BANK OF KIGALI Plc v. NSEKUYE

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00020/2024/CA- RCOMAA 00021/2024/CA (Ngagi, P.J.,21 Kanama 2024.]

Amategeko agenga imiburanishirize y'imanza – Guca urubanza ku kitararegewe(Ultra petita) – Umucamanza aca urubanza ku byasabwe muri icyo kiburanwa gusa, ntashobora guca urubanza ku kitasabwe mu myanzuro kuko biba binyuranyije n'amategeko.

Amabwiriza agena ibihembo mbonera by'Abavoka – Igihembo cy'avoka – Avoka w'urega ashobora guhabwa igihembo gihwanye na miliyoni eshanu (5.000.000 Frw) kuko biba byemewe n'amategeko.

Incamake y'ikibazo: Uwitwa Nsekuye Jacques nk'umukiliya wa Bank of Kigali Plc, avuga ko yafunguje konti zitandukanye zo kubitsa n'iz'inguzanyo muri iyo Banki, ikajya imuha serivisi z'imari zitandukanye zirimo izo kubitsa, inguzanyo n'ingwate z'amasoko mu bucuruzi bwe. Nyuma yaho avuga ko yatangiye kugira ibibazo mu bucuruzi bwe, bituma atabasha gukomeza kwishyura inguzanyo ze neza nk'uko byari bisanzwe, maze yegera bank kugira ngo barebere hamwe uburyo yazishyura inguzanyo yahawe, maze impande zombi zigirana amasezerano yo kuvugurura umwenda, yitwa amasezerano mashya.

Nsekuye yareze Bank of Kigali Plc mu Rukiko rw'Ubucuruzi avuga yagiye yishyuzwa amafaranga menshi mu buryo butazwi kandi butemewe n'amategeko , bityo asaba urwo Rukiko gutegeka Banki kuyakuraho anasaba guhabwa indishyi zo kwica amasezerano. Uru rukiko rwemeza ko ikirego cye gifite ishingiro.

Bank of Kigali Plc yajuririye Urukiko Rukuru rw'Ubucuruzi, ivuga ko Urukiko rw'Ubucuruzi rwaciye urubanza ku kitararegewe, rwirengagije ibimenyetso bigaragaza ko hari umwenda Nsekuye ayibereyemo; kandi ko rwemeje nta mpamvu rushingiyeho ko imwishyura igihombo cyo kudasubizwa amafaranga ku gihe ngo ayakoreshe (*manque à gagner*). Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa Bank of Kigali Plc bufite ishingiro kuri bimwe. Ababuranyi bombi bajuririye mu Rukiko rw'ubujurire, imanza zombi zihurizwa hamwe.

Bank of Kigali Plc yajuriye mu Rukiko rw'ubujurire ivuga ko Urukiko Rukuru rw'Ubucuruzi rwakoze ikosa ryo kutagaragaza ingano y'umwenda Nsekuye Jacques ayibereyemo, kuko rwavuze ko atari byo byaregewe, ikaba isanga urubanza rwaciwe rudashobora kurangizwa mu gihe hatagaragajwe ingano y'umwenda Nsekuye Jacques abereyemo Banki, kandi ko urukiko rwamugeneye indishyi z'umurengera zitagaragarijwe ibimenyetso.

Bank of Kigali Plc ivuga kandi ko icyemezo Urukiko Rukuru rw'Ubucuruzi rwafashe kidasubiza ikibazo cyose rwasabwe gukemura, kuko gushyira mu bikorwa icyo cyemezo bitashoboka kubera ko ikirego cyashyikirijwe inkiko cyari ukumenya niba hari amafaranga y'ikirenga yishuje Nsekuye Jacques ku mwenda yari ayibereyemo, bityo ko umwenda yari ayibereyemo wagombaga kugaragazwa, hashyizweho abahanga babiri (*experts comptables*), bahabwa inshingano zo kwerekana uko umwenda wabazwe n'inyungu zawo, kumenya ingano y'amafaranga yishyuye n'asigaye, ndetse no kwerekana uburyo yabazwe.

Nsekuye Jacques we yireguye avuga ko yajuriye kuko Urukiko Rukuru rw'Ubucuruzi rwakuyeho indishyi z'igihombo yatejwe na Bank of Kigali Plc ruvuga ko atagaragaje icyo gihombo n'uburyo

cyabazwe kandi yaratanze imbonehamwe igaragaza uburyo izo ndishyi zabazwe, ko kuba yarishuye amafaranga atagomba kwishyura byamuvukije unyungu yagombaga kubona muri ayo mafaranga nk'umucuruzi, bityo asaba guhabwa indishyi z'igihombo yatejwe zingana na 18.5% ku mwaka ku mafaranga yose Banki ya Kigali Plc yamutwaye.

Nsekuye avuga kandi ko ingingo z'ubujurire za Bank of Kigali Plc nta shingiro zifite kuko banki ishaka kumvikanisha ko urubanza rwaciwe rudashobora kurangizwa kuko Urukiko rutagaragaje umwenda yari ayibereyemo kandi Urukiko Rukuru rw'Ubucuruzi rwarabisobanuye neza ko icyo kibazo kitaregewe, bityo ko rutari guca urubanza ku kitararegewe.

Hashingiwe kuri izo mpaka, Urukiko rusuzuma ikibazo cyo kumenya niba Urukiko Rukuru rw'Ubucuruzi rwaragombaga kugaragaza ingano y'umwenda Nsekuye Jacques abereyemo Bank of Kigali Plc no kumenya niba Nsekuye yagenewe indishyi z'umurengera.

Incamake y'ikibazo: 1. Umucamanza aca urubanza ku byasabwe mu kiburanwa gusa, ntashobora guca urubanza ku kitasabwe mu myanzuro. Kuko biba binyuranyije n'amategeko.

2.Kuba rero mu rukiko rubanza, uwareze yasabaga gukurirwaho umwenda avuga ko wabazwe mu buryo bunyuranyije n'amategeko, uru rukiko rw'ubujurire ntirwasuzuma ku birebana no kumenya ingano y'umwenda waregewe kuko byaba ari guca urubanza ku kitararegewe.

3. Avoka w'urega ashobora guhabwa igihembo gihwanye na miliyoni eshanu (5.000.000 Frw) kuko biba byemewe n'amategeko.

4. Indishyi zishingiye ku gihombo ntizahabwa uzisaba iyo atagaragaje uburyo yazibaze n'ukuri kwazo.

Ubujurire bw'ababuranyi bombi nta shingiro bufite;
Amagarama y'urubanza ahwanye n'ibyarukozwemo.

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 10 niya 150;
Amabwiriza Nº 01/2014 agena ibihembo mbonera by'Abavoka, ingingo ya 26.

