EQUITY BANK RWANDA Plc v BES & SUPPLY LTD N'UNDI (ADD)

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00003/2021/SC (Cyanzayire, PJ, Hitiyaremye na Karimunda, J.) 08 Mata 2022]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ububasha bw'Urukiko – Agaciro k'ikiburanwa – Amasezerano y'ingwate n'amasezerano y'umwenda - Mu kugena ububasha bw'Urukiko mu bijyanye n'imanza zerekeye amasezerano y'ubugwate ku mitungo itimukanwa, ingwate ntigomba gutandukanywa n'umwenda wishingiwe. Umwenda wishingiwe niwo ugena ububasha bw'Urukiko aho kugira ngo bureberwe ku ngwate kuko icyo ingwate iba igamije ari ukwishingira ko umwenda uzishyurwa.

Incamake y'ikibazo: UWIMANA Saidi Salim yareze Equity Bank Rwanda Plc na BES & Supply Ltd, mu Rukiko rw'Ubucuruzi rwa Nyarugenge asaba iseswa ry'amasezerano y'ubugwate ku mutungo we wanditse kuri UPI: 1/03/07/01/248. Yavugaga ko yatije ingwate NZIZERA Aimable, uyu nawe ayitanga muri Equity Bank Rwanda Plc kubera umwenda ungana na 217.000.000 Frw BES & Supply Ltd abereye umuyobozi yari ifitiye iyo banki, nyuma aza kumenya ko uwo mwenda wishyuwe, aho kumusubiza ingwate yamutije, yongera ahabwa undi mwenda ingwate ye ikomeza gufatirwa. Urukiko ruca urubanza rwemeza ko ikirego cye nta shingiro gifite. Ajuririra mu Rukiko Rukuru rw'Ubucuruzi, rwemeza ko ubujurire bwe bufite ishingiro, ko imikirize y'urubanza rwajuririwe ihindutse, ko ingwate ku mutungo yatanzwe ku nguzanyo ya *overdraft facility* yo ku itariki ya 28/11/2016 mu buryo bunyuranyije n'amategeko iteshejwe agaciro, ko kandi igomba gusubizwa UWIMANA Saidi Salim.

Equity Bank Rwanda Plc yajuririye icyo cyemezo mu Rukiko rw'Ubujurire, ruca urubanza rwemeza ko ubujurire bwayo butakiriwe kuko butari mu bubasha bwarwo, maze Equity Bank Rwanda Plc yandikira Perezida w'Urukiko rw'Ikirenga imusaba ko urubanza nº RCOMAA 0079/2019/CA rwasubirwamo ku mpamvu z'akarengene. Amaze gusuzuma raporo yarukozweho, Perezida w'Urukiko rw'Ikirenga yafashe icyemezo cy'uko rwakongera kuburanishwa ruhabwa nº RS/INJUST/RCOM 00003/2021/SC.

Maze mu iburanisha ababuranyi bajya impaka ku kibazo cyo kumenya niba ubujurire bwa Equity Bank Rwanda Plc bwaragombaga kwakirwa mu Rukiko rw'Ubujurire. Equity Bank Rwanda Plc ivuga ko kuba umwenda ingwate ifite agaciro kangana na 19.328.000 Frw yari yishingiye ari 217.000.000 Frw, ariwo Urukiko rwagombaga gushingiraho, ko rutagombaga gutandukanya ingwate n'umwenda. UWIMANA Saidi Salim we avuga ko Urukiko rw'Ubujurire nta kosa rwakoze rwanga kwakira ubujurire bwa Equity Bank Rwanda Plc, kuko rwarebye icyaregerwaga, kandi ntiharegerwaga umwenda, ahubwo haregerwaga amasezerano y'ubugwate kandi hajemo iby'umwenda haba habayeho guhindura ikirego.

Incamake y'icyemezo: 1. Urukiko rurasanga n'ubwo koko icyaburanywe ari ingwate, ariko hashingiwe ku ngingo ya 8 y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, mu kugena ububasha bw'urukiko iyo ngwate ntiyagombaga gutandukanywa n'umwenda wishingiwe kuko icyo ingwate ziba zigamije ari ukwishingira ko umwenda uzishyurwa, zikaba zidakwiye gutandukanywa n'inshingano yo kwishyura umwenda

w'amafaranga ugeze igihe cyo kwishyurwa, kuko kandi zituma uberewemo umwenda yirinda igihombo ashobora guterwa no kutishyurwa umwenda yatanze, bityo rero ingwate zijyana n'umwenda.

