

RWANDA / JUDGMENT

AKARERE KA NYARUGURU N 'UNDI v. BES & SUPPLY Ltd N' ABANDI

RCOMA 00054- 00056/2022/CA

COURT

Court of Appeal

DECIDED

30 March 2023

CASE / FILE NUMBER

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AKARERE KA NYARUGURU N 'UNDI v. BES & SUPPLY Ltd N' ABANDI

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Text

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AKARERE KA NYARUGURU N 'UNDI v. BES & SUPPLY Ltd N' ABANDI [Rwanda URUKIKO RW UBUJURIRE – RCOMA 00054- 00056/2022/CA (Ngagi, P.J.) 30 Werurwe 2023] Amasezerano – Gusesa amasezerano – Amasezerano agomba kubahirizwa nta buryarya – Amasezerano ashobora guseswa mu gihe bigaragara ko hari impamvu zumvikana zatuma aseswa n'ubwo izo mpamvu zitari ziyateganyijwemo – Itegeko N° 45/2011/2011 ryo ku wa 25/11/2011 ryerekeye amasezerano, ingingo ya 64 niya 84. Amategeko agenga imiburanishirize y' imanza z' ubucuruzi – Igihembo cy'umuhanga – Igihembo cy'umuhanga cyangwa se inzobere cyishyurwa n'uwatsinzwe urubanza – Kuba buri ruhande mu rubanza rwagiye rugira ibyo rutsindira n'ibyo rutsindirwa, bombi bafatanyaga kwishyura igihembo cy'umuhanga washizweho n' urukiko muri urwo rubanza – 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 273. Incamake y' ikibazo: Akarere ka Nyaruguru kagiranye na sosiyete BES & SUPPLY Ltd amasezerano yo kubaka isoko rya kijyambere na Gare i Kibeho mu Karere ka Nyaruguru, ayo masezerano yiswe “Contrat

d'exécution des travaux de construction du Marché Moderne et d'une Gare routière de Kibeho dans le district de Nyaruguru", yagombaga kumara amezi 18. Sosiyete BES & SUPPLY Ltd ivuga ko nyuma yo gusinya ayo masezerano, yasanze inyigo yarakozwe nabi, kuko hari imirimo itarabazwe kandi ari yo yagombaga kubanza gukorwa, ivuga kandi ko hari fagitiri ako Karere katagiye kishyurira ku gihe bituma imirimo idindira, ariko kabirengaho gasesa amasezerano impande zombi zagiranye kavuga ko itayubahirije nk'uko yari ateganyijwe. BES & SUPPLY Ltd yareze Akarere ka Nyaruguru mu Rukiko rw'Ubucuruzi ivuga ko kasheshe amasezerano mu buryo bunyuranyije n'amategeko, irega na none sosiyete y' ubwishingizi SORAS AG Ltd iyisaba kuyishyura ivuga ko ari yo yayihaye ingwate yo kurangiza imirimo neza. Nyuma yo gusesa amasezerano, Akarere kasabye sosiyete y' ubwishingizi SOSRAS kwishyura iyo ngwate yo kurangiza neza imirimo ihwanye na 84.067.521Frw, ihita iyatanga kandi BES & SUPPLY Ltd yari yayisabye kutayatanga kuko Akarere ariko katubahirije amasezerano. SORAS AG Ltd nayo yireguye ivuga ko ibyo yakoze ari ibyari byemeranijweho mu masezerano.

Akarere ka Nyaruguru kireguye kavuga ko sosiyete BES & SUPPLY Ltd ari yo itarubahirije ibyo amasezerano yateganyaga, aho yamaze guhabwa 20% ntihiye itanga ingwate, no kuba kandi yaragiye isaba kongererwa ibihe ikabihabwa ariko ntiyubahirize gahunda yateganyijwe ngo ikore imirimo yasabwaga, bityo ko ari byo byatumye gasesa amasezerano imirimo yari isigaye maze igahabwa undi rwiyezamirimo.

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BES & SUPPLY Ltd yagobokesheje sosiyete NOCTA ENGINEERING Ltd kuko ari yo yari ishinze gukurikirana no kugenzura imirimo y'iryo soko, naho Ruzindana Egide, HAJARO Ltd na Habumugisha Jean Paul bagobotse ku bushake mu rubanza basaba ko mu gihe BES & SUPPLY Ltd yaba yishyurwa kuri ubwo bwishyura habanza kuvamo amafaranga ibabereyemo y'ibikoresho byo gukora iryo soko bayigemuriye. Urukiko rw'Ubucuruzi rushingiye kuri raporo y'umuhanga washyizweho n'Urukiko mu kugaragaza ijanisha ry'imirimo yakozwe rugasanga yari igeze kuri 83%, rwemeje ko amasezerano imapande zombi zakoze yasheshwe mu buryo bunyuranyije n'amategeko, bityo ko BES & SUPPLY Ltd igomba kwishyurwa 296.192.990 Frw Akarere ka Nyaruguru kasigayemo akomoka ku mirimo rwiyezamirimo yakoze itarishyurwa; bityo ko Akarere ka Nyaruguru nako kagomba kwishyura BES & SUPPLY Ltd amafaranga itishyuye n'ibihano byayo bihwanye na 70.729.780 Frw, yose hamwe akaba 237.152.793 Frw, urukiko rwemeza kandi ko ikirego cya sosiyete HAJARO Ltd cyo kugoboka mu rubanza kitakiriwe. Urukiko rw'Ubucuruzi rwemeje nanone ko Akarere ka Nyaruguru kagomba gusubiza BES & SUPPLY Ltd kimwe cya kabiri cy'ingwate gihwanye na 42.033.760 Frw kuko itagombaga kuyafatira yose kandi hari ibikorwa BES & SUPPLY Ltd yashoboye kurangiza mbere y'iseswa ry'amasezerano, hamwe n'indishyi zihwanye na 5.000.000 Frw ku bwo gusesa amasezerano binyuranyije n'amategeko. Akarere ka Nyaruguru ntikishimiye iyo mikirize y'urubanza, maze kayijuririra mu Rukiko Rukuru rw'Ubucuruzi kavuga ko Urukiko rw'Ubucuruzi rutahaye agaciro raporo yakozwe n'impande zose kandi zari zabyumvikanyeho. ECOBANK RWANDA Plc yagobotse mu rubanza kuri urwo rwego rw'ubujurire, isaba ko amafaranga Akarere kazishyura BES&SUPPLY Ltd yazanyuzwa kuri konti yayo iri muri iyo Banki, hagoboka kandi Uwingabire

Fausca, Maniraguha Adalbert, Bizimana Israel, Uwamahoro Francine, Nduwumwami Désiré, Kamana Xavier, Mugabo Celestin, Mugabo François, Kabenga Charles, Guhigana Paul basabye kwishyurwa imyenda bafitiwe na BES&SUPPLY Ltd ikomoka ku mirimo bakoranye muri iryo soko. Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza, maze rwemeza ko ubujurire bw'Akarere ka Nyaruguru bufite ishingiro ku ngano y'ubwishyu bwahawe BES & SUPPLY Ltd ndetse n'ubwishyu isigaje guhabwa, bityo ko icyemezo cyafashwe mu rubanza rwaciye n'urukiko rw'ubucuruzi gihindutse kuri bimwe, rwemeza kandi ko kugoboka mu rubanza kwa ECOBANK RWANDA Plc nta shingiro gufite, kandi ko Akarere ka Nyaruguru kagomba kurekura igice (½) cy'ingwate yo kurangiza imirimo kari kahawe ku rwego rwa mbere. Akarere ka Nyaruguru ntikishimiye imikirize y'urubanza kajuririra Urukiko rw'Ubujurire kavuga ko raporo yakozwe n'umuhanga washyizweho n'Urukiko itagombaga gushingirwaho kubera inenge zitandukanye zirimo, asaba ko ibyemezo byafashwe n'Urukiko rushingiye kuri icyo raporo nta gaciro byahabwa, kavuga kandi ko ibyemejwe n'Urukiko Rukuru rw'Ubucuruzi byuko habayeho kunanizwa kwa BES & SUPPLY Ltd no kuba hari factures zitishyuriwe igihe atari ukuri kuko nta bukererwe bwabayeho.

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BES & SUPPLY Ltd nayo yarajuriye, ivuga ko Urukiko Rukuru rw'Ubucuruzi rutahaye agaciro ibisobanuro yatanze ku bijyanye n'imirimo yiswe raccordement au réseau EWSA + compteur triphasé Akarere ka Nyaruguru kavuga ko atari yo yayikoze, isaba kwishyurwa fagitire itishyuwe n'inyungu z'ubukererwe, no kwishyurwa umuhanga washyizweho n'Urukiko. Izo manza zahurijwe hamwe kugira ngo zizaburanishirizwe hamwe mu Rukiko rw'Ubujurire. Sosisyete NOCTA ENGINEERING Ltd yiregura kuri iyi ngingo y'ubujurire ivuga ko hakwiye kurebwa ibikubiye mu masezerano yabaye hagati ya BES & SUPPLY Ltd n'Akarere ka Nyaruguru. Akarere ka Nyaruguru kavuga kandi ko Urukiko Rukuru rw'Ubucuruzi rutagombaga kugatega kugenera indishyi abagobotse ku bushake kuko zikwiye gutangwa na BES & SUPPLY Ltd kuko ari yo bafitanye amasezerano, Akarere ka Nyaruguru kavuga kandi ko gasanga kadakwiye gusubiza ingwate, kuko kasheshe amasezerano mu buryo bukurikije amategeko, BES & SUPPLY Ltd imaze kunanirwa kurangiza imirimo, ko rero kari gafite uburenganzira bwo gufatira ingwate. SANLAM AG Plc nayo ivuga ko Akarere ka Nyaruguru kagombaga gutegekwa gusubiza ingwate yo kurangiza neza imirimo mu gihe bigaragaye ko kasheshe amasezerano mu buryo budakurikije amategeko biturutse ku makosa yako, kakayarengaho kakishyura ingwate bitari ngombwa. BES & SUPPLY Ltd ivuga ko itemera ko ingwate yasubizwa SORAS AG Ltd yahindutse SANLAM AG Plc, ivuga ko Akarere ka Nyaruguru ariko kagomba kwishyura umuhanga washyizweho n'Urukiko, kuko umuburanyi utsinzwe ari we ugarura ubwishyu bwatanzwe. Akarere ka Nyaruguru yiregura kavuga ko Akarere katakwishyuzwa igihembo cy'umuhanga kuko zateshejwe agaciro kandi ko Umuhanga washyizweho n'Urukiko rw'Ubujurire impande zombi zibyumvikanyeho azishyurwa n'uzatsindwa urubanza. Incamake y' icyemezo: 1. Amasezerano ashobora guseswa mu gihe bigaragara ko hari impamvu zumvikana zatumaze aseswa n'ubwo zitari ziyateganyijwemo.

2. Igihembo cy'umuhanga cyangwa se inzobere cyishyurwa n'uwatsinzwe urubanza. Kuba buri ruhande mu rubanza rwagiye rugira ibyo rutsindira n'ibyo rutsindirwa, bombi bafatanywa kwishyura igihembo cy'umuhanga washizweho n'urukiko muri urwo rubanza. Ubujurire bwatanzwe n'Akarere ka Nyaruguru bufite ishingiro kuri bimwe. Amagarama y urubanza ahwanye n ibyarukozwemo.

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Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 273 Itegeko N° 45/2011/2011 ryo ku wa 25/11/2011 ryerekeye amasezerano, ingingo ya 64 niya 84 Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA

- [1] Ku wa 27/04/2015, Akarere ka Nyaruguru kagiranye na BES & SUPPLY Ltd amasezerano yo kubaka isoko rya kijyambere na Gare i Kibeho mu Karere ka Nyaruguru, yiswe “Contrat d'exécution des travaux de construction du Marché Moderne et d'une Gare routière de Kibeho dans le district de Nyaruguru”, agomba kumara amezi 18. BES & SUPPLY Ltd ivuga ko nyuma yo gusinya ayo masezerano, yasanze inyigo yarakozwe nabi, kuko hari imirimo itarabazwe kandi ari yo yagombaga kubanza gukorwa. icyo kibazo kimaze kugaragara, Akarere ka Nyaruguru kasabye BES & SUPPLY Ltd gukomeza imirimo ariko hakazakorwa contre vérification y'imirimo yose izakorwa, ku bufatanye na NOCTA ENGINEERING Ltd yari ifite mu nshingano zayo kugenzura uko imirimo ikorwa (mission de surveillance) n'Akarere ka Nyaruguru kugira ngo ibibazo by'iyi mirimo yibagiranye ndetse n'indi mirimo yari ifite ibipimo biri hejuru y'ibyateganyijwe ibarwe kandi ikorerwe amasezerano. [2] Ikomeza ivuga ko contre vérification yakozwe ariko Akarere ka Nyaruguru ntikagire icyo kayivugaho, ahubwo ku wa 22/10/2015, kandikira BES & SUPPLY Ltd kayisaba kwihutisha imirimo kuko imaze kugira ubukererwe bwa 14%, ku wa 16/11/2015, igasubiza ko nta bukererwe buriho ahubwo ari uko katashyize mu bikorwa ibikubiye muri contre vérification, igasaba kubikora kugira ngo imirimo igende neza. Ku wa 26/11/2015, BES & SUPPLY Ltd yongeye kwandikira Akarere ka Nyaruguru ikibutsa kwihutisha ibikubiye muri iyo contre vérification kugira ngo imirimo igende neza. BES & SUPPLY Ltd ivuga kandi ko hari fagitiri ako Karere katagiye kishyurira ku gihe bituma imirimo idindira, ariko ku wa 23/05/2018 kabirengaho gaseza amasezerano impande zombi zagiranye kavuga ko BES&SUPPLY Ltd itayubahirije nk'uko yari ateganyijwe, kandi ari ko katubahirije zimwe mu nshingano zako. [3] BES & SUPPLY Ltd yareze Akarere ka Nyaruguru mu Rukiko rw'Ubucuruzi, ivuga ko kasheshe amasezerano mu buryo bunyuranyije n'amategeko, kandi ariko katubahirije ibyari biteganyijwe mu masezerano. Muri urwo rubanza BES & SUPPLY Ltd yarezemo kandi SORAS AG Ltd kuko ari yo yayihaye ingwate yo kurangiza imirimo neza; ariko nyuma yo guseza amasezerano, Akarere ka Nyaruguru kayisabye kwishyura iyo ngwate ihwanye na 84.067.521Frw ihita iyatanga kandi yari yayisabye kutayatanga kuko Akarere ka Nyaruguru ariko katubahirije amasezerano. SORAS AG Ltd yireguye ivuga ko ibyo yakoze ari ibyari byemeranijweho mu masezerano.

