MURWANASHYAKA v BAMU TRADE COMPANY Ltd

[Rwanda Urukiko rw'Ikirenga – RS/INJUST/RCOM 00013/2022/SC (Cyanzayire, P.J., Kazungu na Hitiyaremye, J.) 24 Gicurasi 2024]

Amategeko agenga imanza z'ubucuruzi – Amasezerano – Amasezerano y'umwenda – Ubwishyu – Iyo icyumvikanyweho ari ukwishyura amafaranga ariko ntiyishyurwe mu gihe cyagenwe, ayo mafaranga abaririwa inyungu uhereye igihe yagombaga kwishyuririrwa, ariko haba hari amafaranga uruhande rwishe amasezerano rufiteho uburenganzira akabanza kuvanwamo.

Amategeko agenga imanza z'ubucuruzi – Amasezerano – amasezerano y'umwenda – Kubara inyungu zitateganyijwe mu masezerano – Igihe inyungu zitateganyijwe mu masezerano, igipimo cyazo gishingira ku kigereranyo cy'inyungu ku nguzanyo (Taux moyen de prêt/average lending rate) gitangazwa na Banki Nkuru y'u Rwanda.

Amategeko agenga imanza z'ubucuruzi – Amasosiyete y'ubucuruzi – Uburyozwe bw'abanyamigabane ba sosiyete – Umunyamigabane cyangwa umuyobozi wa sosiyete ntibaryozwa inshingano zayo bitewe gusa n'uko ari abanyamigabane, keretse iyo bakoresheje nabi imiterere yayo bagamije uburiganya cyangwa kwica amategeko, no kuba barafashe nabi umutungo wa sosiyete nk'aho ari umutungo w'abantu ku giti cyabo.

Incamake y'ikibazo: Murwanashyaka Jean Damascène avuga ko yahaye sosiyete BAMU TRADE COMPANY Ltd umwenda ungana na 2.730.000 frws, bakorana amasezerano, ariko ntiyishyurwa nkuko babyumvikanye bituma ayirega mu Rukiko rw'Ubucuruzi arusaba kumutegeka gufatanya n'abanyamigabane bayo kumwishyura umwenda remezo hamwe n'inyungu z'ubukererwe zibariwe kuri 18% nkuko biri mu masezerano. Uru Rukiko rwemeza ko ikirego gifite ishingiro.

Impande zombi zajuririye Urukiko Rukuru rw'Ubucuruzi, rugumishaho imikirize y'urubanza rwajuririwe, ariko rutegeka ko umwe mu banyamigabane witwa Karangwa Fulgence yishyura uruhare rwe rungana na 541.319 Frw, kuko yabyiyemereye imbere y'Urukiko.

Murwanashyaka yasabye ko urubanza rusubirwamo ku mpamvu z'akarengane avuga ko umwenda utarabariwe inyungu zingana na 100.000 Frw buri kwezi kugeza urubanza rubaye itegeko nkuko biri mu masezerano bakoranye, kandi ko abanyamigabane ba BAMU TRADE COMPANY Ltd bataretegetswe gufatanya nayo kumwishyura.

Ku kibazo kijyanye n'inyungu, Urukiko rwasanze hataragombaga kubarwa 100.000 Frw buri kwezi, kuko ibyemeranyijwe mu masezerano ari inyungu mbumbe zingana na 300.000 Frw. Rwasanze ahubwo nk'uko inkiko zibanza zari zabyemeje, Murwanashyaka Jean Damascène agomba kubaririwa inyungu z'ubukererwe zitateganyijwe mu masezerano, hashingiwe ku kigereranyo cy'inyungu ku nguzanyo gitangazwa na Banki Nkuru y'Igihugu, kugeza igihe urubanza rwabereye itegeko. Urukiko rwemeje ko BAMU TRADE COMPANY Ltd igomba kwishyura Murwanashyaka Jean Damascène umwenda usigaye n'inyungu zawo bingana na 3.521.668 Frw, havuyemo 541.319 Frw

Urukiko Rukuru rw'Ubucuruzi rwategetse ko agomba kwishyurwa na Karangwa Fulgence, ni ukuvuga 3.521.668Frw - 541.319Frw = 2.980.349Frw. Ku kibazo cyo kumenya niba abanyamigabane ba BAMU TRADE COMPANY Ltd bagomba gufatanya nayo kwishyura,

Urukiko rwagaragaje ko kugira ngo umunyamigabane aryozwe ibikorwa bya sosiyete, harebwa niba yarakoresheje nabi imiterere ya sosiyete agamije uburiganya cyangwa kwica amategeko; cyangwa hakarebwa niba yarafashe nabi umutungo wa sosiyete nk'aho ari umutungo w'abantu ku giti cyabo.

Urukiko rwagaragaje kandi ko ku byerekeye gukoresha nabi imiterere ya sosiyete hagamijwe uburiganya cyangwa kwica amategeko, ari ngombwa ko hagaragazwa ubushake bw'umunyamigabane bwo kubangamira abandi, kandi yumva ko atazabiryozwa ku giti cye; rwongeraho ko ibikorwa by'uwo munyamigabane bigomba kuba bigamije inyungu ze bwite, atari inyungu za sosiyete.

Incamake y'icyemezo: 1. Iyo icyumvikanyweho ari ukwishyura amafaranga ariko ntiyishyurwe mu gihe cyagenwe, ayo mafaranga abarirwa inyungu uhereye igihe yagombaga kwishyurirwa, ariko haba hari amafaranga uruhande rwishe amasezerano rufiteho uburenganzira akabanza kuvanwamo.

2. Igihe inyungu zitateganyijwe mu masezerano, igipimo cyazo gishingira ku kigereranyo cy'inyungu ku nguzanyo (*Taux moyen de prêt/average lending rate*) gitangazwa na Banki Nkuru y'u Rwanda.

3. Umunyamigabane cyangwa umuyobozi wa sosiyete ntibaryozwa inshingano zayo bitewe gusa n'uko ari abanyamigabane, keretse iyo bakoresheje nabi imiterere yayo bagamije uburiganya cyangwa kwica amategeko, no kuba barafashe nabi umutungo wa sosiyete nk'aho ari umutungo w'abantu ku giti cyabo.

Ikirego gifite ishingiro kuri bimwe;

Amategeko yashingiweho:

Itegeko N° 27/2017 ryo ku wa 31/05/2017 rigenga amasosiyete y'ubucuruzi, ingingo ya 23, ryakurikizwaga igihe BAMU TRADE COMPANY Ltd na Murwanashyaka Jean Damascène bagiranaga amasezerano;

Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, Ingingo ya 64 niya 144.

