COGEBANQUE LTD v. FARAJA HOTEL LTD N'UNDI

[Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 00295/2019/HCC – (Mutajiri, P.J.) 20 Ukuboza 2019]

Amategeko agenga imanza z'ubucuruzi – Igihombo cya sosiyete – Kuzahura sosiyete – Ishyirwaho ry'umucungamutungo – Iyo sosisyete isabirwa gushyirwa muri gahunda y'izahurwa ikanagaragaza umucungamutungo yumva washyirwaho ariko urukiko rwabisuzuma rugasanga atari ku rutonde rugashyiraho uwatanzwe uri ku rutonde, ntibifatwa ko umucamanza yumvikanye na sosiyete ku cyemezo agomba gufata.

Amategeko agenga imanza z'ubucuruzi – Igihombo cya sosiyete – Kwishyura imyenda igejeje igihe – Uberewemo umwenda utemera izahurwa rya sosiyete – Kutagaragaza aho ubwishyu buzava mu gihe cy'izahura – Urukiko ntirwakwemeza itangizwa ry'izahura y'isosiyete mu gihe bigaragara ko mu masezerano sosiyete yagiye igirana n'abafatanyabikorwa bayo nta bwishyu buyaturukaho bugaragara kandi nta n'imari ihari yashorwamo cyangwa abiteguye kugura imigabane muri iyo sosiyete.

Incamake y'ikibazo Faraja Hotel Ltd yagiranye na COGEBANQUE amasezerano y'inguzanyo yagombaga kuyifasha kurangiza no gutangiza ubucuruzi bwayo. Serivisi za hotel ntizaje kugenda neza bituma COGEBANQUE isesa ya masezerano; bituma Faraja Hotel nayo itangira inzira zo gusaba Urukiko rw'Ubucuruzi ko yashyirwa muri gahunda y'izahurwa.

Urukiko rw'Ubucuruzi rwemeje ko ikirego cyayo gifite ishingiro maze ruyishyira muri gahunda y'izahurwa runaboneraho gushyiraho Mubumbyi William Joseph nk'umucungamutungo w'agateganyo wa Faraja Hotel Ltd.

COGEBANQUE yajuririye Urukiko Rukuru ivuga ko umucungamutungo w'agateganyo yashyizweho mu buryo bunyuranyije n'amategeko ngo kuko yagiyeho urukiko rwabyumvikanye na Faraja Hotel; ko mu ishyirwa muri gahunda y'izahurwa kwa FARAJA HOTEL hatagaragajwe aho izakura ubwishyu nk'ubwo COGEBANQUE yari kubona mu iyegeranya n'igabagabanya ry'umutungo w'isosiyete, ko kandi urukiko rutasuzumye neza ko nta mpamvu zumvikana zo kuzahura ubucuruzi bwa FARAJA HOTEL kuburyo mu gihe kizaza izubahiriza inshingano zo kwishyura imyenda igejeje igihe.

FARAJA Hotel Ltd yireguye ivuga ko uburyo umucungamutungo w'agateganyo washyizweho bukurikije amategeko kuko uwo yari yasabye mbere ko yashyirwaho urukiko rwasanze atari ku rutonde bimtuma hashyirwaho Mubumbyi William Joseph; bityo ikavuga ko iyi mpamvu y'ubujurire ya COGEBANQUE nta shingiro ifite.

Kubijyanye n'ahazava ubwishyu, Faraja Hotel yireguye ivuga ko hari amasezerano yagiranye n'abafatanyabikorwa batandakukanye, ko kandi hari n'abashoramali biteguye gushyiramo imali yabo. Bityo, ko mu gihe ibyo byose bikozwe aribwo aribwo izubahiriza inshingano zo kwishyura imyenda yayo igejeje igihe.

Incamake y'icyemezo: 1. Ntibifatwa nkaho umucamanza yumvikanye na sosiyete ku cyemezo agomba gufata mu ishyirwaho ry'umucungamutungo wazahura sosiyete mu gihe bigaragara ko

uwari watanze ikirego nyuma yo kubona umucungamutungo w'agateganyo yari yatanze atemewe yihutiye gushaka undi akamushyikiriza urukiko ngo rumwemeze.

2. Urukiko ntirushobora kwemeza izahura ry'isosiyete mu gihe sosiyete igaragaragaragaramo igihombo gikabije kandi akaba nta mushoraramari cyangwa abashoramari barigaragaza baba bashaka gushora imari yabo muri iyo sosiyete.

Ubujurire bufite ishingiro.
Urubanza RCOM 02171/2018/TC ruteshejwe agaciro.
Uregwa agomba kwishyura uwajuriye amagarama yatanze ajurira.

