

RWANDA / JUDGMENT

ZUBACX Ltd vs OGARU CONSTRUCTION AND CONSULTANTS Ltd

RCOMAA 00036/2023/CA

COURT

Court of Appeal

DECIDED

30 April 2024

CASE / FILE NUMBER

RCOMAA 00036/2023/CA

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ZUBACX Ltd vs OGARU CONSTRUCTION AND CONSULTANTS Ltd

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Text

Page 1

ZUBACX Ltd vs OGARU CONSTRUCTION AND CONSULTANTS Ltd [Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00036/2023/CA (Rutazana, P.J.) 30 Mata 2024] Itegeko ryerekeye imiburanishirize y'imanza z'Ubucuruzi – kujurira – Mu gihe umuburanyi ajuriye anenga impavu itariyo yashingiweho n'Urukiko mu gufata icyemezo kijuririrwa nyamara impamvu nyayo rwshingiyeho ntacyo ayinenga, ubujurire bwe nta shingiro buba bufite. Itegeko ryerekeye indishyi – kubara indishyi – indishyi z'ubukererwe – Hashingiwe ku ihame ry'ubutabera bunoze, nta ruhande rukwiriye kwikungahaza nta mpamvu cyangwa ngo hagire uruhande ruterwa igihombo nta mpamvu. Incamake y'ikibazo: Uru rubanza rwatangiye OGARU CONSTRUCTION AND CONSULTANTS Ltd irega ZUBACX Ltd mu Rukiko rw'Ubucuruzi, isaba ko itegakwa kuyishyura indishyi z'ubukererwe zikomoka ku isoko yabahaye ryo kugemura imashini zo mu bwoko bwa UPS no kuzishyira aho zagombaga gushyirwa (installation), ikabikora mu gihe cy'iminsi 35, ariko ikaba yaragize ubukererwe bw'iminsi 71, bakaba bari bumvikanye ko mu gihe cy'ubukererwe ZUBACX Ltd igomba kwishyura indishyi zingana na 2.000\$ kuri buri muni

w'ubukererwe. ZUBACX Ltd yireguye ivuga ko kuba yarakerewe byatewe n'uko OGARU CONSTRUCTION AND CONSULTANTS Ltd yatinze kwishyura amafaranga yo gutumiza izo mashini (ya commande), ngo ndetse n'uruganda rwagombaga gukora izo mashini rwakerejwe n'uko muri icyo gihe indege zitagendaga kubera icyorezo cya COVID – 19, ko ikirego cyayo nta shingiro gifite kuko ubukererwe bwatewe n'impamvu ntarengwa (cas de force majeure) bityo ZUBACX Ltd ikaba ntacyo ikwiriye kuryozwa. Urukiko mu rubanza RCOM 01473/2021/TC rwemeje ko habaye ubukererwe bikaba byaragize ingaruka kuri OGARU CONSTRUCTION AND CONSULTANTS Ltd kuko nayo Tek Expert Rwanda Ltd (yari yayitumye izo mashini) yayishyuye indishyi z'ubukererwe; maze rutegeka ZUBACX Ltd kwishyura OGARU CONSTRUCTION AND CONSULTANTS Ltd 21.560.000 Frw y'indishyi z'ubukererwe (zingana n'izo nayo yishyujwe na Tek Expert Rwanda Ltd); n'amafaranga y'igihembo cy' Avoka nay'ikurikiranarubanza. ZUBACX Ltd yajuririje Urukiko Rukuru rw'Ubucuruzi igamije kugaragaza ko mu icibwa ry'urubanza rujuririrwa hirengagijwe ko habayeho impamvu ntarengwa (force majeure) yatumye itubahiriza amasezerano kandi urukiko rukaba rutaragaragaje uruhare yagize mu bukererwe bwabayeho, inasaba ko amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka yategetswe kwishyura avanwaho ahubwo ikaba ariyo iyagerenerwa. OGARU CONSTRUCTION AND CONSULTANTS Ltd yireguye ivuga ko ubwo bujuriye nta shingiro bufite, ahubwo isaba ko indishyi z'ikurikiranarubanza n'igihembo cy'avoka yagenewe ku rwego rwa mbere zongerwa. Urukiko mu rubanza RCOMA00308/2022/HCC rwemeje ko ubujuriye bwa ZUBACX Ltd nta shingiro bufite ahubwo ko igomba kwishyura OGARU CONSTRUCTION AND CONSULTANTS Ltd indishyi z'ubukererwe zingana na 157.372.920Frw, n'amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka. Kuko ZUBACX Ltd itakwitwaza icyorezo cya Covid-19 nk'impamvu ntarengwa kandi itunguranye yatumye itubahiriza amasezerano kuko ubwo ayo masezerano

