SHEMA N'UNDI v. I & M BANK RWANDA Plc

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/RCOM 00001/2018/SC (NYIRINKWAYA., P.J., Hitiyaremye, Cyanzayire, Muhumuza na Rukundakuvuga, J.) 24 Nyakanga 2020]

Amategeko agenga imiburanishirize y'imanza – Gusubirishamo urubanza ingingo nshya – Ikimenyetso gishya kimara impaka – Uburiganya bwagize ingaruka ku mikirize y'urubanza – Uburanisha ikimenyetso gishya agomba kugaragariza urukiko ko atigeze amenya ko gihari, cyangwa ko yari azi ko gihari ariko akaba atarashoboraga kukigeraho igihe yaburanaga – Kigomba kandi kuba kimara impaka, ni ukuvuga ko cyashoboraga gutuma umucamanza afata icyemezo gitandukanye n'icyo yafashe – Kugirango urubanza rusubirwemo ku mpamvu z'uburiganya, hagomba kuba harabaye ibikorwa byo kubeshya umucamanza hagamijwe gutsinda urubanza, kandi ubwo buriganya bukaba bwaragize ingaruka ku mikirize y'urubanza;

Amategeko agenga imiburanishirize y'imanza – Gushorwa mu manza nta mpamvu – Gushorwa mu manza nta mpamvu bibaho igihe uwareze yabikoze nta yindi nyungu agamije uretse kurushya uwo arega.

Incamake y'Ikibazo: I &M Bank Rwanda Plc yareze Shema Charles n'umwishingizi we Bashangire Grace mu Rukiko rw'Ubucuruzi rwa Nyarugenge aho yavugaga ko batubahirije amasezerano y'inguzanyo bagiranye akaba atarishyuriye igihe nkuko ayo masezerano yabiteganyaga. Shema n'Umwishingizi we bo bavuga ko umwenda bari bafitiye I &M bank Rwanda Plc bawishyuye wose bakaba nta dene basigayemo. Urukiko rw'Ubucuruzi rwaciye urubanza rwemeza ko ikirego cya I & M Bank Rwanda Plc gifite ishingiro, rutegeka Shema Charles gufatanya n'umwishingizi we Bashangire Grace kwishyura amafaranga yasigaye atishyuwe akubiyemo umwenda remezo n'inyungu.

Shema Charles n'umwishingizi we ntibishimiye imikirize y'Urubanza barujuririra mu Rukiko Rukuru rw'Ubucuruzi aho bagaragazaga ko Urukiko rwabanje rutasesenguye neza ibimenyetso barushyikirije. Urukiko Rukuru rw'Ubucuruzi narwo rwemeje ko ikirego cya Shema nta shingiro gifite.

Shema yakomeje kutishimira ibyemezo by'Inkiko ajuririra nanone Urukiko rw'Ikirenga mu mpamvu zo kujurira harimo kuba Urukiko rwaremeje ko I & M Bank Rwanda Plc ifite uburenganzira bwo kwishyuza umwenda utarageza igihe cyo kwishyurwa, itabanje gusaba mu Rukiko iseswa ry'amasezerano ushingiyeho. Urukiko rw'Ikirenga mu guca urubanza rwemeje ko ubujurire bwa Shema Charles na Bashangire Grace nta shingiro bufite.

Shema Charles na Bashangire Grace batanze ikirego mu Rukiko rw'Ikirenga basaba gusubirishamo urubanza ingingo nshya, bavuga ko impamvu bashingiraho basaba ko urubanza rusubirishwamo ingingo nshya, ari ibimenyetso bishya byabonetse nyuma y'icibwa ry'urubanza, kandi bigaragaza ko hari uburiganya I & M Bank Rwanda Plc yakoreye kuri konti yabo aribyo; *historique bancaire* igaragaza uko amafaranga yatanzwe ndetse n'uko yishyuwe ndetse ikaba ikanagaragaza amanyanga I&M Bank yakoreye kuri Konti yabo hakaba kandi inyandiko zatanzwe na BDF.

Mu kwiregura kuri izo mpamvu, I & M Bank Rwanda Plc ivuga ko ibyo Shema Charles na Bashangire Grace bita ibimenyetso bishya atari byo ngo kuko kuva urubanza rwatangira byari bihari ko rero iyo babishaka baba barabibonye ngo kugeza ubu bakaba baterekana ko babujijwe kubigeraho. Ibyuko hari uburiganya bwakorewe kuri Konti ya Shema, I & M Bank Rwanda Plc ivuga ko nta nyanga iryariryo ryose ryakorewe kuri Konti ya Shema kandi ibi bikaba byaravuzweho bihagije, ku bwibyo rero bakaba basanga ikirego cyabo cyo gusubirishamo urubanza ingingo nshya kidakwiriye kwakirwa ngo gisuzumwe.

Incamake y'Icyemezo: 1. Uburanisha ikimenyetso gishya agomba kugaragariza urukiko ko atigeze amenya ko gihari, cyangwa ko yari azi ko gihari ariko akaba atarashoboraga kukigeraho igihe

yaburanaga kandi ko iyo kiboneka cyashoboraga gutuma umucamanza afata icyemezo gitandukanye n'icyo yafashe.

2. Kugirango hemezweko ikirego cyatanzwe hagamije gusa gushora mu manza, hagomba kubanza kugaragaza ko uwareze yabikoze nta yindi nyungu agamije uretse kurushya uwo arega.

