UWIMANA v. EQUITY BANK RWANDA LTD N'UNDI

[Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA00815/2018/CHC/HCC (Mutajiri, P.J.) 25 Gicurasi 2018]

Amategeko agenga ingwate – Gutiza ingwate – Inguzanyo yatanzwe uwatije ingwate atabigizemo uruhare – Mu gihe uwatijwe ingwate yishyuye inguzanyo yari yahawe atizwa ingwate ntashobora kubishingiraho yongera gusaba indi nguzanyo uwayimutije atabigizemo uruhare – Icyo gihe amasezerano y'ubugwate ku nguzanyo ya kabiri ateshwa agaciro nyiri ngwate akayisubirana.

Incamake y'ikibazo: Equity Bank Rwanda yagiranye amasezerano y'inguzanyo na BES & SUPPLY LTD. Muri ayo masezerano haje kubamo aho Uwimana atiza ingwate y'umutungo we Nzirera Aimable nyiri sosiyete yavuzwe haruguru.

Intandaro y'urubanza ikaba yarabaye iy'uko Uwimana nyuma yo kumenya ko umwenda yari waratijemo ingwate wishyuwe ariko Equity Bank ikongera igaha undi mwenda BES & SUPPLY LTD atabigizemo uruhare yanarangiza banki ikongera ikandikisha ingwate ye ku mwenda mushya, kugeza aho na banki yari igiye guteza cyamunara umutungo we.

Uwimana yaregeye Urukiko rw'Ubucuruzi asaba gutesha agaciro amasezerano y'ubugwate yandikishijwe ku mwenda wa kabiri wahawe BES & SUPPLY LTD atabigizemo uruhare no gusubizwa ingwate ye. Urukiko rwemeje ko ikirego cye nta shingiro gifite kuko ngo BES & SUPPLY LTD itari yakishyuye umwenda wose ibereyemo Equity Bank.

Uwimana yajuririye Urukiko Rukuru rw'Ubucuruzi avuga ko urukiko rubanza rwagombaga gutesha agaciro amasezerano y'ubugwate yakozwe ku nguzanyo ya kabiri yahawe BES & SUPPLY LTD atabigizemo uruhare, rwarangiza rugategeka ko agomba gusubizwa n'umutungo we kuko inguzanyo watanzweho yari yararangije kwishyurwa.

Equity bank yireguye ivuga ko ubujurire bwa Uwimana nta shingiro bufite kuko atigeze agaragaza ko umwenda wahawe BES & SUPPLY LTD uretse kubivuga mu magambo kandi ko ingwate yasubizwa ingwate ari uko uwawuhawe amaze kuwishyura. Asoza avuga asanga nta mpamvu yo gutesha agaciro amasezerano y'ubugwate mu gihe umwenda wose utarishyurwa.

Ku ngingo y'uko haba hari umwenda wa kabiri wahawe BES & SUPPLY LTD, Equity Bank yavuze ko nta mwenda wundi watanzwe, ko umwenda wishyuzwa ari ukomoka kuwa mbere wari watanzwe utarishyuwe. Yongeye ariko ivuga amasezerano ya kabiri bayagiranye ariko ko atigeze ashyirwa mu bikorwa nk'uko yabigaragaraje mu ibaruwa yayo yo kuwa 31 Mutarama 2018.

Incamake y'icyemezo: Kuba umunsi ingwate yagombaga kurangiriraho nk'uko bigaragazwa na abstact of mortgage agreement amended aribwo banki yongeye kwiyandikishaho ingwate itabiherewe uburenganzira na nyiri umutungo; bigaragaza uburiganya banki yakoreye ku ngwate yari yahawe. Banki ikaba yari ifite inshingano yo kubahiriza amasezerano ya mbere arinayo yahawemo ingwate kuko ayo masezerano yari yabaye itegeko kuriyo n'uwo yagurije. Bityo, ingwate igizwe na UPI: 1/03/07/01/248 yatanzwe ku nguzanyo yo kuwa 28/11/2016 ikaba iteshejwe agaciro kandi ikaba igomba gusubizwa UWIMANA Saidi Salim.

