

SIKUBWABO v RWANDA DEVELOPMENT BOARD (RDB) N'ABANDI (ADD 1)

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00007/2021/SC (Cyanzayire, PJ, Nyirinkwaya na Hitiyaremye, J.) 29 Mata 2022]

Amategeko agenga imiburanishirize y'ianza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Gusubirishamo urubanza ku mpamvu z'akarengane – Ubujurire – Iyo urubanza rusubirishwamo ku mpamvu z'akarengane ari urubanza rushingiye ku kuba Urukiko rwaranze kwakira ubujurire hirengagijwe amategeko, Urukiko ruburanisha urubanza rwasabiwe gusubirishwamo rusuzuma iyo mpamvu rwasanga ifite ishingiro rugaca urubanza rubanziriza urundi rukemeza ko hirengagijwe amategeko hangwa kwakira ubujurire maze rukemeza ko iburanisha rikomeza hasuzumwa ingingo z'ubujurire yari yaratanze muri urwo Rukiko.

Amategeko agenga imiburanishirize z'ianza z'ubucuruzi – Ibarwa ry'ibihe byo gutanga ibirego bisaba guhagarika cyangwa gutesha agaciro cyamunara ku mitungo igurishwa hashingiwe ku cyemezo cyo kugurisha ingwate cyatanzwe n'umwanditsi mukuru – Ingingo ya 260, igika cya 6, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'ianza z'imbonzamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi – Ibihe bivugwa mu gika cya 6 cy'ingingo ya 260 bireba by'umwihariko ibirego bisaba guhagarika cyangwa gutesha agaciro cyamunara ku mitungo igurishwa hashingiwe ku cyemezo cyo kugurisha ingwate cyatanzwe n'Umwanditsi Mukuru – Ibihe bivugwa mu gika cya 6 bitandukanye n'ibihe bivugwa mu gika cya 4, bijyanye no gusaba gutesha agaciro cyamunara ku mitungo igurishwa hadashingiwe ku cyemezo cyatanzwe n'Umwanditsi Mukuru.

Incamake y'ikibazo: Mu rwego rwo kugirango hishyurwe umwenda Sikubwabo yari abereyemo Bank of Africa, Umwanditsi Mukuru muri RDB yatanze impushya zo kugurisha ingwate, abanza gutanga uruhushya rwo kugurisha umutungo ufite UPI: 1/02/09/01/844. Nyuma ya cyamunara yakozwe kuri uwo mutungo, SIKUBWABO Raphaël yatanze ikirego gifite No RCOM 01971/2017/TC/NYGE mu Rukiko rw'Ubucuruzi rwa Nyarugenge asaba kuyitesha agaciro, arega Bank of Africa, hagobokeshwamo RDB na Umugiraneza wari ushinzwe kugurisha ingwate. Mu gihe urubanza rwari rutaracibwa, Umwanditsi Mukuru yatanze uruhushya rwo kugurisha umutungo ufite UPI: 1/02/13/03/115, bituma Sikubwabo atanga ikirego cyihutirwa asaba guhagarikisha cyamunara kuri uyu mutungo. Mu rubanza No RCOMA 00793/2017/CHC/HCC rwaciye ku rwego rw'ubujurire, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by'agateganyo, hakabanza gutegerezwa icyemezo cy'urukiko ku rubanza No RCOM 01971/2017/TC/NYGE.2

Urubanza No RCOM 01971/2017/TC/NYGE rwarangije inzira z'ubujurire ku wa 06/05/2020, hemezwa ko nta mpamvu yagaragajwe yatesha agaciro cyamunara ku mutungo ufite UPI: 1/02/09/01/844. Ku wa 08/05/2020, Sikubwabo yahise yandikira Umwanditsi Mukuru amusaba guhagarika burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 kuko hatagaragajwe umwenda watumye ikorwa; ku wa 20/05/2020 atanga ikirego mu Rukiko rw'Ubucuruzi. Urubanza rwanditswe kuri No RCOM 00767/2020/TC, MUREGO Paulin waguze uwo mutungo muri cyamunara na Umugiraneza wari ushinzwe kuwugurisha barugobokamo ku bushake, hagobokeshwa ku gahato Bank of Africa yatanze umwenda.

Murego yatanze inzitizi asaba ko ikirego cya Sikubwabo kitakwakirwa kuko yagitanze ibihe biteganywa n'amategeko byararenze, iyo nzitizi ntiyakirwa mu rwego rwa mbere ariko mu bujurire bwa mbere n'ubwa kabiri ihabwa ishingiro. Mu rubanza N° RCOMAA 00061/2020/CA rwaciwe ku wa 18/12/2020, Urukiko rw'Ubujurire rwagumishijeho icyemezo cyari cyafashwe n'Urukiko Rukuru rw'Ubucuruzi, rusobanura ko ikirego cyagombaga gutangwa mu minsi 15 ibazwe kuva igihe urundi rubanza No RCOM 00577/2019/TC rwemeje ingano y'umwenda rwabereye itegeko, ni ukuvuga ku wa 20/06/2019, rushingiye ku biteganywa n'ingingo ya 260, igika cya kane, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu. Uru rubanza nirwo Sikubwabo yasabye ko rusubirwamo ku mpamvu z'akarengane.

