UWAMBAJE v. ECOBANK RWANDA PLC

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00008/2022/SC (Cyanzayire, P.J., Muhumuza na Kalihangabo, J.) 26 Nyakanga 2024]

Amategeko agenga imitunganyirize y'imirimo y'amabanki – Umwenda – Inyungu – Inyungu zikomoka ku mwenda ikigo cy'imari cyahaye umukiriya ukaba utarishyurwa zikomeza kubarwa kugeza wishyuwe, zipfa gusa kutarenga umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa.

Incamake y'ikibazo: Nkizamacumu yahawe inguzanyo na Ecobank Rwanda Plc ingana na 15 000 000 Frw yishingirwa n'umugore we Uwambaje Francine, nyuma Nkizamacumu aza gupfa atararangiza kwishyura uwo mwenda, bituma Ecobank irega mu Rukiko rw'Ubucuruzi isaba kuwishyurwa.

Urukiko rw'Ubucuruzi rwaciye urubanza rwemeza ko ikirego cya Ecobank Rwanda Plc kidafite ishingiro, ruyitegeka kwishyura Uwambaje indishyi z'akababaro zingana na 800 000 Frw.

Ecobank itishimiye icyo cyemezo yajuririye mu Rukiko Rukuru rw'Ubucuruzi ivugako ibimenyetso yashyikirije Urukiko byirengagijwe ndetse ikaba yarategetswe kwishyura indishyi kandi ari yo yari izikwiye.

Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko ubujurire bwa Ecobank bufite ishingiro, ko urubanza rwaciwe n'Urukiko rw'ubucuruzi ruhindutse mu ngingo zarwo zose, rutegeka ko Uwambaje yishyura Ecobank amafaranga angana na 22.317.396 Frw akubiyemo umwenda remezo ndetse n'inyungu z'ubukererwe.

Uwambaje yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, nawe yandira Perezida w'Urukiko rw'Ikirenga amugezaho ubwo busabe, yemeza ko rusubirishwamo ku mpamvu z'Akarengane.

Mu miburanire y'Uwambaje mu rubanza rusubirwamo ku mpamvu z'akarengane avuga ko atanyuzwe nuko indishyi zabazwe kuko zingana na 12.019.489 Frw ku mwenda remezo ungana na 10.233.987 Frw. Ibyo akavuga ko ari akarengane.

Ecobank Rwanda Plc yiregura ivuga ko kuba Uwambaje mu Rukiko Rukuru rw'Ubucuruzi yaraburanye yemera umwenda ariko yagera mu karengane akaburana avuga ko atemera inyungu yategetswe kwishyura, itabona aho ako karengane kari cyane ko iyo ngingo itaburanywe mu nkiko zabanje.

Incamake y'icyemezo: Inyungu zikomoka ku mwenda ikigo cy'imari cyahaye umukiriya ukaba utarishyurwa zikomeza kubarwa kugeza wishyuwe, zipfa gusa kutarenga umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa.

Ikirego gifite ishingiro kuri bimwe.

Amategeko yashingiweho:

Itegeko N° 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'amabanki, ingingo ya 112, igika cya 2.
Amabwiriza Rusange N°12/2017 yo ku wa 23/11/2017 ku ishyirwa mu byiciro ry'imyenda no guteganya ingoboka, ingingo ya 7, igika cya 2.

Imanza zifashishijwe:
RS/INJUST/RCOM 00008/2021/SC; SIMACO Ltd vs I&M Bank Rwanda Plc rwaciwe n'Urukiko rw'Ikirenga ku wa 25/02/2022

Urubanza

I. IMITERERE Y'URUBANZA

[1] ECOBANK Rwanda Plc yishyuza inguzanyo ingana na 15.000.000 Frw ivuga ko yahaye Nkizamacumu Aphrodis ku wa 29/08/2008, igatangwa mu byiciro bibiri, ikaba yaragombaga kwishyurwa mu gihe cy'amezi atanu, ni ukuvuga bitarenze ku wa 31/01/2009. ECOBANK Rwanda Plc ivuga ko Nkizamacumu Aphrodis yatanze ingwate y'ikamyo Isuzu Benne ifite *plaque* RAA 732X, ndetse umwenda wishingirwa n'umugore we Uwambaje Francine nk'uko bigaragazwa n'amasezerano y'ubwishingizi yakorewe imbere ya Noteri ku wa 08/09/2008.

