MUSHIMIYIMANA v ECOBANK RWANDA Ltd

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/ RCOM 00003/2017/CS (Kayitesi Z., P.J., Cyanzayire na Kayitesi, J.) 10 Gicuransi 2019]

Gusubirishamo urubanza ingingo nshya – Amakosa akabije yo kwitiranya ibintu uko byagenze – Kuba umuburanyi atemera umwanzuro wafashwe n'urukiko ntiyabishingiraho ashaka kumvikanisha ko Urukiko rwitiranyije ibintu uko byagenze, ko habayeho kutumva neza ikibazo cyasuzumwaga ndetse n'ibyashingiweho mu kugicyemura ngo bityo abishingireho asaba gusubirishamo urubanza ingingo nshya.

Incamake y'Ikibazo: Mushimiyimana Thacienne yareze Ecobank Rwanda Ltd mu Rukiko rw'Ubucuruzi rwa Nyarugenge, avuga ko iyi Banki batumvikana ku myenda yamuhaye harimo na *Ligne de Credi* aho Banki ivuga ko yarengeje ayo yari yemerewe nyamara ahubwo Banki ubwayo yaragiye ikura amafaranga kuri konti ye nta burenganzira ayihaye. Urukiko rwaciye urubanza rwemeza ko Ecobank Rwanda Ltd itsinzwe ndetse ruyitegeka no gusubiza Mushimiyimana Thacienne amafaranga yavanye kuri konti ye nta burenganzira ayibihereye

Ecobank Rwanda Ltd ntiyishimiye imikirize y'urubanza, ijuririra Urukiko Rukuru rw'Ubucuruzi, Mushimiyimana Thacienne nawe atanga ubujurire bwuririye ku bundi. Urwo Rukiko rwaciye urubanza rwemeza ko ubujurire bwa Ecobank Rwanda Ltd bufite ishingiro, ko ubujurire bwuririye ku bundi bwa Mushimiyimana Thacienne nta shingiro bufite. Rutegeka Mushimiyimana Thacienne kwishyura Ecobank Rwanda Ltd umwenda ayibereyemo nkuko wagaragajwe n'umuhanga washyizweho n'Urukiko.

Mushimiyimana Thacienne yajuririye Urukiko rw'Ikirenga anenga umucamanza w'Urukiko Rukuru rw'ubucuruzi kuba yaragiye yirengagiza ibimenyetso bye, ahubwo agashakira ibimenyetso bya Ecobank Rwanda Ltd ibisobanuro bidafututse. Avuga kandi ko Urukiko rutahaye ishingiro *observation* yatanze kuri raporo y'umuhanga. Urukiko rw'Ikirenga rwaciye urubanza rwemeza ko ubujurire bwa Mushimiyimana Thacienne budafite ishingiro, rwemeza ko ubujuririre bwuririye ku bundi bwa Ecobank Rwanda Ltd bufite ishingiro kuri bimwe.

Mushimiyimana Thacienne yatanze ikirego gisaba gusubirishamo urubanza ingingo nshya, avuga ko Urukiko rwakoze amakosa akabije yo kwitiranya ibintu uko byagenze. Muri ayomakosa harimo nko kuba Urukiko rwaravuze ko hakoreshejwe sheki zisa kuri konti zitandukanye kandi ari sheki imwe yakoreshwaga kenshi kuri konti imwe, kwitiranya *ligne de credit* na *garantie bancaire*, kwitiranya umwenda ugaragara muri *historique* n'uri mu ibaruwa ya *dénonciation de credit*.

Ku ruhande rwa Ecobank Rwanda Ltd, ivuga ko nta makosa yo kwitiranya ibintu yabayeho. Ngo kuko Ibyo Mushimiyimana yita kwitiranya amasezerano byasobanuwe ngo kuko habaye *consolidation* ya *garanties bancaires* na *lignes de crédits*, ndetse n'Umuhanga wakoze *expertise* akaba yarabisobanuye; ko rero kuba batemera icyemezo cy'Umucamanza bitakwitwa kwitiranya ibintu.

