

RWANDA / JUDGMENT

GATETE v. ECOBANK LTD

RLR V2 2023

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Supreme Court

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GATETE v. ECOBANK LTD

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Text

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GATETE v. ECOBANK LTD [Rwanda URUKIKO RW'IKIRENGA – RCOM 00011/2017/CS (Mutashya, P.J., Karimunda na Muhumuza, J.) 05 Mutarama 2018] Amategeko agenga imanza z'ubucuruzi – Amasezerano y'ubwishingire – Ubwishyu bw'umwishingizi – Ubwishyu bw umwishingizi bugarukira mu mbibi z'ubwishingire bwo kwishyura umwenda. Incamake y' ikibazo: ECOBANK RWANDA LTD yagiranye amasezerano y' inguzanyo na RUBIRIZI DAIRY, yagombaga kwishyurwa mu gihe cy'amezi mirongo ine n'umunani (48), uwitwa Gatete yishingira iyo nguzanyo, maze atanga ingwate y'ikibanza. RUBIRIZI DAIRY Sarl ntiyubahirije ayo masezerano ngo yishyure inguzanyo yahawe n'inyungu zayo mu gihe cyumvikanyweho, maze umwishingizi yandikira ECOBANK RWANDA LTD ayisaba kumusubiza ikibanza cyatanzweho ingwate agamije kukigurisha kugira ngo yishyure uwo umwenda RUBIRIZI DAIRY Sarl yari yishingiye, maze habaho kwandukuka ingwate, icyo kibanza bagicamo ibibanza 51 kugirango bimworohere kugurisha, biranandikwa, Gatete Polycarpe(umwishingizi) ashyikiriza banki ibyangombwa byabyo (Titres de propriété). Gatete (umwishingizi) yongeye kwandikira na none ECOBANK RWANDA LTD asaba kwishyura 39.000.000 Frw y'umwenda wa sosiyete ECOGER na 110.000.000Frw y'umwenda wa RUBIRIZI DAIRY sarl ideni ryose rikavanwaho, ariko banki

imusubiza ivuga ko umwenda wa RUBIRIZI DIARY LTD agomba kwishyura ungana na 149.754.850 Frw. ECOBANK RWANDA LTD yaregeye Urukiko rw'Ubucuruza rwa Nyarugenge isaba gutegeka RUBIRIZI DAIRY SARL na Gatete Polycarpe kwishyura umwenda remezo wa 149.754.850 Frw, n'inyungu zigakomeza kubarwa kugeza umwenda n'indishyi zitandukanye byishyuwe. Urukiko rwaciye urubanza maze rwemeza ko amasezerano y'inguzanyo (convention d'ouverture de crédit avec constitution d'hypothèque) yo ku wa 29/05/2008 ECOBANK RWANDA LTD yagiranye na RUBIRIZI DAIRY Sarl na Gatete Polycarpe nka "Propriétaire Constituant" afite agaciro kandi ko ariyo agomba gushingirwaho mu kubara umwenda iyo sosiyete itishyuye. RUBIRIZI DAIRY Sarl na GATETE bajuririyeye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruza, maze rwemeza kandi ko imikirize y'urubanza RCOM 1418/14/TC/NYGE ihindutse ku bijyanye n'ingano y'umwenda, maze rwemeza ko rutatega ko ingwate zigurishwa, ko atagomba nk'umwishingizi gufatanya na RUBIRIZI DAIRY Sarl kwishyura nkuko byategeswe mu rwego rwa mbere. ECOBANK RWANDA LTD yajuririyeye Urukiko rw'Ikirenga, maze rwemeza ko ifite uburenganzira bwo kwandikisha ingwate ku bibanza bikomoka ku kibanza cyatanzweho ingwate mu masezerano y'inguzanyo yakozwe n'ababuranyi bose, rwemeza kandi ko nta nyungu z'ubukerererwe RUBIRIZI DAIRY Sarl na GATETE P bagomba guhabwa. Rwategeswe RUBIRIZI DAIRY Sarl na GATETE Polycarpe, mu mbibi z'ubwishingire bwe, kwishyura ECOBANK RWANDA LTD 184.099.138Frw y'umwenda iyibereyemo. Nyuma yaho, Gatete yaje gutanga ikirego asaba urukiko gukemura impaka zavutse mu irangiza ry'urubanza, avuga ko Umuhesha w'Inkiko hamwe na ECOBANK RWANDA LTD batangiye

