ACCESS BANK RWANDA LTD v. SOTIRU LTD ADD

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00003/2019/SC (Ntezilyayo, P.J., Mukamurisa, Nyirinkwaya, Cyanzayire, na Rukundakuvuga, J.) 26 Kamena 2020]

Amategeko agenga ububasha bw'inkiko – Gusubirishamo urubanza ku mpamvu z'akarengane – Urubanza rwaciwe n'Urukiko rw'Ikirenga – Imanza zaciwe n'Urukiko rw'ikirenga ntizishobora gusubirishwamo ku mpamvu z'akarengane. Ariko mu nyungu z'ubutabera ibi ntibikurizikizwa iyo hari imanza zaciwe mu gihe cy'inzibacyuho hagati y'itariki ya 30/05/2018 n'itariki ya 01/08/2018 mu gihe hari hategerejwe ko hashyirwaho abacamanza bashya b'Urukiko rw'lkirenga n'Urukiko rw'Ubujurire hakurikijwe imiterere mishya y'izo nkiko.

Incamake y'ikibazo: Access Bank Rwanda Ltd yahaye inguzanyo SOTIRU Ltd ndetse amasezerano yayo agenda avugururwa umwenda ugera kuri 299.699.400 Frw. SOTIRU Ltd yaje kunanirwa kwishyura uwo mwenda bituma Access Bank Rwanda Ltd iyirega mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba kuwishyurwa ndetse n'inyungu zinyuranye.

Urwo Rukiko rwaciye urubanza rwemeza rutegeka SOTIRU Ltd kwishyura Access Bank Rwanda Ltd 339.733.477 Frw akubiyemo umwenda remezo wari usigaye n'inyungu zawo.

SOTIRU Ltd yajuririye mu Rukiko Rukuru rw'Ubucuruzi, narwo mu guca urubanza rwemeza ko ubwo bujurire budafite ishingiro. Ijurira mu Rukiko rw'Ikirenga narwo ruca urubanza rwemeza ko ubujurire bwa SOTIRU Ltd nta shingiro bufite; ko umwenda yari ibereyemo Access Bank Rwanda Ltd ungana na 429.799.032 Frw.

SOTIRU Ltd yatanze ikirego muri urwo Rukiko isubirishamo urubanza ingingo nshya, Urukiko ruca urubanza rwemeza ko ikirego cyayo gifite ishingiro, ruyitegeka kwishyura Access Bank umwenda ungana na 240.821.340.71 Frw.

Access Bank Rwanda Ltd yatanze ikirego mu Rukiko rw'Ikirenga isaba gusubirishamo urubanza ku mpamvu z'akarengane urwo rubanza, irabyemererwa. SOTIRU yatanze inzitizi zitandukanye zo kutakira icyo kirego harimo kuba Access Bank yararegeye Urukiko rutabifitiye ububasha. Isobanura kuri iyi nzitizi ivuga ko nkuko biteganywa n'ingingo ya 58 y'ltegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'lnkiko ivuga ko umuburanyi ushaka ko urubanza rusubirwamo ku mpamvu z'akarengane yandikira Perezida w'Urukiko rukuriye urwaciye urubanza bwa nyuma, byumvikana ko nta Rukiko ruri hejuru y'Urukiko rw'lkirenga. Ikavuga kandi ko urubanza rwaciwe n'Urukiko rw'lkirenga rudashobora gusubirwamo kuko urwo Rukiko rutaca urubanza ngo rwongere rwemeze ko rurimo akarengane.

Access Bank Rwanda Ltd ku rundi ruhande yo ivuga ko nta cyabuza urubanza rwaciwe n'Urukiko rw'lkirenga gusubirwamo ku mpamvu z'akarengane mu gihe Perezida w'urwo Rukiko wasuzumye iyakirwa ry'ikirego yasanze urwo rubanza rukwiye gusubirwamo ku mpamvu z'akarengane. Ikavuga ko hatangwa umurongo ku bijyanye no kumenya niba Urukiko rw'Ikirenga rwasubirishamo ku mpamvu z'akarengane urubanza rwaciye.

