NDAYISABA v RUTAGENGWA N'UNDI

[Rwanda URUKIKO RW'UBUJURIRE – RCAA 00033/2020/CA – (Kaliwabo, P.J.,) 14 Mutarama 2022]

Amategeko agenga ubutaka – Umutungo w'umuryango – Amasezerano y'ubugure bw'umutungo utimukanwa – Agaciro k'amasezerano y'ubugure bw'umutungo utimukanwa bwakozwe n'umwe mu bawufatanyije afite iheshabubasha rimwemerera kugurisha – Umuntu ufite iheshabusha rimwemerera gufata ibyemezo mu mwanya w'undi basangiye umutungo ariko akirengagiza kurikoresha, ntasinye mu mwanya w'uwarimuhaye, ibyo akoze ntibiryozwa (opposable) uwamuhaye ububasha – Nubwo ihererekanya kuri uwo mutungo ridashoboka ariko ibintu bigomba gusubira uko byari bimeze mbere yuko ayo amasezerano akorwa, inzu ikaguma mu mutungo w'umuryango naho ikiguzi kigasubirana nyiracyo..

Incamake y'ikibazo: Ndayisaba yareze Rutagengwa mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko rwamutegeka kumukorera ihinduzamutungo ku nzu baguze akayishyura kubera umwenda uyu Rutagengwa yari afite muri Unguka Bank maze bakorana amasezerano yanditse y'agateganyo ndetse bumvikana ko amafaranga y'ikiguzi asigaye azayamwishyura bamaze gukora ihinduzamutungo. Naho Rutagengwa avuga ko ayo mafaranga yayamugurije kugira ngo inzu ye itagurishwa mu cyamunara, ibyo bakaba babiziranyeho mu masezerano atanditse, kandi ko yamusabye ko bumvikana uburyo yamwishyura agahitamo kugana inkiko.

Umugore wa Rutagengwa yagobotse muri uru rubanza avuga ko inzu yabo yagurishijwe atabizi kandi ayisangiye n'umugabo we nk'abashyingiranywe mu masezerano y'ivangamutungu rusange ndetse ikaba yaragurishijwe amafaranga make atajyanye n'agaciro ifite.

Urukiko Rwisumbuye rwemeje ko ikirego cy'Urega nta shingiro gifite kubera amakimbirane yari mu masezerano y'ubugure aregerwa no kuba umugore w'Uregwa nta mukono we yayashyizeho. Ibi byatumye ajuririra mu Rukiko Rukuru arusaba kwandikwaho umutungo yaguze, mu gihe atakorerwa ihererekanya mutungo agasubizwa amafaranga yishyuye nk'ikiguzi hiyongereyeho inyungu zayo.

Urukiko Rukuru rwemeje ko ikirego cy'Urega nta shingiro gifite kubera ko ihererekanyamutungo ridashobora gushingira kuri ayo masezerano y'ubugure, ko n'ikirego cyo gusubizwa ikiguzi kitasuzumwa kuko cyatanzwe bwa mbere ku rwego rw'ubujurire ndetse akaba ataseswa kuko nyuma y'icibwa ry'urubanza umugore w'Uregwa ashobora gutanga uburenganzira butuma Urega ahabwa ihererekanya ry'umutungo asaba.

Urega yajuririye Urukiko rw'Ubujurire asaba gukorerwa ihererekanya kuko Uregwa yari yahawe ububasha n'umugore we bwo kugurisha uwo mutungo uburanwa mu gihe byaba ngombwa. Anenga urubanza rwaciwe n'urukiko Rukuru avuga ko rwamwimye ikiguzi yatanze agura dore ko n'abanyirawo batabihakana akaba asaba ko byakosorwa.

Muri uru rukiko, Uregwa yabanje gutanga inzitizi y'iburabubasha hashingiwe ku gaciro k'ikiburanwa n'umugore we atanga indi avuga ko Urega yatsinzwe ku mpamvu zimwe mu nkiko zabanje ariko Urukiko rwasanze nta shingiro zifite maze urubanza ruburanishwa mu mizi. Hasuzumwe ikibazo kijyanye no kumenya niba Urega yakorerwa ihererekanya mutungo hashingiwe ku masezerano yakoranye n'Uregwa, ikibazo cyo kuba yasubizwa ikiguzi yatanze mu gihe iryo hinduzamutungo ridakunze no kumenya ishingiro ry'inyungu asaba.

