# KOMEZUSENGE v MUKABERA N’ABANDI

[Rwanda URUKIKO URUKIKO – RS/INJUST/RC 00010/2021/HC/MUS (Gatwaza P.J., Mukamuhire na Gasore J.) 19 Nzeli 2022]

*Itegeko ryerekeye imiburanishirize y’imanza mbonezamubano – Cyamunara – Cyamunara y’umutungo uri mungwate – Umutungo uri mu ngwate ya banki utezwa cyamunara aruko umwanditsi mukuru yabitangiye uburenganzira ariko iyo harangizwa urundi rubanza, uwahawe ingwate abyemeye ingwate ishobora gutezwa cyamunara.*

**Incamake y’ikibazo:** Urubanza rwatangiye Mukabera arega mu Rukiko rw’Ibanze rwa gakenke umuhesha w’Inkiko, Me Mukasa na Iragena baguze inzu, agobokesha Komezusenge asaba ko iyo cyamunara yaseswa kuko yakozwe ku mutungo utakiri uwa Iragena kuko bawuguze. avuga ko Iragena yagurishije Mukabera Madamu ubutaka bubaruye kuri UPI: 4/02/16/01/289, bumvikana ko azamuhinduriza icyangombwa cy'ubutaka ari uko Iragena arangije kwishyura ideni rya Banki kuko icyangombwa cy'ubwo butaka yagitanzeho ingwate muri Unguka Bank Plc.

Mukabera Madamu yandikiye umuhesha w' inkiko amusaba kudateza cyamunara ubwo butaka kuko butakiri umutungo wa Iragena, aho kumusubiza yihutiye kugurisha ubwo butaka bwe, akaba ariyo mpamvu yatanze ikirego asaba gutesha agaciro cyamunara. Me Mukasa na Komezusenge, bireguye bavuga ko iyo cyamunara ikomoka ku kirego cya Komezusenge yareze Iragena umwenda yaramufitiye mu Rukiko rw'Ibanze rwa Gakenke mu manza RC00172/2018/TB/GAK na RC 0167/2018/TB/GAK maze hafatwa icyemezo cy'ubwumvikane RC0003/2018/TB/GAK aho ababuranyi bombi bumvikanye ku mwenda maze Iragena yiyemerera kuwishyura bitarenze kuwa 30/11/2018. Icyo gihe cyararenze bituma icyo cyemezo kirangizwa ku gahato. Umuhesha w’Inkiko avuga ko ubutaka bufite UPI:4/02/16/01/289 bwari Ingwate ya Unguka Bank, mbere yo kubugurisha Me Mukasa yasabye Unguka Bank uburenganzira maze imusubiza mu imwemerera kugurisha ariko akaba ariyo ibanza kwishyurwa. Bakomeje bavuga ko Mukabera Madamu ntaho yahera asaba gutesha agaciro cyamunara kuko itakozwe ku butaka bwe, ko basanga ikirego cye kitaragombaga kwakirwa, kandi ko urukiko rubibonye ukundi, rwazemeza ko nta shingiro gifite.

Urukiko rw’ Ibanze rwa Gakenke mu rubanza RC00172/2018/TB/GAK na RC00167/2018/TB/GAK rwemeje ko iyo cyamunara ikuweho kubera ko umutungo wagurishijwe utari uwa Iragena ngo kuko yari yarawugurishije Mukabera Madamu.

Mukasa na komezusenge ntibishimiye imikirize y’urwo rubanza barujurira mu Rukiko Rwisumbuye rwa Musanze narwo rwemeza mu rubanza RCA00146/2020/TGI/MUS ko nta gihindutse ku rubanza rwajuririwe. Komezusenge yandikiye Perezida w’Urukiko Rukuru Urugereko rwa Musanze asaba ko urwo rubanza rwasubirwamo ku mpamvu z’akarengane nawe yandikira Perezida w’Urukiko rw’Ikirenga amusaba ko urwo rubanza rusubirwamo ku mpamvu z’akarengane nawe yemeza ko rusubirwamo n’Urukiko Rukuru urugereko rwa Musanze. Urukiko Rukuru mu rubanza RCA00146/2020/TGI/MUS rwemeje ko ikirego cyuko umuhesha w’inkiko nta bubasha bwo kugurisha umutungo uburanwa yarafite kuko wari uri mu bugwate kandi atubahirije imihango yateganyirijwe imitungo iri mu bugwate, nta shingiro gifite kuko yarangizaga urundi rubanza kandi yaciye kuri Unguka Bank kuko wari ingwate yawo; kandi ntiyishyurizaga Unguka, bityo yagombaga guteza cyamunara uwo mutungo ari uko Unguka Bank ibimwemereye. Rwemeje ko cyamunara igomba gusubirana agaciro kayo.

**Incamake y’icyemezo:** Umutungo uri mu ngwate ya banki utezwa cyamunara aruko umwanditsi mukuru yabitangiye uburenganzira. Icyakora iyo uteza ingwate abikoze hari undi mwenda yishyuza kandi yabiherewe uburenganzira na banki iberewemo umwenda, iyo cyamunara iba yakozwe mu buryo bwubahirije amategeko.

