

NSENGIYUMVA v BANKI YA KIGALI PLC (BK)

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00005/2021/SC (Ntezilyayo, PJ, Cyanzayire, Hitiyaremye, Karimunda na Nyirinkwaya, J.) 07 Ukwakira 2022]

Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Imbibi z'ikiburanwa – Ibitari mu mbibi z'icyaburanyweho urubanza rugitangira ntibisuzumwa mu rubanza rusubirishwamo ku mpamvu z'akarengane.

Amategeko agenga imanza z'ubucuruzi – Inguzanyo ya banki – Inyungu – Inyungu ku nguzanyo banki ziha abakiliya bazo zikomeza kubarwa kugeza umwenda wose wishyuwe zipfa kutarenga umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa.

Amategeko agenga imanza z'ubucuruzi – Amasezerano y'inguzanyo – Gusesa amasezerano y'inguzanyo (résiliation du contrat) ntabwo bikuraho inshingano y'uwahawe umwenda ko igihe cyose atarishyura inyungu zikomeza kubarwa hubahirizwa ihame ry'uko inyungu zitagomba kurenga umwenda shingiro usigaye kwishyurwa (in duplum rule).

Incamake y'ikibazo: Banki ya Kigali Plc yatanze ikirego mu Rukiko rw'Ubucuruzi, isaba ko Nsengiyumva Fulgence yategekwa kwishyura umwenda remezo ayibereyemo ungana na 155.308.448 Frw, hiyongereyeho inyungu zibazwe kugera ku mwenda remezo, yose hamwe akaba 310.616.976 Frw. Urukiko rw'Ubucuruzi rwacye urubanza rwemeza ko ikirego cya Banki ya Kigali Plc gifite ishingiro, rumutegeka kwishyura 300.000.000 Frw. Nsengiyumva Fulgence yajuririye Urukiko Rukuru rw'Ubucuruzi, ruca urubanza rwemeza ko agomba kwishyura 155.301.368 Frw aho kuba 300.000.000 Frw. Banki ya Kigali Plc yajuririye Urukiko rw'Ubujurire, rwemeza ko ubujurire bwayo bufite ishingiro, ko Nsengiyumva Fulgence agomba kwishyura 310.616.896 Frw, Nsengiyumva Fulgence yandikira Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rusubirishwamo ku mpamvu z'akarengane, arabyemeza, ruburanishwa ku wa 15/02/2022.

Nsengiyumva Fulgence ko icyo atemera ari inyungu zibazwe nyuma y'uko Banki ya Kigali Plc imwandikiye ku wa 12/10/2012 imumenyesha ko ihagaritse imikoranire isanzwe yari ifitanye nawe kandi ko dosiye ishyizwe mu maboko y'umukozi wayo kugirango yishyuzwe ku ngufu kuko igihe ingwate yari igurishijwe muri cyamunara ntihavemo ubwishyu bwose, banki yagombaga guhita iregera inkiko aho gukomeza kubara inyungu mu gihe cy'imyaka 5 kandi amasezerano yari afitanye na banki yaravuyeho. Avuga kandi ko asanga banki igomba kuryozwa amafaranga bamuhombeje agera kuri 275.400.000 Frw agahuzwa n'umwenda ayibereyemo ungana na 146.543.891 Frw bakishyurana.

BK ivuga ko muri icyo myaka 5 impande zombi zari mu mishyikirano yo kureba uburyo umwenda wakwishyurwa, ndetse ko hari amabaruwa impande zombi zagiye zandikirana, ku buryo itari kuregera inkiko bakiri mu biganirwa kandi ko nta cyari kubuza ko inyungu zikomeza kubarwa igihe cyose umwenda utarishyurwa, zipfa gusa kutarenga umwenda remezo. Ku birebana n'ibyo asaba ko Banki ya Kigali Plc yaryozwa igihombo yatejwe na cyamunara, ivuga ko ari ikirego gishya kuko ikiburanwa muri uru rubanza kuva rutangira ari ingano y'umwenda akwiye kwishyura banki kubera inguzanyo yamuhaye atishyuye.

