VINTAGES WINES AND LIQUORS Ltd v. KARASIRA

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00044/2023/CA (Rutazana, P.J.,) 05 Nyakanga 2024]

Amategeko agenga imiburanishirize y'imanza – Kugoboka – Uburenganzira buhabwa uwatije ingwate – Inyungu urega agomba kuba afite kugira ngo ikirego cye cyakirwe igomba kuba ari itaziguye (direct) kandi bwite (personnel) – Gutiza ingwate ntibivuze ko uwayitije yiyambuye uburenganzira kuri yo mu gihe nta bimenyetso bibigaragaza, no mu gihe kandi bigaragara ko uwatije ari (personne physique) n'uwatijwe akaba ari (personne morale) kuko ari abantu babiri batandukanye, ibi byose bigaragaza ko afite inyungu bwite kandi itaziguye yo kugoboka ku bushake kuko byumvikana ko hari inyungu ze bwite zibangamiwe.

Amategeko agenga igihombo – Gutangiza ikurikirana n'irangiza ry'imanza ziturutse ku gihombo – Ikirego cyatanzwe n'ubereyemo abandi imyenda gisaba gutangiza ikurikirana n'irangiza ry'imanza ziturutse ku gihombo si impamvu yasubika uburenganzira bw'ababerewemo imyenda bishingiwe kimwe n'abafite uburenganzira bw'ifatira.

Incamake y'ikibazo: Sosiyete Vintages Wines and Liquors Ltd ivuga ko yagiranye na Equity Bank Rwanda Plc amasezerano y'inguzanyo ingana na 180.000.000Frw, maze uwitwa Nzamukosha Sylvie ayitiza ingwate y'inzu ye, iyo ngwate yandikwa mu Bitabo by'Umwanditsi Mukuru muri RDB kugira ngo izavemo ubwishyu mu gihe Vintages Wines and Liquors Ltd izaba itishyuye inguzanyo yahawe.

Iyi sosiyete rero ntiyishyuye iyo nguzanyo, bituma Equity Bank Rwanda Plc yandikira Umwanditsi Mukuru muri RDB isaba uburenganzira bwo kugurisha ingwate, irabuhabwa, ariko Vintages Wines and Liquors Ltd itanga ikirego mu Rukiko rw'Ubucuruzi isaba gushyirwa mu izahura ry'ubucuruzi, irangiza ry'ibibazo biturutse ku gihombo no gushyiraho umucungamutungo w'agateganyo, inandikira Umwanditsi Mukuru imusaba guhagarika iyo cyamunara. Uru rukiko rwemeza ko ikirego kitakiriwe

Vintages Wines and Liquors Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi, Equity Bank Rwanda Plc nayo yongera kwandikira Umwanditsi Mukuru imusaba uburenganzira bwo kugurisha ingwate, maze igurishwa ku giciro kingana na 320.000.000Frw, yegukanwa na Club House La Palisse Ltd.

Vintages Wines and Liquors Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi irega uwashinzwe kugirisha ingwate, Me Karasira Colette Ratifa, Equity Bank Rwanda Plc, Club House la Palisse Ltd n'Umwanditsi Mukuru muri RDB isaba ko cyamunara iteshwa agaciro, ivuga ko yagurishijwe mu buryo bunyuranyije n'amategeko. Uru rukiko rwemeje ko cyamunara iteshejwe agaciro.

Abaregwa bose bajuririye mu Rukiko Rukuru rw'Ubucuruzi bagaragaza ko cyamunara itagombaga guteshwa agaciro kuko yakozwe mu buryo bukurikije amategeko, Club House la Palisse Ltd ivuga ko Urukiko rw'Ubucuruzi rwavugishije amategeko ibyo atavuga naho Equity Bank Rwanda Plc ivuga ko yari ifite uburenganzira ntayegayezwa ku ngwate yahawe, bityo ikaba yaragombaga kugurishwa mu cyamunara. Uru rukiko rwemeje ko ubujurire bufite ishingiro, bityo ko cyamunara igumanye agaciro kayo.

Vintages Wines and Liquors Ltd yajuririye urwo rubanza mu Rukiko rw'Ubujurire, igamije igaragaza ko Urukiko Rukuru rw'Ubucuruzi rwirengagijwe gusuzuma ibiteganyijwe mu Itegeko ryerekeye igihombo ngo rugaragaze niba ibyemejwe mu rubanza rwajuririwe bifite ishingiro cyangwa nta shingiro bifite.

Abaregwa mu bujurire bose bavuga ko Nzamukosha Sylvie nta nyungu afite mu rubanza kandi ko impamvu ashingiraho ikirego cye asaba ko cyamunara iteshwa agaciro ari ibirego bishya bidashobora gutangwa bwa mbere ku rwego rw'ubujurire, bityo ko ibyo ari impamvu kutakira ikirego cye.

Nzamukosha yiregura avuga ko afite inyungu yemewe n'amategeko, itaziguye kandi ye bwite, yo kugoboka ku bushake muri uru rubanza, kuko rukomoka ku kirego cyatanzwe na Vintages Wines and Liquors Ltd isaba gutesha agaciro cyamunara yakozwe hagurishwa umutungo we bwite yayitije ikawutangaho ingwate muri Equity Bank Rwanda Plc, bityo ikirego cye kikaba kigomba kwakirwa.

Abaregwa bose bavuga ko impamvu Nzamukosha Sylvie ashingiraho asaba gutesha agaciro cyamunara zitakirwa ngo zisuzumwe kuko ari impamvu nshya zitanzwe bwa mbere ku rwego rw'ubujurire bwa kabiri.

Club House la Palisse Ltd yegukanye umutungo uburanwa nayo ivuga ko impamvu Nzamukosha atanga asaba ko cyamunara iteshwa agaciro zitabanje gushyikirizwa Umwanditsi Mukuru muri RDB ngo azifateho icyemezo mbere y'uko zigezwa ku Rukiko.

Nzamukosha avuga ko imiburanire y'abaregwa nta shingiro ifite kuko itegeko ryemera kugoboka mu rubanza aho rwaba rugeze hose, kandi ibisobanuro ku kirego cye akaba abitanga mu mujyo umwe n'uw'ikirego cy'iremezo cya Vintages Wines and Liquors Ltd gisaba gutesha agaciro cyamunara, bityo ibyo asaba bikaba bidakwiriye kwitwa ibirego bishya.

Vintages Wines and Liquors Ltd yiregura ivuga kandi ko itegeko ryerekeye igihombo riteganya ko iyo igihe cy'amezi atandatu kirangiye urukiko rwaramaze gufata icyemezo ku kirego cy'ubereyemo abandi umwenda gisaba gutangiza gahunda y'izahura, bituma uberewemo umwenda ahita atakaza uburenganzira bwo gusaba icyemezo cyo kugurisha ingwate yahawe, ariko ko mu rubanza rwajuririwe, Urukiko Rukuru rw'Ubucuruzi rwemeje ko cyamunara igumaho, rwirengagije ibyateganyijwe n'itegeko, bityo ko isaba urukiko kuvanaho icyemezo cyafashwe cy'uko cyamunara igumana agaciro.

Abaregwa bose basaba uru Rukiko kwemeza ko imikirize y'urubanza rwajuririwe igumaho; Club House la Palisse Ltd wegukanye ingwate muri cyamunara ivuga ko mu gihe urukiko rwabibona ukundi, Equity Bank Rwanda Plc yayisubiza amafaranga yishyuye muri cyamunara hiyongereyeho inyungu zayo zibariwe kuri 18%.

Incamake y' icyemezo: 1. Inyungu urega agomba kuba afite kugira ngo ikirego cye cyakirwe igomba kuba ari itaziguye (*direct*) kandi bwite (*personnel*). Gutiza ingwate ntibivuze ko uwayitije yiyambuye uburenganzira kuri yo mu gihe nta bimenyetso bibigaragaza, no mu gihe kandi bigaragara ko uwatije ari (*personne physique*) n'uwatijwe akaba ari (*personne morale*) kuko ari abantu babiri batandukanye, ibi byose bigaragaza ko afite inyungu bwite kandi itaziguye yo kugoboka ku bushake kuko byumvikana ko hari inyungu ze bwite zibangamiwe.

