EQUITY BANK RWANDA PLC V BES & SUPPLY LTD N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00003/2021/SC (Cyanzayire, PJ, Hitiyaremye na Karimunda, J.) 18 Ugushyingo 2022]

Amategeko agenga imanza z'ubucuruzi – Irangira ry'amasezerano y'ingwate – Isano hagati y'amasezerano y'ingwate n'amasezerano y'umwenda – Igihe cyose umwenda wishingiwe utarishyurwa, ingwate yawishingiye ikomeza kugira agaciro kuko amasezerano y'ingwate ari amasezerano y'inyongera ku masezerano y'umwenda wishingiwe.

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. Ku itariki ya 08/04/2022, uru Rukiko rwaciye urubanza rubanziriza urundi, rwemeza ko ikirego rwashyikirijwe na Equity Bank Rwanda Plc cyo gusubirishamo ku mpamvu z'akarengane urubanza rwaciwe n'Urukiko rw'Ubujurire gifite ishingiro, ko ubujurire bwayo bwa kabiri bwagombaga kwakirwa bugasuzumwa kuko bwari mu bubasha bw'urukiko, iburanisha mu mizi rikomeza hasuzumwa ingingo z'ubujurire Equity Bank Rwanda Plc yari yaratanze mu Rukiko rw'Ubujurire.

Urubanza mu mizi rwaburanishijwe ikibazo cy'ingenzi cyasuzumwe ni ukumenya niba amasezerano y'ubugwate yakozwe ku mutungo uri mu kibanza UPI: 1/03/07/01/248 ataragombaga guseswa. Equity Bank Rwanda Plc isobanura ko *overdraft* ya 12.650.000 Frw yateranyijwe ku mwenda wari umaze kugera kuri 192.495.179 Frw bikabyara 205.145.179 Frw, ariwo mwenda wishyuzwaga BES & Supply Ltd ku itariki ya 28/11/2016, ibyo bikaba bitandukanye n'imiburanire ya UWIMANA Saidi Salim, aho asobanura ko ari umwenda mushya watanzwe ukomoka kuri *overdraft contract* ya 205.171.829 Frw kandi atari byo, kuko ntaho ugaragara kuri *Bank statement* ko waba waratanzwe ndetse batagaragaza aho bishyuriye umwenda bishyuzwa, ndetse ntibanagaragaze aho baherewe umwenda mushya bavuga kuko ntawigeze utangwa.

UWIMANA Saidi Salim avuga ko uretse no kuba umwenda wishingiwe n'ingwate warishyuwe, indi mpamvu bashingiraho basaba ko amasezerano bise *Abstract of Mortgage Agreement (Amendment)* yagiranye na Equity Bank Rwanda Plc na BES & Supply Ltd ku itariki ya

17/03/2016, agasinyirwa imbere ya Noteri ku ya 18/03/2016 yaseswa agasubizwa ingwate ye, ari uko n'ubundi agaciro k'ayo masezerano kagombaga kurangira ku itariki ya 28/11/2016, nyamara aho kugira ngo asubizwe ingwate, kuri uwo munsi hagasinywa andi masezerano y'umwenda mushya wa 205.171.829 Frw wongeye kwishingirwa n'ingwate ye nta burenganzira abitangiye.

Incamake y'icyemezo: 1. Ku mpamvu UWIMANA Saidi Salim ashingiraho asaba ko amasezerano y'ubugwate yakozwe ku mutungo we yaseswa ijyanye no kuba itariki ya 28/11/2016 yagombaga kurangiriraho yarenze, Urukiko rurasanga ibyo nta shingiro bigomba guhabwa kubera ko igihe cyose umwenda wishingiwe utarishyurwa, ingwate yawishingiye ikomeza kugira agaciro kuko amasezerano y'ingwate ari amasezerano y'inyongera ku masezerano y'umwenda wishingiwe.

Urubanza ruhindutse mu ngingo zarwo zose.
Amasezerano y'ubugwate yakozwe agumana agaciro kayo.

Amategeko yashingiweho:
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12.
Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

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, 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. Equity Bank Rwanda Plc yisobanuye ivuga ko umwenda wa 217.000.000 Frw BES & Supply Ltd itigeze iwishyura, ko umwenda wundi UWIMANA Saidi Salim avuga ntawigeze utangwa.

