ACCESS BANK RWANDA LTD v. SOTIRU LTD

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00003/2017/SC (Rugege, P.J., Nyirinkwaya, Cyanzayire, Rukundakuvuga na Hitiyaremye J.) 19 Nyakanga 2019]

Amategeko agenga amasezerano – Gusubizwa inyungu zabyawe n'umwenda remezo – Uko zibarwa iyo hari uruhande rumwe hari ibyo rwavukijwe – Inyungu zibarwa hashingiwe ku gaciro gakwiye k'ibyo urundi ruhande rwabonye hashingiwe ku cyo rwari gutanga kugira ngo rubibone ku wundi muntu uri mu mwanya nk'uw'usaba gusubizwa ibye – Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 155.

Amategeko agenga amasezerano – Ijanisha ry'inyungu – Igishinghirwaho mu kubara ijanisha ry'inyungu – Ijanisha ry'inyungu rishingira ku nyungu uwatanze inguzanyo yakira atanga inguzanyo cyangwa ku rwunguko inguzanyo yari yatangiweho.

Amategeko agenga amasezerano – Kubara inyungu – Amahame ashingirwaho mu kubara inyungu – Kubara inyungu ukwazo cyangwa kuzibara baziteranya n'umwenda remezo – Inyungu zibyawe n'imari y'iremezo ni inyungu zishobora nazo kubyara izindi nyungu gusa iyo biturutse ku rubanza cyangwa ku masezerano yihariye impande zombi zagiranye, ariko na none zikaba ari inyungu nibura z'umwaka wuzuye – Kubara inyungu ukwazo ni ukuzibara zitandukanye n'umwenda remezo ku buryo zitongera kubarwa ari uko zibanje kongerwa ku mwenda remezo – Nta muburanyi wasaba ko yabarirwa inyungu hashingiwe ku ihame yo kuzibara baziteranya n'umwenda mu gihe atagaragaza ko aribwo buryo bwo kubara inyungu yumvikanyeho n'uwamuhaye inguzanyo mu gihe haba hari uruhande rwishe amasezerano, cyangwa bireba cyangwa se ko aribwo buryo uwamuhaye inguzanyo mu kuyibarira inyungu yagiye yishyura.

Amategeko agenga amasezerano – Indishyi zishingiye kudahabwa inguzanyo na banki – Kutazisaba hashingiwe kuri business plan – Nta muburanyi wasaba inyungu zo kudahabwa inguzanyo ashingiye ku bikubiye muri business plan kuko business plan ibyo igaragaraza biba bigomba kubaho byanze bikunze kuko muri kamere yayo itagaragaza ibyagezweho hanyuma wenda ngo hagire ikibivutsa nyirabyo ahubwo igaragaza urutonde rw'ibyifuzwa kugerwaho, ingamba n'ikiguzi bisaba kugira ngo bigerweho.

Incamake y'ikibazo: Access Bank Rwanda Ltd (Access Bank) yagiranye amasezerano y'inguzanyo zitandukanye na SOTIRU Ltd. Icyaje kugaragara ni uko hari amafaranga Access Bank yakuye kuri konti ya SOTIRU bitari ngombwa ndetse iza gushyira SOTIRU mu cyiciro cya 5 cy'abatishyura imyenda neza kandi ahubwo yaragombaga kuyishyira mu cyiciro cya 2 kugira ngo ibashe kubona uko yaka imyenda mu yandi mabanki ndetse no kuzahura ubucuruzi bwayo.

SOTIRU yaje kuregera Urukiko Rukuru rw'Ubucuruzi isaba ko yasubizwa amafaranga yakaswe kuri konti yayo atari ngombwa no kubihererwa inyungu ziyakomokaho, gushyirwa mu cyiciro cya 2 n'indishyi zitandukanye. Urukiko rwemeje ko ikirego cyayo gifite ishingiro rutegeka Acees Bank kwishyura amafaranga n'inyungu zayo yakuye kuri konti ya SOTIRU nta mpamvu n'indishyi zitandukanye.

Impande zombi ntizishimiye imikirize y'urubanza zijuririra Urukiko rw'ikirenga; SOTIRU ivuga ko inyungu z'amafaranga yakaswe nta mpamvu zabazwe nabi, ko itasubijwe amafaranga y'ikinyuranyo hagati y'umwenda yishyuzwaga n'uwamenyeshwaga BNR; ko yimwe indishyi yasabaga zo kuba itahawe amafaranga yari kunguka iyo ACCESS BANK RWANDA Ltd itayima *crédit documentaire*

yari yarayemereye no kuba yarahawe indishyi nkeya kandi ACCESS BANK RWANDA Ltd yarayiteje igihombo gikomeye yanga kuyikura muri *classe* ya

Access Bank yo yajuriye ivuga ko Yaraciwe indishyi nyinshi kandi ko yarategetswe kwishyura amafaranga yose y'umuhanga kandi atari ko bigomba kugenda.

Urukiko rw'Ikirenga rwemeje ko ubujurire bwa SOTIRU bufite ishingiro kuri bimwe rutega Access Bank kwishyura SOTIRU 3.766.742 Frw ya ''agios''; 10.000.000 Frw ajyanye no kuba yaranze kuyihindurira icyiciro cy'inguzanyo nta mpamvu (*classe*) ; 10.000.000 Frw yo kuba yaranze kuyifungurira *crédit documentaire*, igahagarika imyiteguro igeze kure, nta mpamvu ishyitse itanze ; 5.000.000 Frw ya ''transfert'' Banki yakoze ya *crédit à l'importation* ikajya kuyicungira hamwe na *crédit de Caisse* kandi zidahuje kamere; amafaranga y'ikurikirana rubanza n'igihembo cya Avocat.

Ku rundi ruhande rwemeje nanone ko ubujurire bwa Access Bank bufite ishingiro kuri bimwe kuko yaraciwe indishyi nyinshi ku bijyanye no kuba yarimuriye hamwe umwenda wose wa SOTIRU Ltd kandi ibipimo by'inyungu bitandukanye, bityo aho kwishyura indishyi za 10.000.000 Frw igategekwa kwishyura 5.000.000 Frw kandi ko impande zombi zigomba kugabana amafaranga yahembwe umuhanga washyizweho n'Urukiko Rukuru rw'Ubucuruzi, bityo ayo buri ruhande rwatanze akaba aruherereyeho.

SOTIRU yasubirishijemo urubanza ku mpamvu z'akarengane rwongera kuburanishwa. Impamvu yashingiragaho Access Bank hari amafaranga yakuye kuri konti yayo nta mpamvu ntiyatangira inyungu; yakuye; ko Access Bank yagombaga gutegekwa gusubiza ikinyuranyo cy'amafaranga yishyujwe SOTIRU Ltd n'ayo yabwiraga Banki Nkuru y'igihugu (BNR); ko Access Bank yagombaga gutegekwa kwishyura indishyi zishingiye ku kuba yaranze gusubiza SOTIRU Ltd muri *classe 2;* ko Access Bank yagombaga gutegekwa kwishyura indishyi zishingiye ku kuba yaranze gufungirira SOTIRU Ltd *Crédit documentaire* no kuba Acess Bank yagombaga gutegekwa kwishyura yonyine amafaranga yishyuwe umuhanga, ay'ikurikiranarubanza n'ay'igihembo cya avoka.

Kuri izi ngingo Access Bank yireguye ivuga ko yemera gusubiza amafaranga yakase SOTIRU nta mpamvu kandi ikishyura inyungu mu buryo bubazwe neza zitabanje guteranywa n'umwenda remezo. Ku mpamvu yakabiri, yavuze ko nta ndishyi SOTIRU ikwiye kuko izo yaka iterekana ishingiro yazo. Kubijyanye na credit documentaire yavuze ko itayari yujuje nibisabwa kugira ngo iyihabwe. Ku kijyanye n'amafaranga y'igihembo cy'umuhanga, yavuze ko impande zombie zayagabana kuko buri ruhande hari ibyo rwatsindiye.

