

RWANDA / JUDGMENT

FODECO vs THAUGHTS ARE THINGS CO (TATCO) LTD N'UNDI

RS/INJUST/ RCOM 00014/2022/CA

COURT

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31 January 2025

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FODECO vs THAUGHTS ARE THINGS CO (TATCO) LTD N'UNDI

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Text

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FODECO vs THAUGHTS ARE THINGS CO (TATCO) LTD N'UNDI [Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/ RCOM 00014/2022/CA (Nyirandabaruta, P.J., Munyangeri na Kamere J.) 31 Mutarama 2025] Amategeko agenga amasezerano – agaciro k'amasezerabo – Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya. Itegeko No 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, Ingingo ya 64 Amategeko agena ububasha bw'Inkiko – Gusubirishamo urubanza – Gusubirishamo urubanza ku mpamvu z'akarengane – Umuburanyi atarigeze asaba ko urubanza rusubirwamo ku mpamvu z'akarengane, n'ubwo mu gusesengura imicire y'urwo rubanza, urukiko rwasanga hari aho yarenganyijwe, ntirushobora kugira icyo rumugenera. Incamake y'ikibazo: Uru rubanza rwatangiye Fodeco irega Thoughts Are Things Co (TATCO) Ltd ihagarariwe n'Umuyobozi wayo Kimenyi mu Rukiko rw'Ubucuruzi isaba Urukiko gutegeka ko Kimenyi na Tatco kuyisubiza amafaranga miliyoni makumyabiri (20.000.000Frw) ya avansi bakiriye,

Amadolari ibihumbi birindwi (7,000\$) n'inyungu zayo zibariwe kuri 18% ku mwaka, n'indishyi zitandukanye zirimo amafaranga miliyoni mirongo itanu (50.000.000Frw) z'igihombo yayiteye ndetse akanayishyura amafaranga y'ubukode bw'inzu Kimenyi yabagamo ya Fodeco atigeze yishyura angana na miliyoni imwe n'ibihumbi Magana atandatu mirongo itandatu, Magana atanu mirongo inani (1,660,580Frw). Iki kirego cyikaba cyari gishingiye ku masezerano ajyanye no kwiga umushinga w'inguzanyo no gushaka iyo nguzanyo, aho Kimenyi yagombaga kwigira Fodeco umushinga agashaka abashoramali batanga inguzanyo ya miliyali ebyiri (2.000.000.000Frw), nayo ikamwishyura atatu kw'ijana (3/100), ariko Kimenyi akaba atarakoze ibyo yemeye. Urukiko mu rubanza RCOM00749/2019/TC, rushingiye ku ngingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, rwemeje ko Kimenyi yishe amasezerano rumutegeka we na Tatco gufatanya gusubiza Fodeco amafaranga miliyoni makumyabiri (20.000.000Frw) ya avance n'amadolari y'Amerika ibihumbi bitatu 3.000\$ n'indishyi zitandukanye. Tatco na Kimenyi ntibishimiye imikirize y'urubanza, barujuririra mu Rukiko Rukuru rw'Ubucuruza barusaba kwemeza ko Fodeco ariyo itarubahirije inshingano, igategekwa kubishyura amafaranga atandukanye. Fodeco yireguye ivuga ko ubujurire bwa Tatco Ltd na Kimenyi nta shingiro bufite, batanga ubujurire bwuririye ku bundi basaba amafaranga bari baregeye kuko atariyo bahawe. Urukiko mu rubanza RCOMA00655/2019/HCC, rwemeje ko ubujurire bwa Kimenyi Jean na Tatco bufite ishingiro kuri bimwe; n'ubujurire bwuririye ku bundi bwa Fodeco bufite ishingiro kuri bimwe; ko imikirize y'urubanza rujuririrwa ihindutse ku birebana n'ugomba kwishyura ndetse no ku ngano y'umwenda; Rutegeka Tatco kwishyura Fodeco amafaranga miliyoni icyenda, ibihumbi magana atanu mirongo irindwi na bine magana abiri (9,574,200Frw) yasagutse nyuma y'ihwanyamyenda no kuyishyura indishyi z'ikurikiranarubanza n'igihembo cy'Avoka. Fodeco yandikiye Perezida w'Urukiko rw'Ubujurire imusaba ko urubanza RCOMA00655/2019/HCC, rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, rwoherezwa mu Rukiko rw'Ubujurire. Fodeco, ivuga ko mu rubanza rusubirishwamo, hari ibimenyetso byirengagijwe bigaragaza ingano y'umwenda bishyura Kimenyi Jean na Tatco, kandi byamuteye akarengane. Avuga kandi ko Urukiko

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rwirengagije amasezerano ababuranyi bagiranye kandi ko rutahaye agaciro imvugo za Kimenyi na Tatco ku byo bemera. Kimenyi na Tatco, bavuga ko inguzanyo itabashije kuboneka biturutse ku makosa ya Fodeco itarabashije kuzuza ibyo yasabwaga n' abaterankunga. bavuga ko bitari ngombwa guhwanya imyenda kuko ntacyo Tatco yagombaga gusubiza Fodeco. Asaba Urukiko rw'Ubujurire kwemeza ko ikirego cya Fodeco nta shingiro gifite, ko itagomba gusubizwa "avance" kuko itubahirije ibiteganywa n'amasezerano. Asaba n'indishyi zitandukanye. Urukiko mu rubanza RS/ INJUST/ RCOM 00014/2022/CA rwemeje ko gusubirishamo urubanza ku mpamvu z'akarengane bifite ishingiro kuri bimwe ko Kimenyi na Tatco bagomba kwishyura Fodeco miliyoni makumyabiri (20,000,000Frw) n'amadorali ibihumbi birindwi (7,000\$) n'indishyi zitandukanye. Incamake y'icyemezo: 1. Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu

zemewe n'amategako. Agomba kubahirizwa nta buriganya. Igihombo ntikibarwa mu buryo bugenekereje. Bityo, umuburanyi usaba indishyi zikomoka ku gihombo, agomba kugitangira ibimenyetso bidashidikanywaho. 3. Umuburanyi atarigeze asaba ko urubanza rusubirwamo ku mpamvu z'akarengane, n'ubwo mu gusesengura imicire y'urwo rubanza, urukiko rwasanga hari aho yareganyijwe, ntirushobora kugira icyo rumugenera. Bityo, Umuburanyi utarasabye ko urubanza rwe rusubirishwamo ku mpamvu z'akarengane akurikije uburyo n'inzira biteganywa n'Itegeko, ntashobora kuririra ku kirego cyatanzwe n'ubusubirishijemo urubanza ku mpamvu z'akarengane ngo nawe asabe ko rwasuzuma ibyo atishimiye muri urwo rubanza rusubirishwamo. 4. Usaba Amafaranga y'ikurikirana rubanza n'igihembo cya Avoka agomba kuyahabwa kubera ko atsinze urubanza, kandi bikaba bigaragara ko byabaye ngombwa kurukurikirana no gushaka Avoka umuburanira. Bityo, iyo ayo asaba ari menshi kandi atagaragaza uburyo ariyo yagiye kuri uru rubanza atangwa mu bushishozi bw'Urukiko Amategako yashingiweho: Itegeko No 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, Ingingo ya 64 Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutgets, Ingingo ya 12 Imanza zifashishijwe: Urubanza RS/INJUST/RCOM00005/2022/SC rwaciye kuwa 20/10/2023 haburana BES SUPPLY Ltd, Akarere ka Gicumbi n'abandi RS/INJUST/RC 00027/2022/SC Kanyamagana Kayabotsi Pascal yaburanagamo na SANLAM AG Plc na Tulikumwe Théophile. Urubanza. I. IMITERERE Y'URUBANZA [1] Taliki 04/11/2014, Thoughts Are Things Co (TATCO) Ltd ihagarariwe n'Umuyobozi wayo Kimenyi Jean, yagiranye na Forces Development Cooperative (FODECO), ihagarariwe na Mutesi Julia, amasezerano ajyanye no kwiga umushinga w'inguzanyo, kuwusesengura no gushaka iyo nguzanyo. Muri ayo masezerano,

