BANQUE POPULAIRE DU RWANDA PLC v. AKARERE KA NYAMASHEKE

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00006/2022/SC, (Nyirinkwaya, P.J., Hitiyaremye na Karimunda, J.) 27 Mutarama 2023]

Amategeko agenga imanza z'ubucuruzi – Amasoko ya Leta – Ntibihagije kuvuga gusa ko urubanza rufite ingaruka ku mutekano w'igihugu cyangwa ituze rusange, ahubwo ubiburanisha agomba kugaragaza isano iri hagati y'ibyo aburana, yaba abiregera cyangwa abiregwa, n'umutekano w'igihugu, bivuze ko kuba umuburanyi aciwe inyungu z'ubukererwe atishimiye yaba ku bijyanye n'impamvu zashingiweho cyangwa ingano yazo ntabwo aribyo byafatwa nk'impamvu yahungabanya ituze rusange ry'igihugu.

Amategeko agenga imanza z'ubucuruzi – Amasoko ya Leta – Amasezerano hagati y'abantu ku giti cyabo atandukanye n'amasezerano arebana n'Amasoko ya Leta ubundi ashyirwa mu bikorwa hifashishijwe imisoro y'abaturage kandi hagamijwe gukora igikorwa kiri mu nyungu rusange – Iyi nyungu rusange ntabwo buri gihe iboneka mu masezerano hagati y'abantu ku giti cyabo. Nyamara kandi iyo nyungu rusange niyo itegeka Urwego rutanga isoko gushingira ku mategeko yihariye agamije gusobanura uburyo amasezerano azashyirwa mu bikorwa no gushyira ku munzani uburenganzira n'inshingano by'abakoranye amasezerano.

Amategeko agenga imanza z'ubucuruzi – Amasoko ya Leta – Amasezerano – Inyungu – N'ubwo inkiko zidakwiye gusubira mu masezerano yakozwe hagati y'ababuranyi, zifite inshingano zo kugarura mu bushishozi bwazo ingano y'inyungu zishyuzwa ku kigero nyakuri cy'igihombo cyatejwe.

Amategeko agenga imanza z'ubucuruzi – Amasoko ya Leta – Amasezerano – Icyerekezo Umushingamategeko w'u Rwanda yahaye inyungu z'ubukererwe mu Itegeko rishya gishimangira ko no mu Itegeko n° 12/2007 ryo ku wa 27/03/2007 ryavuzwe haruguru, atashatse ko urwego rwatanze isoko rwikungahaza nta mpamvu cyangwa ko umwishingizi aterwa igihombo no kwishyuzwa inyungu z'ubukererwe zibarwa ubuzira herezo hatanitawe kubyo uzihawe yatakaje, kuko yaba kimwe cyangwa ikindi, gitera akarengane.

Amategeko agenga amasoko ya Leta – Ingingo ya 78 y'Itegeko N° 12/2007 ryo ku wa 27/03/2007 rigenga Amasoko ya Leta yaje guhinduka iya 64 y'Itegeko N° 62/2018 ryo ku wa 25/08/2018 rigenga Amasoko ya Leta niyo ihuje kamere n'ikiburanwa ndetse ikaba ariyo igomba gushingirwaho mu gukiranura ababuranyi ku kibazo cy'inyungu z'ubukererwe, niyo igomba gukoreshwa kuri uru rubanza cyane cyane ko ari nayo yari iriho amasezerano.

Amategeko agenga imanza z'ubucuruzi – Inyungu – Inyungu z'ubukererwe – Inyungu ziteganywa n'itegeko zigomba kuba zihagije kugira ngo zice intege abashaka kwica itegeko kandi ntizigomba kubogamira ku ruhande ruzisaba gusa – Inyungu zemejwe ko ari umurengera zigomba kugarukira ku rugero rwagenwe n'Urukiko mu bushishozi bwarwo, zipfa kutarenga izikenewe mu gukosora ibyangijwe kandi zigatanga isomo kugira ngo ibyatumye zitangwa bitazasubira.

Incamake y'ikibazo: Akarere ka Nyamasheke kareze ko Entreprise Hategeka Consult & TP, ihagarariwe na Hategeka Célestin mu Rukiko Rwisumbuye rwa Rusizi ivuga ko yataye imirimo yari yahawe nayo yo kubaka ikigo cy'amashuri cya Shangi itarangiye, bityo ko Banque Populaire

du Rwanda (BPR) Plc ubu yahindutse BPR Bank Plc, yishingiye iyo mirimo ikwiye kwishyura ingwate yatanzwe kugira ngo ibisigaye bikorwe nta gihombo biteje.

BPR Bank Plc yasabye Urukiko kutakira ikirego kuko yareganywe na Hategeka Célestin kandi harishingiwe Entreprise Hategeka Consult & TP, kandi ko impande zombi zumvikanye ko amakimbirane yose akomoka ku ishyirwa mu bikorwa ry'amasezerano azakemurwa n'Abakemurampaka.

Urukiko rwaregewe rwaciye urubanza rusanga hari ingingo y'amasezerano yabaye hagati y'Akarere ka Nyamasheke na Entreprise Hategeka Consult & TP iteganya ko ibyo impande zombi zitazumvikanaho bizabanza gushyikirizwa Abakemurampaka mbere yo kuregerwa inkiko, bityo ko ikirego kitakiriwe kuko kitari mu bubasha bwarwo.

Nyuma yaho, Akarere ka Nyamasheke nako karegeye Urukiko rw'Ubucuruzi, kavuga ko ku wa 17/05/2010, kamenyesheje BPR Bank Plc ko Entreprise Hategeka Consult & TP, yabereye umwishingizi, yataye isoko ryo kubaka Ikigo cy'Amashuri cya Shangi itarangije imirimo, bityo ko banki igomba kwishyura 39.870.470 Frw y'ingwate yo gutangiza imirimo na 19.935.235 Frw y'ingwate yo kurangiza neza imirimo, ariko ikaba itarishyuye, bityo ko gasaba kwishyurwa ingwate ndetse n'inyungu zazo nk'uko biteganywa n'amategeko.

BPR Bank Plc yabanje gusaba ko ikirego kitakirwa kuko cyafashweho umwanzuro n'Urukiko Rwisumbuye rwa Rusizi, ariko ivuga ko mu gihe cyaba cyakiriwe, Urukiko rwakwemeza ko ntacyo ikwiye kuryozwa kuko ingwate zose zishyuwe. Naho ku bijyanye n'inyungu zishyuzwa, isaba Urukiko kwemeza ko izo nyungu ari umurengera, rukazigabanya zigashyirwa ku kigero gikwiye.

Urukiko rw'Ubucuruzi rwaciye urubanza ku nzitizi yo kutakira ikirego, rusanga mu masezerano y'ubwishingire *(cautionnement)* yaregewe ntahateganyijwe ubukemurampaka, rwanzura ko ayo masezerano adakwiye kwitiranywa n'ayakozwe hagati ya rwiyemezamirimo n'Akarere ka Nyamasheke, bityo ko inzitizi nta shingiro ifite.

Mu rubanza mu mizi, urukiko rwasanze impande zombi zemeranywa ko ingwate zamaze kwishyurwa, naho kuba BPR Bank Plc yararengeje iminsi icumi (10) itarishyura izo ngwate, ari amakosa igomba kuryorezwa inyungu. Ku bijyanye n'inyungu zishyurwa ku ngwate yo gutangiza imirimo, rusanga nta gipimo zateganyirijwe, bityo ko mu bushishozi bw'Urukiko, BPR Bank Plc igomba kwishyura izihwanye n'iyo ngwate yakerereanywe.

Ku bijyanye n'inyungu ku ngwate yo kurangiza imirimo neza, Urukiko rwasanze hashingiwe ku ingingo y itegeko rigenga Amasoko ya Leta ryakoreshwaga icyo gihe, izo nyungu zikwiye kubarirwa ku kigero cya 1% ya y'ingwate yo kurangiza neza imirimo ku munsi kugeza igihe ingwate yo kurangiza imirimo neza yishyuriwe.

BPR Bank Plc yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko inyungu z'ubukererwe ku ngwate yo kurangiza imirimo neza zitagombaga gushingira ku Itegeko rigenga Amasoko ya Leta, kuko Akarere ka Nyamasheke kishyuje igihe cya *garantie* cyararangiye.

Urukiko Rukuru rw'Ubucuruzi rwanzuye ko ubujurire bwa BPR Bank Plc bufite ishingiro kuri bimwe, bityo ko inyungu zibazwe ku ngwate yo kurangiza imirimo neza zikuweho, hakishyurwa izingana n'iyo ngwate.

Akarere ka Nyamasheke kajuririye Urukiko rw'Ubujurire kavuga ko Urukiko Rukuru rw'Ubucuruzi rwabaze inyungu z'ubukererwe mu buryo bunyuranyije n'Itegeko rigenga Amasoko ya Leta ndetse n'umurongo watanzwe n'Urukiko rw'Ikirenga kuri icyo kibazo.

BPR Bank Plc yireguye ivuga ko inyungu z'umurengera zitajyanye n'igihombo zigomba gukurwaho, kandi ko n'umurongo Akarere ka Nyamasheke kaburanishaga ntaho uhuriye n'uru rubanza, bityo ko ubujurire budahabwa ishingiro.

Urukiko rw'Ubujurire rwasanze ubujurire bwatanzwe n'Akarere ka Nyamasheke bufite ishingiro ku mpamvu yuko kuba Urukiko Rukuru rw'Ubucuruzi rwarabaze inyungu z'ubukererwe rushingiye ku mategeko rusange agenga amasezerano cyangwa ku mirongo yatanzwe n'inkiko z'amahanga binyuranyije n'ibiteganywa n'Itegeko ndetse n'umurongo watanzwe n'Urukiko rw'Ikirenga, bityo ko imikirize y'urubanza rwajuririwe ihindutse mu ngingo zarwo zose.

