BCR v. ETABLISSEMENT RWANDAIS

[Rwanda URUKIKO RW'IKIRENGA – 2011 SC – RCOMA 0089/09/CS (Kanyange, P.J., Mukandamage na Munyangeri, J.) 30 Ugushyingo 2010]

Amategeko y'ubucuruzi – Guca urubanza kucyitaburanishijwe – Guca urubanza kubitarabunishijwe ntibishakirwa mu bimenyetso ahubwo bishakirwa kubyasabwe n'ibyatanzwe – Umucamanza aha inyito mu rwego rw'amategeko ibyaburanweho n'ababuranyi, Itegeko n° 18/2004 ryo kuwa20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, Ingingo ya 6.

Amategeko y'ubucuruzi – Urega agomba kugaragaza ukuri kw'ibyo aburana. Iyo abibuze uwarezwe aratsinda – Nta muburanyi wavuga ko Urukiko rutaburanishije kucyasabwe mu gihe ariwe wagomba kugaragaza ukuri kw'ibyo aburana, Itegeko n° 18/2004 ryo kuwa20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, Ingingo ya 9 agace ka 2.

Amategeko y'ubucuruzi – Umucamanza agomba gukemura impaka ku bintu bitumvikanweho n'ababuranyi akabitangira ibisubizo – Nta muburanyi wavuga ko umucamanza yivuguruje mu gihe afite inshingano yo gushakira inyito ibyo yashyikirijwe n'ababuranyi, akaba ndetse ashobora guhindura inyito yatanzwe n'ababuranyi – Umucamanza ntategetswe gukurikiza ibyo umuburanyi yashingiyeho ikirego cye, Mélina DOUCHY- OUDOT, Manuel de procédure civile, l'action en justice, le procès, les voies de recours, 2e Edition, Gualino, EJA – Paris- 2006, p. 213.

Amategeko y'ubucuruzi – Imishyikirano igamije kugabanya umwenda – Iyo umwenda ukorewe restructuration ntiwishyurirwe igihe ntibikuraho ibyo impande zombi zumvikanyeho – Mukuregera Urukiko haregerwa ko ayo masezerano atubahirijwe uko yumvikanyweho hadasubiwe ku ngano y'umwenda wa mbere y'imishyikirano, Itegeko ryo kuwa 30/07/1888 rishyiraho urwunge rw'amategeko mbonezamubano igitabo cya gatatu, Ingingo ya 33.

Amategeko y'ubucuruzi – Ikirego cy'inyongera ntigisuzumwa iyo kitaburanyweho ku rwego rwa mbere – Nta muburanyi wakongera gusaba inyungu murundi rubanza mu gihe ikirego cyaciriweho urubanza burundu, gishingiye ku mpamvu imwe, cyerekeye ababuranyi bamwe kandi bakiburana mu izina ryabo rya mbere, Itegeko n°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso n'itangwa ryabyo, Ingingo ya 106.

Amategeko y'ubucuruzi – Igihembo cya Avoka – Iyo nta kigaragaza koko ko ariyo agenwa mu bushishozi bw'Urukiko.

Incamake y'ikibazo: Uwajuriye yaburanye n'uregwa mu Rukiko Rukuru rw'Ubucuruzi ikirego cyijyanye n'ubwishyu bw'umwenda ungana na 279.078.350 frw. Urukiko rwemeza ko kugeza kuwa 04/12/2006 uregwa yari ibereyemo uwajuriye umwenda wa 33 303 307 frws. Rutegeka uwajuriye guha indishyi uregwa zingana na 2.000.000 frw, umusogongero wa Leta, indishyi z'ikurikirana rubanza zirimo n'igihembo cya Avoka n'amagarama y'urubanza.

Uwajuriye yajuririye Urukiko rw'Ikirenga avuga ko urubanza rwashingiye kubitaraburanyweho, ko umucamanza yanze kugira icyo avuga ku byasabwe n'uwajuriye, ko kandi yivuguruje mu ica ry'urubanza no kuba yaranze kumva ababuranyi bigatuma afata ibintu uko bitari.

Incamake y'icyemezo: 1. Ntibyakwitwa ko Urukiko rwaciye urubanza ku kitaraburanishijwe mu gihe Umucamanza yahaye inyito mu rwego rw'amategeko ibyaburanweho n'ababuranyi kandi irebana n'ikirego yaregewe.

2. Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze uwarezwe aratsinda. Bityo uwajuriye ntiyanenga urukiko kuba rutarakoze iperereza kuko ikibazo kitari icyo kumenya uburyo umwenda wabazwe, ahubwo ari ukumenya ishingiro ryawo, ni ukuvuga icyo ababuranyi bemeranijweho.

3. Umucamanza afite inshingano yo gushakira inyito ibyo yashyikirijwe n'ababuranyi, akaba ndetse ashobora guhindura inyito yatanzwe n'ababuranyi, ntategetswe gukurikiza ibyo umuburanyi yashingiyeho ikirego cye. Kuba rero Urukiko Rukuru rw'Ubucuruzi rutarakurikije inyito y'uregwa yashingiragaho ikirego cye, ahubwo rugashaka indi nyito rwasangaga ihura n'ikiburanwa, nta kwivuguruza kwabayeho rwemeza ko ikirego cy'uregwa gifite ishingiro kuko yari ahawe ibyo yaregeye.

4. Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Kubw'ibyo rero uwajuriye yagombaga kubahiriza amasezerano yakoranye n'uregwa agamije kugabanya umwenda no korohereza uregwa kuwishyura kandi akabikora nta buryarya.

5. Urukiko rwajuririwe ntirusuzuma ikirego cy'inyongera mu gihe kitaburanishijwe ku rwego rwa mbere. Ku bw'iyo mpamvu ikirego cy'uregwa nticyasuzumwa.

6. Ikirego cyaciriweho urubanza burundu, gishingiye ku mpamvu imwe, cyerekeye ababuranyi bamwe kandi bakiburana mu izina ryabo rya mbere, ntigishobora kongera kuburanishwa. Inyungu za 18% zisabwa n'uregwa muri uru rubanza akaba atakongera kuzisaba, kuko byaba ari ukugarura ikibazo cyakemuwe burundu.

7. Iyo nta kigaragaza neza igihembo cya Avoka kigenwa mu bushishozi bw'Urukiko. Ariko kubera ko urubanza rwakomeje kugeza ku rwego rw'ubujurire, ayagenewe akaba akwiye kwiyongeraho 500.000 frw.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye kubundi bufite ishingiro kuri bimwe.
Amagarama aherereye ku uwajuriye.

Amategeko yashingiweho:

Itegeko n°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso n'itangwa ryabyo, Ingingo ya 106.

Itegeko n° 18/2004 ryo kuwa20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, Ingingo ya 6, iya 9 agace ka 2.

Itegeko ryo kuwa 30/07/1888 rishyiraho urwunge rw'amategeko mbonezamubano igitabo cya gatatu, Ingingo ya 33.

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:

Mélina DOUCHY- OUDOT, Manuel de procédure civile, l'action en justice, le procès, les voies de recours, 2^{e} Edition, Gualino, EJA – Paris- 2006, p. 213.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko kugeza kuwa 04/12/2006 Etablissement Rwandais yari ibereyemo BCR umwenda wa 33 303 307 frws aho kuba 279.078.350 frw, rutegeka BCR guha Ets Rwandais 2 000 000 frws y'indishyi, gutanga 80 000 frws y'umusogongero wa Leta na 500.000 frw y'ikurikirana rubanza akubiyemo igihembo cya Avoka n'icy'Umuhesha w'inkiko, runayitegeka gutanga 34 850 frws y'amagarama y'urubanza.

[2] BCR yajuririye Urukiko rw'Ikirenga, inenga urubanza rwajuririwe kuba rwarashingiye ku bitaraburanweho (le juge a statué ultra petita), ko umucamanza yanze kugira icyo avuga ku byasabwe na BCR (Refus de répondre aux moyens des parties qui constitue une absence de motivation), ko kandi yivuguruje mu ica ry'urubanza no kuba yaranze kumva ababuranyi bigatuma afata ibintu uko bitari.

[3] Urubanza rwaburanishijwe kuwa 22/06/2010 na 14/09/2010, kuwa 02/11/2010 Urukiko rujya ku cyicaro cya BCR kugira ngo ruhabwe ibisobanuro rwari rukeneye.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kuba Urukiko rwaba rwaraciriye urubanza ku kitaraburanishijwe.

[4] Me RUKANGIRA Emmanuel uhagarariye BCR avuga ko Urukiko rwaciriye urubanza ku bitaraburanweho ltra petita kubera ko Ets Rwandais yaburanaga ivuga ko habayeho transaction ariko mu guca urubanza umucamanza akavuga ko nta transaction yabayeho, ko ahubwo habayeho remise de dette kandi ntaho yari yarigeze ivugwa muri uru rubanza.

