MUGWANEZA v. BANK OF KIGALI LTD

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00014/2022/SC (Mukamulisa, P.J., Muhumuza na Karimunda, J.) 31 Werurwe 2023]

Amategeko agenga imanza z'imbonezamubano – Inshingano – Inshingano z'umwuga. – Inshingano za banki nk'umunyamwuga – N'ubwo umukiliya afite inshingano zo kwita ku gatabo k'inyandiko isaba kwishyura cyangwa ubundi buryo ahabwa na banki bwatuma yishyura, ariko ibyo ntibivanaho inshingano y'ubushishozi kuri banki mbere yo kwishyura.

Amategeko agenga imanza z'imbonezamubano – Inshingano – Inshingano z'umwuga. – Inshingano za banki nk'umunyamwuga – Kwibwa kuri konti y'umukiliya – Banki ifite inshingano zo kugenzura ko uburyo busaba kwishyura bwatanzwe n'umukiliya wayo koko ndetse ko nta makosa yabaye mu gutanga ubutumwa busaba kwishyura;

Amategeko agenga imanza z'imbonezamubano – Inshingano – Inshingano z'umwuga. – Inshingano za banki nk'umunyamwuga – Kwibwa kwa ordre de paiement cyangwa sheki – Iyo hari ikintu kitamenyerewe nk'uburyo ubutumwa busaba kwishyura bukozwemo cyangwa ingano y'amafaranga arenze cyane ayo umukiliya asanzwe asaba banki kumwishyurira, banki ifite inshingano yo gushaka amakuru ku mukiliya mbere yo kwishyura ibyo ubwo butumwa butegeka.

Amategeko agenga imanza z'imbonezamubano – Inshingano – Inshingano z'umwuga. – Inshingano za banki nk'umunyamwuga – Inshingano z'umukiliya wa banki zo kwita ku gatabo yahawe na banki – Gushaka gukumira ikoresha rya konti y'umukiliya mu buryo budakwiye ni byo mu ntangiriro biha umukiliya inshingano zo gucunga neza inyandiko cyangwa andi makuru yahawe na banki ariko bigaha na banki inshingano z'ubushishozi nk'urwego ruri aho amafaranga y'umukiliya asohokera.

Amategeko agenga imanza z'imbonezamubano – Inshingano – Inshingano z'umwuga. – Inshingano za banki nk'umunyamwuga – Kwibwa kuri konti y'umukiliya – Ihame rusange ni uko amafaranga y'umuntu Banki ibitse atagomba gukorwaho nyirayo atabitangiye uruhushya. Banki iramutse iyahaye umuntu utabifitiye uburenganzira, ibyo ntibireba nyiri amafaranga ndetse bifatwa nk'aho ayo mafaranga atigeze ava kuri konti ye, icyo gihe banki ikaba ariyo ibyirengera.

Amategeko agenga imanza z'imbonezamubano – Inshingano – Inshingano z'umwuga. – Inshingano za banki nk'umunyamwuga – Kwibwa kuri konti y'umukiliya – Kwibwa kwa ordre de paiement cyangwa sheki –Iyo umukiliya abikije amafaranga, bifatwa ko banki iba imugiyemo umwenda, kugira ngo rero banki yigobotore izo nshingano igomba kwishyura uwayibikije amafaranga kandi inshingano za banki ntizivanwaho n'uko yemeye kwishyura sheki y'impimbano. Imikorere igezweho y'amabanki ni uko iyo hishyuwe sheki y'impimbano, banki igomba gukosora iryo kosa yishyura umukiliya.

Amategeko agenga imanza z'imbonezamubano – Kubara inyungu, kubara indishyi – in diplum rule– Igipimo cy'ibitsa – Inyungu z'ubukererwe zibarirwa ku gipimo cy'indishyi zihabwa umuguzi wa serivisi z'imari kidashobora kujya munsi y'ikigereranyo cy'inyungu ku nguzanyo (taux moyen de prêt) ariko zitarenze umwenda wishyuzwa.

Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishamo ku mpamvu z'akarengane – Imbibi z'ikiburanwa – Umuburanyi utaranyuzwe n'icyemezo cy'Urukiko ariko ntasabe ko amakosa akinenga akosorerwa mu bujurire cyangwa ngo atange ubujurire bwuririye ku bundi mu

gihe uwo baburana yajuriye nyamara yari abifitiye uburenganzira, aba yivukije inzira y'ubujurire bityo – Ntabwo ashobora kwifashisha inzira yo gusubirishamo urubanza ku mpamvu z'akarengane ngo asabe ko iyo ngingo yongera gusuzumwa.

Incamake y ikibazo : Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Mugwaneza Carine Sandrine arega Bank of Kigali (BK) Ltd, avuga ko ubwo yakoraga igenzura kuri konti ze muri iyo Banki, yasanze ku wa 12/08/2015 uwitwa Twajeneza Olivier yarabikujeho 310.000 Frw kuri konte nº 00051-0609850-07 yabitsaga akanabikuzaho amafaranga y'u Rwanda, naho ku wa 26/08/2015, uwitwa Sinayobye Siméon abikuza 11.500 USD kuri konti Nº 00040-0294342-77 yabitsaga akanabikuzaho amadorari. Avuga ko nyuma y'uko konti ze zivogerewe, yasabye BK Ltd kumusubiza amafaranga n'amadolari yibwe, irabyanga, bituma ahitamo kuregera inkiko.

BK Ltd yireguye ivuga ko nta kosa yakoze, isaba ko ikirego cya Mugwaneza Carine Sandrine kitahabwa ishingiro kuko uyu yari afite inshingano zo kubika neza *carnet d'ordre de paiement* yahawe na banki abajura bifashishije babikuza ayo mafaranga n'ayo madolari kandi ko banki yagenzuye igasanga impapuro zakoreshejwe mu bujura zaratanzwe na nyiri konti ubwe.

Urukiko rw'Ubucuruzi rwa Nyarugenge rwasanze, hari urubanza rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 18/03/2016, rwahamije Sinayobye Siméon icyaha cyo gukoresha inyandiko mpimbano, igihe yabikuzaga 11.500 USD kuri konti Nº 00040-0294342-77 ya Mugwaneza Carine Sandrine, nkuko nawe abyiyemerera; Inyandiko mvugo z'iperereza zakorewe mu rubanza nshinjabyaha zigaragaza ko umukono (*signature*) wari uri kuri *ordre de paiement* yakoreshejwe habikuzwa ayo madolari ari umuhimbano ndetse ko kugira ngo yibwe byagizwemo uruhare n'umukozi wa banki wafashije Sinayobye Siméon; Banki nk'umunyamwuga itarubahirije inshingano zayo zo kurinda amafaranga yari yabikijwe; ariko ko kubirebana na nta bimenyetso bigaragaza ko 310.000 Frw yabikujwe hakoreshejwe sheki y'impimbano, bityo ko ikirego cya Mugwaneza Carine Sandrine gifite ishingiro kuri bimwe, maze rwemeza ko BK Ltd igomba kumusubiza 11.500 USD, hiyongereyeho 2.012 USD, y'indishyi z'igihombo yatejwe na banki *(manque à gagner)* abariye ku gipimo cya 15%.

BK Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko itagombaga gutegekwa gusubiza Mugwaneza Carine Sandrine 11.500 USD yabikujwe kuri konti ye, ndetse ko idakwiye no gutegekwa kwishyura inyungu ya 15%, isaba indishyi zo gushorwa mu manza nta mpamvu. Mugwaneza Carine Sandrine yireguye avuga ko ubujurire bwa BK Ltd nta shingiro bugomba guhabwa kuko mu rubanza RCOM 00860/2016/TC/NYGE rwaciwe ku wa 21/10/2016, Urukiko rw'Ubucuruzi rwa Nyarugenge rwasobanuye ko Banki nk'umunyamwuga itubahirije inshingano zayo zo kurinda konti ze bituma ikura 11.500 USD kuri konti ye.

Ku kibazo kijyanye n'inyungu zibariwe kuri 15%, Urukiko Rukuru rw'Ubucuruzi rwasanze BK Ltd itaryozwa ubujura bwakorewe kuri konti ya Mugwaneza Carine Sandrine, bityo ko n'izo nyungu ntacyo ziyirebaho, rwanzura ko ubujurire bwa BK Ltd bufite ishingiro.

Mugwaneza Carine Sandrine yandikiye Urwego rw'Umuvunyi asaba ko urubanza RCOMA 00642/2016/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rusubirishwamo ku mpamvu z'akarengane, avuga ko Sinayobye Siméon yifashishije *carnet d'ordre de paiement* ye abikuza amafaranga kuri konti ye atabiherewe uburenganzira na nyirayo, bityo ko BK Plc yagize

uburangare nk’umunyamwuga, kuko itubahirije inshingano zayo zo kurinda umutekano wa konti y’umukiriya.

Mugwaneza avuga kandi ko ku bijyanye na 11.500 USD, mu rubanza RCOM 00860/2016/TC/NYGE, yagenewe inyungu za 15% nyamara amabanki y’ubucuruzi asanzwe abarira inyungu kuri 18%, akaba asaba uru Rukiko gukosora ayo makosa, agabahwa inyungu zibariye ku rugero banki zisanzwe zitangiraho inyungu kuva ku wa 12/08/2015. Avuga ko mu gihe cy’imyaka irindwi n’amezi ane n’igice ishize, inyungu agomba kwishyurwa zingana na 15.266,25 USD ariko ko asaba uru Rukiko kuzazibara kugeza urubanza ruciwe ; asaba kandi gusubizwa 310.000 frw yakuwe kuri konti ye hiyongereyeho inyungu zayo zibariye kuri 18%.

BK Plc yiregura ivuga ko mu masezerano Mugwaneza Carine Sandrine yakoranye na banki buri ruhande rwari rufite inshingano rugomba kwubahiriza, bityo akaba asanga banki idakwiye kuryozwa ayo mafaranga kuko Mugwaneza Carine Sandrine ari we wateshutswe ku nshingano ze zo kwita ku gatabo yahawe na banki, ariyo mpamvu agomba kwirengera ibyabaye kuri konti ye.

BK ivuga kandi ko yakoze ubugenzuzi isanga *ordre de paiement* yakoreshejwe habikuzwa 11.500 USD yaracishijwe mu mashini yabugenewe, hemezwa ko ari iya Mugwaneza Carine Sandrine kandi ko ari we wayisinye, kandi ko mbere y’uko ayo madolari abikuzwa, banki yahamagaye Mugwaneza Carine Sandrine, uyu atanga uruhushya rw’uko uwahawe *ordre de paiement* yishyurwa.

BK ikomeza ivuga ko mu rubanza rw’inshinjabyaha Mugwaneza Carine Sandrine aburanisha, Urukiko rwagaragaje ko umujura ari Sinayobye Siméon, ko ntaho rwagaragaje uruhare urwo arirwo rwose rwa banki mu ibura ry’amadolari aburanwa, ariyo mpamvu asaba uru Rukiko kwemeza ko banki itaryozwa uburangare bwa Mugwaneza Carine Sandrine wateshutse ku nshingano ze zo kurinda neza *carnet d’ordres de paiement* yahawe.

Incamake y icyemezo: 1. Umukiliya afite inshingano zo kwita ku gatabo k’inyandiko isaba kwishyura cyangwa ubundi buryo ahabwa na banki bwatuma yishyura, ariko ibyo ntibivanaho inshingano y’ubushishozi kuri banki mbere yo kwishyura;

2. Banki ifite inshingano zo kugenzura ko uburyo busaba kwishyura bwatanzwe n’umukiliya wayo koko ndetse ko nta makosa yabaye mu gutanga ubutumwa busaba kwishyura;

3. Iyo hari ikintu kitamenyerewe nk’uburyo ubutumwa busaba kwishyura bukozwemo cyangwa ingano y’amafaranga arenze cyane ayo umukiliya asanzwe asaba banki kumwishyurira, banki ifite inshingano yo gushaka amakuru ku mukiliya mbere yo kwishyura ibyo ubwo butumwa butegeka.

4. Gushaka gukumira ikoresha rya konti y’umukiliya mu buryo budakwiye ni byo mu ntangiriro biha umukiliya inshingano zo gucunga neza inyandiko cyangwa andi makuru yahawe na banki ariko bigaha na banki inshingano z’ubushishozi nk’urwego ruri aho amafaranga y’umukiliya asohokera. Ibi bituma ibitabashije gukumirirwa hamwe bikumirirwa ahandi. Byumvikanisha ko banki iramutse ivaniweho inshingano y’ubushishozi bishobora gushyira konti z’abakiliya benshi mu kaga.

5. Ihame rusange ni uko amafaranga y’umuntu Banki ibitse atagomba gukorwaho nyirayo atabitangiye uruhushya. Banki iramutse iyahaye umuntu utabifitiye uburenganzira, ibyo ntibireba

nyiri amafaranga ndetse bifatwa nk'aho ayo mafaranga atigeze ava kuri konti ye, icyo gihe banki ikaba ariyo ibyirengera.

6. Iyo umukiliya abikije amafaranga, bifatwa ko banki iba imugiyemo umwenda, kugira ngo rero banki yigobotore izo nshingano igomba kwishyura uwayibikije amafaranga kandi inshingano za banki ntizivanwaho n'uko yemeye kwishyura sheki y'impimbano. Imikorere igezweho y'amabanki ni uko iyo hishyuwe sheki y'impimbano, banki igomba gukosora iryo kosa yishyura umukiliya.

7. Inyungu z'ubukererwe zibarirwa ku gipimo cy'indishyi zihabwa umuguzi wa serivisi z'imari kidashobora kujya munsi y'ikigereranyo cy'inyungu ku nguzanyo (taux moyen de prêt) ariko zitarenze umwenda wishyuzwa.

Ikirego cyasabaga gusbirishwamo urubanza ku mpavu z akarengane gifite ishingiro kuri bimwe.
Amagarama y urubanza ahwanye n ibyarukozwemo.

Amategeko yashingiweho:

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

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

Itegeko n° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha (iyi ngingo niyo ya 12 y'Itegeko n° 1/2012 ryo ku wa 03/02/2012 rihindura kandi ryuzuza Itegeko n° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha), ingingo ya 59.

Amabwiriza Rusange N°07/2010 yo ku wa 27/12/2010 ya Banki Nkuru y'u Rwanda, ingingo ya 2.

Imanza zifashishijwe:

Urubanza n° RS/INJUST/RC 00012/2021/SC Nsengiyumva v Ntagungira n'abandi rwaciwe n'Urukiko rw'Ikirenga ku wa 22/07/2022.

Urubanza n° RS/INJUST/RCOM 00006/2022/SC; Banque Populaire du Rwanda Plc v Akarere ka Nyamasheke rwaciwe n'Urukiko rw'Ikirenga ku wa 27/01/2023.

Urubanza n° RS/INJUST/RC 00024/2018/SC; Ngizweninshuti v Muhima rwaciwe n'Urukiko rw'Ikirenga ku wa 21/02/2020.

Urubanza n° RS/INJUST/RC 00007/2018/SC Nditiribambe v Gatera rwaciwe n'Urukiko rw'Ikirenga ku wa 13/03/2020

Urubanza n° RS/INJUST/RC 00021/2022/SC; Mukagatare Régine n'abandi v SANLAM AG Plc rwaciwe n'Urukiko rw'Ikirenga ku wa 17/03/2022.

urubanza n° RCOMA 0171/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 03/01/2014, ibika bya 16-20.

Urubanza n° RS/INJUST/RCOM 00001/2017/SC; Sebahizi Jules yaburanaga v Equity Bank Rwanda Ltd, rwaciwe n'Urukiko rw'Ikirenga ku wa 26/01/2018.

Imanza zamahanga zifashishijwe:

Urubanza Re (II ZR 185/85), (1987) E.C.C. 254 (1985).

Urubanza Stokes v. Commonwealth, 49 Va.App. 401 (2007).
Urubanza Central Nat. Bank of Richmond v. First & Merchants Nat. Bank..., 171 Va. 289 (1938).
Urubanza Cairo Banking Co. v West, 187 Ga. 666 (1939).
Urubanza Stokes v Commonwealth, 49 Va.App. 401 (2007).

Urubanza

I. IMITERERE Y'URUBANZA.

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Mugwaneza Carine Sandrine arega Bank of Kigali (BK) Ltd, ubu yabaye Bank of Kigali Plc, yitwa BK Plc muri uru rubanza, ko ubwo yakoraga igenzura kuri konti ze muri iyo Banki, yasanze ku wa 12/08/2015 uwitwa Twajeneza Olivier yarabikujeho 310.000 Frw kuri konte nº 00051-0609850-07 yabitsaga akanabikuzaho amafaranga y'u Rwanda, naho ku wa 26/08/2015, uwitwa Sinayobye Siméon abikuza 11.500 USD kuri konti nº 00040-0294342-77 yabitsaga akanabikuzaho amadorari. Avuga ko nyuma y'uko konti ze zivogerewe, yasabye BK Ltd kumusubiza amafaranga n'amadolari yibwe, irabyanga, bituma ahitamo kuregera inkiko.

[2] BK Ltd yireguye ivuga ko nta kosa yakoze, isaba ko ikirego cya Mugwaneza Carine Sandrine kitahabwa ishingiro kuko uyu yari afite inshingano zo kubika neza *carnet d'ordre de paiement* yahawe na banki abajura bifashishije babikuza ayo mafaranga n'ayo madolari kandi ko banki yagenzuye igasanga impapuro zakoreshejwe mu bujura zaratanzwe na nyiri konti ubwe.

[3] Mu rubanza RCOM 00860/2016/TC/NYGE rwaciwe ku wa 21/10/2016, Urukiko rw'Ubucuruzi rwa Nyarugenge rwasanze :

i. Hari urubanza RP 0762/15/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 18/03/2016, rwahamije Sinayobye Siméon icyaha cyo gukoresha inyandiko mpimbano, igihe yabikuzaga 11.500 USD kuri konti nº 00040-0294342-77 ya Mugwaneza Carine Sandrine, nkuko nawe abyiyemerera ;
ii. ii. Inyandiko mvugo z'iperereza zakorewe mu rubanza nshinjabyaha zigaragaza ko umukono (*signature*) wari uri kuri *ordre de paiement* yakoreshejwe habikuzwa ayo madolari ari umuhimbano ndetse ko kugira ngo yibwe byagizwemo uruhare n'umukozi wa banki wafashije Sinayobye Siméon ;
iii. Banki nk'umunyamwuga itarubahirije inshingano zayo zo kurinda amafaranga yari yabikijwe ;
iv. Nta bimenyetso bigaragaza ko 310.000 Frw yabikujwe hakoreshejwe sheki y'impimbano.

[4] Urukiko rwanzuye ko ikirego cya Mugwaneza Carine Sandrine gifite ishingiro kuri bimwe, rwemeza ko BK Ltd igomba kumusubiza 11.500 USD, hiyongereyeho 2.012 USD, y'indishyi z'igihombo yatejwe na banki *(manque à gagner)* abariye ku gipimo cya 15%, 1.000.000 Frw y'indishyi z'ikurikiranarubanza n'igihembo cya Avoka ndetse na 50.000Frw y'ingwate y'igarama yari yaratanze.

[5] BK Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko itagombaga gutegekwa gusubiza Mugwaneza Carine Sandrine 11.500 USD yabikujwe kuri konti ye, ndetse ko idakwiye no gutegekwa kwishyura inyungu ya 15%, isaba indishyi zo gushorwa mu manza nta mpamvu.

[6] Mugwaneza Carine Sandrine yireguye avuga ko ubujurire bwa BK Ltd nta shingiro bugomba guhabwa kuko mu rubanza RCOM 00860/2016/TC/NYGE rwaciwe ku wa 21/10/2016, Urukiko rw'Ubucuruzi rwa Nyarugenge rwasobanuye ko Banki nk'umunyamwuga itubahirije inshingano zayo zo kurinda konti ze bituma ikura 11.500 USD kuri konti ye.

