

RWANDA / JUDGMENT

ACCESS BANK RWANDA LTD v RUHANDO

RLR V.4-2021

COURT

Supreme Court

DECIDED

23 April 2019

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RCOMAA 00051/2017/SC

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ACCESS BANK RWANDA LTD v RUHANDO

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Text

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ACCESS BANK RWANDA LTD v RUHANDO [Rwanda Urukiko rw'Ikirenga – RCOMAA 00051/2017/SC (Kayitesi Z, P.J., Kayitesi R na Cyanzayire, J.) 23 Mata 2019] Amategeko agenga imiburanishirize y'imanza z'ubucuruze – Gusubirishamo urubanza ingingo nshya – Kwitiranya ibintu uko byagenze – Kwitiranya uko ibintu byagenze ni ukutumva neza ikibazo giteje impaka hagati y'ababuranyi ndetse n'ibyashingirwaho mu kugikemura, ibi bigatuma umucamanza agera ku mwanzuro atagombaga kugeraho iyo asobanukirwa neza cyangwa abona neza uko ibintu byari biri. Incamake y'ikibazo: Kuwa 02/05/2013 Ruhando Ndatira Ernest yasabye Access bank Rwanda Ltd kohereza kuri konti ya sosiyete yitwa Aluzinc Asia Pte Ltd amadolari angana na 76.835 mu buryo bwa international transfer kuri konti No503149270301 yanditse ku mazina ya sosiyete West Atlantic Pte Ltd, anyuze muri Bank yitwa OCBC yo muri Singapore, ku mpamvu yo kwishyura amabati. Amafaranga yaje kugera kuri konti yavuzwe hejuru ariko ahabwa sosiyete West Atlantic Pte Ltd kuko ariwe wari wanditse kuriyo konti. Nyuma yaho haje kuvuka ikibazo aho Ruhando yavuze ko banki itubahirije inshingano yahawe kuko aya madolari atageze k'uwo yari agenewe, avuga ko uwo yashakaga kwishyura ari sosiyete Aluzinc Asia Pte Ltd, ariko amafaranga ahabwa West Atlantic Pte Ltd, avuga kandi ko yasanze fagitire (facture) yoherejwe nabishyuzaga ari

impimbano. Ruhando yaje kurega banki mu Rukiko rw'Ubucuruzi rwa Nyarugenge ayisaba gusubizwa ayo mafaranga avuga ko itubahirije ubutumwa yayihaye kandi ari inshingano zayo. Uru Rukiko rwaciye urubanza, rwemeza ko banki isubiza Ruhando ayo mafaranga. Access Bank Rwanda Ltd yajuririyeye Urukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rubanza rwafashe ibintu uko bitari, rwirengagiza ibimenyetso yatanze. Uru rukiko rwemeje ko banki yubahirije inshingano yahawe, bityo ko nta kosa yakoze, kandi ko kuba fagitire yashingiweho yari impimbano nk'uko Ruhando Ndatira abivugaga, Access Bank Rwanda Ltd atariyo yabiryoze, maze urukiko rwemeza ko urubanza rwajuririyewe ruhindutse mu ngingo zarwo zose, bityo ko banki itabiryoze. Ruhando ntiyishimiye imikuriza y'urubanza, ajuririra Urukiko rw'Ikirenga, avuga ko Urukiko rutashobanukiye n'imikorere ya SWIFT nk'inzira yo kohereza amafaranga mu buryo bwa international transfer, rutesha agaciro payment order yatanze nta mategeko rushingiyeho. Uru rukiko mu gukora isesengura ry'urubanza, rwasanze banki itarashyize mu bikorwa mandat yahawe uko bikwiye kuko yohereje ama dolari kuwo itagomba kwohereza, bityo ikaba igomba kubiryoze, ikayasubiza hamwe n'indishyi zikomoka ku kutarangiza uko bikwiye ubutumwa yahawe. Banki yatanze ikirego gisubirishamo urubanza ingingo nshya ivuga ko habayeho amakosa akabije yo kwitiranya uko ibintu byagenze no kuba kandi habonetse ikimenyetso gishya gishimangira ikirego cyayo gisaba gusubirisha urubanza ingingo nshya. Mu iburanisha, Ruhando yatanze inzitizi yo kutakira ikirego kuko banki itagaragaza impamvu zatumye urubanza rusubirishwamo ingingo nshya nk'uko amategeko abiteganyaga. Urukiko rwanzuye ko inzitizi izaburanishwaga hamwe n'urubanza mu mizi. Mu iburanisha, banki yisobanura ivuga ko isaba urukiko kwakira ikirego cyayo gisaba gusubirishamo urubanza ingingo nshya ivuga ko habaye amakosa akabije kuko urukiko rwitiranyije ibintu uko byagenze

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rwitiranya contrat de mandat n'uburyo bwo kwohereza amafaranga mu rwego mpuzamahanga bwitwaga SWIFT. Ruhando we avugaga ko banki yatanze ikirego gisubirishamo urubanza ingingo nshya ishingiye ku ngingo yavuyeho no ku nyandiko yitwaga Agreement of Participation in Automated Transfer System ivuga ko ari ikimenyetso gishya kandi cyari gisanzwe kiriho urubanza rusubirishwamo ingingo nshya ruburanwaga mu bujijwe, bityo ko ikirego kidakwiye kwakirwa kuko icyo nyandiko itatangwaga nk'impamvu cyangwa nk'ikimenyetso gishya. Access bank ivugaga ko icyemeza ko yubahirije ubutumwa yahawe ari n'inyemezabwishyu (facture) Ruhando ubwe yayihereye ariyo igaragazaga ko uwagombaga kwishyurwa ari sosiyete Aluzinc asia pte ltd, ariko konti yatanze yo kwishyuriraho ikaba yari yanditse ku mazina ya sosiyete West Atrantic pte ltd (account name), ibyo bikaba aribyo byatumye Ruhando avugaga ko amafaranga tahawe uwo yari agennye. Ruhando we akavugaga ko nubwo banki ivugaga ko yashingiye ku nyemezabwishyu yashingiweho yishyura yakozwe nawe, bitayikuraho uruhare mu iyoba ry'amafaranga yagombaga kohereza avugaga ko banki yihaye guhindura izina ry'uwo yagombaga kwoherezwa, avugaga kandi ko ariyo ifite ikosa kuko yagombaga gukora ibyo yasabwaga nta kintu ihinduye. Mu kirego cyuririyeye ku kindi cyatangwaga na Ruhando, yasabye ko indishyi zikomeza kubakwa kugeza igihe urubanza rucirirwa kandi zikabakwa mu gaciro k'amafaranga hashingiwe ku gaciro k'idorari. Access Bank Rwanda yo ivugaga ko izi ndishyi nta shingiro zahabwaga ivugaga ko

