EQUITY BANK RWANDA LTD v. SEBAHIZI

[Rwanda URUKIKO RW'IKIRENGA –RS/INJUST/RCOM00001/2017/SC (Mukanyundo, P.J; Kayitesi R. na Rugabirwa, J.) 26 Mutarama 2018]

Amategeko agenga amabanki – Uburyozwe – Uburangare – Kuba banki ifite inshingano yo guhamagara umukiriya mbere yo gukura amafaranga kuri konti ye iyohereza ahandi nkuko biteganywa mu Mabwiriza Ngengamikorere yayo ariko ntibikore bituma iryozwa ingaruka y'iyo mikorere.

Incamake y'ikibazo: Nyuma yaho Sebahizi afungurije konti y'amadorari muri equity BANK RWANDA LTD yabikujweho 30.000USD akoherezwa muri Singapole atabitangiye uburenganzira yatanze ikirego mu rukiko rw'ubucuruzi rwa Nyarugenge asaba ko iyo banki yamusubiza amadorari ye n'indishyi z'inyuranye; urwo Rukiko rwemeje ko ikirego cye gifite ishingiro maze rutegeka iyo banki kumusubiza 30,000USD ikanamuha indishyi z'akababaro n'igihembo cy'avoka.

EQUITY BANK RWANDA LTD yajuririye Urukiko Rukuru rw'Ubucuruzi maze rwemeza ko ubujurire bwayo bufite ishingiro kuri bimwe kuko Sebahizi nawe atarinze bihagije konti ye bituma ibikuzwaho 30.000USD n'abantu batazwi, rwemeza kandi ko ubujurire bwa Sebahizibwuririye ku bundi nta shingiro bufite, rutegeka iyo banki gusubiza Sebahizi 15.000USD ahwanye na kimwe cya kabiri (1/2) cya 30.000USD yabikujwe kuri konti ye nta burenganzira abitangiye.

Sebahizi ntiyishimiye imikirize y'urukiko rukuru yandikira urwego rw' umuvunyi asaba ko urubanza RCOMA0032/16/HCC rwasubirishwamo ku mpamvu z'akarengane kuko nta ruhare yagize mu ibikuzwa rya 30.000USD kuri konti ye, ko ahubwo byatewe n'uburangare bw'iyo banki.

Urwego rw'umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rumusaba ko urwo rubanzarwasubirishwamo ku mpamvu z'akarengane kuko iyo banki itigeze ihamagara Sebahizi mbere yogukuraho ayo madorari kuri konti ye nkuko biteganyijwe mu mabwiriza ngengamikorere ya EQUITY BANK RWANDA Ltd.

Perezida w'Urukiko rw'Ikirenga amaze gusuzuma raporo y'Ubugenzuzi Bukuru bw'Inkiko yasabye Ubwanditsi bw'uru Rukiko ko bwashyira dosiye y'uru rubanza kuri gahunda y'iburanisha.

Mu rukiko rw'ikirenga, Sebahizi avuga ko urubanza rwaciwe n'urukiko rukuru rwemeje ko agabana uburyozwe niyo banki ngo kuko nawe atarinze bihagije konti ye kandi ntacyo rwagaragaje yagombaga gukora kugirango konti ye itinjirirwa.

Akomeza avuga ko afunguza konti ya madorari muri iyo banki bumvikanye ko mbere yo kubikuza yagombaga kuzuza inyandiko zitwae-mail indemnity na diaspora application for funds transferakoresheje ikaramu kugira ngo zigaragare ko ari umwimerere (originaux) ndetse bakanamuhamagara kuri telefoni nkuko biteganyijwe mu mabwiriza Ngengamikorere ya banki bityo rero iyo banki ikaba igomba kumusubiza amadorari ye ikanabimuhera inyungu n' indishyi zinyuranye.

EQUITY BANK RWANDA Ltd yiregura ivuga ko itasubiza Sebahizi 30.000USD yabikujwe kuri konti ye n'abantu batazwi kuko nta ruhare iyo banki yabigizemo, kandi ko itagombaga kumuhamagara byanze bikunze mbere yo gutanga ayo madolari kuko nta masezerano bagiranye abiteganya, ndetse ko itajya ihamagara umukiliya wayo bitewe n'ubwinshi bw'amafaranga, ko ahubwo imuhamagara ari uko yashidikanyije kuri sheki yahawe, ariko iyo banki itabibonamo ikibazo, ihita itanga amafaranga nta yandi mananiza.

Banki yanatanze ubujurire bwuririye ku bundi isaba ko icyemezo cyafashwe n'urukiko rukuru rw'ubucuruzi kiyitegeka kwishyura 15.000USD cyavanwaho kuko ibyo yakoze yabikoze muburyo buteganywa n'amasezerano bagiranye.

Sebahizi yiregura avuga ko ubujurire bwayo nta shingiro bufite kuko itaregeye urwego rw'umuvunyi isaba kurenganurwa.

Incamake y'icyemezo: 1. Kuba banki yari ifite inshingano yo guhamagara umukiriya mbere yo gukura amadorali kuri konti ye iyohereza ahandinkuko biteganywa mu Amabwiriza Ngengamikorere yayo ariko ntibikore bituma iryozwa ingaruka y'iyomikorere. Bityo rero kuba banki yarabikuye amadorali kuri konti ya Sebahizi ikayohereza mu gihugu cya Singaporeitabanje kumuhamagara kuri telephone kugirango imubaze bituma ariyo yonyine ibiryozwa.

