SIMACO LTD v. I&M BANK RWANDA PLC

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00008/2021/SC, (Ntezilyayo, P.J., Mukamulisa, Cyanzayire, Muhumuza na Karimunda J.) 25 Gashyantare 2022]

Amategeko agenga imitunganyirize y'imirimo y'amabanki – Gusesa amasezerano y'inguzanyo- Umwenda remezo – Inyungu – In Duplum Rule – Inyungu zihagarara kubarwa igihe ingano yazo imaze kungana n'umwenda remezo utishyuwe (outstanding capital).

Incamake y'ikibazo: Sosiyete SIMACO Ltd yagiranye na I&M Bank Rwanda Plc amasezerano y'inguzanyo, ariko inanirwa kwishyura maze banki iyandikira ibaruwa isesa amasezerano y'inguzanyo.

SIMACO Ltd yareze I&M Bank Rwanda Plc mu Rukiko rw'Ubucuruzi irusaba kwemeza ingano y'umwenda nyakuri iyibereyemo, inavuga ko hari umwenda itahawe kandi yari yarawemerewe, isaba n'indishyi zinyuranye.

Urukiko rw'Ubucuruzi rwaciye urubanza, rwemeza ko nta kigaragaza ko I&M Bank yayihaye inguzanyo, bityo ko imiburanire yayo nta shingiro ku bijyanye n'ibarwa ry'ingano y'inguzanyo.

I&M Bank yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi ivuga ko indishyi yategetswe kwishyura SIMACO Ltd zidafite ishingiro. SIMACO Ltd nayo ijurira ivuga ko itemera ingano y'umwenda ifitiye I&M Bank Rwanda Plc n'uburyo wabazwe.

Urukiko rwashyizeho umuhanga kugira ngo abashe kugaragaza umwenda nyakuri SIMACO Ltd ibereyemo I&M Bank Rwanda Plc, maze muri raporo yakoze ashingiye ku masezerano aba bombi bashyizeho umukono no kuri historique ya current A/C ya SIMACO Ltd.

Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza maze rwemeza ko kuri ligne de crédit SIMACO Ltd yari yemerewe guhabwa, I&M Bank Plc yashoboye kugaragaza ko yahawe atuzuye kurayo yari yasabye.

SIMACO Ltd yajuririye Urukiko rw'Ubujurire ivuga ko umwenda yishyuzwa iwemera, ariko ko hashingiwe ku mabwiriza Rusange ya Banki Nkuru y'u Rwanda, iyi nguzanyo yakabaye yarahagaritswe kubarwa nyuma y'iminsi 90 batishyura. I&M Bank Rwanda Plc nayo ijurira ivuga ko Urukiko rwemeje ko inyungu zibarwa kugeza ku wa 22/02/2018 kandi zaragombaga kubarwa kugeza urubanza rwa nyuma ruciwe.

Urukiko rw'Ubujurire rwaciye urubanza, rwemeza ko ubujurire bwa I&M Bank naho ubwa SIMACO Ltd nta shingiro bufite.

SIMACO Ltd yandikiye Perezida w'Urukiko rw'Ikirenga isaba ko urubanza RCOMAA 00048/2020/CA rwasubirwamo ku mpamvu z'akarengane, yemeje ko urwo rubanza rusubirwamo ku mpamvu z'akarengane.

SIMACO Ltd ivuga ko itemera uburyo Urukiko rwemeje ko inyungu zigomba gukomeza kubarwa nyuma y'iseswa ry'amasezerano kandi amasezerano aba atakiriho, kandi ko batanemeranya ku ngano y'umwenda remezo SIMACO Ltd yari isigaje kwishyura.

I&M Bank Rwanda Plc yiregura ivuga ko gusesa amasezerano bidasobanura ko ibyateganywaga nayo bivanweho, ahubwo ko ari uguhagarika imikoranire n'uwahawe inguzanyo kuko yananiwe

kwishyura, kugira ngo yishyure umwenda asigaje n'inyungu zawo zose, ivuga ko inyungu zikomeza kubarwa kugeza yishyuye nk'uko biteganywa mu masezerano bagiranye.

SIMACO ivuga ko Urukiko rutagomba kwemeza ko inyungu zikomeza kubarwa kugeza urubanza ruciwe bwa nyuma mu gihe Banki yasheshe amasezerano, ahubwo ko inyungu zagombaga guhita zihagarara kuko Banki yayasheshe igihe cyo kwishyura kitararangira, ivuga kandi ko SIMACO Ltd yasabye kugurisha ingwate kugirango yishyure, I&M Bank irabyanga, nayo ikaba kuri we ari indi mpamvu yari gutuma inyungu zitaragombaga gukomeza kubarwa.

I&M Bank ivuga ko amasezerano y'inguzanyo agaragaza neza igipimo cy'inyungu zumvikanyweho, ko kandi nyuma yo kuyashyiraho umukono, SIMACO Ltd yamenyeshejwe ko inyungu zizakomeza kubarwa kugeza umwenda wose wishyuwe. Akomeza avuga ko inyungu zidashobora guhagarara kubarwa kuko iyo yishyurira ku gihe amafaranga yahawe, Banki yari kongera kuyaguriza abandi bantu nabo bakishyura inyungu, ariyo mpamvu igomba kwishyura izo nyungu yayivukije.

Banki ivuga kandi ko mu masezerano y'inguzanyo hagati yayo na SIMACO Ltd, ntaho bumvikanye ko mu gihe hazaba dénonciation du crédit izasonerwa inyungu, ahubwo ko mu ngingo rusange z'amasezerano (conditions générales) ivuga ko iyo dénonciation ibaye hakorwa cloture du compte, Banki ikagaragaza ibirarane umukiriya ayifitiye kandi inyungu zigakomeza kubarwa.

Banki ikomeza kwisobanura ivuga ko inshingano za SIMACO Ltd zo kwishyura umwenda ibereyeho I&M Bank Rwanda Plc zitasheshwe n'uko Banki yakoze dénoncniation du crédit kuko iyi sosiyete yari ikiyifitiye amafaranga itarishyura, bityo ko n'inyungu zakomezaga kubarwa kuko Banki ari ikigo cy'imari gicuruza amafaranga, ko kuba umuntu yananiwe kwishyura bidahagarika inyungu, ahubwo ko zikomeza kubarwa ariko ntizirenge umwenda remezo nk'uko itegeko ribiteganya.