Page 2

yakorwaga icyo cyorezo cyari kiriho; kuko kandi indishyi zagombaga kugenwa hakurikijwe ibyo impande zombi zumvikanye mu masezerano zagiranye. ZUBACX Ltd yongeye kujuririra Urukiko rw'Ubujuriye, ivuga ko itagomba kwishyuzwa indishyi z'ubukererwe, kandi ko n'izagenwe ari umurenge harebwe iminsi nyakuri y'ubukererwe. Mbere yo kwiregura kuri ubwo bujuriye, OGARU CONSTRUCTION AND CONSULTANTS Ltd yatanze inzitizi y'iburabubasha bw'uru Rukiko, ishingiye ku mpamvu y'uko mu nkiko zombi zabanje ZUBACX Ltd yatsinzwe hashingiwe ku mpamvu zimwe. Urukiko mu rubanza rubanziriza urundi ko iyo nzitizi nta shingiro ifite. Mu rubanza mu mizi, Urukiko rwemeza mu rubanza RCOMAA00036/2023/CA ko ubujuriye bwa ZUBACX bufite ishingiro kuri bimwe ko yaciwe indishyi nyinshi bityo ko agomba gutanga indishyi z'ubukererwe zingana na 76,000,000Frw. Incamake y'icyemezo: 1. Mu gihe umuburanyi ajuriye anenga impavu itariyo yashingiweho n'Urukiko mu gufata icyemezo kijuririrwa nyamara impamvu nyayo rwashingiyeho ntacyo ayinenga, ubujuriye bwe nta shingiro buba bufite. 2. Hashingiwe ku ihame ry'ubutabera bunoze, nta ruhande rukwiriye kwikungahaza nta mpamvu cyangwa ngo hagire uruhande ruterwa igihombo nta mpamvu. Bityo, mu kubara indishyi z'ubukererwe zigomba kwishyurwa n'uwishe amasezerano y'isoko abantu cyangwa ibigo ku giti cyabyo byagiranye nubwo zaba ziteganyijwe mu masezerano, ntizikwiye kurenza agaciro k'isoko.

Ubujurire bufite ishingiro kuri bimwe. Amategeko yashingiweho: Ingingo ya 142 y'Itegeko N°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, Itegeko N° 47/2017 ryo ku wa 23/9/2017 rigenga imitunganyirize y'imirimo y'amabanki Ingingo ya 112 - 2° Itegeko N° 031/2022 ryo ku wa 21/11/2022 rigenga amasoko ya Leta ingingo ya 72

Imanza zifashishijwe: Urubanza RS/INJUST/RCOM 00006/2022/SC, haburana Banque Populaire du Rwanda Plc n'Akarere ka Nyamasheke, rwaciwe n'Urukiko rw'Ikirenga ku wa 27/01/2023. Urubanza RS/INJUST/RCOM 00008/2021/SC haburana SIMACO Ltd na I&M Bank Rwanda Plc rwaciwe n'Urukiko rw'Ikirenga ku wa 25/02/2022, igika cya 47-50; Urubanza RS/INJUST/RCOM00010/2022/SC haburana UNGUKA BANK Plc na Ndagijimana Théoneste; rwaciwe n'Urukiko rw'Ikirenga ku wa 15/12/2023 igika cya 40 urubanza RCOMAA 00002/2023/CA rwaciwe haburana NDANGIZI John na UNGUKA BANK Plc (yahindutse LOLC UNGUKA Finance Plc) rwaciwe n'Urukiko rw'Ubujurire ku wa 26/03/2024 igika cya 42; urubanza RCOMAA 00021/2022/CA, haburana NZATUNGA Ruvuguta Emmanuel n'undi na BPR Bank Rwanda Plc rwaciwe n'Urukiko rw'Ubujurire ku wa 28/06/2024, igika cya 33. Urubanza I. IMITERERE Y'URUBANZA

Page 3

- [1] Ku wa 24/05/2021 OGARU CONSTRUCTION AND CONSULTANTS Ltd yagiranye na ZUBACX Ltd amasezerano (Purchase Order) y'isoko rifite agaciro ka 76.000.000frw ryo kugemura imashini zo mu bwoko bwa UPS no kuzishyira aho zagombaga gushyirwa (installation) mu nzu ya Tek Experts Rwanda Ltd. Iyi nayo yari yagiranye na OGARU CONSTRUCTION AND CONSULTANTS Ltd amasezerano yo ku wa 12/04/2021, y'isoko ryo kuzuza inzu yayo no gushyiramo ibikenewe byose. [2] Muri ayo masezerano yo ku wa 24/05/2021 yavuzwe haruguru (purchase order) OGARU CONSTRUCTION AND CONSULTANTS Ltd yumvikanye na ZUBACX Ltd ko iyi yagombaga kuzuza inshingano zayo mu gihe cy'iminsi 35, harimo iminsi 28 yo kugemuramo imashini n'iminsi 7 yo kuzishyira aho zagombaga gushyirwa (installation), banumvikana ko mu gihe cy'ubukererwe ZUBACX Ltd igomba kwishyura indishyi zingana na 2.000\$ kuri buri muni w'ubukererwe. [3] Ku wa 16/11/2021 OGARU CONSTRUCTION AND CONSULTANTS Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi, isaba ko ZUBACX Ltd itegukwa kuyishyura indishyi z'ubukererwe ngo kuko n'ubwo yagemuye imashini, ariko yagize ubukererwe bungana n'iminsi 71 ibarwa guhera ku wa 28/06/2021 kugeza kuwa 07/09/2021, bituma OGARU CONSTRUCTION AND CONSULTANTS Ltd nayo yishyura indishyi z'ubukererwe Tek Experts Rwanda Ltd yari yayihaye isoko ry'izo mashini. [4] ZUBACX Ltd yireguye ivuga ko kuba yarakerewe kugemura imashini zavuzwe haruguru byatewe n'uko OGARU CONSTRUCTION AND CONSULTANTS Ltd yatinze kwishyura amafaranga yo gutumiza izo mashini (ya commande), ngo ndetse n'uruganda rwagombaga gukora izo mashini rukaba rwarayandikiye ruyimenyesha ko rwakerejwe n'uko muri icyo gihe indege zitagendaga kubera icyorezo cya COVID - 19 kandi ibi na OGARU CONSTRUCTION AND CONSULTANTS Ltd ikaba yarabimenyeshejwe; ko rero ikirego cyayo nta shingiro gifite kuko ubukererwe bwatewe n'impamvu ntarengwa (cas de force majeure) bityo ZUBACX Ltd ikaba ntacyo ikwiriye kuryozwa. [5] Mu rubanza RCOM01473/2021/TC rwaciwe n'Urukiko rw'Ubucuruzi kuwa 25/03/2022 rwemeje ko habaye ubukererwe bityo