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kurangiza urubanza ariko bikorwa mu buryo bunyuranyije n'ibyo Urukiko rwategeswe, kuko Umuhesha w'Inkiko yararengereye mu kurangiza urubanza agashyiramo n'imitungo itaremejwe muri urwo rubanza, bafatira imitungo ye Urukiko rutategeswe, kandi itatanzweho ingwate, avuga ko ahubwo hari gufatirwa imitungo iri mu mbibi z'ubwishingire bwe nkuko Urukiko rwabitegeswe, hagafatirwa ingwate zikomoka ku kibanza cyatanzweho ingwate gusa kuko ari bwo bwishingire bwe. ECOBANK nayo yatanze inzitizi ijyanye n'ibihe ikirego cyatangiye kuko asanga ikirego cyaragombaga gutangwa mu gihe cy'amezi abiri kuko aricyo gihe Umuhesha w'Inkiko w'Umwuga yamenyeshereje Gatete ko urubanza rurimo kurangizwa. Gatete (umwishingizi) yiregura avuga ko asanga iyo nzitizi nta shingiro ifite kuko kuri we, Amabwiriza ya Perezida w'Urukiko rw'Ikirenga yashyiriweho umuntu utarabaye umuburanyi mu rubanza kuko ariwe umenyeshwa imikirize y'urubanza, avuga kandi ko RUBIRIZI DAIRY Sarl ifite imitungo yimukanwa n'itimukanwa, bityo akaba ariyo yabanza kugurishwa mu gihe ubwishyu butavamo n'imitungo yatanzeho ingwate ikaba yagurishwa. Incamake y'icyemezo: Ubwishyu bw'umwishingizi bugarukira mu mbibi z'ubwishingire bwo kwishyura umwenda. Ikirego gifite ishingiro. Amategako yashyirahweho: Itegeko N° 12/2013 ryo ku wa 22/03/2013 rigenga umurimo w'Abahesha b'Inkiko, ingingo ya 49. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA

- [1] Urubanza rukomoka ku masezerano y'inguzanyo ECOBANK RWANDA LTD yagiranye na RUBIRIZI DAIRY Sarl ku wa 29/05/2008, inguzanyo ingana na 133.379.294 Frw yagombaga kwishyurwa mu gihe cy'amezi mirongo ine n'umunani (48), Gatete Polycarpe arayishingira atanga ingwate y'ikibanza cye n° 8957 kiri ku Kicukiro. [2] RUBIRIZI DAIRY Sarl ntiyubahirije ayo masezerano ngo yishyure inguzanyo yahawe n'inyungu zayo mu gihe cyumvikanyweho. Ku wa 16/05/2012, Gatete Polycarpe yandikiye ECOBANK RWANDA LTD ayisaba kumusubiza ikibanza cyatanze ingwate agamije kukigurisha kugira ngo yishyure umwenda RUBIRIZI DAIRY Sarl ibereyemo ECOBANK RWANDA LTD, maze ku wa 23/5/2012 haba kwandukuza ingwate, icyo kibanza bagicamo ibibanza 51 kugirango bimworohere kugurisha, biranandikwa, Gatete Polycarpe ashyikiriza ECOBANK Rwanda Ltd ibyangombwa byabyo (Titres de propriété).