2. Ikirego cyatanzwe n'ubereyemo abandi imyenda gisaba gutangiza ikurikirana n'irangiza ry'imanza ziturutse ku gihombo si impamvu yasubika uburenganzira bw'ababerewemo imyenda bishingiwe kimwe n'abafite uburenganzira bw'ifatira.

3.Habaho irengayobora (*exception*) iyo urimo umwenda agaragaje ko afite ubushake bwo gutanga gahunda y'izahura ry'ubucuruzi bwe hamwe n'ikirego iyo iryo subika riba rigamije guha urimo umwenda amahirwe yo gutegereza icyemezo cy'urukiko kugira ngo rusuzume niba gahunda yo kuzahura ubucuruzi bwe ishoboka ku buryo yakomeza kwishyura imyenda ye bitabaye ngombwa ko ingwate yatanze zigurishwa, ibyo bigakorwa ariko mu gihe cy'amezi atandatu, iyo kirenze uberewemo umwenda ahita asubirana uburenganzira bwe bwo kwegukana ingwate.

Ubujurire nta shingiro;
Amagarama y'urubanza ahwanye n'ibyarukozwemo.

Amategeko yashingiweho:
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 114 niya 154;
Itegeko N° 075/2021 ryo ku wa 06/12/2021 ryerekeye igihombo, ingingo ya 12.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 15/05/2019 Vintages Wines and Liquors Ltd yagiranye na Equity Bank Rwanda Plc amasezerano y'inguzanyo ingana na 180.000.000Frw, kugira ngo Vintages Wines and Liquors Ltd ihabwe iyo inguzanyo, Nzamukosha Sylvie ayitiza ingwate y'inzu ye iri mu kibanza kibaruye kuri UPI: 1/02/13/02/635 giherereye mu Mudugudu wa Kigabiro II, Akagari ka Nyarutarama, Umurenge wa Remera, Akarere ka Gasabo mu Mujyi wa Kigali; iyo ngwate yandikwa mu Bitabo by'Umwanditsi Mukuru muri RDB kugira ngo izavemo ubwishyu mu gihe Vintages Wines and Liquors Ltd izaba itishyuye inguzanyo yahawe.

[2] Vintages Wines and Liquors Ltd ntiyishyuye iyo nguzanyo, bituma Equity Bank Rwanda Plc yandikira Umwanditsi Mukuru muri RDB isaba uburenganzira bwo kugurisha ingwate yavuzwe haruguru, irabuhabwa hanashyirwaho ushinzwe kuyigurisha muri cyamunara witwa Kayumba Godfrey ndetse atangira imirimo ijyanye nabyo ariko ku wa 20/03/2022 Vintages Wines and Liquors Ltd itanga ikirego mu Rukiko rw'Ubucuruzi isaba gushyirwa mu izahura ry'ubucuruzi, irangiza ry'ibibazo biturutse ku gihombo no gushyiraho umucungamutungo w'agateganyo, inandikira Umwanditsi Mukuru imusaba guhagarika iyo cyamunara ishingiye kuri icyo kirego, ku wa 31/03/2022 Umwanditsi Mukuru yandikira uwo yari yashinze kugurisha ingwate amusaba guhagarika cyamunara.

Mu rubanza RCOM 00438/2022/TC rwaciwe n'Urukiko rw'Ubucuruzi kuwa 02/09/2022 rwemeje ko ikirego cyatanzwe na Vintages Wines and Liquors Ltd isaba gushyirwa mu izahura

ry’ubucuruzi, irangiza ry’ibibazo biturutse ku gihombo no gushyiraho umucungamutungo w’agateganyo kitakiriwe, kuko itatanze ibisabwa by’ibanze nk’uko biteganywa n’Itegeko N° 075/2021 ryo ku wa 06/12/2021 ryerekeye igihombo. Vintages Wines and Liquors Ltd yajuririye Urukiko Rukuru rw’Ubucuruzi, Equity Bank Rwanda Plc nayo yongera kwandikira Umwanditsi Mukuru imusaba uburenganzira bwo kugurisha ingwate yavuzwe haruguru yahawe na Vintages Wines and Liquors Ltd, kuwa 26/04/2023 Umwanditsi Mukuru atanga ubwo burenganzira anashyiraho Me Karasira Colette Ratifa nk’ushinzwe kugurisha iyo ngwate mu cyamunara, ayigurisha ku wa 15/06/2023 ku giciro kingana na 320.000.000Frw, yegukanwa na Club House La Palisse Ltd.

[3] Hagati aho, urubanza RCOMA 00617/2022/HC ku bujurire bwavuzwe haruguru bwakozwe na Vintages Wines and Liquors Ltd ku kirego gisaba itangizwa ry’izahura ry’ubucuruzi rwaciwe n’Urukiko Rukuru rw’Ubucuruzi ku wa 19/01/2024, rwemeza ko ubujurire bwayo nta shingiro bufite.

[4] Ku wa 16/06/2023 Vintages Wines and Liquors Ltd yandikiye Umwanditsi Mukuru imusaba gusesa cyamunara y’ingwate yahaye Equity Bank Rwanda Plc yakozwe kuwa 15/06/2023, ishingiye ku mpamvu y’uko Me Karasira Colette Ratifa washinzwe kuyigurisha yatangije imihango ya cyamunara kandi hari ikirego Vintages Wines and Liquors Ltd yari yaratanze isaba gushyirwa mu izahura ry’ubucuruzi, irangiza ry’ibibazo biturutse ku gihombo no gushyiraho umucungamutungo w’agateganyo ngo kandi icyo gihe urubanza rwari rutaracibwa ngo rube itegeko; ku wa 06/07/2023 Umwanditsi Mukuru amusubiza ko ntacyo yagaragarijwe yashingiraho asesa cyamunara.

[5] Ku wa 22/06/2023 Vintages Wines and Liquors Ltd yatanze ikirego mu Rukiko rw’Ubucuruzi irega uwashinzwe kugirisha ingwate, Me Karasira Colette Ratifa, Equity Bank Rwanda Plc , Club House la Palisse Ltd n’Umwanditsi Mukuru muri RDB; isaba ko cyamunara yavuzwe haruguru iteshwa agaciro, ishingiye ku mpamvu zikurikira:

-Kuba yarakozwe hirengagijwe ko mu Rukiko Rukuru rw’Ubucuruzi hari hakiri urubanza RCOMA 00617/2022/HCC rushingiye ku kirego gisaba gushyirwa mu izahura ry’ubucuruzi, rwari rutaracibwa ngo rube itegeko kuko rwari ruteganyijwe kuzaburanishwa ku wa 19/10/2023;

-Kuba cyamunara yarakozwe mu buryo bunyuranyije n’amategeko agenga ifatira, ishinganisha n’itangazwa ryayo;

-Kuba ingwate yaragurishijwe ku gaciro katari akayo.

[6] Uwashinzwe kugurisha ingwate, Me Karasira Colette Ratifa, yireguye avuga ko cyamanura yakozwe mu buryo bukurikije amategeko kuko yatangajwe mu buryo bw’ikoranabuhanga ku rubuga rw’imanza zirangizwa, inatangazwa mu kinyamakuru IGIHE ndetse no kuri Radio *Isango star*, kandi amatangazo yayo amanikwa ku Biro by’Akagari ka Nyarutarama umutungo uherereyemo.

[7] Equity Bank Rwanda Plc nayo yireguye ivuga ko cyamunara yakozwe mu buryo bukurikije amategeko kuko gufatira umutungo, gutangaza cyamunara no kuwugurisha byakozwe mu buryo bukurikije amategeko, kandi Vintages Wines and Liquors Ltd ikaba yariyambuye nkana uburenganzira yemererwa n’itegeko ry’izahura bwo gusaba kongererwa igihe mu gihe urubanza

rurengeje amezi atandatu mu nkiko rutaraba ndakuka; bityo kuba hari urubanza rwerekeranye n'izahura rwajuririwe rwari rutaracibwa ngo rube itegeko, bikaba bitari kubuza Equity Bank Rwanda Plc kugurisha ingwate.