Mu iburanisha mu ruhame, Urega avuga ko Urukiko rwabanje rwamwimye ihererekanya ry'umutungo kandi amasezerano y'ubugure bakoze afite agaciro kuko baguze ku bwumvikane ndetse n'umugore w'Uregwa akaba yari yaratanze iheshabubasha ryo kugurisha mu gihe we atari mu Rwanda ngo ashobore gusinya ku nyandiko y'ubugure.

Uregwa yiregura avuga ko nta bugure bw'inzu yigeze agirana n'Uregwa, ashingiye ku kuba mu masezerano y'ubugure agaragazwa nta mukono w'umugore we uyariho, no kuba iyo nzu ifite agaciro ka 108.789.060 Frw, ikaba itagurishwa amafaranga 43.000.000 gusa. Akomeza avuga ko bagiranye amasezerano atanditse agamije kumuguriza amafaranga atuma Banki idateza cyamunara inzu ye, bityo ko ariyo yamwishyura. Naho Umugore we avuga ko iheshabubasha yatanze ivuga ku bintu byinshi bijyanye n'umutungo wose w'umuryango ndetse ikaba itarakurikijwe kuko kuri ayo masezerano ntaho bigaragara ko umugabo we yamusinyiye.

Ku kibazo cyo kuba Uregwa yasubizwa ikiguzi yatanze hamwe n'inyungu zacyo asobanura ko bitumvikana ko yabura inzu ngo abure n'amafaranga ye kandi abayahawe batayahakana, ko bayabonye akababafasha kwishyura umwenda bari bafitiye banki mu gihe we akirwana no kwishyura umwenda yafashe abona ayo mafaranga bityo akaba asaba ko yayasubizwa hamwe n'inyungu yayo ibariwe kuri 18%.

Uregwa n'umugore we bavuga ko ikirego cyo gusubizwa amafaranga yatanzwe n'Urega hamwe n'inyungu zayo byagaragajwe bwa mbere mu Rukiko Rukuru, aho rwavuze ko ari ikirego gishya gitanzwe bwa mbere ku rwego rw'ubujurire ntirwagira icyo rukivugaho kuko kinyuranyije n'ingingo ya 150 y'Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

Incamake y'icyemezo: Umuntu ufite iheshabusha rimwemerera gufata ibyemezo mu mwanya w'undi basangiye umutungo ariko akirengagiza kurikoresha, ntasinye mu mwanya w'uwarimuhaye, ibyo akoze ntibiryozwa uwamuhaye ububasha. Nubwo ihererekanya kuri uwo mutungo ridashoboka ariko ikiguzi cy'ubugure kikaba cyaratanzwe, abawusangiye bombi bafite inshingano yo gusubiza icyo kiguzi k'uwagitanze hamwe n'inyungu zacyo.

Ubujurire bufite ishingiro kuri bimwe.
Amagarama aherera mu isanduku ya Leta.

Amategeko yashingiweho:

Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111 n'iya 150.

Itegeko N° 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 22.

Imanza zifashishijwe:

Maheshe Munyerenkana Floride aburana na Ecobank Ltd, RCOMA 0027/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 14/11/2014.

Mpakaniye Innocent na Banki y'Ubucuruzi y'u Rwanda, RCOMA 0024/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 08/10/2010 ndetse no mu rubanza.

URUBANZA

I. IMITERERE Y'URUBANZA

[1] Tariki ya 28/08/2018, Ndayisaba Jean Damascène na Rutagengwa Georges bagiranye amasezerano y'ubugure bw'inzu iri mu kibanza UPI: 1/02/13/03/1047 ku giciro cya 43.000.000Frw, Ndayisaba ahita atanga 34.400.000fr yishyuye umwenda Rutagengwa Georges na Rutagengwa Matter bari bafite muri Unguka Bank, amwongera 2.100.000Frw naho andi bumvikana ko azayamuha bamaze gukora ihinduzamutungo. Aba bumvikanye ko amasezerano bakoze ari ay'agateganyo.