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- [3] Ku wa 14/09/2014, GATETE Polycarpe na none yandikiye ECOBANK RWANDA LTD asaba kwishyura 39.000.000 Frw y'umwenda wa ECOGER na 110.000.000Frw y'umwenda wa RUBIRIZI DAIRY sarl ideni ryose rikavanwaho, ariko ku wa 22/09/2014 ECOBANK RWANDA LTD imusubiza ko umwenda wa RUBIRIZI DAIRY LTD agomba kwishyura kuri iyo tariki ungana na 149.754.850 Frw. [4] Ku wa 09/12/2014, ECOBANK RWANDA LTD yaregeye Urukiko rw'Ubucuruza rwa Nyarugenge isaba gutegeka RUBIRIZI DAIRY SARL na Gatete Polycarpe kwishyura umwenda remezo wa 149.754.850 Frw wabazwe kugeza ku wa 22/09/2014 n'inyungu zigakomeza kubarwa kugeza umwenda n'indishyi zitandukanye byishyuye. Urukiko rwaciye urubanza ku wa 30/04/2015 rwemeza ko amasezerano y'inguzanyo (convention d'ouverture de crédit avec constitution d'hypothèque) yo ku wa 29/05/2008 ECOBANK RWANDA LTD yagiranye na RUBIRIZI DAIRY Sarl na GATETE Polycarpe nka "Propriétaire Constituant" afite agaciro kandi ko ariyo agomba gushingirwaho mu kubara umwenda iyo sosiyete itishyuye. Rwemeje ko 150.000.000 Frw avugwa mu ibaruwa yo ku wa 16/05/2012 Gatete Polycarpe yandikiye ECOBANK RWANDA LTD, atari ingano y'umwenda RUBIRIZI DAIRY SARL yari irimo ahubwo ari agaciro kagombaga kugurishwa ikibanza yatanze ingwate n° 8957. Rwemeje ko iyo baruwa yo kuwa 16/05/2012 yagaragazaga ibihe byo kwishyuramo ayo 150.000.000 Frw sosiyete Green Estates Ltd yari kuba yaguze icyo kibanza igihe ECOBANK RWANDA LTD yari kuba yemeye kukirekura ngo gicibwemo ibindi bibanza byinshi. Rwemeje ko ibaruwa, "Acte de Main Levée" yo ku wa 23/05/2012 hamwe n'igurishwa rya bimwe mu bibanza bikomoka ku kibanza n° 8957 Gatete Polycarpe yari yatanze ingwate mu masezerano y'inguzanyo yo ku wa 29/05/2008 bidatesha agaciro cyangwa ngo bihindure ayo masezerano. Rwemeje ko RUBIRIZI DAIRY Sarl igomba gufatanya na Gatete Polycarpe nka "Propriétaire Constituant" kwishyura ECOBANK RWANDA LTD umwenda n'inyungu zawo ukomoka kuri iyo nguzanyo batishyuye nkuko bari babisezeranye, bagatanga n'indishyi z'ikurikiranarubanza n'igihembo cy'Avoka. Rwategetse RUBIRIZI DAIRY Sarl gufatanya na Gatete Polycarpe nka "Propriétaire Constituant" guha ECOBANK RWANDA LTD 132.092.889 Frw (miliyoni ijana na mirongo itatu n'ebiri, ibihumbi mirongo icyenda na bibiri, magana inani na mirongo inani n'icyenda).

