

RWANDA / JUDGMENT

SIMACO LTD v. MUHIRE N'UNDI

RCOMAA 00100/2024/CA

COURT

Court of Appeal

DECIDED

13 February 2025

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SIMACO LTD v. MUHIRE N'UNDI

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Text

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SIMACO LTD v. MUHIRE N'UNDI [Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00100/2024/CA (Ngagi, P.J.) 13 Gashyantare 2025] Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ubujujire – Gutsindwa mu Nkiko zombi hashingiwe ku mpamvu zimwe – Mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi zabanje ku mpamvu zimwe, harebwa icyaburanwaga n'imatekerereze 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 bujujire kandi ko inkiko zombi zazishubijeho mu buryo bumwe. Incamake y'ikibazo: SIMACO Ltd yahawe inguzanyo na BPR Bank Rwanda Plc ingana na 200 000 000 Frw itanga umutungo wayo ho ingwate, ariko iza kunanirwa kuyishyura bituma BPR Bank Rwanda Plc itangiza inzira yo kugurisha mu cyamunara iyo ngwate yatanze yishyingira iyo nguzanyo, igurishwa mu cyamunara bikozwe na Me Muhire wari warashinze gucunga iyo ngwate ndetse amenyesha SIMACO Ltd raporo ya cyamunara kuwa 14/11/2024. SIMACO Ltd nyuma yaho cyamunara ibereye ariko mbere yuko ishyikirizwa raporo yayo (ya cyamunara), yandikiye Umwanditsi Mukuru amusaba gutesha agaciro iyo cyamunara, ndetse amaze gushyikirizwa raporo ya cyamunara atanga ikirego mu Rukiko rw'Ubucuruzi irega BPR

BABK Rwanda Ltd na Me Muhire Samuel isaba Urukiko gutesha agaciro cyamunara. Mu iburanisha ry'urubanza Me Samuel yatanze inzitizi yo kutakira ikirego avuga urega atubahirije amabwiriza y'Umwanditsi Mukuru kuko yandikiye Umwanditsi Mukuru asaba gutesha agaciro cyamunara nyamara atarabona raporo ya cyamunara, ndetse agatanga ikirego ku munsu yamenyesherejweho raporo ya cyamunara. Urukiko rw'Ubucuruzi rwaciye urubanza rwemeza ko ikirego cya SIMACO Ltd kitakiriwe, SIMACO Ltd ijuririra mu Rukiko rw'Ubucuruzi irusaba gusuzuma niba umuhango wo kwandikira Umwanditsi Mukuru warakozwe, no kumenya niba utarubahirije ibihe biteganywa n'amategeko. Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko ubujurire bwa SIMACO Ltd nta shingiro bufite, ko imikirize y'urubanza rwajuririwe idahindutse. SIMACO Ltd yajuririye mu Rukiko rw'Ubujurire, urwo Rukiko rusuzuma inzitizi y'iburabubasha bw'urwo Rukiko yatanze na Me Muhire na BPR BANK Rwanda Plc ishingiyeye ku kuba uwajuririye yaratsinzwe mu Nkiko zombi zimbanza hashingiwe ku mpamvu zimwe, aho Me Muhire Samuel na BPR Bank Rwanda Plc bavugaga ko ubujurire bwa kabiri budashobora kwakirwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, kuko icyo inkiko zombie zahuriyeho ari ukutakira ikirego kuko amabwiriza y'Umwanditsi Mukuru yerekeye agenga ibyerekeye gucunga, gukodesha, kugurisha mu cyamunara, no kwegukana ingwate atubahirijwe mu gihe umuburanyi yari afite ibyo anenga cyamunara cyangwa atishimiye. Ku rundi ruhande, SIMACO Ltd kuri iyi nzitizi yiregura ivuga ko nta shingiro ifite, ko inkiko zombi zabanje zitashingiyeye ku mpamvu zimwe ndetse ikavugaga ko Inkiko zombi zitazumye ibibazo bisa.