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- [4] Akarere ka Nyaruguru kireguye kavuga ko BES & SUPPLY Ltd ari yo itarubahirije ibyo amasezerano yateganyaga, aho yamaze guhabwa 20% ntihiye itanga ingwate, no kuba yaragiye isaba kongererwa ibihe ikabihabwa ariko ntiyubahirize gahunda yateganyijwe ngo ikore imirimo yasabwaga. Ko ibyo ari byo byatumye gasesa amasezerano imirimo yari isigaye igahabwa undi rwiyekezamirimo. BES & SUPPLY Ltd yagobokesheje NOCTA ENGINEERING Ltd kuko ari yo yari ishinze gukurikirana no kugenzura imirimo y'iryo soko, naho Ruzindana Egide, HAJARO Ltd na Habumugisha Jean Paul bagobotse ku bushake mu rubanza basaba ko mu gihe BES & SUPPLY Ltd yaba yishyuye kuri ubwo bwishyu habanza kuvamo amafaranga ibabereyemo y'ibikoresho byo gukora iryo soko bayigemuriye.
- [5] Mu rubanza RCOM 02243/2018/TC rwaciye n'Urukiko rw'Ubucuruzi ku wa 21/10/2019, rushingiye kuri raporo y'umuhanga washyizweho n'Urukiko mu kugaragaza ijanisha ry'imirimo yakozwe na BES & SUPPLY Ltd rugasanga yari igeze kuri 83%, rwemeje ko amasezerano N°20/NYRUGU/2014-2015 yo ku wa 27/04/2015, yasheshwe mu buryo bunyuranyije n'amategeko, ko BES & SUPPLY Ltd igomba kwishyurwa 296.192.990 Frw Akarere ka Nyaruguru kasigayemo akomoka ku mirimo rwiyekezamirimo yakoze itarishyurwa, ko Akarere ka Nyaruguru kagomba kwishyura BES & SUPPLY Ltd amafaranga itishyuye ari kuri facture N°05-06/BES&SUPPLY Ltd/MARCHE MODERNE NYARUGURU/2017 ahwanye na 166.423.013 Frw yakiriwe ku wa 12/06/2017, n'ibihano byayo bihwanye na 70.729.780 Frw, yose hamwe akaba 237.152.793 Frw. Rwemeza ko ikirego cya HAJARO Ltd cyo kugoboka mu rubanza kitakiriwe.
- [6] Urukiko rw'Ubucuruzi rwemeje kandi ko Akarere ka Nyaruguru kagomba gusubiza BES & SUPPLY Ltd kimwe cya kabiri cy'ingwate gihwanye na 42.033.760 Frw kuko itagombaga kuyafatira yose kandi hari ibikorwa BES & SUPPLY Ltd yashoboye kurangiza mbere y'iseswa ry'amasezerano nk'uko byagaragajwe mu gihe cya décompte final, ko kandi Akarere ka Nyaruguru kagomba guha BES & SUPPLY Ltd indishyi zihwanye na 5.000.000Frw ku bwo gusesa amasezerano binyuranyije n'amategeko. Rutegeka Akarere ka Nyaruguru kwishyura BES&SUPPLY Ltd amafaranga kayibereyemo yose hamwe angana na 580.379.543Frw, kabanje kwishyura Ruzindana Egide 145.330.000 Frw, Habumugisha Jean Paul 120.326.800 Frw, guha SORAS 1.000.000 Frw no guha NOCTA 1.000.000Frw, BES & SUPPLY Ltd ikabona kwishyurwa asigaye ahwanye na (585.379.543Frw) - (145.033.000 Frw + 120.326.800 Frw + 267.359.800 Frw + 2.000.000 Frw) = 318.019.743 Frw. [7] Akarere ka Nyaruguru ntikishimiye iyo mikirize y'urubanza, maze kayijuririra mu Rukiko Rukuru rw'Ubucuruzi kavuga ko Urukiko rw'Ubucuruzi rutahaye agaciro raporo yakozwe n'impande zose kandi zari zabyumvikanyeho, rushingira kuri raporo y'umuhanga kandi katarayemeye, kuba rwaremeje ko habayeho amasezerano y'inyongera ya 17,9% kandi atarabayeho, ko rwemeje ko BES & SUPPLY Ltd yananiye kandi ko amasezerano yasheshwe mu buryo bunyuranyije n'amategeko kandi atari byo, ko rwemeje ko hari amafaranga Akarere kari gasigayemo BES & SUPPLY Ltd kandi yarahawe arenze ay'ibikorwa yakoze, rukaba rutarategutse ko ayo mafaranga arenga ku bwishyu kayasubizwa. [8] ECOBANK RWANDA Plc yagobotse mu

rubanza kuri urwo rwego rw'ubujurire, isaba ko amafaranga Akarere kazishyura BES&SUPPLY Ltd yazanyuzwa kuri konti yayo iri muri iyo

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Banki. Hagobotse kandi Uwingabire Fausca, Maniraguha Adalbert, Bizimana Israel, Uwamahoro Francine, Nduwumwami Désiré, Kamana Xavier, Mugabo Celestin, Mugabo François, Kabenga Charles, Guhigana Paul basabye kwishyurwa imyenda bafitiye na BES&SUPPLY Ltd ikomoka ku mirimo bakoranye muri iryo soko. [9] Ku wa 29/06/2021, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00923/2019/HCC, maze rwemeza ko ubujurire bw'Akarere ka Nyaruguru bufite ishingiro ku ngano y'ubwishyu bwahawe BES & SUPPLY Ltd ndetse n'ubwishyu isigaje guhabwa, ko icyemezo cyafashwe mu rubanza RCOM 02243/2018/TC rwajuririwe gihindutse kuri bimwe, rutegeka ko fagitire yaregewe ingana na 166.423.013 Frw, ubwishyu bwayo ndetse n'ibihano byose hamwe bingana na 237.152.793 Frw bikuweho, ko ubwishyu Akarere ka Nyaruguru gasigayemo BES & SUPPLY Ltd hamwe n'ibihano byose bihanye na 78.326.698 Frw, hakiyongeraho 5.000.000 Frw y'indishyi zategetswe ku rwego rwa mbere, yose hamwe akaba 83.326.698 Frw. Rwemeza ko kugoboka mu rubanza kwa ECOBANK RWANDA Plc nta shingiro gufite, rwemeza ko Akarere ka Nyaruguru kagomba kurekura ½ cy'ingwate yo kurangiza imirimo kari kahawe ku rwego rwa mbere.

[10] Urukiko Rukuru rw'Ubucuruzi rwategetse ko ubwishyu bugomba kubanza gukurwamo ayishyurwa abagobotse mu rubanza, 10.860.000 Frw agomba guhabwa Maniraguha Adalbert na bagenzi be ari bo Uwamahoro Francine, Nduwumwami Desire, Kamana Xavier, Mugabo Celestin, Mugabo Francois, Kabenga Charles na Guhigana Paul, 1.770.000 Frw agahabwa Bizimana Israel, 15.535.000 Frw agahabwa Ingabire Fausca, 1.500.000 Frw agahabwa SORAS na 1.000.000 Frw agomba guhabwa NOCTA, yose hamwe akaba 30.665.000 Frw. Runategeka ko 52.661.698 Frw asigaye ku bwishyu Akarere ka Nyaruguru kagomba guha BES & SUPPLY Ltd, azagabanwa mu buryo bungana Ruzindana Egide na Habumugisha Jean Paul, buri wese agahabwa 26.330.849 Frw, naho ubwishyu busigaye ku mwenda buri wese agomba kwishyurwa bakazabuhabwa na BES & SUPPLY Ltd, rutegeka Akarere ka Nyaruguru kwishyura indishyi, harimo 5.767.200 Frw agomba guhabwa Maniraguha Adalbert na bagenzi be ari bo Uwamahoro Francine, Nduwumwami Désiré, Kamana Xavier, Mugabo Celestin, Mugabo Francois, Kabenga Charles na Guhigana Paul, 930.000 Frw ahabwa Bizimana Israel, na 3.000.000 Frw ahabwa uwingabire fausca. [11] Akarere ka Nyaruguru ntikishimiye imikirize y'urubanza kajuririra Urukiko rw'Ubujurire, ubujurire bwako bwandikwa kuri RCOMAA 00054/2021/CA, kavuga ko raporo yakozwe n'umuhanga washyizweho n'Urukiko itagombaga gushingirwaho kubera inenge zitandukanye zirimo, ko n'ibyemezo byafashwe n'Urukiko rushingiye kuri iyo raporo nta gaciro byahabwa. Kavuga kandi ko impamvu kashingiyeho mu gusesa amasezerano zikurikije amategeko, ko kishyuye BES & SUPPLY Ltd amafaranga arenga ayo kagombaga kwishyurwa ku mirimo yakoze, bityo ko gasaba kuyasubizwa, ko nta n'indishyi kagombaga gutegekwa kwishyura abagobotse ku bushake mu rubanza kandi nta masezerano gafitanye nabo ngo kabe karayishe, ndetse ko Urukiko rutagombaga kugategeka gusubiza ingwate. [12] BES & SUPPLY Ltd nayo yarajuriye,

ubujurire bwayo bwandikwa kuri RCOMAA 00056/2021/CA, ivuga ko Urukiko Rukuru rw'Ubucuruza rutahaye agaciro ibisobanuro yatanze ku bijyanye n'imirimo yiswe raccordement au réseau EWSA + compteur triphasé Akarere ka Nyaruguru kavuga ko atari yo yayikoze, isaba kwishyurwa fagitire itishyuwe n'inyungu

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z'ubukererwe, gusubizwa amafaranga 4.000.000 Frw yishyuye umuhanga Kambali Bigishiro washyizweho n'Urukiko. Izo manza zahurijwe hamwe kugira ngo zizaburanishirizwe hamwe mu rubaza rumwe kuri RCOMAA 00054/2021/CA-RCOMAA 00056/2021/CA. [13] Urubanza rwaburanishijwe mu ruhamwe ku wa 13/07/2022, Akarere ka Nyaruguru gahagarariwe na Me Cyubahiro Fiat, BES&SUPPLY Ltd ihagarariwe na Nzirera Aimable, yunganiwe na Me Ndagijimana Emmanuel, SANLAM AG Plc ihagarariwe na Me Nkurunziza François Xavier, NOCTA ENGINEERING Ltd ihagarariwe na Me Munyaneza Roger Claude, Habumugisha Jean Paul, Maniraguha Adalbert, Uwamahoro Francine, Nduwumwami Desire, Kamana Xavier, Mugabo Celestin, Mugabo François Xavier, Kabenga Charles na Guhigana Paul bese bahagarariwe na Me Barahira Eric, ECOBANK RWANDA Plc ihagarariwe na Me Nsengiyumva François, Uwingabire Fausca yunganiwe na Me Hakizimana François Xavier, Bizimana Israel yunganiwe na Me Karenzi Paul, naho Ruzindana Egide yunganiwe na Me Uwingeneye Dancille. Kuri icyo tariki, Urukiko rumaze gusanga Akarere ka Nyaruguru na BES&SUPPLY Ltd zifuza ko hashyirwaho umuhanga, rwemeje ko hashyirwaho Umuhanga, akazatanga raporo ya nyuma ku wa 09/09/2022, ariko asaba ko yakongererwa igihe cyo kurangiza raporo, iburanisha rishyirwa kuwa 12/10/2022. [14] Ku wa 12/10/2022, Sibomana Amini Rajabu yagobotse mu rubanza avuga ko ubwo BES&SUPPLY Ltd yubakaga ku Karere ka Nyaruguru yayigemuriye ibikoresho bifite agaciro ka 87.863.000 Frw, ko rero BES & SUPPLY Ltd igomba kuyamwishyura, urubanza rwimurirwa ku wa 14/11/2022 kugira ngo umuhanga akore raporo ya nyuma (rapport définitif). Mu iburanisha ryo ku wa 14/11/2022, ababuranyi bitabye urukiko bahagarariwe cyangwa bunganiwe nka mbere, usibye Bizimana Israel utari wunganiwe, naho Sibomana Amini Rajabu wagobotse ku bushake mu rubanza ahagarariwe na Me Kanyabitari Benoit, hari n'umuhanga washyizweho n'Urukiko witwa Dr Iyandemye Samuel, wahawe umwanya wo gusobanura raporo; Me Cyubahiro Fiat, uhagarariye Akarere ka Nyaruguru, agira icyo avuga kuri icyo raporo, naho Me Ndagijimana Emmanuel, wunganiye Nzirera Aimable, asaba ko urubanza rwasubikwa kubera ko yarwaye abura umwanya wo gutegura urubanza, urubanza rwimurirwa ku wa 30/11/2022. Urubanza rwongeye kuburanishwa ku wa 25/01/2023, ababuranyi bitabye banahagarariwe cyangwa bunganiwe nka mbere, ariko Nzirera Aimable atunganiwe kuko Me Ndagijimana Emmanuel yivanye mu rubanza, rwongera kuburanishwa kuwa 13/02/2023, ababuranyi bahagarariwe cyangwa bunganiwe nka mbere, usibye BES & SUPPLY Ltd yari ihagarariwe na Nzirera Aimable, ariko yunganiwe na Me Kabeya Augustin na Ruzindana Egide utari wunganiwe. [15] Nyuma yo gupfundikira urubanza, ku wa 21/03/2023, Urukiko rwasomye urubanza rubanziriza urundi rwemeza ko ari ngombwa ko rupfundura iburanisha kugira ngo ababuranyi bagire icyo bavugaga ku mafaranga Sibomana Amini Radjabu wagobotse muri uru rubanza kuri uru rwego asaba kwishyurwa na BES & SUPPLY Ltd, rwemeza ko iburanisha rizapfundurwa ku wa 27/03/2023, maze uwo munsu ruburanishwa mu

ruhame. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO [16]

Muri uru rubanza, Urukiko rurasuzuma ibibazo bikurikira:

