

RWANDA / JUDGMENT

ATX TECHNOLOGY Ltd v ENERGY DEVELOPMENT CORPORATION Ltd

RCOMAA 00044/2022/CA

COURT

Court of Appeal

DECIDED

13 December 2024

CASE / FILE NUMBER

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ATX TECHNOLOGY Ltd v ENERGY DEVELOPMENT CORPORATION Ltd

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Text

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ATX TECHNOLOGY Ltd v ENERGY DEVELOPMENT CORPORATION Ltd [Rwanda URUKIKO RW'UBUJURIRE - RCOMAA 00044/2022/CA (Nyirandabaruta, P.J., Mukamurenzi, Kamere, J.) 13 Ukuboza 2024] Amategeko agenga imanza z'ubucuruzi – Ibimenyetso – Kugaragaza inenge ziri mu rubanza rujuririrwa - Ujurira agomba kugaragaza inenge ziri mu rubanza rujuririrwa, akanagaragaza ibimenyetso bishimangira ibyo asaba mu bujuri bwe, ni ukuvuga ibimenyetso byerekana inenge ziri muri urwo rubanza, ndetse n'ibimenyetso bigaragaza uburyo izo nenge zigomba gukosorwa. Amategeko agenga imanza z'ubucuruzi – Indishyi – Igihombo - Igihombo ntikibarwa mu buryo bugenekereje ahubwo kigomba gutangirwa ibimenyetso. Incamake y'ikibazo: Ku wa 25 Ugushyingo 2015, ENERGY DEVELOPMENT CORPORATION Ltd (EDCL) yasinyanye na Overseas Infrastructure Alliance (OIA) amasezerano yo gushyira amashanyarazi mu turere twa Karongi na Nyamasheke hanyuma OIA nayo isinyana na ATX TECHNOLOGY Ltd kugira ngo iyifashe gukora imwe muri iyo mirimo. Nyuma yo gukora ibikorwa bikubiye mu masezerano, ATX TECHNOLOGY Ltd yamurikiye OIA imirimo yakozwe, irayishima ariko

iyishyura igice hasigara umwenda ungana n'amadolari y'Amerika ibihumbi mirongo inani na bibiri, magana atatu makumyabiri n'atanu (82,325USD). Yaje kwishyura uyu mwenda, OIA iyisubiza ko yawuhererekanyije na EDCL kandi ko nayo yemera kuwishyura, ariko yishyuje EDCL ntiyayishyura bituma itanga ikirego mu Rukiko rw'Ubucuruza irega EDCL iyisaba ko yakwishyura uwo mwenda. Urukiko rwasanze EDCL igomba kwishyura urega uwo mwenda ndetse n'izindi ndishyi. Uregwa yajuririye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruza isaba ko hakurwaho amafaranga yategetswe kwishyura kuko nta shingiro afite. Urukiko rwasanze nta kigaragaza ko EDCL irimo umwenda OIA maze rwemeza ko icyemezo cyafashwe n'Urukiko rw'Ubucuruza giteshejwe agaciro. ATX TECHNOLOGY Ltd yajuririye icyo cyemezo mu Rukiko rw'Ubucuruza, hasuzumwa ikibazo cyo kumenya niba Urukiko Rukuru rw'Ubucuruza rwariyengagije ibimenyetso bigaragaza ko hari umwenda wa OIA Ltd, ATX TECHNOLOGY Ltd igomba kwishyurwa na EDCL. Urega asobanura ko ibimenyetso urukiko rwabanye rwashingiyeho birimo ikitwa reconciliation report post termination of contract rukemeza ko nta kigaragaza ko agomba kwishyurwa umwenda, ku rupapuro rwa 10 muri icyo raporo harimo ko EDCL hari amadorari 295.183,02 USD yafatiriye yagombaga kwishyura aba subcontractors kandi muri bo hakaba harimo na ATX TECHNOLOGY Ltd bityo rero ikaba igomba kwishyurwa ndetse no guhabwa indishyi z'igihombo yatejwe. EDCL ivuga ko uwajuririye atabasha kugaragaza ibimenyetso bivuguruzwa ibyashingiwe hemezwa ko nta mwenda iyibereyemo, ko EDCL na OIA bari batararangiza kumvikana kuri raporo zisoza amasezerano, ko raporo yiswe "Reconciliation report post termination of contract" itagaragaza ko OIA na EDCL barangije kuyumvikanaho dore ko itigeze ishyirwaho umukono n'impande zirebwa n'amasezerano.

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Incamake y'icyemezo: 1. Ujurira agomba kugaragaza inenge ziri mu rubanza rujuriyirwa, akanagaragaza ibimenyetso bishimangira ibyo asaba mu bujuriye bwe, ni ukuvuga ibimenyetso byerekana inenge ziri muri urwo rubanza, ndetse n'ibimenyetso bigaragaza uburyo izo nenge zigomba gukosorwa.

