TRADEMET SA v CROSS INVESTMENT COMPANY LTD,

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00116/2022/CA, (Ngagi, P.J.,) 28 Gashyantare 2023]

Amategeko agenga imiburanishirize y' imanza z' ubucuruzi – Gutambamira umutungo utimukanwa – Itambama ku mutungo rivanwaho iyo ryakozwe ku mutungo wagurishijwe mu buryo bwemewe n' amategeko n' ubwo uwawegukanye atabashije kuwiyandikaho ku mpamvu zitamuturutseho.

Incamake y' ikibazo: Uwitwa Kalinda Valens n'umugore we Nyirahabufite Epiphanie bagurishije imutungo yabo itimukanwa na sosiyete CROSS INVESTMENT COMPANY Ltd ihagarariwe na Frank Lyonson mu buryo bukurikije amategeko, maze bakorana amasezerano y' ubugure mbere yo kwa notaire ariko uwaguze ntiyakora *mutation* ku mpamvu avuga zitamuturutseho.

Sosiyete yitwa TRADEMET S.A itanga ikirego cyihutirwa mu Rukiko rw'Ubucuruzi irega KALINDA Valens isaba ko imitungo ye yagurishije sosiyete CROSS INVESTMENT COMPANY Ltd itambamirwa mu gihe hategerejwe ko urubanza ruri hagati yabo ruba itegeko.

CROSS INVESTMENT COMPANY Ltd nayo yatanze ikirego cyo kurutambamira mu Rukiko Rukuru rw'Ubucuruzi isaba ko iryo tambama rivanwaho, ivuga ko yamenyeshejwe n'Ikigo gishinzwe imicungire y'ubutaka ko ubutaka butambamiwe hashingiwe ku rubanza rwategetse ko imitungo yanditse kuri Kalinda itambamirwa.

KARINDA yaburanye yemera ko itambama ryabaye uwo mutungo waramaze kugurishwa, bityo ko ikirego cya CROSS INVESTMENT COMPANY Ltd gifite ishingiro.

TRADEMET yaburanye ivuga ko ikirego kidakwiye kwakirwa kuko imanza zabaye zose KALINDA Valens yari azirimo kandi akaba atarigeze agaragaza ko umutungo ufatirwa utakiri uwe. Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza maze rwemeza ko ikirego cyatanzwe na CROSS INVESTMENT COMPANY Ltd gifite ishingiro, bityo ko itambama rivanyweho.

TRADEMET ijuririra mu Rukiko rw Ubujurire isaba ko itambama ryashyizwe ku mitungo iburanwa rigumaho kuko ryakozwe mu buryo bukurikije amategeko.

CROSS INVESTMENT COMPANY Ltd yiregura ivuga ko ubutaka yaguranye na KALINDA arubwayo kuko ntaho buhuriye n'urubanza ruri hagati ya KALINDA Valens na TRADEMET SA kandi ko amasezerano yose aba bombi bagiranye adashobora kugira ingaruka kuri CROSS INVESTMENT COMPANY Ltd.

Kalinda avuga ko nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze ryo gukuraho itambama ryashyizwe ku mutungo wa CROSS INVESTMENT COMPANY Ltd kubera ko barishyizeho bawita umutungo we kandi yarawugurishije kuko wari ingwate ya BRD hanyuma itangiye inzira zo kuwugurisha mucyamunara, maze awugurisha CROSS INVESTMENT COMPANY Ltd kugira ngo hishyurwe umwenda wa BRD, ko kubera ikibazo cyari muri za *UPI's* byabaye ngombwa ko hitabazwa Ikigo cy'ubutaka kugira ngo kibikosore ari yo mpamvu iharerekanyamutungo (*mutation*) ryatinze, kandi ko imanza zose zabaye nyuma y'uko hakorwa amasezerano y'ubugure hagati ya KALINDA Valens na CROSS INVESTMENT COMPANY Ltd.