Avuga kandi ko nta sheki n'imwe yigeze ibikuzwa inshuro zirenze imwe, ko ahubwo Mushimiyimana Thacienne yakomeje guteza urujijo azana sheki zo ku ma konti atandukanye azita ko zakoreshejwe kuri konti imwe. Bityo rero baakaba basaba ko ikirego cya Mushimiyimana Thacienne kitakwakirwa kuko uretse kubivuga gusa mu byukuri nta makossa Urukiko rwakoze mu guca urubanza.

Incamake y'Icyemezo: 1. Kuba umuburanyi atemera umwanzuro wafashwe n'urukiko ntiyabishingiraho ashaka kumvikanisha ko Urukiko rwitiranyije ibintu uko byagenze, ko habayeho kutumva neza ikibazo cyasuzumwaga ndetse n'ibyashingiweho mu kugicyemura byatumye umucamanza agera ku mwanzuro atagombaga kugeraho iyo asobanukirwa neza icyo kibazo ngo abishingireho asaba gusubirishamo urubanza ingingo nshya

Ikirego cyo gusubirishamo urubanza ingingo nshya nticyakiriwe
Ingwate y'amagarama y'urubanza ihwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:

Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 186.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mushimiyimana Thacienne yahawe inguzanyo zitandukanye na Ecobank Rwanda Ltd, iza kumwandikira imumenyesha ko atishyura neza, ariko ntibabyumvikanaho bituma agana inkiko. Urubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Mushimiyimana Thacienne arega Ecobank Rwanda Ltd, avuga ko yamuhaye inguzanyo zitandukanye kugira ngo zimufashe mu bucuruzi bwe azikoresha neza, ariko aza gutungurwa no kubona ku wa 12/11/2012 ECOBANK RWANDA Ltd imwandikiye ibaruwa imubwira ko yarengeje 31.277.208 Frw kuri *ligne de credit* yari afite**,** kandi ahubwo ari Banki yagiye ikura amafaranga kuri konti ye nta burenganzira ayihaye.

[2] Urwo Rukiko rwaciye urubanza RCOM 0263/13/TC/Nyge ku wa 30/07/2013, rwemeza ko Ecobank Rwanda Ltd itsinzwe no kudatanga ibimenyetso ibitse kuko yaburanye ivuga ko itahatirwa kubitanga nk'aho ariyo yareze. Urukiko rwayitegetse gusubiza Mushimiyimana Thacienne 173.765.539 Frw yavanye kuri konti ye nta burenganzira ayibihereye no kumuha 1.000.000 Frw y'indishyi. Rwanayitegetse gutanga 150.000 Frw y'indishyi mbonezamubano agashyirwa kuri konti ya Leta, no gutanga amagarama y'urubanza 4.700 Frw.

[3] Ecobank Rwanda Ltd ntiyishimiye imikirize y'urubanza, ijuririra Urukiko Rukuru rw'Ubucuruzi, Mushimiyimana Thacienne nawe atanga ubujurire bwuririye ku bundi. Ku wa 05/02/2014, urwo Rukiko rwaciye urubanza RCOMA 0342/13/HCC, rwemeza ko ubujurire bwa Ecobank Rwanda Ltd bufite ishingiro, ko ubujurire bwuririye ku bundi bwa Mushimiyimana Thacienne nta shingiro bufite. Rwategetse Mushimiyimana Thacienne kwishyura Ecobank Rwanda Ltd umwenda ayibereyemo ungana na 297.914.358 Frw, kuyishyura igihembo cya Avoka kingana na 650.000 Frw no kuyisubiza amafaranga yishyuye umuhanga, akanishyura amagarama y'urubanza. Urukiko rwategetse Ecobank Rwanda Ltd gutanga 150.000 Frw y'indishyi mbonezamubano zigomba gushyirwa kuri konti ya Leta kubera ko itayajuririye.

[4] Mushimiyimana Thacienne yajuririye Urukiko rw'Ikirenga anenga umucamanza w'Urukiko Rukuru rw'ubucuruzi kuba yaragiye yirengagiza ibimenyetso bye, ahubwo agashakira ibimenyetso bya Ecobank Rwanda Ltd ibisobanuro bidafututse. Avuga ko mu Rukiko rw'Ubucuruzi rwa Nyarugenge, iyo Banki yatsinzwe no kwanga gutanga ibimenyetso ibitse, ikaba itarabishyikirije Urukiko Rukuru rw'Ubucuruzi ngo rubimwereke, ategure imyiregurire ye. Anavuga ko atishimiye

kuba ubujurire bwe bwuririye ku bundi bwarirengagijwe, na *contre-expertise* yasabye ntikorwe, ahubwo umucamanza agafata icyemezo cyo guca urubanza adahari nyamara ataritabye inshuro imwe gusa, kandi ntiyashingira kuri *observation* yari yatanze kuri raporo y'umuhanga, aho yasabaga ko uwo muhanga atumizwa agasobanura ibyo yari yanenze muri raporo yakoze.

