MUDENGE v BANK OF KIGALI LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00035/2020/CA – (Gakwaya, P.J.) 12 Gashyantare 2021]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Kujurira – Kugaragaza ingingo z'ubujurire zigasobanurwa nyuma y'igihe cyo kujurira – Kudatanga ibisobanuro mu bihe by'ubujurire kuva ku munsi urubanza rujuririrwa rwasomeweho ntibituma ubujurire bw'uwajuriye buteshwa agaciro kuko itegeko ridateganya ko ari umuhango simusiga cyangwa w'indemyagihugu keretse mu gihe uregwa mu bujurire agaragaje ko hari icyo bimwangiriza – Itegeko Nº 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 150.

Amategeko agenga ububasha bw'inkiko – Ubujurire bwa kabiri – Gutsindwa ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe – Impamvu ni ibyashingiweho n'Urukiko mu kugaragariza no gusobanurira ababuranyi icyatumye rufata icyemezo ku birebana n'icyaregewe – Mu gusobanura izo mpamvu si ngombwa ko inkiko zombi zisobanura impamvu zashingiyeho mu buryo bumwe cyangwa zikanakoresha amagambo amwe kuko icyitabwaho aba ari impamvu ziba zaratumye zifata icyemezo – Itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 52 agace ka gatatu.

Incamake y'ikibazo Exert Engineering Group Ltd yatsindiye isoko ryo kubaka stade ya Huye, biba ngombwa ko iha urwego rutanga isoko (Minisiteri ya Siporo n'Umuco) ingwate yo kwishingira kurangiza isoko neza (performance security), maze Bank of Kigali Ltd aba ariyo iyiha iyo ngwate.

Ku wa 20/6/2012, Bank of Kigali Ltd yagiranye na Exert Engineering Group Ltd amasezerano y'inguzanyo y'umwenda ungana na 157.076.636 Frw, uhwanye n'agaciro k'ingwate yasabwaga. Mudenge wari umunyamigabane muri Exert Engineering Group Ltd na BAMUTESI Jacqueline, umugore we, bemeye kuyibera umwishingizi kuri iyo nguzanyo yatanzwe na Bank of Kigali Ltd, batangaho ingwate inzu yabo iri mu kibanza nº 1952/GAS/KIN giherereye i Gacuriro, Akarere ka Gasabo, mu Mujyi wa Kigali.

Mudenge yatanze ikirego mu Rukiko rw'Ubucuruzi, asaba ko Bank of Kigali Ltd yategekwa kurekura ingwate yahawe, kubera ko icyo yayitangiye kitakiriho kuko stade ya Huye yarangije kubakwa. Bank of Kigali Ltd na Exert Engineering Group Ltd bo bakavuga ko umwenda ugihari, ko batasubizwa iyo ngwate. Yaba Urukiko rw'Ubucuruzi rwaregewe ndetse n'Urukiko Rukuru rw'Ubucuruzi rwajuririwe ngo kuko hari amasezerano yo kwikiranura yabaye hagati ya Exert Engineering Group Ltd na Rwanda Housing Authority Mudenge atagizemo uruhare zemeje ko ikirego n'ubujurire bye nta shingiro gifite kuko Exert Engineering Group Ltd itigeze irangiza imirimo yo kubaka stade ya Huye.

Mudenge yajuririye bwa kabiri mu Rukiko rw'Ubujurire avuga ko imirimo Exert Engineering Group Ltd yari yarumvikanye n'urwego rutanga amasoko mu masezerano, yayikoze ikarangira, akaba akwiye gusubizwa umutungo we, ko andi masezerano yo kwikiranura bakoze nyuma y'uko Rwanda Housing Authority isheshe amasezerano mu buryo bunyuranyije n'amategeko atakagombye kumugiraho ingaruka kuko yakozwe agahari.

Banki ya Kigali yatanze inzitizi yo kutakira ubujurire bwa Mudenge ivuga ko yasobanuye impamvu z'ubujurire nyuma y'igihe cy'ubujurire. Yongeye kandi ivuga ko Urukiko rw'Ubujurire nta bubasha rufite bwo kuburanisha ubujurire bwa kabiri bwa Mudenge kuko yatsinzwe ku mpamvu zimwe ku mpamvu zombi.

Mudenge yireguye avuga ko yajuririye ku gihe kandi atanga impamvu z'ubujurire bwe n'ubwo ibisobanuro byagiye byuzuzwa kuri buri mpamvu nyuma, akaba asanga ubujurire bwe bukwiye kwakirwa kuko asanga impamvu z'ubujurire bwe zaratangiwe igihe.

Ku mpamvu z'ububasha bw'Urukiko rw'Ubujurire, Mudenge yireguye avuga ko ibyo yasobanuye mu nkiko zombi atari byo byafashweho icyemezo, ko uko abacamanza basobanuye impamvu zatumye atsindwa ari zimwe, ariko ko hakwiye kurebwa niba koko MUDENGE Emmanuel atararangije isoko.

Incamake y'icyemezo: 1. Ibisobanuro binenga ingingo zo zatanzwe mu bihe byateganyirijwe ubujurire bidatanzwe mu bihe by'ubujurire kuva ku munsi urubanza rujuririrwa rwasomeweho ntibituma ubujurire bw'uwajuriye buteshwa agaciro kuko itegeko ridateganya ko ari umuhango simusiga cyangwa w'indemyagihugu keretse mu gihe uregwa mu bujurire agaragaje ko hari icyo bimwangiriza. Bityo, kuba Mudenge Emmanuel yaragaragaje inenge z'urubanza yajuririye n'impamvu zatumye ajurira n'abaregwa mu bujurire bakazireguraguraho nta kuntu ubujurire bwe bwateshwa agaciro cyane ko na kopi y'urubanza rujuririrwa yabonetse nyuma y'amezi atandatu (6) kandi ari nayo yagombaga gushingiraho agaragaza ibyo anenga mu buryo burambuye, ndetse akanatanga ibisobanuro.

