# GUARANTY TRUST BANK RWANDA Plc v KIGALI CERAMICA & FURNITURE LTD

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00049/2019.CA(Gakwaya, P.J.) 23 Kanama 2019]

*Amategeko agenga imanza z'ubucuruzi – Ingwate – Kwandikisha ingwate – Inguzanyo itanzwe na banki – Uwahawe umwenda na banki ikanandikisha ingwate mu buryo bukurikije amategeko akomeza kubahiriza amasezerano bagiranye.*

*Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Gufatira ibintu by'urimo umwenda – Uwahawe umwenda, iyo aciye ku ruhande akajya gufunguza konti mu yindi banki, ntibibuza banki yamuhaye umwenda gukurikirana no gusaba gufatira ayo mafaranga ari mu yindi banki hifashishijwe Umuhesha w'Inkiko.*

*Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Gutanga ikirego mu rukiko nyuma y'ifatira ry'ibintu by'urimo umwenda – Iyo uwatanze umwenda ahise atanga ikirego nyuma y'ifatira ry'ibintu by'urimo umwenda, uwahawe umwenda ntashobora kwitwaza ko banki yawutanze idashobora gutanga ikirego kugira ngo igaruze amafaranga yayo kubera ko ngo ifite uburenganzira bwo kugurisha ingwate ifite kugira ngo yiyishyure.*

**Incamake y'ikibazo:** Guaranty Trust Bank Rwanda Plc (GT Bank) yagiranye amasezerano y'inguzanyo na Kigali Ceramica & Furniture Ltd biza kugera igihe ntiyajya iyishyura bituma banki iyiha integuza yo kuyishyura umwenda yari igezemo utarishyurwa. Uwahawe inguzanyo yatangiye kujya anyuza amafaranga ye ku yandi mayandi mabanki, bituma banki isaba umuhesha w'Inkiko w'Umwuga gufatira amafaranga Kigali Ceramica & Furniture Ltd yari yabikije muri banki ya KCB Rwanda Plc.

Guaranty Trust Bank Rwanda Ltd yahise itanga ikirego cyihutirwa mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba kwemeza ko iyibereyemo umwenda ungana na 797.601.959 Frw no gutegeka ko uwo mwenda wishyurwa, inavuga ko ubu umaze kugera kuri Urukiko 803.745.468,45. Kigali Ceramica & Furniture Ltd yatanze inzitizi ivuga ko ikirego cya GT Bank kidakwiye kwakirwa kuko banki yagombaga kugurisha ingwate ikiyishyura, ko kandi yatanze ikirego cyihutirwa kandi nta kirego cy'iremezo gihari, ko kandi banki idakwiye kuregera kwemeza umwenda.

Urukiko rw'Ubucuruzi rwemeje ko inzitizi zatanzwe na Kigali Ceramica & Furniture Ltd maze rwemeza ko ikirego cya GT Bank gifite ishingiro maze rutegeka Kigali Ceramica & Furniture Ltd kwishyura GT Bank 795.513.386,56 Frw.

Kigali Ceramica yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko itishimiye kuba yaratanze inzitizi yo kutakira ikirego, ishingiye ku kuba uwareze nta nyungu yari afite kuko bari bumvikanye ko ninanirwa kwishyura azagurisha ingwate, ariko ntihabwe agaciro, ko yategetswe kwishyura umwenda bitari ngombwa kandi utarigeze unumvikanwaho n'impande zombi.

Urukiko Rukuru rw'Ubucuruzi rwemeje ko inzitizi ya Kigali Ceramica & Furniture Ltd ifite ishingiro maze itesha agaciro urubanza rwaciwe n'Urukiko rw'Ubucuruzi mu ngingo zarwo zose.

GT Bank yajuririye mu Rukiko rw'Ubujurire ivuga ko ivuga ko Urukiko Rukuru rw'Ubucuruzi rwakoze amakosa yo kwemeza ko itari afite inyungu zo kuregera Urukiko, nta mategeko

rushingiyeho naho Kigali Ceramica & Furniture Ltd yo ivuga ko ubujurire bwa Guaranty Trust Bank Rwanda Plc budafite ishingiro, ko itari ifite inyungu yo kwiyambaza inkiko kuko mbere yo kuyiha umwenda, impande zombi zumvikanye ko hagomba kubanza gutangwa ingwate igizwe n'imitungo itimukanwa, kugira ngo umwenda nutishyurwa zizagurishwe bitabaye ngombwa kuregera Urukiko.

**Incamake y'icyemezo:** 1. Kuba urimo umwenda yarahaye uberewemo umwenda ingwate ku mutungo we utimukanwa, ibi ntibihita byumvikanisha ko mu gihe atabashije kwishyura umwenda, ubwishyu bugomba kuva gusa kuri uwo mutungo utimukanwa watanzweho ingwate kuko ubwishyu buva ku mutungo wose w'urimo umwenda kugeza umwenda wose wishyuwe.

2. Kuba ubwishyu buba bugomba kuva mu mutungo wose w'urimo umwenda, nta cyabuza uberewemo umwenda, mu gihe atabonye ubwishyu ku gihe, gusaba Urukiko rubifitiye ububasha ifatira ry'umutungo wimukanwa w'umubereyemo umwenda no gukurikirana umutungo utimukanwa yahawe kugira ngo abone ubwishyu, hakurikijwe imihango iteganywa n'amategeko.

3. Uwatanze umwenda ahise atanga ikirego nyuma y'ifatira ry'ibintu by'urimo umwenda nk'uko amategeko abiteganya, uwahawe umwenda ntashobora kwitwaza ko banki yawutanze idashobora gutanga ikirego kugira ngo igaruze amafaranga yayo kubera ko ibyo iba yaklkoze iba ibifitiyemo inyungu, ububasha n'ubushobozi.