[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, ko kandi uwo mutungo ukomeza kuba ingwate ya Equity Bank Rwanda Plc kugeza igihe 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, akomeza gusaba ko amasezerano y'ubugwate ku mutungo we yaseswa, anasaba Urukiko ko rwasuzuma impamvu uwo mutungo uguma mu bugwate. Equity Bank Rwanda Plc yo yavugaga ko impamvu z'ubujurire za

UWIMANA Saidi Salim nta shingiro zifite, kuko 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, rwemeza ko imikirize y'urubanza rwajuririwe ihindutse, 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] Impamvu urwo Rukiko rwashingiyeho mu gufata icyo cyemezo ni izi zikurikira :

- Kuba *historique* ya banki 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, bikaba bitumvikana ukuntu BES & Supply Ltd yari gucibwa izo ndishyi ku nguzanyo itahawe n'ubwo Equity Bank Rwanda Plc yahakanaga ko ntayo yatanze;

- Kuba Equity Bank Rwanda Plc, nk'umunyamwuga, yarakoze amakosa akabije yo kuba umunsi ingwate yagombaga kurangiriraho ku itariki ya 28/11/2018, aribwo yongeye kwiyandikishaho iyo ngwate itabiherewe uburenganzira na nyir'umutungo.

[6] Equity Bank Rwanda Plc yajuririye icyo cyemezo mu Rukiko rw'Ubujurire, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwafashe ibintu uko bitari, rutesha agaciro ingwate yahawe kandi umwenda yatangiwe utararangira.

[7] Ku itariki ya 04/09/2020, Urukiko rw'Ubujurire 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.

[8] Mu gufata icyo cyemezo, Urukiko rw'Ubujurire rwashingiye ku mpamvu y'uko icyaburanwaga kandi cyaregewe mu manza zabanje ari ugusesa amasezerano y'ubugwate ku nzu ya UWIMANA Saidi Salim, kandi agaciro k'ingwate kakaba kangana na 19.328.000 Frw atageze kuri 75.000.000 Frw ateganywa mu ngingo ya 52, igika cya 2, agace ka 8, y'Itegeko nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko kugira ngo ubujurire bwa kabiri bube mu bubasha bwarwo.

[9] Equity Bank Rwanda Plc yandikiye 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.

[10] 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. Kuri uwo munsi, ababuranyi bagiye impaka ku kibazo cyo kumenya niba ubujurire bwa Equity Bank Rwanda Plc bwari mu bubasha bw'Urukiko rw'Ubujurire, bityo bukaba bwaragombaga kwakirwa.

[11] Ku itariki ya 08/04/2022, uru Rukiko rwaciye urubanza rubanziriza urundi, rwemeza 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, ko ubujurire bwayo bwa kabiri bwagombaga kwakirwa bugasuzumwa kuko bwari mu bubasha bw'urukiko, rutegeka ko iburanisha mu mizi ry'urubanza rizakomeza hasuzumwa ingingo z'ubujurire Equity Bank Rwanda Plc yari yaratanze mu Rukiko rw'Ubujurire.

[12] Equity Bank Rwanda Plc yanengaga icyemezo cyafashwe n'Urukiko Rukuru ivuga ko rwafashe ibintu uko bitari mu kwemeza ko hari amafaranga *(Bank Charges)* yakaswe BES § Supply Ltd ku mwenda wa 205.171.829 Frw kandi ataribyo, ndetse ko rwirengagije ibimenyetso yatanze birimo inyandiko zigaragaza ko amasezerano y'umwenda wa 205.171.829 Frw atashyizwe mu bikorwa, ahubwo umwenda wishyuzwa ari uwa 217.000.000 Frw wishingiwe n'ingwate iregerwa muri uru rubanza.

[13] UWIMANA Saidi Salim we akomeza gushimangira ko umwenda wa 217.000.000 Frw wishingiwe n'ingwate yatije NZIZERA Aimable mu izina rya BES & Supply Ltd ahagarariye wishyuwe, aho gusubizwa ingwate ye agahabwa undi mwenda wa 205.171.829 Frw nta burenganzira abitangiye.

