UJENGE RWANDA LTD v. MUBILIGI N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00042/2018/CA (Kanyange, P.J., Ngagi na Gakwaya, J.) 22 Ukwakira 2021]

Amasezerano – Amasezerano abanziriza aya burundu (contrat de reservation) – contrat de réservation ni amasezerano y'ubwoko bwihariye (sui generis) kandi magirirane (synallagmatique) aho ugurisha, nyuma yo kubona avansi, yemera kubikira ushaka kugura umutungo utimukanwa cyangwa igice cyawo, akaba rero atagomba gufatwa nk'isezeranyagurisha ry'imberame – Amasezerano abanziriza aya burundu (contrat de reservation) atandukanye n'isezeranyagurisha (promesse unilatérale).

Amasezerano – Gusesa amasezerano – Uberewemo umwenda afite inyungu zitaziguye (direct) kandi zagombwa (légitime) zo gusaba mu nkiko iteshwagaciro (nullité absolue) ry'amasezerano umurimo umwenda yagiranye n'abandi bantu mu gihe amubangamiye kugira ngo arengere izo nyungu ze.

Umutungo utimikana –Umutungo watanzweho ingwate – Umutungo utimukanwa umaze gushyirwa mu bugwate uba ubaye umutungo ushinganye – Uwatanze ingwate n'uwahawe ingwate ntibemerewe kugira ubundi burenganzira batanga kuri iyo ngwate mu gihe kivugwa mu masezerano y'ubugwate

Incamake y'ikibazo: Sosiyete Ujenge Rwanda Ltd ihagarariwe n'umuyobozi wayo, yitabaje ibigo by'imari bibiri, ari byo Ecobank Rwanda Plc na Shelter Afrique, kugira ngo ibashe kubona inguzanyo yo kubaka no kurangiza inyubako ijana na mirongo ine (140), maze ubwo butaka bwubatswemo za *appartements* butangwaho ingwate, impande zombi zumvikana ko hazajya hakorwa amasezerano y'agateganyo n'abifuza kugura amazu ariyo *contrat de reservation*, abari kugaragaza ubushake bwo kugura bari gukurikiza moderi y'amasezerano yumvikanyweho, agasinywa mbere yo kwa notaire, bagatanga avansi, nyuma hakazakorwa amasezerano ya burundu inguzanyo Ujenge yahawe na banki zimaze kwishyurwa.

Hari itsinda ry'abaguze ayo mazu mbere y'uko ubugwate bwandikishwa, hakaba hari n'itsinda ryaguze nyuma yuko ubugwate bwandikishwa.

Uwitwa Mubiligi Yvonne waguze imwe muri izo, ariko ayigura nyuma yuko ubugwate bwandikishwa, atanga avance, bumvikana igihe azahabwa imfunguzo, ariko nyuma avuga ko atazihawe, ibyo bituma ayirega mu Rukiko rw'Ubucuruzi rwa Nyarugenge avuga ko yanze yanze kubahiriza amasezerano, ngo imuhe inzu yaguze nk'uko bari babisezeranye, mu rubanza hagobokeshwamo Shelter Afrique na Ecobank Rwanda Plc. Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko ikirego cya Mubiligi gifite ishingiro, maze ahabwa inzu ye.

Bamwe mu baguze amazu mbere y'uko ubugwate bwandikishwa, bakoranye amasezerano y'ubugure ya burundu na Ujenge, bakaba basaba Urukiko gutesha agaciro ubwo bugwate, bashingira ku masezerano, bityo bagahabwa amazu baguze.

Ecobank Rwanda Plc nayo yajuririye Urukiko Rukuru rw'Ubucuruzi, ivuga ko Urukiko ku rwego rwa mbere rwemeje ko Mubiligi Yvonne ahabwa inzu rwirengagije ko yubatse ku butaka yari yarahaweho ingwate.

Urukiko Rukuru rw'Ubucuruzi rwemeje ko Mubiligi atagomba guhabwa inzu, ahubwo ko agomba gusubizwa Frw yari amaze kwishyura n'inyungu zayo, rwemeza kandi ko amasezerano y'ubugure ateshejwe agaciro.

Ujenge Rwanda Ltd ntiyishimiye icyo cyemezo, ijuririra Urukiko rw'Ikirenga, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko ubugure bwa Mubiligi budafite agaciro kubera ko ubutaka bwose bwubatseho *appartements* bwatanzweho ingwate mbere y'uko haba amasezerano y'ubugure, rwirengagije ko ubugure bwa *appartement* ye, Ecobank Rwanda Plc na Shelter Afrique zibwemera, Ujenge Rwanda Ltd kandi ivuga ko kuba Urukiko rwarirengagije ko inzira yo gukuraho ingwate (levée partielle de l'hypothèque) ku gice cya mbere (phase 1), igizwe n'amazu mirongo itatu n'abiri (32 *appartements*) harimo n'iya Mubiligi Yvonne yari hafi kurangira, ari ikimenyetso cy'uko Banki zemeraga ubugure.

Ku rundi ruhande, mu Rukiko rw'Ubucuruzi hatanzwe ibindi birego bitandukanye basaba ko Ujenge itegekwa kubaha inzu baguze, indishyi, amafaranga y'igihombo yabatesheje n'indishyi z'akababaro. Imanza zose zarahujwe, ziburanishwa mu rubanza rumwe. Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje nanone ko Ujenge Rwanda Ltd igomba guha abaguze amazu ariko ntibayahabwe mu gihe bumvikanye, inyungu ku mafaranga batanze, Urukiko Rukuru rw'Ubucuruzi narwo rwemeje ko amasezerano y'ubugwate yabaye hagati ya Ujenge Rwanda Ltd na Ecobank Rwanda Plc na Shelter Afrique agumyeho.

Nyuma y'ivugururwa ry'inzego z'ubucamanza, dosiye zose zoherejwe mu Rukiko rw'Ubujurire, zihuzwa n'urubanza RCOMAA 00042/2017/CS rw'ubujurire bwa Ujenge Rwanda Ltd na Mubiligi Yvonne.

Ujenge Rwanda Ltd ivuga ko abaguze amazu batigeze bayegurirwa kuko nta byangombwa bigeze bahabwa kuko bakoze amasezerano y'agateganyo aya burundu agakorwa nyuma, umuturage amaze kwishyura aribwo azakorerwa ihererekanyamutungo avuga ko habayeho gusa gukuraho ingwate ku mazu makeya, bityo ko amasezerano y'ubugure yakozwe hagati ya Ujenge Rwanda Ltd banki zitari zemerewe kuyatesha agaciro.

Ecobank ivuga ifite uburenganzira bwo kuregera amasezerano y'ubugure bw'amazu isaba ko akurwaho (annulation), kuko itayagizemo uruhare.

Ujenge Rwanda Ltd ivuga ko Ecobank Rwanda Plc idafite ububasha bwo gusaba ko amasezerano y'ubugure itagizemo uruhare aseswa kandi ko ibyo bidakwiye kugira ingaruka ku baguze.

Ujenge Rwanda Ltd ivuga kandi ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko ubugure budafite agaciro kubera ko ubutaka bwose bwubatseho *appartements* bwatanzweho ingwate mbere y'uko haba amasezerano y'ubugure, ariko ko rwirengagije ko ubugure bwa *appartement* ya Mubiligi Yvonne, Ecobank Rwanda Plc na Shelter Afrique zibwemera.

Ecobank Rwanda Plc ivuga ko ibyo Urukiko rwemeje ko amasezerano hagati ya Mubiligi Yvonne na Ujenge Rwanda Ltd ateshwa agaciro bikurikije amategeko kuko hateganyijwe cyangwa

"*contrat de réservation*" cyangwa amasezerano abanziriza ay'ubugure, ko Ujenge Rwanda Ltd yanyuranyije nabyo, ikaba itaranamenyesheje Mubiligi Yvonne ko umutungo uri mu bugwate kugira ngo amenye ko agomba kuzategereza ko umutungo uva mu bugwate mbere yo kuwegukana, ndetse, ko ibyo byose aribyo Urukiko rwahereyeho rutegeka ko amasezerano aseswa.

Incamake y'icyemezo: 1. contrat de réservation ni amasezerano y'ubwoko bwihariye (*sui generis*) kandi magirirane (*synallagmatique*) aho ugurisha, nyuma yo kubona avansi, yemera kubikira ushaka kugura umutungo utimukanwa cyangwa igice cyawo, akaba rero atagomba gufatwa nk'isezeranyagurisha ry'imberame

2. Uberewemo umwenda afite inyungu zitaziguye (direct) kandi zagombwa (légitime) zo gusaba mu nkiko iteshwagaciro (nullité absolue) ry'amasezerano umurimo umwenda yagiranye n'abandi bantu mu gihe amubangamiye kugira ngo arengere izo nyungu ze, bityo nubwo Banki nta ruhare yagize mu masezerano runaka, ifite uburenganzira bwo kuyatesha agaciro kuwo itayakoranye iyo ifite inyungu zitaziguye kandi zagombwa zo gusaba mu nkiko iteshwagaciro ry'amasezerano umurimo umwenda yagiranye n'abandi bantu mu gihe amubangamiye kugira ngo arengere izo nyungu ze.

5. Uwatanze ingwate n'uwayihawe ntibagira ubundi burenganzira batanga ku mutungo watanzweho ingwate bityo Banki zifite inyungu n'ububasha bwo gusaba iteshwagaciro ry'amasezerano y'ubugure y'umutungo utimukanwa uri mu bugwate yakozwe n'uwatanze ingwate kuko ibyo bigamije kurengera abagiranye amasezerano y'ubugwate.

6. Kuba Mubiligi Yvonne yararenganyijwe na Ujenge Rwanda Ltd kubera ko itamuhaye inzu yishyuye, agomba guhabwa indishyi z'ubukererwe zibarirwa kuri 18% buri mwaka mu gihe cy'imyaka ibiri, zingana na 45.000.000 Frwx18%x 2 ans= 16.200.000 Frw.

Ubujurire nta shingiro bufite.
Amagarama y'urubanza ahwanye n'ibyarukozwemo.

Amategeko yashingiweho:
Itegeko Nº 10/2019 ryo ku wa 14/5 /2019 ryerekeye ubugwate ku mutungo utimukanwa, ingingo ya 7,
Itegeko N° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 10 n'iya 111,
Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Sosiyete Ujenge Rwanda Ltd, ihagarariwe n'umuyobozi wayo Sebatigita Patrick, yagiranye amasezerano y'ubugure bwa *appartement* na Mubiligi Yvonne, ku wa 29/1/2014, ku giciro cya 50.000.000Frw, yari kugenda yishyurwa mu byiciro, bemeranya ko Mubiligi Yvonne

azahabwa imfunguzo zayo ku wa 30/3/2014, akaba yari amaze kwishyura 45.000.000Frw. Ku wa 29/9/2014, habaye amasezerano y'inyongera, ahindura ingingo ya 10 y'amasezerano ku birebana n'uko ibibazo byaramuka bivutse byakemurwa. Mubiligi Yvonne yaje kuregera Urukiko rw'Ubucuruzi rwa Nyarugenge, arega Ujenge Rwanda Ltd ko yanze kubahiriza amasezerano, ngo imuhe inzu yaguze nk'uko bari babisezeranye, mu rubanza hagobokeshwamo Shelter Afrique na Ecobank Rwanda Plc, bari baratanze inguzanyo yo kubaka amazu ya Palm Estate, bahabwa ubwo butaka ho ingwate, ari nabwo iya Mubiligi Yvonne yubatseho.

[2] Mu rubanza RCOM 1759/15/TC/NYGE rwo ku wa 24/3/2016, Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko ikirego cya Mubiligi Yvonne gifite ishingiro, ahabwa *appartement* n° 205, iri muri *étage* ya 2, *bloc* 2, muri Palm Estate Kinyinya /Kigali, ariko nawe ategekwa kubanza kwishyura 5.000.000Frw yari asigaye, rutegeka kandi ko ahabwa 1.000.000Frw y'igihembo cya Avoka, naho ku birego bigamije kwiregura bya Shelter Afrique na Ecobank Rwanda Plc, ruvuga ko nta shingiro bifite.

[3] Mubiligi Yvonne yajuririye Urukiko Rukuru rw'Ubucuruzi, avuga ko atishimiye kuba Urukiko rw'Ubucuruzi rwa Nyarugenge rwaramutegetse kubanza kwishyura 5.000.000Frw yari asigaye mbere yo guhabwa *appartement*, ko atahawe indishyi z'ubukererwe kandi atarahawe inzu ku gihe, ko kandi atahawe indishyi z'akababaro n'ikurikiranarubanza. Urubanza rwanditswe kuri RCOMA 00167/2016/CHC/HCC.

[4] Ecobank Rwanda Plc nayo yajuririye Urukiko Rukuru rw'Ubucuruzi, ivuga ko Urukiko ku rwego rwa mbere rwemeje ko Mubiligi Yvonne ahabwa inzu rwirengagije ko yubatse ku butaka yari yarahaweho ingwate, kandi ko rutayigeneye indishyi yari yasabye, ubujurire bwayo bwandikwa kuri RCOMA 000185/2018/HCC, bwombi burahuzwa, buburanishwa mu rubanza rumwe.

[5] Mu rubanza RCOMA 00167/2016/CHC/HCC- RCOMA 000185/2018/HCC rwo ku wa 28/2/2018, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa Mubiligi Yvonne n'ubwa Ecobank Rwanda Plc bufite ishingiro kuri bimwe, ko Mubiligi Yvonne atagomba guhabwa inzu, ahubwo ko agomba gusubizwa 45.000.000 Frw yari amaze kwishyura, ko amasezerano y'ubugure ateshejwe agaciro, ko Mubiligi Yvonne ahabwa na Ujenge Rwanda Ltd inyungu za 16.200.000 Frw, 2.000.000 Frw y'igihembo cya Avoka ku nzego zombi, ikanamusubiza 75.000 Frw na 50.000 Frw yatanzeho ingwate y'amagarama ku nzego zombi. Urwo Rukiko rwategetse kandi Ujenge Rwanda Ltd kwishyura Ecobank Rwanda Plc 2.000.000 Frw y'igihembo cya Avoka ku nzego zombi na 75.000 Frw y'ingwate y'amagarama.

[6] Ujenge Rwanda Ltd ntiyishimiye icyo cyemezo, ijuririra Urukiko rw'Ikirenga ku wa 27/3/2017, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko ubugure bwa Mubiligi Yvonne, budafite agaciro kubera ko ubutaka bwose bwubatseho *appartements* bwatanzweho ingwate mbere y'uko haba amasezerano y'ubugure, rwirengagije ko ubugure bwa *appartement* ye, Ecobank Rwanda Plc na Shelter Afrique zibwemera, ko zanahawe ingwate ku butaka bwose, ko rwirengagije kandi ko *convention de nantissement* yo mu mwaka wa 2012 yuzuzanya na *common terms agreement* yo mu mwaka wa 2013. Ubujurire bwanditswe kuri RCOMAA 00042/2017/CS.

[7] Ujenge Rwanda Ltd kandi ivuga ko kuba Urukiko rwarirengagije ko inzira yo gukuraho ingwate (levée partielle de l'hypothèque) ku gice cya mbere (phase 1), igizwe n'amazu mirongo

itatu n’abiri (32 *appartements*) harimo n’iya Mubiligi Yvonne yari hafi kurangira, ari ikimenyetso cy’uko Banki zemeraga ubugure, ko Urukiko rwategetse Ujenge Rwanda Ltd gutanga amafaranga ahwanye n’ikiguzi cyishyuwe kandi iyo ngingo atari yo Mubiligi Yvonne yaburanishije ku ikubitiro, runemeza iseswa ry’amasezerano kandi ataribyo rwaregewe, ko kandi rwabategetse kwishyura inyungu mbonezamusaruro n’indishyi z’akababaro mu buryo budakwiye, zirenga gato 15.000.00Frw.

[8] Mubiligi Yvonne yatanze ubujurire bwuririye ku bundi asaba ko yahabwa inzu yaguze na Ujenge Rwanda Ltd, ariyo *appartement* n° 25, iri kuri *2ème étage*, *block* 2, Palm Estate, iherereye i Kinyinya, mu Karere ka Gasabo, mu Mujyi wa Kigali, akanagenerwa indishyi. Mu rubanza hasabwe indishyi ziyuranye.

[9] Ku rundi ruhande, mu Rukiko rw’Ubucuruzi hatanzwe ibindi birego birebana n’ubugure bw’amazu yo muri Palm Estate Kinyinya/Kigali, aho Century Real Estate Ltd, Uwera Sandra, Kajangwe Alain, Nyirimihigo Jean-Marie Vianney, Benimana Béatrice, Musabe Edwige, Nyakira Brenda, Araire Alexandre, Kayitesi Viviane, bareze Ujenge Rwanda Ltd, Sebatigita Patrick, Manirakiza Katia na Ecobank Rwanda Plc, batambamira iyandikisha ry’ingwate, *House plot* n° 5313LC n° 3091/GAS/2011/ *Registration Number* 11860B/2011/ORG, yo ku wa 25/10/2012, basaba ko Ujenge Rwanda Ltd itegekwa kubaha inzu baguze, indishyi ku mafaranga batanze bagura, amafaranga y’igihombo yabatesheje, indishyi z’akababaro no gusubizwa amafaranga y’ingwate n’ay’igihembo cya Avoka batanze.

[10] Imanza zose zarahujwe, ziburanishwa mu rubanza rumwe, hagobokamo ku bushake Ruzindana Jérémie na Mukantagara Odette, naho Shelter Afrique igobokeshwa ku gahato, ariko ukugoboka ku bushake kwa Mukantagara Odette ntikwakirwa.

[11] Urukiko rw’Ubucuruzi rwa Nyarugenge rwaciye urubanza RCOM 00112/15/TC/NYG, RCOM 00131/15/TC/NYG, RCOM 00133/15/TC/NYG, RCOM 00137/15/TC/NYG, RCOM 00136/15/TC/NYG, RCOM 00129/15/TC/NYG, RCOM 00132/15/TC/NYG, RCOM 00135/15/TC/NYG na RCOM 00134/15/TC/NYG ku wa 30/9/2015, rwemeza ko amasezerano y’ubugwate: *House Plot* nº 5313/LC, n° 3091/GAS/2011 ifite *Registration* n° 11860B/2011/ORG yo ku wa 25/10/2012 n’ayo ku wa 2/12/2011 afite *Registration* n° 11860/2011/ORG, adakuweho, ahubwo ko amazu yaguzwe na Musabe Edwige, Nyirihimigo Jean-Marie Vianney, Kayitesi Viviane, Ruzindana Jérémie yishyuwe mbere y’uko ubugwate bwandikwa, atarebwa nabwo, bakaba bagomba kuyahabwa akabandikwaho, runemeza ko ayaguzwe na Araire Alexandre, Century Real Estate Ltd, Nyakira Brenda, Uwera Sandra, Kajangwe Alain na Benimana Béatrice yo akomeza kuba ingwate kuko yaguzwe ubugwate bwaratanzwe.

[12] Urukiko rw’Ubucuruzi rwa Nyarugenge rwemeje kandi ko mu itangwa ry’amazu yaguzwe hakwiye no kurebwa aho imirimo y’ubwubatsi yari igeze, maze abishyuye amafaranga macye bakishyura Ujenge Rwanda Ltd aburaho, n’abarengejeho amafaranga bagatanga menshi, Ujenge Rwanda Ltd ikabasubiza arengaho, ko ari muri urwo rwego Ruzindana Jérémie azishyura 1.750.000 Frw, Musabe Edwige azasubizwa 2.240.000 Frw, Kayitesi Viviane azishyura 7.000.000 Frw, abaguze amazu ari mu bugwate nabo mu gihe bemeye kuyafata uko ameze, Araire Alexandre azishyura 6.500.000 Frw, Century Real Estate Ltd izishyura 5.856.000 Frw, Nyakira Brenda azishyura 2.500.000 Frw, Uwera Sandra azishyura 1.750.000 Frw, Kajangwe Alain 20.000.000 Frw naho Benimana Béatrice 166.000 Frw.

[13] Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje nanone ko Ujenge Rwanda Ltd igomba guha abaguze amazu ariko ntibayahabwe mu gihe bumvikanye, inyungu ku mafaranga batanze mu buryo bukurikira: Century Real Estate Ltd 2.666.240 Fw, Musabe Edwige 4.032.000 Frw, Uwera Sandra 4.480.000 Frw, Kayitesi Viviane 3.600.000 Frw, Kajangwe Alain 1.600.000 Frw, Nyakira Brenda 6.400.000 Frw, Alaire Alexandre 5.600.000 Frw, Benimana Béatrice 6.441.600 Frw na Nyirimihigo Jean-Marie Vianney 6.720.000 Frw.

[14] Urwo Rukiko rwemeje ko Ujenge Rwanda Ltd igomba kwishyura Century Real Estate Ltd, Musabe Edwige, Uwera Sandra, Kayitesi Viviane, Kajangwe Alain, Nyakira Brenda, Alaire Alexandre, Benimana Béatrice, Ruzindana Jérémie, Nyirimihigo Jean-Marie Vianney, Ecobank Rwanda Ltd na Shelter Rwanda Afrique 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[15] Century Real Estate Ltd, Musabe Edwige, Uwera Sandra, Kayitesi Viviane, Kajangwe Alain, Nyakira Brenda, Alaire Alexandre, Benimana Béatrice, Ruzindana Jérémie na Nyirimihigo Jean-Marie Vianney, bose bajuririye Urukiko Rukuru rw'Ubucuruzi, ku mpamvu y'uko hari ubugwate butateshejwe agaciro kandi banki zari zemeye ubugure, kuba baremerewe guhabwa inzu zikiri mu bugwate hakaba hataranagaragajwe nomero z'inzu bagomba guhabwa, kandi ko batahawe indishyi z'akababaro n'iz'igihombo bagize.

