

HABIMANA N'UNDI v. ASIIMWE N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA
00031/2016/SC - RCOMAA 00036/16/CS (Nyirinkwaya, P.J.,
Karimunda na Ngagi, J.) 29 Kamena 2018]

Ingwate – Impaka zirebana n'igenagaciro ry'ingwate – Mu gihe habaye kutemeranya ku igenagaciro ry'ingwate hagati y'uwatanze ingwate n'ushinzwe gucunga no kugurisha ingwate, ku busabe bw'ukeka ko yarenganye hakorwa irindi genagaciro.

Ingwate – Iyo ushinzwe gucunga no kugurisha ingwate y'ihaye inshingano z'Umwanditsi Mukuru atabihereye ububasha n'uwo Amabwiriza ateganya aba arengereye inshingano ze.

Cyamunara – Ingaruka z'ugutesha cyamunara agaciro – Iyo cyamunara iteshejwe agaciro, ibintu bisubira uko byari bimeze mbere yuko cyamunara iba.

Incamake y'ikibazo : Asiimwe Frank yahawe inguzanyo na Bank of Kigali Ltd (BK), nawe ayiha ingwate y'inzu ye ifite agaciro ka 121.000.000Frw, yandikishwa muri RDB. Iyi nguzanyo ntiyishyuwe nk'uko bikwiye, maze uwahawe ingwate asaba Umwanditsi Mukuru muri RDB gushyiraho ushinzwe gucunga no kugurisha ingwate, bityo ashiraho Me Habimana, ari nawe wagurishije iyo ngwate muri cyamunara.

Ibibazo byatangiyeye kuvuka ubwo ushinzwe gucunga no kugurisha ingwate yashyizeho umugenagaciro mushyashya wakoze irindi genagaciro ritandukanye n'iryakozwe mu gihe yahabwaga inguzanyo yemeza ko inzu ifite agaciro kangana na

65.197.200Frw, mu gihe yari yarahawe agaciro ka 121.000.000Frw ubwo yandikishwaga muri RDB, ibyo byatumye uwatanze ingwate yandikira *Regulatory Council for Property Valuation* asaba ko hashyirwaho abandi bagenagaciro ku nzu ye kuko atemeraga igenagaciro ryakoreshejwe n'ushinzwe gucunga no kugurisha ingwate, abimenyesha Umwanditsi Mukuru n' ushinzwe gucunga no kugurisha ingwate, ariko icyo kigo nticyamusubiza kugera aho cyamunara ikozwe, iyo ngwate ikagurishwa ku giciro cya 55.000.000Frw.

Ibi byatumye uwatanze ingwate aregara Urukiko rw'Ubucuruzi rwa Nyarugenge asaba gutesha agaciro iyo cyamunara. Urwo Rukiko rwacye urubanza rwemeza ko iyo cyamunara iteshejwe agaciro ku mpamvu yuko hatubahirijwe Amabwiriza y'Umwanditsi Mukuru agenga ibyerekeye gukodesha, kugurisha muri cyamunara ndetse no kwegukana ingwate, rutegeka ushinzwe gucunga no kugurisha ingwate, Bank of Kigali Ltd, *Regulatory Council for Property Valuation* n'Umwanditsi Mukuru wa RDB, buri wese kumwishyura indishyi z'akababaro n'ay'ikurikiranarubanza.

Uwari ushinzwe gucunga no kugurisha ingwate yajuririye mu Rukiko Rukuru rw'Ubucuruzi avuga ko urukiko rwatesheje agaciro cyamunara ntaho rushingiye, avuga kandi ko rwageneye uwareze indishyi zidafite aho zishingiye. Bank of Kigali Ltd nayo yajuriye inenga kuba Urukiko rwaremeje ko cyamunara iseswa, no kuba rwarategetse ko igomba gutanga indishyi rutagaragaje ikosa yakoze ryatuma izitanga, ivuga ko nta ruhare na rumwe yagize mu migendekere ya cyamunara. Uru rukiko rwemeje ko ubujurire bw' uwari ushinzwe gucunga no kugurisha ingwate nta shingiro bufite naho ubwa Bank of Kigali Ltd bufite ishingiro ku bijyanye n'uko nta ndishyi igomba gucibwa.

Uwari ushinzwe gucunga no kugurisha ingwate na Bank of Kigali Ltd ntibishimiye imikirize y'urubanza, maze buri umwe ajurira mu Rukiko rw'Ikirenga, naho uwatanze ingwate, Uwaguze inzu na Regulatory Council for Property Valuation nabo buri umwe yatanze ubujurire bwuririye ku bundi.

Mu bujurire bwe, uwashinzwe gucunga no kugurisha ingwata avuga ko inkiko zibanza zitagombaga gutesha agaciro cyamunara ku mpamvu yuko ingwate yagurishijwe ku gaciro gato kuko iyo ny'irimumutungo atishimiye igenagaciro ryakozwe asaba ko hakorwa irindi genagaciro cyamunara igahagarara, ko igihe atabikoze ibyo bitabazwa ushinzwe kugurisha ingwate kuko atari we uba wakoze iryo genagaciro ngo anaryemeze kandi ko iyo bigaragaye ko agaciro kagenwe ari gato ku giciro nyakuri, icyo gihe inyandiko yemeza Amabwiriza n'icyemezo cy'Umwanditsi Mukuru cyemeza cyamunara nibyo biteshwa agaciro.

Uwatanze ingwate avuga ko nta cyari gutuma cyamunara ikomeza mu gihe ushinzwe gucunga no kugurisha ingwate yabonaga ko nyir'umutungo yari yasabye Urwego rubishizwe ko habanza gukorwa irindi genagaciro kandi ko mu inkiko haburanwaga gutesha agaciro cyamunara yakozwe mu buryo bunyuranyije n'amategeko kuko yari yaramaze gukorwa, ko mu byo aregwa harimo "conflit d'intérêts" kuko yakozwe inshingano za 'receiver' n'iz'umuhesha w'inkiko icyarimwe, asoza avuga ko adahakana ko ingwate ari iya Bank of Kigali Ltd, ariko avuga ko iyo ingwate ikwiye guhabwa agaciro kayo.

Ku ingingo yo kumenya niba kuba ushinzwe gucunga no kugurisha ingwate ariwe wamenyesheje Amabwiriza y'igurisha muri cyamunara mu mwanya w'Umwanditsi Mukuru yaba impamvu yo gutesha agaciro cyamunara, uwari ushinzwe gucunga no kugurisha ingwate avuga ko Amabwiriza

y'Umwanditsi Mukuru ateganya kugenerwa kopi kandi ko Umwanditsi Mukuru amenyesha uko ashaka, ko kuba bikozwe na ushinzwe gucunga no kugurisha ingwate ntacyo byangirije kandi ko Urukiko rwaragombaga kugaragaza icyo uwatanze ingwate yahombejwe no kuba Umwanditsi Mukuru atariwe wamushyikirije mu ntoki ze inyandiko y'Amabwiriza.

Naho uwatanze ingwate avuga ko Amabwiriza y'Umwanditsi Mukuru muri RDB ateganya ko Umwanditsi Mukuru ariwe ugenera kopi y'inyandiko y'amabwiriza y'igurisha uwatanze ingwate ndetse n'uwahawe ingwate bitarenze amasaha 16 y'akazi amaze kuyemeza, bityo kuba yayihawe n'ushinzwe gucunga no kugurisha ingwate, nukuvuga ko yakozwe inshingano z'Umuhesha w'Inkiko kandi nabwo ntiyubahiriza igihe giteganywa n'Amabwiriza kuko we yayamenyeshejwe nyuma y'iminsi itanu aho kuba amasaha 16 ateganywa n'amategeko. Akomeza asobanura ko gutesha agaciro cyamunara bidasaba ko umuntu agaragaza icyo yangirijwe, ahubwo iyo Amabwiriza y'Umwanditsi Mukuru atubahirijwe, cyamunara igomba guteshwa agaciro.

Kuri iyi ngingo, uwaguze inzu muri cyamunara na Bank of Kigali Ltd, bahuza n'uwari ushinzwe gucunga no kugurisha ingwate ko kuba ushinzwe gucunga no kugurisha ingwate ariwe wamenyesheje uwatanze ingwate amabwiriza y'igurisha muri cyamunara mu mwanya w'Umwanditsi Mukuru Atari impamvu yo gutesha agaciro cyamunara kuko icyari kigamijwe ari ukugira ngo amenyeshwe amabwiriza kandi akaba yarayamenye, icyari kigamijwe cyagezweho.

Mu bujurire bwa Bank of Kigali Ltd ivuga ko urukiko rubanza rwitiranyije inshingano z'inzego zarebwaga na cyamunara n'iz'uwahawe uburenganzira bwo kugurisha ingwate, bituma rugera ku mwanzuro utari wo, ko rutayigeneye indishyi

z'ugushyorwa mu manza ku maherere kandi rwaremeje ko nta makosa yakoze muri cyamunara kandi ko rwafashe icyemezo cyo gusesa cyamunara ariko ntirwasobanura uko bizagenda nyuma y'aho kuri yo yari yarahawe ingwate.