2. Ubujurire bwa kabiri kugira ngo bwakirwe ni ukubanza gusuzuma Impamvu z'ibyashingiweho n'Urukiko mu kugaragariza no gusobanurira ababuranyi icyatumye Urukiko rufata icyemezo ku birebana n'icyaregewe, akaba arizo zituma ababuranyi basuzuma niba imiburanire yabo yarasesenguwe n'Urukiko, kubera ko buri cyemezo cy'Urukiko kigomba kuba cyasobanuriwe impamvu cyemejwe gityo, kikaba kiva mu mpamvu zatanzwe. Bityo, ubujurire bwa Mudenge bukaba budakwiye kwakirwa kuko impamvu nyamukuru yatumye Mudenge atsindwa mu Rukiko rw'Ubucuruzi no mu Rukiko Rukuru rw'Ubucuruzi, ari ukuba Exert Engineering Group Ltd, itararangije imirimo y'isoko yari yatsindiye ryo kubaka stade ya Huye, ku buryo Mudenge wari watanze umutungo we ho ingwate yishingira umwenda w'ingwate yo kurangiza neza imirimo, yari yatanzwe na Bank of Kigali Ltd yasubizwa uwo mutungo we.

Inzitizi yo gutesha agaciro ubujurire nta shingiro ifite.
Inzitizi yo kutakira ubujurire bw'uwajuriye ifite ishingiro.
Ubujurire ntibwakiriwe.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:

Itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 52 igika cya 3.

Itegeko no 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 96, 97, 98, 110, 148 na 150.

Inyandiko z'abahanga zifashishijwe:

Albert Fettweis, Manuel de procédure civile, 2e édition, Faculté de droit de Liège, 1987, P. 127, no 133.
Loïc Cadiet et Emmanuel Jeuland, ‘’ Droit judiciaire privé’’, 5e édition, Litec, Paris, 2006, P. 521, no 832.

Imanza zashingiweho:

Civ. 2e , 31 janv. 1980: Bull.civ. II, no 18 ; 24 mai 1984 : Bull.civ. II, no 90, in nouveau code de procédure civile, Mégacode, commenté par Serge Guinchard, Dalloz, Paris, 1999, P. 813.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Exert Engineering Group Ltd yatsindiye isoko ryo kubaka stade ya Huye, biba ngombwa ko iha urwego rutanga isoko (Minisiteri ya Siporo n’Umuco) ingwate yo kwishingira kurangiza isoko neza (performance security), maze Bank of Kigali Ltd aba ariyo iyiha iyo ngwate. Ku wa 20/6/2012, Bank of Kigali Ltd yagiranye na Exert Engineering Group Ltd amasezerano y’inguzanyo y’umwenda ungana na 157.076.636 Frw, uhwanye n’agaciro k’ingwate yasabwaga. Mudenge Emmanuel wari umunyamigabane muri Exert Engineering Group Ltd na Bamutesi Jacqueline, umugore we, bemeye kuyibera umwishingizi kuri iyo nguzanyo yatanzwe na Bank of Kigali Ltd, batangaho ingwate inzu yabo iri mu kibanza nº 1952/GAS/KIN giherereye i Gacuriro, Akarere ka Gasabo, mu Mujyi wa Kigali.

[2] Mudenge Emmanuel yatanze ikirego mu Rukiko rw’Ubucuruzi, asaba ko Bank of Kigali Ltd yategekwa kurekura ingwate yahawe, kubera ko icyo yayitangiye kitakiriho kuko stade ya Huye yarangije kubakwa. Bank of Kigali Ltd na Exert Engineering Group Ltd bo bakavuga ko umwenda ugihari, ko batasubizwa iyo ngwate.

[3] Mu rubanza n° RCOM 01084/2018/TC rwaciwe ku wa 13/12/2018, Urukiko rw’Ubucuruzi rwemeje ko ikirego cya MUDENGE Emmanuel nta shingiro gifite, rutegeka MUDENGE Emmanuel kwishyura Bank of Kigali Ltd amafaranga ibihumbi magana arindwi (700.000 Frw) y’igihembo cya Avoka no gukurikirana urubanza, rwemeje kandi ko Exert Engineering Group Ltd nta ndishyi igomba guhabwa.

[4] Mudenge Emmanuel yajuririye Urukiko Rukuru rw’Ubucuruzi, avuga ko Urukiko rw’Ubucuruzi rwirengagije ko imirimo yishingiye yagombaga gukorwa na Exert Engineering Group Ltd yarangiye, ko amasezerano yo kurangiza isoko ari nayo yatangiwe ingwate, yarangiye na Exert Engineering Group Ltd ikishyurwa amafaranga arenga agaciro k’isoko, akaba akwiye gusubizwa umutungo we yatanzeho ingwate. Yavuze nanone ko habayeho amasezerano yo kwikiranura hagati ya Rwanda Housing Authority na Exert Engineering Group Ltd, aho bemeranyije ko Rwanda Housing Authority igumana 50% y’ingwate yo kurangiza imirimo neza, ariko akaba atagomba kumugiraho ingaruka kuko nta ruhare yayagizemo kandi ariwe watanze ingwate.

[5] Mu rubanza n° RCOMA 00227/2019/HCC rwaciwe ku wa 18/10/2019, Urukiko Rukuru rw’Ubucuruzi rwemeje ko ubujurire bwa MUDENGE Emmanuel nta shingiro bufite, ko ubujurire

bwuririye ku bundi bwatanzwe na Bank of Kigali Ltd bufite ishingiro kuri bimwe, rutegeka Mudenge Emmanuel kwishyura Bank of Kigali Ltd 800.000 Frw y'igihembo cya Avoka ku rwego rw'ubujurire, yiyongera kuri 700.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza yari yategetswe ku rwego ra mbere.

[6] Mudenge Emmanuel yajuririye Urukiko rw'Ubujurire avuga ko imirimo Exert Engineering Group Ltd yari yarumvikanye n'urwego rutanga amasoko mu masezerano, yayikoze ikarangira, akaba akwiye gusubizwa umutungo we, ko andi masezerano yo kwikiranura bakoze nyuma y'uko Rwanda Housing Authority isheshe amasezerano mu buryo bunyuranyije n'amategeko, aho bumvikanye ko Exert Engineering Group Ltd ihabwa 50% y'ingwate yo kurangiza imirimo, indi 50%, Rwanda Housing Authority ikayigumana, adakwiye guhabwa agaciro kuko yakozwe idahari kandi ariyo yari yarishingiye umwenda w'ingwate watanze na Bank of Kigali Ltd, ko muriyo ntaho bigeze bagaragaza ko imirimo itarangiye, ndetse ko Exert Engineering Group Ltd yahawe 416.499.078 Frw yari yarafatiriwe.

