BYAKUNDA v UNGUKA BANK Plc

[Rwanda URUKIKO RW'UBUJURIRE – RSOC 00001/2022/CA – (Kamere, P.J.) 29 Nyakanga 2022]

Amategeko agenga imiburanishirize y'imanza z'umurimo – Kurangiza urubanza – Impaka zivutse mu irangiza ry'urubanza – Ni imbogamizi zavutse zigatuma irangizwa ry'urubanza ridashoboka cyangwa se rikagorana, zikaba zishobora kuba zikomoka ku miterere y'icyemezo cy'Urukiko kirangizwa ubwacyo ariko zikaba zitarashoboye kubanza gukemurwa mu buryo bw'ikirego cyo gusobanuza urubanza cyangwa se zikomoka ku migirire y'ushinzwe kurangiza urwo rubanza.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge Byakunda arega Unguka Bank ko itubahirije icyemezo cyafatiwe mu nama y'Ubutegetsi bw'iyo Banki kimwemerera imodoka, amafaranga yo kwishyura ishuri, amafaranga ahwanye n'umushahara we w'imyaka ibiri azifashisha mu kwishyura inguzanyo afitiye iyo banki no kuvugurura amasezerano y'inguzanyo asigaranye ku buryo bumunogeye. Rwakomereje mu Rukiko Rukuru aho rwemeje ko Uregwa agomba guha Urega ibyo yemerewe mu Nama y'Ubutegetsi no kumuha indishyi zitandukanye.

Uregwa yajuririye mu Rukiko rw'Ubujurire, aho rwemeje ko ubwo bujurire bufite ishingiro kuri bimwe ku kijyanye n'amafaranga y'umushahara Urega yemerewe, ariko ubujurire bwuririye ku bundi bw'Urega bwo nta shingiro bufite.

Uregwa yatanze ikirego cyo gukemura impaka zavutse mu irangizwa ry'urubanza muri uru Rukiko ku ngingo ijyanye no ku ivugurura ry'amasezerano y'inguzanyo ye, ku kibazo cy'amafaranga Uregwa afite yakase ku mpamba Urega yahawe mu rwego rwo kurangiza urubanza RSOCAA 00009/2018/CA, gukemura ikibazo cy'amafaranga y'Urega yafatiriwe n'Uregwa iyitirira kugabanya umwenda mu irangizwa ry'urwo rubanza kandi ntacyo ishingiyeho no ku kibazo cyindishyi zijyanye no gushorwa mu manza.

Uregwa yatanze inzitizi avuga ko abona hari ibibazo byashyikirijwe uru Rukiko byafashweho ibyemezo ntakuka bidakwiye gusuzumwa muri uru rubanza, bityo habanza gusuzumwa ikibazo kijyanye no kumenya niba Uregwa yari yemerewe gufatira amafaranga y'Urega yahawe nk'impamba mu rwego rwo kurangiza urubanza RSOCAA 00009/2018/CA.

Urega avuga ko mu kurangiza urwo rubanza ku neza Uregwa yashyize kuri konti ye amafaranga yategetswe ariko bukeye ahita afataho 23.400.117 Frw ngo yo kugabanya umwenda yari amubereyemo mu gihe uwo mwenda utari mu bukererwe ndetse bitanari mu byategetswe n'Urukiko. Yamusabye kumusubiza ayo mafaranga ariko ntiyagira icyo abikoraho, akaba asaba Urukiko kumutegeka kuyamusubiza n'inyungu zayo kuko yayakuyeho mu buryo budakurikije amategeko kandi akayacuruza.

Uregwa avuga ko avuga ko impaka Urega avuga ko zabaye mu irangiza ry'urubanza ntazabayeho, ko akimara gushyira ayo mafaranga kuri konti ye irangiza ry'urubanza ryari rirangiye gukorwa ku neza, ko haramutse hari ikindi kibazo Urega abona cyarabaye ku micungire ya konti ye nk'umukiliya cyari gusuzumirwa ahandi kandi bikitwa ukundi kutari ugukemura impaka zavutse mu irangiza ry'urubanza.

Ku kibazo cyo kutumvikana ku buryo Urega yakoroherezwa kwishyura inguzanyo asigayemo hashyirwa mu bikorwa ibyemejwe n'Urukiko, Urega avuga ko izindi mpaka zagaragaye mu irangiza ry'urubanza ari ukuba kugeza uyu munsi atarorohereiwe kwishyura iyo nguzanyo kuko akirimo kwishyuzwa ku gipimo cy'inyungu cya 18% nyamara byaremejwe ko inyungu yagombaga

kwishyuriraho ari 10% yari asanzwe yishyuriraho. Ikindi ni uko atahawe igihe cy'imbabazi, ibi bikaba byaratumye yishyura amafaranga y'umurengera atagombaga kwishyura iyo akorerwa ibyo yemerewe.