Uwatanze ingwate avuga ko ibyo iyo banki ivuga nta shingiro bikwiye guhabwa kubera ko itaburanira izo nzego, zinahagarariwe mu iburanisha kandi ko atari we watumye Bank of Kigali Ltd ishorwa mu manza ahubwo byatewe n'uwari ushinzwe gucunga no kugurisha ingwate kandi ko kuvuga uko ibintu bizagenda nyuma yo gusesa cyamunara atari byo byaregewe, ndetse ko nta n'uwasabye ko urukiko rubifataho icyemezo.

Mu bujuriye bwuririye ku bundi bw' uwatanze ingwate, avuga ko ashingiye ku guteza cyamunara inzu ye muburyo bunyuranyije n'amategeko hari ingaruka byamugizeho, asaba ko uwari ushinzwe gucunga no kugurisha ingwate ko yamuha indishyi zitandukanye.

Uwari ushinzwe gucunga no kugurisha ingwate avuga ko izo indishyi atazigenerwa kuko yananiwe kwishyura umwenda bituma habaho kurangiza urubanza ku ngufu akaba ariwe ugomba kwirengera ingaruka zabyo.

Uwaguze inzu, mu bujuriye bwe bwuririye ku bundi avuga ko Urukiko rusanze amakosa yarakozwe n'uwari ushinzwe gucunga no kugurisha ingwate yategekwa gutanga indishyi z'ikurikiranarubanza n'igihembo cy'Avoka. Akomeza avuga ko rusanze cyamunara itarakurikije amategeko rwategeka Bank of Kigali Ltd gusubiza amafaranga yishyuwe muri cyamunara kandi ko yamuha amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka kuko kuba ari mu bujuriye bishingiye ku kirego yashowemo nayo.

Mu bujuriye bwuririye ku bundi bwa Regulatory Council for Property Valuation, ivuga ko Urukiko rwasuzuma niba, mu rwego rw'amategeko, yarashoboraga kuregwa no gucibwa indishyi mu rubanza mu gihe atari ishyirahamwe, umuryango cyangwa Ikigo cya Leta kuko itagira umutungo, ikaba itagira uyihagarariye mu mategeko kuko ikora nka Komite gusa y'abantu baturuka hirya no hino ariko ikaba atariyo rugaga rw'abagenagaciro kuko rwo rufite ubuzima gatozi. Ntacyo abandi baburanyi bavuze kui ubu bujuriye bwuririye ku bundi.

Incamake y'icyemezo : 1. Mu gihe habaye kutemeranya ku igenagaciro ry'ingwate hagati y'uwatanze ingwate n'ushinzwe gucunga no kugurisha ingwate, ku busabe bw'ukeka ko yarenganye hakorwa irindi genagaciro, bitabaye ibyo abashinzwe kugurisha ingwate bakabirengaho cyamunara igakorwa, iteshwa agaciro kuko iba ikozwe mu buryo bunyuranije n'amategeko.

2. Iyo ushinzwe gucunga no kugurisha ingwate y'ihaye inshingano z'Umwanditsi Mukuru atabihereye ububasha n'uwo Amabwiriza ateganya abaarengereye inshingano ze, bityo ibyo yakoze bikaba impfabusa.

3. Iyo cyamunara iteshejwe agaciro, ibintu bisubira uko byari bimeze mbere yuko cyamunara iba, Bank of Kigali Ltd igasubirana ingwate yayo, ikanasubiza uwaguze ingwate amafaranga yatanze agura iyo ngwate muri cyamunara.

4. Indishyi z'akababaro ntizihabwa uzisaba iyo bigaragara ko ari we nyirabayazana mu kutubahiriza inshingano ze ku bushake nubwo yaba yatsinze urubanza.

5. Kuba uwari ushinzwe gucunga no kugurisha ingwate yarayigurishije muri cyamuna ku buryo budakurikije amategeko

bigatuma uwaguze ahamagazwa mu manza kubera amakosa ye agomba kumuha amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

6. Kuba uwatanze ngwate yandikiye Urwego rwa Regulatory Council for Valuation Property arusaba gushyiraho abandi bahanga bakora irindi genagaciro, ariko nti rusubize, cyamunara ikarinda irangira, kandi rwari rufite iyo nshingano ruhabwa n'Itegeko, bihagije kugira ngo rube rwacibwa indishyi.

**Ubujurire bw'uware ushinzwe gucunga no kugurisha
ingwate nta shingiro bufite ;
Ubujurire bwa Bank of Kigali Ltd nta shingiro bufite;
Ubujurire bwuririye ku bundi bw'uwatanze ingwate bufite
ishingiro kuri bimwe;
Ubujurire bwuririye ku bundi bw'uwaguze inzu bufite
ishingiro;
Ubujurire bwuririye ku bundi bwa Regulatory Council for
Property Valuation nta shingiro bufite;
Cyamunara iteshejwo agaciro;
Ingwate y'amagarama yatanzwe ihwanye n'ibyakozwe mu
rubanza.**

Amategeko yashingiweho:

Itegeko N° 22/2018 yo ku wa 29/04/2018 ryerekeye
imiburanishirize y'imanza z'imbonezamubano,
iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 10
Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye
ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3
Itegeko N° 12/2013 ryo ku wa 22/03/2013 rigenga umurimo
w'abahesha b'inkiko ingingo ya 38

Itegeko N° 13/2010 ryo ku wa 07/05/2010 rihindura kandi ryuzuza Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, ingingo ya 3

Itegeko N° 17/2011 ryo ku wa 12/05/2010 rishyiraho kandi rikagena imikorere imikorere y'umwuga w'igenagaciro ku mutungo utimukanwa, ingingo ya 36

Amabwiriza y'Umwanditsi Mukuru N° 03/2010/Org yo ku wa 16/11/2010 agenga ibyerekeye gukoresha, kugurisha muri cyamunara ndetse no kwegukana ingwate, ingingo ya 9,

Itegeko Teka ryo kuwa 30/07/1888, rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Asimwe Frank yahawe inguzanyo na *Bank of Kigali Ltd*, nawe ayiha ingwate y'inzu ye ifite agaciro ka 121.000.000Frw nk'uko byanditswe mu cyemezo cy'ingwate cyatanzwe na *Rwanda Development Board* (RDB).

[2] Asimwe Frank yananiwe kwishyura umwenda yahawe, bituma *Bank of Kigali Ltd* isaba Umwanditsi Mukuru muri RDB gushyiraho ushinzwe gucunga no kugurisha ingwate yahawe na Asimwe Frank, maze Umwanditsi Mukuru ashiraho Me Habimana Vedaste, ari nawe wagurishije iyo ngwate mu cyamunara yabaye ku wa 29/04/2015.

[3] Asiimwe Frank yatanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge asaba gutesha agaciro cyamunara yabaye ku wa 29/04/2015, ku mpamvu yuko Me Habimana Vedaste wari ushinzwe gucunga no kugurisha iyo ngwate yashyizeho umugenagaciro mushyashya wakoze irindi genagaciro ritandukanye n'iryakozwe mu gihe yahabwaga inguzanyo yemeza ko inzu ifite agaciro kangana na 65.197.200Frw kandi yarahawe agaciro ka 121.000.000Frw mu gihe yahabwaga inguzanyo, bituma inzu ye igurishwa ku mafaranga make cyane, kuko yagurishijwe 55.000.000Frw, kandi igurishwa mu bwiru, atabizi.

[4] Ku wa 03/12/2015, Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza RCOM 1321/15TC/NYGE, rwemeza ko cyamunara iteshejwe agaciro ku mpamvu yuko hatubahirijwe ingingo ya 9 y'Amabwiriza y'Umwanditsi Mukuru N° 03/2010/Org yo ku wa 16/11/2010 agenga ibyerekeye gukodesha, kugurisha muri cyamunara ndetse no kwegukana ingwate, iteganya ko Umwanditsi Mukuru ari we wemeza inyandiko y'amabwiriza y'igurisha, akagera kopi y'iyi nyandiko uwatanze ingwate ndetse n'uwahawe ingwate bitarenze amasaha 16 y'akazi amaze kuyemeza; mu gihe nyamara ibiteganywa n'iyi ngingo byakozwe na Me Habimana Vedaste kandi bitari mu nshingano ze.

[5] Urwo Rukiko kandi rwashingiye ku mpamvu yuko Asiimwe Frank yandikiye *Regulatory Council for Property Valuation* asaba ko hashyirwaho abandi bagenagaciro ku nzu ye kuko atemeraga igenagaciro ryakoreshejwe na Me Habimana Vedaste, abimenyeshya Umwanditsi Mukuru na Me Habimana Vedaste ubwe, ariko cyamunara irakomeza ngo hashingiwe ku ngingo ya 19 y'Itegeko ryerekeye ubugwate ku mutungo

utimukanwa ivuga ko ucunga ingwate afite inshingano yo kugurisha ingwate ku giciro gikwiye kigenwa hakurikijwe uko ibiciro bigenda bihindagurika ku isoko, mu gihe nyamara ibivugwa muri iyo ngingo bitamuha uburenganzira bwo kugurisha ingwate ku giciro kiri hasi cyangwa bwo gutesha agaciro ingwate ngo abyite ko ari cyo gicirio kiri ku isoko, kuko mu gihe ukora irindi genagaciro ritandukanye n'iryatanzwe hatangwa inguzanyo, agomba kugaragaza ibikoresho bigize ingwate byataye agaciro, atari ukwemeza agaciro kari hasi gusa nta bimenyetso byerekana icyatumye ingwate ita agaciro.

