

RWANDA / JUDGMENT

# NTAWUGAYUMUGABO v. BRALIRWA Ltd

RCOMA 00423/2022/HCC

## COURT

Commercial High Court

## DECIDED

31 July 2023

## CASE / FILE NUMBER

RCOMA 00423/2022/HCC

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

## NTAWUGAYUMUGABO v. BRALIRWA Ltd

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2023-07-31
- Case/document no.: RCOMA 00423/2022/HCC
- Collection: Commercial High Court

### Text

#### Page 1

NTAWUGAYUMUGABO v. BRALIRWA Ltd [Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 00423/2022/HCC (Kibuka, P.J.) 31 Nyakanga 2023 ] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – force majeure – Umuyaga n'imvura bisanzwe – Umuyaga n'imvura bisanzwe ntibyafatwa mu rwego rw'ibiza kuko imvura n'umuyaga byose bitakwitwa impamvu zitunguranye(force majeure). Ntibyafatwa ko habaye ibiza mu gace kamwe iyo bitemejwe na servisi za meteo mu gihugu, n'iyi kandi nta cyemezo cyangwa amakuru ya Ministeri ishinze ibikorwa by'ubutabazi bibigaragaza. Incamake y'ikibazo: Uwitwa Ntawugayumugabo Vedaste yareze BRALIRWA Plc mu Rukiko rw'Ubucuruzi avuga ko bagiranye amasezerano yiswe lease contract, yari agamije gushyira icyapa cyamamaza ibikorwa byayo ku nzu ye, ariko ko ikibazo cyabaye ari uko BRALIRWA Plc itubahirije inshigano yayo yo gufata neza icyo cyapa ngo ikizirike neza, bituma kigwa bikangiza inzu ye, ayisabye kwishyura ibyangiritse ntiyabikora, bituma ayirega mu Rukiko rw'Ubucuruzi ayisaba kumwishyura amafaranga angana na 8,210,500frw y'ibyangiritse, avuga byagaragajwe n'umuhanga yiyambaje. Urukiko rw'Ubucuruzi rushingiye ku bimenyetso rwiboneye ku mafoto, rugereranyije ibyangiritse byose, rusanga BRALIRWA Plc yamwishyura amafaranga yose hamwe angana na 3.040.000frw. Ntawugayumugabo Vedaste

ntiyishimiye imikirize y'urwo rubanza, arajuririra asaba ko BRALIRWA Plc yategukwa kumwishyura 6,847,480frw yo gusana inzu yagijwe n'ibyapa byabo byo kwamamaza n'indishyi zitandukanye, ikamwishyura 8,201,500Frw ikanamuha indishyi z'akababaro. BRALIRWA Plc yireguye ivuga ko ubujurire nta shingiro bwahabwa, kandi ko nayo itishimiye imikirize y'urubanza inenga Urukiko rw'Ubucuruzi kuba rutaritaye ku kuba ibyabaye byari cas de force majeure kubera gusenyuka kw'inzu byatewe n'impamvu itayiturutseho kuko byatewe n'ibiza by'imvura nyinshi idasanzwe yari mu gihugu, bityo ko nta ndishyi uwayireze yahabwa. Ntawugayumugabo avuga ko BRALIRWA Plc itubahirije amasezerano bagiranye zo gufata neza ibijyanye n'icyapa kiyamamariza ndetse no kwirengera ibyakwangirika byose, avuga kandi ko impamvu zo kudafata neza icyapa cyayo ngo bakizirike mu buryo bukomeye aribyo byateye guhanuka kwacyo maze cyangiza mu buryo bukomeye inzu ndetse n'ibintu biyirimo. BRALIRWA yiregura nanone ivuga ko isanga amafaranga Ntawugayumugabo asaba atari ayo gusana gusa ahubwo ari nk'ayo kubaka inzu bushya nabwo hashyirwaho ibikoresho bihenze itari ifite, ndetse ko nta n'umuhanga uri ku rutonde rw'abahanga wabyemeje wanabirahiriye, bityo ko asaba urukiko gukuraho n'ayo mafaranga make rwari rwamugeneye kuko kwangirika kw'inzu kwatewe n'ibiza bidasanzwe. Page 1 | 12

## Page 2

Incamake y'icyemezo: 1. Umuyaga n'imvura bisanzwe ntibyafatwa mu rwego rw'ibiza kuko imvura n'umuyaga byose bitakwitwa impamvu zitunguranye(force majeure). Ntibyafatwa ko habaye ibiza mu gace kamwe iyo bitemejwe na serivisi za meteo mu gihugu, n'ayo kandi nta cyemezo cyangwa amakuru ya Ministeri ishinze ibikorwa by'ubutabazi bibigaragaza.

2. Uwamanitse icyapa cyamamaza afite ishingano zo gufata neza no kwita ku bijyanye n'icyapa kiyamamariza ndetse no kwirengera ibyakwangirika byose niba aruko amasezerano abiteganyaga. Ubujurire bufite ishingiro. Amategeko yashyirwaho: 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 12. Nta manza zifashishijwe. Urubanza I.IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi, Ntawugayumugabo Vedaste arega BRALIRWA Plc ko ku wa 24/08/2020 bagiranye amasezerano yiswe «lease contract», yari kumara imyaka itatu uhaye 2019 kugeza 2023, agamije gushyira icyapa kinini cyamamaza ibikorwa byayo ku nzu ye izwi ku mazina ya Best Bar and Muhira Bar, bumvikana ko BRALIRWA Plc izishingira ibijyanye n'ibiciro byo gusiga amarangi, installation y'icyapa, kugifata neza no kwirengera ibyakwangirika byose bitewe no kutagifata neza no kutacyitaho, ko ikibazo cyabaye ari uko BRALIRWA Plc itubahirije inshingano yayo zo gufata neza icyapa ngo ikizirike neza, bikaza kugwa, bikangiza inzu ye, ayisabye kwishyura ibyangiritse ntiyabikora, akaba asaba BRALIRWA Plc kumwishyura 8,210,500 frw y'ibyangiritse ku nzu byagaragajwe n'umuhanga yiyambaje. [2] Mu Rukiko rw'Ubucuruzi, BRALIRWA Ltd yireguye yemera amasezerano yagiranye na Ntawugayumugabo Vedaste yo gushyira icyapa cyamamaza ku nzu ye y'ubucuruzi, n'inshingano za buri ruhande nk'uko urega yabisobanuye, ikavuga ko yabuhirije amasezerano nk'uko bumvikanye kuko nta kindi kibazo yigeze igirana na we. BRALIRWA

