

RWANDA / JUDGMENT

NFCS LTD v. NEXTGEN DEVELOPERS LTD N'UNDI

RCOMAA 00114/2022/CA

COURT

Court of Appeal

DECIDED

29 September 2023

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NFCS LTD v. NEXTGEN DEVELOPERS LTD N'UNDI

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Text

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NFCS LTD v. NEXTGEN DEVELOPERS LTD N'UNDI [Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00114/2022/CA (Rukundakuvuga, P.J., Kamere na Rugabirwa, J.) 29 Nzeri 2023]

Amategeko agenga imanza z'ubucuruzi – Igisobanuro cya Sheki – Sheki itangwa hagamijwe kwishyura uyihawe – Igihe nta kindi gisobanuro kiyiherekeje, bigomba kumvikana iteka ko igamije kwishyura umwenda uyitanze abereyemo uyihawe. Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Kugoboka ku bushake mu rubanza – Kugaragaza inyungu yemewe n'Amategeko – Inyungu z'umuburanyi ugoboka mu rubanza zigaragarira mu kuba yabasha no kurutambamira mu gihe yaba atarabashije kurugobokamo. Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Kuregera amafaranga y'ibyakoreshejwe mu rubanza – Umuburanyi wemerewe kuregera ko Urukiko rutegeka undi baburana kumwishyura amafaranga y'ibyo yatakaje ku rubanza, kuyagenerwa ntibishidikanywaho ko bigomba gushingira mbere na mbere ku kuba atsinda urubanza ayasabamo ku zindi ngingo z'ikiregerwa cy'ibanze. Incamake y'ikibazo: NFCS Ltd yagiranye amasezerano na NEXTGEN DEVELOPERS Ltd yo kuyisiziriza

ibibanza bibiri bizubakwaho amazu aciriritse, ayo masezerano aza kuvugururwa, impande zombi zumvikana ko NFCS Ltd nimara gukora akazi kangana na 60% izishyurwa 50% by'agaciro k'isoko ariko akaba atari ko byagenze kuko ubwo yari imaze gukora icyo gice cy'akazi impande zombi zemeranyijwe itishyuwe ahubwo NEXTGEN DEVELOPERS Ltd isesa amasezerano mu buryo bunyuranyije n'amategako, bituma NFCS Ltd iyirega mu Rukiko rw'Ubucuruzi isaba ko ruyitegeka kwishyura umwenda, inyungu zawo hamwe n'indishyi zitandukanye, ndetse urubanza rukarangizwa by'agateganyo ku mafaranga NEXTGEN DEVELOPERS Ltd yemera. Urwo Rukiko rwaciye urubanza rwemeza ko ikirego gifite ishingiro kuri bimwe, uregwa agomba kwishyura 109.859.976 FRW ahwanye n'imirimo yose yakozwe n'inyungu zayo, amafaranga 132.300.000 uregwa asaba mu kirego kiregera kwiregura yo gukosora ibyangijwe ntayo ahawe ndetse ko nta rangizarubanza ry'agateganyo rizabaho. Uregwa atishimiye imikirize y'urubanza yajuririye mu Rukiko Rukuru rw'ubucuruzi, Gasirikare Evariste agoboka ku bushake muri urwo rubanza avuga ko yasinanye na NFCS Ltd amasezerano y'ubufatanye bw'akazi; akaba yaragombaga gutanga amafaranga yose azifashishwa mu gusiza ibibanza no kubaka urukuta, naho NFCS Ltd igakurikirana ikorwa ry'iy mirimo ndetse banumvikana ko bazajya basinya kuri konti iri muri Equity Bank Rwanda Plc izanyuzwaho ubwishyu; hanyuma bwaboneka hakazabanza gukurwamo amafaranga yose yakoreshejwe kugeza akazi karangiye, inyungu isigaye ikaba ari yo igabanwa n'impande zombi, akaba yaragobotse ku bushake avuga ko ayo masezerano atubahirijwe ahubwo yumvise ko hari urubanza NFCS Ltd ifitanye na NEXTGEN DEVELOPERS Ltd, bityo ukugoboka kukaba kugamije kugira ngo urukiko nirufata icyemezo ku mwenda uburanwa, ruzanahatire NFCS Ltd kubahiriza amasezerano bagiranye. Urwo Rukiko rwaciye urubanza rwemeza ko ubujurire budafite ishingiro; ubujurire bwuririye ku bundi busaba gukomeza kubarirwa inyungu bufite ishingiro, ko hagumyehe imikirize y'urubanza

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rwaciye n'Urukiko rw'Ubucuruzi, uretse inyungu n'indishyi byiyongera ku byagenwe ku rwego rubanza, hamwe n'iyishyurwa ry'umwenda n'igabana ry'inyungu zikomoka ku isoko hagati ya Gasirikare Evariste na NFCS Ltd. NFCS Ltd ntiyishimiye iyo mikirize y'urubanza, ijuririra mu Rukiko rw'Ubujurire ababuranyi bose bitabye buri ruhande rurisobanura, impaka zibanda k'uburyo NFCS Ltd na Gasirikare Evariste bagomba kugabana amafaranga Urukiko Rukuru rw'Ubucuruzi rwemeje ko NEXTGEN DEVELOPERS Ltd igomba kwishyura hashingiwe ku masezerano y'isoko ryo gusiza ibibanza yagiranye na NFCS Ltd. Nyuma y'izo mpaka zose, Urukiko rw'ubujurire rusuzuma ibibazo bitandukanye. Ku kibazo cyo kumenya niba 30.000.000 Frw agaragara kuri sheki yo ku wa 30/10/2019 NFCS Ltd yahaye Gasirikare Evariste yaragombaga kwiya ku mwenda wa 48.000.000 Frws cyangwa niba yaragombaga kubarirwa muri uwo mwenda; uwajuriye avugako iyo Sheki Urukiko Rukuru rw'Ubucuruzi rwayibaze nk'undi mwenda hirengagijwe inyandiko yakorewe Gasirikare Evariste mu rwego rwo kuvugurura amasezerano y'umwenda kuko yari yaratinze kwishyurwa ndetse bakemeranywa ko umwenda amubereyemo ari 48 000 000 Frw, akavugako Urwo Rukiko rwirengagije amategako n'ibimenyetso yarushyikirije. Uregwa avugako iyo sheki yayihawe nyuma y'uko kuri uwo muni hari andi mafaranga yari amaze kongera guha urega mu ntoki mu byiciro bitatu, umunsi umwe, kandi ko icyo iyo sheki yari

igamije ari ukugaragaza ko yemera ko yakiriye ayo mafaranga nk'undi mwenda wagombaga kwiyongera kuri 48.000.000 Frw y'umwenda yari iherutse kwemera. Ku kibazo kijyanye no kumenya niba 8 500 000 Frw agaragara kuri sheki yo kuwa 06/06/2019 yaragombaga kubarirwa mu mwenda NFCS Ltd igomba kwishyura Gasirikare, uwajuriye avugako yayihaye uregwa ataratangira iryo soko, Urukiko rutagombaga kuyibarira mu mafaranga rwemeje ko agomba kwishyura kuko bitari bikubiye mu byo impande zombi zumvikanye mu masezerano zagiranye. Avuga kandi ko uretse kuba iyo sheki uregwa yari akuyibitse, amafaranga ayigaragaraho yamaze kwishyurwa mu bundi buryo bwo kuyashyira kuri konti. Uregwa yemera ko uwo mwenda ukomoka ku yandi masezerano bagiranye atajyanye n'isoko, ariko akavuga ko mu gihe yari amenye ko hari Urubanza nta cyari kumubuza kurugobokamo ngo yishyuze umwenda wose aberewemo. Ku kibazo cyerekeranye n'amafaranga y'ikurikiranarubanza, n'igihembo cya Avoka, Uregwa avuga ko urega yamusiragije mu Nkiko bituma ashaka umwunganira, bityo agasaba Urukiko gutegeka urega kumwishyura ayo mafaranga. Ku rundi ruhande urega avugako amafaranga asabwa nta shingiro afite. Incamake y'icyemezo: 1. Sheki itangwa hagamijwe kwishyura uyihawe; igihe nta kindi gisobanuro kiyiherekeje, bigomba kumvikana iteka ko igamije kwishyura umwenda uyitanze abereyemo uyihawe.