Incamake y'icyemezo: 1 Ibitari mu mbibi z'icyaburanyweho urubanza rugitangira ntibisuzumwa mu rubanza rusubirishwamo ku mpamvu z'akarengane.

2. Inyungu ku nguzanyo banki ziha abakiliya bazo zikomeza kubarwa kugeza umwenda wose wishyuwe zipfa kutarenga umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa.

3. Gusesa amasezerano y'inguzanyo (résiliation du contrat) ntabwo bikuraho inshingano y'uwahawe umwenda ko igihe cyose atarishyura inyungu zikomeza kubarwa hubahirizwa ihame ry'uko inyungu zitagomba kurenga umwenda shingiro usigaye kwishyurwa (in duplum rule).

**Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro kuri bimwe
Uregwa agomba kwishyura Banki 293.087.782 Frw, akubiyemo 146.543.891 Frw
y'umwenda remezo na 146.543.891 Frw y'inyungu.**

Amategeko yashingiweho:

Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 60.

Imanza zifashishijwe:

Urubanza Umutesi Kaberuka Espérance na I&M Rwanda Ltd; N°RCOM A 0166/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 28/04/2017.

Urubanza Ndayambaje na Ecobank; RCOM A 0044/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 07/11/2014.

Urubanza Nditiribambe Samuel c/ Gatera Jason et Crts; N°RS/INJUST/RC 00007/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 13/03/2020.

Urubanza Ukwibishaka Alexis na Banki y'Abaturage y'u Rwanda N°RS/INJUST/RSOC 00001/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 02/07/2021.

Urubanza Tabaruka Dieudonné v Akarere ka Gicumbi; N°RS/INJUST/RAD 00003/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 20/05/2022.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 08/10/2010, Banki ya Kigali Plc yahaye Nsengiyumva Fulgence umwenda wa 181.182.303 Frw wagombaga kwishyurwa mu myaka 7 ibarwa guhera ku wa 31/11/2010, yishyura 3.770.444 Frw buri kwezi. Nsengiyumva Fulgence ntiyashoboye kwishyura, ajya mu birarane, nyuma asaba ko umwenda uvugururwa (*restructuration*), ku wa 14/04/2011 yemererwa umwenda wa 196.660.736 Frw wagombaga kwishyurwa mu mezi 120 abarwa guhera ku wa 30/04/2011, yishyura 3.482.715 Frw buri kwezi n'inyungu zingana na 17,25% ku mwaka, nabwo ntiyashobora kwishyura akomeza kujya mu birarane.

[2] Ku wa 12/10/2012, Banki ya Kigali Plc yandikiye Nsengiyumva Fulgence imumenyesha ko ihagaritse uburyo yari asanganywe bwo kwishyura (*dénonciation de votre programme de remboursement*) imusaba guhita yishyura umwenda wose ayibereyemo ugeze kuri 247.546.466

Frw, akubiyemo umwenda remezo n'inyungu ziwukomokaho. Yamumenyeshaga kandi ko inyungu zingana na 19,25% zizakomeza kubarwa kugeza umwenda wose wishyuwe, ndetse ko dosiye ye yashyikirijwe ubishinzwe kugira ngo atangire kumwishyuza ku ngufu amafaranga ayibereyemo.

[3] Ku wa 19/09/2014, inzu Nsengiyumva Fulgence yari yaratanzeho ingwate muri Banki ya Kigali Plc yagurishijwe muri cyamunara, iyo banki aba ari nayo iyegukana ku mafaranga 100.000.000, ku itariki ya 08/10/2014 hashyirwaho 92.320.310 Frw kuri konte ye.

[4] Nyuma yaho tariki ya 13/10/2017, Nsengiyumva Fulgence yandikiye Banki ya Kigali Plc ayisaba kwigurishiriza ingwate akishyura umwenda ayibereyemo wabarirwaga muri 300.000.000 Frw¹, Banki ya Kigali Plc imusubiza ku wa 11/12/2017 ko ibimwemereye, amafaranga avuyemo agakuramo 300.000.000 Frw yo kwishyura umwenda, inamubwira ko ibyo imwemereye bizata agaciro niba itabonye ubwishyu mu minsi 60, ibyo akaba ari nabyo byaje kuba.

