EQUITY BANK RWANDA Plc v DUSABE SANGANO

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00057/2022/CA (Kamere, PJ.) 09 Nzeri 2022]

Amategeko agenga imanza z'ubucuruzi – Amasezerano y'inguzanyo – Abakozi bakorera amabanki – Kwirukanwa mu buryo budakurikije amategeko – Igipimo inyungu zibarirwaho ku wirukanywe – Iyo banki yirukanye umukozi mu buryo bunyuranyije n'amategeko afite inguzayo yahawe ku gipimo kigenewe abakozi nicyo akomeza kuyishyuraho.

Amategeko agenga imanza z'ubucuruzi – Amafaranga yakaswe na banki bidakwiye –Inyungu yabyaye – Amahame ashingirwaho mu kubara inyungu – Igipimo inyungu zibarirwaho – Gusubizanya amafaranga n'inyungu zayo – Iyo banki yakase amafaranga umuntu mu buryo budakwiye kuko iba yarayacuruje nka banki y'ubucuruzi, iba igomba kuyasubizanya n'inyungu zayo zibariwe ku gipimo yagaragarijeho ko ari cyo yacuruzagaho amafaranga muri icyo gihe yayakataga hatagendewe ku kuba uwo yayakase atari umucuruzi.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Iyo nta tegeko ririho rireba ikibazo – Icyo urukiko rwifashisha ruca urubanza – Ku kibazo kitarakemurwa n'amategeko y'u Rwanda Urukiko rwifashisha imvugo z 'abahanga n'iz'amategeko y'amahanga.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Amasezerano – Isesengurwa ry'amasezerano yo kwemezwa (Contrat d'adhésion) – Iyo ari amazezerano yo kwemezwa, isesengura rikorwa ritaberera ku wayateguye.

Incamake y'ikibazo: Equity Bank yashizeho uburyo bworohereza abakozi bayo kubona inguzanyo ku gipimo cy'inyungu (8%) gitoya kiri munsi y'igipimo 18.25% iyo banki atangiraho inguzanyo ku bakiliya basanzwe, bityo Sangano nk' umukozi w'iyo Banki nawe yafashe inguzanyo ibariwe kuri iyo nyungu. Nyuma iyo banki yahinduye igipimo cy'inyungu ku nguzanyo zihabwa abakozi bayo kiva ku 8% kijya kuri 6%, bituma n'inguzanyo yari yarahaye Sangano ishyirwa kuri icyo gipimo ku mwaka.

Nyuma Sangano yarirukanye ku kazi ahita atangira kubarirwa inyungu ku nguzanyo yari asigayemo ku gipimo cy'inyungu cya 18.25% iyo banki itangiraho inguzanyo ku bakiliya basanzwe. Kuko atariyishimiye icyemezo cyo kwirukanwa mu kazi n'icyo guhita azamurirwa igipimo cy'inyungu ku nguzanyo yatanze ibirego bibiri, ikirego kirebana n'iby'inguzanyo mu Rukiko rw'Ubucuruzi asaba ko Equity Bank yagaragaza imbonerahamwe y'uko umwenda uhagaze ndetse no kumumanurira ijanisha ry'inyungu kuri uwo mwenda rigasubira kuri 6%, kuyitegeka kumusubiza ikinyuranyo cy'amafaranga yose yishyuye ku gipimo cy'inyungu cya 18.25% hiyongereyeho inyungu zayo urwo rukiko rwemeza ko ikirego cye kidafite ishingiro, ajuririra Urukiko Rukuru rw'Ubucuruzi rwo rwemeza ko inguzanyo yagombaga kuguma kuri 6%. , ikindi kirego cy'umurimo agitanga mu rundi rukiko rubifitiye ububasha avuga ko yirukanywe mu buryo budakurikije amategeko, aho urwo Rukiko rwemeje ko y'irukanywe muburyo bunyuranije n'amategeko,

EQUITY BANK RWANDA Plc yajuririye Urukiko rw'Ubujurire ivuga ko Urukiko Rukuru rw'Ubucuruzi rwasobanuye nabi amasezerano y'inguzanyo yahawe urega kuko rwavuze ko igikorwa kizaba gitewe na Sangano gituma ava ku kazi ari cyo kizafatwa nk'imbarutso yo guhindura igipimo cy'inyungu, ko kuba Equity Bank Rwanda Plc yaramwirukanye mu buryo bunyuranyije n'amategeko, inyungu zigomba gukomeza kubarirwa kuri 6% kandi mu masezerano y'inguzanyo impande zombi zagiranye hadateganyijwe uburyo umukozi azatandukana n'umukoresha kugira ngo igipimo cy'inyungu gihinduke, ko ahubwo mu gihe uko gutandukana gutewe n'impamvu iyo ari yo yose ari byo bizatuma igipimo cy'inyungu gihinduka.

Uregwa yiregura avuga ko avuga ko ikibazo kiri mu rubanza ari icyo kumva neza *context* ayo masezerano y'inguzanyo yakozwemo, ko yakoraga mu yindi banki , uwajuriye aramureshya kubera ko ari umukozi mwiza yari akeneye nyuma aramwirukana, kandi ko mu gihe atagaragaza ko yamukoreye nabi biba bigaragaza ko yamwirukanye mu buryo budakurikije amategeko, ko ku rwego rwa mbere mu Rukiko rw'Ubucuruzi yatsinzwe n'uko nta kimenyetso yari afite kigaragaza ko yirukanwe arenganyijwe kuko urubanza rw'umurimo rwari rutararangira, ariko ko urubanza rwageze mu Rukiko Rukuru rw'Ubucuruzi ikimenyetso cy'urubanza rw'umurimo cyaramaze kuboneka kikagaragaza ko yirukanywe arenganyijwe.

