

RWANDA / JUDGMENT

IHS RWANDA LTD vs IKIGO CY'IMISORO N'AMAHORO (RRA)

RCOMAA00007/2024/CA CMB RCOMAA00008/2024/CA

COURT

Court of Appeal

DECIDED

28 April 2025

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IHS RWANDA LTD vs IKIGO CY'IMISORO N'AMAHORO (RRA)

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Text

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IHS RWANDA LTD vs IKIGO CY'IMISORO N'AMAHORO (RRA) [Rwanda URUKIKO RW'UBUJURIRE – RCOMAA00007/2024/CA CMB RCOMAA00008/2024/CA (Nyirandabaruta, P.J.; Kamere na Rutazana J.) 28 Mata 2025] Amategeko yerekeye imiburanishirize y'imanza z'ubucuruzi – kujurira – inenge ziri mu rubanza rujuririrwa – Uwajuriye afite inshingano yo kugaragaza ukwibeshya kwakozwe n'Urukiko rubanza gushingiye ku mategeko cyangwa ku byabaye kwatumye urubanza rujuririrwa rucibwa nabi cyangwa kwatuma ruta agaciro. Amategeko yerekeye umusoro utaziguye ku musaruro – inguzanyo – amafaranga y'amanyamahanga – inyungu cyangwa igihombo gikomoka ku ivunjisha mu kwishyura inguzanyo – Umutungo uri mu mafaranga y'amahanga, harimo imyenda yishyuzwa cyangwa igomba kwishyurwa, uhabwa agaciro hakurikijwe agaciro ifaranga rivunjwaho ku muni wa nyuma w'igihe cy'umusoro. Amategeko agenga umusoro utaziguye ku musaruro – Inguzanyo – Iyo sosiyete mbyeyi ihaye sosiyete iyishamikiyeho amafaranga yitwa inguzanyo ntibyakwemezwa gutyo ngo ifatwe nk'ibyatunze umwuga (expense) bidasoreshe, mu gihe iyo nguzanyo itujuje ibisabwa n'amategeko. Incamake

y'ikibazo: Uru rubanza rwatangiye IHS RWANDA Ltd irega Ikigo cy'imisoro n'amahoro (RRA) mu Rukiko rw'Ubucuruzi irusaba gukuraho icyemezo cya Komiseri Mukuru wa RRA kiyangira igihombo kingana na 18,563,444,415Fr, ikanishyurwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. IHS RWANDA Ltd ivuga ko mu kugabanya igihombo cyayo RRA yafashe nk'imari shingiro umwenda yahawe na sosiyete mbyeyi yayo yitwa IHS Mauritius Rwanda Ltd ungana n'amadolari ya Amerika miliyoni Magana abiri (USD200,000,000), bituma yanga igihombo ku guta agaciro k'ifaranga (foreign exchange losses). Ivuga kandi ko mu igenzura, RRA yavuze ko hari ibihombo byo mu mwaka w'imisoro wa 2015 IHS Rwanda Ltd itari yemerewe gukomezanya. kuko uyu mwaka wakorewe igenzura IHS Rwanda Ltd ikajuririra ibyavuye muri iri genzura mu buryo butari bwo. RRA yireguye ivuga ko IHS Rwanda Ltd na IHS Mauritius Rwanda Ltd ari isosiyete zifitanye isano, ari yo mpamvu bigaragara ko amadolari ya Amerika miliyoni magana abiri (USD 200,000,000) IHS Rwanda Ltd yita umwenda, atariwo, ahubwo ari imari shingiro (equity contribution) yatanzwe n'umunyamigabane wayo, kandi ko amasezerano y'umwenda yakozwe hagati ya IHS Rwanda Ltd na IHS Mauritius Rwanda Ltd atujuje ibisabwa n'amategeko. Urukiko mu rubanza RCOM0081/2022/TC, rwemeje ko inguzanyo y'amadolari ya Amerika miliyoni magana abiri (USD200,000,000) IHS Rwanda Ltd yahawe na IHS Mauritius Ltd itaragomba gufatwa nk'imari shingiro, rwemeza, ko ibihombo bijyanye no guta agaciro k'ifaranga biyikomokaho bigomba gukurwa mu musaruro usoreshe. Rwemeje kandi ko IHS Rwanda Ltd ifite uburenganzira bwo gukomezanya igihombo kingana na 18,563,444,415Frw yangiwe na RRA. Rutegeka RRA kwishyura IHS Rwanda Ltd amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. RRA ntiyishimiye imikirize y'urubanza irujuririra mu Rukiko Rukuru rw'Ubucuruzi irusaba gusuzuma niba IHS RWANDA Ltd yarahawe umwenda ku buryo yakwemererwa ibihombo bijyanye nawo, gusuzuma niba ibihombo yemerewe mu rubanza rujuriyirwa byujuje ibisabwa n'amategeko kugira ngo byemerwe nka "depenses", gusuzuma niba uburyo RRA yabazemo ubwicungure (depreciation) bw'imitungo ya IHS RWANDA Ltd bukurikije amategeko, no gusuzuma niba IHS Rwanda Ltd yari ikwiye kwemererwa igihombo cyo mu mwaka w'imisoro wa 2015. inasaba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. IHS Rwanda Ltd yireguye ivuga ko ubujurire bwa RRA nta shingiro bufite kuko ikibazo cyasuzumwe n'Urukiko rw'Ubucuruzi cyari ukumenya niba gufata umwenda IHS Rwanda yahawe na sosiyete mbyeyi yayo (IHS Mauritius Rwanda Ltd) nk'imari shingiro bukurikije amategeko.

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Urukiko Rukuru rw'Ubucuruzi mu rubanza RCOMA00497/2022/HCC rwemeje ko ubujurire bwa RRA bufite ishingiro kuri bimwe, ko imikirize y'urubanza rwajuririwe ihindutse gusa kubijyanye n'uko IHS Rwanda Ltd igomba kwemererwa uburenganzira bwo gukomezanya igihombo kingana na 14,193,700,575Frw cyo muri

2015. Rutegeka RRA kwishyura IHS Rwanda Ltd amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. RRA na IHS Rwanda Ltd bombi ntibishimiye imikirize y'urubanza, buri wese arujuririra mu Rukiko rw'Ubujurire RRA ivuga ko itemera ibyavuzwe n'Urukiko Rukuru rw'Ubucuruzi aho rwemeje ko itagaragaje icyo inenga icyemezo cyafashwe ku rwego rwa mbere ku bijyanye n'igihombo gikomoka kuri 200,000,000USD IHS Rwanda Ltd yahawe na

HIS Mauricius Rwanda Ltd; ko nta mwihariko uhari ku gihombo kijyanye n'itakazagaciro ry'ifaranga gikomoka ku mwenda wayo ku buryo cyanyuranya n'ibiteganywa n'itegeko ku bijyanye no kwemererwa "depenses", ko Urukiko ku rwego rubanza rwabaze imibare ijyanye n'igihombo HIS Rwanda Ltd ikwiye kwemererwa mu buryo butari bwo, kandi ko RRA itabaze nabi ubwicungure bujyanye n'ibikoresho bigize iminara ya IHS RWANDA Ltd. IHS Rwanda Ltd yiregura avuga ko ubujurire bwa RRA nta shingiro bufite kuko yirengangiza ko ikibazo Urukiko rw'Ubucuruzi rwashyikirijwe na IHS Rwanda Ltd kitari ikibazo cyijyanye nuko ibintu byagenze (question of facts) kuko RRA itahakanaga ko hari amasezerano y'inguzanyo, ahubwo ikibazo cyari kumenya by'umwihariko niba amategeko y'u Rwanda yemerera RRA guhindura kamere (nature) y'igikorwa cy'ubucuruzi cyakozwe hagati y'amasosiyete afitanye isano, yanze kwemera inguzanyo yahawe ahubwo ikayifata nk'imari- shingiro (share capital contribution). IHS Rwanda Ltd yajuriye inenga Urukiko Rukuru rw'Ubucuruzi kuba rwaravuze ko ibaruwa yayo yo ku wa 26 Nyakanga 2017 itagaragaza ibyo kuba iyo sosiyete yarangiye igihombo kingana na 4,369,743,840Frw; ko Urukiko Rukuru rw'Ubucuruzi rutafashe iyo baruwa nk'iy'ubujurire kandi ari bwo, ko mu ibaruwa y'ubujurire bwa IHS Rwanda Ltd yakiriwe na RRA ku wa 17/02/2021, yagaragaje ko itemera uburyo RRA yagabanyije amafaranga y'ubwicungure ku bikoresho bigize iminara y'iyi sosiyete, ndetse n'inyungu ku nguzanyo. Isoza asaba ko RRA yategekwe kuyisubiza miliyoni amafaranga y'ikurikiranarubanza n'igihombo cya avoka. RRA kuri ubwo bujuriye, ivuga ko nta shingiro bufite kuko iyo ibaruwa yita iy'ubujurire atari bwo, bityo ko iyo sosiyete idakwiye kwemererwa ko 4,369,743,840Frw nk'igihombo kuko kitigeze kujuririrwa kwa Komiseri Mukuru. Asoza avuga ko amafaranga y'ikurikiranarubanza n'igihombo cya Avoka IHS Rwanda Ltd isaba nta shingiro afite kuko ariyo yishoye mu manza. Urukiko mu rubanza RCOMAA00007/2024/CA CMB RCOMAA 00008/2024/CA rwemeje ko ubujurire bwa IHS Rwanda Ltd nta shingiro bufite ko ubujurire bw'Ikigo cy'imisoro n'amahoro bufite ishingiro. Incamake y'icyemezo: 1. Uwajuriye afite inshingano yo kugaragaza ukwibeshya kwakozwe n'Urukiko rubanza gushingiye ku mategeko cyangwa ku byabaye kwatumye urubanza rujuririrwa rucibwa nabi cyangwa kwatuma ruta agaciro. Bityo, ntabwo Urukiko rwajuririye rwavugaga ko ntaho rwahera rukosora ibyo rutagaragarijwe, nyamara umuburanyi yaragagaje mu myanzuro no mu miburanire, inenge ziri mu rubanza rwaciwe ku rwego rwa mbere, n'amategeko ashingiraho asaba ko zikosorwa. 2. ikiburanwa kireberwa mu myanzuro y'ababuranyi bose, kandi umucamanza aca urubanza ku byasabwe muri icyo kiburanwa gusa, ko adashobora guca urubanza ku kitasabwe mu myanzuro.

3. Umutungo uri mu mafaranga y'amahanga, harimo imyenda yishyuzwa cyangwa igomba kwishyurwa, uhabwa agaciro hakurikijwe agaciro ifaranga rivunjwaho ku munsu wa nyuma w'igihe cy'umusoro. Bityo inyungu zikomoka ku buryo ifaranga riba riyongeye agaciro cyangwa igihombo gitewe n'uko ifaranga riba ryataye agaciro rigereranyijwe n'igipimo cy'ivunjisha cy'amadovise bibarwa igihe cyo kwishyura umusoro.

4. Iyo sosiyete mbyeyi ihaye sosiyete iyishamikiyeho amafaranga yitwa inguzanyo ntibyakwemezwa gutyo ngo ifatwe nk'ibyatunze umwuga (expense) bidasoresheha, mu gihe iyo nguzanyo itujuje ibisabwa

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n'amategako. Bityo, kugirango amafaranga sosiyete cyangwa umuntu ahaye undi kugirango yitwe inguzanyo, agomba kuba yatangiwe ingwate, azishyurwa hiyongeyeho inyungu kandi hanagaragazwa gahunda yo kwishyura (repayment schedule).

5. Ibyemezo bifatwa mu bijyanye n'isora n'isoreshwa ni ibyemezo by'ubutegetsi, bishobora kuvanwaho binyuze mu nzira yo gutakambira Komiseri Mukuru. nk'uko biteganywaga n'Itegeko, nabwo icyemezo afashe kitamunyura akaregera urukiko. Ubujurire bw'Ikigo cy'imisoro n'amahoro bufite ishingiro. Ubujurire bwa IHS Rwanda Ltd nta shingiro bufite. Amategako yashigiweho: Itegeko No 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, Ingingo 19 Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, ingingo ya 6, 10, 111 Itegeko N° 020/2023 ryo ku wa 31/03/2023 rigena uburyo bw'isoresha, Ingingo ya 60 Itegeko No 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha, ingingo ya 30 Amabwiriza ya RURA/ICT InfraDev/ G02/2011 yo ku wa 1 Mata 2011, ingingo ya 2 Imanza zifashishijwe: urubanza RCOMA00008/2022/CA, haburana Prime Economic Zone (PEZ) Co Ltd na MUBILIGI Paul rwaciwe n'Urukiko rw'Ubujurire ku wa 31/07/2023, igika cya 47, Urubanza RCOMAA 00020/2024/CA- RCOMAA 00021/2024/CA, haburana Bank of Kigali Plc na Nsekuyerwaciwe kuwa 21/08/2024 Urubanza RS/INCONST/RCOM 00001/2022/SC, haburana FAST TRUCK INTERIOR AND HARDWARE Ltd na RRA rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2023 (igika cya 33), Urubanza I. IMITERERE Y'URUBANZA [1] IHS Rwanda Ltd yakorewe igenzura na RRA ku misoro yose ku myaka y'imisoro ya 2016 na 2017. Bimwe mu byavuye muri iryo genzura, ni uko ku mwaka wa 2017 RRA yagabanyije igihombo IHS Rwanda Ltd yamenyekanishije muri uwo mwaka, kiva kuri miliyari mirongo itatu, miliyoni mirongo icyenda n'ebyiri, ibihumbi magana atanu na birindwi, magana arindwi mirongo inani na kimwe (30,092,507,781Frw) kigera kuri miliyari cumi n'imwe, miliyoni magana cyenda acyenda mirongo icyenda n'eshatu, ibihumbi magana ane mirongo itandatu na bitatu, ijana na mirongo irindwi na arindwi (11,993,463,177Frw), bisobanuye ko RRA yangiye IHS Rwanda Ltd igihombo kingana na miliyari cumi n'umunani, miliyoni mirongo icyenda n'icyenda, ibihumbi mirongo ine na bine, magana atandatu n'ane (18,099,044,604Frw). [2] IHS Rwanda Ltd yatakambiye Komiseri Mukuru wa RRA, agabanya igihombo yari yamenyekanishije mu mwaka wa 2016 kiva kuri miliyari makumyabiri, miliyoni mirongo itandatu n'icyenda, ibihumbi Magana atanu mirongo icyenda n'icyenda, ijana na mirongo inani n'abiri (20,069.599,182Frw) kigera kuri miliyari cumi n'icyenda, miliyoni magana ane mirongo inani n'enye, ibihumbi cumi na birindwi, magana atandatu makumyabiri n'atatu (19.484,017,623Frw); Naho ku mwaka wa 2017 igihombo yari yemerewe n'abagenzuzi kiva kuri miliyari cumi n'imwe, miliyoni magana cyenda acyenda mirongo icyenda n'eshatu, ibihumbi magana ane mirongo itandatu na bitatu, ijana na mirongo irindwi na arindwi