Ikirego urukiko rwashyikirijwe cyo gusubirishamo ku mpamvu z'akarengane urubanza gifite ishingiro.
Ubujurire bwa kabiri bwagombaga kwakirwa bugasuzumwa.

Amategeko yashingiweho:
Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 8.

Imanza zashingiweho:
Urubanza n° RCOMAA 00052/2016/SC-RCOMAA 0057/16/CS, rwaciwe ku itariki ya 09/06/2017, haburanaga I&M Bank Ltd vs SEBULIKOKO NIYOMWUNGERI Emmanuel na RWASIBO MUTESI Béatrice, igika cya 17.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, UWIMANA Saidi Salim arega Equity Bank Rwanda Plc na BES & Supply Ltd, asaba iseswa ry'amasezerano y'ubugwate ku mutungo we wanditse kuri UPI: 1/03/07/01/248. Yavugaga ko yatije ingwate NZIZERA Aimable kugira ngo ayitange muri Equity Bank Rwanda Plc kubera umwenda ungana na 217.000.000 Frw BES & Supply Ltd abereye umuyobozi yari ifitiye iyo banki, umwenda urangiye aho kumusubiza ingwate ye, NZIZERA Aimable ayifatiraho indi nguzanyo ya 205.000.000 Frw, bituma umutungo we ukomeza gufatirwa. Equity Bank Rwanda Plc ivuga ko umwenda wa 217.000.000 Frw BES & SUPPLY Ltd itigeze iwishyura, ko amasezerano y'umwenda ungana na 205.000.000 Frw UWIMANA Saidi Salim avuga atigeze ashyirwa mu bikorwa.

[2] Ku itariki ya 17/11/2017, Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza nº RCOM 1057/2017/TC/NYGE, rwemeza ko ikirego cya UWIMANA Saidi Salim nta shingiro gifite, ko amasezerano y'ubugwate ku mutungo wanditse kuri UPI: 1/03/07/01/248 atagomba guseswa uwo mutungo ugakomeza kuba ingwate ya Equity Bank Rwanda Plc kugeza umwenda BES & SUPPLY Ltd iyifitiye wishyuwe, rutegeka UWIMANA Saidi Salim guha Equity Bank Rwanda Plc 1.800.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[3] UWIMANA Saidi Salim yajuririye Urukiko Rukuru rw'Ubucuruzi asaba ko amasezerano y'ubugwate yateshwa agaciro, anasaba Urukiko ko rwasuzuma impamvu uwo mutungo uguma mu bugwate, ariko Equity Bank Rwanda Plc yo ikomeza kuvuga ko ingwate itateshwa agaciro kandi uwayitijwe atarishyura umwenda ayibereyemo.

[4] Ku itariki ya 25/05/2018, urwo Rukiko rwaciye urubanza nº RCOMA 00815/2018/CHC/HCC, rwemeza ko ubujurire bwa UWIMANA Saidi Salim bufite ishingiro, ko

ingwate ku mutungo wanditswe kuri UPI:1/03/07/01/248 yatanzwe ku nguzanyo ya *overdraft facility* yo ku itariki ya 28/11/2016 mu buryo bunyuranyije n'amategeko iteshejwe agaciro, ko kandi igomba gusubizwa UWIMANA Saidi Salim, rutegeka Equity Bank Rwanda Plc kwishyura UWIMANA Saidi Salim 1.500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka, ikanamwishyura 125.000 Frw y'amagarama yatanze.

[5] Urukiko rwasobanuye ko kuba *historique* yo kuva ku itariki ya 01/01/2016 kugeza ku ya 08/06/2017, igaragaza ko ku itariki ya 20/02/2017 hari indishyi zaciwe ku nguzanyo ya *overdraft* yo ku itariki ya 28/11/2016, bitumvikana ukuntu BES & Supply Ltd yari gucibwa izo ndishyi ku nguzanyo itahawe n'ubwo Equity Bank Rwanda Plc ihakana ko nta yindi nguzanyo yayihaye.

[6] Rwasobanuye kandi ko Banki, nk'umunyamwuga, yakoze amakosa akabije yo kuba umunsi ingwate yagombaga kurangiriraho ku itariki ya 28/11/2016, aribwo yongeye kuyiyandikishaho itabiherewe uburenganzira na nyir'umutungo.

