MWINURA N'ABANDI v. GT BANK RWANDA LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00038/2018/CA - RCOMAA 00072/2018 (Mukanyundo, P.J., Munyangeri na Mukandamage, J.) 22 Ugushyingo 2019]

Amategeko agenga amasezerano – Amasezerano y'umwenda wa banki – Umwishingizi uvuga ko yasinyishijwe amasezerano y'ubwishingire mu buriganya – Mu gihe umwishingizi atigeze atanga ikirego ku rwego rwa mbere cyo gutesha agaciro amasezerano y'umwenda yabereye umwishingizi yitwaza ko yayakoreshejwe mu buryo bw'uburiganya, nta shingiro byahabwa mu rwego rw'ubujurire ahubwo aba agomba kubahiriza ibikubiye muri ubwo bwishingire mu gihe aba atagaragaza n'impamvu yatumye asinyira ayo masezerano imbere ya noteri – Muri icyo gihe aba agomba kubahiriza ibyo yishingiye yubahiriza ibikubiye mu masezerano y'ubwishingizi yagizemo uruhare – Itegeko n^o 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64.

Amategeko agenga amasezerano – Amasezerano y'umwenda wa banki – Kudasaba guhagarika kubara inyungu nyuma yo gusesa amasezerano no kongererwa igihe cyo kwishyura umwenda – Umwenda ukomeza kubarirwa inyungu na nyuma y'iseswa ry'amasezerano mu gihe impande zabyumvikanyeho mu masezerano – Gusaba kongererwa igihe cyo kwishyura umwenda igihe ababuranyi bananiwe kwishyura ntibiba mu nshingano z'urukiko ahubwo begera Banki yabahaye umwenda bakumvikana uburyo bayishyura.

Incamake y'ikibazo: GT Bank yahaye inguzanyo sosiyete Rwanda Petroleum Development Corporation (RPDC) yishingirwa na Winene na Mwinura. Sosiyete ntiyishyuye umwenda bituma GT Bank iregera umwenda n'inyungu zawo kugeza umaze kwishyurwa mu Rukiko rw'Ubucuruzi rwa Nyarugenge. Urukiko rwemeje ko ikirego cya GT Bank gifite ishingiro rwemeza ko sosiyete n'abishingizi bayo bishyura umwneda wari umaze kuba 109.935.037 Frw.

Sosiyete RPDC, Winene na Mwinura wavugaga ko ntaho ahuriye n'umwenda watanzwe, bajuririye Urukiko Rukuru rw'Ubucuruzi RPDC na Winene bo bavuga ko GT Bank yagenewe amafaranga y'umurengera ngo kuko yabariwe inyungu nyuma yo gusesa amasezerano. Urukiko Rukuru rw'Ubucuruzi rwmeje ko nta gihindutse ku rubanza rwaciwe ku rwego rwa mbere rubategeka kwishyura 2.200.000 frw yo gushora GT Bank mu manza, igihembo cya Avocat n'amafaranga y'ikurikiranarubanza.

Mwinura, Winene na RPDC bongeye bajuririra Urukiko rw'Ikirenga ariko urubanza ruburanishwa n'Urukiko rw'Ubujurire kubera ivugurura ry'amategeko agenga ububasha bw'inkiko yari amaze kuvugururwa.

Ku ruhande rwa Mwinura yavuze ko ntaho ahuriye n'umwenda watanzwe kuko uwo yari yishingiye mbere wari wamaze kwishyurwa, asaba guhabwa icyangombwa cy'inzu ye yari yatanzeho ingwate. Yongeye avuga ko yakorewe uburiganya mu gusinyishwa amasearano y'ubwishingire ngo kuko yari ku miti bigatuma yibagirwa; asaba ko ayo masezerano yateshwa agaciro.

Ku ruhande rwa Winene na RPDC bo bajuriye bavuga ko Mwinura atagomba guhakana ko yishingiye umwenda uburanwa ko kandi Urukiko Rukuru rw'Ubucuruzi rwageneye GT Bank amafaranga y'umurengera kuko amasezerano yari yasheshwe ikomeza kubara inyungu kandi zaragomabaga guhagarara. Bongeye kandi basaba ko bakongererwa igihe cyo kwishyura.

Kuri izi ngingo GT Bank yireguye ivuga ko ubujurire bwabo nta shingiro bufite kubera impamvu zikurikira: ku ruhande rwa Mwinura, ivuga ko atagaragaza ko umwenda yishingiye warangije kwishyurwa. Ku bijyanye n'uburiganya avuga yakorewe, GT Bank yireguye ko icyo kibazo nta kirego Mwinura yagitangiye mu Ruko rw'Ubucuruzi rwa Nyarugenge.