[8] Club House la Palisse Ltd nayo yireguye ivuga ko cyamunara yakozwe mu buryo no mu nzira bikurikije amategeko, kandi ko nyuma y'uko iguze uwo mutungo yawiyandikishijeho bityo cyamunara ikaba ikwiriye kugumana agaciro; ko ariko mu gihe Urukiko rwasanga ikwiye guteshwa agaciro, Equity Bank Rwanda Plc yategekwa gusubiza Club House la Palisse Ltd amafaranga yishyuye mu cyamunara n'inyungu zayo.

[9] Umwanditsi Mukuru ntiyireguye kuko urubanza rwaburanishijwe atitabye Urukiko ariko yaramenyeshejwe umunsi w'iburanisha mu buryo bukurikije amatgeko.

[10] Mu rubanza RCOM 01117/2023/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 18/07/2023**,** rwategetse ko cyamunara yakozwe kuwa 15/06/2023 ku mutungo wavuzwe haruguru ubaruye kuri UPI 1/02/13/02/635 iteshejwe agaciro kuko yakozwe kandi hari urubanza rutaracibwa ku kirego Vintages Wines and Liquors Ltd yatanze isaba itangizwa ry'izahura ry'ubucuruzi no gushyiraho umucungamutungo w'agateganyo; rutegeka Equity Bank Rwanda Plc gusubiza Club House la Palisse Ltd 320.000.000 Frw yishyuye igura muri cyamunara umutungo wavuzwe haruguru, no gufatanya na Me Karasira Colette Ratifa gusubiza mu buryo bungana Vintages Wines and Liquors Ltd 500.000 Frw y'igihembo cya Avoka, 200.000 Frw y'ikurikiranarubanza na 20.000 Frw y'ingwate y'amagarama y'urubanza.

[11] Abaregwa bose bajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi bagamije kugaragaza ko cyamunara itagombaga guteshwa agaciro. Muri make Me Karasira Colette Ratifa avuga ko yakozwe mu buryo bukurikije amategeko, Club House la Palisse Ltd ivuga ko Urukiko rw'Ubucuruzi rwavugishije amategeko ibyo atavuga naho Equity Bank Rwanda Plc ivuga ko yari ifite uburenganzira ntayegayezwa ku ngwate yahawe, bityo ikaba yaragombaga kugurishwa mu cyamunara.

[12] Vintages Wines and Liquors Ltd yireguye ivuga ko nta kosa Urukiko rw'Ubucuruzi rwakoze mu kwemeza ko cyamunara iteshwa agaciro, kuko yakozwe hirengagijwe ko yatanze ikirego isaba gushyirwa mu izahura ry'ubucuruzi, irangiza ry'ibibazo biturutse ku gihombo no gushyiraho umucungamutungo w'agateganyo; naho ku bireba impamvu z'ubujurire zatanzwe na Equity Bank Rwanda Plc uhagarariye Vintages Wines and Liquors Ltd avuga ko zitagomba kwakirwa kuko zatanzwe impitagihe.

[13] Mu rubanza RCOMA 00374/2023/HCC & CMB RCOMA 00376/2023/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 01/09/2023, rwemeje ko ubujurire bwa Club House la Palisse Ltd , ubwa Me Karasira Colette Raftifa n'ubwa Equity Bank Rwanda Plc bufite ishingiro, rutegeka ko cyamunara yavuzwe haruguru yakozwe kuwa 15/06/2023 ku mutungo wa Nzamukosha Sylvie ubaruye kuri UPI1/02/13/02/635 Vintages Wines and Liquors Ltd yatanzeho ingwate muri Equity Bank Rwanda Plc igumanye agaciro; rutegeka Vintages Wines and Liquors Ltd kwishyura Club House la Palisse Ltd, Me Karasira Colette Raftifa na Equity Bank Rwanda Plc 1.200.000 Frw y'indishyi z'ikurikiranarubanza n'igihembo cya Avoka na 40.000 Frw y'amagarama buri wese.

[14] Vintages Wines and Liquors Ltd yajuririye urwo rubanza mu Rukiko rw'Ubujurire, igamije kugaragaza ko Urukiko Rukuru rw'Ubucuruzi rwirengagijwe gusuzuma ibiteganyijwe mu gika cya 5 cy'ingingo 12 y'Itegeko N° 075/2021 ryo ku wa 06/12/2021 ryerekeye igihombo ngo rugaragaze niba ibyemejwe mu rubanza rwajuririwe bifite ishingiro cyangwa nta shingiro bifite, kandi ari cyo kibazo cyagombaga gusuzumwa, ahubwo rusuzuma ibitararegewe bitanagiweho impaka mu rubanza, bituma rugera ku mwanzuro utari wo; bagasaba ko urubanza rwajuririwe ruvanwaho mu ngingo zarwo zose.

[15] Abaregwa bose bireguye bavuga ko ubujurire bwa Vintages Wines and Liquors Ltd nta shingiro bufite. Me Karasira Colette Ratifa n'umwunganira basobanura ko uwajuriye ntacyo agaragaza kivuguruza ibyashingiweho n'Urukiko Rukuru rw'Ubucuruzi uretse gusobanura ingingo y'amategeko kandi Urukiko rwarayisobanuye mu rubanza rwajuririwe, bakaba bemeranya n'ibisobanuro rwatanze; abahagarariye Equity Bank Rwanda Plc bo basobanura ko ibiteganyijwe mu gika cya 5 cy'ingingo ya 12 yavuzwe haruguru byasuzumwe. Urukiko rugera ku mwanzuro w'uko nta cyari kubuza ko ingwate igurishwa; abahagarariye Club House la Palisse Ltd basobanura ko uwajuriye atagaragaza ko cyamunara yakozwe mu buryo bunyuranyije n'amategeko n'amakosa Club House la Palisse Ltd yakoze, akaba kandi yirengagiza ibivugwa mu gika cya 4 n'icya 5 by'ingingo ya 12 yavuzwe haruguru, ndetse ko n'ikirego cy'izahura yitwaza cyateshejwe agaciro; bavuga ko ariko Urukiko rubibonye ukundi Club House la Palisse Ltd yasubizwa amafaranga yishyuye mu cyamunara, ikanishyurwa inyungu zayo zingana na 18% n'indishyi zinyuranye.

[16] Kuri uru rwego kandi uwitwa Nzamukosha Sylvie yagobotse ku bushake mu rubanza avuga ko arufitemo inyungu ngo kuko umutungo wagurishijwe mu cyamunara ari uwe yatije Vintages Wines and Liquors Ltd, asaba ko iteshwa agaciro ashingiye ku kuba imihango ijyanye no kwishyura ingwate y'ipiganwa, kwishyura uberewemo umwenda no gusubiza nyir'umutungo watanzweho ingwate amafaranga yasagutse muri cyamunara, byarakozwe mu buryo bunyuranyije n'amategeko.

[17] Abaregwa mu bujurire bose bavuga ko Nzamukosha Sylvie nta nyungu afite mu rubanza kandi ko impamvu ashingiraho ikirego cye asaba ko cyamunara iteshwa agaciro ari ibirego bishya bidashobora gutangwa bwa mbere ku rwego rw'ubujurire, bagasaba ko ikirego cye kitakirwa. Abahagarariye Club House la Palisse Ltd bakongeraho ko no kuba izo mpamvu ashingiraho ikirego cye zitarabanje gushyikirizwa Umwanditsi Mukuru muri RDB mbere yo kuziregera mu Rukiko ari indi mpamvu ituma ikirego cye kitagomba kwakirwa kuri uru rwego.