ahubwo Access Bank Rwanda Ltd ariyo ikomeje gutakaza amafaranga kubera kuyihoza mu manza nta mpamvu. Incamake y'icyemezo: 1. Kwitiranya uko ibintu byagenze ni ukutumva neza ikibazo giteje impaka hagati y'ababuranyi ndetse n'ibyashingirwaho mu kugikemura, ibi bigatuma umucamanza agera ku mwanzuro atagombaga kugeraho iyo asobanukirwa neza cyangwa abona neza uko ibintu byari biri, bityo kwitiranya ibintu uko byagenze nimwe mu mpamvu yatuma urubanza rusubirishwamo ingingo nshya kuko umucamanza aba yafashe icyemezo kitari gufatwa iyo hatabaho kwitiranya ibintu. Ikirego cyo gusurubishamo urubanza ingingo nshya gifite ishingiro. Banki ntigomba kwishyura amadolari hamwe n'indishyi. Ingwate y'amagarama ihwanye n'ibyakozwe mu rubanza.

Amategako yashingiweho: Itegeko NO21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 186, agace ka 6. Igitabo cya gatatu cy'urwunge rw'Amategako y'imbonezamubano (CCLIII), ingingo ya 532. Nta manza zifashishijwe.

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Urubanza I. IMITERERE Y'URUBANZA [1] Urubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, aho Ruhando Ndatira Ernest yatanze ikirego avuga ko yasabye Access Bank Rwanda Ltd kwishyura (international transfer) sosiyete yitwa Aluzinc Asia Pte Ltd, kuri Konti N° 503-149270-301, ariko amafaranga ntiyayigeraho. Mu rubanza RCOM 1218/14/TC/NYGE rwaciwe ku wa 13/03/2015, Urukiko rwasanze Access Bank Rwanda Ltd yari yemeye ubutumwa (mandat) yari yahawe na Ruhando Ndatira Ernest, ariko ntiyabwubahiriza, ruyitegeka gusubiza kuri Konti N°1002150200663201 ya Ruhando Ndatira Ernest amadolari 76.835 yakuye kuri iyo konti ye kuko atageze k'uwo yari agenewe, kumuha amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka yose hamwe angana na 2.000.000Frw no kumusubiza 50.000Frw y'ingwate y'amagarama y'urubanza. [2] Access Bank Rwanda Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rubanza rwafashe ibintu uko bitari, rwirengagiza ibimenyetso yatanze, rwanga no guhamagaza mu rubanza Banki Nkuru y'u Rwanda cyangwa umukozi w'icyitwa SWIFT (Society for Worldwide Interbank Financial Telecommunication) kugira ngo arusobanurire uburyo kohererezanya amafaranga hagati y'amabanki ku rwego mpuzamahanga bikorwa. [3] Mu rubanza RCOMA 0179/15/HCC rwaciwe ku wa 20/07/2015, Urukiko Rukuru rw'Ubucuruzi rwasanze Access Bank Rwanda Ltd yarubahirije inshingano yahawe na Ruhando Ndatira Ernest kuko amadolari 76.835 yoherejwe muri Singapore nk'uko yari yabisabye hakoreshejwe uburyo bwa SWIFT, anyura ku izina na nimero ya konti byari byatanzwe na Ruhando Ndatira Ernest bityo ko banki nta kosa yakoze kandi ko kuba fagitire yashingiweho yari impimbano nk'uko Ruhando Ndatira Ernest yabiyemereye, Access Bank Rwanda Ltd atariyo yabiryoze, rwemeza ko urubanza rwajuririwe ruhindutse mu ngingo zarwo zose, ko nta madorali banki igomba kumusubiza. [4] Ruhando Ndatira Ernest ntiyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ikirenga, avuga ko Urukiko rutasobanukiwe n'imikorere ya SWIFT nk'inzira ya international transfer, rutesha agaciro payment order yatanze nta mategeko rushingiyeho, rufata icyemezo rushingiye ku kimenyetso (inyemezabuguzi) cyaje nyuma y'uko iburanisha ripfundikiwe bituma rugera ku mwanzuro udasobanutse mu mategeko, kuko rwamuvukije amadolari 76.835 n'inyungu zayo

ruyaha banki nk'indonke nta mpamvu. [5] Mu rubanza RCOMAA 0054/15/CS rwaciwe ku wa 21/04/2017, Urukiko rw'Ikirenga rwasanze Access Bank Rwanda Ltd itarashyize mu bikorwa payment order yatanze na Ruhando Ndatira Ernest uko bikwiye, yohereza amadolari 76.835 sosiyete yitwa WEST ATLANTIC Pte Ltd itari iyagenewe aho kuyohereza ALUZINK ASIA Pte Ltd wari wanditse kuri payment order, rwanzura ko banki yagize uruhare mu ibura rya 76.835USD ya Ruhando Ndatira Ernest, bityo ko hashingiwe ku biteganywa n'ingingo ya 532 y'Igitabo cya gatatu cy'urwunge rw'amategako mbonezamubano, ikwiye kuryozwa ayo madolari n'indishyi zikomoka ku kutarangiza uko bikwiye ubutumwa yahawe. Urukiko rwategetse Access Bank Rwanda Ltd gusubiza Ruhando Ndatira Ernest amadolari ye angana na 76.835 hiyongereyeho inyungu