BPR Bank Plc, yandikiye Perezida w'Urukiko rw'Ikirenga isaba ko urubanza RCOMAA 00020/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 29/10/2021 rusubirishwamo ku mpamvu z'akarengane, ubusabe bwayo buremerwa.

Ababuranyi bagiye impaka ku ngingo zigize urubanza harimo n'ikibazo cy'ibanze cyo kumenya niba inyungu z'ubukererwe ku ngwate yo kurangiza neza imirimo zigenwa n'ingingo ya 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 rigenga Amasoko ya Leta yakoreshwaga ubwo BPR Bank Plc yakoranaga amasezerano y'ubwishingizi n'Akarere ka Nyamasheke.

BPR Bank Plc ivuga ko yemera ko igomba gucibwa inyungu z'ubukererwe kuko yatinze kwishyura, ariko ko inyungu yaciwe kubera gutinda kwishyura ingwate yo kurangiza neza imirimo ari umurengera kandi zibangamiye inyungu rusange kuko amafaranga banki icuruza atari ayayo ahubwo ari ay'abaturage, bityo ko kuyica inyungu zidahuye n'igihombo yateje bikaba bitabungabunga inyungu z'abaturage bayibikije amafaranga yabo kuko bishobora kuyitera guhomba no gufunga.

BPR Bank Plc yiregura ivuga kandi ko Urukiko rw'Ubujurire rwasesenguye mu buryo butari bwo ingingo 78 y'Itegeko nº 12/2007 ryo ku wa 27/03/2007 rigenga Amasoko ya Leta, ruyisoma yonyine aho kuyisomera hamwe n'andi mategeko, bituma ruyica inyungu z'ubukererwe zitagira aho zigarukira. Bavuga ko iyo ngingo igomba gusomerwa hamwe n'iya 41 n'iya 95 z'Itegeko Nshinga, iya 140, iya 142 n'iya 146 z'Itegeko n° 45/2011 ryo ku wa 25/11/2022 rigenga amasezerano, ko kudasomera hamwe izo ngingo bituma isesengura ryakorewe ingingo ya 78 y'Itegeko Nº 12/2007 ryo ku wa 27/03/2007 yavuzwe haruguru rinyuranya n'ibiteganywa n'Itegeko Nshinga ndetse n'andi mategeko, bikaba byagira ingaruka ku ituze cyangwa umutekano rusange, bityo ko isaba ko umurongo watanzwe n'Urukiko rw'Ubujurire uhindurwa.

Ku bijyanye n'inyigo yakozwe n impuguke Dr Munyamahoro René, BPR Bank Plc ivuga ko yemeranya nayo mu mwanzuro wayo uvuga ko mu kugenera Akarere ka Nyamasheke inyungu z'ubukererwe Urukiko rukwiye gushingira icyemezo cyarwo ku biteganywa n'ingingo ya 72 y'Itegeko n° 031/2022 ryo ku wa 21/11/2022 rigenga Amasoko ya Leta kuko iryo tegeko ryasohotse urubanza rutaracibwa.

Akarere ka Nyamasheke kavuga ko inyungu z'ubukererwe BPR Bank Plc yaciwe nta ngaruka zifite ku nyungu rusange cyangwa ituze rya rubanda kuko zishingiye ku itegeko rireba uwo ari we wese,

ryashyizweho hagamijwe guca intege ibigo by'imari byanga kwishyura ingwate, bikadindiza imishinga ya Leta.

Akarere ka Nyamasheke kiregura kavuga kandi ko ko ingingo ya 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 rigenga amasoko ya Leta ryakurikirwaga igihe amasezerano y ubwishingire yakorwaga ikwiye kubahirizwa uko imeze mu rwego rwo gukumira igihombo inzego za Leta zaterwa no kuba buri wese ashaka kuyivugisha icyo ashaka.

Akarere kavuga kandi ko iby'uko iyo ngingo iteganya inyungu z'umurengera kandi zibarwa ubuziraherezo ataribyo kuko izo nyungu zateganyijwe n'itegeko, bityo ko hagomba gushingirwa ku Itegeko ryariho amasezerano akorwa kuko uretse kuba aribyo bikwiye, binabungabunga umutekano w'ibyemezo by'inkiko byafashwe mbere ndetse bikubahiriza n'ihame ry'uko mu manza z'akarengane, Urukiko rutasuzuma akarengane rushingiye ku itegeko ritari ririho urubanza rusubirishwamo rucibwa.

Impaka ziri muri uru rubanza zishingiye ku kumenya niba inyungu z'ubukererwe BPR Bank Plc yaciwe zishobora kugabanywa n'Urukiko. Akarere ka Nyamasheke kavuga ko izo nyungu ziteganywa n'Itegeko N° 12/2007 ryo kuwa 27/03/2007 rigenga Amasoko ya Leta, bityo ko zidakwiye kugabanywa kuko BPR Bank Plc itavuga ko ari umurengera kandi yari isanzwe izi ko nitishyurira ku gihe ingwate yatanze izazicibwa. BPR Bank Plc yo ivuga ko yemera ko igomba kwishyura inyungu ku bwo gutinda kwishyura ingwate ariko ko izingana na 639.923.932 Frw yaciwe ku ngwate ingana na 19.935.235 Frw yatanze ari umurengera. Isaba Urukiko kuzigabanya ku kigero gikwiye.

Incamake y icyemezo: 1. Ntibihagije kuvuga gusa ko urubanza rufite ingaruka ku mutekano w'igihugu cyangwa ituze rusange, ahubwo ubiburanisha agomba kugaragaza isano iri hagati y'ibyo aburana, yaba abiregera cyangwa abiregwa, n'umutekano w'igihugu, bivuze ko kuba umuburanyi aciwe inyungu z'ubukererwe atishimiye yaba ku bijyanye n'impamvu zashingiweho cyangwa ingano yazo ntabwo aribyo byafatwa nk'impamvu yahungabanya ituze rusange ry'igihugu.

2. Urubanza rugumana kamere y'urubanza rw'ubucuruzi aho kuba urubanza rw'ubutegetsi n'ubwo rurimo urwego rwa Leta.

3. Inyungu z'ubukererwe ziteganywa n'Itegeko ry'Amasoko ya Leta zishyuzwa umwishingizi urengeje iminsi icumi atarishyura ingwate yasabwe gusubiza, nubwo izo nyungu ziba zikomoka ku masezerano, urukiko ntirwahindura kamere yarwo.

4**.** Ingingo ya 78 y'Itegeko N° 12/2007 ryo ku wa 27/03/2007 rigenga Amasoko ya Leta yaje guhinduka iya 64 y'Itegeko N° 62/2018 ryo ku wa 25/08/2018 rigenga Amasoko ya Leta niyo ihuje kamere n'ikiburanwa ndetse ikaba ariyo igomba gushingirwaho mu gukiranura ababuranyi ku kibazo cy'inyungu z'ubukererwe, niyo igomba gukoreshwa kuri uru rubanza cyane cyane ko ari nayo yari iriho amasezerano.

5. Inyungu z'ubukererwe zigarurwa ku gaciro ntarengwa k'ingwate yatanzwe aho gukomeza kubarwa ubuziraherezo, iyo uwatanze ingwate atinze kwishyura inyungu z'ubukererwe yaciwe ashobora no gushyirwa ku rutonde rumukumira kuzongera kwishingira Amasoko ya Leta (*black list).*

6. Igipimo cyo kugena inyungu z'ubukererwe n ukwirinda ko zihinduka inzira urwego rwatanze isoko rwikungaharizamo nta mpamvu, bivuze ko ari inshingano z'Urukiko kugarura ku gipimo gikwiye inyungu z'umurengera kabone nubwo zaba ziteganywa n'Itegeko.

Ikirego cyo gusubirishamo ku mpamvu z'akarengane A gifite ishingiro;

Amategeko yashingiweho:

Itegeko N° 12/2007 ryo ku wa 27/03/2007 rigenga Amasoko ya Leta, ingingo ya 78 yaje guhinduka iya 64 y'Itegeko N° 62/2018 ryo ku wa 25/08/2018 rigenga Amasoko ya Leta.

Imanza zifashishijwe:

Urubanza RS/INJUST/RCOM 00008/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25/02/2022,

Urubanza RCOMAA 00020/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 29/10/2021,

Urubanza RCOMAA 00065/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 20/04/2018,

Urubanza RCOMAA 0021/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 30/09/2016.

Urubanza

I. IMITERERE Y'URUBANZA.

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rusizi, Akarere ka Nyamasheke kavuga ko Entreprise Hategeka Consult & TP, ihagarariwe na Hategeka Célestin, yataye imirimo yari yahawe yo kubaka ikigo cy'amashuri cya Shangi itarangiye, bityo ko Banque Populaire du Rwanda (BPR) Plc ubu yahindutse BPR Bank Plc, yishingiye iyo mirimo ikwiye kwishyura ingwate yatanzwe kugira ngo ibisigaye bikorwe nta gihombo biteje. BPR Bank Plc yasabye Urukiko kutakira ikirego kuko yareganywe na Hategeka Célestin kandi harishingiwe Entreprise Hategeka Consult & TP ifite icyicaro mu Mujyi wa Kigali ndetse ko impande zombi zumvikanye ko amakimbirane yose akomoka ku ishyirwa mu bikorwa ry'amasezerano azakemurwa n'Abakemurampaka.

[2] Ku wa 02/02/2012, Urukiko rwaciye urubanza nº RAD 0030/11/TGI/RSZ, rusanga koko ingingo ya 22 y'Amasezerano yo ku wa 15/10/2008 yabaye hagati y'Akarere ka Nyamasheke na Entreprise Hategeka Consult & TP iteganya ko ibyo impande zombi zitazumvikanaho bizabanza gushyikirizwa Abakemurampaka mbere yo kuregerwa inkiko, rwanzura ko ikirego kitakiriwe kuko kitari mu bubasha bwarwo.