Incamake y'icyemezo: 1. Iyo banki yirukanye umukozi mu buryo bunyuranyije n'amategeko afite inguzayo yahawe ku gipimo kigenewe abakozi nicyo akomeza kuyishyuraho, bityo kuba uregwa yarirukanywe mu buryo bunyuranyije n'amategeko nk'uko byemejwe n'urubanza rw'umurimo, inyungu zigomba gukomeza kubarirwa kuri 6%.

2. Iyo banki yakase amafaranga umuntu mu buryo budakwiye kuko iba yarayacuruje nka banki y'ubucuruzi, iba igomba kuyasubizanya n'inyungu zayo zibariwe ku gipimo yagaragarijeho ko ari cyo yacuruzagaho amafaranga muri icyo gihe yayakataga hatagendewe ku kuba uwo yayakase atari umucuruzi, bityo kuba uregwa yakatagwa amafaranga abariwe ku gipimo cy'inyungu cya 18.25%, mu gihe cy'amezi 22 mu buryo butari bwo kandi iyo Banki ikaba itarayabitse ahubwo yarayacuruje nka banki y'ubucuruzi, ikaba igomba kuyasubizanya n'inyungu zayo zibariwe na zo kuri 18.25% yayacururizagaho.

3.Ku kibazo kitarakemurwa n'amategeko y'u Rwanda Urukiko rwifashisha imvugo z 'abahanga n'iz'amategeko y'amahanga

4. Iyo ari amazezerano yo kwemezwa (Contrat d'adhésion) isesengura rikorwa ritaberera ku wayateguye.

Ubujurire nta shingiro bufite.
Ubujurire bwa bwuririye ku bundi bufite ishingiro.

Amategeko yashingiweho:
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111 na 154.
Itegeko n°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 65 na 137.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 04/01/2016, DUSABE SANGANO Javan yagiranye amasezerano y'umurimo na EQUITY BANK RWANDA PLC ariko mbere yo kuba umukozi wa EQUITY BANK akaba yari umukozi wa KCB Bank yari yaranamuhaye inguzanyo yishyuraga ku gipimo cy'inyungu cya 7% ku mwaka cyari cyemerewe guhabwa abakozi bayo gusa. DUSABE SANGANO avuga kandi ko kimwe mu byo EQUITY BANK yamusezeranyije kugira ngo yemere kuva muri KCB Bank kwari ukumwimurira iyo nguzanyo yari afite muri KCB akajya ayishyurira muri EQUITY BANK ariko ku ijanisha ry'inyungu ryagenewe abakozi ba EQUITY BANK.

[2] Kuwa 28/02/2018, Equity Bank Rwanda Plc yagiranye amasezerano y'inguzanyo ya 146.536.603 Frw na DUSABE SANGANO Javan, igice kinini cy'iyo nguzanyo cyakoreshejwe mu kurangiza kwishyura inguzanyo yo muri KCB Bank yavuzwe haruguru kandi iyo nguzanyo yagombaga kujya yishyurirwa ku gipimo cy'inyungu cya 8% ku mwaka kubera ko SANGANO nawe yari amaze kuba umukozi wa Equity Bank. Ingingo ya 4 y'ayo masezerano yateganyaga kandi ko mu gihe SANGANO yaba avuye mu kazi ka Equity Bank, igipimo cy'inyungu kizahinduka nta yindi nteguza kikaba igipimo amabanki atangiraho inguzanyo ["*Should you leave the employment of Equity Bank Rwanda LTD, the interest will be charged at the prevailing commercial rate without prior notice to the borrower*"]. Nanone kandi Ingingo ya 6 igika cya 5 y'Amabwiriza agenga inguzanyo yateganyaga ko inguzanyo izishyurwa mu gihe cyagenwe kandi ko mu gihe umukoresha ahindutse inguzanyo izatangira kwishyurwa ku gipimo cy' inyungu amabanki atangiraho inguzanyo ["*Loan to be repaid within agreed period and if there is a change of the Employer, facility to assume commercial rate of interest*"].

[3] Kuwa 11/09/2019, ubuyobozi bwa Equity Bank bwafashe icyemezo cyo guhindura igipimo cy'inyungu ku nguzanyo zihabwa abakozi bayo kiva ku 8% kijya kuri 6%, bituma n'inguzanyo yavuzwe haruguru yari yarahawe SANGANO Javan ivanwa ku gipimo cy'inyungu cya 8% ishyirwa ku cya 6% ku mwaka.

[4] Kuwa 30/4/2020, Equity Bank Rwanda Plc yirukanye mu kazi DUSABE SANGANO Javan, maze ishingiye ku ngingo ya 4 n'iya 6 igika cya 5 by'amasezerano y'inguzanyo zavuzwe haruguru SANGANO wari utakiri umukozi wa Equity Bank ariko atemera uburyo yirukanywemo ahita atangira kubarirwa inyungu ku nguzanyo yari asigayemo ku gipimo cy'inyungu cya 18.25% ku mwaka.

[5] SANGANO utarishimiye icyemezo cyo kwirukanwa mu kazi n'icyo guhita azamurirwa igipimo cy'inyungu ku nguzanyo yatanze ikirego kirebana n'iby'inguzanyo mu Rukiko rw'Ubucuruzi asaba ko Equity Bank yagaragaza imbonerahamwe y'uko umwenda uhagaze ndetse no kumumanurira ijanisha ry'inyungu kuri uwo mwenda rigasubira kuri 6%, anatanga ikindi kirego cy'umurimo mu rundi rukiko rubifitiye ububasha avuga ko yirukanywe mu buryo budakurikije amategeko.

[6] Kuwa 31/03/2021, Urukiko rw'Ubucuruzi rwaciye urubanza ku bijyanye n'inguzanyo, rwemeza ko ikirego cya DUSABE SANGANO Javan kidafite ishingiro, maze rutegeka ko akomeza kwishyura inguzanyo ku gipimo cya 18.25%.

