

RWANDA TEA TRADING LTD v GT BANK LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00037/2018/CA- RCOMAA 00023/2018/SC (Karimunda, P.J., Ngagi na Mukanyundo, J.) 22 Gashyantare 2019]

Amategeko agenga amasezerano – Impamvu itunguranye (force majeure) – Impamvu ntarengwa itunguranye (force majeure) igomba kuba ari impamvu koko ntarengwa kandi akaba nta wayihagarika (irresistible), idaturutse ku ruhande ruri mu masezerano (extérieure) kandi ikaba ari impamvu itunguranye (imprévisible).

Incamake y'ikibazo: Rwanda Tea Trading Ltd yagiranye amasezerano y'inguzanyo na GT Bank Ltd y'amafaranga angana na miliyoni magana atatu na mirongo itanu (350.000.000 Frw) yagombaga kwishyurwa mu gihe cy'amezi atandatu, Rwanda Tea Trading Ltd yakoranye amasezerano y'ubwishingire magirirane (acte de caution solidaire) na Karyabwite Claver, Mukandori Eugénie, Karyabwite Désiré, Karyabwite Eric na Karyabwite Jean Claude.

Rwanda Tea Trading Ltd ntiyubahirije amasezerano, maze igirana na GT Bank Ltd andi masezerano yo kuvugurura umwenda (réaménagement du crédit), bumvikana ko Rwanda Tea Trading Ltd ihawe undi mwenda ungana na 415.445.080Frw wagombaga kwishyurwa hamwe n'inyungu zawo mu cyiciro kimwe (paiement unique).

Aya masezerano nayo ntiyubahirije, bituma GT Bank Ltd irega Rwanda Tea Trading Ltd n'abishingizi bayo mu Rukiko rw'Ubucuruzi rwa Nyarugenge, isaba ko bayishyura umwenda n'inyungu zawo inasaba n'indishyi zitandukanye.

Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeza ko ikirego cyatanzwe na GT Bank Ltd gifite ishingiro, rutegeka Rwanda Tea Trading Ltd n'abishingizi bayo kuyishyura umwenda remezo n'inyungu zawo.

Ababuranyi bose bajuririyeye uru rubanza mu Rukiko Rukuru rw'Ubucuruzi, GT Bank Ltd ivuga ko itishimiye umwenda Urukiko rwemeje ko yishyurwa, naho Rwanda Tea Trading Ltd n'abishingizi bayo bavugaga ko atari bo batubahirije amasezerano, ko ahubwo ari GT Bank Ltd yayatesheje agaciro igihe cyo kwishyura kitaragera. Urukiko Rukuru rw'Ubucuruzi rwasanze ubujurire bwa Rwanda Tea Trading Ltd n'abishingizi bayo nta shingiro bufite, naho ubwa GT Bank Ltd bukaba bufite ishingiro kuri bimwe.

Rwanda Tea Trading Ltd ntiyishimiye imikirize y'urubanza, ijuririra mu Rukiko rw'Ikirenga, nyuma y'ishyirwaho ry'Urukiko rw'Ubujurire, ubujurire bwayo bwoherezwa muri urwo Rukiko. Mu Rukiko rw'Ubujurire isobanura ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko yo n'abishingizi bayo batubahirije amasezerano, nyamara yarerekanye ko nyuma y'aho Leta y'u Rwanda ihagarikiye umushinga w'uruganda rw'icyayi rwa Gatara Tea Factory, banki yahise iyandikira iyisaba guhita yishyura kandi itariki yumvikanyweho itaragera, kuko hari hasigaye amezi atandatu (6).

GT Bank Ltd yiregura ivuga ko nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu kwemeza ko uwajuriye atubahirije amasezerano y'inguzanyo kuko nawe atabasha kugaragaza ko yishyuye umwenda yari yahawe, bityo ko isanga nta mpamvu yari gutuma agumana uyu mwenda kandi icyo yawukoreshaga kitakiriho.