2. Igihombo ntikibarwa mu buryo bugenekereje ahubwo kigomba gutangirwa ibimenyetso. Ubujuriye bwatanzwe, nta shingiro bufite. Imikirize y'urubanza RCOMA 00886/2020/HCC igumye. Amategeko yashingiweho: Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 120 Imanza zifashishijwe: RS/INJUST/RAD 00002/2022/SC, MHAYIMANA Isaïe n'Urugaga rw'Abavoka rwaciye n'Urukiko rw'Ikirenga ku wa 17/02/2023; RS/INJUST/RC 00005/2021/SC, RADIANT INSURANCE COMPANY Ltd na DUSABIMANA, rwaciye n'Urukiko rw'Ikirenga ku wa 21 Mutarama 2022; RCOMAA 00116/2022/CA, TRADEMET SA na CROSS INVESTMENT COMPANY LTD, rwaciye n'Urukiko rw'Ubujuriye ku wa 28/02/2023. Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 25/11/2015, EDCL yasinyanye amasezerano No 11.07.054/1971/2015/PROC/EDCL/MD/EK/sm na Overseas Infrastructure Alliance (OIA mu magambo ahinnye) mu rwego rwo gushyira mu bikorwa umushinga wa EDCL/EARP wo gushyira amashanyarazi mu Turere twa Karongi na Nyamasheke ku giciro cy'amadolari miliyoni icyenda, ibihumbi magana cyenda mirongo itanu na bitatu magana arindwi n'ibice icumi (9,953,700.10 USD) hatabariwemo imisoro;

imirimo ikaba yaragombaga kumara amezi cumi n'umunani (18). Kugira ngo OIA ishobore gukora iyo mirimo yagiranye amasezerano ashamikiye ku yavuzwe haruguru (sub-contracts) n'izindi sosiyete harimo na ATX TECHNOLOGY Ltd, iyi ikaba ivuga ko ibiteganywa mu masezerano biyireba yabikoze, n'ubwubwira akazi (OIA) yakira imirimo arayishima, anishyura igice cy'ubwishyu, ariko hasigara umwenda ungana n'amadolari y'Amerika ibihumbi mirongo inani na bibiri, magana atatu makumyabiri n'atanu (82,325USD); ko yishyuje OIA uyu mwenda, iyibwira ko yawuherekeranyije na EDCL kandi ko nayo yemera kuwishyura, ariko yishyuje EDCL ntiyayishyura. [2] ATX TECHNOLOGY Ltd yareze EDCL mu Rukiko rw'Ubucuruzi isaba kwishyurwa umwenda wavuzwe haruguru, hiyongereyeho indishyi mbonezamusaruro, igihembo cya Avoka n'amafaranga y'ikurikiranarubanza. EDCL yiregura ivuga ko nta masezerano yabayeho hagati yayo na ATX TECHNOLOGY Ltd, ko ibivugwa ko yemeye ko izayishyura atari byo.

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- [3] Mu rubanza No RCOM 01493/2020/TC rwaciwe ku wa 25/11/2020, urwo Rukiko rushingiye ku ngingo ya 113, igika cya 2, y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano n'ingingo ya 120 y'iryo tegeko2, rwasanze ATX TECHNOLOGY Ltd ifite uburenganzira bukomoka ku masezerano OIA yagiranye na EDCL bwo kwishyurwa na EDCL umwenda OIA yari iyibereyemo; rutegeka EDCL kwishyura ATX TECHNOLOGY Ltd amafaranga miliyoni mirongo inani n'ibiri n'ibihumbi mirongo itanu na bitandatu magana ane na mirongo irindwi n'umunani (82,056,478 Frw) agizwe n'amafaranga miliyoni mirongo inani, ibihumbi magana ane mirongo itanu na birindwi, ijana na makumyabiri n'atandatu (80,457,126 Frw) ariyo ahwanye n'amadolari y'umwenda remezo waregwe, amafaranga miliyoni imwe n'ibihumbi mirongo itanu n'icyenda, magana atatu mirongo itanu n'abiri (1,059,352 Frw) y'inyungu z'ubukererwe cyangwa mbonezamusaruro, n'amafaranga ibihumbi magana atanu mirongo ine (540,000 Frw) y'igihembo cya Avoka n'ikurikiranarubanza. Ruyitegeka no gusubiza ATX TECHNOLOGY Ltd amafaranga ibihumbi makumyabiri (20,000 Frw) y'ingwate y'amagarama. [4] EDCL yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, isaba ko hasuzumwa ishingiye ry'amafaranga yategetswe kwishyura ATX TECHNOLOGY Ltd inasaba ko ATX TECHNOLOGY Ltd itegekwa kuyiha amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, ikirego cyayo gihabwa N° RCOMA 00886/2020/HCC. ATX TECHNOLOGY Ltd yireguye ivuga ko ntacyo EDCL inenga icyemezo cyafashwe n'Urukiko mu rubanza rwajuririye nayo isaba indishyi z'amafaranga y'ikurikiranarubanza n'irangizarubanza ry'agateganyo. [5] Urwo rubanza rwaciwe ku wa 07/10/2021, Urukiko Rukuru rw'Ubucuruzi rushingiye ku kimenyetso cyiswe "Reconciliation report post of the contract" no ku ibaruwa yo ku wa 04/05/2020, EDCL yandikiye uhagarariye ATX TECHNOLOGY Ltd isubiza ibaruwa yayo yo ku wa 16/03/2020, rwasanze EDCL yaremeraga ko mu masezerano y'ubwumvikane barimo na OIA, bari bemeye kwita ku kibazo cyo kwishyura sub-contractors ba OIA, ariko ko ibyo bizakorwa bamaze kwemeranya ku mafaranga EDCL irimo OIA (the payment of sub-contractors liabilities will depend on the actual outstanding funds/amount owed to OIA); nyamara nta kigaragaza ko EDCL irimo amafaranga OIA ku buryo havanwamo agomba

kwishyurwa ATX TECHNOLOGY Ltd, bityo ko uburenganzira bwa ATX TECHNOLOGY Ltd bwo kwishyura ibikorwa yakoze bivuye ku masezerano yakoranye na OIA, itabushingiraho yishyura EDCL kuko amasezerano y'ubwumvikane hagati ya EDCL na OIA nta kigaragaza ko yaba yararangiye, ku buryo hari uwayashingiraho agira icyo yishyura. [6] Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa EDCL bufite ishingiro, ko imikirize y'urubanza No RCOM 01493/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 25/11/2020 ihindutse mu ngingo zayo zose, rutegeka ATX TECHNOLOGY Ltd kwishyura EDCL amafaranga ibihumbi magana atanu (500,000 Frw) y'igihembo cya Avoka, amafaranga ibihumbi ijana (100,000 Frw) y'ikurikiranarubanza n'amafaranga ibihumbi magana atatu na mirongo itandatu (360,000 Frw) y'indishyi zo gushorwa mu manza no kuyisubiza amafaranga ibihumbi mirongo ine (40,000 Frw) y'amagarama yatanze ijurira.

