RWASIBO v. I&M BANK RWANDA Ltd N'UNDI

[Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 0104/14/HCC (Mukamurera, P.J.) 28 Mata 2014]

Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Amasezerano y'ingwate – Uburenganzira bwo gucunga umutungo – Kugwatiriza umutungo uhuriweho n'abazungura, bamwe nta burenganzira babitangiye – Ufite uburenganzrira bwo gucunga umutungo ntashobora kuwugwatiriza abawufiteho uburenganzira batabitangiye uburenganzira – Itegeko ryo kuwa 20/07/1920 ryerekeye ibintu , ingingo ya 32.

Incamake y'ikibazo: Mu mwaka wa 1984 BCR yagiranye amasezerano y'inguzanyo ebyiri zitandukanye na Rwasibo. Imwe ya milliyoni 18 indi ya miliyoni 10 ariko ahabwa imwe ya 18, yitaba Imana atararangiza kuwishyura, BCR irega abazungura be kugira ngo yishurwe ariko iza gutsindwa n'uko itarangije ishingano zayo zo gutanga umwenda wari warumvikanyweho.

Bamwe mu bazungura ba Rwasibo Jean Baptiste aribo Rwasibo Jean Bosco, Rwasibo Louis na Rwasibo Joseph baje gusaba Urukiko rwa Mbere rw'Iremezo rwa Kigali icyemezo cyo gucunga umutungo wasizwe na nyakwigendera baragihabwa.

Mu 1997 abo bazungura baje kugirana amasezerano y'inguzanyo na BCR. Umwe mu bana ba Rwasibo Jean Baptiste witwa Rwasibo Bernard yatanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge asaba ko amasezerano y'inguzanyo yabaye hagati ya BCR n'abo bavandimwe be batatu yaseswa. Urukiko rwemeje ko amasezerano agumyeho kuko yasinywe n'ababifitiye ububasha, rutegeka Rwasibo Bernard guha BCR indishyi zingana 3.000.000Frw hamwe na 300.000Frw y'igihembo cya avoka.

Rwasibo Bernard yajuririye Urukiko Rukuru rw'Ubcuruzi avuga ko Urukiko rubanza rwafashe icyemezo cyo gucunga umutungo uko kitari, ko kandi urwo Rukiko rutitaye ku ibaruwa yo kuwa 16/12/1997 BCR yandikiye succession Rwasibo.

BCR yavuze ko ubujurire nta shingiro bufite kuko abasinye ku masezerano bari bafite ububasha bahawe n'icyemezo n° 694/I.J.B/97 cyabahaga uburenganzira bwo gucunga imitungo yasizwe na nyakwigendera, kandi inguzanyo yatanzwe mu nyungu z'umuryango.

Ku bijyanye n'ibaruwa yandikiwe succession Rwasibo, BCR yavuze ko iyo ngingo nta shingiro ifite kuko Urukiko rubanza rwayifasheho icyemezo rukavuga ko amasezerano y'inguzanyo yasinyweho n'ababiherewe uburenganzira n'Urukiko.

Incamake y'icyemezo: 1. Icyemezo cyo gucunga umutungo wasizwe na Rwasibo Jean Baptiste, ntigiha uburenganzira abagihawe bwo kugwatiriza uwo mutungo, abawufiteho uburenganzira bose batababibahereye ububasha. Bityo amasezerano y'inguzanyo n'ingwate yakozwe n'abafite icyemezo cyo gucunga umutungo wa nyakwigendera nta gaciro afite.

Ubujurire bufite ishingiro.
Ubugwate bukuweho.
Urubanza rwajuririwe rurahindutse.
Amagarama asubijwe uwajuriye bikozwe n'abarezwe mu bujurire.

Amategeko yashingiweho.

Itegeko ryo kuwa 20/07/1920 ryerekeye ibintu, ingingo ya 32.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uwitwa Rwasibo Jean Baptiste yagiranye na BCR amasezerano y'inguzanyo kuwa 21/03/1984, bemeranywa ko agomba guhabwa inguzanyo ebyiri, ariko BCR imuha inguzanyo imwe gusa ya 18.000.000Frw indi ya 10.000.000Frw nayo bari bemeranijweho ntiyatangwa. Rwasibo Jean Baptiste yaje kwitaba Imana, nyuma BCR irega abazungura be isaba ko yakwishyurwa umwenda ukomoka ku nguzanyo yari yaramuhaye. Urubanza rwarangiriye mu Rukiko rw'Ikirenga BCR itsinzwe kubera ko itagombaga kwishyuza umwenda kandi itararangije inshingano zayo zo gutanga imyenda yose yari yumvikanyweho.

