NZATUNGA N'UNDI v. BPR BANK RWANDA PLC

[Rwanda URUKIKO RW'UBUJURIRE – RCOMA 00021/2022/CA (Ngagi, P.J., Kamere na Rutazana, J.) 28 Kamena 2024]

Amategeko agemga imiburanishirize y'imanza z'ubucuruzi – Amasezerano y'inguzanyo – Ingwate – Kugurisha mu cyamunara ingwate y'ubereyemo Banki umwenda – Ubereyemo Banki umwenda utarawishyuye wose nubwo ingwate yatanze yagurishwa mu cyamunara ariko ntimaremo uwo mwenda, agomba kwishyura amafaranga asigaye kugirango wose ube wishyuwe.

Incamake y'ikibazo: Nzatunga yagiranye amasezerano y'inguzanyo y'ubwubatsi na BPR Bank Rwanda Plc, ahwabwa amafaranga anagana na 250.000.000 Frw yishingirwa n'umugore we Nyiramubyeyi Josiane ndetse atanga n'ingwate. Yaje kunanirwa kwishyura iyo nguzanyo yose, yandikirwa yihanangirizwa ndetse nyuma Banki ibiherewe uburenganzira n'Umwanditsi Mukuru igurisha mu cyamunara ingwate yahawe, ariko amafaranga yavuyemo ntiyabasha kwishyura umwenda wose warugezwemo, bituma itanga ikirego mu Rukiko rw'Ubucuruzi isaba Nzatunga na Nyiramubyeyi gufatanya kuyishyura hashingiwe ku masezerano y'inguzanyo n'ay'ubwishingire.

Urukiko rw'Ubucuruzi rwemeje ko Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane kuyishyura 211.334.378 Frw yasigaye ku mwenda nyuma ya cyamunara.

Nzatunga na Nyiramubyeyi bajuririye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruzi bavuga batagombaga gutegekwa kwishyura amafaranga nyuma yuko ingwate batanze yatejwe cyamunara.

Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire nta shingiro, rwemeza ko Nzatunga na Nyiramubyeyi babereyemo umwenda BPR ungana na 129.341.174 Frw aho kuba 211.334.378 Frw yemejwe mu rubanza rwajuririwe.

Nzatunga na Nyiramubyeyi bajuririye mu Rukiko rw'Ubujurire bavuga ko nyuma yo kugurisha mu cyamunara ingwate bari bayihaye, nta yandi mafaranga bagombaga gutegekwa kwishyura BPR Bank Rwanda. Bakavugako ingwate zari zifite agaciro karenze umwenda bari bayibereyemo; ko rero BPR Bank Rwanda Plc yagombaga kuyigurisha ikiyishyura umwenda wose gucungana n'icyo gihe igahita igurisha ingwate yahawe hanyuma ikiyishyura umwenda wose.

BPR Bank Rwanda Plc yo yiregura ivuga ko kuba ingwate zaratanzwe ariko mu kuzigurisha ntizivemo amafaranga yakwishyura umwenda wose babereyemo BPR Bank Rwanda Plc bidasobanuye ko umwenda usigaye utagomba kwishyurwa hifashishijwe indi mitungo batunze cyangwa bazatunga kuko umwenda urangira ari uko wishyuwe wose.

Incamake y'icyemezo: Kuba ingwate yatanzwe n'ubereyemo Banki umwenda yagurishwa mu cyamunara ikavamo amafaranga atishyuye umwenda wose wayo, ntibivanaho inshingano yo kwishyura amafaranga asigaye nyuma yo kugurisha iyo ngwate, kuko ubwishyu bwanashakirwa no mu yindi mitungo y'ubereyemo Banki umwenda.

Ubujurire nta shingiro bufite.

Nta mategeko yashingiweho

Imanza zifashishijwe:

RCOMAA 00079/2016/SC-RCOMAA 0085/16/CS; EQUITY BANK RWANDA Ltd na Barawigirira Issa rwaciwe n'Urukiko rw'Ikirenga kuwa 30/11/2017.

RCOMA 00008/2021/CA; Bank of Kigali Plc na Musabyimana Spéciose rwaciwe n'Urukiko rw'Ubujurire ku wa 10/06/2022.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 18/09/2015, Nzatunga Ruvuguta Emmanuel yagiranye amasezerano n'icyahoze ari BPR Ltd (nyuma yaje guhinduka BPR Bank Rwanda Plc) ahabwa inguzanyo y'ubwubatsi ingana na 250.000.000 Frw yishingirwa n'umugore we Nyiramubyeyi Josiane ndetse atanga ingwate. Ayo masezerano Nzatunga Ruvuguta Emmanuel ntiyashoboye kuyubahiriza bituma BPR Ltd isaba Umwanditsi Mukuru muri RDB uruhushya rwo kugurisha mu cyamunara ingwate yahawe, irabuhabwa ariko amafaranga yavuye mu cyamunara ntiyashobora kurangiza umwenda wose, BPR Plc itanga ikirego mu Rukiko rw'Ubucuruzi isaba kwishyurwa amafaranga yose hamwe angana na 248.693.532 Frw, akubiyemo 186.797.202 Frw y'umwenda remezo, 35.975.151 Frw y'inyungu zisanzwe, 25.921.179 Frw y'inyungu z'ubukererwe, Nzatunga Ruvuguta Emmanuel n'umugore we Nyiramubyeyi Josiane bagafatanya kuyishyura hashingiwe ku masezerano y'inguzanyo n'ay'ubwishingire bashyizeho umukono; bakanishyura 200.000 Frw y'ikurikiranarubanza na 800.000 Frw y'igihembo cya Avoka.

