

RWANDA / JUDGMENT

# KABERI COMPANY Ltd v. RWANDA REVENUE AUTHORITY (RRA)

RCOMAA 00052/2021/CA

COURT

Court of Appeal

DECIDED

21 October 2022

CASE / FILE NUMBER

RCOMAA 00052/2021/CA

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## KABERI COMPANY Ltd v. RWANDA REVENUE AUTHORITY (RRA)

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### Text

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KABERI COMPANY Ltd v. RWANDA REVENUE AUTHORITY (RRA) [Rwanda URUKIKO RW UBURURIRE – RCOMAA 00052/2021/CA (Ngagi, P.J.), 21 Ukwakira 2022] Amategeko agenga ububasha bw’ inkiko – Ububasha bw’ Urukiko – Gutsindwa ku mpamvu zimwe – Ubujurire bwa kabiri ntibwakirwa mu rukiko rw ubujurire ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe – Mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe, harebwa icyaburanwaga n’imitekerereze ya buri rukiko (raisonnement juridique) mu kugaragaza impamvu zashingiweho, kugira ngo rugere ku cyemezo rwafashe, hitawe ku kureba niba ingingo zaburanywe mbere arizo zagarutswaho mu bujurire kandi ko inkiko zombi zazishubijeho mu buryo bumwe. Ibi kandi binumvikanisha ko ibyaburanwe mu rwego rwa mbere ari nabyo ubusanzwe bigomba kuburanwa mu rwego rw’ubujurire hashingiwe ku ihame risanzwe mu micire y’imanza rivuga ko umucamanza wo mu rwego rwa mbere yita ku igenzura ry’ibimenyetso n’amategeko ugereranyije n’ikiburanwa, naho umucamanza wo mu rwego rw’ubujurire akibanda cyane cyane ku kugenzura niba amategeko ku

rwego rwa mbere yarubahirijwe uko bikwiye hakurikijwe ibisobanuro n'ibimenyetso byari byatanzwe muri urwo rubanza, byaba ngombwa agakosora aho bikenewe – Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 52. Incamake y'ikibazo: RWANDA REVENUE AUTHORITY (RRA) yakoreye KABERI COMPANY Ltd igenzura nta nteguza ku myaka ya 2016, iya 2017 n' iya 2018, maze iyica umusoro ku nyongeragaciro (TVA) wiyongereyeho ibihano ungana na 263.111.219 Frw kubera ko muri icyo gihe KABERI COMPANY Ltd yagiye igaragaza ko yacurujye ibintu bike kandi EBM yaragaragaje ko yacurujye byinshi. KABERI COMPANY Ltd yajuririye Komiseri Mukuru ivuga ko iryo soreshwa ryakozwe ridakurikije amategeko, ariko ubujurire bwayo ntibwahabwa ishingiro, itegekwa kwishyura umusoro wose nk'uko yawumenyeshejwe. KABERI COMPANY Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi irega RRA ivuga ko yamenyeshejwe ko izakorerwa igenzura n'iperereza ku musoro, isaba kongererwa igihe cy'igenzura, nyuma yaho isoreshwa nta nteguza, amahame yo kuvuguruzanya atubahirijwe, bityo ko uwo musoro ushingira ku igenzura ridakurije amategeko. RRA yiregura ivuga ko imaze kumenya ko KABERI COMPANY Ltd yanyereje imisoro byatumye isoreshwa mu buryo bw'isoresha nta nteguza maze icibwa umusoro ungana na 263.111.219Frw. Urukiko rw'Ubucuruzi rwemeje ko ikirego cya KABERI COMPANY Ltd nta shingiro gifite kuko nta mpamvu yagaragajwe yatuma igenzura nta nteguza ryakozwe riteshwa agaciro, cyangwa ngo umusoro waciwe uvanweho.

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KABERI COMPANY Ltd ntiyishimiye imikirize y'urubanza, maze ijuririra mu Rukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rwemeje ko igenzura nta nteguza ryakozwe na ryakozwe mu buryo bukurikije amategeko nkandi atari ukuri kuko mu kuwugena hashingiwe ku itegeko ryavuyeho. RRA yireguye ivuga ko impamvu z'ubujurire za KABERI COMPANY Ltd nta shingiro zifite, ko isoreshwa nta nteguza ryakozwe kubera ko yari yaranyereje imisoro ku myaka yagenzurwaga mu mwaka wa 2016 kugeza mu mwaka wa 2018. Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza maze rwemeza ko ubujurire bwa KABERI COMPANY Ltd nta shingiro bufite, ko nta gihindutse ku mikirize y'urubanza rwajuririwe. KABERI COMPANY Ltd ntiyishimiye imikirize y'urubanza maze iyijuririra mu Rukiko rw' Ubujurire ivuga ko igenzura nta nteguza ryakozwe ryagombaga guteshwa agaciro, ivuga ko hagombaga gushyirwaho abagenzuzi bigenga bo gukora igenzura, kandi ko hagombaga no gushingirwa ku bitabo by'ibaruramari by'umusoreshwa, na none ko mu gukora igenzura RRA yifashishije amategeko yakuweho, inakoresha ururimi umusoreshwa atumva, bityo ikaba isaba ko umusoro yaciwe uvanwaho. RRA yatanze inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire ivuga ko KABERI COMPANY Ltd yaratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe, bityo ko ikirego cyayo kitakirwa. Incamake y' icyemezo: 1.Mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe, harebwa icyaburanwaga n'imitekerereze ya buri rukiko (raisonnement juridique) mu kugaragaza impamvu zashingiweho, kugira ngo rugere ku cyemezo rwafashe, hitawe ku kureba niba ingingo zaburanywe mbere arizo zagatwawe mu bujurire kandi ko inkiko zombi zazishubijeho mu buryo bumwe. Ibi kandi binumvikanisha ko ibyaburanwe mu rwego rwa mbere ari nabyo ubusanzwe bigomba kuburanwa mu rwego rw'ubujurire hashingiwe