[14] Urubanza mu mizi rwaburanishijwe mu ruhame ku itariki ya 17/10/2022, ababuranyi bahagarariwe nka mbere, BES & Supply Ltd nanone ititabye. Ikibazo cy'ingenzi cyasuzumwe muri uru rubanza ni ukumenya niba amasezerano y'ubugwate yakozwe ku mutungo uri mu kibanza UPI: 1/03/07/01/248 ataragombaga guseswa nk'uko Urukiko Rukuru rw'Ubucuruzi rwabyemeje. Hanasuzumwe kandi ikibazo cy'indishyi zasabwe muri uru rubanza.

II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURWA RYABYO

a) Kumenya niba amasezerano y'ubugwate yakozwe ku mutungo uri mu kibanza UPI: 1/03/07/01/248 ataragombaga guseswa.

[15] Me MWESIGYE Livingstone na Me KAREMERA Frank bahagarariye Equity Bank Rwanda Plc, bavuga ko icyo banenga mu rubanza nº RCOMA 00815/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku itariki ya 25/05/2018, ari uko urwo Rukiko rwafashe ibintu uko bitari rukemeza ko Equity Bank Rwanda Plc yahaye BES & Supply Ltd umwenda wa kabiri rushingiye ku kuba hari umufuragiro *(overdraft charges)* ungana na 379.500 Frw yaciwe ku itariki ya 20/02/2017[1]. Basobanura ko izo *charges* zikomoka kuri *overdraft* ingana na 12.650.000 Frw yahawe BES & Supply Ltd ku itariki ya 28/11/2016 nyuma yo kuyisaba amafaranga ngo ijye kwishyura abakozi kugira ngo barangize akazi, noneho BES & Supply Ltd ibone kwishyurwa

[1] Igika cya 20 cy'urubanza n° RCOMA 00815/2018/CHC/HCC

n'Akarere ka Gicumbi, cyane cyane ko yagaragazaga ko nayo izahita yishyura Equity Bank Rwanda Plc umwenda wose wari ugeze kuri 192.495.179 Frw icyo gihe.

[16] Basobanura kandi ko *overdraft* ya 12.650.000 Frw yateranyijwe ku mwenda wari umaze kugera kuri 192.495.179 Frw bikabyara 205.145.179 Frw, ariwo mwenda wishyuzwaga BES & Supply Ltd ku itariki ya 28/11/2016, ibyo bikaba bitandukanye n'imiburanire ya UWIMANA Saidi Salim, aho asobanura ko ari umwenda mushya watanzwe ukomoka kuri *overdraft contract* ya 205.171.829 Frw kandi atari byo, kuko ntaho ugaragara kuri *Bank statement* ko waba waratanzwe. Bavuga ko amafaranga agaragara ari 205.145.179 Frw akomoka ku mwenda wa 217.000.000 Frw, ko ikindi gishimangira ko nta mwenda wa 205.171.829 Frw wigeze utangwa ngo wishingirwe n'ingwate y'umutungo wa UWIMANA Saidi Salim ari uko iyo ngwate itigeze yongera kwandikishwa.

[17] Bakomeza basobanura ko hakurikijwe ibisobanuro byatanzwe na Equity Bank Rwanda Plc mu ibaruwa yayo yo ku itariki ya 31/01/2018, *overdraft* ya 12.650.000 Frw itandukanye n'iya 205.171.829 Frw itarigeze itangwa. Bavuga ko ibisobanuro byatanzwe na BES & Supply Ltd mu ibaruwa yandikiye Banki UWIMANA Saidi Salim aburanisha bidakwiye guhabwa ishingiro, kuko batagaragaza aho bishyuriye umwenda bishyuzwa, ndetse ntibanagaragaze aho baherewe umwenda mushya bavuga wa 205.171.829 Frw, kuko ntawigeze utangwa.

[18] Bavuga kandi ko hari n'abandi bantu bari bafite ikibazo kimeze nk'icya UWIMANA Saidi Salim, aho nabo bavugaga ko umwenda wa 217.000.000 Frw wari wishingiwe n'ingwate zabo batije BES & Supply Ltd warangije kwishyurwa, bagasaba ko basubizwa ingwate zabo, bose bakaba baratsinzwe n'uko batashoboye kugaragariza inkiko uko uwo mwenda wishyuwe.