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zingana na 33.950.919Frw na 2.700.000Frw akubiyemo amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. [6] Ku wa 13/06/2017, Access Bank Rwanda Ltd yatanze ikirego gisubirishamo ingingo nshya urubanza RCOMAA 0054/15/CS, ivuga ko habayeho amakosa akabije yo kwitiranya uko ibintu byagenze, bituma Urukiko rugera ku mwanzuro utariwo, cyane cyane ko n'ibimenyetso Access Bank Rwanda Ltd yari yatanze byagaragazaga ko yubahirije inshingano zayo. [7] Urubanza rwaburanishijwe mu ruhame ku wa 06/02/2018, Ruhando Ndatira Ernest aburanirwa na Me Zitoni Pierre Claver, naho Access Bank Rwanda Ltd iburanirwa na Me Rukangira Emmanuel hamwe na Me Buzayire Angèle. Iburanisha rigitangira, Me Zitoni Pierre Claver yibukije inzitizi yatanze yo kutakira ikirego kuko Access Bank Rwanda Ltd itagaragaza impamvu zatumye urubanza rusubirishwamo ingingo nshya nk'uko biteganywa n'ingingo ya 186 y'Itegeko No 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi yubahirizwaga icyo gihe. [8] Urukiko, rushingiye ku biteganywa n'ingingo ya 78, igika cya 4, y'Itegeko No 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi, rwafashe icyemezo cy'uko inzitizi izasuzumirwa hamwe n'urubanza mu mizi, ababuranyi bahabwa umwanya wo kwisobanura ku nzitizi no ku ingingo zigize ikirego gisubirishamo urubanza ingingo nshya, urubanza rurapfundikirwa, ababuranyi bamenyeshwa ko ruzasomwa ku wa 02/03/2018. [9] Uwo muni urubanza ntirwasomwe kuko Urukiko rwari rugisuzuma inyandiko zigize dosiye, ari no muri icyo gihe rwasanze Me Rukangira Emmanuel, uburanira Access Bank Rwanda Ltd, yarandikiye Perezida w'Inteko iburanisha ku wa 12/02/2018 avuga ko nyuma y'iburanisha yabonye ikindi kimenyetso cyitwa Agreement of Participation in Automated Transfer System gishimangira ikirego cyayo, isaba ko iburanisha rifungurwa. [10] Mu rubanza rubanziriza urundi rwaciwe ku wa 16/03/2018, Urukiko rwasanze inyandiko yitwa Agreement of Participation in Automated Transfer System itaraburanweho kandi banki ivuga ko ije gushimangira ibyo yaburanishaga, rutegeka ko iburanisha risubukurwa ku wa 08/05/2018 kugira ngo ababuranyi bagire icyo bavuga kuri iyo nyandiko. [11] Uwo muni iburanisha ntirya baye kuko inteko itari yuzuye, urubanza rwimurirwa ku wa 26/06/2018. Kubera impinduka zari ziteganyijwe mu nzego z'ubutabera, iburanisha ryigijwe imbere, rishyirwa ku wa 19/06/2018. Kuri iyo tariki, urubanza rwaraburanishijwe rurapfundikirwa isomwa ryarwo rishyirwa tariki ya 29/06/2018, ariko ubwo rwari mu mwiherero ngo rufate icyemezo, Urukiko

rwasanze ari ngombwa gukora iperereza muri Banki Nkuru y'Igihugu kugira ngo rusobanukirwe ibikubiye mu nyandiko yitwa Agreement of participation in Automated Transfer System, imikoreshereze y'inyandiko yitwa Payment Order n'imikorere ya SWIFT, rutegeka ko iperereza rizakorwa tariki ya 11/07/2018. [12] Urubanza rwongeye guhamagazwa tariki ya 27/11/2018, ariko rugenda rwimurwa ku mpamvu zitandukanye zemewe n'amategeko, ruza kuburanishwa rurapfundikirwa tariki ya 02/04/2019, Ruhando Ndatira Ernest aburanirwa na Me Zitoni Pierre Claver, naho Access Bank Rwanda Ltd iburanirwa na Me Rukangira Emmanuel. Isomwa ry'urubanza ryashyizwe ku wa 23/04/2019.

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II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO [13] Ibibazo bigomba gusuzumwa muri uru rubanza ni ukumenya niba ikirego cya Access Bank Rwanda Ltd cyo gusubirishamo ingingo nshya urubanza RCOMAA 0054/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 21/04/2017 cya kwakirwa, Urukiko rwasanga cyakwakirwa, rugasuzuma niba Access Bank Rwanda Ltd itarubahirije ubutumwa (mandat) yahawe na Ruhando Ndatira Ernest bwo kohereza amadolari 76.835USD, ku buryo yabiryoze ikayasubiza, ikabitangira n'indishyi. a. Kumenya niba ikirego cya Access Bank Rwanda Ltd cyo gusubirishamo ingingo nshya urubanza RCOMAA 0054/15/CS cya kwakirwa. [14] Me Rukangira Emmanuel na Me Buzayire Angèle, baburanira Access Bank Rwanda Ltd, bavuga ko icyatumye batanga ikirego gisubirishamo urubanza ingingo nshya ari uko mu gika cya 34 cy'urubanza rwasabiwe gusubirishwamo ingingo nshya, Urukiko rwitiranyije contrat de mandat n'uburyo bwo kwoherezeranya amafaranga mu rwego mpuzamahanga bwitwa SWIFT, ko rwavuze ko Ruhando Ndatira Ernest atari we wazanye inyemezabuguzi yashingiweho bituma amafaranga atagera kuri nyirayo, ariko ntirwagaragaza aho iyo nyemezabuguzi yaturutse. [15] Basobanura ko Urukiko rwemeje ko amafaranga yoherejwe mbere y'uko iyo nyemezabuguzi iboneka kandi atari byo, kuko carnet ya banki igaragaza ko payment order yasinywe inyemezabuguzi ihari, ariyo mpamvu basaba uru Rukiko kwemeza ko habayeho amakosa akabije yo kwitiranya uko ibintu byagenze, rukemeza ko hashingiwe ku biteganywa n'ingingo ya 186,60 y'Itegeko No 21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, ikirego cyakiriwe. Basobanura ko Urukiko rwitiranyije ibintu aho rwavuze ko fagitire igaragaza izina West Atlantic Pte Ltd wohererejwe amafaranga, yaje nyuma yuko Ruhando Ndatira Ernest akora OP, nyamara iyo fagitire yarayibonye ku wa 26/04/2013, transaction iba ku wa 02/05/2013, bivuga ko yari ayifite mbere hose, aha akaba ariho hari ikosa rikomeye ryo kwitiranya ibintu. [16] Me Rukangira Emmanuel na Me Buzayire Angèle bavuga kandi ko inyandiko yitwa "Agreement of Participation in Automated Transfer System" ari ikimenyetso gishya babonye gisobanura uburyo transfer y'amafaranga hagati y'amabanki ikorwa, kigaragaza ko Urukiko rwagombaga gushingira kuri compte aho gushingira kuri intitulé de compte, kuba rutarabikoze bikaba bishimangira ikirego cyabo cy'uko rwitiranyije ibintu uko byagenze. Basobanura bavuga ko inyandiko yitwa Agreement of Participation in Automated Transfer System itareba ama banki gusa nk'uko bivugwa n'uburanira Ruhando Ndatira Ernest, kuko irengera n'abakiliya b'amabanki, bitewe n'uko irimo amabwiriza ya Banki Nkuru y'Igihugu, kandi iyi akaba ariyo banki ishinze gushyiraho umurongo andi ma banki agenderaho (banque de régulation), ariyo mpamvu ikirego cya Access Bank Rwanda Ltd

gikwiye kwakirwa. [17] Me Zitoni Pierre Claver, uburanira Ruhando Ndatira Ernest, avuga ko gusubirishamo urubanza ingingo nshya byemerwa gusa iyo hagaragajwe nibura imwe mu mpamvu ziteganywa n'ingingo ya 186 y'Itegeko No 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets. Asobanura ko Access Bank Rwanda Ltd ivuga ko ishingira ikirego cyayo ku gace ka gatandatu k'iyo ngingo bitewe n'uko Urukiko rwaba rwaritiranyije contrat de mandat n'uburyo bwo kwohererezanya amafaranga bwitwa SWIFT ariko ntigaragaze aho byitiranyijwe, ko Urukiko rwirengagije ko inyemezabuguzi yashingiweho amafaranga yoherezwa yari yashyikirijwe banki mbere

