

RWANDA / JUDGMENT

UWINEZA N'ABANDI vs POSADA PLUS Ltd

RCOMAA 00071/2024/CA

COURT

Court of Appeal

DECIDED

29 November 2024

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RCOMAA 00071/2024/CA

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UWINEZA N'ABANDI vs POSADA PLUS Ltd

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Text

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UWINEZA N'ABANDI vs POSADA PLUS Ltd [Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00071/2024/CA (Rutazana, P.J.) 29 Ugushyingo 2024] Itegeko ryerekeye ubugwate ku mutungo utimukanwa – cyamunara – kumenyesha cyamunara – amatangazo ya cyamunara – uwashinzwe gucunga ingwate nta nshingano afite yo gushyikiriza nyir'umutungo amatangazo ya cyamunara; ahubwo nyir'mutungo amenyeshwa Amabwiriza y'igurisha akubiyemo ingengabihe y'uburyo cyamunara zizakurikirana. Incamake y'ikibazo: Uru rubanza rwatangiye POSADA PLUS Ltd itanga ikirego mu Rukiko rw'Ubucuruzi irega Uwineza (uwashinzwe gucunga ingwate) isaba gutesha agaciro cyamunara y'umutungo wayo ufite UPI:1/03/05/04/1106 yari yatanzeho ingwate muri EQUITY BANK RWANDA Plc kuko iyo cyamunara itatangajwe mu buryo buteganyijwe n'amategeko. Urukiko rwasanze mbere y'uko urubanza ruburanishwa ari ngombwa ko hagobokeshwamo EQUITY BANK RWANDA Plc kuko ari yo yari iberewemo umwenda na Mukamurenzi waguze uwo mutungo muri cyamunara. Uwineza na EQUITY BANK RWANDA Plc bireguye bavuga ko impamvu zose POSADA PLUS Ltd ishingiraho isaba ko cyamunara iteshwa agaciro nta shingiro zifite, naho Mukamurenzi avuga ko yaguze umutungo uburanwa mu buryo bukurikije amategeko akaba atagombye kuba ari muri uru rubanza kuko ntacyo abazwa; bese

basaba kugenerwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. Urukiko mu rubanza RCOM01185/2024/TC, rwemeje ko impamvu POSADA PLUS Ltd ishingiraho isaba gutesha agaciro cyamunara y'umutungo wayo nta shingiro zifite, ruyitegeka kwishyura Uwineza amafaranga y'ikurikiranarubanza, no kwishyura Equity Bank Rwanda Plc na Mukamurenzi Annet amafaranga y'igihembo cya Avoka buri wese. POSADA PLUS Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi irusaba gusuzuma: Niba amatangazo ya cyamunara yarakurikije amategeko, Niba cyamunara y'umutungo uburanwa yari ikwiye kugumaho mu gihe umwenda yashingiyeho ukigibwaho impaka, Niba Urukiko rw'Ubucuruzi rwaragombaga gutegeka POSADA PLUS Ltd kwishyura abaregwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka rwirengagije ko ari rwo rwategetse ko EQUITY BANK RWANDA Plc na Mukamurenzi bagobokeshwa mu rubanza, naho Uwineza akaba ari we washoye POSADA PLUS Ltd mu manza; Niba mu gihe cyamunara isubitswe cyangwa abaguzi bakabura itongera gutangazwa nk'uko biteganywa n'amategeko, niba amatangazo ya cyamunara ataragombaga gushyikirizwa Umunyamabanga Nshingwabikorwa w'Akagari aho kuba CEDO. Abaregwa bose bavuze ko impamvu z'ubujurire zatanze na POSADA PLUS Ltd nta shingiro zifite, kuko amategeko agenga cyamunara yubahirijwe, basaba indishyi z'ikurikiranarubanza n'igihembo cya avoka. Urukiko mu rubanza RCOMA 00577/2024/HCC rwemeje ko ubujurire bwa POSADA PLUS Ltd bufite ishingiro kuko uwashinzwe gucunga ingwate atamenyesheje POSADA PLUS Ltd itangazo rya kabiri n'irya gatatu ya cyamunara, maze rutegeka ko iteshejwe agaciro, rutegeka EQUITY BANK RWANDA Plc gusubiza Mukamurenzi amafaranga yishyuye mu cyamunara y'uwo mutungo, runategeka Uwineza Angélique kwishyura POSADA PLUS Ltd amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, Mukamurenzi, EQUITY BANK RWANDA Plc na Uwineza bajuririye Urukiko rw'Ubujurire, bahuriye ku mpamvu y'uko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibimenyetso rwashyikirijwe bigaragaza ko POSADA PLUS Ltd yamenyeshejwe itangazo rya cyamunara rya kabiri n'irya gatatu; EQUITY BANK RWANDA Plc na Uwineza bongeraho ko ariko hashingiwe ku ngingo ya 29 y'Amabwiriza y'Umwanditsi Mukuru agenga ibyerekeye gucunga, gukodesha, kugurisha mu cyamunara, no kwegukana ingwate;

