I&M BANK v. SEBULIKOKO

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA00052/2016/SC- RCOMAA0057/16/CS (Kayitesi R, P.J., Ngagi na Hitiyaremye, J.) 09 Kamena 2017]

Amategeko agenga amasezerano – Amasezerano y'ubugwate – Kongera igihe cyo kwandikisha ingwate – Kutongera igihe cyo kwandikisha ingwate ntibiyitesha agaciro igihe cyose umwenda ishamikiyeho utarishyurwa. Icyakora uko kutongera kuyandikisha ntibyagira inkurikizi ku batari mu masezerano.

Incamake y' ikibazo: I&M BANK yahaye Sebulikoko (uhagarariye ECSNE), inguzanyo ingana na 2.434.879.505Frw mu rwego rwo kugura imashini zifashishwa mu kubaka imihanda, bakorana amasezerano y'ingwate ku mutungo wimukanwa kuwa 07/11/2013. Iyo nguzanyo yishingirwa na Rwasibo Mutesi Beatrice, ikaba yaragombaga kurangira kwishyurwa kuwa 25/04/2015.

Nyuma yaho iyo nguzanyo ntiyishyuwe, I&M BANK ifatira izo ngwate maze izigurisha mu cyamunara ibyemerewe n'umwanditsi mukuru mu kigo cy'igihugu gishinzwe iterambere (RDB), ariko ntizabasha kwishyura umwenda wose bituma ibarega mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba kwishyurwa amafaranga yari asigaye.

Sebulikoko n'umwishingizi we nabo batanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge basaba urukiko gutesha agaciro iryo gurisha ry'ingwate kuko ritubahirije amategeko, banasaba kandi ko hakorwa irindi genagaciro (contre expertise) kuko imitungo yabo yagurishijwe ifite agaciro karuta umwenda bahawe na banki.

Banatanze ikirego cyuririye ku kindi basaba urukiko yuko habaho ihwanywa ry'imyenda (compensation) maze amafaranga asigaye agasubizwa Sebulikoko kuko agaciro k'imitungo yagurishijwe kari hejuru y'amafaranga bishyuzwa. Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeza ko ikirego cya Seburikoko n'umwishingizi we nta shingiro gifite naho icya I&M BANK kikaba gifite ishingiro, rutegeka ko uwahawe inguzanyo hamwe n'umwishingizi bafatanya kwishyura amafaranga bishyuzwa na banki.

Seburikoko n'umwishingizi we ntibanyuzwe n'icyemezo cy'Urukiko rw'Ubucuruzi rwa Nyarugenge bajurira mu Rukiko Rukuru rw'Ubucuruzi bavuga ko I&MBANK yagurishije umutungo wabo utakiri ingwate yanditse ya I&M BANK kuko zitongeye kwandikishwa muri RDB kubera ko igihe cyo kuyandikisha cyari cyararenze. Uru rukiko rwemeje ko ubujurire bufite ishingiro kuri bimwe, rwemeza ko ingwate zagurishijwe mu buryo bunyuranyije n'amategeko kuko zari zitakiri iza banki yazigurishije mu cyamunara.

I&M BANK ntiyishimiye icyemezo cy'Urukiko Rukuru rw'Ubucuruzi kivuga ko umutungo wagurishijwe utakiri ingwate yayo kuko igiye cyayo cy'ubugwate cyari cyararangiye ntizongera kwandikishwa, banki ijurira mu Rukiko rw'Ikirenga ivuga ko mu kwemeza ko umutungo wagurishijwe utari ukiri ingwate Urukiko Rukuru rw'Ubucuruzi rwirengagije impamvu zari zaratanzwe ko ari umwenda Seburikoko n'umwishingizi we batari bagashoboye kwishyura.

Sebulikoko n'umwishingizi we batanze ubujurire bwuririye ku bundi, bavuga ko banki igomba kwirengera ingaruka n'igihombo batejwe n'igurishwa ry'ingwate itari yanditse ndetse basaba urukiko ko habaho ihwanya ry'imyenda. Banki yiregura ivuga ko Sebulikoko yari yiyemeje

kwishyura, anakorerwa ivugururwa ry'amasezerano(restructuration) na banki rishingiye kubusabe bwe ariko ntiyabyubahiriza.

Incamake y'icyemezo: 1. Kwandikisha ingwate biba bigamije kumenyesha abatari mu masezerano ko iyo ngwate ihari, ariko ko n'iyo igihe cy'iyandikisha ryayo kirangiye itarandikwa, ariko nticyongerwe, ibyo bitayitesha agaciro, icyakora nta nkurikizi igira ku bantu batari mu masezerano.