[7] DUSABE SANGANO Javan ntiyishimiye imikirize y'urwo rubanza ajurira mu Rukiko Rukuru rw'Ubucuruzi, avuga ko Urukiko rw'Ubucuruzi rwasobanuye nabi ingingo ya 4 y'amasezerano y'inguzanyo yagiranye na Equity Bank ngo kuko guhagarika kuyibera umukozi byaturutse ku kuba yarirukanwe mu buryo bunyuranyije n'amategeko.

[8] Mu gika cya 16 cy'urubanza RCOMA 00349/2021/HCC, Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko ingingo ya 4 y'amasezerano y'inguzanyo iteganya ko mu gihe DUSABE SANGANO Javan ari we wateye iseswa ry'amasezerano y'umurimo ari bwo ijanisha ry'inyungu ku mwenda riziyongera, ariko ko mu gihe ari Equity Bank yatera iryo seswa azakomeza kwishyurira ku ijanisha riri mu masezerano (6%). Urukiko Rukuru rw'Ubucuruzi rushingiye kuri icyo gisobanuro (interpretation) no ku rubanza rw'umurimo RSOCA 00103/2021/HC/KIG rwari rwaramaze kwemeza ko EQUITY BANK yirukanye DUSABE mu buryo budakurikije amategeko, rwemeje ko EQUITY BANK idafite uburenganzira bwo guhindura ijanisha inguzanyo yishyurirwagaho, bivuze ko inguzanyo yagombaga kuguma kuri 6%.

[9] Ku wa 08/04/2022, EQUITY BANK RWANDA Plc yajuririye Urukiko rw'Ubujurire, ubujurire bwandikwa kuri nº RCOMAA 00057/2022/CA, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwasobanuye nabi ingingo ya 4 n'iya 6 agace ka 5 by'amasezerano y'inguzanyo kuko rwongeyeho conditions zitari ziteganyijwe muri ayo masezerano.

[10] DUSABE SANGANO Javan avuga ko yemera icyemezo cyafashwe n'Urukiko Rukuru rw'Ubucuruzi ariko ntiyishimira uburyo Urukiko rutategetse EQUITY BANK RWANDA Plc kumusubiza 18.449.618 Frw arenga ku yo yagombaga kwishyura kuri 6%, hiyongereyeho inyungu ya 18.25% ku mwaka bivuze 5.297.063 Frw akomeza kwiyongera kugeza urubanza ruciwe. DUSABE Javan SANGANO akaba yaratanze ubujurire bwuririye ku bundi asaba kuyasubizwa.

[11] Impaka ziri mu rubanza zishingiye ku masezerano y'iguriza yabaye hagati ya EQUITY BANK RWANDA Plc na DUSABE Javan SANGANO, aho impande zombi zitumvikana ku bikubiye mu ngingo ya 4 n'iya 6 al 5 z'amasezerano yo ku wa 22/02/2018, aho Equity Bank Rwanda Plc isanga Inkiko zabanje zarasesenguye nabi izo ngingo bigatuma zifata icyemezo kiyirenganya, naho DUSABE Javan SANGANO we akavuga ko Inkiko zabanje zasobanuye neza izo ngingo, ngo uretse ko zitategetse ko asubizwa 18.449.618 Frw yakaswe nyuma y'uko Equity Bank Rwanda Plc ihinduye ijanisha ry'inyungu, ari na yo mpamvu y'ubujurire bwe bwuririye ku bwa Equity Bank Rwanda Plc.

[12] Iburanisha ry'urubanza ryashyizwe ku wa 06/07/2022, EQUITY BANK RWANDA Plc ihagarariwe na Me KAREMERA Frank, naho DUSABE SANGANO Javan yunganiwe na Me TUYISHIME Jean Pierre. Isomwa ry'urubanza rikaba ryarashyizwe isomwa ry'urubanza rigashyirwa ku wa 29/07/2022 ariko uwo munsi ryimurirwa nyuma y'ikiruhuko cy'abacamanza ku wa 09/09/2022.

II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURA RYABYO

Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwarasesenguye neza ingingo ya 4 n'iya 6, igika cya 5, z'amasezerano y'inguzanyo yo ku wa 28/02/2018

[13] Me KAREMERA Frank uhagarariye EQUITY BANK RWANDA Plc avuga ko inkiko zabanje zasobanuye mu buryo butandukanye amasezerano y'inguzanyo, iteganya ko: "… Should you leave the employment of EQUITY BANK RWANDA Ltd; the interest will be charged at the prevailing commercial rate without prior notice to the borrower", aho Urukiko rw'Ubucuruzi rwasobanuye ingingo ya 4 n'iya 6 z'ayo masezerano ruvuga ko mu gihe DUSABE Javan SANGANO azaba atakiri umukozi wa EQUITY BANK RWANDA Plc azatangira kubarirwa ku nyungu z'ubucuruzi zisanzwe, naho Urukiko Rukuru rw'Ubucuruzi mu gika cya 17 cy'urubanza

RCOMA 00349/2021/HCC rujuririrwa rugasobanura ko ijambo "leave", rivuga kimwe na "abandon", "desert" na "quit", rigaragara mu masezerano bishatse kuvuga ko igikorwa kizaba gitewe na DUSABE Javan SANGANO gituma ava ku kazi ari cyo kizafatwa nk'imbarutso yo guhindura igipimo cy'inyungu, ko kuba EQUITY BANK RWANDA Plc yaramwirukanye mu buryo bunyuranyije n'amategeko, inyungu zigomba gukomeza kubarirwa kuri 6%. Avuga ko Urukiko rwasobanuye nabi iyo ngingo, kuko mu bisobanuro rwatanze rwongeyemo ibitari bikubiye mu masezerano nk'uko bigaragara mu gika cya 16 cy'urubanza rujuririrwa, aho rwavuze ko "Should you leave" ari igikorwa kizaba cyatewe na SANGANO Javan DUSABE, mu gika cya 21 rukavuga ko impamvu ituma uwahawe inguzanyo adakomeza kubarirwa mu bakozi ba EQUITY BANK RWANDA Plc igomba kwitabwaho, yaba ikomoka kuri banki, inyungu zigakomeza kubarirwa ku gipimo zabarirwagaho mu gihe yari akiri umukozi wayo.

