

RWANDA / JUDGMENT

GUARDSMARK Ltd vs RWIRANGA N'UNDI

RCOMA 00004/2024/CA

COURT

Court of Appeal

DECIDED

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GUARDSMARK Ltd vs RWIRANGA N'UNDI

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Text

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GUARDSMARK Ltd vs RWIRANGA N'UNDI [Rwanda URUKIKO RW'UBUJURIRE – RCOMA 00004/2024/CA (Ngagi, M., P.J.) 13 Ukuboza 2024] Itegeko rigena ububasha bw'Inkiko – Ububasha bw'Urukiko Rukuru rw'Ubucuruzi – icyemezo cy'ubukemurampaka – Icyemezo cyafashwe n'Urukiko ku mwanzuro w'ubukemurampaka rwaregewe ntikijuririrwa. Itegeko ryereke imiburanishirize y'imanza z'ubucuruzi – Umurongo (stea decisis) – umurongo ushingiyeye ku Itegeko – Umurongo wafashwe mu rubanza ushingiyeye ku Itegeko ryavuyeho ntukurikizwa mu gihe hari itegeko rishya ryateganyijye ukundi. Incamake y'ikibazo: Uru rubanza rwatangiyeye GUARDSMARK Ltd iregera Urukiko Rukuru rw'Ubucuruzi, isaba ko rukuraho icyemezo cy'ubukemurampaka gisubiramo icyemezo cy'ubukemurampaka cyo ku wa 7/10/2023 gitashyirwa agaciro kuko kinyuranye n'amategeko ndemyagihugu ya Repubulika y'u Rwanda. Icyo cyemezo GUARDSMARK Ltd yaregeye abacyemurampaka bemeje ko GUARDSMARK Ltd itabasha kuyigaragariza uburiganya bwashingiweho mu gufata icyemezo cyayo cyo ku wa 07/10/2023 cyayitegekaga kwishyura Sekamana na Rwiranga amafaranga anyuranye angana na 57.145.476Frw ashingiyeye ku masezerano agamiye imikoranire mu bikorwa bya sosiyeti "Memorandum of Understanding". Rwiranga na Sekamana bireguye bavuga ko mu myanzuro ya

GUARDSMARK Ltd n'ibisobanuro byose itanga, nta Tegeko na rimwe ndemyagihugu igaragaza ryirengagijwe, ko ahubwo ibyo ivuga byose ari ibyo yaburanishije mu bukemurampaka, kandi ko byasuzumwe bigafatwaho icyemezo, bityo ko ikirego cya GUARDSMARK Ltd kitagomba guhabwa ishingiro. Urukiko mu rubanza RCOM 00039/2023/HCC rwemeje ko ubujurire bwa GUARDSMARK Ltd nta shingiro bufite, ko nta gihindutse ku mwanzuro w'Ubukemurampaka wafashwe ku wa 07/10/2023 wasubirishijwemo ku wa 21/11/2023. GUARDSMARK Ltd yajuririye Urukiko rw'Ubujurire, Rwiranga na Sekamana babanje kuzamura inzitizi y'iburabubasha bw'urukiko rw'Ubujurire yatanze n'abaregwa, bavugaga ko imanza zaciye n'Urukiko Rukuru rw'Ubucuruzi ku bijyanye no gukuraho umwanzuro wafashwe n'Ubukemurampaka zitajuririrwa. Urukiko rwemeza mu rubanza RCOMA00004/2024/CA ko inzitizi ifite ishingiro, ko urubanza rwajuririye rutakiriwe kuko bene izo manza zitajuririrwa. Incamake y'icyemezo: 1. Icyemezo cyafashwe n'Urukiko ku mwanzuro w'ubukemurampaka rwaregwe ntikijuririrwa. Umwanzuro w'ubukemurampaka uregerwa Urukiko Rukuru rw'ubucuruzi kugirango rwemeze gusa niba warafashwe hakurikije amategeko byaba bitameze bityo rukawutesha agaciro kandi icyemezo rufashe ntikijuririrwa.