Mu kwiregura kwe, Uregwa avuga ko iyi ngingo idakwiye kwakirwa ku ruhande rumwe ariko ko ku rundi ruhande asanga nta mpaka iteje mu irangizwa ry'urubanza kubera ko ibyo Urega yita impaka uru Rukiko rwabisuzumye rubifataho icyemezo cyo kutabyakira. Asaba ko iki kiregerwa kitakwakirwa, ariko ko n'iyo cyakwakirwa kitahabwa ishingiro.

Incamake y'icyemezo: Impaka zivutse mu irangiza ry'urubanza ni imbogamizi zavutse zigatuma irangizwa ry'urubanza ridashoboka cyangwa se rikagorana, zikaba zishobora kuba zikomoka ku miterere y'icyemezo cy'Urukiko kirangizwa ubwacyo ariko zikaba zitarashoboye kubanza gukemurwa mu buryo bw'ikirego cyo gusobanuza urubanza cyangwa se zikomoka ku migirire y'ushinzwe kurangiza urwo rubanza.

Ikirego nta shingiro gifite.
Amagarama ahwanye n'ibyakozwe.

Amategeko yashingiweho:
Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12, 111, 155 n'iya 244.
Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Imanza zifashishijwe:
Kamatenesi Jovia na King Fayçal Hospital, RC 00003/2018/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 25/06/2018.
Re FREIGHT SYSTEM KIGALI LTD, RS/INTERT/RCOM 00004/2021/HCC rwaciwe n'Urukiko Rukuru rw'ubucuruzi ku wa 22/03/2021.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Byakunda Faustin yareze UNGUKA Bank Ltd kuba yarahinduye icyemezo cyafatiwe mu Nama y'Ubutegetsi yo ku wa 17/07/2016 cyamwemereraga "*exit package*" ikubiyemo imodoka RAA 752 Z, 6.000.000 Frw yo kwishyura ishuri, amafaranga ahwanye n'umushahara we w'imyaka ibiri azifashisha mu kwishyura inguzanyo afitiye iyo banki no kuvugurura amasezerano y'inguzanyo asigaranye ku buryo bumunogeye. Byakunda Faustin yavuze ko amaze gusohoka muri banki atahawe ibyo yari yemeranyijweho na yo nyamara ibyo asaba bigaragazwa na "*Exit agreements*" zitandukanye yahawe na banki harimo iyo ku wa 12/08/2016, iyo ku wa 07/09/2016 n'iyo ku wa 19/09/2016, za emails yandikiranye n'abayobozi ba banki ndetse n'icyemezo cy'Inama y'Ubutegetsi cyasinyweho n'impande zombi.

[2] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, rukomereza mu Rukiko Rukuru aho uru rwategetse UNGUKA Bank Ltd guha Byakunda Faustin ibyo yemerewe mu Nama y'Ubutegetsi yo ku wa 17/07/2016 ari byo imodoka RAA 752 Z, amafaranga 6.000.000 Frw azishyura ishuri, amafaranga ahwanye n'umushahara we w'imyaka ibiri azifashisha mu kwishyura

inguzanyo afitiye iyo banki (3.986.959 Frw x 24 = 95.687.020 Frw) no kuvugurura amasezerano y'inguzanyo asigaranye ku buryo bumunogeye nk'uko bikubiye mu nyandiko yo ku wa 17/07/2016, runategeka UNGUKA Bank Ltd mu izina ry'uyihagarariye guha Byakunda Faustin 1.4000.000 Frw y'ikurikiranarubanza n'ay'igihembo cya Avoka no kumusubiza 50.000 Frw yatanzeho ingwate y'igarama aregera Urukiko.

[3] UNGUKA Bank Plc yarajuriye, urubanza rukomereza mu Rukiko rw'Ubujurire kuri RSOCAA 00009/2018/CA, aho ku wa 21/12/2018 rwemeje ko ubujurire bwa UNGUKA Bank Ltd bufite ishingiro kuri bimwe, ko ubujurire bwuririye ku bundi bwa Byakunda Faustin nta shingiro bufite, ko amafaranga y'umushahara Byakunda Faustin yemerewe muri "*exit package*" mu nama y'ubutegetsi yo ku wa 17/07/2016 ku gihe cy'amezi 24 abarirwa ku mushahara yatahanaga (*net salary/salaire net*) mu kwezi kwa Kanama 2016, ko uretse ku bijyanye n'amafaranga y'umushahara Byakunda Faustin yemerewe muri "*exit package*" mu nama y'ubutegetsi yo ku wa 17/07/2016 ku gihe cy'amezi 24 akwiye kubarirwa ku mushahara yatahanaga (*net salary/ salaire net*) mu kwezi kwa Kanama 2016, nta gihindutse ku mikirize y'urubanza RSOCA 00013/2018/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 19/04/2018.