[5] Ecobank Rwanda Ltd nayo yatanze ubujurire bwuririye ku bundi, isaba ko Mushimiyimana Thacienne yategekwa kwishyura umwenda wose ayibereyemo, amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka.

[6] Ku wa 23/06/2017, Urukiko rw'Ikirenga mu rubanza RCOMAA 0029/14/CS, rwemeje ko ubujurire bwa Mushimiyimana Thacienne budafite ishingiro, rwemeza ko ubujuririre bwuririye ku bundi bwa Ecobank Rwanda Ltd bufite ishingiro kuri bimwe. Rwategetse Mushimiyimana Thacienne kwishyura Ecobank Rwanda Ltd 232.343.557 Frw y'umwenda ayibereyemo, runamutegeka kwishyura 800.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego, yiyongera kuri 650.000 Frw y'igihembo cya Avoka yagenwe mu rubanza rwajuririwe; rutegeka kandi Mushimiyimana Thacienne gusubiza Ecobank Rwanda Ltd amafaranga y'igihembo cy'umuhanga nk'uko byemejwe n'Urukiko Rukuru rw'Ubucuruzi.

[7] Urukiko rwasobanuye icyemezo cyarwo rushingiye ku masezerano impande zombi zagiranye, rushingiye kandi no kuri raporo y'Umuhanga mu icungamutungo washyizweho n'Urukiko Rukuru rw'Ubucuruzi.

[8] Nyuma y'icibwa ry'urubanza, Mushimiyimana Thacienne yatanze ikirego asaba gusubirishamo urubanza RCOMAA 0029/14/CS ingingo nshya, ashingiye ku ngingo ya 186 agace ka 6, y'Itegeko Nº 21/2012 ryo ku wa 14/6/2012 rigenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, avuga ko Urukiko rwakoze amakosa akabije yo kwitiranya uko ibintu byagenze.

[9] Iburanisha ryashyizwe ku wa 29/01/2019, kuri iyo tariki urubanza rurasubikwa kubera ko Mushimiyimana Thacienne atari afite umwunganira, rwimurirwa ku wa 09/04/2019. Kuri iyi tariki, iburanisha ryabereye mu ruhame, Mushimiyimana Thacienne ahagarariwe n'umugabo we Byiringiro Emmanuel Clément nawe yunganiwe na Me Mutabazi Innocent, naho Ecobank Rwanda Ltd ihagarariwe na Me Kayigirwa Télésphore.

[10] Muri uru rubanza hagomba gusuzumwa niba hari amakosa akabije urukiko rwakoze yo kwitiranya ibintu uko byagenze, ku buryo byatuma urubanza rusubirwamo, hagasuzumwa n'indishyi zasabwe.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. Kumenya niba Urukiko rwarakoze amakosa akabije yo kwitiranya uko ibintu byagenze, ku buryo byatuma urubanza rusubirwamo

[11] Mu myanzuro yashyikirije Urukiko, Mushimiyimana Thacienne asobanura ko habayeho kwitiranya amasezerano no kwitiranya ibyanditse mu masezerano atandukanye. Avuga ko mu gika cya 16 cy'incarubanza RCOMAA 0029/14/CS, Urukiko ruvuga ko nta masezerano Ecobank Rwanda Ltd yishe ya *ligne de crédit* ya 120.000.000 Frw na *garantie bancaire* ya 140.000.000 Frw, ngo kuko atabigaragarije ibimenyetso, nyamara ikimenyetso cya mbere ari *rapport d'expertise* yerekana ko yari afite *ligne de crédit* ya 120.000.000 Frw igizwe na *ligne de credit* ya 60.000.000 Frw yagombaga

kurangira ku wa 31/01/2013, n‘indi „ligne de crédit“ ya 60.000.000 Frw yagombaga kurangira ku wa 31/08/2013.