2. Inyungu z'umuburanyi ugoboka mu rubanza zigaragarira mu kuba yabasha no kurutambamira mu gihe yaba atarabashije kurugobokamo. Bivuze ko umuburanyi wagobotse adashobora kuzana ikibazo kidafitanye isano n'ikiburanwa mu rubanza hagati y'ababuranyi bari barusanzwemo.
3. Umuburanyi wemerewe kuregera ko Urukiko rutegeka undi baburana kumwishyura amafaranga y'ibyo yatakaje ku rubanza, kuyagenerwa ntibishidikanywaho ko bigomba gushingira mbere na mbere ku kuba atsinda urubanza ayasabamo ku zindi ngingo z'ikiregerwa cy'ibanze.

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Ubujurire bufite ishingiro. Amagarama ahwanye n'ibyarukozwemo. Amategako yifashishijwe: Itegeko No 32/2009 ryo ku wa 18/11/2009 rigenga inyandiko zishobora gucuruzwa, Ingingo y'110, Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, Ingingo y'114, igika cya 2, Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, Ingingo y'111.

Imanza zifashishijwe: Nta manza zifashishijwe

Urubanza I. IMITERERE Y'URUBANZA: [1] Kuwa 28/6/2019, NFCS Ltd yagiranye na NEXTGEN DEVELOPERS Ltd amasezerano yo kuyisiziriza ibibanza bibiri bibaruwe kuri UPI : 1/02/06/1772 na UPI : 1/03/01/06/1763 bizubakwaho amazu aciriritse ku giciro kingana na 220.516.372 FRW, ndetse ko byagombaga gukorwa mu gihe cy'ukwezi kumwe (1 month) kuva amasezerano asinywe n'impande zombi. Ayo masezerano yavugururwa kuwa 19/08/2019 yongererwa igihe yagombaga gukorwamo kiva ku kwezi kumwe kigera ku mezi atatu, yongerwa na none kuvugururwa kuwa

09/09/2019. Ikindi impande zombi zumvikanye ni uko NFCS Ltd nimara gukora akazi kangana na 60%, izishyurwa 50 % by'agaciro k'isoko ariko ko atari ko byagenze kuko NFCS Ltd ubwo yari imaze gukora igice cy'akazi impande zombi zemeranyijwe, yashyikirije NEXTGEN DEVELOPERS Ltd facture ingana na 110.258.186 FRW kugira ngo yishyure ariko yanga kwishyura yitwaje impamvu zidafite ishingiro, ahubwo isesa amasezerano mu buryo bunyuranyije n'amategako. [2] NFCS Ltd ivuga ko nyuma y'iryo seswa ry'amasezerano yasabye kwishyurwa akazi kose yakoze gahwanye na 156.641.898 FRW ariko NEXTGEN DEVELOPERS Ltd ikomeza kwanga kwishyura. Ibyo byatumye iyiregera Urukiko rw'Ubucuruzi isaba ko ruyitegeka kwishyura uwo mwenda, inyungu zawo hamwe n'indishyi zitandukanye, ndetse ngo urubanza rukarangizwa by'agateganyo ku mafaranga NEXTGEN DEVELOPERS Ltd yemera. [3] NEXTGEN DEVELOPERS Ltd ivuga ko amafaranga NFCS Ltd isaba kwishyurwa ntayo ikwiye guhabwa kuko imirimo yakoze idahwanye n'aregerwa, ahubwo ko ifite agaciro kangana na 52.833.165 FRW ndetse ko n'ibyakozwe bitakozwe kinyamwuga, ahubwo ko NFCS Ltd yabyangije. Basaba ahubwo ko NFCS Ltd yatanga amafaranga yo gukosora ibyangijwe hamwe n'indishyi zitandukanye. Muri urwo rubanza urukiko rwashyizeho Shumbusho Jean Pierre nk'inzobere izafatanyaga na Nsengimana Joseph ku ruhande rwa NFCS Ltd na Mbanza Philbert ku

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ruhande rwa NEXTGEN DEVELOPERS Ltd kugaragaza ingano y'akazi kakozwe na NFCS Ltd n'agaciro k'ibyakozwe. [4] Mu rubanza RCOM 1005/2020/TC rwaciye kuwa 21/07/2021, Urukiko rw'Ubucuruzi rwemeje ko ikirego cya NFCS Ltd gifite ishingiro kuri bimwe, ko NEXTGEN DEVELOPERS Ltd igomba kuyishyura 109.859.976 FRW ahwanye n'imirimo yose yakoze, inyungu zayo zingana na 14.098.767 FRW, 500.000 Frw y'igihembo cya Avoka, 100.000 Frw y'indishyi z'ikurikiranarubanza na 20.000 Frw y'igarama ry'urubanza. Urukiko kandi rwemeje ko amafaranga 132.300.000 FRW NEXTGEN DEVELOPERS Ltd isaba mu kirego kiregera kwiregura yo gukosora ibyangijwe ntayo ihawe ndetse ko nta rangizarubanza ry'agateganyo rizabaho. [5] NEXTGEN DEVELOPERS Ltd yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi. Mu mpamvu zatumye ijurira ariko ko urukiko rwashingiye kuri raporo yakozwe kandi rwari rwagaragarijwe inenge zikomeye ziri muri iyo raporo zo kuba bataragaragaje agaciro k'ibyakozwe hagendewe kuri qualité yabyo, kuba urukiko rwarayitegetse kwishyura NFCS Ltd igikorwa cya "Fill from cutting Debris" n'icya "Removing the excavated soil from the construction area and deposit those to the specified area out of construction platform" kandi itarigeze ibikora, no kuba hari amafaranga ya avansi angana na 5.000.000 FRW yishyurwe NFCS Ltd mbere yo gutangira imirimo ariko akaba atarakuwe mu mwenda yategetswe kwishyurwa. Yavuze kandi ko urukiko rwayitegetse kwishyura amafaranga y'ibikorwa byakozwe arimo n'umusoro ku nyongeragaciro kandi ko rutahaye agaciro ikirego cyayo kijyanye no kwishyura 132.300.000 FRW yo gukosora ibyo NFCS Ltd yangije. Yavuze kandi ko inyungu n'indishyi zatanzwe ku rwego rubanza zitari zikwiye. [6] NFCS Ltd yireguye ku mpamvu z'ubujurire bwa NEXTGEN DEVELOPERS Ltd ivuga muri rusange ko nta shingiro zifite. [7] Gasirikare Evariste yagobotse ku bushake muri uru rubanza ku rwego rw'ubujurire. Avuga ko kuwa 28/06/2019 NFCS Ltd yahawe na NEXTGEN Developers Ltd isoko ariko nta mafaranga ifite yo kurikora. Asobanura ko ibyo byatumye kuwa 29/07/2019