ikomeza ivuga ko mu ngingo ya 11 y'amasezerano, bumvikanye ko mu gihe habaye impamvu ntagobotorwa kandi zidaturutse ku bushake bwa muntu, ayo masezerano atakubahirizwa, ko inzu ya Ntawugayumugabo Vedaste yangiritse kubera ibiza bikomeye byatewe n'imvura nyinshi n'umuyaga mwinshi, bityo rero idakwiye kuyibibaza kuko nta ruhare yagize mu kwangirika kwayo cyane ko na mbere yagombaga kuyimenyesha icyo yabonaga itakoze cyari kumuteza ibyago, igasaba ko ibyo Ntawugayumugabo Vedaste aregera bitahabwa ishingiro. [3] Urukiko rw'Ubucuruzi rwasuzumye ibyerekeranye n'indishyi zikomoka ku masezerano y'icyapa zisabwa zakwemezwa, rushingiye ku bimenyetso byatanze, rusanga mu masezerano Ntawugayumugabo Vedaste yaragiranye na BRALIRWA Plc ku wa 24/08/2020 yo gushyira P a g e 2 | 12

### Page 3

icyapa ku nzu ye, mu ngingo ya 5.3, rusanga kuba icyapa cyaraguye kikangiza igisenge cy'inzu ya Ntawugayumugabo Vedaste cyari kimanitseho na plafond ya yo, BRALIRWA Plc yakwirengera ingaruka zabyo ikishyura ibyangiritse nk'uko yabiyemeje mu masezerano yayibereye itegeko. [4] Ku by'ibiza bivugwa na BRALIRWA, Urukiko rw'Ubucuruzi rwasanze nta shingiro bifite kuko kuba icyapa cyaraguye ku bw'umuyaga n'imvura bisanzwe, bitari mu rwego rw'ibiza, BRALIRWA yari kuba yarateguye ko icyapa kimanitse hejuru y'inzu kitazabura guhura n'imvura n'umuyaga, kandi imvura n'umuyaga byose bikaba bitakwitwa ibiza, na cyane ko serivisi za metewo BRALIRWA yiyambaje itemeje ko ibyabaye ari ibiza, bityo guseniyuka cyangwa kugwa kw'icyapa cyo ku nzu imwe mu Mudugudu, bidahagije ko bihita bifatwa nk'ibyatewe n'ibiza. [5] Mu kumenya agaciro k'ibyangiritse, Urukiko rw'Ubucuruzi rushingiye ku bimenyetso rwiboneye ku mafoto, agaragaza ko igisenge cyose kitangiritse uretse amabati icyapa cyabaga cyaguyeho gusa, plafond nayo itarangiritse yose, ndetse nta n'Urukuta rwaguye uretse agace gato kari hejuru y'amabati aho ibyuma by'ibyapa byari bifashe, rusanga BRALIRWA Plc yakwishyura 2.500.000 frw, runayitegeko kwishyura amafaranga 540.000 y'indishyi z'igihembo cy'avoka n'ikurikiranarubanza, yose hamwe akaba 3.040.000 frw. [6] Ntawugayumugabo Vedaste ntiyishimiye iyo mikirize, ajuririra urwo rubanza asaba ko BRALIRWA Plc yategekwa kumwishyura 6,847,480 frw yo gusana inzu yagijwe n'ibyapa byabo byo kwamamaza n'indishyi zitandukanye, ikamwishyura 8,201,500 Frw kubera indi nzu ye yashenywe, ikanamuha indishyi z'akababaro n'amafaranga yari gukodesha inzu yasenyutse mu gihe cy'amezi ane, igihembo cy'avoka n'ikurikiranarubanza. [7] BRALIRWA Plc yireguye ku bujirire ivuga ko nta shingiro bwahabwa, nayo itishimiye imikirize y'urubanza, ko inenga Urukiko rw'Ubucuruzi kuba rutaritaye ku kuba ibyabaye byari "cas de force majeure" nk'uko yabisobanuye na mbere, isaba ko nta ndishyi Ntawugayumugabo Vedaste yahabwa, isaba ko yahabwa igihembo cy'avoka n'ikurikiranarubanza yari yasabye ku rwego rwa mbere, ikanabihabwa mu bujirire. [8] Muri uru rubanza hasuzumwe icyatumye icyapa cyo kwamamaza cya BRALIRWA Plc cyari kimanitse ku nzu ya Ntawugayumugabo Vedaste kigwa, hasuzumwe niba Ntawugayumugabo Vedaste yahabwa amafaranga ahwanye na 6,847,480 Frw yo gusana inzu yangijwe n'icyapa cya BRALIRWA; hasuzumwe niba BRALIRWA Plc yategekwa kwishyura 8,201,500 Frw yo gusana inzu ya Ntawugayumugabo Vedaste yashenywe n'icyapa cyayo kuwa 20/03/2022, hasuzumwe niba