[5] RUBIRIZI DAIRY Sarl na GATETE Polycarpe bajuririye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruza, ruca urubanza ku wa 30/6/2015 rwemeza ko RUBIRIZI DAIRY Sarl, ECOBANK RWANDA LTD na GATETE Polycarpe batemeranyijwe ko amasezerano yo ku wa 29/05/2008 avuyeho agasimburwa n'ayo ku wa 16/5/2012, ko nta masezerano yabayeho avuga ko inyungu za 15% ku mwaka zo mu masezerano yo ku wa 29/05/2008 zihagarara kubarwa, ko ECOBANK RWANDA LTD idategetswe kwishyurwa ari uko ibibanza byavuye mu kibanza n° 8957 bigurishijwe. Urukiko rwemeje kandi ko imikirize y'urubanza RCOM 1418/14/TC/NYGE ihindutse ku bijyanye n'ingano y'umwenda, igihembo cy'avoka no k'ugomba kwishyura umwenda, rutegeka RUBIRIZI DAIRY Sarl kwishyura ECOBANK RWANDA LTD umwenda ungana na 45.607.219 Frw aho kuba 131.092.889 Frw. Urukiko rwasanze RUBIRIZI DAIRY Sarl irimo ECOBANK RWANDA LTD ayo mafaranga yemejwe ku rwego rwa mbere, hakiyongeraho 1.000.000 Frw y'indishyi z'ikurikirana rubanza n'igihembo cy'Avoka yaciwe ku rwego rwa mbere, na 500.000 Frw y'igihembo cy'Avoka ku rwego rw'ubujurire no kuyisubiza 50.000 Frw y'ingwate y'amagarama yatanze irega, yose hamwe akaba 47.157.129 Frw. Rwemeje kandi ko nta ndishyi z'ikurikiranarubanza n'igihembo cy'Avoka RUBIRIZI DAIRY Sarl ikwiriye kwishyurwa na ECOBANK RWANDA LTD, rwemeza ko rutatega ko ingwate zatanze na Gatete Polycarpe zigurishwa, ko atagomba nk'umwishingizi gufatanyana na RUBIRIZI DAIRY Sarl kwishyura

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ECOBANK RWANDA LTD nkuko byategetswe mu rwego rwa mbere, rwemeza ko urubanza rutarangizwa by'agateganyo ku mwenda wa 111.000.000 Frw. [6] ECOBANK RWANDA LTD yajuririye Urukiko rw'Ikirenga, uru Rukiko rwaciye urubanza ku wa 30/06/2017, rwemeza ko ifite uburenganzira bwo kwandikisha ingwate ku bibanza bikomoka ku kibanza gifite n° 8957 kiri Kicukiro cyatanzweho ingwate mu masezerano y'inguzanyo yakozwe n'ababuranyi bese, rwemeza ko nta nyungu z'ubukerererwe RUBIRIZI DAIRY Sarl na Gatete Polycarpe bagomba guhabwa. Rwategetse RUBIRIZI DAIRY Sarl na GATETE Polycarpe, mu mbibi z'ubwishingire bwe, kwishyura ECOBANK RWANDA LTD 184.099.138 Frw y'umwenda iyibereyemo, rubatega kwishyura ECOBANK RWANDA LTD amafaranga y'igihembo cya Avoka angana na 1.000.000 Frw, rubatega gufatanyana gusubiza ECOBANK RWANDA LTD 1.750.000 Frw ya avansi yishyuye ku gihembo cy'umuhanga, rubatega kandi kwishyura igice cy'igihembo cy'umuhanga Habimana José atishyuye kingana na 1.750.000 frw, bakabikora bitarenze ku wa 31/07/2017. [7] Gatete Polycarpe yaje gutanga ikirego cyo gukemura impaka zavutse mu irangiza ry'urubanza RCOMAA 0046/15/CS avuga ko, ashingiye ku rupapuro rwa 15 rw'urwo rubanza, agace ka 57, Umuhesha w'Inkiko na ECOBANK RWANDA LTD batangiye kurangiza urubanza mu buryo bunyuranyije n'ibyo Urukiko rwategetse. [8] Iburanisha ry'urubanza mu ruhamye ryabaye ku wa 03/01/2018, Gatete Polycarpe yunganiye na Me Nzeyimana Boniface, naho ECOBANK RWANDA LTD iburanirwa na Me Nkundabarashi Moïse. [9] Muri urubanza, harasuzumwa ikibazo cy'inzitizi yo kutakira ikirego kubera kurenza igihe cyo kurega, no gusuzuma niba Umuhesha w'Inkiko yararengereye mu kurangiza urubanza agashyiramo n'imitungo itaremejwe muri urwo rubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.