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y'uko amafaranga yoherezwa, nyamara iyo inyemezabuguzi yarazanywe nayo hagati mu iburanisha, atari Ruhando Ndatira Ernest wayitanze kuko atazi aho yaturutse, kubera ko yagaragajwe mu Rukiko bwa mbere tariki ya 29/06/2015 itanzwe na Me Rukangira Emmanuel. Asobanura ko Access Bank Rwanda Ltd ivuga ko Urukiko rwitiranyije inyemezabuguzi na payment order kandi ntabyabaye, uretse ko bibaye ari nabyo byafatwa nko kunenga imikirize y'urubanza, ariyo mpamvu asaba uru Rukiko kwemeza ko ikirego kitakiriwe, kuko nta mpamvu n'imwe urega agaragaza yatuma urubanza rusubirishwamo ingingo nshya. [18] Me Zitoni Pierre Claver avuga kandi ko inyandiko yitwa Agreement of Participation in Automated Transfer System Access Bank Rwanda Ltd yashyizwe muri dosiye nyuma yari isanzwe iriho urubanza rusubirishwamo ingingo nshya ruburanwa mu bujurire, kandi ko Access Bank Rwanda Ltd itabihakana, iyo nyandiko ikaba itatangwa nk'impamvu cyangwa nk'ikimenyetso gishya cyatuma urubanza rusubirishwamo ingingo nshya. Avuga ko iyo nyandiko yatanze na Banki Nkuru y'u Rwanda, akaba atabona aho ihuriye n'abakiliya ba Access Bank Rwanda Ltd, nabyo bikaba bigaragaza ko ikirego cya Access Bank Rwanda Ltd kidakwiye kwakirwa. [19] Me Zitoni Pierre Claver asoza avuga ko Access Bank Rwanda Ltd yatanze ikirego gisubirishamo urubanza ingingo nshya ishingiyeye ku ngingo ya 186, agace ka 6 y'Itegeko No21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets kavuga "ukwitiranya uko ibintu byagenze" kandi ko ako gace kavanyweho n'Itegeko rishya No22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, bityo hagendewe ku biteganywa n'ingingo ya 280 yaryo iteganywa ko imanza zikiburanishwa mu nkiko igihe iri tegeko ritangiye gukurikizwa, ziburanishwa mu buryo bukurikije iri tegeko, ariko ntacyo rihinduye ku mihango y'iburanisha yakozwe mbere y'uko ritangazwa, akaba ari ryo rigomba gukoreshwa, ibi nabyo bikaba ari impamvu ituma ikirego cya Access Bank Rwanda Ltd kidakwiye kwakirwa. UKO URUKIKO RUBIBONA [20] Urukiko rurasanga mbere yo gusesengura ingingo ijyanye n'iyakirwa ry'ikirego bishingiyeye ku kwitiranya ibintu uko byagenze nkuko biteganywa n'ingingo ya 186, agace ka 6 y'Itegeko No21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, hagomba kubanza gusuzuma ikibazo cyatanze n'uburanira Ruhando Ndatira Ernest avuga ko Access Bank Rwanda Ltd yatanze ikirego gisubirishamo urubanza ingingo nshya ishingiyeye kuri iyo ngingo ya 186, agace ka 6, nyamara ako gace karavanyweho n'Itegeko rishya

No22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsu hagendewe ku biteganywa n'ingingo ya 280 yaryo iteganywa ko: "imanza zikiburanishwa mu nkiko igihe iri tegeko ritangiye gukurikizwa, ziburanishwa mu buryo bukurikije iri tegeko, ariko ntacyo rihinduye ku mihango y'iburanisha yakozwe mbere y'uko ritangazwa. [21] Urukiko rurasanga ibyo uburanira Ruhando Ndatira Ernest avugaga bitahabwa ishingiro kuko aha igisobanuro kitari cyo ingingo ya 280 y'Itegeko rishya No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru mu gihe ahubwo ariyo igomba gushingirwaho ngo ibirego byatanzwe iri Tegeko ritarajyaho

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bishobore kwakirwa ngo bisuzumwe hashingiwe ku Itegeko ryariho inkiko ziregerwa, bityo iki kirego kikaba kigomba gusuzumwa hashingiwe ku ngingo ya 186 agace ka 6 y'Itegeko No 21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, kuko ikirego cyatanzwe ariryo rikurikizwa. [22] Ku bijyanye no gusubirishamo urubanza ingingo nshya, ingingo ya 186 agace ka 6 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012, ryavuzwe haruguru, ryakurikizwaga Access Bank Rwanda Ltd itanga ikirego, ari naryo ishingiraho isaba gusubirishamo urubanza ingingo nshya, iteganywa ko : „urubanza rusaba gusubirishwamo ingingo nshya iyo mu icibwa ryarwo hakoze amakosa akabije yo kwitiranya uko ibintu byagenze cyagwa hashingiwe ku Itegeko ritakiriho“. [23] Urukiko rurasanga kwitiranya uko ibintu byagenze ari ukutumva neza ikibazo giteje impaka hagati y'ababuranyi ndetse n'ibyashingirwaho mu kugikemura, ibi bigatuma umucamanza agera ku mwanzuro atagombaga kugeraho iyo asobanukirwa neza cyangwa abona neza uko ibintu byari biri. [24] Urukiko rurasanga mu kiga cya 34 cy'urubanza RCOMAA 0054/15/CS rwaciwe ku wa 21/04/2017 rusabirwa gusubirishwamo, Urukiko rugaragaza ko Ruhando Ndatira Ernest atigeze yemera ko ari we wahaye Access Bank Rwanda Ltd inyemezabuguzi (fagitiri), kubera ko amakuru yuko amadorali ye atageze kuwo agenewe yayabwiwe na Access Bank Rwanda Ltd, iyi Bank kandi ikaba itaragaragaje uko yayihaye iyo fagitiri, ndetse ko ntakigaragaza ko mbere yuko yohereza amadorali yari yakabonye iyo fagitiri. [25] Urukiko rurasanga iyo nyemezabuguzi (fagitiri) ivugwa ari igaragara muri dosiye (Cote c 29), yakozwe na Aluzing Asia Pte Ltd kuwa 26.04.2013, igenewe Rwatole Entreprises (Customer name) yerekana ko Bank izishyurirwaho (Beneficiary Bank ari OCBC Bank Singapore, izina rya Konti izishyurirwaho (Account Beneficiary Name) rikaba West Atlantic Pte Ltd, Nimero ya konti ikaba No 503149270301. Rurasanga iyo nyemezabuguzi (fagitiri) ivugwa mu baruwa yo ku wa 06/05/2013 yashyizweho umukono na Ruhando Ndatira Ernest nka Perezida wa Rwatole Entreprises, yandikiye uwitwa Mr Bala, asobanura ko habaye kohereza amafaranga kuri West Atlantic Pte Ltd, ko iyo fagitiri ari impimbano (Cote 28), ibi bikaba bigaragaza ko yanditse iyi baruwa ayizi kandi ayifite, ku bwizo mpamvu, iyo nyandiko ye ikaba igomba guhabwa agaciro, hashingiwe ku ngingo ya 28 y'Itegeko No 47/2017 ryo ku wa 23/09/2017 iteganywa ko ibaruwa umuntu yandikiye undi itsindisha uwayanditse....". [26] Urukiko rurasanga kuba Ruhando Ndatira Ernest yari azi iyo nyemezabuguzi (fagitiri) kandi ayifite mbere yuko akora OP ku wa 02/05/2013, bigaragaza ko nta wundi waba warayigejeje muri Access Bank Rwanda Ltd, cyane cyane ko ikoreshe nk'umugereka kuri OP isobanura impamvu amafaranga yoherezwa nkuko bisanzwe bikorwa kubohereza amafaranga abandi muri ubwo buryo. [27]