asinyana na NFCS Ltd amasezerano y'ubufatanye bw'akazi. [8] Nk'uko bigaragara muri ayo masezerano, Gasirikare Evariste yagombaga gutanga amafaranga yose azifashishwa mu gusiza ibibanza no kubaka urukuta, naho NFCS Ltd igakurikirana ikorwa ry'ayo mirimo. Ikindi bumvikanye ni uko bombi bazajya basinya kuri konti no 4002200200179 iri muri Equity Bank Rwanda Plc izanyuzwaho ubwishyu ; ko ubwishyu nibuboneka hazabanza gukurwamo amafaranga yose yakoreshejwe kugeza akazi karangiye, inyungu isigaye ikaba ari yo igabanwa n'impande zombi. [9] Gasirikare Evariste avuga ko ayo masezerano NFCS Ltd itayubahirije kuko yanze kumushyira kuri iyo konti ndetse ngo akaba yaranatanze amafaranga yari akenewe yose kugira ngo akazi gakorwe neza, agategereza ko NFCS Ltd yubahiriza amasezerano bagiranye agaheba ahubwo akumva ko iyo sosiyete ifitanye urubanza na NEXTGEN Developers Ltd. Ibyo bikaba ari byo byatumye arugobokamo ku bushake kugira ngo urukiko nirufata icyemezo ku mwenda uburanwa, ruzanahatire NFCS Ltd kubahiriza amasezerano bagiranye.

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[10] Gasirikare asaba ko mu mafaranga azagererwa NFCS Ltd hazakurwamo 86.500.000 FRW yashoye mu mirimo yakorewe NEXTGEN Developers Ltd hiyongereyeho inyungu n'indishyi zitandukanye, ndetse rukanemeza ko amafaranga asigaye ku yo baregeye agabanwa n'impande zombi nk'uko zabyumvikanyeho mu masezerano y'ubufatanye bw'akazi yo kuwa 29/07/2019. Asaba kandi ko ku mwenda wemerwa na NFCS Ltd habaho irangizarubanza ry'agateganyo. [11] Ku wa 11/11/2022, Urukiko Rukuru rw'Ubucuruzi rwaciye urwo rubanza RCOMA00592/2021/HCC, rufata ibyemezo binyuranye bikurikira :

- a) Ko ubujurire bwa NEXTGEN DEVELOPERS Ltd nta shingiro bufite ;
- b) Ko ubujurire bwurirye ku bundi bwa NFCS Ltd busaba gukomeza kubarirwa inyungu bufite ishingiro ;
- c) Ko NFCS Ltd igomba guhabwa na NEXTGEN DEVELOPERS Ltd inyungu zingana na 11.882.382 Frw ;
- d) Ko NEXTGEN DEVELOPERS Ltd igomba guha NFCS Ltd indishyi z'ibyatakajwe muri urwo rubanza ku rwego rw'ubujurire zingana na 500.000 Frw y'igihembo cya Avoka na 100.000 Frw y'ikurikiranarubanza, yose hamwe akaba 600.000 Frw ;
- e) Ko NFCS Ltd irimo Gasirikare Evariste umwenda ungana 86.500.000 Frw ;
- f) Ko nk'uko byemejwe ku rwego rubanza, umwenda remezo NEXTGEN DEVELOPERS Ltd irimo NFCS Ltd ungana na 109.859.976 Frw kandi ko igomba kubanza kwishyuraho Gasirikare Evariste mu mwanya wa NFCS Ltd umwenda ungana na 86.500.000 Frw avuzwe haruguru, andi asigaye bakayagabana nk'inyungu nk'uko bayumvikanye, buri wese agahabwa 11.679.988 Frw ;
- g) Ko irangizarubanza ry'agateganyo risabwa muri uru rubanza nta shingiro rifite.

- h) Ko hagumyeho imikirize y'urubanza RCOM 1005/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi kuwa 21/07/2021, uretse inyungu n'indishyi bimaze kuvugwa haruguru byiyongera ku byagenwe ku rwego rubanza, hamwe n'iyishyurwa ry'umwenda n'igabana ry'inyungu zikomoka ku isoko hagati ya Gasirikare Evariste na NFCS Ltd byavuzwe haruguru ;
- i) Ko 40.000 Frw NEXTGEN DEVELOPERS Ltd yatanze ingwate y'amagarama ijurira ahwanye n'ibyakozwe byose muri urwo rubanza. [12] NFCS Ltd ntiyishimiye iyo mikirize y'urubanza, irujuririra mu Rukiko rw'Ubujurire, ubujurire bwayo bwandikwa kuri RCOMAA 00114/2022/CA, iburanisha ry'urubanza rishyirwa ku wa 11/05/2023 ; uwo munsu ugeze ryimuriwe ku wa 06/06/2023 kuko umwe mu bacamanza bagize inteko yikuye mu nteko iburanisha. Kuri uwo munsu, hitabye NFCS Ltd ihagarariwe na Me Mberabagabo Balinda Richard, NEXTGEN DEVELOPERS Ltd ihagarariwe na Me Bunani Bonaventure, naho Gasirikare Evariste ahagarariwe na Me Gasominari Jean Baptiste, Urukiko rugaragariza ababurany ibaruwa Nishimwe Rosine, umuyobozi wa NFCS Ltd, yagejeje muri dosiye i saa moya n'iminota umunani (07h08') ku munsu iburanisha ryagombaga kuberaho irumenyesha ko Me Mberabagabo Balinda Richard atahawe uburenganzirasaba bwo kumukurikiranira urwo rubanza, anasaba ko urubanza rwasubikwa agashaka undi uzamwunganira.