[7] Uburanira Bank of Kigali Ltd yatanze inzitizi ebyiri avuga ko ubujurire bwa Mudenge Emmanuel butakwakirwa kuko bwatanzwe impitagihe ku mpamvu y'uko ibisobanuro ku mpamvu z'ubujurire byatanzwe nyuma y'umwaka ubujurire butanzwe, no kuba Mudenge Emmanuel yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe.

[8] Urubanza rwahamagawe kuburanishwa ku wa 21/12/2020, ariko uwo munsi iburanishwa rirasubikwa kugira ngo ushinzwe gucunga igihombo (curateur de la faillite-liquidateur) cya Exert Engineering Group Ltd ashake umwunganizi wayo, ryimurirwa ku wa 6/1/2021, uwo munsi urubanza ruburanishwa Mudenge Emmanuel ahagarariwe na Me Utazirubanda Gad, Bank of Kigali Ltd ihagarariwe na Me Rwagitare Fred, Exert Engineering Group Ltd ihagarariwe na Me Musore Gakunzi Valery.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

A. Kumenya niba ubujurire bwa Mudenge Emmanuel bwateshwa agaciro, bukaba budakwiye kwakirwa

[9] Me Rwagitare Fred, uburanira Bank of Kigali Ltd, avuga ko Mudenge Emmanuel atigeze atanga ubujurire kuko atigeze agaragaza ingingo z'ubujurire n'ibisobanuro byazo, nk'uko bisabwa n'ingingo 148 na 150 z'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ko impamvu z'ubujurire zidashobora gutangwa mu iburanisha kuko ingingo ya 150 yavuzwe haruguru iteganya ko zitangwa mu mwanzuro gusa, bityo ko ubujurire bwe butakwakirwa ngo busuzumwe kuko butubahirije amategeko.

[10] Me Rwagitare Fred asobanura ko urubanza rujuririrwa rwaciwe ku wa 18/10/2019, ko rwakabaye rwarajuririwe bitarenze ku wa 17/11/2019, ariko ko kuri iyi tariki hatanzwe gusa ubujurire, ko yaba ingingo z'ubujurire, yaba ibisobanuro byazo, cyangwa ikibazo mu ncamake, byashyizwe muri iecms ku wa 16/10/2020, hashize umwaka wose, ko byatanzwe bikererewe kuko ubujurire bwose butangwa mu kwezi kumwe kandi bwuzuye, bityo ko Urukiko rw'Ubujurire rukwiye kwemeza ko rudashobora gusuzuma ingingo z'ubujurire zarushyikirijwe nyuma y'umwaka kuko inama ntegurarubanza yakozwe ku wa 22/10/2020, hashize icyumweru bishyizwe

muri iecms. Avuga ko ibyo byanemejwe mu rubanza n° RCOMAA 00071/2017/CS rwaciwe n'Urukiko rw'Ikirenga, haburana BRD na Mbuto Aimable.

[11] Me Musore Gakunzi Valéry, uburanira ushinzwe gucunga igihombo cya Exert Engineering Group Ltd, avuga ko ingingo ya 150 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, igaragaza ibigize imyanzuro y'ubujurire, ko iyo bituzuye bitakwitwa ko hatanzwe ubujurire, ko Urukiko rwazareba niba ibyo Mudenge Emmanuel yakoze byakwitwa inyandiko y'ijurira (acte d'appel) ivugwa muri iyo ngingo.

[12] Me Utazirubanda Gad, uburanira Mudenge Emmanuel, avuga ko ubujurire bwatanze ku gihe, ko ibikorerwa muri iecms bigenda bishyirwamo umunsi ku munsi kugeza urubanza rupfundikiwe. Avuga ko mu gihe cyo kujurira, mu gice cya ground of claim harimo ibibazo bagaragaza ingingo z'ubujurire (legal issues) kandi ko hagaragaramo ibyo Mudenge Emmanuel anenga, ko kuba ibisobanuro byaratanzwe nyuma bitatuma ikirego kitakirwa kuko buri gihe umuburanyi aba yemerewe gusobanura mu buryo bwimbitse icyo anenga urubanza, ko ibyakozwe nyuma, bidakuraho ibyari byakozwe mbere.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 96 y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko '' Inyandiko ntishobora gufatwa nk'aho nta gaciro ifite kubera inenge y'imyandikire keretse mu bihe bikurikira: 1º iyo biteganyijwe n'itegeko ku buryo budashidikanywa; 2º iyo hari umuhango simusiga cyangwa w'indemyagihugu wirengagijwe; 3º iyo umuburanyi ubisaba agaragaje icyo bimwangiriza''.

[14] Ingingo ya 97 y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, iteganya ko '' Ukutagira agaciro kw'inyandiko y'urukiko kubera inenge y'imyandikire bikurwaho no kubikosora nyuma iyo hari icyo bikimaze kandi kubikosora bikaba ntacyo byangije''.

[15] Ingingo ya 98 y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru iteganya ko '' Ukutagira agaciro kw'inyandiko y'urukiko kubera inenge y'imyandikire bishobora kubyutswa igihe cyose inkurikizi z'iyo nyandiko zikiriho. Bikurwaho iyo ubibyutsa nyuma y'aho yireguye mu rubanza nyirabayazana cyangwa akabyutsa inzitizi ituma ikirego kitakirwa ntacyo avuze ku iburagaciro ry'inyandiko''.

[16] Ingingo ya 148 y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, igira iti: '' Igihe ntarengwa cyo kujurira ni ukwezi kumwe (1) gitangira kubarwa kuva ku munsi umuburanyi yamenyeyeho ko urubanza rwasomwe''.

[17] Ingingo ya 150 y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko '' Ubujurire bukorwa mu buryo bw'umwanzuro utanga ikirego, ugaragaza ibi bikurikira: 1º umwirondoro wuzuye w'ujurira n'uw'uregwa mu bujurire, 2º urubanza rujuririwe n'urukiko rwaruciye; 3º urukiko rwajuririwe, 4º imiterere y'ikibazo mu ncamake, 5º urutonde rw'inenge z'urubanza zisabirwa gukosorwa n'ibindi bibazo bigomba gusuzumwa, 6º ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba

gukosorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa urukiko, 7º ibisobanuro ku birego by'inyongera mu gihe ibyo birego bihari''.