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Incamake y'icyemezo: Mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi zabanje 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. Icyo gihe ntiharebwa 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. Inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire ifite ishingiro. Amagarama ahwanye n'ibyakozwe mu rubanza. Amategeko yashingiweho: Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, Ingingo ya 52. Imanza zifashishijwe: RS/INJUST/RCOM 00002/2020/SC; Road Solutions Pavement Products vs MAIL CO Ltd rwaciye ku wa 29/9/2020. RS/INJUST/RCOM 00003/2020/SC; SANLAM Assurance Générales Plc vs UNIVERSITY OF RWANDA (UR) rwaciye n'Urukiko rw'Ikirenga ku wa 27/11/2020. RCOMAA 0048/16/CS; RRA vs SODAR Ltd rwaciye n'Urukiko rw'Ikirenga ku wa 19/05/2017. RS/INJUST/RCOM 00002/2020/SC; Road Solution Pavement Products vs MAILCO Ltd, rwaciye ku wa 25/09/2020.

Urubanza I. IMITERERE Y'URUBANZA [1] SIMACO Ltd yahawe inguzanyo na BPR Bank Rwanda Plc ingana na miriyoni magana abiri (200,000,000 Frw), itanga umutungo wayo ho ingwate ubaruye kuri UPI : 5/07/10/05/2135. SIMACO Ltd yananiwe kwishyura iyo nguzanyo yahawe, BPR Bank Rwanda Plc, ikoresha inzira yo kugurisha ingwate mu cyamunara, ingwate igurishwa ku wa 08/11/2024. Uwo munsu SIMACO Ltd yasabye Umwanditsi Mukuru gutesha agaciro iyo

cyamunara, iza gushyikirizwa raporo ya cyamunara ku wa 14/11/2024. [2] Ku wa 14/11/2024, SIMACO Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi irega BPR Bank Rwanda Plc na Muhire Samuel isaba urwo Rukiko gutesha agaciro cyamunara yakozwe na Me Muhire Samuel ku wa 08/11/2024, ku mutungo wa SIMACO Ltd. Mu iburanisha ry'urubanza, uhagarariye Muhire Samuel yatanze inzitizi avuga ko cyamunara yabaye ku wa 08/11/2024, ashingiye ku ngingo ya 9 y'Amabwiriza y'Umwanditsi Mukuru N° 002/2021/ORG yo ku wa 29/06/2021 ahindura Amabwiriza y'Umwanditsi Mukuru N° 001/2020/ORG yo ku wa 12/05/2020 agenga ibyerekeye gucunga, gukodesha, kugurisha mu cyamunara, no kwegukana ingwate, amenyeshya SIMACO Ltd raporo ya cyamunara ku wa 14/11/2024, ko rero SIMACO Ltd yari

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guhera aho ikandikira Umwanditsi Mukuru mu minsi itanu (5) nk'uko bikubiye mu ngingo 10 ishira ingingo ya 39 bis y'Amabwiriza yavuzwe haruguru iteganya ko ubifitemo inyungu ufite icyo anenga cyamunara cyangwa imigendekere yayo, ashobora, mu minsi itanu (5) uhereye ku munsu yakiriyeho raporo ya cyamunara kwandikira Umwanditsi Mukuru, asanga kuba SIMACO Ltd yarandikiye Umwanditsi Mukuru ku itariki ya 08/11/2024, mbere y'uko ihabwa raporo ya cyamunara, ikanatanga ikirego mu Rukiko ku itariki ya 14/11/2024, umunsu yamenyesherejweho raporo, ikirego cyayo kidakwiye kwakirwa hashingiwe ku ngingo ya 83 y' Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets. [3] Uhagarariye SIMACO Ltd yireguye avuga ko inzitizi yatanze nta shingiro yababwira kuko cyamunara yabaye ku wa 08/11/2024, SIMACO Ltd ihita yandikira Umwanditsi Mukuru wa RDB, isaba ko atesha agaciro iyo cyamunara, ko yagendeye ku biteganywa mu ngingo ya 260 y' Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru ijyanye n'ibyo gutanga ikirego, naho urega we akaba agendera ku biteganywa mu ngingo ya 39 bis y'Amabwiriza y'Umwanditsi Mukuru. Avuga kandi ko Umwanditsi Mukuru atasubije mu bihe biteganywa n'amategeko, SIMACO Ltd itanga ikirego ku wa 14/11/2024, mu minsi itanu (5) iteganywa n'amategeko, ikirego kikaba kitaratanze nyuma y'iyi minsi itanu, bityo ko inzitizi yatanze nta shingiro ifite. Naho BPR Bank Rwanda Plc ivuga ko Urukiko rwasuzuma ishingiro ry'inzitizi yatanze. [4] Mu rubanza RCOM 01736/2024/TC rwaciye ku wa 22/11/2024, Urukiko rw'Ubucuruzi rushingiye ku ngingo ya 19 y' Itegeko No 10/2009 ryo ku wa 14/05/2010 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kugeza ubu, ingingo ya 39 bis y'Amabwiriza y'Umwanditsi Mukuru N° 001/2020/ORG yo ku wa 12/05/2020 agenga ibyerekeye gucunga, gukodesha, kugurisha mu cyamunara, no kwegukana ingwate nk'uko yahinduwe akanuzuzwa kugeza ubu, ingingo ya 260 y' Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru iteganya igihe ikirego gisaba gutesha agaciro cyamunara gitangwa, no ku ngingo ya 83, igika cya mbere n'icya 3, iteganya ko mu mpamvu zituma ikirego kitakirwa harimo kutubahiriza imihango iteganywa n'itegeko, rwemeje ko ikirego cya SIMACO Ltd kitakiriwe. Rutegeka SIMACO Ltd kwishyura BPR BANK RWANDA Plc na Muhire Samuel 1,000,000 Frw, buri umwe akagererwa 500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka. Ruvuga ko SIMACO Ltd idasubizwa 20.000 Frw y'ingwate y'amagarama yatanze mu kurega. [5] SIMACO Ltd yajuririyeho Urukiko Rukuru rw'Ubucuruzi ivuga ko irusaba gusuzuma niba umuhango wo kwandikira Umwanditsi