**Ubujurire bufite ishingiro.**
**Urubanza rwaciwe n'Urukiko Rukuru rw'ubucuruzi rurahindutse.**
**Amagarama ahererey e ku uregwa.**

**Amategeko yashingiweho:**
Itegeko N° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.
Itegeko N° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kandi ryujujwe kugeza ubu.

**Inyandiko z'abahanga zifashishijwe:**
FranÇois Kint, Sûretés et principes généraux du droit de poursuite des créanciers, 3e édition, Larcier, Bruxelles, 2000, P. 6.
Marc Donnier et Jean-Baptiste Donnier, Voies d'exécution et procédures de distribution, 7e édition, Litec, Paris, 2003, P. 61.

**Nta manza zifashishijwe.**

## Urubanza

## I. IMITERERE Y'URUBANZA

[1] Ku wa 13/5/2016, Guaranty Trust Bank Rwanda Plc yagiranye amasezerano y'inguzanyo na Kigali Ceramica & Furniture Ltd, iyiha inguzanyo ya 857.248.731 Frw, ariko nyuma ntiyakomeza kwishyura, bituma ku wa 29/8/2016, Guaranty Trust Bank Rwanda Plc iyishyikiriza integuza ya nyuma, iyisaba kwishyura amafaranga yose. Kigali Ceramica & Furniture Ltd yatangiye kujya inyuza amafaranga yayo mu yandi ma banki, Guaranty Trust Bank Rwanda Plc nayo isaba umuhesha w'inkiko gufatira amafaranga yari yanyujijwe kuri konti n° 4400077381 ya Kigali Ceramica & Furniture Ltd, iri muri banki ya K.C.B., arafatirwa.

[2] Guaranty Trust Bank Rwanda Plc yahise inatanga ikirego cyihutirwa gishingiye ku ngingo ya 232 agace ka kane y'Itegeko No 22/2018 ryo ku wa 29/4/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, mu Rukiko rw'Ubucuruzi, irega Kigali Ceramica & Furniture Ltd kwemeza ko iyibereyemo umwenda ungana na 797.601.959 Frw no gutegeka ko uwo mwenda wishyurwa, inavuga ko ubu umaze kugera kuri Urukiko 803.745.468,45 Frw.

[3] UhagarariyeKigaliCeramica&FurnitureLtdyatanzeinzitiziyokutakiraikirego, ivuga ko Guaranty Trust Bank Rwanda Plc itagombaga gutanga ikirego, ahubwo ko yagombaga kugurisha ingwate zanditswe muri RDB nk'uko babyumikanyeho mu masezerano. Yatanze kandi indi nzitizi avuga ko hatanzwe ikirego cyihutirwa kandi nta kirego cy'iremezo gishamikiyeho gihari, ko n'ubwo bavuga ko gishingiye ku ifatira, kitatanzwe mu masaha 48, ahubwo ko Guaranty Trust Bank Rwanda Plc yafatiriye amafaranga ya yari muri banki ya K.C.B. Rwanda Ltd nta kirego yatanze, ko ingingo ya 232 itubahirijwe. Yavuze nanone ko amasezerano yagiranye na Guaranty Trust Bank Rwanda Plc agihari, ko idakwiye kuregera kwemeza umwenda.

[4] Mu rubanza rubanziriza urundi rwo ku wa 23/1/2019, Urukiko rw'Ubucuruzi rwemeje ko inzitizi zatanzwe na Kigali Ceramica & Furniture Ltd, nta shingiro zifite.

[5] Mu kuburana urubanza mu mizi, uhagarariye Kigali Ceramica & Furniture Ltd yavuze ko koko bagiranye amasezerano y'umwenda, ariko ko ayo masezerano yagiye avugururwa, kandi ko yagiye yishyura umwenda ukaza kugera kuri 494.284.266Frw, ko kubera kutishyurwa na Leta mu buryo bukwiye, hari igihe nayo yatindaga kwishyura Guaranty Trust Bank Rwanda Plc, bituma habaho ibirarane, ariko ko babiganiriyeho, nyuma igatungurwa n'uko amafaranga yari kuri konti yayo muri K.C.B. Rwanda Ltd yafatiriwe mu buryo budakurikije amategeko, kuko umwenda wishyuzwa itawemeranywaho na Guaranty Trust Bank Rwanda Plc, kandi ko uwo mwenda yawutangiye ingwate zikandikishwa muri R.D.B., ko ku birebana n'ubwishyu bw'imyenda yatangiwe ingwate zanditse, hari amabwiriza y'Umwanditsi Mukuru muri R.D.B. agomba gukurikizwa.

[6] Urukiko rw'Ubucuruzi rwaciye urubanza n° RCOM 02762/2018/TC ku wa 11/2/2019, rwemeza ko Kigali Ceramica & Furniture Ltd ibereyemo Guaranty Trust Bank Rwanda Plc umwenda ukomoka ku nguzanyo, ungana na 795.513.386,56 Frw, ruyitegeka kwishyura Guaranty Trust Bank Rwanda Plc uwo mwenda, igihembo cya Avoka kingana na 500.000 Frw, amafaranga y'ikurikiranarubanza angana na 20.000 Frw n'ay'ingwate y'amagarama angana na 20.000 Frw, itayishyura ku neza mu gihe giteganywa n'amategeko (ukwezi kumwe), agakurwa mu byayo ku ngufu za Leta.

