ADVANCE MATERIAL TRADING PTE LTD (AMT LTD), v. GISANDE TRADING Ltd N' ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00004/2022/SC (Nyirinkwaya, P.J., Karimunda na Hitiyaremye, J.) 10 Gashyantare 2023]

Amategeko agenga ubugwate ku mutungo utimukanwa – Ingwate – Abatanze umutungo watanzweho ingwate nta burenganzira bari bafite bwo kwivanaho umutungo wari ubanditseho ubwo amasezerano y'ingwate yakorwaga batabiherewe uburenganzira mu nyandiko ndetse bakabyemererwa– Itegeko Nº 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, ingingo ya 4.

Incamake y ikibazo: Sosiyete Advance Material Trading Pte Ltd hamwe na sosiyete Gisande Trading Ltd yari ihagarariwe n'umuyobozi wayo Niyigaba Ignace n'umugore we akaba n'umwishingizi wayo Akingeneye Dally ivuga ko mu bihe bitandukanye bagiye bakorana ibikorwa by'ubucuruzi bw'amabuye y'agaciro, Advance Material Trading Pte Ltd ikajya iha Gisande Trading Ltd amafaranga ikagura ndetse ikanayohereza amabuye y'agaciro mu gihugu cya Singapore, ariko nyuma biza kugaragara ko Gisande itagiye yubahiriza amasezerano, umuyobozi hamwe n'umwishingizi wayo batanga ingwate zigizwe n'imitungo itimukanwa zizavamo ubwishyu kuko bari bamaze kugeramo sosiyete Advance umwenda munini cyane.

Mu gihe sosiyete Advance yari irimo gushaka uburyo yakwandikisha ingwate yahawe, yaje gutungurwa n'uko zimwe muri zo zatambamiwe na Rwanda Revenue Authority kubera imisoro, bituma Advance irega Gisande n'umwishingizi wayo mu rukiko rw'ubucuruzi, isaba Urukiko gutegeka abaregwa kuyisubiza ingwate bari bayihaye kugira ngo zivanwemo ubwishyu, kwishyura umwenda wasigara mu gihe ingwate zaba zigurishijwe ntihavemo ubwishyu bw'umwenda wose, no kuyiha indishyi zitandukanye.

Gisande Trading Ltd hamwe n'umuyobozi wayo Niyigaba Ignace na Akingeneye Dally batanze inzitizi yo kutakira icyo kirego, bashingiye ku mpamvu y'uko mu masezerano impande zombi zagiranye zemeranyije ko nihavuka amakimbirane cyangwa imanza bizakemurwa n'ubukemurampaka bw'i London mu Bwongereza (*arbitration clause*), mu mizi y'urubanza biregura bavuga ko ikirego kidafite ishingiro, kubera ko Advance Material Trading Pte Ltd itagaragaza ibimenyetso by'ibyo iregera.

Urukiko rw'Ubucuruzi rwaciye urubanza, rusanga inzitizi yatanzwe na Gisande nta shingiro ifite, mu mizi y'urubanza rusanga ikirego cyatanzwe na Advance kidafite ishingiro.

Advance yajuririye mu Rukiko Rukuru rw'Ubucuruzi, rwemeza ko ubujurire bufite ishingiro, ko imikirize y'urubanza rwajuririwe ihindutse, rutegeka ko Gisande, Niyigaba Ignace na Akingeneye Dally bagomba guhita bafatanya kwandikisha ingwate bahaye Advance mu masezerano y'inguzanyo n'ingwate bagiranye.

Gisande, Niyigaba Ignace na Akingeneye Dally bajuririye Urukiko rw'Ubujurire, bavuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibivugwa mu amasezerano y'ubugwate bakoranye

kandi ko urwo Rukiko rwabaciye indishyi kandi nta masezerano bishe, uru Rukiko gukosora ayo makosa, bagahabwa indishyi zo gushorwa mu manza.

Mu rubanza rubanziriza urundi, Urukiko rwasanze hari ibisobanuro ababuranyi bakwiye kuruha, bagasobanura icyakorwa kugira ngo izo ngwate zandikwe mu buryo bukurikije amategeko, no kurushyikiriza ibyangombwa by'imitungo batanzeho ingwate mu masezerano kandi ko Niyigaba Ignace agomba kurwitaba ubwe kugira ngo ibisobanuro rwifuza bibashe kumvikana kurushaho.

Gisande yisobanuye ivuga ko imitungo Niyigaba Ignace na Akingeneye Dally batanzeho ingwate igaragara muri *exhibit A* igihari, iri mu maboko ya Advance kandi ko yabahaye uburenganzira busesuye bwo kuzandikisha (*power of attorney*) igihe abazitanze badashoboye kuboneka, ivuga kandi ko mu masezerano, Advance Material Trading Pte Ltd yemeye gukomeza kuyifasha iyiha amafaranga, we n'umugore we bemera gutanga ingwate ku mutungo wabo amaze guhabwa amafaranga bumvikanye, ariko ko iyo nguzanyo itatanzwe, bituma ingwate zitandikishwa, imikoranire irahagarara.

Advance nayo yisobanura ivuga ko Akingeneye Dally na Niyigaba Ignace aribo batayubahirije, kuko bafashe umutungo batanzeho ingwate bawukura ku mazina yabo bawandika ku wundi muntu, bikaba bitari gushoboka kwandikisha ingwate itacyanditse ku bayitanze.

Gisande Trading Ltd n'abishingizi bayo bavuga ko basabye Urukiko Rukuru rw'Ubucuruzi kudasuzuma ubujurire bwatanzwe na Advance bwerekeranye no kwishyura umwenda wasigara mu gihe ingwate zaba zigurishijwe, kubera ko itari yaregeye kwishyurwa umwenda.

Bavuga na none ko nta mwenda wemejwe mu cyemezo cy'Urukiko Rukuru rw'Ubucuruzi mu rubanza rujuririrwa, ko icyo Advance Material Trading Pte Ltd yasabaga kwari uko ingwate zajya mu mazina y'abazitanze zikandikishwa kugira ngo zizavemo ubwishyu.

AMT Ltd yandikiye Perezida w'Urukiko rw'Ikirenga, isaba ko urubanza RCOMAA 00091/2020/CA rwaciwe n'Urukiko rw'Ubujurire rusubirishwamo ku mpamvu z'akarengane kuko rwirengagije ko kuva ku rwego rwa mbere Gisande Trading Ltd n'abishingizi bayo ntacyo bayinengaga ku bijyanye n'ishyirwa mu bikorwa ry'amasezerano y'inguzanyo bagiranye, isaba uru rukiko gutegeka ko ingwate zatanzwe ubwo amasezerano y' inguzanyo yakorwaga zandukurwa zigasubizwa ku mazina yabazitanze.

Incamake y'icyemezo: Abatanze umutungo watanzweho ingwate nta burenganzira bari bafite bwo kwivanaho umutungo wari ubanditseho ubwo amasezerano y'ingwate yakorwaga batabiherewe uburenganzira mu nyandiko ndetse bakabyemererwa.

Ubujurire bufite ishingiro.
Amagarama y'urubanza aherereye kuwareze.

Amatego yashingiweho:
Itegeko Nº 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, ingingo ya 4.

Nta manza zifashishijwe.