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1. Ku bijyanye n'ubujurire bw'Akarere ka Nyaruguru, ugahagarariye avuga ko impamvu ya mbere ijyanye no kumenya niba raporo yo ku wa 31/08/2017, y'ibarura ry'imirimo yakozwe yaragombaga gushingirwaho mu rubanza rujuririrwa, iya kabiri ijyanye no kumenya niba hari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze ryo gushingira kuri raporo y'umuhanga washyizweho n'Urukiko rw'Ubucuruzi, zisubizwa na raporo yakozwe n'umuhanga Dr Iyandemye Samuel. Bivuze ko ibibazo bisigaye ari icyo kumenya niba impamvu zashingiweho n'Akarere ka Nyaruguru mu gusesa amasezerano zikurikije amategeko, kumenya niba Akarere ka Nyaruguru karishyuye BES & SUPPLY Ltd amafaranga arenga hakurikijwe imirimo ku buryo ikwiye kayasubiza, icyo kumenya niba karagombaga gutegekwa kwishyura indishyi z'abagobotse ku bushake n'icyo kumenya niba kagomba gusubiza ingwate. 2. Ku bijyanye n'ubujurire bwa BES & SUPPLY Ltd, hasuzumwa ibyo ivuga ko Urukiko Rukuru rw'Ubucuruzi rutahaye agaciro ibisobanuro yatanze ku bijyanye n'imirimo yiswe raccordement au réseau EWSA + Compteur triphasé Akarere ka Nyaruguru kavuga ko atari yo yayikoze; kumenya niba BES & SUPPLY Ltd igomba kwishyurwa fagitire ya 166.423.013 Frw n'inyungu z'ubukererwe ziyishingiyeho, kumenya niba BES & SUPPLY Ltd yasubizwa amafaranga yatanze kuri garde corps, kumenya niba yasubizwa amafaranga y'ibikoresho ivuga ko yasize kuri chantier n'icyo kumenya niba igihembo cy'umuhanga washyizweho n'Urukiko cyaragombaga gutangwa n'uwatsinzwe. 3. Ku bijyanye n'ubujuririre bwuririye ku bundi, hasuzumwa ibijyanye no kumenya niba SANLAM Plc AG Plc yasubizwa ingwate n'icyo kumenya niba hari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze ryo kutemeza ko amafaranga ya BES & SUPPLY Ltd anyuzwa kuri konti yayo iri muri ECOBANK RWANDA Plc. Hanasuzumwe n'ibijyanye n'amafaranga y'ibyagiye ku rubanza. 4. Ku byerekeranye n'ikirego cyo kugoboka ku bushake cyatanze na Sibomana Amini Rajabu, hasuzumwa ibijyanye n'umwenda arega BES & SUPPLY Ltd n'amafaranga y'ibyagiye ku rubanza asaba. A. UBUJURIRE BW'AKARERE KA NYARUGURU 1. Kumenya niba impamvu zashingiweho n'Akarere ka Nyaruguru mu gusesa amasezerano zikurikije amategeko [17] Uhagarariye Akarere ka Nyaruguru avuga ko ibyemejwe n'Urukiko Rukuru rw'Ubucuruzi mu bika bya 76-80 by'urubanza rujuririrwa byerekeranye n'uko habayeho kunanizwa kwa BES & SUPPLY Ltd no kuba hari factures zitishyuriwe igihe atari ukuri, kuko rwagaragarijwe inyandiko zose zisaba amafaranga za BES & SUPPLY Ltd ndetse n'igihe yagiye yishyurirwa, ko nta bukererwe bwabayeho. Ko fagitire Urukiko ruvuga ko yakererewe yatanze mu mpera z'ukwezi kwa 6, Akarere kamenyesha Rwiyekezamirimo ko ingengo y'imari yarangiye, azishyurwa mu kwa 7 ku ngengo y'imari nshya, ko rwiyekezamiromu yakomeje imirimo, akora indi facture ikubiyemo iyari iherutse n'ibyo yari yakoze byari bimaze

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kwiyongeraho, ikaba yarishyurwe ku wa 06/10/2016, nyuma y'umunsi umwe itanzwe kuko yatanze ku wa 05/10/2016.

- [18] Avuga kandi ko amasezerano yasheshwe mu buryo bukurikije amategako hashingiwe ku biteganyijwe mu ngingo ya 9 y'amasezerano, iteganya ibikurikira : « résiliation de plein droit : Le District peut résilier le contrat de plein droit sans recours aux procédures de constatation défini et sans indemnité dans les éventualités décrites ci-après : retard important dans les travaux sans motifs valables. Ingingo ya 66 (CGC 66.1, 2 (g) ivuga kuri résiliation : Le maître de l'ouvrage ou l'entrepreneur pourront résilier le contrat si l'autre partie commet un manquement majeur au contrat. Les manquements majeurs inclus et ne se limite pas : g. L'entrepreneur retarde l'achèvement des travaux en concurrence du nombre de jour pour lequel le montant maximum des dommages et intérêts convenus peut être payé comme stipulé dans le CPC. GCC 57 le montant des pénalités de retard est plafonné à 5% du montant du marché, le district résiliera de plein droit et au tort de l'Entrepreneur le marché dès que le seuil est atteint et sans autre avertissement », ko kuba BES & SUPPLY Ltd yari imaze gukererwa iminsi ingana na 57 nyuma yo kongererwa igihe cy'amezi atanu (5), bivuze ko katigeze kayinaniza, ahubwo ari yo yananiwe kurangiza imirimo igahabwa undi Rwiyekezamirimo, bityo ko indishyi zaciwe Akarere ka Nyaruguru zikwiye gukurwaho kuko nta shingiro zifite.
- [19] Uhagarariye BES & SUPPLY Ltd yiregura kuri iyi ngingo y'ubujurire avuga ko nta shingiro ifite kuko nk'uko Urukiko Rukuru rw'Ubucuruzi rwabibonye kuva mu gika ya 76 kugeza ku cya 80, imirimo yose yagiye idindira bitewe n'amakosa y'Akarere ka Nyaruguru katishyuriraga igihe, maze Urukiko rushingiye ku biteganywa n'ingingo ya 84 y'Itegeko n° 45/2011 rigenga amasezerano, rusanga mu masezerano magirirane, mu gihe hari uruhande rutubahirije inshingano zarwo rutahamya urundi kutubahiriza amasezerano. Bityo ko nta kosa Urukiko Rukuru rw'Ubucuruzi rwakozwe.
- [20] Uhagarariye NOCTA ENGINEERING Ltd yiregura kuri iyi ngingo y'ubujurire avuga ko hakwiye kurebwa ibikubiye mu masezerano yabaye hagati ya BES & SUPPLY Ltd n'Akarere ka Nyaruguru.

UKO URUKIKO RUBIBONA [21] Ingingo ya 64 y'Itegeko N° 45/2011/2011 ryo ku wa 25/11/2011 ryerekeye amasezerano iteganya ibikurikira: "Amasezerano akozwe mu buryo bukurikije amategako aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategako". Agomba kubahirizwa nta buriganya". Ingingo ya 84 y'iri tegeko iteganya ko uruhande rumwe rudashobora gusaba urundi ruhande kurangiza inshingano zarwo rutabanje gukora ibyo rwasabwaga by'ingenzi mu gihe hari inshingano magirirane. [22] Ingingo ya 9 y'amasezerano, mu ngingo ifite umutwe witwa gusesa amasezerano iteganya ko Akarere gashobora gusesa amasezerano nta mpaka bitabaye ngombwa ko habaho

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imigenzo yo gusuzuma iteganyijwe, nta n'indishyi mu bintu bishobora kuba bivuzwe ahakurikira : gukererwa bikomeye mu kurangiza imirimo nta mpamvu zumvikana¹. Amasezerano ateganya na none ko mu gihe habaye gukererwa bikabije mu kurangiza imirimo, indishyi zirabarwa ariko ntizirenze 5% k'isoko. Muri icyo gihe iyo bigaragaye ko rwiyekezamirimo azaba arengeje igihe

ku buryo bugaragara, Akarere kazasesa amasezerano nta mpaka ku makosa ye, bitabaye ngombwa ko yongerera kwihanangirizwa. [23] Isesengura ry'izi ngingo z'amategako n'iz'amasezerano rihujwe ryafasha Urukiko kumenya uruhande rwishe amasezerano hagati y'Akarere ka Nyaruguru na BES & SUPPLY Ltd; hasuzumwa niba Akarere ka Nyaruguru karasheshe amasezerano ku mpamvu zemewe n'amategako, ndetse no kureba niba buri ruhande rwarayubahije nta buriganya (bonne foi). [24] Dosiye y'urubanza igaragaramo ibaruwa isesa amasezerano yo ku wa 23/05/2018, Akarere ka Nyaruguru kandikiye BES & SUPPLY Ltd kayimenyesha ko impamvu nyamukuru ituma gasesa amasezerano ari uko yananiwe kubahiriza ibikubiye mu masezerano kuko itashoboye kwihutisha imirimo nk'uko byari biteganyijwe mu nyandiko ya Planning y'imirimo yakozwe na BES & SUPPLY Ltd. Muri iyi baruwa, Akarere ka Nyaruguru kagaragaza ko BES & SUPPLY Ltd yagiye yibutsa ko imirimo iri kudindira nta mpamvu, ko yagiye ihagarika imirimo nta mpamvu zifatika. [25] Ku rundi ruhande, dosiye igaragaza ko hari ibaruwa BES & SUPPLY Ltd yandikiye Akarere ka Nyaruguru ku wa 09/11/2015, ikamenyesha ko nta bukererwe buhari, ko kandi izubahiriza ibihe biteganyijwe; ariko isaba Akarere kwihutisha validation y'imirimo y'inyongera. Dosiye igaragaza ko ku wa 26/11/2015, BES & SUPPLY Ltd yongeye kwandikira Akarere ka Nyaruguru ikibutsa ko kakwihutisha validation y'imirimo y'inyongera no gusuzuma ko ingano y'ibikoresho by'ubwubatsi ihwanye n'ibiteganyijwe ku mirimo y'inyongera (contre vérification des quantités pour les travaux de construction...). Muri iyo baruwa avuga ko kudakora ibyo ibasabye bizakereza iyubakwa ry'imirimo y'inyongera itari yarateganyijwe mu masezerano. Ku wa 09/02/2016, BES & SUPPLY Ltd yongeye kwandikira Akarere ka Nyaruguru igasaba kwemeza imirimo y'inyongera yakozwe itari yarateganyijwe mu masezerano ariko yari ngombwa kugira ngo imirimo y'ubwubatsi ibone gukomeza neza ko kandi ikomeje gukora iyo mirimo y'inyongera itemejwe n'Akarere, gashobora kutazayishyura. Muri iyo baruwa BES&SUPPLY Ltd yibutsaga Akarere ka Nyaruguru ko kamaze amezi atatu kadasubiza amabaruwa yakandikiye, ko kubera izo mpamvu niba kadasubije mu minsi 15, izaba ihagaritse by'agateganyo imirimo y'ubwubatsi. [26] Ku bijyanye no kutishyura ku gihe, dosiye igaragaza ko hari ibaruwa Akarere ka Nyaruguru kandikiye BES & SUPPLY Ltd ku wa 28/06/2016, kayimenyesha ko fagitire yatanze ku wa 21/06/2016, ya 165.076.944 Frw izishyurwa mu ntangiro y'ingengo y'imari y'umwaka 2016-2017 kubera ko Akarere nta mafaranga kari gafite mu ngengo y'imari y'umwaka wa 2015- 1 Résiliation de plein droit : Le District peut résilier le contrat de plein droit sans recours aux procédures de constatation défini et sans indemnité dans les éventualités décrites ci-après : Retard important dans les travaux sans motifs valables.

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2016. Dosiye igaragaza na none ko ku wa 08/08/2016, BES & SUPPLY Ltd yandikiye Akarere ka Nyaruguru ikamenyesha ko ibaye ihagaritse imirimo y'ubwubatsi by'agateganyo kubera ko fagitire yabahaye imaze kurenza iminsi 50 itishyurwa bikaba bidindiza imirimo, kandi bikaba biyiteza n'igihombo gikomeye, isaba ko yakwishyurwa kugira ngo imirimo ibone gukomeza. [27] Urukiko rurebeye hamwe iby'amategako n'amasezerano biteganyaye, hamwe n'amabaruwa atandukanye Akarere ka Nyaruguru kandikiranye na BES & SUPPLY Ltd, rurasanga nk'uko inkiko zibanza zabibonye, Akarere ka Nyaruguru karagize uruhare

rukomeye mu gutuma BES & SUPPLY Ltd itubahiriza ibihe byari biteganyijwe mu masezerano, bikageza naho gasesa amasezerano kagiranye nayo. icya mbere kibigaragaza ni uko BES & SUPPLY Ltd yakandikiye inshuro nyinshi igasaba kwihutisha validation y'imirimo y'inyongera no gusuzuma ko ingano y'ibikoresho by'ubwubatsi ihwanye n'ibiteganyijwe ku mirimo y'inyongera (contre vérification des quantités pour les travaux de construction), ariko kakamara amezi atatu (3) kadasubiza kugeza aho BES & SUPPLY Ltd ikandikiye igaha integuza ko nikadasubiza mu gihe cy'iminsi 15 izahagarika by'agateganyo imirimo y'ubwubatsi. icya kabiri, ni uko n'ubwo hari fagitire nyinshi Akarere kagiye kishyura ku gihe, ariko hari ya 165.076.944 Frw yamaze hafi amezi ane

- (4) itarishyurwa, ibi nabyo bikaba ari impamvu yadindiye imirimo. [28] Urukiko rurasanga kuba BES & SUPPLY Ltd yarandikiye Akarere ka Nyaruguru igasaba kugira ibyo kemeza kugira ngo imirimo ikorwe neza, ariko kagatinda gusubiza, bigatuma imirimo idindira bidahuza n'ibiteganywa n'ingingo ya 64 y'Itegeko rigenga amasezerano, ahahera, y'Itegeko rigenga amasezerano iteganya ko amasezerano agomba kubahirizwa nta buryarya (bonne foi). Abahanga mu mategeko basobanura ijamba nta buryarya nk'inshingano abagiranye amasezerano bafite yo gukorana mu bworoherehane, no mu mubano mwiza, buri ruhande rwirinda igikorwa cyose cyabuza urundi ruhande gusohozza neza inshingano zarwo, no kuba rwamumenyesha ikintu cyose cyamworohereza kuzuzwa neza inshingano ze. Bavuga kandi ko iri jambo nta buryarya ari indemyagihugu ku buryo nta ngingo y'amasezerano yarishyira ku ruhande haba mu buryo buziguye cyangwa butaziguye. [29] Urukiko rurasanga na none, kuba Akarere ka Nyaruguru karishyuye 165 076 944 Frw nyuma y'amezi hafi ane nabyo ari impamvu yatumye imirimo itarangizwa mu gihe cyateganyijwe, kandi bigaturutseho, cyane ko BES & SUPPLY Ltd yandikiye Akarere ka Nyaruguru ibaruwa yo ku wa 08/08/2016 ivuga ko ihagaritse akazi by'agateganyo bitewe nuko iyo fagitire imaze iminsi 50 itarishyurwa. Mu gihe rero Akarere ka Nyaruguru katumvikanye na BES & SUPPLY Ltd ko izihangana igategereza ingengo y'imari y'umwaka ukurikiyeho ngo ikemerere, Urukiko rurasanga ari ko katubahirije inshingano zako. [30] Urukiko rurasanga n'ubwo ingingo ya 9 y'amasezerano iteganya ko gukererwa bikomeye mu kurangiza imirimo nta mpamvu zumvikana, ari impamvu izatuma Akarere ka Nyaruguru gasesa amasezerano, itakurikizwa, kuko nk'uko byasobanuwe haruguru, hari impamvu zumvikana zatumye BES & SUPPLY Ltd itubahiriza ibihe byateganyijwe mu masezerano bikayiviramo no gusesa amasezerano. 2 F. Terré, Ph. Simler, Yv. Lequette, Droit civil: Les obligations, 11e éd., Paris, Dalloz, 2013, p.487.