[7] Kigali Ceramica & Furniture Ltd ntiyishimiye icyo cyemezo, ijuririra Urukiko Rukuru rw'Ubucuruzi, ivuga ko itishimiye kuba yaratanze inzitizi yo kutakira ikirego, ishingiye ku kuba uwareze nta nyungu yari afite kuko bari bumvikanye ko ninanirwa kwishyura azagurisha ingwate, ariko ntihabwe agaciro, ko yategetswe kwishyura umwenda bitari ngombwa kandi utarigeze unumvikanwaho n'impande zombi, ko n'ikirego kiregera kwiregura kitakiriwe. Guaranty Trust Bank Rwanda Plc nayo yasabye ko abishingizi b'umwenda yaregeye bagobokeshwa ku gahato mu rubanza.

[8] Urukiko Rukuru Rw'Ubucuruzi rwaciye urubanza n° RCOMA 00156/2019/CHC/HCC ku wa 4/4/2019, rwemeza ko ubujurire bwatanzwe na Kigali Ceramica & Furniture Ltd nta shingiro bufite, ko ikirego cyatanzwe na Guaranty Trust Bank Rwanda Plc mu rubanza n° RCOM 02762/2018/TC, kitagombaga kwakirwa, ko urwo rubanza rugomba guteshwa agaciro mu ngingo zarwo zose, rutegeka Guaranty Trust Bank Rwanda Plc gusubiza Kigali Ceramica & Furniture Ltd amafaranga y'amagarama yatanze n'indishyi z'ibyo yatanze ku rmanza zombi zingana na 1.500.000 Frw.

[9] Guaranty Trust Bank Rwanda Plc ntiyishimiye imikirize y'urwo rubanza, ijuririra Urukiko rw'Ubujurire ku wa 8/4/2019, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwakoze amakosa yo kwemeza ko itari afite inyungu zo kuregera Urukiko, nta mategeko rushingiyeho, ikaba isaba rero uru Rukiko gutegeka Kigali Ceramica & Furniture Ltd kuyiha amafaranga angana na miliyoni eshanu (5.000.000 frw) yo kuyisiragiza mu manza n'amafaranga miliyoni ebyiri (2.000.000 frw) y'igihembo cya Avoka.

[10] Nk'uko bigaragara muri dosiye y'urubanza, mu myanzuro yayo, Kigali Ceramica & Furniture Ltd yavuze ko ubujurire bwa Guaranty Trust Bank Rwanda Plc budafite ishingiro, ko itari ifite inyungu yo kwiyambaza inkiko kuko mbere yo kuyiha umwenda, impande zombi zumvikanye ko hagomba kubanza gutangwa ingwate igizwe n'imitungo itimukanwa, kugira ngo umwenda nutishyurwa zizagurishwe bitabaye ngombwa kuregera Urukiko.

[11] Urubanza rwaburanishijwe ku wa 14/8/2019, Guaranty Trust Bank Rwanda Plc ihagarariwe na Me Mugabonabandi Jean Maurice, uwahagarariye mu mategeko kuyiha amafaranga angana na miliyoni eshanu (5.000.000 Frw) yo kuyisiragiza mu Kigali Ceramica & Furniture Ltd atitabye, ariko Me Munyentwari Charles wagombaga kumwuganira, yitabye Urukiko, arumenyesha ko yamenyesheje Umuyobozi wa Kigali Ceramica & Furniture Ltd ko bagomba kwitaba Urukiko ku wa 14/8/2019, ariko amubwira ko adahari. Nyuma yo gusuzuma ibirebana no kutitaba Urukiko kwa Kigali Ceramica & Furniture Ltd, hashingiwe ku kuba ihamagara ryarakozwe mu buryo bukurikije amategeko kuko Kigali Ceramica & Furniture Ltd yahisemo igicumbi (élection de domicile) kuri cabinet ya Me Munyentwari Charles, nk'uko uyu yabyemeje mu iburanisha no kuba nta mpamvu Umuyobozi wayo yatanze yatumye ataboneka, Urukiko rwafashe icyemezo cyo kuburanisha uru rubanza Kigali Ceramica & Furniture Ltd idahari, hashingiwe ku ngingo ya 56 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

## II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

**a. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwarakoze amakosa yo kwemeza ko ikirego cyatanzwe na Guaranty Trust Bank Rwanda Plc ku rwego rwa mbere kitagombaga kwakirwa**

[12] 12.Me Mugabonabandi Jean Maurice, uhagarariye Guaranty Trust Bank Rwanda, avuga ko mu gace ka cumi na gatandatu (16) k'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwemeje ko Guaranty Trust Bank Rwanda Plc itagombaga gufatira amafaranga ya Guaranty Trust Bank Rwanda Plc na Kigali Ceramica & Furniture Ltd yari muri K.C.B. n'indi mitungo yayo kuko yari ifite ingwate yahawe (garanties), ko batumva aho urwo Rukiko rwakuye iyi myumvire kuko mu masezerano y'inguzanyo Guaranty Trust Bank Rwanda Plc na Kigali Ceramica & Furniture Ltd bagiranye bumvikanye ko Kigali Ceramica & Furniture Ltd izajya inyuza amafaranga y'ubucuruzi bwayo kuri konti yayo iri muri Guaranty Trust Bank Rwanda Plc kugira ngo ijye yiyishyura umwenda wayo nyamara bikaba byaragaragaye ko Kigali Ceramica & Furniture Ltd yatangiye kunyuza ayo mafaranga muri banki ya K.C.B ikaba yari imaze kuhanyuza amafaranga agera ku miliyoni magana biri na cumi n'eshatu (213.000.000 Frw).

