MG INVESTMENT COMPANY LTD v. MOUNT MERU SOYCO LTD

[Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 00474/2018/CHC/HCC (Kibuka, P.J.) 21 Ukuboza 2018]

Amategeko agenga imanza z'ubucuruzi – Ubucuruzi – Umwenda w'ubucuruzi – Kwishyura hakoreshejwe sheki –Umucuruzi wagemuye ibicuruzwa akishyurwa hakoreshejwe sheki bimubera ikimenyetso cy'ubwishyu kidashidikanywaho mu gihe uwamwishyuye atabashije kugaragaza ko sheki yamwishyuye yayimuhaye sheki nka "guarantee"; yatanze yishyura ibicuruzwa yari amaze kugemurirwa.

Incamake y'ikibazo: MOUNT MERU SOYCO, LTD yareze MG INVESTMENT COMPANY, LTD mu Rukiko rw'Ubucuruzi rwa Nyarugenge, kuba yayigemuriraga ibikomoka kuri petrol, nayo ikageda iyishyura uko babyumvikanyeho, ariko bigera aho MG INVESTMENT COMPANY, LTD itangira kutishyura; bityo aka aribwo yaregeye urwo Rukiko, irusaba kuyitegeka kuyishyura umwenda remezo yari iyibereyemo, indishyi mbonezamusaruro n'izindi ndishyi zinyuranye.

Urukiko rw'Ubucuruzi rwa Nyarugenge rwababuranishije, rwanzura ko ikirego cya MOUNT MERU SOYCO, LTD gifite ishingiro, rutegeka MG INVESTMENT COMPANY, LTD kwishyura amafaranga y'umwenda remezo rwemeje, n'indishyi zikomoka ku gihombo hamwe n'amafaranga y'ikurikirana rubanza n'igihembo cya avoka.

MG INVESTMENT COMPANY, LTD yajuririye mu Rukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rubanza rwayitegetse kwishyura umwenda itemera; kuba rwanayiciye indishyi zitandukanye, zidafite ishingiro. MOUNT MERU SOYCO, LTD yireguye ivuga ko iyo uwagemuriwe ibicuruzwa yasabye, bimugezeho (nk'uko bigaragazwa na delivery notes/avis d'arrivée) ndetse agahabwa n'inyemezabuguzi (invoices/factures), biba bivuze ko inshingano z'ugurisha ziba zirangiye; nyuma hasigaye ko uwatumije ibicuruzwa (ugura) yubahiriza inshingano ze zo kwishyura ibyo yashyikirijwe. Ko ibi bivuze ko kutabikora, bigize ukutubahiriza inshingano zikubiye mu masezerano. MOUNT MERU SOYCO, LTD isobanura ko kuba MG INVESTMENT yaraguze ibicuruzwa ndetse ikanabishyikirizwa na MOUNT MERU SOYCO, LTD, ariko ntiyiishyure ikiguzi cyabyo, byumvikana ko itubahirije inshingano zayo; bityo ko ubujurire bwayo nta shingiro bwahabwa ko hagomba kugumaho urubanza rwaciwe n'Urukiko rw'Ubucuruzi.

Incamake y'icyemezo: Urega agomba kugaragaza ibiminyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Naho uvuga ko atagitegetswe gukora yategekwaga gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda. Bityo, Kuba mu bimenyetso MG INVESTMENT COMPANY, LTD yitangiye ubwayo, harimo ibidashidikanwaho, nk'amasheki abiri yahaye MOUNT MERU SOYCO, LTD ya Rwf 149,800,000, kandi impande zombi ziyemeranywaho; rusanga MG INVESTMENT COMPANY, LTD iterekana ikimenyetso na kimwe Urukiko rwashingiraho ngo rwemeze ko MG INVESTMENT COMPANY, LTD yahaga MOUNT MERU SOYCO, LTD sheki nka "guarantee"; ko itayitangaga yishyura ibicuruzwa imaze kugemurirwa.

Inzitizi y’iburabubasha bw’urukiko nta shingiro ifite.
Ubujurire nta shingiro bufite.
Imikirize y’urubanza rwajuririwe RCOM 00151/2018/TC/NYGE rwaciwe n’Urukiko rw’Ubucuruzi rwa NYARUGENGE, kuwa 30/05/2018, ntihindutse.
Irangizarubanza ry’agateganyo ntiritanzwe.