Rwanda Tea Trading Ltd ivuga ko kuba umushinga warahagaze bidaturutse ku makosa yayo bikwiye gufatwa nk'impamvu itunguranye yatumye amasezerano atubahirizwa kuko hatari harigeze hateganywa uko byagenda umushinga uramutse uhagaritswe. Ikomeza ivuga ko nyuma y'uko umushinga uhagaritswe, ibintu byari gusubira uko byari biri mbere, GT Bank Ltd igasubizwa amafaranga yatanze agaragara mu masezerano y'inyongera ariko ntihagire inyungu n'indishyi byishyurwa.

GT Bank Ltd ivuga ko ibyo uwajuriye avuga y'uko nta nyungu ikwiye gusabwa nta shingiro byahabwa, kuko icyatumye itanga amafaranga yayo ari uko yari itegereje inyungu, ko kuba Leta y'u Rwanda yarahagaritse iyubakwa ry'uruganda, bitabuza Banki kubona inyungu z'umwenda yatanze.

GT Bank Ltd isaba ko uwajuriye n'abishingizi be bahatirwa kwishyura umwenda usigaye. Ivuga ko Urukiko Rukuru rw'Ubucuruzi rwabariye inyungu kuri 17.5 % nyamara rwaragombaga kongeraho 2%nk'uko amasezerano abiteganyaga.

Uwajuriye avuga ko 594.052.834 Frw yamaze kwishyurwa kandi ko banki yabonye amafaranga menshi, inyungu zikaba zabarwa kugeza ku wa 22/04/2016, kuko aribwo umushinga wo kubaka uruganda wahagaze.

Incamake y'icyemezo: 1. Kuba uwahawe inguzanyo atarashoboye gushyira mu bikorwa inshingano ze zo kwishyura inguzanyo yahawe kugeza aho igihe cyari giteganyijwe mu masezerano kigeze ndetse kikanarenga aba ariwe wishe amasezerano. Bityo uwahawe umwenda ategetswe kwishyura umwenda remezo, inyungu zawo ndetse n'ibihano by'ubukererwe mu gihe atubahirije igihe cyo kwishyura cyumvikanywe mu masezerano.

2. Impamvu ntarengwa itunguranye (force majeure) igomba kuba ari impamvu koko ntarengwa kandi akaba nta wayihagarika (irresistible), idaturutse ku ruhande ruri mu masezerano (extérieure) kandi ikaba ari impamvu itunguranye (imprévisible). Bityo, icyo umuntu yashoboraga kwirinda, ntiyacyitwaza nk'impamvu ntarengwa, ahubwo aba agomba kugikora n'ubwo byaba bimuhenze.

**Ubujurire nta shingiro bufite;
Ubujurire bwuririye ku bundi bufite ishingiro;
Amagarama y'urubanza ahwanyeye n'ibyarukozwemo.**

Amategeko yashingiweho:

Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 80 n'ya 60.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 25/09/2013, Rwanda Tea Trading Ltd yagiranye amasezerano y'inguzanyo na GT Bank Ltd, muri ayo masezerano GT Bank Ltd ikaba yarahaye Rwanda Tea Trading Ltd inguzanyo y'amafaranga angana na miliyoni magana atatu na mirongo itanu (350.000.000 Frw) yagombaga

kwishyurwa mu gihe cy'amezi atandatu. Kuri uwo munsu kandi, GT Bank Ltd yagiranye amasezerano y'ubwishingire magirirane (acte de caution solidaire) na Karyabwite Claver, Mukandori Eugénie, Karyabwite Désiré, Karyabwite Eric na Karyabwite Jean Claude, ko bishingiye Rwanda Tea Trading Ltd ku mwenda yahawe na GT Bank Ltd.

[2] Rwanda Tea Trading Ltd ntiyubahirije amasezerano, maze nyuma y'ibiganiro, ku wa 16/10/2014, igirana na GT Bank Ltd andi masezerano yo kuvugurura umwenda(réaménagement du crédit), bumvikana ko Rwanda Tea Trading Ltd ihawe umwenda ungana na 415.445.080Frw wagombaga kwishyurwa hamwe n'inyungu zawo mu cyiciro kimwe (paiement unique) bitarenze tariki ya 30/10/2016¹.

