MUKARUGWIZA v BANK OF KIGALI LTD (BK)

[Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RCOM 00004/2019/CA (Mukandamage, P.J., Ngagi na Kamere, J.) 04 Nzeli 2020]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Gusubirishamo urubanza ingingo nshya – Inyandiko ishyikirijwe urukiko nk'ikimenyetso gishya – Iyo urukiko rusuzuma ikimenyetso rwashyikirijwe niba ari gishya rwarangiza rukakigereranya n'ibindi byatanzwe mbere, ntirwemeza ko rutakiriye ikirego ahubwo rucyacyira rugasuzuma ishingiro ry'ikimenyetso rwashyikirijwe niba ari gishya.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ingwate – Kwandikisha ingwate – Kwishyura umwenda wavuye mu cyamunara – Iyo banki yahawe ingwate ku myenda y'abantu batandukanye ikayandikisha ku rwego rutari rwo (rang/ranking) hagendewe ku masezerano impande zombi zagiranye bigatuma umutungo wari waratanzweho ingwate ugurishwa mu cyamunara, muri icyo gihe hishyurwa umwenda hagendewe ku ngwate yari yandikishijwe mbere.

Incamake y'ikibazo: Banki ya Kigali yahaye umwenda Mukarugwiza atanga n'ingwate. Mu masezerano bagiranye bemeranyijwe ko ingwate ye yandikwa ku rwego rwa mbere. Karenzi John nawe yaje guhabwa inguzanyo na Banki ya Kigali atanga ingwateho inzu ya Mukarugwiza, yandikwa ku rwego rwa kabiri kuri iyo ngwate.

Banki ya Kigali yaje kubona ko Karenzi atishyura isaba guteza cyamunara ingwate yari yatanze ariko ntihabanza gukurwamo umwenda wafashwe na Mukarugwiza.

Mukarugwiza yatanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge asaba ko amafaranga yavuye mu cyamunara yagombaga kubanza kwishyura umwenda we yari asigayemo Banki ya Kigali. Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko ikirego cye gifite ishingiro ariko Banki ya Kigali ijuririye Urukiko Rukuru rw'Ubucuruzi rubibona ukundi ivuga ko ingwate ya Mukarugwiza itanditse mu bitabo by'ingwate.

Mukarugwiza yasubirishijemo urubanza ingingo nshya agaragaza ko ingwate yari yanditse ariko Urukiko Rukuru rw'Ubucuruzi rwanga kwakira ikirego cye. Mukarugwiza yasubirishijemo urubanza ku mpamvu z'akarengane avuga ko Mukarugwiza yagiranye amasezerano y'inguzanyo na Banki ya Kigali itanga ingwate yaje kwandikisha nyuma y'imyaka ibiri (2). Indi nguzanyo yahaye Karenzi nawe agatanga ingwate ya Mukarugwiza Banki ya Kigali nayo yayanditse ku rwego rwa mbere kandi yari kuyandikisha ku rwego rwa kabiri nk'uko byari bikubiye mu masezerano bagiranye.

Banki ya Kigali yireguye ivuga ko amafaranga yavuye mu cyamunara cy'inzu ya Mukarugwiza yagombaga kwishyura umwenda wa Karenzi kandi ko ingwate ye ariyo yanditswe mbere.

Incamake y'icyemezo: 1. Iyo urukiko rutasuzumye niba koko ikimenyetso gishya cyatanzwe n'umuburanyi asaba gusubirishamo urubanza ingingo nshya kitarashingiweho mu ica ry'urubanza ku buryo byaba byaramuteye akarengane, kandi ko cyari ikimenyetso cya kamarampaka, icyo gihe ruba rugomba kwemeza ko ikirego cy'uwo muburanyi cyakiriwe, rugafata umwanzuro ukwiye rukurikije uko rwagisuzumye. Bityo, ikirego cya Mukarugwiza kikaba kigomba kwakirwa kigasuzumwa hitabwa ku bimenyetso byatanzwe.