Incamake y'icyemezo: 1. Imanza zaciwe n'Urukiko rw'ikirenga ntizishobora gusubirishwamo ku mpamvu z'akarengane. Ariko mu nyungu z'ubutabera ibi ntibikurizikizwa iyo hari imanza zaciwe

mu gihe cy'inzibacyuho hagati y'itariki ya 30/05/2018 n'itariki ya 01/08/2018 mu gihe hari hategerejwe ko hashyirwaho abacamanza bashya b'Urukiko rw'lkirenga n'Urukiko rw'Ubujurire hakurikijwe imiterere mishya y'izo nkiko.

Urubanza rwaciwe n'Urukiko rw'Ikirenga rushobora gusubirishwamo ku mpamvu z'akarengane.

Amategeko yashigiweho:
ltegeko Nº 012/2018 ryo ku wa 04/04/2018 rigena imitunganyirize n'imikorere y'ubutegetsi bw'ubucamanza, ingingo ya 50

Imanza zifashishijwe:
RS/INJUST/RC 00022/22/2018/SC, Busoro Gervais vs Busoro Mugunga et al rwaciwe n'Urukiko rw'Ikirenga kuwa 28/06/2019.

Urubanza

l. IMITERERE Y'IKIBAZO

[1] Access Bank Rwanda Ltd yahaye SOTIRU Ltd inguzanyo, mu bihe bitandukanye guhera mu mwaka wa 2005 kugeza 2008, biza kugaragara ko itishyura neza kugeza ubwo SOTIRU Ltd yandikiye Banki iyisaba ubundi buryo bwo kwishyura. Ku wa 15/01/2010, impande zombi zavuguruye amasezerano y'umwenda zemeranywa ko umwenda ugeze ku mafaranga 299.699.400, kandi ko SOTIRU Ltd igomba kuwishyura mu mezi 36 ku nyungu zibariwe kuri 16% ku mwaka.

[2] SOTIRU Ltd yananiwe kubahiriza ayo masezerano, bituma Access Bank Rwanda Ltd itanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge, isaba ko SOTIRU Ltd yategekwa kwishyura umwenda remezo n'inyungu zinyuranye. Icyo kirego cyahawe RCOM 1053/14/TC/NYGE ndetse SOTIRU Ltd iburana yemera umwenda.

[3] Ku wa 16/01/2015, Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza, rutegeka SOTIRU Ltd kwishyura Access Bank Rwanda Ltd 339.733.477 Frw akubiyemo umwenda remezo wari usigaye n'inyungu zawo, no kuyishyura amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka ahwanye na 1.000.000.

[4] SOTIRU Ltd yajuririye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruzi, ubujurire bwayo bwandikwa kuri RCOMA 0108/15/HCC. Urwo Rukiko rwaciye urubanza ku wa 15/5/2015, rwemeza ko:

> ubujurire bwa SOTIRU Ltd budafite ishingiro naho ubujurire bwuririye ku bundi bwa Access Bank Rwanda Ltd bufite ishingiro ;

> urubanza rwajuririwe rudahindutse.

Rwategetse SOTIRU Ltd kwishyura Access Bank Rwanda Ltd indishyi z'ikurikiranarubanza n'igihembo cy'Avoka zingana na 2.000.000 zo ku rwego rw'ubujurire gusa.

[5] SOTIRU Ltd yongeye kujuririra urwo rubanza mu Rukiko rw'lkirenga, ubujurire bwayo buhabwa RCOMAA 0031/15/CS, urwo Rukiko ruca urubanza rwemeza ko ubujurire bwa SOTIRU Ltd nta shingiro bufite ; ko umwenda yari ibereyemo Access Bank Rwanda Ltd ungana na 429.799.032 Frw ; ruyitegeka guha Access Bank Rwanda Ltd indishyi zihwanye na 800.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka.