ZUBACX Ltd ikaba itarubahirije amasezerano yagiranye na OGARU CONSTRUCTION AND CONSULTANTS Ltd ku bijyanye n'igihe yagombaga kugemuriramo imashini no kuzishyira aho zagombaga gushyirwa (installation), kandi bikaba byaragize ingaruka kuri OGARU CONSTRUCTION AND CONSULTANTS Ltd kuko nayo Tek Expert Rwanda Ltd (yari yayitumye izo mashini) yayishyuye indishyi z'ubukererwe; maze rutegeka ZUBACX Ltd kwishyura OGARU CONSTRUCTION AND CONSULTANTS Ltd 21.560.000Frw y'indishyi z'ubukererwe (zingana n'izo nayo yishyujwe na Tek Expert Rwanda Ltd); 600. 000Frw y'igihembo cya Avoka, 100.000Frw y'ikurikiranarubanza na 20.000Frw y'ingwate y'amagarama yatanze irega. [6] ZUBACX Ltd yajuririje Urukiko Rukuru rw'Ubucuruzi igamije kugaragaza ko mu icibwa ry'urubanza RCOM 01473/2021/TC hirengagijwe ko habayeho impamvu ntarengwa (force majeure) yatumye itubahiriza amasezerano kandi urukiko rukaba rutaragaragaje uruhare yagize mu bukererwe bwabayeho, no mu kugenera OGARU CONSTRUCTION AND CONSULTANTS Ltd indishyi urukiko rukaba rwarashingiye ku kimenyetso cyatanzwe nyuma y'inama ntegururubanza ndetse gishidikanywaho; inasaba ko amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka yategetswe kwishyura avanwaho ahubwo ikaba ariyo iyagerenerwa. [7] OGARU CONSTRUCTION AND CONSULTANTS Ltd yireguye ivuga ko ubwo bujurire nta shingiro bufite, ahubwo isaba ko indishyi z'ikurikiranarubanza n'igihembo cy'avoka yagenewe ku rwego rwa mbere zongerwa.

Page 4

- [8] Mu rubanza RCOMA00308/2022/HCC rwaciwe ku wa 12/05/2023, Urukiko Rukuru rw'Ubucuruzi rushingiye ku mpamvu y'uko ZUBACX Ltd itakwitwaza icyorezo cya Covid-19 nk'impamvu ntarengwa kandi itunguranye yatumye itubahiriza amasezerano kuko ubwo ayo masezerano yakorwaga icyo cyorezo cyari kiriho bityo rero ZUBACX Ltd ikaba itaratunguwe; rushingiye kandi ku mpamvu y'uko indishyi zagombaga kugenwa hakurikijwe ibyo impande zombi zumvikanye mu masezerano zagiranye, rwasanze harabayeho ubukererwe, rutegeka ZUBACX Ltd kwishyura OGARU CONSTRUCTION AND CONSULTANTS Ltd indishyi z'ubukererwe zingana na 157.372.920Frw, amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka mu bujurire angana na 1.000.000 Frw yiyongera kuyo yagenewe ku rwego rwa mbere. [9] ZUBACX Ltd yongeye kujuririra Urukiko rw'Ubujurire, igamije gukomeza gushimangira ko itagomba kwishyuzwa indishyi z'ubukererwe, kandi ko n'izagenwe ari umurengera harebwe iminsi nyakuri y'ubukererwe bwabayeho n'igihombo bwateye. Mbere yo kwiregura kuri ubwo bujurire, OGARU CONSTRUCTION AND CONSULTANTS Ltd yatanze inzitizi y'iburabubasha bw'uru Rukiko, ishingiyeye ku mpamvu y'uko mu nkiko zombi zabanje ZUBACX Ltd yatsinzwe hashingiye ku mpamvu zimwe. [10] Iburanisha mu ruhamye ryabaye ku wa 14/03/2024, ZUBACX Ltd ihagarariwe na Me Musoni Samuel na Me Ingenzi Jean Félix, naho OGARU CONSTRUCTION AND CONSULTANTS Ltd ihagarariwe na Me Kalinda Stephen na Me Mukoka Ronald Walter, Urukiko rubanza gusuzuma ibijyanye n'iyi nzitizi y'iburabubasha, mu rubanza rubanziriza urundi rwaciwe ku wa 22/03/2024 Urukiko rwemeza ko nta shingiro ifite, iburanisha ry'urubanza mu mizi rikomeza ku wa 15/04/2024. [11] Ku bijyanye n'urubanza mu mizi, mu myanzuro ya ZUBACX Ltd no mu miburanire yayo,

abayihagarariye basobanura ko inenge ziri mu rubanza rwajuririwe ari ukuba Urukiko Rukuru rw'Ubucuruzi rwarayitegetse kwishyura indishyi z'ubukererwe hashingiwe ku mvugo za OGARU CONSTRUCTION AND CONSULTANTS Ltd zitari ukuri, z'uko ZUBACX Ltd itatanze amakuru ajyanye n'impamvu ntarengwa kandi itunguranye yatumye ikererwa kugemura imashini; no kuba indishyi OGARU CONSTRUCTION AND CONSULTANTS Ltd yagenewe ari nyinshi kuko zabariwe ku minsi 71 mu gihe iminsi nyakuri y'ubukererwe ari 37, kandi zikaba zidahura n'igihombo nyakuri ubwo bukererwe bwateye. Basaba kandi ko mu gihe ubujurire bwa ZUBACX Ltd bwahabwa ishingiro, yagenerwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. [12] Mu myanzuro ya OGARU CONSTRUCTION AND CONSULTANTS Ltd no mu miburanire yayo ivuga ko ubujurire bwa ZUBACX Ltd nta shingiro bufite kuko nta makosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu rubanza rwajuririwe ; ahubwo igasaba ko ariyo igenerwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. [13] Hashingiwe ku mpaka zagaragajwe haruguru, Urukiko rugomba gusuzuma ibibazo bikurikira bigize urubanza : Kumenya niba ZUBACX Ltd itaragombaga gitegekwa kwishyura indishyi z'ubukererwe; Kumenya niba indishyi z'ubukererwe OGARU CONSTRUCTION AND CONSULTANTS Ltd zikwiriye kugabanywa kuko ari nyinshi; Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA Kumenya niba ZUBACX Ltd itaragombaga gutegekwa kwishyura indishyi z'ubukererwe