[19] Banzura basaba ko amasezerano y'ubugwate yo ku itariki ya 18/03/2016 UWIMANA Saidi Salim asaba ko yaseswa yagumana agaciro kayo kugeza umwenda wishingiwe wishyuwe.

[20] UWIMANA Saidi Salim na Me NGIRIMANA Jean Pierre umwunganira, bavuga ko umwenda wa 217.000.000 Frw wari wishingiwe n'ingwate ye warangije kwishyurwa, nyuma ku itariki ya 28/11/2016 hagasinywa andi masezerano y'umwenda mushya wa 205.171.829 Frw nawo ukishingirwa n'ingwate ye kandi nta burenganzira abitangiye, ariyo mpamvu bakomeje gusaba ko amasezerano y'ubugwate yari ashingiye ku mwenda wa mbere yaseswa UWIMANA Saidi Salim agasubirana umutungo we.

[21] Bavuga ko ibisobanuro bya Equity Bank Rwanda Plc ko amafaranga y'umufuragiro *(overdraft charges)* yaciwe BES & Supply Ltd ku itariki ya 20/02/2017 angana na 379.500 Frw akomoka kuri *overdraft* ya 12.650.000 Frw yo ku itariki ya 28/11/2016 yahaye BES & Supply Ltd nyuma y'uko iyisabye kuyiha amafaranga yo guhemba abakozi bitakwitabwaho, kuko yaba ihinduye ikirego kubera ko ibyo bitigeze bivugwaho mu manza zose zabanje.

[22] Bakomeza bavuga ko, uretse n'ibyo, *historique* yatanzwe na Equity Bank Rwanda Plc igaragaza ko ku itariki ya 20/02/2017 BES & Supply Ltd yakaswe 379.500 Frw, impamvu zayo zikitwa *charges on an overdraft granted* on 28/11/2016, ibyo ariko akaba atari ukuri, kuko 12.650.000 Frw bavuga agaragara kuri *historique* ari amafaranga NZIZERA Aimable uhagarariye BES & Supply Ltd yabikuje amaze kwemererwa umwenda mushya wa 205.171.829 Frw *(Temporary overdraft facility of Rwf 205,171,829)* nk'uko bigaragazwa n'amasezerano yo ku

itariki ya 24/11/2016 yashyizweho umukono imbere ya Noteri ku itariki ya 28/11/2016, bigahuza neza amatariki n'amazina by'izo *charges* bavuga. Bavuga ariko ko n'iyo *historique* banayikemanga kuko amatariki ayiriho adahura, ngo kuko nta kuntu ku itariki ya 20/02/2017, bari guca amafaranga y'umufuragiro *(overdraft charges)* ku mwenda watanzwe ku itariki ya 28/11/2016 kandi ubusanzwe iyo umwaka urangiye bafunga *operations* zose, bityo ahubwo bagasaba ko n'iyo *historique* yateshwa agaciro kubera ko Banki ariyo iyikorera ikanayigenzura.

[23] Bavuga kandi ko n'iyo bashingira kuri iyo *historique* Equity Bank Rwanda Plc yitangiye, basanga nta karengane kari mu rubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, cyane cyane ko na yo ubwayo yemera ko umwenda yishyuza BES & Supply Ltd ari uwa 205.145.179 Frw witwa *overdraft* nk'uko babyivugira mu mwanzuro wabo, ko ibyo bituma bibaza niba amasezerano y'uwo mwenda bemera wa 205.145.179 Frw yitwa *overdraft* yaba adahari koko. Bavuga ko impamvu bibaza ibyo ari uko iyo umwenda uhinduye izina n'umubare hakorwa amasezerano mashya (novation). Bavuga nanone ko nta kuntu Banki yasobanurira urukiko uburyo yasinye amasezerano ya kabiri aya mbere atishyuwe, ko ari yo mpamvu bakomeje gusaba urukiko gutegeka ko umutungo ubaruye kuri UPI: 1/03/07/01/248 ukurwa mu bugwate UWIMANA Saidi Salim akawusubirana.