[13] Me Mugabonabandi Jean Maurice akomeza avuga ko iyo ariyo mpamvu Guaranty Trust Bank Rwanda Plc yasabye umuhesha w'inkiko gukora ifatira ryayo mafaranga kuri konti ya Kigali Ceramica & Furniture Ltd muri K.C.B., igahita itanga n'ikirego mu Rukiko, ishingiye ku biteganywa n'ingingo ya 232 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[14] Me Mugabonabandi Jean Maurice avuga nanone ko n'ubwo Guaranty Trust Bank Rwanda Plc ifite izindi ngwate, nta cyari kuyibuza kwiyambaza inkiko kugira ngo ibone ubwishyu bw'umwenda Guaranty Trust Bank Rwanda Plc kwiyambaza inkiko.

[15] Me Mugabonabandi Jean Maurice asoza asaba Urukiko kwemeza ko inzira Guaranty Trust Bank Rwanda Plc yaciyemo itanga ikirego mu Rukiko zemewe.

[16] Nk'uko bigaragara mu myanzuro ya Kigali Ceramica & Furniture Ltd yatanze muri uru Rukiko, Avoka wayo vuga ko nta shingiro bikwiye guhabwa kuko nta nyungu yari ifite zo kuregera Urukiko, ko mbere yo kubaha umwenda, impande zombi zumvikanye ko hagomba kubanza gutangwa ingwate zigizwe n'imitungo itimukanwa kandi zikandikishwa muri RDB, kugira ngo umwenda nutishyurwa zizagurishwe bitabaye ngombwa kuregera Urukiko, ariko ko ibyo Guaranty Trust Bank Rwanda Plc yabirenzeho, ifatira amafaranga ya Kigali Ceramica & Furniture Ltd kuri konti yayo iri muri K.C.B., inakurikizaho kuregera Urukiko isaba kwemeza umwenda no gutegeka Kigali Ceramica & Furniture Ltd kuwishyura.

[17] Avuga ko bigaragara ko nta nyungu Guaranty Trust Bank Rwanda Plc yari ifite yo kwiyambaza izindi nzira zitumvikanyweho mu masezerano, ko nta wigeze ayibangamira mu gukoresha inzira bumvikanye, yo kugurisha ingwate, bityo ko nta nyungu na busa yari ifite yo kuregera Urukiko nk'uko n'Urukiko Rukuru rw'Ubucuruzi rwabisobanuye, rukanashingira ku ngingo ya 3, igika cya mbere (1) y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, bitandukanye n'ibyo Guaranty Trust Bank Rwanda Plc ivuga ko nta tegeko Urukiko rwashingiyeho ruvuga ko idafite inyungu yo kurega.

# UKO URUKIKO RUBIBONA

[18] Ingingo ya 3, igika cya mbere (1), y'Itegeko n° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya ko '' Ufite umutungo utimuknwa, afite ububasha bwo kuwutangaho ingwate cyangwa igice cyawo kugira ngo ashingane umwenda afite cyangwa ateganya gufata''.

[19] Ingingo ya 14, igika cya mbere (1), y'Itegeko n° 10/2009 ryo ku wa 14/5/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya ko '' Amasezerano y'ubugwate agaragaza ingingo ziha ububasha uwahawe ingwate bwo kuyicunga, kuyikodesha, kuyigurisha cyangwa kuyegukana igihe uwatanze ingwate atabashije kwishyura.....''. Igika cyayo cya kabiri giteganya ko '' Igihe uwatanze ingwate atabashije kwishyura, uwahawe ingwate amenyesha mu nyandiko uwatanze ingwate ko agiye gukoresha bumwe mu buryo bwavuzwe mu gika kibanziriza iki, akagenera kopi Umwanditsi Mukuru.''

[20] Ingingo ya 232, igika cya mbere, agace ka kane, y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi n'iz'ubutegetsi, iteganya ko '' Umuntu wese uberewemo umwenda ushingiye ku gikorwa cy'ubucuruzi, ashobora gusaba umuhesha w'inkiko gufatira ibintu by'umubereyemo umwenda amaze kugenzura agaciro k'inyandiko zavuzwe haruguru no guhamya ko umwenda utishyuriwe''. Igika cya kabiri cy'iyo ngingo giteganya ko '' Mu gihe kitarenze amasaha mirongo ine n'umunani (48), uberewemo umwenda agomba kandi kuba yagejeje ikirego cy'iremezo mu rukiko rubifitiye ububasha kugira ngo hemezwe umwenda aberewemo''.

[21] Nk'uko bigaragara mu gace ka gatandatu k'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko inzitizi yatanzwe na Kigali Ceramica & Furniture Ltd ku rwego rwa mbere, yagomabaga kwakirwa kuko mu masezerano y'iguriza ababuranyi bagiranye bemeranyijwe ko igihe Kigali Ceramica & Furniture Ltd izaba itishyuye umwenda yagurijwe, ingwate yatanze zizagurishwa bitabaye ngombwa kwitabaza inkiko. Mu gace ka munani k'urubanza rujuririrwa, urwo rukiko rwasobanuye ko Guaranty Trust Bank Rwanda Plc ivuga ko n'ubwo impande zombi zumvikanye ko uwagurijwe natishyura, ingwate yatanze zizagurishwa bitabaye ngombwa kuregera inkiko, ariko ko nta na hamwe mu masezerano y'iguriza hayibuza kuregera inkiko, ibi bitarengera Banki kuko mu mwanya wo gutangiza imihango y'igurisha ry'ingwate nk'uko amasezerano yabiteganyaga, yakoresheje inzira zo gufatira amafaranga y'umukiliya wayo ikoresheje Umuhesha w'inkiko kandi ntiyarekera aho, ahubwo ishoza n'urubanza rukurikiye iryo fatira, ko iyi nzira itarumvikanweho, icyumvikanweho akaba ari ukugurisha igwate zatanzwe.