Amategeko yashingiweho:
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.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y’URUBANZA

[1] MOUNT MERU SOYCO, LTD yareze MG INVESTMENT COMPANY, LTD mu Rukiko rw’Ubucuruzi rwa Nyarugenge, kuba yayigemuriraga ibikomoka kuri petrol, nayo ikageda iyishyura uko babyumvikanyeho, ariko bigera aho MG INVESTMENT COMPANY, LTD itangira kutishyura; bityo aka aribwo yaregeye urwo Rukiko, irusaba kuyitegeka kuyishyura umwenda remezo yari iyibereyemo, indishyi mbonezamusaruro n’izindi ndishyi zinyuranye.

[2] Urukiko rw’Ubucuruzi rwa Nyarugenge rwababuranishije, rwanzura ko ikirego cya MOUNT MERU SOYCO, LTD gifite ishingiro, rutegeka MG INVESTMENT COMPANY, LTD kwishyura amafaranga y’umwenda remezo rwemeje, n’indishyi zikomoka ku gihombo hamwe n’amafaranga y’ikurikirana rubanza n’igihembo cya avoka.

[3] MG INVESTMENT COMPANY, LTD ntiyishimiye iyo mikirize, iyijuririra uru Rukiko ku mpamvu z’uko Urukiko rubanza rwayitegetse kwishyura umwenda itemera; kuba rwanayiciye indishyi zitandukanye, zidafite ishingiro. MOUNT MERU SOYCO, LTD yireguye kuri izi mpamvu, isoza isaba kugenerwa amafaranga y’ikurikiranarubanza yo kuri uru rwego, ndetse no gutegeka irangizarubanza ry’agateganyo.

[4] Harasuzumwa hanafatwe icyemezo kuri izi ngingo z’ubujurire, mu buryo bukurikira: (1) Kumenya niba Urukiko rubanza rwemeje umwenda wa MG INVESTMENT COMPANY, LTD, udafite aho ushingiye. (2) Kumenya niba indishyi zaciwe ku rwego rwa mbere, zari zikwiye, niba hari n’izacibwa kuri uru rwego, hamwe no kumenya niba irangizarubanza ry’agateganyo risabwa, rifite ishingiro.

II. ISESENGURA RY’IBIBAZO BIRI MU RUBANZA

A) Gusuzuma niba Urukiko rubanza rwemeje umwenda wa MG INVESTMENT COMPANY, LTD, udafite aho ushingiye.

[5] MG NVESTMENT COMPANY, LTD isobanura iyi mpamvu yayo y'ubujurire, ivuga ko nk'uko yabigaragaje mbere, sheki yatanze yari iy'ibicuruzwa byagombaga gutangwa (yatanze sheki itarahabwa ibicuruzwa); ko itari iy'ibicuruzwa yamaze guhabwa uko Urukiko rubanza rwabyemeje, rushingiye ku kimenyetso k'inyemezabwishyu MOUNT MERU SOYCO yatanze, gikubiye muri izo « invoices» na "Delivery notes" kuva 01/12/2014, ngo ziriho nimero iranga ikinyabiziga n'umushoferi wari ugitwaye, ngo byose hamwe bikaba ari Rwf 149,800,000. MG NVESTMENT COMPANY, LTD ivuga ko ibyo bimenyetso Urukiko rubanza rwashingiyeho, bigaragaramo ko ari inyemezabwishyu zo muri 2014 zishyuwe, kandi umwenda uvugwa ko ukomoka kuri sheki yabuze, yari iyo ku itariki ya 08/12/2017. Urukiko rukaba rwaranze nkana kureba amasezerano yari yarasinywe hagati y'impande zombi ku itariki ya 11/12/2014, aho umwenda wari wemewe utashoboraga kurenga Rwf 21,700,000 kandi nawo ugatangwa aruko hatanzwe ikiswe « post dated cheque » igomba kwishyurwa mu byumeru bibiri.