BRALIRWA yategekwa gutanga indishyi, hanasuzumwe ikibazo cy'amafaranga y'ikurikiranarubanza n'igihembo cy'avoka bisabwa n'impande zombi. II.ISESENGURA RY'IBIBAZO BIRI MU RUBANZA A. Ku kibazo kijyanye no kumenya icyatumye icyapa cyo kwamamaza cya BRALIRWA Plc cyari kimanitse ku nzu ya Ntawugayumugabo Vedaste kigwa P a g e 3 | 12

## Page 4

[9] BRALIRWA Plc ivuga ko inzu ya Ntawugayumugabo Vedaste na mbere hose yariho icyo cyapa kandi kitigeze kiyisenya, ko ahubwo inzu yashenywe n'ibiza by'imvura nyinshi idasanzwe yari mu gihugu kandi ibyo ntibyatewe n'ubushake bwayo nta n'ubwo Ntawugayumugabo Vedaste yigeze na rimwe ayigaragariza ko hari ibyo itatunganyije nko gufata neza icyo cyapa k'uburyo nawe yabonaga ko cyamwangiriza ngo yange kubikora, ko ahubwo kwangirika kw'inzu ye kwatewe n'impamvu itarayiturutseho kuko byatewe n'ibiza nk'uko n'umuhesha w'inkiko w'umwuga Me Musoni Godefrey wahageze bikiba wabyemeje kuwa 23/01/2022, cyane ko na mbere hose ibyo biza bitarabaho inzu ntacyo yabaye. [10] Ntawugayumugabo Vedaste avuga ko BRALIRWA Plc itubahirije amasezerano bagiranye cyane cyane ibyari mu nshingano yayo nkuko bigaragazwa muri clause ya 5.3 y'amasezerano, iteganya ko BRALIRWA ifite ishingano zo gufata neza ibijyanye n'icyapa kiyamamariza ndetse no kwirengera ibyakwangirika byose bitewe no kutagifata neza no kutabyitaho (The lessee shall maintain the advertising structure in good working order for its intended use; and be responsible for any damages that the structure shall cause), ko impamvu zo kutagifata neza ngo bakizirike mu buryo bukomeye aribyo byateye guhanuka kwacyo.

UKO URUKIKO RUBIBONA [11] Ingingo ya 64 y'itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ibi bikurikira: "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko, agomba kubahirizwa nta buriganya" [12] Ingingo ya 12 y'Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryavugururwe kugeza ubu iteganya ibi bikurikira: "Urega agomba kugaragaza ibimenyetso by'ibyo aregera, iyo abibuze, uwarezwe aratsinda. Naho uvuga ko atagitegetswe gukora icyo yategekwa gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho, iyo abiburiye ibimenyetso, uwo baburana aramutsinda". [13] Ingingo ya 3 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ibi bikurikira: "buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana." [14] Urukiko rusanga kuba BRALIRWA Plc ivuga ko inzu ya Ntawugayumugabo Vedaste yashenywe n'ibiza by'imvura nyinshi idasanzwe yari mu gihugu, n'umuyaga mwinshi, kuba ingingo ya 12 y'Itegeko N°12/2018 yasobanuwe haruguru iteganya ko uvuga ko atagitegetswe gukora icyo yategekwa gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho, iyo abiburiye ibimenyetso, uwo baburana amutsinda, kuba ingingo ya 3 y'Itegeko N°15/2004 yasobanuwe haruguru iteganya ko buri muburanyi atanga ibimenyetso by'ibyo aburana, nk'uko Urukiko rw'Ubucuruzi mu gika cya 9 rwabisobanuye ko ibyabaye atari Ibiza

muri aya magambo: “rusanga kuba icyapa cyaraguye kubwo umuyaga n’imvura bisanzwe, bitari mu rwego rw’ibiza, BRALIRWA yari kuba yitegura ko ibyapa bimanitse hejuru y’inzu bitazabura guhura n’imvura n’umuyaga, kandi imvura n’umuyaga byose bitakwitwa ibiza, na P a g e 4 | 12