[2] Bamwe mu bazungura ba Rwasibo Jean Baptiste aribo Rwasibo Jean Bosco, Rwasibo Louis na Rwasibo Joseph baje gusaba mu rukiko rwa mbere rw'iremezo rwa Kigali icyemezo cyo gucunga umutungo wasizwe na se maze kuwa 30/09/1997 baragihabwa. Kuwa 16/12/1997 bagiranye na BCR amasezerano y'inguzanyo zingana na 26.303.692 frw ziteye gutya:

> 1) 12.303.692Frw: consolidation de vos engagements arrêtés au 12/08/1987 et résultant de votre ancien prét hypothécaire.
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> 2) 14.000.000Frw: prêt hypothécaire complémentaire destiné à la réfection de votre maison sise à Kicukiro et dont 1.100.000Frw vous ont déjà été avancés sur votre compte courant.

[3] Umwe mubana ba Rwasibo Jean Bosco witwa Rwasibo Bernard yatanze ikirego mu rukiko rw'ubucuruzi rwa Nyarugenge asaba ko amasezerano y'inguzanyo yasinywe hagati ya BCR n'abo bavandimwe be batatu yaseswa, BCR igasubiza ingwate yahawe igizwe n'inzu iri muri n° 2087 ku Kicukiro, asaba n'indishyi. BCR yavuze ko ayo masezerano atateshwa agaciro kuko yasinywe n'abazungura babiherewe ububasha n'urukiko kandi bagamije kurangiza inshingano za se yari afitanye na banki no gusana inzu yasize. Urukiko rwavuze ko ikirego ntashingiro gifite, rwemeza ko amasezerano agumyeho kuko yasinywe n'ababifitiye uburenganzira, Rwasibo Bernard ategekwa guha BCR indishyi zingana na 3.000.000Frw hamwe na 300.000Frw y'igihembo cy'avocat.

[4] Rwasibo Bernard ntiyabyishimiye ajurira muri uru rukiko avuga ko urukiko rwaciye urubanza ku rwego rwa mbere rwafashe Ordonnance n° 694/I.J.B/97 de gestion uko itari, ngo ntabwo urukiko rwitaye ku ibaruwa yo kuwa 16/12/1997 BCR yandikiye succession Rwasibo, ikindi ngo ntiyemera indishyi zategetswe. Uhagarariye BCR avuga ko ubwo bujurire ntashingiro bufite, agasaba indishyi zo gushorwa mu manza no guhemba avocat.

[5] Mu iburanisha rya mbere ryabaye kuwa 06/03/2014, uhagarariye BCR yabanje gusaba ko urukiko rwagobokesha abazungura ba Rwasibo Louis na Rwasibo Joseph kuko aba bari mu basinye amasezerano aburanwa, bikaba byarasabwe ku rwego rwa mbere ariko icyemezo cyabifashweho ntibakishimira. Urukiko rumaze kubisuzuma rwafashe icyemezo cyo

gukomeza iburanisha ku baburanyi basanzwe mu rubanza gusa (reba mu magambo arambuye icyemezo cyo kuwa 14/03/2014).

[6] Kumunsi w'iburanisha mu mizi hitabye uhagarariye BCR hamwe na Rwasibo Bernard ariko Rwasibo Bosco atitabye nta n'impamvu yamubujije kwitaba yamenyesheje urukiko, kandi yaramenye itariki y'iburanisha mu buryo bukurikije amategeko, maze bisabwe n'abandi baburanyi urukiko rufata icyemezo cyo gukomeza iburanisha adahari nkuko biteganywa n'ingingo ya 59 CPCCSA.

II. IBIBAZO BIGIYE GUSUZUMWA

Urukiko rugiye gusuzuma ibijyanye na Ordonnance n° 694/I.J.B/97 de gestion, rusuzume ibijyanye n'inguzanyo BCR yatanze mu ibaruwa yo kuwa 16/12/1997, hasuzumwe kandi ibijyanye n'indishyi zatanzwe ku rwego rwa mbere ndetse n'izisabwa mu bujurire.