[4] Ku wa 26/05/2022 Byakunda Faustin yatanze ikirego cyo gukemura impaka zavutse mu irangizwa ry'urubanza mu Rukiko rw'Ubujurire ashingiye ku murongo watanzwe n'Urukiko rw'Ikirenga mu cyemezo RC 00003/2018/CS cyo ku wa 25/06/2018 hagati ya Kamatenesi Jovia va King Fayçal Hospital ku byerekeranye n'ububasha bw'urukiko bwo gusuzuma bene ibyo birego, cyandikwa kuri RSOC 00001/2022/CA.

[5] Mu gutanga iki kirego cye Byakunda Faustin yagaragaje ko kigizwe n'ibi bikurikira:

- Gukemura impaka zishingiye ku kuvugurura ry'amasezerano ya Byakunda Faustin nk'uko byemejwe mu nama y'Ubuyobozi ya UNGUKA Bank yateranye ku wa 17/07/2016 ndetse no mu ibaruwa ya Byakunda Faustin yandikiye *the Board of* UNGUKA Bank ku wa 25/07/2016 (*request of loan restructuring*);
- Gukemura ikibazo cy'amafaranga UNGUKA Bank Plc ifite yarayakase ku mpamba yahawe Byakunda Faustin mu rwego rwo kurangiza urubanza RSOCAA 00009/2018/CA:
- Amafaranga yitiriwe umusanzu w'Ubwiteganirize (RSSB).
- Amafaranga yitiriwe umusoro (TPR).
- Amafaranga yitiriwe ubwishingizi bw'ubuvuzi (RAMA).
- Gukemura ikibazo cy'amafaranga ya Byakunda Faustin UNGUKA Bank Plc yafatiriye iyitirira kugabanya umwenda mu irangizwa ry'urubanza RSOCAA 00009/2018/CA kandi ntacyo ishingiyeho.
- Gutegeka UNGUKA Bank Plc guha Byakunda Faustin indishyi zo gushorwa mu manza nta mpamvu.
- Gutegeka UNGUKA Bank Plc gutanga amafaranga y'ikurikiranarubanza n'igihembo cya Avocat.

[6] Urubanza rwaburanishijwe ku wa 06/07/2022 Byakunda Faustin ahagarariwe na Me Munyandatwa Nkuba Milton, UNGUKA Bank Plc ihagarariwe na Me Nkeza Sempundu Clément, habanza gusuzumwa inzitizi yatanzwe na UNGUKA yo kutakira ikirego kuko ngo cyamaze kuburanishwa mu rubanza rwabaye itegeko.

[7] Mu gusobanura iyo nzitizi, Me Nkeza Sempundu Clément uhagarariye UNGUKA Bank Plc yavuze ko abona hari ibibazo byashyikirijwe uru Rukiko byafashweho ibyemezo ntakuka (*chose jugée*) bidakwiye gusuzumwa muri uru rubanza ari byo bigaragara mu kibazo (*issue*) cya kabiri n'icya gatatu byagaragajwe n'urega mu kirego cye, ko byamaze kuburanishwa no gufawaho icyemezo cya burundu mu rubanza baburanye RC 00951/2020/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 22/11/2021 rukemeza ko Byakunda Faustin adafite ububasha n'inyungu byo gutanga icyo kirego, akaba atarajuririye urwo rubanza, bivuga ko yabyemeye, ko uko yabyita kose ubu bitagomba kongera kugarukwaho mu rubanza.

[8] Me Munyandatwa Nkuba Milton avuga ko icyo cyemezo bagifite, ariko ko kuba cyarabaye itegeko byasuzumirwa mu kirego cyari cyaratanzwe, ko nyuma yo kubona ko amafaranga y'imisoro ku mushahara n'ay'umusanzu w'ubwiteganyirize bw'abakozi yakaswe kuva muri 2019 kugeza ubu yagumye muri isanduku ya UNGUKA Bank ari yo mpamvu ubu baregeye ko yakoherezwa aho yagombaga kujya muri RRA na RSSB, RSSB na yo itabona uko yayakira agahabwa Byakunda Faustin.

