KIVU FOREX BUREAU LTD N'UNDI v. EGEMEM OZBEY

[Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 00119/2019/CHC/HCC – (Kibuka, P.J.) 27 Nzeli 2019]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ingwate itangwa n'abanyamahanga – Umunyamahanga uregera ibye yavukijwe – Nta munyamahanga uregera inkiko z'u Rwanda asabwa ingwate batanga mu gihe afite ibimenyetso bigaragaza ko ari kuregera ibye yavukijwe – Itegeko Nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 91.

Amategeko agenga ububasha bw'inkiko – inguzanyo itanzwe hagati y'umuntu ku giti cye na sosiyete – Ububasha bw'inkiko z'ubucuruzi – Umuburanyi ugiranye amasezerano y'inguzanyo na sosiyete ntiyakwitaza ubucuti yaba afite n'uwamugurije amafaranga ngo ahindukire avuge ko ikibazo bafitanye cyacyemurwa n'inkiko ziburanisha imanza mbonezamubano kandi ikibazo kivutse hagati y'umuntu na sosoiyete gikemurwa n'inkiko z'ubucuruzi –Itegeko N° 30/2018 ryo kuwa 02/06/2018 rigenga ububasha bw'Inkiko, ingingo ya 81.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Amasezerano y'inguzanyo – Kugaragaza ibimenyetso by'ubwishyu – Iyo inguzanyo ishingiye ku masezerano ateganya ko ubwishyu buzakorwa hifashishijwe sheki, igihe cyagera sheki yari yakozwe mbere igasimburwa n'indi, ntibukuraho inshingano z'ugomba kwishyura mu gihe atagaragaje icyazimukuyeho – Itegeko Nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12.

Amategeko agenga sosiyete z'ubucuruzi – Umwishingzi w'umwenda – Gufatanya kwishyura umwenda wafashwe na sosiyete – Umwishingizi akaba n'umunyamigabane wa sosiyete ashobora kuryozwa inshingano za sosiyete iyo uwo mwishingizi cyangwa umunyamigabane yarakoresheje nabi imiterere ya sosiyete agamije uburiganya cyangwa kwica amategeko cyangwa yarafashe nabi umutungo wa sosiyete nk'aho ari umutungo w'abantu ku giti cyabo – Itegeko Nº 17/2018 ryo kuwa 13/04/2018 rigenga amasosiyete y'ubucuruzi, ingingo ya 95.

Incamake y'ikibazo EGEMEM OZBEY yaregeye Urukiko rw'Ubucuruzi, arega KIVU FOREX BUREAU, LTD na Kagenza Isidore ukutubahiriza amasezerano bagiranye aho EGEMEM OZBEY yahaye KIVU FOREX BUREAU, LTD yishingiwe na Kagenza, inguzanyo y'amadolari ibihumbi ijana, hemeranwa ko azayishyurwa mu gihe cy'amezi atatu, aho yahawe sheki y'ayo madolari yagombaga kubikuzwa icyo gihe kigeze. Ariko ko igihe cyarageze ntiyishyurwa uko byasezeranwe, bityo ko urwo Rukiko rwategeka KIVU FOREX BUREAU, LTD na Kagenza wayishingiye gufatanya kwishyura uwo mwenda, indishyi mbonezamusaruro, amafaranga y'ikurikirana rubanza n'igihembo cya Avoka.

KIVU FOREX BUREAU, LTD na Kagenza bajuririye Urukiko Rukuru rw'ubucuruzi bavuga ko EGEMEM OZBEY yagombaga gutanga ingwate isabwa abanyamahanga baregeye inkiko z'u Rwanda, ko ikirego cya EGEMEM OZBEY cyari kuburanishwa n'inkiko ziburanisha imanza mbonezamubano kubera ubucuti bafitanye, ko EGEMEM OZBEY yishyuwe ku buryo KIVU FOREX BUREAU, LTD na Kagenza batakongera kwishyuzwa bwa kabiri; ko kandi Kagenza atagakwiye kuryozwa umwenda wafashwe na KIVU FOREX BUREAU, LTD kuko ari abantu babiri batandukanye.

EGEMEM OZBEY yireguye avuga ko ubujurire bwa KIVU FOREX BUREAU, LTD na Kagenza nta shingiro bufite kuko 1) ingwate isabwa abanyamahanga barayisabye ntibayibwa mu nama ntegurarubanza barangije ntibatakambira Perezida w'Urukiko; ko 2) inkiko z'ubucuruzi zifite ububasha bwo kuburanisha imanza z'ubucuruzi zivutse hagati y'abantu na sosiyete; ko 3) KIVU FOREX BUREAU, LTD na Kagenza batamwishyuye kuko iyo baza kuba baramwishyuye, ntabwo baba baratanze indi sheki isimbura iya mbere; ko kandi 4) KIVU FOREX BUREAU, LTD na Kagenza aribo bamwatse inguzanyo; bityo bakaba bagomba gufatanya kumwishyura umwenda yabahaye.

Incamake y'icyemezo: 1. Umunyamahanga urega asonerwa gutanga ingwate mu mafaranga, iyo afite ibimenyetso bigaragaza ko ari kuregera ibyo yavukijwe. Bityo, impamvu y'ubujurire ya KIVU FOREX BUREAU, LTD na Kagenza Isidore, nta shingiro ifite kubera ko EGEMEM OZBEY aregera ibye yavukijwe.