[24] UWIMANA Saidi Salim n'umwunganizi we barangiza bavuga ko ikindi kimenyetso kigaragaza ko umwenda wa 217.000.000 Frw ingwate ye yari ishingiyeho wishyuwe, ari ibaruwa BES & Supply Ltd yandikiye Equity Bank Rwanda Plc ku itariki ya 12/04/2017, iyimenyesha ko umwenda bishyuzaga ushingiye ku masezerano yarangiye, ko iyo baruwa yakiriwe na Equity Bank Rwanda Plc ku itariki ya 18/04/2017, kugeza n'ubu ikaba itarigeze ihabwa igisubizo.

[25] Bavuga kandi ko, uretse no kuba umwenda wishingiwe n'ingwate ya UWIMANA Saidi Salim warishyuwe, indi mpamvu bashingiraho basaba ko amasezerano bise *Abstract of Mortgage Agreement (Amendment)* UWIMANA Saidi Salim yagiranye na Equity Bank Rwanda Plc na BES & Supply Ltd ku itariki ya 17/03/2016, agasinyirwa imbere ya Noteri ku ya 18/03/2016 yaseswa agasubizwa ingwate ye, ari uko n'ubundi agaciro k'ayo masezerano kagombaga kurangira ku itariki ya 28/11/2016, nyamara aho kugira ngo asubizwe ingwate, kuri uwo munsi hagasinywa andi masezerano y'umwenda mushya wa 205.171.829 Frw wongeye kwishingirwa n'ingwate ye nta burenganzira abitangiye.

UKO URUKIKO RUBIBONA

[26] Ikibazo cy'ingenzi kiri muri uru rubanza impande zombi zitumvikanaho, ni icyo kumenya niba umwenda wa 217.000.000 Frw wari warishingiwe n'ingwate ya UWIMANA Saidi Salim warishyuwe ku buryo akwiye gusubizwa ingwate ye.

[27] Ingingo ya 12, igika cya mbere, 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 ko *urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda*. Ibiteganywa n'iyo ngingo, binahura n'ibivugwa mu ngingo ya 3, igika cya mbere, y'Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko *buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana*.

[28] Mu gusaba ko amasezerano y'ubugwate *(abstract of mortgage agreement)* yakozwe ku itariki ya 18/03/2016 yateshwa agaciro agasubirana ingwate ye, UWIMANA Saidi Salim arashingira ku bintu bibiri by'ingenzi :

- Kuba umwenda wa 217.000.000 Frw wari wishingiwe n'ingwate ye warishyuwe;

- Kuba amasezerano y'ubugwate yaragombaga kurangira ku itariki ya 28/11/2016 nk'uko bikubiye muri ayo masezerano.

[29] Ibimenyetso UWIMANA Saidi Salim ashingiraho yemeza ko umwenda wari wishingiwe n'ingwate ye wishyuwe ni ibi bikurikira:

- Amasezerano y'umwenda ungana na 205.171.829 Frw yasinywe ku itariki ya 28/11/2016 hagati ya Equity Bank Rwanda Plc na BES & Supply Ltd (*Temporary overdraft facility of Rwf 205,171,829).* Mu gusobanura icyo kimenyetso, avuga ko nta kuntu BES & Supply Ltd yari guhabwa umwenda mushya itabanje kwishyura uwa mbere;

- *Historique* igaragaza ko ku itariki ya 20/02/2017, Banki yaciye BES & Supply Ltd 379.500 Frw ivuga ko ari amafaranga y'umufuragiro akomoka ku mwenda yari yayihaye ku itariki ya 28/11/2016 *(charges on an overdraft granted on 28-11-2016;*

- Ibaruwa yo ku itariki ya 14/04/2017 BES & Supply Ltd yandikiye Equity Bank Rwanda Plc iyimenyesha ko amasezerano y'umwenda wa 217.000.000 Frw Banki yashingiragaho yishyuza yarangiye, ko ahubwo ayagombaga gushingirwaho ari ayo ku itariki ya 24/11/2016 y'umwenda wa 205.171.829 Frw.