(11,993,463,177Frw) kigera kuri miliyari cumi n'imwe, miliyoni magana magana atanu makumyabiri n'icyenda, ibihumbi mirongo itandatu na bitatu, magana atatu mirongo itandatu n'atandatu (11,529,063,366Frw), bityo muri uwo mwaka wa 2017

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igihombo itemerewe kiba miliyari cumi n'umunani, miriyoni magana atanu mirongo itandatu n'eshatu, ibihumbi magana ane mirongo ine na bine, magana ane na cumi n'atanu (18,563,444,415Frw). [3] IHS RWANDA Ltd ntiyishimiye icyo cyemezo cya Komiseri Mukuru, irega RRA mu Rukiko rw'Ubucuruzi mu rubanza RCOM0081/2022/TC, irusaba gukuraho icyemezo kiyangira igihombo yangiwe kimaze kuvugwa (18,563,444,415Frw), ikanishyurwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. Mu kirego cyayo IHS RWANDA Ltd ivuga ko mu kugabanya igihombo cyayo RRA yafashe nk'imari shingiro umwenda yahawe na sosiyete mbyeyi yayo yitwa IHS Mauritius Rwanda Ltd ungana n'amadolari ya Amerika miliyoni Magana abiri (USD 200,000,000), bituma yanga igihombo ku guta agaciro k'ifaranga (foreign exchange losses) kingana na miliyari eshatu, miliyoni magana abiri mirongo irindwi n'umunani, ibihumbi magana acyenda mirongo ine na bine, magana ane mirongo inani n'atanu (3,278,944,485Frw) mu mwaka w'imisoro wa 2016 na miliyari imwe, miliyoni ijana na makumyabiri n'icyenda, ibihumbi bitanu, magana acyenda mirongo ine n'atatu (1,129,005,943Frw) mu mwaka w'imisoro wa 2017, gikurwa mu musaruro usorashwa (Taxable income). Yakomeje ivuga ko mu igenzura, RRA yavuze ko hari ibihombo byo mu mwaka w'imisoro wa 2015 IHS Rwanda Ltd itari yemerewe gukomezanya bingana na miliyari enye, miliyoni magana atatu mirongo itandatu n'icyenda, ibihumbi magana arindwi mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw) kuko uyu mwaka wakorewe igenzura IHS Rwanda Ltd ikajuririra ibyavuye muri iri genzura mu buryo butari bwo. [4] RRA yireguye ivuga ko IHS Rwanda Ltd na IHS Mauritius Rwanda Ltd ari isosiyete zifitanye isano, ari yo mpamvu bigaragara ko amadolari ya Amerika miliyoni magana abiri (USD 200,000,000) IHS Rwanda Ltd yita umwenda, atariwo, ahubwo ari imari shingiro (equity contribution) yatanze n'umunyamigabane wayo, kandi ko amasezerano y'umwenda yakozwe hagati ya IHS Rwanda Ltd na IHS Mauritius Rwanda Ltd atujuje ibisabwa n'amategeko. [5] Urukiko rw'Ubucuruzi rwaciye urwo rubanza ku wa 15/06/2022, rusanga inguzanyo y'amadolari ya Amerika miliyoni magana abiri (USD200,000,000) IHS Rwanda Ltd yahawe na IHS Mauritius Rwanda Ltd itaragomba gufatwa nk'imari shingiro, ndetse n'ibihombo byavuzwe haruguru bijyanye no guta agaciro k'ifaranga biyikomokaho bigomba gukurwa mu musaruro usorashwa. Rwemeje ko IHS Rwanda Ltd ifite uburenganzira bwo gukomezanya igihombo kingana n'amafaranga y'u Rwanda miliyari cumi n'umunani, miliyoni magana atanu mirongo itandatu n'eshatu, ibihumbi magana ane mirongo ine na bine, magana ane na cumi n'atanu (18,563,444,415Frw) yangiwe na RRA. Rutegeka RRA kwishyura IHS Rwanda Ltd amafaranga ibihumbi magana atanu (500,000Frw) y'ikurikiranarubanza na miliyoni imwe (1,000,000FRW) y'igihembo cya Avoka. [6] RRA ntiyishimiye imikuriza y'urubanza ijurira mu Rukiko Rukuru rw'Ubucuruzi mu rubanza No RCOMA00497/2022/HCC, irusaba gusuzuma niba IHS RWANDA Ltd yarashyize umwenda ku buryo yakwemererwa ibihombo bijyanye nawo, gusuzuma niba ibihombo yemerewe mu rubanza rujuririrwa byujuje ibisabwa n'amategeko kugira ngo byemerwe nka

“depenses”, gusuzuma niba uburyo RRA yabazemo ubwicungure (depreciation) bw’imitungo ya IHS RWANDA Ltd bukurikije amategeko, no gusuzuma niba IHS Rwanda Ltd yari ikwiye kwemererwa igihombo cyo mu mwaka w’imisoro wa 2015 kingana na miliyari enye, miliyoni magana atatu mirongo itandatu n’icyenda, ibihumbi magana arindwi mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw). Yasoje isaba amafaranga y’ikurikiranarubanza n’igihembo cya Avoka. [7] IHS Rwanda Ltd yireguye ivuga ko ubujurire bwa RRA nta shingiro bufite kuko ikibazo cyasuzumwe n’Urukiko rw’Ubucuruzi cyari ukumenya niba gufata umwenda IHS Rwanda yahawe na sosiyete mbyeyi yayo (IHS Mauritius Rwanda Ltd) nk’imari shingiro bukurikije amategeko. [8] Urukiko Rukuru rw’Ubucuruzi mu rubanza RCOMA00497/2022/HCC rwaciye ku wa 17/11/2023, rwemeje ko ubujurire bwa RRA bufite ishingiro kuri bimwe, ko imikirize y’urubanza rwajuririwe ihindutse

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gusa kubijyanye n’uko IHS Rwanda Ltd itagomba kwemererwa uburenganzira bwo gukomezanya igihombo kingana na miliyari enye, miliyoni magana atatu mirongo itandatu n’icyenda, ibihumbi magana arindwi mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw); ko ibyemejwe mu rubanza RCOM00081/2022/TC bishyirwa mu bikorwa havuyemo ayo mafaranga, bityo IHS Rwanda Ltd ikaba yemerewe gukomezanya igihombo kingana miliyari cumi n’enye, miliyoni ijana na mirongo icyenda n’eshatu, ibihumbi magana arindwi. Magana atanu mirongo irindwi n’atanu (18,563,444,415Frw- 4,369,743,840Frw=14,193,700,575Frw). Rutegeka RRA kwishyura IHS Rwanda Ltd amafaranga ibihumbi magana atanu (500,000Frw) y’ikurikiranarubanza, miliyoni imwe (1,000,000Frw) y’igihembo cya Avoka n’ibihumbi makumyari (20,000Frw) y’amagarama. [9] RRA na IHS Rwanda Ltd bombi ntibishimiye imikirize y’urubanza, buri wese arujuririra muri uru Rukiko, ubujurire bwa RRA bwandikwa kuri RCOMAA00007/2024/CA, naho ubwa IHS Rwanda Ltd buhabwa RCOMAA00008/2024/CA, izo manza zombi zihurizwa mu rubanza rumwe, ruburanishwa ku wa 06/01/2025, RRA ihagarariwe na Me Twahirwa Jean Baptiste, IHS Rwanda Ltd ihagarariwe na Me Bizimana Emmanuel na Me Nzafashwanayo Dieudonné. [10] Mu bujurire bwayo, RRA ivuga ko itemera ibyavuzwe n’Urukiko Rukuru rw’Ubucuruzi aho rwemeje ko itagaragaje icyo inenga icyemezo cyafashwe ku rwego rwa mbere ku bijyanye n’igihombo gikomoka kuri 200,000,000USD IHS Rwanda Ltd yahawe na HIS Mauricius Rwanda Ltd; ko nta mwihariko uhari ku gihombo kijyanye n’itakazagaciro ry’ifaranga gikomoka ku mwenda wayo ku buryo cyanyuranya n’ibiteganywa n’itegeko ku bijyanye no kwemererwa “depenses”, ko Urukiko ku rwego rubanza rwabaze imibare ijyanye n’igihombo HIS Rwanda Ltd ikwiye kwemererwa mu buryo butari bwo, kandi ko RRA itabaze nabi ubwicungure bujyanye n’ibikoresho bigize iminara ya IHS RWANDA Ltd. [11] Uhagarariye IHS Rwanda Ltd yiregura avuga ko ubujurire bwa RRA nta shingiro bufite kuko yirengangiza ko ikibazo Urukiko rw’Ubucuruzi rwashyikirijwe na IHS Rwanda Ltd kitari ikibazo cyijyanye nuko ibintu byagenze (question of facts) kuko RRA itahakanaga ko hari amasezerano y’inguzanyo, ahubwo ikibazo cyari kumenya by’umwihariko niba amategeko y’u Rwanda yemerera RRA guhindura kamere (nature) y’igikorwa cy’ubucuruzi cyakozwe hagati y’amasosiyete afitanye isano, yanze kwemera inguzanyo yahawe ahubwo ikayifata nk’imari- shingiro (share capital contribution). [12] Uhagarariye IHS

Rwanda Ltd avuga ko nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze rwemeza ko RRA itagaragaje icyo inenga isesengurwa ryakozwe n'Urukiko rw'Ubucuruzi ngo inagaragaze n'uburyo byakosorwamo, ko ntaho rwari guhera rukosora ibyo rutagaragarijwe. Kubw'ibyo avuga ko ubujurire bwa RRA budafite ishingiro. [13] Mu myanzuro y'ubujurire bwa IHS Rwanda Ltd, yo inenga Urukiko Rukuru rw'Ubucuruzi kuba rwaravuze ko ibaruwa yayo yo ku wa 26 Nyakanga 2017 itagaragaza ibyo kuba iyo sosiyete yarangiwe igihombo kingana na miliyari enye, miliyoni magana atatu mirongo itandatu n'icyenda, ibihumbi magana arindwi mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw); ko Urukiko Rukuru rw'Ubucuruzi rutafashe iyo baruwa nk'iy'ubujurire kandi ari bwo, ko mu ibaruwa y'ubujurire bwa IHS Rwanda Ltd yakiriwe na RRA ku wa 17/02/2021, yagaragaje ko itemera uburyo RRA yagabanyije amafaranga y'ubwicungure ku bikoresho bigize iminara y'iyi sosiyete, ndetse n'inyungu ku nguzanyo zavuzwe haruguru, aya kandi akaba ariyo mafaranga 4,369,743,840Frw yavuzwe haruguru. Isoza asaba ko RRA yategekwa kuyisubiza miliyoni cumi (10,000,000Frw) y'igihembo cya Avoka, miliyoni eshanu (5,000,000Frw) y'ikurikiranarubanza n'ay'igarama ibihumbi mirongo itanu (50,000Frw). [14] Uhagarariye RRA kuri ubwo bujurire bwa IHS Rwanda Ltd, avuga ko nta shingiro bufite kuko iyo ibaruwa yita iy'ubujurire atari bwo, bityo ko iyo sosiyete idakwiye kwemererwa amafaranga miliyari enye, miliyoni magana atatu mirongo itandatu n'icyenda, ibihumbi magana arindwi mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw) nk'igihombo kuko kitigeze kujuririrwa kwa Komiseri Mukuru. Asoza

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avuga ko amafaranga y'ikurikiranarubanza n'igihembo cya Avoka IHS Rwanda Ltd isaba nta shingiro afite kuko yishoye mu manza zidafite aho zishingiye. [15] Hashingiwe kuri izo mpaka harasuzumwa ibibazo bikurikira. Kumenya niba mu rubanza rujuririrwa RRA itaranenze icyemezo cyafashwe ku rwego rwa mbere ku bijyanye n'igihombo gikomoka ku mwenda IHS Rwanda Ltd ivuga ko yahawe na IHS Mauritius Rwanda Limited ; Kumenya niba mu rubanza rujuririrwa igihombo IHS RWANDA Ltd ikwiye kwemererwa cyarabazwe mu buryo butari bwo ; Kumenya niba RRA yarabaze nabi ubwicungure bujyanye n'ibikoresho bigize iminara ya IHS RWANDA ; Kumenya niba amafaranga miliyari enye, miliyoni magana atatu mirongo itandatu n'icyenda, ibihumbi magana arindwi mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw) yarajuririwe kwa Komiseri Mukuru akaba yaragombaga gufatwaho icyemezo n'Urukiko Rukuru rw'Ubucuruzi ; Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ababuranyi basaba bayahabwa. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA 1. Kumenya niba mu rubanza rujuririrwa RRA itaranenze icyemezo cyafashwe ku rwego rwa mbere ku bijyanye n'igihombo gikomoka ku mwenda IHS RWANDA Ltd ivuga ko yahawe na IHS Mauritius Rwanda Ltd [16] Uhagarariye RRA, avuga ko itemeranywa n'ibyavuzwe n'Urukiko Rukuru rw'Ubucuruzi ku birebana n'igihombo gikomoka ku mwenda IHS RWANDA Ltd ivuga ko yahawe na IHS Mauritius Rwanda Ltd, aho rwemeje ko RRA itagaragaje icyo inenga icyemezo cyafashwe ku rwego rwa mbere mu rubanza rwaciwe n'Urukiko rw'Ubucuruzi kuko ibyo yavuze mu myanzuro yatanze kuri urwo rwego, bisa n'ibyo yavuze mu bujurire. [17] Avuga ko RRA yagaragaje icyo inenga icyemezo cy'Urukiko rw'Ubucuruzi mu gace ka 19 cy'urubanza

rujuririrwa, aho yavuze ko urwo Rukiko rwemeje ko IHS RWANDA Ltd yahawe umwenda kandi nta kimenyetso na kimwe kigaragaza ko uwo mwenda wabayeho. Akomeza avuga ko RRA yagaragaje ko urwo Rukiko rwashingiye icyemezo cyarwo cyose ku myanzuro na “motivations” zari zatanze n’uruhande rumwe rwa IHS Rwanda Ltd, ntacyo ruhinduye cyangwa ngo rugaragaze impamvu rutemera ibyo RRA yavugaga, ko bitari ngombwa ko RRA isubiramo buri kintu itemeranywa narwo, ko rero yagaragarije Urukiko (Rukuru rw’Ubucuruzi) ko itabona icyo Urukiko rw’Ubucuruzi rwashingiweho mu kutemera ibyo RRA yavugaga. [18] Uhagarariye IHS RWANDA Ltd, avuga ko ibyo RRA ivuga nta shingiro bifite, ko yirengangiza ko ikibazo Urukiko rw’Ubucuruzi rwashyikirijwe na IHS Rwanda Ltd kitari ikibazo kijyanye n’uko ibintu byagenze (question of facts) kuko RRA idahakanaga ko hari amasezerano y’inguzanyo cyangwa ngo ivuge ko nta mafaranga angana n’ari mu masezerano y’inguzanyo IHS Rwanda Ltd yakiriye avuye kuri IHS Mauritius Rwanda Ltd. Akomeza avuga ko ikibazo Urukiko rw’Ubucuruzi rwasuzumye cyari icy’amategeko kijyanye no kumenya by’umwihariko niba amategeko y’u Rwanda yemerera RRA guhindura “nature” y’igikorwa cy’ubucuruzi cyakozwe hagati y’amasosiyete afitanye isano, nk’uko yabikoze kuri IHS Rwanda yanga kwemera inguzanyo yahawe, ahubwo ikayifata nk’imari-shingiro (share capital contribution).

