

RWANDA / JUDGMENT

32STEDCON RWANDA v. ACCESS BANK

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Text

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STEDCON RWANDA v. ACCESS BANK [Rwanda URUKIKO RW'IKIRENGA – 2014SC – (Mutashya , P.J., Nyirinkwaya na Gakwaya , J.) 24 Ukwakira 2014] Amategeko agenga inyandiko zishobora gucuruzwa–Amabwiriza y'abasinya kuri Sheki–Agira agaciro iyo yatanzwe n'abasinya kuri konti bose– Itegeko n° 32/2009 ryo kuwa 18/11/2009 ryerekeye inyandiko zishobora gucuruzwa,Ingingo ya 34,111. Amategeko agenga inyandiko zishobora gucuruzwa– Kwishyura Sheki –Iyo Sheki yatanzwe nta buriganya,cyangwa iterabwoba,cyangwa ubuhemu byabayeho banki irayishyura– Itegeko n° 32/2009 ryo kuwa 18/11/2009 ryerekeye inyandiko zishobora gucuruzwa,Ingingo ya 34,111. Amasezerano cyangwa imirimo nshinganwa –Indishyi – Indishyi z'ikurikiranarubanza n'igihembo cy'Avoka –Zitangwa aruko impamvu yazo yagaragajwe, iyo itagaragajwe ntabwo zitangwa. Incamake y'ikibazo: STEDCON RWANDA Ltd yandikiye ACCESS BANK RWANDA iyimenesha yuko amafaranga azajya ava kuli konti yayo aruko ibitangiye uburenganzira,ACCESS BANK yabirenzeho maze yishyura sheki yari yatanzwe na STEDCOM ya 65.193.791 Frw itabanje guhamagara ubuyobozi bwa STEDCOM kugira ngo ihabwe uburenganzira bwo kwishyura. STEDCON yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi irega ACCESS BANK kuba yararigishije amafaranga yayo,kubera yuko yishyuye sheki nta burenganzira ihawe. Urukiko

rwemeje yuko ikirego cya STEDCON nta shingiro gifite, ku mpamvu zuko: (i)Signatures ziri kuri sheki nizo zatanze igihe konti yafungurwaga,(ii)Signature imwe iri kuri sheki ni ya Edward Ngeera Kibute, umuyobozi wa STEDCON, bikaba bitumvikana ukuntu banki yari kubanza kumubaza niba igomba kuriha,(iii)Niba andi mabanki ahamagara ba nyiri konti mbere yo kwishyura, nta “obligation” ziba zifite ku buryo zitabikoze haba hari “devoirs professionnels” zaba zitandukiriye,(iv)Gushyira mu bikorwa bene ariya mabwiriza biragoye mu gihe uwahamagawe avuze ko atahamagawe, mu gihe kandi ugomba guhamagarwa ahamagawe ariko ntaboneke, bityo ubwishyu ntibuboneke bikaba byagira ingaruka ku mikorere y’amabanki (ternir la bonne image de la banque opérante). Urukiko rwanategetse STEDCON guha ACCESS BANK amafaranga y’indishyi,ay’ikurikiranarubanza,n’ay’igihembo cya Avoka. STEDCON yajuriye mu Rukiko rw’Ikirega ku mpamvu zuko: Urukiko rw’Ubucuruzi rwemeje yuko nta makosa yakozwe mu kwishyura sheki,kandi harabaye kwirengagiza amabwiriza ya Banki yashizweho umukono n’impande zombi ateganya uko sheki zizajya zishurwa.Rukaba rwaremeje yuko bitari ngombwa kubanza kubaza, Mu gusibiza ACCESS yasobanuye yuko:Banki yubahirije amategeko kuko yishyuye sheki yasinywe n’abantu babiri babifitiye ububasha,amafaranga akaba yaravanywe kuri konti y’uwatanze sheki agashyirwa kuri konti y’uwahawe sheki. ACCESS yatanze ubujurire bw’uririye ku bundi isaba yuko:kwongererwa indishyi kuzari zatanze,hamwe n’igihembo cya avoka kubera gukomeza gishorwa mu manza.STEDCON yashubije yuko nta ndishyi zakagombye gutangwa mu gihe ibyo iregera bifite ishingiro.