[6] Urwo Rukiko rwategetse Me Habimana Vedaste, Bank of Kigali Ltd, *Regulatory Council for Property Valuation* n'Umwanditsi Mukuru wa RDB, buri wese kwishyura Asiiimwe Frank 1.000.000Frw y'indishyi z'akababaro n'ay'ikurikiranarubanza.

[7] Me Habimana Vedaste yajuririye Urukiko Rukuru rw'Ubucuruzi anenga kuba Urukiko:

1. rwaratesheje agaciro cyamunara ku mpamvu yuko yamenyesheje inyandiko itanga amabwiriza y'igurisha muri cyamunara mu mwanya w'Umwanditsi Mukuru kandi ari "Receiver", nyamara ari inshingano z'Umuhesha w'Inkiko;
2. rwaratesheje agaciro cyamunara ngo kuko ingwate ya Asiiimwe Frank yateshejwe agaciro, nyamara atari byo kuko rwibeshye kubera ko ntaho rwashingiye rwemeza ko iyo ngwate yateshejwe agaciro.
3. rwaravuze ko uburenganzira bwa Asiiimwe Frank bwo gusaba irindi genagaciro butubahirijwe, rushingiye ku ngingo ya 36 y'Itegeko N^o 17/2011 ryo ku wa

12/05/2010 rishyiraho kandi rikagena imikorere y'umwuga w'igenagaciro ku mutungo utimukanwa, nyamara rwarakoresheje iyo ngingo nabi kuko ikirebwa muri uru rubanza ari igiciro cyatanzwe muri cyamunara, aho kuba igiciro cy'igenagaciro;

4. rwarageneye Asimwe Frank indishyi zitagira icyo zishingiyeho.

[8] *Bank of Kigali Ltd* nayo yajuriye inenga kuba Urukiko rwaremeje ko:

1. cyamunara yakozwe ku wa 29/04/2015, iseswa kuko uwamenyesheje iyemeza ry'amabwiriza atari abifitiye ububasha, ko ariko iyo ngingo yubahirijwe, kuko ntaho ivuga ko kugenera kopi Asimwe Frank byari gukorwa n'Umwanditsi Mukuru muri RDB, ko ahubwo byari gukorwa n'uwo ari we wese;

2. cyamunara iseswa kuko ingwate yagurishijwe ku giciro gito, ko ariko ibyo atari byo kuko igiciro ingwate izagurishirizwaho muri cyamunara kitagengwa n'igenagaciro nk'uko biteganywa n'ingingo ya 3 ihindura ingingo ya 19 y'Itegeko ryerekeye ubugwate ku mutungo utimukanwa;

3. *Bank of Kigali Ltd* igomba gutanga indishyi zingana na 1.000.000Frw rutagaragaje ikosa yakoze ryatuma izitanga, kuko nta ruhare na rumwe yagize mu migendekere ya cyamunara.

[9] Ku wa 31/03/2016, Urukiko Rukuru rw'Ubucuruzi rwaciye izo manza (RCOMA 0011/16/HCC – RCOMA 0035/16/HCC), rwemeza ko ubujurire bwa Me Habimana Vedaste nta shingiro bufite, naho ubujurire bwa *Bank of Kigali*

Ltd bufite ishingiro kuri bimwe, ko urubanza RCOM 1321/15/TC/NYGE ruhindutse ku bijyanye n’uko nta ndishyi Bank of Kigali Ltd igomba gucibwa. Rwategetse Me Habimana Vedaste kwishyura Asiimwe Frank 1.500.000Frw y’ikurikiranarubanza n’igihembo cya Avoka ku rwego rwa mbere na 1.000.000Frw y’ikurikiranarubanza n’igihembo cya Avoka mu bujire.

[10] Habimana Vedaste yajuririye Urukiko rw’Ikirenga, arusaba gusuzuma ibibazo bikurikira ari ibyo kumenya niba:

1. cyamunara yakozwe hashyirwa mu bikorwa ibyemezo binyuranye by’ubutegetsi kandi ikemezwa n’icyemezo cy’Umwanditsi Mukuru muri RDB ishobora guteshwa agaciro hataregewe gutesha agaciro icyemezo cy’Umwanditsi Mukuru cyemeza cyamunara;
2. impaka ku igenagaciro cyangwa kunenga imihango y’icyamunara ari impamvu yo gutesha agaciro cyamunara;
3. iyo igenagaciro ryakozwe n’umuhanga kandi rikemezwa n’Umwanditsi Mukururitemewe na nyir’umutungo, bibazwa ushinze kugurisha ingwate;
4. kuba nyir’umutungo ugurishwa yasabye urwego rubishinze gushyiraho abandi bahanga bagena agaciro bihagarika cyamunara;
5. isesengura Urukiko rwakoze ariryo ku ngingo ya 19 y’itegeko rigenga ingwate n’ingingo ya 36 y’itegeko N°17/2010 ryo ku wa 12/05 /2010 rishyiraho kandi rikagena imikorere y’umwuga w’igenagaciro ku mutungo utimukanwa;

6. amabwiriza N°03/2010/ORG atarubahirijwe, ingaruka byagira n'uko byaryozwa;

7. Urukiko rutarivugurujwe;

8. atahabwa amafaranga y'ikurikiranarubanza hamwe n'igihembo cya Avoka hamwe n'ibisabwa urukiko.

[11] Bank of Kigali Ltd nayo yajuriye ivuga ko Urukiko:

1. rutayigeneye indishyi kandi rwaremeje ko nta makosa yakoze muri cyamunara, bityo ikaba yarashowe mu manza ku maherere;

2. rwitiranyije inshingano z'inze zarebwa na cyamunara n'iz'uwahawe uburenganzira bwo kugurisha ingwate, bituma rugera ku mwanzuro utari wo;

3. rwafashe icyemezo cyo gusesa cyamunara yo ku wa 29/04/2015, ariko nti rwasobanura uko bizagenda nyuma y'aho kuri Bank of Kigali Ltd yari yarahawe ingwate.

[12] Urubanza rwaburanishijwe mu ruhamo ku wa 27/02/2018, Me Habimana Vedaste ahagarariye na Me Nkurunziza François-Xavier, Bank of Kigali Ltd ihagarariye na Me Rutembesa Phocas, Asiimwe Frank yunganiye na Me Rwigema Vincent, Me Kayihura Didas na Me Munyentwari Charles, *Regulatory Council for Property Valuation* ihagarariye na Me Ntarugira Nicolas, Musinguzi Hannington ahagarariye na Me Nsengiyumva Niyondora, naho Umwanditsi Mukuru muri RDB atitabaye ariko yarasinyiye itariki y'iburanisha.

[13] Nyuma yo kumva icyo ababuranyi bavugaga ku kutitabwa k'Umwanditsi Mukuru, Urukiko rumaze gusesengura ibitegenywa n'ingingo ya 59 y'Itegeko N° 21/2012 ryo ku wa

14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, rwemeje ko urubanza rubanishwa Umwanditsi Mukuru adahari hakazitabwa ku myanzuro ye, habanza gusuzumwa inzitizi y'iburabubasha ry'uru Rukiko yatanzwe na Asiiimwe Frank, ariko rusanga iyo nzitizi nta shingiro ifite, urubanza ruburanishwa mu ruhame hasuzumwa imizi yarwo ku wa 29/05/2018, na none Umwanditsi Mukuru atitabye, ariko yaramenyeshewe uru rubanza, Bank of Kigali Ltd iburanirwa na Me Buzayire Angèle, abandi baburanyi bahagarariwe nka mbere.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. Ubujurire bwa Me Habimana Vedaste

[14] Mu bujurire bwe Me Habimana Vedaste yatanze ingingo zigeze ku munani, ariko zishobora kubumbirwa muri ebyiri zijyanye no kumenya niba cyamunara yo ku wa 29/04/2015 yaragamboga guteshwa agaciro n'ingaruka zabyo hasuzumwa ingingo zose ziyikubiyemo nk'uko zagiye zitangwa na Me Nkurunziza François-Xavier, ikindi ni ukumenya niba hari indishyi zatangwa muri urubanza.

1. Kumenya niba cyamunara yo ku wa 29/04/2015 yaragamboga guteshwa agaciro n'ingaruka zabyo

a. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rutaragombaga gutesha agaciro cyamunara ku mpamvu zuko ingwate yagurishijwe ku gaciro gato

[15] Me Nkurunziza François-Xavier, uburanira Me Habimana Vedaste, avuga ko icyo banenga imikirize y'urubanza RCOMA 0011/16/HCC & RCOMA 035/16/HCC rwaciwe n'Urukiko Rukuru ku wa 31/03/2016, ari uko rwatesheje agaciro cyamunara rushingiye kuko ingwate yagurishijwe ku gaciro gato ugendeye ku igenagaciro ryakozwe hatangwa inguzanyo.