Incamake y'icyemezo : 1. Inyungu zihagarara kubarwa igihe ingano yazo imaze kungana n'umwenda remezo utishyuwe (outstanding capital). Bityo inyungu zose urega agomba gutanga zigomba kugarurwa ku ngano y'umwenda shingiro.

Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro;

Amategeko yashingiweho:

Itegeko no 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111.

Itegeko Nº 47/2017 ryo ku wa 23/9/2017 rigena imitunganyirize y'imirimo y'amabanki, ingingo ya 112.

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Amabwiriza rusange n° 12/2017 yo ku wa 23/11/2017 ku ishyirwa mu byiciro ry'imyenda no guteganya ingoboka, ingingo ya 8

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku masezerano y'inguzanyo ingana na 676.683.338 Frw, SIMACO Ltd yagiranye na I&M Bank Rwanda Plc ku wa 29/07/2014. Iyo nguzanyo ikaba yari igabanyije mu buryo butatu (3), aribwo:

a. Import limit facility of 500,000$ equivalent to 341,728,300Rwf to facilitate importation of required raw material ;

b. Overdraft limit facility of 200,000,000 Rwf to finance the working capital requirements mainly importation of stocks for a period of 12 months ;

c. a vehicle loan facility of 134,955,038 Rwf to finance acquisition of 2 vehicles repayable over a period of 36 months.

[2] SIMACO Ltd yagiye yishyura iyo nguzanyo nk'uko byari biteganyijwe mu masezerano yagiranye na I&M Bank Rwanda Plc, ariko iza kugera aho inanirwa kwishyura bituma amasezerano y'inguzanyo avugururwa ku wa 31/10/2015, yongera kuvugururwa ku wa 29/03/2017. Nyuma yaho yakomeje kunanirwa kwishyura maze ku wa 22/02/2018, I&M Bank Rwanda Plc iyandikira ibaruwa yise *"Denunciation of your loan facilities"* isesa ayo masezerano y'inguzanyo.

[3] SIMACO Ltd yareze I&M Bank Rwanda Plc mu Rukiko rw'Ubucuruzi irusaba kwemeza ingano y'umwenda nyakuri iyibereyemo, inavuga ko hari umwenda wa 500,000$ itahawe kandi yari yarawemerewe, isaba n'indishyi zinyuranye.

[4] Urukiko rw'Ubucuruzi rwaciye urubanza RCOM 01927/2018/TC ku wa 14/02/2019, rwemeza ko nta kigaragaza ko I&M Bank Rwanda Plc yahaye SIMACO Ltd inguzanyo yo kuzana ibintu mu mahanga (*import limit facility*) ingana na 500,000$ yari ihwanye na 341.718.300Frw, rutegeka I&M Bank Rwanda Plc guha SIMACO Ltd indishyi zingana na 6.000.000 Rwf y'igihombo yatejwe n'iryo kosa. Urukiko ntirwahaye ishingiro imiburanire ya SIMACO Ltd ku bijyanye n'ibarwa ry'ingano y'inguzanyo aho yemezaga ko yabazwe nabi.

[5] Urwo Rukiko rwafashe icyo cyemezo rushingiye ku kuba nta kigaragaza ko I&M Bank Rwanda Plc yahaye SIMACO Ltd inguzanyo yo kuzana ibintu mu mahanga ingana na 500,000$ ahwanye n'amafaranga 341.718.300Frw. Rwashingiye kandi ku kuba umwenda I&M Bank Rwanda Plc yishyuza SIMACO Ltd ukomoka ku masezerano y'inguzanyo yo ku wa 29/07/2014, ku wa 31/10/2015 no ku wa 29/03/2017, ariko SIMACO Ltd mu kubara umwenda nyakuri igomba kwishyura ikaba yarashingiye gusa ku masezerano abiri ariyo ayo ku wa 29/07/2014 no ku wa 31/10/2015, rusobanura ko ingano y'umwenda SIMACO Ltd ivuga ko ariyo igomba kwishyura idahuye n'ukuri.

[6] I&M Bank Rwanda Plc yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, ikirego cyayo cyandikwa kuri RCOMA 00246/2019/HCC, SIMACO Ltd nayo irajurira ikirego cyayo gihabwa RCOMA 00248/2019/HCC, izo manza zombi zirahuzwa. I&M Bank Rwanda Plc ivuga ko yubahirije amasezerano yo ku wa 29/07/2014 ku bijyanye na *import limit facility* ya 500,000$, kandi ko indishyi yategetswe kwishyura SIMACO Ltd zidafite ishingiro. SIMACO Ltd yo yajuriye ivuga ko itemera ingano y'umwenda ifitiye I&M Bank Rwanda Plc n'uburyo wabazwe.

[7] Urukiko rwashyizeho umuhanga (*expert*) kugira ngo abashe kugaragaza umwenda nyakuri SIMACO Ltd ibereyemo I&M Bank Rwanda Plc, maze muri raporo yakoze ashingiye ku masezerano aba bombi bashyizeho umukono ku wa 29/7/2014 no kuri *historique* ya *current A/C* ya SIMACO Ltd, yerekana ko umwenda wari usigaye ungana na 241.384.417Frw, ubazwe kugeza tariki ya 22/02/2018.

[8] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00246/2019/HCC - RCOMA 00248/2019/HCC ku wa 06/05/2020, rwemeza ko I&M Bank Rwanda Plc yubahirije amasezerano y'inguzanyo yo ku wa 29/07/2014 yagiranye na SIMACO Ltd ku bijyanye na *Import limit facility* ya 500,000$, ko umwenda SIMACO Ltd igomba kwishyura I&M Bank Rwanda ungana na 241.384.417Frw. Rutegeka SIMACO Ltd kwishyura I&M Bank 800.000Frw y'igihembo cy'avoka mu rwego rwa mbere no mu rwego rw'ubujurire, ikanayishyura 40.000Frw y'ingwate y'amagarama yatanze ijurira.

[9] Urwo Rukiko rwemeje ko kuri *ligne de crédit* ya 500,000$ SIMACO Ltd yari yemerewe kugira ngo itumize ibikoresho by'ibanze bikoreshwa mu ruganda, I&M Bank Plc yashoboye kugaragaza ko SIMACO Ltd yahawe 369,900$ kuko ubusabwe bw'ayandi butari bukiriho, rushingiye ku nyandiko zitandukanye zigaragaza ko SIMACO Ltd yandikiye I&M Bank Rwanda Plc iyisaba amadorari angana na 369,900 n'izayisabaga kuvugurura amasezerano yo kwishyura iyo nguzanyo. Rwashingiye kandi kuri raporo yakozwe n'umuhanga yo ku wa 8/2/2020 igaragaza ko kugeza ku wa 22/2/2018, I&M Bank Rwanda Plc isesa amasezerano, umwenda yari ifitiye Banki wanganaga na 241.384.417Frw.