[5] Me NDAGIJIMANA Emmanuel avuga ko BCR yitiranya ibintu kuko "ultra petita" idashakirwa mu bimenyetso ahubwo ishakirwa mu byasabwe n'ibyatanzwe, ko ababuranyi babwira umucamanza ibyabaye les faits nawe akabihuza n'amategeko, ko rero iyi mpamvu y'ubujurire nta shingiro ifite.

[6] Urukiko rusanga umucamanza atarigeze arenga imbibi z'icyaregewe, ahubwo yarahaye inyito mu rwego rw'amategeko ibyaburanweho n'ababuranyi nk'uko abisabwa n'ingingo ya 6 y'Itegeko n° 18/2004 ryo kuwa20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi

ryujujwe kugeza ubu, ivuga ko abacamanza baca imanza bashingiye ku ngingo z'amategeko zirebana n'ikirego baregewe.

2. Kuba Urukiko rwaba rutarasubije ku byasabwe na BCR.

[7] Uhagarariye BCR avuga ko umucamanza w'Urukiko Rukuru rw'Ubucuruzi yanze kugira icyo avuga ku byo yasabye by'uko mu gihe urukiko rwabona ari ngombwa, rwakora iperereza muri BCR rugasaba ibyangombwa byose byakenerwa kugira ngo ukuri ku bijyanye na 279.078.350 frw kujye ahagaragara.

[8] Uburanira Ets Rwandais we avuga ko iyi ngingo nayo nta shingiro ifite kuko ibyo uhagarariye BCR asaba binyuranije n'amategeko, kubera ko urukiko atari rwo rushakira ibimenyetso ababuranyi (le Tribunal est passif), ahubwo BCR ari yo yagombaga kwizanira ibimenyetso ishingiraho yemeza uriya mwenda wa 279 078 350 frw, cyane ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[9] Ingingo ya 9 agace ka 2, y'Itegeko n° 18 /2004 ryo kuwa 20/06/2004 ryavuzwe ivuga ko urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze uwarezwe aratsinda .

[10] Urukiko rusanga, nk'uko ingingo ya 9 y'itegeko ivuzwe haruguru ibiteganya, BCR ari yo yagombaga kugaragaza ibimenyetso by'ibyo iregera, kuba Urukiko Rukuru rw'Ubucuruzi rutarakoze iperereza bikaba bitaba impamvu y'ubujurire kubera ko nayo yivugiye ko ryakorwa mu gihe urukiko rwasanga ari ngombwa. Ikindi kandi BCR ntiyanenga urukiko kuba rutarakoze iperereza kuko ikibazo kitari icyo kumenya uburyo umwenda wabazwe, ahubwo ari ukumenya ishingiro ryawo, ni ukuvuga icyo ababuranyi bemeranijweho.

3. Ku bijyanye n'uko umucamanza yaba yarivuguruje.

[11] Uburanira BCR avuga ko umucamanza yivuguruje mu ica ry'urubanza, aho yavuze ko ingingo ya 591 y'Igitabo cy'urwunge rw'amategeko mbonezamubano ikoreshwa na Ets Rwandais nta gaciro yahabwa, nyamara mu cyemezo cy'urukiko akavuga ko Urukiko rwemeye kwakira ikirego rwashyikirijwe na Ets Rwandais kandi ko gifite ishingiro, mu gihe Ets Rwandais yari yaburanye ishingiye ku ngingo imaze kuvugwa.

[12] Uhagarariye Ets Rwandais avuga ko umucamanza ativuguruje ahubwo yakosoye imvugo yakoreshwaga na Ets Rwandais kandi ko n'ubusanzwe umucamanza agomba gukemura impaka ku bintu bitumvikanweho n'ababuranyi akabitangira ibisubizo.

[13] Nk'uko abahanga mu mategeko babivuga, umucamanza afite inshingano yo gushakira inyito ibyo yashyikirijwe n'ababuranyi, akaba ndetse ashobora guhindura inyito yatanzwe n'ababuranyi, ntategetswe gukurikiza ibyo umuburanyi yashingiyeho ikirego cye[1].

