LETSHEGO RWANDA Ltd v UMUBYEYI

[Rwanda URUKIKO RW' IKIRENGA – RS/INJUST/RCOM 00009/2021/SC (Nyirinkwaya, P.J., Hitiyaremye na Karimunda, J.) 29 Mata 2022]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ubushobozi n'ububasha bwo kurega – Ihame rya Piercing the Corporate Veil cyangwa uburyozwe bwa sosiyete cyangwa umunyamigabane wayo – Ihame rya piercing corporate veil rikoreshwa iyo sosiyete ikurikiranweho uburyozwe, uyikurikiranye agasaba ko ubwo uburyozwe burenga sosiyete bukagera no ku bayobozi cyangwa abanyamigabane bayo, iyo bigaragaye ko bakoze amakosa cyangwa bayicunze nabi – Itegeko № 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 3.

Itegeko Nshinga – Gutandukanya abantu – Gutandukanya cyangwa kutareshyeshya abantu bigomba kuba bitewe n'impamvu "igaragarira buri wese (objective justification or legitimate objective) kandi bikaba biri mu rugero urebye uburyo bwakoreshejwe kugera ku ntego cyangwa ikigamijwe.

Incamake y' ikibazo: Uwitwa Umubyeyi Marie Claire umunyamuryango wa koperative ya *transport* yitwa ba *East African Cooperative of Transporters* (EACT), avuga ko yumvikanye na sosiyete Letshego Rwanda Ltd kumugurira imodoka ku nguzanyo ya 37.500.000Frw ariko imodoka itinda kugera mu Rwanda, ibyo byatumye Letshego Rwanda Ltd imusaba gukoresha sosiyete ye yitwa Dieu avec Moi Ltd afata indi nguzanyo ya 15.981.328 Frw mu izina rya sosiyete ye kugira ngo abashe kwishyura ibirarane by'amezi atanu (5) bingana na 8.600.000Frw inguzanyo ya mbere yari imaze kugeramo.

Umubyeyi Marie Claire yavuze ko nyuma yaho byaje kugaragara ko imodoka yatinze kugera mu Rwanda biturutse ku makosa ya Letshego Rwanda Ltd, bituma ayirega mu Rukiko rw'Ubucuruzi asaba kumwishyura ayo mafaranga hiyongereyeho, n'inyungu yaciwe mu gihe imodoka itakoraga hamwe n'indishyi zitandukanye kuko abandi ba nyamuryango ba koperative basangiye umushinga bari mu cyiciro kimwe bahawe ibirarane keretse we.

Nyuma yo gusesengura, Urukiko rwemeza ko Umubyeyi Marie yagenerwa gusa amafaranga atahawe kandi ayafiteho uburenganzira nk'umunyamuryango wa EACT, hiyongereyeho indishyi z'akababaro.

Letshego Rwanda Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rwafashe icyemezo ku nguzanyo yahawe Dieu avec Moi Ltd n'inyungu zayo kandi itarabaye umuburanyi mu rubanza ndetse ko yategetswe kwishyura Umubyeyi Marie Claire indishyi hatabanje kugaragazwa amakosa yamukoreye.

Urukiko Rukuru rw'Ubucuruzi rwasanze ubujurire bwa Letshego Rwanda Ltd nta shingiro bufite rushingiye ku ihame rya piercing the corporate veil nukuvuga uburyozwe ku muyobozi wa sosiyete cyangwa ku munyamigabane wayo, no ku mpamvu kandi yuko amasezerano yabaye hagati ya Letshego Rwanda Ltd na Dieu avec Moi Ltd yuzuzanya n'amasezerano yabaye mbere hagati ya Letshego Rwanda Ltd na Umubyeyi Marie Claire, bityo nta cyabuza Umubyeyi Marie Claire kugira ibyo akurikirana birebana n'ayo masezerano Dieu avec Moi Ltd yakoze.

Letshego Rwanda Ltd yandikiye Perezida w'Urukiko rw'Ubujurire isaba ko urubanza RCOMA 00586/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, rusubirwamo ku mpamvu

z'akarengane kuberako Urukiko Rukuru rw'Ubucuruzi rwaremeje ko Umubyeyi Marie Claire afite ububasha, ubushobozi n'inyungu byo kuregera 8.600.000 Frw akomoka ku nguzanyo yahawe sosiyete Dieu avec Moi Ltd nyamara iyo sosiyete itarabaye umuburanyi mu rubanza.

Umubyeyi yisobanura avuga ko Letshego Rwanda Ltd iteza urujijo mu rubanza kuko yasabwe kwifashisha sosiyete ye abereye umunyamigabane rukumbi gufata indi nguzanyo kugira ngo yishyure ibirarane by'inyungu ku nguzanyo y'imodoka, bityo ko nta cyamubuza gukurikirana umutungo wa sosiyete ye kuko inyungu ziyivamo zijya mu mutungo we.

Sosiyete Letshego Rwanda Ltd ivuga ko ntaho mu masezerano yakoranye na Umubyeyi Marie Claire byari biteganyijwe ko ariyo yari kumushyikiriza imodoka cyangwa igihe ntarengwa imodoka yari kumugeraho ku buryo byafatwa ko ariyo itarubahirije inshingano zayo kugeza ubwo ibiryorezwa inyungu z'ubukererwe zingana na 8.600.000Frw.