Imanza zifashishijwe:

Urubanza RCOMAA 0056/2016/SC-RCOMAA 0061/16/CS, rwa Twagiramungu Vénuste vs Ikigo cy'Igihugu cy'Imisoro n'Amahoro, rwaciwe n'Urukiko rw'Ikirenga ku wa 14/07/2017;

Urubanza RS/INJUST/RCOM 00014/2022/SC rwa Mugwaneza Carine na Banki ya Kigali, rwaciwe n'Urukiko rw'Ikirenga ku wa 31 werurwe 2023;

Urubanza RCOMAA 00040/2016/SC, rwa Munyampundu Antoine na Mukarugambwa Béatrice n'Ikigo cy'Igihugu cy'Imisoro n'Amahoro, rwaciwe n'Urukiko rw'Ikirenga ku wa 22/12/2017;

Urubanza RS/INJUST/RCOM 00009/2021/SC, rwa LETSHEGO RWANDA Ltd na Umubyeyi Marie Claire rwaciwe n'Urukiko rw'Ikirenga ku wa 29/04/2022.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 13/07/2017, Murwanashyaka Jean Damascène yagiranye na BAMU TRADE COMPANY Ltd amasezerano yo kuyibitsamo amafaranga angana na 2.730.000 Frw kuri konti yayo N° 0003-01390161545-46 iri muri COGEBANQUE Plc, ahabwa sheki yagombaga kuyabikuzaho ku wa 13/08/2017**.** Iyo tariki igeze Murwanashyaka Jean Damascène ntiyahawe amafaranga, akorerwa indi nyandiko ku wa 16/10/2017 ivuga ko azishyurwa ku wa 20/10/2017, hiyongereyeho inyungu zingana na 300.000 Frw zo gutinda kwishyurwa, igiteranyo kikaba 3.030.000 Frw.

[2] Ku itariki ya 20/10/2017 nabwo BAMU TRADE COMPANY Ltd ntiyabashije kwishyura Murwanashyaka Jean Damascène, bituma ayirega mu Rukiko rw'Ubucuruzi, agobokesha abanyamigabane 8 bayishinze aribo Rutunganya Jean Marie, Gato Peter, Mwesigwa Godefrey, Karangwa Fulgence, Nyiracumi Ruth, Mukeshimana Ephrem, UwambajimanA Eduidge na Bikorabagabo Jean Bosco, kugirango sosiyete nibura ubwishyu buzakurwe mu mitungo yabo. Yasabye Urukiko kubategeka kumwishyura 2.730.000 Frw, inyungu zayo zingana na 2.200.000 Frw zibazwe kugeza mu kwezi kwa 08/2019 n'indishyi zitandukanye. Yasobanuye ko mu masezerano yo ku wa 16/10/2017, bamwemereye kumwishyura bongeyeho inyungu za 300.000Frw mu mezi atatu bari bamaranye amafaranga, ariho ashingira abara inyungu zingana na 100.000 Frw buri kwezi, zibazwe kugeza mu kwezi kwa 8/2019 atanga ikirego, zose hamwe zikaba 2.200.000 Frw.

[3] Urubanza RCOM 02001/2020/TC rwaburanishijwe hitabye Karangwa Fulgence gusa, abandi banyamigabane badahari ariko barahamagajwe mu buryo bukurikije amategeko. Yavuze ko ku mwenda Murwanashyaka Jean Damascène aregera, bishyuyeho ibihumbi magana arindwi (700.000 Frw); asaba kubwirwa uruhare rwe akarwishyura.

[4] Urubanza rwaciwe ku wa 10/11/2020, Urukiko rwemeza ko BAMU TRADE COMPANY Ltd ifitiye Murwanashyaka Jean Damascène umwenda ungana na 2.330.000Frw yakereranywe iminsi 670 kuko yemera ko kuri 3.030.000 Frw hari 700.000 Frw yishyuwe ; rwemeza kandi ko nta buryozwe buri ku banyamigabane ba BAMU TRADE COMPANY Ltd ku giti cyabo. Rwayitegetse kumwishyura 4.330.550Frw akubiyemo 2.330.000Frw y'umwenda, 780.550Frw y'inyungu, 300.000Frw y'indishyi z'akababaro, 600.000Frw y'igihembo cy'Avoka, 300.000Frw y'ikurikiranarubanza na 20.000 Frw y'ingwate y'amagarama.

[5] Urukiko rwasobanuye ko inyungu za 100.000 Frw buri kwezi Murwanashyaka Jean Damascène yasabaga nta shingiro zifite, kuko ntaho zanditswe mu masezerano bagiranye. Rwasanze ahubwo kuba BAMU TRADE COMPANY Ltd yaratinze kwishyura umwenda, yatanga inyungu Banki zica ku nguzanyo zitanga zibariwe ku gipimo cya 18% ku mwaka mu gihe cy'iminsi 670, bikaba 780.550 Frw.

[6] Urukiko rwasobanuye kandi ko nta kimenyetso urega yarugaragarije gihamya ko abanyamigabane aribo batumye BAMU TRADE COMPANY Ltd itabasha kumwishyura, bitewe no gutagaguza cyangwa gucunga nabi umutungo wayo, ku buryo byatuma bishyura ku giti cyabo.

[7] Murwanashyaka ean Damascène na BAMU TRADE COMPANY Ltd bajuriye mu Rukiko Rukuru rw'Ubucuruzi. Murwanashyaka Jean Damascène yajuriye avuga ko Urukiko rwanze

gutegeka abanyamuryango ba BAMU TRADE COMPANY Ltd gufatanya nayo kumwishyura umwenda wemejwe, kandi ko hari n'umunyamigabane wemeye kwishyura uruhare rwe ariko Urukiko ntirwabyemeza. Yavugaga kandi ko indishyi yasabye atarizo yahawe, akanasaba ko inyungu yagenewe ku rwego rubanza zakomeza kubarwa kugeza urubanza ruciwe.

[8] BAMU TRADE COMPANY Ltd yo yajuriye ivuga ko yemera umwenda ifitiye Murwanashyaka Jean Damascène ungana na 2.030.000 Frw kubera ko yishyuwe 700.000 Frw, kandi ko yemera gutanga 500.000 Frw y'igihembo cy'Avoka na 20.000 Frw y'amagarama y'urubanza, igasaba guhabwa igihe cy'amezi atatu (*3*) yo kuba yarangije kwishyura. Ku bijyanye n'izindi ndishyi zagenewe Murwanashyaka Jean Damascène, BAMU TRADE COMPANY Ltd yasabaga ko zakurwaho kuko ziri hafi kwikuba kabiri kandi yarahombye kubera ko hari abantu yahaye amafaranga batayishyuye.

[9] Imanza kuri ubwo bujurire zahurijwe hamwe, uwitwa Cyurinyana Immaculée agoboka ku bushake avuga ko yatije ingwate BAMU TRADE COMPANY Ltd, yo n'abanyamuryango bayo ntibubahiriza amasezerano bagiranye na AB Bank Ltd, ariyo mpamvu asaba ko iyo ngwate yayisubizwa abafashe umwenda bagatanga ingwate ku giti cyabo, aho kugira ngo ingwate yabatije itezwe cyamunara.

[10] Urubanza rwaburanishijwe Gato Peter, Mukeshimana Ephrem, Mwesigwa Godefrey, Rutunganya Jean Marie, Nyiracumi Ruth na Uwambajimana Eduige batitabye Urukiko ariko barahamagajwe mu buryo bukurikije amategeko. Ku wa 30/12/2021, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00853/2021/HCC-CMB RCOMA 00856/2021/HCC, rwemeza ko ubujurire bwa Murwanashyaka Jean Damascène aribwo bufite ishingiro, rutegeka Karangwa Fulgence kumwishyura 541.319 Frw, BAMU TRADE Company Ltd ikamwishyura umwenda usigaye ungana na 3.789.231 Frw.