[2] Nkizamacumu Aphrodis yapfuye ku wa 27/10/2013 atararangiza kwishyura umwenda. Ku wa 12/12/2019, ECOBANK Rwanda Plc yareze Nkizamacumu Aphrodis na Uwambaje Francine, isaba Urukiko kubategeka kwishyura umwenda usigaye n'inyungu ziwukomokaho, no gusuzuma niba ingwate yagurishwa kugira ngo ivemo ubwishyu.

[3] Uwambaje Francine niwe waje mu rubanza, yiregura avuga ko ECOBANK Rwanda Plc itagaragaza igihe yahereye Nkizamacumu Aphrodis umwenda n'aho yawumuhereye, ko atamenye iby'inguzanyo iburanwa, ko n'amasezerano y'ubwishingizi *(acte de cautionnement)* aburanishwa ari inyandiko mpimbano, kuko atari kuyashyiraho umukono kandi atumva ururimi rw'igifaransa yakozwemo, asaba ko umukono uyariho wamwitiriwe upimwa.

[4] Mu rubanza RCOM 02692/2019/TC rwaciwe ku wa 12/03/2020, Urukiko rw'Ubucuruzi rwagaragarijwe n'ababuranyi ko Nkizamacumu Aphrodis yapfuye ikirego kitaratangwa, rwemeza ko ikirego ECOBANK Rwanda Plc imuregamo kidashobora kwakirwa kuko yarezwe yarapfuye, ko urubanza rukomeza haregwa Uwambaje Francine wishingiye umwenda.

[5] Urukiko rwemeje ko ikirego cya ECOBANK Rwanda Plc kidafite ishingiro, ruyitegeka kwishyura Uwambaje Francine indishyi z'akababaro zingana na 800.000 Frw. Rwasobanuye ko :

a. Amasezerano y'umwenda yabaye hagati ya ECOBANK Rwanda Plc na Nkizamacumu Aphrodis ari magirirane, kandi ECOBANK Rwanda Plc ikaba itagaragaza ko Nkizamacumu Aphrodis yahawe amafaranga yasinyiye cyangwa ngo igaragaze uburyo yishyurwaga *(historique)*, nyamara Banki ariyo ifite inshingano zo gutanga ibimenyetso by'ibyo iregera ;

b. Ibijyanye n’igurishwa ry’ingwate bidakwiye gusuzumwa kuko icyemezo cyo kugurisha ingwate gitangwa n’Umwanditsi Mukuru nyuma yo kubisabwa n’uwahawe ingwate[1].

[6] ECOBANK Rwanda Plc yajuririye Urukiko Rukuru rw’Ubucuruzi ivuga ko ibimenyetso yashyikirije Urukiko byirengagijwe, ndetse igategekwa kwishyura indishyi nyamara ariyo izikwiriye. Uwambaje Francine yireguye avuga ko kuba ECOBANK Rwanda Plc itagaragaza ibimenyetso by’ibyo iregera, Urukiko rugomba kwemeza ko itsinzwe.

[7] Mu rubanza RCOMA 00315/2020/HCC rwaciwe ku wa 08/01/2021, Urukiko Rukuru rw’Ubucuruzi rwasanze :

a. Ku wa 29/09/2008 no ku wa 06/11/2008, ECOBANK Rwanda Plc yarashyize kuri konte N° 80757 ya Nkizamacumu Aphrodis 7.500.000 Frw yiswe *mise en place crédit*, ko ibyo bigaragaza ko Banki yubahirije inshingano zayo zo gutanga inguzanyo ingana na 15.000.000 Frw, bikaba byarahaga Nkizamacumu Aphrodis inshingano yo kwishyura hakurikijwe uburyo bwateganyijwe mu masezerano ;

b. Uwambaje Francine atagaragaza ibimenyetso bituma akurirwaho inshingano yo kwishyura umwenda yishingiye cyangwa bigaragaza ko wishyuwe wose.

[8] Urukiko rwemeje ko ubujurire bwa ECOBANK Rwanda Plc bufite ishingiro, ko imikirize y’urubanza rwajuririwe ihindutse mu ngingo zarwo zose, rutegeka Uwambaje Francine kwishyura 22.317.396 Frw akubiyemo 10.233.987 Frw y’umwenda remezo na 12.019.489 Frw y’inyungu z’ubukererwe.

[9] Ku wa 07/02/2021, Uwambaje Francine yandikiye Perezida w’Urukiko rw’Ubujurire asaba ko urubanza RCOMA 00315/2020/HCC rwaciwe n’Urukiko Rukuru rw’Ubucuruzi ku wa 08/01/2021, rusubirwamo ku mpamvu z’akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubwo busabe, yandikiye Perezida w’Urukiko rw’Ikirenga asaba ko urwo rubanza rusubirwamo, maze mu cyemezo N° 134/CJ/2022 cyo ku wa 24/08/2022, yemeza ko rwoherezwa mu Bwanditsi bw’Urukiko rw’Ikirenga kugira ngo ruzongere ruburanishwe.