Letshego Rwanda Ltd ivuga ko sosiyete yitwa Dieu avec Moi Ltd ya Umubyeyi Marie Claire, yafashe inguzanyo kugira ngo uyu abashe kwishyura inyungu z'ubukererwe zingana na 8.600.000Frw ku nguzanyo y'imodoka yari yarahawe kuko yari amaze amezi atanu atishyura, Ivuga ko amafaranga Umubyeyi Marie Claire asaba gusubizwa atariwe wayahabwa ku giti cye kuko ari igice cy'inguzanyo yahawe sosiyete ye, ivuga ko kuba Urukiko Rukuru rw'Ubucuruzi rwaremeje ko ayasubizwa rushingiye ku ihame rya "piercing the corporate veil" byatewe n'uko rwumvishe nabi iryo hame ubundi rigamije kuryoza nyiri sosiyete igihombo sosiyete yagize, nyamara muri uru rubanza hakaba ntaho Umubyeyi Marie Claire akurikiranyweho uburyozwe bwa sosiyete ye ndetse iyi sosiyete ikaba nta ruhare na ruto ifite mu nguzanyo y'imodoka.

Umubyeyi yiregura ivuga ko hari ibimenyetso bigaragaza ko Letshego Rwanda Ltd ivuga ariyo yagombaga gushyikiriza abanyamuryango imodoka yabemereye.

Incamake y'icyemezo : 1. Ntago ihame rya *piercing corporate veil* ryashingirwaho n'urukiko mu gihe sosiyete idafite icyo iryozwa kuko iryo hame rikoreshwa iyo sosiyete ikurikiranweho uburyozwe, uyikurikiranye agasaba ko ubwo buryozwe burenga sosiyete bukagera no ku bayobozi cyangwa abanyamigabane bayo, iyo bigaragaye ko bakoze amakosa cyangwa bayicunze nabi.

2. Gutandukanya cyangwa kutareshyeshya abantu bigomba kuba bitewe n'impamvu "igaragarira buri wese (objective justification or legitimate objective) kandi bikaba biri mu rugero urebye uburyo bwakoreshejwe kugera ku ntego cyangwa ikigamijwe, bityo nta mpamvu yumvikana Letshego Rwanda Ltd itanga yatuma Umubyeyi adafatwa nk'abandi banyamuryango ba EACT basinyiye inguzanyo yo guhabwa imodoka, bakamara amezi atanu bazitegereje ku bw'amakosa yayo.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane nta shingiro gifite.

Amategeko yashingiweho:

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 3, 12 na 111.

Imanza zifashishijwe:

Re Mugisha; RS/INCONST/SPEC 00002/ 2018/SC; [2019] 3 RLR

Munyampundu Antoine n'undi baburanaga n'Ikigo cy'Imisoro n'Amahôro; RCOMAA 00040/2016/SC; [2018] 4 RLR

Twagiramungu Vénuste v Ikigo cy'Imisoro n'Amahôro; RCOMAA 0056/2016/SC-RCOMAA 0061/16/CS, hagati ya rwaciwe n'Urukiko rw'Ikirenga ku wa 14/07/2017, igika cya 22.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi, Umubyeyi Marie Claire avuga ko yumvikanye na Letshego Rwanda Ltd kumugurira imodoka ku nguzanyo ya 37.500.000 Frw ariko imodoka itinda kugera mu Rwanda. Byatumye Letshego Rwanda Ltd imusaba gukoresha sosiyete ye yitwa Dieu avec Moi Ltd afata indi nguzanyo ya 15.981.328 Frw kugira ngo abashe kwishyura ibirarane by'amezi atanu (5) bingana na 8.600.000Frw inguzanyo ya mbere yari imaze kugeramo.

[2] Yavuze ko nyuma yaho byaje kugaragara ko imodoka yatinze kugera mu Rwanda biturutse ku makosa ya Letshego Rwanda Ltd, hanyuma Letshego Rwanda Ltd yemera gusubiza abandi banyamuryango ba *East African Cooperative of Transporters* (EACT) bari basangiye umushinga 8.600.000 Frw bishyuye ibirarane uretse we. Yasabye Urukiko gutegeka Letshego Rwanda Ltd kumwishyura ayo mafaranga, hiyongereyeho 3.483.807 Frw y'inyungu yaciwe mu gihe imodoka itakoraga, 10% y'inguzanyo ya mbere yemerewe na Letshego Rwanda Ltd kubera ko yishyuye mbere y'igihe giteganyijwe mu masezerano n'indishyi zitandukanye.

[3] Urubanza RCOM 00158/2018/TC rwaciwe ku wa 27/07/2018, Urukiko rusanga Umubyeyi Marie Claire yarahawe 10% y'inguzanyo ya mbere n'iya kabiri ahwanye na 4.426.631 Frw bityo akaba ntandi yemerewe, naho 8.600.000 Frw atahawe kandi nk'abandi banyamuryango ba EACT ayakwiriye, rutegeka Letshego Rwanda Ltd kuyamuha hiyongereyeho 500.000 Frw y'indishyi z'akababaro, 1.040.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka, yose hamwe aba 10.640.000 Frw.