Urubanza

I.IMITERERE Y'URUBANZA:

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi kuri RCOM 01669/2019/TC, AMT Ltd irega Gisande Trading Ltd, Niyigaba Ignace n'umugore we Akingeneye Dally, isobanura ko :

-Mu bihe bitandukanye yagiye ikorana na Gisande Trading Ltd, ihagarariwe na Niyigaba Ignace ibikorwa by'ubucuruzi bw'amabuye y'agaciro yo mu bwoko bwa *Tin and Tantalium* nkuko bigaragazwa n'amasezerano yo ku wa 25/05/2018, AMT Ltd ikaba yarahaga amafaranga Gisande Trading Ltd hanyuma nayo ikagura ndetse ikanayoherereza amabuye y'agaciro muri Singapore;

-Yageze aho isanga Gisande Trading Ltd iyigezemo umwenda munini, igira impungenge ku myishyurirwe yayo, nyuma yo kurebera hamwe uko ikibazo cyakemuka, yumvikana n'umuyobozi wayo Niyigaba Ignace ko bakorana andi masezerano y'inguzanyo n'ingwate, isaba amakuru ku mitungo yagombaga guhabwaho ingwate, mu ibaruwa yo ku wa 7/11/2018, Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda kiyigaragariza ko iyo mitungo yanditse ku mazina ya Niyigaba Ignace n'umugore we Akingeneye Dally. Ku wa 24/12/2018 basinye amasezerano y'inguzanyo n' ingwate, aho bemeranyije ko umwenda Gisande Trading Ltd iyibereyemo ungana na 5,380,456 USD, akubiyemo 4,680,456 USD yari isanzwe iyibereyemo na 700,000 USD y'inguzanyo y'inyongera. Muri ayo masezerano Niyigaba Ignace na Akingeneye Dally nabo biyemeje kwishingira umwenda Gisande Trading Ltd ibereyemo AMT Ltd batanga ingwate ku mitungo yabo bwite igizwe n'amazu atatu n'ikigo cy'ishuri biherereye mu Karere ka Kayonza;

-Imikoranire hagati y'impande zombi yarakomeje ariko Gisande Trading Ltd ntiyuzuza inshingano zayo zo kohereza amabuye y'agaciro ahwanye n'amafaranga yumvikanyweho kuko yohereje amabuye afite agaciro ka 700,000 USD gusa nkuko bigaragazwa na Invoices (*shipment remitences*) zo ku wa 11/12/2018 no ku wa 20/12/2018, yishyura na 680,456 USD, hasigara umwenda ugera kuri miliyoni 4,7 z'amadolari y'Amerika (USD), kuva muri 2019 ikaba nta mabuye yongeye kohereza AMT Ltd;

-Mu gihe AMT Ltd yari irimo gushaka uburyo yakwandikisha ingwate, yatunguwe no gusanga zimwe muri zo zitambamiwe n'Ikigo cy'imisoro n'Amahôro kubera imisoro, naho ikigo cy'ishuri cyari cyanditse kuri Niyigaba Ignace n'umugore we Akingeneye Dally nk'umutungo wabo bwite ubwo basinyaga amasezerano, baracyandikishije ku mazina ya sosiyete yitwa International Technical School of Kigali Ltd (ITS of Kigali Ltd)babereye abanyamigabane 100%, ibyo byose rero bikaba byaratumye AMT Ltd ibura uko yandikisha ingwate zumvikanyweho mu masezerano;

-Nyuma yo kubona ko Gisande Trading Ltd itubahirije amasezerano bagiranye yohereza amabuye y'agaciro ahwanye n'agaciro k'umwenda yahawe cyangwa iwishyura, n' abishingizi bayo bakaba batarubahirije amasezerano y'ingwate, ku wa 15/05/2019 AMT Ltd yabandikiye ibaruwa y'integuza ibihanangiriza, ariko ntibagira icyo babikoraho, nibwo ku itariki ya 09/08/2019 yiyambaje Urukiko kugira ngo amasezerano yubahirizwe, isaba ko abaregwa bategekwa kugarura ku mazina yabo ishuri ribaruye kuri UPI: 1/02/11/02/229, rikandikishwa muri RDB nk'ingwate yayo, kugira ngo uwo mutungo uzabashe kuvanwamo ubwishyu bw'umwenda Gisande Trading Ltd iyibereyemo, ndetse bakanategekwa kwishyura umwenda wasigara mu gihe ingwate zaba zigurishijwe ntihavemo ubwishyu bw'umwenda wose.

[2] Gisande Trading Ltd n' abishingizi bayo batanze inzitizi yo kutakira icyo kirego bavuga ko mu masezerano yo ku wa 25/05/2018, impande zombi zemeranyije ko nihavuka amakimbirane cyangwa imanza bizakemurwa n'ubukemurampaka bw'i London mu Bwongereza. Ku bijyanye n'imizi y'urubanza bireguye bavuga ko ikirego kidafite ishingiro kubera ko AMT Ltd itagaragaza ikosa bakoze kuko yasinye amasezerano y'ingwate ku wa 24/12/2018 ifite amakuru ku mitungo yahaweho ingwate, bakaba ntacyo bahinduye kuri iyo mitungo.

[3] Urukiko rw'Ubucuruzi rwaciye urubanza N° RCOM 01669/2019/TC ku wa 31/10/2019. Ku bijyanye n'inzitizi, rwemeje ko itakiriwe kuko amasezerano ababuranyi bagiranye ku wa 25/05/2018 atariyo aregerwa mu rubanza, ahubwo ari ayo bakoranye ku wa 24/12/2018 ateganya ko mu gihe havuka ibibazo bitashobora gukemurwa mu bwumvikane, byaregerwa inkiko zo mu Rwanda. Ku bijyanye n'imizi y'urubanza, rwemeje ko ikirego cya AMT Ltd nta shingiro gifite, ruyitegeka kwishyura Gisande Trading Ltd amafaranga y'igihembo cya Avoka n'ikurikiranarubanza ahwanye na 600,000 Frw.

[4] Mu gufata icyo cyemezo, Urukiko rwasobanuye ko rutategeka ko umutungo ugarurwa ku mazina y'abayihaye ingwate kuko AMT Ltd yagize uburangare bwo kudahita iyandikisha mu rwego rubishinzwe, ikaba itagaragaza ko nyuma yo guhabwa amakuru ku banditseho imitungo n'Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda mu kwezi kwa 11/2018 no kugirana amasezerano n'abaregwa mu kwezi kwa 12/2018 yatambamiye ihinduzamutungo ngo habe harabayeho amakosa yakozwe n'urwego rwakoze iryo hinduzamutungo kandi waratambamiwe.

[5] AMT Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi, ivuga ko kuba Urukiko rw'Ubucuruzi rutaremeje ko umutungo ubaruye kuri UPI: 1/02/11/02/229 wandukuzwa kuri ITS of Kigali Ltd ukagarurwa mu mazina ya Niyigaba Ignace n'umugore we Akingeneye Dally kugira ngo uzandikishwe muri RDB nk'ingwate yahawe, binyuranyije n'amasezerano bagiranye ku wa 24/12/2018, inenga kandi urwo rukiko kuba ntacyo rwavuze ku byo rwasabwe gutegeka ko mu gihe ingwate zitakwishyura umwenda wose, abaregwa bategekwa kwishyura amafaranga azaba asigaye.

[6] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza N° RCOMA 00946/2019/HCC ku wa 08/10/2020, rwemeza ko ubujurire bwa AMT Ltd bufite ishingiro, ko imikirize y'urubanza rwajuririwe ihindutse, rutegeka Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally gufatanya kwandikisha ingwate bahaye AMT Ltd mu masezerano y'inguzanyo n'ingwate

bagiranye ku wa 24/12/2018, byaba ngombwa hagahinduzwa amazina ya ba nyir'imitungo kugira ngo ubwo bugwate bushobore kwandikwa, mu gihe izo ngwate zaba zitabashije kwishyura umwenda wose AMT Ltd iberewemo, umwenda usigaye ukishyurwa na Gisande Trading Ltd na Niyigaba Ignace. Rwategetse kandi Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally gufatanya guha AMT Ltd amafaranga y'igihembo cya Avoka n'ikurikiranarubanza angana na 3,500,000 Frw ku rwego rwa mbere, 1,500,000 Frw mu bujurire, yose hamwe akaba 5,000,000 Frw.

