

RWANDA / JUDGMENT

MUNYANEZA NUNDI v. ACCESS BANK RWANDA LTD

RCOMAA 00090/2018/CA

COURT

Court of Appeal

DECIDED

26 July 2019

CASE / FILE NUMBER

RCOMAA 00090/2018/CA

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MUNYANEZA NUNDI v. ACCESS BANK RWANDA LTD

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Text

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MUNYANEZA N'UNDI v. ACCESS BANK RWANDA LTD [Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00090/2018/CA (Mukanyundo, P.J., Ngagi na Kanyange, J.) 26 Nyakanga 2019] Amategeko y'ubwishingire - Amasezerano y'ubwishingire - Guhindura zimwe mu ngingo zigize amasezerano y'iremezo, bidakoze ntabwo bigira ingaruka ku bwishingire ku mwenda mu gihe amasezerano avuguruye ateganya ko izindi ngingo zigize amasezerano y'iremezo zidahindutse. Ntabwo umuyobozi wa sosiyete wasinye ku masezerano avuguruye yakwitwaza ko atamenyeshejwe ko ubwishingire ku mwenda bugumye mu gihe yashyiraga umukono ku masezerano avuguruye. Incamake y'ikibazo: Access Bank Rwanda yagiranye amasezerano y'inguzanyo ya miliyari ebyiri na miliyoni mirongo irindwi (2,070,000,000 Frw) hiyongeraho inyungu za 16% ku mwaka maze Munyaneza Felicien na Mudenge Emmanuel buri wese yishingira inshingano zose zikomoka kuri iyo nguzanyo. Exert Engeneering Group Ltd yaje kunanirwa kwishyura, bituma Access Bank Rwanda Ltd irega Munyaneza Felicien na Mudenge Emmanuel bayishingiye isaba ko bayishyura umwenda ungana na 2.556.352.640 Frw wabazwe kugera kuwa 13/10/2017 kandi uzakomeza

kubarwa kugeza iguhe wose uzishyurirwa, bakanayiha indishyi zitandukanye. Urukiko rw'ubucuruzi rwaciye urubanza rwemeza Munyaneza Felicien na Mudenge Emmanuel batubahirije amasezerano y'ubwishingizi bw'inguzanyo Access Bank Rwanda Ltd yahaye Exert Engineering Group Ltd, batishimiye icyo cyemezo cy'urukiko bakijurirye mu Rukiko Rukuru rw'ubucuruzi, mu guca urubanza rwemeza ko ubujurire nta shingiro bufite, ruhamishaho imikirize y'urubanza rwajuririwe. Munyaneza na Mudenge batishimiye imikirize y'urubanza bajurirye mu Rukiko rw'Ubugurire, mu biburanire yabo ku ngingo bajurirye baburana bavugako Urukiko Rukuru rw'Ubuguruzi rwirengagije nkana ingingo z'amategako zivuga ko ubwishingire budakemuka, kandi ko bugomba kumenyeshwa umwishingire mu buryo bweruye, bakavugako batariyozwa inguzanyo iri mu masezerano avuguruye batigeze bamenyeshwa. Ku rundi ruhande uregwa avugako icyo Mudenge Emmanuel na Munyaneza Félicien bishingiye ari umwenda atari icyo uzakora, bakaba rero bafite inshingano yo kuwishyura kuko bawishingiye, Akomeza avuga ko ku bijyanye no kuba abishingizi baragombaga kumenyeshwa ivugurura ry'amasezerano (amendement), ibi bitari ngombwa kuko batagombaga kongera kwishingira icyo inguzanyo izakoresheka (affectation) kandi barishingiye umwenda. Incamake y'icyemezo: Guhindura zimwe mu ngingo zigize amasezerano y'iremezo, ntabwo bigira ingaruka ku bwishingire ku mwenda mu gihe amasezerano avuguruye ateganyaga ko izindi ngingo zigize amasezerano y'iremezo zidahindutse. Ntabwo umuyobozi wa sosiyete wasinye ku masezerano avuguruye yakwitwaza ko atamenyeshwe ko ubwishingire ku mwenda bugumye mu gihe yashyiraga umukono ku masezerano avuguruye. Ubujurire nta shingiro bufite. Amagarama ahwanye n'ibyakozwe mu rubanza.

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Amategako yifashishijwe: Igitabo cya gatatu cy'urwunge rw'amategako mbonezamubano, ingingo y'552. Imanza zifashishijwe: Nta manza zifashishijwe Urubanza I.IMITERERE Y'URUBANZA [1] Ku wa 25/09/2014, ACCESS BANK RWANDA Ltd, yagiranye na EXERT ENGINEERING Group Ltd amasezerano y'inguzanyo ingana na 2.070.000.000 Frw hiyongereyeho inyungu za 16% ku mwaka; iyo nguzanyo ikaba yarimo ibice 3 ari byo: Term loan facility ingana na 410.000.000 Frw ACCESS BANK RWANDA Ltd yaguriye EXERT ENGINEERING GROUP Ltd muri COGEBANQUE Rwanda Ltd, Asset Finance ingana na 560.000.000 Frw yo kugura amashyamba yo gukoresha mu kazi EXERT ENGINEERING GROUP Ltd yari yatsindiye muri MINAGRI na KAMINUZA y'U Rwanda, ishamba rya Nyagatare, na contract finance facility ingana na 1.100.000.000 Frw yo gukoresha mu kurangiza amasezerano amaze kuvugwa, EXERT ENGINEERING GROUP Ltd yari ifitanye na MINAGRI hamwe na KAMINUZA y'URwanda. Mbere y'uko uyu mwenda utangwa, Munyaneza Félicien na Mudenge Emmanuel, buri wese yari yishingiye inshingano ziwukomokaho nk'uko bigaragara mu masezerano (personal guarantee) bagiranye na ACCESS BANK RWANDA Ltd ku wa 20/05/2014. [2] EXERT ENGINEERING GROUP Ltd yananiwe kwishyura umwenda, bituma ACCESS BANK RWANDA Ltd irega Munyaneza Félicien na Mudenge Emmanuel bayishingiye, isaba ko bayishyura umwenda ungana na 2.556.352.640 Frw wabazwe kugeza ku wa 01/11/2016 kandi uzakomeza kubarwa kugeza igihe wose uzishyurirwa, bakanayiha indishyi zitandukanye. [3] Urubanza rwatangiriye mu Rukiko rw'Ubuguruzi rwa Nyarugenge, Munyaneza Félicien na

Mudenge Emmanuel bemera ko koko amasezerano yo ku wa 20/05/2014 yabayeho, ariko ko umwenda bishingiye wamaze kwishyurwa kuko 1.100.000.000 Frw ya Guarantee Line EXERT ENGINEERING GROUP Ltd itigeze iyahabwa. Babwiye Urukiko ko 970.000.000 Frw bemera ko bishingiye ACCESS BANK RWANDA Ltd yayiyishyurwe igurisha inzu n'imashini bya EXERT ENGINEERING GROUP Ltd zikoreshwa mu bwubatsi byari byatanzweho ingwate. [4] Ku wa 13/10/2017, Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza, rwemeza ko Munyaneza Félicien na Mudenge Emmanuel batubahirije amasezerano y'ubwishingizi bw'inguzanyo ACCESS BANK RWANDA Ltd yahaye EXERT ENGINEERING GROUP Ltd, ko ibyo bireguza ko hari ingwate zagurishijwe zikishyura umwenda nta shingiro bifite, kandi ko n'ibyo basaba ko itambamira ry'umutungo wabo ryakorewe ku mubitsi w'impapuro mpamo z'ubutaka ryakurwaho, nabyo bidakwiye guhabwa ishingiro. Uru Rukiko rwemeje ko umwenda Munyaneza Félicien na Mudenge Emmanuel bagomba kwishyura ACCESS BANK RWANDA Ltd ubarwa kugeza ku wa 22/12/2016, ubwo Urukiko rwemeje ko hatangijwe ikurikirana ry'igihombo cya EXERT ENGINEERING GROUP Ltd nk'uko bigaragara mu rubanza RCOM 0729/2016/TC/NYGE na RCOM 0756/2016/TC/NYGE, rutegeka Munyaneza Félicien na Mudenge Emmanuel kwishyura ACCESS BANK RWANDA Ltd amafaranga angana na 2.594.697.930 Frw y'umwenda

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wagaragaraga kuri compte ya EXERT ENGINEERING GROUP Ltd kugeza ku wa 26/05/2017 hamwe n'amafaranga 500.000 Frw y'igihembo cya avoka. [5] Mudenge Emmanuel na Munyaneza Félicien bajuririyeye Urukiko Rukuru rw'Ubucuruzi, maze ku wa 21/06/2018, Urukiko Rukuru rw'Ubucuruzi ruca urubanza RCOMA 00723/2017/CHC/HCC, rwemeza ko ubujurire bwa Mudenge Emmanuel na Munyaneza Félicien nta shingiro bufite, ruhamishaho imikirize y'urubanza rwajuririye, rubategeka guha ACCESS BANK RWANDA Ltd 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka. [6] Mudenge Emmanuel na Munyaneza Félicien ntibishimiye imikirize y'urubanza, bajuririra Urukiko rw'Ubujurire, bavuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije nkana ingingo z'amategako zivuga ko ubwishingire budakekwa, kandi ko bugomba kumenyeshwa umwishingire mu buryo bweruye nk'uko abahanga babivugaga, ntirwaha agaciro ubusabe bwabo bwo gukuraho itambama ryashyizwe ku mitungo yabo kuko umwenda bishingiye warangijwe kwishyurwa, bakaba batariyozwa inguzanyo iri mu masezerano avuguruye batigeze bamenyeshwa, basaba ko Urukiko rukuraho iri tambama. [7] Indi mpamvu y'ubujurire batanga, ni uko badakwiye kuryozwa umwenda wa 1,100,000,000 Frw kuko nta masezerano y'ubwishingire avugurura aya mbere bagiranye na ACCESS BANK RWANDA Ltd ngo bemeranye ku bijyanye n'icyo umwenda ugiye gukora. Bavuga ko rero nta kuntu bariyozwa inguzanyo kuko amasezerano agira ingaruka ku bayagiranye. [8] Urubanza rwaburanishijwe mu ruhame ku wa 07/05/2019, Mudenge Emmanuel na Munyaneza Félicien bahagarariye na Me Mugengangabo Jean Népomuscène, naho ACCESS BANK RWANDA Ltd ihagarariye na Me Bizumuremyi Isaac, wahise azamurira inzitizi y'uko Umwanditsi Mukuru w'Urukiko rw'Ubujurire yari afite inshingano yo gusuzuma inzitizi yo kutakira ubujurire bwa kabiri bwatanzwe na Mudenge Emmanuel na Munyaneza Félicien kuko batsinzwe mu nkiko zombi ku mpamvu zimwe, ashingiye ku ngingo ya 52 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, asaba ko Urukiko

rumutegeka kubisuzuma kuko atabikoze, aho kugira ngo bisuzumwe bwa mbere n'inteko iburanisha urubanza. Bitewe n'uko Me Bizumuremyi Isaac yari yashyize imyanzuro y'iyi nzitizi muri IECMS bucya iburanisha riba, Urukiko rwafashe icyemezo cyo kwimura iburanisha kugira ngo Me Mugengangabo Jean Népomuscène abashe gutegura imyanzuro yo kwiregura, iburanisha rishyirwa ku wa 14/05/2019. [9] Kuri iyo tariki, urubanza rwaburanishijwe mu ruhame, ababuranyi bahagarariwe nka mbere, icyo kibazo aba ari cyo cyonyine kigibwaho impaka. Ku wa 24/05/2019, Urukiko rwafashe icyemezo ko ibyo ACCESS BANK RWANDA Ltd isaba ko Umwanditsi Mukuru yakongera gusuzuma iyakirwa ry'ikirego cy'ubujurire bwa kabiri bwatanzwe na Mudenge Emmanuel na Munyaneza Félicien nta shingiro bifite, rwemeza ko iburanisha rizakomeza ku wa 24/06/2019. [10] Kuri iyo tariki, urubanza rwaburanishijwe mu ruhame, impande zombi zihagarariwe nka mbere, Me Bizumuremyi Isaac avuga ko inzitizi y'iburabubasha ry'Urukiko rw'Ubujurire ishingiye y'uko abajuriye batsinzwe ku mpamvu zimwe ku rwego rwa mbere n'urwa kabiri yari yatanze ayiretse ; isomwa ry'urubanza rishyirwa ku wa 26/07/2019. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

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1. Kumenya niba Munyaneza Félicien na Mudenge Emmanuel bataryozwa inguzanyo iri mu masezerano avuguruye kuko batayamenyeshwe [11] Me Mugengangabo Jean Népomuscène, uburanira Munyaneza Félicien na Mudenge Emmanuel, avuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije nkana ingingo z'amategako zivuga ko ubwishingire budakekwa, kandi ko bugomba kumenyeshwa umwishingire mu buryo bweruye nk'uko abahanga babivuga, ntirwaha agaciro ubusabe bwabo bwo gukuraho itambama ryashyizwe ku mitungo yabo kuko umwenda bishingiye warangije kwishyurwa, bakaba bataryozwa inguzanyo iri mu masezerano avuguruye batigeze bamenyeshwa. [12] Akomeza avuga ko icyo banenga urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, ari uko rwemeje ko kuba amasezerano y'inguzanyo yarahinduwe bitabuza ko Mudenge Emmanuel na Munyaneza Félicien bagomba kuyishingira; mu gihe kuba umuntu ari umuyobozi wa sosiyete, bitavuze ko iyo amasezerano ahinduwe akomeza byanze bikunze kuba umwishingizi; ko rero umwenda bishingira ari 2.070.000.000 Frw hakuwemo 1.100.000.000 Frw kuko yo yahinduriwe icyo yari agenewe mu masezerano ya mbere nk'uko bigaragara mu ivugurura ry'amasezerano ryo ku wa 03/06/2014. Asaba Urukiko ko rwazasuzuma niba igihe habayeho guhindura icyo amafaranga y'umwenda yari agenewe (affectation) hagati ya banki n'uyirimo umwenda, bishyiraho inshingano yo kwishyura uwari wayishingiye mbere y'uko habaho guhindura "affectation" yawo. [13] Me Bizumuremyi Isaac avuga ko mu kuvugurura amasezerano, 1.100.000.000 Frw yagabanyijwemo ibice bitatu, 700.000.000 Frw aba aya "garantie", 300.000.000 Frw aba discount naho 100.000.000 Frw aba aya overdraft, bivuze ko iyo baba baburana ibyo kuba 1.100.000.000 Frw, yarahinduriwe icyo yari yagenewe (affectation), baba baburana 400.000.000 Frw kuko 700.000.000 Frw yo icyo yari agenewe kitahindutse, kuko yakomeje kuba aya garantie. Avuga ko icyo Mudenge Emmanuel na Munyaneza Félicien bishingiye ari umwenda atari icyo uzakora, bakaba rero bafite inshingano yo kwishyura kuko bawishingiye, bakaba batazabazwa ibyavuye mu

masezerano, ko ibi biteganyijwe mu ngingo ya mbere, agace ka "a", k'amasezerano ya "personal guarantee". [14] Akomeza avuga ko ku bijyanye no kuba abishingizi baragombaga kumenyeshwa ivugurura ry'amasezerano (amendement), ibi bitari ngombwa kuko batagombaga kongera kwishingira icyo inguzanyo izakoreshwa (affectation) kandi barishingiye umwenda, bityo rero ko kuba amasezerano ya mbere atarahindutse, ahubwo yavuguruwe, nta mpamvu bari kumenyeshwa. UKO URUKIKO RUBIBONA [15] Ingingo ya 552 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko : "Uwishingiye undi aba yiyemeje imbere y'ugomba kwishyurwa kuzamwishyura mu igihe ugomba kwishyura azaba atabikoze". Ingingo ya 573 y'itegeko rimaze kwibutswa iteganya ko : "Inshingano ikomoka ku bwishingire izima kubera impamvu zimwe n'izizimya izindi nshingano. [16] Dosiye y'urubanza igaragaza ko ku wa 29/05/2014, ACCESS BANK RWANDA Ltd yakoranye na EXERT ENGINEERING GROUP Ltd amasezerano y'inguzanyo afite N° 5855/HCC/LH/TN14 arimo ibyiciro bitatu bigizwe na "Term loan facility" ingana na 410.000.000 Frw, ACCESS BANK RWANDA Ltd yaguriye EXERT ENGINEERING GROUP Ltd muri COGEBANQUE RWANDA Ltd, "Asset Finance" ingana na 560.000.000 Frw yo kugura amamashini yo gukoresha mu kazi EXERT ENGINEERING GROUP Ltd yari

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yatsindiye muri MINAGRI na KAMINUZA y'u Rwanda, ishami rya Nyagatare, na "contract finance facility" ingana na 1.100.000.000 Frw yo gukoresha mu kurangiza amasezerano amaze kuvugwa, Munyaneza Félicien na Mudenge Emmanuel bakaba bari bishingiye iyo nguzanyo ya 2.070.000.000 Frw yo ku wa 20/05/2014, nk'uko bigaragazwa n'amasezerano y'ubwishingire yasinyiwe imbere ya noteri ku wa 02/06/2014. [17] Muri dosiye harimo na none inyandiko yitwa "Amendment N° 1 to the Principle Loan Agreement N° 5855/HCC/LH/TN/14 of May 30, 2014" yo ku wa 03/06/2014 yashyizweho umukono na Munyaneza Félicien nka Managing Director wa EXERT ENGINEERING GROUP Ltd. Mu iriburiro (preamble) ry'ayo masezerano havugwamo ko banki na nyir'ukugurizwa bemeranyije ko ayo masezerano ari igice cy'amasezerano y'ibanze kandi ko ari amwe mu biyagize. [18] Urukiko rurasanga mu gihe EXERT ENGINEERING GROUP Ltd yahawe inguzanyo inaniwe kwishyura nk'uko bigaragara mu rubanza RCOM 0729/2016/TC/NYGE na RCOM 0756/2016/TC/NYGE rwemeje itangira ry'ikurikiranwa ry'igihombo cya EXERT ENGINEERING GROUP Ltd, nta cyabuza ACCESS BANK RWANDA Ltd gusaba ko Munyaneza Félicien na Mudenge Emmanuel baryozwa umwenda bishingiye, nk'uko ingingo ya 552 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yibukijwe haruguru ibiteganya. [19] Urukiko rurasanga amasezerano yo ku wa 03/06/2014 adasimbura ay'ibanze yo ku wa 29/04/2014, ari nayo arimo umwenda wa 2.070.000.000 Frw, Munyaneza Félicien na Mudenge Emmanuel bishingiye, buri wese akishingira inguzanyo yose, ahubwo agize kimwe mu gice cy'ay'ibanze, kandi muri ayo masezerano ibyahinduwe mu bwumvikane bw'impande zombi bikaba bitareba ingingo y'ubwishingire, bivuze ko mu gihe umwenda Munyaneza Félicien na Mudenge Emmanuel bishingiye utarishyurwa, kandi no mu masezerano avugurura aya mbere akaba ntaho bigaragara ko bahinduye ingingo ijyanye n'ubwishingizi bwabo, bakomeza kuryozwa umwenda bishingiye kugeza habonetse impamvu mu zitengwanywa n'amategeko zizimya ubwishingire

nk'uko ingingo ya 573 y'Igitabo cya gatatu cy'urwunge rw'amategako mbonezamubano cyavuzwe haruguru ibiteganywa. [20] Urukiko rurasanga ibyo Munyaneza Félicien na Mudenge Emmanuel bavuga ko bataryozwa inguzanyo iri mu masezerano avuguruye batigeze bamenyeshwa, nta shingiro byahabwa kuko nk'uko byibukijwe haruguru, ingingo ijyanye n'ubwishingire itigeze ivugururwa, bivuze ko yagumanye agaciro kayo, cyane cyane ko ariya masezerano yiswe "Amendment N° 1 to the Principle Loan Agreement N° 5855/HCC/LH/TN/14 of May 30, 2014" ataje asimburwa amasezerano y'ibanze, akaba yarashyizweho umukono na MUNYANEZA Félicien nka Managing Director wa EXERT ENGINEERING GROUP Ltd. [21] Urukiko rurasanga na none ibyo bavuga ko kuba harahinduwe affectation ya 1.100.000.000 Frw bituma bataryozwa aya mafaranga, nabyo nta shingiro byahabwa kuko icyo bishingiye ari umwenda wose, n'aya 1.100.000.000 Frw arimo. Naho kuba baragombaga kumenyeshwa ivugururwa ry'amasezerano, Urukiko 1 The Bank and the Borrower hereby agree that the present addendum agreement constitute part of the principle agreement and forms an integral part of it. 2 Ingingo za 98-108 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 ryerekeye amasezerano iteganywa impamvu zatumye inshingano zivanwaho nko: gusaba ingurane cyangwa isimbura; gusiba inyandiko, kuyica cyangwa kuyisubiza ufitwe inshingano, kwemera kuvanaho inshingano z'urundi ruhande; guhara umwenda; ibisimbura ibisabwa gukorwa, amasezerano asimburwa andi, ubwishyu bwumvikanyweho, ubwumvikane bwo gusesa amasezerano; uguharira umwenda n'ihwanya ry'imyenda.

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rurasanga mu gihe byari bigaragaye ko izindi ingingo z'amasezerano y'ibanze zigumanye agaciro kazo, harimo n'ubwishingire, bitari ngombwa ko bamenyeshwa, ariko kandi rukaba runasanga Munyaneza Félicien wari Managing Director wa EXERT ENGINEERING GROUP Ltd washyize umukono kuri ayo masezerano avugururwa aya mbere atasubira inyuma ngo avuge ko batigeze bamenyeshwa ko inshingano zabo zo kwishingira umwenda wa sosiyete zikomezanya n'umwenda iyo sosiyete ifitiye banki. [22] Hashingiye ku ingingo z'amategako zibukijwe no ku bisobanuro bimaze gutangwa, Urukiko rurasanga Munyaneza Félicien na Mudenge Emmanuel ari abishingizi ba EXERT ENGINEERING GROUP Ltd, bakaba bagomba kuryozwa umwenda iyo sosiyete ibereyemo ACCESS BANK RWANDA Ltd.

2. Kumenya niba amasezerano y'ubugure bw'ingwate yagumana agaciro kayo ku buryo yaherwaho mu kugabanya umwenda Munyaneza Félicien na Mudenge Emmanuel bishyuzwa. [23] Me Mugengangabo Jean Népomuscène, uburanira Munyaneza Félicien na Mudenge Emmanuel, avuga ko amasezerano y'ubugure bw'ingwate y'inzu ku bushake ya EXERT ENGINEERING GROUP Ltd bitabaye ngombwa ko binyura mu cyamunara atagombaga guteshwa agaciro, ko kandi banki yakoze amakosa ubwo yashingiraga ku ibaruwa ya liquidateur yavugaga ko ayo masezerano nta gaciro afite bigatuma isubiza ULTRA INVESTMENT 1.500.000.000 Frw yari yatanze igura iyo inzu, ikaba yaraje kongera kugurishwa amafaranga make bigatuma umwenda wa EXERT ENGINEERING GROUP Ltd utagabanyuka cyane. [24] Me Bizumuremyi Isaac avuga ko iyi ngwate yagurishijwe na Munyaneza Félicien, kandi nta ruhare ACCESS BANK RWANDA Ltd yabigizemo, usibye gusa kuba yari umuhamba muri ayo masezerano. Akomeza avuga ko liquidateur washyizweho

n'Urukiko yandikiye ACCESS BANK RWANDA Ltd ayimenyesha ko ingwate yagurishijwe n'umuntu utabifitiye ububasha, bituma banki isubiza ULTRA INVESTMENT 1.500.000.000 Frw yari yaguze iyo inzu, yaje kugurishwa 300.000.000 Frw mu buryo bwemewe n'amategeko. UKO URUKIKO RUBIBONA [25] Ingingo ya 113, igika cya mbere, y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 ryerekeye amasezerano iteganya ko : "Amasezerano agira inkurikizi ku bayagiranye (...). [26] Urukiko rurasanga amasezerano yo kugurisha ingwate yatanze na EXERT ENGINEERING GROUP Ltd yarabaye hagati ya ULTRA INVESTMENT na Munyaneza Félicien, akaba ntaho areba ACCESS BANK RWANDA Ltd, usibye gusa kuba yaravuyemo ubwishyu bwayo nk'uko bwari kuva n'ahandi. Kuba rero uwari ushinze gucunga igihombo cya EXERT ENGINEERING GROUP Ltd yarandikiye banki ayisaba gusubiza amafaranga yavuye mu igurisha ry'ingwate, koko banki ikayasubiza, nta kosa banki yakoze kuko itari kugumana ubwishyu buturutse ku igurisha ryateshejwe agaciro. [27] Urukiko rurasanga na none n'ubwo ingwate yaje kugurishwa ku mafaranga make cyane, ugereranyije n'aya mbere, nta ruhare banki yabigizemo kuko nta nyungu yari ifite yo gusubiza ubwishyu yari yamaze kwakira cyangwa se yo kwakira ubwishyu buri hasi y'ubwo yari yakiriye mbere.

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- [28] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ubujurire bwa Munyaneza Félicien na Mudenge Emmanuel kuri iyi ngingo budafite ishingiro kuko ntaho rwahera ruvuga ko amasezerano y'ubugure yateshejwe agaciro kubera ko atujuje ibisabwa n'amategeko yagumaho, n'ubwishyu buyakomokaho ngo nabwo bugumane agaciro.
2. Kumenya ishingiro ry'indishyi zisabwa muri uru rubanza [29] Munyaneza Félicien na Mudenge Emmanuel basaba Urukiko gutegeka ko indishyi baciwe (550.000 Frw mu Rukiko rw'Ubucuruza rwa Nyarugenge na 2.000.000 Frw mu Rukiko Rukuru rw'Ubucuruza) zikurwaho kuko ACCESS BANK RWANDA Ltd ari yo yabakuruye mu manza ibaryoza umwenda batishingiye, basaba ko ahubwo ariyo ibaha indishyi zingana na 8.000.000 Frw kuri buri wese, y'igihembo cya Avoka wababuraniye kuva mu Rukiko rw'Ubucuruza rwa Nyarugenge kugera mu Rukiko rw'Ubujurire. Basaba kandi ko Urukiko ruyitegeka kubishyura 100.000 Frw y'amagarama y'urubanza batanze bajuririra urubanza RCOM 00120/2017/TC/NYGE na 150.000 Frw batanze bajuririra RCOMA 00723/2017/CHC/HCC, bakanabasubiza 2,000, 000 Frw y'ikurikiranarubanza. [30] Ku birebana n'izi ndishyi, Me Bizumuremyi Isaac avuga ko Munyaneza Félicien na Mudenge Emmanuel badakwiye gukurirwaho amafaranga baciwe cyangwa guhabwa igihembo cya avoka n'amafaranga y'ikurikiranarubanza basaba, cyeretse mu gihe baba batsinze urubanza. [31] ACCESS BANK RWANDA Ltd yo isaba gusubizwa igihembo cya Avoka kingana na 1.000.000 Frw kuri buri urega kugira ngo isubizwe ibyo yatanze kuri uru rwego, na 10.000.000 Frw y'ikurikiranarubanza kubera ko imaze igihe cy'imyaka irenga ibiri (kuva ku wa 10/01/2017) iburana uru rubanza. UKO URUKIKO RUBIBONA [32] Ingingo ya 111 y'Itegeko N 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize ⁰ y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegetsi iteganya ko: "Ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza.

Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'uyo ikirego cy'iremezo cyaba kitakiriwe”.

[33] Urukiko rw'Ubujurire rurasanga Munyaneza Félicien na Mudenge Emmanuel badakwiye guhabwa indishyi basaba kubera ko ari bo batubahirije amasezerano bagiranye na ACCESS BANK RWANDA Ltd, bityo rero bakaba batagomba gusaba gusubizwa ibyo baba baratakaje kubera uru rubanza. [34] Urukiko rurasanga ACCESS BANK RWANDA Ltd yarashatse umunyamategeko uyiburanira uru rubanza kuri uru rwego, bikaba byumvikana ko yamuhaye ikiguzi kugira ngo akore uwo murimo, bityo rero rukaba rusanga Munyaneza Félicien na Mudenge Emmanuel bagomba kuyiha amafaranga 700.000 Frw y'igihembo cya Avoka agenwe mu bushishozi bwarwo kuko rusanga ari mu rugero rukwiye.

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[35] Rurasanga kandi bakwiye kuyiha amafaranga y'ikurikiranarubanza kuri uru rwego kuko ayasabwe ari ikirenga kandi ACCESS BANK RWANDA Ltd ikaba itagaragaza ibimenyetso yahereyeho iyabara, akaba atanagenwa haherewe igihe urubanza rwatangiriye mu mwaka wa 2017 kuko hari ayo bagenewe mu Rukiko Rukuru rw'Ubucuruzi, bityo bakaba bagomba kuyiha amafaranga ibihumbi magana atatu (300.000 Frw) kuri uru rwego, hakurikijwe igihe urubanza rumaze muri uru Rukiko n'imirimo yarukozweho. Urukiko rurasanga ibirebana n'uko ACCESS BANK RWANDA Ltd imaze igihe cy'imyaka ibiri iburana uru rubanza bitashingirwaho mu kuyiha indishyi, kuko Mudenge Emmanuel na Munyaneza Félicien bari bafite uburenganzira bwo kujurira mu gihe batishimiye ibyemezo byafashwe n'inkiko zabanje. III. ICYEMEZO CY'URUKIKO [36] Rwemeje ko ubujurire bwa Mudenge Emmanuel na Munyaneza Félicien nta shingiro bufite, [37] Rwemeje ko imikirize y'urubanza RCOMA 00723/2017/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 21/06/2018, idahindutse ; [38] Rutegetse Mudenge Emmanuel na Munyaneza Félicien guha ACCESS BANK RWANDA Ltd amafaranga ibihumbi magana arindwi (700.000 Frw) y'igihembo cya Avoka n'ibihumbi magana atatu (300.000 Frw) y'ikurikiranarubanza kuri uru rwego ; [39] Ruvuze ko amagarama yatanzwe ahwanye n'imirimo yakozwe muri uru rubanza.

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