[10] SIMACO Ltd yajuririye Urukiko rw'Ubujurire ivuga ko umwenda ungana na 102.568.441 Frw iwemera, ariko ko hashingiwe ku ngingo ya 5 y'Amabwiriza Rusange ya Banki Nkuru y'u Rwanda N°12/2017 yo ku wa 23/11/2017 ku ishyirwa mu byiciro ry'imyenda no guteganya ingoboka, iyi nguzanyo yakabaye yarahagaritswe kubarwa nyuma y'iminsi 90 batishyura. I&M Bank Rwanda Plc nayo ijurira ivuga ko Urukiko rwemeje ko inyungu zibarwa kugeza ku wa 22/02/2018 kandi zaragombaga kubarwa kugeza urubanza rwa nyuma ruciwe.

[11] Urukiko rw'Ubujurire rwaciye urubanza RCOMAA 00048/2020/CA ku wa 14/05/2021, ruha ishingiro ubujurire bwa I&M Bank Rwanda Plc naho ubwa SIMACO Ltd ruvuga ko nta shingiro bufite. Rutegeka SIMACO Ltd kwishyura I&M Bank Rwanda Ltd 337.619.878 Frw akomoka ku mwenda n'inyungu zawo, ubazwe kugeza ku wa 09/04/2021, runayitegeka kwishyura I&M Bank Rwanda Plc 1.500.000 Frw akubiyemo ay'ikurikiranarubanza n'igihembo cya avoka.

[12] SIMACO Ltd yandikiye Perezida w'Urukiko rw'Ikirenga isaba ko urubanza N° RCOMAA 00048/2020/CA rwasubirwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma icyo kibazo, mu cyemezo cye n° 258/CJ/2021 cyo ku wa 28/10/2021, Perezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, rwoherezwa mu bwanditsi bw'uru Rukiko rwandikwa mu bitabo byabugenewe kuri RS/INJUST/RCOM 00008/2021/SC kugirango ruzongere ruburanishwe.

[13] Ku wa 06/01/2022, iburanisha ryabereye mu ruhame, ababuranyi bose bitabye, SIMACO Ltd ihagarariwe na Kalisa Jéremie, Me Rutagengwa Damascène hamwe na Me Nsengiyumva Emmanuel bamwunganiye, naho I&M Bank Plc ihagarariwe na Me Rusanganwa Jean Bosco.

[14] Uhagarariye SIMACO Ltd n'abunganizi be bavuga ko batemeranya no kuba Urukiko rwaremeje ko inyungu zigomba gukomeza kubarwa nyuma y'iseswa ry'amasezerano kandi amasezerano aba atakiriho, kandi ko batanemeranya ku ngano y'umwenda remezo SIMACO Ltd yari isigaje kwishyura. Naho uhagarariye I&M Bank Rwanda Plc yiregura avuga ko gusesa amasezerano bidasobanura ko ibyateganywaga nayo bivanweho, ahubwo ko ari uguhagarika imikoranire n'uwahawe inguzanyo kuko yananiwe kwishyura, kugira ngo yishyure umwenda asigaje n'inyungu zawo zose. Avuga rero ko inyungu zikomeza kubarwa kugeza yishyuye nk'uko biteganywa mu masezerano SIMACO Ltd yagiranye na Banki.

[15] Ibibazo bigomba gusuzumwa muri uru rubanza bikaba ari ibi bikurikira:

a. kumenya ingano y'umwenda remezo SIMACO Ltd yagombaga kwishyura I&M Bank Rwanda Plc igihe amasezerano y'inguzanyo yaseswaga ku wa 22/02/2018;

b. kumenya niba inyungu zaragombaga gukomeza kubarwa nyuma y'uko I&M Bank Rwanda Plc isheshe amasezerano y'inguzanyo (dénonciation du crédit/denunciation of credit).

c. Kumenya niba SIMACO Ltd yaraciwe indishyi zidafite aho zishingiye no kumenya niba ababuranyi bakwiye indishyi basaba muri uru rubanza

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. Kumenya ingano y'umwenda remezo SIMACO Ltd yagombaga kwishyura I&M Bank Rwanda Plc igihe amasezerano y'inguzanyo yaseswaga ku wa 22/02/2018

[16] Kalisa Jéremie uhagarariye SIMACO Ltd avuga ko amasezerano y'umwenda yagiranye na I&M Bank Rwanda Plc yari mu buryo butatu, ubwa mbere bakaba barasabye 1,500,000$ bahabwa 500,000$, batanga ingwate esheshatu zitandukanye. Nyuma y'umwaka umwe bishyura, hasigaye kwishyura 300.000.000Frw, bongera gusaba I&M Bank Rwanda Plc kubaha inguzanyo batahawe nk'uko bari babyumvikanye mu masezerano. Avuga ko I&M Bank Rwanda Plc yabasabye kongera ingwate kugira ngo bahabwe 1.000.000.000 Frw, ariko ko nyuma yo kuzitanga aho kugirango bahabwe amafaranga bemeranyijweho, bahawe gusa 600.000.000 Frw. Ku wa 22/02/2018, I&M Bank Rwanda Plc yafashe icyemezo cyo gusesa amasezerano y'inguzanyo bari bafitanye.

[17] Anenga kuba Urukiko rw'Ubujurire rwarashingiye icyemezo cyarwo kuri *historique* ya banki, aho gushingira kuri raporo y'umuhanga mu ibaruramari washyizweho n'Urukiko Rukuru rw'Ubucuruzi wari wagaragaje ingano y'umwenda remezo SIMACO Ltd yari isigaje kwishyura I&M Bank Rwanda Plc ungana na 102.568.441 Frw, n'ubwo bwose SIMACO Ltd itemeraga uburyo inyungu zabazwe zikarenga umwenda remezo.

