

# **STRONG CONSTRUCTIONS LTD v. RADIANT INSURANCE COMPANY LTD**

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00002/2019/SC (Rugege, P.J., Kayitesi, Hitiyaremye, Cyanzayire na Rukundakuvuga, J.) 15 Ugushyingo 2019]

*Amategeko agenga amasezerano – Ubwishingire magirirane (Caution solidaire) – Iyo uwafashe umwenda ananiwe kwishyura, uwatanze umwenda afite burenganzira bwo gusaba umwishingizi kwishyura umwenda hatabanje gushakishwa ubwishyu mu mutungo w'uwishingiwe – Umwishingizi utubahirije inshingano zikubiye mu masezerano y'ubwishingizi bikaza gutera igihombo uwishingiwe, umwishingizi agomba kubitangira indishyi.*

**Incamake y'ikibazo:** Strong Constructions Ltd yagiranye amasezerano y'ubwishingizi na Radiant Insurance Company Ltd yo kwishingira kuzishyura amafaranga y'inguzanyo yatse muri Bank of Kigali kugira ngo ibashe kurangiza isoko yari yatsindiye mu bitaro bya Gisirikare bya Kanombe. Muri ubwo bwishingizi, Radiant Insurance Company Ltd yari yishingiye kwishyura ari uko bigaragaye ko nta mafaranga ahagije Strong yishyuwe aturutse ku isoko ryari ryishingiwe.

Strong Constructions Ltd ntiyubahirije igihe cyo kwishyura bituma Banki ya Kigali isaba Radiant Insurance Company Ltd kwishyura umwenda yari yishingiye. Radiant Insurance Company Ltd mbere yo kwishyura, yabanje gusaba Banki ya Kigali kuyiha amakuru kuri konti ya Strong Construction Ltd, maze imaze kubona ko konti yayo yanyujijweho amafaranga menshi kandi ko yanze kwishyura bituma Strong Construction Ltd iregera urukiko rw'Ubucuruzi.

Urukiko rwasuzumye urubanza maze rwemeza ko ikirego cya Strong Construction Ltd nta shingiro gifite ngo kuko ariyo yari kwishyura umwenda yafashe.

Strong Construction yajuririyeye Urukiko Rukuru rw'Ubucuruzi, maze rwemeza ko ikirego cyayo gifite ishingiro kuko Radiant Insurance Company Ltd itubahirije amasezerano y'ubwishingire bitewe n'uko iterekanye ibimenyetso bigaragaraza ko Strong Construction Ltd yishyuwe amafaranga aturutse ku isoko yari yishingiye, maze Urukiko Rukuru rw'Ubucuruzi rutegeka Radiant Insurance Company Ltd gusubiza Strong Construction Ltd indishyi yishyuye Banki ya Kigali kubera kutishyurira igihe ndetse no gusubiza amafaranga yari yafatiriwe na Banki ya Kigali.

Ibi byatumye Radiant Insurance Company Ltd ijuririra Urukiko rw'Ikirenga, maze rwemeza ko ikirego cyayo gifite ishingiro kuko Strong Construction Ltd itigeze ibura ubwishyu bitewe n'uko kuri konti yayo hanyuzeho amafaranga ahagije yakwishyura umwenda yahawe na Banki ya Kigali.

Nyuma yaho, Strong Constructions Ltd yandikiye Ibiro by'Umuvunyi isaba ko urubanza rwasubirwamo ku mpamvu z'akarengane. Nyuma yo gusesengura urubanza, Umuvunyi yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rusubirwamo. Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rusubirwamo ku mpamvu z'akarengane.

Mu iburanisha, Strong Constructions Ltd ivuga ko Urukiko rw'Ikirenga rwirengagije ko ubwishingire bwa Radiant Insurance Company Ltd ari ubwishingire magirirane “Caution Solidaire”, kuko yemeye ko izahita yishyura uwo mwenda ikibisabwa, rwirengagiza ndetse ibimenyetso byerekana ko Strong itashoboye kwishyura inguzanyo kubera ko nyir'isoko atashoboye kubona amafaranga, bigatuma inanirwa kuyishyura ku gihe.

Ku kibazo cyo kunanirwa kubona amafaranga «finance», Radiant Insurance Company Ltd yaburanye ivuga ko Strong Constructions Ltd ariyo yafashe umwenda, bityo ko yo yagombaga kwishyura ari uko yananiwe kwishyura, ariko ko yari ifite amafaranga yo kwishyura nk'uko *historique* ya konti ya banki yabyerekanye.

Ku kibazo cy'uko yemeye kuba ubwishingire bwe ari magirirane "Caution solidaire" no kwishyura umwenda uwo mwenda ikibiyisaba, ivuga ko atari ko bimeze, kubera ko amasezerano yagaragazaga ibigomba kubanza kuzuzwa mbere yo kwishyura, harimo no kubanza kwerekana ko amafaranga yanyujijwe kuri konte ya Strong Constructions Ltd atari ahagije kugira ngo yishyure iyo nguzanyo.

**Incamake y'icyemezo:** 1. Mu masezerano y'ubwishingire magirirane (Caution solidaire), iyo uwafashe umwenda ananiwe kwishyura, uwatanze umwenda afite burenganzira bwo gusaba umwishingizi kwishyura umwenda hatabanje gushakishwa ubwishyu mu mutungo w'ubwishingiwe.

2. Umwishingizi utubahirije inshingano zikubiye mu masezerano y'ubwishingizi magirirane bikaza gutera igihombo uwishingiwe, umwishingizi agomba kubitangira indishyi.

**Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro;  
Urubanza rwaciwe n'Urukiko rw'Ikirenga rurahindutse  
Amagarama aherereye k'uregwa.**

**Amategeko yashingiweho:**

Itegeko N° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 64 na 137.

**Nta manza zifashishijwe.**

**Inyandiko z'abahanga:**

Denis Philippe, Delphine Dehasse, Code Civil, 5 ème edition, Bruylant, 2007, page 287.

Jérôme François, Droit civil, les sûretés personnelles, Tome VIII, Economica, Paris, 2004, page 33.

Martin Imbleau, William A. Schabas, Introduction au droit rwandais, Les éditions Ivon Blais Inc, 1999, page 83.

Pierre Voirin, Gilles Goubeaux, Droit civil, Personnes-Famille-Incapacité-Biens-Obligations-Sûretés, Tome 1, 30<sup>ème</sup> édition, LGDJ, Paris, page 635.