[3] Aya masezerano nayo Rwanda Tea Trading Ltd ntiyayubahirije, bituma GT Bank Ltd iyirega mu Rukiko rw'Ubucuruzi rwa Nyarugenge hamwe n'abishingizi bayo, isaba ko bayishyura umwenda n'inyungu zawo bingana na 623.353.711Frw wabazwe by'agateganyo kugeza ku wa 11/01/2017, isaba kandi indishyi zitandukanye ndetse n'uko urubanza rurarangizwa by'agateganyo ku mwenda abaregwa biyemerera.

[4] Ku wa 19/05/2017, Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza RCOM 00093/2017/TC/NYGE rwemeza ko ikirego cyatanzwe na GT Bank Ltd gifite ishingiro, rutegeka Rwanda Tea Trading Ltd n'abishingizi bayo kuyishyura 594.052.834Frw y'umwenda remezo n'inyungu zawo, 500.000Frw y'ikurikiranarubanza n'igihembo cya Avoka, na 50.000 Frw, GT Bank Ltd yatanzeho ingwate y'amagarama irega, kandi urubanza rukarangizwa by'agateganyo ku mwenda n'inyungu abaregwa biyemerera.

[5] Ababuranyi bose bajuririyeye uru rubanza mu Rukiko Rukuru rw'Ubucuruzi, GT Bank Ltd ivuga ko itishimiye umwenda Urukiko rwemeje ko yishyurwa, kandi ko umwenda remezo n'inyungu zawo bigeze kuri 769.564.268Frw, aba ari yo isaba kwishyurwa, naho Rwanda TT Ltd n'abishingizi bayo bavuga ko atari bo batubahirije amasezerano, ko ahubwo ari GT Bank Ltd yayatesheje agaciro igihe cyo kwishyura kitaragera, bavuga ko batemera irangizarubanza ry'agateganyo ryategetswe n'Urukiko rubanza.

[6] Ku wa 05/01/2018, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00393/2017/CHC/HCC-RCOMA 00395/2017/CHC/HCC rwemeza ko ubujurire bwa Rwanda Tea Trading Ltd n'abishingizi bayo nta shingiro bufite, naho ubwa GT Bank Ltd bukaba bufite ishingiro kuri bimwe, ko umwenda remezo GT Bank Ltd igomba kwishyurwa hamwe n'inyungu zawo bingana na 657,430,909 Frw. Urukiko kandi rwemeje ko irangizarubanza ry'agateganyo ryemejwe ku rwego rwa mbere ku mwenda ungana na 594.052.834Frw rigumyeho, rutegeka Rwanda Tea Trading Ltd n'abishingizi bayo guha GT Bank Ltd 500.000 Frw y'igihembo cya Avoka mu bujirire, yiyongera kuri 500.000 Frw yari yagenewe ku rwego rwa mbere.

[7] Rwanda Tea Trading Ltd ntiyishimiye imikirize y'urubanza, ijuririra mu Rukiko rw'Ikirenga, nyuma y'ishyirwaho ry'Urukiko rw'Ubujurire, ubujurire bwayo bwoherezwa muri

¹ GT BANK Ltd ariko ivuga ko habayeho kwibeshya, uwo mwenda mushya ukaba wari 431.102.236 Frw ari nayo yashyizwe kuri konti ya RWANDA TEA TRADING Ltd ku wa 30/10/2015, aho kuba 415.445.080 Frw.

urwo Rukiko hashingiwe ku ngingo ya 105 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko².

[8] Urubanza rwaburanishijwe mu ruhame ku wa 17/01/2019, Rwanda Tea Trading Ltd iburanirwa na Me Nkongoli Laurent na Me Rwagatare Janvier, naho GT Bank Ltd iburanirwa na Me Bimenyimana Eric.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. UBUJURIRE BWA RWANDA TEA TRADING Ltd

1. Kumenya niba Rwanda Tea Trading Ltd yarubahirije amasezerano y'inguzanyo

[9] Rwanda Tea Trading Ltd ivuga ko, Urukiko Rukuru rw'Ubucuruzi rwemeje ko yo n'abishingizi bayo batubahirije amasezerano, nyamara yarerekanye ko nyuma y'aho Leta y'u Rwanda ihagarikiye umushinga w'uruganda rw'icyayi rwa Gatata Tea Factory, ku wa 22/04/2016, GT Bank Ltd yahise iyandikira iyisaba guhita yishyura kandi itariki yumvikanyweho itaragera, kuko hari hasigaye amezi atandatu (6). Ikomeza ivuga ko itananiwe kwishyura, ko ahubwo GT Bank Ltd ariyo yatesheje agaciro amasezerano, kuko icyo amasezerano y'inguzanyo yari ashingiyeho cyari kivuyeho ubwo umushinga wo kubaka uruganda rw'icyayi rwa Gatata Tea Factory wari umaze guhagarikwa, ibintu bikaba byaragombaga gusubira uko byari bimeze mbere.