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Kimenyi Jean nk'utanga serivise yiyemeje guha Fodeco serivise yo kuyigira umushinga agashaka abashoramali batanga inguzanyo ya miliyali ebyiri (2.000.000.000Frw), maze bumvikana ko ikiguzi cyose Fodeco izahemba utanga serivisi gihwanye n'amafaranga atatu kw'ijana (3/100) y'inguzanyo uhabwa serivisi (Fodeco) ashaka, ariyo ahwanye na miliyoni mirongo itandatu (60.000.000Frw). [2] Bamaze kunoza amasezerano, Fodeco yishyuye avansi ingana na 1/100, angana na miliyoni makumyabiri (20.000.000Frw). Kuwa 07/10/2015, hakozwe andi masezerano avuguruye, Kimenyi Jean ahabwa amadolari y'Amerika ibihumbi birindwi (7,000USD) kuko yari yijeje Fodeco ko bitarenza ukwezi kumwe inguzanyo izaba ibonetse, bitaba ibyo agasubiza Fodeco amafaranga n'amadolari yari yaramwishyuye. [3] Kimenyi Jean amaze kwakira iyo avansi, ibyo yasezeranyije Fodeco ntiyabishyize mu bikorwa, ntiyanasubiza Fodeco amafaranga n'amadolari yamwishyuye. Fodeco yaregeye Urukiko rw'Ubucuruza mu rubanza RCOM00749/2019/TC, irusaba gutegeka ko Kimenyi Jean na Tatco bayisubiza amafaranga miliyoni makumyabiri (20.000.000Frw) ya avansi bakiriye, Amadolari ibihumbi birindwi (7,000\$) n'inyungu zayo zibariwe kuri 18% ku mwaka, indishyi zingana n'amafaranga miliyoni mirongo itanu (50.000.000Frw) z'igihombo yayiteye ndetse akanayishyura amafaranga y'ubukode bw'inzu Kimenyi yabagamo ya Fodeco atigeze yishyura angana na miliyoni imwe n'ibihumbi Magana atandatu mirongo itandatu, Magana atanu mirongo inani (1,660,580Frw). [4] Urukiko

rw'Ubucuruzi rwaciye urwo rubanza ku wa 24/06/2019, rushingiye ku ngingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iteganya ko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko kubayagiranye, rutegeka Kimenyi Jean na Tatco gufatanyaga gusubiza FODECO amafaranga miliyoni makumyabiri (20.000.000Frw) ya avance n'amadolari y'Amerika ibihumbi bitatu 3.000\$ (nu kuvuga 7.000\$ hakuwemo 4.000\$ Urukiko rwasanze yaramaze gusubizwa), runabategeka kuyishyura igihembo cya Avoka kingana n'ibihumbi magana atanu (500,000Frw), amafaranga y'ikurikiranarubanza angana n'ibihumbi mirongo inani (80.000Frw) n'ingwate y'amagarama angana n'ibihumbi makumyabiri (20,000Frw). [5] Tatco na Kimenyi Jean ntibishimiye imikirize y'urubanza, barujuririra mu Rukiko Rukuru rw'Ubucuruzi mu rubanza RCOMA00655/2019/HCC, barusaba kwemeza ko Fodeco ariyo itarubahirije inshingano, igategekwa kubishyura amafaranga miliyoni mirongo ine (40,000.000Frw) ndetse n'indishyi zingana na miliyoni mirongo itatu n'eshanu (35.000.000Frw) z'uko yatesheje igihe Tatco, ndetse Fodeco ikanategakwa kubishyura amadolari ibihumbi bine (4.000\$). [6] Fodeco yireguye ivuga ko ubujurire bwa Tatco Ltd na Kimenyi Jean nta shingiro bufite kubera ko no ku rwego rwa mbere Urukiko rwasanze igihe cy'ukwezi cyateganyijwe mu masezerano bagiranye ku wa 07/10/2015 cyarangiyeye inguzanyo itabonetse, bityo rutegeka Tatco Ltd gusubiza Fodeco amafaranga n'amadolari yavuzwe haruguru. [7] Fodeco yatanze ubujurire bwuririye k'ubundi isaba kwishyurwa amadolari ibihumbi birindwi (7,000\$), aho kuba 3,000\$ yagenwe mu rubanza rwajuririrwaga, miliyoni imwe, ibihumbi magana atandatu mirongo itandatu, magana atanu mirongo inani (1,660,580Frw) y'ubukode bw'inzu Kimenyi Jean yabagamo n'indishyi z'igihombo (manque à gagner) yayiteye zingana na miliyoni mirongo itanu (50,000,000Frw), iz'akababaro n'ikurikiranarubanza zingana na miliyoni icumi (10,000,000Frw), hiyongereyeho igihembo cya Avoka mu bujurire kingana na miliyoni imwe (1,000,000Frw). [8] Urukiko Rukuru rw'Ubucuruzi rwaciye urwo rubanza ku wa 10/07/2020, rwemeza ko ubujurire bwa Kimenyi Jean na Tatco bufite ishingiro kuri bimwe; n'ubujurire bwuririye ku bundi bwa Fodeco bufite