[18] Iburanisha mu ruhame ryabaye ku wa 13/05/2024 Vintages Wines and Liquors Ltd ihagarariwe na Me Micomyiza Liliane na Me Rugwizangonga Marcellin, ari nabo bahagarariye Nzamukosha Sylvie, uwashinzwe kugurisha ingwate Me Karasira Colette Ratifa, ahagarariwe na Me Murekatete Henriette, Club House la Palisse Ltd ihagarariwe na Me Sebukonoke Innocent na Me Kayitare Jean Pierre, Equity Bank Rwanda Plc ihagarariwe na Me Muhiganwa Damas, Umwanditsi Mukuru muri RDB atitabye ariko yaramenyeshejwe umunsi w'iburanisha mu buryo bukurikije amategeko, iburanisha rirapfundikirwa isomwa ryarwo rishyirwa ku wa 29/05/2024; mu gihe Urukiko rwasuzumaga urubanza mu mwiherero rusanga mbere yo gufata icyemezo cya burundu ari ngombwa gupfundura iburanisha kugira ngo ababuranyi bagire ibisobanuro batanga ku nyandiko zashyizwe muri dosiye nyuma y'uko iburanisha ripfundikiwe, rutegeka ko iburanisha ry'uru rubanza rizapfundurwa kuwa 10/06/2024; kuri uwo munsi ababuranyi bitaba Urukiko

bahagararaiwe mu buryo bumwe n’ubwavuzwe haruguru, uretse Equity Bank Rwanda Plc yari ihagagariwe na Me Murindabigwi Mariam naho Club House la Palisse Ltd ihagarariwe na Me Sebukonoke Innocent gusa.

[19] Hashingiwe ku mpaka zagaragajwe haruguru, Urukiko rugomba gusuzuma ibibazo bikurikira bigize urubanza:

-Kumenya niba Nzamukosha Sylvie nta nyungu afite yo gutanga ikirego gisaba kugobokamo ku bushake muri uru rubanza;

-Kumenya niba impamvu Nzamukosha Sylvie ashingiraho asaba ko cyamunara iteshwa agaciro ari ibirego bishya bidashobora gutangwa bwa mbere ku rwego rw’ubujurire;

-Kumenya niba izo mpamvu zifite ishingiro, mu gihe zaba zakiriwe;

-Kumenya niba Urukiko Rukuru rw’Ubucuruzi rwarakoze ikosa ryo kwemeza ko cyamunara igumaho, rwirengagije ko icyemezo ku kirego gisaba gushyirwa mu izahura cyafashwe igihe cy’amezo 6 giteganyijwe mu ngingo ya 12, igika cya 5, y’Itegeko N° 075/2021 ryo ku wa 06/12/2021 ryerekeye igihombo kitarashira;

-Kumenya niba amafaranga y‘’ikurikiranarubanza n’ay’igihembo cya Avoka asabwa muri uru rubanza afite ishingiro.

II. ISESENGURA RY’IBIBAZO BIGIZE URUBANZA

1.Kumemya niba Nzamukosha Sylvie nta nyungu afite yo gutanga ikirego gisaba kugobokamo ku bushake muri uru rubanza

[20] Muri rusange, abahagarariye abaregwa bose bavuga Nzamukosha Sylvie nta nyungu afite yo gutanga ikirego gisaba kugoboka ku bushake muri uru rubanza, bagasaba ko kitakirwa. Uhagarariye Me Karasira Ratifa Colette asobanura ko Nzamukosha Sylvie nta nyungu itaziguye afite muri uru rubanza kuko ubwo yatizaga Vintages Wines and Liquors Ltd umutungo we ngo iwutangeho ingwate yari yemeye ingaruka zabyo zose, akaba kandi atabasha kugaragaza aho we ubwe atandukaniye na Vintages Wines and Liquors Ltd; uhagarariye Equity Bank Rwanda Plc nawe asobanura ko Nzamukosha Sylvie yiyambuye inyungu itaziguye igihe yatizaga Vintages Wines and Liquors Ltd ingwate; naho abahagarariye Club House la Palisse Ltd bakavuga Nzamukosha Sylvie yamenye ko umutungo we ugiye kugurishwa mu cyamunara, akaba rero yagombaga kuyitambamira cyangwa gusaba ko ivaho mu buryo bukurikije amategeko.

[21] Abahagarariye Nzamukosha Sylvie bavuga ko afite inyungu yemewe n’amategeko, itaziguye kandi ye bwite, yo kugoboka ku bushake muri uru rubanza, kuko rukomoka ku kirego cyatanzwe na Vintages Wines and Liquors Ltd isaba gutesha agaciro cyamunara yakozwe hagurishwa umutungo we bwite yayitije ikawutangaho ingwate muri Equity Bank Rwanda Plc, bityo ikirego cye kikaba kigomba kwakirwa hashingiwe ku ngingo ya 114, igika cya kabiri, y’Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi.

UKO URUKIKO RUBIBONA

[22] Ingingo ya 114 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 ibijyanye no kugoboka ku bushake, igira iti: „Ushaka kuburana mu rubanza ataregeye cyangwa atarezwemo abikora mu buryo bwo kuregera inkiko kandi agatanga ingwate y’amagarama. Kugira ngo ikirego cye cyakirwe, ugoboka ku bushake agomba kugaragaza inyungu yemewe n’amategeko, itaziguye kandi ye bwite.“

[23] Ibijyanye n’inyungu urega agomba kuba afite mu rubanza byasobanuwe n’Urukiko rw’Ikirenga mu rubanza RC 0002/16/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 27/01/2017, aho mu gika cya 19 cyarwo, Urukiko rushingiye ku nyandiko z’abahanga mu mategeko, rwasobanuye ko inyungu urega agomba kuba afite kugira ngo ikirego cye cyakirwe, ari itaziguye (*direct*) kandi bwite (*personnel*), ku buryo rero urega abyemererwa gusa, ari uko inyungu zibangamiwe ari ize bwite, kandi n’icyemezo cyazafatwa n’Urukiko ari we ubwe cyagirira akamaro.

[24] Ku birebana n’uru rubanza, dosiye yarwo igaragaza ko rukomoka ku kirego cyatanzwe na Vintages Wines and Liquors Ltd isaba gutesha agaciro cyamunara yakozwe kuwa 15/06/2023 ku mutungo wa Nzamukosha Sylvie ubaruye kuri UPI 1/02/13/02/635, uherereye mu kibanza kiri mu Mudugudu wa Kigabiro II, Akagari ka Nyarutarama, Umurenge wa Remera, Akarere ka Gasabo, Umujyi wa Kigali, watanzweho ingwate na Vintages Wines and Liquors Ltd

[25] Kuba kandi uwo mutungo wari uwa Nzamukosha Sylvie mbere y’uko cyamunara ikorwa bishimangirwa n’Amasezerano y’Ubukode burambye ari muri dosiye, agaragaza ko wari umwanditseho, kandi ko ubukode bwawo burambye bwari bwaratangiye ku wa 30/03/2017 bukaba bwaragombaga kurangira ku wa 05/04/2037; no kuba uwo mutungo yarawutije Vintages Wines and Liquors Ltd kugira ngo iwutangeho ingwate hishingirwa inguzanyo iyo sosiyete y’ubucuruzi yahawe na Equity Bank Rwanda Plc bishimangirwa n’amasezerano y’inguzanyo yakozwe hagati y’impande zombi, muri ayo masezerano hakaba nta havugwa ko Nzamukosha Sylvie nta burenganzira agifite kuri uwo mutungo, hakaba nta n’ikindi Urukiko rwagaragarijwe cyerekana ko yiyambuye ubureganzira kuri uwo mutungo.

[26] Urukiko rurasanga abaregwa kuri uru rwego rw’ubujurire nta kimenyetso batanze kivuguruza ibimaze kugaragazwa haruguru, bityo ibyo bavuga ko Nzamukosha Sylvie yiyambuye inyungu itaziguye kuri uwo mutungo ubwo yawutizaga Vintages Wines and Liquors Ltd bikaba nta shingiro bifite kuko ntacyo bagaragaza babishingiraho.