[4] Letshego Rwanda Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rwafashe icyemezo ku nguzanyo yahawe Dieu avec Moi Ltd n'inyungu zayo kandi Dieu avec Moi Ltd itarabaye umuburanyi mu rubanza ndetse ko yategetswe kwishyura Umubyeyi Marie Claire indishyi hatabanje kugaragazwa amakosa yamukoreye.

[5] Mu rubanza RCOMA 00586/2018/CHC/HCC rwaciwe ku wa 22/03/2019, Urukiko Rukuru rw'Ubucuruzi rwasanze ubujurire bwa Letshego Rwanda Ltd nta shingiro bufite, rubishingira ku mpamvu zikurikira:

i. amasezerano yabaye hagati ya Letshego Rwanda Ltd na Dieu avec Moi Ltd yuzuzanya n'amasezerano yabaye mbere hagati ya Letshego Rwanda Ltd na Umubyeyi Marie Claire, bityo nta cyabuza Umubyeyi Marie Claire kugira ibyo akurikirana birebana n'ayo masezerano Dieu avec Moi Ltd yakoze, kimwe n'uko nawe yabibazwa. Rwasobanuye kandi ko ibyo binashimangirwa n'ihame rya *piercing the corporate veil.*

ii. ibaruwa yo ku wa 09/06/2017, Letshego Rwanda Ltd yandikiye *EACT* yateganyaga ko abanyamuryango b'iyo Koperative bazahabwa inguzanyo y'inyongera *(additional loan)*

ingana na 15.991.328 Frw, kandi ko ariyo yahawe Dieu avec Moi Ltd ihagarariwe na Umubyeyi Marie Claire.

iii. Inyandiko-mvugo y'inama yo ku wa 10/02/2017, yahuje ubuyobozi bwa Letshego Rwanda Ltd n'ubwa *EACT, e-mail* yo ku wa 14/03/2018, umuyobozi wa Letshego Rwanda Ltd yandikiye iyo Koperative, bigaragaza ko yemereye abanyamuryango bose gusubizwa 8.600.000 Frw, bityo Letshego Rwanda Ltd ikaba itagaragaza impamvu Umubyeyi Marie Claire we atafatwa nk'abandi.

[6] Urukiko rwasanze ubujurire bwuririye ku bundi bwa Umubyeyi Marie Claire bufite ishingiro kuri bimwe, rwemeza ko imikirize y'urubanza rwajuririwe igumyeho, rutegeka Letshego Rwanda Ltd guha Umubyeyi Marie Claire 100.000Frw yo gushorwa mu manza, 100.000Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cya Avoka, yose hamwe akaba 1.200.000 Frw.

[7] Ku wa 13/05/2019, Me Serugo Jean-Baptiste mu izina rya Letshego Rwanda Ltd, yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza RCOMA 00586/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 22/03/2019, rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubwo busabe, yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwasubirwamo. Mu cyemezo N 260/CJ/2021 cyo ku wa 01/11/2021, Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[8] Mu myanzuro ye Me Serugo Jean-Baptiste, uburanira Letshego Rwanda Ltd, avuga ko akarengane gashingiye ku ngingo ebyiri zikurikira:

i. Kuba Urukiko Rukuru rw'Ubucuruzi rwaremeje ko Umubyeyi Marie Claire afite ububasha, ubushobozi n'inyungu byo kuregara 8.600.000 Frw akomoka ku nguzanyo yahawe sosiyete Dieu avec Moi Ltd nyamara iyo sosiyete itarabaye umuburanyi mu rubanza;

ii. Kuba Letshego Rwanda Ltd yarategetswe gusubiza Umubyeyi Marie Claire 8.600.000 Frw y'inyungu z'ubukererwe ntagishingiweho.

[9] Iburanisha mu ruhame ryabaye ku wa 09/03/2022, Letshego Rwanda Ltd ihagarariwe na Me Serugo Jean-Baptitse, naho Umubyeyi Marie Claire ahagarariwe na Me Rutagengwa Jean Damascène.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

II.1. Kumenya niba Umubyeyi Marie Claire yari afite ububasha, ubushobozi n'inyungu byo kuregera 8.600.000Frw akomoka ku nguzanyo yahawe Dieu avec Moi Ltd itari umuburanyi mu rubanza

[10] Letshego Rwanda Ltd ivuga ko ku wa 18/04/2016, Dieu avec Moi Ltd, sosiyete ya Umubyeyi Marie Claire, yafashe inguzanyo ya 15.981.328 Frw kugira ngo uyu abashe kwishyura inyungu z'ubukererwe zingana na 8.600.000Frw ku nguzanyo y'imodoka yari yarahawe kuko yari amaze amezi atanu atishyura. Ivuga ko 8.600.000Frw Umubyeyi Marie Claire asaba gusubizwa atariwe wayahabwa ku giti cye kuko ari igice cy'inguzanyo yahawe sosiyete, ko kuba Urukiko

Rukuru rw'Ubucuruzi rwaremeje ko ayasubizwa rushingiye ku ihame rya *"piercing the corporate veil"* byatewe n'uko rwumvishe nabi iryo hame ubundi rigamije kuryoza nyiri sosiyete igihombo sosiyete yagize, nyamara muri uru rubanza hakaba ntaho Umubyeyi Marie Claire akurikiranyweho uburyozwe bwa sosiyete ye ndetse iyi sosiyete ikaba nta ruhare na ruto ifite mu nguzanyo y'imodoka.