[9] Rumaze kumva imiburanire y'ababuranyi ku nzitizi yo kutakira ikibazo cya 2 yasobanuwe haruguru, Urukiko rwarihereyeye ruhita rugifatira icyemezo gikurikira mu ntebe y'Abacamanza:

> Urukiko rushingiye ko ikigomba gusuzumwa ari impaka zishingiye ku irangiza ry'urubanza RSOCAA 00009/2018/CA rwaciwe n'Urukiko ku biva ku mushahara mbumbe we, rurasanga mu gutegeka ibigomba kugenerwa Byakunda Faustin, byaremejwe ko agomba kugenerwa umushahara atahana aho kuba umushahara mbumbe, ku bikatwa ku mushahara mbumbe byo rwavuze gusa ko amategeko akurikizwa, bityo ibyasabwe na Byakunda Faustin muri iki kirego ko amafaranga akatwa ku mushahara mbumbe kugira ngo abone umushahara atahana yagombaga guhabwa RSSB na RRA bikaba bitasuzumirwa muri uru rubanza ruteje impaka ku irangiza ryarwo, kuko bitigeze bitegekwa muri urwo rubanza. Byongeye kandi urubanza RC 00951/2020/TGI/NYGE rwaciwe ku wa 22/12/2021, ubu rukaba rwarabaye itegeko, rwemeje ko Byakunda Faustin atari we ufite inyungu n'ububasha byo gukurikirana bene ayo mafaranga akatwa agenewe RSSB na RRA, bityo iki kibazo kikaba kitagomba gukurikiranwa muri uru rubanza rwo kuburanisha ku mpaka zabaye mu irangiza ry'urubanza.

[10] Ku nzitizi ya kabiri irebana no kutakira ikibazo cy'amafaranga Byakunda Faustin avuga ko UNGUKA Bank Plc yafatiriye iyitirira kugabanya umwenda mu irangizwa ry'urubanza RSOCAA 00009/2018/CA kandi ntacyo ishingiyeho, uburanira UNGUKA Bank Plc avuga ko hari imanza RCOMA 00818/2020/HCC rwaciwe ku wa 03/12/2020, rusobanurwa mu rubanza RS/INTERT/RCOM 00004/2021/HCC rwaciwe ku wa 22/03/2021, na RCOM 00016/2022/HCC rwaciwe ku wa 06/05/2022 ku kibazo cyo gukemura impaka ku buryo bwo kwishyura, maze mu bika bya 40 kugera kuri 44 by'urubanza RSOCAA 00009/2018/CA uru Rukiko ruvuga ko rutagisuzuma, bityo ko iki nta kuntu cyateza impaka mu irangiza ry'urwo rubanza (*fond*) mu gihe kitigeze gisuzumwa.

[11] Urukiko rubona ko aha iki kibazo kitafatwa nk'inzitizi ya kabiri yo kutakira agace kamwe k'ikiregerwa mu rubanza, ko ahubwo hagomba gusuzumwa ishingiro ryabyo niba koko mu kubishyira mu bikorwa hari ibigongana n'ibyategetswe n'Urukiko mu rubanza rwateje impaka. Bityo Urukiko rukaba rwarahise ruburanisha urubanza ruranarupfundikira, isomwa ryarwo rishyirwa ku wa 29/07/2022.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba UNGUKA Bank yari yemerewe gufatira 23.400.117 Frw mu rwego rwo kurangiza urubanza RSOCAA 00009/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 21/12/2018

[12] Me Munyandatwa Nkuba Milton, uhagarariye Byakunda Faustin, avuga ko hari amafaranga yemejwe mu rubanza RSOCAA 00009/2018/CA ko UNGUKA Bank itegetswe kuyishyura Byakunda Faustin, mu kurangiza urwo rubanza ku neza UNGUKA Bank Plc iyashyira kuri konti ya Byakunda Faustin ku wa 14/01/2019 ariko bukeye ihita inafataho 23.400.117 Frw ngo yo kugabanya umwenda yari ayibereyemo mu gihe uwo mwenda utari mu bukererwe ndetse bitanari mu byategetswe n'Urukiko.

[13] Avuga ko yandikiye UNGUKA Bank Plc ayisaba kuyamusubiza, ntiyagira icyo ibikoraho, ko ubu asaba Urukiko kuyitegeka kuyamusubiza n'inyungu zayo kuko UNGUKA BANK yayakuyeho mu buryo budakurikije amategeko kandi ikayacuruza. Akaba asaba kuyasubizwa hiyongereyeho inyungu yayo ibariye kuri 18% mu gihe cyose UNGUKA BANK iyamaranye kandi ikaba yarayacuruje hagati ya Mutarama 2019 kugeza muri Gicurasi 2022, inyungu zisabwa zikaba zibazwe muri ubu buryo: 23.400.117 Frw x 18% x 40 mois = 140.400.070 Frw.