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Incamake y’icyemezo: 1.Abafite uburenganzira bwo gusinya kuri konti banabufite mu kugira icyo bavugaga ku buryo bwo kwemeza sheki, Mu gihe bombi batabikoze nta kosa banki iba ikoze mu kutubahiriza amabwiriza yahawe n’umwe mu bayisinyaho mu gihe undi ntacyo yavuze.

2. Mu gihe sheki yatanze nta buriganya, nta terabwoba cyangwa ubuhemu byabayeho,ikaba igaragaza imikono y’abemerewe gusinya kuri konti yayo bose,ikaba yarishuwe uwo yari igenewe kandi mbere y’itariki yanditseho,nta kosa riba riri kuri banki iba yishyuye bene iyo sheki.
3. Indishyi zitangwa aruko impamvu yazo igaragajwe, iyo itagaragajwe ntabwo zitangwa. Ubujurire nta shingiro; Ubujurire bw’uririye ku bundi bufite ishingiro kuri bimwe; Urubanza rwajuririwe rugumye; Uwajuriye ategutse kwishyura uwarezwe indishyi,amafaranga y’ikurikirana rubanza hamwe n’ayigihembo cya Avoka; Amagarama y’Urubanza aherereye k’Uwajuriye. Amategeko yashyirahweho: Policy ya Access Bank Rwanda yo kwirinda uburiganya yashizweho umukono na STEDCON RWANDA Ltd kuwa 18/08/2009; Itegeko n° 32/2009 ryo kuwa 18/11/2009 ryerekeye inyandiko zishobora gucuruzwa,Ingingo ya 34 n’iya 111. Nta manza zifashishijwe. Imikirize IMITERERE Y’URUBANZA: [1] STEDCON RWANDA Ltd yazeze ACCESS BANK RWANDA Ltd mu Rukiko Rukuru rw’Ubucuruzi ivugaga ko banki yarigishije amafaranga yayo ngo kuko umunsi yishyurwa 69.176.349 Frw na PLESSAY RWANDA kuwa 24/02/2010 yahise yishyura DAHABSHILL MTS Ltd sheki ya 65.193.791 Frw itabanje kubisabira uruhushya umuyobozi wa STEDCON RWANDA Ltd kandi yari

yaramenyeshajwe mu ibaruwa yandikiwe kuwa 09/02/2010 ko mbere yo kuvana amafaranga kuri konti yayo n° 100 210 0101219701 agomba kubanza kubitangira uburenganzira, icyo gikorwa cyo kurigisa amafaranga kikaba cyarabangamiye bikabije imikorere ye STEDCON RWANDA Ltd, ndetse bituma itabasha kwishyura n'imisoro yakomokaga ku bwishyu bwari bwakozwe na PLESSAY RWANDA. [2] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOM 0153/11/HCC kuwa 13/12/2011, rwemeza ko ikirego cya STEDCON Ltd nta shingiro gifite kubera impamvu zikurikira:

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- Signatures ziri kuri sheki nizo zatanze igihe konti yafungurwaga kuwa 18/08/2009.
- Signature imwe iri kuri sheki ni iya Edward Ngeera Kibute, umuyobozi wa STEDCON RWANDA Ltd, bikaba bitumvikana ukuntu banki yari kubanza kumubaza niba igomba kuriha.
- Niba andi mabanki ahamagara ba nyiri konti mbere yo kwishyura, nta "obligation" ziba zifite ku buryo zitabikoze haba hari "devoirs professionnels" zaba zitandukiriye.
- Gushyira mu bikorwa bene ariya mabwiriza biragoye mu gihe uwahamagawe avuze ko atahamagawe, mu gihe kandi ugomba guhamagarwa ahamagawe ariko ntaboneke, bityo ubwishyu ntibuboneke bikaba byagira ingaruka ku mikorere y'amabanki (ternir la bonne image de la banque opérante). [3] Urukiko Rukuru rw'Ubucuruzi rwategetse kandi STEDCON RWANDA Ltd guha ACCESS BANK RWANDA Ltd indishyi za 1.000.000 Frw agenwe mu bushishozi bw'urukiko kubera ko yayireze bitari ngombwa, amafaranga y'ikurikiranarubanza angana na 500.000 Frw n'ay'igihembo cya Avoka angana na 500.000Frw, yose hamwe akaba ari 2.000.000 Frw. [4] STEDCON RWANDA Ltd yajuririye Urukiko rw'Ikirenga kuwa 12/01/2012 aho urubanza rwaburanishijwe mu ruhamwe kuwa 16/09/2014, ihagarariwe na Me Rubasha Herbert, naho ACCESS BANK RWANDA Ltd ihagarariwe na Me Nkurunziza F-Xavier hamwe na Me Rukangira Emmanuel. II. ISESENGURA RY'IBIBAZO BIGIZE URU RUBANZA:
 - a) Kumenya niba hari amakosa ACCESS BANK RWANDA Ltd yakoze yishyura DAHABSHILL sheki ya 65.193.791 Frw. [5] Uburanira STEDCON RWANDA Ltd avuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko nta makosa ACCESS BANK RWANDA Ltd yakoze yishyura DAHABSHILL MTS sheki ya 65.193.791 Frw rwirengagije ko igihe konti yafungurwaga hasinywe amabwiriza (policy) ya banki ateganya ko igihe hazaba hagiye kwishyurwa sheki y'agaciro karenze 1.500.000 Fw bagomba kubanza kubyemererwa na nyiri konti, banki ikaba itarabyubahirije kuko itabajije umuyobozi wa STEDCON RWANDA Ltd nubwo yari yarabandikiye abibasaba. [6] Avuga kandi ko urukiko rwavuze ko bitari ngombwa kubaza kuko sheki yariho amasinye yosa ya ngombwa, rwirengagije ko igihe umuyobozi wa STEDCON RWANDA Ltd yasabaga ko bamubaza mbere yo kugira icyo bakora kuri konti yayo atavugaga igihe hatariho imikono yose, akaba asanga banki yaragize uburangare bukomeye mu kwishyura ariya mafaranga aburanwa itabajije nk'uko yagombaga kubikora. [7]