Incamake y' icyemezo: Itambama ryakozwe ku mutungo rivanwaho iyo ryakozwe ku mutungo wagurishijwe mu buryo bwemewe n'amategeko nubwo uwawegukanye atabashije kuwiyandikaho ngo hakorwe *mutation* ku mpamvu zitamuturutseho.

Ubujurire nta shingiro.
Amagarama y urubanza ahwanye nibyarukozwemo.

Amategeko yashingiweho:
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12 niya 150.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku kirego cyihutirwa cyatanzwe na TRADEMET S. A. mu Rukiko rw'Ubucuruzi irega KALINDA Valens isaba ko imitungo ye itambamirwa mu gihe hategerejwe ko urubanza Nº RCOM 00104/2022/TC ruba itegeko. Urwo rubanza rwarajuririwe mu Rukiko Rukuru rw'Ubucuruzi ruhabwa Nº RCOMA 00214/2022/HCC rucibwa ku wa 04/04/2022. Nyuma y'uko urubanza Nº RCOMA 00214/2022/HCC ruciwe, CROSS INVESTMENT COMPANY Ltd yatanze ikirego cyo kurutambamira mu Rukiko Rukuru rw'Ubucuruzi ivuga ko ku wa 09/09/2022 yamenyeshejwe n'Ikigo gishinzwe imicungire y'ubutaka ko ubutaka bwanditse kuri UPI:1/01/04/03/2330 na UPI:1/01/04/03/2335 butambamiwe hashingiwe k'urubanza Nº RCOMA 00214/2022/HCC rwo ku wa 04/04/2022 rwategetse ko imitungo yanditse kuri KALINDA Valens itambamirwa.

[2] Ivuga kandi ko ubwo butaka bwafashweho icyemezo mu rubanza RCOMA 00214/2022/HCC rwo ku wa 04/04/2022 kandi butakiri ubwa KALINDA Valens, kuko bwari bwaraguzwe na CROSS INVESTMENT COMPANY Ltd, ko kandi muri urwo rubanza Urukiko rwafashe icyemezo ku mitungo ya CROSS INVESTMENT COMPANY Ltd itararubayemo umuburanyi, akaba ari yo mpamvu basaba ko ruhinduka ku byerekeranye no gutambamira ubwo butaka.

[3] KARINDA Valens yaburanye yemera ko itambama ryabaye uwo mutungo waramaze kugurishwa, bityo akavuga ko ikirego cya CROSS INVESTMENT COMPANY Ltd gifite ishingiro.

[4] TRADEMET S.A. yaburanye ivuga ko ikirego kidakwiye kwakirwa kuko imanza zabaye zose KALINDA Valens yari azirimo kandi akaba atarigeze agaragaza ko umutungo ufatirwa utakiri uwe. Akaba abona ari uburyo bwo kugira ngo abure ubwishyu bw'umwenda afitiwe.

[5] Ku wa 02/11/2022, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00635/2022/HCC rwemeza ko ikirego cyatanzwe na CROSS INVESTMENT COMPANY Ltd

gifite ishingiro, ko icyemezo cyafashwe mu rubanza RCOMA 00214/2022/HCC rutambamirwa gihindutse gusa ku bijyanye n'itambamirwa ry'imitungo y'ubutaka bubaruye kuri UPI :1/01/04/03/2330 na UPI :1/01/04/03/2335, ko itambamira ry'imitungo y'ubutaka ibaruwe kuri UPI: 1/01/04/03/2330 na UPI :1/01/04/03/2335 rikuweho; rutegeka KALINDA Valens guha TRADEMET S.A. na CROSS INVESTMENT COMPANY Ltd buri wese indishyi zingana na 600 000 Frw, kandi ko amafaranga y'igarama yatanzwe aguma mu Isanduku ya Leta.