[2] Ndayisaba Jean Damascène yareze Rutagengwa Georges mu Rukiko Rwisumbuye rwa Nyarugenge mu rubanza RC 00843/2018/TGI/NYGE, asaba ko rwamutegeka kumukorera ihinduzamutungo ku nzu yaguze naho Rutagengwa Georges avuga ko aya mafaranga yayamugurije kugira ngo inzu ye itagurishwa mu cyamunara, ibyo bakaba babiziranyeho mu masezerano atanditse, kandi ko yamusabye ko bumvikana uburyo yamwishyura uyu agahitamo kugana inkiko. Rutagengwa Matter Elisabeth yagobotse muri uru rubanza avuga ko inzu yagurishijwe atabizi kandi ari umutungo asangiye na Rutagengwa Georges nk'abashyingiranywe mu masezerano y'ivangamutungu rusange. Aba bombi bavuga kandi ko inzu yabo ifite agaciro ka 108.789.060 Frw, batashoboraga kuyigurisha ku mafaranga 43.000.000 Frw.

[3] Kuwa 20/09/2019 Urukiko Rwisumbuye rwa Nyarugenge rwakijije urwo rubanza, maze rwemeza ko ikirego cyatanzwe na Ndayisaba Jean Damascène nta shingiro gifite, rushingiye ku kuba hari amakimbirane ku masezerano y'ubugure aregerwa, no kuba nta mukono wa Rutagengwa Matter Elisabeth uboneka kuri aya masezerano.

[4] Ndayisaba Jean Damascène yajuririye Urukiko Rukuru, ubujurire bwe bwandikwa kuri RCA 00424/2019/HC/KIG, arusaba kwandikwaho umutungo yaguze, mu gihe atakorerwa ihererekanya mutungo agasubizwa amafaranga yishyuye nk'ikiguzi hiyongereyeho inyungu zayo.

[5] Kuwa 08/10/2020, Urukiko Rukuru rwakijije urwo rubanza, maze rwemeza ko ubujurire bwatanzwe na Ndayisaba Jean Damascène nta shingiro bufite, Rutegeka ko amasezerano y'ubugure bw'agateganyo bw'inzu ibaruye kuri UPI: 1/02/13/03/1047 yabaye hagati ya Ndayisaba Jean Damascène na Rutagengwa Georges atashingirwaho ngo hakorwe ihererekanya ry'umutungo (mutation), ko ikirego kirebana no gusubizwa ubwishyu yatanze kitasuzumwa kuko cyatanzwe bwa mbere ku rwego rw'ubujurire. Rwavuze kandi ko rutasesa amasezerano kuko nyuma y'icibwa ry'urubanza ntacyabuza Rutagengwa Matter Elisabeth gutanga uburenganzira butuma Ndayisaba Jean Damascène ahabwa ihererekanya ry'umutungo asaba.

[6] Kuwa 07/11/2020 Ndayisaba Jean Damascène yajuririye icyo cyemezo mu Rukiko rw'Ubujurire, ubujurire bwe bwandikwa kuri RCAA 00033/202/CA, arusaba gukorerwa ihererekanya ry'umutungo ku nzu yaguze kuko Rutagengwa Georges yayigurishije afite iheshabubasha rya Rutagengwa Matter Elisabeth rimwemerera no kugurisha mu gihe byaba ngombwa, bityo ko bitari ngombwa ko umukono we uboneka ku masezerano yakozwe. Yanenze urubanza ko rwanze gutegeka ihererekanya ry'umutungo rukamwima n'ikiguzi yatanze kandi abagihawe batagihakana, asaba ko byakosorwa.

[7] Me Nyiringabo Théoneste uhagarariye Rutagengwa Georges, mbere yo gusubiza ku mpamvu z'ubujurire yatanze inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire hashingiwe ku gaciro k'ikiburanwa, naho Me Rwagatare Janvier uhagarariye Rutagengwa Matter Elizabeth atanga inzitizi ishingiye ku kuba Ndayisaba Jean Damascène yaratsinzwe hashingiwe ku mpamvu zimwe mu nkiko zombi zibanza.

[8] Ku birebana n'imizi y'urubanza Me Nyiringabo uburanira Rutagengwa Georges yavuze ko uwo yunganiye yakiriye amafaranga mu rwego rw'inguzanyo nubwo byanditswe ko ari ubugure, ko nyamara ikirego cyo kuyasubizwa kitagomba gusuzumwa kuko cyatanzwe bwa mbere ku rwego rw'ubujurire. Kubirebana n'inyungu, yavuze ko ntaho zishingiye.