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uwashinzwe gucunga ingwate nta n'inshingano yari afite yo kumenyesha nyir'umutungo amatangazo ya cyamunara. POSADA PLUS Ltd yireguye ivuga ko ubwo ubujurire nta shingiro bufite, asaba ko buri wese mu bajuriye ko yategekwa kwishyura POSADA PLUS Ltd isaba indishyi zo kuyishora mu rubanza ku maherere. Urukiko mu rubanza RCOMAA00071/2024/CA rwemeje ko uburire Mukamurenzi, EQUITY BANK RWANDA Plc na Uwineza bufite ishingiro ko cyamunara yakozwe ku mutungo uburanwa igumanye agaciro kayo. Incamacye y'icyemezo: Itegeko ryihariye riza mbere y'itegeko riri rusange (Specialia generalibus derogant). Ntabwo hakurikizwa ingingo ya 253 y'Itegeko N° 22/2018 ryo ku wa 29/4/2018 ryeyekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umulimo n'iz'ubutegetsi kandi hari amabwiriza y'Umwanditsi Mukuru N° 001/2020/ORG agenga ibyerekeye gucunga, gukodesha, kugurisha mu cyamunara no kwegukana ingwate. Bityo, uwashinzwe gucunga ingwate nta nshingano afite yo gushyikiriza nyir'umutungo amatangazo ya cyamunara; ahubwo nyir'umutungo amenyeshwa Amabwiriza y'igurisha akubiyemo ingengabihe y'uburyo cyamunara zizakurikirana. Ubujurire

bufite ishingiro. Amategeko yashingiweho: Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 111 Itegeko N° 13/2010 ryo ku wa 07/5/2010 rihindura kandi ryuzuza Itegeko N°10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa ingingo ya 2,3 Amabwiriza y'Umwanditsi Mukuru N° 001/2020/ORG yo ku wa 12/05/2020 agenga ibyerekeye gucunga, gukodesha, kugurisha mu cyamunara no kwegukana ingwate Ingingo ya 1, 24,26,27, 28,29 Nta manza zifashishijwe. Urubanza IMITERERE Y'URUBANZA [1] POSADA PLUS Ltd yasabye inguzanyo muri EQUITY BANK RWANDA Plc irayihabwa ariko ntiyayishyura nk'uko amasezerano y'iguriza yabiteganyaga, bituma ku wa 09/08/2024 umutungo wayo yatanzeho ingwate ubaruye kuri UPI :1/03/05/04/1106 ugurishwa mu cyamunara, wegukanwa na Mukamurenzi Anne. Ku wa 19/8/2024 POSADA PLUS Ltd yandikiye Umwanditsi Mukuru imusaba gutesha agaciro iyo cyamunara, ishingiyeye ku mpamvu zikurikira : kuba amatangazo ya cyamunara atarubahirije amategeko kandi ntamenyeshwe nyir'umutungo ; kuba ingano y'umwenda wishyuzwa ugibwaho impaka mu rubanza RCOM 00389/2023/TC no kuba imihango ijyanye na cyamunara, ifatira n'ishinganisha itarubahirijwe. [2] POSADA PLUS Ltd ibonye Umwanditsi Mukuru atayisubije, yatanze ikirego mu Rukiko rw'Ubucuruzi irega Uwineza Angélique (uwashinzwe gucunga ingwate) isaba gutesha agaciro cyamunara y'umutungo wayo wavuzwe haruguru ivuga ko itatangajwe mu buryo buteganyijwe n'ingingo ya 253 y'Itegeko N° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umulimo n'iz'ubutegetsi, n'ingingo ya 10 y'Iteka rya Minisitiri N° 005/MOJ/AG/21 ryo kuwa 07/06/2021, hashingiye ku mpamvu zikurikira:

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Kuba POSADA PLUS Ltd itaramenyeshye amatangazo ya cyamunara kuko atashyikirijwe Umuyobozi wayo witwa Ntakirutimana Sandrine ; Kuba mu matangazo ya cyamunara hatagaragaramo uwishyuzwa n'umwenda yishyuzwa ; Kuba mu matangazo ya cyamunara hatagaragaramo ifoto y'umutungo, nyamara igomba kugaragazwa kugira ngo abaguzi bitabire cyamunara ; ngo bikaba byaratumye cyamunara ya mbere n'ya kabiri zititabirwa ; Kuba Umuyobozi w'Akagari umutungo wagurishijwe uherereyemo yaremeje ko atarashyikirijwe amatangazo ya cyamunara kandi bikorwa kugira ngo atange uburenganzira bwo kuyamanika. [3] Urukiko rwasanze mbere y'uko urubanza ruburanishwa ari ngombwa hagabokeshwamo EQUITY BANK RWANDA Plc kuko ari yo yari iberewemo umwenda ikaba ari nayo yasabye ko hakorwa cyamunara y'umutungo yahawe ingwate, na Mukamurenzi Annet waguze uwo mutungo muri cyamunara. [4] Uwineza Angélique na EQUITY BANK RWANDA Plc bireguye bavuga ko impamvu zose POSADA PLUS Ltd ishingiraho isaba ko cyamunara iteshwa agaciro nta shingiro zifite, naho Mukamurenzi Annet avugaga ko yaguze umutungo wavuzwe haruguru mu buryo bukurikije amategeko akaba atagombye kuba ari muri uru rubanza kuko ntacyo abazwa ; bese basaba kugenerwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. [5] Mu rubanza RCOM01185/2024/TC rwaciye n'Urukiko rw'Ubucuruzi ku wa 18/09/2024, rwemeje ko impamvu POSADA PLUS Ltd ishingiraho isaba gutesha agaciro cyamunara y'umutungo wayo nta shingiro zifite, ruyitegeka kwishyura Uwineza Angélique 500.000 Frw y'igihembo cya Avoka na 100.000Frw