2. Ingwate itangwa igamije kwishingira umwenda, ku buryo igihe cyose umwenda utarishyurwa ingwate nayo igumaho. Kuba ingwate itarongeye kwandikwa mu Biro by'Umwanditsi Mukuru mu kigo gishinzwe iterambere (RDB) ntibyayitesha agaciro, bivuze rero ko kuba umwenda ukiriho, akaba ari nawo ingwate ishingiyeho, ingwate nayo igumana agaciro kayo, nubwo iyandikwa ryayo ryaba ritarongerewe agaciro.

Ubujurire bufite ishingiro.
Ubujurire bwuririye ku bundi nta shingiro bufite.
Amagarama ahերereye kuri Seburikoko n'umwishingizi we.

Amategeko yashingiweho:
Itegeko Nº34/2013 ryo kuwa 24/05/2013 ryerekeye ubugwate ku mutungo wimukanwa, ingingo ya 2, 19º, iya 7, iya 8 n'iya 27.

Nta manza zifashishijwe.

Ibitekerezo by'Abahanga:
L. Aynes P.& Crocq, *Droit des sûretés,* 9e édition, Paris, L.G.D.J., 2015.

Urubanza

I.IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, I&M Bank Ltd irega Sebulikoko Niyomwungeri Emmanuel (uhagarariye ECSNE) na Rwasibo Mutesi Beatrice (nk'umwishingizi), umwenda ungana na 2.434.879.505Frw, yamuhaye kugira ngo agure imashini zifashishwa mu kubaka imihanda. I&M Bank Ltd yavugaga ko yabonye itishyuwe, itangira gushaka ubwishyu mu ngwate yari yarahawe na Sebulikoko Niyomwungeri Emmanuel (uhagarariye ECSNE), ariko ntizashobora kwishyura umwenda wose.

[2] Sebulikoko Niyomwungeri Emmanuel na Rwasibo Mutesi Béatrice nabo batanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge bavuga ko "dénonciation du crédit" yakozwe na I&M Bank Ltd yateshwa agaciro kuko itubahirije amategeko, ndetse banasaba ko hemezwa ko umwenda wishyuzwa ari umurengera, ko ugomba kongera kubarwa hakoreshejwe "contre-expertise". Batanze n'ikirego cyuririye kukindi, basaba ko habaho ihwanya ry'imyenda (*compensation*) bashingiye ku gaciro kagaragajwe na "expertise" y'imitungo yagurishijwe

kangana na 3.646.457.285Frw, hagakurwamo umwenda ungana na 2.434.879.505Frw, hanyuma amafaranga asigaye (1.221.577.700Frw) agasubizwa Sebulikoko Niyomwungeri Emmanuel.

[3] Urukiko rw'Ubucuruzi rwa Nyarugenge, mu rubanza RCOM0957/15/TC/NYGE & RCOM1673/15/TC/NYGE, rwemeje ko ikirego cya Sebulikoko Niyomwungeri Emmanuel na Rwasibo Mutesi Béatrice nta shingiro gifite, ko ikirego cya I&M Bank Ltd gifite ishingiro; rutegeka Sebulikoko Niyomwungeri Emmanuel (uhagarariye ECSNE) afatanyije na Rwasibo Mutesi Béatrice (umwishingizi) kwishyura I&M Bank Ltd 2.439.879.505Frw.

[4] Sebulikoko Niyomwungeri Emmanuel na Rwasibo Mutesi Béatrice bajuririye Urukiko Rukuru rw'Ubucuruzi, bavuga ko hirengagijwe ko I&M Bank Ltd yarengereye, igafatira umutungo wabo wimukanwa ndetse iwugurisha mu cyamunara, kandi byaragaragaye ko uwo mutungo utakiri ingwate yanditse ya I&M Bank Ltd; Sebulikoko yitiriwe imvugo zitari ize kuko atigeze asaba ko igurisha ry'ingwate ryateshwa agaciro kuko ridakurikije amategeko, ko atari kuregera ibyo yahawe mu rubanza RCOMA0459/15/HCC, habayeho kwitiranya ibintu (*dénaturation de la plaidoirie*), aho Urukiko rwavuze ko "expertise" yakozwe ari igaragaza agaciro k'umutungo wagurishijwe kandi atari byo, ahubwo ko Sebulikoko yerekanye igihombo cy'ubucuruzi yatewe n'igurisha ry'umutungo we, akaba yarifashishije umuhanga mu ibaruramari, bityo abiheraho asaba ihwanya ry'imyenda.