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[19] Avuga ko Urukiko rw’Ubucuruzi rwanzuye ko amategeko yakurikizwaga mu gihe IHS Rwanda Ltd yahabwaga inguzanyo, atemereraga RRA kuba yahindura “nature” y’igikorwa cy’ubucuruzi hagati y’abantu bafitanye isano; ko Urukiko rwashingiye icyemezo cyarwo ku ngingo ya 30 y’Itegeko N° 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro ndetse n’ingingo ya 11 y’Iteka rya Minisitiri N° 004/07 ryo ku wa 09/05/2007 rishyira mu bikorwa iryo Tegeko kuko izo ngingo arizo zigenga mu buryo bwihariye ibikorwa by’ubucuruzi hagati y’abantu bafitanye isano, rukaba rwarasobanuye ko ntaho zemerera RRA guhindura “nature” y’igikorwa cy’ubucuruzi, ahubwo zireba ibijyanye n’uburyo bwo kugena ibiciro mu bikorwa by’ubucuruzi hagati y’abantu bafitanye isano. UKO URUKIKO RUBIBONA [20] Impaka kuri iyi ngingo y’ubujurire zishingiye kuba mu rubanza rujuririrwa, Urukiko Rukuru rw’Ubucuruzi rwaremeje ko ntacyo RRA yanenze icyemezo cyafashwe ku rwego rwa mbere ku bijyanye n’igihombo gikomoka ku madolari miliyoni magana abiri (200,000,000USD) IHS RWANDA Ltd ivuga ko yahawe na IHS Mauritius Rwanda Ltd nk’umwenda akaba atagomba gufatwa nk’imari shingiro. [21] Ibyerekeranye no kunenga urubanza rujuririrwa, Urukiko rw’Ubujurire rwabitanzeho umurongo mu rubanza RCOMA00008/2022/CA, rwaciye n’Urukiko rw’Ubujurire ku wa 31/07/2023, Prime Economic Zone (PEZ) Co Ltd aburana na Mubiligi Paul (igika cya 47), aho rwavuze ko “Uwajuriye afite inshingano yo kugaragaza ukwibeshya kwakozwe n’Urukiko rubanza gushingiye ku mategeko cyangwa ku byabaye kwatumye urubanza rujuririrwa rucibwa nabi cyangwa kwatuma ruta agaciro”. Uyu murongo ukomeje no gukoreshwa mu zindi manza nyinshi zicibwa n’uru Rukiko kuri icyo kibazo. [22] Mu rubanza rujuririrwa, Urukiko Rukuru rw’Ubucuruzi rwasanze ku rwego rwa mbere, Urukiko rw’Ubucuruzi rwarasobanuye ko amategeko atemerera RRA guhindura igikorwa cy’ubucuruzi ndetse ko ntaho

umunyamigabane abujijwe guha inguzanyo sosiyete afitemo imigabane; ahubwo ko icyo amategeko ateganya ari uko inyungu hagati y'abafitanye isano, inyungu ku nguzanyo, ziba zigomba kuba mu kigero kimwe n'izo bashoboraga gushyiraho iyo baba badafitanye isano¹. [23] Urukiko Rukuru rw'Ubucuruzi rwasanze kandi ibyo RRA yasobanuraga mu Rukiko rw'Ubucuruzi (Gufata umwenda IHS Rwanda yahawe na sosiyete mbyeyi yayo (parent company) nk'imari ishingiye itangwa n'abanyamigabane), ari nabyo byatumye yanga igihombo gikomoka ku guta agaciro k'ifaranga bikurikije amategeko, bisa neza n'ibiri mu mwanzuro w'ubujurire ku kibazo cya mbere cyo kumenya niba IHS RWANDA Ltd yarahawe umwenda ku buryo yakwemererwa ibihombo bijyanye nawo bikomoka ku guta agaciro k'ifaranga"; ruvuga ko mu kujurira RRA yateruye ibyo yaburanishije byose ku rwego rwa mbere, rwemeza ko RRA itagaragaza icyo inenga isesengura ryakozwe ku rwego rwa mbere ngo inagaragaze ubusobanuro n'uburyo byakosorwamo ishingiye ku bimenyetso n'amategeko nk'uko ibitegekwa n'ingingo ya 150, 50 na 60, bityo ko ntaho rwahera rukosora ibyo rutagaragarijwe, rwanzura ko iyo ngingo y'ubujurire bwa RRA nta shingiro² ifite. [24] Dosiye igaragaza ko ku rwego rwa mbere³, Urukiko rw'Ubucuruzi mu rubanza No RCOM0081/2022/TC rwaciye ku wa 15/06/2022, rushingiye ku ngingo ya 30 y'Itegeko N° 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro⁴ n'ingingo ya 9 y'Iteka rya Minisitiri N° 004/07 ryo ku

1 Id. Igika cya 58. 2 Id. Igika cya 59-60 3 Urubanza No RCOM0081/2022/TC rwaciye Urukiko rw'Ubucuruzi ku wa 15/06/2022, haburana IHS Rwanda Ltd na RRA, Igika cya 19. 4 Ingingo ya 30 y'Itegeko N° 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro rigena imisoro itaziguye ku musaruro iteganya ibikurikira: "Iyo abantu bafitanye isano bakora ibikorwa by'ubucuruzi harimo n'ubw'amafaranga hagati yabo, bemeranyije cyangwa umwe yemereye undi ibitari gushoboka iyo baba bakora buri wese ku giti cye, Umuyobozi Mukuru w'Ikigo

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wa 09/05/2007 rishyira mu bikorwa iryo Tegeko⁵, rwavuze ko 200,000,000USD IHS Mauricius Rwanda Ltd yahaye HIS Rwanda Ltd, ari inguzanyo aho kuba imari shingiro kandi ko RRA itemerewe guhindura imiterere (nature) y'igikorwa cy'ubucuruzi abantu bafitanye isano (sosiyete zifitanye isano) bagiranye; rubiharaho rwemeza ko miliyoni magana abiri (200,000,000USD) y'Amadolari y'Amerika IHS RWANDA Ltd yahawe na IHS MAURITIUS Ltd atagomba gufatwa nk'imari shingiro⁶. [25] Dosiye igaragaza ko mu Rukiko Rukuru rw'Ubucuruzi (mu gika cya 25), Me Twahirwa Jean Baptiste waburaniraga RRA yavuze ko Urukiko ku rwego rubanza mu gace ka 19 cy'icyemezo cyarwo, rwemeje ko uregwa (IHS Rwanda Ltd) yahawe umwenda kandi nta kimenyetso na kimwe uregwa yatanze cyagaragaza koko ko uwo mwenda wabayeho, asaba ko ibyakozwe ku rwego rubanza kuri iyi ngingo byateshwa agaciro, hakemzwa ko IHS Rwanda Ltd itari ikwiye kwemererwa igihombo yemerewe n'Urukiko; agaruka ku bisobanuro yari yatanze ku rwego rwa mbere avuga ko abagenzuzi ba RRA nta kosa bakoze kuba baremeje ko icyo IHS Rwanda Ltd yise umwenda atari wo ahubwo ari imari shingiro, kandi ko ibyashingiweho mu kwemeza ko atari umwenda, ari nabyo biteganywa mu Mabwiriza ya OECD; mu gika 26 cy'urubanza rujuririrwa, asaba Urukiko Rukuru rw'Ubucuruzi gushingira ku ngingo ya 9 ya OECD

Model Convention 2017. [26] I bivuzwe mu gika kibanziriza iki byerekana ko RRA yanenze Urukiko rw'Ubucuruzi kuba rwaravuze ko rudakwiye gushingira kuri "OECD Transfer Pricing Guidance on Financial Transactions, February 2020," kandi RRA ivuga ko yari ikwiye gushingirwaho, Urukiko Rukuru rw'Ubucuruzi rukaba rwaragombaga kubisuzuma. [27] Uretse n'ibyo kandi, uhagarariye RRA, mu gika cya 25 cy'urubanza rujuririrwa, yavuze ko ingingo ya 21 y'Itegeko 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye igaragaza ko kugira ngo "depenses" zemererwe kuvanwa mu musaruro usoreshe, zigomba kuba zarabayeho koko kandi zifite inyandiko zizigaragaza nyazo ndetse zikaba zaragabanyije umutungo w'umusoreshe; aha akaba yaranengaga ko igihombo Urukiko rw'Ubucuruzi rwemerereye HIS Rwanda Ltd, kitabayeho, asaba Urukiko Rukuru rw'Ubucuruzi kwemeza ko IHS Rwanda Ltd itari ikwiye kwigenera igihombo (loss) kuko kidafite aho gishingiye, anasaba ko ibyakozwe ku rwego rubanza kuri iyi ngingo byateshwa agaciro, hakemezwa ko IHS Rwanda Ltd itari ikwiye kwemererwa igihombo yemerewe n'Urukiko rw'Ubucuruzi. [28] Hashingiye ku murongo watanze mu rubanza RCOMAA00008/2022/CA wagaragajwe haruguru, Urukiko rw'Ubujurire rurasanga mu rubanza rujuririrwa uhagarariye RRA yaragagaje inenge ziri mu rubanza rwaciye ku rwego rwa mbere, n'amategeko ashingiraho asaba ko zikosorwa, bityo kuba Urukiko Rukuru rw'Ubucuruzi rwaremeje ko ntaho rwahera rukosora ibyo rutagaragarijwe, bikaba nta shingiro bifite, urwo Rukiko rukaba rwaragombaga gusuzuma "niba hari amakosa Urukiko ku rwego rwa mbere rwakoze mu kwemeza ko IHS Rwanda Ltd yahawe umwenda, ku buryo yakwemererwa ibihombo bijyanye nawo bikomoka ku guta agaciro k'ifaranga?". Ibi biri busuzumwe mu ngingo ikurikiraho, yerekeranye n'uko igihombo IHS Rwanda Ltd ikwiye kwemererwa cyabazwe. 2. Kumenya niba igihombo IHS Rwanda Ltd ikwiye kwemererwa cyabazwe mu buryo butari bwo [29] Uhagarariye RRA avuga ko mu gika cya 115 cy'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa RRA bufite ishingiro ku bijyanye n'igihombo kingana na miliyari enye, miliyoni

cy'Imisoro n'Amahoro ashobora gutegeka, akurikije amabwiriza ya Minisitiri, ko inyungu z'umwe cyangwa za benshi muri abo bantu bafitanye isano zigomba kongerwaho inyungu abo bantu bagombye kuba baragize iyo baba bakora buri wese ku giti cye." 5 Ingingo ya 9 y' Iteka rya minisitiri N° 004/07 ryo ku wa 09/05/2007 rishyira mu bikorwa itegeko N° 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku nyungu, Umutwe wa IV uvuga ibijyanye n' ibiciro bishingirwaho ku bantu bafitanye isano mu bikorwa by'ubucuruzi, iteganya ibi ko "Igenwa ry'igiciro cyo ku isoko rishingira ku igereranya ry'igikorwa cy'ubucuruzi kigenzurwa n'igikorwa cy'ubucuruzi kitagenzurwa." 6 Id, igika cya 27 7 Ikibazo cya mbere (issue 1) cyasabwaga Urukiko Rukuru rw'Ubucuruzi gusuzuma mu rubanza rujuririrwa

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magana atatu mirongo itandatu n'icyenda, ibihumbi magana arindwi mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw), maze rwemeza ko IHS Rwanda Ltd yemererwa igihombo kingana na miliyari cumi n'enye, ibihumbi ijana na mirongo icyenda na bitatu, ibihumbi magana arindwi, magana atanu mirongo irindwi n'atanu (14,193,700,575 Frw) ni ukuvuga (18,563,444,415Frw-4,369,743,840Frw). [30] Avuga ko amafaranga miliyari cumi