y'ikurikiranarubanza, no kwishyura EQUITY BANK RWANDA Plc na Mukamurenzi Annet 500.000 Frw y'igihembo cya Avoka buri wese. [6] POSADA PLUS Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi irusaba gusuzuma : Niba amatangazo ya cyamunara yo kuwa 9/8/2024 yarakurikije amategeko cyane ingingo ya 253 y'Itegeko N° 22/2018 ryo ku wa 29/4/2018 ryekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi, iz'umulimo n'iz'ubutegetsi, ingingo ya 10 y'Iteka rya Minisitiri N° 005/MOJ/AG/2021 ryo kuwa 07/06/2021, n'ingingo ya 2 y'Amabwiriza y'Umwanditsi Mukuru N° 002/2021/ORG yo kuwa 29/6/2021 ; Niba inyandiko mpesha ivugwa mu ingingo ya 241 y'Iteko N° 22/2018 ryavuzwe haruguru, mu gaka ka yo ka 5, itandukanye n'izindi nyandikompesha ku buryo mu itangazo ryayo hatagomba kugaragaramo nyirumutungo, uwishyurwa n'amafoto y'umutungo hahsingiwe ku iteganywa mu ingingo ya 253 yavuzwe haruguru ; Niba cyamunara y'umutungo wa POSADA PLUS Ltd yari ikwiye kugumaho mu gihe umwenda yashingiyeho ukigibwaho impaka mu rubanza RCOM00398/2024/TC; Niba Urukiko rw'Ubucuruzi rwaragombaga gutegeka POSADA PLUS Ltd kwishyura abaregwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka rwirengagije ko ari rwo rwategetse ko EQUITY BANK RWANDA Plc na Mukamurenzi Annet bagobokeshwa mu rubanza, naho Uwineza Angélique (uwashinzwe gucunga ingwate) akaba ari we washoye POSADA PLUS Ltd mu manza ; Niba mu gihe cyamunara isubitswe cyangwa abaguzi bakabura itongeraga gutangazwa nk'uko biteganywa n'ingingo ya 29 y'Amabwiriza y'Umwanditsi Mukuru N° 001/2020/ORG yo ku wa 12/05/2020 agenga ibyerekeye gucunga, gukodesha, kugurisha mu cyamunara, no kwegukana ingwate ;

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Niba amatangazo ya cyamunara ataragombaga gushyikrizwa Umunyamabanga Nshingwabikorwa w'Akagari aho kuba CEDO. [7] Abaregwa bose bavuze ko impamvu z'ubujurire zatanze na POSADA PLUS Ltd nta shingiro zifite, kuko amategeko agenga cyamunara yubahirijwe, basaba indishyi z'ikurikiranarubanza n'igihembo cya avoka. [8] Mu rubanza RCOMA00577/2024/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi ku wa 25/10/2024 rwemeje ko ubujurire bwa POSADA PLUS Ltd bufite ishingiro kuko uwashinzwe gucunga ingwate atamenyesheje POSADA PLUS Ltd itangazo rya kabiri n'irya gatatu ya cyamunara, maze rutegeka ko cyamunara y'umutungo wa POSADA PLUS Ltd yakozwe ku wa ku wa 09/08/2024 iteshejwe agaciro, rutegeka EQUITY BANK RWANDA Plc gusubiza Mukamurenzi Annet amafaranga yishyuye mu cyamunara y'uwo mutungo, runategeka Uwineza Angélique (uwashinzwe gucunga ingwate) kwishyura POSADA PLUS Ltd 1.200.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka, na 60.000 Frw y'amagarama yishyuye irega ku rwego rwa mbere no ku rwego rw'ubujurire. [9] Mukamurenzi Annet, EQUITY BANK RWANDA Plc na Uwineza Angélique bajuririye Urukiko rw'Ubujurire, bahuriye ku mpamvu y'uko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibimenyetso rwashyikirijwe bigaragaza ko POSADA PLUS Ltd yamenyeshejwe itangazo rya cyamunara rya kabiri n'irya gatatu; EQUITY BANK RWANDA Plc na Uwineza Angélique bongeraho ko ariko hashingiwe ku ingingo ya 29 y'Amabwiriza y'Umwanditsi Mukuru yavuzwe haruguru, uwashinzwe gucunga ingwate nta n'inshingano yari afite yo kumenyesha nyir'umutungo amatangazo ya cyamunara. [10] POSADA PLUS Ltd yireguye ivuga ko ubwo ubujurire nta shingiro bufite kuko abajuriye bavugaga ko cyamunara yubahirije ibiteganywa n'amategeko kandi babizi neza ko ataribyo nk'uko

byasobanuwe mu rubanza rwajuririwe ; asaba ko buri wese mu bajuriye yategekwa kwishyura POSADA PLUS Ltd 1.000.000Frw y'indishyi zo kuyishora mu rubanza ku maherere. [11] Iburanisha mu ruhame ryabaye ku wa 18/11/2024, Mukamurenzi Annet ahagarariwe na Me Hakizimana Francois Xavier, EQUITY BANK RWANDA Plc ihagarariwe na Me Mukandoli Brigitte, Uwineza Angélique yunganiwe na Twizeyimana Théophile naho POSADA PLUS Ltd ihagarariwe na Me Gahamanyi Justin. [12] Hashingiwe ku mpaka zagaragajwe haruguru, Urukiko rurasuzuma ibibazo bikurikira bigize urubanza : Kumenya niba uwashinzwe gucunga ingwate yaragombaga kumenyesha POSADA PLUS Ltd, nka nyir'umutungo UPI:1/03/05/04/1106 watanzweho ingwate, amatangazo ya cyamunara; Mu gihe Urukiko rwasanga POSAD PLUS Ltd yaragombaga kumenyeshwa ayo matangazo, ruranasuzuma niba byarakozwe ; Kumenya niba ishingiro ry'indishyi zisabwa muri uru rubanza ; II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Kumenya niba uwashinzwe gucunga ingwate yaragombaga kumenyesha POSADA PLUS Ltd, nka nyir'umutungo UPI:1/03/05/04/1106 watanzweho ingwate, amatangazo ya cyamunara. [13] Mu myanzuro ye no mu iburanisha, Me Uwineza Angélique (uwashinzwe gucunga ingwate) na Me Twizeyimana Théophile umwunganira, na Me Mukandoli Brigitte uhagarariye EQUITY BANK RWANDA Plc bavuga ko ubujurire bwabo bugamije kugaragaza ko cyamunara itagombaga guteshwa agaciro, bashingiye ku mpamvu zikurikira :