1. Kubijyanye na Ordonnance n° 694/I.J.B/97 de gestion.

[7] Rwasibo Bernard na Me Rwagatare Janvier umwunganira bavuga ko Ordonnance n° 694/I.J.B/97 de gestion urukiko rwahaye Rwasibo Joseph(+), Rwasibo Louis(+) na Rwasibo Jean Bosco yari iyo gucunga (gestion) umutungo w'abazungura ba Rwasibo Jean Baptiste ngo ntabwo bahawe uburenganzira bwo kuwugwatitiza cg kuwugurisha (acte de disposition) abandi bo mumuryango batabizi. Aha rero ngo niho umucamanza yibeshye yemeza ko ibyo bakoze bari babifitiye uburenganzira, nyamara kugira ububasha bwo gucunga umutungo ntabwo bivuga ko uba ufite ububasha busesuye nka nyirawo. Ikibazo ngo ni uko umucamanza atigeze ahakana ko ibyakozwe ari acte de disposition, ariko yongeraho ko hatagomba kurebwa ingwate gusa ahubwo hagomba kurebwa n'icyo yari igamije, nyamara ngo yagombaga kureba niba ibyo bakoze bari babifitiye ububasha.

[8] Me Rusanganwa Jean Bosco uhagarariye BCR yahindutse I&M Bank, avuga ko iyi mpamvu ntashingiro ifite kuko abasinye ku masezerano bari bafite ububasha bahawe n'icyemezo n° 694/I.J.B/97 cyabahaga uburengazira bwo gucunga imitungo wasizwe na Rwasibo Jean Baptiste birimo kuyisana no kurangiza inshingano nyakwigendera yari yarasize atarangije kuri BCR, kandi bikaba byarakozwe mu nyungu z'umuryango. Uretse nibyo kandi ngo amategeko ateganya gestion d'affaire ku bantu badahari (art. 247 à 251 CCL.III), byongeye kandi ngo urega ntagaragaza icyo yaba yarakoze nk'umuzungura kuva 1997 kugirango asigasire umutungo ndetse n'amadeni byasizwe na se. Ibyakozwe rero n'abafite icyemezo ngo ntibyateshwa agaciro kuko bari babifitiye uburenganzira kandi biri no mu nyungu z'umuryango.

[9] Urukiko rusanga icyemezo cyahawe Rwasibo Joseph, Rwasibo Louis na Rwasibo Jean Bosco cyari icyo gucunga umutungo wasizwe na Rwasibo Jean Baptiste nk'uko no mu nteruro (titre) yacyo bigaragara ko ari Ordonnance n° 694/I.J.B/97 de gestion. Ufite uburenganzira bwo gucunga umutungo ntabwo aba ashobora kuwugwatiriza abawufiteho uburenganzira batabitangiye ububasha. Ibyo bikaba bishimangirwa n'ingingo ya 32 CCL.II igira iti "Aucun des copropriétaires ne peut, sans le consentement des autres, changer la destination de la chose commune, ni la grever de droits réels au-delà de sa part indivise". Bityo amasezerano y'inguzanyo n'ingwate yakozwe n'abo bavuzwe haruguru bari bafite icyemezo cyo gucunga umutungo gusa, nta gaciro yagira ku bazungura bandi ba Rwasibo kuko bakoze ibyo badafitiye uburenganzira, kandi batabitumwe n'abo bireba bose. Kuvuga ko byari mu nyungu z'umuryango, ibyo nabyo ntibyahabwa agaciro kuko uwo muryango

niwo wari kumenya inyungu zawo ukanagena uburyo zirengerwa, ariko ntibyatuma umuntu yiha uburenganzira adafite kandi uwo muryango uhari.

