ARLCOM Ltd N'UNDIv. ECOBANK RWANDA Ltd

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA0020/15/CS (Mukamulisa, P.J., Hitiyaremye na Karimunda, J.) 21Gicurasi2018]

Amategeko agenga Amasezerano – Amasezerano y'inguzanyo – Inyungu – Inyungu zisanzwe n'iz'ubukererwe – Mu gihe uwahawe inguzanyo atabashije kwishyura kandi yaratanze ingwate yishingira inguzanyo, inyungu zisanzwe n'iz'ubukererwe ntizikwiye gukomeza kubarwa nyuma ya "denonciation de credit." .

Incamake y'ikibazo: Sosiyete Arlcom Ltd yahawe inguzanyo na Ecobank Rwanda Ltd, iyo nguzanyo yishingirwa n'Uwamahoro ari nawe muyobozi wayo maze anatanga ingwate., Uwo mwenda ukaba waravuguruwe inshuro eshatu (restructuration). Nyuma yaho, sosiyete ntiyabasha kwishyura iyo nguzanyo, maze Ecobank Rwanda Ltd isesa amasezerano y'inguzanyo (denonciation de credit), bityo irega iyi sosiyete hamwe n'umwishingizi wayo mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba kwishyurwa umwenda bayibereyemo, inyungu zisanzwe n'iz'ubukererwe ndetse n'amafaranga y'ikurikiranarubanza. Urukiko rwemeza ko ikirego gifite ishingiro, maze rutegeka abarezwe kwishyura umwenda n'indishyi .

Iyi Sosiyete Arlcom Ltd n'umwishingizi wayo, bajuririye Urukiko Rukuru rw'Ubucuruzi, rwemeza ko ubwo bujurire nta shingiro bufite, rwemeza kandi ko imikirize y'urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge idahindutse uretse ku bijyanye n'ingano y'umwenda, rutegeka Arlcom Ltd n'umwishingizi wayo gufatanya kwishyura Ecobank Rwanda Ltd umwenda bayibereyemo, amafaranga yishyuwe inzobere mu ibaruramari (expert), hamwe n'amagarama y'urubanza.

Barongeye bajuririra Urukiko rw'Ikirenga bavuga ko Uwamahoro atagombaga kuregwa hamwe na sosiyete kuko ntaho ahuriye n'umwenda yishyuzwa usibye kuba yaratanze ingwate kandi atarigeze awutambamira .

Ecobank yisobanura ivuga ko impamvu Uwamahoro asabwa gufatanya na Arlcom Ltd kwishyura ari uko yasinye inyandiko ebyiri zigaragaza ko yemeye umwenda, imwe yitwa*"joint guarantee"* ivuga ko sosiyete nitishyura, azagurisha ingwate akishyura, indi yitwa "*attestation de consentement"* ivuga ko niba sosiyete inaniwe kwishyura azishyura nk'umwishingizi wayo.

Kubirebana no kumenya ingano y'umwenda n'inyungu uwahawe inguzanyo agomba kwishyura , Uwamahoro avuga ko atemeye ibyagaragaye muri raporo y'umuhanga washyizweho n'urukiko kuko asanga ifite inenge nyinshi kubirebana n'amavugururwa y'imyenda yagiye akorwa kandi ko ku wa 24/10/2012 banki yandikiye sosiyete isesa amasezerano ibimenyesha RDB, bivuze ko yari itangiye imihango yo guteza cyamunara ariko nyamara ntiyabikomeza, ibyo byayigizeho ingaruka kuko banki yari kwishyurwa amafaranga make ugereranyije nayo banki imwishyuza ubu

Ku mwenda nyirizina yishyuza, banki ivuga ko imyenda yatanze yavuguruwe inshuro eshatu yumvikanyeho n'impande zombi, kuburyo umwenda wa nyuma wavuguruwe ku itariki ya 14/06/2012 uhwanye na 611.893.224Frw, ariko ukaba warakomeje kubyara inyungu zisanzwe n'iz'ubukererwe kugeza ubu.

Incamake y'icyemezo: 1. Mu gihe uwahawe inguzanyo atabashije kwishyura kandi yaratanze ingwate yishingira inguzanyo, inyungu zisanzwe n'iz'ubukererwe ntizikwiye gukomeza kubarwa kuko ingwate yashoboraga kugurishwa umwenda ukishyurwa nyuma ya "*denonciation de credit.".*

Ubujurire bufite ishingiro kuri bimwe.
Ubujurire bwuririye kubundi bufite ishingiro kuri bimwe.
Amagarama yatanzwe n'abajuriye ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko-Teka ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 33 iya 552 n'iya 560.

Nta manza zifashishijwe.

Urubanza

I.IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Ecobank Rwanda Ltd, irega Uwamahoro Florent de la Paix na Arlcom Ltd, isaba ko Urukiko rwabategeka kwishyura umwenda bayibereyemo n'inyungu zawo ndetse n'amafaranga y'ikurikiranarubanza.

