ECOBANK RWANDA PLC v MICON REAL LINE LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00045/2020/CA – (Ngagi, P.J., Umugwaneza na Kamere, J.) 26 Gashyantare 2021]

Amategeko agenga amasezerano – Amasezerano y'inguzanyo akubiyemo n'ay'ingwate – Kutayitirira ay'ingwate gusa – Igisobanuro cy'amasezerano y'inguzanyo – Amasezerano y'inguzanyo y'amafaranga ni amasezerano abantu bakorana umwe aha cyangwa se yemera guha undi amafaranga, uyahawe nawe akagira inshingano yeruye cyangwa se iteruye yo kuyishyura ku gihe bemeranyijwe habariyemo cyangwa se hatabariyemo n'inyungu – Kugira ngo amasezerano afatwe nk'ay'inguzanyo cyangwa ay'ingwate hakwiye kurebwa umutwe wayo icyo usobanura, uko ingingo zigize amasezerano ziteye, hakarebwa na none icyasezeranyijwe, kugira ngo icyo ababuranyi bajyaho impaka gisobanuke.

Amategeko agenga amasezerano – Amasezerano y'inguzanyo – Ishyirwa mu bikorwa ry'amasezerano – Banki ntiyasaba ko harebwa historique hagamijwe kwerekana ko amasezerano y'inguzanyo yashyizwe mu bikorwa ngo bihabwe ishingiro mu gihe ibyo iba igaragaza biba bidahuye n'amasezerano aburanwa.

Amategeko agenga amasezerano – Gusesa amasezerano y'inguzanyo itaratanzwe – Mu gihe bigaragaye ko Banki itigeze irekura amafaranga y'umwenda cyangwa ngo itange avansi cyangwa se garanti bishingiye ku masezerano y'inguzanyo agibwaho impaka bifatwa ko ayo masezerano atubahirijwe bigatuma aseswa.

Incamake y'ikibazo Sosiyete MICON REAL LINE Ltd yaregaye Urukiko rw'Ubucuruzi isaba gusesa amasezerano y'inguzanyo ingana na 500.000.000 frw yagiranye na ECOBANK RWANDA Plc yo ku wa 07/06/2016 kuko ECOBANK RWANDA Plc itubahirije amasezerano bagiranye.

Urukiko rw'Ubucuruzi rwemeje ko ikirego cya MICON REAL LINE Ltd nta shingiro gifite kuko amasezerano yashyizwe mu bikorwa ngo kuko inguzanyo yayihawe hagakurwamo andi mafaranga MICON REAL LINE Ltd yari ibereyemo ECOBANK RWANDA Plc mbere y'uko iyiha iriya nguzanyo.

MICON REAL LINE Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko yitiranyije amasezerano yavuzwe haruguru n'andi yari yarabaye mbere y'uko amasezerano agibwaho impaka aba bituma ruyitira ko aya mbere yabaye mu ishyirwa mu bikorwa ry'amasezerano yo kuwa 07/06/2016. Urukiko Rukuru rw'Ubucuruzi rwemeje ko amasezerano yo kuwa 07/06/2016 aseswa kuko atashyizwe mu bikorwa runagenera indishyi MICON REAL LINE Ltd.

ECOBANK RWANDA Plc yajuririye Urukiko rw'Ubujurire isaba ko hasuzumwa niba amasezerano yo ku wa 07/06/2016 yabaye hagati ya MICON REAL LINE Ltd na ECOBANK RWANDA Plc yihagije ubwayo ku buryo yafatwa nk'amasezerano y'umwenda, no gusuzuma niba yarubahirijwe ku ruhande rwayo.

MICON REAL LINE Ltd yireguye ivuga ko amasezerano y'inguzanyo ya 500.000.000 frw yabayeho ariko ko itigeze iyahabwa, ko mu gihe itayahawe aribyo byatumye isaba ko amasezerano ayashingiweho aseswa.

MICON REAL LINE Ltd yatanze ubujurire bwuririye ku bundi isaba guhabwa indishyi zo gusiragizwa mu manza. ECOBANK RWANDA Plc yireguye ivuga ko ntazo yatanga ahubwo MICON REAL LINE Ltd ariyo ikwiye kuzitanga kuko ariyo yayishoye mu manza.

Incamake y'icyemezo: 1. A masezerano afatwa nk'ay'inguzanyo cyangwa ay'ingwate harebwe umutwe wayo icyo usobanura, uko ingingo zigize amasezerano ziteye, hakarebwa na none icyasezeranyijwe, kugira ngo icyo ababuranyi bajyaho impaka gisobanuke.

2. Historique ya banki ntishingirwaho hagamijwe kwerekana ko amasezerano y'inguzanyo yashyizwe mu bikorwa ngo bihabwe ishingiro mu gihe ibyo iba igaragaza biba bidahuye n'amasezerano aburanwa.

3. Mu gihe bigaragaye ko Banki itigeze irekura amafaranga y'umwenda cyangwa ngo itange avansi cyangwa se garanti bishingiye ku masezerano y'inguzanyo agibwaho impaka bifatwa ko ayo masezerano atubahirijwe bigatuma aseswa.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi ntibwakiriwe.
Imikirize y'urubanza RCOMA 00347/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 31/12/2019 ntihindutse.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111 n'iya 154, igika cya 1.
Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64, 66 na 80.