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Kuba, hashingiwe ku ngingo ya 29 y'Amabwiriza y'Umwanditsi Mukuru yo ku wa 12/05/2020 agenga ibyerekeye gucunga, gukodesha, kugurisha mu cyamunara, no kwegukana ingwate iteganya uburyo itangazwa rya cyamunara y'ingwate rikorwa, nta shingano uwashinzwe gucunga ingwate yari afite yo gushyikiriza POSADA PLUS Ltd itangazo rya cyamunara ; N'ubwo iyo ngingo itabiteganya, POSADA PLUS Ltd yamenyeshejwe itangazo rya cyamunara kuko ku wa 02/7/2024 Umuhesha w'inkiko yarishyikirije uwitwa Sindayigaya Firmini (umugabo washyiranywe n'Umuyobozi Mukuru wa POSADA PLUS Ltd witwa Ntakirutimana Sandrine) akaba ari nawe nyir'umutungo, amusanze ku biro bya POSADA PLUS Ltd yanga kuryakira no gusinya nk'uko byemejwe mu nyandikomvugo y'Umuhesha w'inkiko ariko ibi bikaba bidakuraho ko yarishyikirijwe, kuko uyu Sindayigaya Firmini ari nawe wari warakiriye mbere (ku itariki 20/6/2024) Amabwiriza y'igurisha ry'ingwate mu cyamunara, icyemezo cyo kugurisha ingwate (Permit to sale the mortgage); igenagaciro ry'ingwate, n'inyandiko isaba POSADA PLUS Ltd umwirondoro wayo kugira ngo ihuzwe n'urubuga rw'ikoranabuhanga rurangirizwamo imanza n'izindi nyandikompesha, kandi ibyo POSADA PLUS Ltd ikaba idahakana ko yabyakiriye, ndetse Sindayigaya Firmini akaba Yari nawe wakurikiranaga uko cyamunara igenda akoresheje telefone ye ifite numero 0787277377 nk'uko bigaragazwa n'ubutumwa bugufi buri muri dosiye yandikiranaga na Uwineza Angélique, bityo POSADA PLUS Ltd ikaba itakwitwaza ko itahawe itangazo rya cyamunara kandi yararihawe ikanga kuryakira nk'uko byasobanuwe ; Kuba, ku wa 20/06/2024 uwashinzwe gucunga ingwate yarandikiye POSADA PLUS Ltd ayisaba kugaragaza imyirondoro yayo kugirango ihuzwe n'urubuga rurangirizwaho inyandikompesha bityo ijye ikurikirana uko cyamunara izajya igenda, ibaruwa yakirwa na SINDAYIGAYA Firmin ku italiki ya 20/06/2024 ariko ntiyatanga imyirondoro, bityo POSADA PLUS Ltd ikaba ariyo yiyambuye

uburenganzira bwo gukurikirana cyamunara. [14] Mu myanzuro yo kujurira Me Hakizimana François Xavier uhagarariye Mukamurenzi Annet nawe avuga ko icyo anenga urubanza rwajuririwe ari uko Urukiko Rukuru rw'Ubucuruzi rwemeje ko cyamunara y'umutungo ubaruye kuri UPI:1/03/05/04/1106 iteshwa agaciro, rushingiye ku mpamvu y'uko POSADA PLUS Ltd nka nyir'umutungo itamenyeshejwe itangazo rya cyamunara, rwirengagije ibimenyetso rwahyikirijwe byerekana ko ku wa 02/07/2024 Umuhesha w'inkiko witwa Pfakwandika yashyikirije POSADA PLUS Ltd itangazo rya cyamunara rikubiyemo inshuro eshatu cyamunara yagombaga gukorwamo n'amatariki yazo, ko kandi iryo tangazo ryanashyizwe mu Kinyamakuru IGIHE.COM no ku biro by'Akagari, kandi kuri iyo tariki ya 02/07/2024 POSADA PLUS Ltd inamenyeshwa Amabwiriza ya cyamunara. [15] Uhagarariye Mukamurenzi Annet kandi avuga ko ibyo Urukiko Rukuru rw'Ubucuruzi rwavuze ko uwashinzwe gucunga ingwate atahuje POSADA PLUS Ltd n'urubuga rw'ikoranabuhanga rurangirizwaho imanza atari ukuri, kuko ku wa 20/06/2024 Me Uwineza Angélique yandikiye umuyobozi wa POSADA PLUS Ltd amusaba email ye kugira ngo amuhuze n'urwo rubuga ariko uyu ntagire icyo amusubiza, hakaba rero nta bundi buryo bwari gukoreshwa ; ahubwo POSADA PLUS Ltd ikaba yarabikoze nkana igamije kuzashora imanza. Mu iburanisha kandi uhagarariye Mukamurenzi Annet yasobanuye ko Urukiko Rukuru rw'Ubucuruzi rwitiranyije ibintu kuko cyamunara itagombaga guteshwa agaciro hashingiwe ku ngingo ya 253 y'Itegeko 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu kuko yari ishingiyeye ku Cyemezo cy'Umwanditsi Mukuru, bityo hakaba haragombaga gushingirwa ku ngingo ya 29 y'Amabwiriza y'Umwanditsi Mukuru N° 001/2020/ORG yo ku wa 12/05/2020 yavuzwe haruguru, agenga ibyerekeye gucunga no gukodesha, kugurisha mu cyamunara no kwegukana ingwate; kandi iyo ngingo ikaba idateganya ko uwatije ingwate cyangwa nyir'umutungo amenyeshwa ibijyanye na cyamunara; ko ariko n'ubwo iyo ngingo itabiteganyaga ushinze