Ubujurire bufite ishingiro.

Imikirize y'urubanza RCOM 1057/2017/TC/NYGE iteshejwe agaciro. Amagarama agomba gusubizwa uwajuriye.

Amategeko yashingiweho:
Itegeko nº 45/2011 ryo kuwa 25/11/2011 rigena amasezerano, ingingo ya 64.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu rukiko rw'ubucuruzi rwa Nyarugenge Uwimana Said Salim arega Equity Bank na BES AND SUPPLY Ltd asaba iseswa ry'amasezerano y'ubugwate ku mutungo we ufite nimero UPI: 1/03/07/01/248.

[2] Impamvu y'isabwa ry'iryo seswa ngo akaba ari ukuba Uwimana Said Salim yari yaratije ingwate uwitwa Nzirera Aimable nawe ayiha Equity Bank kubera umwenda BES & Supply Ltd abereye umuyobozi yari ifitiye iyi banki. Avuga ko ubwo hakorwaga igenagaciro uwo mutungo wari ufite agaciro ka 44,000,000 FRW kandi umwenda wari watanzwe ngo wari amafaranga 217,000,000. Uwimana Said Salim ngo akaba yaraje kumenya ko BES & Supply Ltd yishyuye iyo nguzanyo ikarangira, nyuma yaho aza gutungurwa no kumva ko BES & Supply Ltd bongeye kumvikana igahabwa indi nguzanyo igakomeza gufatira ingwate ye atabizi.

[3] BES & Supply Ltd ikaba ubu ngo yarananiwe kwishyura iyo nguzanyo bityo Equity ikaba ngo ishaka guteza cyamunara umutungo we, iyo akaba ariyo mpamvu yaregeye urukiko.

[4] Urukiko mu guca urubanza rwaburanishijwe Uwimana Said Salim na BES & Supply Ltd badahari rukaba rwaremeje ko amasezerano y'ubugwate k'umutungo UPI: 1/03/07/01/248 atagomba guseswa ko kandi uwo mutungo ukomeza kuba ingwate ya Equity kugeza umwenda BES & Supply Ltd iyifitiye wishyuwe. Rukaba rwaranategetse Uwimana Saidi Salim kwishyura Equit Bank indishyi z'ikurikiranarubanza n'igihembo cya avoka.

[5] Uwimana Saidi Salim akaba atarishimiye imikirize y'urubanza maze Me Munyamashara Fonyo Patient mu mwanya we ajurira asaba ko hasuzumwa ko amasezerano y'ubugwate yateshwa agaciro nk'uko urega abisaba, gusuzuma amakosa y'abaregwa bakomeje kugwatiriza ingwate no gusuzuma amafaranga y'igihembo cya avoka, ikurikiranarubanza ndetse n'ingwate y'amagarama.

[6] Me Mwesigye Livingston mu kugira icyo avuga ku mpamvu z'ubujurire avuga ko nta shingiro zahabwa ngo kuko ingwate itateshwa agaciro ngo kuko byaba ari ukwirengagiza yuko uwatijwe ingwate atishyuye umwenda abereyemo banki, ko kandi ingwate yagombaga gusubizwa ari uko umwenda umaze kwishyurwa. Asoza avuga ko Uwimana Saidi Salim yategekwa gutanga indishyi z'ikurikiranarubanza n'igihembo cya avoka kubera gushora Equity Bank Rwanda Ltd mu manza ku maherere kandi akiyongera kuyatanzwe ku rwego rwambere.

[7] Me Ntwali Nkundimana Justin mu mwanya wa BES avuga ko koko BES yemera ko yatijwe ingwate na Uwimana Said kumwenda ungana na 217,000,000 FRW, uyu mwenda BES yawishyuye nk'uko bigaragazwa na historique bancaire ko ahubwo umwenda utarishyurwa ari uw'amafaranga 205,000,000 FRW.

