MUKAKABANDA N'UNDI v. BANKI Y'ABATURAGE Y'U RWANDA LTD (BPR)

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00001/2018/SC (Nyirinkwaya, P.J., Kayitesi R, Cyanzayire, Rukundakuvuga na Hitiyaremye J.) 12 Nyakanga 2019]

Amategeko agenga imanza z'ubucuruzi – Kubara inyungu n'amafaranga y'umwenda wishyuwe – Iyo urukiko rusuzuma akarengane rubaze uko uwafashe umwenda yishyuraga inyungu n'umwenda rugasanga inkiko zo hasi zarayabaze nabi, ntiruba rushobora gukosora ayo makosa mu gihe uwatanze umwenda atabiregeye.

Incamake y'ikibazo: Mukakabanda yahawe umwenda na Banki y'Abaturage y'u Rwanda (BPR) yishingirwa n'umugabo we. Ntiyaje kwishyura umwenda wose bituma BPR iregera Urukiko rw'Ubucuruzi rwa Musanze. Urukiko rwemeje ko ikirego cya BPR gifite ishingiro rutegeka Mukakabanda n'umugabo we kwishyura umwenda bahawe.

Baje kujuirira mu Rukiko rw'Ubucuruzi narwo rwemeza ko bagomba kwishyura umwenda BPR yari yaregeye. Nyuma y'aha baje gusubirishamo urubanza ku mpamvu z'akarengane urubanza ruburanishwa n'Urukiko rw'Ikirenga.

Impamvu bashingiragaho bavugaga ko bishyuzwa umwenda kandi barararangije kuwishyura kuko ngo hari imitungo yabo yagurishijwe igizwe n'inzu, urusyo n'imodoka ndetse n'andi mafaranga bishyuye mu ntoki; bityo ko ikirego cya BPR inta shingiro cyagombaga guhabwa.

BPR yireguye ivuga ko itishyuza amafaranga y'umurengera kuko amafaranga bavuga bishyuye ataribyo kuko nk'ayo bitwaza ko bishyuye mu ntoki ataribyo kuko habaye kwibeshya ku kwandika nabi umwaka ku mafaranga yavuye mu cyamunara aho kwandika 2011 bandika 2012. Ko rero ibi bitakabaye urwitwazo kuko ari ikosa rigaragarira buri wese kandi nabo ntibabashe kugaragaza aho byanditswe mu gatabo kabo ka banki.

Yongeye ivuga ko ku mafaranga yavuye mu igurishwa ry'imodoka BPR itigeze iyakira ahubwo yatwawe n'umugabo wa Mukakabanda kuko atigeze ayashyira kuri konti nyuma yo kuyishyurwa.

Yasoje ivuga ko urubanza rruburanwa nta karengane kabayemo kuko yishyuje amafaranga yari asigayemo, inyungu zisanzwe n'iz'ubukererwe; bityo ko ikirego cyabo nta shingiro gifite.

Incamake y'icyemezo: 1. Amatariki ari kuri historique no ku ifishi y'umwenda ahura ku birebana n'umunsi n'ukwezi amafaranga yakiriwe, ndetse no ku mubare w'amafaranga yakiriwe, ariko umwaka ntuhure nta gushidikanya kuba guhari ko habaye ukwibeshya ku mwaka> Bityo, amafaranga 1.418.775 agaragara kw'ifishi y'umwenda nk'aho yakiriwe kuwa 14/11/2012 atari andi mafaranga (atandukanye n'ayavuye muri cyamunara y'inzu) Mukakabanda Speciose yiyishyuriye ubwe nk'uko we na Mugereka Prosper babiburanisha, ahubwo ari amafaranga yavuye muri cyamunara y'inzu nk'uko bigaragazwa n'inyandiko zatanzwe na BPR.

2. Mu gihe abatanze ikirego cy'akarengane badashobora kugaragaza ikimenyetso cy'uko amafaranga yavuye mu buguzi bw'imodoka, bigurishirije ubwabo, yakiriwe na banki cyangwa abayihagarariye, ikirego cyabo nticyahabwa ishingiro.