[7] Urwo rukiko rwasobanuye ko ibimenyetso bigizwe n'amabaruwa Umubitsi Mukuru w'impapurompamo z'ubutaka yandikiye Me Rwigamba Molly (Avoka wa AMT Ltd) ku wa 07/11/2018 no ku wa 10/06/2019, agaragaza ko amakuru AMT Ltd yahawe ku mutungo ubaruwe kuri UPI: 1/02/11/02/229 yahinduwe nyuma yo ku wa 24/12/2018, ubwo ababuranyi basinyaga amasezerano, kuko ibaruwa ya mbere yagaragazaga ko umutungo wanditse kuri Niyigaba Ignace, naho iya kabiri ikaba igaragaza ko wanditse kuri ITS of Kigali Ltd, bikaba bigaragaza neza ko Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally batubahirije amasezerano y'ingwate bagiranye na AMT Ltd. Rwanzuye ko hashingiwe ku byo ababuranyi bumvikanyeho mu masezerano no ku ngingo ya 64 n'iya 65 z'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, abaregwa bategetswe kwandikisha ingwate basezeranye na AMT Ltd, na cyane ko sosiyete ITS of Kigali Ltd umutungo UPI: 1/02/11/02/229 wanditseho ari iya Niyigaba Ignace na Akingeneye Dally 100% nk'uko inyandiko yiswe *Full Registration Information of Domestic company* yatanzwe na RDB ku wa 09/10/2018 ibigaragaza.

[8] Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally bajuririye Urukiko rw'Ubujurire, bavuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibi bikurikira:

-Kuba imitungo Niyigaba Ignace na Akingeneye Dally batanzeho ingwate igaragara muri Exhibit A y'amasezerano y'ingwate bakoranye igihari kandi iri mu maboko yabo, bakaba ntacyo bayikozeho gihuye n'ibikubiye mu ngingo ya 3, agace ka 3[1] n'aka 21[2] y'amasezerano y'ingwate yo ku wa 24/12/2018 bakoranye na AMT Ltd;

-Kuba AMT Ltd itarigeze igaragaza ko habaye impinduka ku ngwate yahawe, niba yaragurishijwe cyangwa igatangwaho ingwate ku wundi muntu bikozwe na Niyigaba Ignace, cyangwa ko yashatse kwandikisha ingwate yahawe ntibiyishobokere, cyane ko bari barayihaye uburenganzira busesuye bwo kuzandikisha (*Power of Attorney*) igihe abazitanze badashoboye kuboneka;

-Kuba Ishuri ITS of Kigali Ltd ari iry'abatanze ingwate, bivuze ko uwo mutungo ukiri mu maboko yabo, hakaba rero ntacyabuza ko AMT Ltd yabegera ingwate ikandikishwa;

-Kuba AMT Ltd itararegeye kwishyurwa umwenda ku buryo wari gufatwaho icyemezo, ndetse ikaba itavuga ko ingwate yahawe zitavamo ubwishyu mu gihe zitanditswe muri RDB, no mu gihe kandi zitaragurishwa ngo hagaragazwe umwenda usigaye ngo abe ariwo uregerwa nk'uko bikubiye mu gace ka 20 k'amasezerano y'ingwate yo ku wa 24/12/2018;

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[1] *The Debtor and the Guarantor agree not to mortage or sell property described in Exhibit A and any developments thereon, to any entity whatsoever without the knowledge and written consent from the Creditor.*

[2] *The Collateral as described in Exhibit A and any future developments thereon shall remain the Creditor security up to the total reimbursement of the facility.*

-Kuba Gisande Trading Ltd yaragaragaje ko itahagaze kwishyura nk'uko bigaragazwa n'ibaruwa AMT Ltd yayandikiye ku wa 18/02/2020, aho yagaragazaga ko umwenda iberewemo kuri iyo tariki ungana na 3,772,064.15 USD, ibyo bikaba bivuguruza ibikubiye mu kirego cyatanzwe na AMT Ltd, aho ivuga ko Gisande Trading Ltd iyifitiye umwenda ungana na miliyoni 4,7 z'amadolari y'Amerika.

[9] Izo ngingo z'ubujurire nizo zaburanyweho mu iburanisha ryo ku wa 28/06/2021, ariko ubwo urubanza rwapfundurwaga ku wa 11/10/2021, Niyigaba Ignace yitabye ubwe nk'uko byari byategetswe n'Urukiko, yavuze ko ingwate itandikishijwe kuko AMT Ltd itubahirije amasezerano bagiranye. Yasobanuye ko Gisande Trading Ltd yagize igihombo bitewe n'uko ibiciro by'amabuye y'agaciro byaguye n'ikibazo cy'amabuye yibwe, ko ku wa 24/12/2018 yagiranye na AMT Ltd andi masezerano, aho buri ruhande rwari rufite ibyo rwiyemeje. Ku ruhande rwa AMT Ltd yagombaga gukomeza gufasha Gisande Trading Ltd iyiha amafaranga, naho we n'umugore we bagatanga ingwate ku mutungo wabo Gisande Trading Ltd imaze guhabwa amafaranga bumvikanye, ariko ko iyo nguzanyo itatanzwe, bituma ingwate zitandikishwa imikoranire irahagarara. Yavuze kandi ko kugira ngo umutungo wandikweho ubugwate, babanza kumvikana na AMT Ltd, ikamuha amafaranga yemeye mu masezerano.

[10] Mu rubanza N° RCOMA 00091/2020/CA rwaciwe ku wa 05/11/2021, Urukiko rw'Ubujurire rwemeje ko ubujurire bwa Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally bufite ishingiro, rutegeka AMT Ltd guha abajuriye 1,500,000 Frw y'igihembo cya Avoka ku nzego zose baburanyeho na 50.000 Frw y'amagarama y'urubanza.

[11] Urukiko rw'Ubujurire rwafashe icyemezo rushingiye ku mpamvu zikurikira:

Ntabwo Niyigaba Ignace na Akingeneye Dally bagombaga gutegekwa kwandikisha ingwate basezeranye na AMT Ltd mu gihe nayo itubahirije inshingano zayo ngo itange inguzanyo yemeye ihwanye na 700, 000 USD, yiyongera ku mwenda wari usanzwe uhari (4,680,456 USD), ikaba itanagaragaza icyakozwe kugira ngo imikoranire myiza ikomeze hashingiwe ku byo bumvikanye ko izakomeza gutera inkunga Gisande Trading Ltd nka mbere iyiha amafaranga hakurikijwe uko ibintu bizaba byifashe;

Umutungo ubaruye kuri UPI: 1/02/11/02/229 wahoze wanditse kuri Niyigaba Ignace na Akingeneye Dally ubwo amasezerano y'ingwate yakorwaga ubu wanditse kuri ITS of Kigali Ltd. Ntaho rwahera rutegeka ko wandukurwa kuri iryo shuri ngo wandikwe kubo wari wanditsweho mbere kandi iryo shuri ritararezwe mu rubanza;

Ku birebana n'umwenda, kugeza ubu AMT Ltd nta ngwate ifite kuko itazandikishije, bityo ikaba itanatekereza kugurisha ingwate idafite. Mu gihe kandi nta kirego kirebana n'ingano y'umwenda cyatanzwe, ndetse ngo ube warafashweho icyemezo, ntaho rwahera rutegeka Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally kwishyura umwenda utaramenyekana.

[12] Ku wa 20/11/2021, AMT Ltd ihagarariwe na Me Rwigamba Molly, yandikiye Perezida w'Urukiko rw'Ikirenga, isaba ko urubanza N° RCOMAA 00091/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 05/11/2021 rusubirishwamo ku mpamvu z'akarengane. Amaze gusuzuma ubwo busabe, mu cyemezo № 034/CJ/2022 cyo ku wa 25/02/2022, Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo rwandikwe mu bitabo ruzaburanishwe, ruhabwa N° RS/INJUST/RCOM 00004/2022/SC.

[13] Urubanza rwahamagawe bwa mbere ku wa 14/06/2022, Urukiko rusanga AMT Ltd ihagarariwe na Me Rwigamba Molly hamwe na Me Dushimimana Reuben, naho Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally bahagarariwe na Me Hakizimana Francois Xavier. Abahagarariye AMT Ltd bamenyesheje Urukiko ko mu mitungo ivugwa mu masezerano AMT Ltd yagiranye n'abaregwa, umutungo ifiteho ikibazo isaba ko wafatwaho icyemezo ari ubaruye kuri UPI: 1/02/11/02/229 ubu wanditse kuri sosiyete ITS of Kigali Ltd. Uwo munsi iburanisha ntiryapfundikiwe kugira ngo iryo shuri rigobokeshwe mu rubanza. Urukiko rwategetse kandi ko nta hererekanya rigomba kongera gukorwa kuri uwo mutungo kugeza urubanza rurangiye.