Page 5

- [14] Impamvu ya mbere yatumye ZUBACX Ltd ijurira ni ukugaragaza ko Urukiko Rukuru rw'Ubucuruzi rwategetse ko yishyura indishyi z'ubukererwe rugendeye ku mvugo za OGARU CONSTRUCTION AND CONSULTANTS Ltd z'uko itigeze itanga amakuru ku mpamvu zatumye ikererwa kugemura imashini, ngo kandi ibi atari ukuri. Abayihagarariye basobanura ko mu gika cya 18 cy'urubanza rwajuririwe Urukiko rwavuze ko kuba OGARU CONSTRUCTION AND CONSULTANTS Ltd na ZUBACX Ltd zarahananaganaga amakuru ku bijyanye n'imashini zagombaga kugemurwa bitayikuraho inshingano yari ifite zo kubahiriza igihe cyumvikanyweho mu masezerano, rwirengagije ko ZUBACX Ltd yagaragaje ko muri purchase order hatateganyijwe uburyo ikibazo cyakemuka mu gihe haba habayeho impamvu ntarengwa kandi itunguranye (force majeure), kandi ZUBACX Ltd ikaba nta ndege itwara imizigo yari ifite yagombaga gupakiramo izo mashini kugira ngo zihite zigera mu Rwanda ku gihe cyagenwe, ikaba nta n'ayandi mahitamo yari ifite yari gukoresha mu kwihutisha kuzana izo mashini. [15] Uhagarariye OGARU CONSTRUCTION AND CONSULTANTS Ltd yiregura kuri iyi mpamvu y'ubujurire avuga ko nta gaciro ikwiye guhabwa kuko ibyo kuba ZUBACX Ltd yarasobanuriye OGARU CONSTRUCTION AND CONSULTANTS Ltd ko imashini zizatinda kuyigeraho bidakuraho kubara inyungu z'ubukererwe impande zombi zumvikanye mu masezerano; ko ibirebana n'uko gukererwa kw'izo mashini byatewe n'umwikorezi wagombaga kuzizana nabyo nta shingiro bifite kuko OGARU CONSTRUCTION AND CONSULTANTS Ltd itari izi amasezerano ZUBACX Ltd yagiranye n'uwo mwikorezi; ndetse ko n'ibijyanye n'uko habaye impamvu ntarengwa kandi

itunguranye (force majeure) nta gaciro byahabwa kuko no mu rubanza rwajuririwe Urukiko rwasobanuye ko icyorezo cya COVID 19 kitaba urwitwazo mu gihe impande zombi zasinye amasezerano zizi neza ko icyo cyorezo gihari. UKO URUKIKO RUBIBONA [16] Kuri iyi mpamvu y'ubujurire icyo ZUBACX Ltd igamije kumvikanisha ni uko Urukiko Rukuru rw'Ubucuruzi rutagombaga kuyitegeka kwishyura indishyi z'ubukererwe hashingiwe ku mvugo za OGARU CONSTRUCTION AND CONSULTANTS Ltd z'uko itigeze itanga amakuru ajyanye n'impamvu ntarengwa kandi itunguranye yatumye ikererwa kugemura imashini ngo kandi ibi atari ukuri kuko impande zombi zavuganaga kuri izi mpamvu, kandi mu masezerano zagiranye hakaba hatateganyijwe uko ikibazo cyakemuka mu gihe impamvu nk'iyi yabaho. [17] Isesengura ry'urubanza rwajuririwe rigaragaza ko impamvu nyamukuru Urukiko Rukuru rw'Ubucuruzi rwashingiyeho rwemeza ko ZUBACX Ltd yagize ubukererwe mu kugemura imashini rukanayitegeka kwishyura OGARU CONSTRUCTION AND CONSULTANTS Ltd indishyi z'ubukererwe ari uko rwasanze nta mpamvu ntarengwa kandi itunguranye (force majeure) yabayeho kuko ubwo impande zombi zagiranaga amasezerano (kuwa 24/05/2021) hari mu bihe bya COVID- 19, bityo ZUBACX Ltd ikaba itakwitwaza ko habayeho icyorezo cya COVID-19 nk'impamvu ntarengwa kandi itunguranye yatumye itubahiriza ibyumvikanyweho mu masezerano, kuko iyo mpamvu itayitunguye mu gihe cyose amasezerano yakozwe icyo cyorezo gihari, ko rero yari isanzwe ikizi kimwe n'uburemere bwacyo. Naho ku bijyanye no kuba hari ubutumwa ZUBACX Lt yohereje OGARU CONSTRUCTION AND CONSULTANTS Ltd iyimenyesha impamvu itagemuye imashini ku gihe, Urukiko ruvuga ko bitahabwa ishingiro nk'impamvu yayibujije kubahiriza inshingano zayo. [18] Urukiko rusanga rero mu rubanza rwajuririwe ntaho Urukiko rwemeje ko habayeho ubukererwe ngo runategeke ZUBACX Ltd kwishyura indishyi z'ubukererwe rushingiye ku mpamvu y'uko itatanze amakuru ku mpamvu zayibujije kubahiriza igihe cyumvikanyweho mu masezerano, bityo ibyo ZUBACX Ltd ivuga ko yategetswe kwishyura izo ndishyi hashingiwe ku makuru atari yo bikaba nta shingiro bifite; ahubwo nk'uko byasobanuwe ikaba yarategetswe kwishyura izo ndishyi