[8] Muri uru rubanza hakaba hagomba gusuzumwa niba amasezerano y'ubugwate yateshwa agaciro no kumenya niba hari amakosa abaregwa bakoze mugukomeza kugwatiriza ingwate, gusuzuma amafaranga y'igihembo cya avoka, ikurikiranarubanza ndetse n'ingwate y'amagarama no gusuzuma niba UWIMANA Saidi Salim yategekwa gutanga indishyi z'ikurikiranarubanza n'igihembo cya avoka kubera gushora Equity Bank Rwanda Ltd mu manza ku maherere.

II. ISESENGURA RY'IBIBAZO

A. Kubirebana no gusuzuma niba amasezerano y'ubugwate yateshwa agaciro no kumenya niba hari amakosa abaregwa bakoze mu gukomeza kugwatiriza ingwate

[9] Me Munyamashara Fonyo Patient asobanura ko Uwimana Saidi Salim yatije ingwate B.E.S & SUPPLY Ltd ubwo yasabaga ideni muri Equity Bank Rwanda Ltd, iyo ngwate bayandikisha muri RDB. Iyo ngwate ifite agaciro ka 44,000,000 FRW ikaba ngo yari yatijwe hafatwa ideni rya 217,000,000 RFW yo gukora isoko. Amasezerano y'iyo nguzanyo yakozwe tariki 29/02/2016. Uwimna Saidi Salim ngo yaje kumenya ko B.E.S & SUPPLY Ltd yishyuye iyo nguzanyo irarangira. Mu gihe Uwimana Saidi Salim yari ategereje ko asubizwa icyangombwa cye cy'ubutaka yaje gutungurwa no kumva ko B.E.S & SUPPLY Ltd na Equity Bank Rwanda Ltd bongeye kumvikana rwihishwa, B.E.S & SUPPLY Ltd ihabwa indi nguzanyo Equity Bank Rwanda Ltd ikomeza gufata ingwate ya Uwimana Saidi Salim atabizi, none ubu ngo B.E.S & SUPPLY Ltd yananiwe kwishyura bikaba bigeze aho Equity Bank Rwanda Ltd ishaka guteza cyamunara uwo mutungo we.

[10] Asoza asobanura ko nk'uko abstract of mortgage agreement ibigaragaza ko ubwo bugwate bwagombaga kurangira kuri 28/11/2016 uwo munsi arinabwo hasinywe andi masezerano imbere ya noteri y'umwenda mushya wa 205,171,829 FRW Uwimana saidi atigeze yishyingira kandi atanigeze amenyeshwa. Ibi ngo bigaragara ko ari uburiganya bwabaye hagati ya banki na BES. Iyo akaba ngo ariyo mpamvu asaba urukiko kwemeza ko abaregwa bakoze amakosa yo gukomeza kugwatiriza umutungo wa Uwimana Saidi Salim binyuranije n'amategeko. Avuga ko umunsi amasezerano y'umwenda wa kabiri yashyiriweho umukono imbere yo kwa noteri kuwa 28/11/2016 ari nabwo amasezerano yo gutiza ingwate yari mu masezerano ya mbere akaba ariwo munsi yagombaga kurangiriraho. Harebwa abstract ugasanga EQUITY mu rwego rwo gusibanganya ibimenyetso yashyizemo abstract, ariko wareba mu masezerano icyiswe termination date y'ingwate ikaba itarigeze igaragazwa.

[11] Me Mwesigye Livingston asobanura ko ibisabwa n'uwajuriye asanga nta shingiro bifite cyane ko kwaba ari ukwirengagiza yuko uwo yatije ingwate atishyuye umwenda abereyemo Equity Bank Rwanda Ltd wa 217,000,000 FRW. Bityo rero akaba adakwiye gusaba ko ubugwate bwateshwa agaciro mugihe atagaragaza yuko umwenda wishyuzwa wishyuwe uretse kuba abivuga mu magambo, ibi akaba ngo asanga bihabanye n'ibiteganywa n'ingingo ya 9 CPCCSA.