[6] TRADEMET **S.A.** ntiyishimiye imikirize y'urubanza iyijuririra muri uru Rukiko isaba ko itambama ryashyizwe ku mutungo ubaruye kuri UPI: 1/01/04/03/2330 na UPI :1/01/04/03/2335 rigumaho ndetse ikanahabwa 5.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka kuko ayo yagenewe mu rubanza rujuririrwa ari make ugereranyije n'ayo imaze gutakaza muri uru rubanza. Ubujurire bwayo bwandikwa kuri Nº RCOMAA 00116/2022/CA. CROSS INVESTMENT COMPANY Ltd yireguye ivuga ko ubutaka UPI:1/01/04/03/2330 na UPI:1/01/04/03/2335 ari CROSS INVESTMENT COMPANY Ltd bukaba ntaho buhuriye n'urubanza ruri hagati ya KALINDA Valens na TRADEMET S.A.

[7] Uru rubanza rwari rwahamagajwe ku wa 06/02/2023, ariko rwimurirwa ku wa 14/02/2023 kubera ko Me MUHIRE Jean Marie Eugene yari arwaye. Uwo munsi nabwo ntirwaburanishwa kubera ko Umucamanza yari yagize ibyago, hanyuma rwimurirwa ku wa 21/02/2023. Iyo tariki igeze, urubanza rwaburanishijwe mu ruhame, TRADEMET S.A. ihagarariwe na Me UWIZEYIMANA Jean Eric**,** KALINDA Valens ahagarariwe na Me NKANIKA Alimasi**,** naho CROSS INVESTMENT COMPANY Ltd ihagarariwe na Me MUHIRE Jean Marie Eugene.

[8] Ikibazo nyamukuru cyasuzumwe n'icyo kumenya niba hari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze ryo gukuraho itambama ryashyizwe ku mutungo ubaruye kuri UPI: 1/01/04/03/2330 na UPI :1/01/04/03/2335, hiyongera n'ikijyanye n'indishyi zitandukanye.

III. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba hari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze ryo gukuraho itambama ryashyizwe ku mutungo ubaruye kuri UPI: 1/01/04/03/2330 na UPI :1/01/04/03/2335

[9] Uhagarariye TRADEMET S A avuga ko icyo banenga urubanza rujuririrwa ari uko rwemeje ko itambama rivaho kandi ryakozwe mu buryo bukurikije amategeko. Asobanura ko itambama ryashyizwe ku mitungo ya KALINDA Valens rikurikije amategeko, kandi nk'uko bigaragara mu manza RCOM 00291/0222/TC na Nº RCOMA 00214/204/2022/HCC, KALINDA Valens yabayemo umuburanyi ndetse n'ibyangombwa byagaragajwe byerekanaga ko ari we nyir'umutungo, akaba nta na rimwe yigeze agaragaza ko mu mutungo wasabirwaga gutambamirwa harimo utari uwe, ko rero itambama ryakozwe mu buryo bukurikije amategeko ritagomba kuvaho.

[10] Asobanura kandi ko ibiteganywa n'ingingo ya 74 y'Itegeko nº 27/2021 ryo ku wa 10/06/2021 rigenga ubutaka mu Rwanda, ndetse n'ibyo ingingo ya 213 y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ubusabe bwo gutambamira imitungo itimukanwa bisabwa Umubitsi w'impapurompamo z'ubutaka, hanyuma mu gihe cy'ukwezi hakaba hatanzwe ikirego, ko

byubahirijwe byose ndetse n’urukiko narwo rukabona ko byubahirijwe, ndetse nyuma y’icyemezo cy’urukiko Nº RCOMA 00214/2022/HCC cyashyikirijwe Ikigo gishinzwe imicungire y’ubutaka itambama rigakorwa, ko rero basanga nta gushidikanya ko ibyo byose byakozwe ku mutungo wa KALINDA Valens ukaba waratambamiwe mu buryo bukurikije amategeko, ariyo mpamvu iryo tambama rigomba kugumana agaciro karyo, bityo basaba Urukiko rujuririwe kwemeza ko rigumyeho.