Inyandiko z'abahanga zifashishijwe:
The Common Law Library, Chitty on Contracts-Specific contracts, twenty-seventh edition, volume II, London, Sweet & Maxwell,1994, p.606.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge MICON REAL LINE Ltd isaba gusesa amasezerano yagiranye na ECOBANK RWANDA Plc yo ku wa 07/06/2016 y'inguzanyo ingana na 500.000.000 Frw, kuko ECOBANK RWANDA Plc itubahirije amasezerano bagiranye, igahabwa n'indishyi zijyanye nabyo.

[2] Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza No RCOM01153/2018/TC/NYGE ku wa 21/03/2018, rwemeza ko hari amafaranga yagiye ashyirwa

kuri konti ya MICON REAL LINE Ltd hashingiwe ku masezerano yo ku wa 07/06/2016, aho ku wa 10/06/2016 hashyizweho 80.000.000 Frw, naho ku wa 04/11/2016 hashyirwaho izindi 297.359.448 Frw, ikindi ni uko MICON REAL LINE Ltd yari isanzwe ifitemo umwenda, maze Banki mu gihe cyo kuyiha umwenda ikabanza kwiyishyura umwenda wari usanzwemo, ko ibyo bigaragaza ko amasezerano yo ku wa 07/06/2016 yagiye ashyirwa mu bikorwa, akaba atagomba guseswa, rutegeka MICON REAL LINE Ltd kwishyura ECOBANK RWANDA Plc indishyi zo gushorwa mu manza zingana na 600.000 Frw, ikanishyura amafaranga yishyuwe umuhanga wifashishijwe n'Urukiko.

[3] MICON REAL LINE Ltd ntiyishimiye imikirize y'urubanza, ijurira Urukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwitiranyije iyubahirizwa ry'amasezerano yo ku wa 07/06/2016 n'andi masezerano y'inguzanyo yabaye mbere, maze rwitirira ayo masezerano ya mbere ishyirwa mu bikorwa ry'amasezerano yabaye ku wa 07/06/2016.

[4] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza No RCOMA 00347/2019/HCC ku wa 31/12/2019, rwemeza ko amasezerano yitwa "Convention d'ouverture de crédit avec constitution d'hypothėque" yo ku wa 07/06/2016 yabaye hagati ya ECOBANK RWANDA Plc na MICON REAL LINE Ltd, aseswa, rutegeka ECOBANK RWANDA Plc kwishyura MICON REAL LINE Ltd 1.000.000 Frw y'igihembo cya Avoka na 60.000 Frw y'amagarama y'urubanza.

[5] ECOBANK RWANDA Plc ntiyishimiye imikirize y'urubanza ijuririra Urukiko rw'Ubujurire irusaba gusuzuma niba amasezerano yo ku wa 07/06/2016 yabaye hagati ya MICON REAL LINE Ltd na ECOBANK RWANDA Plc yihagije ubwayo ku buryo yafatwa nk'amasezerano y'umwenda, no gusuzuma niba yarubahirijwe ku ruhande rwayo, niba ECOBANK RWANDA Plc yari ifite impamvu zumvikana zo kudaha MICON REAL LINE Ltd umwenda wa Letter of Credit wa USD 254.000 na Perfomance Guarantee Extension ya USD 186.562, isaba indishyi zitandukanye hamwe n'igihembo cya Avoka.

[6] MICON REAL LINE Ltd nayo yatanze ubujurire bwuririye ku bundi ivuga ko ECOBANK RWANDA Plc yakomeje kuyishora mu manza kandi ari yo ntandaro y'uru rubanza kubera ko itubahirije amasezerano aburanwa, ko basanga ECOBANK RWANDA Plc ikwiriye kwirengera ingaruka z'uru rubanza, isaba ko MICON REAL LINE Ltd yakwishyurwa 2.500.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza kuri uru rwego kandi igahabwa 200.000.000 Frw y'indishyi zo kwica amasezerano.

[7] Urubanza rwaburanishijwe mu ruhame ku wa 23/12/2020, ECOBANK RWANDA Plc, iburanirwa na Me Bimenyimana Eric, MICON REAL LINE Ltd iburanirwa na Gacinya Chance Denys, umuyobozi wayo, yunganirwa na Me Uwamahoro Marie Grace.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba amasezerano yo ku wa 07/06/2016 yabaye hagati ya ECOBANK RWANDA Plc na MICON REAL LINE Ltd atari ay'inguzanyo cyangwa ay'ingwate

[8] Me Bimenyimana Eric, uburanira ECOBANK RWANDA Plc, avuga ko amasezerano yabaye ku wa 07/06/2016 atari amasezerano y'inguzanyo, ko ahubwo ari ayo gutanga ingwate ku

mwenda, asobanura ko icyo ECOBANK RWANDA Plc inenga icyemezo cy'Urukiko Rukuru rw'Ubucuruzi ari uko cyashingiye ku mpamvu zidafite ishingiro, kuko kuba impande zombi zarumvikanye ingano y'umwenda wa 500.000.000 Frw, ijanisha rya 18%, ndetse no kuba umwenda waragombaga kumara imyaka 10 ukarangira ku ya 07/06/2026, kuba impande zombi zarumvikanye ku ngwate ndetse zikanandikishwa ku Mwanditsi Mukuru, kuba umutwe w'amasezerano ugagaragaza ubwoko bwayo bidahagije kugira ngo amasezerano yabaye hagati y'impande zombi yitwe amasezerano y'inguzanyo.