Amategeko yashingiweho:
Itegeko N° 23/2018 ryo ku wa 29/04/2018 ryerekeye igihombo cy'isosiyete n'icy'umuntu ku giti cye, ingingo ya 80 igika cya 2, ingingo ya 81 agace ka 2 n'ingingo ya 190.

Nta manza zifashishijwe.

Urubanza

IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu rukiko rw'ubucuruzi FARAJA Hotel Ltd irega gusaba gutangiza izahura ry'ubucuruzi bwa FARAJA HOTEL no gushyiraho Umucungamutungo wizahura ryayo.

[2] Inkomoko y'urubanza akaba ari ukuba FARAJA Hotel Ltd yarahawe inguzanyo na COGEBANQUE Ltd kugira ngo ibashe kurangiza imirimo yo kubaka no gutangiza ubucuruzi bwayo. Hotel yarangijwe kubakwa itangira gukora ariko iza kugira ikibazo cy'ubukungu ku buryo kwishyura inguzanyo yahawe byayigoye bituma kuwa 19/07/2018, COGEBANQUE Ltd isesa amasezerano y'inguzanyo inamenyesha FARAJA Hotel Ltd ko umwenda iyifitiye ungana na 983,024,542 FRW.

[3] FARAJA Hotel Ltd yatanze ikirego mu rukiko, irusaba kwemeza itangizwa ry'izahura ry'ubucuruzi bwayo kuko hari umushoramari bagiye gukorana kandi bafitanye gahunda yo kuyizahura. FARAJA yanasabaga ko hashyirwaho umucungamutungo wayo uzafatanya n'ubuyobozi bwayo mu gikorwa cyo kuyizahura.

[4] COGEBANQUE Ltd iberewemo umwenda yagobotse mu rubanza ivuga ko isanga nta ngamba zigaragara FARAJA Hotel Ltd ifite zo kuyizahura ikaba idatanga icyizere cyo kuzahuka kuko nta mutungo FARAJA ifite mu gihe umwenda ifitiye COGEBANQUE umaze kurenga 1,066,020,282 FRW. COGEBANQUE yavugaga ko bigaragara ko yahombye kandi itazahurwa igasaba Urukiko kwemeza ko ishyirwa mu iyegeranya n'igabana ry'umutungo wayo (liquidation).

[5] Urukiko rwemeje ko ikirego gisaba izahurwa rya FARAJA Hotel Ltd gifite ishingiro; rutegeka ko izahura ry'ubucuruzi bwa FARAJA Hotel Ltd ifite Tin No:102944483, ikorera mu karere ka Musanze mu ntara y'Amajyaruguru, ritangiye uhereye kuwa 01/03/2019 kugeza

31/07/2019 maze rwemeza Mubumbyi William Joseph nk’umucungamutungo w’agateganyo wa FARAJA Hotel Ltd mu gihe cy’izahurwa ryayo runagena n’inshingano ze.

[6] COGEBANQUE ikaba itarishimiye imikirize y’urubanza maze Me Yves SANGANO mu mwanya wayo ajurira avuga ko urubanza rwaciwe mu buryo bunyuranyije n’amategeko, asaba gukuraho icyemezo cyo gushyira FARAJA HOTEL mu gihombo hagamijwe kuyizahura, ko Urukiko rutasuzumye impungenge za COGEBANQUE nk’uberewemo umwenda kandi utemera izahura, kuko hatagaragazwa aho FARAJA HOTEL izakura ubwishyu nk’ubwo COGEBANQUE yari kubona mu iyegeranya n’igabagabanya ry’umutungo w’isosiyete, ko urukiko rutasuzumye neza ko nta mpamvu zumvikana zo kuzahura ubucuruzi bwa FARAJA HOTEL kuburyo mu gihe kizaza izubahiriza inshingano zo kwishyura imyenda igejeje igihe.

[7] FARAJA Hotel Ltd na Mubumbyi William mu kugira icyo bavuga ku mpamvu z’ubujurire, basobanura ko nta shingiro zifite kuko kuvuga ko icyemezo cy’umucamanza cyamenyekane mbere ataribyo kuko umucungamutungo wari watanzwe mbere byagaragaye ko atari k’urutonde rwabacungamutungo bemewe, bityo bibangombwa ko rubasaba gushaka uri ku rutonde. Ko kandi ibyo kuvuga ko izahura ridashoboka nta nshingiro bifite kuko mbere y’uko urukiko rufata icyemezo ari uko FARAJA yarugaragarije uburyo iri zahura rizakorwa, ariko ngo mu bujurire bwa COGEBANQUE ntabwo bagaragaza ibyo banenga bigendanye n’uburyo FARAJA yagaragaje uko izahura rizakorwa.