Ku ruhande rwa Winene na RPDC, GT Bank nabo yavuze ko ubujurire bwabo nta shingiro bufite kuko batabashije kuvuguruza ibyo inkiko zemeje ku bijyanye n'inyungu, ko kandi banki zibereyeho gutanga inguzanyo zibyara inyungu, bakaba kandi badahakana ko barimo umwenda wayo.

Ku byerekeye kongererwa igihe cyo kwishyura, GT Bank yavuze ko Wenene John Martin na RPDC Ltd ntacyo bakoze ngo bishyure kugeza mu kwezi kwa 12/2017, urubanza rucibwa, ko nta n'ikimenyetso batanga cy'uko baramutse bongerewe igihe bakwishyura, uretse kubivuga gusa.

Incamake y'icyemezo: 1. Iyo umwishingizi atigeze atanga ikirego ku rwego rwa mbere cyo gutesha agaciro amasezerano y'umwenda yabereye umwishingizi yitwaza ko yayakoreshejwe mu buryo bw'uburiganya, nta shingiro bihabwa mu rwego rw'ubujurire ahubwo aba agomba kubahiriza ibikubiye muri ubwo bwishingire mu gihe aba atagaragaza n'impamvu yatumye asinyira ayo masezerano imbere ya noteri. Bityo, kuba Mwinura Eugene yarishingiye umwenda GT Bank Ltd yahaye Wenene John Martin na RPDC Ltd, agomba kubahiriza ibyo yishingiye.

2. Umwenda ukomeza kubarirwa inyungu na nyuma y'iseswa ry'amasezerano, hakurikijwe ibyemeranyijweho mu masezerano.

3. Nta muburanyi wakongererwa igihe cyo kwishyura mu gihe ntawigeze amubuza kwishyura umwenda yemera. Byongeye kandi ntibiri mu nshingano z'urukiko kongerera igihe ababuranyi bananiwe kwishyura umwenda, ahubwo baba bagomba kwegera Banki bakumvikana uburyo bayishyura.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:

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 111 na 154.

Itegeko nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64.

Imanza zifashishsijwe:

Urubanza n° RCOMA 0044/12/CS rwaciwe n'Urukiko rw'lkirenga ku wa 07/11/2014, haburana ECOBANK Ltd na Ndayambaje Emmanuel.

Urubanza n° RCOMA 0166/12/CS rwaciwe n'urwo Rukiko ku wa 28/04/2017, Umutesi Kaberuka Esperance na Runyange Medard baburana na l&M Bank.

Urubanza n° RCOMAA 00078/2018/CA rwaciwe ku wa 17/05/2019 haburana MK Investment Ltd, Mutini Thaddee na KaruruA Jean Pierre.

Urubanza

I. IMITERERE Y'URUBANZA

[1] GT Bank Rwanda Ltd yareze Rwanda Petroleum Development Corporation Ltd (RPDC Ltd) n'abishingizi bayo, aribo WENENE John Martin na Mwinura Eugene, mu Rukiko rw'Ubucuruzi rwa Nyarugenge, isaba ko rubategeka gufatanya kwishyura umwenda bayibereyemo ungana na 88.724.291 Frw n'inyungu zikomeza kubarwa kugeza wishyuwe, ukomoka ku nguzanyo zitandukanye zahawe iyo sosiyete zikaza guhurizwa hamwe ku wa 21/05/2013 zihwanye na 100.000.000 Frw (overdraft ya 40.000.000 Frw, invoice discount line ya 20.000.000 Frw na 40.000.000 Frw ya bond line), yagombaga kwishyurwa bitarenze ku wa 30/05/2014. Kayitesi Stella yagobotse ku bushake mu rubanza avuga ko inzu ye na Mwinura Eugene bayihaye RPDC Ltd ngo iyitangeho ingwate ku mwenda yafashe muri GT Bank Rwanda Ltd, ariko ko uwo mwenda warangiye kwishyurwa, andi masezerano yakurikiyeho bakaba batarigeze bayamenya.

[2] Mu rubanza n° RCOM 01490/2016/TC/NYGE rwaciwe ku wa 31/03/2017, Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko RPDC Ltd, Wenene John Martin na Mwinura Eugene bafatanya kwishyura GT Bank Rwanda Ltd 109.935.037 Frw akubiyemo umwenda remezo utarishyuwe n'inyungu, 500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka no kuyisubiza 50.000 Frw y'amagarama yatanze, rwemeza kandi ko rutakiriye ikirego cyo kugoboka ku bushake cya Kayitesi Stella, ko na 50.000 Frwyatanzeho ingwate y'amagarama arega ahwanye n'ibyakozwe mu rubanza.