[18] Dosiye y'uru rubanza igaragaza ko urubanza n° RCOMA 00227/2019/HCC, rujuririrwa, rwasomwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 18/10/2019, MUDENGE Emmanuel arujuririra muri uru Rukiko ku wa 17/11/2019, agaragaza urubanza ajuririra n'impamvu zatumye ajurira (mu gice cya ground of claim), ari zo kuba : ''Kuba Urukiko rwaremeje ko ikirego cya Mudenge Emmanuel kidafite ishingiro rwirengangije ibimeneyetso byose byagaragajwe; ''Kuba urukiko rutarahaye agaciro uburyo isoko ryo kubaka stade ya Huye byarangiye kuko rusaba icyemezo ko EEG Ltd yarangije imirimo'';

[19] Dosiye y'urubanza igaragaza ko ku wa 13/5/2020, aribwo kopi y'urubanza n° RCOMA 00227/2019/HCC yashyizwe muri iecms, naho ku wa 16/10/2019, akaba aribwo Mudenge Emmanuel yashyize muri iecms ibisobanuro by'ingingo ze z'ubujurire, Bank of Kigali Ltd nayo izireguraho, ndetse inatanga ubujurire bwuririye ku bundi. Na none, dosiye y'urubanza igaragaza ko Exert Engineering Group Ltd nayo yatanze umwanzuro yiregura ku mpamvu z'ubujurire (mu mizi) za MUDENGE Emmanuel.

[20] Urukiko rw'Ubujurire rurasanga kugira ngo iki kibazo gikemurwe, ari ngombwa mbere na mbere kumenya niba kudatanga, mu gihe cy'ukwezi kumwe kuva urubanza rujuririrwa rwasomwe, urutonde rw'inenge zirimo (z'urubanza rujuririrwa), ibisobanuro kuri buri nenge, n'uburyo bigomba gukosorwa, ari inenge y'iremezo (irrégularité ou vice de fond) cyangwa inenge y'imyandikire (irrégularité ou vice de forme).

[21] Urukiko rw'Ubujurire rurasanga isuzuma y'ingingo ya 150 y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, ryumvikanisha ko umwanzuro w'ubujurire (acte d'appel) ari inyandiko y'ibyerekeye iburanisha (acte de procédure), aho uwajuriye agaragaza ibyagombwa birebana n'imyandikire (conditions de forme) bivugwamo, bivuze ko ibiyivugwamo (les mentions) bigize ibisabwa by'ingenzi byerekeranye n'imyandikire, inyandiko itanga ubujurire igomba kuba yujuje.

[22] Urukiko rw'Ubujurire rurasanga kutubahiriza ibivugwa mu ngingo ya 150 y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru bituma umwanzuro w'ubujurire uba ufite inenge y'imyandikire (irrégularité de forme), icyo gihe uwo mwanzuro ukaba ushobora guteshwa agaciro kubera iyo nenge y'imyandikire, hakurikijwe ibiteganywa n'ingingo ya 96 y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, ni ukuvuga ko uteshwa agaciro iyo biteganyijwe n'itegeko ku buryo budashidikanywa (expressément-explicitly), iyo hari umuhango simusiga cyangwa w'idemyagihugu utarubahirijwe, cyangwa iyo umuburanyi ubisaba (uregwa) agaragaje icyo bimwangiriza.

[23] Urukiko rw'Ubujurire rurasanga n'ubwo ingingo ya 150 y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru isobanura uko ubujurire bukorwa n'ibikwiye kugaragazwa mu mwanzuro w'ubujurire, ntiteganya icyo uwajuriye yahanishwa mu gihe umwanzuro w'ubujurire utubahirije ibiyivugwamo cyangwa ngo iteganye ko ibyakozwe biteshwa agaciro iyo hari ibitarubahirijwe.

[24] Urukiko rw'Ubujurire rurasanga kuba ku wa 17/11/2019, ubwo yatangaga ubujurire, MUDENGE Emmanuel ataratanze ibisobanuro birambuye ku ngingo z'ubujurire yari yatanze, ari inenge igaragara mu mwanzuro we w'ubujurire hashingiwe ku biteganyijwe mu ingingo ya 150 y'Itegeko nº 22/2018 ryavuzwe haruguru, ariko bikaba bitatesha agaciro ibyakozwe mbere kuko amategeko adatenganya ko icyo gihe ibyakozwe biteshwa agaciro (pas de nullité sans loi ou sans texte).

[25] Urukiko rw'Ubujurire rurasanga kandi kudatanga ibisobanuro mu gihe cy'ukwezi kumwe kuva ku munsi urubanza rujuririrwa rwasomeweho, bitatuma ubujurire bwa Mudenge Emmanuel buteshwa agaciro kuko itegeko ridateganya ko ari umuhango simusiga cyangwa w'indemyagihugu.

[26] Urukiko rw'Ubujurire rurasanga na none Bank of Kigali Ltd na Exert Engineering Group Ltd batararugaragarije icyo kuba ibisobanuro by'ubujurire byaratanzwe nyuma, byabangirije ku buryo ibyakozwe mbere byateshwa agaciro (pas de nullité sans grief ou nullité sans grief n'opère point), bigafatwa nk'aho Mudenge Emmanuel atigeze ajurira. Rurasanga nyamara Bank of Kigali Ltd na Exert Engineering Group Ltd barireguye ku mpamvu z'ubujurire mu mizi no ku bisobanuro byatanzwe na Mudenge Emmanuel, Bank of Kigali Ltd ikaba yarabikoze mbere y'uko inama ntegurarubanza iba, Exert Engineering Group Ltd ibikora mbere y'uko urubanza ruburanishwa, byumvikanisha ko abaregwa ubwabo bakuyeho inenge y'imyandikire ubujurire bwa Mudenge Emmanuel bwari bufite, nk'uko biteganywa n'ingingo ya 98 y'itegeko nº 22/2018 ryavuzwe haruguru.

