SHUMBUSHO v UWAYO

[Rwanda URUKIKO RUKURU – RCA 00054/2023/HC/RWG (Nyirabagande, P.J.) 10 Kamena 2024]

Amategeko agenga imanza z'imbonezamubano – Amasezerano – Amasezerano ateshejwe agaciro - Iyo amasezerano abaye imfabusa, ibintu bisubira uko byari bimeze mbere y'ikorwa ryayo, ntihagire uyahomberamo ngo undi ayungukiremo.

Amategeko agenga imanza z'imbonezamubano – Amasezerano – Amasezerano ateshejwe agaciro – Gusubizwa ikiguzi cyatanzwe – Uburyo bwo kubara inyungu - Iyo Urukiko rusanze umuburanyi agomba gusubizwa ikiguzi cyatanzwe hamwe n'inyungu, inyungu zigomba kubarirwa ku kigereranyo cy'inyungu ku nguzanyo kigaragara mu nyandiko yitwa Interest Rate Structure gitangazwa na Banki Nkuru y'u Rwanda.

Incamake y'ikibazo: ku wa 10/12/2021, hakozwe amasezerano y'ubugure bw'umutungo utimukanwe (inzu) hagati ya Uwayo na Shumbusho bemeranya ku kiguzi kingana na 65.000.000 Frw yagombaga gutangwa mu byiciro aho igice kimwe cyagombaga kwishyurwa AB Bank ikavana mu bugwate iyo nzu, ikindi gice kikishyurwa ER Rwanda kugirango ivaneho itambamiramutungo yashize kuri iyo nzu, amafaranga yose yishyuwe akaba angana na 42.000.000 Frw. Bumvikanye ko igice gisigaye cyagombaga kwishyurwa hakorwa ihererekanya mutungo.

Shumbusho yatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo asaba ko yakorerwa ihererekanya mutungo kuko yakoze inshingano ze zose nkuko zikubiye mu masezerano ariko Uwayo ntashyire mu bikorwa ibyo yagombaga gukora. Uwayo we avuga ko ayo mafaranga yayagurijwe bityo ko nta nshingano yo kugurisha afite. Urukiko rwasanze ayo masezerano atarakorewe imbere ya noteri maze rwemeza ko ikirego cya Shumbusho nta shingiro gifite.

Urega yajuririye mu Rukiko Rukuru maze rusuzuma ikibazo cyo kumenya niba hategekwa ihererekanya mutungo ku masezerano y'ubugure bw'umutungo yo ku wa 10/12/2021 atarakorewe ngo asinyirwe imbere ya noteri no kumenya niba hari indishyi zagenwa hashingiwe ku masezerano aburanwa.

Shumbusho asobanura ko amasezerano yo ku wa 10/12/2021 yagombaga guhabwa agaciro hagategekwa ihererekanywa ry'umutungo utimukanwa, kuko yasinyweho n'impande zombie, we agashyira mu bikorwa inshingano ze ariko Uwayo ntiyamukorera ihererekanya mutungo. Akomeza avuga ko mu gihe atakwegurirwa uwo mutungo yasubizwa amafaranga yatanze ayigura ndetse n'inyungu zayo. Uwayo ntacyo yavuze ku mpamvu z'ubujurire kuko yahamagajwe ahatazwei ariko ntiyitabira iburanisha.

Incamake y'icyemezo: 1. Amasezerano y'ubugure bw'ubutaka akozwe mu buryo by'inyandikompamo ni yo agira agaciro kubera ko ari yo yemerwa igihe cy'ihererekanya ry'ubutaka rishingiye ku masezerano yo kubwegurira undi.

2. Iyo amasezerano abaye imfabusa, ibintu bisubira uko byari bimeze mbere y'ikorwa ryayo, ntihagire uyahomberamo ngo undi ayungukiremo.

3. Iyo Urukiko rusanze umuburanyi agomba gusubizwa ikiguzi cyatanzwe hamwe n'inyungu; inyungu zigomba kubarirwa ku kigereranyo cy'inyungu ku nguzanyo kigaragara mu nyandiko yitwa Interest Rate Structure gitangazwa na Banki Nkuru y'u Rwanda.

