MUSABYIMANA N'UNDI v. ECOBANK RWANDA PLC

[Rwanda URUKIKO RW'UBUJURIRE – RCOM 00004/2021/CA (Kaliwabo, P.J.) 10 Ugushyingo 2021]

Amategeko agenga imiburanishirize y'ubucuruzi – Kugura umutungo mu cyamunara – Ihinduzamutungo – Uwaguze umutungo mu cyamunara yemerewe gukorerwa ihinduzamutungo ukandikwa mu mazina ye uhereye igihe yishyuriye amafaranga ya cyamunara – Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 261.

Incamake y'ikibazo: Musabyimana Célestin na Somayire Rubona Fredy bishingiye umwenda ECOBANK RWANDA Plc yahaye INTERTRADE F&C Ltd ungana na 210.115.808 Frw inanirwa kuwishyura bituma iyo banki irega abishingizi mu Rukiko rw'Ubucuruzi.

Urukiko rw'Ubucuruzi rwaciye urubanza rwemeza ko Musabyimana na Somayire bafite inshingano yo kwishyura umwenda bishingiye. Batishimiye imikirize y'urubanza barajuriye kugera mu Rukiko rw'Ubujurire hose batsindwa.

Batanze ikirego basaba ko urubanza rwaciwe n'Urukiko rw'Ubujurire bakarutsindwamo rusubirishwamo ingingo nshya, ndetse bashingiye kuri icyo kirego, batanga ikirego cyihutirwa basaba Urukiko ko hatakorwa ihinduzamutungo ku mitungo yaguzwe mu cyamunara kugeza urubanza RCOM 00001/2021/CA (rwasabiwe gusubirishwamo ingingo nshya) ruciriwe kugira ngo hirindwe imanza z'uruhererekane zavuka mu gihe baba barutsinze.

ECOBANK RWANDA Plc ivuga ko ntacyo yavuga ku bijyanye nuko hatakorwa ihinduzamutungo kuko bireba abaguze mu cyamunara kandi bakaba batari bari mu rubanza kandi bakaba bataranayihaye ububasha bwo kuyihagararira.

Incamake y'icyemezo: Uwaguze umutungo mu cyamunara yemerewe gukorerwa ihinduzamutungo ukandikwa mu mazina ye uhereye igihe yishyuriye amafaranga ya cyamunara.

Ikirego nta shingiro gifite.

Amategeko yashingiweho:
Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 261.

Nta manza zifashishijwe

Urubanza

IMITERERE Y'IKIBAZO

[1] Urubanza rwatangiriye mu Rukiko rw'Ubucuruzi, ECOBANK RWANDA Ltd irega Musabyimana Célestin na Somayire Rubona Fredy, kwishyura umwenda ungana na 210.115.808 Frw ukomoka ku masezerano y'ubwishingire bw'umwenda wahawe INTERTRADE F&C Ltd.

[2] Mu rubanza RCOM 01046/2018/TC rwaciwe ku wa 30/01/2019, Urukiko rw'Ubucuruzi rwemeje ko Musabyimana Célestin na Somayire Rubona Fredy, nk'abishingizi ba INTERTRADE F&C Ltd, bafite inshingano yo kwishyura ECOBANK RWANDA Plc amafaranga 210.115.808 asigaye ku mwenda yahaye INTERTRADE F&C Ltd. Rwategetse Musabyimana Célestin na Somayire Rubona Fredy kwishyura ECOBANK RWANDA Plc 200.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka no kuyisubiza 50.000 Frw y'ingwate y′amagarama yatanze irega.

[3] Musabyimana Célestin na Somayire Rubona Fredy bajuririye Urukiko Rukuru rw'Ubucuruzi, ubujurire bwabo bwandikwa kuri RCOMA 00201/2019/HCC. Urukiko rwaciye urubanza ku wa 18/12/2019, rwemeza ko ubujurire bwatanzwe na Musabyimana Célestin hamwe na Somayire Rubona Fredy nta shingiro bufite, ko imikirize y'urubanza RCOM 01046/2018/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 30/01/2019 idahindutse. Rwategetse Musabyimana Célestin na Somayire Rubona Fredy gufatanya kwishyura ECOBANK RWANDA Plc 1.000.000 Frw y'igihembo cya Avoka ku rwego rw'ubujurire.