[5] Ku wa 10/10/2019, Banki ya Kigali Plc yatanze ikirego mu Rukiko rw'Ubucuruzi, isaba ko Nsengiyumva Fulgence yategekwa kwishyura umwenda remezo ayibereyemo ungana na 155.308.448 Frw, hiyongereyeho inyungu zibazwe kugera ku mwenda remezo, yose hamwe akaba 310.616.976 Frw. Nsengiyumva Fulgence yireguye avuga ko yemera umwenda ungana na 247.546.466 Frw, ariko ko inyungu zabazwe nyuma y'uko Banki ya Kigali Plc ihagaritse imikoraniye isanzwe bari bafitanye ikanagurisha muri cyamunara ingwate yari yarayihaye atazemera.

[6] Urukiko rw'Ubucuruzi rwaciye urubanza N° RCOM 02129/2019/TC ku wa 23/01/2020, rwemeza ko ikirego cya Banki ya Kigali Plc gifite ishingiro, rutegeka Nsengiyumva Fulgence kwishyura 300.000.000 Frw, akubiyemo umwenda remezo n'inyungu zawo, hiyongereyeho 560.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[7] Urukiko rwashingiye icyemezo cyarwo ku ngingo ya 112 -2° y'Itegeko N° 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'amabanki iteganya ko mu kwishyura imyenda itishyurwa, inyungu zitagomba kurenga umwenda shingiro igihe inguzanyo yageraga ku rwego rwo kutishyurwa, ndetse no ku ngingo ya 28 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo² rushingiye ku kuba Nsengiyumva Fulgence yaremeye umwenda mu nyandiko yandikiye Banki ya Kigali Plc ku wa 13/10/2017.

[8] Nsengiyumva Fulgence yajuririye Urukiko Rukuru rw'Ubucuruzi, ruca urubanza N° RCOMA 00175/2020/HCC ku wa 27/11/2020, rwemeza ko umwenda Nsengiyumva Fulgence agomba kwishyura Banki ya Kigali Plc ari 155.301.368 Frw aho kuba 300.000.000 Frw yari yemejwe ku rwego rwa mbere.

¹ Muri icyo baruwa Nsengiyumva Fulgence yanditse agira ati: [...] nshingiye ku mafaranga nzi ko nkirimu Banki ya Kigali Plc abarirwa muri 300.000.000 Frw, nabasabaga ko mwanemerera nkagurisha izi nzu maze hakaboneka ubwishyu bwa Banki ya Kigali Plc bityo ikibazo cy'umwenda nyifitiye kikarangira burundu kuko maze kuyigurisha nahita nishyura ayo mafaranga yose icyarimwe.

² Iyo ngingo iteganya ko : ibaruwa umuntu yandikiye undi itsindisha uwayanditse, n'aho yaba atarashyizeho umukono cyangwa igikumwe, bapfa kugaragaza gusa ko ari we ikomokaho. Iyo baruwa icyo yemera ikiburanwa iba igaragagaje ko uwayanditse yiyemerera ubwe icyo ashinjwa n'ubwo aba atabivugiyemo mu rukiko bwose.

[9] Urukiko rwasobanuye ko Banki ya Kigali Plc imaze kugurisha ingwate ntikuremo ubwishyu bwose, itagombaga kumara imyaka igera kuri 5 ibara inyungu kandi yarahagaritse imikoranire isanzwe yari ifitanye na Nsengiyumva Fulgence, ahubwo ko yari guhita yitabaza inkiko igasaba ubwishyu busigaye. Rwasobanuye kandi ko kuba Nsengiyumva Fulgence yaremeye kwishyura 300.000.000 Frw mu ibaruwa yo ku wa 13/10/2017 bidakwiye kugenderwaho kuko ayo mafaranga atayemeye nk'uwemera umwenda nyakuri afitiye Banki ya Kigali Plc, ahubwo ko impande zombi zayemeranyijweho mu gihe zageragezaga kumvikana ngo zikemure ikibazo nta manza zibaye.