## Page 5

servisi za meteo urega yiyambaje itaremeje ko ibyabaye ari ibiza, nta cyemezo cyangwa amakuru ya Ministeri ishinze ibikorwa by’ubutabazi bigaragaza ko habayeho ibiza muri ako gace, nta n’ibyangiritse ku yandi mazu y’abaturanyi yo muri uwo Mudugudu kugira ngo byumvikane ko byari ibiza, guseniyuka cyangwa kugwa kw’ibyapa byo ku nzu imwe mu Mudugudu bikaba bidahagije ko bihita bifatwa ko byatewe n’ibiza”, inzu ya Ntawugayumugabo Vedaste itarashenywe n’ibiza bigizwe n’imvura nyinshi n’umuyaga mwinshi kuko BRALIRWA Plc itabasha kuvugurura ibyavuzwe n’Urukiko rwa mbere igaragaza ko serivisi za metewo zagaragaje ko imvura yaguye cyangwa umuyaga wahahushye aho inzu yashenyutse ari ibiza, igaragaza ko mu Mudugudu iyo nzu yubatsemo hari izindi nzu zasenyutse cyangwa se ikindi cyapa cyayo cyari ku yindi nzu hafi aho cyaguye kubera iyo mvura n’uwo muyaga. [15] Urukiko rusanga kuba Ntawugayumugabo Vedaste avuga ko inzu ye yashenywe no kuba BRALIRWA Plc itarubahirije amasezerano bagiranye cyane cyane ibyari mu nshingano yayo nkuko bigaragazwa muri clause ya 5.3 y’amasezerano, iteganya ko BRALIRWA ifite ishingano zo gufata neza ibijyanye n’icyapa kiyamamariza ndetse no kwirengera ibyakwangirika byose bitewe no kutagifata neza no kutabyitaho (The lessee shall maintain the advertising structure in good working order for its intended use; and be responsible for any damages that the structure shall cause), kuba ingingo ya 64 y’itegeko n° 45/2011 yasobanuwe haruguru iteganya ko amasezerano akozwe mu buryo bukurikije amategeko, aba itegeko hagati y’abagiranye, kuba ingingo ya ingingo ya 12 y’Itegeko N°12/2018 yasobanuwe haruguru iteganya ko urega agomba kugaragaza ibimenyetso by’ibyo aregera, iyo abibuze, uwarezwe aratsinda, kuba ingingo ya 3 y’Itegeko N°15/2004 yasobanuwe haruguru iteganya ko buri muburanyi atanga ibimenyetso by’ibyo aburana, kuba muri dosiye harimo amasezerano hagati ya BRALIRWA Plc na Ntawugayumugabo Vedaste yo ku wa 24/08/2020, agaragaza mu ngingo ya 5.3 ko BRALIRWA ifite ishingano zo gufata neza ibijyanye n’icyapa kiyamamariza ndetse no kwirengera ibyakwangirika byose bitewe no kutagifata neza no kutabyitaho muri aya magambo: “The lessee shall maintain the advertising structure in good working order for its intended use; and be responsible for any damages that the structure shall cause”, ibyo Ntawugayumugabo Vedaste avuga ko icyapa BRALIRWA Plc yari yarashyize ku nzu ye cyagushijwe no kutagifata neza nk’uko byari biteganyijwe mu masezerano bifite ishingiro nk’uko byasobanuwe n’Urukiko rw’Ubucuruzi mu gika cya 8 n’icya 9 by’urubanza rwajuriwe. B. Ku kibazo cyo kumenya niba Ntawugayumugabo Vedaste yahabwa amafaranga ahwanye na 6,847,480 Frw yo gusana inzu yangijwe n’icyapa cya BRALIRWA [16] Ntawugayumugabo Vedaste avuga ko mu gika cya 10 cy’icarubanza Urukiko rwavuze ko rudashobora gushingira kuri devis yo gusana inzu yatanze kuko itagaragaza niba ariyo gusana ibyangijwe n’icyapa, akaba asanga ari ukwirengagiza nkana ibimenyetso yarushyikirije cyane ko nta kindi kibazo inzu ye yari ifite ku buryo yari gusabirwa Devis yo kuyisana, kandi uretse n’ibyo yatanze n’icyangombwa cyo gusaba gusana kubera inzu yasenywe n’icyapa cya BRALIWA, bikaba bitangaje cyane kubona

umucamanza avuga ko yagennye amafaranga mu bushishozi bwe kandi hari inyandiko y'umuhanga igaragaza ibyangijwe n'amafaranga agomba kubisana, ibi akaba asanga ari akarengane gakomeye yagiriwe kuko amafaranga umucamanza yegennye atari ayo gusana ibyangijwe n'icyapa cya Bralirwa. P a g e 5 | 12

## Page 6

[17] Ntawugayumugabo Vedaste avuga ko ikindi ari uko BRALIRWA Plc itubahirije amasezerano bagiranye cyane cyane ibyari mu inshingano yayo nkuko bigaragazwa muri clause ya 5.3 y'amasezerano, iteganya ko BRALIRWA ifite ishingano zo gufata neza ibijyanye n'icyapa kiyabamamariza ndetse no kwirengera ibyakwangirika byose bitewe no kutagifata neza no kutabyitaho (The lessee shall maintain the advertising structure in good working order for its intended use; and be responsible for any damages that the structure shall cause), ko impamvu zo kutagifata neza ngo bakizirike mu buryo bukomeye aribyo byateye guhanuka kwacyo maze cyangiza mu buryo bukomeye inzu ndetse n'ibintu biyirimo, akaba ariho yahise abasaba mu bwumvikane ko bamusanira inzu ku giciro cya 6.847.480 Rwf nkuko byagaragajwe n'umuhanga mu by'ubwubatsi, ko ndetse yiyamabaje n'umunyamategeko abandikira ibaruwa ariko biba ibyubusa, BRALIRWA irinangira ahubwo isubiza ibaruwa ivuga ko ibyabaye ari force Majeure kubera imvura yaguye ku itariki ya 20/01/2022 nkuko ingingo ya 11.3 y'amasezerano iteganya ko impande zombi ntacyo zaryozwa, bityo asanga ibyo BRALIRWA Plc ivuga nta shingiro bifite kuko kuba batarigeze bazirika icyapa cyabo ngo gikomere hakurikijwe uburemere bwacyo, umuyaga ukagihanura kikagwira inzu, asanga ari BRALIRWA Plc itarubahirije ibyo amasezerano yateganyaga mu ngingo ya 5.3 yavuzwe haruguru, no kuba yarinangiye ikanga kwishyura amafaranga 6.847.480 yagaragajwe n'umuhanga mu by'ubwatsi, asaba Urukiko ko rwayitegeka kumwishyura hamwe n'izindi ndishyi zo gushorwa mu manza rushingiye ku ingingo ya 64 y'itegeko No 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano mu Rwanda iteganya ko "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye, kandi ko agomba kubahirizwa ntaburiganya" n'ingingo ya 80 y'Itegeko yavuze haruguru iteganya ko "Iyo igihe cyo gukora ibisabwa mu masezerano kigeze, kutabikora bifatwa nko kwica amasezerano". P a g e 6 | 12

