HESTIA LTD v UMOJA HOUSE LTD

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00002/2018/SC (Mukamulisa, P.J., Nyirinkwaya, Cyanzayire, Rukundakuvuga na HitiyaremyeJ.) 31 Mutarama 2020]

Amategeko agenga imanza z'ubucuruzi – Amasezerano – Amasezerano y'ubukode – Kwishyura k'ukodesha –Ukodesha ntiyakwitwaza ko nta wamwishyuje ngo yibere mu nzu y'abandi atishyura kuko aba afite inshingano yo kwibwiriza akishyura ubukode hakurikijwe ihame risanzwe ry'uko abagiranye amasezerano bagomba kuyubahiriza nta buryarya – Nta kigomba kubuza ukodesha inzu y'undi kwishyura ubukode uretse igihe hari impamvu ikomeye yaba yaramubujije kuba muri iyo nzu cyangwa kuyikoresha yakodesheje nk'uko byemeranyijwe mu masezerano.

Amategeko agenga imanza z'ubucuruzi – Amasezerano – Integuza y'ubukode n'inshingano z'impande zombi mu gihe cy'integuza – Icyo igamije – Mu masezerano y'ubukode, integuza iba igamije gufasha nyir'inzu gutangira gushaka uzajya mu nzu ye igihe uwari uyirimo azaba ayivuyemo kandi atabihombeyemo – Ku ruhande rw'ukodesha igihe cy'integuza kimufasha kubona umwanya wo gushaka aho azimukira, kugira ngo igihe asohotse mu nzu yakodeshaga atabura aho yerekeza – Mu gihe cy'integuza impande zombi zikomeza kubahiriza amasezerano zagiranye ku byerekeranye n'ubwishyu bw'ubukode ku buryo uyishe aryozwa igihombo yateje.

Amategeko agenga imanza z'ubucuruzi – Amasezerano – Indishyi zo kudatanga integuza y'ubukode – Kwishyuza amafaranga y'integuza itarishyuwe – Iyo integuza itishyuwe, ubwishyu bw'indishyi bubarwa hakurikijwe amafaranga y'ubukode uwakodeshaga yari asanzwe atanga buri kwezi n'umubare w'iminsi uwakodeshaga yagiye atarangije cyangwa yateshejwe ku gihe cy'integuza cyari giteganyijwe – Icyakora, iyo iyo nzu ibonye abayijyamo muri icyo gihe cy'integuza, icyo gihombo kiba kivuyeho.

Amategeko agenga imanza z'ubucuruzi – Amasezerano – Indishyi zo kudatanga integuza y'ubukode – Indishyi zigamije kwishyura ibyo umuntu yatakaje – Bene izi ndishyi zigenwa hakurikijwe igihe amasezerano y'ubukode ashesherejwe ugereranyije n'igihe yagombaga kumara – Iyo asheshwe vuba izo ndishyi ziba nyinshi, yaba asheshwe yegereje igihe yagombaga kumara zikaba nkeya kuburyo zibarwa kuva ku mezi atatu kugera ku kwezi kumwe kw'amafaranga y'ubukode yemeranyijweho mu masezerano.

Incamake y'ikibazo: Umoja house Ltd na Hestia Ltd bagiranye amasezerano y'ubukode bw'inzu kuva ku wa 01/01/2014. Ingingo ya kabiri y'ayo masezerano yateganyaga ko Hestia Ltd izajya yishyura ubukode bwa $ 3.402 kandi bukishyurwa buri kwezi, naho ingingo ya munani ikavuga ko uwifuza gusesa amasezerano azatanga integuza y'amezi atandatu. Impaka zavutse aho mu kwezi kwa 7/2014, Umoja House yishyurije Hestia Ltd amezi abiri, ukwa karindwi n'ukwa munani/2014, Hestia ikanga kwishyura; ubwumvikane bugatangira kuba buke kugeza ubwo Hestia Ltd iviriye mu nzu kuwa 28/11/2014, ikagenda idatanze integuza.