2. Umurongo wafashwe mu rubanza ushingiyeye ku Itegeko ryavuyeho ntukurikizwa mu gihe hari itegeko rishya ryateganyijwe ukundi. Bityo, ntabwo umurongo watanze n'Urukiko rw'Ikirenga bitewe nuko Itegeko ryariho icyo gihe ntacyo ryari ryateganyijwe ku bijyanye no kujuririra icyemezo Urukiko rwafashe ku bujurire bw'icyemezo cy'abacyemurampaka washingirwaho, mu gihe hari Itegeko ririhwo ubu ryakemuye icyo kibazo rivugaga ko icyo cyemezo kitajuririrwa. Amategekoyashingiye: Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 111

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Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, Ingingo ya 82, igika cya 4 n'icya 5 Itegeko N° 005/2008 ryo ku wa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi, Ingingo ya 3 Imanza zifashishijwe: Urubanza RPAA 00048/2020/CA, haburana Ubushinjacyaha na Bimenyimana Jean Paul rwaciye n'Urukiko rw'Ubujurire ku wa 26/05/2022, igika cya 26 urubanza RPAA 00367/2020/CA, haburana Ubushinjacyaha na Twagirumukiza Innocent Réponse rwaciye ku wa 22/12/2023, igika cya 19 Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 10/07/2020, GUARDSMARK Ltd ihagarariye n'Umuyobozi wayo, akaba n'umunyamigabane umwe rukumbi Condo Raphael yagiranye amasezerano "Memorandum of Understanding" na Sekamana Evariste na Rwiranga Florin agamije imikoranire mu bikorwa bya sosiyeti. Mu ngingo ya 8 y'ayo masezerano, impande zose zumvikanye ko amakimbirane azavuka azakemurwa ku bwumvikane, byananirana hakiyambazwa ubuhoza (mediation), nabwo byananirana hakiyambazwa Ubukemurampa (Arbitration). [2] Ku wa 29/04/2021, INVICTUS SECURITY SERVICES Ltd yagiranye amasezerano y'igurisha n'igura ry'imigabane na Condo Raphael, maze Condo Raphael agurisha imigabane ye 85%, asigarana 15% na yo yaje kugurwa nyuma. Ku wa 14/07/2021, Rwiranga Florin na Sekamana Evariste bandikiye GUARDSMARK Ltd ibaruwa bayishyuzwa umwenda ungana na 57.154.476Frw bavugaga ko

uwo mwenda ukomoka ku masezerano y'imikoranire (Memorandum of Understanding) bagiranye na yo ubwo yari ihagarariwe na Condo Raphael. [3] Sekamana Evariste na Rwiranga Florin ntibashoboye kumvikana na GUARDSMARK Ltd, bituma baregera Ubukemurampaka, basaba Inteko y'Abakemurampaka gutegeka GUARDSMARK Ltd kubasubiza amafaranga bari bamaze kuyishoramo yavuzwe haruguru hiyongereyeho inyungu ndetse n'indishyi zitandukanye. [4] Ku wa 07/10/2023, Inteko y'Abakemurampaka mu gufata icyemezo yategetse ko GUARDSMARK Ltd isubiza Rwiranga Florin 50.002.291Frw no gusubiza Sekamana Evariste 7.143.185Frw, ko GUARDSMARK Ltd isubiza Rwiranga Florin amafaranga yatanze mu bukemurampaka angana na 6.000.000Frw y'igihembo cy'Umukemurampaka, 1.080.000Frw ya TVA, hiyongereyeho 1.200.000Frw y'ibyakoreshejwe mu bukemurampaka, yose hamwe akaba 8.280.000Frw, no gusubiza Sekamana Evariste 7.143.185Frw, hiyongereyeho 1.000.000Frw y'indishyi mbonezamusaro n'iz'akababaro, ikanishyura 3.000.000Frw y'ikurikiranarubanza n'igihemba cya Avoka. [5] Ku wa 01/11/2023, GUARDSMARK Ltd ishingiyeye ku ngingo ya 45 y'itegeko No 005/2008 ryo ku wa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi, iteganya ko mu gihe cy'iminsi mirongo itatu (30) amenyeshejwe imyanzuro, uwiambaje ubukemurampaka ashobora, amaze kubimenyesha uwo bafitanye ikibazo, gutanga ikirego gisaba Inteko y'Abakemurampaka gusubiramo iyo myanzuro, igihe bigaragara ko yafashwe hashingiwe ku buriganya cyangwa hashingiwe ku mpapuro mpimbano, GUARDSMARK Ltd yasabye Inteko y'Ubukemurampaka gusubira ku mwanzuro yafashe wo kuyitegeka kwishyura Sekamana Evariste na Rwiranga Florin umwenda ungana na 57.145.476Frw.