2. Kuba Sebahizi yaravukijwe uburenganzira bwo gukoresha amadorali ye bitewe n'uburangare bwa Banki byateye umuryango we igihombo bityo banki igomba kubitangira indishyi.

3. Indishyi zikurikiranarubanza n'igihembo cy'avoka bigenwa mu bushishozi bw'urukiko igihe asabwe ari menshi.

4. Nta wakwitwaza ko ubujurire bwuririye ku bundi butakwakirwa mu rubanza rusubirishwamo ku mpamvu z'akarengane avuga ko butaregewe urwego rw'umuvunyi kuko haregerwa Urukiko, hataregerwa umuvunyi.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite shingiro.
Imikirize y'urubanza rwaciwe n'Urukiko rukuru rw'Ubucuruzi ihindutse kuri bimwe.

Amategeko yasingiweho:
Itegeko - Ngenga Nº03/2012/OL rigenga imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 81, agace ka 2°.
Itegeko N°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 64,137.
Itegeko Nº15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 110.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Sebahizi Jules arega EQUITY BANK RWANDA Ltd asaba ko yamusubiza 30.000USD yabikujwe kuri konti ye Nº04003211159434 atabitangiye uburenganzira, ikanamuha n'indishyi zinyuranye.

[2] Urwo Rukiko rwaciye urubanza RCOM1408/15/TC/Nyge kuwa 30/11/2015, rwemeza ko ikirego cya Sebahizi Jules gifite ishingiro, rutegeka EQUITY BANK RWANDA Ltd kumusubiza 30.000USD yakuwe kuri konti ye atabizi, ikanamuha 2.000.000Frw y'indishyi z'akababaro n'igihembo cy'Avoka.

[3] EQUITY BANK RWANDA LTD yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, ruca urubanza RCOMA0032/16/HCC kuwa 19/02/2016, rwemeza ko ubujurire bwa EQUITY BANK RWANDA Ltd bufite ishingiro kuri bimwe bijyanye n'uko Sebahizi Jules nawe atarinze bihagije (protégé) konti ye yavuzwe haruguru bituma ibikuzwaho 30.000USD n'abantu batashoboye kumenyekana, rwemeza kandi ko ubujurire bwa Sebahizi Jules bwuririye ku bundi nta shingiro bufite, rutegeka EQUITY BANK RWANDA Ltd gusubiza Sebahizi Jules 15.000USD ahwanye na kimwe cya kabiri (1/2) cya 30.000USD yabikujwe kuri konti ye akoherezwa muri Singapore nta burenganzira abitangiye.

[4] Sebahizi Jules yandikiye Umuvunyi Mukuru asaba ko urubanza RCOMA0032/16/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 19/02/2016, rwasubirishwamo ku mpamvu z'akarengane kubera ko atagize uruhare mu ibikuzwa rya 30.000USD kuri konti ye, ko ahubwo byatewe n'uburangare bwa EQUITY BANK RWANDA Ltd kuko yohereje ayo madolari mu gihugu cya Singapore itabanje kumubaza niba ariwe wayihaye ubwo burenganzira.

[5] Nyuma yo gusuzuma icyo kibazo, Umuvunyi Mukuru yasanze urubanza RCOMA0032/16/HCC rukwiye gusubirishwamo ku mpamvu z'akarengane kubera ko hashingiwe ku mabwiriza ngengamikorere ya EQUITY BANK RWANDA Ltd yitwa *operations procedures manual*, yagombaga guhamagara Sebahizi Jules mbere yo kuvana 30.000USD kuri konti ye no kuyohereza mu gihugu cya Singapore, bityo kuba EQUITY BANK RWANDA Ltd itaramuhamagaye mbere yo kohereza ayo madolari hanze y'Igihugu nk'uko yabyiyemereye imbere y'Urukiko Rukuru rw'Ubucuruzi, bikwiye kuyitsindisha nk'uko biteganywa n'ingingo ya 110 y'Itegeko Nº15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko amagambo umuburanyi avugiye mu Rukiko agira ibyo yemera amutsindisha, kuko uko kutamuhamagara, ari cyo cyatumye ayo mafaranga avanwa kuri konti ye atabizi bikamuteza igihombo.

[6] Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza RCOMA0032/16/HCC rwasubirishwamo ku mpamvu z'akarengane kasobanuwe haruguru. Perezida w'Urukiko rw'Ikirenga amaze gusuzuma raporo y'Ubugenzuzi Bukuru bw'Inkiko, yafashe icyemezo Nº013/2017 kuwa 14/03/2017, asaba Ubwanditsi bw'uru Rukiko ko bwashyira dosiye y'uru rubanza kuri gahunda y'iburanisha kugira ngo urwo rubanza rusubirishwemo ku mpamvu z'akarengane, maze ruhabwa RS/INJUST/RCOM00001/2017/SC.

[7] Urubanza rwaburanishijwe mu ruhame kuwa 18/07/2017, Sebahizi Jules ahagarariwe na Me Bizimana Shoshi Jean Claude, naho EQUITY BANK RWANDA Ltd ihagarariwe na Me Karemera Frank.