[9] Akomeza asobanura uburyo Banki yari yumvikanye na MICON REAL LINE Ltd, burimo kuzongera gukora amasezerano no kwandikisha ingwate muri RDB cyane ko izo ngwate zari zisanzwe zaratanzwe ku mwenda wa 250.000.000 Frw nyamara Urukiko rukaba rwarabyirengagije byose rukemeza ko ari amasezerano y'umwenda kuko umwenda udakwiye kwitiranywa n'undi kandi nyamara n'ubundi amasezerano yo gutanga ingwate akorerwa ku mwenda, ko bitabaye ibyo ntacyo iyo ngwate yaba yishingira, ko rero aya masezerano adakwiye kwitiranywa n'amasezerano y'inguzanyo. Akomeza avuga ko amasezerano yakozwe ingwate zari zisanzwe zihari ko batari kurenza 500.000.000 Frw cyane ko ntaho MICON REAL LINE Ltd yigeze isaba ayo mafaranga bita inguzanyo.

[10] MICON REAL LINE Ltd, mu izina ry' Umuyobozi wayo Gacinya Chance Denys, mu kwiregura avuga ko ibyo Me BIMENYIMANA Eric avuga atari byo kuko bandikiye ECOBANK RWANDA Ltd ku wa 21/12/2015 basaba inguzanyo ya 700.000.000 Frw, bemererwa 500.000.000 Frw kandi n'Urukiko rwagaragaje ko ku wa 07/06/2016 habayeho amasezerano y'inguzanyo aherekejwe n'ingwate (convention d'ouverture de crédit avec constitution d'hypothèque), ko muri ayo masezerano impande zombi zumvikanye ku ngano y'umwenda ugurizwa ungana 500.000.000 Frw, kw'ijanisha ry'inyungu (18%), ku gihe umwenda wagombaga kumara cy' imyaka icumi, no ku ngwate zigomba gutangwa zikanandikishwa ku Umwanditsi Mukuru, ko ibyo byose bigaragaza ko amasezerano yabaye hagati y'impande zombi ari amasezerano y'iguriza yari yihagije. Ashingira ku ibaruwa yo ku wa 21/12/2015 ndetse n'amasezerano yabaye ku wa 07/06/2016 mu ngingo ya 2 n'iya 5 ashimangira ko ayo masezerano ari ay'inguzanyo.

[11] Me Uwamahoro Marie Grace, uburanira MICON REAL LINE Ltd, nawe avuga ko amasezerano yabaye hagati ya MICON REAL LINE Ltd na ECOBANK RWANDA Plc ku wa 06/07/2016 ari ay'inguzanyo atari ay'ingwate kuko bibaye uko bivugwa ntabwo bari bafite inshingano zo kuyashyira mu bikorwa, bikaba nta n'impamvu yari gutuma MICON REAL LINE Ltd ijya kuregera kwica amasezerano, nyamara ko ibivugwa na ECOBANK RWANDA Plc atari ukuri kubera ko ayo masezerano MICON REAL LINE Ltd yayakoze ishaka amafaranga yo gukora isoko yari yatsindiye ariko birangira itayahawe isoko bararitwara.

[12] Me Uwamahoro Marie Grace avuga kandi ko ibivugwa mu ngingo ya 3 n'iya 4 z'amasezerano bigaruka ku ijambo "crédit" bisobanuye ko icyo ECOBANK RWANDA Plc yatanze ari inguzanyo isabwamo ingwate. Akomeza avuga ko izo ngwate zandikishijwe muri RDB nk'uko byari mu masezerano, akaba abona ku ruhande rwa MICON REAL LINE Ltd barashyize mu bikorwa inshingano zabo mu masezerano ariko ECOBANK RWANDA Plc yo ikaba yaranze gushyira mu bikorwa ibyo yemeye.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 66 y'Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ibikurikira: "Gusesengura amasezerano cyangwa imwe mu ngingo zayo ni ugusobanura icyo ayo masezerano agamije n'icyasezeranyijwe".

[14] Mu rwego rwo kumenya ubwoko bw'amasezerano yakozwe ku wa 07/06/2016 hagati ya MICON REAL LINE Ltd na ECOBANK RWANDA Plc hakwiye kurebwa umutwe wayo icyo usobanura, uko ingingo zigize amasezerano ziteye, hakarebwa na none icyasezeranyijwe, kugira ngo icyo ababuranyi bajyaho impaka gisobanuke.