[3] RPDC Ltd na Wenene John Martin bajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi bavuga ko GT Bank Rwanda Ltd yagenewe amafaranga y'umurengera, kuko inyungu zabazwe na nyuma y'iseswa ry'amasezerano, Mwinura Eugene nawe ajurira avuga ko ntaho ahuriye n'uwo mwenda, Urukiko ruca urubanza n° RCOMA 00261/2017/CHC/HCC - n° RCOMA 00284/2017/CHC/HCC, rwemeza ko ubujurire bwabo nta shingiro bufite, ko imikirize y'urubanza rwajuririwe idahindutse, rubategeka gufatanya kwishyura 2.200.000 Frw y'indishyi zo gushorwa mu manza, ikurikiranarubanza n'igihembo cya Avoka.

[4] Mwinura Eugene, Wenene John Martin na RPDC Ltd bajuririye Urukiko rw'lkirenga, urubanza ruhabwa n° RCOMAA 00054/2018/SC, ruza kwimurirwa mu Rukiko rw'Ubujurire hashingiwe ku biteganywa n'ingingo ya 105 y'ltegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ruhabwa n° RCOMAA 00038/2018/CA - RCOMAA 00072/2018/CA.

[5] Mu bujurire bwe, Mwinura Eugene avuga ko ntaho ahuriye n'amasezerano y'inguzanyo ya 100.000.000 Frw, GT Bank Rwanda Ltd yahaye WENENE John Martin na RPDC Ltd, ko kandi yakorewe uburiganya butuma ayo masezerano agomba guteshwa agaciro, maze banki ikamusubiza icyangombwa cy'inzu ye yatijeho ingwate ku mwenda wa mbere. Wenene John Martin na RPDC Ltd nabo bavuga ko Mwinura Eugene yishingiye umwenda, ko agomba gufatanya nabo kuwishyura mu gihe batabishoboye, ko ariko Urukiko Rukuru rw'Ubucuruzi rwageneye GT Bank Rwanda Ltd amafaranga y'umurengera, naho GT Bank Rwanda Ltd ikavuga ko ubujurire bwabo bose nta shingiro bufite, ko urubanza rwajuririwe rugomba kugumaho, bakishyura bafatanyije umwenda bayibereyemo.

[6] Uru rubanza rwaburanishijwe mu ruhame ku wa 18/02/2019, Mwinura Eugene yunganiwe na Me Galuga Vital, RPDC Ltd na Wenene John Martin batitabye urukiko kandi badahagarariwe, ariko barahamagawe mu buryo bukurikije amategeko, GT Bank Rwanda Ltd iburanirwa na Me Rusanganwa Jean Bosco, habanza gusuzumwa inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire yatanzwe na GT Bank Rwanda Ltd, hacibwa urubanza rubanziriza urundi ku wa 22/03/2019, Urukiko rwemeza ko ubujurire bwa Mwinura Eugene, ubwa Wenene John Martin n'ubwa RPDC Ltd, buri mu bubasha bwarwo.

[7] Iburanisha mu mizi ryakomeje ku wa 18/06/2019, MWINURA Eugene yunganiwe na Me Galuga Vital, Wenene John Martin na RPDC Ltd baburanirwa na Me Bisamaza Remezo, GT Bank Rwanda Ltd ihagarariwe na Me Rusanganwa Jean Bosco, ku wa 13/09/2019, Urukiko rufata icyemezo gitegeka GT Bank Rwanda Ltd gutanga ibisobanuro by'uburyo umwenda yatanze ku isoko n° 02/W/2011-2012/RDRP ryo kubaka amazu y'abamugariye ku rugamba (construction of 26 houses for disabled Ex-combatants) RPDC Ltd yatsindiye wishyuwe, no kugaragaza ingwate yari yahawe na Wenene John Martin na RPDC Ltd kuri iyo nguzanyo; n'impamvu inzu iri mu kibanza n° 1352, mu Mudugudu wa Kagara, Akagari ka Nyabisindu, Umurenge wa Remera, Akarere ka Gasabo, Umujyi wa Kigali, ya Mwinura Eugene na Kayitesi Stella yashyizwe mu ngwate zatanzwe ku mwenda wa 100.000.000 Frw uburanwa muri uru rubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