[11] Ivuga ko ihame rya *"piercing the corporate veil"* ryasobanuwe neza mu ngingo 92, igika cya 5, y'Itegeko no 007/2021 ryo ku wa 05/02/2021 rigenga amasosiyete y'ubucuruzi iteganya ko *"Urukiko rushobora kurenga uburyozwe bushingiye ku migabane kugira ngo umunyamugabane aryozwe inshingano za sosiyete, iyo rusanze uwo munyamugabane yarakoresheje nabi icyiciro cya sosiyete agamije uburiganya cyangwa kwica amategeko cyangwa yarafashe nabi umutungo wa sosiyete nk'aho ari umutungo w'abantu ku giti cyabo."* Ku bwa Letshego Rwanda Ltd, iri hame ntaho ryemerera inkiko zabanje gufata icyemezo ku nguzanyo yahawe Dieu avec Moi Ltd kandi itarigeze iregwa uburyozwe cyangwa ngo ibe umuburanyi mu rubanza. Ivuga ko Umubyeyi Marie Claire ku giti cye nta bubasha, ubushobozi n'inyungu afite byo kuregera amasezerano atagizemo uruhare.

[12] Me Rutagengwa Jean Damascène, uburanira Umubyeyi Marie Claire, avuga ko Letshego Rwanda Ltd iteza urujijo mu rubanza. Asobanura ko nyuma yo gufata inguzanyo ya mbere, Umubyeyi Marie Claire yasabwe kwifashisha sosiyete ye abereye umunyamigabane rukumbi, agafata indi nguzanyo kugira ngo yishyure ibirarane by'inyungu ku nguzanyo y'imodoka. Avuga ko ntakibuza Umubyeyi Marie Claire gukurikirana umutungo wa sosiyete ye kuko n'ubundi inyungu ziyivamo zijya mu mutungo we. Avuga ko ibaruwa ya Letshego Rwanda Ltd yo ku wa 09/06/2017, igaragaza ko inguzanyo yahawe Dieu avec Moi Ltd ari iy'inyongera, bivuze ko idakwiye gutandukanywa n'inguzanyo yahawe Umubyeyi Marie Claire agura imodoka, byose bishimangira ko kuri iyi ngingo nta karengane kabaye mu rubanza rusabirwa gusubirishwamo.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 3 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko *"ikirego cyakirwa mu rukiko iyo urega afite ububasha, inyungu n'ubushobozi byo kurega, keretse igihe itegeko ribiteganya ukundi."*

[14] Urukiko rurasanga Urukiko Rukuru rw'Ubucuruzi rwaremeje ko Umubyeyi Marie Claire afite ububasha, ubushobozi n'inyungu byo kurega rushingiye ku mpamvu ebyiri zikurikira :

i. Kuba 8.600.000 Frw Umubyeyi Marie Claire asaba gusubizwa na Letshego Rwanda Ltd akomoka ku nguzanyo yaje nk'inyogera ku yindi nguzanyo ya 37.500.000 Frw Umubyeyi Marie Claire yari yarafashe ku giti cye ku wa 19/11/2015 ;

ii. Kuba hashingiwe ku ihame rya *piercing the corporate veil* nta kibuza Umubyeyi Mari Claire gukurikirana amafaranga ya Dieu avec Moi Ltd ;

[15] Urukiko rurasanga mu masezerano yo ku wa 13/07/2016 ntaho bivugwa ko ari ay'inyongera ku masezerano yo ku wa 19/11/2015, ikigaragara ni uko ari amasezerano hagati y'abantu batandukanye, nubwo EACT yayise amasezerano y'inyongera mu rwandiko rwo ku wa 13/01/2017, bikongera bikagarukwaho mu nyandiko-mvugo y'inama yabaye ku wa 10/02/2017,

ndetse na Letshego Rwanda Ltd ikabitangira ibisobanuro mu rwandiko rwo ku wa 09/06/2017, nta cyari gutuma Urukiko Rukuru rw'Ubucuruzi rushingira ububasha, ubushobozi n'inyungu bya Umubyeyi Marie Claire ku kuba inguzanyo ivugwa mu masezerano yo ku wa 13/07/2016 ari iy'inyongera kuko iyo nguzanyo atariyo yaregerwaga, ahubwo haregerwaga uburenganzira bwa Umubyeyi Marie Claire kuri 8.600.000 Frw yahawe Letshego Rwanda Ltd, ikayasubiza abandi banyamuryango ba EACT bose bayatanze uretse we.