1 Iteganya ko “ugenewe inshingano ashobora gukoresha uburenganzira n'ububasha ugomba kumwishyura afite ku bandi bantu kugira ngo ashobore kwishyurwa”. 2 Iteganya ko “iherekanya ry'uburenganzira ari ugutanga ku bushake uburenganzira bukomoka ku masezerano bugahabwa undi muntu”.

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[7] ATX TECHNOLOGY Ltd yajuririye urwo rubanza mu Rukiko rw'Ubujurire, ubujurire bwayo buhabwa N° RCOMAA 00044/2022/CA, ruburanishirizwa mu ruhamwe ku wa 18/11/2024, ATX TECHNOLOGY Ltd ihagarariwe na Me RWAKA John na Me KIRENGA Etienne naho EDCL ihagarariwe na Me Ndamage Ferdinand. [8] Mu myanzuro no mu miburanire yayo, ATX TECHNOLOGY Ltd inenga Urukiko Rukuru rw'Ubucuruzi kuba rwaravuze ko nta kimenyetso kigaragaza ko igomba kwishyurwa na EDCL nyamara ibimenyetso bihari, inenga kandi ko urwo Rukiko rwasobanuye ikimenyetso ababuranyi bombi bemera mu buryo butari bwo, nyamara gisobanutse neza, rugishingiraho rufata icyemezo kitari cyo. Isaba Urukiko rw'Ubujurire gusuzuma ibimenyetso bigaragaza ko igomba kwishyurwa na EDCL byirengagijwe cyangwa byasuzumwe mu buryo butari bwo, gusuzuma ishingiro ry'indishyi mbonezamusaruro ikwiye guhabwa, indishyi zo gushorwa mu manza, amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka. [9] EDCL yireguye ivuga ko ATX TECHNOLOGY Ltd itabasha kuvuguruzwa impamvu zashingiweho hemezwa ko nta kigaragaza ko iyibereyemo umwenda, ko EDCL na OIA batararangiza kumvikana kuri raporo zisoza amasezerano, bityo ko nta ndishyi izo arizo zose yayiha kuko nta nshingano yigeze igirana nayo. Itanga ubujurire bwuririye ku bundi, isaba indishyi zo gushorwa mu manza z'amaherere zingana n'amafaranga miliyoni enye (4,000,000 Frw), amafaranga miliyoni imwe (1,000,000 Frw) y'ikurikiranarubanza n'amafaranga ibihumbi magana atandatu na makumyabiri na kimwe (621,000 Frw) y'igihembo cya Avoka. [10] Hashingiwe kuri izo mpaka, Urukiko rw'Ubujurire ruramuri uru rubanza sanga harasuzumwa ibibazo bikurikira: - Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwarirengagije ibimenyetso bigaragaza ko hari umwenda wa OIA Ltd, ATX TECHNOLOGY Ltd igomba kwishyurwa na EDCL; - Kumenya niba ATX TECHNOLOGY Ltd yaragombaga guhabwa indishyi mbonezamusaruro; - Ibyerekeye indishyi zo gushorwa mu manza, amafaranga y'ikurikiranarubanza n'ibihembo

by'abavoka. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA 1. Gusuzuma niba Urukiko Rukuru rw'Ubucuruzi rwariyengagije ibimenyetso bigaragaza ko hari umwenda wa OIA Ltd, ATX TECHNOLOGY Ltd igomba kwishyurwa na EDCL [11] Uhagarariye ATX TECHNOLOGY Ltd avuga ko ibimenyetso Urukiko Rukuru rw'Ubucuruzi rwashingiyeho mu gika cya 17 cy'Urubanza rujuririrwa, bigizwe na Reconciliation Report post Termination of Contract n'inyandiko ya EDCL yo ku wa 04/05/2020, rukemeza ko nta kigaragaza ko EDCL irimo amafaranga OIA ku buryo havamo agomba kwishyurwa ATX TECHNOLOGY Ltd, bidafite ishingiro kuko iyo nyandiko impande zombi zemera igaragaza ku rupapuro rwa 10 ko "EDCL yemera ko yafatiriye 295.183,02 USD ya subcontractors harimo na 82.324,86 USD yabariwe ATX TECHNOLOGY Ltd nk'uko bigaragara ku rupapuro rwa 9 rw'iyi Reconciliation Report", bikaba bishimangirwa n'ibaruwa No11.07.023/1135/20/MD-