## **Urubanza**

### **I. IMITERERE Y'URUBANZA**

[1] Strong Constructions Ltd yahawe na Banki ya Kigali inguzanyo ku wa 14/04/2014, ingana na 272,000,000 Frw yo kubaka VIP WING mu Bitaro bya Gisirikare bya Kanombe. Strong Constructions Ltd yahise igirana amasezerano tariki ya 15/04/2014, na Radiant Insurance Company Ltd yiswe "Contrat de Cautionnement N° RD 0010CRI1403488" yo kwishingira iyo

nguzanyo. Kuri iyo tariki na none, mu nyandiko yiswe "Acte de Cautionnement N° RD 0010CRI1401759/02645", Radiant Insurance Company Ltd yemeye kwishyurira Strong Constructions Ltd iyo nguzanyo, mu gihe bizagaragara ko nta mafaranga ahagije yishyuwe aturutse kuri iryo soko yanyujijwe kuri konti yayo N° 010-0323102-28 iri muri Banki ya Kigali kuburyo avamo ubwishyu.

[2] Strong Constructions Ltd ntiyishyuye umwenda yafashe muri Banki ya Kigali ku gihe cyari giteganyijwe, maze ku wa 13/04/2015 Banki ya Kigali yandikira Radiant Insurance Company Ltd iyimenyesha ko Strong Constructions Ltd itubahirije inshingano zayo zo kwishyura inguzanyo yahawe ingana na 272,000,000 Frw, isaba Radiant Insurance Company Ltd kwishyura ayo mafaranga hashingiwe ku masezerano y'ubwishingire (contrat de cautionnement) yagiranye na Strong Construction Ltd.

[3] Radiant Insurance Company Ltd imaze kubona ubwo busabe, yasabye Banki ya Kigali amakuru ku nguzanyo yahawe Strong Constructions Ltd igamije kureba niba nta mafaranga yishyuwe aturutse ku isoko yari yishingiye ryo kubaka VIP WING mu Bitaro bya Kanombe, maze ishingiye kuri « historique » ya konti ya Strong Constructions Company Ltd iri muri iyo Banki , isanga haranyujijweho 354.681.513 Frw akomoka kuri iryo soko yiswe « avance de démarrage », yishyuwe mu byiciro bibiri, 300.000.000 Frw yishyuwe ku wa 21/11/2013 na 54.681.513 Frw yishyuwe tariki ya 16/06/2014.

[4] Imaze kubona ko iyo Konti ya Strong Constructions Ltd yanyujijweho amafaranga, Radiant Insurance Company Ltd yanze kwishyura Banki ya Kigali. Strong Constructions Ltd yahise iregera Urukiko rw'Ubucuruzi rwa Nyarugenge ivuga ko Radiant Insurance Company Ltd itubahirije amasezerano y'ubwishingire bagiranye yo ku wa 15/04/2014.

[5] Mu rubanza N° RCOM 00011/2016/TC/NYGE rwaciwe ku wa 05/05/2016, Urukiko rwasanze ibyo Strong Constructions Ltd ivuga ko Radiant Insurance Company Ltd itubahirije amasezerano nta shingiro bifite, kuko ari yo mbere na mbere yagombaga kwishyura umwenda yari yarafashe, kandi ikaba itagaragaza ko yabuze ubwishyu cyangwa indi mpamvu yatumye itishyura, runayitegeka kwishyura Radiant Insurance Company indishyi z'igihembo cy'Avoka n'iz'ikurikiranarubanza zingana na 1.000.000 Frw.

[6] Strong Constructions Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi, mu rubanza N° RCOMA 00312/2016/CHC/HCC rwaciwe ku wa 14/10/2016, urwo Rukiko rwemeza ko ubujurire bwayo bufite ishingiro, kuko Radiant Insurance Company Ltd idafite ibimenyetso bifatika bigaragaza ko Strong Constructions Ltd yishyuwe amafaranga y'isoko yishingiye ryo kubaka VIP WING mu Bitaro bya Kanombe, ariko ntiyishyure Banki ya Kigali umwenda wayo, bityo rwemeza ko Radiant Insurance Company Ltd itubahirije inshingano zayo zikubiye mu masezerano y'ubwishingire. Rwayitegetse kandi gusubiza Strong Constructions Ltd indishyi yishyuye Banki ya Kigali kubera kutishyurira igihe zingana na 84.271.004 Frw, kuyisubiza amafaranga yayo 83.103.377 Frw yafatiriwe na Banki ya Kigali, gutanga 126.000 Frw y'amagarama yatanze ku rwego rwa mbere n'urwa kabiri, no kuyiha 3.000.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka kuri izo nzego.

[7] Radiant Insurance Company Ltd yajuririye Urukiko rw'Ikirenga, mu rubanza N<sup>o</sup> RCOMAA 00065/2016/SC-RCOMAA 0071/16/CS rwaciwe ku wa 21/06/2017, urwo Rukiko rwemeza ko ubujurire bwa Radiant Insurance Company Ltd bufite ishingiro, ko itagomba kwishyurira Strong Constructions Ltd, kuko itigeze ibura ubwishyu kubera ko byagaragaye ko kuri konti yayo hanyuzeho amafaranga ahagije yakwishyura umwenda yahawe na Banki ya Kigali ariko ntibikore, ruyitegeka guha Radiant Insurance Company Ltd 1.000.000FRW y'ikurikiranarubanza n'igihembo cy'Avoka, ndetse no kuyisubiza amafaranga y'amagarama yatanze mu rubanza angana na 100.000 Frw.

[8] Ku wa 11/09/2017 Strong Constructions Ltd yandikiye Urwego rw'Umuvunyi Mukuru isaba ko urubanza RCOMAA 00065/2016/SC-RCOMAA 0071/16/CS rusubirishwamo ku mpamvu z'akarengane. Nyuma y'isesengura ry'akarengane kavugwa na Strong Constructions Ltd, Umuvunyi Mukuru yasanze Radiant Insurance Company Ltd itarubahirije amasezerano y'ubwishingire yagiranye na Strong Construction Ltd, yandikira Nyakubahwa Perezida w'Urukiko rw'Ikirenga asaba ko urubanza rusubirwamo.

[9] Perezida w'Urukiko rw'Ikirenga nawe, nyuma y'isesengura ry'urubanza, mu cyemezo cye cyo ku wa 27/06/2019, yemeje ko ikirego cyoherezwa mu Bwanditsi bw'Urukiko kikandikwa mu bitabo byabugenewe, kugira ngo urubanza ruzongere ruburanishwe.

[10] Urubanza rwaburanishijwe mu ruhamwe ku wa 8/10/2019, Strong Constructions Ltd ihagarariwe na Me Idahemuka Tharcisse, naho Radiant Insurance Company Ltd iburanirwa na Me Kazungu Jean Bosco, Me RUZINDANA Ignace na Me Twiringiyemungu Joseph, rurafundikirwa, isomwa ryarwo rishyirwa ku wa 15/11/2019.