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[1] 1Le juge a l'obligation et le pouvoir de qualifier les faits, au besoin de les requalifier et de ne pas s'en tenir au fondement juridique invoqué au soutien de la prétention. Il s'agit même du principal travail du juge. Le juge doit donner aux faits leur vêtement juridique, dire sur quel fondement juridique il est fait droit à la demande, Mélina DOUCHY- OUDOT, Manuel de procédure civile, l'action en justice, le procès, les voies de recours, 2e Edition, Gualino, EJA – Paris- 2006, p. 213.

[14] Kuba Urukiko Rukuru rw'Ubucuruzi rutarakurikije inyito Ets Rwandais yashingiragaho ikirego cyayo, ahubwo rugashaka indi nyito rwasangaga ihura n'ikiburanwa, nta kwivuguruza kwabayeho rwemeza ko ikirego cya Ets Rwandais gifite ishingiro kuko yari ihawe ibyo yaregeye.

4. Ikibazo cyo kumenya niba umucamanza yaba yarafashe ikibazo cy'umwenda uburanwa uko kitari.

[15] Mu mwanzuro we, uburanira BCR avuga ko iyo umuntu yananiwe kwishyura umwenda wa Banki, bamuha ubundi buryo bwo kwishyura kugirango ashobore kwishyura umwenda arimo, ko 33 303 307 frws Ets Rwandais yaregeye atari yakorewe transaction, ko ahubwo ari "restructuration".

[16] Yavuze ko ijambo "restructuration" risobanura ibintu byinshi nka réechelonnement, réorganisation na réamenagement, ngo akaba aribyo BCR yakoreye umukiriya wayo Ets Rwandais iyiha ubundi buryo bwo kwishyura.

[17] Uhagarariye BCR avuga kandi ko icyashingiweho BCR ishyira umwenda kuri 230 000 000 frws ari igice cy'inyungu yavaniyeho Ets Rwandais, bumvikana uburyo izayishyura ariko ntiyabyubahiriza, bituma BCR isubira ku mwenda wa kera, ko rero restructuration itabayeho. Yavuze kandi ko Urukiko rwafashe ibintu uko bitari rwemeza ko habayeho remise de dette ngo kuko BCR yemeye gukura umwenda wa Ets Rwandais kuri 501 038 338 frws ikawushyira kuri 230 000 000 frws kandi nyamara kugira ngo Ets Rwandais yemererwe "restructuration" yaragombaga kuba yarishyuye 100 000 000 frw bitarenze kuwa 23/03/2005, bakumvikana uburyo izishyura andi mafaranga asigaye, ikaba itarigeze ibyubahiriza.

[18] Yasobanuye ko kuba Ets rwandais itarubahirije ibyo yasabwaga kugira ngo habe "restructuration", byatumye BCR iyandikira ibaruwa kuwa 09/08/2007 iyibwira ko isubiye ku mwenda wa mbere yabaze igasanga ungana na 279 078 350 frws.

[19] Me NDAGIJIMANA Emmanuel uburanira Ets Rwandais avuga ko nyuma yaho BCR iguze umwenda Ets Rwandais yari ifite muri BK ariko ntibashe kuwishyura uko bari barabyumvikanyeho, BCR yatanze ikirego mu Rukiko rwa Mbere rw'Iremezo yishyuza umwenda wa 310.348.059, nyuma yaho impande zombi ziza kumvikana, BCR iyikuriraho igice cy'inyungu, bemeranywa ku ngano y'umwenda ungana na 230.000.000 Frw.

[20] Yavuze ko, kugira ngo Ets Rwandais ibashe kwishyura, yasabye inguzanyo muri COGEBANQUE ya 100.000.000 frws, BCR iyifasha kuva mu cyiciro cya V cy'abananiwe kwishyura iyishyira mu cya II kugira ngo ibashe kubona umwenda wa COGEBANQUE.

[21] Me NDAGIJIMANA yasobanuye kandi ko nubwo Ets Rwandais itahise yishyura 100.000.000 frw ako kanya, ariko yaje kuyishyura kuwa 08/07/2005 na nyuma yaho ikomeza kwishyura ku buryo kuwa 04/12/2006 BCR yayibwiye ko isigayemo 33.303.370 frw, ko rero itumva impamvu BCR yasubiye ku mwenda wa kera.

[22] Urukiko rusanga, nk'uko ababuranyi babyemeranywaho, harabayeho imishyikirano igamije kugabanyiriza umwenda Ets Rwandais no kuyorohereza kwishyura iwuvana kuri 501 078 338 frw ugera kuri 230 000 000 frw mu gihe yari kuba yishyuye ako kanya.