[8] Muri uru rubanza hakaba hagomba gusuzumwa niba urubanza rwaraciwe mu buryo bunyuranyije n’amategeko, gusuzuma niba Urukiko rutarasuzumye impungenge za COGEBANQUE nk’uberewemo umwenda kandi utemera izahura, kuko hatagaragazwa aho FARAJA HOTEL izakura ubwishyu nk’ubwo COGEBANQUE yari kubona mu iyegeranya n’igabagabanya ry’umutungo w’isosiyete no gusuzuma niba urukiko rutarasuzumye neza ko nta mpamvu zumvikana zo kuzahura ubucuruzi bwa FARAJA HOTEL kuburyo mu gihe kizaza izubahiriza inshingano zo kwishyura myenda igejeje igihe, gusuzuma niba MUBMBYI Joseph yahabwa igihembo k’igihe yamaze ari umucungamutungo w’agateganyo wa FARAJA HOTEL Ltd no gusuzuma niba indishyi zisabwa na FARAJA Hotel Ltd zifite ishingiro.

II. ISESENGURA RY’IBIBAZO

A. Ku birebana no gusuzuma niba Urubanza ryaraciwe mu buryo bunyuranyije n’amategeko

[9] Me YVES SANGANO asobanura ko umucamanza yarenze ku nshingano zo guca urubanza mu muhezo nk’uko biteganyijwe mu ngingo ya 130 CPCCSA, aho icyemezo agomba gufata cyamenyekanye mbere y’uko gifatwa ngo bikaba bigaragazwa nu kuba Umucamanza yarumvikanye na FARAJA HOTEL ku cyemezo agomba gufata, bikaba bigaragazwa n’inyandiko iri muri note ya IECMS yakozwe na RD Advocates (iburanira FARAJA HOTEL) yo kuwa 26/02/2019 aho yanditse ivuga ko yamaze kumvikana n’umucungamutungo Mubumbyi Joseph ku gihembo cy’amafaranga ibihumbi FRW 500,000 buri kwezi. Hejuru yo kwica itegeko, Ibi bikaba byarakozwe mu buryo bunyuranyije kandi n’ingingo ya 74 y’itegeko ry’igihombo ivuga ku byerekeye ubugenzuzi bw’urukiko ku mucungamutungo w’agateganyo cyangwa umucungamutungo.

[10] Akomeza asobanura ko ibyavuzwe na R.D Advocates ko biri mu cyemezo cy'urukiko cyafashwe kuwa 01/03/2019, nyuma y'iminsi 4 aho kivuga mu duce twa 16 (gushyiraho MUBUMBYI Joseph nka administrator) na 19 (igihembo cy'administrator). Ibi ngo bigaragara ko byakozwe nyuma y'uko umucamanza asubitse isomwa ryo kuwa 14/02/2019 kubera ko FARAJA yari yasabye administrator utari ku rutonde, isomwa ngo ryimuriwe kuwa 22/02/2019 ariko ntiryaba, ntihanagaragazwa impamvu ritabaye kugeza igihe ngo COGEBANQUE itangiye ubujurire.

[11] Asoza asobanura ko ikigaragara ari uko isomwa ryabaye ku wa 01/03/2019 saa tatu, PV ikaba igaragaza ko isomwa ritabaye ku wa 14/02/2019 kubera administrator atari yemewe. Ibi byose akaba ngo aribigaragaza impamvu umucamanza atigeze asuzuma impamvu zatanzwe na COGEBANQUE nk'uko zigaragara mu kibazo cya 2 na 3 z'iki kirego. Avuga ko Mubumbyi Joseph yakoze raporo agaragaza ko kugira iyo sosiyete izahurwe ari uko haboneka undi muntu ushyiramo amafaranga.

[12] Me Rutagengwa Jean Damascene akoresheje imyanzuro ya Me Matovu Paul asobanura ko ibyo COGEBANQUE ivuga nta nshingiro bifite, kuko urubanza bajuririra rwasomwe kuwa 01/03/2019, ariko mbere y'uko rusomwa hagiye haba amasubika y'isomwa, isubikwa rya mbere akaba ngo ari uko urukiko rwategetse ko COGEBANQUE ihamagazwa mu rubanza, naho ibyo avuga ko icyemezo cy'urukiko cyamenyekanye mbere ataribyo, kuko ngo FARAJA utanga ikirego batanze uwitwa Kayiranga Cyrille nk'uzaba ashizwe izahurwa rya FARAJA HOTEL, ariko urukiko ngo rwarebye k'urutonde rusanga atariho maze rubasaba gushaka uri ku rutonde. Ibyo rero ntabwo bigaragaza ko icyemezo cy'urukiko cyari cyamenyekanye, ntabwo umucamanza yari kujya kwiherera ngo asuzume urubanza kandi hagaragaye ko harimo ikibazo, ibyo ntabwo aribyo bakwita ko icyemezo cyari kizwi mbere y'uko urubanza rusomwa.

