NTEGEYE v. ECOBANK RWANDA LTD N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/COM0001/16/CS (Rugege, P.J., Kanyange, Gakwaya, Hitiyaremye, Ngagi na Karimunda, J.) 9 Nzeri 2016]

Amasezerano – Amasezerano yo kwikiranura – Iyo ababuranyi bagiranye ubwumvikane bagamije kwikiranura, ubwo bwumvikane bugomba guhabwa agaciro kuko amasezerano yo kwikiranura agira hagati y'abayagiranye agaciro kamwe n'ak'urubanza rwakemuwe ku buryo budasubirwaho mu rwego rwa nyuma – Iteka ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 591 n'iya 595.

Indishyi – Indishyi z'akababaro – Indishyi mbonezamusaruro – Igihembo cya Avoka – Amafaranga y'ikurikiranarubanza – Mu gihe umuburanyi atsinzwe urubanza nta ndishyi z'akababaro ahabwa – Mu gihe urukiko rusanze ikirego cy'uwareze kidakwiye kwakirwa, uregwa ahabwa indishyi z'ikurikiranarubanza n'igihembo cy'avoka iyo yamwiyambaje – Kigenwa mu bushishozi bw'urukiko iyo rusanze icyo asaba kitari mu rugero.

Incamake y'ikibazo: Mu mwaka wa 1993, Ntegeye Bernard yasabye BACAR S.A inguzanyo yo kubaka ikibanza N°1200 giherereye Kacyiru-Nord arayihabwa. Nyuma asaba indi yo kurangiza, arayemererwa ariko Jenoside yakorewe Abatutsi iba atarahabwa amafaranga. Nyuma ya Jenoside yegereye BCDI SA yahindutse ECOBANK Rwanda Ltd ngo imuhe amafaranga yo kuyirangiza maze imuha 50.000.000Frw ibanje kugura umwenda wa BACAR SA wanganaga na 42.485.087Frw. Ibi byatumye BCDI SA imuha gusa 7.516.953Frw nayo ataramufashije kurangiza kubaka inzu ye bituma asaba kongererwa umwenda. Mbere y'uko ahabwa igisubizo ku nyongera yari amaze gusaba, BCDI yamwishyuje 8.527.976Frw y'inyungu. Hagati aho igisubizo ku nguzanyo y'inyongera yagihawe nyuma y'amezi 11 kandi kitayimwemerera, ahubwo Banki ihita imusaba nta nteguza kuyishyura umwenda wose wari umaze kugera kuri 73.836.942Frw.

Mu rwego rwo kwishyura uwo umwenda, Ntegeye Bernard yagiranye amasezerano na Banki, bemeranywa ko ayeguriye inyubako ye n'ibikoresho byari aho, byose hamwe bifite agaciro ka 45.607.038Frw, hasigara umwenda uhwanye na 28.232.000Frw. Bemeranyijwe na none ko Banki niramuka ishatse kugurisha iyo nzu, Ntegeye Bernard afite uburenganzira bwo kugura mbere y'abandi (droit de préemption/préférence) mu gihe cy'imyaka icumi (10). BCDI SA ntiyubahirije amasezerano maze kuwa 11/04/2003, igurisha iyo nzu Banki Nkuru y'u Rwanda, itamenyesheje Ntegeye Bernard.

Ntegeye Bernard yaregeye Urukiko Nkemurampaka avuga ko BCDI S.A yishe y'amasezerano bagiranye, imugurishiriza inzu itabimubwiye, bityo asaba ko igurisha ryateshwa agaciro agahabwa uburenganzira bwo kugura mbere y'abandi, guca BCDI S.A. indishyi n'inyungu. Yagobokeshe kandi Banki Nkuru y'u Rwanda avuga ko icyemezo cyose cyafatwa cyayigiraho ingaruka.

Urukiko Nkemurampaka rwanzuye ko BCDI S.A. itishe amasezerano, ko rusanga nta mpamvu Banki Nkuru y'u Rwanda yagobokeshwa ndetse ko ibyo kuburanisha uburenganzira bwo kumenyeshwa ubugure «droit de préférence», Ntegeye Bernard aburanisha, ari amagambo gusa (théorie) kuko bigaragara ko atashoboraga kuyigura mu gihe yananiwe kwishyura umwenda wa banki. Rwemeje cyakora ko Banki yateshutse ku nshingano zayo zo kumumenyesha iby'iryo gurisha, ruyitegeka kubitangira indishyi za 5.000.000Frw.