[30] Ku birebana no kumenya niba umwenda wa 217.000.000 Frw warishyuwe nk'uko UWIMANA Saidi Salim abivuga, inyandiko ziri muri dosiye ziragaragaza ko ku itariki ya 03/03/2016, hagati ya Equity Bank Rwanda Plc na BES & Supply Ltd hasinywe amasezerano y'umwenda umaze kuvugwa, ayo masezerano akaba yarateganyaga ko umwenda ugomba kuba wishyuwe mu gihe cy'amezi atandatu uhereye umunsi uhawe umwenda azatangira kubikuriza amafaranga *(The advance will be repaid in full directly from your savings accout in Six (6) months (P+1) from the date of drawdown)*. *Historique* iri muri dosiye yerekana ko ku itariki ya 21/03/2016, kuri konti ya BES & Supply Ltd 4002200243705, hashyizweho 217.000.000 Frw, ku munsi ukurikiyeho itangira kubikuzwaho, bivuze ko, hakurikijwe amasezerano amaze kuvugwa, ku itariki ya 21/09/2016, umwenda wose wagombaga kuba wishyuwe.

[31] Nk'uko *historique* ikomeza ibyerekana, Urukiko rurasanga kuri iyo tariki uwo mwenda wari utarishyurwa, kubera ko ku itariki ya 31/08/2016, kuri konti ya BES & Supply Ltd hariho *balance* ya -207.204 Frw, mu gihe ku itariki ya 30/09/2016 hariho -211.289 Frw. *Historique* igaragaza kandi ko ku itariki ya 18/10/2016, Banki yiyishyuye wa mwenda wa 217.000.000 Frw, ariko kubera ko kuri konti hariho 27.984.771,54 Frw gusa, bituma BES & Supply Ltd ikomeza gusigarana umwenda ungana na 189.015.228,46 Frw. Ku itariki ya 31/10/2016, biragaragara ko kuri konti ya BES & Supply Ltd hakuweho andi 3.479.950 Frw y'inyungu, bituma uwo umwenda ukomeza kwiyongera, ku buryo kuri iyo tariki wanganaga na 192.495.179,11 Frw. *Historique* igaragaza nanone ko ku itariki ya 28/11/2016, NZIZERA Aimable ariwe uhagarariye BES & Supply Ltd yemerewe kubikuza 12.650.000 Frw kandi kuri konti nta mafaranga yari ariho,

umwenda uragenda noneho ugera kuri 205.145.179,11 Frw. Kuva ku itariki imaze kuvugwa, *historique* iragaragaza ko nta yandi mafaranga yigeze ashyirwa kuri konti ya BES & Supply Ltd, ahubwo hagiye hakurwaho amafaranga anyuranye agendanye n'inyungu n'izindi *charges* ku buryo kugeza ku itariki ya 31/05/2017, umwenda wose wari umaze kugera kuri 260.635.248 Frw.

[32] Ku bivugwa na UWIMANA Saidi Salim ko umwenda ukubiye mu masezerano yo ku itariki ya 03/03/2016 wishyuwe, ko ahubwo umwenda ugaragara muri *historique* ari undi mwenda wa 205.171.829 Frw wahawe BES & Supply Ltd, ibyo akabishingira ku masezerano yo ku itariki ya 28/11/2016 ari muri dosiye, Urukiko rurasanga, n'ubwo koko ayo masezerano yashyizweho umukono n'impande zombi, bigakorerwa imbere ya Noteri, nyamara ukurikije ibigaragazwa muri *historique* ya Banki, nta cyerekana ko ayo masezerano yashyizwe mu bikorwa, kuko nta hagaragara ko ayo mafaranga yigeze ashyirwa kuri konti ya BES & Supply Ltd nk'uko byagenze ku mwenda wa mbere.

[33] Ku bivugwa nanone na UWIMANA Saidi Salim ko impamvu ahamya ko uwo mwenda wa kabiri watanzwe, kandi ukaba utari gutangwa uwa mbere utarishyurwa, ari uko ku itariki ya 20/02/2017, Banki yaciye BES & Supply Ltd amafaranga y'umufuragiro angana na 379.500 Frw ikavuga ko akomoka ku mwenda yayihaye ku itariki ya 28/11/2016 *(charges on an overdraft granted on 28/11/2016)*, iyi akaba ari nayo mpamvu n'Urukiko Rukuru rw'Ubucuruzi rwashingiyeho rwemeza ko umwenda wa kabiri watanzwe koko, Urukiko rurasanga ibi nta shingiro bifite kubera ko kuri iyo tariki nta mafaranga avugwa mu masezerano UWIMANA Saidi Salim aburanisha yigeze ashyirwa kuri konti ya BES & Supply Ltd. Icyakozwe kuri iyo tariki, ni uko NZIZERA Aimable uhagarariye BES & Supply Ltd yemerewe *overdraft* ya 12.650.000 Frw akayabikuza, aribyo byatumye umwenda yari afite ukomeza kwiyongera nk'uko byasobanuwe haruguru, izo *charges* akaba ariho zikomoka kubera ko kuva yakwemererwa kubikuza nta faranga na rimwe yigeze yishyura.