ku ihame risanzwe mu micire y'imanza rivuga ko umucamanza wo mu rwego rwa mbere yita ku igenzura ry'ibimenyetso n'amategeko ugereranyije n'ikiburanwa, naho umucamanza wo mu rwego rw'ubujurire akibanda cyane cyane ku kugenzura niba amategeko ku rwego rwa mbere yarubahirijwe uko bikwiye hakurikijwe ibisobanuro n'ibimenyetso byari byatanzwe muri urwo rubanza, byaba ngombwa agakosora aho bikenewe.

2. Mu gusuzuma ko impamvu zashingiweho umuburanyi atsendwa mu nkiko zombi ari zimwe, hatarebwa niba ibimenyetso abaturanyi batanze ku rwego rwa mbere ari byo byatanzwe no mu rwego rw'ubujurire, cyangwa ko zakoresheje amagambo amwe, ahubwo harebwa niba inkiko zombi zarashubije ku buryo bumwe ingingo zirebana n'ikiburanwa.

Inzitizi y' iburabubasha ifite ishingiro. Amagarama y' urubanza ahwanye nibyarukozwemo.

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Amategeko yashingiweho: Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 52. Imanza zifashishijwe: Urubanza RS/INJUST/RCOM 00003/2020/SC rwaciwe ku wa 27/11/2020, haburana SANLAM AG Plc na UR; Urubanza RCOMAA 0038/16/CS-RCOMAA 0033/2016/CS hagati ya Bank of Kigali Ltd na MULISA KANA Martin rwaciwe n'Urukiko rw'Ikirenga ku wa 21/04/2017, igika cya 21; Urubanza rubanziriza urundi mu rubanza RCOMAA 00010/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 15/03/2019, haburana KOPERATIVE DUKUNDUMURIMO (KOADU) na KING CONSTRUCTION AND SERVICE COMPANY (KICOSECA); Urubanza RS/INJUST/RCOM00002/2020/SC hagati ya Road Solution Pavement Products na MAILCO Ltd, rwaciwe ku wa 25/09/2020, igika cya 24;

Urubanza RCOMAA 0048/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2017, haburana RRA na SODAR Ltd. Urubanza I. IMITERERE Y'URUBANZA

- [1] RWANDA REVENUE AUTHORITY (RRA) yakoreye KABERI COMPANY Ltd igenzura nta nteguza ku myaka ya 2016, 2017 na 2018, maze iyica umusoro ku nyongeragaciro (TVA) wiyongereyeho ibihano ungana na 263.111.219 Frw kubera ko muri icyo gihe KABERI COMPANY Ltd yagiye igaragaza ko yacurujye ibintu bike kandi EBM yaragaragaje ko yacurujye byinshi. KABERI COMPANY Ltd yajuririye Komiseri Mukuru ivuga ko iryo soreshwa ryakozwe ridakurikije amategeko, ariko ubujurire bwayo ntibwahabwa ishingiro, itegukwa kwishyura umusoro wose nk'uko yawumenyeshejwe. [2] KABERI COMPANY Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi irega RRA ivuga ko yamenyeshejwe ko izakorerwa igenzura n'iperereza ku musoro, isaba RRA kongererwa igihe cy'igenzura, hanyuma isoreshwa nta nteguza, amahame yo kuvuguruzanya atubahirijwe, umusoro ushingira ku igenzura ridakurije amategeko, ritakorewe ibitabo byayo, ko iryo genzura ryakorewe mu biro by'umugenzuzi yemeza ko KABERI COMPANY Ltd yanyereje umusoro kandi atari byo, ahubwo harabayeho ukwibeshya bisanzwe bituma umusoro wishyuwe uba muke ugereranyije n'uwagombaga kwishyurwa, kandi ko byari gukosorwa, ndetse ko RRA ititaye ku musoro wishyuwe n'ibyatanze umwuga, ko mu igenzura hakoreshejwe ururimi rw'icyongereza umuyobozi wayo atazi kandi RRA isanzwe iyandikira mu kinyarwanda, ko

n'amategeko yashingiweho Atari yo, ndetse n'ibisabwa n'amategeko bitubahirijwe mu nyandiko igena umusoro, maze isaba ko iryo genzura yakorewe ryakurwaho ndetse n'umusoro yaciwe.