[27] Urukiko rw'Ubujurire rurasanga harebwe amategeko y'ibindi bihugu, nk'amategeko y'Ababiligi n'Abafaransa (droit comparé), aho ateganya ko umwanzuro w'ubujurire ugomba kugaragaza urutonde rw'inenge z'urubanza rujuririrwa, bitaba ibyo uwo mwanzuro ugata agaciro kawo (à peine de nullité)[1] , inkiko n'abahanga mu mategeko bemeza ko uwo mwanzuro uteshwa gaciro iyo uregwa mu bujurire agaragaza byamwangirije[2] , bivuze ko n'ubwo amategeko yabo

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[1] Ingingo ya 901 ya code de procédure civile franÇais iteganya ko '' La déclaration d'appel est faite par acte contenant, à peine de nullité : 1º a) Si l'appelant est une personne physique : ses nom, prénoms, domicile, nationalité, date été lieu de naissance ; b) Si l'appelant est une personne morale : sa forme, sa dénomination, son siège social et l'organe qui la représente légalement, 2º Les nom, prénoms, et domicile de l'intiméou, s'il s'agit d'une personne morale, sa dénomination et son siège social, 3º La constitution de l'avouéde l'appelant, 4º l'indication du jugement, 5º L'indication de la cour devant laquelle l'appel est porté. La déclaration indique le cas échéant, les chefs du jugement auxquels l'appel est limité et le nom de l'avocat chargé d'assister l'appelant devant la cour. Elle est signée par l'avoué''. Ingingo ya 1057, alinéa, point 7 ya code judiciaire belge iteganya ko '' Hormis les cas où il est formé par conclusions, l'acte d'appel contient, à peine de nullité, l'énonciation des griefs''

[2] Si l'article1057, 7º du code judiciaire prescrit, à peine de nullité de l'acte d'appel ………, l'énonciation des griefs, encore faut-il que l'intimé indique en quoi cette omission a nui à ses intérêts. En l'absence d'une telle justification, l'acte d'appel ne peut être déclaré nul''. Albert Fettweis, Manuel de procédure civile, 2e édition, Faculté de droit de Liège, 1987, P. 127, nº 133. '' L'omission des griefs (dans l'acte d'appel) est sanctionnée de nullité si l'intimé, ……………, établit l'existence d'un préjudice réel'', Albert Fettweis, Manuel de procédure civile, 2e édition, Faculté de droit de Liège, 1987, P. 511, nº 780. '' C'est l'intimé, demandeur d'annulation de l'acte d'appel, qui doit prouver que la non-indication des griefs de l'appelant lui a causé un préjudice. En principe, l'absence de contestation de l'appelant sur ce point ne suffirait à établir le préjudice'', comp. Cass., 13 mai 1977, Pas., I, 942, in Albert Fettweis, idem. ''L'irrégularité ou l'omission d'une des mentions prévues l'art. 901 (code de procédure civile franÇais) n'entraine la nullité que si la preuve d'un grief est rapportée'', Civ. 2e , 31 janv. 1980: Bull.civ. II, nº 18 ; 24 mai 1984 : Bull.civ. II, nº 90, in nouveau code de procédure civile, Mégacode, commenté par Serge Guinchard, Dalloz, Paris, 1999, P. 813.

ateganya ko kutagaragaza urutonde rw'inenge z'urubanza rujuririrwa mu mwanzuro w'ubujurire bituma uteshwa agaciro, mu ku byemeza ubisaba agomba byanze bikunze kugaragaza icyo byangije[3] .

[28] Urukiko rw'Ubujurire rurasanga hashingiwe ku ngingo ya 97 y'itegeko nº 22/2018 ryavuzwe haruguru, kuba Mudenge Emmanuel yarakosoye inenge ubujurire bwe bwari bufite igihe yabutangaga, akuzuza ibindi bisabwa n'ingingo ya 150 y'itegeko nº 22/2018 ryavuzwe haruguru, byaratumye izo nenge zivaho, kandi uko yabikosoye akaba ntacyo byangije.

[29] Haseguriwe ibyasobanuwe haruguru, Urukiko rw'Ubujurire rurasanga Mudenge Emmanuel ajuririra muri uru Rukiko ku wa 17/11/2019, yaragaragaje urubanza ajuririra n'impamvu zatumye ajurira (mu gice cya ground of claim), ariyo mpamvu bitumvikana ukuntu ubujurire bwe bwateshwa agaciro mu gihe muri uru rubanza byagaragaye ko kopi y'urubanza rujuririrwa rwasomwe ku wa 18/10/2019, ari nayo yagombaga gushingirwaho Mudenge Emmanuel agaragaza ibyo anenga mu buryo burambuye, ndetse akanatanga ibisobanuro, yabonetse nyuma y'amezi atandatu (6) rusomwe, kuko yashyizwe muri iecms ku wa 13/5/2020. Rurasanga kandi itegeko ridateganya ko ibisobanuro by'uwajuriye kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba gukosorwa, bitangwa mu gihe cy'ukwezi kumwe (1) kopi y'urubanza rujuririrwa ibonetse, ariyo mpamvu harebwe uburyo ibintu bisanzwe bikorwa mu nkiko (pratique judiciaire), aho Ubwanditsi busaba ababuranyi gutanga ibisobanuro by'ubujurire mbere y'uko haba inama ntegurarubanza, ibyo bisobanuro by'ubujurire bugomba gutangwa nibura mbere y'uko haba inama ntegurarubanza, kuko icyo gihe haba habaye amasezerano (contrat judiciaire) hagati y'Urukiko n'ababuranyi ku birebana n'ibizaburanishwa mu mizi.

[30] Ku birebana n'urubanza nº RCOMAA 00071/2017/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 26/10/2018, Bank of Kigali Ltd ivuga ko hakurikizwa umurongo rwatanze, ko Urukiko rw'Ikirenga rwavuze ko ingingo imwe yatanzwe mu gihe cy'ubujurire ariyo yasuzumwa yonyine, izatanzwe nyuma ntizisuzumwe, Urukiko rw'Ubujurire rurasanga ibyo bitakurikizwa muri uru rubanza kuko Mudenge Emmanuel we atigeze agaragaza ko ajuririye ingingo imwe ngo nyuma ajye atanga izindi nk'uko muri urwo rubanza byagenze, ahubwo atanga ubujurire yagaragaje icyo anenga urubanza rujuririrwa muri rusange, nyuma aza kuzuza ibibazo bigomba gusuzumwa mu rubanza anabitangaho ibisobanuro. Rurasanga kandi muri urwo rubanza, Urukiko rw'Ikirenga rwarashimangiye ihame y'amategeko rivuga ko umwanzuro w'ubujurire ari wo ugaragaza ingingo zajuririwe (effet dévolutif de l'appel), ari nazo zigomba gusuzumwa n'Urukiko, ku buryo uwajuriye adashobora nyuma kwongera muri dosiye izindi ngingo z'ubujurire[4] .