[10] GT Bank Ltd ivuga ko nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu kwemeza ko RTT Ltd itubahirije amasezerano y'inguzanyo kuko nayo itagaragaza ko yishyuye umwenda yari yahawe. Isanga nta mpamvu yari gutuma Rwanda Tea Trading Ltd igumana uyu mwenda, nyamara icyo yawukoreshaga kitakiriho ; ikaba isanga iyo yo n'abishingizi bayo baza kwishyurira umwenda ku gihe, byari kubafasha kugabanya inyungu ntizikomeze kwiyongera. Ikomeza ivuga ko n'ubwo umwenda wari kwishyurirwa rimwe ku wa 30/10/2016, ikigaragara ari uko na nyuma y'aho, Rwanda Tea Trading Ltd itishyuye umwenda ku itariki yari yumvikanyweho mu masezerano, bituma GT Bank Ltd iyandikira iyisaba kwishyura 594.052.834 Frw, ariko ntibahita bayishyura, ahubwo mu iburanisha mu Rukiko rwabanje bavuga ko ari wo bemera bituma Urukiko rutegeka irangizarubanza ry'agateganyo.

UKO URUKIKO RUBIBONA

[11] Ingingo ya 80, igika cya kabiri, y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko: "Iyo igihe cyo gukora ibisabwa mu masezerano kigeze, kutabikora bifatwa nko kwica amasezerano".

[12] Inyandiko ziri muri dosiye zigaragaza ko ku wa 25/09/2013, GT Bank Ltd yakoranye amasezerano y'inguzanyo na Rwanda Tea Trading Ltd yanganaga na 350.000.000 Frw, iyo nguzanyo ikaba yaragombaga kwishyurwa mu gihe cy'amezi atandatu (6). Ayo masezerano yaje kuvugururwa ku wa 16/10/2014, impande zombi zumvikana ko umwenda Rwanda Tea Trading

² "Guhera igihe iri tegeko ritangiriye gukurikizwa, uretse imanza zatangiye kuburanishwa, imanza zose zitakiri mu bubasha bw'Urukiko zaregewe, zohererezwa Urukiko rubifitiye ububasha hakurikijwe ibiteganywa n'iri tegeko".

Ltd ibereyemo GT Bank Ltd ungana na 415.445.080 Frw³, wagombaga kwishyurirwa rimwe bitarenze ku wa 30/10/2016. Mbere y'uko iyo tariki igera, GT Bank Ltd imaze kumenya ko umushinga Rwanda Tea Trading Ltd yari yarasabiye inguzanyo wahagaze, yahise isaba Rwanda Tea Trading Ltd kuyishyura umwenda yafashe bitabaye ngombwa ko itegereza iriya tariki. Rwanda Tea Trading Ltd ntabwo yashoboye kwishyura umwenda, bituma ku wa 06/11/2016, nyuma yo gutanga integuza, GT Bank Ltd itanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge, urwo Rukiko rutegeka Rwanda Tea Trading Ltd n'abishingizi bayo kuyishyura 594.052.834 Frw y'umwenda n'inyungu zawo. Iki cyemezo kijurirwa mu Rukiko Rukuru rw'Ubucuruzi narwo rwemeza ko Rwanda Tea Trading Ltd itubahirije amasezerano, ko umwenda GT Bank Ltd igomba kwishyurwa n'inyungu zawo bingana na 657.430.909 Frw.

[13] Dosiye igaragaza ko mu masezerano yo ku wa 16/10/2014, avugurura ayo ku wa 25/09/2013, Rwanda Tea Trading Ltd yiyemereye ko izishyura mu ngunga imwe umwenda remezo wa 415.445.080 Frw n'inyungu zawo zibariye kuri 17.95% ku wa 30/10/2016.