n'umunani, miliyoni magana atanu mirongo itandatu n'eshatu, ibihumbi magana ane mirongo ine na bine, magana ane na cumi n'atanu (18,563,444,415Frw) yahereweho n'urwo Rukiko mu kubara igihombo ntaho ahuriye n'amafaranga yaburanwaga kuko amafaranga y'ibihombo IHS Rwanda Ltd isaba kwemererwa ateranyijwe atagera kuri ayo, nta n'aho ahuriye n'amafaranga yaburanywe, ko ahubwo abahagarariye iyo sosiyete bayavuzeho muri "introduction" y'imyanzuro yabo, muri "issues" baregeraga bavugagamo ibindi. Asobanura ko amafaranga yaburanwaga ku rwego rwa mbere yanganaga na miliyari cumi n'ebyiri (12,000,000,000Frw), ariyo yari gukurwamo igihombo cya miliyari enye (4,000,000,000Frw) hagasigara miliyari umunani (8,000,000,000Frw). Asaba Urukiko rw'Ubujurire gukosora imibarire ijyanye n'igihombo IHS Rwanda Ltd yemerewe kuko yakozwe mu buryo butari bwo. [31] Ku byerekeranye n'igihombo gituruka ku itakazagaciro ry'ifaranga ku mwenda wa miliyoni magana abiri y'amadolari (200,000,000USD), uhagarariye RRA avuga ko ingingo ya 19 y'Itegeko No 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, ivuga ko igihombo (perte) gikomoka ku gutakaza agaciro k'ifaranga kitabwaho mu kubara inyungu umusoresha yagize mu mwaka runaka, naho ingingo ya 21 ikagaragaza ibisabwa (conditions) kugira ngo icyo gihombo kibe cyafatwa nka "dépenses" zivanwa mu musaruro (income) usoresha; koi zo "depenses" zigomba kuba zarabayeho koko (real expense) kandi zifite inyandiko zizigaragaza nyazo, naho mu gace kayo ka 3 iyo ngingo ikavuga ko "dépenses" zigomba kuba zaragabanyije umutungo w'umusoresha (decrease in the net assets of the taxpayer). Ashingiye kuri ibyo, avuga ko igihombo IHS Rwanda Ltd isaba kwemererwa atari "dépenses" nyayo kuko umwenda HIS ivuga ko icyo gihombo gikomokaho utigeze wishyurwa (repayment), ahubwo icyo gihombo kigaragara gusa mu bitabo by'ibaruramari bya IHS Rwanda Ltd ; bityo ko icyabayeho ari "comptabilisation" y'igihombo, kandi nta bwishyu bwigeze bubaho. Kubw'ibyo asaba ko icyemezo cyafashwe n'Urukiko Rukuru rw'Ubucuruzi gihindurwa. [32] Abahagarariye IHS Rwanda Ltd bavuga ko Urukiko rw'Ubujurire rudakwiye kwakira ngo runasuzume ingingo uhagarariye RRA avuga y'uko igihombo cy'amafaranga miliyari cumi n'umunani, miliyoni magana atanu mirongo itandatu n'eshatu, ibihumbi magana ane mirongo ine na bine, magana ane na cumi n'atanu (18,563,444,415Frw) ari cyo IHS Rwanda Ltd yari yaregeye, kuko itari muzu yari yajuririye ngo zinasuzumwe n'Urukiko Rukuru rw' Ubucuruzi, bityo ikaba itasuzumwa bwa mbere mu bujurire bwo ku rwego rwa kabiri hashingiwe ku ngingo ya 154 y' Itegeko No22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, iteganya ko ku rwego rw'ubujurire hadashobora gutangirwa ikirego gishya uretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu rukiko rw'ubujurire. [33] Bavuga ko Urukiko rw'Ubujurire rusanze iyo ngingo y'ubujurire bwa RRA ikwiye kwakirwa, rukayisuzuma rutayihisha ingiro kuko nyuma y'uko IHS Rwanda Ltd itishimiye ibyavuye mu igenzura yakorewe, ikabijuririra kwa Komiseri Mukuru, mu ibaruwa ye yo ku wa 19/04/2021 isubiza ubujurire bwayo, yongerera igihombo IHS Rwanda Ltd yangiwe mu mwaka w'imisoro wa 2017 kigera ku mafaranga miliyari cumi n'umunani, miliyoni magana atanu mirongo itandatu n'eshatu, ibihumbi magana ane mirongo ine na bine, magana ane na cumi n'atanu (18,563,444,415Frw), abazwe mu buryo bukurikira:30,092,507,781Frw yamenyekanishinje muri 2017 gukuramo 11,529,063,366Frw Komiseri Mukuru yayemereye), bityo IHS Rwanda Limited iregera Urukiko rw'Ubucuruzi irusaba

gukuraho icyemeza cya Komiseri Mukuru kiyangira icyo gihombo kingana gutyo.

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[34] Ku byerekeranye n'igihombo gituruka ku itakazagaciro ry'ifaranga ku mwenda wa miliyoni magana abiri z'amadolari (200,000,000USD), bavuga ko ibyo uhagarariye RRA avuga atari byo kuko ibijyane n'ibihombo ku guta agaciro k'ifaranga ku mwenda utarishyurwa (unrealised foreign exchange losses) bigengwa n'ingingo yihariye ya 19 y'Itegeko No 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, ivuga ko: "Mu isoza ry'8igihe cy'umusoro, umutungo uri mu mafaranga y'amahanga, harimo imyenda yishyuzwa cyangwa igomba kwishyurwa, uhabwa agaciro hakurikijwe agaciro ifaranga rivunjwaho ku munsu wa nyuma w'igihe cy'umusoro. Inyungu cyangwa igihombo giturutsemo bishyirwa mu ibarura ry'inyungu ku bikorwa ry'icyo gihe." Kandi ko iyi ngingo yihariye, idahuye n'ibiteganywa n'ingingo ya 21 y'iryo Tegeko. [35] Bavuga ko Urukiko Rukuru rw'Ubucuruzi rwashingiye ku ngingo ya 19 imaze kuvugwa, rwemeza ko igihombo gituruka ku guta agaciro k'ifaranga ku mwenda utarishyurwa (unrealised foreign exchange loss) gikurwa mu musaruro usoresheha, kandi ko RRA nayo mu bujurire bwayo yavugaga ko iyo ngingo ariyo ikwiye gushingirwaho ndetse ko no mu mwanzuro wayo w'ubujurire mu Rukiko rw'Ubujurire ikaba ibisubiramo. [36] Bavuga kandi ko Urukiko Rukuru rw'Ubucuruzi rwashingiye icyemezo cyarwo ku kuba RRA muri "audits" zagiye zikorera abandi basoresheha (Gigawatt Final Rectification p.3), RRA yaremeye ko igihombo gikomoka ku ihindagurika ry'agaciro k'ifaranga ku myenda itarishyurwa gikurwa mu musaruro usoresheha. Bakomeza bavuga ko no mu itegeko N° 027/2022 ryo ku wa 20/10/2022 rishyiraho imisoro ku musaruro nk'uko ryahinduwe, ingingo ya 25, agace 12, iteganya ko igihombo cy'ivunjisha gikomoka ku mwenda utarishyurwa (unrealised foreign exchange loss) cyongewe ku rutonde rw'ibyatumye umwuga (expenses) bidakurwa mu musaruro usoresheha (reba); bityo ko byumvikanisha neza ko ku myaka y'imisoro ya mbere y'uko iri tegeko ritangazwa mu Igazeti ya Leta, igihombo cy'ivunjisha gikomoka ku mwenda utarishyurwa cyari mu byatumye umwuga bivanwa mu musaruro usoresheha. [37] Kubw'ibyo bavuga ko ubujurire bwa RRA nta shingiro bukwiye guhabwa basaba Urukiko rw'Ubujurire kudahindura icyemezo cy'Urukiko Rukuru rw'Ubucuruzi ku byerekeranye n'uko IHS Rwanda Ltd yemerewe gukura mu musaruro usoresheha igihombo gikomoka ku guta agaciro k'ifaranga ku mwenda utarishyurwa. UKO URUKIKO RUBIBONA [38] Impaka zishingiye ku kumenya niba mu rubanza rujuririrwa igihombo cya IHS Rwanda Ltd cyarabariwe ku mafaranga miliyari cumi n'umunani, miliyoni magana atanu mirongo itandatu n'eshatu, ibihumbi magana ane mirongo ine na bine, magana ane na cumi n'atanu (18,563,444,415Frw) ataregewe, no kukumenya niba icyo gihombo cyarabariwe ku itakazagaciro ry'ifaranga rituruka ku madolari miliyoni magana abiri (200,000,000USD) yabazwe nk'umwenda kandi utari ukwiye kwemerwa nka "depenses" hakurikijwe Itegeko No 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro. A. Ku bijyanye n'uko igihombo cya IHS Rwanda Ltd cyaba cyarabariwe ku mafaranga ataregewe [39] Ibijyanye no kumenya niba urubanza rwaraciye ku kitararegewe, Urukiko rw'Ubujurire mu rubanza RCOMAA00020/2024/CA- RCOMAA 00021/2024/CA rwaciye ku wa 21/08/2024, haburana Bank

Of Kigali Plc na Nsekuye (igika cya 21), rusobanura ngingo ya 6 n'ya 10 z'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, rwatanze umurongo uvuga ko "ikiburanwa kireberwa mu myanzuro y'ababuranyi bose, ko kandi umucamanza aca urubanza ku byasabwe muri icyo kiburanwa gusa, ko adashobora guca urubanza ku kitasabwe mu myanzuro."

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[40] Dosiye igaragaza ko kuva mu Rukiko rw'Ubucuruzi, IHS Rwanda Ltd yaregeraga "Gukuraho icyemezo cya Rwanda Revenue Authority cyo kwangira IHS Rwanda Ltd igihombo kingana na 18,563,444,415frw hamwe n'indishyi z'ikurikiranarubanza n'igihembo cya Avoka." Nk'uko byagaragajwe mu miterere y'urubanza, iyo sosiyete isobanura ko ayo mafaranga akomoka ku kinyuranyo kiri hagati y'igihombo yamenyekanishije mu mwaka wa 2017 (loss declared) kingana na miliyari mirongo itatu, miliyoni mirongo icyenda n'ebiyiri, ibihumbi magana atanu na birindwi, magana arindwi mirongo inani na kimwe (30,092,507,781Frw), n'igihombo yemerewe (loss rectified) na Komiseri Mukuru wa RRA kingana miliyari cumi n'imwe, miliyoni magana magana atanu makumyabiri n'icyenda, ibihumbi mirongo itandatu na bitatu, magana atatu mirongo itandatu n'atandatu (11,529,063,366Frw) nk'uko icyemezo cya Komiseri Mukuru kiri muri dosiye kibigaragaza. [41] Ibyo bisobanuye ko RRA yangiye IHS Rwanda Ltd igihombo kingana na Miliyari cumi n'umunani, miliyoni magana atanu mirongo itandatu n'eshatu, ibihumbi magana ane mirongo ine na bine, magana ane na cumi n'atanu (30,092,507,781Frw-11,529,063,366Frw= 18,563,444,415Frw) ku mwaka w'imisoro wa 2017, ariyo aburanwa. Ibyo uburanira RRA avuga ko miliyari cumi n'ebiyiri (12,000,000,000Frw) ariyo yaburanwaga ku rwego rwa mbere bikaba nta shingiro bifite, ahubwo hashingiwe ku murongo wavuzwe haruguru watanze mu rubanza RCOMAA00020/2024/CA- RCOMAA00021/2024/CA, igihombo IHS Rwanda Ltd yangiye mu mwaka wa 2017 cyavuzwe haruguru kikaba ari cyo gikwiye gusuzumwa gusa, harebwa niba mu rubanza rujuririrwa cyarabariwe ku itakazagaciro ry'ifaranga rituruka ku amadolari miliyoni magana abiri (200,000,000USD) yabazwe nk'umwenda kandi utari ukwiye kwemerwa nka "depenses" hakurikijwe Itegeko No 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro. B. Ku bijyanye no kumenya niba igihombo gituruka ku itakazagaciro ry'ifaranga IHS RWANDA Ltd yemerewe mu rubanza rujuririrwa, cyarabazwe k'umwenda utari ukwiye kwemerwa nka "depenses" hakurikijwe Itegeko No 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro [42] Mu rubanza rujuririrwa (mu gika cya 72), Urukiko Rukuru rw'Ubucuruzi rwemeje ko nk'uko byemejwe n'Urukiko rubanza "ibihombo bijyanye no guta agaciro k'ifaranga bikomoka ku nguzanyo ya USD 200,000,000 IHS Rwanda Ltd yahawe na IHS Mauritius Rwanda Ltd bingana na 3,278,944,485Frw mu mwaka w'imisoro wa 2016 na 1,129,005,943FRW mu mwaka w'imisoro wa 2017, IHS Rwanda Ltd ifite uburenganzira bwo kubikura mu musaruro ushushwa." [43] Urukiko rw'Ubujurire rushingiye ku murongo wavuzwe haruguru watanze mu rubanza RCOMAA00020/2024/CA- RCOMAA00021/2024/CA rwaciye kuwa 21/08/2024 haburana Bank Of Kigali Plc na Nsekuye

(igika cya 21) uvuga ko “Umucamanza aca urubanza ku byasabwe mu kiburanwa”, rurasanga Urukiko Rukuru rw’Ubucuruzi rwarakoze amakosa yo guca urubanza ku gihombo cyerekeranye n’umwaka w’imisoro wa 2016 kandi kitaburanwa, kuko igihombo IHS Rwanda Ltd yaregeye kandi kiburanwa ari icyerekeranye n’umwaka wa 2017 nk’uko byasobanuwe haruguru; bityo igihombo kingana na Miliyari eshatu, miliyoni magana abiri mirongo irindwi n’umunani, ibihumbi magana acyenda mirongo ine na bine, magana ane mirongo inani n’atanu (3,278,944,485Frw) mu mwaka w’imisoro wa 2016, akaba atagomba kubarirwa mu gihombo kiburanwa muri uru rubanza. [44] Rurasanga nyuma y’ibyo, harasigara hasuzumwa niba IHS Rwanda Ltd ikwiye kwemerwa igihombo kingana n’amafaranga Miliyari imwe, miliyoni ijana na makumyabiri n’icyenda, ibihumbi bitanu, magana acyenda mirongo ine n’atatu (1,129,005,943Frw) gituruka ku guta agaciro k’ifaranga mu mwaka w’imisoro w’imisoro wa 2017.

8 Icyemezo cya Komiseri Mukuru No Ref 162/2021/CG/LS&BA/RRA cyo kuwa 19/04/2021, urupapuro rwa 9 (CIT for year 2017).

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[45] Dosiye igaragaza ko igihombo kiburanwa IHS Rwanda Ltd yangiwe ko akurwa mu musaruro usoreshe (Foreign exchange losses on shareholder’s loan disallowed) wo mu mwaka w’imisoro w’imisoro wa 2017, ku bijyanye no guta agaciro k’ifaranga rikomoka ku nguzanyo ya miliyoni Magana abiri (USD200,000,000) IHS Rwanda Ltd ivuga ko yahawe na IHS Mauritius Rwanda Ltd, ari amafaranga Miliyari imwe, miliyoni ijana na makumyabiri n’icyenda, ibihumbi bitanu, magana acyenda mirongo ine n’atatu (1,129,005,943Frw), nk’uko imiburanire ya IHS RWANDA Ltd ndetse n’Icyemezo iregera cya Komiseri Mukuru kibigaragaza. [46] Kuri ayo mafaranga IHS RWANDA Ltd yangiwe, mu rubanza rujurirwa, igika cya 72, Urukiko Rukuru rw’Ubucuruzi rwemeje ko hagomba kwitabwa uko byagiye bigendekera abandi basoreshe bahuye n’iki kibazo, rusanga RRA yaremereye abandi basoreshe ko igihombo gikomoka ku guta agaciro kw’ifaranga (unrealised foreign exchange loss) gikurwa mu musaruro usoreshe nk’uko bigaragara mu nyandiko ndakuka y’isoreshwa (163/DTT/LTO/AD2/2020) yahawe Gigawatt Global Rwanda Limited kuwa 30/11/2020 (ku ipaji ya 3); kandi ko itavugurujwe na RRA, ibyo ubwabyo bikaba bigarazaga ko ingingo ya 19 y’Itegeko no 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro ariyo igomba gukurikizwa aho kuba iya 2110. [47] Ingingo 19 y’Itegeko No 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro iteganya ko “mu isoza ry’igihe cy’umusoro, umutungo uri mu mafaranga y’amahanga, harimo imyenda yishyuzwa cyangwa igomba kwishyurwa, uhabwa agaciro hakurikijwe agaciro ifaranga rivunjwaho ku muni wa nyuma w’igihe cy’umusoro. Inyungu cyangwa igihombo giturutse bishyirwa mu ibarura ry’inyungu ku bikorwa ry’icyo gihe.” [48] Ingingo ya 19 imaze kuvugwa, yumvikanisha ko mu isoza ry’igihe cy’umusoro, umutungo uri mu mafaranga y’amahanga, harimo imyenda yishyuzwa cyangwa igomba kwishyurwa, uhabwa agaciro hakurikijwe agaciro ifaranga rivunjwaho ku muni wa nyuma w’igihe cy’umusoro, ariho hakomoka inyungu zitewe n’uko ifaranga riba riyongeye agaciro cyangwa igihombo gitewe n’uko ifaranga riba ryataye

agaciro rigereranyijwe n'igipimo cy'ivunjisha cy'amadovise (amafaranga y'abanyamahanga); ibi ariko bikaba bigomba gushingira ko harimo imyenda yishyuzwa cyangwa igomba kwishyurwa, ari naho impaka muri uru rubanza ziri, zishingiye ku kumenya niba amadolari y'Amerika miliyoni magana abiri (200,000,000USD), IHS Rwanda Ltd yahawe na sosiyete mbyeyi yayo IHS Mauritius Rwanda Ltd ari umwenda (loan) ku buryo yabwirwa igihombo gituruka ku itakazagaciro ry'ifaranga cyangwa akwiye gufatwa nk'imari shingiro (equity). [49] Itegeko rimaze kuvugwa n'irisobanura ijamba "umwenda", ariko ingingo yaryo ya 19 mu zindi ndimi, umwenda usemurwa mu Gifaransa nka "créances et dettes". "Dette" ni Umwenda ujyanye n'inshingano yo kwishyura¹¹, "créances" ni uburenganzira bwo gusaba kwishyurwa¹². Mu cyongereza ingingo ya 19 ? umwenda usemurwa nka "claims and debts". "Claim" bisobanura uburenganzira bwo kwishyura,¹³ naho

