

ECOBANK v. INDIA NOVEMBER

[Rwanda URUKIKO RW'IKIRENGA – RCOMA 0005/10/CS (Mutashya, P.J., Havugiyaremye na Rugabirwa, J.)10 Kamena 2010]

Amategeko y'ubucuruzi – Inyandiko mvunjamafaranga – Chèque de voyage – Ugomba kwishyura chèque de voyage zibwe – Iyo chèque de voyage zibwe ziri mu maboko y'uwaziguze, akamenyesha (opposition) mu gihe cyateganyijwe Banki yazimugurishije (Banque intermédiaire) ko zibwe, zishyurwa na banki yazimugurishije, keretse igaragaje ko ayo mafaranga yohererejwe Banki yakoze ayo masheki (Banque émettrice).

Amategeko y'ubucuruzi – Ibarwa ry'inyungu z'ubukererwe – Inyungu zituruka ku gihombo cyatewe no kuba chèques de voyage zitarahise zishyurwa igihe zari zibwe – Zitangira kubarwa nyuma y'amasaha 48 uhereye umunsi yamenyekanishirijeho iyibwa ryazo kugeza ku munsi urubanza ruciriwe.

Incamake y'ikibazo: ECOBANK SA yagurishije INDIA NOVEMBER ihagarariwe na Isidore Ndabarasa, chèque de voyage zihwanye n'amadolari 8.000 USD. ECOBANK yabikuje ayo mafaranga kuri konti INDIA NOVEMBER yari ifite muri iyo banki. Izo sheki zaje kwibwa zifitwe na Isidore Ndabarasa uhagarariye INDIA NOVEMBER, amenyesha ECOBANK nayo imenyeshya CITICORP yazikoze ko izo sheki zibwe. INDIA NOVEMBER yagiye yandikira ECOBANK iyisaba kuyisubiza ayo mafaranga ariko ikanga kuyatanga ivuga ko uwazikoze ariwe CITICORP ariyo igomba kwishyura ayo mafaranga kubera ko ari nayo yayoherejwe. CITICORP ivuga ko itayasubiza kuko INDIA NOVEMBER yajyanye ayo masheki itabanje kuyasinyira imbere y'umukozi wa banki wayiyagurishije.

INDIA NOVEMBER yareze ECOBANK mu Rukiko Rukuru rw'Ubucuruzi, rutegeka ECOBANK guha INDIA NOVEMBER 8.000 USD yari yaguze izo chèques de voyage, ay'inyungu zayo, ay'indishyi z'akababaro, ay'ikurikiranarubanza n'igihembo cy'Avoka.

ECOBANK yajuririye mu Rukiko rw'Ikirenga, ivuga ko umucamanza wa mbere yayitegetse guha INDIA NOVEMBER amafaranga menshi atagaragaje uruhare rwayo mu ibura ry'izo sheki. Yongera kuvuga ko itagomba kuryozwa amakosa ya CITICORP kuko Isidore Ndabarasa atasinyiye izo sheki imbere y'umukozi wayo. INDIA NOVEMBER yo ivuga ko ECOBANK igomba kwishyura 8.000 USD hamwe n'indishyi zayo kuko itagaragaje ko yohereje CITICORP amadolari yagurishije izo sheki.

Incamake y'icyemezo: 1. Iyo uwaguze cheque de voyage azibwe akabimenyasha ku gihe banki yazimugurishije, nayo ntigaragaze ko hari amafaranga yaba yarishyuye banki yazikoze azikomokaho, banki yazimugurishije (Banque intermédiaire) niyo igomba kumwishyura, kabone n'ubwo haba hari sheki zaba zarishyuwe mbere y'imenyekanisha kuko we aba yarakoze ibimureba.

2. Mu gihe cheque de voyage yibwe, uwayiguze akabimenyeshya Banki yayimugurishije ku gihe, agomba kwishyurwa na banki yayimugurishije mu gihe cy'amasaha 48 abarwa guhera ku munsi w'imenyekanisha, itabikora ikabitangira indishyi z'ubukererwe zibarwa uhereye nyuma y'amasaha 48 imenyekanisha rikozwe kugeza ku munsi w'icibwa ry'urubanza.

**Ubujurire bufite ishingiro kuri bimwe.
Ubujurire bwuririye ku bundi bufite ishingiro.
Imikirize y'urubanza ihindutse kuri bimwe.
Amagarama y'urubanza aherereye ku wareze.**

Nta tegeko ryashingiweho.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] ECOBANK SA (ex-BCDI) yagurishije Isidore NDABARASA wari uhagarariye INDIA NOVEMBER “Chèques de Voyage” (Travellers Cheques) za CITICORP zihwanye n'amadorari y'anyamerika 8.000, ECOBANK iyabikuza kuri konti INDIA NOVEMBER yari ifite muri iyo Banki.