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[6] Ku wa 21/11/2023, Inteko y'Abakemurampaka yafashe icyemezo cy'uko isanga GUARDSMARK Ltd itabasha kuyigaragariza uburiganya bwashingiweho mu gufata icyemezo cyayo cyo ku wa 07/10/2023 ; bituma GUARDSMARK Ltd iregera Urukiko Rukuru rw'Ubucuruzi, isaba ko icyemezo cy'ubukemurampaka cyo ku wa 21/11/2023 gisubiramo icyemezo cyo ku wa 7/10/2023 giteshwa agaciro kuko kinyuranye n'amategeko ndemyagihugu ya Repubulika y'u Rwanda. [7] Rwiranga Florin na Sekamana Evariste bireguye bavuze ko mu myanzuro ya Guardsmark Ltd n'ibisobanuro byose itanga, nta Tegeko na rimwe ndemyagihugu igaragaza ryirengagijwe, ko ahubwo ibyo ivuga byose ari ibyo yaburanishije imbere y'Inteko y'Ubukemurampaka, kandi ko byasuzumwe bigafatwaho icyemezo, bityo ko kirego cya GUARDSMARK Ltd kitagomba guhabwa ishingiro, kuko ari uburyo yahisemo gukomeza kubasiragiza igamije kutabishyura. [8] Mu rubanza RCOM00039/2023/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 24/05/2024, rwemeje ko ubujurire bwa Guardsmark Ltd nta shingiro bufite, ko nta gihindutse ku mwanzuro w'Ubukemurampaka wafashwe ku wa 07/10/2023 wasubirishijwemo ku wa 21/11/2023. Rutegeka Guardsmark Ltd kwishyura Rwiranga Florin na Sekamana Evariste, buri wese, amafaranga ibihumbi magana arindwi (700.000Frw) y'indishyi z'ikurikiranarubanza n'igihembo cya Avoka. [9] GUARDSMARK Ltd yajuririye uru Rukiko, ubujurire bwayo bwandikwa kuri RCOMA00004/2024/CA. Urubanza rwaburanishijwe mu ruhame ku wa 04/12/2024, GUARDSMARK Ltd ihagarariwe na Me Kalinda Stephen, naho

Rwiranga Florin na Sekamana Evariste, bahagarariwe na Me Niyondora Nsengiyumva, hasuzumwa inzitizi y'iburabubasha bw'uru Rukiko yatanze n'abaregwa, ishingiye ku kuba imanza zaciwe n'Urukiko Rukuru rw'Ubucuruzi ku bijyanye no gusaba gukuraho umwanzuro wafashwe n'Ubukemurampaka zitajuririrwa. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO 1.Kumenya niba ubujurire bwa GUARDSMARK Ltd buri mu bubasha bw'Urukiko rw'Ubujurire [10] Uhagarariye Rwiranga Florin na Sekamana Evariste avuga ko ubujurire bwa GUARDSMARK Ltd butari mu bubasha bw'Urukiko rw'Ubujurire, hashingiwe ku ngingo ya 82, igika cya 4, y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko Urukiko Rukuru rw'Ubucuruzi ruburanisha imanza zigamije gusuzuma niba ibyemezo byafashwe n'abakemurampaka byubahirije amategeko, kandi ko bene izo manza zitajuririrwa. Asobanura ko GUARDSMARK Ltd yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi ishingiye ku ngingo ya 47 y'Itegeko N° 005/2008 ryo ku wa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi, irusaba kvanaho umwanzuro w'Inteko y'ubukemurampaka (annulation de la sentence arbitrale) wafashwe ku wa 07/10/2023 wasubirishijwemo ku wa 21/11/2023, wemeje ko ikirego cya Rwiranga Florin na Sekamana Evaritse gifite ishingiro, ngo kuko wafashwe mu buryo bunyuranyije n'amategeko ndemyagihugu ya Republika y' u Rwanda, Urukiko rwemeza ko ikirego cyayo nta shingiro gifite, akaba asanga kamere y'ikirego yatanze kitajuririrwa, ko kandi GUARDSMARK Ltd itagaragaza ingingo y'Itegeko Urukiko rw'Ubujurire rwashingiraho rwakira ubujurire bw'urubanza RCOM00039/2023/HCC rwaciwe hagamijwe kvanaho imyanzuro y'ubukemurampaka, aho ku wa 24/5/2024, rwemeje ko ikirego cyayo nta shingiro gifite, ko nta gihindutse ku mwanzuro w'Ubukemurampaka wafashwe ku wa 07/10/2023 wasubirishijwemo ku wa 21/11/2023, kuko rwaciwe ku rwego rwa nyuma kandi rukaba rwarabaye Itegeko. [11] Avuga kandi ko GUARDSMARK Ltd inyuranya n'ibyo Umushingamategeko yateganije mu ngingo ya 82, igika cya 4, y'Itegeko N°30/2018 ryavuzwe haruguru, kuko izi neza ko bene izi manza zifite kamere itandukanye n'imanza zisanzwe, kuko ikiregerwa mu Rukiko Rukuru rw'Ubucuruzi ari ukugira ngo rusuzume niba umwanzuro w'Ubukemurampaka utanyuranyije n'amategeko, ko kandi izo manza zitajuririrwa, ariko ko GUARDSMARK Ltd yabirenzeho ikajurira. Akaba asanga Ubwanditsi bw'Urukiko