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ishingiro kuri bimwe; ko imikirize y'urubanza RCOM00749/2019/TC rwaciye ku wa 24/06/2019, ihindutse ku birebana n'ugomba kwishyura ndetse no ku ngano y'umwenda; Rutegeka Tatco kwishyura FODECO amafaranga miliyoni icyenda, ibihumbi magana atanu mirongo irindwi na bine magana abiri (9,574,200Frw) yasagutse nyuma y'ihwanyamyenda no kuyishyura ibihumbi Magana inani (800,000Frw) y'indishyi z'ikurikiranarubanza n'igihembo cy'Avoka. [9] Fodeco yandikiye Perezida w'Urukiko rw'Ubujurire imusaba ko urubanza RCOMA00655/2019/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi ku wa 10/07/2020, rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ukirenga amaze gusuzuma raporo yashyikirijwe na Perezida w'Urukiko rw'Ubujurire kuri urwo rubanza, ashingiye ku Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigenga ububasha bw'Inkiko mu ngingo yaryo ya 53, yemeje ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, rwoherezwa mu Rukiko rw'Ubujurire kugira ngo rube ari rwo ruzaruburanisha. [10] Muri uru Rukiko ikirego cyahawe RS/INJUST/RCOM00014/2022/CA, nyuma y'inama ntegururubanza yo ku wa 30/09/2024, urubanza ruburanishwa mu ruhamwe ku itariki ya 06/01/2025 Fodeco ihagarariwe na Me Ngilishuti Jean Bosco, naho Kimenyi Jean na Tatco

bahagarariwe na Me Habineza Jean Paul. [11] Uhagarariye Fodeco, avuga ko mu rubanza RCOMA00655/2019/HCC, Urukiko Rukuru rw'Ubucuruzi rwirengagije ko mu myanzuro ya Kimenyi Jean na Tatco basabaga kwishyurwa na Fodeco amadolari ibihumbi bine (4.000\$) mu bihumbi cumi na kimwe (11.000\$) bayigurije kuko ibihumbi birindwi (7.000\$) bayishyuye, icyo kimenyetso kirengagijwe kikaba cyarateye Fodeco akarengane kuko Umucamanza atari kurenga kubyo umuburanyi yiyemerera ko yayishyuye, ngo ategeke Fodeco kongera kuyamwishyura. [12] Avuga ko urwo Rukiko rwemeje ko amafaranga yoherejwe abashoramari ataryozwa Kimenyi Jean, rwirengagije ikimenyetso cy'inyandiko yo ku wa 07/01/2016, igaragaza ko amafaranga yoherejwe na Kimenyi Jean nk'uko yabishyizeho umukono kandi ko ariwe wakiriye amafaranga yatanze na Fodeco nk'uko bigaragazwa n'ibimenyetso binyuranye birimo sheki (chèque) ya "20.000.000Frw" yakiriye tariki 04/11/2014. [13] Avuga kandi ko rwirengagije ko Kimenyi Jean na Tatco mu Rukiko biyemereye ko bishyuye amadolari ibihumbi birindwi (7.000\$), runirengagiza ibyo Fodeco na Tatco zumvikanyeho mu masezerano zagiranye ko amadolari ibihumbi bine (4.000\$) azasubizwa Tatco ari uko inguzanyo ibonetse, ko kuba Urukiko rwaremeje ko Kimenyi Jean hamwe na Tatco bataryozwa amafaranga Fodeco yishyura, binyuranyije n'amategeko kuko niwe Muyobozi wayo akaba na nyirayo. Asoza avuga ko Urukiko rutageneye indishyi Fodeco kandi kuba rwaremeje ko Tatco Ltd itubahirije amasezerano ubwabyo biyiha uburenganzira ku ndishyi. [14] Uhagarariye Kimenyi Jean na Tatco, avuga ko amafaranga yoherezwaga na Kimenyi Jean biturutse ku bayobozi ba Fodeco babaga baganiriye n'abaterankunga bakagira ibyo bumvikana, ko nta makosa Kimenyi Jean yakoze kuko Fodeco nayo yemera ko yoherezwaga ayo mafaranga. Avuga ko inguzanyo itabashije kuboneka biturutse ku makosa ya Fodeco itarabashije kuzuza ibyo yasabwaga n'abaterankunga bari gutanga inguzanyo. [15] Avuga ko bitari ngombwa guhwanya imyenda kuko ntacyo Tatco yagombaga gusubiza Fodeco kubera amakosa yayo, ko ahubwo Tatco yagombaga gusubizwa amadolari ibihumbi cumi na kimwe (11.000\$) ndetse igahabwa n'indishyi zo kuba Fodeco yarayitesheje umwanya iyinjiza mu mishinga kuko abagombaga gutanga inguzanyo babonye nta bushobozi bwo kuzayishyura Fodeco ifite.

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[16] Asaba Urukiko rw'Ubujurire kwemeza ko ikirego cya Fodeco nta shingiro gifite, ko itagomba gusubizwa "avance" kuko itubahirije ibiteganywa n'ingingo ya 7 y'amasezerano yagiranye na Tatco, rukayitegeka kuyishyura amafaranga miliyoni mirongo ine (40,000,000Frw) y'igihombo yayiteje no kuyishyura amafaranga y' ikurikiranarubanza n'ay'igihombo cya Avoka. [17] Hashingiwe kuri izo mpaka, harasuzumwa ibibazo bikurikira : Ku kirego cy'akarengane cyatanze na Fodeco Kumanya niba Kimenyi Jean na Tatco Ltd bagomba gutegekwa gufatanya kwishyura Fodeco amadolari ibihumbi birindwi (7.000\$) Kumanya niba Kimenyi Jean na Tatco Ltd bagomba gutegekwa gusubiza Fodeco amafaranga miliyoni makumyabiri (20.000.000Frw); Kumanya niba kuba Urukiko rwaremeje ko Tatco itubahirije amasezerano yagiranye na Fodeco biyihesha uburenganzira ku ndishyi n'amafaranga y'ikurikiranarubanza. Ku bisabwa na Kimenyi Jean Kumanya niba Fodeco ikwiye gusubiza amafaranga angana na miliyoni mirongo ine (40,000,000Frw) y'igihombo yateje Tatco ; Kumanya niba TATCO ikwiye guhabwa amafaranga y'ikurikiranarubanza n'igihombo cya

Avoka. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA1. 1.Kumenya niba Kimenyi Jean na TATCO bategekwa gufatanya kwishyura FODECO amadolari ibihumbi birindwi (7.000\$) [18] Mu myanzuro no mu miburanire ye, uhagarariye Fodeco avuga ko mu rubanza RCOMA00655/019/HCC rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwirengagije imyanzuro ya Kimenyi Jean, aho yiyandikiye ubwe mu mwanzuro w'ubujurire ko yamaze kwishyurwa 7.000\$ Tatco yari yaraguriye Fodeco (reba umwanzuro ye Tatco na Kimenyi Jean yashyizwe muri dosiye, muri IECMS) ku wa 10/06/2019, maze rubirengaho rutegeka Fodeco kongera kuyishyura; basobanura ko muri icyo myanzuro Kimenyi Jean na Tatco bashyikirije Urukiko Rukuru rw'Ubucuruzi bajurira, basabaga kwishyurwa amadorali ibihumbi bine (4.000\$) mu bihumbi cumi na kimwe (11.000\$) baguriye Fodeco kuko bavugaga ko ibihumbi birindwi (7.000\$) babyishyuwe; Umucamanza akaba atari kurenga ku byo ababuranyi biyemerera ko bishyuwe ngo ateguke FODECO kongera kwishyura amadolari ibihumbi birindwi (7000\$), ko ibyo binyuranyije n'ingingo ya 1101 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ryakurikizwaga icyo gihe, yateganyaga ko ibyo umuburanyi yiyemerereye bimutsindisha. Asaba uru Rukiko gutegeka Kimenyi Jean na Tatco Ltd gufatanya kwishyura Fodeco ayo madolari yabahaye. [19] Avuga kandi ko Urukiko Rukuru rw'Ubucuruzi rwanyuranyije n'ibiteganywa n'ingingo ya 52 n'ya 1253 z'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano,

