MUSABYIMANA N'UNDI v. ECOBANK RWANDA PLC

[Rwanda URUKIKO RW'UBUJURIRE – 00001/2021/CA (Munyangeri, P.J.) 13 Gicurasi 2022]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Amasezerano y'inguzanyo – Acte de mainlevée hypothécaire – Uberewemo umwenda (créancier) ashobora guhanagura ingwate yahawe ku bushake (radiation volontaire) mu gihe yishyuwe umwenda cyangwa ashaka korohereza urimo umwenda (débiteur) – Mu gihe uberewemo umwenda ahanaguye ingwate mu rwego rwo korohereza ufite umwenda, uberewemo umwenda agomba kugira uburenganzira ndakumirwa (droit réel) kuri uwo mutungo utimukanwa watanzweho ingwate.

Incamake y'ikibazo: ECOBANK Rwanda Plc yagiranye amasezerano y'inguzanyo na INTERTRADE F&C Ltd ingana na 482.412.146 Frw itanga ingwate zinyuranye harimo n'umutungo utimukanwa ndetse yishingirwa na Musabyimana Celestin na Somayire Rubona Freddy, iza kunanirwa kwishyura umwenda wose ibereyemo iyo Banki, bituma ECOBANK Rwanda Plc irega abishingizi mu Rukiko rw'Ubucuruzi irusaba kubahatira kuyishyura umwenda wari usigaye ungana na 210.115.808 Frw.

Urukiko rw'Ubucuruzi rwaciye urubanza rwemeza ko ikirego cya Ecobank Rwanda Plc gifite ishingiro, rutegeka Musabyimana na Somayire n'abishingizi ba INTERTRADE F&C Ltd kwishyura Ecobank 210.115.808 Frw.

Musabyimana na Somayire bajuririye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruzi bavuga ko Urukiko rw'Ubucuruzi rutagaragaje ishingiro ry'icyemezo rwafashe (absence de motivation), kuba rwarashingiye ku mategeko agenga amasezerano rukirengagiza arebana n'igihombo, kwirengagiza ikibazo rwashyikirijwe cyo kuba ECOBANK RWANDA Plc yarigwijeho umutungo nta mpamvu, kuba rwarirengagije uburiganya bwakozwe na ECOBANK RWANDA Plc mu kwegukana ingwate, no kuba rwarirengagije impamvu zikuraho abishingizi inshingano.

Urwo Rukiko rwemeje ko ubujurire nta shingiro bufite, rwemeza ko hagumyeho imikirize y'urubanza rwaciwe n'Urukiko rw'Ubucuruzi.

Musabyimana na Somayire bajuririye mu Rukiko rw'Ubujurire, rwemeza ko ubujurire bwabo nta shingiro bufite hagumyeho imikirize y'urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi.

Batanze ikirego gisaba gubirishamo urubanza RCOMAA 00067/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 23/04/2021 ingingo nshya, cyirakirwa. Mu miburanire yabo mu rubanza mu mizi bavuga ko kuba hari ikimenyetso cya Acte de mainlevée hypothécaire Banki yakoze, bisobanuye ko umwenda utakiriho, ko rero "Acte de mainlevée" ihwanye n'ubwishyu, ECOBANK RWANDA Plc ikaba idashobora kuvuga ko yayitanze hatabayeho ubwishyu.

ECOBANK Rwanda Plc ivuga ko ikimenyetso cya "Acte de mainlevée hypothécaire" ubwacyo kidashobora guhindura imikirize y'urubanza rusubirishwamo ingingo nshya, kubera ko iyo Acte isobanura kurekura cyangwa guhanagura ingwate, bitandukanye no kwishyura umwenda. Ivuga kandi ko iyo habayeho kurangiza kwishyura umwenda Banki itanga attestation de non créance, ikavuga ko niyo umwenda waba warishyuwe hagaragazwa ibimenyetso byuko kwishyuwe.

Incamake y'icyemezo: Ubereyemo Banki umwenda (débiteur) wahawe *Acte de mainlevée hypothécaire* ntiyayitwaza avuga ko yamaze kwishyura, ahubwo uberewemo umwenda (créancier) ashobora kuyitanga agamije guhanagura ingwate yahawe ku bushake (radiation volontaire) ashaka korohereza urimo umwenda (débiteur), ariko nawe (créancier) ntabangamirwe k'uburenganzira bwe ndakumirwa (droit réel) kuri uwo mutungo utimukanwa watanzweho ingwate.

Ikirego nta shingiro gifite.
Ingwate y'amagarama ihwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 170.

Nta manza zifashishijwe

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 30/05/2018, ECOBANK RWANDA Ltd yagiranye na INTERTRADE F&C Ltd amasezerano y'inguzanyo ingana na 482.412.146 Frw, itanga ingwate zinyuranye harimo n'umutungo utimukanwa, ndetse yishingirwa na Musabyimana Célestin na Somayire Rubona Freddy, ariko ntiyashobora kwishyura umwenda wose. ECOBANK RWANDA Plc yareze Musabyimana Célestin na Somayire Rubona Freddy mu Rukiko rw'Ubucuruzi, isaba ko bahatirwa kwishyura umwenda usigaye ungana na 210.115.808 Frw wahawe INTERTRADE F&C Ltd babereye abishingizi.