[11] Mu myanzuro yayo ndetse inaburana mu Rukiko, Strong Constructions Ltd ishingira akarengane kayo ku kuba mu rubanza RCOMAA 00065/2016/CS-RCOMAA 0071/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 21/06/2017, uru Rukiko rwaremeje ko itabuze ubushobozi bwo kwishyura umwenda yahawe na Banki ya Kigali, rwirengagije ibimenyetso bigaragarira buri wese byerekana ko itari ishoboye kwishyura. Kimwe muri ibyo bimenyetso akaba ari uko uwo bagiranye amasezerano yo kubaka VIP WING mu Bitaro bya Gisirikare bya Kanombe, ariwe MINADEF/ RMH, yabuze "financement", bityo imirimo ntiyakorwa uko yari yateguwe bituma nayo idashobora gukora imirimo ku gihe no kwishyurwa ku gihe, ariyo mpamvu Radiant Insurance Company Ltd, nk'umwishingizi wayo yagombaga kuyishyurira. Kuba Radiant Insurance Company Ltd itarishyuriye Strong Construction Ltd, ikaba itarubahirije amasezerano y'ubwishingire bagiranye, ariyo mpamvu igomba kwirengera indishyi z'igihombo byayiteje.

[12] Radiant Insurance Company Ltd yo yireguye ivuga ko kuri Konti ya Strong Constructions Ltd hanyuzeho amafaranga ahagije yakwishyura umwenda yahawe na Banki ya Kigali ariko ntiyishyura, bityo ko itari kuyishyurira itabuze ubushobozi. Ikibazo kiri mu rubanza akaba ari ukumenya niba Radiant Insurance Company Ltd itarubahirije inshingano zayo zikubiye mu masezerano y'ubwishingire yagiranye na Strong Constructions Ltd, byagaragara ko itazubahirije hagasuzumwa niba indishyi z'igihombo Strong Constructions Ltd ivuga ikwiye kuzihabwa.

## **II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO**

**a. Kumenya niba Radiant Insurance Company Ltd itarubahirije amasezerano y'ubwishingire (Acte de cautionnement) yagiranye na Strong Constructions Ltd.**

[13] Me Idahemuka Tharcisse uburanira Strong Constructions Ltd avuga ko akarengane yagiriwe mu rubanza RCOMAA 00065/2016/SC-RCOMAA0071/16/CS kagaragara mu buryo bukurikira :

- Kuba muri urwo rubanza Urukiko rw'Ikirenga rwaremeje ko Radiant Insurance Company Ltd itagombaga kuyishyurira umwenda wa 272,000,000 Frw yahawe na Banki ya Kigali yishingiye, kuko itari yarabuze ubushobozi bwo kwishyura kubera ko kuri konti yayo hanyujijweho amafaranga ahagije yakwishyura uwo mwenda, rwirengagije ibimenyetso bigaragarira buri wese byemeza ko itari ishoboye kwishyura, birimo kuba MINADEF/RMH yarabuze “financement” bikayiviramo kutishyurirwa ku gihe, binatuma imirimo idakorwa uko yari yateguwe.

Kuba Urukiko rw'Ikirenga rwarirengagije ko ingingo ya mbere y'amasezerano (Contrat de cautionnement No RD0010CRI1403488) bagiranye na Radiant Insurance Company Ltd yateganyaga ko yiyemeje kuba “Caution Solidaire”, no kwishyura nta yandi mananiza (assumer la garantie irrévocable du paiement), naho mu nyandiko yiswe “Acte de cautionnement No RD0010CRI1401759/02645” mu gika cyayo cya 5, ikiyemeza kwishyura Banki ya Kigali ikibisabwa bwa mbere mu nyandiko.

- Kuba Urukiko rwarirengagije inkomoko y'ubwishyuru bw'inguzanyo ya 272,000,000 Frw, rukemeza ko kuri Konti ya Strong Constructions Ltd hanyuzeho amafaranga ahagije kandi igika cya 5 cy'amasezerano (Acte de Cautionnement) cyarateganyaga ko ubwishyuru buzaturuka ku mafaranga azishyurwa kuri fagitire z'isoko ryishingiye ryo kubaka VIP WING mu Bitaro bya Kanombe, no kuba iyo nguzanyo yaritanyijwe na “avance de démarrage” kandi yari ifite amasezerano yihariye yiswe “Advance payment guarantee No RD001RC0A1305281” yo ku wa 04/10/2013, yaranayihawe mbere y'uko amasezerano aburanwa abaho, kuko yabayeho tariki ya 15/04/2014, “avance” yaratanzwe tariki ya 30/10/2013.

[14] Me Idahemuka Tharcisse avuga ko akarengane kandi gashingiye ku kuba Urukiko rwarirengagije ingingo z'amategeko zikurikira:

- Ingingo ya 170 CPCCSA yabuzaga umucamanza kurenga imbibi z'icyajuririwe, kuko rwasuzumye amafaranga yose yanyuze kuri Konti ya Strong Construction Ltd harimo nayo yishyurwe ku yandi masoko, rwirengagije ko icyagibwagaho impaka ari ubwishyuru bwa Kanombe Military Hospital bujyanye n'isoko ryo kubaka VIP WING, kandi rwirengagiza ko urubanza rw'ubucuruze cyangwa rw'imbenezamubano ruba ari urw'ababuranyi ubwabo.
- Ingingo ya 110 y'Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso n'itangwa ryabyo mu manza, iteganya ko kwiyemerera mu rubanza ari amagambo umuburanyi cyangwa umuhagarariye avugira mu rukiko agira ibyo yemera kandi ko ayo magambo atsindisha uyavuze, bityo ko kuba mu masezerano Radiant Insurance Company Ltd yariyemereye kuba « Caution solidaire » igatanga na « garantie irrévocable » yo kwishyura, bitari kwirengagizwa n'Urukiko.

[15] Me Kazungu Jean Bosco, Me Ruzindana Ignace na Me Twiringiyemungu Joseph baburanira Radiant Insurance Company Ltd basubiza ku ngingo zitangwa na Strong Constructions Ltd mu buryo bukurikira:

- Ku bijyanye no kubura " *financement* ", bavuga ko Strong Constructions Ltd ariyo yafashe inguzanyo muri Banki ya Kigali, akaba ariyo yari "Débuteur Principal", ko Radiant Insurance Company Ltd yagombaga kwishyura ari uko Strong Constructions Ltd yananiwe kwishyura, ariko ko itabuze ubushobozi bwo kwishyura, kuko Banki ya Kigali yagaragaje ko kuri konti yayo hanyuzeho amafaranga arenze kure umwenda yishingiye, kandi ko Banki ya Kigali yiyishyuye umwenda wayo kubera ko Strong Constructions Ltd yari ifite ubwishyu.
- Ku bijyanye no kuba Radiant Insurance Company Ltd yari yaremeye kuba "Caution solidaire" no kwishyura ikibisabwa nta yandi mananiza abayeho, bavuga ko ibyo atari byo, kuko muri ayo masezerano hagaragaramo ibigomba kubanza kubahirizwa mbere y'uko yishyura, harimo kubanza kugaragaza ko konti ya Strong Constructions Ltd iri muri iyo banki hanyuzeho amafaranga adashobora kwishyura inguzanyo yatanzwe. Basobanura ko ibikubiye muri "acte de cautionnement" Strong Constructions Ltd ishingiraho bitayireba, kuko ayo masezerano yakozwe hagati ya Banki ya Kigali na Radiant Insurance Company Ltd, bityo nta wundi muburanyi wayashingiraho arega hashingiwe ku ihame ry'uko amasezerano agira ingaruka ku bayagiranye, akaba rero atareba Strong Construction Ltd, kuko atari bénéficiaire wayo.
- Ku kuba Radiant Insurance Company Ltd yarirengagije inkomoko y'ubwishyu, bavuga ko amafaranga Strong Constructions Ltd yishyuye, yaba "avance de demarrage", yaba n'andi mafaranga y'ubwishyu yahawe nyuma, yose yagombaga kuvamo ubwishyu, ariyo mpamvu Banki ya Kigali yiyishyuye ku mafaranga yasanze kuri konti ya Strong Construction Ltd.

[16] Bavuga ko mu ibaruwa ya Banki ya Kigali yo ku wa 14/04/2014 yemerera Strong Construction Ltd umwenda hagaragaramo ibintu byatanzweho ingwate, ari naho Banki ya Kigali yashingiye yiyishyura umwenda wayo. Izo ngwate akaba ari:

- *Hypothèque inscrite de 599.000.000 Frw en 1er rang sur la parcelle No 2276 à Gisozi-Gasabo,*
- *Assurance incendie couvrant l'immeuble donné en garantie avec avenant transfert d'intérêts en notre faveur et dont l'échéance est fixée au 17/06/2014,*
- *Caution des associés de 807.800.000Frw na Domiciliation des paiements des divers contrats.*

[17] Bavuga ko hashingiwe kuri izo ngwate cyane cyane kuri "domiciliation des paiements des divers contrats", bigaragara ko Banki ya Kigali yagombaga kwiyishyura ku mafaranga avuye kuri fagitire zishyuye, yaba adahagije, igasaba Radiant Insurance Company Ltd kwishyura abura hagenewe kuri "Acte de cautionnement", cyangwa igashingira ku biteganywa mu masezerano y'umwenda ikiyishyura ku mafaranga yose anyuze kuri konti hatitawe ku nkomoko yayo, ari nabyo yakoze, bityo ko mu gihe ibikoze ikiyishyura nta nshingano zindi Radiant Insurance Company Ltd yari kuba ifite.

[18] Ku bijyanye n'ingingo z'amategeko Strong Constructions Ltd ivuga ko zitubahirijwe ababuranira Radiant Insurance Company Ltd basubiza mu buryo bukurikira:

- Ku ngingo ya 170 CPCCSA iteganya ko umucamanza aca urubanza gusa ku cyajuririwe, bavuga ko mu gika cya 20 cy'urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, bigaragara ko Urukiko rwasuzumye ubujurire bwa Radiant Insurance Company Ltd rusanga kuri Konti ya Strong Constructions Ltd haranyuzeho amafaranga ahagije yavamo ubwishyu, bityo rukaba rutararenze imbibi z'icyajuririwe kuko yagombaga kwishyura ari uko bigaragaye ko kuri konti ya Strong Constructions Ltd nta mafaranga ahagije yanyuzeho yavamo ubwishyu. Bongeraho ko n'ihame ry'uko mu manza mbonezamubano n'ubucuruzi urubanza ari urw'ababuranyi, uhagarariye Strong Constructions Ltd avuga, naryo ritakiba mu mategeko, uhubwo ko hakurikijwe amategeko mashya, urubanza rwabaye urw'ababuranyi n'Urukiko; batanga urugero rw'inama ntegururubanza ikorwa n'Urukiko, n'urw'uko Urukiko rubyibwirije rushobora kujya aho ikiburanwa kiri.
- Ku ngingo ya 110 y'Itegeko N<sup>o</sup> 15/2004 yo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, aho Strong Constructions Ltd ivuga ko Radiant Insurance Company Ltd yemeye umwenda, bavuga ko itigeze yemera umwenda, kuko hashingiwe ku ngingo ya 5 n'iya 8 y'amasezerano y'ubwishingire (contrat de cautionnement), Strong Constructions Ltd ariyo yahawe umwenda ikaba ari nayo yagombaga kuwishyura, waramuka wishyuwe na Radiant Insurance Company Ltd ikazayisubiza ibyo yayishyuriye, kandi ko kuba Banki ya Kigali yarishyuwe basanga urubanza ruburanwa nta shingiro (fondement) rufite.

## **UKO URUKIKO RUBIBONA**

[19] Strong Constructions Ltd igaragaza ko yananiwe kwishyura inguzanyo ya 272.000.000 Frw yahawe na Banki ya Kigali kubera kubura ubwishyu ibitewe nuko umushinga wo kubaka VIP WING mu Bitaro bya Kanombe waburiwe "financement", hari n'ibimenyetso bibigaragaza, ariko Radiant Insurance Company Ltd yanga kuyishyurira nkuko yabyemeye mu masezerano y'ubwishingire bagiranye yo ku wa 15/04/2014 (Contrat de Cautionnement no RD0010CRI1403488).

[20] Ku bijyanye no kubura ubwishyu kubera kubura "financement", ibimenyetso biri muri dosiye kandi bigarukwaho n'impande zombi, bigaragaza ko amasezerano yo kubaka VIP WING mu Bitaro bya Kanombe yakozwe hagati ya Strong Constructions Ltd na Rwanda Military Hospital in partnership with Ministry of Health, atashyizwe mu bikorwa mu gihe cyagenwe kubera kubura "financement" ibyo bikaba byaragize ingaruka ku kwishyurirwa imirimo Strong Constructions Ltd yabaga yarangije gukora, akaba ari nabyo byabaye intandaro yo kutubahiriza amasezerano yagiranye na Banki ya Kigali yo kwishyura inguzanyo yayihaye ingana na 272.000.000 Frw.