2. Banki niyo ifite inshingano zo kwandikisha neza ingwate yahawe. Iyo ikoze amakosa yo gushyira ingwate imwe yatanzwe ku myenda ibiri ku ku rwego rumwe, kandi izi neza ibikubiye mu masezerano yagiranye n'abo yahaye inguzanyo, bigatuma hatezwa cyamunara, amafaranga avuye mu cyamunara abanza kwishyura umwenda w'uwagombaga kwandikwa ku rwego rwa mbere hakurikijwe amasezerano y'inguzanyo impande zombi zagiranye. Bityo, amafaranga yavuye mu cyamunara akaba agomba kubanza kwishyura umwenda wahawe Mukarugwiza.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro.
Urubanza no RCOMA 0573/14/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 09/01/2015 ruhindutse mu ngingo zarwo zose.
Amagarama y'ibyakozwe aherereye ku isanduku ya Leta.

Amategeko yashingiweho:
Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 186, 3°.
Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64.
Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kandi ryavuguruwe kugeza ubu, ingingo ya 22.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mukarugwiza Ruth yagiranye na Banque de Kigali SA (yaje guhinduka Bank of Kigali Ltd) amasezerano y'inguzanyo ingana na 60.000.000 Frw, atanga ingwate y'inzu ye yubatse mu kibanza no 11639/LC GAS/L 2349 kiri i Kibagabaga, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali, ayo masezerano ashyirwaho umukono na Notaire ku wa 14/04/2008, ingwate y'umwenda yandikwa ku itariki ya 14/02/2011 muri RDB kuri n° 901/2011/ORG, ku rwego rwa mbere (en premier rang).

[2] Ku wa 23/12/2010, Bank of Kigali Ltd yagiranye na none na Karenzi John amasezerano y'inguzanyo ingana na 50.000.000 Frw yakorewe imbere ya Notaire, nabwo hatangwa ingwate kuri iyo nzu ya Mukarugwiza Ruth, yandikwa nayo muri RDB ku wa 11/01/2011 ku rwego rwa mbere (en premier rang) kuri n° 219/2011/ORG.

[3] Bank of Kigali Ltd yaje kugurisha mu cyamunara iyo nzu yahaweho ingwate yiyishyura umwenda wa Karenzi John, Mukarugwiza Ruth yandika ku wa 19/03/2014, ayisaba kubahiriza amasezerano bagiranye, ikabanza ikiyishyura umwenda yari asigaje kwishyura, amafaranga asigaye akishyura umwenda wa Karenzi John, ariko Bank of Kigali Ltd ntacyo yakoze kuri icyo cyifuzo cye, bituma ayirega mu Rukiko rw'Ubucuruzi rwa Nyarugenge, asaba urwo Rukiko kuyitegeka ko amafaranga yagurishijwe inzu ye mu cyamunara akoreshwa mu kwishyura umwenda ayifitiye, no kumuha 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[4] Mu rubanza nº RCOM 593/14/TC/NYGE rwaciwe ku wa 29/07/2014, Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko ikirego cya Mukarugwiza Ruth gifite ishingiro, rutegeko ko amafaranga yagurishijwe ingwate agomba kubanza kwishyura umwenda we.

[5] Bank of Kigali Ltd yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, maze urwo Rukiko ruca urubanza nº RCOMA 0463/14/HCC ku wa 30/10/2014, rwemeza ko ubujurire bwayo bufite ishingiro, rusobanura ko n'ubwo Mukarugwiza Ruth yagiranye amasezerano na Banki ko iziyandikishaho ingwate yatanze, iyo Banki ntabyo yakoze, bityo iyo ngwate ikaba itanditse mu bitabo by'Umwanditsi Mukuru, ahubwo ingwate yanditswe ari iyatanzwe na Karenzi John, kandi yanditse ko umwenda we ari wo uzabanza kwishyurwa, maze rwemeza ko amafaranga yagurishijwe iyo ngwate atagomba kwishyura umwenda wa Mukarugwiza Ruth, rutegeka ko urubanza rwajuririwe ruhindutse mu ngingo zose, runategeka Mukarugwiza Ruth guha Bank of Kigali Ltd 800.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka no kuyisubiza ingwate y'amagarama yatanze ijurira.