[2] Mu rubanza RCOM 01046/2018/TC rwaciwe ku wa 30/01/2019, Urukiko rw'Ubucuruzi rwemeje ko ikirego cyatanzwe na Ecobank Rwanda Plc gifite ishingiro, ko Musabyimana Célestin na Somayire Rubona Freddy nk'abishingizi ba INTERTRADE F&C Ltd bafite inshingano zo kwishyura Ecobank Rwanda Plc umwenda wahawe INTERTRADE F&C Ltd utarishyuwe. Rubategeka kwishyura Ecobank Rwanda Plc umwenda ungana na 210.115.808 Frw, 200,000 Frw na 500.000 Frw y'igihembo cy'Avoka, rubategeka kandi gusubiza ECOBANK RWANDA Plc 50.000 Frw y'ingwate y'amagarama yatanze irega.

[3] Musabyimana Célestin na Somayire Rubona Freddy bajuririye icyo cyemezo mu Rukiko Rukuru rw'Ubucuruzi, bavuga ko Urukiko rw'Ubucuruzi rutagaragaje ishingiro ry'icyemezo rwafashe (absence de motivation), kuba rwarashingiye ku mategeko agenga amasezerano rukirengagiza arebana n'igihombo, kwirengagiza ikibazo rwashyikirijwe cyo kuba ECOBANK RWANDA Plc yarigwijeho umutungo nta mpamvu, kuba rwarirengagije uburiganya bwakozwe na ECOBANK RWANDA Plc mu kwegukana ingwate, no kuba rwarirengagije impamvu zikuraho abishingizi inshingano.

[4] Mu rubanza RCOMA 00201/2019/HCC rwaciwe ku wa 18/12/2019, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwatanzwe na Musabyimana Célestin na Somayire RUBONA Freddy nta shingiro bufite, ko ubwatanzwe na ECOBANK RWANDA Plc bwuririye ku bwabo bufite ishingiro, imikirize y'urubanza rwajuririwe ntiyahinduka, rutegeka abajuriye gufatanya kwishyura ECOBANK RWANDA Plc 1.000.000 Frw y'igihembo cy'Avoka.

[5] Musabyimana Célestin na Somayire Rubona Freddy bajuririye icyo cyemezo mu Rukiko rw'Ubujurire, barusaba gusuzuma niba kuba Urukiko rwarangiye ECOBANK RWANDA Plc gusubirana ingwate bikuraho amakosa yari yakoze yo kuyirekura, niba Urukiko rw'Ubucuruzi rwararegewe ibyaha cyangwa rwararegewe amakosa, niba koko Urukiko rutaragaragarijwe itegeko n'ihame rihatira uberewemo umwenda ufite ingwate guhitamo, niba Urukiko rwarivuguruje, niba Urukiko rutaragaragarijwe ingingo y'itegeko n'ikimenyetso, niba nta bimenyetso bagaragarije Urukiko bihatira ECOBANK RWANDA Plc guhitamo inzira yabonamo ubwishyu, bajuriye kandi basaba Urukiko kwemeza agaciro k'ingwate ECOBANK RWANDA Plc yegukanye, no kumenya niba barishingiye amakosa, uburiganya bwa ECOBANK RWANDA Plc n'ubujura bwakorewe INTERTRADE F&C Ltd.

[6] Mu rubanza RCOMAA 00067/2020/CA rwaciwe ku wa 23/04/2021, Urukiko rw'Ubujurire rwemeje ko ubujurire bwatanzwe na Musabyimana Célestin na Somayire Rubona Freddy nta shingiro bufte, ko imikirize y'urubanza RCOMA 00201/2019/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 18/12/2019 idahindutse, rutegeka Musabyimana Célestin na Somayire RUBONA Freddy gufatanya kwishyura ECOBANK RWANDA Plc 1.000.000 Frw y'igihembo cy'Avoka, amagarama yatanzwe bajurira ahwana n'ibyakozwe mu rubanza.

[7] Musabyimana Célestin na Somayire Rubona Freddy bongeye kuregera Urukiko rw'Ubujurire, basubirishamo ingingo nshya urubanza RCOMAA 00067/2020/CA, ikirego cyandikwa kuri 00001/2021/CA.

[8] Urubanza rwaburanishijwe mu ruhame ku wa 03/12/2021, Musabyimana Célestin na Somayire Rubona Freddy bahagarariwe na Me Idahemuka Tharcisse afatanyije na Me Masumbuko Nde Emile, ECOBANK RWANDA Plc ihagarariwe na Me Bimenyimana Eric. Kuri uwo munsi, hasuzumwe ikibazo kirebana n'iyakirwa ry'ikirego cyo gusubirishamo urubanza ingingo nshya.

[9] Ku wa 31/12/2021, Urukiko rwaciye urubanza ku iyakirwa ry'ikirego, rwemeza ko ikirego cyatanzwe na Musabyimana Célestin na Somayire Rubona Freddy cyo gusubirishamo ingingo nshya urubanza RCOMAA 00067/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 23/04/2021 cyakiriwe, rutegeka ko urubanza ruzaburanishwa mu mizi ku wa 10/01/2022 saa tanu n'igice (11h30).

