ACCESS BANK Ltd v. NGARAMBE NA MUGENZI WE; MUCUMBITSI v. ACCESS BANK Ltd

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0088/11/CS & RCA 0179/12/HC/KIG (Mugenzi, P.J., N. Munyangeri na G. Gatete, J.) 15 Ugushyingo 2013]

Amategeko agenga ububasha bw'Inkiko – Ubusobekerane bw'imanza – Imanza zifitanye isano rumwe rwereregewe Urukiko rwisumbuye kurwaregewe urundi – Mu gihe bigaragara ko imikirize ya rumwe ishobora kubangamira urundi, izo manza ziba zifitanye isano kandi zigomba guhuzwa zikaburanishirizwa hamwe – Itegeko Ngenga nº 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha bw'Inkiko nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ingingo ya 153.

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Ubujurire – Imbibi z'icyajuririwe – Guca urubanza ku ngingo zajuririwe mu bujurire bw'ibanze cyangwa mu bujurire bwuririye ku bundi – Gutesha agaciro amasezerano y'ubugwate kandi icyasabwe ari iseswa rya cyamunara, bifatwa nko guca urubanza ku kitaregewe.

Amategeko agenga ingwate – Ingwate ku mutungo utimukanwa – Agaciro k'amasezerano y'ingwate atanditse mu gitabo cyandikwamo ingwate ku mutungo utimukanwa mu biro by'Umwanditsi Mukuru, yashyizweho umukono mbere y'Itegeko nº 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa – Amasezerano yose y'ubugwate yakozwe mbere y'uko iryo tegeko ritangira gukurikizwa akomeza kugira agaciro kayo – Itegeko Nº 13/2010 ryo kuwa 07/05/2010 rihindura kandi ryuzuza Itegeko nº 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, ingingo ya 4.

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Cyamunara – Kugurisha icyagwatirijwe bitagombye urubanza – Urwego rutanga icyemezo kigomba gushingirwaho mu kugurisha icyagwatirijwe bitagombye urubanza hashingiwe ku masezerano y'ubugwate yasinyiwe imbere ya Noteri kandi yashyizweho inyandikompuruza ariko kitanditswe mu gitabo cyandikwamo ingwate ku mutungo utimukanwa mu biro by'Umwanditsi Mukuru – Icyemezo cya Perezida w'Urukiko nicyo gishingirwaho kugirango cyamunara ibeho, kuko impande zombi zitashoboraga kwiyambaza servisi z'Umwanditsi Mukuru mu gihe muri "Registry" ye umutungo wagombaga kugurishwa utagaragaramo – Itegeko nº 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kandi ryujujwe n'Itegeko nº 13/2010 ryo kuwa 07/05/2010, ingingo ya 26.

Amasezerano cyangwa imirimo nshinganwa – Indishyi – Isubizwa ry'igiciro cy'inzu iburanwa n'inyungu zayo – Amafaranga yishyuwe ku nguzanyo – Indishyi zikomoka ku gihombo cy'ubukode bw'inzu – Indishyi z'akababaro – Indishyi z'ikurikiranarubanza n'igihembo cy'Avoka – Umuburanyi wahawe inguzanyo na Banki ntasubizwa amafaranga y'umufuragiro acibwa ku nguzanyo (flat fees) kuko usanzwe udasubizwa – Indishyi zijyanye n' amafaranga y'ubukode yavukijwe zigenwa hashingiwe ku gaciro k'inzu, ku gihe gishize n'aho iherereye – Uwafatiriwe agomba guha Uwaguze mu cyamunara indishyi zikubiyemo amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka ku nzego zose z'iburanisha agenwe mu bushishozi bw'Urukiko – Itegeko Nº 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 89 – Itegeko ryo kuwa 30 Nyakanga 1888, rigenga ibyerekeye imirimo nshinganwa cyangwa amasezerano, ingingo ya 258.