[14] Kuri iki kibazo, Urukiko rurasanga uruhande rwari rusigaje gusohoza amasezerano ari Rwanda Tea Trading Ltd, inshingano yayo y'ibanze ikaba yari ukwishyura umwenda nk'uko bigaragara mu masezerano yo ku wa 16/10/2014 yibukijwe haruguru. Kuba rero itariki yumvikanyweho yarageze Rwanda Tea Trading Ltd itarishyura umwenda yari ifitiye GT Bank Ltd, bivuze ko Rwanda Tea Trading Ltd ari rwo ruhande rutubahirije inshingano zarwo nk'uko ziteganywa mu masezerano.

[15] Urukiko rurasanga imvugo y'uburanira Rwanda Tea Trading Ltd, ko GT Bank Ltd ari yo itarubahirije amasezerano kuko yayisabye kwishyura igihe bumvikanye kitaragera nta shingiro yahabwa, kuko nk'uko Urukiko Rukuru rw'Ubucuruzi rwabibonye, kuba GT Bank Ltd ikimara kumenya ko umushinga yatangiye inguzanyo utagikomeje kuko wahagaritswe na Leta y'u Rwanda, igahita isaba gusubizwa amafaranga yayo, nta kosa yakoze, kuko kuyasubiza byari ku nyungu z'impande zombi, cyane cyane ko nk'uko byagaragajwe, byageze no ku itariki iteganyijwe mu masezerano Rwanda Tea Trading Ltd itarishyura, bituma nyuma y'aho GT Bank Ltd iregera Urukiko rw'Ubucuruzi rwa Nyarugenge, kuko yari imaze kubona ko integuza yatanze zabaye impfabusa.

[16] Urukiko rero rushingiye ku biteganywa n'ingingo ya 80, igika cya kabiri, y'Itegeko N°45/2011 ryo ku wa 25/11/2011 yavuzwe haruguru, rurasanga kuba Rwanda Tea Trading Ltd itarashoboye gushyira mu bikorwa inshingano zayo zo kwishyura inguzanyo yahawe na GT Bank Ltd kugeza aho igihe cyari giteganyijwe mu masezerano kigeze ndetse kikanarenga, ariyo yishe masezerano, akaba ntaho Urukiko Rukuru rw'Ubucuruzi rwari guhera rwemeza ko RTT Ltd itishe amasezerano, ndetse akaba ari nako n'uru Rukiko rubibona.

2. Kumenya niba kuba Leta y'u Rwanda yarahagaritse umushinga wo kubaka uruganda rwa Gatata Tea Factory byafatwa nk'impamvu itunguranye yatumye amasezerano atubahirizwa ku buryo nta nyungu zari zikwiye kubarwa

³ GT BANK Ltd ivuga ko muri ayo masezerano habayeho kwibeshya ko ahubwo umwenda ungana na 431.102.236 Frw aho kuba 415.445.080 Frw.

[17] Rwanda Tea Trading Ltd ivuga ko kuba umushinga warahagaze bidaturutse ku makosa yayo bikwiye gufatwa nk'impamvu itunguranye yatumye amasezerano atubahirizwa nk'uko biteganywa mu ngingo ya 92 y'Itegeko rigenga amasezerano⁴ kuko hatari harigeze hateganywa uko byagenda umushinga uramutse uhagaritswe. Ikomeza ivuga ko nyuma y'uko umushinga uhagaritswe, ibintu byari gusubira uko byari biri mbere, GT Bank Ltd igasubizwa amafaranga yatanze agaragara mu masezerano y'inyongera yo ku wa 15/10/2014, ariko ntihagire inyungu n'indishyi byishyurwa nk'uko bivugwa mu ngingo ya 91, igika cya mbere, y'Itegeko ryerekeye amasezerano⁵.