[11] Urukiko Rukuru rw'Ubucuruzi rwatanze ibisobanuro bikurikira :

a. BAMU TRADE COMPANY Ltd niyo igomba kwishyura umwenda, kuko abanyamigabane bayo bawuryozwa ari uko uwareze agaragaje ko bakoresheje nabi imiterere ya sosiyete bagamije uburiganya cyangwa kwica amategeko, cyangwa ko bafashe nabi umutungo wa sosiyete nk'aho ari umutungo w'abantu ku giti cyabo.

b. Ibyo BAMU TRADE COMPANY Ltd ivuga ko umwenda igomba kwishyura utabarirwamo inyungu za 300.000 Frw, ahubwo ko yakwishyura 2.030.000 Frw, nta shingiro bifite kuko impande zombi zumvikanye mu masezerano yo ku wa 16/10/2017 ko ari inyungu z'ubukererwe. Kuba kandi umwenda uregerwa utarishyuriwe igihe, ugomba kubarirwa inyungu hiyongereyeho indishyi z'akababaro n'ibyo Murwanashyaka Jean Damascène yatakaje aburana uwo mwenda.

c.N'ubwo hasobanuwe ko abanyamigabane ba BAMU TRADE COMPANY Ltd batagomba kuryozwa umwenda wayo, nta cyabuza ko Karangwa Fulgence yishyura uruhare rwe kuko yabyiyemereye imbere y'Urukiko.

[12] Ku birebana n'ukugoboka ku bushake kwa Cyurinyana Immaculée, Urukiko rwemeje kutakira ikirego cye kuko rwasanze nta nyungu afite zo kugoboka mu rubanza ruburanwamo umwenda ukomoka ku masezerano BAMU TRADE COMPANY Ltd yagiranye na

Murwanashyaka Jean Damascène, mu gihe ayo masezerano atavugwamo ingwate avuga ko yatije BAMU TRADE COMPANY Ltd kugira ngo ihabwe umwenda na AB Bank Plc.

[13] Nyuma y'uko Urukiko Rukuru rw'Ubucuruzi ruciye urwo rubanza, Murwanashyaka Jean Damascène yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubwo busabe, yohererej Perezida w'Urukiko rw'Ikirenga raporo yarukozeho, nawe yemeza ko rwongera kuburanishwa n'Urukiko rw'Ikirenga, rwandikwa kuri RS/INJUST/RCOM 00013/2022/SC.

[14] Iburanisha ryashyizwe ku wa 16/10/2023, uwo munsi hitaba Murwanashyaka Jean Damascène, uregwa n'abagobokeshejwe batitabye uretse Uwambajimana Eduidge wenyine. Urukiko rwasanze mu bataje hari

ababuranyi batatu (3) batahamagawe mu buryo bukurikije amategeko aribo Mwesigwa Godefrey, Nyiracumi Ruth na Bikorimana Jean Bosco, rwemeza ko iburanisha risubikwa bakabanza guhamagarwa, na Rutunganya Jean Marie agashaka Avoka.

[15] Iburanisha ryimuriwe ku wa 15/01/2024, uwo munsi hitaba Murwanashyaka Jean Damascène ahagarariwe na Me Rwamukwaya Evariste, BAMU TRADE COMPANY Ltd ititabye. Mu bagobokeshejwe hitabye Karangwa Fulgence yunganiwe na Me Ndayambaje Iyamuremye Simon, Nyiracumi Ruth na Bikorabagabo Jean Bosco nabo bitabye ariko nta Avoka bafite. Rutunganya Jean Marie, Gato Peter, Mwesigwa Godefrey, Mukeshimana Ephrem na Uwambajimana Eduidge ntibitabye; ariko bari bahamagawe mu buryo bukurikije amategeko. Iburanisha ryimuriwe ku wa 09/04/2024 kugirango ababuranyi bitabye badafite Abavoka babashake.

[16] Ku wa 09/04/2024, Murwanashyaka Jean Damascène yitabye ahagarariwe na Me Rwamukwaya Evariste, BAMU TRADE COMPANY Ltd ititabye, naho mu bagobokeshejwe hitabye Karangwa Fulgence yunganiwe na Me Ndayambaje Iyamuremye Simon, Uwambajimana Eduidge ahagarariwe na Me Mutayega Bizimana Bibley, Nyiracumi Ruth yunganiwe na Me Umugwaneza Diane. Rutunganya Jean Marie, Gato Peter, Mwesigwa Godefrey, Bikorabagabo Jean Bosco na Mukeshimana Ephrem ntibitabye, Urukiko rwemeza ko iburanisha rikomeza badahari kuko bahamagawe mu buryo bukurikije amategeko.

[17] Ababuranyi bagiye impaka ku kibazo cyo kumenya niba umwenda BAMU TRADE COMPANY Ltd ibereyemo Murwanashyaka Jean Damascène ukwiye kubarirwa inyungu, uyu agasaba kubarirwa inyungu zingana na 100.000 Frw buri kwezi kugeza urubanza rubaye itegeko, naho abaregwa bakavuga ko nta nyungu zikwiye kubarwa. Hagiwe impaka kandi ku kibazo cyo kumenya niba abanyamigabane ba BAMU TRADE COMPANY Ltd bategekwa gufatanya nayo kwishyura Murwanashyaka Jean Damascène.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1.Kumenya niba umwenda Murwanashyaka Jean Damascène yishyuza ukwiye kubarirwa inyungu n'uko zaba zingana

[18] Murwanashyaka Jean Damascène avuga ko inyungu za 300.000 Frw mu mezi atatu ku mwenda remezo wa 2.730.000 Frw impande zombi zazemeranyijweho mu masezerano yo ku wa 16/10/2017, bivuze ko buri kwezi yagombaga kujya yungukirwa 100.000 Frw kugeza ubwishyu burangiye. Avuga ko kuba atarishyuwe akagana inkiko, inyungu zigomba gukomeza kubarwa, bityo akaba asaba gusubizwa amafaranga yabikije angana na 2.730.000 Frw n'inyungu zayo zingana na 6.000.000 Frw, kandi zigakomeza kubarwa kugeza urubanza rubaye itegeko.

[19] Avuga ko inyungu asaba ziteganywa n'ingingo ya 86 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iteganya ko iyo amasezerano yishwe mu buryo bukabije biturutse ku kudakora ibisabwa, bitanga uburenganzira bwo gusaba indishyi ku bitakozwe byose mu gihe izo ndishyi zikuraho inshingano zisigaye z'uruhande rwarenganye. Ku bivugwa na bamwe mu banyamigabane ba BAMU TRADE COMPANY Ltd ko amafaranga yatanze yari ayo kwishingira uwitwa Ngarambe kugira ngo agurizwe amafaranga yo kugura imodoka, avuga ko atari byo, ko ahubwo ari ayo yabikije muri BAMU TRADE COMPANY Ltd kugira ngo izamwungukire.

[20] Karangwa Fulgence avuga ko inyungu zisabwa na Murwanashyaka Jean Damascène zitigeze ziteganywa mu masezerano yagiranye na BAMU TRADE COMPANY Ltd, kandi ko n'ubwo atishyuwe zikabije kuba umurengera. Avuga kandi ko kuba Rutunganya Jean Marie ariwe wamuhaye sheki ku giti cye abandi banyamuryango batabizi, ndetse akamukorera inyandiko y'inyungu z'ubukererwe, ari we wenyine ukwiye kubyirengera.