[2] Abaregwa bireguye bavuga ko ikirego cya BPR Ltd nta shingiro gifite kuko mu ibaruwa y'integuza yandikiye Nzatunga Ruvuguta Emmanuel ku wa 13/12/2017', imwihanangiriza kwishyura bwa nyuma yamumenyesheje umwenda agomba kwishyura ungana na 238. 206. 717 Frw (umwenda remezo, inyungu zisanzwe n'iz'ubukererwe), ngo bivuze ko iyo yishyura ayo mafaranga nta deni yari kuba asigayemo; muri iyo baruwa inamumenyesha ko mu buryo impande zombi zateganyije mu ngingo ya 11 y'amasezerano buzakoreshwa inguzanyo n'itishyurwa banki yahisemo kugurisha ingwate; ko rero mu gihe izo ngwate zagurishijwe mu cyamunara bitangiwe uburenganzira n'Umwanditsi Mukuru zikegukanwa na BPR Ltd, iyi Banki itari guhindukira ngo ibarege mu Rukiko ivuga ko ibishyuza amafaranga yasigaye ku mwenda ngo kuko mu masezerano impande zombi zagiranye nta hateganyijwe ko nihagira amafaranga asigara nyuma yo kugurisha ingwate banki iziyambaza inzira yo kuregera urukiko. Naho ku bijyanye n'ingano y'amafaranga bishyuzwa bavuga ko nyuma yo kubaha integuza, Banki itagombaga gukomeza kubara inyungu kuko binyuranyije n'amategeko.

[3] Mu rubanza RCOM 01527/2018/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 03/12/2020, Urukiko rwemeje ko ikirego cya BPR Plc gifite ishingiro, rutegeka Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane kuyishyura 211.334.378 Frw yasigaye ku mwenda nyuma ya cyamunara, 200.000 Frw y'ikurikiranarubanza na 20. 000 Frw yatanzeho ingwate y'amagarama irega.

[4] Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane bajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi bavuga ko icyo barunenga ari uko bategetswe kwishyura amafaranga yasigaye nyuma y'uko ingwate batanze zitejwe cyamunara, kuba Urukiko rutarashyizeho umuhanga mu ibaruramari (*expert-comptable*) kandi yarasabwe n'abaregwa, no kuba rwaragiye rwivuguruza mu byemezo rwafashe.

[5] Mu rubanza RCOMA 00921/2020/HCC rwaciwe ku wa 18/11/2021**,** Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwatanzwe na Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane bufite ishingiro naho ubwa BPR Plc nta shingiro bufite ; ko umwenda Nzatunga Ruvuguta Emmanuel na nyiramubyeyi Josiane bagomba kwishyura BPR Plc ungana na 129.341.174 Frw aho kuba 211.334.378 Frw yemejwe mu rubanza rwajuririwe; rutegeka Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane kwishyura BPR Plc uwo mwenda hiyongereyeho amafaranga y'ikurikiranarubanza, ay'igihembo cya Avoka n'amagarama bategetswe kwishyura ku rwego rwa mbere.

[6] Urukiko kandi rwasanze atari ngombwa ko hashyirwaho umuhanga wo kugaragaza ingano y'umwenda kuko ibimenyetso byashingiweho bigizwe na « *Final notice* » na Raporo za cyamunara ndetse n'amasezerano y'inguzanyo bihagije mu kugaragaza ukuri ku bijyanye n'umwenda abaregwa bishyuzwa, cyane ko nta muburanyi wigeze akemanga ibyo bimenyetso.

[7] Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane bongeye kujuririra urwo rubanza mu Rukiko rw'Ubujurire na BPR Bank Rwanda Plc itanga ubujurire bwuririye ku bwabo, urubanza rwandikwa kuri RCOMAA 00021/2022/CA maze nyuma y'imihango ntegurarubanza ruhabwa itariki y'iburanisha yo ku wa 14/05/2024 ariko kuri uwo munsi ntirwaburanishwa kuko uhagarariye Nzatunga Ruvuguta Emmanuel yari mu kiruhuko cy'uburwayi.

[8] Urubanza rwaburanishijwe mu ruhame ku wa 20/05/2024, Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane bahagarariwe na Me Murera Valérie naho BPR Bank Rwanda Plc ihagarariwe na Me Mugemanyi Vedaste, iburanisha rirapfundikirwa ababuranyi bamenyeshwa ko urubanza ruzasomwa ku wa 07/06/2024, kuri uwo munsi Urukiko rufata icyemezo cyo kongere gupfundura iburanisha kugira ngo ababuranyi barugezeho ibisobanuro ku nyandiko bashyize muri dosiye nyuma y'iburanisha.