[3] Ku wa 12/12/2018, Akarere ka Nyamasheke karegeye Urukiko rw'Ubucuruzi, kavuga ko ku wa 17/05/2010, kamenyesheje BPR Bank Plc ko Entreprise Hategeka Consult & TP, iyo banki yari yarishingiye, yataye isoko ryo kubaka Ikigo cy'Amashuri cya Shangi itarangije imirimo, bityo ko banki igomba kwishyura 39.870.470 Frw y'ingwate yo gutangiza imirimo na 19.935.235 Frw y'ingwate yo kurangiza neza imirimo, ibaruwa yakirwa na banki ku wa 20/05/2010, ariko kugeza ikirego gitangwa ikaba itarishyuye, gasaba kwishyurwa ingwate ndetse n'inyungu zazo nk'uko biteganywa n'amategeko.

[4] BPR Bank Plc yabanje gusaba ko ikirego kitakirwa kuko cyafashweho umwanzuro n'Urukiko Rwisumbuye rwa Rusizi, ariko ivuga ko mu gihe cyaba cyakiriwe, Urukiko

rwakwemeza ko ntacyo ikwiye kuryozwa kuko ingwate zose zishyuwe. Naho ku bijyanye n'inyungu zishyuzwa, isaba Urukiko gushingira ku biteganywa n'ingingo ya 41 y'Itegeko Nshinga rya Repubulika y'u Rwanda, iya 112, agace ka 2, y'Itegeko nº 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'amabanki, iya 59 y'Itegeko nº 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ndetse n'ingingo ya 140, iya 142, n'iya 146 z'Itegeko nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, rukemeza ko izo nyungu ari umurengera, rukazigabanya zigashyirwa ku kigero gikwiye.

[5] Ku wa 22/07/2019, Urukiko rw'Ubucuruzi rwaciye urubanza nº RCOM 02726/2018/TC, ruhera ku nzitizi yo kutakira ikirego, rusanga mu masezerano y'ubwishingire *(cautionnement)* yaregewe ntahateganyijwe ubukemurampaka, rwanzura ko ayo masezerano adakwiye kwitiranywa n'ayakozwe hagati ya rwiyemezamirimo n'Akarere ka Nyamasheke, bityo ko inzitizi nta shingiro ifite. Ku wa 29/07/2019, rwaciye urubanza mu mizi, rusanga impande zombi zemeranywa ko ingwate zamaze kwishyurwa, naho kuba BPR Bank Plc yararengeje iminsi icumi (10) itarishyura izo ngwate, ari amakosa igomba kuryorezwa inyungu. Ku bijyanye n'inyungu zishyurwa ku ngwate yo gutangiza imirimo, rusanga nta gipimo zateganyirijwe, bityo ko mu bushishozi bw'Urukiko, BPR Bank Plc igomba kwishyura izihwanye n'iyo ngwate yakereranywe ingana na 3.818.866 Frw.

[6] Ku bijyanye n'inyungu ku ngwate yo kurangiza imirimo neza, Urukiko rwasanze hashingiwe ku biteganywa n'ingingo ya 78 y'Itegeko nº 12/2007 ryo ku wa 27/03/2007 rigenga Amasoko ya Leta ryakoreshwaga icyo gihe,[1] izo nyungu zikwiye kubarirwa ku kigero cya 1% ya 19.935.235 Frw ku munsi kugeza igihe ingwate yo kurangiza imirimo neza yishyuriwe, ni ukuvuga ku wa 26/03/2019, akaba 19.935.235 Frw x 1% x 3.330 iminsi = 639.923.932 Frw. Urukiko rwasanze BPR Bank Plc igomba kwishyura kandi 500.000 Frw y'ikurikiranarubanza, yose hamwe akaba 644.242.798 Frw.

[7] BPR Bank Plc yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko inyungu z'ubukererwe ku ngwate yo kurangiza imirimo neza (19.935.235 Frw) zitagombaga gushingira ku ngingo ya 78 y'Itegeko nº 12/2007 ryo ku wa 27/03/2007 rigenga Amasoko ya Leta, kuko Akarere ka Nyamasheke kishyuje igihe cya *garantie* cyararangiye, isaba Urukiko gusuzuma niba ingingo ya 10 n'iya 18 z'Amasezerano yo ku wa 08/10/2008 n'ayo ku wa 15/10/2008 zarasesenguwe uko bikwiye. Akarere ka Nyamasheke kireguye kavuga ko hashingiwe ku biteganywa n'ingingo ya 64, iya 80 n'iya 81 z'Itegeko rigenga amasezerano ndetse n'umurongo watanzwe n'Urukiko rw'Ikirenga mu rubanza Akarere ka Nyaruguru kaburanaga na SONARWA General Insurance Company Ltd,2 nta yindi ngingo yari gushingirwaho hagenwa inyungu z'ubukererwe uretse iya 78 y'Itegeko no 12/2007 ryo ku wa 27/03/2007 ryavuzwe haruguru.

[8] Mu rubanza RCOMA 00765/2019/HCC rwaciwe ku wa 10/02/2021, Urukiko Rukuru rw'Ubucuruzi rwasanze:

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[1] Iyo ngingo iteganya ko "Banki cyangwa Ikigo cy'Imari cyemewe n'amategeko gisubiza Urwego rutanga isoko ingwate yose y'ubwishingizi bwo kurangiza isoko mu minsi icumi (10) y'akazi uhereye igihe urwandiko rubisaba rwakiriwe. Banki cyangwa ikigo cy'imari cyemewe n'amategeko cyishyura inyungu ingana na rimwe ku ijana (1%) kuri buri munsi w'ubukererwe mu kwishyura. Iyo bibaye ngombwa kuregera inkiko kandi amategeko yazo akemeza ko Urwego rutanga isoko rutsinze inyungu zikomeza kwiyongera kugeza igihe icyemezo cy'urukiko cyubahirijwe".

[2] Reba urubanza n° RCOMAA 0021/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 30/09/2016.

-Kuba imirimo itararangiye ngo yakirwe burundu (*réception définitive*) byaratumye ingwate ikomeza kugira agaciro, bivuze ko igihe cyo kwishyuza ingwate yo kurangiza imirimo neza kitarenze;

-Iby'uko ingwate yo gutangiza imirimo itagombaga kwishyuzwa kuko igihe cy'amasezerano hagati y'Akarere ka Nyamasheke na rwiyemezamirimo cyari cyararangiye nta shingiro bifite bitewe n'uko amasezerano yaregewe ari ayabaye hagati ya BPR Bank Plc n'Akarere ka

-Nyamasheke aho kuba ayo ako Karere kakoranye na rwiyemezamirimo; iii. Ingingo za 112, agace ka 2, y'Itegeko nº 47/2017 ryo ku wa 23/9/2017 rigena imitunganyirize y'imirimo y'amabanki, iya 59, igika cya 4, y'Itegeko nº 01/2012 ryo ku wa 03/02/2012 rihindura kandi ryuzuza Itegeko nº 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha ziburanishwa na BPR Bank Plc zidahuye na kamere y'ikiburanwa;

-Hashingiwe ku biteganywa n'ingingo ya 46 n'iya 141 z'Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano,[3] indishyi zikomoka ku kwica amasezerano zigomba gushingira ku gihombo, nyamara bikaba bigaragara ko 639.923.932 Frw yaciwe BPR Bank Plc aruta agaciro k'isoko ryose, cyane cyane ko imirimo yari isigaye kugira ngo isoko rirangire itageraga ku 10%;

[9] Urukiko Rukuru rw'Ubucuruzi rwanzuye ko ubujurire bwa BPR Bank Plc bufite ishingiro kuri bimwe, ko inyungu zingana na 639.923.932 Frw zibazwe ku ngwate yo kurangiza imirimo neza ingana na 19.935.235 Frw zikuweho, hakishyurwa izingana n'iyo ngwate, ni ukuvuga 19.935.235 Frw.

[10] Akarere ka Nyamasheke kajuririye Urukiko rw'Ubujurire kavuga ko Urukiko Rukuru rw'Ubucuruzi rwabaze inyungu z'ubukererwe mu buryo bunyuranyije n'Itegeko rigenga Amasoko ya Leta ndetse n'umurongo watanzwe n'Urukiko rw'Ikirenga kuri icyo kibazo. BPR Bank Plc yireguye ivuga ko inyungu z'umurengera zitajyanye n'igihombo zigomba gukurwaho, kandi ko n'umurongo Akarere ka Nyamasheke kaburanishaga ntaho uhuriye n'uru rubanza, bityo ko bitanahuzwa, isaba ko ubujurire budahabwa ishingiro.

[11] Mu rubanza RCOMAA 00020/2021/CA rwaciwe ku wa 29/10/2021, Urukiko rw'Ubujurire rwasanze ubujurire bwatanzwe n'Akarere ka Nyamasheke bufite ishingiro ku bw'impamvu zikurikira:

-Kuba ingingo ya 78 y'Itegeko nº 12/2007 ryo ku wa 27/03/2007 ryavuzwe haruguru ariyo ihuje kamere n'ikiburanwa, ndetse ikaba yaragarutse mu ngingo ya 64 y'Itegeko nº 62/2018 ryo ku wa 25/08/2018 rigenga Amasoko ya Leta rikoreshwa ubu, bivuze ko kuba Urukiko Rukuru rw'Ubucuruzi rwarabaze inyungu z'ubukererwe rushingiye ku mategeko rusange agenga amasezerano cyangwa ku mirongo yatanzwe n'inkiko z'amahanga binyuranyije n'ibiteganywa n'Itegeko ndetse n'umurongo watanzwe n'Urukiko rw'Ikirenga;

[3] Ingingo ya 141 ngingo iteganya ko "Nta ndishyi zishobora gutangwa ku gihombo kiri hejuru y'icyo uruhande rwarenganyijwe rushobora kugaragaza nta gushidikanya". Nubwo kandi mu rubanza havuzwe ingingo ya 46, Urukiko rwashatse kuvuga iya 146 iteganya ko "indishyi zituruka ku kwica amasezerano zishobora guteganywa mu masezerano ariko hakagenwa umubare ukwiye ugendeye ku gihombo nyakuri kiriho cyangwa cyiteguwe ko cyabaho mu gihe amasezerano atubahirijwe cyangwa mu gihe cy'ingorane zo kubona ibimenyetso by'igihombo. Ingingo yo mu masezerano igena indishyi z'ikirenga ntiyubahirizwa kuko, kubera impamvu ndemyagihugu, ifatwa nk'igihano".