Ntegeye ntiyishimiye icyo cyemezo, aregera Urukiko Rukuru avuga ko Urukiko Nkempurampaka rwakoze ikosa ryo kwakira ikirego cyo kwiregura cya BCDI S.A. bituma

rumutegeka kwishyura iyo Banki umwenda ungana na 28.232.000Frw kandi cyari ikirego kigomba gutangwa ukwacyo mu rundi rukiko rubifitiye ububasha kuko icyo kirego kitakwitiranwa no kwiregura (défense au fond). Yavuze kandi ko Urukiko rwitiranyije ibintu kuko amabwiriza ya Banki Nkuru y'u Rwanda adakuraho amasezerano yabaye hagati ye na banki. Uru Rukiko rwemeje ko Ntegeye yari afite aho abarizwa hazwi na BCDI S.A. ku buryo itari kumubura kugira ngo imumenyeshe ko inzu ye igiye kugurishwa kandi ko inzu igurishwa, igihe cy'imyaka 10 kiri mu masezerano cyari kitararangira ku buryo byafatwa nk'aho Ntegeye yatakaje uburenganzira bwo kumenyeshwa igurisha, bityo rusesa ayo masezerano y'ubugure atamenyeshejwe.

Urukiko Rukuru rw'Ubucuruzi kandi rwemeje ko nta mwenda Ntegeye akibereyemo BCDI S.A. ndetse rumugenera indishyi mbonezamusaruro n'iz'akababaro.

BCDI S.A. na Banki Nkuru y'u Rwanda bajuririye icyo cyemezo mu Rukiko rw'Ikirenga bavuga ko uru rukiko rwemeje iseswa ry'amasezerano y'ubugure kandi bitarasabwe n'urega, ko rwavuze ko nta mwenda abereyemo BCDI S.A. kubwo kudasobanukirwa n'imikorere y'amabanki kubirebana n'uburyo umwenda n'inyungu zose ziwukumokaho bibarwa.

Urukiko rw'Ikirenga rwanzuye ko Ntegeye agifitiye BCDI S.A. umwenda rumutegeka kuyishyura 48.102.687Frw, bituma yandikira Umuvunyi Mukuru amusaba gusuzuma akarengane kabaye mu rubanza maze Umuvunyi Mukuru yandikira Perezida w'Urukiko rw'Ikirenga amusaba ko urubanza rwasubirishwamo ku mpamvu z'akarengane.

Iburanisha rigitangira, ECOBANK Rwanda Ltd yibukije inzitizi yatanze yo kutakira ikirego cya Ntegeye kubera ko nyuma y'icibwa ry'urubanza mu Rukiko rw'Ikirenga bumvikanye ku irangizwa ryarwo kandi impande zombi zemeranywa ko ntawuzatesha agaciro amasezerano yo kwikiranura bagiranye. Ntegeye we yiregura avuga ko amasezerano bagiranye ari ayo kurangiza urubanza atari ayo kwikiranura.

Incamake y'icyemezo: 1. Ikirego cy'uwasubirishije urubanza ku mpamvu z'akarengane ntigikwiye kwakirwa ngo gisuzumwe kuko amasezerano yo kwikiranura yagiranye na ECOBANK Rwanda kuri urwo rubanza rwose kandi agakorwa nyuma yaho atangiye ikirego cye ku Rwego rw'Umuvunyi yasimbuye urwo rubanza.

2. Ntaho urukiko rwahera rusuzuma ishingiro ry'indishyi z'akababaro n'iz'imbonezamusaruro zisabwa n'urega mu gihe ikirego cye kitakiriwe, naho amafaranga y'igihembo cya Avoka asaba akaba atayakwiriye kubera ko atsinzwe kuri uru rwego

3. Amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa na ECOBANK Rwanda Ltd na Banki Nkuru y'Igihugu, izo banki ziyakwiriye kuko zagombye gukurikirana iby'uru rubanza kandi ziyambaza ba Avoka bahembwa, bityo mu bushishozi bw'Urukiko buri banki ikaba igenewe amafaranga ibihumbi magana inani (800.000Frw) y'ikurikiranarubanza n'igihembo cya Avoka.

Ikirego nticyakiriwe.
Amagarama y'urubanza aherereye k'urega.

Amategeko yashingiweho:
Iteka ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 591 n'iya 595.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mu mwaka wa 1993, Ntegeye Bernard yasabye BACAR SA inguzanyo yo kubaka ikibanza N°1200 giherereye Kacyiru-Nord arayihabwa. Nyuma asaba indi yo kurangiza, arayemererwa ariko Jenoside yakorewe Abatutsi iba atarahabwa amafaranga. Nyuma ya Jenoside yegereye BCDI S.A (ubu yitwa ECOBANK Rwanda Ltd) ngo imuhe amafaranga yo kurangiza inzu ye. BCDI S.A imuha 50.000.000Frw ibanje kugura umwenda wa BACAR S.A wanganaga na 42.485.087Frw. Ntegeye Bernard avuga ko 7.516.953Frw yasigaye atashoboye kurangiza kubaka inzu ye bituma asaba kongererwa umwenda. Mbere y'uko ahabwa igisubizo, Banki imwishyuza 8.527.976Frw y'inyungu, igisubizo ku nguzanyo y'inyongera kiza nyuma y'amezi 11 kimwangira inyongera y'umwenda yari yasabye, ahubwo asabwa guhita yishyura umwenda wose wari umaze kugera kuri 73.836.942Frw nta nteguza.