[9] Iburanisha ryapfunduwe ku wa 13/06/2024, ababuranyi bahagarariwe mu buryo bumwe n'ubwavuzwe haruguru, bageza ku Rukiko ibisobanuro ku bijyanye n'ibarwa ry'umwenda waregewe, runasaba BPR Bank Rwanda Plc gushyira muri dosiye inyandiko isobanura mu buryo burambuye uko uwo mwenda wabazwe, abaregwa nabo bakazagira icyo bayivugaho, Urukiko rukazasuzuma niba rwazaca urubanza bitabaye ngombwa ko hongera kuba iburanisha, ababuranyi barabyemera, isomwa ry'urubanza rishyirwa ku wa 28/07/2024; ku wa 19/06/2024 Me Mugemanyi Vedaste ashyira muri dosiye inyandiko igaragaza uburyo BPR Bank Rwanda Plc yabaze umwenda, naho ku wa 23/06/2024 Me Murera Valérie ashyira muri dosiye inyandiko zigaragaza uko Nzatunga Ruvuguta Emmanuel yagiye yishyura umwenda n'ingano y'amafaranga amaze kwishyura, Urukiko rusanga bihagije ngo ruce urubanza.

[10] Mu myanzuro no mu miburanire yabo Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane bavuga ko icyo banenga urubanza rwajuririwe ari uko Urukiko rwemeje ko bagomba kwishyura andi mafaranga atari ngombwa yiswe umwenda wasigaye nyuma y'uko hagurishijwe

mu cyamunara ingwate batanze zigenewe kwishyura umwenda wose, ntirunahe agaciro ibyo basabye ko hashyirwaho umuhanga wo kugaragaza umwenda nyakuri ukwiye kwishyurwa mu gihe nta kimenyetso na kimwe BPR Bank Rwanda Plc yatanze kigaragaza umwenda nyawo udashidikanywaho ibishyuza n'uko wabazwe; basaba Urukiko kwemeza ko nyuma y'amafaranga y'umwenda bishyuye n'ingwate batanze zikegukanwa na BPR Bank Rwanda Plc, nta yandi mafaranga bagomba kwishyuzwa; ariko Urukiko rwabibona ukundi bagategekwa kwishyura ikinyuranyo hagati y'inguzanyo bahawe n'amafaranga yose bishyuye; basaba no kugenerwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

[11] Uhagarariye BPR Bank Rwanda Plc avuga ko ubwo bujurire nta shingiro bufite kuko mu kubara umwenda usigaye nyuma yo kugurisha ingwate muri cyamunara hadashingirwa ku gaciro k'ingwate kagaragajwe n'igenagaciro igihe hatangwaga inguzanyo, ahubwo hashingirwa ku mafaranga yavuye muri cyamunara ; avuga kandi ko atari ngombwa ko hashyirwaho umuhanga kuko ibimenyetso biri muri dosiye bihagije mu kugaragaza ingano y'umwenda ugomba kwishyurwa.

[12] Uhagarariye BPR Bank Rwanda Plc kandi yatanze ubujurire bwuririye ku bundi, asaba Urukiko gutegeka Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane kwishyura umwenda remezo n'inyungu zawo zibaze kugeza urubanza rubaye itegeko, kuko ari bo bakomeje kujurira aho kwishyura amafaranga bategetswe n'urukiko bigakomeza guteza banki igihombo ; bakishyura n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego.

[13] Hashingiwe ku mpaka zagaragajwe haruguru, Urukiko rurasuzuma ibibazo bikurikira bigize urubanza :

a) Kumenya niba abajuriye batagomba kwishyura BPR Bank Rwanda Plc amafaranga y'umwenda wasigaye nyuma y'uko ingwate batanze zigurishijwe ;
b) Kumenya ingano y'umwenda ugomba kwishyurwa, mu gihe byaba bigaragaye ko bagomba kuwishyura ;
c) Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba abajuriye batagomba kwishyura BPR Bank Rwanda Plc amafaranga y'umwenda wasigaye nyuma y'uko ingwate batanze zigurishijwe

[14] Me Murera Valérie, uhagarariye Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane bajuriye, avuga ko ubujurire bwabo bugamije kugaragaza ko nyuma yo kugurisha mu cyamunara ingwate bari bayihaye, nta yandi mafaranga bagombaga gutegekwa kwishyura BPR Bank Rwanda Plc kuko nta bundi burenganzira iyo Banki yari ifite bwo kubarega ibishyuza amafaranga y'inyongera ku mwenda arenze ku ngwate yahawe kandi yegukanye, kuko kugeza ku wa 07/12/2017 ubwo BPR Bank Rwanda Plc yabonaga ko bananiwe kwishyura ikabandikira ibihanangiriza bwa nyuma, izo ngwate zari zifite agaciro karenze umwenda bari bayibereyemo; ko rero BPR Bank Rwanda Plc yagombaga gucungana n'icyo gihe igahita igurisha ingwate yahawe hanyuma ikiyishyura umwenda wose aho gutegereza kubikora mu mwaka wa 2019.