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- [31] Urukiko rurasanga kuba hari inshingano Akarere ka Nyaruguru katubahirije, kandi iyo kazubahiriza byari korohera BES & SUPPLY Ltd kurangiza inshingano zayo, atari ko kasubira inyuma ngo gasabe BES & SUPPLY Ltd kurangiza imirimo ku gihe. Urukiko rurasanga rero kuba, Akarere ka Nyaruguru karagize uruhare rukomeye mu kuba BES & SUPPLY Ltd itararangije imirimo, hanyuma kakaba ariko gasesa amasezerano, binyuranyije n'ibiteganywa n'ingingo ya 84 y'Itegeko rigenga amasezerano; bityo ubujurire bwayo kuri iyi ngingo nta shingiro bufite.

2. Gusuzuma niba Akarere ka Nyaruguru karishyuye BES & SUPPLY Ltd amafaranga arenga ayo kagombaga kuyishyura ku mirimo yakoze no gusuzuma niba kayasubizwa [32] Uhagarariye Akarere ka Nyaruguru avuga ko ibyemejwe n'Urukiko Rukuru rw'Ubucuruzi mu bika bya 88-99 ko Akarere ka Nyaruguru kishyuye BES&SUPPLY Ltd 608.024.614 Frw, kirengagije ko hari avance yagarujwe ndetse n'imisoro yakaswe kuri fagitire, ko rwavuze ko amafaranga yafashwe mu ntoki gusa kandi rwaragomba kwemeza ko hishyuwe 707.001.927 Frw (ayafashwe mu ntoki+avance+imisoro) nk'uko bigaragazwa na tableau iri muri dosiye ya IECMS, rukaba rwaranemeje ko ikigero cy'imirimo yakozwe na BES & SUPPLY Ltd kiri kuri 83% kandi atari byo nk'uko bigaragazwa na décompte final ko ari 66,1%. [33] Akomeza avuga ko Akarere ka Nyaruguru kishyuye BES & SUPPLY Ltd amafaranga aruta ayo kagombaga kuyishyura, kuko kayishyuye 707.001.927 Frw kandi imirimo yakozwe ifite agaciro kangana na 590.732.515 Frw nk'uko yemejwe n'umuhanga nubwo ko katayemera, ahubwo kemera agaciro k'iyi mirimo kemejwe na décompte final kangana na 545.172.168 Frw. Bityo ko gasaba ko BES&SUPPLY Ltd igasubiza 707.001.927 Frw – 545.172.168 Frw = 161.829.759 Frw, ibihano by'ubukererwe bihwanye na 5%, by'agaciro k'isoko ryose angana na $(840.675.210 \times 5/100) = 42.033.760$ Frw, nk'uko biteganywa n'ingingo ya 57 CGC y'amasezerano, amafaranga angana 10% y'ibihano by'imirimo itarangiye angana na $840.675.210 \text{Frw} \times 10/100 = 84.067.521$ Frw nk'uko biteganywa n'ingingo ya 67.1 y'amasezerano ndetse n'igihembo cya Avoka kingana na 1.000.000 Frw. Yose hamwe angana na $(71.161.859 \text{Frw} + 161.829.759 \text{Frw} + 84.067.521 \text{Frw} + 42.033.760 \text{Frw} + 5.000.000 \text{Frw} = 364.092.899 \text{Frw}$. [34] Uhagarariye BES & SUPPLY Ltd yiregura kuri iyi mpamvu y'ubujurire avuga ko nta shingiro ifite, nk'uko Urukiko rwabisobanuye kuva mu gika cya 88 kugeza ku cya 99, aho rwasobanuye neza uko fagitire zose zatanzwe na BES & SUPPLY Ltd zishyuwe, rushingiye ku bimenyetso byagaragajwe n'impane zombi, bikaza kugaragara ko hari umwenda Akarere ka Nyaruguru kayisigayemo, rushingiye ku mirimo yakozwe yagaragajwe n'Umuhanza washyizweho witwa Kambali. Bityo ko ibyo Akarere ka Nyaruguru kavugaga ko hari gushingirwa kuri raporo yakozwe na ASSETIP kugira ngo hagaragare imirimo yakozwe n'amafaranga yishyuwe atari byo, kuko iyo raporo itumvikanyweho nk'uko rwabisobanuye. UKO URUKIKO RUBIBONA

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- [35] Mu rwego rwo gusubiza iyi ngingo y'ubujurire, hararebwa agaciro k'imirimo yakozwe n'iyishyuwe hashingiwe kuri raporo y'umuhanga Dr Iyandemye Samuel, ndetse no kubimenyetso byagiye bitangwa n'ababuranyi, noneho ikinyuranyo n'icyo gishingirwaho hemezwa koko niba ibyo Akarere ka Nyaruguru kavuga ko kagomba gusubizwa amafaranga kishyuye arenze imirimo yakozwe na BES&SUPPLY Ltd bifite ishingiro. Haranasuzumwa niba uburyo Akarere kabara ayo mafaranga nabyo bifite ishingiro. [36] 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 iteganya ibikurikira: "Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda". Ingingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo nayo iteganya ko "Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana".

- a. Ku bijyanye n'agaciro cyangwa ijanisha (%) ry'imirimo yakozwe [37] Raporo y'umuhanga Dr Iyandemye Samuel yakozwe ku wa 28/10/2022, igaragaza ko imirimo yakozwe na BES & SUPPLY Ltd igeze ku ijanisha rya 70%, naho itarakozwe ikaba ari 30%. Akarere ka Nyaruguru kavuga ko kemeranya n'ibyakozwe n'umuhanga, ariko kakavuga ko katemeranya nawe ku giciro cyabariwe amakaro no ku buryo yabaze ijanisha ry'imirimo yakozwe na BES & SUPPLY Ltd n'itarakozwe, igaragaza ko imirimo yakozwe, abariye agaciro k'amakaro kuri 21.000 Frw (prix unitaire), ifite agaciro ka 568.152.042.038 Frw. Kavuga ko ijanisha ry'imirimo yakozwe ryagomba kubarirwa ku gaciro ka 840.000.000 Frw, kuko ariko gateganyijwe mu masezerano, aho kubarira ku giteranyo cy'imirimo yakozwe n'iyari isigaye gukorwa. [38] BES & SUPPLY Ltd yo ivuga ibintu bigera kuri bitanu (5) itemeranyaho na raporo y'umuhanga. Icyamba mbere, ivuga iko itemeranya n'umuhanga ku giciro cy'amakaro, kuri yo umuhanga yagombaga kuyabarira kuri 29.367 Frw kuri m3, aho kuba 21.000 Frw. Ikindi ngo ni uko umuhanga yavuze ko nta couche d'impreignation yakozwe kuri gare kandi BES & SUPPLY Ltd yarayikoze, ibyo bikaba byarayahombeje 4.500.000 Frw. Icyamba gatatu ngo ni uko umuhanga yavuze ko BES & SUPPLY Ltd itakoze garde corps nyamara ari yo yatanze ibikoresho; ivuga ko byayahombeje 3.676.750 Frw. Ikindi BES & SUPPLY Ltd itemeranya na raporo y'umuhanga ngo ni uko ivuga ko nta raccordement électrique yakoze, nyamara hari iyo yakoze; ivuga ko ibyo byayahombeje 3.500.000 Frw. BES & SUPPLY ivuga ko hari n'ibikoresho yaguze byari bifite agaciro kagera kuri 68.000.000Frw, ko Akarere kasheshe amasezerano ibyo bikoresho biri kuri chantier, kakaza kubiteza cyamunara. [39] Mu rwego rwo kumenya niba rwemeranya na raporo y'umuhanga, rurareba ibisubizo yagiye atanga ku mpungenge buri ruhande rwagaragaje. Ku bijyanye n'agaciro k'amakaro, n'ubwo impande zombi zitabyumva kimwe, kuko Akarere kifuza ko amakaro yabarirwa kuri 16.000 Frw kuri m3, BES & SUPPLY Ltd yo ikavuga ko yabarirwa kuri 29.367 Frw kuri m3, mu rwego rwo gukemura izi mpaka, Urukiko rurasanga rwemeranya n'igiciro cya 21.000 Frw kuri m3 yagenwe n'umuhanga kuko usibye ko kigerageza kuba hagati, ariko nawe avuga ko asanzwe

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agena agaciro, ko kandi ari ko yasanze kari ku isoko, bityo Urukiko rukaba ntacyo rufite rwaheraho ruvuguruzwa igiciro cyatanzwe n'umuhanga. [40] Ku bijyanye n'ibyo Akarere ka Nyaruguru kavuga ko umuhanga yagombaga kubara ijanisha ry'imirimo yakozwe ashingiye ku biteganyijwe mu masezerano, aho guteranya agaciro k'imirimo yakozwe n'itarakozwe, Urukiko rurasanga nta makosa umuhanga yakoze, kuko we yagiye abara ikintu cyose cyagombaga gukorwa, akigenera agaciro kacyo, areba ibyakozwe n'agaciro kabwo, ndetse abara n'ibyari bisigaye gukorwa, bituma agera ku mibare igaragaza ko imirimo yakozwe ifite agaciro ka 568.152.042,038 Frw, naho iyari isigaye gukorwa ifite agaciro ka 243.547.331,965 Frw. Urukiko rurasanga nta mpamvu yari kubarira kuri 840.675.210 Frw yari ateganyijwe mu masezerano, mu gihe yari afite imibare igaragaza ukuri kuri ahakorerwa imirimo. Rurasanga 840.675.210 Frw yafatwa nk'igiciro cya référence ariko kidahwanye neza n'ibigaragara aho imirimo ikorerwa (terrain), habarwa akantu ku kandi. Iki giciro kikaba gitandukanye n'icy'ikintu runaka cyaba kiri ku isoko, umuntu yahita yumvikana n'ugurisha agahita igitwara. [41] Urukiko rurasanga rero ibyo

Akarere ka Nyaruguru kanenga raporo y'umuhanga nta shingiro byahabwa, hakaba hagomba kurebwa ibyo BES & SUPPLY Ltd inenga iyi raporo. [42] Ku bijyanye n'agaciro k'amakaro, Urukiko rurasanga iki kibazo cyasubijwe mu gika cya 38 cy'uru rubanza. Ku bijyanye n'ibyo BES & SUPPLY Ltd ivuga ko ari yo yakoze couche d'impreignation, Urukiko rurasanga nta shingiro byahabwa kuko nta bimenyetso bifatika ishingiraho ivuguruza uko umuhanga yabibonye, kubera ko kuvuga ko hari amafoto y'ikamyo yabo ihahagaze, ko rero hari présomption ko ari yo yayikoze, ibyo bidahagije, kandi nta n'indi raporo ihari igaragaza ko ari yo yayikoze. Urukiko rurasanga na none ibyo ivuga ko ari yo yaguze ibikoresho bya garde corps irabisudira, ko hari hasigaye kubishyiraho nabyo nta bimenyetso batanga bashingiraho, nka fagitire, amafoto n'ibindi bishobora kugaragaza ko koko ibyo bikoresho byageze kuri terrain, ko kandi byari bisudiriye nk'uko babivuga. Ikijyanye na raccordement électrique, BES & SUPPLY Ltd ivuga ko itabazwe kandi yarakozwe, ngo kuko iyo idakorwa nta buryo hari kuba hari amashanyarazi kuri chantier, Urukiko rurasanga umuhanga yarasobanuye neza ko icyakozwe kandi akaba yarakibaze, ari ugutunganya chantier (installation du chantier) kandi ko itandukanye na raccordement électrique. [43] Ku bijyanye n'ibikoresho BES & SUPPLY Ltd ivuga ko bitabazwe muri raporo y'umuhanga kandi byarageze kuri chantier y'Akarere ka Nyaruguru, ko rero bigomba kubazwa Akarere ka Nyaruguru, Urukiko rurasanga umuhanga yarusobanuriye ko ibimenyetso yahawe na BES & SUPPLY Ltd ku bijyanye n'ibyo bikoresho ari inyandikomvugo y'Akarere ka Nyaruguru igaragaza ko ibyo bikoresho byasubijwe BES & SUPPLY Ltd na raporo ya cyamunara y'ibyo bikoresho, ko kandi yabajije umuhesha w'inkiko uburyo byatejwe cyamunara akamusubiza ko Nzizera Aimable ari we wabahaye uburenganzira bwo kubiteza cyamunara mu rwego rwo kurangiza urubanza BES & SUPPLY Ltd yari yatsinzwemo, kuba rero BES & SUPPLY Ltd itabasha kuvuguruza ibyo bisobanuro by'umuhanga, ibyo ivuga nta shingiro byahabwa. Urukiko rurasanga rero ibyo BES & SUPPLY Ltd inenga raporo y'umuhanga nta shingiro byahabwa, kuko rwemeranya n'ibisubizo n'ibisobanuro umuhanga yatanze. [44] Urukiko rurasanga rero imirimo yakozwe na BES & SUPPLY Ltd iri ku kigero cya 70% by'ikiguzi cyo kubaka ibikorwa remezo byavuzwe, agaciro kayo kakaba 568.152.042,038 Frw,

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nk'uko byagaragajwe na raporo y'umuhanga Dr Samuel Iyandemye. Naho imirimo itarakozwe na BES&SUPPLY Ltd ikaza kurangizwa na Reserve Force iri ku kigero cya 30% ikagira agaciro ka 243.547.331, 965 Frw.

- b. Ibijyanye no kumenya niba Akarere ka Nyaruguru karishyuye amafaranga arenze ay'imirimo yakozwe [45] Urukiko rurasanga mu gusubiza ikibazo ari ngombwa kureba ikinyuranyo hagati y'amafaranga Akarere ka Nyaruguru gatangira ibimenyetso ko kishyuye n'agaciro k'imirimo yakozwe na BES & SUPPLY Ltd, byaramuka bigaragaye ko kaba karishyuye amafaranga arenze agaciro k'imirimo yakozwe kakayasubizwa na BES & SUPPLY Ltd. [46] Dosiye y'urubanza igaragaramo avansi yo gutangira imirimo ingana na 142.118.862Frw yasabwe na BES & SUPPLY Ltd mu ibaruwa yo ku wa 29/07/2015, yakorewe Facture N 0 00/B.E.S/07/2015 yo ku wa 29/07/2015, yishyuwe mu byiciro bibiri: icyiciro cya mbere kigaragazwa na Payment Order yo ku wa 03/09/2015, iriho 71.059.431 Frw, icyiciro cya

kabiri nacyo kigaragazwa na Payment Order yo ku wa 02/10/2015, iriho 71.059.431 Frw, bityo fagitire yose ingana na 142.118.862 Frw yarishyuwe. Igaragaramo kandi Facture No 0106/ BES&SUPPLY/MARCHE/MODERNE/NYARUGURU/2015 yishyuza 130.080.900 Frw, yakorewe Payment Order yo ku wa 22/06/2015, iriho 130.080.900 Frw, Facture N0 0212/BES&SUPPLY/ MARCHE/MODERNE/ NYARUGURU/2015, yo ku wa 28/12/2015, iriho 133.549.428 Frw, yakorewe Payment Order ku wa 31/12/2015, iriho 109.653.428 Frw. [47] Dosiye

y'urubanza

igaragaramo

kandi

Facture

N0 0406/BES&SUPPLY/MARCHE/MODERNE/ NYARUGURU/2016, yo ku wa 04/10/2016, iriho 174.284.584 Frw, yakorewe Payment Order yo ku wa 07/10/2016, iriho 174.284.584 Frw, bigaragara ko yishyuwe yose. Ibaruwa BES & SUPPLY Ltd yandikiye Akarere ka Nyaruguru ku wa 03/12/2017, igasaba kuyishyurira abakozi 16.642.750 Frw hashingiwe kuri facture N05, aya mafaranga yishyuwe ku wa 08/12/2017, nk'uko bigaragazwa na Payment Order yo kuri iyo tariki iriho 16.642.750 Frw, kandi yishyuwe ashyizwe kuri konti numero 461331548811 ya Sacco

Imboni

Kibeho

iri

muri

BPR.