[10] Mu nama ntegurarubanza, Uwambaje Francine yavuze ko ibyo yasabaga by’uko umukono we uri ku masezerano y’ubwishingizi wapimishwa abiretse, ahubwo ko ibyo yishyuzwa byashakirwa mu ngwate Nyakwigendera yari yarahaye ECOBANK Rwanda Plc, ubwishyu butaboneka akabona gukurikiranwa nk’uhagarariye abazungura ba Nkizamacumu Aphrodis.

[11] Urubanza rwaburanishijwe mu ruhame ku wa 16/10/2023, Uwambaje Francine ahagarariwe na Me Ndikumana Elysée, naho ECOBANK Rwanda Plc ihagarariwe na Me Habakurama François Xavier. Ababuranyi bagiye impaka ku bibazo byo kumenya niba hari umwenda Nkizamacumu Aphrodis yari abereyemo ECOBANK Rwanda Plc n’ingano yawo, no kumenya niba hari indishyi zatangwa mu rubanza.

[12] Nyuma yo kumva ibyo ababuranyi bavuga ku bibazo byasuzumwe, Urukiko rwapfundikiye iburanisha, ababuranyi bamenyeshwa ko urubanza ruzasomwa ku wa 17/11/2023. Kuri uwo munsi

[1] Reba ingingo ya 4 y’Amabwiriza y’Umwanditsi Mukuru N° 03/2010/ORG yo ku wa 16/11/2010 agenga ibyerekeye gukodesha, kugurisha muri cyamunara ndetse no kwegukana ingwate.

urubanza ntirwasomwe kuko umwe mu Bacamanza bari bagize inteko yahinduriwe inshingano, biba ngombwa ko hashyirwaho inteko nshya. Iburanisha ry'urubanza ryapfunduwe ku wa 07/02/2024, isomwa ryarwo rishyirwa ku wa 23/02/2024.

[13] Mu gihe Urukiko rwari rwiherereye ngo ruce urubanza, rwasanze ari ngombwa ko habanza gushyirwaho umuhanga hashingiwe ku biteganywa n'ingingo ya 76 y' Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo[2], kugira ngo afashe kugaragaza ingano y'umwenda remezo wari usigaye kwishyurwa igihe inguzanyo yageraga mu rwego rwo kutishyurwa; inyungu zisanzwe n'iz'ubukererwe zari zitarishyurwa icyo gihe; inyungu z'ubukererwe zabazwe guhera igihe inguzanyo yageraga mu rwego rwo kutishyurwa; n'igiteranyo cy'inyungu zose.

[14] Ku wa 19/03/2024, hashyizweho Umuhanga Ayinkamiye Spéçiose, ahabwa inshingano zagaragajwe hejuru. Yashyikirije Urukiko raporo ye ku wa 02/05/2024, iburanisha ry'urubanza ryongera gupfundurwa ku wa 02/07/2024.

[15] Kuri iyo tariki urubanza rwaburanishirijwe mu ruhame, Uwambaje Francine ahagarariwe na Me Iyamuremye Jean Louis, naho ECOBANK Rwanda Plc ihagarariwe na Me Habakurama François Xavier. ~~A~~baburanyi babwiye Urukiko ko bemeranya na raporo y'Umuhanga, ko nta kindi bongeraho.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

II.1. Kumenya niba hari umwenda Nkizamacumu Aphrodis yari abereyemo ECOBANK Rwanda Plc n'ingano yawo

- **Ku bijyanye n'umwenda remezo**

[16] Uwambaje Francine avuga ko adafite amakuru ku mwenda umugabo we yishyuzwa, kuko atari mu masezerano umugabo we yakoranye na Banki. Avuga ko mbere y'uko umugabo we apfa, yari afite amasoko mu Karere ka Huye n'Akarere ka Nyamagabe, kandi ko nyuma y'urupfu rwe, utwo Turere twanditse tuvuga ko ubwishyu buzanyuzwa kuri konti y'umugabo we iri muri ECOBANK Rwanda Plc. Akomeza avuga ko ECOBANK Rwanda Plc, mu nyandiko itanga inguzanyo, yibutsa inshingano z'utwo Turere twombi, akaba asanga hashingiwe ku biteganywa n'ingingo ya 36[3] y'Itegeko Nº 15/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ECOBANK Rwanda Plc ariyo ikwiye kugaragaza niba utwo Turere twarayishyuye cyangwa tutarayishyuye.