Imanza zifashishijwe:
Urubanza RADAA 00003/2024/CA-RADAA 00004/2024/CA, rwa Umujyi wa Kigali na Gatete rwaciwe n'Urukiko rw'Ubujurire ku wa 14/06/2024;
Urubanza RADAA 00011/2022/CA, rwa Nzabarimana Abdallahaman n'Umujyi wa Kigali rwaciwe n'Urukiko rw'Ubujurire ku wa 12/06/2023.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nsekuye Jacques nk'umukiliya wa Bank of Kigali Plc, yafunguje konti zitandukanye zo kubitsa n'iz'inguzanyo muri iyo Banki, ikajya imuha serivisi z'imari zitandukanye zirimo izo

kubitsa, inguzanyo n’ingwate z’amasoko mu bucuruzi bwe. Mu mikoranire ye n’iyi Banki yagiye imuha inguzanyo zitandukanye akazishyura neza, aho yatangiye kuzihabwa mu mwaka wa 2006, ariko bigeze mu mwaka wa 2015 yagize ibibazo mu bucuruzi bwe, bituma atabasha gukomeza kwishyura inguzanyo ze neza nk’uko byari bisanzwe.

[2] Mu mwaka wa wa 2016, Nsekuye Jacques yegereye Bank of Kigali Ltd, kugira ngo barebere hamwe uburyo yazishyura inguzanyo yahawe, maze impande zombi zigirana amasezerano yo kuvugurura umwenda, yitwa amasezerano mashya. Iyo Banki imaze kubona ko Nsekuye Jacques afite konti zitandukanye, ku wa 17/08/2016, yamugiriye inama yo kuzihuza zikaba konti imwe, bityo n’umwenda yari afite urahuzwa. Mu guhuza izo konti Bank of Kigali Plc yakoze amakosa mu mibare yo guhuza imyenda iri kuri ayo makonti, bituma hakorwa ubugenzuzi bizakugaragara ko Nsekuye Jacques yishyuzwa amafaranga menshi.

[3] Ibyo byatumye Nsekuye Jacques arega Bank of Kigali Plc mu Rukiko rw’Ubucuruzi avuga ko ubugenzuzi bwakozwe bwagaragaje ko hari amafaranga menshi yagiye akatwa mu buryo butazwi kandi butemewe, arimo aturuka ku nyungu z’ubukererwe z’umurengera zitari mu masezerano yagiranye n’iyo Banki, amafaranga y’ubwishingizi bw’inguzanyo yamuciye inshuro ebyiri (2) mu mwaka umwe, amafaranga iyo Banki yahawe ubwo Nsekuye Jacques yagurishaga inzu ye ngo yishyure inguzanyo ye ariko ntiyashyire kuri konti ye ahubwo igakomeza kumwishyuza inyungu z’ubukererwe, ndetse n’amafaranga yishyuzwa aturuka kuri komisiyo yaciwe ku ngwate *(guarantees*) zataye agaciro n’izo atahawe ariko banki igakomeza kuyamwishyuza hiyongereyeho n’inyungu zisanzwe n’iz’ubukererwe. Asobanura ko guhera mu mwaka wa 2019 yagiye yandikira Bank of Kigali Plc ayisaba amakuru n’ibisobanuro ku mafaranga agenda acibwa, anasaba ko yabihagarika ariko ikabyanga. Ko hagiye hakorwa inama zitandukanye zigamije gukemura icyo kibazo, iyo Banki ikagenda imwizeza ko igiye gukemura ibyo bibazo ariko ntibikore, uko guhora yishyura umwenda utemewe n’inyungu z’umurengera ziwuturukaho bituma ubucuruze bwe budindira, hanyuma asaba urwo Rukiko gutegeka Banki ya Kigali gukuraho umwenda utemewe n'amategeko yishyuza Nsekuye Jacques no guhabwa indishyi zo kwica amasezerano.

[4] Mu rubanza RCOM 00448/2022/TC rwaciwe n’Urukiko rw’Ubucuruzi ku wa 08/02/2023 rwemeje ko:

-ikirego cya Nsekuye Jacques gifite ishingiro;

-umubare w’amafaranga Nsekuye Jacques yaregeye gusubizwa na Bank of Kigali Plc wagaragajwe n’abahanga mu ibaruramari (experts comptables), hiyongereyeho n’izindi nyungu z’umurengera zagaragajwe nyuma y’igenzura ryakozwe ufite ishingiro;

-Bank of Kigali Plc, igomba gusubiza Nsekuye Jacques amafaranga agizwe n’ibyiciro binyuranye, yose hamwe angana na 509.691.354 Frw;

-Bank of Kigali Plc, igomba gusubiza Nsekuye Jacques kimwe cya kabiri (½) cy’igihembo cyahawe Abahanga bashyizweho n’Urukiko gihwanye na 2,750,000 Frw;

-Bank of Kigali Plc, igomba guha Nsekuye Jacques indishyi z’akababaro zihwanye 10,000,000 Frw, ikurikiranarubanza n’igihembo cy’abavoka bihwanye na 5,000,000 Frw; yose hamwe akaba miliyoni cumi n’eshanu (15,000,000 Frw);

-Bank of Kigali Plc, igomba guhita isubiza Nsekuye Jacques amafaranga ahwanye na miliyoni magana abiri na mirongo itatu n'ebyiri n'ibihumbi magana cyenda na mirongo irindwi na bitandatu na magana ane na cumi n'umunani (232.976.418 Frw) yiyemerera gusubiza, bityo hakabaho irangizarubanza ry'agateganyo kuri aya mafaranga.
-Rutegeka ko Bank of Kigali Plc, igomba guha Nsekuye Jacques amafaranga yose angana na **509,691,354 Frw**; agizwe n'amafaranga y'ikirenga urega yishyujwe na Bank of Kigali Plc akaba agomba kuyasubizwa; ndetse hakiyongeraho n'amafaranga y'indishyi zo gushorwa mu manza, igihembo cy'abahanga; ikurikiranarubanza n'igihembo cya Avoka, byavuze haruguru, byose bihwanye na **17,750,000 Frw.**

[5] Bank of Kigali Plc yajuririye Urukiko Rukuru rw'Ubucuruzi, inenga ko:

-Urukiko rw'Ubucuruzi rwaciye urubanza ku kitararegewe;

-Urukiko rw'Ubucuruzi rwirengagije ibimenyetso bigaragaza ko hari umwenda Nsekuye Jacques ayibereyemo;

-Urukiko rwemeje nta mpamvu rushingiyeho ko Bank of Kigali Plc, yishyura Nsekuye Jacques igihombo cyo kudasubizwa amafaranga ku gihe ngo ayakoreshe (*manque à gagner*) kingana na 105.793.969 Frw;

-indishyi z'akababaro, n'amafaranga y'igihembo cy'Avoka rwageneye Nsekuye Jacques nta shingiro bifite.

[6] Nsekuye Jacques yireguye avuga ko ingingo z'ubujurire za Bank of Kigali Plc nta shingiro zifite, hanyuma atanga ubujurire bwuririye ku bundi asaba gusubizwa inyungu Bank of Kigali Plc yabaze ku mafaranga angana na miliyoni magana inane (800.000.000 Frw) yavuye mu kugurisha ingwate ariko ntahite ashyirwa kuri konti ye, no kumwishyura 12.500.000 Frw atahawe, anasaba ko indishyi z'igihombo yamuteye yagenewe n'Urukiko rw'Ubucuruzi zakwiyongera ngo kuko yamutwariye amafaranga ikamuvutsa kuyabyaza umusaruro.