[14] Avuga kandi ko mu masezerano y'inguzanyo impande zombi zagiranye hatateganyijwe uburyo umukozi azatandukana n'umukoresha kugira ngo igipimo cy'inyungu gihinduke, ko ahubwo mu gihe uko gutandukana gutewe n'impamvu iyo ari yo yose ari byo bizatuma igipimo cy'inyungu gihinduka, ko rero Urukiko Rukuru rw'Ubucuruzi rwirengagije ko DUSABE Javan SANGANO yahawe inguzanyo ku nyungu zo hasi mu rwego rwo guha *avantages* abakozi bayo, mu gukora interprétation y'ingingo ya 4 n'iya 6 al. 5 rukaba ngo rwaragombaga kureba ibiteganywa n'ingingo ya 66 y'Itegeko n°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko "*Gusesengura amasezerano cyangwa imwe mu ngingo zayo ari ugusobanura icyo ayo masezerano agamije n'icyasezeranyijwe.*"

[15] Uburanira EQUITY BANK avuga kandi ko Urukiko Rukuru rw'Ubucuruzi rwagombaga kwita ku ngingo ya 68 y'Itegeko rimaze kuvugwa haruguru na yo iteganya ko "*Imvugo n'indi myitwarire bigamije amasezerano bisesengurwa hakurikijwe uko ibintu biteye, kandi iyo ikigamijwe cy'ibanze ku mpande zigirana amasezerano gishobora kumenyekana neza, byitabwaho*", ibyo ngo bikaba bisobanuye ko mu gihe DUSABE Javan SANGANO yari kuba atakiri umukozi wa EQUITY BANK RWANDA Plc atagombaga gukomeza guhabwa *avantage* zihabwa abakozi bayo, ari na yo mpamvu mu masezerano y'inguzanyo hatigeze hateganywa ikigomba gushingirwaho kugira ngo umukozi utandukanye na Equity Bank ashyirwe ku nyungu zisanzwe.

[16] Akomeza avuga ko Urukiko rubanza rwiregangije ko mu rubanza RSOCA 00103/2021/HC/KIG, DUSABE Javan SANGANO yarezemo EQUITY BANK RWANDA Plc ibyo kumwirukana mu kazi mu buryo butemewe n'amategeko yagenewe 29.000.000 Frw nk'indishyi z'akababaro kubera kuva ku kazi, ko ibyo bisobanuye ko mu kuva ku kazi hari inyungu (advantages) nyinshi yatakaje Urukiko rwashingiyeho rumugenera izo ndishyi, mu nyungu yatakaje hakaba ngo harimo no kuba agomba kuzamurirwa ijanisha mu kwishyura umwenda afitiye banki. Bityo akaba asaba Urukiko kongera gusuzuma ingingo ya 4 n'iya 6 igika cya 5 by'amasezerano y'inguzanyo yo ku wa 22/02/2018, rukabona ko mu ngingo ya 6 igika cya 5 ku bijyanye na *condition of sanction* hateganya ko mu gihe umukoresha ahindutse atakiri Equity Bank Plc iyo nguzanyo izakomeza kwishyurwa hakurikijwe igipimo cy'inyungu gitangwa n'amabanki y'ubucuruzi, bityo ngo rukemeza ko DUSABE Javan SANGANO agomba gukomeza kwishyura inguzanyo ku nyungu za 18.25% ku mwaka.

[17] DUSABE Javan SANGANO n'umwunganizi we Me TUYISHIME Jean Pierre biregura kuri iyi ngingo y'ubujurire bavuga ko mu rubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwasesenguye neza ingingo ya 4 y'amasezerano y'inguzanyo, ko ibyo EQUITY BANK RWANDA Plc ivuga ko rwasobanuye iyo ngingo rutitaye ku bikubiye mu ngingo ya 66 n'iya 68 z'Itegeko n°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, nta shingiro byahabwa, kuko mu gika cya 21

n'icya 22 by'urubanza RCOMA 00349/2021/HCC Urukiko rwasesenguye ibikubiye mu ngingo ya 66, aho rwasobanuraga impamvu ingingo z'amasezerano zivugwa zabayeho, aho rwavuze ko impamvu irebana no kuba DUSABE Javan SANGANO yari atakiri umukozi wa Banki yagombaga kwitabwaho, kandi ko n'ingingo ya 68 rwayitayeho mu gusobanura icyo amasezerano yari agamije nk'uko bigaragara mu gika cya 16 cy'urubanza rwajuririwe, aho rwasobanuye ko amasezerano yari agamije ko mu gihe DUSABE Javan SANGANO yivanye ku kazi inyungu zizazamuka, ibyo bikaba bisobanuye ko igihe yari kuguma ku kazi cyangwa akakavanwaho bitamuturutseho, EQUITY BANK RWANDA Plc nta burenganzira yari ifite bwo kuzamura inyungu.

[18] Bakomeza bavuga ko EQUITY BANK RWANDA Plc yakuye DUSABE Javan SANGANO aho yakoraga muri KCB imwizeza ko izamugurira inguzanyo itazamuye inyungu, kandi ikazamara igihe kirekire, aho impande zombi zumvikanye ko izishyurwa mu gihe kingana n'amezi 180.