[5] Mu rubanza RCOMA00100/2016/CHC/HCC rwaciwe kuwa 15/07/2016, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa Sebulikoko Niyomwungeri Emmanuel na Rwasibo Mutesi Béatrice bufite ishingiro kuri bimwe, rwemeza ko imodoka n'imashini za Sebulikoko Niyomwungeri Emmanuel uhagarariye ECSNE zagurishijwe mu cyamunara zitakiri ingwate ya I&M Bank Ltd, ko zisubizwa abajuriye kuko zagurishijwe mu buryo bunyuranyije n'amategeko.

[6] I&M Bank Ltd ntiyishimiye iki cyemezo, ikijuririra mu Rukiko rw'Ikirenga ivuga ko mu kwemeza ko imodoka n'imashini byagurishijwe bitakiri ingwate za I&M Bank Ltd, hirengagijwe ko impamvu yatumye ingwate zitangwa ari umwenda Sebulikoko n'umwishingizi we batari bagashoboye kwishyura, bityo hakaba haragombaga guhabwa agaciro ingingo ya 7 ya "*acte de nantissement*" yo kuwa 07/11/2013, kuba kugeza ubu Sebulikoko Niyomwungeri Emmanuel/ECSNE na Rwasibo Mutesi Béatrice baranze kwishyura umwenda bayibereyemo, ahubwo bakayishora mu manza, ari ukwica amasezerano nkana, bakaba bagomba no kubitangira indishyi zingana na 10.000.000Frw, igihembo cy'Avoka kingana na 5.000.000Frw, n'amafaranga y'ikurikiranarubanza angana na 3.000.000Frw.

[7] Sebulikoko n'umwishingizi we, nabo batanze ubujurire bwuririye ku bundi, Sebulikoko avuga ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko atagaragaje ko imashini zari zifite akazi cyangwa zari ziteguye kugakora, ariko ko rwirengagije ko yari afite imirimo myinshi yiteguraga gukora, ko Urukiko rw'Ikirenga rwakwifashisha umuhanga mu kugena igihombo kuko umuburanyi atagishoboye kucyisobanurira, naho Rwasibo Béatrice avuga ko I&M BANK Ltd igomba kwirengera ingaruka n'igihombo batejwe n'igurishwa ry'ingwate itari yanditse, akaba asaba ko habaho ihanywa ry'imyenda, I&M Bank Ltd ikabaha 1.214.577.780Frw.

[8] Urubanza rwaburanishijwe mu ruhame ku wa 09/05/2017, I&M Bank Ltd ihagarariwe na Me Rubasha Hubert, Sebulikoko Niyomwungeri Emmanuel na Rwasibo Mutesi Béatrice bahagarariwe na Me Nzirabatinyi Fidèle, Me Rwagatare Janvier na Me Kavutse Ephrem.

II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURA RYABYO

A. UBUJURIRE BWA I&M BANK Ltd

1. Kumenya niba I&M Bank Ltd yaragurishije ingwate zari zarataye agaciro

[9] Me Rubasha Hubert avuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije impamvu nyamukuru yatumye Sebulikoko Niyomwungeri Emmanuel n'umwishingizi we batanga ingwate, ko rwavuze ko I&M Bank Ltd yagurishije ingwate zari zarataye agaciro, nyamara ko Urukiko rutakuyeho umwenda abo baburana bayibereyemo cyane cyane ubwabo bakaba barawiyemereye mu rubanza RCOM0957- 1673/15/TC/NYGE, ko rero ingwate zari mu maboko ya I&M Bank Ltd ubwo zagurishwaga. Akomeza avuga ko ingingo ya 27 y'Itegeko Nº34/2013 ryo kuwa 24/05/2013 ryerekeye ubugwate ku mutungo wimukanwa iteganya ko uwatanze umwenda igihe cyose atarishyurwa agumana ingwate. Asoza avuga ko ingingo ya 194 y'Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko umutungo wimukanwa n'utimukanwa by'urimo umwenda ari ingwate rusange y'uwo abereyemo umwenda, bityo ko I&M Bank Ltd yari ifite uburenganzira bwo kugurisha ingwate yahawe na Sebulikoko.