[18] GT Bank Ltd ivuga ko ibyo Rwanda Tea Trading Ltd ivuga y'uko nta nyungu GT Bank Ltd ikwiye gusaba nta shingiro byahabwa, kuko icyatumye itanga amafaranga yayo ari uko yari itegereje inyungu, ko kuba Leta y'u Rwanda (MINECOFIN) yarahagaritse iyubakwa ry'uruganda, bitabuza Banki kubona inyungu z'umwenda yatanze, ahubwo ko ibyo Rwanda Tea Trading Ltd yaba yaratakaje yazabisaba MINECOFIN.

UKO URUKIKO RUBIBONA

[19] 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". Naho ingingo ya 92 y'iri Tegeko 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 ibintubimeze bibigaragaza ukundi " .

[20] Dosiye igaragaza ko mu masezerano Rwanda Tea Trading Ltd yakoranye na GT bank Ltd ku wa 16/10/2014, mu ngingo bise " Les intérêts débiteurs", impande zombi zemeranyije ko inyungu zibarwa kuri 17.95% ku mwaka, ko ariko icyo gipimo gishobora guhinduka (kigabanuka cyangwa cyiyongera) bitewe n'ihindagurika ry'ibiciro ku isoko.

[21] Urukiko rurasanga kuba Urukiko Rukuru rwaremeje ko inyungu zikomeza kubarwa, ariko rugakosora uburyo izo nyungu zabazwe nta kosa rwakozwe, kuko rwasanze ko, mu gihe bigaragaye ko GT Bank Ltd atari rwo ruhande rwishe amasezerano, ahubwo ari Rwanda Tea Trading Ltd n'abishingizi bayo batubahirije ibiteganyijwe mu masezerano, nta mpamvu rutari kubara inyungu.

[22] Urukiko rurasanga nanone ingingo ya 92 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, Rwanda Tea Trading Ltd ishingiraho ivuga ko Urukiko Rukuru rw'Ubucuruzi rutari kubara inyungu itakurikizwa muri uru rubanza, kuko usibye ko kuyikoresha ku ruhande rwa Rwanda Tea Trading Ltd kandi byemejwe ko ari yo itarujuje ibisabwa mu masezerano, ikaba itasaba ko yasonerwa kwishyura inyungu, kuko isesengura ry'iyi ngingo

4 Iyo ngingo igira iti: "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 bibigaragaza ukundi".

5 Inshingano zo kuriha indishyi z'akababaro zishingiye ku guhakana inshingano zivaho iyo bigaragara ko uruhande rwarenganye na rwo rutari gukora igisabwa.

ryumvikanisha ibitandukanye n'imyumvire y'ababuranira Rwanda Tea Trading Ltd nk'uko biza gusobanurwa mu bika bikurikira.

[23] Urukiko rurasanga icyo amasezerano ya Rwanda Tea Trading Ltd na GT Bank Ltd yari ashingiyeho (objet) ari amafaranga y'inguzanyo Banki yahaye Rwanda Tea Trading Ltd, aho kuba kubaka uruganda rw'icyayi, kandi n'iyi biza kuba ari ko bimeze, Urukiko rurasanga nta mpamvu ntarengwa itunguranye (force majeure) yaba yarabujije Rwanda Tea Trading Ltd gukomeza kurwubuka, kuko iyo mpamvu igomba kuba yujuje ibi bikurikira⁶: kuba ari impamvu koko ntarengwa kandi akaba nta wayihagarika (irresistible), ikaba idaturutse ku ruhande ruri mu masezerano (extérieure) kandi ikaba ari impamvu itunguranye (imprévisible).

[24] Rurasanga rero kuba MINECOFIN yarahagaritse isoko ryo kubaka uruganda kubera ko itishimiye uburyo ryakorwaga, bidahura n'ibiteganywa n'ingingo ya 92 y'Itegeko ryibukijwe haruguru ngo ibe yakwitwaza amakosa yayo yo kudakora isoko neza, ngo iyuririreho ivuga ko icyemezo cyafashwe na MINECOFIN ari impamvu ntarengwa itunguranye. Ibi bishimangirwa kandi n'inyandiko z'abahanga mu mategeko, aho bavuga ko icyo umuntu yashoboraga kwirinda, atacyitwaza nk'impamvu ntarengwa, ko ahubwo aba agomba kugikora n'ubwo byaba bimuhenze; bakanavuga ko nta mpamvu ntarengwa itunguranye ibaho ku bijyanye n'inshingano yo kwishyura amafaranga, kuko ufite iyo nshingano ashobora kuyishyura akoresheje umutungo we, kandi ko igihombo kitarengera ufite inshingano⁷.