3. Mu kubara amafaranga uwafashe umwenda yishyuraga inyungu n'umwenda, urukiko rugasanga inkiko zo hasi zarayabaze nabi, ntiruba rushobora gukosora ayo makosa mu gihe uwatanze umwenda

atabiregeye. Bityo, BPR ntiyabaze nabi amafaranga yagiye yishyurwa kuko ntayarenze kuyagombaga kwishyurwa, ahubwo abahawe umwenda bungukiye mu ikosa ryakozwe n'Urukiko rw'Ubucuruzi, aho bategetswe kwishyura 5.363.587 Frw aho kwishyura 5.636.587 Frw, ndetse no mu ikosa ryakozwe n'Urukiko Rukuru rw'Ubucuruzi, aho rwemeje ko amafaranga 320.000 Frw yavuye mu igurisha ry'urusyo atashyizwe kw' ifishi kandi ataribyo, bigatuma akurwa mu mafaranga 5.363.587 Frw bategetswe n'urukiko rubanza, maze bishyuzwa 5.043.587 Frw gusa y'umwenda remezo aho kwishyuzwa 5.636.587 Frw.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarenga nta shingiro gifite. Urubanza n° RCOMA 0112/13/HCC ntirudahindutse.

Amategeko yashingiweho:
Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 igika cya mbere.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mukakabanda Speciose yahawe umwenda wa 8.000.000 Frw na Banki y'abaturage y'u Rwanda (BPR), yishingirwa n'umugabo we. Umwenda ntabwo wishyuwe uko byari biteganyijwe mu masezerano y'inguzanyo, maze banki irega Mukakabanda Speciose n'umwishingizi we mu Rukiko rw'Ubucuruzi rwa Musanze, isaba ko bakwishyura umwenda, inyungu n'indishyi uko byavuzwe mu kiburanwa.

[2] Muri urwo rukiko, Mukakabanda Speciose na Mugereka Prosper baburanye bavuga ko BPR ibarega yaramaze gusesa amasezerano y'inguzayo, ikaba itashingira ikirego cyayo ku masezerano ubwayo yasheshe, ndetse ko ingwate zari zaratanzwe zakagombye kuba zarishyuye umwenda wose kuko ziba zinganya cyangwa zirusha agaciro umwenda watanzwe.

[3] Urukiko rw'Ubucuruzi rwa Musanze rwaciye urubanza n° RCOM 0055/13/TC/MUS ku wa 14/03/2013, rwemeza ko ibyo Mukakabanda Speciose na Mugereka Prosper baburanisha nta shingiro bifite, rutegeka abaregwa kwishyura BPR, umwenda bayibereyemo ungana na 5.363.587 Frw y'umwenda remezo (ayo niyo mafaranga yanditswe muri *dispositif* ariko mu gace ka 15 k'urubanza, Urukiko rwasobanuye ko Mukakabanda agomba kwishyura 5.636.587 Frw), 603.205 Frw y'inyungu zisanzwe na 37.577 Frw y'inyungu z'ubukererwe (yose hamwe akaba ari 6.004.369 Frw), akishyura na 250.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza, 6.600 Frw y'amagarama y'urubanza, atabona ubwishyu akishyurwa na Mugereka Prosper wamwishingiye.

[4] Mukakabanda Speciose na Mugereka Prosper bajuririye Urukiko Rukuru rw'Ubucuruzi bavuga ko ikirego cya BPR kitagombaga kwakirwa kuko yari yaratanze ikirego cyasibwe, aho kubyutsa urwo rubanza itanga ikirego gishya, bavuga kandi ko umwenda wabazwe nabi, hakurikijwe ibigaragara kw'ifishi y'umwenda yatanzwe na banki, ndetse ko hari 1.420.000 Frw yavuye mu igurishwa ry'ingwate y'inzu muri cyamunara ryabaye tariki ya 10/11/2011, 320.000 Frw yavuye mu igurishwa ry'urusyo

ryabaye ku wa 26/07/2011 na 2.800.000 Frw yavuye mu igurisha ry'imodoka ryabaye ku wa 10/11/2010 atashyizwe kw'ifishi y'umwenda.

[5] Ku wa 01/10/2013 urwo rukiko rwaciye urubanza n° RCOMA 0112/13/HCC, rwemeza ko ubujurire bwa Mukakabanda Speciose na Mugereka Prosper bufite ishingiro ku bijyanye gusa na 320.000 Frw yavuye mu igurishwa ry'urusyo, bityo ko umwenda bagomba wose hamwe kwishyura ari 5.684.369 Frw aho kuba 6.004.369 Frw.