[8] Kuwa 06/10/2017, Urukiko rwaciye urubanza rubanziriza urundi, rwemeza ko iburanisha ry'uru rubanza rizongera gufungurwa kuwa 20/12/2017, kugirango ababuranyi b'impande zombi bagire icyo bavuga ku nyandiko y'Amabwiriza ngengamikorere ya EQUITY BANK RWANDA Ltd yitwa Equity Bank Rwanda Ltd, *Branch Operations Procedures Manual,* rutegeka ko amagarama y'urubanza asubitswe.

[9] Iburanisha ry'urubanza ryasubukuwe kuwa 20/12/2017, EQUITY BANK RWANDA Ltd ihagarariwe nka mbere, naho Sebahizi Jules wari uhibereye yunganiwe na Me Bizimana shoshi Jean Claude.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO

1. Kumenya niba Sebahizi Jules yaragize uruhare mu ibikuzwa rya 30.000USD kuri konti ye ku buryo nawe yakwirengera kimwe cya kabiri (½) cy'i gihombo yagize.

[10] Me Bizimana Shoshi Jean Claude, wunganira Sebahizi Jules, avuga ko hashingiwe ku ngingo ya 81, agace ka 2°, y'Itegeko - Ngenga Nº03/2012/OL ryo kuwa13/06/2012 rigenga imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, iteganya ko "Urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane, iyo mu icibwa ry'urubanza hirengagijwe amategeko n'ibimenyetso bigaragarira buri wese", urubanza RCOM0032/16/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 19/02/2016 rukwiye gusubirishwamo ku mpamvu z'akarengane, kubera ko urwo Rukiko rwemeje ko EQUITY BANK RWANDA Ltd igomba gusubiza Sebahizi Jules 15.000USD ngo kuko nawe atarinze bihagije e-mail adress ye kugira ngo konti ye 04003211159434 itabikuzwaho 30.000USD, ariko ko urwo Rukiko rutagaragaje icyo yagombaga gukora kugira ngo konti ye itinjirirwa (itaba piraté/hacked).

[11] Avuga kandi ko EQUITY BANK RWANDA Ltd igomba gusubiza Sebahizi Jules 30.000USD yabikujwe kuri konti ye atabitangiye uburenganzira, kuko Banki yohereje ayo madolari mu gihugu cya Singapore itabanje kumuhamagara kuri telefoni kugira ngo imubaze niba ariwe wayihaye ubwo burenganzira nk'uko biteganywa n'ingingo ya 14 y'amabwiriza ngengamikorere yayo yitwa *operations procedures manual,* ateganya ko EQUITY BANK RWANDA Ltd igomba kubanza guhamagara umukiliya wayo mbere yo kohereza amafaranga 100.000 ahandi hantu cyangwa amafaranga ari munsi yayo mu gihe ishidikanyije kuri sheki bayihaye, kandi ko amasezerano yihariye yitwa *e-mail indemnity,* impande zombi zagiranye, adakuraho ayo mabwiriza rusange cyangwa izindi ngamba zose zafashwe na EQUITY BANK RWANDA Ltd mu rwego rwo kubungabunga umutekano w'amafaranga y'abakiriya bayo kugira ngo atibwa.

[12] Akomeza asobanura ko atumva impamvu yatumye EQUITY BANK RWANDA Ltd itamuhamagara mbere yo kohereza 30.000USD hanze y'Igihugu nk'uko uyiburanira yabyiyemereye ku rwego rwa mbere, mu bujurire no muri uru Rukiko, kandi mbere hose yarabikoze inshuro eshatu zose igihe yamubazaga niba ariwe wayihaye uburenganzira bwo guha Bikema Vanessa 1.700USD, ikindi gihe 1.500USD, n'ikindi gihe 1.800USD, kandi uyu yari imbere mu gihugu, nkanswe kohereza amadolari menshi cyane angana na 30.000USD hanze yacyo, kandi hashingiwe kuri *e-mail indemnity*na *diaspora-application for funds transfer* zandikishije imashini, kandi we ubusanzwe yarazuzurishaga intoki akoresheje ikaramu.

[13] Sebahizi Jules avuga ko atari umucuruzi, ko ahubwo ari umukozi wakoreraga USAID mu Gihugu cya Liberia, ko kugira ngo ajye abona amadolari avuye mu Rwanda, byatumye afunguza konti muri EQUITY BANK RWANDA Ltd, ishami rya Remera, ariko ko batagiranye amasezerano avuga ko konti ye izaba "géré online", ko ahubwo kuri buri *opération* yakoraga ashaka ko Banki imwoherereza amadolari, Banki yamusabaga ko yuzuza *e-mail indemnity na Diaspora application for funds transfer* akoresheje ikaramu kugira ngo zigaragare ko ari umwimerere (originaux), kandi ko yazimusinyishije inshuro eshatu zose ubwo yayisabaga amadolari yavuzwe haruguru, ndetse ko mbere yo kuyamwoherereza, EQUITY BANK RWANDA yabanzaga kumuhamagara kuri telefoni kugira ngo imenye neza niba ariwe wayisabye ayo madolari, yarangiza, ikayanyuza kuri Bikema Vanessa nk'uko Banki yari yarabimusabye igihe yafunguzaga konti kugira ngo ijye iyanyuza ayo madolari kuri konti

y'umuntu yizeye, kandi ko uyu yagiye ahabwa ayo madolari akayamwohereza akoresheje uburyo bwa *Western Union,* kandi nta kibazo cyigeze kibaho icyo gihe.