9 icyemezo cya Komiseri Mukuru No Ref 162/2021/CG/LS&BA/RRA cyo kuwa 19/04/2021, urupapuro rwa 9. 10 Ingingo ya 21 y'Itegeko No 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro iteganya ko "Mu ibarwa ry'inyungu ku bikorwa by'ubucuruzi, ibikurwamo bigomba kuba byujuje ibi bikurikira: 1° byarakoreshejwe mu birengera inyungu y'umurimo ku buryo butaziguye kandi birebana n'icungwa risanzwe ry'imirimo; 2° bihuje n'ibyakoreshejwe nyabyo kandi bigaragazwa n'inyandiko ngaragazabuguzi nyazo; 3° biganisha ku igabanuka ry'ibigize umutungo bwite; 4° byarakoreshejwe mu bikorwa bijyanye n'igihe cy'umusoro kirebwa." 11 "Une dette est associée à une obligation de payer. L'entreprise ou la personne concernée (débiteur) doit ainsi une somme précise à une autre entité." <https://www.legalplace.fr/guides/creance-dette/> #:~:text=La%20diff%C3%A9rence%20entre%20les%20deux,droit%20d'exiger%20un%20paiement., Accede le 06/03/2025. 12 Idem ("Une créance est liée à un droit d'exiger un paiement. Cette fois-ci, le sujet (créancier) dispose de moyens divers pour que l'impayé soit réglé. Cependant, il est bon de noter qu'il ne pourra user de ses prérogatives qu'au terme d'une échéance convenue par les deux parties."). 13 "claim verb (DEMAND) means to ask for something because it belongs to you or you have the right to have it." <https://dictionary.cambridge.org/dictionary/learner-english/claim>, Accessed on 06th March 2025.

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"Debt" bisobanuye amafaranga umuntu aberewemo atarishyurwa¹⁴. Bityo Umwenda ukaba usobanuye amafaranga umuntu abereyemo undi, ajyanye n'uburenganzira bw'uyabereyemo bwo kuyishyurwa. [50] Ku bijyanye n' Amadolari y'Amerika miliyoni magana abiri (200,000,000USD), IHS Rwanda Ltd yahawe na IHS Mauricius Rwanda Ltd, inyandiko yo ku wa 10/02/2014 yiswe "CURRENT ACCOUNT AGREEMENT", ariyo masezerano HIS Rwanda Ltd nk'ugurijwe yagiranye na HIS Mauricius Rwanda Ltd nk'utanze inguzanyo, yerekana ko HIS Rwanda Ltd idafite amafaranga ahagije yo gukoresha ibikorwa byayo no kwishyura abo yagiranye nayo amasezerano, ariyo mpamvu HIS Mauricius Rwanda Ltd iyihaye ayo madolari, ikayashyira kuri konti yayo kugira ngo ayifashe mu bikorwa byayo¹⁵. [51] Ingingo ya 2, igika cya 2, y'ayo masezerano igira iti : "Impande zombi zemeranya ko uwagurijwe azasaba gukuramo ayo mafaranga kugeza ku mubare ntarengwa wavuzwe haruguru uko bikenewe. Nta nshingano ariko k' Uwatanze inguzanyo kugira ngo abone amafaranga

ayo ari yo yose yasabwe kandi gukuramo amafaranga yasabwe bizakorwa amasezerano yumvikanyweho n'inguzanyo ku mubare n'uburyo bwo kuyabona”¹⁶. [52] Ingingo ya 3, igika cya 1, y'ayo masezerano iteganya ko inguzanyo izishyurwa mu gihe cy'imyaka icyenda (9), igika cya 2, kikavuga ko “Haseguriwe ibivugwa mu ngingo ya 9 ikurikira¹⁷, Uwatanze inguzanyo ntashobora gusaba kwishyurwa / gusubizwa inguzanyo zose cyangwa igice cyayo mbere yuko hashyirwaho gahunda yo kwishyura nk'uko biteganywa n'igika kibanziriza iki.”¹⁸ Ingingo ya 6, igika cya 1, igateganya ko “Uwagurijwe azishyura amafaranga yose cyangwa yerekeye aya masezerano ku gihe cyagenwe giteganijwe muri gahunda yo kwishyura¹⁹”. [53] Ingingo ya 4 (a) y'ayo masezerano, iteganya ko inguzanyo izishyurwa nta nyungu²⁰, ingingo yayo ya 13, igika cya mbere, ikavuga ko ayo amasezerano azagengwa n'amategeko yo mu Rwanda²¹. [54] Ingingo zimaze kuvugwa zisesenguriwe hamwe, zigaragaza ko Amadolari y'Amerika miliyoni magana abiri (200,000,000USD) yatanzwe na IHS Mauricius Rwanda Ltd, nta nyungu, nta ngwate nta na gahunda yo kwishyura (repayment schedule) yashyizweho igaragara muri dosiye; ibi bikaba byatuma umuntu wese yibaza inyungu iyo sosiyete yari ifite mu gutanga aya madolari angana gutyo, agomba kwishyurwa mu gihe cy'imyaka icyenda (9), nta nyungu, nta ngwate kandi atishyingiwe (Loan guarantor), nta n'icyemeza ko azishyurwa cyane cyane ko ayo masezerano agaragaza n'ubundi ko IHS Rwanda Ltd yari yarananiwe no kwishyura abagiranye amasezerano nayo, bityo ikaba nta cyizere yari ifitiwe cyo kwishyura (creditworthiness²²), inguzanyo nini nk'iy'amadolari yavuzwe haruguru, niba koko yari umwenda ikaba yaragomba gutangirwa ingwate nini kubera ibyago byo kutishyurwa (risk).

14 “something, especially money, that is owed to someone else,” <https://dictionary.cambridge.org/dictionary/english/debt>. Accessed on 06th March 2025. 15 “B. Upon its incorporation, IHS Rwanda has signed various contracts for the development of its activities in Rwanda (investments and operational needs) and since this company is newly incorporated, it does not have sufficient revenues to finance itself all its expenses. and pay the fees dues to its contractors.C. Considering that, the Lender decides to make advance payments to IHS Rwanda to be registered in its shareholder's current account to cover all its expenses” 16 “The parties agree that the Borrower will request drawdown of such amounts up to the maximum amount set out above as the need arises. There is no obligation however on the Lender to make available any such amount requested and the drawdown of the requested funds will be subject to agreement being reached with the Lender on the amount and mode of drawdown.” 17 Ingingo ya 9 y'amasezerano ivuga ibijyanye no kunanirwa kwishyura inguzano (event of default). 18 “Subject to the provisions of Article 9 below, the Lender shall not ask for any repayment/reimbursement of all or part of the loan before the establishment of the repayment schedule under the preceding paragraph” 19 “The Borrower will make all payments under or in respect of this Agreement on the due date provided in the repayment schedule.” 20 “The Loan shall be made available to the Lender free of interest.” 21 “This agreement shall be subject to the law in force in Rwanda.” 22 “An assessment of a person's or a business's ability to pay” See <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095646994>. Accessed on 11th March 2025.

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[55] Mu gihe inguzanyo itatangiwe ingwate (unsecured debt), bisaba ko ibarirwa inyungu zayo ziri hejuru cyane y'izisanzwe kugira ngo zigabanye igihombo gishobora guturuka ku byago byo kutishyurwa (risk).²³ Ibi bisobanuye ko kuba Amadolari y'Amerika miliyoni magana abiri (200,000,000USD), IHS Rwanda Ltd yahawe IHS Mauricius Rwanda Ltd ataratangiwe ingwate, nta nabarirwe inyungu, ayo madolari atafatwa nk'umwenda cyane cyane ko nta n'uburyo bwo kuwishyura bugaragara (repayment schedule); bityo hashingiwe ku ngingo ya 19 y'Itegeko No 16/2005 rigena imisoro itaziguye ku musaruro, amafaranga Miliyari imwe, miliyoni ijana na makumyabiri n'icyenda, ibihumbi bitanu, magana acyenda mirongo ine n'atatu (1,129,005,943Frw) akaba atari akwiye kwemererwa HIS Rwanda Ltd nk'igihombo kiyakomokaho gishingiye ku itakaza gaciro k'ifaranga mu isoza ry'igihe cy'umusoro w'umwaka wa 2017 kuko nta kigaragaza nta shiti ko amadolari yavuzwe haruguru ari umwenda yahawe ku buryo igihombo cyangwa inyungu ziwukomokaho byakurwa mu musaruro usoreshe. [56] Ku bijyanye n'urugero rwa sosiyete Gigawatt, rwatanzwe mu rubanza rujuririrwa, ko iyo sosiyete yemerewe na RRA ko igihombo gikomoka ku ihindagurika ry'agaciro k'ifaranga ku myenda itarishyurwa gikurwa mu musaruro usoreshe, Urukiko rw'Ubujurire rurasanga urwo rugero rudahura n'uru rubanza kubera ko amadolari IHS Rwanda Ltd yahawe na IHS Mauricius Rwanda Ltd atujuje ibigaragaza ko ari umwenda nk'uko byasobanuwe haruguru. Naho kubijyanye n'uko Komiseri Mukuru nta bubasha bwo guhindura imiterere (nature) y'igikorwa cy'ubucuruzi, Urukiko rw'Ubujurire rurasanga nta shingiro bifite kuko atahinduye kamere y'ibikorwa by'ubucuruzi bya IHS Rwanda Ltd yahawe na IHS Mauricius Rwanda Ltd, ahubwo yabisuzumye agasanga bitagize umwenda ku buryo IHS Rwanda Ltd yakwemererwa igihombo gituruka ku itakaza gaciro k'ifaranga riwukomokaho, bityo ubujurire bwa RRA bukaba bufite ishingiro kuri iyi ngingo, amafaranga Miliyari imwe, miliyoni ijana na makumyabiri n'icyenda, ibihumbi bitanu, magana acyenda mirongo ine n'atatu (1,129,005,943Frw) akaba adakwiye kwemererwa IHS Rwanda Ltd nk'igihombo gikomoka ku itakaza gaciro k'ifaranga k'umusoro w'umwaka wa 2017, aka ataragombaga kuvanwa mu musaruro usoreshe. 2.Kumenya niba RRA yarabaze nabi ubwicungure bujyanye n'ibikoresho bigize iminara ya IHS Rwanda Ltd [57] Uhagarariye RRA avuga ko mu rubanza rujuririrwa (igika cya 82), Urukiko rwavuze ko ibikoresho RRA yasoreshye atari ibikoresho by'itumanaho, rubishingiraho rwemeza ko uburyo ubwicungure bw'ibyo bikoresho bwabazwe budakurikije amategeko. Avuga ko Urukiko rwifashishije amategeko mpanabyaha mu gushaka igisobanuro cy'ijambo "itumanaho" bikaba byaranatumye RRA idahabwa ubutabera. [58] Avuga ko RRA isanga Urukiko rwaragombaga kuguma mu mbibi z'ibiteganywa mu ngingo ya 2 y'Amabwiriza ya Komiseri Mukuru No 12/2012 yo ku wa 23/02/2012, ashyira mu bikorwa Itegeko No 24/2010 ryo ku wa 28/05/2010 rihindura kandi ryuzuzwa Itegeko No 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, cyane cyane ko ibyo amategeko y'imisoro yateganyije ntawe uba akwiye kubihabwa ubusobanuro ayo mategeko atatanze. [59] Akomeza avuga ko IHS Rwanda Ltd mu nzego zibanza yavugaga ko hari ibikoresho bigize iminara yayo byabariwe ubwicungure ku buryo budakurikije amategeko kuko atari ibikoresho by'itumanaho, nka batiri, imigozi

(cables), generators n'amatara, igasaba ko byabarirwa ubwicingure ku gipimo cya 25%. Akomeza avuga ko HIS Rwanda Ltd yavugaga ko n'ubwo byafatwa nk'ibikoresho by'itumanaho, ubwicingure butabarwa ku kigero cya 10% kuko bitarengeje imyaka 10, nk'uko biteganywa n'ingingo ya 2 y'Amabwiriza ya Komiseri Mukuru no 12/2012 yo ku wa 23/02/2012. [60] Avuga ko RRA yabaze ubwicingure bw'ibyo bikoresho izirikana ko ari ibikoresho bigize iminara imaze imyaka irenga 10 nk'uko IHS Rwanda Ltd yabyivugiraga mu myanzuro yayo ku rwego rwa mbere,

23 "Unsecured debt refers to loans that are not backed by collateral. Because they are riskier for the lender, they often carry higher interest rates" <https://www.investopedia.com/terms/u/unsecureddebt.asp>. Accessed on 11th March 2025.