[12] Akomeza avuga ko mu gika cya 50 cy’incarubanza RCOMAA 0029/14/CS, Urukiko rwemereye Ecobank Rwanda Ltd kwishyurwa „*garantie* ya 100.000.000 Frw, mu gihe yasabye ko yakwerekana sheki za 100.000.000 Frw yananiwe kwishyura zigaterwaho kashe ko zitazigamiwe ntizigaragaze, kugeza urubanza rupfundikirwa. Akomeza avuga ko nta kimenyetso Urukiko rw’Ikirenga rwagaragaje cyunganiye fotokopi zatanzwe na PHONE COM Ltd kugira ngo harebwe niba cyubahirije amategeko.

[13] Mu gihe cy’iburanisha ry’urubanza, Byiringiro Emmanuel Clément uhagarariye Mushimiyimana Thacienne yasobanuye ko ibyitiranyijwe ari ibi bikurikira:

- Kuba Urukiko rwaravuze ko hakoreshejwe sheki zisa kuri konti zitandukanye kandi ari sheki imwe yakoreshwaga kenshi kuri konti imwe, no kuba harabaye kwitiranya sheki isanzwe, na sheki y’impimbano;

- kwitiranya *ligne de credit* na *garantie bancaire* Urukiko rukavuga ko hahujwe *garanties bancaires* kandi ari „*lignes de crédit* “zahujwe. Avuga kandi ko hari amasezerano yo ku wa 07/02/2012 yagombaga kurangira ku wa 31/01/2013, arimo *garantie bancaire* ya 40.000.000 Frw na *ligne de credit* ya 60.000.000 Frw, yitiranyijwe n’ayo ku wa 21/08/2013 yagombaga kurangira ku wa 31/08/2013, arimo *garantie bancaire* ya 100.000.000 Frw na *ligne de crédit* ya 60.000.000 Frw, Urukiko rukavuga ko amasezerano yo ku wa 21/08/2013 yasimbuye ayo ku wa 07/02/2012, kandi *ligne de credit* zarahujwe zikaba 120.000.000 Frw;

- kwitiranya umwenda ugaragara muri *historique* n’uri mu ibaruwa ya *dénonciation de credit* hakishyuzwa uvugwa mu ibaruwa aho kwishyuzwa uri muri *historique;*

- kwitiranya amasezerano yarangiye yo ku wa 21/08/2012 n’ayo ku wa 24/12/2012 yari akirimo gutegurwa.

[14] Me Mutabazi Innocent wunganira Byiringiro Emmanuel Clément avuga ko kwitiranya ibintu biboneka mu cyemezo cy’Urukiko rw’Ikirenga aho ruvuga ko ubujurire bwa Mushimiyimana Thacienne nta shingiro bufite nyamara rukagabanya indishyi yari yaciwe mu Rukiko rw’Ubucuruzi, ko rero ibi byerekana ukwivuguruza. Avuga ko mu gika cya 15, ku rupapuro rwa 4 rw’urubanza, biboneka ko amasezerano hagati ya Mushimiyimana Thacienne na Ecobank Rwanda Ltd yagombaga kurangira ku wa 31/08/2012, ko rero mu gihe amasezerano akiriho buri wese agomba kubahiriza inshingano ze.

[15] Me Kayigirwa Télésphore ku ruhande rwa Ecobank Rwanda Ltd, avuga ko asanga ikirego cya Mushimiyimana Thacienne kitakwakirwa kuko nta makosa ryo kwitiranya ibintu yabayeho. Avuga ko ibyo bita kwitiranya amasezerano byasobanuwe mu gika cya 35 cy’urubanza rusabirwa gusubirwamo, hagaragazwa ko habaye *consolidation* ya *garanties bancaires* na *lignes de crédits*, ndetse n’Umuhanga wakoze *expertise* akaba yarabisobanuye; ko rero kuba batemera icyemezo cy’Umucamanza bitakwitwa kwitiranya ibintu.