[7] Mu rubanza RCOMA 00169/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, ku wa 08/03/2023, urwo Rukiko rwemeje ko:

-ubujurire bwa Bank of Kigali Plc, bufite ishingiro kuri bimwe;

472.943.740 Frw yemejwe n'abahanga ko akomoka ku makosa ya Bank of Kigali Plc, agomba gukurwa mu mwenda Nsekuye Jacques abereyemo Bank of Kigali Plc;

-Urukiko rw'Ubucuruzi rutigeze ruregerwa kugaragaza umwenda Nsekuye Jacques asigayemo Bank of Kigali Plc, ko rero rutari kwirengagiza ibimenyentso bigaragaza ko hari umwenda Nsekuye Jacques abereyemo Bank of Kigali Plc kandi rutarasuzumye icyo kibazo;

-indishyi zingana na miliyoni ijana n'eshanu n'ibihumbi magana arindwi na mirongo icyenda na bitatu na magana cyenda na mirongo itandu n'icyenda (105.793.969 Frw) Urukiko rw'Ubucuruzi rwategetse Bank of Kigali Plc kwishyura Nsekuye Jacques zivanweho;

-Bank of Kigali Plc, itatanze ibimenyetso bigaragaza ko hari indishyi zingana na 10.000.000 Frw yategetswe mu gika bya 15 na 31 by'urubanza rujuririrwa;

-impamvu y'ubujurire ya Bank of Kigali Plc, ivuga ko itagombaga gucimbwa 5.000.000 Frw y'igihembo cya Avoka nta shingiro ifite;

-ubujurire bwuririye ku bundi bwa Nsekuye Jacques ku birebana n'inyungu Bank of Kigali Plc yabaze ku mafaranga angana na miliyoni magana inane (800.000.000 Frw) yavuye mu kugurisha ingwate butakiriwe;

-ubujurire bwuririye ku bundi bwa Nsekuye Jacques ku birebana n'indishyi zituruka ku gihombo Banki ya Kigali yateje Nsekuye Jacques ziyongera ku zo yahawe n'Urukiko rw'ubucuruzi nta shingiro bufite;

- Nsekuye Jacques agomba kwishyura Bank of Kigali Plc 500.000 Frw y'igihembo cy'Avoka, 100.000 Frw y'ikurikiranarubanza na 40.000 Frw y'ingwate y'amagarama;

-Bank of Kigali Plc igomba kwishyura Nsekuye Jacques indishyi zingana na 17.750.000 Frw zatagetswe n'Urukiko rw'Ubucuruzi, zikubiyemo indishyi zo gushorwa mu manza no gutakaza igihe acuragira mu Rukiko zihwanye na 10.000.000 Frw, igihembo cy'abahanga kingana na 2.750.000 Frw na 5.000.000 Frw y'ikurikiranarubanza n'igihembo cy' Abavoka.

[8] Bank of Kigali Plc, yajuririye uru Rukiko, ubujurire bwawo bwandikwa kuri RCOMAA 00020/2024/CA. Nsekuye Jacques nawe yarajuriye ubujurire bwe bwandikwa kuri RCOMAA 00021/2024/CA. Izi manza zombi zihurizwa hamwe mu rubanza RCOMAA 00020/2024/CA-RCOMAA 00021/2024/CA.

[9] Urubanza rwaburanishijwe mu ruhame ku wa 10/06/2024, Bank of Kigali Plc ihagarariwe na Me Rusanganwa Jean Bosco, naho Nsekuye Jacques ahagarariwe na Me Niyitegeka Epaphrodite.

[10] Mu myanzuro no mu miburanire yayo Bank of Kigali Plc ivuga ko Urukiko Rukuru rw'Ubucuruzi rwakoze ikosa ryo kutagaragaza ingano y'umwenda Nsekuye Jacques ayibereyemo, kuko rwavuze ko atari byo byaregewe kandi ikirego cyashyikirijwe inkiko cyari ukumenya niba hari amafaranga y'ikirenga Bank of Kigali Plc yishuje Nsekuye Jacques ku mwenda yari ayibereyemo, ko ingano y'uwo mwenda yanagaragajwe n'abahanga bashyizweho n'Urukiko rw'Ubucuruzi, ariko urwo Rukiko ntirwagaragaza uwo mwenda, ikaba isanga urubanza rwaciwe rudashobora kurangizwa mu gihe hatagaragajwe ingano y'umwenda Nsekuye Jacques abereyemo Banki. Ivuga kandi ko Urukiko rwageneye Nsekuye Jacques miliyoni eshanu (5.000.000 Frw) y'ikurikiranarubanza n'igihembo cya Avoka akaba asanga ayo mafaranga ari umurengera kandi atarayatangiye ibimenyetso, bityo asaba ko yahabwa miliyoni imwe (1.000.000 Frw) kuko ari yo asanzwe atangwa. Asoza asaba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka yo kuri uru rwego.

[11] Nsekuye Jacques we yajuriye avuga ko Urukiko Rukuru rw'Ubucuruzi rwakuyeho indishyi z'igihombo yatejwe na Bank of Kigali Plc ruvuga ko atagaragaje icyo gihombo n'uburyo cyabazwe kandi yaratanze imbonehamwe igaragaza uburyo izo ndishyi zabazwe, ko kuba yarishuye amafaranga atagomba kwishyura byamuvukije unyungu yagombaga kubona muri ayo mafaranga nk'umucuruzi, bityo asaba guhabwa indishyi z'igihombo yatejwe zingana na 18.5% ku mwaka ku mafaranga yose Banki ya Kigali Plc yamutwaye. Avuga kandi ko asaba Urukiko gukuraho amafaranga y'ikurikiranarubanza n'igihembo cya Avoka yategetswe guha Bank of

Kigali Plc kuko nta shingiro afite, cyane ko ari we warenganyijwe n'uko atahawe indishyi z'igihombo yatewe n'iyo Banki, agasaba n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka yo kuri uru rwego. Ku bijyanye n'ubujurire bwa Bank of Kigali avuga ko nta shingiro bufite, kuko Urukiko rutari kwemeza ingano y'umwenda ayibereyemo kandi ataribyo byaregewe, ko 5.000. 000 Frw y'ikurikiranarubanza n'igihembo cya Avoka yagenewe akurikije amategeko, akaba agomba kugumaho.

[12] Hashingiwe kuri izo mpaka, Urukiko rurasuzuma ibibazo byo kumenya niba:

-Urukiko Rukuru rw'Ubucuruzi rwaragombaga kugaragaza ingano y'umwenda Nsekuye Jacques abereyemo Bank of Kigali Plc;

-amafaranga miliyoni eshanu (5.000.000 Frw) y'ikurikiranarubanza n'igihembo cya Avoka Nsekuye Jacques yagenewe ari umurengera;

-Urukiko Rukuru rw'Ubucuruzi rwaragombaga kugenera Nsekuye Jacques indishyi z'igihombo yatejwe na Bank of Kigali Plc;

-amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Nsekuye Jacques yategetswe kwishyura Bank of Kigali Plc yakurwaho;

-amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro.