[2] Mu rwego rwo kwishyura umwenda wa Banki, Ntegeye Bernard yagiranye amasezerano na Banki ku wa 09/02/2001, bemeranywa ko ayeguriye inyubako ye n'ibikoresho byari aho, byose hamwe bifite agaciro ka 45.607.038Frw, asigarana umwenda wa 28.232.000Frw. Mu ngingo ya 6 y'ayo masezerano bemeranywa na none ko Banki iramutse ishatse kugurisha iyo nzu, Ntegeye Bernard afite uburenganzira bwo kugura mbere y'abandi (droit de préemption/préférence) mu gihe cy'imyaka icumi (10). Kuwa 11/04/2003, BCDI S.A yagurishije iyo nzu Banki Nkuru y'u Rwanda, itamenyesheje Ntegeye Bernard.

[3] Ntegeye Bernard yaregeye Urukiko Nkemurampaka avuga ko BCDI S.A yishe ingingo ya 6 y'amasezerano bagiranye, imugurishiriza inzu itabimubwiye, asaba ko ibyakozwe byose ku kibanza N°1200 giherereye Kacyiru-Nord biteshwa agaciro hakubahirizwa ibyemeranyijwe ko agomba kugura mbere y'abandi, guca BCDI SA indishyi n'inyungu. Ntegeye Bernard yagobokeshe kandi Banki Nkuru y'u Rwanda avuga ko icyemezo cyose cyafatwa cyayigiraho ingaruka.

[4] Mu cyemezo cyafashwe kuwa 02/12/2005, Urukiko Nkemurampaka rwasanze nta mpamvu yo kogobokesha Banki Nkuru y'u Rwanda, rusanga kandi amasezerano yegurira BCDI SA inzu yarakozwe mu rwego rwo kwishyura igice cy'umwenda Ntegeye Bernard yari abereyemo iyo Banki kuko ari we wihereye Banki ibyangombwa by'iyo nzu birimo «fiche cadastrale», «contrat de location» na «autorisation de bâtir», rwemeza ko BCDI S.A itishe amasezerano, kuko nubundi igihe Ntegeye Bernard yasabaga ko ingingo ya 6 y'amasezerano yubahirizwa yari atarishyura umwenda abereyemo iyo Banki, ko atigeze amenyesha Banki amakuru ye kuva ayo masezerano yasinywa, kandi ko inzu yagurishijwe hashingiwe ku mabwiriza ya Banki Nkuru y'u Rwanda N°05/2000 yo kuwa 29/03/2000, rwanzura ko nta kinyuranyije n'amategeko kiri mu masezerano iyo Banki yagiranye na Banki Nkuru y'u Rwanda cyangwa cyakorewe ku kibanza N°1200 nyuma yaho hagurishijwe.

[5] Urukiko rwasanze kandi ibya «droit de préférence», Ntegeye Bernard aburanisha, ari amagambo gusa (théorie) kuko atakwitwaza ko yari kugura iyo nzu yagurishijwe 100.000.000Frw mu gihe yari yananiwe kwishyura umwenda wa 28.232.000Frw. Rusanga cyakora Banki yarateshutse ku nshingano zayo zo kumenyesha Ntegeye Bernard iby'iryo gurisha, ruyitegeka kubitangira indishyi za 5.000.000Frw.

[6] Ntegeye Bernard ntiyishimiye icyo cyemezo, aregera Urukiko Rukuru avuga ko Urukiko Nkempurampaka rwakoze ikosa ryo kwakira ikirego cyo kwiregura cya BCDI S.A bituma rumutegeka kwishyura iyo Banki umwenda ungana na 28.232.000Frw kandi cyari ikirego kigomba gutangwa ukwacyo mu rundi rukiko rubifitiye ububasha kuko icyo kirego kitakwitiranwa no kwiregura (défense au fond). Yavuze kandi ko Urukiko rwitiranyije ibintu kuko amabwiriza ya Banki Nkuru y'u Rwanda adakuraho amasezerano yabaye hagati ye na banki.