[6] MG NVESTMENT COMPANY, LTD yemeza rero ko ntabwo MOUNT MERU SOYCO yashoboraga kuvuga ko yatanze umwenda wa Rwf 149,800,000 binyuranye n'amasezerano bari bafitanye. Ko ahubwo iyo sheki yafatwa nka guarantee yari yatanzwe y'ibicuruzwa byagombaga gutangwa ariko ntiyaba iyo kwishyura ibitanzwe, kandi amasezerano atari uko yavugaga cyane ko mu mwanzuro utanga ikirego kuri paragraph ya 3, uregwa ubwe yivugiye ko mu mikorarnire y'impande zombi MG Investment yatangaga sheki hanyuma yamara guhabwa ibicuruzwa binganya igiciro kiri kuri iyo sheki, Mount Meru Soyco Ltd ikabona ikayitwara kuri banki kugira ngo ibone ubwishyu. Ko ku itariki ya 8/12/2017, MG Investment Ltd yatanze sheki ifite agaciro ka Rwf 149,800,000. Bikaba bigaragara neza ko MOUNT MERU SOYCO, LTD yivugiye ubwayo ibitandukanye cyane nibyo Urukiko rwa mbere rwashingiyeho rwemeza ko 149,800,000 Frw wari umwenda MG Investment Ltd yagombaga kwishyura.

[7] MG INVESTMENT COMPANY, LTD yemeza ko bigaragara ko sheki yatanzwe ku itariki ya 8/12/2017; bityo hakaba hakwibazwa niba bigaragara ko ku itariki ya 8/12/2017 aribwo sheki yatanzwe kandi kuri iyo tariki hakaba haratanzwe ibicuruzwa bifite agaciro ka 10,689,300 Frw, ni gute MOUNT MERU SOYCO, LTD yavuga ite ko yari yaragemuye kandi ari nta kigaragaza ko ibyo bicuruzwa byatanzwe bifite agaciro ko 149,800,000 Frw. MG INVESTMENT COMPANY, LTD ivuga ko ibi bigaragaza ko ibyo MOUNT MERU SOYCO, LTD ivuga atari ukuri kandi ko nta mpamvu yari ihari yatumye Urukiko rubanza rubiha agaciro kandi bivuguruzanya. Ko ukuri kwibi n'uko impande zombi ukurikije amasezerano zari zifitanye, yaje kurangira, ntiyongererwa igihe, ariko akaba yarakomeje gukurikizwa muri 'practice'. MG INVESTMENT COMPANY, LTD ikaba yatangaga pre-payment igizwe na sheki, ndetse MOUNT MERU SOYCO, LTD akayijyana muri Banki, noneho uko MG INVESTMENT COMPANY, LTD ihawe ibicuruzwa, amafaranga akagenda agabanuka kugeza igihe yarangiraga, hagakorwa indi sheki. Ko rero nta mwenda MOUNT MERU SOYCO, LTD yatangaga kuko ibyo byigeze kubaho kera iza kubihagarika, ivuga ko abantu bayambura.

[8] MG INVESTMENT COMPANY, LTD yemeza ko mu masezerano yari ariho mbere, hateganwaga ko MOUNT MERU SOYCO, LTD yatanga ibicuruzwa aruko imaze kubona guarantee ko izishyurwa. Ko iyo guarantee rero yari sheki. MOUNT MERU SOYCO, LTD ikavuga ko ngo sheki yatanzwe ku itariki ya 8/12/2017 yari iyo kwishyura ibicuruzwa byari byaratanzwe, nyamara hari ibyo yatanze bifite agaciro ka Rwf 10,689,300. Hakaba hakwibazwa niba ibyo byaba byari bitanzwe ku mwenda? Ko nta kimenyetso kigaragaza ko byari bitanzwe ku mwenda. Bityo MG INVESTMENT COMPANY, LTD ikaba isanga ibyo Urukiko rubanza