[15] Dosiye igaragaramo amasezerano yo ku wa 07/06/2016 yakozwe hagati ya ECOBANK RWANDA Ltd, MICON REAL LINE Ltd, Arlette Hosana, Didier NTWARI KAYIHURA[1], afite umutwe witwa: "Convention d'ouverture de crédit avec constitution d'hypothèque)". Ingingo yayo ya mbere iteganya ko ECOBANK RWANDA Ltd yemereye MICON REAL LINE Ltd inguzanyo ya 500.000.000 Frw, iya 2 ikerakana icyo iyo nguzanyo izakoreshwa n'uko Banki ifite uburenganzira bwo kubanza kwiyishyura kuri iyo nguzanyo imyenda MICON REAL LINE Ltd yari isanzwe iyibereyemo, ingingo ya 3 igateganya igihe cy'ayo masezerano, iya 5 ikibutsa ko umwenda remezo MICON REAL LINE Ltd yemerewe ungana na 500.000.000 Frw, ko inyungu zibariwe kuri 18% ku mwaka, ko kandi iyo nguzanyo ari iy'igihe kingana n'imyaka 10, ni ukuvuga kugeza ku wa 07/06/2026, naho ingingo ya 9 igateganya ko mu gihe uwafashe inguzanyo yaba ananiwe kwishyura ahaye Banki uburenganzira bwo kugurisha ingwate, kuyegukana, kuyicunga cyangwa kuyikodesha.

[16] Mu gusobanura amasezerano y'inguzanyo, abahanga mu mategeko bavuga ko amasezerano y'inguzanyo y'amafaranga ari amasezerano abantu bakorana umwe aha cyangwa se yemera guha undi amafaranga, uyahawe nawe akagira inshingano yeruye cyangwa se iteruye yo kuyishyura ku gihe bemeranyijwe habariyemo cyangwa se hatabariyemo n'inyungu"[2], bivuze ko iby'ingenzi muri ayo masezerano ari ukwemeranya ku mubare w'amafaranga, ku kigero cy'inyungu iyo zasezeranywe no ku gihe umwenda uzishyurirwamo.

[17] Urukiko rurasanga iby'ingenzi bigize amasezerano y'inguzanyo bigaragara mu masezerano yo ku wa 07/06/2016 hagati ya MICON REAL LINE Ltd na ECOBANK RWANDA PLC byuzuye, kuko muri ayo masezerano impande zombi zumvikanye ku ngano y'amafaranga y'inguzanyo (500.000.000 Frw), ku nyungu (18% ku mwaka) no ku gihe umwenda uzishyurirwamo (imyaka 10), hiyongeraho n'ingingo ijyanye n'uburenganzira bwa Banki ku ngwate mu gihe MICON REAL LINE Ltd yaba inaniwe kwishyura inguzanyo.

[18] Urukiko rurasanga na none umutwe w'amasezerano ubwawo ugaragaza ko ari amasezerano y'inguzanyo ariko akubiyemo n'ay'ingwate y'umutungo utimukanwa; kuba rero amasezerano yo ku wa 07/06/2016, akubiyemo n'ay'ingwate bikaba bitayakuraho kuba ari ay'inguzanyo, kuko yujuje iby'ingenzi bisabwa mu masezerano y'inguzanyo.

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[1] Arlette Hosana na Didier Ntwari Kayihura bagaragara nk'abishingizi batanze ingwate (propriétaires constituants) muri aya masezerano.

[2] "A contract of loan of money is a contract whereby one person lends or agrees to lend a sum of money to another, in consideration of a promise express or implied to repay that sum on demand or at a fixed or determinable future time, or conditionally upon an event which is bound to happen, with or without interest", The Common Law Library, Chitty on Contracts-Specific contracts, twenty-seventh edition, volume II, London, Sweet & Maxwell,1994, p.606.

[19] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga amaserano yo ku wa 07/06/2016 hagati ya MICON REAL LINE Ltd na ECOBANK RWANDA Plc yari amasezerano y'inguzanyo, ariko akaba anakubiyemo n'ay'ingwate ku mutungo utimukanwa, bityo ibyo uhagarariye ECOBANK RWANDA Plc avuga ko atari amasezerano y'inguzanyo yihagije bikaba nta shingiro bifite.

[20] Ku bijyanye no kuba ECOBANK RWANDA Plc ivuga ko hari ibyari byarumvikanyweho n'impande zombi byo kuzongera gukora andi masezerano nk'uko biri mu ngingo ya 2 y'amasezerano bagiranye, Urukiko rurasanga ibyo bitabuza ko amasezerano yavuzwe haruguru ari ay'inguzanyo, kuko icyo iyo ngingo iteganya ari uko impande zombi zizagira ibyo zumvikanaho nk'uburyo inguzanyo yemerewe MICON REAL LINE Ltd izakoreshwa, ECOBANK RWANDA Plc ikaba rero ntacyo igaragaza kivuguruza kuba amasezerano yo ku wa 07/06/2016 ari ay'inguzanyo.