[21] Karangwa Fulgence asobanura ko uwitwa Ngarambe yasabye Murwanashyaka Jean Damascène amafaranga yo gushyira muri BAMU TRADE COMPANY Ltd kugira ngo azabashe guhabwa inguzanyo yo kugura imodoka, akayatanga ari ukumwishingira ariko inguzanyo ntiboneke, akaba asanga nta nyungu zikwiye gutangwa kuri ayo mafaranga. Yongeraho ko asanga icyemezo cy'Urukiko Rukuru rw'Ubucuruzi kidakwiriye guhinduka.

[22] Nyiracumi Ruth avuga ko nta nyungu Murwanashyaka Jean Damascène akwiriye guhabwa, kuko atigeze asobanura icyo ashingiraho azisaba, kandi zikaba zitarateganyijwe mu masezerano.

[23] Uwambajimana Eduidge avuga ko atazi iby'itangwa ry'ayo mafaranga, ko nta n'inyungu zikwiye kubarwa.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 64 y'Itegeko N^0 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano igira iti: "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya".

[25] Ingingo ya 144 y'Itegeko rimaze kuvugwa yo iteganya ko "Iyo kwica amasezerano birebana no kutishyura amafaranga cyangwa kudakora igisabwa gishobora kubarwa mu mafaranga azwi cyangwa ashobora kumenyekana, inyungu zibarwa uhereye igihe igisabwa cyagombaga gukorwa hakuwemo ibyo uruhande rwishe amasezerano rufiteho uburenganzira".

[26] Kimwe mu byumvikana muri izi ngingo, ni uko icyumvikanyweho mu masezerano kigomba kubahirizwa uko kiri. Iyo icyumvikanyweho ari ukwishyura amafaranga ariko ntiyishyurwe mu gihe cyagenwe, ayo mafaranga abarirwa inyungu uhereye igihe yagombaga kwishyurirwa, ariko haba hari amafaranga uruhande rwishe amasezerano rufiteho uburenganzira akabanza kuvanwamo.

[27] Ku bijyanye n'uburyo inyungu zibarwa (igihe zitateganyijwe mu masezerano), mu rubanza Mugwaneza Carine Sandrine yaburanaga na Bank of Kigali Plc[1], uru Rukiko rwagaragaje ko igipimo cyazo gishingira ku kigereranyo cy'inyungu ku nguzanyo (*Taux moyen de prêt/average lending rate*) gitangazwa na Banki Nkuru y'u Rwanda, ruvanaho umurongo wari warafashwe mu rubanza Sebahizi Jules yaburanaga na Equity Bank Rwanda Ltd[2], kimwe n'urwo Nsengiyumva Théoneste yaburanye na Ntagungira Jérôme na bagenzi be[3]; muri izo manza hakaba hari hemejwe ko inyungu zibarirwa ku gipimo cy'izo amabanki aheraho abakiriya bayo babikije amafaranga kugirango abungukire (*deposit rate*).

[28] Muri uru rubanza, dosiye igaragaza amasezerano yasinywe hagati ya Murwanashyaka Jean Damascène na BAMU TRADE COMPANY Ltd ku wa 13/07/2017, yo kubitsa kuri konti y'iyi Sosiyete yari muri COGEBANQUE, amafaranga angana na 2.730.000. Muri ayo masezerano, BAMU TRADE COMPANY Ltd yemeranyijwe na Murwanashyaka Jean Damascène ko imuha sheki azajya kubikuza ku wa 13/08/2017, mu rwego rwo kumusubiza ayo mafaranga.

[29] Dosiye igaragaza kandi ko ku wa 16/10/2017, Murwanashyaka Jean Damascène yasinye andi masezerano na Rutunganya Jean Marie nk'Umuyobozi wa BAMU TRADE COMPANY Ltd, anasinywaho na Karangwa Fulgence. Muri ayo masezerano, bemeranyijwe ko amafaranga y'ideni BAMU TRADE COMPANY Ltd ifitiye Murwanashyaka Jean Damascène angana na 2.730.000 azayishyurwa ku wa 20/10/2017, hiyongereyeho ubukererwe bungana na 300.000 Frw, yose hamwe akaba 3.030.000Frw. Kuri iyi tariki Murwanashyaka Jean Damascène ntiyishyuwe ari nacyo cyatumye atanga ikirego.

[30] Mu rubanza RCOM 02001/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 10/11/2020, bigaragara ko Murwanashyaka Jean Damascène yemereye mu iburanisha ko mu mwaka wa 2018 yishyuwe 700.000 Frw, hagasigara 2.330.000 Frw kuri 3.030.000 Frw yagombaga guhabwa. Mu miburanire ye muri uru Rukiko, Murwanashyaka Jean Damascène asaba gusubizwa 2.730.000 Frw hiyongereyeho inyungu zayo zingana na 100.000 Frw buri kwezi kugeza urubanza rubaye itegeko, agasobanura ko mu masezerano yo ku wa 16/10/2017, impande zombi zemeranyijwe ku nyungu za 300.000 Frw ku mezi atatu, bivuga ko ari 100. 000 Frw ku kwezi.

[31] Urukiko rusanga ibisobanuro Murwanashyaka Jean Damascène atanga ku bijyanye n'inyungu zemeranyijweho, atari byo byumvikana mu masezerano yo ku wa 16/10/2017. Icyumvikanamo, ni uko ku mwenda ungana na 2.730.000Frw BAMU TRADE COMPANY Ltd yemeraga ko imufitiye, hari kwiyongeraho amafaranga mbumbe angana na 300.000Frw y'ubukererwe. Muri ayo masezerano, ntihavuzwemo ko ayo mafaranga ahwanye n'inyungu za

[1] Urubanza RS/INJUST/RCOM 00014/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 31/03/2023, ibika bya 53-55.
[2] Urubanza RS/INJUST/RCOM 00001/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 26/01/2018, igika cya 34.
[3] Urubanza RS/INJUST/RC 00012/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 22/07/2022, igika cya 51.

100.000 Frw zibazwe buri kwezi mu gihe cy'amezi atatu, cyane cyane ko nta n'amezi atatu yari arimo hagati y'itariki ya 13/08/2017 yagombaga kwishyurirwaho mbere, n'itariki ya 20/10/2017 ubwishyu bwari bwimuriweho.

[32] Urukiko rusanga ahubwo, nk'uko byasobanuwe n'Urukiko rw'Ubucuruzi, Murwanashyaka Jean Damascène yaragombaga kubarirwa inyungu z'ubukererwe hashingiwe ku biteganywa n'ingingo ya 144 y'Itegeko N^0 45/2011 ryo ku wa 25/11/2011 ryavuzwe haruguru, kuko iyo asubizwa amafaranga mu gihe cyari cyumvikanyweho yari kugira ikindi ayabyaza. Urukiko rusanga ku nyungu zari zabazwe n'Urukiko rw'Ubucuruzi, hakwiyongeraho izibazwe kuva igihe urubanza rwasomewe n'urwo Rukiko (ku wa 10/11/2020) kugeza igihe urubanza rwabereye itegeko, ni ukuvuga ku itariki urubanza rwaciriweho n'Urukiko Rukuru rw'Ubucuruzi (ku wa 30/12/2021).

