BRD Plc v. RUTAGANDA N'UNDI

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00007/2020/CA (Ngagi, P.J.,) 21 Gicurasi 2021]

Amategeko agenga imanza z'ubucuruzi – Amasezerano – Amasezerano y'inguzanyo – Ingwate – Inyungu zisanzwe n'iz'ubukererwe – Inyungu zisanzwe n'iz'ubukererwe ntizikomeza gukomeza kubarwa mu gihe Banki ifite ingwate yagurishwa ikavamo ubwishyu.

Incamake y'ikibazo : Uru rubanza rukomoka ku masezerano y'inguzanyo BRD Ltd yakoranye na Rutaganda Viateur ingana na 40.000.000Frws, yishingirwa n'umugore we Uwantege Odette, iyo nguzanyo ikaba yaragombaga kwishyurwa mu myaka itanu (5), ku nyungu zisanzwe za 15% n'iz'ubukererwe za 4%. Rutaganda Viateur n'umwishingizi we ntibubahirije amasezerano, bituma BRD Ltd iregera Urukiko rw'Ubucuruzi rwa Nyarugenge isaba ko urwo Rukiko rubategeka kubahiriza amasezerano bakishyura umwenda remezo n'inyungu bibazwe kugera ku wa 02/10/2017, byose hamwe bihwanye na 81.107.225Frw.

Urukiko rw'Ubucuruzi rwasanze hakurikijwe inyandiko yiswe *"extrait de compte"* na *"situation des échéances"*, Rutaganda Viateur yarahawe 38.589.622 Frw, amafaranga abura kugira ngo 40.000.000 Frw yuzure akaba ari aya *"commission"*. Rwasanze kandi uwahawe umwenda n'umwishingizi we batarubahirije amasezerano bagiranye na BRD Ltd, kuko batishyuye umwenda bahawe wari ugeze kuri 81.107.225 Frw ku wa 02/10/2017 akubiyemo umwenda remezo, inyungu zisanzwe n'iz'ubukererwe, nk'uko babimenyeshejwe, bityo bakaba bagomba kuwishyura.

Rutaganda na Uwantege bajuririye Urukiko Rukuru rw'Ubucuruzi bavuga ko batishimiye uburyo bategetswe kwishyura 81.107.225Frw kandi bareguriye BRD ingwate.

Ku birebana n'uko Rutaganda Viateur yategetswe kwishyura kandi yarahaye BRD ingwate, Urukiko Rukuru rw'Ubucuruzi rwasanze amasezerano impande zombi zagiranye ateganya ko igihe cyo kwishyura nikigera uwagurijwe ntiyishyure Banki izaba ifite uburenganzira bwo gucunga, gukodesha, kugurisha cyangwa kwegukana imitungo yatanzeho ingwate, rwasanze kandi ko n'ubwo Banki itari yemerewe kwibwiriza ngo itangire gahunda yo kugurisha ingwate, kuyicunga cyangwa kuyegukana, bitari bibujijwe kuyikuramo ubwishyu mu gihe bisabwe na nyirayo, bityo ko abaregwa bagomba kwishyura umwenda n'inyungu bingana na 44.621.809 Frw yari agezemo igihe yandikiraga Banki bwa mbere ku wa 17/05/2014, kuko icyo yagombaga gukora ngo yishyure yagikoze.

Ku birebana n'indishyi, Urukiko Rukuru rw'Ubucuruzi rwasanze indishyi zose yahawe ku rwego rwa mbere zikaba zikuweho, n'izo isaba mu bujurire ikaba idakwiye kuzihabwa, n'abajuriye batazikwiye kuko kuba hariho imanza, nabo hari uruhare babigizemo kuko batishyuye inguzanyo bahawe.

BRD Ltd yajuririye Urukiko rw'Ubujurire ivuga ko impamvu yajuriye, ari uko itemera ingano y'umwenda wemejwe n'Urukiko Rukuru rw'Ubucuruzi, kuko urwo Rukiko rutagomba guhagarika ibarwa ry'inyungu ku wa 17/05/2014.

Rutaganda na Uwantege bavuga ko ibyo uburanira BRD Plc avuga nta shingiro byahabwa, kuko Urukiko rwagaragaje aho rwashingiye rwemeza ingano y'umwenda, bavuga kandi ko inyungu zitagomba kurenga umwenda remezo.

Incamake y'icyemezo: 1. Inyungu zisanzwe n'iz'ubukererwe ntizikomeza gukomeza kubarwa mu gihe Banki ifite ingwate yagurishwa ikavamo ubwishyu.

Ubujurire nta shingiro bufite.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko Nº 45/2011 yo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64 niya 78.

Imanza zifashishijwe:
Urubanza RCOMAA 0020/15/CS, Uwamahoro Florent de la Paix & Arlcom Ltd na ECOBANK RWANDA Ltd rwaciwe n'Urukiko rw'Ikirenga ku wa 21/05/2018.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku masezerano y'inguzanyo ya 40.000.000Frw yo ku wa 03/05/2012, BRD Ltd yahaye Rutaganda Viateur, yishingirwa n'umugore we Uwantege Odette, ayo mafaranga akaba yaragombaga kwishyurwa mu myaka itanu (5), ku nyungu zisanzwe za 15% n'iz'ubukererwe za 4%. Rutaganda Viateur n'umwishingizi we ntibubahirije amasezerano, bituma BRD Ltd iregera Urukiko rw'Ubucuruzi rwa Nyarugenge isaba ko urwo Rukiko rubategeka kubahiriza amasezerano bakishyura umwenda remezo n'inyungu bibazwe kugera ku wa 02/10/2017, byose hamwe bihwanye na 81.107.225Frw.