[10] Banki ya Kigali Plc yajuririye Urukiko rw'Ubujurire, ruca urubanza N° RCOMAA 00104/2020/CA ku wa 30/04/2021, rwemeza ko ubujurire bwayo bufite ishingiro, ko Nsengiyumva Fulgence agomba kwishyura umwenda remezo n'inyungu ziwukomokaho zibazwe kugera ku ngano y'umwenda remezo, yose hamwe akishyura 310.616.896 Frw, hiyongereyeho 700.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[11] Urukiko rwasobanuye ko inyungu zikomeza kubarwa igihe cyose umwenda zikomokaho utarishyurwa, ariko ntizirenze ingano y'umwenda remezo nk'uko biteganyijwe mu ngingo ya 112-2° y'Itegeko N° 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'amabanki.

[12] Ku bijyanye n'ibaruwa yo ku wa 13/10/2017, Nsengiyumva Fulgence yandikiye Banki ya Kigali Plc, Urukiko rw'Ubujurire rwasanze nta mpamvu ukwiemerera kwe muri iyo nyandiko kutashingirwaho nk'uko biteganywa n'ingingo ya 28 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru.

[13] Nyuma y'aho urwo rubanza ruciriwe, Nsengiyumva Fulgence yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko rusubirishwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma icyo kibazo, mu cyemezo cye N° 227/CJ/2021 cyo ku wa 20/09/2021, Perezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rwoheresha mu bwanditsi bw'Urukiko kugira ngo ruzongere ruburanishwe, dosiye ihabwa N° RS/INJUST/RCOM 00005/2021/SC.

[14] Urubanza rwaburanishijwe mu ruhamwe ku wa 15/02/2022, Nsengiyumva Fulgence yunganiwe na Me Kayiranga Cyrille, naho Banki ya Kigali Plc ihagarariwe na Me Biseruka Frank, abaturanyi bajya impaka ku bibazo bikurikira: ingano y'umwenda Nsengiyumva Fulgence agomba kwishyura Banki ya Kigali Plc (A); ishingiro ry'indishyi Nsengiyumva Fulgence asaba kuri uru rwego (B).

[15] Uwo muni iburanisha ryarapfundikiwe, isomwa ry'urubanza rishyirwa ku wa 25/03/2022. Igihe rwari rwiherereye ngo ruce urubanza, Urukiko rwasanze ari ngombwa gushyiraho Umuhanga wagaragaza uko umwenda Nsengiyumva Fulgence abereyemo Banki ya Kigali Plc wagiye uhinduka.

[16] Muri raporo ye, Umuhanga Ayinkamiye Spéciose yagaragaje ko:

1° Tarike ya 12/10/2012, ubwo Banki ya Kigali Plc yandikiraga Nsengiyumva Fulgence imumenyesha ko ihagaritse imikoranire isanzwe bari bafitanye (dénonciation de crédit), yari ayibereyemo umwenda remezo ungana na 196.660.736Frw, inyungu zisanzwe zingana na 42.120.536Frw, yose hamwe akaba 238.864.201Frw, aho kuba 247.546.466 Frw yari yabazwe na Banki ya Kigali Plc.

Ku bijyanye n'ikinyuranyo kiri mu mibare ye n'iya Banki ya Kigali Plc, yasobanuye ko giterwa n'uko mu kubara inyungu banki yakoresheje iminsi 360, mu gihe we yakoresheje iminsi yose y'umwaka uko ari 365 hakurikijwe amabwiriza ya Banki Nkuru y'u Rwanda akubiye mu ibaruwa yandikiye ibigo by'imari ku wa 3/12/20213.