1 Iteganya ko: Ukwiyeemerera mu rubanza ni amagambo umuburanyi cyangwa umuhagarariye avugira mu rukiko agira ibyo yemera. Ayo magambo atsindisha uwayavuze. Ntibyemewe kuvana amagambo amwe mu yo yavuze ngo abe ari yo bamutsindisha adafatiwe hamwe nk'uko yayavuze. Uwemereye atyo mu rukiko ntabwo ashobora kwisubiraho keretse bigaragaye ko yemejwe n'uko yagirirwaga nabi cyangwa ko yibeshya ku cyabaye. Ntashobora kwisubiraho avuga ko yayobejwe no kwibeshya ku mategeko. 2 Iteganya ko uregwa afite uburenganzira bwo kwemera ikirego mu gihe cyose urubanza rutarasomwa 3 Iteganya ko uregwa aba yemeye ikirego iyo yemeye ibyo umurega asaba urukiko cyangwa icyo urubanza rumutsinda rwategetse

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iz'ubucuruzi, iz'umurimo n'iz'ubutegets; ko Kimenyi Jean na Tatco bari baremeye ibyo baregwa nk'uko babigaragaje mu myanzuro yabo bavuga ko bemera ko bishyuwe 7.000\$ baguriye Fodeco, akaba ari ukwemera ibyo aregwa k'umuburanyi nk'uko biteganywa n'ingingo ya 5 yavuze haruguru. Naho ku bijyanye n'ingingo ya 125 yavuzwe haruguru, avuga ko ku bijyanye n'amafaranga Kimenyi Jean na Tatco bemeye mu byo Fodeco ibarega, byagombaga kugira agaciro bitagombye kwemerwa na Fodeco. [20] Uhagarariye Kimenyi Jean na Tatco, yireguye kuri iyi ngingo avuga ko nta bimenyetso byirengagijwe, ko ahubwo byasobanuwe mu buryo buyirenganya, ko Urukiko Rukuru rw'Ubucuruzi rutari guhwanya imyenda kuko Tatco ntacyo yagombaga gucibwa, ahubwo yagombaga kwishyurwa amadolari bihumbi cumi na kimwe (11.000\$) yaguriye Fodeco nk' uko agaragara mu masezerano bagiranye, agasaba Urukiko rw'Ubujurire kubikosora. UKO URUKIKO RUBIBONA [21] Kuri iyi ngingo y'ubujurire, impaka zishingiye ku kumenya niba Kimenyi Jean na Tatco barajuririye Urukiko Rukuru rw'Ubucuruzi bemera ko bishyuwe amadolari ibihumbi birindwi (7.000\$) mu madoliri ibihumbi cumi na

kimwe (11.000\$) Fodeco yabaguriye, urwo Rukiko rukabyirengagiza rugategeka Fodeco kuyishyura bwa kabiri. [22] Ingingo ya 64 y'Itegeko No 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ko "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya". [23] Mu rubanza rujuririrwa (urupapuro rwa 3) Urukiko rwagaragaje ikibazo rugiye gusuzuma kijyanye no gusuzuma niba Fodeco ariyo itarubahirije inshingano ku buryo yategekwa kwishyura 40.000.000FRW n'indishyi z'uho yatesheje igihe Tatco, kandi niba Fodeco yacibwa 4,000\$, maze mu gika cya [17] rusanga ibyo Tatco isaba bitahabwa ishingiro kuko kuvuga ko umushinga utahawe inguzanyo kubera amakosa ya Fodeco itaratanze ibyangombwa (icyemezo cy'umutungo cyangwa se amasezerano y'aho Fodeco yaba baraguriye ubutaka, icyemezo cy'Umujiyi wa Kigali kiyemerera kubaka inzu yarigiye gusabirwa inguzanyo ndetse na expertise), ari urwitwazo kuko nk'uko bigaragazwa mu kimenyetso Tatco ubwayo yitangiye cy'inyigo yakoze y'umushinga w'iyi nguzanyo mu gika cya 7.1, igaragaza nimeru y'ikibanza cya Fodeco cyagombaga kubakwamo iyo nzu ndetse ikanasobanura aho gihereye (Fodeco Cooperative plot is located on a plot number 601 located in Rukiri II Cell, Remera Sector of Gasabo District in Kigali City, a district which is slightly wider than ½ of Kigali city. This site may be identified as the areas currently occupied by market of Remera. The surrounding environment has good asphalt roads, paved walkways with interlocking cement blocks and reasonably well drained storm water drainage trenches). [24] Urukiko Rukuru rw'Ubucuruzi rushingiye ku amasezerano Tatco na Fedeco bagiranye ku wa 04/11/2014, ingingo yayo ya 6 n'ya 8, rwasanze Fodeco nta nshingano yo guha abashoramari ibyangombwa byavuzwe haruguru, ahubwo byari mu nshingano za Tatco, ikaba kandi itarubahirije igihe cyumvikanywe mu masezerano, bityo ko hashingiwe ku biteganywa n'ingingo ya 64 y'Itegeko No 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, Tatco igomba gusubiza avansi yahawe ya 1% angana na 20,000,000Frw nta yandi mananiza nk'uko bikubiye mu masezerano ndetse nk'uko byanemejwe n'urukiko rubanza. [25] Urukiko Rukuru rw'Ubucuruzi rwasesenguye kandi (mu gika cya [21]-[23]) ibijyanye na 7000\$ Kimenyi Jean yaburanye asaba kwishyurwa (n'ubwo atari mu byo yajuriye asaba kuko ajurira yasabaga ko Fodeco yategekwa kwishyura 4000\$ muri 11.000\$ yari yaguriywe kuko hishyuwemo 7.000\$; rusanga ku wa 18/11/2015 Tatco yaraguriye Fodeco 7,000\$ nk'uko amasezerano yo kuri iyo tariki abigaragaza ndetse no ku