2. Gusuzuma ibijyanye n'inguzanyo BCR yatanze mu ibaruwa yo kuwa 16/12/1997.

[10] Rwasibo Bernard n'umwunganira bavuga ko urukiko rutitaye ku ibaruwa BCR yandikiye succession Rwasibo kuwa 16/12/1997, kuko uyisesenguye wasanga yarandikiwe Rwasibo Joseph, Rwasibo Louis na Rwasibo Jean Bosco. Ikindi ngo abandi bazungura ntacyo bamenyeshejwe kandi uburenganzira bw'inguzanyo n'ingwate ntabyo batanze. Basobanuye kandi ko uburyo iyo nguzanyo yatanzwemo bugaragaramo uburiganya kuko banki itigeze igaragaza niba yaratanze iyo nguzanyo imaze kugaragarizwa cg gukora expertise y'ibyangiritse ngo irebe koko niba inguzanyo yo gusana inzu igomba gutangwa cg ngo ikurikirane irebe koko niba iyo nguzanyo yarashyizwe kuri iyo nzu. Bakomeje bavuga ko BCR yatanze iyo nguzanyo ivuga ko yishingikirije ku masezerano yo kuwa 21/03/1984 ndetse no ku manza zaciwe arizo RCA 10.263/Kig na RA 2022/13.03/93 ndetse no ku isabwa ry'inguzanyo ryo kuwa 26/08/1997, nyamara ngo iyo urebye inguzanyo zatanzwe ntaho zihuriye n'amasezerano yavuzwe ndetse n'imanza zavuzwe. Kuba rero ngo haratanzwe inguzanyo zidafite aho zihuriye n'ibyo byavuzwe kandi zigahabwa abatabiherewe uburenganzira, ni indi mpamvu ituma asaba ko ayo masezerano yakozwe mu izina ry'abazungura ba Rwasibo nawe arimo yaseswa.

[11] Uhagarariye BCR (I&M Bank) avuga ko iyi ngingo ntashingiro yahabwa kuko urukiko rwayifasheho icyemezo rukavuga ko amasezerano y'inguzanyo yasinyweho n'ababiherewe uburenganzira n'urukiko. Yabajijwe niba we abona ko ibyakozwe n'abasinye amasezerano ari "acte de gestion cg se niba ari acte de disposition", asubiza ko ari acte de disposition ariko ko abazungura ba Rwasibo badashobora kuvuga ko umwenda utabareba cyane cyane ko ushingiye ku mwenda wasizwe na se, hakiyongeraho inguzanyo yo gusana inzu nayo y'abazungura, bityo urega ngo akaba adakwiye kuvuga ko bitamureba kandi atagaragaza icyo yaba yarakoze ku mwenda se yasize cg mugusana iyo nzu, ahubwo yagombye gushimira ababikoze. Yakomeje asobanura ko abahawe inguzanyo bari barahawe icyemezo cyo gucunga umutungo, ngo ni mu rwego rwo kuwucunga rero bafashe n'inguzanyo yo kuwusana, maze inzu isanwa bayitangaho ingwate, ibyo nabyo ngo ntibikwiye kwirengagizwa.

[12] Urukiko rusanga inguzanyo yatanzwe na BCR kuwa 16/12/1997 uyihagarariye avuga ko byakozwe mu rwego rwo kurangiza inshingano za Rwasibo Jean Baptiste ku masezerano yari yaragiranye na BCR, ndetse no murwego rwo kubahiriza ibyemezo by'inkiko mu manza RCA 10.263/Kig na RA 2022/13.03/93. Mu gusuzuma ayo masezerano ndetse n'izo manza, urukiko rusanga iyo nguzanyo koko yaranditswe ko ishingiye kuyandi masezerano yo kuwa 21/03/1984 no kuri izo manza zaciwe ariko ikanashingira no kunguzanyo yasabwe kuwa 26/08/1997. Uhagarariye BCR ntagaragaza niba iyo nguzanyo yaba yarasabwe n'abazungura bose ba Rwasibo. Kuba rero yarasabwe na bamwe kandi batagaragaza niba abandi babatumye cg babibahereye uburenganzira, ibyo ntibyakwitirirwa abazungura bose. Ikindi iyo nguzanyo yasabwe ntaho ihuriye n'amasezerano yari yarasinywe hagati ya BCR na Rwasibo Jean Baptiste, kandi n'ingano y'amafranga yatanzwe kuri iyo nguzanyo atandukanye n'ayari mumasezerano ya kera, ndetse n'impamvu ntabwo ari imwe. Ibi byose rero bigaragaza ko izo nguzanyo zatanzwe kuwa 16/12/1997 itandukanye n'iyari mu masezerano ya Rwasibo Jean Baptise na BCR. Iyo nguzanyo ikaba itakwitwa ko yatanzwe mu rwego rwo kurangiza imanza zavuzwe kuko izo manza nazo zavugaga ko hubahirizwa amasezerano yabaye hagati ya BCR na Rwasibo nyamara nkuko bimaze gusobanuka ntabwo ibiri muri ayo masezerano aribyo byashyizwe mu bikorwa, bityo n'izo manza sizo zarangijwe. Uretse n'ibyo kandi

n'abakoraga ayo masezerano y'inguzanyo n'ingwate ntibari babifitiye ububasha nkuko byasobanuwe hejuru, ibyo bigatuma ibyakozwe muri ayo masezerano biteshwa agaciro.