Ikirego cyo gusubirishamo urubanza ingingo nticyakiriwe ngo gisuzumwe, kuko cyatanzwe mu buryo budakurikije amategeko
Ingwate y'amagarama yatanzwe, ihwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 170, igika cya mbere.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] BCR SA yahindutse I & M Bank Rwanda Plc yahaye Shema Charles umwenda wo kumufasha mu bikorwa bye, umugore we Bashangire Grace aba umwishingizi kuri uwo mwenda (*caution solidaire et indivisible et sans limitation de montant*). Ntibumvikanye ku bijyanye n'iyubahirizwa ry'amasezerano yo kwishyura umwenda, bituma I & M Bank Rwanda Plc irega Shema Charles n'umwishingizi we.

[2] Urubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, I & M Bank Rwanda Plc ivuga ko kuva mu mwaka wa 2006, yagiye imuha inguzanyo zitandukanye, ku buryo ku wa 27/12/2010, iyo myenda yahujwe (consolidation) ikaba 220.647.408 Frw, ariko Shema Charles n'umwishingizi we bakaba batarubahirije inshingano zabo zo kwishyura umwenda wose kuko bahagaritse kwishyura basigaje amafaranga angana na 175.555.040 (principal et intérêts calculés jusqu' au 1/08/2013)

[3] Uhagarariye I & M Bank Rwanda Plc yasobanuye ko 220.647.408 Frw akubiyemo umwenda ungana na 27.000.000 Frw wa découvert (restructured expired overdraft facility repayable monthly: 976.236 Frw amortissement, intérêts majorés éventuellement des pénalités et frais- for a period not exceeding 36 months-3 ans, interest rate 16 %, penalty rate on missed payments 2%) ; uyu mwenda ukaba waragombaga kurangira kwishyurwa bitarenze taliki ya 30/12/2013 (dernière échéance), naho première échéance ikaba yari ku wa 31/12/2010, bikaba bigaragazwa na facility offer yasinywe na SHEMA Charles ndetse na tableau d'amortissement yawo.

[4] Avuga ko undi mwenda ukubiye muri ayo mafaranga ungana na 193.647.408 Frw wa crédit d'investissement (restructured investment loan repayable per annum: 56.322.717 Frw - principal/amortissement, intérêts majorés éventuellement des pénalités et frais- for a period not exceeding 60 months-5 ans, interest rate 13 %, penalty rate on missed payments 2%), uyu mwenda ukaba waragombaga kurangira kwishyurwa bitarenze taliki ya 31/08/2015 (dernière échéance), naho première échéance ikaba yari ku wa 31/08/2011.

[5] Shema Charles yireguye avuga ko yarangije kwishyura umwenda ku buryo kuri konti ye hasigaye 92.979.959 Frw, kuko nyuma yo guhuza imyenda ku wa 27/12/2010, Banki iheraho yishyuza 220.647.408 Frw, amaze gushyira kuri konti 313.627.367 Frw. Avuga kandi ko niba hari amafaranga

atarishyurwa kuri uwo mwenda byaba byaratewe na I & M Bank Rwanda Plc kubera ko yamuhungabanyije mu bikorwa bye by'ubucuruzi, bituma agwa mu gihombo.

[6] Avuga kandi ko atemera umwenda wa 193.647.408 Frw wahujwe n'uwa 27.000.000 Frw ku wa 27/12/2010, kuko Banki iterekana aho iyo myenda ikomoka, kandi ko atemera ijanisha ry'inyungu ziri mu masezerano yo ku wa 27/12/2010 kuko zinyuranye ku nguzanyo zombi mu gihe ijanisha ryagombye kuba rimwe ku myenda yombi nk'uko bigenda iyo habayeho ihuza ry'imyenda *(consolidation),* kandi hagakorwa indi gahunda nshya yo kwishyura.

[7] Ku wa 25/09/2014, Urukiko rw'Ubucuruzi rwaciye urubanza RCOM 0896/14/TC/NYGE, rwemeza ko ikirego cya I & M Bank Rwanda Plc gifite ishingiro, rutegeka Shema Charles gufatanya n'umwishingizi we Bashangire Grace kwishyura 204.527.092 Frw akubiyemo umwenda remezo n'inyungu, bakanishyura 1.000.000 Frw y'indishyi na 1.000.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka.

[8] Shema Charles na Bashangire Grace ntibishimiye imikirize y'urubanza, bajuririra Urukiko Rukuru rw'Ubucuruzi. Urwo Rukiko rwaciye urubanza RCOMAA 0522/14/HCC ku wa 05/12/2014, rwemeza ko urubanza rwajuririwe rudahindutse uretse ku nyungu zigomba kwiyongera kugeza urubanza ruciwe, rutegeka Shema Charles gufatanya na Bashangire Grace kwishyura I & M Bank Rwanda Plc 240.929.557 Frw.