[16] Avuga kandi ko nta sheki n’imwe yigeze ibikuzwa inshuro zirenze imwe, ko ahubwo Mushimiyimana Thacienne yakomeje guteza urujijo azana sheki zo ku ma konti atandukanye azita ko zakoreshejwe kuri konti imwe, ibyo bikaba byarasobanuwe mu buryo bwimbitse kuva mu gika cya 18 kugeza ku cya 41 by’urubanza. Yongeraho ko amasezerano yo ku wa 24/12/2012 bavuga ko yari atarasinywa atayazi.

[17] Asoza avuga ko mu masezerano yo ku wa 21/08/2012, *ligne de crédit* yabaye 60.000.000 Frw aho kuba 120.000.000 Frw nk'uko Mushimiyimana Thacienne abivuga, naho *garantie bancaire* iba 100.000.000 Frw aho kuba 140.000.000 Frw, amasezerano yo kuri iyo tariki akaba ari *consolidation* y'ibyahise byose, ibi kandi bikaba byaraburanyweho mu rubanza asaba gusubirishamo ingingo nshya.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 186 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya, mu gace kayo ka 6, ko urubanza rushobora gusubirishwamo ingingo nshya iyo "mu icibwa ry'urubanza hakozwe amakosa akabije yo kwitiranya uko ibintu byagenze cyangwa hashingiwe ku itegeko ritariho''. Ibi nibyo Mushimiyimana Thacienne ashingiraho asaba gusubirishamo urubanza ingingo nshya.

[19] Nk'uko byasobanuwe mu rubanza rwaciwe n'Urukiko rw'Ikirenga ku wa 23/04/2019, haburana Access Bank Rwanda Ltd na Ruhando Ndatira Ernest, kwitiranya uko ibintu byagenze bivuga kutumva neza ikibazo giteje impaka hagati y'ababuranyi ndetse n'ibyashingirwaho mu kugikemura, ibi bigatuma umucamanza agera ku mwanzuro atagombaga kugeraho iyo asobanukirwa neza icyo kibazo.

[20] Mu rubanza rusabirwa gusubirwamo, ibyo urega avuga ko byitiranyijwe n'Urukiko bikubiye mu ngingo enye zagaragajwe mu gika cya 13 cy'uru rubanza, akaba aribyo urukiko rugiye gusuzuma ingingo ku yindi, rubihuza n'agace ka 6 k'ingingo ya 186 yavuzwe haruguru.

B. Kuba Urukiko rwaravuze ko hakoreshejwe sheki zisa kuri konti zitandukanye kandi ari sheki imwe yakoreshwaga kenshi kuri konti imwe, no kuba haritiranyijwe sheki isanzwe na sheki y'impimbano.

[21] Mu bika bya 34 na 35 by'urubanza rusabirwa gusubirwamo, Urukiko rwasobanuye ko Mushimiyimana Thacienne yakiriye udutabo twa sheki tubiri tujyanye na konti ebyiri zitandukanye, arizo: No 0010013800902201 na No 0010133800902201, utwo dutabo tukaba dufite amasheki ahuje nimero kuva kuri 36855152 kugeza kuri 36855175. Rwagaragaje, rushingiye kuri raporo y'Umuhanga mu icungamutungo washyizweho n'Urukiko Rukuru rw'Ubucuruzi, ko Mushimiyimana Thacienne yasinyaga sheki 2 zifite nimero imwe, ariko zigomba gukoreshwa kuri konti zitandukanye zavuzwe haruguru, ibyo akaba aribyo we yita ko hari sheki imwe yakoreshwaga inshuro nyinshi kuri konti imwe. Urukiko rwasobanuye nanone, mu gika cya 37, ko raporo y'umuhanga mu icungamutungo yagaragaje ko *transactions'*zose zakorewe kuri konti za Mushimiyimana Thacienne zidafite ikibazo, kuko hari inyandiko z'umwimerere ziriho umukono wa nyiri konti, kandi ko ibyavuzwe muri iyo raporo bihuye na *historiques* za konti.

[22] Urukiko rurasanga, hatarabayeho kwititanya uko ibintu byagenze nk'uko Mushimiyimana Thacienne abivuga, ahubwo Urukiko rwarumvise neza ikibazo rugasobanura aho rushingira umwanzuro warwo; kuba atemera uwo mwanzuro, bikaba bitaba impamvu yo gusubirishamo urubanza.