3. Kubijyanye n'indishyi zatanzwe ku rwego rwa mbere n'izasabwe mu bujurire.

[13] Rwasibo Bernard n'umwunganira bavuga ko ntandishyi BCR yagombaga guhabwa ahubwo ko ariyo yagombaga kuzitanga kubera uburiganya bwakoreshejwe mu gutanga izo nguzanyo hitwajwe izina ry'abazungura ba Rwasibo, bityo agasaba indishyi zingana na 50.000.000Frw, hamwe na 5.000.000Frw y'ikurikiranarubanza ndetse na 10.000.000Frw y'igihembo cy'avocat.

[14] Uhagarariye BCR (I&M Bank) avuga ko izo ndishyi ntashingiro zifite kuko nta buriganya banki yakoze, ahubwo ko igomba guhabwa indishyi zingana na 1.000.000Frw kuko ikomeje gushorwa mu manza ntampamvu, igahabwa na 1.000.000Frw y'igihembo cy'avocat mu bujurire.

[15] Urukiko rusanga indishyi zahawe BCR ku rwego rwa mbere zigomba kuvanwaho kuko urubanza zishingiye rurayitsinda, bikajyana n'uko izo isaba mu bujurire zitakwirirwa zisuzumwa kubera iyo mpamvu y'uko itsindwa. Naho indishyi zisabwa na Rwasibo Bernard zo gukurikirana urubanza no guhemba avocat, urukiko rusanga akwiye kuzihabwa hashingiwe ku ngingo ya 258 CCL.III igira iti "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse". Kuba yariyambaje inkiko ngo zikemure ikibazo cye byatumye ashaka avocat wo kumwunganira kandi agomba guhembwa, ndetse nawe hari ibyo yatakaje akurikiranye urwo rubanza, bityo ibyo byose bikaba byirengerwa n'abaregwa kuko aribo ba nyirabayazana. Urukiko ariko rusanga izo ndishyi zagenwa mu bushishozi bwarwo hashingiwe kubyakozwe mu rubanza n'igihe rwamaze, kuko izasabwe ari ikirenga kandi ntanikigaragaza ko ariko zishyuwe, bityo hakaba hagenwe 500.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cy'avocat. Izindi ndishyi zasabwe zingana na 50.000.000Frw ngo zishingiye ko hakoreshejwe izina rya succession Rwasibo mugukora uburiganya, izo ntiyazihabwa kuko zitasobanuwe neza ngo hagaragazwe kuba harakozwe ibintu mu buryo butemewe n'amategeko icyo byamwangirijeho yahererwa indishyi cyane cyane ko ibyo yatakaje akurikiranye ikibazo ngo gikemuke mu nkiko abishubijwe.

III. ICYEMEZO CY'URUKIKO

[16] Rwemeje ko ubujurire bwa Rwasibo Bernard bufite ishingiro.

[17] Rwemeje ko amasezerano y'inguzanyo yasinywe hagati ya BCR, Rwasibo Jean Bosco, Rwasibo Louis na Rwasibo Joseph kuwa 16/12/1997 atareba abandi bazungura ba Rwasibo Jean Baptiste batayasinyeho.

[18] Rwemeje ko ubugwate bwakozwe kunzu iri mukibanza n° 2087 bushingiye kuri ayo masezerano bukuweho.

[19] Rwemeje ko indishyi zari zahawe BCR ku rwego rwa mbere zikuweho.

[20] Rwemeje ko BCR yahindutse I&M Bank ifatanije na RWASIBO Jean Bosco aribo bagomba guha Rwasibo Bernard indishyi z'ikurikiranarubanza no guhemba avocat.

[21] Rwemeje ko icyemezo cyafashwe mu rubanza rwajuririwe gihindutse.

[22] Rutegetse BCR yahindutse I&M Bank Rwanda Ltd ifatanije na Rwasibo Jean Bosco kwishyura Rwasibo Bernard indishyi zo gukurikirana urubanza zingana na 500.000Frw n'indishyi zo guhemba avocat zingana na 1.000.000Frw, yose hamwe akaba 1.500.000Frw, buri wese agatanga 750.000Frw.

[23] Rutegetse kandi BCR yahindutse I&M Bank Rwanda Ltd hamwe na Rwasibo Jean Bosco gufatanya gusubiza Rwasibo Bernard 75.000Frw y'ingwate y'amagarama yatanze ku rubanza ajurira, buri wese akaba agomba gutanga 37.500Frw.