Incamake y'ikibazo: ACCESS BANK yajuririye urubanza rw'Urukiko Rukuru ivuga ko itishimiye icyemezo cyarwo gihindura icyemezo cy'Urukiko Rwisumbuye rwari rwemeje ko

cyamunara y'inzu uregwa Ngarambe yatanzeho ingwate ikagurwa na Mucumbitsi igumaho. Urukiko Rukuru rwo rwemeje ko ivaho ndetse runabimucira indishyi nyamara ngo nta muburanyi n'umwe wigeze aregera gutesha agaciro ingwate yatanzwe kuko ikirego cya Ngarambe cyari kigamije gutesha agaciro cyamunara, aho gutesha agaciro amasezerano ku ngwate yari yatanzwe kandi ko n'iyo kiza kuba ikibazo cyaregewe, hari kwitabwa ku Itegeko Nº 10/2009 ryo kuwa 14/05/2009 riha agaciro amasezerano y'ubugwate ku mitungo itimukanwa yakozwe mbere y'uko ritangazwa.

Mu rundi rubanza RCA 0179/12/HC/KIG mu Rukiko Rukuru, Mucumbitsi yajuriyemo arega ACCESS BANK, asaba ko mu gihe Urukiko rwakwemeza ko cyamunara iseswa ACCESS BANK ari nayo yajuriye mu rubanza RCAA 0088/11/CS mu Rukiko rw'Ikirenga yamusubiza ikiguzi cy'inzu yaguze mu cyamunara ndetse ikanabimuhera indishyi z'igihombo cy'amafaranga y'ubukode bw'inzu yagombaga kuba yarishyuwe, iz'izakababaro, ikurikiranarubanza n'igihembo cy'avoka.

Hagati aho mbere y'imiburanishirize y'urubanza mu mizi, ACCESS BANK ivuga ko isanga imanza zombi zifitanye isano maze igasaba ko zahuzwa zikaburanishirizwa mu rubanza rumwe naho Mucumbitsi na Ngarambe bakavuga ko zidakwiye guhuzwa kuko nta sano zifitanye.Mu kwiregura mu mizi y'urubanza, Ngarambe avuga ko nta bugwate ku bintu bitimukanwa bubaho butanditse mu gitabo cy'inyandiko z'ubutaka bityo agasobanura ko cyamunara itubahirije amategeko kubera ko uburyo bwo kugurisha icyagwatirijwe bitagombye urubanza butashoboraga gukoreshwa kubera ko nta ngwate yanditse (enregistré) yariho, ndetse Perezida w'Urukiko atari agifite ububasha bwo gufata icyemezo cyo guteza cyamunara kubera ko Itegeko ryo kuwa 15/05/1922 ryari ryaravanyweho n'itegeko nº 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, ku bw'izo mpamvu uwagombaga gutanga uburenganzira akaba yari Umwanditsi Mukuru; bityo Banki ikaba igomba kwirengera ingaruka zose zo gutanga inguzanyo kandi ingwate itandikishije.

Incamake y'icyemezo: 1. Urukiko rw'Ikirenga ruramutse rwemeje ko cyamunara nta nenge ifite uwaguze akegukana inzu, hagati aho icyemezo cy'Urukiko Rukuru kikamusubiza ikiguzi cyayo, haba habayeho ibyemezo bibiri bitandukanye ku kiburanwa kimwe, akaba ariyo mpamvu izi manza zifitanye isano kandi zigomba guhuzwa zikaburanishirizwa hamwe.

2. Umucamanza yaciye urubanza ku kitaregewe atesha agaciro amasezerano y'ubugwate kandi atabisabwe.

3. Itegeko Nº 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa ryateganyije ko amasezerano yose y'ubugwate yakozwe mbere y'uko iryo tegeko ritangira gukurikizwa akomeza kugira agaciro kayo, bityo amasezerano y'ubugwate yashyizweho umukono imbere ya Noteri yashingiweho muri cyamunara yari afite agaciro kayo nk'uko Itegeko Nº 13/2010 ryo kuwa 07/05/2010 rihindura kandi ryuzuza Itegeko nº 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa ryabiteganyije.