2. Ikibazo cy'ubucuruzi kivutse hagati y'umuntu na sosoiyete gikemurwa n'inkiko z'ubucuruzi. Bityo, ingingo y'ubujurire ya KIVU FOREX BUREAU, LTD na Kagenza Isidore nta shingiro ifite kuko batagaragaza ko sosiyete yakiriye inguzanyo ifite kamere y'imbonezamubano.

3. Inguzanyo ishingiye ku masezerano ateganya ko ubwishyu buzakorwa hifashishijwe sheki, igihe cyagera sheki yari yakozwe mbere igasimburwa n'indi, ntibukuraho inshingano z'ugomba kwishyura mu gihe atagaragaje icyazimukuyeho. Bityo, kuba uretse kubivuga mu magambo gusa, KIVU FOREX BUREAU, LTD na KAGENZA Isidore batagaragaza icyo iyi sheki yo muri 2017 yari ishingiyeho, niba idafite aho ihuriye n'amasezerano yo kuwa 29/05/2014; rusanga imvugo yabo idafite ishingiro kuko nta bimenyetso ishingiyeho, bivuguruza ikimenyetso cyatanzwe na EGEMEM OZBEY, aricyo iyo sheki yo kuwa 31/12/2017.

4. Sosiyete n'umwishingi wayo baryozwa umwenda wafashwe na sosiyete. Bityo, KIVU FOREX BUREAU, LTD igomba kubazwa kimwe na KAGENZA Isidore (bafatanije), uburyozwe bw'umwenda wa EGEMEM OZBEY.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe.
Imikirize y'urubanza rwajuririwe RCOM 01619/2018/TC rwaciwe n'Urukiko rw'Ubucuruzi, kuwa 18/01/2019, ntihindutse.

Amategeko yashingiweho:
Itegeko n° 30/2018 ryo kuwa 02/06/2018 rigenga ububasha bw'Inkiko, ingingo ya 81.
Itegeko no 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12 na 91.
Itegeko no 17/2018 ryo kuwa 13/04/2018 rigenga amasosiyete y'ubucuruzi, ingingo ya 95.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] EGEMEM OZBEY yaregeye Urukiko rw'Ubucuruzi, arega KIVU FOREX BUREAU, LTD na Kagenza Isidore ukutubahiriza amasezerano bagiranye aho EGEMEM OZBEY yahaye KIVU FOREX BUREAU, LTD yishingiwe na Kagenza Isidore, inguzanyo y'amadolari ibihumbi ijana, hemeranwa ko azayishyurwa mu gihe cy'amezi atatu, aho yahawe sheki y'ayo madolari yagombaga kubikuzwa icyo gihe kigeze. Ariko ko igihe cyarageze ntiyishyurwa uko byasezeranwe, bityo ko urwo Rukiko rwategeka KIVU FOREX BUREAU, LTD na Kagenza Isidore wayishingiye, kwishyura uwo mwenda.

[2] KIVU FOREX BUREAU, LTD na Kagenza Isidore bireguye bemeza ko nta mwenda KIVU FOREX BUREAU, LTD ikibereyemo EGEMEM OZBEY, kuko yaramwishyuye ayo madolari mu ntoki, nawe ahita ayisubiza iyo sheki yari yarahawe nka "garantie", kandi yagombaga kubikuza ku itariki ya 29/08/2014. Kagenza Isidore yanongeye ku myiregurire ye, ko EGEMEM OZBEY atagaragaza aho ashingira avuga ko Kagenza Isidore yishingiye KIVU FOREX BUREAU, LTD; ko umwenda warahawe sosiyete, ko rero we, ntacyo yabazwa.

[3] Urukiko rw'Ubucuruzi rwaburanishije urwo rubanza, rwanzura ko ikirego cya EGEMEM OZBEY gifite ishingiro, rutegeka KIVU FOREX BUREAU, LTD na Kagenza Isidore gufatanya kumwishyura umwenda remezo yaregeye n'inyungu mbonezamusaruro, hamwe n'indishyi z'ikurikiranarubanza n'igihembo cya avoka.

[4] KIVU FOREX BUREAU, LTD na Kagenza Isidore ntibishimiye iyo mikirize, bayijuririra uru Rukiko ku mpamvu z'uko EGEMEM OZBEY yagombaga gutegekwa gutanga ingwate mu rubanza kubera ko ari umunyamahanga; kuba uru rubanza rutari mu bubasha bw'Urukiko rw'ubucuruzi kuko ari urw'imbonezamubano; kuba Urukiko rw'Ubucuruzi rwirengagije ko ugusubiza Kagenza Isidore sheki yo kuwa 29/08/2014, aricyo ikimenyetso cyo kuba EGEMEN OZBEY yarishyuwe; kuba harabaye kuvanga ibintu uko bitari kuko hemejwe ko sheki ya kabiri yari iyo gusimbura sheki ya mbere nyuma y'imyaka itatu, kandi yari iyo kugura imigabane muri ERO MINING, LTD; no kuba Kagenza Isidore yahohotewe no kuzanwa mu rubanza nk'umufatanya mwenda na KIVU FOREX BUREAU Ltd, kuko ibyo yasinyiye yabikoze nk'umuyobozi wayo; bityo ko bombi bakwiye kugenerwa indishyi zo gushorwa mu manza ku maherere.

[5] Ikigiye gusuzumwa muri ubu bujurire, kinafatweho umwanzuro, ni: (1) Kumenya niba EGEMEM OZBEY yagombaga gutegekwa gutanga ingwate mu rubanza kubera ko ari umunyamahanga; kuba uru rubanza rutari mu bubasha bw'Urukiko rw'ubucuruzi kuko ari urw'imbonezamubano. (2) Kumenya niba uru rubanza rutari mu bubasha bw'Urukiko rw'ubucuruzi kuko ari urw'imbonezamubano. (3) Kumenya niba Urukiko rw'Ubucuruzi rwirengagije ko ugusubiza Kagenza Isidore sheki yo kuwa 29/08/2014, aricyo ikimenyetso cy'uko EGEMEN OZBEY yarishyuwe, runavanga ibintu uko bitari rwemeza ko sheki ya kabiri yari iyo gusimbura sheki ya mbere nyuma y'imyaka itatu, kandi yari iyo kugura imigabane muri ERO MINING, LTD; (4) Kumenya niba ukurega Kagenza Isidore nk'umufatanya mwenda wa KIVU FOREX BUREAU Ltd ari ukumuhohotera, bityo ko bombi bakwiye kugenerwa indishyi zo gushorwa mu manza ku maherere.

II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA

A) Gusuzuma niba EGEMEM OZBEY yagombaga gutegekwa gutanga ingwate mu rubanza kubera ko ari umunyamahanga; kuba uru rubanza rutari mu bubasha bw'Urukiko rw'ubucuruzi kuko ari urw'imbonezamubano.

[6] KIVU FOREX BUREAU, LTD na Kagenza Isidore basobanura iyi mpamvu yabo y'ubujurire, bavuga ko Bwana EGEMEN OZBEY umunya Turukiya, yagombaga gutanga ingwate mu gutanga ikirego, kuko ari umunyamahanga, nk'uko biteganijwe mu ngingo ya 91 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Usibye igihe baregera ibyabo bavukijwe kandi babifitiye ibimenyetso, umunyamahanga wese uretse uwo mu bihugu by'umuryango w'Afurika y'Iburasirazuba, ureze bwa mbere cyangwa ugobotse mu rubanza, bisabwe n'uregwa, mbere y'iyindi nzitizi mu rubanza, agomba gutanga amafaranga y'ingwate ashobora kuvamo amagarama n'indishyi z'akababaro ashobora gucibwa, uretse igihe haba harimo amasezerano ibihugu by'amahanga byaba byaragiranye n'u Rwanda asonera abaturage babyo ingwate …"

[7] EGEMEM OZBEY yiregura kuri iyi mpamvu y'ubujurire ya KIVU FOREX BUREAU, LTD na Kagenza Isidore, avuga ko ibivugwa n'abarega nta shingiro bifite. Ko ingwate itangwa n'abanyamahanga barayisabye mu nama ntegurarubanza ntibayihabwa, ariko ko igitangaje ari uko batubahirije ibisabwa n'Itegeko ngo bandikire Perezida w'Urukiko basaba ko yabifataho icyemezo. Ko ku munsi w'iburanisha ry'urubanza mu mizi, nibwo bongeye gusaba Urukiko ko rwategeka EGEMEM OZBEY gutanga ingwate y'abanyamahanga. Akaba we, yarasobanuriye umucamanza ko KIVU FOREX BUREAU, LTD na Kagenza Isidore batubahirije ibikubiye mu ngingo ya 92 y'Itegeko rivuzwe hejuru, iteganya uburyo iyi nzitizi izamurwa n'ushaka kuyitanga, ariko bikaba atari ko byakoze. Kandi ko ikindi ari uko afite ibimenyetso bihagije by'uko aregera ibye. Ko umucamanza ashingiye ku ngingo ya 72 al6 y'iryo Tegeko, yafashe icyemezo kuri iyo nzititi y'itangwa ry'ingwate n'abanyamahananga, yemeza ko EGEMEM OZBEY adakwiye kwishyura iyo ngwate. Ko rero ibivugwa na KIVU FOREX BUREAU, LTD na Kagenza Isidore by'uko iyi nzitizi itasuzumwe, nta gaciro bikwiye guhabwa kuko byafashweho icyemezo n'umucamanza waruburanishaga. Iyi ngwate kandi ikaba idakwiye kwongera gusabwa mu bujurire, ko muri uru rubanza rujuririrwa, uwajuriye atari EGEMEM OZBEY, ahubwo hajuriye KIVU FOREX BUREAU, LTD na Kagenza Isidore. Bisobanuye ko OGEMEM OZBEY atari urega mu bujurire, ahubwo ari uregwa.

UKO URUKIKO RUBIBONA

[8] Rushingiye kuri iyi mpamvu y'ubujurire ya KIVU FOREX BUREAU, LTD na Kagenza Isidore, no ku myiregurire ya EGEMEM OZBEY; rushingiye ku biteganwa mu ingingo ya 91 y'Itegeko nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, aho igena ko "Usibye igihe baregera ibyabo bavukijwe kandi babifitiye ibimenyetso, umunyamahanga wese uretse uwo mu bihugu by'Umuryango w'Afurika y'Iburasirazuba, ureze bwa mbere cyangwa ugobotse mu rubanza, bisabwe n'uregwa, mbere y'iyindi nzitizi mu rubanza, agomba gutanga amafaranga y'ingwate ashobora kuvamo amagarama n'indishyi z'akababaro ashobora gucibwa, uretse igihe haba hariho amasezerano ibihugu by'amahanga byaba byaragiranye n'u Rwanda asonera abaturage babyo ingwate. Uregwa ashobora gusaba kandi ko ingwate itangwa bwa mbere mu

rwego rw'ubujurire. Umunyamahanga uregwa asonerwa gutanga ingwate mu mafaranga, iyo yatanze ingwate y'umutungo utimukanwa afite mu Rwanda ushobora kuvamo ingwate isabwa." No kuba mu cyemezo kibanziriza ikindi cyo kuwa 27/11/2018, Urukiko rw'Ubucuruzi rwemeje mu rubanza rwajuririwe, ko nta ngwate itangwa n'abanyamahanga EGEMEM OZBEY akwiye gutanga kubera ko "afite ibimenyetso bigaragaza ko ari kuregera ibye yavukijwe..."

[9] Runashingiye kuba mu mikirize y'urubanza rwajuririwe, nubwo rutaraba Itegeko, Urukiko rubanza rwahaye ishingiro ibyo EGEMEM OZBEY yaregeye; rusanga, nta kosa Urukiko rubanza rwakoze mu kudategeka EGEMEM OZBEY kubanza gutanga ingwate itangwa n'abanyamahanga. Rusanga rero, kuba muri uru rwego atari EGEMEM OZBEY urega, akaba ahubwo aregwa; iki kibazo cy'ingwate itangwa n'abanyamahanga idafite ishingiro ku rwego rw'ubujurire. Rero ko iyi mpamvu y'ubujurire ya KIVU FOREX BUREAU, LTD na Kagenza Isidore, nta shingiro ifite.

B) Gusuzuma niba uru rubanza rutari mu bubasha bw'Urukiko rw'ubucuruzi kuko ari urw'imbonezamubano.

[10] KIVU FOREX BUREAU, LTD na Kagenza Isidore basobanura iyi mpamvu yabo y'ubujurire, bavuga ko umucamanza wa mbere yaburanishije uru rubanza atabifitiye ububasha, kuko yarushyize mu bucuruzi kandi inguzanyo yo kuwa 29/05/2014 yari inguzanyo isanzwe y'imbonezamubano nk'uko biteganywa n'ingingo ya 81 y'itegeko No 30/2018 ryo kuwa 02/06/2018 rigena ububasha bw'inkiko. Ko EGEMEN OZBEY atagombaga kuregera Urukiko rw'ubucuruzi kuko inguzanyo yatanzwe ifite kamere y'imbonezamubano; ko na sheki ya "garantie" yari yatanzwe gusa mu bucuti bwabo. KIVU FOREX BUREAU, LTD na KAGENZA Isidore bavuga ko KIVU FOREX BUREAU, LTD na EGEMEN OZBEY badakora ubucuruzi bwungura igurizwa ry'amafaranga. Ko uko bigaragara mu myanzuro y'Urukiko, hariho ubucuti hagati yabo. Bityo rero ko ububasha bw'Urukiko butagomba gushingira kuri sheki kuko yaherekezaga amasezerano y'inguzanyo nka garantie, "l'accessoire suit le principal."

[11] EGEMEM OZBEY yiregura kuri iyi mpamvu y'ubujurire, avuga ko iyi nzitizi itangwa na KIVU FOREX BUREAU, LTD na Kagenza Isidore; uretse no kuba itangwe mu Rukiko rw'Ubujurire, itarigeze iburanwaho mu Rukiko rw'Ubucuruzi; nta shingiro ikwiye guhabwa. Ko Urukiko rw'Ubucuruzi arirwo rufite ububasha bwo kuburanisha imanza ziri hagati y'abantu n'ibigo by'ubucuruzi. Ko rero ibivuga na KIVU FOREX BUREAU, LTD na Kagenza Isidore, nta shingiro bikwiye guhabwa cyane cyane ko batanerekana ingingo y'amategeko bashingiraho bagaragaza urundi Rukiko rufite ububasha bwo kuburanisha imanza ziregwamo sosiyete.

UKO URUKIKO RUBIBONA

[12] Rushingiye kuri iyi mpamvu y'ubujurire ya KIVU FOREX BUREAU, LTD na Kagenza Isidore, no ku myiregurire ya EGEMEM OZBEY; rushingiye kuba ingingo ya 81 y'Itegeko n° 30/2018 ryo kuwa 02/06/2018 rigenga ububasha bw'Inkiko, iteganya mu gika cyayo cya mbere, ko "Haseguriwe ibivugwa mu ngingo ya 27, agace ka 4o, Urukiko rw'Ubucuruzi ruburanisha mu rwego rwa mbere imanza zose z'ubucuruzi, iz'imari, iz'imisoro n'ibindi bibazo bifitanye isano nabyo byerekeye: 1° impaka zivutse ku masezerano cyangwa ku bikorwa by'ubucuruzi hagati y'abantu cyangwa ibigo by'ubucuruzi;(…)" Runashingiye ku masezerano yabaye hagati ya KIVU FOREX BUREAU, LTD na EGEMEM OZBEY kuwa 29/05/2014, yo gutanga inguzanyo ya USD 100,000; uruhande rumwe (KIVU FOREX BUREAU, LTD) rukaba ari sosiyete y'ubucuruzi

yanditswe muri RDB, kandi ikora ubucuruzi bwiswe “other monetary intermediation”, urundi ruhande (EGEMEM OZBEY) rukaba ari umuntu ku giti cye, atagaragajwe nk’umucuruzi;

[13] Rusanga, ntaho KIVU FOREX BUREAU, LTD na Kagenza Isidore barugaragariza ko aya masezerano y’inguzanyo y’amafaranga, inguzanyo yakiriwe na sosiyete isanzwe ivunja amafaranga y’amahanga, ko ifite kamere y’imbonezamubano; Bakaba kandi batabasha no kwerekana icyo bashingiraho bavuga ko KIVU FOREX BUREAU, LTD na EGEMEN OZBEY badakora ubucuruzi bwungura igurizwa ry’amafaranga, ko ahubwo bigaragara ko ariho ubucuti hagati yabo; ukuntu haba ubucuti hagati y’umuntu na sosiyete y’ubucuruzi. Rusanga rero, uru rubanza ruri mu bubasha bw’Inkiko z’ubucuruzi, kuko impaka ziburanwamo ari impaka z’ubucuruzi, bityo iyi mpamvu y’ubujurire ikaba idafite ishingiro.

C) Gusuzuma niba Urukiko rw’Ubucuruzi rwirengagije ko ugusubiza Kagenza Isidore sheki yo kuwa 29/08/2014, aricyo ikimenyetso cy’uko EGEMEN OZBEY yarishyuwe, runavanga ibintu uko bitari rwemeza ko sheki ya kabiri yari iyo gusimbura sheki ya mbere nyuma y’imyaka itatu, kandi yari iyo kugura imigabane muri ERO MINING, LTD.

[14] KIVU FOREX BUREAU, LTD na Kagenza Isidore basobanura iyi mpamvu yabo y’ubujurire, bavuga ko icyari giteganyijwe mu masezerano yo kuwa 29/05/2014 cyari inguzanyo ishyigikiwe na “garantie” ya sheki, kandi amasezerano asobanura ko isubizwa ry’iyo sheki nicyo kigaragaza ko iyo nguzanyo yishyuwe. Kuko niba itari yarishyuwe EGEMEN OZBEY yagombaga kuyiteza muri Banki nk’itazigamiwe. Bikaba bitarabaye kuko yayisubije KIVU FOREX BUREAU LTD. Iyi sheki ije nyuma y’imyaka itatu ngo isimbure iya mbere, ikaba nta kuri kurimo. Ko rero ari nabyo ingingo ya 197 agace ka 2 y’Itegeko ryo kuwa 30/07 1888 y’urwunge rw’amategeko mbonezamubano (Igitabo cya mbere 1) iteganya, ko “…Naho uvuga ko atagitegetswe kubahiriza inshingano agomba kugaragaza ubwishyu cyangwa icyamukuyeho iyo nshingano ye.” Bivuga ko umucamanza wa mbere yarirengagije ko ikimenyetso cyo kwishyura inguzanyo ari ugusubiza sheki ya “garantie” mu minsi 90. Kandi ko ibi bitajyanye n’ingingo ya 64 y’Itegeko rigenga amasezerano ndetse n’ingingo ya 197 igika cya 2 y’Igitabo cya mbere cy’urwunge rw’amategeko y’imbonezamubano.

[15] KIVU FOREX BUREAU, LTD na Kagenza Isidore bavuga ko umucamanza wa mbere yahaye agaciro ko isheki yo kuwa 31/12/2017 (ya Equity Bank) ije gusimbura iya mbere yo kuwa 29/08/2014 (ya Fina Bank); bikaba bidasobanutse kandi akayitirira inguzanyo yo mu mwaka wa 2014, nyamara ubwayo iyi sheki ya 2017 ijyanye n’ibikorwa byihariye bya Kagenza Roger na EGEMEN OZBEY, nk’uko amasezerano yabyo abigaragaza. Ko rero, nubwo ntabwo byubahiraza amategeko, kuko sheki yataye agaciro, yataye igihe, ntiyasimburwa n’indi. Ko rero, nk’uko biteganijwe n’ingingo ya 113 ry’Itegeko No 32/2009 ryo kuwa 18/11/2009 ryerekeye inyandiko zishobora gucuruzwa, “Sheki igira agaciro mu minsi mirongo itandatu (60) uhereye ku itariki yatangiweho.” Hakaba ntaho bivugwa muri iri Tegeko ko sheki yataye igihe isimburwa n’indi. Nubwo kandi ntaho ibi bikorwa bihuriye na KIVU FOREX BUREAU, LTD.

[16] KIVU FOREX BUREAU, LTD na Kagenza Isidore basoza bavuga ko umucamanza wa mbere yarakomatanyije ikigo KIVU FOREX BUREAU LTD, kiyobowe na Kagenza Isidore n’ibikorwa by’ubucuruzi bw’amabuye mu masezerano yihariye ya Kagenza Roger na EGEMEN OZBEY, bari muri ERO MINING COMPANY (reba amasezerano yo kuwa 31/12/2017). Ko aya masezerano yabaye hagati y’abanyamigabane ba Sosiyete ERO MINING COMPANY aribo Kagenza Roger, EGEMEN Ozbey na AGABEY OZBEY; ba OZBEY bombi bagurishaga cyangwa

gutanga imigabane na Kagenza Roger kuyigura; ayigura akoresheje sheki (Equity Bank) yo kuwa 31/12/2017.

[17] EGEMEM OZBEY yiregura avuga ko iyi mpamvu y'ubujurire ya KIVU FOREX BUREAU, LTD na Kagenza Isidore idakwiye guhabwa ishingiro kuko ibyo basobanura mu mvugo atari ukuri. Ko amasezerano yabaye hagati ye na KIVU FOREX BUREAU, LTD ndetse na KAGENZA Isidore, nta hantu na hamwe hateganyijwe ko gusubiza sheki bisobanura kwishyura, kandi biranumvikana ko kwishyura ari uguhabwa ikimenyesto cy'ubwishyu. Ko rero kuba we, nk'umuntu wari usanzwe akorana na KIVU FOREX BUREAU, LTD na Kagenza Isidore, yarakomeje kubihanganira igihe cyose bari bataramwishyura, ndetse bakemera kumuha indi sheki kuko indi yarengeje igihe. Ko rero ntabwo KIVU FOREX BUREAU, LTD na Kagenza Isidore babyuririraho ngo babaze impamvu atayiteje kashe muri Bank nk'itazigamiwe, kuko icyo yari agamije si ukubarega icyaha, ahubwo ni ukwishyurwa.

[18] EGEMEM OZBEY asobanura ko imvugo ya KIVU FOREX BUREAU, LTD na Kagenza Isidore by'uko yarasubijwe sheki, ngo bisobanuye ko yishyuye, nta shingiro bikwiye guhabwa, kuko iyo baza kuba barishyuye, ntabwo baba baratanze indi sheki isimbura iya mbere. Ahubwo ko igihe cy'amezi atatu bavuganye kigeze, Kagenza Isidore yahise amusaba ko iyi cheque atayijyana muri bank cyangwa ngo ayiteze kashe, ko amadolari ye ataraboneka; amusaba kumwihanganira akabanza akayabona. Ko EGEMEM OZBEY yakomeje kwihangana kugeza ubwo Kagenza Isidore amuhaye indi sheki yo kuwa 31/12/2017 yo muri EQUITY BANK, ndetse imwe yamuhaye mbere EGEMEM OZBEY akayimusubiza kuko yari yaramaze guta agaciro.

[19] EGEMEM OZBEY yemeza ko Kagenza Isidore yari agambiriye kumwambura, kuko ngo na sheki ya kabiri yamuhaye, yasanze itazigamiwe, kugeza n'ubu Kagenza Isidore akaba yaranze kumusubiza ayo madolari ye. Ko imvugo ya Kagenza Isidore y'uko atari kumuha indi sheki mu gihe indi yari imaze imyaka igera kuri 3, nta shingiro ikwiye guhabwa, kuko kuba yaratse umwenda akamara imyaka itatu atarawishyura ntibimukuraho inshingano zo kuwishyura. Ko kuba yaratanze indi sheki agamije kwerekana ko afite ubushake bwo kwishyura, nabwo ntiyishyure kuko EGEMEM OZBEY yasanze itazigamiye, nibyo byatumye afata icyemezo cyo kumuregera Inkiko kugira ngo zimutegeke kwishyura uwo mwenda.

[20] EGEMEM OZBEY asoza avuga ko KIVU FOREX BUREAU, LTD na Kagenza Isidore bashaka muri uru rubanza guhuza ibintu bidafite aho bihuriye n'icyaregewe urukiko. Ko amasezerano yabaye hagati y'abanyamuryango ba ERO MINING COMPANY na Egemen, ari indi sosiyete, kandi we yarari kuguramo imigane, aho yaguzemo imigabane ingana na 30% (Rwf 4,500,000). Bikaba rero, ntaho bihuriye n'umwenda wa USD 100,000 Kagenza Isidore amubereyemo.

UKO URUKIKO RUBIBONA

[21] Rushingiye kuri iyi mpamvu y'ubujurire ya KIVU FOREX BUREAU, LTD na Kagenza Isidore, no ku myiregurire ya EGEMEM OZBEY; rushingiye kandi kuba ingingo ya 12 y'Itegeko nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, igena ko "Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Naho uvuga ko atagitegetswe gukora icyo yategekwaga gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho.

Iyo abiburiye ibimenyetso, uwo baburana aramutsinda." Rusanga, kuba EGEMEM OZBEY yaregeye umwenda wa USD 100,000 ushingiye ku masezerano yo kuwa 29/05/2014; ayo masezerano akavuga ku bwishyu bwateganijwe bushingiye kuri sheki yumvikanweho (na numero yayo); EGEMEM OZBEY akerekana indi sheki yo kuwa 31/12/2017, y'ayo madolari na none, kandi yatanzwe na KIVU FOREX BUREAU, LTD ihagarariwe na none na Kagenza Isidore (nubwo avuga ko ari imyaka itatu nyuma), nk'ikindi kimenyetso cy'umwenda; kuba rero, uretse kubivuga mu magambo gusa, KIVU FOREX BUREAU, LTD na Kagenza Isidore batagaragaza icyo iyi sheki yo muri 2017 yari ishingiyeho, niba idafite aho ihuriye n'amasezerano yo kuwa 29/05/2014; rusanga imvugo yabo idafite ishingiro kuko nta bimenyetso ishingiyeho, bivuguruza ikimenyetso cyatanzwe na EGEMEM OZBEY, aricyo iyo sheki yo kuwa 31/12/2017, nk'uko biteganwa n'igika cya kabiri cy'inyi ngingo ya 12 ivuzwe hejuru. Kandi bakaba baterekana ihuriro (isano) riri hagati ya sheki ya USD 100,000 ya KIVU FOREX BUREAU, LTD n'amasezerano yabaye hagati y'abanyamigabane ba Sosiyete ERO MINING COMPANY, batanagaragaramo KIVU FOREX BUREAU, LTD.

D)Gusuzuma niba ukurega Kagenza Isidore nk'umufatanya mwenda wa KIVU FOREX BUREAU Ltd ari ukumuhohotera, bityo ko bombi bakwiye kugenerwa indishyi zo gushorwa mu manza ku maherere.

[22] KIVU FOREX BUREAU, LTD na Kagenza Isidore banajuririye kuba Kagenza Isidore adakwiye kuregwa nk'umufatanya w'ideni kuko ibyo yasinye ntabwo ari ibye; byari ibya KIVU FOREX BUREAU, LTD. Ko uru rubanza rutareba Kagenza Isidore ku giti cye, rukaba rureba gusa KIVU FOREX BUREAU, LTD, ariyo yonyine ikwiye kuregwa. KIVU FOREX BUREAU, LTD na KAGENZA Isidore bavuga ko KIVU FOREX BUREAU, LTD na Kagenza Isidore itandukanye na Kagenza Isidore nubwo ariwe umuyobozi wayo. Ko nk'uko biteganijwe mu ngingo za 9, 23 na 26 igika cya 2 z' itegeko No 27/2017 ryo kuwa 31/05/2017 rigenga amasosiyete y'ubucuruzi: Ingingo ya 9 igateganya ko "Hakurikijwe ibyiciro by'amasosiyete bivugwa muri iri tegeko, amasosiyete agabanyijwemo ubwoko bukurikira: 1° isosiyete ifite uburyozwe bugarukira ku migabane;…" Ingingo ya 23 igateganya ko "Iyo inyandiko z'ishingwa z'isosiyete zanditswe, isosiyete iba ishinzwe hakurikijwe iri tegeko nk'isosiyete ifite ubuzima gatozi bwite butandukanye n'ubw'abanyamigabane bayo." N'ingingo ya 26 mu gika cyayo cya 2 igateganya ko "Isosiyete yashinzwe ifite ubushobozi n'uburenganzira busesuye bwo gukora imirimo y'ubucuruzi, igikorwa icyo ari cyo cyose bijyanye n'intego yayo."

[23] KIVU FOREX BUREAU, LTD na Kagenza Isidore basobanura kandi ko ubundi iyo abantu babiri bafatanya kwishyura ideni, bidakekwa gusa, ahubwo bigirirwa inyandiko yihariye. N'ingingo 100 y'itegeko ryo kuwa 30 Nyakanga 1888 y'urwunge rw'amategeko mbonezamubano (Igitabo cya mbere) iteganya ko "ubufatanye ntibucyekwa, bugomba guteganywa nk'uburyo bweruye. Iryo hame rireka gukurikizwa gusa mu gihe ubufatanye buriho nta shiti bushingiye ku mategeko." Bityo ko mu masezerano yubugurize hagaragaramo abasinya babiri, iya Kagenza Isidore umuyobozi wa KIVU FOREX BUREAU, LTD n'iya Kagenza Simon Roger umuhamya. Ko hashizwe umuhamya ku ruhande, hasigara isinya imwe gusa. Iyo sinya imwe ikaba idafite agaciro kuri babiri. (Kagenza Isidore na sosiyete KIVU FOREX BUREAU, LTD). Hanyuma kandi, amafaranga akaba yaragiye kuri konti ya KIVU FOREX BUREAU, LTD aho kujya kuri konti ya Kagenza Isidore. Bityo rero ko KIVU FOREX BUREAU, LTD na KAGENZA Isidore bakwiye guhabwa indishyi zo gushorwa mu manza ku maherere, zingana na Rwf 10,000,000 buri umwe.

[24] EGEMEM OZBEY yiregura kuri iyi mpamvu y'ubujurire, avuga ko imvugo ya KIVU FOREX BUREAU, LTD na Kagenza Isidore, nta shingiro yahabwa kuko nk'uko bigaragara ku masezerano yabaye hagati ye na KIVU FOREX BUREAU, LTD na Kagenza Isidore, ndetse na Kagenza Roger; Kagenza Isidore yasinye ku giti cye kuko ntabwo yigeze yandikamo ko asinye nk'Umuyobozi wa KIVU FOREX BUREAU, LTD. Ko rero ibyo byerekana ko we ubwe ku giti cye afatanyije na KIVU FOREX BUREAU, LTD (Sosiyete ye 100%), batse umwenda kwa EGEMEM OZBEY, akaba ari nayo mpamvu bagomba gufatanya mu kuwishyura. EGEMEM OZBEY asobanura kandi ko hashingiwe ku ngingo ya 95, igika cya nyuma y'Itgeko rigenga amasosiyete mu Rwanda, ntabwo bibujijwe kurega sosiyete n'umunyamigabane wayo, iyo bigaragara ko hakoreshejwe uburyo bw'uburiganya cyangwa kwica amategeko. Ko rero bigaragara ko ibyakozwe ari Kagenza Isidore wabikoze.

[25] EGEMEM OZBEY asanga indishyi zisabwa na KIVU FOREX BUREAU, LTD na Kagenza Isidore, nta shingiro zikwiye guhabwa, kuko nibo bamushoye mu manza z'amaherere, dore ko n'umwenda yabahaye batawuhakana, ahubwo bakabeshya ko bamwishyuye nta kimenyetso babyerekanira. EGEMEM OZBEY agasoza asaba indishyi zihwanye na Rwf 5,000,000 zo gushorwa mu manza, zikubiyemo igihembo cya Avoka n'ay'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[26] Rushingiye kuri iyi mpamvu y'ubujurire ya KIVU FOREX BUREAU, LTD na Kagenza Isidore ndetse no ku bisabwa na EGEMEM OZBEY; rushingiye kuba impaka aba baburanyi bafitanye ishingiye ahanini ku ishyirwa mu bikorwa ry'amasezerano yo kuwa 29/05/2014, kandi muri aya masezerano hagaragara neza ko yabaye hagati ya EGEMEM OZBEY na KIVU, LTD (aho kuba KIVU FOREX BUREAU, LTD), Kagenza Isidore na Kagenza Roger; kuba Kagenza Isidore ubwe, muri ubu bujurire yagaragaje icyemezo cy'iyandikwa rya sosiyete gitangwa n'Umwanditsi Mukuru muri RDB (Full Registration Information of Domestic Company) cya sosiyete KIVU FOREX BUREAU, LTD, kigaragaza ko iyi sosiyete ifite gusa umunyamigabane umwe, ariwe KAGENZA Isidore; rusanga, kuba Kagenza Isidore adahakana ko ayo masezerano areba sosiyete ye KIVU FOREX BUREAU, LTD (nubwo mu masezerano handitse gusa KIVU, LTD), kandi ahagiye handikwa KIVU, LTD haniyongeregaho amazina y'abantu babiri (KAGENZA Isidore na Kagenza Roger utari n'umunyamigabane wa sosiyete) batandukanye na sosiyete; bisobanuye ko EGEMEM OZBEY yagiranye amasezerano n'abantu batatu, ariko KIVU, LTD (KIVU FOREX BUREAU, LTD), Kagenza Isidore na Kagenza Roger;

[27] Urukiko rusanga kandi bikwiye koko gufatwa ko EGEMEM OZBEY yagiranye amasezerano na sosiyete, hamwe (cyane cyane) n'uyifitemo imigabane yose, ariwe Kagenza Isidore, hashingiwe ku buryo hagiye handikwa (ukundi) amazina ya sosiyete, ndetse hakaniyongeraho n'amazina y'umunyamigabane hamwe n'ay'undi muntu (Kagenza Roger), bityo mu buryo bwo kwirinda urujijo rwaterwa n'iyo myandikire y'ariya masezerano, hanashingiwe kuba ingingo ya 95 y'Itegeko nº 17/2018 ryo kuwa 13/04/2018 rigenga amasosiyete y'ubucuruzi, igena ko "Urukiko rushobora kurenga uburyozwe bushingiye ku migabane kugira ngo umunyamugabane aryozwe inshingano za sosiyete, iyo rusanze uwo munyamugabane yarakoresheje nabi imiterere ya sosiyete agamije uburiganya cyangwa kwica amategeko cyangwa yarafashe nabi umutungo wa sosiyete nk'aho ari umutungo w'abantu ku giti cyabo." Ariko aha, hakemezwa, nk'uko byagaragajwe n'Urukiko rubanza, ko KIVU FOREX BUREAU, LTD igomba

kubazwa kimwe na Kagenza Isidore (bafatanije), uburyozwe bw’umwenda wa EGEMEM OZBEY.

[28] Rushingiye kuri ibi rubonye, rusanga nta hohoterwa Urukiko rubanza rwagiriye Kagenza Isidore nk’uko abivuga; bityo ko nta n’indishyi yagenerwa. Ahubwo, rushingiye kuba EGEMEM OZBEY nawe yasabye kugenerwa indishyi zo gushorwa mu manza, zikubiyemo igihembo cya Avoka n'ay’ikurikiranarubanza; no kuba ingingo ya 258 y’igitabo cya gatatu cy’urwunge rw’amategeko mbonezamubano, iteganya ko “Igikorwa cyose cy’umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse.” Hamwe no ku biteganwa n’ingingo ya 26 y’Amabwiriza nº 01/2014 agenga ibihembo mbonera by’abavoka; rusanga KIVU FOREX BUREAU, LTD na Kagenza Isidore bagomba gutegeka gufatanya kwishyura EGEMEM OZBEY muri ubu bujurire, indishyi zo gukomeza kumushora mu rubanza za Rwf 200,000 n’igihembo cya avoka cya Rwf 500,000.

III. ICYEMEZO CY’URUKIKO:

[29] Urukiko Rukuru rw’Ubucuruzi:

- Rwemeye kwakira ubujurire bwatanzwe na KIVU FOREX BUREAU, LTD na Kagenza Isidore, kuko bwatanzwe mu buryo bwubahirije amategeko, rubusuzumye rusanze nta shingiro bufite.

- Rwemeye kwakira ubujurire bwa EGEMEM OZBEY bwuririye kubwa KIVU FOREX BUREAU, LTD na Kagenza Isidore, kuko bwatanzwe mu buryo bwubahirije amategeko, rubusuzumye, rusanze bufite ishingiro kuri bimwe.

- Rwemeje ko imikirize y’urubanza rwajuririwe RCOM 01619/2018/TC rwaciwe n’Urukiko rw’Ubucuruzi, kuwa 18/01/2019, idahindutse.

- Rukijije ko KIVU FOREX BUREAU, LTD na Kagenza Isidore bagomba gufatanya kwishyura EGEMEM OZBEY muri ubu bujurire, Rwf 500,000 y’igihembo cya avoka, na Rwf 200,000 y’indishyi zo kumushora mu rubanza.

- Rutegetse KIVU FOREX BUREAU, LTD na Kagenza Isidore gufatanya kwishyura EGEMEM OZBEY muri ubu bujurire, Rwf 700,000.