[33] Urukiko rusanga kuva ku wa 10/11/2020 kugeza ku wa 30/12/2021 harimo iminsi 379, bityo inyungu zikaba zabarwa mu buryo bukurikira :

$$\frac{2.330.000 \text{ Frw} \times 379 \text{ jrs} \times 16,760^{4}}{360 \times 100} = \textbf{411.118 Frw}.$$

Nk'uko byasobanuwe mu gika kibanza, izi nyungu zigomba kwiyongera ku zari zabazwe n'Urukiko rw'Ubucuruzi zingana na 780.550 Frw, zose hamwe zikaba **1.191.668 Frw**.

[34] Hashingiwe ku bisobanuro byose byatanzwe no ku ngingo z'amategeko zagaragajwe, Urukiko rurasanga umwenda Murwanashyaka Jean Damascène yishyuza ungana na 2.330.000 Frw ukwiye kubarirwa inyungu zingana na 1.191.668 Frw ; ayo agomba kwishyurwa yose hamwe akaba 3.521.668 Frw.

[35] Urukiko rurasanga ku mafaranga 3.521.668 Murwanashyaka Jean Damascène agomba kwishyurwa, harimo 541.319 Frw agomba kwishyurwa na Karangwa Fulgence nk'uko byemejwe n'Urukiko Rukuru rw'Ubucuruzi kandi akaba atarasabye ko urubanza rusubirwamo ku mpamvu z'akarengane. Ni ukuvuga ko BAMU TRADE COMPANY Ltd igomba kwishyura 3.521.668 Frw – 541.319 Frw =
2.980.349Frw**.**

2.Kumenya niba abanyamigabane ba BAMU TRADE COMPANY Ltd bategekwa gufatanya nayo kwishyura Murwanashyaka Jean Damascène

[36] Murwanashyaka Jean Damascène avuga ko ibyo asaba ko abanyamigabane ba BAMU TRADE COMPANY Ltd bafatanya nayo kumwishyura, abishingira ku biteganywa n'ingingo ya 92, agace ka 5, y'Itegeko N^o 007/2021 ryo ku wa 05/02/2021 rigenga amasosiyete y'ubucuruzi, iteganya ko urukiko rushobora kurenga uburyozwe bushingiye ku migabane kugira ngo umunyamugabane aryozwe inshingano za sosiyete, iyo rusanze uwo munyamugabane yarakoresheje nabi icyiciro cya sosiyete agamije uburiganya cyangwa kwica amategeko, cyangwa yarafashe nabi umutungo wa sosiyete nk'aho ari umutungo w'abantu ku giti cyabo.

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[4] *Average lending rate* Ukuboza 2021

[37] Asobanura ko ashingiye ku biteganywa n'iyo ngingo, asanga abanyamigabane ba BAMU TRADE COMPANY Ltd aribo bakwiye kumwishyura kuko yahombejwe nabo, nk'uko byagaragajwe n'imvugo umwe muri bo witwa Karangwa Fulgence yavugiye mu rubanza N° RCOMA 00583-00856/2021/HCC, asaba kwishyura umugabane we, ari narwo rusabirwa gusubirwamo. Avuga kandi ko bigaragara no mu cyemezo cy'Urukiko RDP 00362/2018/TB/NYGE, aho uwitwa Cyurinyana Immaculée yareze Rutunganya Jean Marie wari uhagarariye BAMU TRADE COMPANY Ltd, uyu akaba yariyemereye ko impamvu batamwishyuye ari uko amafaranga ya sosiyete yagurijwe ariko ntibashobore kuyishyuza. Yongeraho ko BAMU TRADE COMPANY Ltd ari sosiyete itabaho, ariyo mpamvu abanyamuryango bayo bose bakwiriye kwifashishwa mu kumwishyura, cyane cyane ko ari bo bayihombeje.

[38] Karangwa Fulgence avuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko agomba kwishyura uruhare rwe ku mwenda Murwanashyaka Jean Damascène yishyuza BAMU TRADE COMPANY Ltd rungana na 541.319 Frw, ndetse ko yamaze kwishyuraho 40.500 Frw, akaba yarahagaritswe na Murwanashyaka Jean Damascène wamubwiye ko yakomeje imanza. Asobanura ko yemera kwishyura uruhare rwe kubera ko adashaka gukomeza gukururana mu manza, kuko amaze gutakaza amafaranga menshi.

[39] Nyiracumi Ruth avuga ko nta karengane Murwanashyaka Jean Damascène yagiriwe hemezwa ko abanyamigabane ba BAMU TRADE COMPANY Ltd badakwiye gufatanya kumwishyura, kuko nk'uko Urukiko rwabigaragaje mu rubanza rusubirishwamo, nta kimenyetso Murwanashyaka Jean Damascène agaragaza cyerekana ko abagize BAMU TRADE COMPANY Ltd bakoresheje nabi iyo sosiyete bagamije uburiganya, ko bishe amategeko, cyangwa ko bafashe nabi umutungo wayo nk'aho ari uwabo ku giti cyabo. Avuga kandi ko kuba Karangwa Fulgence yaremeye kwirengera umwenda, bidakwiye gushingirwaho hemezwa ko nawe yakwishyura umwenda atemera kandi utamureba.

[40] Uwambajimana Eduidge avuga ko nta mpamvu yo kumushora muri uru rubanza Murwanashyaka Jean Damascène aregamo BAMU TRADE COMPANY Ltd, kuko amasezerano yabaye hagati yabo bombi akaba ntaho ahuriye nayo, cyane ko BAMU TRADE COMPANY Ltd ifite ubuzima gatozi, we akaba atakiri n'umunyamuryango wayo.

UKO URUKIKO RUBIBONA

[41] Ingingo ya 23 y'Itegeko N° 27/2017 ryo ku wa 31/05/2017 rigenga amasosiyete y'ubucuruzi, ryakurikizwaga igihe BAMU TRADE COMPANY Ltd na Murwanashyaka Jean Damascène bagiranaga amasezerano, iteganya ko *iyo inyandiko z'ishingwa z'isosiyete zanditswe, isosiyete iba ishinzwe hakurikijwe iri tegeko nk'isosiyete ifite ubuzima gatozi bwite butandukanye n'ubw'abanyamigabane bayo.*

[42] Ingingo ya 95, igika cya mbere, y'iryo Tegeko, iteganya ko uretse iyo ari isosiyete ifite uburyozwe butagarukira ku migabane, umunyamigabane ataryozwa inshingano ya sosiyete kuko ari umunyamigabane gusa […]. Naho mu gika cyayo cya nyuma, iyo ngingo igateganya ko urukiko rushobora kurenga uburyozwe bushingiye ku migabane kugira ngo umunyamugabane aryozwe inshingano za sosiyete, iyo rusanze uwo munyamugabane yarakoresheje nabi imiterere

ya sosiyete agamije uburiganya cyangwa kwica amategeko cyangwa yarafashe nabi umutungo wa sosiyete nk'aho ari umutungo w'abantu ku giti cyabo.