[10] Me Rubasha Hurbert akomeza avuga ko Urukiko Rukuru rw'Ubucuruzi rwihaye ububasha bwo kuvuguruza ibindi byemezo byafashwe n'urwo Rukiko mu zindi manza ebyiri zabanje, rutegeka ko imashini n'imodoka za Sebulikoko Niyomwungeri Emmanuel zagurishijwe mu cyamunara azisubizwa ngo kuko zagurishijwe mu buryo bunyuranyije n'amategeko kubera ko zitari zikiri ingwate ya I&M Bank Bank Ltd, rwirengangije ko urubanza rwa mbere (RCOMA0320/15/HCC) rwemeje ko icyemezo cyatanzwe n'Umwanditsi Mukuru cyo kurindisha I&M Bank Ltd umutungo wimukanwa yahaweho ingwate na ECSNE gihamaho mu ngingo zacyo zose, runategeka ko I&M Bank Ltd ihamana uburenganzira bwo kurinda umutungo wimukanwa yahaweho ingwate, naho urubanza rwa kabiri (RCOMA 0391/15/HCC) rwemeza ko igurishwa ry'umutungo wagwatirijwe na Sebulikoko Niyomwungeri Emmanuel ryakozwe mu buryo bukurikije amategeko. Avuga ko rero, kuri we, I&M Bank Ltd yari ifite ububasha n'uburenganzira bwo kugurisha ingwate kuko yabuhawe n'inkiko. Asoza avuga ko Urukiko Rukuru rw'Ubucuruzi rutashishoje neza rutegeka ko ingwate zose zagurishijwe mu buryo bunyuranyije n'amategeko ngo kuko zagombaga kurangira kuwa 25/04/2015 nyamara zimwe muri zo zaragombaga kurangira mu 2018, kandi ko mu gihe I&M Bank Ltd yahoraga yandikira Sebulikoko imusaba kwishyura umwenda ayibereyemo, bitari bikiri ngombwa ko yongera kwandikisha ingwate.

[11] Me Kavutse Ephrem, uhagarariye abaregwa, avuga ko Sebulikoko Niyomwungeri Emmanuel n'umwishingizi we badahakana umwenda, ko ikosa I&M Bank Ltd yakoze ari uko yagurishije ingwate yari yaramaze guta agaciro, kuko itongeye kuyandikisha mu biro by' Umwanditsi Mukuru (muri RDB).

[12] Me Rwagatare Janvier, nawe uhagarariye abaregwa, avuga ko mu Rukiko Rukuru rw'Ubucuruzi ikibazo cyaburanywe atari icy'umwenda kuko Sebulikoko atawuhakana, ko icyaburanywe kwari kumenya niba ingwate igihe yagurishwaga yari yanditse mu buryo bwemewe n'amategeko. Avuga ko iyo ngwate yagombaga kurangira kuwa 25/04/2015, banki iyifatira ku wa 08/05/2015, ikaba rero yaranyuranyije n'ingingo ya 27 y'Itegeko Nº34/2013 ryo ku wa 24/05/2013 ryerekeye ubugwate ku mutungo wimukanwa, kuko Banki yagombaga kwandikisha ingwate bitarenze kuwa 25/04/2015, bityo kuba itarabikoze bivuze ko yiyambuye ububasha kuri iyo ngwate. Akomeza avuga ko ibyemezo byafashwe mu manza RCOMA0320/15/HCC na RCOMA0391/15/HCC byari ibyemezo ku birego byihutirwa, icya mbere kirebana no gucunga umutungo, naho icya kabiri cyarebanaga na cyamunara, ariko ko ibyo byemezo byombi bitigeze biha I&M Bank Ltd uburenganzira bwo kugurisha izo ngwate. Ku bijyanye n'uko zimwe muri‟garanties" zagombaga kurangira mu 2018, avuga ko I&M Bank Ltd ari yo igomba kubitangira ibimenyetso kuko ariyo irega, naho ku bijyanye n'inyandiko za ‟mise en demeure" zandikiwe Sebulikoko avuga ko zidakuraho itegeko.

[13] Me Nzirabatinyi Fidèle, nawe uhagarariye abaregwa, avuga ko kuvuga ko igihe cyose umwenda ukiriho n'ingwate iba iriho, ari ukwirengagiza ibyo amategeko ateganya, asaba ko Urukiko rwasuzuma ingingo ya 7, iya 8 n'iya 27 z'Itegeko Nº34/2013 ryo ku wa 24/05/2013 ryerekeye ubugwate ku mutungo wimukanwa. Akomeza avuga ko ingingo ya 194 y'Itegeko Nº 21/2012 ryo ku wa 14/06/2012, yavuzwe n'uburanira I&M Bank Ltd, irebana na "gage général", ko ndetse n'iyo yashingirwaho, uburyo banki yanyuzemo ifatira umutungo, atari yo nzira yari gukurikizwa; bityo ko iyi ngingo ntacyo yabamarira.