II.ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

A. UBUJURIRE BWA BANK OF KIGALI Plc

1. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwaragombaga kugaragaza ingano y'umwenda Nsekuye Jacques abereyemo Bank of Kigali Plc

[13] Uhagarariye Bank of Kigali Plc avuga ko icyemezo Urukiko Rukuru rw'Ubucuruzi rwafashe kidasubiza ikibazo cyose rwasabwe gukemura, kuko gushyira mu bikorwa icyo cyemezo bitashoboka kubera ko ikirego cyashyikirijwe inkiko cyari ukumenya niba hari amafaranga y'ikirenga Bank of Kigali Plc yishuje Nsekuye Jacques ku mwenda yari ayibereyemo, ko rero umwenda yari ayibereyemo wagombaga kugaragazwa. Asobanura ko Urukiko rw'Ubucuruzi kugira ngo rugaragaze ukuri kuri iki kibazo, nyuma y'ipiganwa ryabaye, hashyizweho abahanga babiri (*experts comptables*), bahabwa inshingano zo kwerekana uko umwenda Bank of Kigali Plc yishyuza Nsekuye Jacques wabazwe n'inyungu zawo, kumenya ingano y'amafaranga yishyuye n'asigaye, ndetse no kwerekana uburyo yabazwe nk'uko bigaragara mu cyemezo Urukiko rw'Ubucuruzi rwafashe ku wa 31 Kanama 2022.

[14] Asobanura ko mu gika cya 67 cy'urubanza rujuririrwa RCOMA 00169/2022/HCC, Urukiko rwemeje ko 472.943.740 Frw yemejwe n'abahanga ko akomoka ku makosa ya Bank of Kigali Plc, agomba gukurwa mu mwenda Nsekuye Jacques ayibereyemo, naho mu gika cya 68 cy'urwo rubanza rwemeza ko Urukiko rw'Ubucuruzi rutigeze ruregerwa kugaragaza umwenda Nsekuye Jacques asigayemo Bank of Kigali Plc, bityo ko rutari kwirengagiza ibimenyentso bigaragaza ko hari umwenda Nsekuye Jacques ayibereyemo kandi rutarasuzumye icyo kibazo.

[15] Avuga ko icyo Bank of Kigali Plc inenga icyo cyemezo cy'Urukiko ari uko Urukiko Rukuru rw'Ubucuruzi mu kwemeza amafaranga agomba gukurwa ku mwenda Nsekuye Jacques ayibereyemo rwashingiye kuri raporo y'abahanga, ariko rukirengagiza ingano y'umwenda wose ayo mafaranga agomba kuvamo, kandi muri iyo raporo hagaragaramo ingano y'umwenda wose, ariko rukabirengaho rukemeza ko icyo kibazo kitasuzumwe.

[16] Akomeza avuga ko ibaruwa y'abahanga yo ku wa 08/11/2022 iri mu rubanza rwaciwe n'Urukiko rw'Ubucuruzi RCOM 00448/2022/TC ifite impamvu igira iti:

> Kubagezaho raporo y'ubugenzuzi ku ngano y'umwenda Bwana Nsekuye Jacques afitiye Bank of Kigali Plc, ko ku rupapuro rwa 4, urwa 5, urwa 47 n'urwa 48 z'iyo Raporo basobanuye ko ufashe umwenda wose Nsekuye Jacques abereyemo Bank of Kigali Plc, kugeza taliki ya 31/12/2022, ungana na miliyoni magana arindwi na cumi n'eshatu n'ibihumbi magana inani na makumyabiri n'umunani na magana atatu na mirongo irindwi n'ane (713.828.374 Frw), ugakuramo amafaranga yose hamwe n'inyungu zayo abahanga bemeza ko akomoka ku makosa yayo bingana na 472.943.740 Frw, hasigara umwenda wayo ungana na 240.884.634 Frw, ukaba ari wo mwenda byibuze Urukiko rwagombaga gutegeka Nsekuye Jacques kwishyura Bank of Kigali Plc, rushingiye ku bikubiye muri iyo raporo, ko rero urwo Rukiko rwirengagije ko muri iyo raporo hagaragajwe ingano y'umwenda wa 713.828.374Frw, Nsekuye Jacques ayibereyemo, rukemeza gusa amafaranga agomba gukurwa mu mwenda yari abereyemo iyo Banki. Bityo ko asaba Urukiko rw'Ubujurire kubikosora.

[17] Uhagarariye Nsekuye Jacques yiregura kuri iyi ngingo y'ubujurire ya Bank of Kigali Plc avuga ko nta shingiro ifite, kuko ishaka kumvikanisha ko urubanza rwaciwe rudashobora kurangizwa, kuko Urukiko rutagaragaje umwenda Nsekuye Jacques yari ayibereyemo kandi Urukiko Rukuru rw'Ubucuruzi rwarabisobanuye neza ko icyo kibazo kitaregewe, bityo ko rutari guca urubanza ku kitararegewe, nk'uko biteganywa n'ingingo 10 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine ndetse n'iya 6 y'iryo Tegeko iteganya ko ikiburanwa kidahinduka.

[18] Avuga kandi ko uretse no kuba kitararegewe, kuvuga ko urubanza rutabasha kurangizwa ngo kubera ko Urukiko rutagaragaje ingano y'umwenda Banki yishyuza Nsekuye Jacques, asanga ari ukwirengagiza imiterere y'ikirego cyashyikirijwe Urukiko kubera impamvu zikurikira:

> a.kuba mu kirego Nsekuye Jacques yashyikirije Urukiko yaragaragaje umwenda udakurikije amategeko asaba ko ukurwa mu wo yishyuzwaga, kandi ko mu mwenda wose wagaragajwe na Banki ya Kigali Plc, kuba hategekwa ko hakurwamo ingano y'amafaranga runaka atemewe, bikaba bitaba imbogamizi yatuma urubanza rutarangizwa;
>
> b.kuba Banki ya Kigali ari yo yagiranye amasezerano y'umwenda na Nsekuye Jacques, ikaba ari na yo yagiye imwishyuza mu mabaruwa atandukanye no mu bihe bitandukanye, gushaka kugaragaza ko yaba itamenya ingano y'umwenda imwishyuza bitumvikana, ahubwo yirengagiza nkana ukuri izi neza, kuko gufata ingano y'umwenda yagaragarije Nsekuye Jacques igakuramo amafaranga Urukiko rwategetse ko akurwamo, bidasaba ubundi buhanga idafite;

c.kuba Bank of Kigali Plc ubwayo, nyuma y'uko urubanza RCOM 00448/2022/TC ruciwe, ibisabwe na Nsekuye Jacques mu ibaruwa yayandikiye ku wa 08/03/2023, yaramumenyesheje umwenda wari usigaye kugeza ku wa 31 Werurwe 2023 ungana na 559.576.706 Frw. Bityo ko ibyo Banki ya Kigali Plc isaba Urukiko gufataho icyemezo kandi rutarabiregewe, kandi ubwayo yarabimugaragarije mu nyandiko, nta shingiro bigomba guhabwa.

[19] Akomeza avuga ko ku bijyanye n'ibyo Bank of Kigali Plc ivuga ko Urukiko rwirengagije ibikubiye muri raporo y'abahanga, asanga na byo nta shingiro byahabwa, kuko raporo y'abahanga atari yo igena ikiburanwa, ko ahubwo amategeko ateganya ko abahanga batanga ibitekerezo byabo ku ngingo ziteganywa n'urubanza gusa. Ko rero kuba baratanze ibitekerezo ku bitararegewe, Urukiko rutari rutegetswe kubishingiraho ngo rufate icyemezo ku kitararegewe, na cyane ko rudakurikiza byanze bikunze ibitekerezo by'abahanga mu gihe binyuranye n'imyumvire yarwo. Bityo ko iyi ngingo y'ubujurire ya Bank of Kigali Plc nta shingiro igomba guhabwa.

