NDANGIZI v. UNGUKA BANK PLC

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00002/2023/CA (Munyangeri, P.J.)
26 Werurwe 2024]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Inyungu – Kubara inyungu ku nguzanyo – Inyungu ku nguzanyo Banki ziha abakiliya bazo zikomeza kubarwa kugeza umwenda wose wishyuwe, icy'ingenzi nuko izo nyungu zitarenga umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa.

Incamake y'ikibazo: Good Supply and construction Ltd yagiranye na UNGUKA Bank Plc amasezerano y'inguzanyo yo gukoresha mu mirimo yo kubaka ibiro by'Umurenge wa Niboye, mu Karere ka Kicukiro, iyo nguzanyo yishingirwa na Ndangizi John na Mukarugira Virginie batije Good supply and construction Ltd ingwate y'inzu.

Good supply & construction Ltd ntiyashoboye kurangiza kwishyura umwenda ibereyemo UNGUKA Bank Plc bituma Ndangizi yandikira Banki ayibaza amafaranga asigaye kwishyura kugira ayishyure nk'umwishingizi, nyuma yuko asubijwe agasanga umwenda ari munini, yareze Banki mu Rukiko rw'Ubucuruzi arusaba kwemeza ko umwenda Good supply & Constructions Ltd ifitiye UNGUKA BANK Plc ungana 9.032.506 Frw, aho kuba 156.329.422 Frw.

Urukiko rw'Ubucuruzi rwaciye urubanza rwemeza ko ikirego cya Ndangizi gifite ishingiro, ko umwenda Good supply and construction Ltd ibereyemo UNGUKA Bank Plc akaba ari nawo ugomba kubazwa Ndangizi ungana na 25.493.380 Frw.

UNGUKA Bank Plc itishimiye icyo cyemezo yajuririye mu Rukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rutagombaga kugabanya umwenda Good supply and construction Ltd iyibereyemo ndetse isaba indishyi z'ibyakoreshejwe mu rubanza.

Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko umwenda Good supply and construction Ltd ibereyemo UNGUKA Bank Plc ungana na 141.033.837 Frw.

Ndangizi yajuririye mu Rukiko rw'Ubujurire avuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko Good supply and construction Ltd ibereyemo UNGUKA Bank Plc umwenda ungana na 141.033.837 Frw rushingiye kuri raporo y'umuhanga. Avugako Good Supply & Construction Ltd irimo UNGUKA BANK Plc 123.297.076 Frw ndetse hari uko yagiye yishyurwa. Avuga kandi ko amafaranga angana na 37.396.300 Frw yakomotse ku cyamunara atashyirwa ku mwenda kandi iyo cyamunara yarateshejwe agaciro.

UNGUKA Bank Plc ivuga ko impamvu z'ubujurire za Good supply and construction Ltd zidafite ishingiro, itanga ubujurire bwuririye ku bundi ivuga ko Urukiko Rukuru rw'Ubucuruzi rwagombaga kuyiha inyungu z'umwenda wabazwe nyuma ya cyamunara. Ivuga ko kuba cyamunara yarasheshwe kandi uwagurijwe akaba atarishyura umwenda, inyungu zawo zikwiye gukomeza kubarwa kugeza awishyuye.

Ndangizi yiregura avuga ubujurire nta shingiro bufite kubera ko umwenda uba warasibwe mu bitabo bya Banki, ukaba ubarwa nk'igihombo (radiation), ndetse Good supply ikaba yarahombye nkuko byemejwe n'Urukiko rw'Ubucuruzi, ikaba ku mwenda ibereyemo UNGUKA Bank Plc isigaje kwishyura 25.493. 380 Frw.

Incamake y'icyemezo: Inyungu ku nguzanyo Banki ziha abakiliya bazo zikomeza kubarwa kugeza umwenda wose wishyuwe, icy'ingenzi nuko izo nyungu zitarenga umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa.

Ubujurire bufite ishingiro.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Nta mategeko yashingiweho

Imanza zifashishijwe:
RS/INJUST/RCOM 00010/2022/SC; UNGUKA BANK Plc na NDAGIJIMANA Théoneste rwaciwe n'Urukiko rw'Ikirenga ku wa 15/12/2023.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 08/05/2015, Good Supply & Construction Ltd ihagarariwe na Mwizerwa Jean Bosco yagiranye na UNGUKA BANK Plc amasezerano y'inguzanyo ya *"Ligne de crédit nº 046/2015"* ingana n'amafaranga miliyoni ijana (100.000.000 Frw) yo gukoresha mu mirimo yo kubaka ibiro by'Umurenge wa Niboye, mu Karere ka Kicukiro, agomba kumara igihe kingana n'amezi atandatu (6). Muri ayo masezerano impande zombi zumvikanye ko inyungu z'iyo nguzanyo zizabarirwa kuri 24% ku mwaka, hiyongeyeho komisiyo ya 2%, ndetse na "*management fees*" zibariwe kuri 0.5% buri kwezi, kandi ko iyo nguzanyo izishyurwa mu bice bibiri (2), icya mbere gihwanye na 40% y'inyemezabwishyu yishyuwe n'uwubakirwaga ibiro, naho icyiciro cya kabiri gihwanye na 60% y'inyemezabwishyu na yo yishyuwe n'uwubakirwaga ibiro. Muri ayo masezerano y'inguzanyo, Ndangizi John na Mukarugira Virginie batije Good Supply & Construction Ltd ingwate y'inzu.

[2] Good Supply & Construction Ltd ntiyashoboye kurangiza kwishyura umwenda yahawe, aho yagombaga kwishyura umwenda ungana n'amafaranga miliyoni ijana na cumi n'eshanu (115.000.000 Frw) habariwemo inyungu na komisiyo, ubazwe kuva ku wa 08/05/2015 kugeza ku wa 29/11/2016. Ku wa 30/03/2021, Ndangizi John yandikiye UNGUKA BANK Plc ayibaza umwenda Good Supply & Construction Ltd yishingiye isigayemo kugira ngo yubahirize inshingano nk'umwishingizi, imusubiza imumenyesha ko umwenda ugaragara ungana n'amafaranga miliyoni ijana na mirongo itanu n'esheshatu, ibihumbi magana atatu na makumyabiri n'icyenda na magana ane na makumyabiri n'abiri (156.329.422 Frw), kandi ko kugeza ku wa 31/05/2017 Good Supply & Construction Ltd yari irimo umwenda ungana n'amafaranga miliyoni ijana na mirongo itatu n'enye, ibihumbi magana abiri na mirongo itanu na bine na magana atandatu na mirongo itatu n'atanu (134.254.635 Frw).

[3] Ndangizi John amaze kumenyeshwa ingano y'uwo mwenda, yasanze ari munini maze bituma arega UNGUKA BANK Plc mu Rukiko rw'Ubucuruzi, arusaba kwemeza ko umwenda Good supply & Constructions Ltd ifitiye UNGUKA BANK Plc ungana n'amafaranga miliyoni

icyenda, ibihumbi mirongo itatu na bibiri na magana atanu n'atandatu (9.032.506 Frw), aho kuba amafaranga miliyoni ijana na mirongo itanu n'esheshatu, ibihumbi magana atatu na makumyabiri n'icyenda na magana ane na makumyabiri n'abiri (156.329.422 Frw).