2° Tariki ya 08/10/2014, inzu ya Nsengiyumva Fulgence imaze kugurishwa muri cyamunara, hishyuwe 92.320.310 Frw, asigarana umwenda ungana na 146.543.891 Frw (238.864.201 Frw - 92.320.310 Frw).

3° Inyungu zisanzwe n'iz'ubukererewe zibazwe kuva ku wa 08/10/2014 kugeza ku wa 05/09/2019 zingana na 138.420.742 Frw, naho inyungu zibazwe kugeza ku wa 31/12/2019 zikaba zingana na 147.076.869 Frw.

[17] Iburanisha ryapfunduwe ku wa 20/09/2022, urubanza ruburanishwa mu ruhamwe, Nsengiyumva Fulgence yunganiwe na Me Kayiranga Cyrille, Banki ya Kigali Plc ihagarariwe na Me Biseruka Frank. Umuhanga Ayinkamiye Spéciose nawe yari yitabye, asobanura ibikubiye muri raporo ye, ababuranyi nabo bagira icyo bayivugaho, nyuma urubanza rurapfundikirwa.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO:

a. Kumenya ingano y'umwenda nsengiyumva fulgence agomba kwishyura banki ya kigali plc

[18] Nsengiyumva Fulgence yunganiwe na Me Kayiranga Cyrille avuga ko ntacyo anenga ku mibare yagaragajwe n'Umuhanga, ko icyo atemera ari inyungu zibazwe nyuma y'uko Banki ya Kigali Plc imwandikiye ku wa 12/10/2012 imumenyesha ko ihagaritse imikoraniye isanzwe yari ifitanye nawe kandi ko dosiye ishyizwe mu maboko y'umukozi wayo kugirango yishyuzwe ku ngufu kuko igihe ingwate yari igurishijwe muri cyamunara ntihavemo ubwishyu bwose, banki yagombaga guhita iregera inkiko aho gukomeza kubara inyungu mu gihe cy'imyaka 5 kandi amasezerano yari afitanye na banki yaravuyeho.

[19] Avuga ko Urukiko rw'Ubujuje narwo rwemera mu mwanzuro warwo ko banki yari kwitabaza inkiko imaze kubona ko ingwate itavuyemo ubwishyu bwose, ariko ikabibuzwa n'uko hari imishyikirano hagati y'impande zombi, nyamara iyo mishyikirano yarabayeho mu gihe cy'iminsi 60 gusa kuko ariyo minsi Banki ya Kigali Plc yari yamuhaye yo kuba yagurishije.

[20] Avuga kandi ko mu rubanza N°RS/INJUST/RP 00006/2017/CS rwaciwe ku wa 29/11/2019, uru rukiko rwemeje mu buryo budasubirwaho ko Rutembesa Phocas wagurishije umutungo we muri cyamunara n'abo bari bafatanyije bakoze icyaha cyo kwandika cyangwa gukoresha inyandiko yahinduwe cyangwa irimo ibinyoma, kuba yari ahagarariye Banki ya Kigali Plc mu gikorwa cyabayemo icyaha, akaba asanga banki igomba kubiryoza hashingiwe ku ngingo ya 33 y'Itegeko Ngenga No 01/2012 ryo ku wa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana

³ Ibaruwa Ref: 0510/2021 – 06033/0010 BNR [0].

ryakurikizwaga igihe icyaha cyakorwaga, amafaranga bamuhombeje agera kuri 275.400.000 Frw agahuzwa n'umwenda abereyemo Banki ya Kigali Plc ungana na 146.543.891 Frw bakishyurana.

[21] Me Biseruka Frank avuga ko Banki ya Kigali Plc ahagarariye nayo ntacyo inenga ku mibare yagaragajwe n'Umuhanga, ko kuba harabaye ikinyuranyo hagati y'imibare ye n'iya banki byatewe n'uko amabwiriza ya Banki Nkuru y'u Rwanda asaba kubarira inyungu ku minsi 365 yari atarasohoka igihe batangaga ikirego ku rwego rwa mbere.