Ubujurire bufite ishingiro kuri bimwe.

Amategeko yashingiweho:
Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa, ingingo ya 34.

Imanza zifashishijwe:
RS/INJUST/RC 00010/2019/SC, Twizerimana na Manizabayo, rwaciwe n'Urukiko rw'Ikirenga ku wa 25/09/2020;
RS/INJUST/RC 00014/2021/SC, Mukandori na Kayitesi rwaciwe n'Urukiko rw'Ikirenga ku wa 13/05/2022.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Hagaragazwa amasezerano y'ubugure bw'umutungo utimukanwa yakozwe ku wa 10/12/2021, avugwamo ko Uwayo Marie Aimée agurishije Shumbusho Asuman inzu ibaruye kuri UPI 1/02/09/7591 iherereye mu Mudugudu wa Rukurazo, Akagari ka Kibagabaga, Umurenge wa Kimironko, Akarere ka Gasabo ku 65.000.000 Frw ; ikaba isanzwe iri mu bugwate bwa AB Bank siege ; ayo mafaranga agomba kwishyurwa mu buryo bukurikira: 2.000.000 Frw zitanzwe kashi nka garanti kugira ngo inzu itazagurishwa undi ; kwishyura AB Bank 25.000.000 Frw kugira ngo inzu ive mu bugwate ; kwishyura itambamiramutungo muri ER Rwanda 15.000.000 Frw; amafaranga asigaye yose akazishyurwa icyangombwa cy'ubutaka kimaze guhinduzwa kigiye mu mazina ya Shumbusho Asuman ; havugwamo ko inzu igiye mu maboko ya Shumbusho Asuman kuva igihe atangiriye kwishyura; hagaragajwe icyemezo cy'uko Uwayo Marie Aimée ari umupfakazi, icyemezo cy'uko umugabo we Ndayiramya Melane yapfuye, n'icy'ubupfakazi.

[2] Ashingiye ku masezerano y'ubugure, ibimenyetso byo kwishyura AB Bank, ER Rwanda n'ikimenyetso cya momo , Shumbusho Asuman avuga ko we yubahirije inshingano ze nk'uko zikubiye mu masezerano, anarenzaho 150.000 Frw yishyuye Uwayo Marie Aimée ngo yishyure umusoro, amuha 2.000.000 Frw mu ntoki 2.000.000 Frw ya garanti kugira ngo iyo nzu itazagurishwa undi muntu ; yatanze ikirego asaba Urukiko gutegeka Uwayo Marie Aimée kubahiriza inshingano ze, akandikwaho iyo nzu n'indishyi z'uko yakomeje kubyaza iriya nzu umusaruro, ubu ikaba ikimuri mu maboko. Agaragaza amasezerano y'ubugure, icyemezo cy'amafaranga yishyuwe.

[3] Uwayo Marie Aimee avuga ko atahatirwa kubahiriza amasezerano adakurikije amategeko, kuko na Shumbusho Asuman na we yemera ko ayo masezerano yayashyize kwa noteri batari kumwe, ko yakuweyo n'umwana; yongeraho ko bataguze ahubwo ko ari amafaranga yamugurije abyara inyungu.

[4] Mu rubanza No RC 00181/2022/TGI/GSBO rwaciwe ku wa 28/12/2022, Urukiko Rwisumbuye rwa Gasabo rwemeje ko ikirego cya Shumbusho Asuman nta shingiro gifite, rwemeje ko nta ndishyi Shumbusho Asuman agomba guhabwa muri uru rubanza, rwemeje ko ingwate 20.000 Frw yatanzwe na Shumbusho Asuman ihwanye n'ibyakozwe mu rubanza. Urukiko rwasobanuye ayo masezerano atakorewe ngo asinyirwe imbere ya noteri nk'uko biteganywa mu ngingo ya 34 y'Iteka rya Minisitiri No 0002/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa.