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- [3] RRA yiregura ivuga ko imaze kumenya ko KABERI COMPANY Ltd yanyereje imisoro, aho mu imenyekanisha ryayo ry'imyaka ya 2016, 2017 na 2018 ry'imisoro ku nyongeragaciro yamenyekanishaga ko yacurujye bike nyamara kandi itazi ko imashini yayo ya EBM ikoresha mu gutanga fagitire itanga amakuru nyayo ku bijyanye n'ibyo yacurujye, ko ibyo byatumye isoreshe mu buryo bw'isoresha nta nteguza nk'uko biteganywa n'ingingo ya 42 y'Itegeko no 026/2019 rigena imitunganyirize y'isoresha, maze icibwa umusoro ungana na 263.111.219 Frw hakubiyemo n'ibihano bijyanye nawo. [4] Mu rubanza RCOM 00582/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 30/06/2020, urwo Rukiko rwemeje ko ikirego cya KABERI COMPANY Ltd nta shingiro gifite, ko nta mpamvu yagaragajwe yatuma igenzura nta nteguza ryakozwe riteshwa agaciro, cyangwa ngo umusoro waciwe uvanweho, rutegeka KABERI COMPANY Ltd kwishyura RRA 500.000 Frw y'indishyi z'ibyo yatakaje ku rubanza. [5] KABERI COMPANY Ltd ntiyishimiye imikirize y'urubanza, ijuririra Urukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rwemeje ko igenzura nta nteguza ryakozwe na RRA ryakozwe mu buryo bukurikije amategeko rwirengagije ko amategeko atubahirijwe, ko hanashingiwe ku itegeko ryavuyeho, ko ryakozwe hatitawe ku bitabo by'umusoreshwa, ko iryo genzura ryakozwe mu rurimi umuyobozi atumva, ko hatanarebwe ko hari umusoro wari waratanze. RRA yireguye ivuga ko impamvu z'ubujurire za KABERI COMPANY Ltd nta shingiro zifite, ko isoreshe nta nteguza ryakozwe kubera ko KABERI COMPANY Ltd yari yaranyereje imisoro ku myaka yagenzurwaga mu mwaka wa 2016 kugeza mu mwaka wa 2018. [6] Ku wa 07/06/2021, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00469/2020/HCC maze rwemeza ko ubujurire bwa KABERI COMPANY Ltd nta shingiro bufite, ko nta gihindutse ku mikirize y'urubanza No RCOM 00582/2020/TC, rutegeka KABERI COMPANY Ltd kwishyura RRA 800.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka. [7] KABERI COMPANY Ltd ntiyishimiye imikirize y'urubanza iyijuririra muri uru Rukiko ivuga ko igenzura nta nteguza ryakozwe na RRA ryagombaga guteshwa agaciro, ko hagombaga gushyirwaho abagenzuzi bigenga bo gukora igenzura nk'uko yabisabye, ko hagombaga no gushingirwa ku bitabo by'ibaruramari by'umusoreshwa, ko kandi RRA mu gukora igenzura yifashishije amategeko yakuweho, inakoresha ururimi umusoreshwa atumva, bityo isaba ko umusoro yaciwe uvanwaho, maze ubujurire bwayo bwandikwa kuri RCOMAA 00052/2021/CA.
- [8] Iburanisha mu ruhamwe ryabaye ku wa 12/10/2022, KABERI COMPANY Ltd ititabye, naho RWANDA REVENUE AUTHORITY/RRA ihagarariwe na Me Gatera Jean Clément, maze hashingiwe ku ngingo ya 54 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi Urukiko rufata icyemezo cyo kuburanisha urubanza KABERI COMPANY Ltd idahari urubanza ruciwe rukazafatwa nk'aho yari ihari kuko itagaragaje impamvu yatumye ititaba.

Uwo muni hasuzumwa inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire yatanze na RRA ishingiyeye ku kuba KABERI COMPANY Ltd yaratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe.

