

RWANDA / JUDGMENT

STEDCON RWANDA v. ACCESS BANK

RCOMA 0002/12/CS

COURT

Supreme Court

DECIDED

24 October 2014

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STEDCON RWANDA v. ACCESS BANK

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Text

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STEDCON RWANDA v. ACCESS BANK [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0002/12/CS (Mutashya, P.J., Nyirinkwaya na Gakwaya, J.) 24 Ukwakira 2014] Amategeko agenga inyandiko zicuruzwa – Kwishyurwa sheki – Kudasaba uburenganzira ba nyiri konti mu iyishyurwa rya sheki – Banki yishyuye sheki yasinywe n'abantu babifitiye ububasha, ntishobora kuryozwa kuyishyura mu gihe ba nyiri konti ntacyo banenga sheki yishyuwe cyangwa ngo bahakane ko sheki yatanze atari iyabo. Amategeko agenga inyandiko zicuruzwa – Kwishyura sheki – Ishyirwa ry'amafaranga kuri konti y'uwishyuye – Kutitiranya iyishyurwa rya sheki na frande ryatambambiwe n'umwe mu bemewe kuyisinyaho – Ntibyitwa frande mu iyishyurwa rya sheki mu gihe mu itangwa ryayo nta terabwoba cyangwa ubuhemu byakoreshejwe – Itegeko no 32/2009 ryo kuwa 18/11/2009 ryerekeye inyandiko zishyirwa gucuruzwa, ingingo ya 34. Incamake y' ikibazo: STEDCON RWANDA LTD yareze ACCESS BANK LTD mu Rukiko Rukuru rw'Ubucuruzi ivuga ko banki yarigishije amafaranga yayo ngo kuko yishyuye sheki yari igenewe DAHABSHILL MTS ltd itabanje kubisabira uruhushya umuyobozi wayo kandi yari yarabiyimenyesheje. STEDCON RWANDA ltd ivuga ko ibyo ACCESS BANK RWANDA ltd yayikoreye byabangamie imikorere yayo bituma itanabasha kwishyurwa imisoro y'ubwishyu bwari bwakozwe na PLESSAY RWANDA. Urukiko

Rukuru rw'Ubucuruzi rwemeje ko ikirego cya STEDCON RWANDA Ltd nta shingiro gifite kuko signature zari kuri sheki arizo zatanze igihe konti yafungurwaga ko signature imwe iriho ari iy'umuyobozi wa STEDCON RWANDA Ltd, bikaba bitari ngombwa kubanza kumubaza niba ari ngombwa kuriha kuko banki nta shingano zibifitiye ku buryo zitabikoze zaba zitandukiriye, ndetse ko gushyira mu bikorwa amabwiriza yo guhamagarana bigoye mu gihe uwahamagawe avuze ko atahamagawe no mu gihe kandi ugomba guhamarwa ahamagawe ariko ntaboneke, ibyo bikaba byagira ingaruka ku mikorere y'amabanki. STEDCON RWANDA Ltd yajuririye mu Rukiko Rukuru rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko nta makosa ACCESS BANK RWANDA LTD yakoze yishyura sheki DAHABSHIL MTS Ltd mu gihe impande zombie zari zaremeranijwe ko mu gihe hazaba hagiye kwishyurwa sheki y'agaciro karenze 1.500.000 igomba kubanza kubyemererwa na nyiri konti. Ivuga kandi ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko bitari ngombwa kubaza kuko sheki yariho amasinye yose ya ngomwa kandi mu gihe banki yashyikirijwe ibaruwa y'umuyobozi wa STEDCON RWANDA Ltd ntacyo yabajije uburyo byagombaga gukorwa. Yavuze kandi ko gushyira mu bikorwa amasezerano yo kubanza kubaza nyiri konti bitagoye kuko numero zihamaye n'izahamagawe ziba zigaragara, kandi ko urukiko rutasobanuye itegeko ryakurikijwe n'ingingo zishingiye ku byabaye rwashingiyeho mu icibwa ry'urubanza. ACCESS BANK RWANDA Ltd yo ivuga ko yubahirije amategeko kuko yishyuye sheki yasinywe n'abantu babiri babifitiye ububasha. Bityo ko nta kurigisa kwabayeho kuko amafaranga yakuwe kuri konti y'uwatanze sheki.

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Ivuga kandi ko STEDCON RWANDA Ltd yafunguye konti bikoze n'abantu babiri, ko umuntu umwe Atari kunyura inyuma ngo atanye amabwiriza kandi nta nama ya "board" imwemerera gutanga amabwiriza wenyine, kandi ko STEDCON RWANDA Ltd nta gihombo yagize kuko itahakanye ko sheki yishyurwe ari iyayo. Incamake y'icyemezo: 1. Uwatanze sheki yasinywe n'abantu babifitiye ububasha ntanagaragaze ko yatanze mu buryo bw'uburiganya, ntiyavugaga ko banki yayishyuye yarigishije amafaranga yishyurwe ngo bihabwe ishingiro mu gihe nawe ubwe yemeza ko amafaranga yashyizwe kuri konti y'uwagombaga kwishyurwa. Bityo ubujurire bwa STEDCON RWANDA LTD akaba nta shingiro bufite.

2. Iyo banki yishyurura sheki iteretswe ko umwe mubasinye kuri konti nta burenganzira agifite kuri konti nta kosa iba ikoze yo kutubahiriza amabwiriza aba yatanze n'umwe muri bo. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe. Amagarama aherereye ku uwajuriye. Amategeko yashingiweho: Itegeko no 32/2009 ryo kuwa 18/11/2009 ryerekeye inyandiko zishyurwa, ingingo ya 34. Nta manza zashingiweho. Urubanza I. IMITERERE Y'URUBANZA [1] STEDCON RWANDA Ltd yareze ACCESS BANK RWANDA Ltd mu Rukiko Rukuru rw'Ubucuruzi ivuga 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 kubatangira 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:

- Signatures ziri kuri sheki nizo zatanze igihe konti yafungurwaga kuwa 18/08/2009.

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- 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 rwategutse 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 yajuririyeye Urukiko rw'Ikirenga kuwa 12/01/2012 aho urubanza rwaburanishijwe mu ruhame 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'ubucuruza, 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 ashyirwa kuri konti y'uwahawe sheki. [10] Bavuga kandi ko STEDCON RWANDA Ltd yafunguye konti bikozwe 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 hasobanuwemo ko iyo "policy" igamije kwirinda "fraudulents practices", ndetse ko umukiriya akena 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 yakoze yo kutakurikiza ibyo yari ibwiwe 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

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