**Gusubirishamo urubanza ku mpamvu z’akarengane bifite ishingiro.**

**Amategeko yashingiweho:**
Itegeko Nº15/2004 ryo kuwa 12/06/2004 ry’ibimenyetso mu manza n’itangwa ryabyo, ingingo ya 4
Itegeko Nº22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo ya 111

**Nta manza zifashishijwe.**

## Urubanza.

## I. IMITERERE Y’URUBANZA

[1] Hagati ya Iragena Vénuste na Komezusenge Wellars habayeho urubanza RC00172/2018/TB/GAK na RC00167/2018/TB/GAK muri rwo hafatwamo Icyemezo cy’ubwumvikane Nº0003/2018/TB/GAK cyafashwe kuwa 28/11/2018. Icyo cyemezo kimaze gufatwa ntabwo Iragena Vénuste yubahirije ibigukubiyemo kuko yari-yategetswe mu ica ry’urubanza RCA00146/2021/TGI/MUS, Urupapuro rwa 2, kwishyura amafaranga 3.000.000Frw ariko ntayishyure mu gihe giteganywa n’amategeko. Byabaye ngombwa ko Komezusenge Wellars ashaka Umuhesha w’Inkiko w’Umwuga Me Mukasa Frodouald ngo amurangirize urubanza ku gahato, cyamunara ikorwa ku mutungo utimukanwa wa Iragena Vénuste ufite nimero UPI:4/02/16/01/289, umutungo ugizwe n’ubutaka buherereye mu Kagari ka buranga, Umurenge wa Nemba, Akarere ka Gakenke.

[2] Me Mukasa Frodouard Umuhesha w`Inkiko w`umwuga, mbere yo kugurisha ubwo butaka, yamenye ko ubutaka agiye kugurisha Iragena Vénuste yabutanzeho ingwate muri Unguka Bank. Abibonye atyo nibwo kuwa 07/01/2020 yandikiye Unguka Bank ayisaba ko yamwemerera akagurisha uwo mutungo maze akayishyura umwenda Iragena Vénuste asigayemo, asigaye akishyurwa Komezusenge Wellars; Unguka Bank nayo mu ibaruwa yayo nimero Ref:UB/HO/CD/20/2020 yo kuwa 14/10/2020 imwemerera kugurisha uwo mutungo. Iyo baruwa rero hamwe n’inyandikompesha nibyo Umuhesha w’Inkiko w’Umwuga yashingiyeho agurisha muri cyamunara ubutaka bwavuzwe haruguru.

[3] Ariko hagati aho, ni ngombwa kwibutsa ko umuhesha w’inkiko w’umwuga, yanze kumvira abantu batandukanye bamumenyeshaga ko baguze uwo mutungo ubwo wari ukiri mu bugwate bwa Unguka Bank, barimo na Mukabera Madamu Léoncie, ntiyabiha agaciro.

[4] Mukabera Madamu Léoncie, yareze mu Rukiko rw’Ibanze rwa Gakenke Me Mukasa Frodouard na Iragena Vénuste, agobokesha Komezusenge W. asaba ko iyo cyamunara yaseswa

kuko yakozwe ku mutungo utakiri uwa Iragena V. Yaregaga avuga ko kuwa 30/01/2018, Iragena Venuste yagurishije Mukabera Madamu Léoncie ubutaka bubaruye kuri UPI: 4/02/16/01/289 ku mafaranga miliyoni 12,000,000Frw, bumvikana ko azamuhinduriza icyangombwa cy'ubutaka ari uko Iragena Venuste arangije kwishyura ideni rya Banki kuko icyangombwa cy'ubwo butaka yagitanzeho ingwate muri Unguka Bank Plc. Tariki ya 28/01/2020, Mukabera-Madamu Léoncie yatunguwe no kubona itangazo rivuga-ko tariki ya 30/01/2020 Me Mukasa Froduald Umuhesha w'Inkiko w'Umwuga azateza muri cyamunara umutungo utimukanwa wa Iragena Venuste harimo n'ubutaka bubaruye kuri UPI:4/02/16/01/289 bwaguzwe na Mukabera Madamu Léoncie.

[5] Mukabera-Madamu Léoncie yandikiye umuhesha w' inkiko amusaba kudateza cyamunara ubwo butaka kuko butakiri umutungo wa Iragena Venuste, amusaba kumumenyesha icyemezo yafashe kuri iyo baruwa bitarenze kuwa 29/01/2020, ni ukuvuga mbere y'uko iyo cyamunara iba. Umuhesha w'inkiko ntiyasubije Mukabera Madamu Léoncie ahubwo yihutiye kugurisha ubwo butaka bwe, akaba ariyo mpamvu yatanze ikirego asaba gutesha agaciro cyamunara yabaye kuwa 30/01/2020 ashingiye ku ngingo ya 260 y’Itegeko Nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi.

