RWAGASANA v BANKI YA KIGALI (BK LTD)

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA 0056/15/SC-RCOMAA 00025/2017/SC-RCOM 0003/17/CS-RCOM 00004/2017/SC (Mutashya, P.J., Rugabirwa na Nyirinkwaya, J.) 26 Mutarama 2018]

Amategeko agenga amasezerano – Amasezerano y'inguzanyo – Inshingano zo kwishyura inyungu zikomoka ku masezerano yo kurangiza neza imirimo z'amafaranga yishyuwe na banki mu mwanya w'uwahawe umwenda – Nta kosa banki iba ikoze iyo yishyuje inyungu ku mafaranga yishyuriye rwiyemeza mirimo nk'ingwate yo kurangiza neza imirimo (performance guaranty) ku rwego rwatanze isoko iyo uwaritsindiye atarangije imirimo neza – Itegeko N°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64.

Amategeko agenga amasezerano – Amasezerano y'inguzanyo – Kudahakana umwenda umwishingizi yasinyiye – Umwishingizi washakanye n'uwahawe umwenda na banki ntiyahakana umwenda wafashwe n'uwo bashakanye yitwaza ko atawusinginye kandi basangiye uwo mutungo mu gihe bigaragaye ko imyenda yose yafashwe n'uwo bashakanye yayishyizeho umukono.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Igihembo cy'avoka – Amafaranga y'ikurikiranarubanza, n'igihembo cya avoka agenwa mu bushishozi bw'urukiko n'ubwo impande zombi zaba zarabyumvikanyeho mu masezerano iyo bigaragaye ko ari ukwihesha indonke ikabije kandi n'uyasaba ntagaragaze ikimenyetso cy'uburyo yayakoresheje.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Igihembo cy'umuhanga – Iyo igihembo cy'umuhanga cyishyuwe na banki mu mwanya w'umukiliya wayo, ategekwa kucyishyura mu gihe atsinzwe urubanza.

Incamake y'ikibazo: Rwagasana yahawe inguzanyo zitandukanye na Banki ya Kigali (BK LTD) Ltd, azihabwa mu bihe bitandukanye. Muri izo nguzanyo hiyongereyeho iy'ingwate yo kurangiza neza imirimo y'isoko (Bank Guarantee), hamwe n'aya *ligne de credit*, n'ayo banki yaguriye Rwagasana inguzanyo yari afite muri ECOBANK (rachat credit).

Impande zombi zikorana amasezerano y'inguzanyo, ay'ubwishingizi n'ay'ingwate, bumvikana ko natishyura nkuko bikwiye baziyamabaza inkiko. Mu masezerano bumvikanye kandi ko igipimo cy'inyungu umwenda uzabarirwaho ari 17.25 % ku kwezi, ariko ko azayishyura 2 % y'inyungu z'ubukererwe ziyongera kuri 17.25 % zikaba iza 19,25 % mu gihe atishyuye inguzanyo y'ingwate yo kurangiza neza imirimo.

Rwagasana yananiwe kwishyura bituma banki isesa amasezerano, inamushyira mu cyicyiro cya 5 cy'abatishyura neza inguzanyo bahawe (classe 5).

Ibi byatumye Rwagasana arega BK mu Rukiko rw'Ubucuruzi rwa Nyarugenge umugore we nawe Mukakimenyi Marie Rose arugobokamo basaba ko inzu ze yatanzeho ingwate zitatezwa cyamunara, basaba kutishyura amafaranga atandukanye ajyanye n'inguzanyo yahawe, basaba kandi banki kudakomeza kubara inyungu z'ubukererwe nyuma y'iseswa ry'amasezerano y'inguzanyo, asaba n'indishyi zinyuranye.

Urukiko rwemeje ko ikirego cyabo gifite ishingiro kuri bimwe, kandi ko ingwate y'inzu itatezwa cyamunara, banki igahabwa

indishyi z’igihombo yagize, urukiko rwemeza kandi ko inyungu zari zazamuwe nyuma y’iseswa ry’amasezerano zigomba gusubizwa ku gipimo zumvikanyweho n’impande zombi mu masezerano bagiranye.

BK Ltd na Rwagasana na Mukakimenyi bajuririye mu Rukiko Rukuru rw’Ubucuruzi, rwemeza ko ubujurire bwa BK bufite ishingiro, naho ubujurire bwa Rwagasana nta shingiro bufite, ko imikirize y’urubanza rwajuririwe ihindutse mu ngingo zayo zose.

Rwagasana yajuririye mu Rukiko rw’Ikirenga avuga ko inkiko zibanza zemeje ko agomba kwishyura ingwate yo kurangiza neza imirimo y’isoko BK Ltd yamwishyuriye hamwe n’inyungu zayo zisanzwe n’iz’ubukererwe kandi BK itaragaragaje aho yishyuriye.

Yavuze kandi ko raporo y’umuhanga itahabwa agaciro kuko itagaragaza imyenda yose aregwa na BK Ltd, uburyo yayifashe n’uburyo bwo kuyishyura bari barumvikanyeho mu masezerano bagiranye.

Yarongeye avuga kandi ko yishyuzwa amafaranga y’umurengera y’igihembo cya Avocat n’amafaranga y’ikurikirana rubanza kuko arimo urwunguko rwinshi kandi na BK itagaragaza uburyo yayakoresheje.

Mukakimemyi nawe yajuriye avuga ko hari umwenda atemera kuko atigeze awusinyira kandi ari umugore wa Rwagasana Thomas ufite 50% by’imitungo bashakanye.

BK Ltd yireguye ivuga ko yagurije Rwagasana inguzanyo zitandukanye, ivuga ukuntu iyo myenda yagiye yiyongera ku yindi myenda yagiye imuha kuko atayishyuraga nk’uko bikwiye, ivuga kandi ko izo nguzanyo zose zigomba kwishyurwa hamwe n’inyungu zisanzwe n’iz’ubukererwe ku gipimo cyumvikanywe mu masezerano y’inguzanyo.

Yavuze kandi ko raporo y'umuhanga yahabwa agaciro kuko igaragaza uburyo imyenda yose yafashwe na Rwagasana Thomas n'ubwo idahura n'igiteranyo cy'amafaranga yaregeye. Kubijyanye n'amafaranga y'igihembo cya Avocat n'ay'ikurikirana rubanza, BK yavuze ko bayishyura kuko ateganyijwe mu masezerano y'ingwate bagiranye.

Ku ngingo ya Mukakimenyi yo guhakana ko atakwishyura umwenda yitwaje ko hari uwo atasinyiye, BK yireguye ivuga ko nta shingiro byahabwa kuko imyenda yose yahaye Rwagasana Thomas bayisinyiye bose imbere ya noteri.

Incamake y'icyemezo: 1. Nta kosa banki iba ikoze iyo yishyuje inyungu ku mafaranga yishyuriye rwiyemeza mirimo nk'ingwate yo kurangiza neza imirimo (performance guaranty) ku rwego rwatanze isoko iyo uwaritsindiye atarangije imirimo.

2. Amafaranga y'ikurikiranarubanza, n'igihembo cya avoka agenwa mu bushishozi bw'urukiko kabone nubwo hari ikigero cyayo (pourcentage) cyateganyijwe mu masezerano y'inguzanyo iyo ari umurengera kandi nuyasabye ntagaragaze uko yayakoresheje.

3. Uwashakanye n'uwahawe umwenda na banki ntiyahakana umwenda wafashwe n'uwo bashakanye yitwaza ko atawusinginye kandi basangiye uwo mutungo mu gihe bigaragaye ko imyenda yose yafashwe n'uwo bashakanye yayishyizeho umukono.

4. Amafaranga ya raporo y'umuhanga yishyurwa n'uwatsinzwe urubanza.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi bufite kuri bimwe.

Ikirego cya Bank ya Kigali gifite bufite ishingiro kuri bimwe;
Nta gihindutse ku rubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi;
Abareze bagomba gufatanya kwishyura umwenda remezo n'inyungu z'ubukererwe;
Amagarama y'urubanza ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:

Itegeko Ngenga N°08/2005 ryo ku wa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda (ryakoreshwaga icyo gihe), ingingo ya 34 na 35.

Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi (ryakoreshwaga icyo gihe), ingingo ya 9.

Itegeko N°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64.

Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 76.

Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura (ryakoreshwaga icyo gihe), ingingo ya 21.

Itegeko-Teka ryo ku wa 30/07/1888, rigenga amasezerano cyangwa imirimo nshinganwa (ryakoreshwaga icyo gihe), ingingo ya 258.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Rwagasana Thomas arega BK Ltd asaba ko inzu ze ziri mu kibanza Nº 322/324 kiri mu Karere ka Nyagatare zitatezwa cyamunara kuko amasezerano bagiranye ateganya ko mu gihe ananiwe kwishyura inguzanyo yamuhaye haziyambazwa inkiko, ko atakwishyura 9% ya frais judiciaires, mise à exécutions, commissions et frais non privilégiés kuko ari clauses abusives, kandi ko igipimo cy'inyungu (taux d'intérêt) kitagomba kuva kuri 17, 25% ngo kibe 19,5% bitewe n'uko Rwagasana Thomas yashyizwe mu cyicyiro cya 5 (classe 5) cy'abatishyura neza inguzanyo bahawe, ndetse ko BK Ltd itakomeza kubara inyungu z'ubukererwe nyuma y'iseswa ry'amasezerano y'inguzanyo ryabaye ku wa 06/12/2012, anasaba ko yamuha indishyi zinyuranye. Mukakimenyi Marie Rosine, umugore wa Rwagasana Thomas, yagobotsemo ku bushake muri urwo rubanza.

[2] Mu miburanire ye, Rwagasana Thomas yasabye kandi ko atakwishyura BK Ltd umwenda w'ikirenga imwishyuza ungana na 879.296.362Frw ubazwe kugeza ku wa 09/08/2013 kuko igipimo cy'inyungu cya 19,5%, uwo mwenda wabariweho, kidateganyijwe mu masezerano bagiranye, kandi ko izo nyungu zitagomba gukomeza kubarwa nyuma y'iseswa ry'amasezerano y'inguzanyo. Naho uburanira BK Ltd avuga ko itishyuza Rwagasana Thomas umwenda w'ikirenga, ko ahubwo akwiye kuyishyura amafaranga yose ayibereyemo arimo 879.296.362Frw y'umwenda na 261.864.547Frw y'ingwate yo kurangiza neza imirimo y'isoko (Bank Guarantee), ariko ko

inyungu zawo z'ubukererwe zigomba gukomeza kubarwa kugeza igihe azayishyurira umwenda wose.

[3] Urwo rukiko rwaciye urubanza RCOM 0774/13/TC/Nyge ku wa 28/11/2013, rwemeza ko ikirego cya Rwagasana Thomas n'icya Mukakimenyi Marie Rosine bifite ishingiro kuri bimwe, rwemeza ko inzu iri mu kibanza Nº322/324 kiri mu Karere ka Nyagatare itagurishwa muri cyamunara binyuze ku Mwanditsi Mukuru wa RDB, rwemeza ko 9% abariwe ku mwenda-remezo ya frais judiciaires, mise à exécution, commissions et frais non privilégiés atahabwa agaciro kuko ari «clauses abusives», rutegeka ko BK Ltd ihabwa indishyi nyakuri zijyanye n'igihombo yagize.

[4] Urwo Rukiko rwemeje kandi ko 261.864.547Frw ya Bank Guarantee (y'ingwate yo kurangiza imirimo) agomba kuvanwa mu mwenda Rwagasana Thomas yishyuzwa na BK Ltd kuko atigeze atangwa, kandi ko inyungu zazamuwe nyuma y'iseswa ry'amasezerano zikaba 19,5% zigomba gusubizwa kuri 17,25% kuko arizo zumvikanyweho n'impande zombi mu masezerano bagiranye.

[5] Urwo Rukiko rwasobanuye na none ko Rwagasana Thomas atakwishyura BK Ltd 91.016.449Frw kuko nta kimenyetso yatanze kigaragaza ko imwishyuza ayo mafaranga, ariko ko 665.248.503Frw atavanwa mu myenda imwishyuza kuko itayamugeretseho nk'uko Rwagasana Thomas ashaka kubyumvikanisha, kubera ko igihe BK Ltd yamwandikiraga ibaruwa yo ku wa 07/09/2012 yamwihanangirizaga bwa nyuma yiswe Last warning, konti ye Nº 040-0293075-71, yari iriho umwenda ungana na 717.157.248Frw, kandi ko Rwagasana Thomas atigeze awuhakana mbere hose.

[6] BK Ltd, Rwagasana Thomas na Mukakimenyi Marie Rosine bajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, ruca urubanza RCOMA 0591/13/HCC-RCOMA 0007/14/HCC ku wa 03/07/2014, rwemeza ko ubujurire bwa BK Ltd bufite ishingiro, ko ubujurire bwa Rwagasana Thomas na Mukakimenyi Marie Rosine nta shingiro bufite, ko imikirize y'urubanza rwajuririwe ihindutse mu ngingo zayo zose, rutegeka Rwagasana Thomas gufatanya na Mukakimenyi Marie Rosine guha BK Ltd 500.000Frw y'ikurikiranarubanza n'igihembo cy'Avoka na 500.000Frw y'indishyi zo gukomeza kuyishora mu rubanza, rutegeka Rwagasana Thomas guha Habineza Emmanuel, 350.000Frw y'igihembo cy'umuhanga washinzwe n'urukiko kugira ngo akore igenzura mu ibaruramari n"ibindi byose byafasha kwerekana uko imyenda Rwagasana Thomas yahawe ingana.

[7] Urwo Rukiko rwasobanuye ko 9% y'ikurikiranarubanza, ay'igihembo cy'Avoka, ayo guhemba umuhesha w'inkiko n'ay'irangizarubanza (frais judiciaires, mise à exécution, commissions et frais non privilégiés), atari clauses abusives kuko mu masezerano y'inguzanyo impande zombi zagiranye, hateganyijwe ko mu gihe Rwagasana Thomas atishyuye BK Ltd umwenda ayibereyemo, azayishyura 2% y'inyungu z'ubukererwe ziziyongera kuri 17.25% y'igipimo cy'inyungu zisanzwe, zikaba 19.25%.

[8] Urwo Rukiko rwasobanuye kandi ko 240.994.500Frw ya Bank Guarantee agomba gushyirwa mu mwenda Rwagasana Thomas yishyuzwa na BK Ltd kuko yayamwishyuriye muri Minisiteri y'Ubuzima. Ikindi n'uko ko nta kimenyetso Rwagasana Thomas yatanze kigaragaza ko hari amafaranga BK Ltd yamugeretseho nk'uko ashaka kubyumvikanisha, ariko ko

kugira ngo hamenyekane ingano y'umwenda nyakuri ayibereyemo, hagomba gushyirwaho umuhanga mu by'ibaruramari nk'uko Rwagasana Thomas yabisabye ku rwego rwa mbere no mu bujurire, nyamara kubera ko Rwagasana Thomas yanze kumwishyura kugira ngo akore iyo raporo, akwiye gucibwa 350.000Frw y'igihembo cy'umuhanga washyizweho n'urukiko gihwanye n'imirimo y'ibanze yakoze, maze urubanza rwe rugacibwa hashingiwe ku myanzuro yatanze, aho gushingira ku buhamya bw'umuhanga.

[9] Rwagasana Thomas yajuririye urubanza RCOMA 0591/13/HCC-RCOMA 0007/14/HCC mu Rukiko rw'Ikirenga, ubujurire bwe bwandikwa kuri RCOMAA 0056/15/SC – RCOMAA 00025/2017/SC.

[10] BK Ltd imaze kubona ko amafaranga yavuye muri cyamunara y'inzu za Rwagasana Thomas atarangije umwenda wose yari ayifitiye, byatumye itanga ikirego mu Rukiko Rukuru rw'Ubucuruzi isaba ko Rwagasana Thomas na Mukakimenyi Marie Rosine bayishyura umwenda wasigaye uhwanye na 2.174.151.697 agizwe na 888.923.978 Frw "en principal" + 1.285.719 Frw "pour les agios" abazwe kugeza ku wa 17/08/2001, ariko ko icyo kirego kitaburanishijwe ahubwo cyoherejwe muri uru rukiko, aho cyanditswe kuri RCOM 0003/17/CS - RCOM 00004/2017/SC kinahuzwa n'ubujurire bwa Rwagasana Thomas bwanditswe RCOMAA 0056/15/SC – RCOMAA 00025/2017/SC kubera ko izo manza zombi zifitanye isano, n'ababuranyi ari bamwe.