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kandi ko IHS Rwanda Ltd yakomeje kuvuga ko ibyo bikoresho bifite ubuzima (lifespan) butageze ku myaka 10, ariko itigeze ibasha kubigaragaza; ko ikimenyetso cyakabaye kigaragaza ko ibikoresho bimaze igihe runaka, ari inyandiko zigaragaza igihe byaguriwe, cyangwa igihe IHS Rwanda Ltd yabiboneye, ko kuba izo nyandiko ntazo yagaragaje mu igenzura (audit), itazitanga bwa mbere mu rubanza kuko binyuranyije n'ibiteganywa n'ingingo ya 43 y'Itegeko No 026/2019 ryo ku wa 10/10/2019 rigena uburyo bw'isoresha iteganya ko: "Umusoresha ntiyemererwa gutanga, ku rwego urwo ari rwo rwose rw'ubujurire, indi nyandiko atagaragaje mu gihe cy'igenzura, uretse igihe agaragaje ko atatanze iyo nyandiko kubera impamvu yumvikana." Asoza asaba ko ibyakozwe ku rwego rubanza byahinduka, hakemezwa ko RRA yabaze ubwicingure bw'ibyo bikoresho mu buryo bwubahirije amategeko. [61] Abahagarariye IHS Rwanda Ltd bavugaga ko ibyo RRA ivuga ko itabonye ubutabera kubera ko Urukiko Rukuru rw'Ubucuruzi rwagombaga gushingira gusa ku itegeko rigena umusoro utaziguye ku musaruro n'amabwiriza ya Komiseri Mukuru N°12/2012 yo ku wa 23/02/2012, nta shingiro bikwiye guhabwa kuko Amabwiriza adasobanura ijamba "itumanaho", ko rero Urukiko Rukuru rw'Ubucuruzi nta kosa rwakoze gushakira igisobanuro cy'iryo jambo mu yandi mategeko. [62] Ku byo uhagarariye RRA avuga ko hashingiwe ku ngingo ya 2 y'Amabwiriza ya Komiseri yavuzwe haruguru, ubwicingure bw'imitungo ya IHS Rwanda Ltd yose yifashishwa mu gukoresha iminara yayo bugomba kubarwa ku gipimo cya 10%, bavugaga ko nta shingiro bifite kuko iyo ngingo ya 2 iteganya ko ku bijyanye n'ibikoresho by'itangazamakuru n'itumanaho bifite ubuzima buri hejuru y'imyaka icumi (10) kugera ku myaka makumyabiri (20), igipimo cy'ubwicingure bwabyo ari 10%, kandi ko RRA itigeze ihakana ko ibikoresho bya IHS Rwanda Ltd bigomba kwicungura ku kigero cya makumyabiri na gatanu (25%), atari iby'itumanaho cyangwa bifite ubuzima buri muni y'imyaka icumi (10). [63] Bakomeza bavugaga ahubwo ko ibyo bikoresho bigomba kwicungura hagendewe ku gihe cy'ubuzima bw'umunara kuko umunara ari "system" y'itumanaho, ikibazo kikaba ari ukumenya niba hashingiwe ku ngingo ya 2 y'Amabwiriza ya Komiseri Mukuru, mu gihe kimwe mu bikoresho bigize itumanaho gifite ubuzima burenze imyaka icumi (10), ibindi bikoresho bigize iyo "system" bigomba nabyo kwicungura ku gipimo cya 10% hatitawe ku bwoko bwabyo n'igihe cy'ubuzima bwabyo. [64] Bavugaga ko Urukiko Rukuru rw'Ubucuruzi nta kosa rwakoze mu kwemeranywa n'Urukiko rw'Ubucuruzi, maze narwo rukemeza ko ibikoresho bya IHS Rwanda

Ltd byifashishwa mu gukoresha iminara yayo bigomba kwicungura ku gipimo cya 25%, aho kuba 10% nk'uko RRA yabikoze kuko birebwe ukwabyo nk'uko Amabwiriza ya Komiseri Mukuru abivuga, ibyo bikoresho atari iby'itumanaho kandi bidafite ubuzima buri hejuru y'imyaka 10, ahubwo ibikoresho bya batiri, imigozi (cables), generators n'amatare bifite ubuzima bw'imyaka itatu (3) bimara. [65] Basaba Urukiko rw'Ubujurire kwemeza ko ubujurire bwa RRA kuri iyi ngingo nta shingiro bufite, rukemerera IHS Rwanda Ltd amafaranga y'ubwicungure angana na miliyari ebyiri, miliyoni magana atandatu makumyabiri n'eshatu, ibihumbi magana inani mirongo ine na bibiri, magana ane mirongo itanu n'ane (2,623,842,454Frw) mu mwaka w'imisoro wa 2016 na miliyoni magana arindwi n'eshatu, ibihumbi magana atanu na birindwi, magana abiri makumyabiri n'arindwi (703,507,227Frw) mu mwaka w'imisoro wa 2017, RRA yari yangiye IHS Rwanda Ltd nk'uko byemejwe n'Urukiko Rukuru rw'Ubucuruza. [66] Ku bijyanye n'amafaranga amaze kuvugwa yo mu mwaka wa 2017, abahagarariye IHS Rwanda Ltd basobanura ko bari basabye kwemererwa miliyoni magana arindwi n'eshatu, ibihumbi magana atanu na birindwi, magana abiri makumyabiri n'arindwi (703,507,227Frw) ajyanye n'ubwicungure, ariko RRA ikabemerera miliyoni magana atandatu n'imwe, ibihumbi magana arindwi mirongo irindwi na bitandatu, magana acyenda (601,776,900Frw). UKO URUKIKO RUBIBONA

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[67] Impaka kuri iyi ngingo zishingiye ku kumenya niba ibikoresho bikurikira: Batiri (Batteries), intsinga (cables), generators n'amatare (lights) bigize umunara (telecom tower) bikwiye gufatwa nk'ibikoresho by'itumanaho ku buryo byabwirizwa ubwicungure ku gipimo cya 10%, hashingiwe ku ngingo ya 2 y'Amabwiriza no 12/2012 yo ku wa 23/02/2012 ya Komiseri Mukuru ashyira mu bikorwa itegeko No 24/2010 ryo ku wa 28/05/2010 rihindura kandi ryuzuzwa Itegeko No 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro (Itegeko ryakurikizwaga igihe IHS Rwanda Ltd yagenzurwaga). A. Kumenya niba ibikoresho bya batiri, intsinga, generators n'amatare (Batteries, cables, generators & lights) bigize umunara (telecom tower) ari ibikoresho by'itumanaho [68] Amabwiriza ya RURA/ICT InfraDev/ G02/2011 yo ku wa 1 Mata 2011, ingingo yayo ya 2 (i), asobanura igikoresho cy'itumanaho (a Telecommunication facility) ko ari intsinga zose, imirongo, umurongo wo gukoresha, antene n'ibindi bikoresho byose bikoreshwa cyangwa bifitanye isano no gutanga serivise imwe cyangwa nyinshi z'itumanaho²⁴. Ibi bisobanuye ko uretse intsinga zose zimaze kuvugwa, ibindi bikoresho byose (birimo na batiri n'amatare / Batteries & lights) bikoreshwa cyangwa bifitanye isano no gutanga serivise imwe cyangwa nyinshi z'itumanaho, nabyo ari ibikoresho by'itumanaho (a Telecommunication facility) kuko iyo bishyizwe hamwe bituma itumanaho rishoboka, kimwe muri byo kivuyemo itumanaho rikaba ryahungabana; Inyandiko z'abahanga mu by'itumanaho zigaragaza ko Batteri zibika kandi zigatanga ingufu zituma umunara w'itangazamakuru n'itumanaho ukomeza gukora²⁵; Amatare amurikira umunara ukagaragara ndetse ugatekana²⁶, kandi akoreshwa mu kugaragaza (indicate) ko sisiteme y'umunara iri gukora neza, ko nta kibazo cy'ikoranabuhanga waba wagize²⁷. Bityo ibikoresho byose bikoreshwa cyangwa bifitanye isano no gutanga serivise imwe cyangwa nyinshi z'itumanaho, ni bikoresho by'itumanaho.

[69] Dosiye igaragaza ko mu rubanza rujuririrwa, uhagarariye RRA yavugaga ko mu gihe cy'igenzura, abagenzuzi babaze ubwicingure (depreciation) bw'ibikoresho bitandukanye bigize iminara (towers) ya IHS Rwanda Ltd (Batteries, cables & lights) ku gipimo (rate) cya 10%, kuko umunara (tower) ari sisiteme (telecommunication system), bityo n'ibikoresho biwugize bikaba bigomba gusoreshwa nk'ibikoresho by'itumanaho²⁸. Ku rundi ruhande abahagarariye IHS Rwanda Ltd bavugaga ko ibikoresho bivugwa bitafatwa nk'iby'itumanaho n'ubwo byifashishwa mu gukoresha iminara²⁹. [70] Urukiko Rukuru rw'Ubucuruzi rwasanze Amabwiriza no 12/2012 yo ku wa 23/02/2012 ya Komiseri Mukuru ashyira mu bikorwa Itegeko No 24/2010 ryo ku wa 28/05/2010 rihindura kandi ryuzuza Itegeko no 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, atarasobanuye itangazamakuru

24 “Any cables, wires, lines, wave guides, antennas and any other equipment that is used or associated with the provision of one or more telecommunications services.” Guidelines for siting and sharing of telecommunication base station infrastructure; Ref. RURA/ICT InfraDev/G02/2011, 1 April 2011, P.3. 25 “Telecom tower batteries, as an important part of the telecommunications network, play a pivotal role. It not only provides continuous and stable power support for telecommunications towers, but also plays an indispensable role in many aspects. such as high energy density, long life, safety and reliability also make it widely used in the field of communication.” Accord, The role of telecom tower batteries, 2024-04-14. Accessed online at <https://www.accord-power.com/news media/blog/1779066698284929025.html>, on 23rd April 2025. See also “Batteries provide a modern uninterruptable power supply (UPS) to enable our vast, digital society. Batteries can also help balance other data centers and telecom systems.” BCI, Telecom, Data Centers & Critical Systems, Accessed online at <https://battery council.org/battery-facts-and-applications/essential-applications/telecom-data-centers-and-critical-systems/>, on 23rd April 2025. 26 “The lighting system is the primary means of ensuring that the tower is visible to low-flying aircraft, making it critical for preventing collisions.” Accessed online at <https://ptii.net/the-benefits-of-tower-painting-and-lighting-maintenance/>, on 23rd April 2025.. “These lights can be seen from far away and help pilots identify and avoid obstacles while in flight.” Accessed online at <https://pcitower.com/tower-lighting-faq/>, on 23rd April 2025. 27 “LED tower lights are vertical stacks of LED lights, typically in different colors, that are used to visually signal various system states or machine conditions. These lights are designed to provide instant feedback, such as operational status, warnings, and fault indicators.” Accessed online at <https://www.gqele.com/the-complete-guide-to-led-tower-lights.html>, on 23rd April 2025. 28 Urubanza No RCOMA 00497/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 17/11/2023, haburana RRA na IHS RWANDA Ltd, igika cya 73 29 Idem, igika cya 75.

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n'itumanaho (information and communication system) maze rusobanura ayo magambo rwifashishije Itegeko NO 60/2018 ryo ku wa 22/8/2018 ryerekeye gukumira no guhana ibyaha bikoreshejwe ikoranabuhanga mu ngingo yaryo ya 3, iteganya ko urusobe rw'iyoherezwakoranabuhanga (information system) ari porogaramu zose za mudasobwa n'ibikoresho byo gutunganya amakuru, kuyabika cyangwa kuyacukumbura cyangwa byo

kuyacunga (information system: all software, tools and equipment for the production, storage or processing of data or information or management of data or information); naho itumanaho ari ihererekanya ry'amakuru rinyujijwe mu bikoresho by'Ikoranabuhanga mu Itangazabumenyi n'Itumanaho (communication: the transmission of information through Information Communication Technology media.)³⁰; ariko nyuma yo gutanga ibyo bisobanuro, Urukiko Rukuru ntirwavuga niba ibikoresho byagibwagaho impaka (Batteries, cables & lights) biri ku munara w'itumanaho (telecommunication tower), bigize cyangwa bitagize ibikoresho by'itumanaho, iyi ikaba ari inenge iri muri urwo rubanza. [71] Urukiko rw'Ubujurire rushingiye ku ngingo ya 2 (i) y'Amabwiriza ya RURA yo ku wa 1 Mata 2011 yavuzwe haruguru, rurasanga intsinga, batiri n'amata yo ku munara w'itumanaho byose ari ibikoresho by'itumanaho, bityo hakaba hagiye gusuzumwa niba biri mu bigengwa n'ingingo ya 2 y'Amabwiriza ya Komiseri Mukuru no 12/2012 yo ku wa 23/02/2012 yavuzwe haruguru.

B. Kumenya niba batiri, insinga n'amata byo ku munara (telecom tower) bigengwa n'ingingo ya 2 y'Amabwiriza ya Komiseri Mukuru no 12/2012 yo ku wa 23/02/2012 ku byerekeranye n'igipimo cy'ubwicungure [72] Ingingo ya 2 y'Amabwiriza ya Komiseri Mukuru no 12/2012 yo ku wa 23/02/2012 ashyira mu bikorwa Itegeko no 24/2010 ryo ku wa 28/05/2010 rihindura kandi ryuzuza Itegeko no 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro iteganya ibikurikira: "Ku bijyanye n'ibikoresho by'itangazamakuru n'itumanaho bifite ubuzima buri hejuru y'imyaka icumi (10) kugera ku myaka makumyabiri (20), igipimo cy'ubwicungure bwabyo ni 10%" (bisobanuye mu cyongereza mu buryo bukurikira: "The depreciation rates for information and communication system assets whose lifespan is above ten (10) up to twenty (20) years is 10%). [73] Mu cyemezo cya Komiseri Mukuru No Ref 162/2021/CG/LS&BA/RRA cyo ku wa 19/04/2021, IHS Rwanda Ltd yavugaga ko itumva impamvu indi mitungo igize iminara nka bateri, insinga, amata, itabarirwa ubwicungure bwo gutakaza agakiro (depreciation) ku kigero cya 25% nka "generators & fire extinguishers", ahubwo bikabarirwa ku 10% kandi bidafite ubuzima nk'ubw'umunara ushobora kurenza imyaka icumi (10)³¹. Komiseri Mukuru ashingiye ku ngingo ya 2 y'Amabwiriza no 12/2012 yo ku wa 23/02/2012 yavuzwe haruguru, yemeje ko ubujurire bwa IHS Rwanda Ltd ku bijyanye n'igipimo cyo guta agaciro kwa bateri, insinga n'amata cya 25% nta shingiro bufite kuko ari ibikoresho bigize umunara ufatwa nka sisitemu y'itumanaho kandi ubarirwa ubwicungure ku gipimo cya 10%³². Ibyo byatumye igihombo ku bijyanye n'ubwicungure bw'ibikoresho bya IHS Rwanda Ltd mu mwaka wa 2017 bukomaze kubarirwa kuri miliyoni magana atandatu n'imwe, ibihumbi magana arindwi mirongo irindwi na bitandatu, magana acyenda (601,776,900Frw), aho kuba miliyoni magana arindwi n'eshatu, ibihumbi magana atanu na birindwi, magana