[27] Urukiko rurasanga kandi mu rwego rw’amategeko Nzamukosha Sylvie (*personne physique*) na Vintages Wines and Liquors Ltd (*personne morale*) ari abantu babiri batandukanye, bityo hashingiwe ku bisobanuro byatanzwe mu bika bibanziriza iki, akaba afite inyungu bwite kandi itaziguye yo kugoboka ku bushake muri uru rubanza rwerekeye cyamunara y’umutungo we yatije Vintages Wines and Liquors Ltd kuko byumvikana ko hari inyungu ze bwite zibangamiwe, kandi akaba atarabaye umuburanyi muri uru rubanza ku rwego rwa mbere no ku rwego rw‘ubujurire. Hashingiwe kuri ibyo bisobanuro byose, ibyo abaregwa bavuga ko adafite inyungu yo kugoboka ku bushake muri uru rubanza bikaba nta shingiro bifite.

2.Ku bijyanye no kumenya niba impamvu Nzamukosha Sylvie ashingiraho asaba ko cyamunara iteshwa agaciro ari ibirego bishya bidashobora gutangwa bwa mbere ku rwego rw’ubujurire

[28] Abahagarariye abaregwa bahuriza ku gusaba ko impamvu Nzamukosha Sylvie ashingiraho asaba gutesha agaciro cyamunara zitakirwa ngo zisuzumwe kuko ari impamvu nshya zitanzwe bwa mbere ku rwego rw'ubujurire bwa kabiri. Basobanura ko ku rwego rwa mbere Urukiko rw'Ubucuruzi rwemeje ko cyamunara iteshwa agaciro rushingiye gusa ku mpamvu imwe y'uko yakozwe hirengagijwe ko hari urubanza Vintages Wines and Liquors Ltd yarezemo isaba gushyirwa mu izahura rwari rutaracibwa, iyo mpamvu iba ari nayo yonyine ijuririrwa inasuzumwa mu Rukiko Rukuru rw'Ubucuruzi, rwemeza ko cyamunara itagombaga guteshwa agaciro, Vintages Wines and Liquors Ltd ijuririra uru Rukiko nanone kuri iyo mpamvu yonyine; ko rero impamvu Nzamukosha Sylvie ashingiraho ikirego cye kuri uru rwego zitaburanyweho haba ku rwego rwa mbere haba no ku rwego rw'ubujurire, zikaba kandi nta nenge zigaragaza yakozwe mu rubanza rujuririrwa asaba ko ikosorwa, bityo izo mpamvu zikaba zidakwiye kwakirwa ngo zisuzumwe kuko ari ibirego bishya, hashingiwe ku ngingo ya 154 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ibirego bishya bibujijwe ku rwego rw'ubujurire, n'ingingo ya 155 nayo y'iryo tegeko iteganya ko urukiko rwajuririwe ruburanisha mu mbibi z'icyajuririwe.

[29] Abahagarariye Club House la Palisse Ltd banongeraho ko izo mpamvu zitabanje gushyikirizwa Umwanditsi Mukuru muri RDB ngo azifateho icyemezo mbere y'uko zigezwa ku Rukiko, hashingiwe ku biteganywa mu ngingo ya 260, igika cya 6, y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi n'iz'ubutegetsi.

[30] Abahagarariye Nzamukosha Sylvie bavuga ko imiburanire y'abaregwa nta shingiro ifite kuko itegeko ryemera kugoboka mu rubanza aho rwaba rugeze hose, kandi ibisobanuro ku kirego cye akaba abitanga mu mujyo umwe n'uw'ikirego cy'iremezo cya Vintages Wines and Liquors Ltd gisaba gutesha agaciro cyamunara, bityo ibyo asaba bikaba bidakwiriye kwitwa ibirego bishya. Bavuga kandi ko n'ibimenyetso ashingiraho byabonetse nyuma y'uko atanze ikirego kandi bikaba bidahindura ikirego cy'iremezo ahubwo bicyuzuza cyangwa bigishimangira, ko rero nabyo bitakwitwa ibirego bishya kuko nabyo icyo bigamije ari ugutesha agaciro cyamunara.

UKO URUKIKO RUBIBONA

[31] Ingingo ya 154, igika cya mbere, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, igira iti: "Mu 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"; naho ingingo ya 156 nayo y'iryo tegeko igateganya ko Urukiko rw'ubujurire ruburanisha gusa mu mbibi z'icyajuririwe.

[32] Ku birebana n'uru urubanza, dosiye yarwo igaragaza ko mu Rukiko rw'Ubucuruzi Vintages Wines and Liquors Ltd yatanze ikirego isaba gutesha agaciro cyamunara ishingiye ku mpamvu zikurikira: *kuba yarakozwe hirengagijwe ko hari urubanza rushingiye ku kirego gisaba gushyirwa mu izahura ry'ubucuruzi rwari rutaracibwa ngo rube itegeko; kuba yarakozwe mu buryo bunyuranyije n'agenga ifatira, ishinganisha n'itangazwa ryayo no kuba ingwate yaragurishijwe ku gaciro katari akayo*; mu guca urubanza Urukiko rw'Ubucuruzi rwemeza ko cyamunara iteshejwe agaciro ku mpamvu ya mbere (y'uko yakozwe hirengagijwe ko hari urubanza rushingiye ku kirego gisaba gushyirwa mu izahura ry'ubucuruzi rwari rutaracibwa ngo rube itegeko) naho izindi mpamvu ruvuga ko nta shingiro zifite; Vintages Wines and Liquors Ltd

yemeye imikirize y'urubanza ntiyajurira, ahubwo hajurira abaregwaga kuri iyo mpamvu yonyine, iba ari nayo ijuririrwa na Vintages Wines and Liquors Ltd muri uru Rukiko, bivuze ko icyo ari cyo kibazo gisigaye hagati y'ababuranyi (Vintages Wines and Liquors Ltd n'abo yareze) kuri uru rwego rw'ubujurire. Nzamukosha Sylvie we yagobotse mu rubanza kuri uru rwego asaba ko cyamunara iteshwa agaciro ashingiye ku mpamvu zikurikira: *kuba imihango ijyanye no kwishyura ingwate y'ipiganwa, kwishyura amafaranga ya cyamunara no gusubiza nyir'umutungo watanzweho ingwate ayasagutse byarakozwe mu buryo bunyuranyije n'amategeko*.

[33] Urukiko rurasanga impamvu Nzamukosha Sylvie ashingiraho ikirego cye ari impamvu nshya zidafite aho zihuriye n'izo Vintages Wines and Liquors Ltd yashingiyeho itanga ikirego ku rwego rwa mbere, (n'ubwo bombi basaba gutesha agaciro cyamunara); zikaba kandi zinatandukanye n'impamvu yaburanyweho mu Rukiko Rukuru rw'Ubucuruzi inajuririrwa na Vintages Wines and Liquors Ltd muri uru Rukiko; bityo ibyo Nzamukosha Sylvie avuga ko ikirego cye cyuzuza kandi kigashimangira icya Vintages Wines and Liquors Ltd bikaba nta shingiro bifite; uru rukiko rukaba ntaho rwahera ruzisuzuma kuko byaba binyuranyije n'ibiteganywa mu ngingo ya 154 n'iya 156 zavuzwe haruguru ziteganya ko ku rwego rw'ubujurire hatemerwa ibirego bishya kandi ko urubanza ruburanishwa mu mbibi z'icyajuririwe.

[34] Urukiko rushingiye ku bimaze gusobanurwa haruguru rurasanga atari ngombwa gusuzuma ibijyanye no kuba impamvu Nzamukosha Sylvie ashingiraho ikirego cye atarabanje kuzishyikiriza Umwanditsi Mukuru muri RDB, kimwe n'ibijyanye n'ishingiro ryazo, mu gihe rwasanze ari ibirego bishya bitemewe ku rwego rw'ubujurire.