[2] Urwo Rukiko rwaciye urubanza RCO0164/13/TC/NYGE rwemeza ko ikirego cya Ecobank Rwanda Ltd gifite ishingiro, rutegeka abarezwe kwishyura umwenda n'indishyi z'ikurikiranarubanza.

[3] Arlcom Ltd na Uwamahoro Florent de la Paix ntibishimiye iyi mikirize y'urubanza, bajuririra Urukiko Rukuru rw'Ubucuruzi, ruca urubanza RCOMA0213/14/HCC, rwemeza ko ubwo bujurire nta shingiro bufite, ko imikirize y'urubanza RCOM0164/13/TC/Nyge, rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge idahindutse uretse ku bijyanye n'ingano y'umwenda. Rwategetse Arlcom Ltd na Uwamahoro Florent de la Paix gufatanya kwishyura Ecobank Rwanda Ltd umwenda bayibereyemo ungana na 786.356.789Frw, kuyishyura amafaranga yishyuwe inzobere mu ibaruramari (expert) angana na 2.600.000Frw, no kwishyura amagarama y'urubanza.

[4] Arlcom Ltd na Uwamahoro Florent de la Paix bajuririye Urukiko rw'Ikirenga, barusaba kwemeza ko Ecobank Rwanda Ltd nta bubasha n'inyungu yari ifite byo kurega Uwamahoro Florent de la Paix hamwe na Arlcom Ltd kubera ko uruhare rwa Uwamahoro ari uko gusa yatanze ingwate yishingira umwenda. Banenze kandi Urukiko Rukuru rw'Ubucuruzi kuba rwarashingiye kuri expertise nyamara yari irimo ibintu bidasobanutse.

[5] Uru rubanza rwaburanishijwe mu ruhame ku wa 24/11/2015, uwo munsi Ecobank Rwanda Ltd itanga inzitizi yo kutakira ikirego cy'ubujurire cyatanzwe na Uwamahoro Florent de la Paix na Arlcom Ltd ivuga ko abajuriye batsinzwe ku mpamvu zimwe mu Nkiko zombi

zibanza. Ku wa 21/01/2016, Urukiko rwaciye urubanza rubanziriza urundi, rwemeza ko inzitizi yatanzwe na Ecobank Rwanda Ltd nta shingiro ifite, rutegeka ko iburanisha rizakomeza ku wa 03/05/2016, ariko rigenda risubikwa kenshi bitewe cyane cyane n'uko Uwamahoro Florent de la Paix yari hanze y'Igihugu kandi yarasabye kuba mu rubanza rwe kubera ko hari byinshi aruziho, Avoka we akaba yari afite ububasha bwo kumwunganira gusa.

[6] Iburanisha rya nyuma ryabaye ku itariki ya 13/06/2017, Uwamahoro Florent de la Paix na Arlcom Ltd bahagarariwe na Me Kazeneza Théophile, Ecobank Rwanda Ltd iburanirwa na Me Kayigirwa Télesphore, nyuma y'iburanisha Urukiko ruvuga ko ruzafata icyemezo ku wa 21/07/2017, ariko mbere y'uko ruca urubanza, rwakira ibaruwa ya Uwamahoro Florent de la Paix watanze inzitizi yo kwigarika Me Nkurunziza Francois Xavier wari usanzwe amwunganira akanahagararira Arlcom Ltd. Byatumye iburanisha ryimurirwa ku wa 31/10/2017, kugira ngo Uwamahoro Florent de la Paix abanze ashyikirize Urukiko umwanzuro ukubiyemo ikirego cye cy'ubwigarike, nabwo ntirwaburanishwa kuko bisabwe na Me Kazeneza Théophile, hategerejwe umwanzuro wa Komisiyo y'imyitwarire y'Urugaga rw'Abavoka ku kibazo cy'ubwigarike bwa Me Nkurunziza François Xavier, urubanza ku nzitizi yavuzwe ruburanishwa kuwa 12/12/2017.

[7] Ku wa 12/01/2018, Urukiko rwemeje ko ikirego cyatanzwe na Uwamahoro Florent de la Paix cyo kwigarika Me Nkurunziza François Xavier gifite ishingiro, ko Me Nkurunziza Francois Xavier agomba kumwishyura 500.000Frw y'igihembo cy'Avoka, rutegeka ko iburanisha ry'urubanza mu mizi rizapfundurwa ku wa 27/03/2018. Uwo munsi iburanisha ryabaye hari Me Habinshuti Yves wunganira Uwamahoro Florent de la Paix anahagarariye Arlcom Ltd, naho Ecobank Rwanda Ltd iburanirwa na Me Nkundabarashi Moïse afatanyije na Me Kayigirwa Télésphore.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

Kumenya niba Uwamahoro Florent de la paix atagomba kuregwa hamwe na Arlcom Ltd mu rubanza

[8] Uwamahoro Florent de la Paix avuga ko Ecobank yagombye kugaragaza amasezerano y'umwenda yihariye yagiranye nayo kuko we atabona aho ahuriye n'umwenda wishyuzwa usibye kuba yaratanze ingwate kandi akaba atarigeze ayitambamira mu gikorwa cyo kuyigurisha. Anavuga ko mu mwanzuro wakozwe na Avoka wa Ecobank Rwanda Ltd irega ubwo yasabaga ko ikirego cyakirwa, yasabye Uwamahoro Florent de la Paix kuyishyura miliyoni 657, no kumutegeka kwishyura amafaranga y'ikurikiranarubanza, ariko mu gufata icyemezo, Urukiko rutegeka ko Uwamahoro Florent de la Paix afatanya na Arlcom Ltd kandi rutarabisabwe.