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- [13] Nyuma yo kumva icyo ababuranyi bavugaga ku bikubiye muri icyo baruwa Urukiko rwariherereye maze ku wa 13/06/2023, mu rubanza rubanziriza urundi rwemeza ko guhera ku wa 06/06/2023 Me Mberabagabo Balinda Richard yambuwe ububasha bwo guhagararira NFCS Ltd muri uru rubanza kandi rutegeka NFCS Ltd gushaka undi Avoka wo kuyihagararira cyangwa se kuyunganira mu bisigaye gukorwa kuri uru rubanza. Iburanisha ryimuriwe ku wa 23/06/2023, ariko uwo munsu ntirwaburanishwa kuko Avoka wagombaga guhagararira NFCS Ltd atari yabonye igihe gihagije cyo kwitegura ahubwo iburanisha ryimurirwa ku wa 06/09/2023. [14] Mu iburanisha ryo ku wa 06/09/2023, nyuma yo gusomera ababuranyi raporo y'urubanza, Urukiko rwumvise ibisobanuro by'ababuranyi ku kibazo rwababajije rubyibwirije kijyanye no kumenya niba muri uru rubanza Urukiko rukwiye gusuzuma mu mizi ingingo z'ubujurire bwa NEXTGEN DEVELOPERS Ltd bugaragara nk'ubwatanzwe bwuririye ku bw'ibanze bwa NFCS Ltd mu gihe muri ubwo bujurire bw'ibanze nta kigaragaramo NFCS Ltd itanyuzweho ku byo yaburanyaga NEXTGEN DEVELOPERS Ltd mu rubanza rwajuririwe, ahubwo hakagaragaramo gusa ibyo NFCS Ltd itanyuzweho ku byo yaburanyaga Gasirikare Evariste birebana gusa n'uburyo bwo kugabana amafaranga NEXTGEN DEVELOPERS Ltd yategetswe n'Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwajuririwe. Isomwa ry'icyemezo cy'Urukiko kuri icyo kibazo ryabaye ku wa 15/09/2023, Urukiko rwemeza ko ubujurire bwuririye ku bundi bwatanzwe na NEXTGEN DEVELOPERS Ltd butakiriwe kuko ubujurire bwuririye ku bundi budashobora kwakirwa mu gihe uwajuriye ntacyo aryoza uwabutanze 1, ko iburanisha rizakomeza ku wa 18/09/2023 guhera saa tatu za mugitondo. [15] Kuri uwo munsu, ababuranyi bose baritabye buri ruhande rurisobanura, impaka zibanda ku ingingo zisigaye z'urubanza zirebana n'uburyo NFCS Ltd na Gasirikare Evariste bagomba kugabana amafaranga Urukiko Rukuru rw'Ubucuruzi rwemeje

ko NEXTGEN DEVELOPERS Ltd igomba kwishyura hashingiwe ku masezerano y'isoko ryo gusiza ibibanza yagiranye na NFCS Ltd. [16] NFCS Ltd yaburanye ivuga ko uruhare rw'amafaranga ya Gasirikare Evariste mu ikorwa ry'imirimo y'isoko rya NEXTGEN DEVELOPERS Ltd rungana na 48.000.000 Frw yumvikanyweho mu nyandiko yo ku wa 25/10/2019, naho Gasirikare Evariste akaburana ashimangira ibyemejwe mu rubanza rujurirwa ko uruhare rwe ari 86.500.000 Frw agizwe na 48.000.000 Frw impande zombi zemeranwaho, hiyongeraho 8.500.000 Frw agaragara kuri sheki yo ku wa 06/06/2019 NFCS Ltd ndetse na 30.000.000 Frw agaragara kuri sheki yo ku wa 30/10/2019 NFCS Ltd yahaye Gasirikare Evariste. NFCS Ltd yo ivuga ko ibya sheki ya 8.500.000 Frw bidakwiye kuzanwa kuburanirwa mu rubanza rurebana no kuregera amafaranga y'isoko ryatanzwe na NEXTGEN DEVELOPERS Ltd, naho sheki ya 30.000.000 Frw ikaba atari umwenda mushya wiyongeraga kuri 48.000.000 Frw ahubwo ko yari igamije kwishyura igice cy'umwenda wa 48.000.000 Frw wari umaze kwemeranwaho, ikaba yari kwishyurwa mu gihe NEXTGEN DEVELOPERS Ltd yari kuba itanze ubwishyu kuri konti ya NFCS Ltd iyo cheque yatanzweho. Gasirikare Evariste kandi asaba ko NFCS Ltd itegekwa kumwishyura 18% y'indishyi mbonezamusaruro z'amafaranga yose agomba kwishyurwa, kubera kumushora mu manza ku maherere ; impande zombi zikanasaba indishyi zirebana n'amafaranga y'ibyagenze ku rubanza. [17] Urukiko rushingiye kuri izo mpaka, rurasuzuma ibibazo bikurikira :

1 Reba icyemezo mu rubanza rubanziriza urundi cyo ku wa 15/09/2023.

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- Kumenya niba 30.000.000 Frw agaragara kuri sheki yo ku wa 30/10/2019 NFCS Ltd yahaye Gasirikare Evariste yaragombaga kwiyongera ku mwenda wa 48.000.000 Frws cyangwa niba yaragomba kubarirwa muri uwo mwenda ; - Kumenya niba 8.500.000 Frw agaragara kuri sheki yo ku wa 06/06/2019 yaragombaga kubarirwa mu mwenda NFCS Ltd igomba kwishyura Gasirikare Evariste ukomoka ku ikorwa ry'Isoko rya NEXTGEN DEVELOPERS Ltd ; - Kumenya niba inyungu Urukiko Rukuru rw'Ubucuruzi rwageneye NFCS Ltd zaragombaga kugenerwa Gasirikare Evariste wenyine ; - Kumenya niba Urukiko Rukuru rwaragombaga gutegeka NFCS Ltd kwishyura GASIRIKARE Evariste 18% y'indishyi mbonezamusaruro z'amafaranga yose agomba kwishyurwa, kubera kumushora mu manza ku maherere ; - Ikibazo cy'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa n'ababuranyi.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

A. Kumenya niba 30.000.000 Frw agaragara kuri sheki yo ku wa 30/10/2019 NFCS Ltd yahaye Gasirikare Evariste yaragombaga kwiyongera ku mwenda wa 48.000.000 Frws cyangwa niba yaragombaga kubarirwa muri uwo mwenda [18] Uhagarariye NFCS Ltd avuga ko sheki yo ku wa 30/10/2019 ya 30.000.000 Frw NFCS Ltd yahaye Gasirikare Evariste Urukiko Rukuru rw'Ubucuruzi rwayibaze nk'undi mwenda NFCS Ltd ifitiye Gasirikare Evariste hirengagijwe inyandiko yo ku wa 25/10/2019 Nishimwe Rosine, umuyobozi wa NFCS Ltd yari aherutse gukorera Gasirikare Evariste mu rwego rwo kuvugurura amasezerano y'umwenda yari amufitiye kuko yari yaratinze kwishyurwa. Avuga ko muri iyo nyandiko umuyobozi wa NFCS Ltd yumvikanye na Gasirikare ko

48.000.000 Frw ari yo mafaranga NFCS Ltd yari imaze guhabwa na Gasirikare kugeza kuri uwo munsu, ikaba ari yo yonyine yari imubereyemo; ko rero hejuru ya 48.000.000 Frw NFCS Ltd yemera, Urukiko Rukuru rutagombaga kongeraho na 30.000.000 Frw rwirengagije amategako n'ibimenyetso yarushyikirije NFCS Ltd isobanura ko n'ubwo yanditseho itariki ya 30/10/2019 ngo yakozwe ku wa 25/10/2019 igamije kuzishyurwa hagabanywa uwo mwenda wa 48.000.000 Frw wari umaze kwemeranywaho kandi ngo ishyirwaho itariki (NFCS Ltd) yari yitezeho kuzaba yaramaze kubona ubwishyu buturutse kuri NEXTGEN DEVELOPERS Ltd. [19] Gasirikare Evariste n'umwunganira bavuga ko Urukiko rwemeje ko NFCS Ltd igomba kwishyura Gasirikare Evariste ariya mafaranga rushingiye ku bimenyetso yarushyikirije birimo sheki ya 30.000.000 Frw NFCS Ltd yahaye Gasirikare Evariste amaze kuyongera andi 30.000.000Frw kugira ngo ikomeze imirimo nyuma yo kurangiza 60% y' imirimo. Gasirikare Evariste asobanura ko iyo sheki yayihawe na NFCS Ltd ku wa 30/10/2019 nyuma y'uko kuri uwo munsu hari andi mafaranga yari amaze kongera kuyiha mu ntoki mu byiciro bitatu, umunsu umwe, kandi ko icyo iyo sheki yari igamije ari ukugaragaza ko NFCS Ltd yemera ko yakiriye ayo mafaranga nk'undi mwenda wagombaga kwiwongera kuri 48.000.000 Frw y'umwenda yari iherutse kwemera ku wa 25/10/2019.