rwemeje, ataribyo kandi bidakwiriye kwakirwa ngo bisuzumwe. Ikindi nuko urukiko rwashingiye ku ingingo ya 110 y'Itegeko no.32/2009 ryo kuwa 18/11/2009 ryerekeye inyandiko zishobora gucuruzwa, iteganya ko « Sheki ari inyandiko itavuguruzwa itanzwe n'uwayishyizeho umukono igenewe banki imwe cyangwa ikigo cy'imari kimwe isaba kwishyura mu gihe bisabwe, umubare w'amafaranga usobanuye kuri sheki. Iyo sheki igomba kwishyurwa ny'irubwite, umuntu wateganyirijwe cyangwa uyitwaje. Izina rya banki cyangwa ikigo cy'imari bigomba kwishyura rigomba kuba ryanditse mu buryo busobanutse (...)» Aha MG INVESTMENT COMPANY, LTD ikavuga ko idahakana ko yigeze guha MOUNT MERU SOYCO, LTD cheque, cyangwa ngo ibe yaragize ubushake buke bwo kwishyura, ahubwo ikibazo cyavutse igihe MOUNT MERU SOYCO, LTD yavuze ko cheque yahawe (prepayment) yayitaye, maze nyuma yaho ikagemura ibicuruzwa bidahwanye n'amafaranga yari kuri cheque yabuze, hanyuma igashaka ko MG INVESTMENT COMPANY, LTD iyishyura amafaranga menshi adahwanye n'ibicuruzwa yazanye. MG INVESTMENT COMPANY, LTD nayo mu ibaruwa yandikiye MOUNT MERU SOYCO, LTD, yayisabye ko yagemura ibicuruzwa bihwanye na sheki yahawe, ariko kubera imikorere mibi, ntiyabyubahiriza.

[9] MG INVESTMENT COMPANY, LTD isobanura na none ko nk'uko biteganijwe mu ngingo ya 64 y'Itegeko no 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, iteganya ko "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye, akaba agomba kubahirizwa nta buriganya." Ko rero kuba MOUNT MERU SOYCO Ltd yarananiwe kubahiriza ibyo amasezerano yateganyaga, ahubwo igashaka ko bayishyura amafaranga kandi itaragemuye ibicuruzwa, ari uburiganya, ndetse atari umwenda MG INVESTMENT COMPANY, LTD igomba kwishyura nk'uko Urukiko rwabitegetse. Ko na none uko ingingo ya 3 y'Itegeko No 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko "Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana..." no kuba MG INVESTMENT yaragaragarije Urukiko ibimenyetso byose ndetse bigaragaza ko nta mwenda ifitiye MOUNT MERU SOYCO, ariko ntibihabwe agaciro, byaba ari akarengane gakabije. Isoza iyi mpamvu yayo y'ubujurire, ivuga ko uko ingingo ya 258 y'Itegeko ryo kuwa 30/07/1888 rishyiraho igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, iteganya ko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse." No kuba MOUNT MERU SOYCO Co, Ltd yarayishoye mu manza kandi ariyo itarubahirije amasezerano, ikwiye kubiryozwa, maze uru Rukiko rugategeka ko yishyura indishyi z'akababaro zingana na Rwf 5,000,000.

[10] MOUNT MERU SOYCO, LTD yiregura kuri iyi mpamvu y'ubujurire, ivuga ko mu bisanzwe, bizwi mu bucuruzi ko iyo uwagemuriwe ibicuruzwa yasabye, bimugezeho (nk'uko bigaragazwa na delivery notes/avis d'arrivée) ndetse agahabwa n'inyemezabuguzi (invoices/factures), biba bivuze ko inshingano z'ugurisha ziba zirangiye; nyuma hasigaye ko uwatumije ibicuruzwa (ugura) yubahiriza inshingano ze zo kwishyura ibyo yashyikirijwe. Ko ibi bivuze ko kutabikora, bigize ukutubahiriza inshingano zikubiye mu masezerano. MOUNT MERU SOYCO, LTD isobanura ko kuba MG INVESTMENT yaraguze ibicuruzwa ndetse ikanabishyikirizwa na MOUNT MERU SOYCO, LTD, ariko ntiyishyure ikiguzi cyabyo, byumvikana ko itubahirije inshingano zayo, cyane ko nk'uko bigaragara mu ncarubanza y'urubanza rujujuririrwa mu gika cya [7] aho MG INVESTMENT yemera ko: "… nyuma yo guhagarikisha sheki ya BK Ltd itariho amafaranga ahagije, yahaye MOUNT MERU SOYCO indi sheki ya BPR, ikaba koko itarabikujwe, ariko ku mpamvu MG INVESTMENT itabazwa; nta mwenda ikibereyemo MT MERU SOYCO…" Ko rero, hashingiwe ku bimaze kuvugwa, nta