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wa 07/01/2016 yarayiguriye 4,000\$, bivuze ko yayiguriye 11,000\$ yose hamwe, rwanzura ko ibyo Fodeco ivuga ko yasubizwa 7,000\$ yahaye Tatco ngo iyohereze abashoramari bagombaga kuyiha inguzanyo nta shingiro byahabwa kuko ayo madorari yarohererejwe uwagombaga gutanga inguzanyo nk'uko yemezwa n'uburanira Fodeco ndetse bikanemezwa n'ibaruwa yo kuwa 16/11/2015 Fodeco yandikiye Umuyobozi wa COGEBANQUE imusaba kugaruza amadorari 7,000\$ avuga ko yakorewe transfert ku wa 07/10/2015 akuwe kuri konti 01390090331-45 akoherezwa Rania Zoumot anyujijwe kuri Al Ram Branch Jerusalem muri ISRAEL, ko iyoherezwa ry'ayo madorari 7,000\$ rihuza n'amasezerano yo ku wa 29/09/2015 yiswe Escrow Agreement yakozwe hagati ya Rania Zoumot(Escro Agent) wa Alram Area Jerusalem Israel na S.N.& Associations

ihagarariwe na Samer Nassar ndetse na Client ariwe Fodeco ihagarariwe na Mutesi Julia, kuko ayo madorari yishyuwe mu nyungu za Fodeco, ko rero ayo madolari 7000\$ atagomba kuryozwa Tatco, ahubwo Fodeco yagakurikirana kubo yayahaye ntibayikorere ibyo bumvikanye. [26] Dosiye y'urubanza igaragaza ko mu rwego rw'ubujurire bwa mbere, mu Rukiko Rukuru rw'Ubucuruzi, Kimenyi Jean na Tatco bajuriye basaba urwo Rukiko gutegeka Fodeco kubishyura 4.000\$ muri 11.000\$ bari bayiguriye kuko hishyuwemo amadolari 7.000\$. Muri uwo mwanzuro, basobanuye ko hari 11.000\$ Tatco yatije Fodeco yagaragajwe n'amasezerano ariko haza kugaragazwa ko hishyuwemo 7.000\$, Urukiko rukaba rwaravuze ko Tatco yakwishyura Fodeco 3.000\$ ngo kuko hagaragajwe 7.000\$ nyamara rwirengagiza ko ayo 7.000\$ yatanze na Fodeco kugirango Tatco iyohereze ku bashoramari babaga bavuganye na Fodeco, mu nyungu zayo, ko rero Fodeco itahindukira ngo iyishyuzwe; ko basaba ko Fodeco yishyura 4.000\$ kuyo yari yaguriye kuko yishyuyemo 7.000\$ gusa naho 7.000\$ yoherejwe abashoramari ku wa 18/11/2015 agaherera kuri Fodeco kuko yoherejwe ariyo ibisabye kandi bigakorwa mu nyungu zayo. [27] Urukiko Rukuru rw'Ubucuruzi ruherereye kubyo rwari rwamaze kwemeza mu yindi ngingo, rwanzuye ko TATCO igomba Fodeco 20,000,000FRW mu gihe Fodeco yo igomba Tatco 11,000\$ ahwanye na $947.8 \times 11,000 = 10,425,800\text{FRW}$, rushingiye kandi ku ngingo ya 107 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iteganya ko iyo abantu babiri baberanyemo imyenda, hashobora kubaho ihwanya ryayo riyizimya yombi, rwahwanyije imyenda, maze rwemeza ko Tatco igomba gusubiza Fodeco 20,000,000 FRW

- 10,425,800 = 9, 574,2000 FRW. [28] Urukiko rw'Ubujurire ruherereye kubyo Tatco yivugiyemo ubwayo mu bujurire bwayo mu Rukiko Rukuru rw'Ubucuruzi, ko amadolari isaba Urukiko gutegeka Fodeco kuyishyura ari 4.000\$ muri 11.000\$ yari yarayiguriye kuko yishyuwemo 7.000\$ no kuba muri uru Rukiko Tatco itarigeze ihakana ubwo bwishyuwe ahubwo ivuga gusa ko nta bimenyetso byirengagijwe, kandi ko Urukiko Rukuru rw'Ubucuruzi rutari guhwanya imyenda kuko ngo ntacyo igomba Fodeco, rurasanga Urukiko Rukuru rw'Ubucuruzi koko rwariirengagijwe ibyo Tatco yiyemereye ko Fodeco yishyuye 7000\$ muri 11.000\$ yayiguriye, rwemeza ko Fodeco ifitiye Tatco umwenda 11.000\$, ruyigenera ibyo itasabye kuko yo yasabaga 4.000\$ kuko yemera ko yishyuwe 7.000\$, urwo Rukiko rukaba rwarategetse Fodeco kongera kwishyura bwa kabiri 7.000\$, bikaba bigomba gukosora, bityo Fodeco ikaba itagomba kongera kuyishyura. [29] Kubyo Fodeco isaba ko Kimenyi Jean na Tatco bategekwa gufatanya kuyisubiza 7.000\$ yayihaye, nk'uko byagaragajwe haruguru, Urukiko Rukuru rwemeje ko Fodeco itayasubizwa ku mpamvu y'uko ayo madolari uko ari 7.000\$ yoherejwe abashoramari mu nyungu za Fodeco. [30] Ku bijyanye n'ayo madolari 7.000\$, amasezerano Fodeco ihagarariwe n'Umuyobozi wayo Mutesi Julia na Tatco ihagarariwe n'Umuyobozi wayo Kimenyi Jean bagiranye ku wa 07/10/2015, ari muri dosiye, yiswe "Amasezerano yo gutanga serivisi yo kohereza amafaranga y'umukiriya hanze" (hoherezwaga 7.000\$), ateganya mu ngingo yayo ya gatandatu (6) ko ayo masezerano ahawe igihe cy'ukwezi, icyo gihe cyashira nta nguzanyo ibonetse, Tatco igasubiza umukiriya ari we Fodeco ayo madolari uko ari ibihumbi birindwi (7.000\$)

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kuri uwo munsu yari afite agaciro kangana na miliyoni eshanu n'ibihumbi Magana atatu na makumyabiri (5.320.000) yatanze, hiyongereyeho amafaranga miliyoni makumyabiri (20.000.000Frw) umukiriya (Fodeco) yahaye Tatco ku wa 04/11/2014, yose hamwe akaba miliyoni makumyabiri n'eshanu n'ibihumbi magana atatu na makumyabiri (25.320.000Frw). [31] Urukiko rw'Ubujurire rushingiye ku biteganywa mu ngingo ya 64 y'Itegeko No 45/2011 ryo ku wa 25/11/2011, yavuzwe haruguru, rurasanga Tatco n'Umuyobozi wayo Kimenyi Jean bagomba gufatanya gusubiza Fodeco amadolari ibihumbi birindwi (7.000\$) kuko bayisezeranyije ko inguzanyo n'itaboneka bazayayisubiza hiyongereyeho miliyoni makumyabiri (20.000.000Frw) Tatco yahaweho avance ku wa 04/11/2014. [32] Rurasanga nyuma y'ibyo bisobanuro, ingingo y'ubujurire bwa Fodeco y'uko Kimenyi Jean na Tatco Ltd bagomba gutegekwa gufatanya kwishyura Fodeco amadolari ibihumbi birindwi (7.000\$) ifite ishingiro.