-Kuba BPR Bank Plc yarakiriye ibaruwa iyisaba kwishyura ingwate yo kurangiza neza imirimo ku wa 20/05/2010, ikishyura ku wa 26/03/2019, bituma igomba kwishyura inyungu z'ubukererwe zibariwe ku gipimo giteganywa n'itegeko cya 1% ku munsi.

[12] Urukiko rwanzuye ko imikirize y'urubanza rwajuririwe ihindutse mu ngingo zarwo zose, rutegeka BPR Bank Plc kwishyura Akarere ka Nyamasheke 644.242.798 Frw akubiyemo 3.818.866 Frw y'inyungu zo gukererwa kwishyura ingwate yo gutangiza imirimo ababuranyi bemeranywaho, 639.923.932 Frw y'inyungu z'ubukererwe ku ngwate yo kurangiza neza imirimo na 500.000 Frw y'ikurikiranarubanza ku rwego rwa mbere, nk'uko yemejwe n'Urukiko rw'Ubucuruzi.

[13] BPR Bank Plc, yandikiye Perezida w'Urukiko rw'Ikirenga isaba ko urubanza nº RCOMAA 00020/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 29/10/2021 rusubirishwamo ku mpamvu z'akarengane. Mu cyemezo nº 043/CJ/2022 cyo ku wa 15/03/2022, Perezida w'Urukiko rw'Ikirenga amaze gusuzuma ubwo busabe, yemeje ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[14] Urubanza rwaburanishijwe mu ruhame ku wa 12/09/2022, BPR Bank Plc ihagarariwe na Mugire Rwamfizi Joseph yunganiwe na Me Mubangizi Frank afatanyije na Me Mugemanyi Vedaste naho Akarere ka Nyamasheke gahagarariwe na Me Cyubahiro Fiat.

[15] Ababuranyi bagiye impaka ku ngingo zigize urubanza harimo n'ikibazo cy'ibanze cyo kumenya niba inyungu z'ubukererwe ku ngwate yo kurangiza neza imirimo zigenwa n'ingingo ya 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 rigenga Amasoko ya Leta yakoreshwaga ubwo BPR Bank Plc yakoranaga amasezerano y'ubwishingizi n'Akarere ka Nyamasheke, ndetse zikaba zaragarutse mu ngingo ya 64 y'Itegeko N° 62/2018 ryo ku wa 25/08/2018 rigenga Amasoko ya Leta, atari umurengera. Nyuma y'izo mpaka, iburanisha ryarapfundikiwe, ababuranyi bamenyeshwa ko urubanza ruzasomwa ku wa 07/10/2022.

[16] Mu gihe Urukiko rwari rwiherereye ngo ruce urubanza, rwasanze imyanzuro y'ababuranyi ndetse n'ibisobanuro baruhaye mu iburanisha bidahagije, bituma ku wa 07/10/2022, rufata icyemezo mu rubanza rubanziriza urundi, rushyiraho Dr Munyamaharo René, Umwarimu muri Kaminuza y'u Rwanda, Ishami ry'Amategeko nk'impuguke, ahabwa inshingano zo kuzagaragaza ibi bikurikira:

a. Impamvu *(raison d'être/rationale)* y'ingingo ya 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 rigenga Amasoko ya Leta;

b. Akamaro n'ingaruka by'iyo ngingo mu bijyanye n'imitunganyirize y'Amasoko ya Leta, ubukungu bw'igihugu n'uburenganzira bw'abishingira ndetse n'abasaba ubwishingizi bwo kurangiza neza imirimo mu by'Amasoko ya Leta guhera igihe iyo ngingo yagiriyeho (ku wa 27/03/2007) kugeza ubu;

c. Ikigereranyo cy'akamaro n'ingaruka by'iyo ngingo n'amategeko y'amahanga yaba ateye nkayo.

[17] Ku wa 05/12/2022, Dr Munyamaharo René yashyikirije urukiko inyigo yakoze, agaragaza muri make ibi bikurikira:

a) Impamvu inyungu z’ubukererwe zashyizwe mu Itegeko nka *garantie à première demande* (yishyurwa nta mananiza) ni uko ama banki n’ibindi bigo by’imari byatangaga ingwate yo kurangiza imirimo neza, ariko impamvu zo kwishyura zagaragazwa, ibyo bigo bigashyiraho amananiza, bigatuma urwego rwatanze isoko rusiragira;

b) Ugereranyije n’ibindi bihugu birimo Tanzaniya, Burundi, Uganda, Ubwongereza, Ubufaransa, Mali, Sénégal na Repubulika Iharanira Demokarasi ya Kongo, amategeko y’u Rwanda na Kenya niyo yonyine afite umwihariko wo kugena inyungu z’ubukererwe ku bigo by’imari byatinze cyangwa byanze kwishyura ingwate yo kurangiza imirimo neza;

c) Kuba inyungu z’ubukererwe zateganyijwe n’Itegeko zidashingiye ku gihombo cyatejwe no kutubahiriza amasezerano bishobora gutera ukwikungahaza nta mpamvu ku ruhande rw’urwego rwatanze isoko;

-Urukiko, iyo rumaze kubona ko inyungu z’ubukererwe ziteganywa n’itegeko ari umurengera kuko zidahuye n’igihombo uwatanze isoko yatejwe n’uko isoko ritarangiye neza, rufite inshingano zo kwemeza ko kubahiriza ibiteganywa n’itegeko uko ryanditse nta gushyira mu gaciro bishobora guteza akarengane. Mu bwigenge bwarwo, Urukiko rugomba gushyira ku munzani rugaca urubanza mu buryo bunoze kandi butabogamye hashingiwe ku mpamvu zose zarufasha kugera ku kuri kw’ibyabaye.

-Nubwo urubanza ruburanwa ari urw’ubutegetsi, Urukiko rukwiye gufata ko inyungu z’ubukererwe ziteganywa n’ingingo ya 78 y’Itegeko n° 12/2007 ryo ku wa 27/03/2007 rigenga Amasoko ya Leta yaje gusimburwa n’ingingo ya 64 y’Itegeko n°62/2018 ryo ku wa 25/08/2018 rigenga Amasoko ya Leta ari igihano, kandi ko ubwo buryo bwo guhana ibigo by’imari byatinze kwishyura ingwate bwavanweho n’ingingo ya 72, agace ka 4, y’Itegeko n° 031/2022 ryo ku wa 21/11/2022 rigenga Amasoko ya Leta, bityo hashingiwe ku ihame ry’uko itegeko rishya iyo rije rivanaho cyangwa ryoroshya igihano (*retroactivité in mitius*) ariryo rigomba gukoreshwa, urubanza rugacibwa hashingiwe ku itegeko ryo muri 2022.

[18] Urubanza rwongeye kuburanishwa ku wa 14/12/2022, BPR Bank Plc ihagarariwe na MUGIRE RWAMFIZI Joseph yunganiwe na Me MUBANGIZI Frank naho Akarere ka Nyamasheke gahagarariwe na Me CYUBAHIRO Fiat. Dr MUNYAMAHORO René yasobanuriye Urukiko inyigo yakoze, ababuranyi nabo bahabwa umwanya wo kugira icyo bayivugaho.

II.IBIBAZO BIGIZE URUBANZA N’ISESENGURWA RYABYO.

II.1. Kumenya ingano y’inyungu z’ubukererwe ku ngwate yo kurangiza imirimo neza BPR Bank Plc igomba kwishyura.

[19] BPR Bank Plc ivuga ko yemera ko igomba gucibwa inyungu z’ubukererwe kuko yatinze kwishyura, ariko ko inyungu zingana na 639.923.932 Frw yaciwe kubera gutinda kwishyura ingwate ingana na 19.935.235 Frw yo kurangiza neza imirimo ari umurengera kandi zibangamiye inyungu rusange kuko amafaranga banki icuruza atari ayayo ahubwo ari ay’abaturage, kuyica inyungu zidahuye n’igihombo yateje bikaba bitabungabunga inyungu z’abaturage bayibikije amafaranga yabo kuko bishobora kuyitera guhomba no gufunga.

[20] Basobanura ko Urukiko rw'Ubujurire rwasesenguye mu buryo butari bwo ingingo 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 rigenga Amasoko ya Leta, ruyisoma yonyine aho kuyisomera hamwe n'andi mategeko, bituma ruyica inyungu z'ubukererwe zitagira aho zigarukira. Bavuga ko iyo ngingo igomba gusomerwa hamwe n'iya 41 n'iya 95 z'Itegeko Nshinga, iya 140, iya 142 n'iya 146 z'Itegeko n° 45/2011 ryo ku wa 25/11/2022 rigenga amasezerano, ko kudasomera hamwe izo ngingo bituma isesengura ryakorewe ingingo ya 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 yavuzwe haruguru rinyuranya n'ibiteganywa n'Itegeko Nshinga ndetse n'andi mategeko, bikaba byagira ingaruka ku ituze cyangwa umutekano rusange, ariyo mpamvu basaba ko umurongo watanzwe n'Urukiko rw'Ubujurire uhindurwa.