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[2] Ingingo ya 76 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igira iti:" *Ubuhamya bw'abahanga ni ubugamije guha urukiko ibisobanuro bishingiye ku bumenyi kimwe n'umwanzuro urenze ubumenyi busanzwe bw'umucamanza mu kazi ke bitewe n'uko ibiburanwa bishingiye ku buhanga. Bwihariye"*.

[3] Iyo ngingo iteganya ko "*iyo hari impamvu zikomeye, zisobanuye kandi zihuje, zishobora gutuma umuburanyi cyangwa undi muntu ukekwaho inyandiko ikubiyemo ikintu cy'ingirakamaro, urukiko rushobora gutegeka ko iyo nyandiko cyangwa kopi yayo yemejwe ko ihuye n'inyandiko y'umwimerere, bishyirwa muri dosiye y'urubanza ruburanishwa".*

[17] Akomeza avuga ko amafaranga yishyuwe n'Uturere twa Huye na Nyamagabe ku wa 05/11/2008 no ku wa 13/05/2008, atageze ku mwenda Nkizamacumu Aphrodis yari yarahawe, ko ariyo mpamvu basaba inyandiko za *cession de créance.*

[18] Avuga kandi ko kuba mbere yo gutanga inguzanyo, Banki ibanza gusuzuma niba ingwate kuri iyo nguzanyo zikurikije amategeko, ariyo igomba kwirengera ingaruka mu gihe yahawe ingwate zidakurikije amategeko. Yongeraho ko ku birebana na sosiyete y'ubwishingizi yaba yarishingiye umwenda wishyuzwa Nkizamacumu Aphrodis, batakibiburanisha kuko nta kimenyetso bafite kigaragaza ko uwo mwenda wari wishingiwe.

[19] ECOBANK Rwanda Plc ivuga ko ingingo ijyanye no guhabwa dosiye idakwiye gusuzumwa kuko nta handi yigeze iburanwaho mu manza zabanje. Isobanura ko UWAMBAJE Francine, nk'umugore w'isezerano watanze ikirego cy'akarengane, yagombye kuba afite ibimenyetso asaba Banki kuko nta kimubuza kwaka *historique* ya konti yahoze ari iy'umugabo we, kugira ngo asuzume niba koko inguzanyo yaratanzwe n'uburyo yishyuwe ; akaba ashobora kandi no kwandikira Uturere avuga adusaba kugaragarizwa aho twishyuriye umugabo we. Ivuga ko mu nguzanyo nyinshi Nkizamacumu Aphrodis yahawe, iteje ikibazo ari iyo ku wa 29/08/2008.

[20] ECOBANK Rwanda Plc ivuga kandi ko *cession de créance* yatanzwe n'Akarere ka Nyamagabe ntayo ifite, kandi ko n'iyatanzwe n'Akarere ka Huye nta mukono w'ako Karere ugaragaraho, bityo ko nta kigaragaza ko utwo Turere twishyuye umwenda Nkizamacumu Aphrodis yahawe.

[21] Isobanura ko ku mafaranga yishyuwe n'Akarere ka Huye ku wa 05/11/2008 angana na 4.973.000 Frw, Nkizamacumu Aphrodis yahise akuraho asaga miliyoni ebyiri, ku buryo ayasigaye atari kwishyura umwenda wose. Ku bijyanye n'amafaranga angana na 14.909.991 Akarere ka Musebeya kishyuye ku itariki ya 14/05/2008, isobanura ko ayo mafaranga yishyuwe mbere y'ikorwa ry'amasezerano aburanwa, ku buryo ntaho ahuriye n'umwenda uburanwa.

[22] Ivuga kandi ko icyatumye itegereza igihe kigera ku myaka 10 itararega, byatewe n'uko yari igikurikirana ibijyanye n'ingwate yari yarahawe na Nkizamacumu Aphrodis, ariko ko bidaha ufite umwenda uburenganzira bwo kutishyura.