[19] DUSABE Javan SANGANO avuga ko ikibazo kiri mu rubanza atari icyongereza, ko ahubwo ari icyo kumva neza *context* ayo masezerano y'inguzanyo yakozwemo, ko atari ubwa mbere akoze muri Banki, ko yakoraga muri KCB Bank, EQUITY BANK ikamureshya kubera ko ari umukozi mwiza yari ikeneye, ikamuha umushahara munini, ikanamugurira umwenda yari afite muri KCB, ariko ko mu gihe batagaragaza ko yabakoreye nabi bamwirukanye mu buryo budakurikije amategeko. Yongeraho ko ku rwego rwa mbere mu Rukiko rw'Ubucuruzi yatsinzwe n'uko nta kimenyetso yari afite kigaragaza ko yirukanwe arenganyijwe kuko urubanza rw'umurimo rwari rutararangira, ariko ko urubanza rwageze mu Rukiko Rukuru rw'Ubucuruzi ikimenyetso cy'urubanza rw'umurimo cyaramaze kuboneka kikagaragaza ko yirukanywe arenganyijwe.

[20] DUSABE SANGANO Javan avuga kandi ko EQUITY BANK ikimara kumwirukana yahise imukura ku gipimo cy'inyungu cya 6% ikamushyira ku cya 18.25%, ko kugeza ubwo Urukiko Rukuru rw'Ubucuruzi rwemezaga ko banki itagombaga kumuzamurira inyungu yari amaze gukatwa kuri compte ye amafaranga arenga ayo yagombaga gukatwa agera kuri 18.449.618 Frw, muri ubu bujurire akaba asaba kuyasubizwa kuko mu rubanza rujuririrwa yari yayasabye ariko Urukiko ntirugire icyo ruyavugaho, kandi ko hagomba kwiyongeraho inyungu zayo za 18,25% nawe yari kuyabyaza iyo banki itaza kuba yarayamukase.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 64 y'Itegeko n°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ibi bikurikira: "Amasezerano akozwe mu buryo bukurikije amategeko, aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kwubahirizwa nta buryarya".

[22] Ingingo ya 70 y'iryo Tegeko yo igateganya ko: "*Buri ruhande rufite inshingano yo kurangiza amasezerano nta buriganya kandi rukarangwa n'imikorere myiza yemerwa ku bagiranye amasezerano*".

[23] Dosiye y'uru rubanza igaragaza amasezerano y'inguzanyo yateguwe na EQUITY BANK Plc (Contrat d'adhésion) DUSABE SANGANO Javan agomba kuyemeza, iyo nguzanyo y'umwenda ingana na 146.535.630 Frw ibarwa guhera ku wa 15/02/2018 kugera ku wa 28/02/2033, ikishyurwa ku nyungu za 8% zaje kumanurwa n'icyemezo cy'ubuyobozi bw'iyo banki zikagera kuri 6%. Ayo

masezerano akaba arimo imvugo ababuranyi batumvikanaho "*Should you leave the employment of EQUITY BANK RWANDA Ltd"; the interest will be charged at the prevailing commercial rate without prior notice to the borrower*" buri ruhande ruyaha igisobanuro kirubereye, Urukiko rukaba rugomba kuyasobanura ngo rukize impaka ziri hagati yabo. Uru Rukiko rurasanga kandi mu gusobanura aya magambo rudakwiye kwirengagiza ko amasezerano y'inguzanyo yabaye hagati y'impande zombi atari kuba yarakozwe mu buryo yakozwemo iyo atazakuba yarabanjirijwe n'andi masezerano y'umurimo hagati y'izo mpande.

[24] Urukiko rw'Ubujurire, mu gusesengura iyo mvugo "*Should you leave the employment of EQUITY BANK RWANDA Ltd"* yateje impaka hagati y'ababuranyi bombi rurasanga rugomba kugendera mu murongo w'inzira ebyiri (*règles)*, gushaka kutemeranya n'icyo abagiranye amasezerano bari bagamije (*La recherche exclusive de la commune intention des parties*[1]) no kwihanangirizwa guhindura uburyo cyangwa amerekezo y'imvugo z'ukuri kandi zihamye(*L'interdiction absolue de dénaturer le sens ou la portée de stipulations claires et précises).* Urukiko rurifashisha imvugo z'Abahanga n'iz'amategeko y'amahanga kuri iki kibazo kitarakemurwa n'amategeko y'u Rwanda[2].

[25] Urukiko rw'Ubujurire, mu gusesengura iyo mvugo *Should you leave the employment of EQUITY BANK RWANDA Ltd"* rurasanga rugomba kwita cyane ku cyo iyo mvugo yari imariye ayo masezerano (*l'interprétation en considération de l'utilité de la clause*[3]) no gusesengura hitawe ku ruhare rwa buri ruhande mu bagiranye amasezerano (l'interprétation en considération de la qualité d'une partie[4]), kuko mu gihe ari amazezerano yo kwemezwa (Contrat d'adhésion), isesengura rikorwa ritaberera ku wayateguye[5];

[26] Urukiko rw'Ubujurire rushingiye kuri izo ngingo z'amategeko yavuzwe hejuru, rushingiye kandi kuri ibyo bisobanuro bimaze gutangwa, rurasanga imvugo igaragara mu masezerano y'inguzanyo hagati ya EQUITY BANK na DUSABE SANGANO "*Should you leave the employment of EQUITY BANK RWANDA Ltd",* idahita igaragaza *ubwayo* uburyo SANGANO yagombaga kuba atandukanyemo na EQUITY BANK niba ari ukuhikura ku bushake bwe cyangwa se kuhavanwa atabishakaga. Urukiko rurasanga ariko iyo ruhuje iyo mvugo na context yariho yo guha akazi SANGANO DUSABE Javan avanywe mu kandi kazi ka banki ya KCB akaza mu ka EQUITY Bank, agahita ahahabwa inguzanyo y'igihe kirekire kingana n'amezi 180, byerekana ko ingaruka SANGANO nk'umukozi yari kugira kubera kudakomeza gukorera EQUITY BANK zigomba gusuzumwa hitawe ku buryo umukozi n'umukoresha bitwaye kugira ngo habeho uko gutandukana, iyi mvugo "*Should you leave the employment of EQUITY BANK RWANDA Ltd",* ikaba muri iyi context itumvikanisha *ko* mu gihe uko gutandukana gutewe n'impamvu iyo ari yo yose ari byo bizatuma igipimo cy'inyungu gihinduka nk'uko EQUITY BANK ishaka kubyumvikanisha, ahubwo ko mu gihe byari bimaze kwemezwa n'inkiko mu rubanza rw'umurimo ko Equity Bank ari yo yakoze amakosa yo kwirukana SANGANO DUSABE ikamuvutsa amahirwe yo gukomeza kubahiriza amasezeranyo y'inguzanyo ashamikiye ku y'umurimo mu gihe yari kumara cy'amezi 180, byari bimaze no kugaragara ko Equity Bank ari yo yishe ingingo z'amategeko agenga amasezerano zibukijwe haruguru ku buryo atari yo