[16] Ecobank Rwanda Plc nayo yajuriye ivuga ko mu birego byaregewe harimo no gutambamira iyandikisha ry'ingwate *House Plot* nº 5313/LC, n° 3091/GAS/2011 ifite *Registration* n° 1186 OB/2011/ORG yo ku wa 25/10/2012, mu mwanzuro w'inyongera haza kongerwamo ibirego bishya by'uko ubugwate nº 11860/2011/ORG bwo ku wa 2/12/2011 na n° 13843/2012/ORG bwo ku wa 13/12/2012 nabwo bukurwaho, ku wa 12/5/2015, Urukiko rwemeza ko ibirego bishya bitakiriwe, ariko ko mu gufata icyemezo, ubugwate bwo ku wa 2/12/2011, nabwo bwasuzumwe. Ivuga kandi ko rwemeye ukugoboka kwa Ruzindana Jérémie, kandi ntacyo urubanza rwari kumutwara, ko kandi rwasuzumye ikirego rudafitiye ububasha, kuko icyari cyaregewe ari ugukuraho icyemezo cy'iyandikisha ry'ingwate kandi kikaba kitari mu bubasha bw'inkiko z'ubucuruzi.

[17] Ujenge Rwanda Ltd nayo yajuriye ivuga ko itishimiye ko ubugwate bwagumyeho kandi banki zaremeraga ko ayo mazu agomba kugurishwa, ko itishimiye kandi inyungu n'indishyi yaciwe mu rubanza.

[18] Ubujurire bwose bwahurijwe hamwe mu rubanza RCOMA 00550/15/HCC, RCOMA 00550/15/HCC, RCOMA 00551/15/HCC, RCOMA 00552/15/HCC, RCOMA 00553/15/HCC, RCOMA 00554/15/HCC, RCOMA 00555/15/HCC, RCOMA 00560/15/HCC, RCOMA 00557/15/HCC, RCOMA 00558/15/HCC, RCOMA 00559/15/HCC, RCOMA 00561/15/HCC, RCOMA 00562/15/HCC, rucibwa ku wa 10/6/2016, Urukiko Rukuru rw'Ubucuruzi rwemeza ko ikirego cy'iyandikisha ry'ubugwate bw'ubutaka cyari mu bubasha bw'Urukiko, ko icyemezo cyafashwe nyuma ku kirego kitari cyakiriwe, gikuweho, ko icyemezo cyari cyafashwe ku bijyanye n'ubugure bwabaye hagati ya Ujenge Rwanda Ltd na Musabe Edwige, Kayitesi Viviane, Nyirimihigo Jean-Marie Vianney na Ruzindana Jérémie gikuweho kuko cyari gishingiye ku bugwate bwo ku wa 2/12/2011.

[19] Urukiko Rukuru rw'Ubucuruzi kandi rwemeje ko amasezerano y'ubugwate yabaye hagati ya Ujenge Rwanda Ltd na Ecobank Rwanda Plc na Shelter Afrique yo ku wa 25/10/2012, agumyeho, ko Sebatigita Patrick na Manirakiza Katia bashowe mu manza bitari ngombwa, bakaba bagomba guhabwa n'ababakuruye mu manza 1.000.000 Frw y'ikurikiranarubanza kuri buri wese. Urwo Rukiko rwemeje ko indishyi zari zahawe Century Real Estate Ltd, Musabe Edwige, Uwera Sandra, Kayitesi Viviane, Kajangwe Alain, Nyakira Brenda, Alaire Alexandre, Benimana Béatrice, Ruzindana Jérémie, Nyirimihigo Jean-Marie Vianney na Manirakiza Katia zose zikuweho.

[20] Urukiko Rukuru rw'Ubucuruzi rwemeje ko indishyi Ujenge Rwanda Ltd yategetswe guha Ecobank Rwanda Plc na Shelter Afrique ku rwego rwa mbere zigumyeho zikiyongeraho 1.000.0000 Frw y'igihembo cya Avoka n'ikurikiranarubanza byo mu bujurire, yose hamwe akaba 2.000.000 Frw, rwategetse Century Real Estate Ltd, Musabe Edwige, Uwera Sandra, Kayitesi Viviane, Kajangwe Alain, Nyakira Brenda, Alaire Alexandre, Benimana Béatrice, Ruzindana Jérémie wasimbuwe n'umugore we Murekatete Laetitia na Nyirimihigo Jean-Marie Vianney kwishyura Sebatigita Patrick na Manirakiza Katia 2.000.000Frw kuri buri wese, y'ikurikiranarubanza n'igihembo cya Avoka.

[21] Ujenge Rwanda Ltd ntiyishimiye icyemezo cy'Urukiko Rukuru rw'Ubucuruzi, ijuririra Urukiko rw'Ikirenga, ubujurire bwandikwa kuri RCOMAA 00028/2017/CS, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko ubugure butandukanye bwa *appartements* budafite agaciro, ko igurisha ritakurikije amategeko kuko Ecobank Rwanda Plc na Shelter Afrique zitatanze uburenganzira bwo kugurisha burundu, rwirengagije ko ubugure bwose, haba ubwabaye mbere ndetse n'ubwabaye nyuma y'uko ingwate itangwa, Ecobank Rwanda Plc na Shelter Afrique zibwemera, ko kandi rwategetse Ujenge Rwanda Ltd guha Ecobank Rwanda Plc indishyi z'ikurikiranarubanza n'igihembo cya Avoka kandi Ujenge yarakoze ibyari bikubiye mu masezerano bagiranye.

[22] Century Real Estate Ltd, Musabe Edwige, Uwera Sandra, Kayitesi Viviane, Kajangwe Alain, Nyakira Brenda, Alaire Alexandre, Benimana Béatrice, Nyirimihigo Jean-Marie Vianney nabo bajuriye bavuga ko Urukiko Rukuru rw'Ubucuruzi rwatesheje agaciro amasezerano y'ubugure ku baguze nyuma y'ubugwate, kandi banki zari zaremeye ko amazu agurishwa, ko rwavuze ko ubugwate bwo ku wa 25/10/2012, butashingirwaho kugira ngo abaguze bahabwe amazu yabo mu gihe hari ubundi bugwate bwabaye mbere yabwo butigeze buregerwa, rwirengagije ko izo ngwate nazo zashyikirijwe Urukiko rw'Ubucuruzi rwa Nyarugenge nk'ikirego cy'inyonyegera, ko kitari ikirego gishya, kuko nabo bari babonye ko izo ngwate ari zimwe, ndetse zifite nomero imwe.

[23] Bavuga kandi ko Urukiko Rukuru rw'Ubucuruzi rutasuzumye ikimenyetso gishya rwashyikirijwe aricyo kirebana n'ingwate Ecobank Rwanda Plc na Shelter Afrique yagwatirije ku wa 13/12/2012, ko rwakuyeho indishyi zijyanye n'amafaranga bishyuye, zari zaragenewe abaguze, ku mpamvu z'uko ubugure bwabo bwateshejwe agaciro, ariko ko basanga bakwiye kuzihabwa nk'uko Urukiko rw'Ubucuruzi rwari rwabiteganyije. Musabe Edwige, Kayitesi Viviane, Nyirimihigo Jean-Marie Vianney na Ruzindana Jérémie, uhagarariwe na Murekatete Laetitia, basaba ko Ujenge Rwanda Ltd yacibwa indishyi kuko itubahirije amasezerano.

[24] Ecobank Rwanda Plc yatanze ubujurire bwuririye ku bundi, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko ibyemezo byafatiwe Ruzindana Jérémie witabye Imana bigumaho, runategeka ko ubujurire bwe mu Rukiko Rukuru bwakiriwe, kandi yaritabye Imana urubanza rukiri mu Rukiko rw'Ubucuruzi, rutegeka ko asimburwa n'umudamu we, ko rwamufasheho icyemezo kandi atakiriho, ko Urukiko rw'Ikirenga rukwiye kubifataho icyemezo, inavuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko Urukiko rw'Ubucuruzi rwari rufite ububasha bwo gusuzuma agaciro k'icyemezo cy'ubuyobozi, nyamara biri mu bubasha bw'inkiko zisumbuye.

[25] Manirakiza Katia na Patrick Sebatigita nabo batanze ubujurire bwuririye ku bundi, bavuga ko aribo bahaye Ujenge Rwanda Ltd ubutaka yatanzeho ingwate, ariko ko bibazwa impamvu bakomeje kuzanwa mu manza kandi nta masezerano bafitanye n'abaguze.

[26] Nyuma y'ivugururwa ry'inzego z'ubucamanza, dosiye zose zoherejwe mu Rukiko rw'Ubujurire, zihuzwa n'urubanza RCOMAA 00042/2017/CS rw'ubujurire bwa Ujenge Rwanda Ltd na Mubiligi Yvonne, mu rubanza rumwe RCOMAA 00042/2018/CA.

[27] Urubanza rwahamagawe kuburanishwa mu Rukiko rw'Ubujurire bwa mbere ku wa 16/1/2019, ariko rugenda rwimurwa kuko ababuranyi bageragezaga inzira y'ubwumvikane, ariko birangira ubwumvikane bunaniranye, rwongera guhamagarwa ku wa 14/3/2021, uwo munsi ntirwaburanishwa kuko ababuranyi bamenyeshejwe urubanza bakerewe, iburanisha ryimurirwa ku wa 14/4/2021, Ujenge Rwanda Ltd, Sebatigita Patrick na Manirakiza Katia bahagarariwe na Me Niyondora Nsengiyumva, Ecobank Rwanda Plc ihagarariwe na Me Munyaneza Remy, Shelter Afrique ihagarariwe na Me Nizeyimana Boniface, Mubiligi Yvonne ahagarariwe na Me Barahira Mukazana na Me Barahira Eric, Century Real Estate Ltd, Musabe Edwige n'abandi bavuga ko baguze, bahagarariwe na Me Rwigamba Molly na Me NIyomubyeyi Flora. Uwo munsi urubanza rwaraburanishijwe ariko iburanisha ntiryarangira, ryimurirwa ku wa 22/4/2021, ababuranyi bose bunganiwe nka mbere, hari na Me Dushimirimana Reuben nawe uhagarariye abavuga ko baguze.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

A. Ubujurire ku rubanza RCOMA 0550/15/HCC, RCOMA 0551/15/HCC, RCOMA 0552/15/HCC, RCOMA 0553/15/HCC, RCOMA 0554/15/HCC, RCOMA 0555/15/HCC, RCOMA 0560/15/HCC, RCOMA 0557/15/HCC, RCOMA 0558/15/HCC, RCOMA 0559/15/HCC, RCOMA 0561/15/HCC, RCOMA 0562/15/HCC

A.1. Ubujurire bwa Ujenge Rwanda Ltd

a) Kumenya niba Ujenge Rwanda Ltd yaragurishije amazu yabyumvikanyeho na Ecobank Rwanda Plc na Shelter Afrique no kumenya niba amasezerano y'ubugure atari guteshwa agaciro

[28] Me Niyondora Nsengiyumva, uburanira Ujenge Rwanda Ltd, avuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije uko umushinga wari uteye, ko inzu zo muri Palm Estate zubatswe hagamijwe ko zigurishwa, ko rwanirengagije ko ubugure bwose, haba ubwabaye mbere cyangwa nyuma y'uko ingwate itangwa, Ecobank Rwanda Plc na Shelter Afrique zibwemera, nk'uko bigaragazwa n'amasezerano ya *convention de nantissement*, *agreement settlement* na *common term agreement*. Avuga ko mu masezerano bivugwa neza ko amafaranga y'ubugure n'ay'ubukode azakoreshwa n'uwatanze ingwate kandi ko igurisha ryari rifite 10% ya *source de financement*, ko

banki zaje mu mushinga waramaze gutangira, akaba atari zo zawutangije, kandi ko abaguze bari batangiye kwishyura buhoro buhoro, kugeza igihe inyubako zizarangirira. Akomeza avuga ko abaguze batigeze begurirwa inzu kuko nta byangombwa bigeze bahabwa, ko igice cya nyuma cy'ikiguzi cyagombaga kwishyurwa kuri *compte séquestre*, ari nabyo byakozwe kugira ngo habeho gukuraho ingwate (levée de l'hypothèque), ko banki zari zabyemeye, ayo akaba yari kuba ingwate (gage*)* cyangwa *nantissement* ku baberewemo umwenda (créanciers*)*.

[29] Me Niyondora Nsengiyumva akomeza avuga ko habayeho gukuraho ingwate ku mazu mirongo itatu n'abiri (32), bigaragaza ko banki zemeye ko agurishwa, kandi ko ubwo butaka bwagombaga kugabanywamo kabiri kugira ngo buhabwe UPI, ko hari UPI ebyiri, aho izo nzu 32 zifite UPI 6992, ikindi gice cyasigaye kikaba gifite UPI 6993, ko ibyo byose Ujenge Rwanda Ltd itari kubikora itabyumvikanyeho na banki.

[30] Me Niyondora Nsengiyumva avuga kandi ko mu mushinga w'ubwubatsi haba hagomba kugaragara uruhare rwa nyir'umushinga, ariyo mpamvu Ujenge Rwanda Ltd yanditse ibaruwa ku wa 10/2/2014, igaragaza ko nta ruhare yatanze kuri 10%, ariko ibwira banki ko igiye gushaka umushoramari uza mu mushinga akayatanga, Ecobank Rwanda Plc irabyemera naho Shelter Afrique ntiyabyemera, ahubwo ihita isesa amasezerano (résiliation*)*, ko iyo uwo mushoramari azamo, nawe yari kugabana nk'uko banki zari kugabana, akishyurwa hakurikijwe ayo yatanze, ko ibyo nabyo bigaragaza ko ayo mazu yagombaga kubakwa anagurishwa kandi ko banki zari zibizi.

[31] Me Niyondora Nsengiyumva avuga na none ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko amazu yagurishijwe hatagendewe kuri *modèle* y'amasezerano yumvikanyweho, ariko ko uburyo Ujenge Rwanda Ltd yakoresheje ntacyo buhindura ku masezerano kuko yari amasezerano y'agateganyo, ko itigeze ikora amasezerano ya burundu kuko yo yari gukorwa nyuma, ko mu masezerano handitse ko umuturage namara kwishyura aribwo azakorerwa ihererekanyamutungo, ko Ujenge Rwanda Ltd igurisha, itigeze ibwira abaturege ko uwo mutungo uri mu bugwate.

[32] Me Niyondora Nsengiyumva avuga ko uretse n'ibyo kandi, amasezerano yakozwe hagati ya Ujenge Rwanda Ltd n'abandi, banki zitari zemerewe kuyatesha agaciro kandi nta ruhare ziyafitemo hashingiwe ku ngingo ya 64 n'iya 113 y'Itegeko rigenga amasezerano, ko amasezerano agira agaciro gusa hagati y'abayagiranye, ko n'ubwo bari bayazi, batayagizemo uruhare. Avuga ko kuri ibyo hakwifashishwa urubanza RCAA 00045/2016/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/5/2019 n'urubanza RCAA 0011/07/CS rwaciwe ku wa 21/4/2015 n'urwo Rukiko, ko igihe amasezerano abangamiye umuntu kandi atarayagizemo uruhare, aregera ibye biyavugwamo, kandi ko abaguze batagombaga kurenganywa n'uruhande rufite ingufu ari rwo banki na Ujenge Rwanda Ltd. Avuga kandi ko hakwiye no kwitabwa ku ngingo ya 96 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, ko n'ubwo Ecobank Rwanda Plc iburanisha ingingo ya 7 y'Itegeko nº 10/2019 ryo ku wa 14/5/2019 rigenga ingwate ku mutungo utimukanwa ryo mu mwaka wa 2009, itigeze ikora amasezerano ivuga ko ibagurije ariko ko batemerewe kugurisha, ko no muri izo nzu mirongo itatu n'ebyiri (32), hari abaguzi bamwe bazitsindiye, abandi ntibazihabwa, hakaba hibazwa uburyo bavuga ko kuri bamwe ubugure bufite agaciro, ku bandi butagafite.

[33] Me Munyaneza Remy, uburanira Ecobank Rwanda Plc, avuga ko ibivugwa na Ujenge Rwanda Ltd ko banki zari zizi ko ayo mazu azagurishwa atari byo, ko iyo utanze umutungo ho ingwate uba usigaranye uburengazira bwo kuwubyaza umusaruro, ariko udashobora kuwugurisha. Avuga kandi ko uwakoze amasezerano y'agateganyo ategukana umutungo, ko udashobora kubona

uburenganizira ku mutungo amasezerano y'ubugwate agihari. Akomeza avuga ko bafite uburenganzira bwo kuregera amasezerano basaba ko akurwaho (annulation), ko n'ingingo ya 96 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, bayisobanura nabi kuko Ecobank Rwanda Plc itagize uruhare mu masezerano, naho ku birebana n'ibyo uburanira Ujenge Rwanda Ltd avuga ko abaturage ari igice cy'abanyantege nke, atari byo, ko ibyo bitakwitabwaho ngo hirengagizwe amasezerano. Avuga ko amasezerano y'ubugure atigeze abera imbere ya noteri, ko kandi n'iyo bajyayo igihe cyo kugura, noteri atari kubyemera kuko umutungo wari ukiri mu bugwate.

[34] Me Nizeyimana Boniface, uburanira Shelter Afrique, avuga ko ashingiye ku ngingo ya 7 y'Itegeko ryerekeye ubugwate ku mutungo utimukanwa, atemera amasezerano y'abaguze, ko hari *form* igaragaza uburyo amafaranga azajya yishyurwa ariko ko itakurikijwe, ko amasezerano uko yakwitwa kose, hakozwe ibitarumvikanyweho. Avuga ko hibazwa impamvu abaguze batigeze babaza niba amazu ari mu bugwate, ko na Ujenge Rwanda Ltd, nta makuru yigeze ibaha. Akomeza avuga ko amasezerano y'ubugure batigeze bayabona, ko bayaboneye mu Rukiko, ko bahaye Ujenge Rwanda Ltd 2.000.000 Usd, Ecobank Rwanda Plc nayo imuha 2.000.000 Usd, ko inzira zo gukuraho ingwate zari zatangiye mu mwaka wa 2015, Ujenge Rwanda Ltd itangira kuvuga iby'undi mushoramari izazana itaranishyura 10% yasabwaga, ko uyu mugabane wabaye imbogamizi kuko yasabaga ko bayongera andi madolari angana na miliyoni ebyiri (2.000.000 Usd).

[35] Me Rwigamba Molly avuga ko abaguze bishyuye amafaranga inzu zitarubakwa, ko ibyo ari byo byitwa *pre-sale*, hashingiwe ku ngingo ya 4 y'amasezerano y'ubugure, aho kuba *contrat de réservation*, kuko aha ho umuntu aba asaba kuzamufatira ikintu kandi bikaba atari ngombwa ko abanza kwishyura amafaranga. Akomeza avuga ko ingingo ya 5 ya *common term agreement*, *section* 5, agace ka 1, hagaragara ibyo Ujenge Rwanda Ltd yari gukora, hakanavugwa ibirebana n'ikoreshwa ry'ibyaguzwe, ko ibyagurishijwe mbere y'uko bubaka bingana na 10% kandi ko abaguze, baguze banki zibizi, nk'uko bigaragarira mu ngingo ya 5 ya *common term agreement*. Avuga ko pre-sale zivugwa mu masezerano ari izavuye mu bugure bw'ayo mazu kuko urebye igihe *Common Term Agreement* yasinyiwe, ku wa 5/4/2014, usanga yarabaye nyuma y'uko abaguzi bagura, ko amafaranga yari guhabwa Ujenge Rwanda Ltd nayo ikayashyira muri Ecobank Rwanda Plc.

UKO URUKIKO RUBIBONA

[36] Ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iteganya ibikurikira : Amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa mu buryo bukurikije amategeko. Agomba kubahirizwa nta buryarya.

[37] Ingingo ya 7 y'Itegeko Nº 10/2019 ryo ku wa 14/5 /2019 ryerekeye ubugwate ku mutungo utimukanwa igira iti: Umutungo utimukanwa umaze gushyirwa mu bugwate uba ubaye umutungo ushinganye. Uwatanze ingwate n'uwahawe ingwate ntibemerewe kugira ubundi burenganzira batanga ku ngwate ivugwa mu gika cya mbere c'iyi ngingo mu gihe kivugwa mu masezerano y'ubugwate'.

[38] Dosiye y'urubanza igaragaramo inyandiko yiswe *Convention de nantissement de créances* yo ku wa 12/12/2012, yabaye hagati ya Ujenge Rwanda Ltd, Ecobank Rwanda Plc na Shelter Afrique, mu ngingo yayo ya gatanu (5), agace ka mbere (1), *point* 2.i, hateganyijwe ko uwatanze ingwate agena uko ikiguzi cya *appartements* ijana na mirongo ine (140) z'umushinga, kizakoreshwa nyuma y'uko uwaguze amaze gusinyira '' *contrat de réservation''* imbere ya noteri[1], kandi ko hazakurikizwa *modèle* bumvikanyeho, iri ku mugereka.

[39] Dosiye igaragaza kandi ko *contrat de réservation* ivugwa muri *convention de nantissement de créances*, yasobanuwe nk'amasezerano asinywa n'uwaguze mu rwego rwo guhabwa inzu (appartement) mbere yo gusinya amasezerano y'ubugure 2[2].