[13] Avuga ko Mubumbyi washyizweho ari umusaza ugeze mu zabukuru kuburyo atashobora gukora ako kazi, ko ndetse yanavuze ko ako kazi atagashobora.

[14] Ku kibazo cyo kumenya niba urukiko ruramutse rusanze FARAJA igomba gushyirwa mu izahura niba Mubumbyi yakomeza kuba umucungamutungo, Me Yves Sangano asobanura ko kugeza ubu nta kigaragaza ko atashobora inshingano ze nk'uko biteganywa n'itegeko, ko icyanenzwe ari uburyo yashyizweho ndetse n'igihembo yagenewe.

[15] Me Rutagengwa asobanura ko kubwabo bumva hashyirwaho undi mucungamutungo kuko kuva yashyirwaho yahageze kabiri gusa, ko kandi nawe yabyiyemereye. Avuga ko bagiye mri RDB, ko ariko kubera ko urubanza rwari rwarajuririwe ntakindi cyari gukorwa.

UKO URUKIKO RUBIBONA

[16] Urukiko rusanga ibivugwa na Me Sangano Yves ko umucamanza yarenze ku nshingano zo guca urubanza mu muhezo nk'uko biteganyijwe mu ngingo ya 130 CPCCSA, aho icyemezo agomba gufata cyamenyekanye mbere y'uko gifatwa ngo bikaba bigaragazwa nu kuba Umucamanza yumvikanye na FARAJA HOTEL ku cyemezo agomba gufata, bikaba bigaragazwa n'inyandiko iri muri note ya IECMS yakozwe na RD Advocates (iburanira FARAJA HOTEL) yo kuwa 26/02/2019 aho yanditse ivuga ko yamaze kumvikana n'umucungamutungo MUBUMBYI Joseph ku gihembo cy'amafaranga ibihumbi FRW 500,000 buri kwezi, bitahabwa ishingiro kuko

ikigaragara ari uko Me Sangano Yves yitiranya igikorwa cyo gushyiraho umucungamutungo n'igihembo agomba guhabwa n'igikorwa cyo guca urubanza mu mizi yarwo, kuko kuba nyuma y'isubikwa ry'isomwa ry'urubanza ryakozwe kuwa 14/02/2019 kubera ko umucungamutungo w'agateganyo Kayiranga Cyrille wari watanzwe nta bubasha abifitiye kuko atari k'urutonde rw'abacungamutungo bemewe, kuba kuwa 26/02/2019 uburanira FARAJA Hotel Ltd yarandikiye urukiko arumenyesha ko hari undi mucungamutungo w'agateganyo witwa Mubumbyi Joseph babonye ndetse bumvikanye nawe igihembo agomba kuzahabwa, ibi bigaragara ko uwari watanze ikirego nyuma yo kubona umucungamutungo w'agateganyo yari yatanze atemewe yihutiye gushaka undi, ibyo rero bikaba bitagomba gufatwa nkaho umucamanza yumvikanye na FARAJA HOTEL ku cyemezo agomba gufata.

B. Kubirebana no gusuzuma niba Urukiko rutarasuzumye impungenge za COGEBANQUE nk'uberewemo umwenda kandi utemera izahura, kuko hatagaragazwa aho FARAJA HOTEL izakura ubwishyu nk'ubwo COGEBANQUE yari kubona mu iyegeranya n'igabagabanya ry'umutungo w'isosiyete no gusuzuma niba urukiko rutarasuzumye neza ko nta mpamvu zumvikana zo kuzahura ubucuruzi bwa FARAJA HOTEL kuburyo mu gihe kizaza izubahiriza inshingano zo kwishyura imyenda igejeje igihe

[17] Me Sangano Yves asobanra ko bagaragarije urukiko ko bigaragara neza ko Sosiyete yahombye, ariko banagaragaza impungenge ko izahura ridashoboka kubera ko FARAJA HOTEL yafashe inguzanyo ingana na FRW 839,047,793 igomba kwishyura amafaranga angana na 16,248,493 buri kwezi (amasezerano y'inguzanyo yashyizweho umukono kuwa 29/12/2015). Umwenda umaze kurenga amafaranga arenga FRW 1,066,020,282, hakibazwa niba icyatumaga idashobora kwishyura cyaravuyeho. Iki gisubizo ngo ntacyo babonye mu byo FARAJA HOTEL yagaragarije urukiko.