UKO URUKIKO RUBIBONA

[14] Ingingo ya 27 y'Itegeko Nº34/2013 ryo ku wa 24/05/2013 ryerekeye ubugwate ku mutungo wimukanwa iteganya ko iyandikisha ry'ubugwate riba rifite agaciro uhereye ku munsi ryandikiweho:

1° Kugeza igihe cyashyizwe mu masezerano*;*

2° Iyo igihe cy'inshingano gikomeza nyuma y'ikiri mu iyandikisha, kugeza igihe cy'inyongera kivugwa mu iyongera ry'igihe ryanditswe mbere y'uko igihe cya mbere kirangira; cyangwa

3° Mu gihe inshingano irangiye mbere y'igihe kivugwa mu iyandikisha, kugeza ku itariki agaciro k'iyandikisha karangiriraho.

[15] Ingingo ya 2, 19º y'Itegeko Nº34/2013 ryo kuwa 24/05/2013 rimaze kuvugwa haruguru, isobanura ubugwate nk'uburenganzira ku mutungo bwite wimukanwa w'umuntu bwemeza ko hazabaho ubwishyu cyangwa irangiza ry'inshingano.

[16] Mu gushaka kumenya niba koko I&M Bank Ltd yaragurishije ingwate zari zarataye agaciro, Urukiko rurasanga ari ngombwa kubanza kumenya impamvu ingwate itangwa, icyo imariye uwayihawe, akamaro ko kuyandikisha, ako kongera igihe cyo kuyandikisha n'ingaruka zo kutongera icyo gihe k'uwahawe ingwate.

[17] Nk'uko abahanga mu mategeko babisobanura, ingwate zigamije kwishingira ko umwenda uzishyurwa, ntabwo zatandukanywa n'inshingano yo kwishyura umwenda w'amafaranga ngenagihe (*obligations de somme d'argent à terme*), zituma uberewemo umwenda yirinda igihombo ashobora guterwa no kutishyurwa umwenda yatanze. Bakomeza gusobanura ko ingwate zijyana n'umwenda[1].

[18] Ku byerekeranye no kwandikisha ingwate abo bahanga basobanura, na none, ko kwandikisha ingwate ku mutungo utimukwanwa[2] biba bigamije kumenyesha abatari mu masezerano ko iyo ngwate ihari, ariko ko n'iyo igihe cy'iyandikisha ryayo kirangiye itarandikwa, ariko nticyongerwe, ibyo bitayitesha agaciro, icyakora nta nkurikizi igira ku bantu batari mu masezerano (non opposable aux tiers)[3].

[19] Dosiye y'uru rubanza igaragaza ko Sebulikoko Niyomwungeri Emmanuel[4] yagiranye amasezerano y'ingwate ku mutungo wimukanwa na I&M Bank Ltd kuwa 07/11/2013, Rwasibo Mutesi Béatrice yishingira umwenda wagombaga kurangira kwishyurwa kuwa 25/04/2015. Nyuma yaho, Sebulikoko yatangiye kugira ibibazo byo kutishyura neza inguzanyo yahawe na I&M Bank Ltd, bituma Banki, ibyemerewe n'Umwanditsi Mukuru muri RDB, igurisha ingwate, ariko ntizashobora kwishyura umwenda wose Sebulikoko abereyemo Banki.

[20] Ku byerekeranye no kumenya niba koko I&M Bank Ltd yaragurishije ingwate zamaze guta agaciro kubera ko zitongeye kwandikwa, Urukiko rurasanga nk'uko byavuzwe haruguru, ingwate itangwa igamije kwishingira umwenda, ku buryo igihe cyose umwenda utarishyurwa ingwate nayo igumaho. Urukiko rurasanga imvugo y'ababuranira Sebulikoko ko kuba ingwate itarongeye kwandikwa mu Biro by'Umwanditsi Mukuru muri RDB biyitesha agaciro, nta shingiro byahabwa, kuko n'ingingo ya 7 y'amasezerano arebana n'ingwate (acte de nantissement) yo kuwa 07/11/2013 impande zombi zumvikanyeho, iteganya ko igihe cyose amasezerano y'umwenda azaba agifite agaciro n'andi yose ayashamikiyeho azakomeza kugira agaciro, bivuze rero ko kubera ko Sebulikoko ubwe yiyemerera umwenda, kandi uwo mwenda ukaba ukiriho, akaba ari nawo ingwate ishingiyeho, bivuze ko ingwate nayo igumana agaciro kayo, nubwo iyandikwa ryayo ryaba ritarongerewe agaciro.