[15] Akomeza asobanura ko gukomeza kubara umwenda n'inyungu zawo nyuma y'uko ingwate zigurishijwe muri cyamunara binyuranyije n'ingingo ya 15 y'Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa[1], n'ingingo ya 11 y'amasezerano y'inguzanyo impande zombi zagiranye[2] kuko ko BPR Rwanda Plc yemeye ingwate imaze kubona ko zizishyura umwenda wose igihe abajuriye bazaba bananiwe kwishyura, ko rero itakomeza kuvuga ko hari umwenda bayibereyemo igendeye ku makosa yayo yo kutagurisha ingwate mu gihe gikwiriye, n'aho izigurishirije ikaba ari yo izegukana mu gaciro kazo kose bityo ikaba nta gihombo yagize; asoza asaba Urukiko kwemeza ko nta deni rya BPR Bank Rwanda Plc, Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane basigayemo.

[16] Me Mugemanyi Vedaste, uhagarariye BPR Bank Rwanda Plc, avuga ko amasezerano impande zombi zagiranye agaragaza ko Nzatunga Ruvuguta Emmanuel yahawe inguzanyo ingana na 250.000.000 Frw, ubwo cyamunara y'ingwate yatanze yatangiraga tariki ya 07/12/2017 akaba yari afite umwenda yakereranywe ungana na 238.206.717 Frw, kandi muri cyamunara hakaba haravuyemo 120.000.000 Frw nk'uko bigaragazwa na Raporo za cyamunara; mu gihe ayo mafaranga yavuye muri cyamunara yishyurwaga umwenda ukaba wari wazamutse ugeze kuri 248.693.532 Frw, bityo abajuriye bakaba batakwirengagiza umwenda usigaye batishyuye n'inyungu zawo ngo bumve ko BPR Bank Rwanda Plc yareka kuwishyuza; avuga ko ibi byaba ari akarengane kuri BPR Bank Rwanda Plc kuko amafaranga itanga nk'inguzanyo aba agomba kugaruka n'inyungu zayo, abajuriye bakaba nta kimenyetso batanga kigaragaza ko bishyuye umwenda wose n'inyungu zawo zose.

[17] Akomeza avuga ko imitungo y'umuntu ari ingwate y'abo abereyemo umwenda, bityo kuba abajuriye baratanze ingwate ariko mu kuzigurisha ntizivemo amafaranga yakwishyura umwenda wose babereyemo BPR Bank Rwanda Plc bidasobanuye ko umwenda usigaye utagomba

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[1] Ingingo ya 15 y'Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa igira iti :
"Igihe uwatanze ingwate atabashije kwishyura, uwahawe ingwate ashobora gusaba Umwanditsi Mukuru gukoresha bumwe mu buryo bukurikira :
1° gushyiraho umuntu uhabwa gucunga ingwate n'ibiyikomokaho ;
2° gukodesha ingwate abyumvikanyeho n'uwatanze ingwate ;
3° kwegukana ingwate abyumvikanyeho n'uwatanze ingwate
; 4° kugurisha ingwate abyumvikanyeho n"uwatanze ingwate.

Mu gihe uwatanze ingwate atubahiriza inshingano ze zo kwishyura nk"uko biteganyijwe mu masezerano y"ubugwate, uwahawe ingwate yandikira uwatanze ingwate amwibutsa inshingano atubahirije akagenera kopi Umwanditsi Mukuru.

Imenyesha risabwa mu gika cya mbere cy'iyi ngingo rigomba kugaragaza ibyo atishyuye n'uko bingana n'uko uwahawe ingwate ashobora gukoresha inzira zemewe n'amategeko kugira ngo haboneke ubwishyu buvuye mu ngwate yagwatirijwe.

[2] Mu ngingo ya 10 y'amasezerano impande zombi zagiranye, uwahawe inguzanyo yemeye ko mu gihe azaba atubahirije amasezerano, kandi nyuma y'uko Banki imuhaye integuza, izakoresha bumwe mu buryo bukurikira izasanga aribwo bukwiriye hakurikijwe amategeko agenga ingwate, kugira ngo yiyishyure : gucunga ingwate, gukodesha ingwate, kuyegukana cyangw akuyigurisha.

kwishyurwa hifashishijwe indi mitungo batunze cyangwa bazatunga kuko umwenda urangira ari uko wishyuwe wose.

UKO URUKIKO RUBIBONA

[18] Impaka kuri iki kibazo zishingiye ku kumenya niba nyuma y'uko ingwate abajuriye bahaye BPR Bank Rwanda Plc zigurishijwe ariko umwenda wose bari bayifitiye ntushobore kwishyurwa nta yandi mafaranga iyi Banki ikwiriye kubishyuza hashingiwe ku mpamvu y'uko n'ubundi izo ngwate zari zigamije kugaruza inguzanyo bahawe mu gihe batabashije kuyishyura kandi BPR Bank Rwanda Plc ikaba ari yo yazegukanye mu cyamunara.

[19] Ikibazo gisa n'iki cyasuzumwe mu rubanza RCOMAA 00079/2016/SC-RCOMAA 0085/16/CS rwaciwe n'Urukiko rw'Ikirenga haburana EQUITY BANK RWANDA Ltd na Barawigirira Issa, aho mu gika cyarwo cya 30 Urukiko rwasanze hakurikijwe ibiteganywa n'ingingo ya 64[3] y'Itegeko N°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, kuba amafaranga yavuye muri cyamunara atarahwanye n'umwenda wose Barawigirira Issa yari abereyemo EQUITY BANK RWANDA Ltd, ibyo bivuze ko Barawigirira Issa agomba kwishyura umwenda wasigaye nyuma yo kugurisha ingwate.