[2] Mu rubanza RCOM 02199/2017/TC/NYGE rwaciwe ku wa 07/06/2018, Urukiko rw'Ubucuruzi rwasanze hakurikijwe inyandiko yiswe *"extrait de compte"* na *"situation des échéances"*, Rutaganda Viateur yarahawe 38.589.622 Frw, amafaranga abura kugira ngo 40.000.000 Frw yuzure akaba ari aya *"commission"*. Rwasanze kandi uwahawe umwenda n'umwishingizi we batarubahirije amasezerano bagiranye na BRD Ltd, kuko batishyuye umwenda bahawe wari ugeze kuri 81.107.225 Frw ku wa 02/10/2017 akubiyemo umwenda remezo, inyungu zisanzwe n'iz'ubukererwe, nk'uko babimenyeshejwe, bityo bakaba bagomba kuwishyura.

[3] Ku birebana n'ibyavuzwe n'abaregwa ko babonye batagishoboye kwishyura bakegurira ingwate BRD Ltd yagombaga kugurisha mu gihe kitarenze amezi 3, Urukiko rwasanze bitahabwa agaciro, kuko amasezerano y'inguzanyo atigeze aseswa kandi impande zombi zikaba zarumvikanye ko mu gihe habayeho kutubahiriza amasezerano BRD Ltd ishobora guhitamo, ari ukugurisha ingwate, kwegurirwa gucunga umushinga cyangwa se kuregera Urukiko, ikaba rero yarahisemo kurega. Rwategetse abaregwa kwishyura BRD Ltd 700.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[4] Rutaganda Viateur na Uwantege Odette bajuririye Urukiko Rukuru rw'Ubucuruzi bavuga ko batishimiye uburyo Urukiko rw'Ubucuruzi rwanze gusubukura iburanisha kandi bari barugaragarije ko Rutaganda Viateur arimo kuburana urundi rubanza mu Rukiko Rwisumbuye, ko bategetswe kwishyura 81.107.225Frw kandi bareguriye BRD ingwate, ndetse rukaba rutarabageneye indishyi kandi barashowe mu manza, basaba n'izindi ndishyi mu bujurire. BRD Ltd yatanze ubujurire bwuririye ku bundi, inenga urubanza rw'Urukiko rw'Ubucuruzi ko mu kugena amafaranga agomba kwishyurwa, aho kugira ngo rugendere ku kigero umwenda wari ugezeho, rwashingiye ku mafaranga ari mu kirego, maze nayo isaba indishyi.

[5] Mu rubanza RCOMA 00483/2018/CHC/HCC rwaciwe ku wa 26/04/2019, Urukiko Rukuru rw'Ubucuruzi rwasanze impamvu y'ubujurire y'uko Rutaganda Viateur yaburanishijwe adahari ntacyo yamumarira, kuko itaburanyweho ku rwego rwa mbere, akaba ahubwo yari afite uburenganzira bwo kurusubirishamo nk'uko amategeko abiteganya, kuba atarakoresheje iyo nzira rero agahitamo ubujurire, bikaba bituma agomba kugaragaza gusa ibyo atishimiye ku rwego rwa mbere.

[6] Ku birebana n'uko Rutaganda Viateur yategetswe kwishyura kandi yarahaye BRD ingwate,Urukiko Rukuru rw'Ubucuruzi rwasanze amasezerano impande zombi zagiranye ateganya ko igihe cyo kwishyura nikigera uwagurijwe ntiyishyure Banki izaba ifite uburenganzira bwo gucunga, gukodesha, kugurisha cyangwa kwegukana imitungo yatanzeho ingwate (ingingo ya 9), kandi ko mu minsi 30 uwagurijwe wananiwe kwishyura ahawe integuza, Banki izaba ifite uburenganzira bwo gusesa amasezerano y'inguzanyo, gusaba ko wishyurwa wose, kugurisha ingwate, kwitabaza inzego z'ubutabera cyangwa gushyira mu maboko yayo imicungire y'umushinga biturutse ku bushake bwayo (ingingo ya 14).

[7] Rwasanze ariko n'ubwo nta kigaragaza ko ingwate yatanzwe yandikishijwe muri RDB Ltd, mu gihe abagurijwe bari bamaze kunanirwa kwishyura umwenda bahawe, Rutaganda Viateur yarandikiye Banki ayimenyesha ko ayeguriye ingwate ye igizwe n'ubutaka bwe buriho inyubako buherereye mu Kagari ka Nyarukombe, Umurenge wa Muyumbu, Akarere ka Rwamagana, Banki ntiyagira icyo imusubiza, yongera kuyandikira asaba uburenganzira bwo kuyigurisha nabwo ntiyagira icyo imusubiza. Rwasanze kandi n'ubwo Banki itari yemerewe kwibwiriza ngo itangire gahunda yo kugurisha ingwate, kuyicunga cyangwa kuyegukana, bitari bibujijwe kuyikuramo ubwishyu mu gihe bisabwe na nyirayo, kandi akaba nta kintu yakoze kibangamira igurishwa ryayo, Banki ikaba itaranamweretse imbogamizi ziri mu byo yayisabye cyangwa ngo imwemerere kwigurishiriza iyo ngwate.