2. Kumenya niba amasezerano yo ku wa 07/06/2016 yarubahirijwe ku rundande rwa ECOBANK RWANDA Plc, akaba atagomba guseswa

a) Ibijyanye n'ishyirwa mu bikorwa ry'amasezerano yo ku wa 07/06/2016

[21] Me Bimenyimana Eric, uhagarariye ECOBANK RWANDA Ltd, avuga ko mu gika cya 34 cy'urubanza rujuririrwa Urukiko Rukuru rw'Ubucuruzi rwavuze ko kuba ECOBANK RWANDA Ltd yiyemerera ko amasezerano yo ku wa 07/06/2016 ari amasezerano y'ingwate bisobanuye ko yiyemerera ko atigeze ashyirwa mu bikorwa, bigashimangirwa na Raporo y'Umuhanga ON & Associates Ltd ihagarariwe na Olivier NTAWUYIRUSHINTEGE yo kuwa 19/11/2018 aho mu gika cya 8 (section 8) cyayo yatanze umwanzuro ko Banki itigeze irekura amafaranga y'umwenda cyangwa ngo itange avansi cyangwa se garanti bishingiye ku masezerano y'inguzanyo ateganyijwemo ingwate yo ku wa 07/06/2016.

[22] Asobanura ko asanga ibyo bigaragaza ko Urukiko Rukuru rw'Ubucuruzi rutumvise neza ibisobanuro rwahawe na ECOBANK RWANDA Plc, ko ikibazo ari uko MICON REAL LINE Ltd itigeze igaragaza aho yaba yarasabiye umwenda wa 500.000.000 Frw nyamara yarasabye indi myenda, ko rero kugira ngo MICON REAL LINE LTD ihabwe uwo mwenda yagombaga kubanza kuwusaba.

[23] Me Bimenyimana Eric akomeza asobanura ko ayo masezerano yashyizwe mu bikorwa, kuko mu bihe bitandukanye MICON REAL LINE Ltd yasabaga amafaranga muri ECOBANK RWANDA Plc ikayahabwa, atanga ingero z'uko byagenze ku mafaranga yagiye atangwa; ku wa 15/07/2016, MICON REAL LINE Ltd yandikiye ECOBANK RWANDA Plc iyisaba umwenda ungana na USD 186,562 irayahabwa, ku wa 28/07/2016 iha MICON REAL LINE Ltd umwenda wa USD 189,562 ni ukuvuga Frw 149,943,542 Frw kuri za ngwate zatanzwe mu masezerano yo ku wa 07/06/2016 kugeza ubwo umwenda MICON REAL LINE Ltd yari isanganywe wanganaga na 340.000.000 Frw uvuye kuri 250.000.000 Frw; ku wa 04/11/2016 ECOBANK RWANDA Plc yashyize kuri konti ya MICON RAEL LINE Ltd umwenda wa 297.359.449 Frw uyu mwenda nawo ukaba ukomoka ku mwenda wa 250.000.000 Frw.

[24] Asoza iyi ngingo avuga ko ntaho MICON REAL LINE Ltd yahera ivuga ko iyo myenda itarebana n'amasezerano yo ku wa 07/06/2016, kandi ingwate zatanzwe ari zimwe UPI 1/02/07/02/1155 na UPI 1/03/07/02/544.

[25] Me Uwamahoro M.Grace avuga ko ibyo ECOBANK RWANDA Ltd ivuga, igenda yivuguruza, ko mbere yari yavuze ko amasezerano yabaye yari ay'ingwate gusa, ubu bakaba bemera ko ari ay'inguzanyo zagiye zitangwa, akaba ari byo n'Urukiko Rukuru rw'Ubucuruzi rwavuze ko ariya masezerano yari ay'inguzanyo atari ay'ingwate, ko kuba ECOBANK RWANDA Plc itagaragaza aho yatangiye umwenda wa 500.000.000 Frw, ariko MICON REAL LINE Ltd yo ikaba yarakomeje kwandikira ECOBANK RWANDA Plc iyisaba kubahiriza ayo amasezerano, ibyo bitandukanye n'ibyo ECOBANK RWANDA Plc ivuga, ko 80.000.000 Frw yagiye kuri konti akomoka ku masezerano yo ku wa 03/06/2016, ayo akaba yari amasezerano yihariye afite n'ibiyagenga byihariye, akaba atandukanye n'ayo ku wa 07/06/2016, ko ECOBANK RWANDA Plc idakwiye kubyirengagiza nkana ngo ivuge ko yashyizwe kuri konti mu rwego rwo gushyira mu bikorwa amasezerano yo ku wa 07/06/2016.

[26] Akomeza avuga ko 279.359.448 Frw yashyizwe kuri konti ku wa 04/11/2016, ariko ECOBANK RWANDA Plc irongera iyakuraho uwo munsi nk'uko umuhanga yabisobanuye, ko ku bwabo ayo mafaranga ntaho ahuriye n' amasezerano yo ku wa 07/06/2016, ko iyo aba afite aho ahuriye ECOBANK RWANDA Plc itari kuvuga ko ari extension kuko hakorwa extension iyo igihe cyari cyumvikanweho cyarangiye.

[27] Me Uwamahoro Marie Grace avuga ko kuba ECOBANK RWANDA Plc ivuga ko ku wa 15/07/2016 yashyize kuri konti ya MICON REAL LINE Ltd 189,562 USD mu rwego rwo gushyira mu bikorwa amasezerano yo ku wa 07/06/2016 y'amafaranga 500,000,000 Frw ataribyo, kuko ishaka guhuza amasezerano aburanwa n'andi masezerano, nyamara 186,562 USD ni advance payment Guarantee MICON REAL LINE Ltd yari yasabye nayo ikaba itarayahawe nk'uko ECOBANK RWANDA Plc ibyemera ikagaragaza n'impamvu itayatanze, bityo rero amasezerano aburanwa ntiyashyizwe mu bikorwa nk'uko byanasobanuwe muri raporo y'umuhanga washyizweho n'urukiko.