Facture N00306/BES&SUPPLY/MARCHE/MODERNE/NYARUGURU/2016, yo ku wa 16/06/2016, iriho 16.497.240 Frw, aya mafaranga yishyuwe yose ku wa 16/06/2016, nk'uko bigaragazwa na Payment Order ndetse na Payment list byombi byo kuri iyo tariki. [48] Dosiye igaragaramo na none ibaruwa yo ku wa 27/04/2017, BES & SUPPLY Ltd yandikiye Akarere ka Nyaruguru, aho yatangaga uburenganzira bw'uko Akarere kayishyurira abakozi 13.716.250 Frw, ko ayo mafaranga azakatwa kuri facture N05, ayo mafaranga yose yishyuwe ku wa 08/05/2017, nk'uko bigaragazwa na Payment Order yo kuri iyo tariki. Mu nama Njyanama y'Akarere ka Nyaruguru yateranye ku wa 28/12/2018, hafashwe icyemezo cy'uko abakozi bari bakoreye BES & SUPPLY Ltd Akarere kabishyura 13.838.600 Frw, ariko Akarere kishyuye 5.030.600 Frw nk'uko bigaragazwa na Payment Voucher yo ku wa 25/02/2019, iriho ayo mafaranga, Memo yo ku wa 11/02/2019, igaragaza ko abandi bagombaga kwishyurwa 8.358.000 Frw bafitanye amasezerano na BES & SUPPLY Ltd.

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- [49] Hashingiwe ku bimenyetso byagaragajwe haruguru, Urukiko rurasanga amafaranga yose hamwe BES & SUPPLY Ltd yishyuwe n'Akarere ka Nyaruguru angana na: 130.080.900 Frw + 109.653.428Frw + 174.284.584Frw + 16.642.750Frw + 16.497.240Frw + 13.716.250Frw + 5.030.600Frw= 465.905.752 Frw. [50] Urukiko rurasanga amafaranga ya avansi yo gutangira imirimo (Avance demarrage) BES & SUPPLY Ltd yari imaze gusubiza Akarere ka Nyaruguru muri 142.118.862 Frw kari kayishyuye angana na: 75.758.203 Frw ni ukuvuga: 42.370.846 Frw (yakuwe kuri Facture N004- 06/BES&SUPPLY/MARCHE MODERNE/NYARUGURU/2016) + 33.387.357Frw (yakuwe kuri facture N00212/BES&SUPPLY/MARCHE/MODERNE/ NYARUGURU/2015). [51] Urukiko rurasanga amafaranga Akarere ka Nyaruguru kagombaga kwishyura BES & SUPPLY Ltd hakurikijwe imirimo yakozwe nk'uko yemejwe n'umuhanga Dr IYANDEMYE Samuel muri raporo ya nyuma yakozwe ku wa 28/10/2022, ari 568.152.042,038 Frw. Kuba rero amafaranga yose hamwe Akarere ka Nyaruguru kishyuye BES & SUPPLY Ltd angana na 465.905.752Frw, ariko BES & SUPPLY Ltd nayo ikaba itari yakarangije kwishyura Akarere ka Nyaruguru avansi yo gutangira imirimo (avance de démarrage), aho iyari isigaye ingana na 66.360.659Frw (142.118.862 Frw-75.758.203 Frw), ni ukuvuga ko amafaranga Akarere ka Nyaruguru kagomba kwishyura BES & SUPPLY Ltd angana na: 568.152.042,038Frw – (465.905.752Frw + 66.360.659 Frw) = 35.885.631 Frw. [52] Nk'uko byemejwe mu rubanza rujuririrwa ko ubwishyu butatanze ari bwo bugomba kubarirwa ibihano by'ubukererwe, bikabarwa mu buryo bumwe nk'uko byari byabazwe ku rwego rwa mbere, n'iminsi yari yagendeweho ikaba ari yo ikomeza kubarwa, Urukiko rurasanga ariko bigomba no kugenda kuri uru rwego kuko nta mu buranyi wabijuririye, bityo 35.885.631 Frw Akarere ka Nyaruguru kagomba kwishyura BES & SUPPLY Ltd kagomba kuyatangira ibihano by'ubukererwe bibazwe mu buryo bukurikira: 35.885.631 Frw x 1/1000 x iminsi 425 = 15.251.393 Frw. Ni ukuvuga ko amafaranga yose ahamwe Akarere ka Nyaruguru kagomba kwishyura BES & SUPPLY Ltd ari 35.885.631 Frw + 15.251.393 Frw = 51.137.024 Frw [53] Hashingiwe ku bimaze gusobanurwa haruguru Urukiko rurasanga ibivugwa n'Akarere ka Nyaruguru ko amafaranga kishyuye BES & SUPPLY Ltd arenze ay'imirimo yakozwe, ko rero kagomba gusubizwa amafaranga arenga ku yagombaga kwishyurwa nta shingiro bifite, ahubwo kakaba kagomba kuyishyura 51.137.024 Frw yasigaye kuyo kagombaga kwishyura akubiyemo n'ibihano by'ubukererwe, hiyongereyeho 5.000.000 Frw y'indishyi zo gusesa amasezerano mu buryo bunyuranyije n'amategeko BES & SUPPLY Ltd yagenewe mu rubanza rujuririrwa, yose hamwe akaba 56.137.024 Frw.
3. Gusuzuma niba Akarere ka Nyaruguru ariko kagombaga gutegekwa kwishyura indishyi isabwa n'abagobotse ku bushake mu rubanza rujuririrwa [54] Uhagarariye Akarere ka Nyaruguru avuga ko Urukiko Rukuru rw'Ubucuruzi rutagombaga gutegeka Akarere ka Nyaruguru kugenera indishyi abagobotse ku bushake kuko nta

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shingiro zifite, ko zikwiye gutangwa na BES & SUPPLY Ltd kuko ari yo bafitanye amasezerano, nk'uko urwo Rukiko rwabyemeje mu rubanza RCOMA 00457/2019/CHC/HCC rwaciwe ku wa 29/3/2019, aho Uwingabire Fausca yari yarareze Akarere ka Nyaruguru kuri iyi ngingo, Urukiko rukemeza ko ntacyo agomba kubaza Akarere ka Nyaruguru, Urukiko rumwe rukaba rutafata ibyemezo bibiri bivuguruzanya ku kibazo kimwe no ku baburanyi bamwe. [55] Uhagarariye Habumugisha Jean Paul avuga ko Habumugisha Jean Paul yagobotse mu rubanza asaba kwishyurwa amafaranga ye akomoka ku bikoresho yagemuriye BES & SUPPLY Ltd mu gihe yubakaga isoko ry'Akarere ka Nyaruguru, bifite agaciro ka 120.326.800 Frw hamwe n'indishyi zishamikiyeho. Ko Urukiko Rukuru rw'Ubucuruzi rwari rwemeje ko ubwishyu bwose BES & SUPPLY Ltd yategetswe n'Urukiko rw'Ubucuruzi bugumyeho, ariko kubera ko amafaranga BES & SUPPLY Ltd yagombaga kwishyurwa n'Akarere ka Nyaruguru yagabanutse, rutegeka ko 52.661.698 Frw yasigaye ku bwishyu ako Karere kagomba guha BES & SUPPLY Ltd azagabanwa mu buryo bungana hagati ya Ruzindana Egide na Habumugisha Jean Paul, buri wese agahabwa 26.330.849 Frw, naho ubwishyu busigaye ku mwenda buri wese agomba kwishyurwa bakabuhabwa na BES & SUPPLY Ltd, bityo ko asaba Urukiko gutegeka ko yishyurwa umwenda wose aberewemo, amafaranga yose BES & SUPPLY Ltd yagenerwa hakabanza gukurwamo ayo imubereyemo, hatavamo ubwishyu, asigaye akayishyurwa na BES & SUPPLY Ltd nk'uko byemejwe n'Urukiko Rukuru rw'Ubucuruzi mu rubanza rujuririrwa. [56] Bizimana Israel avuga ko yagobotse mu rubanza kugira ngo yishyuze umwenda ungana na 1.770.000 Frw yari aberewemo na BES&SUPPLY Ltd, hanyuma Urukiko rugategeka ko awishyurwa n'Akarere ka Nyaruguru kuko utagibwagaho impaka. Ko kandi Urukiko rwabisobanuye neza mu gika cya 127 n'icya 128 by'urubanza N° RCOMA 00923/2019/HCC rujuririrwa, aho rwagaragaje ingano yawo, ndetse n'indishyi zigomba kwishyurwa n'ako Karere kubera kudindiza kwishyura, bityo kakaba kagomba kwirengera ingaruka zabyo. [57] Uwingabire Fausca avuga ko indishyi Akarere ka Nyaruguru kaciwe mu rubanza RCOMA 00923/2019/HCC rujuririrwa zifite ishingiro, kuko katsinzwe urubanza BES & SUPPLY Ltd yakarezemo nk'uko Urukiko rwabisobanuye mu gika cya 133 cy'urubanza rujuririrwa, aho Urukiko rwasobanuye ko iyo Akarere ka Nyaruguru kishyura BES & SUPPLY Ltd nayo yari kumwishyura, ariko ko kabyanze bigakurura imanza, kagomba kuryozwa ingaruka zabyo, gategekwa kwishyura indishyi abo kazishoyemo. Bityo asaba ko ibyo yagenewe mu rubanza rujuririrwa bigumaho. [58] Uhagarariye BES & SUPPLY Ltd avuga ko Urukiko Rukuru rw'Ubucuruzi nta kosa rwakoze mu gufata icyemezo, kuko kuva mu gika cya 112 kugeza ku cya 141, rwasobanuye ko abagobotse mu rubanza bagaragaje inyungu itaziguye bafite mu rubanza, ko bagaragaje n'ibimenyetso by'amafaranga batishyuwe kubera amakosa y'Akarere ka Nyaruguru, bityo ko Akarere ka Nyaruguru ariko kagombaga gutegekwa kubishyura, amafaranga asigaye akabona kwishyurwa BES & SUPPLY Ltd. UKO URUKIKO RUBIBONA [59] Ihame risanzwe rizwi mu mategeko ni uko igikorwa cyose cy'umuntu cyangirije undi gisaba nyiri ukugikora kwishyura ibyangiritse. Ku kibazo kijyanye nuko Urukiko Rukuru rw'Ubucuruzi rwemeje ko Akarere ka Nyaruguru ari ko kagomba kuryozwa indishyi zikomoka

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ku kuba abagobotse mu rubanza baratinze kwishyurwa kubera amakosa yako, aho kasheshe mu buryo budakurikije amasezerano kari gafitanye na BES & SUPPLY Ltd kandi iyi ikaba yari ifitanye amasezerano n'abagobotse bavugwa muri uru rubanza, ndetse ayo masezerano akaba yari afitanye isano n'ayo BES & SUPPLY Ltd yagiranye n'Akarere ka Nyaruguru; Urukiko rurasanga ibyo Urukiko Rukuru rw'Ubucuruzi rwategetse bifite ishingiro kuko abagobotse bagomba kwishyurwa biturutse ku bwishyu BES & SUPPLY Ltd yari kwishyurwa n'Akarere ka Nyaruguru. Kuba rero karasheshe amasezerano mu muryo budakurikije amategeko, ndetse hakaba hari naho kagiye gatinda kwishyura, byagize ingaruka ku bagobotse mu rubanza kuko nabo batinze kwishyurwa, ndetse bituma bagoboka mu rubanza, bityo rero Akarere ka Nyaruguru gakwiye kwirengera indishyi zikomoka ku makosa yako. [60] Urukiko rurasanga ibyo Akarere ka Nyaruguru kavuga ko nta ndishyi katanga kuko nta masezerano gafitanye n'abagobotse ku bushake bavugwa haruguru, nta shingiro byahabwa, kuko indishyi zisabwa zidashingiye ku masezerano ahubwo zishingiye ku ikosa (délit/tort) ryakozwe n'Akarere ka Nyaruguru rikaba ryaragize ingaruka ku bagobotse ku bushake bavugwa haruguru kandi bigaragara ko bafite inyungu muri uru rubanza. [61] Ku bivugwa n'uhagarariye Akarere ka Nyaruguru ko hari urubanza RCOM 00457/2019/CHC/HCC rwaciwe ku wa 29/03/2019, aho Uwingabire Fausca yari yarareze Akarere ka Nyaruguru kuri iyi ngingo, Urukiko rukemeza ko ntacyo agomba kukabaza, ko rero Urukiko rumwe rutafata ibyemezo bibiri bivuguruzanya ku kibazo kimwe no ku baburanyi bamwe, Urukiko rurasanga nk'uko byasobanuwe mu gika kibanziriza iki, abagobotse mu rubanza barimo n'Uwingabire Fausca badasaba ko Akarere ka Nyaruguru gategekwa kubishyura bashingiye ku masezerano bagiranye nako, ahubwo bashingira ku makosa kakoze yo gutinda kwishyura BES & SUPPLY Ltd kandi nayo ikaba yari yaragiranye nabo amasezerano, bityo Akarere ka Nyaruguru kagomba kwirengera ingaruka zikomoka ku makosa kakoze, kagaha abagobotse mu rubanza bose indishyi.

4. Gusuzuma niba hari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu gutegeka Akarere ka Nyaruguru gusubiza ingwate

[62] Uhagarariye Akarere ka Nyaruguru avuga ko Akarere ka Nyaruguru gasanga kadakwiye gusubiza ingwate, kuko kasheshe amasezerano mu buryo bukurikije amategeko, BES & SUPPLY Ltd imaze kunanirwa kurangiza imirimo, ko rero kari gafite uburenganzira bwo gufatira ingwate.

[63] Uhagarariye SANLAM AG Plc avuga ko Akarere ka Nyaruguru kagombaga gutegekwa gusubiza ingwate mu gihe bigaragaye ko kasheshe amasezerano mu buryo budakurikije amategeko biturutse ku makosa yako, kakayarengaho kakishyura ingwate bitari ngombwa.

[64] Uhagarariye BES & SUPPLY Ltd avuga ko batemera ko ingwate yasubizwa SORAS AG Ltd yahindutse SANLAM AG Plc.