[14] Me Nkeza Sempundu Clément, uhagarariye UNGUKA Bank, avuga ko impaka Byakunda Faustin avuga ko zabaye mu irangiza ry'urubanza ntazabayeho, ko UNGUKA Bank Plc ikimara gushyira 23.400.117 Frw kuri konti ya Byakunda Faustin ku wa 14/01/2019 irangiza ry'urubanza ryari rirangiye gukorwa ku neza, ko haramutse hari ikindi kibazo Byakunda Faustin abona cyarabaye ku micungire ya konti ye nk'umukiliya cyari gusuzumirwa ahandi kandi bikitwa ukundi kutari ugukemura impaka zavutse mu irangiza ry'urubanza. Avuga ko ku wa 15/01/2019 ari bwo ayo mafaranga yimuriwe kuri ligne de crédit iriho umwenda wa Byakunda Faustin kugira ngo ugabanywe.

[15] Ku birebana no kuba ayo mafaranga 23.400.117 Frw UNGUKA Bank yategetswe kwishyura Byakunda Faustin yarayakoresheje mu kugabanya umwenda we, Me Sempundu Nkeza Clement avuga ko mu rubanza RSOCAA 00009/2018/CA ikirebana n'ayo mafaranga cyaburanwaga atari icyo yagombaga kuzakoreshwa kuko impande zombi zaburanaga zemera ko ari agenewe kuzagabanya umwenda Byakunda Faustin asanzwe afitiye UNGUKA Bank Plc, ko ahubwo haburanwaga ibirebana n'ingano yayo, aho UNGUKA Bank Plc yaburanaga ivuga ko akwiye kubarirwa ku mezi 15 y'umushahara Byakunda atahana naho Byakunda agasaba ko abarirwa ku mezi 24 y'umushahara mbumbe we.

[16] Me Sempundu Nkeza Clement akomeza avuga ko hakurikijwe igika cya 35 cy'urubanza RSOCAA 00009/2018/CA kigahuzwa n'uko byemejwe n'Inama y'Ubutegetsi ya UNGUKA Bank (reba ikimenyetso cya 12) ndetse n'igika cya 51 cy'urwo rubanza ayo mafaranga yari gukoreshwa mbere na mbere mu kugabanya umwenda Byakunda afitiye UNGUKA, ndetse ko na we ari ko yaburanye avuga nk'uko bigaragara mu gika cya 36 cy'urwo rubanza.

[17] Me Munyandatwa Nkuba Milton uhagarariye Byakunda Faustin avuga ko ntaho inama y'ubutegetsi ya Unguka Bank yavuze ko amafaranga yose yari kwishyura umwenda, ko bidashoboka ko umuntu yabona impamba yose akayishyura umwenda kandi agomba kurya no kubaho, kandi ko no cyiciro cya mbere cy'ayo yari yarishyuwe na UNGUKA Bank atayishyuye yose ahubwo yishyuyeho igice kugira ngo agabanye umwenda, ko ngo bitumvikana ukuntu uburyo bwakoreshejwe ku bwishyu bw'icyiciro cya kabiri bwatandukana n'ubwari bwarakoreshejwe bwishyu bw'icyiciro cya mbere.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 244, igika cya mbere, y'Itegeko N°22/2018 ryo ku wa 29/04/2018 iteganya ibikurikira: urubanza rubaye itegeko cyangwa indi nyandikompesha biba bishobora guhita birangizwa kugira ngo ibyo byemezo bishyirwe mu bikorwa.

[19] Ababuranyi bombi mu rubanza RSOCAA 00009/2018/CA baremeranwa ko ari inyandikompesha yabaye itegeko, ko muri urwo rubanza UNGUKA Bank Plc yategetswe kwishyura Byakunda Faustin 23.400.117 Frw kandi ko mu rwego rwo kurangiza urwo rubanza ku wa 14/01/2019 UNGUKA Bank Plc yashyikirije Byakunda Faustin ayo mafaranga iyashyira kuri konti ye isanzwe iri muri iyo banki. Ababuranyi baremeranwa kandi ko nk'uko bigaragazwa na *historique* y'iyo konti ayo mafaranga UNGUKA Bank Plc yayakuye kuri iyo konti ikayakoresha yose mu kugabanya umwenda w'inguzanyo Byakunda Faustin ayibereyemo. Ikibazo gihari kikaba ari icyo kumenya aho UNGUKA Bank Plc yakuye uburenganzira bwo kongera gukura ayo mafaranga kuri konti ya Byakunda Faustin.