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[20] Uhagarariye NEXTGEN DEVELOPERS Ltd avuga ko iyi ngingo nta kintu iyivugaho kuko ibyo NFCS Ltd yumvikanye na Gasirikare Evariste bitayireba. UKO URUKIKO RUBIBONA [21] Impaka kuri iyi ngingo zishingiye ku kumenya no gusobanukirwa neza icyari kigamijwe NFCS Ltd iha Gasirikare Evariste sheki ya 30.000.000 Frw yo ku wa 30/10/2019. [22] Ingingo ya 110 y' Itegeko No 32/2009 ryo ku wa 18/11/2009 rigenga inyandiko zishobora gucuruzwa ryagenderwagaho mu gihe sheki iburanwa muri uru rubanza yakorwaga, akaba ari nayo yasubiwemo n'ingingo ya 3, agace ka 7o y'Itegeko No 060/2021 ryo ku wa 14/10/2021 rigenga inyandiko zishobora gucuruzwa, igira iti: "Sheki ni inyandiko itavuguruzwa itanzwe n'uwashyizeho umukono igenewe banki imwe cyangwa ikigo cy'imari kimwe, isaba kwishyura mu gihe bisabwe, umubare w'amafaranga usobanuye kuri sheki. Iyo sheki igomba kwishyurwa nyir'ubwite, umuntu wateganyijwe cyangwa uyitwaje. [...]". [23] Nk'uko byumvikana rero, hashingiwe ku gisobanuro cya sheki kivugwa muri izi ngingo, nta kindi sheki itangirwa n'uyitanga uretse kwishyura uyihawe. Mu yandi magambo, igihe nta kindi gisobanuro kiyiherekeje, bigomba kumvikana iteka ko iyo sheki igamije kwishyura umwenda uyitanzwe abereyemo uyihawe. Uwo mwenda ushobora kuba impamvu iyo ariyo yose ituma uyitanzwe yishyura uyihawe. [24] Ku birebana n'igisobanuro n'impamvu bya sheki ya 30.000.000 Frw yo ku wa 30/10/2019, uru Rukiko rurasanga hashingiwe ku cyo sheki ari cyo mu buryo budashidikanywaho, kigaragajwe haruguru, mu gihe haba nta kindi gisobanuro cyatanzwe, iyo sheki yatanze na NFCS yaba yari igamije kwishyura Gasirikare. [25] Dosiye y'uru rubanza igaragaza ko ku wa 29/07/2019, ukwezi kumwe nyuma y'isinywa ry'amasezerano yo gutegura site y'ibibanza yavuzwe haruguru, ari bwo NFCS Ltd yasinyanye na Gasirikare Evariste icyiswe "amasezerano y'ubufatanye bw'akazi", aho mu iriburiro ryayo agaragaza ko ubufatanye agamije ari ubwo gukora isoko (ryo gutegura site y'ibibanza) ryavuzwe haruguru NFCS Ltd yahawe na NEXTGEN DEVELOPERS Ltd2. Ingingo ya 2 y'aya

masezerano igaragaza uburyo impande zombi zayagiranye zemeranyijwe ku nshingano buri ruhande ruzabazwa n'urundi mu magambo akurikira : “Gasirikare Evariste nk'umufatanyabikorwa wa NFCS Ltd yemeye kuzana amafaranga yo gukora iryo soko ryo gusiza no kubaka mur de soutienement ryatanzwe na NEXTGEN DEVELOPERS Ltd kugeza irangiye, NFCS Ltd igakurikirana imirimo kugeza irangiye, nawe agakurikirana uko amafaranga azakoreshwa”. Ingingo ya 3 yo iteganya icyo buri ruhande ruzabona nk'igihembo ku nshingano zarwo zimaze kuvugwa haruguru. [26] Dosiye y'uru rubanza igaragaza na none inyandiko yo ku wa 25/10/2019 yanditswe na Nishimwe Rosine, umuyobozi wa NFCS Ltd, kandi na Gasirikare Evariste aburana yemera. Iyo

2 Mu iriburiro ry'ayo masezerano aragira ati: “Hagati ya company NFCS Ltd ... na GASIRIKARE Evariste ... bagiranye amasezerano y'ubufatanye bw'akazi ko gukora isoko ryo gusiza ikibanza no kubaka mur de soutienement kiri mu Mudugudu wa KARAMA, Akagari ka Nyabikenke, Umurenge wa Bumbogo, Akarere ka Gasabo ryahawe company NFCS Ltd ritanzwe na NEXTGEN DEVELOPERS Ltd, ayo masezerano akaba ateye atya: ...”.

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nyandiko ikaba igaragaramo mu buryo budashikanywaho ko kugera kuri uwo munsu nta yandi mafaranga Gasirikare Evariste yari yarahaye NFCS Ltd arebana n'isoko ryavuzwe haruguru bagombaga gufatanya gukora kugira ngo bazagabane mu buryo bungana inyungu zizarikomokaho³. Nk'uko kandi impande zombi zibyemeranywaho, iyo Gasirikare Evariste yabaga hari amafaranga ahaye NFCS Ltd muri urwo rwego, NFCS Ltd yamukoreraga inyandiko igaragaza ko iyakiriye, bityo haba inyandiko nyinshi. Ibyo nibyo byatumye ku wa 25/10/2019 bakora inyandiko imwe igamije kuzibumbira muri imwe no gusimbura izo zindi nyinshi zayibanjirije⁴. [27] Muri urwo rwego, uru Rukiko rurasanga sheki ya 30.000.000 Frw NFCS Ltd yahaye Gasirikare Evariste ku munsi umwe (ku wa 25/10/2019) cyangwa se iminsi itanu (ku wa 30/10/2019) nyuma y'uko bemeranwa ko umwenda imurimo umaze kugera kuri 48.000.000 Frw, nta kundi rwayifata uretse gusa kuba yari igamije kwishyura uwo mwenda wari wemeranyijweho cyane ko nta kindi gisobanuro cyayiherekeje. Naho ku birebana no kuba iyo sheki yaba yarakozwe ku itariki ya 30/10/2019 iyanditseho cyangwa se ku itariki 25/10/2019 impande zombi zemeranyijweho ku mwenda usigaye wanganaga na 48.000.000 Frw, uru Rukiko rurasanga kubijyaho impaka ntacyo byahindura ku kijyanye n'icyo igomba kuba igamije muri kamere yayo nk'uko byasobanuwe haruguru. [28] Urukiko rurasanga ibivugwa na Gasirikare Evariste ko iyo sheki ari ingwate cyangwa se ikimenyetso cy'undi mwenda yari amaze guha NFCS Ltd umunsi umwe mu nshuro eshatu kandi utanzwe mu ntoki (cash) bitafatwaho ukuri, kuko nta kindi kimenyetso kigaragaza ku buryo butagibwaho impaka impamvu zayo, cyane cyane ko uburyo avuga ko yayitanzemo bunyuranye n'ubwari bumenyerewe, aho mu mikoranire yabo isanzwe, iyo hari amafaranga nk'aya Gasirikare Evariste yabaga ahaye NFCS Ltd habagaho n'inyandiko zihariye zo kuyakira nawe yakorerwaga na NFCS Ltd. [29] Kubera izi mpamvu, uru Rukiko rukaba rurasanga aya 30.000.000 Frw akwiye kubarirwa ahubwo mu mwenda wa 48.000.000 Frws NFCS Ltd igomba Gasirikare Evariste kuko iyo sheki n'ubwo yatanzwe itigeze yishyurwa aho kuba inyongera kuri yo nk'uko Urukiko Rukuru rwari rwabifashe, bityo bikaba bigomba gukosorwa,