[25] Ku byerekeranye n'ibyo ababuranira Rwanda Tea Trading Ltd bavuga ko GT Bank Ltd itubahirije ibiteganywa n'ingingo ya 70 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano⁸, kuko iyo ijya kuba ikunda ukuri kandi ifite ubushake bwo kwirinda kurenganya umukiliya wayo, kuko mu gihe yari imaze kumenya ko isoko Rwanda Tea Trading Ltd yafatiye inguzanyo rivuyeho itari kujya mu byo kubara inyungu, ahubwo yari kwakira ubwishyu bw'umwenda fatizo gusa, Urukiko rurasanga nabyo bitahabwa ishingiro, kuko GT Bank Ltd, imaze kubona ko isoko rihagaze, yasabye Rwanda Tea Trading Ltd, kuyisubiza amafaranga yayo, ibonye Rwanda Tea Trading Ltd idahise iyasubiza, itegereza itariki yari iteganyijwe mu masezerano, iyo tariki igeze itarishyurwa yohereza inyandiko z'integuza, nabwo Rwanda Tea Trading Ltd ntiyishyura, bituma ibona kugana inkiko. Urukiko rurasanga rero nta mikorere irimo uburiganya cyangwa amananza yaba yaranze GT Bank Ltd, bityo akaba nta mpamvu itari gukomeza kubara inyungu nk'uko zari ziteganyijwe mu masezerano, cyane cyane ko itanarebwagwa n'amasezerano yari hagati ya Rwanda Tea Trading Ltd na MINECOFIN, akaba nta n'uruhare yagize mw'ihagarikwa ry'uwo mushinga, wenda nko kuba yarimanye amafaranga nta mpamvu bigatuma Rwanda Tea Trading Ltd idashobora kubahiriza inshingano zayo mu masezerano yakoranye na Leta y'u Rwanda (MINECOFIN).

6 . Ph. MALAURIE, L. AYNES, Ph. STOFFEL-MUNCK, *Droit des obligations*, 7e édition, Paris, LGDJ, 2015, pp. 515-516.

⁷ (... , il n'existe pas de force majeure à l'égard des obligations de somme d'argent car le débiteur peut fournir une somme d'argent en prélevant sur ses biens, et l'insolabilité n'est pas libératoire, (Ph. MALAURIE, L. AYNES, Ph. STOFFEL-MUNCK, *Droit des obligations*, 7ème édition, Paris, L.G.D.J., 2015, p. 515.

8. Buri ruhande rufite inshingano yo kurangiza amasezerano nta buriganya kandi rukarangwa n'imikorere myiza yemerwa ku bagiranye amasezerano.

B. UBUJURIRE BWURIRIYE KU BUNDI BWATANZWE NA GT BANK LTD

1. Kumenya niba Rwanda Tea Trading Ltd n'abishingizi bayo bahatirwa kwishyura umwenda usigaye n'ingano yawo

[26] GT Bank Ltd isaba ko Rwanda Tea Trading Ltd n'abishingizi bayo bahatirwa kwishyura umwenda usigaye ungana 255.279.610 Frw wabazwe kugeza ku wa 17/01/2019 kuko amafaranga yemera angana na 594.052.834 Frw yo yamaze kuyishyura. Ivuga ko Urukiko Rukuru rw'Ubucuruzi rwabariye inyungu kuri 17.5 % nyamara rwaragombaga kongeraho 2% nk'uko amasezerano abiteganyaga.

[27] Kuri ubu bujurire bwa GT Bank Ltd, Rwanda Tea Trading Ltd ivuga ko 594.052.834 Frw yamaze kwishyurwa nk'uko biri mu irangizwa ry'urubanza ry'agateganyo, bakumva banki yarabonye amafaranga menshi, inyungu zikaba zabarwa kugeza ku wa 22/04/2016, kuko aribwo umushinga wo kubaka uruganda wahagaze.