[8] Urukiko Rukuru rw'Ubucuruzi rwasanze rero umwenda n'inyungu zawo RUTAGANDA Viateur agomba kwishyura ari 44.621.809 Frw yari agezemo igihe yandikiraga Banki bwa mbere ku wa 17/05/2014, kuko icyo yagombaga gukora ngo yishyure yagikoze,naho imyiregurire ya Banki y'uko kuba itarahise igira icyo ikora byatewe n'uko ifite uburyo ikora *gestion* y'amadosiye yayo ajyanye n'inguzanyo nta shingiro bifite, kuko niba ifite kubitindana bidakwiye kugira ingaruka k'uwagurijwe ngo ategereze imyaka 4 yose ategereje ko Banki ifata gahunda ya dosiye ye, ari nabyo byatumye inyuranya n'ingingo ya 112 y'Itegeko N°47/2017 ryo ku wa 23/09/2017 rigenga imitunganyirize y'imirimo y'amabanki[1]

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[1] Iyi ngingo ivuga ko mu kwishyuza imyenda itishyurwa, banki ntigomba kurenza umubare w'amafaranga ntarenga akurikira:1° umwenda shingiro utarishyuwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa;2°inyungu

[9] Ku birebana n'indishyi, Urukiko Rukuru rw'Ubucuruzi rwasanze kuba BRD Ltd itarahawe iza 8% yasabaga ku rwego rwa mbere bikwiye, kuko ari yo yahisemo kuregera umwenda umaze kurengerana kandi ikibazo cyarashoboraga gukemuka urubanza rutabayeho[2], bityo indishyi zose yahawe ku rwego rwa mbere zikaba zikuweho, n'izo isaba mu bujurire ikaba idakwiye kuzihabwa. Rwasanze kandi n'abajuriye batazikwiye kuko kuba hariho imanza, nabo hari uruhare babigizemo kuko batishyuye inguzanyo bahawe.

[10] BRD Ltd yajuririye Urukiko rw'Ubujurire itanga impamvu z'ubujurire zigera kuri eshatu ariko mu iburanisha ivuga ko hasuzumwa ebyiri.

[11] Urubanza rwaburanishijwe mu ruhame ku wa 29/09/2020, BRD Plc ihagarariwe na Me Rwigema Vincent, naho Rutaganda Viateur na Uwantege Odette bahagarariwe na Me Katushabe Mary, ababuranyi babwira Urukiko ko bagiye kugerageza gukemura ikibazo mu bwumvikane, iburanisha ryagiye ryimurwa ku matariki atandukanye hakigeragezwa inzira y'ubwumvikanye, ariko biza kugaragara ko batumvikana ku ngano y'umwenda BRD Plc yishyuza Rutaganda Viateur na Uwantege Odette, maze mu iburanisha mu ruhamwe ryabaye ku wa 23/02/2021, hashyirwaho Umuhanga witwa Uwamariya Therese washinzwe kugaragaza ingano y'uwo mwenda, ariko baza kunanirarwa, bituma mu iburanisha mu ruhame ryo ku wa 23/03/2021 hashyirwaho undi muhanga wemeranyijweho n'ababuranyi witwa Nsanzimana Anastase, ahabwa inshingano zo kugaragaza ingano y'umwenda abaregwa babereyemo BRD Plc.

[12] Urubanza rwongeye kuburanishwa mu ruhame, ku wa 20/04/2021, BRD Plc ihagarariwe na Me Rwigema Vincent, Rutaganda Viateur na Uwantege Odette bahagarariwe na Me Katushabe Mary afatanyije na Me Mudahogora Angelique, Umuhanga Nsanzimana Anastase atanga raporo ye, ababuranyi bagira icyo bayivugaho, iburanisha rirapfundikirwa.

II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba impamvu zashingiweho mu kugena ingano y'umwenda ugomba kwishyurwa, zikurikije amategeko no kumenya y'uko uwo mwenda ugomba kwishyurwa

[13] Me Rwigema Vincent avuga ko impamvu BRD Plc yajuriye, ari uko itemera ingano y'umwenda wemejwe n'Urukiko Rukuru rw'Ubucuruzi, ko ari wo Rutaganda Viateur na Uwantege Yvette bayibereyemo, kuko urwo Rukiko rutagomba guhagarika ibarwa ry'inyungu ku wa 17/05/2014. Avuga kandi ko BRD Plc itemera impamvu urwo Rukiko rwashingiyeho ruhagarika ibarwa ry'inyungu, kuko itashoboraga kugurisha ingwate kubera ko ibyangombwa byayo byari byarahindutse, hagomba kubanza guhinduza icyemezo cy'iyandikisha ry'ubugwate kugira ngo gihuzwe na UPI y'ikibanza, ko kandi yabigerageje yandikira ubuyobozi butandukanye

zitarenze umwenda shingiro igihe inguzanyo yageraga mu rwego rwo kutishyurwa hakurikijwe amasezerano banki ifitanye n'uyifitiye umwenda […]. Urukiko Rukuru rwavuze ko igihe rwacaga urubanza, umwenda wishyuzwa wari umuza kurenga 90.000.000Frw.

[2] Urukiko rwashingiye ku ngingo ya 140 y'Itegeko rigenga amasezerano iteganya ko nta ndishyi zishobora gutangwa mu gihe uwatewe igihombo yashoboraga kucyirinda nta zindi ngaruka, umutwaro cyangwa igisebo bimuteye.

kuko nta bushake Rutaganda yari yabishyizemo, ko ibonye bitinze ari bwo yahisemo kuregera Urukiko kuko bitari biteganyijwe mu masezerano. Avuga ko iby'uko Rutaganda Viateur yagombaga kumvikana na Banki bakagurisha ingwate bitari gushingirwaho, kuko bidateganyijwe mu masezerano kandi igurishwa ry'ingwate rikaba rifite amategeko rikurikiza.