[4] UNGUKA BANK Plc yireguye ivuga ko umwenda Ndangizi John asaba ko ariwo wemezwa atari wo. Yasobanuye ko ku wa 31/05/2017, Good Supply & Construction Ltd yari isigayemo umwenda ungana n'amafaranga miliyoni ijana na mirongo itatu n'enye, ibihumbi magana abiri na mirongo itanu na bine na magana atandatu na mirongo itatu n'atanu (134.254.635 Frw), ku wa 25/08/2017 yishyuraho amafaranga miliyoni mirongo itatu n'indwi, ibihumbi magana atatu na mirongo icyenda na bitandatu na magana atatu (37.396.300 Frw) hasigara umwenda ungana n'amafaranga miliyoni mirongo icyenda n'esheshatu, ibihumbi magana inani na mirongo itanu n'umunani na magana atatu na mirongo itatu n'atanu (96.858.335 Frw), hakiyongeraho inyungu bumvikanyeho mu masezerano zari zigeze ku mafaranga miliyoni mirongo itanu n'icyenda, ibihumbi magana ane na mirongo irindwi na kimwe na mirongo inani n'arindwi (59.471.087 Frw) yose hamwe akaba miliyoni ijana na mirongo itanu n'esheshatu, ibihumbi magana atatu na makumyabiri n'icyenda na magana ane na makumyabiri n'abiri (59.329.422 Frw). Yaje kandi gutanga umwanzuro w'inyongera ivuga ko hari amafaranga ya overdraft management fees yibagiranye mu kubara umwenda angana n'amafaranga miliyoni makumyabiri n'eshatu, ibihumbi ijana na cumi na birindwi na magana atanu na mirongo ine na rimwe (23.117.541 Frw), bityo ko umwenda wose ungana n'amafaranga miliyoni ijana na mirongo irindwi n'icyenda, ibihumbi magana atanu na mirongo icyenda na bitanu na mirongo irindwi na rimwe (179.595.071 Frw).

[5] Mu rubanza RCOM 00745/2021/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 29/12/2021, urwo Rukiko rushingiye ku ngingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ku ngingo ya 14 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo no ku ngingo 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, rwemeje ko :

- Ikirego cya Ndangizi John gifite ishingiro ;
- Umwenda Good Supply & Construction Ltd ibereyemo UNGUKA BANK Plc ugomba kubazwa Ndangizi John nk'uwatije ingwate iyo sosiyete ungana n'amafaranga miliyoni makumyabiri n'eshanu, ibihumbi magana ane na mirongo icyenda na bitatu na magana atatu na mirongo inani (25.493.380 Frw) ;
- UNGUKA BANK Plc yishyura Ndangizi John amafaranga miliyoni imwe (1.000.000 Frw) y'igihembo cya Avoka, amafaranga ibihumbi magana atatu (300.000 Frw) y'ikurikiranarubanza, n'amafaranga ibihumbi makumyabiri (20.000 Frw) y'ingwate y'amagarama ;
- Ingwate y'amagarama yatanzwe na Ndangizi John arega, ihwana n'ibyakozwe mu rubanza.

[6] UNGUKA BANK Plc yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi ivuga ko Ndangizi John atari afite ububasha bwo kuregera umwenda wahawe Good Supply & Construction Ltd, ko Urukiko rutagombaga kugabana umwenda Good Supply & Construction Ltd irimo kandi ko itagombaga gucibwa indishyi. Yashoje isaba ko Ndangizi John ayiha amafaranga y'ibyagiye ku rubanza.

[7] Ndangizi John yireguye avuga ko yari afite ububasha bwo kuregera uwo mwenda nk'umwishingizi w'umwenda wahawe Good Supply & Construction Ltd, ko umwenda wagabanyijwe hashingiwe ku bimenyetso byagaragajwe bisobanura impinduka zagiye zikorerwa ku masezerano y'inguzanyo kandi ko yagombaga gutegekwa gutanga indishyi nk'uko byakozwe kubera ko ariyo yamushoye mu manza. Yashoje asaba ko UNGUKA BANK Plc imuha indishyi kuri urwo rwego.

[8] Mu rubanza RCOMA 00072/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 25/11/2022, urwo Rukiko rushingiye ku ngingo ya 129 y'Itegeko N˚ 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, urwo Rukiko rushingiye ku ngingo ya 129, iya 10 z'Itegeko N˚ 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ku ngingo ya 64 y'Itegeko N˚ 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ku ngingo ya 3 y'Itegeko N˚ 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, rwemeje ko:

- Impamvu yo kutakira ikirego yatanzwe na UNGUKA BANK Plc nta shingiro ifite ;
- Urukiko rw'Ubucuruzi rwasuzumye umubare w'amafaranga Ndangizi John agomba kuryozwa kandi icyo rwari rwaregewe ari ukwemeza umwenda Good Supply & Construction Ltd ifitiye UNGUKA BANK Plc ;
- Umwenda Good Supply & Construction Ltd irimo UNGUKA BANK Plc ungana n'amafaranga miliyoni mirongo ine n'imwe, ibihumbi mirongo itatu na bitatu na magana inani na mirongo itatu n'arindwi (141.033.837 Frw) ;
- Amafaranga y'ikurikiranarubanza, ay'igihembo cya Avoka n'ay'igarama Urukiko rw'Ubucuruzi rwategetse UNGUKA BANK Plc kwishyura Ndangizi John avanweho ;
- Buri ruhande rugomba kwirengera ibyo rwatakaje mu rubanza ;
- Ingwate y'amagarama yatanzwe na UNGUKA BANK Plc ihwanye n'ibyakozwe mu rubanza.

[9] Ndangizi John yajuririye urwo rubanza mu Rukiko rw'Ubujurire, ubujurire bwe bwandikwa kuri RCOMAA 00002/2023/CA, nyuma y'imihango nteguramubanza, hemezwa ko ruzaburanishwa ku wa 10/01/2024. Uwo munsi ababuranyi bose baritabye, Ndangizi John yunganiwe na Me Rukarishya Ngenda Philémon afatanyije na Me Gahamanyi Justin, UNGUKA BANK Plc ihagarariwe na Me Nkeza Sempundu Clément, iburanisha rirapfundikirwa, ababuranyi bamenyeshwa ko icyemezo cy'Urukiko kizasomwa ku wa 26/01/2024, isomwa ryarwo rigenda ryimurwa kugeza ku wa 23/02/2024 ubwo Urukiko rwafashe icyemezo cy'uko iburanisha ry'urubanza rizapfundukrwa ku wa 14/03/2024.