[9] Me Habinshuti Yves avuga ko Uwamahoro Florent de la Paix yatije ingwate Arlcom Ltd, akaba yumva nta kindi akwiye kuryozwa, kuko Ecobank Rwanda Ltd itagaragaza ibimenyetso by'uko yemeye ko yafatanya na Arlcom Ltd kwishyura, ari yo mpamvu akwiye kuvanwa mu rubanza, cyane cyane ko Ecobank Rwanda Ltd mu kurega Uwamahoro Florent de la Paix itagaragaza amakosa yakoze mu kuba Arlcom Ltd itarubahirije amasezerano yagiranye na banki. Anavuga ko Urukiko Rukuru rw'Ubucuruzi rwategetse ko Uwamahoro Florent de la Paix afatanya na Arlcom Ltd kwishyura Ecobank, ariko ntirwagaragaza amafaranga buri wese agomba kwishyura.

[10] Me Nkundabarashi Moïse uburanira Ecobank asubiza ko impamvu ituma Uwamahoro asabwa gufatanya na Arlcom Ltd kuyishyura, ari uko yasinye inyandiko yitwa *"joint guarantee"* yo ku wa 14/12/2009 aho yemeye kwishingira Arlcom Ltd, anasinya "*attestation de consentement"* ku wa 31/02/2009 nanone yemera umwenda.

[11] Akomeza avuga ko inyandiko ya mbere ivuga ko Arlcom Ltd nitishyura, Uwamahoro Florent de la Paix azagurisha ingwate akishyura, naho inyandiko ya kabiri yo ikavuga ko Arlcom Ltd nitishyura, Uwamahoro Florent de la Paix azishyura. Akomeza avuga ko indi mpamvu ituma Uwamahoro Florent de la Paix na Arlcom Ltd baregwa hamwe, ari uko hari amasezerano y'inguzanyo yakozwe hagati ya Arlcom Ltd na Ecobank Rwanda Ltd yo ku wa 14/06/2012 akaba ari *restructuration* yakozwe ku myenda Arlcom Ltd na Uwamahoro Florent de la Paix bari barahawe, iyo myenda ikaba ifite agaciro ka 611.893.224Frw, ko rero atumva uburyo Uwamahoro avuga ubu ko ntaho ahuriye n'umwenda Ecobank Rwanda Ltd yishyuza.

[12] Ku bijyanye na "*Joint Guarantee*" hamwe na "attestation *de consentement*" zavuzwe haruguru na Ecobank, Uwamahoro Florent de la Paix avuga ko yazisinye, ko ariko urebye ibizikubiyemo, atari we wari ushinzwe kugurisha ingwate kuko izo nshingano zari iza Ecobank, ko ndetse itagombaga kubanza kumusaba uruhushya rwo kugurisha ingwate.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 552 y'Igitabo cya III cy'urwunge rw'amategeko y'imbonezamubano, iteganya ko"Umuntu wiyemeje kwishingira undi asabwa gusa kubahiriza ibyo yishingiye, iyo uwo yishingiye atubahirije inshingano ze"; naho iya 560 igateganya ko «Umuntu wiyemeje kwishingira undi umwenda we asabwa kwishyura uberewemo umwenda iyo gusa ugomba kwishyura uwo mwenda wishingiwe atawishyuye, habanje gukoreshwa umutungo we, keretse iyo uwishingiye yerekanye ko azishyura hatabaye izindi mpaka, cyangwa akaba yariyemeje gufatanya kwishyura na nyirumwenda batabatandukanije. Icyo gihe hakurikizwa amahame ajyanye n'imyenda abantu biyemeza kwishyura bafatanije».

[14] Ingingo ya 33 y'Igitabo cya III cy'urwunge rw'amategeko y'imbonezamubano iteganya ko "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko ".

[15] Ku bijyanye n'uru rubanza, dosiye igaragaza ko kuva mu mwaka wa 2009, Arlcom yagiye ihabwa na Ecobank Rwanda Ltd imyenda itandukanye, nyuma hasinywa amasezerano atatu avugurura iyo myenda "restructuring", akaba yarasinywe ku ruhande rumwe na Ecobank Rwanda Ltd n'umuyobozi wayo, ku rundi ruhande hasinya Uwamahoro Florent de la Paix nka "Managing Director" wa Arlcom Ltd. Nanone muri ayo masezerano, mu gice cyiswe "security/Support", kuri Nº 6, Uwamahoro yongeye kwemera ko abaye umwishingizi ku giti cye w'umwenda wafashwe cyangwa igihombo cyawuturukaho ("*Renewal of the Personal Guarantee of promotor Mr Uwamahoro Florent de la Paix with Ecobank listed as loss payee*").