[5] Shumbusho Asuman yajuririye Urukiko Rukuru, we na Me Niyomugabo Christophe bavuga ko amasezerano yo ku wa 10/12/2021 yagombaga guhabwa agaciro kuko yasinyweho n'impande zombi Uwayo Marie Aimée ntayahakana kandi Shumbusho yubahirije inshingano ze; kandi si ngombwa ko amasezerano aba yanditse. Uwayo Marie Aimée ntacyo yavuze ku mpamvu z'ubujurire kuko yahamagajwe ahatazwi ariko ntiyitabira iburanisha. Urukiko rurasuzuma niba amasezerano y'ubugure bw'umutungo utimukanwa atakorewe imbere ya noteri yashigirwaho hagategekwa ihererekanywa ry'uwo mutungo.

[6] Shumbusho Assuman na Me Niyomugabo Christophe basaba indishyi zinyuranye zirimo 1.000.000 Frw y'ubukode bw'inzu kuva ayiguze kugeza urubanza ruciwe, igihembo cya avoka, ikurikiranarubanza n'iz'akababaro; bongeraho ko mu gihe batakwegurirwa umutungo, Shumbusho yasubizwa amafaranga yatanze n'inyungu zayo. Urukiko rurasuzuma agaciro k'indishyi zisabwa.

[7] Ikirego cyanditswe kuri No RCA 00054/2023/HC/KIG, urubanza ruburanishwa mu ruhame ku wa 20/05/2024, Shumbusho Assuman yunganiwe na Me Niyomugabo Christophe naho Uwayo Marie Aimée aburanishwa adahari kuko atitabiriye iburanisha ariko yarahamagajwe nk'umuburanyi udafite aho abarizwa hazwi.

[8] Ibibazo bisuzumwa mu rubanza ni ibi bikurikira:

- Kumenya niba amasezerano y'ubugure bw'umutungo utimukanwa atakorewe imbere ya noteri yashigirwaho hagategekwa ihererekanywa ry'uwo mutungo.
- Kumenya ishingiro ry'indishyi zisabwa na Shumbusho Assuman.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO.

A. Kumenya niba « *mutation* » yategekwa, ku masezerano y'ubugure bw'umutungo yo ku wa 10/12/2021 atarakorewe ngo asinyirwe imbere ya noteri

[9] Shumbusho Asuman na Me Niyomugabo Christophe bavuga ko amasezerano yo ku wa 10/12/2021 yagombaga guhabwa agaciro hagategekwa ihererekanywa ry'umutungo utimukanwa, kuko yasinyweho n'impande zombi kandi Uwayo Marie Aimée ntayahakana. Bavuga ko Shumbusho yakoze inshingano ze zirimo kwishyura AB Bank kuko umutungo wari ugwatirije muri AB Bank, hari n'itambamiramutungo rya ER Rwanda, uyu arishyurwa; kandi amasezerano atanditse agira agaciro kuko ari ubwumvikane bw'impande zombi ku kintu no ku kiguzi.

[10] Bavuga kandi ko gushingira ku ngingo ya 34 y'Iteka rigena iyandikisha ry'umutungo utimukanwa ari ukwitiranya ibintu kuko ariya masezerano yari imbanzirizamasezerano yo kugira ngo umutungo ugurwa ubanze ukurwe mu bugwate bwa AB Bank. Ayo masezerano akaba yarimo « clause » ko amafaranga asigaye azishyurwa ari uko umutungo ugurishwa ugeze mu mazina ya

Shumbusho, iki gihe ni bwo hakorwa amasezerano y'igura n'igurisha akorewe imbere ya noteri nk'uko bivuga mu ngingo ya 34. Basaba Urukiko ko rwasesengura neza ibikubiye mu masezerano bigahuzwa n'ibisobanurwa mu ngingo ya 34 y'Iteka rigena iby'iyandikisha ry'umutungo utimukanwa, nk'uko byasesenguwe mu rubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze. Uwayo Marie Aimée ntacyo yavuze ku mpamvu z'ubujurire kuko yahamagajwe ahatazwei ariko ntiyitabira iburanisha.