[6] SOTIRU Ltd yatanze ikindi kirego mu Rukiko rw'lkirenga kigamije gusubirishamo ingingo nshya urubanza RCOMAA 0031/15/SC, gihabwa RS/REV.COM 0001 /2017/SC. Urwo Rukiko rwaciye urubanza ku wa 26/06/2018, rwemeza ko ikirego gifite ishingiro. Rwanemeje ko umwenda SOTIRU Ltd ibereyemo Access Bank Rwanda Ltd ungana na 240.821.340.71 Frw; rutegeka Access Bank Rwanda Ltd kwishyura SOTIRU Ltd indishyi zingana na 1.000.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka.

[7] Access Bank Rwanda Ltd ntiyishimiye icyo cyemezo, itanga ikirego mu Rukiko rw'lkirenga isaba gusubirishamo ku mpamvu z'akarengane urubanza RS/REV.COM 0001/2017/SC rwaciwe ku wa 26/06/2018. Nyuma yo gusesengura impamvu zatanzwe, Perezida w'Urukiko rw'lkirenga yafashe icyemezo n º 177/CJ/2019 gitegeka ko urwo rubanza rwaciwe rusubirwamo, ikirego cyandikwa kuri RS/INJUST/RCOM 0003/2019/SC

[8] Urubanza rwaburanishijwe mu ruhame ku wa 26/05/2020, Access Bank Rwanda Ltd ihagarariwe na Me Buzayire Angèle naho SOTIRU Ltd ihagarariwe na Me Niyondora Nsengiyumva na Me Rwigema Vincent.

[9] Mu myanzuro yayo ndetse no mu nama ntegurarubanza, SOTIRU Ltd yari yatanze inzitizi zikurikira:

> kuba Access Bank Rwanda Ltd itarubahirije ibihe biteganywa n'amategeko ubwo yatangaga ikirego cyo gusaba ko urubanza rusubirwamo ku mpamvu z'akarengane

> kuba Access Bank Rwanda Ltd yararegeye Umuyobozi udafite ububasha.

Mbere yo gusuzuma izo nzitizi, Urukiko rwabanje gusuzuma ikibazo kijyanye no kumenya niba urubanza rwaciwe n'Urukiko rw'lkirenga rushobora gusubirwamo ku mpamvu z'akarengane, ababuranyi bajya impaka kuri icyo kibazo. Nyuma y'iburanisha, Urukiko rwemeje ko ruzabanza gufata umwanzuro kuri icyo kibazo, mbere yo gusuzuma izindi ngingo z'urubanza.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba urubanza rwaciwe n'Urukiko rw'lkirenga rushobora gusubirwamo ku mpamvu z'akarengane.

[10] Me Buzayire Angèle uhagarariye Access Bank Rwanda Ltd avuga ko ashingiye ku ngingo ya 53, igika cya mbere, y'ltegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'lnkiko, ihujwe n'iya 54 y'iryo tegeko mu gace kayo ka 2, asanga nta cyabuza urubanza rwaciwe n'Urukiko rw'lkirenga gusubirwamo ku mpamvu z'akarengane mu gihe Perezida w'urwo Rukiko wasuzumye iyakirwa ry'ikirego yasanze urwo rubanza rukwiye gusubirwamo ku mpamvu z'akarengane.

[11] Asobanura ko Umushingamategeko atigeze avuga ku bijyanye no kuba Urukiko rw'lkirenga rushobora gusubiramo urubanza rwaciye, ku mpamvu z'akarengane, ari yo mpamvu arusaba kuzatanga umurongo kuri iki kibazo gisuzumwa.