Incamake y'icyemezo: 1. Uwakiriye yibeshye cyangwa ku bushake icyo atagombwa, afite inshingano yo kugisubiza uwakimuhaye atagombaga kukimuha. Bityo, kuba ACCESS BANK RWANDA Ltd idahakana ko yakuye 3.748.002Frw kuri konti ya SOTIRU Ltd nta mpamvu igomba gusubiza ayo mafaranga kuri konti ya SOTIRU Ltd.

2. Inyungu zibarwa hashingiwe ku gaciro gakwiye k'ibyo urundi ruhande rwabonye hashingiwe ku cyo rwari gutanga kugira ngo rubibone ku wundi muntu uri mu mwanya nk'uw'usaba gusubizwa ibye

3. Ijanisha ry'inyungu rishingira ku nyungu uwatanze inguzanyo yakira atanga inguzanyo cyangwa ku rwunguko inguzanyo yari yatangiweho.

4. Kubara inyungu ukwazo (*calcul arithmétique*) zitagenda zongerwa ku mwenda remezo ari ryo hame, mu gihe kuzibara zigenda zongerwa ku mwenda remezo, bishobora gukorwa gusa biturutse ku masezerano yihariye cyangwa ku rubanza keretse hari ubundi buryo bwo kubara inyungu bumvikanye igihe haba hari uruhande rwishe amasezerano.

5. Nta makosa yakozwe mu rubanza RCOMA 0157/12/CS rusabirwa gusubirwamo habarwa indishyi Sotiru yavukijwe zo kudashyirwa mu cyiciro cya 2 kuko uburyo igihombo yatewe cyo kudashyirwa muri *classe* 2 nk'uko byari byemeranyijwe nta kindi byashingiraho uretse kugereranya indishyi z'akababaro mu bushishozi bw'Urukiko hashingiwe ku kuba uwo bagiranye amasezerano yarayitengushye.

6. Kubara indishyi hashingiwe kuri *business plan* nta shingiro bihabwa, kuko *business plan* muri kamere yayo itagaragaza ibyagezweho hanyuma wenda ngo hagire ikibivutsa nyira byo ahubwo igaragaza urutonde rw'ibyifuzwa kugerwaho, ingamba n'ikiguzi bisaba kugira ngo bigerweho. Ikindi kandi indishyi ntizashingira ku kintu kitariho nkaho cyagombaga kubaho byanze bikunze nk'uko uwabigennye yabitekereje.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro kuri bimwe. Urubanza RCOMA 0157/12/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 14/03/2014 ihindutse kuri bimwe.

Amategeko yashingiweho:
Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 155, 164.
Itegeko ryo kuwa 30/07/1888 ryerekeye imirimo nshinganwa cyangwa amasezerano, ingingo ya 52 na 252.
Code Civil Francais, ingingo ya 1154.

Imanza zashingiweho:
Urukiko Rusesa imanza rw'Ubufaranca ku kibazo nk'iki : Cass civ I 19 décembre 2000, n° 98-14487 ; accessible sur https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007041894:

Urubanza

IMITERERE Y'URUBANZA

[1] ACCESS BANK RWANDA Ltd yagiranye amasezerano y'inguzanyo na SOTIRU Ltd ku buryo bukurikira:

a. Umwenda wa 200.000.000Frw (crédit à l'importation) yagombaga kwishyura mu mezi 84 (imyaka 7) ku nyungu zingana na 14% ;

b. Umwenda wa 24.500.000Frw (crédit de caisse) yagombaga kwishyura mu gihe cy'amezi 12 (une année renouvelable), ku nyungu za 16,75% ;

c. Kuyifungurira crédit documentaire igihe izaba imaze gushyira kuri compte amafaranga angana na 75.365.574 Frw.

[2] Mu gushyira mu bikorwa ayo masezerano, hari ibyo impande zombi zitumvikanye bituma SOTIRU Ltd irega ACCESS BANK RWANDA Ltd mu Rukiko Rukuru rw'Ubucuruzi isaba amafaranga yavuzwe mu kiburanwa.

[3] Umuhanga wiyambajwe (expert) muri urwo rubanza yagaragaje ko hari operations zijyanye na 26.688.501 Frw zakozwe kuri konti ya crédit de caisse ya SOTIRU Ltd zigamije kugabanya umwenda wa crédit à l'importation ariko hakaba hari na 3.748.002 Frw yakuwe kuri konti ya crédit de caisse ya SOTIRU Ltd itashoboye kugaragaza aho yayashyize. ACCESS BANK RWANDA Ltd yaburanye nayo yemera ko yakuye amafaranga kuri konti ya SOTIRU LTD yitwa crédit de caisse igamije kwiyishyura ibirarane by'umwenda wa crédit à l'importation.

[4] Mu rubanza n° RCOM 0126/11/HCC, Urukiko Rukuru rw'Ubucuruzi rwategetse ACCESS BANK RWANDA Ltd kwishyura SOTIRU Ltd :

a. 3.748.002 Frw yakuye kuri konti yayo nta mpamvu ;
b. 174.386 Frw agizwe na agios zikomoka kuri 3.748.002 Frw ;
c. Frw y'indishyi zo kuba itarubahirije ingingo ya 5 y'amasezerano yo ku wa 15/1/2010 ;
d. 10.000.000 Frw yo kuba yarakoze transfert y'ibirarane bya crédit à l'importation, ikabishyira kuri konti ya crédit de caisse bigatuma uwo mwenda wiyongera ;
e. 700.000 Frw y'ikurikiranarubanza ;
f. umusogongero wa Leta wa 4% ya 19.622.388 Frw;
g. amafaranga y'umuhanga kandi igasubiza SOTIRU Ltd ayo yishyuye umuhanga.

[5] SOTIRU Ltd na ACCESS BANK RWANDA Ltd zajuririye Urukiko rw'Ikirenga, ibirego byabo byandikwa kuri RCOMA 0157/12/CS.

[6] SOTIRU Ltd yajurijwe n'impamvu zikurikira :

a. Kuba inyungu na agios zarabazwe nabi;
b. Kuba itarasubijwe amafaranga y'ikinyuranyo hagati y'umwenda yishyuzwaga n'uwamenyeshwaga BNR;
c. kuba yarimwe indishyi yasabaga zo kuba itahawe amafaranga yari kunguka iyo ACCESS BANK RWANDA Ltd itayima crédit documentaire yari yarayemereye;
d. kuba yarahawe indishyi nkeya kandi ACCESS BANK RWANDA Ltd yarayiteje igihombo gikomeye yanga kuyikura muri classe ya 5.

[7] ACCESS BANK RWANDA Ltd yajurijwe no kuba:

a. Yaraciwe indishyi nyinshi;
b. Yarategetswe kwishyura amafaranga yose y'umuhanga kandi atari ko bigomba kugenda.

[8] Ku wa 14/3/2014, Urukiko rw'Ikirenga rwaciye urubanza n° RCOMA 0157/12/ CS, rwemeza ko ubujurire bwa SOTIRU Ltd bufite ishingiro kuri bimwe, ko kandi n'ubujurire bwa ACCESS BANK RWANDA Ltd na bwo bufite ishingiro kuri bimwe.