[6] Me MUKASA Froduald we, kimwe na Komezusenge Wellars, bireguye bavuga ko KOMEZUSENGE Wellars yareze IRAGENA Vénuste umwenda w'amafaranga 3.000.000 Frw mu Rukiko rw'Ibanze rwa Gakenke mu manza RC00172/2018/TB/GAK na RC0167/2018/TB/GAK maze kuwa 28/11/2018 hafatwa icyemezo cy'ubwumvikane RC0003/2018/TB/GAK aho ababuranyi bombi bumvikanye ku mwenda maze IRAGENA Vénuste yiyemerera ko azishyura Komezusenge Wellars amafaranga 3.000.000Frw kuwa 30/11/2018. Icyo gihe cyararenze bituma icyo cyemezo kirangizwa ku gahato aho byageze kuri cyamunara yakozwe kuwa 30/01/2020 saa tanu z’amanywa hagurishwa umutungo wa Iragena Vénuste wanditswe kuri UPI:4/02/16/01/289 na UPI:4/02/16/01/586. Ubutaka UPI:4/02/16/01/289 bwari Ingwate ya Unguka Bank, mbere yo kubugurisha Me Mukasa Froduald yasabye Unguka Bank uburenganzira maze imusubiza mu ibaruwa Ref:UB/HO/CD/20/2020 yo kuwa 16/01/2020 bamwemerera kugurisha ariko akaba ariyo ibanza kwishyurwa.

[7] Bakomeje bavuga ko Mukabera Madamu Léoncie ntaho yahera asaba gutesha agaciro cyamunara yabaye kuwa 30/01/2020 ku butaka UPI:4/02/16/01/289 kuko itakozwe ku butaka bwe, ko basanga ikirego cye kitaragombaga kwakirwa, kandi ko urukiko rubibonye ukundi, rwazemeza ko nta shingiro gifite kuko umutungo wagurishijwe muri cyamunara atari uwe; ko kandi ko niyo bwe bwaba koko bwarabaye, rukemeza ko bwakozwe mu nzira zitemewe n`amategeko; babisabira indishyi zo gushorwa mu manza bitari ngombwa n’izo gukurikirana urubanza hamwe n’ibihembo bya ba Avoka.

[8] Urukiko rw’ ibanze rwa Gakenke rwemeje ko iyo cyamunara ikuweho kubera ko umutungo wagurishijwe utari uwa Iragena Vénuste-ngo kuko yari yarawugurishije Mukabera Madamu Léoncie, bajuriye n’Urukiko Rwisumbuye rwa Musanze rurabishimangira, rugumishaho imikirize y’urubanza rwajuririwe. Komezusenge Wellars yaregeye uru rukiko asaba gusubirishamo urubanza RCA 00146/2020/TGI/MUS rwaciwe n'Urukiko Rwisumbuye rwa Musanze kuwa 10/6/2021, ku mpamvu z'akarengane, ikirego cye gihabwa RS/INJUST/RC 00010/2021/HC/MUS. Urubanza rwaburanishijwe mu ruhame Komezusenge Wellars, Me Mukasa Frodouard, Mukabera Madamu Léoncie na Iragena Venuste bitabye bunganirwa na ba Avoka bagaragajwe haruguru.

Muri uru rubanza, rwagobokeshejwemo kandi Unguka Bank na Twagirimana Céléstin, baburanye bunganirwa na ba Avoka babo;

[9] Komezusenge Wellars na Me Mukasa Frodouard hamwe na Unguka Bank na Twagirimana Céléstin, baburana uru rubanza bagaragaza ko cyamunara yabaye yubahirije amategeko kubera ko yakorewe ku mutungo wa Iragena Venuste, umutungo utimukanwa yari yarashyize mu bugwate bwa Unguka Bank; bikaba bitarashobokaga, mu rwego rw'amategeko ko ugurishwa Mukabera Madamu Léoncie, kandi niba koko byakakozwe, nta gaciro ubwo bugure bwari kuba bufite kubera ko bibujijwe kugurisha umutungo uri mu bugwate, dore ko n' ubwo bugure nta gaciro bwahabwa kuko butakorewe imbere yo Noteri w'ubutaka nk'uko amategeko abiteganya. Bavuga rero ko kuba ibyo byarirengagijwe, cyamunara yabaye kuri uwo mutungo ntiyagombaga gukurwaho ; basaba ko byakosorwa, igasubizwaho, bagahabwa indishyi zo gushorwa mu manza nta mpamvu, izo gukurikirana uru rubanza n'ibihembo bya avoka. Me Mukasa Frodouard anaboneraho kandi gusaba gusubizwa 500.000frw yishyuye mu rwego rwo kurangiza urubanza rusubirishwamo ku mpamvu z'akarengane.

[10] Mukabera Madamu Léoncie na Iragena Venuste, bo siko babibona, bavuze ko icyamunara yabaye ku mutungo utakibarizwa mu mitungo ya Iragena Venuste, bagasaba ko kuvanaho iyo cyamunara byemejwe n'inkiko ntacyabihindukaho, nabo bagasaba amafaranga yo gukurikirana uru rubanza n'igihembo cya avoka wababuraniye ;

[11] Ibibazo bisuzumwa muri uru rubanza ni ibi :

> Kumenya, mu rwego rw'amategeko, niba koko uwo mutungo watejwe cyamunara wari umutungo wa Mukabera Madamu Léoncie no kumenya agaciro ubwo bugure bwe bwahabwa.
>
> Ishingiro ry'indishyi zasabwe n'ababuranyi muri uru rubanza.