[9] Shema Charles na Bashangire Grace bajuririye Urukiko rw'Ikirenga, batanga impamvu z'ubujurire zikurikira:

a. Kuba Urukiko rwaremeje ko I & M Bank Rwanda Plc ifite uburenganzira bwo kwishyuza umwenda utarageza igihe cyo kwishyurwa, itabanje gusaba mu Rukiko iseswa ry'amasezerano ushingiyeho;
b. Kuba Urukiko rutarasubije icyaregewe cyose kuko:
    i. Ntacyo rwavuze ku mwenda ungana na 144.270.847 Frw utagira amasezerano no ku ishyirwaho ry'umuhanga;
    ii. Rutasuzumye icyabayeho hagati ya *consolidation* na *restructuration* kugirango harebwe ingaruka zabyo
    iii. Rutavuze ku ndishyi zari zasabwe na Shema Charles na Bashangire Grace, no ku kinyuranyo cy'amafaranga yo kuri konti hakurikijwe *historique* yo kuva ku wa 01/01/2010 kugeza ku wa 21/03/2014, igaragaza *solde créditeur* ingana na 58.536.818 Frw;
c. Kuba Urukiko rwaremeje ko nta kimenyetso kigaragaza ko Shema Charles yarangije kwishyura umwenda, kandi historique ya compte courant ibigaragaza;
d. Kuba Urukiko rwarahinduye imiburanire ya Bashangire Grace ku bijyanye n'ubwishingire;
e. Ukwivuguruza mu cyemezo cy'Urukiko no kunyuranya n'amategeko.

[10] Ku wa 22/06/2018, Urukiko rw'Ikirenga rwaciye urubanza RCOMAA 0004/15/CS:

a. Rwemeza ko ubujurire bwa Shema Charles na Bashangire Grace nta shingiro bufite, naho ubwa I & M Bank Rwanda Plc bwuririye ku bundi bufite ishingiro kuri bimwe;
b. Rwemeza ko imikirize y'urubanza rwajuririwe ihindutse ku bijyanye n'ingano y'umwenda ugomba kwishyurwa na Shema Charles afatanyije na Bashangire Grâce;
c. Rubategeka gufatanya kwishyura 202.130.039 Frw akubiyemo umwenda remezo, inyungu zawo n'ibihano by'ubukererwe, no guha I&M Bank Rwanda Plc 500.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cy'Avoka yiyongera kuri 1.000.000

Frw bategetswe n'Urukiko rw'Ubucuruzi rwa Nyarugenge yose hamwe akaba 2.500.000 Frw

d. Runabategeka gufatanya gusubiza I & M Bank Rwanda Plc amafaranga y'igihembo cy'umugenagaciro.

[11] Ku wa 03/09/2018, Shema Charles na Bashangire Grace batanze ikirego cyo gusubirishamo urubanza ingingo nshya. Ikirego cyabo cyanditswe mu bitabo by'Urukiko hashingiwe ku cyemezo cya Perezida w'Urukiko rw'Ikirenga ku itakamba bakoze ku cyemezo cy'Ubwanditsi bw'Urukiko cyo kutakira ikirego[1].

[12] Iburanisha ry'urubanza ryashyizwe ku wa 08/01/2020. Kuri iyi tariki hitabye Me Nkanika Alimasi ahagarariye Shema Charles na Bashangire Grace, I & M Bank Rwanda Plc ihagarariwe na Me Rusanganwa Jean Bosco. Urukiko rwasuzumye inzitizi yatanzwe na Me Nkanika Alimasi asaba ko urubanza rwaba ruhagaze, mu gihe bategereje ko hafatwa icyemezo ku kirego cy'inshinjabyaha batanze, rwemeza ko nta shingiro ifite kuko usaba gusubirishamo urubanza ingingo nshya agomba kuba afite izo ngingo, ndetse n'ibimenyetso byose ashingiraho, mu gihe cyo gutanga ikirego.

[13] Me Nkanika Alimasi yongeye gusaba ko urubanza rwimurwa kuko hari bagenzi be bafatanyije kuburana badahari, iburanisha ryimurirwa ku wa 17/03/2020, ariko Urukiko rutegeka ko Abavoka batitabye bafatanya kwishyura ihazabu mbonezamubano ya 200.000 Frw kubera gutinza urubanza. Ku wa 17/03/2020, urubanza ntirwaburanishijwe kubera ingamba zo kurwanya COVID-19, rwongera gushyirwa kuri gahunda y'iburanisha ku wa 22/06/2020.

[14] Kuri iyi tariki, urubanza rwaburanishirijwe mu ruhame, Shema Charles na Bashangire Grace bahagarariwe na Me Zitoni Pierre Claver, Me Nyangezi Bonane na Me Mukarusanga Florence, naho I & M Bank Rwanda Plc ihagarariwe na Me Rusanganwa Jean Bosco. Shema Charles na Bashangire Grace bavuga ko impamvu bashingiraho basaba ko urubanza rusubirishwamo ingingo nshya, ari ibimenyetso bishya byabonetse nyuma y'icibwa ry'urubanza, kandi bigaragaza ko hari uburiganya I & M Bank Rwanda Plc yakoreye kuri konti ya Shema Charles, bigizwe na *historique bancaire* yabonetse muri Kanama 2018, hamwe n'inyandiko zatanzwe na BDF. I & M Bank Rwanda Plc ivuga ko ibyo SHEMA Charles na Bashangire Grace bita ibimenyetso bishya atari byo, kandi ko nta buriganya bwakorewe kuri konti ya Shema Charles, ikaba isanga ikirego cyabo cyo gusubirishamo urubanza ingingo nshya kidakwiriye kwakirwa ngo gisuzumwe.