[6] Mukarugwiza Ruth yasubirishijemo ingingo nshya urubanza urwo rubanza, ashingiye ku mpamvu y'uko hari ikimenyetso urukiko rutabonye kigaragaza ko ingwate ku nzu ye ari yo yanditswe ku rwego rwa mbere, Urukiko Rukuru rw'Ubucuruzi, mu rubanza nº RCOMA 0573/13/HCC rwaciwe ku wa 09/01/2015, rwemeza ko ikirego cye kitakiriwe, kuko kitujuje ibisabwa n'amategeko kugira ngo urubanza rusubirishwemo ingingo nshya. ␤

[7] Mukarugwiza Ruth yandikiye Urwego rw'Umuvunyi asaba ko urwo rubanza nº RCOMA 0573/13/HCC rusubirwamo ku mpamvu z'akarengane, maze ku wa 24/01/2019, Umuvunyi Mukuru yandikira Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwasubirwamo, kuko rugaragaramo akarengane.

[8] Mu cyemezo cye nº 188/CJ/2019 cyo ku wa 02/10/2019, Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza no RCOMA 0573/13/HCC rusubirwamo ku mpamvu z'akarengane, maze arwohereza mu Rukiko rw'Ubujurire kugira ngo ruruburanishe, ikirego cyandikwa kuri no RS/INJUST/RC 00004/2019/CA.

[9] Urubanza rwaburanishijwe mu ruhame ku wa 29/06/2020, Mukarugwiza Ruth ahagarariwe na Me Twiringiyemungu Joseph, naho Bank of Kigali Plc ihagarariwe na Me Rusanganwa Jean Bosco.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. Kumenya niba kuba ikirego gisaba gisubirishamo urubanza Nº RCOMA 0463/14/HCC ingingo nshya cyatanzwe na Mukarugwiza Ruth mu rubanza Nº RCOMA 0573/14/HCC kitarakiriwe byaba byaramuteye akarengane

[10] Mu iburanisha ry'urubanza, Urukiko rwifuje kumenya aho akarengane Mukarugwiza Ruth yaregeye mu rubanza nº RCOMA 0573/14/HCC rwaciwe ku wa 09/01/2015 n'Urukiko Rukuru rw'Ubucuruzi gashingiye, Me Twiringiyemungu Joseph, umuburanira, avuga ko muri urwo rubanza, Mukarugwiza Ruth yari yareze asaba gisubirishamo urubanza nº RCOMA 0463/14/HCC rwaciwe n'urwo Rukiko, kubera ko rwashingiye ku nyandiko yandikisha ingwate ku mwenda wa Karenzi John, rukaba rutarabonye inyandiko yo ku wa 14/02/2011 yandikisha ingwate y'umwenda

wa Mukarugwiza Ruth igaragaza ko iyo ngwate yanditse ku rwego rwa mbere, ko kuba rero icyo kirego cye kitarakiriwe ngo urubanza ruburanishwe mu mizi, byamuteye akarengane.

[11] Me Rusanganwa Jean Bosco, uhagarariye Bank of Kigali Plc, avuga ko hashingiwe ku bisabwa kugira ngo ikirego gisaba gisubirishamo urubanza ingingo nshya cyakirwe, asanga ikirego cya MUKARUGWIZA Ruth kitaragombaga kwakirwa, ko rero nta karengane yagiriwe.

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[12] Ingingo ya 55, agace ka 2o, y'Itegeko no 30/2018 ryo ku wa 02/0682018 rigena ububasha bw'inkiko iteganya ko "Urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane kubera impamvu zikurikira: (...) 2° iyo mu icibwa ry'urubanza hirengagijwe amategeko n'ibimenyetso bigaragarira buri wese (...).

[13] Akarengane Mukarugwiza Ruth avuga ko kagaragara mu rubanza no RCOMA 0573/14/HCC rwaciwe ku wa 09/01/2015 n'Urukiko Rukuru rw'Ubucuruzi, gakwiye gusuzumwa harebwa niba koko hari amategeko cyangwa se ibimenyetso bigaragarira buri wese urwo Rukiko rwirengagije ku buryo byamuteye akarengane.