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rw'Ubujurire bwaragombaga gushingira kuri iyo ngingo bukanga kwandika ikirego cya GUARDSMARK Ltd, cyane ko n'ingingo ya 21, 2° y'Itegeko N° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko Umwanditsi w'Urukiko adashobora kwandika ikirego mu gihe urega atanze ikirego kitari mu bubasha bw'urukiko. Ko rero ibyo GUARDSMARK Ltd ivuga ko Urukiko rw'Ubujurire rufite ububasha bwo kuburanisha ubujurire bwayo nta shingiro byahabwa kuko yirengagiza kamere y'ikirego cyatanze mu Rukiko Rukuru rw'Ubucuruzi ndetse n'icyo amategeko ateganya ku cyemezo cyafashwe ku kirego nk'icyo. [12] Akomeza avuga ko urubanza RCOMAA0041/11/CS, GUARDSMARK Ltd ishingiraho ijurira rutagomba gushingirwaho kuko

rwaciwe hatarashyirwaho Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, kandi ko muri iri Tegeko Umushingamategeko yabujije mu buryo busobanutse kujuririra ibyemezo byafashwe n'Urukiko Rukuru rw'Ubucuruzi ku bijyanye no kuregera ibyemezo by'abakemurampaka. Kandi ko nta rubanza na rumwe rwaba urw'Urukiko rw'Ikirenga cyangwa urw'urundi Rukiko, rwaba ruhindura ubwo bushake bw'Umushingamategeko mu bundi buryo igaragaza. Bityo ko ibyo uhagararaye GUARDSMARK Ltd avuga nta shingiro bikwiye gukabwa. [13] Uhagarariye GUARDSMARK Ltd ashingiye ku ngingo ya 52, y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, iteganya ko Urukiko rw'Ubujurire rufite ububasha bwo kuburanisha mu rwego rw'ubujurire bwa mbere, imanza zaciwe mu rwego rwa mbere n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi n'Urukiko Rukuru rwa Gisirikare, avuga ko ubujurire bwa GUARDSMARK Ltd buri mu bubasha bw'Urukiko rw'Ubujurire, kubera ko urubanza RCOM00039/2023/HCC rujuririrwa rwaciwe ku rwego rwa mbere n'Urukiko Rukuru rw'Ubucuruzi, aho rwasuzumye ibijyanye no gutesha agaciro icyemezo cy'ubukemurampaka. [14] Avuga kandi ko inzitizi itangwa na Rwiranga Florin na Sekamana Evariste nta shingiro ifite hashingiwe ku murongo watanze n'Urukiko rw'Ikirenga mu rubanza RCOMAA0041/11/CS, haburana Rukerikibaye Raphael na GORF COURSE ESTATE Ltd ku kibazo gisa n'iki, aho mu bika byarwo bya 17-26 mu rubanza rubanziriza urundi urwo Rukiko rwemeje ko icyemezo cyafashwe n'Urukiko Rukuru rw'Ubucuruzi gishobora kujuririrwa. Akomeza avuga ko ashingira no ku ngingo ya 5 n'ya 6 za UNCITRAL ziteganya ko Inkiko zishobora kwiambazwa mu kvanaho ibyemezo byafashwe mu bukemurampaka. Asoza avuga ko ingingo ya 82, y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko idakwiye gukoreshwa muri uru rubanza, cyane ko Urukiko Rukuru rw'Ubucuruzi rutaburanishije urubanza ahubwo rwagarukiye ku nzitizi, bakaba barajuriye kugira ngo bahabwe ubutabera. UKO URUKIKO RUBIBONA [15] Ingingo ya 82, igika cya 4 n'icya 5, y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ibikurikira : "Urukiko Rukuru rw'Ubucuruzi ruburanisha kandi imanza zigamiye gusuzuma niba ibyemezo byafashwe n'abakemurampaka byubahirije amategeko. Imanza ziciwe n'Urukiko Rukuru rw'Ubucuruzi ku byemezo byavuzwe mu gika cya 4 cy'iyi ngingo ntizijuririrwa." [16] Isesengura ry'iyi ngingo ryumvikanisha neza ko Urukiko Rukuru rw'Ubucuruzi ari rwo rufite ububasha bwo gusuzuma niba ibyemezo byafashwe n'abakemurampaka byubahirije amategeko, kandi ko icyemezo cyafashwe n'urwo Rukiko kitajuririrwa. Mu yandi magambo, ntabwo Urukiko Rukuru rw'Ubucuruzi ari Urukiko rujuririrwamo icyemezo cy'Ubukemurampaka umwe mu bagannye inzira y'ubukemurampaka atishyimiye, ahubwo icyo rushinzwe ni ugusuzuma niba icyemezo cy'ubukemurampaka cyubahirije amategeko, cyaba kitayubahirije rukagitesha agaciro, cyaba kiubahirije kikagumana agaciro kacyo. Ibi binashimangirwa nuko bene urwo rubanza rudahabwa numero y'ubujurire, ahubwo ruhabwa numero y'uko ruregwe bwa mbere mu Rukiko Rukuru rw'Ubucuruzi (RCOM). Ikindi kandi iyi ngingo ivuga mu buryo bweruye, kandi butagira kigombero, ko icyemezo cyafashwe n'Urukiko