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gucunga ingwate we yabikoze nk'uko babisobanuye mu myanzuro. Ashingiyeye kuri izo mpamvu zose agasaba uru Rukiko kwemeza ko cyamunara igumaho. [16] Abajuriye bombi kandi bavugaga ko urubanza RCOMAA00064/2019/CA rwaciye n'Urukiko rw'Ubujurire ku wa 03/10/2019, haburana Kayumba Godfrey na SIMACO Ltd, RDB na Safari (mu gika cya 23) n'urubanza RCOMAA00028/2023/CA rwaciye n'Urukiko rw'Ubujurire ku wa 20/10/2023 haburana Amajyambere Industry CO Ltd, Valérien Munyaneza na COMPAGNIE GENERALE DE BANQUE Plc zitagombaga gushingirwaho mu rubanza rwajuririwe, kuko zatanze umurongo ku bijyanye n'iyubahirizwa ry'ibihe byo gutangaza cyamunara, kanidi ibi bikaba atari byo biburanwa muri uru rubanza. [17] Me Gahamanyi Justin uhagarariye POSADA PLUS Ltd, mu myanzuro ye no mu iburanisha avuga ko ubujurire bwose bwatanze nta shingiro bufite. Ku bijyanye n'ubujurire bwa Mukamurenzi Annet, uhagarariye POSADA PLUS Ltd avugaga ko mu rubanza rwajuririwe Urukiko Rukuru rw'Ubucuruzi rwasanze itamenyeshejwe itangazo rya cyamunara rya kabiri n'irya gatatu kandi ko ayo matangazo atanamanitswe ku Biro by'Akagari, ndetse n'ibijyanye n'itangazo rya mbere Urukiko rwemeje ko ryatangajwe kandi ko yarimenyeshejwe byakozwe mu buryo budakurikije amategeko. [18] Ku bijyanye no kumenyesha POSADA PLUS Ltd amatangazo ya

cyamunara yavuzwe haruguru, Me Gahamanyi Justin asobanura ko ibyo Uwineza Angélique avuga ko POSADA PLUS Ltd yamenyeshejwe itangazo rya cyamunara bikozwe n'Umuhesha w'Inkiko w'umwuga witwa Pfakwandika bitashingirwaho hemezwa ko POSADA PLUS Ltd ihagarariwe n'Umuyobozi wayo Ntakirutimana Sandrine yamenyeshejwe iryo tangazo mu buryo bukurikije amategeko, kuko Umuhesha w'inkiko atagaragaje aho uwo avuga ko yamenyesheje iryo tangazo akanga gusinya ahuriye na POSADA PLUS Ltd ndetse n'umwirondoro we, kandi ingingo ya 47 y'Itegeko N° 22/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsiki ikaba isobanura neza uburyo ibigo bifite ubuzima gatozi bimenyeshwa hakoreshejwe uburyo bw'ikoranabuhanga. [19] Me Gahamanyi Justin akomeza asobanura ko ingingo ya 29 y'Amabwiriza y'Umwanditsi Mukuru N° 001/2020/ORG yavuzwe haruguru iteganya ko iyo cyamunara yasubitswe cyangwa ititabiriwe yongeraga igatangazwa nyamara bikaba bitarakozwe kuko POSADA PLUS Ltd yabajije amakuru ku bijyanye n'imanikwa ry'amatangazo ya cyamunara ku Biro by'Akagari ka Rubirizi ingwate ihereyemo, Umunyamabanga Nshingwabikorwa ababwirako mu bitabo byabo nta handitse ko bakiriye ayo matangazo; ko n'Umuhesha w'inkiko wagiye kugenzura niba iryo tangazo ryaramanitswe ku Biro by'Akagari abisabwemo na POSADA PLUS Ltd bamweretse aho amatangazo amanikwa kandi hafungwa, asangamo amatangazo menshi ahamanitse harimo n'ay'umwaka ushize wa 2023 ariko abura itangazo na rimwe ryamamaza igurishwa ry'umutungo wa wa POSADA PLUS Ltd. [20] Akomeza asobanura POSADA Plus Ltd yanitabaje Rwanda Forensic Institute ngo igenzure amatangazo uwashinzwe gucunga ingwate avuga ko yatangajwe mu kinyamakuru IGIHE.COM, igenzura ryakozwe rikagaragaza ko itangazo ryo kuwa 02/07/2024 ari ryo ryonyine ryatangajwe muri icyo kinyamakuru, ko kandi ibi binahura n'ibyo Urukiko Rukuru rw'Ubucuruzi rwagaragaje mu rubanza rwajuririwe aho rwemeje ko n'itangazo rya cyamunara rya kabiri n'irya gatatu atamenyeshejwe POSADA PLUS Ltd kuko itari kumenyeshwa amatangazo atarabayeho; ko rero hashingiwe kuri ibyo bisobanuro, nyuma y'uko cyamunara ya mbere isubitswe uwashinzwe gucunga ingwate atongeye kuyitangaza gihe cy'amasaha 24 nk'uko biteganywa n'ingingo ya 253 y'Itegeko N° 22/2018 bigashimangirwa Iteka rya Minisitiri N° 005/MOJ/AG/2021 mungingo yaryo ya 4 niya 13 ndetse n'Amabwiriza y'Umwanditsi Mukuru N° 002/AG/2021 mu ngingo yayo ya 2. Akomeza kandi gushimangira ko amatangazo ya cyamunara Mukamurenzi Annet avuga ko yamenyeshejwe POSADA PLUS Ltd atagaragaza uwishyuzwa, uwishyuzwa ndetse n'ifoto y'umutungo wagurishijwe, nyamara akaba atabivuguruzaga cyangwa ngo