4. Cyamunara yakozwe mu buryo amategeko ateganya, kubera ko amasezerano y'ubugwate yasinywe imbere ya Noteri kandi agatezwaho inyandikompuruza mbere y'uko ikorwa.

5. Nta kosa Banki yakoze isaba icyemezo cyo guteza cyamunara, kubera ko yagisabye kugirango hubahirizwe amasezerano kandi na cyamunara ikaba yarabaye mu buryo amategeko ateganya, kugirango hishyurwe inguzanyo yari yatanze.

6. *Frais sur crédit* na *commission d'intervention* ni amafaranga y'umufuragiro (flat fees) udasubizwa, ku bw'iyo mpamvu akaba atagomba gusubizwa.

7. Mu bushishozi bw'Urukiko kandi hanashingiwe ku mategeko agenga amasezerano cyangwa imirimo nshinganwa; Ngarambe agomba guha Mucumbitsi amafaranga y'ubukode yavukijwe abariwe ku bukode bwa buri kwezi bugenwe hashingiwe ku gaciro k'inzu n'aho iherereye mu gihe cy'amezi 41.

8. Mu bushishozi bwarwo kandi hashingiwe ku Itegeko rigenga amasezerano cyangwa imirimo nshinganwa, Ngarambe agomba guha Mucumbitsi indishyi zikubiyemo amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka ku nzego zose z'iburanisha; rusanga ariko adakwiye kugenerwa indishyi z'akababaro mu gihe yagenewe indishyi zijyanye n'igihombo yatejwe.

Ubujurire mu manza zombi bufite ishingiro.
Uwafatiriwe umutungo agomba kwishyura indishyi uwaguze mu cyamunara.
Cyamunara igumyeho n'inzu yegukanwe n'uwaguze mu cyamunara.
Urubanza RCA 0156/11/HC/KIG ruhindutse mu ngingo zarwo zose.
Amagarama aherereye ku wafatiriwe umutungo.

Amategeko yashingiweho:
Itegeko Ngenga nº 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha bw'Inkiko nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ingingo ya 153.
Itegeko Nº 13/2010 ryo kuwa 07/05/2010 rihindura kandi ryuzuza Itegeko nº 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, ingingo ya 4, 26.
Itegeko Nº 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 89.
Itegeko ryo kuwa 30 Nyakanga 1888, rigenga ibyerekeye imirimo nshinganwa cyangwa amasezerano, ingingo ya 258.

Nta manza zifashishijwe:

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 31/10/2008, ACCESS BANK Ltd (yitwaga BANCOR S.A.) yagiranye amasezerano na THEME ENTREPRESE SARL agamije guha iyo sosiyete inguzanyo ingana na Frw 41.000.000, maze NGARAMBE Emmanuel uyiyobora atanga ingwate (tiers constituant) igizwe n'inzu ye iri muri parseli nº 4650/Remera, ikaba yaraje gutezwa cyamunara kubera ko iyo sosiyete itari yubahirije amasezerano y'ubwishyu.

[2] Ngarambe Emmanuel yareze ACCESS BANK Ltd mu Rukiko Rwisumbuye rwa Gasabo, asaba gutesha agaciro cyamunara y'iyo nzu yakozwe kuwa 25/04/2010. Ku itariki ya 28/03/2011, urwo Rukiko rwemeje ko ikirego cya Ngarambe Emmanuel nta shingiro gifite, kubera ko impamvu zose yaburanishaga zirimo iyo kuba ubugwate butari bwanditse, iyo gushingira ku itegeko ryavuyeho mu guteza cyamunara iyo nzu, no kuba hatarabanje kurebwa imitungo itimukanwa ya THEME ENTREPRISE zitahawe agaciro.