UKO URUKIKO RUBIBONA

[11] Ikibazo gisuzumwa muri uru rubanza ni ukumenya agaciro k'amasezerano y'ubugure bw'umutungo utimukanwa atakorewe ngo asinyirwe imbere ya noteri, niba yashingirwaho hagategekwa ihererekanya ry'uwo mutungo.

[12] Iki kibazo ntikikibwaho impaka kuko cyakemuwe mu rubanza N° RS/INJUST/RC 00010/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25/09/2020, haburana Twizerimana Théoneste na Manizabayo Kennedy (igika cya 23 – 27 no mu rubanza N° RS/INJUST/RC 00014/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 13/05/2022, haburana Mukandori na Kayitesi (igika cya 31).

[13] Muri izo manza hemejwe ko amasezerano y'ubugure bw'ubutaka akozwe mu buryo by'inyandikompamo (acte authentique) ariyo agira agaciro kubera ko ari na yo yonyine yemerwa igihe cy'ihererekanya ry'ubutaka rishingiye ku masezerano yo kubwegurira undi. Ko uwaguze hakozwe amasezerano mu buryo bw'inyandiko bwite (acte sous seing privé), ubugure bwe buba ari imfabusa.

[14] Nk'uko bigaragara muri dosiye, hari amasezerano yo ku wa 10/12/2021 avugwamo ko Uwayo Marie Aimée agurishije Shumbusho Asuman inzu ibaruye kuri UPI 1/02/09/7591 iherereye mu Mudugudu wa Rukurazo, Akagari ka Kibagabaga, Umurenge wa Kimironko, Akarere ka Gasabo ku 65.000.000 Frw ; ikaba isanzwe iri mu bugwate bwa AB Bank siège ; ayo mafaranga agomba kwishyurwa mu buryo bukurikira : 2.000.000 Frw zitanzwe kashi nka garanti kugira ngo inzu itazagurishwa undi; kwishyura AB Bank 25.000.000 Frw kugira ngo inzu ive mu bugwate; kwishyura itambamiramutungo muri ER Rwanda 15.000.000 Frw; amafaranga asigaye yose akazishyurwa icyangombwa cy'ubutaka kimaze guhinduzwa kigiye mu mazina ya Shumbusho Asuman; havugwamo ko inzu igiye mu maboko ya Shumbusho Asuman kuva igihe atangiriye kwishyura; hagaragajwe icyemezo cy'uko Uwayo Marie Aimée ari umupfakazi, icyemezo cy'uko umugabo we Ndayiramya Melane, n'icy'ubupfakazi.

[15] Nk'uko baboneka muri ariya masezerano yo ku wa 10/12/2021 hagati ya Shumbusho Assuman na Uwayo Marie Aimée ko baguze inzu yavuzwe mu gace kabanza, hakaba hariho na kashe ya noteri ariko Uwayo Marie Aimee yahakanye ko atayasinyeho, ko we atagiye kwa noteri i Gicumbi. Shumbusho Assuman na we yemeye ko yayajyanye kwa noteri akayasigayo kuko yihutaga agiye mu kazi, Uwayo Marie Aimee akazajya gusinya, hanyuma umwana akayazanira Shumbusho.

[16] Hashingiwe kuri ibyo bisobanuro, byumvikana neza ko ariya masezerano atakorewe imbere ya noteri kandi ko atasinyiwe imbere ye, ahubwo yarakozwe ajyanwayo, abaguze batari kumwe, ngo basinyire imbere ye. Urukiko rukaba rusanga aya masezerano atarakorewe imbere ya

noteri nk’uko bisobanurwa mu ngingo ya 34 y’Itegeko rya Minisitiri rigenga iyandikisha ry’ubutaka ryasobanuwe mu manza zavuzwe haruguru.

[17] Rukaba rusanga rero aya masezerano ari imfabusa, kuko akozwe mu buryo bunyuranyijwe n’ibiteganywa n’amategeko ku ikorwa ry’amasezerano y’ubugure bw’umutungo utimukanwa agomba gukorerwa imbere ya noteri, nk’uko byasobanuwe mu rubanza rujuririrwa; bityo rero, nta kosa ryakozwe mu kutayaha agaciro.