[16] Akomeza avuga ko Urukiko Rukuru rw'Ubucuruzi rutagombaga gutesha agaciro cyamunara yakozwe ku wa 19/04/2015 ku mpamvu yuko ingwate yagurishijwe ku gaciro gato kuko iyo ny'irimumungo atishimiye igenagaciro ryakozwe asaba ko hakorwa irindi genagaciro cyamunara igahagarara, ko gihe atabikoze ibyo bitabazwa ushinzwe kugurisha ingwate (Habimana Vedaste) kuko atari we uba wakoze iryo genagaciro ngo anaryemeze.

[17] Asoza avuga ko impaka ku igenagaciro zikemurwa hakurikijwe ibiteganyijwe n'ingingo ya 36 y'Itegeko N° 17/2010 ryo ku wa 12/05/2010 rishyiraho kandi rikagena imikorere y'umwuga w'igenagaciro ku mutungo utimukanwa, ko iyo icyemezo gifashwe n'urwo rwego cyangwa kigaragaje ko agaciro kagenwe ari gato ku gaciro nyakuri, icyo gihe inyandiko yemeza Amabwiriza n'icyemezo cy'Umwanditsi Mukuru cyemeza cyamunara biteshwa agaciro.

[18] Asimwe Frank avuga ko, uretse inyungu Me Habimana Vedaste we bwite yari afite yo gukomeza cyamunara mu gihe yabonaga ko nyir'umutungo yari yasabye ko habanza gukorwa irindi genagaciro, nta cyari gutuma cyamunara ikomeza kandi ko ari byo byaregewe, ko haburanwaga gutesha agaciro cyamunara yakozwe mu buryo bunyuranyije n'amategeko yari yaramaze gukorwa, bityo akaba asanga Me Habimana Vedaste

ashaka kongera kuburana ku bintu yamaze kuburanaho akanabitsindirwa ku rwego rwa mbere n’urwa kabiri. Avuga ko ibyo avuga ko atakoresheje irindi genagaciro (contre expertise) atari kuyikoresha kandi yari yandikiye Urwego rubishizwe. Akomeza avuga ko mu mwaka umwe n’igice umutungo wavanywe ku giciro cya 140.500.00Frw ushyirwa ku giciro cya 65.197.200Frw nacyo cyagezweho bitewe nuko inzu yahimbiwe ibikoresho bitayubatse hagamijwe kuyitesha agaciro n’umugenagaciro washyizweho na Me Habimana Vedaste nk’uko byasobanuwe mu icibwa ry’urubanza RCOM 1321/15/TC/NYGE, ko mu byo Me Habimana Vedaste aregwa harimo “conflit d’intérêts”, kuko yakoze inshingano za “receiver”, n’iz’umuhesha w’inkiko icyarimwe. Asoza avuga ko adahakana ko ingwate ari iya Bank of Kigali Ltd, ariko avuga ko iyo ngwate ikwiye guhabwa agaciro kayo.

[19] Me Kayihura Didace, wunganira Asiiimwe Frank, asobanura ko impamvu y’ingingo ya 7 y’Amabwiriza y’Umwanditsi Mukuru ari ukugira ngo ukoresha igenagaciro (*expertise*) agereranye n’agaciro ingwate yandikiweho, ko iyo harimo ikinyuranyo gikabije, nawe ashyira mu gaciro akirinda kugurisha ingwate. Avuga ko iyo ingingo z’Amabwiriza zubahirizwa umutungo wa Asiiimwe Frank utari guteshwa agaciro ngo ugurishwe ku gaciro gato cyane.

[20] Me Munyentwari Charles, wunganira Asiiimwe Frank, avuga ko icyo basaba uru Rukiko ari ukwemeza ko inkiko zabanje zari zifite ukuri zemeza ko cyamunara iteshejwe agaciro.

[21] Me Rwigema Vincent, nawe wunganira Asiiimwe Frank, avuga ko Itegeko riha ububasha ugurisha ingwate kugurisha ku giciro gikwiye hagendewe kw’ihindagurika ry’ibiciro.

[22] Me Ntarugira Nicolas, uburanira *Regulatory Council for Property Valuation*, avuga ko ikirego cyashyikirijwe urukiko atari ikirego cy'igenagacagiho ko ahubwo ari icyo gutesha agaciro cyamunara.

[23] Me Niyondora Nsengiyumva, uburanira Musinguzi Hannington, avuga ko uwo aburanira yazanywe mu rukiko kuko urubanza rumufiteho ingaruka nk'uwaguze muri cyamunara.

[24] Me Buzayire Angèle, uburanira *Bank of Kigali Ltd*, avuga ko kuba cyamunara yakurwaho kubera ingwate yaba yaragurishijwe ku gaciro gato bidakuraho ko *Bank of Kigali Ltd* yagumana ingwate yayo.

[25] Umwanditsi Mukuru muri RDB ntacyo yavuze kuri iyi ngingo kuko nta myanzuro ye igaragara kandi nta nubwo yitabiriye inama ntegurarubanza n'amaburanisha kandi yaramenyeshajwe mu buryo bukurikije amategeko.

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[26] Ingingo ya 3 y'Itegeko N° 13/2010 ryo ku wa 07/05/2010 rihindura kandi ryuzuza Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, mu gika cyayo cya mbere, iteganya ko "Ucunga ingwate afite inshingano yo kugurisha ingwate ku giciro gikwiye kiri ku isoko, amaze kubimenyesha impande zombi". Naho igika cya kabiri giteganya ko "Igiciro gikwiye kigenwa hakurijwe uko ibiciro bigenda bihindagurika ku isoko. Igurisha ryose rikurikiza inzira y'icyamunara".

[27] Ingingo ya 36 y'Itegeko N° 17/2011 ryo ku wa 12/05/2010 rishyiraho kandi rikagena imikorere imikorere y'umwuga w'igenagaciro ku mutungo utimukanwa iteganya ko *“Mu gihe habayeho kutemeranya ku igenagaciro ry'umutungo utimukanwa, ukeka ko yarenganye ashyikiriza ikirego Urwego, icyo gihe Urwego rushyiraho abandi bagenagaciro bemewe bagakoresha uburyo bushya bw'igenagaciro, iyo impaka zidakemutse, ikirego gishyikirizwa urukiko rubifitiye ububasha”*.

[28] Ingingo ya 11 y'Amabwiriza y'Umwanditsi Mukuru N° 03/2010/Org yo ku wa 16/11/2010 agenga ibyerekeye gukoresha, kugurisha muri cyamunara ndetse no kwegukana ingwate ivuga ko *“Uwahawe ububasha bwo guteza cyamunara ingwate afite inshingano zo kugurisha ku giciro gikwiye hakurikijwe ihindagurika ry'ibiciro ku soko ndetse no ku igenagaciro ry'umutungo ryagaragajwe mu nyandiko y'Amabwiriza y'igurisha”*.

[29] Dosiye y'urubanza igaragaza ko ku wa 02/03/2015, Umwanditsi Mukuru muri RDB yashyize umukono ku nyandiko yitwa *“Permit to sale the mortgaged property”*, Me Habimana Vedaste, *Bank of Kigali Ltd* na Asiimwe Frank bahabwa kopi yayo. Muri iyo nyandiko hagaragaramo ko agaciro k'ingwate igihe yandikishwaga ari 121.000.000Frw, ko umwenda wishyurwa Bank of Kigali Ltd ungana na 70.850.000Frw, igihe cyamunara izatangirira n'igihe izasozwa.

[30] Dosiye igaragaza ko igihe ingwate yajyaga kugurishwa, Me Habimana Vedaste yakoresheje igenagaciro ku wa 07/03/2015 ryerekana ko iyo ngwate ifite agaciro ka 65.197.200Frw. Dosiye igaragaza ko Asiimwe Frank abonye atishimiye iryo genagaciro, ku wa 16/03/2015, yandikiye Regulatory Council for Property Valuation asaba ko

hashyirwaho abandi bagenagaciro bo gukora irindi genagaciro (contreexpertise) k'iyari yakoreshejwe na Me Habimana Vedaste, Asiiimwe Frank abimenyeshya Umwanditsi Mukuru muri RDB, Me Habimana Vedaste na Banki ya Kigali, ariko iryo genagaciro (*contre-expertise*) ntabwo ryakozwe kuko Asiiimwe Frank atigeze abona igisubizo, ahubwo cyamunara yarakomeje kugeze ingwate igurishijwe 55.000.000Frw.

[31] Urukiko rurasanga, kuva Asiiimwe Frank agaragaje ko atemeranya n'igenagaciro ryasabwe na Me Habimana Vedaste wari ushinzwe gucunga no kugurisha ingwate, akandikira *Regulatory Council for Property Valuation* ayisaba ko hakorwa irindi genagaciro ry'ingwate yari yahaye *Banki ya Kigali Ltd*, ndetse akanagera kopi Umwanditsi Mukuru muri RDB, Me Habimana Vedaste na Bank of Kigali Ltd, ariko Me Habimana Vedaste wari uzi neza ko ingingo ya 36 y'Itegeko N° 17/2011 ryo ku wa 12/05/2010 rishyiraho kandi rikagena imikorere y'umwuga w'igenagaciro ku mutungo utimukanwa iteganyanya uko bigenda iyo hatabaye kwemeranya ku igenagaciro akabirengaho inzu ikagurishwa ku giciro cya 55.000.000Frw, ibi bigaragaza ko cyamunara yakozwe mu buryo butubahirije amategeko.