[2] Nk'uko bivugwa n'abaturanyi bombi, ayo ma “Chèques de Voyage” yibwe afitwe na Isidore NDABARASA, ariko azikorera “opposition” kuwa 19/06/2001, ECOBANK inabimenyesha CITICORP kuwa 20/06/2001, iyi nayo ngo ibimenyesha andi ma Banki kugira ngo atazishyura. Kuwa 17/06/2001, “Chase Forex Bureau” yo muri Kenya, yari yazishyuyemo 2.000 USD abajura bayahavunjishirije.

[3] INDIA NOVEMBER yagiye yandikira ECOBANK iyisaba kuyisubiza 8.000 USD yabikuje kuri konti yayo. ECOBANK ikavuga ko ari CITICORP igomba kuyisubiza ayo madorari kuko ariyo nyiri ayo mashaki no kuba ariyo yoherejwe ayo madorari. CITICORP ikavuga ko itayasubiza ngo kuko Isidore NDABARASA yajyanye ayo mashaki atabanje kuyasinyira imbere y'umukozi wa ECOBANK wayamugurishije.

[4] INDIA NOVEMBER yareze ECOBANK mu Rukiko Rukuru rw'Ubucuruzi, urubanza rwacibwa kuwa 20/11/2009, Urukiko rutegeka ECOBANK guha INDIA NOVEMBER 8.000 USD yaguze “Chèques de Voyage”, 8.960 USD y'inyungu zayo z'imyaka umunani, 5.000 USD y'indishyi z'akababaro, 5.000 USD y'ikurikiranarubanza na 500.000 Frw y'igihembo cy'Avoka, inategekwa gutanga 634.688 Frw y'umusogongerwa wa Leta.

[5] Urubanza rwaburanishijwe mu mizi mu ruhame bwa nyuma kuwa 25/04/2011, ECOBANK ihagarariwe na Me RWAGATARE Janvier, naho INDIA NOVEMBER ihagarariwe na NKURIKIYE Salvator yunganiwe na Me SHEMA GAKUBA Charles na Me RWAJAYIJA John.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO:

Iyo “Chèques de Voyage” zibwe n’iyihe Banki hagati ya Banki yagurishije ayo masheki na Banki yayakoze igomba kwishyura umukiriya wayaguze.

[6] Uburanira ECOBANK avuga ko yagurishije INDIA NOVEMBER ihagarariwe na Isidore NDABARASA “Chèques de Voyage” zihwanye na 8.000 USD, anavuga ko INDIA NOVEMBER yayimenesheje ko ayo masheki yibwe (opposition) kuwa 19/06/2001, nayo ibimenesha CITICORP kuwa 20/06/2001.

[7] Avuga ko umucamanza wa mbere yayitegetse guha INDIA NOVEMBER amafaranga menshi atagaragaje uruhare rwayo mu ibura rya “Travellers Cheques” cyangwa mu kudasubiza INDIA NOVEMBER amafaranga yayo. Avuga kandi ko ECOBANK itagomba kuryozwa amakosa ya CITICORP yanze gusubiza INDIA NOVEMBER amafaranga yayo nk’uko bigaragarira mu ibaruwa yayo yo kuwa 26/03/2002, ngo kuko Isidore Ndabarasa atayasinyiye imbere y’umukozi wa ECOBANK wayamugurishije.

[8] Ababuranira INDIA NOVEMBER bavuga ko Isidore Ndabarasa yaguze “Chèques de Voyage” muri ECOBANK kuwa 01/06/2001 zihwanye na 8.000 USD. Bavuga ko zimaze kwibwa kuwa 16/06/2001, yazikoreye “opposition” anabimenesha ECOBANK kuwa 19/06/2001, ko ariko kuwa 17/06/2001, abajura bari bayishyurwemo 2000 USD na “Chase Forex Bureau” yo muri Kenya. Basabye ko 8.000 USD yakwishyurwa na ECOBANK hakiyongeraho n’indishyi zayo ngo kuko itagaragaje ko yohereje CITICORP amadorari yagurishije ayo masheki.

[9] Igihe Urukiko rwihereraga kugira ngo ruce urubanza burundu, rwasanze ari ngombwa ko rwifashisha impuguke mu mikoreshereze y’ama “Chèques de Voyage” kugira ngo igire ibyo irusobanurira, maze rushyiraho Bwana Gakwaya Dominiko.