Naho ibyo uhagarariye Ruhando Ndatira Ernest avuga ko iyo nyemezabwishyu itakoreshejwe mu nzego zibanza, ikaba yaragaragajwe ku rwego rw'ubujurire mu rubanza rusabirwa gusubirishwamo ingingo nshya, ntiyaba impamvu yabuza Access Bank Rwanda Ltd kuyikoresha ku rwego rw'ubujurire nk'ikimenyetso gishimangira imiburanire yayo, kuko ikibujijwe ku rwego rw'ubujurire ari ingingo nshya ariko ikimenyetso gishya kitabujijwe mu gihe gishobora gufasha umuburanyi gushimangira ingingo aburanisha. [28] Urukiko rurasanga kwitiranya ibintu uko byagenze gushingiye ku kuba Urukiko rwarafashe ko igihe Ruhando Ndatira Ernest yakoraga OP yishyuriweho amafaranga 76.835USD yari atarabona

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inyemezabuguzi (fagitire) igaragaramo West Atlantic Pte Ltd, ko atari nawe waba warayigejeje muri Access Bank Rwanda Ltd, nyamara mu ibaruwa yo ku wa 06/05/2013 yavuzwe haruguru yiyemerera ubwe ko yakiriye iyo nyemezabuguzi (fagitire). [29] Kuba rero mu gufata icyemezo Urukiko rwarashingiye ku kibazo cy'iyi nyemezabuguzi (fagitire) rwitiranya igihe yabonekeye, uwayakiriye n'uko yageze muri Access Bank Rwanda Ltd nk'uko bigaragara mu gika cya 34 cy'urubanza RCOMAA 0054/15/CS rusabirwa gusubirishwamo ingingo nshya, Urukiko rurasanga harabayeho amakosa akomeye yo kwitiranya ibintu uko ibintu byagenze, bituma hafatwa icyemezo kitari gufatwa iyo hatabaho uko kwitiranya ibintu. [30] Hashingiwe kuri ibyo bisobanuro no ku ngingo ya 186, 6 nk'uko yasobanuwe haruguru, Urukiko rurasanga habayeho kwitiranya uko ibintu byagenze ku bijyanye n'inyemezabwishyu (fagitire), bikaba ari imwe mu mpamvu ituma ikirego cya Access Bank Rwanda Ltd cyo gusubirishamo urubanza RCOMAA 0054/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 21/04/2017 ingingo nshya cyakirwa. [31] Urukiko rurasanga kandi mu gihe rusanze ikirego cya Access Bank Rwanda Ltd cya kwakirwa hashingiwe ku mpamvu yo kwitiranya ibintu uko byagenze, atari ngombwa gusuzuma indi mpamvu yatanze na Access Bank Rwanda Ltd yo gusubirishamo urubanza RCOMAA 0054/15/CS ingingo nshya ishingiyeye ku kimenyetso gishya, cyane cyane ko mu gusobanura iyo ngingo yo ubwayo yivugira ko icyo kimenyetso gishimangira ikirego cyabo cy'uko rwitiranya ibintu uko byagenze, kuko gisobanura uburyo transfer y'amafaranga hagati y'amabanki ikorwa, cyerekana ko hashingirwa kuri compte aho gushingira kuri intitulé de compte. b. Kumenya niba Access Bank Rwanda Ltd itarubahirije ubutumwa (mandat) yahawe na Ruhando Ndatira Ernest zo kohereza amatorari 76.835 ku buryo yayaryozwa ikabitangira n'indishyi. [32] Me Rukangira Emmanuel na Me Buzayire Angel baburanira Access Bank Rwanda Ltd bavuga ko Ruhando Ndatira Ernest yagiye muri Access Bank ubwe yuzuza bordereau de transfert/ordre de paiement (OP) y'amadorali 76.835 n'intoki, bivuga ko informations yashyize kuri iyo bordereau zirebana n'uwagombaga koherezwa amafaranga ari we wazitangiye, ko na code yoherejweho nayo igaragaza ko yoherejwe na Ruhando Ndatira Ernest, bityo kuba amafaranga atarageze k'uwo yagombaga koherezwa nta makosa Access Bank Rwanda Ltd yakoze. [33] Basobanura ko inyemezabwishyu (fagitiri) Ruhando Ndatira Ernest ubwe yihereye Access Bank Rwanda Ltd igaragaza ko uwagombaga kwishyura ari sosiyete yitwa Aluzinc Asia Pte Ltd, ariko konti yayo Ruhando Ndatira yatanze ari nayo yanditse kuri Ordre de Paiement yanditse kuri West Atrantic Pte Ltd, kuba rero amafaranga yaroherejwe kuri iyo konti ya Aluzinc Asia Pte Ltd iri muri OCBC (OVERSEAS

CHINESE BANKING CORPORATION) nk'uko yari yabisabwe, yubahirije ubutumwa (mandat) yahawe na Ruhando Ndatira Ernest. [34] Bakomeza bavuga ko Ruhando Ndatira Ernest adasobanura icyatumye ayo madorali atagera k'uwo yari agenewe kubera ko yaje gusanga inyemezabwishyu (facture) yahaye Access Bank Rwanda Ltd ari y'impimbano, kandi ko nyuma yo gukora operation yo kuyohereza Ruhando Ndatira Ernest yandikiye uwitwa Mr Bala amusaba kuvugana na Banki (OCBC) yoherejwemo ayo madolari kugira ngo amufashe igikorwa cya transfert gihagarare, ariko bamubwira ko yakererewe, ko transfert yarangiye, ndetse na Ruhando Ndatira Ernest ubwe ajya muri Singapore gukurikirana icyo kibazo.