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### II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba ubujurire bwa KABERI COMPANY Ltd butari mu bubasha bw'Urukiko rw'Ubujurire kuko yatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe
- [9] Uhagarariye RRA, ashingiyeye ku ngingo ya 52, igika cya 3, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko ubujurire bwa kabiri budashobora kwakirwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, asaba Urukiko rw'Ubujurire kutakira ubujurire bwa kabiri bwatanze na Kaberi COMPANY Ltd kubera ko yatsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe. [10] Asobanura ko ku byerekeye imikorere y'igenzura ryakozwe nta nteguza, mu gika cya 8 cy'urubanza RCOM 00582/2020/TC, Urukiko rw'Ubucuruzi rwafashe icyemezo cy'uko ibyo Kaberi COMPANY Ltd yaregeraga nta shingiro bifite, rushingiyeye ku mpamvu y'uko yasoreshejwe nta nteguza nk'uko biteganywa n'ingingo ya 42 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha, ku buryo ibijyanye n'igenzura nta nteguza bikorwa iyo hagaragaye ibimenyetso by'inerezamuror byabonetse nyuma y'uko igenzura risanzwe rikozwe, kandi ko iyo hakozwe bene iryo soresha atari ngombwa kumenyesha umusoreshe igenzura nk'uko biteganywa n'ingingo ya 38 y'iryo tegeko. Avuga ko ibyo byagarutswaho n'Urukiko Rukuru rw'Ubucuruzi, aho mu gika cya 19 cy'urubanza RCOMA 00469/2020/HCC rujuririrwa, urwo Rukiko rwashingiyeye ku ngingo ya 42 y'Itegeko ryavuzwe haruguru, maze rwanzura ko RRA yatangiye ikora igenzura risanzwe hanyuma bigaragaye ko KABERI COMPANY Ltd yakozwe inerezamuror, ikora igenzura nta nteguza, kandi ko mu gihe hakozwe bene iryo genzura umusoreshe atarimenyeshwa nk'uko biteganywa mu ngingo ya 38 y'iryo tegeko. [11] Avuga ko ku byerekeye ibitabo Kaberi COMPANY Ltd ivuga ko bitasuzumwe, mu gika cya 9 cy'urubanza RCOM 00582/2020/TC, Urukiko rw'Ubucuruzi rwafashe icyemezo rushingiyeye ku mpamvu y'uko bitari ngombwa kwita ku bitabo by'ibaruramari mu gihe hasoreshejwe igicuruzo gikomoka muri systeme ya facturation (EBM) y'umusoreshe, ko ari nabyo Urukiko Rukuru rw'Ubucuruzi rwashingiyeho nk'uko bigaragara mu gika cya 29 cy'urubanza RCOMA 00469/2020/HCC. [12] Avuga kandi ko ku bijyanye n'amategeko yakoreshejwe mu igenzura, mu gika cya 10 cy'urubanza RCOM 00582/2020/TC, Urukiko rw'Ubucuruzi rwavuze ko ibyo KABERI COMPANY Ltd yavuze nta shingiro bifite, kuko ku bijyanye na procédure itegeko ryariho igenzura rikorwa ari ryo rikurikizwa, ariko ko mu guca umusoro hashingirwa ku itegeko ryariho mu gihe cy'isoreshe kirebwa n'umusoro waciye, kandi ko ari byo RRA yakozwe. Ibyo akaba ari nabyo byagarutswaho mu mu gika cya 37 cy'urubanza RCOMA 00469/2020/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi mu kwemeza ko ibyo Kaberi COMPANY Ltd ivuga nta shingiro bifite.