UKO URUKIKO RUBIBONA

[20] Ingingo ya 10 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: *"Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine".* Iya 6 y'iryo Tegeko nayo igateganya ko ikiburanwa kigenwa n'ibisabwa na buri muburanyi. Ibisabwa bigaragarira mu myanzuro iregera urukiko n'imyanzuro yo kwiregura, bigashimangirwa burundu mu nama ntegurarubanza ku manza iteganyijwemo. […]".

[21] Icyo izi ngingo zombi zivuga ni uko ikiburanwa kireberwa mu myanzuro y'ababuranyi bose, ko kandi umucamanza aca urubanza ku byasabwe muri icyo kiburanwa gusa, ko adashobora guca urubanza ku kitasabwe mu myanzuro[1].

[22] Dosiye igaragaza ko mu myanzuro Nsekuye Jacques yatanze mu Rukiko rw'Ubucuruzi yasabaga gukurirwaho umwenda utemewe n'amategeko Bank of Kigali Plc imwishyuza no guhabwa indishyi zo kwica amasezerano.

[23] Mu miburanire ya Nsekuye Jacques muri uru Rukiko, umuhagarariye yibukije ko Nsekuye Jacques atigeze na rimwe asaba Urukiko kumugaragariza ingano y'umwenda Nsekuye Jacques abereyemo Bank of Kigali Plc, ko ahubwo yasabaga gukurirwaho umwenda utemewe n'amategeko Bank of Kigali Plc imwishyuza, kuko nta kibazo yari afite cyo kumenya ingano y'umwenda Bank of Kigali Plc imwishyuza.

[24] Urukiko rurasanga nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu kwemeza ko Nsekuye Jacques atigeze asaba kugaragarizwa ingano y'umwenda abereyemo Bank of Kigali Plc, kuko nk'uko byasubanuwe haruguru, nta kibazo yari afite cyo kumenya ingano y'umwenda yari abereyemo Bank of Kigali Plc, kuko Banki yari yarayimumenyesheje, ahubwo ikibazo cyari uko

[1] Izi ngingo z'amategeko zagiye zikoreshwa mu manza nyinshi zitandukanye, harimo n'urubanza RADAA 00003/2024/CA-RADAA 00004/2024/CA rwaciwe n'uru Rukiko ku wa 14/06/2024, haburana Umujyi wa Kigali na GATETE Polycarpe.

yasanze mu mafaranga asabwa kwishyura harimo ayo yishyuzwa mu buryo budakurikije amategeko; ayo akaba ari yo yasabye Urukiko ko akurwa mu mwenda yishyuzwa na Bank of Kigali Plc.

[25] Ku byo uhagarariye Bank of Kigali Plc avuga, ko Urukiko Rukuru rw'Ubucuruzi rwagombaga kugaragaza ingano y'umwenda Nsekuye Jacques abereyemo Bank of Kigali Plc, ko kuba ingano yawo itaragaragajwe bigoye ko uru rubanza rurangizwa, Urukiko rurasanga nta shingiro byahabwa, kuko nk'uko byagaragajwe haruguru, ntabwo Nsekuye Jacques yigeze arega asaba kugaragarizwa ingano y'umwenda abereyemo Bank of Kigali Plc, ahubwo yasabye gukurirwaho umwenda udakurikije amategeko n'umwenda ukomoka ku makosa ya Bank of Kigali Plc yishyuzwa n'iyo Banki, kandi nk'uko biteganywa n'ingingo ya 10 y'Itegeko N° 22/2018 yibukijwe haruguru, Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine. Kuba rero Urukiko Rukuru rw'Ubucuruzi rutaragaraje ingano y'umwenda Nsekuye Jacques abereyemo Bank of Kigali Plc, nta kosa rwakoze, kuko atari byo byaregewe.

[26] Ku byo avuga ko kutaragaragaza ingano y'umwenda byatuma urubanza rugorana kurangizwa, Urukiko rurasanga nabyo nta shingiro bifite, kuko Bank of Kigali Plc izi umwenda yishyuza Nsekuye Jacques, gufata rero uwo mwenda igakuramo miliyoni magana ane na mirongo irindwi n'ebyeri n'ibihumbi magana acyenda na mirongo ine na bitatu n'amafaranga magana arindwi na mirongo ine (472.943.740 Frw) yemejwe n'inkiko ko akomoka ku makosa ya Bank of Kigali Plc nk'uko yagaragajwe n'abahanga, ntabwo ari ibintu byagora Banki, bityo ibyo ivuga nta gaciro bigomba guhabwa.

[27] Hashingiwe ku bisobanuro bibaze gutangwa, Urukiko rurasanga ubujurire bwa Bank of Kigali Plc, kuri iyi ngingo, nta shingiro bufite, kuko nk'uko byasobanuwe haruguru kandi nk'uko biteganywa n'ingingo z'amategeko zibukijwe haruguru, ntaho inkiko zabanje zariguhera zisuzuma ikibazo cy'ingano y'umwenda Nsekuye Jacques abereyemo Bank of Kigali Plc, kuko atari cyo cyaregewe. Bityo nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze kwemeza ko Urukiko rw'Ubucuruzi rutari kwemeza umwenda Nsekuye Jacques asigayemo Bank of Kigali Plc, kuko atari byo byaregewe.

2.Kumenya niba amafaranga miliyoni eshanu (5.000.000 Frw) y'ikurikiranarubanza n'igihembo cya Avoka Nsekuye Jacques yagenewe ari umurengera

[28] Uhagarariye Bank of Kigali Plc ashingiye ku ngingo ya 111 y'Itegeko nº 22/2018 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 kwishyuza ibyakoreshejwe mu rubanza, avuga ko Bank of Kigali Plc inenga kuba Urukiko Rukuru rw'Ubucuruzi rwarayitegetse kwishyura Nsekuye Jacques amafaranga y'igihembo cya Avoka angana na miliyoni eshanu (5.000.000 Frw), bakaba basanga ayo mafaranga ari umurengera kandi Urukiko rwarayagennye nta bimenyetso biyasobanura rushingiyeho. Bityo ko kuba ayo mafaranga akabije kuba umurengera, ari yo mpamvu asaba Urukiko rw'Ubujurire kumugenera amafaranga angana na miliyoni imwe (1.000.000 Frw), kuko ari na yo asanzwe atangwa no mu zindi manza zimeze nk'uru.