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agaragaze icyo banenga ibyashyingiweho n'Urukiko mu rubanza rwajuririwe rwemeza ko ibiteganywa n'ingingo ya 10 y'Iteka rya Minisitiri ryavuzwe haruguru Minijust No 005/MOJ/AG/2021 bitubahirijwe. [21] Me Gahamanyi Justin avuga ko imiburanire y'uko uwashinzwe gucunga ingwate yandikiye POSADA PLUS Ltd ayisaba kumenyeshya email yayo kugira ngo ifungurirwe konte ku rubuga rurangirizwaho inyandikompesha nabyo nta shingiro bikwiraye guhabwa, kuko no kuba iyo baruwa itarashyikirijwe ubishinzwe cyangwa ngo inyuzwe mu nzira ziteganywa n'amategeko, bigaragara ko yatanze n'Amabwiriza ya cyamunara atarasohoka bityo hakibazwa aho cyamunara basabaga POSADA PLUS Ltd kwihuza nayo yafunguriwe. [22] Ku

bijyanye n'ubujurire bwa Uwineza Angélique, uhagarariye POSADA PLUS Ltd avuga ko nta shingiro bufite kuko mu rubanza rwajuririwe Urukiko rwatanze umurongo ku bijyanye n'itangazwa rya cyamunara n'inyungu zabyo kimwe n'izo kumenyesha nyir'umutungo amatangazo ya cyamunara, harimo no kwishakira abakiriya, nyamara ibyo byose Uwineza Angélique akaba atarabyubahirije kuko atamenyesheje POSADA PLUS Ltd amatangazo ya cyamunara ngo anayamanike cyangwa ayatangaze ahateganyijwe mu buryo buteganywa n'amategoko nk'uko byasobanuwe ku birebana n'ubujurire bwa Mukamurenzi Annet. [23] Ku bijyanye n'imiburanire ya Uwineza Angélique y'uko mu rubanza rwajuririwe Urukiko rwasuzumye ingingo zitaburanyweho mbere, uhagarariye POSADA PLUS Ltd avuga ko ibi atari ukuri kuko hasuzumwe ibijyanye n'uko cyamunara yatangajwe mu buryo budakurikije amategoko, Urukiko rugaragaza neza ko Amabwiriza y'Umwanditsi Mukuru adakuraho amategoko ahubwo ayuzuzwa. UKO URUKIKO RUBIBONA [24] Impaka kuri iki kibazo zishingiye ku kumenya niba uwashinzwe gucunga ingwate yaragombaga kumenyesha POSADA PLUS Ltd, nka nyir'umutungo UPI:1/03/05/04/1106 watanzweho ingwate, amatangazo ya cyamunara. Abajuriye bavugaga ko cyamunara y'ingwate zandikishwa mu Biro by'Umwanditsi Mukuru zikurikiza imihango yihariye iteganywa n'Amabwiriza y'Umwanditsi Mukuru yo ku wa 12/05/2020 agenga ibyerekeye gucunga, gukodesha, kugurisha mu cyamunara, no kwegukana ingwate, kandi hashingiwe ku ngingo ya 29 y'ayo Mabwiriza iteganywa uburyo itangazwa rya cyamunara y'ingwate rikorwa, uwashinzwe gucunga ingwate nta shingano yari afite yo kumenyesha POSADA PLUS Ltd itangazo rya cyamunara; naho POSADA PLUS Ltd yo ikavugaga ko hagombaga gukurikizwa ibiteganyijwe mu ngingo ya 253 y'Itegeko N° 22/2018 ryo ku wa 29/4/2018 ryeyekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruza, iz'umulimo n'iz'ubutegets, n'ingingo ya 10 y'Iteka rya Minisitiri N° 005/MOJ/AG/2021 ryo kuwa 07/06/2021 ngo bigashimangirwa n'ingingo ya 2 y'Amabwiriza y'Umwanditsi Mukuru N° 002/2021/ORG yo kuwa 29/6/2021. Mu gihe Urukiko rwasanga uwashinzwe kugurisha ingwate yari afite inshingano yo kumenyesha nyir'umutungo amatangazo ya cyamunara, nibwo rusuzuma niba byarakozwe kandi hubahirijwe amategoko. [25] Ingingo ya 2, igika cya mbere n'icya 2, y'Itegeko N° 13/2010 ryo ku wa 07/5/2010 rihindura kandi ryuzuzwa Itegeko N°10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa igira iti: "Amasezerano y'ubugwate agaragaza ingingo ziha ububasha uwahawe ingwate bwo kuyicunga, kuyikodesha, kuyigurisha cyangwa kuyegukana igihe uwatanze ingwate atabashije kwishyura. Amasezerano kandi agaragaza igihe, ahantu n'ibikurikizwa kugira ngo ubwo buryo bushyirwe mu bikorwa. Igihe uwatanze ingwate atabashije kwishyura, uwahawe ingwate amenyesha mu nyandiko uwatanze ingwate ko agiye gukoresha bumwe mu buryo bwavuzwe mu gika kibanziriza iki akagera kopi Umwanditsi Mukuru.