[9] Urwo rukiko rwategetse ACCESS BANK RWANDA Ltd kwishyura SOTIRU Ltd:

a. 3.766.742 Frw ya ‘’agios’’ ;
b. 10.000.000 Frw ajyanye no kuba yaranze kuyihindurira icyiciro cy’inguzanyo nta mpamvu (classe) ;
c. 10.000.000 Frw yo kuba yaranze kuyifungurira crédit documentaire, igahagarika imyiteguro igeze kure, nta mpamvu ishyitse itanze ;
d. Frw ya ‘’transfert’’ Banki yakoze ya crédit à l’importation ikajya kuyicungira hamwe na crédit de Caisse kandi zidahuje kamere;
e. 700.000 Frw y’ikurikiranarubanza yagenwe n’Urukiko Rukuru rw’Ubucuruzi ;

Access Bank ikaba igomba kwishyura SOTIRU Ltd amafaranga yose hamwe 29.466.742 Frw.

[10] Urukiko rwemeje ko ubujurire bwa ACCESS BANK RWANDA Ltd bufite ishingiro kuri ibi bikurikira :

a. Kuba yaraciwe indishyi nyinshi ku bijyanye no kuba yarimuriye hamwe umwenda wose wa SOTIRU Ltd kandi ibipimo by’inyungu bitandukanye, bityo aho kwishyura indishyi za 10.000.000 Frw igategekwa kwishyura 5.000.000 Frw ;
b. Impande zombi zigomba kugabana amafaranga yahembwe umuhanga washyizweho n’Urukiko Rukuru rw’Ubucuruzi, bityo ayo buri ruhande rwatanze akaba aruherereyeho ;
c. Gufatanya kwishyura amagarama y’urubanza angana na 48.700 Frw, ni ukuvuga 24.350 Frw kuri buri wese.

[11] SOTIRU Ltd ntiyishimiye imikirize y’urwo rubanza, maze yiyambaza Urwego rw’Umuvunyi kugira ngo urubanza rusubirwemo ku mpamvu z’akarengane. Urwego rw’Umuvunyi rwasuzumye urwo rubanza, rubikorera raporo maze rwandikira Perezida w’Urukiko rw’Ikirenga rusaba ko urubanza rusubirishwamo ku mpamvu z’akarengane. Perezida w’urukiko rw’Ikirenga amaze gusuzuma raporo yakozwe n’Ubugenzuzi Bukuru bw’Inkiko yohereje uru rubanza mu bwanditsi bw’Urukiko rw’Ikirenga kugira ngo rwongere ruburanishwe maze rwandikwa kuri RS/INJUST/RCOM 00003/2017.

[12] Iburanisha ry’urubanza ryashyizwe ku wa 12/12/2017, uwo munsi ugeze SOTIRU Ltd ishyikiriza Urukiko rw’Ikirenga ikirego yihana Umucamanza MUHUMUZA Richard wari mu nteko iburanisha uru rubanza. SOTIRU Ltd isobanura ko yihana Umucamanza MUHUMUZA Richard kubera ko yabaye mu nteko iburanisha urubanza n° RCOM 00006/2017/SC, bifitanye isano, kandi akaba yaragize icyo avuga kuri uru rubanza n° RS/INJUST/RCOM 00003/2017/SC rutaraburanishwa.

[13] Ku wa 9/3/2018, Urukiko rw’Ikirenga rwafashe icyemezo kuri iyo nzitizi, rwemeza ko ubwihane SOTIRU Ltd yakoreye Umucamanza MUHUMUZA Richard mu rubanza n° RS/INJUST/RCOM 00003/2017/SC, nta shingiro bufite. Ruvuga ko kuba Umucamanza MUHUMUZA Richard yarabaye umwe mu bacamanza bagize inteko yaburanishije urubanza n° RCPM 00006/2017/SC, aho SOTIRU Ltd yatanze ikirego cyihutirwa kigamije gusaba guhagarika irangizarubanza n° RCOMAA 0031/15/CS, kandi akaba yongeye kuba umucamanza uburanisha uru rubanza n° RS/INJUST/RCOM 00003/2017/SC, n’ubwo izi manza zombi ari uruhererekane

rw’imanza zikomoka ku rubanza n° RCOM 1053/TC/NYGE, rwatangiriye mu Rukiko rw’Ubucuruzi rwa Nyarugenge, iyi sano idahagije kubera impamvu zikurikira:

a. ikirego cyihutirwa ni ikirego cyihariye ku buryo, ari ikiburanwa, ari n’imiburanishirize yacyo ntaho biba bihuriye n’urubanza mu mizi;

b. ibyemezo bifashwemo ntaho biba bihuriye n’ibyemezo bifatwa mu mizi y’urubanza nyirizina.

Nyuma y’icyo cyemezo, iburanisha ry’urubanza mu mizi ryashyizwe ku wa 22/5/2018.

[14] Kuwa 22/05/2018, urubanza rwarahamagajwe, ACCESS BANK RWANDA Ltd ihita itanga inzitizi yo kudasuzuma ikirego cy’akarengane cya SOTIRU Ltd kuko impamvu zose yatanze ku kirego cy’akarengane ari nazo yaburanishije mu Rukiko rw’Ikirenga mu rubanza RCOMAA 0031/15/CS rwaciwe kuwa 07/07/2017, ubwo ikirego cy’akarengane cyatangwaga;

[15] Urukiko rwemeje ko iyo nzitizi nta shingiro ifite kubera impamvu zikurikira:

a. Urubanza RCOMAA 0031/15/CS rwaciwe kuwa 07/07/2017 ntirwari ubujurire bw’urubanza n°RCOMA 0157/12/CS ku buryo SOTIRU Ltd yagombaga kurindira ko rwacibwa mbere yo gutanga ikirego ku rwego rw’Umuvunyi;

b. Urukiko rw’Ikirenga rusanga nanone n’ubwo mu rubanza n° RCOMAA 0031/15/CS rwaciwe nyuma y’uko SOTIRU Ltd imenyesha Urwego rw’Umuvunyi ibimenyetso bigaragaza akarengane kari mu rubanza n° RCOMA 0157/12/CS, uru Rukiko rukaba rwarasuzumye zimwe mu ngingo zivugwa muri uru rubanza rw’akarengane, bitabuza ko rusuzuma impamvu z’akarengane kuko ibirego muri izo manza bitandukanye: mu rubanza rumwe haburanwa kutubahiriza amasezerano kwa ACCESS BANK RWANDA Ltd (RCOMA 0157/12/CS) naho mu rundi (RCOMAA 0031/15/CS) hakaburanwa kwishyura umwenda SOTIRU Ltd ifitiye ACCESS BANK RWANDA Ltd.

[16] Kuwa 10/06/2019, iburanisha ryarakomeje, ababuranyi bose bahagarariwe: SOTIRU Ltd ihagarariwe na Me NSENGIYUMVA NIYINDORA afatanyije na Me RWIGEMA Vincent naho ACCESS BANK RWANDA Ltd ihagarariwe na Me BUZAYIRE Angèle, maze SOTIRU Ltd isobanura akarengane ivuga ko yatewe n’imikirize y’urubanza n° RCOMA O157/12/CS.

1. Nk’uko bigaragara mu myanzuro yashyikirije Urukiko, SOTIRU Ltd yatanze impamvu zikurikira:
2. ACCESS BANK RWANDA Ltd yakuye 3.748.002 Frw kuri konti ya SOTIRU Ltd nta mpamvu, ikaba igomba kuyasubiza n’inyungu zayo;
3. ACCESS BANK RWANDA Ltd yagombaga gutegekwa gusubiza ikinyuranyo cy’amafaranga yishyujwe SOTIRU Ltd n’ayo yabwiraga Banki Nkuru y’igihugu (BNR);
4. ACCESS BANK RWANDA Ltd yagombaga gutegekwa kwishyura indishyi zishingiye ku kuba yaranze gusubiza SOTIRU Ltd muri classe 2;
5. ACCESS BANK RWANDA Ltd yagombaga gutegekwa kwishyura indishyi zishingiye ku kuba yaranze gufungirira SOTIRU Ltd Crédit documentaire;
6. ACCESS BANK RWANDA Ltd yagombaga gutegekwa kwishyura yonyine amafaranga yishyuwe umuhanga, ay’ikurikiranarubanza n’ay’igihembo cya avoka.