[22] Nanone, mu gace ka cyenda k'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwanzuye ruvuga ko ikirego cya Guaranty Trust Bank Rwanda Plc kiregera kwishyuza umwenda kitagombaga kwakirwa mu Rukiko kuko iyo nzira ababuranyi bumvikanye ko bataziyikoresha, ahubwo ingwate zatanzwe zikaba arizo zagombaga kugurishwa, ko nta nyungu Banki yari ifite yo kurega.

[23] Ingingo ya 5 y'amasezerano hagati ya Guaranty Trust Bank Rwanda Plc yo ku wa 13/5/2016, igaragaza ko kugira ngo Kigali Ceramica & & Furniture Ltd ibone inguzanyo isaba, yatanze ingwate ku mutungo utimukanwa utandukanye, ingwate ku bubiko (debenture on stock),

ubwishingire bwa Karangwa Raymond na Uwera Manzi, n'izindi ngwate (Fire and open peril insurance on the pledged properties, promissory note for the total facility amount plus accrued interest).

[24] Isuzuma y'ingingo ya 3, igika cya mbere (1), n'iya 14, igika cya mbere (1) z'Itegeko n° 10/2009 ryo ku wa 14/5/2009 ryavuzwe haruguru, ryuvimkanisha ko ubugwate ku mutungo utimukanwa butangwa n'usaba umwenda kugira ngo awubone no kugira ngo ugomba kuwutanga abe afite ikizere ko azabona ubwishyu, kandi atekane, bitabaye ngombwa ko igihe urimo umwenda atishuye, habe impuranire n'abandi baberewemo umwenda. Ibi bisobanura ko icyo ubugwate bugamije mbere na mbere atari uko umutungo utimukanwa ugurishwa n'uwahawe ingwate mu gihe uwahawe umwenda atawishyuye ku gihe, ahubwo ni uburyo bwo kugira ngo ashingane umwenda afite[1].

[25] Iryo suzuma rigaragaza kandi ko ubugwate ku mutungo budatangwa gusa kugira ngo bugurishwe iyo umwenda utishyuwe kuko uwahawe ingwate ashobora gusaba kuyicunga, kuyikodesha, kuyigurisha cyangwa kuyegukana, abimenyesheje mu nyandiko uwatanze ingwate, akagenera kopi Umwanditsi Mukuru.

[26] Urukiko rw'Ubujurire rurasanga nta ngingo y'amasezerano y'inguzanyo yo ku wa 13/5/2016, yabaye hagati ya Kigali Ceramica & Furniture Ltd na Guaranty Trust Bank Rwanda Plc, yemeza ko mu gihe Kigali Ceramica & Furniture Ltd itazabasha kwishyura umwenda, Guaranty Trust Bank Rwanda Plc izagurisha gusa ingwate ku mutungo utimukanwa kugira ngo ibone ubwishyu, bitabaye ngombwa gutanga ikirego mu Rukiko. Rurasanga kandi nk'uko byagaragajwe haruguru, uretse ingwate ku mutungo utimukanwa, Kigali Ceramica & Furniture Ltd yarahaye Guaranty Trust Bank Rwanda Plc izindi ngwate (garanties), zirimo n'ubwushingire bwa Karangwa Raymond n'ubwa Uwera Manzi, bivuze ko ubushake bwabo igihe bagiranaga ayo masezerano Atari ukwemeza ko igihe Kigali Ceramica & Furniture Ltd itazabasha kwishyura, Guaranty Trust Bank Rwanda Plc izabona ubwishyu igurishije gusa ingwate ku mutungo utimukanwa yahawe, bitabaye ngombwa kuregera inkiko.

[27] Urukiko rw'Ubujurire rurasanga kuba urimo umwenda yarahaye uberewemo umwenda ingwate ku mutungo we utimukanwa, ibi bidahita byumvikanisha ko mu gihe atabashije kwishyura umwenda, ubwishyu bugomba kuva gusa kuri uwo mutungo utimukanwa watanzweho ingwate.

[28] Urukiko rw'Ubujurire rurasanga nanone nk'uko byasobanuwe haruguru, n'ubwo ku buryo bw'igitangaza (par extraordinaire) abagiranye amasezerano yo ku wa 13/5/2016 baba barumvikanye ko ubwishyu buzaboneka gusa habayeho kugurisha ingwate ku mutungo utimukanwa watanzweho ingwate, byari kuba bitubahirije amategeko (principe général de droit)

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[1] ' Le créancier ne consentira à prêter qu'à un débiteur en mesure de lui rembourser. Et il en est surtout ainsi dans la vie des affaires. Le commerce et l'industrie vivent de crédit, lequel sera accordé plus volontiers et à meilleur compte si le bénéficiaire està même d'en garantir le remboursement. Un système efficace de sûretés remplit ainsi une première fonction. Il rassure les créanciers et en même temps facilite, pour le débiteur, la recherche du crédit'', FranÇois Kint, Sûretés et principes généraux du droit de poursuite des créanciers, 3e édition, Larcier, Bruxelles, 2000, P. 6.

kuko ubwishyu buva ku mutungo wose w'urimo umwenda[2] kugeza umwenda wose wishyuwe (jusqu'au parfait paiement)[3].

[29] Urukiko rw'Ubujurire rurasanga kandi kuba ubwishyu bugomba kuva mu mutungo wose w'urimo umwenda, nta cyabuza uberewemo umwenda, mu gihe atabonye ubwishyu ku gihe, gusaba Urukiko rubifitiye ububasha ifatira ry'umutungo wimukanwa w'umubereyemo umwenda no gukurikirana umutungo utimukanwa yahawe kugira ngo abone ubwishyu[4], hakurikijwe imihango iteganywa n'amategeko. Ibi byumvikanisha ko n'ubwo uberewemo umwenda ufite ingwate, aba afite inyandikomvaho zimwemerera kugurisha icyagwatirijwe bitabaye ngombwa ko atanga ikirego mu rukiko, nta cyamubuza kuregera urukiko kugira ngo akurikirane, ndetse anafatire umutungo wimukanwa w'umubereyemo umwenda[5].