[11] Uhagarariye CROSS INVESTMENT COMPANY Ltd avuga ko ubutaka UPI:1/01/04/03/2330 na UPI:1/01/04/03/2335 ari CROSS INVESTMENT COMPANY Ltd bukaba ntaho buhuriye n’urubanza ruri hagati ya KALINDA Valens na TRADEMET SA. Asobanura ko ibivuga na TRADEMET S A bidakwiye guhabwa ishingiro kuko nk’uko byasobanuwe mu rubanza rujuririrwa ubutaka UPI:1/01/04/03/2330 na UPI:1/01/04/03/2335 bwafashweho icyemezo mu rubanza Nº RCOMA 00214/2022/HCC rwo ku wa 04/04/2022 kandi butakiri ubwa KALINDA Valens, kuko yari yarabugurishije CROSS INVESTMENT COMPANY LTD nk’uko bigaragara mu masezerano yo ku wa 18/12/2020, bigashimangirwa n’inyandiko isaba ihererekanya ry’ubutaka yo ku wa 15/03/2021.

[12] Asobanura kandi ko mu rubanza rujuririrwa, Urukiko rwasanze urubanza Nº RCOMA 00214/2022/HCC rwo ku wa 04/04/2022 rwarafashe icyemezo ku mitungo ya CROSS INVESTMENT COMPANY Ltd kandi itarabaye umuburanyi muri urwo rubanza, rusanga urwo rubanza rukwiye guhinduka ku byerekeranye no gutambamira ubutaka bufite UPI:1/01/04/03/2330 na UPI:1/01/04/03/2335 kandi nyirabwo atarabaye umuburanyi muri urwo rubanza. Ko rero bashingiye ku ngingo 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, basanga ibisabwa na TRADEMET S.A. bidakwiye guhabwa ishingiro kuko amasezerano yose TRADEMET S.A. yaba yaragiranye na KALINDA Valens adashobora kugira ingaruka kuri CROSS INVESTMENT COMPANY Ltd nk’uko iyo ngingo yavuzwe haruguru ibigaragaza.

[13] Uhagarariye KALINDA Valens avuga ko nta kosa Urukiko Rukuru rw’Ubucuruzi rwakoze ryo gukuraho itambama ryashyizwe ku mutungo wa CROSS INVESTMENT COMPANY Ltd kubera ko barishyizeho bawita umutungo we kandi yarawugurishije kuko wari ingwate ya BRD hanyuma itangiye inzira zo kuwugurisha mucyamunara, KALINDA Valens awugurisha CROSS INVESTMENT COMPANY Ltd kugira ngo hishyurwe umwenda wa BRD, ko kubera ikibazo cyari muri za UPI's byabaye ngombwa ko hitabazwa Ikigo cy'ubutaka kugira ngo kibikosore ari yo mpamvu ihararekanyamutungo (*mutation*) ryatinze.

[14] Asobanura kandi ko imanza RCOM 00291/0222/TC ndetse na RCOMA 00214/204/2022/HCC zabaye nyuma y’uko hakorwa amasezerano y'ubugure hagati ya KALINDA Valens na CROSS INVESTMENT COMPANY Ltd zikaba zitambamira umutungo utakiri uwe, kuko ku wa 18/12/2020 yari yaramaze kuwugurisha kandi itambama yarimenyeshejwe ku wa 23/02/2022. KALINDA Valens akaba asanga ikirego cya CROSS INVESTMENT COMPANY Ltd cyasabaga gukura itambama kuri uwo mutungo cyari gifite ishingiro n'Urukiko rubibona rutyo rurivanaho, bakaba rero basanga ubujurire bwa TRADEMET S.A. nta shingiro bufite kuko igamije gutambamira umutungo wa CROSS INVESTMENT COMPANY Ltd kandi ntaho KALINDA Valens agihuriye nawo.

[15] Avuga kandi ibivugwa n'uhagarariye TRADEMET S.A. ko nta na hamwe KALINDA Valens yigeze avuga ko uwo mutungo atari uwe nta nshingiro bifite, kuko yaburanye agaragaza ko itambama nta shingiro rifite.