Mukuru warakozwe, no kumenya niba utarubahirije ibihe biteganywa n'amategeko. Muhire Samuel na BPR Bank Rwanda Plc bireguye bavuga ko iyi mpamvu y'ubujurire idafite ishingiro, buri ruhande rugira ibyo rusaba kugenerwa kuri urwo rwego rw'ubujurire. [6] Mu rubanza RCOMA 00732/2024/HCC rwaciwe ku wa 10/12/2024, Urukiko Rukuru rw'Ubucuruzi rushingiye ku ngingo ya 19 y'Itegeko No 10/2009 ryo ku wa 14/05/2010 ryavuzwe haruguru, ingingo ya 9, igika cya 1 n'ya 10, y'Amabwiriza N° 002/2021/ORG yo ku wa 29/06/2021 y'Umwanditsi Mukuru ahindura Amabwiriza y'Umwanditsi Mukuru n° 001/2020/ORG yo ku wa 12/05/2020 agenga ibyerekeye gucunga, gukodesha, kugurisha mu cyamunara, no kwegukana ingwate, no ku ngingo ya 260 n'ya 83, z'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, rwemeje ko:

- a. Ubujurire bwatanzwe na SIMACO Ltd nta shingiro bufite ;

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- b. Imikirize y'urubanza rwajuririwe, RCOM 01736/2024/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 22/11/2024, idahindutse ;
- c. SIMACO Ltd igomba kwishyura BPR BANK RWANDA Plc na Muhire Samuel ibyemejwe ku rwego rwa mbere, ari byo 1,000,000 Frw ; buri umwe akagenerwa 500,000 Frw y'ikurikiranarubanza n'igihembo cya Avoka ;
- d. SIMACO Ltd igomba guha BPR BANK RWANDA 500.000 Frw y'igihembo cya Avoka na 100,000 Frw y'ikurikiranarubanza yo ku rwego rw'ubujurire ;
- e. SIMACO Ltd igomba guha MUHIRE Samuel 500,000 Frw y'igihembo cya Avoka na 100,000 Frw y'ikurikiranarubanza yo ku rwego rw'ubujurire. [7] SIMACO Ltd yajuririye uru Rukiko, ubujurire bwayo bwandikwa kuri RCOMAA 00100/2024/CA. Urubanza rwaburanishijwe mu ruhamwe ku wa 05/02/2025, SIMACO Ltd ihagarariwe na Me Rwigema Vincent, Muhire Samuel ahagarariwe na Me Abasa Fazili naho BPR Bank Rwanda Plc ihagarariwe na Me Mugemanyi Vedaste, hasuzumwa inzitizi y'iburabubasha yatanze na Muhire Samuel afatanyije na BPR Bank Rwanda Plc ishingiye ku kuba abajuriye baratsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO 1. Kumenya niba SIMACO Ltd yaratsinzwe ku mpamvu zimwe mu nkiko zombi ku buryo ubujurire bwayo butari mu bubasha bw'uru Rukiko. [8] Uhagarariye Muhire Samuel ashingiye 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, avuga ko ubujurire bwa kabiri bwa SIMACO Ltd budakwiye kwakirwa kuko yatsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe. Avuga kandi ko mu rubanza RCOMAA 00012/2022/CA, Urukiko rw'Ubujurire rwatanze umurongo ko bifatwa ko umuburanyi yatsinzwe ku mpamvu zimwe mu nkiko zabanje, iyo Urukiko rwajuririwe, nyuma yo gusesengura imikirize y'urubanza mu nkiko zombi, rusanze ingingo z'ingenzi zasuzumwe, impamvu zashingiweho kugira ngo hagerwe ku cyemezo cyafashwe ari zimwe kandi zaratumye hafatwa ibyemezo bisa ; ko muri icyo gihe Urukiko rwemeza ko ubujurire butari mu bubasha bwarwo. [9] Asobanura ko iyo