[16] Ikindi kiboneka muri dosiye ni inyandiko yiswe "*Convention* d'ouverture *de crédit avec constitution d'hypothèque*" yo ku wa 10/12/2009, yasinywe ku ruhande rumwe na Ecobank, ku rundi ruhande hasinya Uwamahoro Florent de la Paix, nk'umukiriya ukorera imirimo

y'ubucuruzi ku izina rya "Arlcom"[1]. Muri dosiye harimo kandi "acte notarié" yo ku wa 10/12/2009 yasinywe hagati ya Ecobank Rwanda Ltd na Uwamahoro Florent de la Paix, umugore we witwa Uwamahoro Amina Arlette nawe ayasinya nk'umutangabuhamya, bikaba biboneka ko iyo nyandiko ijyanye n'umwenda uburanwa muri uru rubanza.

[17] Byongeye kandi, Urukiko rurasanga kuba mu nyandiko zitandukanye ziri muri dosiye Ecobank Rwanda Ltd yarandikiranaga na Uwamahoro Florent de la Paix, kuva habaye amasezerano yose avugurura umwenda iyo banki yagiranye na Arlcom Ltd, kandi buri gihe iyi ikaba yari ihagarariwe n'Umuyobozi wayo (Managing Director) ari we Uwamahoro Florent de la Paix, bisobanuye ko, mu gihe iyo sosiyete idashoboye kwishyura umwenda wishyuzwa na Ecobank Rwanda Ltd kuko ariyo yawufashe, ugomba kwishyurwa na Uwamahoro Florent de la Paix nk'umwishingizi wayo.

[18] Nanone mu gihe cy'iburanisha, Uwamahoro Florent de la Paix yemeye ko yanasinye inyandiko zitwa "joint guarantee" na "Acte de consentement" kandi zose zinyajye n'umwenda Ecobank Rwanda Ltd yahaye Arlcom Ltd , aho yemeye ko nutishyurwa azawishyura.

[19] Nyuma y'ibisobanuro byatanzwe haruguru, Urukiko rusanga ibivugwa na Uwamahoro Florent de la Paix ko Ecobank Rwanda Ltd itagombaga kumukurikirana hamwe na Arlcom Ltd nta shingiro bifite, mu gihe umwenda wahawe iyo sosiyete waba utarishyuwe kandi yarawishingiye.

Kumenya ingano y'umwenda n'inyungu zawo Uwamahoro Florent de la Paix na Arlcom Ltd bagomba kwishyura Ecobank Rwanda Ltd.

[20] Uwamahoro Florent de la Paix avuga ko umuhanga washyizweho n'Urukiko, nk'uko biboneka ku rupapuro rwa 45 rwa raporo ye, yasanze muri restructuration ya mbere yakozwe harimo amakosa kuko nta bisobanuro by'umwenda Ecobank Rwanda Ltd yatanze, bigaragaza ko n'izindi restructurations zakukiriye zari zipfuye kuko zashingiye kuri iyo ya mbere yarimo amakosa.

[21] Anavuga ariko ko anenga uwo muhanga kuba yarerekanye ko umwenda wishyuzwa ungana na 408.000.000Frw, kandi wari ukwiye kuba 248.000.000Frw, ko kandi "expertise" irimo n'izindi nenge zirimo kuba umuhanga yarasanze "lettre de crédit" na "ligne de crédit" Ecobank Rwanda Ltd yarabifashe nk'umwenda nyamara ntiyerekana ingaruka byagize. Yongeraho ko kuba imibare Ecobank Rwanda Ltd igenda itanga ipfuye, byagize icyo bimuvutsa ariko Urukiko Rukuru ntirwabisuzuma ngo rumurenganure. Anasanga kuba yarashyize umukono kuri restructuration bidahagije mu kwanzura ko yemera umwenda Ecobank Rwanda Ltd ivuga ko yamuhaye, cyane cyane ko amasezerano asinywa hagati ya banki n'umukiliya wayo aba yateguwe niyo banki (contrat d'adhésion), asaba Urukiko kuzabyitaho rukamurenganura.