[14] Avuga ko Urukiko Rukuru rw'Ubucuruzi rutari gukoresha ingingo ya 112 y'Itegeko rigenga amabanki mu bihe ryasohotse amasezerano yararangije kubaho kandi rikaba ridateganya *rétroactivité*, ndetse ingingo yaryo ya 120 ikaba iteganya inzibacyuho y'umwaka, bivuze ko ryagombaga gukurikizwa n'amabanki guhera ku wa 16/10/2018, kandi urubanza RCOM 02199/2017/TC/NYGE rwaraciwe ku wa 7/6/2018. Byongeye kandi amasezerano yari ateganyijwe kurangizwa mu kwa 11/2016 ku buryo nayo atari guhuzwa n'iryo Itegeko, ko rero nta kosa Urukiko rw'Ubucuruzi rwari rwakoze. Avuga kandi ko Urukiko Rukuru rw'Ubucuruzi rwakoresheje nabi ingingo ya 112 y'Itogeko ryibukijwe haruguru, kuko idakoreshwa ku nyungu z'ubukererwe (pénalités), ahubwo ikoreshwa gusa ku nyungu zisanzwe.

[15] Ku byerekeranye n'ubwishingire bwa BDF avuga ko butabayeho, ko kandi niyo bwaba bwarabayeho ntabwo bisonera abereyemo BRD Plc kwishyura, kuko yagombaga kuba yarayihamagaje mu rubanza.

[16] Asoza avuga ko hakurikizwa ingano y'umwenda nk'uko BRD Plc yawubaze, Urukiko ruramutse rubibonye ukundi rwashingira k'uyo Umuhanga yabaze, ariko kugeza ku itariki urubanza ruciriweho.

[17] Abahagarariye Rutaganda Viateur na Uwantege Odette bavuga ko ibyo uburanira BRD Plc avuga nta shingiro byahabwa, kuko Urukiko rwagaragaje aho rwashingiye rwemeza ingano y'umwenda. Bavuga ko Urukiko rwashingiye ku ngingo ya 14 y'amasezerano, aho impande zombi zemeranyijwe ko uhawe inguzanyo nananirwa kwishyura, BRD Ltd izahita imuha integuza mu gihe kitarenze iminsi mirongo itatu (30) ariko ko BRD Ltd itabyubahirije. Avuga ko no mu ngingo za 9 na 18 bemeranyijwe ko Rutaganda Viateur nananirwa kwishyura BRD Ltd zegukana ingwate, ikayicunga cyangwa igasaba ko igurishwa ku ngufu za Leta, ko ariko nabyo itabikoze kandi bigaragara ko inkomyi y'ayo masezerano yari iteganijwe yo kunanirwa kwishyura yabaye.

[18] Ku birebana n'uko BRD Ltd itari gushobora kugurisha ingwate yahawe mu gihe ibyangombwa byayo byari byarahindutse, ivuga ko hagombaga kubanza guhinduza icyemezo cy'iyandikisha ry'ubugwate kugira ngo gihuzwe na nimero za UPI y'ikibanza, avuga ko nta shingiro bifite kuko ingwate yari yanditse, ndetse bakaba bari baremeranyije ko Rutaganda Viateur nananirwa kwishyura izagurishwa, anabonye uwayigura Banki irabyanga, bikaba bigaragara ko yashakaga indonke kuri Rutaganda Viateur.

[19] Bakomeza bavuga ko ku ruhande rw'abo ahagarariye, bananiwe kwishyura ku wa 30/04/2013, ko ayo yananiwe kwishyura ari 1.315 Frw, ko rero inyungu zagombaga gukomeza kubarwa kugeza ku wa 31/05/2013, kuko ari bwo ukwezi kumwe (1) kw'integuza kwari kurangiye. Bavuga ko rero umwenda bemera ari 12.000.000 Frw, ko kandi BRD Plc idakwiye kubara inyungu nyuma y'aho Rutaganda Viateur na Uwantege Odette bananiriwe kwishyura. Bavuga ko impamvu hasigara 12.000.000 Frw, ari uko mu mwenda abaregwa basabwa kwishyurwa hagomba kuvanwamo 26.000.000 Frw yishingiwe na BDF.

[20] Ku birebana n'uko Urukiko Rukuru rw'Ubucuruzi rwakoresheje ingingo ya 112 y'Itegeko rigena imitunganyirize y'imirimo y'amabanki ryagaragajwe haruguru, bavuga ko nta kosa rwakoze, kuko mu masezerano ateganya ko nihavuka ikibazo hazashingirwa ku mategeko y'u Rwanda, kandi ko iryo tegeko rwashingiyeho ari rimwe mu mategeko y'u Rwanda. Avuga kandi ko BRD Ltd yabariye inyungu ku mezi 66 aho kubarira ku mezi 60 nk'uko impande zombi zabyumvikanyeho mu masezerano y'inguzanyo, bityo ko n'amafaranga yagendaga yishyura aruta ayo yagombaga kwishyura, akaba ari yo mpamvu amafaranga yo kwishyura yagombaga kugabanywa.

[21] Nyuma yo kumva imiburanire y'impande zombi, kandi hashingiwe ku cyifuzo cy'impande zombi, Urukiko rwasanze mbere yo gufata icyemezo cya burundu ku bijyanye no kumenya ingano y'umwenda nyawo Rutaganda Viateur na Uwantege Odette babereyemo BRD Plc n'uburyo wabazwe, kuko impande zombi zitawumvikanaho, ari ngombwa ko hashyirwaho umuhanga wafasha mu kubarura uwo mwenda, rwiyambaza uwitwa Nsanzimana Anastase nk'uko byavuzwe haruguru.