[7] Mu rubanza N°RCOMA0020/05/11/HC/KIG rwaciwe kuwa 31/05/2007, Urukiko rwasanze kuva Ntegeye Bernard agiranye amasezerano y'iguriza na BCDI S.A yarayimenyesheje ko yaboneka kuri B.P.445 KIGALI, C/O PNUD-KIGALI, B.P.2920 KIGALI, C/O Birasamashyo Augustin cyangwa kuri B.P. 910 LUANDA - ANGOLA, bivuze ko Banki itari kumuburira kuri imwe muri ayo ma sanduku y'Iposita kugira ngo imumenyeshe ko inzu ye igiye kugurishwa kandi ko igihe cy'imyaka 10 kiri mu masezerano cyari kitararangira inzu igurishwa ngo bifatwe ko Ntegeye Bernard yatakaje «droit de préférence».

[8] Rwasanze kandi BCDI S.A yaragurishije inzu nta mwenda Ntegeye Bernard ayibereyemo kuko "extrait bancaire" ya konti N°110-2534703-9 igaragaza ko kuwa 31/12/2002 nta mwenda Ntegeye Bernard yari akibereyemo banki. Urukiko rwanzuye ko BCDI S.A idakwiye kwitsitsa ku mabwiriza ya Banki Nkuru y'u Rwanda yashingiyeho igurisha inzu kuko ayo mabwiriza adakuraho amasezerano yakorewe imbere ya noteri kandi yabaye itegeko, rwemeza ko amasezerano yiswe «acte de cession d'immeuble» asheshwe, Ntegeye Bernard asubijwe inzu ye, kandi agenewe indishyi mbonezamusaruro z'ubukode bw'inzu angana na 6.000.000Frw na 5.000.000Frw y'indishyi z'akababaro.

[9] BCDI S.A na Banki Nkuru y'u Rwanda bajuririye icyo cyemezo mu Rukiko rw'Ikirenga bavuga ko:

a) Urukiko Rukuru rwaciye urubanza ku cyo rutaregewe kuko ntawasabye iseswa ry'amasezerano yo kuwa 09/02/2001;

b) Ntegeye Bernard atakwitwaza ko atamenye iby'umwenda we kandi ku wa 30/03/2001 yarandikiwe yibutswa umwenda afite anasabwa gusobanura uko azawishyura ndetse na Avoka we Birasamashyo Augutsin akaba yarabonye ibaruwa yishyuza ku wa 26/04/2001;

c) Urukiko Rukuru rwibeshye ruvuga ko nta mwenda Ntegeye Bernard akibereyemo banki rushingiye kuri "extraits de compte", bigaragaza ko rutasobanukiwe n'imikorere y'amabanki kubirebana n'uburyo umwenda n'inyungu zose ziwukumokaho bibarwa;

d) Habayeho kwibeshya ku mabwiriza N°5/2000 ya Banki Nkuru y'u Rwanda, ruvuga ko adakuraho amasezerano yakorewe imbere ya noteri nyamara ayo masezerano adashobora kuvuguruza ayo mabwiriza kuko ashyira mu bikorwa ingingo ya 34 na 35 z'Itegeko N°08/99 ryo kuwa 18/06/1999 ryerekeye imitunganyirize y'amabanki n'ibindi bigo by'imari.

[10] Mu rubanza N°RCOMAA005/07/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 30/07/2010, Urukiko rwasanze:

a) Haraciwe urubanza ku kitarasabwe kuko Urukiko Rukuru rwerekanye ko amasezerano y'ubugure hagati ya BCDI S.A na Banki Nkuru y'u Rwanda yabayemo

uburiganya, uretse ko nabwo bwagombaga kugaragarizwa ibimenyetso, aho kuyasesa, rusesa ayabaye hagati ya Ntegeye Bernard na BCDI S.A bidafitanye isano;

b) Kugira ngo inzu yatanzweho ingwate ive mu maboko ya Ntegeye Bernard, habanje kubaho ibiganiro, mu mwanya wa Ntegeye Barnard hasinya Birasamashyo Augustin warubifitiye uburenganzira busesuye, humvikanwa ko Ntegeye Bernard yegurira BCDI S.A inzu ye, ikiguzi cyayo kikavanwa mu mwenda yari agezemo ungana na 73.839.942Frw, umwenda usigara ungana na 28.232.000Frw, aya masezerano akaba ntaho ahuriye n'ingingo ya 17 y'Iteka ryo kuwa 15/05/1922 ryerekeye ubugwate bw'ibitimukanwa;

c) Amasezerano yakozwe hagati ya Ntegeye Bernard na BCDI S.A akwiye gufatwa nk'ayaturutse ku bwumvikane bwa bombi hagamijwe gushaka uburyo bwo kwishyura ndetse n'Umushingamategeko akaba yarasanze amasezerano nkayo ntaho abangamiye uwatanze ingwate kuko mw'Itegeko N°13/2010 ryo kuwa 07/05/2010 rihindura Itegeko no 10/2009 ryo kuwa 14/04/2009, mu ngingo yaryo ya 2, yabishimangiye kurushaho kuko ibyari bibujijwe gushyirwa mu masezerano y'ubugwate yemeye ko bijyamo, bityo ko ibikenewe kugira ngo amasezerano yo ku wa 09/02/2001 yitwe ay'ubugure byuzuye;