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EDCL/FG/RA/ck yo ku wa 08/06/2020, aho EDCL yohereje OIA Reconciliation Report ivuga ko iyohereje "Final Reconciliation Report" kugira ngo igire icyo iyivugaho mu rwego rwo gusozza ibyerekeye amasezerano", n'ibaruwa Ref No: 253/20/COR/OIA/2020-21 yo ku wa 14/07/2020, ya OIA yasubizaga ibaruwa ya EDCL yo ku wa 08/06/2020 (ku rupapuro rwayo rwa 5), ivuga ko "nta mpaka ziri mu kuba EDCL igomba kwishyura sub-contractors 295.183,02USD yafatiriye ngo izishyure sub-contractors bamaze igihe kirekire batishyurwa kandi ubwishyu bwabo bwarafatiriwe." Bityo ko kuba EDCL na OIA bemeranya ko EDCL ifitiye sub-contractors 295.183,02 USD harimo na 82,324,24USD yabariwe ATX TECHNOLOGY Ltd, EDCL yagombaga kwishyura ATX TECHNOLOGY Ltd nta yandi mananiza. [12] Akomeza avuga ko ibimenyetso birimo ibaruwa ya OIA itanga urutonde rw'imyenda ya subcontractors rwakozwe na EDCL ku wa 20/08/2019, ibaruwa yo ku wa 03/03/2020 OIA yandikiye ATX TECHNOLOGY Ltd iyibwira ko umwenda wayo yawuherekeranyije na EDCL Ltd, ibaruwa yo ku wa 04/04/2020 ya EDCL yemerera ATX TECHNOLOGY Ltd umwenda, ibaruwa yo ku wa 04/05/2020 ijyanye n'ingano y'umwenda n'iherekanya ryawo, ibaruwa yo ku wa 26/05/2020 ATX TECHNOLOGY Ltd yishyura EDCL, na raporo yakozwe na EDCL igaragaza ku rupapuro rwa 10 ko abo OIA ibereyemo imyenda bazishyurwa na EDCL bazishyurwa 418.276,74 USD, harimo na 82.324,24USD yabariwe ATX TECHNOLOGY Ltd, ko Urukiko Rukuru rw'Ubucuruzi rutabashije kubivugurura kandi ko mu gika cya 16 n'icya 17 by'urubanza rujuririrwa, urwo Rukiko rwavuze ko nta kigaragaza ko EDCL irimo amafaranga OIA ku buryo havamo agomba kwishyura ATX TECHNOLOGY Ltd kandi ko amasezerano y'ubwumvikane hagati ya EDCL na OIA nta kigaragaza ko yaba yararangiye kugira ngo ATX TECHNOLOGY Ltd iyashingireho igira icyo iyishyura; nyamara ko muri "Reconciliation Report post Termination" yakozwe na EDCL nta na hamwe hagaragaramo ko sub-contractors bagomba kwishyurwa ari uko amasezerano y'ubwumvikane hagati ya EDCL na OIA Ltd arangiye. [13] Avuga ko ibyo bishimangirwa n'inyandiko ya EDCLyo ku wa 08/06/2020 n'ya OIA yo ku wa 14/07/2020 zombi zihuriza ku kuba EDCL yari ifatiriye OIA 295.183.02USD agomba kwishyurwa subcontractors; n'ibaruwa ya EDCL yo ku wa 25/04/2020, urupapuro rwa 3, yemera ko izishyura subcontractors directly, kandi ko mu nyandikomvugo y'inama yo ku wa 14/02/2019, n'iyi ku wa 18/03/2019, EDCL yemeye kwishyura subcontractors nta kindi isabye (without any conditions),

bityo ko inyangidiko yiswe “Reconciliation Report Post Termination of the Contract” ikwiye kuba ikimenyetso kuko impande zombi zibyemeranyaho, EDCL ikaba ariyo yakizanye mu rubanza, kikaba gikwiye gufatwa nk’ikimenyetso kiyishinje inshingano, mu gihe itagaragaza ikimenyetso cy’aho yishyuriye uwayihaye inshingano, ko rero Urukiko Rukuru rw’Ubucuruzi nta bubasha rwari rufite bwo guhakana iyo raporo ruvuga ko itafatwa nk’umwanzuro ndakuka. Asoza avuga ko EDCL ishyira Urukiko mu rujijo, ikaba ikwiye kwemera ko bakiri mu mishyikirano cyangwa ko nta mwenda ifitiye OIA, ikanagaragaza ikimenyetso cy’aho yishyuriye amafaranga 295.183.02USD ivuga ko yishyurwe sub-contractants, bagasobanura n’impamvu ayo mafaranga atari muri final report; ko ikibazo cyakemurwa n’uko EDCL yakwishyura subcontractants, nyuma igasaba OIA kuyishyura kuko bo bafitanye amasezerano kandi akaba agikomeza. [14] Uburanira EDCL avuga ko ATX TECHNOLOGY Ltd itabasha kuvugurura impamvu zashingiweho hemezwa ko nta kigaragaza ko iyibereyemo umwenda; ko EDCL na OIA bari batararangiza kumvikana kuri raporo zisoza amasezerano, ko raporo yiswe “Reconciliation report post termination of contract” itagaragaza ko OIA na EDCL barangije kuyumvikanaho kuko itigeze ishyirwaho umukono n’impande zirebwa n’amasezerano arizo EDCL na OIA.