[22] Ku birebana n'ibyo Nsengiyumva Fulgence avuga ko Banki ya Kigali Plc itari gukomeza kubara inyungu nyuma ya cyamunara, ahubwo ko yagombaga guhita igana inkiko, avuga ko nk'uko Urukiko rw'Ubujurire rwabigaragaje mu gika cya 20 cy'urubanza, muri iyo myaka 5 impande zombi zari mu mishyikirano yo kureba uburyo umwenda wakwishyurwa, ndetse ko hari amabaruwa impande zombi zagiye zandikirana, nk'inyangiko Nsengiyumva Fulgence yiyandikiye ubwe ku wa 13/04/2017 yemera umwenda ungana na 300.000.000 Frw, asaba ko yakorohereweza uburyo bwo kwishyura, ku buryo Banki ya Kigali Plc itari kuregera inkiko bakiri mu biganiro.

[23] Avuga kandi ko nta cyari kubuza ko inyungu zikomeza kubarwa igihe cyose umwenda utarishyurwa, zipfa gusa kutarenga umwenda remezo nk'uko biteganywa n'ingingo ya 112- 2° y'Itegeko No 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'amabanki, ari nayo mpamvu aho kwishyura inyungu zari zigeze kuri 503.701.707 Frw igihe Banki ya Kigali Plc yatangaga ikirego ku rwego rwa mbere, yasabye kwishyurwa inyungu za 155.301.368 Frw zingana n'umwenda Nsengiyumva Fulgence yayisigayemo ingwate imaze kugurishwa muri cyamunara, aba ari nabyo byemezwa n'Urukiko rw'Ubujurire.

[24] Ku birebana n'ibyo Nsengiyumva Fulgence asaba ko Banki ya Kigali Plc yaryozwa igihombo yatejwe na cyamunara, Me Biseruka Frank avuga ko ari ikirego gishya kuko ikiburanwa muri uru rubanza kuva rutangira ari ingano y'umwenda akwiye kwishyura banki kubera inguzanyo yamuhaye atishyuye. Yongeraho ko hari imanza zabaye kuri iyo cyamunara, aho Nsengiyumva Fulgence yasabaga ko iteshwa agaciro, nk'urubanza N°RCOMA 00471/2020/HC, ariko ko itigeze iteshwa agaciro.

UKO URUKIKO RUBIBONA:

i. Ku bijyanye n'umwenda remezo

[25] Ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko *amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye*, naho ingingo ya 110 y'Itegeko n° 15/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igateganya ko *amagambo umuburanyi cyangwa umuhagarariye avugiye mu rukiko agira ibyo yemera atsindisha uwayavuze*.

[26] Amasezerano ababuranyi bagiranye agaragaza ko Nsengiyumva Fulgence yahawe na Banki ya Kigali Plc umwenda ungana na 181.182.303 Frw waje kuvugururwa ukaba 196.660.736 Frw wagombaga kwishyurwa mu gihe cy'amezi 120 abarwa uherye ku wa 30/04/2011, yishyura 3.482.715 Frw buri kwezi n'inyungu zingana na 17,25% ku mwaka. *Historiques* za banki ziri muri

dosiye nazo zigaragaza ko atigeze yishyura uko byari biteganyijwe mu masezerano, umwenda ugenda wiyongera abarirwa ibirarane.

[27] Nsengiyumva Fulgence nawe ubwe yemera ko atigeze yishyura umwenda yahawe, ndetse kuva ku rwego rwa mbere yaburanye avuga ko yemera umwenda ungana na 247.536.018 Frw wagaragajwe na Banki ya Kigali Plc mu ibaruwa yamwandikiye ku wa 12/10/2012 imumenyesha ko ihagaritse imikoranire isanzwe bari bafitanye, wasigaye ungana na 155.308.448 Frw ubwo ingwate yagurishwaga muri cyamunara, hakishyurwa 92.320.310 Frw yagabanyije umwenda.