[11] Urukiko rw'Ikirenga rwanzuye ruvuga ko Ntegeye Bernard afitiye BCDI S.A umwenda kuko nyuma yo gusuzuma inyandiko zose zijyanye n'inguzanyo yatanzwe, na konti za Ntegeye Bernard muri BCDI SA, impuguke Habimana José yasanze nta kigaragaza ko inguzanyo ya 28.232.000Frw yishyuwe kandi ko 70.000USD yanyuze kuri konti atari «solde créditaire» ahubwo ari «mouvement créditaire» kuko hazaga make make, ni uko rwemeza ko Ntegeye Bernard agomba kwishyura BCDI S.A 48.102.687Frw akayatangira n'umusogongero wa Leta wa 4%.

[12] Ntegeye Bernard yandikiye Umuvunyi Mukuru amusaba gusuzuma akarengane kabaye mu rubanza rwaciwe n'Urukiko rw'Ikirenga ku wa 30/07/2010. Ku wa 18/06/2014 Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga amusaba ko urubanza N°RCOMAA005/07/CS rwaciwe kuwa 30/07/2010 rwasubirishwamo ku mpamvu z'akarengane.

[13] Mu cyemezo N°011/2016 cyo kuwa 29/02/2016, Perezida w'Urukiko rw'Ikirenga yasabye Ubwanditsi bw'Urukiko rw'Ikirenga gushyira kuri gahunda y'iburanisha urubanza N°RCOMAA005/07/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 30/07/2010 kugira ngo hasuzumwe niba rwarabayemo akarengane.

[14] Iburanisha ryabereye mu ruhame kuwa 15/06/2016, Ntegeye Bernard yunganiwe na Me Zawadi Stephen hamwe na Me Mubangizi Frank, ECOBANK Rwanda Ltd ihagarariwe na Me Munyaneza Remy naho Banki Nkuru y'u Rwanda iburanirwa na Me Byiringiro Jacques, Me Cyiza Clément na Me Murego Jean-Léonard.

[15] Iburanisha rigitangira, ECOBANK Rwanda Ltd yibukije inzitizi yatanze yo kutakira ikirego cya Ntegeye Bernard kubera ko nyuma y'icibwa ry'urubanza mu Rukiko rw'Ikirenga bumvikanye ku irangizwa ryarwo kandi impande zombi zemeranywa ko ntawuzatesha agaciro amasezerano yo kwikiranura.

II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURA RYABYO

II.1. Kumenya niba amasezerano yo kwikiranura ku irangiza ry'urubanza akumira iyakira ry'ikirego kiregera kurusubirishamo ku mpamvu z'akarengane.

[16] Me Munyaneza Remy uburanira ECOBANK Ltd avuga ko nyuma y'icibwa ry'urubanza mu Rukiko rw'Ikirenga, impande zombi zagiranye amasezerano yo kwikiranura (acte transactionnel), buri ruhande rugira icyo rwigomwa, ECOBANK Rwanda Ltd yemera guhara 14.102.687Frw, ihagarika n'imihango y'irangizarubanza yari yatangije, igamije gukumira ko ururabanza rwazasubirishwamo ingingo nshya cyangwa ku mpamvu z'akarengane, bumvikana ko nta ruhande ruzasaba ko ayo masezerano ateshwa agaciro, ayo masezerano akorwa ECOBANK Rwanda Ltd itazi ko Ntegeye Bernard yiyambaje Urwego rw'Umuvunyi, bityo akaba asaba uru Rukiko gushingira ku ngingo ya 583 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, rukemeza ko ikirego kitakiriwe.

[17] Me Cyiza Clément, Me Murego Jean-Léonard na Me Byiringiro Jacques, baburanira Banki Nkuru y'u Rwanda, bavuga ko amasezerano y'ubwumvikane yari agamije kurangiza urubanza rwaciwe n'Urukiko rw'Ikirenga, Ntegeye Bernard ayashyiraho umukono abifitiye ububasha n'ubushobozi kandi azi ko ingaruka zayo ari ukwikiranura na ECOBANK Ltd kugirango imitungo ye idatezwa cyamunara, bituma ECOBANK Ltd imwemerera kwishyura make kuyo yari yategetswe mu rubanza, bakaba basaba uru Rukiko kwemeza agaciro k'amasezerano yo kwikiranura, ikirego cya Ntegeye Bernard nticyakirwe.