[16] Urukiko rurasanga na none iby'Urukiko Rukuru rw'Ubucuruzi rwavuze ko Umubyeyi Marie Claire yemerewe ku giti cye kuregera amasezerano yakozwe na sosiyete Dieu avec Moi Ltd hashingiwe ku ihame rya "*piercing corporate veil"* mu rwego rwo gushakisha ubutabera bw'ukuri, nabyo ataribyo. Iby'ikoreshwa ry'iri hame byasobanuwe ku buryo burambuye mu rubanza *Munyampundu Antoine n'undi baburanaga n'Ikigo cy'Imisoro n'Amahôro*,[1]uru Rukiko rusanga umuyobozi cyangwa umunyamigabane wa sosiyete adashobora kuryozwa imisoro yaciwe sosiyete hatabanje kugaragazwa ko hari amakosa cyangwa imicungire mibi yakoze bigatuma sosiyete itishyura imisoro, ibyo kandi byemezwa n'Urukiko mu bushishozi bwarwo. Urukiko rwasanze "*gufatira umutungo wa Munyampundu Antoine na Mukarugambwa Béatrice hagamije kuwugurisha mbere yo kugaragaza uburyozwe bwabo mu gutuma sosiyete bari babereye abanyamigabane itishyura imisoro yaciwe ari ukwirengagiza itandukaniro riri hagati y'ubuzimagatozi bwa sosiyete n'ubw'abayobozi cyangwa abanyamigabane bayo, kubyirenganiza bikaba byatuma abayobozi cyangwa abanyamigabane baryozwa (mu buryo* bunyuranyije n'amategeko) ibikorwa bya sosiyete nk'aho ari ibyabo igihe icyo aricyo cyose n'uwo ari ariwe wese.."[2]

[17] Rushingiye ku murongo rwatanze mu rubanza Twagiramungu Venuste yaburanaga n'Ikigo cy'Imisoro n'Amahôro,[3] aho uru Rukiko rwibukije ko "*uburyozwe bw'abayobozi cyangwa abanyamigabane ba sosiyete aribyo byitwa "piercing the corporate veil" cyangwa "lifting the veil of the corporation" (ari) umwihariko (exception) wemezwa gusa n'Urukiko, rukirengagiza itandukaniro riri hagati y'ubuzimagatozi bwa sosiyete n'ubwa ba nyirayo kugira ngo abayobozi cyangwa abanyamigabane baryozwe ibikorwa bya sosiyete nk'aho ari ibyabo…*" kandi ko "*… mu kwemeza uburyozwe, Inkiko zishimangira ko bidapfa gukorwa, ahubwo hagomba gushingirwa ku mpamvu zisobanutse (circumstances in which the corporate veil may be lifted are greatly circumscribed) zigaragaza igituma abayobozi cyangwa abanyamigabane bagomba kuryozwa ibyakaryojwe sosiyete.*"[4]

[18] Ibimaze gusobanurwa mu gika kibanza bishimangira ko iby'Urukiko Rukuru rw'Ubucuruzi rwavuze ko rwashingiye ku ihame rya "*piercing corporate veil*" mu rwego rwo gushakisha ubutabera bw'ukuri, rusanga nta kibuza Umubyeyi Marie Claire kuregera amasezerano yakozwe n'undi nta shingiro bifite, kuko iryo hame rikoreshwa iyo sosiyete yakurikiranweho uburyozwe noneho uyikurikiranye agasaba ko uburyozwe burenga sosiyete bukagera no ku

1 Reba urubanza RCOMAA 00040/2016/SC, Munyampundu Antoine n'undi baburanaga n'Ikigo cy'Imisoro n'Amahôro, rwaciwe n'Urukiko rw'Ikirenga ku wa 22/12/2017.
2 Reba urubanza RCOMAA 00040/2016/SC, Munyampundu Antoine n'undi baburanaga n'Ikigo cy'Imisoro n'Amahôro, rwaciwe n'Urukiko rw'Ikirenga ku wa 22/12/2017, igika cya 25.
3 Reba urubanza RCOMAA 0056/2016/SC-RCOMAA 0061/16/CS, hagati ya Twagiramungu Vénuste n'Ikigo cy'Imisoro n'Amahôro rwaciwe n'Urukiko rw'Ikirenga ku wa 14/07/2017, igika cya 22.
4Reba urubanza n° RCOMAA 00040/2016/SC, MUNYAMPUNDU Antoine n'undi baburanaga n'Ikigo cy'Imisoro n'Amahôro, rwaciwe n'Urukiko rw'Ikirenga ku wa 22/12/2017, igika cya 26.

bayobozi cyangwa abanyamigabane bayo, hamaze kugaragazwa ko bakoze amakosa cyangwa bayicunze nabi. Nyamara muri uru rubanza nta wareze Dieu avec Moi Ltd, ahubwo urubanza rwatangijwe na Umubyeyi Marie Claire arega Letshego Rwanda Ltd, bityo ihame rya *piercing corporate veil* rikaba ridashobora gukoreshwa kuri Dieu avec Moi Ltd.

[19] Urukiko rurasanga kuba Urukiko Rukuru rw'Ubucuruzi rwarashakiye ububasha, ubushobozi n'inyungu bya Umubyeyi Marie Claire mu kuba inguzanyo ya kabiri ari iy'inyongera cyangwa mu ihame rya *piercing the corporate veil* harabayeho kwibeshya.