[9] Rutagengwa Matter Elisabeth yavuze ko amasezerano avugwa nta ngaruka yagombye kugira ku mutungo we kuko nta ruhare yayagizemo, ko iheshabubasha ryarebaga amasezerano bari bafitanye na Banki gusa, ko kandi inzu ya 108.000.000Frw itari kugurishwa ku giciro cya 43.000.000Frw ngo byitwe ko byakozwe mu nyungu y'umuryango.

[10] Kuwa 14/12/2021 Urukiko rwafashe icyemezo ku nzitizi, rusanga nta shingiro zifite, rwemeza ko urubanza rukomereza mu mizi. Iburanisha ryabaye Ndayisaba Jean Damascène yunganiwe na Me Ntabwoba Francois Xavier na Me Murera Paulin, Rutagengwa Georges ahagarariwe na Me Nyiringabo Théoneste naho Rutagengwa Matter Elisabeth ahagarariwe na Me Rwagatare Janvier.

[11] Uru rukiko rurasuzuma niba Ndayisaba Jean Damascène yakorerwa ihererekanya ry'umutungo hashingiwe ku masezerano yagiranye na Rutagengwa Georges, rusuzume niba ikirego gisaba gusubizwa ikiguzi yatanze mu gihe yaba adahawe ihinduzamutungo no kumenya ishingiro ry'inyungu asaba.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Gusuzuma niba Ndayisaba Jean Damascène yakorerwa ihererekanya ry'mutungo ku nzu ibaruwe kuri UPI 1/02/13/03/1047

[12] Ndayisaba Jean Damascène avuga ko yaguze inzu ku bwumvikane hagati ye na Rutagengwa Georges ku giciro cy'amafaranga 43.000.000 Frw, akamwishyurira umwenda yari afite muri Unguka Bank ungana na 34.400.000 Frw, hanyuma uwo munsi akamuha n'andi mafaranga 500.000 Frw, kuwa 29/08/2018 amwishyura andi mafaranga angana na 1.600.000 Frw ku mafaranga yari amusigayemo, yose hamwe aba 36.500.000 Frw; bumvikana ko amafaranga asigaye angana na 6.500.000 azayamuha ku munsi wo gukora ihererekanya ry'umutungo. Akomeza avuga ko urubanza yaciriwe rwanze kumuha ihererekanya ry'umutungo rushingiye ku kuba Rutagengwa Matter Elisabeth atarashyize umukono ku masezerano y'ubugure, nyamara ngo rwirengagiza ko uyu yari yarahaye umugabo we iheshabubasha rimwemerera no kugurisha umutungo basangiye.

[13] Me Ntabwoba Francois Xavier na Me Murera Paulin bunganira Ndayisaba Jean Damascène bavuga ko ayo masezerano y'ubugure yo kuwa 28/08/2018 afite agaciro kuko baguze ku bwumvikane bw'impande zombi ndetse n'umugore wa Rutagengwa Georges akaba yari yaramuhaye iheshabubasha (*procuration*) ryo kugurisha uwo mutungo mu gihe we atari mu Rwanda ngo ashobore gusinya ku nyandiko y'ubugure; ko Ndayisaba Jean Damascène yaje gutangazwa n'uko yashowe mu manza aho kugira ngo yandikweho umutungo yaguze ku bwumvikane bw'impande zimbi hashingiwe ku masezerano bagiranye kuwa 28/08/2018.

[14] Rutagengwa Georges ahagarariwe na Me Nyiringabo Théoneste yireguye avuga ko nta bugure bw'inzu yigeze agirana na Ndayisaba Jean Damascène, ashingiye ku kuba mu masezerano y'ubugure agaragazwa nta mukono w'umugore we uyariho, no kuba iyo nzu ifite agaciro cya 108.789.060 Frw, ikaba itagurishwa amafaranga 43.000.000 gusa. Yavuze ko bagiranye amasezerano atanditse agamije kumuguriza amafaranga atuma Banki idateza cyamunara inzu ye, bityo ko ariyo yamwishyura. Yavuze ko nta kigomba guhinduka ku rubanza rwajuririwe kuko Ndayisaba Jean Damascène atagaragaza inenge irubonekamo ngo ariyo ikosorwa.