[17] Mu gusobanura izi ngingo, hari ibyo SOTIRU Ltd yavuze ko itagikurikiranye. Ibyo ni ibi bikurikira:

a. gusubizwa ikinyuranyo cy'amafaranga yishyujwe SOTIRU Ltd n'ayo ACCESS BANK RWANDA Ltd yabwiraga BNR, kuko ingano y'umwenda SOTIRU Ltd ibereyemo ACCESS BANK RWANDA Ltd yafashweho icyemezo mu buryo ndakuka mu rubanza RS/REV/COM 0001/2017/SC.

b. Gusubizwa:

   i. 260.000 Frw ahembwa abazamu barinda uruganda rudakora buri kwezi guhera muri Mata 2011 kugeza muri Kamena 2017 ikaba imaze kubitakarizamo agera kuri 19.500.000 Frw (260.000 Frw × 19 mois);

   ii. amafaranga atari munsi ya 30.000.000 Frw yo kuzishyura aba techniciens bo gukora imashini z'inganda zatoye ingese no gusimbuza pieces zangiritse, igihe uruganda ruzaba rwongeye gukora;

   iii. 50.000.000Frw yo kuzahura izina rya SOTIRU Ltd na ''produits'' zayo byibagiranye kw'isoko, kuko kugirango aba clients n'aba fournisseurs ba SOTIRU Ltd bazongere kuyibuka no kuyigirira ikizere bisaba campagne ya marketing ikomeye;

Ibi SOTIRU Ltd yabiretse kuko isanga bitaraburanywe mu rubanza isaba ko rusubirwamo ku mpamvu z'akarengane.

[18] Mu gusubiza kuri izi ngingo z'akarengane zatanzwe na SOTIRU Ltd, ACCESS BANK RWANDA Ltd ivuga ko muri rusange nta karengane kari mu rubanza n° RCOMA 0157/12/CS rusabirwa gusubirwamo, igatanga impamvu kuri buri ngingo, ikanaboneraho gusaba amafaranga y'ikurikiranarubanza n'igihembo cy'avoka angana na 1.000.000 Frw

II. IBIBAZO BIGOMBA GUSUZUMWA MURI URU RUBANZA N'ISESENGURA RYABYO

1. Kuba ACCESS BANK RWANDA Ltd yarakuye 3.748.002 Frw kuri konti ya SOTIRU Ltd nta mpamvu, ikaba igomba kuyasubiza n'inyungu zayo;
2. Indishyi zishingiye ku kuba ACCESS BANK RWANDA Ltd yaranze gusubiza SOTIRU Ltd muri classe 2;
3. Indishyi zishingiye ku kuba ACCESS BANK RWANDA Ltd yaranze gufungurira SOTIRU Ltd crédit documentaire;
4. Amafaranga yishyuwe umuhanga, ay'ikurikiranarubanza n'ay'igihembo cya avoka asabwa na SOTIRU Ltd;
5. Amafaranga y'ikurikiranarubanza n'igihembo cya avoka ACCESS BANK RWANDA Ltd isaba;

1. Ku bijyanye no kuba ACCESS BANK RWANDA Ltd yarakuye 3.748.002 Frw kuri konti ya SOTIRU Ltd nta mpamvu, ikaba igomba kuyasubiza n'inyungu zayo;

[19] Me NIYONDORA NSENGIYUMVA na Me RWIGEMA Vincent baburanira SOTIRU Ltd banenga urubanza RCOMA 0157/12/CS kuba rwaremeje ko ACCESS BANK RWANDA Ltd yakoze

amakosa ikura 3.748.002 Frw kuri konte ya SOTIRU Ltd nta mpamvu (nk'uko bigaragara mu gika cya 10 cyarwo), ariko ntirutegeke ko SOTIRU Ltd iyasubizwa, ahubwo rugategeka gusa ko isubizwa inyungu z'ayo mafaranga zihwanye na 3.776.742 Frw. Banenga kandi uburyo izo nyungu zabazwe kuko Urukiko rwakoresheje calcul arthmétique aho gukoresha calcul cumulatif buri kwezi, ukurikije uko ubusanzwe banki zibara inyungu. Ababuranira SOTIRU Ltd bemeza ko ubaze neza urwunguko guhera taliki ya 2/5/2006 kugeza tariki ya 01/5/2014, ku gipimo cy'inyungu Banki yakoreshaga (16.75%) wasanga 3.748.002 Frw yarabyaye inyungu zingana na 10.641.930 Frw, yose hamwe akaba 14.389.932 Frw.

[20] Mu gusubiza iyi ngingo, Me BUZAYIRE Angèle yemera ko ariya mafaranga 3.748.002 bayasubizwa, ariko akaba atemeranywa n'abahagarariye SOTIRU Ltd ibyo kubara inyungu hakoreshejwe calcul cumulatif, kuko uretse no kuba binyuranye n'amategeko hari n'imanza yaburanye[1] zemeza ko capitalisation des intérêts itemewe kandi ko ibyo kuvuga ko izo nyungu zabazwe n'umuhanga zitahabwa agaciro kuko uwo muhanga atashyizweho n'urukiko.

UKO URUKIKO RUBIBONA

[21] Urukiko rusanga hagomba kubanza gusuzuma iby'isubizwa rya 3.748.002 Frw mbere yo gusuzuma iby'inyungu zayo.

a. Ku bijyanye no kuba ACCESS BANK RWANDA Ltd igomba gusubiza 3.748.002 Frw kuri konti ya SOTIRU Ltd.

[22] Urukiko rusanga mu rubanza RCOMA 0157/12/CS[2] rusabirwa gusubirwamo ku mpamvu z'akarengane, hari 3.748.002 Frw yagaragajwe ko ACCESS BANK RWANDA Ltd yayakuye kuri konti ya "Crédit de caisse" ya SOTIRU Ltd nta mpamvu, nyamara urwo rubanza ntirwategeka ACCESS BANK RWANDA Ltd kuyasubizaho.

[23] Urukiko rusanga, nk'uko biteganywa n'ingingo ya 252 CCLIII « uwakiriye yibeshye cyangwa ku bushake icyo atagombwa, afite inshingano yo kugisubiza uwakimuhaye atagombaga kukimuha ». Bityo rero, mu gihe ACCESS BANK RWANDA Ltd idahakana ko yakuye 3.748.002Frw kuri konti ya SOTIRU Ltd nta mpamvu, Urukiko rurasanga harabaye amakosa mu RCOMA 0157/12/CS yo kudategeka ACCESS BANK RWANDA Ltd gusubiza ayo mafaranga kuri konti ya SOTIRU Ltd.

b. Ku bijyanye n'ibarwa ry'inyungu zikomoka kuri 3.748.002Frw ACCESS BANK RWANDA Ltd igomba guha SOTIRU Ltd

[24] Nk'uko biteganywa n'ingingo ya 155 y'Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, inyungu zikomoka ku bigomba gusubizwa, iyo ibyo bisubizwa ari amafaranga, zibarwa hashingiwe kuri ibi bikurikira:

- Agaciro gakwiye k'ibyo urundi ruhande rwabonye hashingiwe ku cyo rwari gutanga kugira ngo rubibone ku wundi muntu uri mu mwanya nk'uw'usaba gusubizwa ibye;

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[1] Atanga urugero rw'urubanza RS/REV/COM 0001/2017/SC mu gika cya 29 aho ruvuga ngo" Urukiko rurasanga umwenda ugomba kwishyurwa ugomba gushingira ku mwenda fatizo wa 217.891.689 Frw wari usigaye ku wa 15/01/2010 amasezerano y'ivugururwa ry'umwenda asinywa nk'uko byemejwe haruguru, uyu mwenda ukaba ariwo ubarirwaho urwunguko rwa 16% ariko hagenda havanwamo amafaranga SOTIRU yagiye yishyura kugeza ku wa 31/05/2014, 217.891.689 akaba yaragombaga kwishyurwa mu gihe cy'imyaka itatu, bivuze ko urwunguko rwa buri kwezi rwari 2.905.223,85 Frw (capital x taux d'interêts annuel x temps de valorisation),"

[2] Reba mu gika cya 10 cy'urubanza RCOMA 0157/12/CS

- Uburyo umutungo w'urundi ruhande wongereye agaciro cyangwa izindi nyungu yaba yarakuyemo.