[20] Urukiko rurasanga Umubyeyi Marie Claire yarareze asaba Letshego Rwanda Ltd kumusubiza 8.600.000 Frw yamutwaye bidakwiye, inyungu z'ubukererwe, indishyi z'akababaro n'amafaranga y'ikurikiranarubanza. Mu mishyikirano bagiranye n'imbere y'Urukiko rw'Ubucuruzi, Letshego Rwanda Ltd ntihakana ko yakiriye ayo mafaranga, nta nubwo yavuze ko Umubyeyi Marie Claire atemerewe kuyaregera, ahubwo yavuze ko adakwiye kuyasubizwa kuko atujuje ibisabwa kugira ngo ayasubizwe nk'uko bimeze kuri bamwe mu banyamuryango ba EACT bayasubijwe. Bityo rero akaba ntacyabuzaga Umubyeyi Marie Claire kurega Letshego Rwanda Ltd mu gihe atanyuzwe n'impamvu zashingiweho yanga kumusubiza 8.600.000 Frw kuko iyo mpamvu idashingiye ku masezerano ayo mafaranga akomokaho.

II.2. Kumenya niba Letshego Rwanda Ltd ikwiye gusubiza Umubyeyi Marie Claire 8.600.000 Frw yishyuwe nk'inyungu z'ubukererwe.

[21] Me Serugo Jean-Baptiste, uburanira Letshego Rwanda Ltd, avuga ko ntaho mu masezerano yakoranye na Umubyeyi Marie Claire biteganyijwe ko ariyo yari kumushyikiriza imodoka cyangwa igihe ntarengwa imodoka yari kumugeraho ku buryo byafatwa ko ariyo itarubahirije inshingano zayo kugeza ubwo ibiryorezwa inyungu z'ubukererwe zingana na 8.600.000 Frw. Avuga ko nyuma y'uko Urukiko Rukuru rw'Ubucuruzi rusanze Umubyeyi Marie Claire yaragabanyirijwe ubwishyu ku kigero cya 10 % kuko yishyuye mbere y'igihe cyari giteganyijwe mu masezerano, bitari bikwiye ko rwemeza ko asubizwa na 8.600.000 Frw cyane cyane ko Urukiko rwafashe icyo cyemezo ntaho rushingiye kuko rwirengagije ko:

i. inama yakoranye n'abanyamuryango ba *EACT* ntacyo yagezeho;

ii. ntaho muri *e-mail* yo ku wa 14/03/2018, Letshego Rwanda Ltd yemereye abanyamuryango ba EACT *bonus* kuko icyari kigamijwe kwari ugushishikariza abatishyura neza gusaba ivururwa ry'amasezerano y'inguzanyo bahawe kugira ngo bahabwe na *bonus*;

iii. ivugurura ry'amasezerano y'inguzanyo ya bamwe mu banyamuryango ryabaye Umubyeyi Marie Claire yararangije kwishyura inguzanyo ye.

[22] Me Rutagengwa Jean Damascène, uburanira Umubyeyi Marie Claire avuga ko ibyo Letshego Rwanda Ltd ivuga nta shingiro bifite kuko ibimenyetso bikurikira bigaragaza ko ariyo yagombaga gushyikiriza abanyamuryango imodoka yabemereye:

i. *"Request to submit details for additional loan"* yo ku wa 09/06/2017 Benjamin Muketha, umuyobozi wa Letshego Rwanda Ltd yandikiye EACT iyimenyesha ko imodoka zaje ariko ko itazihabwa kubera ibizigendaho n'ibirarane by'amezi atanu byatewe n'uko igihe cyo kwishyura cyageze imodoka zitaraza;

ii. Kuba Letshego Rwanda Ltd yarashishikarije abanyamuryango gusaba inguzanyo y'inyongera kugira ngo babashe guhabwa izo modoka, bigaragaza ko ariyo yari ifite inshingano zo kugeza imodoka kuri ba nyirazo.

iii. Kuba Letshego Rwanda idahakana ko ariyo yari ifite inshingano zo kugeza izo modoka mu Rwanda, bivuze ko batari kwishyuzwa imodoka batarahabwa.

[23] Avuga ko Umubyeyi Marie Claire yakuriweho 10% ku nguzanyo kuko yari yishyuye mbere y'igihe, naho ku bijyanye na *bonus* ya 8.600.000 Frw, akavuga ko abandi banyamuryango bayihawe, bityo hamwe n'inyandiko-mvugo y'inama Letshego Rwanda Ltd yakoranye na EACT ku wa 10/02/2017 na *email* Umuyobozi wa Letshego Rwanda Ltd yandikiye EACT ku wa 14/03/2018, ibyo ari ibimenyetso bidashidikanywaho bihamya ko iyo *bonus* yatanzwe. Avuga ko iby'uko *bonus* yatanzwe Umubyeyi Marie Claire yararangije kwishyura ataribyo kuko ubuyobozi bwa Koperative bwasabye ko abanyamuryango bayihabwa ku wa 13/01/2017, urwo rwandiko rwakirwa na Letshego Rwanda Ltd ku wa 16/01/2017, imodoka ye ikora impanuka ku wa 02/03/2017, ari nabwo yasabye umwishingizi kwishyura kuri konti ye muri Letshego Rwanda Ltd, bityo akaba ntacyabuzaga ko nawe asubizwa 8.600.000 Frw nk'abandi banyamuryango.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 12 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "*Uregwa agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwareze aratsinda*."