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[1] https://aurelienbamde.com/2017/07/10/linterpretation-du-contrat-et-le-juge;

[2] Aurérien Bambé, *Droit des contrats, Droit des obligations, Effets du contrat, Force obligatoire, Posted Juil 10, 2017, et le Code Civil français* consultés ce 21/07/2022.

[3] Aux termes de l'article 1191 du Code civil, « *lorsqu'une clause est susceptible de deux sens, celui qui lui confère un effet l'emporte sur celui qui ne lui en fait produire aucun*.»

[4] Aux termes de l'article 1190 du Code civil « *dans le doute, le contrat de gré à gré s'interprète contre le créancier et en faveur du débiteur, et le contrat d'adhésion contre celui qui l'a proposé.* »

[5] L'article 1190 du Code civil prévoit que, en cas de doute, le contrat d'adhésion s'interprète contre celui qui l'a propose.

yabyungukiramo yemererwa kuzamura igipimo cy'inyungu ku nguzanyo ngo DUSABE SANGANO Javan wubahirije ayo masezerano abe ari we ubihomberamo asabwa kwishyura inyungu z'umurengera atari kwishyuzwa iyo EQUITY Bank iguma mu murongo mwiza wo kubahiriza amasezerano y'umurimo bari baragiranye.

[27] Urukiko rw'Ubujurire rushingiye kuri iryo sesengura rimaze gukorwa rurasanga nta makosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu gusobanura ko ijambo Leave, abandon, desert, quit rigaragara mu masezerano bishatse kuvuga ko igikorwa kizaba gitewe na DUSABE Javan SANGANO gituma ava ku kazi ari cyo kizafatwa nk'imbarutso yo guhindura igipimo cy'inyungu, no kwemeza ko kuba EQUITY BANK RWANDA Plc yaramwirukanye mu buryo bunyuranyije n'amategeko nk'uko byemejwe n'urubanza rw'umurimo byaburanwemo, inyungu zigomba gukomeza kubarirwa kuri 6%[6], bityo impamvu y'ubujurire yatanzwe na EQUITY BANK kuri iyi ngingo ikaba idahawe ishingiro.

Gusuzuma niba EQUITY BANK RWANDA Plc yategekwa gusubiza DUSABE SANGANO Javan amafaranga yishyuye arenga ku yo yagombaga kwishyura ku gipimo cy'inyungu cya 6% ku mwaka, hiyongereyeho n'inyungu ziyabariweho ku gipimo cya 18.25% ku mwaka

[28] DUSABE Javan SANGANO avuga ko mu rubanza RCOMA 00349/2021/HCC rujuririrwa yari yasabye Urukiko gutegeka EQUITY BANK RWANDA Plc kumusubiza amafaranga angana na 18.449.618 Frw arenga ku yo yagombaga kwishyura kuri 6%, hiyongereyeho n'inyungu zibarwa kugeza urubanza ruciwe, ariko ko rutayamugeneye. Asobanura ko kuva ku wa 28/6/2020 kugeza ku wa 28/3/2022 aho Urukiko rutegekeye ko EQUITY BANK RWANDA Plc itemerewe kuzamura inyungu, DUSABE Javan SANGANO yakatwaga 2.239.000 Frw ku kwezi mu gihe cy'amezi 22 bitewe no kuzamura inyungu, zivuye kuri 6% zikajya kuri 18.25%, mu gihe amasezerano y'inguzanyo yateganyaga ko yagombaga kujya yishyura 1.400.381 Frw ku kwezi, ariko hakajya hiyongeragaho 838.619 Frw ku kwezi, kuko ibyo byabayeho mu gihe cy'amezi 22, ay'inyongera yakaswe bitemewe akaba yose hamwe yarabaye 18.449.618 Frw.

[29] Asaba ko kuba EQUITY BANK RWANDA Plc yaratwaye ayo mafaranga mu buryo bunyuranye n'amategeko, Urukiko rukwiye kuyitegaka kuyamusubiza kandi hakiyongeraho n'inyungu ziyabariweho ku gipimo cya 18.25% nk'uko na yo yabimukoreraga mu kumwishyuza, ndetse zigakomeza kubarwa kugeza igihe urubanza ruciriwe. Ibyo avuga ko abishingira ku ngingo ya 137 y'Itegeko n°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iteganya ko: « *Uruhande rwarenganyijwe rufite uburenganzira bwo kubona indishyi zitanzwe n'urundi ruhande rutubahirije ibisabwa mu masezerano, keretse iyo ikirego kigamije kubona indishyi cyahagaritswe cyangwa cyaravuyeho*».

[30] Uhagarariye EQUITY BANK RWANDA Plc yiregura kuri ubu bujurire bwuririye ku bundi avuga ko budakwiye kwakirwa kuko amafaranga asabwa impande zombi zitigeze ziyaburanaho mu manza zabanje, ko ari ikirego gishya gitanzwe ku rwego rw'ubujurire kinyuranye n'ibiteganywa n'ingingo ya 154 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegtsi, iteganya ibikurikira : *"Ku rwego rw'ubujurire ntihashobora gutangirwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu Rukiko rw'ubujurire;*

[6] Reba igika cya 17 na 18 cy'urubanza rujuririrwa.