[7] Mu rubanza RCOMA 00642/2016/CHC/HCC rwaciwe ku wa 06/01/2017, Urukiko Rukuru rw'Ubucuruzi rwasanze :

i. Kuba Mugwaneza Carine Sandrine yaramenye ko sheki ze zibwe ariko ntabimenyeshe BK Ltd kugira ngo ihagarike iyishyurwa ryazo ari amakosa ye, bityo akaba ataryozwa banki, kuko ari we wari ufite inshingano zo kurinda sheki ze, nk'uko biteganywa na *general conditions* za BK Ltd mu gace ka *receipt booklets*, ivuga ko "*nyiri payment order ari we ufite inshingano zo kuyicunga kandi ko mu gihe hari urupapuro rwibwemo yihutira kubimenyesha banki" ;*

ii. Kuba nta kibazo kiri mu mukono *(signature)* wakoreshejwe kuri sheki yabikujweho amadorari, nta ruhare cyangwa uburangare banki yagize kuko mbere yo kwishyura ibanza gukora igenzura ;

iii. Nta kimenyetso kigaragaza ko telefoni ya Mugwaneza Carine Sandrine yavanywe ku murongo amasaha atatu ;

iv. Mugwaneza Carine Sandrine yagize uburangare bukabije mu kwandarika *carnet d'ordre de paiement* ye, binaba intandaro yo kwibwa kwe, bityo akaba agomba kwikurikiranira Sinayobye Siméon wamwibye cyane cyane ko yiyemerera icyaha.

[8] Ku kibazo kijyanye n'inyungu zibariwe kuri 15%, Urukiko Rukuru rw'Ubucuruzi rwasanze BK Ltd itaryozwa ubujura bwakorewe kuri konti ya Mugwaneza Carine Sandrine, bityo ko n'izo nyungu ntacyo ziyirebaho, rwanzura ko ubujurire bwa BK Ltd bufite ishingiro, ko imikirize y'urubanza rwajuririwe ihindutse kuri byose, rutegeka Mugwaneza Carine Sandrine kwishyura BK Ltd 500.000 Frw y'ikurikiranarubanza no gusubiza BK Ltd 75.000 Frw y'ingwate y'amagarama.

[9] Ku wa 22/12/2017, Mugwaneza Carine Sandrine yandikiye Urwego rw'Umuvunyi asaba ko urubanza RCOMA 00642/2016/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/01/2017 rusubirishwamo ku mpamvu z'akarengane. Urwego rw'Umuvunyi rumaze gusuzuma ubwo busabe, rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko urwo rubanza rwasubirwamo. Nyuma yo gusuzuma raporo yakozwe n'Ubugenzuzi Bukuru bw'Inkiko, Perezida w'Urukiko rw'Ikirenga yafashe Icyemezo nº 158/CJ/2022 cyo ku wa 29/08/2022, ategeka ko urubanza rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[10] Urubanza rwaburanishijwe mu ruhame ku wa 20/02/2023, Mugwaneza Carine Sandrine yunganiwe na Me Bizumuremyi Isaac, naho BK Plc ihagarariwe na Me Rutagengwa Jean-Damascène.

[11] Ababuranyi bagiye impaka ku bibazo byo kumenya niba Urukiko rwategeka BK Plc gusubiza 11.500 USD na 310.000 Frw yabikujwe kuri konti za Mugwaneza Carine Sandrine, kumuha inyungu ziyakomokaho zibariwe ku gipimo cya 18% ku mwaka banki z'ubucuruzi zisanzwe zitangiraho inguzanyo no kumenya niba hari indishyi zatangwa muri uru rubanza.

II.IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

II.1. Kumenya niba BK Plc igomba gusubiza Mugwaneza Carine Sandrine 11.500 USD yabikujwe kuri konti ye n° 00040-0294342-77.

[12] Mugwaneza Carine Sandrine na Me Bizumuremyi Isaac umwunganira, bavuga ko Sinayobye Siméon yifashishije *carnet d'ordre de paiement* ifite nº AA21910409 abikuza 11.500 USD kuri konti nº 00040-0294342-77 atabiherewe uburenganzira na nyirayo. Bavuga ko BK Plc, nk'umunyamwuga, itubahirije inshingano zayo zo kurinda umutekano wa konti y'umukiriya, kuko iyo igenzura neza yari kubona ko *ordre de paiement* yifashishijwe yasinywe na Twajeneza Olivier aho gusinywa na Mugwaneza Carine Sandrine. Bavuga ko ayo madolari atari kubikuzwa bitagizwemo uruhare n'umukozi wa banki ukorera ku Gisimenti, ari nabyo bigaragaza ko mu guca urubanza, Urukiko Rukuru rw'Ubucuruzi rwirengagije inyandiko-mvugo zashingiweho mu rubanza nº RP 0762/15/TGI/NYGE n'amategeko yariho icyo gihe, cyane cyane ingingo ya 482[1] n'iya 493[2] z'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, bituma rutemeza ko banki yagize uburangare bukabije.

[13] Bavuga ko umunsi *ordre de paiement* yatanzwe muri BK Plc, Mugwaneza Carine Sandrine yari mu mahanga, ko ibyo binashimangirwa n'ibyo banki yivugira ko yagerageje guhamagara nimero ye ya telefoni ya 0788308017 yatanze muri BK Plc isanga koko itariho. Basobanura ko nyuma y'uko banki isanze telefoni ye itariho byayiteye amakenga, ariko nyuma y'iminsi ibiri, bigizwemo uruhare n'umukozi wa banki, ngo ihamagara indi nimero ya 0785978930 bahawe na Sinayobye Siméon, ndetse batazi nyirayo kuko basanze ibaruye k'uwitwa Akayezu Delphine, uyu ngo atanga uruhushya rw'uko amadolari yishyurwa. Basanga banki itagaragaza icyayimaze amakenga nyuma yuko isanze telefoni 0788308017 itariho kuko itabasha no kwerekana ko telefoni 0785978930 yayihamagaye koko kandi ko ibaruye kuri Mugwaneza Carine Sandrine. Naho ku bijyanye na telepfoni ya 0788867979, bavuga ko yigeze kuba iya Mugwaneza Carine Sandrine ariko amaze kubona 0788308017 arekeraho kuyikoresha.

[14] Bavuga ko umukozi wa banki ukorera ku Gisimenti ari we wabwiye Sinayobye Siméon ko hari amadolari ari kuri konti ya Mugwaneza Carine Sandrine, ari nacyo cyatumye aba ariho ajya kuyafatira aho kujya kuyabikuriza kuri BK Plc Ishami rya Nyamirambo aho yafungurije konti. Basobanura ko ibyo BK Plc ivuga ko yamaze iminsi icyenda ishakisha Mugwaneza Carine

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[1] Iyo ngingo yategenyaga ko *"Ububitsi, muri rusange, ari igikorwa umuntu yiyemeza cyo kwakira ibintu by'abandi, akagira inshingano zo kubirinda no kuzabisubiza uko biri".*

[2] Iyo ngingo yateganyaga ko "uwabikijwe agomba kurinda ibintu yabikijwe abyitayeho ku buryo bumwe nubwo arindamo ibye bwite".

Sandrine mbere yo kwishyura *ordre de paiement* atari byo kuko Sinayobye Siméon yivugiye ko yishyuwe hashize iminsi ibiri gusa. Basanga nyuma y'uko banki igize amakenga kuri *ordre de paiement* ndetse imaze no kubona ko telefoni yahawe na nyiri konti itariho, itagombaga kwihutira kwemeza ko ayo madolari akurwa kuri konti ye. Basaba uru Rukiko kubona ko BK Plc itabashije gucunga ibyo yabikijwe, bityo ikaba ifite inshingano zo gusubiza Mugwaneza Carine Sandrine ibyo yibwe.

[15] Me Rutagengwa Jean-Damascène uburanira BK Plc avuga ko nyuma yo gufunguza konti no guhabwa agatabo *(carnet d'ordres de paiement),* Mugwaneza Carine Sandrine yahise agira inshingano zo kukarinda neza nk'uko arinda amafaranga abitse iwe. Asobanura ko ikibazo kimaze kumenyekana, banki yakoze ubugenzuzi isanga *ordre de paiement* yakoreshejwe habikuzwa 11.500 USD yaracishijwe mu mashini yabugenewe, hemezwa ko ari iya Mugwaneza Carine Sandrine kandi ko ari we wayisinye. Avuga ko mbere y'uko ayo madolari abikuzwa, banki yategereje iminsi icyenda, hanyuma iza guhamagara Mugwaneza Carine Sandrine kuri nimero nº 0785978930, uyu atanga uruhushya rw'uko uwahawe *ordre de paiement* yishyurwa.

[16] Avuga ko ayo madolari yageze kuri konti ya Sinayobye Siméon ku wa 26/08/2016, ayabikuza ku wa 27/08/2016, uwo munsi, nyuma y'amasaha abiri amadolari abikujwe, Mugwaneza Carine Sandrine atanga ikibazo muri BK Plc avuga ko hari amadolari yavanwe kuri konti ye, kuba yarahise abimenya kandi adafite uburyo bwa *SMS banking* bikaba bigaragaza ko yari aziranye na Sinayobye Siméon. Yongeraho ko ibi bishimangirwa kandi n'imvugo za Niyoyita Cyprien wemeza ko yahamagaye Mugwaneza Carine Sandrine kuri nº 0788308017, amumenyesha ko agiye kwibwa kuri konti ye, ariko Mugwaneza Carine Sandrine aho kubimenyesha banki cyangwa Polisi akuraho telefoni yari yarabaruje muri banki. Yongeraho ko amadolari yabikujwe Mugwaneza Carine Sandrine ari mu Rwanda kuko Sinayobye Siméon yavuze ko *ordre de paiement* yayihawe na nyirayo.

[17] Me Rutagengwa Jean Damascène akomeza avuga ko nta nshingano banki ifite zo guhamagara nyiri konti mbere y'uko yishyura ibyo yategetse, ko kuba yarahamagaye kuri 0785978930 ari uko yari yagize amakenga gusa, kandi ko iyi nimero yahoze ari iya Mugwaneza Carine Sandrine hanyuma iza gukorerwa *simswap*. Asobanura ko kuba amadolari yarabikujwe ku Ishami rya Gisimenti aho kubikurizwa i Nyamirambo, ubwabyo atari ikibazo kuko umukiliya yemerewe kubikuriza ku ishami rimwegereye kandi ko umukozi wa banki witirirwa kuba yarafashije Sinayobye Siméon kwiba ayo madolari atagaragajwe ngo abiryozwe.