C. Kwitiranya ligne de credit na garantie bancaire, Urukiko rukavuga ko hahujwe garanties bancaires kandi ari lignes de credit zahujwe

[23] Mu gika cya 14 cy'urubanza rusabirwa gusubirwamo, Urukiko rwasobanuye ko Mushimiyimana Thacienne yagiye afata *lignes de credit* na *garanties bancaires* zitandukanye, ariko

bikarangira ku wa 21/08/2012 ahawe *ligne de credit* ya 60.000.000 Frw na *garantie bancaire* ya 100.000.000 Frw igizwe na 80.000.000 Frw ya *garanties bancaires* ebyiri zari zisanzwe na 20.000.000 Frw yari yongereweho. Ibyo Urukiko rwabishingiye ku masezerano impande zombi zasinye ku wa 21/08/2012[1].

[24] Urukiko rurasanga, hashingiwe kuri ibyo bisobanuro byatanzwe mu rubanza rusabirwa gusubirwamo, nta kwitiranya„*ligne de crédit* na *garantie bancaire* kwabayeho, kuko urukiko rwagaragaje neza ko *garanties bancaires* zahujwe zikaba 100.000.000 Frw, hagatangwa na *„ligne de credit* ya 60.000.000 Frw, runasobanura icyo rushingiraho rubyemeza.

D. Kwitiranya umwenda ugaragara muri *historique* n'uri mu ibaruwa ya *dénonciation de credit* hakishyuzwa uvugwa mu ibaruwa aho kwishyuzwa uri muri *historique*

[25] Nk'uko bigaragara mu rubanza rusabirwa gusubirwamo, kuva ku gika cya 49 kugeza ku cya 54, Urukiko rwasuzumye ikibazo cyo kumenya niba hari umwenda Mushimiyimana Thacienne abereyemo Ecobank Rwanda Ltd, rusanga uhari rushingiye ku masezerano impande zombi zagiranye no kuri „historique" ya konti N° 0010013800902201.Kugirango Urukiko rumenye ingano y'umwenda Mushimiyimana Thacienne agomba kwishyura, rwasuzumye ibivugwa mu ibaruwa ya dénonciation" yo ku wa 13/11/2012, n'ibyagaragajwe n'Umuhanga mu icungamutungo washyizweho n'Urukiko Rukuru rw'Ubucuruzi ahereye kuri *historiques* za konti. Rwasanze hari ikinyuranyo kuko ibaruwa ya d*énonciation* ivuga umwenda ungana na 232.343.557 Frw (akubiyemo 192.837.462 Frw ya„débits irréguliers, 38.548.291Frw ya *solde du crédit à moyen terme* na 957.804 Frw y'inyungu), naho Umuhanga akagaragaza ko uwo mwenda ungana na 232.846.281 Frw, rufata umwanzuro wo kugendera ku ibaruwa ya *dénonciation* ivuga amafaranga make ugereranyije n'ayagaragajwe n'Umuhanga ahereye kuri „historiques" za konti.

[26] Urukiko, rushingiye ku bimaze gusobanurwa, rurasanga hatarabayeho kwitiranya umwenda ugaragara muri *historique* n'uri mu ibaruwa ya „*dénonciation de crédit* ", ahubwo Urukiko rwarumvise neza ikibazo cyagibwagaho impaka, rugafata umwanzuro rubona ukwiye kandi bigaragara ko ariwo uri mu nyungu z'urega.

E. Kwitiranya amasezerano yarangiye yo ku wa 21/08/2012 n'ayo ku wa 24/12/2012 yari akirimo gutegurwa

[27] Urukiko, nyuma yo gusuzuma kopi y'urubanza rusabirwa gusubirwamo, rurasanga nta masezerano yo ku wa 24/12/2012 yigeze avugwamo ku buryo urukiko rwaba rwarayitiranyije n'andi, bityo ibyo Mushimiyimana Thacienne avuga bikaba ntacyo bishingiyeho

Umwanzuro rusange

[28] Urukiko rurasanga icyo Byiringiro Emmanuel Clément n'umwunganira bita kwitiranya uko ibintu byagenze, ari ukutemera isesengura Urukiko rwakoze rushingiye ku bimenyetso byatanzwe mu rubanza, harimo na raporo y'Umuhanga washyizweho n'Urukiko. Urukiko rurasanga ariko ibyo bitakwitwa kwitiranya ibintu uko byagenze biteganywa mu ngingo ya 186,6 y'Itegeko N° 21/2012