## Page 7

[18] BRALIRWA Ltd yiregura ivuga ko iyi mpamvu y'ubujurire nta shingiro yahabwa kubera inzu ya Ntawugayumugabo Vedaste itasenywe n'icyapa cyo kwamamaza ibikorwa bya yo cyari ku nzu ye kuko na mbere hose icyo cyapa cyari kiyiraho kandi kitigeze kiyisenya, ko ahubwo inzu yashennye n'ibiza by'imvura nyinshi idasanze yari mu gihugu, kandi ko ibyo bitatwe n'ubushake bwayo, na Ntawugayumugabo Vedaste atigeze na rimwe ayigaragariza ko hari ibyo itatunganyije nko gufata neza icyo cyapa ku buryo nawe yabonaga ko cyamwangiriza ngo yange kubikora, ko ahubwo kwangirika kw'inzu ye kwatewe n'impamvu itarayiturutse ho bitewe n'ibiza nk'uko n'umuhesha w'inkiko w'umwuga, Me Musoni Godefrey wahageze bikiba yabyemeje ku wa 23/01/2022, cyane ko na mbere hose ibyo biza bitarabaho inzu ntacyo yabaye. [19] BRALIRWA Ltd ivuga ko ibyo byose yabigaragarije

Urukiko rw'Ubucuruzi ariko rurabyirengagiza, runabirengaho, rugenera Ntawugayumugabo Vedaste indishyi zingana na 2,500,000Frw kandi rwamaze no kugaragaza kuri page ya 3 mu gika cya 10 cy'urubanza rujuririrwa ko amafaranga asaba atari ayo gusana ahubwo ari nk'ayo kubaka inzu bushya nabwo hashyirwaho ibikoresho bihenze itari ifite, ndetse nta n'umuhanga uri ku rutonde rw'abahanga wabyemeje wanabirahiriye, akumva n'ayo mafaranga make Urukiko rwari rwamuhaye yakurwaho kuko kwangirika kw'inzu kwatewe n'ibiza bidasanzwe. UKO URUKIKO RUBIBONA [20] Urukiko rusanga kuba Ntawugayumugabo Vedaste avuga ko mu gika cya 10 cy'icarubanza Urukiko rwavuze ko rudashobora gushingira kuri devis yo gusana inzu yatanze kuko itagaragaza niba ariyo gusana ibyangijwe n'icyapa, asanga ari ukwirengagiza ibimenyetso yarushyikirije, kuba mu ngingo ya 12 y'Itegeko N°22/2018 yasobanuwe haruguru iteganya ko urega agaragaza ibimenyetso by'ibyo aregera yabura, uwarezwe agatsinda, ibyo Ntawugayumugabo Vedaste avuga nta shingiro bifite kuko mu gika cya 10 cy'urubanza yajuririye, Urukiko rwagaragaje impamvu rutatanze amafaranga yo gusana yagaragajwe muri devis yatanze kuko ibyo igaragara ari nk'iyi gusana inzu yose, kandi yagombye kuba ari iyi gusana ibyangijwe n'icyapa cya BRALIRWA Plc, byongeye kandi devis ikaba yarakozwe n'umugenagaciro utari ku rutonde rwa Banki Nkuru y'igihugu, utarayiherekereje indahiro, avuga ko azitanze mu bushishozi agendeye kubyo yabonye mu iperereza n'amafoto y'ibyangiritse, ibyo byashingiweho ku rwego rwa mbere, Ntawugayumugabo Vedaste akaba atarabivugurujye. [21] Kuri iyi ingingo, Urukiko rukaba rwemeranywa n'ibyasobanuwe mu gika cya 10 cy'urubanza rwajuririye nk'uko gisobanuye muri aya magambo: "Kubyangiritse n'ingano y'indishyi zisabwa, Urukiko rusanga Ntawugayumugabo Vedaste asaba indishyi za 8,210,500 frw kubyangiritse ashingiye kuri devis estimatif et quantitatif des travaux de rehabilitation yakozwe na Twagirayezu Vedaste, Umuyobozi wa CHA Ltd, nyamara iyi devis idasobanuye ko ari igenagaciro ry'ibyangijwe n'ibyapa, ahubwo ari igenagaciro (devis) rijyanye no gusana inzu, kandi mu gusana hasanwa ibyangiritse ndetse n'ibishaje, hakaba hanyongeramo ibindi bitarimo mbere, hashosbora gusimbuzwa ibihenda kurusha ibyariho mbere, ndetse iriya sosiyete n'umuyobozi wabo batagaragazwa nk'abari mu bagenagaciro bemewe na BNR, nta ndahiro y'umugenagaciro ko ibyo ari agaciro k'ibyangiritse, bituma ririrya genagairo ridafatwa nk'agaciro nyako k'ibyangiritse, nubwo ryaherwaho, ariko agaciro kagenwa mu bushishozi bw'Urukiko, hagendewe no ku byo Urukiko rwiboneye n'amafoto yafashwe mbere agaragaza ko P a g e 7 | 12

## Page 8

igisenge cyose kitangiritse uretse amabati icyapa cyabaga cyaguyeho gusa, plafond nayo itarangiritse yose, ndetse nta n'urukuta rwaguye, uretse agace gato ko hejuru y'amabati aho ibyuma by'ibyapa byari bifashe, bityo BRALIRWA Plc yakwishyura 2.500.000 frw". [22] Urukiko rusanga kuba BRALIRWA Plc ivuga ko itemeranya n'icyemezo cy'Urukiko rw'Ubucuruzi mu gika cya 10 kuko yategetswe gutanga amafaranga y'ibyangijwe n'icyapa cyayo kandi, nta kosa ifite kuko byatewe n'ibiza ishingiyeye ku ngingo ya 11 y'masezerano yagiranye nta Vedaste Ntawugayumugabo, kuba mu ngingo ya 64 y'Itegeko N°45/2011 yasobanuwe haruguru iteganya ko