izo 30.000.000 Frw zigakurwa mu yo rwari rwamugeneye

B. Kumenya niba 8.500.000Frw agaragara kuri sheki yo ku wa 06/06/2019 yaragombaga kubarirwa mu mwenda NFCS Ltd igomba kwishyura Gasirikare Evariste ukomoka ku ikorwa ry'isoko rya NEXTGEN DEVELOPERS Ltd; [30] Uhagarariye NFCS Ltd avuga ko sheki ya 8.500.000 Frw yo ku wa 06/06/2019 umuyobozi wa NFCS Ltd yari yarahaye Gasirikare Evariste ataratangira iryo soko rya NEXTGEN DEVELOPERS Ltd Urukiko rutagombaga kuyibarira mu mafaranga rwemeje ko NFCS Ltd igomba Gasirikare Evariste kuko bitari bikubiye mu byo impande zombi zumvikanye mu masezerano zagiranye. Avuga kandi ko uretse kuba iyo sheki Gasirikare Evariste yari akiyibitse,

3 Iyi nyandiko ibivuga muri aya magambo: “Njyewe NISHIMWE Rosine maze guhabwa na GASIRIKARE Evariste amafaranga angana na miliyoni mirongo ine n’umunani (48.000.000 Frw) ku isoko turimo gukorana ry’I Bumbogo”. 4 Inyandiko yo ku wa 25/10/2019 isoza ibivuga muri aya magambo: “Izabanje nanditse nta gaciro zigifite zijyanye n’amafaranga agenda ampa yo gukora iryo soko rya Bumbogo”.

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ngo amafaranga ayigaragaraho yamaze kwishyurwa mu bundi buryo bwo kuyashyira kuri konti ya Gasirikare Evariste uko yakabaye ngo kuko nta gisobanura impamvu yayamaranye icyo gihe cyose azi neza ko atishyuwe. [31] Gasirikare Evariste nawe yemera ko uwo mwenda ukomoka ku yandi masezerano bagiranye atajyanye n’iri soko rya NEXTGEN DEVELOPERS Ltd, ariko akavuga ko mu gihe yari amenye ko hari Urubanza hagati ya NFCS Ltd na NEXTGEN DEVELOPERS Ltd, nta cyari kumubuza kurugobokamo ngo yishyuze umwenda wose amubereyemo. UKO URUKIKO RUBIBONA [32] Impaka kuri iki kibazo zishingiye ku kumenya niba impamvu yo kugoboka mu rubanza ishobora kuba iyo ariyo yose n’iyo yaba idashingiye ku kibazo kiri mu rubanza rugobokwamo. Mu yandi magambo, ikibazo ni ukumenya niba hashingiwe ku mikoranire n’imigabanire y’urwunguko byumvikanweho hagati ya Gasirikare na NFCS bishoboka ko sheki ya 8.500.000 Frw ibarirwa mu bigomba kugabanwa bikomoka ku isoko rya NEXTGEN DEVELOPERS Ltd. [33] Ingingo ya 114, igika cya 2, y’Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi iteganya ko kugira ngo ikirego cye cyakirwe, ugoboka ku bushake agomba kugaragaza inyungu yemewe n’amategeko, itaziguye kandi ye bwite. Inyungu yemewe ni iy’umuburanyi utagobotse mu rubanza ashobora gukurikirana atambamira imikirize yarwo. Koko rero, iyo atashoboye kurugobokamo kandi yari arufitemo inyungu ashobora kuzirengera arutambamira. Igihe rero icyo aburana kitaburanwe muri urwo rubanza ntaba yemerewe kurutambamira kuko nta nyungu aba arufitemo. Mu yandi magambo, inyungu z’umuburanyi ugoboka mu rubanza zigaragarira mu kuba yabasha no kurutambamira mu gihe yaba atarabashije kurugobokamo. Ibyo bivuze ko umuburanyi wagobotse adashobora kuzanamo ikibazo kidafitanye isano n’ikiburanwa mu rubanza hagati y’ababuranyi bari barusanzwemo. [34] Urukiko rurasanga bisobanutse neza mu masezerano y’ubufatanye bw’akazi yo ku wa 28/07/2019 ko inshingano n’ibihembo bya NFCS Ltd na Gasirikare Evariste bivugwa muri ayo masezerano ari gusa ibigomba kuba bifatanye isano n’isoko NFCS Ltd yahawe na NEXTGEN DEVELOPERS Ltd mu masezerano yo ku wa 28/06/2019.

Ibi bikaba bivuze ko ibijyanye na sheki ya 8.500.000 Frw yo ku wa 06/06//2019 na Gasirikare Evariste ubwe yiyemerera ko idafitanye isano n'iryo soko bitagombaga kubarirwa mu mwenda wemejwe n'Urukiko Rukuru rw'Ubucuruzi, mu gihe ibijyanye n'iyi sheki ntaho bihuriye n'isoko rya NEXTGEN DEVELOPERS Ltd. [35] Kubera izo mpamvu, Uru Rukiko rukaba rusanga ingingo irebana na sheki ya 8.500.000 Frw yo ku wa 06/06//2019 itaragombaga no gusuzumirwa muri uru rubanza, bityo Urukiko Rukuru rw'Ubucuruzi rukaba rwarakoze ikosa mu kugenera Gasirikare amafaranga ayivugwamo.