[43] Amahame y'ingenzi yumvikana muri izi ngingo, ni uko sosiyete igira ubuzima gatozi butandukanye n'ubw'abanyamigabane, kandi kuri sosiyete ifite uburyozwe bugarukira ku migabane (*a company limited by shares/société à responsabilité limitée par actions*), umunyamigabane akaba ataryozwa inshingano za sosiyete bitewe gusa n'uko ari umunyamigabane. Icyakora iryo hame ryo kutaryoza umunyamigabane inshingano za sosiyete hashingiwe ku kuba bafite ubuzima gatozi butandukanye, rishobora kutitabwaho n'Urukiko ; Itegeko rikaba ryaragennye ko ibyo bishoboka mu bihe bikurikira: kuba umunyamigabane yarakoresheje nabi imiterere ya sosiyete agamije uburiganya cyangwa kwica amategeko; kuba yarafashe nabi umutungo wa sosiyete nk'aho ari umutungo w'abantu ku giti cyabo.

[44] Ihame ryo kutaryoza abanyamigabane inshingano za sosiyete kimwe n'irengayobora kuri iryo hame, byasobanuwe n'uru Rukiko mu manza zinyuranye rwifashishije ibisobanuro by'abahanga. Mu rubanza RCOMAA 0056/2016/SC-RCOMAA 0061/16/CS rwaciwe ku wa 14/07/2017, Urukiko rwagaragaje ko uburyozwe bw'abayobozi cyangwa abanyamigabane ba sosiyete aribyo byitwa *"piercing the corporate veil"* cyangwa *"lifting the veil of the corporation*", ari umwihariko (*exception*) wemezwa gusa n'Urukiko, rukirengagiza itandukaniro riri hagati y'ubuzimagatozi bwa sosiyete n'ubwa ba nyirayo kugira ngo abayobozi cyangwa abanyamigabane baryozwe ibikorwa bya sosiyete nk'aho ari ibyabo […][5]. Urukiko rwagaragaje kandi ko kwemeza uburyozwe bidapfa gukorwa, ahubwo ko hagomba gushingirwa ku mpamvu zisobanutse zigaragaza igituma abayobozi cyangwa abanyamigabane bagomba kuryozwa ibyagombye kuryozwa sosiyete (*circumstances in which the corporate veil may be lifted are greatly circumscribed*) [6].

[45] Ibimaze kuvugwa byagarutsweho mu rubanza RCOMAA 00040/2016/SC rwaciwe ku wa 22/12/2017[7]; byongera kugarukwaho mu rubanza RS/INJUST/RCOM 00009/2021/SC rwaciwe ku wa 29/04/2022[8], Urukiko rwongeraho ko ihame rya *"piercing the corporate veil" rikoreshwa iyo sosiyete yakurikiranyweho uburyozwe noneho uyikurikiranye agasaba ko ubwo buryozwe burenga sosiyete bukagera no ku bayobozi cyangwa abanyamigabane bayo, hamaze kugaragazwa ko bakoze amakosa cyangwa bayicunze nabi.*

[46] Amakosa cyangwa gucunga nabi umutungo wa sosiyete nka zimwe mu mpamvu zo kuryoza abanyamigabane ibikorwa bya sosiyete, aribyo mu ngingo ya 95, igika cya nyuma, y'Itegeko N°27/2017 ryo ku wa 31/05/2017, bigaragazwa nko gukoresha nabi imiterere ya sosiyete

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[5] Urubanza RCOMAA 0056/2016/SC-RCOMAA 0061/16/CS, Twagiramungu Vénuste vs Ikigo cy'Igihugu cy'Imisoro n'Amahoro, rwaciwe ku wa 14/07/2017, igika cya 22.

[6] Urubanza *AGC (Investments) Limited v. Commissioner of Taxation*, Federal Commissioner of Taxation (1964) 111 CLR 443 (HC, Mc Tiernan, Kitto, Taylor, Windeyer and Owen JJ), rwavuzwe mu rubanza RCOMAA 0056/2016/SC-RCOMAA 0061/16/CS, Twagiramungu Vénuste vs Ikigo cy'Igihugu cy'Imisoro n'Amahoro, rwaciwe ku wa 14/07/2017, igika cya 22.

[7] Urubanza RCOMAA 00040/2016/SC, Munyampundu Antoine na Mukarugambwa Béatrice baburanye n'Ikigo cy'Igihugu cy'Imisoro n'Amahoro, rwaciwe ku wa 22/12/2017, igika cya 26.

[8] Urubanza RS/INJUST/RCOM 00009/2021/SC, haburana LETSHEGO RWANDA Ltd na Umubyeyi Marie Claire rwaciwe ku wa 29/04/2022, igika cya 17.

hagamijwe uburiganya cyangwa kwica amategeko *(for fraudulent or illegal purposes*/*à des fins frauduleuses ou illégales*), no gufata nabi umutungo wa sosiyete nk'aho ari umutungo w'abantu ku giti cyabo, byagiye bivugwaho n'abahanga banyuranye. Mbere yo kugaragaza ibyavuzwe n'abahanga, Urukiko rurasanga ari ngombwa kubanza kugaruka by'umwihariko ku gisobanuro cy'uburiganya (*fraude).*

[47] Gérard CORNU[9] agaragaza ibikorwa cyangwa imyitwarire bifatwa nk'uburiganya, birimo:

a.Kugambirira gukora ikidakwiye (mauvaise foi, intention frauduleuse);

b.Kubeshya, gukora igikorwa kigamije kubangamira uburenganzira bwagombaga kubahirizwa (tromperie, acte accompli dans le dessein de préjudicier à des droits que l'on doit respecter (ex. Fraude aux créanciers);

c.Kugambirira, ku muntu ufite imyenda, kwishyira mu gihombo cyangwa kucyongera (action qui consiste, de la part du débiteur, à se render sciemment insolvable ou à augmenter son insolvabilité /fraude paulienne);

d.Gukora igikorwa kigaragara nk'aho cyubahirije amategeko hagambiriwe guca inyuma y'itegeko rigira ibyo ribuza (*acte régulier en soi […] accompli dans l'intention d'éluder une loi impérative ou prohibitive* […]/*fraude à la loi*);

[48] Umuhanga mu mategeko Valérie SIMONART avuga ko amategeko y'Ubwongereza ahana umuntu wese uba umunyamigabane wa sosiyete azi neza ko ikora ibikorwa bigamije uburiganya. Yongeraho ko ari ngombwa kugaragaza ubushake bwo kuriganya ababerewemo imyenda ([…] *Ces textes [Companies Act and Insolvency Act] sanctionnent toute personne qui prend sciemment part à une société qui exerce ses activités avec une intention frauduleuse**.** Il est généralement requis que les créanciers démontrent une véritable malhonnêteté ou la volonté de frauder les créanciers(175),[…]*[10].