[25] Hashingiwe ku bivugwa muri iyi ngingo, Urukiko rusanga ACCESS BANK RWANDA Ltd igomba gusubiza SOTIRU Ltd inyungu zikomoka ku mafaranga 3.748.002Frw yakuwe kuri konti ya crédit de caisse yayo nta mpamvu hashingiwe ku buryo uwo mutungo wabyajwe inyungu na ACCESS BANK RWANDA Ltd cyangwa ku gaciro gakwiye k'ibyo ACCESS BANK RWANDA Ltd yashoboraga gutanga kugira ngo iyabone. Hakurikijwe ibyo, urukiko ruragaragaza mu bika bikurikiyeho ibyerekeye igiciro (taux d'intérêt) kigomba gushingirwaho inyungu, uburyo inyungu zibarwamo, igihe zigomba kubarirwamo, mbere yo kugaragaza amafaranga yose ACCESS BANK RWANDA Ltd igomba gusubiza SOTIRU Ltd.

i. Ibyerekeye igiciro (*taux d'intérêt*) inyungu zibarirwaho

[26] Hashingiwe ku bimaze kuvugwa mu gika kibanziriza iki, Urukiko rurasanga ACCESS BANK RWANDA Ltd igomba gusubiza amafaranga ahwanye n'inyungu yakira itanga inguzanyo kuko ku ruhande rumwe, banki ari ikigo gicuruza amafaranga akaba ari nabwo buryo cyungutse ku mafaranga ya SOTIRU Ltd yihaye nta mpamvu kuko kuva iyafite yiyongereye mu yo isanzwe itangaho inguzanyo, kandi iyitanga kuri kiriya giciro cya 16.75% (iyo ari credit de caisse), ku rundi ruhande akaba ari nacyo giciro (16.75%) yari yarahereyeho inguzanyo SOTIRU Ltd.

ii. Ibyerekeye uko inyungu zigomba kubarwa

[27] Urukiko rusanga, SOTIRU Ltd na ACCESS BANK RWANDA Ltd batemeranya ku buryo inyungu zigomba kubarwa: niba zigomba kubarwa bateranya inyungu n'umwenda remezo (calcul cumulatif) akaba ari na byo bagenda babariraho izindi, cyangwa niba inyungu zibarwa ukwazo (calcul arithmétique).

[28] Urukiko rusanga mu mahame rusange agenga ibarwa ry' inyungu zibyawe n'imari y'iremezo, no mu mikorere y'ibigo by'imari mu Rwanda izo nyungu zishobora nazo kubyara izindi nyungu gusa iyo biturutse ku rubanza cyangwa ku masezerano yihariye impande zombi zagiranye, ariko na none zikaba ari inyungu nibura z'umwaka wuzuye. Iyi mikorere (pratique) ikomoka ahanini ku byahoze mu ngingo ya 52CLIII (Itegeko ryo kuwa 30/07/1888 ryerekeye imirimo nshinganwa cyangwa amasezerano) yavanyweho n'itegeko rigenga amasezerano[3] ariko rikaba ritarateganyije ikiyisimbura. Urukiko rusanga iryo hame kandi rikigaragara no mu mategeko yo mu bindi bihugu bifite inararibonye rikataje mu mikorere y'ibigo by'imari[4], bityo akaba nta mpamvu kugeza ubu yatuma inyungu zibyarwa n'izindi zibarwa mu bundi buryo mu Rwanda.

[29] Hashingiwe ku bivugwa mu gika kibanziriza iki, Urukiko rurasanga kubara inyungu ukwazo (calcul arithmétique) zitagenda zongerwa ku mwenda remezo ari ryo hame, mu gihe kuzibara zigenda

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[3] Ingingo ya 164 y'Itegeko rigenga amasezerano igira iti: "Interuro ya mbere y'"Itegeko ryo kuwa 30/07/1888 ryerekeye imirimo nshinganwa cyangwa amasezerano n'"ingingo zose z'"amategeko abanziriza iri kandi zinyuranyije na ryo bivanyweho ».

[4] Urugero ni ingingo ya 1154 ya Code Civil Français accessible sur https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000032041024&cidTexte=LEGITEXT000006070721&dateTexte=20161001. Iyi ngingo kimwe n'iyahoze ari ingingo ya 52 CCLIII y'u Rwanda, zombi zibivuga kimwe: « Inyungu zibyawe n'imari y'iremezo zishobora nazo kubyara izindi nyungu biturutse ku rubanza cyangwa ku masezerano yihariye, zipfa gusa, ari mu kirego cyangwa mu masezerano, kuba ari inyungu nibura z'umwaka wuzuye : les intérêts échus des capitaux peuvent produire des intérêts, ou par une demande judiciare, ou par une convention speciale, pourvu que, soit dans la demande, soit dans la convention, il s'agisse d' intérêts dus au moins pour une annee entière».

zongerwa ku mwenda remezo, bishobora gukorwa gusa biturutse ku masezerano yihariye cyangwa ku rubanza. Kuba rero SOTIRU Ltd itagaragaza ko aribwo buryo bwo kubara inyungu bumvikanye igihe haba hari uruhande rwishe amasezerano, cyangwa bireba inyungu zivutse nyuma y'itangwa ry'ikirego kizisaba5, cyangwa se nibura aribwo buryo Access Bank Rwanda Ltd yakoresheje mu kuyibarira inyungu yagiye yishyura, Urukiko rurasanga nta mpamvu Access Bank Rwanda Ltd yategekwa kwishyura indishyi zibazwe mu buryo bukomatanyije bwo guhuza inyungu n'umwenda remezo (calcul cumulatif d'interêts).

iii. Ibyerekeye igihe inyungu zibarirwamo

[30] Nk' uko byagaragajwe n'umuhanga washyizweho n'Urukiko[6], ACCESS BANK RWANDA Ltd yakuye kuri konti ya SOTIRU LTD 3.748.002 Frw kuwa 02/05/2006, kuva icyo gihe atangira kubyarira inyungu zidafite aho zishingiye ACCESS BANK RWANDA Ltd kugeza ubu; bityo zikaba zigomba kubarwa kugeza igihe urubanza ruciriwe kuko ariwo munsi impaka kuri ayo mafaranga zirangiriyeho kandi akaba ari nawo murongo watanzwe n'Urukiko rw'Ikirenga ku byerekeye igihe ibarwa ry'inyungu nk'izi rihagararira[7]. Ibyo bivuze ko 3.748.002 Frw ya SOTIRU Ltd, ACCESS BANK RWANDA Ltd iyamaranye imyaka 13 n'iminsi 78, cyangwa iminsi 4.823 yose hamwe.

iv. Amafaranga yose ACCESS BANK RWANDA Ltd igomba gusubiza SOTIRU Ltd

[31] Hashingiwe ku bisobanuro byatanzwe mu bika bibanziriza iki, Urukiko rurasanga inyungu ACCESS BANK RWANDA Ltd igomba gusubiza SOTIRU Ltd zingana na (3.748.002x16.75% x 13x4.823): 4.745= 8.295.432 Frw hakongerwaho umwenda remezo wa 3,748,002 Frw, yose hamwe akaba 8.295.432Frw +3.748.002Frw=12.043.434Frw aho kuba 3.776.742 Frw yari yabariwe mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane.