[22] Umuhanga Nsanzimana Anastase yatanze raporo igaragaza ko Rutaganda Viateur yemerewe na BRD inguzanyo ya 40.000.000 Frw, yishingirwa na Uwantege Odette ndetse no ku wa 03/05/2012 handikishwa ingwate ku Mwanditsi Mukuru ; inyungu zisanzwe ku nguzanyo zingana na 15% ku mwaka, iz'ubukererwe zingana na 4% ku mwaka. Raporo igaragaza ko yashyikirijwe 40.000.000 Frw yasabye, atangira kuyishyura kugeza ku wa 31/05/2013, kuko nyuma y'iyo tariki, ntabwo inguzanyo yongeye kwishyurwa. Ku wa 17/05/2014, Rutaganda Viateur yandikiye BRD Ltd ayimenyesha ko atakibashije kwishyura umwenda, maze ayibwira ko ayeguriye umutungo we ugizwe n'ubutaka n'inyubako ziburiho, uherereye mu Kagari ka Nyarukombe, Umurenge wa Muyumbu, Akarere ka Rwamagana ; maze ku wa 02/06/2014, Banki imusubiza ko igiye gukoresha byihutirwa, inzira ziteganyijwe n'amategeko kugira ngo yishyurwe inguzanyo yabahaye. Kuri iyo tariki inguzanyo itarishyuwe yari igeze kuri 37.812.698 Frw, inyungu zose hamwe zigeze kuri 6.530.420 Frw, komisiyo za 419.937 Frw, umusogongero wa Banki 20.499 Frw, yose akaba 44.783.533 Frw.

[23] Akomeza avuga ko yabajije BRD Plc impamvu itihutiye gukora ibyari biteganyijwe mu masezerano yagiranye na Rutagarama Viateur ikimara kubona ko ananiwe kwishyura inguzanyo yahawe ; avuga ko yanabajije Banki niba yarakoze igenzura ry'umushinga Rutaganda Viateur yari yarasabiye inguzanyo ikindi yabajije ni ukumenya niba Banki yarakurikiranye ubwishingizi bwatanzwe na BDF.

[24] Avuga ko ku byerekeranye n'ubwishingizi bwa BDF, BRD Plc yamushubije ko butigeze bubaho, naho Rutaganda Viateur avuga ko bwabayeho. Naho ku byerekeranye n'amagenzura, avuga ko nta raporo yagaragarijwe na BRD yaba yerekana ko yakozwe.

[25] Avuga ko ku mpande zombi habayeho amakosa ya *procedures,* kuko buri ruhande hari ibyo rutakoze, kandi byari biteganyijwe mu masezerano, nko guhanahana amakuru yose arebana n'imicungire y'umushinga, ndetse n'ikoreshwa ry'inguzanyo nk'uko biteganyijwe mu masezerano. Akomeza avuga ko hari inyungu Rutanda Viateur agomba kwishyura kugeza igihe yasabiye mu nyandiko BRD Plc kwegukana ingwate, kuko yakabaye yarabisabye umushinga ukimara gupfa. Avuga ko nta nyungu BRD Plc yari ikwiye kubara, kuko nayo hari ibiteganyijwe mu masezerano itubahirije.

[26] Yanzura avuga ko umwenda Rutaganda Viateur yaba abereyemo BRD Plc ungana na 44.783.553 Frw wakwishyurwa hifashishijwe ingwate yahaye BRD Plc. Avuga ko bibaye ngombwa ko inyugu zibarwa kugeza ku wa 20/04/2021, ni ukuvuga itariki ya nyuma y'iburanisha, umwenda waba ugeze kuri 75.644.938Frw, nawo wakwishyurwa hifashishijwe ingwate Rutaganda Viateur yahaye BRD Plc.

[27] Nyuma yo kumva ibisobanuro byatanzwe n'umuhanga kuri raporo yakoze mu iburanisha ryo ku wa 20/04/2021, uhagarariye BRD Plc, avuga ko atemeranya n'Umuhanga ku mibare yatanze, ko ahubwo hashingirwa ku mibare BRD Plc yikoreye kuri *Excell* ni ukuvuga 108.000.000 Frw. Avuga ko ku bwa BRD Plc nta mpamvu yumvikana yatuma Umuhanga abara inyungu kugeza ku wa 31/05/2014, ko ahubwo inyungu zigomba gukomeza kubarwa kugeza umwenda wishyuwe, kuko nta nkomyi nsesamasezerano impande zombi zumvikanyeho ivuga ko nihabaho kutubahiriza amasezerano azahita aseswa, ko niyo BRD Plc yaba itarasubije Rutanganda Viateur, nta kosa ryaba rihari ku buryo ibarwa ry'inyungu ryahagarara.

[28] Akomeza avuga ko kandi mu ibarwa ry'inyungu, ingingo ya 112 y'Itegeko N° 47/2017 ryo ku wa 23/09/2017 rigenga imitunganyirize y'imirimo y'amabanki ikoreshwa gusa ku nyungu zisanzwe, ko itakoreshwa ku nyungu z'ubukererwe, kuko zo zigomba gufatwa nk'ibihano aho gufatwa nk'inyungu.