A. UBUJURIRE BWA MWINURA Eugene

a. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwarategetse Mwinura Eugene gufatanya na Wenene John Martin na RPDC Ltd kwishyura umwenda ungana na 109.935.037 Frw kandi ntaho ahuriye nawo

[8] Me Vital Galuga, uburanira Mwinura Eugene, avuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibyo yarusobanuriye ko adafite aho ahuriye n'umwenda wishyuzwa Wenene John Martin na sosiyete ye yitwa RPDC Ltd. Asobanura ko mu mwaka wa 2012, Mwinura Eugene yatije ingwate RPDC Ltd kugira ngo ihabwe umwenda wo gukora isoko n° 02/W/2011-2012/RDRP of construction of 26 houses for disabled Ex-combatants, ko iri soko ryarangiye ndetse rikanishyurwa ryose, ko kuba hari undi mwenda Wenene John Martin n'iyo sosiyete bafashe nyuma, atawuzi ndetse n'uwo bashakanye akaba atawuzi.

[9] Akomeza avuga ko Mwinura Eugene yakorewe uburiganya nk'uko bigarukwaho n'ibaruwa ya Wenene John Martin yo ku wa 06/10/2013, iyo ku wa 14/10/2016 n'iyo ku wa 2/04/2017, aho avuga ko ntaho ahuriye n'umwenda, ko kandi afite ubushobozi bwo kwiyishyurira umwenda. Yongeraho ko ku rupapuro rwa nyuma rw'amasezerano y'ubwishingire yo ku wa 27/05/2013, Mwinura Eugene atigeze yemeza n'umukono we ko ayemeye ku birebana n'ahanditse ikitonderwa (N.B.), nabyo bikaba bigaragaza uburiganya bwa Wenene John Martin, ko rero ayo masezerano agomba guteshwa agaciro.

[10] Mwinura Eugene avuga ko atemeranya n'ibyo Urukiko rwashingiyeho ruvuga ko mu masezerano yo ku wa 27/05/2013, yishingiye umwenda ungana na 100.000.000 Frw wahawe RPDC Ltd, ko kandi yiyemerera ko yayasinyeho, kubera ko Wenene John Martin na GT Bank

Rwanda Ltd bamusinyishije ayo masezerano ari mu rugo arwaye ari ku miti, kuko yagize impanuka ituma ayifata akagira ikibazo cyo kwibagirwa nk’uko bigaragazwa n'inyandiko z’abaganga

[11] Me Remezo Bisamaza, uburanira Wenene John Martin na RPDC Ltd, avuga ko nta buriganya bwigeze bukorerwa Mwinura Eugene igihe yishingiraga umwenda GT Bank Rwanda Ltd yahaye RPDC Ltd, kuko yabaye umwishingizi ku bushake, bishimangirwa n’umukono we ku masezerano y’inguzanyo yakorewe imbere ya Notaire, ko kuba na none ataranditse n’intoki ze ko yemeye amasezerano, bitatuma ata agaciro. Asanga rero na Mwinura Eugene akwiye gutegekwa gufatanya n’abandi kwishyura umwenda nk’umwishingizi, ariko akishyura ari uko Wenene John Martin na RPDC Ltd bananiwe kwishyura.

[12] Ku byerekeye amabaruwa uwunganira Mwinura Eugene avuga ko yanditswe na Wenene John Martin ahakana ubwishingire bwe, Me Remezo Bisamaza avuga ko ayo mabaruwa atari we wayanditse, kuko biganye umukono we (signature) bakawushyira ku nyandiko zanditswe n'imashini.

[13] Me Rusanganwa Jean Bosco, uburanira GT Bank Rwanda Ltd, avuga ko iyi ngingo y’ubujurire ya Mwinura Eugene nta shingiro ifite, kuko atagaragaza ko umwenda yishingiye warangiye kwishyurwa, akaba asanga nta cyamubuza gutegekwa gufatanya kwishyura n’uwo yishingiye, ko kandi yiyemereye imbere y’urukiko ko yasinye ayo masezerano y’ubwishingire ya 100.000.000 Frw ariko akavuga ko atayasomye.

[14] Ku byerekeye uburiganya Mwinura Eugene avuga ko yakorewe na GT Bank Rwanda Ltd ifatanyije na Wenene John Martin, Me Rusanganwa Jean Bosco avuga ko nta shingiro ryabwo, ko nta kirego cyo gutesha agaciro amasezerano yigeze atanga mu Rukiko rw’Ubucuruzi rwa Nyarugenge, ko kandi bitari gushoboka, kuko yaburanye avuga ko atazi amasezerano y’inguzanyo, ko ayo azi ari ayo gutiza ingwate, ageze mu Rukiko Rukuru rw’Ubucuruzi ahindura imvugo kuko bari berekanye ko yasinyiye imbere ya Notaire, avuga ko yagize “stress", ko ibyo yasinyiye atabisomye, ariko ntiyasaba ko byateshwa agaciro. Asanga rero adakwiye guhindura ikirego ngo avuge ko atanze ibimenyetso mu bujurire, kuko atabyemererwa n’ingingo ya 154, igika cya 3, y’ltegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz'ubucuruzi, iz’umurimo n’iz’ubutegetsi.