[6] Ku ngingo ijyanye no kuvuga ko umwenda wabazwe nabi hakurikijwe ibigaragara kw'ifishi y'umwenda yatanzwe na banki, Urukiko rwavuze ko Mukakabanda Speciose na Mugereka Prosper birengagiza ko amafaranga avugwa mu ifishi ko yishyuwe yagiye yishyurwa nyuma y'igihe ku buryo byagiye bituma inyungu zisanzwe n'iz'ubukererwe ziyongera.

[7] Ku ngingo irebana n'amafaranga yavuye mu igurishwa ry'inzu, Urukiko rwavuze ko yashyizwe kuri konti ku itariki ya 14/11/2012, nyuma y'iminsi ine igurishijwe ariko ko kuri ayo mafaranga hakuwemo za commissions, aho kwandika 1.420.775 Frw kw'ifishi y'umwenda, handikwa 1.418.775 Frw. Rwavuze kandi ko Mukakabanda yanze kugaragaza agatabo ke ka banki kugira ngo hasuzumwe uko yagiye yishyura.

[8] Mugereka Prosper ntiyishimiye iyo mikirize, yandikira Urwego rw'Umuvunyi asaba kurenganurwa ntiyishyuzwe amafaranga yamaze kwishyura binyujijwe muri cyamunara yatejwe na Banki y'Abaturage, Ishami rya Birambo.

[9] Nyuma yo gusuzuma icyo kibazo, Urwego rw'Umuvunyi rwasanze urubanza n° RCOMA 0112/13/HCC rukwiriye gusubirwamo ku mpamvu z'akarengane, maze rwandikira Perezida w'Urukiko rw'Ikirenga, rumusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma raporo y'Ubugenzuzi Bukuru bw'Inkiko, Perezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rwongera kuburanishwa.

[10] Urubanza rwaburanishijwe mu ruhame ku wa 07/06/2019, Mugereka Prosper na Mukakabanda Speciose bahagarariwe na Me Rudakemwa Jean Felix, naho BPR ihagarariwe na Me Mugemanyi Vedaste.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA.

a) Kumenya niba amafaranga yagurishijwe inzu ariyo yanditswe kw'ifishi y'umwenda cyangwa se niba ari andi Mukakabanda Speciose yiyishyuriye

[11] Me Rudakemwa Jean Felix, uburanira Mukakabanda Speciose na Mugereka Prosper, avuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko 1.420.000 Frw yavuye muri cyamunara y'inzu yari yatanzweho ingwate yagabanyije umwenda kuko yashyizwe kw' ifishi y'umwenda nyuma y'iminsi 4 gusa inzu igurishijwe, nyamara atari ko biri kuko inzu yagurishijwe ku itariki ya 10/11/2011, amafaranga Urukiko rwavuze ko yagabanyije umwenda akaba yaranditswe kw' ifishi y'umwenda ku itariki ya 14/11/2012, nyuma y'umwaka inzu igurishijwe, bikaba bigaragara ko rwitiranyije amafaranga 1.420.000 Frw yavuye muri cyamunara y'inzu atagaragara na hamwe kw'ifishi y'umwenda na 1.418.775 Frw Mukakabanda Speciose na Mugereka Prosper biyishyuriye ubwabo mu ntoki, adafite aho ahuriye

n‘ayavuye muri cyamunara y’inzu, dore ko amafaranga avuye muri cyamunara banki ihita iyatwara, ku buryo bitari gushoboka ko yashyirwa kw‘ifishi y’umwenda nyuma y’umwaka wose.

[12] Ku birebana n’ibyo Urukiko Rukuru rw’Ubucuruzi rwavuze ko Mukakabanda Speciose yanze kugaragaza agatabo ke ka banki kugira ngo hasuzumwe uko yagiye yishyura umwenda, avuga ko ako gatabo ntacyo kari kumara kuko kandikwagamo ayabikijwe gusa (*versements*), amafaranga yishyuraga umwenda akaba atarishyurirwaga mu gatabo, ahubwo yarishyurirwaga kw‘ifishi y’umwenda yabaga ibitswe na Banki.

