KABANDANA v. BANK OF KIGALI LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00035/2018/CA (Karimunda, P.J., Mukanyundo na Ngagi, J.) 17 Gicurasi 2019]

Amategeko agenga amasezerano – Inguzanyo yatanzwe na banki – Ibimenyetso bishobora gushingirwaho mu kwerekana ko umwenda wabayeho – Nta muburanyi wahakana kutishyura umwenda wa banki ashingiye ko itamuhaye ibaruwa iwumumenyesha mu gihe bigaragara ko atahakanye imikoranire yagiranye na banki mu guhabwa inguzanyo ndetse akisabira na banki ko bagirana imishyikirano mu gukemura ikibazo cy'umwenda ayifitiye.

Amategeko agenga amasezerano n'imirimo nshinganwa – Ubuzime – Inyungu z'umwenda zitishyujwe mu gieh cyagenwe – Inyungu banki itishyuje mu gihe cy'imyaka itanu (5) itanze umwenda ntishobora kuzishyuza kuko haba habaye ubuzime bwo kuzishyuza – Itegeko ryo mu 1888 rigenga amasezerano n'imirimo nshinganwa, ingingo ya 657.

Incamake y'ikibazo: Kabandana yagiranye amasezerano y'inguzanyo na Bank of Kigali (BK) aza no gutangaho ingwate umutungo we utimukanwa wagoombaga gutezwa cyamunara nta rubanza mu gihe ananiwe kwishyura. Kabanda yaje kunanirwa kwishyura umwenda yahawe, BK igiye guteza cyamunara, Murekeyisoni washakanye na Kabandana agoboka mu rubanza rwari rwatanzwe na BK irega Kabandana asaba ko iyo ngwate yandukurwa mu ngwate kuko atigeze abitangira uburenganzira.

Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko ikirego cya Murekeyisoni gifite ishingiro, runategeka Kabandana kwishyura BK umwenda wayo ungana na 115.540.000 Frw.

BK na Kabandana bajuririye Urukiko Rukuru rw'Ubucuruzi, BK ivuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ingano y'umwenda itariwo nago Kabandana we avuga ko atari kwishyuzwa umwenda kuko ngo yarangije kuwishyura. Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa BK bufite ishingiro butegeka Kabandana kuyishyura 428,904,930 Frw naho ko ubujurire bwa Kabandana nta shingiro bufite.

Kabandana yajuririye Urukiko rw'Ikirenga ariko urubanza ruburanishwa n'Urukiko rw'Ubujurire kubera ivugurura ry'amategeko y'ububasha bw'Inkiko. Mu bujurire bwe yavugaga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije amategeko bituma bigira ingaruka ku ngano y'umwenda wabazwe nta bimenyetso banki igaragaje. Yongeye avuga ko inyungu z'umwenda yishyuzwa zazimye bityo ko atagomba kuziryozwa.

Kuri izi mpamvu BK yireguye ivuga ko ko rero ibyo Kabandana avuga ko BK itigeze igaragaza ishingiro by'ibyo iregera atari byo, kuko Urukiko Rukuru rw'Ubucuruzi rwabisobanuye neza, rukerekana n'impamvu rwashyigikiye raporo y'umuhanga yerekeranye n'umwenda nyakuri. Kubijyanye n'ubuzime bw'inyungu z'umwenda, BK yavuze ko kuba harabayeho ikirego cy'umugore wa Kabandana cyijyanye no kwandukuza ingwate byatumye ibihe bihagarikwa kubara kuko BK yishyuje umwenda hakaza kuzamo imbogamizi.

Incamake y'icyemezo: 1. Uwahawe inguzanyo na banki ntiyahakana kutishyura umwenda wa banki ashingiye ko itamuhaye ibaruwa iwumumenyesha mu gihe bigaragara ko atahakanye

imikoranire yagiranye na banki mu guhabwa inguzanyo ndetse akisabira na banki ko bagirana imishyikirano mu gukemura ikibazo cy'umwenda ayifitiye kandi akanabyemerera imbere y'urukiko. Bityo, Kabandana akaba yarahawe inguzanyo na Bank of Kigali kuko nawe yabyiyemereye kandi agasubiza ubusabe bwayo bwo kwishyuza yerekana aho yazavana ubwishyu.

2. Uwatanze umwenda iyo adashoboye kugaragaza ibikorwa yakoze bihagarika ibara ry'inyungu, muri icyo gihe habarwa ibihe by'ubuzime kuri izo nyungu. Bityo, inyungu Bank of Kigali igomba kubara ku mwenda yahaye Kabandana ari izo guhera tariki 16/01/2008 kugeza ku itariki ya 16/01/2013.