[10] Ku wa 10/01/2022, Abavoka bahagarariye ababuranyi bitabye Urukiko bagirwa inama yo kugerageza kurangiza ikibazo bafitanye mu bwumvikane bifashishije umuhuza barabyemera banumvikana ko Me Kavaruganda Julien Gustave aba umuhuza muri iki kibazo, iburanisha rirasubikwa, bamenyeshwa ko kumvikana nibinanirana, bazagaruka kuburana ku wa 07/02/2022 saa tatu n'igice (9H30). Ku wa 31/01/2022, Me Kavaruganda Julien Gustave wahawe inshingano zo kuba umuhuza muri uru rubanza yakoze raporo, amenyesha Urukiko ko ababuranyi batashoboye kurangiza ikibazo mu bwumvikane.

[11] Urubanza rwaburanishijwe mu mizi mu ruhame ku wa 07/02/2022, Musabyimana Célestin na Somayire Rubona Freddy bahagarariwe na Me Idahemuka Tharcisse afatanyije na Me Masumbuko Nde Emile, ECOBANK RWANDA Plc ihagarariwe na Me Bimenyimana Eric, basobanura aho inyandiko yitwa "Acte de mainlevée hypothécaire" ihurira no kuba abishingizi b'umwenda wahawe INTERTRADE F&C Ltd bavuga ko uwo mwenda wishyuwe.

[12] Ku wa 18/02/2022, Urukiko rwafashe icyemezo mu rubanza rubanziriza urundi, rwemeza ko hashyirwaho umuhanga wo kugaragariza Urukiko uburyo umwenda wa miliyoni Magana abiri na mirongo itandatu (260.000.000 Frw) wishyuwe, cyangwa amafaranga asigaye kwishyurwa niba umwenda utarishyuwe, rwemeza ko iburanisha rizapfundurwa ku wa 14/03/2022.

[13] Ku wa 01/03/2022, Urukiko rwafashe icyemezo gishyiraho umuhanga mu ibaruramari witwa Gashagaza Patrick, asabwa kuba yatanze raporo bitarenze ku wa 10/03/2022, ariko ntiyashobora guhita ayirangiza, asaba kongererwa igihe cyo gutunganya inshingano yahawe, iburanisha ryimurirwa ku wa 13/04/2022, umuhanga ashyikiriza Urukiko raporo y'ibyavuye mu igenzura ku wa 08/04/2022.

[14] Urubanza rwaburanishijwe mu ruhame ku wa 13/04/2022, Me Masumbuko Nde Emile na Me Idahemuka Tharcisse bunganira Musabyimana Célestin, bahagarariye Somayire Rubona Freddy, ECOBANK RWANDA Plc ihagarariwe na Me Bimenyimana Eric, uwo munsi umuhanga asobanura ibikubiye muri raporo yakoze, ababuranyi bagira icyo bayivugaho.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba gukora "Acte de mainlevée hypothécaire"bisobanuye ko banki yishyuwe umwenda wari wishingiwe

[15] Me Idahemuka Tharcisse avuga ko mu bika bya 21 na 26 by'urubanza RCOMAA 00067/2020/CA, Urukiko rw'Ubujurire rwavuze ko rusanga hari inzira nyinshi ziteganywa n'amategeko zitigeze ziyambazwa kugira ngo hagaragazwe ibimenyetso, ko rero ikimenyetso cyaburaga cyemeza ko ubwishingizi bwa Musabyimana Célestin na Somayire Rubona Freddy bwaregewe butakiriho, ari "Acte de mainlevée hypothécaire"y'umwenda remezo ungana na 260.000.000 Frw. Akomeza avuga ko mu gihe cyo gusuzuma iyakirwa ry'ikirego, ECOBANK RWANDA Plc yasobanuye ko "Acte de mainlevée"ari "authentique", "sincère", ibitswe na Noteri n'Umwanditsi Mukuru, ko rero hashingiwe ku ngingo ya 110 y'itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, amagambo uhagarariye ECOBANK RWANDA Plc yavugiye imbere y'Urukiko, asobanura ko nta mpaka zikiri kuri "Acte de mainlevée hypothécaire."

[16] Me Masumbuko Nde Emile avuga ko ibimenyetso bigizwe n'amasezerano yo ku wa 26/07/2010 y'umwenda ungana na 260.000.000 Frw, ECOBANK RWANDA Plc yahaye INTERTRADE F& C Ltd, inyandiko yo ku wa 02/08/2010 yiswe "Acte de cautionnement solidaire", abanyamigabane ba INTERTRADE F& C Ltd bishingira umwenda ungana na 260.000.000 Frw yahawe, n'inyandiko yo ku wa 07/10/2011 yiswe"Acte de mainlevée hypothécaire", aho ECOBANK RWANDA Plc yemera ko umwenda ungana na 260.000.000 Frw

wishyuwe, inarekura ingwate yari yahawe na INTERTRADE F& C Ltd, bigaragaza ko ECOBANK RWANDA Plc yareze abishingizi ba INTERTRADE F&C Ltd, ishingiye ku nyandiko zataye agaciro.