[10] Ku wa 14/03/2024 ababuranyi bitabiriye iburanisha, Ndangizi John yunganiwe na Me RWIGEMA Vincent, Me Gahamanyi Justin na Me Niyibizi Diogēne, UNGUKA BANK Plc (isigaye yitwa LOLC UNGUKA Finance Plc) ihagarariwe na Me Nkeza Sempundu Clēment, impande zombi zongera gusobanurira Urukiko buryo ki amafaranga y'umwenda Ndangizi John yishingiye yagiye yishyurwa ndetse n'uburyo andi mafaranga yagiye avanwa kuri konti ya Good Supply & Construction Ltd.

[11] Mu myanzuro no mu miburanire, Ndangizi John n'abamwunganira bavuga ko mu rubanza rujuririrwa, Urukiko Rukuru rwirengagije impinduka zabaye ku masezerano N° 46/2015 yo ku wa 25/02/2016 yemezaga ko Good Supply & Construction Ltd irimo UNGUKA BANK Plc amafaranga angana na miliyoni ijana na makumyabiri n'eshatu, ibihumbi magana abiri na mirongo icyenda na birindwi na mirongo irindwi n'atandatu (123.297.076 Frw) n'uko yishyuwe, ahubwo rushingira kuri raporo y'umuhanga yakozwe idashingiye ku masezerano y'inguzanyo maze rwemeza ko umwenda ungana n'amafaranga miliyoni ijana na mirongo ine n'imwe,ibihumbi mirongo itatu na bitatu na magana inani na mirongo itatu n'arindwi (141.033.837 Frw) aho kuba amafaranga miliyoni makumyabiri n'eshanu, ibihumbi magana ane na mirongo icyenda na bitatu na magana atatu na mirongo inani (25.493.380 Frw) ngo runagaragaze uburyozwe bwe, no kuba rwaremeje ko amafaranga miliyoni mirongo itatu n'indwi, ibihumbi magana atatu na mirongo icyenda na bitandatu na magana atatu (37.396.300 Frw) yakomotse ku cyamunara ashyirwa mu mwenda kandi iyo cyamunara yarateshejwe agaciro. Basoza basaba indishyi.

[12] Uhagarariye UNGUKA BANK Plc yiregura avuga ko impamvu z'ubujurire nta shingiro zifite kubera ko Ndangizi John akomeza gutsimbarara ku ngano y'umwenda wemejwe n'Urukiko rw'Ubucuruzi kandi haragaragajwe ko rwaciriye urubanza ku cyo rutari rwaregewe, ko kuba atagaragaza inenge iri mu cyemezo cyafashwe mu rubanza rujuririrwa byumvikanisha ko yemeye ibisobanuro Urukiko Rukuru rw'Ubucuruzi rwatanze ndetse ko kuba amafaranga angana na miliyoni mirongo itatu n'indwi, ibihumbi magana atatu na mirongo icyenda na bitandatu na magana atatu (37.396.300 Frw) Urukiko rwarakomeje kuyabarira mu mwenda ari ibintu byumvikana kubera ko nta kigaragaza ko yishyuwe mu gihe cyamunara yakomokagaho yateshejwe agaciro. Yatanze kandi ubujurire bwuririye ku bundi avuga ko Urukiko Rukuru rw'Ubucuruzi rwagombaga kuyiha inyungu z'umwenda wabazwe nyuma ya cyamunara. Asoza asaba guhabwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka yari yasabye mu rubanza rujuririrwa n'andi yo kuri uru rwego.

[13] Mu gusoza iburanisha, impande zombi zemeranyije ko ikibazo kirebana n'amafaranga miliyoni mirongo itatu n'indwi, ibihumbi magana atatu na mirongo icyenda na bitandatu na magana atatu (37.396.300 Frw) yavuye muri cyamunara zizongera kukiganiraho zikagifataho umwanzuro, zisaba Urukiko kukivana mu bibazo rugomba kuzasuzuma.

[14] Harebwe impaka ziri muri uru rubanza, harasuzumwa ibibazo bikurikira :

a. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwarirengagije impinduka zabaye mu masezerano n° 46/2015 yo ku wa 25/02/2016 ;

b. Kumenya niba inyungu zigomba gukomeza kubarwa na nyuma ya cyamunara ;

c. Amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ababuranyi basaba

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwarirengagije impinduka zabaye mu masezerano N° 02/2016 yo ku wa 25/02/2016

[15] Ndangizi John n'abamwunganira bavuga ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko Urukiko rw'Ubucuruzi rwaciriye urubanza ku kitararegewe nyamara ahubwo ari rwo rwaruciriye ku kitararegewe, aho rwemeje ingano y'umwenda Good Supply & Construction Ltd ibereyemo UNGUKA BANK Plc, rukirengagiza kuvuga ku buryozwe bwe, bikaba byarateje urujijo. Basobanura ko ikibazo kigibwaho impaka cyakemuwe n'impinduka zabaye mu masezerano n° 46/2015 yo ku wa 25/02/2016, aho ingingo yayo ya 3 yavuguruwe, hakemezwa ko ku nguzanyo y'amafaranga miliyoni ijana (100.000.000 Frw) Good Supply & Construction Ltd yari yahawe mu mwaka wa 2015, isigayemo amafaranga angana na miliyoni ijana na makumyabiri n'eshatu, ibihumbi magana abiri na mirongo icyenda na birindwi na mirongo irindwi n'atandatu (123.297.076 Frw) hamaze kubarirwa ibirarane byose azishyurirwa rimwe mu gihe cy'amezi ane gusa, ko rero ayo mafaranga amaze kuvugwa ari inguzanyo y'igihe gito atari *ligne de crédit* nshyashya yari itanzwe kubera ko itegeko rigenga amabanki riteganya ko nta we ushobora guhabwa indi nguzanyo cyangwa kongererwa igihe atabanje kwishyura ibirarane yari agezemo.

[16] Kuri iyi ngingo basobanura ko ku mafaranga angana na miliyoni ijana na makumyabiri n'eshatu n'ibihumbi magana abiri na mirongo icyenda na birindwi na mirongo irindwi n'atandatu (123.297.076 Frw) avugwa mu masezerano yiswe impinduka yo ku wa 25/02/2016 impande zirebwa na yo zemeranyaho kuko zayashyizeho umukono, ku wa 29/02/2016, UNGUKA BANK Plc yishyuwe amafaranga miliyoni mirongo itatu n'ebyiri, ibihumbi magana inani na mirongo inani na kimwe na magana atatu na mirongo itanu n'atandatu (32.881.356 Frw), ku wa 21/04/2016 UNGUKA BANK Plc yishyurwa amafaranga miliyoni mirongo ine n'ebyiri, ibihumbi magana abiri na mirongo itatu na bitanatu na magana acyenda na makumyabiri na bine (42.236.924 Frw), 19/11/2016, hishyurwa amafaranga miliyoni cumi n'esheshatu, ibihumbi magana ane na mirongo ine na magana atandatu na mirongo irindwi n'umunani (16.440.678 Frw), ku wa 17/02/2017 hishyurwa amafaranga miliyoni cumi n'ebyiri, ibihumbi magana ane n'umunani na magana atanu na mirongo itatu n'atandatu (12.408.536 Frw), amafaranga yose yishyuwe akaba angana na miliyoni ijana n'eshatu, ibihumbi magana acyenda na mirongo itandatu na birindwi na magana ane na mirongo icyenda n'ane (103.967.494 Frw).