Sikubwabo avuga ko ikirego cye cyatanzwe hashingiwe ku ngingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, kandi hakurikijwe ibyategetswe n'Urukiko mu rubanza N° RCOMA 00793/2017/HCC rwemeje ko ibikorwa bya cyamunara bihagarara hagategerezwa imikirize y'urubanza N° RCOM 01971/2017/TC/NYGE; ibyo bikaba byarashimangiwe n'urubanza N° RCOMA 01016/2019/HCC narwo rwavuze ko RDB yagombaga gutegereza urubanza N° RCOM 01971/2017/TC/NYGE, bityo iminsi yabazwe n'Urukiko rw'Ubujurire idateganyijwe n'itegeko kuko ingingo rwakoresheje ya 260, igika cya 4, iteganya ko imanza zo gutesha agaciro cyamunara arizo ziregerwa mu minsi 15 uhereye igihe cyamunara yabereyeho, ikaba idateganya ko ibirego byo guhagarikisha cyamunara birebwa n'iyi minsi 15.

Uregwa, abagobotse ku bushake n'uwagobokeshejwe ku gahato, bese bavuga ko batavuguruzwa icyemezo cyafashwe n'Urukiko rw'Ubujurire, kuko basanga ibihe byo gutanga ikirego bitarubahirijwe.

Incamate y'icyemezo: 1. Iyo urubanza rusubirishwamo ku mpamvu z'akarengane ari urubanza rushingiye ku kuba Urukiko rwaranze kwakira ubujurire hirengagijwe amategeko, Urukiko ruburanisha urubanza rwasabiwe gusubirishwamo rusuzuma iyo mpamvu rwasanga ifite ishingiro rugaca urubanza rubanziriza urundi rukemeza ko hirengagijwe amategeko hangwa kwakira ubujurire maze rukemeza ko iburanisha rikomeza hasuzumwa ingingo z'ubujurire yari yatanze muri urwo Rukiko.

2. Ingingo ya 260, igika cya 6, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu. Ibihe bivugwa mu gika cya 6 cy'ingingo ya 260 y'Itegeko rimaze kuvugwa, bireba by'umwihariko ibirego bisaba guhagarika cyangwa gutesha agaciro cyamunara ku mitungo igurishwa hashingiwe ku cyemezo cyo kugurisha ingwate cyatanzwe n'Umwanditsi Mukuru; bikaba bitandukanye n'ibihe bivugwa mu gika cya 4, bijyanye no gusaba gutesha agaciro cyamunara ku mitungo igurishwa hadashingiwe ku cyemezo cyatanzwe n'Umwanditsi Mukuru..

**Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro;
Ikirego cyatanzwe kigamije guhagarikisha burundu cyamunara kikaba cyaragombaga
kwakirwa;
Urubanza rwaciwe, kimwe n'urwarubanjirije, zivanyweho;
Iburanisha ry'urubanza ku ngingo z'ubujurire rizakomeza.**

Amategako yashingiweho:

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegets, ingingo ya 260

Imanza zifashishijwe:

Urubanza N° RS/INJUST/RC 00023/2018/SC; IBYISI v. KALISA RIBAKARE N’abandi rwaciwe n’Urukiko rw’Ikirenge ku wa 31/01/2020.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Uru rubanza rukomoka ku ruhushya rwo guteza cyamunara (permit to sell N° 017-074833) umutungo ufite UPI: 1/02/13/03/115 rwatanzwe n’Umwanditsi Mukuru muri R.D.B ku wa 06/11/2017, kugirango hishyurwe umwenda Sikubwabo Raphaël yari abereyemo Bank of Africa. Iyo cyamunara yakurikiraga indi yakozwe ku wa 09/06/2017 ku mutungo ubaruye kuri UPI: 1/02/09/01/844 nabwo hishyurwa uwo mwenda.

[2] Nyuma y’iyi cyamunara yo ku wa 09/06/2017, Sikubwabo Raphaël yatanze ikirego mu Rukiko rw’Ubucuruzi rwa Nyarugenge arusaba kuyitesha agaciro, umwenda ukishyurwa hakurikijwe ibindi biteganyijwe mu masezerano y’inguzanyo. Ikirego cyanditswe kuri N° RCOM 01971/2017/TC/NYGE, uregwa ari Bank of Africa, hagobokeshwamo RDB na Umugiraneza Jean Michel wari ushinze kugurisha ingwate. Nyuma yo gutanga iki kirego, urubanza rutaracibwa, nibwo Sikubwabo Raphaël yahawe n’Umwanditsi Mukuru *permit to sell* N° 017-074833 yo ku wa 06/11/2017 yavuzwe haruguru, ndetse n’amabwiriza ya cyamunara, birebana n’ingwate ifite UPI: 1/02/13/03/115.