[18] Me Rutagegwa Jean Damascène wunganira SIMACO Ltd avuga ko inyungu zagombaga kubarwa hashingiwe ku ngano y'umwenda remezo ungana na 102.568.441 Frw wagaragajwe muri raporo y'umuhanga washyizweho n'Urukiko. Akomeza avuga ko, Urukiko rw'Ubujurire rwirengagije nkana ibiteganywa n'ingingo ya 112, igika cya 1(1,2) y'Itegeko no 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize n'imirimo y'amabanki, aho rwavuze ko iyo ngingo idashobora gukoreshwa, rwirengagiza kandi ingingo ya 8 (b) y'Amabwiriza Rusange ya Banki Nkuru y'u Rwanda N°12/2017 yo ku wa 23/11/2017 ku ishyirwa mu byiciro ry'imyenda no

guteganya ingoboka kandi izo ngingo zombi zari zihuye n'icyaburanwaga mu rubanza kijyanye no kumenya ingano y'umwenda wari usigaye kwishyurwa.

[19] Me Rusanganwa Jean Bosco uhagarariye I&M Bank Rwanda Plc avuga ko mu kubara umwenda remezo, badahera ku masezerano yakozwe mu mwaka wa 2014, kuko yasimbuwe n'ayakozwe mu mwaka wa 2015, 2016 na 2017. Avuga ko ku bijyanye na *overdraft*, I&M Bank Rwanda Plc ishingira ku masezerano ya 2017 kuko indi myenda yose yishyuwe mu gihe, ko akurikije ayo masezerano, SIMACO Ltd itagombaga kurenza 200.000.000Frw ari nayo Banki ifata nk'umwenda remezo kugeza ku wa 31/03/2018.

[20] Akomeza avuga ko *historique* ya Banki yo ku wa 07/08/2019 Urukiko rwashingiyeho igaragaza ko kugeza ku wa 29/03/2019, SIMACO Ltd yari ifitiye I&M Bank Rwanda Plc, umwenda ungana na 326.073.235 Frw. Naho Umuhanga washyizweho n'Urukiko Rukuru rw'Ubucuruzi, muri raporo ye agaragaza ko kugeza taliki ya 22/02/2018 I&M Bank Rwanda Plc isesa amasezerano, umwenda wari usigaye kwishyurwa na SIMACO Ltd wanganaga na 241.384.417 Frw, noneho Banki imaze gukora *actualisation*, isanga kugeza ku wa 09/04/2021, umwenda wari ugeze kuri 337.619.878Frw, ko kandi I&M Bank Rwanda Plc, yari yumvikanye na SIMACO Ltd ko nirenza amafaranga yari yemerewe nka *overdraft*, hazongerwaho inyungu za 4% ku mwaka zibariwe kuyo yafashe, iyo ikaba ariyo mpamvu yatumye yishyuzwa inyungu zirenze umwenda remezo. Naho ku bijyanye n'ingwate, avuga ko I&M Bank Rwanda Plc itabyisobanuraho kuko byaregewe mu zindi manza.

[21] Ku bijyanye n'inguzanyo SIMACO Ltd ivuga ko itahawe, Me Rusanganwa Jean Bosco asobanura ko kongera *overdraft* byasabaga SIMACO Ltd kuba igifite ibikorwa by'ubucuruzi kuko yahawe umwenda kugira ngo biyifashe gukomeza ubucuruzi bwayo. Asobanura ko SIMACO Ltd itahawe *overdraft* ya 2, ko ahubwo nyuma yo kubona ko itishyuye 200.000.000Frw, yahawe uburyo bwo gukomeza gukorana na Banki, ariko bumvikana ko nirenza igihe bumvikanye izishyura inyungu za 4% ku mwaka, kandi ko gukomeza kutishyura mu gihe bishobora gutuma habaho iseswa ry'amasezerano.

UKO URUKIKO RUBIBONA

[22] Ingingo ya 3 y' Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko *"buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana."*

[23] Ingingo ya 64 y'itegeko N°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya."

[24] Dosiye y'urubanza igaragaza ko, ku wa 29/07/2014, SIMACO Ltd yagiranye na I&M Bank Rwanda PlC amasezerano y'inguzanyo ingana na 676,683,338 Frw; SIMACO Ltd igenda yishyura umwenda nk'uko amasezerano yabiteganyaga, ariko nyuma bitangira kuyinanirwa, habaho kuvugura amasezerano bigera aho inanirwa kwishyura burundu, bituma ku wa 22/02/2018, I &M Bank Rwanda yandikira SIMACO Ltd ibaruwa yise *«Denunciation of your Ioans facilities»* isesa amasezerano, igaragaza ko umwenda wari usigaye kwishyurwa wanganaga na 248.384.992 Frw.

[25] Bigaragara kandi ko SIMACO Ltd itemeye ingano y'uwo mwenda yishyuzwaga na I&M Bank Rwanda Plc, bituma mu bujurire, Urukiko Rukuru rw'Ubucuruzi rushyiraho umuhanga kugirango agaragaze ingano y'umwenda, maze raporo y'umuhanga igaragaza ko SIMACO Ltd yahawe umwenda mu byiciro bitatu; icyiciro cya mbere ari nacyo yishyuye ikakirangiza kikaba ari " *a vehicle loan facility of 134.955.038 Rwf to finance acquisition of 2 vehicles'',* icyiciro cya kabiri ni *overdraft*, aho yari yemerewe 200.000.000Frw yagombaga gufata mu gihe cyumvikanyweho mu masezerano. Icyiciro cya gatatu ni Import limits facility of 500.000USD ingana na 341.728.300Frw**.** Ayo masezerano yagiye avugururwa kugeza ku wa 22/02/2018, umuhanga akaba agaragaza ko SIMACO Ltd yagombaga kwishyura I&M Bank Rwanda Plc 241.384.417 Frw akubiyemo umwenda remezo usigaye ungana na 102.568.441 Frw, inyungu zisanzwe zingana na 119.945.322 Frw n'andi mafaranga anyuranye ajyanye n'imicungire y'umwenda (*management charges and monthly charges*) angana na 18.870.654 Frw. Hashingiwe kuri iyi raporo y'umuhanga, Urukiko rurasanga umwenda remezo ukomoka kuri *overdraft* SIMACO Ltd yari isigaje kwishyura I&M Bank Rwanda Plc ungana na 102.568.441 Frw.

b. Kumenya niba inyungu zaragombaga gukomeza kubarwa nyuma y'uko I&M Bank Rwanda Plc isheshe amasezerano (*dénonciation du crédit/denunciation of credit*)

[26] Mu myanzuro bashyikirije Urukiko, mu Nama ntegurarubanza no mu iburanisha, Kalisa Jérémie uhagarariye SIMACO Ltd n'abamwunganira bavuga ko kuba Urukiko rw'Ubujurire rwaremeje ko SIMACO Ltd igomba kwishyura I&M Bank Rwanda Plc umwenda ungana na 241.384.417Frw binyuranyije n'ibiteganywa n'ingingo ya 112 y'Itegeko Nº 47/2017 ryavuzwe haruguru ndetse n'ingingo ya 20 y'Itegeko N 17/2021 ryo ku wa 03/03/2021 ryerekeye kurengera umuguzi wa serivisi y'imari[1] kuko rwabariyemo inyungu z'umurengera zikubye kabiri umwenda wari usigaye kwishyurwa zingana na 138.815.976Frw.

[27] Basobanura kandi ko Urukiko rutagomba kwemeza ko inyungu zizakomeza kubarwa kugeza urubanza ruciwe bwa nyuma mu gihe Banki yasheshe amasezerano ku wa 22/02/2018 yaragombaga kurangira ku wa 31/03/2018. Ahubwo ko inyungu zagombaga guhita zihagarara hashingiwe ku ngingo ya 8 (b) y'Amabwiriza Rusange ya Banki Nkuru y'u Rwanda N°12/2017 yo ku wa 23/11/2017, iteganya ko inyungu zikomoka ku mwenda zibarwa hashingiwe ku masezerano y'inguzanyo, kandi ayo masezerano atari akiriho, kuko Banki yayasheshe igihe cyo kwishyura kitararangira. Kuribo, nk'uko Me Rutagengwa Jean Damascene abisobanura, uwo mwenda wafatwa nk'aho wasibwe.

[28] Naho Me Nsengiyumva Emmanuel avuga ko SIMACO Ltd yasabye kugurisha ingwate kugirango yishyure, I&M Bank Rwanda Plc irabyanga, nayo ikaba kuri we ari indi mpamvu yari gutuma inyungu zitaragombaga gukomeza kubarwa.

[29] Me Rusanganwa Jean Bosco uhagarariye I&M Bank Rwanda Plc, avuga ko amasezerano y'inguzanyo agaragaza neza igipimo cy'inyungu zumvikanyweho, ko kandi nyuma yo kuyashyiraho umukono, ku wa 29/03/2017 SIMACO Ltd yamenyeshejwe ko inyungu zizakomeza kubarwa kugeza umwenda wose wishyuwe, ahagira hati: *"together with interest which will continue to accrue until the date of final payment"*.

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[1] Ivuga ko utanga serivise y'imari atagomba kurenza umubare w'amafaranga y'umwenda shingiro utarishyuwe igihe umuguzi wa serivise y'imari yananiwe kwishyura n'inyungu zitarenze umwenda shingiro wari usigaye.

[30] Akomeza avuga ko inyungu zidashobora guhagarara kubarwa kuko iyo SIMACO Ltd yishyurira ku gihe amafaranga yahawe, Banki yari kongera kuyaguriza abandi bantu nabo bakishyura inyungu, ariyo mpamvu SIMACO Ltd igomba kwishyura izo nyungu yayivukije. Asobanura ko kwemeza ko inyungu zidakomeje kubarwa nyuma yo gusesa amasezerano y'inguzanyo, byaba binyuranyije n'ibiteganywa n'ingingo ya 64 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano[2] n'umurongo watanzwe n'Urukiko rw'Ikirenga nko mu rubanza RCOMA 0044/12/SC rwaciwe ku wa 07/11/2014 haburana ECOBANK Rwanda Ltd na Ndagijimana Emmanuel, aho rwavuze ko umuntu atakwitwaza amakosa ye yo kutishyura ngo avuge ko inyungu zihagarara kandi agifitiye Banki amafaranga.

[31] Me Rusanganwa Jean Bosco asobanura kandi ko mu masezerano y'inguzanyo hagati ya I&M Bank Rwanda Plc na SIMACO Ltd, ntaho bumvikanye ko mu gihe hazaba *dénonciation du crédit* izasonerwa inyungu, ahubwo ko mu ngingo rusange z'amasezerano (*conditions générales*) mu ngingo ya 18 bavuga ko iyo *dénonciation* ibaye hakorwa *cloture du compte*, Banki ikagaragaza ibirarane umukiriya ayifitiye kandi inyungu zigakomeza kubarwa, ndetse SIMACO Ltd ko ntaho yigeze ivuga ko yasinye itabizi.

[32] Akomeza asobanura ko inshingano za SIMACO Ltd zo kwishyura umwenda ibereyeho I&M Bank Rwanda Plc zitasheshwe n'uko Banki yakoze *dénoncniation du crédit* kuko iyi sosiyete yari ikiyifitiye amafaranga itarishyura, bityo ko byumvikana ko n'inyungu zakomezaga kubarwa kuko Banki ari ikigo cy'imari gicuruza amafaranga.

[33] Ku bijyanye n'igihe inyungu zigomba guhagararira kubarwa, Me Rusanganwa Jean Bosco avuga ko n'ubwo Urukiko rw'Ubujurire rwavuze ko inyungu zikomoka ku mwenda SIMACO Ltd yahawe, zigomba gukomeza kubarwa kugeza ku munsi urubanza ruzasomerwaho, ariko ko ibarwa ryazo ryahagaze kugeza ku wa 29/03/2019, ko ibindi byiyongeraho ari *charges*. Ikindi ngo iyo amasezerano ahagaze ingaruka ya mbere ni ugutanga integuza, ko kuba umuntu yananiwe kwishyura bidahagarika inyungu, ahubwo ko zikomeza kubarwa ariko ntizirenge umwenda remezo nk'uko itegeko ribiteganya.

UKO URUKIKO RUBIBONA

[34] Ingingo ya 112 y'Itegeko Nº 47/2017 ryo ku wa 23/9/2017 rigena imitunganyirize y'imirimo y'amabanki igira iti: "Mu kwishyuza imyenda itishyurwa, banki ntigomba kurenza umubare w'amafaranga ntarengwa akurikira: umwenda shingiro utarishyuwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa; inyungu zitarenze umwenda shingiro igihe inguzanyo yageraga mu rwego rwo kutishyurwa hakurikijwe amasezerano banki ifitanye n'uyifitiye umwenda; amafaranga yakoreshejwe mu gihe cyo kwishyuza amafaranga yose y'ufitiye umwenda banki."

[35] Ingingo ya 8 y' Amabwiriza rusange N°12/2017 yo ku wa 23/11/2017 ku ishyirwa mu byiciro ry'imyenda no guteganya ingoboka iteganya ko: *"Banki ntigomba kurenza mu byo ikura ku wo yahaye umwenda mu bijyanye n'imyenda itishyurwa neza hashingiwe ku bipimo ntarengwa bikurikira: ingano y'amafaranga atarishyuwe ku mwenda w'ibanze mu gihe umwenda wasibwe;*

[2] Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko

*inyungu ku birarane zitishyuwe, zibarwa hakurikijwe amasezerano uwahawe umwenda yagiranye na banki, ariko ntizirenge umwenda wagombaga kwishyurwa mu gihe umwenda wasibwe; n' amafaranga banki yatanze mu kwishyuza abayifitiye imyenda.***"**

[36] Dosiye y'uru rubanza igaragaza ko Urukiko rw'Ubujurire mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rwategetse SIMACO Ltd kwishyura I&M Bank Rwanda Plc umwenda remezo wari usigaye kwishyurwa igihe amasezerano yaseswaga na Banki, hongeweho inyungu zibazwe kugera ku wa 09/05/2021 ungana na 337.619.878Frw, rushingiye ku nyandiko ya Banki yerekana uburyo yabaze umwenda SIMACO Ltd yari iyibereyemo kugeza icyo gihe.

[37] Ababuranira SIMACO Ltd bagaragaza ko batemeranya n'icyo cyemezo, kuko Urukiko rw'Ubujurire rutagombaga gutegeka ko hakomeza kubarwa inyungu kandi amasezerano zishingiyeho yaramaze guseswa na I&M Bank Rwanda Plc.

[38] Urukiko rurasanga nk'uko Urukiko rw'Ubujurire rwabisobanuye mu rubanza rusabirwa gusubirwamo, mu gika cyarwo cya 27, I&M Bank Rwanda Plc yaragiranye na SIMACO Ltd amasezerano y'inguzanyo ku wa 29/07/2014, SIMACO Ltd ihabwa inguzanyo yose hamwe ingana na 676.683.338Frw irimo ibyiciro bitatu byagaragajwe mu gika cya mbere cy'uru rubanza. SIMACO Ltd ikaba yarishyuye iyo myenda nk'uko na I&M Bank Rwanda Plc yabivugiye mu iburanisha usibye inguzanyo y'ingoboka (o*verdraft*) iburanwa muri uru rubanza.

[39] Ku bijyanye n'iyo nguzanyo y'ingoboka (*overdraft*), Urukiko rurasanga I&M Bank Rwanda Plc yaragaragaje amasezerano y'inguzanyo atandukanye yagiranye na SIMACO Ltd ku wa 29/07/2014, yemererwa guhabwa amafaranga 200.000.000 agomba kwishyurwa mu gihe cy'umwaka umwe, yagombaga kurangira ku wa 31/07/2015. Ayo masezerano yagiye avugururwa kugira ngo SIMACO Ltd yongererwe igihe cyo kuyihabwa n'igihe cyo kwishyura mu buryo bukurikira :

- Iyo nguzanyo ya *overdraft* yavuguruwe ku wa 31/10/2015 na none mu gihe cy'umwaka yagombaga kurangira ku wa 31/10/2016 ;
- Yongera kuvugururwa ku wa 09/11/2016 ikarangira ku wa 31/03/2017 ;
- Iya nyuma ivugurwa kuwa 29/03/2017 igomba kuzarangira kuwa 31/03/2018.

[40] Urukiko rurasanga muri ayo masezerano, hari hateganyijwe kandi ko amafaranga ya *overdraft* azashyirwa kuri konti n° 5041368- 01-44 mu gihe cyumvikanyweho kugira ngo afashe SIMACO Ltd mu bucuruzi ; ko ugurijwe agomba kubahiriza igihe cyumvikanyweho cyo gufata no kwishyura iyo nguzanyo, kandi ko amezi abiri mbere y'uko amasezerano arangira, agomba kumenyesha Banki niba yifuza kongera ayo masezerano cyangwa kuyahagarika.

[41] Urukiko rurasanga rero nk'uko Urukiko rw'Ubujurire rwabisobanuye, SIMACO Ltd yarananiwe kwishyura kugeza ubwo ku wa 22/02/2018, I&M Bank Rwanda Plc isesa amasezerano maze iyimenyesha ko igomba kwishyura 248.384.992Frw. Ikibazo Kalisa Jéremie n'abamwunganira bashyikirije uru Rukiko mu rwego rw'akarengane kikaba ari ukumenya niba nyuma y'uko I&M Bank Rwanda Plc isheshe amasezerano, yaragombaga gukomeza kubara inyungu.

[42] Abahanga mu mategeko basobanura ko gusesa amasezerano y'inguzanyo bidakuraho inshingano yateganyaga ku ruhande rw'uwahawe inguzanyo. Christian Gavalda, Jean Stoufflet[3] na Karlis Bauze [4]bose bahuriza ku kuba gusesa amasezerano y'umwenda cyangwa kuwusiba mu bitabo (*write off*) bitavuze ko uwo mwenda n'inyungu zawo bitazishyurwa.

[43] Urukiko rurasanga kandi abahanga mu mategeko batandukanya kudasohoza inshingano ziri mu masezerano bituma ibyakozwe byose bishingiye kuri ayo masezerano bikurwaho (*Résolution du contrat*) no gusesa amasezerano bireba iby'igihe kizaza (*Résiliation du contrat*).[5]

[44] Undi muhanga avuga ko gusaba ko ingingo yo gukomeza amasezerano mu buryo buziguye ikurwaho, bigaragaza ubushake bwo guhagarika cyangwa gusesa amasezerano, naho gusesa amasezerano bikozwe n'uruhande rumwe bigashingira gusa ku kutubahiriza inshingano bikozwe n'urundi ruhande.[6] Gusesa amasezerano bikozwe n'uruhande rumwe binateganyijwe mu Mahame yashyizweho n'Ikigo Mpuzamahanga gishinzwe guhuza amategeko agenga abantu (*Unidroit*) mu ngingo ya 7-3-1 ivuga ko uruhande rumwe rushobora gusesa amasezerano iyo atubahirijwe n'urundi ruhande.[7]

[45] Urukiko, rushingiye ku bisobanuro byatanzwe haruguru, rurasanga kuba ku wa 22/02/2018 I&M Bank Rwanda Plc, yaramenyesheje SIMACO Ltd ko isheshe amasezerano y'inguzanyo bari bafitanye, byumvikana ko icyakozwe ari ugusesa amasezerano y'inguzanyo bikozwe n'uruhande rumwe kuko SIMACO Ltd itayubahirije (*résolution par dénonciation unilatérale*).

[46] Urukiko rurasanga abahanga bavuga ko byemewe ko abagiranye amasezerano bashobora kumvikana ko mu gihe azaba asheshwe, inyungu zari ziteganyijwe mu masezerano zikomeza gukurikizwa, hakaba yaniyongeraho ijanisha ry'inyongera.[8] Ku byerekeye amasezerano y'inguzanyo, inyungu zisanzwe n'inyungu z'ubukererwe zikomeza kubarirwa ku mwenda

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[3]Gavalda, C., & Stoufflet, J. (2008). Droit Bancaire, Institutions-Comptes-Opérations-Services, 7 éd. *Par J. STOUFFLET, Litec* : *L'annulation d'un crédit fait naitre à la charge de l'emprunteur et, éventuellement, d'un co-emprunteur une obligation de remboursement. Les suretés garantissant le remboursement sont maintenues*…
A write-off does not preclude the bank from enforcing, selling, or transferring the credit to another entity. Writing-off a loan does not entail forgiving the debt. The borrower still owes money to the bank; however, the bank has derecognized this asset from its financial statements due to uncollectibility.
[4] Karlis B., *"Non-Performing Loan Write-Offs: Practices in the CESEE region*", Policy Brief, September, 2019, available athttps://thedocs.worldbank.org/en/doc/3723515693672019170130022019/original/FinSACNPLWriteoffsCESEERegion.pdf.
[5] S. LE GAC-PECH, Rompre son contrat, RTD Civ. 2005, n° 20, *tandis que la résolution entraîne l'anéantissement rétroactif du contrat, la résiliation n'opère que pour l'avenir.*
[6] A. BRES, La résolution du contrat par dénonciation unilatérale, Litec, 2009 : *La dénonciation d'une clause tacite de reconduction exprime simplement la volonté de sortir du contrat qui est basée sur des stipulations contractuelles, alors que la dénonciation unilatérale est justifiée par les manquements à l'exécution du contrat et elle conduit à la résolution du contrat pas simplement à son non-renouvèlement.*
[7] www.unidroit.org/french/principles/contracts/principles2010/blackletter2010-french.pdf *: La résolution par dénonciation unilatérale se retrouve aussi dans les Principes Unidroit. L'article 7-3-1 des Principes Unidroit dispose qu'une partie peut résoudre le contrat s'il y a inexécution essentielle de la part de l'autre partie.*
[8] *Il est admis que les parties puissent convenir qu'en cas de dénonciation du crédit, le taux conventionnel serait toujours d'application mais, le cas échéant, augmenté d'un pourcentage complémentaire*. Voir Andre-Pierre Andre-Dumont, Observations, *Revue de Droit Commercial*, 2010/2, p. 129, https://www.rdc-tbh.be/article/?docEtiq=rdc_tbh2010_2p127

remezo wagaragajwe igihe cy'iseswa ry'amasezerano, kugeza igihe umwenda uzarangirizwa kwishyurwa.[9]

[47] Ibimaze kuvugwa haruguru ariko bigomba guhuzwa n'ibiteganywa n'ingingo ya 112 y'Itegeko Nº 47/2017 ryo ku wa 23/9/2017 ryavuzwe haruguru, aho iteganya urugero ntarengwa rw'ibarwa ry'inyungu, ikavuga ko zitagomba kurenga umwenda shingiro igihe inguzanyo yageraga mu rwego rwo kutishyurwa (*non performing loan*).

[48] Ihame ry'uko inyungu zitagomba kurenga umwenda remezo usigaye kwishyurwa ni ihame rikomoka mu mategeko y'Abaromani n'Abaholandi (*Roman Dutch law*) riva ku rurimi ry'ikiratini "*in duplum"* bivuga inshuro ebyiri (*in double*)[10] risobanura ko inyungu zihagarara kubarwa igihe ingano yazo imaze kungana n'umwenda remezo utishyuwe (*outstanding capital*). Iryo hame risobanura ko ku nguzanyo zatanzwe na banki cyangwa ibigo biciriritse cyangwa mu masezerano ateganya ko umwenda remezo uzishyurwa wongeweho inyungu zawo ku gipimo cyumvikanyweho, inyungu ku mwenda remezo zihagarara kubarwa iyo zimaze kungana n'umwenda remezo wari usigaye kwishyurwa.[11]

[49] Nk'uko Urukiko rw'Ikirenga rw'Ubujurire rwo muri Afurika y'Epfo rwabisobanuye kandi mu rubanza *In Standard Bank of SA Ltd v Oneate Investment (Pty) Ltd*, iri hame ryashyizwe mu mategeko mu nyungu rusange (*public policy or public interest*), kugirango ririnde abarimo imyenda (*debtors*) kudakomeza gucibwa inyungu z'umurengera n'ababerewemo imyenda (*creditors*) no mu gihe uwatanze umwenda atishyuje kugirango za nyungu zikomeze kwiyongera, ibyo bikaba umutwaro ukomeye k'uwatse inguzanyo ndetse bikabangamira ubukungu muri rusange.[12]

[50] Dushingiye ku bisobanuro byatanzwe mu bika bibanza, dusanga igihe I& M Bank Rwanda Ltd yasesaga amasezerano y'inguzanyo ku wa 22/02/2018, umwenda shingiro wagaragajwe n'umuhanga ko ariwo wari usigaye kuri *overdaft* SIMACO Ltd yari iyibereyemo wangana n'amafaranga 102.568.441 naho inyungu zari zitarishyurwa zikangana n'amafaranga 119.945.441. Hashingiwe ku ihame ry'uko inyungu zitagomba kurenga umwenda shingiro igihe inguzanyo yageraga mu rwego rwo kutishyurwa, inyungu zose SIMACO ltd igomba gutanga zigomba kugarurwa ku ngano y'umwenda shingiro, ni ukuvuga amafaranga 102.568.441. Bityo SIMACO Ltd ikaba igomba kwishyura amafaranga yose hamwe angana na 102.568.441 Frw x 2 ahwanye na 205.136.882 Frw.

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[9] Nk'urugero rw'uko ibyo bikorwa, reba Christine Biquet-Mathieu, Exercise d'analyse d'un decompte hypothecaire, 2001, pp. 4-5, https://docplayer.fr/1270653-Exercice-d-analyse-d-un-decompte-de-credit-hypothecaire.html

[10] Standard Bank of SA Ltd v Oneate Investment (Pty) Ltd 1995 (4) SA 510 available at www.saflii.org/za/cases/ZASCA/1997/94.pdf (accessed on 05/02/2022)

"In duplum is a Latin phrase derived from the word in duplo which means "in double".23 The rule has its origin in the Roman Dutch law"….