[12] Me Niyondora Nsengiyumva na Me Rwigema Vincent bahagarariye SOTIRU Ltd bavuga ko udashobora gushingira ku ngingo ya 53 y'ltegeko N° 30/2018 ryo ku wa 02/06/2018 ryibukijwe haruguru; utayihuje n'iya 58 y'iryo Tegeko, kuko iyi ya nyuma ariyo isobanura ko umuburanyi ushaka ko urubanza rusubirwamo ku mpamvu z'akarengane yandikira Perezida w'Urukiko rukuriye urwaciye urubanza bwa nyuma, byumvikana ko nta Rukiko ruri hejuru y'Urukiko rw'lkirenga

[13] Banavuga ko Perezida w'Urukiko rw'lkirenga asuzuma akarengane kari mu manza zaciwe n'Urukiko rw'Ubujurire, ko igitekerezo cy'Umushingamategeko ari uko urubanza rwaciwe n'Urukiko rw'lkirenga rudashobora gusubirwamo kuko urwo Rukiko rutaca urubanza ngo rwongere rwemeze ko rurimo akarengane.

UKO URUKIKO RUBIBONA

[14] Ingingo ya 50 y'ltegeko N° 012/2018 ryo ku wa 04/04/2018 rigena imitunganyirize n'imikorere y'ubutegetsi bw'ubucamanza, ivuga ko Urukiko rw'lkirenga ari rwo Rukiko rukuriye izindi nkiko zose mu Gihugu kandi ko ibyemezo byarwo bitajuririrwa cyangwa ngo bisubirweho uretse gusa ibyerekeye imbabazi za Perezida wa Repubulika cyangwa gusubira ku cyemezo cyarwo rubyibwirije ku nyungu z'itegeko. lyi ngingo yaje igamije guha umwihariko Urukiko rw'lkirenga no kurugira urukiko rugenzura imicire y'imanza mu zindi nkiko, rugakosora amakosa yaba yakozwe mu nshingano zazo zo kubahiriza amategeko no gutanga ubutabera rubanda ruzitegerejeho, bityo rukanatanga umurongo ku zindi nkiko mu gukemura ibibazo by'amategeko zihura nabyo, aho kuba Urukiko rusuzuma ubujurire ku rwego rwa nyuma nk'uko byahoze. Hakurikijwe amategeko mashya, ububasha nk'ubwo bwasigiwe Urukiko rw'Ubujurire.

[15] lyi ngingo igaragaza impinduka zabaye nyuma y'uko hashyizweho itegeko rishya rigenga imitunganyirize n'imikorere y'ubutegetsi bw'ubucamanza ryo ku wa 04/04/2018 n'itegeko rishya N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko. Koko rero, mbere y'uko aya mategeko asohoka, imanza zaciwe n'Urukiko rw'lkirenga zashoboraga nazo gusubirwamo biciye mu nzira yo gusubirishamo imanza nk'uko byateganywaga n'ingingo ya 81 y'itegeko ngenga N° 03/2012/01- ryo ku wa 13/06/2012 rigena imiterere, imitunganyirize n'ububasha bw'Urukiko rw'lkirenga. lcyakora, nyuma yo gusohoka kw'amategeko yavuzwe haruguru, habayeho inzibacyuho, mu gihe hari hategerejwe ko hashyirwaho abacamanza bashya b'Urukiko rw'lkirenga n'Urukiko rw'Ubujurire hakurikijwe imiterere mishya y'izo nkiko.

[16] Muri icyo gihe cy'inzibacyuho kandi, imanza zari mu Rukiko rw'lkirenga zitari zikiri mu bubasha bwarwo hakurikije amategeko mashya yavuzwe, zagumye muri urwo Rukiko zikomeza kuburanishwa mu gihe hari hategerejwe ko Urukiko rw'Ubujurire ndetse n'Urukiko rw'lkirenga zihabwa abakozi zigatangira gukora mu buryo bushya. Birumvikana ko imanza zari mu Rukiko rw'lkirenga, ari izinjiye zinagomba kuburanishwa hakurikijwe amategeko ya kera kandi ziburanishwa n'abacamanza bari basanzwe baca imanza mu murongo rwari rusanganywe wo gusuzuma inzira z'ubujurire zisanzwe n'izidasanzwe, uwo murongo ukaba ari nawo waje guhabwa Urukiko rw'Ubujurire muri iki gihe.