- **Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwarakoze ikosa ryo kwemeza ko cyamunara y'ingwate yatanzwe na Vintages Wines and Liquors Ltd igumaho, rwirengagije ko icyemezo ku kirego cyayo gisaba gutangiza gahunda y'izahura cyafashwe igihe cy'amezi 6 giteganywa n'itegeko kitarashira**

[35] Abahagarariye Vintages Wines and Liquors Ltd bavuga ko ingingo ya 12, igika cya 5, y'Itegeko N° 075/2021 ryo ku wa 06/12/2021 ryerekeye igihombo iteganya ko iyo igihe cy'amezi atandatu kirangiye urukiko rwaramaze gufata icyemezo ku kirego cy'ubereyemo abandi umwenda gisaba gutangiza gahunda y'izahura, bituma uberewemo umwenda ahita atakaza uburenganzira bwo gusaba icyemezo cyo kugurisha ingwate yahawe, kandi ko ibi ari nako Urukiko rw'Ubucuruzi rwabibonye mu rubanza RCOM 01117/2023/TC kuko rwemeje ko cyamunara y'ingwate yatazwe na Vintages Wines and Liquors Ltd iteshwa agaciro rushingiye ku mpamvu y'uko ikirego yatanze isaba gushyirwa mu izahura cyafashweho icyemezo n'Urukiko igihe cy'amezi atadantu giteganywa n'ingingo ya 12 yavuzwe haruguru kitarashira; nyamara mu rubanza rwajuririwe Urukiko Rukuru rw'Ubucuruzi rukaba rwaremeje ko cyamunara igumaho rudasuzumye ibiteganyijwe muri iyo ngigo ya 12 yavuzwe haruguru ngo rugaragaze niba ibyemejwe n'Urukiko rw'Ubucuruzi nta shingiro bifite kandi aricyo kibazo cyagombaga gusuzumwa.

[36] Bakomeza basobanura ko ahubwo Urukiko Rukuru rw'Ubucuruzi rwasuzumye ibitararegewe bitanagiweho impaka n'ababuranyi mu rubanza, bijyanye n'ikirego gisaba gushyirwa mu izahura, no mu gika cya 40 cy'urubanza rwajuririwe rutanga umurongo uhabanye n'ibiteganyijwe mu ngingo ya 12 yavuzwe haruguru, aho rwavuze ko izahura ridatangizwa n'ikirego cyatanzwe mu Rukiko, ko ahubwo ritangizwa n'umucamanza yemeza ko hari gahunda ifatika ishobora gutuma ibintu bisubira mu buryo.

[37] Abahagarariye Vintages Wines and Liquors Ltd bashingira kuri ibyo bisobanuro bagasaba uru Rukiko gukosora ibyo bavuga ko ari amakosa yakozwe n'Urukiko Rukuru rw'Ubucuruzi, rugasesengura ibiteganywa n'ingingo ya 12, yavuzwe haruguru kandi rukavanaho icyemezo cyafashwe cy'uko cyamunara igumana agaciro.

[38] Abahagarariye abaregwa bose bahuriza ku kuvuga ko ubujurire bwa Vintages Wines and Liquors Ltd nta shingiro bufite kuko Urukiko Rukuru w'Ubucuruzi rwasuzumye ibiteganyijwe mu ngingo ya 12 yavuzwe haruguru, kandi hashingiwe ku byo rwasobanuye mu rubanza rwajuririwe rukaba nta kosa rwakoze mu kwemeza ko cyamunara igomba kugumaho; ko ahubwo Vintages Wines and Liquors Ltd ariyo isobanura iyo ngingo uko itari, yirengagije ko iyo igihe cy'amezi 6 kiyivugwamo gishize nta rukiko rwemeje ko hari gahunda ifatika yatuma hatangizwa izahura, biha uwari uberewemo umwenda uburenganzira bwo kwishyurwa; ko rero nta mpamvu n'imwe yari gutuma cyamunara iteshwa agaciro; abahagarariye Equity Bank Rwanda Plc na Club House la Palisse Ltd bongeraho ko kuba cyamunara itaragombaga guteshwa agaciro bishimangirwa no kuba ubu Urukiko Rukuru rw'Ubucuruzi narwo rwaramaze gufata icyemezo cyo kutakira ikirego cya Vintages Wines and Liquors Ltd gisaba kwemeza ko hatangizwa gahunda y'izahura.

[39] Abaregwa bose basaba uru Rukiko kwemeza ko imikirize y'urubanza rwajuririwe igumaho; uhagarariye Club House la Palisse Ltd we yongeraho ko mu gihe urukiko rwabibona ukundi, Equity Bank Rwanda Plc yayisubiza amafaranga yishyuye muri cyamunara hiyongereyeho inyungu zayo zibariwe kuri 18%.

UKO URUKIKO RUBIBONA

[40] Impaka hagati y'ababuranyi kuri iyi ngingo zigaragaza ko ipfundo ry'ikibazo rishingiye ku kumenya niba icyemezo cyo gutesha agaciro cyamunara y'umutungo Equity Bank Rwanda Plc yahaweho ingwate cyaragombaga kugumaho hashingiwe ku mpamvu y'uko yakozwe mu gihe ikurikirana ry'imyenda Vintages Wines and Liquors Ltd ibereyemo abandi, harimo na Equity Bank Rwanda Plc, ryari ryarasubitswe kuko ikirego Vintages Wines and Liquors Ltd yatanze isaba gutangiza gahunda y'izahura cyafashweho icyemezo n'Urukiko igihe cy'amezi 6 giteganywa mu ngingo ya 12, igika cya 5, y'Itegeko N° 075/2021 ryo ku wa 06/12/2021 ryerekeye igihombo kitarashira.

[41] Ingingo ya 12 y'Itegeko N° 075/2021 ryo ku wa 06/12/2021 ryerekeye igihombo, iteganya ibijyanye n'isubika ryo gukurikirana umwenda ufite ingwate, igira iti:

> -"Uburenganzira bw'ababerewemo imyenda bishingiwe kimwe n'abafite uburenganzira bw'ifatira ntibusubikwa n'itangiza ry'urubanza rw'ikurikirana n'irangiza ry'imanza ziturutse ku gihombo.
>
> -Ariko iyo urimo umwenda agaragaje ko afite ubushake bwo gutanga gahunda y'izahura hamwe n'ikirego cye, imyenda yose harimo n'imyenda ifite ingwate hamwe n'uburenganzira bw'ifatira birasubikwa uhereye ku munsi w'ubusabe.
>
> -Urimo umwenda agomba gutanga gahunda y'izahura mu rukiko mu gihe kitarenze amezi atatu (3) uhereye ku itariki yo gutangiza urubanza.

-Igihe cy’isubika gitangwa ntigishobora kurenza amezi atandatu (6) harimo n’amezi atatu (3) yo gutanga gahunda y’izahura.

-Iyo igihe kivugwa mu gika cya 4 cy’iyi ngingo kirangiye urukiko rutarafata icyemezo ku busabe, uberewemo umwenda wishingiwe ahita agira uburenganzira ku ngwate hakurikijwe amategeko abigenga.

-Uberewemo umwenda ashobora gusaba ko yakurirwaho isubikwa mu gihe agaragaje impamvu yumvikana.”