[32] Urukiko rurasanga na none kuba Asiiimwe Frank yaranditse asaba ko haba irindi genagaciro ariko ntiha gire ubuyitaho yaba uwandikiwe cyangwa abagenewe kopi kugeza inzu igurishijwe kuri kimwe cya kabiri (1/2) cy'agaciro yari yarahawe ubwo ingwate yandikwagwa muri RDB Ltd nyuma y'imyaka ibiri gusa, ibi bigaragaza ko ntaho Me Habimana Vedaste yashingira avuga ko atatesheje agaciro ingwate, kuko igihe yirengangije ko hakorwa irindi genagaciro nk'uko byari byasabwe na nyir'umutungo, kugira ngo rigaragaze uko ibiciro

bihagaze ku isoko hanyuma ingwate ikagurishwa ku gaciro kari hasi cyane y’ako yari ifite, byumvikana ko Me Habimimana Vedaste atubahirije ibiteganywa n’ingingo ya 3 y’Itegeko N° 13/2010 ryo ku wa 07/05/2010 rihindura kandi ryuzuza Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, mu gika cyayo cya mbere, ndetse n’ingingo ya 11 y’Amabwiriza y’Umwanditsi Mukuru N° 03/2010/Org yo ku wa 16/11/2010 agenga ibyerekeye gukoresha, kugurisha muri cyamunara ndetse no kwegukana ingwate ziteganywa ko “Ucunga ingwate afite inshingano yo kugurisha ingwate ku giciro gikwiye kiri ku isoko, amaze kubimenyesha impande zombi”.

[33] Urukiko rurasanga nk’uko inkiko zabanje zabibonye, kuba Asiiimwe Frank yari yaranenze igenagaciro ryakozwe n’Umugenagaciro washyizweho na Me Habimana Vedaste, haragombaga gukoreshwa irindi genagaciro kuko ari uko amategeko abiteganywa, bityo cyamunara yakozwe ku wa 29/04/2015 ikaba igomba guteshwa agaciro.

b. Kumenya niba ku kuba Me Habimana Vedaste ariwe wamenyesheje Amabwiriza y’igurisha muri cyamunara mu mwanya w’Umwanditsi Mukuru yaba impamvu yo gutesha agaciro cyamunara

[34] Me Nkurunziza François-Xavier, uhagarariye Me Habimana Vedaste, avuga ko kuba yarashyizweho nk’ushinzwe kugurisha ingwate n’icyemezo cy’Umwanditsi Mukuru muri RDB, agafata icyemezo cyo kumuha amabwiriza ndetse n’icyemezo cyemeza ko ibyo yashyirirweho yabikoze uko amategeko abiteganywa, bivuze ko nyir’umutungo wagurishijwe adashobora kurega asaba gutesha agaciro cyamunara atabanje gutesha agaciro ibyemezo binyuranye byafashwe n’urwego

rw'ubutegetsi, yishyingikirije ko atemera igenagaciro ry'umutungo we, cyangwa ko n'imihango yo kugurisha ayinenga.

[35] Me Nkurunziza François Xavier, uburanira Me Habimana Vedaste, avuga ko Amabwiriza y'Umwanditsi Mukuru ateganya kugenerwa kopi aho kubakumenyeshwa kandi ko Umwanditsi Mukuru amenyeshya uko ashaka, ko kuba bikoze na “*Receiver*” ntacyo byangirije, akaba asanga Urukiko rwaragombaga kugaragaza icyo Asiimwe Frank yahombejwe no kuba Umwanditsi Mukuru atariwe wamushyikirije mu ntoki ze inyandiko y'Amabwiriza; ko, uretse nibyo, Urukiko rwivugurujye aho ku rupapuro rwa 9, agace ka 26, rwavuze ko kugenera kopi ari inshingano z'Umwanditsi Mukuru, kandi ko ari we ubibazwa iyo kumenyeshya bidakurikije amategeko, naho ku rupapuro rwa 14, agace ka 53, rukavuga ko Habimana Vedaste atagaragaje ubushishozi n'ubwitonzi no kwirinda kubogama, ko rero yakoze ikosa ryagize ingaruka kuri Asiimwe Frank.

[36] Asiimwe Frank avuga ko ingingo ya 9 y'Amabwiriza y'Umwanditsi Mukuru muri RDB iteganya ko Umwanditsi Mukuru ariwe ugenera kopi y'inyandiko y'amabwiriza y'igurisha uwatanze ingwate ndetse n'uwahawe ingwate bitarenze amasaha 16 y'akazi amaze kuyemeza. Avuga ko Me Habimana Vedaste nka *Receiver* yakoze inshingano z'Umuhesha w'Inkiko kandi nabwo ntiyubahiriza igihe giteganywa n'Amabwiriza kuko Amabwiriza yo ku wa 25/03/2015 yayamenyeshajwe ku wa 30/03/2015, bivuze nyuma y'iminsi itanu aho kuba amasaha 16 ateganywa n'amategeko.

[37] Me Kayihura Didace, Me Munyentwari Charles na Me Rwigema Vincent, bose bunganira Asiimwe Frank bavuga ko ingingo ya 9 y'Amabwiriza y'Umwanditsi Mukuru muri RDB

iteganya ko iyo Umwanditsi Mukuru amaze kwemeza amabwiriza y'igurisha, agenera kopi uwatanze ingwate, bavuga ko uwo bunganira atamenyeshejwe n'Umwanditsi Mukuru, kandi ingingo z'Amabwiriza zarashyizweho hagamijwe guca akajagari kagaragara muri cyamunara, ko gutesha agaciro cyamunara bidasaba ko umuntu agaragaza icyo yangirijwe, ko ahubwo iyo Amabwiriza y'Umwanditsi Mukuru atubahirijwe, cyamunara igomba guteshwa agaciro, ko kuba imigenzo (*procédures*) itarubahirijwe ari impamvu yo gutesha agaciro kuko iyo migenzo ari ndemyagihugu.

[38] Me Niyondora Nsengiyumva, avuga ko ku bijyanye n'ibiteganywa n'ingingo ya 9 y'Amabwiriza y'Umwanditsi Mukuru, iyi ngingo ivuga ko iyo Umwanditsi Mukuru amaze kwemeza amabwiriza agenderwaho abimenyesha uwatanze ingwate bitarenze amasaha 16, ko kuba inkiko zaravuze ko kutabyubahiriza yaba impamvu yo gutesha agaciro cyamunara, abona ntacyo amabwiriza yateganyije mu gihe bitubahirijwe, abona ko niba icyari kigamijwe ari ukugira ngo Asiiimwe Frank amenyeshwe amabwiriza kandi akaba yarayamenye, iyo itaba impamvu yo gutesha agaciro cyamunara kuko icyari kigamijwe cyagezweho. Ku byerekeye kumenya niba imigenzo iteganywa n'Amabwiriza y'Umwanditsi Mukuru muri RDB ari indemyagihugu avuga ko atari ndemyagihugu (*d'ordre public*) kuko itajyanye n'imiburanishirize y'imanza (*procedure judiciaire*).

[39] Me Buzayire Angèle, uburanira *Bank of Kigali Ltd*, avuga ko kuba Asiiimwe Frank ataramenyeshwe inyandiko y'amabwiriza y'igurisha, iyo itaba impamvu yo gutesha agaciro cyamunara. Akomeza avuga ko imigenzo iteganywa n'Amabwiriza atari indemyagihugu, ko rero bitavuze ko kuba

hari imigenzo itarubahirijwe muri cyamunara, ibyo byatuma cyamunara iteshwa agaciro.

[40] Uhagarariye *Regulatory Council for Property Valuation* ndetse n'Umwanditsi Mukuru ntacyo bavuga kuri iyi ngingo.

UKO URUKIKO RUBIBONA

[41] Ingingo ya 9 y'Amabwiriza y'Umwanditsi Mukuru yibukijwe haruguru iteganya ibikurikira: “Umwanditsi Mukuru niwe wemeza inyandiko y'amabwiriza y'igurisha. Umwanditsi Mukuru agenera kopi y'iyi nyandiko uwatanze ingwate ndetse n'uwahawe ingwate bitarenze amasaha 16 y'akazi amaze kuyemeza”.

[42] Dosiye igaragaza ko ku wa 10/03/2015, Me Habimana Vedaste yohereje Umwanditsi Mukuru muri RDB Amabwiriza y'igurisha ry'ingwate ya Asiiimwe Frank amusaba kuyemeza, agenera kopi Umuyobozi Mukuru wa Bank of Kigali Ltd na Asiiimwe Frank, ariko uyu akaba yarayakiriye ku wa 15/03/2015. Dosiye igaragaza ko ku wa 25/03/2015, Umwanditsi Mukuru muri RDB yandikiye Me Habimana Vedaste amumenyesha ko yemeje amabwiriza y'igurisha ry'ingwate ya Asiiimwe Frank agenera kopi Bank of Kigali Ltd na Asiiimwe Frank. Ku wa 30/03/2015, Me Habimana Vedaste nibwo yashyikirije Asiiimwe Frank inyandiko y'amabwiriza y'igurisha ayisigiye umukozi we Jesika.