3.Iyo urukiko rubaze inyungu rugasanga zitarenze umwenda shingiro igihe inguzanyo yageraga mu rwego rwo kutishyurwa hakurikijwe amasezerano banki ifitanye n'umukiliya wayo nta mpamvu yo gushingira ku ngingo ya 112 y'Itegeko nº 47/2017 ryo ku wa 23/9/2017 rigena imitunganyirize y'imirimo y'amabanki.

Ubujurire bw'uwajuriye bufite ishingiro kuri bimwe.
Ubujurire bwuririye ku bundi nta shingiro bufite.
Amagarama ahwanye n'ibyakozwe mu rubanza.

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.
Itegeko nº 15/2004 ryo ku wa 12/6/2004 ryerekeyeibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 n'iya 110.
Itegeko ryo mu 1888 rigenga amasezerano n'imirimo nshinganwa, ingingo ya 657.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] BANK OF KIGALI Ltd yareze Kabandana Venant isaba Urukiko ko rwamutegeka kuyishyura umwenda ukomoka ku mafaranga agaragaraga mu kirego yagiye imuha mu bihe bitandukanye kugira ngo ayakoreshe bu bucuruzi bwe. Bari barumvikanye ko mu gihe Kabandana Venant azananirwa kwishyura, Banki izagurisha ingwate nta rubanza rubaye, ariko ntibyashoboka kubera ko igihe imihango ya cyamunara yari itangiye, Murekeyisoni Gloriose, umugore wa Kabandana Venant bashakanye mu buryo bwemewe n'amategeko kandi bafitanye amasezerano y'ivanganutungo risesuye, yatanze ikiregо cyo kugoboka mu rubanza asaba gutesha agaciro amasezerano y'ubugwate y'imitungo y'umuryango yabaye hagati ya Kabandana Venant na BANK OF KIGALI Ltd atabitangiye uburenganzira, akaba yarasabaga ko BANK OF KIGALI Ltd ndetse na Kabandana Venant bamuha indishyi.

[2] Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza n° RCOM 1231/15/TC/Nyge ku wa 13/07/2016, rwemeza kwakira ikirego rwashyikirijwe na BANK OF KIGALI Ltd ndetse n'icyo kugoboka rwashyikirijwe na Murekeyisoni Gloriose, rwemeza ko bifite ishingiro, ko

Kabandana Venant atubahirije amasezerano yagiranye na BANK OF KIGALI Ltd akaba agomba kuyubahiriza yishyura umwenda ayifitiye ungana na 115,540,000 Frw, ko ubugwate ku mutungo wa Kabandana Venant na Murekeyisoni Gloriose uri mu kibanza nº 5663, Volume R.XIX, Folio 117 Nyarugenge bukurwaho, rutegeka kandi BANK OF KIGALI Ltd guha Murekeyisoni Gloriose indishyi z'ikurikiranarubanza zingana na 500.000 Frw.

[3] BANK OF KIGALI Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rubanza rwirengagije ibimenyetso yarushyikirije, bituma rwemeza ingano y'umwenda itari yo. Kabandana Venant nawe, ntiyishimiye imikirize ya mbere, ajurira nawe avuga ko Urukiko rwemeje ko yishyura umwenda wamaze kwishyurwa; no kuba rutaragombaga kwemeza indishyi zigenerwa BANK OF KIGALI Ltd kubera ko yagundiriye nta mpamvu impapuro z'imyimerere z'imitungo ye itimukanwa, ko kandi rutasubije ibibazo byose rwashyikirijwe. Yatanze n'ubujurire bwuririye ku bwa BANK OF KIGALI Ltd, avuga ko iyi Banki yaregeye ibyo idafitiye ibimenyetso; asaba ko ingwate ku mitungo ye itimukanwa, irekurwa kuko iriho mu buryo budakurikije amategeko; ko ariko Urukiko rusanze hari umwenda yaba afitiye BANK OF KIGALI Ltd, habaho ihwanya ry'imyenda cyangwa ukwishyura mu myaka itanu, kuko ukutishyura kwe byatewe na BANK OF KIGALI Ltd yamugumaniye ingwate mu buryo bunyuranyije n'amategeko.

[4] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza nº RCOMA 00446/2016/CHC/HCC – nº RCOMA 00456/2016/CHC/HCC ku wa 06/04/2018**, r**wemeza ko ubujurire bwa BANK OF KIGALI Ltd bufite ishingiro, ko ubujurire bwatanzwe na Kabandana Venant, nta shingiro bufite, ko imikirize y'urubanza rwajuririwe n° RCOM 1231/15/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge, ku wa 13/07/2016, ihindutse gusa ku ngano y'umwenda, rutegeka ko Kabandana Venant agomba kwishyura BANK OF KIGALI Ltd umwenda wose, ungana na 428,904,930 Frw.