[18] Ku byerekeranye no kuba ayo masezerano ariho imikono y’ugura n’urugurisha, bikaba kandi atari ngombwa ko amasezerano aba yanditse ; Urukiko rusanga iyi miburanire itahabwa agaciro kuko, Umushingamategeko yatandukanyije amasezerano y’ubugure bw’umutungo utimukanwa n’andi masezerano y’ubugure; agena ko, uretse ubwumvikane bw’impande zombi ku kigurwa no ku kiguzi, amasezerano y’ubugure bw’umutungo utimukanwa agomba no gukorerwa imbere ya noteri kugira ngo ihererekanya ry’umutungo rishoboke, nk’uko bisobanurwa mu ya 34 y’Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikishwa ry’ubutaka rikorwa iteganya ko ihererekanya rishingiye ku masezerano yo kwegurira undi ibintu ntirishobora gukorwa iyo amasezerano rishingiyeho atakozwe ku buryo bw'inyandiko y’umwimerere.

[19] Ibiburanishwa na Shumbusho Assuman na Me Niyomugabo Christophe ko ariya masezerano ari imbanzirizamasezerano yari agamije gukura umutungo ugurishwa mu bugwate; Urukiko rusanga bitahabwa agaciro kuko arasobanutse ko hagurishijwe umutungo ugaragazwa, ku kiguzi kigaragazwa; ibindi byayavuzwemo ni uburyo bwo kwishyura n’ibizabanza kuzuzwa. Rusanga kandi niba iriya nyandiko atari amasezerano, ntacyo urega yashingiraho asaba Urukiko ngo rutegeke ihererekanya mu gihe nta masezerano y’ubugure yakorewe imbere ya noteri ahari; kubera ko inyandiko ikorewe imbere ya noteri ni yo itegeka ihererekanya ry’umutungo utimukanwa wagurishijwe.

[20] Ibiburanishwa na Me Niyomugabo Christophe ko hari urubanza rwasesenguye ukundi ingingo ya 34 y’Iteka rya Minisitiri ryavuzwe haruguru rigena uburyo amasezerano y’ubugure bw’umutungo utimukanwa akorwamo, Urukiko rusanga uretse no kuba ntarwo yatanze, rukaba kandi rutavuguruza imanza zaciwe n’Urukiko rw’Ikirenga n’izaciwe n’Urukiko rw’Ubujurire ariko nta n’ikidasobanutse muri iriya ngingo, kuko iteganya ko igurishwa ry’umutungo utimukanwa rikorerwa imbere ya noteri, ibi ubwabyo birasobanutse. Nyuma y’ibimaze gusobanurwa byose rero, Urukiko rwemeje ko ariya masezerano atahabwa agaciro, akaba atashingirwaho hategekwa ihererekanya ry’umutungo utimukanwa.

[21] Ku birebana no kuba nta masezerano y’ubugure yabayeho akaba ari amafaranga Shumbusho Assuman yagurije Uwayo Marie Aimée, uyu ni ko yabiburanishije; Urukiko rusanga bitahabwa agaciro kubera ko, uretse no kuba Uwayo Marie Aimée nta kimenyetso atanga kigaragaza ko ari « lambert » ngo kivuguruze amasezerano y’ubugure agaragazwa na Shumbusho Assuman ; kuri aya masezerano hiyongeraho ubutumwa bwaragarajwe kuri telefoni zabo, aho Uwayo Marie Aimée avuga ko yashyize umutungo ku isoko umuryango yashatsemo ugasakuza ; ko « *mutation* » itashoboka kuko hari itambamiramutungo, n’ibindi. ibi byose bikaba rero bishingiweho mu kwemeza ko ariya masezerano yabayeho, n’ubwo adakurikije amategeko.

[22] Ku byerekeranye no kuba Shumbusho Assuman atashingira ku masezerano adakurikije amategeko ngo abisabire indishyi; Urukiko rusanga n’ubwo ayo masezerano adakurikije

amategeko, Uwayo Marie Aimée yayungukiyemo ahabwa amafaranga ayamaranye imyaka irenga 2 kandi yakemuye ibibazo bye birimo no kuba umutungo we utaragurishijwe mu cyamunara, kandi bombi bayagiyemo mu buryo bunyuranyije n'amategeko babizi; bombi rero bagize amakosa.