[23] Ku birebana no kuba yari ifite uburenganzira bwo kugurisha ingwate yahawe mu gihe itishyuwe, ECOBANK Rwanda Plc ivuga ko ikibazo cyabaye ari uko ingwate zatanzwe zitabashije kuvamo ubwishyu. Isobanura ko basanze imodoka Nkizamacumu Aphrodis yatanzeho ingwate itamwanditseho, ko ashobora kuba yarayitijwe na AMINI ABED mu rwego rwo kongera agaciro k'ingwate yasabwaga.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko "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] Mu nyandiko zigize dosiye y'urubanza, harimo amasezerano y'umwenda ungana na 15.000.000 Frw yo ku wa 29/08/2008, yasinywe hagati ya ECOBANK Rwanda SA na Nkizamacumu Aphrodis ; uwo mwenda ukaba wari ugenewe kubaka ibyumba by'amashuri mu Karere ka Nyamagabe. Muri ayo masezerano, impande zombi zumvikanye ko umwenda uzatangwa mu byiciro bibiri bihwanye na 7.500.000 Frw.

[26] Dosiye igaragaramo n'amasezerano yiswe *"Acte de cautionnement solidaire",* yasinywe na Uwambaje Francine ku wa 04/09/2008, yiyemeza kwishingira ubwishyu bw'uwo mwenda. Mu Nkiko zibanza, Uwambaje Francine yavugaga ko ayo masezerano ari amahimbano, ko atigeze ayasinya, agasaba ko umukono we wapimwa, ariko muri uru Rukiko yavugiye mu Nama Ntegurarubanza ko asanga nta mpamvu iyi nyandiko yapimishwa. Urukiko rusanga hashingiwe kuri iyi mvugo ye, nta cyabuza ko amasezerano bigaragara ko yasinyeho akoreshwa mu rubanza, kuko iyo aba atarayasinye koko, yari kwemera ko umukono we upimwa.

[27] Muri dosiye harimo nanone inyandiko igaragaza uko amafaranga yinjiye n'uko yasohotse kuri konti Nº 106-08075701-76 ya Nkizamacumu Aphrodis *(historique).* Iyo nyandiko *(historique)* igaragaza ko ku wa 29/09/2008, ECOBANK Rwanda Plc yashyizeho 7.500.000 Frw, ku wa 06/11/2008 yongera gushyiraho 7.500.000 Frw, yose hamwe aba 15.000.000 Frw impande zombi zari zemeranyijweho mu masezerano yo ku wa 29/08/2008.

[28] Ikigaragara muri izi nyandiko zashyikirijwe Urukiko, ni uko ECOBANK Rwanda Plc yahaye Nkizamacumu Aphrodis umwenda ungana na 15.000.000 Frw, ukishingirwa na Uwambaje Francine, ikibazo akaba ari ukumenya niba uwo mwenda warishyuwe wose.

[29] Uwambaje Francine avuga ko uwo mwenda wishyuwe ashingiye ku kuba hari sosiyete y'ubwishingizi yemeye kwishyura umwenda uburanwa, no kuba Nkizamacumu Aphrodis yari afite amasoko mu Karere ka Huye n'Akarere ka Nyamagabe, utwo Turere tukemera kunyuza ubwishyu kuri konti ye muri ECOBANK Rwanda Plc.

[30] Ku bijyanye no kuba hari sosiyete y'ubwishingizi yemeye kwishyura umwenda, mu iburanisha ryo ku wa 16/10/2023, urega yabwiye Urukiko ko babivugaga bashingiye ku bisanzwe bikorwa mu itangwa ry'imyenda, ariko ko nta kimenyetso babifitiye.

[31] Ku bijyanye n'ubwishyu bwaba bwaraturutse ku masoko Nkizamacumu Aphrodis yari afite mu Turere twa Huye na Nyamagabe, utwo Turere tukemera kumwishyura tubinyujije kuri konti ye muri ECOBANK Rwanda Plc, Urukiko rasanga, hashingiwe kuri *historique* ya konti yanyuzwagaho umwenda, nta bwishyu bwigeze buturuka mu Karere ka Nyamagabe kuva igihe umwenda uburanwa watangiwe ku wa 29/08/2008[4]. Ikigaragara kuri *historique*, ni ubwishyu bwakozwe n'Akarere ka Huye ku wa 05/11/2008 bungana na 4.973.000 Frw, Nkizamacumu Aphrodis agahita akuraho 2.347.000 Frw, ariko ubwo bwishyu bukaba butarashoboye kuvanamo umwenda.