[29] **Uhagarariye** Nsekuye **Jacques** ashingiye ku biteganywa n'ingingo ya 26 y'Amabwiriza Nº 01/2014 agena ibihembo mbonera by'Abavoka iteganya ko igihembo fatizo cya Avoka w'urega

kiri hagati ya 500.000 Frw na 5.000.000 Frw, yiregura kuri iyi ngingo y'ubujurire ya Bank of Kigali Plc avuga ko nta shingiro ifite, kuko amafaranga y'igihembo cya Avoka angana na miliyoni imwe (1.000.000 Frw) yifuza ko ari yo Nsekuye acques akwiye guhabwa yirengagiza ko Urukiko Rukuru rw'Ubucuruzi mu kumugenera angana na miliyoni eshanu (5.000.000 Frw) rutarenze ku byo amategeko ateganya, kandi ko mu bushishozi bwarwo rwashyize mu gaciro, kubera ko yatangiye gukurikirana iki kibazo guhera mu mwaka wa 2019, afite Abavoka bakurikirana ikirego cye, bandika amabaruwa atandukanye, bahura n'ubuyobozi bw'iyo Banki kugira ngo bagerageze kureba ko icyo kibazo cyakemuka binyuze mu bwumvikane ariko ikabyanga kugeza ubwo agishyikirije Urukiko. Byongeye kandi kuba Bank of Kigali Plc ivuga ko mu zindi manza zimeze nk'uru hasanzwe hatangwa amafaranga angana na miliyoni imwe (1.000.000 Frw) atari ukuri, kuko nta bimenyetso ibitangira, kandi hakaba hari n'izindi manza nyinshi zatanzwemo ibihembo bya Avoka birenze ayo mafaranga mu bushishozi bw'Inkiko. Bityo ko iyi ngingo y'ubujurire nta shingiro ifite.

UKO URUKIKO RUBIBONA

[30] Ingingo ya 26 y'Amabwiriza Nº 01/2014 agena ibihembo mbonera by'Abavoka iteganya ibikurikira: "Avoka w'urega wateguye dosiye n'inyandiko ashobora gusaba igihembo fatizo kiri hagati y'amafaranga 500.000 n'amafaranga 5.000.000, cyongerwaho, iyo hari imyenda yagarujwe nawe ubwe cyangwa n'intumwa ye, igihembo cyinyongera cyo kwishyuza, kibarwa hakurikijwe ijanisha riteganywa mu gace ka II k'ingingo ya 23".

[31] Urukiko rurasanga mu gihe Bank of Kigali Plc itagaragaza ko amafaranga miliyoni eshanu (5.000.000 Frw) y'ikurikiranarubanza n'igihembo cya Avoka yaciwe mu Rukiko rw'Ubucuruzi yayaciwe mu buryo budakurikije amategeko, ntaho rwahera rwemeza ko Urukiko Rukuru rw'Ubucuruzi rwagombaga kuyagabanya rukayageza ku mafaranga miliyoni imwe (1.000.000 Frw) nk'uko Bank of Kigali Plc, ishaka kubyumvikanisha, kuko usibye kubivuga gusa, nta Tegeko ishingiraho ibisaba, kandi nk'uko byagaragajwe haruguru ingingo ya 26 y'Amabwiriza Nº 01/2014 agena ibihembo mbonera by'Abavoka yemera ko Avoka w'urega ashobora guhabwa igihembo gihwanye na miliyoni eshanu (5.000.000 Frw), bivuze ko icyo gihembo gikurikije amategeko. Byongeye kandi, ntabwo byumvikana uburyo Bank of Kigali Plc ijuririra aya mafaranga ivuga ko ari umurengera, kandi nayo ubwayo ari yo isaba kuri uru rwego; bivuze ko nayo yemera ko bishoboka ko yayagenwa n'Urukiko. Urukiko rurasanga rero iyi ngingo y'ubujurire bwa Bank of Kigali Plc nta shingiro ifite.

B. UBUJURIRE BWA NSEKUYE JACQUES

3. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwaragombaga kugenera Nsekuye Jacques indishyi z'igihombo yatejwe na Bank of Kigali Plc

[32] Uhagarariye Nsekuye Jacques avuga ko mu gika cya 44 cy'urubanza rujuririrwa RCOMA 00169/2022/HCC, Urukiko Rukuru rw'Ubucuruzi, mu gutegeka ko indishyi zingana na 105.793.969Frw zituruka ku gihombo Bank of Kigali Plc yateje Nsekuye Jacques zikurwaho, rwarashingiye ku kuba ngo ataragaragaje icyo yahombye n'uburyo yakibaze, kandi atari byo kuko, haba mu myanzuro yatanzwe mu Rukiko rw'Ubucuruzi ku rwego rwa mbere, muri raporo y'abahanga, ndetse no mu myanzuro y'ubujurire yo mu Rukiko Rukuru rw'Ubucuruzi, yagaragaje ko Bank of Kigali Plc yamwishyuje amafaranga atandukanye kubera amakosa yayo yo kubara nabi

umwenda, ingwate z'amasoko atahawe, amafaranga y'ubwishingizi yishyujwe inshuro ebyiri n'inyungu z'umurengera. Ko kuba rero Banki yariyemereye ko ayo mafaranga yose, nyuma y'uko Nsekuye Jacques agurishije umutungo we, yayiyishyuye nyamara ataragombaga kuyishyura, ko ibyo bigaragaza neza ko yatewe igihombo cyo gutwarwa amafaranga yagombaga kubonaho inyungu mu bucuruzi bwe.

[33] Avuga kandi ko mu gika cya 38 cy'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwemeje ibyasabwaga na Banki ya Kigali Plc ko nta ndishyi yari ikwiye gucibwa, hanyuma Urukiko rurabyemera, bikaba bigaragaza ko Urukiko Rukuru rw'Ubucuruzi rutumvise neza ishingiro ry'indishyi Nsekuye Jacques yasabye kuko usibye no kuba yarishyuye amafaranga atagombaga kwishyura (atari umwenda yahawe), ntiyanagombaga no kuyishyurizwa rimwe ngo ayishyure kuko uwo mwenda wagombaga kwishyurwa kugeza mu mwaka wa 2033. Ku bijyanye no kuvuga ko Nsekuye Jacques atagaragaje uko inyungu z'igihombo yatejwe zabazwe, avuga ko na byo asanga atari ukuri kuko haba mu Rukiko rw'Ubucuruzi ku rwego rwa mbere hagaragajwe imbonerahamwe y'uko izo ndishyi zabazwe nk'uko bigaragara ku mugereka nº 053 wa dosiye y'urwo rubanza, ndetse no ku mugeraka wa Nº 004 w'urubanza rujuririrwa.

[34] Avuga na none ko ashingiye kuri izi mpamvu zose bagaragaje, asaba Urukiko rw'Ubujurire kwemeza ko Nsekuye Jacques yishyujwe amafaranga atagombaga kwishyura, ko Banki yayamutwaye bidakwiriye, bikaba byumvikanisha igihombo yatewe no kubura amafaranga yakoreshaga nk'umucuruzi akabiherwa indishyi z'igihombo yatejwe zingana na 18.5% ku mwaka ku mafaranga yose Banki ya Kigali Plc yatwaye Nsekuye Jacques mu buryo bw'uburiganya, akabiherwa indishyi asaba zingana na 194,851,740 Frw zibazwe kugeza ku wa 05/04/2024 nk'uko zikubiye mu mbonerahamwe bashyize mu bimenyetso igaragaza neza uko zibazwe, zikaba zishingiye ku biteganywa n'ingingo ya 138 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano.

[35] Uhagarariye Bank of Kigali Plc yiregura kuri iyi ngingo y'ubujurire ya Nsekuye Jacques avuga ko nta shingiro ifite, kuko indishyi asaba yazihawe nk'uko bigaragara mu gika cya 75 cy'urubanza RCOMA 00169/2022/HCC rujuririrwa. Avuga kandi ko n'icyo yasabye cyo gukurirwaho umwenda utemewe n'amategeko yagihawe, ko n'igihombo avuga ko yagize nta shingiro gifite, kuko atagaragaza ko yishyuye umwenda w'ikirenga; bityo ko hashingiwe ku biteganywa n'ingingo ya 12 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, no ku ngingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, asanga iyi ngingo y'ubujurire nta shingiro igomba guhabwa.