Page 6

hashingiwe ku mpamvu y'uko ubwo yagiranaga amasezerano na OGARU CONSTRUCTION AND CONSULTANTS Ltd icyorezo cya COVID 19 cyari gihari bityo ikaba itacyitwaza nk'impamvu ntarengwa kandi itunguranye yayibujije kuzura inshingano yemeye mu masezerano; kandi mu bujurire bwayo ikaba ntacyo yagaragaje inenga iyi mpamvu yashingiweho n'Urukiko. Hashingiwe kuri ibyo bisobanuro, ZUBACX Ltd ikaba nta mpamvu yagaragaje yashingirwaho hemezwa ko itagombaga gutegekwa kwishyura indishyi z'ubukererwe ; bityo iyi mpamvu y'ubujurire ikaba nta shingiro ifite. Kumenya niba indishyi z'ubukererwe OGARU CONSTRUCTION AND CONSULTANTS Ltd zikwiriye kugabanywa kuko ari nyinshi [19] Abahagarariye ZUBACX Ltd bavuga ko indi mpamvu yatumye ijurira ari uko indishyi z'ubukererwe yategetswe kwishyura mu rubanza rwajuririwe ari umurengera, igasaba ko mu gihe Urukiko rwasanga zigomba gutangwa zagabanywa hashingiwe ku biteganywa mu ngingo ya 142 y'Itegeko N°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ko nta ndishyi zishobora gutangwa ku gihombo kiri hejuru

y'icyo uruhande rwarenganyijwe rushobora kugaragaza nta gushidikanya. [20] Abahagarariye ZUBACX Ltd bakomeza basobanura ko indishyi zagenwe mu rubanza rwajuririwe zigomba kugabanywa hashingiwe ku mpamvu zikurikira : Kuba umubare nyakuri w'iminsi y'ubukererwe ari 37 aho kuba 71 yashingiweho mu rubanza rwajuririwe ngo kuko purchase order yatanze ku wa 24/05/2021 ariko amafaranga yo gutumiza imashini akishyurwa ku wa 01/06/2021, bityo iyi tariki ikaba ariyo igomba guherwaho habarwa iminsi y'ubukererwe, iminsi 35 iteganyijwe mu masezerano ikaba yaragombaga kurangira ku wa 05/07/2021; ko rero kuba izo mashini zararangiye gukorerwa installation ku wa 11/08/2021 maze ku wa 24/08/2021 OGARU CONSTRUCTION AND CONSULTANTS Ltd igasinye kuri delivery note ko izakiriye, bivuze ko kuva ku wa 05/07/2021 kugeza ku wa 11/08/2021 harimo iminsi mirongo itatu n'irindwi (37), akaba ari yo ikwiriye gufatwa nk'iminsi y'ubukererwe; Kuba OGARU CONSTRUCTION AND CONSULTANTS Ltd itarigeze igaragaza igihombo yagize gihuye n'indishyi z'ubukererwe yagenewe zingana na 157.372.920Frw ku isoko rifite agaciro ka 76.000.000Frw, zagenwe hashingiwe ku nyandiko yiswe Acceptance of final account summary mu gihe OGARU CONSTRUCTION AND CONSULTANTS Ltd yo yaburanaga igaragaza ko indishyi yaciye na Tek Experts Rwanda Ltd zingana na 21.560.000Frw; bagasaba ko mu gihe Urukiko rwasanga hari indishyi zikwiriye gutangwa, zagabanywa hashingiwe ku biteganywa mu ngingo ya 181 y'Itegeko N°62/2018 ryo ku wa 25/08/2018 rigenga amasoko ya Leta no ku murongo watanze n'Urukiko rw'Ikirenga mu rubanza RS/INJUST/RCOM 00006/2022/SC rwaciye ku wa 27/01/2023 haburana Akarere ka Nyamasheke na BPR Bank Plc1, zikabwirwa kuri rimwe ku gihumbi by'agaciro kose k'isoko, kuri buri muni w'ubukererwe, ngo kuko n'ubwo ZUBACX Ltd atari yo yatsindiye isoko, ariko yahawe agace kamwe ku isoko rinini OGARU CONSTRUCTION AND CONSULTANTS Ltd yari yatsindiye muri sosiyete ya Tek Experts Rwanda Ltd ari na yo yishyuye ZUBACX Ltd ikiguzi cy'izo mashini zari zatumijwe kuko yari izi ko ari yo yari yarahawe akazi. [21] Uhagarariye OGARU CONSTRUCTION AND CONSULTANTS Ltd avuga ko iyi mpamvu y'ubujurire nta shingiro ifite, kuko mu masezerano impande zombi zagiranye zemeranyije ko ZUBACX Ltd yagombaga kuzuza inshingano zayo mu gihe cy'iminsi 35 kandi ko mu gihe

1Abahagarariye ZUBACX Ltd bavugaga ko mu gika cya 54 cy'urwo rubanza Urukiko rw'Ikirenga rwasanze inyungu z'ubukererwe yagenewe Akarere ka Nyamasheke ari umurenegira maze mu bushishozi bwarwo rukazigabanya.