[21] Muri ibyo bimenyetso harimo ibi bikurikira:

- "Extrait de compte" yatanzwe na Banki ya Kigali igaragaza ko fagitire ya mbere ifite n<sup>o</sup> 04/01/023/2013/T/NCB/RHM/MOH yishyura amafaranga 143.864.240 Frw yatanzwe na Strong Construction Ltd tariki ya 23/05/2014 ndetse na fagitire ya kabiri ifite n<sup>o</sup>

05/02/023/2013/T/NCB/RMH/MOH yishyuza 60.751.920 Frw, yatanzwe tariki ya 07/07/2014 zitishyuwe na Kanombe Military Hospital;

- “*Extrait de compte*” yatanzwe na Banki ya Kigali igaragaza ko kuva amasezerano y’ubwishingire yashyizweho umukono tariki ya 15/04/2014, Ibitaro bya Kanombe byari bimaze kwishyura amafaranga angana na 54.681.513 Frw yishyuwe tariki ya 16/06/2014, 51.484.678 Frw yishyuwe tariki ya 20/03/2015, na 136.123.194 Frw yishyuwe tariki ya 10/12/2015. Usibye 54.681.513 Frw yishyuwe tariki ya 16/06/2014, bigaragara ko andi mafaranga yose yishyuwe igihe giteganyijwe mu masezerano y’isoko ryo kubaka VIP WING cyararenze, kuko ingingo ya 5 y’ayo masezerano yateganyaga ko imirimo izakorwa mu gihe cy’amezi 15, ayo mezi akaba yaragombaga kurangira tariki ya 15/01/2015, uherye igihe yashyiriweho umukono n’impande zombi tariki ya 15/10/2013;
- Ibaruwa yo ku wa 16/10/2014 Strong Constructions Ltd yandikiye Umuyobozi w’Ibitaro rya Kanombe yibutsa kwishyura izo fagitire zombi (ifite no 04/01/023/2013/T/NCB/RHM/MOH yishyuza amafaranga angana 143.864.240 Frw na fagitire no 05/02/023/2013/T/NCB/RMH/MOH yishyuza 60.751.920 Frw). Iyo baruwa ikaba igaragaza ko kugeza kuri iyo tariki ya 16/10/2014 yandikiweho, nta fagitire n’imwe ya Strong Constructions Ltd yari yishyuwe;
- Ibaruwa ebyiri, iyo ku wa 20/01/2016 n’iyo ku wa 30/03/2016, zanditswe n’Ubuyobozi bwa Military Hospital busaba Minisitiri w’Ubuzima gukomeza gutera inkunga umushinga wo kubaka VIP WING mu Bitaro bya Kanombe. Birumvikana ko ibyo bitaro byandika izo baruwa byari bifite ikibazo cya “financement” nk’uko bivugwa na Strong Constructions Ltd;
- Ibaruwa yo ku wa 19/02/2015 yanditswe n’Umuyobozi wa Military Hospital asubiza iyanditswe na Strong Constructions Ltd ku wa 18/02/2015 yasabaga kongerwa igihe cyo kurangiza imirimo.
- Muri dosiye nta baruwa n’imwe yigeze yandikwa na Military Hospital igaragaza ko Strong Constructions Ltd ariyo yaba yaradindije imirimo.

[22] Amasezerano impande zombi zishingiraho muri uru rubanza ari mu byiciro bibiri: amasezerano y’ubwishingire bagiranye yo ku wa 15/04/2014 (Contrat de Cautionnement no RD0010CRI1403488) Radiant Insurance Company Ltd yiyemeza kuzishyurira Strong Constructions Ltd mu gihe izaba yabuze ubwishyu, ndetse n’amasezerano yo ku wa 15/04/2014 yiswe “Acte de Cautionnement RD0010CRI1401759/02645” yakozwe na Radiant Insurance Company Ltd yemerera Banki ya Kigali kuzishyura umwenda wa Strong Constructions Ltd igihe izaba itashoboye kuwishyura.

[23] Ku byerekeye ibyo Radiant Insurance Company Ltd ivuga ko Strong Constructions Ltd itakwitwaza amasezerano ya “Acte de Cautionnement RD0010CRI1401759/02645” yakozwe na Radiant Insurance Company Ltd yonyine, kubera ko atayireba, Urukiko rurasanga ayo masezerano ubwayo atari kubaho mu gihe nta masezerano y’ibanze y’inguzanyo ari hagati ya Banki ya Kigali na Strong Constructions Ltd, ari nayo amasezerano y’ubwishingire (Contrat de Cautionnement) ashingiyeho. Aya masezerano “Acte de cautionnement” ubwayo ntiyahagije, kuba yarabayeho ashingiyeye ku masezerano y’ibanze Strong Constructions Ltd ifitemo inyungu, Radiant Insurance Company Ltd ntaho yahera ivuga ko Strong Constructions Ltd itayafitemo inyungu cyangwa



atayireba, kuko byose bishingiye ku nguzanyo yahawe na Banki ya Kigali. Naho ibyo ivuga ko Banki ya Kigali ariyo yagombaga kurega kuko ariyo irebwa bwa mbere na “Acte de Cautionnement”, Urukiko rurasanga kuba itarareze cyangwa yarareze ikaza kureka ikirego, nk’uko bivugwa n’abahagarariye Radiant Insurance Company Ltd, ibyo bitavanaho uburenganzira bwa Strong Constructions Ltd bwo kuregera inkiko mu gihe ibona ko amasezerano yagiranye na Radiant Insurance Company Ltd atubahirijwe.

[24] Ku bijyanye n’amasezerano y’ubwishingire muri rusange, Abahanga mu mategeko bavuga ko umuntu wese wemeye kwishingira undi aba yemeye kumusimbura mu nshingano ze afitiye abandi mu gihe we adashoboye kuzubahiriza [ ...celui qui se rend caution d’une obligation, se soumet envers le créancier à satisfaire à cette obligation, si le débiteur n’y satisfait pas lui même...]<sup>1</sup>.

[25] Abahanga mu mategeko batandukanya ariko ubwishingire busanzwe (cautionnement simple) n’ubwishingire magirirane (cautionnement solidaire) kandi bakavuga ko ingaruka zabwo zitandukanye. Bemeza ko mu bwishingire busanzwe, Umwishingizi aba afite uburenganzira bwo kubanza gukurikirana ubwishyu mu mutungo w’uwafashe umwenda, byagaragara ko atabishoboye akaba aribwo amwishyurira [*...le cautionnement est simple, lorsque la caution dispose d’un bénéfice de discussion. Elle peut contraindre, à certaines conditions, le créancier à discuter d’abord les biens du débiteur, c’est-à-dire à établir son insolvabilité...*]. Naho ku bwishingire magirirane bakavuga ko nta burenganzira Umwishingizi aba afite bwo kubanza gusaba ko ubwishyu bubanza gushakwa mu mutungo w’uwishingiwe ...[ la caution solidaire, en effet, ne dispose pas de bénéfice de discussion,...la caution est exposée au paiement de la dette principale lorsque, celle-ci, est exigible..]<sup>2</sup>.