[20] Urukiko rurasanga impaka mu irangiza ry'urubanza zikwiye kuregerwa Urukiko mu buryo nk'ubwo Byakunda Faustin yabikozemo muri uru rubanza zikwiye kuba ari imbogamizi zavutse zigatuma irangizwa ryarwo ridashoboka cyangwa se rikagorana, izo mpaka zikaba zishobora kuba zikomoka ku miterere y'icyemezo cy'Urukiko kirangizwa ubwacyo (*dispositif du jugement*) ariko zikaba zitarashoboye kubanza gukemurwa mu buryo bw'ikirego cyo gusobanuza urubanza, cyangwa se zikomoka ku migirire y'ushinzwe kurangiza urwo rubanza.

[21] Uru Rukiko rurasanga ku birebana n'amafaranga 23.400.117 Frw UNGUKA Bank Plc yategetswe kwishyura Byakunda Faustin mu rubanza RSOCAA 00009/2018/CA nta mpaka ziri mu myumvire yaba itandukanye hagati y'ababuranyi bombi ku cyo Urukiko rwategetse, kandi nta rujijo ruri mu kuba iki cyemezo cy'Urukiko cyararangije gushyirwa mu bikorwa nyuma y'uko ku wa 14/01/2019 UNGUKA Bank Plc yari irangije gukura aya mafaranga 23.400.117 Frw mu mutungo wayo ikayinjiza mu mutungo wa Byakunda Faustin kuri konti ye n'ubundi asanzwe abikaho akanabikuzaho amafaranga ye. Bityo, rushingiye ku biteganywa n'ingingo ya 244, igika cya mbere y'Itegeko N°22/2018 ryo ku wa 29/04/2018 yibukijwe haruguru, uru Rukiko rukaba rusanga ubwo bwishyu bwarasoje neza irangizwa ry'urubanza RSOCAA 00009/2018/CA ku bijyanye n'icyo uru Rukiko rwari rwategetse. Ibindi bireba uburyo ku wa 15/01/2019 aya mafaranga 23.400.117 Frw yavuye mu mutungo yari yamaze kugeramo wa Byakunda Faustin akagira ahandi ajyanwa n'undi utari nyir'uwo mutungo, uru Rukiko rurasanga bidashobora gusuzumirwa mu kirego nk'iki cyo gucyemura impaka ku irangizwa ry'urubanza RSOCAA 00009/2018/CA. Bityo, ibisabwa na Byakunda Faustin kuri iyi ngingo bikaba nta shingiro bifite.

2. Ikibazo cy'ukutumvikana ku buryo Byakunda Faustin yakoroherezwa kwishyura UNGUKA Bank Plc inguzanyo ayisigayemo hashyirwa mu bikorwa ibyemejwe n'Urukiko

[22] Me Munyandatwa Nkuba Milton, uhagarariye Byakunda Faustin, avuga ko izindi mpaka zagaragaye mu irangiza ry'urubanza ari ukuba kugeza uyu munsi atarorohereJwe kwishyura inguzanyo asigayemo UNGUKA Bank nk'aho atanga urugero rwo kuba akirimo kwishyuzwa ku gipimo cy'inyungu cya 18% nyamara byaremejwe ko inyungu yagombaga kwishyuriraho ari 10% yari asanzwe yishyuriraho, no kuba UNGUKA Bank mu kurangiza urubanza yaranze kumuha "*période de grâce*" nyamara iri mu byo yayigaragarije byagombaga kuba bigize "*exit package*", ibi bikaba byaratumye yishyura amafaranga y'umurengera atagombaga kwishyura iyo akorerwa ibyo yemerewe.

[23] Me Nkeza Sempundu Clement, uhagarariye UNGUKA Bank Plc, mu kwiregura kuri iyi ngingo avuga ko iyi ngingo idakwiye kwakirwa ku ruhande rumwe ariko ko ku rundi ruhande asanga nta mpaka iteje mu irangizwa ry'urubanza RSOCAA 00009/2018/CA kubera ko ibyo Byakunda Faustin yita impaka uru Rukiko rwabisuzumye rukabifataho icyemezo cyo kutabyakira. Akomeza avuga ko bitumvikana ukuntu umuburanyi ashaka kubwira Urukiko ko ikibazo rutakiriye ngo rugisuzume cyaba giteje impaka mu irangizwa ry'urubanza, ko impaka nk'izo zidashobora kuvuka ku kitarasuzumwe ngo gifatweho icyemezo, ko ahubwo impaka zavuka gusa ku cyategetswe n'Urukiko ariko kidashobora kurangizwa hatabanje gukemurwa impaka ku rujijo muri cyo. Agasoza asaba ko iki kiregerwa kitakirwa, ariko ko n'iyo cyakwakirwa kitahabwa ishingiro.