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UKO URUKIKO RUBIBONA

- [65] Ingingo ya 150, igika cya mbere, agace ka 5°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 ko umwanzuro w'ubujurire ugaragaza urutonde rw'inenge z'urubanza zisabirwa gukosorwa n'ibindi bibazo bigomba gusuzumwa.
- [66] Nk'uko byagaragajwe mu ngingo zabanjirije iyi, Akarere ka Nyaruguru kasheshe amasezerano kagiranye na BES & SUPPLY Ltd mu buryo bunyuranyije n'amategeko, bikaba rero byumvikana ko nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze kwemeza ko ako Akarere kagomba kurekura ingwate yo kurangiza imirimo kafatiriye. Bityo ubujurire bw'Akarere ka Nyaruguru kuri iyi ngingo nta shingiro bufite.

B. UBUJURIRE BWA BES & SUPPLY Ltd

1. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rutarahaye agaciro ibisobanuro BES & SUPPLY Ltd yatanze ku bijyanye n'imirimo yiswe Raccordement au réseau EWSA + Compteur triphasé Akarere ka Nyaruguru kavuga ko atari yo yayikoze
- [67] Uhagarariye BES & SUPPLY Ltd avuga ko Umuhanga Kambali Bigishiro yahaye BES & SUPPLY Ltd 100% kuri iyi ngingo, kubera ko imirimo ya raccordement yari yarakozwe mbere y'indi mirimo yose, kugira ngo indi imirimo y'ubwubatsi ikenera amashanyarazi ishobore gukorwa nk'uko bigaragazwa na Annexe 1.a, Annexe 1.b, Annexe 1.c, ko kandi amasezerano BES & SUPPLY Ltd yari yasinyanye n'Akarere yari afite agaciro ka 26.422.000 Frw, ko imirimo BES & SUPPLY Ltd yakoze ijyanye n'amashanyarazi muri ayo masezerano, Umuhanga Kambali Bigishiro yagaragaje ko ifite agaciro ka 14.764.000 Frw, bihwanye na 56% y'ibyari biteganijwe mu masezerano, nk'uko bigaragara kuri Annexe 2.a: ku ncamake y'imbonerahamwe y'imirimo y'amashanyarazi, ibyo Akarere ka Nyaruguru kapatanye na RDF gukora bikaba ntaho bihuriye n'ibyo BES & SUPPLY Ltd yari yarakoze. Ikindi kandi ngo ni uko imirimo y'amashanyarazi RDF yapatanye, hashoboraga kuba harimo n'indi raccordement EWSA + Compteur triphasé, cyangwa kakaba karahinduye kagakoresha umuyoboro munini uruta uwo bari barateganyije mu gihe basinyanaga amasezerano na BES & SUPPLY, kuko hari byinshi byahindutse nyuma.
- [68] Avuga kandi ko raccordement kuri réseau EWSA na compteur triphasé yahawe agaciro ka 3.500.000 Frw, ndetse ko itabariwe muri ziriya 26.422.000 Frw ko yari ingingo yihariye

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nk'uko raporo y'umuhanga ibigaragaza, ikaba yaranishyujwe muri facture ya mbere BES&SUPPLY Ltd yishyuje, kandi ko icyo gihe Akarere ka Nyaruguru katabyanze. [69] Uhagarariye Akarere ka Nyaruguru yiregura avuga ko ibyo BES & SUPPLY Ltd ivuga ko Urukiko rutahaye agaciro ibisobanuro yatanze ku bijyanye n'imirimo yiswe Raccordement au réseau EWSA + Compteur triphasé Akarere ka Nyaruguru kavuga ko atari yo yayikoze Urukiko rudakwiye kubiha agaciro, kuko Raccordement au réseau EWSA, Compteur triphasé et installations y'amashanyarazi mu nyubako byakozwe na RDF/RF nk'uko bigaragazwa n'amasezerano yo ku wa 21/09/2018, yabaye hagati ya RDF/RF n'Akarere ka Nyaruguru, aho mu ngingo yayo ya 5 igaragaza igiciro

cy'amashanyarazi kingana 86.392.693Frw, kandi ko Urwego rwa Leta nk'Akarere na RDF rutari kubara ngo rwishyure cyangwa rwishyuze imirimo itakozwe cyangwa ngo imirimo yakozwe yishyurwe kabiri.

[70] Avuga kandi ko hashingiwe ku ibaruwa yo ku wa 14/11/2018 y'Umuyobozi w'Ingabo zavuye ku Rugerero Lt Col Joshu MBARAGA, wari kuri terrain Kibeho yandikiye Umuyobozi wa EUCL ishami rya Nyaruguru, asaba ko hagezwa amashanyarazi ku nyubako avuye kuri transfomateur yayo. Hashingiwe kandi ku ibaruwa ya Niyotwizera Christophe Umuyobozi wa EUCL Ishami rya Nyaruguru yo kuwa 15/11/2018, imenyeshya batanze inyigo yo kugeza amashanyarazi ku nyubako ya gare routière ya KIBEHO, ibivugwa na BES&SUPPLY Ltd nta shingiro byahabwa.

UKO URUKIKO RUBIBONA [71] Urukiko rurasanga iki kibazo cyarasobanuwe neza n'umuhanga washyizweho n'Urukiko, kandi cyashubijwe mu bika bibanziriza iki ko ibyo BES & SUPPLY Ltd ivuga ko ari yo yakozwe raccordement électrique nta shingiro bifite.

2. Kumenya niba BES & SUPPLY Ltd ikwiye kwishyurwa fagitire ya 166.423.013 Frw hamwe n'inyungu z'ubukererwe ziyishingiyeho

[72] Uhagarariye BES & SUPPLY Ltd avuga ko hari fagitire ifite agaciro ka 166.423.013 Frw yo ku wa 12/06/2017, BES & SUPPLY Ltd nka rwiyezamirimo itishyurwe, hanyuma ku wa 30/06/2017, Akarere ka Nyaruguru kakayandikira ibaruwa kayimenyeshya ko azishyurwa ari uko ASSETIP irangije kubarura imirimo yakozwe, ariko ko ibyabazwe na ASSETIP bikaba bitarahawe agaciro ahubwo uwari ushinze kugenzura imirimo yo kubaka (Mission de surveillance) NOCTA Engineering Ltd mu nama yo ku wa 18/01/2018, yasabwe gukora igenzura, ku wa 24/01/2018, igatanga raporo igaragaza ko imirimo yakozwe yari igeze ku kigero cya 83%, bityo ko ntacyagombaga kubuza Akarere ka Nyaruguru kwishyura iyo fagitire nk'uko kabivugaga.

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[73] Avuga na none ko Urukiko rwabisobanuye neza mu gika cya 78 cy'urubanza rujiririrwa, aho Akarere ka Nyaruguru kavuze ko katishyuye iyo fagitire kuko idahuye n'imirimo yari yakozwe, ibyo nabyo bikaba bitahabwa agaciro, kuko kari gafite mission de surveillance yari ishinze kugenzura imirimo, ndetse akaba ari yo yagenzuraga na factures zikishyurwa, ko iyo gasanga hari ikirengaho mu mirimo yishyuzwa, kari kubigaragaza hakishyurwa ibyemerwa n'uwatanze isoko, cyangwa se kagasaba uwakoze fagitire kuyikosora. Kuba iyo fagitire itarigeze yishyurwa bikagera mu gihe cy'urubanza nyuma y'iseswa ry'amasezerano, ari amakosa y'Akarere ka Nyaruguru yo kutagaragaza ubwishyu kemera ngo kabutange, hanyuma hasigara haburanwa ibyo impande zombi zitumvikanagaho aho kugira ngo byose bijye mu bukererwe. Ikindi kandi ngo nuko kuba facture yari yujuje ibyangombwa nk'uko contract yabiteganyaga (facture en bonne et due forme), itabarwa gusa nk'agaciro k'imirimo itarishyurwe, ahubwo yafatwa nka facture itarishyurwe, Akarere kakayitangira ibihano by'ubukererwe.

[74] Uhagarariye Akarere ka Nyaruguru avuga ko fagitire ya 4 yagombaga kwishyurwa ari uko BES & SUPPLY Ltd igeze kuri 80% nk'uko bikubiye mu ngingo ya 3 y'amasezerano, ko kuba rero imirimo yakoze itarageze ku kigero cya 80%, ko Akarere kadakwiye kwishyura iyo fagitire. Asobanura ko Urukiko rutahaye agaciro ubusobanuro yatanze bugaragaza ko fagitire ya 166.423.013 Frw yatanzwe amasezerano ataraseswa bigatuma rutayigenera inyungu z'ubukererwe, Urukiko rudakwiye kubiha agaciro hashingiwe ku ngingo ya 3 y'amasezerano Akarere ka Nyaruguru kagiranye na yo, agaragaza uburyo yagombaga kwishyurwa. Ko kuba imirimo BES & SUPPLY Ltd yakoze itarigeze igera ku kigero cya 80% itagombaga kwishyurwa iyo fagitire ya 166.423.013 Frw, nk'uko bigarazwa na raporo y'umuhanga.

UKO URUKIKO RUBIBONA [75] Dosiye y'urubanza igaragaza amasezerano yiswe “contrat du marché No 0/NYRGRU/2014-2015 yo ku wa 27/04/2015, hagati y'Akarere ka Nyaruguru na BES & SUPPLY Ltd. Ku rupapuro rwa 4 rw'ayo masezerano impande zombi zumvikanye uburyo BES & SUPPLY Ltd izishyurwa zemeranywa ko fagitire ya mbere izishyurwa imirimo igeze kuri 10%, fagitire ya kabiri ikishyurwa imirimo igeze kuri 30%, fagitire ya gatatu ikishyurwa imirimo igeze kuri 50%, fagitire ya kane ikishyurwa imirimo igeze kuri 80%, naho fagitire ya nyuma ikishyurwa nyuma y'uko imirimo yakozwe yakiriwe by'agateganyo.

[76] Dosiye y'urubanza igaragaramo kandi raporo y'umuhanga Dr. IYANDEMYE Samuel yakozwe ku wa 28/10/2022, igaragaza ko imirimo yakozwe na BES & SUPPLY Ltd igeze ku ijanisha rya 70%, ikaba ifite agaciro ka 568.152.042 Frw, naho itarakozwe na BES & SUPPLY Ltd ikaza gukorwa na Reserve Force iri ku ijanisha rya 30%, ikaba ifite agaciro ka 243.547.331 Frw.

[77] Nk'uko byagaragajwe haruguru, Umuhanga washyizweho n'uru Rukiko yaragaragaje ko imirimo yose BES & SUPPLY Ltd yakoze ifite agaciro ka 568.152.042 Frw; kuba rero BES & SUPPLY Ltd isaba kwishyurwa fagitire ya 166.423.013 Frw hamwe n'inyungu z'ubukererwe

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ziyishingiyeho, Urukiko rurasanga nk'uko Urukiko Rukuru rw'Ubucuruzi rwabibonye iyi fagitire ya 166.423.013 Frw iramutse yishyurwe byaba bivuga ko imirimo yose BES SUPPLY Ltd yakoze yaba ingana na 568.152.042 Frw + 166,423,013 Frw= 734.575.055 Frw kandi atariko bimeze, ahubwo agaciro k'imirimo yose yakoze gahwanye na 568.152.042 Frw bivuze ko na 166.423.013 Frw ibariwemo, bikaba rero byumvikana ko fagitire ya 166.423.013 Frw itagomba kwishyurwa, bityo ubujurire bwa BES & SUPPLY Ltd kuri iyi ngingo nta shingiro bufite.

3. Kumenya niba igihembo cy'umuhanga washyizweho n'Urukiko cyaragombaga gutangwa n'uwatsinzwe

[78] Uhagarariye BES & SUPPLY Ltd avuga ko mu gika 31 n'icya 32 by'urubanza No RCOMA 00923/2019/HCC rujuririrwa, Urukiko rwasobanuye neza ko Akarere ka Nyaruguru kagomba kwishyura umuhanga Kambali washyizweho n'Urukiko, na cyane ko umuburanyi utsinzwe ari we ugarura ubwishyu bwatanzwe, kuvuga ko katemera raporo yakoze akaba atari impamvu ifatika. Ariko ko Urukiko mu gufata icyemezo, rutigeze rugategeka kwishyura

amafaranga angana 4.000.000 Frw BES&SUPPLY Ltd yishyuye umuhanga Kambali, bityo ko gakwiye gutegekwa kuyishyura.

- [79] Uhagarariye Akarere ka Nyaruguru yiregura avuga ko Akarere katakwishyuzwa igihembo cy'umuhanga kuko raporo z'abahanga za mbere zateshejwe agaciro kandi ko Umuhanga washyizweho n'Urukiko rw'Ubujuje impande zombi zibyumvikanyeho azishyurwa n'uzatsindwa urubanza.

UKO URUKIKO RUBIBONA

- [80] Ingingo ya 273 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujijwe kugeza ubu mu gika cyayo cya gatatu iteganya ko "Urukiko rushobora mu gihe bibaye ngombwa gusaba ababuranyi gutanga amafaranga akenewe mu guhamba inzobere cyangwa umusemuzi. Utsinze urubanza yishyurwa n'uwatsinzwe amafaranga yatanze ku nzobere no ku musemuzi".
- [81] Dosiye y'urubanza igaragaramo icyemezo cy'Urukiko rw'Ubucuruzi cyo ku wa 18/03/2019 gishyiraho umuhanga Kambali Bigishiro Jean Pierre. Igaragaramo kandi amasezerano yiswe contrat de consultance hagati ya BES SUPPLY Ltd n'Umuhanga Kambali Bigishiro Jean Pierre, aho bumvikanye ko imirimo Urukiko rwategetse umuhanga gukora izishyurwa 4.000.000 Frw.

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- [82] Nk'uko byagaragajwe haruguru igihembo cy'umuhanga cyangwa se inzobere cyishyurwa n'uwatsinzwe urubanza, kuba rero Urukiko rw'Ubucuruzi rwarashyizeho umuhanga agakora raporo igashingirwaho n'urwo Rukiko ndetse n'Urukiko Rukuru rw'Ubucuruzi kandi zikemeza ko Akarere ka Nyaruguru kaseshe amasezerano mu buryo budakuriye amategeko, ndetse kakagira ibyo gategekwa kwishyura BES & SUPPLY Ltd, ariko ntirugire icyo ruvuga ku gihembo cy'umuhanga, uru rukiko rurasanga iri ari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze, bityo iryo kosa rikaba rigomba gukosorwa kuri uru rwego.
- [83] Kuba Akarere ka Nyaruguru na BES & SUPPLY Ltd bombi barajuririyeye Urukiko Rukuru rw'Ubucuruzi kandi buri ruhande rukagira ibyo rutsindira n'ibyo rutsindirwa Urukiko rurasanga ari ngombwa ko bombi bafatanyaga kwishyura igihembo cy'umuhanga Kambali Bigishiro Jean Pierre kingana na 4.000.000 Frw, bityo Akarere ka Nyaruguru kakishyura kimwe cya kabiri (½) cy'icyo gihembo gihwanye na 2.000.000 Frw, naho andi 2.000.000 Frw agaherera ku ruhande rwa BES&SUPPLY Ltd. Urukiko rurasanga kandi kuba igihembo cyose kingana na 4.000.000 Frw cyarishyurwe na BES&SUPPLY Ltd, Akarere ka Nyaruguru kagomba kuyisubiza 2.000.000 Frw.