## II. ICYAGARAGARIYE URU RUKIKO N'ISESENGURA RY'IBIBAZO BIGIZE URUBANZA :

[12] Icyagaragariye uru rukiko, n'uko mu gukuraho iyo cyamunara, hashingiwe kuba yarabaye ku mutungo w' undi muntu wari waramaze kuwugura, kandi bigakorwa n'utabifitiye ububasha, nk'uko byasobanuwe mu buryo bukurikira :

> Urukiko rwisumbuye rwasanze Mukabera Madamu Léoncie yaragaragarije urukiko inyandiko y'ubugure yo kuwa 30/01/2018 aho agaragaza ko yaguze ubutaka UPI: 4/02/16/01/289 na Iragena Venutse, ibikorwa Mukabera Madamu Leoncie yashyize kuri ubwo butaka bikaba bibigaragaza ko ari ubwe, kandi ubwo butaka baguze akaba aribwo bwagurishijwe muri cyamunara na Me Mukasa Froduald kuwa 30/01/2020 ndetse na Iragena Venuste akaba yemera ko ubwo bugure bwabayeho, Mukabera Madamu Leoncie akaba yaramenyesheje Me Mukasa Froduard ko ubwo butaka yabuguze na IRAGENA Venuste nk'uko bigaragazwa n'inyandiko yamwandikiye kuwa 28/01/2020 akayibona kuwa 29/01/2020 mbere y`uko akoresha cyamunara, ndetse akaba yaranamumenyesheje ko yatanze ikirego mu Rukiko rw`Ibanze rwa Gakenke asaba ko iyo cyamunara yahagarikwa, ariko Me Mukasa Froduard akabirengaho nkana agakoresha cyamunara.

Rwashingiye ku ngingo ya 260 y’Itegeko Nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi iteganya ko << Umuntu wese ubifitemo inyungu ashobora gusaba Urukiko rw'Ibanze rw'aho cyamunara igomba kubera kuyihagarika iyo: 1º hatubahirijwe amategeko agenga ishinganisha, ifatira n'itangazwa rya cyamunara; 2° umutungo ugomba kugurishwa udashobora kugurishwa kubera ubukene bwa nyirawo nk'uko biteganywa mu ngingo ya 259 y’iri tegeko; 3° hari ikimenyetso kidashidikanywaho kigaragaza ko umutungo ugiye kugurishwa atari uw'uryozwa kwishyura. Izi mpamvu ni nazo zishingirwaho mu kirego gisaba gutesha agaciro cyamunara yakozwe>>.

Rwasanze Me Mukasa Frodouard yari azi neza ko umutungo ugomba gutezwa cyamunara waguzwe na Mukabera Madamu Leoncie akawugura na Iragena Venuste nubwo wari ukimwanditseho, bakaba bari barumvikanye ko ibyangombwa by`ubutaka azabimuha ari uko Iragena Venuste arangije kwishyura Unguka Bank, kuba nta mutation yari yakabaye ntabwo bikuraho ko habaye ubugure, bityo bikaba bigaragara ko cyamunara yabaye ku butaka bufite UPI: 4/02/16/01/289 4/02/16/01/289 itakurikije amategeko kuko yakorewe ku mutungo utakiri uwa Iragena Venuste.

Rwasanze kandi Unguka Bank itarigeze iha Me Mukasa Frodouard uburenganzira bwo kujya kuyishyuriza umwenda uvugwa ko Iragena Venuste yari ayibereyemo cyane ko bitari mu bubasha bwa Me Mukasa Frodouard.

[13] Urukiko rwisumbuye rwa Musanze, mu kwemeza ibyo, rwashimangiraga ibyemejwe n’Urukiko rw’Ibanze rwa Gakenke rwakuyeho iyo cyamunara rushingiye ku mpamvu zikurikira :

Rwasanze Mukabera Madamu Léoncie yaragaragarije urukiko inyandiko y’ubugure yo kuwa 30/01/2018 aho agaragaza ko yaguze ubutaka UPI :4/02/16/01/289 na Iragena Venutse, ubwo butaka baguze akaba aribwo

Bwagurishijwe muri cyamunara na Me Mukasa Froduald kuwa 30/01/2020 ndetse na Iragena Venuste akaba yemera ko ubwo bugure bwabayeho. Rero kuba ingingo imaze kuvugwa haruguru iteganya ko umuntu wese ufite ikimenyetso kidashidikanywaho ashobora gusaba gutesha agaciro cyamunara yakozwe, rukaba rusanga Me Mukasa Frodourd yarakoze amakosa yo guteza cyamunara ubutaka bwa Mukabera Madamu Léoncie kandi yaramumenyesheje ko ubwo butaka yabuguze na Iragena Venuste nk’uko bigaragazwa n’inyandiko yamwandikiye kuwa 28/01/2020 akayibona kuwa 29/01/2020.

Rwasanze Iragena Venuste nawe ubwe yiyemerera ko baguze ubwo

butaka na Mukabera Madamu Léoncie kandi akavuga ko ubwo butaka baguze yabutanzeho ingwate muri Unguka Bank Plc, bakaba barumvikanye ko ibyangombwa by’ubutaka azabimuha amaze kurangiza kwishyura uwo mwenda wa Unguka Bank Plc. Rero rurasanga mu by’ukuri ubutaka UPI: 4/02/16/01/289 ari ubwa Mukabera Madamu Leonie kubera ko yabuguze na Iragena Venuste kandi ibikorwa yashyize kuri ubwo butaka bikaba bibigaragaza ko ari ubwe. Rero rurasanga nubwo ihererekanya ry’ubwo butaka ritakozwe hagati ya Iragena Venuste na Mukabera Madamu Léoncie mu gihe cy’ubugure bw’ubwo butaka nk’uko amategeko ajyanye n’uburyo ihererekanya ry’uburenganzira ku mitungo itimukanwa ateganya ko byose bikorerwa imbere y’umubitsi w’inyandiko z’ubutaka kugira ngo habeho iyandikwa ry’ubutaka k’ubufiteho uburenganzira, rero kuba ibyo

bitarakozwe iyo ntiyaba impamvu ituma ruvuga ko ubwo butaka atari ubwa Mukabera Madamu Léoncie kubera ko agaragaza ikimenyetso ko yabuguze na Iragena Venuste.