[14] Ingingo ya 186, 3o y'Itegeko no 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga ubwo urubanza no RCOMA 0573/14/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rwacibwaga, iteganya ko "Urubanza rushobora gusubirishwamo ingingo nshya kubera imwe muri izi mpamvu (...): 3o kuba kuva aho urubanza ruciriwe habonetse ibimenyetso bya kamarampaka bigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo; icyo kimenyetso cyaba kiri mu nyandiko zatanzwe mu rubanza ariko urukiko ntirukibone cyangwa cyaragaragajwe nyuma;".

[15] Bigaragara mu rubanza no RCOMA 0573/14/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rusabirwa gusubirwamo ku mpamvu z'akarengane, ko Mukarugwiza Ruth yareze asaba gusubirishamo ingingo nshya urubanza no RCOMA 0463/14/HCC ku mpamvu y'uko hari inyandiko y'iyandikishwa ry'ingwate yahaye Bank of Kigali Plc, Urukiko Rukuru rw'Ubucuruzi rutabonye ngo ruyicireho urubanza, urwo Rukiko rusuzuma iyo nyandiko, ruyigereranya n'iy'ingwate yatanzwe na Karenzi John, ndetse n'amasezerano y'inguzanyo, maze rusanga izo nyandiko zombi zitera urujijo, aho zemeza ko ingwate uko ari ebyiri ari izo ku rwego rwa mbere, ko ariko ibyo bikemurwa n'ibiteganywa mu ngingo za 4 na 8 z'Itegeko no 10/2009 ryo ku wa 10/05/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kugeza ubu, ziteganya ko byitwa ko ubugwate bufite agaciro iyo bwanditswe mu gitabo cyandikwamo ingwate ku mutungo utimukanwa mu biro by'Umwanditsi Mukuru, kandi ko ubugwate ku mutungo utimukanwa bushyirwa ku rutonde hakurikijwe uko bwanditswe mu gitabo cyandikwamo ubugwate, bityo ko ingwate ku rwego rwa mbere ari iyishingiye umwenda wahawe Karenzi John.

[16] Urukiko Rukuru rw'Ubucuruzi rwasanze rero ibiteganywa n'ingingo ya 186, 3o y'Itegeko no 21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru Mukarugwiza Ruth yashingiyeho ikirego cye bituzuye, ko nta karengane kagaragaye mu rubanza yasabiye gusubirishamo ingingo nshya, ko ikimenyetso cye kitari/kitujuje ibisabwa n'iyo ngingo y'itegeko, kikaba kitakiriwe.

[17] Urukiko rurasanga Urukiko Rukuru rw'Ubucuruzi rutarasuzumye niba koko ikimenyetso Mukarugwiza Ruth yatanze asaba gusubirishamo urubanza kitarashingiweho mu ica ry'urubanza nº RCOMA 0463/14/HCC ku buryo byaba byaramuteye akarengane, kandi ko cyari ikimenyetso cya kamarampaka, nk'uko ingingo ya ya 186, 3º y'Itegeko no 21/2012 ryo ku wa 14/06/2012 yavuzwe haruguru yabiteganyaga icyo gihe urubanza rucibwa, ahubwo, nk'uko bimaze gusobanurwa haruguru, rwaracyakiriye, rukigereranya n'ibindi bimenyetso, rusanga nta karengane kari mu rubanza rwasabiwe gusubirishwamo akarengane, rukaba rero rwaragombaga kwemeza ko ikirego cya Mukarugwiza Ruth cyakiriwe, rugafata umwanzuro ukwiye rukurikije uko rwagisuzumye, bityo urubanza rukaba ruciwe burundu, ku buryo utarwishimiye yashobora kurusubirishamo ku mpamvu z'akarengane.