[10] Nyuma yo kurahira ko avugisha ukuri, avuga mu ncamake ko iyo umukiriya aguze “Chèques de Voyage”, Banki yazimugurishije (Banque intermédiaire) igakura amafaranga kuri konti ye, hanyuma zikibwa, umukiriya agomba kwihutira kubimenesha iyo Banki (opposition). Avuga ko iyo umukiriya yarangaye akabikora akererewe, ahomba kuko aba yarahawe amakuru yose yazamufasha igihe yazibwe.

[11] Akomeza avuga ko iyo umukiriya akoze “opposition” hakiri kare, Banki yamugurishije “Chèques de Voyage” niyo igomba kuyamwishyura, kabone n’ubwo hari amasheki yishyurwe mbere ya “opposition”, kuko we aba yakoze ibimureba, keretse iyo banki yayamugurishije igaragaje ko yohereje amafaranga kuri Banki yakoze ayo masheki (Banque émettrice).

[12] Urukiko rurasanga umuhanga mu mikoreshereze ya “Chèques de Voyage” wavuzwe haruguru yasobanuriye uru Rukiko ko iyo izo “chèques” zibwe, umukiriya akazikorera “opposition” kuri Banki yazimugurishije (Banque intermédiaire) hakiri kare, ari iyi Banki igomba kumwishyura amafaranga yahawe, keretse igaragaje ko ayo mafaranga yoherejwe Banki yakoze ayo masheki (Banque émettrice).

[13] Muri uru rubanza, Urukiko rurasanga ababuranyi bombi bemeranywa ko Isidore Ndabarasa, wari uhagarariye INDIA NOVEMBER, yaguze “Chèques de Voyage” (Travellers Cheques) za CITICORP muri ECOBANK SA (ex-BCDI) zifite agaciro ka 8.000 USD, kandi ko

ECOBANK yabikuje amafaranga ahwanye nayo kuri konti ya INDIA NOVEMBER yari muri iyo Banki.

[14] Urukiko rurasanga kandi ababuranyi bombi bemeranywa ko ayo masheki yibwe, kandi ko Isidore Ndabarasa yayakoreye “opposition” mu gihe cya vuba, kuko yabimenyesheje ECOBANK kuwa 19/06/2001, nyuma y’iminsi itatu ayo masheki yibwe, ECOBANK nayo ibimenyesha CITICORP kuwa 20/06/2001, inayishyikiriza nomero za “chèques de Voyage” zibwe.

[15] Urukiko rurasanga rushingiye ku bisobanuro byatanzwe n’impuguke kandi narwo rusanga bifite ishingiro, kuba INDIA NOVEMBER yaribwe “Chèques de Voyage”, ikazikorera “opposition” mu gihe cya vuba, nyamara ECOBANK ikaba itagaragaza ko ayo mafaranga yayohereje CITICORP, ntinagaragaze aho CITICORP yasinyiye ko iyakiriye, kandi ntinagaragaze ko hari amafaranga CITICORP yaba yarishyuye akomoka kuri izo “Chèques de Voyage” zibwe, ECOBANK niyo igomba gusubiza INDIA NOVEMBER 8.000 USD ahwanye na “Chèques de Voyage” zibwe.

[16] Urukiko rurasanga kandi ayo mafaranga agomba kwiyongeraho inyungu z’ubukererwe, amafaranga y’ikurikiranarubanza hamwe n’ay’igihembo cy’Avoka nk’uko byemejwe n’Urukiko rubanza, ariko uru Rukiko rukaba rugomba gusubira mu mibare ruyagena, kuko hamwe rwagenye amafaranga y’ikirenga, ahandi rushingira ku mibare itariyo. Inyungu z’ubukererwe zikaba zigomba kubarwa kugeza ku munsu urubanza ruciriwe nk’uko INDIA NOVEMBER yabisabye mu bujurire bwayo bwuririye ku bundi, uru Rukiko rusanga bufite ishingiro.

[17] Ku byerekeye inyungu z’ubukererwe, Urukiko rusanga kuba INDIA NOVEMBER yarakoze “opposition” mu gihe gikwiye, nyamara ECOBANK yayibona kuwa 19/06/2001, igakomeza kugundira 8.000 USD kugeza igihe yaregewe mu Rukiko Rukuru rw’Ubucuruzi, kandi yaragombaga guhita iyishyura nk’uko imikoreshereze ya “Chèques de Voyage” ibisaba, cyane ko INDIA NOVEMBER nk’umucuruzi yagombaga kuyabyaza umusaruro, bigaragara ko yayiteje igihombo, bityo ikaba igomba kubitangira inyungu z’ubukererwe zibariwe kuri 14 % ku mwaka nk’uko Urukiko rubanza rwabyemeje.

[18] Ku byerekeranye no kwishyura, abahanga mu mikoreshereze ya “Chèques de Voyage” bavuga ko iyo umukiriya yibwe “Chèques de Voyage” akanakora “opposition” mu gihe gikwiye, agomba kuba yishyurwe mu gihe kitarenze amasaha 48¹ abazwe guhera ku munsu yakoreyeho “opposition”. Urukiko rusanga ECOBANK yarabonye “opposition” kuwa 19/06/2001, bityo hakurikijwe ibyo bisobanuro, ECOBANK igomba kwishyura INDIA NOVEMBER inyungu z’ubukererwe zibazwe guhera kuwa 21/06/2001, kugeza ku munsu w’icibwa ry’urubanza kuwa 10/06/2011, bityo izo nyungu zikaba zibazwe mu buryo bukurikira:

= 8.000 USD x 14 x 3.589 iminsi = 11.165 USD.

100 x 360

¹ En cas de perte ou de vol de chèques de voyage, ... en général, le remboursement est effectué sous 48h” in <http://www.alertes-meteo.com/astuce/chèque-voyage.htm>

[19] Ku bijyanye n'indishyi z'akababaro, Urukiko rubanza rwageneye INDIA NOVEMBER 5.000 USD y'indishyi z'akababaro. Urukiko rusanga INDIA NOVEMBER itari guhabwa inyungu z'ubukererwe hamwe n'indishyi z'akababaro, kuko igihe ECOBANK yamaranye amafaranga yayo, yayaboneye inyungu z'ubukererwe, bityo amadorari 5.000 y'indishyi z'akababaro yagenewe n'Urukiko rubanza akaba agomba kuvanwaho.

[20] Ku byerekeye amafaranga y'ikurikiranarubanza n'ay'igihembo cy'Avoka, mu rwego rwa mbere INDIA NOVEMBER yari yagenewe 5.000 USD y'ikurikiranarubanza na 500.000 Frw y'igihembo cy'Avoka. Urukiko rusanga bigaragara koko ko hari amafaranga INDIA NOVEMBER yatanze ikurikirana uru rubanza haba mu ngendo, ifunguro n'ibindi, ndetse hari n'Abavoka bayiburaniye mu nzego zombi. Bityo Urukiko rusanga mu bushishozi bwarwo ECOBANK igomba guha INDIA NOVEMBER 2.000 USD y'ikurikiranarubanza n'ay'igihembo cy'Avoka kuko 5.000 USD na 500.000 Frw yagenewe n'Urukiko rubanza ari ikirenga.

[21] Urukiko rurasanga rero amafaranga ECOBANK igomba guha INDIA NOVEMBER ari 8.000 USD yaguze "Chèques de Voyage", 11.165 USD y'inyungu z'ubukererwe na 2.000 USD y'ikurikiranarubanza n'ay'igihembo cy'Avoka, yose hamwe akaba ari 21.165 USD.

III. ICYEMEZO CY'URUKIKO

[22] Rwemeye kwakira ubujurire bwa ECOBANK n'ubujurire bwa INDIA NOVEMBER bwuririye ku bwayo kuko bwatanzwe mu buryo n'inzira bikurikije amategeko;

[23] Rwemeje ko ubujurire bwa ECOBANK bufite ishingiro kuri bimwe, ko ubujurire bwa INDIA NOVEMBER bwuririye ku bwayo bufite ishingiro;

[24] Rutegetse ECOBANK guha INDIA NOVEMBER 8.000 USD yabikuje kuri konti yayo igura "Chèques de Voyage", 11.165 USD y'inyungu z'ubukererwe na 2.000 USD y'ikurikiranarubanza n'ay'igihembo cy'Avoka, yose hamwe akaba ari 21.165 USD, ikanayatangira n'umusogongerwa wa Leta wa 4% ungana na 846 USD, itayatanga mu gihe cy'iminsi umunani, agakurwa mu byayo ku ngufu za Leta;

[25] Ruvuze ko imikirize y'urubanza RCOM 0066/09/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 20/11/2009 ihindutse kuri bimwe;

[26] Ruyitegetse gutanga amagarama y'urubanza angana na 40.900 Frw, abariwemo n'ayo yaciwe mu rwego rwa mbere, itayatanga mu gihe cy'iminsi umunani, agakurwa mu byayo ku ngufu za Leta.