[43] Urukiko rurasanga ingingo ya 9 y'Amabwiriza y'Umwanditsi Mukuru iteganya gusa ko Umwanditsi Mukuru agenera kopi y'inyandiko y'amabwiriza uwatanze ingwate n'uwahawe ingwate bitarenze amasaha 16 y'akazi amaze

kuyemeza. Ikigaragara nuko Umwanditsi Mukuru yageneye kopi Asimwe Frank, ariko uyu ayishyikirizwa na Me Habimana Vedaste ku wa 30/03/2015. Isesengura ry'iyi ngingo ryerekana ko ivuga gusa ibyo kugena kopi ariko ntivuga uburyo iyo kopi ishyikirizwa uwo yagenewe, nta nubwo ivuga ko Umwanditsi Mukuru ariwe uyishyikiriza uwatanze ingwate. Nubwo iyi ngingo itavuga ko Umwanditsi Mukuru ariwe utanga iyi nyandiko, ariko ikigaragara nuko afite ishingano yo kumenya no guteganya uburyo iyi nyandiko yagera k'uwo yagenewe mu masaha yateganyijwe n'Amabwiriza.

[44] Urukiko rurasanga nta hantu na hamwe muri dosiye hagaragaza ko Me Habimana Vedaste yaba yarahawe inshingano n'Umwanditsi Mukuru yo gushyikiriza Asimwe Frank kopi y'inyandiko y'amabwiriza. Rurasanga nk'uko Urukiko Rukuru rw'Ubucuruzi rwabibonye kuba Me Habimana Vedaste yarihayeho inshingano z'Umwanditsi Mukuru atabihereye ububasha n'uwo Amabwiriza ateganya, ari ukurengera ku nshingano ze kuko nubwo yaba ari Umuhesha w'Inkiko w'umwuga, yagombye kubanza gukorana amasezerano yanditse n'uwamwiyambaje nk'uko biteganywa n'ingingo ya 38 y'Itegeko N° 12/2013 ryo ku wa 22/03/2013 rigenga umurimo w'abahesha b'inkiko ivuga ko mbere yo kurangiza ibyemezo, Umuhesha w'Inkiko w'umwuga abanza kugirana amasezerano yanditse n'uwamwiyambaje. Urukiko rurasanga kuba nta kigaragaza ko Umwanditsi Mukuru muri RDB yaba yariyambaje Me Habimana Vedaste nk'Umuhesha w'inkiko, bivuze ko ibyo yakoze byose yabikoze atabyemerewe n'ubufitiye ububasha, bivuze ko atubahirije ibiteganywa n'amategeko, bityo ibyo yakoze bikaba ari impfabusa.

[45] Urukiko rurasanga imvugo y'ababuranira Habimana Vedaste, *Bank of Kigali Ltd* na Musinguzi Hannington ko kuba Asiimwe Frank yarashyikirijwe kopi y'inyandiko y'amabwiriza na Me Habimana Vedaste ntacyo byamwangirije, ikaba itaba impamvu yo gutesha agaciro cyamunara, cyane cyane ko imigenzo ya cyamunara atari indemyagihugu, itahabwa ishingiro, kuko muri rurasange amabwirizwa yashyiriweho kugira ngo uburenganzira bwa buri ruhande cyamunara ireba bwubahirizwe kandi ibintu bikorwe kuri gahunda, kuba bitarubahirijwe birahagije kugira ngo Asiimwe Frank asabe ko bikorwa mu buryo bwateganyijwe bitabaye ngombwa ko atanga ibimenyetso y'ibyangirijwe. Urukiko rurasanga na none ikigamijwe atari ukumenya niba imigendekere iteganywa n'amabwiriza ari amategeko ndemyagihugu cyangwa niba atari yo ngo cyamunara ibone guteshwa agaciro, kuko gutesha agaciro cyamunara itubahirije ibiteganywa n'amategeko bidasaba byanze bikunze ko ayo mategeko aba ari amategeko ndemyagihugu, igihe cyose uwo amategeko agamije kurengera akoresheje ubwo bubasha bwe asaba ko ibyakozwe mu buryo butubahirije amategeko kandi bimubangamiye byateshwa agaciro.

[46] Urukiko rurasanga n'iyi Me Habimana Vedaste yari kuba yemerewe n'amategeko gushyikiriza kopi y'inyandiko y'amabwiriza Asiimwe Frank, na none amasaha 16 ateganywa n'Amabwiriza ntabwo yari kuba yubahirijwe, kuko nk'uko byibukijwe haruguru, inyandiko yakozwe ku wa 25/05/2015 igera kwa Asiimwe Frank ku wa 30/03/2015, iyi nayo ikaba yari kuba impamvu yihagije yo gutuma cyamunara iteshwa agaciro.

[47] Hashingiwe ku ngingo z'amategeko, Amabwiriza n'ibisobanuro byavuzwe haruguru, Urukiko rurasanga nk'uko

inkiko zabanje zabibonye, cyamunara yabaye ku wa 29/04/2015 hagurishwa ingwate Asiimwe Frank yahaye *Bank of Kigali Ltd* igomba guteshwa agaciro kuko yakozwe mu buryo bunyuranyije n'amategeko, bityo ibintu bikaba bigomba gusubira uko byari bimeze mbere ya cyamunara.

B. Ubujurire bwa BANK OF KIGALI Ltd

Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwaritiranyije inshingano z'inzego zarebwaga na cyamunara n'iz'uwahawe uburenganzira bwo kugurisha ingwate

[48] Me Rutembesa Phocas, mu myanzuro ye, avuga ko Urukiko Rukuru rw'Ubucuruzi rwitiranyije inshingano z'inzego zarebwaga na cyamunara n'iz'uwahawe uburenganzira bwo kugurisha ingwate, bituma rugera ku mwanzuro utari wo.

[49] Asiimwe Frank avuga ko kuba *Bank of Kigali Ltd* itagaragaza ikimenyetso ko ihagarariye izo nzego irimo kuvugira muri uru rubanza, ibyo ivuga nta shingiro bikwiye guhabwa kubera ko *Bank of Kigali Ltd* itaburanira izo nzego, dore ko zari zinahagarariwe mu iburanisha.

[50] Me Niyondora Nsengiyumva, uburanira Musinguzi Hannington, avuga ko iyi ngingo y'ubujurire itareba Musinguzi Hannington kubera ko we yitabiriye cyamunara kandi kubahiriza imihango ibanziriza cyamunara bikaba biri mu nshingano z'Umwanditsi Mukuru na "Receiver".

UKO URUKIKO RUBIBONA

[51] Ingingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko : “Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana“.

[52] Kuri iyi ngingo y'ubujurire, usibye kuba *Bank of Kigali Ltd* yivugira gusa ko Urukiko Rukuru rw'Ubucuruzi rwitiranyije inshingano z'inzego zarebwaga na cyamunara n'iz'uwahawe uburenganzira bwo kugurisha ingwate, bituma rugera ku mwanzuro utari wo, Urukiko rurasanga itagaragaza uburyo Urukiko rwaba rwaritiranyije izo nshingano, kandi nta nubwo igaragaza umwanzuro utari wo Urukiko rwagezeho n'icyo byaba byarayangirije, kuko rwasobanuye neza inshingano za buri rwego, runagaragaza ko Me Habimana Vedaste yakoze inshingano atahawe n'Umwanditsi Mukuru, bityo iyi ngingo y'ubujurire ikaba nta shingiro yababwa.

Kumenya niba Bank of Kigali Ltd yaragombaga kugenerwa indishyi zo kuba yarashowe mu manza nta mpamvu

[53] Me Rutembesa Phocas, uhagarariye Bank of Kigali Ltd, mu myanzuro ye avuga ko Urukiko Rukuru rw'Ubucuruzi rutageneye uwo ahagarariye indishyi kandi rwaremeje ko nta makosa yakoze muri cyamunara, bityo ikaba yarashowe mu manza ku maherere.

[54] Asiimwe Frank avuga ko iyi mpamvu nta shingiro yababwa, kubera ko Urukiko Rukuru rw'Ubucuruzi rwagaragaje ko atari we watumye Bank of Kigali Ltd ishorwa mu manza, ko ahubwo byatewe na Me Habimana Vedaste, ibyo rukaba rwarabisobanuye neza mu gika cya 58, ku rupapuro rwa 15, cy'urubanza rujuririrwa, bityo ko izo ndishyi Bank of Kigali Ltd izishakira k'utagomba kuzitanga, ikaba idakwiye kuzihabwa.