[18] Asoza avuga ko mu rubanza rw'inshinjabyaha Mugwaneza Carine Sandrine aburanisha, Urukiko rwagaragaje ko umujura ari Sinayobye Siméon, ko ntaho rwagaragaje uruhare urwo arirwo rwose rwa banki mu ibura ry'amadolari aburanwa, ariyo mpamvu asaba uru Rukiko kwemeza ko banki itaryozwa uburangare bwa Mugwaneza Carine Sandrine wateshutse ku nshingano ze zo kurinda neza *carnet d'ordres de paiement* yahawe.

UKO URUKIKO RUBIBONA

[19] Ingingo ya 2 y'Amabwiriza Rusange N°07/2010 yo ku wa 27/12/2010 ya Banki Nkuru y'u Rwanda yerekeye iyohererezanya Koranabuhanga ry'amafaranga n'ihererekanya koranabuhanga ry'amafaranga yakoreshwaga muri 2015 ubwo amadolari n'amafaranga aburanwa

yavanwaga kuri konti ya Mugwaneza Carine Sandrine,[3] ivuga ko inyandiko isaba kwishyura (*ordre de paiement*) ari *amabwiriza yo kwishyura akozwe n'uyohereje ku kigo kiyakira, byoherejwe mu mvugo, mu buryo bw'ikoranabuhanga cyangwa mu nyandiko, hagamijwe kwishyura cyangwa gutuma indi banki cyangwa ikigo gitanga serivisi zo kwishyurana ku bishyura uberewemo umwenda, amafaranga azwi cyangwa yagenwa*.

[20] Iyi ngingo ivuga kandi ko uburyo bwo kwirinda (procédure de sécurité) ari ubushyirwaho mu bwumvikane hagati y'umukiriya n'ikigo cyakira hagamijwe :

(a) *Kugenzura ko uburyo busaba kwishyura cyangwa ubutumwa buhindura cyangwa bukuraho inyandiko isaba kwishyura ari iby'umukiriya cyangwa ;*

(b) *Gushakisha amakosa aba mu kohereza cyangwa mu bigize inyandiko isaba kwishyura cyangwa ubutumwa.*

Uburyo bwo kwirinda bushobora gusaba ikoreshwa ry'imibare cyangwa indi mibare y'ibanga, hagaragazwa amagambo cyangwa imibare, irindanyandiko, uburyo bwo kwibutsa cyangwa ibikoresho by'ubwirinzi bisa n'ibi…"

[21] Amabwiriza Rusange ya Bank of Kigali Ltd agenga inyandiko isaba kwishyura (*ordre de paiement*) yo mu mwaka wa 2005 ateganya ko umukiliya agomba kwita ku gatabo k'inyandiko isaba kwishyura yahawe kandi ko banki itaryozwa ingaruka zo kuba hari urupapuro rwatakayemo cyangwa rwavanwemo, ko biramutse bibaye, nyiri agatabo asabwa kwihutira kubimenyesha banki kugira ngo hirindwe ikoreshwa ritemewe ry'urwo rupapuro rwibwe cyangwa rwatakaye (*He (the customer) is also required to take great care of payment order booklet. The bank declines any liability for any damage arising from loss or removal of a form. Should this happen, the holder must urgently inform the bank in order to avoid any malpractice through the abusive use of a stolen or lost form*.)

[22] Dosiye y'urubanza irimo *ordre de paiement* (O.P.) ya Mugwaneza Carine Sandrine ya 11.500 USD yahawe Sinayobye Siméon ku wa 14/08/2015. Kuri iyo O.P. byanditse n'intoki ko nimero ya telefoni ya Mugwaneza Carine Sandrine ari **0788867979**. Iyo O.P. yakiriwe na banki ku wa 17/08/2015 nk'uko bigaragazwa na *bordereau* yo ku wa 17/08/2015, umukozi wayakiriye yabanje gusaba umuyobozi we uruhushya rwo kwishyura ayo madolari (*dérogation démandée*), umuyobozi asanga nimero ya telefoni ya Mugwaneza Carine Sandrine ari 0788308017, ategeka umukozi wa banki kutishyura ayo madolari mu gihe cyose nyiri konti atabanje kubyemeza (*0788308017, do not force if the owner is not confirming*). Kuri iyo *bordereau* hariho kandi ubundi butumwa bugira buti "*We spoke to her on **0785978930.** She confirmed the ID and OP*". Muri dosiye harimo kandi indi *bordereau* yo ku wa 26 Aout 2015 igaragaza ko Sinayobye Siméon yishyuwe 11.500 USD.

[23] Dosiye y'urubanza irimo na none ibaruwa Banki of Kigali Ltd yandikiye Mugwaneza Carine Sandrine ku wa 08/09/2015, ibanza kugaragaza ko nimero ye ya telefoni ari 0788308017, kandi ko amadolari yishyuwe Sinayobye Siméon mu buryo bukurikije amategeko kuko banki yasanze *ordre de paiement* yakoreshejwe ari iyahawe Mugwaneza Carine Sandrine, umukono

[3] Aya Mabwiriza yasimbuwe n'Amabwiriza Rusange n° 31 /2019 yo ku wa 16/12/2019 agamije kurengera abakoresha serivisi z'imyishyuranire.

uyiriho ari uwe, kandi ko mu rwego rwo gusuzuma ko nta kindi kibazo cy'umutekano iyo *ordre de paiement* ifite, banki yamuhamagaye kuri telefoni, akemeza ko ayo madolari yishyurwa (*As a further security check, the Bank called you and confirmed the payment to be effected, then the transaction was processed.*)

[24] Dosiye irimo na none urwandiko Bank of Kigali Ltd yandikiye Mugwaneza Carine Sandrine ku wa 10/09/2015, isubiza ibaruwa ye isaba irangamuntu ya Sinayobye Siméon n'ikimenyetso cy'uko banki yamuhamagaye akemeza ko Sinayobye Siméon yishyurwa. Banki na none ibanza kwibutsa kuri *en-tête* y'urwandiko ko nimero ya telefoni ya Mugwaneza Carine Sandrine ari 0788308017, igakomeza ivuga ko ikimenyetso yasabye cy'uko yahamagawe kuri telefoni 0785978930 mbere y'uko amadolari yishyurwa kitasabwa banki ahubwo cyatangwa gusa n'ikigo cya MTN (*the proof you requested the bank to provide indicating that you were called on Mobile N° 0785978930 : before paying the amount above can only be given by the telecommunication company MTN not the bank*).

[25] Urukiko rurasanga ikibazo kigibwaho impaka muri uru rubanza ari ukumenya niba banki yarateshutswe ku nshingano zayo z'ubushishozi bigatuma itarindira umutekano konti n'amafaranga by'umukiliya nk'uko ibisabwa nk'umunyamwuga ku buryo igomba gusubiza Mugwaneza Carine Sandrine 11.500 USD yabikujwe kuri konti ye n° 00040-0294342-77.

[26] Ikibazo cy'umutekano w'amakonti n'amafaranga y'abakiliya cyagarutsweho n'uru Rukiko mu manza zitandukanye. Mu rubanza *I & M Bank Rwanda Plc yaburanaga na Coffee Business Center (CBC) Ltd*, uru Rukiko rwibukije ko mbere yo kwishyura, banki igomba kubanza gusuzuma niba inyandiko ishyikirijwe ngo zishyurwe zujuje ibyangombwa. Mu byo isuzuma harimo imiterere y'iyo nyandiko, umukono uyiriho, uburyo yahererekanyijwe no kumenya niba itaratambamiwe. Muri urwo rubanza Urukiko rwasanze ibyo banki yavugaga ko yasuzumye inyandiko yashyikirijwe mbere yo kwishyura ataribyo kuko iyo iba yarabikoze yari kubona ko umukono uziriho atari uwa nyiri konti.[4]

[27] Naho mu rubanza Sebahizi Jules yaburanaga na Equity Bank Rwanda Ltd, Urukiko rwasanze iyo banki yarabikuje 30.000 USD kuri konti y'umukiliya, iyohereza muri Singapore ishingiye kuri *e-mail indemnity* na *Diaspora Application for Funds Transfers* yuzurishijwe imashini ndetse banki itabanje kumuhamagara ngo abyemeze nyamara amasezerano ateganya ko *Diaspora Application for Funds Transfers* izajya yuzurishwa intoki kandi ko nta madolari azavanwa kuri konti ye banki itabanje kumuhamagara kuri telefoni yayihaye ngo abyemeze. Urukiko rwasanze kuba Equity Bank Rwanda Ltd yemera ko itabanje guhamagara Sebahizi Jules mbere yo kohereza ayo madolari binyuranyije n'amabwiriza yayo ndetse "*n'imikorere y'ama banki (pratique) yo mu Rwanda ayategeka kubanza guhamagara abakiliya bayo batanze amasheki mbere yo kwishyura.*"[5]

[28] Ibijyanye n'inshingano za banki zo kurinda konti z'abakiliya bazo byagarutsweho na none mu rubanza II ZR 185/85 rwaciwe n'Urukiko rw'Ikirenga rw'Ubudage (*Bundesgerichtshof*) ubwo rwasuzumaga ikirego cy'umuturage wibwe agapapuro ka sheki, hanyuma umujura akiganana

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[4] Reba urubanza RCOMA 0171/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 03/01/2014, ibika bya 16-20.