Rwasanze kuba nta "mutation" yakozwe, ibyo ubwabyo bigaragaza ko ubugure bwabayeho, kuko ikigomba kumvikana ari uko amasezerano y‟ubugure ku kitimukanwa yakozwe mu nyandikobwite ubwayo aba ari itegeko hagati y'abayagiranye, kandi ko uwaguze agira uburenganzira ku cyaguzwe, naho

Ibyerekeranye no kumenyekanisha muri serivisi z‟ubutaka (bijyana no kubona

"Certificat d'enregistrement" cyangwa "Titre d'emphyteose") bikaba bikorwa kugira ngo n'abandi batari mu masezerano (les tiers) bamenye ko nyir'umutungo ahari, ku buryo batabirengaho ngo biyitirire uwo mutungo;

Rwanzuye ko rukurikije ibimaze kuvugwa haruguru, rusanga cyamunara yabaye kuwa 30/01/2020 ikabera ku mutungo UPI: 4/02/16/01/289 wa Mukabera Madamu Léoncie, ikorwa na Me Mukasa Frodualد ikaba iteshejwe agaciro kayo kose, ubwo butaka bugasubira mu maboko ya Mukabera Madamu Léoncie wabuguze nta yandi mananiza. Urukiko rurasanga Me Mukasa Froduald yaravuze ko Ubutaka UPI:4/02/16/01/289

bwari Ingwate ya Unguka Bank Plc, mbere yo kubugurisha yasabye Unguka Bank Plc uburenganzira maze imusubiza mu ibaruwa Ref: UB/HO/CD/20/2020 yo kuwa 16/01/2020 imwemerera kugurisha. Hashingiwe k'ingingo ya 260 y'Itegeko Nº22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko Umuntu wese ubifitemo inyungu ashobora gusaba Urukiko rw'Ibanze rw'aho cyamunara igomba kubera kuyihagarika iyo: 1º hatubahirijwe amategeko agenga ishinganisha, ifatira n'itangazwa rya cyamunara Izi mpamvu ni nazo zishingirwaho mu kirego gisaba gutesha agaciro cyamunara yakozwe. Naho ingingo ya 24 y'amabwiriza y'umwanditsi mukuru nº 001/2020/ORG yo kuwa 12/05/2020 agenga ibyerekeranye gucunga, gukodesha kugurisha mu cyamunara no kwegukana ingwate ateganya ko Icyemezo cyo kugurisha mu cyamunara ingwate gitangwa n'umwanditsi Mukuru, abisabwe mu nyandiko n'uwayihawe Umwanditsi Mukuru agenera uwatanze ingwate na nyir'umutungo watanzweho ingwate kopi y'icyemezo cyo kugurisha mu cyamunara ingwate. Icyemezo cyo kugurisha mu cyamunara ingwate kigaragaza ibi bikurikira : 1 º uwatanze ingwate ; 2 º ibiranga ingwate ; 3 º uwashinzwe gucunga ingwate.

Rero rurasanga Me Mukasa Froduald nta bubasha yari afite bwo kugurisha ingwate Iragena Venuste yatanze muri Unguka Bank Plc, ubwo bubasha bukaba bufitwe gusa n'Umwanditsi Mukuru, rero kuvuga ko yabisabye Unguka Bank Plc ikabimwemerera ibyo ntibihagije kubera ko yagombye kuba azi neza ko bikorwa n'umwanditsi Mukuru. Ikindi nuko Iragena Venuste nta kibazo yarafite cy'umwenda yasabye muri Inguka Bank Plc kubera ko iyo aza kuba afite ikibazo Inguka Bank Plc niyo yari gusaba Umwanditsi Mukuru akagurisha ingwate yatanze, rero kuba byarakozwe na Me Mukasa Froduald nk'umuhesha w'Inkiko w'umwuga, ibi yakoze bikaba bigaragaza ko atubahirijwe amategeko agenga cyamunara, bityo cyamunara yabaye kuwa 30/01/2020 ibera ku mutungo UPI: 4/02/16/01/289 wari watanzweho Ingwate muri Bank, ikaba iteshejwe agaciro kayo kose kubera ko Me Mukasa Froduald wayikoresheje nta bubasha yarabifitiye.