[14] Asobanura ko EQUITY BANK RWANDA Ltd, yabikuje 8.500USD kuwa mbere tariki ya 29/06/2015 na 21.500USD kuwa gatanu tariki ya 03/07/2015, yose hamwe aba 30.000USD, irangije kuyabikuza kuri konti ye, iyohereza mu gihugu cya Singapore kugira ngo akoreshwe mu kugura impapuro,kandi atari umucuruzi wazo, irangije kuyohereza, Umuyobozi wa EQUITY BANK RWANDA Ltd, ishami rya Remera amuhamagara kuri telefoni kuwa kabiri amubaza niba ariwe wabitangiye uburenganzira, arabihakana, noneho uwo muyobozi amubwira ko agiye gukora ibishoboka byose kugira ngo agaruze ayo madolari akiri hafi, ariko nyuma yaho, atangazwa no kuba yarafunze telefoni ye mu gihe cy'ibyumweru bibiri byose, kandi ko icyo gihe EQUITY BANK RWANDA Ltd ikaba itarahakanaga uburyozwe (responsabilité) bwayo. Asaba ko EQUITY BANK RWANDA Ltd yamusubiza 30.000USD yabikujwe kuri konti ye atabitangiye uburenganzira hiyongereyeho n'indishyi zinyuranye.

[15] Me Karemera Frank, uburanira EQUITY BANK RWANDA Ltd, avuga ko itasubiza Sebahizi Jules 30.000USD yabikujwe kuri konti ye Nº04003211159434 n'abantu batazwi kuko nta ruhare iyo banki yabigizemo, kandi ko itagombaga kumuhamagara byanze bikunze mbere yo gutanga ayo madolari kuko nta masezerano bagiranye abiteganya, ndetse ko itajya ihamagara umukiliya wayo bitewe n'ubwinshi bw'amafaranga, ko ahubwo imuhamagara ari uko yashidikanyije kuri sheki yahawe, ariko iyo banki itabibonamo ikibazo, ihita itanga amafaranga nta yandi mananiza.

[16] Avuga kandi ko ingingo ya 14 y'amabwiriza ngengamikorere yayo yitwa *operations procedures manual*, itegeka EQUITY BANK RWANDA Ltd guhamagara umukiliya wayo, Sebahizi Jules aburanisha, itakurikizwa muri uru rubanza kuko ari ingingo y'amategeko rusange areba abakiliya bayo bose, ko ahubwo hakwiye gukurikizwa amasezerano yihariye yiswe *e-mail indemnity* kuko ariyo arebana n'imicungire ya konti ye yavuzwe haruguru.Asobanura ko kuba EQUITY BANK RWANDA Ltd yarakoranye na Sebahizi Jules amasezerano yihariye, ari uko yabonaga ko amabwiriza ngengamikorere yayo adahagije mu gukumira ingaruka (risques) nyinshi zigaragarira mu bucuruzi bukorwa hakoreshejwe ikoranabuhanga (commerce électronique).

[17] Avuga na none ko wenda EQUITY BANK RWANDA Ltd ishobora kuba yaryozwa ayo madolari mu gihe uru Rukiko rwasanga itarubahirije ingingo za 3, 4, 5 na 6, igika cya 6 z'amasezerano yihariye yavuzwe haruguru. Asobanura ko ingingo ya 3 y'ayo masezerano, iteganya ko iyo banki yakiriye *e-mail* itandukanye na *adresse* yahawe n'umukiliya, itayubahiriza, ariko ko muri uru rubanza nta na rimwe muri ziriya *operations* banki yigeze ikeka ko *e-mail* yabonye itari iya Sebahizi Jules, ko ahubwo yabonaga ko ari iye kuko yari yayohererejе inyemezabwishyu (facture) ivuye Hong Kong igaragaza ugomba guhabwa ayo madolari, igihugu ahereyemo, nimero ya konti ye n'icyo agomba kuyakoresha, bituma banki itanga ayo madolari, ariko ko nyuma yaho, byagaragaye ko konti ye yinjiriwe n'abajura nk'uko nawe ubwe abyiyemerera.

[18] Akomeza asobanura ko ingingo ya 4 y'amasezerano yihariye yavuzwe haruguru, iteganya ko umukiliya yemeye ko *e-mail instructions* zose zizafatwa nk'aho ariwe wazitanze, kandi ko yemeye ingaruka zose zishingiye kuri iyo *e-mail,* bivuze ko umukiliya nawe yemeraga ko EQUITY BANK RWANDA Ltd idafite ubushobozi 100 % bwo kugenzura *e-mail* ye. Avuga ko ingingo ya 5 y'ayo masezerano, ivuga ko umukiliya ashobora guha banki indishyi igihe bibaye ngombwa, kandi ko Sebahizi Jules yayikuyeho uburyozwe kuko nawe yiyemereye ko ubwo bucuruzi burimo ingaruka

(risques) nyinshi. Yongeraho ko ingingo ya 6, igika cya 6, y'ayo masezerano, igaragaza ko banki itaryozwa amakuru atariyo. Mu gusoza, avuga ko n'iyo EQUITY BANK RWANDA Ltd itaba yarahamagaye Sebahizi Jules, itaryozwa ayo madolari kuko yafashe ingamba (précautions) zose yagombaga gufata kugira ngo ayo madolari ye atibwa n'ubwo yaje kwibwa itabishaka.