[22] Uwamahoro Florent de la Paix avuga nanone ko muri raporo ye, umuhanga yakoze *tableau* agaragaza ko hagomba kubaho isuzumwa ry'umukono w'uhagarariye Arlcom Ltd, kugira ngo byemerwe ko *opération*s zakozwe kuri konti yayo ari izayo koko, ko muri urwo

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[1] Uwamahoro Florent de la Paix "*opérant ses activités commerciales sous le nom de "Arlcom", ci-après dénommé "Le Client".*

rwego, kuri *opérations* 252 zabaye, nta sinyatire ya Arlcom iriho, nyamara ibyo Urukiko ntirwabiha agaciro. Asanga ibisobanuro byatanzwe n'Urukiko Rukuru rw'Ubucuruzi bidahwitse, ari nayo mpamvu asaba ko hashyirwaho undi muhanga, hagakorwa *contre expertise* kugira ngo imibare nyayo igaragare. Anavuga ko kuba Ecobank Rwanda Ltd yaragiye yanga gutanga *historique* ari uko hari ibyo yashakaga guhisha, asaba Urukiko kuzabishingiraho rwemeza ko itsinzwe. Anavuga ko umwenda yemera ungana na 284.093.675Frw.

[23] Akomeza avuga ko ku wa 24/10/2012 Ecobank Rwanda Ltd yandikiye Arlcom Ltd isesa amasezerano, ibimenyesha RDB, bivuze ko iyo banki yari yatangiye imihango yo guteza cyamunara ibinyujije kuri RDB, nyamara ko itabikomeje ngo iteze cyamunara y'ingwate yahawe kandi ntacyabiyibuzaga, ibyo bikaba byarabagizeho ingaruka z'uko icyo gihe banki yari kwishyurwa gusa miliyoni 657 nk'uko yayishyuzaga mbere, ariko uyu munsi ikaba ivuga ko umwenda igomba kwishyurwa urenga miliyari.

[24] Uwamahoro Florent de la Paix na Me Habinshuti Yves bavuga kandi ko hari amafaranga 500.000Frw Ecobank yakuye kuri konti ya Arlcom Ltd ku wa 02/06/2011 ariko ntiyayatangira ibisobanuro, ko hari n'andi mafaranga *Sotra Tour & Travel Agency* yishyuye Arlcom Ltd ikoresheje sheki ebyiri (imwe ifite Nº36855080 ya 9.552.043 Frw yo ku wa 28/04/2011 n'indi ifite Nº36855081 ifite agaciro ka 6.102.882 Frw) akaba yaragombaga kujya kuri konti ya Arlcom Ltd muri Ecobank Rwanda Ltd, nyamara iyo banki ikiyishyura ayo mafaranga ikereweho imisi 45, kandi yari gutuma umwenda ugabanuka, Ecobank Rwanda Ltd ikaba itagaragaza impamvu yatumye ikererwa kwiyishyura. Anenga kandi umuhanga kuba ataragaragaje igihombo yatejwe n'ubwo bukererwe ngo anakore ihwanyamyenda.

[25] Me Habinshuti Yves avuga ko Arlcom Ltd na Uwamahoro Florent de la Paix bagerageje kwandikira Perezida w'Urukiko Rukuru rw'Ubucuruzi bamugaragariza inenge nyinshi ziri muri raporo y'umuhanga, muri zo hakaba hari izo urwo Rukiko rwemeye ariko ntirwategeka ko iyo raporo ivanwaho hagakorwa indi. Atanga ingero avuga ko umuhanga yerekanye ko mu gukora restructurations, Ecobank Rwanda Ltd yagiye ihindura ikigero cy'inyungu (taux d'intérêt) inyuranyije n'ibyo bemeranyijwe mu masezerano, kuko nko ku rupapuro rwa 48 rwa raporo ye yerekanye ko ikigero cy'inyungu zumvikanyweho mu kuvugurura umwenda wa 408.000.000Frw Ecobank Rwanda Ltd yakoresheje ikingana na 16,49% aho gukoresha 16%, ku rupapuro rwa 52 yerekana ko ku mwenda uvuguruwe wa 611.893.294, biboneka ko Ecobank Rwanda Ltd yakoresheje ikigero cy'inyungu kingana na 16,02% aho gukoresha icyumvikanyweho cya 15%. Avuga ko iyo izo nenge zose Urukiko Rukuru rw'Ubucuruzi ruziha agaciro, byari gutuma umwenda ugabanuka, ariko rukaba rwarabyirengagije.

[26] Anavuga ko umuhanga yagaragaje ku rupapuro rwa 49 ko Ecobank Rwanda Ltd yabaze nabi umwenda iberewemo ubwo yakoraga restructuration ya 559.279.335Frw aho kuba 493.852.705 Frw, ko kandi nta bisobanuro iyo banki yatanze, ndetse ko no kuri restructuration ya 611.893.224 Frw ivugwa ku rupapuro rwa 51 rwa raporo, umuhanga yerekanye ko umwenda wari kuba ari 504.809.709Frw, nyamara ko aya makosa yose nayo ntacyo Urukiko rwayavuzeho.

[27] Me Habinshuti Yves akomeza avuga ko Urukiko rwatanze ibisobanuro bidahwitse, aho garanties bancaires zahindutse umwenda ubyara inyungu kandi ibyo bitabaho, dore ko n'umuhanga Urukiko rwashyizeho yasobanuye ko bene izo ngwate ari engagement par signature, ko atari inguzanyo banki iba yahaye umukiriya. Anenga n'umuhanga kuba yaragaragaje ikibazo

gusa ariko ntiyigere avuga ingaruka zacyo, n'Urukiko rukaba rutarasuzumye ibibazo uwo muhanga yagaragaje ngo rubihe agaciro, ahubwo rukemeza ko izo nenge zidashingiye ku masezerano cyangwa amahame y'inguzanyo, aho kwemeza ko amafaranga n'inyungu zayo byabazwe nabi bigomba gukurwa mu myenda.