[5] Kabandana Venant yajuririye Urukiko rw'Ikirenga avuga ko hari amategeko Urukiko Rukuru rw'Ubucuruzi rwirengagije, ibyo bikaba byaragize ingaruka ku ngano y'umwenda wabazwe nta bimenyetso banki igaragaje. Nyuma y'ivugururwa ry'Urwego rw'Ubucamanza, urubanza rwimuriwe mu Rukiko rw'Ubujurire hashingiwe ku ngingo ya 105 y'Itegeko nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, ikirego gihabwa nº RCOMAA 00035/2018/CA.

[6] Mu iburanisha ryo ku wa 17/01/2019, BANK OF KIGALI Ltd, yatanze inzitizi ivuga ko KABANDANA Venant yatsinzwe ku mpamvu zimwe mu nkiko zombi zabanje, bityo ubujurire bwe bukaba budakwiye kwakirwa ngo busuzumwe hashingiwe ku biteganywa n'ingingo ya 28, igika cya gatanu, y'Itegeko Ngenga nº 30/2012/OL ryo ku wa 12/06/2012 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga rwari rwajuririwe, Urukiko rw'Ubujurire rwemeza, ku wa 15/02/2019, ko inzitizi y'iburabubasha yatanzwe na BANK OF KIGALI Ltd nta shingiro ifite, ko ubujurire bwa Kabandana Venant buri mu bubasha bw'Urukiko rw'Ikirenga rwari rwajuririwe, bityo bukaba buri no mu bubasha bw'Urukiko rw'Ubujurire bwoherejwemo, iburanisha ry'urubanza mu mizi rishyirwa ku wa 09/04/2019.

[7] Uwo munsi ugeze, urubanza rwaburanishirijwe mu ruhame, Kabandana Venant yunganiwe na Me Muragijimana Emmanuel na Me Niyomugabo Christophe, naho BANK OF KIGALI Ltd ihagarariwe na Me Buzayire Angèle.

III. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba hari ibimenyetso byerekana ko Kabandana Venant abereyemo BANK OF KIGALI Ltd umwenda atishyuye

[8] Me Muragijimana Emmanuel, uburanira KABANDANA Venant, avuga ko Urukiko Rukuru rw'Ubucuruzi rwategetse ko Kabandana Venant yishyura BANK OF KIGALI Ltd umwenda ayibereyemo ungana na 428,904,930 Frw, kandi nta bimenyetso by'ibyo iregera yigeze igaragaza haba ku rwego rwa mbere ndetse no mu bujurire, kuko yareze imwishyuza 476,571,149 Frw, uyu mubare ukaba ari umwenda wabazwe kugeza ku wa 28/02/2016, ivuga ko ukomoka ku mwenda remezo wa 143,588,480 Frw n'inyungu zawo zingana na 332,976,323 Frw. Akomeza asobanura ko igihe kandi BANK OF KIGALI Ltd yaregaga, yatanze umwanzuro uherekejwe na "*historique de compte*" ariko ko itigeze yerekana ibaruwa Kabandana Venant yayandikiye asaba uwo mwenda, cyangwa se ibaruwa BANK OF KIGALI Ltd yamusubije imwemerera aya 143,588,480 Frw ndetse ko nta n'amasezerano y'umwenda (*loan contract*) bagiranye yigeze yerekana.

[9] Me Muragijimana Emmanuel avuga kandi ko umuhanga witabajwe ku rwego rw'ubujurire, nawe ntaho muri raporo ye agaragaza amasezerano y'umwenda wa 143.588.480 Frw cyangwa ngo agaragaze kuri *historique de compte* ko ayo mafaranga yageze kuri konti ya Kabandana Venant, akaba yerekana gusa ibaruwa yandikiwe Kabandna Venant imumenyesha ko bahinduye *"ligne de crédit*" kandi ko imyenda ye yashyizwe hamwe, umwenda ukomatanije (*crédit consolidé)* ukaba ungana na 160,689,000 Frw .

[10] Me Niyomugabo Christophe nawe uburanira Kabandana Venant, avuga ko uru Rukiko rwategeka Kabandana Venant kwishyura umwenda remezo, mu gihe BANK OF KIGALI Ltd yaba iwutangiye ibimenyetso bidashidikanywaho, byabura rukavuga ko Banki itsinzwe kubera kubura ibimenyetso, ko ariko uko byaba bimeze kwose, asanga niyo umwenda waba uhari ariko BANK OF KIGALI Ltd itawugaragariza ibimenyetso, ntaho Urukiko rwashingira rumutegeka kuwishyura.