UKO URUKIKO RUBIBONA

[36] Ingingo ya 150, agace 5 n'aka 6, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, iteganya ibikurikira: "Ubujurire bukorwa mu buryo bw'umwanzuro utanga ikirego, ugaragaza 5° urutonde rw'inenge z'urubanza zisabirwa gukosorwa n'ibindi bibazo bigomba gusuzumwa; 6° ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba gukosorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa urukiko". Ingingo ya 3 y'Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[37] Mu rubanza RADAA 00011/2022/CA rwaciwe ku wa 12/06/2023, haburana Nzabarimana Abdallahaman n'Umujyi wa Kigali, uru Rukiko rwasobanuye ko rusomeye hamwe izi ngingo zombi rusanga zumvikanisha ko ujurira afite inshingano yo kugaragaza ko hari inenge ziri mu rubanza rujuririrwa n'ibimenyetso bishimangira ko ibyo Urukiko rwemeje atari byo. Mu yandi magambo ujurira agomba kugaragaza ikosa ryakozwe mu rubanza rujuririrwa, akagaragaza amategeko ashingiraho n'ibimenyetso bihamya ko ibyo avuga ari ukuri[2].

[38] Imikirize y'urubanza rujuririrwa igaragaza ko Urukiko rwasanze indishyi z'igohombo Nsekuye Jacques avuga ko yatewe n'amakosa ya Bank of Kigali Plc atarashoboye kuzigaragaza no kwerekana uburyo yazibaze, ko kandi n'Urukiko rw'Ubucuruzi rutigeze rugaragaza uko rwabaze izo ndishyi; bityo rwemeza ko izo ndishyi zingana na 105,793,969 Frw zitagaragajwe uko zabazwe zigomba gukurwaho, kuko nta kuri kwazo kwagaragajwe nk'uko biteganywa n'ingingo za 12 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, n'iya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

[39] Dosiye igaragaramo inyandiko yatanzwe na Nsekuye Jacques yiswe "Manque à gagner ku nyungu z'umurengera zikomoka ku nguzanyo uko zabazwe n'Abahanga". Ikigaragara nuko iyo nyandiko yateguwe n'uruhande rwa Nsekuye Jacques ikaba ivuga ko imibare bahereyeho yavuye muri raporo yakozwe n'abahanga ku wa 31/10/2022. Iyo mibare igaragaza ko manque à gagner Nsekuye Jacques asaba ingana na 109.089.213 Frw. Ikindi kigaragara nuko iyo nyandiko usibye imibare irimo nta bindi bisobanuro itanga.

[40] Dosiye igaragaramo raporo y'Ubugenzuzi yo muri Werurwe 2022 yateguwe n'uwitwa NYANDWI Martin. Iyo raporo igaragaza ko amafaranga yose Bank of Kigali Plc igomba gusubiza Nsekuye Jacques ari 495.584.497, ko ariko Nsekuye Jacques yishyuzwa na Bank of Kigali Plc umwenda ungana na 595.923.417 Frw. Nk'uko impande zombi zibyemeranyaho aya mafaranga Bank of Kigali Plc yarayemeye nk'uko yakosowe, kandi na Nsekuye Jacques ntabwo yigeze aregera ingano y'umwenda yishyuzwa, ahubwo yasabaga ko amakosa ari mu mwenda yishyuzwa akosorwa. Icyo impande zombi zitumvikanaho nuko Nsekuye Jacques avuga ko ayo mafaranga yagombaga kuyasubizwa akanjya kuri konti ye, ko kuba atarayasubijwe byamuteye igihombo, naho Bank of Kigali Plc ikavuga ko itarikuyashyira kuri konti ye, ahubwo yagombaga gukurwa mu mwenda yishyuzwa nk'uko byemejwe mu rubanza rujuririrwa. Bityo ko nta gihombo yagize yagombaga guhererwa indishyi, cyane ko Nsekuye Jacques yari ayibereyemo umwenda wageze igihe cyo kwishyurwa.

[41] Urukiko rurasanga mu gihe, umwenda Nsekuye Jacques yishyuzwaga nk'uko wagaragajwe haruguru, wari ugeze igihe cyo kwishyurwa, ariko Nsekuye Jacques agasaba ko amakosa arimo akosorwa, kandi bikaba byarakozwe kuko Banki yabyemeye; ntaho Nsekuye Jacques yahera avuga ko hari igihombo yatejwe, kuko 495.584.497 Frw yakosowe yagabanyije umwenda we. Kuba rero amafaranga yishyuzwa yari menshi ku mafaranga yakosowe, birumvikana ko Nsekuye Jacques atari guhabwa ariya mafaranga ngo ayakoreshe ibindi bintu byari kumubyarira inyungu nk'uko ashaka kubyumvikanisha, ahubwo icyabayeho n'uko umwenda yishyuzwaga na Bank of Kigali Plc wagabanyijwe, cyane ko mu rubanza rujuririrwa RCOMA 00169/2022/HCC, Urukiko Rukuru rw'Ubucuruzi rwemeje ko 472.943.740 Frw yemejwe n'abahanga ko akomoka ku makosa ya Bank of Kigali Plc, agomba gukurwa mu mwenda Nsekuye Jacques abereyemo Bank of Kigali Plc.

[2] reba igika cya 45.

[42] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze, gukuraho indishyi z'igihombo Nsekuye Jacques yari yagenewe n'Urukiko rw'Ubucuruzi; bityo ubujurire bwe kuri iyi ngingo nta shingiro bufite.

4.Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Nsekuye Jacques yategetswe kwishyura Bank of Kigali Plc yakurwaho

[43] Uhagarariye Nsekuye Jacques avuga ko mu gika cya 65 cy'urubanza rujuririrwa RCOMA 00169/2022/HCC rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwageneye Banki of Kigali Plc amafaranga ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka, n'ibihumbi ijana (100.000 Frw) y'ikurikiranarubanza, nyuma yo kuvuga ko ubujurire bwa Bank of Kigali Plc bufite ishingiro ku bijyanye no gukurikirwaho indishyi zishingiye ku gihombo yateje Nsekuye Jacques, nyamara kuri iyo ngingo Nsekuye Jacques ari we warenganye, akaba yaragombaga guhabwa indishyi z'igihombo Bank of Kigali Plc yamuteje, bityo ko asaba Urukiko rw'Ubujurire gutegeka ko amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Urukiko Rukuru rw'Ubucuruzi rwayigeneye akwiriye gukurwaho, ko ahubwo ari yo ikwiye gutegekwa guha Nsekuye Jacques amafaranga angana na miliyoni eshatu (3.000.000 Frw) yari yasabye mu rubanza rujuririrwa Nº RCOMA 00169/2022/HCC.