[28] Asoza avuga ko ECOBANK RWANDA Plc ishaka kuyobya Urukiko ifata inguzanyo zose MICON yaba yarafashe ikazihuza n'amasezerano yo kuwa 07/06/2016 kandi ntaho bihuriye, buri masezerano yihariye ukwayo, ko rero amasezerano yo kuwa 07/06/2016 atashyizwe mu bikorwa, ko hashingiwe ku bisobanuro atanze ndetse na raporo yakozwe n' impuguke bigaragaza ko amasezerano yo kuwa 07/06/2016 atigeze ashyirwa mu bikorwa.

UKO URUKIKO RUBIBONA

[29] Ingingo ya 64 y'Itegeko n°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ibikurikira: "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya".

[30] Dosiye igaragaza ko ku wa 21/12/2015, MICON REAL LINE Ltd yandikiye ECOBANK RWANDA Ltd iyisaba inguzanyo ya USD 700,000 kugira ngo ishyire mu bikorwa isoko yatsindiye muri EUCL ryiswe Supply and installation of 20 MVA transformers and accessories at Mont Kigali, nyuma yaho, ku wa 07/06/2016 hakozwe amasezerano hagati ya ECOBANK

RWANDA Ltd, MICON REAL LINE Ltd, Arlette Hosana, Didier NTWARI KAYIHURA[3], afite umutwe witwa: “Convention d’ouverture de crédit avec constitution d’hypothèque)”, ingingo ya 1,3 na 5 ziteganya ko ECOBANK RWANDA Ltd yemereye MICON REAL LINE Ltd inguzanyo ya 500.000.000 Frw harimo ingwate ndetse harimo ijanisha rya 18% ry’inyungu hamwe n’igihe kingana n’imyaka 10 cyo kwishyura umwenda.

[31] Dosiye igaragaza ko ku wa 03/06/2016, ECOBANK RWANDA Plc yagiranye na MICON REAL LINE Ltd amasezerano y’inguzanyo ya 80.000.000 Frw yari afite intego (description) yiswe “to assist the client in executing the contract signed with Kamonyi district, akaba agaragaza ko kandi azamara igihe cy’amezi atandatu (6 months), kandi akaba yaragombaga kurangira ku itariki ya 31/12/2016.

[32] Muri dosiye harimo ikimenyetso cyiswe “loan disbursement being approved rebooking the loan contract” cyatanzwe na ECOBANK RWANDA Plc kigaragaza ko ku wa 04/11/2016 iyi Banki yashyize 279.359.448 Frw kuri konti ya MICON REAL LINE Ltd. Dosiye irimo na none historique ivugwa na ECOBANK RWANDA Plc igaragaza uko ababuranyi bombi bagiye bakorana guhera ku wa 10/01/2010 kugeza ku wa 04/05/2019, hakaba n’indi yo guhera ku wa 30/04/2013 kugeza ku wa 26/09/2017.

[33] Dosiye igaragaza ko 250.000.000 Frw yashyizwe kuri konti ya MICON REAL LINE Ltd mu rwego rwo gushyira mu bikorwa amasezerano yasinywe hagati ya MICON REAL LINE Ltd na ECOBANK RWANDA Plc ku wa 06/01/2014 afite intego cyangwa description igira iti: “to execute the contract signed with Rusizi District”.

[34] Dosiye irimo kandi raporo y’umuhanga ON & Associates Ltd ihagarariwe na Olivier NTAWUYIRUSHINTEGE yo ku wa 19/11/2018, aho muri section ya 7 yiswe “observation” n’iya 8 yiswe “conclusion and opinion”, igaragaza ko Banki itigeze irekura amafaranga y’umwenda cyangwa ngo itange avansi cyangwa se garanti bishingiye ku masezerano y’inguzanyo ateganyijwemo n’ingwate yo ku wa 07/06/2016, ko kandi amasezerano aburanwa atubahirijwe ku ruhande rwa ECOBANK RWANDA Plc cyane cyane ingingo ya 2 igika cya 2 n’icya 3[4], ko mu igenzura bakoze ntaho bigeze babona amasezerano y’inyongera kuri aya ya 500.000.000 Frw aburanwa, ko kandi inguzanyo itigeze itangwa.

[35] Urukiko rurasanga 80.000.000 Frw yashyizwe kuri konti ya MICON REAL LINE Ltd ku wa 10/06/2016 yarashyiraga mu bikorwa amasezerano yasinywe ku wa 03/06/2016 akaba ntaho ahuriye n’ishyirwa mu bikorwa ry’amasezerano yo ku wa 07/06/2016, kuko nk’uko byagaragajwe haruguru, yari agamije gushyira mu bikorwa amasezerano MICON REAL LINE Ltd yari ifitanye n’Akarere ka Kamonyi.