[11] Kabandana Venant avuga ko umwenda yemera ari uwaturutse mu guhuza imyenda ungana na 143,076,639 Frw, akaba yarandikiye BANK OF KIGALI Ltd tariki ya 11/3/2016 ashaka kuwishyura kuko yari yarasabye inguzanyo muri Banque Populaire du Rwanda (BPR), ariko ko yasabye ubwo bwumvikane mu rwego rwo gukomeza kubana neza na BANK OF KIGALI Ltd, ariko ko atari ukubera ko yemera ingano y'umwenda wose yishyuzwa.

[12] Mu mwanzuro watanzwe na Me Rukangira Emmanuel, uburanira BANK OF KIGALI Ltd, avuga ko iyi mpamvu y'ubujurire nta shingiro ifite, kuko mu Rukiko w'Ubucuruzi rwa Nyarugenge, BANK OF KIGALI Ltd yari yaregeye Kabandana Venant kutubahiriza amasezerano y'inguzanyo bagiranye, isaba urwo Rukiko kwemeza umwenda Kabandana Venant asigayemo no kumutegeka kuwishyura hamwe n'inyungu z'ubukererwe n'amafaranga y'ikurikiranarubanza. Asobanura ko impande zombi zajuriye, Kabandana Venant mu bujurire bwe akaba yaravugaga ko yishyuzwa umwenda wamaze kwishyurwa no kuba Urukiko rw'Ubucuruzi rwa Nyarugenge rutaragombaga kwemeza indishyi zigenerwa BANK OF KIGALI Ltd kubera ko yagundiriye nta mpamvu impapuro z'imyimerere y'imitungo ye itimukanwa, kuba rero icyo gihe nawe ubwe yarivugiraga ko Bank iri kumwishyuza umwenda wamaze kwishyurwa, byumvikana ko uwo mwenda wabayeho kuko nawe ubwe awiyemerera.

[13] Avuga kandi ko mu Rukiko Rukuru rw'Ubucuruzi, BANK OF KIGALI Ltd yari yajurijwe n'uko Urukiko rw'Ubucuruzi rwa Nyarugenge rwari rwirengagije ibimenyetso rwari rwashyikirijwe, bituma rwemeza ingano y'umwenda itariyo, naho Kabandaana Venant mu bujurire bwuririye ku bundi asaba ko ingwate ku mitungo ye itimukanwa yarekurwa, hakabaho ihwanya ry'imyenda cyangwa akishyura umwenda yishyuzwa mu gihe cy'imyaka itanu, kuko kutishyura kwe byatewe na BANK OF KIGALI Ltd yamugumaniye ingwate. Kuri we abona iyi mvugo ya Kabandana Venant nayo ari ikimenyetso cy'uko afitiye banki umwenda.

[14] Me Rukangira Emmanuel avuga na none ko Urukiko Rukuru rw'Ubucuruzi, mu guca urubanza, rwasanze Kabandana Venant hari umwenda akibereyemo BANK OF KIGALI Ltd rushingiye kuri raporo yatanzwe n'umuhanga rwashyizeho, yagaragaje ko umwenda we ungana na 428,904,930 Frw, agizwe na 143,595,826 Frw y'umwenda remezo na 285,309,104 Frw y'inyungu (kugeza ku wa 31/01/2018); ko rero ibyo Kabandana Venant avuga ko BANK OF KIGALI itigeze igaragaza ishingiro by'ibyo iregera atari byo, kuko Urukiko Rukuru rw'Ubucuruzi rwabisobanuye neza, rukerekana n'impamvu rwashyigikiye raporo y'umuhanga yerekeranye n'umwenda nyakuri.

[15] Me Buzayire Angèle, imbere y'uru Rukiko avuga ko amasezerano y'inguzanyo BANK OF KIGALI Ltd yagiranye na KABANDANA Venant ari ayo mu mwaka wa 1999, ko Kabandana Venant yakoranaga na BANK OF KIGALI Ltd mu bucuruzi bwe, umwenda remezo imurega ubu ungana na 143,595,826 Frw ukabaukomoka kuri "*ligne de credit*" no kuri "*crédit documentaire"* yahawe hiyongereyeho n'inyungu zayo, ko iyo myenda yari afitiye banki yaje guhuzwa ikagera kuri 160,689,000 Frw ku itariki ya 07/03/2007, ko ariko kuva icyo gihe Kabandana yishyuye angana na 40,594,000 Frw gusa nawe yari yishyuwe na MINADEF.