UKO URUKIKO RUBIBONA

[55] Urukiko rurasanga kuba Urukiko Rukuru rw'Ubucuruzi rwaravuze ko *Bank of Kigali Ltd* itagombaga gucibwa indishyi kubera ko atariyo yakoze amakosa yatumye cyamunara iteshwa agaciro bidashatse kuvuga ko yagombaga kugenerwa indishyi na Asiiimwe Frank. Rurasanga ahubwo mu gihe bigaragaye ko Asiiimwe Frank ariwe wari utsinze urubanza kubera ko ingwate yatanze yagurishijwe mu cyamunara ku buryo budakurikije amategeko bigatuma iyo cyamunara iteshwa agaciro, byumvikana ko atari we wari guha Bank of Kigali Ltd indishyi kuko atari we watumye *Bank of Kigali Ltd* ishorwa mu manza, ahubwo byatewe na Me Habimana Vedaste wagurishije ingwate yatanzwe na Asiiimwe Frank mu buryo budakurikije amategeko, akaba ari nawe *Bank of Kigali Ltd* yagombaga gusaba izo ndishyi, kuba itarabikoze rero igomba kwirengera izo ngaruka, bityo nk'uko Urukiko Rukuru rw'Ubucuruzi rwabibonye nta ndishyi Bank of Kigali yagombaga kugenerwa.

Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwari rufite inshingano yo gusobanura uko bizagenda nyuma yo gusesa cyamunara kuri Bank of Kigali Ltd yari yarahawe ingwate

[56] Ababuranira *Bank of Kigali Ltd* bavuga ko Urukiko Rukuru rw'Ubucuruzi rwafashe icyemezo cyo gusesa cyamunara yo ku wa 29/04/2015, nyamara ntirwasobanura uko bizagenda nyuma y'aho kuri *Bank of Kigali Ltd* yari yarahawe ingwate.

[57] Asiiimwe Frank avuga ko iyi mpamvu nta shingiro yahabwa kubera ko kuvuga uko ibintu bizagenda nyuma yo gusesa cyamunara atari byo byaregewe, ndetse ko nta n'uwasabye ko urukiko rubifataho icyemezo, bityo urukiko

rukaba rutari guca urubanza kukitasabwe kuko byaba binyuranyije n'ibiteganywa n'ingingo ya 7 y'Itegeko N° 21/2012 yo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko: "Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine".

[58] Me Niyondora Nsengiyumva avuga ko kuri iyi ngingo Urukiko rwabivuga ku buryo bweruye cyangwa buteruye, ikizwi iyo cyamunara iteshejwe agaciro ibintu bisubira uko byari bimeze. Akomeza avuga ko inzu ikomeza kuba ingwate ya *Bank of Kigali Ltd* kugeza umwenda wishyuwe ku neza cyangwa hagakorwa cyamunara mu buryo bukurikije amategeko.

UKO URUKIKO RUBIBONA

[59] Ingingo ya 10 y'Itegeko N° 22/2018 yo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine".

[60] Dosiye igaragaza ko mu Rukiko Rukuru rw'Ubucuruzi, *Bank of Kigali Ltd* yajuriye inenga kuba Urukiko rwaremeje ko cyamunara yakozwe ku wa 29/04/2015 iseswa kuko uwamenyesheje iyemeza ry'Amabwiriza atari abifitiye ububasha, n'ingwate ikaba yaragurishijwe ku giciro gito no kuba rwarategetse *Bank of Kigali Ltd* gutanga indishyi zingana na 1.000.000Frw itagaragaje ikosa yakoze.

[61] Urukiko rurasanga, mu gihe Urukiko Rukuru rw'Ubucuruzi rwari rumaze kwemeza ko cyamunara yo ku wa 29/04/2015 iteshejwe agaciro bitari ngombwa kuvuga uko ibintu bizagenda kuri *Bank of Kigali*, kuko nk'uko uburanira Musinguzi Hannington abivuga, Urukiko rwabivuga ku buryo bweruye cyangwa buteruye, ikizwi iyo cyamunara iteshejwe agaciro, ibintu bisubira uko byari bimeze.

C. Ubujurire bwuririye ku bundi n'imyiregurire kuri bwo

C.1. Ubujurire bwuririye ku bundi bwa Asiimwe Frank

Kumenya niba hari indishyi Asiimwe Frank akwiye kugenerwa

[62] Asiimwe Frank avuga ko ashingiye ku kuba inzu ye yaratejwe cyamunara muburyo bunyuranyije n'amategeko ku wa 29/04/2015, akavutswa uburenganzira bwo kubona ibimutunga n'umuryango we, akavutswa uburenganzira bwo kuba mu gice cy'iyi nzu kitakodeshwaga, no kuvutswa uburenganzira bwo gukorera ahari hagenewe "bureau" yakoreragamo, kandi kuva icyo gihe iyo nzu ikaba yaragiye mu maboko y'uwayiguze kandi kugeza ubu cyamunara ikaba yarateshejwe agaciro ndetse bamwe mu bagize uruhare muri iryo gurisha bakaba baremeye imikirize y'urubanza, ariko iyo nzu ikaba ikomeje gukorerwamo ubucuruzi bayibyaza inyungu mu buryo butandukanye, arasaba ko Me Habimana Vedaste wagurishije inzu ye mu buryo bunyuranyije n'amategeko, akamuteza ibihombo, agatuma umuryango we wangara yacibwa

indishyi z'akababaro zingana na 55.802.800Frw, zikomoka ku kinyuranyo cy'agaciro inzu yari yanditsweho muri RDB ka 121.000.000Frw n'agaciro kahawe inzu ka 65.197.200Frw, amafaranga y'ikurikiranarubanza angana na 2.000.000Frw n'igihembo cy'avoka kingana na 5.000.000Frw kubera gukomeza kumusiragiza mu manza nta mpamvu abizi neza ko ubujurire bwa kabiri yatanze bunyuranyije n'amategeko, ahubwo agamije gukingira ikibaba uwo yagurishije inzu mu buryo bunyuranyije n'amategeko, ariwe Musinguzi Hannington ngo akomeze kuyibyaza umusaruro, ibyo kandi akaba abisaba ashingiye ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano n'amabwiriza ashiraho ibihembombonera by'abavoka.

[63] Me Nkurunziza François Xavier avuga ko indishyi zisabwa na Asiimwe Frank nta shingiro zifite kuko yananiwe kwishyura umwenda wa *Bank of Kigali Ltd* bituma habaho kurangiza urubanza ku ngufu akaba ariwe ugomba kwirengera ingaruka zabyo. Naho ku bijyanye n'igihembo cya Avoka avuga ko abirekera ubushishozi bw'Urukiko uzatsinda akayagenerwa.

[64] Me Buzayire Angèle, uburanira Bank of Kigali Ltd, avuga ko indishyi Asiimwe Frank asaba atazihabwa kuko ariwe wakoze amakosa, kuko *Bank of Kigali Ltd* nta nzu ikodesha Musinguzi Hannington, ahubwo yaramugurishije kugira ngo igabanye ingano y'umwenda Asiimwe Frank ayibereyemo. Avuga ko ahubwo Asiimwe Frank ariwe ukwiye gusubiza Bank of Kigali Ltd ayo yishyuye Avoka.

[65] Kuri ubu bujurire, uhagarariye Musinguzi Hannington n'uhagarariye *Regulatory Council for Property Valuation* bashubije ko iyi ngingo itabareba.

UKO URUKIKO RUBIBONA

[66] Urukiko rurasanga indishyi z’akababaro Asiiimwe Frank asaba guhabwa atazigenerwa kuko nubwo cyamunara yateshejwe agaciro kubera ko hari imigenzo itarubahirijwe, nawe atakwirengangiza ko ariwe nyirabayazana wa cyamunara kuko atashoboye kuzuza inshingano ze ku bushake, bigatuma biba ngombwa ko habaho cyamunara. Urukiko rurasanga ariko Me Habimana Vedaste akwiye guha Asiiimwe Frank amafaranga y’igihembo cya Avoka n’ay’ikurikiranarubanza kuko kuba atarubahirije amategeko aricyo cyatumye Asiiimwe aregera inkiko, akaba rero mu bushishozi bw’Urukiko agenewe 1.000.000Frw y’igihembo cya Avoka na 300.000Frw y’ikurikiranarubanza, kuko 2.000.000Frw asaba atayatangira ibimenyetso ko ari yo yagiye kuri uru rubanza.

C.2. Ubujurire bwuririye ku bundi bwa Musunguzi Hannington

Kumenya niba Musunguzi Hannington ashobora gusubizwa 55.000.000Frw yatanze agura inzu ya Asiiimwe Frank akaba yagenerwa n’indishyi

[67] Musunguzi Hannington avuga ko amaze kuzanwa mu manza ku nzego eshatu (3) kandi nta kosa yakoze; ko Urukiko rusanze amakosa yarakozwe na Me Habimana Vedaste maze bigatuma cyamunara iteshwa agaciro, Me Habimana Vedaste yategekwa gutanga indishyi z’ikurikiranarubanza n’igihembo cy’Avoka zingana na 2.000.000Frw.