[18] Urukiko rurasanga rero, hari ingingo y'amategeko yerekeye gusubirishamo urubanza ingingo nshya yirengagijwe mu guca urubanza nº RCOMA 0573/14/HCC Mukarugwiza Ruth yasabiye gusubirwamo ku mpamvu z'akarengane, akaba akwiye gukosorwa hasuzumwa ibimenyetso byose byatanzwe muri uru rubanza.

b. Kumenya niba amafararanga yavuye mu cyamunara cy'inzu ya Mukarugwiza Ruth iri mu kibanza nº 11639/LC GAS/L 2349 kiri i Kibagabaga, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali, agomba guherwaho hishyurwa umwenda abereyemo Bank of Kigali Plc

[19] Me Twiringiyemungu Joseph, uburanira Mukarugwiza Ruth, avuga ko mu masezerano y'inguzanyo yabaye ku wa 14/4/2008 hagati ya Mukarugwiza Ruth na Banque de Kigali SA, iyo Banki ari yo yagombaga kwandikisha ingwate yahawe, ko rero yayandikishije ku Mwanditsi Mukuru muri RDB ku wa 14/02/2011, mu gihe kirenga imyaka ibiri yarayihawe, ko mu kuyandikisha yayishyize ku rwego rwa mbere (en premier rang) nk'uko amasezerano y'umwenda abivuga.

[20] Akomeza avuga ko na none ku wa 23/12/2010, Bank of Kigali Plc yahaye Karenzi John umwenda ungana na 82.862.162 Frw, ifata ingwate ku nzu yatanzweho ingwate na MUKARUGWIZA Ruth, ariko mu masezerano hasobanurwa neza ko iyo ngwate ishyizwe ku rwego rwa kabiri (en deuxième rang), nyamara mu kwandikisha ingwate ku Mwanditsi Mukuru ku itariki ya 11/01/2011, Bank of Kigali Plc ivuga ko iyandikishije ku rwego rwa mbere (en premier rang), bityo inyuranya n'amasezerano y'umwenda, akaba ari na byo byateje ikibazo cy'uko ikiguzi cy'ingwate cyazagabanywa nk'ubwishyu bw'iyo myenda yombi.

[21] Asanga rero, ashingiye ku biteganywa n'ingingo ya 22 y'Itegeko nº 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, ijyanye no kugena urutonde rw'uko imyenda yishyurwa, umwenda wa Mukarugwiza Ruth ari wo wagombaga kwishyurwa mbere, kuko ari wo watanzwe mbere, uwa Karenzi John ukishyurwa nyuma, kuko watanzwe nyuma.

[22] Yongeraho ko Mukarugwiza Ruth atari umugore wa Karenzi John, ahubwo babanaga gusa, ariko batarashyingiranywe mu buryo bukurikije amategeko.

[23] Me Rusanganwa Jean Bosco, uhagarariye Bank of Kigali Plc, avuga ko ibyakozwe byose muri cyamuna kwari ukugira ngo hishyurwe umwenda wafashwe na Karenzi John, kubera ko atishyuraga neza, ko umwenda wa Mukarugwiza Ruth wari utarageza igihe cyo kwishyuzwa kandi yishyuraga neza, ku buryo ku italiki ya 22/04/2013 yari ashigaje 33.964.000 Frw.

[24] Akomeza avuga ko muri “Loan Agreement with Creation of a Mortgage” yakozwe hagati ya Bank of Kigali Plc, Karenzi John na Mukarugwiza Ruth ku mwenda wafashwe na Karenzi John, bigaragara ko Mukarugwiza Ruth ari umugore (spouse) wa Karenzi John, akaba kandi yaranayishyizeho umukono, kandi ko “Certificate for Registration of Mortgage” yakozwe taliki ya 11/01/2011 igaragaza ko inzu yanditswe ari “1st Rank” ku mwenda wa Karenzi John, kandi ko iyi Certificate ari yo yahereweho hagurishwa iyo nzu.

[25] Me Rusanganwa Jean Bosco avuga na none ko ingingo ya 4 n’iya 8 z’Itegeko n° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, nk’uko ryahinduwe kugeza ubu, ziteganya ko “Byitwa ko ubugwate bufite agaciro iyo bwanditswe mu gitabo cyandikwamo ingwate ku mutungo utimukanwa mu biro by’Umwanditsi Mukuru, kandi ko ubugwate ku mutungo utimukanwa bushyirwa ku rutonde hakurikijwe uko bwanditswe mu gitabo cyandikwamo ingwate”, ko rero kuba ingwate yatanzwe ku mwenda wahawe Karenzi John ari yo yanditswe mbere, kuko yandishijwe ku wa 11/01/2011, naho iya Mukarugwiza Ruth ikandikishwa ku wa 14/02/2011, ari yo mpamvu cyamurana yabayeho kugira ngo hishyurwe umwenda wa Karenzi John.