Yongeraho ko gushyira mu bikorwa ariya mabwiriza bitagoye nk'uko Urukiko rwabivuze kuko, uretse ko muri "policy" ya ACCESS BANK RWANDA Ltd biteganyijwe ko bikorwa mu nyandiko, no ku buryo bwa telefone ntibyagora kubikorera igenzura kuko numero zihamagaye n'izihamagawe ziba zigaragara, uretse ko banki itavuze ko nibura yagerageje bikayigora. [8] Avuga kandi ko Urukiko rutasobanuye itegeko ryakurikijwe n'ingingo zishingiye ku byabaye rwashingiyeho mu icibwa ry'urubanza nk'uko biteganywa n'ingingo ya 147 y' Itegeko

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n°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets. [9] Ababuranira ACCESS BANK RWANDA Ltd bavuga ko banki yubahirije amategeko kuko yishyuye sheki yasinywe n'abantu babiri babifitiye ububasha, hakaba nta kurigisa kwabayeho kuko amafaranga yakuwe kuri konti yayo ashwirwa kuri konti y'uwahawe sheki. [10] Bavuga kandi ko STEDCON RWANDA Ltd yafunguye konti bikoze n'abantu babiri, ntibagaragaza uburyo bazajya bemeza sheki, ko rero umuntu umwe atari kunyura inyuma ngo atange amabwiriza we wenyine, atanagaragaje nibura inama ya "board" imwemerera gutanga amabwiriza wenyine. [11] Bongeraho ko STEDCON RWANDA Ltd nta gihombo yagize kuko nayo ubwayo yemera ko sheki yishyurwa ari iyayo kandi ko yasinywe n'abantu babifitiye ububasha. UKO URUKIKO RUBIBONA: [12] "Policy" ya ACCESS BANK RWANDA Ltd yo guhabwa "confirmation" yanditse mbere y'uko sheki yishyurwa yanditswe koko mu masezerano STEDCON RWANDA Ltd yashyizeho umukono ubwo yafunguraga konti muri iyo banki kuwa 18/08/2009, hakaba hasobanuwe ko iyo "policy" igamije kwirinda "fraudulents practices", ndetse ko umukiriya agena niba ashaka gukoresha ubwo buryo bwa "confirmation", yaba abishaka agahitamo niba azajya yandika ibaruwa yemeza sheki cyangwa niba azajya ayemeza kuri "reverse side". [13] Ikindi kigaragara muri ayo masezerano n'uko Julius Chacha Mabanga na Edward Ngeera, bombi bafite uburenganzira bwo gusinya kuri iyo konti, ntacyo bavuze ku buryo bwo kwemeza sheki, Urukiko rukaba rusanga umwe muri bo atahindukira ngo atange amabwiriza wenyine ajyanye n'uburyo zigomba kwemezwa yirengagije ko iyo konti ifite n'undi muntu iyifiteho uburenganzira. [14] Urukiko rusanga rero mu gihe ACCESS BANK RWANDA Ltd iteretswe ko Julius Chacha Mabanga nta burenganzira agifite kuri konti ya STEDCON RWANDA Ltd, nta kosa yakozwe yo kutakurikiza ibyo yari ibwiye na Edward Ngeera wenyine ko azajya yemeza buri "operation" yo kubikuza hakoreshejwe cash, sheki cyangwa "transfert". [15] Ku bijyanye na sheki ya 65.193.791 Frw yishyurwe DAHABSHILL MTS, Urukiko rusanga mu miburanire yayo STEDCON RWANDA Ltd idahakana ko iyo sheki ari iyayo cyangwa ko imikono iriho ari iy'abateganyijwe mu masezerano yagiranye na banki. [16] Urukiko rusanga rero ibyo STEDCON RWANDA Ltd ivuga ko Banki yarigishije ariya mafaranga nta shingiro bifite kuko nayo ubwayo yemeza ko yashyizwe kuri konti ya DAHABSHILL MTS hakurikijwe sheki yayo yariho imikono y'abemerewe gusinya kuri konti yayo, ikaba itagaragaza ko yayitanze mu buryo bw'uburiganya (fraude), hakoreshejwe iterabwoba (contrainte) cyangwa ubuhemu (abus de confiance), binyuze mu nzira cyangwa ku mpamvu zitemewe n'amategeko nk'uko bisobanurwa mu ngingo ya 34 y'itegeko n° 32/2009 ryo kuwa 18/11/2009 ryerekeye inyandiko zishobora gucuruzwa (titres négociables), ndetse sheki yahawe