[15] Me Rwagatare Janvier uhagarariye Rutagengwa Matter Elisabeth umugore wa Rutagengwa Georges yaburanye avuga ko iheshabusha (*procuration*) yatanze rivuga ibintu byinshi, birimo uburenganzira bwo gusinya mu mwanya we amasezerano y'inguzanyo muri banki zose zo mu Rwanda, kugura no kugurisha imitungo itimukanwa yarondoye n'ibindi bifitiye inyungu umuryango. Agaragaza ko mu masezerano y'ubugure y'agateganyo yabaye hagati ya Ndayisaba Jean Damascène na Rutagengwa Georges ntaho iyi "*procuration*" yakurikijwe kuko ntaho usanga Rutagengwa Matter yarasinyiwe n'umugabo we.

[16] Me Rwagatare Janvier yakomeje avuga ko Urukiko Rukuru rwasobanuye neza ko iheshabubasha ryatanzwe ryari rusange, bityo ko iyo Rutagengwa Matter Elisabeth yifuza ko inzu

yabo igurishwa, yari gutanga iheshabubasha ryihariye, rivuga inzu iyo ariyo, igiciro n'ibindi biyireba. Yakomeje avuga ko iheshabubasha ryatanzwe rivuga ko ibikorwa atangiye ububasha bigomba gukorwa mu nyungu z'umuryango, nyamara ngo amasezerano avugwa na Ndayisaba ntabonekamo inyungu z'umuryango kuko bitumvikana uburyo inzu yari ifite agaciro ka 108.000.000 frw yari kugurishwa 43.000.000 frw ngo byitwe inyungu y'umuryango. Kuri iyi ngingo Ndayisaba yasobanuye ko agaciro k'umutungo mu gihe cyo gufata inguzanyo atari ko kagenderwaho mu gihe cy'igurisha kugira ngo hishyurwe umwenda kuko, uretse no kuba uyu mutungo waba waratakaje agaciro uko iminsi itambuka, biterwa nanone n'uko isoko ry'abagura rihagaze, ko iyo iyi nzu iza gutezwa cyamunara, yashoboraga no kugurishwa ku giciro kiri hasi y'icyo we yatanze kuko ngo kuri cyamunara ya mbere abayigurisha bari batanze igiciro fatizo cya 73.000.000Frw.

UKO URUKIKO RUBIBONA

[17] Ingingo ya 22 y'Itegeko N° 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda, ryariho igihe amasezerano aregerwa yakorwaga, iteganya ko ihererekanya ry'uburenganzira ku butaka iryo ari ryo ryose rikozwe n'uhagarariye umuryango rigomba kubanza kwemezwa n'abanditse bose ku mpapurompamo z'ubutaka.

[18] Urukiko rurasanga ubujurire bwa Ndayisaba Jean Damascène bushingiye ku kuba Urukiko Rukuru rwaranze guha agaciro amasezerano y'ubugure bw'inzu yabaye hagati ye na Rutagengwa Georges, rwirengagije ko umukono wa Rutagengwa Matter Elisabeth utari ngombwa kuko uyu yari yaratanze iheshabusha ku mugabo we, rimwemerera no kugurisha inzu iburanwa.

[19] Mu gusesengura iheshabubasha ryatanzwe na Matter Rutagengwa Elisabeth ku wa 27/12/2017, Urukiko rurasanga uyu yarahaye umugabo we Rutagengwa Georges ububasha bwo kumuhagararira no gusinya mu mwanya we amasezerano y'inguzanyo, ayo kugura n'ayo kugurisha imitungo bafitanye harimo n'inzu iri mu kibanza UPI 1/02/13/03/1047, iri mu Kagari ka Rukili I, Umurenge wa Remera mu Karere ka Gasabo, ari nayo iburanwa uyu munsi. Rurasanga ibisobanuro byatanzwe n'Urukiko Rukuru by'uko hari hakenewe iheshabubasha ryihariye ku birebana n'iyi nzu nta shingiro bifite, kuko iyatanzwe isobanura neza ububasha butanzwe, ubuhawe n'uburyo abukoresha.

[20] Urukiko rurasanga nyamara, amasezerano y'ubugure yo kuwa 28/08/2018 bigaragara ko yabaye hagati ya Ndayisaba Jean Damascène na Rutagengwa Georges ku giti cye wenyine kuko nta ngingo iyabonekamo ivuga ko ahagarariye Matter Rutagengwa Elisabeth ndetse akaba atarigeze ashyiraho umukono mu mwanya we, bityo ubu bugure bwuzuye ku birebana na Rutagengwa Georges, bukaba budashobora kuba *opposable* kuri Matter Rutagengwa Elisabeth basangiye umutungo.