[17] Me Masumbuko Nde Emile akomeza asobanura ko mu mategeko, "Acte de mainlevée" igaragaza ko ari "Acte juridique" ikorwa na banki yemeza ko umwenda utakiriho, ko rero "Acte de mainlevée" ihwanye n'ubwishyu, ECOBANK RWANDA Plc ikaba idashobora kuvuga ko yayitanze hatabayeho ubwishyu.

[18] Me Bimenyimana Eric avuga ko ikimenyetso cya "Acte de mainlevée hypothécaire" ubwacyo kidashobora guhindura imikirize y'urubanza rusubirishwamo ingingo nshya, kubera ko "Acte de mainlevée hypothécaire" isobanura kurekura cyangwa guhanagura ingwate, bitandukanye no kwishyura umwenda. Asobanura ko impamvu hakozwe iyi nyandiko, ari uko mbere y'uko ikorwa, INTERTRADE F&C Ltd yari isanganywe umwenda ungana na 260.000.000 Frw hashingiwe ku masezerano yakorewe imbere ya Noteri ku wa 02/08/2010, aho kuwishyura isaba kuzamurirwa ingano y'umwenda, ko bitewe n'uko uwo mwenda wari usanzwe warandikishijwe hashingiwe ku cyemezo N° 2889/10/ORG cyo kwandikisha ingwate cyo ku wa 11/08/2010, byabaye ngombwa ko ECOBANK RWANDA Plc ihanagura ingwate yatanzwe ku mwenda wa 260.000.000 Frw, kugira ngo ingano y'umwenda izamurwe igere kuri 410.000.000 Frw ari na wo itishyuye, bituma hagurishwa ingwate yahoze ifite n°11895, ari na yo bivugwa ko yakorewe "Acte de mainlevée hypothécaire", umwenda ugasigara ari 210.115.808 Frw, ko kandi ari ibintu bisanzwe bikorwa mu mikorere y'amabanki.

[19] Me Bimenyimana Eric akomeza avuga ko iyo ECOBANK RWANDA Plc yibeshya ntisibe ingwate y'umwenda ungana na 260.000.000 Frw, nta mutekano umwenda ungana na 410.000.000 Frw wari kuba ufite, ndetse nta n'uburenganzira yari kugira ku ngwate burenze umwenda ungana na 260.000.000 Frw, ko kuba byarakozwe bityo, byatumye uburenganzira bwayo ku ngwate buzamuka, bugera ku mwenda wa 410.000.000 Frw. Avuga kandi ko kuba mu nyandiko y'amasezerano yashyize muri dosiye hagaragara ahanditse "existing loan", byumvikanisha ko umwenda wa 260.000.000 Frw wari ugihari, ko kandi kuba barimo kuburana amafaranga ashingiye ku masezerano afatika, Urukiko rukwiye gusaba abarega kugaragaza ikimenyetso cyuko bishyuye umwenda, ko nibakigaragaza Urukiko rutazemeza umwenda, ko kandi "acte de mainlevée hypothécaire" atari ikimenyetso kigaragaza ko umwenda wishyuwe, ko iyo umwenda wishyuwe hatangwa "Attestation de non créance", uretse ko na yo ishobora gutangwa habayeho kwibeshya, na byo bikaba bigira uko bikosorwa cyangwa yatangwa nta kwibeshya na byo bikaba byatangirwa ibindi bisobanuro.

[20] Me Bimenyimana Eric asaba ko Musabyimana Célestin na Somayire Rubona Freddy basobanura niba barishyuye mu byiciro cyangwa niba barishyuriye icyarimwe, cyangwa kugaragaza ingano y'amafaranga bagiye bishyura kubera ko "historique bancaire" bitangiye nk'ikimenyetso, itagaragaramo ubwishyu bugeze kuri 260,000,000 Frw, ko "acte de mainlevée hypothécaire"atari ikimenyetso kimara impaka kandi yasobanuye uburyo yatanzwemo, ko rero bakwiye kugaragariza Urukiko ibimenyetso byemeza ko bishyuye, bitabaye ibyo, bikemezwa ko batavuguruza ibikubiye mu gika cya 21 cy'urubanza rusubirishwamo ingingo nshya, cyane cyane ko badasobanura aho baje gukura ubwishyu mu gihe bavuga ko INTERTRADE F&C Ltd yari yibwe.

[21] Me Idahemuka Tharcisse avuga ko Musabyimana Célestin na Somayire Rubona Freddy batahawe umwenda, ahubwo bishingiye umwenda wahawe INTERTRADE F&CLtd, ko ingingo ya 5 y'amasezerano y'ubwishingizi ivuga ko ingwate izarekurwa ari uko ECOBANK RWANDA Plc imaze kwishyurwa, ko rero itari gutanga umwenda ungana na 410.000.000 Frw uwa 260.000.000 Frw utarishyurwa, ubwishingizi butagira agaciro mu gihe umwenda bwari bushingiyeho utakiriho nk'uko bigaragazwa na " Acte de mainlevée hypothécaire". Avuga kandi ko uretse inyandiko ihanagura ingwate, hari n'imvugo ECOBANK RWANDA Plc yivugiye imbere y'Urukiko, asaba Urukiko kuzabishingiraho rwemeza ko umwenda ungana na 260.000.000 Frw waregewe utakiriho, akibaza ukuntu ECOBANK RWANDA Plc yaba yaratanze umwenda ungana na 410.000.000 Frw kandi uwa 260.000.000 Frw ukiriho, asaba ko Urukiko rwazabisuzuma.