[4] Musabyimana Célestin na Somayire Rubona Fredy bajuririye Urukiko rw'Ubujurire bavuga ko ECOBANK RWANDA Ltd ibishyuza umwenda yamaze kwiyishyura. Urukiko mu rubanza RCOMAA 00067/2020/CA rwaciye ku wa 23/04/2021, rwasanze ubu bujurire nta shingiro bufite, rwemeza ko imikirize y'urubanza RCOMA 00201/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 18/12/2019 idahindutse. Hagati aho imitungo ya Musabyimana Célestin na Somayire Rubona Fredy yari yarafatiriwe na ECOBANK RWANDA Plc yaje gutezwa cyamunara.

[5] Ku wa 13/10/2021, Musabyimana Célestin na Somayire Rubona Fredy batanze ikirego mu Rukiko rw'Ubujurire basaba gusubirishamo ingingo nshya urubanza RCOMAA 00067/2020/CA, ikirego gihabwa RCOM 00001/2021/CA. Aba bombi, bashingiye ku kirego gisubirishamo ingingo nshya, batanze ikirego cyihutirwa basaba Urukiko gutegeka ko amafaranga yavuye mu cyamunara y'imitungo yabo atashyirwa kuri konti ya ECOBANK RWANDA Plc no kudakorera ihinduzamutungo abaguze iyi mitungo kugeza urubanza RCOM 00001/2021/CA ruciwe kugira ngo hirindwe imanza z'uruhererekane zavuka mu gihe baba batsinze urubanza basubirishijemo ingingo nshya**.**

[6] ECOBANK RWANDA Ltd mu mwanzuro wayo, yavuze ko amafaranga yavuye mu cyamunara yamaze kugera kuri konti yayo bityo ko ibyo basaba nta "objet" bifite, ko ibirebana n'ihinduzamutungo bireba abayiguze kandi abo bakaba batararezwe muri uru rubanza. Yavuze kandi ko nta bwihutirwe buri muri iki kirego kuko ikibazo cy'umwenda bishyuzwa cyabyaye imanza nyinshi ku buryo izindi manza zavuka atarizo ziteye impungenge.

[7] Iburanisha ryabaye ku wa 03/11/2021 Musabyimana Célestin na Somayire Rubona Fredy bahagarariwe na Me Idahemuka K. Tharcisse na Me Masumbuko Nde Emile naho ECOBANK RWANDA Ltd ihagarariwe na Me Bimenyimana Eric.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

A. Kumenya niba Urukiko rwategeka kudashyira amafaranga ya cyamunara kuri konti ya ECOBANK RWANDA PLC

[8] Musabyimana Célestin na Somayire Rubona Fredy bahagarariwe na Me Idahemuka K. Tharcisse na Me Masumbuko Nde Emile baburanye bavuga ko basubirishijemo ingingo nshya urubanza RCOMAA 00067/2020/CA bagamije kwerekana ko umwenda bishyuzwa na ECOBANK RWANDA Plc iyi yamaze kuwiyishyura bityo ngo ikaba ishaka kwishyurwa kabiri, ko ariyo mpamvu basaba Urukiko gutegeka ko amafaranga yavuye mu cyamunara cy'imitungo yabo atashyirwa kuri konti ya ECOBANK RWANDA Plc kuko byazagorana kuyagaruza bigatuma havuka izindi manza z'urudaca.