[5] Reba urubanza *Sebahizi Jules yaburanaga na Equity Bank Rwanda Ltd*, n° RS/INJUST/RCOM 00001/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 26/01/2018, igika cya 26. [6] Reba urubanza Re (II ZR 185/85), (1987) E.C.C. 254 (1985).

ubuhanga umukono wa nyiri sheki akajya kuyibikuza kuri banki. Umukozi wa banki amaze kubona ko amafaranga asabwa kubikuzwa ari menshi ugereranyije n'ayo nyiri konti asanzwe abikuza kandi uyu akaba atarahamagaye banki kuri telefoni ngo yemeze ko iyo sheki yishyurwa nk'uko yari asanzwe abigenza, yasabye umuyobozi w'Ishami rya banki kwemeza ko iyo sheki yishyurwa, nawe arabyemera.[6]

[29] Mu gusuzuma niba kuba banki yaremeye ko iyo sheki yishyurwa bigomba gufatwa nk'uburangare, Urukiko rwasanze :

i. Banki iba yishe inshingano zayo z'ubushishozi ziri mu masezerano yakoranye n'umukiliya wayo iyo yeretswe sheki isaba kwishyura amafaranga arenze cyane ingano y'ay'umukiliya asanzwe yishyura akoresheje sheki, ikabikora itabanje kubaza niba koko iyo sheki ari umwimerere ;

ii. Banki iba yishe inshingano zayo z'ubushishozi iyo yishyuye sheki itabanje kubaza umukiliya wayo kandi kuri sheki zabanje umukiliya yarabanzaga guhamagara banki kugira ngo ayihe uburenganzira bwo kubikuza amafaranga kuri konti ye ;

iii. Nubwo atari ingano y'amafaranga yanditse kuri sheki igomba gutuma buri gihe iyo sheki ikemangwa, iyo sheki yanditseho amafaranga menshi ugereranyije n'ayo umukiliya asanzwe yishyura ni ikintu cy'ingenzi kigomba guherwaho hasuzumwa niba harabayeho uburangare bwa banki, kandi icyo gihe gukeka ko banki itakoze inshingano zayo yishyura iyo sheki birusha uburemere iby'uko sheki yari yanditsweho amafaranga menshi.[7]

[30] Muri urwo rubanza, Urukiko rw'Ikirenga rw'Ubudage rwasanze mu gihe banki ibonye ko sheki yanditsweho amafaranga arenze ayo umukiliya asanzwe abikuza cyangwa yishyura, igomba guhita itekereza ko bishoboka ko iyo sheki irimo gukoreshwa mu buryo bunyuranyije n'amategeko, icyo gihe igahita isaba ko hatangwa umucyo kuri iyo sheki. Urukiko rwasanze bidakozwe bityo bishobora gushyira abakiliya benshi mu kaga, bityo ko Urukiko rw'Ubujurire rwari rufite ukuri mu kwemeza ko banki yari ifite inshingano zo gutelefona nyiri konti mbere yo kwishyura sheki kugira ngo imenye neza niba koko ari we wayitanze.[8]

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[6] Reba urubanza Re (II ZR 185/85), (1987) E.C.C. 254 (1985).

[7] "A bank is in breach of its duty of care under its contract with its customer if, on presentation of an unusually large cheque payable to cash, albeit one which would still leave a sizeable credit balance in the account, it does not make inquiries as to the genuineness of the cheque… A bank which is presented with a cheque which appears genuine on the face of it but is made out for a sum many times higher than the customer would normally write such cheques for, and where the customer on earlier occasions when large amounts were drawn had telephoned the bank to authorise it to pay to a named bearer, the bank's natural suspicions regarding the cheque should be aroused. It is settled case law that, although a cheque made out for a large amount is not in itself suspicious, the question whether a cheque is for an unusually large amount in the normal course of business transactions between the parties is relevant to the question whether the bank was negligent in paying out. The suspicion that there may be a wrongful application of the cheque outweighs the assumption that the customer has by exception written an unusually large cheque." Reba urubanza Re (II ZR 185/85), (1987) E.C.C. 254 (1985).

[8] "A bank which, as in this case, knows of circumstances from which it must be inferred that a cheque to cash for a large sum exceeds by an aunuasual amount the sums involved in in other cheque transactions usually affected by the customer must take account of the possibility that the cheque is being misused…If the bank were allowed to refrain from doing so there would an increase to a no longer justifiable extent in the risk borne by the customer in the context

[31] Urukiko rurasanga umuhanga Thierry Bonneau, mu gitabo cyitwa *Droit bancaire*, nawe ashimangira ko nubwo banki idakwiye kwivanga mu bikorwa by'abakiliya bayo, ariko nk'umunyamwuga, ifite inshingano y'ubushishozi (*devoir de vigilance*), ikaba igomba gukurikirana no kugenzura (*vigilancesurveillance*) ndetse igashaka n'amakuru (*vigilance-information*) kugira ngo imenye ko ibikorerwa kuri konti byose biciye mu mucyo cyane cyane iyo ibona ko hari ikintu kigiye gukorerwa kuri konti mu buryo butamenyerewe. Naho Jérome Lasserre Capdeville na bagenzi be, nabo mu gitabo cyitwa *Droit Bancaire*, bavuga ko nubwo nyiri konti ari we ufite inshingano zo gukurikirana ibiyiberaho, banki igomba kugira ubushishozi, ikamenya ko abantu basaba kuyibikuzaho amafaranga babifitiye uburenganzira koko.[9]

[32] Urukiko rurasanga inshingano y'ubushishozi kuri za banki ndetse n'ibindi bigo by'imari iri muzo Umushingamategeko yagarutseho mu ngingo ya 3 y'Itegeko nº 017/2021 ryo ku wa 03/03/2021 ryerekeye kurengera umuguzi wa serivisi y'imari. Nubwo iri tegeko ridakwiye gushingirwaho mu gufata icyemezo muri uru rubanza kuko ritari ririho ubwo konti ya Mugwaneza Carine Sandrine yavogerwaga, ritanga icyereko cy'uko *utanga serivisi y'imari agomba … gukorana ubwitonzi, ubuhanga n'ubushishozi mu bijyanye n'igicuruzwa cy'imari cyangwa serivisi y'imari atanga.*

[33] Iki cyerekezo ni nacyo kigaragara mu Mabwiriza Rusange n° 55/2022 yo ku wa 27/10/2022 yerekeye kurengera umuguzi wa serivisi z'imari. Mubyo ateganya harimo kuba utanga serivisi z'imari agomba gushyira mu muco w'ikigo cye cy'ubucuruzi ibirebana no kurengera umuguzi (ingingo ya 3), gushyiraho uburyo bwo kuvugana n'umuguzi wa serivisi y'imari harimo no guhamagara kuri telefoni kandi umukiliya yaba yahamagawe kuri telefoni, banki igakora ku buryo byunganirwa n'ubundi buryo bw'itumanaho bufasha kugaragaza ibimenyetso (ingingo ya 21) no kumenyesha umuguzi wa serivisi y'imari igikorwa cyose gikorewe kuri konti ye (ingingo ya 22).

[34] Ibimaze gusobanurwa haruguru birebewe hamwe, byumvikanisha ko :

i. Umukiliya wa banki afite inshingano zo kwita ku gatabo k'inyandiko isaba kwishyura cyangwa ubundi buryo ahabwa na banki bwatuma yishyura, ariko ibyo ntibivanaho inshingano y'ubushishozi kuri banki mbere y'uko yemeza ko ubwishyu bukorwa ;

ii. Banki ifite inshingano zo kugenzura ko uburyo busaba kwishyura bwatanzwe n'umukiliya wayo koko ndetse no gusuzuma ko nta makosa yabaye mu gutanga ubutumwa busaba banki kwishyura ;

iii. Iyo hari ikintu kitamenyerewe nk'uburyo ubutumwa busaba kwishyura bukozwemo cyangwa ingano y'amafaranga arenze cyane ayo umukiliya asanzwe asaba banki

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of the apportionment of risks… In the results there are no grounds in law for objecting the appeal court's findings in the circumstances of the case that the defendant (the bank) was under a duty to telephone to the plaintif before paying out on the cheque in order to ascertain whether he had drawn it." Reba urubanza Re (II ZR 185/85), (1987) E.C.C. 254 (1985).

[9] "Le client de la banque est, en principe, seul titulaire des pouvoirs sur son compte. Cela est plus particulièrement le cas pour les operations débitrices, et découle du devoir de restitution…Il est donc demandé au banquier d'être vigilant et de s'assurer que les personnes réalisant des opérations au débit d'un compte sont bien en droit d'agir de la sorte." Reba Jérôme Lasserre Capdeville et les autres, *Droit bancaire*, Dalloz, Paris, 2021, p.392.

kumwishyurira, banki ifite inshingano yo gushaka amakuru ku mukiliya mbere yo kwishyura ibyo ubwo butumwa butegeka.

[35] Ku bijyanye n'uru rubanza, Urukiko rurasanga banki yarabanje kugira amakenga kuri *ordre de paiement* yagaragarijwe na Sinayobye Siméon ku wa 17/08/2015 bituma ndetse umukozi wayakiriye ajya gusaba uruhushya rwo kuyishyura, ntiyaruhabwa kuko nimero ya telefoni Mugwaneza Carine Sandrine yari yarahaye banki itari iriho. Kuba banki yarabanje guhamagara nyiri konti kuri nimero ye yari yarahaye banki bigaragaza ko nayo yemera inshingano yayo yo gushaka amakuru (*vigilance-information*) mu gihe ibonye hari igikorwa kitamenyerewe kigiye gukorerwa kuri konti y'umukiliya. Kuba kandi umuyobozi wa banki yarategetse ko kwishyura bihagarara kugeza igihe nyiri konti yemereje ko ari we watanze ubutumwa, ni ikindi kimenyetso gihamya ko banki yemera inshingano zayo zo gushishoza mbere yo kwishyura. Iyi myitwarire ya banki inyomoza kandi ibyo iburanisha by'uko itari itegetswe guhamagara Mugwaneza Carine Sandrine mbere yo kwishyura, kuko iyo iba itabitegetswe itari kumuhamagara cyangwa se ngo nyuma yo kumumahagara ntimubone isabe ko kwishyura bitegereza akabanza kuboneka.