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[35] Bavuga ko mu rwego rwo kumufasha, Access Bank Rwanda Ltd nayo yandikiye Correspondant Bank yayo (CITI BANK NEW YORK) iyisaba guhagarika igikorwa cyo kuyohereza muri bank OCBC, ariko bayisubiza ko cyarangiye bitagishobotse, ndetse inandikira na OCBC iyisaba gusubiza ayo madolari kubera ko yoherejwe k'uwo atari agenewe, ariko ntiyasubizwa. Bavuga ko Ruhando Ndatira Ernest ashaka gutwerera Access Bank Rwanda Ltd amakosa kandi ari aye bwite, kuko fagitiri (facture) yakoreshejwe niwe ubwe wayitangiye. [36] Ku byerekeye umubare w'amadorari ari ku nyemezabwishyu adahura n'ayari kuri ordre de payment bavuga ko kuba imibare itandukanye biterwa n'imikoranire hagati ye n'uwo yayoherezezaga, ibyo bikaba bitatuma havugwa ko ubutumwa Access Bank Rwanda Ltd itabwubahirije. Naho kucyo Access Bank Rwanda Ltd yakozwe imaze kubona ko uwagombaga kwishyura ugaragara kuri ordre de payment atandukanye n'ugaragara kuri facture, asubiza ko kuri ordre de payment hari handitseho ALUZINC ASIA Pte Ltd kandi ko ari yo yari yatanze iyo nyemezabwishyu igaragaraho ko uwanditse kuri iyo konti ari West Atlantic Pte Ltd, bityo ko Access Bank Rwanda Ltd yarebye numero ya konti yatanze na Ruhando Ndatira Ernest kuri Ordre de Payment ireba na numero ya konti yari ku nyemezabwishyu yatanze na Aluzinc Asia Pte Ltd isanga birahura, kandi ko umuntu umwe ashobora kugira konti nyinshi muri banki imwe ariko zifite inyito (intitulées) zitandukanye. [37] Bavuga ko iperereza Urukiko rwakozwe muri Banki Nkuru y'u Rwanda rihuza n'ibisobanuro byatanze na Access Bank Rwanda Ltd kuva urubanza rwatangira, kuko byagaragaye ko mu gihe hari contradiction hagati ya intitulé na numero ya konti ubwayo, ikitabwaho ari konti, kandi ko mu gihe usaba ko amafaranga yoherezwa yujuje ordre de payment, bank igakora operation yo kohereza amafaranga, ibisigaye gukorwa kugira ngo amafaranga agere ku wo agenewe bikorwa na banki zindi. [38] Naho kuberekeye ibyo uhagarariye Ruhando Ndatira Ernest anenga iperereza ryakozwe n'Urukiko avuga ko itsinda ryabajijwe ritarahiye kandi ko imyirondoro y'ababajijwe ituzuye, ko n'ababajijwe batari bafite ubumenyi buhagije ku mikorere ya SWIFT ndetse ko na Banki Nkuru y'u Rwanda idafite aho ihuriye n'imikorere yayo, bavuga ko nta handi amakuru yari akenewe n'Urukiko yagombaga gushakirwa usibye muri Banki Nkuru y'u Rwanda kuko ariyo ikurikirana imikorere y'amabanki (regulator), ko nibyo banenga byose bigaragara kuri iyo raporo. [39] Me Zitoni Pierre Claver uburanira Ruhando Ndatira Ernest avuga ko ikosa ryakozwe ryatumye Access Bank Rwanda Ltd itishyura uwo yagombaga kwishyura, ariyo yarikoze,

kuko n'ubwo ivuga ko inyemezabwishyu (fagitiri) yashingiweho yishyura ari Ruhando Ndatira Ernest wayitanze atari ukuri kuko atazi aho yaturutse, kubera ko yagaragajwe mu Rukiko bwa mbere tariki ya 29/06/2015 itanzwe na Me Rukangira Emmanuel. Akomeza avuga ko umubare wa 71.241,12USD uyigaragaraho utandukanye n'ugaragara kuri ordre de payement yatanze na Ruhando Ndatira Ernest ya 76.835 USD, ikanagaragaraho ko account beneficiary name ari West Atlantic Pte Ltd, mu gihe ordre de payement yo igaragaza ko beneficiary name ari Aluzinc Asia Pte Ltd, bityo Access Bank Rwanda Ltd ikaba ifite uruhare mu iyoba ry'amadolari yagombaga kohereza, kubera ko yihaye guhindura beneficiary name inyuranije n'uwo yabwiwe na Ruhando Ndatira Ernest kwishyura. [40] Me Zitoni avuga ko iperereza ryakozwe n'Urukiko muri Banki Nkuru y'Igihugu ritakurikije amategeko kuko ababajijwe batabanje kurahira, ko n'imyirondoro yabo ituzuye, kandi ko n'itsinda ryabajijwe nta makuru afatika ryashoboraga gutanga kuko ridafite aho rihuriye n'imikorere ya SWIFT,