[9] Kuri iyi ngingo Me Bimenyimana Eric yasobanuye ko amafaranga abarega basaba ko afatirwa kuri ubu yamaze kugera kuri konti ya ECOBANK RWANDA Plc nk'uko bigaragazwa na "bordereaux de transfert", kandi ko cyamunara yakozwe hakurikijwe amategeko, bityo ko nta kosa ryakozwe aya mafaranga ahabwa ECOBANK RWANDA Plc. Yakomeje avuga ko ikirego kigamije kubuza ko amafaranga adahabwa ECOBANK nta "objet" gifite kuko icyo kigamije kuburizamo cyarangiye. Kuri iyi ngingo yo kuba amafaranga yarageze kuri konti ya ECOBANK RWANDA Plc, Me Idahemuka K. Tharcisse avuga ko niba ariko bimeze byaba byarakozwe mu buriganya hagati y'Umuhesha w'inkiko na ECOBANK RWANDA Plc nyuma yo kumenya ko hari ikirego cyihutirwa cyatanzwe bityo ko yafatirwa kuri konti ya ECOBANK RWANDA Plc. Abajijwe niba gufatira amafaranga mu maboko ya ECOBANK RWANDA Plc byaba bihuje n'ikirego cyatanzwe asubiza ko bihuje n'icyo ikirego cyari kigambiriye.

▯ Uko Urukiko rubibona

[10] Ingingo ya 185 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko"Iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinzwe kurangiza impaka zihutirwa w`aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara".

[11] Urukiko rurasanga ikirego cya Musabyimana na Somayire kigamije ko amafaranga yavuye mu cyamunara cy'imitungo yabo atashyirwa kuri konti ya ECOBANK RWANDA Plc kugeza igihe urubanza rusubirishamo ingingo nshya ruzacibwa kugira ngo, mu gihe baramuka barutsinze, bitazabyara izindi manza bayagaruza. Rurasanga, nk'uko bigaragazwa na "*bordereaux de transfert*" yo ku wa 30/10/2021, aya mafaranga yarageze kuri konti N° 9651510000024 ya ECOBANK RWANDA Plc bityo icyo baregeye kikaba kidashoboka kubera ko Urukiko rutabuza ko ayo mafaranga ashyirwa kuri konti ya ECOBANK kandi yaramaze kuhagera. Urukiko rurasanga kandi rudashobora kuyafatira mu maboko ya ECOBANK kuko, uretse no kuba ataricyo cyaregewe, nyamara kandi abarega ntibashobora kwerekana ko baramutse bayatsindiye ECOBANK RWANDA Plc yabura ubwishyu ku buryo biba ngombwa gushinganisha umubare w'amafaranga bavuga.

B. Ku birebana no kubuza abaguze imitungo Musabyimana Célestin na Somayire Rubona Fredy gukorerwa ihinduzamutungo

[12] Musabyimana Célestin na Somayire Rubona Fredy bahagarariwe na Me Idahemuka K. Tharcisse na Me Masumbuko Nde Emile baburanye basaba Urukiko gutegeka ko imitungo yabo yaguzwe mu cyamunara itakorerwaho ihinduzamutungo kuko ngo byaba impamvu y'izindi manza mu gihe iyi mitungo yazaba imaze kugera mu maboko y'abantu benshi kandi ikaba ishobora kwongererwa agaciro ku buryo byazagora abarega baramutse bayisubijwe ariko bagasabwa gutanga ikiguzi cy'ibyiyongereye.

[13] Me Bimenyimana Eric yaburanye avuga ko ECOBANK RWANDA Plc ahagarariye ntacyo yavuga kuri iyi ngingo kuko ireba abaguze mu cyamunara kandi batari muri uru rubanza, kandi ko nubwo atabahagarariye ariko byaba bitubahirije ubutabera gufatira abantu icyemezo badahawe amahirwe yo kwisobanura. Kuri iyi ngingo ababuranira Musabyimana Célestin na Somayire Rubona Fredy bavuga ko cyamunara yakozwe bisabwe na ECOBANK RWANDA Plc bityo ko nta shingiro ifite ivuga ko itarebwa n'ikibazo cy'ihinduzamutungo. Bakomeza bavuga ko kugeza kuri uyu munsi imitungo icyanditswe kuri bo, ko umuhesha w'inkiko yabandikiye abasaba ibyangombwa by'ubutaka kugira ngo hakorwe ihinduzamutungo, bityo ko abayiguze muri cyamunara batari baba beneyo ku buryo inyungu zabo zabangamirwa n'uru rubanza. Abarega bavuga kandi ko uhagarariye ECOBANK yaburanishije ibimenyetso byatanzwe n'Umuhesha w'inkiko ku buryo agomba gufatwa nk'umuhagarariye mu rubanza, naho abaguze mu cyamunara ngo baguze bazi neza ko ibyo bagura biri mu manza.