[16] Avuga ko Kabandana Venant adakwiye guhakana umwenda afitiye banki kandi hari ibimenyetso biwugaragaza, birimo ibaruwa yo ku wa 11/03/2016 yanditse, ayisaba kumvikana igihe yari imaze gutanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge uretse ko banki yamusubije tariki ya 14/03/2016, imubwira ibyo agomba kubanza gukora kugira ngo nayo ibe yareka ikirego, ko ariko ntabyo yakoze maze birangira baburanye.

UKO URUKIKO RUBIBONA

[17] Ingingo ya 3 y'Itegeko nº 15/2004 ryo ku wa 12/6/2004 ryerekeyeibimenyetso mu manza n'itangwa ryabyo, iteganya ko "B*uri muburanyi agomba kugaragaza ukuri kw'ibyo aburana".*

[18] 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 ko "U*rega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda".*

[19] Ingingo ya 110 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko "Ukwiyemerera mu rubanza ni amagambo umuburanyi cyangwa umuhagarariye avugira mu Rukiko agira ibyo yemera. Ayo magambo atsindisha uwayavuze".

[20] Izi ngingo zumvikanisha ko urega agomba gutanga ibimenyetso bigaragaza ukuri kw'ibyo aregera, yabibura uwarezwe agatsinda.

[21] Dosiye y'urubanza igaragaza ko ku itariki ya 23/08/1999, Kabandana Venant yagiranye amasezerano na BANK OF KIGALI Ltd *yiswe''Ouverture de Crédit avec constitution d'hypothèque'',* muri aya masezerano yashyizweho umukono n'impande zombi ndetse na Noteri wa Leta, bikaba bigaragara ko BANK OF KIGALI Ltd yahaye Kabandana Venant inguzanyo ingana na 159,300,000 Frw.

[22] Bigeze ku itariki ya 07/3/2007, BANK OF KIGALI Ltd yandikiye Kabandana Venant imubwira ko ishingiye ku mabwiriza yo gutanga inguzanyo nawe ubwe yaboneye kopi ku wa 29/11/1995, ihinduye uburyo bw'inguzanyo afitiye iyi Banki. Muri dosiye kandi hagaragaramo ko tariki ya 19/04/2007, Kabandana Venant yandikiye BANK OF KIGALI Ltd ayaka indi nguzanyo yitwa'' *Ouverture d'un CREDOC''* kugira ngo abashe kurangiza isoko yari yatsindiye ryo gutanga motos YAMAHA AG100 muri MINADEF.

[23] Ku wa 09/10/2007, BANK OF KIGALI Ltd yandikiye Kabandana Venant imumenyesha ko atarimo kwishyura inguzanyo yahawe, imumenyesha ko umwenda remezo ndetse n'inyungu zawo kugeza ku itariki ya 31/10/2007, uzaba ari 177.504.635 Frw. Ku wa 23/11/2007, Kabandana Venant yasubije BANK OF KIGALI Ltd avuga ko uwo mwenda uzishyurwa namara guhabwa na Union de Banques Populaire du Rwanda (UBPR), amafaranga angana na 168,640,000 Frw ndetse avuga ko bizakorwa mu cyumweru gitaha.

[24] Ku itariki ya 11/03/2016, Kabandana Venant yandikiye BANK OF KIGALI Ltd ayisaba gukemura ikibazo bafitanye mu bwumvikane, akaba yarasabaga ko Banki yahagarika urubanza n° RCOM 1231/15/TC/NYGE rwari mu Rukiko rw'Ubucuruzi, ikaba yari yaramureze isaba ko yategekwa kuyishyura umwenda wose ayibereyemo, Kabandana Venant akaba kandi yarabwiraga Banki ko yafashe umwanzuro wo kugurisha umwe mu mitungo afite kandi ko yabonye n'umukiriya wo kuwugura kugira ngo yishyure uwo mwenda na Banki ibashe guhagarika urubanza.

[25] Muri dosiye harimo na none ibaruwa yo ku wa 14/03/2016, BANK OF KIGALI Ltd yandikiye Kabandana Venant isubiza iyo yari yayandikiye ihakana kurangiza ikibazo mu bwumvikane imubwira ko uwo mwenda umaze imyaka 10 utishyurwa, maze imubwira ko umwenda wose ayibereyemo ungana na 476,571,149 Frw ubazwe kugeza tariki ya 28/02/2016, ukaba ugizwe n'umwenda remezo wa 143,595,826 Frw n'inyungu zawo zingana na 332,975,323 Frw kandi ko uzakomeza kubarwa kugeza umwenda wose wishyuwe.