[26] Urukiko rurasanga mu ngingo ya mbere y’amasezerano Radiant Insurance Company Ltd yagiranye na Strong Constructions Ltd (contrat de cautionnement no RD0010CRII403488 yo ku wa 15/04/2014), Radiant Insurance Company Ltd yaremeye ku buryo bweruye kuba Umwishingizi magirirane (Caution solidaire) wa Strong Constructions Ltd , muri aya magambo [...déclare se porter caution solidaire de Strong Construction Ltd envers Bank of Kigali Ltd, et assumer la garantie irrévocable du paiement d’un montant de 272.000.000 Frw (deux cent soixante-douze millions de Francs Rwandais) représentant la garantie de bonne exécution du contrat ci-haut cité ..]. Hakurikijwe iyi ngingo n’ibisobanuro by’Abahanga, Urukiko rurasanga kugirango umwenda wa Banki ya Kigali wishyurwe, hataragombaga kubanza gushakirwa ubwishyu mu mutungo bwite wa Strong Construction Ltd.

[27] Urukiko rurasanga kandi muri “Acte de cautionnement” yakozwe na Radiant Insurance Company Ltd yonyine, n’ubwo ari amasezerano ruhanderumwe (contrat unilatéral)<sup>3</sup>, yarihaye inshingano zitaziguye zo kwishyurira Strong Constructions Ltd umwenda yahawe na Banki ya Kigali, ibi bikaba byari bigamije kuyongerera icyizere n’amahirwe byo kwishyura mu gihe Strong Constructions Ltd izaba yananiwe kwishyura, kubera ko yemereye Banki ya Kigali ko mu gihe izaba itagishoboye kwishyura, izahita yishyura uwo mwenda ikibiyisaba. Ibi ni nabyo byemezwa n’Abahanga mu mategeko bavuga ko kwiyemeza kwishyura bwa mbere ukubisabwa, ari uburyo

<sup>1</sup> Denis Philippe, Delphine Dehasse, Code Civil, 5 ème edition, Bruylant, 2007, page 287.

<sup>2</sup> Jérôme François, Droit civil, les sûretés personnelles, Tome VIII, Economica, Paris, 2004, page 33<sup>SEP</sup>.

<sup>3</sup> Martin Imbleau, William A. Schabas, Introduction au droit rwandais, Les éditions Ivon Blais Inc, 1999, page 83.

bworohereza uberewemo umwenda kwishyurwa bitamugoye kuko asa n'uba afite abagomba kumwishyura babiri, kandi ko uwemeye muri ubwo buryo aba yihaye inshingano zitaziguye k'uberewemo umwenda [ ..., *la garantie à première demande renforce la situation du créancier en lui donnant deux débiteurs au lieu d'un seul. Tandis que le cautionnement est une obligation accessoire, la garantie à première demande est une obligation autonome, le garant s'engageant, non pas pour autrui, mais à l'occasion des relations contractuelles d'autrui, (...) il promet non pas d'exécuter l'obligation du débiteur principal défaillant, mais de verser sur simple réclamation du créancier une somme déterminée...*]<sup>4</sup>.

[28] Ku biyanye n'inkomoko y'ubwishyu, amasezerano yiswe “Acte de Cautionnement” agaragaza ko inkomoko y'ubwishyu ari amafaranga akomoka ku isoko ryo kubaka VIP WING ya Kanombe Military Hospital, ahavuga ko Radiant Insurance Company Ltd izishyura Banki ya Kigali nyuma yo kugaragaza ko amafaranga ya fagitiri yishyurwe yageze kuri konti ya Strong Constructions Ltd iri muri Banki ya Kigali kuri iryo soko ryavuzwe, adahagije mu kwishyura umwenda. Aya masezerano abivuga muri aya magambo : « *Et nous nous engageons à rembourser BANK OF KIGALI, dès réception de sa demande écrite, montrant que le Contractant (Strong Construction Ltd) ne se conforme pas aux stipulations du contrat signé entre lui et Bank of Kigali, la somme ci- dessus stipulée (272.000.000 FRW) après avoir prouvé que le(s) paiement (s) au compte 040-0323102-28 ouvert à la BANK OF KIGALI au nom de Strong Construction Ltd, pour le marché ci-haut mentionné, n'a pas été suffisant pour le remboursement du crédit contracté* ».

[29] Ibyerekeye inkomoko y'ubwishyu ubisanga no mu ibaruwa yo ku wa 14/05/2015 Banki ya Kigali yanditse isubiza iyo Radiant Insurance Company Ltd yanditse isaba amakuru kuri konti ya Strong Constructions Ltd, aho Banki ya Kigali yari yarayimenyesheje ko kuri konti ya Strong Constructions Ltd hanyuzeho amafaranga, ariko ko adakomoka ku isoko yishingiye; no mu ibaruwa yo ku wa 13/09/2018 yandikiye Umuvunyi Mukuru isobanura ko ubwishyu bw'inguzanyo yahawe Strong Constructions Ltd bwagombaga kuva gusa ku bwishyu bw'isoko ryo kubaka VIP WING mu Bitaro bya Kanombe.

[30] Urukiko rurasanga ibyo ababuranira Radiant Insurance Company Ltd bavuga ko hagombaga kurebwa izindi ngwate yatanze ifata inguzanyo bitahabwa agaciro kubera ko hashingiwe kuri “Acte de Cautionnement RD0010CRI1401759/02645” cyane cyane mu gika cyayo cya 5, Radiant Insurance Company Ltd yagombaga kwishyurira Strong Constructions Ltd ikibisabwa na Banki ya Kigali hatabanje kurebwa inzindi ngwate, kandi n'Abahanga mu by'amategeko bakaba bavuga ko iyo ari amasezerano y'ubwishingire magirirane (caution solidaire) ari nayo Radiant Insurance Company yakoreye Strong Constructions Ltd, nta burenganzira Umwishingizi aba afite bwo kubanza gusaba ko ubwishyu bubanza gushakwa mu mutungo w'ubwishingiwe ...[ *la caution solidaire, en effet, ne dispose pas de bénéfice de discussion,...la caution est exposée au paiement de la dette principale lorsque, celle-ci, est exigible..*]<sup>5</sup>.

[31] Urukiko rurasanga kandi ukurikije imiterere y'ubwishingizi ubwayo “garantie de bonne exécution”, mu gihe ikibazo cyateye ukutishyura ari umushinga utarakozwe uko biteganijwe

---

<sup>4</sup> Pierre Voirin, Gilles Goubeaux, Droit civil, Personnes-Famille-Incapacité-Biens-Obligations-Sûretés, Tome 1, 30<sup>ème</sup> édition, LGDJ, Paris, page 635.

<sup>5</sup> Jérôme François, Droit civil, Ibidem, page 33

kubera ukubura “*financement*” impamvu idaturutse kuri Strong Constructions Ltd, ndetse akaba ari n’impamvu itabujijwe mu ngingo ya 4 y’amasezerano y’ubwishingizi N° RD0010CRI1403488, abahagarariye Radiant Insurance Company Ltd ntaho bahera bavuga ko hagombaga guherwa ku zindi ngwate.