usesenguye neza ibyavuzwe mu rubanza RCOM 01736/2024/TC rwaciwe ku wa 22/11/2024 guhera mu gika cya 12 kugeza ku 16, usanga rwumvikanisha neza ko mu kwandikira Umwanditsi Mukuru hagamijwe gutesha agaciro cyamunara, hagomba kubahirizwa ibihe biteganwa n'Amabwiriza y'Umwanditsi Mukuru. Urukiko runagaragaza neza aho Umwanditsi Mukuru akura ububasha bwo gushyiraho amategeko aho rwashingiye ku ngingo ya 19 y'Itegeko N° 10/2009 ryo ku wa 14/05/2010 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kugeza ubu, iteganya ko "Umwanditsi Mukuru ategura amabwiriza rusange agenga cyamunara ijyanye n'igurisha ry'ingwate n'ubundi buryo bwavuzwe mu gika cya mbere cy'ingingo ya 2 y'iri Tegeko", hanyuma runashingira no ku ngingo ya 39 bis y'Amabwiriza y'Umwanditsi Mukuru N° 001/2020/ORG yo ku wa 12/05/2020 agenga ibyerekeye gucunga, gukodesha, kugurisha mu cyamunara, no kwegukana ingwate nk'uko yahinduwe akanuzuzwa kugeza ubu iteganya ko ubifitemo inyungu ufite icyo anenga cyamunara cyangwa imigendekere yayo, ashobora, mu minsi itanu (5) uhereye ku munsu yakiriyeho raporo ya cyamunara, gusaba mu

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nyandiko Umwanditsi Mukuru ko asuzuma inenge yagaragajwe akayifataho icyemezo gikwiye; maze rwemeza ko ikirego kitagomba kwakirwa. [10] Asobanura kandi ko ibyo ari nabyo byagarutsweho n'Urukiko Rukuru rw'Ubucuruzi mu bika bya 21-28 by'urubanza rujuririrwa, aho narwo rwasesenguye rushingiye ku ngingo z'amategeko zashingiweho n'Urukiko rw'Ubucuruzi, runashimangira ko Umwanditsi Mukuru afite ububasha bwo gushyiraho Amabwiriza agenga cyamunara y'umutungo wandikishijwe nk'ingwate muri RDB, hanyuma rugera ku gisubizo gisa n'icy'Urukiko rw'Ubucuruzi. Bityo, asaba Urukiko rw'Ubujurire kutakira ubu bujurire kuko butari mu bubasha bwariwo. [11] Uhagarariye BPR RWANDA Plc nawe avuga ko uwo ahagarariye nawe yatanze iyi inzitizi akaba yemeranya n'ibisobanuro byatanzwe na Muhire Samuel, ko kandi icyo yongeraho ari uko ibyo Urukiko rw'Ubucuruzi rwashingiyeho biri mu bika bya 12-18 ari nabyo byashingiweho n'Urukiko Rukuru rw'Ubucuruzi mu bika bya 22-28 by'urubanza rujuririrwa. Avuga kandi ko ku bijyanye n'indishyi z'ibyagiye ku rubanza, inkiko zombi zazigennye zishingiye ku ngingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru. [12] Uhagarariye SIMACO Ltd yireguye kuri iyi nzitizi avuga ko nta shingiro ifite, ko inkiko zombi zabanje zitashingiye ku mpamvu zimwe. Asobanura ko urebye igika cya 19 cy'urubanza rwaciwe n'Urukiko rw'Ubucuruzi RCOM 01736/2024/TC usanga icyatumye ikirego cya SIMACO Ltd kitakirwa ku rwego rwa mbere ari uko Urukiko rwatesheje agaciro ibaruwa SIMACO Ltd yandikiye Umwanditsi Mukuru taliki ya 08/11/2024, isaba gutesha agaciro cyamunara yari yabayeho kuriyo taliki, bityo Urukiko ruvuga ko itashingirwaho, rwanzura ko mbere yo gutanga ikirego SIMACO Ltd itubahirije umuhango wo kwandikira Umwanditsi Mukuru imusaba gutesha agaciro iyo cyamunara. Naho mu rubanza rujuririrwa RCOMA 00732/2024/HCC, mu gika cya 2, Urukiko Rukuru rw'Ubucuruzi rusuzuma ingingo itari yasuzumwe ku rwego rubanza ijyanye no kumenya niba ibihe byo kuregera gutesha agaciro cyamunara biteganywa mu ngingo ya 260 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru bitavuguruzanya n'ibiteganywa mu Mabwiriza y'Umwanditsi Mukuru, maze urwo Rukiko rwanzura ko bitavuguruzanya. [13] Avuga kandi ko ku