[18] Asobanura ko FARAJA ubwayo yagaragaje ko imaze kugira igihombo cya 236,797,356 FRW, nyamara nta ngamba mu mibare zihari zifatika zerekana uburyo iyi sosiyete izazahurwa igashobora kwishyura ababerewemo imyenda. COGEBANQUE iranibutsa ko igihe isosiyete ishyizwe mu gihombo, imyenda yose ihinduka iyagejeje igihe byumvikana ko FARAJA ifite igihombo yo ubwayo yivugira wongeyeho umwenda wa COGEBANQUE. Ubishyize hamwe igihombo ngo kirenga 1,3000,000 FRW. Bikaba byumvikana ko igihombo kiruta agaciro k'umutungo wa FARAJA ndetse n'umutungo yatijwe n'umunyamigabane wayo wayibereye umwishingizi ku nguzanyo ya COGEBANQUE (Inyubako FARAJA HOTEL ikoreramo).

[19] Akomeza asobanura ko hagaragajwe amasezerano atandukanye y'imikorere n'abantu batandukanye sosiyete yatangiye kubona. Ariko ngo ibi byose nta kizere bitanga ku buryo sosiyete yazahurwa. COGEBANQUE yibaza agaciro k'amasezerano yatanzwe mu mafaranga uko kangana. Iki gusubizo ngo ntabwo kigeze kigaragara mu byo FARAJA HOTEL yagaragaje. FARAJA ngo nta buryo itanga ishobora no kubona inguzanyo igamije kuzahura ubucuruzi bwayo nk'uko biteganyijwe mu ngingo ya 93 kandi ikanashobora kwishyura umwenda wa COGEBANQUE. Avuga ko umutungo FARAJA yagaragaje ari uwo yatijwe n'umwe mu banyamigabane, ukaba rero ntaho uhuriye n'izahura.

[20] Na none asobanura ko amasezerano FARAJA HOTEL yagiranye na GEMS HOSPITALITY AND TOURISM DEVELOPMENT GROUP Ltd, ari nayo Urukiko rwagendeyeho cyane (agace ka 7 ka kopi y'urubanza), ngo ntabwo agaragaza icyo azongerera HOTEL. Nta action plan mu mibare, nta kintu na kimwe usibye kuvuga ibyo buri ruhande ruzakora

n’uburyo bazagabana inyungu. Biteganyijwe ko mu byo FARAJA HOTEL izajya yinjiza bazajya bafata 7%. Ibi bishoboka ku isosiyete itari mu gihombo, kuko ugereranyije imyenda sosiyete ifite gufata 7% kubyo yacuruje ari menshi cyane (ngo byaba kongera igihombo).

[21] Avuga ko COGEBANQUE ishingiye ku ngingo ya 93 z’itegeko ry’igihombo (Inguzanyo igamije kuzahura ubucuruzi), ntabwo babona aho sosiyete izakura amafaranga yayifasha kuzahura ubucuruzi bwayo. COGEBANQUE yibaza ingano y’amafaranga akenewe mu kuzahura ubucuruzi bwa FARAJA HOTEL, uko azakoreshwa. COGEBANQUE itemera izahura ryasabwe na FARAJA HOTEL, ishingiye ko ngo nta ngamba n’imwe igaragara, haba mu mibare, mu mikorere ndetse no mu buryo sosiyete yubatse zigaragaza ko ishobora kuzahurwa. Ku bw’ibyo, ntabwo COGEBANQUE yizera kuzishyurwa nk’uko bivugwa mu itegeko ry’igihombo. COGEBANQUE ishingiye ku ngingo ya 10 na 11 z’itegeko ry’igihombo, yumva umutungo utari uwa sosiyete udashobora kubarirwa mu mutungo uzifashishwa mu gihombo cya sosiyete. Nk’uko bigaragara ku cyemezo cyo kwandikisha ingwate cyatanzwe n’Umwanditsi Mukuru (RDB) kuwa 23/02/2015; ngo ntabwo ingwate yatanzwe na sosiyete ari umutungo wayo ku buryo wabarirwa mu mutungo ugomba gucungwa mu gihombo. Ingwate yatanzwe yanditse kuri UPI 4/03/08/04/970 ngo ni umutungo wa Nsengiyumva Francois na Celine Nyirarukundo. COGEBANQUE yibaza uko bizagenda mu gihe COGEBANQUE ishyize mu bikorwa uburenganzira bwayo kwo kwishyurwa hakoreshejwe itegeko ry’ingwate ku mutungo utimukanwa (Receivership). Aha ngo nta gisubizo gitangwa kuko itegeko rivuga neza ko isubika ry’uburenganzira bwo gukurikirana umwenda ufite ingwate ritangira kuva ku itariki ikirego gitangiweho kugeza aho urukiko rugifatiyeho icyemezo (Ingingo ya 11 in fine itegeko ry’igihombo).