[40] Imikirize y'urubanza rwajuririwe igaragaza ko mu gace ka mirongo itatu (30), Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko *modèle* yumvikanyweho n'impande zombi ari *modèle de contrat de réservation*, ko umutwe wayo wiswe *Contract of the Pre-sale for an apartment located* in Kinyinya-Kigali, ko ibyo byerekana ko hatari hagamijwe kugurisha burundu, ahubwo ko abaguzi bari kwemera gusinya *contrat de réservation* byari kwerekana ko bafite ubushake bwo kuzagura burundu, nk'uko bigaragara mu iriburiro (*préambule*) ry'iyo *modèle* y'amasezerano.

[41] Mu gace ka mirongo itatu na rimwe (31) k'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwakomeje rusobanura ko hashingiwe kuri ayo masezerano yari yumvikanyweho n'impande zombi, ko ikizakorwa ari *pre-sale contract*, bigaragara ko Shelter Afrique na Ecobank Rwanda Ltd zitatanze uburenganzira bwo kugurisha burundu, ko ari nacyo Ujenge Rwanda Ltd yagombaga kumenyesha abaguzi bayo, ikabereka ko hari ingwate zatanzwe kubera ko banki zatanze inguzanyo zo kubaka kandi ko bemerewe gukora *contrat de réservation* bakagenda bishyura buke buke kugeza igihe inzu zuzuriye, bakagirana amasezerano ya burundu, ko iyo biza kugenda neza impande zombi zikuzuza inshingano zazo, nta kibazo cyari kubaho, ariko ko Ujenge Rwanda Ltd itabyubahirije, ahubwo ikabeshya abaguzi ko nta bugwate buziriho kandi ko hazubakishwa gusa amafaranga bazishyura, ntibamenyeshwa ko hari izindi nguzanyo zatanzwe zizatuma umushinga urangira, ntiyanakoresha *modèle* bumvikanyeho, bigaragaza ko itashakaga kugaragariza abaguzi ko nta burenganzira busesuye bwo kugurisha ifite.

[42] Mu gace ka mirongo itatu na kabiri (32) k'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko ibivugwa na Ujenge Rwanda Ltd ko banki zari zatangiye inzira yo gukuraho ingwate (*levée partielle de l'hypothèque*), nabyo bitavuze ko banki zari zaremeye ko inzu zigurishwa burundu, ko byari gukorwa iyo umushinga ugenda neza, ko bitari kubuza ko ibyo bikorwa, abagiye basinya *contrat de réservation* bakagenda begukana ayo mazu kuko yari yo maherezo y'uwo mushinga iyo urangira neza, ko bitakozwe ngo bigere ku ndunduro, Ujenge Rwanda Ltd ikaba itabyitwaza nk'ikimenyetso kiyemerera kugurisha.

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1 L'article 5.1.2.i de la convention de nantissement des créances stipule que '' *La constituante affecte le prix de vente des cent quarente (140) appartements du Projet, soit les sommes dues par chaque acquéreur en principal et intérêts dès que ce dernier aura signé par-devant notaire un contrat de réservation dont un modèle demeurera annexé à l'accord''*.

2 L'article 1 de la convention de nantissement des créances définit le contrat de réservation comme étant la convention signée par l'acquéreur en vue de l'acquisition d'un appartement, avant la signature du contrat de vente''.

[43] Urukiko rw'Ubujurire rurasanga isesengura ry'amasezerano yiswe *convention de nantissement de créances* yo ku wa 12/12/2012, cyane cyane mu ngingo yayo ya gatanu (5), ryumvikanisha ko *appartements* zubakwa hari hagamijwe ko zigurishwa, ariko abantu bashaka kuzigura bagomba mbere na mbere kugira amasezerano ya *réservation* na Ujenge Rwanda Ltd, akorewe imbere ya Noteri kugira ngo babikirwe *appartements* bashaka, kandi bakaba bari bafite inshingano yo gutanga avansi (*acompte*) mbere y'uko bikorwa, ndetse ko bari kwegukana *appartements* nyuma yo gusinya amasezerano y'ubugure.

[44] Urukiko rw'Ubujurire rurasanga kandi hagendewe ku bisobanuro abagiranye amasezerano bahaye icyo bise *contrat de réservation*[3], nk'uko bigaragara muri *convention de nantissement de créances*, ari amasezerano ushaka kugura *appartement* asinya mbere y'uko habaho amasezerano y'ubugure.

[45] Urukiko rw'Ubujurire rurasanga *contrat de réservation,* ari amasezerano y'ubwoko bwihariye (*sui generis*), kandi amasezerano magirirane (*synallagmatique*), aho ugurisha, nyuma yo kubona avansi, yemera kubikira ushaka kugura umutungo utimukanwa cyangwa igice cyawo, akaba rero atagomba gufatwa nk'isezeranyagurisha ry'imberame[4] (*promesse unilatérale*).

[46] Nk'uko kandi bigaragara muri *Common Term Agreement* yo ku wa 3/5/2013, n'ubwo impande zombi zumvikanye ko 10% y'amafaranga azagenda ku mushinga wose azaturuka ku mafaranga azishyurwa n'abaziyemeza kugura *appartements,* Urukiko rw'Ubujurire rurasanga ibyo bitavuze ko Ujenge Rwanda Ltd yari ifite uburenganzira bwo kugurisha burundu izo *appartements* hashingiwe kuri *convention de nantissement de créances* , bityo ikaba yarakoze amakosa yo kugirana amasezerano y'ubugure n'abantu bavugwa muri uru rubanza.

[47] Uretse n'ibyo, Urukiko rw'Ubujurire rurasanga hashingiwe ku ngingo ya 5.1.2 y'amasezerano yiswe *Convention de nantissement de créances* yo ku wa 12/12/2012, Ujenge Rwanda Ltd itarakurikije moderi y'amasezerano ya *réservation* ivugwamo kandi yarumvikanyweho, kuko iyo ngingo isobanura ko abari kugaragaza ubushake bwo kugura bari gukurikiza moderi y'amasezerano yumvikanyweho, ndetse bakanayasinyira imbere ya noteri, ariko nk'uko na Ujenge Rwanda Ltd ibyemera, iyo moderi ntiyakurikijwe, ndetse n'andi amasezerano bakoze akaba atarakorewe imbere ya noteri, ibi bikaba bigaragaza ko mu kugurisha Ujenge Rwanda Ltd itubahirije ibyumvikanyweho.

[48] Urukiko rw'Ubujurire rurasanga kandi, Ujenge Rwanda Ltd itarigeze yubahiriza ibyumvikanyweho mu masezerano yiswe *Accord de compte-séquestre* yo ku wa 14/12/2012, ku byerekeye konti zigomba gushyirwaho amafaranga y'ikiguzi cy'amazu, kuko banki na Ujenge Rwanda Ltd bumvikanye ko ikiguzi ndetse n'ubwishyu bw'ubukode bizajya bishyirwa kuri

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3 *Le contrat de réservation désigne la convention signée par l'acquéreur en vue de l'acquisition d'un appartement, avant la signature du contrat de vente.*

4 *'' Le contrat préliminaire de réservation, contrat sui generis essentiellement synallagmatique, le vendeur s'engageant en contrepartie d'un dépôt de garantie à réserver à l'acheteur éventuel un immeuble ou une partie de l'immeuble, ne peut être identifié à la promesse unilatérale de vente (...)'', Civ. 3e, 27 oct. 1975 : D. 1976. 97, Gilles GOUBEAUX, Philippe Bihr et Xavier Henry, in mégacode, code civil, 2e édition, Dalloz, Paris, 1997-1998, P. 1210. '' Le contrat préliminaire à la vente d'immeuble à construire (....) n'est ni une promesse unilatérale de vente, ni une promesse synallagmatique de vente, ni un pacte de préférence'', idem, P.1216.*

comptes séquestres ziri muri Ecobank Rwanda Plc[5], ariko nk'uko bigaragara mu masezerano Ujenge Rwanda Ltd yagiranye n'abaguzi, bigaragara ko bumvikanye izindi konti zizashyirwaho ubwishyu, zitandukanye n'izumvikanyweho n'impande zombi (Ujenge Rwanda Ltd n'amabanki), ibi nabyo bikaba bigaragaza ko Ujenge Rwanda Ltd yakoze ibitarumvikanyweho mu kugurisha amazu, dore ko itanigeze ibwira abaguzi ko ubutaka izo nzu zubatseho buri mu bugwate.

[49] Ku birebana n'ibivugwa na Ujenge Rwanda Ltd ko amasezerano yagiranye n'abaguze *appartements* atari guteshwa agaciro bisabwe na banki kuko nta ruhare zayagizemo, Urukiko rw'Ubujurire rurasanga bitahabwa agaciro kuko uberewemo umwenda afite inyungu zitaziguye (direct) kandi zagombwa (légitime) zo gusaba mu nkiko iteshwagaciro (nullité absolue) ry'amasezerano umurimo umwenda yagiranye n'abandi bantu mu gihe amubangamiye kugira ngo arengere izo nyungu ze, bityo n'ubwo banki zitari mu bagiranye amasezerano y'ubugure bwa *appartements*, zifite ububasha bwo gusaba kuyatesha agaciro[6] kugira ngo zizigaruze mu mutungo wa Ujenge Rwanda Ltd, uzibereyemo umwenda, kandi umutungo wagurishijwe uri mu bugwate. Rurasanga kandi ingingo ya 7 y'Itegeko nº 10/2019 ryo ku wa 14/5/2019 ryavuzwe haruguru ibuza uwatanze ingwate n'uwahawe ingwate kugira ubundi burenganzira batanga ku mutungo watanzweho ingwate, mu gihe ubugwate bugomba kumara, yumvikanisha mu buryo buhagije ko banki zifite inyungu n'ububasha bwo gusaba iteshwagaciro ry'amasezerano y'ubugure y'inzu iri mu bugwate, yakozwe n'uwatanze ingwate kuko iyo ngingo ya 7 igamije kurengera abagiranye amasezerano y'ubugwate.

[50] Hashingiwe ku byasobanuwe haruguru, Urukiko rw'Ubujurire rurasanga Ujenge Rwanda Ltd yaragurishije amazu itabyumvikanyeho na banki, ahubwo nk'uko byagaragajwe haruguru, yagurishije burundu *appartements,* itarubahirije amasezerano yagiranye n'ayo ma banki yo kugirana gusa amasezerano ya *réservation* n'abantu bafite ubushake bwo kugura *appartements*. Rurasanga kandi nta makosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu gutesha agaciro amasezerano y'ubugure bw'amazu, nk'uko byari byasabwe na banki, kuko zifite inyungu zitaziguye kandi zagombwa zo kubisaba, bityo iyi ngingo y'ubujurire bwa Ujenge Rwanda Ltd ikaba nta shingiro ifite.

b) Kumenya niba Ujenge Rwanda Ltd yaragombaga gutegekwa gutanga amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka

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5 ''L*es prix de vente et les loyers sont payables dans l'un des comptes séquestres intitulés comme indiqués ci-après et portant respectivement les numéros 00110133808895201/Ujenge Rwanda Ltd ou le compte en dollars des Etats Unis et 0010133808895202/Frw Ujenge Palm Estate pour celui en Francs Rwandais (..).*

6 *'' Nullité absolue : Il s'agit ici des cas où la règle méconnue intéresse l'ordre public. On estime alors que la nullité peut être demandée par toute personne qui y trouve intérêt, c'est-à-dire qui peut retirer un avantage de nullité. Cela concerne donc toutes les parties au contrat, mais encore les tiers ; par exemple les créanciers d'un vendeur ont intérêt à la nullité de la vente pour voir le bien revenir dans le patrimoine du vendeur. L'idée est d'accroître ainsi les chances de voir quelqu'un demander la nullité pour fragiliser les contrats contraires à l'ordre public'', Alain Bénant, Droit des obligations, 14e édition, LGDJ, Montchrestien, 2014, P. 167, nº 208. '' La jurisprudence admet la recevabilité d'une action en nullité absolue exercée par un tiers, lorsque celui-ci invoque un droit contraire à celui qui résulte du contrat irrégulier'', Philippe Malaurie, Laurent Aynès et Philippe Stoffel-Munck, Droit des obligations, 7e édition, LGDJ, Montchrestien, 2015, P. 345, nº 702. ''Pour invoquer la nullité absolue d'un acte, cela suppose, autrement dit, d'être en mesure de justifier en premier lieu d'un intérêt légitime et en second lieu d'un intérêt direct''. Les créanciers peuvent justifier d'un intérêt à agir s'ils démontrent que l'acte conclu par le débiteur leur cause un préjudice'', A. Bamdé & J. Bourdoiseau, L'action en nullité (titularité de l'action et pouvoir du juge), in droit des contrats, Droit des obligations, Nullité, posted Sep.26, 2017.*

[51] Me Niyondora Nsengiyumva, uburanira Ujenge Rwanda Ltd, avuga ko yasobanuriye inkiko zabanje ko mu rwego rwo gushyira mu bikorwa amasezerano y'ubugure yavuzwe haruguru, yitabaje ibigo by'imari bibiri ari byo Ecobank Rwanda Plc na Shelter Afrique, kugira ngo ibashe kubona inguzanyo yo kubaka no kurangiza inyubako ijana na mirongo ine (140), ko mu masezerano yo ku wa 3/5/2013, bemeranyijwe inkomoko y'amafaranga yo kubaka amazu mu Mudugudu wa *la Palm Estate*, nk'uko bigaragara ku rupapuro rwa 64 rw'amasezerano yiswe *Common Terms Agreement*, harimo kugurisha amazu na mbere y'uko yubakwa (*pre-sales ou pré-*vente) ku rugero rwa 10% rwa *financement* yose y'umushinga, ko hamwe n'ibindi byose bagiye basobanura, byari bihagije kugira ngo Urukiko rwemeze ko Ujenge Rwanda Ltd itagomba gucibwa indishyi z'ikurikiranarubanza n'igihembo cya Avoka kuri Ecobank Rwanda Plc na Shelter Afrique, asaba ko izo ndishyi zose zakurwaho kuko yakoze ibikurikije amategeko n'amasezeno.

[52] Me Munyaneza Remy, uburanira Ecobank Rwanda Plc, avuga ko nta ndishyi zigeze zitangwa mu rubanza, uretse amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, kandi ko byo bikwiye kuko Ujenge Rwanda Ltd yakoze amakosa.

[53] Me Nizeyimana Boniface, uburanira Shelter Afrique, avuga ko indishyi Ujenge Rwanda Ltd yaciwe zifite ishingiro kuko yagurishije amazu itamenyesheje banki, ikagurisha ihinduye ibikubiye mu masezerano byari byemeranyijweho, ndetse ko abaguzi yaguze nabo yababeshye ko ayo mazu atari mu bugwate, yarangiza nk'aho ibyo bidahagije, ntibashe kurangiza ayo mazu, nyamara ifite amafaranga ya banki, ifite n'amafaranga y'abaguzi, ibyo akaba ari byo byateye abaguzi kurega, bityo ingaruka zose ziturutse kuri izo manza akaba ari Ujenge Rwanda Ltd ikwiye kuzirengera.

UKO URUKIKO RUBIBONA

[54] Ingingo ya 111, igika cya mbere (1), y'Itegeko n° 22/2018 ryo ku wa 24/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ibikurikira : Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo, kigamije kwishyuza ibyakoreshejwe mu rubanza''.

[55] Imikirize y'urubanza igaragaza ko mu gace ka mirongo ine na gatandatu (46) k'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko nyirabayazana w'urubanza ari Ujenge Rwanda Ltd, bityo ko ari yo igomba kwirengera ibyo Ecobank Rwanda Plc na Shelter Afrique batakaje ku rubanza, ko barushowemo nta mpamvu, ruvuga ko buri wese akwiye guhabwa 1.000.000 Frw y'ibyagiye ku rubanza mu bujurire.

[56] Urukiko rw'Ubujurire rurasanga nk'uko byagaragajwe haruguru, kuba Ujenge Rwanda Ltd yaratsinzwe urubanza, nta makosa Urukiko Rukuru rw'Ubucuruzi rwakoze ruyica amafaranga y'ibyakoreshejwe mu rubanza, bityo iyi mpamvu y'ubujurire yayo ikaba nta shingiro ifite.

A.2. Ubujurire bwa Century Real Estate Ltd, Musabe Edwige, Uwera Sandra, Kayitesi Viviane, Kajangwe Alain, Nyakira Brenda, Araire Alexandre, Benimana Béatrice na Nyirimihigo Jean-Marie Vianney

a) Kumenya niba hari ibimenyetso bishya byatanzwe mu Rukiko Rukuru rw'Ubucuruzi ntibisuzumwe

[57] Me Rwigamba Molly na Me Dushimimana Reuben, baburanira Century Real Estate Ltd, Musabe Edwige na bagenzi be, bavuga ko ingwate zose zandikishijwe zifitanye isano kuko ari umutungo umwe wandikishijwe n'abawutanze bakaba ari bamwe, ko kuba harabonetse ikimenyetso gishya kitigeze gitangwa mu Rukiko rw'Ubucuruzi rwa Nyarugenge kirebana n'ingwate Ecobank Rwanda Plc na Shelter Afrique zagwatirije ku wa 2/12/2011, yanditswe kuri n° 11860/2011/ORG n'iyo ku wa 13/12/2012, yanditswe kuri n° 13843/2012/ORG, bagasaba ko izo ngwate zombi ziteshwa agaciro, haba iya mbere n'iya kabiri, ariko Urukiko Rukuru rw'Ubucuruzi ntirwabisuzuma ngo rugire icyo rubivugaho, ko bikwiye gusuzumwa kuri uru rwego, kuko amabanki yimanye amakuru ku bijyanye n'ingwate zose bandikishije.

[58] Me Rwigamba Molly na Me Dushimimana Reuben bakomeza bavuga ko mu mwanzuro w'inyongera watanzwe ku rwego rwa mbere, haregerwaga *certificats d'enregistrement* z'ubugwate ebyiri, Urukiko rw'Ubucuruzi rwa Nyarugenge ruvuga ko zitakwakirwa kuko ari ibirego bishya, Urukiko Rukuru rw'Ubucuruzi narwo rubyemeza rutyo, ko iyo urwo Rukiko rutaza gufata izo *certificats d'enregistrement* y'ubugwate nk'ibirego bishya, nibura rwari kubifata nk'ibimenyetso bishya, kandi ko nabwo byari kugira ingaruka nk'izo Urukiko rw'Ubucuruzi rwa Nyarugenge rwari rwabonye. Bavuga ko n'ubwo batabijuririye mu Rukiko Rukuru rw'Ubucuruzi, Ecobank Rwanda Plc ari yo yari yajuriye, inenga icyemezo cy'Urukiko rw'Ubucuruzi rwa Nyarugenge cyasubiye kubyo rwari rwemeje mbere ko ibirego birebana n'ingwate yo ku wa 2/12/2011 n'iyo ku wa 13/12/2012 ari ibirego bishya, hanyuma nabo bagasaba Urukiko Rukuru rw'Ubucuruzi gufata izo *certificats d'enregistrement* z'ubugwate nk'ibimenyetso bishya, aho kubifata nk'ibirego bishya.

[59] Me Munyaneza Remy, uburanira Ecobank Rwanda Plc, avuga ko *certificats d'enregistrement* zasabirwaga guteshwa agaciro zitari gufatwa nk'ibimenyetso kuko ari zo zaregerwaga kandi ko kuba abazitanze batarajuriye, ntacyo Urukiko Rukuru rw'Ubucuruzi rwari kubasubiza kuko Urukiko rutiregera, ko rero impamvu itangwa n'abarega nta shingiro ifite, ko bitiranya ikimenyetso gishya n'ingingo nshya, kandi mu by'ukuri icyo abajuriye basabaga ku rwego rw'ubujurire rwa mbere ari uko mu byemezo baregeraga ku rwego rwa mbere hiyongeraho icyemezo cy'iyandikishwa ry'ingwate kivugwa muri iyi mpamvu, bakanasaba ko giteshwa agaciro. Avuga ko ibyo ari "ikirego gishya" atari "ikimenyetso gishya'' kandi ibirego bishya bikaba bitemewe ku rwego rw'ubujurire.

[60] Me Niyondora Nsengiyumva avuga ko nk'uko abareze babivuga, hari *certificats d'enregistrement* z'ingwate eshatu (3), zakozwe mu bihe bitandukanye bitewe n'uko umwenda wagiye utangwa, ko ikigomba kumvikana ari uko ingwate ari imwe gusa, ko Urukiko rutari kwanga gusuzuma ikimenyetso cyerekana ko ingwate yavuguruwe cyangwa ngo byitwe ko ari ikirego gishya. Avuga ko iyi ngingo ifite ishingiro kuko atari ikirego gishya cyatanzwe, ahubwo ko ari ikimenyetso cy'uko ingwate yavuguruwe.

UKO URUKIKO RUBIBONA

[61] Ingingo ya 10 y'Itegeko N° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: "Umucamanza aca urubanza ku cyasabwe cyose kandi kuri cyo cyonyine".

[62] Imikirize y'urubanza rujuririrwa igaragaza ko mu gace ka cumi n'icyenda (19), Urukiko Rukuru rw'Ubucuruzi mu gusuzuma ibirebana n'icyemezo cyafashwe n'Urukiko rwa mbere ku kirego rwari rwamaze kwemeza ko kitakiriwe, rwasobanuye ko ntaho itegeko ryigeze riteganya ko Urukiko rushobora gufata icyemezo mu rubanza ngo rufate ikindi kikivuguruza muri urwo rubanza, ko iyo hari utacyishimiye, hari inzira abinyuzamo kikongera gusuzumwa, kikaba cyanahindurwa, bityo ko ibyakozwe n'Urukiko ku rwego rwa mbere byo kuba rwari rwamaze gufata icyemezo ku nzitizi yo kutakira ikirego cyo gutesha agaciro ubugwate n° 11860/2011/ORG bwo ku wa 2/12/2011 na N° 13843/2012/ORG bwo ku wa 13/12/2012, hanyuma rukongera gufata icyemezo cyo kugisuzuma, nta gaciro byahabwa kuko binyuranyije n'ibiteganywa n'amategeko, ko rero icyemezo cyafashwe kuri ibyo birego giteshejwe agaciro.