[25] Kuri iyi ngingo, dosiye y'urubanza igaragaza ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko Letshego Rwanda Ltd igomba gusubiza Umubyeyi Marie Claire 8.600.000Frw rushingiye ku bimenyetso bikurikira :

i. inyandiko-mvugo y'inama ubuyobozi bwa Letshego Rwanda Ltd bwakoranye n'ubuyobozi bwa EACT ku wa 10/02/2017 ;

ii. e-mail umuyobozi mushya wa Letshego Rwanda Ltd yandikiye EACT ku wa 14/03/2018.

[26] Urukiko rurasanga inyandiko-mvugo y'inama yabaye ku wa 10/02/2017, Urukiko Rukuru rw'Ubucuruzi rwashingiyeho ivuga ko Letshego Rwanda Ltd igiye gusuzuma amasezerano yakoranye na EACT kugira ngo imenye uwateye ubukererwe bw'amezi atanu, hanyuma ifate icyemezo gikwiye. Hagati aho, imodoka ya Umubyeyi Marie Claire yakoze impanuka, Saham Assurances Générales Plc yari yarayishingiye yishyura ku wa 10/07/2017, ari nabwo Umubyeyi Marie Claire yasabye Letshego Rwanda Ltd kwiyishyura imyenda yose yafashe, uwo munsi kuri konti ye havanwaho 28.414.853Frw. Bigaragarira Urukiko ko, ku wa 05/07/2018, hashize umwaka Umubyeyi Marie Claire yishyuye umwenda, aribwo Letshego Rwanda Ltd yemeye ko ariyo nyirabayazana w'ubukererwe, yemera gusubiza abanyamuryango bose ba EACT 8.600.000 Frw yise "*bonus*" muri e-mail igira iti: "*all members balance as August 2017 will be subject to a signing bonus of Rwf 8.6 million*."

[27] Urukiko rurasanga kuba muri *e-mail* yo ku wa 05/07/2018, Letshego Rwanda Ltd ivuga ko izishyura "*bonus*" ihereye ku mwenda abanyamuryango bose bari bafite muri Kanama 2017, kandi

icyo gihe kuba Umubyeyi Marie Claire yari yararangije kwishyura, sibyo byatuma avutswa uburenganzira kuri ayo mafaranga ku mpamvu zikurikira:

i. urwandiko rwa EACT rwo ku wa 13/01/2017 rwasabaga Letshego Rwanda Ltd kuvaniraho abanyamuryango bose 8.600.000 Frw kuko batinze kubona imodoka (*EACT requests … a) Deduct Rwf 8.6 M component related to the 5 months delay*), ibi bikaba byari kuganirwaho mu nama yo ku wa 18/01/2017;

ii. amafaranga yishyuzwa ni ay'inyungu z'ubukererwe ku masezerano yasinywe ku wa 19/11/2015, mu nama yabaye ku wa 10/02/2017 (mbere y'uko Umubyeyi Marie Claire yishyura), abanyamuryango ba EACT bashimangiye ko badakwiye kuyaryozwa kandi amakosa ari aya Letshego Rwanda Ltd;

iii. *e-mail* yo ku wa 05/07/2018 igaragaza ko icy'ingenzi kandi cyumvikanweho n'impande zombi mu nama yabaye ku wa 10/02/2017 ari uko Letshego Rwanda Ltd yemeye ko ariyo nyirabayazana w'ubukererwe bw'imodoka z'abanyamuryango, bityo bakaba bataragombaga gusabwa gutanga 8.600.000 Frw yo kuziba icyuho cy'inyungu z'ubwo bukererwe;

iv. inkomyi y'uko abazasubizwa ayo mafaranga ari abari bafitiye Letshego Rwanda Ltd umwenda muri Kanama 2017 yishyiriweho na Letshego Rwanda Ltd ubwayo (*acte unilatéral*), bityo ikaba itashingirwaho umwe mu banyamuryango barebwa n'ubwo bukererwe yangirwa gusubizwa ayo mafaranga kuko ntaho iyo nkomyi yumvikanweho mu nama yabaye ku wa 10/02/2017, nta nubwo Letshego Rwanda Ltd igaragaza impamvu yayo.

[28] Urukiko rurasanga nubwo buri wese mu banyamuryango ya EACT yasinye amasezerano y'inguzanyo ku giti cye, urwandiko rwo ku wa 13/01/2017 rugaragaza ko imishyikirano yo kugura imodoka, aho zizagurirwa, igihe zizazira, ingano y'iguzanyo, uburyo izishyurwa n'ibibazo byavutse mu micungire y'ayo masezerano byakurikiranwe na EACT mu izina ry'abanyamuryango ba Koperative bose. Ntaho kugeza ubu Letshego Rwanda Ltd igaragaza ko imodoka ya Umubyeyi Marie Claire yaziye ku gihe ugereranyije n'iz'abandi banyamuryango. Mu gihe rero abanyamuryango bose bafashe inguzanyo bari banasangiye ibibazo by'uko imodoka zatinze kubageraho, ntacyatuma haba ubusumbane mu gukemura icyo kibazo, ngo hagati y'abanyamuryango babiri bose batinze kubona imodoka, utarashoboye kwishyura bigatuma amasezerano akururuka kugeza muri Kanama 2017 asubizwe amafaranga aziba icyuho cy'ubukererwe, naho uwishyuye neza inguzanyo yahawe akarangiza umwenda wose mbere y'icyo gihe yangirwe kuyasubizwa.