[29] Ku bijyanye n'ubwishingire bwa BDF, avuga ko butigeze bubaho, ko *Memorandum* yabaye hagati ya BDF na BRD Ltd yavugaga ko BDF ishobora kwishingira imishinga yashyikirijwe na Banki, ariko bitari itegeko. Akomeza avuga ko niyo ubwo bwishingire bujya kuba bwarabayeho ntabwo busonera Rutaganda Viateur kwishyura inguzanyo yahawe, ko kandi iyo akenera ko imwishyurira yari kuba yarayihamagaje mu rubanza, kuba rero itarabikoze ntaho yahera ivuga ko ku mwenda hakwiye kuvanwamo arenga 26.000.000 Frw Rutaganda Viateur avuga ko yishingiwe na BDF. Asoza avuga ko asaba Urikiko ko rwazemeza ingano y'umwenda nk'uko BRD Plc yawubaze, rwabibona ukundi rukemeza uwo Umuhanga yabaze kugeza urubanza ruciwe, ariko akongerwaho 8% ateganyijwe mu ngingo ya 18 y'amasezerano y'inguzanyo.

[30] Me Katushabe Marie avuga ko atemeranya n'umuhanga ku buryo yabaze inyungu, kuko ku ruhande rwa Rutaganda Viateur inyungu zagombaga guhagarara ku wa 31/05/2013, kuko ari bwo Rutaganda Viateur yananiwe kwishyura. Kuba rero BRD Ltd ntacyo yakoze, Rutaganda Viateur amaze kunanirwa kwishyura, ntabwo yakomeza kubara inyungu kuri 12.000.000Frw yari asigaje kuko mu mwenda wa 37.000.000 wari utarishyurwa, hagomba kuvanwamo agera kuri 26.000.000Frw yishingiwe na BDF kuko ubwo bwishingire bwabayeho.

[31] Avuga ko inyungu zitagomba kurenga umwenda remezo nk'uko biteganywa n'ingingo ya 112 y'Itegeko N° 47/2017 ryo ku wa 23/09/2017 rigenga imitunganyirize y'imirimo y'amabanki, ko kandi iyi ngingo ikurikizwa mu ibarwa ry'inyungu zisanzwe n'inyungu z'ubukererwe.

[32] Me Mudahogora Angelique nawe uburanira Rutaganda Viateur na Uwantege Odette avuga ko asaba ko Urukiko rwazareba ibyemejwe mu rubanza RCOMAA 0020/15/CS rwaciwe ku wa 21/05/2018 haburana Uwamahoro Florent de la Paix & Arlcom Ltd na ECOBANK RWANDA Ltd.

UKO URUKIKO RUBIBONA

[33] Ingingo ya 64 y’Itegeko Nº 45/2011 yo ku wa 25/11/2011 rigenga amasezerano iteganya ibikurikira : “Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n’amategeko. Agomba kubahirizwa nta buriganya”. Ingingo ya 78 y’iri Tegeko rimaze kwibutswa yo iteganya ko “Iyo inkomyi itangiza inshingano itabayeho, inshingano ziba zivuyeho. Kutabaho kw’inkomyi ntibifatwa nko kwica masezerano keretse biturutse ku ruhande rufite inshingano yo gutuma inkomyi ibaho”.

[34] Ingingo ya 76 y’Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, igira iti: ‟Ubuhamya bw’abahanga ni ubugamije guha urukiko ibisobanuro bishingiye ku bumenyi kimwe n’umwanzuro urenze ubumenyi busanzwe bw’umucamanza mu kazi ke bitewe n’uko ibiburanwa bishingiye ku buhanga bwihariye”. Ingingo ya 77 y’iryo Tegeko iteganya ibikurikira : ‟Kugira ngo Urukiko ruce urubanza rwaregewe rushobora, gutegeka umuhanga cyangwa abahanga gusuzuma no gutanga ibitekerezo ku bintu bifitanye isano n’urwo rubanza kandi bijyanye n’umwuga wabo”.

[35] Ingingo ya 9 y’amasezerano y’iguriza n’ubugwate ku mutungo utimukanwa No 110/2012/LU/DM/dm yo ku wa 03 Gicurasi 2012 yabaye hagati ya Rutaganda Viateur na BRD Ltd, Uwantege Odette ari umwishingizi iteganya ko haramutse habayeho kutishyura inguzanyo remezo, BRD Ltd izaba ifite uburenganzira cyangwa ububasha bwo gucunga, gukodesha, kugurisha cyangwa kwegukana imutungo yatanzweho ingwate nk’uko biteganywa n’Itegeko No 10/2009 ryo ku wa 14 Gicurasi 2009 rirebana n’ubugwate ku mitungo itimukanwa nk’uko ryahinduwe kandi rikuzuzwa n’Itegeko No 13/2010 ryo ku wa 07/05/2010.

[36] Ingingo ya 18 y’ayo masezerano iteganya ibikurikira: “Mu gihe Uwagurijwe atubahirije inshingano ze, Banki izasaba ko umwenda Uwagurijwe ayiberemo uvanwa mu bintu bye ku ngufu za Leta hakurikijwe ingingo ya 9 y’Itegeko Teka ryo ku wa 17 Ugushyingo 1952 igira iti: “Inyandiko zishyizweho umukono wa Noteri zubahirizwa ku ngufu za Leta. Iyo inyandiko yerekana umwenda udashidikanywaho kandi uri mu mafaranga. Noteri ashobora gutanga kopi yayo iherekejwe n’inyandikompuruza”.

[37] Nk’uko raporo y’Umuhanga ibigaragaza kandi akaba ari nako bigaragara muri dosiye, ku wa 17/09/2013, Rutaganda Viateur yamenyesheje BRD Ltd ko umushinga wagize ibibazo; ku wa 02/06/2014, BRD Plc imusubiza ko kwegukana ingwate bitateganyijwe mu masezerano bagiranye, ko ariko kubera umushinga utakiriho, akaba atanacyishyura umwenda ayibereyemo, igiye gukoresha byihutirwa inzira ziteganywa n’amategeko kugira ngo yishyurwe inguzanyo ayibereyemo.