[11] Urubanza rwaburanishijwe mu ruhame ku wa 25/07/2017, Rwagasana Thomas yunganiwe na Me Mutabazi Abayo Claude, Mukakimenyi Marie Rosine yunganiwe na Me

Rwinikiza Félix, naho BK Ltd ihagarariwe na Me Rusanganwa Jean Bosco.

[12] Iburanisha ry'urubanza ritangiye, uburanira BK Ltd yavuze ko aretse inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga yari yaratanze mu nama nteguararubanza yo ku wa 25/01/2017, aho yavugaga ko agaciro k'ikiburanwa katageze kuri 50.000.000Frw, maze urubanza ruburanishwa mu mizi.

[13] Ku wa 26/07/2017, uru rukiko rwashyizeho Ayinkamiye Spéciose nk'umuhanga muri uru rubanza kugira ngo agaragaze by'umwihariko ingano y'umwenda-remezo n'inyungu ziwukomokaho, Rwagasana Thomas agomba kwishyura BK Ltd.

[14] Ku wa 30/10/2017, Ayinkamiye Spéciose yatanze raporo ikubiyemo ibisubizo by'ibibazo binyuranye yari yarabajijwe n'urukiko, n'ababuranyi batanga indi myanzuro y'inyongera bagira icyo bayivugaho. Iburanisha ry'urubanza ryasubukuwe ku wa 13/12/2017, maze Ayinkamiye Spéciose asobanura iyo raporo ye n'abandi baburanyi bagira icyo bayivugaho.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1.Kumenya ingano y'umwenda-remezo n'inyungu ziwukomokaho Rwagasana Thomas agomba kwishyura BK Ltd

[15] Rwagasana Thomas n'umwunganira bavuga ko BK Ltd yamuhaye inguzanyo zitandukanye no mu bihe bitandukanye kugira ngo yubake amazu y'ubucuruzi, amashuri, ibitaro n'ibindi bikorwa nk'uko bigaragazwa n'amasezerano bagiranye, ariko ko

BK Ltd yamwishyuje 668.248.503Frw nk'uko bigaragazwa na historique bancaire mu buryo bukurikira: 100.000.000Frw yo ku wa 23/08/2010, 189.452.100 Frw yo ku wa 02/07/2010, 119.740.499Frw yo ku wa 04/12/2012, 256.055.904Frw yo ku wa 27/08/2010, na 409.192.599 Frw, kandi ko BK Ltd yakomeje kuyabarira inyungu z'ubukererwe nyuma y'iseswa ry'amasezerano, kandi nta masezerano yanditse bagiranye agaragaza ko yamuhaye iyo myenda.

[16] Bavuga kandi ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko agomba kwishyura BK Ltd 240.994.500Frw y'ingwate yo kurangiza neza imirimo y'isoko (Bank Guarantee) hiyongereyeho n'inyungu zayo, kandi ko ayo mafaranga agomba kwiyongera ku zindi nguzanyo ayifitiye, rwirengagije ko ayo mafaranga atari inguzanyo kubera ko nta masezerano yihariye bagiranye ayigenga. Bavuga ko indi mpamvu ituma Rwagasana Thomas atakwishyura BK Ltd ayo mafaranga, ari uko nta kimenyetso yatanze kigaragaza ko yamwishyuriye uwo mwenda muri MINISANTE, ko ariko iramutse itanze icyo kimenyetso, yayishyura 240.994.500Frw yumvikanyweho n"impande zombi, atabariyemo inyungu kuko zitumvikanyweho n'impande zombi.

[17] Bakomeza basobanura ko guhera ku wa 07/09/2012, igihe BK Ltd yandikiraga Rwagasana Thomas imwishyuza umwenda ayibereyemo, kugeza ku wa 11/03/2015, yayishyuye uwo mwenda mu buryo bukurikira: ku wa 15/01/2013 yayishyuye 46.572.417Frw na 32.072.857Frw, ku wa 20/06/2013 ayishyura 879.083.831Frw, ku wa 14/01/2014 ayishyura 89.730.282Frw, ku wa 14/03/2014 ayishyura 126.728.540Frw, naho ku wa 11/03/2015 ayishyura 40.000.000Frw, yose hamwe akaba 1.214.187.927Frw, ko kuba ku wa 07/09/2012, BK Ltd yarandikiye Rwagasana Thomas imwishyuza 1.164.321.782Frw,

kandi yarayishyuye 1.214.187.927Frw, basanga ahubwo ariyo igomba kumusubiza 49.866.145Frw y'ikinyuranyo cy'ayo mafaranga. Basaba ko Urukiko rw'Ikirenga rwakwemeza ko Rwagasana Thomas yishyuye BK Ltd imyenda yose yamuhaye ku buryo igomba kumusubiza 1.000.000.000Frw irenga yayishyuye bitari ngombwa.

[18] Ku bijyanye n'agaciro ka raporo y'umuhanga, Me Mutabazi Abayo Claude wunganira Rwagasana Thomas avuga ko iyo raporo itahabwa agaciro kuko itagaragaza imyenda yose Rwagasana Thomas aregwa na BK Ltd, uburyo yayifashe n'uburyo bwo kuyishyura bari barumvikanyeho mu masezerano bagiranye, kandi ko umuhanga atagaragaje umubare w'amafaranga Rwagasana Thomas yayishyuye mbere na nyuma ya cyamunara y'inzu ye kuko atagaragaje uburyo 40.000.000Frw yavuye muri iyo cyamunara yagabanyije umwenda we.

[19] Avuga kandi ko umuhanga yagaragaje ko Rwagasana Thomas asigaje kwishyura BK Ltd 1.668.645.757Frw abariyemo inyungu zingana na 786.948.623Frw zabariwe ku gipimo cy'inyungu kingana na 19.25 %, ariko ko batamenye aho yakuye iryo janisha ry'inyungu kuko ritigeze ryumvikanwaho n'impande zombi mu masezerano bagiranye, ko ahubwo igipimo cy'inyungu yagombaga gukoresha mu kubara inyungu ari 17.25 % kuko aricyo cyumvikanyweho n'impande zombi mu masezerano bagiranye yasinyiwe imbere ya Noteri.

[20] Avuga na none ko umuhanga atagaragaje niba 786.948.623Frw ari inyungu zisanzwe cyangwa z'ubukererwe kuko inyungu zisanzwe zagombaga guhagarara guhera ku itariki y'iseswa ry'amasezerano cyangwa ry'isibwa ry'umwenda mu bitabo bya BK Ltd, uretse ko inyungu z'ubukererwe zo zagombaga gukomeza kubarwa kugeza urubanza ruciwe nk'uko

byemejwe mu mwiherero w'Abacamanza wabereye mu Karere ka Rubavu, ariko ko bitumvikana ukuntu izo nyungu zajya kungana n'umwenda yishyuzwa ungana na 881.697.134Frw.

[21] Ku byerekeranye n'agaciro ka raporo y'umuhanga, Mukakimenyi Marie Rosine n'umwunganira bavuga ko iyo raporo itahabwa agaciro kubera ko itagaragaza imyenda agomba gufatanya n'umugabo we n'iyo batagomba gufatanya bitewe n'uko hari amasezerano y'inguzanyo n'ay'ingwate Mukakimenyi Marie Rosine atasinye. Ikindi n'uko bitumvikana ukuntu umwenda wishyuzwa ungana na 881.697.134Frw ujya kungana n'inyungu zawo zingana na 786.948.623 Frw zibariwe ku ijanisha rya 19.25 % ritumvikanyweho n'impande zombi mu masezerano bagiranye.

[22] Me Rusanganwa Jean Bosco avuga ko BK Ltd yagurije Rwagasana Thomas inguzanyo zitandukanye mu bihe bitandukanye kuva mu mwaka wa 2010 kugeza 2012 nk'uko bigaragazwa n'amasezerano bagiranye kuko ku wa 02/03/2010, yamugurije 294.775.152Frw arimo 94.775.152 Frw yakoresheje mu kumugurira umwenda yari afitiye ECOBANK inamuha ligne de crédit ya 200.000.000Frw, kandi ko iyo myenda yagiye yiyongera ku yindi myenda yagiye imuha kuko atayishyuraga nk'uko bikwiye ku buryo ku wa 31/01/2012, iyo myenda yose yanganaga na 1.048.187.160Frw nk'uko bigaragazwa n'amasezerano yo ku wa 31/01/2012.