[28] Yongeraho ko umuhanga yasanze hari ama sheki yakuwe kuri konti ya Arlcom Ltd ku mibare itariyo nk'uko biboneka ku rupapuro rwa 34 rwa raporo, kuko aho gukuraho 17.324.152Frw, Ecobank Rwanda Ltd yakuyeho 173.224.152Frw ariko ntiyagira icyo abikoraho.

[29] Me Nkundabarashi Moïse uhagarariye Ecobank Rwanda Ltd yabanje gusubiza ku kinyuranyo cy'imibare ya 17.324.152Frw, na 173.224.152Frw kivugwa n'abo baburana, avuga ko biboneka ko ari amakosa yabaye mu gihe cyo kwandika, ko ariko umuhanga yagaragaje ku rupapuro rwa 34 rwa raporo ye ko byakosowe. Anavuga ko asanga ari byiza ko ubu Uwamahoro Florent de Paix noneho yemera ko hari umwenda abereyemo Ecobank Rwanda Ltd kubera ko mbere yavugaga ko ntawo.

[30] Ku bijyanye n'umwenda nyirizina Ecobank Rwanda Ltd yishyuza, avuga ko imyenda iyo banki yatanze yavuguruwe inshuro eshatu byumvikanyweho n'impande zose, ku buryo umwenda wa nyuma wavuguruwe ari uwo ku itariki ya 14/06/2012, ukaba uhwanye na 611.893.224Frw, ariko ukaba warakomeje kubyara inyungu zisanzwe n'iz'ubukererwe kugeza ubu.

[31] Avuga ko ikibazo cyo gukoresha ikigero cy'inyungu "taux d'intérêt" kitari cyo Ecobank Rwanda Ltd ibona kitagombye kubaho, kuko mu masezerano yo kuvugurura umwenda "restructuration" yo ku wa 14/06/2012, bemeranyijwe ko icyo kigero kingana na 15%, banemeranywa ko inyungu zo kutishyura zingana na 2% buri kwezi, kandi ibyo bigero by'inyungu akaba ari byo Ecobank Rwanda Ltd yakoresheje ibara inyungu igomba kwishyurwa kuva muri 2012 kugeza ubu, kuko inyungu zisanzwe zibariye kuri 15% kuva ku itariki ya 14/06/2012 kugeza ku ya 31/08/2015, ni ukuvuga imyaka itatu n'amezi abiri, zikaba zingana na 374.157.837Frw, hakiyongeraho inyungu z'ubukererwe "pénalité" za 2% buri kwezi, zose hamwe zikangana na 242.242.109Frw.

[32] Avuga rero ko igiteranyo cy'umwenda wose Ecobank Rwanda Ltd yishyuza ubu hamwe n'inyungu zose ari = 611.893.224 Frw + 74.157.837Frw (inyungu zisanzwe) + 224.22.249.109 Frw (pénalité), yose hamwe akaba = 1.283.862.819Frw.

[33] Me Kayigirwa Télésphore nawe uhagarariye Ecobank Rwanda Ltd avuga ko ku byerekeye 500.000Frw abo baburana bavuga ko yavanywe kuri konti ya Arlcom Ltd nta bisobanuro, icyo abona gishoboka ari uko ayo mafaranga ajyanye na "compte courant" akaba ntaho ahuriye n'umwenda Ecobank Rwanda Ltd yishyuza, ko ndetse sheki zijyanye n'ayo mafaranga zishobora kuba zarabuze kubera ikibazo cy'ububiko bw'inyandiko.

[34] Anavuga ko sheki 2 za Sotra Tours & Travel Agency zashyizwe kuri konti ya Arlcom Ltd zakereweho iminsi 42, umuhanga yasobanuye ko yeretswe ko igihe izo sheki zatangwaga zitari zizigamiwe, naho ibyo umuhanga yavuze ko Ecobank Rwanda Ltd yanze kumwereka konti ya Sotra Tours & Travel Agency ngo arebe ko koko izo sheki zatanzwe nta mafaranga ari kuri konti ya nyirazo, ko impamvu Ecobank Rwanda Ltd itamweretse iyo konti ari uko ntaho ihuriye

na “expertise” yakorwaga, kuko banki ifite inshingano zo kugirira ibanga konti y’umukiliya (Sotra Tours & Travel Agency) wayo.