[22] Me Masumbuko Nde Emile na Me Idahemuka Tharcisse bavuga ko kuba ECOBANK RWANDA Plc yarasabye indi ngwate ari uko yari izi neza ko ingwate ya mbere yavuyeho, ko kandi iyo ngwate yari yaratanzwe ku mwenda ungana na 260.000.000 Frw, ikaba itabasha kugaragaza ko Musabyimana Célestin na Somayire Rubona Freddy bigeze biyemeza kwishingira umwenda ungana na 410.000.000 Frw, ko rero ECOBANK RWANDA Plc yagombaga kugaragaza ko umwenda wa 260.000.000 Frw ukomereje aho, ko rero kuba bitarakozwe, basanga ikirego cyaratanzwe nabi, ikaba yaragombaga kurega INTERTRADE F&C Ltd, aho kurega Musabyimana Célestin na Somayire RUBONA Freddy. Basaba Urukiko kutazasuzumira umwenda wa 410.000.000 Frw muri uru rubanza, kuko utigeze uvugwa mu rubanza rusubirishwamo ingingo nshya, ko uvuzwe ari uko habayeho kwakira ikirego cyo gusubirishamo urubanza ingingo nshya.

[23] Mu gutanga ibisobanuro kuri raporo yakoze, umuhanga Gashagaza Patrick avuga ko yagenzuye mu bitabo bya banki, asanga INTERTRADE F & C Ltd yarahawe umwenda ungana na 260.000.000 Frw, harimo 200.000.000 y'inguzanyo y'inyandiko nyizezabwishyu yo gutumiza ibicuruzwa mu mahanga na 60.000.000 Frw y'inguzanyo kuri konti yo kubitsa no kubikuza. Akomeza avuga ko ayo masezerano y'inguzanyo yatangiye ku wa 22/07/2010 agomba kurangira ku wa 31/07/2011, ko ariko mbere y'uko arangira, sosiyete yasanze ikeneye ubushobozi burenzeho, ijya mu biganiro na banki iyisaba ko yayiha 410.000.000 Frw, amasezerano y'uwo mwenda mushyashya ashyirwaho umukono ku wa 15/09/2011. Akomeza avuga ko umwenda wa 260.000.000 Frw wari ufite ingwate y'ikibanza n° 11895 ufite agaciro kangana na 288.600.000 Frw, ukaba kandi wari wishingiwe ku mitungo ya Musabyimana Célestin na SOMAYIRE RUBONA Freddy, umwenda ungana na 410.000.000 Frw na none ugira ingwate y'ikibanza n° 11895 wari ugejeje ku gaciro kangana na 427.128.000 Frw, wishingirwa no ku mitungo ya Somayire Rubona Freddy.

[24] Ku kibazo cyo kumenya niba umwenda ungana na 260.000.000 Frw warishyuwe cyangwa hari igice cyawo gisigaye kwishyurwa n'isano yaba iri hagati y'umwenda ungana na 260.000.000 Frw n'uwa 410.000.000 Frw, umuhanga GASHAGAZA Patrick asobanura ko yasanze mbere yo gufata umwenda ungana na 410.000.000 Frw, ku mwenda wa 260.000.000 Frw hari hasigaye 210.000.000 Frw, amasezerano y'umwenda ungana na 260.000.000 Frw avaho, umwenda wari usigaye ushyirwa mu masezerano mashya y'umwenda ungana na 410.000.000 Frw kandi ko umukiliya ari we wasabye kongererwa ubushobozi mbere y'uko amasezerano y'umwenda wa mbere arangira.

[25] Akomeza avuga ko umwenda wari usigaye ungana na 210.000.000 Frw wimuriwe mu mwenda wa 410.000.000 Frw kandi ko mu kuwutanga hasinywe amasezerano mashyashya, ubwishingizi bushya bugaragazwa muri ayo masezerano kubera ko ubwa mbere butari bugifite agaciro.

[26] Musabyimana Célestin avuga ko ibisobanuro byatanzwe n'umuhanga ari ko yari abizi kandi ko yayikoze neza, kandi ko Avoka wa ECOBANK RWANDA Plc yigeze kuvuga ko niberekana ko umwenda ungana na 260.000.000 Frw warangiye, atazongera kuburana, ko rero we na Somayire Rubona Freddy batishingiye umwenda wa 410.000.000 Frw, ko utabareba. Asoza avuga ko umwenda wa 260.000.000 Frw utakiriho, ko nta nshingano bakiwufiteho, ko niba banki yaba ifite ikibazo ku mwenda ungana na 410.000.000 Frw, yabiregera mu Rukiko kandi ko biteguye kuburana.