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[24] Dosiye y'urubanza igaragaza ko mu rubanza RSOCAA 00009/2018/CA Byakunda Faustin avuga ko rwateje impaka mu kururangiza, Urukiko rw'Ubujurire rwasuzumye kuva mu gika cyarwo cya 40 kugeza ku cya 44 ikibazo cyo kumenya niba ingingo ijyanye no koroherezwa kwishyura inguzanyo yakwakirwa.

[25] Dosiye y'urubanza igaragaza kandi ko mu gika cya 40 cy'urwo rubanza Byakunda Faustin n'abamwunganiraga baburanye bavuga ko mu Rukiko Rwisumbuye rwa Nyarugenge Byakunda Faustin yasabye ko agabanyirizwa inyungu kugeza kuri 10% zivuye kuri 18% kandi akoroherezwa kwishyura, Urukiko rubifataho icyemezo, ntibyajuririrwa, bivuze ko byahise biba itegeko, ariko ko UNGUKA Bank yanze kubishyira mu bikorwa, bakaba basaba Urukiko rw'Ubujurire kongera kubifataho icyemezo. Naho mu gika cya 41 cy'urwo rubanza, abari bahagarariye UNGUKA Bank bakaba barireguye kuri iyo ngingo bavuga ko ikibazo cyo kugabanyiriza Byakunda Faustin inguzanyo kitigeze kiburanwa mu bujurire bwa mbere mu Rukiko Rukuru kandi ko UNGUKA Bank itari kukijuririra kandi yaremeye mu nyandiko yo ku wa 19/09/2016 ko izavugurura umwenda hashingiwe ku mategeko n'amabwiriza agenga imikorere yayo.

[26] Dosiye y'urubanza igaragaza na none ko mu gika cya 42 kugera ku cya 44 by'urubanza RSOCAA 00009/2018/CA, Urukiko rw'Ubujurire rushingiye ku ngingo ya 155 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ahateganyijwe ko ikirego cy'ubujurire cyakiriwe gituma ikibazo gisubira uko cyari kimeze mbere y'uko gicibwaho urubanza rujuririrwa ariko ku ngingo zajuririwe gusa, rwasanze ku bijyanye no koroherezwa uburyo bwo kwishyura inguzanyo Urukiko Rwisumbuye rwa Nyarugenge rwarategetse UNGUKA Bank Ltd kuvugurura amasezerano y'inguzanyo ku buryo bunogeye Byakunda Faustin ntiyabijuririra, na Byakunda Faustin akaba yiyemerera ko ntabyo yajuririye mu Rukiko Rukuru, bityo uru Rukiko rukaba ntaho rwahera rusuzuma ingingo zitajuririwe mu Rukiko Rukuru (Reba igika cyarwo cya 40.

[27] Rushingiye ku bimaze gusobanurwa haruguru bigaragazwa na dosiye y'urubanza Byakunda avuga ko ruteje impaka mu irangizwa ryarwo, uru Rukiko rurasanga ingingo yo gusobanura uburyo UNGUKA Bank Plc yakorohereza Byakunda Faustin kwishyura inguzanyo ayisigayemo itarigeze isuzumwa mu mizi ngo inafatweho icyemezo n'uru Rukiko mu rubanza RSOCAA 00009/2018/CA. Uru Rukiko rukaba rusanga nta cyemezo Byakunda Faustin abasha kugaragaza cyafashwe kuri iyi ngingo, ngo agaragaze aho ashingira impaka ku irangizwa ryacyo kugira ngo n'uru Rukiko rubashe kubona aho rwahera rubifataho icyemezo cyatanga umurongo ku buryo icyo cyemezo cyashyirwa mu bikorwa. Ibisabwa na Byakunda Faustin ku buryo yakoroherezwa agabanyirizwa igipimo cy'inyungu akanahabwa "*periode de grace*" yo kwishyura uru Rukiko rukaba rusanga nta shingiro bifite, kuko ruramutse rufashe icyemezo cyo kubyemeza rwaba rutegetse ibitarigeze bitegekwa mu rubanza Urega avuga ko rwateje impaka mu irangiza ryarwo.