[20] Ibi byanagarutsweho n'Urukiko rw'Ubujurire mu rubanza RCOMA 00008/2021/CA rwaciwe ku wa 10/06/2022 haburana Bank of Kigali Plc na Musabyimana Spéciose, aho mu gika cya 20, Urukiko rwasanze nta mpamvu yatuma Musabyimana Spéciose adategekwa kwishyura umwenda wasigaye nyuma yo kugurisha ingwate muri cyamunara mu gihe atagaragaza ko yawishyuye, cyane ko gutanga ingwate no kwishyura umwenda ari ibintu bibiri bitandukanye, ariyo mpamvu ingwate igurishwa kugira ngo amafaranga avuyemo abashe kwishyura umwenda, mu gihe iguzwe amafaranga make atakwishyura umwenda wose, ubwishyu bugashakirwa no mu yindi mitungo y'ubereyemo Banki umwenda.

[21] Urukiko rw'Ubujurire kandi rwasobanuye ko kuba uwahawe inguzanyo avuga ko nta mafaranga agombaga gutegekwa kwishyura Banki kuko ingwate yatanze yari ihagije mu kwishyura umwenda yari ayifitiye nta shingiro bifite, kuko iyo ngwate itashoboye kwishyura uwo mwenda. Ibi Urukiko rwabishingiye ku byasobanuwe n'abahanga Philippe MALAURIE na Laurent AYNES mu gitabo cyabo *Droit des sûretés, 13ème édition, Paris 2019, pp. 428-429*, ko ingwate ari uburenganzira butangwa n'itegeko, urubanza cyangwa amasezerano, bushingiye ku mutungo utimukanwa cyangwa ku bwoko runaka bw'imitungo yimukanwa bwemerera ufitiwe umwenda gukurikira uwo mutungo aho waba uri hose.

[22] Uru rukiko rushingiye ku bisobanuro byatanzwe mu manza zavuzwe haruguru, rurasanga ibyo Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane bavuga ko nta yandi mafaranga y'umwenda bagomba kwishyura BPR Bank Rwanda Plc nyuma y'uko yegukanye ingwate bayihaye binyuze muri cyamunara kuko izo ngwate zari zigenewe kugaruza umwenda wose kandi zikaba zari zifite agaciro karuta umwenda bahawe, nta shingiro bifite; bityo hakaba nta mpamvu

[3] Ingingo ya 64 y'Itegeko N°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano igia iti: "*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*".

yatuma batishyura BPR Bank Rwanda Plc amafaranga y'umwenda yasigaye nyuma y'uko ingwate bahaye banki igurishijwe ariko ntishobore kwishyura umwenda wose.

[23] Urukiko rurasanga no kuba BPR Bank Rwanda Plc ari yo yegukanye iyo ngwate muri cyamunara ntacyo bihindura ku nshingano ya yo kwishyura umwenda wasigaye, kuko BPR Bank Rwanda Plc yari ifite uburenganzira bwo kugura ingwate kimwe n'abandi baguzi hashingiwe ku biteganywa mu ngingo ya 21 y'Itegeko Nº 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa iteganya ko "Iyo uwahawe ingwate yifuza kugura ingwate igiye kugurishwa, ahabwa uburenganzira mbere y'abandi baguzi mu gihe igiciro cye kingana n'icy'abandi".

[24] Urukiko rushingiye ku bisobanuro byose byatanzwe rurasanga nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu gutegeka Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane kwishyura BPR Bank Rwanda Plc amafaranga y'umwenda yasigaye nyuma y'uko ingwate bahaye iyo banki igurishijwe, bityo iyi mpamvu y'ubujurire ikaba nta shingiro ifite.

2. Kumenya ingano y'umwenda ugomba kwishyurwa

[25] Me Murera Valerie avuga ko indi mpamvu yatumye Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane ahagarariye bajurira, ari uko mu Rukiko Rukuru rw'Ubucuruzi basabye ko hashyirwaho umuhanga mu rwego rwo gukuraho urujijo rwatumye babarirwa umwenda munini ku buryo na nyuma y'uko BPR Bank Rwanda Plc yegukanye ingwate zose batanze kandi zifite agaciro kanini iyi Banki yakomeje kubara umwenda no kuvuga ko batarangije kuwishyura wose, rwirengagije ko bagiye bamenyeshwa mwenda mu nyandiko ariko ntibagaragarizwe uko ungana n'uko ubazwe mu buryo bugaragara.