[21] Urukiko rurasanga Rutagengwa Georges, ku mpamvu ze bwite, atarakoresheje ububasha yari yahawe n'umugore we bwo kumuhagararira mu masezerano atandukanye harimo no kugurisha inzu ivugwa muri uru rubanza, bityo amasezerano y'ubugure yabaye hagati ye na Ndayisaba akaba yuzuye kubibareba bombi ariko akaba ataba *opposable* kuri Rutagengwa Matter Elisabeth, ariyo mpamvu ihererekanya ry'umutungo risabwa na Ndayisaba Jean Damascène ridashoboka kuko ritakorwa gusa ku ruhare Rutagengwa Georges afite kuri uyu mutungo kandi udashobora kugabwa kabiri.

[22] Urukiko rurasanga kuri iyi ngingo, nubwo ibisobanuro byashingiweho ataribyo, ariko icyemezo cy'Urukiko Rukuru cyo kudaha Ndayisaba Jean Damascène ihererekanya ry'umutungo yasabye gifite ishingiro.

2. **Gusuzuma niba Ndayisaba Jean Damascène yasubizwa amafranga 36.500.000 frw yatanze hamwe n'inyungu zayo za 18%**

[23] Ndayisaba Jean Damascène yunganiwe na Me Murera Paulin yaburanye avuga ko yarengayijwe no kuba Urukiko rwaramwimye ihererekanya ry'umutungo yaguze na nyirawo rukamwangira no gusubizwa amafaranga 36.500.000 yatanze awugura. Yavuze ko bitumvikana ko yabura inzu ngo abure n'amafaranga ye kandi abayahawe batayahakana, ko bayabonye akabafasha kwishyura umwenda bari bafitiye Unguka Bank mu gihe we akirwana no kwishyura umwenda yafashe abona aya mafaranga.

[24] Ndayisaba Jean Damascène n'ubwunganizi bwe bavuga ko impamvu Urukiko rwashingiyeho rumwima amafaranga ye ngo aruko Matter Rutagengwa Elisabeth ashobora kwisubiraho akemera amasezerano yo kuwa 28/08/2018 bityo ngo agakorerwa ihererekanya ry'umutungo asabwa, ko abona icyo cyemezo nta kindi gisobanuye uretse kumwima uburenganzira ku nzu yaguze no ku kiguzi yatanze, asaba ko byakosorwa.

[25] Ndayisaba yasabye kandi ko yahabwa inyungu y'amafaranga 36.500.000 yatanze zibariwe ku kigero cya 18% kugeza kuri uyu munsi bityo ngo agahabwa 19.710.000frw, avuga kandi ko nawe Banki yayafashemo imubarira inyungu ziri hejuru ya 18%. Ubwunganizi bwa Ndayisaba bwasabye ko mu kugena inyungu, Urukiko rwazifashisha urubanza RCOMA 0024/10/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 08/10/2010 haburana Mpakaniye Innocent na Banki y'ubucuruzi mu Rwanda.

[26] Me Nyiringabo Théoneste uhagarariye Rutagengwa Georges yavuze ko ikirego kirebana no gusubiza amafaranga yahawe na Ndayisaba Jean Damascène Urukiko Rukuru rwagaragaje ko ari ikirego cyatanzwe bwa mbere ku rwego rw'ubujurire bityo ko kinyuranyije n'ingingo ya 150 y'Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, asaba ko kitasuzumwa kubera iyo mpamvu. Yavuze kandi ko inyungu zisabwa na Ndayisaba ari ikirenga kandi zikaba ntaho zishingiye bityo ko nazo atazihabwa. Me Nyiringabo Théoneste yavuze ko urugero rw'urubanza rw'Urukiko rw'ikirenga rutanzwe n'ubwunganizi bwa Ndayisaba bwashyizwe muri systeme hakerewe bityo ko ntacyo yaruvugaho, ko ariko azarwisobanuraho muri note de plaidoirie azashyira muri sytème.

[27] Me Rwagatare Janvier uhagarariye Rutagengwa Matter Elisabeth avuga ko ibijyanye no gusubizwa amafaranga ndetse n'inyungu zayo byagaragajwe bwa mbere mu Rukiko Rukuru, aho rwavuze ko ari ikirego gishya gitanzwe bwa mbere ku rwego rw'ubujurire maze rushingiye ku ngingo ya 150 y'Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryibukijwe haruguru, ntirwagira icyo rukivugaho, kandi ko no kuri uru rwego ariko bikwiye gufatwa.