[31] Urukiko rw'Ubujurire rurasanga hashingiwe ku bisobanuro byatanzwe haruguru, kutagaragaza mu gihe cy'ukwezi kumwe (1), mu mwanzuro w'ubujurire ibikubiye mu ngingo ya 150 y'Itegeko nº 22/2018 ryavuzwe haruguru, umuburanyi akaza kubigaragaza nyuma, bituma ibyo yakoze biteshwa agaciro n'Urukiko, bivuze ko bitakwakirwa, iyo amategeko abiteganya uko

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[3] '' En d'autres termes, il importe de le répéter, il faut se trouver dans une hypothèse où le prononcé de la nullité est prévu par la loi avant de vérifier l'existence d'un préjudice ou ………..'', Albert Fettweis, Manuel de procédure civile, 2e édition, Faculté de droit de Liège, 1987, P. 131, nº 139.

[4]'' Il n'est pas sans intérêt de préciser que seul l'acte d'appel opère dévolution, de sorte qu'un appel limité à certains chefs ne peut ensuite être étendu par voie de conclusions'', Cass. 1re civ., 22 juin 1999 : Bull.civ. II, nº 206 in Loïc Cadiet et Emmanuel Jeuland, '' Droit judiciaire privé'', 5e édition, Litec, Paris, 2006, P. 521, nº 832.

(nullité expressément prévue par la loi), cyangwa kubikora mu gihe cy'ubujurire hari umuhango w'indemyagihugu (formalité d'ordre public) ugomba kubahirizwa cyangwa iyo ubibyutsa agaragaza icyo byamwangiriza (preuve d'un grief) kuko ibikubiye muri iyo ngingo ari ibyagombwa birebana n'imyandikire y'ubujurire (conditions de forme de l'appel).

[32] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga inzitizi yatanzwe n'abaregwa y'uko ubujurire bwa Mudenge Emmanuel bwateshwa agaciro, kuko ari nk'aho nta bujurire bwatanzwe, kubera ko imyanzuro ye isobanura impamvu z'ubujurire yatanzwe impitagihe, nyuma y'ukwezi kumwe (1) kuva ku munsi urubanza rujuririrwa rwasomeweho, nta shingiro ifite.

B. Kumenya niba Mudenge Emmanuel yaratsinzwe mu rwego rwa mbere n'urwa kabiri ku mpamvu zimwe

[33] Me Rwagitare Fred, uburanira Bank of Kigali Ltd, avuga ko ubujurire bwa Mudenge Emmanuel butari mu bubasha bw'Urukiko rw'Ubujurire kuko yatsinzwe mu rwego rwa mbere n'urwa kabiri ku mpamvu zimwe. Asobanura ko mu rubanza rwaciwe n'Urukiko rw'Ubucuruzi, ikibazo nyamukuru cyari ugusuzuma niba Bank of Kigali Ltd yarekura ingwate yanditse mu mazina ya Mudenge Emmanuel, ko guhera ku gika cya cyenda (9) kugeza ku cya cumi na kabiri (12), urwo Rukiko rwasobanuye ko ntakigaragaza ko Exert Engineering Group Ltd ariyo yarangije imirimo yo kubaka stade ya Huye, ko ikirego cye kidafite ishingiro kuko mu masezerano byari biteganyijwe ko Exert Engeneering Group Ltd igomba kuzagaragaza attestation de bonne execution, ikaba itarayigaragaje, ko nta n'ikindi kimenyetso igaragaza, bityo ko rubona itararangije isoko, ari nabyo bituma rudaha ishingiro ikirego cya Mudenge Emmanuel.

[34] Me Rwagitare Fred asobanura kandi ko mu rubanza rwaciwe n'Urukiko Rukuru, mu gika cya 25, urwo Rukiko rwavuze ko rushingiye ku bisobanuro byose byatanzwe, rusanga mu mpamvu z'ubujurire bwa Mudenge Emmanuel nta kigaragaza ko Exert Enginieering Group Ltd yarangije neza imirimo y'isoko ryo kubaka stade ya Huye nk'uko abivuga, ko ahubwo ibisobanuro byatanzwe bishimangira ko iyo mirimo itarangiye nêtre eza. Avuga ko biragaragara neza ko impamvu zo gutsindwa kwa Mudenge Emmanuel ari zimwe haba mu Rukiko rw'Ubucuruzi no mu Rukiko Rukuru rw'Ubucuruzi, bityo ko hashingiwe ku ngingo ya 52, igika cya gatatu (3), y'itegeko n° 30/2018 ryo ku wa 2/6/2018 rigena ububasha bw'inkiko, Urukiko rw'Ubujurire rudafite ububasha bwo kuburanisha ubu bujurire bwa kabiri.

[35] Me Gakunzi Musore Valéry, uburanira ushinzwe gucunga igihombo cya Exert Engineering Group Ltd, avuga ko Bank of Kigali Ltd yari ifite uburenganzira bwo gufatira ingwate kuko impamvu ituma ingwate yo kurangiza neza imirimo (garantie de bonne exécution) ishobora gufatirwa ari uko haba habayeho kutarangiza isoko (inexécution), kutarangiza neza isoko (mauvaise exécution) cyangwa kurangiza isoko igice (exécution partielle), kandi ko ibyo byose inkiko zombi zabishingiyeho.

[36] Me Utazirubanda Gad, uburanira Mudenge Emmanuel, avuga ko ibyo Mudenge Emmanuel yasobanuye mu nkiko zombi atari byo byafashweho icyemezo, ko uko abacamanza basobanuye impamvu zatumye Mudenge Emmanuel atsindwa ari zimwe, ariko ko hakwiye kurebwa niba koko Mudenge Emmanuel atararangije isoko.

UKO URUKIKO RUBIBONA

[37] Ingingo ya 52, igika cya gatatu, y'Itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko igira iti: ''Icyakora kandi ubujurire bwa kabiri ntibushobora kwakirwa ku manza z'ababuranye bemera ibyo baregwa, cyangwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe''.

[38] Isesengura ry'iyi ngingo ryumvikanisha ko '' impamvu'' ari ibyashingiweho n'Urukiko mu kugaragariza no gusobanurira ababuranyi icyatumye Urukiko rufata icyemezo ku birebana n'icyaregewe, akaba arizo zituma ababuranyi basuzuma niba imiburanire yabo yarasesenguwe n'Urukiko, kubera ko buri cyemezo cy'Urukiko kigomba kuba cyasobanuriwe impamvu cyemejwe gityo, kikaba kiva mu mpamvu zatanzwe[5].