gushindikanya ko MG INVESTMENT yagombaga kwishyura, dore ko yanabishimagiye itanga sheki yemerera MOUNT MERU SOYCO, LTD kwishyurwa na Bank umwenda yari iyibereyemo ungana na Rwf 149,800,000 ariko ntiyabikuzwa kubera impamvu z'uko yaheze maze ikabimenyeshwa ndetse na Baque Populaire ikabimenyeshwa.

[11] MOUNT MERU SOYCO, LTD isanga uguhindukira kwa MG INVESTMENT COMPANY, LTD, ikavuga ko nta bicuruzwa yakiriye cyangwa ngo sheki yatanzwe yari iy'ibizagemurwa mu gihe kizaza, ari ukujijisha Urukiko, ndetse no guhunga inshingano zo kwishyura umwenda. MOUNT MERU SOYCO, LTD isanga, niba MG INVESTMENT COMPANY, LTD ivuga ko ibicuruzwa byari kuzayishyikirizwa, kuki yavuze ko sheki itari izigamiye? Bikaba aha bikwiye kumvikanwa ko ingano y'amafaranga yari kuri iyo sheki yagombaga kwishyurwa, yari ishingiye ku bicuruzwa byaguzwe, ndetse ikabishyikirizwa. Kandi ko imvugo ya MG INVESTMENT COMPANY, LTD y'uko ngo Urukiko rubanza rutagakwiye kuba rwarashingiye ku ngingo ya 110 y'itegeko N°32/2009 ryerekeye inyandiko zishobora gucuruzwa, aho iteganya ko sheki ari inyandiko itavuguruzwa itanzwe n'uwayishyizeho umukono igenewe banki imwe cyangwa ikigo cy'imari kimwe, isaba kwishyura mu gihe bisabwe, umubare w'amafaranaga usobanuye kuri sheki. Iyo sheki igomba kwishyurwa nyir'ubwite, umuntu wateganyijwe cyangwa uyitwaje. Izina rya banki cyangwa ikigo cy'imari bigomba kwishyura rigomba kuba ryanditse mu buryo busobanutse. Ngo kuko MOUNT MERU SOYCO yaje kugemura ibicuruzwa bidahwanye n'amafaranga yari kuri cheque; ibi atari ukuri kuko haba cheque ya mbere itarizigamiye yo muri BK, nyuma yo gusabwa na MG INVESTMENT ikayihabwa, yatanze indi yo kuwa 08/12/2017, ibi bikaba bigaragaza ko yari izi neza ko igihe kigeze ngo MOUNT MERU SOYCO, LTD iyibikuze kugira ngo hishyurwe ibicuruzwa MG INVESTMENT COMPANY, LTD.

[12] MOUNT MERU SOYCO, LTD isobanura ko ku itariki imaze kuvugwa yo kuwa 08/12/2017 ari naho sheki yo muri BPR yatanzwe, nubwo yaje gutakara ntiyabikuzwa. Hakaba nta wavuga ko rero MOUNT MERU SOYCO yagemuye ibicuruzwa bidahuye n'amafaranga yari kuri cheque kandi nyamara cheque yari igiye kubikuzwa nyuma yuko ibyaguzwe byose bishyikirizwa uwabiguze. Ko ibi binagaragarira kandi kuri delivery notes zo kuwa 8/12/2017 umunsi ibicuruzwa bya nyuma byari bimaze gushyikirizwa MG INVESTMENT CO. LTD. Ko rero, imikirize y'urubanza rwajuririwe, ikwiye kugumaho kuko Urukiko rwasobanuye uko bikwiye, cyane ko na MG INVESTMENT CO. LTD yiyemereye ko cheque itabikujwe. Ko ibi byahuzwa n'ibitegwanwa mu ngingo ya 110 igika cya 1 cy'itegeko N° 15/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, aho iteganya ko «Ukwiyemerera mu rubanza ni amagambo umuburanyi cyangwa umuhagarariye avugira mu rukiko agira ibyo yemera. Ayo magambo atsindisha uwayavuze.»