[63] Imikirize y'urwo rubanza rujuririrwa igaragaza kandi ko mu gace ka makumyabiri (20), Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko ibyo Ujenge Rwanda Ltd ivuga ko ibirebana n'ubwo bujurire ntacyo byamarira Ecobank Rwanda Plc yabutanze, nta shingiro bifite, kuko mu bugwate bwakuwe mu biburanwa harimo ubwo ku wa 2/12/2011, kandi ko ari bwo bwakozwe mbere y'ubundi bwose, ko hari ababuranyi bagiye bagaragaza ko baguze mbere y'uko ubugwate butangwa, ibyo bigasuzumwa hashingiwe kuri ubwo bugwate bwakozwe mbere, ari nabwo Urukiko rwari rwashingiyeho ruvuga ko butabareba, ko bagomba guhabwa amazu yabo, ko ibyo nabyo bihita bita agaciro kuko ubugwate bashingiraho budasuzumwe, kuko Urukiko rutakwemeza ko baguze mbere cyangwa nyuma y'ubugwate butasuzumwe.

[64] Urukiko rw'Ubujurire rurasanga, hagendewe ku byagiye bigarukwaho mu rubanza rujuririrwa, ntaho Urukiko Rukuru rw'Ubucuruzi rwigeze rusuzuma ikibazo kijyanye no kumenya niba ibirego byatanzwe birebana na *certificats d'enregistrement* z'ingwate zatanzwe ku wa 2/12/2011 no ku wa 13/12/2012, ari ibirego bishya cyangwa ari ibimenyetso bishya byatanzwe, ahubwo icyasuzumwe cyari ukumenya agaciro kahabwa icyemezo cyafashwe nyuma y'aho Urukiko rw'Ubucuruzi rufashe icyemezo ku nzitizi yo kutakira ibirego by'inyongera byatanzwe n'abaguze barusaba kuvanaho iyandikisha ry'ingwate ryo ku wa 2/12/2011 n'iryo ku wa 13/12/2012, nyuma rukabigarukaho, rukavuga ko noneho rubisuzuma.

[65] Urukiko rw'Ubujurire rurasanga kandi ibugwa n'uhagarariye abavuga ko baguze ko buririye ku bujurire bwa Ecobank Rwanda Plc mu Rukiko Rukuru rw'Ubucuruzi, nabo bagasaba Urukiko gufata izo *certificats d'enregistrement* nk'ibimenyetso, aho gufatwa nk'ibirego bishya, nta shingiro bifite, kuko ahubwo icyo basabye ari ukudaha agaciro ubujurire bwa Ecobank Rwanda Plc, kuko ibyo ivuga ntacyo byayimarira bitewe n'uko Urukiko rw'Ubucuruzi rwa Nyarugenge rwazishingiyeho kuko zari zifitanye isano n'ikirego cyatanzwe mbere.

[66] Hashingiwe ku bimaze gusobanurwa, Urukiko rw'Ubujurire rurasanga nta bimenyetso bishya byatazwe mu Rukiko Rukuru rw'Ubucuruzi ngo urwo Rukiko rwirengagize kubisuzuma.

[67] Uretse n'ibyo, Urukiko rw'Ubujurire rurasanga mu gihe Urukiko rwaciye urubanza burundu (*décision définitive*), by'umwihariko muri iyi dosiye ku birebana n'icyemezo cyo kutakira ibirego bishya cyafashwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge, rutari rufite ububasha bwo gusubira ku cyemezo rwari rwafashe kuko habayeho kwivanaho urubanza ku birebana n'icyo kibazo (*dessaisissement*).

[68] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga nta bimenyetso bishya byatanzwe mu Rukiko Rukuru rw'Ubucuruzi ngo rwange kubisuzuma, bityo iyi mpamvu y'ubujurire ya Century Real Estate Ltd, Musabe Edwige na bagenzi be, nta shingiro ifite.

b) Kumenya niba ubugwate bwahawe Ecobank Rwanda Plc na Shelter Afrique bukwiye guteshwa agaciro kuko bwatanzwe amazu yaramaze kugurishwa bamwe mu baguze

[69] Me Rwigamba Molly, uburanira abavuga ko baguze, avuga ko mu baguze hari abaguze mbere y'uko ubugwate bwo ku wa 25/10/2012 bwandikishwa, bakaba basaba Urukiko gutesha agaciro ubwo bugwate, ko kuri Ruzindana Jérémie bashingira ku bwishyu yakoze, ku bandi batatu, ari bo Musabe Edwige, Kayitesi Viviane na Nyirimihigo Jean-Marie Vianney, bakaba bashingira ku masezerano kuko bishyuye mbere, ko kuba barishyuye mbere ari cyo cyatumye umucamanza abaha amazu. Avuga ko umucamanza ku rwego rwa mbere yanze ibirego by'imigereka birebana n'ubugwate bwakozwe nyuma yo kugura, ariko nyuma aza kubisuzuma, ko Urukiko Rukuru rw'Ubucuruzi rwaje gukuraho icyemezo cyabifashweho ku rwego rwa mbere kuko ibibazo bitakiriwe bitari gushingirwaho hagenwa ba nyiri amazu.

[70] Me Rwigamba Molly akomeza avuga ko mu rubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwavuze ko ubugwate bwaregewe bwo ku wa 25/10/2012, butashingirwaho ngo abaguze bahabwe amazu yabo mu gihe hari ubundi bugwate bwabaye mbere yabwo, butigeze buregerwa, rwirengagije ko izo ngwate nazo zashyikirijwe Urukiko rw'Ubucuruzi rwa Nyarugenge nk'ikirego cy'inyonyegera, kuko nabo bari babonye ko izo ngwate ari zimwe, ndetse zifite nomero imwe kubera ko imwe itasuzumwa indi idahari, ko icyari cyatanzwe atari ikirego gishya nk'uko abaregwaga bashakaga kubyumvikanisha, ahubwo ko cyari ikirego cy'inyongera cyatanzwe gifitanye isano n'ikirego cyatanzwe mbere, kandi ko cyagombaga gusuzumwa hashingiwe ku ngingo ya 109 y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Avuga ko iyo Urukiko Rukuru rw'Ubucuruzi rushingira ku bugwate bwaregewe rwari kugena uhabwa amazu hashingiwe ku gihe ubugure bwabereye, ko urwo Rukiko rwagarutse k'uwakwegukana amazu, nyamara rwarasheshe icyemezo. Avuga ko Urukiko rw'Ubujurire rukwiye kubona ko nta birego bishya byatanzwe, rukabona ko abaguze mbere bari bakwiye guhabwa amazu, kandi ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwakoze ikosa ryo kwita ibirego by'imigereka, ibirego bishya kandi byari bishamikiye ku kirego cyatanzwe.

[71] Me Rwigamba Molly avuga na none ko nta mpamvu yari ihari yo kujuririra icyemezo cy'Urukiko rw'Ubucuruzu kuko rwari rwatanze amazu, ariko ko aho Ecobank Rwanda Plc ijuririye, icyo kibazo cyagarutsweho, ko imyiregurire ye kuri icyo kibazo igaragara mu rubanza rujuririrwa mu gika cya cumi n'umunani (18).

[72] Me Dushimirimana Reuben, nawe uburanira Century Real Estate Ltd, Musabe Edwige na bagenzi be, avuga ko Urukiko Rukuru rw'Ubucuruzi rutagiye mu nzira Urukiko rw'Ubucuruzi rwari rwabonye, y'uko ubugwate bwabayeho baramaze kugura, ngo rubone ko bakwiye guhabwa imitungo yabo, ko rwagombaga kureba icyaregewe mu Rukiko rw'Ubucuruzi rwa Nyarugenge, rukabona ugomba kwegukana amazu, ko kandi rwasheshe icyemezo cy'Urukiko rw'Ubucuruzi rwa Nyarugenge, nyamara nta birego bishya byatanzwe, ko abarega n'abaregwa batahindutse kandi n'ibiregerwa bikaba bitarahindutse, ko kuba Urukiko rw'Ubucuruzi rwa Nyarugenge rwarasuzumye impinduka ku ngwate, bitavuze ko ari ibirego bishya, ahubwo ko ari ibimenyetso bifitanye isano n'ikirego cyatanzwe mbere kuko ingwate zagaragajwe nyuma zo mu mwaka wa

2012 zishamikiye ku ngwate yo muri 2011, ko inyandiko zatanzwe zigaragaza izindi ngwate zari zishingiye ku ngwate yari yagaragajwe mu kirego cyashyikirijwe Urukiko kuko zose ari ingwate ku mutungo umwe, nk'uko bigaragazwa n'amatariki atandukanye ubugwate, uko ari butatu, bwagiye bwandikirwaho.

[73] Me Niyondora Nsengiyumva, uburanira Ujenge Rwanda Ltd, Sebatigita Patrick na Manirakiza Katia, avuga ko inkiko zombi zakoze amakosa yo kuvuga ko habayeho ikirego gishya kandi kitarabayeho, ko bwa mbere habayeho ingwate ku wa 2/12/2011 kuri 361.302.560 Frw, nyuma ku wa 25/10/2012, habaho kuvugurura ingwate ku mafaranga 1.344.200.000, hajemo Shelter Afrique havugururwa amasezerano kuri 8.500.000 Usd, ko ikibazo cyabaye ari uko abarega batanze ikirego bagaragaza itariki ya *certificat de l'hypothèque* kuko batari bazi ko hari *hypothèque* ya mbere, kandi ko n'ubwo habaye amatariki atatu yo guhindura ingwate, umutungo watanzweho ingwate ari umwe, ko iyo Urukiko Rukuru rw'Ubucuruzi ruza kubona ko hari ingwate nyinshi, rukabona ko umutungo ari umwe, rwari kubona ko nta kirego gishya gihari, kuko nta ngwate eshatu zabayeho, ko ari imwe yagiye ivugururwa,hakaba hanibazwa niba iyo ngwate imwe yari guteshwa agaciro.

[74] Me Niyondora Nsengiyumva avuga na none ko ibirego by'inyongera byagombaga kwakirwa, ko impamvu Urukiko Rukuru rw'Ubucuruzi rwasheshe urubanza rw'Urukiko rw'Ubucuruzi rwa Nyarugenge ari uko rwemeraga ko ari ibirego bishya, n'ubwo atari ibirego bishya. Akomeza avuga ko nta nyungu zari zihari zo kujuririra Urukiko Rukuru rw'Ubucuruzi, ko n'ubwo icyemezo cy'Urukiko rw'Ubucuruzi rwa Nyarugenge nta kibazo cyari giteje Ujenge Rwanda Ltd, Ecobank Rwanda Plc imaze kujurira, Ujenge Rwanda Ltd yabonye umwanya wo kwiregura inenga icyemezo cyafashwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge.

[75] Me Munyaneza Remy, uburanira Ecobank Rwanda Plc, avuga ko hari ikibazo cyo kumenya niba hari ibirego bishya byatanzwe no kumenya niba Urukiko rw'Ubucuruzi rwari gushingira ku birego bitakiriwe, ko ibirebana n'ikirego gishya bitigeze bijuririrwa mu Rukiko Rukuru rw'Ubucuruzi, ko rutari kubisuzuma kandi rutarabiregewe, ko rwasuzumye gusa ibyo rwari rwashyikirijwe na Ecobank Rwanda Plc, kandi ko icyemezo cy'Urukiko rw'Ubucuruzi kitajuririrwa mu Rukiko rw'Ubujurire, ko Urukiko rw'Ubujurire rwazasuzuma impamvu z'ubujurire zatanzwe igihe cyo kujurira, kandi ko ibyerekeye ibirego bishya bitigeze bishyikirizwa Urukiko Rukuru rw'Ubucuruzi. Avuga kandi ko hakurikijwe igihe abantu baguriye, Ruzindana Jérémie ari we wenyine waguze mbere y'ubugwate, n'ubwo nawe batabyemera ijana kw'ijana (100%), ko Urukiko rwavuze ko abaguze mbere ari bane, ariko ko ubwishyu butafatwa nk'amasezerano, ko kuri ibyo hakwifashishwa urubanza RS/INJUST/RC 00010/2019/CS rwa Ida Muhikira.

[76] Me Nizeyimana Boniface, uburanira Shelter Afrique, avuga ko ikibazo cy'ibirego bishya kitasuzumwa mu Rukiko rw'Ubujurire kuko kitigeze kijuririrwa mu Rukiko Rukuru rw'Ubucuruzi, kandi ko gukuraho ingwate bitashoboka kuko amasezerano y'ubugure yabayeho ubugwate bwaramaze kwandikwa, ko kandi sheki atari amasezerano, ahubwo ari *moyen de paiement*.

UKO URUKIKO RUBIBONA

[77] Ingingo ya 10 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "Umucamanza aca urubanza ku cyasabwe cyose kandi kuri cyo cyonyine".

[78] Imikirize y'urubanza rujuririrwa igaragaza ko mu gace ka mirongo itatu na gatatu (33), ku kibazo cya Ruzindana Jérémie, Nyirimihigo Jean-Marie Vianney, Musabe Edwige na Kayitesi Viviane bemejwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge ko baguze mbere, Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko iki kibazo kitasuzumwa, ko bazabiregera kuko ubugwate bwashingiweho ku kibazo cyabo butagombaga gusuzumwa muri urwo rubanza.

[79] Mu gace ka makumyabiri (20) k'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko hari ababuranyi bagiye bagaragaza ko baguze mbere y'uko ubugwate butangwa, ibyo bigasuzumwa hashingiwe kuri ubwo bugwate bwakozwe mbere, ari nabwo Urukiko rw'Ubucuruzi rwa Nyarugenge rwashingiyeho ruvuga ko butabareba, ko bagomba guhabwa amazu yabo, ko ibyo nabyo biteshejwe agaciro mu gihe ubugwate bashingiraho budasuzumwe, ko Urukiko rutakwemeza ko baguze mbere cyangwa nyuma y'ubugwate butari mu kirego, butasuzumwe, ko ibyo bigira ingaruka ku kirego cya Musabe Edwige, Nyirimihigo Jean-Marie Vianney, Kayitesi Viviane na Ruzindana Jérémie kuko baburanye bavuga ko baguze mbere y'ubugwate bwo ku wa 2/12/2011 kandi ubwo bugwate budashobora guteshwa agaciro kuko butari mu kirego cyagombaga gusuzumwa, ko ibyo bari batsindiye bishingiye ku kuba ubugwate butabareba nta shingiro bifite kuko nabo mu myanzuro yabo y'ibanze baregeye ubugwate bwo ku wa 25/12/2012, kandi ubu bugwate baregeye bukaba butashingirwaho ngo bahabwe amazu yabo mu gihe hari ubugwate bundi bwabaye mbere butigeze buregerwa, ko ahubwo bakwiye gutanga ikindi kirego kijyanye nabwo, ibyo bavuga bikabona gusuzumwa.

[80] Nk'uko bigaragara mu rubanza rwaciwe ku rwego rwa mbere, kimwe n'abandi batanze amafaranga yo kugura *appartements*, Musabe Edwige, Nyirimihigo Jean-Marie Vianney, Kayitesi Viviane na Ruzindana Jérémie batanze ikirego basaba gutambamira iyandikishwa ry'ingwate *house plot* n°5313LC n° 3091/GAS/2011 ifite *Registration Number* 1186OB/2011/ORG yo ku wa 25/10/2012. Nyuma baza gutanga umwanzuro w'inyongera basaba ko n'iyandikishwa ry'ubugwate bwo ku wa 2/12/2011 n'ubwo ku wa 13/12/2012 rivaho.

[81] Dosiye y'urubanza igaragaza ko impamvu bivugwa ko Ruzindana Jérémie, Nyirimihigo Jean-Marie Vianney, Musabe Edwige na Kayitesi Viviane baguze mbere y'ubugwate, ari uko, Nyirimihigo Jean-Marie Vianney yishyuye amafaranga ku wa 25/7/2011, Musabe Edwige yishyura ku wa 29/7/2011, Kayitesi Viviane yishyura ku wa 23/11/2011, Ruzindana Jérémie yishyura ku wa 18/7/2011, nyamara ubugwate bwa mbere bwakozwe ku wa 2/12/2011. Ubu bugwate ni bwo bwaje kugibwaho impaka, Urukiko rw'Ubucuruzi rwemeza ko butaregewe, ko haregewe ubwo ku wa 25/10/2012, ariko ruza kubisubiraho, rubushingiraho mu gufata icyemezo, ari nacyo cyavanyweho n'Urukiko Rukuru rw'Ubucuruzi.

[82] Urukiko rw'Ubujurire rurasanga kugira ngo hemezwe ko hari abaguze mbere y'uko ubugwate bubaho (Ruzindana Jérémie, Nyirimihigo Jean-Marie Vianney, Musabe Edwige na Kayitesi Viviane), hakwiye gusuzumwa igihe baguriye ndetse n'igihe ubugwate bwabereyeho. Nyamara nk'uko byagaragajwe haruguru, ndetse nk'uko n'Urukiko Rukuru rw'Ubucuruzi rwabibonye, ubugwate bwaregewe ni ubwo ku wa 25/10/2012, ariko hakaba hari ubundi bwabaye mbere, ku wa 2/12/2011, ari nabwo bwakabaye bugenderwaho kugira ngo habe hakwemezwa ko

hari abaguze mbere n'abaguze nyuma, ariko nk'uko byagaragajwe, ubu bugwate ntibwigeze busuzumwa mu Rukiko Rukuru rw'Ubucuruzi, kuko butaregewe, ndetse n'icyemezo cyari cyafashwe mu Rukiko rw'Ubucuruzi rwa Nyarugenge kibushingiyeho, nyuma y'ikindi cyemezo cy'urwo Rukiko cyo kwanga kubwakira kuko ari ikirego gishya, cyakuweho n'Urukiko Rukuru rw'Ubucuruzi.

[83] Urukiko rw'Ubujurire rurasanga ku birebana na Ruzindana Jérémie, Nyirimihigo Jean-Marie Vianney, Musabe Edwige na Kayitesi Viviane, n'ubwo Urukiko Rukuru rw'Ubucuruzi rutari gusuzuma ikirego kirebana n'ubugwate bwo ku wa 2/12/2011, rutari kwemeza ko ibirego byabo bidakwiye gusuzumwa kubera ko bishingiye ku bugwate bwo ku wa 2/12/2011, kuko biragaraga muri dosiye ko bari batanze n'ikirego gisaba gutesha agaciro ubugwate bwo ku wa 25/10/2012.

[84] Urukiko rw'Ubujurire rurasanga rero kuba barasabaga gutesha agaciro ubugwate bwo ku wa 25/12/2012, Urukiko Rukuru rw'Ubucuruzi rwaragombaga gusuzuma icyo kirego, rukavuga niba gifite cyangwa kidafite ishingiro.

[85] Ku birebana n'ubugwate bwo ku wa 25/10/2012, Urukiko rw'Ubujurire rurasanga kuba Ruzindana Jérémie (wasimbuwe na Murekatete Laetitia), Nyirimihigo Jean-Marie Vianney, Musabe Edwige na Kayitesi Viviane baraguze mbere yabwo, bivuze ko ubwo bugwate butabareba (inopposabilité).

[86] Hashingiwe ku byasobanuwe haruguru, Urukiko rw'Ubujurire rurasanga iyi ngingo y'ubujurire irebana na Ruzindana Jérémie, Nyirimihigo Jean-Marie Vianney, Musabe Edwige na Kayitesi Viviane ifite ishingiro.

c) Kumenya niba Ecobank Rwanda Plc na Shelter Afrique zaremeye ko amazu agurishwa

[87] Mu myanzuro yabo, bahagarariwe na Me Rwigamba Molly, Century Real Estate Ltd, Uwera Sandra, Kajangwe Alain, Nyakira Brenda, Benimana Béatrice na ARAIRE Alexandre bavuga ko bagiranye na Ujenge Rwanda Ltd amasezerano y'ubugure mu bihe bitandukanye, baniyemeza kwishyura nk'uko bigaragazwa n'inyandiko z'ubwishyu bwabo, ko mu kugura izo nzu, Ujenge Rwanda Ltd yabahishe ko yatanzeho ingwate ikibanza zubatsemo, igiha Ecobank Rwanda Plc na Shelter Afrique, ko iyo myitwarire igaragaza ko yashatse kugaragaza ibintu uko bitari, bituma nabo bemera gukorana nayo amasezerano, ko rero kuba Ujenge Rwanda Ltd itaragaragarije abaguze ko amazu yubatse mu kibanza cyatanzweho ingwate, ahubwo ikabizeza ko nta ngwate yahatanzwe ndetse ko bazafashwa kubona ibyangombwa by'umutungo, bifatwa nk'igikorwa cy'uburiganya, bityo ko basaba ko bahabwa amazu baguze nk'uko bikubiye mu masezerano bagiranye na Ujenge Rwanda Ltd cyangwa se ayo masezerano agateshwa agaciro, bagasubizwa amafaranga bishyuye, inyungu mbonezamusaruro ndetse n'indishyi zinyuranye, Ujenge Rwanda Ltd ikirengera ingaruka zose kuko itabagaragarije ukuri mu gihe cy'ikorwa ry'amasezerano.