[39] Dosiye y'urubanza igaragaza ko Urukiko rw'Ubucuruzi, mu rubanza n° RCOM 01084/2018/TC rwo ku wa 13/12/2018, mu gace ka cyenda (9), rwasobanuye ko Mudenge Emmanuel asaba Urukiko gutegeka Bank of Kigali Ltd kurekura ingwate we na Bamutesi Jacqueline batanze, ariko ko atagaragaza ikimenyetso cyerekana ko Exert Engineering Group Ltd yarangije imirimo y'isoko yari yatsindiye ryo kubaka stade ya Huye, kugira ngo ayisubizwe. Mu gace ka cumi (10), urwo Rukiko rwasobanuye nanone ko ikirego cye kidakwiye guhabwa ishingiro kuko Exert Engineering Group Ltd yatanze ingwate itarangije imirimo, ko Mudenge Emmanuel avuga ko icyo yatangiye ingwate cyavuyeho kuko stade yarangije kubakwa kandi ko yatangiye gukoreshwa, ariko ko nta kimenyetso agaragaza cyerekana ko ari Exert Engineering Group Ltd yayirangije ku buryo yasubizwa ingwate. Mu gika cya cumi na kabiri (12), urwo Rukiko ruvuga ko rusanga amasezerano Exert Engineering Group Ltd yagiranye na Bank of Kigali Ltd ku wa 20/6/2012, ku birebana n'ingwate, itarayubahirije ku buryo Mudenge Emmanuel yasubizwa ingwate.

[40] Dosiye y'urubanza igaragaza nanone ko, Urukiko Rukuru rw'Ubucuruzi, mu gace ka cumi n'umunani na cumi n'icyenda (18-19) tw'urubanza rujuririrwa, rwasobanuye ko Exert Engineering Group Ltd yemeye ko atari yo yarangije imirimo yo kubaka stade ya Huye, ko yirukanywe nta nteguza muri iyo mirimo, iyari isigaye igakomezwa n'indi sosiyete (Roko Construction Ltd), ko ibyo byumvikanisha ko Mudenge Emmanuel nawe ubwe yemera ko Exert Engineering Group Ltd yavanywe mu mirimo y'ubwubatsi bwa stade ya Huye itarangiye, runasanga ibyo Mudenge Emmanuel avuga ko imirimo y'ubwubatsi yari iteganyijwe mu masezerano y'isoko yishingiye, yarangiye kandi ko Exert Engineering Group Ltd yishyuwe, nta gaciro byahabwa, naho mu gace ka makumyabiri (20), rusobanura ko Exert Engineering Group Ltd yaretse ikirego yari yatanze, ihitamo kumvikana na Rwanda Housing Authority, bumvikana ko iyi yishyurwa 50% y'ingwate yose iyo banki yari yishingiye, ko muri ayo masezerano yo kwikiranura, Exert Engineering Group Ltd yemeye ko Rwanda Housing Authority yishyurwa ingwate yo kurangiza neza imirimo, ko rero nayo yemera ko hari imirimo itararangiye mu kubaka stade ya Huye.

[41] Mu gace ka makumyabiri na rimwe (21), Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko ku bijyanye no kuba Mudenge Emmanuel avuga ko ayo masezerano atagomba kugira ingaruka ku ngwate yatanze kuko atajyanye n'imirimo yo kubaka stade ya Huye kandi ko ntaho ahuriye n'ikibazo cy'uko Exert Engineering Group Ltd itarangije imirimo, nta shingiro bifite kuko ayo masezerano yakozwe n'impande zombi zagiranye amasezerano, ko arebana n'imirimo yakozwe

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[5] Reba urubanza nº RCOMAA 0043/2016/CS- RCOMAA 0047/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 23/2/2013, haburana Nzaramba Edouard na Guaranty Trust Bank Rwanda Ltd.

na Exert Engineering Group Ltd ikishingirwa na Mudenge Emmanuel. Mu gace ka makumyabiri na kabiri (22), ku birebana no kuba ayo masezerano atahabwa agaciro kuko umucungamutungo wahagarariye Exert Engineering Group Ltd mu ikorwa ryayo atari asobanukiwe n'ibyo akora, urwo Rukiko rwasobanuye ko bitahabwa agaciro, kuko ariwe wari ufite ububasha bwo kuyihagararira mu nyungu no mu bibazo byose birebana nayo. Mu gace ka makumyabiri na kane (24), urwo Rukiko rwasobanuye ko Mudenge Emmanuel atagaragaza ko hari icyemezo cyo kurangiza imirimo neza Exert Engineering Group Ltd yahawe na Rwanda Housing Authority.

[42] Urukiko rw'Ubujurire rurasanga hasesenguwe ibyo inkiko zombi zagiye zisobanura, zose zarashakaga kugaragaza ko Exert Engineering Group Ltd itarangije imirimo y'isoko yari yatsindiye, aho Urukiko rw'Ubucuruzi rwasobanuye ko Mudenge Emmanuel atigeze agaragaza ko Exert Engineering Group Ltd yarangije isoko yatsindiye ku buryo yasaba gusubizwa ingwate yatanze, ko ibyo avuga ko icyo yatangiye ingwate cyarangiye bidakwiye guhabwa ishingiro kuko atagaragaza ko ari Exert Engineering Group Ltd yarangije isoko, ko Exert Engineering Group Ltd itubahirije amasezerano ngo irangize iryo soko; naho Urukiko Rukuru rw'Ubucuruzi, rusobanura ko Exert Engineering Group Ltd yemeye ko itarangije isoko yari yatsindiye kuko yirukanywe mu mirimo igakomezwa n'indi sosiyete, ko ibyo binagaragaza ko Mudenge Emmanuel azi neza ko atari yo yarangije iryo soko, kuko yarikuwemo itarangiye, ko n'ibyo avuga ko amasezerano y'isoko yishingiye yarangiye kuko stade ya Huye yamaze kubakwa, nta shingiro byahabwa. Mu gukomeza gusobanura ko imirimo y'isoko Exert Engineering Group Ltd itayirangije, Urukiko Rukuru rw'Ubucuruzi rwanasobanuye ko Exert Engineering Group Ltd yemeye ko haba amasezerano yo kwikiranura, yemera ko Rwanda Housing Authority nka nyir'isoko itwara 50% y'ingwate, ari naho yakomeje isobanura iby'ayo masezerano mu gace ka 21, aka 22 n'aka 23, runakomeza mu gace ka makumyabiri na kane (24), narwo rushimangira ko Mudenge Emmanuel atagaragaje ko hari icyemezo cyo kurangiza neza imirimo Exert Engineering Group Ltd yahawe.