[15] Ikibazo nyamukuru cyasuzumwe muri uru rubanza, ni ukumenya niba *historique bancaire* yatanzwe na I & M Bank Rwanda Plc muri Kanama 2018, hamwe n'inyandiko zatanzwe na BDF, ari ibimenyetso byatuma urubanza rusubirishwamo ingingo nshya, hashingiwe ku biteganywa n'ingingo ya 170, agace ka 1^{o} n'aka 3^{o}, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Hasuzumwe kandi ibijyanye n'indishyi zasabwe.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.

Kumenya niba historique bancaire yatanzwe na I & M Bank Rwanda Plc muri Kanama 2018, hamwe n'inyandiko zatanzwe na BDF, ari ibimenyetso byatuma urubanza rusubirishwamo ingingo nshya, hashingiwe ku biteganywa n'ingingo ya 170, agace ka 1o n'aka 3o, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi

[1] Icyemezo N^{o} 0019/2018 cyo ku wa 17/12/2018 kirebana n'itakamba ry'umuburanyi

[16] Shema Charles, Bashangire Grace n'ababahagarariye, bavuga ko hari ibimenyetso bishya kandi bigaragaza uburiganya bwakozwe na I & M Bank Rwanda Plc kuri konti ya Shema Charles, bigizwe na *historique bancaire* yatanzwe muri Kanama 2018, hamwe n'inyandiko zatanzwe na BDF.

[17] Ku bijyanye na *historique bancaire*, batanga ibisobanuro bikurikira:

a. Kuba I & M Bank Rwanda Plc ariyo icunga konti za Shema Charles, nyuma y'icibwa ry'urubanza ikaba yaratanze historique bancaire itandukanye n'iyo yari yatanze mu gihe cy'iburanisha, bigaragaza ko habayemo uburiganya bwagize ingaruka ku mikirize y'urubanza, kandi bukaba butarigeze bumenywa n'uwatsinzwe mu gihe cy'iburana;

b. Urubanza rukiburanishwa, basabye Banki gutanga historique ya konti no kugaragaza inkomoko y'imibare umuhanga agenderaho, irabyanga. Ku wa 22/08/2018, nibwo Banki yatanze historique bancaire, bayigereranyije n'imibare yakoreshejwe n'umuhanga, ndetse na historique yari yaratanzwe mu Rukiko, basanga Banki yaragiye ikora manipulation ku mibare yo kuri konti ye, ku buryo iyo aza kuba abizi mu gihe cy'urubanza cyangwa se Urukiko ubwarwo rukabimenya, urubanza rutari gucibwa uko rwaciwe;

c. Bahereye ku rugero rw'ibyakorewe kuri konti ya Shema Charles ku wa 07/11/2007, imibare igaragara kuri Historique yashingiweho mu guca urubanza inyuranye n'imibare igaragara kuri Historique yabonetse nyuma y'icibwa ry'urubanza. Kuba hari historique yabonetse nyuma kandi inyuranye n'iyakoreshejwe mu rubanza, ni ikimenyetso gishya kandi kimara impaka, kuko iyo iza kuboneka mbere hari guhinduka ibijyanye n'ingano y'umwenda;

d. N'ubwo igiteranyo kigaragara kuri historique zombi gihura, ni Banki yabyikoreye kuko bitumvikana uburyo imibare inyuranye, hanyuma igiteranyo kikaba kimwe. Kuba Banki igaragaza ko igiteranyo ari kimwe, ni uburiganya yakoze, bakaba basaba ko hashyirwaho umuhanga wagaragaza uko ibintu byagenze;

e. Ku bijyanye n'uburyo *historique* ya kabiri (yatanzwe mu 2018) yabonetse, abahagarariye Shema Charles bavuga ko yandikiye abishingizi be bakamubwira ko bamwishyuriye, ndetse bakamuha inyandiko bishyuriyeho bamubwira kujya kubaza Banki. Amaze kubona iyo nyandiko, yandikiye Banki ayisaba *historique*, bayimuhaye asangamo imibare itandukanye n'iri muri *historique* yashingiweho urubanza rucibwa.

[18] Ku bijyanye n'inyandiko zatanzwe na BDF, Shema Charles, Bashangire Grace n'ababahagarariye batanga ibisobanuro bikurikira:

a. Shema Charles ahabwa umwenda, hari igice kimwe cyishingiwe na BDF, bikumvikana ko mu gihe Shema Charles yari kuba ananiwe kwishyura, igice kigomba kwishyurwa na BDF kitagombaga gutandukana n'amafaranga yishyuzwa;

b. Hakurikijwe inyandiko za BDF zirebana n'uwo mwenda, imibare y'amafaranga yishyuzwa Shema Charles n'ayishyujwe BDF biratandukanye, bivuze ko hari uburiganya bwakozwe na I & M Bank Rwanda Plc ku mwenda yahawe. Izo nyandiko nazo zikaba ari ibimenyetso bishya bitigeze bimenyekana mu gihe cy'icibwa ry'urubanza;

c. Umuhanga washyizweho n'Urukiko yatanze raporo ye muri Mutarama 2018, bivuze ko umunsi yatangaga raporo Banki yari izi ko amafaranga ya BDF yishyuwe ariko ntiyabimugaragariza. Ayo mafaranga yagombaga kugabanya umwenda kuko yishyurirwa umukiriya; kuba atagaragara kuri historique yakoreshejwe mu rubanza bikaba ari uburiganya bwagaragaye nyuma;

d. Ku bijyanye n'ibaruwa yanditswe na BNR irebana n'ubwishingire butangwa n'ibigega icunga birimo na BDF, bavuga ko ari inshingano za BNR kwishyurira uwananiwe kwishyura akaba ari nako ibaruwa yayo ikwiye kumvikana.