[3] Ngarambe Emmanuel yajuririye Urukiko Rukuru, ikirego gihabwa nimero RCA 0156/11/HC/KIG. Urwo Rukiko rwemeje kuwa 14/07/2011 ko imikirize y'urubanza RC 0171/10/TGI/Gsbo ihindutse mu ngingo zarwo zose, rutegeka ko icyamunara cyakozwe

giteshwa agaciro, runategeka kandi ACCESS BANK Ltd kuriha Ngarambe Emmanuel indishyi zingana na Frw 500.000.

Ibisobanuro Urukiko Rukuru rwashingiyeho mu gufata icyo cyemezo:

[4] Umucamanza w'Urukiko Rukuru yasanze uw'Urukiko Rwisumbuye yarasesenguye nabi ingingo ya 19 y'Itegeko ryo kuwa 15/05/1922 ryerekeye ubugwate ku bintu bitimukanwa, iteganya ko "nta bugwate ku bintu bitimukanwa bubaho butanditse mu gitabo cy'inyandiko z'ubutaka .....". Umucamanza yasanze umuhango simusiga (formalité substantielle) wo kwandikisha ingwate mu gitabo cy'inyandiko z'ubutaka na nubu uriho, ibi kandi ngo bikaba ari nabyo biteganywa n'igika cya mbere cy'ingingo ya 4 y'itegeko n°10/2009 ryo kuwa 14/05/2009 ryerekeye ingwate ku mutungo utimukanwa iteganya ko "... ubugwate bugira agaciro iyo bwanditse mu gitabo cyandikwamo ingwate ku mutungo utimukanwa mu biro by'Umwanditsi Mukuru". Umucamanza yashimangiye ko iyi ngingo itahinduwe mu Itegeko n°13/2010 ryo kuwa 14/05/2010 rihindura kandi ryuzuza itegeko n°10/2009 ryo kuwa 14/05/2009, ku bw'izo mpamvu, ACCESS BANK ikaba yaragize amakosa n'uburangare ntiyandikishe ingwate, kandi ariwo muhango simusiga uha agaciro ubugwate.

[5] Urwo rubanza rumaze gucibwa, ACCESS BANK Ltd yajuririye Urukiko rw'Ikirenga, ikirego cyayo gihabwa nimero RCAA 0088/11/CS, ariko hagati aho hagaragaye ko hari urundi rubanza RCA 179/12/HC/KIG bifitanye isano rwari mu Rukiko Rukuru Dr Mucumbitsi Joseph yarezemo ACCESS BANK Ltd, Umucamanza akaba yarafashe icyemezo kuwa 28/03/2013 cyo kuruhuza n'uru rubanza RCAA 0088/11/CS Banki yari yajuririye Urukiko rw'Ikirenga, akaba arirwo rwaje kuburanishwa ku itariki ya 15/10/2013.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.

A. Isuzuma ry'inzitizi yabyukijwe n'ababuranira Ngarambe na Dr Mucumbitsi ijyanye no kudahuza imanza zombi kuko ngo nta sano zifitanye.

[6] Dr Mucumbitsi J., avuga ko nta sano iri mu manza ziburanwa; Me Karongozi umwunganira nawe akunga murye avuga ko Dr Mucumbitsi asaba Banki gusubizwa rwf 42.270.000 yaguze inzu mu cyamunara, akanasaba indishyi zerekeranye n'ikurikirarubanza n'iz'akababaro, naho Ngarambe we agasaba ko cyamunara yakozwe ivanwaho. Icyo ngo Banki igamije mu gusaba ihuzwa ry'imanza, ni ukugirango Dr Mucumbitsi ajye kwishyuza Ngarambe, mu gihe yo yamaze kwakira sheki yaguzwe inzu mu cyamunara, Mucumbitsi akaba ubu anishyura Ecobank umwenda w'inzu yagurijwe ariko kugeza ubu atigeze atunga.

[7] Me Bigaraba John uhagarariye Ngarambe E. asobanura ko nta sano abona imanza zifitanye, kubera ko kugirango habeho urusobekerane (connexité), ababuranyi bagomba kuba ari bamwe, ikiburanwa ari kimwe n'impamvu ari imwe, muri izi manza akaba atariko bimeze, kuko hasabwa gukemura ibibazo bitandukanye.