[32] Ku bijyanye no kuba harabayeho kwitiranya inguzanyo ya” avance de démarrage” n’inguzanyo ya 272.000.000 Frw zahawe Strong Constructions Ltd, Urukiko rurasanga muri dosiye hagaragamo amasezerano y’ubwishingire abiri yakozwe na Radiant Insurance Company ku bw’inyungu za Strong Constructions Ltd, ariyo : Amasezerano yo ku wa 04/10/2013 yiswe “Advance Payment Security/Advance payment guarantee N° RD001RCOA1305281”; n’Amasezerano yo ku wa 15/04/2014 yiswe “Contrat de cautionnement No RD0010CRI1403488”. N’ubwo ayo masezerano yombi arebana no kubaka VIP WING mu Bitaro bya Kanombe, Urukiko rurasanga atandukanye mu miterere yayo, ku gihe yakorewe, ku cyo yari agamije, no ku ngano y’amafaranga yishingiwe, bivuze ko inguzanyo ashingiyeho zigomba gutandukanywa, bityo ibyo abahagarariye Radiant Insurance Company Ltd bavuga ko yagombaga kubanza kuvamo ubwishyu bikaba bitahabwa ishingiro.

[33] Urukiko rurasanga kandi, nk’uko bigaragara mu gika cya gatanu cya “Acte de Cautionnement RD0010CRI1401759/02645”, kimwe mu byo Radiant Insurance Company Ltd yagombaga gushingiraho mbere yo kwishyurira Strong Constructions Ltd ari uko bigaragaye ko kuri konti yayo yafunguwe muri Banki ya Kigali, nta mafaranga ahagije yayinyujijweho yakwishyura inguzanyo ya 272.000.000 Frw aturutse ku bwishyu bw’isoko yishingiye. Rukaba rurasanga nta bundi buryo Radiant Insurance Company Ltd yari kumenya niba Strong Constructions Ltd yarishyuye amafaranga ahagije yavamo ubwishyu aturutse ku isoko yishingiye ryo kubaka VIP WING mu Bitaro bya Kanombe, hadasuzumwe amafaranga yose yanyujijwe kuri konti yayo, kuba Urukiko rwarabisuzumye rukaba nta makosa rwakoze ryo kurenga imbibi z’icyajuririwe.

[34] Urukiko rurasanga rero kuba Radiant Insurance Company Ltd mu masezerano y’ubwishingire yo ku wa 15/04/2014 (Contrat de Cautionnement no RD0010CRI1403488), yaremeye kuba umwishingizi magirirane “Caution Solidaire” ku mwenda yari ifitiye Banki ya Kigali , ndetse no mu masezerano (Acte de Cautionnement RD0010CRI1401759/02645) ikemerera Banki ya Kigali ko mu gihe Strong Constructions Ltd itagishoboye kuyishyura, izahita yishyura uwo mwenda ikibiyisaba, Radiant Insurance Company Ltd yaragombaga kuyishyurira nk’umwishingizi wayo, cyane cyane ko mu ibaruwa yayo yo ku wa 4/05/2015 yabwiye Strong Constructions Ltd ko niramuka iyishyuriye amafaranga yose azahita asubizwa Radiant Insurance Company Ltd.

[35] Urukiko rurasanga kandi, kuba mu rubanza RCOMAA 00065/2016/SC-RCOMAA 0071/16/CS haremejwe ko Radiant Insurance Company Ltd itishyurira Strong Constructions Ltd, kubera ko ifite ubwishyu kuko Historique ya Banki yagaragazaga ko hanyuzeho amafaranga menshi arenze kure ay’umwenda, harabayeho ikosa ryo kwitiranya inkomoko y’ubwishyu, kuko amafaranga yandi Strong Constructions Ltd yishyuye aturutse ku yandi masoko atarebwaga n’ubwo bwishyu, kuko buri soko riba rifite uko ricungwa kubera ko bidakozwe gutyo, imirimo ikadindira cyangwa se ntikorwe, byateza ikindi gihombo.

[36] Urukiko rurasanga na none kuba mu rubanza RCOMAA 00065/2016/SC-RCOMAA 0071/16/CS rusabirwa gusubirishwamo ku mpamvu z’akarengane, Urukiko rwaremeje ko

umwenda wishyurwa ku mafaranga ayariyo yose yanyuze kuri konti ya Strong Constructions Ltd, habaye gushakira ubwishyu ku mutungo bwite wayo, aho kubushakira ku mafaranga akomoka ku isoko ryo kubaka VIP Wing mu Bitaro bya Kanombe iyo amasezerano y'ubwishingire ari magirirane, iri rikaba ari ikosa ryateye Strong Constructions Ltd akarengane.

[37] Urukiko rw'Ikirenga rushingiye ku bisobanuro byatanzwe no ku ngingo 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, rurasanga kuba Radiant Insurance Company Ltd yaranze kwishyurira Strong Constructions Ltd itarubahirije amasezerano y'ubwishingire bagiranye tariki ya 15/04/2014, bityo Urubanza No RCOMAA 00065/2016/CS-RCOMAAA0071/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 21/06/2017 rukaba rugaragaramo akarengane, rugomba guhinduka.

**b. Kumenya niba indishyi zisabwa na Strong Construction Ltd zifite ishingiro**

[38] Me IDAHEMUKA avuga ko Strong Constructions Ltd ari mu manza zabanje ndetse no muri uru rubanza itaregera ubwishyu bw'umwenda kuko Banki ya Kigali yishyuwe; ahubwo iregera inyungu n'ibihano by'ubukererwe bingana na 84.271.004 Frw yaciwe biturutse ku kwishyura ikererewe, nyuma y'uko Radiant Insurance Company Ltd yanze kwishyura, ndetse no gusubizwa amafaranga yayo yafatiriwe agizwe na 52.598.296 Frw aturutse ku masezerano y'isoko rya “mechanization RADA “ na 30.505.081 Frw yafatiriwe yishyuwe na OT, yose hamwe angana 83.103.337 Frw, iryo fatira rikaba ryaratumye itubahiriza andi masezerano yari ifite ku yandi masoko.

[39] Avuga ko amasezerano Strong Constructions Ltd yagiranye na Kanombe Military Hospital yagiye yongerwa ariko bidaturutse kuri yo, ahubwo ari ikibazo cyaturutse ku rwego rwa Leta rwabuze “financement”, kandi ko amasezerano hagati yayo na Radiant Insurance Company Ltd, n'amasezerano hagati ya Banki ya Kigali na Radiant Insurance Company Ltd yo atigeze ahinduka. Avuga ko ayo masezerano yose yari afite igihe cy'umwaka, kandi ko muri uwo mwaka w'ubwishingire Banki ya Kigali itigeze yishyurwa, ariyo mpamvu Strong Constructions Ltd yaciwe ibihano by'ubukererwe.