[12] Kuba BES & SUPPLY CO LTD itarubahirije ibyumvikanyweho bijyanye n'imyishyurire y'inguzanyo asanga yaranyuranyije n’ingingo ya 64 y’itegeko rigenga amasezerano, bityo ikaba ntaho yahera isaba gutesha agaciro amasezerano kandi ariyo yayishe, ingwate zatanzwe ku mwenda wa 217,000,000FRW zikaba zigomba gusigara mu bugwate kugeza uwatijwe ingwate yishyuye kandi bitakorwa zikavanwamo ubwishyu bw'umwenda wavuzwe haruguru nk’uko biteganywa n'ingingo ya 13 y'amasezerano y'iguriza.

[13] Asoza avuga ko Equity Bank Rwanda Ltd isanga nta kosa yakoze, kubera ko ibyo yakoze ar’ibyumvikanyweho n’uwahawe inguzanyo yuko ingwate yatanzwe izasubizwa ari uko yishyuye, kandi ko igihe uwatijwe ingwate atishyuye umwenda yahawe ingwate zatanzwe akaba arizo zivamo ubwishyu akaba ariyo mpamvu Equity yariyasabye uburenganzira RDB bwo guteza cyamunara kugirango ushobore kugaruza inguzanyo yatanze ingana na 217,000,000 FRW zitishyuwe nk’uko bigaragazwa na Bank statement. Hashingiwe ku ngingo ya 11 y'itegeko N° 10/2009 ryo kuwa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa. Akaba ari muri urwo rwego uwajuriye atasaba ko umutungo yatije uvanwa mu bugwate mu gihe atagaragaza ko uwo yatije yishyuye.

[14] Kubirebana n’ibijyanye no kuba hari undi mwenda ungana 205,000,000 FRW, BES yahawe rwihishwa kungwate zimwe kandi abazitije BES batagishijwe inama nabyo sibyo kuko nta mwenda wongeye gutangwa nyuma ya 217,000,000 FRW bityo umwenda wishyuzwa akaba ari ukomoka kuri 217,000,000FRW. Ubu akaba ari uburyo bwo kujijisha urukiko cyane ko ntaho bagaragaza baba barayaherewe uretse amasezerano bagiranye ariko ntashyirwe mu bikorwa nk’uko Equity Bank yabigaragaje mu ibaruwa yayo yo kuwa 31 Mutarama 2018.

[15] Nyuma yo kumva avuga ko yemera ko habayeho amasezerano abiri ko ariko aya kabiri atigeze ashyirwa mu bikorwa, ku kibazo cyo kumenya impamvu ki banki imaze kubona ko uwagurijwe atashoboye kwishyura umwenda wa mbere yemeye kongera kumuha undi mwenda, asubiza ko umwenda wa mbere umaze kutishyurwa BES yasabye ko yahabwa andi masezerano ko ariko banki imaze kubona ko amasezerano ya mbere atigeze ashyirwa mu bikorwa yamwangiye inguzanyo ya kabiri. Ibyo bigashimangirwa nuko mu ibaruwa yo kuwa 31/01/2018 yandikiwe urukiko kubirebana na historique, banki yasobanuye ko umwenda watangiwe kuri konti ye bwite, ko kandi kubera ko wari umwenda wigihe gito bitari ngombwa gufunguza indi konti.

[16] Ku kibazo cyo kumenya icyo avuga kuri expertise avuga ko iyo expertise batayemera kuko aribo bayikoreshereje. Nzirera asobanura ko ideni rya 217,000,000 FRW wa ligne de credit ryishyuwe kuwa 18/10/2016, kuri 28/11/2017 akaba BES yarahawe umwenda wa 205,000,000 FRW. BES ikaba ngo yaremeranyijwe na banki ko yayiha uyu mwenda ndetse ingwate zigakomeza kuba izo.