[13] Me Mugemanyi Vedaste, uburanira BPR, avuga ko inzu yagurishijwe muri cyamunara ku wa 10/11/2011 ku mafaranga 1.420.000 nk’uko inyandiko ya cyamunara ibigaragaza, ko nyuma yo kuvanamo amafaranga arebana n’ikoreshwa rya cyamunara hasigaye 1.418.775 Frw, ashyirwa kw’ifishi y’umwenda ku wa 14/11/2011, ariko haba ikosa ry’imyandikire ku mwaka, maze aho kwandika 2011 handikwa 2012, abaregera akarengane bakaba bitwaza iryo kosa bavuga ko ayo mafaranga ari ayo bo ubwabo biyishyuriye mu ntoki kandi ataribyo.

UKO URUKIKO RUBIBONA

[14] Ingingo ya 3, igika cya mbere, y‘Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo iteganya ko *‘‘buri muburanyi agomba kugaragaza ukuri kw’ibyo aburana‘‘.*

[15] Ababuranyi bombi baremeranya ko inzu Mukakabanda Speciose yari yaratanzeho ingwate yagurishijwe muri cyamunara ku wa 10/11/2011 ku mafaranga 1.420.000, ikibazo akaba ari icyo kumenya niba ayo mafaranga ataragabanyije umwenda uburanwa harebwe ibimenyetso byatanzwe, aribyo *historique bancaire* ya konti ya Mukakabanda Speciose n’ifishi y‘ umwenda.

[16] Iyo rero harebwe *historique* ya konti ya Mukakabanda Speciose yo ku wa 01/07/2011 kugeza ku wa 30/11/2011, ikigaragara n’uko ku itariki ya 14/11/2011 hari amafaranga angana na 1.418.775 Frw yavuye muri cyamunara y’inzu ya Mukakabanda Speciose yashyizwe kuri konti ye, ayo mafaranga akaba yarishyuwemo 972.813 Frw y’umwenda remezo, 282.640 Frw y’inyungu zisanzwe na 163.322 Frw y’inyungu z‘ubukererwe.

[17] Iyo na none harebwe ifishi y’umwenda ya Mukakabanda Speciose, ikigaragara ni uko hari amafaranga angana na 1.418.775 Frw yashyizwe kuri konti ya Mukakabanda Speciose ku itariki ya 14/11/2012, akishyurwamo umwenda remezo n‘inyungu zisanzwe n’iz’ubukererwe zavuzwe.

[18] Iyo rusesenguye izo nyandiko, ikigaragara n’uko amatariki ahura ku birebana n’umunsi n’ukwezi amafaranga yakiriwe, ndetse no ku mubare w‘amafaranga yakiriwe, Urukiko rukaba rusanga rero nta gushidikanya guhari ko habaye ukwibeshya ku mwaka wanditse mw‘ ifishi y’umwenda, aho kwandika umwaka wa 2011 hakandikwa umwaka wa 2012.

[19] Urukiko rurasanga rero amafaranga 1.418.775 agaragara kw‘ifishi y’umwenda nk’aho yakiriwe kuwa 14/11/2012 atari andi mafaranga (atandukanye n’ayavuye muri cyamunara y’inzu) Mukakabanda Speciose yiyishyuriye ubwe nk’uko we na Mugereka Prosper babiburanisha, ahubwo ari amafaranga yavuye muri cyamunara y’inzu nk’uko bigaragazwa n’inyandiko zatanzwe na BPR, bityo ikirego cyabo cy’akarengane ku birebana n’iyi ngingo kikaba nta shingiro gifite.

b) Kumenya niba amafaranga yagurishijwe imodoka yarakiriwe na BPR ariko ntiyandikwe kw'ifishi y'umwenda

[20] Me Rudakemwa Jean Felix, uburanira Mukakabanda Speciose na Mugereka Prosper, avuga ko Urukiko Rukuru rw'Ubucuruzi ntacyo rwavuze ku mafaranga 2.800.000 yavuye mu igurishwa ry'imodoka yari yaratanzweho ingwate, atagaragara kw'ifishi y'umwenda.