[26] N'ubwo mu miburanire yabo, abunganira Kabandana Venant bavuga ko nta mwenda afitiye BANK OF KIGALI Ltd kuko nta bimenyetso yawugaragarije harimo nk'ibaruwa yasabiyeho iyo nguzanyo, iyo banki yamwandikiye iyimwemerera (*lettre de notificationdu crédit*) cyangwa amasezerano y'inguzanyo bagiranye, we yibwiriye uru Rukiko ko yemera ko hari umwenda w'iremezo ugera kuri 143,076,639 Frw atishyuye, ko rero hashingiwe ku ngingo z'amategeko yavuzwe haruguru, Urukiko rusanga ibimenyetso birondoye haruguru, kimwe no kwiyemerera umwenda Kabandana Venant yakoreye imbere y'uru Rukiko, bigaragara ko yagiranye imikoranire y'ubucuruzi (*des relations d'affaires*) na BANK OF KIGALI Ltd, ko yagiye imuha inguzanyo zitandukanye yagiye akoresha cyane cyane mu bucuruzi bwo gutumiza motos zo mu bwoko bwa YAMAHA yagemuraga muri minisiteri zitandukanye, kuzikura muri Gasutamo n'ibindi, kuba mu ibaruwa yo ku wa 09/10/2007, banki yaramweretse ko umwenda we mu bitabo byayo umaze kugera kuri 177,504,635 Frw, maze aho kuyandikira ahakana uwo mwenda, ahubwo

akaba ku itariki ya 23/11/2007, yarayandikiye ayisobanurira uburyo yumva azakemura ikibazo cy'ibirarane bikomoka ku nguzanyo ye akoresheje amafaranga angana na 168,640,000 azahabwa na Banki y'Abaturage y'u Rwanda, nta gushidikanya ko ibyo KABANDANA Venant aburana nta shingiro bifite.

[27] Urukiko rurasanga ikindi cyerekana ko Kabandana Venant hari umwenda abereyemo BANK OF KIGALI Ltd, ni uko nyuma yo ku wa 28/02/2016, BANK OF KIGALI Ltd imaze kumubwira ingano y'umwenda imwishyuza ikanamubwira ko igiye no gutanga ikirego mu Rukiko, yandikiye Umuyobozi Mukuru wayo amusaba guhagarika urubanza nº RCOM 1231/15/TC/NYGE rwari mu Rukiko rw'Ubucuruzi rwa Nyarugenge. Muri iyi baruwa naho yasabaga gukemura ikibazo mu bwumvikane, ndetse amubwira ko yiteguye kugurisha imwe mu mitungo ye kugira ngo ikibazo gikemuke, ariko ntiyagira icyo akora cyatuma ibyo yasabaga bishoboka.

[28] Urukiko rurasanga hashingiwe ku byo Kabandana Venant yagiye yandika mu mabaruwa atandukanye yohererezaga BANK OF KIGALI Ltd kimwe n'ibikubiye mu zindi nyandiko zigize dosiye y'urubanza zasobanuwe haruguru, hashingiwe kandi ku biteganywa n'ingingo ya 3 n'iya 110 z'Itegeko nº 15/2004 ryo ku wa 12/6/2004 ryavuzwe haruguru, ku ngingo ya 12, igika cya mbere, y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, Kabandana Venant ntiyashoboye kugaragaza ibimenyetso byerekana ko yishyuye umwenda BANK OF KIGALI Ltd imurega, ahubwo hari ibimenyetso bifatika bigaragaza ko ayifitiye umwenda, bityo iyi ngingo ye y'ubujurire ikaba nta shingiro ifite.

2. Kumenya ingano y'umwenda Kabandana Venant afitiye BANK OF KIGALI Ltd

2.1 Kumenya niba mu kubara umwenda hari inyungu zitagombaga kubarwa kubera ubuzime

[29] Me Niyomugabo Christophe anenga Urukiko Rukuru rw'Ubucuruzi kuba rwarabaze nabi umwenda BANK OF KIGALI Ltd yishyuza Kabandana Venant, avuga ko rwashingiye kuri raporo y'umuhanga utarigeze uha agaciro ibiteganywa n'ingingo ya 657 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, ko iyo Urukiko Rukuru rw'Ubucuruzi ruha ingingo imaze kuvugwa agaciro, rutari kugenera inyungu BANK OF KIGALI Ltd kubera ko igihe cy'imyaka itanu iteganywa n'itegeko cyo kwishyura inyungu ku nguzanyo cyari cyararenze bitewe nuko hari inyandiko yishyuza Kabandana Venant yabonye ku wa 14/12/2007, nyuma akaba tariki ya 15/01/2008 yarishyuye amafaranga yari avuye muri MINADEF, akaba yarongeye kubona indi nyandiko imwishyuza ku wa 11/03/2016, nyuma y'imyaka 8, iyi nyandiko ikaba yaramumenyeshaga itangwa ry'ikirego n'imyanzuro. Asoza avuga ko ku birebana n'iyi ngingo Urukiko rw'Ikirenga rwabifasheho umurongo mu rubanza n° RCOMA 0017/11/CS rwaciwe ku wa 14/01/2014.