**Ku kibazo cyo kumenya, mu rwego rw'amategeko, niba koko uwo mutungo watejwe cyamunara wari umutungo wa Mukabera Madamu Léoncie no kumenya agaciro ubwo bugure bwe bwahabwa.**

[14] Komezusenge Wellars na Me Mukasa Frodouard hamwe na Unguka Bank na Twagirimana Céléstin, baburana uru rubanza bagaragaza ko umutungo wagurishijwe nyirawo ari Iragena Venuste ubaruweho. Ikindi n'uko uwo mutungo nyirawo yari yarawutanzeho ingwate muri Unguka Bank, nk'uko ariyo yari ibitse icyangombwa cyawo. Rero nta kuntu hari -kuba ubugure bw'umutungo uri mu bugwate bwa banki, itabyemeye ngo bube bwakwemerwa mu rwego rw'amategeko. Ikindi kandi n'uko ubwo bugure butakorewe imbere y' ababiherewe ububasha ariwe Noteri ushinzwe ubutaka bw'aho bubarizwa, ahubwo ugasanga ubwo bugure bwarakozwe mu rwego rwo kuburizamo ubwishyu, dore ko n'abahamya babwo ari abo mu muryango w'uwaguze n'uwagurishije gusa.

[15] Mukabera Madamu Léoncie na Iragena Venuste biregura bavuga ko tariki ya 21/08/2018 Iragena Venuste yagiranye amasezerano y'ubwumvikane na Komezusenge Wellars ko agomba kumwishyura amafaranga angana na miliyoni eshatu( 3,000,000fws) mu manza bari bafitanye, ayo masezerano akaba yarakorewe mu rukiko imbere y'umwanditsi warwo, mu nama nteguraruba nza, uwo munsi Iragena Venuste yahise amuha ibihumbi Magana atanu( 500,000fws), bigeze tariki ya 08/03/2019 yongera kumuha miliyoni imwe n'ibihumbi ijana( 1,100,000fws) ayanyujije kuri konti ya Komezusenge Wellars iri muri Unguka Bank, mu gihe agishakisha andi yari asigaye angana na miliyoni imwe n'ibihumbi Magana ane (1,400,000fws) yagize ikibazo arafungwa.

[16] Bakomeza bavuga ko Komezusenge Wellars akimara kumva ko Iragena Venuste yafunzwe yihutiye kujya guteza umutungo we yishyuza n'amafaranga yamaze guhabwa, nibwo yagurishije ubutaka bubaruwe kuri UPI:4/02/16/01/289 buherereye mu Kagari ka Buranga, Umurenge wa Nemba, Akarere ka Gakenke, yirengagije ko uwo mutungo utakiri uwe, kuko mbere y'uko ugurishwa mu cyamunara umugore wa Iragena Venuste witwa Tuyishimire Aloyisie akimara kubona itangazo rya cyamunara rivuga ko tariki ya 30/01/2020 hazagurishwa umutungo wavuzwe haruguru yandikiye umuhesha w'inkiko na Komezusenge abamenyesha ko uwo mutungo utakiri uwabo ndetse anabasaba ko bamumenyesha amafaranga Iragena Venuste yari asigaje kwishyura kugira ngo ayishyure, ibi babirengaho bagurisha uwo mutungo.

[17] Iragena Venuste akomeza avuga ko ubutaka bufite UPI:4/02/16/01/289 yabugurishije Mukabera Madamu Léoncie ku mafaranga miliyoni 12,000,000Frw ayamuha cash, bumvikana ko azamuhinduriza icyangombwa cy'ubutaka ari uko arangije kwishyura ideni rya Unguka Bank Plc kuko icyangombwa cy'ubwo butaka cyari kikiri mu maboko ya Banki, akaba yaratunguwe no kumva ko ubwo butaka bwatejwe cyamunara. Basoza bavuga ko cyamunara yakozwe ku mutungo utari uwa Iragena Venuste igomba guteshwa agaciro kuko yakozwe mu buryo bunyuranyije n'amategeko arebana n'imihango ndemyagihugu umuhesha w'inkiko yirengagije mbere y'uko ateza cyamunara, kuko yamenyeshejwe mu buryo bukurikije amategeko ko umutungo ashaka kugurisha ari uwe, abirengaho nk'uko nawe ubwe abyiyemerera ; naho ibyo yisobanura avuga ko yabonaga ubwo bugure bwarakozwe mu buryo bunyuranyije n'amategeko nta shingiro byahabwa.

[18] Urukiko ruzabone ko imihango ikorwa mbere y'uko cyamura ikorwa, yakozwe mu-buryo butubahirije amategeko, kuko nta fatirabwishyu, itambama cyangwa ishinganisha byigeze bikorwa-kandi ari imihango ndemyagihugu yagombaga kubahirizwa n'umuhesha w'inkiko nk'uko

biteganywa n'ingingo ya 212, 217 n'iya 234, igenagaciro rikaba naryo ritarigeze rimenyeshwa mu buryo buteganywa n'ingingo ya 252CPCCSA, itangazo rya cyamunara ritamenyeshejwe nyir'umutungo n'ingingo ya 253 ya CPCCSA ndetse na raporo ya cyamunara ikaba yarakozwe mu buryo bunyuranyije n'ibiteganywa n'ingingo ya 266 CPCCSA.

[19] Ingingo ya 3 y'Itegeko N°15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana, ingingo ya 12 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 Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda.

[20] Ingingo ya 4 y'Itegeko Nº15/2004 ryo kuwa 12/06/2004 ry'ibimenyetso mu manza n'itangwa ryabyo ivuga ko urukiko ruca urubanza rwaregewe hakurikijwe ibimenyetso bihuje na kamere y'ikiburanwa.