UKO URUKIKO RUBIBONA

[13] Rushingiye kuri iyi mpamvu y'ubujurire ya MG INVESTMENT COMPANY, LTD, no ku myiregurire ya MOUNT MERU SOYCO, LTD; rushingiye 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, iteganya ko "Urega agomba kugaragaza ibiminyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Naho uvuga ko atagitegetswe gukora yategekwaga gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda." No kuba mu bimenyetso MG

INVESTMENT COMPANY, LTD yitangiye ubwayo, harimo ibidashidikanwaho, nk'amasheki abiri yahaye MOUNT MERU SOYCO, LTD ya Rwf 149,800,000, kandi impande zombi ziyemeranywaho; rusanga MG INVESTMENT COMPANY, LTD iterekana ikimenyetso na kimwe Urukiko rwashingiraho ngo rwemeze ko MG INVESTMENT COMPANY, LTD yahaga MOUNT MERU SOYCO, LTD sheki nka "guarantee"; ko itayitangaga yishyura ibicuruzwa imaze kugemurirwa; nyamara kandi mu bimenyetso bidashidikanwaho MG INVESTMENT COMPANY, LTD yitangiye ubwayo, harimo ibaruwa ya MOUNT MERU SOYCO, LTD yo kuwa 13/12/2017, iyisaba kuyiha indi sheki, nyuma y'uko iya mbere itakaye; hananditswe muri iyo nyandiko, ko ari sheki yishyura ibicuruzwa byagemuwe. Rusanga na none, ibimenyetso bya "invoices" zo kuwa 08/12/2017 za Rwf 5,350,000 zerekanwe na MG INVESTMENT COMPANY, LTD, uko zatanzwe na MOUNT MERU SOYCO, LTD, zidafite aho zivuguruza ibyo rumaze kubona hejuru, nka sheki yatanzwe na MOUNT MERU SOYCO, LTD, kandi iterekana ko yarishyuwe. Rusanga rero nta kosa Urukiko rubanza rwakoze ku birebana n'iyi mpamvu y'ubujurire, bityo ikaba idafite ishingiro.

B) Gusuzuma niba indishyi zaciwe ku rwego rwa mbere, zari zikwiye, niba hari n'izacibwa kuri uru rwego, hamwe no kumenya niba irangizarubanza ry'agateganyo risabwa, rifite ishingiro.

[14] MG INVESTMENT COMPANY, LTD isobanura kandi iyi mpamvu yayo y'ubujurire, ivuga ko Urukiko rw'ubucuruzi rwayitegetse kwishyura 1000,000 frw y'igihembo cy'avoka, 200,000 frw y'ikurikirana rubanza ndetse na 50,000 frw y'igarama kubera ko itishyuye ngo bigatuma MOUNT MERU SOYCO, LTD itanga ikirego mu Rukiko; ikaba isanga iki cyemezo nta shingiro gifite kuko MG INVESTMENT COMPANY, LTD yubahirije inshingano zayo, ahubwo MOUNT MERU SOYCO, LTD ikaba ariyo itarazubahirije ishaka kwishyurwa amafaranga mu buryo bw'uburiganya. MG INVESTMENT COMPANY, LTD ikaba ahubwo ishingiye ku ngingo ya 258 y'Itegeko ryo kuwa 30/07/1888 rishyiraho igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano; riteganya ko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse." Isaba ko MOUNT MERU SOYCO ariyo yakagombye kutanga ayo mafaranga y'ikurikirana rubanza, ndetse n'igihembo cyavocat kubera ko ariyo yayishoye mu manza ku maherere. Ikaba rero ikwiye no kugenerwa igihembo cy'avoka kingana na 3,000,000frw, indishyi z'ikurikirana rubanza zingana na 1000,000frw ndetse n'igarama rihwanye na 40,000frw.