[18] Ntegeye Bernard avuga ko ariwe wasabye kumvikana na banki, ECOBANK Rwanda Ltd yemera ko yishyurwa 34.000.000Frw kubera ko yari izi ko ari ay'ubusa, ayatanga agamije gukumira cyamunara ku bintu bye bifite agaciro, ibyo bikaba ntaho bihuriye n'ibyo kurenganurwa yari yasabye Urwego rw'Umuvunyi.

[19] Me Mubangizi Frank wunganira Ntegeye Bernard avuga ko kurangiza urubanza bidakwiye kwitiranywa no kurusubirishamo ku mpamvu z'akarengane, ko kwita amasezerano yakozwe ayo kwikiranura byaba ari ukuyahindurira inyito kuko nta kwikiranura kwabayeho ahubwo icyabaye ari ukurangiza urubanza. Asobanura ko Ntegeye Bernard yiyambaje Urwego rw'Umuvunyi muri 2012, amasezerano y'ubwumvikane akorwa muri 2014, ko iyo aba yarikiranuye na ECOBANK Rwanda Ltd yari kuba yararetse ikirego, kuba atarabikoze bikaba bigaragaza ko amasezerano atari ayo kwikiranura. Asoza avuga ko ntacyo ECOBANK Rwanda Ltd na Banki Nkuru y'u Rwanda bakemanga ikirego cyashikirijwe Urwego rw'Umuvunyi, bityo akaba asaba uru Rukiko kwakira ikirego cya Ntegeye Bernard akarenganurwa.

[20] Me Zawadi Stephen nawe uburanira Ntegeye Bernard, avuga ko akarengane karegewe Umuvunyi Mukuru karenze amasezerano y'ubwumvikane, ko ibyabaye hagati ya Ntegeye Bernard na ECOBANK Rwanda Ltd byari uburyo bwo kurangiza urubanza Ntegeye Bernard adahutajwe, amasezerano y'ubwumvikane agabanya ikintu gito cyane ku karengane kariho kandi ko amasezerano ashyirwaho umukono, ECOBANK Rwanda Ltd yari ifite ibaruwa Ntegeye Bernard yandikiye Urwego rw'Umuvunyi, akaba asanga uru Rukiko ntacyo rufite cyo gusuzuma kubirebana na "acte transactionnel" ahubwo rukwiye kwakira ikirego rwashikirijwe, Ntegeye Bernard akarenganurwa aho akirengana.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 81, igika cya 1 y'Itegeko-Ngenga N^{o}03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko: "Urubanza

rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane kubera impamvu zikurikira:

1° iyo hari ibimenyetso simusiga bigaragaza ruswa, ikimenyane cyangwa icyenewabo, byagize ingaruka ku mikirize y'urubanza bikaba bitarigeze bimenywa n'uwatsinzwe mu gihe cy'iburana;

2° iyo mu icibwa ry'urubanza hirengagijwe amategeko n'ibimenyetso bigaragarira buri wese;

3° iyo urubanza rudashobora kurangizwa ukurikije imikirize yarwo."

[22] Ingingo ya 591 y'Igitabo cya gatatu cy'Urwunge rw'Amategeko Mbonezamubano iteganya ko: "amasezerano yo kwikiranura agira hagati y'abayagiranye agaciro kamwe n'ak'urubanza rwakemuwe ku buryo budasubirwaho mu rwego rwa nyuma. Ntawe ushobora gusaba ko ateshwa agaciro yitwaje ko yibeshye kubyo amategeko ateganya, cyangwa se yitwaje ko yahenzwe".

[23] Naho ingingo ya 595 yicyo Gitabo iteganya ko: "Amasezerano yo kwikiranura ku rubanza rwaciwe burundu rudashobora no kujuririrwa, ariko abikiranuye bakaba batari bazi ko urwo rubanza rwabayeho, nta gaciro namba agira. Iyo urwo rubanza abikiranuye batari bazi rugishobora kujurirwa, amasezerano yo kwikiranura ahamana agaciro kayo".