UKO URUKIKO RUBIBONA

[28] Urukiko rurasanga Rutagengwa Georges na Matter Rutagengwa Elisabeth bombi bemeranywa ko amafaranga yatanzwe na Ndayisaba Jean Damascène yishyuye umwenda bari bafitiye Unguka Bank bigatuma inzu yabo idatezwa cyamunara, bikaba byumvikana ko aya mafaranga yakoreshejwe mu nyungu z'umuryango wabo bombi.

[29] Urukiko rurasanga, kuba Ndayisaba Jean Damascène yararegeye ihererekanya ry'umutungo ku nzu yaguze na Rutagengwa Georges, uyu mu myiregurire ye akaba yaravuze ko yamwandikiye ashaka ko bavugana uburyo yamusubiza amafaranga ye, nta mpamvu Urukiko Rukuru rwari rufite yo gufata ikirego cyo gusubizwa ikiguzi yatanze nk'ikirego gishya gitangiwe mu bujurire kuko iki kirego ari ingaruka yo kudahabwa ihererekanya ry'umutungo yasabye.

[30] Urukiko rurasanga, ibisobanuro by'Urukiko Rukuru ko kugarurira Ndayisaba amafaranga ye bigombera kubanza kuregera amasezerano y'ubugure kandi ko bishoboka ko Rutagengwa Matter Elisabeth ashobora noneho kuyemera hanyuma ihererekanya ry'umutungo rigakorwa, ibi bisobanuro nta shingiro bifite kubera ko Urukiko rwemeje ko ihinduzamutungo ridashoboka kubera ko amasezerano rishingiraho atabonekaho umukono wa Rutagengwa Matter Elisabeth, ibi bikaba bivuze ko ibintu bigomba gusubira uko byari bimeze mbere yuko amasezerano akorwa, inzu ikaguma mu mutungo w'umuryango naho ikiguzi kigasubirana nyiracyo; Urukiko rukaba rutaragombaga gufata icyemezo gishingiye ku kugenekereza ko Rutagengwa Matter Elisabeth ashobora kuzagera nyuma akemera ibyo uyu munsi ahakana, kuko ibyo byaba binyuze ukubiri n'ubutabera umuburanyi ategereje ku Rukiko.

[31] Urukiko rurasanga, Ndayisaba Jean Damascène afite uburenganzira ku mafaranga ye yakiriwe n'umuryango wa Rutagengwa Georges na Rutagengwa Matter Elisabeth, nk'uko nabo bemera ko yashyizwe kuri Unguka Bank akishyura umwenda aba bombi bari bafitiye Banki, agacungura inzu yabo yari igiye kugurishwa mu cyamunara, kandi nk'uko Ndayisaba abivuga, aya mafaranga akaba agomba kuyabonera inyungu kuko avuga ko nawe yayahawe na Banki nayo imubarira inyungu, ababuranyi bakaba batabihakana.

[32] Rurasanga kandi, inyungu zibariwe kuri 18% ziri mu rugero rw'inyungu zisabwa n'ibigo by'imali igihe bitanga inguzanyo; kuba Ndayisaba Jean Damascène yaraburanye avuga ko amafaranga yahaye Rutagengwa Jean Damascène yayahaweho inguzanyo na Banki ndetse akaba ayishyurira inyungu, ababuranyi be bakaba bataravuguruje iyi miburanire, kuba kandi Rutagengwa Georges na Matter Rutagengwa Elisabeth bemera ko amafaranga bahawe na Ndayisaba yahawe Unguka Bank kugira ngo acungure inzu yabo yari igiye gutezwa cyamunara, bikaba biri mu gaciro ko amafaranga Ndayisaba yabahaye abarirwa inyungu nk'uko n'umwenda wacunguwe nawo wabarirwaga inyungu.

[33] Urukiko rurasanga inyungu zibariwe ku kigero cya 18% arizo Urukiko rw'Ikirenga rwatanze mu manza zitandukanye rwaciye harimo urubanza RCOMA 0024/10/CS rwaciwe ku wa 08/10/2010 Mpakaniye Innocent aburana na Banki y'Ubucuruzi y'u Rwanda ndetse no mu rubanza RCOMA 0027/13/CS rwaciwe ku 14/11/2014 Maheshe Munyerenkana Floride aburana na ECOBANK Ltd.