3. **Gusuzuma ishingiro ry'indishyi zisabwa na Byakunda Faustin zo gushorwa mu manza nta mpamvu**

[28] Kubera igihe Byakunda Faustin amaze asiragizwa na UNGUKA Bank Plc, umuburanira asaba Urukiko kuyitegeka kumuha indishyi zo gushorwa mu manza ku maherere zingana na 9.000.000 Frw zihwanye na 1.500.000 Frw kuri buri mwaka yamaze asiragizwa ubu imyaka ikaba ibaye itandatu.

[29] Uburanira UNGUKA Bank avuga ko indishyi zo gushorwa mu manza urega asaba, uretse no kuba ntazo akwiriye, atanagaragaragaza icyo zaba zishingiyeho, ko ntazo Urukiko rukwiye kumugenera cyane cyane ko mu mategeko anazishingira ku itegeko ritakiriho (Art 258 CCLII).

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[30] Ingingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo (J.O no spécial du 19/07/2004) iteganya ibikurikira: buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. Umucamanza ashobora nyamara gutegeka umuburanyi wese gutanga gihamya y'ibimenyetso afite.

[31] Ingingo ya 12 igika cya 1, 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 Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda.

[32] Urukiko rw'Ubujurire rushingiye ku biteganywa n'ingingo z'amategeko zimaze kwibutswa haruguru rurasanga indishyi zisabwa na Byakunda Faustin ntazo akwiye guhabwa kubera ko uretse no kuba atabasha kugaraza uburyo yakwitwa ko yashowe mu rubanza rw'amaherere ku kirego we ubwe yitangiye akaba agitsindirwa ku kiregerwa cy'ibanze nk'uko byasobanuwe n'Urukiko haruguru, nta n'ubwo yigeze agira ikimenyetso agaragariza Urukiko kirebana n'ishingiro ryazo.

4. **Gusuzuma ibijyanye n'amafaranga y'ikurikiranubanza n'igihembo cya Avoka asabwa n'ababuranyi**

[33] Byakunda Faustin asaba Urukiko gutegeka UNGUKA Bank Plc kumuha 2.000.000 Frw y'ikurikiranarubanza kubera ibyo yakoresheje ategura dossier (*photocopies, scan, tel, e-mails* n'ingendo za hato na hato) n'igihembo cya Avoka kingana na 3.000.000 Frw hiyongereyeho igihembo cy'inyongera hashingiwe ku ijanisha riteganywa mu ngingo ya 23 agace ka II (y'Amabwiriza agenga ibihembo mbonera by'Abavoka).

[34] UNGUKA Bank Plc ivuga ko urega azisaba ubwa kabiri, n'ubwo hombi nta shingiro ryazo agaragaza, igasaba Urukiko kwemeza ko nta shingiro zifite. UNGUKA Bank isaba ahubwo Urukiko gutegeka Byakunda Faustin kuyishyura 2.000 000 Frw y'igihembo cya Avoka na 800.000 Frw y'ikurikiranarubanza.

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[35] 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 ibikurikira: ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe.

[36] Ingingo ya 34 y'Amabwiriza Nº 01/2014 yo ku wa 18/07/2014 agena ibihembo mbonera by'Abavoka, iteganya ibikurikira: Avoka afite uburenganzira bwo kugena igihembo ashyize mu gaciro ariko kitari munsi ya 500.000 Frw kandi kitarenze 3.000.000 Frw.

[37] Urukiko rw'Ubujurire rushingiye ku biteganywa n'ingingo zimaze kwibutswa haruguru no ku kuba bimaze kuba ihame ritakigibwaho impaka ko amafaranga y'ibyagenze ku rubanza acibwa uwarutsinzwe hagamijwe ko yishyurwa uwarutsinze, rurasanga amafaranga y'ikuririkiranarubanza n'igihembo cya Avoka Byakunda Faustin asaba nta shingiro afite kuko ari we utsindwa urubanza, ko ahubwo UNGUKA Bank Plc ari yo iyakwiye kubera ko ari yo itsinda urubanza. Urukiko rukaba rusanga ariko ayo UNGUKA Bank Plc ikwiye agomba kugenwa mu bushishozi bw'Urukiko, bityo rukaba ruyigeneye 600.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza.

III. ICYEMEZO CY'URUKIKO

[38] Rwemeje ko ikirego cyatanzwe na Byakunda Faustin nta shingiro gifite.

[39] Rutegetse Byakunda Faustin kwishyura UNGUKA Bank Plc 800.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego.

[40] Ruvuze ko ingwate y'amagarama y'uru rubanza yatanzwe na Byakunda Faustin ahwanye n'ibyarukozwemo.