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hakaba haragombaga kubazwa abakozi bo mu ishami rishinzwe external transaction ribarizwa muri banking operations department kuko aribo bashoboraga gutanga amakuru ya nyayo ku mikorere ya SWIFT system, ko SWIFT system ari uburyo bwo kohererezanya amafaranga bwigenga budafite aho buhuriye na Bank Nkuru, usibye kumenya ko buriho, ikaba ntacyo yabukoraho. [41] Akomeza avuga ko mu iperereza ryakozwe n'Urukiko rw'Ikirenga itsinda ryabajijwe ryasobanuye ko iyo izina ry'umukiriya ritandukanye na konti ye, igihe cy'iyishyurwa bahitamo konti, nyirayo akaba ariwe wishyurwa, ariko ko ibyo bishoka igihe ari ukwishyurana hagati y'amabanki ubwayo, bitandukanye n'uburyo bwo kwishyurana hakoreshejwe SWIFT, ko ikizwi ari uko mu gihe banki isanze izina ry'umukiriya ritandukanye na konti ye kwishyura bihita bihagarara, umuntu akaba yakwibaza impamvu Access Bank Rwanda Ltd yo yahisemo guhindura uwo yari yasabwe kohereza ayo madolari. [42] Me Zitoni Pierre asoza avuga ko Access Bank Rwanda Ltd ariyo ifite ikosa kuko yagombaga gukora ibyo yasabwe nta kintu ihinduye, ibyo abayiburanira bavuga ko inyemezabwishyu (fagitiri) yari umugereka (annexe) ya Ordre de payement akaba atari ukuri, kuko nta bisobanuro uwohereza amafaranga asabwa guha banki, kandi ko no ku nyandiko yuzuzwa ntaho ayo makuru yateganyirijwe. Akomeza asobanura ko igishimangira ko ikosa ryayo ari uko nyuma y'uko amadolari yagombaga koherezwa abuze, Access Bank Rwanda Ltd yanditse inyandiko zitandukanye zigamije guhagarika transfert harimo na Email umukozi wayo witwa Aline yagiye yandika, ko n'ibaruwa Ruhando Ndatira Ernest yanditse yayandikishijwe nayo, kandi hakurikijwe context ibintu byakozwemo impande zombi zarafatanyaga gukemura ikibazo, ko iyo baruwa yanditse itavanaho inshingano za Access Bank Rwanda Ltd. Abajijwe niba banki ishobora kohereza amafaranga itabajije impamvu yoherezwa, avuga ko bikorwa iyo hishyurwa umwenda, ariko ko atari ngombwa mu gihe cyo kohereza amafaranga. UKO URUKIKO RUBIBONA [43] Urukiko rurasanga nkuko dosiye y'urubanza ibigaragaza, tariki ya 02/05/2013 Ruhando Ndatira Ernest yasabye Access Bank Rwanda Ltd kohereza amadolari 76.835 kuri konti No503149270301, iri muri Bank OCBC yo muri Singapore uwo yari agenewe akaba ari Aluzinc Asia Pte Ltd, impamvu yo kohereza ayo madolari akaba ari

ukwishyura amabati (achat tôles) nk'uko bigaragazwa n'inyandiko (OP- ordre de payement) yakozwe na Ruhando Ndatira Ernest. Rurasanga kandi tariki ya 24/03/2013 Aluzinc Asia Pte Ltd yari yarakoze fagitiri iyohereza uruganda rukora amabati rwitwa Rwatole Enterprises, sosiyete yanditse kuri Ruhando Ndatira Ernest, iriho konti numero 503149270301 yanditse ku izina rya West Atlantic Ltd. [44] Urukiko rurasanga mu idosiye y'urubanza harimo inyandiko yitwa Payment TT197013 Details, yujijwe na Access Bank Rwanda Ltd igaragaza ko Access Bank Rwanda Ltd yishyuye 76.835.00 USD, yakozwe ku wa 30/12/2014 (saa 12:03:53 (Cote ya 6), ikaba yanditseho ko Value date ari ku wa 02/05/2013, uyishyuye (Ordering Party) akaba Ruhando Ndatira Ernest, Konti yishyuweho (Beneficiary account or ID) ikaba konti No 503149270301, uwishyuwe (Beneficiary Name) akaba West Atlantic Pte Ltd, naho Bank yishyuwe (Beneficiary Bank Account other ID) ikaba OCBC CENTER, SINGAPORE, uyu wishyuwe akaba atandukanye na Aluzinc Asia Pte Ltd wari wanditse kuri "Ordre de payement" yakozwe na Ruhando Ndatira Ernest.

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[45] Urukiko rurasanga ariko nubwo ruri bwibande ku nyandiko imaze kuvugwa mu gika kibanza gusa, kuko ariyo Ruhando Ndatira Ernest ashingiraho avuga ko amafaranga ye yoherejwe utari wanditse kuri OP, muri dossiye hagaragaramo indi nyandiko nayo yitwa Payment TT197013 Details yo ku wa 02/05/2013 yanditswe ku wa 02/05/2013 saa 16:55:05, yuzujwe na Access Bank Rwanda Ltd igaragaza ko Access bank yishyuye 76.835.00 USD, yanditseho ko Value date ari ku wa 02/05/2013, uyishyuye (Ordering Party) akaba Ruhando Ndatira Ernest, Konti yishyuweho (Beneficiary account or ID) ikaba konte No 503149270301, Bank yishyuwe (Beneficiary Bank Account) ikaba OCBC CENTER, SINGAPORE, naho uwishyuwe (Beneficiary Name) akaba ALUZINC ASIA Pte Ltd, bihura n'uware wanditse kuri Ordre de payement yakozwe na Ruhando Ndatira Ernest (Cote ya 4). [46] Urukiko rurasanga kandi muri dosiye y'urubanza harimo inyandiko zitandukanye zerekana ko nyuma yo gusabwa kohereza amadolari 76.835, Access Bank Rwanda Ltd yayohereje kuri Konti numero 503149270301 iri muri OCBC Bank i Singapore, murizo hakabamo iyiswe Start of message, ibaruwa yo ku wa 06/05/2013 ya Ruhando Ndatira Ernest yandikiye uwitwa Bala amusaba kumufasha gukurikirana kugira ngo ayo madolari adakurwa kuri Konti kuko mu kuyishyura yashingiye kuri fagitire y'impimbano (Cote 28), inyandiko yitwa Account statement details igaragaza uburyo ayo madolari yoherejwe n'inzira yanyuzemo kugira ngo agere kuri konti yagomba gushyirwaho, ibi bikaba bigaragaza ko ayo madolari yageze kuri Konti numero 503149270301; bikanashimangirwa na intermediary bank (New York CITI Bank) mu butumwa yohereje Access Bank Rwanda Ltd iyimenyesha ko amadolari yageze kuri iyo konti ariko ko operation idashoboka guhagarikwa kuko yarangiye. [47] Urukiko rurasanga mu iperereza ryakozwe n'Urukiko rw'Ikirenga ku wa 11/07/2018 muri Banki Nkuru y'Igihugu, abakozi babihereye ububasha n'Ubuyobozi bwayo basorabanuriye Urukiko imikorere ya SWIFT (uko kohererezanya amafaranga hagati y'amabanki ku rwego mpuzamahanga bikorwa), n'uburyo iyo havutse ikibazo cy'amazina y'uwohererejwe amafaranga gikemuka, bagaragaza ko iyo banki yohereza amafaranga imaze kuyohereza,