[38] Raporo igaragaza ko aho BRD imenyeye ko umushinga wahagaze BRD Ltd, itakoze ibiteganywa n'ingingo ya 14 y'amasezerano[3], ku buryo hari guhita hubahirizwa ibiteganyijwe mu ngingo ya 9 y'ayo masezerano[4] ; ko ndetse na nyuma y'aho ayandakiye, nta kigaragara ko hari icyo yakoze ikurikirana ibwishyu bwayo, ahubwo ikigaragara muri dosiye nuko yategereje maze ikaregera Urukiko ku wa 02/07/2017, isaba kwishyurwa 81.107.225Frw akubiyemo umwenda remezo n'inyungu zawo.

[39] Urukiko rurasanga nk'uko Urukiko Rukuru rw'Ubucuruzi rwabibonye, ndetse akaba ari nako Umuhanga nawe yabibonye, kuba Rutaganda Viateur yarandikiye Banki ayimenyesha ko atagishoboye kwishyura umwenda, akayisaba ko yakwegukana ingwate kugira ngo yiyishyure, Banki ikamusubiza ko igiye gukoresha byihutirwa inzira ziteganywa n'amategeko kugira ngo yishyurwe inguzanyo ayibereyemo, ariko igahitamo kuregera Urukiko nyuma y'imyaka itatu, nta mpamvu inyungu zari gukomeza kubarwa ngo zijye ku mutwe w'abayibereyemo umwenda, kandi Banki ari yo itarakoresheje uburyo yari ifite yemererwa n'amategeko kugira ngo yishyurwe umwenda bari bayiberemo. Urukiko rurasanga kuba Banki itarabyitayeho ngo ibikurikirane, nta ruhare Rutaganda Viateur na Uwantege Odette babifitemo ku buryo yababarira inyungu, ahubwo ari yo igomba kwirengera kuba itarakurikiranye ishyirwa mu bikorwa ry'ibyo ubwayo yiyemeje mu ibaruwa yayo yo ku wa 02/06/2014, bityo inyungu zigomba kubarwa kugeza ku wa 31/05/2014.

[40] Urukiko rurasanga rero nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu kwemeza ko ibirwa ry'inyungu ryagombaga guhagarara ku wa 17/05/2014; bityo impamvu rwashingiyeho mu kugena ingano y'umwenda Rutaganda Viateur na Uwantege Odette bagomba kwishyura zakurikije amategeko.

[41] Ku byerekeranye no kumenya ingano y'umwenda Rutaganda Viateur na Uwantege Odette babereyemo BRD Plc, Urukiko rurasanga rwemeranwa na raporo y'Umuhanga igaragaza ko umwenda n'inyungu zawo zibazwe kugeza ku wa 31/05/2014 ungana na 44.783.553Frw akubiyemo 37.812.698Frw y'inguzanyo itarishyuwe, 6.530.420Frw y'inyungu zose hamwe, 419.937Frw ya za komisiyo na 20.499 Frw z'umusongero wa Banki.

[42] Urukiko rurasanga ibyo uhagarariye BRD Plc avuga ko inyungu zigomba kubarwa kugeza urubanza ruciwe nta shingiro byahabwa, kuko nk'uko byasobanuwe haruguru, Banki ari yo itarakurikiranye ubwishyu bwayo, kuko iyo iza gukora inshingano zayo nk'uko byari biteganyijwe, ntabwo byari kuba ngombwa ko ikibazo gikemuka muri ubu buryo bwo kugana inkiko. Ni nako byemejwe mu rubanza RCOMAA 0020/15/CS rwaciwe ku wa 21/05/2018

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3 Ingingo ya 14 y'amasezerano iteganya ibikurikira: "Igihe cyose habaye igikorwa cyo kutubahiriza aya masezerano, niba Uwagurijwe ananiwe cyangwa nta bushobozi afite bwo bwo gukosora icyo gikorwa mu gihe kitarenze iminsi mirongo iitatu (30) amaze kubona intenguza yanditswe na Banki, Banki izaba ifite uburenganzira bwo gusesa umwenda wishyurwa wose, kugurisha ingwate, kwitabaza inzego z'ubutabera cyangwa gushyira mu maboka yayo imicungire y'umushinga biturutse ku bushake bwayo".

4 Ingingo ya 9 y'amasezerano iteganya ibikurikira:" Igihe cyo kwishyura umwenda w'iremezo n'inyungu nikigera ariko Uwagurijwe ntiyishyure, Banki izaba ifite ububasha bwo gucunga, gukodesha, kugurisha cyangwa kwegukana imitungo yatanzweho ingwate, nk'uko biteganywa n'itegeko no 10/2009 ryo ku wa 14 Gicurasi 2009 rirebana n'ubugwate ku mitungo itimukanwa nk'uko ryahinduwe kandi rikuzuzwa n'itegeko 13/2010 ryo ku wa 07/05/2010. Igihe cyo kugurisha iyo mitungo, Banki izakurikiza ibiteganywa n'itegeko rirebana n'ubugwate ku mitungo itimukanwa n'andi mabwiriza yashyizweho n'inzego zibifitiye ubushobozi."

haburana Uwamahoro Florent de la Paix & Arlcom Ltd na ECOBANK RWANDA Ltd, aho urwo Rukiko rwasobanuye ko Banki igomba kwirengera ingaruka z'uburangare bwayo, kuko biba ari ugutuma uwishyuzwa akomeza kubarirwa inyungu z'ikirenga kandi bikamutera igihombo ku makosa atari aye[5].