[26] Akomeza asobanura ko hashingiwe ku ngingo ya 4 y'Amabwiriza rusange N° 02/2011 ku ishyirwa mu byiciro by'imyenda no guteganya ingoboka, iteganya ko iyo uwahawe inguzanyo arengeje iminsi 90 atarishyura ibarwa ry'umwenda n'inyungu zaba izisanzwe cyangwa iz'ubukererwe rihagarara, ko rero ariko byagombaga kugenda no ku bireba abo ahagarariye kuko BPR Bank Rwanda Plc yari ifite inshingano yo guhita yubahiriza ibyo impande zombi zumvikanye mu ngingo ya 11 y'amasezerano zagiranye, ko mu gihe uhawe inguzanyo atazubahiriza amasezerano, nyuma y'uko banki imwihanangirije izakoresha uburyo bunyuranye bwo kwiyishyura harimo no kugurisha ingwate yahawe muri cyamunara. Avuga ko kuba hatarashyizweho umuhanga byatumye n'ubu abo ahagarariye batabasha kumenya ingano y'umwenda nyakuri barimo BPR Bank Rwanda Plc guhera batangira kwishyura kugeza ubwo igihe bagombaga kwishyuriraho buri kwezi cyarengagaho iminsi 90.

[27] Me Murera Valérie avuga ko ibyo BPR Bank Rwanda Plc isaba mu bujurire bwuririye ku bundi nta shingiro bifite kuko abo ahagarariye batigeze banga kwishyura, kandi ko mu gihe bananiwe kwishyura amasezerano impande zombi zagiranye yagombaga kubahirizwa nk'uko ari, banki ntishake kubishyuza amafaranga arenze ayo bumvikanye itanagaragaza uko yabazwe. Akomeza asobanura ko abo ahagarariye batemera ingano y'umwenda wabazwe ba BPR Bank Rwanda Plc kuko bo basanga nta yandi mafaranga bakwiriye kwishyuzwa nyuma y'uko bishyuye 211.801.389 Frw y'umwenda (agizwe na-103.056.926 Frw bishyuye mbere y'uko bihanangirizwa bwa nyuma na 93.282.292 frw yavuye muri cyamunara) n'ingwate zabo zikegukanwa n'iyo banki;

bavuga cyakora Urukiko rubibonye ukundi bakwishyura 38.198.611 Frw y'ikinyuranyo hagati ya 250.000.000 frw hahawe nk'inguzanyo n'ayo bishyuye yavuzwe haruguru.

[28] Me Mugemanyi Vedaste, uhagarariye BPR Bank Rwanda Plc, avuga ko ibijyanye n'umwenda Urukiko rwabisobanukiwe kandi rukawugaragaza hamwe n'inyungu zawo, bityo ibyo abajuriye bavuga bikaba nta shingiro byahabwa kuko kugira ngo hashyirweho umuhanga ubisaba agomba kugaragaza neza ibyo ashingiraho kandi bikagaragara ko hari ibikeneye kugaragazwa n'umuhanga koko.

[29] Ahubwo mu bujurire bwuririye ku bundi, uhagarariye BPR Bank Rwanda Plc, avuga ko umwenda n'inyungu zawo Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane bagomba kwishyura BPR Bank Rwanda Plc bigomba kubarwa guhera tariki ya 07/12/2017 ubwo bihanangirizwaga bwa nyuma kugeza urubanza ruciwe, kuko umwenda utishyuwe ukomeza kubarirwa inyungu kugeza wishyuwe wose n'inyungu zawo, kandi abajuriye bakaba ari bo bakomeje kujurira aho kwishyura amafaranga bategetswe n'Urukiko bigakomeza guteza banki igihombo.

[30] Akomeza asobanura ko ubwo abajuriye bihanangirizwaga bwa nyuma, umwenda wari usigaye kwishyurwa wanganaga na 238.206.717 Frw ukubiyemo umwenda remezo, inyungu zisanzwe n'inyungu z'ubukererwe, ukomeza kubarirwa inyungu mu gihe cyose utarishyurwa (18% ku nyungu zisanzwe na 22% ku nyungu z'ubukererwe), nyuma y'uko ingwate zabo zombi zigurishijwe muri cyamunara (tariki ya 08/08/2019) hasigara umwenda ungana na 211.261.853 Frw, ari nawo BPR Bank Rwanda Plc yaregeye; kugeza tariki ya 17/6/2024 umwenda wose wishyuzwa ukaba ungana na 401.514.973 Frw, ugizwe na 229.230.913 Frw y'umwenda remezo na 172.284.041 Frw y' inyungu zingana (reba imbonerahamwe iri muri dosiye yatanzwe na BPR Rwanda Plc, igaragaza uko umwenda wose wabazwe).

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[31] Ipfundo ry'ikibazo kuri iyi ngingo rishingiye ku kumenya niba umwenda BPR Rwanda Plc yishyuza abajuriye waragombaga gukomeza kubarwa na nyuma y'uko bihanangirijwe bwa nyuma n'ingwate bahaye Banki zikagurishwa, n'ingano nyakuri y'uwo bagomba kwishyura.