[27] Me Masumbuko Nde Emile na Me Idahemuka Tharcisse bavuga ko ikibazo cyatangiye ari umwenda wa 260.000.000 Frw, ko niba umuhanga yarasanze wararangiye, akagaragaza isano ufitanye n'umwenda wa 410.000.000 Frw, batiteguye kuburana, ko ikibazo cyari 260.000.000 Frw kandi ko cyarangiye. Bavuga kandi ko nta cyo bavuga kuri raporo y'umuhanga, kubera ko amasezerano y'umwenda ungana na 260.000.000 Frw yarangiye, ko ibisobanuro bya banki atari byo kubera ko "Mainlevée yakozwe ku wa 07/10/2011, ari na byo byari biteganyijwe mu ngingo ya 5 y'ubwishingizi bw'abo bunganira, na ho ubwumvikane bw'amasezerano y'umwenda wa 410.000.000 Frw buba ku wa 15/09/2011, ko rero ibyo ECOBANK RWANDA Plc ivuga atari byo kuko hari ibimenyetso bibivuguruza.

[28] Me Bimenyimana Eric avuga ko bemera uko raporo y'umuhanga ikozwe, ko abarega bavuga ko bahawe "Mainlevée" bamaze kwishyura umwenda ariko ko umuhanga yagaragaje ko batari bishyura, ko ibyo Me Idahemuka Tharcisse avuga birebana n'ingingo ya 5 y'ubwishingizi, bashaka kwitiranya ubwishingizi n'ingwate kandi ko nta ho "Mainlevée" ivuga ko habaye "révocation de guarantie", kandi ko ikimenyetso cya "Mainlevée" kidashobora guhindura urubanza rusubirishwamo ingingo nshya. Akomeza avuga ko Somayire Rubona Freddy ari we wishingiye umwenda ungana na 410.000.000 Frw, ariko ko Musabyimana Célestin afite inshingano ku mwenda wa 210.115.808 Frw barezwe, na ho Somayire Rubona Freddy akaba afite inshingano kuri 210.115.808 Frw n'arengaho.

Uko Urukiko rubibona

[29] Ingingo ya 170, igika cya mbere y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "Urubanza rushobora gusubirishwamo ingingo nshya […] 3º iyo kuva aho ruciriwe, habonetse ikimenyetso gishya kimara impaka, kigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo," iya 170, igika cya gatatu y'itegeko rimaze kuvugwa iteganya ko "Ikimenyetso n'iyo ari gishya gihabwa agaciro gusa iyo gishobora kuvuguruza ibyari byashingiweho mu ica ry'urubanza rusabirwa gusubirishwamo ingingo nshya", naho ingingo ya 12, igika cya kabiri y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe igateganya ko" Uvuga ko atagitegetswe gukora icyo yategekwaga gukora cyagaragajwe n'ibimenyetso, agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda."

[30] Dosiye y'urubanza igaragaza inyandiko yo ku wa 15/09/2011, ECOBANK RWANDA Plc yandikiye Umuyobozi Mukuru wa INTERTRADE F& C Ltd, ari we Musabyimana Célestin, imumenyesha ibigomba kubahirizwa kugira ngo sosiyete abereye umuyobozi ihabwe umwenda ungana na 410.000.000 Frw, akaba yarayishyizeho umukono ku wa 16/09/2011.

[31] Hari inyandikomvugo y'inama yo ku wa 15/09/2011, aho abagize inama y'ubutegetsi ya INTERTRADE F& C Ltd, ari bo Musabyimana Célestin na Somayire Rubona Freddy bateranye bagasuzuma ibikubiye mu ibaruwa yanditswe na ECOBANK RWANDA Plc ku wa 15/09/2011 irebana n'inguzanyo n'uburyo yabagejejeho bwo kuyikoresha, abagize inama biyemeza gushyira mu bikorwa ibikubiye muri iyo baruwa ari byo: 1. inguzanyo y'ingoboka ingana na 60.000.000 Frw kuri konti yo kubitsa no kubikuza; 2. inguzanyo y'inyandiko nyizezabwishyu yo gutumiza ibicuruzwa mu mahanga ingana na 300.000.000 Frw; 3. inguzanyo ingana na 50.000.000 Frw y'ubwishingizi mu ipiganwa ry'amasoko.

[32] Dosiye y'urubanza igaragaza kandi "Acte de mainlevée hypothécaire" yo ku wa 07/10/2011, aho ECOBANK RWANDA Plc yahanaguraga ingwate igizwe n'ikibanza nº 11895 giherereye mu Karere ka Kicukiro, Umujyi wa Kigali cyari cyarashyizwe mu bugwate ku wa 02/08/2010, hishingirwa umwenda ungana na 260.000.000 Frw, iyo "acte de mainlevée hypothécaire" yemejwe imbere ya Noteri w'Akarere ka Nyarugenge ku wa 17/10/2011, icyo gihe hakaba hari abahagarariye ECOBANK RWANDA Plc, Noteri w'Akarere ka Nyarugenge, ku ruhande rwa INTERTRADE F& C Ltd hakaba hari Musabyimana Célestin washyizeho umukono.