[28] Hashingiwe rero ku masezerano ababuranyi bagiranye no ku kwiyemerera kwa Nsengiyumva Fulgence, Urukiko rurasanga agomba kwishyura umwenda remezo wasigaye utishyuwe nyuma y'uko ingwate igurishijwe muri cyamunara, usibye ko imibare yakosorwa hakurikijwe iyagaragajwe n'Umuhanga yemeranywaho n'ababuranyi ku mpande zombi, bityo akishyura 146.543.891 Frw aho kuba 155.308.448 Frw yemejwe n'Urukiko rw'Ubujurire.

[29] Ku bijyanye n'ibyo Nsengiyumva Fulgence asaba ko Banki ya Kigali Plc yaryozwa igihombo yatejwe na cyamunara kigera kuri 275.400.000 Frw, ayo mafaranga agahuzwa n'ayo yemera ko abereyemo banki, Urukiko rurasanga bitagomba gusuzumwa kubera ko bitari mu mbibi z'icyaburanyweho urubanza rugitangira, ibi akaba ari nawo murongo wafashwe n'uru rukiko mu manza zinyuranye⁴.

ii. Ku bijyanye n'inyungu

[30] Ku birebana n'inyungu ku nguzanyo banki ziha abakiliya bazo, ibikubiye mu ngingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano ryavuzwe haruguru, bigomba guhuzwa n' ingingo ya 7 y'Amabwiriza Rusange N°02/2011 yo ku wa 21/03/2011 ya Banki Nkuru y'u Rwanda ku ishyingirwa mu byiciro ry'imyenda no guteganya ingoboka yakurikizwaga igihe ikirego cyatangwaga yateganyaga mu gika cyayo cya 2 ko *inyungu zose ku myenda itishyurwa neza zandikwa kuri konti y'inyungu zahagaze kugeza igihe zishyuriwe n'uwasabye umwenda*, ndetse n' ingingo ya 112 - 2° y'Itegeko N° 47/2017 ryo ku wa 23/9/2017 rigenga imitunganyirize y'imirimo y'amabanki iteganya ko *inyungu amabanki yishyura ku nguzanyo zitishyuwe zitagomba kurenza umwenda shingiro utarishyuwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa*.

[31] Ibivuzwe muri ayo mabwiriza n'iryo tegeko iyo bihurijwe hamwe byumvikanisha ko inyungu ku nguzanyo banki ziha abakiliya bazo zikomeza kubarwa kugeza umwenda wose wishyuwe ariko ko inyungu banki zishobora kwishyura zitagomba kurenza umwenda shingiro wagaragajwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa.

[32] Ibi uru rukiko rwabisobanuye mu manza zinyuranye⁵, rubigarukaho mu buryo burambuye mu rubanza SIMACO Ltd yaburanye na I&M Bank Rwanda Plc rwaciwe ku wa 25/02/2022, aho rwifashishije inyandiko z'abahanga mu mategeko, rusobanura ko gusesa amasezerano

⁴ Urubanza N°RS/INJUST/RC 00007/2018/SC rwaciwe ku wa 13/03/2020, haburana Nditiribambe Samuel c/ Gatera Jason et Crts (igika cya 72) ; urubanza N°RS/INJUST/RSOC 00001/2018/SC rwaciwe ku wa 02/07/2021, haburana Ukwibishaka Alexis na Banki y'Abaturage y'u Rwanda (igika cya 12); urubanza N°RS/INJUST/RAD 00003/2021/SC rwaciwe ku wa 20/05/2022, haburana Tabaruka Dieudonné n'Akarere ka Gicumbi (igika cya 9).

⁵ Urubanza N°RCOM A 0166/12/CS rwaciwe ku wa 28/04/2017, haburana Umutesi Kaberuka Espérance na I&M Rwanda Ltd; Urubanza RCOM A 0044/12/CS rwaciwe ku wa 07/11/2014, haburana Ndayambaje na Ecobank.

y'inguzanyo (résiliation du contrat) bitakuraho inshingano yateganyaga ku ruhande rw'uwahawe inguzanyo⁶, ndetse n'inkomoko n'impamvu z'ihame ry'uko inyungu zitagomba kurenga umwenda shingiro usigaye kwishyurwa (in duplum rule)⁷.