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[26] Ingingo ya 64 y’Itegeko no 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko “Amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n’amategeko. Agomba kubahirizwa nta buriganya”.

[27] Naho ku byerekeye uburyo amafaranga avuye mu ngwate yagurishijwe akoreshwa, ingingo ya 22 y’Itegeko no 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa nk’uko ryahinduwe kandi ryavuguruwe kugeza ubu, iteganya ko “akoreshwa hakurikijwe urutonde rw’ibikenewe rukurikira: 1° kwishyura inyungu yose, amafaranga y’ubukode, amahoro, ayakoreshejwe cyangwa andi mafaranga ya ngombwa kandi agomba kwishyurwa ku ngwate; 2° kwishyura amafaranga yakoreshejwe n’andi yose agomba kwishyurwa, harimo ayishyurwa uwahawe gucunga ingwate; 3° kwishyura umwenda wa mbere watangiwe ingwate cyangwa igice cy’uwo mwenda gisigaye, inyungu cyangwa ibindi bintu byatumye haba igurisha; 4° kwishyura ingwate yose y’inyongera ku mutungo utimukanwa hakurikijwe urutonde rw’ubusumbane mu bugwate. Iyo hari amafaranga asagutse mu igurishwa ry’ingwate, ahabwa nyir’ingwate yagurishijwe”.

[28] Inyandiko ziri muri dosiye zigaragaza ko ku wa 14/04/2008, Banque de Kigali SA yagiranye amasezerano na Mukarugwiza Ruth, imuha inguzanyo ingana na 60.000.000 Frw, atanga ingwate ku nzu ye iri mu kibanza nº 11639/LC GAS/L 2349 kiri i Kibagabaga, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali ku rwego rwa mbere (en premier rang), aha iyo Banki n’uburenganzira bwo kuyandikisha, ko na none ku wa 23/12/2010 Bank of Kigali Plc yahaye Karenzi John (client) 82.862.162 Frw y’inguzanyo, Mukarugwiza Ruth ashyira umukono ku masezerano nk’umugore we (spouse), hatangwa na none ingwate ku nzu ye yavuzwe haruguru.

[29] Bigaragara ko mu kwandikisha ingwate muri RDB, Bank of Kigali Plc yandikishije ingwate zombi ku rwego rwa mbere, iyatanzwe na Karenzi John yandikwa ku wa 11/01/2011, naho iyatanzwe na Mukarugwiza Ruth yandikwa ku wa 14/02/2014, nyamara izi neza ko ingwate

yahawe mbere ari iyatanzwe na Mukarugwiza Ruth mu masezerano y'umwenda yo ku wa 14/04/2008.

[30] Urukiko rurasanga mu kwandikisha izo ngwate, nk'uko yari yabiherewe uburenganzira na Mukarugwiza Ruth, Bank of Kigali Plc itarubahirije ibikubiye mu masezerano y'inguzanyo, kuko ubugwate bwombi yambwandikishije ku rwego rwa mbere, kandi ihera ku bwatanzwe na Karenzi John, nyamara ingwate yatanzwe na Mukarugwiza Ruth ari yo yari ku rwego rwa mbere kandi yatanzwe mbere, naho iya Karenzi John ikaba ku rwego rwa kabiri.

[31] Urukiko rurasanga rero, ibyo Bank of Kigali Plc iburanisha ivuga ko yagurishije mu cyamunara inzu yahaweho ingwate yiyishyura umwenda wa Karenzi John, kuko ari yo yandikishijwe mbere kandi ku rwego rwa mbere nta gaciro byahabwa, kubera ko ari yo yari ifite inshingano zo kwandikisha neza ingwate yahawe, ariko igakora amakosa yo kuzishyira ku rwego rumwe, kandi izi neza ibikubiye mu masezerano yagiranye n'abo yahaye inguzanyo, kandi mu gutanga izo nguzanyo yagombaga kubanza kugenzura niba inguzanyo itanze zihawe koko umugabo n'umugore bashyingiranywe mu buryo bukurikije amategeko, n'uburyo bw'imicungire y'umutungo wabo.