[21] Uru rukiko rurasanga hari inyandiko igaragaza ko habayeho ubugure bwo kuwa 30/01/2018 bwabaye hagati ya Iragena Venuste waguriship Mukabera Madamu Léoncie ubwo butaka bubaruye kuri UPI: 4/02/16/01/289 ku mafaranga miliyoni 12,000,000Frw; bumvikana ko azamuhinduriza icyangombwa cy'ubutaka ari uko Iragena Venuste arangije kwishyura ideni rya Banki kuko icyangombwa cy'ubwo butaka yagitanzeho ingwate muri Unguka Bank Plc. Ubwo bugure ntibwakorewe imbere ya Noteri w'ubutaka nk'uko biteganwa n' amategeko. Ikindi kandi n'uko ubwo bugure bwakorewe ku mutungo uri mu bugwate nk'uko-ababuranyi bose babyemeranwaho ndetse bikanagaragazwa n'ayo masezerano nyamara, bikorwa Unguka Bank Plc itabizi, ibintu bibujijwe n' amategeko.

[22] Uru rukiko rurasanga, mu rwego rw' amategeko, ayo masezerano y'ubugure nta gaciro afite ku buryo yahesha uwaguze uburenganzira buyaburanisha mu nkiko ku mpamvu y'uko yakozwe mu buryo bunyuranyije n'ibyo amategeko ateganya kugira ngo amasezerano ku mutungo utimukanwa nk'ubutaka ngo agire agaciro, bityo abe yakwemerwa n'inkiko. Rurasanga rero nta kosa umuhesha w' inkiko w'umwuga yakoze mu kwanga kuyitaho agakomeza ateza cyamunara uwo mutungo mu rwego rwo kurangiza imanza Iragena. yari afitanye na Komezusenge

[23] Rurasanga ku bijyanye n'uko atari afite ububasha bwo kugurisha uwo mutungo uri mu bugwate atubahirije imihango yateganyirijwe bene iyo imitungo iba iri mu bugwate, rurasanga nta shingiro ryabyo kubera ko we yarangizaga nyine urubanza mbonezamubano rwari hagati ya Iragena. na Komezusenge., akaba yaraciye kuri Unguka Bank kubera ko uwo mutungo we wari waratanzweho ingwate; bivuze ko atishyurizaga Unguka, gusa yagombaga guteza cyamunara uwo mutungo ari uko Unguka Bank ibimwemereye;

[24] Kubera izo mpamvu zose, cyamunara yabaye igomba gusubirana agaciro kayo; urubanza RC00060/2020/TB/GAK rugahinduka, kandi ku bijyanye n'indishyi Komezusenge. na Me Mukasa Frodouard baciwe muri izo manza, basaba ko zavaho, kandi Me Mukasa Frodouard agasubizwa 500.000frw yatanze mu rwego rwo kurangiza urwo rubanza yatsinzwe, Mukabera Madamu Leoncie na Iragena Venuste basaba urukiko kuzabona ko indishyi Komezusenge Wellars yaciwe mu rukiko rw'Ibanze rwa Gakenke zifite ishingiro kuko zishingiye ku makosa yakozwe na Komezusenge Wellars n'Umuhesha w'inkiko Mukasa Frodouard wamurangirazaga urubanza. Kuba baramenyeshejwe ko umutungo bashaka kugurisha atari uwa Iragena Venuste

bakabirengaho bakawugurisha, ibi bikaba byarashoye Madamu Mukabera Leoncie mu manza, urukiko ruzabone ko indishyi byaciwe zikwiye kugumaho, kuko igikorwa cyose cyangije undi gitegeka uwagikoze kuryozwa indishyi z'ibyo yangije.

[25] Uru rukiko rurasanga izo ndishyi zavaho koko kubera ko nyine iyo cyamunara isubijweho. Rurasanga kandi na 500.000frws yishyuwe na Me Mukasa Frodouard mu rwego rwo kurangiza urwo rubanza, nayo agomba kuyasubizwa hashingiwe ku bimaze kuvugwa haruguru.

**Ku bijyanye n'indishyi zasabwe n'ababuranyi muri uru rubanza.**

[26] Komezusenge Wellars, Me Mukasa Frodouard, Unguka Bank ltd na Twagirimana Celestin basabye indishyi zo gushorwa mu manza nta mpamvu, izo gukurikirana urubanza n'igihembo cya avoka, akishyurwa na Mukabera Madamu Leoncie afatanyije na Iragena. kubera ko bafatanya mu kwemeza ubugure bakoze budakurikije amategeko.

[27] Komezusenge Wellars yasabye uru rukiko gutegeka Mukabera Madamu Leoncie kwishyura igihembo cya avocat n`ikurikiranarubanza n`igarama ku rwego rw'ubujurire. Asaba uru rukiko ko Mukabera Madamu Leoncie yishyura 1.000.000Frw y`igihembo cya Avocat ni ukuvuga 500.000Frw mu Rukiko Rwisumbuye na 500.000Frw mu Rukiko Rukuru na 600.000Frw y`ikurikiranarubanza kuva mu rukiko rubanza kugeza mu rukuru na 20.000Frw yishyuye igarama ajuririra mu Rukiko Rwisumbuye. Akomeza avuga ko Mukabera Madamu Leoncie yashoye Komezusenge Wellars mu manza nta mpavu, akaba agomba kubimuhera indishyi zingana na 3.000.000Frw.