amasezerano aba itegeko hagati y'abagiranye no ku ngingo ya 12 y'Itegeko N°12/2018 yasobanuwe haruguru iteganya ko uvuga ko atagitegetswe gukora icyo yategekwa gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho,ko iyo abiburiye ibimenyetso, uwo baburana amutsinda, kuba kandi ingingo ya 3 y'Itegeko N°15/2004 yasobanuwe haruguru iteganya ko buri muburanyi atanga ibimenyetso by'ibyo aburana, ibyo BRALIRWA Plc ivuga nta shingiro byahabwa kuko ntabimenyetso by'uko habaye ibiza nk'uko Urukiko rw'Ubucuruzi rwabisobanuye mu gika cya 8n'icya 9 by'urubanza rwajuririwe, kandi byemejwe ku kibazo cyambere cyasuzumwe haruguru. C. Ku kibazo cyo kumenya niba BRALIRWA Plc yategekwa kwishyura 8,201,500 yo gusana inzu ya Ntawugayumugabo Vedaste yasenywe n'icyapa cyayo kuwa 20/03/2022 [23] Ntawugayumugabo Vedaste avuga ko yajuriye kuko mu rubanza rujuririrwa umucamanza ntacyo yavuze ku bijyanye n'icyapa cyasenywe inzu ye ya kabiri, kandi yari yabiregeye akaba yarabyirengije na cyane ko yageze no kuri terrain abona ko ari amazu abiri atandukanye yashenywe n'ibyapa bya Bralirwa byari biyamanitswe ho, akaba ariyo mpamvu asaba Urukiko Rukuru rw'Ubucuruzi gutegaka BRALIWA gutanga amafanga yo gusana inzu ye yasenywe n'icyapa cyabo tariki ya 20/03/2022, cyaguye gisenya inzu ye mu buryo bukomeye, ko kandi ibyo byapa byagushijwe n'uko byamanitswe nabi nk'uko byemejwe n'Urukiko, BRALIRWA itabikomeje, akaba asaba Urukiko gutegeka BRALIRWA kumuha 8,201,500 frw yo gusana inzu ye ya kabiri yashenywe nk'uko bigaragazwa na devis yo gusana iyo nzu yakozwe n'umuhanga. [24] BRALIRWA Ltd yiregura isaba ko n'iyi mpamvu y'ubujurire nta shingiro yahabwa kuko nk'uko yabisobanuye inzu ya Ntawugayumugabo Vedaste itashenywe n'icyapa cya yo kuko n'ubundi icyo cyapa cyari gisanzweho, ko ahubwo guhanuka kw'icyapa kwatewe n'ibiza by'imvura nyinshi idasanzwe yariho nk'uko ikigo cy'itaganyagihe cyabigaragaje ndetse n'umuhesha w'inkiko w'umwuga Me Musoni Godefrey wahageze yabyemeje ku wa 23/01/2022, bityo BRALIRWA Plc ikaba idakwiye kugira indishyi yacibwa, ko uvuga ko amafaranga 8,201,500Frw urukiko rubanza rutayavuzeho, atari byo kuko bigaragara ko yasuzumwe nk'uko biboneka mu gika cya 6 n'icya 10 kuri page ya 2-3 y'urubanza rujuririrwa, ari naho Urukiko rwafatiye icyemezo cyo kugena indishyi zingana na 2,500,000Frw mu bushishozi bwawo kubera inenge nyinshi zagagarajwe z'ibyashingirwagaho hasabwa izo ndishyi, bityo ikaba isaba ko n'ayo mafaranga yatanze yakurwaho.

UKO URUKIKO RUBIBONA [25] Ingingo ya 6 y'Itegeko N°22/2018 ryavuzwe haruguru iteganya ibi bikurikira: "Ikiburanwa kigenwa n'ibisabwa na buri muburanyi. Ibisabwa bigaragarira mu myanzuro iregera urukiko n'imyanzuro yo kwiregura, bigashimangirwa burundu mu nama ntegarubanza ku P a g e 8 | 12

## Page 9

manza iteganyijwemo. Mu iburanisha, umuburanyi ntashobora guhindura ikiburanwa ababuranyi bose batabyemeye. Ikiburanwa ntigishobora guhindurwa mu rukiko rwajuririwe. icyakora, ikiburanwa gishobora guhindurwa n'ibirego by'imigereka iyo bifitanye isano ihamye n'ibyo ababuranyi basaba." Ingingo ya 154 igika cya mbere y'Itegeko N°22/2018 ryavuzwe haruguru iteganya ibi bikurikira: "Ku rwego rw'ubujurire ntishobora gutangirwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanze mu rukiko rw'ubujurire". [26] Urukiko rusanga, Ntawugayumugabo Vedaste avuga ko