UKO URUKIKO RUBIBONA

[28] Ku byerekeranye n'ibyo uburanira GT Bank Ltd avuga ko Urukiko Rukuru rw'Ubucuruzi rwabaze inyungu kuri 17.5% ariko ntirwongeraho 2% nk'uko amasezerano abiteganyaga, Urukiko rurasanga koko ingingo ya 3 y'amasezerano yo ku wa 16/10/2014, iteganyaga ko hejuru y'inyungu zavuzwe haruguru (17.95%) hiyongeraho 2% akurwa ku mafaranga yose arenze urugero rw'umwenda watanzwe. Urukiko rurasanga nanone mu gika cya 16 cy'urubanza rwajuririwe, Urukiko koko ntacyo rwavuze kuri 2% yavuzwe mu masezerano.

[29] Ku byerekeranye n'ingano y'umwenda Rwanda Tea Trading Ltd igomba kwishyura GT Bank Ltd, Urukiko rurasanga impande zombi zemeranya ko GT Bank Ltd yamaze kwishyurwa 594.052.834 Frw nk'uko byagaragajwe haruguru, ariko nk'uko GT Bank Ltd yabigaragaje mu iburanisha ryo ku wa 17/01/2019, Rwanda Tea Trading Ltd igomba kwishyura 255.279.610 Frw akubiyemo umwenda remezo wari usigaye, inyungu zawo n'ibihano by'ubukererwe kuko itigeze iyavuguruzwa, ahubwo yatsimbaraye ku mvugo y'uko nta nyungu zikwiye kubarwa kubera ko habaye impamvu ntarengwa itunguranye, no kuba ngo yarishyuye amafaranga menshi, ibyo Urukiko rukaba rutabishingiraho gutyo gusa kuko Rwanda Tea Trading Ltd itatanze ibimenyetso bivuguruzwa ingano y'umwenda n'inyungu zawo⁹.

C. Kumenya ishingiro ry'indishyi zisabwa

[30] GT Bank Ltd isaba Urukiko gutegeka Rwanda Tea Trading Ltd kuyishyura miliyoni imwe (1.000.000 Frw) y'igihembo cya Avoka kuri uru rwego kubera gukomeza kuyishyura mu manza nta mpamvu.

⁹ Ingingo 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'ubutegetswe iteganyaga ko: "Uvuga ko atagitegetswe gukora icyo yategekwe gukora cyagaragarijwe ibimenyetso agomba kugaragaza impamvuzakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda".

Me Rwagatare Janvier, uburanira Rwanda Tea Trading Ltd, avuga ko Urukiko rwazasuma ishingiro ry'izo ndishyi GT Bank Ltd isaba.

UKO URUKIKO RUBIBONA

[31] Urukiko rurasanga GT Bank Ltd yarashatse umunyamategeko uyiburanira kuri uru rwego, bikaba byumvikana ko yamuhaye ikiguzi kugira ngo ayikorere uyu murimo,

[32] Urukiko rurasanga ariko 1.000.000 Frw Banki isaba, itayatangira ibimenyetso, bityo ikaba ikwiye guhabwa 700.000 Frw y'igihembo cya Avoka, agenwe mu bushishozi bwarwo.

III. ICYEMEZO CY'URUKIKO

[33] Rwemeje ko ubujurire bwa Rwanda Tea Trading Ltd nta shingiro bufite;

[34] Rwemeje ko ubujurire bwuririye ku bundi bwa GT Bank Ltd bufite ishingiro;

[35] Rwemeje ko urubanza RCOMA 00393/2017/CHC/HCC-RCOMA00395/2017/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 05/01/2018 rwajuririwe ruhindutse ku byerekeranye n'ingano y'inguzanyo n'inyungu zayo Rwanda tea Trading Ltd igomba kwishyura GT Bank Ltd ;

[36] Rutegetse Rwanda Tea Trading Ltd kwishyura GT Bank Ltd amafaranga asigaye ku nguzanyo yayihaye hamwe n'inyungu zayo angana na 255.279.610 Frw;

[37] Rutegetse Rwanda Tea Trading Ltd guha GT Bank Ltd, 700.000 Frw y'igihembo cya Avoka kuri uru rwego;

[38] Rwemeje ko amagarama yatanzwe ahwanye n'imirimo yakozwe.