[14] Iburanisha ryasubukuwe ku wa 12/10/2022, AMT Ltd, Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally bahagarariwe nka mbere, ITS of Kigali Ltd nayo yitabye, ihagarariwe na Me Karenzi Jean Paul. Uyu yamenyesheje Urukiko ko iyo sosiyete itacyanditse kuri Niyigaba Ignace n'umugore we Akingeneye Dally, ahubwo ko yanditse k'uwitwa Ingabire Jeannine kuva tariki ya 11/02/2022 nk'uko bigaragazwa n'inyandiko ya RDB yiswe *Full Registration Information of Domestic Company*, ndetse ko umutungo uburanwa wahaweho ingwate KCB Bank Rwanda Plc ubu yahindutse BPR Bank Plc. Abahagarariye AMT Ltd, bashingiye kuri ayo makuru basabye ko BPR Bank Plc yagobokeshwa mu rubanza. Nyuma yo kumva abandi baburanyi icyo bavuga kuri ubwo busabe, Urukiko rwemeje ko iburanisha risubitswe kugira ngo BPR Bank Plc igobokeshwe mu rubanza.

[15] Urubanza rwasubukuwe ku wa 13/12/2022, AMT Ltd, Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally, ITS of Kigali Ltd bahagarariwe nka mbere, BPR Bank Plc nayo yitabye, ihagarariwe na Me Buzayire Angèle.

[16] Hakurikijwe imyanzuro ITS of Kigali Ltd na BPR Bank Plc bashyize muri system, basaba ku bw'ibanze kutaba ababuranyi mu rubanza kuko basanga kugobokeshwa bwa mbere mu Rukiko rw'Ikirenga binyuranye n'ingingo ya 116 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Urukiko rwibukije ko igobokeshwa ryabo ryamaze gufatwaho icyemezo kandi ko ibirebana no kugobokeshwa mu manza z'akarengane byamaze gufatwaho umurongo mu manza zinyuranye.

[17] Iburanisha ryakomeje mu mizi, hasuzumwa ibibazo bikurikira:

1.Kumenya niba umutungo ubaruye kuri UPI: 1/02/11/02/229 wakwandukurwa kuri ITS of Kigali Ltd, ugasubizwa ku mazina ya Niyigaba Ignace na Akingeneye Dally, kugira ngo ushobore kwandikwa nk'ingwate ihawe AMT Ltd;

2.Kumenya niba abaregwa bagomba gutegekwa kwishyura umwenda wasigara mu gihe ingwate zaba zigurishijwe ntihavemo ubwishyu bwose;

3- Indishyi zisabwa muri uru rubanza.

II. IBIBAZO BISUZUMWA N'ISESENGURWA RYABYO:

A. KUMENYA NIBA UMUTUNGO UBARUYE KURI UPI: 1/02/11/02/229 WAKWANDUKURWA KURI ITS OF KIGALI LTD, UGASUBIZWA KU MAZINA YA NIYIGABA IGNACE NA AKINGENEYE DALLY, KUGIRA NGO USHOBORE KWANDIKWA NK'INGWATE YA AMT LTD

[18] Me Rwigamba Molly hamwe na Me Dushimimana Reuben bavuga ko Urukiko rw'Ubujurire rwemeje ko AMT Ltd bahagarariye itubahirije amasezerano yagiranye na Gisande Trading Ltd ku wa 24/12/2018 yo kuyiha inguzanyo y'inyongera ya 700, 000 USD, rugendeye gusa ku mvugo idahuje n'ukuri Niyigaba Ignace yavugiye muri urwo rukiko ku wa 11/10/2021, ubwo urubanza rwapfundurwaga agategekwa kwitaba ubwe, akumvikanisha ko bahungishije umutungo ubaruye kuri UPI: 1/02/11/02/229 nkana kuko AMT Ltd itubahirije amasezerano bagiranye ngo ibahe inguzanyo y'inyongera yari yarabemereye.

[19] Bavuga ko Urukiko rw'Ubujurire rwabyemeje rwirengagije ko kuva ku rwego rwa mbere Gisande Trading Ltd n'abishingizi bayo ntacyo banengaga AMT Ltd ku bijyanye n'ishyirwa mu bikorwa ry'amasezerano y'inguzanyo bagiranye, bakaba ahubwo baraburanaga bavuga ko ikirego cyayo nta shingiro gifite kuko itagaragaza ko habaye impinduka ku mutungo bayihayeho ingwate nyuma y'amasezerano bakoranye, cyangwa ko yashatse kwandikisha ingwate yahawe ntibishoboke kuko yahawe uburenganzira busesuye bwo kwandikisha ingwate (*Power of Attorney*) igihe abazitanze badashoboye kuboneka.

[20] Bavuga kandi ko Urukiko rw'Ubujurire rwirengagije ibimenyetso byari muri dosiye bigaragaza ko tariki ya 11/12/2018 AMT Ltd yishyuye 400,000 USD, ku itariki ya 20/12/2018 naho yishyura 300,000 USD, yose hamwe aba 700,000 USD. Basobanura ko kugira ngo amasezerano yo ku wa 24/12/2018 akorwe, AMT Ltd yari imaze igihe iha Gisande Trading Ltd amadolari kugira ngo iyigurire amabuye y'agaciro, ariko ntibyubahirize, bituma basubira mu mibare noneho bemeranya ko AMT Ltd igiye kuyongerera 700,000 USD, asanga umwenda isanzwe iyibereyemo ungana na 4,680,456 USD, amasezerano mashya AMT Ltd iyasinyira Singapore ku itariki ya 6/12/2018, Gisande Trading Ltd n'abishingizi bayo nabo bayasinya ku wa 24/12/2018 imbere ya Noteri wo mu Rwanda kuko bagombaga gusinya ari uko bamaze kubona iriya nguzanyo y'inyongera ya 700,000 USD.

[21] Bavuga kandi ko amasezerano y'inguzanyo n'ingwate yo ku wa 24/12/2018 akwiye gusesengurwa hamwe n'amasezerano yayabanjirije yo ku itariki 25/05/2018 ajyanye n'ibikorwa by'ubucuruzi bw'amabuye y'agaciro bakoranaga, AMT Ltd ikaba yarahaga Gisande Trading Ltd amafaranga, nayo ikagura ndetse ikanayohereza amabuye y'agaciro muri Singapore, ari nayo mpamvu mu iriburiro (*préambule*) ry'amasezerano y'inguzanyo n'ingwate bavuga ko Gisande Trading Ltd isanzwe ibereyemo AMT Ltd umwenda wa 4,680,000 USD, bikaba byumvikanisha ko ingwate zivugwa muri aya masezerano zishingiraga uwo mwenda wari usanzwe uhari, hiyongereyeho umwenda mushya wa 700.000 USD.

[22] Ku bijyanye n'ibyo Gisande Trading Ltd n'abishingizi bayo baburanishije kuva ku rwego rwa mbere ko AMT Ltd itagaragaza ikosa bakoze kuko yahawe uburenganzira bwo kwandikisha ingwate (*Power of Attorney*), bavuga ko nubwo yari yarahawe ubwo burenganzira, yazitiwe n'uko ibyangombwa by'ingwate yari yarahawe byari fotokopi kandi kwandikisha ingwate bikorwa hari iby'umwimerere (*orginal*). Bavuga kandi ko ibyo Niyigaba Ignace yiyemereye mu Rukiko rw'Ubujurire ko bahungishije ingwate ari ikimenyetso kigaragaza ko kutandikisha ingwate bitabaturutseho, ahubwo ari we n'umugore we byaturutseho.