[3] Igihe iyi cyamunara ya kabiri yari itaremezwa n’Umwanditsi Mukuru, Sikubwabo Raphaël wavugaga ko atigeze amenyeshwa umwenda wari usigaye nyuma y’ubwishyu bwavuye muri cyamunara ya mbere, yahise atanga ikirego cyihutirwa asaba guhagarika by’agateganyo cyamunara ku ngwate ya kabiri irebana n’umutungo ufite UPI: 1/02/13/03/115, kugirango habanze gusuzumwa ibyasabwe mu rubanza rw’iremezo. Ikirego cyanditswe kuri No RCOM 02265/2017/TC/NYGE, urubanza rucibwa ku wa 04/12/2017, Urukiko rwemeza ko nta mpamvu yo guhagarika cyamunara yari iteganyijwe ku wa 05/12/2017. Urwo rubanza rwajuririwe mu Rukiko Rukuru rw’Ubucuruzi kuri N° RCOMA 00793/2017/CHC/HCC, rucibwa ku wa 21/12/2017, hemezwa ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by’agateganyo, hakabanza gutegerezwa icyemezo cy’urukiko ku rubanza No RCOM 01971/2017/TC/NYGE.

[4] Nyuma y’icibwa y’uru rubanza N° RCOMA 00793/2017/CHC/HCC, Sikubwabo Raphaël yatanze ikirego mu Rukiko Rukuru rw’Ubucuruzi, asaba guhamagaza Umwanditsi Mukuru agasobanura impamvu atarurangiza¹, Murego Paulin waguze mu cyamunara yahagaritswe agasubizwa amafaranga yatanze. Ikirego cyanditswe kuri N° RCOM 00024/2019/HCC, urubanza

¹ Yatanze ikirego ashingiye ku ngingo ya 184 y’Itegeko N° 22/2018 ryo ku wa 29/04/2018 rya CPCCSA, ivuga ku bihano bihabwa umuyobozi wanze gushyira mu bikorwa icyemezo cy’urukiko.

rucibwa ku wa 04/10/2019, Urukiko rwemeza ko rudafite ububasha bwo kuburanisha bene ibyo birego kuko birebana n'imanza z'ubutegets. Urwo rubanza rwajuririwe mu Rukiko Rukuru rw'Ubucuruzi kuri N° RCOMA 01016/2018/HCC, rucibwa ku wa 14/02/2020, hemezwa ko ikirego cyakiriwe ariko ko ibyo Umwanditsi Mukuru yagombaga gukora mu gushyira mu bikorwa urubanza N° RCOMA 00793/2017/CHC/HCC yabikoze kuko yahagaritse by'agateganyo iyemezwa rya raporo ya cyamunara kuri UPI: 1/02/13/03/115.

[5] Urubanza N° RCOM 01971/2017/TC/NYGE (rurebana no gutesha agaciro cyamunara yabaye ku wa 09/06/2017 kuri UPI: 1/02/09/01/844) rwari rwatumye cyamunara kuri UPI: 1/02/13/03/115 ihagarikwa by'agateganyo rwaciwe ku wa 16/05/2018, hemezwa ko nta mpamvu yagaragajwe yatesha agaciro cyamunara. Urwo rubanza rwajuririwe mu Rukiko Rukuru rw'Ubucuruzi kuri N° RCOMA 00443/2018/CHC/HCC, rucibwa ku wa 14/12/2018, hemezwa ko urubanza rwajuririwe rudahindutse. Sikubwabo Raphaël yajuriye bwa kabiri mu Rukiko rw'Ubujurire kuri N° RCOMAA 00039/2019/CA, urubanza rucibwa ku wa 06/05/2020, hemezwa ko ubwo bujurire butakiriwe kuko bwatanzwe bukererewe.

[6] Nyuma y'uko urubanza N° RCOM 01971/2017/TC/NYGE rurangije inzira zose z'ubujurire, ku wa 08/05/2020 Sikubwabo Raphaël yandikiye Umwanditsi Mukuru amusaba guhagarika burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115. Ku wa 20/05/2020, yatanze ikirego mu Rukiko rw'Ubucuruzi, asaba guhagarika burundu cyamunara ku mutungo we ufite UPI: 1/02/13/03/115, kuko hatagaragajwe umwenda watumye ikorwa. Urubanza rwanditswe kuri N° RCOM 00767/2020/TC, Murego Paulin waguze uwo mutungo muri cyamunara na Umugiraneza Jean Michel wari ushinze kuwugurisha barugobokamo ku bushake, hagobokeshwa ku gahato Bank of Africa yatanze umwenda.

[7] Muri urwo rubanza, Sikubwabo Raphaël yatanze inzitizi asaba Urukiko kutakira ibirego by'abagobotse ku bushake kuko nta nyungu bafite. Murego Paulin nawe yatanze inzitizi asaba ko ikirego cya Sikubwabo Raphaël kitakwakirwa kuko yagitanze ibihe biteganywa n'amategeko byo kuba yaregera gutesha agaciro cyamunara byararenze.

[8] Urubanza rwaciwe ku wa 22/06/2020, Urukiko rwemeza ko inzitizi yatanzwe na Sikubwabo Raphaël nta shingiro ifite kuri Murego Paulin kuko ariwe waguze umutungo uburanwa muri cyamunara, amategeko akaba amwemerera kuba yagoboka muri urwo rubanza. Rwemeje ko inzitizi yo kutakira ukugoboka ku bushake kwa Umugiraneza Jean Michel ifite ishingiro kuko hatagaragajwe ko hari amakosa ajyanye n'imihango (*procédure*) yaba yarakozwe mu kugurisha muri cyamunara umutungo uburanwa, kandi ko nta nyungu ze bwite zibangamiwe mu rubanza. Ku bijyanye n'inzitizi yo kutakira ikirego bitewe n'uko cyatanzwe impitagihe, Urukiko rwemeje ko cyakirwa kigasuzumwa mu mizi. Ku bireba urubanza mu mizi, Urukiko rwemeje ko ikirego cya SIKUBWABO Raphaël nta shingiro gifite, rutegeka ko cyamunara yakozwe ku mutungo ufite UPI: 1/02/13/03/115 igumaho.

[9] Sikubwabo Raphaël yajuririye imikirize y'urubanza mu Rukiko Rukuru rw'Ubucuruzi, urubanza rwandikwa kuri N° RCOMA 00398/2020/HCC, avuga ko yajurijwe no kuba Urukiko rw'Ubucuruzi rutarahagaritse cyamunana yavuzwe kandi hari impamvu zituma ihagarikwa.

Yanasabaga Urukiko gusuzuma niba imanza N° RCOMA 00793/2017/CHC2 na RCOM 01971/2017/TC/NYGE3 hari ingaruka zagize kuri iyo cyamunara. Muri urwo rubanza MUREGO Paulin yatanze inzitizi agaragaza ko ikirego cyakiriwe ku rwego rwa mbere kitaragombaga kwakirwa kuko SIKUBWABO Raphaël yareze impitagihe. Umugiraneza Jean Michel yatanze ubujurire bwuririye ku bundi asaba ko hasuzumwa niba urukiko rwa mbere rutaraciye urubanza ku byo rutaregewe, anasaba indishyi zinyuranye. Bank of Africa nayo yatanze ubujurire bwuririye ku bundi isaba indishyi z'ibyakozwe mu rubanza ku rwego rw'ubujurire.

[10] Urubanza rwaciye ku wa 16/07/2020, Urukiko Rukuru rw'Ubucuruzi rwemeza ko inzitizi yatanzwe na MUREGO Paulin ifite ishingiro, ko ikirego cyatanzwe na Sikubwabo Raphaël mu Rukiko rw'Ubucuruzi kitagombaga kwakirwa ngo gisuzumwe mu mizi, kuko cyatanzwe impitagihe. Urukiko rwasobanuye ko niba mu gutanga ikirego, urega yarashingiye ku byemejwe mu rubanza No RCOM 00577/2019/TC rwaciye ku wa 20/06/2019 rukagaragaza umwenda yishyuzwaga, byumvikana ko cyamunara yari yarahagaritswe n'imanza zinyuranye yagombaga guhita ikomeza kuva igihe urwo rubanza rusomewe. Kuba rero Sikubwabo Raphaël yatanze ikirego mu Rukiko rw'Ubucuruzi ku wa 20/05/2020, amezi 11 nyuma y'uko cyamunara yemerewe gukomeza, bigaragaza ko yatanze ikirego impitagihe, kikaba kitari gikwiye kwakirwa ngo gisuzumwe mu mizi.

[11] Urukiko Rukuru rw'Ubucuruzi rwemeje kandi ko ubujurire bwuririye ku bundi bwatanzwe na Bank of Africa n'ubwa Umugiraneza Jean Michel bufite ishingiro, rwemeza ko urubanza N° RCOM 00767/2020/TC rwaciye ku wa 22/06/2020 n'Urukiko rw'Ubucuruzi ruteshejwe agaciro, rutegeka Sikubwabo Raphaël guha Bank of Africa na Umugiraneza Jean Michel: 500.000 Frw y'indishyi zo gusiragizwa mu nkiko, 500.000 Frw y'igihembo cy' Avoka, 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 1.300.000 Frw kuri buri wese.

[12] Sikubwabo Raphaël yajuririye imikirize y'urubanza mu Rukiko rw'Ubujurire, asaba gusuzuma niba ikirego cye cyaratanzwe impitagihe nk'uko Urukiko Rukuru rw'Ubucuruzi rwabyemeje, kandi urubanza N° RCOMA 00793/2017/HCC rwaciye ku wa 21/12/2017 rwarategetse ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by'agateganyo, hakabanza gutegerezwa icyemezo cy'Urukiko ku rubanza N° RCOM 01971/2017/TC/NYGE. Mu rubanza N° RCOMAA 00061/2020/CA rwaciye n'Urukiko rw'Ubujurire ku wa 18/12/2020, hemejwe ko ubujurire bwa Sikubwabo Raphaël budafite shingiro, ko imikirize y'urubanza rwajuririwe idahindutse.

[13] Sikubwabo Raphaël yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza N° RCOMAA 00061/2020/CA rwaciye n'Urukiko rw'Ubujurire ku wa 18/12/2020 rwasubirwamo ku mpamvu z'akarengane, avuga ko mu icibwa ryarwo hirengagijwe amategeko n'ibimenyetso. Perezida w'Urukiko rw'Ikirenga yafashe icyemezo ko urwo rubanza rwongera kuburanishwa n'Urukiko rw'Ikirenga, rwandikwa mu bitabo byabugenewe, ruhabwa No RS/INJUST/RCOM 00007/2021/SC.

² Urubanza rwemeje ko cyamunara iteganyijwe ku mutungo ufite UPI: 1/02/13/03/115 ihagarara by'agateganyo hagategerezwa icyemezo kizafatwa mu rubanza N° RCOM 01971/2017/TC/NYG.

³ Urubanza SIKUBWABO Raphaël yasabyemo gutesha agaciro cyamunara yabaye ku wa 09/06/2017 ku mutungo ufite UPI: 1/02/09/01/844, hakomezwa ko nta mpamvu yagaragaje yatuma iteshwa agaciro, mu bujurire Urukiko Rukuru rukemeza ko nta gihindutse.

[14] Iburanisha ry'urubanza ryashyizwe ku wa 14/03/2022 ribera mu ruhame, Sikubwabo Raphaël yunganiwe na Me Uwizeyimana Venuste, RDB ihagarariwe na Me Nkusi Fred, Umugiraneza Jean Michel yunganiwe na Me Matimbano Barton, Murego Paulin ahagarariwe na Me Munderere Léopold, naho Bank of Africa ihagarariwe na Me Kayiranga Cyrille.

[15] Urukiko rwabanje kubaza ababuranyi uburyo Umugiraneza Jean Michel ari mu rubanza, kandi bigaragara ko Urukiko rw'Ubucuruzi rwemeje ko nta nyungu afite yo kurugobokamo ku bushake. Nyuma yo kumva icyo buri muburanyi avuga kuri icyo kibazo, Urukiko rwasanze Umugiraneza Jean Michel agomba kuguma mu rubanza kuko ababuranyi bose bemeza ko Sikubwabo Raphaël wari waratanze inzitizi yayiretse mu bujirire n'ubwo bitagarajwe mu rubanza.

[16] Sikubwabo Raphaël ashingira akarengane ke ku kuba harabayeho kwibeshya ku rubanza rugomba guherwaho habarwa ibihe byo gusaba guhagarika burundu cyamunara, kuko hemejwe ko urubanza rugomba guherwaho ari N° RCOM 0577/2019/TC rwaciwe ku wa 20/06/2019 rukemeza umwenda yari abereyemo Bank of Africa⁴, mu gihe ibihe byagombaga kubarwa guhera igihe urubanza N° RCOM 01971/2017/TC/NYGE rwabereye itegeko nk'uko byari byemejwe mu rubanza N° RCOMA 00443/2018/CHC/HCC. Avuga kandi ko habayeho gukoresha nabi ibiteganywa n'ingingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, kubera ko mu gihe cyose Umwanditsi Mukuru ataremeza cyamunara yakozwe hashingiwe ku ruhushya yatanze, ishobora gusabirwa guhagarikwa, ibihe bigatangira kubarwa uherye igihe uregwa yandikiye Umwanditsi Mukuru.

[17] Abaregwa bavuga ko ikirego cyatanzwe impitagihe, kuko cyagombaga gutangwa mu minsi 15 uherye igihe cyamunara yabereye hashingiwe ku biteganywa n'ingingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[18] Nyuma yo kumva impaka ziri hagati y'ababuranyi, Urukiko rwasuzumye ibibazo bikurikira:

- Kumenya niba ikirego cyatanzwe na Sikubwabo Raphaël asaba Urukiko guhagarika burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 cyaratanzwe impitagihe;
- Ibijyanye n'indishyi ababuranyi basaba.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.

Kumenya niba ikirego cya SIKUBWABO Raphaël kigamije guhagarikisha burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 cyaratanzwe impitagihe.

⁴ Uru ni urundi rubanza SIKUBWABO Raphaël yarezemo Bank of Africa asaba Urukiko rw'Ubucuruzi kwemeza umwenda ayibereyemo ku itariki ya 10/04/2017, ubwo iyi Banki yasabaga Umwanditsi Mukuru uburenganzira bwo kugurisha ingwate.

[19] Sikubwabo Raphaël na Me Uwizeyimana Venuste umwunganira bavuga ko ikirego cye cyatanzwe hashingiwe ku ngingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburamushirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, kandi hakurikijwe ibyategetswe n'Urukiko mu rubanza N° RCOMA 00793/2017/HCC rwemeje ko ibikorwa bya cyamunara bihagarara hagategerezwa imikirize y'urubanza N° RCOM 01971/2017/TC/NYGE; ibyo bikaba byarashimangiwe n'urubanza N° RCOMA 01016/2019/HCC narwo rwavuze ko RDB yagombaga gutegereza urubanza N° RCOM 01971/2017/TC/NYGE.

[20] Basobanura ko iminsi yabazwe n'Urukiko rw'Ubujurire idateganyijwe n'itegeko kuko ingingo rwakoresheje ya 260, igika cya 4, iteganya ko imanza zo gutesha agaciro cyamunara arizo ziregerwa mu minsi 15 uhereye igihe cyamunara yabereyeho, ikaba idateganya ko ibirego byo guhagarikisha cyamunara birebwa n'ayo minsi 15.

[21] Bavuga kandi ko nyuma y'aho urubanza N° RCOM 01971/2017/TC/NYGE rubereye ndakuka, Sikubwabo Raphaël yandikiye Umwanditsi Mukuru ku wa 08/05/2020 amusaba guhagarika burundu cyamunara, uyu akaba yaragombaga gusubiza mu minsi itatu hakurikijwe ibiteganywa mu ngingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, ariko ntiyasubiza, ikirego gitangwa ku wa 20/05/2020; kikaba cyaratanzwe mu buryo bukurikije amategeko.

[22] Murego Paulin na Me Munderere Léopold umwunganira bavuga ko ikirego cyatanzwe impitagihe nk'uko bisobanuwe mu gika cya 17 cy'urubanza N° RCOMAA 0061/2020/CA; Urukiko rukaba rwarasobanuye ko ingingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, iteganya ko ikirego kigomba gutangwa mu minsi 15 uhereye igihe cyamunara yabereye. Bongeraho ko urubanza N° RCOM 01971/2017/TC/NYGE Sikubwabo Raphaël avuga ko rwagombaga gutegerezwa rwaciwe ku wa 16/05/2018, bivuze ko umunsi wa nyuma yagombye kuba yaratangiyeho ikirego ari ku wa 01/06/2018 kuko yagombaga kugitanga mu minsi 15 uhereye igihe urubanza rwaciriwe; nyamara yagitanze mu mwaka wa 2020, bikaba byumvikana ko yakererewe cyane.

[23] Umugiraneza Jean Michel na Me Matimbano Barton umwunganira bavuga ko batavuguruzwa icyemezo cyafashwe n'Urukiko rw'Ubujurire, ko basanga ibihe byo gutanga ikirego bitarubahirijwe.

[24] Me Nkusi Fred uhagarariye RDB avuga ko ashingiye ku cyemezo cy'Urukiko rw'Ubujurire mu rubanza N° RCOMAA 00061/2020/CA, asanga iki kirego kitarubahirije igihe cy'iminsi 15 iteganywa n'ingingo ya 260, igika cya 4, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 yavuzwe haruguru.

[25] Me Kayiranga Cyrille uhagarariye Bank of Africa avuga ko ibihe byo gutanga ikirego byagombaga kubara guhera igihe cyamunara ku mutungo ufite UPI: 1/02/13/03/115 yabereye, ibyo bihe bikaba bitarubahirijwe hakurikijwe ibiteganywa n'ingingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 rimaze kuvugwa.

UKO URUKIKO RUBIBONA

[26] Ingingo ya 260, igika cya 6, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu iteganya ko guhagarika no gutesha agaciro cyamunara ku mitungo igurishwa hashingiwe ku cyemezo cyo kugurisha ingwate cyatanzwe n'Umwanditsi Mukuru, bisabwa Umwanditsi Mukuru. Umwanditsi Mukuru atanga igisubizo mu gihe kitarenze iminsi itatu (3) y'akazi. Iyo hari utishimiye igisubizo cy'Umwanditsi Mukuru cyangwa udahawe igisubizo mu gihe giteganywa muri iki gika, abatangira ikirego mu rukiko rw'ubucuruzi hakurikijwe ibivugwa muri iyi ngingo mu gihe kitarenze iminsi itanu (5) y'akazi uherye igihe yamenyeye icyo gisubizo.

[27] Ibivugwa muri iki gika cya 6 cy'ingingo ya 260 y'Itegeko rimaze kuvugwa, bireba by'umwihariko ibirego bisaba guhagarika cyangwa gutesha agaciro cyamunara ku mitungo igurishwa hashingiwe ku cyemezo cyo kugurisha ingwate cyatanzwe n'Umwanditsi Mukuru; ibihe bivugwamo bikaba bitandukanye n'ibihe by'iminsi 15 byashingiweho n'Inkiko zabanje bivugwa mu gika cya 4⁵ cy'ingingo ya 260 yavuzwe haruguru, byo bikaba bijyanye no gusaba gutesha agaciro cyamunara ku mitungo igurishwa hadashingiwe ku cyemezo cyatanzwe n'Umwanditsi Mukuru.

[28] Dosiye y'uru rubanza igaragaza ko ikirego cyatanzwe na Sikubwabo Raphaël, kijyanye no guhagarikisha burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115, hashingiwe ku ruhushya rwo guteza cyamunara (*permit to sell* N° 017- 074833) rwatanzwe n'Umwanditsi Mukuru muri RDB ku wa 06/11/2017. Bivugwa rero ko ibihe bigomba gushingirwaho mu gusuzuma niba ikirego cyaratanzwe impitagihe, ari ibivugwa mu gika cya 6 cy'ingingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru. Ku bijyanye n'aho guhera ibyo bihe bibarwa, ni ngombwa kubanza kwibutsa ibyemezo byafashwe muri zimwe mu manza zavuzwe mu gice kirebana n'imiterere.

[29] Mbere yo gusaba guhagarika burundu cyamunara ku mutungo ufite UPI:1/02/13/03/115, SIKUBWABO Raphaël yabanje gutanga ikirego cyihutirwa asaba guhagarika by'agateganyo cyamunara kuri uwo mutungo, kugirango hazabanze gufatwa umwanzuro ku kindi kirego N° RCOM 01971/2017/TC/NYGE yari yatanze asaba gutesha agaciro cyamunara yakozwe mbere ku mutungo ufite UPI: 1/02/09/01/844, bityo bimufashe kumenya umwenda yaba asigajwe kwishyura nyuma y'iyi cyamunara ya mbere mu gihe itatashwa agaciro.

[30] Mu rubanza N° RCOMA 00793/2017/CHC/HCC rwaciwe ku wa 21/12/2017, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ibikorwa bijyanye na cyamunara ku mutungo ufite UPI: 1/02/13/03/115 bihagarara by'agateganyo, hakabanza gutegerezwa icyemezo cy'urukiko ku rubanza N° RCOM 01971/2017/TC/NYGE rwavuzwe haruguru. Uru rubanza rwaciwe ku wa 16/05/2018, hemezwa ko nta mpamvu yo gutesha agaciro cyamunara ya mbere ku mutungo ufite UPI: 1/02/09/01/844, iki cyemezo kiba ndakuka nyuma y'urubanza rwaciwe n'Urukiko rw'Ubujurire ku wa 06/05/2020.

[31] Nyuma y'uko urubanza N° RCOM 01971/2017/TC/NYGE rwari rwatumye cyamunara kuri UPI: 1/02/13/03/115 ihagarikwa by'agateganyo rubaye ndakuka, Sikubwabo Raphaël yandikiye

⁵ Iki gika cya 4 Urukiko rw'Ubujurire rwavuze ko ari igika cya 5, ariko bigaragara ko habaye kwibeshya. Giteganywa ko ikirego gisaba gutesha agaciro cyamunara gitangwa mu gihe kitarenze iminsi cumi n'itanu (15) uherye umunsi cyamunara yabereyeho.

Umwanditsi Mukuru ku wa 08/05/2020 amusaba guhagarika burundu cyamunara yari yarahagaritswe by'agateganyo.

[32] Hashingiwe ku biteganywa mu gika cya 6 cy'ingingo ya 260 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, Sikubwabo Raphaël yari afite igihe cy'iminsi itatu (3) y'akazi cyo gutegereza igisubizo cy'Umwanditsi Mukuru, icyo gihe kikaba cyararangiyeye ku wa 13/05/2020. Mu gihe nta gisubizo yahawe, yari afite iminsi itanu (5) y'akazi yo gutanga ikirego mu Rukiko rw'Ubucuruzi, itangira kubarwa guhera ku wa 14/05/2020, bivuze ko umunsi wa nyuma yari afite wo gutanga ikirego wari ku wa 20/05/2020, ari nabwo yagitanze.

[33] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ikirego cya Sikubwabo Raphaël kigamije guhagarikisha burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 kitaratanzwe impitagihe kuko yubahirije ibihe biteganywa n'ingingo ya 260, igika cya 6, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets. Kubera iyo mpamvu, Urukiko rurasanga urubanza N° RCOMAA 00061/2020/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020, kimwe n'urwarubanjirije N° RCOMA 00398/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 16/07/2020, zigomba kuvanwaho. Ni ukuvuga ko hagumaho urubanza N° RCOM 00767/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 22/06/2020, hagakurikiraho gusuzuma ubujurire bwari bwashyikirijwe Urukiko Rukuru rw'Ubucuruzi ku bireba imizi y'urwo rubanza.

[34] Ku bijyanye n'urukiko rwasuzuma ubujurire bwari bwakozwe ku rubanza N° RCOM 00767/2020/TC, Urukiko rusanga iyo ikibazo cyagejwe kuri uru rwego kiza kuba cyaraje nk'ubujurire, hari gushingirwa ku ngingo ya 158, igika cya 2, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets iteganya ko *iyu urukiko rwajuririwe rusanze urubanza rwari rwaregewe mu buryo bukurikije amategeko nyamara urukiko rwaruciye ku rwego rubanza rukavuga ko rutakiriwe kandi rwaragombaga kwakirwa, urukiko rwajuririwe rurwakira, rukagaragaza ko rwagombaga kwakirwa ku rwego rwa mbere, rukarutesha agaciro, rukarusubiza urukiko rwari rwaruciye kugira ngo ruruburanishe mu mizi.* Ni ukuvuga ko urubanza rwari gusubizwa Urukiko Rukuru rw'Ubucuruzi kugirango ruburanishe mu mizi ubujurire rwari rwashyikirijwe.

[35] Nyamara ariko, urubanza ntirwageze muri uru Rukiko mu rwego rw'ubujurire, ahubwo rwaje mu rwego rw'akarengane. Iyi nzira yo gusubirishamo urubanza ku mpamvu z'akarengane ishyingirwaho, igitekerezo cy'Umushingamategeko cyari uko urukiko rwaregewe biciye muri iyi nzira, rukemura ibibazo byose biri mu rubanza umuburanyi yarugejeho, aho kugirango rukemure igice kimwe, ikindi gisubire mu nkiko ziri hasi yarwo, bitume habaho imanza zishobora kuzongera kugaruka mu karengane kandi byashobokaga ko ibibazo birangirizwa rimwe n'urukiko ruri ku rwego rwo hejuru. Iki gitekerezo nicyo kigaragara mu rubanza N° RS/INJUST/RC 00023/2018/SC rwaciwe n'uru Rukiko ku wa 31/01/2020, Ibyisi Augustin yaregagamo Kalisa Ribakare Didier na Mukantabana Clémentine⁶. Ni ukuvuga rero ko uru Rukiko arirwo ruzasuzuma ingingo z'ubujurire Sikubwabo Raphaël yari yashyikirije Urukiko Rukuru rw'Ubucuruzi.

⁶ Urubanza N° RS/INJUST/RC 00023/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 31/01/2020, para 31-32.

[36] Ku bijyanye n'indishyi ababuranyi basaba, Urukiko rurasanga zitasuzumwa ubu kuko urubanza ruzakomeza kuburanishwa, zikaba zizasuzumirwa hamwe n'ikirego cy'ubujurire SIKUBWABO Raphaël yari yashyikirije Urukiko Rukuru rw'Ubucuruzi.

III. ICYEMEZO CY'URUKIKO

[37] Rwemeje ko ikirego cyatanzwe na Sikubwabo Raphaël cyo gusubirishamo ku mpamvu z'akarengane urubanza No RCOMAA 00061/2020/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020, gifite ishingiro;

[38] Rwemeje ko ikirego cyatanzwe na Sikubwabo Raphaël mu Rukiko rw'Ubucuruzi kigamije guhagarikisha burundu cyamunara ku mutungo ufite UPI: 1/02/13/03/115 cyatanzwe mu gihe giteganywa n'amategeko, kikaba cyaragombaga kwakirwa;

[39] Rwemeje ko urubanza No RCOMAA 00061/2020/CA, rwaciwe n'Urukiko rw'Ubujurire ku wa 18/12/2020, kimwe n'urwarubanjirije N° RCOMA 00398/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 16/07/2020, zivanyweho;

[40] Rwemeje ko iburanisha ry'urubanza ku ngingo z'ubujurire Sikubwabo Raphaël yari yashyikirije Urukiko Rukuru rw'Ubucuruzi rizakomeza ku munsu Ubwanditsi bw'Urukiko buzamenyesha ababuranyi.