bijyanye no kwandikira Umwanditsi Mukuru, mu gika cya 27 cy'urubanza rujuririrwa Urukiko Rukuru rw'Ubucuruzi rwemeje ko SIMACO Ltd yamwandikiye inenga raporo ya Receiver nyamara nayo yari itarayimenyeshwa, ibi bikaba binyuranye no kuba ibaruwa yayo yafatwa nk'itarigeze ibaho nkuko byemejwe ku rwego rwa mbere. Ku bijyanye n'indishyi, avuga ko ku rwego rwa mbere mu gika cya 24 Urukiko rw'Ubucuruzi rwazigennye rushingiye kukuba hari igihombo SIMACO Ltd yateje abo yareze kandi ariyo yakoze amakosa yo kutandikira Umwanditsi Mukuru, rugena indishyi mu bushishozi bwarwo kuko rutagaragarijwe ibimenyetso bijyanye n'izari zasabwe, ariko Urukiko Rukuru rw'Ubucuruzi mu gika cya 32 rugena indishyi rushingiye gusa ku kuba ubujurire bwayo butarahawe ishingiro binyuranye n'impamvu z'igihombo n'ibimenyetso zashingiweho ku rwego rwa mbere. UKO URUKIKO RUBIBONA [14] 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

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manza z'ababuranye bemera ibyo baregwa, cyangwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe." [15] Ikibazo cyo kumenya niba impamvu zashingiweho umuburanyi atsindwa ku rwego rwa mbere n'urwa kabiri ari zimwe, kigomba gusuzumwa hasesengurwa imikurikira y'urubanza ku rwego rwa mbere n'urwa kabiri, ingingo z'ingenzi zasuzumwe, impamvu buri rukiko rwashingiyeho kugira ngo rugere ku cyemezo, byaramuka bigaragaye ko ari zimwe, ubujurire ntibube buri mu bubasha bw'Urukiko rw'Ubujurire. [16] Nk'uko byafashweho umurongo mu manza zaciwe n'Urukiko rw'Ikirenga, mu gusuzuma niba umuburanyi yaratsinzwe mu nkiko zombi zabanje 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 bujirire 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. [17] Na none mu rubanza RCOMAA 0048/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2017, haburana RRA na SODAR Ltd³, 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 byatanzwe no mu rwego rw'ubujurire, cyangwa ko zakoresheje amagambo amwe, ahubwo harebwa niba inkiko zombi zarashubije ku buryo bumwe ingingo zirebana n'ikiburanwa. [18] Nk'uko bigaragara mu rubanza RCOM 01736/2024/TC rwaciwe ku wa 22/11/2024, SIMACO Ltd yareze BPR Bank Plc na Muhire Samuel irusaba gutesha agaciro cyamunara yakozwe na Me Muhire Samuel ku wa 08/11/2024, ku mutungo wa SIMACO Ltd ufite UPI :5/07/10/05/2135. Urwo Rukiko rwasuzumye ikibazo cyo kumenya niba inzitizi yo kutakira ikirego yatanze ku byo kutubahiriza ibihe biteganywa n'amategeko ifite ishingiro ;

ikindi n'ikijyanye no kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ababuranyi basaba mu rubanza bayagenerwa.