Page 7

cy'ubukererwe yagombaga kujya yishyura 2000\$; ko rero n'ubwo ZUBACX Ltd yageze aho ikarangiza isoko yahawe, yagize ubukererwe bungana n'iminsi mirongo irindwi n'umwe (71) ibarwa guhera ku wa 28/06/2021 kugeza ku wa 07/09/2021, bikaba bigomba kuyigiraho ingaruka kuko OGARU CONSTRUCTION AND CONSULTANTS Ltd nayo yishyuye Tek Experts Rwanda Ltd indishyi z'ubukererwe bitewe na ZUBACX Ltd. [22] Asobanura ko ari na byo Urukiko Rukuru rw'Ubucuruzi rwasesenguye maze rugasanga ZUBACX Ltd ikwiye kwishyura indishyi z'ubukererwe, bityo ko nta makosa rwakoze. Ku bijyanye n'ingingo ya 181 y'Itegeko rigenga amasoko ya Leta uhagarariye OGARU CONSTRUCTION AND CONSULTANTS Ltd avuga ko Urukiko rudakwiriye kuyishingiraho, ko ahubwo rwazashingira ku masezerano impande zombi zagiranye,

maze ibiyakubiyemo bigahuzwa n'ibiteganywa n'ingingo ya 64 y'Itegeko rigenga amasezerano. UKO URUKIKO RUBIBONA [23] Impaka ziri hagati y'ababuranyi kuri iki kibazo zishingiye ku kumenya uburyo indishyi z'ubukererwe ziburanwa muri uru rubanza zigomba kubarwa: abahagarariye OGARU CONSTRUCTION AND CONSULTANTS Ltd bavuga ko zigomba kubarwa hashingiwe ku biteganyijwe mu masezerano impande zombi zagiranye mu gihe abahagarariye ZUBACX Ltd bo bavuga ko ziramutse zibazwe gutyo zaba ari umurengera, igasaba ko zigabanywa zigashyirwa ku kigero gikwiriye. [24] Ingingo ya 64 y'Itegeko N°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano igira iti: "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya". [25] Ku birebana no kumenya niba indishyi z'ubukererwe zishingiye ku ishyirwa mu bikorwa ry'amasezerano (muri rusange) zigomba kubarwa hakurikijwe byanze bikunze igipimo cyateganyijwe mu masezerano, nta rubanza rwagaragajwe rwabitanzeho umurongo haba mu Rukiko rw'Ikirenga cyangwa mu Rukiko rw'Ubujurire. Cyakora hari imanza zasuzumye zinatanga umurongo ku bibazo byihariye bijya gusa n'iki, bijyanye n'ibarwa ry'inyungu z'ubukererwe zikomoka ku mwenda watanze na banki cyangwa izikomoka ku ngwate yo kurangiza imirimo neza (mu bijyanye n'amasoko ya Leta). [26] Ku bijyanye n'inyungu z'ubukererwe zicibwa umukiriya wa banki wahawe umwenda akarenza igihe cyo kwishyura, mu manza2 zinyuranye zaciwe n'Urukiko rw'Ikirenga ndetse n'uru Rukiko, zishingiye ku biteganywa mu ngingo ya 112 - 2° y'Itegeko N° 47/2017 ryo ku wa 23/9/2017 rigena imitunganyirize y'imirimo y'amabanki ryakurikizwaga ubwo zacibwaga, zemeje ko inyungu (harimo n'inyungu z'ubukererwe) banki zishobora kwishyura abakiriya bazo zishingiye ku nguzanyo

2 Hari urubanza N° RS/INJUST/RCOM 00008/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25/02/2022, haburana SIMACO Ltd na I&M Bank Rwanda Plc (igika cya 47-50); urubanza RS/INJUST/RCOM00010/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 15/12/2023 haburana UNGUKA BANK Plc na Ndagijimana Théoneste (igika cya 40); urubanza N° RCOMAA 00002/2023/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 26/03/2024 haburana NDANGIZI John na UNGUKA BANK Plc (yahindutse LOLC UNGUKA Finance Plc) mu gika cya 42); urubanza N° RCOMAA 00021/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 28/06/2024, NZATUNGA Ruvuguta Emmanuel n'undi baburana na BPR Bank Rwanda Plc (igika cya 33). 3 Iyo ngingo ya 112 - 2° y'Itegeko N° 47/2017 ryo ku wa 23/09/2017 yateganyaga ko inyungu zishyuzwa na banki zidashobora kurenza umwenda shingiro igihe inguzanyo yageraga mu rwego rwo kutishyurwa hakurikijwe amasezerano banki ifitanye n'iyifitiye umwenda. Ibyari biteganyijwe muri iyi ngingo binateganyijwe mu ngingo ya 20 y'Itegeko N° 017/2021 ryo ku wa 03/03/2021 ryerekeye kurengera umuguzi wa serivisi z'imari rikurikizwa ubu.