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Rukuru rw'Ubucuruzi kitajuririrwa. Ibi byumvikanisha na none ko Umushingamategeko yashatse ko imyanzuro yafashwe n'Ubukemurampaka mu gihe ikurikije amategeko irangizwa, ko nta zindi nzira z'ubujurire zigomba gukorwa kuri iyo myanzuro. [17] Hashingiwe ku biteganywa n'Itegeko N° 005/2008 ryo ku wa 14/02/2008 ryerekeye ubukemurampaka n'ubwunzi mu bibazo by'ubucuruzi, ubukemurampaka busobanurwa nk'uburyo bukoreshwa n'abantu bafitanye ikibazo basaba Umukemurampaka cyangwa Inteko y'Abakemurampaka kubakiranura ku kibazo cy'ubucuruzi gikomoka ku mategeko, ku masezerano, cyangwa gikomoka ahandi bifitanye isano¹. Mu yandi magambo, Ubukemurampaka ni uburyo abafitanye ikibazo bitabaza undi muntu cyangwa urwego udafite aho abogamiye kandi ukora nk'umucamanza wigenga kugira ngo abakemurire ikibazo, afata icyemezo gifatwa nk'urubanza kandi kiba kigomba gushyirwa mu bikorwa. [18] Ku bijyanye n'uru rubanza, dosiye igaragaza ko mu ngingo ya 8 y'amasezerano yabaye hagati ya GUARDSMARK Ltd ku ruhande rumwe, na Rwiranga Florin hamwe na Sekamana Evariste, ku rundi ruhande, impande zose zumvikanye ko amakimbirane ashobora kuvuka azakemurwa ku bwumvikane, byananirana hakiyambazwa ubuhuza (mediation), nabwo bwananirana hakiyambazwa Ubukemurampa (Arbitration). Nyuma y'aho amakimbarane avukiye, byarangiye abagiranye amasezerano bagannye inzira y'ubukemurampaka, umwanzuro wafashwe mu Bukemurampaka, aba ari wo uregerwa mu Rukiko Rukuru rw'Ubucuruzi, maze mu rubanza RCOM00039/2023/HCC, Urukiko rwemeza ko umwanzuro w'Ubukemurampaka wafashwe ku wa 07/10/2023, usubirishwamo ku wa 21/11/2023, ugumanye agaciro kawo ; urwo rubanza akaba ari rwo rwajuririwe muri uru Rukiko. [19] Urukiko rurasanga nk'uko byibukijwe haruguru, inzira y'ubukemurampaka ni ubutabera bwigenga, aho abayigannye baba bihitiyemo Umukemurampaka uzakemura ibibazo bafitanye, bivuze ko baba bahisemo kutagana inzira y'inkiko zo mu Rwego rw'Ubucamanza. Nubwo bimeze bityo, Umushingamategeko