Umoja House Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi, isaba kwishyurwa amafaranga y'amezi itishyuwe, amafaranga y'amezi atandatu y'integuza itishyuwe n'indishyi. Urubanza rwatangiriye mu Rukiko rw'Ubucuruzi rurangirira mu Rukiko Rukuru rw'Ubucuruzi; Hestia Ltd iratsindwa itegekwa kwishyura amezi itishyuye, indishyi ndetse n'amafaranga y'integuza y'amezi atandatu. Hestia Ltd yatanze ikirego gisaba gusubirishamo urubanza ingingo nshya nabwo

itegekwa kwishyura amafarnga yatsindiwe hakuwemo ay'ukwezi kumwe yari yaratanze nka "caution".

Hestia yongeye isubirishamo urubanza ku mpamvu z'akarengane mu Rukiko rw'Ikirenga ivuga ko atariyo yishe amasezerano kuko yishyujwe mu buryo butumvikanyweho kandi ko itagomba kuryozwa amezi atandatu y'integuza mu gihe inzu yakodeshaga hari abandi bazigiyemo muri icyo gihe cy'integuza.

Umoja House yireguye ivuga ko Hestia igomba kwirengera ingaruka zo kwica amasezerano, kandi ko igomba kwishyura integuza y'amezi atandatu kuko abagiye bakodesha inzu yayo batahakodesheje hose.

Incamake y'icyemezo: 1. Ukodesha ntiyakwitwaza ko nta wamwishyuje ngo yibere mu nzu y'abandi atishyura kuko aba afite inshingano yo kwibwiriza akishyura ubukode hakurikijwe ihame risanzwe ry'uko abagiranye amasezerano bagomba kuyubahiriza nta buryarya. Bityo, Hestia Ltd niyo yishe amasezerano kubera ko itishyuye ubukode hakurikije amasezerano yagiranye na Umoja House Ltd.

2. Ubwishyu bw'indishyi buturuka ku kudatanga integuza bubarwa hakurikijwe amafaranga y'ubukode uwakodeshaga yari asanzwe atanga buri kwezi n'umubare w'iminsi uwakodeshaga yagiye atarangije cyangwa yateshejwe ku gihe cy'integuza cyari giteganyijwe. Icyakora, kubera ko impamvu y'ayo mafaranga ari ukuriha igihombo cyatewe n'uko kuva mu nzu mu buryo butiteguwe, iyo iyo nzu ibonye abayijyamo muri icyo gihe cy'integuza, icyo gihombo kiba kivuyeho. Bityo, Hestia ikaba igomba kwishyura Umoja House $9.072 kubera kudatanga integuza ariko zikagarukira aho yaboneye abandi bakodesha inzu zayo.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarenga gifite ishingiro kuri bimwe. Imikirize y'urubanza no RCOMA 0490/15/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 11/12/2015 igumyeho uretse ku bijyanye n'umubare w' amafaranga y'integuza Hestia Ltd igomba guha Umoja House Ltd.

Amategeko yashingiweho:
Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 70.

Imanza zifashsishijwe:
C. CIV. ART 1134, AL.3) cité par Ed. Francis LEFEBVRE et al, op.cit. p762, no 60615-60616.
Cass 3e civ. 28 Juin 2000 no 1066 FS-D, Ste Teissir c/Commune de Clichy et copr.2001 comm. No 57 obs.

Inyandiko z'abahanga zifashishijwe:
B. Vial-pedroletti) cité par par Ed. Francis LEFEBVRE et al, Baux commerciaux in Mémento expert, 2015, p. 762 et 766, no 60615.
Isabelle DYKMANS , Fin de bail : la différence entre indemnités de rupture et préavis in L'Echo du 14 janvier 2020 accessible sur https://www.lecho.be/monargent/immobilier/fin-debail-la-difference-entre-indemnites-de-rupture-et-preavis/10126221.html

Urubanza

I. IMITERERE Y'URUBANZA

[1] Umoja House Ltd yagiranye amasezerano y'ubukode bw'inzu na Hestia Ltd y'imyaka 3 yishyura 3.402$ ku kwezi, yagombaga gutangira ku wa 01/01/2014, bemeranya ku nshingano za buri ruhande n'uko bigenda igihe hari ushaka gusesa amasezerano.