Page 8

zabahaye zitagomba kurenga umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa. [27] Naho ku bijyanye n'inyungu z'ubukererwe zikomoka ku ngwate yo kurangiza imirimo neza (mu bijyanye n'amasoko ya Leta), ingingo ya 72 y'Itegeko N° 031/2022 ryo ku wa 21/11/2022 rigenga amasoko ya Leta yerekeye "Ingaruka zo gushyira amananiza ku gufatira

ingwate mu masoko ya Leta” iteganya ko inyungu z’ubukererwe zishyurwa n’Ikigo cy’imari kibifitiye uburenganzira kitahaye Urwego rutanga isoko ingwate yose mu gihe giteganywa n’iyo ngingo, ingana na rimwe ku ijana (1%) y’amafaranga agomba kwishyurwa kuri buri muni w’ubukererwe mu kwishyura; ko ariko izo nyungu z’ubukererwe zitarenga ingano y’agaciro k’ingwate yatanze. [28] Ibi byanagarutseho mu rubanza RS/INJUST/RCOM 00006/2022/SC rwaciye n’Urukiko rw’Ikirenga ku wa 27/01/2023 Banque Populaire du Rwanda Plc n’Akarere ka Nyamasheke baburana ibijyanye n’ingano y’inyungu z’ubukererwe ku ngwate yo kurangiza imirimo neza iyo banki yagombaga kwishyura, by’umwihariko “Kumenya niba inyungu z’ubukererwe ziteganywa n’Itegeko BPR Bank Plc yari yaciye zarashoboraga kugabanywa kuko ari umurenge zigashyirwa ku kigero gikwiye”, aho Urukiko rw’Ikirenga rwatanze imirongo ikurikira: N’ubwo inkiko zidakwiye gusubira mu masezerano yakozwe hagati y’ababuranyi, zifite inshingano zo kugarura mu bushishozi bwazo ingano y’inyungu zishyuzwa ku kigero nyakuri cy’igihombo cyatejwe; icyerekezo cy’Umushingamategeko w’u Rwanda mu Itegeko N° 031/2022 ryo ku wa 21/11/2022 rigenga amasoko ya Leta ryavuzwe haruguru ku bijyanye n’inyungu z’ubukererwe ni uko urwego rwatanze isoko rudakwiye kwikungahaza nta mpamvu cyangwa ko umwishingizi aterwa igihombo no kwishyuzwa inyungu z’ubukererwe zibarwa ubuziraherezo hatanitawe kubyo uzihawe yatakaje, kuko yaba kimwe cyangwa ikindi, gitera akarengane; Inyungu ziteganywa n’itegeko zigomba kuba zihagije kugira ngo zice intege abashaka kwica itegeko kandi ntizigomba kubogamira ku ruhande ruzisaba gusa; Inyungu zemejwe ko ari umurenge zigomba kugarukira ku rugero rwagenwe n’Urukiko mu bushishozi bwawo, zipfa kutarenga izikenewe mu gukosora ibyangijwe kandi zigatanga isomo kugira ngo ibyatumye zitangwa bitazasubira. [29] Ku bijyanye n’uru rubanza, indishyi z’ubukererwe ZUBACX Ltd yategetswe kwishyura mu rubanza rwajuririwe zingana na 157.372.920Frw, zabazwe hashingiwe ku biteganyijwe mu masezerano yagiranye na OGARU CONSTRUCTION AND CONSULTANTS Ltd ateganya ko kuri buri muni w’ubukererwe izacibwa 2.000 USD, mu gihe agaciro k’isoko ryose ayo masezerano ashingiyeho kangana na 76.000.000Frw. Nk’uko byibukijwe haruguru, kuri uru rwego rw’ubujurire icyo ZUBACX Ltd inenga izo ndishyi yategetswe kwishyura ni ukuba ivuga ko zitabariwe ku mubare nyakuri w’iminsi y’ubukererwe yabayeho, no kuba ari umurenge igasaba ko zigabanywa zigahuzwa n’igihombo nyakuri cyabayeho. [30] Ku bijyanye n’umubare w’iminsi y’ubukererwe, mu masezerano impande zombi zagiranye zumvikanye ko ZUBACX Ltd yagombaga kuzuza inshingano zayo mu gihe cy’iminsi 35, harimo iminsi 28 yo kugemuramo imashini n’iminsi 7 yo kuzishyira aho zagombaga gushyirwa (installation). Urukiko rurasanga nk’uko abahagarariye ZUBACX Ltd babivugaga na OGARU CONSTRUCTION AND CONSULTANTS Ltd ikaba itabihakana, dore ko binagaragazwa n’inyandiko iri muri dosiye (receipt), ku itariki ya 01/06/2021 nibwo ZUBACX Ltd yishyuye (na Tek Experts Rwanda Ltd) amafaranga yo gutumiza imashini zavuzwe haruguru no kuzikorera installation, bityo iyo tariki ikaba ariyo igomba guherwamo mu kubara igihe cy’ubukererwe. Urukiko rurasanga ariko ibyo