[21] Urukiko rurasanga ingingo ya 7, iya 8 n'iya 27, z'Itegeko Nº34/2013 ryo ku wa 24/05/2013 ryerekeye ubugwate ku mutungo wimukanwa abahagarariye Sebulikoko n'umwishingizi we baburanisha bashaka kwerekana ko ingwate zagurishijwe zarataye agaciro, ntacyo zabamarira kuko, n'ubwo ingingo ya 7 y'iryo tegeko iteganya ko ubugwate bugira agaciro iyo bumaze kwandikwa n'Umwanditsi Mukuru, iyi ngingo yarubahirijwe kuko ubugwate bwanditswe n'Umwanditsi Mukuru,buhabwa igihe bwagombaga kumara, ndetse impande zombi zumvikana ko buzagumana agaciro kabwo igihe cyose amasezerano y'umwenda remezo azaba agifite agaciro. Urukiko rurasanga, na none, ibiteganywa n'ingingo ya 8 y'Itegeko rimaze

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[1] *Les sûretés garantissent l'exécution future d'une obligation; elles sont indissociables de l'obligation de somme d'argent à terme. Elles permettent au créancier de se prémunir contre la défaillance du débiteur, (… sans sûreté, pas de crédit…). L. AYNES, P. CROCQ, Droit des sûretés, 9e édition, Paris, L.G.D.J., 2015, p.13.*

[2] Aba bahanga bavuga ko iyandikwa ry'ingwate yimukanwa ariko umutungo ukagumana nyirawo (débiteur) rikorwa kimwe n'iry'umutungo utimukanwa (L. AYNES, P. CROCQ, *op.cit.*, p. 279).

[3] *En cas de pérémption de l'inscription, l'hypothèque n'est pas éteinte, mais perd son opposabilité (L .AYNES, P. CROCQ, op.cit., p. 365).*

[4] Mu masezerano handitse Niyomwungeri Emmanuel.

kuvugwa haruguru nta kibazo biteye, kuko byo bireba abandi bantu batari mu masezerano y'ubugwate (tiers), kandi abo bantu bakaba ntaho bagaragara muri aya masezerano. Naho ku biteganywa n'ingingo ya 27 agace ka 1º y'Itegeko ryavuzwe haruguru, ko iyandikisha ry'ubugwate riba rifite agaciro uhereye ku munsi ryandikiweho kugeza igihe cyashyizwe mu masezerano, Urukiko rurasanga n'ubwo amasezerano yateganyaga ko ingwate izarangira ku wa 25/04/2015, ariko ingingo ya 7 y'ayo masezerano ikaba iteganya ko ingwate ikomeza kugira agaciro kayo igihe cyose amasezerano y'umwenda remezo azaba agifite agaciro, ibyo bivuze ko igihe cyose amasezerano-remezo agifite agaciro, ingwate nayo igumana agaciro kayo.Urukiko rurasanga na none ibiteganywa mu gace ka 2º k'ingingo ya 27 imaze kuvugwa, byakurikizwa igihe habaye kongera igihe cy'iyandikwa ry'ingwate, akaba rero Sebulikoko n'umwishingizi we batakuririra ku kuba iki gihe kitarongerewe bashaka kugaragaza ko igihe uyu muhango wo kongera igihe utakozwe, ingwate iba itaye agaciro kayo, birengangiza ibiteganywa n'ingingo 7 y'amasezerano y'ingwate yavuzwe haruguru.

[22] Urukiko rurasanga na none, hashingiwe ku rubanza RCOMA0320/15/HCC rwemeje ko I&M Bank Ltd igumana uburenganzira bwo kurinda umutungo wimukanwa yahaweho ingwate, n'urubanza RCOMA0391/15/HCC rwemeje ko cyamunara ikomeza, I&M Bank Ltd yari ifite uburenganzira bwo gufatira no kugurisha ingwate yari yahawe na Sebulikoko Niyomwungeri Emmanuel,bityo bikaba bitari ngombwa gusuzuma ikibazo kijyanye nuko hari ingwate zagombaga gukomeza kugeza mu 2018 ndetse n'icyo kumenya niba ingwate zaragombaga kongera kwandikwa kuko cyashubijwe mu bika bibanza.