[19] Uhagarariye I & M Bank Rwanda Plc avuga ko ibivugwa n'abarega bitatuma urubanza rusubirishwamo ingingo nshya kubera impamvu zikurikira:

a. Ku bijyanye na historique bancaire;

- Si ikimenyetso gishya, icyaba gishya cyaba ari italiki yabonekeyeho (22 Kanama 2019);
- Abarega ntibagaragaza icyo historique bancaire yo muri Kanama 2018 ihindura ku rubanza No RCOMAA 0004/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 22/06/2018, mu gihe iyakoreshejwe mu nkiko zose ari imwe, kuko historique itajya ihinduka;
- Abarega bagombye kwerekana niba hari amafaranga yashyizwe kuri konti ntagaragareho, cyangwa niba hari ayakuwe kuri konti nta mpamvu, kugirango bemeze ko hakozwe uburiganya kuri konti ya Shema Charles;
- Nta tandukaniro riri hagati ya *historique bancaire* yakoreshejwe mu rubanza n'iyatanzwe muri Kanama 2018, uretse uburyo *libellé* zikurikiranyemo. *Libellé* ya *échéance* n'inyungu kuri *historique* yatanzwe muri Kanama 2018 bigenda bikurikiranye neza kuva kuri 1 kugera ku 10, naho ku yakoreshejwe mu rubanza ntibikurikiranye, ariko ikirebwa ni uko imibare ihura. Ikindi cyerekana ko imibare ihura, ni uko igiteranyo kuri *historiques* zose ari 122.638.882 Frw.

b. Ku bijyanye n'inyandiko zatanzwe na BDF:

- Si ikimenyetso gishya, kandi Banki ntiyari kugihisha kuko BDF itishyurira uwafashe umwenda, ahubwo Banki ikomeza kwishyuza uwahawe umwenda kugira ngo izishyure BDF;
- Ibaruwa ya Banki Nkuru y'Igihugu(BNR) yo ku wa 22 Ukwakira 2010, isobanura inshingano z'uwahawe inguzanyo yishingiwe mu rwego rw'ibigega bya Leta icunga, byashyiriweho korohereza imishinga yemewe kubona inguzanyo mu mabanki n'ibigo by'imari. Muri iyo baruwa, BNR isobanura ko inshingano y'uwahawe inguzanyo yo kwishyura umwenda wose ivugwa mu masezerano hagati ye na banki cyangwa ikigo cy'imari. Ikigamijwe na Leta ibinyujije muri BNR, akaba ari ukwishingira ibibazo byo kutishyurwa inguzanyo «*risques financiers encourus par différentes institutions financières participantes*», cyangwa igihombo cyaterwa no kutishyurwa izo nguzanyo. Ibyo bivuze ko BNR itishingira umuntu wahawe inguzanyo ku giti cye.

UKO URUKIKO RUBIBONA

[20] Ingingo ya 170 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya impamvu zishobora gutuma urubanza rusubirishwamo ingingo nshya. Mu gace kayo ka 1º, iteganya ko urubanza rushobora gusubirwamo iyo habayemo uburiganya bwagize ingaruka ku mikirize y'urubanza, kandi bukaba butarigeze bumenywa n'uwatsinzwe mu gihe cy'iburana. Naho mu gace kayo ka 3º, iyi ngingo iteganya ko urubanza rushobora gusubirwamo iyo kuva aho ruciriwe, habonetse ikimenyetso gishya kimara impaka kigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo.

[21] Igika cya kabiri cy'ingingo imaze kuvugwa, gisobanura ko ikimenyetso gishya ari icyo umuburanyi atashoboraga kumenya ko cyaba gihari, akakibona nyuma cyangwa akaba atarabashaga kukigeraho igihe yaburanaga. Mu gika cya nyuma cy'iyo ngingo, hateganyijwe ko n'iyo ikimenyetso ari gishya, kigira agaciro gusa iyo gishobora kuvuguruza ibyari byashingiweho mu icibwa ry'urubanza rusabirwa gusubirwamo. Ibi bikaba byumvikanisha neza ko, uburanisha ikimenyetso gishya, agomba kugaragariza Urukiko ko atigeze amenya ko gihari, cyangwa ko yari azi ko gihari ariko akaba atarashoboraga kukigeraho igihe yaburanaga.