1 Reba urubanza N° RS/INJUST/RCOM 00002/2020/SC rwaciwe ku wa 29/9/2020 haburana Road Solutions Pavement Products na MAIL CO Ltd. 2 Reba igika cya 23 cy'urubanza No RS/INJUST/RCOM 00003/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 27/11/2020, haburana SANLAM Assurance Générales Plc na UNIVERSITY OF RWANDA (UR). 3 Reba igika cya 18 cy'urwo rubanza. Reba na none urubanza Urubanza No RS/INJUST/RCOM 00002/2020/SC hagati ya Road Solution Pavement Products na MAILCO Ltd, rwaciwe ku wa 25/09/2020, igika cya 24.

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[19] Mu rubanza RCOMA 00732/2024/HCC rwaciwe ku wa 10/12/2024, Urukiko Rukuru rw'Ubucuruzi rwasuzumye ikibazo cyo kumenya niba Urukiko rw'Ubucuruzi rwarirengagije ko umuhango wo kwandikira Umwanditsi Mukuru wakozwe, kandi ko wubahirije ibihe biteganywa n'amategeko n'icyo kumenya uruhande rugomba urundi igihembo cya Avoka n'amafaranga y'ikurikiranarubanza. [20] Ku kibazo nyamukuru kijyanye no kumenya niba inzitizi yo kutakira ikirego yatanze ku byo kutubahiriza ibihe biteganywa n'amategeko ifite ishingiro, mu yandi magambo kumenya niba SIMACO Ltd yarubahirije imihango n'ibihe biteganywa n'amategeko byo kwandikira Umwanditsi Mukuru, mu bika bya 12-16, rushingiye ku ngingo ya 19 y'Itegeko N° 10/2009 ryo ku wa 14/05/2010 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe, iya 39 bis y'Amabwiriza y'Umwanditsi Mukuru N° 001/2020/ORG yo ku wa 12/05/2020 agenga ibyerekeye gucunga, gukodesha, kugurisha mu cyamunara, no kwegukana ingwate nk'uko yahinduwe akanuzuzwa; Urukiko rw'Ubucuruzi rwasanze imihango ya cyamunara iteganywa n'amategeko, kimwe n'ibihe by'imihango yose ijyanye nayo ndetse n'ibyo gusaba gutesha agaciro cyamunara no kuregera urukiko, SIMACO Ltd itarabyubahirije, kuko ushinze kugurisha ingwate yashyikirije SIMACO Ltd raporo ya cyamunara ku wa 14/11/2024, nyamara uwo munsu akaba ari wo munsu SIMACO Ltd yatanzeho ikirego, mu gihe amategeko ateganywa ko ari yo taliki yo guheraho gusaba Umwanditsi Mukuru gutesha agaciro cyamunara kugeza mu gihe cy'iminsi itanu. Ikindi mu bika bya 17-19 rushingiye ku ngingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, no ku ngingo ya 83 y'Itegeko N° 22/2018 rimaze kwibutswa, rwasanze Umwanditsi Mukuru yaragombaga kwandikirwa nyuma y'uko ahawe raporo ya cyamunara, hanyuma rwanzura ko imihango yo kumwandikira itakurikije amategeko, ko rero ikirego cya SIMACO Ltd kitagomba kwakirwa. [21] Kuri iki kibazo, Urukiko Rukuru rw'Ubucuruzi, mu gika cya 21 cy'urubanza RCOMA 00732/2024/HCC, rwaciwe ku wa 10/12/2024, Urukiko rwibukije ko rugiye gusuzuma niba SIMACO Ltd yarubahirije ibiteganijwe n'amategeko n'Amabwiriza byerekeranye n'umuhango wo kwandikira Umwanditsi Mukuru, bivuze ko ari ikibazo kimwe n'icyasuzumwe n'Urukiko rw'Ubucuruzi; maze rushingiye ku ngingo 19 y'Itegeko N° 10/2009 ryo ku wa 14/05/2010 ryibukijwe haruguru, ingingo ya 9, igika cya mbere n'iya 104 z'Amabwiriza N° 002/2021/ORG yo ku wa 29/06/2021 y'Umwanditsi Mukuru ahindura Amabwiriza y'Umwanditsi Mukuru N° 001/2020/ORG yo ku wa 12/05/2020 agenga