UKO URUKIKORUBIBONA

[19] Ingingo ya 81, agace ka 2°, y'Itegeko - Ngenga Nº03/2012/OL ryo ku wa 13/06/201 rigenga imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, iteganya ko "urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane, iyo mu icibwa ry'urubanza hirengagijwe amategeko n'ibimenyetso bigaragarira buri wese".

[20] Naho ingingo ya 64 y'Itegeko N°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, igateganya ko "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko".

[21] Ingingo ya 9 ya *email–indemnity*, EQUITY BANK RWANDA Ltd yagiranye na Sebahizi Jules kuwa 07/04/2015 iri muri dosiye, ivuga ko imikoranire yabo izagengwa n'amategeko, politiki ya banki n'imikorere yabo.[1] Naho ingingo ya 14 y'Amabwiriza Ngengamikorere ya EQUITY BANK RWANDA Ltd (Equity Bank Limited, Branch Operations Procedures Manual) agenga uburyo bwo gukura amafaranga kuri konti y'umukiriya ajya kuri konti y'undimukiriya, ateganya ko *Operations Manager*, mbere yo gukura kuri konti y'umukiriya amafaranga bayohereza kuri konti y'undi mukiriya bashingiye ku mabwiriza bohererejwe n'umukiriya aturutse kuri email, bafite inshingano zo kureba niba iyo *e-mail* ari iy'umukiriya yabahaye, bakanareba ndetse niba hariho email indemnity form. Iyo basanze ibyo byuzuye, bagomba guhamagara umukiriya wabahaye amabwiriza kugira ngo hemezwe ko amabwiriza yabahaye ari ukuri.[2]

[22] Dosiye y'urubanza igaragaza ko kuwa 05/06/2012, Sebahizi Jules wakoreraga USAID mu gihugu cya Liberia, yafunguje konti N°4003211159434 muri EQUITY BANK RWANDA Ltd, bumvikana ko kugira ngo iyi banki imwohereze amafaranga, Sebahizi Jules yagombaga kubanza kuzuza *e-mail indemnity* n'inyandiko y'ababa mu mahanga isaba kohereza amafaranga yitwa *Diaspora - application for funds transfer, yarangiza,* akohereza banki izo nyandiko azinyujije *kuri e-mail ye yitwa* ***makuzajules@gmail.com.***

[23] Dosiye y'urubanza igaragaza kandi ko kuwa 13/03/2015, Sebahizi Jules yujuje *e-mail indemnity* na *diaspora-application for funds transfer* n'intoki akoresheje ikaramu, arangije, yohereza EQUITY BANK RWANDA Ltd izo nyandiko azinyujije kuri *e-mail* ye yitwa ***makuzajules@gmail.com*** yavuzwe haruguru, ayisaba ko yabikuza 1.700USD kuri konti N°4003211159434 yavuzwe haruguru, ikayashyira kuri konti N°4003211287114 ya Bikema Vanessa, ukorera muri iyo banki, akaba ariwe uyamwohereza. Ibyo kandi Sebahizi Jules yabikoze kuwa 07/04/2015, ubwo yayisabaga kumwoherereza 1.500USD, no kuwa 27/05/2015, ubwo yayisabaga kumwoherereza 1.800USD, yose

[1] "The indemnity and all future transactions shall be governed by all applicable laws and the Banks policies and procedures".
[2] "If the instruction is received via email, confirm whether the email used to send the instructions is the one maintained in the customer's cust ID. Also the instruction should be received together with email indemnity form. If sender email is the same as the email maintained in system, make a call back to the remitter to confirm authenticity of the said instruction (…)".

anyujijwe kuri konti ya Bikema Vanessa yavuzwe haruguru, kandi Sebahizi Jules yemera ko yabonye aya madolari nta kibazo kibayeho.

[24] Nk'uko bivugwa n'ababuranyi b'impande zombi, muri dosiye, hari *e-mail indemnity* na *diaspora - application for funds transfer* zo kuwa 29/06/2015, zujujwe hakoreshejwe imashini n'umuntu utazwi kandi izo nyandiko ziriho *signature* ya Sebahizi Jules iri *scanée* zohererejwe EQUITY BANK RWANDA Ltd zinyujijwe kuri *e-mail* ya Sebahizi Jules ***(makuzajules@gmail.com)*** yavuzwe haruguru, asaba ko Banki yabikuza kuri konti ye N°4003211159434 yavuzwe haruguru 8.500USD, ikayohereza kuri *adresse* ikurikira: Beneficiary's name: Chong Tze Min, Beneficiary's Account N°245660375, Beneficiary's Bank: DBS Bank Limited, Country: Marina Bay, Singapore, Swift Code/IBAN/Fed wire N°DBSSSGSG. Ibyo kandi byakozwe kuwa 03/07/2015, ubwo uwo muntu utazwi yasabaga ko EQUITY BANK RWANDA Ltd yabikuza kuri konti ya Sebahizi Jules yavuzwe haruguru 21.500USD ikamwoherereza kuri iyo *adresse*, maze EQUITY BANK RWANDA Ltd imwoherereza 30.000USD (8.500USD + 21.500USD) muri ibyo byiciro bibiri.