[22] Mu rubanza rwaciwe ku wa 18/01/2019, haburana Mulindahabi Fidèle na Atraco, uru Rukiko rwagarutse ku gisobanuro cy'ikimenyetso gishya, rugaragaza ko ari icyabonetse nyuma y'icibwa ry'urubanza umuburanyi atari asanzwe akizi, cyangwa icyo atashoboraga kugeraho, kandi kikaba ari kamarampaka; ni ukuvuga ko cyashoboraga gutuma umucamanza afata icyemezo gitandukanye n'icyo yafashe. Nanone mu rubanza rwaciwe ku wa 27/09/2019, Rutazibwa Alexandre yaburanaga na Mukandutiye Bellancille, Leta y'u Rwanda n'Ikigo cy'Igihugu Gishinzwe Umutungo Kamere mu Rwanda, Urukiko rwifashishije inyandiko z'abahanga mu mategeko, rwasobanuye ko kugirango urubanza rusubirwemo ku mpamvu z'uburiganya:

- Hagomba kuba harabaye ibikorwa bigamije kubeshya umucamanza kugirango uwakoze ibyo bikorwa atsinde urubanza;
- Icyemezo cyafashwe kikaba cyarashingiye gusa ku makuru y'ibinyoma;
- Kandi ubwo buriganya bukaba bwaragize ingaruka ku mikirize y'urubanza

[23] Mu bika bikurikira, harasuzumwa niba impamvu zatanzwe na Shema Charles na Bashangire Grace zihura n'ibiteganyijwe n'ingingo ya 170, 1º na 3º, hakurikijwe ibisobanuro bimaze gutangwa, ku buryo zatuma urubanza RCOMAA 0004/15/CS rusubirwamo.

a. Ku bijyanye na historique bancaire yatanzwe na I & M Bank Rwanda Plc muri Kanama 2018

- **Gusuzuma niba ari ikimenyetso gishya kimara impaka**

[24] Urukiko rurasanga iyo *historique bancaire* yarabonetse nyuma y'aho urubanza rusabirwa gusubirwamo ruciriwe ku wa 22/06/2018, kuko yabonetse muri Kanama 2018, n'uregwa akaba atabihakana. Urukiko rusanga ariko atari ikimenyetso cyashoboraga gutuma umucamanza afata icyemezo gitandukanye n'icyo yafashe, kuko imibare igaragaramo ntaho itandukaniye n'igaragara muri *historique bancaire* igarukira mu 2016, ababuranyi bemeranya ko ariyo yakoreshejwe mu rubanza rusabirwa gusubirwamo, uretse gusa kuba imibare idakurikiranye mu buryo bumwe.

[25] Urukiko rurasanga rero, *historique bancaire* yatanzwe na I & M Bank Rwanda Plc muri Kanama 2018 atari ikimenyetso gishya kimara impaka, kuko kitari gutuma umucamanza afata icyemezo gitandukanye n'icyo yafashe.

- **Gusuzuma niba ari ikimenyetso kigaragaza ko hari uburiganya bwakorewe kuri konti ya Shema Charles**

[26] Urukiko rurasanga ibivugwa n'abarega ko hari imibare y'amafaranga yahinduwe na I & M Bank Rwanda Plc, hagereranyijwe historique *bancaire* yatanzwe muri Kanama 2018 n'iyakoreshejwe mu rubanza rusabirwa gusubirwamo, nta shingiro byahabwa. Hagendewe ku rugero(sample) rwatanzwe n'ababuranyi, ku mibare yo ku wa 11/07/2007, hagaragara ibi bikurikira:

Itariki	***historique bancaire* yatanzwe muri Kanama 2018**	***Historique bancaire* yakoreshejwe mu rubanza rusabirwa gusubirwamo(igarukira mu 2016)**

	Libellé	Débit	Libellé	Débit
11/07/ 2007	RGL/IMP 004/060 Prêt 205922	2.018.769	RGL/IMP 005/060 Prêt 205922	2.018.769
11/07/ 2007	RGL/IMP 005/060 Prêt 205922	2.018.769	Int.Impayés/ Prêt 205922	182.428
11/07/ 2007	Int.Impayés/ Prêt 205922	31.291	Int.Impayés/ Prêt 205922	31.291
11/07/ 2007	RGL/IMP 006/060 Prêt 205922	2.018.769	RGL/IMP 010/060 Prêt 205922	2.018.769
11/07/ 2007	Int.Impayés/ Prêt 205922	56.964	Int.Impayés/ Prêt 205922	161.219

11/07/ 2007	RGL/IMP 007/060 Prêt 205922	2.018.769	RGL/IMP 004/060 Prêt 205922	2.018.769
11/07/ 2007	Int.Impayés/ Prêt 205922	95.241	RGL/IMP 009/060 Prêt 205922	2.018.769
11/07/ 2007	RGL/IMP 008/060 Prêt 205922	2.018.769	Int.Impayés/ Prêt 205922	123.879
11/07/ 2007	Int.Impayés/ Prêt 205922	123.879	RGL/IMP 008/060 Prêt 205922	2.018.769
11/07/ 2007	RGL/IMP 009/060 Prêt 205922	2.018.769	RGL/IMP 006/060 Prêt 205922	2.018.769
11/07/ 2007	Int.Impayés/ Prêt 205922	161.219	Int.Impayés/ Prêt 205922	95.241
11/07/ 2007	RGL/IMP 010/060 Prêt 205922	2.018.769	Int.Impayés/ Prêt 205922	56.964
11/07/ 2007	Int.Impayés/ Prêt 205922	182.428	RGL/IMP 007/060 Prêt 205922	2.018.769
	Solde au 11/07/2007	**122.638.882**	**Solde au 11/07/2007**	**122.638.882**

[27] Iyi mbonerahamwe iragaragaza ko imibare iri kuri *historiques bancaires* zombi ari imwe, igitandukanye gusa akaba ari uburyo ikurikiranye nk'uko byavuzwe haruguru. Urukiko rukaba rusanga nta kigaragaza ko hari uburiganya I & M Bank Rwanda Plc yaba yarakoreye kuri konti ya Shema Charles, igamije kubeshya umucamanza kugirango afate icyemezo gitandukanye n'icyo yagombaga gufata.