[21] Avuga ko ikimenyetso ko banki yakiriye ayo mafaranga ari uko ubugure bw'imodoka bwabaye ku wa 10/12/2010, BPR ihagarariwe n'umukozi wayo Mukandinda Valentine washyize umukono we na kashe ya banki ku masezerano y'ubugure, hari n'Umuhesha w'Inkiko, Ntwarabagabo Daniel, nawe washyize umukono ku masezerano y'ubugure, ku buryo Mugereka Prosper atari kwakira amafaranga mu ntoki cyangwa ngo ayacikane abahagarariye banki bahari kandi aricyo cyabazanye, n'imodoka yaragurishijwe kugira ngo banki yishyurwe, bikaba bitumvikana ukuntu ivuga ko itayakiriye.

[22] Akomeza avuga ko mu mikorere ya BPR y'icyo gihe, umukiliya iyo yabaga atanze amafaranga yo kwishyura umwenda, nta nyandiko n'imwe yahabwaga igaragaza ko ashyize amafaranga kuri konti cyangwa ko yishyuye umwenda.

[23] Ku bijyanye n'uko inyandiko y'igurisha ry'iyo modoka yanditswe mu buryo bw'amasezerano y'ubugure bukozwe na nyirayo, mu gihe cyamunara ifite uburyo ikorwamo n'inyandiko zabugenewe zigaragaza ko yabayeho, Me Rudakemwa Jean Felix avuga ko ari bwo buryo banki yahisemo gukoresha, ko ari *arrangement interne* n'umukiliya, kandi ko inyandiko yakozwe hagurishwa imodoka ari nayo yakozwe hagurishwa urusyo banki yemera ko amafaranga yarwo yayashyikirijwe akagabanya umwenda n'ubwo atigeze ashyirwa kw'ifishi y'umwenda kimwe n'ay'imodoka.

[24] Me Mugemanyi Vedaste, uburanira BPR, avuga ko atari banki yagurishije imodoka n'urusyo nubwo byari byaratanzweho ingwate, ko ari abaregera akarengane bagiye bagurisha, ko inyandiko batanze yerekana ko imodoka yagurishijwe na Mugereka Prosper ubwe ku wa 10/12/2010 ku giciro cya 2.800.000Frw, kuba ayo mafaranga ataranditswe kw'ifishi y'umwenda akaba ari uko atigeze ayashyikiriza banki.

[25] Avuga kandi ko mu gihe iyo modoka yagurishwaga BPR yari itaraba *informatise*, ko icyo gihe inyandiko zagaragazaga ko amafaranga yagiye kuri konti y'umukiliya ari agatabo ke n'ifishi y'umwenda, ko mu rwego rwo gutanga ibimenyetso banki yatanze ifishi y'umwenda igaragaza amafaranga umukiliya yagiye ashyiraho, Mukakabanda Speciose asabwe kuzana agatabo ke ka banki ngo kagereranywe n'ibyanditse kw'ifishi ntiyagatanga.

[26] Akomeza avuga ko mu mikorere ya banki bitashobokaga ko umukiliya agenda batamwandikiye mu gatabo ibikozwe byose, kuko kagiraga ibice bibiri, kimwe kigenewe kwandikamo amafaranga yo kwizigamira n'ikindi kigenewe imyenda yahawe, ko nyuma aribwo amafaranga yo kwishyura umwenda yakurwagaho na serivisi ya *credit*, ikayashyira kw' ifishi y'umwenda.

UKO URUKIKO RUBIBONA:

[27] Amasezerano y'ubugure bw'imodoka yari yaratanzweho ingwate agaragaza ko yagurishijwe na Mugereka Prosper ubwe ku wa 10/12/2010 ku giciro cya 2.800.000 Frw.

[28] Urukiko rurasanga kuba Mukandinda Valentine wari uhagarariye banki na Ntwarabagabo Daniel, umuhesha w'inkiko, barashyize umukono ku masezerano y'ubugure bw'imodoka ubwabyo bidahagije kwemeza ko aribo bakiriye amafaranga yavuye mu bugure bw'imodoka, cyane ko Mukakabanda Speciose na Mugereka Prosper batanagaragaza uwayakiriye muri abo bombi n'aho yaba yarasinyiye ko ayakiriye, bikaba bitumvikana ko umuntu ubereyemo umwenda banki, umaze kugurisha umutungo we ngo yishyure uwo mwenda, yakwishyura ntasigarane inyandiko n'imwe igaragaza ko amafaranga yavuye muri ubwo bugure yahawe banki cyangwa uyihagarariye.