[8] Me Buzayire Angèle uburanira Banki asobanura ko imanza zombi zifitanye isano, kubera ko ikirego cya Ngarambe E. kigamije kuvanaho cyamunara y'inzu yatanzeho ingwate, icya Dr Mucumbitsi J. nacyo kikaba aricyo kigamije (résolution de la vente publique), usibye ko anasaba indishyi zinyuranye.

[9] Kuri iki kibazo, Urukiko rusanga isano ivugwa muri uru rubanza iva ku mpamvu z'uko inzu ya Ngarambe Emmanuel yatanzweho ingwate ku nguzanyo yatanzwe na ACCESS BANK yaje gutezwa cyamunara, igurwa na Dr Mucumbitsi Joseph, yishyura ACCESS BANK igiciro cyayo ariko uwaguze ntiyegurirwa inzu, ahubwo Ngarambe Emmanuel ahita arega ACCESS BANK asaba ko cyamunara iseswa kuko yasanze hari ibyo ubugwate ndetse na cyamunara bitubahirije; nyuma yo kudashyikirizwa inzu, Dr Mucumbitsi akaba nawe yarahise arega ACCESS BANK asaba ko cyamunara yaseswa kugirango asubirane amafaranga yari yatanze.

[10] Urukiko rero rusanga imanza zombi zifitanye isano nkuko ingingo ya 153 y'Itegeko Ngenga N° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha bw'Inkiko nkuko ryahinduwe kandi ryujujwe kugeza ubu ibiteganya, kubera ko imikirize ya rumwe ishobora kubangamira icyemezo cy'urundi, mu gihe hasuzumwa niba cyamunara yabaye yarakurikije amategeko, kuko uru Rukiko ruramutse rwemeje ko cyamunara nta nenge ifite uwaguze akegukana inzu, hagati aho icyemezo cy'Urukiko Rukuru kikamusubiza ikiguzi cyayo, haba habayeho ibyemezo bibiri bitandukanye ku kiburanwa kimwe, akaba ariyo mpamvu izi manza zifitanye isano zigomba guhuzwa zikaburanishirizwa hamwe nk'uko ingingo y'Itegeko Ngenga yavuzwe haruguru ibiteganya.

B. Ku bijyanye n'urubanza mu mizi.

Ikibazo cyo kumenya niba amasezerano y'ubugwate yasinywe hagati ya ACCESS BANK Ltd na Ngarambe Emmanuel nta gaciro afite kubera ko atanditse (registered).

[11] Me Buzayire A. afatanyije na Me Rukangira E. baburanira ACCESS BANK Ltd bavuga ko umucamanza yemeje ko Banki yagize uburangare n'amakosa ntiyandikisha ingwate kandi kuyandikisha ari umuhango uha agaciro ubugwate, anaherako atesha agaciro ubugwate bwari bwatanzwe, ibyo ngo bikaba binyuranyije n'ibyo amategeko ateganya (ingingo ya 170 CPCSSA) kubera ko "Urukiko rujuririwe ruburanisha gusa ubujurire mu mbibi z'icyajuririwe, rugafata icyemezo ku ngingo zatumye uwatanze ubujurire ajurira cyangwa uwabwuririyeho nawe ajurira", nyamara ngo rukaba rwarafashe icyemezo cyo gutesha agaciro ubugwate, icyo cyemezo kikaba nta shingiro gifite kuko nta muburanyi n'umwe wigeze aregera gutesha agaciro ingwate yatanzwe : bavuga ko ikirego cya Ngarambe cyari kigamije gutesha agaciro cyamunara, kitari icyo gutesha agaciro amasezerano y'ubugwate yari yatanzwe.

[12] Basobanura ko n'iyo kiza kuba ikibazo cyaregewe hari kwitabwa ku ngingo ya 26 y'Itegeko N° 10/2009 ryo kuwa 14/05/2009 ryavuzwe haruguru riha agaciro amasezerano y'ubugwate ku mitungo itimukanwa yakozwe mbere yuko ritangazwa, umucamanza waciye urubanza rwajuririwe akaba ataragombaga kureba niba kwandikisha ingwate byarabayeho cyangwa bitarabayeho, kubera ko itegeko rivuga ko amasezerano akomeza kugira agaciro kugeza igihe arangiriye. Ikindi cyashimangiwe, nuko Ngarambe atakwitwaza ingingo ya 19 y'Itegeko ryo kuwa 15/05/1922 ryavuzwe haruguru ngo asabe ko cyamunara iseswa azi neza ko ariwe wagize uburiganya ingwate ntiyandikishwe na Banki ntiyishyurwe, akaba ariyo mpamvu agomba kwirengera ingaruka zose.

[13] Me Bigaraba J. uburanira Ngarambe E. we ashimangira ko ingingo ya 19 y'Itegeko ryo kuwa 15/05/1922 ryerekeye ubugwate ku bintu bitimukanwa, yateganyaga ko "nta bugwate ku bintu bitimukanwa bubaho butanditse mu gitabo cy'inyandiko z'ubutaka .....". Ibi kandi ngo bikaba biteganywa n'igika cya mbere cy'ingingo ya 4, y'itegeko n° 10/2009 ryo kuwa 14/05/2009 ryerekeye ingwate ku mutungo utimukanwa nkuko ryahinduwe kandi ryujujwe kugeza ubu mu magambo akurikira: "byitwa ko ubugwate bufite agaciro iyo

bwanditse mu gitabo cyandikwamo ingwate ku mutungo utimukanwa mu biro by'Umwanditsi Mukuru", ku bw'izo mpamvu ngo ACCESS BANK ikaba yaragize amakosa n'uburangare ntiyandikishe ingwate kandi ari umuhango uha agaciro ubugwate. Avuga ko Banki igomba kwirengera ingaruka zose zo gutanga inguzanyo kandi ingwate itandikishije.

[14] Urukiko rurasanga koko Umucamanza yaraciye urubanza ku kitaregewe agatesha agaciro amaserano y'ubugwate kandi atabisabwe, anemeza kandi atari byo ko ayo masezerano atari yanditse, mu gihe dosiye igaragaza ko yashyizweho umukono imbere ya Noteri ku itariki ya 04/11/2008. Kubera rero ko ingingo ya 26 y'Itegeko Nº 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa yateganyije ko amasezerano yose y'ubugwate yakozwe mbere yuko iryo tegeko ritangira gukurikizwa (15/05/2009) akomeza kugira agaciro kayo, kandi ko yari yahawe kugeza tariki ya 14/05/2011 kugirango abayasinyiye bayashyikirize Umwanditsi Mukuru, ibi bishatse kuvuga ko igihe cyamunara yabaga ku itariki ya 25/04/2010, yari afite agaciro kayo nk'uko ingingo ya 4 y'Itegeko Nº 13/2010 ryo kuwa 07/05/2010 rihindura kandi ryuzuza Itegeko nº 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa yabiteganyije.

Ikibazo cyo kumenya niba cyamunara yarakozwe amategeko yubahirijwe.

[15] Me Bigaraba J. uburanira Ngarambe E. asobanura ko cyamunara itubahirije amategeko kubera ko "procédure de vente par voie parée" itashoboraga gukoreshwa kubera ko nta ngwate yanditse (enregistré) yariho. Ikindi yasobanuye nuko Perezida w'Urukiko atari agifite ububasha bwo gufata icyemezo cyo guteza cyamunara kubera ko Itegeko ryo kuwa 15/05/1922 ryari ryaravanyweho n'itegeko nº 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, ku bw'izo mpamvu uwagombaga gutanga uburenganzira akaba yari Umwanditsi Mukuru.