[32] Hakurikijwe ibigaragara muri raporo y'Umuhanga washyizweho n'Urukiko kandi impande zombi zikaba ziyemera, ku wa 23/09/2010 Nkizamacumu Aphrodis yishyuye amafaranga angana na 9.000.000, nyuma y'iyo tariki ntiyongera kwishyura. Umwenda remezo wari usigaye

[4] Ubwishyu bugaragara ni ubwakozwe ku wa 13/05/2008, mbere y'uko hasinywa amasezerano y'umwenda uburanwa, bukaba butareba uwo mwenda.

kwishyurwa igihe inguzanyo yageraga ku rwego rwo kutishyurwa, ni ukuvuga ku wa 23/09/2010, wanganaga na 9.798.689 Frw. Urukiko rukaba rurasanga uwo mwenda ugomba kwishyurwa.

[33] Muri dosiye y'urubanza harimo icyemezo cyatanzwe n'Ibitaro bya Kabutare, cyemeza ko Nkizamacumu Aphrodis yapfiriye muri ibyo Bitaro ku wa 27/10/2013. Nk'uko kandi byasobanuwe haruguru, harimo amasezerano yiswe *"Acte de cautionnement solidaire",* yasinywe na Uwambaje Francine ku wa 04/09/2008, yiyemeza kwishingira ubwishyu bw'uwo mwenda. Urukiko rukaba rusanga rero, kuba Uwambaje Francine yari yarishingiye umwenda Nkizamacumu Aphrodis yahawe na ECOBANK Rwanda Plc, ariwe ugomba kuwishyura.

[34] Uwambaje Francine avuga ko ibyo yishyuzwa byashakirwa mu ngwate Nkizamacumu Aphrodis yari yarahaye ECOBANK Rwanda Plc, ubwishyu butaboneka akabona gukurikiranwa nk'uhagarariye abazungura be. Urukiko rusanga ariko n'ubundi nta kimubuza kugurisha izo ngwate akishyura, mu gihe aburanisha ko yari umugore w'isezerano wa Nkizamacumu Aphrodis. Ku bijyanye no gukurikiranwa nk'umuzungura wa Nkizamacumu Aphrodis, Urukiko rurasanga muri uru rubanza atararezwe nk'umuzungura, ahubwo yararezwe nk'uwishingiye umwenda.

[35] Urukiko rusanga kandi ibivugwa n'uwunganira Uwambaje Francine ko Urukiko rwari gutegeka ECOBANK Rwanda Plc gutanga ibimenyetso birimo: amasezerano y'inguzanyo yahawe Nkizamacumu Aphrodis; amasezerano ya *"cession de créance"* agaragaza ko Akarere ka Nyamagabe kemeraga kunyuza ubwishyu bungana na 28.694.280 Frw kuri konti ya Nkizamacumu Aphrodis muri ECOBANK Rwanda Plc, kimwe na *"cession de créance"* Akarere ka Huye kemeraga kwishyura 25.000.000 Frw*; "document d'identification du camion Isuzu Benne RAA 732 X";* nta shingiro bifite. Koko rero, bimwe muri ibyo bimenyetso bigaragara muri dosiye, birimo *amasezerano y'inguzanyo yahawe Nkizamacumu Aphrodis, "document d'identification du camion Isuzu Benne RAA 732 X",* ibindi hakaba nta kibuza Uwambaje Francine kubyishakira mu Turere avuga byatangiwemo. Urukiko rusanga kandi n'iyo bigaragazwa byose nk'uko abisaba, ntacyo byahindura kuri *historique* yashyizwe muri dosiye igaragaza umwenda wahawe Nkizamacumu Aphrodis, n'uburyo wagiye wishyurwa.

[36] Hashingiwe ku bisobanuro byose byatanzwe, Urukiko rusanga Nkizamacumu Aphrodis abereyemo ECOBANK Rwanda Plc umwenda remezo ungana na 9.798.689 Frw, ukaba ugomba kwishyurwa na uwambaje Francine.

- **Ku bijyanye n'ingano y'inyungu**

[37] Uwambaje Francine avuga ko amasezerano ECOBANK Rwanda Plc yagiranye na Nkizamacumu Aphrodis yari kumara amezi 5, bivuze ko hakurikijwe ibiteganywa n'ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, igihe cy'ibara ry'inyungu zisanzwe n'iz'ubukererwe kitari kurenga igihe giteganyijwe mu masezerano. Avuga kandi ko kuba Urukiko Rukuru rw'Ubucuruzi rutaritaye ku biteganywa n'ingingo ya 112[5] y'Itegeko N° 47/2017 ryo ku wa 23/9/2017 rigena imitunganyirize y'imirimo y'amabanki by'uko inyungu zitagombaga kubarwa nyuma y'iminsi 90 uhereye igihe Nkizamacumu Aphrodis yananiriwe kwishyura,

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[5] Iyo ngingo igira iti: *"Mu kwishyuza imyenda itishyurwa, banki ntigomba kurenza umubare w'amafaranga ntarengwa akurikira: umwenda shingiro utarishyuwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa; inyungu zitarenze umwenda shingiro igihe inguzanyo yageraga mu rwego rwo kutishyurwa hakurikijwe amasezerano banki ifitanye n'uyifitiye umwenda; amafaranga yakoreshejwe mu gihe cyo kwishyuza amafaranga yose y'ufitiye umwenda banki*".

byatumye ategekwa kwishyura inyungu z'umurengera, kuko zingana na 12.019.489 Frw ku mwenda remezo ungana na 10.233.987 Frw.