[25] Urukiko rurasanga imvugo y'uburanira EQUITY BANK RWANDA Ltd y'uko muri uru rubanza hatakurikizwa Amabwiriza Ngengamikorere (Equity Bank Limited, Branch Operations Procedures Manual) yayo kubera ko areba abakiliya bayo muri rusange, aho kureba Sebahizi Jules ku giti cye nta shingiro ifite, kuko ayo mabwiriza yuzuzanya na e-mail indemnity bagiranye ku wa 07/04/2015 yavuzwe haruguru, kandi ko yabaye amategeko hagati y'impande zombi nk'uko biteganywa n'ingingo ya 64 y'Itegeko ryavuzwe haruguru.

[26] Hashingiwe ku mategeko no ku bisobanuro bimaze kuvugwa haruguru, Urukiko rurasanga EQUITY BANK RWANDA Ltd igomba kuryozwa 30.000USD ya Sebahizi Jules yabikujwe kuri konti ye N°4003211159434 atabitangiye uburenganzira kubera impamvu zikurikira :

- Kuba EQUITY BANK RWANDA Ltd yarabikuje 30.000USD kuri konti ya Sebahizi Jules N°4003211159434 inshuro ebyiri zose no mu bihe bitandukanye kuko kuwa 30/06/2015, habikujwe 8.500USD, naho kuwa 03/07/2015, habikuzwa 21.500USD, igahita iyohereza mu gihugu cya Singapore itabanje kumuhamagara kugira ngo yemeze ko ariwe wayihaye uburenganzira bwo kuyohereza muri icyo gihugu, kandi EQUITY BANK RWANDA Ltd yari ifite inshingano zishingiye ku masezerano bagiranye ateganya ko izamuhamagara mbere yo gutanga ayo madolari nk'uko biteganywa n'ingingo ya 14 y'Amabwiriza Ngengamikorere ya EQUITY BANK RWANDA Ltd yiswe Equity Bank Limited, *Branch Operations Procedures Manual*, agenga uburyo bwo gukura amafaranga kuri konti y'umukiriya ajya ku konti y'undi mukiriya.
- Kuba EQUITY BANK RWANDA Ltd itarahamagaye Sebahizi Jules mbere yo kohereza ayo madolari mu gihugu cya Singapore kandi yari ifite amakuru ahagije yagombaga gutuma igira amakenga ikamuhamagara mbere yo kohereza ayo madolari muri icyo gihugu kuko yabonaga ko imikoranire yabo yahindutse bitewe n'uko yabonaga yasabwe kohereza amadolari menshi cyane yo kugura impapuro muri Hong Kong, kandi Sebahizi Jules atari umucuruzi kuko yari umukozi wa USAID.
- Kuba EQUITY BANK RWANDA Ltd itarahamagaye Sebahizi Jules mbere yo kohereza umubare munini w'amadolari ungana na 30.000USD mu gihugu cya Singapore, kandi mbere yarabanzaga kumuhamagara kuri telefoni ubwo yayisabaga ukwoherereza amadolari make cyane angana na 1.700USD, ikindi gihe 1.500USD, n'ikindi gihe 1.800USD, ibikora yabanje gucisha ayo madolari kuri konti N°4003211287114 ya

Bikema Vanessa wari mu Rwanda kuko yakoreraga muri iyo banki nk'uko byasobanuwe haruguru.

- Kuba EQUITY BANK RWANDA Ltd yarohereje 30.000USD mu gihugu cya Singapore itabanje guhamagara Sebahizi Jules kugira ngo yemeze ko ariwe wayihaye ayo mabwiriza kandi imikorere y'amabanki (pratique) yo mu Rwanda ayategeka kubanza guhamagara abakiliya bayo batanze amasheki mbere yokuyishyura. Ibyo kandi biteganyijwe mu mabwiriza ngengamikorere ya EQUITY BANK RWANDA Ltd yavuzwe haruguru (p. 82), aho ategeka ko ba *cash officer* bagomba kubanza guhamagara abakiliya bayo mbere yo guhemba sheki y'ibihumbi magana atanu (500.000Frw) bahawe n'utari nyiri konti.[3]
- Kuba mu nkiko zose EQUITY BANK RWANDA Ltd yaburaniyemo yaremeye ko itahamagaye Sebahizi Jules mbere yo kohereza 30.000USD ye mu gihugu cya Singapore bikwiye kuyitsindisha nk'uko biteganywa n'ingingo ya 110 y'Itegeko Nº15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko"ukwiyemerera mu rubanza ari amagambo umuburanyi cyangwa umuhagarariye avugira mu rukiko agira ibyo yemera. Ayo magambo aramutsindisha".

[27] Hashingiwe ku mategeko, no ku bisobanuro bimaze kuvugwa haruguru, Urukiko rurasanga, kuba nta ruhare Sebahizi Jules yagize mu ibikuzwa rya 30.000USD kuri konti ye N°4003211159434 n'iyoherezwa ryayo mu gihugu cya Singapore, bigaragaza ko EQUITY BANK RWANDA Ltd yabikoze kubera uburangare bwayo bwasobanuwe haruguru, ikwiye kuyamusubiza uko yakabaye kubera impamvu zasobanuwe haruguru.

2. Kumenya niba Sebahizi Jules agomba guhabwa indishyi asaba muri uru rubanza.

[28] Me Bizimana Shoshi avuga koSebahizi Jules n'umuryango we bavukijwe uburengenzira bwo gukoresha 30.000USD yabo mu gihe cy'imyaka ibiri yose, ni ukuvuga kuva ku wa 29/06/2015 kugeza kuri 03/07/2015, igihe ayo madolari yabikuzwaga kuri konti ye kugeza ubu bitewe n'amakosa ya EQUITY BANK RWANDA Ltd yavuzwe haruguru, byatumye bagira imibereho mibi, kandi baribariteganyirije, asaba ko EQUITY BANK RWANDA Ltd yabakoreye ayo makosa, yabibahera inyungu z'igihombo yabateje zibazwe mu buryo bukurikira: 30.000USD × 18 % × imyaka 2 = 10.800USD.

[29] Avuga kandi ko EQUITY BANK RWANDA Ltd igomba gusubiza Sebahizi Jules 16.560USD y'igihombo yagize ubwo yataga akazi yakoraga i Monrovia akaza kwikurikiranira uru rubanza nk'uko bigaragazwa na *pièces* ziri muri dosiye.

[30] Akomeza avuga ko hashingiwe ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano, EQUITY BANK RWANDA Ltd ikwiye guha Sebahizi Jules n'umuryango we 10.000.000Frw y'indishyi z'akababaro bagize, 2.000.000Frw y'ikurikiranarubanza, 1.000.000Frw y'igihembo cy'Avoka cyo ku rwego rwambere, 1.000.000Frw y'igihembo cy'Avoka cyo ku rwego rwa kabiri na 1.000.000Frw y'igihembo cy'Avoka cyo muri uru Rukiko.

[3] A call back mustbe made for all third party cheques before payment for amounts exceeding 500,000FRW.

[31] Me Karemera Frank, uhagarariye EQUITY BANK RWANDA Ltd, avuga ko Sebahizi Jules atahabwa indishyi asaba kubera ko yishoye mu rubanza ku maherere kuko nta makosa banki yamukoreye nk'uko byasobanuwe haruguru.

UKO URUKIKO RUBIBONA

[32] Ku byerekeranye n'inyungu z'igihombo Sebahizi Jules asaba, ingingo ya 137 y'Itegeko N°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, iteganya ko "uruhande rwarenganyijwe rufite uburenganzira bwo kubona indishyi zitanzwen'urundi ruhande rutubahirije ibisabwa mu masezerano, keretse iyo ikiregokigamije kubona indishyi cyahagaritswe cyangwa cyaravuyeho".

[33] Urukiko rurasanga koko Sebahizi Jules n'umuryango we baragize igihombo cyo kudakoresha 30.000USD bitewe n'uko EQUITY BANK RWANDA Ltd yayohereje mu gihugu cya Singaporenta burenganzira abitangiye nk'uko byasobanuwe haruguru, akaba atarashoboye kuyakoresha mu buryo ubwo aribwo bwose, haba kuyatungisha umuryango, haba ndetse no kuyarekera muri banki akabyara inyungu.

[34] Hashingiwe kuri iyo ngingo, Urukiko rurasanga rero EQUITY BANK RWANDA Ltd yateje Sebahizi Jules n'umuryango we igihombo igomba kubibahera n'inyungu z'igihombo yabateje zibariwe ku gipimo cy'inyungu kingana na 6.576% nk'uko cyemejwe na BNR mu kwezi kwa 12/2017 (taux moyen d'intérêt débiteur) kuko aricyo kibarirwaho inyungu z'amafaranga abakiliya babitsa mu ma banki kugira ngo abungukire, aho kuba gipimo cy'inyungu kingana na 18% ku mwaka kuko Sebahizi Jules atari umucuruzi nk'uko yabyiyemereye imbere y'uru Rukiko, bityo kuba Sebahizi Jules yaramaze iminsi 926 adakoresha ayo madolari ye bitewe n'uburangare bwa EQUITY BANK RWANDA Ltd nk'uko byasobanuwe haruguru, ni ukuvuga kuva ku wa 30/06/2015, umunsi wa mbere ayo madolari yabikuzwaga kuri konti ye kugeza ku wa 26/01/2018, umunsi w'isomwa ry'urubanza, igomba kubitangira inyungu zibazwe mu buryo bukurikira:

$$\frac{30.000USD\ X\ 6.576\ X\ iminsi\ 926}{360\ X100} = 5.074USD$$

[35] Ku bijyanye n'ibyo Sebahizi Jules yatanze akurikirana urubanza (dépenses), Urukiko rurasanga ibimenyetso biri muri dosiye bigaragaza ko yakoresheje amafaranga akurikirana uru rubanza mu buryo bukurikira: ama *tickets* y'indege yishyuye yo kuva muri Liberiya aza mu Rwanda yo kuza no gusubirayo: 182USD, 780USD na 592.500Frw nk'uko bigaragazwa n'inyemezabuguzi (reçus) zo kuwa 24/08/2015 no kuwa 31/03/2017, 180USD y'icumbi na visa yishyuye ubwo yari mu gihugu cya Ghana - Accra nk'uko bigaragazwa n'inyemezabuguzi (reçus) yo kuwa 23/08/2015, 50USD yishyuriye muri Gasutamo y'icyo gihugu, na 20USD yahaye umushoferi wamukuye ku kibuga cy'indege akamujyana muri hoteli yarayemo muri icyo gihugu nk'uko bigaragazwa n'inyemezabuguzi zo kuwa 22/08/2015, hiyongereyeho n'ibyamutunze n'ingendo yakoreye mu Rwanda, aho yazaga gukurikirana urubanza rwe, akaba yagenewe 500.000Frw mu bushishozi bw'Urukiko, yose hamwe akaba 1.212USD na 1.092.500Frw y'ikurikiranarubanza.

[36] Ku byerekeranye n'igihembo cy'Avoka, Urukiko rurasanga mu nkiko yagiye aburaniramo, Sebahizi Jules yaragombye kwifashisha abamwunganira kuva ku rwego rwa mbere kugera muri uru Rukiko, bityo EQUITY BANK RWANDA Ltd ikaba igomba kumuha 500.000Frw y'igihembo cy'Avoka yo ku rwego rwa mbere, 500.000Frw yo mu Rukiko Rukuru rw'Ubucuruzi na 1.000.000Frw

yo kuri uru rwego agenwe n'Urukiko mu bushishozi bwarwo kuko ayo asaba ari menshi, yose hamwe akaba 2.000.000Frw y'igihembo cy'Avoka.

[37] Ku bijyanye n'indishyi z'akababaro, ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, iteganya ko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse". Hashingiwe kuri iyi ngingo, Urukiko rurasanga, kuba Sebahizi Jules n'umuryango we baravukijwe 30.000USD mu gihe kirenze imyaka ibiri bitewe n'igikorwa cya EQUITY BANK RWANDA Ltd cyo kuyohereza hanze y'Igihugu Sebahizi Jules atabitangiye uburenganzira nk'uko byasobanuwe haruguru, bigaragara ko icyo gikorwa cyabateye akababaro kinabahungabanya mu mitekerereze yabo, bityo EQUITY BANK RWANDA Ltd igomba kubibahera indishyi z'akababaro zingana na 800.000Frw agenewe n'Urukiko mu bushishozi bwarwo kuko ayo asaba ari menshi.

3. Kumenya niba ubujurire bwuririye ku bundi bwa EQUITY BANK RWANDA Ltd bufite ishingiro.

[38] Me Karemera Frank, uhagarariye EQUITY BANK RWANDA Ltd, avuga ko itanze ubujurire bwuririye ku bundi isaba Urukiko rw'Ikirenga ko rwavanaho icyemezo cyafashwe n'Urukiko Rukuru rw'Ubucuruzi kiyitegeka kwishyura Sebahizi Jules kimwe cya kabiri (1/2) cya 30.000USD kingana na 15.000USD kubera ko nta ruhare iyo banki yagize mu kwibwa kwa *e-mail ye,* kandi ko ibyo iyo banki yakoze, yabikoze mu buryo buteganywa n'amasezerano bagiranye, isaba ahubwo ko Sebahizi Jules akwiye kuyiha 2.000.000Frw y'igihembo cy'Avoka.

[39] Me Bizimana Shoshi wunganira Sebahizi Jules avuga ko ubujurire bwuririye ku bundi bwatanzwe na EQUITY BANK RWANDA Ltd nta shingiro bufite kubera ko yagize uburangare bwo kohereza amafaranga ye hanze y'igihugu atayihaye uburenganzira. Ikindi n'uko kuba EQUITY BANK RWANDA Ltd itararegeye Urwego rw'Umuvunyi isaba kurenganurwa, asanga itatanga ubujurire bwuririye ku bundi isaba ko 15.000USD Sebahizi Jules yagenewe yavanwaho kubera ko kuregera urwo rwego ari inzira yihariye (procédure spéciale), ko ahubwo yaregera amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka gusa.

UKO URUKIKO RUBIBONA

[40] Urukiko rurasanga ubujurire bwuririye ku bundi bwatanzwe na EQUITY BANK RWANDA Ltd nta shingiro bufite kubera impamvu zasobanuwe haruguru, bityo ikaba itagomba guhabwa amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka isaba kuko itsinzwe.

[41] Urukiko rurasanga ibyo Me Bizimana Shoshi aburanisha by'uko EQUITY BANK RWANDA Ltd idafite uburenganzira bwo gutanga ubujurire bwuririye ku bundi nta shingiro bifite kuko haregerwa Urukiko, hataregerwa Umuvunyi.

III.ICYEMEZO CY'URUKIKO

[42] Rwemeje ko ikirego cyatanzwe na Sebahizi Jules gisaba gusubirishamo ku mpamvu z'akarengane urubanza RCOMA0032/16/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 19/02/2016 gifite shingiro.

[43] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na EQUITY BANK RWANDA Ltd nta shingiro bufite.

[44] Rutegetse EQUITY BANK RWANDA Ltd guha Sebahizi Jules 1.212USD na 1.092.500 Frw y'ikurikiranarubanza.

[45] Rutegetse EQUITY BANK RWANDA Ltd guha Sebahizi Jules 30.000USDyabikujwe kuri konti ye atabitangiye uburenganzira na 5.074USDy'inyungu z'igihombo yamuteje n'umuryango we, yose hamwe akaba 35.074USD.

[46] Rutegetse EQUITY BANK RWANDA Ltd guha Sebahizi Jules 800.000Frw y'indishyi z'akababaro na 2.000.000Frw y'igihembo cy'Avoka.

[47] Ruvuze ko imikirize y'urubanza RCOMA0032/16/HCC rwaciwe n'UrukikoRukuru rw'Ubucuruzi ku wa 19/02/2016 ihindutse kuri bimwe.

[48] Rutegetse EQUITY BANK RWANDA Ltd gutanga amagarama y'urubanza angana na 100.000Frw.