[17] Ndangizi John n'abamwunganira bavuga kandi ko kuba aho Akarere ka Kicukiro kishyuriye Good Supply & Construction Ltd nayo igahita yishyura umwenda yari ifitiye UNGUKA BANK Plc, basanga kuwa 14/02/2017 hagombye kuba hasigaye umwenda ungana n'amafaranga miliyoni cumi n'icyenda, ibihumbi magana atatu na makumyabiri n'icyenda na magana atanu na mirongo inani n'abiri (19.329.582 Frw), ko kandi nta nyungu zakagombye gukomeza kubarwa kubera ko mu masezerano y'impinduka nta birebana n'inyungu byavuzwemo, ahubwo hakaba habarwa inyungu z'ibihano by'ubukererwe zibariwe kuri 4%.

[18] Bavuga ko raporo yakozwe n'umuhanga washyizweho n'Urukiko, igaragaza ko umwenda Good Supply & Construction Ltd yari isigayemo ku wa 25/08/2017 ungana n'amafaranga miliyoni ijana n'eshatu, ibihumbi magana atandatu na mirongo itatu na birindwi na magana atanu na mirongo itatu n'arindwi (103. 637. 537 Frw), kuko nyuma yo kugurisha ingwate atongeye kubara inyungu n'amafaranga yo kuyicunga, ko rero iyo Urukiko Rukuru rw'Ubucuruzi rwita ku cyaregewe, hari gutangwa raporo y'umwenda Good Supply & Construction Ltd yari isigayemo, hakanagaragazwa umwenda usigaye ku wo Ndangizi John yishingiye atanga ingwate, ko ariko atari ko byakozwe, ahubwo umuhanga yabikoze nk'aho umwenda Good Supply & Construction Ltd yafashe nyuma y'uwo Ndangizi John yatangiye ingwate yagaragajwe mu kuvugurura amasezerano na wo urebwa n'ingwate ye kandi bitarumvikanyweho.

[19] Bavuga kandi ko Urukiko rwirengagije *historique* UNGUKA BANK yitangiye igaragaza uburyo amafaranga yagiye ashyirwa kuri konti, ahubwo rwemeza ko umwenda Good Supply & Construction Ltd iyibereyemo ungana n'amafaranga miliyoni ijana na mirongo ine n'imwe, ibihumbi mirongo itatu na bitatu na magana inani na mirongo itatu n'arindwi (141.033.837 Frw) rushingiye ku mibare yagaragajwe n'umuhanga kandi idahura n'ibikubiye mu masezerano yo ku wa 25/02/2016, bituma ingano y'umwenda iba nini kandi ko Urukiko rutitaye ku byo umuhanga yagaragaje by'uko hari abakozi ba Good Supply & Construction Ltd bavanye kuri konti y'iyo sosiyete amafaranga agera kuri miliyoni mirongo irindwi n'eshatu (73.000.000 Frw) ku mafaranga miliyoni ijana (100.000.000 Frw) yari yishyuwe ku nguzanyo, bakaba barabikoze Ndangizi John atabibahereye uburenganzira, ko rero basanga ayo mafaranga yabikujwe ku bwishyu bwari bwatanzwe ataba mu nshingano z'umwishingizi na cyane ko kuba hari inyandiko Good Supply & Construction Ltd yigeze kwandikira Banki ku wa 25/04/2016 iyisaba kubikuza amafaranga miliyoni makumyabiri n'eshanu (25.000.000 Frw) kuri miliyoni mirongo itanu (50.000.000 Frw) yari yishyuye, ku wa 26/04/2016 Banki ikayisubiza iyimenyesha ko bidashoboka byumvikanisha ko no kubikuza amafaranga agera kuri miliyoni mirongo irindwi n'eshatu (73.000.000 Frw) bitagombaga gushoboka, ndetse ko hari urubanza rwa Gaju Cynthia na Access Bank rwatanze umurongo ku kibazo nk'iki, aho Banki yatanze umwenda Gaju Cynthia atishingiye, Urukiko rw'Ikirenga ukemeza ko uwo mwenda utamureba.

[20] Uhagarariye UNGUKA BANK Plc asaba Urukiko kuzabona ko Ndangizi John n'abamwunganira bahinduye imiburanire ngo kuko ibisobanuro batangiye mu iburanisha bitandukanye n'ibyo batanze mu myanzuro yo kujurira ndetse no mu nama ntegurarubanza, mbere hose akaba nta na hamwe bigeze bavuga ku mafaranga miliyoni mirongo irindwi n'eshatu (73.000.000 Frw) bavuga ko yabikujwe kandi yari yarishyuwe umwenda, kandi ko amasezerano y'impinduka yo ku wa 25/02/2016 yanditsemo ko izindi ngingo nta gihindutse. Avuga ko UNGUKA BANK Plc yemera ibikubiye muri *historique* yayo kandi ko urega adakwiye kuba yemera igice kimwe cy'iyo *historique* ngo ikindi agihakane mu gihe Banki yayikoze igamije kugaragaza ingano y'amafaranga asigaye kwishyurwa.

[21] Uhagarariye UNGUKA BANK Plc akomeza avuga ko Ndangizi John atabasha kuvuguruza ibisobanuro byatanzwe n'Urukiko Rukuru rw'Ubucuruzi kandi rimwe abishingiraho ubundi akiyambaza icyemezo cyafashwe n'Urukiko rw'Ubucuruzi nyuma y'uko ruciriye urubanza ku kitararegewe, mu gika cya 51 n'icya 52 by'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rukaba rwaribukije ko icyaregewe ku rwego rwa mbere ari "Kwemeza ko umwenda Good supply& Constructions Ltd ifitiye UNGUKA BANK Plc ari nawo urega yagombye kuryozwa nk'umwishingizi ari 9.032.506 Frw, aho kuba 156.329.422 Frw", maze rugasanga gitandukanye n'icyasuzumwe ku rwego rwa mbere cyo "Kumenya umubare w'amafaranga Good Supply & Construction Ltd ibereyemo UNGUKA BANK Plc, Ndangizi John agomba kuryozwa nk'uwatije ingwate", kandi ko kuri uru rwego, ku ruhande rumwe Ndangizi John na we yemeranya n'Urukiko Rukuru rw'Ubucuruzi ku cyo yaregeye ku rwego rwa mbere kimaze kuvugwa haruguru, ariko kuba atabasha kubihindura, akaba arimo ashakisha uburyo yagihunga avuga ko Urukiko rwahinduranyije amagambo bigatuma icyaregewe cyumvikana nabi, ariko akaba adasobanura icyahinduwe cyangwa icyavanwemo icyo ari cyo.