[34] Ibaruwa yo ku itariki ya 14/04/2017 BES & Supply Ltd yandikiye Equity Bank Rwanda Plc iyimenyesha ko amasezerano y'umwenda wa 217.000.000 Frw yashingiragaho iyishyuza yarangiye UWIMANA Saidi Salim aburanisha, Urukiko rurasanga itafatwaho ikimenyetso cy'uko uwo mwenda wishyuwe, kubera ko, nk'uko bimaze gusobanurwa, ntaho bigaragara muri *historique* iri muri dosiye ko uwo mwenda wishyuwe koko, byongeye kandi hakaba ntaho Equity Bank Rwanda Plc yigeze yemeranya n'ibyo BES & Supply Ltd yavugaga muri iyo baruwa.

[35] Ku bivugwa nanone na UWIMANA Saidi Salim ko *historique* Equity Bank Rwanda Plc itanga nk'ikimenyetso cy'uko itigeze yishyurwa atayemera ngo kuko ayikemanga, Urukiko rurasanga nta mpamvu yayikemanga kuri uru rwego, mu gihe nyamara yayemeraga mu manza zaciwe mbere, ndetse n'Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza Equity Bank Rwanda Plc yajuririye akaba ari cyo kimenyetso rwashingiyeho.

[36] Ku yindi mpamvu UWIMANA Saidi Salim ashingiraho asaba ko amasezerano y'ubugwate yakozwe ku mutungo we yaseswa ijyanye no kuba itariki ya 28/11/2016 yagombaga kurangiriraho yarenze, Urukiko rurasanga ibyo nta shingiro bigomba guhabwa kubera ko igihe cyose umwenda wishingiwe utarishyurwa, ingwate yawishingiye ikomeza kugira agaciro kuko amasezerano y'ingwate ari amasezerano y'inyongera ku masezerano y'umwenda wishingiwe. Uyu murongo ni nawo wafashwe n'uru Rukiko mu rubanza nº RCOMAA 00052/2016/SC-RCOMAA 0057/16/CS rwaburanwaga hagati ya I&M Bank Plc na SEBULIKOKO NIYOMWUNGERI Emmanuel

n'undi[2]. Muri urwo rubanza, impaka zari zishingiye ku kumenya niba banki yaragurishije ingwate zari zarataye agaciro kuko itariki y'amasezerano y'ubugwate yarangiye ntihabeho kongera kuzandikisha. Urukiko, rwifashishije inyandiko z'ahanga, rwemeje ko icyo ingwate ziba zigamije ari ukwishingira ko umwenda uzishyurwa, ko zitatandukanywa n'inshingano yo kwishyura umwenda w'amafaranga ngenagihe *(obligations de somme d'argent à terme)*, zigatuma uberewemo umwenda yirinda igihombo ashobora guterwa no kutishyurwa umwenda yatanze.

[37] Urukiko rurasanga kandi na UWIMANA Saidi Salim ubwe yari abizi ko byashobokaga ko umwenda wishingiwe n'ingwate ye utakwishyurwa, kubera ko mu masezerano yo gutiza ingwate yagiranye na BES & Supply Ltd, mu ngingo yayo ya 4, bumvikanye uko bizagenda mu gihe yananirwa kubahiriza amasezerano yo gusubiriza ku gihe ingwate ba nyirayo biturutse ku kutishyura inguzanyo yahawe bikagera aho ifatirwa cyangwa igatezwa cyamunara[3]. Ibi ni nabyo UWIMANA Saidi Salim agarukaho mu ibaruwa yo ku itariki ya 30/12/2016 yandikiye BES & Supply Ltd ubwo yamusabaga ibyangombwa by'ingwate yabatije.