[23] Kuba Urukiko Rukuru rw'Ubucuruzi (*mu gika cya 13*) rwarasobanuye ko umucamanza w'Urukiko rw'Ubucuruzi yasuzumye icyo ataregewe, aho yavuze ku bijyanye no gutesha agaciro igurisha ry'ingwate kandi bitararegewe, Urukiko rurasanga iyo myumvire atari yo kuko, hakurikijwe uko urwo rubanza rw'Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciwe (ibika bya 24-31), umucamanza yatangaga ibisobanuro ku kirego cyuririye ku kindi cyari cyatanzwe n'uburanira Sebulikoko,cyerekeranye no guhwanya imyenda, aho yavugaga ko kugurisha ingwate bitakurikije amategeko kuko byakozwe igihe cyazo cyararangiye, ndetse na cyamunara ikaba yarateshejwe agaciro n'urubanza RCOMA0459/15/HCC, bityo akabyuririraho asaba ko I&M Bank Ltd igomba kwishyura ikinyuranyo kiri hagati y'agaciro kagaragajwe na "Expertise" y'ingwate zagurishijwe n'umwenda ugomba kwishyurwa. Kuba rero, mu gusubiza icyo kibazo, uwo mucamanza yarakoze isesengura ry'urubanza RCOMA0459/15/HCC, hamwe n'imanza RCOMA0320/15/HCC na RCOMA0391/15/HCC, akanzura ko ibyemejwe mu manza RCOMA0320/15/HCC na RCOMA0391/15/HCC ari byo bigomba gukurikizwa kubera ko urubanza RCOMA0459/15/HCC rutigeze ruvanaho izo manza, ibyo byerekana ko nta kosa yakoze, kuko mu gihe Urukiko rwari rwarafashe icyemezo cy'uko cyamunara y'umutungo wimukanwa wa Sebulikoko ikomeza, rutagombaga kwivuguruza ruvuga ko iyo cyamunara iteshejwe agaciro.

[24] Hashingiwe ku ngingo z'amategeko no ku bisobanuro byatanzwe haruguru, Urukiko rurasanga I&M Bank Ltd yaragurishije imodoka n'imashini zatanzwe nk'ingwate na Sebulikoko Niyomwungeri Emmanuel uhagarariye ECSNE, izo ngwate zigifite agaciro, bityo ubujurire bwa I&M Bank Ltd, kuri iyi ngingo, bukaba bufite ishingiro.

Kumenya niba indishyi I&M Bank Ltd isaba yazihabwa

[25] Me Rubasha Hubert avuga ko kuba kugeza ubu Sebulikoko Niyomwungeri Emmanuel/ECSNE na Rwasibo Mutesi Béatrice baranze kwishyura umwenda babereyemo I&M Bank Ltd, ahubwo bakayishora mu manza, ari ukwica amasezerano nkana, bakaba bagomba kubitangira indishyi zingana na 10.000.000Frw, igihembo cy'Avoka kingana na 5.000.000Frw, n'amafaranga y'ikurikiranarubanza angana na 3.000.000Frw.

[26] Abahagarariye Sebulikoko Niyomwungeri Emmanuel bavuga ko indishyi I&M Bank Ltd isaba nta shingiro zifite kubera ko ari we wambuwe imitungo ye mu buryo bunyuranyije n'amategeko nk'uko n'imanza zabigaragaje, ko ahubwo ari we wakagombye kuzihabwa. Uhagarariye Rwasibo Mutesi Béatrice, nawe, avuga ko izo ndishyi nta shingiro zahabwa kuko we na Sebulikoko uhagarariye ECSNE bagaragaje ko I&M Bank Ltd ari yo yakoze amakosa yo kugurisha ingwate zataye agaciro yirengagije ibivugwa mu ngingo ya 27 y'Itegeko Nº34/2013 ryavuzwe haruguru.

UKO URUKIKO RUBIBONA

[27] Ku bijyanye n'indishyi 10.000.000Frw zisabwa na I&M Bank Ltd, Urukiko rurasanga zidakwiye gutangwa kuko, mu kuzisaba, ishingira ku kuba Sebulikoko yarishe amasezerano no gushorwa mu manza, mu gihe nyamara ingingo zitahindutse mu rubanza rwaciwe n'Urukiko rw'Ubucuruzi zigaragaza ko I&M Bank Ltd yagenewe inyungu z'umwenda remezo zijyanye no kuba itarishyuriwe ku gihe umwenda yatanze, bityo ikaba itakongera kugenerwa izindi ndishyi ziyongera kuri izo nyungu;naho ku bijyanye no gushorwa mu manza, (I&M Bank Ltd) ikaba izisaba nk'aho ari Sebulikoko wayishoye muri uru rubanza kandi bigaragara ko ari yo yajuriye, bityo ikaba itakuririra ku burenganzira bwo kujurira ihabwa n'ingingo ya 162, y'Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ngo ibisabire indishyi zo gushorwa mu manza.