[49] Abahanga mu mategeko Stéphane ROUSSEAU na Nadia SMAÏLI bavuga ko mu gitabo cy'urwunge rw'amategeko mbonezamubano cya Quebec hagaragaramo ubushake bw'Umushingamategeko bwo guhana imikoreshereze mibi y'imiterere ya sosiyete, hakabaho kuryoza umunyamigabane ibikorwa bya sosiyete, mu gihe uwo munyamigabane yitwaje imiterere ya sosiyete kugirango abangamire abandi akora uburiganya cyangwa yica amategeko, kandi yumva ko atazabibazwa (*La volonté du législateur de sanctionner l'abus de la personnalité morale par la levée du voile corporatif ressort de l'emploi du verbe «masquer» à l'article 317*[11]*[du Code Civil Québecois]. Cette notion exige que l'actionnaire manipule la personnalité morale de la société et détourne sa finalité économique pour commettre une fraude, un abus de droit ou une*

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[9] Gérard CORNU, Vocabulaire juridique,11ème édition, PUF, 2016, p. 482.

[10] Valérie SIMONART, *LA PERSONNALITÉ MORALE EN DROIT PRIVÉ COMPARÉ, L'unité du concept et ses applications pratiques* Allemagne, Angleterre, Belgique, Etats-Unis, France, Italie, Pays-Bas et Suisse, Bruxelles, BRUYLANT, 1995, p.504, [consulté le 02/05/2024], https://bib.kuleuven.be/rbib/collectie/archieven/boeken/simonartpersonnalitemoralecompare-1995.pdf

[11] Art. 317 du Code Civil *Québecois: La personnalité juridique d'une personne morale ne peut être invoquée à l'encontre d'une personne de bonne foi, dès lors qu'on invoque cette personnalité pour masquer la fraude, l'abus de droit ou une contravention à une règle intéressant l'ordre public*.

dérogation à une règle d'ordre public au détriment d'autrui sans assumer de responsabilité personnelle)[12].

[50] Aba bahanga bakomeza basobanura ko imikoreshereze mibi y'imiterere ya sosiyete ishobora kubaho mu buryo bubiri, uburyo bwa mbere bukaba ari igihe umunyamigabane abikoze ashaka guhishira ibikorwa bye bigamije uburiganya no kwica amategeko. Uburyo bwa kabiri ni igihe umunyamigabane yifashishije sosiyete kugirango akore uburiganya cyangwa yice amategeko hatabaye kubimuryoza ku giti cye. Abahanga bongeraho ko ibikorwa by'uwo munyamigabane bigomba kuba bigamije inyungu ze bwite, atari inyungu za sosiyete[13].

[51] Ibiteganyijwe mu ngingo ya 95, igika cya 1 n'icya nyuma, y'Itegeko N° 27/2017 ryo ku wa 31/05/2017 rigenga amasosiyete y'ubucuruzi, birebewe hamwe n'ibyasobanuwe n'inkiko ndetse n'abahanga, byumvikanamo bimwe mu bitekerezo by'ingenzi bikurikira:

a.Kugirango umunyamigabane aryozwe ibikorwa bya sosiyete, hashingirwa ku bintu bikurikira, kandi buri cyose kikaba kihagije:

b.Kuba umunyamugabane yarakoresheje nabi imiterere ya sosiyete agamije uburiganya cyangwa kwica amategeko;

c.Kuba umunyamugabane yarafashe nabi umutungo wa sosiyete nk'aho ari umutungo w'abantu ku giti cyabo.

d.Uburyozwe bw'abayobozi cyangwa abanyamigabane ba sosiyete, ni umwihariko (*exception*) wemezwa gusa n'Urukiko;

e.Mu kwemeza ubwo buryozwe, Urukiko rugomba gushingira ku mpamvu zisobanutse, zigaragaza neza igituma umunyamigabane agomba kuryozwa ibyagombaga ubundi kuryozwa sosiyete;

f.Ku byerekeye gukoresha nabi imiterere ya sosiyete hagamijwe uburiganya cyangwa kwica amategeko, ni ngombwa ko hagaragazwa ubushake bw'umunyamigabane bwo kubangamira abandi, kandi yumva ko atazabiryozwa ku giti cye; e. Ibikorwa by'uwo munyamigabane bigomba kuba bigamije inyungu ze bwite, atari inyungu za sosiyete.

[52] Ku bijyanye n'uru rubanza, ibyo Murwanashyaka Jean Damascène ashingiraho asaba ko abanyamigabane ba BAMU TRADE COMPANY Ltd bategekwa gufatanya kumwishyura, ni ibintu bibiri:

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[12] Stéphane ROUSSEAU et Nadia SMAÏLI, *La « levée du voile corporatif » en vertu du Code civil du Québec : des perspectives théoriques et empiriques à la lumière de dix années de jurisprudence*, *Les Cahiers de droit*, *47*(4), 2006, p.829, [consulté le 03/05/2024], https://doi.org/10.7202/043912ar

[13] *Plus précisément, la manipulation de la personnalité morale que tente d'endiguer l'article 317 peut prendre deux formes. En premier lieu, l'article 317 s'intéresse à l'actionnaire qui manipule la personnalité morale pour légitimer une fraude, un abus de droit ou une dérogation à l'ordre public. Dans un tel cas, l'actionnaire se sert de la société comme d'une façade afin de camoufler ses agissements personnels. […]*
En second lieu, l'emploi du verbe «masquer» permet de réprimer une autre forme de manipulation de la personnalité morale où L'actionnaire se sert de la société comme d'un intermédiaire ***pour commettre une fraude****, un abus de droit ou une dérogation à une règle d'ordre public sans encourir de responsabilité personnelle. Il ne suffit cependant pas que la société ait fait une opération menant à un tel résultat pour que l'article 317 entre en jeu. Encore faut-il que l'opération ait été effectuée dans l'intérêt de l'actionnaire plutôt que dans le seul intérêt de la société elle-même. […];* Ibidem, p.829-830.

a.Imvugo umwe mu banyamigabane witwa Karangwa Fulgence yavugiye mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, asaba kwishyura umugabane we;

b.Imvugo ya Rutunganya Jean Marie uhagarariye BAMU TRADE COMPANY Ltd, MurwanashyakA Jean Damascène avuga ko igaragara mu cyemezo cy'Urukiko N° RDP 00362/2018/TB/NYGE cya dosiye y'uwitwa Cyurinyana Immaculée[14], aho Rutunganya Jean Marie yaba yaremeye ko impamvu batishyuye uwaregaga ari uko amafaranga ya sosiyete yagurijwe abanyamigabane ariko ntibashobore kuyabishyuza**.**

[53] Urukiko rurasanga muri izi mvugo zombi, hatagaragaramo ubushake bw'abanyamigabane ba BAMU TRADE COMPANY Ltd bwo kugambirira gukorera Murwanashyaka Jean Damascène uburiganya cyangwa kwica amategeko, bagamije inyungu zabo bwite. Izi mvugo ntizigaragaza kandi ko abanyamigabane bafashe nabi umutungo wa sosiyete nk'aho ari uwabo ku giti cyabo.

[54] Urukiko rurasanga kandi ibyo Murwanashyaka Jean Damascène avuga ko BAMU TRADE COMPANY Ltd ari baringa, ko ari yo mpamvu asaba kwishyurwa n'abanyamigabane bayo, nta shingiro byahabwa kuko uretse kuba muri dosiye hari icyemezo kigaragaza ko yanditse nka sosiyete, ariwe wayireze kandi akaba atari kuyirega azi ko itabaho.