[38] Hashingiwe ku ngingo z'amategeko zagaragajwe haruguru ndetse no ku bisobanuro bimaze gutangwa, Urukiko rurasanga nta kigaragaza ko umwenda wa 217.000.000 Frw wari wishingiwe n'ingwate ya UWIMANA Saidi Salim wishyuwe ku buryo amasezerano y'ubugwate yakozwe kuri iyo ngwate yaseswa akayisubirana.

b) Kumenya niba indishyi ababuranyi basaba bakwiye kuzihabwa.

[39] Me MWESIGYE Livingstone uhagarariye Equity Bank Rwanda Plc avuga ko abaregwa aribo bayishoye mu manza bigatuma yiyambaza abanyamategeko kugira ngo ishobore guhagararirwa mu nkiko mu rwego rwo kubungabunga inyungu zayo, ibi bikaba byaratumye igira ibyo itakaza, kubera iyo mpamvu ikaba ibisabira indishyi zingana na 7.050.000 Frw akubiyemo:

- 5.000.000 Frw y'igihembo cya Avoka;
- 2.000.000 Frw y'ikurikiranarubanza;
- 50.000 Frw y'ingwate y'igarama ryatanzwe mu Rukiko rw'Ubujurire.

[40] Avuga ko ku rundi ruhande indishyi zisabwa na UWIMANA Saidi Salim nta shingiro zahabwa kuko ariwe wishoye mu manza, cyane cyane ko yari azi neza ko uwo yatije ingwate atigeze yishyura umwenda wari wishingiwe ahubwo akarenga akajya kurega, bityo akaba agomba kwirengera ingaruka zabyo.

[41] UWIMANA Saidi Salim na Me NGIRIMANA Jean Pierre umwunganira bavuga ko basaba Urukiko gutegeka Equity Bank Rwanda Plc kumuha indishyi zo gushorwa mu manza z'amaherere n'izo kuba atabyaza umusaruro umutungo we zingana na 5.000.000 Frw hamwe n'igihembo cya Avoka kingana na 2.000.000 Frw.

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[2] Urubanza n° RCOMAA 00052/2016/SC-RCOMAA 0057/16/CS rwaciwe ku itariki ya 09/06/2017, igika cya 17 n'icya 20.

[3] Muri ayo masezerano bumvikanye ko BES & Supply Ltd nitishyura umwenda ingwate igafatirwa cyangwa igatezwa cyamunara, izishyura iyo ngwate ku gaciro kari mu masezerano hiyongeyeho igihombo izaba yateje ba nyirayo n'izindi ndishyi.

UKO URUKIKO RUBIBONA

[42] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka kimwe n'ay'igarama ryatanzwe mu Rukiko rw'Ubujurire Equity Bank Rwanda Plc isaba igomba kuyahabwa kuko itsinze urubanza kandi bikaba bigaragara ko byabaye ngombwa kurukurikirana no gushyiraho Abavoka bayiburanira. Urukiko rurasanga ariko 5.000.000 Frw y'igihembo cya Avoka na 2.000.000 Frw y'ikurikiranarubanza isaba ari menshi kandi idasobanura uko iyabara, bityo mu bushishozi bwarwo rukaba ruyigeneye 500.000 Frw y'igihembo cy'Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw hiyongeyeho na 50.000 Frw y'ingwate y'igarama yatanzwe mu Rukiko rw'Ubujurire.

[43] Ku birebana n'indishyi zisabwa na UWIMANA Saidi Salim, Urukiko rurasanga ntazo agomba guhabwa kuko ntacyo atsindiye muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[44] Rwemeje ko urubanza nº RCOMA 00815/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku itariki ya 25/05/2018 ruhindutse mu ngingo zarwo zose;

[45] Rwemeje ko amasezerano y'ubugwate yakozwe ku mutungo uri mu kibanza UPI: 1/03/07/01/248 agumana agaciro kayo;

[46] Rutegetse UWIMANA Saidi Salim guha Equity Bank Rwanda Plc 800.000 Frw akubiyemo ay'igihembo cya Avoka n'ay'ikurikiranarubanza, no kuyisubiza 50.000 Frw y'ingwate y'igarama yatanze mu Rukiko rw'Ubujurire.