[30] Me Buzayire Angèle avuga ko ingingo ya 657 imaze kuvugwa haruguru, ababuranira Kabandana Venant bavuga ko umuhanga atakurikije, itashingirwaho kuko Kabandana Venant yishyujwe, umugore agasaba ko bihagarikwa kubera ko atasinye ku ngwate, ndetse Urukiko ruza kubyemeza, kuba rero harabayeho ihagarikwa ry'ingwate, bikaba bivuze ko iyi ngingo idashobora gukurikizwa, kuko BANK OF KIGALI Ltd yishyuje umwenda hakaza kuzamo imbogamizi.

UKO URUKIKO RUBIBONA

[31] Ingingo ya 657 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, iteganya ko''amafaranga yishyurwa uko igihe gitashye yerekeye inshingano yo gutunga umuntu; amafaranga y'ubukode bw'inzu cyangwa icyata-murima; inyungu z'amafaranga yagurijwe, muri rusange n'andi mafaranga yose yishyurwa buri mwaka, cyangwa mu kindi gihe kitageze ku mwaka ; bizima hashize imyaka itanu".

[32] Dosiye y'urubanza igaragaza ko kuva ku itariki ya 07/03/2007, BANK OF KIGALI Ltd imaze kumenyesha Kabandana Venant ko umwenda uhurijwe hamwe (*crédit consolidé*) ubaye 160,689,000 Frw, ibaruwa BANK OF KIGALI Ltd yanditse imwishyuza ni iyo ku wa 09/10/2007 aho yamubwiraga ko ibirarane bye bigeze kuri 177,504,635 Frw, imuha n'integuza yo kwishyura ayo mafaranga.

[33] Urukiko rurasanga kuva kuri iriya tariki yo ku wa 09/10/2007 BANK OF KIGALI Ltd itanga integuza yishyuza umwenda, muri dosiye nta kindi kimenyetso BANK OF KIGALI Ltd yashyikirije Urukiko kigaragaza ko yagiye yishyuza KABANDANA Venant mbere y'uko itanze ikirego ku wa 30/7/2015, uretse ko byageze tariki ya 15/01/2018, Kabandana Venant akishyurwa na MINADEF "*facture*" ye ya 40,594,500 Frw, ari nabyo byagabanyije umwenda asigayemo, ku buryo hamaze kuvanwamo andi mafaranga BANK OF KIGALI Ltd igenda imwishyuza ugabanuka ukagera kuri 143,595,826 Frw.

[34] Hashingiwe ku biteganywa n'ingingo ya 657 y'Itegeko rimaze kwibutswa haruguru, Urukiko rurasanga inyungu BANK OF KIGALI Ltd igomba kubara ari izo guhera tariki 16/01/2008 kugeza ku itariki ya 16/01/2013, naho iza nyuma y'iyi tariki zikaba zari zarashaje. Kuba rero BANK OF KIGALI Ltd itarashoboye kugaragaza ibikorwa yakoze bihagarika ibara ry'inyungu mu gihe kimaze kuvugwa kibarwa guhera itariki ya nyuma Kabandana Venant yishyuriyeho, umwenda we ugomba kubarwa mu buryo bukurikira:

a) Umwenda shingiro utarishyuwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa: 143,595,826 Frw

b) Igipimo cy'inyungu zisanzwe impande zombi zumvikanyeho:17,25%;

c) Igipimo cy'inyungu z'ubukererwe impande zombi zumvikanyeho: 2%, kuva ku wa 16/01/2008 kugeza ku wa 15/01/2013;

d) Igiteranyo cy'inyungu zisanzwe zibazwe kugeza tariki ya 15/01/2013=143,595,826 Frw x 17,25% x5:100x1= 123,851,400 Frw;

e) Igiteranyo cy'inyungu z'ubukererwe zibaze kugeza ku wa 15/01/2013= 143,595,826 Frw x 2% x5:100x1= 14,359,583 Frw;

f) Umwenda wose KABANDANA Venant agomba kwishyura BANK OF KIGALI Ltd ungana na =143,595,826 Frw +123,851,400 Frw+14,359,583 Frw= **281,806,809 Frw**