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- [13] Avuga na none ko ku bijyanye n'ururimi rwakoreshejwe muri raporo y'igenzura, mu gika cya 13 cy'urubanza RCOM 00582/2020/TC, Urukiko rw'Ubucuruzi rwashingiye ku mpamvu z'uko icyongereza cyakoreshejwe muri raporo y'igenzura ari rumwe mu ndimi zemewe zikoresheza mu Rwanda, kandi ko uwashoreshejwe ari sosiyeti itandukanye na nyirayo uvuga ko atazi icyongereza, cyane ko bigaragara ko nyuma y'igenzura Kaberi COMPANY Ltd yajuririye umusoro yaciwe mu ngingo zitandukanye, ndetse igashobora gusobanura ibyari bikubiye muri raporo y'igenzura ivuga ko yanditse mu cyongereza, ko ibyo byerekana ko yanasobanukiwe ibiyikubiyemo, ko ibyo ari nabyo byashingiweho n'Urukiko Rukuru rw'Ubucuruzi nk'uko bigaragara mu gika cya 46 cy'urubanza RCOMA 00469/2020/HCC, aho rwashimangiye ibyashingiweho n'Urukiko rw'Ubucuruzi ndetse rukanongeraho ko Kaberi COMPANY Ltd itagaragaje icyo ibinenga. [14] Asoza avuga ko kuba uhagarariye Kaberi COMPANY Ltd atarabashije kugaragaza uburyo itatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, ahubwo mu myiregurire ye kuri iyi nzitizi akavuga gusa ko Urukiko rw'Ubujurire rufite ububasha kuko ikiburanwa kirenze 75.000.000 Frw, ko basanga ibyo bigaragaza ko nawe yemera ko KABERI COMPANY Ltd yatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, bityo rero ubujurire bwayo bukaba butagomba kwakirwa kuko yatsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe. [15] Uhagarariye KABERI COMPANY Ltd, mu myanzuro ye no mu nama ntegururubanza avuga ko iyi nzitizi nta shingiro ifite, kuko mu kujurira KABERI COMPANY Ltd yashingiye ku ngingo ya 52, igika cya 2, agace ka 8, y'Itegeko n 30/2018 ryo ku wa 02/06/2018 rigena <sup>o</sup> ububasha bw'inkiko, kuko ikiburanwa ari umusoro ungana na 263.111.219 Frw. Ko ku bijyanye no gutsindwa ku mpamvu zimwe Urukiko rudakwiye kubiha agaciro, kuko kamwe mu duce tugize ingingo ya 52 y'Itegeko n 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko <sup>o</sup> gahagije kugira ngo ubujurire bwakirwe. Bityo ko ubu bujurire buri mu bubasha bw'Urukiko rw'Ubujurire. UKO URUKIKO RUBIBONA [16] Ingingo ya 52, igika cya 3, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ibikurikira: "Icyakora kandi ubujurire bwa kabiri ntibushobora kwakirwa ku manza z'ababuranye bemera ibyo baregwa, cyangwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe".
- [17] Ku bijyanye n'ibisobanuro by'impamvu zimwe, Urukiko rurasanga nk'uko byafashweho umurongo mu manza zitandukanye zaciwe n'Urukiko rw'Ikirenga ndetse n'uru Rukiko, mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe, harebwa icyaburanwaga n'imitekerereze ya buri rukiko (raisonnement juridique) mu kugaragaza impamvu zashingiweho, kugira ngo rugere ku cyemezo rwafashe, hitawe ku kureba niba ingingo zaburanywe mbere arizo zagarutseho mu bujurire kandi ko inkiko zombi zazishubijeho mu buryo bumwe
1. Ibi kandi binumvikanisha ko ibyaburanwe mu rwego rwa 1 Reba urubanza RS/INJUST/RCOM 00003/2020/SC rwaciwe ku wa 27/11/2020, haburana SANLAM AG Plc na UR; Urubanza RCOMAA 0038/16/CS-RCOMAA 0033/2016/CS hagati ya Bank of Kigali Ltd na MULISA KANA Martin rwaciwe n'Urukiko rw'Ikirenga ku wa

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mbere ari nabyo ubusanzwe bigomba kuburanwa mu rwego rw'ubujurire hashingiwe ku ihame risanzwe mu micire y'imanza rivuga ko umucamanza wo mu rwego rwa mbere yita ku igenzura ry'ibimenyetso n'amategeko ugereranyije n'ikiburanwa, naho umucamanza wo mu rwego rw'ubujurire akibanda cyane cyane ku kugenzura niba amategeko ku rwego rwa mbere yarubahirijwe uko bikwiye hakurikijwe ibisobanuro n'ibimenyetso byari byatanze muri urwo rubanza, byaba ngombwa agakosora aho bikenewe.

- [18] Na none mu rubanza RCOMAA 0048/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2017, haburana RRA na SODAR Ltd2, urwo Rukiko rwasobanuye ko mu gusuzuma ko impamvu zashingiweho umuburanyi atsindwa mu nkiko zombi ari zimwe, hatarebwa niba ibimenyetso ababuranyi batanze ku rwego rwa mbere ari byo byatanze no mu rwego rw'ubujurire, cyangwa ko zakoresheje amagambo amwe, ahubwo harebwa niba inkiko zombi zarashubije ku buryo bumwe ingingo zirebana n'ikiburanwa.
- [19] Nk'uko bigaragara mu rubanza RCOM 00582/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 30/06/2020, KABERI COMPANY Ltd yazeze RRA isaba Urukiko gukuraho umusoro ungana na 263.11.219 Frw kubera ko wabazwe mu buryo no mu nzira bidakurikije amategeko, isaba n'indishyi zitandukanye. Mu gusuzuma iki kirego, urwo Rukiko rwabajije ikibazo kijyanye no kumenya impamvu KABERI COMPANY Ltd ishingiraho isaba kvanaho umusoro yaciwe, ariko rugisubiza mu duce twinshi.
- [20] Mu rubanza RCOMA 00469/2020/HCC rwaciwe ku wa 07/06/2021, Urukiko Rukuru rw'Ubucuruzi, mu rwego rwo gusubiza ubujurire wa KABERI COMPANY Ltd rwo rwahisemo gusuzuma buri kabazo kagize ikibazo nyamukuru ukwako maze rusuzuma ingingo zikurikira: gusuzuma niba isoreshwa nta nteguza KABERI COMPANY Ltd yakorewe ryari rikurikije amategeko, gusuzuma niba nubwo isoreshwa ryabereye mu biro ibitabo by'umusoreshwa bitaritaweho, gusuzuma niba umusoro n'ibihano byawo byaraciwe mu buryo bukurikije amategeko, gusuzuma niba amafaranga yatanze nk'umusoro ataragombaga gukurwa mu yo RRA yabaze, gusuzuma niba igenzura ryakozwe mu rurimi umusoreshwa atumva, niba kandi byaba impamvu yatuma rivaho, no gusuzuma niba indishyi zaciwe uwajuriye ataragombaga kuzicibwa.