yemeye inzira imwe rukumbi umwanzuro w'ubukemurampaka ushobora kuregerwa mu nkiko, n'icyo igamije. Mu bibazo by'ubucuruzi, iyo nzira n'ukuregera Urukiko Rukuru rw'Ubucuruzi, hatagamijwe guhindura umwanzuro wafashwe n'Ubukemurampaka, ahubwo hagamijwe kureba niba uwo mwanzuro wubahirije amategeko ; waba uyubahirije ukagumana agaciro kawo, waba utayubahirije ugateshwa agaciro ; kandi hakurikijwe ibiteganywa n'ingingo ya 82, igika cya 4 n'icya 5, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 ryibukijwe haruguru, icyo cyemezo ntikijuririrwa. [20] Ku byo uhagarariye GUARDSMARK Ltd avuga ko hashingiwe ku bitaganywa n'ingingo ya 52, y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko Urukiko rw'Ubujurire rufite ububasha bwo kuburanisha mu rwego rw'ubujurire bwa mbere, imanza zaciwe mu rwego rwa mbere n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi n'Urukiko Rukuru rwa Gisirikare, ko rero asanga ubujurire bwa GUARDSMARK Ltd buri mu bubasha bw'Urukiko rw'Ubujurire, kubera ko urubanza RCOM00039/2023/HCC rujuririrwa rwaciwe ku rwego rwa mbere n'Urukiko Rukuru rw'Ubucuruzi, aho rwasuzumye ibijyanye no gutesha agaciro icyemezo cy'ubukemurampaka; Urukiko rurasanga nta shingiro bifite kuko ku bijyanye no gusuzuma niba umwanzuro w'Ubukemurampaka ku bibazo by'ubucuruzi utanyuranije n'amategeko, Umushingamategeko yabihaye umwihariko wabyo avuga ko biri mu bubasha bw'Urukiko Rukuru rw'Ubucuruzi ko kandi icyemezo gifashwe n'urwo Rukiko kitajuririrwa.

Bivuze ko muri icyo gihe ububasha bw'uru Rukiko ku manza zajuririwe zivuye mu Rukiko Rukuru rw'Ubucuruzi budasuzumwa hashingiwe ku ngingo ya ya 52 nk'uko uhagarariye GUARDSMARK Ltd ashaka kubyumvikanisha, ahubwo busuzumwa hashingiwe ku ngingo ya 82 y'iryo Tegeko. [21] Ku byo uhagarariye GUARDSMARK Ltd avuga ko ashingira ku murongo watanze n'Urukiko rw'Ikirenga mu rubanza RCOMAA0041/11/CS, haburana Rukerikibaye Raphael na GORF COURSE ESTATE Ltd ku kibazo gisa n'iki, aho mu bika byarwo bya 17- 26 mu rubanza rubanziriza urundi urwo