[16] Kuri iki kibazo, Urukiko rusanga ibyo bisobanuro nta gaciro byahabwa kubera impamvu zikurikira:

1. Cyamunara yakozwe ku itariki ya 25/04/2010 igihe amasezerano ateganya "procédure de vente par voie parée" yari afite agaciro, kuko abayagiranye bari bafite inshingano zo kuyashyikiriza Umwanditsi Mukuru bitarenze tariki ya 14/05/2011 (mu gihe cy'imyaka 2).
2. Kuvuga ko "procédure de vente par voie parée" yavanyweho n'Itegeko nº 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa byaba ari ukwirengagiza ko amasezerano y'ubugwate iyo "procédure" ishingiyeho yagumanye agaciro ihawe n'iryo tegeko mu ngingo yayo ya 26 yasobanuwe mu bika bibanziriza iki, icyemezo cya Perezida w'Urukiko kikaba aricyo cyagombaga gushingirwaho kugirango cyamunara ibeho, kuko impande zombi zitashoboraga kwiyambaza servisi z'Umwanditsi Mukuru mu gihe muri "Registry" ye umutungo wagombaga kugurishwa utagaragaramo.

[17] Nyuma y'ibimaze gusobanurwa rero, Urukiko rusanga cyamunara yarakozwe mu buryo amategeko ateganya, kubera ko yasinywe imbere ya Noteri kandi agatezwaho kashe mpuruza kuwa 12/11/2009 mbere y'uko cyamunara iba kuwa 25/04/2010, akaba ariyo mpamvu igomba guhamana agaciro kayo, kuko inzu ya Ngarambe yatejwe aruko THEME ENTREPRESE yari yananiwe kwishyura inguzanyo yari yahawe nkuko byari byasezeranywe.

Ku byerekeye ubujurire bwa Dr Mucumbitsi Joseph.

Ikibazo cyo kumenya niba hari igihombo ACCESS BANK Ltd yateje Dr Mucumbitsi Joseph.

[18] Me Karongozi André Martin afatanyije na Me Nubumwe Jean Bosco, basobanura ko Banki yahawe amafaranga mu cyamunara, ariko uwo bahagarariye waguze akaba atarahawe inzu, kandi Banki ariyo yasabye icyemezo cy'urukiko cyo guteza cyamunara ikagihabwa, ku bw'izo mpamvu bakaba babona ko ifite uruhare rukomeye mu gihombo Dr Mucumbitsi J. yagize, kubera ko atahawe icyo yaguze.

[19] Me Buzayire Angèle na Me Rukangira Emmanuel bo siko babibona, kubera ko nta masezerano y'ubugure (contrat de vente) Dr Mucumbitsi J. yagiranye na Banki, kuko yegukanye inzu mu ipiganwa rya cyamunara, ku bw'izo mpamvu ikaba ntacyo yaryozwa.

[20] Urukiko rusanga nta kosa Banki yakoze isaba icyemezo cyo guteza cyamunara, kubera ko yagisabye kugirango hubahirizwe amasezerano (ingingo ya 33 C.C.L.III), cyamunara ikaba yarabaye mu buryo amategeko ateganya, kugirango hishyurwe inguzanyo yari yatanze, abahagarariye Dr Mucumbitsi bakaba batagaragaza uruhare rwa Banki mu gihombo ubu afite cyo kudatunga icyo yaguze mu cyamunara. Kuba Banki yaratanze ikirego mu Rukiko kugirango ayo masezerano ahamane agaciro kayo, byerekana ahubwo ko ari inzira yatangije (diligence) igamije guhesha Dr Mucumbitsi uburyo bwo gushobora kwisanzura (jouissance) ku mutungo yegukanye mu cyamunara.

Ku bijyanye n'indishyi zinyuranye Dr Mucumbitsi Joseph asaba ACCESS BANK Ltd na Ngarambe Emmanuel.