21/04/2017, igika cya 21. Reba kandi igika cya 12 cy'urubanza rubanziriza urundi mu rubanza RCOMAA 00010/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 15/03/2019, haburana KOPERATIVE DUKUNDUMURIMO (KOADU) na KING CONSTRUCTION AND

SERVICE COMPANY (KICOSECA); Urubanza RS/INJUST/RCOM00002/2020/SC hagati ya Road Solution Pavement Products na MAILCO Ltd, rwaciwe ku wa 25/09/2020, igika cya 24. 22 Reba igika cya 18 cy'urwo rubanza.

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- [21] Mu rwego rwo kumenya niba KABERI COMPANY Ltd yaratsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, haritabwa ku ngingo (points) z'ingenzi inkiko zombi zasuzumye, kuko nta buryo izo zitigeze zihuririraho mu isuzuma zajya mu igereranya. Izo ngingo zaburanishijwe n'inkiko zombi ni izijyanye n'igenzura nta nteguza, ibitabo bitasuzumwe, ku itegeko ryakoreshejwe mu gusoresha KABERI COMPANY Ltd, umusoro wishyuye, n'icy'ururimi rwakoreshejwe mu igenzura.
- [22] Ku bijyanye n'igenzura nta nteguza, Urukiko rw'Ubucuruzi, mu gika cya 6, rushingiye ku ngingo ya 42 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha, rwasanze RRA yarahereye ku gikorwa cy'igenzura risanzwe, ariko nyuma iza gukora igenzura nta nteguza rishingiye ku kuba yarasanze harabayeho inyerezamusoro, nk'uko iyi ngingo ibiteganywa, kandi igenzura nta nteguza ridasaba kubahiriza ibihe by'imenyesha ry'igenzura risanzwe (byo mu ngingo ya 28), cyangwa ibyo kuvuguruzanya (biteganywa mu ngingo ya 36), ndetse n'ibihe by'igenzura ry'ikibazo cyihariye (byo mu ngingo ya 37), nkuko bisobanurwa mu ri iyi ngingo, igenzura nta nteguza rishingira ku kuba hari impamvu zikomeye z'inyerezwa ry'umusoro zagaragaye.
- [23] Kuri iyi ngingo Urukiko Rukuru rw'Ubucuruzi, mu gika cya 19 cy'urubanza rujuririrwa, rwasanze nk'uko byemejwe n'Urukiko rubanza kandi rwemeranya narwo ko ku igenzura nta nteguza, rushingiye ku ngingo ya 42 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha iteganywa ko iyo hari impamvu zikomeye zigaragaza ko habayeho inyerezwa ry'umusoro, Ubuyobozi bw'imisoro bushobora gukora igenzura nta nteguza kandi ko muri icyo gihe, umusoresha akorerwa inyandiko igena umusoro cyangwa inyandiko igena ibihano hatitawe ku bivugwa mu ngingo ya 28, iya 36 n'ya 37 z'iri tegeko, rusanga RRA yarahereye ku gikorwa cy'igenzura risanzwe, ariko nyuma iza gukora igenzura nta nteguza rishingiye ku kuba mu igenzura risanzwe yarasanze harabayeho inyerezamusoro, nkuko iyi ngingo ibiteganywa, kandi igenzura nta nteguza rikaba ridasaba kubahiriza ibihe by'imenyesha ry'igenzura risanzwe (byo mu ngingo ya 37), nk'uko bisobanurwa muri iyi ngingo, igenzura nta nteguza rishingira ku kuba hari impamvu zikomeye z'inyerezwa ry'umusoro zagaragaye.
- [24] Urukiko rurasanga kuri iyi ngingo, inkiko zombi zarashingiye ku kuba mu igenzura risanzwe RRA yarasanze harabayeho inyerezamusoro byakozwe na KABERI COMPANY Ltd bituma isoreshwa nta nteguza nk'uko biteganywa n'amategeko.
- [25] Ku bijyanye n'ibitabo KABERI COMPANY Ltd ivuga ko bitasuzumwe, Urukiko rw'Ubucuruzi, mu gika cya 9, rushingiye ku ngingo ya 35 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 ryibukijwe haruguru rwasanze mu gihe igenzura nta nteguza ryakozwe ritandukanye n'andi magenzura nta vuguruzanya ry'ibitabo ryari ngombwa mbere y'igenzura nta nteguza, ndetse no mu buryo bw'igenzura rikorewe mu biro igenzura rikorerwa mu biro by'umugenzuzi ubwe iyo ibyacuujwe by'umusoro ku nyongeragaciro bitangana n'ibyacuujwe by'umusoro ku nyungu nta mpamvu nk'uko biteganywa n'ingingo ya 38 y'Itegeko N° 026/2019 ryo ku wa

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18/09/2019 ryibukijwe haruguru, rwemeza ko kuba RRA yaragendeye kuri fagitire za EBM, nta bindi bitabo byari bikenewe kuzemeza cyangwa kuzivuguruza ku bijyanye n'umusoro ku nyongeragaciro.