C.UBUJURIRE BWURIRIYE KU BUNDI

1. Gusuzuma niba Akarere ka Nyaruguru kategekwa gusubiza SANLAM AG Plc ingwate kahawe

- [84] Uhagarariye SANLAM AG Plc asaba Urukiko ko nirusanga hari amakosa yakozwe n'Akarere ka Nyaruguru, kakishyuza ingwate bitari ngombwa, kategekwa kuyisubiza SANLAM AG Plc nk'uko byari byasabwe mu rubanza RCOMA 00923/2019/HCC rujuririrwa. Avuga kandi ko byasabwe kuva ku rwego rwa mbere nk'uko bigaragara ku rupapuro rwa 6 rw'urubanza N° RCOM 02243/2018/TC, aho ku kibazo cya mbere cy'urwo rubanza kijyanye no kumenya niba Akarere karasheshe amasezerano y'isoko ku buryo bunyuranyije n'amategeko, SORAS AG Ltd mu kuyireguraho yavuze ko icyo kibazo ntacyo SORAS AG Ltd ikivugaho, ariko ko Urukiko rusanze Akarere ka Nyaruguru karasheshe amasezerano mu buryo budakwiye, rukemeza ko amasezerano akomeza, kayisubiza ingwate ya 84.067.521 Frw yishyuye, kuko yaba yarishyuwe bitari ngombwa, ko rero kuva yagobokeshwa ku ngufu muri uru rubanza, itahwemye kubisaba.
- [85] Uhagarariye Akarere ka Nyaruguru yiregura kuri iyi ngingo avuga ko Akarere ka Nyaruguru kadakwiye gusubiza SANLAM AG Plc ingwate, kuko kasheshe amasezerano mu buryo bukurikije amategeko, cyane ko BES & SUPPLY Ltd yananiwe kurangiza imirimo, ikaza guhabwa MINADEF ngo iyirangize.

UKO URUKIKO RUBIBONA

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- [86] Ingingo ya 154 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: "Ku rwego rw'ubujurire ntihashobora gutangirwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu rukiko rw'ubujurire. icyakora, ababuranyi bashobora kwaka inyungu, ibyishyuwe ku bukode n'ibindi bintu by'inyongera byabonetse kuva aho urubanza rwaciriwe n'indishyi z'igihombo umuburanyi yagize kuva urubanza ruciwe".
- [87] Dosiye y'urubanza igaragaza ko mu mwanzuro wo kwiregura wa SORAS A.G Ltd yahindutse SANLAM AG Plc ku kibazo cya mmbere kijyanye no gusuzuma niba Akarere ka Nyaruguru kataraseshe amasezerano mu buryo bunyuranyije n'amategeko, SORAS A.G. Ltd yavugaga ko Urukiko rusanze Akarere ka Nyaruguru karaseshe amasezerano mu buryo budakwiye, rukemeza ko amasezerano akomeza, icyo gihe ingwate yishyuwe na SORAS A.G Ltd yayisubizwa n'Akarere ka Nyaruguru kuko yaba yarishyuwe bitari ngombwa.
- [88] Urukiko rurasanga nubwo Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubusabe bwa SORAS A.G. Ltd yahindutse SANLAM A.G. Plc bwo gusubizwa ingwate ari ikirego gishya gitanzwe bwa mbere ku rwego rw'ubujurire atari byo, kuko nk'uko byagaragajwe haruguru SORAS A.G. Ltd yabisabye kuva ku rwego rwa mbere, bikaba rero byumvikana ko atari ikirego gishya cyatanzwe ku rwego rw'ubujurire, bityo Urukiko Rukuru rw'Ubucuruzi rwakoze ikosa ryo kutakira ubujurire bwuririye ku bundi bwatanzwe na SORAS A.G. Ltd.

- [89] Urukiko rurasanga Urukiko Rukuru rw'Ubucuruzi rwaremeje ko ingwate yatanzwe na SORAS A.G. Ltd yahindutse SANLAM A.G.Plc isubizwa ariko ntirwagaragaza uwo igomba gusubizwa uwo ariwe, kuba rero uru Rukiko narwo rwasanze Akarere ka Nyaruguru karaseshe amasezerano mu buryo bunyuranyije n'amategeko rurasanga kagomba gusubiza SANLAM AG Plc ingwate kahawe ihwanye na 84.067.521 Frw.
2. Gusuzuma niba hari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze ryo kutemeza ko amafaranga ya BES & SUPPLY Ltd anyuzwa kuri konti yayo iri muri ECOBANK RWANDA Plc
- [90] Uhagarariye ECOBANK RWANDA Plc avuga ko mu gika cya 107 cy'urubanza N° RCOMA 00923/2019/HCC, Urukiko Rukuru rw'Ubucuruzi rutahaye agaciro icyifuzo cyayo cyo kunyuzwa amafaranga muri ECOBANK RWANDA Plc, ngo kuko ntaho ihuriye n'umwenda uburanwa, kandi ko ikibazo cy'iyo Banki kigomba gukemurirwa mu rundi rubanza. Ko ECOBANK RWANDA Plc isanga mu gufata icyo cyemezo hari ibyo rwirengagije birimo amasezerano yo ku wa 27/4/2015, Akarere ka Nyaruguru kagiranye na BES & SUPPLY Ltd, aho mu ngingo yayo ya 63 yateganyaga ko ubwishyu buzanyuzwa muri ECOBANK RWANDA

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Plc, ayo masezerano akaba yuzuzwa n'ayo ku wa 15/09/2016 yashyizweho umukono n'izo mpande uko ari eshatu, aho zemeranyije ko ubwishyu bwose buzabera muri ECOBANK RWANDA Plc kugira ngo ibone uko yiyishyura umwenda wa 120.000.000 Frw yahaye BES & SUPPLY Ltd kugira ngo imirimo ikomeze mu gihe BES & SUPPLY Ltd yari igiterereye ubwishyu.

- [91] Avuga kandi ko urubanza RCOM 02748/2018/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 19/07/2019 rwategetse BES & SUPPLY Ltd hamwe na Nzizera Aimable kwishyura ECOBANK RWANDA Plc 374.338.428 Frw rwabaye Itegeko, rwanategetse Akarere ka Nyaruguru gutanga indishyi zingana na 800.000 Frw kubera kutubahiriza ayo amasezerano, ndetse no gufatanya na BES & SUPPLY Ltd hamwe na Nzizera Aimable gutanga igihembo cya Avoka. Bityo ko ECOBANK RWANDA Plc itanze ubujurire bwurirye ku bundi isaba ko icyemezo cy'Urukiko Rukuru rw'Ubucuruzi gihinduka ku byerekeye aho ubwishyu bwa BES & SUPPLY Ltd bugomba gucishwa, no kwemeza ko amafaranga azishyurwa n'Akarere ka Nyaruguru azacishwa muri ECOBANK RWANDA Plc kuri konti ya 0010133811861901 ya BES & SUPPLY Ltd iri muri iyo Banki nk'uko impande zose zabyemeranyijweho.
- [92] Uhagarariye Akarere ka Nyaruguru yiregura kuri iyi ngingo avuga ko Urukiko ruramutse rutegetse Akarere ka Nyaruguru kugira amafaranga kishyura, aho yanyuzwa hose ntacyo byaba bigatwaye.
- [93] Uhagarariye BES & SUPPLY Ltd avuga ko ibyo ECOBANK RWANDA Plc isaba nta shingiro bifite. Bafite titre exécutoire, ibyo rero BES & SUPPLY Ltd yatsindira basaba umuhesha w'inkiko bakishyurwa ariko ntabwo byaza muri uru rubanza. UKO URUKIKO RUBIBONA [94] Dosiye y'urubanza igaragaza amasezerano yo ku wa 15/09/2016, yiswe Assignment/ Domiciliation agreement yabaye hagati ya BES & SUPPLY Ltd, ECOBANK RWANDA Plc n'Akarere ka Nyaruguru, aho BES & SUPPLY Ltd yemeye ko ubwishyu bw'amafaranga yose

azaturuka ku isoko yahawe n'Akarere ka Nyaruguru azanyuzwa kuri konti yayo ifite no 0010133811861901. Igaragaza kandi amasezerano y'inguzanyo yo kuwa 26/04/2017, yabaye hagati ya BES&SUPPLY Ltd na ECOBANK RWANDA Plc, aho mu ngwate zahawe ECOBANK RWANDA Plc harimo n'amasezerano ahuza impande eshatu yabaye hagati ya BES&SUPPLY Ltd, ECOBANK RWANDA Plc n'Akarere ka Nyaruguru, uru rukiko rurasanga rero kuba Urukiko Rukuru rw'Ubucuruzi rwaremeje ko ukugoboka kwa ECOBANK RWANDA Plc nta shingiro gufite, ari ikosa urwo Rukiko rwakoze rigomba gukosorwa.

- [95] Urukiko rurasanga ariko imyenda BES & SUPPLY Ltd ibereyemo abagobotse muri uru rubanza nk'uko yagaragajwe mu rubanza rujuririrwa irenze kure 51.137.024 Frw, Akarere ka Nyaruguru kagomba kuyishyura, bikaba rero byumvikana ko ikirego cyo kugoboka cyatanzwe na ECOBANK RWANDA Plc isaba ko amafaranga Akarere ka Nyaruguru kazishyura

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BES&SUPPLY Ltd yanyuzwa kuri konti yayo iri muri iyo Banki nta mpamvu yacyo (sans objet).

D. IBYEREKEYE IKIREGO CYO KUGOBOKA CYATANZWE NA Sibomana Amini Rajabu

1. Kumenya niba BES & SUPPLY Ltd iramutse itsinze urubanza Urukiko rwatega ko ubwishyura Akarere ka Nyaruguru kayigomba buhabwa Sibomana Amini Rajabu
- [96] Uhagarariye Sibomana Amini Rajabu avuga ko uwo ahagarariye yahawe na BES & SUPPLY Ltd isoko ryo kugemura ibikoreho by'ubwubatsi bitandukanye ku soko yubakaga mu Karere ka Nyaruguru bifite agaciro kangana na 87.863.000 Frw nk'uko bigaragara kuri Purchase Order yo ku wa 10/08/2017. Asobanura ko hakurikijwe ibikubiye mu ngingo ya 113, 114 ,117 z'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, SIBOMANA Amini Radjabu yagobotse mu rubanza kuko BES & SUPPLY Ltd imubereyemo umwenda ukomoka ku bikoreho by'ubwubatsi yayigemuriye ndetse impande zombi zikumvikana uburyo azishyurwa, ariko BES & SUPPLY Ltd ntibyubahirize.
- [97] Asobanura kandi ko BES & SUPPLY Ltd yagaragaje ko izishyura mu bihe bitandukanye itanga na sheki zitandukanye zihwanye niyo minsi izishyuriraho, ko ku wa 22/12/2017, yagombaga kwishyura 47.000.000 Frw, ku wa 2/01/2018 ikishyura 30.000.000 Frw, ku wa 17/04/2018 ikishyura 10. 863.000 Frw, ko ariko itabyubahirije ariyo mpamvu SIBOMANA Amini Rajabu amaze kumenya uru rubanza yarugobotsemo kugira ngo mu gihe BES & SUPPLY Ltd izaba itsinze Urukiko ruzatega ko umwenda imubereyemo ubanza kwishyurwa kuko nta cyizere cyo kuzishyurwa.
- [98] Uhagarariye BES & SUPPLY Ltd avuga ko ibyo Sibomana Amini Rajabu asaba bifite ishingiro kuko bagiranye amasezerano na BES&SUPPLY Ltd kandi yagaragaje n'ibimenyetso ashingiraho birimo tableau na sheki. Avuga ko barebye Itegeko N° 62/2018 ryo ku wa 25/08/2018 rigenga amasoko ya Leta mu ngingo yaryo ya 99 igika cya 3, iteganya ko iyo

uwatsindiye isoko atishyuye abakozi, ibyo yagemuriwe, service yahawe n'undi muntu mu gihe cy'ishyirwa mu bikorwa ry'isoko, Urwego rwatanze isoko rufatira amafaranga angana n'ubwo bwishyu rushingiye ku nyemezabuguzi kugira ngo ayo mafaranga yishyurwe abo abereyemo imyenda; basanga Urwego rwatanze isoko ari rwo Akarere ka Nyaruguru kari kubikora iyo hatazamo litige, ko rero SIBOMANA Amini Rajabu yemerewe gushingira ku ngingo imaze kuvugwa akagira ibyo asaba muri uru rubanza, bityo ikirego cye kikaba gifite ishingiro.

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- [99] Ingingo ya 110 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ibikurikira: "Ukwiyeemerera mu rubanza ni amagambo umuburanyi cyangwa umuhagarariye avugira mu rukiko agira ibyo yemera. Ayo magambo atsindeisha uwayavuze."
- [100] Nk'uko bigaragara mu bimenyetso bitandukanye biri muri dosiye y'urubanza birimo Purchase Order na sheki zitandukanye, Sibomana Amini Rajabu yagemuriye BES&SUPPLY Ltd ibikoreshe bitandukanye bifite agaciro ka 87.863.000 Frw ubwo yakoraga isoko mu Karere ka Nyaruguru kandi n'uhagarariye BES&SUPPLY Ltd arabyemera. Bityo, Urukiko rurasanga BES & SUPPLY Ltd ibereyemo Sibomana Amini Rajabu umwenda wa 87.863.000 Frw.
- [101] Ku bijyanye n'ibyo Sibomana Amini Radjabu asaba byo kuba yakwishyurwa ku mafaranga Akarere ka Nyaruguru kabereyemo BES & SUPPLY Ltd, Urukiko rurasanga bidashoboka kubera ko amafaranga yose Akarere ka Nyaruguru kabereyemo BES & SUPPLY Ltd yamaze kugabanywa abandi BES & SUPPLY Ltd ibereyemo imyenda mu rubanza rujuririrwa kandi nta muburanyi wabijuririye, bikaba rero byumvikana ko SIBOMANA Amini Radjabu agomba kwishyurwa na BES & SUPPLY Ltd ubwayo.

E. IBYEREKEYE AMAFANGA Y'IBYAKORESHEJWE MU RUBANZA

1. Kumenya ugomba kwishyura igihembo cy'umuhanga

[102] Ababuranyi bavugaga ko umuburanyi uzatsindwa urubanza yategekwe kwishyura igihembo cy'umuhanga Dr. Iyandemye Samuel washyizweho kuri uru rwego.

UKO URUKIKO RUBIBONA

- [103] Dosiye y'urubanza igaragaraza icyemezo cyo ku wa 13/07/2022 gishyiraho umuhanga Dr. Iyandemye Samuel. Muri icyo cyemezo Urukiko rwategetse buri ruhande kwishyura ½ cy'igihembo cy'uwo muhanga.