[21] Bavuga ko ingingo ya 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 yavuzwe haruguru ari ingingo rusange, naho ngingo ya 112, igika cya 2, y'Itegeko n° 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'amabanki n'iya 59 y'Itegeko n° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha ziteganya ko inyungu zidashobora kurenga 100% by'umwenda wishyuzwa ari ingingo zihariye, bityo kwemeza ko inyungu zigomba kubarwa hashingiwe gusa ku ngingo ya 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 yavuzwe haruguru binyuranye n'ihame ry'uko iyo hari ingingo z'amategeko zivuguruzanya ku kintu kimwe, itegeko ryihariye rirutishwa itegeko rusange. Bavuga ko aya mategeko yihariye akumira ibara ry'inyungu z'ubukererwe buzira iherezo, ko ari nabyo Umushingamategeko yashimangiye mu Itegeko rigenga Amasoko ya Leta rya 2018 aho yagennye ko inyungu z'ubukererwe zidashobora kurenga 5% y'agaciro k'isoko, bakaba basaba uru Rukiko, mu bushishozi bwarwo, gukumira inyungu z'umurengera n'ibihano bikabije, rukemeza ko nta nyungu zikwiye kubarwa ubuziraherezo.

[22] Bavuga na none ko BPR Bank Plc idakwiye kuryozwa kuba Akarere ka Nyamasheke karatinze kurega, kakabikora kagamije kuzishyuza igihombo kitabayeho, ari nayo mpamvu umurongo wemejwe mu rubanza n° RCOMAA 0021/14/CS rwaciwe n'uru Rukiko ku wa 30/09/2016 udahuye na kamere y'ikiburanwa. Bavuga ko igihombo nyakuri Akarere kagize ari 19.935.235 Frw, ko ibyo bishimangirwa n'ibaruwa Entreprise Hategeka Consult & TP yanditse ku wa 14/04/2009 yemeza ko imirimo y'inyongera itakoze ifite agaciro ka 18.466.220 Frw, raporo yo ku wa 14/09/2010 ivuga ko hari hasigaye imirimo ifite agaciro ka 15.306.111 Frw, raporo yo ku wa 10/11/2010 ivuga ko imirimo yari isigaye yari iri ku kigero cya 08% cy'isoko ryose, ndetse no kuba rwiyemezamirimo wasimbuye Entreprise Hategeka Consult & TP yarahawe isoko ringana na 64.240.146 Frw. Basaba uru Rukiko gushimangira umurongo rwatanze mu rubanza *SIMACO Ltd yaburanaga na I & M Bank Rwanda Plc*,[4] w'uko ubwiyongere bw'inyungu z'ubukererwe butarenga 100% by'umwenda fatizo, rukemeza ko gusubiza ibyangiritse bitagomba kurenga igihombo nyakuri cyabayeho.

[23] Ku bijyanye n'inyigo yakozwe na Dr MUNYAMAHORO René, BPR Bank Plc ivuga ko yemeranya nayo cyane cyane mu mwanzuro wayo uvuga ko mu kugenera Akarere ka Nyamasheke inyungu z'ubukererwe Urukiko rukwiye

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[4] Reba N° RS/INJUST/RCOM 00008/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25/02/2022.

gushingira icyemezo cyarwo ku biteganywa n'ingingo ya 72 y'Itegeko n° 031/2022 ryo ku wa 21/11/2022 rigenga Amasoko ya Leta kuko iryo tegeko ryasohotse urubanza rutaracibwa.

[24] Akarere ka Nyamasheke kavuga ko inyungu z'ubukererwe BPR Bank Plc yaciwe nta ngaruka zifite ku nyungu rusange cyangwa ituze rya rubanda kuko zishingiye ku itegeko rireba uwo ari we wese, ryashyizweho hagamijwe guca intege ibigo by'imari byanga kwishyura ingwate, bikadindiza imishinga ya Leta. Kavuga ko iyi ngingo yagarutse no mu Itegeko rya 2018 ryongeyeho ko uwatinze kwishyura ingwate ashyirwa no kuri *black list*, byumvikanisha ko ikibazo cy'ibigo by'imari bitubahiriza inshingano zabyo kigihari. Gasobanura ko ntaho ingingo ya 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 yavuzwe haruguru inyuranye n'Itegeko Nshinga kuko iyo biba bityo aricyo cyari kuregerwa, ndetse ko idateganya inyungu z'umurengera.

[25] Akarere ka Nyamasheke kavuga ko mu masezerano yo ku wa 08/10/2008, BPR Bank Plc yiyemeje guhita yishyura ingwate nta mananiza; ku wa 20/05/2010 imenyeshwa ko rwiyemezamirimo yishingiye yananiwe kurangiza imirimo, isabwa kwishyura ingwate zombi, ntiyagira icyo ikora; ku wa 26/03/2019, nyuma y'ikirego gishya mu Rukiko rw'Ubucuruzi, hishyurwa ingwate gusa, inyungu z'ubukererwe zirasigara. Gasobanura ko ikirego cya mbere cyari cyaratanzwe mu Rukiko Rwisumbuye rwa Rusizi mu mwaka wa 2012, nticyakirwa, BPR Bank Plc irabibona ariko ikomeza kwicecekera nyamara izi ko buri munsi inyungu z'ubukererwe ziyongera. Kavuga ko katinze kugaruka mu nkiko kuko kifuzaga kwishyurwa ku neza, kabonye bibaye iby'ubusa kiyambaza inkiko, ari nacyo kigaragaza ko katatereye iyo ngo kamare imyaka icyenda katararega nk'uko BPR Bank Plc ibivuga.

[26] Kavuga ko itegeko rusange rikoreshwa ku bitarateganyijwe n'Itegeko ryihariye, kakaba gasanga BPR Bank Plc itarubahirije amasezerano bakoranye ndetse yishora no mu bihano biteganywa n'amategeko agenga Amasoko ya Leta, ariyo mpamvu Urukiko rw'Ubujurire rwari rufite ukuri mu gushingira icyemezo cyarwo ku ngingo ya 64 y'Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano n'ingingo ya 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 ryagengaga Amasoko ya Leta ubwo amasezerano y'ubwishingizi yakorwaga. Kavuga ko ntaho Urukiko rw'Ubujurire rwirengagije Itegeko rigenga imitunganyirize y'imirimo y'amabanki cyangwa Itegeko rigenga imitunganyirize y'isoreshwa kuko rutari kuyashingiraho adahuje kamere n'ikiburanwa, ko ayo mategeko yombi yihariye mu gukemura ibibazo by'amabanki cyangwa by'imisoro, naho ku bijyanye n'Amasoko ya Leta itegeko ryihariye akaba ari Itegeko n° 12/2007 ryo ku wa 27/03/2007 ryavuzwe haruguru.

[27] Akarere ka Nyamasheke kavuga ko ingingo ya 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 yavuzwe haruguru ikwiye kubahirizwa uko imeze mu rwego rwo gukumira igihombo inzego za Leta zaterwa no kuba buri wese ashaka kuyivugisha icyo ashaka. Kavuga ko iby'uko iyo ngingo iteganya inyungu z'umurengera kandi zibarwa ubuziraherezo ataribyo kuko izo nyungu zateganyijwe n'itegeko, uregwa akaba ashobora kuzikumira yubahiriza ibyo amategeko ateganya, atabikora akaba atakwitwaza ko ari umurengera kandi buri munsi abona uko inyungu z'ubukererwe zigenda ziyongera ndetse anafite ubushobozi bwo kuzihagarika. Gasaba uru Rukiko gufata banki nk'umunyamwuga ukwiye gutandukanywa n'umuturage usanzwe, ko bidashoka ko yibagirwa kwishyura umwenda yasinyiye, ahubwo ko nk'uko nayo yishyuza abayibereyemo umwenda, igomba kumva ko iyo ariyo yafashe umwenda itegetswe kwishyura ku gihe. Kavuga ko kuva aho imanza nk'izi zitangiriye, inkiko zigashyira mu

bikorwa ingingo ya 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 yavuzwe haruguru uko imeze, abatanze ingwate basigaye bishyurira ku gihe.

[28] Ku bijyanye n'inyigo yakozwe na Dr Munyamahoro René, Akarere ka Nyamasheke kavuga ko umwanzuro iyo nyigo yagezeho w'uko hakwiye gukoreshwa Itegeko n° 031/2022 ryo ku wa 21/11/2022 rigenga Amasoko ya Leta nta shingiro bikwiye guhabwa, kuko ikiburanwa ari inyungu z'ubukererwe zishingiye ku masezerano. Gasanga rero hagomba gushingirwa ku Itegeko ryariho amasezerano akorwa kuko uretse kuba aribyo bikwiye, binabungabunga umutekano w'ibyemezo by'inkiko byafashwe mbere ndetse bikubahiriza n'ihame ry'uko mu manza z'akarengane, Urukiko rutasuzuma akarengane rushingiye ku itegeko ritari ririho urubanza rusubirishwamo rucibwa.

UKO URUKIKO RUBIBONA

[29] Impaka ziri muri uru rubanza zishingiye ku kumenya niba inyungu z'ubukererwe BPR Bank Plc yaciwe zishobora kugabanywa n'Urukiko. Akarere ka Nyamasheke kavuga ko izo nyungu ziteganywa n'Itegeko n° 12/2007 ryo kuwa 27/03/2007 rigenga Amasoko ya Leta, bityo ko zidakwiye kugabanywa kuko BPR Bank Plc itavuga ko ari umurengera kandi yari isanzwe izi ko nitishyurira ku gihe ingwate yatanze izazicibwa. BPR Bank Plc yo ivuga ko yemera ko igomba kwishyura inyungu ku bwo gutinda kwishyura ingwate ariko ko izingana na 639.923.932 Frw yaciwe ku ngwate ingana na 19.935.235 Frw yatanze ari umurengera. Isaba Urukiko kuzigabanya ku kigero gikwiye.