[23] Mu bisobanuro uhagarariye BCR ndetse n'abakozi bayo barugejejeho igihe cy'iperereza, bavuze ko Banki ishobora gukorera umu client wayo restructuration y'umwenda ariko bigakorwa ari uko yubahirije conditions impande zombi zumvikanyeho.

[24] Ku byerekeye Ets Rwandais, basobanuye ko BCR yemeye kuyikorera iyo restructuration mu gihe yakwemera kwishyura ako kanya 230 000 000 frw. Banasobanuye ariko ko Ets Rwandais itashoboye kwishyura ayo mafaranga yasabwaga, bumvikana ko yishyura 100.000.000 frw, bivuze ko iyo ari yo yabaye condition nshya kugirango habeho restructuration kuko n'ubwo ayo mafaranga atishyuwe ako kanya nk'uko Ets Rwandais yabisabwaga, ikigaragara ari uko yayishyuye kuwa 08/07/2005 nyuma yo guhabwa inguzanyo na COGEBANQUE, na nyuma y'aho ikaba yarakomeje kwishyura.

[25] Ibimaze gusobanurwa ni nabyo byumvikana mu ibaruwa BCR yandikiye COGEBANQUE kuwa 01/12/2005 iha kopi Ets Rwandais iyimenyesha umwenda isigayemo (situation actuelle des engagements), aho ivuga ko ku mafaranga yose yari ibereyemo iyo banki angana na 230.000.000 frw, imaze kwishyura angana na 167.000.000 frw, ko muri 63.000.000 frw asigaye igomba kwishyura 33.000.000 frw bitarenze impera z'Ukuboza 2005 naho 30.000.000 frw ikayishyura mu gihe cy'amezi cumi n'abiri nyuma yo kwishyura umubare uvuzwe haruguru. Urukiko rurasanga rero, iyo BCR iza kuba itaremeye restructuration , itari kwandika ko amafaranga Ets Rwandais yari imaze kwishyura avanwa muri 230.000.000 frw impande zombi zemeranyijweho nk'uko byavuzwe haruguru.

[26] Kuba BCR ivuga ko restructuration yabujijwe n'uko Ets Rwandais itishyuriye igihe 33.000.000 frw nta shingiro bigomba guhabwa kuko icyo cyari ikibazo kirebana n'iyishyurwa ry'amafaranga bari barumvikanyeho, gitandukanye n'ikirebana n'ibyagombaga kubahirizwa (conditions) na Ets Rwandais kugira ngo umwenda wayo uvanwe kuri 501.078.338 frw ushyirwe kuri 230.000.000 frw.

[27] Urukiko rurasanga rero BCR yaragombaga kubahiriza ayo masezerano yakoranye na Ets Rwandais agamije kugabanya umwenda no korohereza Ets Rwandais kuwishyura kandi ikabikora nta buryarya nk'uko biteganywa n'ingingo ya 33 CCLIII cyangwa ikaregera ko ayo masezerano atubahirijwe uko yumvikanyweho. Muri urwo rwego rero BCR ntiyagombaga gusubira ku mwenda wa mbere wa 501.078.338 frw mu gihe itanigeze ibimenyesha Ets Rwandais kuva mbere.

[28] Hashingiwe ku bimaze gusobanurwa, Urukiko rurasanga nk'uko na BCR yabivuze mu ibaruwa yo kuwa 04/12/2006, umwenda Ets Rwandais yari iyibereyemo kuri yo tariki ungana na 33.303.370 frw nk'uko Urukiko Rukuru rw'Ubucuruzi rwabyemeje.

5. Kumenya niba Urukiko rwaragombaga kwemeza amafaranga Ets Rwandais yishyuye nyuma y'itariki ya 04/12/2006.

[29] Mu bujurire bwuririye ku bundi Ets Rwandais yakoze, uyihagarariye avuga ko Urukiko Rukuru rw'Ubucuruzi rwanze kwakira ikirego cy'inyongera bari batanze barusaba kwemeza ko nyuma y'italiki ya 04/12/2008 hari andi mafaranga yishyuwe BCR ku buryo hasigaye 1 398 741 frws kuwa 30/04/2008, akaba ari nawo mwenda Etablissement Rwandais yari isigayemo BCR ubwo imitungo yayo yagurishwaga muri cyamunara.

[30] Uhagarariye BCR yavuze ko ibisabwa na Ets Rwandais nta shingiro byahabwa kuko uburyo ibara umwenda bigaragaza ko idashyiramo inyungu kandi nta na remise de dette yabayeho.