yajuriye kuko mu rubanza rujuririrwa umucamanza ntacyo yavuze ku bijyanye n'icyapa cyasenye inzu ye ya kabiri, kandi yari yabiregeye akaba yarabyirengije na cyane ko yageze no kuri terrain abona ko ari amazu abiri atandukanye yashenywe n'ibyapa bya BRALIRWA byari biyamanitswe ho, akaba ariyo mpamvu asaba Urukiko gutegeka BRALIRWA kumuha 8,201,500 frw yo gusana inzu ye ya kabiri yashenywe nk'uko bigaragazwa na devis yo gusana iyo nzu yakozwe n'umuhanga. [27] Urukiko rusanga mu Rukiko rw'Ubucuruzi, Vedaste Ntawugayumugabo yaratanze ikirego asaba Urukiko gutegeka BRALIRWA PLC kwishyura amafaranga 6,847,480 frw yo gusana inzu yangijwe n'icyapa cyabo cyo kwamamaza; n'Indishyi zitandukanye, mu bisobanuro n'ibimenyetso yatanze mu kirego cye agaragaza devis de reparation ebyiri, iyo ku wa 24/01/2022 yagaragaje ko amafaranga yo gusana inzu ari 6,847,480 Frw n'iyo ku wa 22/03/2022 igaragaza ko amafaranga yo gusana inzu ari 8,201,500 frw, nta devis n'imwe iriho ikigaragaza ko izo nzu zitandukanye kuko nta nimero y'ikibanza iriho; ibaruwa yandikiye Umurenge ivuga ko asaba gusana inzu iri mu kibanza UPI 1/01/13/01/1665; inyandiko ya Kalikumutima Boniface yo ku wa 02/03/2022 avuga ko atwaye icyapa cya BRALIRWA Plc n'amafoto yagaragaje ari ay'inzu imwe. [28] Urukiko rusanga kuba Vedaste Ntawugayumugabo avuga ko Urukiko rw'Ubucuruzi rutasuzumye amafaranga 8,201,500 frw yo gusana inzu ye ya kabiri yashenywe n'icyapa cya BRALIRWA Plc nk'uko byasobanuwe haruguru, kuba hakurikijwe ibimeze gusobanurwa muri rusanze ibanziriza iyi nta kimenyetso na kimwe yagaragaje muri dosiye kigaragaza ko BRALIRWA Plc yari ifite ibyapa bibiri bimanitse ku nzu ze ebyiri zitandukanye kuko arega yavuze ko asaba amafaranga yo gusana inzu imwe, BRALIRWA yiregura ivuga ko yari ifite icyapa kimwe ku nzu ye, bikaba byarasobanuye yarasuzumwe mu gika cya 8 kugeza ku cya 10, kuba umucamanza yarakoze iperereza, agakora raporo avuga ko yabonye inzu imwe yashenywe n'icyapa cya BRALIRWA, kuba ingingo ya 6 y'itegeko N°22/2018 yasobanuwe haruguru iteganya ko ikirego kigaragazwa n'imyanzuro itanga ikirego n'imyanzuro yo kwiregura, bigashimangirwa burundu mu nama ntegururubanza ku manza iteganyijwemo, ko ikiburanwa kitahindurwa mu bujurire, kuba ingingo ya 12 yaryo yasobanuwe haruguru iteganya ko urega agaragaza ibimenyetso by'ibyo aregera, n'aho ingingo ya 154 igika cya mbere yaryo yasobanuwe haruguru iteganya ko mu bujurire bibujijwe gutanga ibirego bishya, ibyo Vedaste Ntawugayumugabo avuga muri iyi ngingo y'ubujurire nta shingiro bifite kuko ibyo kuba icyapa cya BRALIRWA Plc cyaramwangirije inzu ya kabiri ntabyo yagaragaje ku rwego rwa mbere. D. Ku kibazo cyo kumenya niba BRALIRWA yategekwe gutanga indishyi [29] Ntawugayumugabo Vedaste avuga ko kuba BRALIRWA yaranze gusana inzu ye kandi izi neza ko yashenywe n'icyapa cya yo bikamushora mu manza nta mpamvu, asaba guhabwa P a g e 9 | 12

## Page 10

indishyi z'akababaro zihwanye na 2,500,000 frw; amafaranga yakuraga mu bukode bw'inzu bwa buri kwezi bungana na 950,000 frw, hakaba hashize amezi atatu adahabwa ubwo bukode kubera ko inzu ye yasenyutse bityo asaba Urukiko gutegeka BRALIRWA kumuha amafaranga yari kuvana mu bukode igihe cy'amezi ane ahwanye na 3,800,000 frw. [30] BRALIRWA Plc yiregura isaba ko nta ndishyi izo ari zo zose yasabwa gutanga kuko nta ruhare yagize mu byabaye ku buryo byayiviramo kwishyura izi ndishyi zisabwa, ku bijyanye n'indishyi z'ikurikiranarubanza

n'igihembo cy'avoka no gushorwa mu manza Ibyerekeraye n'indishyi zo gushorwa mu manza kimwe n'iz'ikurikiranarubanza n'iz'igihembo cy'avoka, Urukiko rwazabisuzuma, rukabifataho icyemezo mu ica ry'urubanza mu mizi kuko ari ingaruka z'uko urubanza ruba ruciwe.