C. Kumenya niba inyungu Urukiko Rukuru rw'Ubucuruzi rwageneye NFCS Ltd zaragombaga kugenerwa Gasirikare Evariste wenyine

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[36] Gasirikare Evariste n'umwunganira bavuga ko Urukiko Rukuru rw'Ubucuruzi rwategetse ko NFCS Ltd ari yo ihabwa inyungu zikomoka ku mafaranga y'imirimo yakoreye NEXTGEN DEVELOPERS Ltd ntiyishyurwe rwirengagije ko izo nyungu zose zikomoka kuri 86.500.000 Frw yashowe na Gasirikare Evariste. Gasirikare Evariste avuga ko izo nyungu ari we wagombaga kuzihabwa, kuko ari we washoye amafaranga yose nk'uko amasezerano abiteganyaga, akaba ari na we wagize igihombo kuko kutishyura kwa NEXTGEN DEVELOPERS Ltd ari we byagizeho ingaruka zikomeye, kuko yatanze amafaranga yose yo gukora imirimo naho NFCS Ltd icyo yakozwe akaba ari ugukurikirana imirimo gusa nk'uko amasezerano y'imikoranire yabo yabiteganyaga. [37] Gasirikare Evariste n'umwunganira banenga kandi uburyo izo nyungu zabazwe. Bavuga ko Urukiko rwemeje ko NEXTGEN DEVELOPERS Ltd igomba kwishyura 109.859.976 Frw y'agaciro k'imirimo yakozwe, inyungu mbonezamusaruro zagenwe n'Urukiko rw'Ubucuruzi ku rwego rubanza zingana na 14.092.761 Frw, naho ku rwego rw'ubujurire Urukiko Rukuru rw'Ubucuruzi rwemeza izindi zingana na 11.882.382 Frw, naho inyungu Urukiko Rukuru rw'Ubucuruzi rwageneye buri ruhande nyuma yo kuzigabana ku buryo bungana ziba 11.679.988 Frw, igiteranyo cy'inyungu mbonezamusaruro kikaba gihwanye na 25.981.149 Frw. [38] Ku birebana n'uko inyungu mbonezamusaruro zagombaga kubarwa n'uruhare rwa buri wese, basanga mu mafaranga Urukiko rwategetse ko yishyurwa angana na 109.859.976 Frw, Gasirikare Evariste yarashoye 86.500.000 Frw ; bikaba bigaragara ko ayo yashoye aruta ayo NFCS Ltd yashoye inshuro 8,4, bityo inyungu mbonezamusaruro zategetswe n'Urukiko GASIRIKARE Evariste agomba kugabana na NFCS Ltd zikaba zaragombaga kubarwa hakurikijwe icyo buri wese yashoye. Ni ukuvuga ko ku ruhande rwa NFCS Ltd zari kuba : $25.981.149 : 8,4 = 3.092.994$ Frw naho ku ruhande rwa Gasirikare Evariste zikaba : $25.981.149 - 3.092.994 = 22.888.155$ Frw. [39] Uhagarariye NEXTGEN DEVELOPERS Ltd avuga ko NEXTGEN DEVELOPERS Ltd ntacyo ivuga kuri iyi ngingo. UKO URUKIKO RUBIBONA [40] Impaka kuri iyi ngingo zishingiye ku kumenya uko inyungu NEXTGEN DEVELOPERS Ltd yategetswe kwishyura zigomba kugabanwa hagati ya Gasirikare Evariste na NFCS Ltd. [41] Ingingo ya 2 y'amasezerano y'ubufatanye bw'akazi yo ku wa 29/07/2019 impande zombi zagiranye ivuga ko Gasirikare Evariste nk'umufatanyabikorwa wa NFCS Ltd yemeye kuzana amafaranga yo gukora iryo soko no kubaka mur de soutienement ryatanze na NEXTGEN DEVELOPERS Ltd kugeza

rirangiye, NFCS Ltd igakurikirana imirimo kugeza irangiye, nawe agakurikirana uko amafaranga azakoreshejwe; naho ingingo ya 3 y'ayo masezerano ikavuga ko NFCS Ltd n'uwo bafatanyije iryo soko Gasirikare Evariste bazagabana inyungu zizava muri iryo soko kuri 50% havuyemo ibyakoreshejwe byose kuri iryo soko (dépenses) ndetse n'imisoro ya Leta, buri wese akazafata 50%, isoko ryose rifite agaciro kangana na 220,516,372 FRW. [42] Izi ngingo zombi z'aya masezerano, zisomewe hamwe, zumvikanisha ko ku mafaranga yose akomotse ku isoko rya NEXTGEN DEVELOPERS habanza kuvanwamo ayashowe na Gasirikare (akayagenerwa), hakanavanwamo ayakoreshejwe kuri iryo soko, asigaye yose akaba ariyo agomba kugabanywa impande zombi ku buryo bungana.

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[43] Dosiye y'urubanza igaragaza ko ku rwego rwa mbere Urukiko rw'Ubucuruzi rwemeje ko amafaranga NEXTGEN DEVELOPERS Ltd igomba kwishyura NFCS Ltd ari 109.859.976 Frw y'agaciro k'imirimo y'isoko yakozwe kugeza riseshwe, na 14.098.767 Frw y'inyungu z'ubukererwe bwo kuyishyura. Urubanza rugeze mu bujurire na Gasirikare Evariste amaze kurugobokamo, Urukiko Rukuru rw'Ubucuruzi rwagumishijeho amafaranga amaze kuvugwa haruguru, ahubwo ku ndishyi/inyungu z'ubukererwe zavuzwe haruguru rwongeraho izindi zingana na 11.882.382 Frw zibariwe ku gihe cyari gishize hafiwe urubanza rwo mu Rukiko rw'Ubucuruzi rwari rwajuririye. Ibi bikaba bivuze ko amafaranga agendanye n'isoko ry'imirimo kandi arebwa n'impaka z'igabana hagati ya NFCS Ltd na Gasirikare inkiko zamaze gutegeka NEXTGEN DEVELOPERS Ltd ari 109.859.976Frw + 14.098.767Frw + 11.882.382Frw = 135.841.125 Frw. [44] Ku bijyanye n'uburyo bwo kugabana ayo mafaranga, Urukiko rurasanga, nk'uko bimaze gusobanurwa mu gika cya 42 cy'uru rubanza, mu mafaranga yose 135.841.125 Frw yagombaga kwishyurwa na NEXTGEN DEVELOPERS Ltd haragombaga kubanza gukurwamo 48.000.000Frw y'igishoro kigomba kubanza kugarukira Gasirikare Evariste, 87.841.127 Frw asigaye akaba ari yo nyungu igomba kugabanywa NFCS Ltd na Gasirikare Evariste mu buryo bungana. Ni ukuvuga ko buri wese agomba kugenerwa $87.841.127 \text{ Frw} \times 50\% = 43.920.563 \text{ Frw}$. Mu yandi magambo, kuri 135.841.125 Frw yose hamwe agomba kwishyurwa na NEXTGEN DEVELOPERS Ltd, uruhare rwa NFCS Ltd rurebana gusa n'inyungu, urwo ruhare rukaba rungana na 43.920.563 Frw; naho uruhare rwa Gasirikare Evariste rukaba rungana na 48.000.000 Frw yemejwe ko ari yo yashoye, hakiyongeraho 43.920.563 Frw y'uruhare rwe ku nyungu nyuma yo kuzigabana na NFCS Ltd mu buryo bungana, yose hamwe akaba 91.920.563 Frw. [45] Hashingiwe ku bimaze gusobanurwa haruguru, uru Rukiko rurasanga ibyari byemejwe n'Urukiko mu kugenera NFCS Ltd yonyine inyungu zikomoka ku gukererwa kwishyura kwa NEXTGEN DEVELOPERS Ltd nta shingiro bifite kuko binyuranyije n'igabana riringanije ry'inyungu zose zakomotse ku isoko ryumvikanweho n'impande zombi, bityo ubujurire bwa Gasirikare Evariste bwuririye ku bundi bukaba bufite ishingiro kuri iyi ngingo yo kuba izo nyungu zose zitagomba kwiharirwa na NFCS Ltd yonyine ariko na none bukaba nta shingiro bufite kubirebana no kuba ari we wenyine ugomba kuziharira.