[29] Urukiko rurasanga kandi kuvuga ko inyandiko yakozwe hagurishwa imodoka ari nayo yakozwe hagurishwa urusyo, kandi ko banki yemera ko amafaranga yarwo yayashyikirijwe akagabanya umwenda n'ubwo atigeze ashyirwa kw'ifishi y'umwenda kimwe n'ay'imodoka, bitabera abarega ikimenyetso, cyane ko urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rutagaragaza neza ikosa uwari uhagarariye banki yemera ryabaye ku birebana n'amafaranga yavuye mu igurisha ry'urusyo, ndetse ifishi y'umwenda kimwe na *historique bancaire* bikaba bigaragaza ko amafaranga y'ubugure bw'urusyo yashyizwe ku ifishi, ariko aho kwandika ko amafaranga yakiriwe ku wa 26/07/2011, ari nawo munsi urusyo rwagurishijwe, bakaba baranditse ko yakiriwe ku wa 26/07/2012, iryo kosa ry'imyandikire ku mwaka akaba ari naryo ryakozwe ku birebana n'amafaranga yavuye muri cyamunara y'inzu.

[30] Urukiko rurasanga rero, mu gihe abatanze ikirego cy'akarengane badashobora kugaragaza ikimenyetso cy'uko amafaranga yavuye mu buguzi bw'imodoka, bigurishirije ubwabo, yakiriwe na banki cyangwa abayihagarariye, ikirego cyabo kitahabwa ishingiro.

c) Kumenya niba Mukakabanda Speciose na Mugereka Prosper baraciwe inyungu zitari zikwiye no kumenya niba barishyujwe amafaranga arenga ku yo bagombaga kubera ko BPR yabaze nabi amafaranga yagiye yishyurwa

[31] Me Rudakemwa Jean Felix avuga ko Urukiko Rukuru rw'Ubucuruzi rwaciye Mukakabanda Speciose na Mugereka Prosper aburanira inyungu zisanzwe zingana na 603.205 Frw n'iz'ubukererwe zingana na 37.577 Frw zitari kubaho iyo amafaranga yavuye muri cyamunara y'inzu no mu igurishwa ry'imodoka ashyirwa kw'ifishi y'umwenda kuko yari kwishyura umwenda wose, bakaba rero basaba gusubizwa ayo mafaranga.

[32] Avuga kandi ko banki yagiye ibara nabi amafaranga Mukakabanda Speciose na Mugereka Prosper bishyuraga, bituma bishyuzwa amafaranga y'ikirenga ku mwenda, bakaba basaba gusubizwa ayo mafaranga bishyuye bitari ngombwa.

[33] Ku birebana n'ayo mafaranga avuga ko yishyuwe bitari ngombwa, ahereye kw'ifishi y'umwenda, ayasobanura mu buryo bukurikira:

- ku itariki ya 28/07/2010, umwenda usigaye wari 6.857.500 Frw;
- ku itariki ya 29/09/2010, abarega bishyuye 50.000 Frw, hasigara 6.807.500 Frw;
- ku itariki ya 30/12/2010, bishyuye 439.000 Frw ;
- ku itariki ya 31/03/2011, bishyuye 164.000 Frw ;
- ku itariki ya 26/07/2012, bishyuye 320.000 Frw ;

- ku itariki ya 14/11/2012, bishyuye 1.418.775 Frw.

[34] Akomeza avuga ko igiteranyo cy'ayo bishyuye yose hamwe ari 2.391.775 Frw, wakongeraho 4.540.000 Frw yavuye muri cyamunara y'inzu no mu igurisha ry'urushyo n'imodoka (1418.775 + 320.000 +2.800.000), yose hamwe akaba 6.931.775 Frw, kandi umwenda wagombaga kwishyurwa wari 6.857.500 Frw, bivuze ko hari amafaranga yishyuwe, ataragombaga kwishyurwa, angana na 74.275 Frw.