[31] Urukiko rurasanga ikirego Ets Rwandais yatanze mu Rukiko Rukuru rw'Ubucuruzi cyari icyo gusaba ko hemezwa ko umwenda BCR yanditse mu ibaruwa yo kuwa 04/12/2006 ari wo iyibereyemo, ko atari uwa 279 078 350 frw BCR yavugaga, ibyo akaba ari nabyo byaburanweho. Ibivugwa na Ets Rwandais urukiko rwaba rutarasubije bikaba rero nta shingiro bifite kuko nta n'ikirego cy'inyongera yatanze ngo kibe kitarasuzumwe, uru rukiko narwo rukaba rutasuzuma ibitaraburanweho ku rwego rwa mbere.

6 . Kumenya niba Ets Rwandais yagenerwa inyungu za 18 % zibariwe ku mafaranga 279 078 350 frw.

[32] Me NDAGIJIMANA avuga ko umucamanza yemeje ko nta nyungu za 18 % ya 279 078 350 frw Ets Rwandais igomba guhabwa na BCR ngo kuko zizatangirwa mu rundi rubanza rw'imitungo yayo yatejwe cyamunara kubera uyu mwenda, avuga ariko ko urwo rubanza narwo rwaciwe izo nyungu ntizitangwe.

[33] Uhagarariye BCR avuga ko inyungu zisabwa zishingiye kuri cyamunara yakozwe hashingiwe ku masezerano yari ifitanye na Ets Rwandais yarimo vente par voie parrée, ko kandi kuba nta kosa BCR yakoze ntaho Ets Rwandais yashingira yaka inyungu.

[34] Ku kibazo cyerekeye inyungu za 18 % zisabwa na Ets Rwandais, ingingo ya 106 y'itegeko ryererekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko ikirego cyaciriweho urubanza burundu, gishingiye ku mpamvu imwe, cyerekeye ababuranyi bamwe kandi bakiburana mu izina ryabo rya mbere, kidashobora kongera kuburanishwa.

[35] Urukiko rurasanga izo nyungu uhagarariye Ets Rwandais yemera ko zaburanwe mu rundi rubanza, ikaba itakongera kuzisaba muri uru rubanza, kuko byaba ari ukugarura ikibazo cyakemuwe burundu kandi bibujijwe n'ingingo ya 106 yavuzwe haruguru.

7 . Amafaranga y'ikurikirana rubanza, igihembo cya avocat n'icya huissier.

[36] Me NDAGIJIMANA avuga ko urukiko rwageneye Ets Rwandais 500.000 frw kandi yari yasabye 10 % y'amafaranga yose aburanwa nk'igihembo cya avocat na 5% y'umuhesha w'inkiko, urukiko ntirwayatanga kandi Ets Rwandais igomba kuyabishyura kubera amakosa ya BCR yayishoye mu manza.

[37] Uhagarariye BCR yavuze ko amafaranga Ets Rwandais yaka nta shingiro afite ngo kuko ashingiye ku masezerano avoka yakoranye n'uwo aburanira.

[38] Urukiko rurasanga nk'uko umucamanza wa mbere yabyemeje, ntakigaragaza ko ayo mafaranga ari yo koko Ets Rwandais igomba kwishyura, akaba ari yo mpamvu yagenwe mu bushishozi bw'urukiko, ariko kubera ko urubanza rwakomeje kugeza kuri uru rwego rw'ubujurire, ayo yagenewe akaba akwiye kwiyongeraho 500.000 frw.

III. ICYEMEZO CY'URUKIKO

[39] RWEMEJE ko ubujurire bwa BCR nta shingiro bufite.

[40] RWEMEJE ko ubujurire bwuririye ku bundi bwa Ets Rwandais bufite ishingiro ku byerekeye amafaranga y'ikurikirana rubanza.

[41] RUTEGETSE BCR kwishyura Ets Rwandais 500 000 frw y'ikurikirana rubanza yiyongera kuri 500.000 frw yagenewe ku rwego rwa mbere.

[42] RUVUZE ko urubanza rwajuririwe ruhindutse gusa ku byerekeye amafaranga y'ikurikirana rubanza.

[43] RUTEGETSE BCR kwishyura 42. 850 frws y'amagarama y'urubanza, itayatanga mu gihe cy'iminsi 8, ayo mafaranga agakurwa mu byayo ku ngufu za Leta.