[7] Equity Bank Rwanda Plc yajuririye Urukiko rw'Ubujurire, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwafashe ibintu uko bitari, rutesha agaciro ingwate yahawe kandi umwenda wishingiwe utararangiza kwishyurwa.

[8] Ku itariki ya 04/09/2020, urwo Rukiko rwaciye urubanza nº RCOMAA 0079/2019/CA rwemeza ko ubujurire bwa Equity Bank Rwanda Plc butakiriwe kuko butari mu bubasha bwarwo, ruyitegeka kwishyura UWIMANA Saidi Salim 700.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[9] Urukiko rwasobanuye ko hashingiwe ku biteganywa n'igika cya 2, agace ka 8, no ku gika cya kane by'ingingo ya 52 y'Itegeko nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, no ku gaciro k'ikiburanwa kangana na 19.328.000 Frw katanzwe na UWIMANA Saidi Salim, ubujurire Equity Bank Rwanda Plc yatanze butari mu bubasha bwarwo, kubera ko agaciro k'ikiburanwa katageze nibura kuri 75.000.000 Frw, ko rero butagomba kwakirwa.

[10] Equity Bank Rwanda Plc yandikiye Perezida w'Urukiko rw'Ikirenga isaba ko urubanza nº RCOMAA 0079/2019/CA rwasubirwamo ku mpamvu z'akarengane, amaze gusuzuma ubwo busabe, ku itariki ya 17/08/2021, afata icyemezo ko urwo rubanza rwongera kuburanishwa, arwohereza mu Bwanditsi bw'Urukiko ruhabwa nº RS/INJUST/RCOM 00003/2021/SC.

[11] Urubanza rwaburanishijwe mu ruhame ku itariki ya 07/03/2022, Equity Bank Rwanda Plc ihagarariwe na Me MWESIGYE Livingstone afatanyije na Me KAREMERA Frank, naho UWIMANA Saidi Salim yunganiwe na Me NGIRIMANA Jean Pierre, BES & Supply Ltd ititabye, NZIZERA Aimable uyihagarariye akaba ataranitabiriye inama ntegurarubanza yari yaramenyeshejwe mu buryo bukurikije amategeko.

[12] Urukiko rwabanje kumva ababuranyi ku birebana n'inzitizi yari yabyukijwe na UWIMANA Saidi Salim, avuga ko ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane cyatanzwe na Equity Bank Rwanda Plc kitagomba kwakirwa kuko cyatanzwe mu buryo bunyuranyije n'amategeko kubera ko itagaragaza ikimenyetso cy'igihe batangiye ikirego mu rwego rw'akarengane. Nyuma yo kugaragariza ababuranyi ko urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane rwasomwe ku itariki ya 04/09/2020, ibaruwa isaba kurusubirishamo igashyirwa mu ikoranabuhanga rya "Sobanuza inkiko" ku itariki ya 03/10/2020,

Urukiko rwafatiye icyemezo mu ntebe ko iyo nzitizi nta shingiro ifite kubera ko bigaragara ko igihe cy'iminsi mirongo itatu (30) giteganywa n'amategeko cyubahirijwe.

[13] Urukiko rwakomereje iburanisha ku kibazo cyagibwagaho impaka aricyo cyo kumenya niba ubujurire bwa Equity Bank Rwanda Plc bwaragombaga kwakirwa mu Rukiko rw'Ubujurire.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba ubujurire bwa Equity Bank Rwanda Plc bwaragombaga kwakirwa mu Rukiko rw'Ubujurire.

[14] Me MWESIGYE Livingstone uhagarariye Equity Bank Rwanda Plc mu myanzuro ye, avuga ko Urukiko rw'Ubujurire rwanze kwakira ubujurire bwabo ruvuga ko butari mu bubasha bwarwo, aho rwasobanuye ko icyaburanwaga ari ugusesa amasezerano y'ubugwate yakozwe ku mutungo uri mu kibanza cyanditswe kuri UPI: 1/03/07/01/248, ko rushingiye kuri raporo y'igenagaciro yo ku itariki ya 17/06/2020 yerekanye ko ingwate ifite agaciro kangana na 19.328.000 Frw, ubujurire bwa kabiri bwa Equity Bank Rwanda Plc butagomba kwakirwa kuko agaciro k'ikiburanwa katageze nibura kuri 75.000.000 Frw ateganywa n'itegeko.