[36] Urukiko rurasanga mu iburanisha imbere y'uru Rukiko, BK Plc yaremeje ko nimero ya telefoni Mugwaneza Carine Sandrine yayihaye ari 0788308017, kandi koko niyo yabanje guhamagarwaho na banki, imubuze itegeka ko *ordre de paiement* itegereza uwayitanze akabanza kuyemeza. Byongeye kandi inyandiko zose BK Plc yandikiye Mugwaneza Carine Sandrine, yashyizeho ko abarizwa kuri telefoni 0788308017. Banki ntisobanura aho yakuye nimero 0788867979 yanditse kuri *ordre de paiement*, ndetse no mu mikorere ya kinyamwuga ntibyari bikwiye ko banki ihabwa nimero 0785978939 na Sinayobye Siméon wari uje kubikuza *ordre de paiement*, noneho ngo iyo nimero banki ifate ko ari iya Mugwaneza Carine Sandrine nta handi ibishingiye nyamara uyu hari indi nimero yayihaye ngo ijye imushakiraho mu gihe imukeneye.

[37] Urukiko rurasanga BK Plc itabasha kugaragaza ko telefoni 0785978939 ivuga ko yahamagaye bwa nyuma mbere yo gufata umwanzuro wo kwishyura ibaruye kuri Mugwaneza Carine Sandrine, nta nubwo igaragaza ko uyu yaba yarayitanze nk'iyo bamushakiraho mu gihe yaba abuze kuri 0788308017 (*alternative telephone*). Kuba rero harahamagawe umuntu utazwi akemeza ko ayo madolari abikuzwa, bikwiye gufatwa nko kuba banki yaremeye ko ayo madolari abikuzwa nyirayo atabyemeje, nyamara banki yari imaze kwivugira ko atazabikuzwa uwatanze *ordre de paiement* ataraboneka kuri telefoni yahaye banki ngo abyemeze.

[38] Urukiko rurasanga *bank statement* ya Mugwaneza Carine Sandrine kuri konti y'amadolari nº 00040-0294342-77 igaragaza ko kugeza ku wa 17/08/2015 ubwo *ordre de paiement* iburanwa yagezwaga muri BK Plc, amadolari menshi yari yarabikuje ari 1.629 USD yavanywe kuri konti ku wa 28/01/2015, avanyweho na Mugwaneza Carine Sandrine. Kuba rero kuri konti hari hagiye kuvanwaho 11.500 USD hashingiwe kuri *ordre de paiement* yahawe umuntu ku giti cye cyari igikorwa kitamenyerewe kuri iyo konti cyategeka banki gushishoza kurushaho mbere yo kwishyura.

[39] Urukiko rurasanga nk'uko Urukiko Rukuru rw'Ubucuruzi rwabisanze mu gika cya 26 cy'urubanza rusubirishwamo, Mugwaneza Carine Sandrine yari afite koko inshingano zo kurinda neza *carnet d'ordres de paiement* ndetse no kumenyesha banki cyangwa izindi nzego ko *ordre de payment* yibwe. Ibyo ariko sibyo byatuma banki ikurwaho inshingano isanganywe nk'umunyamwuga zo gushishoza buri gihe mbere yo kwishyura, cyane cyane ko nayo ubwayo

yivugira ko yabanje kugira amakenga mbere yo kwishyura. Nk'uko byibukijwe haruguru, banki ntigaragaza icyaje kuyimara ayo makenga.

[40] Urukiko rurasanga inshingano y'umukiliya yo kurinda *carnet d'ordre de paiement* ndetse n'iyo kwihutira kumenyesha banki n'izindi nzego ko yibwe zitaburizamo burundu ibyago byo kwibwa kuko hari igihe yamenya ko yibwe ari uko abonye amakuru ko amafaranga ye yabikujwe. Kumenya amakuru ya konti bishobora gutinzwa n'impamvu zitandukanye harimo no kuba umukiliya adakoresha ikoranabuhanga, agatinda kubona amakuru cyangwa akayabona ari uko agiye aho banki ikorera. N'abakoresha ikoranabuhanga bashobora kugira imbogamizi cyangwa rikabatenguha ntibabone amakuru cyangwa bagatinda kuyabona.

[41] Urukiko rurasanga gushaka gukumira ikoresha rya konti y'umukiliya mu buryo budakwiye ari byo mu ntangiriro biha umukiliya inshingano zo gucunga neza inyandiko cyangwa andi makuru yahawe na banki ariko bigaha na banki inshingano z'ubushishozi nk'urwego ruri aho amafaranga y'umukiliya asohokera. Ibi bituma ibitabashije gukumirirwa hamwe bikumirirwa ahandi. Byumvikanisha ko banki iramutse ivaniweho inshingano y'ubushishozi bishobora gushyira konti z'abakiliya benshi mu kaga. Inkiko zasanze iyi nshingano y'ubushishozi ariyo ituma mu mikorere ya za banki zigomba guteganyiriza abakiliya bazo icyitwa *affidavit form of forgery* kugira ngo mu gihe amafaranga y'umukiliya yaba yibwe hakoreshejwe inyandiko mpimbano, banki izabashe kuyakurikirana no kuyagaruza.[10]

[42] Ku bijyanye n'ingaruka zo kutubahiriza inshingano y'ubushishozi ku ruhande rwa banki, mu rubanza I & M Bank Rwanda Ltd yaburanaga na Coffee Business Center (CBC) Ltd, uru Rukiko rwasanze "banki isubiza amafaranga nyirayo, iyo yayahaye umuntu yibeshye, cyane cyane umutekamutwe, kubera ko ubwishyu buba iyo amafaranga yafashwe n'ubifitiye uburenganzira. Keretse banki ishoboye kubona ibimenyetso ku makosa y'umukiliya … cyangwa se ko yabitewe n'impamvu zidasanzwe."[11] Naho mu rubanza Sebahizi Jules yaburanaga na Equity Bank Rwanda Ltd rwavuzwe haruguru, uru Rukiko rwasanze "kuba nta ruhare Sebahizi Jules yagize mu ibikuzwa rya 30.000 USD kuri konti ye …n'iyoherezwa ryayo mu gihugu cya Singapore, bigaragaza ko Equity Bank Rwanda Ltd yabikoze kubera uburangare bwayo, (ikaba) ikwiye kuyamusubiza uko yakabaye…"[12]

[43] Uruhare rwa banki rumaze igihe rugarukwaho n'inkiko z'ibindi bihugu, nkaho mu rubanza *Central Nat. Bank of Richmond yaburanaga na First & Merchants Nat. Bank*, Urukiko rw'Ikirenga rwa Leta ya Virginia muri Leta Zunze Ubumwe za Amerika rwavuze ko ihame rusange ari uko amafaranga y'umuntu Banki ibitse atagomba gukorwaho nyirayo atabitangiye uruhushya, ko banki iramutse iyahaye umuntu utabifitiye uburenganzira, ibyo bitareba nyiri amafaranga ndetse ko bifatwa nk'aho ayo mafaranga atigeze ava kuri konti ye, icyo gihe banki ikaba ariyo ibyirengera.[13]

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[10] Reba urubanza *Stokes v. Commonwealth*, 49 Va.App. 401 (2007).

[11] Reba urubanza n° RCOMA 0171/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 03/01/2014, igika cya 17.

[12] Reba urubanza RS/INJUST/RCOM 00001/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 26/01/2018, igika cya 27.

[13] "The general rule is conceded that a depositor's funds in a bank are unaffected by any unauthorized payment. If a bank pays out money to the holder of a check, upon which the name of its depositor is forged, it is simply no payment as between the bank and the depositor; the account between the bank and the depositor and the legal liability of the bank remain just the same as if the pretended payment had not been made. The pretended payment does not diminish

Uyu murongo ni nawo wemejwe mu rubanza *Cairo Banking Co. yaburanaga na West et al.*, aho Urukiko rw'Ikirenga rwa Georgia rwasanze iyo umukiliya abikije amafaranga muri banki, bifatwa ko banki iba imugiyemo umwenda, kugira ngo rero banki yigobotore izo nshingano igomba kwishyura uwayibikije amafaranga kandi ko inshingano za banki zitavanwaho n'uko yemeye kwishyura sheki y'impimbano.[14]

[44] Naho mu rubanza *Sheila Michelle Stokes yaburanaga na Commonwealth of Virginia*, Urukiko rw'Ubujurire rwa Virginia, rushingiye ku murongo watanzwe muri urwo rubanza rwa *Central Nat. Bank of Richmond*, rwasanze imikorere igezweho y'amabanki ari uko iyo hishyuwe sheki y'impimbano, banki igomba gukosora iryo kosa ryo kubikuza amafaranga y'umukiliya itabiherewe uruhushya, igakura amafaranga kuri konti yayo ikishyura umukiliya.[15]

[45] Urwo Rukiko rwavuze ko :

i. Ibikuza ry'amafaranga ryakorewe muri banki mu buriganya nta ngaruka rigomba kugira ku mukiliya kuko banki iba itahawe ububasha bwo kubikuza amafaranga kuri konti y'umukiliya ;[16]

ii. Banki yishyuye sheki y'impimbano igomba gufatwa nk'iyishyuye ku mafaranga yayo, ikazikurikiranira uwo yishyuye.[17]

[46] Iby'uko banki yishyuye umuntu kubwo kwibeshya cyangwa uburangare igomba gusubiza umukiliya wayo amafaranga ye binagarukwaho na Jérôme Lassere Capdeville na bagenzi be bavuga ko ari ihame ko *banki igomba gukora neza ibyo isabwa n'umukiliya wayo, ko mu gihe yishyuye undi muntu cyangwa yamwohereje amafaranga ku bwo kwibeshya, igomba gusubiza nyiri konti amafaranga ye, hanyuma ikaba ariyo yikurikiranira uwoherejwe ayo mafaranga.*[18]

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the funds of the depositor…In the payment by a bank of a forged check, it acts at its own peril, and not that of the depositor". Reba urubanza *Central Nat. Bank of Richmond v. First & Merchants Nat. Bank*..., 171 Va. 289 (1938).

[14] "Where a person deposits money in a bank on general deposit, the relation of debtor of the bank to the depositor as creditor immediately arises, and in order to discharge itself from this liability the bank must pay the depositor. The liability can not be discharged by accepting a forged check drawn in the name of the depositor against the bank." Reba urubanza *Cairo Banking Co. v. West*, 187 Ga. 666 (1939).