[30] Urukiko rw'Ubujurire rurasanga nta gushidikanya ko Kigali Ceramica & Furniture Ltd itabashije kwishyura Guaranty Trust Bank Rwanda Plc umwenda wayo uko babyumvikanyeho, nk'uko yabisobanuye mu Rukiko rw'Ubucuruzi aho yemeye ko rimwe na rimwe itabashaga kwishyura uko byari biteganyijwe, bitewe n'uko projet za Leta zatindaga kwishyura, bituma hajyamo ibirarane, ari nabwo mu kwezi kwa cumi na kabiri kw'umwaka wa 2018 impande zombi zabiganiriyeho zikumvikana uko ibirarane bigomba kwishyurwa kugeza mu kwezi kwa mbere 2019.

[31] Urukiko rw'Ubujurire rurasanga kandi ku wa 12/12/2018, hashingiwe ku masezerano y'inguzanyo yashyiriweho umukono imbere ya Noteri ku wa 13/5/2016, hagati ya Guaranty Trust Bank Rwanda Plc na Kigali Ceramica & Furniture Ltd no ku ngingo ya 232, 4° y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi Me Munyantwari S. Willy, Umuhesha w'Inkiko w'Umwuga abisabwe na Guaranty Trust Bank Rwanda Plc, yarafatiriye mu maboko ya K.C.B. Bank Rwanda Ltd umutungo wimukanwa wa Kigali Ceramica & Furniture Ltd, ugizwe n'amafaranga yari abitse kuri konti yayo n° 4400077381, yafunguwe muri K.C.B. Bank Rwanda Ltd, kugira ngo atarigiswa, K.C.B. Bank Rwanda Ltd isabwa kudakuraho ayo mafaranga mu gihe cy'amasaha mirongo ine n'umunani (48) uhereye igihe yakiriye iyo nyandiko y'ifatira.

[32] Urukiko rw'Ubujurire rurasanga nk'uko bigaragara muri *system* y'inkiko, Guaranty Trust Bank Rwanda Plc yaratanze ikirego mu Rukiko rw'Ubucuruzi, gishingiye ku ngingo ya 232, 4°

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[2] *''Un créancier hypothécaire ou privilégié sur un meuble ou un immeuble- c'est-à-dire un créancier qui s'est vu reconnaître, par l'effet d'une convention ou de la volonté du législateur, un droit de préférence sur tel ou tel bien du débiteur dont le prix de réalisation lui sera réservé en cas d'exécution- conserve le droit d'exécuter le débiteur sur tous ses autres biens'', FranÇois Kint, op.cit., P. 18.*

[3] *''Le débiteur est tenu de ses obligations non seulement sur ses biens présents mais aussi sur ses biens à venir- c'est-à-dire sur tous les biens qu'il possédera lorsque le créancier poursuivra l'exécution'', FranÇois Kint, op.cit., P.23.*

[4] *'Le créancier saisit librement les biens de son choix : tous les éléments du patrimoine du débiteur sont Indistinctement affectés à l'exécution de ses obligations'', FranÇois Kint, op.cit., P. 45. ''Le cumul des voies d'exécution est en outre permis. Le créancier qui a pratiqué saisie mobilière peut par exemple, même avant réalisation des meubles saisis, mettre en œuvre une saisie-exécution sur un immeuble du débiteur. En recourant à telle voie d'exécution, le créancier ne renonce pas pour autant à l'exercice d'autres voies'', FranÇois Kint, op.cit., P. 46.*

[5] *Le principe de base est que tous les créanciers , quels qu'ils soient, peuvent saisir les biens de leur débiteur : créanciers chirographaires, privilégiés, hypothécaires, gagistes.........., de telle sorte qu'il n'y a pas à faire de distinction selon qu'ils sont ou non nantis de sûretés''. Marc Donnier et Jean-Baptiste Donnier, Voies d'exécution et procédures de distribution, 7e édition, Litec, Paris, 2003, P. 61.*

y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, kigamije gusaba urukiko kwmeza ko Kigali Ceramica & Furniture Ltd iyibereyemo umwenda uhwanye na 767.601.959 Frw, hashingiwe ko hari ifatira ry'umwenda w'ubucuruzi ryakozwe n'Umuhesha w'inkiko Me Munyantwari S. Willy.

[33] Urukiko rw'Ubujurire rurasanga nanone nta kigaragaza ko kuva Umuhesha w'inkiko Me MUNYANTWARI S. Willy yafatira umutungo wimukanwa wa Kigali Ceramica & Furniture Ltd, ugizwe n'amafaranga yari abitse kuri konti yayo muri K.C.B. Bank Rwanda Ltd, hari icyemezo cyafashwe n'Urukiko cyakuyeho iryo fatira.

[34] Hashingiwe ku byasobanuye haruguru, Urukiko rw'Ubujurire rurasanga kuba Kigali Ceramica & Furniture Ltd itarabashije kwishyura umwenda ifitiye Guaranty Trust Bank Rwanda Plc uko bari babyemeranyije mu masezerano, kuba Me Munyantwari S. Willy, abisabwe na Guaranty Trust Bank Rwanda Plc yarafatiriye mu maboko ya K.C.B. Bank Rwanda Ltd umutungo wimukanwa wa Kigali Ceramica & Furniture Ltd no kuba mu gihe cy'amasaha mirongo ine n'umunani (48) uhereye igihe K.C.B. Bank Rwanda Ltd yakiriye iyo nyandiko y'ifatira, Guaranty Trust Bank Rwanda Plc yaratanze ikirego mu Rukiko rw'Ubucuruzi kugira ngo rwemeze ko Kigali Ceramica & Furniture Ltd iyibereyemo umwenda uhwanye na 767.601.959 Frw, icyo kirego cyatanzwe na Guaranty Trust Bank Rwanda Plc cyari cyujuje ibyagombwa byose kugira ngo cyakiriwe n'Urukiko rw'Ubucuruzi.