[88] Mu iburanisha, Me Rwigamba Molly avuga ko mu gace ka 5.2.1 k'amasezerano yiswe ''*Convention de nantissement de créances''* yo ku wa 12/12/2012, Ujenge Rwanda Ltd yumvikanye na banki ko amafaranga yose azava mu baguze, baba abaguze mbere cyangwa abaguze nyuma, azajya muri uwo mushinga, ko batigeze bavuga ''*abazagura*'', ngo bifatwe ko bavugaga ibishobora kuzaba mu gihe kizaza.

[89] Me Dushimirimana Reuben avuga ko Ecobank Rwanda Plc yari izi ko abaguzi bariho, ko rero ntacyo yakwitwaza ivuga ko amasezerano akwiye guseswa, ko idakwiye gufata ingwate yahawe nk'izindi ngwate zisanzwe kuko yatanze uburenganzira bwo kugurisha. Avuga ko ibibazo bihari ari bibiri, icyo gutesha agaciro ingwate n'icyo guhabwa amazu, ko rero ubwo bugwate bwavuyeho, igisigaye akaba ari ukwemeza ko abaguze amazu bayegukana.

[90] Me Niyondora Nsengiyumva, uburanira Ujenge Rwanda Ltd, avuga ko Ecobank Rwanda Plc idafite ububasha bwo gusaba ko amasezerano y'ubugure itagizemo uruhare aseswa kandi ko nta cyateganyijwe mu gihe umushinga waba utagenze uko byari biteganyijwe, ngo havugwe niba hazaseswa amasezerano y'ubugure cyangwa amasezerano y'ubugwate kandi ko ibyo bidakwiye kugira ingaruka ku baguze, kuko banki zemeye ingwate zirangije zinemera ko amazu azagurishwa abayaguze bakayegukana. Avuga ko hakwiye kurebwa uko izindi nkiko zagiye zicyemura icyo kibazo, ko harebwa kandi inyandiko Ecobank Rwanda Plc yagiye yandika, iyo ku wa 12/4/2014 n'iyo ku wa 14/4/2014, aho yavugagamo ibirebana n'icyiciro cya mbere na *compte séquestre*, kandi ko itari kuvugamo icyiciro cya mbere itavuzemo abaguzi.

[91] Me Niyondora Nsengiyumva akomeza avuga ko Urukiko Rukuru rw'Ubucuruzi rwatesheje agaciro amasezerano y'ubugure ruvuga ko Ujenge Rwanda Ltd itari ifite uburenganzira bwo kugurisha burundu, nyamara itarigeze igurisha burundu, ko kugurisha burundu byari gushingira kuri *levée partielle de l'hypothèque*, ko hari imanza umunani (8) zaciwe n'Urukiko Rukuru rw'Ubucuruzi, zemeje ko abaguze amazu bayahabwa, bikaba bitumvikana uburyo Urukiko rwakwemerera abantu bamwe guhabwa amazu abandi ntibabyemererwe, kandi inzu zubatse ku butaka bumwe, buri no mu bugwate bumwe. Avuga kandi ko ingwate zose zari zifite igihe ariko ko ubu zataye agaciro, nk'uko bigaragazwa n'ikimenyetso cyatanzwe n'Umubitsi w'impapuro mpamo ku wa 29/3/2021, ko igikwiye kurebwa ubu ari amasezerano y'ubugure no kwegukana amazu. Anavuga ko ingwate itangwa mu gihe kigenwe, ko iyo icyo gihe kirangiye, ubugwate buvaho, uretse iyo habayeho kongera kwandikisha ingwate.

[92] Me Munyaneza Remy avuga ko mu gace ka gatanu (5.1) ka *convention de nantissement de créances*, aho bavuze *use of pre-sale*, batashatse kuvuga amafaranga azava mu baguzi ahubwo ko ari *financing plan*, kandi ko amasezerano adashobora gusubira inyuma ngo agenge ibintu byabaye atarabaho. Ku byerekeye ibaruwa yo mu kwezi kwa kane, umwaka wa 2014, avuga ko ibyo ivuga birebana n'igihe cyo kuva 2013-2014, ko ibyabaye mbere ya 2013 byo bitarebwa nayo. Akomeza avuga ko ibiteganywa muri *convention de nantissement de créances* bigaragaza ko ibivugwa byose byari biteganyijwe ahazaza kandi ko *contrat de réservation* izasinyirwa imbere ya noteri, ariko ibyo bitigeze byubahirizwa, ko na Kajangwe Alain waguze mu mwaka wa 2014, atubahirije ibiteganywa na modeli yari ihari, ko mu gushaka abaguzi, Ujenge Rwanda Ltd yagombaga gukurikiza ibiteganywa mu masezerano. Akomeza avuga ko Ujenge Rwanda Ltd ivuga ko icyabaye ari *contrat de réservation*, ko itigeze igurisha burundu, ariko ko abaguze bo bavuga ko habayeho amasezerano y'ubugure (*contrat de vente*), nyamara bombi bagasaba ko ingwate iseswa, ko hakwiye kwibazwa impamvu basaba ko ingwate iseswa kandi Ujenge Rwanda Ltd ivuga ko amasezerano ya burundu yari kuzaba hamaze kubaho gukuraho igice cy'ingwate (*levée partielle de l'hypothèque*).

[93] Me Munyaneza Remy avuga kandi ko bitari ngombwa guteganya ko mu gihe hatabaye kwishyurwa, ingwate zizagurishwa kuko biteganyijwe mu itegeko ry'ingwate, naho ku birebana n'uko bizagenda mu gihe amasezerano azaba atubahirijwe, avuga ko biteganyijwe muri *accord de*

compte séquestre ku rupapuro rwa gatatu (3) n'urwa kane (4), no muri *convention de nantissement de créances,* ingingo ya 5.1.1, ko rero ingaruka zo kutishyura ari ukugurisha ingwate, ko Ujenge Rwanda Ltd yari ifite inshingano yo kumenyesha abaguzi ko baguze amazu ari mu bugwate, ariko ko yababwiye ko nta bugwate burimo, ikaba ishaka ko amasezerano aseswa, abaguze amazu bakayegukana, banki zigahomba, yo ikigendera nk'aho nta cyabaye. Avuga ko Ecobank Rwanda Plc yo ifite ingwate, ko niba abaguze bemera ko icyabaye ari *contrat de réservation,* byaguma bityo, bakazegukana amazu Ujenge Rwanda Ltd imaze kwishyura umwenda ifitiye banki.

[94] Me Munyaneza Remy asaba Urukiko kuzifashisha izindi manza zaciwe n'Urukiko rw'Ikirenga, aho kugura umutungo utimukanwa bigomba gukorwa mu buryo bukurikije amategeko (*solennité),* kandi ko hatazakurikizwa amategeko ya *condominium* kuko adahuye n'ikiburanwa ubu, ko muri uru rubanza ari ho havutse ikibazo cy'ingwate gusa, ko mu zindi manza inkiko zatanze amazu, ntizagira icyo zivuga ku ngwate, kandi ko hakwiye kurebwa urubanza rwaciwe nyuma, ko umuntu ahawe inzu nta kibanza, yayikoresha gusa ariko adashobora kuyiyandikishaho.

[95] Me Munyaneza Remy avuga kandi ko amafaranga y'abaguzi yari gushyirwa muri Ecobank Rwanda Plc agafatwa nk'ingwate, nk'uko byavuzwe muri *accord de compte séquestre,* urupapuro rwa gatatu (3), igika cya kane (4), ko kuba rero nta mafaranga yishyuwe hashingiwe kuri iyo ngingo, abaguzi batafatwa muri ubwo buryo kandi ko uburenganzira bw'ugurisha butarebwa uyu munsi, ko bwarebwa igihe yagurishaga, ko ingwate ivaho igihe umwenda wishyuwe, kandi uvugwa ubu ukaba utarishyurwa. Avuga ko mu gihe ubugwate bwaba butakiriho, haburanwa ibisigaye mu byaregewe, ariko ko ubugwate butavuyeho, ahubwo ko icyavuyeho ari iyandikisha ry'ingwate (enregistrement de l'hypothèque) kuko ingwate ikurwaho no kwishyura umwenda.

[96] Me Nizeyimana Boniface avuga ko banki nazo zikwiye kurenganurwa kuko amafaranga zikoresha ari ay'abaturage.

UKO URUKIKO RUBIBONA

[97] Ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 ryibukijwe haruguru, igira iti: "Amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa mu buryo bukurikije amategeko. Agomba kubahirizwa nta buryarya."

[98] Imikirize y'urubanza rujuririrwa igaragaza ko mu gace ka makumyabiri n'icyenda(29), Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko Century Real Estate Ltd, Uwera Sandra, Kajangwe Alain, Nyakira Brenda, Benimana Béatrice na ARAIRE Alexandre bose baguze nyuma y'uko ubugwate bwanditswe kandi ko babyemera, ko basaba gusa ko ubugwate bukurwaho kuko ababuhawe bari baremeye igurisha, ariko ko ibyo atari ko bimeze kuko mu masezerano, ntaho Ujenge Rwanda Ltd yahawe uburenganzira bwo kugurisha burundu, ko nk'uko bigaragara muri *convention de nantissement de créances,* impande zashyize umukono ku masezerano zemeranyije ko amazu agurishwa, ariko ko nk'uko bigaragara mu gace ka 5.1.2.1 k'ayo masezerano, icyemejwe ari uko abashaka kugura bazakora *contrat de réservation*, atari amasezerano y'ubugure (*contrat de vente).* Mu gace ka mirongo itatu (30) k'urubanza rujuririrwa, urwo Rukiko ruvuga ko ibyo bigaragaza ko hatari hagamijwe kugurisha burundu, ahubwo ko abaguzi bari kwemera gusinya *contrat de réservation* ari byo kwemera ko bafite ubushake bwo kuzagura. Mu gace ka mirongo

itatu na rimwe (31), rwakomeje ruvuga ko ibyo ari byo Ujenge Rwanda Ltd yagombaga kumenyesha abakiriya bayo, ko hari ingwate zatanzwe kubera amabanki yatanze inguzanyo yo kubaka, bagasinya *contrat de réservation*, bakagenda bishyura buhoro buhoro kugeza inzu zuzuye bakagirana amasezerano ya burundu.

[99] Urukiko rw'Ubujurire rurasanga, nk'uko byasobanuwe haruguru hasuzumwa ikibazo cya mbere kigize ubu bujurire, ku bujurire bwa Ujenge Rwanda Ltd, isesengura ry'amasezerano yiswe *convention de nantissement de créances* yo ku wa 12/12/2012, cyane cyane ku ngingo yayo ya gatanu (5), ryumvikanisha ko *appartements* zubakwa hari hagamijwe ko zigurishwa, ariko abantu bashaka kuzigura bagomba mbere na mbere kugirana amasezerano ya *réservation* na Ujenge Rwanda Ltd, akorewe imbere ya Noteri kugira ngo babikirwe *appartements* bashaka, kandi bakaba bari bafite ishingano yo gutanga avansi (*acompte*) mbere y'uko bikorwa, ndetse ko bari kwegukana *appartements* nyuma yo gusinya amasezerano y'ubugure.

[100] Urukiko rw'Ubujurire rurasanga ibyo atari byo Ujenge Rwanda Ltd yakoze, ahubwo yagurishije burundu (*contrat définitif de vente*) Century Real Estate Ltd, Uwera Sandra, Kajangwe Alain, Nyakira Brenda, Benimana Béatrice na ARAIRE Alexandre *appartements*, banki zitabimenyeshejwe, bityo ikaba itarubahirije amasezerano yagiranye na banki.

[101] Hashingiwe ku byasobanuwe haruguru, Urukiko rw'Ubujurire rurasanga banki zitari zizi ko Ujenge Rwanda Ltd yagurishije burundu *appartements*, bityo ibisabwa na Century Real Estate Ltd, Uwera Sandra, Kajangwe Alain, Nyakira Brenda, Benimana Béatrice na ARAIRE Alexandre ko amasezerano y'ubugure bagiranye na Ujenge Rwanda Ltd nyuma y'uko ingwate zandikwa, ahabwa agaciro, bakegukana *appartements*, bakaba batabihabwa, iyi ngingo y'ubujurire bwabo ikaba nta shingiro ifite.

d) Kumenya niba Urukiko Rukuru rw'Ubucuruzi rutaragombaga gukuraho inyungu, indishyi, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka byari byagenewe abaguze

[102] Me Rwigamba Molly, uburanira Century Real Estate Ltd, Musabe Edwige na bagenzi be, avuga ko Urukiko Rukuru rw'Ubucuruzi rwakuyeho indishyi zijyanye n'amafaranga bishyuye zari zaragenewe abaguze ku mpamvu y'uko ubugure bwabo bwateshejwe agaciro, ariko ko basanga bakwiye kuzihabwa nk'uko Urukiko rw'Ubucuruzi rwa Nyarugenge rwari rwabyemeje, ko kandi Ujenge Rwanda Ltd igomba kwishyura ayo mafaranga angana na 16% y'amafaranga buri wese yishyuye, ndetse n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kuri buri rwego angana na 1.000.000Frw kuri buri wese, ni ukuvuga 3.000.000Frw kuri buri wese, ku nzego zose harimo n'ayo mu Rukiko rw'Ubujurire. Asaba kandi ko amafaranga y'ikurikiranarubanza n'igihembo cya Avoka yaciwe abaguze mu Rukiko Rukuru rw'Ubucuruzi, yakurwaho yose kuko nta shingiro afite, ko Sebatigita Patrick na Manirakiza Katia aribo bagomba gucibwa ayo mafaranga n'indishyi kuko batanze umutungo utari uwabo, bawuha banki kandi bazi neza ko wagurishijwe, bakaba bakwiye kuzicibwa hamwe n'amabanki kubera ayo makosa yabo.

[103] Me Niyondora Nsengiyumva avuga ko nk'uko bigaragara mu masezerano, nta gushidikanya ko Ujenge Rwanda Ltd yagurishije ishingiye ku bwumvikane yagiranye na Ecobank Rwanda Plc na Shelter Afrique, ko mu nkiko zabanje yagiye isobanura ko mu rwego rwo gushyira mu bikorwa amasezerano y'ubugure yavuzwe haruguru, yitabaje ibigo by'imari bibiri, ari byo Ecobank Rwanda Plc na Shelter Afrique, kugira ngo ibashe kubona inguzanyo yo kubaka no

kurangiza inyubako ijana na mirongo ine (140), kuko amafaranga y'ikiguzi ubwayo atari ahagije kurangiza inyubako no gutunganya ibindi bikenerwa, ko icyo gihe banki zombi zari zizi neza ko itarabona uruhare rwayo, ko yagombaga gutanga 22% y'amafaranga yose yari akenewe mu mushinga, nyamara igira ikibazo cy'ubushobozi, ntiyabasha kuyabona kandi inyubako zimaze igihe zaratangiye kubakwa hashingiwe ku mafaranga akomoka kuyo abaguzi batanze (pre-sale).

[104] Me Niyondora Nsengiyumva akomeza avuga ko ku wa 10/2/2014, Ujenge Rwanda Ltd yagejeje icyifuzo kuri Ecobank Rwanda Plc na Shelter Afrique cyo kuzana undi mushoramari witwa T.LG Capital (London-based investiment Holding Company) kugira ngo atange uruhare rwayo, maze nawe agire *garantie* yo kugaruza amafaranga umushinga urangiye, ko banki zatanze igice cy'amafaranga y'inguzanyo zizi neza ko itarabona uruhare rwayo, aho ku wa 12/3/2014, ndetse no ku yandi matariki akurikira, Ecobank Rwanda Plc yanditse ibaruwa yemera icyifuzo cyayo, ku wa 14/4/2014, Shelter Afrique yandika yanga icyo cyifuzo, bituma ibura uko yatanga uruhare rwayo, ko ku buryo butunguranye, Shelter Afrique yahise ihagarika igice cy'inguzanyo kingana na 4.500.000 Usd kuri 6.500.000 Usd yari yiyemeje gutanga bituma umushinga udakomeza, uretse ko *appartements* zari zigeze ku kigero kirenga 89%, bikaba bigaragaza ubushake yari ifite.

UKO URUKIKO RUBIBONA

[105] Imikirize y'urubanza rujuririrwa igaragaza ko mu gace ka mirongo itatu n'icyenda (39), Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko inyungu za 16% zari zahawe abaguze kubera ko bahawe amazu, bahabwa n'inyungu zijyanye n'igihombo bagize mu gihe bamaze batayahabwa, ko kuva mu bujurire byahindutse hakemezwa ko amazu atari ayabo kuko bayaguze ari mu bugwate, rusanga n'inyungu bari bahawe zijyanye nayo zigomba kuvaho, ko babonye ari ngombwa bazakurikirana Ujenge Rwanda Ltd ku mafaranga yabo bayihaye kuko muri urwo Rukiko batigeze babisaba. Mu gace ka mirongo ine (40) karwo, urwo Rukiko rwasobanuye ko abaguze, ibyo bari basabye mu bujurire, nta na kimwe batsindiye, bityo ko n'indishyi bari bahawe z'ikurikiranarubanza no guhemba Avoka ku rwego rwa mbere, zikuweho kuko badatsinze urubanza, ko n'izo basabye mu bujurire zitakwirirwa zisuzumwa kuko *badatsinze.*

[106] Urukiko rw'Ubujurire rurasanga nk'uko bimaze kugaragazwa mu gace kabanziriza aka, Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko kuba amazu atari ay'abavuga ko baguze kuko bayaguze asanzwe ari mu bugwate, nta mpamvu yo kuba bagenerwa inyungu ndetse n'amafaranga y'ikurikiranarubanza kuko batayatsindiye.

[107] Urukiko rw'Ubujurire rurasanga rero Urukiko Rukuru rw'Ubucuruzi rutari gutegeka ko inyungu, indishyi, amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka byatanzwe ku rwego rwa mbere byagumaho mu gihe icyo byari bishingiyeho cyo kuba bagomba guhabwa amazu bavuga ko baguze, cyari kimaze gukurwaho no guteshwa agaciro, bityo iyi ngingo y'ubujurire y'abaguze nta shingiro ifite.

e) Kumenya niba abavuga ko baguze na Ujenge Rwanda Ltd bakwiye indishyi basaba

[108] Ku birebana na Musabe Edwige, Kayitesi Viviane, Nyirimihigo Jean-Marie Vianney na Murekatete Laetitia (wasimbuye Ruzindana Jérémie), Me Rwigamba Molly avuga ko kuba Ujenge Rwanda Ltd yitwaza ko kudatanga amazu atari yo byaturutseho, ari ukwirengagiza ko mu gihe

yagurishaga amazu itigeze yumvikana n’aba ko kugira ngo amazu baguze azarangize kubakwa, Shelter Afrique izabanza gutanga amafranga yo kuyarangiza. Avuga ko izo nzu yazishyize mu bugwate nyuma y'ubugure bwabo, ko ibyo bituma Ujenge Rwanda Ltd ari yo igomba gucibwa indishyi zishingiye ku kuba itarubahirije amasezerano. Asaba ko bahabwa ibikurikira, bibazwe kuva igihe bishyuriye amafaranga y'inzu kugeza igihe urubanza ruzaburanishirizwa burundu:

-Kuri Musabe Edwige: -Inyungu z'amafaranga yishyuye zingana na 25.200.000 Frw*16%*10 (years) = 40.032.000 Frw - Igihombo yatejwe kingana na 800 Usd *12= 9.600 Usd.

-Kuri Kayitesi Viviane: - Inyungu z'amafaranga yishyuye zingana na 21.000.000 Frw*16%*10 (years) = 30.360.000 Frw - Igihombo yatejwe kingana na 1.000 Usd ku kwezi *12= 12.000 Usd. -Kuri Nyirimihigo Jean-Marie Vianney: - Inyungu z'amafaranga yishyuye *apartments* 2 zingana na 42.000.000 Frw*16%*10 (years) = 60.720.000 Frw - Igihombo yatejwe kingana na 1.000 Usd *12*2= 24.000 Usd. -Kuri Murekatete Laetitia: - Inyungu z'amafaranga yishyuye *apartment* zingana na 28.000.000 Frw*16%*9 (years) = 40.480.000 Frw - Igihombo yatejwe kingana na 1.000 Usd *12= 12.000 Usd.

[109] Bose basaba indishyi z'akababaro zingana na 2.000.000 Frw, igihembo cya Avoka kingana na 1.500.000 Frw n’amafranga y'amagarama bagiye bishyura mu nkiko angana na 225.000 Frw, kuri buri wese.

[110] Me Rwigamba Molly avuga ko hashingiwe ku biteganywa mu ngingo ya 135 y'Itegeko rigenga amasezerano, mu nyungu z'uwahawe isezeranya harimo n'inyungu yari itegerejwe, ari yo nyungu yo kubona urwunguko ruturuka ku masezerano nk'uko yayiteganyaga iyo amasezerano aza kubahirizwa, bityo ko basaba Urukiko gutegeka Ujenge Rwanda Ltd kwishyura abaguze inyungu n'indishyi zibazwe kuva igihe bishyuriye amafaranga kugeza igihe urubanza ruzacibwa burundu muri ubu buryo:

-Kuri Nyakira Brenda: -Inyungu z'amafaranga yishyuye zingana na 40.000.000 Frw*16%*9 (years)= 57.600.000 Frw - Igihombo yatejwe kingana na 500 Usd *12= 6.000 Usd/ ku mafaranga yateganyaga gukura kuri iyo nzu ku mwaka.

-Kuri Kajangwe Alain: - Inyungu z'amafaranga yishyuye zingana na 10.000.000 Frw*16%*9 (years) = 14.400.000 Frw - Igihombo yatejwe kingana na 500 Usd ku kwezi *12= 6.000 Usd/ ku mwaka.

-Kuri Benimana Béatrice: - Inyungu z'amafaranga yishyuye zingana na 40.260.000 Frw*16%*8 (years) = 51.532.800 Frw - Igihombo yatejwe kingana na 1.500 Usd *12= 18.000 Usd - Amafaranga y'indege yategaga ava mu bufaransa aza gukurikirana ikibazo cy'inzu.