DAHABSHILL MTS ikaba itarishyuwe mbere y'itariki yanditseho nk'uko bibujijwe mu

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ningo ya 111 agace ka gatatu y'iryo tegeko kuko itariki yishyuriweho kuwa 24/02/2010 ari nawo munsu wanditseho.

- b) Ku byerekeye ubujurire bwuririye ku bundi bwa ACCESS BANK RWANDA Ltd. [17] Ababuranira ACCESS BANK RWANDA Ltd bavuga ko STEDCON RWANDA Ltd ikomeje kubashora mu manza, bityo mu bujurire bwuririye ku bundi bakaba basaba urukiko kwongera indishyi zari zatanzwe mu rwego rwa mbere zigashyirwa kuri 5.000.000 Frw, amafaranga y'ikurikirana rubanza agashyirwa kuri 2.000.000 Frw, naho igihembo cya avoka kigashyirwa kuri 1.000.000 Frw. [18] Uburanira STEDCON RWANDA Ltd avuga ko nta ndishyi ikwiye gucibwa kubera ko ibyo iregera bifite ishingiro. UKO URUKIKO RUBIBONA: [19] Urukiko rusanga koko STEDCON RWANDA Ltd yarajuriye nta mpamvu nk'uko byasobanuwe haruguru, bityo ikaba igomba kwishyura ACCESS BANK RWANDA Ltd 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka ku rwego rw'ubujurire yiyongera kuyo Urukiko Rukuru rw'Ubucuruzi rwagennye ku rwego rwa mbere angana na 2.000.000 Frw, yose hamwe akaba 3.000.000 Frw. [20] Ku bijyanye n'izindi ndishyi ababuranira ACCESS BANK RWANDA Ltd asaba mu bujurire, urukiko rusanga batagaragaza impamvu yazo, bityo hakaba hagomba kugumaho izavuzwe mu gace ka 19 k'uru rubanza. III. ICYEMEZO CY'URUKIKO: [21] Rwemeje ko ubujurire bwa STEDCON RWANDA Ltd nta shingiro bufite. [22] Rwemeje ko ubujurire bwuririye ku bundi bwa ACCESS BANK RWANDA Ltd bufite ishingiro kuri bimwe. [23] Rwemeje ko urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rugumye. [24] Rutegetse STEDCON RWANDA Ltd kwishyura ACCESS BANK RWANDA Ltd indishyi za 2.000.000 yategetswe mu Rukiko Rukuru rw'Ubucuruzi, hiyongereyeho 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka ku rwego rw'ubujurire, yose hamwe akaba 3.000.000 Frw. [25] Rutegetse STEDCON RWANDA Ltd kwishyura amagarama y'uru rubanza.

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