- [104] Urukiko rurasanga Akarere ka Nyaruguru na BES & SUPPLY Ltd bagomba gufatanya kwishyura igihembo cy'umuhanga kuko buri ruhande rufite ibyo rwatsindiye n'ibyo rwatsindiye. Rurasanga igihembo cy'Umuhanga ari 11.278.540 Frw, bityo buri ruhande rugomba kwishyura kimwe cya kabiri (½) cy'ayo gihwanye na 5.639.270 Frw; kuba rero

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Akarere ka Nyaruguru karishyuye uruhare rwako ntacyo kagomba gutegekwa kubijyanye n'ubwishyu bw'umuhanga Dr. Iyandemye Samuel naho BES & SUPPLY Ltd igomba kumwishyura 3.139.270 Frw itaramwishyura.

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

[105] Uhagarariye Akarere ka Nyaruguru asaba Urukiko rw'Ubujurire gutegeka BES&SUPPLY Ltd kwishyura Akarere ka Nyaruguru 1.000.000 Frw y'igihembo cya Avoka kuri uru rwego rw'ubujurire kubera kugashora mu manza kuko ari yo yarutangiye kandi ari yo yishe amasezerano.

[106] Uhagarariye BES & SUPPLY Ltd avuga ko Amafaranga y'igihembo cya Avoka Akarere ka Nyaruguru gasaba ntayo kahabwa, kuko ari ko kakoze amakosa, ko ahubwo ari ko gakwiye gutegekwa kwishyura BES & SUPPLY Ltd 1.000.000 Frw y'ikurikiranarubanza na 3.000.000 Frw y'igihembo cya Avoka.

[107] Uhagarariye Akarere ka Nyaruguru avuga ko nta ndishyi Akarere ka Nyaruguru gakwiye guha BES & SUPPLY Ltd kuko kasheshe amasezerano mu buryo bukurikije amategako.

[108] Uhagarariye Habumugisha Jean Paul, Maniraguha Adalbert, Uwamahoro Francine, Nduwumwami Desire, Kamana Xavier, Mugabo Celestin, Mugabo Francois, Kabenga Charles na Guhigana Paul, ashingiye ku biteganywa n'ingingo ya 111 y'itegeko n°22/2018, ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza mbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, asaba ko abo ahagarariye bazagenerwa 1.000.000 Frw y'igihembo cya Avoka, na 500.000 Frw y'ikurikiranarubanza kuri uru rwego rw'Ubujurire bwa kabiri, yiyongera ku yagenwe n'inkiko zabanje.

[109] Bizimana Israël asaba 1.000.000 Frw y'igihembo cya Avoka 500.000 Frw y'ikurikiranarubanza.

[110] Uwingabire Fausca asaba Urukiko rw'Ubujurire gutegeka Akarere ka Nyaruguru guha Uwingabire Fausca 1.000.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cya Avoka, kubera gukomeza kumushora mu manza, no kuba atarishyuriwe igihe kubera amakosa y'Akarere ka Nyaruguru.

[111] Uhagarariye Akarere ka Nyaruguru yiregura ku mafaranga y'ikurikiranarubanza n'igihembo cya Avoka, Akarere ka Nyaruguru asabwa na Habumugisha Jean Paul, Maniraguha Adalbert, Uwamahoro Francine, Nduwumwami Desire, Kamana Xavier, Mugabo Celestin,

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Mugabo Francois, Kabenga Charles na Guhigana Paul, Bizimana Israël na Uwingabire Fausca, avuga ko ntayo gakwiye gutanga kuko nta masezerano kagiranye na bo ngo kabe karayishe.

[112] Uhagarariye ECOBANK RWANDA Plc, ashingiye ku ngingo ya 111 y'Itegeko N°22/2018, ryo ku wa 29/04/2018 ryavuzwe haruguru, asaba Urukiko rw'Ubujurire gutegeka BES & SUPPLY Ltd n'Akarere ka Nyaruguru gufatanya kwishyura ECOBANK RWANDA Plc 2.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka ku rwego rw'Urukiko Rukuru rw'Ubucuruzi no kuri uru rwego, kubera itishyuwe nk'uko amasezerano yabiteganyaga, bigatuma ikomeza gukurikirana ibyayo mu nkiko kandi yitabaza abanyamategeko.

[113] Uhagarariye Akarere ka Nyaruguru yiregura avuga ko Akarere ka Nyaruguru kishyuye amafaranga kuri konti kumvikanyeho na BES & SUPPLY Ltd bagiranye amasezerano, bityo ko n'ubu kagize indishyi gacibwa, kazishyura kuri konti Urukiko rwategeka, ari na yo mpamvu kadakwiye gucibwa amafaranga ayo ari yo yose cyane ko ntacyo kanze gukora.

[114] Uhagarariye NOCTA ENGINEERING asaba Urukiko rw'Ubujurire kugenera NOCTA ENGINEERING 1.000.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza, kubera gushorwa mu manza.

[115] Uhagarariye BES & SUPPLY Ltd yiregura kuri aya mafaranga NOCTA ENGINEERING Ltd isaba avuga ko yazasabwa Akarere ka Nyaruguru kubera ko ari ko kasheshe amasezerano mu buryo bunyuranije n'amategeko. Akarere ka Nyaruguru kavuga ko izi ndishyi nta shingiro zifite.

[116] Uhagarariye SANLAM AG Plc asaba Urukiko ko nirusanga Akarere ka Nyaruguru karaseshe amasezerano mu buryo bukurikije amategeko rwazategeka BES & SUPPLY Ltd kwishyura SANLAM Plc 1.000.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cya Avoka kuri uru rwego kuko ari yo yagobokesheje ku ngufu SANLAM Plc. Avuga kandi ko Urukiko nirusanga Akarere ka Nyaruguru karaseshe amasezerano mu buryo bunyuranije n'amategeko ari ko gakwiye kwishyura ayo mafaranga.

[117] Uhagarariye Sibomana Amini Radjabu asaba Urukiko gutegeka BES & SUPPLY Ltd guha Sibomana Amini Rajabu amafaranga angana na 1.000.000 Frw y'igihembo cya Avoka. BES & SUPPLY Ltd ntacyo yavuze kuri ayo mafaranga.

UKO URUKIKO RUBIBONA

[118] 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:

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“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’iyo ikirego cy’iremezo cyaba kitakiriwe”.

- [119] Urukiko rurasanga amafaranga y’igihembo cya Avoka n’ikurikiranarubanza SANLAM AG Plc isaba afite ishingiro, kuko ubujurire bwayo bwuririye ku bundi bwahawe ishingiro, bityo mu bushishozi bwarwo ruyigeneye 500.000 Frw y’igihembo cya Avoka na 200.000 Frw y’ikurikiranarubanza, agomba gutangwa n’Akarere ka Nyaruguru.
- [120] Kubyeyekeye amafaranga y’ikurikiranarubanza n’igihembo cya Avoka asabwa n’Akarere ka Nyaruguru kimwe n’asabwa na BES & SUPPLY Ltd, Urukiko rurasanga nta ruhande rugomba kuyahabwa, kuko buri ruhande rufite ibyo rutsindiye n’ibyo rwatsindiye.
- [121] Ku byerekeye amafaranga y’ikurikiranarubanza n’igihembo cya Avoka asabwa na ECOBANK RWANDA Plc Urukiko rurasanga idakwiye kuyahabwa kuko ntacyo yatsindiye muri uru rubanza.
- [122] Urukiko rurasanga kandi ubujuririre bw’Akarere ka Nyaruguru n’ubwa BES & SUPPLY Ltd aribwo bwatumye Habumugisha Jean Paul, Maniraguha Adalbert, Uwamahoro Francine, Nduwumwami Desire, Kamana Xavier, Mugabo Celestin, Mugabo Francois, Kabenga Charles na Guhigana Paul baza mu rubanza bityo amafaranga y’ikurikiranarubanza n’igihembo cya Avoka basaba afite ishingiro, mu bushishozi bw’Urukiko rukaba rubageneye bose hamwe 500.000Frw y’igihembo cya Avoka na 200.000Frw y’ikurikiranarubanza agomba gutangwa n’Akarere ka Nyaruguru gafatanyije na BES & SUPPLY Ltd.
- [123] Ku byerekeye amafaranga y’ikurikiranarubanza n’igihembo cya Avoka asabwa na Bizimana Israël, NOCTA ENGINEERING na Uwingabire Fausca, Urukiko rurasanga bagomba kuyahabwa, bityo mu bushishozi bwarwo rugeneye buri wese 500.000 Frw y’igihembo cya Avoka na 200.000 Frw agomba gutangwa n’Akarere ka Nyaruguru gafatanyije na BES & SUPPLY Ltd kuko aribo bajuriye bagatuma baza muri uru rubanza bagashaka na abavoka bababuranije kuri uru rwego.
- [124] Ku byerekeranye n’amafaranga y’igihembo cya avoka asabwa na Sibomana Amini Rajabu, urukiko rurasanga agomba kuyahabwa kuko BES & SUPPLY Ltd itamwishyuye bikaba ngombwa ko aregera urukiko ndetse akiyambaza avoka wo kumuburanira, rurasanga ariko na none amafaranga asaba ari menshi, bityo mu bushishozi bw’urukiko akaba agomba guhabwa 500.000 Frw agatangwa na BES & SUPPLY Ltd. III. ICYEMEZO CY’URUKIKO
- [125] Rwemeje ko ubujurire bwatanzwe n’Akarere ka Nyaruguru bufite ishingiro kuri bimwe.
- [126] Rwemeje ko ubujurire bwatanzwe na BES & SUPPLY Ltd bufite ishingiro kuri bimwe.
- [127] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na SANLAM AG Plc bufite ishingiro.

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- [128] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na ECOBANK RWANDA Plc nta mpamvu yabwo.
- [129] Rwemeje ko ikirego cyo kugoboka ku bushake mu rubanza cyatanzwe na Sibomana Amini Rajabu gifite ishingiro kuri bimwe.
- [130] Rwemeje ko urubanza RCOMA 00923/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 29/06/2021 ruhindutse kuri bimwe.
- [131] Rwemeje ko ubwishyu Akarere ka Nyaruguru gasigayemo BES & SUPPLY Ltd bungana na 56.137.024 Frw.
- [132] Rwemeje ko ubwishyu bwose BES & SUPPLY Ltd yategetswe guha Ruzindana Egide bungana na 145.033.000 Frw hamwe n'igihembo cya Avoka cya 500.000 Frw byategetswe mu rubanza rujuririrwa bigumyeho.
- [133] Rwemeje ko ubwishyu bwose BES & SUPPLY Ltd yategetswe guha Habumugisha Jean Paul bungana na 120.326.800 Frw mu rubanza rujuririrwa bugumyeho.
- [134] Rwemeje ko indishyi zingana na 5.767.200 Frw zigomba guhabwa Maniraguha Adalbert, Uwamahoro Francine, Nduwumwami Desire, Kamana Xavier, Mugabo Celestin, Mugabo Francois, Kabenga Charles na Guhigana Paul zigomba kwishyurwa n'Akarere ka Nyaruguru zategetswe mu rubanza rujuririrwa zigumyeho.
- [135] Rwemeje ko 930.000Frw yagenewe Bizimana Israel na 3.000.000Frw yagenewe UWINGABIRE Fausca mu rubanza rujuririrwa agomba gutangwa n'Akarere ka Nyaruguru agumyeho.
- [136] Rwemeje ko 1.500.000 Frw yagenewe SANLAM AG Plc mu rubanza rujuririrwa agomba gutangwa na BES&SUPPLY Ltd agumyeho.
- [137] Rwemeje ko 1.000.000 Frw NOCTA ENGINEERING yagenewe mu rubanza rujuririrwa agomba gutangwa na BES & SUPPLY Ltd agumyeho.
- [138] Rwemeje ko BES & SUPPLY Ltd ibereyemo Sibomana Amini Rajabu umwenda ungana na 87.863.000 Frw.
- [139] Rutegetse ko ubwishyu bwa 56.137.024 Frw Akarere ka Nyaruguru gasigayemo BES & SUPPLY Ltd bugomba gukurwamo ayishyurwa abagobotse mu rubanza rujuririrwa, ni ukuvuga 10.860.000 Frw agomba guhabwa Maniraguha Adalbert, Uwamahoro Francine, Nduwumwami Desire, Kamana Xavier, Mugabo Celestin, Mugabo François, Kabenga Charles na Guhigana Paul; 1.770.000 Frw agomba guhabwa Bizimana Israel; 15.535.000 Frw agomba guhabwa Ingabire Fausca; 1.500.000 Frw agomba guhabwa SANLAM AG Plc na 1.000.000 Frw agomba guhabwa NOCTA ENGINEERING, yose hamwe akaba 30.665.000 Frw.

[140] Rutegetse ko 25.472.024 Frw asigaye ku bwishyu BES & SUPPLY Ltd igomba guhabwa n'Akarere ka Nyaruguru azagabanwa mu buryo bungana RUZINDANA Egide na

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HABUMUGISHA Jean Paul, buri wese agahabwa 12.736.012 Frw, naho ubwishyu busigaye ku mwenda buri wese agomba kwishyurwa bakabuhabwa na BES & SUPPLY Ltd.

[141] Rutegetse Akarere ka Nyaruguru gusubiza BES & SUPPLY Ltd 2.000.000 Frw ahwanye na kimwe cya kabiri (½) cy'igihembo cyishyuwe umuhanga Kambali Bigishiro Jean Pierre.

[142] Rutegetse Akarere ka Nyaruguru gusubiza SANLAM AG Plc ingwate kahawe ingana na 84.067.521 Frw.

[143] Rutegetse BES&SUPPLY Ltd kwishyura Sibomana Amini Rajabu umwenda imubereyemo ungana na 87.863.000Frw.

[144] Rutegetse Akarere ka Nyaruguru na BES & SUPPLY Ltd gufatanya kwishyura SANLAM AG Plc 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza yo kuri uru rwego.

[145] Rutegetse Akarere ka Nyaruguru na BES & SUPPLY Ltd gufatanya kwishyura Habumugisha Jean Paul, Maniraguha Adalbert, Uwamahoro Francine, Nduwumwami Desire, Kamana Xavier, Mugabo Celestin, Mugabo Francois, Kabenga Charles na Guhigana Paul bese hamwe 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza, kuri uru rwego.

[146] Rutegetse Akarere ka Nyaruguru na BES & SUPPLY Ltd gufatanya kwishyura BIZIMANA Israël, NOCTA ENGINEERING na Uwingabire Fausca, 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza, kuri buri wese, kuri uru rwego.

[147] Rutegetse BES & SUPPLY Ltd kwishyura Sibomana Amini Rajabu amafaranga 500.000Frw y'igihembo cya Avoka.

[148] Rutegetse BES & SUPPLY Ltd kwishyura Umuhanga Dr. Iyandemye Samuel 3.139.270 Frw itaramwishyura.

[149] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.

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