[36] Urukiko rurasanga ibivugwa na ECOBANK RWANDA Plc ko 279.359.448 Frw yashyizwe kuri konti ya MICON REAL LINE Ltd ku wa 04/11/2016 mu rwego rwo gushyira mu bikorwa amasezerano yo ku wa 07/06/2016, nta shingiro bifite kuko uko bigaragara muri dosiye ntabwo bisobanutse ku buryo Urukiko rwabishingiraho rubyemeza.

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[3] Arlette Hosana na Didier Ntwari Kayihura bagaragara nk’abishingizi batanze ingwate (propriétaires constituants) muri aya masezerano.

[4] Reba raporo y’umuhanga page 4, section 7&8.

[37] Urukiko rurasanga ECOBANK RWANDA Plc yarashyize 250.000.000 Frw kuri konti ya MICON REAL LINE Ltd mu rwego rwo gushyira mu bikorwa amasezerano yo ku wa 06/01/2014 afite intego cyangwa description "to execute the contract signed with Rusizi District", akaba ntaho ahuriye n'ishyirwa mu bikorwa ry'amasezerano yo ku wa 07/06/2016.

[38] Urukiko rurasanga ibyo Me BIMENYIMANA Eric asaba ko harebwa historique kubera ko ari yo igaragaza ishyirwa mu bikorwa ry'aya masezerano, nta shingiro byahabwa kuko nk'uko byagaragajwe haruguru ibyo igaragaza bitandukanye n'ibyo avuga.

[39] Urukiko rurasanga ibimenyetso ECOBANK RWANDA Plc ishingiraho ivuga ko amafaranga yagiye ashyirwa kuri konti ya MICON REAL LINE Ltd, ntaho bihuriye n'ishyirwa mu bikorwa ry'amasezerano yo ku wa 07/06/2016, kandi ibi bikaba bivuguruza ibyo iburanisha ko amasezerano yo ku wa 07/06/2016 atari ay'inguzanyo ahubwo ari ay'ingwate, kuko bitumvikana uburyo yavuga ko amasezerano yashyizwe mu bikorwa hagatangwa inguzanyo iyateganyijwemo ngo yongere ivuge ko ayo masezerano atari ay'inguzanyo, bityo iyi ngingo y'ubujurire bwayo ikaba nta shingiro ifite.

b) Ku bijyanye no gusesa amasezerano yo ku wa 07/06/2016

[40] Me Bimenyimana Eric uburanira ECOBANK RWANDA Plc avuga ko aya masezerano aramutse aseshwe byagira ingaruka, kuko izi ngwate zari zishingiye undi mwenda ungana na 94,000 USD wa Letter of Credit bishyuriye MICON REAL LINE Ltd yari yananiwe kubahiriza amasezerano, bityo akavuga ko icyo barwanaho ari ingwate, ko icyakora amasezerano aramutse aseshwe ibintu bikaguma uko byari bimeze mbere y'itariki ya 07/06/2016 ECOBANK RWANDA Plc ntakibazo yagira.

[41] Gacinya Chance Denys, uhagarariye MICON REAL LINE Ltd, avuga ko ibyo Me BIMENYIMANA Eric uburanira ECOBANK RWANDA Plc asobanura nta shingiro byahabwa kuko Banki aburanira izi neza ko hari amasezerano itashyize mu bikorwa, cyane ko na 94,000 $ ya Letter of Credit bavuga batayishyuye bonyine, bakabishingira no ku byo umuhanga yavuze ko ECOBANK yamubeshye, bityo ko batari bazi ko ECOBANK iburana icungana n'ingwate aho kuba 500,000,000 Frw y'amasezerano y'inguzanyo.

[42] Me Uwamahoro Marie Grace we avuga ko amafaranga MICON REAL LINE Ltd yasabye y'inguzanyo muri ECOBANK RWANDA Plc yari ayo kugira ngo ibashe gushyira mu bikorwa isoko yari yaratsindiye muri EUCL ariko ko kudahabwa amafaranga byatumye itarirangiza rihabwa abandi, bityo rero ayo masezerano akaba ntacyo akibamariye ari nayo mpamvu basaba Urukiko rw' Ubujurire kwemeza ko amasezerano aburanwa y' inguzanyo atigeze ashyirwa mu bikorwa bityo rugategeka ko aseswa ndetse ECOBANK RWANDA Plc ikishyura amafaranga y'indishyi n' inyungu zitandukanye zasabwe na MICON REAL LINE Ltd.

UKO URUKIKO RUBIBONA

[43] Ingingo ya 80 y'Itegeko n°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ibikurikira: "Iyo igihe cyo gukora ibisabwa mu masezerano kigeze kutabikora bifatwa nko kwica amasezerano", naho ingingo ya 64 y'iryo Tegeko iteganya ko amasezerano ashobora guseswa ari uko abayagiranye babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko.

[44] Dosiye igaragaza ko ku wa 31/05/2017 ECOBANK RWANDA Plc yashyize US $ 94,783 kuri konti ya MICON REAL LINE LTD ibishyurira performance guarantee, naho MICON REAL LINE Ltd ikavuga ko bafatanyije kuyishyura.