[28] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga *historique bancaire* yatanzwe na I & M Bank Rwanda Plc muri Kanama 2018 atari ikimenyetso gishya kimara impaka, kandi kigaragaza ko hari uburiganya bwakorewe kuri konti ya Shema Charles, bukagira ingaruka ku mikirize y'urubanza; icyo kimenyetso kikaba kitaba rero impamvu yo gusubirishamo urubanza ingingo nshya.

a Ku bijyanye n'inyandiko zatanzwe na BDF

- **Gusuzuma niba ari ikimenyetso gishya kimara impaka**

[29] Mu nyandiko zashyikirijwe Urukiko, harimo ibaruwa yo ku wa 28/02/2017, BDF yandikiye I & M Bank Rwanda Plc, iyimenyesha ko yemeye ubusabe bwayo burebana n'ubwishingire ku mwenda utarishyuwe na Shema Charles, hakabanza kwishyurwa 50% by'umwenda wishingiwe bihwanye na 31.181.988 Frw. Ku wa 02/08/2017, BDF yongeye kwandika ivuga ko igiye kwishyura 50% yari yasigaye, nayo angana na 31.181.988 Frw.

[30] Ikigaragara ni uko izi nyandiko zombi zari zihari igihe urubanza rusabirwa gusubirwamo rwacibwaga, kuko zanditswe mu 2017, kandi urubanza rusabirwa gusubirwamo rukaba rwaraciwe mu 2018. Shema Charles asobanura ko yazimenye ari uko ashakishije amakuru muri BDF urubanza rumaze gucibwa, ariko Urukiko rusanga nta cyamubuzaga gushaka ayo makuru urubanza rutaracibwa, mu gihe yari azi ko BDF yishingiye igihombo Banki yaterwa n'umwenda yafashe.

[31] Uretse n'ibyo kandi, Urukiko rusanga izo nyandiko zitarashoboraga gutuma umucamanza afata icyemezo gitandukanye n'icyo yafashe, kuko ubwishingire bwa BDF butavanaho inshingano z'uwishingiwe zo kwishyura umwenda wose yahawe na Banki, hakurikijwe ibivugwa mu ibaruwa (lettre circulaire) Banki Nkuru y'Igihugu(BNR) yohereje amabanki n'ibigo by'imari ku wa 22/10/2010. Muri iyo baruwa, Banki Nkuru y'Igihugu itanga bimwe mu bisobanuro bikurikira:

a. Uwahawe inguzanyo afite inshingano zo kwishyura umwenda wose yahawe na banki cyangwa ikigo cy'imari mu rwego rw'ibigega bicungwa na Banki Nkuru y'Igihugu[2];

b. Inshingano y'uwahawe inguzanyo yo kwishyura umwenda wose isobanurwa neza mu masezerano hagati ya banki cyangwa ikigo cy'imari n'uwahawe iyo nguzanyo, aho yemera kwishyura umwenda wose ahawe. Iyo nshingano isobanurwa kandi mu masezerano yabaye hagati ya BNR n'ayo mabanki n'ibigo by'imari, kuko agaragaza ko ikigamijwe na leta ibinyujije muri BNR, ari ukwishingira ibibazo byo kutishyurwa inguzanyo byatanga (risques financiers encourus par différentes institutions financières participantes), cyangwa igihombo cyaterwa no kutishyurwa izo nguzanyo;

c. Ibyo bivuze ko BNR itishingira umuntu wahawe inguzanyo ku giti cye mu rwego rwa biriya bigega;

d. Gukurikirana abafite umwenda ku nguzanyo yose bahawe batishyuye ni inshingano z'amabanki n'ibigo by'imari byatanze inguzanyo, haseguriwe uburenganzira bwa BNR bwo gusubizwa igice cy'amafaranga y'inguzanyo yishingiye mu gihe cy'irangiza rubanza kugirango asubizwe mu kigega.

[32] Urukiko rusanga rero, inyandiko zatanzwe na BDF atari ikimenyetso gishya kimara impaka, cyatuma urubanza rusubirwamo.

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[2] Ibigega byashyiriweho korohereza imishinga yemewe kubona inguzanyo mu ma banki n'ibigo by'imari

- **Gusuzuma niba ari ikimenyetso kigaragaza ko hari uburiganya bwakorewe kuri konti ya Shema Charles**

[33] Shema Charles ashingira uburiganya ku kuba amafaranga yishyuwe na BDF, agaragara mu mabaruwa iki kigega cyandikiye I & M Bank Rwanda Plc ku wa 28/02/2017 no ku wa 02/08/2017, ataragaragajwe kuri *historique bancaire* yakoreshejwe n'umuhanga washyizweho n'Urukiko kugirango yerekane umwenda wishyuwe n'utarishyurwa, ahubwo akaboneka kuri *historique bancaire* avuga ko yahawe muri Kanama 2018.

[34] Nk'uko byasobanuwe haruguru, kugirango urubanza rusubirwemo ku mpamvu z'uburiganya, hagomba kuba harabayeho kubeshya umucamanza hagamijwe gutsinda urubanza; umucamanza agashingira kuri ayo makuru y'ibinyoma agafata icyemezo atagombaga gufata.