UKO URUKIKO RUBIBONA

[16] Ingingo ya 12, igika cya mbere, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: "*Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda"*. Ingingo ya 150, agace ka 5 y'iryo Tegeko iteganya ko ubujurire bugomba kugaragaza urutonde rw'inenge z'urubanza zisabirwa gukosorwa.

[17] Urukiko rusomeye hamwe izi ngingo rusanga zumvikanisha ko urega agomba kugaragaza ibimenyetso bishimangira ibyo aregera, ni ukuvuga ibimenyetso bigaragaza ko ibyo asaba mu kirego cye ari ukuri, kandi ko ujurira nawe agomba kugaragaza inenge ziri mu rubanza rujuririrwa, akanagaragaza ibimenyetso bishimangira ibyo asaba mu bujurire bwe, ni ukuvuga ibimenyetso byerekana inenge ziri muri urwo rubanza, ndetse n'ibimenyetso bigaragaza uburyo izo nenge zigomba gukosorwa.

[18] osiye y'urubanza igaragaza amasezerano y'ubugure bw'umutungo utimukanwa ufite UPI: 1/01/04/03/187 na 1/01/04/03/190 yo ku wa 18/12/2020, KALINDA Valens n'umugore we NYIRAHABUFITE Epiphanie bagiranye na CROSS INVESTMENT COMPANY Ltd ihagarariwe na Frank Lyonson.

[19] Dosiye y'urubanza igaragaza kandi ibaruwa yanditswe n'Ikigo gishyinzwe imicungire y'ubutaka mu Rwanda/ Urwego rw'Umubitsi w'impapurompamo z'ubutaka cyandikiye KALINDA Valens ku wa 21/09/2021, igaragaza ko ubutaka bufite UPI: 1/01/04/03/2335 ikomoka kuri UPI: 1/01/04/03/190 na UPI: 1/01/04/03/2330 ikomoka kuri UPI: 1/01/04/03/187. Iyo baruwa igaragaza kandi ko ubwo butaka bwavuye mu mbibi z'igishanga kandi ko ubutaka bufite UPI: 1/01/04/03/2335 na UPI: 1/01/04/03/2330 bwanditswe kuri CROSS INVESTMENT COMPANY Ltd hakurikijwe amasezerano y'ubugure yagiranye na KALINDA Valens hamwe n'umugore we NYIRAHABUFITE Epiphanie imbere ya Noteri mu by'ubutaka ku wa 15/03/2021.

[20] Imikirize y'urubanza RCOMA 00214/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 04/04/2022, igaragaza ko urwo Rukiko rwemeje ko nta gihindutse ku mikirize y'urubanza RCOM 00291/2022/TC, ko kandi ibyarutegetswemo bishyirwa mu bikorwa ari byo ko imitungo itimukanwa ibaruye kuri UPI 1/01/04/03/2330, UPI 1/01/04/03/2335, UPI 1/01/04/03/1011, UPI 1/01/04/03/243, UPI 3/07/05/05/6377, UPI 3/07/05/05/6378, UPI 3/07/05/05/4871, UPI 3/07/05/05/6377, UPI 3/07/05/05/5607, UPI 3/07/05/05/4862, UPI 3/07/05/05/3147 na UPI 3/07/05/05/4831 ya KALINDA Valens itambamirwa kugeza igihe urubanza RCOM 00104/2022/TC, KALINDA Valence yarezwemo na TRADEMET S.A. rubereye itegeko.

[21] Imikirize y'urubabanza rujuririrwa RCOMA 00635/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 02/11/2022 igaragaza ko CROSS INVESTIMENT yagaragaje ibimenyetso byemeza ko imutungo ibaruye kuri UPI:1/01/04/03/2330 na UPI:1/01/04/03/2335