- [26] Kuri iyi ngingo, nubwo Urukiko Rukuru rw'Ubucuruzi rutasubiye mu magambo yakoreshejwe n'Urukiko rw'Ubucuruzi, ariko mu gika cya 28 n'icya 29 cy'urubanza rujuririrwa rwagaragaje ko rwemeranya n'igisubizo cyatanze n'urwo Rukiko, kuko rwagaragaje ko KABERI COMPANY Ltd itagaragaje icyo inenga ibyashyingiweho n'urwo Rukiko. Byongeye kandi rwasobanuye ko narwo rusanga koko umusoro KABERI COMPANY Ltd yaciwe uturuka ku kinyuranyo cy'ibyo yacurujwe itasoreye gikomoka kuri fagitire zayo yanyujije mu mashini ye y'ikoranabuhanga (EBM) ikoresha mu bucuruzi bwayo, bityo akaba atakwifuzaga ko hakoreshwa ibitabo bya bidahujwe n'ukuri, kuko ukuri kose gukomoka kubyo ubwayo yacurujwe ikanabitangira fagitire nk'uko zigaragazwa na raporo ya EBM yayo Kuri iki kibazo rero Urukiko rurasanga inkiko zombi zarashyingiye ku mpamvu zimwe.
- [27] Ku kibazo cy'itegeko ryakoreshejwe mu gusoresha KABERI COMPANY Ltd, mu gika cya 10 cy'urubanza rwaciwe n'Urukiko rw'Ubucuruzi rushyingiye ku ngingo ya 96 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha iteganya ko iri tegeko ritangira gukurikizwa ku munsu ritangarijweho mu Igazeti ya Leta ya Repubulika y'u Rwanda, rwasanze RRA yarashyingiye ku ngingo ya 42 y'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha ryasohotse mu Igazeti ya Leta yo ku wa 10/10/2019, ikora igenzura nta nteguza ku wa 17/12/2019, igendeye kuri iryo tegeko rishya nkuko ingingo ya 96 ivuzwe haruguru ibiteganya, rwemeza ko byumvikana ko iryo genzura ryashyingiye ku mategeko itashyingira ku itegeko ryavanyweho ku bijyanye n'igenzura (ribarirwa muri procedure), naho ku bijyanye n'umusoro, byo byumvikana ko umusoro ukurikiza itegeko ryariho mu gihe cy'umusoro, hatakurikizwa itegeko ryaje nyuma y'igihe cy'umwaka w'imisoro wagenzuwe.
- [28] Kuri iki kibazo, Urukiko Rukuru rw'Ubucuruzi mu gika cya 37 cy'urubanza rujuririrwa rwagaragaje ko rwemeranywa n'ibyemejwe n'Urukiko rw'Ubucuruzi mu gika cya 10 bivuzwe haruguru, maze rusobanura itegeko rigomba gukoreshwa mu gusoresha (procédure de taxation) n'itegeko rigenga umusoro ugomba gucibwamo, kuko itegeko rigomba gukoreshwa muri procedure hakoreshwa itegeko ririho igikorwa kiri gukorwa (la loi en vigueur), naho itegeko rikoreshwa mu guca umusoro hagakoreshwa itegeko ry'umusoro ryariho kuri uwo mwaka w'isoreshwa. Kuri iyi ngingo, Urukiko rurasanga KABERI COMPANY Ltd yaratsinze mu nkiko zombi ku mpamvu zimwe kuko imitekerereze y'inkiko zombi ari imwe.

- [29] Ku kibazo cy'umusoro wishyuwe, mu gika cya 12 cy'urubanza rwaciwe n'Urukiko rw'Ubucuruzi, urwo Rukiko rwasanze nayo itaba impamvu yo gukuraho umusoro yaciwe, ahubwo yayagaragariza RRA agaherwaho ku bwishyu, hanyuma mu gika cya 14, rushingiye ku ngingo ya 3 y'itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana, rwemeza ko nta mpamvu yatuma umusoro KABERI COMPANY Ltd yaciwe uvanwaho.