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[1] "consolidation of the 2 existing PGBs totalling Rwf 80 million with an increase up to Rwf 100 Millions in favour of PHONECOM Ltd/ Kayigamba Alice as required MTN Rwandacell to enable acquire MTN products from the franchisee on credit basis, the PBG of Rwf 100 Million to be issued will cancel and replace the 2 existing PBGs of 80 Million earlier issued to PHONE COM Ltd/Kayigamba Alice". "Renewal/extension of the existing distributorship finance/AX of 60 Million to allow the client acquire MTN products on cash basis from the franchisee PHONECOM Ltd/ Kayigamba Alice

ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ahubwo ari uburyo bwo kunenga imikirize y'urubanza rwaciwe babinyujije mu nzira yo gusubirishamo urubanza ingingo nshya, iyo nzira kandi ikaba itandukanye n'iy'ubujurire busanzwe aho umuburanyi aba yemerewe kugaragaza ibyo atishimiye mu byashingiweho n'Urukiko.

[29] Hashingiwe ku bisobanuro byose byatanzwe, Urukiko rurasanga nta makosa akabije yakozwe, yo kwitiranya uko ibintu byagenze, yatuma urubanza rusubirwamo. Urukiko rurasanga rero, ikirego gisaba gusubirishamo urubanza ingingo nshya cyatanzwe na Mushimiyimana Thacienne kidashobora kwakirwa.

B. KUMENYA NIBA INDISHYI ECOBANK RWANDA LTD ISABA YAZIHABWA

[30] Me Kayigirwa Télésphore mu izina rya Ecobank Rwanda Ltd, mu bujurire bwuririye ku bundi, avuga ko Mushimiyimana Thacienne yasubirishijemo urubanza ingingo nshya agambiriye kuyishora mu manza z'amaherere, bityo akaba agomba kubitangira indishyi zingana na 5.000.000 Frw, agatanga kandi amafaranga y'ikurikiranarubanza n'igihembo cya Avoka angana na 2.000.000 Frw.

[31] Byiringiro Emmanuel Clément uhagarariye Mushimiyimana Thacienne yiregura kuri izo ndishyi avuga ko nta shingiro zahabwa, kuko gusubirishamo urubanza ingingo nshya ntacyo byangiriza Ecobank Rwanda Ltd, cyane ko ngo yanamaze kugurisha imitungo ye

UKO URUKIKO RUBIBONA

[32] Urukiko rurasanga kuba Mushimiyimana Thacienne yarasubirishijemo urubanza ingingo nshya, byaratumye Ecobank Rwanda Ltd igira ibyo itakaza mu gukurikirana urubanza, ndetse igashaka uyiburanira, ikaba rero igomba kugenerwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. Icyakora, kubera ko 2.000.000 Frw yasabye ari menshi kandi itarayatangiye ibimenyetso, igenewe mu bushishozi bw'Urukiko 800.000 Frw, akubiyemo 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka.

[33] Urukiko rurasanga amafaranga yo gushorwa mu manza ku maherere Ecobank Rwanda Ltd isaba itayagenerwa, kuko Mushimiyimana Thacienne yari afite uburenganzira bwo kwiyambaza urukiko kugirango rusuzume ibyo yumva ko yaba yararenganyemo.

III. ICYEMEZO CY'URUKIKO

[34] Rwemeje ko ikirego cyo gusubirishamo urubanza ingingo nshya cyatanzwe na Mushimiyimana Thacienne kitakiriwe;

[35] Rwemeje ko imikirize y'urubanza RCOMAA 0029/14/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 23/06/2016, igumyeho;

[36] Rutegetse Mushimiyimana Thaciennce kwishyura Ecobank Rwanda Ltd 300.000 Frw y'ikurikiranarubanza, na 500.000 Frw y' igihembo cya Avoka yose hamwe akaba 800.000 Frw;

[37] Rutegetse ko ingwate y'amagarama yatanzwe na Mushimiyimana Thacienne ihwanye n'ibyakozwe mu rubanza.