[11] Georgiadis M. K., "*Introduction of the In Duplum Rule in Kenya: A Legal Mechanism of Equitable Distribution of Resources or a Poverty Redistribution Initiative*? Vol. II, *Kenya Law Review*, 2008-2010, p. 3., or, Black, HL., Black, HC., (Eds) (1990) Blacks' Law Dictionary St Paul Minnesota: West Group Publishing 6th Ed.

………… *It is a principle firmly entrenched in our law that interest, whether it accrues as simple or compound interest, ceases to accumulate upon any amount of capital owing once the accrued interest equals the amount of capital outstanding, whether the debt arises as a result of a financial loan or out of any contract whereby a capital sum is payable together with interest thereon at a determined rate."*

[12] *Ethekwini Municipality v Verulam Medicentre(PTY) Ltd* [2005] ZASCA 98 (457/04, 29 September 2005

c. Kumenya niba SIMACO Ltd yaraciwe indishyi zidafite icyo zishingiyeho no gusuzuma niba indishyi zisabwa muri uru rubanza zikwiye gutangwa

[51] Kalisa Jéremie uhagarariye SIMACO Ltd n'abamwunganira bavuga ko Urukiko rwaciye SIMACO Ltd amafaranga agera kuri 1.500.000 Frw rwise ay'ikurikiranarubanza n'igihembo cy'Avoka kandi I&M Bank Rwanda Plc nta kimenyetso yatanze kigaragaza ko yayishyuye Avoka wayiburaniye, mu gihe mu rwego rw'ubujurire yari yahawe andi agera kuri 800 000 Frw, ko bigaragaza kubogama.

[52] Kalisa Jéremie uhagarariye SIMACO Ltd avuga kandi ko yashowe mu manza z'amaherere bituma yishyura amafaranga menshi mu kuzikurikirana no kwishyura abunganizi, nyamara byarashobokaga ko bumvikana ku ngano y'umwenda hakabaho no kwishyura ku neza. Asaba ko I&M Bank Rwanda Plc yishyura SIMACO Ltd 20.000.000Frw y'indishyi z'akababaro kubera ubuhemu bwose Banki yayigiriye, ikayemerera umwenda wa 500,000$ ariko ntiyahe SIMACO Ltd, ikanategekwa kwishyura 5.000.000Frw y'ikurikiranarubanza n'igihembo cy'Abavoka bayiburaniye.

[53] Me Rusanganwa Jean Bosco uhagarariye I&M Bank Rwanda Plc avuga ko asanga ingingo ya 111, iya 9 n'iya 12 z'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, zigaragaza ko amafaranga y'ikurikiranarubanza n'igihembo cya Avoka yasabwe na I&M Bank Rwanda Plc, yareze muri urwo rubanza, afite ishingiro kuko ikirego cyayo cyahawe ishingiro.

[54] Avuga kandi ko asanga indishyi SIMACO Ltd isaba nta shingiro ryazo kubera ko ariyo yabaye nyirabayazana w'izi manza, ubwo yananirwaga kwishyura umwenda yahawe ndetse Banki yashaka kugurisha ingwate zatanzwe, igashora imanza. Asobanura ahubwo ko Banki ikomeje gushorwa mu manza ku maherere, ikaba isaba Urukiko gutegeka SIMACO Ltd kuyishyura 1.000.000Frw y'ikurikiranarubanza ndetse na 1.000.000 Frw y'igihembo cy'Avoka ku rwego rw'Urukiko rw'Ikirenga.

UKO URUKIKO RUBIBONA

[55] Ku byerekeye indishyi zisabwa n'ababuranyi muri uru rubanza, ingingo ya 111 y'Itegeko n$_o$ 22/2018 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 ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe."*

[56] Urukiko rusanga ibyo SIMACO Ltd ivuga ko Urukiko rw'Ubujurire rutagombaga guha I&M Bank Rwanda Plc 1.500.000Frw ngo kuko itagaragaje ko ariyo yishyuye abayiburaniye nta shingiro bifite kuko kuba ikirego cyayo cyari gihawe ishingiro, yari yemerewe kugenerwa indishyi zijyanye n'ibyo yakoresheje ikurikirana urubanza. Ayo mafaranga kandi si igihembo cy'avoka gusa ahubwo akubiyemo igihembo cy'Avoka n'ay'ikurikiranarubanza ; Urukiko rukaba nta kosa rwakoze mu kuyagena mu bushishozi bwarwo.

[57] Urukiko rurasanga amafaranga akubiyemo ay'ikurikiranarubanza n'igihembo cy'Avoka I&M Bank Rwanda Plc isaba kuri uru rwego, itagomba kuyahabwa kuko ntacyo itsindiye muri uru rubanza.

[58] Urukiko rurasanga kuba SIMACO Ltd yarareze ivuga ko inyungu yishyuzwa zabazwe mu buryo butaribwo, maze uru Rukiko rugasanga bifite ishingiro, amafaranga y'igihembo cy'Avoka n'ay'ikurikiranarubanza isaba igomba kuyahabwa kubera ko byabaye ngombwa ko ikurikirana urubanza no gushaka uyiburanira. Ariko kuko 5.000.000 Frw isaba itagaragaza ko ariyo koko yagiye kuri uru rubanza, mu bushishozi bw'Urukiko igenewe 500.000Frw y'igihembo cy'Avoka na 300.000Frw y'ikurikiranarubanza. Naho indishyi z'akababaro zingana na 20.000.000Frw SIMACO Ltd isaba ikaba itagomba kuzihabwa kuko zidafite aho zishingiye.

III. ICYEMEZO CY'URUKIKO

[59] Rwemeje ko ikirego cyatanzwe na SIMACO Ltd isaba gusubirishamo ku mpamvu z'akarengane urubanza RCOMAA 00048/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 14/05/2021 gifite ishingiro ;

[60] Rwemeje ko imikirize y'urubanza RCOMAA 00048/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 14/05/2021 ruhindutse ku bijyanye n'ingano y'umwenda remezo n'inyungu SIMACO Ltd igomba kwishyura I&M Bank Rwanda Plc ;

[61] Rutegetse SIMACO Ltd kwishyura I&M Bank Rwanda Plc umwenda remezo n'inyungu ziwukomokaho zihwanye na 205.136.882Frw ;

[62] Rutegetse I&M Bank Rwanda Plc guha SIMACO Ltd 800.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza kuri uru rwego.