[38] ECOBANK Rwanda Plc ivuga ko Itegeko Nº 47/2017 ryo ku wa 23/09/2017 ryavuzwe haruguru ridashobora gukoreshwa risubira inyuma ku buryo ryakurikizwa ku mwenda Nkizamacumu Aphrodis yahawe mu 2008 ritarajyaho, ko icyagendeweho ari uko yasinyiye kwishyura umwenda wose kandi inyungu zigakomeza kubarwa kugeza wishyuwe.

[39] Isobanura ko kuba mu Rukiko rw'Ubucuruzi Uwambaje Francine yaraburanaga avuga ko atagomba kuryozwa umwenda kuko nta kigaragaza ko ECOBANK Rwanda Plc yashyize amafaranga kuri konti ya Nkizamacumu Aphrodis, mu Rukiko Rukuru rw'Ubucuruzi akaburana yemera umwenda, none ubu muri uru Rukiko akaburana avuga ko atemera inyungu yategetswe kwishyura, itabona aho akarengane kari cyane ko iyo ngingo itaburanywe mu nkiko zabanje.

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[40] Ingingo ya 112, igika cya 2, y'Itegeko Nº 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'amabanki iteganya ko inyungu amabanki yishyuza ku nguzanyo zitishyuwe zitagomba kurenza umwenda shingiro utarishyuwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa.

[41] Ingingo ya 7, igika cya 2, y' Amabwiriza Rusange N°12/2017 yo ku wa 23/11/2017 ku ishyirwa mu byiciro ry'imyenda no guteganya ingoboka iteganya ko inyungu zose ku myenda itishyurwa neza zabariwe mbere mu mutungo ariko ntizakirwe zigomba guhindurwa kandi zikandikwa kuri konti y'inyungu zahagaze kugeza igihe zishyuriwe n'uwasabye umwenda. Ingingo ya 8, agace ka b, y'ayo mabwiriza yo iteganya ko inyungu ku birarane zitishyuwe, zibarwa hakurikijwe amasezerano uwahawe umwenda yagiranye na banki, ariko ntizirenge umwenda wagombaga kwishyurwa mu gihe umwenda wasibwe.

[42] Izi ngingo zumvikanisha ko igihe cyose umwenda ikigo cy'imari cyahaye umukiliya utarishyurwa, inyungu zikomoka kuri uwo mwenda zikomeza kubarwa kugeza wishyuwe, zipfa gusa kutarenga umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa.

[43] Ibivugwa muri izi ngingo byasobanuwe mu manza zinyuranye zaciwe n'uru Rukiko, zirimo urubanza SIMACO Ltd yaburanaga na I&M Bank Rwanda Plc. Muri uru rubanza, Urukiko rwasobanuye ko ku byerekeye amasezerano y'inguzanyo, inyungu zisanzwe n'inyungu z'ubukerererwe zikomeza kubarirwa ku mwenda remezo wagaragajwe igihe cy'iseswa ry'amasezerano, kugeza igihe umwenda uzarangirizwa kwishyurwa[6].

[44] Urukiko rwifashishije ibisobanuro by'abahanga, rwanasobanuye ko ihame ry'uko inyungu zitagomba kurenga umwenda remezo usigaye kwishyurwa ari ihame rikomoka mu mategeko y'Abaromani n'Abaholandi (*Roman Dutch law*), riva ku rurimi ry'ikiratini "*in duplum"* bivuga inshuro ebyiri (*in double*), risobanura ko inyungu zihagarara kubarwa igihe ingano yazo imaze

[6] URUBANZA N° RS/INJUST/RCOM 00008/2021/SC rwaciwe ku wa 25/02/2022, haburana SIMACO Ltd na I&M Bank Rwanda Plc, igika cya 46.

kungana n'umwenda remezo utishyuwe (*outstanding capital*). Iryo hame risobanura ko ku nguzanyo zatanzwe na banki cyangwa ibigo bicirirtse cyangwa mu masezerano ateganya ko umwenda remezo uzishyurwa wongeweho inyungu zawo ku gipimo cyumvikanyweho, inyungu ku mwenda remezo zihagarara kubarwa iyo zimaze kungana n'umwenda remezo wari usigaye kwishyurwa[7].