[23] Avuga kandi ko ku wa 11/06/2012, BK Ltd yandikiye Rwagasana Thomas imusaba kuyishyura byibuze 1.055.701.542Frw akomoka ku mwenda wanganaga na 1.118.645.689Frw habariwemo na 63.244.147Frw ya mortgage loan, ariko ko atabikoze, bituma ku wa 07/09/2012, imuha integuza (last warning letter) imusaba kuyishyura

1.164.321.782Frw, bigeze ku wa 06/12/2012, ihagarika amasezerano bagiranye inamusaba kuyishyura 1.211.614.537Frw y'umwenda yari ayibereyemo.

[24] Asobanura ko historique ya konti isanzwe (compte courant) Nº 00293075-71 ya Rwagasana Thomas igaragaza ko yashyizweho amafaranga yavuye muri cyamunara y'inzu ye, maze agabanya umwenda we ku buryo wavuye kuri 927.581.853Frw ukaba 887.581.853Frw ku wa 11/03/2015 habariwemo 240.994.500Frw y'ingwate yo kurangiza neza imirimo y'isoko, BK Ltd yamwishyuriye muri MINISANTE ku wa 10/06/2014 hashingiwe ku masezerano y'ubwishingire bagiranye, ariko ko uwo mwenda utabariwemo inyungu z'ubukererwe (agios) zabazwe kuva ku wa 01/01/2013 nk'uko bigaragazwa na historique ya konti yazo ifite Nº 09860175-36, ko kubera ko amafaranga yavuye muri cyamuna atarangije umwenda wose wa Rwagasana Thomas, ariyo mpamvu yatumye imurega mu rukiko imusaba kuyishyura 888.923.978Frw y'umwenda-remezo hiyongereyeho 1.285.227.719Frw y'inyungu z'ubukererwe (agios)zibazwe kugeza ku wa 17/08/2016, yose hamwe akaba 2.174.151.697Frw, ariko ko inyungu z'ubukererwe zikwiye kubarwa kugeza umwenda wose wishyuwe.

[25] Akomeza asobanura ko igipimo cy'inyungu cyumvikanyweho mu masezerano ari 17.25 % ku kwezi n'ubwo umuhanga yabariye izo nyungu ku mwaka, ariko ko icyo gipimo cyazo cyabaye 19,25 % kubera ko muri ayo masezerano, no muri Règlement des Ouvetures de Crédit yahawe na BK Ltd, Rwagasana Thomas yemeye anasinyira ko azayishyura 2% y'inyungu z'ubukererwe ziyongera kuri 17.25 % mu gihe atishyuye inguzanyo yahawe.

[26] Ku byerekeye 240.994.500Frw y'ingwate yo kurangiza neza imirimo y'isoko (Bank Guarantee), avuga ko hashingiwe ku ngingo ya 64 y'Itegeko rigenga amasezerano, Rwagasana Thomas akwiye kuyishyura ayo mafaranga hiyongereyeho n'inyungu zayo kubera ko bayumvikanyeho mu masezerano y'ubwishingire bagiranye ku wa 31/01/2012, kandi ko BK Ltd yamwishyuriye 240.994.500Frw muri Minisiteri y'Ubuzima ku wa 10/06/2014, inyanyujije kuri konti yayo iri muri BNR bitewe n'uko Rwagasana Thomas atarangije isoko BK Ltd yari yishingiye, maze ayo mafaranga yiyongera ku myenda yamuhaye, kandi ko agomba kubyara inyungu kuko BK Ltd ikora akazi ko gucuruza amafaranga.

[27] Ku byerekeranye n'agaciro ka raporo y'umuhanga, Me Rusanganwa Jean Bosco, avuga ko iyo raporo ikwiye guhabwa agaciro kuko umuhanga yemeje ko Rwagasana Thomas agomba kwishyura BK Ltd 881.697.134Frw y'umwenda-remezo na 786.948.623Frw y'inyungu z'ubukererwe (agios), yose hamwe akaba 1.668.645.757Frw n'ubwo aya mafaranga adahuye n'ayo BK Ltd yari yararegeye mbere angana na 2.174.151.697 abazwe kugeza ku wa 17/08/2001.

[28] Umuhanga asobanura ko igipimo cy'inyungu zisanzwe kigaragara mu masezerano ari 17.25%, ariko ko cyiyongereyeho 2% y'inyungu z'ubukererwe, gihinduka 19.25% nk'uko kigaragarira mu ibaruwa yo ku wa 06/12/2012, BK Ltd yandikiye Rwagasana Thomas imumenyesha ko igipimo cy'inyungu cyahindutse kikaba 19.25% bitewe n'uko yananiwe kuyishyura imyenda ayibereyemo, kandi ko uyu yabonye iyo baruwa arayisinya ku wa 27/03/2013, nyamara ntiyagira icyo ayivugaho, bivuze ko yemeye ibiyikubiyemo, kandi ko igipimo cy'inyungu cya 19.25%, aricyo kimufitiye akamaro kuko iyo atabona iyo

baruwa, yari kubarira inyungu zisanzwe n'iz'ubukererwe ku gipimo cy'inyungu cya 41% ku mwaka.

[29] Avuga kandi ko amafaranga yose y'ubwishyu yaciye kuri konti ya Rwagasana Thomas arimo ayavuye muri za cyamunara y'inzu ze yagabanyije imyenda ye nk'uko yabisobanuye muri raporo ye. Yongeraho ko Mukakimenyi Marie Rosine yasinye amasezerano yose Rwagasana Thomas yagiranye na BK Ltd.

UKO URUKIKO RUBIBONA

[30] Ku byerekeranye n'agaciro ka raporo y'umuhanga, ingingo ya 76 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko: "Ubuhamya bw'abahanga ni ubugamije guha urukiko ibisobanuro bishingiye ku bumenyi kimwe n'umwanzuro urenze ubumenyi busanzwe bw'Umucamanza mu kazi ke bitewe n'uko ibiburanwa bishingiye ku buhanga bwihariye", naho ingingo ya 98 y'iryo Tegeko, igateganya ko "Urukiko ntirukurikiza byanze bikunze ibitekerezo by'abahanga mu gihe binyuranye n'imyumvire y'abacamanza".

[31] Hashingiwe kuri iyo ngingo, Urukiko rurasanga iyo raporo ikwiye gushingirwaho mu guca uru rubanza kuko yakozwe n'umuhanga mu mbibi z'inshingano yari yarasabwe n'urukiko, kandi rubona ibiyikubiyemo bihuje n'ukuri.

[32] Ku birebana n'umwenda-remezo, ingingo ya 64 y'Itegeko N°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iteganya ko "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko

babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya".

[33] Naho ku byerekeranye n'inyungu z'ubukererwe, ingingo ya 7, igika cya 2, y'Amabwiriza rusange N°02/2011 ku ishyirwa mu byiciro by'imyenda no guteganya ingoboka, iteganya ko "Inyungu zose ku myenda itishyurwa neza zabariwe mbere mu mutungo ariko ntizakirwe zigomba guhindurwa kandi zikandikwa kuri konti y'inyungu zahagaze kugeza igihe zishyuriwe n'uwafashe umwenda".

[34] Ku birebana n'uru rubanza, inyandiko ziri muri dosiye na raporo yakozwe n'umuhanga washyizweho n'uru rukiko yo ku wa 30/10/2017, bigaragaza ko ku wa 09/04/2009, Rwagasana Thomas yandikiye BK Ltd asaba ko yamuha découvert ya 700.000.000Frw izamufasha kurangiza ku gihe imirimo yo kubaka ishuri rya FAWE GIRL"S SCHOOL riri i Kayonza, kandi ko azishyura ayo mafaranga mu gihe cy'amezi atatu (3). Ku wa 14/04/2009, BK Ltd, Rwagasana Thomas na Mukakimenyi Marie Rosine basinye amasezerano yiswe Ouverture de crédit avec constitution d"hypothèque bari imbere ya Noteri. Ayo masezerano agaragaza ko BK Ltd yemereye Rwagasana Thomas inguzanyo ya 700.000.000Frw yayisabye, kandi ko azayishyura mu gihe cy'imyaka 3 ku gipimo cy'inyungu kingana na 17.25 % ku mwaka, ko agaciro k'ingwate atanze kangana na 120.000.000Frw na 10.800.000Frw ya frais judiciaires, et de mise à exécution, commissions et frais privilégiés, ko aya mafaranga angana na 130.800.000Frw. Rwagasana Thomas na Mukakimenyi Marie Rosine batanze ingwate y'iyo nguzanyo igizwe n'inzu yabo iri mu kibanza gifite N°322/324 kiri i Nyagatare, mu Ntara y'Iburasirazuba.