[21] Me Karongozi A.M. uhagarariye Dr Mucumbitsi asaba ko yasubizwa igiciro cy'inzu yari yaguze n'indishyi zihwanye na rwf 39.059.179; mu gihe Urukiko rutegetse ko cyamunara igumana agaciro kayo, Dr Mucumbitsi agasubizwa inzu ye, ACCESS BANK Ltd igafatanya na Ngarambe Emmanuel kumuha indishyi zihwanye na rwf 39.059.179 (principal et intérêts) yishyuye Ecobank kugeza kuwa 05/09/2013, amafaranga yishyuwe kugirango inguzanyo itangwe ahwanye na rwf 3.660.000, rwf 10.000.000 y'indishyi z'akababaro na rwf 11.391.988 akubiyemo ay'ikurikiranarubanza n'igihembo cya Avoka.

[22] Me Buzayire Angèle na Me Rukangira Emmanuel bahagarariye Banki basobanura ko ntacyo Banki yaryozwa kubera ko ntacyo yangirije Dr Mucumbitsi Joseph.

[23] Nk'uko byasobanuwe, Urukiko rusanga kuba kugeza magingo aya Dr Mucumbitsi atarabona inzu ye yaguze, nyirabayazana w'izo ngorane ari Ngarambe Emmanuel washoje imanza asaba gusesa cyamunara yakozwe, kandi nyamara hubahirijwe amategeko nkuko byasobanuwe, akaba agomba kwirengera indishyi zijyanye n'icyo gihombo (ingingo ya 258 C.C. L.III).

[24] Urukiko rusanga mu ndishyi Dr Mucumbitsi asaba, hakubiyemo rwf 3.660.000 (frais sur crédit & commission d'intervention): usibye ko nta n'ibimenyetso byayo yagaragaje, rusanga ayo mafaranga ari umufuragiro (flat fees) udasubizwa, kandi nawe yiyemerera ko yabonye inguzanyo, ku bw'izo mpamvu akaba atagomba kuyasubizwa mu gihe yegukanye ibyo yaguze.

[25] Ku bijyanye n'igihombo yatejwe no kutabona inzu yaguze, Urukiko rusanga mu bushishozi bwarwo Ngarambe Emmanuel agomba guha Dr Mucumbitsi amafaranga y'ubukode yavukijwe ahwanye na rwf 12.300.000, ni ukuvuga rwf 300.000 buri kwezi mu gihe cy'amezi 41, ubwo bukode bwa buri kwezi bukaba bugenwe hashingiwe ku gaciro

k'inzu gasaga rwf 42.000.000, naho iherereye mu Kagari ka Bibare, Umurenge wa Kimironko mu Karere ka Gasabo – Umujyi wa Kigali (ingingo ya 258 C.C. L.III n'iya 89 y'Itegeko Nº 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano).

[26] Urukiko rusanga na none mu bushishozi bwarwo, Ngarambe agomba guha Dr Mucumbitsi Joseph rwf 1.000.000 akubiyemo amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ku nzego zose z'iburanisha (ingingo ya 258 C.C. L.III); rusanga ariko adakwiye kugenerwa indishyi z'akababaro mu gihe yagenewe indishyi zijyanye n'igihombo yatejwe.

III. ICYEMEZO CY'URUKIKO

[27] Rwemeje ko ubujurire bwa ACCESS BANK Ltd n'ubwa Dr Mucumbitsi Joseph bufite ishingiro;

[28] Rukijije ko Ngarambe Emmanuel atsinzwe;

[29] Rutegetse Ngarambe Emmanuel guha Dr Mucumbitsi Joseph indishyi zihwanye na rwf 13.300.000 uru rubanza rukimara gusomwa;

[30] Rumutegetse no kuriha amagarama ahwanye na rwf 32.400 uru rubanza rukimara gusomwa.

[31] Rutegetse ko cyamunara yakozwe hagurishwa inzu iri mu kibanza nº 4650 i Remera – Bibare ihamanye agaciro kayo, inzu yaguzwe ikegukana nyirayo Dr Mucumbitsi Joseph;

[32] Ruvuze ko imikirize y'urubanza RCA 0156/11/HC/KIG rwaciwe kuwa 14/07/2011 ihindutse mu ngingo zarwo zose.