- a. Kumenya niba ikirego cya Gatete polycarpe kitagomba kwakirwa kubera ko yarengeje igihe cyo kurega. [10] Me Nkundabarashi Moïse uhagarariye ECOBANK yatanze inzitizi ijyanye n'ibihe ikirego cyatangiwe kuko asanga ikirego cyaragombaga gutangwa mu gihe cy'amezi abiri uhereye ku wa 25/08/2017 kuko aricyo gihe Umuhesha w'Inkiko w'Umwuga yamenyeshereje Gatete Polycarpe ko urubanza rurimo kurangizwa. Ko kuba yatanze ikirego ku wa 05/12/2017, yanyuranyije n'ibiteganywa n'ingingo ya 50 y'Amabwiriza N° 002/2015 yo ku wa 18/05/2015 ya Perezida w'Urukiko rw'Ikirenga agenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ashya mu bikorwa ibiteganywa mu ngingo ya 208 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ayo mabwiriza agateganya ko ibirego byerekeye impaka zivutse mu irangiza ry'imanza, bitangwa mu gihe kitarenze amezi abiri uhereye igihe urega amenyeye ko urubanza rurimo kurangizwa cyangwa rwarangijwe, akaba asanga rero ikirego cyatanzwe na Gatete Polycarpe kitagomba kwakirwa kuko yagitanze ku wa 05/12/2017 amezi abiri (2) yararenze.

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- [11] Me Nizeyimana Boniface wunganira Gatete Polycarpe asanga iyo nzitizi nta shingiro ifite kuko kuri we, Amabwiriza ya Perezida w'Urukiko rw'Ikirenga yashyiriweho umuntu utarabaye umuburanyi mu rubanza kuko ariwe umenyeshwa imikirize y'urubanza, bo bakaba bashingira ku ngingo ya 208 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ibibazo bivutse mu irangizwa ry'urubanza, bishyikirizwa Urukiko rwaruciye bwa nyuma. [12] Akomeza avuga ko mu gihe Urukiko rwaba rubibonye ukundi, rwazirikana ko Gatete Polycarpe ahereye ku Itegeko ry'Umuhesha w'Inkiko ryishyura ryo ku wa 25/08/2017 akarimumenyeshya uwo munsu, yandikiye Umuhesha w'Inkiko w'Umwuga ku wa 19/10/2017 amubwira yuko ibyo ari gukora atari byo, Umuhesha w'Inkiko nawe amusubiza ku wa 26/10/2017, akaba asanga uwo munsu wo ku wa 26/10/2017 aribwo impaka zatangiye, ariho haherwa habarwa ibihe byo kurega. UKO URUKIKO RUBIBONA [13] Ingingo ya 208 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko : "Impaka zishingiye ku irangiza ry'urubanza ryaba riri gukorwa cyangwa ryarangiye zikemurwa n'Urukiko rwaruciye bwa nyuma cyangwa urwemeje ko urubanza rwo mu mahanga rurangirizwa mu Rwanda mu gihe kitarenze iminsi cumi n'itanu (15) guhera igihe Urukiko rwakiriye ikirego". [14] Ingingo ya 50 y'Amabwiriza N° 002/2015 yo ku wa 18/05/2015 ya Perezida w'Urukiko rw'Ikirenga agenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko : "Ikirego cyerekeranye n'impaka zishingiye ku irangiza ry'ibyemezo by'inkiko zivugwa mu ngingo ya 208 y'Itegeko n° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, gishyikirizwa urukiko rubifitiye ububasha mu gihe kitarenze amezi abiri (2) uhereye igihe urega amenyeye ko urubanza rurimo kurangizwa cyangwa rwarangijwe". [15] Mu nyandiko zigize urubanza, harimo Itegeko ry'Umuhesha w'Inkiko w'Umwuga Mwitende Jean Paul ryo