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[26] Ingingo ya 3 y'iryo tegeko, yerekeye ibijyanye n'igurisha ry'ingwate, iteganywa mu gika cyayo cya 3, ko Umwanditsi Mukuru ategura amabwiriza rusange agenga cyamunara ijyanye n'igurisha ry'ingwate n'ubundi buryo bwavuzwe mu gika cya mbere cy'ingingo ya 2 y'iri tegeko". [27] Ingingo ya 1 y'Amabwiriza y'Umwanditsi Mukuru N° 001/2020/ORG yo ku wa 12/05/2020 agenga ibyerekeye gucunga, gukodesha, kugurisha mu cyamunara no kwegukana

ingwate nk'uko yahinduwe kugeza ubu, iteganya ko ayo mabwiriza ashiraho uburyo bwo gucunga, gukodesha, kugurisha mu cyamunara cyangwa kwegukana ingwate ku mutungo utimukanwa watanzweho ingwate mu gihe uwatanze ingwate atishyuye. [28] Urukiko rusanga izi ngingo zivuzwe haruguru zirebwe hamwe, zumvikanisha ko ibijyanye n'ubugwate ku mutungo utimukanwa, uburyo uwahawe ingwate yitabaza iyo atishyuye, n'ibijyanye no kugurisha mu cyamunara cyangwa kwegukana ingwate ku mutungo utimukanwa watanzweho ingwate mu gihe uwatanze ingwate atishyuye, bigengwa n'Itegeko ryavuzwe haruguru ryerekeye ubugwate ku mutungo utimukanwa, n'Amabwiriza y'Umwanditsi Mukuru nayo yavuzwe haruguru arishyira mu bikorwa, agenga ibyerekeye gucunga, gukodesha no kugurisha mu cyamunara no kwegukana ingwate. By'umwihariko ku bijyanye no kugurisha ingwate ari nabyo birebana n'uru rubanza, ayo mabwiriza ateganya ingingo zinyuranye zirebana n'itangazwa rya cyamunara, ibikubiye mu Itangazo rya cyamunara, uburyo cyamunara ikoresheya, n'ibindi. [29] Urukiko rushingiye kuri ibyo bisobanuro no ku ihame ry'amategeko rivuga ko itegeko ryihariye riza mbere y'itegeko riri rusange (Specialia generalibus derogant), rurasanga ayo mategeko yihariye ariyo agomba kureberwamo niba imihango yo kugurisha mu cyamunara ingwate yandikishijwe mu Bitabo by'Umwanditsi Mukuru yarakozwe mu buryo bukurikije amategeko, aho kuba ingingo ya 253 y'Itegeko N° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umulimo n'iz'ubutegets, kuko n'ubwo iyi ngingo nayo iteganya ibijyanye n'itangazwa rya cyamunara, Itegeko ihereyemo ryerekeye imiburanishirize y'imanza muri rusange, by'umwihariko mu mutwe ujyanye no kurangiza imanza, ibyo iteganya bikaba bitashingirwaho mu gusuzuma ibijyanye no kugurisha mu cyamunara ingwate yandikishijwe mu Biro by'Umwanditsi Mukuru, mu gihe nk'uko byasobanuwe hari amategeko yihariye abigenga. [30] Ingingo ya 26 y'Amabwiriza y'Umwanditsi Mukuru N° 001/2020/ORG yo ku wa 12/05/2020 yavuzwe haruguru, agenga ibyerekeye gucunga no gukodesha, kugurisha mu cyamunara no kwegukana ingwate nk'uko yahinduwe kugeza ubu, iteganya ko ushinze gucunga ingwate ategura inyandiko y'amabwiriza y'igurisha mu cyamunara ikubiyemo nibura amakuru akurikira: nimeroy'umutungo wagwaturijwe, aho uherereye, ubuso bwawo, kuwugaragaza uko uri, agaciro kawo kari ku isoko kagenwe n'umugenagaciro w'umutungo utimukanwa wemewe, itariki cyamunara izaberaho, aho izabera n'isaha izatangiriraho, ingengabihe y'uburyo cyamunara zizakurikirana mu gihe habayeho iyimura rya cyamunara, amakuru ya konti izakoresheya mu kubika ibivuye muri cyamunara, ingwate y'ipiganwa, uko amafaranga azava mu ngwate igurishwa azakoresheya hakurikijwe urutonde rw'uko ibigomba kwishyurwa bikurikirana, andi makuru uwashinze gucunga ingwate abona ari ngombwa. [31] Ingingo ya 28 y'ayo Mabwiriza yo iteganya ko nibura iminsi icumi (10) mbere y'umunsi wa cyamunara, uwashinze gucunga ingwate amenyesha uwahawe ingwate n'uwayitanze iyo nyandiko y'amabwiriza y'igurisha mu cyamunara, akagera kopi Umwanditsi Mukuru na nyir'umutungo iyo anyuranye n'uwatanze ingwate; naho ingingo ya 27 y'ayo Mabwiriza y'Umwanditsi Mukuru igateganya ko Inyandiko y'amabwiriza y'igurisha mu cyamunara iherekezwa n'imigereka igizwe na Kopi y'icyemezo cyo kugurisha mu cyamunara ingwate cyamenyeshejwe uwatanze ingwate na nyir'umutungo iyo atandukanye n'uwatanze ingwate;

na kopi ya Raporo y'igenagaciro ry'umutungo ryakozwe igihe cyo kugurisha ingwate mu cyamunara n'umugenagaciro w'imitungo itimukanwa wemewe kandi ryamenyeshejwe uwatanze ingwate na nyir'umutungo watanzweho ingwate iyo atandukanye n'uwatanze