[35] Ikigaragara muri *historique bancaire* ababuranyi bemeranywaho ko ariyo yakoreshejwe n'umuhanga mu rubanza rusabirwa gusubirwamo, ni uko igarukira mu mwaka wa 2016, mu gihe amafaranga yishyuwe na BDF yinjiye kuri konti ku wa 17/03/2017 no ku wa 11/09/2017. Kuba umuhanga yarakoresheje *historique bancaire* itagaragaza amafaranga yishyuwe na BDF, ntibyafatwa nko kuba I & M Bank Rwanda Plc yarashatse kubeshya umucamanza igamije gutsinda urubanza, kuko n'iyo hakoreshwa *historique bancaire* ya 2018 igaragaza ayo mafaranga bitari kugira ingaruka ku mikirize y'urubanza. Koko rero, nk'uko byasobanuwe mu gika cya 31 cy'uru rubanza, ubwishingire bwa BDF ntibuvanaho inshingano za Shema Charles na Bashangire Grace zo kwishyura umwenda wose watanzwe na I & M Bank Rwanda Plc.

[36] Urukiko rurasanga rero, inyandiko zatanzwe na BDF atari ikimenyetso kigaragaza ko hari uburiganya bwakorewe kuri konti ya Shema Charles.

[37] Hashingiwe ku bisobanuro byose byatanzwe, Urukiko rurasanga *historique bancaire* yatanzwe na I & M Bank Rwanda Plc muri Kanama 2018, hamwe n'inyandiko zatanzwe na BDF, atari ibimenyetso byatuma urubanza rusubirishwamo ingingo nshya, hashingiwe ku biteganywa n'ingingo ya 170, agace ka 1^{o} n'aka 3^{o}, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi; bityo ikirego cyatanzwe na Shema Charles na Bashangire Grace kikaba kidashobora kwakirwa ngo gisuzumwe.

- **Gusuzuma indishyi zisabwa na I & M Bank Rwanda Plc**

[38] Uhagarariye I & M Bank Rwanda Plc avuga ko asaba Urukiko gutegeka Shema Charles na Bashangire Grace kwishyura uwo ahagarariye indishyi zo gushorwa mu manza nta mpamvu zingana na 10.000.000 Frw, amafaranga y'ikurikiranarubanza angana na 1.000.000, na 2.000.000 Frw y'igihembo cy'Avoka.

[39] Shema Charles, Bashangire Grace n'ababahagarariye, bavuga ko indishyi I & M Bank Rwanda Plc isaba idakwiye kuzihabwa kuko ariyo nyirabayazana w'izi manza.

UKO URUKIKO RUBIBONA

[40] Urukiko rurasanga indishyi zo gushorwa mu manza nta mpamvu zasabwe na I & M Bank Rwanda Plc nta shingiro zahabwa, kuko bwari uburenganzira bwa Shema Charles na Bashangire Grace bwo gutanga ikirego bagamije kurengera inyungu zabo, kandi hakaba nta kigaragaza ko ari

ikirego batanze nta yindi nyungu bagamije uretse kuruhanya (procedure vexatoire)[3]. Urukiko rurasanga ariko I & M Bank Rwanda Plc yagenerwa amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka, kuko byabaye ngombwa gushaka uyihagararira no gukurikirana urubanza, ariko kuko ayo isaba ari menshi kandi ikaba itagaragaza uko iyabara, ikaba igenewe mu bushishozi bw'Urukiko 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cy'Avoka, yose hamwe akaba 800.000 Frw.

III. ICYEMEZO CY'URUKIKO

[41] Rwemeje ko ikirego cyatanzwe na Shema Charles na Bashangire Grace cyo gusubirishamo urubanza ingingo nshya kitakiriwe ngo gisuzumwe, kuko cyatanzwe mu buryo budakurikije amategeko;

[42] Rwemeje ko imikirize y'urubanza RCOMAA 0004/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 22/06/2018, igumyeho;

[43] Rutegetse Shema Charles na Bashangire Grace kwishyura I & M Bank Rwanda Plc amafaranga ibihumbi magana inani (800.000) y'ikurikiranarubanza n'igihembo cy'Avoka;

[44] Rutegetse ko ingwate y'amagarama yatanzwe na Shema Charles na Bashangire Grace, ihwanye n'ibyakozwe mu rubanza.

[3] *« Une procédure peut revêtir un caractère vexatoire non seulement lorsqu'une partie est animée de l'intention de nuire* à une autre, mais lorsqu'elle exerce son droit d'agir en justice d'une manière qui excède manifestement les limites de l'exercice normal de ce droit par une personne prudente et diligente »; Cassation Belge, 31 Octobre 2003, C.02.0602. F

"L'instance, la poursuite vexatoire est intentée par un demandeur qui entend seulement gêner, humilier ou contrarier le défendeur, c'est-à-dire, à proprement parler, le vexer elle est introduite ou est entamée par malveillance et sans motif légitime une procédure est vexatoire lorsqu'elle est introduite par malice ou sans motif suffisant ou qu'elle ne saurait déboucher sur un résultat pratique » Juridictionnaire, TERMIUM Plus®, http ://btb.termiumplus.gc.ca, consultée le 23/07/2020