[15] "Appellant argues, …that once a depositor's account is debited, the funds automatically belong to the depositor …. We disagree with this argument, as it requires this Court to ignore modern banking practice and the debtor/creditor relationship …At present, a bank generally would debit the depositor's account when it pays the person presenting the forged check. The bank then must correct the unauthorized withdrawal of funds by debiting its own funds and crediting the depositor's account to fully make it whole…" Reba urubanza *Stokes v. Commonwealth,* 49 Va. App. 401 (2007).

[16] "Where a fraudulent transaction has occurred at a bank, that transaction does not affect the depositor, for the purposes of identifying the victim of a larceny based on the fraudulent transaction, because the bank did not possess the authority to disburse the funds from that depositor's account."

[17] "A bank, in paying a forged check, must be considered as making the payment out of its own funds, for the purposes of identifying the bank as the victim of the larceny that arises from the payment on the forged check."

[18] "Tout d'abord il est acquis que (le) banquier doit correctement passer les opérations souhaitées par son client. Ainsi, en cas de paiements ou de virements opérés par erreur au bénéfice d'un tiers, l'obligation de restitution implique que le banquier reste tenu de restituer la chose reçue à son véritable bénéficiaire. Il devra alors procéder au remboursement du client victime de l'erreur et, le plus souvent, prétendre à un remboursement par le tiers." Reba Jérôme Lasserre Capdeville et les autres, Droit bancaire, Dalloz, Paris, 2021, p.388.

[47] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rurasanga BK Plc itarubahirije ishingano yo gukorana ubushishozi ubwo yavanaga 11.500 USD kuri konti ya Mugwaneza Carine Sandrine ikayishyura Sinayobye Siméon, bityo BK Plc ikaba igomba kuyamusubiza ikazikurikiranira uwayahawe.

II.2. Kumenya niba Mugwaneza Carine Sandrine yahabwa inyungu zikomoka ku 11.500 USD zibariwe kuri 18% ku mwaka.

[48] Mugwaneza Carine Sandrine na Me Bizumuremyi Isaac umwunganira bavuga ko ku bijyanye na 11.500 USD, mu rubanza RCOM 00860/2016/TC/NYGE, Mugwaneza Carine Sandrine yagenewe inyungu za 15% nyamara amabanki y'ubucuruzi asanzwe abarira inyungu kuri 18%, akaba asaba uru Rukiko gukosora ayo makosa, agabahwa inyungu zibariye ku rugero banki zisanzwe zitangiraho inyungu kuva ku wa 12/08/2015. Avuga ko mu gihe cy'imyaka irindwi n'amezi ane n'igice ishize, inyungu agomba kwishyurwa zingana na 15.266,25 USD ariko ko asaba uru Rukiko kuzazibara kugeza urubanza ruciwe.

[49] Me Rutagengwa Jean-Damascène, uburanira BK Plc avuga ko Mugwaneza Carine Sandrine atahabwa izo nyungu kuko ari we wateshutse ku nshingano ze zo kurinda agatabo ke, ko iyo aza kuba yarabitse neza agatabo ke n'umukono we, ayo madolari atari kubikuzwa, bityo akaba adakwiye kungukira mu makosa ye.

UKO URUKIKO RUBIBONA

[50] Ingingo ya 137 y'Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko "uruhande rwarenganyijwe rufite uburenganzira bwo kubona indishyi zitanzwe n'urundi ruhande rutubahirije ibisabwa mu masezerano, keretse iyo ikirego kigamije kubona indishyi cyahagaritswe cyangwa cyaravuyeho."

[51] Ingingo ya 94, igika cya kabiri n'icya kane, y'Amabwiriza Rusange n° 55/2022 yo ku wa 27/10/2022 yerekeye kurengera umuguzi wa serivisi z'imari ivuga ku Indishyi ihabwa umuguzi wa servisi y'imari, igira iti: "*Iyo uburangere bw'utanga serivisi y'imari buteje umuguzi wa serivisi y'imari igihombo cy'amafaranga, umuguzi wa serivisi y'imari aba afite uburenganzira bwo gusaba indishyi y'igihombo. Kubara indishyi bishingira kuri ibi bikurikira :*

1° umubare w'amafaranga y'igihombo cyatewe n'uburangare ;

2° ikiguzi cy'amahirwe yabuze kubera uburangare ;

3° indishyi zishyuwe n'umuguzi wa serivisi y'imari niba zihari.

Ibyo ari byo byose, igipimo cy'indishyi ntigishobora kujya munsi y'ikigereranyo cy'inyungu k'unguzanyo (taux moyen de prêt/ average lending rate) nk'uko cyatangajwe n'urwego rw'ubugenzuzi."

[52] Mu rubanza *Sebahizi Jules yaburanaga na Equity Bank Rwanda Ltd,*[19] uru Rukiko rwasanze kuba banki yaravanye amafaranga kuri konti ya Sebahizi Jules nta burenganzira abitangiye byaramuteye igihombo kuko atashoboye kuyakoresha mu buryo ubwo aribwo bwose, haba kuyatungisha umuryango cyangwa kuyarekera muri banki ngo abyare inyungu, uku kandi ni nako bimeze muri uru rubanza kuko banki yishyuye Sinayobye Siméon 11.500 USD kandi Mugwaneza Carine Sandrine, nyiri konti yavanweho ayo madolari, atabitangiye uburenganzira, igihe cyose Mugwaneza Carine Sandrine amaze adafite ayo madolari bikaba byaramuvukije inyungu yari kuyavanamo iyo aba yarayakoresheje cyangwa yarayabikije agamije kuyungukiramo.

[53] Muri urwo rubanza rwa Sebahizi Jules,[20] uru Rukiko rwagennye indishyi rushingiye ku gipimo cy'inyungu z'amafaranga abakiliya babitsa mu mabanki kugira ngo abungukire (*taux moyen créditeur*). Uyu murongo ni nawo uherutse kwemezwa mu rubanza *Nsengiyumva Théoneste yaburanaga na Ntagungira Jérôme na bagenzi be*, aho uru Rukiko rwasanze Nsengiyumva Théoneste agomba gusubizwa amafaranga yari yaraguze isambu yatsindiwe hiyongereyeho inyungu zibariwe ku gipimo cy'inyungu kingana na 8% amabanki aheraho abakiriya bayo babikije amafaranga kugira ngo abungukire.[21]

[54] Urukiko rurasanga icyakora uburyo bwo kubara inyungu bwavuzwe haruguru aribwo Banki Nkuru y'u Rwanda yasubiyeho mu mabwiriza yavuzwe haruguru ateganya ko igipimo cy'indishyi zihabwa umuguzi wa serivisi z'imari kidashobora kujya munsi y'ikigereranyo cy'inyungu ku nguzanyo (*taux moyen de prêt/ average lending rate*) nk'uko cyatangajwe n'urwego rw'ubugenzuzi." Inyandiko yitwa *Interest Rate Structure* yatangajwe na Banki Nkuru y'u Rwanda ku rubuga rwayo www.bnr.rw/browse-in/financial-market/money-marketinterest-rates/monthly-interest-rates ndetse inagarukwaho n'urubuga rwa www.tradingeconomics.com/rwanda/interest-rate igaragaza ko icyo gipimo mu Rwanda kigeze kuri 15.81%,[22] bityo akaba ari cyo kigomba kubarirwaho inyungu Mugwaneza Carine Sandrine agomba guhabwa na BK Plc.

[55] Urukiko rurasanga rero BK Plc igomba guha Mugwaneza Carine Sandrine inyungu zingana na 11.500 USD x 15.81 % guhera ku wa 27/08/2015, ni ukuvuga umunsi ukurikira uwo amadolari yavanwe kuri konti, kugeza ku wa 31/03/2023, ni ukuvuga igihe kingana n'imyaka irindwi, amezi arindwi n'iminsi ine, bihwanye n'iminsi 2.734, bityo akangana na:

$$\frac{11.500 \text{ USD} \times 15.81 \times 2.734 = 13.807,8 \text{ USD}}{360 \times 100}$$

[19] Reba urubanza RS/INJUST/RCOM 00001/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 26/01/2018, igika cya 33 n'icya 34.
[20] Reba urubanza RS/INJUST/RCOM 00001/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 26/01/2018, igika cya 34.
[21] Reba urubanza n° RS/INJUST/RC 00012/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 22/07/2022, igika cya 50.
[22] Byasomwe ku wa 29/03/2023.

[56] Urukiko rurasanga nubwo inyungu BK Plc yakagombye kwishyura Mugwaneza Carine Sandrine zingana na **13.807,8 USD**, izi nyungu zirenze kure 11.500 USD BK Plc yahaye Sinayobye Siméon kubera uburangare. Mu rubanza *Banque Populaire du Rwanda Plc yaburanaga n'Akarere ka Nyamasheke,*[23] uru Rukiko rwasanze inyungu zo gutinda kwishyura umwenda zitagomba kuba umurengera. Rwasobanuye ko igipimo cyo kugena inyungu z'ubukererwe ari ukwirinda ko zihinduka inzira yo kwikungahaza nta mpamvu k'uzihawe, ariyo mpamvu ari inshingano y'Urukiko kugarura ku gipimo gikwiye inyungu z'umurengera.

[57] Muri urwo rubanza, uru Rukiko rwasanze igipimo gikwiye cy'inyungu z'ubukererwe kigenwa n'Urukiko mu bushishozi bwarwo. Inyungu ariko ntizigomba kurenga izikenewe mu gukosora ibyangijwe ariko kandi zigomba kuba zihagije ku buryo zitanga isomo kugira ngo ibyatumye zitangwa bitazasubira, rwemeza ko inyungu z'ubukererwe zitagomba kurenga ingano y'umwenda wishyuzwa.

[58] Urukiko rurasanga iki cyerekezo cy'uko inyungu ku mwenda remezo zihagarara kubarwa iyo zimaze kungana n'umwenda remezo wari usigaye kwishyurwa aricyo kigaragara mu yandi mategeko yihariye nk'aho ingingo ya 72, agace ka 4, y'Itegeko n° 031/2022 ryo ku wa 21/11/2022 rigenga Amasoko ya Leta,[24] iya 112, agace ka 2, y'Itegeko nº 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'amabanki[25] n'iya 59 y'Itegeko nº 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujujwe kugeza ubu,[26] buri tegeko kubyo rireba, inyungu zikaba zidashobora kurenga ingano y'ingwate yatanzwe ku bijyanye n'amasoko ya Leta cyangwa kurenga ingano y'umwenda wishyuzwa ku bijyanye n'imyenda yatanzwe na banki cyangwa kurenga ingano y'umusoro wishyuzwa ku bireba imisoro yatinze kwishyurwa.