1 Reba ingingo ya 3 y'iryo Tegeko.

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Rukiko rwemeje ko icyemezo cyafashwe n'Urukiko Rukuru rw'Ubucuruzi gishobora kujuririrwa, Urukiko rurasanga nta shingiro byahabwa kuko ubwo icyo cyemezo cyafatwaga, Itegeko ryariho icyo gihe ntacyo ryavugaga ku bijyanye no kuba imanza zaciwe n'Urukiko Rukuru rw'Ubucuruzi hasuzumwa ko imyanzuro yafashwe n'Ubukemurampaka ikurikije amategeko zitajuririrwa. Kuba rero, iki kibazo cyarakemuwe n'Itegeko N°30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru, aho ryemeje ku buryo bweruye ko izo manza zitajuririrwa, ntabwo umurongo watanze n'Urukiko rw'Ikirenga bitewe nuko Itegeko ryariho icyo gihe ntacyo ryari ryateganiye washingirwaho, mu gihe hari Itegeko ririho ubu ryakemuye icyo kibazo. Ibyo kuba umurongo wafashwe mu rubanza ushingiyeho ku itegeko ryavuyeho udakurikizwa mu gihe hari itegeko rishya ryateganyije ukundi, nibyo byemejwe n'uru Rukiko mu rubanza RPAA 00048/2020/CA2, aho rwasobanuye ko umurongo wari uriho udashobora gukurikizwa mu gihe itegeko wari ushingiyeho ryavuyeho (cyangwa ryahinduwe), bikaba byaranashimangiwe mu manza zitandukanye zirimo n'urubanza RPAA00367/2020/CA3. [22] Hashingiwe ku ngingo z'amategeko no ku bisobanuro byatanze haruguru, Urukiko rurasanga ubujurire bwa GUARDSMARK Ltd butagomba kwakirwa ngo busuzumwe, kuko butari mu bubasha bw'Urukiko rw'Ubujurire. 2.Kumenya niba indishyi z'akababaro, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka bisabwa muri uru rubanza bifite ishingiro [23] Uhagarariye Rwiranga Florin na Sekamana Evariste asaba Urukiko rw'Ubujurire gutegeka GUARDSMARK Ltd guha Rwiranga Florin na Sekamana Evariste amafanga miliyoni imwe n'ibihumbi magana atanu (1.500.000Frw) y'ikurikiranarubanza n'igihembo cya Avoka yo kuri uru rwego nubwo ikirego cyaba kitakiriwe. [24] Uhagarariye GUARDSMARK Ltd avuga ko amafaranga y'ikurikiranarubanza n'igihembo cya Avoka abaregwa basaba badakwiye kuyahabwa, kubera ko ubujurire bwa GUARDSMARK Ltd bukwiye kwakirwa ; ko ariko mu gihe Urukiko rw'Ubujurire rwazabibona ukundi, rwazabagenera angana na kimwe cya kabiri (1/2) cy'ayategetswe mu rubanza rujuririrwa RCOM00039/2023/HCC. UKO URUKIKO RUBIBONA [25] Ku bijyanye n'amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza asabwa, Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe". [26] Urukiko rurasanga, kuba GUARDSMARK Ltd yarajuriye

byaratumye Rwiranga Florin na Sekamana Evariste bakurikirana uru rubanza banashaka Avoka wo kubaburanira. Hashingiwe rero ku ngingo ya 111 yibukijwe haruguru, birumvikana ko amafaranga y'ibyagiye ku rubanza Rwiranga Florin na Sekamana Evariste basaba afite ishingiro, ariko ayo basaba ni menshi harebwe ko urubanza rugarukiye ku nzitizi y'iburabubasha bw'uru Rukiko; bityo mu bushishozi bwarwo rukaba rubageneye, bese hamwe, amafaranga ibihumbi magana atanu (500.000Frw) y'igihembo cya Avoka n'amafaranga ibihumbi magana abiri (200.000Frw) y'ikurikiranarubanza, kuri uru rwego, agomba gutangwa na GUARDSMARK Ltd.

2 Reba igika cya 26 cy'urubanza RPAA 00048/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/05/2022, haburana Ubushinjacyaha na BIMENYIMANA Jean Paul. 3 Reba igika cya 19 cy'urubanza RPAA 00367/2020/CA rwaciwe ku wa 22/12/2023, haburana Ubushinjacyaha na TWAGIRUMUKIZA Innocent Réponse.

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III. ICYEMEZO CY'URUKIKO [27] Rwemeje ko inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire yatanzwe na Rwiranga Florin hamwe na Sekamana Evariste ifite ishingiro. [28] Rwemeje ko ubujurire bwa GUARDSMARK Ltd butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire. [29] Rutegetse GUARDSMARK Ltd kwishyura Rwiranga Florin na Sekamana Evariste bese hamwe, amafaranga ibihumbi magana atanu (500.000Frw) y'igihembo cya Avoka n'amafaranga ibihumbi magana abiri (200.000Frw) y'ikurikiranarubanza, kuri uru rwego. [30] Ruvuze ko ingwate y'amagarama yatanzwe ihwanye n'ibyakozwe mu rubanza.

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