yawuguze na KARINDA Valens mu buryo bukurikije amategeko, akaba atarabashije kuwandikwaho ku mpamvu zitamuturutseho, ariko ibyo bikaba bitamwambura uburenganzira kuri uwo mutungo, ko CROSS INVESTIMENT Plc itemerewe kwandikwaho ubwo butaka n'Ikigo cy'Igihugu gishinzwe imicungire n'imikoreshereze y'ubutaka, kuko bwashyizweho itambamira hashingiwe ku rubanza RCOMA 00214/2022/HCC kandi amenyeshwa ko kugira ngo itambamirwa rikurweho ari uko yabisaba Urukiko. Rurasanga TRADEMET nta bimenyetso bivuguruza ibyatanzwe n'urega, bityo ko itambama ryashyizwe ku mitungo UPI:1/01/04/03/2330 na UPI:1/01/04/03/2335 mu rubanza RCOMA 00214/2022/HCC, rigomba gukurwaho.

[22] Nk'uko byagaragajwe haruguru, CROSS INVESTMENT COMPANY Ltd yaguze umutungo ufite UPI:1/01/04/03/2330 na UPI:1/01/04/03/2335 wa KALINDA Valens ku wa 18/12/2020, ihererekanyamutungo imbere ya Noteri w'ubutaka rikorwa ku wa 21/09/2021, naho itambama ry'uwo mutungo ryemezwa n'Urukiko Rukuru rw'Ubucuruzi ku wa 04/04/2022, Urukiko rukaba rusanga itambama ryarakozwe nyuma y'uko CROSS INVESTMENT COMPANY Ltd iguze uwo mutungo na KALINDA Valens, bivuze ko ryabaye uwo mutungo utakiri uwa KALINDA Valens ahubwo ari uwa CROSS INVESTMENT COMPANY Ltd.

[23] Urukiko rurasanga kuba TRADEMET S.A. yaratambamiye umutungo ufite UPI:1/01/04/03/2330 na UPI:1/01/04/03/2335 iwita uwa KALINDA Valens kandi yarawugurishije CROSS INVESTMENT COMPANY Ltd mu buryo bukurikije amategeko, kuba itambama ryarashyizwe ku mutungo wa CROSS INVESTMENT COMPANY Ltd idafite aho ihuriye n'urubanza ruri hagati ya KALINDA Valens na TRADEMET S.A, kuba kandi CROSS INVESTMENT COMPANY Ltd itarigeze iba umuburanyi mu rubanza N° RCOMA 00214/2022/HCC rwemeje ko uwo mutungo ushyirwaho utambamirwa, birumvikana ko nta kosa riri mu rubanza rujuririrwa rwemeje ko iryo tambama rikurwaho, bityo ubujurire bwa TRADEMET S.A. nta shingiro bufite.

2. Kumenya niba indishyi KALINDA Valens yaciwe mu rubanza rujuririrwa zigomba kuvanwaho

[24] **Uhagarariye KALINDA Valens** avuga ko mu Rukiko Rukuru, KALINDA Valens yaciwe amafaranga adafite impamvu kandi nta muntu numwe yashoye mu rubanza ku mpamvu imuturutseho, akaba asanga rero yararenganyijwe agacibwa amafaranga adafite impamvu.

[25] Uhagarariye TRADEMET S.A. avuga ko Urukiko rw'Ubucuruzi rwemeje itambama hanyuma KALINDA Valens ajuririra Urukiko Rukuru rw'Ubucuruzi ariko mu bujurire bwe avuga gusa ko Urukiko rw'Ubucuruzi rutahaye agaciro inzitizi yatanze kandi ko rwemeje itambama kandi yaratanze ingwate, akaba nta na hamwe yigeze avuga ko uwo mutungo yawugurishije, bityo ko indishyi KALINDA Valens yaciwe zifite ishingiro kuko ariwe wategeje izi manza.