Urukiko rurasanga isesengura ry’iyi ngingo ryumvikanisha iby’ingenzi bikurikira ku birebana n’isubika ryo gukurikirana umwenda ufite ingwate:

-Kuba ihame ari uko iyo ubereyemo abandi imyenda atanze ikirego gitangiza urubanza rw’ikurikirana n’irangiza ry’imanza ziturutse ku gihombo, bidasubika uburenganzira bw’ababerewemo imyenda bishingiwe kimwe n’abafite uburenganzira bw’ifatira;

-Kuba habaho irengayobora (*exception*) iyo urimo umwenda agaragaje ko afite ubushake bwo gutanga gahunda y’izahura ry’ubucuruzi bwe hamwe n'ikirego cyavuzwe haruguru, uburenganzira bw’ababerewemo imyenda bwavuzwe haruguru bugasubikwa;

-Kuba, ku ruhande rumwe iryo subika riba rigamije guha urimo umwenda amahirwe yo gutegereza icyemezo cy’urukiko ku busabe bwe kugira ngo rusuzume niba gahunda yo kuzahura ubucuruzi bwe ishoboka ku buryo yakomeza kwishyura imyenda ye bitabaye ngombwa ko ingwate yatanze zigurishwa;

-Kuba, no ku rundi ruhande, iyi ngingo idateganya ko uburenganzira bw’uberewemo umwenda wishingiwe busubikwa kugeza igihe urubanza ruzacibwa ku rwego rwa nyuma hagafatwa icyemezo ndakuka ku kirego cyavuzwe haruguru; ko ahubwo iteganya igihe cy‘amezi atandatu isubika ridashobora kurenza, icyo gihe cyarenga nta cyemezo kirafatwa n’Urukiko ku busabe bwe, uberewemo umwenda wishingiwe ntakomeze gutegereza, ahubwo agahita asubirana ubureganzira bwe bwo kwegukana ingwate;

-Hagendewe ku kuba isubika ry‘uburenganzira bwo gukurikirana umwenda wishingiwe riba ryakozwe mu buryo bw’irengayobora ku mpamvu y’uko urimo umwenda yagaragaje ko afite ubushake bwo kuzahura ubucuruzi bwe ku buryo iryo zahura rishobotse yakwishyura imyenda ye bitabaye ngombwa ko ingwate yatanze zigurishwa, byumvikanisha ko mu guteganya ko iyo hashize amezi atandatu urukiko rutarafata icyemezo uberewemo umwenda ahita asubirana uburenganzira bwo kwegukana ingwate, icyo Umushingamategeko yari agamije ari uko isubika ry‘uburenganzira bw’uberewemo umwenda wishingiwe rigira igihe rirangirira, ntategereze igihe kirekire hashingiwe gusa ku kirego cyatanzwe n’urimo umwenda, nta cyemezo cy’urukiko ku bijyanye no gutangiza izahura; mu yandi magambo, ni ukugira ngo igihe cy’amezi atandatu nikirenga urukiko rutaremeza gutangiza izahura ry’ubucuruzi, uberewemo umwenda wishingiwe azahite asubirana uburenganzira bwe bwo kwegukana ingwate.

-Ibivuzwe haruguru byumvikanisha ko uburenganzira bwo gukurikirana umwenda wishingiwe bukomeza gusubikwa iyo mu gihe kitarenze amezi atandatu abarwa guhera urimo umwenda atanze ikirego, urukiko rwemeje gutangiza izahura ry’ubucuruzi; naho iyo rutemeje gutangiza izahura fashe icyemezo ko iyo gutangiza izahura bitemejwe, impamvu y’isubika ry’ubwo burenganzira iba itakiriho, bigatuma uberewemo umwenda ufite ingwate asubirana uburenganzira bwo kuyegukana hakurikijwe amategeko abigenga.

[42] Ku birebana n'uru rubanza, Urukiko Rukuru rw'Ubucuruzi rwatesheje agaciro urubanza RCOM 01117/2023/TC rwaciwe n'Urukiko rw'Ubucuruzi, rwemeza ko cyamunara yakozwe kuwa 15/06/2023 hagurishwa umutungo wa Nzamukosha Sylvie watanzweho ingwate na Vintages Wines and Liquors Ltd igumanye agaciro, rushingiye ku mpamvu zikurikira:

-Kuba umutungo wagurishijwe muri cyamunara utari uwa Vintages Wines and Liquors Ltd ahubwo ari uwo yatijwe na Nzamukosha Sylvie, ukaba kandi utari mu mitungo iyi sosiyete yagaragaje ko izayifasha muri iyo gahunda y'izahura, kuko usaba gutangiza izahura ry'ubucuruzi aba agamije ko imitungo ye yazamufasha mu kwishyura imyenda yatumye ajya mu gihombo; ko rero ibi bivuguruza ibiteganywa n'ingingo ya 12 y'Itegeko N° 075/2021 ryo kuwa 06/12/2021 ryerekeye igihombo, kuko umwenda wakabaye usubikwa mu gihe umutungo watanzweho ingwate ugaragara mu mitungo izafasha mu izahura kandi ukaba ari uw'uwasabye izahura cyangwa se agaragaza ko nyirawo yawumuhaye byemewe n'amategeko ngo uzifashishwe muri iyo gahunda y'izahura;

-Kuba, n'iyo uwo mutungo wari kuba uri mu mitungo Vintages Wines and Liquors Ltd yatanze kugira ngo izayifashe muri gahunda y'izahura ry'ubucuruzi bwayo, ntacyo byari kuyimarira kuko izahura ridatangizwa n'uko hatanzwe ikirego mu rukiko, ahubwo ritangizwa n'icyemezo cy'Umucamanza cy'uko hari gahunda ifatika ishobora gutuma ibintu bisubira mu buryo; bityo gutanga ikirego cy'izahura bikaba bitatuma cyamunara yabaye iteshwa agaciro.

[43] Ubujurire bwa Vintages Wines and Liquors Ltd bugamije kugaragaza ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibiteganywa n'ingingo ya 12 yavuzwe haruguru, ko iyo igihe cy'amezi atandatu kirangiye urukiko rwarafashe icyemezo ku kirego gisaba gutangiza izahura bituma uberewemo umwenda ahita atakaza uburenganzira bwo gusaba icyemezo cyo kugurisha ingwate agategereza ko urubanza ku kirego gisaba gutangiza izahura rurangira, ko kandi ari nako Urukiko rw'Ubucuruzi rwabibonye, ahubwo rushingira icyemezo cyarwo ku bitararegewe bitanaburanyweho.

[44] Urukiko rurasanga hashingiwe ku biteganywa mu ngingo ya 12 yavuzwe haruguru, uburenganzira bw'uberewemo umwenda ufite ingwate busubikwa iyo urimo umwenda agaragaje ko afite ubushake bwo gutanga gahunda y'izahura ry'ubucuruzi bwe hamwe n'ikirego cye gitangiza urubanza rw'ikurikirana n'irangiza ry'imanza ziturutse ku gihombo, iyo ngingo ikaba idatandukanya umwenda ufite ingwate igizwe n'umutungo bwite w'urimo umwenda n'ingwate igizwe n'umutungo utari uwe (nk'ingwate yaba yaratijwe), ikaba itanateganya ko kugira ngo umwenda ufite ingwate usubikwe iyo ngwate igomba kuba ari umutungo bwite w'urimo umwenda kandi ikaba iri mu mitungo izamufasha muri gahunda y'izahura ry'ubucuruzi bwe; bityo impamvu y'uko ingwate yagurishijwe muri cyamunara itari umutungo wa Vintages Wines and Liquors Ltd ntibe no mu mitungo yagaragaje ko izayifasha muri gahunda y'izahura ry'ubucuruzi bwayo ikaba itaragombaga gushingirwaho n'Urukiko Rukuru rw'Ubucuruzi rwemeza ko umwenda wa Equity Bank Rwanda Plc utasubitswe, ikaba nta shingiro ifite kuko idahuye n'ibiteganywa mu ngingo ya 12 yavuzwe haruguru.

[45] Urukiko rurasanga kandi iyo mpamvu kimwe n'iy'uko izahura ridatangizwa n'uko hatanzwe ikirego mu rukiko ahubwo ritangizwa n'icyemezo cy'Umucamanza cy'uko hari gahunda ifatika ishobora gutuma ibintu bisubira mu buryo, zisa n'izinjira mu ishingiro ry'ikirego gitangiza gahunda y'izahura, hashingiwe ku bisobanuro byose byatanzwe haruguru zikaba zitaragombaga

gushingirwaho n'Urukiko Rukuru rw'Ubucuruzi rwemeza ko cyamunara yakozwe hagurishwa ingwate Equity Bank Rwanda Plc yahawe na Vintages Wines and Liquors Ltd igumana agaciro.