[15] Ku birebana n’ibyo Mwinura Eugene avuga ko yasinye arwaye ari ku miti ituma yibagirwa, Me Rusanganwa Jean Bosco avuga ko inyandiko za muganga yerekana zitagaragaza ko yari yanyoye imiti ku buryo yasinye atabizi, ko byaba ari n'icyaha yakorewe, akaba atari kurindira ko habaho uru rubanza.

[16] Me Rusanganwa Jean Bosco avuga na none ko ibyanditse ku masezerano mu cyitonderwa (N.B.) atari kamara ku buryo amasezerano Mwinura Eugene yasinye atabyanditseho yateshwa agaciro, ko igikuru ari inshingano yasinyiye imbere ya “Notaire" ugomba kubanza kureba niba abamuri imbere ari bazima, maze akemeza ko imikono ari iya ba nyirayo, akaba rero atari kubikora arwaye mu mutwe, bityo ntiyavuga ko atazi ayo masezerano.

[17] Ku birebana n'amabaruwa uburanira Mwinura Eugene avuga ko yanditswe na Wenene John Martin, Me Rusanganwa Jean Bosco avuga ko atamukuraho inshingano yiyemeje, ko kandi bari ku ruhande rumwe.

UKO URUKIKO RUBIBONA

[18] Ku byerekeye iyubahirizwa ry'amasezerano, ingingo ya 64 y'Itegeko nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano riteganya ko *"Amasezerano akoze ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buryarya"*.

[19] Nk'uko bigaragara mu rubanza n° RCOMA 00261/2017/CHC/HCC - n° RCOMA 00284/2017/CHC/HCC rwajuririwe, Urukiko Rukuru rw'Ubucuruzi rwasuzumye ikibazo cyo kumenya niba Mwinura Eugene afite aho ahuriye n'umwenda uburanwa ku buryo yategekwa kuwishyura, rusanga ku wa 27/05/2013, harabyeho amasezerano hagati ye na GT Bank Rwanda Ltd yishingira umwenda wa 100.000.000 Frw wahawe RPDC Ltd mu rwego rw'ubufatanye bw'umwenda nk'uko bigaragara mu ngingo ya 1 yayo, akaba nawe yiyemerera ko yasinye ayo masezerano, uretse ko avuga ko atayasomye, icyo akaba ari ikimenyetso simusiga kigaragaza ko Mwinura Eugene afite aho ahuriye n'umwenda iyo sosiyete ibereyemo GT Bank Rwanda Ltd, akaba rero atabasha kwerekana ukuntu atategekwa kubahiriza ibiyakubiyemo ku bimureba.

[20] Urwo Rukiko rwasanze kandi ibyo Mwinura Eugene yireguza avuga ko umwenda we n'umugore we bishingiye batanga ingwate y'inzu yabo warangiye kwishyurwa ntacyo byamumarira, kuko muri uru rubanza bigaragara ko yishingiye umwenda uburanwa (caution personnelle), kandi nta kimenyetso atanga cy'uko wishyuwe.

[21] Urukiko rurasanga, mu bujurire, nta kimenyetso Mwinura Eugene yabashije gutanga kinyomoza ibyo bisobanuro byatanzwe n'Urukiko Rukuru rw'Ubucuruzi, kubera ko ibyo aburanisha avuga ko yakorewe uburiganya agasinyishwa amasezerano iwe mu rugo arwaye ari ku miti ituma atamenya ibyo akora, nabyo nta shingiro bifite, kuko bigaragara ko ayo masezerano yakorewe imbere ya Notaire witwa Tuyishimire, byumvikana ko yari muzima azi ibyo asinyira, kuko iyo bitaba ibyo aba yarabimubwiye.

[22] Urukiko rurasanga kandi ibyo Mwinura Eugene asaba uru Rukiko ko ayo masezerano y'ubwishingire yo ku wa 27/05/2013 yateshwa agaciro kuko afite inenge, bitarigeze biburanwaho mu nkiko zabanje, akaba rero atabiregera bwa mbere mu bujurire, kuko atabyemererwa n'ingingo ya 154 y'ltegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[1].