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[15] Avuga ko kuba OIA Ltd yasabye EDCL ko igihe cyo kuyishyura nikigera hakwishyurwa n’abo ifitiye imyenda, bigakorwa ari uko bamaze kumvikana kuri raporo zisoza amasezerano, iyi “condition” yo kumvikana k’ugusozza amasezerano itaruzura, ngo bigaragare ko hari umwenda EDCL ifitiye OIA wabasha kuvamo ayishyurwa “sub- contractors” barimo ATX TECHNOLOGY Ltd; ko EDCL yasubije ibaruwa ya Avoka wa ATX TECHNOLOGY Ltd yo ku wa 16/3/2020, mu ibaruwa N° 11.07.023/770/20/MD-EDCL/FG/HU/pu yo ku wa 04/5/2020, igaragaza ko izishyura ATX TECHNOLOGY Ltd mu gihe bigaragaye ko hari umwenda ifitiye OIA. (“the payment of subcontractor’s liabilities will depend on the actual outstand fund/ amounts owed to OIA. Therefore, the reconciliation report is under process, and it is at its final stage, the outcome will be communicated in due course”). Avuga ko iyo baruwa yakurikiraga “handover report” y’imirimo yagaragazaga ibibazo byo kutuzura inshingano kuri OIA (cotes 2-2(15), ko kandi mu ibaruwa n°11.07.023/120413/21/MD- EDCL/FG/RA/ck yo ku wa 30/12/2021, EDCL yagaragaje ko aho kuba EDCL ifitiye umwenda OIA, ahubwo iyi sosiyete ari yo igomba kwishyura EDCL 510.119,2 USD (cotes 3-3(2)). [16] Akomeza avuga ko muri iyo baruwa EDCL yagaragarije OIA konti igomba kwishyurwaho uwo mwenda ariyo 1000023217 iri muri BNR, ibisobanuro by’uwo mwenda bikaba bigaragara muri Annex A y’iyo baruwa yiswe “Revised final statement of Account for reconciliation between EDCL & OIA,” maze nayo iyisubiza mu ibaruwa yayo N° 256/82/COR/OIA/2021-22 yo ku wa 31/12/2021 ivuga ko ikibazo cyabo cyagombye gushyikirizwa ubukemurampaka. Ibyo bikaba byerekana ko umwenda EDCL yaba ifitiye OIA Ltd utaragaragara, kuko ugifite impaka, bityo ATX TECHNOLOGY Ltd nka “sub-contractor” w’iyo sosiyete ikaba ntaho yahera yishyura EDCL, hashingiwe ku itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, cyane cyane mu ngingo yaryo ya 113, igika cya 2, iteganya ko: “Amasezerano agira inkurikizi ku bayagiranye gusa, ntabangamira undi wese kandi amugirira akamaro gusa mu biteganyijwe

bijyanye no gusezerana ibifitiye undi akamaro. icyakora, ugenewe inshingano ashobora gukoresha uburenganzira n'ububasha ugomba kumwishyura afite ku bandi bantu kugira ngo ashobore kwishyurwa keretse iyo ubwo burenganzira bushingiye gusa ku muntu ubwe....”, akaba rero nta burenganzira cyangwa ububasha ATX TECHNOLOGY Ltd ifite bwo kwishyura EDCLkuko nta mwenda EDCLifitiye ATX TECHNOLOGY Ltd cyangwa OIA. [17] Asoza avuga ko ibyo ATX TECHNOLOGY Ltd ivuga ko ku rupapuro rwa 10 rw’inyandiko yiswe “Reconciliation report post termination of the contract” hagaragaraho 295.183.02USD agomba kwishyurwa ba sub-contractors atari ukuri, kuko hari amafaranga OIA yahawe harimo n’ibihano, ko bakora imibare hagasigara amafaranga ya ba “subcontractors” batarishyurwa harimo na ATX TECHNOLOGY Ltd, ariko wareba ugasanga EDCL yarasohoye amafaranga arenga ayo yagombaga OIA, ari cyo cyatumye EDCL ivuga ko “sub-contractors” bagomba kwishyurwa na OIA kuko nta mwenda ikiyifitiye, ko kuba OIA ifite ibihano bitarahinduka, n’ubwumvikane bukaba butararangira kuko hari ikibazo cy’amasezerano akigibwaho impaka kizakemurwa n’ubukemurampaka (Arbitrage international), ATX TECHNOLOGY Ltd ikaba igomba kugaragaza ko OIA ifitiye umwenda na EDCL, iyi yo ikaba ntacyo yagaragaza iki kibazo kitaracyemuka, ba sub-contractors bakaba bakwishyurwa ari uko bigaragaye ko hari umwenda EDCL ifitiye OIA, hashingiwe ku ibaruwa iri kuri cote ya 5 igaragaza ko ikibazo cy’amafaranga EDCL yaba ifitiye sub- contractors yakwishyurwa ari uko asigaye (balances) abanje kugaragara, atagaragara ATX TECHNOLOGY Ltd ikajya kwishyura OIA.

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UKO URUKIKO RUBIBONA [18] Impaka kuri iyi ngingo y’ubujurire zishingiye ku kumenya niba hari ibimenyetso bigaragaza ko hari umwenda EDCL ibereyemo OIA Ltd, ukaba waragombaga gukurwamo uwo ATX TECHNOLOGY Ltd ivuga ko isigaje kwishyurwa na OIA nk’uko yabihereye uburenganzira (Assignment of rights/ Cession des droits). [19] Ingingo ya 120 y’Itegeko N° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ko “Ihererekanya ry’uburenganzira ari ugutanga ku bushake uburenganzira bukomoka ku masezerano bugahabwa undi muntu.” Iyi ngingo yumvikanyishye ko uburenganzira buhabwa undi muntu, bugomba kuba buhari. [20] Mu rubanza rujuririrwa No RCOMA 00886/2020/HCC rwaciye n’Urukiko Rukuru rw’Ubucuruzi ku wa 07/10/2021, igika cya 15, urwo Rukiko rwasanze ikimenyetso cy’inyandiko yiswe “Reconciliation report post of the contract”, itarashyizweho imikono na EDCL na OIA Ltd, ari umushinga ku buryo kitafatwa nk’umwanzuro ndakuka impande zombi zemeranyijweho, rusanga ku rupapuro rwa 13 rw’iyo nyandiko hari imyanzuro ibiri ikurikira: 1) ko EDCL nta mafaranga igomba OIA Ltd; 2), ko OIA Ltd igifite umwenda wa “sub-contractors” bayo ungana n’amadorali ibihumbi ijana na makumyabiri na bitatu na mirongo icyenda n’atatu (123. 093.71 USD). [21] Rwasanze kandi ibaruwa yo ku wa 04/05/2020, EDCL yandikiye uhagarariye ATX TECHNOLOGY Ltd isubiza ibaruwa yayo yo ku wa 16/03/2020, igaragaza ko EDCL yemeraga mu masezerano y’ubwumvikane hagati yayo na OIA Ltd, ko EDCL izishyura ba “sub-contractors” ba OIA, ariko ikabishyura imaze kwemeranya na OIA ku mafaranga asigaye ibereyemo na EDCL (the payment of subcontractor’s liabilities will depend on the actual outstand funds/amount owed to OIA)⁴; rusanga nyamara nta