[23] Bavuga kandi ko uhereye igihe amasezerano y'inguzanyo n'ingwate yasinyiwe ku wa 24/12/2018, n'igihe umutungo wandikiwe kuri ITS of Kigali Ltd ku wa 19/03/2019, harimo amezi atatu gusa, ko AMT Ltd itari gutekereza ko Niyigaba Ignace, nk'umuntu bakoranaga bafitanye icyizere, ari buhite yivanaho umutungo ku buryo yari gutambamira ihererekanya ryawo bakimara gusinya amasezerano, cyane cyane ko Niyigaba Ignace yavugaga ko adahari yagiye mu rugendo. Bavuga kandi ko aho bigaragariye ko umutungo utacyanditse kuri Niyigaba Ignace na Akingeneye Dally, AMT Ltd yahise itanga ikirego isaba ko ugarurwa ku mazina yabo kugira ngo ushobore kwandikwa muri RDB nk'ingwate ihawe.

[24] Me Rwigamba Molly hamwe na Me Dushimimana Reuben bavuga ko akandi karengane kari mu rubanza N° RCOMAA 00091/2020/CA gashingiye ku kuba Urukiko rw'Ubujurire rwarasanze umutungo uburanwa wari wanditse koko kuri Niyigaba Ignace na Akingeneye Dally ubwo amasezerano y'ingwate yakorwaga, ariko rukabirengaho rukemeza ko batategekwa kubahiriza amasezerano bagiranye basubiza umutungo ku mazina yabo kugira ngo wandikwe muri RDB nk'ingwate ya AMT Ltd, rwitwaje ko ishuri ITS of Kigali Ltd umutungo wanditseho ritarezwe muri uru rubanza.

[25] Bavuga ko Urukiko rw'Ubujurire rwabyemeje rwirengagije ko ibyo Niyigaba Ignace na Akingeneye Dally bakoze binyuranyije n'amasezerano bakoranye, bikaba kandi bitubahirije ingingo ya 64 y'Itegeko N°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 7 y'Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, ndetse n'umurongo watanzwe n'Urukiko rw'Ikirenga mu rubanza N° RCOMAA 0008/14/CS rwaciwe ku wa 22/07/2016, haburana Mujawimana Rose n'abandi na Banki ya Kigali, aho rwasobanuye, mu gika cya 17, ko amasezerano y'ingwate iyo akozwe mu buryo bukurikije amategeko aba itegeko hagati y'abayagiranye kandi ko adashobora guteshwa agaciro kabone n'iyo ingwate yaba itarandikishijwe.

[26] Bavuga ko Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally bamaze gutsinda mu Rukiko rw'Ubujurire, bakujeho itambama ryari ryarakozwe na AMT Ltd ku mutungo uburanwa, babonye ku itariki ya 03/03/2022 hatanzwe ikirego cy'akarengane, ku wa 14/03/2022 bihutira kujya muri KCB Bank Rwanda Plc yahindutse BPR Bank Plc kuwutangaho ingwate hasabwa inguzanyo y'ishuri ryabo ITS of Kigali Ltd, bashaka n'undi munyamigabane bamwandikaho ishuri ngo bigaragare ko ritakiri iryabo , ibyo byose bikaba bigaragaza uburiganya bwa Niyigaba Ignace na Akingeneye Dally.

[27] Bavuga ko kuba Niyigaba Ignace na Akingeneye Dally uwo mutungo barawuhaye ITS of Kigali Ltd, byafatwa nko gutanga umutungo wibwe, ko basanga ihererekanya ryose ryabaye ku mutungo ufite UPI: 1/02/11/02/229 nyuma y'amasezerano yo ku wa 24/12/2018, ndetse n'igwatiriza rindi muri BPR Bank Plc, bikwiye guteshwa agaciro, maze umutungo ukagarurwa ku mazina ya Niyigaba Ignace na Akingeneye Dally kugira ngo wandikwe muri RDB nk'ingwate ya AMT Ltd.

[28] Me Hakizimana Francois Xavier uhagarariye Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally avuga ko amadolari 700,000 avugwa n'ababuranira AMT Ltd yatanzwe hubahirizwa amasezerano yo ku wa 25/05/2018, aho bemeranyije ko Gisande Trading Ltd izajya ihabwa amadolari yo kugura amabuye y'agaciro, noneho uko iyagemuye bakagenda bakuramo amafaranga ahwanye n'agaciro kayo kugeza umwenda urangiye, ko atatanzwe hubahirizwa

amasezerano yo ku itariki ya 24/12/2018 kuko yo yari atarakorwa, ariya madolari akaba atari gutangwa mbere y'uko amasezerano asinywa.

[29] Yabajijwe uko ahuza ariya madolari yohererejwe Gisande Trading Ltd ku wa 11/12/2018 no ku wa 20/12/2018, n'ibikubiye mu masezerano yo ku wa 25/05/2018, avuga ko aya masezerano yaje avugurura ayo ku itariki ya 08/01/2017, ari nayo yatangiweho 700.000 USD.

[30] Avuga ko hari n'andi masezerano bongeye kugirana nyuma ku itariki ya 01/04/2019, bumvikana ubundi buryo bw'imikoranire n'uburyo *pourcentage* zizajya zigabanwa ku mabuye yagemuwe, ariko ko nayo atubahirijwe, ari nabyo byatumye Niyigaba Ignace, nyuma yo kubona ko Gisande Trading Ltd ibuze amafaranga, yagurishije ingwate abyumvikanyeho na AMT Ltd.

[31] Ku bijyanye n'ibyo ababuranira AMT Ltd bavuga ko Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally batubahirije amasezerano y'ingwate bagiranye, avuga ko mu ngingo ya 3, agace ka 19 y'ayo masezerano banditse ko impande zombi zizafatanya kwandikisha ingwate ariko ko mu gihe abatanze ingwate bataboneka, uwahawe ingwate yemerewe kubikora abahagarariye (*Power of Atorney*), ko rero AMT Ltd itavuga ko yabuze Niyigaba Ignace ngo bandikishe ingwate kandi yarahawe uburenganzira bwo kuzandikisha.

[32] Naho kubyo abahagarariye AMT Ltd bavuga ko bagiye kwandikisha umutungo yahaweho ingwate bagasanga umutungo utakibaruye kuri Niyigaba Ignace na Akingeneye Dally, ahubwo ubaruye kuri ITS of Kigali Ltd, avuga ko ibyo byabaye inkiko zarabavanyeho inshingano yo kwandikisha ingwate.

[33] Me Karenzi Jean Paul avuga ko ishuri ITS of Kigali Ltd ahagarariye ryaguzwe na Ingabire Jeannine ku itariki ya 11/02/2022 nkuko bigaragazwa n'icyangombwa cyatanzwe na RDB kiri muri dosiye, arigurana n'imitungo yayo yose, harimo umutungo ubaruye kuri UPI: 1/02/11/02/229, ko awugura yasanze abamugurishije bari bawutunze mu buryo bukurikije amategeko kuko nta kindi kibazo wari ufite, ukaba utari utambamiwe cyangwa uriho ubugwate, bityo tariki ya 11/03/2022 ishuri riwutangaho ingwate kugira ngo rihabwe umwenda na KCB Bank Rwanda Plc yahindutse BPR Bank Plc, ubu ukaba warandikishijwe nk' ingwate ya banki muri RDB.

[34] Avuga ko uwo mutungo ITS of Kigali Ltd iwutunze ku bw'ineza (*bonne foi*), ko ayandi masezerano yaba yarabaye kuri uwo mutungo yabazwa impande zayagiranye, haba harimo ibitarubahirijwe bikabazwa Niyigaba Ignace, Akingeneye Dally, Gisande Trading Ltd ku bibareba na Advanced Material Trading Pte Ltd ku biyireba.

[35] Me Buzayire Angèle, uhagarariye BPR Bank Plc , avuga ko kugeza ubu AMT Ltd nta ngwate ifite kuko itazandikishije, ko ingwate zivugwa mu masezerano AMT Ltd yagiranye na Gisande Trading Ltd n'abishingizi bayo zari kugira agaciro iyo zandikwa hubahirizwa ingingo ya 4 y'Itegeko N° 10/2009 ryo ku wa 04/05/2009 ryerekeye ubugwate ku mutungo utimukanwa igena ko ubugwate bugira agaciro iyo bwanditswe mu gitabo cyandikwamo ingwate ku mutungo utimukanwa mu biro by'Umwanditsi Mukuru.