2. Ku bijyanye n'indishyi zishingiye ku kuba ACCESS BANK RWANDA Ltd yaranze gusubiza SOTIRU Ltd muri classe 2.

[32] Me NIYONDORA NSENGIYUMVA na Me RWIGEMA Vincent baburanira SOTIRU Ltd bavuga ko Urukiko rw'Ikirenga rwasanze SOTIRU Ltd yarishyuye amafaranga arenga 75.365.574 Frw kugira ngo ikurwe muri classe 5 nk'uko SOTIRU Ltd yari yabyumvikanye na ACCESS BANK RWANDA Ltd mu masezerano[8] yo ku wa 15/1/2010 nyamara ntibyakorwa; ndetse hakaba hari n'amabaruwa[9] menshi ACCESS BANK RWANDA Ltd yandikiye SOTIRU Ltd iyimenyesha ko yashyizwe muri classe 2, kandi izi neza ko atari ukuri.

[33] SOTIRU Ltd ivuga ko ibyo byayiteye igihombo bigatuma ifunga imiryango kuva 2010 kugeza uyu munsi kuko itashoboraga kubona inguzanyo mu bindi bigo by'imari, nyamara Urukiko rw'Ikirenga rwirengagiza nkana uburemere bwacyo, maze ruyigenera gusa 10.000.000Frw (indemnisation forfaitaire) kuri 50.917.872 Frw zari zasabwe ahwanye n'inyungu za 18% ya

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[5] Reba umurongo watanzwe n' Urukiko Rusesa imanza rw'Ubufaranca ku kibazo nk'iki : Cass civ I 19 décembre 2000, n° 98-14487 ; accessible sur https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007041894:
« les intérêts échus des capitaux ne peuvent produire des intérêts qu'à dater de la demande qui en est faite et pourvu qu'il s'agisse d'intérêts dus au moins pour une année entière »

[6] Raporo y'umuhanga yo kuwa 04/05/2012

[7] Reba igika cya 34 cy'urubanza RS/INJUST/RCOM00001/2017/SC rwaciwe kuwa 26 Mutarama 2018; haburana Equity Bank Rwanda Ltd vs Sebahizi Jules; rwasohotse mu Icyegeranyo, V.3-Nyakanga,2018, p 97

[8] Amasezerano yo kuwa 15/01/2010

[9] Ibaruwa yo kuwa 22/02/2010 n'iya le 28/08/2010

75.365.574 Frw, ko aha Urukiko rw'Ikirenga rwirengagije nkana ko iyo SOTIRU Ltd iza gushora ayo mafaranga ahandi yari kubona izo nyungu.

[34] SOTIRU Ltd inenga ibarwa ry'indishyi yahawe kuko zagenwe ntaho zishingiye, nyamara iyo ari banki isaba indishyi, zibarirwa ku gipimo cya 18%, akaba ari nayo mpamvu SOTIRU Ltd isanga nayo yaragombaga guhabwa indishyi zibariye kuri icyo gipimo, bityo ikabona 75.000.000Frw x18% x imyaka 9 bihwanye na 150.000.000Frw;

[35] Me BUZAYIRE Angèle, uburanira ACCESS BANK RWANDA Ltd, avuga ko ACCESS BANK RWANDA Ltd isanga uretse no kuba nta karengane SOTIRU Ltd yagiriwe ahubwo n'izo 10.000.000 Frw yagenewe mu bushishozi ntazo yari ikwiye kuko hashingiwe ku mabwiriza n°09/2003 ya Banki Nkuru y'u Rwanda ajyanye n'icungwa ry'imyenda y'ama banki n'ibindi bigo by'ubucuruzi mu ngingo yayo ya 16 yakoreshwaga icyo gihe, nyir'umwenda aguma muri classe yari arimo nyuma ya restructuration mu bihe biteganyirijwe kwishyurwamo bitatu bikurikirana (pour une période de trois echéances de payement consecutif), keretse iyo nyuma y'icyo gihe, wa mwenda wishyuwe nk'uko byemeranyijwe mu masezerano ya restructuration. Icyo gihe nibwo ashyirwa muri classe 2.

[36] Me BUZAYIRE Angèle avuga ko nyuma y'amasezerano ya restructuration yo kuwa 15/01/2010, SOTIRU Ltd itigeze yishyura buri kwezi 15.000.000 Frw nk'uko byari byumvikanyweho; ndetse na 75.365.574 Frw yishyuye ntiyari agamije kuyikura muri classe 5 ahubwo yari ayo kwishyura ibirarane yari ifite; bityo akaba asanga nta mpamvu yari gushyirwa muri classe 2. Me BUZAYIRE Angèle asoza avuga ko nta karengane kabaye mu rubanza rusabirwa gusubirwamo, ko indishyi SOTIRU Ltd yahawe zikwiye kuko itabarirwa urwunguko nka Banki.

[37] Abunganira SOTIRU Ltd bavuga ko banki itaburanisha amabwiriza kandi hari amasezerano, bakaba basanga kuba banki itarubahirije ayo masezerano nk'umunyamwuga kandi ari yo yari ishingiyeho umwenda yishyuza SOTIRU Ltd igomba kubiryozwa, ikaba iryozwa igihombo yateje. Basanga kandi icyo gihombo kigomba kubarwa hashingiwe ku kuba iyo itaza kugirira icyizere ACCESS BANK RWANDA Ltd ngo iyihe 75.365.574Frw yizera ko iyivana mu cyiciro cya gatanu, yashoboraga kuyacururiza ahandi akunguka, igakora yishyura. Basoza bibutsa ko ikibazo cy'uko ACCESS BANK RWANDA Ltd yakoreye amakosa SOTIRU Ltd yo kutayishyira mu cyiciro cya kabiri (classe 2) kandi yamaze kwishyurwa 75.365.574Frw nk'uko byemeranyijwe, byarafashweho icyemezo mu rubanza RCOMA 0157/12/CS bityo igisigaye cyazanzwe mu rubanza rw'karengane akaba ari ingano y'indishyi zagombaga gutangwa.

[38] Me BUZAYIRE Angèle nawe yemera ko ikiburanwa ari indishyi zahawe SOTIRU Ltd ariko akibutsa ko 75.365.574Frw SOTIRU Ltd idakwiye kuyafata nk'impano kandi yarakoreshejwe mu kwishyura umwenda yari ibereyemo banki.

UKO URUKIKO RUBIBONA

[39] Urukiko rurasanga, nk'uko byemejwe mu rubanza RCOMA 0157/12/CS[10] rusabirwa gusubirwamo ku mpamvu z'akarengane, raporo y'umuhanga igaragaza ko SOTIRU Ltd yubahirije ibyo yasabwe kugira ngo ishyirwe mu cyiciro cya 2, kandi na ACCESS BANK RWANDA Ltd yemera ko byubahirijwe ariko ntigaragaze icyayibujije kuyishyira muri icyo cyiciro cya 2 cyari kuyihesha

[10] Mu gica cyarwo cya 20, 21 na 22

amahirwe yo kugirirwa icyizere n'ibindi bigo by'imari, bityo ikaba igomba kuryozwa igihombo yateje SOTIRU Ltd hashingiwe ku ngingo ya 258 CCLIII[11].