[23] Rusanga Uwayo Marie Aimée atakungukira wenyine muri ayo masezerano ngo abe yarakiriye amafaranga ayakoreshe hanyuma ngo abyitwaze avuge ko nta ndishyi yasabwa yitwaje amakosa ye. Bityo rero na we akwiye gutanga indishyi kubera ko na we yemera ko yakiriye amafaranga yavuzwe haruguru, n'ubwo ahakana ku mpamvu yayahawe, bikaba bitemewe n'Urukiko, ayamarana igihe, imyaka isaga 2, kandi na Shumbusho Assuman hari ibyo yari kuyakoresha muri kiriya gihe kandi yayatanze yizeye kubona umutungo. Ku bisobanuro bitanzwe kandi hiyongeraho ko niba amasezerano abaye imfabusa, ibintu bisubira uko byari bimeze mbere y'ikorwa ryayo, ntihagire uyahomberamo ngo undi ayungukiremo.

B. Kumenya niba hari indishyi zagenwa hashingiwe ku masezerano aburanwa

[24] Shumbusho Assuman na Me Niyomugabo Christophe basaba indishyi zinyuranye zirimo 1.000.000 Frw y'ubukode bw'inzu kuva ayiguze kugeza urubanza ruciwe, igihembo cya avoka, ikurikiranarubanza n'iz'akababaro; bongeraho ko mu gihe batakwegurirwa umutungo, Shumbusho yasubizwa amafaranga yatanze ayigura n'inyungu zayo. Ku ruhande rwa Uwayo Marie Aimée, mu Rukiko Rwisumbuye yavugaga ko nta bugure bwabayeho ahubwo ko ari amafaranga yagurijwe abyara inyungu, ko rero nta ndishyi zagenwa zishingiye ku masezerano atubahirije amategeko.

UKO URUKIKO RUBIBONA

[25] Ikibazo gisuzumwa muri uru rubanza ni ukumenya amafaranga Shumbusho Assuman yasubizwa niba ubugure bidahawe agaciro kandi uregwa akaba yaremeye ko yagurijwe amafaranga.

[26] Iki kibazo ariko ntikikibwaho impaka kuko cyakemuwe mu manza zaciwe n'Urukiko rw'Ubujuririre Nº RS/INJUST/RC 00027/2022/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 29/11/20235. Muri urwo rubanza, Urukiko rwemeje ko mu gihe Urukiko rusanze umuburanyi agomba gusubizwa ikiguzi cyatanzwe hamwe n'inyungu; inyungu zigomba kubarirwa ku kigereranyo cy'inyungu ku nguzanyo (taux moyen de prêt/ average lending rate) kigaragara mu nyandiko yitwa Interest Rate Structure gitangazwa na Banki Nkuru y'u Rwanda ku rubuga rwayo rwayo www.bnr.rw/browse-in/financial-market/money-market-interest-rates/monthly- interest-rates6. Uwo murongo ni na wo wegendeweho mu rubanza Nº RS/INJUST/RC 00027/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 29/11/2023, haburana Nyirabazungu Marie Jeanne n'abandi baburana na UKAM PROPERTIES Ltd n'abandi (igika cya 70 na 71).

[27] Urukiko rusanga kuba Uwayo Marie Aimée yemera ko yahawe amafaranga n'ubwo atemera impamvu yayahawe, Shumbusho Assuman akagaragaza ibimenyetso by'amafaranga yatanze, hakaba hemejwe ko amasezerano y'ubugure adahawe ishingiro ; kurekera Uwayo Marie Aimée amafaranga yakiriye cyangwa yishyuriwe byaba ari ukumukungahaza nta mpamvu bisobanurwa mu ngingo ya 1303-1 y'Itegeko ryo mu Gihugu cy'Ubufaransa igateganya ko

havugwa kwikungahaza nta mpamvu iyo habayeho kwishyura uwakeneshejwe nta nshingano yarangizaga cyangwa bushake ku gikorwa cy’ubugira neza[1].