[55] Hashingiwe ku bisobanuro byose byatanzwe, no ku ngingo z'amategeko zagaragajwe, Urukiko rurasanga abanyamigabane ba BAMU TRADE COMPANY Ltd batategekwa gufatanya nayo kwishyura Murwanashyaka Jean Damascène.

3.Kumenya ishingiro ry'indishyi zisabwa

[56] Murwanashyaka Jean Damascène asaba Urukiko gutegeka BAMU TRADE COMPANY Ltd n'abanyamigabane bayo kumuha 2.000.000 Frw y'indishyi mbonezamusaruro kuko amaze imyaka igera kuri itanu (5) asiragira mu nkiko; agasobanura ko izo ndishyi zishingiye ku mwanya yataye n'ibyo yatakaje aregera amafaranga ye. Avuga kandi ko asaba 1.000.000 Frw y'ikurikiranarubanza na 2.000.000 Frw y'ibihembo yagiye ahemba abunganizi kuva uru rubanza rwatangira.

[57] Karangwa Fulgence avuga ko indishyi Murwanshyaka Jean Damascène asaba zaryozwa BAMU TRADE COMPANY Ltd kuko ariyo bagiranye amasezerano kandi akaba atakiri umunyamigabane wayo. Asaba ko ahubwo Murwanashyaka Jean Damascène yategekwa kumuha 2.000.000Frw y'igihembo cy'Avoka ku manza zose, na 1.500.000Frw akubiyemo 1.000.000Frw yo gushorwa mu manza na 500.000 Frw y'ikurikiranarubanza.

[58] Nyiracumi Ruth avuga ko indishyi Murwanshyaka Jean Damascène asaba ntaho zihuriye n'abanyamigabane ba BAMU TRADE COMPANY Ltd. Asaba ko ahubwo yategekwa kumuha 800.000 Frw y'indishyi zo kumushora mu manza kandi nta masezerano afitanye nawe, na 200.000 Frw y'ikurikiranarubanza.

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[14] Bigaragara ko ari icyemezo ku ifunga n'ifungurwa ry'agategenyo ku kirego Ubushinjacyaha bwaregagamo BAMU TRADE COMPANY Ltd na Rutunganya Jean Marie, icyaha cy'ubuhemu n'icyo guhimba cyangwa guhindura inyandiko, biturutse ku nzu Cyurinyana Immaculée yatanzeho ingwate muri BAMU TRADE COMPANY Ltd kugirango muramukazi we agurirwe inzu, ariko ikaba itaraguzwe. Urukiko rwemeje ko nta mpamvu zikomeye zituma Rutunganya Jean Marie uhagarariye BAMU TRADE COMPANY Ltd akekwaho ibyaha akurikiranyweho.

[59] Uwambajimana Eduidge avuga ko 5.000.000 Frw urega asaba zakwishyurwa na BAMU TRADE COMPANY Ltd bagiranye amasezerano, cyane cyane ko atakiri n'umunyamuryango wayo. Asaba ko ahubwo Urukiko rwategeka Murwanashyaka Jean Damascène kumuha 2.000.000 Frw y'igihembo cy'Avoka na 1.000.000Frw y'ikurikiranarubanza.

[60] Murwanashyaka Jean Damascène avuga ko Uwambajimana Eduidge na Karangwa Fulgence bakiri abanyamuryango ba BAMU TRADE COMPANY Ltd kuko itigeze iseswa, by'umwihariko Karangwa Fulgence akaba yarasinye ku masezerano yo ku wa 16/10/2017 aburanwa muri uru rubanza. Yongeraho ko indishyi bamusaba nta shingiro zifite.

UKO URUKIKO RUBIBONA

[61] Ingingo ya 111, igika cya mbere, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza.

[62] Urukiko rurasanga amafaranga Murwanashyaka Jean Damascène asaba kuri uru rwego, akubiyemo indishyi mbonezamusaruro, amafaranga y'ikurikiranarubanza n'ay'igihembo cy'Avoka, adakwiye kuyahabwa kuko hari ibyo atsindiwe mu rubanza.

[63] Ku bijyanye n'indishyi bamwe mu bagobokeshejwe mu rubanza basaba Murwanashyaka Jean Damascène, Urukiko rurasanga Uwambajimana Eduidge na Karangwa Fulgence bakwiye guhabwa amafaranga y'ikurikiranarubanza n'ay'igihembo cy'Avoka, ariko kuko ayo basaba ari menshi bakaba bagenewe n'Urukiko mu bushishozi bwarwo 500.000Frw y'igihembo cy'Avoka na 300.000Frw y'ikurikiranarubanza kuri buri wese. Ku bijyanye na 1.000.000Frw yo gushorwa mu manza Karangwa Fulgence asaba, Urukiko rurasanga ntayo akwiye guhabwa kuko bwari uburenganzira bwa Murwanashyaka Jean Damascène bwo kuregera inkiko no kumugobokesha mu rubanza agamije kurengera inyungu ze.

[64] Urukiko rurasanga amafaranga 800.000 yo gushorwa mu manza Nyiracumi Ruth asaba atayahabwa kuko nk'uko bimaze kuvugwa haruguru, bwari uburenganzira bwa Murwanashyaka Jean Damascène bwo kuregera inkiko no kumugobokesha mu rubanza agamije kurengera inyungu ze. Urukiko rurasanga ahubwo amafaranga 200.000 y'ikurikiranarubanza asaba yayahabwa uko yayasabye kuko ari mu rugero.

III. ICYEMEZO CY'URUKIKO

[65] **Rwemeje** ko ikirego rwashyikirijwe na Murwanashyaka Jean Damascène cyo gusubirishamo ku mpamvu z'akarengane urubanza RCOMA 00853/2021/HCC-CMB RCOMA 00856/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 30/12/2021, gifite ishingiro kuri bimwe;

[66] **Rwemeje** ko imikirize y'urubanza RCOMA 00853/2021/HCC-CMB RCOMA 00856/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 30/12/2021, ihindutse gusa ku

bijyanye n'ingano y'amafaranga BAMU TRADE COMPANY Ltd igomba kwishyura Murwanashyaka Jean Damascène;

[67] **Rwemeje** ko BAMU TRADE COMPANY Ltd igomba kwishyura Murwanashyaka Jean Damascène umwenda usigaye n'inyungu zawo bingana na 3.521.668 Frw, havuyemo 541.319 Frw Urukiko Rukuru rw'Ubucuruzi rwategetse ko agomba kwishyurwa na Karangwa Fulgence, ni ukuvuga 3.521.668 Frw - 541.319 Frw = **2.980.349 Frw**;

[68] **Rutegetse** BAMU TRADE COMPANY Ltd kwishyura Murwanashyaka Jean Damascène **2.980.349 Frw**;

[69] **Rutegetse** Murwanashyaka Jean Damascène kwishyura Karangwa Fulgence 500.000 Frw y'igihembo cy'Avoka na 300.000Frw y'ikurikiranarubanza, yose hamwe akaba **800.000Frw**;

[70] **Rutegetse** Murwanashyaka Jean Damascène kwishyura Uwambajimana Eduidge 500.000 Frw y'igihembo cy'Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba **800.000 Frw**;

[71] **Rutegetse** Murwanashyaka Jean Damascène kwishyura Nyiracumi Ruth 200.000 Frw y'ikurikiranarubanza.