[45] Ibyasobanuwe mu rubanza rwa SIMACO Ltd na I&M Bank Rwanda Plc byanagarutsweho mu rubanza Nsengiyumva Fulgence yaburanaga na Bank de Kigali Plc[8].

[46] Ku bijyanye n'uru rubanza, ECOBANK Rwanda Plc yareze isaba kwishyurwa umwenda remezo ungana na 10.233.987 Frw, n'inyungu z'ubukererwe zingana na 12.019.489 Frw. Nk'uko byasobanuwe haruguru, raporo y'Umuhanga washyizweho n'Urukiko igaragaza ko ku wa 23/09/2010, umwenda ECOBANK Rwanda Plc yahaye Nkizamacumu Aphrodis wageze ku rwego rwo kutishyurwa hasigaye kwishyurwa umwenda remezo ungana na 9.798.689 Frw. Raporo y'Umuhanga igaragaza kandi ko nta nyungu zisanzwe zari zitarishyurwa igihe inguzanyo yageraga mu rwego rwo kutishyurwa, ko nta n'inyungu z'ubukererwe zari ziteganyijwe mu masezerano.

[47] Umuhanga agaragaza nanone ko inyungu zabazwe guhera igihe inguzanyo yageraga mu rwego rwo kutishyurwa, kugeza ku italiki ya 30/06/2014 ubwo ECOBANK Rwanda Plc yahagarikaga gukomeza kubara inyungu, zingana na 7.926.468 Frw**.** Ikigaragara ni uko izi nyungu ziri hasi y'ingano y'umwenda remezo wari usigaye kwishyurwa igihe inguzanyo yageraga mu rwego rwo kutishyurwa, zikaba rero zigomba kwishyurwa uko zingana.

[48] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga Inyungu Uwambaje Francine agomba kwishyura ECOBANK Rwanda Plc ari 7.926.468 Frw. Bikaba bivuga ko amafaranga yose hamwe agomba kwishyura angana na (9.798.689 Frw +7.926.468 Frw =) 17.725.157 Frw, akubiyemo umwenda remezo n'inyungu zawo.

II. 2. Kumenya ishingiro ry'indishyi zisabwa muri uru rubanza.

[49] Uwambaje Francine asaba uru Rukiko gutegeka ECOBANK Rwanda Plc kumwishyura 500.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cy' Avoka.

[50] ECOBANK Rwanda Plc ivuga ko indishyi Uwambaje Francine asaba nta shingiro zifite, kuko imanza zatewe n'uko itishyuwe, ahubwo ko rwamutegeka kuyiha 500.000 Frw y'ikurikiranarubanza kubera gusiragizwa mu nkiko na 1.000.000 Frw y'igihembo cy'Avoka.

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[51] 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, iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza.

[7] Ibidem, igika cya 48.
[8] Urubanza N° RS/INJUST/RCOM 00005/2021/SC rwaciwe ku wa 07/10/2022, igika cya 31 n'icya 32.

[52] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka Uwambaje Francine na ECOBANK Rwanda Plc basaba nta n'umwe wayahabwa kuko bose bagize icyo batsindirwa mu rubanza.

III. ICYEMEZO CY'URUKIKO

[53] Rwemeje ko ikirego cyatanzwe na Uwambaje Francine cyo gusubirishamo ku mpamvu z'akarengane urubanza RCOMA 00315/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 08/01/2021**,** gifite ishingiro kuri bimwe ;

[54] Rwemeje ko imikirize y'urubanza RCOMA 00315/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 08/01/2021, ihindutse ku bijyanye n'ingano y'umwenda remezo n'inyungu zawo Uwambaje Francine agomba kwishyura ;

[55] Rutegetse Uwambaje Francine kwishyura ECOBANK Rwanda Plc 9.798.689 Frw y'umwenda remezo na 7.926.468 Frw y'inyungu, yose hamwe akaba 17.725.157 Frw ;

[56] Rutegetse Uwambaje Francine na ECOBANK Rwanda Plc gufatanya kwishyura igihembo cy'umuhanga ; Uwambaje Francine akaba agomba gusubiza ECOBANK Rwanda Plc 500.000 Frw ahwanye na kimwe cya kabiri (1/2) cya 1.000.000 Frw yamaze kwishyura.