[46] Urukiko rurasanga ariko n'ubwo impamvu zavuzwe haruguru zitagombaga gushingirwaho hemezwa ko cyamunara igumanye agaciro hashingiwe ku mpamvu zasobanuwe, kuri uru rwego hagomba gusuzumwa niba impamvu Vintages Wines and Liquors Ltd ishingiraho ubujurire bwayo ivuga ko hagomba kugumaho icyemezo cyafashwe n'Urukiko rw'Ubucuruzi cy'uko cyamunara iteshwa agaciro, zifite ishingiro.

[47] Nk'uko byavuzwe haruguru, mu bujurire bwa Vintages Wines and Liquors Ltd ivuga ko ingingo ya 12 y'Itegeko N° 075/2021 ryo kuwa 06/12/2021 ryerekeye igihombo iteganya ko iyo igihe cy'amezi atandatu kirangiye urukiko rwarafashe icyemezo ku kirego gisaba gutangiza izahura bituma uberewemo umwenda ahita atakaza uburenganzira bwo gusaba icyemezo cyo kugurisha ingwate, agategereza ko urubanza ku kirego gisaba gutangiza izahura rurangira; igasaba uru Rukiko kubishingiraho rukemeza ko cyamunara yaregewe muri uru rubanza iteshwa agaciro kuko yakozwe nyamara ikirego cya Vintages Wines and Liquors Ltd gisaba gutangiza izahura cyari cyarafashweho icyemezo n'Urukiko rw'Ubucuruzi amezi atandatu atarashira.

- Uru Rukiko rushingiye ku byasobanuwe haruguru mu gika cya 43 cy'uru rubanza ku bijyanye n'icyo ingingo ya 12 yavuzwe haruguru yumvikanisha, rurasanga ibyo abahagarariye Vintages Wines and Liquors Ltd bavuga nta shingiro bifite, kuko nk'uko byasobanuwe haruguru, uburenganzira bwo gukurikirana umwenda wishingiwe bukomeza gusubikwa iyo mu gihe kitarenze amezi atandatu abarwa guhera urimo umwenda atanze ikirego, urukiko rwemeje gutangiza izahura ry'ubucuruzi; naho iyo rutemeje gutangiza izahura, impamvu y'isubika ry'ubwo burenganzira iba itakiriho, bigatuma uberewemo umwenda ufite ingwate asubirana uburenganzira bwo kuyegukana hakurikijwe amategeko abigenga.

[48] Urukiko rurasanga ku bireba ikirego Vintages Wines and Liquors Ltd yari yatanze isaba gushyirwa mu izahura, nta cyemezo cyo gutangiza izahura ry'ubucuruzi cyafashwe n'Urukiko rw'Ubucuruzi kuko icyo rwemeje mu rubanza RCOM 00438/2022/TC rwaciwe kuwa 02/09/2022 (ari nacyo abahagarariye bavuga ko cyagombaga gutuma Equity Bank Rwanda Plc itakaza amahirwe yo kwegukana ingwate yayo) ari uko ikirego cyayo kitakiriwe kuko itatanze ibisabwa by'ibanze nk'uko biteganywa n'itegeko; iki cyemezo kikaba cyaranashimangiwe ku rwego rw'ubujurire n'Urukiko Rukuru rw'Ubucuruzi mu rubanza RCOMA 00617/2022/HC rwaciwe ku wa 19/01/2024; uru rukiko rukaba rusanga hashingiwe ku byasobanuwe haruguru, nta makosa yakozwe mu kuba umutungo wavuzwe haruguru waragurishijwe mu cyamunara ku wa 15/06/2023 hagamijwe kwishyura Equity Bank Rwanda Plc yari yarawuhaweho ingwate kuko nta cyayibuzaga gusubirana uburenganzira bwo kuyegukana; bityo ubujurire bwa Vintages Wines and Liquors Ltd bukaba nta shingiro bufite.

- **Kumenya niba indishyi zisabwa muri uru rubanza zifite ishingiro**

[49] Uhagarariye Me Karasira Colette Ratifa asaba Urukiko kugenerwa 1.000.000Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego. Abahagarariye Club House la Palisse Ltd nabo basaba Urukiko gutegeka Vintages Wines and Liquors Ltd kuyishyura 1.000.000Frw y'igihembo cya Avoka na 500.000Frw yo gusiragizwa mu nkiko. Izi ndishyi ntacyo abahagarariye Vintages Wines and Liquors Ltd bazivuzeho.

[50] Abahagarariye Nzamukosha Slyvie nabo basaba urukiko gutegeka abaregwa bose gufatanya kumwishyura 20.000.000 Frw y'indishyi z'akababaro, gushorwa mu manza, ikurikirana rubanza n'igihembo cya Avoka.

UKO URUKIKO RUBIBONA

[51] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: "*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".*

[52] Urukiko rurasanga Vintages Wines and Liquors Ltd ari yo yajuriye biba ngombwa ko abaregwa mu bujurire bose bakurikirana urubanza banashaka abavoka bababuranira; nyamara nk'uko byasobanuwe haruguru ubujurire bwayo bukaba nta shingiro bufite, bityo hashingiwe ku ngingo ya 111 yibukijwe haruguru Vintages Wines and Liquors Ltd ikaba igomba kwishyura Club House la Palisse Ltd, Me Karasira Colette Ratifa na Equity Bank Rwanda Plc , 700.000Frw y'igihembo cya Avoka na 200.000Frw y'ikurikiranarubanza kuri buri wese, agenwe mu bushishozi bw'urukiko kuko ayo basaba ari menshi kandi nta bisobanuro bayatangiye. Naho indishyi zisabwa na Nzamukosha Sylvie akaba atazihabwa kuko ikirego cye kitakiriwe.

III. ICYEMEZO CY'URUKIKO

[53] **Rwemeje** ko ubujurire bwa Vintages Wines and Liquors Ltd Ltd nta shingiro bufite.

[54] **Rwemeje** ko ikirego cya Nzamukosha Sylvie gisaba kugoboka mu rubanza ku bushake kitakiriwe ngo gisuzumwe mu mizi.

[55] **Rwemeje** ko icyemezo cyafashwe mu rubanza RCOMA 00374/2023/HCC & CMB RCOMA 00376/2023/HCC cy'uko cyamunara yakozwe kuwa 15/06/2023 ku mutungo ufite UPI: 1/02/13/02/635 urimo inzu ya Nzamukosha Sylvie yatanzweho ingwate na Vintages Wines and Liquors Ltd igumanye agaciro, kidahindutse.

[56] **Rwemeje** ko Vintages Wines and Liquors Ltd igomba kwishyura Me Karasira Colette Ratifa, Equity Bank Rwanda Plc na Club House la Palisse Ltd, buri wese, amafaranga ibihumbi magana arindwi (700.000 frw) y'igihembo cya Avoka n'ibihumbi magana abiri (200.000 Frw) y'ikurikiranarubanza kuri uru rwego.

[57] **Rutegetse** ko cyamunara yakozwe kuwa 15/06/2023 ku mutungo ufite UPI: 1/02/13/02/635 urimo inzu ya Nzamukosha Sylvie yatanzweho ingwate na Vintages Wines and Liquors Ltd igumanye agaciro.

[58] **Rutegetse** Vintages Wines and Liquors Ltd kwishyura Me Karasira Colette Ratifa, Equity Bank Rwanda Plc na Club House la Palisse Ltd, buri wese, amafaranga miliyoni imwe n'ibihumbi magana abiri (1.200.000Frw) y'ikurikiranarubanza n'igihembo cya Avoka n'ibihumbi mirongo

ine (40.000Frw) y’amagarama yagenwe mu rubanza rwajuririwe, n’ibihumbi magana arindwi (700.000frw) y’igihembo cya Avoka n’ibihumbi magana abiri (200.000 Frw) y’ikurikiranarubanza agenwe kuri uru rwego.

[59] Ruvuze ko amagarama yatanzwe ahwanye n’ibyakozwe mu rubanza.