³⁰ Idem, igika cya 82. ³¹ "However, the taxpayer says that he does not agree and understand the reason why other assets that are component of the towers except for the above mentioned (generators & fire extinguishers) like batteries, cables, lights that have different life span, have not been granted the same treatment to be depreciated at 25% and continued to be depreciated at 10% like the Towers whose life span can exceed 10 years." icyemezo cya Komiseri Mukuru No Ref 162/2021/CG/LS&BA/RRA cyo kuwa 19/04/2021, urupapuro rwa 5. ³² Ibid ("Therefore. the appeal of the taxpayer on depreciation rate of batteries. cables, light on a rate of 25% has no basis

because. the mentioned assets are components of the tower system regarded as telecommunication system assets whose depreciation rate is 10% as provided for by the law mentioned here above. Therefore, the audit decision of depreciating batteries, cables and lights at a rate of 10 is maintained”)

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abiri mirongo irindwi n'arindwi (703,507,277Frw) muri uwo mwaka w'imisoro33, nk'uko IHS Rwanda Ltd yabisabaga. [74] Mu rubanza ku rwego rwa mbere, IHS Rwanda Ltd yaregeye Urukiko rw'Ubucuruzi icyemezo cya Komiseri Mukuru kimaze kuvugwa, isaba kwemerwa igihombo gituruka ku bwicungire bwo guta agaciro k'ibikoresho RRA yanze kubarira kuri 25% (batteries, cables & lights), urwo Rukiko mu gika cya 38 cy'urubanza RCOM00081/2022/TC rwaciye ku wa 15/06/2022, rusesenguye ingingo ya 2 y'Amabwiriza ya Komiseri Mukuru yavuzwe haruguru, rusanga uko yanditse bivuga ibikoresho bigize uburyo bw'itangazamakuru n'itumanaho bigomba kuba bifite ubuzima buri hejuru y'imyaka 10 (information and communication system assets whose lifespan above ten (10)) kugira ngo ingingo yavuzwe ikurikizwe, ko IHS Rwanda Ltd nta kosa yakoze ubwo yabaraga amafaranga y'ubwicungire bw'ibikoresho bitandukanye bikoreshwa ku minara yayo kuko ibyo bikoresho bifite ubuzima butarengeje imyaka 10, ko kandi ibyo RRA itigeze ibigiraho ikibazo mu igenzura nk'uko bigaragazwa n'urega, bityo rwanzura ko igomba kwemererwa amafaranga y'ubwicungire avanwa mu musaruro usoreshwa angana na miliyari ebyiri, miliyoni magana atandatu makumyabiri n'eshatu, ibihumbi magana inani mirongo ine na bibiri, magana ane mirongo itanu n'ane (2,623,842,454Frw) mu mwaka w'imisoro wa 2016 na miliyoni magana arindwi n'eshatu, ibihumbi magana atanu na birindwi, magana abiri mirongo irindwi n'arindwi (703,507,277Frw) mu mwaka w'imisoro wa 2017. [75] Mu rubanza rujurirwa, Urukiko Rukuru rw'Ubucuruzi narwo rwemeje ko nk'uko Urukiko rw'Ubucuruzi rwabyemeje kugira ngo ingingo ya 2 y'Amabwiriza yavuzwe haruguru ikurikirizwe³⁴, buri gikoresho kigomba kuba ari icy'itangazamakuru n'itumanaho kandi gifite ubuzima buri hejuru y'imyaka icumi (10), rwemeza ko IHS Rwanda Ltd igomba kwemererwa amafaranga y'ubwicungire avanwa mu musaruro usoreshwa angana na miliyari ebyiri, miliyoni magana atandatu makumyabiri n'eshatu, ibihumbi magana inani mirongo ine na bibiri, magana ane mirongo itanu n'ane (2,623,842,454Frw) mu mwaka w'imisoro wa 2016 na miliyoni magana arindwi n'eshatu, ibihumbi magana atanu na birindwi, magana abiri mirongo irindwi n'arindwi (703,507,277Frw) mu mwaka w'imisoro wa 2017³⁵. [76] Icyemezo kimaze kuvugwa kigaragaza ko Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza ku misoro yo mu mwaka wa 2016 kandi itararegewe kuko IHS Rwanda Ltd kuva ku rwego rwa mbere ikiburanwa cyari “Gukuraho icyemezo cya Rwanda Revenue Authority cyo kwangira IHS Rwanda Ltd igihombo kingana na 18,563,444,415Frw”, IHS Rwanda Ltd igasobanura ko ayo mafaranga akomoka ku kinyuranyo kiri hagati y'igihombo yamenyekanishije kingana na miliyari mirongo itatu, miliyoni mirongo icyenda n'ebiri, ibihumbi magana atanu na birindwi, magana arindwi mirongo inani na kimwe (30,092,507,781Frw) mu mwaka wa 2017, Abagenzuzi ba RRA bagabanyije bakemera gusa igihombo cya miliyari cumi n'imwe, miliyoni magana cyenda acyenda mirongo icyenda n'eshatu, ibihumbi magana ane mirongo itandatu na bitatu, ijana na mirongo irindwi na arindwi

(11,993,463,177Frw). Nyuma y'uko ajuririye Komiseri Mukuru yarongeye arabisuzuma, ayemerera igihombo kingana na miliyari cumi n'imwe, miliyoni magana atanu makumyabiri n'esheshatu, ibihumbi mirongo itandatu na bitatu, magana atatu mirongo itandatu n'atandatu (11,526,063,366Frw)³⁶, bisobanuye ko yangiwe igihombo cya miliyali cumi n'umunani, miliyoni magana

33 Idem. p.9. 34 Iyi Ingingo iteganya ibikurikira: “Ku bijyanye n'ibikoresho by'itangazamakuru n'itumanaho bifite ubuzima buri hejuru y'imyaka icumi (10) kugera ku myaka makumyabiri (20), igipimo cy'ubwicungure bwabyo ni 10%” bisobanuye mu cyongereza mu buryo bukurikira “The depreciation rates for information and communication system assets whose lifespan is above ten (10) up to twenty (20) years is 10%.” 35 Urubanza No RCOMA 00497/2022/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi ku wa 17/11/2023, haburana RRA na IHS RWANDA Ltd, igika cya 82-84. 36 icyemezo cya Komiseri Mukuru No Ref 162/2021/CG/LS&BA/RRA cyo kuwa 19/04/2021, urupapuro rwa 9, kigaragaza ko mu gihombo IHS Rwanda Ltd yemerewe na RRA mu mwaka wa 2017, kingana na miliyari cumi n'imwe, miliyoni magana atanu makumyabiri n'esheshatu, ibihumbi mirongo itandatu na bitatu, magana atatu mirongo itandatu n'atandatu (11,526,063,366Frw), habariwemo ubwicungure (Depreciation and investment allowance disallowed) bungana na miliyoni magana atandatu n'imwe, ibihumbi magana arindwi mirongo irindwi na bitandatu, magana acyenda (601,776,900Frw).

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atanu mirongo itandatu n'esheshatu, ibihumbi magana ane mirongo ine na bine, magana ane cumi n'atanu (18,566,444,415Frw) mu mwaka wa 2017³⁷, abariwemo miliyoni ijana n'imwe, ibihumbi magana arindwi mirongo itatu, magana atatu makumyabiri n'arindwi (101,730,327Frw) y'ikinyuranyo kiri hagati ya miliyoni magana atandatu n'imwe, ibihumbi magana arindwi mirongo irindwi na bitandatu, magana acyenda (601,776,900Frw) yemerewe na Komiseri Mukuru³⁸ mu gihe iyo sosiyete yasabaga kwemererwa miliyoni magana arindwi n'eshatu, ibihumbi magana atanu na birindwi, magana abiri mirongo irindwi n'arindwi (703,507,277Frw) mu mwaka w'imisoro wa 2017, aho ubwicungure bw'intsinga, batiri n'amatare yo ku munara yabubariraga kuri 25%, ariko Komiseri Mukuru akemeza ko bugomba kubarirwa kuri 10%. [77] Ku bijyanye n'imisoro yo mu mwaka wa 2016, nk'uko byavuzwe haruguru, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza ku kitaraburanwe (ultar petita), bikaba binyuranye n'ingingo ya 10 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, ivuga ko “Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine.”, bityo icyemezo cyarwo cyo kuvana mu musaruro usoroshya wa 2016, amafaranga y'ubwicungure angana na miliyari ebyiri, miliyoni magana atandatu makumyabiri n'eshatu, ibihumbi magana inani mirongo ine na bibiri, magana ane mirongo itanu n'ane (2,623,842,454Frw), kikaba kigomba gukurwaho. [78] Ku bijyanye n'amafaranga y'ubwicungure ku musoro wo mu mwaka wa 2017, IHS Rwanda Ltd yasabaga kwemererwa miliyoni magana arindwi n'eshatu, ibihumbi magana atanu na birindwi, magana abiri mirongo irindwi n'arindwi (703,507,277Frw) nk'igihombo gituruka ku bwicungure bw'ibikoresho byayo, RRA iyemerera miliyoni magana atandatu n'imwe,

ibihumbi magana arindwi mirongo irindwi na bitandatu, magana acyenda (601,776,900Frw) nk'uko byasobanuwe haruguru. [79] Ikinyuranyo kingana na miriyoni ijana n'imwe, ibihumbi magana arindwi mirongo itatu, magana atatu makumyabiri n'arindwi (101,730,327Frw) kiri hagati y'amafaranga IHS Rwanda Ltd yasabaga kwemererwa ko akurwa ku musoro wa 2017, n'ayo RRA yayemereye, gituruka ku bwicungure bw'intsinga, batiri n'amatare yo ku munara w'itumanaho RRA yabariye ku gipimo cya 10% ibikoresho by'itumanaho, ishingiye ku ngingo ya 2 y'Amabwiriza ya Komiseri Mukuru No 12/2012 yo ku wa 23/02/2012, ariko IHS Rwanda Ltd igasaba ko hashingirwa ku gipimo cya 25% habarwa ubwicungure bw'ibyo bikoresho. [80] Kugira ngo batiri, insinga n'amatare byo ku munara w'itumanaho (telecom tower) bibarirwe ubwicungure hashingiwe ku ngingo ya 2 y'Amabwiriza ya Komiseri Mukuru no 12/2012 yo ku wa 23/02/2012 yavuzwe haruguru, bigomba kuba : 1) Ari ibikoresho by'itumanaho ; 2) bifite ubuzima buri hejuru y'imyaka icumi (10) kugera ku myaka makumyabiri (20) nk'uko ayo Mabwiriza abiteganyaga. [81] Iby'uko ibyo ibikoresho ari iby'itumanaho byasobanuwe mu buryo burambuye haruguru, hagaragazwa ko intsinga, batiri n'amatare yo ku munara w'itumanaho byose ari ibikoresho by'itumanaho nk'uko Amabwiriza ya RURA/ICT InfraDev/ G02/2011 yo ku wa 1 Mata 2011 abiteganyaga. Ikibazo gisigaye kikaba ari ukumenya niba bifite ubuzima buri hejuru y'imyaka icumi (10) kugera ku myaka makumyabiri

(20) kugira ngo ubwicungire bwabyo bubarirwe ko gipimo cya 10% giteganywa n'ingingo ya 2 y'Amabwiriza ya Komiseri Mukuru No 12/2012 yo ku wa 23/02/2012. [82] Ingingo ya 60 y'Itegeko N° 020/2023 ryo ku wa 31/03/2023 rigena uburyo bw'isoresha iteganyaga ko "usora agaragaza ibimenyetso iyo : 1° akoze imenyekanisha rikosora ; 2° ashaka kuvuguruzwa ibikubiye mu nyandikomvugo yakozwe n'ubuyobozi bw'imisoro ; 3° Ubuyobozi bw'imisoro bukora igenzura ku ihererekanya ry'ibiciro."

37 icyemezo cya Komiseri Mukuru No Ref 162/2021/CG/LS&BA/RRA cyo kuwa 19/04/2021, urupapuro rwa 9 na 11. 38 Ibid.

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[83] Urukiko rushingiye kuri iyo ngingo, rurasanga nta bimenyetso IHS Rwanda Ltd itanga bigaragaza ubwoko bw'intsinga, batiri n'amatare yo ku munara, igihe byaguriwe, n'igihe cy'uburambe (life span) bwabyo, ngo byerekane ko uburambe bw'ibyo bikoresho butandukanye n'ubw'umunara (kabone n'ubwo byose hamwe bigize sisiteme y'itumanaho), bityo ibyo ivuga ko ibyo bikoresho by'itumanaho bifite ubuzima buri muni y'imyaka icumi (10) bikaba bitagengwa n'ingingo ya 2 y'Amabwiriza ya Komiseri Mukuru No 12/2012 yo ku wa 23/02/2012 ku byerekeranye n'igipimo cy'ubwicungure, bikaba nta shingiro bifite kuko nta kibigaragaza. [84] Kubera iyo mpamvu, Urukiko rw'Ubujurire rurasanga icyemezo cya Komiseri Mukuru cyemerera IHS Rwanda Ltd igihombo kingana na miliyoni magana atandatu n'imwe, ibihumbi magana arindwi mirongo irindwi na bitandatu, magana acyenda (601,776,900Frw) aturuka ku bwicungure burimo n'ubw'ibyo bikoresho birimo bateri, insinga n'amatare byo ku munara (telecom tower) byabariwe kuri 10%, Urukiko Rukuru rw'Ubucuruza rutaragombaga kukivanwaho kubera ko ibyo bikoresho ari iby'itumanaho