[15] MOUNT MERU SOYCO, LTD yisobanura ivuga ko byagaragaye ko MG INVESTMENT COMPANY Ltd ariyo yayishoye mu manza nyuma y'uko itishyuye umwenda iyibereyemo. Bikaba byaratumye MOUNT MERU SOYCO LTD ikoresha amafaranga atandukanye mu mikurikiranire ndetse n'imitegurire y'uru rubanza. Ko rero, indishyi zagennwe mu rubanza rujuririrwa zikaba zikwiye kugumaho. Kandi hashingiwe ku ngingo ya 258 yavuzwe hejuru, iteganya ko « Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyir'ugukora ikosa rigikomokaho kuriha ibyangiritse no kuba yabitangira indishyi. » MG INVESTMENT COMPANY LTD ikwiye kwishyura izi ndishyi bitewe n'uburemere bw' igihombo gikabije byatewe no kwica inshangano zayo.

[16] MOUNT MERU SOYCO, LTD ivuga kandi ko hashingiwe ku ngingo ya 152 igika cya 3 y'itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko mu gihe ubujurire

bw'ibanze butakiriwe, cyangwa bwasibwe, ntibibuza ko uregwa mu ubujurire asaba amafaranga y'ikurikiranarubanza. Hamwe n'ibijyanye n'igihembo cya Avoka bishimangirwa n'ingingo ya 26 y'Amabwiriza y'Urugaga rw'Abavoka mu Rwanda no 01/2014 mu ngingo ya 26 agena ibihembo mbonera by'Abavoka mu Rwanda, aho iteganya ko igihembo fatizo cy'Avoka w'urega kigomba kuba hagati ya 500,000 Rwf na 5,000,000 Rwf. Ikaba isanga rero MG INVESTMENT ikwiye kuyishyura igihembo cya Avoka, indishyi (amafaranga yakoreshejwe mu rwego rw'amategeko n'andi yakoreshejwe na MOUNT MERU SOYCO, LTD mu kwishyuza amafaranga) angana 2, 000, 000 Frw. Kandi kuba bigaragara ko MG INVESTMENT yiyemerera ko ibicuruzwa byaguzwe kandi birashyika ndetse n'umwenda ukaba utarishyuwe ; bityo rero kuba irangizwa ry'agateganyo ryemezwa n'Urukiko rubyibwirije ndetse nta ngwate, iyo : (2°) ikiburanwa ari umwenda wemewe mu rubanza n'uregwa. MG INVESTMENT ikwiye gutegekwa irangizarubanza ry'agateganyo kuko yiyemereye umwenda nkuko byagarajwe mu rubanza rwajuririwe, bikaba kandi bigaraga ko ibikorwa byayo birimo gushaka gutinza.

UKO URUKIKO RUBIBONA

[17] Rushingiye kuri ibi bisabwa n'ababuranyi, no kubyo rwabonye mu isesengura ry'impamvu z'ubujurire zabanjirije; runashingiye 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 ari MG INVESTMENT COMPANY, LTD ikwiye guha MOUNT MERU SOYCO, LTD amafaranga y'ikurikiranarubanza harimo n'igihembo cya avoka. Rusanga kandi, kuba MG INVESTMENT COMPANY, LTD itemera yeruye ko ibereyemo MOUNT MERU SOYCO, LTD umwenda, akaba ari nabyo yajuririye, ntabwo rwakwemeza muri uru rubanza irangizarubanza ry'agateganyo, uko riteganijwe mu ngingo ya 237 y'Itegeko nº 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

III. ICYEMEZO CY'URUKIKO

[18] Urukiko Rukuru rw'Ubucuruzi:

- Rwemeye kwakira inzitizi y'iburabubasha bw'Urukiko, yatanzwe na MG INVESTMENT COMPANY, LTD, kuko yatanzwe mu buryo bwubahirije amategeko, ruyisuzumye, rusanze nta shingiro ifite.
- Rwemeye kwakira ubujurire bwatanzwe na MG INVESTMENT COMPANY, LTD, kuko bwatanzwe mu buryo bwubahirije amategeko, rubusuzumye, rusanze nta shingiro bufite.
- Rwemeje ko imikirize y'urubanza rwajuririwe RCOM 00151/2018/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa NYARUGENGE, kuwa 30/05/2018, idahindutse.
- Rukijije ko nta rangizarubanza ry'agateganyo riba muri uru rubanza.
- Rutegetse ko nta rangizarubanza ry'agateganyo riba muri uru rubanza.