[28] Ku bijyanye n'amafaranga y'ikurikiranarubanza n'ay'igihembo cy'Avoka, Urukiko rurasanga kuba ubujurire bwa I&M Bank Ltd bufite ishingiro, byumvikana ko hari amafaranga yatakaje ikurikirana urubanza no kwishyura Avoka, bityo Sebulikoko n'umwishingizi we bakaba bagomba kuyiha 300.000Frw y'ikurikiranarubanza na 500.000Frw y'igihembo cy'Avoka, aya mafaranga akaba agenwe mu bushishozi bwarwo kuko ayifujwe ari ikirenga ndetse akaba ataratangiwe ibimenyetso.

B. Ubujurire bwuririye ku bundi bwa Sebulikoko Niyomwungeri Emmanuel

[29] Abahagarariye Sebulikoko bavuga ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko atagaragaje ko imashini zari zifite akazi cyangwa zari ziteguye kugakora, ariko ko rwirengagije ko yari afite imirimo myinshi yiteguraga gukora; ko kubera ko habaye impinduka nyinshi, Urukiko rw'Ikirenga rwakwifashisha umuhanga mu kugena igihombo kuko umuburanyi atagishoboye kucyisobanurira, nk'uko rwabikoze mu rubanza RADA0001/05/CS rwaciwe kuwa 02/09/2009, rukagena ihwanya ry'imyenda (compensation); bavuga ko mu kubara igihombo hashingirwa ku mafaranga Sebulikoko yagaragaje imodoka zari kwinjiza ku munsi, akanahabwa indishyi zo gushorwa mu manza zingana na 10.000.000Frw, indishyi z'akababaro zingana na 30.000.000Frw n'igihembo cy'Avoka kingana na 15.000.000Frw.

[30] I&M Bank Ltd ivuga ko ibivugwa na Sebulikoko nta shingiro byahabwa kubera ko ubwe yiyemereye ko akazi yari afite yakatswe, uhereye kw'iseswa ry'amasezerano yari yaragiranye na DRC, Burundi ndetse n'u Rwanda; ko yari yiyemeje kwishyura Banki ibivuye muri ayo masoko, ariko ntiyabyubahiriza; ko yagiye akorerwa ivugurura ry'amasezerano (*restructuration*) na Banki rishingiye ku busabe bwe yitwaje ko ECSNE ifite amasoko atandukanye ariko ntibashobore kwishyura.

UKO URUKIKO RUBIBONA

[31] Urukiko rurasanga, rutiriwe rusesengura imvugo z'ababuranyi kuri ubu bujurire bwuririye ku bundi, kuba I&M Bank Ltd yaragurishije ingwate yahawe na Sebulikoko Niyomwungeri Emmanuel mu buryo bukurikije amategeko, nk'uko byasobanuwe haruguru (*mu gika cya 21*), ibyo bivuze ko nta mpamvu yo gusuzuma ibijyanye n'igihombo Sebulikoko avuga ko yatewe n'iryo gurisha ry'ingwate, bityo ubujurire bwe bwuririye ku bundi bukaba nta shingiro bufite.

III. ICYEMEZO CY'URUKIKO

[32] Rwemeje ko ubujurire bwatanzwe na I&M Bank Ltd bufite ishingiro;

[33] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Sebulikoko Niyomwungeri Emmanuel nta shingiro bufite;

[34] Rwemeje ko ingwate zatanzwe na Sebulikoko Niyomwungeri Emmanuel uhagarariye ECSNE, zagurishijwe na I&M Bank Ltd zigifite agaciro;

[35] Rwemeje ko imikirize y'urubanza RCOMA00100/2016/CHC/HCC rwaciwe ku wa 15/07/2016 n'Urukiko Rukuru rw'Ubucuruzi, ihindutse gusa ku birebana n'ingwate;

[36] Rutegetse Sebulikoko Niyomwungeri Emmanuel uhagarariye ECSNE gufatanya na Rwasibo Mutesi Béatrice guha I&M Bank Ltd 300.000Frw y'ikurikiranarubanza na 500.000Frw y'igihembo cy'Avoka;

[37] Rutegetse Sebulikoko Niyomwungeri Emmanuel uhagarariye ECSNE na Rwasibo Mutesi Béatrice gufatanya kwishyura I&M Bank Ltd 100.000Frw y'ingwate y'amagarama yatanze ijurira.