UKO URUKIKO RUBIBONA

[26] Dosiye y'urubanza igaragaza inyandiko isaba gutambamira ihererekanya ry'ubutaka (caveat) yanditswe na Me KAYIGIRWA Viateur, Umuhesha w'inkiko w'umwuga ku wa 07/02/2022, aho yasabye gutambamira imitungo ya KALINDA Valens. Igaragaza n'ibaruwa Me

KAYIGIRWA Viateur yandikiye KALINDA Valens ku wa 08/02/2022 amumenyesha ko imitungo ye UPI 1/01/04/03/2330, UPI 1/01/04/03/2335, UPI 1/01/04/03/243, UPI 3/07/05/05/6377, UPI 1/01/04/03/1011, UPI 3/07/05/05/6378, UPI 3/07/05/05/4871, UPI 3/07/05/05/5607, UPI 3/07/05/05/4862, UPI 3/07/05/05/3147, UPI 3/07/05/05/4831 na UPI 3/07/05/05/6377 itambamiwe.

[27] Dosiye y'urubanza igaragaza kandi ko mu rubanza Nº RCOMA 00214/2022/HCC KALINDA Valens yajuririye impamvu ebyiri, harimo iyo kuba Urukiko rw'Ubucuruzi rwarirengagije inzitizi yatanze n'iyo kuba rwaremeje ko imitungo ye itambamirwa kandi umwenda waratangiwe ingwate.

[28] Imikirize y'urubanza rujuririrwa RCOMA 00635/2022/HCC igaragaza ko KALINDA Valens yari umuburanyi mu manza zose zafashe icyemezo cyo gushyiraho itambama ku mitungo ye, akaba yari azi neza ko yagurihije imitungo iburanwa, nyamara ntiyabigaragaza muri izo manza yaburanye na TRADEMET S.A, bikaba byaratumye iyo mitungo ishyirwaho itambama kandi bitari ngombwa, maze rwemeza ko ari we ugomba guha TRADEMET S.A. na CROSS INVESTMENT COMPANY Ltd buri wese 100 000 Frw y'ibyo yatakarije ku rubanza mu kurukurikirana na 500 000 Frw y'igihembo cya Avoka.

[29] Hashingiwe ku mpamvu zimaze gutangwa mu gika kibanziriza iki, Urukiko rurasanga ikosa KALINDA Valens yakoze ari ryo ryatumye izi manza zibaho, bityo nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze ryo kumutegeka guha TRADEMET S.A. na CROSS INVESTMENT COMPANY Ltd buri wese indishyi z'ibyo batakaje mu rubanza zingana na 600 000 Frw, ubujurire bwuririye ku bundi bwatanzwe na KALINDA Valens bukaba nta shingiro bufite.

3. Kumenya niba indishyi, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka bisabwa muri uru rubanza bifite ishingiro

[30] Uhagarariye TRADEMET S.A. avuga ko mu cyemezo cy'urukiko kijuririrwa TRADEMET S.A. yagenewe indishyi zingana na 600,000 Frw gusa nyamara bashingiye ko TRADEMET S.A. izi manza yazishowemo n'imyitwarire ya KALINDA Valens kandi ikaba ikomeza guhura n'ibihombo byo kutishyurwa ndetse no gukurikirana uburenganzira bwayo, basanga amafaranga yagenwe n'Urukiko mu rubanza rujuririrwa adahuye n'ibyo TRADEMET S.A. ikomeje gutakariza mu manza bakaba basaba ko mu bushishozi bw'Urukiko KALINDA Valens akwiye gutegekwa kwishyura 5.000.000 Frw akubiyemo ikurikiranarubanza n'igihembo cya Avoka.

[31] Uhagarariye KALINDA Valens yiregura avuga ko indishyi zisabwa na TRADEMET S.A. nta shingiro zifite kubera ko umutungo TRADEMET S.A. yatambamiye atari uwa KALINDA Valens nk'uko inzego zibishinzwe zabigaragaje. Avuga kandi ko mu gihe Urukiko rwasanga ubujurire bwa TRADEMET S.A. nta shingiro bufite yacibwa 800.000 Frw akubiyemo ay'ikurikiranarubanza n'igihembo cya Avoka.