ku wa 25/08/2017 ryishyuzwa Gatete Polycarpe ibyo urubanza RCOMAA 0046/2015/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 30/06/2017 rwategetse, kandi akaba yabikoze mu gihe cy'iminsi cumi n'itanu (15) uhereye igihe aboneye iri Tegeko, akanamumenyesha ko natubahiriza iri Tegeko mu gihe cyavuzwe haruguru, azafatira imitungo ye itimukanwa. [16] Muri dosiye kandi, harimo inyandiko yo ku wa 19/10/2017 Gatete Polycarpe yanditse asubiza Umuhesha w'Inkiko w'Umwuga Mwitende Jean Paul, amugaragariza ko mu ifatira yakoze yarengereye ashyiramo n'ibyo Urukiko rutategetse, amusaba kurivanaho. [17] Muri dosiye hagaragaramo kandi urwandiko rwo ku wa 23/10/2017 Umuhesha w'Inkiko w'Umwuga Mwitende Jean Paul yanditse asubiza Gatete Polycarpe, uyu akarubona ku wa 26/10/2017, amumenyesha ko ifatira yakoze yariyakoze mu rwego rwo kurangiza urubanza RCOMAA 0046/2015/CS, kandi akaba yarariyakoze mu buryo bwemewe n'amategeko.

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[18] Muri dosiye, harimo kandi inyandiko itanga ikirego kuri IECMS (Integrated Electronic Case Management System) igaragaza ko Gatete Polycarpe yatanze ikirego ku wa 05/12/2017 asaba Urukiko gukemura impaka zavutse mu irangiza ry'urubanza RCOMAA 0046/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 30/06/2017. [19] Urukiko rurasanga uhereye ku buryo Gatete Polycarpe yagiye yandikirana n'Umuhesha w'Inkiko, impaka zavutse kuri iryo rangiza rubanza zaratangiyeye ku wa 26/10/2017 kuko nyuma yuko Gatete Polycarpe amweretse ko ifatira yakoze rinyuranyije n'ibyo Urukiko rwategetse, niho Umuhesha w'Inkiko yamushwishurije amubwira ko ifatira yakoze ridashobora kuvaho igihe cyose amafaranga yategetswe n'Urukiko atararangira kwishyurwa, ahongaho niho impaka ku irangizarubanza zivugwa mu ngingo ya 208 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru zatangiriye, bityo rukaba rusanga igihe cy'amezi abiri (2) kivugwa mu ngingo ya 50 y'Amabwiriza N° 002/2015 yo ku wa 18/05/2015 ya Perezida w'Urukiko rw'Ikirenga yavuzwe haruguru kigomba gutangira kubakwa guhera ku wa 26/10/2017, icyo gihe cy'amezi abiri rero kikaba cyarubahirijwe kuko ikirego cyatanzwe ku wa 05/12/2017 nkuko bigaragazwa n'inyandiko itanga ikirego iri muri dosiye, bityo inzitizi yatanze na Me Nkundabarashi Moïse uhagarariye ECOBANK ikaba nta shingiro ifite. B. Kumenya niba Umuhesha w'Inkiko yararengereye mu kurangiza urubanza agashyiramo n'imitungo itemejwe muri urwo rubanza [20] Gatete Polycarpe avugaga ko mu kurangiza urubanza RCOMAA 0046/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 30/06/2017, ECOBANK RWANDA LTD n'Umuhesha w'Inkiko barenze ku byo igika cya 57 cy'urubanza rurangizwa giteganywa bafatira n'ibyo Urukiko rutategetse, ni ukuvuga ko ku bimwerekereye, hari gufatirwa imitungo iri mu mbibi z'ubwishingire bwe nkuko Urukiko rwabitegetse, bivuze ko hari gufatirwa ingwate zikomoka ku kibanza n° 8957 gusa kuko ari bwo bwishingire bwe, iza zikaba arizo mpaka asaba ko Urukiko rwakemura. [21] Avugaga ko RUBIRIZI DAIRY Sarl ifite imitungo yimukanwa n'itimukanwa, bityo kuri we akaba ariyo yabanza kugurishwa mu gihe ubwishyu butavamo n'imitungo Gatete Polycarpe yatanzeho ingwate ikaba yagurishwa. Agasanga ECOBANK RWANDA LTD n'Umuhesha w'Inkiko bararengereye cyane, ko aho abimenyeye, yandikiye Umuhesha w'Inkiko w'Umwuga, amusaba kureka ibyo bintu ariko ntiyagira icyo abikoraho.