[40] Urukiko rurasanga icyakora, ibyo SOTIRU Ltd ivuga ko kubara igihombo yatewe bigomba gushingira ku mahirwe yavukijwe yishyura 75.365.574Frw yizeye gushyirwa muri classe ya 2 ntibikorwe nta shingiro bifite, kuko ayo mafaranga n'ubundi yishyuye ibirarane by'umwenda bituruka ku kwishyura nabi kwayo. Koko rero ayo mafaranga 75.365.574Frw ntiyafatwa nk'amafaranga yatanzwe atagombaga gutangwa (paiement de l'indû) ku buryo inyungu zayo zagaruzwa kandi yarishyuye umwenda. Urukiko rurasanga, mu gihe udafite uburenganzira bwo kugaruza icyo watanze (dore ko SOTIRU Ltd idasaba gusubizwa 75.365.574Frw kuko nyine yishyuwe umwenda wayo kandi idahakana) utanashobora kugira uburenganzira ku nyungu zacyo.

[41] Ku birebana n'indishyi za 10.000.000 Frw SOTIRU Ltd yagenewe, Urukiko rusanga nta makosa yakozwe mu rubanza RCOMA 0157/12/CS rusabirwa gusubirwamo, kuko uburyo igihombo yatewe cyo kudashyirwa muri classe 2 nk'uko byari byemeranyijwe nta kindi byashingiraho uretse kugereranya indishyi z'akababaro mu bushishozi bw'Urukiko hashingiwe ku kuba uwo bagiranye amasezerano yarayitengushye.

3. Indishyi zishingiye ku kuba ACCESS BANK RWANDA Ltd yaranze gufungurira SOTIRU Ltd ''crédit documentaire'' nk'uko impande zombi zari zabyumvikanye

[42] Me NIYONDORA NSENGIYUMVA na Me RWIGEMA Vincent baburanira SOTIRU Ltd bavuga ko Urukiko rw'Ikirenga rwemeje ko ACCESS BANK RWANDA Ltd yakoze amakosa yo kwanga gufungurira SOTIRU Ltd ''crédit documentaire'' yo kugura ''tones'' 500 z'ingano muri Kenya, nyamara SOTIRU Ltd yaramaze kwishyura arenga 90% by'agaciro k'ingano yagombaga kugura mu mahanga. Urukiko rwanemeje ko iyo SOTIRU Ltd iza gufungurirwa iyo ''crédoc'', byanze bikunze yari ifite amahirwe yo kubona urwunguko. SOTIRU Ltd isanga rero urwunguko rwateganywaga muri ''business plan'', ari rwo rwari rukwiriye gushingirwaho mu kugena ingano y'amahirwe yavukijwe maze SOTIRU Ltd igahabwa 357.370.456 Frw y'inyungu yavukijwe no kubuzwa amahirwe yari itegereje kuri ''crédoc'', yasabwaga mu gihe cy'urubanza rusubirishwamo ku mpamvu z'akarengane, kuri ubu akaba ageze kuri 451.252.971Frw. Bavuga kandi ko urukiko rutari gushingira ku bushishozi kandi hari business plan yemeranyijweho n'impande zombi, ko icyo basaba atari indishyi z'akababaro ahubwo ari indishyi mbonezamusaruro.

[43] Me BUZAYIRE Angèle, uburanira ACCESS BANK RWANDA Ltd, avuga ko SOTIRU Ltd n'ubwo Urukiko rw'Ikirenga rwayigeneye 10.000.000 Frw, ACCESS BANK RWANDA Ltd isanga nta ndishyi ikwiye kuko itujuje ibisabwa kugira ngo ibone crédit documentaire:

- Kuva mu mwaka wa 2004, SOTIRU Ltd ihabwa imyenda itandukanye ntiyabashije kubahiriza amasezerano ku buryo yagiye yihanangirizwa kenshi kwishyura bitayikundira;
- Ibyo SOTIRU Ltd yemerewe hashingiwe ku ibaruwa yanditswe n'abayobozi bayo ku wa 26/3/2009 (kwishyura 75.000.000Frw mu byiciro bitatu), ntiyabyubahirije.

Asoza avuga ko crédit documentaire itafunguwe kuko amafaranga bari bemeranyijwe yatanzwe nabi bityo banki ikaba itari gufata risk yiyongera ku mwenda bari basanganywe ungana na miliyoni magana abiri (200.000.000Frw).

[11] Iyi ngingo ivuga ko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyir'ukugikora kuriha ibyangiritse

[44] Ku bijyanye n'indishyi Me BUZAYIRE Angèle avuga ko nta karengane kabaye, ko ayo bahawe ari ayo kuko badashobora gushingira indishyi kuri business plan n'urwunguko yagira bishingiye gusa kuri raporo y'umuhanga, kuko ibyo ari hypothétique.

UKO URUKIKO RUBIBONA

[45] Ku bijyanye no kubara inyungu zishingiye kuri business plan nk'uko SOTIRU Ltd ibyifuza, Urukiko rurasanga nta shingiro bifite, kuko business plan muri kamere yayo itagaragaza ibyagezweho hanyuma wenda ngo hagire ikibivutsa nyira byo ahubwo igaragaza urutonde rw'ibyifuzwa kugerwaho, ingamba n'ikiguzi bisaba kugira ngo bigerweho. Ntabwo rero Urukiko rwashingira indishyi ku kintu kitariho nkaho cyagombaga kubaho byanze bikunze nk'uko uwabigennye yabitekereje. Koko rero nta gihamya ko amafaranga SOTIRU Ltd yateganyaga muri business plan yari kuyabona uko yabiteganyije[12] mu gihe bigaragara ko n'umushinga nyiri zina SOTIRU Ltd yatanze ngo ibone umwenda itabashije kuwubyaza inyungu nk'uko yabyifuzaga.

[46] Ku bijyanye n'indishyi za miliyoni icumi (10.000.000Frw) SOTIRU Ltd yagenewe mu rubanza RCOMA 0157/12/CS, Urukiko rurasanga, nta karengane kabaye kuko uburyo igihombo SOTIRU Ltd yatewe no kudahabwa crédit documentaire nk'uko byari byemeranyijwe, budashobora gufatwa nko kuvutswa ikintu wari ufitiye uburenganzira budashidikanywaho nk'uko byasobanuwe mu gika kibanziriza iki. Indishyi zibishingiyeho nazo rero ntizishobora gufatwa nk'indishyi mbonezamusaruro nk'uko SOTIRU Ltd ibiburanisha kuko itabasha kugaragaza ku buryo budashidikanywaho urwunguko yavukijwe. Kubera izo mpamvu, indishyi ishobora kubona ni indishyi z'akababaro yatewe no kuba uwo bagiranye amasezerano yarayitengushye kandi nta bundi buryo zagenwa uretse kugereranya bikozwe mu bushishozi bw'Urukiko, bityo Urukiko rukaba rusanga nta karengane kabaye mu rubanza RCOMA 0157/12/CS, ku birebana n'indishyi za miliyoni icumi (10.000.000Frw) SOTIRU Ltd yagenewe.

4. **Kuba Urukiko rwaremeje ko amafaranga yishyuwe umuhanga yishyurwa n'impande zombi, nyamara ACCESS BANK RWANDA Ltd yaratsinzwe ku ngingo zose yatanze**

[47] Me NIYONDORA NSENGIYUMVA na Me RWIGEMA Vincent baburanira SOTIRU Ltd bavuga ko, mu rubanza rusabirwa gusubirwamo, ingingo zose z'ubujurire zagaragajwe na SOTIRU Ltd Urukiko rw'Ikirenga rwazihaye ishingiro, ariko ruvuga ko amafaranga yishyuwe umuhanga yishyurwa n'impande zombi, nyamara ACCESS BANK RWANDA Ltd yaratsinzwe ku ngingo zose yatanze mu bujurire. Basanga rero harirengagijwe ingingo ya 6, igika cya 4, y'Iteka rya Minisitiri n° 002/08.11 ryo kuwa 11/2/2014 rigena amafaranga atangwa mu manza z'imbonezamubano, iz'umurimo n'iz'ubutegetsi, bityo SOTIRU Ltd ikaba isaba ko 2.950.000 Frw yishyuye umuhanga yayasubizwa na ACCESS BANK RWANDA Ltd.