kigaragaza ko EDCL irimo amafaranga OIA ku buryo havanwamo agomba kwishyura ATX TECHNOLOGY Ltd, bityo ko uburenganzira bwa ATX TECHNOLOGY Ltd bwo kwishyura ibikorwa yakoze, bivuye ku masezerano yakoranye na OIA, itabushingiraho yishyura EDCL kuko amasezerano y'ubwumvikane hagati ya EDCL na OIA nta kigaragaza ko yaba yararangiye, ku buryo hari uwayashingiraho agira icyo yishyura⁵. [22] Ku bijyanye no kuba urwo Rukiko rwariengagije ko amasezerano y'ubwumvikane hagati ya EDCL na OIA (Reconciliation report post termination of the contract) atari umushinga, ko yari yararangiye gukorwa kandi EDCL yemeye kwishyura “sub- contractors” nta kindi isabye (without any conditions) nk'uko bigaragazwa mu nyandiko y'inama yo ku wa 14/02/2019, n'iyi ku wa 18/03/2019 EDCL yagiranye na OIA, dosiye igaragaza inyandikomvugo y'inama yahuje EDCL na OIA yo ku wa 19/02/2019 ku bijyanye no gushyira iherezo (termination) ku masezerano bari bafitanye “Westen EPC Contract financed by EFDB”, ko OIA yagombaga kwerekana imirimo

3 “It should be noted that the assignor must guarantee the existence of the receivable at the time of the assignment” - Céline Pignon, Useful civil law concepts to understand the assignment rules in the Luxembourg contractual business practice. Available online at <https://www.lexology.com/library/detail.aspx?g=191fffca-d347-4d0e-8a62-d681178858a1>, accessed 11th Dec.2024. 4 Urubanza rujuririrwa No RCOMA 00886/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 07/10/2021, igika cya 16. 5 Idem, igika cya 17.

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yakozwe, itarakorwa, kandi ubwishyu busigaye EDCL igahita ibwishyura abakoreshejwe na OIA (sub-contractors) kuri konti zabo muri banki, asagutse agahabwa OIA. [23] Ibaruwa ya EDCL yo ku wa 20/05/2020 yandikiye ATX TECHNOLOGY Ltd, igaragaza ko EDCL yemeraga ko inshingano yo kwishyura ba “sub-contractors” ba OIA yeguriwe EDCL nk'ihame, ariko ko kwishyurwa bizaterwa n'uko bizaba byagaragaye ko EDCL hari icyo igomba OIA (the payment of subcontractor's liabilities will depend on the actual outstand funds/amount owed to OIA); ko raporo (Reconciliation report) irimo gukorwa igeze ku musozo, ikizavamo OIA ikazakimenyeshwa mu gihe gikwiriye. [24] Nyuma y'aho ku wa 29/7/2021, EDCL imenyeshesheje iyi raporo OIA iyibwira ko imibare igaragaza ko nta mwenda iyibereyemo, ko ahubwo OIA ari yo igomba kuyishyura Amadolari y'Amerika ibihumbi magana ane makumyabiri n'icyenda, n'ibice cumi n'icyenda (USD 429,719.19),⁶ ndetse ku wa 30/12/2021 iyimenyesha ko yongeye kubara umwenda iberewemo na OIA igasanga ungana n'Amadolari y'Amerika ibihumbi magana atanu na cumi, ijana na cumi n'icyenda, n'ibice bibiri (USD 510,119.2)⁷. OIA ku wa 31/12/2021 yasubije EDCL ko izo mpaka zo kwishyurwa igiye kuzishyikiriza Ubukemurampaka⁸. [25] Mu gihe hakiri impaka zerekeranye no kumenya niba hari umwenda OIA iberewemo na EDCL cyangwa niba EDCL ariyo iyifitiye umwenda, Urukiko rw'Ubujurire rusanga ibyo Urukiko Rukuru rw'Ubucuruzi rwavuze mu rubanza rujuririrwa by'uko nta kigaragaza ko EDCL ifitiye OIA amafaranga ku buryo yavanwamo agomba kwishyurwa ATX TECHNOLOGY Ltd, cyane cyane ko nta “final reconciliation report” iyi sosiyete igaragaza yumvikanweho n'impande zombi (EDCL na OIA) yashingirwaho hemezwa ko hari umwenda usigaye mu masezerano zagiranye, bifite ishingiro, bityo ATX TECHNOLOGY Ltd ikaba itakwegurirwa uburenganzira ku mwenda utagaragazwa mu buryo

budashidikanywaho. [26] Hashingiwe ku murongo watanze mu rubanza No RCOMAA 00116/2022/CA rwaciye n'Urukiko rw'Ubujurire ku wa 28/02/2023, haburana TRADEMET SA na CROSS INVESTMENT COMPANY LTD, uvuga ko "ujurira nawe agomba kugaragaza inenge ziri mu rubanza rujuririrwa, akanagaragaza ibimenyetso bishimangira ibyo asaba mu bujurire bwe, ni ukuvuga ibimenyetso byerekana inenge ziri muri urwo rubanza, ndetse n'ibimenyetso bigaragaza uburyo izo nenge zigomba gukosorwa"⁹, uru Rukiko rurasanga ATX TECHNOLOGY Ltd nta bimenyetso itanga bishimangira ko OIA Ltd iberewemo umwenda udashidikanywaho na EDCL, bityo ubujurire bwayo kuri iyi ngingo bukaba nta shingiro bufite. 2. Kumenya niba ATX TECHNOLOGY Ltd yaragombaga guhabwa indishyi mbonezamusaruro [27] Uhagarariye ATX TECHNOLOGY Ltd, avuga ko ari sosiyete y'ubucuruzi kandi iharanira inyungu, ko kuba EDCL yaranze kuyishyura umwenda iyifitiye uherye ku wa 14/02/2019, byayiteje igihombo gikomeye cyane ku buryo n'indi imirimo yari isanzwe ikora yadindiye. Asaba ko ATX TECHNOLOGY Ltd ihabwa indishyi mbonezamusaruro zibazwe mu buryo bukurikira:

6 Ibaruwa Ref. No 11.07.23/11277 /21/MD-EDCL/FG/RA/CK yo ku wa 29/7/2021. 7 Ibaruwa Ref. 11.07.023/120413/21/ MD-EDCL/FG/RA/CK yo kuwa 30/12/2021. 8 Ibaruwa Ref.256/82/COR/OIA.2021-22 yo kuwa 31/12/2021. 9 Reba igika cya 17,

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$P(1 + r/n)^{nt} - (P)$, aho: P = umwenda remezo (principal loan), r = igipimo cy'inyungu ku mwaka (annual interest rate (decimal)), n = umubare w'inshuro z'ubwikube bw'inyungu ku kiciro (the number of times that the interest is compounded per unit t) t = ari igihe amafaranga yamaze acuruzwa cyangwa atarishyurwa (the time the money is invested or borrowed). Bityo EDCL ikaba igomba guha ATX TECHNOLOGY Ltd inyungu mbonezamusaruro zingana na: $USD = USD 82.325 (1 + 0.18/1)^{(1 \times 2.2)} - USD 82.325 = USD = USD 82.325 \times (1.18^{1.6}) - (USD 82.325) = USD = (USD 82.325 \times 1.30) - (USD 82.325) = USD = (118.487,4 - USD 82.325) = 36,162.4 USD$. [28] Uhagarariye EDCL avuga ko iyi mpamvu y'ubujurire itahabwa ishingiro kuko nta mwenda ifitiye ATX TECHNOLOGY Ltd, n'uburyo amasezerano ariwe OIA nta mwenda afite na EDCL, cyane ko "Reconciliation report" yagombaga gushingirwaho, OIA na EDCL zitarayumvikanaho ahubwo bigaragara ko hazitabazwa ku zindi nzego z'ubutabera nk'uko bigaragara mu ibaruwa ya OIA N° 256/82/COR/OIA/2021-22 yo ku wa 31/12/2021 igaragara kuri cote 5. UKO URUKIKO RUBIBONA [29] Impaka zishingiye ku nyungu z'umwenda (indishyi mbonezamusaruro) ATX TECHNOLOGY Ltd isaba kubera ko EDCL yanze kuyishyura umwenda iyifitiye bikayitera igihombo. [30] Ibijyanye n'indishyi z'igihombo, byatanze umurongo n'Urukiko rw'Ikirenga mu rubanza No RS/INJUST/RAD 00002/2022/SC rwaciye ku wa 17/02/2023 haburana Mhayimana Isaïe n'Urugaga rw'Abavoka. Muri urwo rubanza Me Mhayimana Isaïe yaburanaga asaba indishyi z'igihombo yabaze mu buryo bugenekereje, Urwo Rukiko rusanga zitatangwa kuko "igihombo kitabarwa mu buryo bugenekereje, ahubwo kiba kigomba gutangirwa ibimenyetso", bikaba nta byatanze, bityo rwemeza ko nta shingiro zifite. [31] Imikirize y'urubanza rujuririrwa igaragaza ko Urukiko Rukuru rw'Ubucuruzi rwashingiye ku mpamvu y'uko nta kigaragaza ko EDCL irimo amafaranga OIA ku buryo havanwamo agomba kwishyura ATX Technology Ltd nk'uko byasuzumwe mu ngingo ya mbere y'ubujurire, rusanga ntacyo EDCL igomba ATX TECHNOLOGY Ltd ndetse ko

n'inyungu z'ubukererwe zemejwe mu rubanza rwaciwe ku rwego rwa mbere zivanweho. [32] Urukiko rw'Ubujurire rushingiye ku murongo ugaragajwe haruguru, rurasanga igihombo kitabarwa mu buryo bugenekereje, ahubwo kigomba gutangirwa ibimenyetso kugira ngo hishyurwe indishyi cyateje. Rurasanga indishyi z'igihombo ATX TECHNOLOGY Ltd isaba izishingira ku mwenda ivuga ko OIA iberewemo na EDCL, nyamara akaba nta bimenyetso biwugaragaza ku buryo butagibwaho impaka, bityo indishyi isaba zikaba nta shingiro zifite. Ku bw'ibyo, Urukiko Rukuru rw'Ubucuruzi rukaba nta kosa rwakoze mu kwemeza ko inyungu z'ubukererwe (indishyi) zemejwe mu rubanza rwaciwe ku rwego rwa mbere zivanweho; ubujurire bwa ATX TECHNOLOGY Ltd kuri iyi ngingo bukaba nabwo nta shingiro bufite. 3. Kumenya niba indishyi zo gushorwa mu manza, amafaranga y'ikurikiranarubanza n'ibihembo bya Avoka bisabwa n'ababuranyi bakwiye kubihabwa