[68] Avuga ko yazanywe mu rubanza mu Rukiko Rukuru rw’Ubucuruzi ndetse no mu Rukiko rw’Ikirenga nyamara

ntacyo Bank of Kigali Ltd imurega kugeza ubu kuko nta kosa yakoze, ko Urukiko rusanze cyamunara itarakurikije amategeko, basaba ko rwategeka Bank of Kigali Ltd gusubiza amafaranga angana na 55.000.000Frw yishyuwe muri cyamunara kuko nta mpamvu yayagumana kandi cyamunara itagifite agaciro. Asaba kandi urukiko gutegeka *Bank of Kigali Ltd* kumugenera 2.000.000Frw y'ikurikiranarubanza n'igihembo cy'Avoka kuko kuba ari mu bujirire mu Rukiko rw'Ikirenga bishingiye ku kirego yashowemo na Bank of Kigali Ltd.

[69] Asiiimwe Frank avuga iko ibyo Musinguzi Hannington avuga nta gaciro byahabwa kuko binyuranyije n'ibyo yivugiye mu myanzuro ye.

UKO URUKIKO RUBIBONA

[70] Ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko: "Igikorwa cyose cyangirije undi gitegeka nyirigukora ikosa rigikomokaho kuriha ibyangiritse".

[71] Urukiko rurasanga kuba Habimana Vedaste yagurishije ingwate muri cyamuna ku buryo budakurikije amategeko bigatuma Asiiimwe Frank aregera inkiko asaba ko iyo cyamunara yateshwa agaciro, inkiko zikayitesha agaciro, kandi akaba n'uru Rukiko ariko rubibona, byaratumye koko Musinguzi Hannington waguze muri cyamunara ahamagazwa mu manza kubera amakosa ya Habimana Vedaste, kandi biba ngombwa ko yiyambaza Avoka wo kumuburanira, biba na ngombwa ko anakurikirana urubunza, akaba rero amafaranga asaba ayakwiye, ariko kubera ko ayo asaba atagaragaza ibimenyetso by'uko ariyo yagiye kuri uru rubanza, mu

bushishozi bw'urukiko, rumugeneye 500.000Frw y'igihembo cya Avoka na 300.000Frw y'ikurikiranarubanza, yose hamwe akaba 800.000Frw.

[72] Urukiko rurasanga, nk'uko byibikijwe haruguru, kuba cyamunara iteshejweagaciro, ibintu bigomba gusubira uko byari bimeze mbere yuko cyamunara iba, Bank of Kigali Ltd igasubirana ingwate yayo, ikanasubiza Musinguzi Hannington 55.000.000Frw yatanze agura inzu mu cyamunara. Urukiko rurasanga ariko 2.000.000Frw y'ikurikiranarubanza n'igihembo cy'Avoka Musinguzi Hannington asaba Bank of Kigali Ltd ntayo akwiye guhabwa kuko nta kosa Bank of Kigali Ltd yamukoreye.

C.3. Ubujurire bwuririye ku bundi bwa *regulatory council for property valuation*

[73] *Regulatory Council for Property Valuation* ivuga ko Urukiko rwasuzuma niba, mu rwego rw'amategeko, yarashoboraga kuregwa no gucibwa indishyi mu rubanza mu gihe atari ishahirahamwe, umuryango cyangwa Ikigo cya Leta; ko rusanze bitari bikwiye, hakurwaho indishyi za 1.000.000Frw zategetswe kuko *Regulatory Council* itagira umutungo, ikaba itagira uyihagarariye mu mategeko ku buryo tubona nta n'uburyo icyo cyemezo cyashyirwa mu bikorwa kuri yo kuko ikora nka Komite gusa y'abantu baturuka hirya no hino ariko ikaba atariyo rugaga rw'abagenagaciro kuko rwo rufite ubuzima gatozi.

[74] Ntacyo abandi baburanyi bavuze kuri ubu bujurire bwa *Regulatory Council for Property Valuation*.

UKO URUKIKO RUBIBONA

[75] Ingingo ya 3, igika cya 3, y'Itegeko N° 17/2010 ryo ku wa 12/05/2010 rishyiraho kandi rikagenye imikorere y'umwuga w'igenagaciro ku mutungo utimukanwa mu Rwanda iteganywa ko Urugaga rufite ubuzimagatozi kandi rwigenga. Naho ingingo ya 9 y'iryo Tegeko ikaba ari yo ishyiraho Urwego rutunganya imikorere y'abagenagaciro ku mutungo utimukanwa mu Rwanda, kandi igateganywa ko urwo rwego rutangira gukora mu minsi itarenze 90 nyuma yuko itegeko ritangazwa mu Igazeti ya Leta ya Repubulika y'u Rwanda.

[76] Dosiye igaragaza ko ku wa 16/03/2015, Asiimwe Frank yandikiye *Regulatory Council for Property Valuation* arusaba gushyiraho abandi bahanga bakora irindi genagaciro nk'uko biteganywa n'ingingo ya 36 y'Itegeko ryibukijwe mu gika kibanziriza iki, Urwego nti rwasubiza iyo baruwa bityo cyamunara irakomeza irarangira.

[77] Urukiko rurasanga kuba Asiimwe Frank yandikiye Urwego rwa *Regulatory Council for Valuation Property* arusaba gushyiraho abandi bahanga bakora irindi genagaciro, ariko nti rusubize, cyamunara ikarinda irangira, kandi rwari rufite iyo nshingano ruhabwa n'Itegeko, bihagije kugira ngo rube rwaciwe indishyi. Urukiko rurasanga Urwego rwarahawe iminsi 90 nyuma y'aho Itegeko ritangazwa mu Igazeti ya Leta ya Repubulika y'u Rwanda ngo rube rwatangiywe gukora, kuba rero rwarashyizweho mu mwaka wa 2010, Asiimwe Frank akarwandikira mu mwaka wa 2015, nyuma y'imyaka itanu, imvugo y'uburanira *Regulatory Council for Valuation Property* ko nta buryo yarigushyira mu bikorwa ubusabwa wa Asiimwe Frank ngo itagira umutungo, ikaba itagira uyihagarariye mu

mategeko nta shingiro yahabwa kuko ingingo ya 3, igika cya 3, y'Itegeko rimaze kwibutswa iteganya ko Urugaga rufite ubuzimagatozi kandi rwigenga, kuba rero rwaba rudakora ibyo ntabwo byabazwa Asimwe Frank, bityo indishyi za 1.000.000Frw rwaciwe n'Urukiko Rukuru rw'Ubucuruzi zikaba zitagomba kuvanwaho.

D. Kumenya niba indishyi me Habimana Vedaste asaba Asimwe Frank zifite ishingiro

[78] Me Nkurunziza François-Xavier, uhagarariye Me Habimana Vedaste asaba uru Rukiko gutegeka Asimwe Frank kumuha indishyi yasabye mu rwego rwa mbere n'urwa kabiri hiyongereyeho 3.000.000Frw yo muri uru rwego rw'ubujurire no gusubizwa amagarama yose yatanze.

[79] Asimwe Frank avuga ko amafaranga asabwa, uretse no kudatangirwa ibimenyetso nta shingiro yahabwa, kubera ko uyasaba ari we wishoye mu manza ku bushake bwe.

UKO URUKIKO RUBIBONA

[80] Urukiko rurasanga kuba Me Habimana Vedaste ariwe wagurishije ingwate mu cyamunara, kandi nk'uko inkiko zibanza zabibonye zigatesha agaciro cyamunara kubera yakozwe mu buryo bunyuranyije n'amategeko, akaba ari ko n'uru Rukiko rubibona, rurasanga indishyi asaba atazihabwa kuko ariwe utsinzwe urubanza.

III. ICYEMEZO CY'URUKIKO

[81] Rwemeje ko ubujurire bwa Habimana Vedaste nta shingiro bufite;

[82] Rwemeje ko ubujurire bwa Bank of Kigali Ltd nta shingiro bufite;

[83] Rwemeje ko ubujurire bwuririye ku bundi bwa Asiiimwe Frank bufite ishingiro kuri bimwe;

[84] Rwemeje ko ubujurire bwuririye ku bundi bwa Musinguzi Hannington bufite ishingiro;

[85] Rwemeje ko ubujurire bwuririye ku bundi bwa Regulatory Council for Property Valuation nta shingiro bufite;

[86] Rwemeje ko imikirize y'urubanza RCOMA 0011/16/2016 HCC & RCOMA 0035/16/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 31/03/2016 idahindutse, usibye ku ndishyi zagenwe kuri uru rwego no kuba Bank of Kigali Ltd igomba gusubiza Musinguzi Hannington 55.000.000Frw;

[87] Rutegetse Me Habimana Vedaste guha Asiiimwe Frank 1.000.000Frw y'igihembo cya Avoka na 300.000Frw y'ikurikiranarubanza yose hamwe akaba 1.300.000Frw kuri uru rwego;

[88] Ruvuze ko cyamunara yakozwe ku wa 29/04/2015 iteshejwo agaciro;

[89] Rutegetse Bank of Kigali Ltd gusubiza Musinguzi Hannington 55.000.000Frw yatanze agura inzu muri cyamunara, nayo ikagumana ingwate yatanzwe na Asimwe Frank;

[90] Ruvuze ko ingwate y'amagarama yatanzwe ihwanye n'ibyakoze mu rubanza.