Uko Urukiko rubibona

[14] Ingingo ya 261 y'Itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, mu gika cyayo cya 2, iteganya ko "uwaguze umutungo mu cyamunara awegukana amaze kwishyura kandi ashobora kuwandikisha ku izina rye amaze kugeza ku rwego rubishinzwe kopi y'inyandikomvaho yemeza ubugure".

[15] Urukiko rurasanga, nubwo cyamunara y'imitungo ya Musabyimana Célestin na Somayire R. Fredy yakozwe ku busabe bwa ECOBANK RWANDA Plc kubera ubwishingire bari baratanze ku mwenda wahawe INTERTRADE F&C Ltd, nyamara kuva ku munsi amafaranga ya cyamunara yishyuriwe, imitungo yegukanywe n'abayiguze mu cyamunara ndetse bikaba biri mu burenganzira bwabo bwo kuyiyandikishaho nk'uko bivugwa mu ngingo ya 261 y'Itegeko N° 22/2018 ryavuzwe haruguru.

[16] Urukiko rurasanga, uretse no kuba abaguze uyu mutungo batari ababuranyi muri uru rubanza kandi nta bubasha bahaye uwo ari we wese kubahagararira, nta n'impamvu rubona yatuma bavutswa uburenganzira bwabo bwo kwandikwaho umutungo begukanye kuva ku munsi bishyuriye ikiguzi mu cyamunara. Rurasanga, kuba Musabyimana na Somayire bararegeye guhagarikisha icyamunara ntibabyemererwe, badashobora kuburizamo ihinduzamutungo (procedure administrative) ku mpamvu yuko hazavuka izindi manza mu gihe baramuka basubijwe iyi mitungo; ubugure bwabaye mu cyamunara burihagije kuba bwabyara urundi rubanza mu gihe urubanza rusubirishamo ingingo nshya rwabibona ukundi.

C. Ku birebana n'amafaranga y'ikurikiranarubanza yasabwe na ECOBANK RWANDA Plc

[17] ECOBANK RWANDA Plc yaburanye isaba 1000.000Frw y'igihembo cya Avoka wayiburaniye kuri uru rwego. Me Idahemuka K. Tharcisse uburanira Musabymana na Somayire yavuze ko aya mafaranga adakwiye gutangwa ku rwego rw'ikirego cyihutirwa ko ahubwo uyafitiye uburenganzira yazayasaba mu gihe cyo kuburana mu mizi y'urubanza.

[18] Urukiko rurasanga 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 ivuga ko ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza.

[19] Urukiko rurasanga ikirego cyihutirwa kigamije ko hafatwa ibyemezo by'agatenyo mu gihe ababuranyi bategereje kuburana urubanza mu mizi yarwo. Urukiko rurasanga, nubwo ECOBANK RWANDA Plc ikwiye igihembo cya Avoka kuko yayiburaniye nyamara kandi kuba ababuranyi bagifite urubanza mu mizi bagomba kuburana, icyo nicyo gihe gikwiye cyo gusaba amafaranga y'ikurikirana rubanza, utsinze urubanza akazaba afite uburenganzira bwo gusaba n'ibyo yatakaje mu rubanza ku kirego cyihutirwa.

III. ICYEMEZO CY'URUKIKO

[20] Rwemeje ko ikirego cyihutirwa RCOM 00004/2021/CA cya Musabyimana Célestin na Somayire Rubona Fredy nta shingiro gifite.

[21] Rutegetse ko ingwate y'amagarama yatanzwe muri uru rubanza ihera mu Isanduku ya Leta.