Page 9

abahagarariye ZUBACX Ltd bavuga ko kuzikorera installation byarangiye ku wa 11/08/2021 nta kimenyetso ibitangira uretse kubivuga gusa, Urukiko rukaba ntaho rwagera rubishingiraho; ahubwo itariki ya 07/09/2021 OGARU CONSTRUCTION AND CONSULTANTS Ltd ivuga mu ibaruwa yandikiye ZUBACX Ltd ku wa 07/10/2021 iyimenyesha ko igomba kwishyura indishyi z'ubukererwe, ikaba ari yo ikwiriye gushingirwaho, bityo rero iminsi 35 yari iteganyijwe mu masezerano ikaba yararangiye ku itariki ya 05/07/2021; kugeza ku itariki ya 07/09/2021 yavuzwe haruguru hakaba harimo iminsi 61, ariyo igomba gufatwa nk'iminsi y'ubukererwe. [31] Ku bijyanye n'ingano y'indishyi z'ubukererwe, uru Rukiko rurasanga hashingiwe ku byasobanuwe ku birebana n'impamvu ya mbere y'ubujurire no ku bimaze gusobanurwa mu gika kibanziriza iki, ZUBACX Ltd igomba kuzishyura kuko zateganyijwe mu masezerano, ariko mu gihe zaba zibazwe hashingiwe kuri 2.000USD zikaba zaba zingana na 122.000USD (ni ukuvuga hafi inshuro ebyiri agaciro k'isoko ryose). N'ubwo ingingo z'amategako kimwe n'imirongo yatanze mu manza byavuzwe haruguru kuva ku gika ku cya 25 kugeza ku cya 28 by'uru rubanza bitashingirwaho mu buryo butaziguye muri uru rubanza kuko bijyanye n'ibarwa ry'inyungu z'ubukererwe zikomoka ku mwenda watanze na banki cyangwa izikomoka ku ngwate yo kurangiza imirimo neza (mu bijyanye n'amasoko ya Leta), uru Rukiko rurasanga hashingiwe ku ihame ry'ubutabera bunoze, icyerekezo cy'Umushingamategeko cy'uko nta ruhande rukwiriye kwikungahaza nta mpamvu cyangwa ngo hagire uruhande ruterwa igihombo nta mpamvu ari nacyo gikwiriye kugenderwaho mu kubara indishyi z'ubukererwe zigomba kwishyurwa na ZUBACX Ltd. [32] Hashingiwe ku byasobanuwe byose, uru Rukiko rurasanga indishyi z'ubukererwe ZUBACX Ltd ikwiriye kwishyura zigomba kugabanywa zigashyirwa ku kigero gikwiriye, mu bushishozi bwwarwo ikaba ikwiriye kwishyura indishyi za 76.000.000Frw zingana n'agaciro kose k'isoko yari yahawe. Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro [33] Abahagarariye ZUBACX Ltd basaba Urukiko kuyigenera 2.000.000Frw y'ikurikiranarubanza n'igihembo cya Avoka mu gihe rwasanga ubujurire bwayo bufite ishingiro. [34] Abahagarariye OGARU CONSTRUCTION AND CONSULTANTS Ltd bavuga ko ibyo ZUBACX Ltd isaba nta shingiro bifite kuko ariyo yishoye mu manza ; ahubwo bagasaba ko OGARU CONSTRUCTION AND CONSULTANTS Ltd ariyo igenerwa 500.000Frw y'ikurikiranarubanza na 1.500.000 Frw y'igihembo cya Avoka kubera ko yashoye mu manza z'amaherere bikaba ngombwa ko ikurikirana urubanza ikanashaka abayiburanira. UKO URUKIKO RUBIBONA [35] 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 ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza, kikaburanishirizwa rimwe n'ikirego cy'iremezo. [36] Urukiko rurasanga ZUBACX Ltd ari yo yajuriye, ariko n'ubwo hari ibyo itsindiye kuri uru rwego ariko ikaba itsinzwe urubanza muri rusange kuko hemejwe ko igomba kwishyura indishyi z'ubukererwe, ikaba rero ari yo yabaye intandaro y'imanza; bityo amafaranga y'ikurikiranarubanza n'igihembo cya Avoka isaba akaba nta shingiro afite; ahubwo ikaba igomba kwishyura OGARU CONSTRUCTION AND CONSULTANTS Ltd 500.000 frw y'igihembo cya Avoka na 200.000Frw

Page 10

y'ikurikiranarubanza kuri uru rwego agenwe mu bushishozi bw'Urukiko, hashingiwe ku ngingo ya111 yavuzwe haruguru. III. ICYEMEZO CY'URUKIKO [37] Rwemeje ko ubujurire bwa ZUBACX Ltd bufite ishingiye kuri bimwe. [38] Rwemeje ko ZUBACX Ltd igomba kwishyura OGARU CONSTRUCTION AND CONSULTANTS Ltd indishyi z'ubukererwe zingana na miliyoni mirongo irindwiri n'esheshatu z'amafaranga y'u Rwanda (76.000.000Frw). [39] Rwemeje ko ZUBACX Ltd igomba kwishyura OGARU CONSTRUCTION AND CONSULTANTS Ltd amafaranga y'u Rwanda ibihumbi magana atanu (500.000Frw) y'igihembo cya avoka n'ibihumbi magana abiri (200.000Frw) y'ikurikiranarubanza kuri uru rwego, yiyongera kuri miliyoni imwe y'amafaranga y'u Rwanda (1.000.000Frw) y'indishyi z'ikurikiranarubanza n'igihembo cya avoka yagenewe mu Rukiko Rukuru rw'Ubucuruzi, ibihumbi magana atandatu (600.000Frw) y'igihembo cya avoka, ibihumbi ijana (100.000Frw) y'ikurikiranarubanza n'ibihumbi makumyabiri (20.000Frw) y'ingwate y'amagarama yagenewe mu Rukiko rw'Ubucuruzi. [40] Rutegetse ZUBACX Ltd kwishyura OGARU CONSTRUCTION AND CONSULTANTS Ltd indishyi z'ubukererwe zingana n'amafaranga y'u Rwanda miliyoni mirongo irindwi n'esheshatu (76.000.000Frw), ibihumbi magana atanu (500.000Frw) y'igihembo cya avoka n'ibihumbi magana abiri (200.000Frw) y'ikurikiranarubanza kuri uru rwego, yiyongera kuri miliyoni imwe y'amafaranga y'u Rwanda (1.000.000Frw) y'indishyi z'ikurikiranarubanza n'igihembo cya avoka yagenewe mu Rukiko Rukuru rw'Ubucuruzi, ibihumbi magana atandatu (600.000Frw) y'igihembo cya avoka, ibihumbi ijana (100.000Frw) y'ikurikiranarubanza, n'ibihumbi makumyabiri (20.000Frw) y'ingwate y'amagarama yagenewe mu Rukiko rw'Ubucuruzi. [41] Ruvuze ko amagarama yatanze ahwanye n'ibyakozwe mu rubanza.

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