[32] Urukiko rurasanga na none, mu gihe Bank of Kigali Plc ari yo yafashe icyemezo cyo kugurisha ingwate yahawe, ayo makosa amaze kugaragazwa, akwiye gukosorwa, maze amafaranga yavuye mu cyamunara cy'iyo nzu ya Mukarugwiza Ruth akabanza kwishyura umwenda ayibereyemo.

[33] Hashingiwe ku ngingo ya 64 y'Itegeko no 45/2011 ryo ku wa 25/11/2011 n'iya 22 y'Itegeko no 10/2009 ryo ku wa 14/05/2009 zavuzwe haruguru no ku bimaze gusobanurwa, Urukiko rurasanga ikirego cyo gusubirishamo urubanza no RCOMA 0573/14/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 09/01/2015 cyatanzwe na Mukarugwiza Ruth gifite ishingiro, bityo urwo rubanza rukaba rugomba guhinduka.

c. Ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka

[34] Me Twiringiyemungu Joseph, uburanira Mukarugwiza Ruth, avuga ko Bank of Kigali Plc ari yo nyirabayazana w'uru rubanza, ikaba igomba kumuha 2.000.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza.

[35] Me Rusanganwa Jean Bosco, uhagarariye Bank of Kigali Plc, avuga ko amafaranga Mukarugwiza Ruth ayisaba nta shingiro afite, kubera ko yemera ko ingwate yagurishijwe ari we wayitanzeho ubugwate ku mwenda wahawe umugabo we, kandi ku nyungu z'umuryango, ko ahubwo ari we ugomba gutegekwa kuyishyura 1.000.000 Frw y'indishyi zo gushorwa mu manza nta mpamvu, hiyongereyeho 1.000.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka.

UKO URUKIKO RUBIBONA

[36] Ingingo ya 111 y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza

kiburanishwa rimwe n’ikirego cy’iremezo. Gishobora kandi kwakirwa kikaburanishwa n’iyo ikirego cy’iremezo cyaba kitakiriwe“.

[37] Urukiko rurasanga, nk’uko byagaragajwe haruguru, ikirego cyatanzwe na Mukarugwiza Ruth gifite ishingiro, bityo n'amafaranga y’ikurikiranarubanza n’igihembo cya Avoka asaba afite ishingiro ariko 2.000.000 Frw ni menshi, mu bushishozi bwarwo akaba agenewe 800.000 Frw kuri uru rwego.

[38] Urukiko rurasanga amafaranga y’indishyi, ay’ikurikiranarubanza n’ay’igihembo cya Avoka asabwa na Bank of Kigali Plc itayagenerwa, kuko ntacyo itsindiye muri uru rubanza.

III. ICYEMEZO CY’URUKIKO

[39] Rwemeje ko ikirego cyatanzwe na Mukarugwiza Ruth cyo gusubirishamo urubanza no RCOMA 0573/14/HCC rwaciwe ku wa 09/01/2015 n'Urukiko Rukuru rw'Ubucuruzi ku mpamvu z'akarengane gifite ishingiro;

[40] Rwemeje ko ikirego cy’ibyagiye ku rubanza cya Bank of Kigali Plc nta shingiro gifite;

[41] Rwemeje ko urubanza n° RCOMA 0573/14/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 09/01/2015 ruhindutse mu ngingo zarwo zose;

[42] Rutegetse Bank of Kigali Plc kubanza kwiyishyura umwenda Mukarugwiza Ruth ayibereyemo ihereye ku mafaranga yavuye mu cyamunara cy’inzu ye iri mu kibanza n° 11639/LC GAS/L 2349 kiri i Kibagabaga, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali yahaweho ingwate;

[43] Rutegetse Bank of Kigali Plc kwishyura Mukarugwiza Ruth 800.000 Frw y’ikurikiranarubanza n’igihembo cya Avoka kuri uru rwego;

[44] Ruvuze ko amafaranga y’ibyakozwe mu rubanza aherereye ku Isanduku ya Leta.