[28] Kubera izo mpamvu, Uwayo Marie Aimée agomba gusubiza Shumbusho Assuman yamafaranga yamuhaye nk’uko yayemeye mu mwanzuro wo kwiregura mu Rukiko Rwisumbuye :2.000.000 Frw yahawe mu ntoki; 13.565.276 Frw yishyuwe ERI RWANDA; 25.000.000 Frw (cheque); 250.000 Frw kuri momo, yose hamwe akaba 40.815.276 Frw.

[29] Ku zindi ndishyi, Urukiko rusanga Shumbusho Assuman atagenerwa amafaranga akomoka ku bukode kuko rwemeje ko amasezerano y’ubugure atakozwe mu buryo bukurikije amategeko; bisobanuye ko iyo nzu itigeze iba iye.

[30] Rusanga ariko kuba hemejwe ko hari amafaranga yahaye Uwayo Marie Aimée, uyu yarayemeye arayasobanura nk’uko byavuze haruguru, ayo mafaranga yari kuba yabyaye inyungu kuko yemera ko ku kwezi bari bemeranyije 2.000.000 Frw. Shumbusho Assuman yamaze igihe atayafite kandi yari kugira ibyo ayakoresha bibyara inyungu; ziriya nyungu zivugwa na Uwayo Marie Aimée, uretse no kuba ntawazisabye ariko zari kuba ari n’umurengera, bityo rero, izo ndishyi zibariwe ku gipimo BNR itangiraho inguzanyo ku munsi urubanza ruciriwe kuva ku wa 10/12/2021, mu gihe cy’imyaka 2 n’amezi 6; ni ukuvuga (40. 815.276 Frw x 15,870 x 30): 100 x 12 = 16.193.460 Frw.

[31] Ku ndishyi z’ikurikiranarubanza n’igihembo cya avoka, Urukiko rusanga Shumbusho Assuman akwiye kugenerwa miliyoni imwe n’bihumbi magana atanu (1.500.000 Frw) agenwe ku nzego zombi; izi ndishyi zigenwe hashingiwe ku biteganywa n’amategeko bikanagarukwaho n’abahanga mu mategeko2, hakiyongeraho amafaranga ibihumbi mirongo ine (40.000 Frw) y’igarama ry’urubanza. Bityo, amafaranga yose hamwe Uwayo Marie Aimée agomba kwishyura Shumbusho Assuman ni amafaranga yasobanuwe mu bika bibanziriza iki, ni ukuvuga miliyoni mirongo itanu n’umunani, ibihumbi magana atanu na mirongo ine n’umunani na magana arindwi na mirongo itatu n’atandatu (40.815.276 Frw + 16.193.460 Frw + 1.500.000 Frw + 40.000 Frw = 58.548.736 Frw).

III. ICYEMEZO CY’URUKIKO

[32] Rwemeje ko ikirego cyatanzwe na Shumbusho Assuman gihawe ishingiro;

[33] Rwemeje ko amasezerano yakozwe ku wa 10/12/2021, ku bugure bw’umutungo ubaruye kuri UPI 1/02/09/7591 atakurikije amategeko, ko ari imfabusa;

[34] Rutegetse Uwayo Marie Aimée kwishyura Shumbusho Assuman indishyi zose zibariwe hamwe zingana n’amafaranga miliyoni mirongo itanu n’umunani, ibihumbi magana atanu n’umunani na magana arindwi na mirongo itatu n’atandatu (58.548.736 Frw), nk’uko yasobanuwe haruguru;

[1] Article 130-1 du code civil francais, version en vigueur du 30/01/2023, stipule que “L'enrichissement est injustifié lorsqu'il ne procède ni de l'accomplissement d'une obligation par l'appauvri ni de son intention libérale”, egifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000032023810/, consulte ce 30/01/2023.

[35] Rutegetse ko amagarama y’urubanza angana n’amafaranga ibihumbi mirongo ine (40.000 Frw) Shumbusho Assuman yatanze arega ahwanye n’ibyakozwe;