[15] Asobanura ko icyari cyarajuririwe mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, ari ukugira ngo hasuzumwe ibijyanye no kumenya niba umwenda warishyuwe, nk'uko Urukiko Rukuru rw'Ubucuruzi rwari rwabyemeje. Asobanura ko kuba umwenda iyo ngwate yari yishingiye ari 217.000.000 Frw, ariwo Urukiko rwagombaga gushingiraho, ko rutagombaga gutandukanya ingwate n'umwenda, ko rero ashingiye ku ngano y'uwo mwenda nta mpamvu ubujurire bwabo butari kwakirwa. Yanzura avuga ko, ashingiye ku ngingo ya 8 y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, asanga ibyo Urukiko rw'Ubujurire rwakoze rutandukanya ingwate n'umwenda iyo ngwate ishingiyeho rukanga kwakira ubujurire bwabo ari amakosa yabateje akarengane.

[16] Me KAREMERA Frank nawe uburanira Equity Bank Rwanda Plc, avuga ko Urukiko rw'Ubujurire rwakoze amakosa mu rwego rw'amategeko rutandukanya umwenda n'ingwate kubera ko ububasha bw'Urukiko bugaragazwa n'ingano y'umwenda. Avuga ko iyo rushaka kureba agaciro k'ingwate, rwari gufata ingwate zose BES & Supply Ltd ihagarariwe na NZIZERA Aimable yatijwe kugira ngo zishingire umwenda, dore ko yatijwe ingwate n'abantu benshi kuko ingwate ya UWIMANA Saidi Salim ifite agaciro ka 19.328.000 Frw yonyine itari kwishingira umwenda wa 217.000.000 Frw.

[17] UWIMANA Saidi Salim na Me NGIRIMANA Jean Pierre umwunganira, mu myanzuro yabo bavuga ko Urukiko rw'Ubujurire nta kosa rwakoze rwanga kwakira ubujurire bwa Equity Bank Rwanda Plc, kuko rwarebye icyaregerwaga, kandi ntiharegerwaga umwenda, ahubwo haregerwaga amasezerano y'ubugwate. Bavuga ko hajemo iby'umwenda haba habayeho guhindura ikirego, ibyo n'Urukiko rw'Ubujurire rukaba rwarabifasheho icyemezo aho rwasobanuye neza ko icyaregewe atari umwenda, ko ahubwo ari ugusesa amasezerano y'ubugwate.

[18] Bavuga kandi ko hashingiwe ku kiburanwa n'agaciro kacyo, babona nta karengane Equity Bank Rwanda Plc yakorewe Urukiko rwanga kwakira ubujurire bwayo kuko nayo izi neza ko

icyaregewe atari umwenda ishaka gushingiraho ububasha bw’urukiko, ko ahubwo kwari ugusesa amasezerano y’ubugwate ku mutungo wanditswe kuri UPI: 1/03/07/01/248 ufite agaciro katageze kuri 75.000.000 Frw. Bakomeza basobanura ko kuba Equity Bank Rwanda Plc ivuga ko ububasha bw’urukiko bugaragazwa n’ingano y’umwenda wishingiwe mu masezerano ataribyo, kuko umwenda wa 217.000.000 Frw Equity Bank Rwanda Plc ivuga wishingiwe n’ingwate nyinshi harimo n’iya UWIMANA Saidi Salim nk’uko bigaragara mu masezerano yasinyiwe imbere ya Noteri wa RDB ku itariki ya 03/03/2016 (Contract Financing Facility of Frw 217.000.000). Banzura bavuga ko Equity Bank Rwanda Plc idakwiye kuvuga ko inguzanyo ya 217.000.000 Frw yari kwishingirwa n’ingwate ifite agaciro kangana na 19.328.000 Frw.

UKO URUKIKO RUBIBONA

[19] Ingingo ya 8 y’Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko, iteganya ko mu manza zerekeye ibanze ku bwishyu n’ingwate y’ibitimukanwa, ububasha bw’Urukiko bugaragazwa n’umubare w’amafaranga y’umwenda wishingiwe mu mazeserano.

[20] Ingingo imaze kuvugwa yumvikanisha neza ko mu kugena ububasha bw’urukiko igihe habaye impaka ku birebana n’amasezerano y’ubugwate hatagomba kurebwa agaciro k’ingwate gusa, ko ahubwo hagomba kwitabwa no ku ngano y’umwenda iyo ngwate yari yishingiye.