[17] Urukiko rusanga ari muri icyo gihe cy'inzibacyuho urubanza RS/REV.COM 00001/2017/SC rwaciwemo kuko rwaciwe ku wa 26/06/2018, ni ukuvuga hagati y'igihe Itegeko N° 012/2018 ryo ku wa 04/04/2018 rigena imitunganyirize n'imikorere y'ubutegetsi bw'ubucamanza ryasohokeye[1] , no ku wa 01/08/2018, ni ukuvuga igihe Urukiko rw'lkirenga rwaboneye abacamanza hakurikijwe imiterere yarwo mishya. Uru rubanza rukaba ari rumwe mu zagumye mu Rukiko rw'lkirenga kuko rushingiye ku rubanza RS/REV.COM 00001/2017/SC rusubirishamo urundi ingingo nshya rwari mu zagumye mu Rukiko rw'lkirenga kuko rwari rwaratangiye kuburanishwa, mu gihe izindi nkarwo zari muri urwo rukiko zari zitaratangira kuburanishwa, zoherejwe mu Rukiko rw'Ubujurire hakurikijwe ibiteganywa n'ingingo ya 101 y'itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'lnkiko[1].

[18] Urukiko rusanga ingaruka z'ibyo ku manza Urukiko rw'lkirenga rwari rusanganywe, ari uko muri zo, izoherejwe mu Rukiko rw'Ubujurire iyo ziciwe, zikabonekamo akarengane zishobora kuregerwa mu Rukiko rw'lkirenga ngo zikosorwe mu rwego rwo gusubirishamo imanza ku mpamvu z'akarengane, mu gihe zimwe zari zaratangiye kuburanishwa n'Urukiko rw'lkirenga mu miterere yarwo ya cyera, zitaba zishobora gusubirwamo ku mpamvu z'akarengane hakurikijwe ibiteganywa n'ingingo ya 50 y'ltegeko N° 012/2018 ryo ku wa 04/04/2018 yavuzwe haruguru mu gihe yaba isobanuwe hatitawe ku miterere yihariye n'imikorere y'Urukiko rw'lkirenga mu gihe cy'inzibacyuho.

[19] Kubera izo mpamvu Urukiko rusanga mu nyungu z'ubutabera, guha abaturage uburenganzira bungana no kureshyeshya ababuranyi imbere y'amategeko, imanza zaciwe n'Urukiko rw'lkirenga muri icyo gihe cy'inzibacyuho zigomba gufatwa kimwe n'izicibwa n'Urukiko rw'Ubujurire ubu cyangwa izaciwe n'Urukiko rw'lkirenga amategeko agenga ububasha bw'inkiko n'imiterere y'urwego rw'Ubucamanza atarahinduka, igihe Urukiko rw'lkirenga rwari rugifite ububasha n'abacamanza byahawe Urukiko rw'Ubujurire rw'ubu.

[20] Ni muri urwo rwego rero Urukiko rw'lkirenga rusanga ihame ry'uko imanza zaciwe n'Urukiko rw'lkirenga zidashobora gusubirwaho nk'uko biteganywa mu ngingo ya 50 y'ltegeko N° 012/2018 ryo ku wa 04/04/2018 rigena imitunganyirize, imiterere n'imikorere y'Ubutegetsi bw'Ubucamanza rigomba gusigasirwa, uretse ku byerekeye imanza rwaburanishije mu gihe cy'inzibacyuho ukurikije imiterere yazo, ubu zikaba zagombye kuba ziri mu bubasha bw'Urukiko rw'Ubujurire nk'uko byasobanuwe haruguru.

[21] Rusanga kandi ari muri Ubwo buryo bwo gusesengura amategeko bwita ku cyo amategeko agamije, cyane cyane inyungu z'ubutabera n'ibihe bidasanzwe by'inzibacyuho, imanza zaciwe n'Urukiko rw'lkirenga muri icyo gihe, zishobora gusubirwamo ku mpamvu z'akarengane hatitawe ku mihango n'inzira zisanzwe ibyo ibirego bicamo, akaba ari no muri urwo rwego Perezida w'Urukiko rw'lkirenga yakiriye iki kirego agategeka ko cyandikwa mu bitabo by'Urukiko rw'lkirenga ngo ruburanishwe mu mizi bundi bushya nk'uko biteganywa n'ingingo ya 62 ndetse n'iya 63 z'ltegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko ryavuzwe haruguru.