[22] ECOBANK RWANDA LTD yireguye ivuga ko kuri icyo kibazo isanga nta mpaka zavutse na gato kuko RUBILIZI DAIRY Sarl n'umwishingizi wayo bagomba kwishyura ECOBANK RWANDA LTD nkuko byemejwe n'Urukiko. Ikindi, bakaba ataribo bagena uburyo urubanza rurangizwa, ibi bikaba bisobanurwa mu buryo bwumvikana n'ingingo ya 194 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, aho iteganya ko ibintu byimukanwa n'ibitimukanwa by'urimo umwenda ari ingwate rusange y'abo abereyemo umwenda. UKO URUKIKO RUBIBONA [23] Ingingo ya 203 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko: "Irangiza

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ry'ibyemezo by'inkiko cyangwa inyandiko rigomba gukorwa mu buryo no mu gihe cyategetswe n'ibyemezo byazo". [24] Ingingo ya 49 y'Itegeko N° 12/2013 ryo ku wa 22/03/2013 rigenga umurimo w'Abahesha b'Inkiko iteganya ko : Imirimo iri mu bubasha bw' umuhesha w'inkiko w'umwuga igizwe n'imirimo icyenda nkuko igaragara muri iyo ngingo harimo kurangiza ibyemezo by'inkiko, iby'inze z'ubuyobozi zibifitiye ububasha n'izindi nyandikompesha". [25] Muri dosiye, harimo amasezerano y'inguzanyo yo ku wa 29/05/2008, ECOBANK RWANDA LTD yagiranye na RUBIRIZI DAIRY Sarl, ECOBANK RWANDA LTD ikayihira inguzanyo ingana na 133.379.294Frw, Gatete Polycarpe akayishyira agatanga ikibanza cye n° 8957 kiri Rubirizi- Kicukiro. [26] Muri dosiye, harimo kandi Itegeko ry'Umuhesha w'Inkiko ryishyura Gatete Polycarpe ryo kuwa 25/08/2017 rimumenyesha ko natubahiriza iryo tegeko azafatira imitungo afatanyije n'umugore we igaragara mu mbonerahamwe iri hasi, akongeramo indi mitungo itari mu kibanza n° 8957 kiri Kicukiro- Rubirizi. [27] Mu rubanza rurangizwa RCOMAA 0046/15/CS rwaciye n'Urukiko rw'Ikirenga ku wa 30/06/2017, muri rwemeje yarwo ya 54, Urukiko rwemeje ko ECOBANK RWANDA Ltd ifite uburenganzira bwo kwandikisha ingwate ku bikomoka ku kibanza gifite n° 8957 cyatanzweho ingwate mu masezerano y'inguzanyo RUBIRIZI DAIRY Sarl na ECOBANK RWANDA LTD bagiranye, kugira ngo bibe byavamo ubwishyu bw'umwenda. Mu gika cyarwo cya 57 kandi, Urukiko rwategetse ko RUBIRIZI DAIRY Sarl ifatanyaga na Gatete Polycarpe mu mbibi z'ubwishingire bwe kwishyura ECOBANK RWANDA LTD 184.099.138 frw y'umwenda iyibereyemo. [28] Urukiko rurasanga Umuhesha w'Inkiko mu kurangiriza urubanza kuri Gatete Polycarpe nk' uwishingiye inguzanyo, ataragombaga gushyiramo indi mitungo itari mu ngwate y'ibanza bikomoka ku kibanza gifite N° 8957 kiri Rubirizi- Kicukiro kuko nicyo cyatanzweho ingwate mu masezerano y'inguzanyo RUBIRIZI DAIRY Sarl na ECOBANK RWANDA LTD bagiranye, ibi kandi bikaba ari nabyo Urukiko rwemeje mu rubanza rurangizwa mu gika cyarwo cya 57. [29] Urukiko rurasanga ibyo uhagarariye ECOBANK RWANDA LTD avuga yuko GATETE Polycarpe na RUBIRIZI DAIRY Sarl bagomba gufatanya kwishyura umwenda babereyemo ECOBANK RWANDA LTD hashingiwe ku ngingo ya 194 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, ibi byajyaga kumvikana iyo bombi bari kuba bafatanyije umwenda, ariko kuba GATETE Polycarpe yaraje mu masezerano nk'umwishingizi, ubwishyu bwe bugarukira ku byo yishingiye nkuko n'ubundi Urukiko rwabitegetse ko bugomba kugarukira mu mbibi z'icyo yishingiye ni ukuvuga ku