2. Kumenya niba Kimenyi Jean na TATCO bagomba gusubiza FODECO amafaranga miliyoni makumyabiri (20.000.000Frw). [33] Uhagarariye Fodeco, avuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko amafaranga miliyoni makumyabiri (20.000.000Frw) ataryozwa Kimenyi Jean, rwirengagije ibiteganywa n'amasezerano bagiranye ndetse n'inyandiko iyohereza, igaragaza ko amafaranga yahawe Kimenyi Jean kuko ariwe wayasinyiye cyane ko mu masezerano ariwe wagombaga gushaka abashoramari, ko ntaho Fodeco yagombaga guhurira n'abashoramari muri "process" yo gusaba inguzanyo. [34] Akomeza avuga ko kuba Urukiko rwarategutse ko Kimenyi Jean na Tatco bataryozwa amafaranga Fodeco yishyura, binyuranyije n'amategako kuko Kimenyi Jean ari we Umuyobozi wa Tatco akaba na nyirayo, akaba ari nawe wakiriye amafaranga yishyuzwa, nk'uko bigaragazwa na sheki ya miliyoni makumyabiri (20.000.000Frw) yakiriye tariki 04/11/2014. [35] Uhagarariye Kimenyi Jean, avuga ko Fodeco itagomba gusubizwa amafaranga ya "avance" Fodeco yatanze kuko ariyo itaratanze amakuru ya nyayo ku birebana n'umushinga wayo ; ko kuba inguzanyo itarabonetse byaturutse ku makosa ya Fodeco kuko itujuje ibyo yasabwaga n'abaterankunga bari gutanga iyo nguzanyo. UKO URUKIKO RUBIBONA [36] Impaka kuri iyi ngingo zishingiye ku kumenya niba hari amakosa Fodeco yakoze yatumye idahabwa inguzanyo yashakaga, kandi niba byatuma Tatco na Kimenyi Jean uyihagarariye akaba na nyirayo badategukwa gusubiza miliyoni makumyabiri (20.000.000Frw) bahawe nka "avance" ku kiguzi cya serivisi yagombaga guhabwa Fodeco. [37] Nk'uko byagaragaye haruguru mu gika cya [23], Urukiko Rukuru rw'Ubucuruzi mu gika cya [17] cy'urubanza rusubirwamo ku mpamvu z'akarengane, rwavuze ko ibyo Tatco ivuga ko umushinga utahawe inguzanyo kubera amakosa ya Fodeco itaratanze ibyangombwa (icyemezo cy'umutungo cyangwa se amasezerano y'aho Fodeco yaba baraguriye ubutaka, icyemezo cy'Umujyi wa Kigali kiyemerera kubaka inzu yarigiye gusabirwa inguzanyo ndetse na expertise), ari urwitwazo kuko nk'uko bigaragazwa mu kimenyetso Tatco ubwayo yitangiye cy'inyigo yakoze y'umushinga w'iyi nguzanyo mu gika cya 7.1, igaragaza nimeru y'ikibanza cya Fodeco cyagombaga kubakwamo iyo nzu ndetse ikanasobanura aho gihereye (Fodeco Cooperative plot is located on a plot number 601 located in Rukiri II Cell, Remera Sector of Gasabo District in Kigali City, a district which is slightly wider than ½ of Kigali city. This site may be identified as the areas

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currently occupied by market of Remera. The surrounding environment has good asphalt roads, paved walkways with interlocking cement blocks and reasonably well drained storm water drainage trenches), bivuga ko Tatco nk'inzobere mubyo kwiga imishinga itaza imbere y'urukiko ivuga ko yize umushinga wo gusaba inguzanyo y'inyubako y'inzu y'ubucuruzi itagaragarijwe ibyangombwa byose igomba kugenderaho mu gusaba iyo nguzanyo harimo icyangombwa cy'ubutaka bw'aho iyo nzu igomba kubakwa, expertise y'umutungo wa Fedeco ndetse na raporo ya audit igaragaza imikorere ya Fodeco, kuko bitumvikana ibyo yagomba gushingiraho ireshya abashoramari bagombaga gutanga amafaranga mu gihe ibyo byose ivuga ko ntabyo yari ifite. [38] Rwasanze kandi ibyo uhagarariye Kimenyi Jean na Tatco avuga ko Fodeco yaba yarabimye ibyo byangombwa byose ndetse ko yanabyimye abagombaga gutanga inguzanyo nta shingiro byahabwa, kuko usibye kubivuga mu magambo nta kimenyetso ibigaragariza kandi nyamara ifite inshingano zo kagaragaza ukuri n'ibimenyetso by'ibyo iburanisha yabibura igatsindwa. Ikindi ko bitumvikana ukuntu nk'inzobere mu mishinga yemeye gukora umushinga idahawe ibyo byangombwa cyangwa se uyu muni ngo ibe igaragaza ko yabisabye urundi ruhande rukabyimana. Urukiko Rukuru rwanavuze ko kuvuga ko uwagombaga gutanga inguzanyo atayitanze kubera ko Fodeco yamwimye ibyangombwa byavuzwe haruguru nabyo nta shingiro kuko Fodeco itari ifite inshingano zo gushyikiriza ibyangombwa nyiri ugutanga inguzanyo, ko nk'uko amasezerano yabaye hagati ya Tatco na Fedeco ku wa 04/11/2014 abiteganywa (mu ngingo yayo ya 6 ivuga k'uruhare rw'utanga serivisi), ibyo byarebaga Tatco. [39] Urukiko Rukuru rw'Ubucuruzi, rushingiye kuri ibyo bisobanuro byose no kubiteganywa n'ingingo ya 64 y'Itegeko No 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, rwanzuye ko kuba Tatco itarubahirije ingengabihe yo gutanga serivisi nk'uko biri mu ngingo ya 8 y'amasezerano impande zombi zagiranye ku wa 04/11/2014, kandi ayo amasezerano yakozwe bikurikije amategeko akaba yarabaye itegeko hagati ya Tatco na Fodeco, Tatco igomba gusubiza avansi yahawe ya 1% ingana na 20,000,000FRW nta yandi mananiza nk'uko bikubiye mu masezerano ndetse nk'uko byanemejwe n'Urukiko rubanza. [40] Nk'uko byagaragajwe haruguru, ku muni w'isinywa ry'amasezerano yo gutanga serivisi Fodeco ihagarariwe na Mutesi Julia (uhabwa serivisi) yagiranye na Tatco ihagarariwe na Kimenyi Jean (utanga serivisi) ku wa 04/11/2014, agaragaza mu ngingo yayo ya kabiri (2) ko amafaranga y'igihembo uhabwa serivisi azaha uyitanga yose hamwe ari atatu ku ijana (3%) y'inguzanyo ashaka, ahwanye na miliyoni mirongo itandatu (60.000.000Frw) ko kandi kuri uwo muni amasezerano ashyiriweho umukono (ku wa 04/11/2014) Tatco yishyuwe 1% yayo, angana na miliyoni makumyabiri (20.000.000Frw). Ingingo ya 8 y'ayo masezerano, iteganywa ko ayo masezerano ahawe agaciro k'amezi atatu (3), ayo mezi yashira inguzanyo itabonetse, Tatco igasubiza amafaranga yahawe avansi nta yandi mananiza. [41] Mu yandi masezerano Fodeco ihagarariwe na Mutesi Julia yagiranye na Tatco ihagarariwe na Kimenyi Jean ku wa 07/10/2015, yiswe "amasezerano yo gutanga serivisi yo kohereza amafaranga y'umukiriya hanze"(7.000\$), ingingo yayo ya gatandatu (6) iteganywa ko ayo masezerano ahawe igihe cy'ukwezi, icyo gihe cyashira nta nguzanyo ibonetse, Tatco igasubiza umukiriya ari we Fodeco ayo madolari uko ari ibihumbi birindwi (7.000\$) yatanze, hiyongereyeho amafaranga miliyoni makumyabiri (20.000.000Frw) umukiriya (FODECO) yahaye Tatco ku wa 04/11/2014, yose

hamwe icyo gihe akaba yarageraga kuri miliyoni makumyabiri n'eshanu n'ibihumbi magana atatu na makumyabiri (25.320.000Frw). [42] Urukiko rw'Ubujurire rushingiye kuri ibyo aburanyi bumvikanye mu masezerano yombi bagiranye kandi yabaye itegeko hagati yabo hakurikijwe ibyo ingingo ya 64 y'Itegeko No 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya, ruranga Tatco n'Umuyobozi wayo Kimenyi Jean bagomba gusubiza ayo