[22] Avuga kandi ko nyuma yo kubona ko ibyo Urukiko rw'Ubucuruzi rwari rwasabwe atari byo rwemeje no kubona ko umwenda wemejwe n'urwo Rukiko wabazwe mu buryo budasobanutse, Urukiko Rukuru rw'Ubucuruzi rwategetse ko hashyirwaho umuhanga kugira ngo

agaragaze ingano nyakuri y'umwenda Good Supply & Constructions Ltd ibereyemo UNGUKA BANK Plc, cyane ko ari nacyo cyari cyararegewe, rusanga raporo y'umuhanga washyizweho n'Urukiko igaragaza ko umwenda Good Supply & Constructions Ltd isigayemo ungana n'amafaranga miliyoni ijana n'eshatu, ibihumbi magana atandatu na mirongo itatu na birindwi na magana atanu na mirongo itatu n'arindwi (103.637.537 Frw), wabazwe kugeza ku munsi wa cyamunara wo ku wa 25/08/2017, kandi ko nyuma yo kugurisha ingwate mu cyamunara, umuhanga atongeye kubara inyungu n'amafaranga yo gucunga ingwate, rukaba rwaribukije ko kandi mu iburanisha ababuranyi barumenyesheje ko cyamunara yari yavuyemo ubwishyu bungana n'amafaranga miliyoni mirongo itatu n'indwi, ibihumbi magana atatu na mirongo icyenda na bitandatu na magana atatu (37.396.300 Frw), maze ruyongera ku mwenda wemejwe n'umuhanga kuko yari yabazwe nk'ayishyuwe kandi cyamunara yarasheshwe ibintu bigasubira uko byari bimeze mbere, ari yo mpamvu mu gika cya 67 cy'urwo rubanza, Urukiko Rukuru rw'Ubucuruzi rwemeje ko umwenda Good Supply & Construction Ltd ifitiye UNGUKA BANK Plc ungana n'amafaranga miliyoni ijana na mirongo ine n'imwe, ibihumbi mirongo itatu na bitatu na magana inani na mirongo itatu n'arindwi (141.033.837 Frw), ni ukuvuvuga amafaranga miliyoni ijana n'eshatu, ibihumbi magana atandatu na mirongo itatu na birindwi na magana atanu na mirongo itatu n'arindwi kongeraho amafaranga miliyoni mirongo itatu n'indwi, ibihumbi magana atatu na mirongo icyenda na bitandatu na magana atatu (103.637.537 Frw k + 37.396.300 Frw).

[23] Avuga kandi ko niba Good Supply & Construction Ltd yemera ko yishyuye umwenda ku wa 29/02/2016, kuri uwo munsi igafata undi ungana n'amafaranga miliyoni mirongo irindwi n'eshatu (73.000.000 Frw) idakwiye guhindukira ngo ivuge ko amasezerano y'umwenda yari yararangiye, ko kandi itavuga ko kubara inyungu byari byarahagaze mu gihe mu masezerano y'impinduka hatigeze handikwamo ko ayo muri 2015 avanyweho cyangwa ko kubara izo nyungu bihagaritswe. Avuga ko UNGUKA BANK Plc yemera amafaranga Good Supply & Construction Ltd yayishyuye koko, ko ariko ishaka gushyira ku ruhande inyungu zabazwe mu gihe cyose gishize itishyura umwenda yahawe.

[24] Ku birebana no kuba Ndangizi John n'abamwunganira bavuga ko yabarirwa inyungu z'ubukererwe aho kubarirwa inyungu z'umwenda, avuga ko inkiko zibanza zemeje ko inyungu z'umwenda zigomba gukomeza kubarwa kandi ko icyo kibazo kitajuririwe ndetse ko habarwa inyungu z'ubukererwe mu gihe haburanwa umwenda wa *ligne de crédit*, uyu akaba atariwo uburanwa muri uru rubanza.

Uko Urukiko rubibona

[25] Impaka kuri iyi ngingo zishingiye ku kumenya niba Urukiko Rukuru rw'Ubucuruzi rwaba rwarirengagije ibikubiye mu masezerano y'impinduka yo ku wa 25/02/2016.

[26] Ingingo ya 64 y'Itegeko N˚ 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko "Amasezerano akozwe mu buryo bukurikije amategeko, aba itegeko ku bayagiranye […]".

[27] Dosiye y'urubanza igaragaza inyandiko yiswe" Impinduka ku masezerano y'inguzanyo N˚ 02/016" hagati ya UNGUKA BANK Ltd na Good Supply & Construction Ltd igaragaza ko impande zombi zemeye kuvugurura amasezerano y'inguzanyo N˚ 046/2015 yashyizweho umukono ku wa 08/05/2015. Nk'uko bigaragazwa n'ingingo ya mbere y'amasezerano

y'impinduka, ingingo ya 3 y'amasezerano N° 046/2015 niyo yonyine yavuguruwe, hagaragazwa ko ku itariki ya 25/02/2016, Good Supply & Construction Ltd yari isigayemo inguzanyo ingana n'amafaranga y'u Rwanda miliyoni ijana na makumyabiri n'eshatu, ibihumbi magana abiri na mirongo icyenda na birindwi na mirongo irindwi n'atandatu (123.297.076 Frw), yagombaga kwishyurwa mu mugabane umwe (une tranche) mu gihe cy'amezi ane (4).

[28] Mu masezerano N° 046/2015 yashyizweho umukono ku wa 08/05/2015, Good Supply & Construction Ltd yari yahawe inguzanyo ingana n'amafaranga miliyoni ijana (100.000.000 Frw), ingingo yayo ya 3 yateganyaga ko "inguzanyo itanzwe mu gihe kingana n'amezi atandatu (6) kibarwa uhereye igihe aya masezerano ashyiriweho umukono kandi ntigishobora kongerwa bitumvikanyweho n'impande zombi".

[29] Ingingo ya 2 y'amasezerano y'impinduka iteganya ko "izindi ngingo zikubiye mu masezerano y'inguzanyo n° 046/2015 yashyizweho umukono ku wa 08/05/2015 ntizihindutse, bityo zikaba zikomeje gukurikizwa uko ziri".

[30] Dosiye y'urubanza irimo kandi raporo y'umuhanga mu ibaruramari washyizweho n'Urukiko Rukuru rw'Ubucuruzi, iyo raporo ikaba igaragaza ko ku wa 25/08/2017, Good Supply & Construction Ltd yari isigayemo UNGUKA BANK Plc umwenda ungana n'amafaranga miliyoni ijana n'eshatu, ibihumbi magana atandatu na mirongo itatu na birindwi na magana atanu na mirongo itatu n'arindwi (103.637.537 Frw). Umuhanga yasobanuye mu mwanzuro we ko Good Supply & Construction Ltd yahawe inguzanyo ingana n'amafaranga miliyoni magana abiri na mirongo ine n'eshanu, ibihumbi magana atatu na cumi na magana atatu na mirongo itatu na rimwe (245.310.331 Frw) yishyuramo amafaranga miliyoni ijana na mirongo ine n'imwe, ibihumbi magana atandatu na mirongo irindwi na bibiri na magana arindwi na mirongo icyenda n'ane (141.672.794 Frw), kugeza mu kwezi k'Ukwakira mu mwaka wa 2022 ubwo yakoraga raporo, ikaba yari isigayemo umwenda ungana n'amafaranga miliyoni ijana n'eshatu, ibihumbi magana atandatu na mirongo itatu na birindwi na magana atanu na mirongo itatu n'arindwi (103.637.537 Frw) kandi ko nyuma y'itariki ya cyamunara yo ku wa 25/08/2017, atongeye kuyibarira inyungu.