[32] Ingingo ya 3 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[33] Ikibazo gisa n'icyavuzwe haruguru cyasuzumwe mu rubanza RS/INJUST/RCOM 00010/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 15/12/2023, haburana UNGUKA Bank Plc na Ndagijimana Théoneste, aho Urukiko rw'Ikirenga rushingiye ku ngingo ya 7[4], igika cya kabiri

[4] Ingingo ya 7, igika cya kabiri, y'Amabwiriza Rusange n° 12/2017 yo ku wa 23/11/2017 ku ishyirwa mu byiciro ry'imyenda no guteganya ingoboka amaze kuvugwa, iteganya ko inyungu zose ku myenda itishyurwa neza zabariwe mbere mu mutungo ariko ntizakirwe zigomba guhindurwa kandi zikandikwa kuri konti y'inyungu zahagaze kugeza igihe zishyuriwe n'uwasabye umwenda.

n'iya 24[5], igika cya kabiri, z'Amabwiriza Rusange N° 12/2017 yo ku wa 23/11/2017 ku ishyirwa mu byiciro ry'imyenda no guteganya ingoboka, n'ingingo ya 112 - 2° y'Itegeko nº 47/2017 ryo ku wa 23/9/2017 rigena imitunganyirize y'imirimo y'amabanki ryubahirizwaga urubanza rucibwa[6], rwasanze ibiteganyijwe muri izo ngingo iyo bihurijwe hamwe byumvikanisha ko inyungu ku nguzanyo banki ziha abakiliya bazo zikomeza kubarwa kugeza umwenda wose wishyuwe, icy'ingenzi akaba ari uko inyungu banki zishobora kwishyuza zitagomba kurenga umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa; ko nta ngingo y'itegeko n'imwe ivuga ko iyo umukiliya atishyuye mu gihe runaka inyungu zihagarara kubarwa hakagurishwa ingwate[7].

[34] Muri urwo rubanza, Urukiko rw'Ikirenga rushingiye kuri ibyo bisobanuro rwasanze nta cyari kubuza UNGUKA Bank Plc gukomeza kubara inyungu nk 'uko amasezerano yari yagiranye na Ndagijimana Théoneste abiteganya igihe cyose yari atararangiza kwishyura umwenda ayibereyemo, icya ngombwa ni uko izo nyungu zitarenza umwenda shingiro utarishyuwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa, nk'uko biteganyijwe mu ngingo ya 112-2° y'Itegeko ryavuzwe haruguru rigena imitunganyirize y'imirimo y'amabanki (ryakurikizwaga icyo gihe).

[35] Urukiko rushingiye ku byasobanuwe muri urwo rubanza rwaciwe n'Urukiko rw'Ikirenga, rusanga no ku bireba umwenda Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane bahawe na BPR Bank Rwanda Plc, nta kibuza ko ukomeza kubarirwa inyungu na nyuma y'uko bihanangirijwe bwa nyuma n'ingwate batanze zikagurishwa, igihe cyose batararangiza kwishyura ; bityo iyi mpamvu yabo y'ubujurire ikaba nta shingiro ifite.

[36] Ku birebana n'ingano y'umwenda abajuriye bagomba kwishyura, Urukiko rurasanga ibisobanuro byatanzwe n'ababuranyi mu iburanisha no mu nyandiko bashyize muri dosiye ku bijyanye n'uburyo ugomba kubarwa bihagije kugir ango urubanza rucibwe.

[37] Urukiko rurasanga mu bujurire bwuririye ku bundi uhagarariye BPR Bank Rwanda Plc agaragaza ko umwenda wose hamwe iyi Banki ibishyuza ungana na 401.514.973 Frw (agizwe na 229.230.913 Frw y'umwenda remezo na 172.284.041 Frw y' inyungu) wabazwe haherewe ku mwenda wari usigaye ubwo bihanangirizwaga bwa nyuma ndetse na nyuma y'uko hakuwemo amafaranga yavuye muri cyamunara y'ingwate zabo, akanagaragaza uburyo umwenda wasigaye

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[5] Ingingo ya 24, igika cya kabiri, y'Amabwiriza yavuzwe haruguru iteganya ko Banki ishobora gutangiza inzira (zo kwishyuza) zabamo no kugurisha ingwate igihe umwenda utangiye kutishyurwa neza.

[6] Ingingo ya 112 - 2° y'Itegeko Nº 47/2017 ryo ku wa 23/9/2017 rigena imitunganyirize y'imirimo y'amabanki ryakurikizwaga icyo gihe, yateganyaga ko inyungu amabanki yishyuza ku nguzanyo zitishyuwe zitagomba kurenza umwenda shingiro utarishyuwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa.

[7] Ibyasobanuwe mu rubanza RS/INJUST/RCOM 00010/2022/SC binahura n'ibyasobanuwe mu rubanza RS/INJUST/RCOM 00008/2021/SC SIMACO Ltd yaburanye na I&M Bank Rwanda Plc rwaciwe ku itariki ya 25/02/2022, aho Urukiko rw'Ikirenga rwifashishije inyandiko z'abahanga mu mategeko, rwasobanuye ko gusesa amasezerano y'inguzanyo bidakuraho inshingano yateganyaga ku ruhande rw'uwahawe inguzanyo (igika cya 42 kugeza ku cya 46); byanagarutsweho n'Urukiko rw'Ubujurire mu rubanza RCOMAA 00002/2023/CA rwaciwe ku wa 26/03/2024 haburana NDANGIZI John na UNGUKA BANK Plc.

wagiye ubarirwa inyungu kugeza tariki ya 17/06/2024, hashingiwe ku gipimo cy'inyungu cyumvikanyweho mu masezerano; uhagarariye Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane akaba nta nenge yagaragaje ku bijyanye n'uburyo umwenda wabazwe n'ibyashingiweho cyangwa ngo agaragaze ikimenyetso kibivuguruza, bityo hakaba nta n'impamvu y'uko hashyirwaho umuhanga.