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mafaranga bahaweho avance kuko ariko babyiyemeje ko inguzanyo bari biyemeje gushakira Fodeco nitaboneka bazayasubiza nta yandi mananiza kandi iyo nguzanyo ikaba itarabonetse. [43] Rurasanga ibyo uhagarariye Tatco na Kimenyi Jean avuga ko kuba inguzanyo itarabonetse byaturutse ku makosa ya Fodeco itaratanze ibyo yasabwaga nta shingiro byahabwa, kuko nk'uko n'Urukiko Rukuru rw'Ubucuruzi rwabibonye kandi Kimenyi Jean na Tatco batabivugurujwe, aba nibo bari bafite inshingano yo gushaka inguzanyo, bikaba bitumvikana ukuntu uyu munsu bavugaga ko biyemeje gushakira Fodeco inguzanyo ya miliyari ebyiri z'amafaranga y'u Rwanda (2.000.000.000Frw) yo kubaka inzu z'ubucuruzi, akakira avansi ya miliyoni makumyabiri (20.000.000) yose, atagaragarijwe iby'ingezi azaheraho yaka iyo nguzanyo. Nk'uko kandi Urukiko Rukuru rwabigaragaje, Tatco yari ifite amakuru yose nk'uko inyigo yakoze y'umushinga w'iyi nguzanyo ibigaragaza ; numero y'ikibanza cya Fodeco cyagombaga kubakwamo iyo nzu ndetse ikanasobanura aho gihereye (Fodeco Cooperative plot is located on a plot number 601 located in Rukiri II Cell, Remera Sector of Gasabo District in Kigali City, a district which is slightly wider than ½ of Kigali city, ibyo byose Kimenyi Jean na Tatco ahagarariye babibonye kuko Fodeco yabibahaye. Ikindi nk'umuhanga mu kwiga imishinga ijyanye no gushaka inguzanyo, bari babizi neza ko utahabwa inguzanyo yo kubaka inzu uterekana ko ufite ikibanza uzayubakamo n'uburyo iyo nguzanyo izishyurwa, kuba rero batarashoboye kubona iyo nguzanyo, ntabwo amakosa bayashyira kuri Fodeco, bityo bakaba bagomba gusubiza amafaranga ya "avance" Kimenyi Jean yakiriye nk'uko babisezeranye. [44] Urukiko rw'Ubujurire rurasanga nta mpamvu n'imwe yatuma Tatco n'Umuyobozi wayo Kimenyi Jean badafatanye kwishyura amafaranga n'amadolari Fodeco yabahaye, kuko usibye kuvuga gusa ko kuba inguzanyo itarabonetse ari amakosa ya Fodeco, nta yindi mpamvu batanga yatuma badafatanye kwishyura.

3. Kumenya niba indishyi ababuranyi basaba bazihabwa [45] Uhagarariye Fodeco avuga ko kuba Urukiko rwaremeje ko Tatco na Kimenyi Jean batubahirije amasezerano bagiranye na Fodeco, ubwabyo biyiha uburenganzira ku ndishyi; isaba indishyi z'igihombo (manque à gagner) Tatco yayiteye zingana na miliyoni mirongo itanu (50,000,000Frw); ko Fodeco ari koperative y'ubucuruzi, ikaba yarashoye amafaranga iyaha Kimenyi Jean ngo abigire umushinga babone inguzanyo ya miliyari ebyiri (2.000.000.000Frw), kuba iyo nguzanyo itarabonetse bikaba byarayiteye igihombo ariyo mpamvu isaba miliyoni mirongo itanu (50.000.000Frw). [46] Fodeco isaba kandi ko Tatco na Kimenyi Jean bategekwa kuyiha miliyoni umunani (8.000.000Frw) y'indishyi z'akababaro kuko Fodeco ari abantu bishyize hamwe bashakira kubaka inzu y'ubucuruzi, kuba bitarashobotse bikaba byaratumye igira isura mbi. [47] Isoza isaba amafaranga y'ikurikiranarubanza miliyoni ebyiri (2,000,000Frw) kubera ko imaze imyaka munani (8) ikurikirana urubanza, n'ay'igihembo cya Avoka mu

bujurire miliyoni imwe (1,000,000Frw). [48] Uhagarariye Kimenyi Jean na Tatco avuga ko ibyo Fodeco isaba by'igihombo ivuga ko yagize nta shingiro bifite kuko icyo gihombo itakigaragaza. Basaba ahubwo Urukiko gutegeka Fodeco kuba ariyo ibishyura amafaranga miliyoni mirongo ine (40,000,000Frw) y'igihombo yabateje kuko itubahirije amasezerano bagiranye. Naho ku ndishyi z'akababaro avuga ko Fodeco ariyo itarubahirije amasezerano kuko itubahirije ibiteganywa n'ingingo ya 7 y'amasezerano bagiranye ; ko amasezerano yo ku wa 04/11/2014 n'ayo ku wa 07/10/2015 yombi yuzuzanya adasimburana. Asaba Urukiko gutegeka Fodeco guha abo ahagarariye amafaranga y'ikurikiranarubanza miliyoni eshatu n'ibihumbi magana atanu (3.500.000Frw) na miliyoni ebyiri n'ibihumbi magana atanu (2.500.000Frw) y' igihombo cya Avoka. [49] Fodeco ntacyo yigeze ivuga ku ndishyi Tatco na Kimenyi Jean basaba.