ibyerekeye gucunga, gukodesha, kugurisha mu cyamunara, no kwegukana ingwate (igika cya 24 cy'urwo rubanza), ku ngingo ya 260 y'Itegeko N° 22/2018 ryibukijwe haruguru (igika cya 25 cy'urwo rubanza) no ku ngingo ya 83 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 rimaze kwibutswa (reba igika cya 28 ry'urubanza rujuririrwa), no kubisobanuro by'izi ngingo rwasanze kuba SIMACO Ltd yarandikiye Umwanditsi Mukuru inenga raporo y'ushinzwe kugurisha ingwate, nyamara yari itaramenyeshwa iyo raporo nk'uko biteganyijwe muri ayo Mabwiriza, ikabara iminsi ngo y'uko Umwanditsi Mukuru yari atarayisubiza, kandi nyamara iyo minsi ibarwa guhera igihe yandikiye Umwanditsi Mukuru mu buryo bukurikije Amabwiriza; nta kosa Urukiko rw'Ubucuruzi rwakoze rwo kutakira ikirego kitubahirije ibihe biteganyijwe n'Amabwiriza agenga uko bene ibyo birego bitangwa. Mu gika cya

4 Ibyo iyi ngingo ya 10 y'Amabwiriza y'Umwanditsi Mukuru N° 002/2021/ORG iteganya bisa n'ibiteganywa mu ngingo 39 bis y'Amabwiriza y'Umwanditsi Mukuru N° 001/2020/ORG yashingiweho n'Urukiko rw'Ubucuruzi.

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28 rwanzura ko kuba SIMACO Ltd itarubahirije imihango yasobanuwe mu bika byabanje, ikirego cyayo kitagombaga kwakirwa ku rwego rwa mbere. [22] Urukiko rw'Ubujurire rurasanga, nubwo Urukiko Rukuru rw'Ubucuruzi rwatanze ibisobanuro rugerageza kumvikanisha ingingo rwashingiyeho, ariko impamvu zashingiweho n'inkiko zombi ni zimwe, kuko zombi zashingiye ku kuba SIMACO Ltd itarubahirije ibihe biteganywa n'amategeko ku bijyanye n'umuhango wo kwandikira Umwanditsi Mukuru usaba gutesha agaciro cyamunara, no kuba, iyo imihango itubahirijwe ikirego kitakirwa. [23] Urukiko rurasanga, ku kibazo kijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, nubwo ari ingaruka kikaba kitagombye kujya mu igereranya, ariko nacyo SIMACO Ltd yagitsinzweho mu nkiko zombi hashingiwe ku mpamvu zimwe, kuko inkiko zombi zayitegetse kwishyura Muhire Samuel na BPR Bank Rwanda Plc amafaranga y'ibyagiye ku rubanza zishingiye ku ngingo z'amategeko zibiteganywa, cyane cyane ingingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza, nk'uko bigaragara mu bika bya 23 na 24 by'urubanza rw'Urukiko rw'Ubucuruzi no mu bika bya 32 na 33 by'urubanza rwaciye n'Urukiko Rukuru rw'Ubucuruzi. [24] Ku byo uhagarariye SIMACO Ltd avuga ko impamvu atari zimwe, kuko Urukiko Rukuru rw'Ubucuruzi rwasuzumye ingingo itari yasuzumwe ku rwego rubanza ijyanye no kumenya niba ibihe byo kuregera gutesha agaciro cyamunara biteganywa mu ngingo ya 260 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru bitavuguruzanya n'ibiteganywa mu Mabwiriza y'Umwanditsi Mukuru, Urukiko rurasanga nta shingiro bifite, kuko nk'uko byagaragajwe haruguru ikibazo nyamukuru cyasuzumwe ni kimwe kijyanye no kumenya niba imihango yo kwandikira Umwanditsi Mukuru yarubahirije ibiteganywa n'amategeko. Rurasanga na none, ibyo avuga ko Urukiko rw'Ubucuruzi rwemeje ko umuhango wo kwandikira Umwanditsi Mukuru utabayeho, naho Urukiko Rukuru rw'Ubucuruzi rwo rwemeza ko SIMACO Ltd yanditse isaba ko cyamunara iteshwa agaciro, ariko ko yabikoze mu bihe bidateganyijwe n'amategeko, bidafite ishingiro, kuko ntaho Urukiko rw'Ubucuruzi rwigeze ruvuga ko uwo muhango