-Kuri ARAIRE Alexandre: - Inyungu z'amafaranga yishyuye Ujenge Rwanda Ltd zingana na 35.000.000 Frw*16%*8 (years) = 44.800.000 Frw - Igihombo yatejwe kingana na 1.000 Usd *12= 12.000 Usd.

-Kuri Uwera Sandra: - Inyungu z'amafaranga yishyuye Ujenge Rwanda Ltd zingana na 28.000.000 Frw*16%*9 (years)= 40.320.000 Frw - Igihombo yatejwe ku mafaranga yakabaye akura mu bukode kingana na 1.000 Usd*12= 12.000 Usd.

-Kuri Century Real Estate Ltd: - Inyungu z'amafaranga yishyuye Ujenge Rwanda Ltd zingana na 16.664.000 Frw*16%*8 (years)= 21.329.920 Frw - Igihombo yatejwe kingana na 1.000 Usd *12= 12.000 Usd.

[111] Bose basaba ko bahabwa indishyi z'akababaro zingana na 2.000.000 Frw, igihembo cya Avoka kingana na 1.500.000 Frw, amafaranga y'amagarama yagiye yishyura mu nkiko angana na 225.000 Frw, kuri buri wese.

[112] Me Dushimimana Reuben avuga ko indishyi zari zagenwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge zikaza kuvanwaho n'Urukiko Rukuru rw'Ubucuruzi kuko ikirego cy'iremezo cyari cyavanyweho, zagumaho, hakiyongereyeho indishyi zibazwe ukurikije aho igihe kigeze nk'uko biri mu mbonerahamwe bagaragaje. Avuga ko izo ndishyi zisabwa Ujenge Rwanda Ltd, Sebatigita Patrick na Manirakiza Katia, ariko ko mu gihe ubutaka bwaba butakiri mu bugwate, banki zafatanya na Ujenge Rwanda Ltd kwishyura indishyi. Avuga kandi ko gusaba indishyi Urukiko rw'Ubucuruzi rwa Nyarugenge rwari rwagennye ari impamvu y'ubujurire kuko byagarutsweho mu gace ka mirongo itatu n'icyenda (39) k'urubanza rujuririrwa.

[113] Me Niyondora Nsengiyumva avuga ko indishyi zarebwa mu buryo bubiri, ko icya mbere ari uko Ujenge Rwanda Ltd itigeze ihakana uburenganzira bw'abaguzi, ko kandi imbogamizi zabayeho kugira ngo abaguzi badahabwa amazu zaturutse kuri banki, ko mu gihe Urukiko rwasanga abaguze bakwiye guhabwa amazu, indishyi zatangwa na banki kuko ari zo zananije ishyirwa mu bikorwa ry'umushinga, ko abaguze amazu bagombaga kuyegukana ari uko bamaze kwishyura. Avuga ko mu kugena indishyi, Urukiko rwazareba niba abazisaba Ujenge Rwanda Ltd bagaragaza amakosa yakoze ku buryo yazicibwa, kandi ko Manirakiza Katia na Sebatigita Patrick nta huriro bafitanye n'abaguzi ku buryo bacibwa indishyi.

[114] Me Niyondora Nsengiyumva avuga kandi ko kugira ngo abanyamigabane bareganwe na sosiyete hari ibigomba kuba byuzuye biteganywa n'amategeko, ko ibyo Urukiko rwabifasheho umwanzuro runagenera Manirakiza Katia na Sebatigita Patrick indishyi zo gushorwa mu manza ku maherere, kandi ko ababarega batagaragaza amakosa bakoze yatuma bazanwa mu rubanza, ko ahubwo bakwiye kugenerwa indishyi zo gusiragizwa mu manza kuri uru rwego.

[115] Me Munyaneza Remy avuga ko nta ndishyi Ecobank Rwanda Plc ikwiye gusabwa kuko nta makosa yakoreye abazisaba, ko bajya kugura babwiwe ko nta bugwate buri ku mutungo. Avuga ko ntacyo yavuga ku kirego cy'indishyi kuko ari ikirego gishya gitangiwe mu iburanisha muri uru Rukiko, ko haba mu nkiko zibanza, haba no mu myanzuro ntaho Ecobank Rwanda Plc yigeze isabwa indishyi.

[116] Me Nizeyimana Boniface avuga ko ntacyo yavuga ku kirego cy'indishyi kuko ikigo ahagarariye kitigeze kiziregwa.

UKO URUKIKO RUBIBONA

[117] Ingingo ya 111 y'Itegeko n°22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ''Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza''.

[118] Ingingo ya 81 y'Itegeko nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko '' Kwica amasezerano yose bitanga uburenganzira ku ndishyi z'akababaro zishingiye ku nshingano zo gukora igisabwa zitararangira. Kwica igice cy'amasezerano bitanga uburenganzira ku ndishyi z'akababaro zishingiye gusa ku gice cy'ishingano zisigaye zo gukora igisabwa''.

[119] Ingingo ya 137 y'Itegeko n° 45/2011 ryo ku wa 25/11/2011 ryavuzwe haruguru iteganya ko ''Uruhande rwarenganyijwe rufite uburenganzira bwo kubona indishyi zitanzwe n'urundi ruhande rutubuharijwe ibisabwa mu masezerano keretse iyo ikirego kigamije kubona indishyi cyahagaritswe cyangwa cyavuyeho''.

a) Kuri Murekatete Laetitia (wasimbuye Ruzindana Jérémie), Nyirimihigo Jean-Marie Vianney, Musabe Edwige na Kayitesi Viviane

[120] Urukiko rw'Ubujurire rurasanga nk'uko byagaragajwe haruguru, Nyirimihigo Jean-Marie Vianney, Musabe Edwige na Kayitesi Viviane batarebwa n'ubugwate buvugwa muri uru rubanza, bakwiye guhabwa indishyi n'amafaranga basaba.

[121] Urukiko rw'Ubujurire rurasanga nk'uko dosiye y'urubanza ibigaragaza mu Rukiko Rukuru rw'Ubucuruzi Nyirimihigo Jean-Marie Vianney, Musabe Edwige na Kayitesi Viviane bajuriye banenga Urukiko rw'Ubucuruzi rwa Nyarugenge kuba rutarabageneye indishyi zijyane n'igihombo bagize n'indishyi z'akababaro no kuba rutarasobanuye ingano y'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, bivuze ko bari bashimishijwe n'indishyi (inyungu) ku mafaranga batanze ariko ntibahabwe amazu baguze ku gihe, Urukiko rw'Ubucuruzi rwa Nyarugenege rwabageneye. Rurasanga rero Nyirimihigo Jean-Marie Vianney, Musabe Edwige na Kayitesi Viviane badashabora gusaba uru Rukiko kubongerera izo ndishyi, bakaba bagomba kugumana izo bagenewe ku rwego rwa mbere, ni ukuvuga 6.720.000 Frw kuri Nyirimihigo Jean-Marie Vianney, 4.032.000 Frw kuri Musabe Edwige na 3.600.000 Frw kuri Kayitesi Viviane.

[122] Ku birebana n'indishyi zijyane n'igihombo basaba, Urukiko rw'Ubujurire rurasanga batazihabwa kuko nta bimenyetso bazitangira.

[123] Ku birebana n'indishyi z'akababaro basaba, Urukiko rw'Ubujurire rurasanga bakwiye kuzihabwa hashingiwe ku kuba Ujenge Rwanda Ltd itarabahaye amazu baguze mu gihe bari babyumvikanye mu masezerano no ku gihe gishize bategereje ayo mazu, bakaba bagomba guhabwa 2.000.000 Frw buri wese.

[124] Ku birebana n'amafaranga y'igihembo cya Avoka basaba, Urukiko rw'Ubujurire rurasanga bakwiye kuyahabwa kuko ari ku makosa ya Ujenge Rwanda Ltd izo manza zabaye, bibatuma gushaka Avoka wo kubaburanirira, bityo bagomba guhabwa na Ujenge Rwanda Ltd 1.000.000 Frw buri wese y'igihembo cya Avoka.

[125] Ku birebana n'amafaranga y'amagarama basaba gusubizwa, Urukiko rw'Ubujurire rurasanga bayakwiye kuko amakosa yakozwe na Ujenge Rwanda Ltd yatumye batanga ibirego kuva mu Rukiko rw'Ubucuruzi kugeza muri uru rukiko, bityo bakaba bakwiye guhabwa na Ujenge Rwanda Ltd 225.000 Frw buri wese.

[126] Ku birebana na Murekatete Laetitia (wasimbuye Ruzindana Jérémie), n'ubwo nawe atarebwa n'ubugwate buvugwa muri uru rubanza, Urukiko rw'Ubujurire rurasanga kuba atarajuririye ibirebana n'indishyi mu Rukiko Rukuru rw'Ubucuruzi, atazisabira kuri uru rwego.

b) Ku birebana na Century Real Estate Ltd, Nyakira Brenda, Kajangwe Alain, Benimana Béatrice, ARAIRE Alexandre na Uwera Sandra

[127] Urukiko rw'Ubujurire rurasanga Century Real Estate Ltd, Nyakira Brenda, Kajangwe Alain, Benimana Béatrice, ARAIRE Alexandre na Uwera Sandra badakwiye guhabwa indishyi n'amafaranga basaba kuko, kimwe na Ujenge Rwanda Ltd baburanye bemeza ko amasezerano y'ubugure bagiranye na Ujenge Rwanda Ltd yakozwe amabanki abizi, nyamara nk'uko byagaragajwe haruguru, ntiyari abizi kuko atahaye Ujenge Rwanda Ltd uburenganzira bwo kugurisha *appartements*, bivuze ko iyi ngingo y'ubujurire bwabo nta shingiro ifite.

A.3. Ubujurire bwuririye ku bundi bwa Ecobank Rwanda Plc

a) Kumenya niba ubujurire bwa Ruzindana Jérémie butari kwakirwa mu Rukiko Rukuru rw'Ubucuruzi

[128] Me Munyaneza Remy, uburanira Ecobank Rwanda Plc, avuga ko Ruzindana Jérémie yakurwa mu rubanza kuko yaburanishijwe mu Rukiko Rukuru rw'Ubucuruzi, rugumishaho ibyemezo byamufatiwe mu Rukiko rw'Ubucuruzi, kandi yari yarapfuye, ko rwemeje ko ubujurire bwe bwakiriwe, nyamara ubujurire bukorwa yari atakiriho, rumufataho icyemezo rubyirengagije, runemeza ko ibyemezo yafatiwe bigumana agaciro. Avuga ko Urukiko rw'Ubujurire rukwiye kubihindura, rukemeza ko ibyemezo byafatiwe Ruzindana Jérémie bitagombaga kugumana agaciro, ndetse ko n'ubujurire bwatanzwe na we butagombaga kwakirwa.

[129] Me Rwigamba Molly, uburanira Murekatete Laetitia, avuga ko mu Rukiko Rukuru rw'Ubucuruzi ariho bamenyeye ko Ruzindana Jérémie yapfuye, ko byabaye ngombwa ko asimburwa n'umugore we Murekatete Laetitia, ko kandi ibyo bitavuze ko yahagarariye uwitabye Imana, ahubwo ko yaje mu rubanza nk'umuzungura we, bityo ko ibyakozwe byemewe n'amategeko.

UKO URUKIKO RUBIBONA

[130] Nk'uko bigaragara mu gace ka makumyabiri na rimwe (21) k'urubanza rujuririrwa, ku birebana na Ruzindana Jérémie, Ecobank Rwanda Plc yajuriye mu Rukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwakiriye kugoboka kwe, nyamara uko kugoboka kwe kudakurikije amategeko kuko *appartement* yaguze ifite nº 208, itaburanwa mu rubanza yagobotsemo, bityo ko ukugoboka kwe kutagombaga kwakirwa ku rwego rwa mbere.

[131] Imikirize y'urubanza rujuririrwa igaragaza ko mu gace ka makumyabiri na gatatu (23), Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko kuba ubugwate buburanwa bushingiye ku kibanza cyubatsweho inzu na Ruzindana Jérémie yaguze, afite inyungu yo kugoboka mu rubanza kugira ngo yizere ko icyemezo kizafatwa kitazamuhungabanya.

[132] Nk'uko bigaragara mu gace ka mirongo itanu (50) k'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa Ruzindana Jérémie butakiriwe kuko butakurikije amategeko.

[133] Imikirize y'urubanza rujuririrwa igaragaza na none ko mu gace ka mirongo itanu na kane (54), Urukiko Rukuru rw'Ubucuruzi rwemeje ko icyemezo cyari cyafashwe ku bijyanye n'ubugure hagati ya Ujenge Rwanda Ltd na Ruzindana Jérémie gikuweho kuko cyari gishingiye ku bugwate bwo ku wa 2/12/2011 butari mu kirego. Mu gace ka mirongo itanu n'umunani (58) k'urubanza rujuririrwa, urwo Rukiko rwemeje ko indishyi zari zahawe Ruzindana Jérémie n'umugore we Murekatete Laetitia zikuweho.

[134] Hashingiwe ku byagaragajwe haruguru, Urukiko rw'Ubujurire rurasanga ibivugwa na Ecobank Rwanda Plc ku birebana n'ubujurire bwa Ruzindana Jérémie mu Rukiko Rukuru rw'Ubucuruzi, atari byo kuko ubwo bujurire butarakiriwe, ndetse ko urwo Rukiko rwakuyeho icyemezo cyafashwe ku rwego rwa mbere cyemeza ko Ruzindana Jérémie agomba guhabwa inzu yaguze, runemeza ko indishyi yari yagenewe zikuweho, bityo ibisabwa na Ecobank Rwanda Plc ko uru Rukiko rwakwemeza ko ibyemezo byafatiwe Ruzindana Jérémie bitagombaga kugumana agaciro, ndetse n'ubujurire bwe mu Rukiko Rukuru rw'Ubucuruzi butagombaga kwakirwa, bikaba nta shingiro bifite.

[135] Kubera izo mpamvu, Urukiko rw'Ubujurire rurasanga iyi ngingo y'ubujurire ya Ecobank Rwanda Plc nta shingiro ifite kuko ivugisha Urukiko Rukuru rw'Ubucuruzi ibyo rutavuze cyangwa ibyo rutemeje.

b) Kumenya niba ikirego kirebana no gutesha agaciro ingwate kitari mu bubasha bw'inkiko z'ubucuruzi

[136] Me Munyaneza Remy, uburanira Ecobank Rwanda Plc, avuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwari rufite ububasha bwo gusuzuma ikirego rwashyikirijwe kandi kirebana n'icyemezo cy'ubuyobozi, kiri mu bubasha bw'inkiko zisumbuye nk'uko amategeko abiteganya, ko kuba icyo cyemezo cy'ubuyobozi cyaratanzwe mu rwego rwo kwandikisha ingwate bidakuraho ko ari icyemezo cy'ubuyobozi, ndetse ko bidakuraho ko Ubuyobozi bwatanze icyo cyemezo bushobora kutaba mu rubanza rusaba ko icyo cyemezo giteshwa agaciro. Asaba Urukiko rwajuririwe kwemeza ko Inkiko z'Ubucuruzi, nta bubasha zari zifite bwo gusuzuma ikirego kijyanye no gutesha agaciro ibyemezo by'Ubuyobozi.

[137] Me Rwigamba Molly, uburanira abaguze *appartements*, avuga ko ikiburanwa ari ikibazo gishingiye ku masezerano y'ubucuruzi ababuranyi bagiranye, ko rero inkiko z'ubucuruzi zari zifite ububasha bwo gutesha agaciro ingwate, ko iki kirego atari ikibazo cy'ibyemezo by'Ubuyobozi kandi ko byagiweho impaka mu Rukiko Rukuru rw'Ubucuruzi, nk'uko bigaragara mu rubanza rujuririrwa ku rupapuro rwa karindwi (7) n'urwa munani (8), rubifataho icyemezo.

UKO URUKIKO RUBIBONA

[138] Ingingo ya 2 y'Itegeko Ngenga n° 60/2012/OL ryo ku wa 14/9/2012 rigena imiterere, ububasha n'imikorere by'inkiko z'ubucuruzi, ryakoreshwaga ubwo uru rubanza rwatangiraga

kuburanishwa ku rwego rwa mbere, igira iti: " *Muri iri tegeko ngenga ibibazo by'ubucuruzi bivuga imanza z'ubucuruzi, iz'imari, iz'imisoro n'amahoro n'ibindi bibazo bifitanye isano byerekeye impaka zivutse ku masezerano cyangwa ku bikorwa by'ubucuruzi hagati y'abantu cyangwa ibigo by'ubucuruzi*."

[139] Imikirize y'urubanza rujuririrwa igaragaza ko mu gace ka cumi na gatatu (13), Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko igikorwa cy'ubucuruzi cyabaye ari inguzanyo Ujenge Rwanda Ltd yasabye muri Ecobank Rwanda Plc na Shelter Afrique, ko ari muri urwo rwego rw'amasezerano hatanzwe n'ingwate, irandikishwa kugira ngo uwagurijwe ahabwe amafaranga, ko rero ikibazo cyavuka muri ibyo bikorwa by'ayo masezerano, cyaba ikijyanye n'ingwate cyangwa ubwishyu kigomba gushyikirizwa inkiko z'ubucuruzi kuko arizo zifite ububasha, bityo ko inzitizi yatanzwe idafite ishingiro.

[140] Nk'uko dosiye y'uru rubanza ibigaragaza, ikiburanwa muri uru rubanza, ni ugukuraho ingwate ku mpamvu y'uko abavuga ko baguze *appartements* zubatse ku butaka bwatanzweho ingwate, ndetse ikandikishwa muri RDB, ibyo biza gutuma hatangwa inguzanyo, zitanzwe n'ibigo by'imari, aribyo Ecobank Rwanda Plc na Shelter Afrique.

[141] Nk'uko ingingo ya 2 y'Itegeko Ngenga n° 60/2012/OL ryo ku wa 14/9/2012 ryibukijwe haruguru ibisobanura, ibibazo by'ubucuruzi ni imanza z'ubucuruzi, iz'imari, iz'imisoro n'amahoro n'ibindi bibazo bifitanye isano byerekeye impaka zivutse ku masezerano cyangwa ku bikorwa by'ubucuruzi hagati y'abantu cyangwa ibigo by'ubucuruzi, bityo kuba ikibazo kiri muri uru rubanza kirebana n'amazezerano y'ubucuruzi, aho hazamo ingwate zandikishijwe ndetse n'inguzanyo zatanzwe n'ibigo by'ubucuruzi, nta mpamvu yari gutuma icyo kibazo kitaburanishwa n'inkiko z'ubucuruzi, bityo rero Urukiko Rukuru rw'Ubucuruzi nta makosa rwakoze rwemeza ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwari rufite ububasha, bityo iyi ngingo y'ubujurire bwuririye ku bundi bwa Ecobank Rwanda Plc nta shingiro ifite.

A.4. Ubujurire bwuririye ku bwa Century Real Estate Ltd n'abandi bwatanzwe na Manirakiza Katia na Sebatigita Patrick

Kumenya niba Manirakiza Katia na Sebatigita Patrick bakwiye amafaranga basaba

[142] Me Niyondora Nsengiyumva avuga ko Manirakiza Katia na Sebatigita Patrick ari bo bahaye Ujenge Rwanda Ltd ubutaka yatanzeho ingwate, bakibaza impamvu bakomeje kuzanwa mu manza kandi nta masezerano bafitanye n'abaguze, nta n'ikosa babakoreye, ko batigeze bahakana ko batanze ingwate cyangwa ngo bayitambamire ku buryo byagira ingaruka ku baguze, ko rero bakomeza kubashora mu manza bitari ngombwa, akaba asaba 1.500.000 Frw y'igihembo cya Avoka mu bujurire, agomba gutangwa n'abaguze bose bafatanyije.

[143] Me Niyondora Nsengiyumva avuga na none ko Manirakiza Katia na Sebatigita Patrick ari bo bahaye Ujenge Rwanda Ltd ubutaka maze ibutangaho ingwate kandi ko amategeko yemera gutiza ingwate, ko nta kosa na rimwe bakoreye abaguze ku giti cyabo, bakaba bakomeje gushorwa mu manza zitari ngombwa, bakaba basaba kwishyurwa 1.500.000 Frw y'igihembo cya Avoka yiyongera kuyatanzwe ku rwego rwa mbere.

[144] Ababuranira Century Real Estate Ltd, Musabe Edwige na bagenzi be bavuga ko Sebatigita Patrick na Manirakiza Katia ari bo banditsweho ikibanza inyubako zubatswemo basaba guhabwa,

ko no mu iyandikisha ry'ingwate ari bo bayitanze, ko Urukiko rw’Ubucuruzi rwabisobanuye neza, rwemeza ko bagize uruhare mu itangwa ry'ingwate iri mu kiburanwa, ko nabo bagomba kuguma mu rubanza kuko rubareba, bityo bakaba batahabwa amafaranga basaba.

UKO URUKIKO RUBIBONA

[145] Ingingo ya 111 y’Itegeko n°22/2018 ryo ku wa 29/4/2018 ryibukijwe haruguru iteganya ibikurikira: "Ikirego cy’amafaranga y’ikurikiranarubanza ni ikirego gishamikiye ku kirego cy’iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. "

[146] Nk’uko bigaragara mu gace ka mirongo ine na karindwi (47) k’urubanza rujuririrwa, Urukiko Rukuru rw’Ubucuruzi rwasobanuye ko Sebatigita Patrick na Manirakiza Katia bashowe mu manza nta mpamvu, cyane cyane ko impande z’abaregaga ntacyo zagaragaje zibakurikiranyeho, ndetse n’ibyemezo byagiye bifatwa bikaba ntacyo byabavuzeho, bityo ko hashingiwe ku ngingo ya 258 y’Igitabo cya gatatu cy’Urwunge rw’amategeko mbonezamubano (CCLIII) yubahirizwaga icyo gihe, bagomba guhabwa 1.000.000Frw buri wese, y’ikurikiranarubanza n’igihembo cya Avoka, kandi bakazihabwa na Century Real Estate Ltd, Musabe Edwige na bagenzi be.