UKO URUKIKO RUBIBONA [31] Mu rubanza RADA 00005/2018/CA rwaciwe n'Urukiko rw'Ubujuire ku wa 05/10/2018, Umujyi wa Kigali uburana na MACO Musoni, mu gika cya 34, mu kugena inshyi z'akababaro mu bushishozi rwabisobanuye mu buryo bukurikira: "Urukiko rurasanga indishyi z'akababaro Maco Musoni Oscar Léonce asaba Umujyi wa Kigali zifite ishingiro, kuko kuva imodoka ye yakora impanuka, atahwemye gusiragira agira ngo Umujyi wa Kigali umwishyure ibyangiritse ku modoka ye, ariko ntiyahabwa igisubizo biba ngombwa kwiyambaza inkiko, nabwo ntiwitaba mu rukiko rwabanje, ubu hakaba hashize imyaka 8 atarishyurwa, bikaba byaramuteye akababaro, ariko indishyi zingana na 15.000.000 Frw asaba avuga ko 200.000 Frw yagenwe n'Urukiko Rukuru ari make, ni menshi, mu bushisozi bwawo akaba agenewe 1.000.000 Frw". [32] Urukiko rusanga kuba Ntawugayumugabo Vedaste asaba guhabwa amafaranga yakuraga mu bukode bw'inzu bwa buri kwezi bungana na 950,000 frw, asobanura ko hashize amezi atatu adahabwa ubwo bukode kubera ko inzu ye yasenyutse bityo asaba amafaranga yari kuvana mu bukode igihe cy'amezi ane ahwanye na 3,800,000 frw, nk'uko yari yazisabye mu Rukiko rw'Ubucuruzi, kuba ingingo ya 12 y'Itegeko N°22/04/2018 yasobanuwe haruguru iteganya ko urega agaragaza ibimenyetso by'ibyo aregera, indishyi Vedaste Ntawugayumugabo asaba zigizwe n'ubukode bw'inzu nta shingiro zahabwa uko aburana avuga ko yasanyewe inzu, atagaragaza igihe yayisaniye kandi ntagaragaze ko iyo nzu yari asanzwe ayikodesha, ngo agaragaze igihe amasezerano y'ubukode yahagaze n'igihe iyo nzu yongeye gukodesherezwa, bityo ikaba yaramaze amezi ane idakodeshwa, kandi ngo agaragaze n'ikimenyetso cy'uko iyo nzu yakodeshwaga amafaranga 950.000 frw ku kwezi; [33] Urukiko rusanga kuba Vedaste Ntawugayumugabo asaba indishyi z'akababaro zihwanye na 2,500,000 frw, kuba igice cy'igisenge n'igice cya plafond by'inzu bye yarashenywe n'icyapa cya BRALIRWA Plc nk'uko byagaragajwe haruguru, akaba yahawe amafaranga yo kubisana, kuba Urukiko rw'Ubujurire rwaragaragaje ko indishyi z'akababaro zitangwa mu bushishozi mu rubanza RADA 00005/2018/CA nk'uko byasobanuwe haruguru, indishyi z'akababaro zihwanye na 2,500,000 frw Vedaste Ntawugayumugabo asaba atazihabwa zose kuko atagaragaza icyo ashingiraho asaba ariya mafaranga cyane ko atagaragaza igihe inzu ye yamaze idakoresha, ariko kuba inzu ye yarashenywe n'icyapa cya BRALIRWA byaramuteye akababaro, mu bushishozi, akaba agenewe amafaranga y'u Rwanda ibihumbi magana atanu (500.000frw) y'indishyi z'akababaro. P a g e 10 | 12

## Page 11

E. Ku kibazo kijyanye n'amafaranga y'igihembo cy'avoka n'ikurikiranarubanza asabwa n'impande zombi [34] Ntawugayumugabo Vedaste arasaba Urukiko gutegeka BRWALIRWA gutanga amafaranga y'ikurikirana rubanza ahwanye na 400,000 frw: Igihembo cy'avoka 1,000,000 Frw; no gusubizwa igarama yatanze. [35] BRALIRWA Plc ivuga ko isaba ko amafaranga y'ikurikiranarubanza angana na 400,000Frw n'igihembo cy'avoka kingana na 1,000,000Frw nta shingiro yahabwa kubera ko Ntawugayumugabo Vedaste ariwe wishoye mu manza ku bushake bwe ndetse n'ubu akaba agikomeje gushoza imanza, ikaba isaba ko niba hari n'amafaranga na

make yatakaje ko yayirengera. [36] BRALIRWA Plc, mu bujurire bwuririrye ku bundi isaba amafaranga y'ikurikiranarubanza n'igihembo cy'avoka, yari yasabye ku rwego rubanza ntiyahabwe angana na 2,500,000Frw, ikanasaba ko mu gihe ubujurire bwayo bwahabwa ishingiro ko yazihabwa hiyongereyeho amafaranga y'ikurikiranarubanza ku rwego rw'ubujurire angana na 100,000Frw n'igihembo cy'avoka kingana na 500,000Frw.

UKO URUKIKO RUBIBONA [37] Ingingo ya 111 y'Itegeko N°22/2018 ryavuzwe haruguru iteganya ibi bikurikira: "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'yo ikirego cy'iremezo cyaba kitakiriwe". [38] Urukiko rusanga kuba mu byo Ntawugayumugabo Vedaste yajuririye harimo kimwe cyahawe ishingiro ari cyo indishyi z'akababaro nk'uko byagaragajwe haruguru, kuba ibyo BRALIRWA Plc yajuririye nta shingiro byahawe, kuba ingingo ya 111 y'Itegeko N°22/2018 yasobanuwe haruguru iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza, Ntawugayumugabo Vedaste agenewe amafaranga y'u Rwanda ibihumbi magana arindwi (700.000frw) akubiyemo igihembo cy'avoka n'ikurikiranarubanza. III. ICYEMEZO CY'URUKIKO [39] Urukiko Rukuru rw'Ubucuruzi: - Rwemeye kwakira ubujurire bwatanzwe na Ntawugayumugabo Vedaste, kuko bwatanzwe mu buryo bwubahirije amategeko, rubusuzumye rusanze bufite ishingiro kuri bimwe. -Rwemeje ko imikirize y'urubanza rwajuririwe, RCOM 00387/2022/TC, uko rwaciwe n'Urukiko rw'Ubucuruzi ku wa 01/06/2022, ihindutse gusa ku ndishyi z'akababaro. -Rutegetse BRALIRWA Plc guha Ntawugayumugabo Vedaste amafaramga y'u Rwanda ibihumbi magana atanu (500.000 frw) y'indishyi z'akababaro; ikanamuha kuri uru rwego amafaranga y'u Rwanda ibihumbi magana arindwi (700,000frw) akubiyemo igihembo cy'avoka P a g e 11 | 12

## Page 12

n'ikurikiranarubanza ndetse no kumusubiza Rwf 40,000 y'ingwate y'amagarama byo mu bujurire; byose byiyongera kubyo yategetswe ku rwego rwa mbere. P a g e 12 | 12

## Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/3579/3747>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/ntawugayumugabo-vedaste-v-bralirwa-plc-leaseagreements-commercial-high-court-2023>

Prepared on 13 October 2026 · Esheria