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[33] Uhagarariye ATX TECHNOLOGY Ltd avuga ko iyo sosiyete yashowe mu manza, agasaba Urukiko gutegeka EDCL kuyisubiza amafaranga y'ikurikiranarubanza angana na miliyoni eshatu (3,000,000 Frw) n'igihembo cya Avoka kingana n'icumi ku ijana by'ikiregerwa (ni ukuvuga angana n'amadolari ibihumbi umunani magana abiri mirongo itatu n'atanu (8.235 USD)). [34] Uhagarariye EDCL avuga ko indishyi ATX TECHNOLOGY Ltd isaba nta shingiro zahabwa kuko nta nshingano yigeze igirana nayo. Ashingira ku ngingo ya 152 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, avuga ko EDCL itanga ubujurire bwurirye ku bundi isaba ATX TECHNOLOGY Ltd kuyiha indishyi zo kuyishora mu manza z'amaherere zingana n'amafaranga y'u Rwanda miliyoni enye (4,000,000Frw), ay'ikurikiranarubanza miliyoni imwe (1,000,000Frw) n'ay'igihembo cya Avoka ibihumbi magana atandatu na makumyabiri na kimwe (621,000Frw). [35] Uhagarariye ATX TECHNOLOGY Ltd avuga ko indishyi zisabwa na EDCL nta shingiro zahabwa kuko ari uburenganzira bwa ATX TECHNOLOGY Ltd kujurira mu gihe itishimiye icyemezo yafatiwe. UKO URUKIKO RUBIBONA a) Ku byerekeye amafaranga y'ikurikiranarubanza n'ibihembo bya Avoka asabwa n'ababuranyi [36] Ibyerekeranye n'amafaranga umuburanyi yakoresheje ku rubanza, Urukiko rw'Ikirenga mu rubanza no RS/INJUST/RC 00005/2021/SC rwaciwe ku wa 21 Mutarama 2022, haburana RADIANT INSURANCE COMPANY Ltd na DUSABIMANA, rwemeje ko uyasaba agomba kuyahabwa kubera ko atsinze urubanza, kandi bikaba bigaragara ko byabaye ngombwa kurukurikirana no gushaka Avoka umuburanira; cyakora ko iyo ayo asaba ari menshi kandi atagaragaza uburyo ariyo yagiye kuri uru rubanza atangwa mu bushishozi bw'Urukiko10. Rwemeza ko ntaho rwahera rutegeka utsinze urubanza gutanga amafaranga y'igihembo cy'Avoka n'ay'ikurikiranarubanza11. [37] Urukiko rw'Ubujurire rushingiye kuri uwo murongo, rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ATX TECHNOLOGY Ltd isaba nta shingiro afite, kuko itsinzwe urubanza, ikaba ahubwo ariyo igomba kwishyura EDCL amafaranga yakoresheje mu rubanza. Rurasanga ariko amafaranga EDCL isaba ari menshi kandi nta bimenyetso iyagaragariza, bityo mu bushishozi bw'Urukiko, ikaba ikwiye kwishyurwa amafaranga ibihumbi magana atanu (500,000Frw)

y'igihembo cya Avoka n'ibihumbi Magana abili (200,000Frw) y'ikurikiranarubanza, yiyongera kuri 500.000 Frw y'igihembo cya avoka, 100.000 Frw y'ikurikiranarubanza yagenwe mu rubanza rujuririrwa ndetse na 40.000Frw y'ingwate y'amagarama ATX TECHNOLOGY Ltd yategetswe kuyisubiza. b) Ku byerekeye indishyi EDCL isaba zo gushorwa mu maza

10 Urubanza no.RS/INJUST/RC 00005/2021/SC rwaciwe kuwa 21 Mutarama 2022 n'Urukiko rw'Ikirenga, haburana Radiant Insurance Company Ltd na Dusabimana, igika cya 43. 11 Idem, igika cya 44.

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[38] Mu rubanza rujuririrwa (igika cya 28), Urukiko Rukuru rw'Ubucuruzi rushingiye ku mpamvu y'uko EDCL yarezwe itaragombaga kuregwa, rwayigeneye, mu bushishozi bwawo, 360.000 Frw y'indishyi zo gushorwa mu manza. [39] Urukiko rw'Ubujurire rurasanga kuri uru rwego, EDCL isaba guhabwa indishyi zo gushorwa mu manza zingana na miliyoni anye (4.000.000Frw), nyamara ikaba itagaragaza icyo inenga icyemezo cy'urukiko Rukuru kuzo ndishyi yagenewe, ubujurire bwayo bwuririye ku bundi ku bijyanye n'izo ndishyi yaka bukaba nta shingiro bufite. Bivuze ko ku bijyanye n'indishyi zo gushorwa mu manza hagumye 360.000 Frw yategetswe mu rubanza rujuririrwa. III. ICYEMEZO CY'URUKIKO [40] Rwemeje ko ubujurire bwa ATX TECHNOLOGY Ltd nta shingiro bufite. [41] Rwemeje ko imikirize y'urubanza No RCOMA 00886/2020/HCC rwaciwe n'Urukiko Rukuru ku wa 07/10/2021, igumye. [42] Rutegetse ATX TECHNOLOGY Ltd kwishyura ENERGY DEVELOPMENT CORPORATION Ltd (EDCL) amafaranga ibihumbi magana atanu (500,000Frw) y'igihembo cya Avoka n'ibihumbi Magana abili (200,000Frw) y'ikurikiranarubanza, yiyongera kuri miliyoni imwe (1,000,000Frw) yagenwe mu rubanza rujuririrwa y'ikurikiranarubanza, igihembo cya Avoka n'indishyi zo gushorwa mu manza, yose hamwe akishyura ENERGY DEVELOPMENT CORPORATION Ltd (EDCL) miliyoni imwe n'ibihumbi magana atandatu (1,700,000Frw). [43] Ruvuze ko amagarama yatanze ahwanye n'ibyakoze mu rubanza.

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