[33] Igika cya kabiri cy'urubanza RCOMAA 00067/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 23/04/2021 rusubirishwamo ingingo nshya, kigaragaza ko Musabyimana Célestin na Somayire Rubona Freddy, kuva mu Rukiko rw'Ubucuruzi, mu Rukiko Rukuru rw'Ubucuruzi no mu Rukiko rw'Ubujurire, baburanye bavuga ko umwenda bishingiye wishyuwe binyujijwe muri cyamunara y'umutungo watanzweho ingwate, ko kuba ingwate yagurishijwe amafaranga make, ECOBANK RWANDA Plc itabishyuza amafaranga yasigaye nk'abishingizi kandi iyo ngwate yagurishijwe ku gaciro gake biturutse ku makosa ya Bank.

[34] Urukiko rurasanga, kuva mu ntangiriro z'urubanza, Musabyimana Célestin na Somayire Rubona Freddy batarigeze bavuga ko umwenda ungana na 260.000.000 Frw waba warishyuwe mu buryo ubwo ari bwo bwose, ahubwo bakomeje kuvuga ko wishyuwe hifashishijwe guteza cyamunara umutungo watanzweho ingwate, ariko na bo bazi neza ko igiciro cyatanzwe muri cyamunara kitishyuye umwenda wose, ari yo mpamvu ECOBANK RWANDA Plc yabareze nk'abishingizi b'umwenda wahawe INTERTRADE F& C Ltd ntishobore kuwishyura wose.

[35] Urukiko rurasanga, umuhanga mu mategeko witwa Goel PIETTE, asobanura ko uberewemo umwenda (créancier) ashobora guhanagura ingwate yahawe ku bushake (radiation volontaire) mu gihe yishyuwe umwenda cyangwa ashaka korohereza urimo umwenda (débiteur). Avuga ko mu gihe uberewemo umwenda ahanaguye ingwate mu rwego rwo korohereza ufite umwenda, uberewemo umwenda agomba kugira uburenganzira ndakumirwa (droit réel) kuri uwo mutungo utimukanwa watanzweho ingwate.

[36] Nk'uko byagaragajwe na raporo y'umuhanga wahawe inshingano ndetse n'ababuranyi bakaba babyiyemerera, umwenda ungana na 210.992.118 Frw wari usigaye ku mwenda wa 260.000.000 Frw nta bwo INTERTRADE F&C Ltd yawishyuye ndetse n'abishingizi bawo

ntibawishyuye, ahubwo mu rwego rwo koroherezanya hagati ya banki n'abakiliya bayo, ECOBANK RWANDA Plc yimuriye uwo mwenda mu masezerano mashya y'umwenda ungana na 410.000.000 Frw, ubu buryo bw'imikoranire bukaba bwasobanuwe n'umuhanga mu mategeko wavuzwe mu gika kibanziriza iki.

[37] Urukiko rurasanga, hashingiwe ku bikubiye mu nyandiko yanditswe ku wa 15/09/2011 hagati ya ECOBANK RWANDA Plc na Musabyimana Célestin n'ibikubiye mu nyandikomvugo y'inama yo ku wa 15/09/2011 yakozwe n'abagize inama y'ubutegetsi ya INTERTRADE F&C Ltd biyemeza kubahiriza ibyasabwe na ECOBANK RWANDA Plc kugira ngo sosiyete yabo ihabwe inguzanyo yifuzaga, aho mu nyandiko ya banki hagaragaramo ko hagomba gutangwa ingwate igizwe n'ikibanza cyanditse kuri nº 11895 giherereye mu Karere ka Kicukiro, abagize inama y'ubutegetsi ya INTERTRADE F& C Ltd bariyemeje kubahiriza ibyifuzo byose bya ECOBANK RWANDA Plc kugira ngo iyo nguzanyo itangwe.

[38] Urukiko rurasanga, kuba Musabyimana Célestin na Somayire Rubona Freddy bariyemeje kubahiriza ibikubiye mu nyandiko yo ku wa 15/09/2011 yateguwe na ECOBANK RWANDA Plc ivugwamo ingwate y'ikibanza nº 11895 bigaragara ko cyari mu bugwate kugeza ku wa 07/10/2011 ubwo ingwate yahanagurwaga, ariko ntibagaragaze ikimenyetso kigaragaza ubwishyu bwaba bwarakozwe hagati aho, ngo bagaragaze itariki bishyuriyeho umwenda, bagaragaze niba amafaranga y'ubwishyu yarashyizwe kuri konti 1 Goel PIETTE, Droit des sûretés, 7ème édition, Gaulino, Paris, 2015, p.151." […] la radiation volontaire peut s'expliquer par le paiement effectué par le débiteur auquel cas la sûreté n'a plus de raison d'être ou par la volonté du créancier de renoncer à l'inscription par exemple pour favoriser le crédit du débiteur. Les règles de capacité ne sont pas les mêmes dans les deux hypothèques. Dans le premier cas, le créancier doit simplement avoir la capacité de recevoir le paiement, tandis que dans le second, il est exigé qu'il ait la capacité de disposer d'un droit réel immobilier" cyangwa barishyuye cash, inyandiko yiswe " Acte de mainlevée hypothécaire" idasobanuye ubwishyu bw'umwenda, cyane cyane ko nta ho ECOBANK RWANDA Plc yigeze igaragaza muri iyo nyandiko ko ikozwe kubera ko ubwishyu butanzwe.