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[1] Iri tegeko ryasohotse mu igazeti ya Leta, nomero idasanzwe yo ku wa 30/05/2018. Ingingo yaryo ya 9 ivuga ko ritangira gukurikizwa ku munsi ritangarijweho mu igazeti ya Leta

[22] Urukiko rusanga kandi nk'uko biteganywa n'ingingo ya 62 na 63 zimaze kuvugwa mu gika kibanziriza iki, iyo Perezida w'Urukiko rw'lkirenga ategetse ko urubanza rwandikwa ngo rwongere ruburanishwe ku mpamvu z'akarengane, urwo rubanza rugomba kuburanishwa mu mizi cyereka umuburanyi ashoboye kugaragaza impamvu idasanzwe kandi ndemyagihugu, nko kuba harabaye kwibeshya ku bihe byo gutanga ikirego nk'uko Urukiko rw'lkirenga rwabitanzeho umurongo mu rubanza RS/INJUST/RC 00022/22/2018/SC haburana Busoro Gervais na Busoro Mugunga et al [2]

[23] Hashingiwe ku bisobanuro byatanzwe, Urukiko rurasanga ihame ari uko imanza zaciwe n'Urukiko rw'ikirenga zidashobora gusubirishwamo ku mpamvu z'akarengane, ariko mu nyungu z'ubutabera ibyo bikaba bitareba imanza zaciwe mu gihe cy'inzibacyuho, hategerejwe ko hashyirwaho abacamanza bashya b'Urukiko rw'lkirenga n'Urukiko rw'Ubujurire hakurikijwe imiterere mishya y'izo nkiko, ni ukuvuga hagati y'itariki ya 30/05/2018 n'itariki ya 01/08/2018. Bityo, uru rubanza narwo rwinjira muri uwo murongo, akaba ari muri urwo rwego rwakiriwe.

Ill. ICYEMEZO CY'URUKIKO

[24] Rwemeje ko urubanza rwaciwe n'Urukiko rw'lkirenga mu gihe cy'inzibacyuho, hagati y'itariki ya 30/05/2018 n'itariki ya 01/08/2018, rushobora gusubirishwamo ku mpamvu z'akarengane

[25] Rutegetse ko iburanisha rizakomeza ku wa 14 Nzeli 2020 hagasuzumwa izindi ngingo z'urubanza.

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[2] Urukiko rw'lkirenga rwabivuze muri aya magambo:
"Isesengura ry'ingingo ya 62 yavuzwe haruguru, ryumvikanisha neza ko mbere yo kugira ngo Perezida w'Urukiko rw'lkirenga afate icyemezo ko urubanza rusubirwamo ku mpamvu z'akarengane, aba yasuzumye neza raporo yashyikirijwe n'inzego zibishinzwe zavuzwe haruguru. lyo asanze nta nzitizi yatuma urubanza rutaburanishwa mu mizi, ategeka ko urubanza rwongera kuburanishwa, ari nayo mpamvu ingingo ya 63 yavuzwe haruguru, iteganya ko Urukiko rusabwe gusubiramo urubanza ku mpamvu z'akarengane ruruburanisha mu mizi. Mu kubiteganya gutyo, umushingamategeko yumvaga ko ibirebana n'inzitizi biba byarangije gusuzumwa, bityo kuri uru rwego akaba nta nzitizi iba igomba gutangwa. Cyeretse umuburanyi ashoboye kugaragaza impamvu idasanzwe nko kuba harabayeho kwibeshya ku bihe byo gutanga ikirego". Reba urup. rwa 5, igika cya 18 by'urwo rubanza