D. Kumenya niba Urukiko Rukuru rwaragombaga gutegeka NFCS Ltd kwishyura Gasirikare Evariste 18% y'indishyi mbonezamusaruro z'amafaranga yose agomba kwishyurwa, kubera kumushora mu manza ku maherere. [46] Mu bujurire bwuririye ku bundi, Gasirikari Evariste n'umwunganira basaba Urukiko rw'Ubujurire gutegeka NFCS Ltd kwishyura Gasirikare Evariste indishyi mbonezamusaruro zingana na 18% y'amafaranga yose agomba kwishyurwa ahwanye na $98.179.988\text{Frw} + 22.888.155\text{Frw} = 121.068.143 \times 18\% = 21.792.265\text{Frw}$, kubera gukomeza kumushora mu manza z'amaherere, aho kumwishyura. [47] Uhagarariye NFCS Ltd yiregura ku ndishyi mbonezamusaruro Gasirikare Evariste asaba avuga ko Urukiko rwazazisuzuma, hanyuma rwasanga azikwiriye rukazitanga.

4 Reba igika cya 29 cy'uru rubanza.

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[48] Uhagarariye NEXTGEN DEVELOPERS Ltd avuga ko ntacyo NEXTGEN DEVELOPERS Ltd ivuga kuri iyi ngingo. UKO URUKIKO RUBIBONA [49] Ingingo ya 150,50 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ujurira agomba kugaragaza icyo anenga urubanza rujuririrwa. Naho ingingo yaryo ya 154, igika cya 4 ikongeraho ko hadashobora gutangwa ikirego gishya ku rwego rw'ubujurire. [50] Mu rubanza rujuririrwa, indishyi Gasirikare asaba zo kumushora mu manza z'amaherere aho kumwishyura, ntizigize ziburanwa. Ahubwo nk'uko bigaragara, ni ubwa mbere kuri uru rwego rw'ubujurire bwa kabiri Gasirikare Evariste aziregeye ; bityo iyi ngingo irebana n'izi ndishyi ikaba itagomba kwakirwa ngo isuzumwe kuko yatanze mu buryo bunyuranyije n'amategeko. E. Ibyerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa n'ababuranyi [51] Gasirikare Evariste n'umwunganira basaba Urukiko rw'Ubujurire gutegeka NFCS Ltd kumwishyura 1.300.000Frw akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza, kuko NFCS Ltd aho kumwishyura yatanze ikirego cy'ubujurire kugira ngo akomeze asiragire mu nkiko, bigatuma yariyambaje umunyamategeko wo kumuburanira. [52] Uhagarariye NFCS Ltd avuga ko amafaranga asabwa na Gasirikare Evariste nta shingiro afite. [53] Uhagarariye NEXTGEN DEVELOPERS Ltd avuga ko nta muburanyi NEXTGEN DEVELOPERS Ltd ifite icyo isaba nk'uko nayo nta wagize icyo ayisaba kuri uru rwego. UKO URUKIKO RUBIBONA [54] Ingingo ya 111 y'Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikirwa ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. (...) kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'ayo ikirego cy'iremezo cyaba kitakiriwe. [55] Urukiko rurasanga n'ubwo umuburanyi yemerewe gushingira ku ngingo y'itegeko yibukijwe haruguru akemererwa kuregera ko Urukiko rutegeka undi baburana kumwishyura bene aya mafaranga y'ibyo yatakaje ku rubanza, kuyagenerwa byo ntibishidikanywaho ko bigomba gushingira mbere na mbere ku kuba atsinda urubanza ayasabamo ku zindi ngingo z'ikiregerwa cy'ibanze. [56] Muri uru rubanza ubujurire bwa NFCS Ltd yatanze ihanganyemo na Gasirikare Evariste Urukiko rwasanze bugomba guhabwa ishingiro nk'uko byasobanuwe

haruguru, naho ubwa Gasirikare Evariste bwabwuriyeho buhabwa ishingiro gusa ku kuba NFCS Ltd itagomba

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kwiharira inyungu z'ubukererwe zaciwe NEXTGEN DEVELOPERS Ltd ariko na none ntibwahabwa ishingiro ku byari byasabwe ko Gasirikare Evariste ari we ukwiye kuziharira. [57] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa na Gasirikare Evariste nta shingiro agomba guhabwa, ko buri muburanyi kuri uru rwego agomba kwirengera amafaranga y'ibyo yatanze ku rubanza. [58] Urukiko rurasanga ahubwo rugomba kwibutsa ko ku bijyanye n'amafaranga y'ibigenda ku rubanza, ku rwego rwa mbere Urukiko rw'Ubucuruzi rwategetse NEXTGEN DEVELOPERS Ltd guha NFCS Ltd 500.000 Frw y'igihembo cya Avoka, 100.000 Frw y'ikurikiranarubanza na 20.000Frw y'igarama ryatanzwe, naho ku rwego rw'ubujurire bwa mbere Urukiko Rukuru rw'Ubucuruzi rutegeka NEXTGEN DEVELOPERS Ltd guha NFCS Ltd andi 600.000 Frw agizwe na 500.000Frw y'igihembo cya Avoka na 100.000 Frw y'ikurikiranarubanza. Ibi bikaba bivuze ko amafaranga yose hamwe y'ibyagenze kuri uru rubanza ku nzego zose NEXTGEN DEVELOPERS Ltd yategetswe kwishyura NFCS Ltd angana na 1.220.000 Frw agizwe na 1.000.000 Frw y'ibihembo bya Avoka, 200.000 Frw y'ikurikiranarubanza na 20.000 Frw y'igarama ryatanzwe. III. ICYEMEZO CY'URUKIKO [59] Rwemeje ko ubujurire bwa NFCS Ltd bufite ishingiro kuri byose naho ubujurire bwa Gasirikare Evariste bubwuriyeho bukagira ishingiro kuri bimwe ; [60] Rwemeje ko nk'uko byemejwe n'Urukiko Rukuru rw'Ubucuruzi mu rubanza rwajuririwe amafaranga NEXTGEN DEVELOPERS Ltd igomba kwishyura angana na 135.841.125 Frw nk'uko byasobanuwe haruguru ; [61] Rwemeje ko mu mafaranga amaze kuvugwa mu gika kibanziriza iki 43.920.563 Frw ari yo NEXTGEN DEVELOPERS Ltd igomba kwishyura NFCS Ltd naho 91.920.563 Frw ikayishyura Gasirikare Evariste nk'uko byasobanuwe haruguru ; [62] Rutegetse NEXTGEN DEVELOPERS Ltd kwishyura NFCS Ltd 43.920.563 Frw ; [63] Rutegetse NEXTGEN DEVELOPERS Ltd kwishyura Gasirikare Evariste 91.920.563 Frw ; [64] Rwibukije NEXTGEN DEVELOPERS Ltd kwishyura NFCS Ltd 1.220.000 Frw y'ikurikiranarubanza, ibihembo bya Avoka n'igarama ry'urubanza ku nzego zabanje yategetswe n'Urukiko mu rubanza rwajuririwe ; [65] Ruvuze ko amagarama y'urubanza yatanzwe na NFCS Ltd kuri uru rwego ahwanye n'ibyarukozwemo.

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