[17] Me Ntwali Nkunzimana Justin asobanura ko ibisobanuro bya EQUITY ataribyo kuko icyagombaga kugirwaho impaka ari historique ko kandi igaragaza debit na credit, naho amasezerano yo ahari kandi nta baruwa iyasesa. Avuga ko integuza yanditswe na banki yishyuza yo kuwa 16/03/2017 ko bayishubije ko banki yaba yaribeshye ko ahubwo umwenda wishyuzwa warangije kwishyura.

UKO URUKIKO RUBIBONA

[18] Ingingo za 64 y'itegeko ryo kuwa 25/11/2011 rigena amasezerano iteganya ko ''amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye'';

[19] Urukiko rusanga muri dosiye hagaragaramo amasezerano abiri anyuranye aya mbere yiswe contract financing facility y'amafaranga 217,000,000 yo kuwa 04/02/2016 yagombaga kumara amezi 6 yasinyiwe imbere ya noteri kuwa 03/03/2016, n'amasezerano ya kabiri yiswe over draft facility y'amafaranga 205,171,829 yashyizweho umukono kuwa 21/11/2016 asinyirwa imbere ya noteri kuwa 28/11/2016;

[20] Urukiko rusanga ibivugwa na Me Mwesigye ko nubwo hari amasezerano y'inguzanyo ya overdraft ko ariko iyo nguzanyo itigeze itangwa na banki bitahabwa ishingiro, kuko nk'uko bigaragazwa na historique urukiko rwashyikirijwe na banki yo kuva kuwa 01/01/2016 kugeza kuwa 08/06/2017, igaragaza ko kuwa 20/02/2017 hari indishyi zaciwe ku nguzanyo ya overdraft yo kuwa 28/11/2016 (charges on an overdraft granted on 28/11/2016), bikaba bitumvikana ukuntu BES yarigucibwa izo ndishyi k'unguzanyo itahawe koko, byongeye ibikubiye muri iyi historique bikaba bihuza neza n'igihe amasezerano y'inguzanyo ya overdraft facility yashyiriweho umukono imbere ya noteri kuwa 28/11/2016;

[21] Kuba historique igaragaza ko banki yatanze inguzanyo ya overdraft facility kuwa 28/11/2016, kuba muri iyo nguzanyo ingwate yatanzwe ari iyari yatanzwe ku nguzanyo ya mbere yo kuwa 03/03/2016, kuba banki iburana ivuga ko itigeze itanga iyo nguzanyo bivuga ko n'ingwate yayandikishijweho itigeze itangwa na cyane ko bigaragara ko banki nk'umwunyamwuga yakoze amakosa akabije yo kuba umunsi ingwate yagombaga kurangiriraho nk'uko bigaragazwa na abstact of mortgage agreement amended igaragaza ko ingwate yagombaga kurangira kuwa 28/11/2016, kuba kuri iyi tariki aribwo banki yongeye kwiyandikishaho iyo ngwate itabiherewe uburenganzira na nyiri umutungo, ibi bigaragaza uburiganya banki yakoreye ku ngwate yari yarahawe, banki ikaba yari ifite inshingano yo kubahiriza amasezerano ya mbere arinayo yahawemo ingwate kuko ayo masezerano yari yabaye itegeko kuriyo n'uwo yagurije nk'uko biteganywa n'ingingo ya 64 y'itegeko ryo kuwa 25/11/2011 ryavuzwe haruguru, bityo kubw'izo mpamvu ingwate igizwe na UPI: 1/03/07/01/248 yatanzwe ku nguzanyo yo kuwa 28/11/2016 ikaba iteshejwe agaciro kandi ikaba igomba gusubizwa UWIMANA Saidi Salim .

B. Ku birebana no gusuzuma amafaranga y'igihembo cya avoka, ikurikiranarubanza ndetse n'ingwate y'amagarama zisabwa na Uwimana Saidi Salim

[22] Me Munyamashara Fonyo Patient asobanura ko asaba urukiko gutegeka abaregwa kwishyura urega amafaranga y'ikurikiranarubanza 1,000,000FRW; igihembo cya avoka 2,000,000FRW ndetse n'amafaranga y'ingwate y'amagarama 125,000.