[35] Urukiko rw'Ubujurire rurasanga kuba Guaranty Trust Bank Rwanda Plc yari ifite ububasha, inyungu n'ubushobozi byo kurega, Urukiko Rukuru rw'Ubucuruzi rwarakoze amakosa yo kwemeza ko ikirego cyayo kitagombaga kwakirwa mu Rukiko rw'Ubucuruzi.

[36] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga iyi ngingo y'ubujurire bwa Guaranty Trust Bank Rwanda Plc ifite ishingiro.

### b. Kumenya niba Kigali Ceramica & Furniture Ltd ibereyemo Guaranty Trust Bank Rwanda Plc umwenda ungana na 797.601.959 Frw, wemejwe n'Urukiko rw'Ubucuruzi

[37] Me MUGABONABANDI Jean Maurice avuga ko Guaranty Trust Bank Rwanda Plc isaba uru Rukiko gutegeka Kigali Ceramica & Furniture Ltd kuyishyura umwenda ungana n'amafaranga miliyoni magana arindwi mirongo icyenda na zirindwi n'ibihumbi magana atandatu na kimwe magana cyenda na mirongo itanu n'icyenda (797.601.959 Frw), wari wemejwe n'Urukiko rw'Ubucuruzi n'izindi ndishyi zari zategetswe.

## UKO URUKIKO RUBIBONA

[38] Ingingo ya 12 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 '' Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Naho uvuga ko atagitegetswe gukora icyo yategekwaga gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda''.

[39] Dosiye y'urubanza igaragaza ko iburana mu Rukiko rw'Ubucuruzi, Kigali Ceramica & Furniture Ltd yasabye ko umwenda ungana 797.601.959 utemezwa kuko itawemeranywaho na Guaranty Trust Bank Rwanda Plc nk'uko yakomeje kubigaragaza mu mabaruwa yayo isaba réconciliation bancaire.

[40] Nk'uko bigaragara mu myanzuro yayo mu Rukiko Rukuru rw'Ubucuruzi, Kigali Ceramica & Furniture Ltd yasobanuye ko umwenda uvugwa naGuaranty Trust Bank Rwanda Plc ushidikanywaho kubera ko wagiye ubarwa mu buryo butari bwo, nk'uko yabigaragaje mu nyandiko yandikiye Guaranty Trust Bank Rwanda Plc ku wa 10/11/2015, ku wa 1/12/2015, ku wa 29/12/2015, ku wa 28/1/2016 no ku wa 16/4/2018 ubwo yayisabaga ko hakorwa réconciliation bancaire, kugira ngo hamenyekane umwenda nyakuri usigaye. Kubera iyo mpamvu, Kigali Ceramica & Furniture Ltd yasabye urwo rukiko kwemeza umwenda nyakuri utazwi budashidikanywaho kuko imibare y'umwenda itangwa na Guaranty Trust Bank Rwanda Plc ivuguruzanya ikaba idasobanura neza uburyo umwenda n'inyungu zawo byabazwe kugeza icyo gihe.

[41] Nk'uko bigaragara mu gace ka cumi na gatandatu (16) k'urubanza rwaciwe ku rwego rwa mbere, Urukiko rw'Ubucuruzi rwasobanuye ko Kigali Ceramica & Furniture Ltd yemera ko ibereyemo umwenda Guaranty Trust Bank Rwanda Plc ariko ko itavuga ingano yawo. Naho mu gace ka cumi na karindwi (17) k'urwo rubanza, urwo Rukiko rwavuze ko amabaruwa yo ku wa 10/11/2015, ku wa 1/12/2015 no ku wa 29/12/2015 yatanzwe na Kigali Ceramica & Furniture Ltd, ivuga ko itemera umwenda iregwa, nta gaciro yahabwa kuko yanditswe mbere y'uko amasezerano ashingirwaho muri uru rubanza kandi ababuranyi bemeranywaho, ashyirwaho umukono ku wa 13/5/2016. Rwavuze kandi ko uretse kuvuga ko itemera ingano y'umwenda yishyuzwa, itagaragaza ibimenyetso by'ayo yishyuye, n'aho yishyuriye.

[42] Dosiye y'urubanza igaragaza ko, mu gace ka cumi n'icyenda (19) n'aka makumyabiri (20) tw'urubanza rwaciwe ku rwego rwa mbere, Urukiko rw'Ubucuruzi rwasobanuye ko hashingiwe ku masezerano y'inguzanyo ababuranyi bagiranye no kuri historiques y'inguzanyo, Kigali Ceramica & Furniture Ltd igomba kwishyura Guaranty Trust Bank Rwanda Plc umwenda ungana na 795.513.386,56 Frw, ugizwe n'umwenda w'irwemezo wa 436.712.830,29 Frw, inguzanyo y'igihe gito ingana na 191.074.186,88 Frw, inyungu zisanzwe zingana na 152.271.500,99 Frw n'inyungu z'ubukererwe zingana na 15.454.869,39 Frw.

[43] Urukiko rw'Ubujurire rurasanga bigaragara nta gushidikanywa ko Kigali Ceramica & Furniture Ltd ifitiye umwenda Guaranty Trust Bank Rwanda Plc, ariko ikaba itemeranya nayo ingano yawo.