[21] Muri uru rubanza, impande zombi zemeranya ko UWIMANA Saidi Salim yatije BES & Supply Ltd ihagarariwe na NZIZERA Aimable ingwate ifite agaciro ka 19.328.000 Frw kugira ngo hamwe n’izindi ngwate yishingire umwenda wa 217.000.000 Frw yagombaga guhabwa na Equity Bank Rwanda Plc. Icyo batumvikanaho kuri uru rwego, ni agaciro kagomba gushingirwaho mu kugena ububasha bw’urukiko aho UWIMANA Saidi Salim avuga ko ari agaciro k’ingwate yatije BES & Supply Ltd, mu gihe Equity Bank Rwanda Plc yo ivuga ko ikigomba gushingirwaho ari ingano y’umwenda wishingiwe.

[22] Mu kwanga kwakira ubujurire bwa kabiri bwa Equity Bank Rwanda Plc, Urukiko rw’Ubujurire rwashingiye ku masezerano y’ubugwate bw’umutungo ufite agaciro ka 19.328.000 Frw, ruvuga ko ikiburanwa ari ingwate kandi agaciro kayo kakaba katagejeje kuri 75.000.000 Frw ateganywa n’itegeko. Urukiko rurasanga n’ubwo koko icyaburanywe ari ingwate, ariko hashingiwe ku ngingo ya 8 y’Itegeko n° 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru, mu kugena ububasha bw’urukiko iyo ngwate itaragombaga gutandukanywa n’umwenda wishingiwe.

[23] Ibyo kuba ingwate idatandukanywa n’umwenda byanagarutsweho n’uru Rukiko aho mu rubanza n° RCOMAA 00052/2016/SC-RCOMAA 0057/16/CS, rushingiye ku nyandiko z’abahanga, rwemeje ko icyo ingwate ziba zigamije ari ukwishingira ko umwenda uzishyurwa, ko zidakwiye gutandukanywa n’inshingano yo kwishyura umwenda w’amafaranga ugeze igihe cyo kwishyurwa, ko kandi zituma uberewemo umwenda yirinda igihombo ashobora guterwa no kutishyurwa umwenda yatanze, ko rero ingwate zijyana n’umwenda[1].

[24] Hashingiwe ku ngingo ya 8 y’Itegeko n° 30/2018 ryo ku wa 02/06/2018 ryavuzwe haruguru, ndetse no ku ngingo ya 52, igika cya 2, agace ka 8, y’iryo Tegeko iteganya ko imwe mu

[1] Urubanza n° RCOMAA 00052/2016/SC-RCOMAA 0057/16/CS, rwaciwe ku itariki ya 09/06/2017, haburanaga I&M Bank Ltd vs SEBULIKOKO NIYOMWUNGERI Emmanuel na RWASIBO MUTESI Béatrice, igika cya 17.

mpamvu zihesha Urukiko rw'Ubujurire ububasha bwo kuburanisha mu rwego rw'ubujurire bwa kabiri imanza zaciwe n'Urukiko Rukuru rw'Ubucuruzi ari igihe izo manza zagenwemo n'Urukiko indishyi zingana nibura na 75.000.000 Frw cyangwa zifite agaciro kagenwe n'umucamanza mu gihe habaye impaka kangana na 75.000.000 Frw, Urukiko rurasanga ubujurire bwa Equity Bank Rwanda Plc bwaragombaga kwakirwa bugasuzumwa n'Urukiko rw'Ubujurire kubera ko ingwate yaburanwaga ishingiye ku mwenda urengeje 75.000.000 Frw ateganywa n'itegeko.

III. ICYEMEZO CY'URUKIKO

[25] Rwemeje ko ikirego rwashyikirijwe na Equity Bank Rwanda Plc cyo gusubirishamo ku mpamvu z'akarengane urubanza nº RCOMAA 0079/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku itariki ya 04/09/2020 gifite ishingiro;

[26] Rwemeje ko ubujurire bwa kabiri bwa Equity Bank Rwanda Plc bwagombaga kwakirwa bugasuzumwa mu Rukiko rw'Ubujurire kuko bwari mu bubasha bwarwo;

[27] Rwemeje ko iburanisha mu mizi ry'uru rubanza rizakomeza ku munsi n'isaha ababuranyi bazamenyeshwa n'ubwanditsi bw'Urukiko, hasuzumwa ingingo z'ubujurire Equity Bank Rwanda Plc yari yaratanze mu Rukiko rw'Ubujurire.