[43] Urukiko rurasanga ibyo uhagarariye BRD Plc avuga ko ingingo ya 112 y'Itegeko N° 47/2017 ryo ku wa 23/09/2017 rigenga imitunganyirize y'imirimo y'amabanki ikoreshwa gusa ku nyungu zisanzwe, ko itakoreshwa ku nyungu z'ubukererwe, kuko zo zigomba gufatwa nk'ibihano aho gufatwa nk'inyungu, nta shingiro byahabwa, kuko usibye kubivuga gusa, ntaho abishingira, nta nubwo agaragaza ko hari aho iyo ngingo iteganya ko ikoreshwa gusa ku ibarwa ry'inyungu zisanzwe.

[44] Rurasanga na none ibyo BRD Plc isaba ko amafaranga acibwa Rutaganda Viateur na Uwantege Odette agomba kongerwaho 8% nk'uko biteganywa n'ingingo ya 18 y'amasezerano nta shingiro byahabwa, kuko nubwo koko batashoboye kwishyura umwenda, ariko nta makosa bakoze yatuma bacibwa amafaranga y'ibihano kandi nk'uko byagaragajwe haruguru BRD Plc niyo itarakoze ku gihe ibyo yari yemerewe n'amategeko ndetse n'amasezerano kugira ngo yishyurwe umwenda yatanze n'inyungu zawo, bityo nta ndishyi yahabwa mu gihe yashoboraga kwirinda igihombo yaba yaragize nta zindi ngaruka cyangwa igisebo bimuteye nk'uko biteganywa n'ingingo ya 140 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano.

[45] Urukiko rurasanga ibyo Me Katushabe Mary avuga ko inyungu zagombaga kubarwa kugeza ku wa 31/05/2013, kuko ari bwo ukwezi kumwe (1) kw'integuza kwari kurangiye, nta shingiro byahabwa kuko nk'uko Umuhanga yabigaragaje, kandi akaba ari nako uru Rukiko rubibona, ibarwa ry'inyungu z'ubukererwe ryagomba guhagarara ku wa 31/05/2014, ubwo Rutaganda Viateur yamenyeshaga Banki ko atagishoboye kwishyura anayisaba kwegukana ingwate.

[46] Urukiko rurasanga na none ibyo avuga ko ku nguzanyo itarishyuwe igera kuri 37.812.698 Frw hagomba kuvanwamo 26.000.000Frw yishingiwe na BDF nta shingiro byahabwa, kuko usibye kubivuga gusa ntabwo agaragaza ko ayo mafaranga yaba yarishyuwe na BDF ku buryo yaba yaragabanyije ingano y'umwenda. Bivuze rero ko mu gihe cyose atagaragaza ko BDF yaba yarishyuye ayo yishingiye, niyo ubwo bwishingire bwaba bwarabayeho, ntabwo bisonera Rutaganda Viateur na Uwantege Odette kwishyura umwenda babereyemo BRD Plc.

[47] Hakurikijwe ibimaze gusobanurwa haruguru, Urukiko rurasanga umwenda n'inyungu zawo Rutaganda Viateur na Uwantege Odette bagomba kwishyura BRD Plc ari 44.783.553Frw, bityo imikirize y'urubanza RCOMA 000483/2018/CHC/HCC rwaciwe ku wa 26/04/202019 ikaba idahindutse usibye ku kinyuranyo gito cya 161.744Frw yiyongera kuri 44.621.809Frw yari yagenwe n'Urukiko Rukuru rw'Ubucuruzi.

2. Kumenya niba hari amafaranga y'igihembo cya Avoka n'ikurikiranarubanza yagenwa muri uru rubanza

[48] Uburanira BRD Plc asaba Urukiko rw'Ubujurire gutegeka Rutaganda Viateur na Uwantege Yvette guha BRD Plc 1.500.000Frw y'ikurikiranarubanza n'igihembo cya Avoka yari

5 Igika cya 37 cy'urubanza RCOMAA 0020/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 21/05/2018.

yasabye mu rubanza rujuririrwa, hakanagumishwaho ayari yemejwe ku rwego rwa mbere, no kuyiha 500.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cya Avoka muri ubu bujurire.

[49] Ababuranira abaregwa bavuga ko BRD Plc itasaba indishyi z'igihombo yagize kuko ari yo yakiteje, ko ahubwo abaregwa ari bo bakwiye guhabwa indishyi zose batahawe kuva ku rwego rwa mbere. Basaba Urukiko rw'Ubujurire gutegeka BRD Plc guha Rutaganda Viateur na Uwantege Odette 1.000.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cya Avoka kubera ko yabashoye mu manza.

[50] Ku byerekeranye n'amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza asabwa n'impande zombi, Urukiko rurasanga nta ruhande rukwiye kuyahabwa, kuko haba ku ruhande rwa BRD Plc nk'uko byasobanuwe, ubujurire bwayo nta shingiro bwahawe, no ku ruhande rw'abaregwa nabo ntayo bahabwa, kuko iyo baba barishyuye umwenda babereyemo BRD Plc, ntabwo uru rubanza rwari kubaho.

III. ICYEMEZO CY'URUKIKO

[51] Rwemeje ko ubujurire bwatanzwe na BRD Plc nta shingiro bufite ;

[52] Rwemeje ko imikirize y'urubanza RCOMA 00483/2018/CHC/HCC rwaciwe ku wa 26/04/2019 idahindutse usibye ku kinyuranyo cya 161.744 Frw yiyongera kuri 44.621.809Frw yari yagenwe n'Urukiko Rukuru rw'Ubucuruzi ;

[53] Rutegetse Rutaganda Viateur na Uwantege Odette gufatanya kwishyura BRD Plc 44.783.553Frw;

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