UKO URUKIKO RUBIBONA

[35] Urukiko rusanga impande zose zumvikana ko umwenda Ecobank Rwanda Ltd ikurikiranye wavuguruwe inshuro 3, uwavuguruwe bwa nyuma Ecobank ikaba yarawubaze ikerekana ko ungana na 611.893.224Frw, ariko mu bisobanuro umuhanga washyizweho n’Urukiko Rukuru rw’Ubucuruzi yatanze, yerekanye ko mu by’ukuri uwo mwenda wagombaga kungana na 610.166.856Frw anabitangira ibisobanuro bikubiye muri raporo ye. Ubwo Ecobank Rwanda Ltd idahakana imibare yakozwe n’uwo muhanga, uwo mubare wemejwe n’umuhanga niwo ugomba guherwaho harebwa ibijyanye n’inyungu iyo banki ibara kuko Uwamahoro na Arlcom Ltd batemera ibarwa ryazo. Ku rundi ruhande nanone, Urukiko rusanga rutahera kuri 284.093.675Frw Uwamahoro Florent de Paix avuga ko ari wo mwenda yemera, kuko atagaragaza aho awushingira.

[36] Urukiko rusanga ku itariki ya 24/10/2012, Ecobank Rwanda Ltd yarandikiye Arlcom Ltd na Uwamahoro Florent de la Paix ikora “dénonciation du crédit” inasaba kwishyurwa 657.788.007 Frw (ni ukuvuga: 610.166.856 Frw “crédits amortissables” + inyungu za 8.340.713 Frw + inyungu z’ubukererwe: 11.509.852 Frw + Débit en compte courant”: 27.270.586 Frw).

[37] Urukiko rushingiye ku masezerano y’umwenda yabaye, iyo banki yari yahawe ingwate ifite agaciro kangana 750.000.000Frw. Nk’uko Uwamahoro Florent de la Paix abiburanisha, ntibyumvikana uburyo nyuma yo gusesa amasezerano y’umwenda ku itariki imaze kuvugwa, hejuru y’umwenda wa 610.166.866Frw uvuguruwe bwa nyuma nk’uko wemejwe n’umuhanga, Ecobank Rwanda Ltd yahisemo gukomeza kubara inyungu zisanzwe n’iz’ubukererwe kandi igahera kuri 611.893.224Frw, aho gushaka uko igurisha ingwate yahawe, cyane cyane ko agaciro kayo gasumba kure amafaranga yishyuzaga icyo gihe. Urukiko rusanga Ecobank Rwanda Ltd igomba kwirengera ingaruka z’iyo mikorere kubera ko kutabyitaho kwaba ari ugutuma uwishyuzwa akomeza kubarirwa inyungu z’ikirenga kandi bikamutera igihombo ku makosa atari aye.

[38] Mu bisobanuro yatanze mbere kandi, umuhanga yagaragaje ku rupapuro rwa 67 rwa raporo ye, ko yabonye ikibazo cy’amafaranga ya sheki 2 zo ku wa 28/4/2011 za Sotra Tours & Travel Agency, imwe ya 9.552.043Frw n’indi ya 6.102.882Frw (zombi zihwanye na 15.654.925Frw) yahawe Ecobank Rwanda Ltd ku itariki ya 4/05/2011 agenewe gushyirwa kuri konti ya Arlcom Ltd, ariko ikayashyiraho ku itariki ya 16/6/2011, nyuma y’iminsi 42. Uwo muhanga anavuga ko mu bisobanuro yahawe na Ecobank Rwanda Ltd, yamubwiye ko kudahita iyashyira kuri konti ya Arlcom Ltd byatewe n’uko izo sheki zari zitazigamiwe, ariko ko iyo banki itamuhaye ikimenyetso cy’ibyo ivuga. Asoza yemeza ko biramutse bigaragaye ko izo mpungenge “réserves” yavuze kuri izo sheki zifite ishingiro, ingano y’umwenda kugeza ku itariki ya 4/05/2011 yahinduka.

[39] Mu miburanire ya Uwamahoro Florent de la Paix n’umwunganira, nk’uko byasobanuwe, mu byo banenga Ecobank Rwanda Ltd ku bijyanye n’uburyo umwenda yishyuza wabazwe, harimo n’amafaranga avuzwe mu gika kibanziriza iki, kuko bavuga ko iyo iba yarayashyize kuri konti ya Arlcom Ltd ku gihe, yari kugabanya umwenda wishyuzwa. Ecobank Rwanda Ltd ku

ruhande rwayo yo yakomeje kuvuga ko bishoboka ko izo sheki zitari zizigamiwe ko ndetse ifite inshingano yo kugira ibanga ku bijyanye na konti z'abakiliya bayo.