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ingwate. Ingingo ya 24 y'ayo Mabwiriza y'Umwanditsi Mukuru igateganya ko mu byo icyo cyemezo cyo kugurisha mu cyamunara kigaragaza harimo uwatanze ingwate, ibiranga ingwate, uwashinzwe kugurisha ingwate nk'uko biteganywa mu ngingo ya 24 nayo y'ayo Mabwiriza y'Umwanditsi Mukuru. [32] Ingingo ya 29 y'Amabwiriza y'Umwanditsi Mukuru N° 001/2020/ORG yo ku wa 12/05/2020 yavuzwe haruguru, agenga ibyerekeye gucunga no gukodesha, kugurisha mu cyamunara no kwegukana ingwate, niyo iteganya ibijyanye n'itangazwa rya cyamunara, igira iti: "Ushinzwe gucunga ingwate amenyekanisha igurisha mu cyamunara nibura iminsi icumi (10) mbere y'umunsi wa cyamunara kuri radiyo cyangwa televiziyo no mu kinyamakuru cyandikirwa mu icapiro cyangwa gikorera kuri interineti bikorera mu Rwanda. Iyo minsi ibarwa uhereye ku munsi ukurikira uwo cyamunara yatangarijweho habariwemo umunsi cyamunara izaberaho". [33] Urukiko rurasanga mu biteganyijwe mu ngingo z'Amabwiriza y'umwanditsi Mukuru zimaze kuvugwa haruguru, nta hagaragara ko uwashinzwe gucunga ingwate agomba gushyikiriza nyir'umutungo amatangazo ya cyamunara ; ahubwo icyo izo ngingo ziteganywa ni uko nyir'umutungo amenyeshwa Amabwiriza y'igurisha akubiyemo ingengabihe y'uburyo cyamunara zizakurikirana mu gihe habayeho iyimura rya cyamunara (ingingo ya 26), kandi ko cyamunara itangazwa mu buryo bwavuzwe haruguru buteganywa mu ngingo ya 29. Hashingiwe kuri ibyo bisobanuro byose, uwashinzwe kugurisha ingwate akaba atari ategetswe gushyikiriza POSADA PLUS Ltd nka nyir'umutungo ugurishwa, amatangazo ya cyamunara ; bityo akaba atari ngombwa gusuzuma niba byarakozwe n'uburyo byakozwemo. [34] Urukiko rurasanga kandi imiburanire y'uhagarariye POSADA PLUS Ltd y'uko kumanika amatangazo ku Kagari no yatangaza mu kinyamakuru IGIHE.COM nabyo bitakurikije amategeko bitasuzumwa muri uru rubanza, kuko uretse no kuba bitarasuzumwe ngo bifatweho icyemezo mu rubanza rwajuririwe, bitanajuririwe muri uru Rukiko, kuko hajuriye Mukamurenzi Annet, Uwineza Angélique na EQUITY BANK RWANDA Plc, bakaba barajuririye gusa ibijyanye no kuba POSADA PLUS Ltd itaramenyeshwe amatangazo ya cyamunara, naho POSADA PLUS Ltd yo ikaba itarajuriye muri uru Rukiko. [35] Hashingiwe ku bisobanuro byose byatanze, ubujurire bwatanze na Mukamurenzi Annet, Uwineza Angélique na EQUITY BANK RWANDA Plc bukaba bufite ishingiro. Kumenya niba amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka asabwa n'ababuranyi muri uru rubanza afite ishingiro. [36] Uwineza Angélique yasabye Urukiko gutegeka POSADA PLUS Ltd amafaranga y'igihembo cya avoka n'ikurikiranarubanza yose hamwe angana na 3.000.000Frw kuko yishyuye Avoka mu manza eshatu guhera mu Rukiko rw'Ubucuruzi. EQUITY BANK RWANDA Plc nayo yasabye Urukiko gutegeka POSADA PLUS Ltd kuyishyura cya 500.000Frw y'igihembo cya Avoka kuri uru rwego na 500.000Frw yo ku rwego rubanza. UKO URUKIKO RUBIBONA [37] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu igira iti: "Ikirego cy'amafaranga y'ikurikiranarubanza ni 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'iyo ikirego cy'iremezo cyaba kitakiriwe". [38] Urukiko rurasanga Uwineza Angélique na EQUITY BANK RWANDA Plc barajuriye muri uru Rukiko kandi nk'uko byasobanuwe haruguru ubujurire bwabo bukaba bufite ishingiro, bityo hashingiwe ku biteganywa mu ngingo ya 111 yibukijwe, POSADA PLUS Ltd ikaba igomba kubishyura ibyo batakaje

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mu gukurikirana no kuburana uru rubanza; mu bushishozi bw'Urukiko rukaba rubageneye 1.000.000Frw y'igihembo cya Avoka kuri buri wese, kuri Me Uwineza Angélique na EQUITY BANK RWANDA Plc, hakiyongeraho 600.000Frw yo gukurikirana urubanza kuko yayasabye. III. ICYEMEZO CY'URUKIKO [39] Rwemeje ko ubujurire bwatanzwe na Mukamurenzi Annet, Uwineza Angélique na EQUITY BANK RWANDA PLC bufite ishingiro. [40] Rwemeje ko imikirize y'urubanza RCOMA00577/2024/HCC rwajuririwe ihindutse kuri byose.

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[41] Rwemeje ko cyamunara yakozwe ku itariki 09/08/2024 ku mutungo ubaruye kuri UPI:1/03/05/04/1106 igumanye agaciro kayo. [42] Rutegetse POSADA PLUS Ltd kwishyura Uwineza Angélique amafaranga y'u Rwanda miliyoni imwe (1.000.000Frw) y'igihembo cya Avoka n'amafaranga ibihumbi magana atandatu (600.000frw) y'ikurikiranarubanza. [43] Rutegetse POSADA PLUS Ltd kwishyura EQUITY BANK RWANDA Plc amafaranga miliyoni imwe (1.000.000Frw) y'igihembo cya Avoka. [44] Ruvuze ko amagarama yatanze ahwanye n'ibyakozwe mu rubanza.

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