[31] Bigaragara ko umwenda umuhanga yagaragaje ko Good Supply & Construction Ltd isigaje kwishyura ungana n'amafaranga miliyoni ijana n'eshatu, ibihumbi magana atandatu na mirongo itatu na birindwi na magana atanu na mirongo itatu n'arindwi (103.637.537 Frw) ariwo Urukiko Rukuru rw'Ubucuruzi rwongeyeho amafaranga angana na miliyoni mirongo itatu n'indwi, ibihumbi magana atatu na mirongo icyenda na bitandatu na magana atatu (37.396.300 Frw), yavuye mu cyamunara yari yabazwe nk'ayishyuwe kandi agomba gusubizwa uwari waguze muri cyamunara kuko yateshejwe agaciro, maze rubiheraho rwemeza ko umwenda Good Supply & Construction Ltd ibereyemo UNGUKA BANK Plc ari miliyoni ijana na mirongo ine n'imwe, ibihumbi mirongo itatu na bitatu na magana inani na mirongo itatu n'arindwi (141.033.837 Frw).

[32] Umuhanga yagaragaje kandi ko amafaranga angana miliyoni mirongo ine n'imwe n'ibihumbi magana arindwi (41.700.000 Frw) Good Supply & Construction Ltd yabikuje igihe cy'impinduka ku masezerano cyararangiye n'amafaranga yabikujwe ku yagombaga kwishyura inguzanyo angana na miliyoni mirongo irindwi n'eshatu n'ibihumbi magana ane na makumyabiri na bitanu (73.425.000 Frw), yabikujwe kubera imikorere ya UNGUKA BANK Plc itari iya kinyamwuga.

[33] Nyuma yo gusesengura ibikubiye mu kirego Ndangizi John yatanze mu Rukiko rw'Ubucuruzi, Urukiko rw'Ubujurire rurasanga yari agamije ko Urukiko rwemeze ko umwenda usigaye k'uwo UNGUKA BANK Plc yahaye Good Supply & Construction Ltd akawishingira ungana n'amafaranga miliyoni icyenda, ibihumbi mirongo itatu na bibiri na magana atanu n'atandatu, kuko atemeraga ko yishingiye umwenda Banki yagaragaje ko Good Supply & Construction Ltd isigayemo ungana n'amafaranga miliyoni ijana na mirongo itanu n'esheshatu, ibihumbi magana atatu na makumyabiri n'icyenda na magana ane na makumyabiri n'abiri (156.329.422 Frw), ibi rero bikaba byumvikanisha ko atatanze ikirego agamije ko hemezwa umwenda nyakuri Good Supply & Construction Ltd ifitiye UNGUKA BANK Plc, ahubwo yashakaga kumenya ibimureba k'umwenda yishingiye watanzwe mu masezerano y'impinduka yo ku wa 25/02/2016.

[34] Urukiko rw'Ubujurire rurasanga UNGUKA BANK Plc yemera koko ko Good Supply & Construction Ltd yayishyuye amafaranga angana na miliyoni ijana n'eshatu, ibihumbi magana cyenda na mirongo itandatu na birindwi na magana ane na mirongo icyenda n'ane (103.967.494 Frw) mu mwenda uri mu masezerano y'impinduka ungana n'amafaranga miliyoni ijana na makumyabiri n'eshatu, ibihumbi magana abiri na mirongo icyenda na birindwi na mirongo irindwi n'atandatu (123.297.076 Frw), ibi bikaba byumvikanisha ko umwenda wari usigaye ku wa 14/02/2017 ungana n'amafaranga miliyoni ijana na makumyabiri n'eshatu, ibihumbi magana abiri na mirongo icyenda na birindwi na mirongo irindwi n'atandatu (123.297.076 Frw) gukuramo amafaranga miliyoni ijana n'eshatu, ibihumbi magana cyenda na mirongo itandatu na birindwi na magana ane na mirongo icyenda n'ane (103.967.494 Frw), hagasigara amafaranga miliyoni cumi n'icyenda, ibihumbi magana atatu na makumyabiri n'icyenda na magana atanu na mirongo inani n'abiri (19.329.582 Frw), aya mafaranga akaba ari yo areba Ndangizi John nk'uwishingiye umwenda Good Supply & Construction Ltd yahawe mu masezerano y'impinduka yo ku wa 25/02/2016.

[35] Ku byerekeranye no kuba Ndangizi John n'abamwunganira bavuga ko amafaranga yahawe Good Supply & Construction Ltd yafashwe nk'umwenda umureba kandi atarigeze awishingira harimo ungana n'amafaranga miliyoni mirongo irindwi n'eshatu n'ibihumbi magana ane na makumyabiri na bitanu (73.425.000 Frw) ndetse n'andi umuhanga yagaragaje angana n'amafaranga miliyoni mirongo ine n'imwe n'ibihumbi magana arindwi (41.700.000 Frw) nayo yahawe Good Supply & Construction Ltd amasezerano y'impinduka yararangiye, bakaba basaba Urukiko kwemeza ko uwo mwenda utamureba, ikibazo gisa n'iki cyafashweho umurongo mu rubanza RCOMA 0138/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 16/05/2014, haburana Gaju Cynthia na ACESS BANK Ltd. Muri urwo rubanza, Gaju Cynthia yari yishingiye umwenda ungana n'amafaranga miliyoni makumyabiri n'eshanu (25.000.000 Frw) ACCESS BANK Ltd yari yarahaye Twagira Azzy ku wa 28/04/2006 urangira kwishyurwa, nyuma yo kwishyura ACESS BANK Ltd iha Twagira Azzy undi mwenda ungana n'amafaranga miliyoni cumi n'ebyiri (12.000.000 Frw) ku wa 24/04/2007 ariko wo ntiyahamagaza Gaju Cynthia ngo awishingire, uwahawe umwenda ananiwe kwishyura Banki ishaka ko Gaju Cynthia yishyura uwo mwenda, Urukiko rw'Ikirenga rubiheraho rwemeza ko uwo mwenda wa kabiri utareba Gaju Cynthia kuko atigeze awishingira[1].

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[1] Reba urubanza RCOMA 0138/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 16/05/2014, haburana GAJU Cynthia na ACCESS BANK Ltd, igika cya 20.

[36] No muri uru rubanza rero, bigaragara ko hari amafaranga yahawe Good Supply & Construction Ltd afatwa nk'umwenda, uwo mwenda ukaba utagomba kubarirwa mu wo Ndangizi John yishingiye kubera ko hamaze kugaragazwa amafaranga yasigaye k'uwo yari yarishingiye, ibindi bikaba bireba Good Supply & Construction Ltd na UNGUKA BANK Plc nk'abahanye inguzanyo idafite umwishingizi.