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- [30] Kuri iki kibazo, Urukiko rurasanga, mu gika cya 42 cy'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwasanze nk'uko Urukiko rw'Ubucuruzi rwabibonye, KABERI COMPANY Ltd itagaragaza ikimenyetso cy'amafaranga yari yarasoze mbere ntakurwemo, ikaba yirengagiza ko buri muburanyi agomba kugaragaza ukuri n'ibimenyetso by'ibyo aburana yabibura agatsindwa nk'uko biteganywa n'ingingo ya 3 y'itegeko N° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo n'ingingo ya 12 y'itegeko N°22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu. Kuri iki kibazo, inkiko zabanje zashingiye ku mpamvu imwe yo kuba KABERI COMPANY Ltd itagaragaza ibimenyetso by'ibyo isaba.
- [31] Ku kibazo cyo kumenya niba igenzura ryakozwe mu rurimi umusoreshe atumva byaba impamvu ituma umusoro uvanwaho, mu gika cya 13 cy'urubanza rwaciwe n' Urukiko rw'Ubucuruzi, Urukiko rwasanze urega yarajuririyeye Komiseri Mukuru yiregura ku musoro yaciwe, arasubizwa, kandi uko kwiregura kugaragaza ko yasobanukiwe ikibazo yireguyeho nubwo yaba yarasobanuye, ko kandi icyongereza ari ururimi rwemewe n'Itegeko Nshinga rya Repubulika y'u Rwanda rutagombye gutuma inyandiko yarwo iteshwa agaciro, ahubwo yasabirwa gusobanurwa, ko ndetse urega ari sosiyete ishobora kuba igizwe n'abantu benshi, barimo abazi icyongereza n'abatakizi, itakwitiranywa n'umunyamigabane wayo cyangwa umuyobozi wayo, kuba umuyobozi wayo atazi ururimi yandikiwemo bitatesha agaciro inyandiko yandikiwe sosiyete.
- [32] Mu gika cya 46 cy'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwasanze nk'uko Urukiko rw'Ubucuruzi rwabibonye, ibyo KABERI COMPANY Ltd ivuga bitahabwa ishingiro kuko urega yarajuririyeye Komiseri Mukuru yiregura ku musoro yaciwe, arasubizwa, kandi uko kwiregura kugaragaza ko yasobanukiwe ikibazo yireguyeho nubwo yaba yarasobanuye, kandi icyongereza ari ururimi rwemewe n'itegeko Nshinga rutagombye gutuma inyandiko yarwo iteshwa agaciro, ahubwo yasabirwa gusobanurwa, ndetse urega ari sosiyete ishobora kuba igizwe n'abantu benshi, barimo abazi icyongereza n'abatakizi, itakwitiranywa n'umunyamigabane wayo cyangwa umuyobozi wayo, kuba umuyobozi wayo atazi ururimi yandikiwemo bitatesha agaciro inyandiko yandikiwe sosiyete. Kuri iyi ngingo, Urukiko rurasanga KABERI COMPANY Ltd yaratsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe.

[33] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga KABERI COMPANY Ltd yaratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe; bityo ubujurire bwayo ntibwakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire.

2. Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro

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[34] Mu myanzuro y'uhagarariye KABERI COMPANY Ltd asaba ko mu gihe ubujurire bwayo bwakwirwa bugahabwa ishingiro, Urukiko rw'Ubujurire rwazatega RRA kuyisubiza 3.000.000 Frw yahaye Avoka uyiburanira na 1.000.000 Frw y'ikurikiranarubanza. [35] Uhagarariye RRA avuga ko ashingiye ku biteganywa n'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 asaba Urukiko rw'Ubujurire gutegeka KABERI COMPANY Ltd kwishyura RRA 1.000.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cya Avoka ku rwego rw'ubujurire hashingiwe ku ngingo ya 34 y'Amabwiriza n°01/2014 agenga ibihembo mbonera by'Abavoka. [36] Uhagarariye KABERI COMPANY Ltd avuga ko amafaranga RRA isaba nta shingiro yababwira, kuko iyo ikora igenzura mu buryo bukurikije amategeko hatari kubaho imanza, no kuba uyiburanira ari umukozi wayo, bityo ko adakwiye gusaba igihembo cya Avoka. Ko n'imanza ashingiraho nta gaciro zikwiye guhabwa kuko atari izasohotse mu cyegeranyo. UKO URUKIKO RUBIBONA [37] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 28/04/2018 ryerekeye imiburanishirize y'imanza mbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye 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". [38] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ikurikiranarubanza RRA isaba ko KABERI COMPANY Ltd iyishyura afite ishingiro, kuko haribyo yatakaje ikurikirana inaburana uru rubanza, ariko kuba urubanza rugarukiye ku nzitizi, mu bushishozi bwarwo, rutegetse KABERI COMPANY Ltd kuyishyura 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza. Rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka KABERI COMPANY Ltd isaba mu myanzuro yayo nta shingiro afite kuko ubujurire bwayo butakiriwe. III. ICYEMEZO CY'URUKIKO

[39] Rwemeje ko inzitizi y'iburabubasha bw'uru Rukiko yatanze na RWANDA REVENUE AUTHORITY(RRA) ifite ishingiro. [40] Rwemeje ko ubujurire bwa KABERI COMPANY Ltd butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire. [41] Rwemeje ko ubujurire bwuririye ku bundi bwatanze na RWANDA REVENUE AUTHORITY (RRA) bufite ishingiro.

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[42] Rutegetse KABERI COMPANY Ltd kwishyura RWANDA REVENUE AUTHORITY (RRA) 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza kuri uru rwego. [43] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.

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