[35] Ku wa 20/04/2009, BK Ltd yandikiye Rwagasana Thomas ibaruwa imumenyesha ko imugurije (mise en place du crédit) 700.000.000Frw yo kubaka ishuri rya FAWE GIRL‟S SCHOOL riri i Kayonza, izishyurwa mu gihe cy'amezi 3 ku gipimo cy'inyungu cya 17.25 % ku mwaka, kandi ko ingwate y'iyo nguzanyo ari inzu yavuzwe haruguru.

[36] Ku wa 01/09/2009, Rwagasana Thomas yandikiye BK Ltd ayisaba découvert ya 100.000.000Frw yo kubaka ikigega cy'amazi gifite 100 m3 n'imishahara yo guhemba abakozi bubakaga ishuri rya FAWE GIRL SCHOOL ryavuzwe haruguru.

[37] Ku wa 02/12/2009, Rwagasana Thomas yandikiye BK asaba ko yamwongerera igihe cy'amezi 3 kugeza muri Gashyantare 2010 kugira ngo azayishyure iyo nguzanyo kuko nyir'ibikorwa ataramwishyura amafaranga amusigayemo.

[38] Ku wa 08/12/2009, Rwagasana Thomas yandikiye BK Ltd ayisaba ko yamuguriza 79.902.927 Frw y'ingwate yo kurangiza neza imirimo y'isoko (Caution de Bonne Fin) ahwanye na 10 % y'isoko yatsindiye rya 799.029.271Frw ryo kubaka umuhanda w'itaka: Nyamata – Musenyi - Shyara, uri mu Karere ka Bugesera, ufite uburebure bw'ibilometero 27.

[39] Ku wa 02/12/2009, Rwagasana Thomas yandikiye na none BK Ltd ayisaba ko yamuguriza 298.260.45Euros ahwanye na 240.994.500Frw y'ingwate yo kurangiza neza imirimo y'isoko ry'ibitaro bya Bushenge biri mu Karere ka Nyamasheke, mu Ntara y'Iburengerazuba.

[40] Ku wa 25/01/2010, Rwagasana Thomas yandikiye BK Ltd ayisaba inguzanyo yo mu bwoko bwa découvert ya

200.000.000Frw yo kugura ibikoresho byo kubaka ibitaro bya Bushenge byavuzwe haruguru n'imishahara y'abakozi.

[41] Ku wa 25/01/2010, Rwagasana Thomas yandikiye BK Ltd ayisaba ko yamugurira umwenda afitiye ECOBANK ungana na 94.779.152Frw, BK Ltd ikanahabwa ingwate z'uwo mwenda zose kugira ngo imyenda ye yose iherere muri BK Ltd.

[42] Ku wa 02/03/2010, BK Ltd yandikiye Rwagasana Thomas ibaruwa imumenyesha ko imugurije 94.775.152Frw azishyurwa mu gihe cy'imyaka itanu (5), ibazwe guhera ku wa 31/03/2010, ku gipimo cy'inyungu kingana na 17.25 % ku mwaka.

[43] Ku wa 29/06/2010, BK Ltd yakoranye na Rwagasana Thomas amasezerano y'inguzanyo n'ingwate (Loan agreement with creation of a mortgage), agaragaza ko imugurije 933.590.963 Frw, ko agaciro k'igwate atanze kangana na 400.000.000Frw, kandi ko azayishyura 36.000.000 Frw ya frais judiciaires, et de mise à exécution, commissions et frais privilégiés aya mafaranga akaba 436.000.000Frw. Ayo masezerano yasinyiwe imbere ya Noteri w'Akarere ka Gasabo na BK Ltd, Rwagasana Thomas na Mukakimenyi Marie Rosine.

[44] Ku wa 16/09/2011, BK Ltd yandikiye Rwagasana Thomas imumenyesha ko imwemereye facility ya 69.000.000Frw yo guhemba abakozi (The Bank has agreed to extend an overdraft facility of Rwf 69.000.000 has been granted fo cater for employees's salary)

[45] Ku wa 13/12/2011, Rwagasana Thomas yongeye kwandikira BK Ltd ayisaba kumwongerera igihe cy'amezi 3 kugira ngo azayishyure inguzanyo (découvert) ya 200.000.000

Frw yo kurangiza imirimo isigaye yo kubaka ibitaro bya Bushenge byavuzwe haruguru (The expression need of money is 200 million which is equivalent to the cost of remaining works for reconstruction of Bushenge Hospital).

[46] Ku wa 21/12/2011, BK Ltd yandikiye Rwagasana Thomas imumenyesha ko imwemereye découvert ya 100.000.000Frw (The Bank has agreed to grant an overdraft facility of Rwf 100.000.000 has been granted fo facilitate your daily operations expense), inamwibutsa indi myenda ayibereyemo ibazwe kugeza ku wa 21/12/2011.

[47] Ku wa 22/12/2011, BK Ltd yagiranye na Rwagasana Thomas amasezerano y'ingwate (Loan agreement with creation of a mortgage) ya 1.050.929.051Frw (The Bank offers tot he Client, who accepts, a loan of Rwf 1.050.929.051 to be drawn on Bank of Kigali. Muri ayo masezerano yasinyiwe imbere ya Noteri w'Akarere ka Gasabo na BK Ltd, Rwagasana Thomas na Mukakimenyi Marie Rosine, hateganyijwe ko BK Ltd ihawe ingwate igizwe n'inzu iri mu kibanza gifite N°1584/KIC/MAS kiri Masaka, mu Karere ka Kicukiro, ifite agaciro ka 13.000.000Frw, kandi ko azayishyura 1.170.000Frw ya frais judiciaires, mise à exécution, commissions et frais non privilégiés, yose hamwe akaba 14. 170.000Frw.

[48] Ku wa 05/01/2012, BK Ltd yagiranye na Rwagasana Thomas amasezerano y'ingwate (Constitution of mortgage) N°15329 igizwe n'inzu iri mu kibanza N°319 kiri Nyarutarama, mu Karere ka Gasabo ifite agaciro kangana na 250.000.000Frw, kandi ko azayishyura 22.500.000Frw ya frais judiciaires, mise à exécution, commissions et frais non privilégiés, yose hamwe akaba 272.500.000Frw. Ayo masezerano yasinyiwe imbere ya

Noteri w'Akarere ka Gasabo na BK Ltd, Rwagasana Thomas na Mukakimenyi Marie Rosine.

[49] Ku wa 26/01/2012, Rwagasana Thomas yandikiye BK Ltd ayisaba kumwongerera igihe cy'amezi 3 kugira ngo azayishyure inguzanyo zose yamuhaye zigaragara mu bitabo byayo, cyane cyane découvert yamuhaye yakoresheje mu kubaka ibitaro bya Bushenge mu gihe agitegereje ko MINISANTE itanga uburenganzira bwo kumwishyura.

[50] Ku wa 31/01/2012, BK Ltd yandikiye Rwagasana Thomas imumenyesha ko imwemereye découvert ya 404.293.881 Frw agomba kuzishyura mu mezi 3 mu gihe agitegereje kwishyurwa. (The Bank has agreed to grant an overdraft limit for the debit balance on your account of Rwf 404.293.881 for a period of 3 months awaiting payments).

[51] Ku wa 20/04/2012, Rwagasana Thomas yandikiye BK Ltd ayisaba ko yamuguriza 68.000.000Frw yo guhemba abakozi bubakaga ibitaro bya Bushenge.