1.2 Kumenya ingano y'inyungu Kabandana Venant agomba kwishyura

[35] Me Niyomugabo Christophe avuga ko Urukiko Rukuru rw'Ubucuruzi rwashimangiye ibyo umuhanga yakoze kandi atarigeze areba ingingo ya 112 y'itegeko Nº 47/2017 ryo ku wa 23/9/2017 rigena imitunganyirize y'amabanki, rukaba rwari rukwiye gukosora amakosa y'umuhanga, kuko

inyungu zingana na 285,309,104 Frw zirenze kure icyo yita umwenda remezo cya 143,595,826 Frw, kuko uburyo izi nyungu zabazwe atari byo kuko ijanisha ry'urwunguko ari 17,25% rugaragara mu ibaruwa yo ku wa 07/03/2007, umuhanga akaba yarakoresheje 19,25% yamenyeshejwe na BANK OF KIGALI Ltd mu ibaruwa yo ku wa 15/2/2018.

[36] Me Buzayire Angèle nawe uburanira BANK OF KIGALI Ltd avuga ko ingingo ya 112 y'Itegeko nº 47/2017 ryo ku wa 23/9/2017 rigena imitunganyirize y'imirimo y'amabanki, urukiko rutayiha agaciro kuko ikirego cyatanzwe iri tegeko ritarabaho, ko rero ritakoreshwa muri uru rubanza.

UKO URUKIKO RUBIBONA

[37] Ingingo ya 112 y'Itegeko nº 47/2017 ryo ku wa 23/9/2017 rigena imitunganyirize y'imirimo y'amabanki iteganya ko mu kwishyuza imyenda itishyurwa, banki ntigomba kurenza umubare w'amafaranga ntarengwa akurikira: 1° umwenda shingiro utarishyuwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa; 2° inyungu zitarenze umwenda shingiro igihe inguzanyo yageraga mu rwego rwo kutishyurwa hakurikijwe amasezerano banki ifitanye n'uyifitiye umwenda; 3° amafaranga yakoreshejwe mu gihe cyo kwishyuza amafaranga yose y'ufitiye umwenda banki. Banki Nkuru ishobora kugena uburyo bwo kubara no gushyira ahagaragara inyungu.

[38] Ku kibazo cyo kumenya niba iyi ngingo Kabandana Venant aburanisha asaba ko yakurikizwa kugirango inyungu yishyuzwa zigabanuke, Urukiko rurasanga ikiburanwa muri uru rubanza ari umwenda BANK OF KIGALI Ltd yishyuza Kabandana Venant ndetse ikaba ivuga ko azakomeza kuwishyura kugeza wishyuwe wose. Rurasanga kandi kuba inyungu zabazwe mu gika cya 34 zitarenze umwenda shingiro igihe inguzanyo yageraga mu rwego rwo kutishyurwa hakurikijwe amasezerano banki ifitanye na Kabandana Venant, nta mpamvu yo gusuzuma niba ingingo ya 112 y'Itegeko nº 47/2017 ryo ku wa 23/9/2017 ryavuzwe haruguru yakoreshwa cyangwa itakoreshwa mu kubara umwenda uburanwa muri uru rubanza.

3. Ku birebana n'ubujurire bwuririye ku bundi

[39] Me Buzayire Angèle avuga ko Kabandana Venant yategekwa kwishyura BANK OF KIGALI Ltd indishyi za 2,000,000 Frw yo gushorwa mu manza, kuva 2008 kugeza uyu munsi kandi yaremeye ko bakorana amasezerano.

[40] Me Muragijimana Emmanuel na Me Niyomugabo Christophe bavuga ko izi ndishyi nta shingiro zazo kuko Kabandana Venant atariwe wareze kuko yaje yiregura.

UKO URUKIKO RUBIBONA

[41] Urukiko rurasanga indishyi BANK OF KIGALI Ltd yasabye ntazo yagenerwa kuko ubujurire bwa KABANDANA bufite ishingiro kuri bimwe, akaba atsindiye ingano y'umwenda igabanutse.

III. ICYEMEZO CY'URUKIKO

[42] Rwemeje ko ubujurire bwatanzwe na Kabandana Venant bufite ishingiro kuri bimwe;

[43] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na BANK OF KIGALI Ltd nta shingiro bufite ;

[44] Rwemeje ko urubanza n° RCOMA 00446/2016/CHC/HCC - RCOMA 00456/2016/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/04/2018, ruhindutse ku birebana n'ingano y'umwenda Kabandana Venant agomba kwishyura BANK OF KIGALI Ltd ;

[45] Rutegetse Kabandana Venant kwishyura BANK OF KIGALI Ltd, umwenda ayibereyemo ungana na **281,806,809 Frw.**

[46] Ruvuze ko amagarama y'urubanza ahwanye n'ibyakozwe muri uru rubanza.