[31] DUSABE SANGANO Javan n'umwunganizi we bavuga ko ayo mafaranga atari ikirego gishya, gifatwa nk'ingaruka kuri iryo zamurwa ry'inyungu, ko ari ibintu byumvikana ko niba Urukiko ruvuze ko batari bemerewe kuzamura inyungu, ku bijyanye n'ayiyongereyeho adakwiye batari guceceka. Bavuga kandi ko babiburanye mu Rukiko Rukuru rw'Ubucuruzi, ko biri mu myanzuro yabo no mu nyandikomvugo y'iburanisha bikaba byaragarutsweho, n'ubwo mu rubanza bitashyizwemo, ko na nyuma y'urubanza rwajuririwe Umwunganizi we yagiye kubaza muri Banki iby'ayo mafaranga yagiye akatwa kuri izo nyungu n'uko azayasubizwa, anababaza niba bazajurira, bityo ko aho banki ijuririye na bo babishyize mu bujurire bwuririye ku bundi.

[32] Kuri iyo ngingo Me Frank KAREMERA uhagarariye EQUITY BANK avuga ko Urukiko ruramutse rusanze hari inyungu akwiye guhabwa (à titre subsidiaire), kuri izo nyungu za 18%, atazihabwa kuko atari umucuruzi w'amafaranga, agasaba Urukiko gukurikiza amategeko. Naho ku bijyanye no kuba hari amafaranga yiyongereye ku yo SANGANO yari asanzwe akatwa, yasubije ko ntacyo yabivugaho mu buryo bw'imibare, bityo akaba ataragaragarije Urukiko niba hari amafaranga DUSABE yishyuye koko, niba ayo avuga ari yo koko cyangwa se niba ari andi bitandukanye.

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[33] Ingingo ya 154 y'Itegeko n$_o$ 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishyirize y'imanza z'imbonezamubano, iz'ubucuruzi iz'umurimo n'iz'ubutegetsi, iteganya ibikurikira: *"Ku rwego rw'ubujurire ntihashobora gutangirwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu Rukiko rw'ubujurire. Icyakora ababuranyi bashobora kwaka inyungu, ibyishyuwe ku bukode n'ibindi bintu by'inyongera byabonetse kuva aho urubanza rwaciriwe n'indishyi z'igihombo umuburanyi yagize kuva urubanza ruciwe".*

[34] Ingingo ya 65 y'Itegeko n°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ibi bikurikira: "Amasezerano ntategeka gusa icyemejwe, ahubwo yongeraho n'ingaruka ugushyira mu kuri, imigenzereze cyangwa amategeko byageneye inshingano bikurikije kamere yayo**".**

[35] Ingingo ya 137 y'iryo tegeko rimaze kuvugwa haruguru nayo iteganya ibikurikira: « Uruhande rwarenganyijwe rufite uburenganzira bwo kubona indishyi zitanzwe n'urundi ruhande rutubahirije ibisabwa mu masezerano, keretse iyo ikirego kigamije kubona indishyi cyahagaritswe cyangwa cyavuyeho ».

[36] Urukiko rw'ubujurire rurasanga dosiye y'urubanza rujuririrwa igaragaza ko mu myanzuro yo kurega ya DUSABE SANGANO Javan hari agace yavuzemo ikibazo cy'aya mafaranga avuga ko yagiye akatwa ku ijanisha rya 18.25% agasaba kuyasubizwa[7], kandi no mu iburanisha ryo ku wa 16/02/2021 SANGANO n'umwunganizi bakaba barongeye kubigarukaho basaba ko EQUITY BANK

[7] Aho agira ati: "*Turasaba Urukiko kwemeza ko EQUITY BANK yahinduye interest rate mu buryo bunyuranije n'amategeko no gutegeka EQUITY BANK gusubiza Javan SANGANO ikinyuranyo cy'amafaranga yose yishyuye kuri interest rate ya 18.25% hiyongereyeho inyungu zayo. Ubundi Javan SANGANO yishyuraga 1.400.381 Frw ku kwezi kuri interest rate ya 6% nyamara kuva ukwezi kwa 6/2020 kugeza ukwezi kwa 12/2021 Javan SANGANO yishyuraga 2,239,000 Frw ku kwezi kuri interst rate ya 18.25% bivuze ko harimo ikinyuranyo cya 838.619 Frw Javan SANGANO yishyuye mugihe cy'amezi 19, bityo banki ikwiye kumusubiza 15.933.761 Frw n'inyungu zayo zibariwe ku gipimo cya BNR nk'uko Urukiko Rukuru rw'Ubucuruzi rwabitegetse muri RCOMA 00644/2018/HCC"*

Yamugarurira amafaranga y'ikirenga yishyujwe n'inyungu ndetse n'indishyi z'akababaro[8], ariko Urukiko ntirwigeze rubigarukaho mu cyemezo rwafashe.

[37] Rushingiye ku biteganywa n'ingingo z'amategeko zimaze kwibutswa haruguru no ku bisobanuro by'uko atari ubwa mbere mu bujurire DUSABE SANGANO Javan aregeye amafaranga aburanwa aha, Urukiko rurasanga ikirego kiamije kugaruza amafaranga arenga ku yo DUSABE SANGANO Javan yagombaga kwishyura kuri 6%, n'inyungu ya 18.25% atari ikirego gishya gitangiwe bwa mbere kuri uru rwego nk'uko EQUITY BANK ishaka kubyumvikanisha, ahubwo ari ingaruka zo kwica amasezerano nk'uko DUSABE SANGANO abivuga ndetse kikaba cyari cyaratanzwe uru rubanza rugitangira.