[52] Ku wa 11/06/2012, BK Ltd yandikiye Rwagasana Thomas imusaba ko yayishyura 1.118.645.689Frw y'umwenda ayibereyemo ubazwe kugeza ku wa 11/06/2012, ariko ko agomba kuyishyura nibura 1.055.701.542Frw bitarenze ku wa 11/06/2012.

[53] Ku wa 07/09/2012, BK Ltd yandikiye Rwagasana Thomas imuha integuza (Last warning letter) imusaba ko yayishyura 1.164.321.782Frw, kandi ko natabikora mu gihe cy'iminsi 30 y'akazi, BK Ltd izatangira imihango yo kugurisha amazu ye yayihayeho ingwate, ndetse ko izamushyirisha mu

bakiriya batajya bishyura inguzanyo zabo neza, Rwagasana Thomas yabonye iyo baruwa ku wa 18/09/2012, arabisinyira.

[54] Ku wa 25/09/2012, Rwagasana Thomas yandikiye BK Ltd ayitakambira asaba ko yamwongerera igihe cyo kuyishyura inguzanyo yamuhaye kugeza igihe Minisiteri y'Ubuzima izamwishyurira amafaranga imusigayemo.

[55] Ku wa 06/12/2012, BK Ltd yandikiye Rwagasana Thomas imumenyesha ko isheshe amasezerano bagiranye (Termination of your repayment program), imusaba ko yayishyura 1.211.614.537Frw akubiyemo umwenda-remezo, inyungu, commission n'andi mafaranga ayibereyemo (charges), ariko ko inyungu z'ubukererwe zizakomeza kubarirwa ku gipimo cy'inyungu kingana na 19.25 % kugeza igihe azayishyurira imyenda yose ayifitiye, maze zigashyirwa kuri konti itandukanye n'amakonti asanganwe. Rwagasana Thomas yabonye iyo baruwa ku wa 27/03/2012, aranabisinyira.

[56] Raporo yo ku wa 22/12/2013 n'iyo ku wa 28/02/2014 zakozwe na Me Kanyana Bibiane na Me Habimana Védaste, bari bashinzwe kugurisha ingwate, zigaragaza ko nyuma yo kugurisha amazu ari mu bibanza N°1/02/13/02/319 na N°1/02/13/02/619 biri Nyarutarama, mu Karere ka Gasabo, ya Rwagasana Thomas na Mukakimenyi Marie Rosine bari baratanzeho ingwate muri BK Ltd, hari amafaranga yakoreshejwe muri izo cyamunara ku buryo hasigaye 85.480.282 Frw ku nzu imwe, hanasigara 118.456.988Frw ku yindi nzu, yashyizwe kuri konti N°00040-0293075-71 ya Rwagasana Thomas, maze agabanya découvert yari ayifitiye nk'uko bivugwa muri raporo y'umuhanga wavuzwe haruguru.

[57] Avis de crédit yo ku wa 10/06/2014 iri muri dosiye, igaragaza ko BK Ltd yishyuriye Rwagasana Thomas 240.994.500Frw y'ingwate yo kurangiza neza imirimo y'isoko yo kubaka ibitaro bya Bushenge muri Minisiteri y'Ubuzima iyanyujije kuri konti yayo N°1201176 iri muri BNR nk'uko bari barabyumvikanyeho mu masezerano y'ubwishingire N°98469 (Perfomance Guarantee N° 98469) yo mwaka wa 2009, noneho BK Ltd irangije kumwishyurira ayo mafaranga, yayongereye ku myenda Rwagasana Thomas yari ayibereyemo kuko ku wa 10/06/2014, BK Ltd yashyize konte ye N° 040-0293075-71 muri solde négatif nk'uko bigaragazwa n'inyandiko iri muri dosiye kuri cote ya 207 na Accusé de reception d'ordre de virement immédiat N° 345023 iri kuri cote ya 208.

[58] Ku bijyanye n‟imyenda BK Ltd yagurije Rwagasana Thomas, umuhanga washyizweho n‟uru rukiko yasesenguye amasezerano y‟inguzanyo yavuzwe haruguru, atanga raporo yo ku wa 30/10/2017, igaragaza ko BK Ltd yagurije Rwagasana Thomas imyenda ikurikira: 700.000.000Frw ku wa 20/04/2009, 240.994.500 Frw ku wa 02/12/2009, 94.775.152 Frw ku wa 02/03/2010, 200.000.000 Frw ku wa 02/03/2010, 110.000.000 Frw ku wa 02/03/2010 na 933.590.963 Frw ku wa 29/06/2010.

[59] Iyo raporo y'umuhanga igaragaza kandi ko muri iyo myenda-remezo, Rwagasana Thomas yarangije kwishyura BK Ltd 700.000.000Frw gusa mu mpera z'ukwezi kwa munani 2009, kandi ko kuri mortgage loan facility ingana na 94.775.152Frw, yayishyuye gusa 56.940.552Frw na 2.719.204 y'inyungu zayo z'ubukererwe, hasigara 73.341.651Frw yiyongereye ku zindi za découverts yamuhaye, ko nyuma yo guteza cyamunara amazu ye abiri ari mu bibanza N° 1/02/13/02/319 na N° 1/02/13/02/619 biri Nyarutarama byavuzwe haruguru, amafaranga avuyemo

(85.480.282 Frw + 118.456.988 Frw) yashyizwe kuri konti ye N° 00040-0293075-71 iri muri BK Ltd agabanya imyenda ye, ariko ko iyo myenda yongeye kwiyongeraho 240.994.500Frw y'ingwate yo kurangiza neza imirimo y'isoko yamwishyuriye muri MINISANTE nk'uko byasobanuwe haruguru.

[60] Amasezerano y'inguzanyo na raporo y'umuhanga byavuzwe haruguru biri muri dosiye, bigaragaza ko imyenda Rwagasana Thomas yagurijwe na BK Ltd yavuzwe haruguru izishyurwa hiyongereyeho inyungu zayo zisanzwe zibariwe ku gipimo cy'inyungu kingana na 17.25 %, uretse Bank Guarantee iziyongeraho inyungu zibariwe ku gipimo cy'inyungu kingana na 3.5 %, ariko ko mu gihe atayishyuye umwenda ayibereyemo, azawishyura hiyongereyeho inyungu zawo z'ubukererwe zizabarirwa ku gipimo cy'inyungu kingana na 19.25 % nk'uko bivugwa mu ibaruwa BK Ltd yamwandikiye ku wa 06/12/2012, igihe yasesaga amasezerano bagiranye (Termination of your repayment program).

[61] Hashingiwe ku bisobanuro bimaze kuvugwa haruguru, Urukiko rurasanga imvugo y'uburanira Rwagasana Thomas y'uko inyungu z'ubukererwe zitagombaga kubarirwa ku gipimo cya 19.25 %, nyuma y'iseswa ry'amasezerano y'inguzanyo nta shingiro ifite, kubera ko BK Ltd yamwandikiye ibaruwa yo ku wa 06/12/2012 yavuzwe haruguru, imumenyesha ko azayishyura inyungu z'ubukererwe zibariwe ku gipimo cya 19.25 %, kandi Rwagasana Thomas yabonye iyo baruwa ku wa 27/03/2012, arabisinyira, ariko ntiyagira icyo ayivugaho icyo gihe, bigaragara ko yemeye icyo gipimo cy'inyungu.

[62] Urukiko rurasanga ikindi kimenyetso kigaragaza ko inyungu z'ubukererwe zikwiye kubarirwa ku gipimo kingana na 19.25 %, ari uko BK Ltd yagiye yandikira Rwagasana Thomas

amabaruwa atandukanye yo ku wa 21/12/2011, ku wa 31/01/2012, 11/06/2012 no ku wa 07/09/2012, imumenyesha ko natayishyura ibirarane ayibereyemo bikurikira: 7.235.903Frw; 12.256.453Frw; 4.869.120Frw na 12.340.276Frw, azabyishyurira inyungu z'ubukererwe zibariwe ku gipimo cya 19.25 %, ariko ko Rwagasana Thomas atagize icyo akinenga icyo gihe cyose, bivuze rero ko nta kosa umuhanga yakoze ubwo yabariraga inyungu z'ubukererwe ku gipimo cya 19.25 %.