[24] Inyandiko zigize dosiye y'urubanza zigaragaza ko mu rubanza RCOMAA0005/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 30/07/2010, icyabanje gusuzumwa ari ukumenya niba Urukiko Rukuru rwa Repubulika rwaraciye urubanza kucyo rutaregewe ubwo rwemezaga ko amasezerano yiswe "acte de cession d'immeuble" aseswa, rwongera gusuzuma ikibazo cyo kumenya niba ECOBANK Rwanda Ltd yaraguze ingwate yahawe kugira ngo umwenda wa Ntegeye Bernard ugabanuke cyangwa ushireho, rukomeza rusuzuma niba koko nta madolari ya Amerika 70.000 Ntegeye Bernard yanyujije kuri konti ye muri ECOBANK Rwanda Ltd agamije kwishyura umwenda yarimo iyo banki, kuri izi ngingo zose Urukiko rusanga ubujurire bwa ECOBANK Rwanda Ltd bufite ishingiro, rubona gusuzuma ikibazo cy'umwenda Ntegeye Bernard asigayemo ECOBANK Rwanda Ltd, rwemeza ko kugeza urubanza rucibwa (kuwa 30/07/2010), uwo mwenda ungana na 48.102.687Frw.

[25] Dosiye igaragaza kandi ko Urukiko rw'Ikirenga rwasuzumye ubujurire bwa Banki Nkuru y'u Rwanda bwasabaga kwemeza ko nta nenge iri mu masezerano y'ubugure bw'inzu yagiranye na ECOBANK Rwanda Ltd, Urukiko rusanga ubwo bujurire bufite ishingiro, naho ku bujurire bwuririye ku bundi bwa Ntegeye Bernard wasabaga ko hasuzumwa niba amasezerano yagiranye na ECOBANK Rwanda Ltd yaruhabirijwe, rwemeza ko ikirego cye kitakiriwe kuko kitigeze gisuzumwa n'Inkiko zibanza.

[26] Muri dosiye harimo kandi amasezerano y'ubwumvikane (Acte transactionnel) yo ku wa 06/03/2014 hagati ya Ntegeye Bernard na ECOBANK Rwanda Ltd avuga ko impande zombi zumvikanye ku irangizwa ry'urubanza N°RCOMAA0005/07/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 30/07/2010, ingingo ya mbere y'ayo masezerano ivuga ko Ntegeye Bernard yemeye kwishyura 34.000.000Frw mu rwego rwo gukemura ikibazo afitanye na ECOBANK Rwanda Ltd kivugwa mu rubanza no RCOMAA0005/07/CS ("Monsieur Ntegeye Bernard s'engage à verser la somme de 34.000.000Frw à ECOBANK Rwanda en vue de liquider tous ses engagements qu'il a envers ECOBANK Rwanda Ltd en rapport avec le jugement ci haut cite"), naho ingingo ya 3 y'ayo masezerano ivuga ko impande zombi zemeranyijwe ku kurangiza urubanza N°RCOMAA0005/07/CS, ko bemeye nta gahato

gukora amasezerano yo kwikiranura bazi ingaruka zabyo, biyemeje kudakemenga ishyirwa mu bikorwa ryayo no kuyuhabiriza nta buryarya (les parties s'engagent à clôturer la mise en application de l'arrêt RCOMAA0005/07/CS de la Cour Suprême et à exécuter de bonne foi la transaction. Les parties s'interdisent expressément de remettre en cause la mise en application de la transaction et de ce fait les parties rappellent connaitre pleinement la portée de leur engagement volontaire auquel elles ont donné un consentement libre et éclairé.» (cote 95).

[27] Urukiko rurasanga ingingo ya gatatu y'amasezerano yo kwikiranura Ntegeye Bernard yagiranye na ECOBANK Rwanda Ltd ku wa 06/03/2014, yumvikanisha neza ko akiranutse na banki ku ngingo zose z'urubanza, byumvikanisha ko kuva yari yarabaye umuburanyi muri urwo rubanza, kwikiranura kuri rwo bituma amasezerano yo kwikiranura agumana agaciro kayo mu ngingo zayo zose; byongeye kandi Ntegeye Bernard yavuze ko amasezerano yo kwikiranura yayasinye azi ingaruka zayo, no mu gihe cy'iburanisha yongera gushimangira ko atayahakana, nabyo bigaragaza ko ayo masezerano akwiye gufatwa nk'urubanza rwakemuwe ku rwego rwa nyuma kuburyo budasubirwaho kandi akaba adashobora guteshwa agaciro ku mpamvu y'uko umwe mubayashyizeho umukono yibeshye kubyo amategeko ateganya cyangwa se ko yahenzwe, bityo, ibyo Ntegeye Bernard n'abamwunganira baburanisha ko amasezerano yagiranye na ECOBANK Rwanda Ltd yari ayo kurangiza urubanza aho kuba ayo kwikiranura bikaba nta shingiro bifite.