[23] Urukiko rurasanga rero, kuba Mwinura Eugene yarishingiye umwenda GT Bank Ltd yahaye Wenene John Martin na RPDC Ltd, agomba kubahiriza ibyo yishingiye, maze agafatanya

[1] Iyo ngingo iteganya ko "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 byaonetse kuva aho urubanza rwaciriwe n'indishyi z'igihombo umuburanyi yagize kuva urubanza ruciwe.Ntibibujijwe ariko mu rwego rw'ubujurire gutanga ibisobanuro bishya cyangwa ibimenyetso bishya bigamije kumvikanisha kurushaho ibyari byaraburanishijwe mu rwego rwa mbere".

nabo kwishyura umwenda nk'uko byemejwe mu rubanza yajuririye, bityo ubujurire bwe kuri iyo ngingo nta shingiro bufite.

B. Kumenya niba Mwinura Eugene yasubizwa ingwate yatije Wenene John Martin na RPDC Ltd

[24] Me Vital Galuga, uburanira Mwinura Eugene, avuga ko GT Bank Rwanda Ltd igomba kumusubiza icyangombwa cy'ubutaka cy'ingwate yatije Wenene John Martin na RPDC Ltd, kuko umwenda cyatangiwe wamaze kwishyurwa, ku bindi ikazikurikiranira abo yahaye umwenda, cyane cyane ko batawuhakana kandi bafite ubushobozi bwo kuba bawiyishyurira.

[25] Mwinura Eugene avuga ko we n'umugore we batiza RPDC Ltd na Wenene John Martin icyangombwa cy'umutungo ugizwe n'inzu nta nyungu bari bategereje, ko icyari kigamijwe ari ukugira ngo babone inguzanyo yo gukora isoko bari batsindiye, rirangiye gukorwa no kwishyura umwenda bakaba baragombaga guhita basubizwa ingwate yabo, agasaba urukiko gutesha agaciro amasezerano yo ku wa 27/05/2017 kubera inenge zagaragajwe haruguru, hanyuma rugategeka GT Bank Rwanda Ltd kubazubiza icyo cyangombwa cy'umutungo cyabo, hagakurikiranwa Wenene John Martin nk'uko nawe abyiyemerera.

[26] Me Rusanganwa Jean Bosco, uburanira GT Bank Rwanda Ltd, avuga ko ikibazo cy'ingwate kitigeze gisuzumwa mu manza za mbere, ko mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Kayitesi Stella, umugore wa Mwinura Eugene yari yagobotse mu rubanza avuga ko adashaka ko ingwate igurishwa, ariko urukiko ruvuga ko atari yo iburanwa, ko haburanwa umwenda n'abawishingiye, ko icyo kibazo kitajuririwe.

[27] Akomeza avuga ko umwenda wa 40.000.000 Frw watanzwe ku wa 13/04/2012 ugomba kurangira ku wa 20/10/2012, wari watangiwe ingwate ku mutungo uri mu kibanza n° 1352, mu Mudugudu wa Kagara, Akagari ka Nyabisindu, Umurenge wa Remera, Akarere ka Gasabo, Umujyi wa Kigali, wa Mwinura Eugene na Kayitesi Stella warangiye kwishyurwa, ko n'ingwate yakuweho muri RDB.

UKO URUKIKO RUBIBONA

[28] Urukiko rurasanga ikibazo cy'ingwate Mwinura Eugene na Kayitesi Stella batije WENENE Martin ku nguzanyo yahawe yo gukora isoko n° 02/W/2011- 2012/RDRP ryo kubaka amazu y'abamugariye ku rugamba (construction of 26 houses for disabled Ex-combatants) RPDC Ltd yatsindiye kitarigeze gisuzumwa mu manza zabanje, kikaba rero kitazuzumwa bwa mbere mu bujurire kuko, nk'uko byagaragajwe haruguru, ntibyemewe n'ingingo ya 154 y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru.

B. UBUJURIRE BWA WENENE John Martin na RPDC Ltd

a. Kumenya niba umwenda GT Bank Rwanda Ltd yahaye Wenene John Martin na RPDC Ltd utaragombaga gukomeza kubarirwa inyungu nyuma yo gutanga ikirego, niba kandi bakongererwa igihe cyo kwishyura.