[23] Me Mwesigye Livingston asobanura ko indishyi zisabwa dusanga zidakwiye gutangwa cyane ko uwajuriye ndetse n'uwutijwe ingwate batubahirije ibyumvikanyweho mu masezerano y'igura aho banze kwishyura kuneza ahubo bakaba bakomeje gushora Equity Bank Rwanda Ltd mu manza bitari ngombwa.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 258 y’itegeko ryo kuwa 30 Nyakanga 1888 ryerekeye urwunge rw'amategeko y'imbonezamubano, igitabo cya gatatu ibyerekeye imirimo nshinganwa cyangwa amasezerano iteganya ko ‘’igikorwa cyose cy’umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse’’

[25] Urukiko rusanga indishyi z’ikurikiranarubanza n’igihembo cya avoka zisabwa na UWIMANA Saidi Salim zifite ishingiro kuko kuba bigaragara ko banki yarengerereye ikayandikishaho ingwate igizwe n’umutungo we nta burenganzira abiyihereye bigatuma agana inkiko kugira arenganurwe, kuba mu gukurikirana imanza yarashatse avoka umwunganira, hashingiwe ku ngingo ya 258 y’itegeko ryo kuwa 30 Nyakanga 1888 ryavuzwe haruguru, ibyo yatakaje byose muri izo manza bikaba bigomba kwishyurwa na Equity Bank kuko ariko nyirabayazana w’icyo gihombo, bityo ikaba igomba kumwishyura amafaranga 1,500,000 y’indishyi z’ikurikiranarubanza n’igihembo cya avoka zigenwe mu bushishozi bw’urukiko kuko izasabwaga ari umurengera.

C. Ku birebana no gusuzumaniba Uwimana Saidi Salim yategekwa gutanga indishyi z‘ikurikirana rubanza n‘igihembo cya avoka kubera gushora Equity Bank Rwanda Ltd mu manza ku maherere

[26] Me Mwesigye Livingston asobanura ko kubera gukomeza gushorwa mu manza na UWIMANA Saidi Salim yatije ingwate B.E.S & SUPPLY Ltd nti yubahirize ibyumvikanyweho mu masezerano y’iguriza bijyanye niyishyurwa ry’umwenda ibereyemo Equity Bank. Bityo rero Equity Bank Rwanda Ltd ikaba ibisabira indishyi zo gukurikirana urubanza zingana na 1,500,000 FRW.

[27] UWIMANA Saidi Salim n’umwunganizi we bakaba ntacyo bavuze kuri izi ndishyi.

UKO URUKIKO RUBIBONA

[28] Urukiko rusanga izi ndishyi zitagomba gutangwa kuko uzisaba urubanza rumutsinda.

III. ICYEMEZO CY’URUKIKO

[29] Rwemeye kwakira ubujurire bwa Uwimana Saidi Salim rubusuzumye rusanga bufite ishingiro.

[30] Rwemeje ko imikirize y’urubanza RCOM 1057/2017/TC/NYGE iteshejwe agaciro.

[31] Rwemeje ko ingwate UPI: 1/03/07/01/248 yatanzwe ku nguzanyo ya overdraft facility yo kuwa 28/11/2016 binyuranye n’amategeko iteshejwe agaciro.

[32] Rutegetse ko ingwate UPI: 1/03/07/01/248 yatanzwe ku nguzanyo ya overdraft facility yo kuwa 28/11/2016 iyndukuwe ku nguzanyo ya overdaft facility yo kuwa 28/11/2016 kandi ikaba igomba gusubizwa Uwimana Saidi Salim.

[33] Rutegetse Equity Bank Rwanda Ltd kwishyura Uwimana Saidi Salim amafaranga 1,500,000 y’indishyi z’ikurikiranarubanza n’igihembo cya avoka.

[34] Rutegetse Equity Bank Rwanda Ltd kwishyura Uwimana Saidi Salim amafaranga 125,000 y’amagarama yatanze arega.