[48] Me BUZAYIRE Angèle, uburanira ACCESS BANK RWANDA Ltd, avuga ko kugabana amafaranga y'umuhanga byari bikwiye kuko buri ruhande rufite ibyo rwatsindiye. Ibyo abishingira ko urebye ibyo SOTIRU Ltd yari yaregeye, bisaga miliyoni magana atandatu, ngo nta na kimwe cya kabiri yabonye, ibyo bikaba bisobanuye ko asanga ahubwo ACCESS BANK RWANDA Ltd ariyo yatsinze.

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[12] « La perte d'une chance pour être réparable doit être certaine et directe ou à tout le moins raisonablement probable ». Voir Patrick Lingibé in PEUT-ON ÊTRE INDEMNISÉ EN CAS DE PERTE DE CHANCE ? Publié dans Village Justice, le 20 Novembre 2018; accessible sur https://www.village-justice.com/articles/peut-etre-indemnise-cas-perte-chance,30015.html,

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[49] Urukiko rusanga, urubanza RCOMA 0157/12/CS rusubirishwamo ku mpamvu z’akarengane rwarasobanuye neza ko SOTIRU Ltd itatsinze kuri byose kandi koko, ibyo yasabaga byose mbere y’uko hashyirwaho umuhanga siko yabibonye nk’uko raporo ye (umuhanga) ibigaragaza[13]. Kubera izo mpamvu, Urukiko rurasanga, ibyo SOTIRU Ltd ivuga ko habaye amakosa mu gutegeka ko amafaranga yishyuwe umuhanga yishyurwa n’impande zombi hashingiwe ku ngingo ya 6 al 4[14] y’Iteka rya Minisitiri n°002/08.11 ryo ku wa 11/02/2014 rigena amafaranga atangwa mu manza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi nta shingiro bifite, kuko buri mu buranyi mu rubanza RCOMA 0157/12/CS afite ibyo yatsindiye. Urukiko rurasanga ahubwo mu gihe nta ngingo iteganya mu buryo bweruye uko bigenda iyo buri muburanyi afite ibyo atsindiye n’ibyo yatsinzweho, iyi ngingo ya 6 al 4 y’iteka ryavuzwe haruguru, isobanura ko mu bihe nk’ibi buri mu baburanyi agomba kugira ibyo yishyura undi ku mafaranga yatanze yishyura umuhanga kandi ibyo bikaba ntaho bitaniye no kuvuga ko bagomba gufatanya kumwishyura.

5. Ku bijyanye n’amafaranga y’ikurikiranarubanza n’igihembo cya Avoka

[50] Me NIYONDORA NSENGIYUMVA na Me RWIGEMA Vincent bavuga ko SOTIRU Ltd yatsinze ku ngingo zose, nyamara Urukiko rwirengagiza amafaranga y’ikurikirana rubanza kuva 2011 kugeza 2014, ndetse n’igihembo cy’ abavoka batatu baburaniye SOTIRU Ltd. Basaba rero ko Urukiko rwagenera SOTIRU Ltd amafaranga y’ikurikiranarubanza n’igihembo cya avoka ajyanye n’uru rubanza rwo gusubirishamo ku mpamvu z’akarengane, angana na 5.000.000 Frw, habariwemo 1.000.000 Frw y’ikurikiranarubanza na 4.000.000 Frw y’ibihembo by’abavoka. SOTIRU Ltd inasaba gusubizwa 5.000.000 Frw yishyuye abavoka ba 2 bayiburaniye bakanakurikirana iki kirego cy'akarengane kuva cyatangira ku Rwego rw'Umuvunyi;

[51] Me BUZAYIRE Angèle uhagarariye ACCESS BANK RWANDA Ltd avuga ko ayo mafaranga SOTIRU Ltd isaba itayakwiye kuko itatsinze. Asaba ahubwo ko Urukiko rusanze uru rubanza nta karengane karimo, rwazagenera ACCESS BANK RWANDA Ltd indishyi z’ikurikiranarubanza n’igihembo cya avoka kingana na miliyoni imwe y’amafaranga y’u Rwanda (1.000.000Frw).

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[52] Urukiko rurasanga, nk’uko byasobanuwe mu gika cya 54 cy’urubanza RCOMA 0157/12/CS, SOTIRU Ltd yaratsinzwe kuri bimwe igatsinda ku bindi, akaba ari nayo mpamvu urukiko rw’Ikirenga rwabarekeye gusa ayo baribagenewe n’Urukiko Rukuru rw’Ubucuruzi: 700.000Frw y’ikurikiranarubanza. Bityo rero Uru rukiko rukaba rusanga nta makosa yakozwe mu rubanza RCOMA 0157/12/CS ku birebana n’iyi ngingo.

[53] Urukiko rurasanga ahubwo, kuri uru rwego SOTIRU Ltd ikwiye kugenerwa amafaranga y’ikurikiranarubanza n’igihembo cya avoka, kuko ariyo itsinze, ariko kuko ayo isaba ari menshi, mu bushishozi bwarwo, ikaba igenewe 500.000Frw y’igihembo cya avoka na 300.000Frw y’ikurikiranarubanza, yose hamwe akaba angana na 800. 000Frw.

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[13] Urugero ni nk’aho umuhanga yagaragaje ko amafaranga ACCESS BANK RWANDA Ltd yakuye kuri konti ya SOTIRU Ltd nta mpamvu ari 3.748.002frw aho kuba 26.416.501frw nk’uko SOTIRU Ltd yabivugaga.

[14] Iyi ngingo iteganya ko *“Mu icibwa ry’urubanza, umucamanza ategeka mu cyemezo cy’urukiko, umuburanyi watsinzwe kwishyura uwatanze amafaranga ahabwa abaganga, abasemuzi, abahanga cyangwa izindi nzobere*”

III. ICYEMEZO CY'URUKIKO

[54] Rwemeje ko ikirego cyatanzwe na SOTIRU Ltd cyo gusubirishamo ku mpamvu z'akarengane urubanza RCOMA 0157/12/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 14/03/2014, gifite ishingiro kuri bimwe;

[55] Rwemeje ko imikirize y'urubanza RCOMA 0157/12/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 14/03/2014 ihindutse kuri bimwe.

[56] Rutegetse ACCESS BANK RWANDA Ltd gusubiza 3.748.002 Frw yakuye kuri konti ya SOTIRU Ltd n'inyungu zayo zingana na 8.295.432Frw, yose hamwe akaba 12.043.434Frw;

[57] Rutegetse ACCESS BANK RWANDA Ltd kwishyura SOTIRU Ltd 10.000.000 Frw ajyanye no kuba yaranze kuyihindurira icyiciro cy'inguzanyo nta mpamvu; 10.000.000 Frw yo kuba yaranze kuyifungurira crédit documentaire; 5.000.000 Frw ya transfert ya crédit à l'importation banki yakoze ikajya kuyicungira hamwe na crédit de Caisse kandi zidahuje kamere; hamwe na 700.000Frw y'ikurikiranarubanza nk'uko byagenwe mu rubanza RCOMA 0157/12/CS;

[58] Rutegetse ACCESS BANK RWANDA Ltd guha SOTIRU Ltd amafaranga y'ikuriniranarubanza n'igihembo cy'avoka kuri uru rwego angana 800.000Frw;