[29] Me Remezo Bisamaza, uburanira Wenene John Martin na RPDC Ltd, avuga ko GT Bank Rwanda Ltd yagenewe n'Urukiko Rukuru rw'Ubucuruzi amafaranga y'umurengera itari ikwiye, nyamara bararugaragarije ko batemera ingano y'umwenda n'uburyo inyungu zabazwe, ariko mu guca urubanza urukiko rurabyirengagiza. Basanga GT Bank Rwanda Ltd ikwiye kugaragaza inyandiko zose z'imitangire y'inguzanyo n'uko zagiye zishyurwa n'amafaranga asigaye, kuko ntabyo yagaragaje mu nkiko zabanje, kuko umwenda bo bemera ko bayifitiye ungana na 88.724.291 Frw, ko kandi bumva inyungu zitaragombaga gukomeza kubarwa na nyuma yo gusesa amasezerano.

[30] Avuga na none ko Wenene John Martin na RPDC Ltd basabye Urukiko kubaha umwanya wo gushaka uko bakwishyura, ariko rurabyirengagiza, agasaba ko byakosorwa bagahabwa ikindi gihe, kuko ubu bamaze kwisuganya kandi ko bafite amasoko yavamo ubwishyu.

[31] Me Rusanganwa Jean Bosco, uburanira GT Bank Rwanda Ltd, avuga ko iyi ngingo y'ubujurire ya Wenene John Martin na RPDC Ltd nta shingiro ifite, kuko batabasha kuvuguruza ibyo inkiko zemeje ku bijyanye n'inyungu, ko kandi banki zibereyeho gutanga inguzanyo zibyara inyungu, bakaba kandi badahakana ko barimo umwenda wayo.

[32] Ku byerekeye kongererwa igihe cyo kwishyura, Me Rusanganwa Jean Bosco avuga ko Wenene John Martin na RPDC Ltd ntacyo bakoze ngo bishyure kugeza mu kwezi kwa 12/2017, urubanza rucibwa, ko nta n'ikimenyetso batanga cy'uko baramutse bongerewe igihe bakwishyura, uretse kubivuga gusa.

UKO URUKIKO RUBIBONA

[33] Nk'uko byasobanuwe haruguru, ingingo ya 64 y'ltegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano itegeka abayagiranye kuyubahiriza nta buryarya.

[34] Nk'uko bigaragara na none mu rubanza n° RCOMA 00261/2017/CHC/HCC - n° RCOMA 00284/2017/CHC/HCC rwajuririwe, Urukiko Rukuru rw'Ubucuruzi rwasanze Wenene John Martin na RPDC Ltd baterekana ko basezeranye na Banki ko niharamuka habayeho gusesa amasezerano kubera kutishyura, inyungu zizahita zihagarara. Rwasanze kandi gusesa amasezerano bitavuze ko umwenda uvuyeho, ko rero bidakwiye kumvikana ko ibara ry'inyungu rihagarara, kubera ko amasezerano aba yasheshwe kuko hari uruhande rumwe rutayubahirije.

[35] Urukiko rurasanga ibyemejwe n'Urukiko Rukuru rw'Ubucuruzi bifite ishingiro, kuko mu masezerano Wenene John Martin na RPDC Ltd bagiranye na GT Bank Ltd biyemeje kwishyura umwenda bahawe hiyongereyeho inyungu zisanzwe n'iz'ubukererwe, kuba rero batarubahirije amasezerano, GT Bank Rwanda Ltd ikaregera umwenda ungana na 88.724.291 Frw nabo bemera, bitavuze ko ariyo bagomba kwishyura gusa nk'uko babiburanisha, kuko nta cyahagaritse ibarwa ry'inyungu z'ubukerererwe, bityo kuba Urukiko Rukuru rw'Ubucuruzi rwarabaze n'inyungu z'ubukererwe kugeza urubanza ruciwe, rukaba nta kosa rwakoze.

[36] Urukiko rurasanga kandi no mu manza zaciwe n'Urukiko rw'lkirenga ndetse n'Urukiko rw'Ubujurire, izo nkiko zaremeje ko umwenda ukomeza kubarirwa inyungu na nyuma y'iseswa ry'amasezerano, hakurikijwe izemeranyijweho mu masezerano[2].

[37] Ku byerekeye kongererwa igihe cyo kwishyura, Urukiko rurasanga Wenene John Martin na RPDC Ltd badakwiye kongererwa igihe cyo kwishyura, kuko ntawigeze ababuza kwishyura umwenda bemera kugeza ubu, kandi ntibiri mu nshingano z'urukiko kongerera igihe ababuranyi bananiwe kwishyura umwenda, ahubwo bakwegera Banki bakumvikana uburyo bayishyura.