[28] Urukiko rurasanga kandi Ntegeye Bernard yarakoranye amasezerano yo kwikiranura na ECOBANK Rwanda Ltd nyuma yo gushyikiriza Urwego rw'Umuvunyi ikirego cye cy'akarangane kuko icyo kirego yagitanze muri 2012, yikiranura na ECOBANK Rwanda Ltd ku wa 06/03/2014, mu masezerano yo kwikiranura akaba yemera ko akiranutse na banki ku ngingo zose z'urubanza harimo n'izo yari yaregeye akarengane k'Urwego rw'Umuvunyi (sans réserve), byumvikanisha ko yikiranura na banki yemeraga ko nta karengane yakorewe kuko iyo bitaba bityo yari kugaragaza ingingo yikiranuyeho na banki n'izo atikiranuyeho nayo ku mpamvu y'uko atemera imikirize y'urubanza kuri zo, kuba atarabikoze atyo, ahubwo nyuma y'amasezerano yo kwikiranura akavuga ko ayo masezerano agarukira ku mwenda wategetswe n'Urukiko, bigaragaza kwivuguruza kuko yikiranuye ku ngingo z'urubanza zose ari uko yemera ko nta karengane kazirimo.

[29] Urukiko rurasanga hashingiwe ku byasobanuwe no ku ngingo z'amategeko zibukijwe hejuru, ikirego cya Ntegeye Bernard cyo gusubirishamo urubanza RCOMAA0005/07/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 30/07/2010 ku mpamvu z'akarengane kidakwiye kwakirwa ngo gisuzumwe kuko amasezerano yo kwikiranura yagiranye na ECOBANK Rwanda kuri urwo rubanza rwose kandi agakorwa nyuma yaho atangiye ikirego cye ku Rwego rw'Umuvunyi yasimbuye urwo rubanza.

II.2. Kumenya niba indishyi zisabwa na ECOBANK Rwanda Ltd, Banki Nkuru y'u Rwanda n'izisabwa na Ntegeye Bernard zikwiye gutangwa.

[30] Me Munyaneza Remy uburanira ECOBANK Rwanda Ltd, avuga ko Ntegeye Bernard yashoye banki mu manza nta mpamvu kubwo kutubahiriza amasezerano yo kwikiranura, akaba asaba ko yabiryorezwa indishyi z'ikurikiranarubanza n'igihembo cya Avoka bingana na 2.000.000Frw.

[31] Me Byiringiro Jacques uburanira Banki Nkuru y'Igihugu, avuga ko iyo banki yashowe mu manza ku mpamvu z'amaherere akaba abisabira amafaranga y'ikurikiranarubanza n'igihembo cya Avoka angana na 2.000.000Frw.

[32] Me Mubangizi Frank na Me Zawadi Stephen bunganira Ntegeye Bernard bavugiye mu nama ntegurarubanza ko uwo bunganira ariwe ukwiriye indishyi z'akababaro zingana na 50.000.000Frw, iz'imbonezamusaruro zingana n'amadolari ya Amerika 493.584 n'igihembo cy'Abavoka babiri kingana na 15.000.000Frw.

[33] Urukiko rurasanga ku birebana n'indishyi z'akababaro n'indishyi mbonezamusaruro Ntegeye Bernard asaba ntaho rwahera rusuzuma ishingiro ryazo kuko ikirego cye kitakiriwe, naho amafaranga y'igihembo cya Avoka asaba akaba atayakwiriye kubera ko atsinzwe kuri uru rwego.

[34] Urukiko rurasanga, ku birebana n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa na ECOBANK Rwanda Ltd na Banki Nkuru y'Igihugu, izo banki ziyakwiriye kuko zagombye gukurikirana iby'uru rubanza kandi ziyambaza ba Avoka bahembwa, bityo mu bushishozi bw'Urukiko buri banki ikaba igenewe amafaranga ibihumbi magana inani (800.000Frw) y'ikurikiranarubanza n'igihembo cya Avoka.

III. ICYEMEZO CY'URUKIKO

[35] Rwemeje ko inzitizi yatanzwe na ECOBANK Rwanda Ltd ifite ishingiro;

[36] Ruvuze ko ikirego cya Ntegeye Bernard cyo gusubirishamo ku mpamvu z'akarengane urubanza N°RCOMAA0005/07/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 30/07/2010 kitakiriwe;

[37] Rutegetse Ntegeye Bernard guha ECOBANK Rwanda Ltd amafaranga y'ikurikiranarubanza n'igihembo cya Avoka yose hamwe angana n'ibihumbi magana inani (800.000Frw);

[38] Rutegetse Ntegeye Bernard guha Banki Nkuru y'u Rwanda amafaranga y'ikurikiranarubanza n'igihembo cya Avoka yose hamwe angana n'ibihumbi magana inani (800.000Frw);

[39] Rutegetse Ntegeye Bernard gutanga amagarama y'urubanza angana na 100.000Frw.