[43] Urukiko rw'Ubujurire rurasanga, hashingiwe ku bimaze gusobanurwa mu gace kabanziriza aka, impamvu nyamukuru yatumye Mudenge Emmanuel atsindwa mu Rukiko rw'Ubucuruzi no mu Rukiko Rukuru rw'Ubucuruzi, ari ukuba Exert Engineering Group Ltd, itararangije imirimo y'isoko yari yatsindiye ryo kubaka stade ya Huye, ku buryo Mudenge Emmanuel wari watanze umutungo we ho ingwate yishingira umwenda w'ingwate yo kurangiza neza imirimo, yari yatanzwe na Bank of Kigali Ltd yasubizwa uwo mutungo we. Rurasanga n'ubwo inkiko zombi zagiye zibisobanura mu buryo butandukanye zikanakoresha amagambo atandukanye, atari cyo kigomba kwitabwaho hasuzumwa niba impamvu zashingiweho ari zimwe, kuko nk'uko byasobanuwe mu gace ka makumyabiri n'umunani (28) k'uru rubanza, ''impamvu'' ni ibyashingiweho n'Urukiko mu kugaragariza no gusobanurira ababuranyi icyatumye rufata icyemezo ku birebana n'icyaregewe.

[44] Urukiko rw'Ubujurire rurasanga kandi, uburanira Mudenge Emmanuel mu gihe cy'iburanisha, nawe yaremeje ko ibyo inkiko zombi zashingiyeho mu guca urubanza ari bimwe, ibyo yongeraho ko icyo Mudenge Emmanuel yasobanuriye abacamanza bo mu nkiko zombi atari cyo bafasheho icyemezo, ko harebwa niba atararangije isoko, bikaba bitahabwa ishingiro kuko birebana n'urubanza mu mizi.

[45] Hashingiwe kuri izo mpamvu zose no ku ngingo ya 52, igika cya gatatu (3), y'Itegeko n° 30/2018 ryo ku wa 2/6/2018 ryavuzwe haruguru, Urukiko rw'Ubujurire rurasanga inzitizi yo kuba Mudenge Emmanuel yaratsinzwe mu rwego rwa mbere n'urwa kabiri ku mpamvu zimwe

yatanzwe na Bank of Kigali Ltd ifite ishingiro, ubujurire bwa Mudenge Emmanuel bukaba butagomba kwakirwa.

C. Kumeya niba ababuranyi bakwiye guhabwa amafaranga n'indishyi z'akababaro basaba

[46] Me Rwagitare Fred avuga ko kubera gukomeza gushora Bank of Kigali Ltd mu manza ku maherere, Urukiko rw'Ubujurire rukwiye gutegeka Mudenge Emmanuel guha Bank of Kigali Ltd 10.000.000 Frw y'indishyi zo gushorwa mu manza ku maherere na 3.000.000 Frw y'igihembo cya Avoka kuri uru rwego, kandi ko ayo mafaranga akwiye gutangwa n'ubwo ikirego kitakwakirwa.

[47] Ushinzwe gucunga igihombo cya Exert Engineering Group Ltd asaba indishyi zinyuranye zingana na 2.000.000 Frw na 1.000.000 Frw yo gusiragizwa mu manza. Me Gakunzi Musore Valery nawe avuga ko kubera ko byabaye ngombwa ko Exert Engineering Group Ltd en liquidation ishaka Avoka ngo ayihagararire, mu gihe uwajuriye yatsindwa, Urukiko rwamutegeka kwishyura indishyi zirimo 1.000.000 Frw y'igihembo cya Avoka.

UKO URUKIKO RUBIBONA

[48] Ingingo ya 110 y'Itegeko ryo ku wa 29/4/2018 ryerekeye imibuanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ''ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gushamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikaburanisha n'iyo ikirego cy'iremezo cyaba kitakiriwe''.

[49] Urukiko rw'Ubujurire rurasanga n'ubwo ikirego cya Mudenge Emmanuel kitakiriwe, hari ibyo Bank of Kigali Ltd na Exert Engineering Group Ltd batakaje kubera uru rubanza, bityo bakaba bakwiye kugenerwa amafaranga y'igihembo cya Avoka, ariko bakaba batahabwa ayo basaba kuko batagaragaza ko ariyo yagiye ku rubanza, ahubwo harebwe imirimo yarukozweho, aho rugarukikiye ku gusuzuma inzitizi gusa, bakaba bagenerwa 700.000 Frw y'igihembo cya Avoka, kuri buri wese.

[50] Urukiko rw'Ubujurire rurasanga kandi 10.000.000 Frw yo gushorwa mu manza asabwa na Bank of Kigali Ltd na 1.000.000 Frw yo gusiragizwa mu manza asabwa na Exert Engineering Group Ltd, badakwiye kuyagenerwa kuko ari uburenganzira bw'umuburanyi utishimiye imikirize y'urubanza kuba yarujuririra. Naho ku birebana na 2.000.000 Frw y'indishyi zinyuranye, asabwa na Exert Engineering Group Ltd, Urukiko rw'Ubujurire rurasanga atahabwa ishingiro kuko urubanza rutaburanishijwe mu mizi.

III. ICYEMEZO CY'URUKIKO

[51] Rwemeje ko inzitizi yatanzwe na Bank of Kigali Ltd yo kuba ubujurire bwatanzwe bukwiye guteshwa agaciro, hagafatwa ko butabayeho, nta shingiro ifite;

[52] Rwemeje ko inzitizi yo kutakira ubujurire bwa Mudenge Emmanuel yatanzwe na Bank of Kigali Ltd ifite ishingiro;

[53] Rwemeje ko ubujurire bwa Mudenge Emmanuel butakiriwe;

[54] Rutegetse Mudenge Emmanuel kwishyura Bank of Kigali Ltd na Exert Engineering Group Ltd amafaranga ibihumbi magana arindwi (700.000 Frw) y'igihembo cya Avoka, kuri buri wese;

[55] Rwemeje ko amafaranga y'ingwate y'amagarama yatanzwe na Mudenge Emmanuel, ahwanye n'ibyakozwe mu rubanza.