[34] Urukiko rurasanga, inyungu zingana na 19.710.000frw zisabwa na Ndayisaba Jean Damascène, zihwanye na: $\left(\frac{36.500.000\text{Frw x } 18 \text{ x } 1095}{100 \text{ x } 365}\right)$.

[35] Urukiko rurasanga, hakurikijwe *bordereau de versement* ya Unguka Bank biboneka ko kuwa 28/08/2018 Ndayisaba yashyize kuri konti ya Rutagengwa Georges amafaranga 34.400.000, uwo munsi akaba yaramuhaye andi 500.000Frw naho kuwa 29/08/2018 amuha 1.600.000Frw, bisobanura ko kugeza kuwa 14/12/2021, umunsi iburanisha ryapfundikiriwe, umuryango wa Rutagengwa Georges na Matter Rutagengwa Elisabeth wari umaranye amafaranga ya Ndayisaba Jean Damascène iminsi 1200. Rurasanga, hejuru y'amafaranga 36.500.000 Rutagengwa Georges na Matter Rutagengwa Elisabeth bagomba kugarurira Ndayisaba Jean Damascène bagomba kwongeraho inyungu y'amafaranga 19.710.000Frw yasabwe n'urega angana n'iminsi 1095 bayamaranye, kuko ari yo yasabye, yose hamwe akaba ari 56.210.000Frw.

3. Ku birebana n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka

[36] Matter Rutagengwa Elisabeth uhagarariwe na Me Rwagatare Janvier yasabye ko Ndayisaba Jean Damascène yategekwa kumuha 1.000.000Frw y'igihembo cya Avoka atahawe n'Urukiko rubanza no kumuha andi 1.500.000Frw ahwanye n'igihembo cya Avoka n'ay'ikurikiranarubanza kuri uru rwego.

[37] Ndayisaba Jean Damascène wunganirwa na Me Ntabwoba Francois Xavier na Me Murera Paulin yavuze ko nta ndishyi yaha Matter Rutagengwa Elisabeth kuko we n'umugabo we aribo bamushoye mu manza kubera inzu yaguze bakanga kuyimuha, ko ahubwo bombi bategekwa kumuha 1.500.000Frw y'igihembo cya Avoka.

[38] Me Nyiringabo Théoneste uhagarariye Rutagengwa Georges yireguye ku mafaranga Ndayisaba Jean Damascène asaba avuga ko Urukiko rukwiye kuzayaha uzatsinda urubanza.

UKO URUKIKO RUBIBONA

[39] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza mbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego cy'amafaranga y'ikurikirana rubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo.

[40] Urukiko rurasanga Matter Rutagengwa Elisabeth na Rutagengwa Georges nta ndishyi bakwiye kuko batsindwa no kuba bagomba Ndayisaba Jean Damascène amafaranga ye n'inyungu yayo ahubwo aba akaba aribo bamugomba amafaranga 1.500.000Frw y'igihembo cya Avoka nk'uko Me Nyiringabo Théoneste uhagarariye Rutagengwa Georges yabyiyemereye ko uzatsinda ariyo azagenerwa.

III. ICYEMEZO CY'URUKIKO

[41] Rwemeje ko ubujurire bwa Ndayisaba Jean Damascène bufite ishingiro kuri bimwe.

[42] Rwemeje ko Ndayisaba Jean Damascène adahabwa ihererekanya ry'umutungo wa Rutagengwa Georges na Matter Rutagengwa Elisabeth ubaruwe kuri UPI: 1/02/13/03/1047.

[43] Rwemeje ko Rutagengwa Georges na Matter Rutagengwa Elisabeth bafatanya gusubiza Ndayisaba Jean Damascène amafaranga ye 36.500.000 hiyongereyeho inyungu zayo zingana n'amafaranga 19.710.000.

[44] Rwemeje ko Rutagengwa Georges na Matter Rutagengwa Elisabeth bafatanya guha Ndayisaba Jean Damascène amafaranga 1.500.000 y'igihembo cya Avoka n'ikurikiranarubanza.

[45] Rutegetse ko amafaranga yose hamwe Rutagengwa Georges na Matter Rutagengwa Elisabeth bagomba guha Ndayisaba Jean Damascène ari 57.710.000Frw.

[46] Rutegetse ko ingwate y'amagarama ihera mu Isanduku ya Leta kuko ahwanye n'ibyakozwe kuri uru rubanza.