A. Kumenya niba BPR Bank Plc yishyujwe inyungu z'ubukererwe ziburanwa byagira ingaruka ku ituze cyangwa umutekano rusange.

[30] Ku bijyanye n'ibyo BPR Bank Plc ivuga ko kwishyura inyungu z'ubukererwe yaciwe bishobora kubangamira ituze rusange cyangwa umutekano w'igihugu, Urukiko rurasanga nk'uko umuhanga Samuel Makinda abivuga, umutekano w'igihugu ujyanye no kurinda amategeko, amabwiriza, inzego n'imico byacyo, iyo igihugu kidashobora kurinda abaturage bacyo, gikumira cyangwa kirinda ibyahungabanya abaturage muri ibyo bintu, haba habaye ikibazo cy'umutekano w'igihugu.[5] Bisobanuye ko ikintu kijyanye n'umuntu ku giti cye, ishyirahamwe cyangwa sosiyete ku giti cyayo kidafite ingaruka kuri rubanda kitafatwa nk'ikireba umutekano w'igihugu cyangwa ituze rusange.

[31] Urukiko rurasanga mu rubanza Muvunyi Paul yaburanaga na Horizon Sopyrwa Ltd, uru Rukiko rwarasanze « HORIZON SOPYRWA Ltd itagaragaza isano iri hagati y'ibyo yishyuza MUVUNYI Paul n'umutekano w'igihugu kuko kuba Urukiko rutegetse cyangwa rudategetse umucuruzi kwishyura ibyo aregwa mu rubanza ataribyo byashingirwaho havugwa ko umutekano w'igihugu uri buhungabane mu gihe hatagaragajwe aho uwo mwenda hagati y'abacuruzi ubwabo uhuriye n'umutekano w'igihugu. »[6]

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[5] Security is the preservation of the norms, rules, institutions and values of society. Reba Makinda, Samuel M. *Sovereignty and Global Security, Security Dialogue*, 1998, Sage Publications, Vol. 29(3) 29: pp. 281-292.
[6] Reba urubanza N° RCOMAA 00065/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 20/04/2018, igika cya 27.

[32] Urukiko rwasanze bitihagije kuvuga gusa ko urubanza rufite ingaruka ku mutekano w'igihugu cyangwa ituze rusange, ahubwo ko ubiburanisha agomba kugaragaza isano iri hagati y'ibyo aburana, yaba abiregera cyangwa abiregwa, n'umutekano w'igihugu. N'ubu kandi niko Urukiko rukibibona. Ibi byumvikanisha ko kuba umuburanyi aciwe inyungu z'ubukererwe atishimiye yaba ku bijyanye n'impamvu zashingiweho cyangwa ingano yazo ntabwo aribyo byafatwa nk'impamvu yahungabanya ituze rusange ry'igihugu nk'uko BPR Bank Plc ishaka kubyumvikanisha, bityo iyi mpamvu ikaba nta shingiro ifite.

B. Kumenya Itegeko ryashingirwaho hasuzumwa ingano y'inyungu z'ubukererwe ku ngwate yo kurangiza imirimo neza BPR Bank Plc igomba kwishyura.

[33] Ingingo ya 78 y'Itegeko n° 12/2007 ryo kuwa 27/03/2007 rigenga Amasoko ya Leta iteganya ko "Banki cyangwa Ikigo cy'Imari cyemewe n'amategeko gisubiza Urwego rutanga isoko ingwate yose y'ubwishingizi bwo kurangiza isoko mu minsi icumi (10) y'akazi uhereye igihe urwandiko rubisaba rwakiriwe. **Banki cyangwa ikigo cy'imari cyemewe n'amategeko cyishyura inyungu ingana na rimwe ku ijana (1%) kuri buri munsi w'ubukererwe mu kwishyura.** Iyo bibaye ngombwa kuregera inkiko kandi amategeko yazo akemeza ko Urwego rutanga isoko rutsinze, inyungu zikomeza kwiyongera kugeza igihe icyemezo cy'urukiko cyubahirijwe."

[34] Urukiko rurasanga ku kibazo cyo kumenya ni ryari hashobora gushingirwa ku mategeko agenga amasezerano mu gihe hasuzumwa ikibazo cy'inyungu z'ubukererwe ku ngwate yatanzwe ku isoko rya Leta, abahanga *Sarah Ben Messaoud* na bagenzi be bavuga ko amasezerano hagati y'abantu ku giti cyabo atandukanye n'amasezerano arebana n'Amasoko ya Leta ubundi ashyirwa mu bikorwa hifashishijwe imisoro y'abaturage kandi hagamijwe gukora igikorwa kiri mu nyungu rusange. Iyi nyungu rusange ntabwo buri gihe iboneka mu masezerano hagati y'abantu ku giti cyabo. Nyamara kandi iyo nyungu rusange niyo itegeka Urwego rutanga isoko gushingira ku mategeko yihariye agamije gusobanura uburyo amasezerano azashyirwa mu bikorwa no gushyira ku munzani uburenganzira n'inshingano by'abakoranye amasezerano.[7]

[35] Urukiko rurasanga nk'uko byagaragajwe na Dr Munyamahoro René, u Rwanda na Kenya biri mu bihugu bike bifite ingingo y'Itegeko igenga ingano y'inyungu z'ubukererwe ku ngwate yo kurangiza imirimo neza. Mu bihugu bidafite itegeko bigenderaho, bene izo nyungu zigenwa mu masezerano. Inkiko zagiye zemeza ko nubwo zidakwiye gusubira mu masezerano yakozwe hagati y'ababuranyi, zifite inshingano zo kugarura mu bushishozi bwazo ingano y'inyungu zishyuzwa ku kigero nyakuri cy'igihombo cyatejwe.[8] Mu Rwanda, ingingo ya 146, igika cya 2 y'Itegeko n°

[7] "Un contrat public se distingue d'un contrat privé sur plusieurs plans. D'une part, les moyens mis en oeuvre sont des moyens publics puisque ce sont directement ou indirectement les contribuables qui les financent… D'autre part, la finalité d'intérêt général poursuivie par le pouvoir adjudicateur impose que des règles particulières gouvernent tant la passation que l'exécution du contrat, afin d'éviter que le service public ne soit interrompu… Vu ces specificités, des règles particulières doivent nécessairement être élaborées, qui divergent en grande partie du droit commun des contrats et visent à assurer un équilibre entre les droits et obligations des parties prenantes." Reba Sarah Ben Messaoud et Autres*, Le droit des marches publics : A l'Aune de la réforme du 1er Juillet 2013*, Bruxelles, Larcier, 2014, pp. 10-11.

[8] "...where a sum of money was agreed to be paid as a penalty for non-performance of a collateral contract where the actual dagame which would be sustained could be estimated, in such circumstances, the courts would limit the sum recoverable to the actual loss suffered. The principle would be applied in particular where the penalty was agreed to

45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko ingingo y'amasezerano igena inyungu z'umurengera ifatwa nk'igihano, bityo ku bw'impamvu ndemyagihugu, ikaba itagomba kubahirizwa. Icyakora, iyi ngingo y'Itegeko ntiyakoreshwa ku nyungu z'ubukererwe ziburanwa muri uru rubanza nk'uko BPR Bank Plc ibisaba kuko izo nyungu zidateganywa n'amasezerano ahubwo zishingiye ku Itegeko.

[36] Urukiko rurasanga ikindi gishimangira ko Itegeko rigenga amasezerano atariryo rikwiye gushingirwaho ni uko atari ubwa mbere ikibazo gisa n'iki gisuzumwe n'uru Rukiko. Mu rubanza *Akarere ka Nyaruguru kaburanaga na SONARWA Insurance Company Ltd* rwaciwe ku wa 30/09/2016, ako Karere kavugaga ko katewe igihombo no kuba SONARWA Insurance Company Ltd yararengeje iminsi 10 itarishyura ingwate yo kurangiza imirimo neza, gasaba ko itegekwa kwishyura 1% ya 35.020.866 Frw buri munsi uhereye ku wa 04/10/2012 kugeza igihe izo nyungu z'ubukererwe zishyuriwe. Urukiko rw'Ikirenga rwasanze koko ayo masezerano ariho ndetse agomba kubahirizwa nk'uko biteganywa n'ingingo ya 64 y'Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ariko mu kugena inyungu z'ubukererwe rushingira ku biteganywa n'ingingo ya 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 rigenga Amasoko ya Leta, ruvuga ko kuba SONARWA Insurance Company Ltd itarishyuye ingwate mu gihe cy'iminsi 10 kuva iyisabwe n'Akarere ka Nyaruguru nyamara mu masezerano yari yiyemeje kuzishyura nta mananiza, igomba kwishyura inyungu z'ubukererwe zihwanye na 1% ya 35.020.866 Frw buri munsi w'ubukurerwe mu minsi 1.109 yamaze itarishyura, yose hamwe aba 388.381.403 Frw.[9]

[37] Urukiko rurasanga kandi ibivugwa na BPR Bank Plc ko mu gihe hadashingiwe ku Itegeko rigenga amasezerano hakwiyambazwa ingingo ya 112 y'Itegeko n° 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'amabanki cyangwa ingingo ya 59 y'Itegeko n° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha nazo ziteganya ko inyungu ku nguzanyo yatanzwe na banki cyangwa ku misoro itarishyuriwe igihe zidakwiye kurenga ingano y'amafaranga yishyuzwa nta shingiro bifite. Ikoreshwa ry'ingingo ya 112 y'Itegeko n° 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'amabanki ryasesenguwe bihagije n'uru Rukiko mu rubanza *SIMACO Ltd yaburanaga na I & M Bank Rwanda Plc,* aho rwasobanuye aho ibarwa ry'inyungu zikomoka ku masezerano y'imyenda banki zahaye abakiliya bazo rigarukira.