[36] Avuga ko ibyo AMT Ltd ivuga ko yabuze umwimerere w'icyangombwa cy'ubutaka kugira ngo ibashe kwandikisha ingwate bitahabwa agaciro kuko yashoboraga gushingira ku ngingo

ya 213 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko *uberewemo umwenda wese cyangwa umuntu wese ubifitemo inyungu, ashobora gusaba Umubitsi w'inyandikompamo z'ubutaka, ushinzwe ubutaka ku Murenge cyangwa ku Karere w'aho ikitimukanwa kiri kubuza umubereyemo umwenda gukora ihinduzamutungo ry'ibintu bye bitimukanwa*, maze igatambamira ihererekanya ry'umutungo yahaweho ingwate, nyuma igatanga ikirego isaba iyubahirizwa ry'amasezerano y'ingwate nk'uko iyo ngingo ibiteganya, kuba itarabikoze bikaba byumvikanisha ko amasezerano y'ingwate atakiriho, hasigaye gusa ay'umwenda, bityo ko AMT Ltd yafatwa nk'uberewemo umwenda udafite ingwate (*créancier chirographaire*).

[37] Avuga kandi ko nta kosa na rimwe cyangwa uburiganya ubwo aribwo bwose BPR Bank Plc yakoze mu gihe yandikishaga ingwate, kuba iyi banki yaritwararitse ku byo itegeko ryerekeye ubugwate ku mutungo utimukanwa risaba mbere yo guha umwenda ITS of Kigali Ltd, akaba atariyo yakwamburwa uburenganzira kandi ariyo yubahirije amategeko.

UKO URUKIKO RUBIBONA

i. Ku bijyanye n'ibyo AMT Ltd ivuga ko yubahirije amasezerano yagiranye na Gisande Trading Ltd n'abishingizi bayo.

[38] Mbere yo gusuzuma niba umutungo ubaruye kuri UPI 1/02/11/02/229 wasubizwa ku mazina ya Niyigaba Ignace na Akingeneye Dally kugira ngo uzashobore kwandikishwa mu gitabo cy'Umwanditsi Mukuru muri RDB nk'ingwate ihawe AMT Ltd, harabanza hasuzumwe niba, nk'uko Urukiko rw'Ubujurire rwabyemeje, AMT Ltd itarubahirije inshingano zayo zijyanye no gutanga inguzanyo y'inyongera ivugwa mu masezerano yo ku wa 24/12/2018, bityo ikaba nayo itasaba ko Gisande Trading Ltd n'abishingizi bayo bategekwa kubahiriza inshingano zabo zirebana n'ingwate bemeye gutanga muri ayo masezerano.

[39] Iki kibazo kirasuzumwa hakurikijwe ibiteganyijwe mu ngingo ya 9 y' Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko *ibimenyetso (.....) bishobora gutangwa hakoreshejwe inyandiko, ubuhamya, uburyo bwo gucukumbura, ukwiyemerera k'umuburanyi cyangwa herekanywe ibindi bintu bifatika,* ndetse n'ingingo ya 12 y'Itegeko Nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, igena ko *urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Naho uvuga ko atagitegetswe gukora icyo yategekwaga gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda.*

[40] Urukiko rurasanga muri dosiye y'Urukiko rw'Ubucuruzi, harimo inyandiko 2 ziswe *Payment detail,* zigaragaza ko tariki ya 11/12/2018 AMT Ltd yohereje Gisande Trading Ltd 400,000 USD, nanone tariki ya 20/12/2018 yohereza 300,000 USD, yose hamwe aba 700,000 USD. Izo nyandiko nizo AMT Ltd ishingiraho ivuga ko yahaye Gisande Trading Ltd inguzanyo y'inyongera ivugwa mu masezerano bagiranye, ariko Gisande Trading Ltd n'abishingizi bayo bakavuga ko ayo madolari atishyuwe hubahirizwa amasezerano yo ku wa 24/12/2018, ko ahubwo yishyuwe hubahirizwa amasezerano yo ku wa 08/01/2017 yavuguruwe n'ayo ku itariki ya

25/05/2018, kandi ko inguzanyo y'inyongera ya 700.000 USD itari gutangwa mbere y'uko amasezerano yo ku wa 24/12/2018 asinywa.

[41] Urukiko rurasanga mu masezerano y'inguzanyo n'ingwate ababuranyi bagiranye ku wa 24/12/2018, nta ngingo n'imwe igaragaza ko hari umwenda AMT Ltd igomba kwishyura Gisande Trading Ltd, usibye ahavugwa gusa ko igomba gukora uko ishoboye kugira ngo imikoranire myiza hagati y'impande zombi ikomeze. Muri ayo masezerano abayashyizeho umukono bemeza ahubwo ko Gisande Trading Ltd ibereyemo AMT Ltd umwenda wa 5,380,456 USD, akubiyemo 4,680,456 USD y'umwenda yari isanzwe iyibereyemo na 700,000 USD y'inguzanyo y'inyongera. Ibi ubwabyo bigaragaza ko basinye amasezerano Gisande Trading yaramaze kubona inguzanyo y'inyongera, ibyo yo n'abishingizi bayo bavuga ko itari gutangwa mbere y'uko amasezerano asinywa bikaba nta gaciro byahabwa, kimwe n'ibyo bavuga ko amadolari 700,000 yoherejwe hubahirizwa amasezerano yo ku wa 8/1/2017 yavuguruwe n'ayo ku itariki ya 25/05/2018, kuko usibye kubivuga mu magambo, batagaragaza uko bahuza ayo masezerano n'amadolari yoherejwe ku wa 11/12/2018 no ku wa 20/12/2018.

[42] Urukiko rurasanga kandi harebwe imiburanire n'imyanzuro ya Gisande Trading Ltd n'abishingizi bayo kuva ku rwego rwa mbere kugeza bajurira mu Rukiko rw'Ubujurire, ndetse baburana muri urwo rukiko ku wa 28/06/2021, bigaragara ko ntacyo banengaga AMT Ltd ku bijyanye n'iyubahirizwa ry'amasezerano bagiranye ku wa 24/12/2018 kuko baburanaga bavuga gusa ko AMT Ltd itagaragaza amakosa bakoze yatumye ingwate bayihaye itandikishwa muri RDB, ibi nabyo bikaba byumvikanisha ko ibyo bavugiye ubwa mbere mu iburanisha ryo ku wa 11/10/2021 mu Rukiko rw'Ubujurire, ubwo urubanza rwapfundurwaga, ko AMT Ltd itatanze inguzanyo y'inyongera bumvikanyeho mu masezerano, atari ukuri.

[43] Hashingiwe ku bimenyetso byatanzwe, Urukiko rurasanga AMT Ltd yarubahirije amasezerano yagiranye na Gisande Trading Ltd n'abishingizi bayo yo kuyiha inguzanyo y'inyongera ya 700.000 USD, bityo Urukiko rw'Ubujurire rukaba rwarashingiye icyemezo cyarwo ku mpamvu itariho, aho rwemeje ko Niyigaba Ignace na Akingeneye Dally batategekwa kwandikisha ingwate basezeranye na AMT Ltd mu gihe nayo itubahirije inshingano zayo ngo itange inguzanyo yemeye .

ii. Ku bijyanye no kumenya niba umutungo ubaruye kuri UPI 1/02/11/02/229 wakwandukurwa kuri ITS of Kigali Ltd, ugasubizwa ku mazina ya Niyigaba Ignace na Akingeneye Dally, kugira ngo ushobore kwandikwa nk'ingwate ya AMT Ltd

[44] Ingingo ya 147 y' Itegeko nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, mu nteruro yayo ya mbere, iteganya ko *Urukiko rushobora gutegeka uruhande rutubahirije cyangwa rugiye kwica amasezerano gukora igisabwa mu masezerano.*