[63] Ku birebana na 240.994.500Frw y'ingwate yo kurangiza neza imirimo y'isoko, Urukiko rurasanga, kuba BK Ltd yarishyuriye Rwagasana Thomas ayo mafaranga muri MINISANTE ku wa 10/06/2014 nk'uko bigaragazwa n'ibimenyetso birimo na Avis de crédit yo ku wa 10/06/2014 biri muri dosiye byavuzwe haruguru, nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze ubwo rwemezaga ko ayo mafaranga agomba kwiyongera ku zindi nguzanyo yamuhaye akanayishyurira inyungu zingana na 3.5% ku mwaka nk'uko byanemejwe n'umuhanga washyizweho n'uru rukiko kubera ko BK Ltd ari ikigo cy'imari gishinzwe gucuruza amafaranga.

[64] Urukiko rurasanga imvugo y'uburanira Rwagasana Thomas y'uko atakwishyura BK Ltd 668.248.503Frw (ariko mu by'ukuri ni 665.248.503 Frw) agizwe na 100.000.000Frw + 189.452.100 Frw + 119.740.499 Frw + 256.055.904 Frw agaragarira kuri historique bancaire ya BK Ltd ngo kuko yayageretsweho na BK Ltd nta shingiro ifite, kuko nta kimenyetso yatanze kigaragaza ukuri kw'ibyo aburana nk'uko biteganywa n'ingingo ya 9 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 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, kubera ko BK Ltd yagiye imwandikira amabaruwa atandukanye yavuzwe haruguru imumenyesha ingano y'imyenda ayibereyemo, ariko ntagire icyo ayinenga, ahubwo agakomeza kuyisaba izindi nguzanyo nk'uko byasobanuwe haruguru.

[65] Hashingiwe ku ngingo ya 64 y'Itegeko ryavuzwe no kuri raporo y'umuhanga byavuzwe haruguru, Urukiko rurasanga Rwagasana Thomas agomba kwishyura BK Ltd 881.697.134Frw y'umwenda-remezo na 786.948.623Frw y'inyungu z'ubukererwe, yose hamwe akaba 1.668.645.757Frw kuko Rwagasana Thomas na Mukakimenyi Marie Rosine n'ababunganira nta bimenyetso batanze bivuguruza ibyashingiweho n'umuhanga byavuzwe haruguru.

2. Kumenya niba hari amasezerano Mukakimenyi Marie Rosine atasinye ku buryo atafatanya na Rwagasana Thomas kwishyura BK Ltd imyenda yamuhaye atayishyuye

[66] Mukakimenyi Marie Rosine n'umwunganira bavuga ko atafatanya na Rwagasana Thomas kwishyura BK Ltd imyenda yose yamugurije kuko atasinye amasezerano y'inguzanyo n'ay'ingwate umugabo we yagiranye na BK Ltd.

[67] Basobanura ko muri ayo masezerano harimo amasezerano y'inguzanyo yo ku wa 31/01/2012 ya 404.293.881Frw akwiye guteshwa agaciro kuko iyo nguzanyo yatanzweho ingwate y'imitungo yose y'umuryango, ariko ko Mukakimenyi Marie Rosine atayasinye kandi nawe afite uburenganzira bungana na 50 % kuri iyo mitungo y"umuryango nkuko biteganywa n'ingingo ya 34 na 35 z'Itegeko Ngenga N°08/2005 ryo ku wa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda , hamwe n'ingingo ya 21

y’Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w’abashyingiranywe, impano n’izungura, iteganya ko “Uko imicungire y'umutungo n’uburyo bawucunga byaba biri kose, ubwumvikane bw'abashyingiranywe ni ngombwa mu gutanga ikitimukanwa bwite n'umutungo bahuriyeho no kubitangaho ubundi burenganzira bwose“`

[68] Me Rusanganwa Jean Bosco, uburanira BK Ltd, avuga ko Mukakimenyi Marie Rosine akwiye gufatanya na Rwagasana Thomas kwishyura imyenda yose uyu yahawe na BK Ltd kuko yasiye ku masezerano yose y’inguzanyo n’ay’ingwate bagiranye.

UKO URUKIKO RUBIBONA

[69] Ingingo ya 9 y’Itegeko N°21/2012 ryo ku wa 14/06/2012 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“.

[70] Dosiye y’urubanza igaragaza ko Mukakimenyi Marie Rosine yasinyiye imbere ya Noteri w’Akarere ka Gasabo amasezerano y’inguzanyo n’ay’ingwate yo ku wa 14/04/2009, ku wa 29/06/2010, no ku wa 22/12/2011, ndetse n’amasezerano y’ingwate (Constitution of mortgage) yo ku wa 05/01/2012 yavuzwe haruguru.

[71] Urukiko rurasanga, nk’uko n’umuhanga yabisobanuye muri raporo ye yavuzwe haruguru, nta masezerano y’inguzanyo cyangwa y’ingwate Rwagasana Thomas yagiranye na BK Ltd,

Mukakimenyi Marie Rosine atasinye, bityo uyu akaba agomba kubitsindirwa nk'uko biteganywa n'ingingo ya 9 y'Itegeko ryavuzwe haruguru, bivuze rero ko Mukakimenyi Marie Rosine agomba gufatanya na Rwagasana Thomas kwishyura BK Ltd umwenda-remezo n'inyungu z'ubukererwe nk'uko byasobanuwe haruguru.

3. Kumenya niba amasezerano y'inguzanyo Rwagasana Thomas yagiranye na BK Ltd arimo clauses abusives ku birebana na frais judiciaires, mise à exécution, commissions et frais non privilégiés

[72] Rwagasana Thomas n'umwunganira bavuga ko atakwishyura BK Ltd 9% y'umwenda-remezo wose imwishyuza urenga miriyari y'‟ikurikiranarubanza, ay'igihembo cya Avoka, yo kwishyura amatangazo ya cyamunara, yo guhemba umuhesha w'inkiko n'ay'irangizarubanza (frais judiciaires, mise à exécution, commissions et frais non privilégiés) kubera ko ingingo zose z'amasezerano bagiranye ari muri position de faiblesse zimutegeka kuyishyura ayo mafaranga, ari clauses abusives kuko ziteganyiriza BK Ltd urwunguko rwinshi cyane kuko 9% y'amafaranga arenga miriyari yishyuzwa ashobora kugera kuri 160.000.000Frw y'ikurikiranarubanza n'igihembo cy'Avoka, kandi ko nta kimenyetso BK Ltd yatanze kigaragaza ko yakoresheje ayo mafaranga mu gukurikirana no kuburana uru rubanza.

[73] Bavuga ko ahubwo Rwagasana Thomas yarangije kwishyura amafaranga ya frais judiciaires, mise à exécution, commissions et frais non privilégiés, igihe inzu ze zatezwaga cyamunara kuko abaziteje cyamunara bishyuye amafaranga y'‟amatangazo ya cyamunara, ay'igihembo cy'umuhesha w'inkiko n'andi yose yasabwaga, barangije, bayamubaraho,

ariko ko iyo umuhanga agaragaza amafaranga yose Rwagasana Thomas yishyuye icyo gihe, yari gusanga hasigaye amafaranga y'igihembo cya Avoka gusa.

[74] Me Rusanganwa Jean Bosco, uburanira BK Ltd, avuga ko 9% ya frais judiciaires, mise à exécution, commissions et frais non privilégiés, agaragarira mu masezerano y'ingwate, atari clauses abusives, kuko adashingiye ku mwenda-remezo wose yishyuzwa, kandi ko ayo mafaranga atagombye kumutera impungenge mu gihe BK Ltd imwishyuza gusa 10.000.000Frw y'ikurikiranarubanza n'igihembo cy'Avoka na 50.000Frw y'ingwate y'igarama yatanze.

UKO URUKIKO RUBIBONA

[75] Amasezerano y'inguzanyo n'ay'ingwate yo ku wa 14/04/2009, ayo ku wa 29/06/2010, ayo ku wa 22/12/2011 n'ayo ku wa 05/01/2012 yavuzwe haruguru, agaragaza ko mu gihe Rwagasana Thomas atishyuye inguzanyo yamuhaye, azishyura 10.800.000Frw, 36.000.000Frw, 1.170.000Frw na 22.500.000 Frw ya frais judiciaires, et de mise à exécution, commissions et frais privilégiés.