[38] Hashingiwe ku ngingo ya 64 y'ltegeko n° 45/2011 ryo ku wa 25/11/2011, no ku bimaze gusobanurwa, Urukiko rurasanga ubujurire bwa Wenene John Martin na RPDC Ltd kuri iyo ngingo nta shingiro bufite.

b. Ishingiro ry'indishyi, amafaranga y'ikurikiranarubanza n'ibihembo bya Avoka bisabwa n'ababuranyi

[39] Me Rusanganwa Jean Bosco, uburanira GT Bank Rwanda Ltd, avuga ko, yuririye ku bujurire bwa Mwinura Eugene, asaba urukiko kumutegeka kwishyura 2.000.000 Frw y'indishyi zo gushorwa mu manza nta mpamvu na 2.000.000 Frw y'inkurikiranarubanza n'igihembo cya Avoka.

[40] Me Vital Galuga, uburanira Mwinura Eugene, avuga ko ubujurire bwuririye ku bundi bwa GT Bank Rwanda Ltd nta shingiro bufite kuko amasezerano y'ubwishingizi bw'umwenda yahaye Wenene John Martin na RPDC Ltd atamureba, ko ahubwo ariyo ikwiye kumuha 10.000.000 Frw y'indishyi z'akababaro zo gushorwa mu manza ikanafatanya na Wenene John Martin kumuha 3.000.000 Frw y'igihembo cya Avoka, 300.000 Frw y'ikurikiranarubanza, bakanamusubiza 90.000 Frw y'amagarama yatanze.

UKO URUKIKO RUBIBONA

[41] lngingo ya 111 y'ltegeko 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 igishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza, ko kiburanishwa rimwe n'ikirego cy'iremezo.

[42] Urukiko rurasanga 2.000.000 Frw y'indishyi zo gushorwa mu manza nta mpamvu GT Bank Rwanda Ltd isaba Mwinura Eugene itayagenerwa, kuko kuba yarajuriye, ni uburenganzira ahabwa n'itegeko mu gihe atishimiye imikirize y'urubanza.

[43] Urukiko rurasanga 2.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka GT Bank Rwanda Ltd isaba Mwinura Eugene afite ishingiro, kuko yashatse umunyamategeko igomba guhemba wakurikiranye urubanza mu nama ntegurarubanza, akanaruburana mu bujurire inshuro

[2] Reba urubanza n° RCOMA 0044/12/CS rwaciwe n'Urukiko rw'lkirenga ku wa 07/11/2014, haburana ECOBANK Ltd na Ndayambaje Emmanuel, urubanza n° RCOMA 0166/12/CS rwaciwe n'urwo Rukiko ku wa 28/04/2017, Umutesi Kaberuka Esperance na Runyange Medard baburana na l&M Bank n'urubanza n° RCOMAA 00078/2018/CA rwaciwe ku wa 17/05/2019 haburana MK Investment Ltd, Mutini Thaddee na KaruruA Jean Pierre.

zose rwaburanishijwe, ariko amafaranga isaba ni menshi kandi nta bimenyetso yayatangiye bigaragza ko ariyo koko yakoresheje, mu bushishozi ikaba igenewe 1.000.000 Frw kuri uru rwego.

[44] Urukiko rurasanga 10.000.000 Frw y'indishyi z'akababaro zo gushorwa mu manza Wenene John Martin asaba GT Bank Rwanda Ltd, 3.000.000 Frw y'igihembo cya Avoka, 300.000 Frw y'ikurikiranarubanza na 90.000 Frw y'amagarama yatanze ayisaba kumuha ifatanyije na Wenene John Martin adakwiye kuyagenerwa kubera ko ubujurire bwe nta shingiro bufite.

III. ICYEMEZO CY'URUKIKO

[45] Rwemeje ko ubujurire bwa Mwinura Eugene, ubwa Wenene John Martin n'ubwa Rwanda Petroleum Development Corporation Ltd (RPDC Ltd), nta shingiro bufite;

[46] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na GT Bank Rwanda Ltd bufite ishingiro kuri bimwe;

[47] Rwemeje ko nta gihindutse ku mikirize y'urubanza rwajuririwe n° RCOMA 00261/2017/CHC/HCC - n° RCOMA 00284/2017/CHC/HCC rwaciwe ku wa 04/12/2017 n'Urukiko Rukuru rw'Ubucuruzi;

[48] Rutegetse Mwinura Eugene kwishyura GT Bank Rwanda Ltd 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego;

[49] Ruvuze ko amafaranga y'ingwate y'amagarama yatanzwe n'abajuriye ahwanye n'ibyakozwe mu rubanza.