[35] Akomeza avuga ko ayo mafaranga 74.275 Frw agomba kwiyongera kuri 640.782 Frw y'inyungu Mukakabanda Speciose na Mugereka Prosper baciwe bitari ngombwa, yose hamwe akaba 715.057 Frw

[36] Me Mugemanyi Vedaste avuga ko inyungu zitahagaze ku wa 29/09/2010 nk'uko Mukakabanda Speciose na Mugereka Prosper babyumvikanisha, ko mu mibare yabo birengagiza ko amafaranga yagiye yishyurwa habanje kuvanwamo inyungu, asigaye akabona gushyirwa ku mwenda, ko nta mafaranga y'ikirenga bigeze bishyura kuko ifishi y'umwenda igaragaza uko bagiye bishyura n'umubare w'amafaranga bishyuye ndetse n'umwenda bari basigaje kwishyura.

[37] Avuga kandi ko ku wa 26/11/2010, ubwo banki yandikiraga Mukakabanda Speciose isesa amasezerano y'inguzanyo, umwenda wari ugeze kuri 6.807.500 Frw, kandi ko abarega batigeze bavuguruza iyo mibare. Ku birebana n'inyungu baciwe zingana na 715.057 Frw, avuga ko abarega nta bimenyetso batanze bigaragaza ko zishingiye ku mwenda wari waramaze kwishyurwa.

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[38] Ku bijyanye n'ikirego cya Mukakabanda Speciose na Mugereka Prosper gisaba kuvanirwaho inyungu zisanzwe zingana na 603.205 Frw n'iz'ubukererwe zingana na 37.577 Frw, bavuga ko iyo amafaranga yavuye muri cyamunara y'inzu no mu igurishwa ry'imodoka ashyirwa kw'ifishi y'umwenda, yari kwishyura umwenda wose ntibacibwe izo nyungu, Urukiko rurasanga iki kirego cyari inkurikizi y'ibirego byasuzumwe haruguru mu bice bya II.a na II.b by'urubanza, rukaba ntaho rwahera rwemeza ko baciwe inyungu zitagombaga gucibwa mu gihe ibirego bishamikiyeho nabyo bitahawe ishingiro.

[39] Urukiko rurasanga rero, nk'uko byasobanuwe n'Urukiko Rukuru rw'Ubucuruzi, ibyo Mukakabanda Speciose na Mugereka Prosper bavuga ko, ari ukwirengagiza ko amafaranga y'umwenda yishyurwaga nyuma y'igihe, akabanza gukurwamo inyungu zisanzwe n'iz'ubukererwe mbere yo gukurwamo umwenda remezo, bityo ikirego cyabo kijyanye n'amafaranga y'ikirenga bishyujwe kikaba nta shingiro gifite. Ku bijyanye n'ibyo Mukakabanda Speciose na Mugereka Prosper bavuga ko BPR yabaze nabi amafaranga yagiye yishyurwa bigatuma bishyura amafaranga arenga ku yo bagombaga kwishyura, Urukiko rurasanga ifishi y'umwenda igaragaza ko amafaranga yishyuwe yagiye agabanya umwenda remezo mu buryo bukurikira:

- ku itariki ya 28/07/2010, umwenda remezo wari ugeze ku mafaranga 6.857.500 Frw nk'uko abarega babivuga bahereye ku byanditswe kw' ifishyi y'umwenda;

- ku itariki ya 29/09/2010, bishyuye 50.000 Frw, hasigara 6.807.500 Frw nk'uko abarega nabo babivuga;

- ku itariki ya 30/12/2010, bishyuye 439.000 Frw nk'uko abarega babivuga, ariko umwenda remezo ugabanukaho 198.100 Frw gusa kuko andi yishyuwemo 240.900 Frw y'inyungu zisanzwe, ubwo hasigara umwenda remezo wa 6.609.400 Frw (6.807.500Frw -198.100Frw) ;

- Ku itariki ya 26/07/2010, bishyuye 320.000 Frw , umwenda remezo uguma ari 6.609.400 Frw kuko yose yishyuwemo 161.953 Frw y'inyungu zisanzwe na 158.047 Frw y'inyungu z'ubukererwe;

- ku itariki ya 14/11/2011, bishyuye 1.418.775 Frw, umwenda remezo ugabanukaho 972.813 Frw gusa, andi yishyurwamo 282.640 Frw y'inyungu zisanzwe na 163.322 Frw y'inyungu z'ubukererwe, ubwo hasigara 5.636.587 Frw y'umwenda remezo, ari nayo yaregewe mu Rukiko rw'Ubucuruzi rwa Musanze, akaba ari nayo urwo rukiko rwabategetse kwishyura, nubwo muri *dispositif*' rwibeshye rukandika 5.363.587 Frw, nyamara mu bisobanuro rwari rwagaragaje neza ko ari 5.636.587 Frw.