[147] Urukiko rw’Ubujurire rurasanga mu bujurire bwatanzwe na Century Real Estate Ltd, Musabe Edwige na bagenzi be muri uru Rukiko, batarajuririye icyemezo cyafashwe n’Urukiko Rukuru rw’Ubucuruzi cyemeza ko Sebatigita Patrick na Manirakiza Katia bashowe mu manza bitari ngombwa, ariko bakaba barakomeje kubarega muri ubwo bujurire.

[148] Urukiko rw’Ubujurire rurasanga kuba Century Real Estate Ltd, Musabe Edwige na bagenzi be batarajuriye banenga ibisobanuro byatanzwe n’Urukiko Rukuru rw’Ubucuruzi byatumye hafatwa icyemezo cyavuzwe haruguru, nta mpamvu batahabwa amafaranga basaba kuko bakomeje kuba mu rubanza bashowemo n’ababareze, bagira ibyo batanga kubera urwo rubanza.

[149] Urukiko rw’Ubujurire rurasanga ariko kuba ayo basaba ari kirenga, mu bushishozi bwarwo, rubageneye 500.000 Frw buri wese, yiyongera ku mafaranga bahawe n’Urukiko Rukuru rw’Ubucuruzi, yose hamwe akaba 1.500.000 Frw kuri buri wese.

[150] Kubera izo mpamvu, Urukiko rw’Ubujurire rurasanga ubujurire bwuririye ku bundi bwatanze na Sebatigita Patrick na Manirakiza Katia bufite ishingiro.

B. Ubujurire bw’urubanza RCOMA 00167-00185/2016/CHC

B.1. Ubujurire bwa Ujenge Rwanda Ltd

a. Kumenya niba Urukiko Rukuru rw’Ubucuruzi rwarakoze amakosa mu kwemeza ko amasezerano y’ubugure adafite agaciro

[151] Me Niyondora Nsengiyumva, uburanira Ujenge Rwanda Ltd, avuga ko Urukiko Rukuru rw’Ubucuruzi rwavuze ko ubugure budafite agaciro kubera ko ubutaka bwose bwubatseho *appartements* bwatanzweho ingwate mbere y’uko haba amasezerano y’ubugure, ariko ko rwirengagije ko ubugure bwa *appartement* ya Mubiligi Yvonne, Ecobank Rwanda Plc na Shelter Afrique zibwemera, zirengagije ko zahawe ingwate ku butaka bwose, ko uko kwemera kunagaragazwa n’amasezerano yo ku wa 3/5/2013 (*Common Terms Agreement)*, n’ayo ku wa

26/5/2016. Avuga ko Mubiligi Yvonne yaguze nyuma y'uko *Common Terms Agreement* ishyirwaho umukono kandi ko mu masezerano yo ku wa 12/12/2012, yiswe *Convention de nantissement des créances*, Ecobank Rwanda Plc, Ujenge Rwanda Ltd na Shelter Afrique, bemeranyijwe ko amazu azarugishwa kuko ari cyo umushinga wari ugamije, nk'uko bigaragara mu ngingo ya 5. 1.2, aho bivugwa neza ko amafaranga y'ubugure bw'amazu ndetse n'ubukode bw'amazu y'ubucuruzi (*espaces commerciaux*) azakoreshwa (*affectation*) n'uwatanze ingwate kuva hakozwe amasezerano imbere ya Noteri, kandi ko ayo masezerano yabereye imbere ya noteri, ariko ko iyo *Convention de nantissement des créances* yirengagijwe.

[152] Me Niyondora Nsengiyumva asobanura ko ijambo ''*acquéreur*'' ryakoreshejwe mu masezerano, rivuga ''uwaguze'', ko kandi mu ngingo ya 5.1.5. y'ayo masezerano yo ku wa 12/12/2012, Ujenge Rwanda Ltd yemeranyije na Ecobank Rwanda Plc ndetse na Shelter Afrique ko amafaranga y'ubugure bw'amazu azishyurwa kuri *compte séquestre* iyavugwamo, naho mu ngingo ya 5.2, bavuga ko *solde* kuri *compte séquestre* izaba *gage* cyangwa *nantissement au profit des créanciers* (banks). Asobanura kandi ko impamvu amasezerano yitwa *pre-sale*, ari uko hagurishwaga amazu atarubakwa (*vente d'une chose future*), ko *convention de nantisement des créances* yerekana ko uretse *solde du prix de vente*, banki zagombaga kwishyurwa no ku mafaranga y'ubukode ku bijyanye n'igice kimwe cy'amazu y'ubucuruzi, ko rero banki zari zizi amasezerano y'ubugure, bityo ko Mubiligi Yvonne agomba guhabwa *appartement* yaguze nk'uko Ujenge Rwanda Ltd ibyemera.

[153] Me Niyondora Nsengiyumva asobanura na none ko bagaragarije Urukiko Rukuru rw'Ubucuruzi ko banki zemeraga ko ingwate ikurwaho ku nzu ya Mubiligi Yvonne ndetse n'izindi mirongo itatu n'imwe (31) ziri kumwe muri *phase* ya 1 y'umushinga, ko uwo mushinga wari ugeze kure kandi ko *e-mails* zibigaragaza, aho Shelter Afrique yanditse ko ibona nta kibazo, naho Ecobank Rwanda Plc ntiyakora *objection* ngo ivuge ko itari izi ko *appartements* zagurishijwe, ko rero uru Rukiko rwasesengura ingingo ya 5 y'amasezerano yo mu mwaka wa 2012, rukanayahuza na *Common Terms Agreement* yo mu mwaka wa 2013, ndetse na *procédure* ya *levée de l'hypothèque* yari yatangiye, maze rukemeza ko ubugure bwabayeho hagati ya Ujenge Rwanda Ltd na Mubiligi Yvonne, banki zombi zibwemera, bityo zikaba zitakwitwaza *hypothèque* zahawe, mu gihe ziyemereye ko inyubako ziri kuri ubwo butaka zigurishwa. Ibi byose Urukiko ntacyo rwigeze rubivugaho.

[154] Me Barahira Eric, uburanira Mubiligi Yvonne, avuga ko Mubiligi Yvonne yishyuye amafaranga angana na 90% y'agaciro kari karumvikanyweho, ko byumvikana ko inzu yari yabaye iye, ko ibindi bibazo Ujenge Rwanda Ltd yari ifite bitari kumugiraho ingaruka, ko ahubwo yari akwiye guhabwa inzu ye kuko na Ujenge Rwanda Ltd yavuze ko ibyo kugurisha impande zombi zari zarabyumvikanyeho mu masezerano atandukanye, ko rero kuba hari amasezerano bagiranye bemeza ko mu gihe cy'igurisha bagomba gukora amasezerano bise *contrat de réservation*, bigaragaza ko kugurisha bari babiziranyeho kuko n'ubundi iyo *contrat* ari ubushake bw'umuguzi, ko ashatse yanakora amasezerano ya burundu, kuko igira iti "*bien que le contrat de réservation vous protège considérablement, le contrat préliminaire n'est pas un passage obligé en cas de VEFA. Par conséquent, rien ne vous empêche de* signer directement le contrat de vente définitif sans passer au préalable par la case ''contrat de réservation''.

[155] Me Munyaneza Remy, uburanira Ecobank Rwanda Plc, avuga ko iyi mpamvu y'ubujurire nta shingiro ifite, ko ibyo Urukiko rwemeje ko amasezerano hagati ya Mubiligi Yvonne na Ujenge

Rwanda Ltd ateshwa agaciro bikurikije amategeko. Avuga ko ibivugwa na Ujenge Rwanda Ltd ko Ecobank Rwanda Plc na Shelter Afrique zari zaremeye ko ayo mazu agurishwa atari byo, ko ashingira ku masezerano atandukanye avuga ko hateganyijwemo kugurisha, nyamara atari byo, kuko hateganyijwe "*pre-sale*" cyangwa "*contrat de réservation*" cyangwa amasezerano abanziriza ay'ubugure, impande zose zikaba zaremeranyijwe ku buryo ayo masezerano agomba kuba ameze (*Template : modèle*), aho bigaragara neza ko ari "*contrat de réservation*", ko Ujenge Rwanda Ltd yanyuranyije nabyo, ikaba itaranamenyesheje Mubiligi Yvonne ko umutungo uri mu bugwate kugira ngo amenye ko agomba kuzategereza ko umutungo uva mu bugwate mbere yo kuwegukana, ndetse ko ibyo byose aribyo Urukiko rwahereyeho rutegeka ko amasezerano aseswa.

[156] Me Nizeyimana Boniface, uburanira Shelter Afrique, avuga ko impamvu y'ubujurire nta shingiro ifite, ko ibyo Urukiko rwemeje ko amasezerano hagati ya Mubiligi Yvonne na Ujenge Rwanda Ltd ateshwa agaciro bikurikije amategeko. Avuga ko ibyo Ujenge Rwanda Ltd ivuga ko Ecobank Rwanda Plc na Shelter Afrique zari zaremeye ko ayo mazu agurishwa atari ukuri, ko hari harateganyijwe "*pre-sale*" cyangwa "*contrat de réservation*" cyangwa amasezerano abanziriza ay'ubugure, impande zose ziyemeranyaho, zinateganya uburyo agomba kuba ameze (*Template*), bigaragara ko ari "*contrat de réservation*", ariko ko Ujenge Rwanda Ltd itabyubahirije, ntiyanamenyesha Mubiligi Yvonne ko umutungo uri mu bugwate kugira ngo amenye ko atazahita awegukana, ko Urukiko nta mategeko rwigeze rwica.

[157] Me Munyaneza Remy na Me Nizeyimana Boniface bavuga kandi ko iyi mpamvu nta shingiro ifite kuko Ujenge Rwanda Ltd idashobora kwitwaza ko *procédure* ya *levée de l'hypothèque* yari yatangiye n'ubwo nabyo nta bimenyetso bidashidikanywaho bibigaragariza, kuko ntacyo byayifasha igihe cyose itararangira ngo umutungo uve mu bugwate, ko itari yemerewe kugira icyo iwukoraho kijyanye no kuwutangaho uburenganzira ubwo aribwo bwose, ko ibyo Urukiko rwemeje bikurikije amategeko.

UKO URUKIKO RUBIBONA

[158] Nk'uko bigaragara mu gace ka cumi n'umunani (18) k'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko ibivugwa na Ujenge Rwanda Ltd ko n'ubwo yagurishije nyuma y'ingwate yari ibyemerewe kuko Ecobank Rwanda Plc na Shelter Afrique zemeye ko agurisha nk'uko bigaragazwa na *convention de nantissement de créances* na *Common terms agreement*, atari byo, kuko itigeze yemererwa kugurisha burundu, ko impande zasinye *convention de nantissement*, mu ngingo ya 5.1.2.1, zemeranijwe ko amazu agenewe kugurishwa ariko ko icyashyizwe mu masezerano ari *contrat de réservation* aho kuba *contrat de vente*, kandi ko hemejwe moderi igomba kugenderwaho. Mu gace ka cumi n'icyenda (19) k'urubanza rujuririrwa, urwo Rukiko rwakomeje rusobanura ko umutwe w'iyo moderi ya *contrat de réservation* ari '' *Agreement for the pre-sale of an appartement located at Kinyinya/Kigali*'', bigaragaza ko hatari hagamijwe kugurisha burundu, ahubwo ko abaguzi bari kwemera gusinya ayo masezerano byari kuba ari ukwerekana ko bafite ubushake bwo kuzagura burundu.

[159] Imikirize y'urubanza rujuririrwa igaragaza kandi ko mu gace karwo ka makumyabiri (20), Urukiko Rukuru rw'Ubucuruzi rwakomeje rusobanura ko Ujenge Rwanda Ltd yagombaga gusobanurira abaguzi bayo ko hari ubugwate bwatanzwe kubera inguzanyo yatanzwe n'amabanki, ko bemerewe gukora *contrat de réservation* bakagenda bishyura kugeza inzu zuzuye bakagirana

amasezerano ya burundu, ko iyo buri ruhande rwubahiriza inshingano zarwo, nta kibazo cyari kubamo, ariko ko Ujenge Rwanda Ltd itabyubahirije kuko yabwiye abaguzi ko nta bugwate burimo, kandi ko batamenyeshejwe ko bagomba kubanza gukora *contrat de réservation* mbere yo gukora amasezerano ya burundu, ko ibyo byose bigaragaza ko amasezerano yabaye hagati ya Ujenge Rwanda Ltd na Mubiligi Yvonne yo kugura burundu nta gaciro afite, ko itavuga ko banki zari zemeye kugurisha kandi ibyo bumvikanyeho itarabikoze.

[160] Mu gace ka makumyabiri na kabiri (22) k'urubanza rujuririrwa kandi, Urukiko Rukuru rw'Ubucuruzi rwasanze kuba hari haratangiye *procédure ya levée de l'hypothèque* bitagaragaza ko banki zari zaremeye ko amazu agurishwa burundu, ko ibyo ari ibisanzwe iyo umushinga ugenda neza, ko bitari kubuza ko ibyo bikorwa maze abagize *contrat de réservation* bakagenda begukana amazu burundu kuko yariyo maherezo y'umushinga, ko kuba bitarakozwe ngo bigere ku ndunduro Ujenge Rwanda Ltd itabyitwaza nk'ikimenyetso.

[161] Nk'uko bigaragara mu mwanzuro watanzwe na Mubiligi Yvonne ku rwego rwa mbere no mu rubanza rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge, Mubiligi Yvonne yatanze ikirego asaba ko ahabwa *appartement* nº 205 yaguze cyangwa ikiguzi cyayo hiyongereho indishyi z'ubukererwe, indishyi mbonezamusaruro, indishyi z'akababaro n'amafaranga y'igihembo cya Avoka, bivuze ko asaba Ujenge Rwanda Ltd gutegekwa kurangiza (gushyira mu bikorwa) inshingano ye yo kumuha *appartement* yaguze cyangwa gutesha agaciro ayo masezerano y'ubugure, agasubizwa amafaranga yatanze agura, ndetse ahahabwa n'indishyi.

[162] Hashingiwe ku bisobanuro byatanzwe n'Urukiko Rukuru rw'Ubucuruzi, Urukiko rw'Ubujurire rurasanga ibivugwa na Ujenge Rwanda Ltd ko urwo Rukiko rwemeje ko amasezerano y'ubugure hagati yayo na Mubiligi Yvonne adafite agaciro kuko yabayeho nyuma y'amasezerano y'ubugwate buvugwa, atari byo, ahubwo rwasobanuye ko ayo masezerano adafite agaciro kuko yagurishije appartement itabyemerewe na banki, kandi ko amasezerano yiswe *Convention de nantissement de créances* na *Common Terms Agreement* zitayemeraga kugurisha burundu, ko ahubwo yagombaga kugirana na Mubiligi Yvonne *contrat de réservation* nk'uko biteganywa mu ngingo ya 5.1.2.1 ya *Convention de nantissement des créances*.

[163] Urukiko rw'Ubujurire rurasanga nk'uko byagarutsweho muri uru rubanza ku birebana n'ubujurire bwa Century Real Estate Ltd n'abandi, ibirebana n'uko amazu agomba gutangira kugurishwa acyubakwa, Ujenge Rwanda Ltd, Ecobank Rwanda Plc na Shelter Afrique batarabyumvikanyeho, nk'uko bigaragara muri *Convention de nantissement de créances* na *Common Terms Agreement*, ibyo kandi bikanashimangirwa n'igisobanuro cyahawe *contrat de réservation,* ivugwa muri *convention de nantisement de créance*s, aho yasobanuwe nk'amasezerano yasinywe n'uwaguze mu rwego rwo guhabwa inzu (*appartement*) mbere yo gusinya amasezerano y'ubugure.

[164] Urukiko rw'Ubujurire rurasanga rero nta makosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu kwanzura ko amasezerano y'ubugure nta gaciro afite, Mubiligi Yvonne akaba agomba gusubizwa 45.000.000 Frw no guhabwa na Ujenge Rwanda Ltd inyungu zingana na 16.200.000 Frw, cyane cyane ko Mubiligi Yvonne yatanze ikirego asaba guhabwa *appartement* nº 205 cyangwa ikiguzi cyayo hiyongereyeho indishyi z'ubukererwe kuva tariki ya 30/4/2014 kuko Ujenge Rwanda Ltd itubahirije amasezerano bagiranye, nk'uko byagaragajwe haruguru.

[165] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga iyi ngingo y'ubujurire bwa Ujenge Rwanda Ltd nta shingiro ifite.

b. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwari gutegeka Ujenge Rwanda Ltd gutanga amafaranga ahwanye n'ikiguzi cyishyuwe rukanategeka iseswa ry'amasezerano kandi ataribyo rwaregewe

[166] Me Niyondora Nsengiyumva, uburanira Ujenge Rwanda Ltd, avuga ko mu iburanisha Mubiligi Yvonne mu Rukiko Rukuru rw'Ubucuruzi yasabye guhabwa *appartement* kandi ko ubugure bwe bukurikije amategeko, anavuga ko ibyo guhabwa ikiguzi yari yarabiretse, ko rero kumugenera ikiguzi yishyuye bisa no gusesa amasezerano kandi bo bemera kumuha icyaguzwe, ari cyo *appartement*, aho igeze, ko nta mpamvu yemewe n'amategeko yatuma uwaguze adahabwa *appartement* kuko no mu zindi manza zirebana n'iki kibazo, inteko yaciye urwo rubanza yemeje ko abaguze bahabwa amazu yabo (urubanza rwa Kagina Yves, Kakana Camile, Ngendahayo Ingrid, Rutanga Jeanne, Gasengayire Fébronie).

[167] Me Barahira Eric avuga ko Mubiligi Yvonne yaregeye guhabwa inzu yaguze akishyura 45.000.000 Frw ahwanye na 90%, ko nk'uko bigaragara mu myanzuro ye yagiraga ati: '*'Gutegeka Ujenge Rwanda Ltd guha Mme Mubiligi Yvonne appartement n°25 iri muri étage ya kabiri, block 2 muri Palm estate(Kinyinya/ KIGALI) cyangwa ikiguzi cyayo hiyongereyeho indishyi z'ubukererwe kuva tariki ya 30/3/2014*'', ko byumvikana rero ko mu gihe byari kugaragara ko Ujenge Rwanda Ltd ari yo iri mu makosa, yagombaga kwishyura amafaranga yishyuwe na Mubiligi Yvonne ndetse n'indishyi.

[168] Me Munyaneza Remy,uburanira Ecobank Rwanda Plc na Me Nizeyimana Boniface, uburanira Shelter Afrique, bavuga ko kuvuga ko Urukiko rutigeze ruregerwa gutesha agaciro amasezerano y'ubugure nta shingiro bifite, kuko ari cyo bo basabaga, ko Urukiko rwashingira ku kuba Ujenge Rwanda Ltd yarakoranye n'abaguze amasezerano abanziriza ay'ubugure (*pre-sale*), nyamara uwo mutungo yarawutanzeho ingwate, ko rero mu gihe cyose iyo ngwate itaravanwaho, uwo mutungo udashobora gukorerwaho amasezerano nk'ayo yakoze, ko Mubiligi Yvonne yasabaga ko ayo masezerano yateshwa agaciro nk'ingaruka y'ibyasobanuwe.

UKO URUKIKO RUBIBONA

[169] Ingingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko '' Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana''.

[170] Nk'uko bigaragara mu gace ka makumyabiri na rimwe (21) k'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwanzuye ko amasezerano yo kugura inzu burundu yabaye hagati ya Mubiligi Yvonne na Ujenge Rwanda Ltd nta gaciro afite kuko Ujenge Rwanda Ltd yakoze ibyo itari yemerewe n'abo yahaye ingwate, cyane cyane ko itagaragaza impamvu itakoresheje *exemplaire* y'amasezerano yumvikanyweho, igakoresha ay'ubugure bwa burundu, kandi atari yo yemeranijweho.

[171] Imikirize y'urubanza rwajuririwe igaragaza na none ko mu gace ka makumyabiri na gatatu (23), Urukiko Rukuru rw'Ubucuruzi rwavuze ko Mubiligi Yvonne adakwiye guhabwa inzu kuko iri mu bugwate, ko ahubwo yasubizwa 45.000.000 Frw yari amaze kwishyura Ujenge Rwanda Ltd.

[172] Urukiko rw'Ubujurire rurasanga nk'uko byasobanuwe haruguru, Mubiligi Yvonne yatanze ikirego asaba guhabwa *appartement* nº 205 cyangwa ikiguzi cyayo hiyongereyeho indishyi z'ubukererwe kuva tariki ya 30/4/2014.

[173] Urukiko rw'Ubujurire rurasanga kandi Ujenge Rwanda Ltd idatanga ikimenyetso cy'uko Mubiligi Yvonne yari yaretse gusaba gusubizwa amafaranga yari yayihaye.

[174] Urukiko rw'Ubujurire rurasanga na none ibivugwa na Ujenge Rwanda Ltd ko Urukiko Rukuru rw'Ubucuruzi rwategetse iseswa ry'amasezerano y'ubugure yagiranye na Mubiligi Yvonne atari byo kuko nk'uko byagaragajwe haruguru, ahubwo urwo Rukiko rwatesheje agaciro ayo masezerano ku mpamvu zasobanuwe haruguru.