[59] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga BK Plc igomba guha Mugwaneza Carine Sandrine inyungu zingana na 11.500 USD.

II.3. Kumenya niba BK Plc igomba kwishyura Mugwaneza Carine Sandrine 310.000 Frw yabikujwe kuri konti ye n'inyungu zayo zibariwe kuri 18%.

[23] Reba urubanza RS/INJUST/RCOM 00006/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 27/01/2023, igika cya 52.

[24] "Inyungu z'ubukererwe zivugwa mu gika cya kabiri (2) n'icya gatatu (3) by'iyi ngingo ntizirenga ingano y'agaciro k'ingwate yatanzwe."

[25] 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." Reba kandi 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; 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."

[26] "Ubwiyongere bw'inyungu z'ubukererwe ntiburenga ijana ku ijana (100%) by'umusoro." Reba ingingo ya 59 y'Itegeko n° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha (iyi ngingo niyo ya 12 y'Itegeko n° 1/2012 ryo ku wa 03/02/2012 rihindura kandi ryuzuza Itegeko n° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha).

[60] Mugwaneza Carine Sandrine na Me Bizumuremyi Isaac umwunganira bavuga ko ku wa 12/08/2015, Twajeneza Olivier yabikuje 310.000 Frw kuri konti ye ifite nº 00051-0609850-07 ku burangare bwa BK Ltd cyangwa se iyo banki ibigizemo uruhare kandi nta burenganzira Mugwaneza Carine Sandrine yatanze ngo ayo mafaranga abikuzwe, bityo ko Urukiko rwategeka banki kuyamusubiza hiyongereyeho inyungu zayo zibariye kuri 18% zihwanye na 418.500 Frw, yose hamwe akaba 728.500 Frw (310.000 Frw +418.500Frw). Bavuga ko ayo mafaranga Mugwaneza Carine Sandrine yayaregeye ariko ntayahabwe.

[61] Me Rutagengwa Jean-Damascène, uburanira BK Plc, avuga ko mu masezerano Mugwaneza Carine Sandrine yakoranye na banki buri ruhande rwari rufite inshingano rugomba kwubahiriza, ko banki yubahirije izayo zo kugenzura ubuziranenge bw'inyandiko za *ordre de paiement* zakoreshejwe ndetse n'umukono wa Mugwaneza Carine Sandrine, bityo akaba asanga banki idakwiye kuryozwa ayo mafaranga kuko Mugwaneza Carine Sandrine ari we wateshutswe ku nshingano ze zo kwita ku gatabo yahawe na banki, ariyo mpamvu agomba kwirengera ibyabaye kuri konti ye.

UKO URUKIKO RUBIBONA

[62] Urukiko rurasanga nk'uko bigaragara mu nyandiko zigize dosiye y'urubanza, ingingo ijyanye na 310.000 Frw yarasuzumwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge. Mu gika cya 17 cy'urubanza RC 00860/2016/TC/NYGE rwaciwe ku wa 21/10/2016, Urukiko rwasanze "*ku bijyanye n'amafaranga 310.000 Frw Mugwaneza Carine Sandrine avuga ko yakuwe kuri konti ye na Twajeneza Olivier akoresheje sheki y'impimbano, nta bimenyetso abigaragariza, kuko sheki n° 00051-0609850-07/Rwf igaragaza ko iriho umukono we, akaba rero atagaragaza ko iyo sheki ari impimbano cyangwa se yashyizweho umukono utari uwe, bityo Urukiko rukaba ntaho rwahera rutegeka ko ayo mafaranga ayasubizwa*."

[63] Urukiko rurasanga ntaho bigaragara muri dosiye y'urubanza mu Rukiko Rukuru rw'Ubucuruzi ko Mugwaneza Carine Sandrine yigeze ajuririra icyemezo cyavuzwe mu gika kibanza. Nyamara kandi ingingo ya 55 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko *umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanzwe ariko ntabikore mu gihe giteganywa n'amategeko ntiyemerewe gusaba ko urubanza yatsinzwe rusubirishwamo ku mpamvu z'akarengane*. Ubwo rwasesenguraga iyi ngingo mu manza zitandukanye harimo n'urwo *Ngizweninshuti Albert yaburanaga na Muhima Giovani*, uru Rukiko rwasanze umuburanyi utaranyuzwe n'icyemezo cy'Urukiko ariko ntasabe ko amakosa akinenga akosorerwa mu bujurire cyangwa ngo atange ubujurire bwuririye ku bundi mu gihe uwo baburana yajuriye nyamara yari abifitiye uburenganzira, aba yivukije inzira y'ubujurire, bityo akaba adashobora kwifashisha inzira yo gusubirishamo urubanza ku mpamvu z'akarengane ngo asabe ko iyo ngingo yongera gusuzumwa kuko byaba binyuranyije n'amategeko.[27]

[27] Reba urubanza RS/INJUST/RC 00024/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 21/02/2020, igika cya 19. Reba kandi urubanza RS/INJUST/RC 00007/2018/SC Nditiribambe Samuel yaburanaga na Gatera Jason rwaciwe n'Urukiko rw'Ikirenga ku wa 13/03/2020 ndetse n'urubanza RS/INJUST/RC 00021/2022/SC *Mukagatare Régine na bagenzi be baburanaga na SANLAM AG Plc* rwaciwe n'Urukiko rw'Ikirenga ku wa 17/03/2022.

[64] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga kuba Mugwaneza Carine Sandrine yari afite inzira yo kujuririra icyemezo cyafashwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge ku ngingo ijyanye n'amafaranga 310.000 ntabikore, bisobanuye ko ari uko yari yemeye imikirize y'urwo Rukiko kuri iyo ngingo, bityo akaba atahindukira ngo avuge ko yayirenganyeho, ari nayo mpamvu ibijyanye n'iyo ngingo bidakwiye kwakirwa ngo bisuzumwe kuri uru rwego.

II.4. Kumenya ishingiro ry'indishyi zisabwa muri uru rubanza.

[65] Mugwaneza Carine Sandrine na Me Bizumuremyi Isaac umwunganira basaba uru Rukiko gutegeka BK Plc guha Mugwaneza Carine Sandrine 2.000.000 Frw y'indishyi z'akababaro ku bwo kumara imyaka ine akurikirana amafaranga ye muri BK Plc, mu nkiko no ku Rwego rw'Umuvunyi, 4.000.000 Frw y'ikurikiranarubanza, 1.500.000 Frw y'igihembo cya Avoka kuri uru rwego no kumusubiza 2.500.000 Frw y'igihembo cya Avoka yatanze mu nkiko zabanje.

[66] Me Rutagengwa Jean-Damascène, uburanira BK Plc, avuga ko nta ndishyi BK Plc ikwiye guha Mugwaneza Carine Sandrine kuko uyu ari we wishoye mu manza anazishoramo banki, ariyo mpamvu akwiye kuyiha 2.000.000 Frw y'indishyi zo kuyishora mu manza nta mpamvu, 500.000 Frw y'ikurikiranarubanza, 1.000.000 Frw y'igihembo cya Avoka, yose hamwe akaba 3.500.000 Frw.

[67] Mugwaneza Carine Sandrine na Me Bizumuremyi Isaac, umwunganira, bavuga ko indishyi BK Plc isaba ntazo ikwiriye kuko iyo itaza guteshuka ku nshingano zayo nta manza ziba zarabayeho.

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[68] Ku bijyanye n'indishyi z'akababaro za 2.000.000 Frw zisabwa na Mugwaneza Carine Sandrine, Urukiko rurasanga koko igikorwa cya BK Plc cyo kuvana 11.500 USD kuri konti ye ku bw'uburangare agahabwa Sinayobye Siméon cyarangirije Mugwaneza Carine Sandrine, kuva muri 2015 akaba ahangayikishijwe no gushaka uburyo yagaruza ayo madolari kugira ngo ayikenuze cyangwa ayabyaze umusaruro, bityo mu bushishozi bw'Urukiko akaba agenewe indishyi z'akababaro zingana na 1.000.000 Frw.

[69] Naho ku bijyanye n'amafaranga y'igihembo cya Avoka n'ay'ibyagiye ku rubanza asabwa na Mugwaneza Carine Sandrine ndetse na BK Plc, Urukiko rurasanga ntayo bakwiriye kuko buri wese afite ibyo atsindiye n'ibyo atsindiwe muri uru rubanza.

[70] Urukiko rurasanga kandi muri dosiye y'urubanza nta bimenyeteso birimo bigaragaza ko Mugwaneza Carine Sandrine yishyuye 2.500.000 Frw y'igihembo cya Avoka mu Rukiko rw'Ubucuruzi rwa Nyarugenge no mu Rukiko Rukuru rw'Ubucuruzi, bityo Urukiko rukaba ntaho rwahera rutegeka ko ayo mafaranga ariyo akwiye gusubizwa nk'uko abisaba.

III. ICYEMEZO CY'URUKIKO

[71] Rwemeje ko ikirego cyatanzwe na Mugwaneza Carine Sandrine cyo gusubirishamo ku mpamvu z'akarengane urubanza RCOMA 00642/2016/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/01/2017, gifite ishingiro kuri bimwe;

[72] Rwemeje ko imikirize y'urubanza RCOMA 00642/2016/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/01/2017, ihindutse mu ngingo zayo zose;

[73] Rutegetse Bank of Kigali Plc, kwishyura Mugwaneza Carine Sandrine 11.500 USD yavanwe kuri konti ye y'amadolari nº 00040-0294342-77 hiyongereyeho inyungu zingana na 11.500 USD, yose hamwe akaba 23.000 USD;

[74] Rutegetse Bank of Kigali Plc guha Mugwaneza Carine Sandrine 1.000.000 Frw y'indishyi z'akababaro.