[37] Kubera izo mpamvu, Urukiko rw'Ubujurire rurasanga kuba Urukiko Rukuru rw'Ubucuruzi rwarafashe umwenda wose umuhanga yagaragaje ko ari wo Good Supply & Construction ibereyemo UNGUKA BANK Plc, rukavuga ko ari wo Ndangizi John yishingiye, harabayeho kwirengagiza ibikubiye mu masezerano y'impinduka yo ku wa 25/02/2016, kuko rutitaye ku bunyamwuga buke bwa Banki yatanze inguzanyo itishingiwe, bityo iyi ngingo y'ubujurire ya Ndangizi John ikaba ifite ishingiro.

2. Kumenya niba inyungu zigomba gukomeza kubarwa kugeza umwenda wishyuwe.

[38] Uhagarariye UNGUKA BANK Plc yatanze ubujurire bwuririye ku bwa Ndangizi John avuga ko kuba mu gika cya 58 cy'urubanza rujuririrwa, Urukiko rwaremeje ko rutakurikiza umurongo wafashwe mu rubanza RS/INJUST/RCOM 00008/2021/SC rwa SIMACO Ltd na I & M BANK RWANDA Plc ku birebana n'uko inyungu zakomeza kubarwa nyuma ya cyamunara kuko urwo rubanza rutakemuye ikibazo cy'ibarwa ry'inyungu nyuma yo guteza cyamunara, ko ahubwo rwasuzumye ibijyanye no gukomeza kubara inyungu nyuma yo gusesa amasezerano (dénonciation du crédit/denunciation of credit), asanga rwarasesenguye urubanza nabi, ngo kuko rwagarukiye gusa ku nyito y'ikibazo gisuzumwa (libellé), ntirwite ku isesengura ryakozwe n'Urukiko rw'Ikirenga kuri icyo kibazo, aho mu gika cyarwo cya 47 rushingiye ku mvugo z'abahanga, Urukiko rw'Ikirenga rwemeje ko abagiranye amasezerano bashobora kumvikana ko mu gihe azaba asheshwe, inyungu zari ziteganyijwe mu masezerano zikomeza gukurikizwa, hakaba hanakwiyongeraho ijanisha ry'inyongera. Ko ku byerekeye amasezerano y'inguzanyo, inyungu zisanzwe n'inyungu z'ubukererwe zikomeza kubarirwa ku mwenda remezo wagaragajwe igihe cy'iseswa ryayo, kugeza igihe umwenda uzarangiriza kwishyurwa, rukanzura ko nyuma yo gusesa amasezerano inyungu zikomeza kubarwa kugeza umwenda urangije kwishyurwa.

[39] Akomeza avuga ko kuba cyamunara yarasheshwe kandi uwagurijwe akaba atarishyura umwenda, inyungu zawo zikwiye gukomeza kubarwa kugeza awishyuye kandi ko ari cyo Urukiko rw'Ikirenga rwasobanuye ariko Urukiko Rukuru rw'Ubucuruzi rubyirengagiza nta cyo rushingiyeho. Asaba uru Rukiko kwemeza ko inyungu zingana n'amafaranga miliyoni mirongo itanu n'esheshatu, ibihumbi magana atatu na makumyabiri na bine na magana atandatu na mirongo irindwi n'atandatu (56.324.676 Frw) zabazwe nyuma ya cyamunara byakozwe mu buryo bukurikije amategeko kubera ko nyuma yo gutesha agaciro cyamunara, ibintu byasubiye uko byari bimeze mbere, zikaba ziyongera ku mwenda Good Supply & Construction Ltd ibereyemo UNGUKA BANK Plc nk'uko wemejwe mu rubanza rujuririrwa kuko zitarenze umwenda remezo Ndangizi John yishyuzwa.

[40] Ndangizi John n'abamwunganira bavuga ko iyi ngingo y'ubujurire nta gaciro yahabwa, kubera ko umwenda uba warasibwe mu bitabo bya Banki, ukaba ubarwa nk'igihombo (radiation), kandi ko hari urubanza RCOM 00911/2017/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi ku wa

14/12/2017, rwemeje ko Good Supply & Construction Ltd yahombye itagikora, ndetse ko amasezerano yo ku wa 25/02/2016 yabaye hagati ya UNGUKA BANK Plc, Good Supply & Construction Ltd na Ndangizi John, bari bumvikanye ku ngano y'umwenda UNGUKA BANK igomba kwishyurwa n'igihe uzishyurirwa, ndetse ko wishyuwe hagasigara amafaranga miliyoni makumyabiri n'eshanu, ibihumbi magana ane na mirongo icyenda na bitatu na magana atatu na mirongo inane (25.493. 380 Frw).

Uko Urukiko rubibona

[41] Impaka kuri iyi ngingo zishingiye ku kumenya niba inyungu ku nguzanyo zikwiye gukomeza kubarwa kugeza umwenda wishyuwe.

[42] Impaka nk'izi zakemuwe mu rubanza RS/INJUST/RCOM 00010/2022/SC haburana UNGUKA BANK Plc na Ndagijimana Théoneste, rwaciwe n'Urukiko rw'Ikirenga ku wa 15/12/2023. Muri urwo rubanza, Ndagijimana Théoneste yavugaga ko UNGUKA BANK Plc itagombaga gukomeza kumubarira inyungu mu gihe yari ananiwe kwishyura inguzanyo yahawe, ko ahubwo yari gusesa ayo masezerano y'inguzanyo, Urukiko rwahuje ibiteganywa n'ingingo ya 7, igika cya 2 n'inginzo ya 24, igika cya 2 z'Amabwiriza N° 12/2017 yo ku wa 23/09/2017 ku ishyirwa mu byiciro ry'imyenda no guteganya ingoboka n'ibiteganywa n'ingingo ya 112, 2° y'Itegeko N° 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'amabanki, rusobanura ko inyungu ku nguzanyo Banki ziha abakiliya bazo zikomeza kubarwa kugeza umwenda wose wishyuwe, ko icy'ingenzi ari uko izo nyungu zitarenga umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa[2], maze rwanzura ko nta cyari kubuza UNGUKA BANK Plc gukomeza kubara inyungu nk'uko amasezerano yagiranye na Ndagijimana Théoneste abiteganya mu gihe cyose yari atararangiza kwishyura umwenda kandi izo nyungu zitarengeje umwenda yananiriweho kwishyura[3].

[43] No muri uru rubanza, bigaragara ko umwenda Good Supply & Construction Ltd n'umwishingizi wayo bagombaga kuba barangije kwishyura ku wa 25/06/2016 icyo gihe kitubahirijwe, ahubwo kugeza ku wa 14/02/2017 itariki Good Supply & Construction Ltd yishyuriyeho andi mafaranga afatwa nk'aya nyuma, hasigaye umwenda ungana n'amafaranga miliyoni cumi n'icyenda, ibihumbi magana atatu na makumyabiri n'icyenda na magana atanu na mirongo inani n'abiri (19.329.582 Frw) ku bireba umwenda Ndangizi Jonh yari yarishingiye, uyu mwenda ukaba ugomba kubarirwa inyungu nk'uko byatanzweho umurongo mu rubanza rwavuzwe haruguru.