[28] Me Mukasa Frodouard yasabye indishyi za 2.000.000frw zikubiyemo 500.000frws zo gukurikira urubanza,1.000.000frws y'ibihembo bya avoka, 500.000frw y'indishyi z'akababaro; akana subizwa 500.000frws yatanze mu rwego rwo kurangiza urubanza rusubirwamo.

[29] Unguka Bank ltd isaba indishyi za 1.000.000frw agizwe n'amafaranga y' igihembo cya avoka n'ayo gukurikirana urubanza naho Twagirimana Celestin asaba 700.000frws y'igihembo cya avoka n' ayo gukurikirana urubanza.

[30] Mukabera Madamu Léoncie asubiza ko urukiko ruzabone ko impamvu zatumye Madamu Mukabera Leoncie arega Komezusenge Wellars ari uko amategeko abiteganya kandi akaba yabikoze arengera uburenganzira bwe ahabwa n'umutungo yaguze; akaba nta ndishyi yatanga; aboneraho ahubwo gusaba nawe guhabwa indishyi z'akababaro (1.000.000Frw), amafaranga y'ikurikiranarubanza (500.000Frw) n'igihembo cya Avocat (1.000.000Frw) nk'uko biteganywa n'ingingo zavuzwe haruguru, amafaranga yose hamwe asaba akaba ari miliyoni ebyiri na magana atanu (2.500.000fws).

[31] Iragena Venuste, nawe asubiza ko nta shingiro indishyi zimusabwa zifite, ahubwo akavuga ko nawe yarenganurwa Komezusenge Wellars akamusubiza amafaranga yahawe arenze 1.4 000frw kuko andi yayamwishyuye; akagenerwa indishyi z'akababaro za 1.000.000Frw, amafaranga y'ikurikiranarubanza (500.000Frw) n'igihembo cya Avocat (1.000.000Frw) nk'uko biteganywa n'ingingo zavuzwe haruguru, amafaranga yose hamwe asaba akaba ari miliyoni ebyiri (2.500.000fws).

[32] Ingingo ya 111 y'Itegeko Nº22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo.

[33] Uru rukiko rurasanga nta ndishyi Mukabera Madamu Léoncie na Iragena Venuste bahabwa mu gihe bigaragaye ko uru rubanza rubatsinze ; bakaba kandi bafatanya mu guharanira ko cyamunara yabaye ivanwaho ; bityo indishyi zisabwa n'abo baburana basaba isubizwaho ry'iyo cyamunara, bakaba bagomba gufatanya kuzishyura, uretse 500.000frws azasubizwa n'uwayakiriye ;

[34] Rurasanga, Mukabera Madamu Léoncie agomba gufatanya na Iragena Venuste kwishyura, indishyi zikurikira, zigenwe mu bwitonzi n'ubushishozi b'urukiko kuko nta gihamya cy'asabwa, izo ndishyi akaba ari izi zikurikira :

Komezusenge Wellars, 1.550.000frw akubiyemo ibihembo bya avoka no gukurikirana urubanza ku nzego zose ;

Me Mukasa Froduard, 1.400.000frw akubiyemo ibihembo bya avoka no gukurikirana urubanza ku nzego zose, akanamusubiza 500.000frw yamuhaye mu rwego rwo kurangiza imanza zakuweho zavuzwe haruguru ;

Unguka Bank ltd, 650.000frw akubiyemo igihembo cya avoka no gukurikirana uru rubanza;

Twagirimana Céléstin, 650.000frw akubiyemo igihembo cya avoka no gukurikirana uru rubanza.

[35] Kubera izo mpamvu zose, urubanza RC00060/2020/TB/GAK rurahindutse mu ngingo zarwo zose naho urubanza RCA 00146/2020/TGI/MUS rukaba ruvuyeho.

## III. ICYEMEZO CY'URUKIKO

[36] Rwemeje ko ikirego cya Komezusenge Wellars gisubirishamo ku mpamvu z'akarengane urubanza RCA00146/2020/TGI/MUS rwaciwe kuwa 10/06/2021 n'Urukiko Rwisumbuye rwa Musanze, gifite ishingiro.

[37] Rwemeje ko urubanza RCA00146/2020/TGI/MUS rwaciwe kuwa 10/06/2021 n'Urukiko Rwisumbuye rwa Musanze n'urubanza RC00060/2020/TB/GAK-RC 00083/2020/TB/GAK rwaciwe kuwa 06/11/2020 n`Urukiko rw`Ibanze rwa Gakenke zihindutse mu ngingo zazo zose.

[38] Rusubijeho cyamunara yakozwe kuwa 30/01/2020 na Me Mukasa Froduard ku mutungo utimukanwa wari ubaruwe kuri UPI: 4/02/16/01/289.

[39] Rutegetse Mukabera Madamu Léoncie gufatanya na Iragena Venuste kwishyura:

Komezusenge Wellars 1.550.000frw akubiyemo ibihembo bya avoka no gukurikirana urubanza ku nzego zose;

Me Mukasa Froduard 1.400.000frw akubiyemo ibihembo bya avoka no gukurikirana urubanza ku nzego zose, akanamusubiza 500.000frw yamuhaye mu rwego rwo kurangiza imanza zakuweho zavuzwe haruguru;

Unguka Bank ltd 650.000frw akubiyemo igihembo cya avoka no gukurikirana uru rubanza;

Twagirimana Céléstin 650.000frw akubiyemo igihembo cya avoka no gukurikirana uru rubanza.