[38] Urukiko rusanga ingingo ya 112 y'Itegeko n° 47/2017 ryo ku wa 23/09/2017 yavuzwe haruguru ireba imikoranire hagati ya banki n'abo yahaye inguzanyo. Ivuga kandi mu buryo bwihariye aho ibarwa ry'inyungu zishingiye ku masezerano y'umwenda hagati ya banki n'umukiliya wayo utarashoboye kubahiriza inshingano ze zigarukira. Iki kibazo gitandukanye n'igisuzumwa muri uru rubanza cyo kumenya aho inyungu z'ubukererwe Itegeko riteganya ku kigo cy'imari cyatinze kwishyura ingwate yo kurangiza imirimo neza zigarukira, bityo Itegeko n° 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'amabanki nk'Itegeko ryihariye ku mikorere y'amabanki rikaba ritakoreshwa ku masoko ya Leta kandi nayo asanzwe afite Itegeko ryihariye rivuga ku nyungu z'ubukererwe.

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be paid for the non-payment of a sum of money under a bond. This limited application of the principle was subsequently extended to other situations by the courts of common law, but the principle was always recognized as being subject to fairly narrow constraints and the courts have always avoided claiming that they have any general jurisdiction to rewrite the contracts that the parties have made." *Reba Philips Hong Kong v Attorney General of Hong Kong*, Const.L.J. 1993, 9 (3) 202-2013 at p.5.

[9] Reba urubanza n° RCOMAA 0021/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 30/09/2016, ibika bya 17 kugeza 22.

[39] Urukiko rurasanga kandi ingingo ya 59, igika cya kane y'Itegeko n° 25/2005 ryo ku wa 24/12/2005 rigena imitunganyirize y'isoresha[10] ireba umusoreshwa utarishyuye umusoro mu gihe giteganywa n'Itegeko. Iyo ngingo ivuga ko acibwa inyungu z'ubukererwe za 1.5% buri kwezi, kandi ko inyungu z'ubukererwe zidashobora kurenga ingano y'umusoro. Nubwo bigaragara ko muri iri Tegeko, Umushingamategeko yashyizeho igipimo ntarengwa ku nyungu z'ubukererwe, icyo gipimo sicyo cyakoreshwa muri uru rubanza kuko ikiburanwa atari umusoro watinze kwishyurwa ahubwo ni ingwate yo kurangiza neza isoko rya Leta itarishyuwe mu bihe biteganywa n'amategeko, kandi ibijyanye n'amasoko ya Leta bifite amategeko yihariye, ayo mategeko akaba ariyo agomba gukoreshwa ku bibazo bijyanye nayo.

[40] Urukiko rurasanga kandi BPR Bank Plc ishyigikiye umwanzuro w'impuguke yashyizweho n'uru Rukiko w'uko inyungu z'ubukererwe zikwiye kubarwa hashingiwe ku biteganywa n'ingingo ya 72, igika cya kane, y'Itegeko n° 31/2022 ryo ku wa 21/11/2022 rigenga Amasoko ya Leta ivuga ko zidakwiye kurenga ingano y'ingwate. Bavuga ko gukoresha iryo Tegeko risubira inyuma bishingiye ku ihame rya *retroactivité in mitius* rimenyerewe mu manza nshinjabyaha ubu risigaye rikoreshwa no mu manza z'ubutegetsi nk'uko bigaragazwa n'imanza zo mu Bufaransa, harimo urwaciwe na *Conseil d'Etat* ku wa 16/02/2009 n'urwaciwe na *Cour d'Appel de Lyon* ku wa 24/10/2019.

[41] Urukiko rurasanga ariko uru rubanza rwaratangiriye mu Rukiko rw'Ubucuruzi rufite kamere y'urubanza rw'ubucuruzi, n'ubu akaba ariyo rugifite aho kuba urubanza rw'ubutegetsi n'ubwo rurimo Akarere ka Nyamasheke nk'urwego rwa Leta. Byongeye kandi nubwo inyungu z'ubukererwe ziteganywa n'Itegeko ry'Amasoko ya Leta zishyuzwa umwishingizi urengeje iminsi icumi atarishyura ingwate yasabwe gusubiza, izo nyungu ziba zikomoka ku masezerano, bityo mu gihe itegeko rizishyiraho ritazise igihano mpanabyaha, Urukiko sirwo rwazihindurira kamere, byose ngo rubikore rugamije gusa kwagura imikoreshereze y'ihame rya *retroactivité in mitius.*

[42] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga Urukiko rw'Ubujurire rwari rufite ukuri ubwo mu bika bya 22 na 23 by'urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, rwasangaga ingingo ya 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 rigenga Amasoko ya Leta yaje guhinduka iya 64 y'Itegeko N° 62/2018 ryo ku wa 25/08/2018 rigenga Amasoko ya Leta, ariyo ihuje kamere n'ikiburanwa ndetse ikaba ariyo igomba gushingirwaho mu gukiranura ababuranyi ku kibazo cy'inyungu z'ubukererwe. Ni ukuvuga ko iyo ngingo ariyo igomba gukoreshwa kuri uru rubanza cyane cyane ko ari nayo yari iriho amasezerano hagati ya BPR Bank Plc n'Akarere ka Nyamasheke akorwa.

c. Kumenya niba inyungu z'ubukererwe ziteganywa n'Itegeko zaciwe BPR Bank Plc zishobora kugabanywa n'Urukiko kuko ari umurengera zigashyirwa ku kigero gikwiye.

[43] Urukiko rurasanga nk'uko byibukijwe haruguru, mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, Urukiko rw'Ubujurire rwasanze nta kibuza ko ingingo ya 78 y'Itegeko n° 12/2007 ryo kuwa 27/03/2007 rigenga Amasoko ya Leta yubahirizwa uko iri "*hatitawe ku marangamutima (appréciation d'ordre moral) yaterwa n'ingano y'umubare w'inyungu*

[10] Iyi ngingo yazanywe n'ingingo ya 12 y'Itegeko N° 1/2012 ryo ku wa 03/02/2012 rihindura kandi ryuzuza Itegeko n° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha.

wishyuzwa…"[11] Igika cya gatatu cy'iyi ngingo kivuga ko "*Iyo bibaye ngombwa kuregera inkiko kandi amategeko yazo akemeza ko Urwego rutanga isoko rutsinze inyungu zikomeza kwiyongera kugeza igihe icyemezo cy'Urukiko cyubahirijwe.*"

[44] Urukiko rurasanga mu gika cya gatatu cy'ingingo ya 78 y'Itegeko n° 12/2007 ryo ku wa 27/03/2007 yavuzwe haruguru, Umushingamategeko atarashyizeho igihe ntarengwa cyo kuregera inkiko, bivuze ko urwego rwatanze isoko rushobora kurega igihe rushakiye rutitaye ku kuba iminsi rwatakaje rutararega rugiye kuyungukiramo nta mpamvu cyangwa gutera umwishingizi igihombo kidafite ishingiro. Byongeye kandi, kuba itegeko riteganya ko inyungu zikomeza kubarwa na nyuma y'icibwa ry'urubanza nta gitangira bituma ugomba kuziryozwa atamenya hakiri kare ingano y'inyungu z'ubukererwe itegeko rimuteganyiriza, izo nyungu zishobora kuza zikabije kuba umurengera (*unreasonably disproportional*) ku buryo buri wese ushyira mu gaciro yabona koko ko zitajyanye n'uburemere bwo gutinda kwishyura ingwate yo kurangiza imirimo neza.

[45] Urukiko rurasanga iyo inyungu zikubye ingwate zikomokaho inshuro 32 nk'uko bimeze muri uru rubanza ndetse izo nshuro zikaba zishobora gukomeza kwiyongera ubuziraherezo mu gihe cyose zitarishyurwa, hakwiye kwibazwa niba koko icyo ari cyo Umushingamategeko yari agamije. Iby'uko inyungu z'ubukererwe z'umurengera zidashobora kuba mu byo Umushingamategeko yari agambiriye ashyiraho Itegeko bibanza kugaragarira mu kuba mu bindi byiciro, nko mu bijyanye n'inyungu z'ubukererwe zikomoka ku misoro cyangwa ku mwenda watanzwe na banki yarazishyiriyeho igipimo ntarengwa.

[46] Urukiko rurasanga kandi ikibazo cy'ingano y'inyungu z'ubukererwe ku ngwate yatanzwe ku isoko rya Leta igatinda kwishyurwa kandi yarasabwe cyarasuzumwe mu Itegeko rishya rigenga Amasoko ya Leta. Nubwo iryo Tegeko atari ryo rikwiye gushingirwaho muri uru rubanza kuko ritari ririho amasezerano y'ubwishingizi hagati ya BPR Bank Plc n'Akarere ka Nyamasheke akorwa, bigaragarira Urukiko ko icyo kibazo cyahawe icyerekezo, inyungu z'ubukererwe zigarurwa ku gaciro ntarengwa k'ingwate yatanzwe aho gukomeza kubarwa ubuziraherezo nk'uko byahoze. Mu Itegeko rishya, iyo uwatanze ingwate atinze kwishyura inyungu z'ubukererwe yaciwe ashobora no gushyirwa ku rutonde rumukumira kuzongera kwishingira Amasoko ya Leta (*black list*).[12]

[47] Icyerekezo Umushingamategeko w'u Rwanda yahaye inyungu z'ubukererwe mu Itegeko rishya gishimangira ko no mu Itegeko n° 12/2007 ryo ku wa 27/03/2007 ryavuzwe haruguru, atashatse ko urwego rwatanze isoko rwikungahaza nta mpamvu cyangwa ko umwishingizi aterwa igihombo no kwishyuzwa inyungu z'ubukererwe zibarwa ubuzira herezo hatanitawe kubyo uzihawe yatakaje kuko, yaba kimwe cyangwa ikindi, gitera akarengane. Mu bisobanuro byatanzwe na Dr Munyamahoro René nawe ashimangira ko igipimo cyo kugena inyungu z'ubukererwe ari ukwirinda ko zihinduka inzira urwego rwatanze isoko rwikungaharizamo nta mpamvu, ibi bikaba bivuze ko ari inshingano z'Urukiko kugarura ku gipimo gikwiye inyungu z'umurengera kabone nubwo zaba ziteganywa n'Itegeko.