[40] Ku bijyanye n'inyungu n'ibihano by'ubukererwe Strong Constructions Ltd iregera, Me Kazungu Jean Bosco, Me Twiringiyemungu Joseph na Me RUZINDANA Ignace bahagarariye Radiant Insurance Company Ltd , bavuga ko izo nyungu n'ibihano by'ubukererwe bitareba Radiant Insurance Company Ltd , kuko iyo Banki ya Kigali isanga itarubahirije amasezerano y'ubwishingire bagiranye (Acte de cautionnement) ariyo yari kurega, kuko hashingiwe ku ihame ry'uko amasezerano agira ingaruka ku bayagiranye, nta wundi muntu washoboraga kuyitwaza ngo arege usibye yo, kandi ko Banki ya Kigali yareze Radiant Insurance Company Ltd mu Rukiko rw'Ubucuruzi rwa Nyarugenge, ariko imaze kubona Strong Constructions Ltd yishyuye ireka icyo kirego.

[41] Bavuga ko basanga uwagombaga kuregwa inyungu n'ibihano by'ubukererwe ari Banki ya Kigali kuko yemeye ko amafaranga abyara inyungu z'ubukererwe kandi yari ifite ubwishyu, kandi ko kugeza ubu Banki ya Kigali nta kibazo ifite kubera ko yishyuwe, ko na Strong Constructions Ltd nta kibazo yagombye kugira kuko yivanyeho inshingano yishyura. Basaza bavuga ko amasezerano hagati ya Strong Constructions Ltd na Kanombe Military Hospital yahindutse, kandi

ko impinduka zabaye muri ayo masezerano Radiant Insurance Company Ltd itazimenyeshajwe, ndetse ko itagombaga kuzishingira.

## **UKO URUKIKO RUBIBONA**

[42] Ingingo ya 137 y’ Itegeko n°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko uruhande rwarenganyijwe rufite uburenganzira bwo kubona indishyi zitanzwe n’urundi ruhande rutubahirije ibisabwa mu masezerano, keretse iyo ikirego kigamije kubona indishyi cyahagaritswe cyangwa cyavuyeho.

[43] Urukiko rurasanga ibyo abahagarariye Radiant Insurance Company Ltd bavuga ko Strong Constructions Ltd itashingira ku masezerano yakozwe hagati ya Radiant Insurance Company Ltd na Banki ya Kigali ngo iregere indishyi bitahabwa agaciro, kuko uretse n’uko ayo masezerano “Acte de Cautionnement noRD0010CRII401759/02645” ari amasezerano ruhanderumwe (unilatéral), yashyizweho umukono na Radiant Insurance Company Ltd yonyine yiyemeza kuzishyura Banki ya Kigali umwenda wa Strong Constructions Ltd mu izina ryayo,<sup>6</sup> ayo masezerano yabayeho ashingiye ku masezerano yandi yakozwe hagati ya Strong Constructions Ltd na Radiant Insurance Company Ltd , kandi akorwa mu nyungu zayo nk’uko byasobanuwe haruguru.

[44] Urukiko rurasanga kandi niba Strong Constructions Ltd yarishyuye inyungu z’ubukererwe itagombaga kwishyura iyo Radiant Insurance Company Ltd yubahiriza amasezerano bagiranye, ikaba arizo isaba gusubizwa, ntaho Radiant Insurance Company Ltd yahera ivuga ko idafite uburenganzira bwo kuziregera.

[45] Urukiko rurasanga kuba Radiant Insurance Company Ltd itarubarije inshingano zayo zikubiye mu masezerano y’ubwishingizi yagiranye na Strong Constructions Ltd nk’uko byagaragajwe mu bika bibanza, hari igihombo byayiteye harimo kuba hari inyungu z’ubukererwe zingana na 84.271.004 Frw yaciwe, kuzishyura bikaba byaratumye itubahiriza inshingano zayo zikubiye mu yandi masezerano yari ifitanye n’abandi bantu, nk’uko bisobanurwa na Me Idahemuka Tharcisse uyihagarariye, bityo Radiant Insurance Company Ltd ikaba igomba kubitangira indishyi.

[46] Urukiko rurasanga rero, rushingiye ku ngingo ya 137 y’Itegeko n°45/2011 ryo ku wa 25/11/2011 ryavuzwe haruguru, Radiant Insurance Company Ltd igomba guha Strong Constructions Ltd amafaranga y’indishyi ahwanye n’inyungu z’ubukererwe yaciwe na Banki ya Kigali angana na 84.271.004 Frw.

[47] Ku bijyanye n’amafaranga 83.103.337Frw Strong Constructions Ltd ivuga ko yafatiriwe na Banki ya Kigali, ikaba isaba kuyasubizwa na Radiant Insurance Company Ltd, kubera ko iryo fatira ryatumye itubahiriza andi masezerano yari ifite ku yandi masoko, Urukiko rurasanga

---

6 ...« Et nous nous engageons à rembourser BANK OF KIGALI, dès réception de sa demande écrite, montrant que le Contractant (Strong Construction Ltd) ne se conforme pas aux stipulations du contrat signé entre lui et BANK OF KIGALI, la somme ci-dessus stipulée (272.000.000 FRW) après avoir prouvé que le(s) paiement au compte 040-0323102-28 ouvert à la BANK OF KIGALI au nom de Strong Construction Ltd, pour le marché ci-haut mentionné, n’a pas été suffisant pour le remboursement du crédit contracté ».

itayasubizwa, kuko itashoboye kugaragariza Urukiko ko atari mu yagabanyije umwenda yari ifitiye iyo Banki.

### **III. ICYEMEZO CY'URUKIKO**

[48] Rwemeye kwakira ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza No RCOMAA 00065/2016/CS-RCOMAAA0071/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 21/06/2017, rugisuzumye rusanga gifite ishingiro ;

[49] Rwemeje ko Radiant Insurance Company Ltd itubahije amasezerano y'ubwishingire yagiranye na Strong Constructions Ltd ku wa 15/04/2014 ;

[50] Rwemeje ko urubanza N° RCOMAA 00065/2016/CS-RCOMAA0071/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 21/06/2017 ruhindutse;

[51] Rutegetse Radiant Insurance Company Ltd guha Strong Constructions Ltd 84.271.004 Frw y'indishyi ahwanye n'inyungu z'ubukererwe yaciwe na Banki ya Kigali;

[52] Rutegetse Radiant Insurance Company Ltd guha Strong Constructions Ltd amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka angana na 3.000.000 Frw na 126.000 Frw y'ingwate y'amagarama yari yagenewe n'Urukiko Rukuru rw'Ubucuruzi.