kibanza gifite n° 8957 kiri Rubirizi- Kicukiro . C.Kumenya niba indishyi zisabwa muri uru rubanza zifite ishingiro. [30] ECOBANK RWANDA LTD yatanze ikirego cyuririye ku cya Gatete Polycarpe, isaba urukiko gutegeka urega kwishyura indishyi zo gushorwa mu manza z'amaherere zingana na 5.000.000 Frw, amafaranga y' ikurikiranarubanza angana na 2.000.000 Frw, n'ay'igihembo cya Avoka angana na 3.000.000 Frw.

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[31] Gatete Polycarpe avuga ko ahubwo ariwe ugomba guhabwa indishyi kuko ECOBANK RWANDA LTD n'Umuhesha w'Inkiko batandukiriye bagatangira kurangiza urubanza ku bitarategatswe n'Urukiko, akaba asaba ko bamuha bafatanyije amafaranga y'ikurikiranarubanza n'igihembo cya Avoka bingana na 3.000.000Frw. [32] ECOBANK RWANDA LTD kuri izo ndishyi yireguye ivuga ko Gatete Polycarpe ariwe uhagarariye RUBILIZI Diary Sarl, ko kuba rero atarishyuye uyu mwenda ku neza atabyitwaza ngo asabe indishyi z'ibintu adafitiye ibimenyetso. UKO URUKIKO RUBIBONA [33] Urukiko rurasanga, ku byerekeye ikirego cyuririye ku kindi cya ECOBANK RWANDA LTD , nta shingiro cyahabwa kuko ariyo yatsinzwe muri uru rubanza, ikaba itagaragaza icyo yangirijwe muri uru rubanza. [34] Ku byerekeye amafaranga y'ikurikirarubanza n'igihembo cya Avoka GATETE Polycarpe asaba, Urukiko rurasanga ayakwiye ariko rukayamugenera mu bushishozi bwarwo kuko ayo asaba atagaragaza ibimenyetso by'uko ariyo akwiriye, bityo akaba agomba guhabwa yose hamwe 1.000.000 Frw (miliyoni imwe). III. ICYEMEZO CY URUKIKO [35] Rwemeje ko ikirego cyo gukemura impaka zavutse mu irangiza ry'urubanza RCOMAA 0046/15/CS cyatanzwe na Gatete Polycarpe gifite ishingiro; [36] Rwemeje ko inzitizi yazamuwe na Me Nkundabarashi Moïse yo kutakira ikirego nta shingiro ifite; [37] Rwemeje ko ikirego cya ECOBANK RWANDA LTD cyuririye ku cya Gatete Polycarpe gisaba indishyi nta shingiro gifite; [38] Rwemeje ko ubwishyu bwa Gatete Polycarpe bugomba kugarukira mu mbibi z'icyo yishyinye nkuko Urukiko rwabitegetse ni ukuvuga ku kibanza gifite n°8957 kiri Rubirizi- Kicukiro [39] Rutegetse ECOBANK RWANDA LTD guha Gatete Polycarpe 1.000.000 Frw y'ikurikirarubanza n'igihembo cya Avoka; [40] Rutegetse ko amagarama y'urubanza ahwanye n'ibyarukozwemo.

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