[45] Urukiko rurasanga imikirize y'urubanza RCOMA 00347/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 31/12/2019 ku rupapuro rwa 14 mu gika cya 35, igaragaza ko urwo Rukiko rwasanze kuba icyari kigenderewe mu masezerano yo ku wa 07/06/2016 yabaye hagati ya ECOBANK RWANDA Ltd na MICON REAL LINE Ltd, kitarakozwe, rutegeka ko aseshwe kubwo kutubahirizwa. Uru Rukiko narwo rukaba ari uko rubibona, bityo akaba nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze rwemeza ko ayo masezerano aseshwe.

[46] Urukiko rusanga kuba uburanira ECOBANK RWANDA PLC asaba ko ibintu biguma uko byahoze kubera ko bahomba ingwate zari zishingiye undi mwenda kubera ko nyuma bishyuye 94,000 $ LC MICON REAL LINE Ltd yari yananiwe kubahiriza amasezerano, ibi bitabuza aya masezerano guseswa kuko intego nyamukuru yayo itagezweho.

[47] Nyuma yo gusesengura ibijyanye n'iseswa ry'amasezerano yo ku wa 07/06/2016 uru Rukiko narwo rugasanga yaragombaga guseswa nk'uko bimaze gusobanurwa haruguru, Urukiko rurasanga nta mpamvu igihari yo gusuzuma ingimgo y'ubujurire bwa ECOBANK RWANDA Plc ishingiye ku kumenya niba ECOBANK RWANDA Plc yari ifite impamvu zumvikana zo kudaha MICON REAL LINE Ltd umwenda wa Letter of Credit wa USD 254.000 na Perfomance Guarantee Extension ya USD 186.562, kuko ntaho ihuriye n'ishyirwa mu bikorwa ndetse n'iseswa ry'ayo masezerano yaregewe.

3. Gusuzuma ishingiro ry'indishyi, amafaranga y'igihembo cya Avoka nay'ikurikirarubanza bisabwa mu rubanza

[48] Me Uwamahoro M.Grace avuga ko ECOBANK RWANDA Plc yakomeje gushora MICON REAL LINE Ltd mu manza kandi ari yo ntandaro y'uru rubanza kubera ko itubahirije amasezerano aburanwa, ko basanga ECOBANK ikwiriye kwirengera ingaruka z' uru rubanza, asaba ko MICON REAL LINE Ltd yahabwa indishyi zikomoka ku kwica amasezerano zingana na 200.000.000 Frw, 2.500.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza kubera ko kutubahiriza amasezerano byatumye MICON REAL LINE Ltd inanirwa gushyira mu bikorwa isoko yari yatsindiye muri EUCL, ko izo ndishyi batazihawe akaba ari yo mpamvu bazisabye mu Rukiko rw'Ubujurire.

[49] Uhagarariye ECOBANK RWANDA Plc mu nama ntegurarubanza yavuze ko amafaranga 200,000,000 Frw MICON REAL LINE Ltd yari yayasabye ku rwego rwa mbere ntiyayahabwa, ntiyanabijuririra, bikaba bivuze ko yari yanyuzwe n'imikirize y'urubanza kuri iyo ngingo, bityo izo ndishyi zikaba zitagomba kugarukwaho mu rwego rw'Ubujurire, akomeza avuga ko ariyo yayishoye mu manza, ko igomba kubitangira 1.000.000 Frw y'igihembo cya Avoka ku rwego rw'Urukiko Rukuru na 1.000.000 Frw ku rwego rw'Urukiko rw'Ubujurire, yiyongera ku yatanzwe n'Urukiko rw'ubucuruzi.

UKO URUKIKO RUBIBONA

a) Ku byerekeranye n'indishyi za 200.000.000 Frw zisabwa na MICON REAL LINE Ltd

[50] Ingingo ya 154, igika cya 1 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: "Ku rwego rw'ubujurire ntihashobora gutangirwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu rukiko rw'ubujurire".

[51] Urukiko rurasanga 200, 000,000 Frw y'igihombo MICON REAL LINE LTD isaba ari ikirego gishya izanye mu bujurire kitaburanishijweho mu Rukiko Rukuru rw'Ubucuruzi. Bityo kikaba kitagomba kwakirwa hashingiwe ku biteganywa n'ingingo ya 154 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 yibukijwe haruguru.

b) Ku byerekeranye n'amafarnga y'ikurikiranarubanza n'igihembo cya Avoka

[52] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29 /04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: "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".

[53] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza MICON REAL LINE Ltd isaba ikwiye kuyahabwa, kuko byabaye ngombwa ko ishaka Avoka wo kuyiburanira, ariko kuko ayo isaba ari menshi kandi ikaba nta bimenyetso yatanze by'ingano nyakuri y'ayo ikwiye, mu bushishozi bw'Urukiko rukaba ruyigeneye 800.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza, kuri uru rwego.

III. ICYEMEZO CY'URUKIKO

[54] Rwemeje ko ubujurire bwatanzwe na ECOBANK RWANDA Plc nta shingiro bufite;

[55] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na MICON REAL LINE Ltd butakiriwe ku birebana n'indishyi zo kwica amasezerano;

[56] Rwemeje ko imikirize y'urubanza Nº RCOMA 00347/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 31/12/2019 idahindutse;

[57] Rutegetse ECOBANK RWANDA Plc kwishyura MICON REAL LINE Ltd 800.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza, kuri uru rwego.

[58] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.