[44] Nk'uko bigaragara mu mabaruwa avugwa mu gace ka mirongo itatu n'icyenda (39) k'uru rubanza Urukiko rw'Ubujurire rurasanga aya mabaruwa arebana n'amasezerano n'ibikorwa (operations) Guaranty Trust Bank Rwanda Plc yakoze kuri konti ya Kigali Ceramica & Furniture Ltd mu rwego rw'amasezerano y'inguzanyo bagiranye mbere y'umwaka wa 2016. Rurasanga nyamara ikiburanwa muri uru rubanza gikomoka ku masezerano Guaranty Trust Bank Rwanda Plc na Kigali Ceramica & Furniture Ltd bagiranye ku wa 13/5/2016, ibi bikaba byumvikanisha ko aya mabaruwa nta sano itaziguye afitanye n'amasezerano y'inguzanyo yo ku wa 13/5/2016.

[45] Urukiko rw'Ubujurire rurasanga n'ubwo Kigali Ceramica & Furniture Ltd itemeranya na Guaranty Trust Bank Rwanda Plc ku ngano y'umwenda uregerwa, ntinagaragaza ibimenyetso bishimangira ko atariwo, ngo inatange umubare w'umwenda ibona ko ifitiye Guaranty Trust Bank Rwanda Plc.

[46] Urukiko rw'Ubujurire rurasanga nk'uko byagaragajwe mu gace ka mirongo ine (40) k'uru rubanza, kuba Kigali Ceramica & Furniture Ltd idatanga ibimenyetso bigaragaza ko umwenda Guaranty Trust Bank Rwanda Plc isaba atariwo igomba kwishyura, hagomba kwemezwa ko iyibereyemo umwenda ugizwe na 436.712.830,29 frw y'umwenda remezo, 191.074.188,88 frw y'inguzanyo y'igihe gito, 152.271.500,99 frw y'inyungu zisanzwe na 15.454.869,39 Frw y'inyungu z'ubukererwe, yose hamwe akaba angana na 795.513.387,55 Frw, aho kuba 795.513.386,56 Frw nk'uko Urukiko rw'Ubucuruzi rwabyemeje.

**c. Kumenya niba Guaranty Trust Bank Rwanda Plc ikwiye guhabwa amafaranga isaba**

[47] Me Mugabonabandi Jean Maurice avuga ko Guaranty Trust Bank Rwanda Plc isaba uru Rukiko gutegeka Kigali Ceramica & Furniture Ltd kuyishyura amafaranga angana na miliyoni eshanu (5.000.000 Frw) y'indishyi zo kuyisiragiza mu manza n'igihembo cya Avoka kingana na miliyoni ebyiri (2.000.000 Frw).

## UKO URUKIKO RUBIBONA

[48] Ingingo ya 258 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano iteganya ko ''Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyiri ugukora ikosa rigikomokaho kuriha ibyangiritse".

[49] Ku birebana n'indishyi zo gusiragizwa mu manza Guaranty Trust Bank Rwanda Plc isaba, Urukiko rw'Ubujurire rurasanga nta shingiro zifite kuko ari inshingano y' uberewemo umwenda, kandi mu nyungu ze gukurikirana mu nkiko urimo umwenda kugira ngo abone ubwishyu, mu gihe rero itagaragaza amakosa yakozwe yamwangirije, indishyi isaba ntigomba kuzihabwa.

[50] Ku birebana n'amafaranga Guaranty Trust Bank Rwanda Plc isaba, kuko byabaye ngombwa ko ikurikirana urubanza rwayo ndetse ishaka n'uyihagararira, bityo mu bushishozi bwarwo rukaba ruyigeneye amafaranga miliyoni imwe (1.000.000 Frw) y'igihembo cya Avoka, aho kuba miliyoni ebyiri (2000.000 Frw) yari yasabye, yiyongera kuri 540.000 Frw yagenewe n'Urukiko rw'Ubucuruzi, yose hamwe akaba miliyoni imwe n'ibihumbi magana atanu na mirongo ine (1.540.000 Frw).

## III. ICYEMEZO CY'URUKIKO

[51] Rwemeje ko ubujurire bwa Guaranty Trust Bank Rwanda Plc bufite ishingiro.

[52] Rwemeje ko imikirize y'urubanza no RCOMA 00156/2019/CHC/HCC rwaciwe ku wa 4/4/2017 n'Urukiko Rukuru rw'Ubucuruzi, ihindutse kuri byose.

[53] Rwemeje ko Kigali Ceramica & Furniture Ltd ibereyemo Guaranty Trust Bank Rwanda Plc umwenda ungana na miliyoni magana arindwi mirongo icyenda n'eshanu n'ibihumbi magana atanu na cumi na bitatu magana atatu mirongo inani na birindwi (795.513.387,55 Frw).

[54] Rutegetse Kigali Ceramica & Furniture Ltd kwishyura Guaranty Trust Bank Rwanda Plc umwenda ungana na miliyoni magana arindwi mirongo icyenda n'eshanu n'ibihumbi magana atanu na cumi na bitatu magana atatu mirongo inani na birindwi (795.513.387,55 Frw).

[55] Rutegetse Kigali Ceramica & Furniture Ltd kwishyura Guaranty Trust Bank Rwanda Plc amafaranga miliyoni imwe (1.000.000 Frw) y'igihembo cya Avoka, yiyongera ku bihumbi magana atanu na mirongo ine 540.000 Frw yagenewe n'Urukiko rw'Ubucuruzi, yose hamwe akaba miliyoni imwe n'ibihumbi magana atanu mirongo ine (1.540.000 Frw).

[56] Rutegetse Kigali Ceramica & Furniture Ltd kwishyura amagarama y'urubanza angana n'ibihumbi mirongo itanu (50.000 frw).