[39] Urukiko rurasanga, inyandiko yiswe "Acte de mainlevée hypothécaire" atari ikimenyetso kimara impaka kugira ngo hemezwe ko umwenda waburanwe mu rubanza rusubirishwamo ingingo nshya INTERTRADE F&C Ltd yari ifitiye ECOBANK RWANDA Plc wishyuwe, cyane ko abarega na bo biyemerera ko wimuriwe mu mwenda ungana na 410.000.000 Frw, akaba nta kibakuraho inshingano zo kwishyura uwo mwenda bombi bishingiye mu gihe hagaragajwe ko utishyuwe koko.

[40] Urukiko rurasanga, hakurikijwe ibyashingiweho n'Urukiko mu gufata icyemezo mu rubanza RCOMAA 00067/2020/CA rusubirishwamo ingingo nshya, ku biteganywa n'amategeko ndetse n'inyandiko z'abahanga mu mategeko,"Acte de mainlevée hypothécaire" yanditswe na ECOBANK RWANDA Plc ku wa 07/10/2011, idasobanuye ko umwenda wahawe INTERTRADE F& C Ltd ungana na 260.000.000 Frw wishyuwe, bityo ikaba atari ikimenyetso gishya kimara impaka kigaragaza ko abishingizi Musabyimana Célestin na Somayire Rubona Freddy batagombaga gusabwa kwishyura umwenda INTERTRADE F&C Ltd itashoboye kwishyura ungana na 210.115.808 Frw.

[41] Ku bijyanye no kumenya niba Musabyimana Célestin na Somayire Rubona Freddy bahabwa indishyi basaba, Urukiko rurasanga, hashingiwe ku ngingo ya 75, igika cya mbere

y’itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, iteganya ko “Muri rusange nta nyandiko, imyanzuro y’urubanza cyangwa inyandiko ikubiyemo ingingo ziburanishwa bishobora koherererezwa Urukiko nyuma y’inama ntegurarubanza”, uretse ko iyi ngingo itanigeze isuzumwa mu rubanza rusubirishwamo ingingo nshya, rutagomba gusuzuma iki kibazo, kubera ko kitigeze kigibwaho impaka mu nama ntegurarubanza yabaye ku wa 22/11/2021.

2. Ku byerekeye amafaranga y’igihembo cya Avoka n’ikurikiranarubanza

[42] Me Bimenyimana Eric asaba Urukiko rw’Ubujurire gutegeka Musabyimana Célestin na Somayire Rubona Freddy kwishyura ECOBANK RWANDA Plc 2.000.000 Frw, akubiyemo 1.000.000 Frw mu rubanza 00001/2021/CA na 1.000.000 Frw mu rubanza rw’ikirego cyihutirwa rufite RCOM 00004/2021/CA y’igihembo cya Avoka, kuko ECOBANK RWANDA Plc itayagenewe kandi yatsinze urwo rubanza.

[43] Me Masumbuko NDE Emile avuga ko kuba abo ahagarariye barasubirishijemo urubanza RCOMAA 00067/2020/CA ingingo nshya, ari uburenganzira bemererwa n’amategeko, bityo amafaranga y’igihembo cya Avoka ECOBANK RWANDA Plc isaba akaba nta shingiro yahabwa.

Uko Urukiko rubibona

[44] Ingingo ya 111 y’itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi iteganya ko ”Ikirego cy’amafaranga y’ikurikiranarubanza ari ikirego gishamikiye ku kirego cy’iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Kiburanishirizwa rimwe n’ikirego cy’iremezo."

[45] Urukiko rurasanga, Musabyimana Célestin na Somayire Rubona Freddy bagomba gusubiza ECOBANK RWANDA Plc amafaranga y’igihembo cya Avoka angana na 800.000 Frw y’igihembo cya Avoka, buri wese agatanga 400.000 Frw, kuko yaburaniwe na Avoka wakurikiranye urubanza ku nzego zose, akaba agenwe mu bushishozi bwarwo, kubera ko ayo isaba ari menshi.

III. ICYEMEZO CY’URUKIKO

[46] Rwemeje ko ikirego cyatanzwe na Musabyimana Célestin na Somayire Rubona Freddy cyo gusubirishamo ingingo nshya urubanza RCOMAA 00067/2020/CA rwaciwe n’Urukiko rw’Ubujurire ku wa 23/04/2021, nta shingiro gifite.

[47] Rwemeje ko urubanza RCOMAA 00067/2020/CA rwaciwe n’Urukiko rw’Ubujurire ku wa 23/04/2021, rugumanye agaciro karwo.

[48] Rutegetse Musabyimana Célestin na Somayire Rubona Freddy gufatanya guha ECOBANK RWANDA Plc 800.000 Frw y’igihembo cya Avoka, buri wese agatanga 400.000 Frw.

[49] Rutegetse ko ingwate y’amagarama yatanzwe na Musabyimana Célestin na Somayire Rubona Freddy barega, ihwanye n’ibyakozwe muri uru rubanza.