

RWANDA / JUDGMENT

NKWAYA V ECOBANK

RCMAA00085/2018/CA

COURT

Court of Appeal

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NKWAYA V ECOBANK

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Text

Page 1

NKWAYA v ECOBANK LTD [Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00085/2018/CA (Mukanyundo, P.J., Kanyange na Munyangeri, J.) 14 Kamena 2019] Amategeko agenga amasosiyete – sosiyete y'ubucuruzi – Izina ry'ubucuruzi – izina ry'ubucuruzi bw'umuntu ntirikora ubucuruzi bwe, ahubwo ubucuruzi bukorwa na nyir'ubucuruzi cyangwa nyiri entreprise, akaba ariwe uregwa mu rukiko. Amategeko agenga amasosiyete – icyemezo cy'iyandikwa muri RDB – Izina ry'ikigo cy'umuntu ku giti cye (entreprise individuelle) – icyemezo cy'iyandikwa muri RDB mu gitabo cy'ubucuruzi cyandikwa ku mazina y'ukora ubucuruzi akoresheje izina ry'ubucuruzi kuko izina ry'ikigo cy'umuntu ku giti cye kitagira ubuzima gatozi. Incamake y'ikibazo: Ecobank Rwanda Ltd yahaye umwenda Nkwaya Kega Alfred ukoresha izina ry'ubucuruzi rya Aquilla & Priscilla, ntishyurwa neza maze imurega mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba kumuhatira kwishyura umwenda ayibereyemo, n'inyungu zigakomeza kubarwa kugeza urubanza rubaye ndakuka. Nkwaya Kega Alfred yireguye avuga ko ikirego cya Ecobank Rwanda Ltd kitagombaga kwakirwa, kuko cyamaze kuburanwaho mu rundi rubanza kandi ko n'umwenda aregwa Banki yagiye iwuhindagura ku buryo bigoye no kumenya uko wabazwe kuko hari amafaranga atandukanye Banki yagiye ikura kuri konti ye nta bisobanuro ibitangiye. Urukiko

rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza, rwemeza ko Nkwaya Kega Alfred agomba kwishyura Ecobank Rwanda Ltd umwenda remezo n'inyungu zawo. Nkwaya Kega Alfred yajuriye mu Rukiko Rukuru rw'Ubucuruzi, rwemeza ko ubujurire bwe nta shingiro bufite, ko imikirize y'urubanza rwajuririwe idahindutse, rutegeka Nkwaya Kega Alfred guha Ecobank Rwanda Ltd amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. Nkwaya Kega Alfred (Aquila & Priscilla) yajuririye Urukiko rw'Ikirenga, avuga ko yarezwe mu mwanya wa Sosiyete ye Aquilla & Priscilla, kuko we nta masezerano yigeze agirana na Ecobank Rwanda Ltd, ko Urukiko rwanze guha agaciro ibimenyetso by'uko yibwe bigatuma akomeza kubarirwa inyungu no kuba umwenda yishyuzwa warabazwe nabi. Ecobank Rwanda Ltd nayo yatanze ubujurire bwuririye ku bundi isaba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. Urubanza rwimuriye mu Rukiko rw'Ubujurire. Nkwaya Kega Alfred avuga ko atagombaga kuregwa kuko atari umukiriya wa Ecobank Rwanda Ltd, ko uwahawe inguzanyo ari Aquilla & Priscilla, we akaba ari Umuyobozi w'iyi Sosiyete gusa, akaba kandi nta n'amasezerano ayo ariyo yose yigeze agirana na Ecobank Rwanda Ltd. Avuga kandi ko Ecobank Rwanda Ltd yabanje kurega Aquilla & Priscilla ikirego kirasibwa, nyuma iza gutanga ikindi kirego irega Nkwaya Kega Alfred, Urukiko Rukuru rw'Ubucuruzi rukaba rutaragaragaje mu mwanzuro warwo impamvu atari Aquilla & Priscilla yongeye kuregwa, ahubwo hakaregwa Nkwaya Kega Alfred kandi nta masezerano yigeze agirana na Ecobank Rwanda Ltd.

Page 2

Ecobank Rwanda Ltd yiregura, avuga ko ubujurire nta shingiro bwahabwa kuko Aquilla & Priscilla ari izina ry'ubucuruzi rya Nkwaya Kega Alfred, ko kandi izina atari ryo ricuruza kuko no muri registre de Commerce ye handitse ko umucuruzi ari Nkwaya Kega Alfred. Ecobank Rwanda Ltd ivuga kandi ko kuba bari babanje kurega Aquilla & Priscilla, hari habayeho kwibeshya, ko ariko nyuma baje kubikosora barega Nkwaya Kega Alfred ukoresha amazina ya Aquilla & Priscilla mu bucuruzi bwe, ko batari kurega Aquilla & Priscilla kandi izina ry'ubucuruzi ritaregwa. Ivuga na none ko mu gihe Ecobank Rwanda Ltd yatangaga inguzanyo, ku nyandiko y'amasezerano handitseho ko uwo bayagiranye ari Aquilla & Priscilla /Nkwaya Kega Alfred, Directeur Général, ubundi uyu Nkwaya Kega Alfred aba ariwe ushyiraho umukono we, ko ibi byose bigaragaza ko uwahawe inguzanyo ari Nkwaya Kega Alfred. Nkwaya Kega Alfred ukoresha izina Aquilla & Priscilla, avuga ko Aquilla & Priscilla yagize ibyago yatewe na Sosiyete Engen Rwanda Ltd bari bafitanye amasezerano y'imikoranire mu bicuruzwa bikomoka kuri petrole, Engen Rwanda Ltd itwara amafaranga yari abitse mu mutamenwa(coffre-fort) hamwe n'ibindi bikoresho, bituma Aquilla & Priscilla itabasha gukomeza gukora no kubahiriza inshingano, avuga ko habayeho urubanza hagati ya Engen Rwanda Ltd na Aquilla & Priscilla baburana iby'ubwo bujura rutararangira kuko rugeze ku rwego rw'akarengane muri uru Rukiko. Ecobank Rwanda Ltd nawe yisobanura ko na mbere y'uko ubwo bujura Nkwaya Kega Alfred avuga ko Engen Rwanda Ltd yamukoreye buba, yari yarananiwe kwishyura umwenda yari abereyemo Ecobank Rwanda Ltd, avuga kandi ko iki kibazo cy'ubujura Nkwaya Kega Alfred aburanisha kitareba Ecobank Rwanda Ltd kuko nta sano iri hagati y'uru rubanza n'ubwo avuga aburana na Engen Rwanda Ltd, bityo akaba agomba kwishyura umwenda yahawe n'inyungu zawo zose. Nkwaya Kega Alfred, avuga ko

banki yivuguruzaga mu mibare nyayo yerekanaga amafaranga yagombaga kwishyura maze urukiko rwemeza ko yishyura umwenda wose hatarebwe aho ligne de crédit yari igeze, kandi nta kimenyetso ashobora kubona cyerekana ingano y'amafaranga yari amaze gukoresha. Incamake y'icyemezo: 1. Izina ry'ubucuruzi bw'umuntu ku giti cye (entreprise individuelle) ntirikora ubucuruzi bwe, ahubwo ubucuruzi bukorwa na nyir'ubucuruzi cyangwa nyiri entreprise, bityo niwe ugomba kuregwa mu rukiko.

2. Icyemezo cy'iyandikwa muri RDB mu gitabo cy'ubucuruzi cyandikwa ku mazina y'ukora ubucuruzi akoresheje izina ry'ubucuruzi kuko izina ry'ikigo cy'umuntu ku giti cye kitagira ubuzima gatozi Ubujurire nta shingiro bufite. Amagarama y'urubanza aherereye ku wareze. Amategeko yashingiweho: Itegeko N 07/2009 ryo ku wa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi, ingingo ya 16 n'ya 375,

Page 3

Iteka rya Minisitiri N 02/05/2009 ryo ku wa 08/05/2009 ryerekeye ubucuruzi bukorwa n'abantu badafite ubushobozi buhagije, ingingo ya 2. Nta manza zifashishijwe. Urubanza I.IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Ecobank Rwanda Ltd irega Nkwaya Kega Alfred ukoresha izina ry'ubucuruzi rya Aquilla & Priscilla, ikaba yarasabaga Urukiko kumuhatira kwishyura umwenda ayibereyemo ungana na 163,453,050 Frw, ubazwe kugera ku wa 30/09/2015, inyungu zigakomeza kubarwa kugeza urubanza rubaye ndakuka. [2] Nkwaya Kega Alfred yireguye avuga ko ikirego cya Ecobank Rwanda Ltd kitagombaga kwakirwa, kuko cyamaze kuburanwaho mu rundi rubanza kandi ko n'umwenda aregwa Banki yagiye iwuhindagura ku buryo bigoye no kumenya uko wabazwe kuko hari amafaranga atandukanye Banki yagiye ikura kuri konti ye nta bisobanuro ibitangiye. [3] Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza N° RCOM 00993/2017/TC/NYGE ku wa 15/01/2018, rwemeza ko Nkwaya Kega Alfred agomba kwishyura Ecobank Rwanda Ltd 100.000.000 Frw y'umwenda remezo n'inyungu zawo, hamwe n'amafaranga 500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka. [4] Nkwaya Kega Alfred yajuriye mu Rukiko Rukuru rw'Ubucuruzi, ruca urubanza N° RCOMA 00105/2018/CHC/HCC ku wa 29/06/2018, rwemeza ko ubujurire bwe nta shingiro bufite, ko imikirize y'urubanza rwajuririwe idahindutse, rutegeka Nkwaya Kega Alfred guha Ecobank Rwanda Ltd amafaranga angana na 1,000,000 Frw y'ikurikiranarubanza n'igihembo cya Avoka. [5] Nkwaya Kega Alfred (Aquilla & Priscilla) yajuririye Urukiko rw'Ikirenga, avuga ko yarezwe mu mwanya wa Sosiyete ye Aquilla & Priscilla, kuko we nta masezerano yigeze agirana na Ecobank Rwanda Ltd, ko Urukiko rwanze guha agaciro ibimenyetso by'uko yibwe bigatuma akomeza kubarirwa inyungu no kuba umwenda yishyuzwa warabazwe nabi. Ecobank Rwanda Ltd nayo yatanze ubujurire bwuririye ku bundi isaba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. Hashingiwe ku ngingo ya 105 y'Itegeko no 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, urubanza rwimuriye mu Rukiko rw'Ubujurire, ikirego gihabwa n° RCOMAA 00035/2018/CA. [6] Iburanisha ry'urubanza ryabaye mu ruhamwe ku wa 07/05/2019, Nkwaya Kega Alfred, ukoresha mu bucuruzi bwe izina rya Aquilla & Priscilla, yunganiwe na Me Mukagasana Clotilde, naho Ecobank Rwanda Ltd ihagarariwe na Me Bimenyimana Eric.

Page 4

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba AQUILLA & PRISCILLA ariyo yagombaga kuregwa muri uru rubanza aho kuba NKWAYA KEGA Alfred. [7] Nkwaya Kega Alfred na Me Mukagasana Clotilde, umwunganira, bavuga ko atagombaga kuregwa kuko atari umukiriya wa Ecobank Rwanda Ltd, ko umukiriya wayo ari Sosiyete Aquilla & Priscilla kandi ko ariyo yahawe inguzanyo ndetse ikaba ari nayo izwi no muri Banki Nkuru y'Igihugu, ko Nkwaya Kega Alfred atazwi muri Banki uretse gusa kuba ari Umuyobozi w'iyi Sosiyete, akaba nta n'amasezerano ayo ariyo yose yigeze agirana na Ecobank Rwanda Lt, ko rero ashingiye ku ngingo ya 113 y'Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, Nkwaya Kega Alfred ntaho ahuriye n'amasezerano aburanwa muri uru rubanza, akaba ataragombaga no kururegwamo. [8] Me Mukagasana Clotilde avuga kandi ko Ecobank Rwanda Ltd yabanje kurega Aquilla & Priscilla ikirego kirasibwa, nyuma iza gutanga ikindi kirego noneho irega Nkwaya Kega Alfred, Urukiko Rukuru rw'Ubucuruzi rukaba rutaragaragaje mu mwanzuro warwo impamvu atari Aquilla & Priscilla yongeye kuregwa, ahubwo hakaregwa Nkwaya Kega Alfred kandi nta masezerano yigeze agirana na Ecobank Rwanda Ltd, ko ibyo rwemeje ko impamvu Aquilla & Priscilla itashoboraga kuregwa kubera ko nta buzimagatozi ifite, nta shingiro byahabwa, cyane cyane ko na Ecobank Rwanda Ltd nayo ubwayo yemeye kugirana na Aquilla & Priscilla amasezerano y'inguzanyo, ko rero Nkwaya Kega Alfred atari we ukwiye kubibazwa kuko nta bikorwa (opération/movement) yigeze akorana n'iyi Banki. [9] Mu mwanzuro watanze na Me Uwanyirigira Delphine, mu izina rya Ecobank Rwanda Ltd yiregura, avuga ko iyi ngingo y'ubujurire nta shingiro yahabwa kuko Aquilla & Priscilla ari izina ry'ubucuruzi rya Nkwaya Kega Alfred, ko kandi izina atari ryo ricuruzwa kuko no muri registre de Commerce ye handitse ko umucuruzi ari Nkwaya Kega Alfred. Avuga ko ku rupapuro rwa 4, mu gika cya 10 cy'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwabisobanuye neza, ko kandi Nkwaya Kega Alfred ukoresha izina ry'ubucuruzi rya Aquilla & Priscilla, atagaragaza icyo anenga impamvu Urukiko rwashingiyeho icyemezo cyarwo, nk'ibikubiye muri "Registre de commerce" ya Nkwaya Kega Alfred ndetse no ku ngingo ya 2 n'ya 3 z'Itegeko rigenga ibimenyetso mu manza n'itangwa ryabyo ndetse n'ya 12 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. [10] Me Bimenyimana Eric, nawe uburanira Ecobank Rwanda Ltd, avuga ko kuba bari babanje kurega Aquilla & Priscilla, hari habayeho kwibeshya, ko ariko nyuma baje kubikosora barega Nkwaya Kega Alfred ukoresha amazina ya Aquilla & Priscilla mu bucuruzi bwe, ko batari kurega Aquilla & Priscilla kandi izina ry'ubucuruzi ritaregwa nk'uko babisobanuye haruguru. [11] Avuga na none ko mu gihe Ecobank Rwanda Ltd yatangaga inguzanyo, ku nyandiko y'amasezerano handitseho ko uwo bayagiranye ari Aquilla & Priscilla /Nkwaya Kega Alfred, Directeur Général, ubundi uyu Nkwaya Kega Alfred aba ariwe ushyiraho umukono we, ko ibi byose bigaragaza ko uwahawe inguzanyo ari Nkwaya Kega Alfred.

Page 5

UKO URUKIKO RUBIBONA [12] Ingingo ya 375 y'Itegeko no 07/2009 ryo ku wa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi nk'uko ryahinduwe kugeza ubu, iteganya ko "Ibyerekeye iyandikisha, imiterere n'imikorere by'ibikorwa by'ubucuruzi bukorwa n'abantu badashobora kwinjiza nibura ibihumbi icumi (10.000Frw) ku munsu bigenwa n'Iteka rya Minisitiri ufite ubucuruzi mu nshingano ze". [13] Hashingiwe ku biteganywa n'ayo ngingo, hashyizweho Iteka rya Minisitiri no 02/05/2009 ryo ku wa 08/05/2009 ryerekeye ubucuruzi bukorwa n'abantu badafite ubushobozi buhagije, ingingo yaryo ya kabiri ikaba iteganya ko "igikorwa cy'ubucuruzi hakurikijwe iri teka ni igikorwa cy'umuntu wese yaba umugore cyangwa umugabo ukora ibikorwa by'ubucuruzi, byanditswe hakurikijwe ibiteganywa n'iri teka harimo kugura no kugurisha, gutanga serivisi cyangwa se ikindi gikorwa icyo aricyo cyose mu buryo buhoraho gikorwa hagamijwe kubona inyungu".

[14] Ku birebana n'ubucuruzi bwa Nkwaya Kega Alfred, icyemezo cy'iyandikwa (Certificate of enterprise registration) cyatanzwe na RDB ku wa 29/06/2011, kigaragaza ko cyatanzwe hashingiwe ku ngingo ya 10 y'Iteka rya Minisitiri n° 02/09/MINICOM ryo ku wa 08/05/2009 ryavuzwe haruguru. Nk'uko umutwe w'iryo Teka ubivuga hamwe n'ingingo yaryo ya kabiri, bigaragara ko ryerekeye ubucuruzi bukorwa n'abantu, bivuze ko ritareba iyandikishwa ry'amasosiyete y'ubucuruzi kuko yo yandikwa hashingiwe ku ngingo ya 16 y'Itegeko no 07/2009 ryo ku wa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi. [15] Icyemezo cy'iyandikwa ry'ubucuruzi kivuzwe haruguru, kigaragaza ko cyahawe Nkwaya Kega Alfred nka nyiri ubucuruzi (enterprise name), ko kandi iyo entreprise ikorera ku izina ry'ubucuruzi rya Aquilla & Priscilla (Business name). Kuba rero Aquilla & Priscilla ari izina ry'ubucuruzi bw'umuntu, byumvikana ko nta bucuruzi ikora, ko ahubwo bukorwa na nyir'ubucuruzi cyangwa nyiri entreprise ariwe Nkwaya Kega Alfred nk'uko n'icyemezo cy'iyandikwa kibigaragaza (business owner). [16] Ku kibazo cyo kumenya niba Aquilla & Priscilla ariyo yagombaga kuregwa mu mwanya wa Nkwaya Kega Alfred, Urukiko Rukuru rw'Ubucuruzi, rushingiye ku cyemezo cyatanzwe na Rwanda Development Board (RDB) cyo ku wa 29/06/2011 cyavuzwe haruguru, rwemeje ko Nkwaya Kega Alfred ariwe mucuruzi, bityo akaba ariwe ugomba kuregwa. [17] Uru rukiko narwo rusanga Aquilla & Priscilla ari izina ry'ikigo cy'ubucuruzi cy'umuntu ku giti cye abenshi bakunda kwita mu ndimi z'amahanga Entreprise individuelle, ko n'icyemezo cy'iyandikwa (Certificate of enterprise registration), kigaragaza ko atari Aquilla & Priscilla yanditswe muri RDB, ko ahubwo Nkwaya Kega Alfred ariwe wanditswe mu gitabo cy'ubucuruzi, bivuga rero ko ariwe ukora ubucuruzi, akoresheje izina ry'ubucuruzi rya Aquilla & Priscilla; bityo Aquilla & Priscilla nk'izina ry'ikigo cy'umuntu ku giti cye kikaba kitagira ubuzima gatozi. [18] Ibimaze kuvugwa birahura n'inyandiko z'abahanga mu mategeko, aho bavuga ko ubucuruzi bw'umuntu ari ubukorwa n'umuntu ku giti cye, ko bene ubwo bucuruzi abukora mu izina rye muri entreprise individuelle. Bavuga kandi ko bigomba kumvikana ko entreprise

Page 6

individuelle itagira ubuzima gatozi n'umutungo bitandukanye n'ibya nyirayo¹. Ibi kandi ni nako bisobanuye mu rubanza RCOMAA 0064/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 03/06/2016, haburana Rwanda Free Zone na Association momentanée (joint venture) H3E, aho rwasobanuye ko kuba entreprise y'umuntu ku giti cye idafite ubuzima gatozi, ko idashobora kurega mu Rukiko, ko ahubwo bikorwa na nyirayo mu izina rye. [19] Hashingiwe ku byasobanuwe haruguru, no ku ngingo z'amategeko yavuzwe haruguru, uru Rukiko narwo rurasanga, Aquilla & Priscilla ari izina ry'ikigo cy'ubucuruzi (entreprise individuelle) bukorwa na Nkwaya Kega Alfred, ariko kuba kidafite ubuzima gatozi, ntigishobora kurega cyangwa kuregwa mu nkiko, cyane cyane ko nta n'umutungo kigira, ibivugwa na Nkwaya Kega Alfred ko aricyo cyagombaga kuregwa bikaba nta shingiro bifite ; bityo Urukiko Rukuru rw'Ubucuruzi rukaba nta kosa rwakoze rwemeza ko Nkwaya Kega Alfred ariwe wagombaga kuregwa kuko ariwe ufite ubuzima gatozi n'umutungo ndetse akaba ari nawe wasinye ku nyandiko y'amasezerano nka nyiri ikigo cy'ubucuruzi (Business owner) n'umuyobozi wa Aquilla & Priscilla.

2. Kumenya niba Urukiko rwarirengagije ibimenyetso bigaragaza ko NKWAYA KEGA Alfred yibwe maze bigatuma yishyuzwa inyungu z'umurengera [20] Me Mukagasana Clotilde wunganira Nkwaya Kega Alfred ukoresha izina Aquilla & Priscilla, asobanura ko ku wa 23/07/2011, Aquilla & Priscilla yagize ibyago yatewe na Sosiyete Engen Rwanda Ltd bari bafitanye amasezerano y'imikoranire mu bicuruzwa bikomoka kuri petrole, Engen Rwanda Ltd itwara amafaranga yari abitse mu mutamenwa(coffre-fort) hamwe n'ibindi bikoresho, bituma Aquilla & Priscilla itabasha gukomeza gukora no kubahiriza inshingano yari ifitiye abandi bantu, ko kandi yahise imenyeshya Ecobank Rwanda Ltd icyo kibazo yagize mu ibaruwa yo ku wa 30/09/2011 n'iyi ku wa 15/04/2013. Avuga kandi ko yashyikirije Urukiko Rukuru rw'Ubucuruzi ibimenyetso bigizwe n'amafoto agaragaza uburyo bamuseneyeye, Coffre fort bakayimena bagakuramo amafaranga n'inyandiko byarimo, ndetse ko hari n'inyandiko ikubiyemo ubuhamya bwatanzwe n'umukozi wa Fodey Security yarindaga aho bakoreraga, aho asobanura uko ubujura bwahuye Aquilla & Priscilla bwakozwe . [21] Avuga ko habayeho urubanza hagati ya Engen Rwanda Ltd na Aquilla & Priscilla baburana iby'ubwo bujura, ko ariko rutararangira kuko rugeze ku rwego rw'akarengane muri uru Rukiko. [22] Mu mwanzuro watanze na Me Uwanyirigira Delphine mu mwanya wa Ecobank Rwanda Ltd mu kwiregura, avuga ko mu gika cya 15 cy'imikurizwe y'urubanza, Urukiko Rukuru rw'Ubucuruzi rwasobanuye neza ko Nkwaya Kega Alfred ukoresha izina rya Aquilla & Priscilla mu bucuruzi bwe, atigeze agaragaza ibimenyetso by'uko yibwe, nk'urubanza rwabaye ndakuka rwemeje ko ubwo bujura bwabayeho, ko ariko urwo Rukiko rwanavuze ko niyo aza kubitanga, 11 Entreprise individuelle est donc celle exploitée par un commerçant physique seul, c'est-à-dire sans associé. On dit encore d'un tel commerçant qu'il exerce le commerce en "son nom personnel" ou "en son nom propre". Il est important de bien comprendre qu'une telle entreprise individuelle n'a pas de personnalité juridique distincte de celle de la personne physique qu'il exploite. L'entreprise individuelle, à la différence de la Société, n'a donc pas la personnalité morale: Jean-Pierre BERTREL et Marina BERTREL, Droit des Sociétés, in Droit de l'Entreprise, Paris, Wolters Kluwer France SAS, 2010/2011,

p.382.

Page 7

bitabuza Ecobank Rwanda Ltd uburenganzira bwo kumwishyura umwenda ayibereyemo kuko nta ruhare na ruto yabigizemo. [23] Me Bimenyimana Eric uburanira Ecobank Rwanda Ltd, nawe asobanura ko na mbere y'uko ubwo bujura Nkwaya Kega Alfred avuga ko Engen Rwanda Ltd yamukoreye buba, yari yarananiwe kwishyura umwenda yari abereyemo Ecobank Rwanda Ltd, kuko amafaranga yayafashe ku wa 29/06/2010, akaba yaragombaga kurangiza kwishyura ku wa 30/6/2011, kandi ko kugeza kuri iyo tariki umwenda wari ugeze kuri 72.000.000 Frw. Nawe avuga ko iki kibazo cy'ubujura Nkwaya Kega Alfred aburanisha kitareba Ecobank Rwanda Ltd kuko nta sano iri hagati y'uru rubanza n'ubwo avuga aburana na Engen Rwanda Ltd, bityo akaba agomba kwishyura umwenda yahawe n'inyungu zawo zose. UKO URUKIKO RUBIBONA [24] Ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko "Amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya". [25] Ingingo ya 80 y'Itegeko rimaze kuvugwa haruguru iteganya ko "Gukora ibisabwa byose mu masezerano bikuraho inshingano zo kubikora. Iyo igihe cyo gukora ibisabwa mu masezerano kigeze, kutabikora bifatwa nko kwica amasezerano". [26] Ku bijyanye n'ibyo Nkwaya Kega Alfred yasabaga byo gusonerwa kwishyura inyungu zikomoka ku mwenda afitiye Ecobank Rwanda Ltd kubera ko yibwe bigatuma abura uburyo bwo kwishyura, Urukiko Rukuru rw'Ubucuruzi rwasanze nta bimenyetso yagaragaje bigaragaza ko koko yibwe, rwanzura ko agomba kwishyura inyungu nk'uko zabazwe. [27] Mu bujurire bwe imbere y'uru Rukiko, Nkwaya Kega Alfred yashyize muri dosiye raporo yakozwe n'umukozi wa Fodey Security, wagaragaje ko habaye ubujura bw'amafaranga bwabereye kuri Engen Remera- Giporoso ku wa 23/07/2011, aho yagaragaje ko umukozi wa Engen witwa Kayihura Jeannine yaje agasimbuza umukozi wayo waharindaga, uwa G4S, nyuma yo kumwirukana aho ngaho bakajya mu nzu bakamena umutamenwa bagatwara amafaranga. [28] Haragaragaramo kandi amafoto atandukanye agaragaza umutamenwa wabikwagamwo amafaranga Nkwaya Kega Alfred avuga ko wamenywe n'umukozi wa Engen bikaba byaramuviriyemo kutabasha kwishyura umwenda abereyemo Ecobank Rwanda Ltd.

[29] Urukiko rurasanga, n'ubwo Nkwaya Kega Alfred aba yaragaragaje ibimenyetso byerekana ko yibwe, ibyo bitamubera impamvu yo kutuzuzwa inshingano ze zo kwishyura umwenda afitiye banki, kuko ntaho ihuriye n'iki kibazo, cyane ko nta ruhare yabigizemo ngo wenda abe ayisaba guhuza imyenda. Byongeye kandi, ubu bujura avuga ntibwafatwa nk'impamvu ntarengwa itunguranye (force majeure) ivugwa mu ngingo ya 92 22 y'Itegeko n° 22 Iyi ngingo iteganya ko " Iyo uruhande rumwe rudashobora gukora ibisabwa mu masezerano ku mpamvu zitaruturutseho kubera ko habuze ikintu amasezerano yari ashingiyeho cyangwa indi mpamvu ntarengwa itunguranye, inshingano y'urwo ruhande yo gukora ibisabwa ivaho, keretse iyo uko ibintu bimeze ninigaragaza

Page 8

45/2011 ryo ku wa 25/11/2011 ryavuzwe haruguru, ku buryo byamukuraho inshingano nk'uko abisobanura, kuko ibikorwa nka biriya umucuruzi yagombye kubifatira ubwishingizi, bityo Nkwaya Kega Alfred akaba agomba kuzuza inshingano ze nk'uko yaziyemeje mu masezerano yagiranye na Ecobank Rwanda Ltd, hashingiwe ku biteganywa n'ingingo ya 64 y'Itegeko ryavuzwe haruguru. Kuba itariki yo kurangiza kwishyura umwenda yarageze Nkwaya Kega Alfred agifite umwenda ungana na 72.000.000 Frw n'inyungu zayo, kandi kugeza ubu akaba ntacyo yakoze ngo awishyure, byumvikana ko inshingano zikimuriho kuko atagaragaza impamvu yemewe n'amategeko yazimukuyeho nk'uko biteganywa n'ingingo ya 80 y'Itegeko n° 45/2011 ryo ku wa 25/11/2011; bityo ubujurire bwe kuri iyi mpamvu bukaba nta shingiro bufite.

3. Kumenya niba umwenda Nkwaya Kega Alfred yishyuzwa warabazwe nabi [30] Me Mukagasana Clotilde wunganira Nkwaya Kega Alfred, avuga ko igipimo cy'inyungu (taux d'intérêt) cyari giteganyijwe mu masezerano y'inguzanyo cyari 16.5%, ko ariko mu manza zabanje, Ecobank Rwanda Ltd yagiye iregera amafaranga atandukanye, kuko mbere yaregeye 163.453.050 Frw, nyuma ivuga ko umwenda nyawo ungana na 153,293,344 Frw, ko Urukiko rumaze kubona ivuguruzanya riri mu mibare Banki itanga rwemeje ko Nkwaya Kega Alfred yishyura umwenda wose hatarebwe aho ligne de crédit yari igeze, ikibazo gikomeye afite kikaba ari uko nta kimenyetso ashobora kubona cyerekana ingano y'amafaranga yari amaze gukoresha, kuko inyandiko ze zose bazibye nk'uko byasobanuwe haruguru. [31] Me Mukagasana Clotilde asobanura kandi ko banenga urubanza rujuririrwa kuba rwaremeje ko imikirize y'urubanza n° RCOM 00993/2017/TCNYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge idahindutse, rutitaye ku nyungu zabazwe mu buryo butari bwo. Avuga ko niba urwo Rukiko rwaremeje ko Nkwaya Kega Alfred agomba kwishyura 50.000.000 Frw y'umwenda remezo na 50.000.000 Frw y'inyungu, bivuze ko taux d'intérêts yakoreshejwe ari 100% aho kuba 16.5% nk'uko Ecobank Rwanda Ltd yabisobanuye, ndetse ko Nkwaya Kega Alfred nawe yagaragaje igihe cy'iburanisha uko imibare yakagombye gukorwa ariko ntibyahabwa agaciro kuko iyo ikurikizwa, yari kwishyura 67.000.000 Frw abazwe mu buryo bukurikira: iminsi 870 = imyaka 2 n'iminsi 42. Inyungu yakwishyura mu myaka 2, zingana na 50.000.000 Frw y'umwenda remezo $\times 16.5 \times 2 : 1 \times 100 = 16.500.000$ Frw, naho inyungu z'iminsi 42 zingana na : 50.000.000 Frw $\times 16.5 \times 42 : 360 \times 100 = 962.000$ Frw. [32] Abahagarariye Ecobank Rwanda Ltd, bavuga ko mu kubara inyungu z'umwenda Nkwaya Kega Alfred abereyemo Banki, bari babanje kwibagirwa ko amasezerano yateganyije igipimo cy'inyungu cya 16.5 %, maze babarira ku gipimo cya 19.5%, ko ariko nyuma Banki yaje kubikosora babarira noneho kuri 16.5%. Bavuga ko Urukiko, mu gutegeka Nkwaya Kega Alfred kwishyura Ecobank Rwanda Ltd 100,000,000 Frw, rutitaye ku mubare wa 153,293,344 Frw Ecobank Rwanda Ltd yasabaga, ko ahubwo rwagendeye ku Itegeko n° 47/2017 ryo ku wa 23/09/2017 rigenga Imitunganyirize y'Imirimo y'Amabanki, maze ruvuga ko uko byagenda kose, Ecobank Rwanda Ltd idashobora kwishyura inyungu zirenga 50,000,000Frw y'umwenda remezo Nkwaya Kega Alfred ayibereyemo, uwajuriye akaba nta nenge agaragaza kuri ibi byashingiweho n'Urukiko Rukuru rw'Ubucuruzi. UKO URUKIKO RUBIBONA ukundi.

Page 9

[33] Ku bivugwa na Nkwaya Kega Alfred ko Urukiko Rukuru rw'Ubucuruzi rwemeje uko inyungu zabazwe n'Urukiko rwa mbere kandi rwarabaze inyungu mu buryo butaribwo kuko rwakoresheje igipimo cya 100%, Urukiko rurasanga iyi myumvire idahuye n'ukuri, kuko ari ukwiringagiza ko umubare wa 100.000 Frw, Urukiko rwawugezeho ruherereye ko umwenda remezo yananiwe kwishyura ungana na 50.000.000 Frw, noneho rushingiye ku biteganywa n'ingingo ya 112 y'Itegeko n° 47/2017 ryo ku wa 23/9/2017 rigena imitunganyirize y'imirimo y'amabanki iteganya ko " Mu kwishyura imyenda itishyurwa, banki ntigomba kurenza umubare

w'amafaranga ntarengwa akurikira: 1° umwenda shingiro utarishyuwe igihe inguzanyo yageraga mu rwego rwo kutishyurwa; 2° inyungu zitarenze umwenda shingiro igihe inguzanyo yageraga mu rwego rwo kutishyurwa hakurikijwe amasezerano banki ifitanye n'uyifitiye umwenda; 3° amafaranga yakoreshejwe mu gihe cyo kwishyura amafaranga yose y'ufitiye umwenda banki. Banki Nkuru ishobora kugena uburyo bwo kubara no gushyira ahagaragara inyungu", rusanga inyungu nyinshi agomba kwishyura ari 50.000.000 Frw, bityo umwenda wose agomba Ecobank Rwanda Ltd uba 100.000.000 Frw; bityo iyi mpamvu y'ubujurire nayo ikaba nta shingiro ifite.

4. Ku birebana n'ubujurire bwuririye ku bundi [34] Mu mwanzuro w'ubujurire watanze na Me Uwanyirigira Delphine mu mwanya wa Ecobank Rwanda Ltd, asaba Urukiko rw'Ubujurire gutegeka Nkwaya Kega Alfred ukoresha izina ry'ubucuruzi rya Aquilla & Priscilla kwishyura Ecobank Rwanda Ltd 1,000,000 Frw y'igihembo cya Avoka, ashingiye ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano. [35] Me Mukagasana Clotilde wunganira Nkwaya Kega Alfred ukoresha izina Aquilla & Priscilla avuga ko izo ndishyi zisabwa zidakwiye gutangwa kuko kuba atarishyuye Ecobank Rwanda Ltd byaturutse ku mpamvu ntarengwa itunguranye kandi itamuturutseho. UKO URUKIKO RUBIBONA [36] Ingingo ya 111, igika cya kabiri, y'Itegeko n° 22/2018 ryo ku wa 29/04/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa hamwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikaburanishwa niyo ikirego cy'iremezo cyaba kitakiriwe". [37] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ikurikiranarubanza asabwa na Ecobank Rwanda Ltd afite ishingiro, kuko kuba hari abanyamategeko bakurikiranye urubanza kuva rwajuririrwa kuri uru rwego bakanaruburana, byumvikana ko hari amafaranga yabishyuye kandi hakaba hari nayo yakoresheje ikurikirana urubanza, ko harebwe ibyo byose byakozwe, 1.000.000 Frw akubiyemo ay'igihembo cya Avoka n'ikurikiranarubanza isaba ari mu rugero rukwiye. III. ICYEMEZO CY'URUKIKO [38] Rwemeje ko ubujurire bwatanze na Nkwaya Kega Alfred nta shingiro bufite;

Page 10

[39] Rwemeje ko nta gihindutse ku mikirize y'urubanza N° RCOMA 00105/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 29/06/2018; [40] Rutegetse Nkwaya Kega Alfred kwishyura Ecobank Rwanda Ltd 1.000.000 Frw akubiyemo ay'igihembo cya Avoka n'ikurikiranarubanza igenewe kuri uru rwego.

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