[48] Mu rubanza *Top Rank Inc. yaburanaga na Allerton Lounge Inc,* Urukiko rwa New York muri *Leta Zunze Ubumwe za Amerika* rwasanze inyungu ziteganywa n'itegeko zigomba kuba

[11] Reba igika cya 23 cy'urubanza RCOMAA 00020/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 29/10/2021.
[12] Reba ingingo ya 72 y'Itegeko n° 031/2022 ryo ku wa 21/11/2022 rigenga Amasoko ya Leta.

nyinshi bihagije kugira ngo bice intege abashaka kwica itegeko kandi ko zitagomba kubogamira kuri umwe mu baburanyi harebwa gusa igihombo gito gishoboka ku watanze ikirego (*statutory damages must be sufficient enough to deter future infringments and should not be calibrated to favor a defendant by merely awarding minimum estimated losses to a plaintif*)[13]. Naho mu rubanza BMW of North America Inc. yaburanye na Gore, Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe za Amerika rwasanze kimwe mu biranga inyungu z'umurengera ari uko ntaho ziba zihuriye n'igihombo nyakuri cyabaye (…*perhaps (the) most commonly cited indicium of an unreasonable or excessive punitive damages award is its ratio to the actual harm inflicted on the plaintiff*).[14]

[49] Naho mu rubanza *McCarthy yaburanaga na Niskern,*[15] Urukiko rw'Ikirenga rwa Amerika rwasanze inyungu z'umurengera ari igihano kandi zifatwa nk'umurengera iyo zikabije kuba nyinshi ugereranyije n'igihombo nyakuri cyabaye, icyo gihe Urukiko rukaba rufite inshingano zo kuzivanaho mu rwego rwo gukumira akarengane *(punitive damages "enormously in excess of what may justly be regarded as compensation" for the injury must be set aside "to prevent injustice").*

[50] Urukiko rurasanga no mu bindi bihugu, inkiko zaragiye zigarura inyungu z'umurengera ku gipimo gikwiye. Mu rubanza *The Bank of Lisbon & South Africa Ltd yaburanaga na Antonio De Ornelas & Jorge De Costa De Ornelas*, Urukiko rw'Ikirenga rwa Afurika y'Epfo, rwasanze ntakirubuza gushingira ku ihame ry'ubutabera bunoze ngo rugabanye ibihano by'ubukererwe ku rugero rukwiye kuko rufite inshingano zo kugenzura ko ibyo ababuranyi bumvikanyeho bitabangamiye inyungu rusange, politiki rusange cyangwa imico myiza. [15] Mu Bufaransa, *Conseil d'Etat* yavuze ko mu gihe umucamanza asanze inyungu z'ubukererwe zagenwe ari umurengera, yemerewe kugena iziri mu rugero. [16]

[51] Christophe Lajoye nawe ashimangira ko ku bijyanye n'amasoko ya Leta nta kibuza Urukiko kugabanya cyangwa kongera inyungu z'ubukererwe mu gihe rubona ari umurengera cyangwa zidahagije.[17] Sarah Ben Messaoud na bagenzi be bavuga ko kuba inyungu z'ubukererwe zarumvikanweho hatagendewe ku gipimo gifatika (*forfaitaire*) ubwabyo bitabuza Urukiko kuzigabanya mu gihe hari ibyakozwe ku nshingano z'ibanze zari mu masezerano ya

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[13] Top Rank, Inc. v Allerton Lounge Inc. n° 96-7864, 1998 WL 35152791, SDNY March 25, 1998, at 1.
[14] BMW of North America Inc. v Gore, 517 U.S. 559 (1996), at 580 and 583. [15]
22 Minn. 90, 91–92 (1875).
[15] "The Court may reduce a stipulated penalty "to such an extent as it may consider equitable in the circumstances" …Not only contracts against public interest or public policy are subject to control by the Court, but also those offending the boni mores. In this field reference must be made to the sense of justice." Reba ubanza *The Bank of Lisbon & South Africa v Ornelas and Another* (53/85) [1988] ZASCA 35; [1988] 2 All SA 393 (A) (30 March 1988), page 17.
[16] "s'il considère que les pénalités sont excessives, le juge doit apprécier dans quelle proportion il convient de les modérer, la modulation ne portant que sur la part manifestement excessive desdites pénalités. Conseil d'Etat (CE), Reg. n° 392707. Rec, *Société GBR Ile de France v Centre Hospitalier Interdepartemental de Psychiatrie de l'Enfant et de l'Adolescent*, 19/07/2017.
[17] "Conseil d'Etat reconnaît au juge administrative le pouvoir de dimininuer ou d'augmenter le montant des pénalités de retard d'un contrat quand elles sont manifestement excessives ou au dérisoires". Christophe Lajoye, *Droit des marchés publics*, Gualino, Paris, 2021, p.280.

rwiyemezamirimo kuko kwishyura inyungu z'ubukererwe nkaho nta cyakozwe byaba biganisha mu guha urwego rwatanze isoko inyungu zirenze ibyo rwatakaje.[18]

[52] Ku kibazo cyo kumenya urugero rukwiye rw'inyungu z'ubukererwe, mu rubanza *Melina yaburanaga na Chaplin*, Urukiko rw'Ikirenga rwa Minesota rwasanze inyungu z'ubukererwe zemejwe ko ari umurengera zigomba kugarukira ku rugero rwagenwe n'Urukiko mu bushishozi bwarwo, zipfa kutarenga izikenewe mu gukosora ibyangijwe kandi zikaba zitanga isomo kugira ngo ibyatumye zitangwa bitazasubira (*an award should not exceed the level necessary to properly punish and deter*.)[19]

[53] Ku bireba uru rubanza, Urukiko rurasanga nk'uko bigaragara muri dosiye, isoko ryose ryari ryarahawe Entreprise Hategeka & Consult ryari rifite agaciro ka 199.352.352 Frw, ibaruwa Entreprise Hategeka Consult & TP yanditse ku wa 14/04/2009 yemeza ko imirimo y'inyongera itarakozwe ifite agaciro ka 18.466.220 Frw, raporo yo ku wa 14/09/2010 ivuga ko hari hasigaye imirimo ifite agaciro ka 15.306.111 Frw, raporo yo ku wa 10/11/2010 ivuga ko imirimo yari isigaye yari iri ku kigero cya 08% cy'isoko ryose, ni ukuvuga 15.948.188 Frw. Ibi byumvikanisha ko agaciro k'imirimo yari isigaye ku isoko ryatanzwe katari kanageze ku ngano y'ingwate yatanzwe.

[54] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rurasanga inyungu z'ubukererwe zingana na 639.923.932 Frw zahawe Akarere ka Nyamasheke mu rubanza RCOMAA 00020/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 29/10/2021 ari umurengera, bityo mu bushishozi bw'Urukiko zikaba zikwiye kugabanywa kugeza kuri 19.935.235 Frw ahwanye n'agaciro k'ingwate BPR Bank Plc yatanze.

II. 2. Kumenya niba Akarere ka Nyamasheke kahabwa amafaranga y'igihembo cya Avoka.

[55] Me Cyubahiro Fiat uburanira Akarere ka Nyamasheke asaba ko kahabwa 1.000.000 Frw y'igihembo cya Avoka kuri uru rwego, hakiyongeraho na 500.000 Frw kagenewe mu Rukiko rw'Ubucuruzi ndetse na 500.000 Frw kagenewe mu Rukiko rw'Ubujurire.

[56] Ababuranira BPR Bank Plc bavuga ko Akarere ka Nyamasheke katagenerwa indishyi gasaba kuko ariko kishoye muri izi manza nta mpamvu.

UKO URUKIKO RUBIBONA

[57] 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 ivuga ko *ikirego*

[18] "…malgré la caractère contractuel et forfaitaire, le juge peut, par application de l'article 1231 du code civil, réduire le montant des amendes pour retard lorsque l'obligation principale a été exécutée en partie puisque, dans cette hypothèse, elles excèdent manifestement le montant que les parties pouvaient fixer pour réparer le dommage resultant de l'inexécution de la convention." Sarah Ben Messaoud et Autres*, Le droit des marches publics : A l'Aune de la réforme du 1er Juillet 2013,* Bruxelles, Larcier, 2014, p. 619.

[19] Reba *Melina v. Chaplin*, 327 N.W.2d 19 (1982) Dec. 10, 1982, Minnesota Supreme Court No. 81-1005, 327 N.W.2d 19, p.20.

cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza."

[58] Urukiko rurasanga kuba BPR Bank Plc ariyo itsinze urubanza nta ndishyi igomba gutanga.

III. ICYEMEZO CY'URUKIKO.

[59] Rwemeje ko ikirego cyatanzwe na Banque Populaire du Rwanda Plc, ubu yahindutse BPR Bank Plc, cyo gusubirishamo ku mpamvu z'akarengane urubanza RCOMAA 00020/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku itariki ya 29/10/2021, gifite ishingiro;

[60] Rwemeje ko imikirize y'urubanza RCOMAA 00020/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku itariki ya 29/10/2021 ihindutse gusa ku birebana n'ingano y'inyungu z'ubukererwe BPR Bank Plc igomba kwishyura;

[61] Rutegetse BPR Banki Plc kwishyura Akarere ka Nyamasheke 19.935.235 Frw y'inyungu z'ubukererwe.