[38] Urukiko rurasanga kandi nk'uko bivugwa n'urega amafaranga yakatwaga 1.400.381 Frw ku kwezi ku ijanisha rya 6%, mu kuzamura inyungu ijanisha rishyizwe kuri 18.25%, atangira kujya akatwa 2.239.000 Frw ku kwezi, hajya hiyongeragaho 838.619 Frw ku kwezi, mu gihe cy'amezi 22 ayiyongereyeho agera kuri 18.449.618 Frw yakaswe mu buryo butari bwo Bank itarayabitse yarayacuruje nka banki y'ubucuruzi, ikaba igomba kuyasubizanya n'inyungu zayo zibariwe na zo kuri 18.25%, hatagendewe ko DUSABE SANGANO Javan atari umucuruzi nk'uko uhagarariye EQUITY abivuga, ahubwo hagendewe ku kuba ari cyo gipimo Equity Bank nayo yamugaragarijeho ko ari cyo yacuruzagaho amafaranga muri icyo gihe yayamukatAga mu buryo budakwiye, iki gipimo kikaba kitanatandukanye cyane n'igipimo mpuzandengo banki z'ubucuruzi na EQUITY BANK irimo zitangiraho inguzanyo, nk'uko zabazwe mu rubanza rwaciwe n'uru Rukiko[9], aha zikaba zigomba kubarwa mu gihe cy'amezi 22 yayakase, ni ukuvuga 838.619 Frw X 22 mois X 18.25%= 3.367.055 Frw.

Gusuzuma ibijyanye n'amafaranga y'ibyagenze ku rubanza asabwa n'ababuranyi

[39] Uhagarariye EQUITY BANK RWANDA Plc asaba Urukiko gutegeka DUSABE Javan SANGANO gusubiza EQUITY BANK RWANDA Plc 1.000.000 Frw y'ikurikiranarubanza na 4.000.000 Frw y'ibihembo bya Avoka yishyuwe kuva urubanza rutangiye kugera kuri uru rwego.

[40] DUSABE Javan SANGANO yiregura ku mafaranga Equity Bank Rwanda Plc isaba avuga ko nta shingiro afite, kuko ari yo yamwirukanye mu buryo bunyuranije n'amategeko nk'uko byemejwe mu rubanza RSOCA 00103/2021/HC/KIG rwamaze kuba Itegeko, ikaba ikwiye kwirengera ingaruka zabyo.

[41] DUSABE Javan SANGANO asaba ahubwo Urukiko gutegeka EQUITY BANK RWANDA Plc kumuha indishyi zo gusiragizwa kuri banki zingana na 2.000.000 Frw, igihembo cy'umwunganizi kuva ku rwego rwa mbere kugera mu Rukiko rw'Ubujurire kingana na 3.500.000 Frw, n'amafaranga y'ikurikiranarubanza angana na 1.500.000 Frw, kubera ko yamuhemukiye ikamusiragiza mu manza zitari ngombwa bigatuma agira ibyo atakaza.

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[8] Aho bavuga bati: "Banki *yakoze amakosa ku nguzanyo ikaba yakwirengera ingaruka kuko ariyo yishe amasezeran, biyo ikirengera ingaruka zayo, hakarebwa umwanzuro batanze, bakamugarurira amafaranga y'ikirenga n'inyungu ndetse na intérêt na DI".*

[9] Mu rubanza RCAA 00003-00004/2021/CA rwaciwe ku wa 15/07/2022, igika cya 50 & 53 aho Urukiko rugira ruti: "*kuko kuba yasubizwa amafaranga yishyuye hiyongereyeho inyungu zibariwe ku gipimo cya 18% atari ugucuruza amafaranga, ahubwo ari uko uwayatanze ahanini aba nawe yayasabye muri banki, kandi akaba ari cyo gipimo mpuzandengo banki z'ubucuruzi zitangiraho inguzanyo".*

[42] Uhagarariye EQUITY BANK RWANDA Plc yiregura kuri izi ndishyi DUSABE Javan SANGANO asaba avuga ko nta shingiro zifite, kuko EQUITY BANK Plc yahinduye ijanisha ry'inyungu hashingiwe ku masezerano y'inguzanyo impande zombi zagiranye, ko kandi kuba DUSABE Javan SANGANO yaratangije uru rubanza bitari ngombwa nta ndishyi akwiye guhabwa.

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[43] 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*".

[44] 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*".

[45] Urukiko rw'Ubujurire rushingiye ku biteganywa n'izo ngingo, rurasanga amafaranga y'ikuririkiranarubanza n'igihembo cya Avoka EQUITY BANK RWANDA Plc isaba itayagenerwa kuko itsindwa n'urubanza, naho ayo DUSABE SANGANO Javan akwiye kuko ariwe utsinda urubanza akaba agomba kugenwa mu bushishozi bw'Urukiko kuko ayo asaba ari umurengera, bityo akaba agenewe 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza kuri uri rwego yiyongera ku byategetswe mu rubanza rwajuririwe.

III. ICYEMEZO CY'URUKIKO

[46] Rwemeje ko ubujurire ku rubanza n° RCOMA 00349/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 11/03/2022 bwatanzwe na EQUITY BANK RWANDA Plc nta shingiro bufite

[47] Rwemeje ko ubujurire bwa DUSABE SANGANO Javan bwuririye ku bundi bufite ishingiro, ko Equity Bank Rwanda Plc igomba kumusubiza amafaranga 18.449.618 Frw y'inyungu yamukase itabyemerewe hiyongereyeho inyungu zayo zingana na 3.367.055 Frw nk'uko byasobanuwe haruguru;

[48] Rutegetse EQUITY BANK RWANDA Plc kwishyura DUSABE SANGANO Javan 18.449.618 Frw n'inyungu zayo zingana na 3.367.055 Frw

[49] Rutegetse EQUITY BANK RWANDA Plc kwishyura DUSABE SANGANO Javan 500.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza, kuri uru rwego

[50] Ruvuze ko uretse ku byiyongereyeho byategetswe muri uru rubanza, ku bindi nta gihindutse ku mikirize y'urubanza rwajuririwe;

[51] Ruvuze ko ingwate y'amagarama y'uru rubanza yatanzwe na EQUITY BANK RWANDA Plc ihwanye n'ibyarukozwemo**.**