[38] Urukiko rushingiye ku bisobanuro byatanzwe haruguru no ku ngingo ya 3 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ryavuzwe haruguru, Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane bagomba kwishyura BPR Bank Rwanda Plc 229.230.913 Frw y'umwenda remezo na 172.284.041 Frw y' inyungu nk'uko yabazwe na BPR Bank Rwanda Plc, kuko nta kimenyetso bagaragaje kiyavuguruza; ibyo ubahagarariye avuga ko batemera ingano y'umwenda wabazwe kuko basanga nta yandi mafaranga y'umwenda bakwiriye kwishyuzwa nyuma y'uko bishyuye 211.801.389 Frw n'ingwate zabo zikegukanwa n'iyo banki, nta shingiro bifite kuko nk'uko byasobanuwe haruguru mu gusuzuma ikibazo kibanziriza iki, kuba banki yaregukanye ingwate muri cyamunara si impamvu ituma umwenda utarishyurwa udakomeza kubarirwa inyungu, kandi mu mafaranga bavuga ko bishyuye ntibagaragaza ko habariwemo n'inyungu zose bagomba kwishyura banki; hashingiwe kuri iyo mpamvu, n'ibyo avuga ko Urukiko rubibonye ukundi bakwishyura gusa ikinyuranyo cy'amafaranga y'inguzanyo bahawe n'ayo bishyuye bikaba nta shingiro bifite.

[39] Hashingiwe ku bisobanuro bimaze gutangwa, impamvu y'ubujurire bwa Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane ku bijyanye n'ingano y'umwenda ugomba kwishyurwa ikaba nta shingiro ifite, ahubwo ubujurire bwuririye ku bundi bwatanzwe na BPR Bank Rwanda Plc bukaba bufite ishingiro.

3. Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro

[40] Uhagarariye Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane asaba gutegeka BPR Bank Rwanda Plc kubishyura 2.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka ku rwego rwa mbere n'urwa kabiri na 1.000. 00 Frw y'igihembo cya Avoka kuri uru rwego.

[41] Uhagarararirye BPR Bank Rwanda Plc avuga ko ibyo abajuriye basaba nta shingiro bifite kuko ari bo batumye habaho imanza kugeza kuri uru rwego ; ahubwo agasaba ko BPR Bank Rwanda Plc ariyo yishyurwa 200.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cya Avoka.

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

[43] Urukiko rurasanga Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane ari bo bajuriye, kandi nk'uko byasobanuwe, ubujurire bwabo bukaba nta shingiro bufite, bityo

amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka basaba akaba nta shingiro afite; ahubwo kuko byabaye ngombwa ko BPR Bank Rwanda Plc iregwa mu bujurire ikurikirana urubanza ikanashaka Avoka uyiburanira kuri uru rwego, hashingiwe ku ngingo ya 111 yavuzwe haruguru ikaba ikwiriye kugenerwa amafaranga yose hamwe angana na 700.000 Frw agizwe na 500.000 Frw y'igihembo cya Avoka na 200.000 Frw yo gukurikirana urubanza, agenwe mu bushishozi bw'Urukiko, kuko ayo basaba ari menshi kandi bakaba nta n'ibisobanuro bayatangira.

III. ICYEMEZO CY'URUKIKO

[44] Rwemeje ko ubujurire bwatanzwe na Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane nta shingiro bufite.

[45] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na BPR Bank Rwanda Plc bufite ishingiro.

[46] Rwemeje ko Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane bagomba kwishyura BPR Bank Rwanda Plc amafaranga y'u Rwanda angana na miliyoni magana abiri na makumyabiri n'icyenda, ibihumbi magana abiri na mirongo itatu n'amafaranga magana cyenda na cumi n'atatu (229.230.913 Frw) y'umwenda remezo na miliyoni ijana na mirongo irindwi n'ebyiri, ibihumbi magana abiri na mirongo inani na bine n'amafaranga mirongo ine na rimwe (172.284.041 Frw) y' inyungu.

[47] Rutegetse Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane kwishyura BPR Bank Rwanda Plc amafaranga y'u Rwanda angana na miliyoni magana abiri na makumyabiri n'icyenda, ibihumbi magana abiri na mirongo itatu n'amafaranga magana cyenda na cumi n'atatu (229.230.913 Frw) y'umwenda remezo na miliyoni ijana na mirongo irindwi n'ebyiri, ibihumbi magana abiri na mirongo inani na bine n'amafaranga mirongo ine na rimwe (172.284.041 Frw) y' inyungu.

[48] Rutegetse Nzatunga Ruvuguta Emmanuel na Nyiramubyeyi Josiane kwishyura BPR Bank Rwanda Plc amafaranga ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka n'ibihumbi magana abiri (200.000 Frw) y'ikurikiranarubanza.