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UKO URUKIKO RUBIBONA Ku byerekeye indishyi z'igihombo [50] Ikibazo cy'indishyi zijyanye n'igihombo umuburanyi yagize, Urukiko rw'Ikirenga rwagitanzweho umurongo mu rubanza RS/INJUST/RAD 00002/2022/SC rwaciwe 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 bugenekereje⁴, ahubwo kiba kigomba gutangirwa ibimenyetso", bikaba nta byatanzwe, bityo rwemeza ko nta shingiro zifite. [51] Urukiko rw'Ubujurire rurasanga indishyi Fodeco isaba z'igihombo cya miliyoni mirongo itanu (50.000.000Frw), itabasha kuzisobanura ngo inazigaragarize ibimenyetso ngo Urukiko rubone aho ruhera rusuzuma igihombo ivuga ko yagize, bityo rushingiye kuri uwo murongo wagaragajwe haruguru watanzwe n'Urukiko rw'Ikirenga, Fodeco ikaba itahabwa izo ndishyi kuko itazitangiye ibimenyetso kandi zikaba zitabarwa mu buryo bugenekereje. Iyi ngingo y'ubujurire bwa Fodeco ikaba nta shingiro ifite. [52] Ku byerekeye indishyi z'igihombo Kimenyi Jean na Tatco basaba, ibijyanye n'uko umuburanyi yagira ibyo asaba mu rubanza avuga ko yareganyijweho, iyo atari we warusubirishijemo ku mpamvu z'akarengane, Urukiko rw'Ikirenga rwabitanzweho umurongo mu manza zitandukanye rwaciye, nko mu rubanza RS/INJUST/RSOC 00004/2024/SC rwaciwe ku wa 04/10/2024, haburana Karangwa Jhon na ADPR mu izina ry'uyihagarariye⁵, aho rwemeje ko "kuba umuburanyi atarigeze asaba ko urubanza rusubirwamo ku mpamvu z'akarengane, n'ubwo mu gusesengura imicire y'urwo rubanza, urukiko rwasanga hari aho yareganyijwe, rudashobora kugira icyo rumugenera". Ibi Urukiko rw'Ikirenga rwabyemeje rushingiye ku rubanza no RS/INJUST/RCOM 00005/2022/SC rwaciwe ku wa 20/10/2023 haburana BES SUPPLY Ltd, Akarere ka Gicumbi n'abandi, narwo rwashingiye ku zindi manza zatanze uwo murongo⁶. Muri izo manza hari n'urubanza RS/INJUST/RC00027/2022/SC Kanyamagana Kayobotsi Pascal yaburanagamo na SANLAM AG Plc na Tulikumwe Théophile, narwo rwashingiye ku manza zitandukanye, rwemeje ko Umuburanyi utarasabye ko urubanza rwe rusubirishwamo ku mpamvu z'akarengane akurikije uburyo n'inzira biteganywa n'Itegeko (...), adashobora kuririra ku kirego cyatanzwe n'ugasubirishijemo urubanza ku mpamvu z'akarengane ngo nawe asabe ko rwasuzuma ibyo atishimiye muri urwo rubanza rusubirishwamo⁷. [53] Urukiko rushingiye kuri uwo murongo watanzwe n'Urukiko rw'Ikirenga,

rurasanga muri uru rubanza uwatanze ikirego cy'akarengane ari Fodeco, ntabwo rero abandi Tatco na Kimenyi Jean baburana, bashobora kuririra kuri icyo kirego cy'akarengane ka Fodeco ngo bagire ibyo basaba Urukiko gusuzuma batishimiye mu rubanza rusubirwamo ku mpamvu z'akarengane kindi uretse ibijyanye n'ibyagiye ku rubanza ari byo amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka. Kubera iyo mpamvu rurasanga indishyi basaba zingana na miliyoni mironko ine (40.000.000Frw) z'igihombo bavuga ko bagize ntazo bahabwa kuko nta burenganira bafite bwo kuzaka mu kirego cy'akarengane cyatanzwe na Fodeco. Ku byerekeye indishyi z'akababaro

4 Urubanza RS/INJUST/RAD 00002/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 17/02/2023, 5 Urubanza No RS/INJUST/RSOC 00004/2024/SC, rwaciwe ku wa 04/10/2024, haburana KARANGWA Jhon na ADPR, p.9, igika cya 28. 6 Nk'urubanza No RS/INJUST/RCOM 00005/2019/SC rwaciwe ku wa 30/11/2022, haburana Kigali Ceramica & Furniture Ltd na Guaranty Trust Bank (Rwanda) Plc, para 45, Urubanza RS/INJUST/RC 00009/2022/SC rwaciwe ku wa 18/05/2023, haburana SANLAM AG Plc na UWIHANGANYE Jean, para 29. 7 Urubanza No RS/INJUST/RC 00027/2022/SC, KANYAMAGANA KAYOBOTSI Pascal yaburanagamo na SANLAM AG Plc na TULIKUMWE Théophile, igika cya 12.

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[54] Ingingo ya 12 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutgets, iteganya ko Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. [55] Urukiko rushingiye kuri iyo ngingo ya 12 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 rivuzwe haruguru, rurasanga indishyi z'akababaro Fodeco yaka nazo itazihabwo, kuko itashoboye gusobanura ngo igaragaze n'ibimenyetso by'uburyo kutabona inguzanyo yari yijejwe na Tatco na Kimenyi Jean byatumye igira isura mbi, iza ndishyi yaka zikaba nta shingiro zifite. Amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka [56] Muri uru rubanza, Fodeco yasabye amafaranga miliyoni ebyiri (2,000,000Frw) y'ikurikiranarubanza na miliyoni imwe (1,000,000Frw) y'igihembo cya Avoka mu bujurire, naho Tatco na Kimenyi Jean basaba amafaranga miliyoni eshatu n'ibihumbi magana atanu (3.500.000Frw) y'ikurikiranarubanza na miliyoni ebyiri n'ibihumbi magana atanu (2.500.000Frw) y'igihembo cya Avoka. [57] Ibyerekeranye n'amafaranga umuburanyi yakoresheje ku rubanza, Urukiko rw'Ikirenga mu rubanza 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'Urukiko". Rwemeza ko ntaho rwahera rutegeka utsinze urubanza gutanga amafaranga y'igihembo cy'Avoka n'ay'ikurikiranarubanza. [58] Urukiko rw'Ubujurire rushingiye kuri uwo murongo, rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Fodeco isaba afite shingiro, kuko itsinda urubanza, ikaba yararukurikiranye kandi yarashatse Avoka uyiburanira. Rurasanga ariko amafaranga 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, naho ayo Tatco na Kimenyi Jean basaba bakaba batayahabwa kuko batsindwa n'urubanza. III. ICYEMEZO CY'URUKIKO [59] Rwemeje ko ikirego cyatanzwe na Forces Development Cooperative (FODECO) mu izina ry'Umuyobozi wayo Mutesi Julia, gisubirishamo urubanza RCOMA00655/2019/HCC ku mpamvu z'akarengane gifite ishingiro kuri bimwe. [60] Rutegetse Thoughts Are Things Co (TATCO) Ltd n'Umuyobozi wayo Kimenyi Jean gufatanya gusubiza Forces Development Cooperative (FODECO) amafaranga y'u Rwanda miliyoni makumyabiri (20.000.000Frw) n'amadolari ibihumbi birindwi (7.000\$). [61] Rutegetse Thoughts Are Things Co (TATCO) Ltd n'Umuyobozi wayo Kimenyi Jean gufatanya guha Forces Development Cooperative (FODECO) amafaranga ibihumbi Magana atanu (500.000Frw) y'igihembo cya Avoka n'amafaranga ibihumbi magana abiri (200.000) y'ikurikiranarubanza, yose hamwe bakayishyura miliyoni makumyabiri n'ibihumbi Magana arindwi (20.000.700Frw) n'ibihumbi birindwi by'amadolari (7.000\$).

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