[40] Urukiko rusanga ibyo bisobanuro Ecobank Rwanda Ltd bidakwiye, kuko ku rundi ruhande byagaragaye ko mu mafaranga yishyuza, harimo n'inyungu z'ubukererwe, nyamara nayo yarakerewe gushyira ku gihe amafaranga yavuzwe haruguru kuri konti ya Arlcom Ltd ku buryo byagize ingaruka ku kwiyongera kw'izo nyungu, ayo mafaranga akaba agomba rero kubarirwa inyungu zikavanwa mu z'ubukererwe zagiye zibarwa na Ecobank. Ayo mafaranga akaba abazwe ku buryo bukurikira : 6.102.882 Frw + 9.552.013 Frw= 15.654.925 x 42 x 2 = 9.566.283Frw 360x100

[41] Nanone kandi, Urukiko rusanga umuhanga yarasobanuye ko hari 500.000Frw Ecobank Rwanda Ltd itagaragaza uburyo yavuye kuri konti ya Arlcom Ltd ku itariki ya 2/06/2011, akavuga ko niba nayo adatangiwe ibisobanuro, azagabanya umwenda wa Arlcom Ltd.

[42] Urukiko rushingiye kuri ibyo bisobanuro by'umuhanga, no ku mpungenge Uwamahoro Florent de la Paix na Arlcom Ltd bagaragaje mu iburanisha, bikanahuzwa n'uko Ecobank Rwanda Ltd itabashije gusobanura ivanwa ry'ayo mafaranga kuri konti ya Arlcom Ltd, rusanga akwiye kuvanwa mu mwenda remezo wishyuzwaga mu ibaruwa yo ku wa 24/10/2012 ya Ecobank Rwanda Ltd igihe yakoraga "dénonciation du crédit". Ni ukuvuga ko agomba gukurwa ku mwenda remezo wa 610.166.856Frw wabariweho inyungu z'ubukererwe, uwo mwenda ugasigara ari: 610.166.856Frw - 500.000Frw= 609.666.856Frw.

[43] Ku bijyanye n'andi mafaranga ya "garantie bancaire" Uwamahoro Florent de Paix anenga ko yabazwe nk'umwenda atari byo, Urukiko rusanga umuhanga yarayatangiye ibisobanuro byumvikana, ku rupapuro rwa 67 rwa raporo ye, aho asobanura ko n'ubwo atari amafaranga umukiliya afata mu ntoki, abarwa nk'umwenda. Ku bijyanye n'andi makosa Uwamahoro Florent de la Paix na Arlcom Ltd bavuga ko yaba yarabaye mu mibare ya Ecobank Rwanda Ltd, Urukiko rusanga usibye impungenge umuhanga yagaragaje kandi zitaweho, ayandi batayagaragariza ibimenyetso.

[44] Hakurikijwe ibisobanuro byatanzwe haruguru, umwenda wishyuzwa n'inyungu zawo biteye bitya: 609.666.856Frw (umwenda wakosowe) + 8.340.713Frw (inyungu zisanzwe) + inyungu z'ubukererwe: 1.943.569Frw (ahwanye na 11.509.852Frw- 9.566.283Frw + Débit en compte courant": 27.270.586Frw = 647.221.724Frw.

Ku bijyanye n'ubujurire bwuririye ku bundi

[45] Me Nkundabarashi Moïse uburanira Ecobank Rwanda Ltd, yasabye ko Uwamahoro Florent de la Paix na Arlcom Ltd bafatanya kwishyura iyo banki amafaranga y'ikurikiranarubabanza n'igihembo cy'Avoka kingana na 2.000.000Frw.

[46] Uwamahoro Florent de la Paix na Arlcom Ltd basanga ubujurire bwuririye ku bundi bwa Ecobank Rwanda Ltd nta gaciro bugomba kugira kuko batemera umwenda wishyuzwa.

UKO URUKIKO RUBIBONA

[47] Urukiko rurasanga mu gihe hari ibyo Uwamahoro Florent de la Paix na Arlcom Ltd bategetswe kwishyura Ecobank Rwanda Ltd, bagomba kuyishyura 500.000Frw y'ikurikiranarubanza na 500.000Frw y'igihembo cy'Avoka kuri uru rwego kubera ko ariyo ari mu rugero rukwiye harebwe igihe uru rubanza rumaze n'amaburanisha yabaye.

III. ICYEMEZO CY'URUKIKO

[48] Rwemeje ko ubujurire bwa Uwamahoro Florent de la Paix na Arlcom Ltd bufite ishingiro kuri bimwe;

[49] Rwemeje ko ubujurire bwa Ecobank Rwanda Ltd bwuririye ku bundi bufite ishingiro kuri bimwe;

[50] Ruvuze ko imikirize y'urubanza RCOMA0213/14/HCC rwaciwe ku wa 25/04/2014 n'Urukiko Rukuru rw'Ubucuruzi, ihindutse ku bijyanye n'ingano y'umwenda Uwamahoro Florent de la Paix na Arlcom Ltd bagomba kwishyura Ecobank Rwanda Ltd;

[51] Rutegetse Uwamahoro Florent de la Paix na Arlcom Ltd gufatanya kwishyura Ecobank Rwanda Ltd umwenda n'inyungu bingana na 647.221.724Frw hamwe na 1.000.000Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego;

[52] Ruvuze ko amafaranga Uwamahoro Florent de la Paix na Arlcom Ltd batanzeho ingwate y'amagarama muri uru Rukiko, ahwanye n'ibyakozwe mu rubanza.