kandi nta kigaragaza ko bifite ubuzima buri munsu y'imyaka icumi (10) nk'uko IHS Rwanda ibiburanisha. [85] Urukiko rushingiye kuri ibyo bisobanuro byose, rurasanga ubujurire bwa RRA kuri iyi ngingo bufite ishingiro kuko ubwicungure bujyanye n'ibikoresho bigize iminara ya IHS Rwanda Ltd RRA itarabubaze nabi, bityo IHS Rwanda Ltd ikaba itaragombaga kwemererwa ko igihombo cy'amafaranga miliyoni magana arindwi n'eshatu, ibihumbi magana atanu na birindwi, magana abiri mirongo irindwi n'arindwi (703,507,277Frw) avanwa mu musoro ushushwa ku mwaka wa 2017, ahubwo ikaba yari ikwiye kwemererwa miliyoni magana atandatu n'imwe, ibihumbi magana arindwi mirongo irindwi na bitandatu, magana acyenda (601,776,900Frw) muri uwo mwaka nk'uko yagaragaraga mu cyemezo cya Komiseri Mukuru cyo kuwa 19/04/2021. 3. Kumenya niba amafaranga miliyari enye, miliyoni magana atatu mirongo itandatu n'icyenda, ibihumbi magana arindwi mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw) yarajuririye kwa Komiseri Mukuru, akaba yaragombaga kubarirwa mu gihombo IHS Rwanda Ltd yagize cyemejwe n'Urukiko ku rwego rwa mbere. [86] Mu bujurire bwa IHS Rwanda Ltd, uyihagarariye avuga ko Urukiko Rukuru rw'Ubucuruza rwavuze ko ibaruwa yayo yubujurire yo ku wa 26 Nyakanga 2017 itagaragaza ko itishimiye ibijyanye no kuba yarangiye igihombo cya miliyari enye, miliyoni magana atatu mirongo itandatu n'icyenda, ibihumbi magana arindwi mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw). Anenga ibyo kuko raporo y'ibyavuye mu igenzura ku mwaka w'imisoro wa 2015 igaragaza ko RRA yagabanyije igihombo IHS Rwanda Ltd yari yamenyekanishije kiva kuri miliyari zirindwi, miliyoni ijana n'eshatu, ibihumbi bine magana atandatu mirongo icyenda na rimwe (7,103,004,691Frw) kigera kuri miliyari ebyiri, miliyoni magana arindwi mirongo itatu n'eshatu, ibihumbi magana abiri mirongo itandatu, magana inani mirongo itanu n'imwe (2,733,260,851Frw). [87] Asobanura ko ibyo bivuze ko RRA yanze igihombo kingana na miliyari enye, miliyoni magana atatu mirongo itandatu n'icyenda, ibihumbi magana arindwi mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw) akaba ari nacyo kiburanwaho ; ko ayo mafaranga akomoka ku gihombo cyo mu mwaka wa 2015, IHS Rwanda Ltd yakuyemo muri declaration ya 2016. Avuga ko IHS Rwanda Ltd yajuririye amafaranga yose yangiye yari gutuma igihombo kigabanyuka kandi ko ibaruwa yubujurire ya IHS Rwanda igaragaza neza ko itemera kuba RRA yaragabanyije amafaranga yubwicungureho miliyari ebyiri, miliyoni mirongo itanu n'enye, ibihumbi magana ane mirongo inani na bitatu, magana acyenda mirongo icyenda n'atandatu (2,054,483,996Frw) ndetse no kubijyanye n'inyungu zingana na miliyari ebyiri, miliyoni ijana n'esheshatu, ibihumbi magana ane mirongo inani n'umunani, magana arindwi mirongo ine n'eshatu (2,106,488,743Frw) igasobanura ko yari yarasubijwe mu musaruro ushushwa mu mwaka w'imisoro wa 2016 , bityo akaba atari kongera gusubizwa mu musaruro ushushwa mu mwaka w'imisoro wa 2015.

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[88] Avuga ko Urukiko Rukuru rw'Ubucuruza rwibeshye mu kwanzura ko ntaho bigaragara mu ibaruwa yubujurire ya IHS Rwanda Ltd ko itishimiye kuba yarangiye igihombo kingana na miliyari enye, miliyoni magana atatu mirongo itandatu n'icyenda, ibihumbi magana arindwi

mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw) kuko yari yajuriye igaragaza ko itemera impamvu zari zatumye igihombo yari yamenyakanishije kigabanywaho ayo mafaranga, bityo agasaba Urukiko rw'Ubujurire guhindura icyo cyemezo cy'urubanza rujuririrwa. [89] Uhagarariye RRA avuga ko ibaruwa ya IHS Rwanda Ltd yo ku wa 26/07/2017 yakiriwe na RRA ku wa 28/07/2017, Urukiko rwayifashe nk'iy'ubujurire kuko yujuje ibisabwa n'amategeko kugira ngo ibe yafatwa ityo. Avuga ko mu gika cya 102 na 103 by'urubanza rujuririrwa, Urukiko rwemeje ko Umuyobozi wo muri RRA wakiriye iyo baruwa n'ubwo atariwe wari ufite ububasha bwo gusuzuma ubujurire bwe, ko atagombaga kuyakira ngo yicecekere kandi abona ko ari ubujurire, bityo ko RRA yakiriye ubujurire bw'umusoro bwa IHS Rwanda Ltd ariko ntiyatanga igisubizo. [90] Akomeza avuga ko hashingiwe ku ngingo ya 30 y'Itegeko No 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha (yakurikizwaga mu gihe igenzura IHS RWANDA Ltd ryakorwaga), iteganya ko umusoresha utanyuzwe n'ibikubiye mu nyandiko igena umusoro ashobora kujuririra Komiseri Mukuru mu gihe kitarenze iminsi mirongo itatu (30) nyuma y'uko ashyikirijwe iyo nyandiko, umuyobozi ushinze kwakira no gusuzuma ubujurire bujyanye n'imisoro muri RRA ari Komiseri Mukuru. [91] Avuga ko Urukiko Rukuru rw'Ubucuruzi rutagombaga kumvikanisha ko Urukiko rw'Ubucuruzi nta makosa rwakoze mu kwemeza ko ibaruwa yanditswe ari ubujurire, rushingiye ku manza zaciwe n'ibindi bihugu, rwirengagije ko mu bujyanye n'uburyo amategeko arutana (hiérarchie des normes) "jurisprudence" idasimbura amategeko yanditse; uretse ko na "jurisprudences" zakoreshejwe ari izishingiye ku mategeko y'ibindi bihugu, bityo zikaba zitanakoreshwa mu gihe hari amategeko y'u Rwanda agenga ibintu biri kuburanwaho; Akomeza avuga ko kuba Urukiko rwarakoze amakosa yo kwemeza ko ingingo isuzumwa kandi itari yarajuririwe kwa Komiseri Mukuru, binyuranyije n'ibiteganywa mu ngingo ya 53 y'Itegeko 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha, iteganya ko umusoresha utanyuzwe n'icyemezo cya Komiseri Mukuru ashobora kuregera inkiko, kubera izo mpamvu zose agasaba Urukiko rw'Ubujurire kwemeza ko Urukiko Rukuru rw'Ubucuruzi rutagombaga kwemeza ko ibaruwa yavuzwe ahabanza yari gufatwa nk'ubujurire bw'umusoro, ko ndetse rwagombaga kwemeza ko iyi ngingo itagombaga gusuzumwa mu nkiko kuko itajuririwe kwa Komiseri Mukuru. [92] Asoza asaba uru Rukiko kwemeza ko ikibazo (issue) kijyanye no kwemererwa igihombo cya miliyari enye, miliyoni magana atatu mirongo itandatu n'icyenda, ibihumbi magana arindwi mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw) kitagombaga gusumwa mu rubanza rujurirwa kuko kitajuririwe kwa Komiseri Mukuru ndetse ko ayo mafaranga aburanwa ari mu byemeranyijweho (Agreed issues) mu ibaruwa y'ubujurire, ko nta kibazo HIS Rwanda Ltd yari iyafiteho. UKO URUKIKO RUBIBONA [93] Impaka kuri iyi ngingo zishingiye ku kumenya niba amafaranga miliyari enye, miliyoni magana atatu mirongo itandatu n'icyenda, ibihumbi magana arindwi mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw) yarajuririwe kwa Komiseri Mukuru, akaba ataragombaga gufatwa n'Urukiko Rukuru rw'Ubucuruzi nk'ingingo itaragombaga gusuzumwa kuko itashyikirijwe Komiseri Mukuru w'Imisoro mbere yo kuregera urukiko. [94] Ibijyanye no kumenya niba ikibazo kitashyikirijwe Komiseri Mukuru w'Imisoro gikwiye gusuzumwa cyatanzweho umurongo mu rubanza RS/INCONST/RCOM 00001/2022/SC rwaciwe n'Urukiko rw'Ikirenga

ku wa 19/05/2023 (igika cya 33), haburana FAST TRUCK INTERIOR AND HARDWARE Ltd na RRA, rwemeza ko “ibyemezo bifatwa mu bijyanye n’isora n’isoreshwa ari ibyemezo by’ubutegets, bishobora

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kuvanwaho binyuze mu nzira yo gutakambira Komiseri Mukuru nk’uko biteganywaga n’Itegeko, nabwo icyemezo afashe kitamunyura akaregera urukiko.” Uyu murongo wumvikanisha ko ingingo zirebana n’isoreshwa zitajuririwe kwa Komiseri Mukuru zidashobora kuregerwa bwa mbere mu nkiko kuko haregerwa icyemezo Komiseri Mukuru aba yafashe kubyo aba yasabwe n’umusoreshwa. [95] Mu rubanza rujuririrwa, igika cya 97, Urukiko Rukuru rw’Ubucuruzi rwasanze ibikubiye mu ibaruwa ya IHS RWANDA, bigaraza ko yari ibaruwa yo kujurira; mu gika cya 102, rusanga umuyobozi wakiriye ubujurire ataragomba kwicecekera, ntabushyikirize ubufitiye ububasha cyangwa ngo byibuze amenyeshe umusoreshwa kugira ngo yandikire ubujurire bwe umuyobozi ubufitiye ububasha kuko binyuranije n’ihame rijyanye n’ubutabera karemano (natural justice); kandi ko muri iyo baruwa, ibyasabwaga bigaragaza ko IHS Rwanda Ltd yari yandikiye Komiseri Mukuru atari ushizwe imisoro y’imbere mu gihugu, bigaragara ko habayeho kwibeshya, bityo ko uwo wandikiwe yagombaga koherereza ubwo busabe umuyobozi ubufitiye ububasha, maze akamenyesha uwasabye/uwajuriye igisubizo. [96] Urwo Rukiko rwasanze ariko kuba mu ibaruwa ya IHS Rwanda Ltd ntahagarara ko itishimiye igihombo kingana n’amafaranga miliyari enye, miliyoni magana atatu mirongo itandatu n’icyenda, ibihumbi magana arindwi mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw) isaba ko yakivanirwaho, bitasuzumwa bwa mbere mu Rukiko mu gihe mu nyandiko yayo ijurira kwa Komiseri itigeze ibigaragaza. [97] Ibaruwa yavuzwe haruguru nk’inyandiko y’ubujurire igaragaza ko yandikiwe Komiseri ushizwe imisoro y’imbere mu gihugu (Commissioner General for Domestic Taxes Department) ku wa 26/07/2017, IHS Rwanda Ltd yavugaga ko igihombo yemerewe mu cyo yamenyekanishije (Principal loss declared) ku musoro wa CIT kingana na miliyari ebyiri, miliyoni magana arindwi mirongo itatu n’eshatu, ibihumbi magana abiri mirongo itandatu, magana inani mirongo itanu n’imwe (2,733,260,851Frw). Yakomeje igaragaza ko ibyo yemera mu igenzura (agreed issues) n’ibyo itemeranya n’abagenzuzi ba RRA (non-agreed issues). [98] IHS Rwanda Ltd ikomeza igaragaza muri iyo baruwa ko kubijyanye n’igihombo yemera (agreed issues) ku musoro wa CIT kingana na miliyari ebyiri, miliyoni magana arindwi mirongo itatu n’eshatu, ibihumbi magana abiri mirongo itandatu, magana inani mirongo itanu n’imwe (2,264,099,930Frw) kigizwe n’ibikurikira : Unsupported expense=67,617,781Frw ; Interest expenses not allowed=2,106,488,743Frw ; Staff cost overstated=89,989,509Frw. Naho mu byo IHS Rwanda Ltd yajuririraga itemera (non-agreed issues) ; nta na hamwe muri iyo baruwa igaragaza igihombo itemerewe ku musoro wa CIT. [99] Hashingiwe ku murongo wavuzwe haruguru uvuga ko ibyemezo bifatwa mu bijyanye n’isora n’isoreshwa bishobora kuvanwaho binyuze mu nzira yo gutakambira Komiseri Mukuru nk’uko byateganywaga n’ingingo ya 30 y’Itegeko No 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y’isoresha ryakurikizwaga mu gihe IHS Rwanda yagenzurwaga, kandi icyemezo Komiseri afashe kitamunyura akaregera urukiko; Urukiko rw’Ubujurire rurasanga kuba mu ibaruwa yayo y’ubujurire, ntaho IHS Rwanda Ltd igaragariza

Komiseri ko itishimiye igihombo kingana n'amafaranga miliyari enye, miliyoni magana atatu mirongo itandatu n'icyenda, ibihumbi magana arindwi mirongo ine na bitatu, magana inani mirongo ine (4,369,743,840Frw) isaba kwemererwa, nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze rukura icyo gihombo mu cyo iyo sosiyete yari yemerewe ku rwego rwa mbere kuko kitagombaga kuburanwa bwa mbere mu nkiko. 4.Kumenya niba IHS Rwanda Ltd yahabwa amafaranga isaba y'ikurikiranarubanza n'igihembo cya Avoka RRA

[100] Uhagarariye IHS RWANDA Ltd ashingiye ku ngingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu nk'uko ryahinduwe kugeza ubu, asaba Urukiko gutegeka RRA kuyisubiza amafaranga miliyoni icumi (10,000,000Frw) y'igihembo cya Avoka, miliyoni eshanu (5,000,000Frw)

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y'ikurikiranarubanza n'ay'igarama ibihumbi mirongo itanu (50,000Frw) ku mpamvu y'uko yayishoye mu manza.

[101] Uhagarariye RRA avuga ko indishyi zisabwa na IHS RWANDA Ltd itazikwiye kuko ariyo yashoye RRA mu manza zidafite aho zishingiye. UKO URUKIKO RUBIBONA

[102] Ingingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu nk'uko ryahinduwe kugeza ubu iteganya ibikurikira : "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza."

[103] Urukiko rw'Ubujurire rurasanga amafaranga y'ikurikiranarubanza, ay'igihembo cya Avoka n'ay'igarama IHS RWANDA Ltd isaba itayahabwa kuko yatsinzwe urubanza. III. ICYEMEZO CY'URUKIKO

[104] Rwemeje ko ubujurire bwa Rwanda Revenue Authority bufite ishingiro.

[105] Rwemeje ko ubujurire bwatanzwe na IHS Rwanda Ltd nta shingiro bufite.

[106] Rwemeje ko imikirize y'urubanza RCOMA00497/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 17/11/2023 ihindutse kuri bimwe.

[107] Rwemeje ko icyemezo cya Rwanda Revenue Authority cyo kwangira IHS Rwanda Ltd igihombo kingana n'amafaranga miliyari cumi n'umunani, miliyoni magana atanu mirongo itandatu n'eshatu, ibihumbi magana ane mirongo ine na bine, magana ane na cumi n'atanu (18,563,444,415Frw) ku mwaka w'imisoro wa 2017 kigumyeho.

[108] Ruvuze ko amagarama yatanze ahwanye n'ibyakozwe mu rubanza.

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