[44] Urukiko rw'Ubujirire rurasanga umwenda Ndangizi John yishingiye ukaba utarishyurwa wose, ugomba kubarirwa inyungu guhera ku wa 14/02/2017 kugeza ku wa 26/03/2024 mu buryo bukurikira : 19.329.582 Frw x 24% x 2.562 iminsi : iminsi 360 = amafaranga miliyoni eshatu, ibihumbi magana arindwi na mirongo itatu na bitandatu na magana atandatu na mirongo cyenda n'icyenda (3,736,699 Frw).

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[2] Reba urubanza RS/INJUST/RCOM 00010/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 15/12/2023, haburana UNGUKA BANK Plc na NDAGIJIMANA Théoneste, igika cya 40.

[3] Idem, igika cya 42

[45] Ku byerekeranye n'ibyo Ndangizi John n'abamwunganira bavuga ko inyungu zitakomeza kubarwa kuko nta masezerano zishingiyeho kandi ko hari urubanza rushyira Good Supply & Construction Ltd mu gihombo, Urukiko rurasanga nta shingiro byahabwa kubera ko mu masezerano y'impinduka yo ku itariki ya 25/02/2016, impande zombi zemeranyije ko uretse ingingo ya 3 yonyine, nta kindi gihindutse ku masezerano yo ku wa 08/05/2015, ibi bikaba byumvikanisha ko ingingo irebana n'inyungu yateganywaga mu masezerano yahindurwaga yo yagumyeho. Naho kuba Good Supply & Constrution Ltd yarashyizwe mu izahura nk'uko byemejwe mu rubanza RCOM 00911/2017/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge ku wa 14/12/2017, ndetse hagashyirwaho umucungamutungo w'igihombo cya Entreprise Good Supply & Construction Ltd[4], Urukiko rurasanga bitabuza ko umwishingizi yishyuzwa umwenda n'inyungu zawo yishingiye.

[46] Kubera izo mpamvu, uru Rukiko rurasanga umwenda UNGUKA BANK Plc yahaye Good Supply & Construction Ltd kandi Ndangizi John yishingiye ungana n'amafaranga miliyoni miliyoni cumi n'icyenda, ibihumbi magana atatu na makumyabiri n'icyenda na magana atanu na mirongo inani n'abiri (19.329.582 Frw) kongeraho inyungu zayo zingana n'amafaranga miliyoni eshatu, ibihumbi magana arindwi na mirongo itatu na bitandatu na magana atandatu na mirongo icyenda n'icyenda (3.736.699 Frw), yose hamwe ukaba ungana n'amafaranga miliyoni makumyabiri n'eshatu, ibihumbi mirongo itandatu na bitandatu na magana abiri na mirongo inani na rimwe (23.066.281 Frw).

3. Ibyerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa

[47] Uhagarariye UNGUKA BANK Plc avuga ko mu rubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa UNGUKA BANK Plc bufite ishingiro, ko ariko itagomba gusubizwa ibyo yatakaje mu rubanza, ngo kuko umwenda yamenyesheje Ndangizi John atari wo Urukiko rwemeje, akaba asaba uru Rukiko gukosora ayo makosa, rukayigenera amafaranga y'igihembo cya Avoka angana na miliyoni ebyiri (2.000.000 Frw), amafaranga ibihumbi magana inani (800.000 Frw) yari yasabye mu rubanza rujuririrwa, hiyongereyeho amafaranga miliyoni imwe n'ibihumbi magana atanu (1.500.000 Frw) y'igihembo cya Avoka n'amafaranga ibihumbi magana atanu (500.000Frw) y'ikurikiranarubanza kuri uru rwego. Ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Ndangizi John asaba guhabwa, avuga ko nta faranga na rimwe akwiye kugenerwa kubera ko ari we wishoye mu rubanza rutari ngombwa, akaba nta n'icyo yagaragaje anenga urubanza yajuririye.

[48] Ndangizi John n'abamwunganira biregura ku ndishyi UNGUKA BANK Plc isaba bavuga ko ntazo yahabwa kubera ko yakoze amakosa yo kubara kuri Ndangizi John amafaranga yahaye Good Supply & Construction Ltd, idakurije ibikubiye mu masezerano bagiranye. Basaba ahubwo uru Rukiko gutegeka UNGUKA BANK Plc kumuha amafaranga angana na miliyoni eshanu (5.000.000 Frw) y'igihembo cya Avoka n'amafaranga miliyoni imwe (1.000.000 Frw) y'ikurikiranarubanza.

[4] Mu gika cya 8 cy'urubanza RCOM 00911/2017/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge ku wa 14/12/2017, rwemeje ko Me GASORE Alain ashyizweho nk'umucungamutungo w'agateganyo wa Entreprise Good Supply & Construction Ltd.

Uko Urukiko rubibona

[49] Ingingo ya 111 y'itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".

[50] Urukiko rurasanga kuba ubujurire bwa Ndangizi John n'ubwa UNGUKA BANK Plc bwahawe ishingiro, buri ruhande rugomba kwirengera amafaranga y'ibyagiye ku rubanza. Naho amafaranga y'ikurikiranarubanza n'igihembo cya Avoka UNGUKA BANK Plc ivuga ko Urukiko Rukuru rw'Ubucuruzi rutayihaye, uru Rukiko rurasanga itayahererwa kuri uru rwego kuko mu rubanza rwajuririwe, urwo Rukiko rwasobanuye impamvu idakwiye kuyahabwa[5].

III. ICYEMEZO CY'URUKIKO

[51] Rwemeje ko ubujurire bwa Ndangizi John, bufite ishingiro.

[52] Rwemeje ko ubujurire bwuririye ku bwa Ndangizi John bwatanzwe na UNGUKA BANK Plc (yahindutse LOLC UNGUKA Finance Plc), bufite ishingiro.

[53] Rwemeje ko urubanza RCOMA 00072/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 25/11/2022, ruhindutse.

[54] Rwemeje ko umwenda UNGUKA BANK Plc (yahindutse LOLC UNGUKA Finance Plc) yahaye Good Supply & Construction Ltd wishingiwe na NDANGIZI John ungana n'amafaranga miliyoni makumyabiri n'eshatu, ibihumbi mirongo itandatu na bitandatu na magana abiri na mirongo inani na rimwe (23.066.281 Frw).

[55] Ruvuze ko amafaranga y'ingwate y'amagarama Ndangizi John yatanze ajurira, ahwanye n'ibyakozwe mu rubanza.

[5] Mu gika cya 71 cy'urubanza n° RCOMA 00072/2022/HCC, Urukiko Rukuru rw'Ubucuruzi, urwo Rukiko rwasobanuye ko buri ruhande rugomba kwirengera ibyagiye ku rubanza kubera ko nta rwahawe ukuri ku byo rwavugaga ijana ku ijana.