[45] Ku bijyanye n'ibyo Gisande Trading Ltd n'abishingizi bayo bavuga ko AMT Ltd yahawe uburenganzira busesuye bwo kwandikisha ingwate ku buryo itavuga ko batubahirije inshingano zabo, Urukiko rurasanga ari ukwirengagiza amabaruwa y'Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda yo ku wa 07/11/2018 no ku wa 10/06/2019 yavuzwe haruguru, agaragaza ko amakuru AMT Ltd yahawe ku mutungo ubaruwe kuri UPI: 1/02/11/02/229

yahinduwe nyuma y'uko ababuranyi bashyize umukono ku masezerano ku wa 24/12/2018, kuko ibaruwa ya mbere yagaragazaga ko umutungo wanditse kuri Niyigaba Ignace, naho iya kabiri igaragaza ko wanditse kuri ITS of Kigali Ltd, ndetse ni no kwirengagiza *email* icyo kigo cyanditse ku wa 22/08/2022, yashyizwe muri dosiye kuri uru rwego, igaragaza ko umutungo ufite UPI: 1/02/11/02/229 wanditswe kuri ITS of Kigali Ltd ku itariki ya 19/03/2019. Kuba Niyigaba Ignace na Akingeneye Dally bariyandukujeho umutungo hatarashira n'amezi atatu basinye amasezerano y'inguzanyo n'ingwate, bakawandikisha ku mazina ya ITS of Kigali Ltd, byumvikanisha ko kutandikisha ingwate byabaturutseho.

[46] Ku bijyanye n'ibyo uhagarariye Gisande Trading Ltd n'abishingizi bayo avuga ko bagurishije ingwate babyumvikanyeho na AMT Ltd, Urukiko rurasanga bitafatwaho ukuri kuko nta bimenyetso abitangira, bikaba bivuguruzwa n'ibyo Niyigaba Ignace yivugiye ubwe mu Rukiko rw'Ubujurire ko banze gutanga ingwate kuko AMT Ltd yanze gutanga inguzanyo yemeye, nyamara ibi akaba ataribyo kuko, nk'uko byagaragajwe haruguru, amasezerano yasinywe Gisande Trading Ltd yaramaze kuyihabwa.

[47] Ku bijyanye n'ibyo uhagarariye BPR Bank Plc avuga ko nta ngwate AMT Ltd ifite ku mutungo ubaruye kuri UPI: 1/02/11/02/229 kuko itanditse mu gitabo cy'Umwanditsi Mukuru muri RDB, Urukiko rurasanga ikiburanwa muri uru rubanza atari ukumenya niba ingwate itandikishijwe ifite agaciro, ahubwo ari iyubahirizwa ry'amasezerano y'ingwate yagombaga gutangwa na Niyigaba Ignace n'umugore we Akingeneye Dally, bishingira umwenda Gisande Trading Ltd ibereyemo AMT Ltd.

[48] Na none ku bijyanye n'ibyo avuga ko amasezerano y'ingwate atakiriho kuko AMT Ltd itatambamiye ihererekanya ry'umutungo yahaweho ingwate, ubu uwo mutungo ukaba utacyanditse kubo bakoranye amasezerano, Urukiko rurasanga nta shingiro bifite kuko, nk'uko byagaragajwe haruguru, kutandikisha ingwate byaturutse kuri Niyigaba Ignace na Akingeneye Dally biyandukujeho umutungo wagombaga kwandikwa muri RDB nk'ingwate ya AMT Ltd, ikibazo ahubwo akaba ari icyo kumenya niba ihererekanya mutungo ryakozwe hagati ya Niyigaba Ignace na Akingeneye Dally n'ishuri ITS of Kigali Ltd ryahabwa agaciro harebwe ibikubiye mu masezerano bagiranye na AMT Ltd.

[49] Mu masezerano yo ku wa 24/12/2018, Niyigaba Ignace na Akingeneye Dally biyemeje kwinshingira umwenda Gisande Trading ltd ibereyemo AMT Ltd, batanga ingwate ku mitungo yabo bwite irimo n'ikigo cy'ishuri giherereye mu Karere ka Kayonza. Bemeje kandi ko iyo imitungo izaguma ari ingwate ya AMT Ltd kugeza umwenda wose wishyuwe (ingingo ya 2, interuro ya nyuma), ko itazagurishwa cyangwa ngo itangweho ingwate k' uwo ari we wese wundi AMT Ltd itabitangiye uburenganzira mu nyandiko (ingingo ya 3.3), ndetse ko Gisande Trading Ltd n'abishingizi bayo bagomba kumenyesha AMT Ltd impinduka iyo ariyo yose yaba ku mitungo itanzweho ingwate (ingingo ya 3.17), kandi ko bazakora ibikenewe byose kugira ngo iyo mitungo yandikishwe nk'ingwate ihawe AMT Ltd (ingingo ya 3.19).

[50] Hashingiwe ku masezerano y'ingwate Niyigaba Ignace na Akingeneye Dally bakoranye na AMT Ltd, Urukiko rurasanga nta burenganzira Niyigaba Ignace na Akingeneye Dally bari bafite bwo kwivanaho umutungo ubaruye kuri UPI: 1/02/11/02/229 wari ubanditseho ubwo amasezerano y'ingwate yakorwaga, batabiherewe uburenganzira mu nyandiko na AMT Ltd, ndetse itanamenyeshejwe.

[51] Urukiko rurasanga kandi harebwe uburyo Niyigaba Ignace na Akingeneye Dally bihutiye kwivanaho uwo mutungo, bakawandika ku ishuri ryabo ITS of Kigali Ltd, bigaragaza ko bashakaga ko AMT Ltd idashobora kwifashisha uburenganzira yahawe (*Power of Attorney*) ngo yandikishe uwo mutungo muri RDB nk'ingwate bayihaye, ari nabyo byumvikana no mu mvugo ya Niyigaba Ignace mu Rukiko rw'Ubujurire, aho yavuze ko yanze gutanga ingwate kubera ko AMT Ltd yanze kuyiha inguzanyo y'inyongera, ko nta cyabuza ko umutungo ubaruye kuri UPI: 1/02/11/02/229 wakwandukurwa kuri ITS of Kigali Ltd, ugasubizwa ku mazina ye na Akingeneye Dally, AMT Ltd iramutse yubahirije amasezerano bakoranye.

[52] Urukiko rurasanga kuba Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally barasinye amasezerano y'inguzanyo n'ingwate na AMT Ltd, iyi ikubahiriza inshingano zayo ikomora kuri ayo masezerano ariko bo bagakora uko bashoboye ngo ntashyirwe mu bikorwa ku bireba inshingano zabo zijyanye n'ubwishingire, byerekana ko imyitwarire n'imigenzereze yabo mu ishyirwa mu bikorwa ry'amasezerano yaranzwe n'uburiganya *(mauvaise foi*), ibi akaba ari ukutubahiriza Itegeko rigenga amasezerano ryavuzwe iteganya ko *amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye [....].Agomba kubahirizwa nta buriganya* (ingingo ya 64), ko *amasezerano adategeka gusa icyemejwe, ahubwo yongeraho n'ingaruka ugushyira mu kuri, imigenzereze cyangwa amategeko byageneye inshingano bikurikije kamere yayo (* ingingo ya 65), *buri ruhande rufite inshingano yo kurangiza amasezerano nta buriganya kandi rukarangwa n'imikorere myiza yemerwa ku bagiranye amasezerano (ingingo ya 70).*

[53] Urukiko rurasanga kugira ngo abaregwa bubahirize amasezerano bagiranye na AMT Ltd, umutungo ubaruye kuri UPI: 1/02/11/02/229 ugomba kwandukurwa ku ishuri ITS of Kigali Ltd, ugasubizwa ku mazina ya Niyigaba Ignace na Akingeneye Dally kugira ngo ushobore kwandikwa nk'ingwate ya AMT Ltd kuko bawivanyeho mu buryo bunyuranyije n'amasezerano bakoranye na AMT Ltd, ingingo ya 147 y'Itegeko rigenga amasezerano yavuzwe haruguru ikaba iha Urukiko ububasha bwo gutegeka *uruhande rutubahirije cyangwa rugiye kwica amasezerano gukora igisabwa mu masezerano*.