[44] Uhagarariye Bank of Kigali Plc yiregura kuri iyi ngingo y'ubujurire ya Nsekuye Jacques avuga ko nta shingiro yahabwa nk'uko Urukiko Rukuru rw'Ubucuruzi rwabisobanuye mu gika cya 65 cy'urubanza rujuririrwa RCOMA 00169/2022/HCC, ko rero nta cyari gutuma Bank of Kigali Plc itagenerwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, nyuma yo gusanga ubujurire bwayo bufite ishingiro. Bityo ko kuba Nsekuye Jacques nta tegeko agaragaza ryaba ryarishwe ku bijyanye n'amafaranga y'ikurikiranarubanza ndetse n'igihembo cy'Avoka yatanzwe, asanga iyi ngingo ye y'ubujurire nta shingiro ifite.

UKO URUKIKO RUBIBONA

[45] Ingingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru igira iti: «Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe». Ingingo ya 152 y'iryo tegeko igira iti: «Uregwa mu rukiko rujuririrwa ashobora na we kugira ibyo asaba yiregura. Ubujurire bwuririye ku bundi bukorwa n'uwarezwe mu bujurire bwerekeye ku wajuriye cyangwa ku bandi barezwe mu bujurire. Mu gihe ubujurire bw'ibanze butakiriwe, cyangwa bwasibwe, ntibibuza ko uregwa mu ubujurire asaba amafaranga y'ikurikiranarubanza. Ubujurire bwuririye ku bundi ntibutangirwa ingwate y'amagarama ».

[46] Imikirize y'urubanza rujuririrwa igaragaza ko Urukiko rwasuzumye ubujurire bwa Bank of Kigali Plc, rusanga bufite ishingiro kuri bimwe, naho ubujurire bwuririye ku bundi bwatanzwe na nsekuye Jacques rusanga nta shingiro bufite.

[47] Urukiko rurasanga kuba hari ibyo Bank of Kigali Plc yatsindiye mu Rukiko Rukuru rw'Ubucuruzi, ariko kuri nsekuye Jacques, ubujurire bwe bwuririye ku bundi bukaba butarahawe

ishingiro, nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu kugenera Bank of Kigali Plc amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza, cyane ko n'uru Rukiko rwasanze nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze gukuraho indishyi z'igihombo Nsekuye Jacques yari yagenewe n'Urukiko rw'Ubucuruzi. Bityo Urukiko rurasanga ubujurire bwa Nsekuye Jacques, kuri iyi ngingo nta shingiro bufite.

[48] Mu kwanzura k'ubujurire bw'impande zombi, nk'uko byasobanuwe haruguru, nta cyahindutse ku mikirize y'urubanza rujuririrwa RCOMA 00169/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, ku wa 08/03/2023. Bityo ibyategetswe muri urwo rubanza bigumyeho, ari byo ko:

-miliyoni magana ane na mirongo irindwi n'ebyeri n'ibihumbi magana acyenda na mirongo ine na bitatu n'amafaranga magana arindwi na mirongo ine (472.943.740 Frw) yemejwe n'abahanga ko akomoka ku makosa ya Bank of Kigali Plc, agomba gukurwa mu mwenda Nsekuye Jacques abereyemo Bank of Kigali Plc;

-indishyi zingana na miliyoni ijana n'eshanu n'ibihumbi magana arindwi na mirongo icyenda na bitatu na magana cyenda na mirongo itandu n'icyenda (105.793.969 Frw) Urukiko rw'ubucuruzi rwategetse Bank of Kigali Plc kwishyura Nsekuye Jacques zivanweho;

-Bank of Kigali Plc igomba kwishyura Nsekuye Jacques indishyi zingana na miliyoni cumi na zirindwi na magana arindwi na mirongo itanu (17.750.000 Frw) zikubiyemo 10.000.000 Frw y'indishyi zo gushorwa mu manza, 2.750.000 Frw y'igihembo cy'Abahanga na 5.000.000 Frw y'ikurikiranarubanza n'igihembo cy'Abavoka;

- Nsekuye Jacques agomba kwishyura Bank of Kigali Plc, amafaranga ibihumbi magana atanu (500.000 Frw) y'igihembo cy'Avoka, n'ibihumbi ijana (100.000 Frw) y'ikurikiranarubanza, n'ibihumbi mirongo ine (40.000 Frw) y'ingwate y'amagarama.

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

[49] Uhagarariye Bank of Kigali Plc ashingiye ku ngingo za 9, 110,111 na 152 z'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, no ku ya 26 y'Amabwiriza nº 01/2014 agenga ibihembo mbonera by'abavoka, asaba Urukiko rw'Ubujurire gutegeka Nsekuye Jacques guha Bank of Kigali Plc amafaranga y'ikurikiranarubanza n'igihembo cya Avoka angana na miliyoni eshanu (5.000.000 Frw). Ashingiye kandi ku ngingo ya 269, igika cya 2 y'Itegeko Nº 22/2018 ryavuzwe haruguru, asaba Urukiko rw'Ubujurire gutegeka Nsekuye Jacques kwishyura Bank of Kigali Plc amafaranga ibihumbi mirongo itanu (50.000 Frw) y'ingwate y'igarama yatanze ijurira, kuko ari we wabiteye.

[50] Avuga kandi ko amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Nsekuye Jacques asaba yo kuri uru rwego nta shingiro afite, kuko ubujurire bwe budafite ishingiro.

[51] Uhagarariye Nsekuye Jacques avuga ko miliyoni eshanu (5.000.000 Frw) y'ikurikiranarubanza n' igihembo cya Avoka Bank of Kigali Plc isaba Nsekuye Jacques nta shingiro afite, kuko ibyo iregera nta shingiro bifite, ko n'ayo yagenewe n'Urukiko Rukuru rw'Ubucuruzi mu rubanza RCOMA 00169/2022/HCC akwiriye gukurwaho nk'uko yabigaragaje

mu bujurire bwe. Kandi ko n'amafaranga ibihumbi mirongo itanu (50.000 Frw) y'igarama isaba gusubizwa ntayo yahabwa.

[52] Avuga kandi ko ashingiye ku ngingo ya 111 y'Itegeko ryibukijwe haruguru, asaba Urukiko rw'Ubujurire gutegeka Bank of Kigali Plc guha Nsekuye Jacques amafaranga miliyoni eshatu (3.000.000 Frw) y'ikurikiranarubanza n'igihembo cya Avoka yo kuri uru rwego rw'ubujurire kubera gukomeza kumusiragiza mu nkiko, bitewe n'amakosa yayo, bikaba bikomeje kumugiraho ingaruka zo gutakaza amafaranga atandukanye akurikirana uru rubanza anishyura Avoka umuburanira.

UKO URUKIKO RUBIBONA

[53] Kuba ubujurire bwa Bank of Kigali Plc n'ubwa Nsekuye Jacques nta na bumwe bwahawe ishingiro, Urukiko rurasanga nta mafaranga y'ibyagiye ku rubanza agomba gutangwa kuri uru rwego.

III. ICYEMEZO CY'URUKIKO

[54] **Rwemeje** ko ubujurire bwa Bank of Kigali Plc nta shingiro bufite.

[55] **Rwemeje** ko ubujurire bwa Nsekuye Jacques nta shingiro bufite.

[56] **Rwemeje** ko imikirize y'urubanza RCOMA 00169/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, ku wa 08/03/2023, igumyeho.

[57] Rwemeje ko ibyategetswe mu rubanza rujuririrwa RCOMA 00169/2022/HCC nk'uko byibukijwe mu gika cya 48 cy'uru rubanza, bigumyeho.

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