[22] Asoza avuga ko raporo y’umucungamutungo igaragaza ko kuberako umusaruro udahagije ndetse nta n’imari (fonds propre) ifite itashobora kwishyura umwenda wa banki. Ibi ngo bikaba byahura n’ibyo bagaragaje by’uko amasezerano FARAJA yatanze atagaragaza ibizinjira n’uburyo byafasha mu kwishyura umwenda COGEBANQUE yishyuza, ko kandi COGEBANQUE ijya gutangira kugurisha ayo masezerano yarariho. Avuga ko ibivugwa ko ubujurire bwahagaritse inzira y’izahura ataribyo kuko itegeko riteganya ko bene ibyo byemezo birangizwa by’agateganyo.

[23] Me Rutagengwa Jean Bosco asobanura ko kuba COGEBANQUE ivuga ko izahura ridashoboka nta nshingiro bifite kuko mbere y’uko urukiko rufata icyemezo ari uko FARAJA yarugaragarije uburyo iri zahura rizakorwa, ariko ngo mu bujurire bwa COGEBANQUE ntabwo bagaragaza ibyo banenga bigendanye n’uburyo FARAJA yagaragaje uko izahura rizakorwa. Avuga ko hari amasezerano atandukanye FARAJA yagaragarije urukiko kandi ngo ntabwo urukiko rwafashe icyemezo gusa, ahubwo rwashingiye ku mategeko n’ibimenyetso barushyikirije bagaragaza ko hari icyizere ko ubucuruzi bwa FARAJA Hotel bushora kuzahurwa, hano ikigaragara n’uko COGEBANQUE ishishikajwe no guteza cyamunara ingwate bahawe gusa.

[24] Akomeza asobanura ko basabye urukiko ku rwego rwambere kwemeza itangizwa ry’izahura ry’ubucuruzi bwa FARAJA HOTEL Ltd kubera ko niba hari n’imyenda igeze igihe cyo kwishyurwa iyi sosiyete itishyura. Ngo si ubushake bwo kutishyura ahubwo ni ubushobozi kuko umushinga wo gutanga inguzanyo wizwe nabi n’amafaranga y’inguzanyo nayo atangwa nabi. Ibi bikaba ngo byaratumye Faraja Hotel Ltd itangirana imbaraga nkeya. Avuga ko ariko ibyo bitayiciye intege kuko yashatse igisubizo cy’ibibazo yari ifite. Icya mbere yakoze akaba ngo ari ugushaka abandi bashoramari kugirango babashe gufatanya ubucuruzi babashe no kuzahura ubucuruzi bwa Faraja Hotel. Faraja Hotel Ltd ngo ifite gahunda yo kureba uko imirimo ya hotel

yagenda neza kuko ifite amasoko azayifasha kubigeraho kandi ikaba ifite n'abashoramari bashaka gushoramo amafaranga bagura imigabane ku buryo umwenda wakwishyurwa.

[25] Avuga ko iyo raporo FARAJA itayizi kuko itayihawe, byongeye ikaba ntan'umukono uyiriho ndetse n'ibikubiye muri iyo raporo FARAJA ikaba itazi aho yayikuye. Kuvuga ko izahura ridashoboka ataribyo kuko batanze amasezerano anyuranye, ko ahubwo ikibazo ari umucungamutungo babahaye udashoboye. Ikindi kuvuga ko batanze ikirego hatangijwe inzira yo kugurisha ingwate yatangiye ataribyo kuko nta kimenyetso babigaragariza. Ikindi kuvuga ko ingwate ari umutungo w'umunyamigabane ataribyo kuko ikibanza FARAJA yubatsweho ari icya nyiri hotel.

[26] Asoza asobanura ko asanga nta mpungenge COGEBANQUE yagira kubirebana n'izahura ry'ubucuruzi bwa FARAJA HOTEL kuko yahawe ingwate kandi irahari ntaho iteze kuzajya, ntabwo yaza mu rukiko COGEBANQUE yavuga ko izahura ry'ubucuruzi bwa FARAJA HOTEL budashoboka kandi idashizwe management ya FARAJA HOTEL ibi bavuga ngo ni uburyo bashaka ko FARAJA HOTEL itezwa cyamunara ariko ngo COGEBANQUE ntivuga ku mafaranga bamaze kwishyurwa. Ngo ikigaragara ni uko icyo bagambiriye ari cyamunara y'ingwate bahawe, naho ibindi bavuga nta kuri kurimo kuko ngo FARAJA HOTEL yagaragarije urukiko mu buryo burambuye uko izahurwa rizakorwa n'aho amafaranga azaturuka.