[175] Urukiko rw'Ubujurire rurasanga rero nta makosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu kwemeza ko Mubiligi Yvonne agomba gusubizwa amafaranga yishyuye angana na 45.000.000 Frw no guhabwa na Ujenge Rwanda Ltd inyungu zingana na 16.200.000Frw.

[176] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga iyi ngingo y'ubujurire bwa Ujenge Rwanda Ltd nta shingiro ifite.

c. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwarategetse Ujenge Rwanda Ltd kwishyura inyungu mbonezamusaruro n'indishyi z'akababaro mu buryo budakwiye

[177] Me Niyondora Nsengiyumva, uburanira Ujenge Rwanda Ltd, avuga ko ingingo ya 9 y'amasezerano iteganya ko impande zombi zidashobora kuryozwa kutubahiriza amasezerano, mu gihe kutayubahiriza byatewe n'impamvu zidaturutse ku bushake bw'abakoze amasezerano, ko kuba itarabashije kubona inguzanyo yose nk'uko yari iyiteze, byari gutuma Urukiko rwemeza ko indishyi zitagomba gutangwa kuko ari impamvu zidaturutse ku bushake. Avuga kandi ko Urukiko Rukuru rw'Ubucuruzi rwategetse Ujenge Rwanda Ltd gutanga inyungu mbonezamusaruro kandi zidateganyijwe mu masezerano, kandi n'uwareze atarashoboye kugaragaza ko izo nyungu yari kuzibona. Ku bijyanye n'indishyi z'akababaro, Me Niyondora Nsengiyumva avuga ko Urukiko rutagaragaje akababaro Mubiligi Yvonne yagize ku buryo yagenerwa indishyi zirenga amafaranga miliyoni cumi n'eshanu (15.000.000 Frw).

[178] Nta kintu Mubiligi Yvonne yavuze kuri iyi ngingo y'ubujurire bwa Ujenge Rwanda Ltd.

UKO URUKIKO RUBIBONA

[179] Ingingo ya 3 y'Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko ‘’ Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana’’.

[180] Nk'uko bigaragara mu gace ka makumyabiri n'umunani (28) n'aka mirongo itatu (30) tw'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko kuba Mubiligi Yvonne yararenganyijwe na Ujenge Rwanda Ltd kubera ko itamuhaye inzu yishyuye, agomba guhabwa indishyi z'ubukererwe zibarirwa kuri 18% buri mwaka mu gihe cy'imyaka ibiri, zingana na 45.000.000 Frwx18%x 2 ans= 16.200.000 Frw.

[181] Nk'uko bigaragara nanone mu gace ka mirongo itatu n'umunani (38) k'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko indishyi mbonezamusaruro zasabwe

na Mubiligi Yvonne atazihabwa, kuko uretse indishyi zishingiye ku kutubahiriza amasezerano kuko atahawe inzu ku gihe (indishyi z'ubukererwe), atagaragaza izo ndishyi mbonezamusaruro aho azishingira, cyane cyane ko adasobanura uburyo iyo nzu yari kuyibyaza umusaruro ushingiye ku mafaranga asaba.

[182] Ku birebana n'indishyi mbonezamusaruro n'indishyi z'akababaro, Urukiko rw'Ubujurire rurasanga ibivugwa na Ujenge Rwanda Ltd bitahabwa agaciro kuko itategetswe kwishyura Mubiligi Yvonne izo ndishyi.

[183] Urukiko rw'Ubujurire rurasanga ahubwo nk'uko byagaragajwe haruguru, Ujenge Rwanda Ltd yarategetswe gusa kwishyura Mubiligi Yvonne indishyi z'ubukererwe, kandi ikaba itanenga ibisobanuro byatanzwe n'Urukiko Rukuru rw'Ubucuruzi bishimangira itangwa ry'izo ndishyi, aho rwavuze ko kudatanga uruhare rwayo (Ujenge Rwanda Ltd) mu kubaka amazu, aribyo byatumye Mubiligi Yvonne atabona inzu mu gihe.

[184] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga iyi ngingo y'ubujurire bwa Ujenge Rwanda Ltd nta shingiro ifite.

d. Kumenya niba Urukiko rutaragombaga gutegeka Ujenge Rwanda Ltd guha Ecobank Rwanda Plc na Mubiligi Yvonne amafaranga y'ikurikiranarubanza n'igihembo cya Avoka

[185] Me Niyondora Nsengiyumva, uburanira Ujenge Rwanda Ltd, avuga ko ashingiye ku masezerano yagaragaje bigaragara ko Ujenge Rwanda Ltd yagurishije amazu ishingiye ku bwumvikane yagiranye na Ecobank Rwanda Plc ndetse na Shelter Afrique, ariko ko Urukiko Rukuru rw'Ubucuruzi rwayitegetse guha Ecobank Rwanda Plc amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, rwirengagije ko ibyo Ujenge Rwanda Ltd yakoze yabishingiye ku masezerano, kandi ko rwageneye Mubiligi Yvonne indishyi kandi ibyo aregera ibyemera.

[186] Me Munyaneza Remy, uburanira Ecobank Rwanda Plc, avuga ko Urukiko nta kosa rwakoze mu kuyigenera amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, kuko Ujenge Rwanda Ltd ariyo yayizanye mu rubanza, kuko ariyo yasabye ko igobokeshwa ku gahato, bityo ikaba ikwiye kwirengera ingaruka zose zikomoka kuri icyo gikorwa harimo kuba byarabaye ngombwa ko yishyura amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, kandi ko ariyo yabaye intandaro y'uru rubanza ikora ibitarumvikanyweho.

[187] Me Barahira Eric, uburanira Mubiligi Yvonne, avuga ko Mubiligi Yvonne yatanze ikirego kikaba kigeze mu Rukiko rw'Ubujurire kubera ko amasezerano y'ubugure yagiranye na Ujenge Rwanda Ltd itayubahirije, ko nayo ubwayo yemera ko itayubahirije, ikaba itagaragaza ko ariwe nyirabayazana wo kutayubahiriza, bityo rero ko nta mpamvu yari gutuma atagenerwa ibyo yatanze ku rubanza.

UKO URUKIKO RUBIBONA

[188] Imikirize y'urubanza rujuririrwa igaragaza ko mu gace ka mirongo itatu na karindwi (37), Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko indishyi zisabwa na Ujenge Rwanda Ltd itazihabwa kuko urubanza izisabamo irutsindwa, runasobanura ko Ecobank Rwanda Plc na

MUBILIGI Yvonne bahabwa indishyi z'ibyo batakaje ku rubanza, zirimo izo gukurikirana urubanza no guhemba Avoka, zingana na 1.000.000 Frw kuri buri wese mu rwego rw'ubujurire.

[189] Imikirize y'urubanza rujuririrwa igaragaza kandi ko mu gace ka mirongo ine na kane (44), Urukiko Rukuru rw'Ubucuruzi rwategetse ko Mubiligi Yvonne ahabwa 2.000.000Frw y'igihembo cya Avoka n'ikurikiranarubanza, akubiyemo 1.000.000 Frw yo ku rwego rwa mbere na 1.000.000 Frw yo ku rwego rw'ubujurire, akanasubizwa 75.000 Frw y'ingwate y'amagarama yatanze ku rwego rw'ubujurire na 50.000 Frw yo ku rwego rwa mbere. Mu gace ka mirongo ine na gatanu (45), urwo Rukiko rutegeka ko Ecobank Rwanda Plc ihabwa 2.000.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza, akubiyemo 1.000.000 Frw yo ku rwego rwa mbere na 1.000.000 Frw yo ku rwego rw'ubujurire, akanasubizwa 75.000 Frw y'ingwate y'amagarama yatanze ku rwego rw'ubujurire.

[190] Urukiko rw'Ubujurire rurasanga Mubiligi Yvonne na Ecobank Rwanda Plc baragenewe amafaranga y'igihembo cya Avoka n'ikurikiranarubanza mu Rukiko Rukuru rw'Ubucuruzi, kuko rwasanze Ujenge Rwanda Ltd itsindwa n'urubanza kuko ariyo yakoze amakosa.

[191] Urukiko rw'Ubujurire rurasanga rero nta makosa urwo Rukiko rwakoze rubagenera ayo mafaranga yakoreshejwe mu rubanza, ibyo Ujenge Rwanda Ltd ivuga ko nta makosa yakoze bikaba nta shingiro bifite, nk'uko byasobanuwe haruguru muri uru rubanza, kuko rwagaragaje ko yagurishije *appartements* mu buryo butumvikanyweho.

[192] Hashingiwe kuri izo mpamvu, Urukiko rw'Ubujurire rurasanga iyi mpamvu y'ubujurire nta shingiro ifite.

B.2. Ubujurire bwuririye ku bwa Ujenge Rwanda Ltd butanzwe na Mubiligi Yvonne

a. Kumenya niba Mubiligi Yvonne akwiye guhabwa inzu cyangwa gusubizwa ikiguzi no guhabwa indishyi asaba

[193] Me Barahira Eric, uburanira Mubiligi Yvonne asaba ko uyu yahabwa inzu yaguze na Ujenge Rwanda Ltd ariyo *appartement* n°25, 2ème étage, block 2, Palm Estate, iherereye i Kinyinya, mu Karere ka Gasabo, mu Mujyi wa Kigali, akanagenerwa indishyi nk'uko zabazwe ku rwego rw'Urukiko Rukuru rw'Ubucuruzi. Akomeza avuga ko mu gihe Urukiko rwasanga amakosa yarakozwe na Ujenge Rwanda Ltd, yategekwa kwishyura amafaranga yakiriye angana na 45.000.000 Frw n'inyungu zingana na 16.200.000 Frw zagenwe n'Urukiko Rukuru rw'Ubucuruzi, hakiyongeraho igihembo cya Avoka kingana na 2.000.000 Frw, n'ingwate y'amagarama yo ku rwego rw'Urukiko rw'Ubucuruzi (50.000 Frw) n'Urukiko Rukuru rw'Ubucuruzi (75.000 Frw), akaba yose hamwe 63.325.000 Frw. Mu mwanzuro w'inyongera, uburanira Mubiligi Yvonne asaba ko indishyi zatanzwe n'Urukiko Rukuru rw'Ubucuruzi zakongerwa, Mubiligi Yvonne akagenerwa indishyi zingana na 76.263.250 Frw, zibazwe mu buryo bukurikira: 63.325.000 Frw x 21%= 13.298.250 Frw, yose hamwe akaba 76.263.250 Frw.

[194] Niyondora Nsengiyumva, uburanira Ujenge Rwanda Ltd avuga ko inyungu zisabwa na Mubiligi Yvonne nta shingiro zifite kuko indishyi zo kutubahiriza amasezerano bidakwiye kubarwa nk'aho ari amasezerano y'inguzanyo hagati ya banki n'umukiriya (taux bancaire).

[195] Me Munyaneza Remy, uburanira Ecobank Rwanda Plc, avuga ko ubujurire bwuririye ku bundi bwa Mubiligi Yvonne nta shingiro bufite kuko amasezerano hagati ya Mubiligi Yvonne na

Ujenge Rwanda Ltd nta gaciro afite mu mategeko, kuko yakozwe ku mutungo uri mu ngwate, bityo ko uwagurishije (pre-sale) atari yemerewe kugira icyo ahindura ku mutungo uri mu ngwate mu gihe cyose ingwate itaravanwaho.

UKO URUKIKO RUBIBONA

[196] Ingingo ya 3 y'Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko ‘' Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana''.

[197] Nk'uko bigaragara mu duce twa makumyabiri (20), makumyabiri na rimwe (21), makumyabiri na kabiri (22) na makumyabiri na gatatu (23) tw'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko Ujenge Rwanda Ltd itarubahirije amasezerano yagiranye na Ecobank Rwanda Plc na Shelter Afrique kuko zitari zayihaye uburenganzira bwo kugirisha *appartements* burundu, ntiyagaragariza abaguzi ko hagomba kubanza kubaho *contrat de réservation* mbere yo kuzakora amasezerano y'ubugure, ahubwo igahitamo kubabeshya ko inzu baguze nta bugwate buziriho, amasezerano yo kugura inzu burundu yagiranye na Mubiligi Yvonne nta gaciro afite, bityo ko Urukiko rw'Ubucuruzi rutagombaga guha Mubiligi Yvonne inzu kuko yayiguze iri mu bugwate, ahubwo ko yasubizwa 45.000.000 Frw yishyuye ashaka kuyigura.

[198] Urukiko rw'Ubujurire rurasanga uretse gusaba guhabwa inzu, ntacyo Mubiligi Yvonne anenga ku bisobanuro byatanzwe n'Urukiko Rukuru rw'Ubucuruzi byatumye rwemeza ko asubizwa amafaranga yari yaratanze ashaka kugura inzu, aho guhabwa iyo nzu, bityo ibyo asaba akaba atabihabwa.

[199] Ku birebana n'indishyi zisabwa na Mubiligi Yvonne mu mwanzuro w'inyongera, Urukiko rw'Ubujurire rurasanga atazihabwa kuko adasobanura kamere yazo n'impamvu azibara uko.

[200] Urukiko rw'Ubujurire rurasanga rero ibyemejwe n'Urukiko Rukuru rw'Ubucuruzi ko Mubiligi Yvonne agomba gusubizwa na Ujenge Rwanda Ltd amafaranga yishyuye angana na 45.000.000Frw no guhabwa inyungu zingana na 16.200.000 Frw, ari byo bigomba kugumaho.

[201] Kubera izo mpamvu, iyi ngingo y'ubujurire bwuririye ku bundi bwa Mubiligi Yvonne nta shingiro ifite.

b. Kumenya niba Mubiligi Yvonne akwiye amafaranga asaba

[202] Me Barahira Eric, uburanira Mubiligi Yvonne, asaba ko kuri uru rwego Urukiko rw'Ubujurire rutegeka Ujenge Rwanda Ltd guha Mubiligi Yvonne 2.500.000 Frw, akubiyemo 1.000.000 Frw y'ikurikiranarubanza na 1.500.000 Frw y'igihembo cya Avoka.

[203] Ujenge Rwanda Ltd itasubije ku bisabwa na Mubiligi Yvonne.

UKO URUKIKO RUBIBONA

[204] Ingingo ya 111 y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ‘' Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije

kwishyuza 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‘‘.

[205] Urukiko rw’Ubujurire rurasanga kuba Ujenge Rwanda Ltd yarajuriye bigatuma Mubiligi Yvonne yongera kuza mu rubanza, igomba kumwishyura ibyo yarukoreshejemo, haba mu gukurikirana urubanza ndetse no kwishyura Avoka wamuburaniye, bityo akwiye guhabwa kuri uru rwego 1.000.000 Frw y’igihembo cya Avoka na 500.000 Frw y’ikurikiranarubanza, yose hamwe akaba 1.500.000 Frw aho kuba 2.500.000 Frw asaba, akayahabwa na Ujenge Rwanda Ltd.

[206] Kubera izo mpamvu, Urukiko rw’Ubujurire rurasanga iyi ngingo y’ubujurire bwa Mubiligi Yvonne ifite ishingiro.

B.3. Ubujurire bwuririye ku bwa Ujenge Rwanda Ltd bwatanzwe na Ecobank Rwanda Plc na Shelter Afrique

Kumenya niba Ecobank Rwanda Plc na Shelter Afrique zikwiye amafaranga zisaba

[207] Me Munyaneza Remy avuga ko Ecobank Rwanda Plc isaba Urukiko gutegeka Ujenge Rwanda Ltd kuyishyura 2.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego kubera gukomeza kuyishora mu manza zidafite ishingiro.

[208] Me Nizeyimana Boniface avuga ko kubera yashowe mu manza nta mpamvu, Shelter Afrique isaba ko Ujenge Rwanda Ltd yayishyura amafaranga y'ikurikiranarubanza n'igihembo cya Avoka bingana na 2.000.000 Frw.

[209] Me Niyondora Nsengiyumva avuga ko nta ndishyi Ecobank Rwanda Plc ikwiye guhabwa kuko ubugure bwakozwe mu buryo bukurikije amategeko kandi ko yari ibuzi, ahubwo ko ubwo bugure bukomeza kugira agaciro.

[210] Me Niyondora Nsengiyumva avuga kandi ko indishyi Shelter Afrique isaba nta shingiro zifite kuko Ujenge Rwanda Ltd yakoze ibyari biteganyijwe n'amasezerano.

UKO URUKIKO RUBIBONA

[211] Ingingo ya 111 y’Itegeko Nº 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi iteganya ko ‘‘Ikirego cy’amafaranga y’ikurikiranarubanza ni ikirego gishamikira ku kirego cy’iremezo kigamije kwishyuza 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‘‘.

[212] Urukiko rw’Ubujurire rurasanga nk’uko byasobanuwe muri uru rubanza, Ujenge Rwanda Ltd yarakoze amakosa yo kugurisha *appartements* mu buryo itumvikanyeho na Ecobank Rwanda Plc na Shelter Afrique zahawe ingwate ku butaka bwubatseho *appartements* zivugwa mu rubanza. Rurasanga ibi byaratumye haba imanza, bikaba ngombwa ko Ecobank Rwanda Plc na Shelter Afrique zizibonekamo, hakaba hari ibyo zatakaje, haba ku ba Avoka baziburaniye no gukurikirana

urubanza, bityo zikaba zigomba kwishyurwa na Ujenge Rwanda Ltd kuko ariyo yabaye nyirabayazana w'imanza.

[213] Urukiko rw'Ubujurire rurasanga hashingiwe ku byakozwe muri uru rubanza, Ecobank Rwanda Plc na Shelter Afrique zagenerwa 500.000Frw y'ikurikiranarubanza buri imwe, zikanahabwa kandi 1.000.000Frw buri imwe, y'igihembo cya Avoka, yose hamwe akaba 1.500.000Frw ku buri wese, aho kuba 2.000.000Frw basaba.

III. ICYEMEZO CY'URUKIKO

[214] Rwemeje ko ubujurire bwa Ujenge Rwanda Ltd ku manza zombi zaciwe n'Urukiko Rukuru rw'Ubucuruzi nta shingiro bufite.

[215] Rwemeje ko ubujurire bwa Musabe Edwige, Kayitesi Viviane na Nyirimihigo Jean-Marie Vianney bufite ishingiro.

[216] Rwemeje ko ubujurire bwa Murekatete Laetitia (wasimbuye Ruzindana Jérémie) bufite ishingiro kuri bimwe.

[217] Rwemeje ko ubujurire bwa Century Real Estate Ltd, Uwera Sandra, Kajangwe Alain, Nyakira Brenda, Benimana Béatrice na ARAIRE Alexandre nta shingiro bufite.

[218] Rwemeje ko ubujurire bwa Ecobank Rwanda Plc bwuririye ku bwa Ujenge Rwanda Ltd n'abavuga ko baguze amazu nta shingiro bufite.

[219] Rwemeje ko ubujurire bwuririye ku bundi bwa Sebatigita Patrick na Manirakiza Katia bufite ishingiro.

[220] Rwemeje ko ubujurire bwuririye ku bundi bwa Mubiligi Yvonne bufite shingiro kuri bimwe.

[221] Rwemeje ko urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ruhindutse ku birebana na Musabe Edwige, Kayitesi Viviane, Nyirimihigo Jean-Marie Vianney na Murekatete Laetitia (wasimbuye Ruzindana Jérémie).

[222] Rwemeje ko Musabe Edwige, Kayitesi Viviane, Nyirimihigo Jean-Marie Vianney na Murekatete Laetitia (wasimbuye Ruzindana Jérémie) batarebwa n'ubugwate buvugwa muri uru rubanza, bakaba bagomba guhabwa *appartements* baguze.

[223] Rutegetse Ujenge Rwanda Ltd guha Nyirimihigo Jean-Marie Vianney, Musabe Edwige na Kayitesi Viviane indishyi bari bagenewe ku rwego rwa mbere, ni ukuvuga 6.720.000Frw kuri Nyirimihigo Jean-Marie Vianney, 4.032.000 Frw kuri Musabe Edwige na 3.600.000 Frw kuri Kayitesi Viviane.

[224] Rutegetse Ujenge Rwanda Ltd kwishyura Nyirimihigo Jean-Marie Vianney, Musabe Edwige na Kayitesi Viviane 2.000.000Frw buri wese y'indishyi z'akababaro.

[225] Rutegetse Ujenge Rwanda Ltd Kwishyura Nyirimihigo Jean-Marie Vianney, Musabe Edwige, Kayitesi Viviane na Murekatete Laetitia (wasimbuye Ruzindana Jérémie) 1.000.000 Frw buri wese y'igihembo cya Avoka na 225.000 Frw buri wese y'amagarama bari batanze.

[226] Rutegetse Century Real Estate Ltd, Musabe Edwige, Kayitesi Viviane, Nyirimihigo Jean-Marie Vianney, Uwera Sandra, Kajangwe Alain, Nyakira Brenda, Benimana Béatrice na ARAIRE Alexandre kwishyura Sebatigita Patrick na Manirakiza Katia 500.000 Frw y'igihembo cya Avoka buri wese, yiyongera ku mafaranga bahawe n'Urukiko Rukuru rw'Ubucuruzi, yose hamwe akaba 1.500.000 Frw kuri buri wese.

[227] Rutegetse Ujenge Rwanda Ltd kwishyura Ecobank Rwanda Plc, Shelter Afrique na Mubiligi Yvonne 500.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cya Avoka, yose hamwe akaba 1.500.000 Frw ku buri wese.

[228] Rwemeje ko amafaranga y'ingwate y'amagarama yatanzwe n'abajuriye ahwanye n'ibyakozwe mu rubanza.