[76] Ku birebana n'amafaranga ya frais judiciaires, et de mise à exécution, commissions et frais privilégiés, Urukiko rurasanga rukwiye kuyagenera BK Ltd mu bushishozi bwarwo, aho gushingira ku gipimo cya 9% cy'imyenda yahawe kivugwa muri ayo masezerano kuko kwaba ari kuyihesha indonke ikabije (enrichissement sans cause) kandi bitemewe n'amategeko, kuko nta kimenyetso BK Ltd yatanze kigaragaza ingano y‟amafaranga yakoresheje ikurikirana uru rubanza, cyane cyane ko

n'uyiburanira muri uru rubanza yiyemereye ko icyo gipimo kitashingirwaho mu kuyigenera ayo mafaranga.

4. Kumenya niba Rwagasana Thomas atakwishyura 350.000Frw y'igihembo cy'umuhanga wo ku rwego rwa mbere

[77] Rwagasana Thomas n'umwunganira bavuga ko Urukiko Rukuru rw'Ubucuruzi rutagombaga kumutegeka kwishyura Habineza Emmanuel 350.000Frw nk'igihembo cy'umuhanga, kandi nta raporo ya expertise yakoze.

[78] Me Rusanganwa Jean Bosco, uburanira BK Ltd, avuga ko Rwagasana Thomas akwiye kwishyura ayo mafaranga kubera ko uwo muhanga yashyizweho n'Urukiko Rukuru rw'Ubucuruzi ariwe ubisabye nk"uko bigaragarira mu gika cya 17 cy'urubanza rujuririrwa, kandi ko uwo muhanga yakoze imirimo y"ibanze kugeza ubwo yatanze fagitire, ariko ko atakoze raporo bitewe n'uko Rwagasana Thomas yanze kumuha avance yari gutuma ayikora.

UKO URUKIKO RUBIBONA

[79] Urukiko rurasanga nk'uko n'Urukiko Rukuru rw'Ubucuruzi rwabisobanuye mu gika cya 18 cy'urubanza rwajuririwe muri uru rukiko, kuba Rwagasana Thomas yaremeye ko hashyirwaho umuhanga mu by'ibaruramari kugira ngo atange raporo igaragaza ingano nyakuri y'umwenda abereyemo BK Ltd, kandi umuhanga washyizweho n'urwo rukiko akaba yarakoze imirimo y'ibanze ijyanye no gusuzuma uburemere bw'imirimo yari yahawe kugeza ubwo yatangaga inyemezabwishyu facture igaragaza ingano y'amafaranga azishyurwa, ariko iyo raporo ikaba itarakozwe bitewe n'uko Rwagasana Thomas

atamwishyuye ayo mafaranga, nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze ubwo rwamutegekaga kwishyura uwo muhanga 350.000Frw ahwanye n'imirimo y'ibanze yari amaze gukora, bityo ubujurire bwe kuri iyi ngingo nta shingiro bufite.

5. Kumenya niba Rwagasana Thomas yahabwa indishyi asaba no kumenya niba ubujurire bwuririye ku bundi bwatanzwe na BK Ltd bufite ishingiro

[80] Rwagasana Thomas n'umwunganira bavuga ko BK Ltd ikwiye kumuha 20.000.000Frw y'indishyi z'akababaro z'uko itubahirije amasezerano bagiranye, 500.000Frw y'ikurikiranarubanza na 10.000.000Frw y'igihembo cy'Avoka, ariko ko ataha BK Ltd indishyi isaba kubera ayo makosa yamukoreye.

[81] Me Rusanganwa Jean Bosco, uburanira BK Ltd, avuga ko itaha Rwagasana Thomas indishyi asaba kuko atubahirije amasezerano y'inguzanyo bagiranye, ko ahubwo atanze ubujurire bwuririye ku bundi, asaba ko Rwagasana Thomas na Mukakimenyi Marie Rosine bafatanya kuyiha 2.000.000Frw y'indishyi zo gushorwa mu manza nta mpamvu, 10.000.000Frw y‟ikurikiranarubanza n'igihembo cy'Avoka.

[82] Me Rwinikiza Félix, uburanira Mukakimenyi Marie Rosine, avuga ko ataha BK Ltd indishyi isaba kubera ko atasinye amasezerano yose y‟inguzanyo n'ay'ingwate BK Ltd yakoranye na Rusanganwa Jean Bosco, kandi nawe yari afite uruhare ku mutungo w'umuryango wabo.

UKO URUKIKO RUBIBONA

[83] Ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano, iteganya ko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

[84] Hashingiwe kuri iyo ngingo, Urukiko rurasanga Rwagasana Thomas atahabwa indishyi z'akababaro, amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka kubera ko atsinzwe.

[85] Ku birebana n'amafaranga BK Ltd isaba mu bujurire bwuririye ku bundi, Urukiko rurasanga itahabwa indishyi z'akababaro zo gushorwa mu manza nta mpamvu kuko nta kigaragaza ko Rwagasana Thomas yayireze nkana agamije kuyangiriza, ariko agomba kuyiha 1.000.000Frw y'ikurikiranarubanza n'igihembo cy'Avoka yo kuri uru rwego agenewe n'urukiko mu bushishozi bwarwo kuko ayo isaba ari menshi.

6. Kumenya ugomba kwishyura igihembo cy'umuhanga wo kuri uru rwego

[86] Inyemezabwishyu (reçu) yo ku wa 04/01/2017 iri muri dosiye, igaragaza ko Rwagasana Thomas yishyuye Ayinkamiye Spéciose, umuhanga washyizweho n'uru rukiko, 2.000.000Frw y"igihembo kugira ngo ategure raporo igaragaza ingano y'umwenda abereyemo BK Ltd. Na none bordereau de versement yo ku wa 01/12/2017 iri muri dosiye, igaragaza ko BK Ltd yishyuye uwo muhanga igihembo kingana na 2.000.000Frw kugira ngo abashe gukora iyo raporo.

[87] Urukiko rurasanga Rwagasana Thomas akwiye gusubiza BK Ltd 2.000.000Frw y'igihembo cy'umuhanga wakoze raporo

igaragaza ingano y'umwenda ayibereyemo kubera ko atsinzwe urubanza.

[88] Hakurikijwe ibisobanuro byavuzwe haruguru, Urukiko rurasanga rero igiteranyo cy'amafaranga Rwagasana Thomas na Mukakimenyi Marie Rosine bagomba kwishyura BK Ltd ari: 881.697.134Frw y'umwenda-remezo + 786.948.623Frw y'inyungu z'ubukererwe + 1.000.000Frw y'ikurikiranarubanza n'igihembo cy'Avoka yo kuri uru rwego, yose hamwe akaba 1.669.645.757Frw, bakanayisubiza 2.000.000Frw y'igihembo cy'umuhanga wakoze raporo igaragaza ingano y'umwenda ayibereyemo, ayo mafaranga akaba agomba kwiyongera kuyo yaciwe mbere.

III. ICYEMEZO CY'URUKIKO

[89] Rwemeje ko ubujurire bwa Rwagasana Thomas nta shingiro bufite;

[90] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na BK Ltd bufite ishingiro kuri bimwe;

[91] Rwemeje ko ikirego cyatanzwe na BK Ltd gifite ishingiro kuri bimwe;

[92] Rwemeje ko nta gihindutse ku mikirize y'urubanza RCOMA 0591/13/HCC-RCOMA 0007/14/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 03/07/2014;

[93] Rutegetse Rwagasana Thomas na Mukakimenyi Marie Rosine gufatanya guha BK Ltd 881.697.134 Frw y'umwenda-

remezo na 786.948.623 Frw y'inyungu z'ubukererwe, yose hamwe akaba 1.668.645.757Frw;

[94] Rutegetse Rwagasana Thomas na Mukakimenyi Marie Rosine gufatanya guha BK Ltd 1.000.000Frw y'ikurikiranarubanza n'igihembo cy'Avoka yo kuri uru rwego;

[95] Rutegetse Rwagasana Thomas na Mukakimenyi Marie Rosine gufatanya guha BK Ltd 2.000.000Frw y'igihembo cy'umuhanga wakoze raporo igaragaza ingano y'umwenda bayibereyemo;

[96] Rutegetse ko ingwate y'amagarama yatanzwe na Rwagasana Thomas ajurira ingana na 100.000 Frw ihwanye n'ibyakozwe muri uru rubanza.