[54] Ku birebana n'andi masezerano yabaye kuri uwo mutungo UPI: 1/02/11/02/229 nyuma y'icibwa ry'urubanza N° RCOMA 00091/2020/CA, Urukiko rurasanga, mu gihe ibyemejwe muri urwo rubanza bivanyweho, ibintu bikaba bisubiye uko byari bimeze urwo rubanza rutaracibwa, ayo masezerano nta gaciro afite mu bibangamiye ishyirwa mu bikorwa ry'amasezerano y'inguzanyo n'ingwate Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally bakoranye na AMT Ltd.

B. KUMENYA NIBA ABAREGWA BAGOMBA GUTEGEKWA KWISHYURA UMWENDA WASIGARA MU GIHE INGWATE ZABA ZIGURISHIJWE NTIHAVEMO UBWISHYU BWOSE

[55] Me Rwigamba Molly hamwe na Me Dushimimana Reuben bahagarariye AMT Ltd bavuga ko Gisande Trading Ltd ibereyemo umukiliya wabo amadolari menshi ugereranyije n'agaciro k'ingwate yatanze, ariyo mpamvu basaba ko mu gihe ingwate zanditswe hagakurikiraho kuzigurisha ntizivemo ubwishyu bw'umwenda wose, abaregwa bategekwa kwishyura AMT Ltd amadolari azaba asigaye mu yindi mitungo ya Gisande Trading Ltd n'abishingizi bayo, aho kugira ngo bagaruke mu rukiko kuregera umwenda wasigaye utishyuwe.

[56] Ku birebana n'ibyavuzwe n'Urukiko rw'Ubujurire ko ntaho rwahera rutegeka Gisande Trading Ltd kwishyura umwenda utaramenyekana, Me Rwigamba Molly avuga ko Urukiko rwashingira ku nyandiko z'igenzura (*audit*) ziri muri dosiye, impande zombi zashyizeho umukono, zigaragaza ko ku itariki ya 28/01/2019, Gisande Trading Ltd yari ibereyemo AMT Ltd umwenda ungana na 3,994,409.95 USD (3,772,064 USD + 222,345.95 USD).

[57] Me Hakizimana Francois Xavier uburanira Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally avuga ko muri uru rubanza AMT Ltd itigeze iregera umwenda, usibye gusaba Urukiko gutegeka ko yishyurwa amafaranga yasigara nyuma y'igurisha ry'ingwate, ibi bikaba bitashoboka kuko ingwate zitarandikishwa ngo zigurishwe, Urukiko rukaba ntaho rwahera rutegeka Gisande Trading Ltd n'abishingizi kwishyura AMT Ltd amafaranga atazwi umubare. Avuga kandi ko ibyo ababuranira AMT Ltd bavuga ko impande zombi zemeranyije ku mwenda iberewemo ari ibinyoma kuko, ku itariki ya 18/02/2020, AMT Ltd yandikiye Gisande Trading Ltd iyimenyesha ko ibona umwenda ugera kuri 3,772,064 USD, ko niba nayo ariko ibibona yabyemeza, ibyo bikaba byumvikanisha ko ingano y'umwenda itigeze yumvikanwaho.

UKO URUKIKO RUBIBONA:

[58] Nk'uko bigaragara mu kirego cyatanzwe na AMT Ltd ku rwego rwa mbere no mu miburanire yayo kugeza kuri uru rwego, icyaregewe muri uru rubanza ntabwo ari ugutegeka Gisande Trading Ltd n'abishingizi bayo kwishyura umwenda babereyemo AMT Ltd, ahubwo ni ukubategeka kwishyura umwenda wasigara mu gihe ingwate zaba zigurishijwe ntihavemo ubwishyu bwose.

[59] Urukiko rurasanga kandi mu manza zose zabaye nta mpaka zabaye ku ngano nyakuri y'umwenda Gisande Trading Ltd isigaje kwishyura AMT Ltd ku buryo byafatirwaho icyemezo ubwa mbere kuri uru rwego.

[60] Urukiko rurasanga rero, nk'uko byasobanuwe n'Urukiko rw'Ubujurire, abaregwa batategekwa kwishyura umwenda wasigara nyuma yo kugurisha ingwate kandi uwo mwenda uzasigara utaramenyekana, bityo, kuri iyi ngingo, ikirego cyatanzwe na AMT Ltd kikaba nta shingiro gifite.

C. INDISHYI ZISABWA

[61] Me Rwigamba Molly hamwe na Me Dushimimana Reuben, bahagarariye AMT Ltd, bavuga ko Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally batubahirije amasezerano y'ingwate bagiranye na AMT Ltd kandi ko batishyuye umwenda bahawe, ahubwo ko bayishoye mu manza bitari bikwiye, ariyo mpamvu basaba ko bayishyura 3,300,000 Frw y'igihembo cya Avoka n'ikurikiranarubanza.

[62] Me Hakizimana Francois Xavier, uhagarariye Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally, avuga ko indishyi urega asaba ntazo akwiye kuko ari we wijyanye mu nkiko, akaba agomba kubyirengera. Asaba ahubwo ko AMT Ltd ariyo yategekwa kubishyura 2,000,000Frw y'igihembo cya Avoka n'ikurikiranarubanza kuri buri wese, yose hamwe akaba 6,000,000 Frw.

[63] Abahagarariye AMT Ltd bavuga ko abaregwa aribo bateje impaka zayishoye mu manza, kandi ko yasubirishijemo urubanza kuko yari yarenganye, bityo ikaba atariyo yabiryorezwa indishyi.

[64] Me Buzayire Angèle, uhagarariye BPR Bank Plc, asaba ko AMT Ltd yayishoye mu manza nta mpamvu yacibwa 3,000,000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

UKO URUKIKO RUBIBONA:

[65] Ingingo ya 111 y'Itegeko n° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igira iti: i*kirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo [....]*.

[66] Urukiko rurasanga Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally bagomba guha AMT Ltd amafaranga y'igihembo cya Avoka n'ikurikiranarubanza kuko batubahirije amasezerano y'ingwate bagiranye, biba ngombwa ko irega isaba iyubahirizwa ryayo. Urukiko rurasanga 3,300,000 Frw AMT Ltd isaba ari mu rugero harebwe inkiko enye baburaniyemo kuva urubanza rutangira.

[67] Urukiko rurasanga kandi Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally bagomba guha BPR Bank Plc amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kuko, nubwo ataribo basabye ko igobokeshwa mu rubanza, nibo batumye biba ngombwa kuyihamagaza hirindwa ko ibyemezo byafatwa mu rubanza byayigiraho ingaruka itaraburanye, ikaba igenewe 800,000 Frw kuko ari mu rugero, ayo basaba bakaba batayatangira ibimenyetso.

III. ICYEMEZO CY'URUKIKO:

[68] Rwemeje ko ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza RCOMAA 0091/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 05/11/2021, gifite ishingiro kuri bimwe;

[69] Rutegetse ko umutungo ubaruye kuri UPI: 1/02/11/02/229, uherereye mu Kagari ka Cyaruzinge, Umurenge wa Ndera, Akarere ka Gasabo, Umujyi wa Kigali, wandukurwa kuri International Technical School of Kigali Ltd, ukandikwa kuri Niyigaba Ignace na Akingeneye Dally;

[70] **Rutegetse** ko ubugwate ku mutungo UPI: 1/02/11/02/229 bwandukurwa kuri BPR Bank Plc mu gitabo cyandikwamo ingwate ku mutungo utimukanwa mu biro by'Umwanditsi Mukuru muri RDB, bukandikwa kuri Advance Material Trading Pte Ltd;

[71] Rwemeje ko Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally batategekwa kwishyura umwenda wasigara mu gihe ingwate zaba zimaze kugurishwa ntihavemo ubwishyu bwose, ku mpamvu zasobanuwe haruguru;

[72] Rutegetse Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally guha Advance Material Trading Pte Ltd 3,300,000 Frw y’igihembo cya Avoka n’ikurikiranarubanza;

[73] Rutegetse Gisande Trading Ltd, Niyigaba Ignace na Akingeneye Dally guha BPR Bank Plc 800,000 Frw y’igihembo cya Avoka n’ikurikiranarubanza.