[29] Urukiko rurasanga ibyo Letshego Rwanda Ltd iburanisha ko Umubyeyi Marie Claire adakwiye guhabwa uburenganzira bwahawe bagenzi be bo muri EACT binyuranyije n'ihame ry'ingenzi ry'uko abantu bari mu cyiciro kimwe bagomba gufatwa kimwe. Uru Rukiko rwibukije mu manza zitandukanye uburemere bw'iryo hame riteganywa n'Itegeko Nshinga. Mu rubanza rwa Mugisha Richard, uru Rukiko rwongereyeho ko gutandukanya cyangwa kutareshyeshya abantu bigomba kuba bitewe n'impamvu "*igaragarira buri wese (objective justification or legitimate objective) kandi bikaba biri mu rugero urebye uburyo bwakoreshejwe kugera ku ntego cyangwa*

ikigamijwe”,[5]ku bireba uru rubanza hakaba nta mpamvu yumvikana Letshego Rwanda Ltd itanga yatuma Umubyeyi Marie Claire adafatwa nk’abandi banyamuryango ba EACT basinyiye inguzanyo yo guhabwa imodoka mu Gushyingo 2015, bakamara amezi atanu bazitegereje ku bw’amakosa yayo.

[30] Hashingiwe ku biteganywa n’ingingo ya 12 y’Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru no ku bisobanuro bimaze gutangwa, Urukiko rurasanga nta bimenyetso Letshego Rwanda Ltd igaragaza byari gutuma idafata Umubyeyi Marie Claire kimwe n’abandi banyamuryango ba EACT yemereye “bonus” ya 8.600.000 Frw kuko batinze kubona imodoka.

II.2. Kumenya niba indishyi zasabwe zifite ishingiro.

[31] Me Serugo Jean-Baptiste asabira Letshego Rwanda Ltd 1.000.000 Frw y'ikurikiranarubanza na 4.000.000Frw y'igihembo cya Avoka ku nzego zose kuko Umubyeyi Marie Claire yayishoye mu manza z’amaherere.

[32] Me Rutagengwa Jean Damascène, uburanira Umubyeyi Marie Claire, avuga ko indishyi Letshego Rwanda Ltd isaba nta shingiro zifite kuko ariyo ahubwo yamushoye mu manza, asaba uru Rukiko gutegeka Letshego Rwanda Ltd kumuha indishyi z’akababaro zo gushorwa mu manza nta mpamvu kuva mu mwaka wa 2018 zihwanye na 6.000.000 Frw, 400.000 Frw y'ikurikiranarubanza na 1.500.000 Frw y’igihembo cya Avoka.

UKO URUKIKO RUBIBONA

[33] Ingingo ya 111 y’Itegeko № 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. […] Gishobora kandi kwakirwa kikanaburanishwa n’iyo ikirego cy’iremezo cyaba kitakiriwe”.*

[34] Iyi ngingo yumvikanisha ko ikirego gisaba indishyi z’ibyagiye ku rubanza kiba gishamikiye ku kirego cy’iremezo kandi ko ishingiro ryacyo rishobora gusuzumwa nubwo urubanza rwaba rutakomeje ngo rujye mu mizi y’ikiburanwa.

[35] Ku birebana n’amafaranga y’ikurikiranarubanza n’igihembo cya Avoka Letshego Rwanda Ltd isaba, Urukiko rurasanga ntayo ikwiriye kuko itsinzwe urubanza.

[36] Ku birebana n’indishyi z’akababaro zisabwa na Umubyeyi Marie Claire, Urukiko rurasanga rutagomba kuzisuzuma kubera ko ntaho bigaragara ko mu Rukiko Rukuru rw’Ubucuruzi yari yazisabye ngo bazimwime.

[37] Urukiko rurasanga icyakora Umubyeyi Marie Claire yarakomeje gukurikirana iby’uru rubanza kuva mu mwaka wa 2018, bimutesha umwanya n’amikoro yagiye yishyura Avoka umuburanira, bityo amafaranga y’igihembo cya Avoka n’ay’ikurikiranarubanza asaba akaba

5 Reba urubanza RS/INCONST/SPEC 00002/ 2018/SC, rwaciwe n’Urukiko rw’Ikirenga ku wa 24/04/2019, igika cya 89.

ayakwiriye. Icyakora kuba nta kimenyetso kigaragaza ko ingano y’amafaranga asaba ariyo koko yagiye kuri uru rubanza, mu bushishozi bw’Urukiko akaba agenewe 500.000Frw y’igihembo cya Avoka na 300.000Frw y’kurikiranarubanza kuri uru rwego.

III. ICYEMEZO CY’URUKIKO.

[38] Rwemeje ko ikirego cya Letshego Rwanda Ltd gisubirishamo urubanza RCOMA 00586/2018/CHC/HCC ku mpamvu z’akarengane nta shingiro gifite;

[39] Rwemeje ko nta gihindutse ku mikirize y’urubanza RCOMA 00586/2018/CHC/HCC rwaciwe n’Urukiko Rukuru rw’Ubucuruzi ku wa 22/03/2019;

[40] Rutegetse Letshego Rwanda Ltd guha Umubyeyi Marie Claire 500.000 Frw y’igihembo cya Avoka kingana na 300.000 Frw y’ikurikiranarubanza kuri uru rwego.