[33] Mu masezerano avuguruwe ababuranyi bagiranye ku wa 14/04/2011 bigaragara ko bateganyije ko umwenda uzajya ubarirwa inyungu zisanzwe za 17,25% ku mwaka kandi ko banki ishobora guhindura icyo gipimo igihe ibimenyesheje umukiliya wayo mbere y'iminsi 30. Bigaragara kandi ko mu ibaruwa Banki ya Kigali Plc yandikiye Nsengiyumva Fulgence ku wa 12/10/2012 yamenyeshejwe ko icyo gipimo gishyizwe kuri 19,25% kandi ko inyungu zizakomeza kubarwa kugeza umwenda wose wishyuwe ariko ko zizandikwa kuri konti yihariye itandukanye n'iyari isanzwe. Ntaho bigaragara mu masezerano bagiranye no mu nyandiko bagiye bandikirana ko hari icyo bateganyije ku ibarwa ry'inyungu gitandukanye n'ibiteganyijwe mu mabwiriza ya BNR yavuzwe haruguru no mu Itegeko rigena imitunganyirize y'imirimo y'amabanki naryo ryavuzwe haruguru.

[34] Urukiko rurasanga rero nta cyari kubuza ko inyungu zikomeza kubarwa nk'uko amasezerano Nsengiyumva Fulgence yagiranye na Banki ya Kigali Plc abiteganyira igihe cyose yari atararangiza kwishyura umwenda ayibereyemo, zipfa gusa kubahiriza ibiteganyijwe mu ngingo ya 112 - 2° y'Itegeko ryavuzwe rigena imitunganyirize y'imirimo y'amabanki. Ibi kandi byumvikanisha ko imyiregurire ya Nsengiyumva Fulgence ko nta nyungu zagombaga gukomeza kubarwa nyuma y'uko banki ihagaritse imikoranyirize isanzwe bari bafitanye n'ingwate ikagurishwa muri cyamunara ntihavemo ubwishyu bwose nta shingiro ifite.

[35] Ku bijyanye n'ingano y'izo nyungu, Umuhanga yagaragaje ko ku wa 31/12/2019 zari zigeze kuri 147.076.869 Frw. Hashingiwe rero ku ihame y'uko inyungu zitagomba kurenga umwenda remezo igihe inguzanyo yageraga mu rwego rwo kutishyurwa, Urukiko rurasanga Nsengiyumva Fulgence agomba kwishyura inyungu zingana na 146.543.891 Frw, aho kuba 155.308.448 Frw yemejwe n'Urukiko rw'Ubujurire.

b. Ku bijyanye n'indishyi zisabwa muri uru rubanza

[36] Nsengiyumva Fulgence asaba ko yahabwa 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[37] Me Biseruka Frank uhagarariye Banki ya Kigali Plc avuga ko nta ndishyi Nsengiyumva Fulgence akwiye guhabwa kuko ariwe wakomeje gushora banki mu manza kandi ku mwenda nawe ubwe yemera.

UKO URUKIKO RUBIBONA:

[38] Ingingo ya 111 y'Itegeko No 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igira iti: *ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije*

⁶ Urubanza No RS/INJUST/RCOM 00008/2021/SC, &42-46.

⁷ Ibidem, &48-50.

kwishyuzwa ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo [...].

[39] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka Nsengiyumva Fulgence asaba kuri uru rwego atagomba kuyahabwa kuko impande zombi ziburana zifite icyo zitsindiye muri uru rubanza.

III. ICYEMEZO CY'URUKIKO:

[40] Rwemeje ko ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza N° RCOMAA 00104/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 30/04/2021 gifite ishingiro kuri bimwe;

[41] Rutegetse Nsengiyumva Fulgence kwishyura Banki ya Kigali Plc 293.087.782 Frw, akubiyemo 146.543.891 Frw y'umwenda remezo na 146.543.891 Frw y'inyungu.