[32] CROSS INVESTMENT COMPANY Ltd ivuga ko amafaranga asabwa na TRADEMET S.A. areba KALINDA Valens. Ivuga kandi mu rubanza rujuririrwa Urukiko rwagaragaje neza ko iriya mitungo itagombaga gutambamirwa ariko TRADEMET S.A. ikaba yarakomeje gutsimbarara ishora CROSS INVESTMENT COMPANY Ltd mu manza kandi mu rubanza Nº RCOMA 00214/2022/HCC rwo ku wa 04/04/2022 rwarabaye hagati ya KALINDA Valens na TRADEMET

SA, CROSS INVESTMENT COMPANY Ltd ikaba itararubayemo umuburanyi. Ibi biteza igihombo CROSS INVESTMENT COMPANY Ltd, bituma itabasha kubyaza umusaruro umutungo wayo ndetse ijya mu manza. Bityo bakaba basaba Urukiko ko rwategeka TRADEMET SA kwishyura CROSS INVESTMENT COMPANY Ltd 20.000.000 Frw y'indishyi zo kutabasha kubyaza umusaruro umutungo wayo kuko wari utambamiwe;5,000,000 Frw y'indishyi zo gusiragizwa mu nzego z'ubuyobozi; 1,500,000 Frw y'Ikurikiranarubanza n'igihembo cy'Avoka, yiyongera kuyategetswe mu rubanza rujuririrwa.

UKO URUKIKO RUBIBONA

[33] Ku birebana n'amafaranga y'ibyakoreshejwe mu rubanza, ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 28/04/2018 ryerekeye imiburanishirize y'imanza mbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: "*Ikirego 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. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".*

[34] Urukiko rurasanga kubera ubujurire bwa TRADEMET SA byarabaye ngombwa ko CROSS INVESTMENT COMPANY Ltd ishaka Avoka wo kuyiburanira kuri uru rwego, bityo amafaranga y'ikurikiranarubanza n'igihembo cya Avoka isaba afite ishingiro, mu bushishozi bw'Urukiko ruyigeneye 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza agomba gutangwa na TRADEMET SA.

[35] Ku bijyanye indishyi zo kutabasha kubyaza umusaruro umutungo wayo kuko wari utambamiwe n'indishyi zo gusiragizwa mu nzego z'ubuyobozi zisabwa na CROSS INVESTMENT COMPANY Ltd, Urukiko zitagomba gusuzumwa muri uru rubanza kuko itigeze izisaba mu rubanza rujuririrwa.

[36] Urukiko rurasanga 600.000 Frw akubiyemo amafaranga y'ikurikiranarubanza n'igihembo cya Avoka TRADEMET SA yagenewe mu rubanza rujuririrwa yaragenwe mu bushishizo bw'Urukiko, ibyo rero TRADEMET SA ivuga ko ari make nta shingiro bifite, cyane ko itagaragaza icyo inenga ubushishozi bw'Urukiko. Rusanga kandi ntayo igomba kugenerwa kuri uru rwego, kuko ubujurire bwayo nta shingiro bwahawe.

[37] Urukiko rurasanga KALINDA Valens nta mafaranga y'ikurikiranarubanza n'igihembo cya Avoka agomba kugenerwa muri uru rubanza kuko nk'uko byagaragajwe haruguru niwe watumye habaho izi manza kandi n'ubujurire yatanze bwuririye ku bundi asaba gukurirwaho indishyi yaciwe nta shingiro bwahawe.

III. ICYEMEZO CY'URUKIKO

[38] Rwemeje ko ubujurire bwatanzwe na TRADEMET S.A. nta shingiro bufite.

[39] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na KALINDA Valens nta shingiro bufite, naho ubwatanzwe na CROSS INVESTMENT COMPANY Ltd bufite ishingiro kuri bimwe.

[40] Rwemeje ko urubanza No RCOMA 00635/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 02/11/2022 rudahindutse.

[41] Rutegetse TRADEMET S.A. kwishyura CROSS INVESTMENT COMPANY Ltd,

[42] 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza, kuri uru rwego, yiyongera ku 600.000 Frw yagenewe mu rubanza rujuririrwa agomba gutangwa na KALINDA Valens.

[43] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.