ibikorwa bindi bikorwa n'izindi banki (intermediary bank-correspondant bank and receiving bank), bityo ikaba idashobora kubona amakuru yose kuri konti yoherejweho amafaranga harimo no kuba yahuza ikonti yoherejweho n'izina yanditseho kugira ngo imenye koko ko ari nyirayo. Raporo yiryo perereza igaragaza ko iyo havutse ikibazo cy'uko nimeroyari ya konti igaragaraho amazina atandukanye ya nyiri konti, ikirebwa ari nimeroyari ya konti aho kuba amazina ya banyirayo. [48] Urukiko rurasanga uwunganira Ruhando Ndatira Ernest adahakana ko amadolari 76.835 yageze kuri konti N°503149270301 yatanze na Ruhando Ndatira Ernest ubwe kuri OP yashyikirije Access Bank Rwanda Ltd, ahubwo icyo ahakana ari uko izina ALUZINC ASIA Pte Ltd ryanditse kuri iyo OP ritandukanye n'izina WEST ATLANTIC PTE LTD rigaragara kuri iyo konti muri Bank Oversea Chinese Banking Corporation Limited Singapore (OCBC) yafunguwemo, kandi akaba atemera na fagitiri igaragaramo WEST ATLANTIC PTE LTD nk'uwari kwoherezwaho ayo madolari. [49] Urukiko rurasanga nkuko byasobanuwe haruguru, inyemezabwishyu (fagitiri) igaragaramo izina WEST ATLANTIC PTE LTD ryari kuri konti N°503149270301 Ruhando Ndatira Ernest yujuje kuri OP ngo yoherezweho amadorali ye ariwe yari yakorewe kandi nta wundi wayigejeje muri Access Bank Rwanda Ltd atari we, bivugako Access Bank Rwanda Ltd yohereje amadorali kuri konti no kuri nimeroyari Ruhando Ndatira Ernest yatanze; bityo ikaba yarujuje inshingano yayo.

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- [50] Urukiko rurasanga na none hashingiwe kuri raporo y'iperereza ry'Urukiko rw'Ikirenga ryakozwe muri Banki Nkuru y'Igihugu yavuzwe haruguru, kuba Access Bank Rwanda Ltd yarohereje amadolari 76.835 akagera kuri konti N°503149270301 yari yahawe na Ruhando Ndatira Ernest, iri muri Bank Oversea Chinese Banking Corporation Limited Singapore (OCBC), nabyo bishimangira ko yari yakozwe inshingano yayo, kubera ko iyo havutse ikibazo ku mazina ya nyiri konti ikigomba kurebwa ari nimeroyari ya konti aho kuba amazina y'uwohererejwe. Ibi kandi niko bimeze mu nyandiko yitwa "Agreement of Participation in Automated Transfer System", mu gika cyayo ya 39.2. aho bavugako iyo hari itandukaniro hagati ya nimeroyari ya konti n'izina rya nyirayo, nimeroyari ya konti niyo irebwa (Where there is discrepancy between a beneficiary account number and beneficiary name and address in a message, the account number will take precedence). [51] Ku bijyanye nuko umubare w'amadorali uri kuri iyo nyemezabwishyu utandukanye n'umubare uri kuri OP yujujwe na Ruhando Ndatira Ernest nabyo ntacyo byafasha mu kumenya nyiri konti yoherejweho amafaranga kuko icyari gikenewe mu kohereza amafaranga ari nimeroyari ya konti yagombaga koherezwaho, nk'uko byagaragajwe haruguru, kuba Ruhando Ndatira Ernest yohereje make cyangwa menshi bikaba byaba ikibazo kimureba we n'uwo yari yohereje ayo madolari, kitareba banki yagombaga kuyohereza. [52] Urukiko rurasanga rero rushingiye kuri ibyo bisobanuro, no ku biteganywa n'ingingo ya 532 y'Igitabo cya gatatu cy'urwunge rw'Amategako y'imbonezamubano, iteganya ko: „Intumwa itegatswe kurangiza ubutumwa yahawe mu gihe cyose ikibushinzwe kandi iryozwa indishyi zikomoka ku kutarangiza ubutumwa yahawe. Itegatswe kurangiza ibintu yatangiye gukora, kabone n'iyi uwamutumye

yaba yarapfuye, niba hari ibishoboka kwangirika “; Access Bank Rwanda Ltd yarubahirije inshingano yahawe Mandat, ikaba itaryozwa kwishyura 76.835 USD n’indishyi zijyanye nayo; ku bw’izo mpamvu urubanza RCOMAA0054/15/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 21/04/2017 rukaba rugomba guhinduka mu ngingo zarwo zose. c. Kumenya niba izindi ndishyi zisabwa muri uru rubanza zikwiye [53] Uhagarariye Ruhando Ndatira Ernest yatanze ikirego cyuririre ku kindi asaba ko indishyi zikomeza kubarwa kugeza igihe urubanza ruciriwe nk’uko byemejwe n’Urukiko rw’Ikirenga mu rubanza RCOMAA 0054/15/CS, kandi zikabarwa mu gaciro k’amafaranga hashingiwe ku gaciro k’idorari kangana na 890Frw. Bityo indishyi basaba zikabarwa mu buryo bukurikira: $76,835 \text{ USD} \times 890 \text{ Frw} = 68.383.150 \text{ Frw}$. Access Bank Rwanda Ltd ikaba kuva muri Gicurasi 2013 kugeza muri Gashyantare 2019 hashize imyaka 5 n’amezi 8 ni ukuvuga iminsi 1860. Inyungu zikaba ari: $(68.383.150 \times 17,56\% \times 1860/360) = 62.041.557 \text{ FRW}$, zikazatangwa hamwe n’umwenda remezo wa 76.835USD. [54] Ababuranira Access Bank Rwanda Ltd bavugaga ko indishyi Ruhando Ndatira Ernest asaba nta shingiro zifite, ahubwo kugeza ubu Access Bank Rwanda Ltd ariyo ikomeje gutakaza amafaranga kubera kuyihoza mu manza nta mpamvu, ariko mu myanzuro yabo ntibagaragagaza ingano yizo ndishyi. UKO URUKIKO RUBIBONA [55] Urukiko rurasanga indishyi zisabwa n’uhagarariye Ruhando Ndatira Ernest zidakwiye kuko ntacyo atsindiye muri uru rubanza, byongeye kandi Access Bank Rwanda Ltd yari ifite uburenganzira bwo kugana inkiko igihe yumva ko hari uburenganzira bwayo igomba guharanira.

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III. ICYEMEZO CY’URUKIKO [56] Rwemeje ko ikirego cyo gusubirishamo ingingo nshya urubanza RCOMAA0054/15/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 21/04/2017 cyatanzwe na Access Bank Rwanda Ltd cyakiriwe kandi ko gifite ishingiro; [57] Rwemeje ko urubanza RCOMAA0054/15/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 21/04/2017 ruhindutse mu ngingo zarwo zose; [58] Rwemeje ko Access Bank Rwanda Ltd itagomba kwishyura Ruhando Ndatira Ernest 76.835 USD n’indishyi zijyana nayo; [59] Ruvuze ko ingwate y’amagarama yatanze ihwanye n’ibyakozwe muri uru rubanza.

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