[40] Urukiko rurasanga rero BPR itarabaze nabi amafaranga yagiye yishyurwa bigatuma bishyura amafaranga arenga ku yo bagombaga kwishyura, ahubwo barungukiye mu ikosa ryakozwe n'Urukiko rw'Ubucuruzi, aho bategetswe kwishyura 5.363.587 Frw aho kwishyura 5.636.587 Frw, ndetse no mu ikosa ryakozwe n'Urukiko Rukuru rw'Ubucuruzi, aho rwemeje ko amafaranga 320.000 Frw yavuye mu igurisha ry'urusyo atashyizwe kw' ifishi kandi ataribyo, bigatuma akurwa mu mafaranga 5.363.587 Frw bategetswe n'urukiko rubanza, maze bishyuzwa 5.043.587 Frw gusa y'umwenda remezo aho kwishyuzwa 5.636.587 Frw, ayo makosa ariko akaba atakosorwa muri uru rubanza rw'akarengane kuko BPR itabiregeye.

d) Ku bijyanye n'indishyi zisabwa muri uru rubanza

[41] Me Rudakemwa Jean Felix avuga ko Mukakabanda Speciose na Mugereka Prosper aburanira basaba 49.680.000 Frw akubiyemo inyungu mbonezamusaruro n'indishyi z'akababaro kubera ko banki yabateje igihombo, abazwe mu buryo bukurikira:

- imodoka yinjizaga 20.000 Frw ku munsi ni ukuvuga 600.000 Frw ku kwezi, bivuze ko guhera ku itariki cyamunara yabereyeho ku wa 10/12/2010 igihombo ari 43.200.000 Frw ku mezi 72 ashize;

- urusyo rwinjizaga 3.000 Frw ku munsi, ni ukuvuga 90.000 Frw ku kwezi, bivuze ko guhera ku itariki cyamunara yabereyeho ku wa 26/07/2011 igihombo ari 6.480.000 Frw ku mezi 72 ashize.

[42] Akomeza avuga ko abo aburanira basaba n'indishyi z'akababaro zingana na 2.000.000 Frw kubera banki yabateye guhangayika, 1.000.000 Frw y'ikurikiranarubanza kuva urubanza rwatangira kugeza ubu kubera ingendo, amacumbi n'amafunguro, ndetse na 2.000.000 Frw y'igihembo cya Avoka.

[43] Me Mugemanyi Vedaste avuga ko indishyi abarega basaba BPR nta shingiro zifite kuko ari bo bashoye banki mu manza bitewe no kutubahiriza amasezerano y'umwenda bagiranye.

[44] Arasaba ko BPR yahabwa 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[45] Me Rudakemwa Jean Felix avuga ko nta ndishyi BPR ikwiye guhabwa kuko ariyo yashoye abo aburanira mu manza.

UKO URUKIKO RUBIBONA

[46] Urukiko rurasanga nta nyungu cyangwa indishyi Mukakabanda Speciose na Mugereka Prosper bakwiye kuko, nkuko byagaragajwe haruguru, ntacyo BPR yabangirije ikurikirana uburenganzira bwayo bukomoka ku masezerano y'inguzanyo bakoranye, ahubwo aribo bagomba kuyiha amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kuko byabaye ngombwa ko yiyambaza Avoka wo kuyiburanira no kugira ibyo itakaza mu gukurikirana urubanza rw'akarengane yashowemo bitari ngombwa, ariko igahabwa 600.000 Frw abazwe mu bushishozi bwarwo hakurikijwe imiterere y'urubanza.

III. ICYEMEZO CY'URUKIKO1

[47] Rwemeje ko ikirego cya Mukakabanda Speciose na Mugereka Prosper kigamije gusubirishamo ku mpamvu z'akarengane urubanza n° RCOMA 0112/13/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 01/10/2013 nta shingiro gifite;

[48] Rwemeje ko urwo rubanza n° RCOMA 0112/13/HCC rudahindutse;

[49] Rutegetse Mukakabanda Speciose na Mugereka Prosper guha Banki y'Abaturage y'u Rwanda, Agashami ka Birambo, 600.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego.