

RWANDA / JUDGMENT

NTEGEYE v ECOBANK RWANDA LTD kinyarwanda

RCOMAA 00001/2019/SC

COURT

Supreme Court

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NTEGEYE v ECOBANK RWANDA LTD kinyarwanda

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Text

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NTEGEYE v ECOBANK RWANDA LTD N'UNDI [Rwanda URUKIKO RW'IKIRENGA – RCOMAA 00001/2019/SC (Ntezilyayo, P.J., Rukundakuvuga na Cyanzayire, J.) 24 Mutarama 2020] Amategeko agenga imiburanishirize y'imanza zasabiwe gusubirwamo ku mpamvu z'akarengane – Gusubirishamo urubanza ingingo nshya – Gusubirishamo urubanza ku mpamvu z'akarengane ni inzira idasanzwe idashobora gufungura izindi nzira z'ubujurire kuko ziba zararangiye – Urubanza rwaciwe ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane ruba ari urwa nyuma ndetse ntirushobora gusubirishwamo ingingo nshya. Incamake y'ikibazo: BCDI (Ecobank) yahaye Ntegeye Bernard inguzanyo, maze ananirwa kwishyura mu bihe bumvikaniyeho, biba ngombwa ko ayegurira umutungo we utimukanwa ugizwe n'inzu mu rwego rwo kuyishyura, ariko mu masezerano bemeranywa na Banki ko niramuka ishatse kugurisha iyo nzu, ko ariwe uzaba ufite uburenganzira bwo kuyigura mbere y'abandi baguzi mu gihe cy'imyaka 10 (Droit de preemption). Inzu iza kugurishwa muri cyamunara, ariko yegukanwa na BNR, ariko umwenda ntiwishyurwa wose. Ntegeye yaje kurega Ecobank mu bukemurampaka, avuga ko inzu ye yagurishijwe mu

buryo bunyuranyije n'amategeko. Inteko y'Ubukemurampaka ryemeza ko BCDI itishe amasezerano ko bugure bwari bufite agaciro. Urega yajuririye mu Rukiko Rukuru, rwemeza ko amasezerano yiswe acte de cession d'immeuble BCDI yagiranye n'urega aseswa, maze agasubirana inzu ye. BCDI yajuririye mu Rukiko rw'Ikirenga ivuga ko urubanza rwajuririwe rwaciwe ku cyo rutasabwe kuko rwategetse ko amasezerano y'ubugure aseswa kandi ataribyo byari byaregewe. Uru rukiko rwemeje ko ubujurire bufite ishingiro, bityo ko Ntegeye agomba kwishyura umwenda remezo n'inyungu zawo. Ntegeye yasubirishijemo urubanza ku mpamvu z'akarengane, nyuma yaho impande zombi zakoranye amasezerano yo kwikiranura. Mu gufata icyemezo, Urukiko rw'Ikirenga rwemeje ko ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane kitakiriwe kuko amasezerano yo kwikiranura yakozwe agira agaciro kamwe n'akurubanza rwabaye itegeko, bityo ko ikirego kitariwe. Ntegeye yatanze ikindi kirego asaba ko urubanza rusubirishwamo ingingo nshya, ashingiye ku ngingo ya 83 y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, avuga ko itamubuza gusubirishamo urubanza rw'akarengane ingingo nshya, avuga ko iyi ngingo ikumira gusa imanza zaburanishijwe n'Urukiko rw'Ikirenga rugasangamo akarengane, avuga ko ikirego cye kitari mu byakumiriwe niyi ngingo kuko ari ikirego kitigeze cyakirwa ngo gisuzumwe. Ecobank Rwanda Ltd na National Bank of Rwanda bavuga ko ingingo ya 83 y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga yamuzitiraga ku kuba yakongera kuregera icyemezo cyafashwe ku rubanza rwasubirishijwemo ku mpamvu z'akarengane kuko interuro ya kabiri y'iyi ngingo ivuga icyemezo gifashwe icyo ari cyo cyose mu manza zasubirishijwemo ku mpamvu z'akarengane kidashobora kujuririrwa.

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Urukiko rw'Ikirenga rwafashe icyemezo rushingiye ku ngingo ya 53 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 ryerekeye ububasha bw'Inkiko, ivuga ko umucamanza washikirijwe urubanza rw'akarengane ashobora gufata kimwe mu byemezo akemeza ko habaye akarengane, cyangwa nta karengane gahari, ashobora kutakira ikirego. Icyemezo cyose umucamanza yafata muri ibi, ntigishobora gusubirwaho, bityo ko urubanza rwaciwe ku kirego cyo gusubirishamo ku mpamvu z'akarengane rudashobora gusubirishwamo ingingo nshya kuko ruba rwarabaye itegeko. Incamake y'icyemezo: 1. Urubanza rwaciwe ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane ruba ari urwa nyuma ndetse ntirushobora gusubirishwamo ingingo nshya kuko gusubirishamo urubanza ku mpamvu z'akarengane ni inzira idasanzwe idashobora gufungura izindi nzira z'ubujurire kuko ziba zarangiye. Ikirego gisaba gusubirishamo urubanza ingingo nshya nticyakiriwe. Amategeko yashingiweho: Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 53 Itegeko Ngenga No 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 83. Imanza zifashishijwe: Kabango v Leta y'u Rwanda, RAD 00001/2019/SC Urubanza I. IMITERERE Y'IKIBAZO [1] Mu mwaka wa 1998, Ntegeye Bernard yahawe inguzanyo na BCDI SA (ubu yitwa Ecobank Rwanda Ltd) ingana na 50.000.000 Frw, akuramo 42.485.087Frw yo kwishyura inguzanyo yari yarahawe na BACAR SA mu mwaka wa 1993 mu rwego rwo kubaka inzu iri mu kibanza No 1200 Kacyiru – Nord. Ntegeye Bernard ntiyishyuye umwenda yahawe na BCDI SA, ukomeza kwiyongera ugera

kuri 73.839.942Frw, bituma ku wa 09/02/ 2001 agirana nayo amasezerano yo kuyegurira ya nzu iri mu kibanza No 1200 Kacyiru - Nord yari imaze kugira agaciro ka 41.484.288Frw. Kuri ayo mafaranga hiyongeraho 4.122.750Frw y'ibikoresho byarimo, byose hamwe bikaba 45.607.038Frw, bivuga ko yari asigaranye umwenda wa 28.232.904Frw. Mu ngingo ya 6 y'ayo masezerano, bemeranyijwe ko Banki iramutse ishatse kugurisha iyo nzu, Ntegeye Bernard afite uburenganzira bwo kugura mbere y'abandi (Droit de préemption/préférence) mu gihe cy'imyaka icumi (10). Ntegeye Bernard yananiwe kwishyura amafaranga yari asigaye, agenda arushaho kwiyongera. Ku wa 11/04/2003, BCDI SA yagurishije mu cyamunara inzu yari yareguriwe, yegukanwa na National Bank of Rwanda. [2] Ntegeye Bernard yareze BCDI SA (yahindutse Ecobank Rwanda Ltd) mu Rukiko Nkemurampaka, agobokesha National Bank of Rwanda, avuga ko inzu ye iri mu kibanza No 1200 Kacyiru-Nord yatejwe cyamunara hatubahirijwe amategeko, kandi hirengagijwe ingingo ya 6 y'amasezerano bari baragiranye. Ku wa 02/12/2005, Urukiko Nkemurampaka rwemeje ko

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BCDI SA itishe amasezerano, ko rero ubugure bwa National Bank of Rwanda bufite agaciro, rutegeka Ntegeye Bernard kwishyura 28.232.000Frw avugwa mu masezerano yo ku wa 09/02/2001. Ku bijyanye na « droit de préférence », Urukiko rwasobanuye ko ibyo Ntegeye Bernard avuga ari amagambo gusa, kuko atavuga ko yari kugura mbere inzu yagurishijwe 100.000.000Frw kandi yarananiwe kwishyura 28.232.000Frw. Rwasanze icyakora Banki yarateshutse ku nshingano yo kumumenyesha iby'iryo gurisha, ruyitegeka kubitangira indishyi zingana na 5.000.000Frw. [3] Ntegeye Bernard ntiyishimiye icyemezo cy'Abakemurampaka, akijuririra mu Rukiko Rukuru rwa Repubulika. Ku wa 31/05/2007, mu rubanza RCOMA 0020/05/ HCKIG, uru Rukiko rwemeje ko amasezerano Ntegeye Bernard yagiranye na BCDI SA bise "Acte de cession d'immeuble" asheshwe, kandi ko nta mwenda Ntegeye Bernard abereyemo iyo Banki hashingiwe kuri « extrait bancaire » ya konti No 110-2534703-9. Rwategetse ko Ntegeye Bernard asubirana inzu ye, agahabwa 6.000.000Frw y'indishyi mbonezamusaruro, na 5.000.000Frw y'indishyi z'akababaro. [4] BCDI SA na National Bank of Rwanda bajuririye urwo rubanza mu Rukiko rw'Ikirenga. Ku wa 30/07/2010, mu rubanza RCOMAA 0005/07/CS, Urukiko rwemeje ko ubwo bujurire bufite ishingiro, rutegeka Ntegeye Bernard kwishyura Ecobank Rwanda Ltd (yari BCDI SA mbere) 48.102.687Frw aturuka ku mwenda wa 28.232.000Frw n'inyungu zawo. Urukiko rwasobanuye ko :

- a. Urukiko Rukuru rwa Repubulika rwaciye urubanza ku cyo rutasabwe, kuko rwerekanye ko amasezerano y'ubugure hagati ya BCDI SA na National Bank of Rwanda yabayemo uburiganya, ariko rugasesa amasezerano yabaye hagati ya BCDI SA na Ntegeye Bernard atari byo byari byaregewe;
- b. Amasezerano yo ku wa 09/02/2001 yiswe « acte de cession d'immeuble » yujuje ibisabwa byose kugirango abe amasezerano y'ubugure, bityo inzu yarebwaga n'ayo masezerano ikaba yarinjiye mu mutungo wa BCDI SA, bivuga ko yari ifite uburenganzira bwo kuyigurisha National Bank of Rwanda;

- c. Hashingiwe kuri raporo y'umuhanga washyizweho n'Urukiko, Ntegeye Bernard atishyuye umwenda yari asigaje kwishyura BCDI SA. [5] Ntegeye Bernard yasubirishijemo urubanza ku mpamvu z'akarengane, Urwego rw'Umuvunyi rugaragaza ko Urukiko rw'Ikirenga rutafashe umwanzuro ku bijyanye n'iyubahirizwa ry' ingingo ya 6 y'amasezerano yiswe « acte de session d'immeuble », ntirwagira n'icyo rubivugaho kandi biri mu byari byaregewe. Dosiye yashyikirijwe Urukiko rw'Ikirenga, ikirego cyandikwa kuri RS/REV/INJUST/COM 0001/16/CS. Muri urwo rubanza, Ecobank Rwanda Ltd yatanze inzitizi yo kutakira ikirego cya Ntegeye Bernard, ivuga ko nyuma y'uko agejeje ikibazo ku Rwego rw'Umuvunyi, bagiranye amasezerano y'uburyo urubanza ruzarangizwa, impande zombi zemeranywa ku kwikiranura. [6] Ku wa 09/09/2016, Urukiko rw'Ikirenga rwemeje ko inzitizi yatanze na Ecobank Rwanda Ltd ifite ishingiro, rwemeza ko ikirego cya Ntegeye Bernard cyo gusubirishamo urubanza ku mpamvu z'akarengane kitakiriwe, rumutegeka kwishyura Ecobank Rwanda Ltd na National Bank of Rwanda amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka. Urukiko rwafashe umwanzuro rushingiye ku ngingo ya 591 y'Igitabo cya gatatu cy'urwunge

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rw'amategako mbonezamubano, yateganyaga ibi bikurikira : « amasezerano yo kwikiranura agira hagati y'abayagiranye agaciro kamwe n'ak'urubanza rwakemuwe ku buryo budasubirwaho mu rwego rwa nyuma. Ntawe ushobora gusaba ko ateshwa agaciro yitwaje ko yibeshye ku byo amategako ateganya, cyangwa se yitwaje ko yahenzwe ». [7] Urukiko rw'Ikirenga rwasobanuye ko, Ntegeye Bernard na Ecobank Rwanda Ltd bagiranye amasezerano ku wa 06/03/2014, avuga ko impande zombi zumvikanye ku irangizwa ry'urubanza RCOMAA 0005/07/CS rwaciwe ku wa 30/07/2010. Ingingo ya mbere y'ayo masezerano igaragaza ko Ntegeye Bernard yiyemeje kwishyura 34.000.000Frw mu rwego rwo kurangiza ibibazo afitanye na Ecobank Rwanda Ltd1, naho ingingo ya 3 ikavuga ko impande zombi zemeye nta gahato gukora amasezerano yo kwikiranura bazi ingaruka zabyo, bakaba biyemeje kudakemanga ishyirwa mu bikorwa ryayo no kuyubahiriza nta buryarya2. [8] Urukiko rw'Ikirenga rwasobanuye kandi ko, Ntegeye Bernard yakoranye amasezerano yo kwikiranura na Ecobank Rwanda Ltd nyuma yo gushyikiriza Urwego rw'Umuvunyi ikirego cye cy'akarengane kuko yagitanze mu 2012, amasezerano agakorwa ku wa 06/03/2014 ; muri ayo masezerano akaba yemera ko akiranutse na Banki mu ngingo zose z'urubanza, harimo n'izo yari yaregeye akarengane. Urukiko rwagaragaje ko yikiranura na Banki, yemeraga ko nta karengane yakorewe, kuko icyo bitaba ibyo yari kugaragaza ingingo yikiranuyeho n'izo atikiranuyeho ku mpamvu y'uko atemera imikirize y'urubanza kuri zo. [9] Ntegeye Bernard yatanze ikindi kirego asaba gusubirishamo ingingo nshya urubanza No RS/REV/INJUST/COM 0001/16/CS rwaciwe ku wa 09/09/2016, Ubwanditsi bw'Urukiko bwemeza ko icyo kirego kitakiriwe ngo cyandikwe mu bitabo by'Urukiko, kubera ko kinyuranye n'ibiteganywa n'ingingo ya 83 y'Itegeko Ngenga No 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga. Ntegeye Bernard yatakambiye Perezida w'Urukiko rw'Ikirenga. Mu cyemezo cyo ku wa 08/06/2018, Perezida w'Urukiko rw'Ikirenga yemeje ko ikirego cya Ntegeye Bernard cyandikwa mu bitabo by'Urukiko, Inteko ikazasuzuma niba urubanza rwaciwe ku kirego

cyo gusubirishamo urubanza ku mpamvu z'akarengane, rushobora gusubirishwamo ingingo nshya, icyemezo cyafatwa kikazifashishwa n'izindi nkiko. [10] Impamvu Ntegeye Bernard ashingiraho asaba ko urubanza rusubirishwamo ingingo nshya, ni amahame yo mu rwego rw'amategeko avuga ko yirengagijwe n'Urukiko, ariyo : « contra proferentem »³, na « Parol evidence rule »⁴, akaba avuga ko yayamenye nyuma y'aho urubanza rusabirwa gusubirwamo ruciriwe. Mu myanzuro yabo, abaregwa bavugaga ko ayo 1 « Monsieur Ntegeye Bernard s'engage à verser la somme de 34.000.000 Frw à Ecobank Rwanda en vue de liquider tous ses engagements qu'il a envers Ecobank Rwanda Ltd en rapport avec le jugement (RCOMAA 0005/07) ». 22 “ les parties s'engagent à clôturer la mise en application de l'arrêt RCOMAA 0005/07 de la Cour Suprême et à exécuter de bonne foi la transaction. Les parties s'interdisent de remettre en cause la mise en application de la transaction et de ce fait les parties rappellent connaître pleinement la portée de leur engagement volontaire auquel elles ont donné un consentement libre et éclairé ». 33 Ihame risobanura ko iyo mu masezerano hari amagambo atera urujijo, harebwa ibiri mu nyungu z'uruhande rutagize uruhare mu kuyategura 44 Ihame risobanura ko mu gihe hari amasezerano yanditse yashyize n'impande zose areba, bidashoboka kuyahindura n'ibyavugwa mu magambo binyuranye n'ibiyanditsemo.

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mahame asanzwe mu mategeko, akaba atari impamvu yatuma urubanza rusubirishwamo ingingo nshya kuko nta cyamubujije kuyifashisha aburana urwo rubanza. [11] Abaregwa bagaragaza kandi ko Ntegeye Bernard atubahirije ibihe byo gutanga ikirego, kuko urubanza RS/RV/INJUST/COM 0001/16/CS rwaciwe ku wa 09/09/2016, ikirego gisaba kurusubirishamo ingingo nshya kigatangwa ku wa 09/09/2017 nyuma y'umwaka ruciwe, mu gihe itegeko riteganyaga igihe cy'amezi abiri. Ntegeye Bernard asobanura ko ihame rya « contra proferentem » yarimenye ku wa 14/08/2017, ikirego akagitanga ku wa 27/09/2017, igihe cy'amezi abiri kitararangira. [12] Urubanza rwaburanishijwe mu ruhamwe ku wa 06/01/2020, Ntegeye Bernard ahagarariwe na Me Zawadi Stephen, Me Mubangizi Frank na Me Umutangana Aimée Jacqueline, Ecobank Rwanda Ltd ihagarariwe na Me Munyaneza Remy, naho National Bank of Rwanda ihagarariwe na Me Murego Jean Leonard na Me Byiringiro Jacques. Ababuranyi babanje kujya impaka ku kibazo cyo kumenya niba urubanza rwaciwe ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane, rushobora gusubirishwamo ingingo nshya, hemezwa ko ari nacyo kizabanza gufatwaho umwanzuro n'Urukiko. Urukiko rwamenyesheje ababuranyi ko icyemezo kuri icyo kibazo kizasomwa ku wa 24/01/2020. Mu gihe Urukiko rwakwemeza ko urubanza rwaciwe ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane rushobora gusubirishwamo ingingo nshya, akaba aribwo haburanishwa ku bindi bibazo biri mu rubanza aribyo:

- a. Kumenya niba ibihe byo gusubirishamo urubanza ingingo nshya byarubahirijwe;

- b. Kumenya niba kudakurikiza ihame ry'amategeko byaba impamvu yatuma urubanza rusubirishwamo ingingo nshya. [13] Hashingiwe ku byagaragajwe mu bika bibanza, ikibazo cy'ingenzi cyasuzumwe muri uru rubanza, ni ukumenya niba urubanza rwaciwe ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane, rushobora gusubirishwamo ingingo nshya. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO
- a. Gusuzuma niba urubanza rwaciwe ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane rushobora gusubirishwamo ingingo nshya [14] Abahagarariye Ntegeye Bernard bavuga ko ingingo ya 83 y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, itamubuza gusubirishamo urubanza RS/RV/INJUST/COM 0001/16/CS ingingo nshya. Babisobanura mu buryo bukurikira:
- a. Bavuga ko iyi ingingo ikumira gusa imanza zaburanishijwe n'Urukiko rw'Ikirenga rugasangamo akarengane, kuko ruba rwarakosoye amakosa yose yaba yarakozwe mu rwego rw'amategeko, rugatanga umurongo ngenderwaho, ariyo mpamvu itegeko ryavuze ko icyo cyemezo kidasubirwaho; ibyo bikaba bitareba urubanza RS/RV/INJUST/COM 0001/16/CS kuko rutasuzumwe ngo hemezwe ko rwabayemo akarengane;
- b. Bavuga ko ikirego cya Ntegeye Bernard kitari mu byakumiriwe n'ingingo yavuzwe haruguru, kuko ari ikirego kitigeze cyakirwa ngo gisuzumwe, bivuze ko akarengane Urwego rw'Umuvunyi rwabonye mu mikirize y'urubanza RCOMAA 0005/07/CS

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rwaciwe n'urukiko rw'Ikirenga ku wa 30/07/2010, ntaho kagiye. Bongeraho ko inzitizi yatanzwe na Ecobank Rwanda Ltd n'akarengane kabonywe n'Urwego rw'Umuvunyi byari gusuzumirwa hamwe, mu guca urubanza byose bigafatwaho icyemezo;

- c. Bavuga kandi ko ibyo ababuranira Ecobank Rwanda Ltd na National Bank of Rwanda bavuga ko ingingo ya 53 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko yakemuye impungenge zari mu ngingo ya 83 y'Itegeko Ngenga ryavuzwe haruguru atari byo, kuko yagiyeho nyuma y'uko ikirego gitangwa. [15] Abahagarariye Ecobank Rwanda Ltd na National Bank of Rwanda bavuga ko ingingo ya 83 y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga yamuzitiraga ku kuba yakongera kuregera icyemezo cyafashwe ku rubanza rwasubirishijwemo ku mpamvu z'akarengane. Babisobanura mu buryo bukurikira:
- a. Interuro ya kabiri y'iyo ingingo ivuga "icyemezo gifashwe", bivuze ko icyemezo icyo ari cyo cyose cyafatwa mu manza zasubirishijwemo ku mpamvu z'akarengane kidashobora kujuririrwa. Ibyo bikaba byarashimangiwe n'umushingamategeko mu ngingo ya 53 agace ka nyuma y'Itegeko rishya rigenga ububasha bw'inkiko ryatangajwe mu 20185, naryo rikaba ryakwifashishwa kugira ngo ingingo ya 83 yavuzwe haruguru isobanuke neza ;

- b. Indi mpamvu ituma ikirego cya Ntegeye Bernard kidashobora kwakirwa ishingiyeye ku nyungu z'ubutabera ziha agaciro k'ukuri ntabanduka (vérité irrefragable) icyemezo cy'Urukiko cyafashwe burundu (autorité de la chose jugée/stare decisis). Niyo mpamvu hateganyijwe inzira zisanzwe n'izidasanzwe z'ubujurire, uburyo zikoreshwa ndetse n'igihe zikorwamo. Kutabyubahiriza, byabangamira ihame riha agaciro imanza zaciwe burundu, umuntu watsinze agahorana impungenge ku cyo yatsindiye, cyangwa n'ababuranyi bakirara bibwira ko igihe cyose no ku mpamvu iyo ari yo yose bashobora gusubira mu nkiko;
- c. Bavuga ko uburyo abahagarariye Ntegeye Bernard basobanuramo ingingo ya 83 y'Itegeko Ngenga No 03/2012/OL ryo ku wa 13/06/2012 ataribwo, kuko bashakaga gutandukanya ibyo umushyamba umushyamba atandukanyije kandi bitemewe mu bijyanye no gusesengura amategeko, hakaba hagomba kurebwa ingingo yose aho kureba agace kamwe ; ibyo kandi bigahuzwa n'umutwe w'iyi ngingo ureba icyemezo icyo aricyo cyose cyafatwa, ni ukuvuga igihe hagaragajwe akarengane, igihe nta karengane kagaragajwe, n'igihe ikirego kitakiriwe. [16] Bongeraho ko impungenge Perezida w'Urukiko rw'Ikirenga yari yagaragaje yemera ko ikirego cya Ntegeye Bernard cyandikwa zitagihari, kuko zakuweho n'ingingo ya 53 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 ryerekeye ububasha bw'Inkiko, bivuze ko umurongo w'Urukiko utagikenewe. UKO URUKIKO RUBIBONA 55 « Imanza zasubiwemo ku mpamvu z'akarengane ntizishobora kongera kujuririrwa »

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- [17] Mu cyemezo No 0022/2019 cyo ku wa 08/06/2018 kirebana n'itakamba rya Ntegeye Bernard ku iyakirwa ry'ikirego gisaba gusubirishamo urubanza ingingo nshya, Perezida w'Urukiko rw'Ikirenga yasanze mu nyungu z'ubutabera, iki kirego cyakwandikwa mu bitabo by'Urukiko kugirango hazatangwe umurongo wafasha izindi nkiko ku kibazo cyo kumenya niba urubanza rwaciwe ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane, rushobora gusubirishwamo ingingo nshya, hashingiwe ku biteganywa n'ingingo ya 83 y'Itegeko Ngenga No 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga (ryakoreshezwaga igihe ikirego cyatangwaga) . [18] Mu gihe urubanza rwari rutegereje kuburanishwa, hatangajwe Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ibyataganywaga n'ingingo ya 83 y'Itegeko Ngenga No 03/2012/OL ryo ku wa 13/06/2012 ryavuzwe haruguru, bisimburwa n'ibiteganywa mu ngingo ya 53 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018. N'ubwo ariko ingingo ya 83 y'Itegeko Ngenga No 03/2012/OL ryo ku wa 13/06/2012 itakiriho, Urukiko rurasanga ari ngombwa ko hatangwa umurongo ku byo yataganyaga ababuranyi batumva kimwe, kuko ikomeza gukoreshwa mu manza zikiri mu nkiko, zaregewe mbere y'uko Itegeko N° 30/2018 ryo ku wa 02/06/2018 ritangazwa, hashingiwe ku biteganywa n'ingingo ya 280 y'iri Tegeko6. [19] Ingingo ya 83 y'Itegeko Ngenga No 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga yagiraga iti : « Iyo Urukiko rw'Ikirenga rusanze urubanza rwari rwaraciwe harabayemo akarengane, rukosora amakosa yakozwe mu ica ry'urwo rubanza kandi rugatanga umurongo ngenderwaho wo mu rwego rw'amategeko mu gukemura bene ibyo bibazo. icyemezo gifashwe ntigishobora gusubirwaho ». [20] Mu

gusobanura ibiteganywa n'iyi ngingo, ni ngombwa kubanza kureba icyari kigamijwe hashyirwaho inzira yo gusubirishamo urubanza ku mpamvu z'akarengane. Imanza zisabirwa gusubirwamo ku mpamvu z'akarengane, ziba zaramaze gucibwa ku rwego rwa nyuma⁷. Icyari kigamijwe n'umushingamategeko, ni ugukosora akarengane gashobora kuba mu rubanza, bitewe no kwibeshya cyangwa amakosa y'umucamanza bigaragarira buri wese, kandi nta yindi nzira yo kugakosora igishoboka. Ni inzira rero idasanzwe, idashobora gufungura izindi nzira z'ubujurire, kuko ziba zararangiye. [21] Umucamanza washyikirijwe ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane, aba ashobora gufata kimwe mu byemezo bikurikira:

- a. Iyo asanze harabaye akarengane, aragakosora, agatanga umurongo mu rwego rw'amategeko iyo ari ngombwa;
- b. Iyo asanze nta karengane kabaye, arabisobanura, akavuga ko ikirego cy'akarengane nta shingiro gifite, urubanza rwari rwaciwe mbere rukagumaho; 66 "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". 77 Ingingo ya 78 y'Itegeko Ngenga No 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga; Ingingo ya 53 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko.

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- c. Ashobora kutakira ikirego, iyo asanga ibisabwa n'itegeko kugirango urubanza rusubirwemo ku mpamvu z'akarengane bituzuye; muri icyo gihe akavuga ko ikirego cy'akarengane kitakiriwe. [22] icyemezo cyose umucamanza yafata muri ibi uko ari bitatu bimaze kuvugwa, ntigishobora gusubirwaho. Ibi nibyo byumvikana mu nteruro ya nyuma y'ingingo ya 83 y'Itegeko Ngenga No 03/2012/OL ryo ku wa 13/06/2012 ryavuzwe haruguru, irebwe hamwe n'umutwe w'iyi ngingo. Umutwe w'iyi ngingo uvuga « icyemezo gifatwa mu rubanza rusubiramo urwaciwe ku rwego rwa nyuma », ibi bikaba bitareba gusa icyemezo kigaragaza ko habaye akarengane, ahubwo bireba icyemezo cyose cyafatwa mu rubanza rwasabiwe gusubirishwamo ku mpamvu z'akarengane. Bitagenze bityo, urubanza rwose rugaragaje ko nta karengane kabaye, cyangwa rutakiriye ikirego, rwajya rwongera gufungura inzira zisanzwe n'izidasanzwe z'ubujurire, bigatuma urubanza rutagira iherezo mu nkiko; ibyo kandi akaba ataribyo umushingamategeko yari agendereye. [23] Mu nteruro ya mbere y'ingingo ya 83 imaze kuvugwa, Urukiko rusanga umushingamategeko yarashatse gusobanura uko bigomba kugenda igihe Urukiko rw'Ikirenga rusanze harabaye akarengane, kugirango rutagarukira gusa ku gukemura akarengane rudatanze umurongo wafasha izindi nkiko zihuye na bene ibyo bibazo. Ibi bikaba bitari bikenewe igihe Urukiko rwasanze nta karengane kabaye cyangwa ikirego kidashobora kwakirwa, ari nayo mpamvu byo bitavuzwe, kuko byumvikana ko hagumaho urubanza rwasabirwaga gusubirwamo. [24] Urukiko rurasanga igikwiye kumvikana rero, ari uko mu ngingo ya 83 y'Itegeko Ngenga No 03/2012/OL ryo ku wa 13/06/2012, umushingamategeko atashatse ko imanza zitarangira mu nkiko,

ariyo mpamvu interuro ya nyuma y'iyi ngingo itareba gusa icyemezo cyagaragaje ko habaye akarengane, ahubwo ireba n'icyemezo cyagaragaje ko nta karengane kabaye, kimwe n'icyemezo cyo kutakira ikirego. Ni nayo mpamvu, mu ngingo ya 53 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, umushingamategeko yakosoye urujijo rwaterwaga n'imyandikire y'ingingo ya 83 y'Itegeko Ngenga No 03/2012/OL ryo ku wa 13/06/2012, ibyari interuro ya nyuma y'iyi ngingo bikaba igika kihariye giteganya ko: "Imanza zasubiwemo ku mpamvu z'akarengane zidashobora kongera kujuririrwa". [25] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga urubanza rwaciwe ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane, rudashobora gusubirishwamo ingingo nshya. Muri uru rubanza, Ntegeye Bernard yasabye gusubirishamo ingingo nshya urubanza RS/RV/INJUST/COM 0001/16/CS rwari rwaraciwe n'Urukiko rw'Ikirenga ku wa 09/09/2016, ku kirego cyo gusubirishamo urubanza ku mpamvu z'akarengane. Bivuga rero ko, ikirego cyo gusubirishamo urubanza ingingo nshya, cyatanze na Ntegeye Bernard, kidashobora kwakirwa ngo gisuzumwe. Kubera iyiyo mpamvu, Urukiko rurasanga bitakiri ngombwa ko ibindi bibazo byari byagaragajwe byasuzumwa.

- b. Gusuzuma indishyi zasabwe na Ecobank Rwanda Ltd na National Bank of Rwanda [26] Abahagarariye National Bank of Rwanda bavuga ko kubera igihombo iyo Banki iterwa no kuba Ntegeye Bernard ayihozwa mu manza z'amaherere, basaba Urukiko ko rwamutegeka kuyishyura indishyi zo gushorwa mu manza nta mpamvu, igihombo cy'Avoka no gukurikirana urubanza, zose hamwe zingana na miliyoni ebyiri (2.000.000Frw).

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- [27] Uhagarariye Ecobank Rwanda Ltd asaba Urukiko gutegeka Ntegeye Bernard kuyishyura indishyi zo gukomeza kuyishora mu manza zingana na miliyoni icumi (10.000.000Frw), rukanamutegeka kuyishyura amafaranga y'ikurikiranarubanza n'igihombo cy'Avoka angana na miliyoni ebyiri (2.000.000Frw). [28] Abahagarariye Ntegeye Bernard bavuga ko indishyi zo gushorwa mu manza Ecobank Rwanda Ltd na National Bank of Rwanda basaba nta shingiro zifite, kuko ari uburenganzira Ntegeye Bernard ahabwa n'itegeko bwo gusubirishamo urubanza ingingo nshya kugirango arenganurwe. Bavuga kandi ko amafaranga y'ikurikiranarubanza n'igihombo cy' Avoka Ecobank Rwanda Ltd isaba ariyo igomba kuyirengera, kuko ariyo yatumye Ntegeye Bernard ajya mu manza. UKO URUKIKO RUBIBONA c. Ku bijyanye n'indishyi zo gushorwa mu manza nta mpamvu [29] Urukiko rurasanga indishyi zo gushorwa mu manza nta mpamvu Ecobank Rwanda LTD na National Bank of Rwanda basaba ntazo bahabwa, kuko Ntegeye Bernard yatanze ikirego agamije kurengera inyungu ze, bikaba ari uburenganzira yemererwa n'amategeko. [30] Urukiko rurasanga Ecobank Rwanda Ltd ikwiye guhabwa amafaranga y'ikurikiranarubanza n'igihombo cy'Avoka kuko byabaye ngombwa ko ikurikirana urubanza yarezwemo na Ntegeye Bernard, ikishyura n'Abavoka bayihagararira muri urwo rubanza. Urukiko rurasanga ariko itahabwa 2.000.000Frw isaba kuko itayagaragariye ibisobanuro kandi akaba ari menshi, rukaba mu bushishozi bwari, ruyigeneye 300.000Frw y'ikurikiranarubanza, na

500.000Frw y'igihembo cy'Avoka. Ni ukuvuga ko Ecobank Rwanda Ltd igenewe amafaranga yose hamwe 300.000Frw + 500.000Frw = 800.000Frw. [31] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka National Bank of Rwanda isaba itayahabwa, kuko urubanza rwakurikiranywe rukanaburanwa n'abakozi bayo bahemberwa ako kazi, bakagenerwa n'ibibafasha kugakora ku ngengo y'imari itangwa na Leta. Ibyo ni nabyo byemejwe mu rubanza RAD 00001/2019/SC rwaciwe n'uru Rukiko ku wa 31/05/2019, haburana Kabango Antoine na Leta y'u Rwanda. III. ICYEMEZO CY'URUKIKO [32] Rwemeje ko ikirego cyatanzwe na Ntegeye Bernard kitakiriwe, kubera ko cyatanzwe mu nzira zidakurikije amategeko; [33] Rwemeje ko imikirize y'Urubanza RS/RV/INJUST/COM 0001/16/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 09/09/2016, igumyeho; [34] Rutegetse Ntegeye Bernard guha Ecobank Rwanda Ltd 800.000Frw y'ikurikiranarubanza n'igihembo cy'Avoka; [35] Rutegetse ko ingwate y'amagarama y'urubanza Ntegeye Bernard yatanze arega ihwanye n'ibyakoze mu rubanza.

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