utabayeho. Ikindi nk'uko byagaragajwe haruguru, inkiko zombi zasobanuye ko uwo muhango utubahirije ibiteganywa n'amategeko. [25] Ku kibazo cy'amafaranga y'ibyagiye ku rubanza yasabwe mu manza zombi, Urukiko rurasanga, ibyo uhagarariye SIMACO Ltd avuga ko Urukiko rw'Ubucuruzi rwavuze ko SIMACO Ltd yateje abarezwe igihombo, ko kandi amafaranga basaba batayatangira ibimenyetso, hanyuma ruyagena mu bushishozi bwarwo, ariko Urukiko Rukuru rw'Ubucuruzi mu gika cya 32 ruyagena rushingiye gusa kukuba ubujurire bwayo butarahawe ishingiro binyuranye n'impamvu z'igihombo n'ibimenyetso zashingiweho ku rwego rwa mbere; Urukiko rurasanga nabyo nta shingiro bifite, kuko usibye kuba ikibazo kijyanye n'amafaranga y'ibyagiye ku rubanza kitakagombye kuza mu igereranya ryo kumenya ko SIMACO Ltd yatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, kuko ari ingaruka, akaba atari cyo cyatumye ikirego cya SIMACO Ltd kitakirwa, ariko nk'uko byasobanuwe haruguru, inkiko zombi zagennye amafaranga y'igihembo cya Avoka n'ikurikiranarubanza zishingiye ku ngingo z'amategeko zibiteganywa, nubwo Urukiko Rukuru rw'Ubucuruzi rwakoreshe ingingo nyinshi, ariko icyo zahuriyeho n'uko Muhire Samuel na BPR Bank Rwanda Plc bakwiye guhabwa amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza.

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- [26] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga SIMACO Ltd yaratsinzwe ku mpamvu zimwe mu nkiko zombi ; bityo ubujurire bwayo bukaba butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire.
2. Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro [27] Uhagarariye SIMACO Ltd ashingiye ku biteganywa n'ingingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, avuga ko SIMACO Ltd isaba ko yagenerwa igihembo cya Avoka kingana na miliyoni ebyiri (2,000,000 Frw) n'ibihumbi magana atanu (500,000 Frw) y'ikurikiranarubanza. [28] Uhagarariye Muhire Samuel avuga ko ibyo SIMACO Ltd isaba nta shingiro bifite, bityo bakaba basaba Urukiko rw'Ubujurire gutegeka SIMACO Ltd gusubiza Muhire Samuel miliyoni imwe (1,000,000 Frw) y'igihembo cya Avoka n'ibihumbi magana atanu (500,000 Frw) y'ikurikiranarubanza yo kuri uru rwego. [29] Uhagarariye BPR Bank Rwanda Plc ashingiye ku ngingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, asaba ibihumbi magana abiri (200,000 Frw) y'ikurikiranarubanza na miliyoni imwe (1,000,000Frw) y'igihembo cya Avoka. UKO URUKIKO RUBIBONA [30] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira : “Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'ayo ikirego cy'iremezo cyaba kitakiriwe”. [31] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Muhire Samuel na BPR Bank Rwanda Plc basaba bakwiye kuyahabwa kuko inzitizi batanze ifite ishingiro kandi bikaba byarabaye ngombwa ko bashaka Abavoka bo kubaburanira ; bityo mu

bushishozi bwarwo rukaba rugeneye buri wese amafaranga ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka n'amafaranga ibihumbi magana abiri (200.000 Frw) y'ikurikiranarubanza, kuri uru rwego, agomba gutangwa na SIMACO Ltd. Rurasanga ayo SIMACO Ltd isaba ntayo igomba guhabwa, kuko ntaho yaba ashingiye mu gihe ubujurire bwayo butakiriwe. III. ICYEMEZO CY'URUKIKO [32] Rwemeje ko inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire yatanzwe na Muhire Samuel hamwe na BPR Bank Rwanda Plc ifite ishingiro. [33] Rwemeje ko ubujurire bwa SIMACO Ltd butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire.

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[34] Rutegetse SIMACO Ltd kwishyura Muhire Samuel na BPR Bank Rwanda Plc, buri wese, amafaranga ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka n'amafaranga ibihumbi magana abiri (200.000 Frw) y'ikurikiranarubanza, kuri uru rwego. Yose hamwe akaba miliyoni imwe n'ibihumbi magana ane (1,400,000 Frw). [35] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.

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