UKO URUKIKO RUBIBONA

[27] Urukiko rusanga ibivugwa na Me Rutagengwa Jean Damascene ko hari icyizere cyo kuzahura FARAJA Hotel ngo kuko hari amasezerano atandukanye yagiye isinyana n'izindi sosiyete cyangwa abantu bizayifasha kuzahuka, muri ayo masezerano ngo harimo ayo kuwa 04/07/2018 yagiranye na Gems Hospitality and Tourism Development Group Ltd (GHTD), iyi sosiyete yemera kugira inshingano yo kongera igishoro cyayo muri FARAJA Hotel ishyiramo amafaranga, amasezerano na MINADEF yo kuwa 11/2018, amasezerano na MAILMAN SCHOOL OF PUBLIC HEALTH RWANDA LLC yo kuwa 03/09/2018 ndetse n'amasezerano na UNDP yo kuwa 28/11/2018, bitahabwa ishingiro kuko, aya masezerano urukiko rwashingiyeho rwemeza itangizwa ry'izahura atafatwa nk'amasezerano y'abandi bashoramari bazanye mri FARAJA Hotel imari hagamijwe kugira izahuke, ahubwo nk'uko ayo masezerano yose agaragara akaba ari amasezerano y'imikoranire aho nka hotel yagombaga kugenda iha abo bakiriya serivisi nk'izo kubacumbikira, kubakodesha ibyumba by'inama no kubagaburira igihe bahakoreye inama cyangwa baharaye. Urukiko rubanza rukaba rutaragombaga gufata aya masezerano nk'impamvu zumvikana zerekana ko hari icyizere cy'uko ubucuruzi bwa FARAJA bwazahuka ziteganywa n'ingingo ya 80 igika cya 2 cy'itegeko N° 23/2018 ryo ku wa 29/04/2018 ryerekeye igihombo cy'isosiyete n'icy'umuntu ku giti cye na cyane ko ayo masezerano yagaragaje atafatwa nk'igishoro cy'igihe kirekire cyazanywe n'abandi batera nkunga cyangwa abandi bacuruzi bashaka kugura imigabane muri FARAJA kuburyo byashingirwaho ngo byemezwe ko hagendewe kuri ayo masezerano iyi sosiyete yazahuka ikanashobora kwishyura imyenda ifite.

[28] Na none izindi mpungenge z'urukiko zikaba zituruka ku kuba na nyuma yayo masezerano yose yavuzwe haruguru FARAJA Hotel yarakomeje guhura n'igihombo kuko nk'uko bigaragarazwa na raporo yo kuwa 26/04/2019 y'umucungamutungo washyizweho MUBUMBYI Joseph, ko mu mwaka wa 2018 umusaruro wayo wari amafaranga 119,305,095 uvuye ku musaruro

wa 294,357,918 y’umwaka wa 2017, na none bikaba bigaragara ko umusaruro wakomeje kugenda usubira hasi kuko mu kwezi kwa mbere 2019 umusaruro wabaye 17,786,949, mu kwezi kwa kabiri 2019 uba 5,589,907 naho mu kwezi kwa gatatu 2019 umusaruro uba 3,652,966, kuba rero uyu musaruro ukomeza kugenda ugabanyuka kandi n’abo FARAJA yise abafatanya bikorwa bafitanye nayo amasezerano bakiyiha isoko ariko nabo bikaba bigaragara ko amafaranga yabo agenda agabanyuka kuko muri 2017 igishoro cyabo cyari 482,772,802 muri 2018 kikaba 465,537,801, kuba FARAJA idashobora kuba yakwishyura umwenda wa banki kuwa 30/04/2019 wari ugeze ku mafaranga 1,148,211,355, bigaragaza ko nta cyizere cy’uko iyi hoteri ishyizwe mu nzira y’izahurwa yazahuka ikaba yakwishyura imyenda ifite nk’ko biteganywa n’ingingo ya 81, 2° y’itegeko N° 23/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru.

[29] Urukiko rusanga na none rushingiye kuri raporo y’umucungamutungo w’agateganyo yavuzwe haruguru igaragaza ko kugira FARAJA Hotel Ltd ibashe kuzahuka bisaba gushaka abashoramari bashyiramo nibura amafaranga 1,800,000, kuba iyo raporo yarakozwe hasesenguwe n’ibyayo masezerano yavuzwe haruguru, umucungamutungo akagaragaza ko hakenewe gushorwamo indi mari ingana n’amafaranga yavuze, kuba kandi kugeza ubu nta mushoraramari cyangwa abashoramari barigaragaza baba bashaka gushora imari yabo muri iyo hoteri, kuba na none iyo raporo igaragaza ko umutungo bwite (fonds propres) wa FARAJA Hotel wazimiye kubera igihombo, bityo Urukiko rukaba rutakwemeza itangizwa ry’izahurwa cya FARAJA HOTEL Ltd.

C. Ku birebana no gusuzuma niba icyemezo cyo gushyira FARAJA HOTEL mu igihombo hagamijwe kuyizahura cyakurwaho

[30] Me Yves Sangano asobanura ko Nk’uko bigaragara mu gace ka 21 ka kopi y’urubanza, biragaragara ko Urukiko rwafashe icyemezo cyo gushyira FARAJA HOTEL mu izahura mu gihe cy’amezi atanu uhereye kuwa 01/03/2019 kugeza 31/07/2019. Avuga ko asanga iki cyemezo kigomba gukurwaho kubera ko cyarafashwe bidakurikije ibiteganyijwe mu ngingo ya 81 y’itegeko ry’igihombo nk’uko ngo babigaragaje muri issue ya 2 n’iya 3, ko kandi bitumvikana uburyo urukiko rwemeje ko izahura rizakorwa mu gihe cy’amezi 5 gusa. Yibaza igihe inshingano za admistrator ziteganyijwe n’itegeko zizakorerwa. Mu gufata iki cyemezo, urukiko ruzagenere Administrator MUBUMBYI Joseph igihembo gihwanye n’igihe yari amaze yarashyizweho nka Administrator n’ubwo bagaragaje ko yashyizweho mu buryo bunyuranyije n’amategeko.

[31] Me Matovu Paul asobanura ko asanga nta mpamvu yo gukuraho iki cyemezo kuko COGEBANQUE itabasha kugaragaza uburyo ibiteganywa n’ingingo ya 81 y’itegeko ry’igihombo itubahirijwe, kandi FARAJA HOTEL ngo yatanze ikirego ishingiye kuriyo ngingo inagaragaza ibiteganywa n’iyo ngingo y’itegeko biherekejwe n’ibimenyetso. FARAJA HOTEL isanga impamvu COGEBANQUE itanga isaba ko icyemezo cyakurwaho nta nshingiro zifite; ikindi kandi ngo kubirebana n’ushizwe gucunga igihombo basabira igihembo basanga bitari mu shingano zabo.

UKO URUKIKO RUBIBONA

[32] Urukiko rusanga ibyo kuba icyemezo cyo gushyira FARAJA HOTEL mu igihombo hagamijwe kuyizahura cyakurwaho cyangwa cyavanwaho cyashubijwe mu isesengura ry’ikibazo kibanziriza iki.

[33] Rusanga ku kibazo cyo kugenera Mubumbyi Joseph igihembo gihwanye n’imirmo yakoze nk’uko bisabwa na COGEBANQUE urukiko rwabivugaho kuko nk’uwari umuburanyi muri uru rubanza, igihe cyose habereye iburanisha atigeze y’itaba urukiko ngo arusobanurire ikibazo cye, bityo rukaba rutabona aho ruhera rugikemura. COGEBANQUE ikaba nta nyungu ifite zo kugira ngo abe ariyo imuburanira imusabira igihembo, ariko mu gihe yaba afite icyo kibazo akaba yazisunga ibiteganywa n’ingingo ya 190 y’itegeko N° 23/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru.

D. Ku birebana no gusuzuma niba ubujurire bwuririye ku bundi bwatanzwe na FARAJA HOTEL Ltd bufite ishingiro

[34] Me MATOVU Paul asobanura ko FARAJA HOTEL yatanze ubujurire bwuririye kubwa COGEBANQUE dushingiye ku ngingo ya 152 CPCCSA, dusaba indishyi zo gushorwa mu manza nta mpamvu zihwanye na 4,000,000 FRW, amafaranga y'ikurikirana rubanza 700,000 FRW, igihembo cy'avoka 2,000,000 FRW.

[35] Uburanira COGEBANQUE Ltd akaba ntacyo yavuze kuri izi ndishyi.

UKO URUKIKO RUBIBONA

[36] Urukiko rusanga FARAJA Hotel itangomba guhabwa izi ndishyi kuko urubanza zari zishingiyeho ruyitsinda.

III. ICYEMEZO CY’URUKIKO

[37] Rwemeye kwakira ubujurire bwa COGEBANQUE Ltd kuko bwatanzwe bikurikije aamategeko, rubusuzumye rusanga bufite ishingiro.

[38] Rwemeje ko urubanza RCOM 02171/2018/TC ruteshejwe agaciro.

[39] Rutegetse FARAJA Hotel Ltd kwishyura COGABANQUE Ltd amafaranga 40,000 y’amagarama yatanze ijurira.