[2] Umoja House Ltd yareze Hestia Ltd mu Rukiko rw'Ubucuruzi rwa Nyarugenge ivuga ko itubahirije amasezerano yishyura uko bikwiriye, isaba ko yategekwa kuyishyura umwenda uteye utya:

- Umwenda ungana na 17.110$;
- Kwishyura 20.412$ y'igihe cy'integuza;
- Indishyi n'igihembo cya Avoka kingana na 3.500.000frw.

[3] Hestia Ltd yaburanye ivuga ko atari yo itarubahirije amasezerano ko ahubwo ari Umoja House Ltd yayishe kuko ariyo yatangiye kujya iyishyuza amezi 2 kandi bari baremeranyije kwishyura buri kwezi; ibyanze Hestia Ltd isesa amasezerano. Hestia Ltd ivuga ko itakwishyura ubukode bw'amezi ane ko ahubwo yakwishyura ubw'amezi 3 n'iminsi irindwi bungana na 10.999,8$ kandi ko yahabwa igihe gihagije cyo kuyishyura.

[4] Mu rubanza nº RCOM 1456/14/TC/NYGE, Urukiko rw'Ubucuruzi rwemeje ko ikirego cya Umoja House Ltd gifite ishingiro kuko:

- Hestia Ltd ari yo yishe amasezerano y'ubukode, yanga kwishyura buri kwezi nk'uko yari yabyiyemeje;
- Hestia Ltd itubahirije ibyo yiyemeje mu ngingo ya 8 y'amasezerano y'ubukode yo ku wa 01/01/2014, ngo ibe yaramenyesheje Umoja House Ltd ko itagishaka gukomeza amasezerano y'ubukode bagiranye aho kureka kwishyura ntitange n'integuza (préavis);

Urwo rukiko, rushingiye kuri ibyo, rwategetse Hestia Ltd guha Umoja House Ltd 37.422$, amafaranga y'u Rwanda 500.000 y'indishyi no gusubiza Umoja House Ltd 50.000frw y'igarama ry'urubanza.

[5] Hestia Ltd yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi ku impamvu zikurikira:

- Kuba Urukiko rwaremeje ko ari yo yasheshe amasezerano kandi atari byo;
- Kuba yarasabye kwishyura umwenda w'ubukode yemera mu gihe cy'amezi 12 ntibihabwe agaciro.

[6] Mu rubanza nº RCOMA 0228/15/HCC, Urukiko rwemeje ko ubujurire bwatanzwe na Hestia Ltd nta shingiro bufite, ko urubanza rwajuririwe rudahindutse, ruyitegeka guha Umoja House Ltd 600.000frw y'indishyi z'ibyatanzwe ku ikurikiranarubanza n'igihembo cy'Avoka kuri urwo rwego, rushingiye ku mpamvu zikurikira:

- Hestia Ltd ivuga ko ku wa 28/11/2014 yari yaramaze kuva mu nzu ariko ntiyerekana urwandiko yandikiye Umoja House Ltd nk'uko byari biteganyijwe mu ngingo ya 8 y'amasezerano y'ubukode;
- Hestia Ltd nta mpamvu ifite idasanzwe cyangwa itarashoboraga guteganywa yatuma Urukiko rwemeza ko (Hestia Ltd) yemerewe kwishyura mu byiciro, cyane ko itishyuraga ubukode nk'uko byari byarumvikanyweho mu masezerano.

[7] Nyuma y'icibwa ry'imanza zavuzwe haruguru, Hestia Ltd yongeye gutanga ikindi kirego mu Rukiko Rukuru rw'Ubucuruzi, isubirishamo urubanza nº RCOMA 0228/15/HCC ingingo nshya ku mpamvu zikurikira:

- Kuba hari inyandiko yatanzwe mu rubanza ariko Urukiko ntirwayibona (facture nº 20 yo ku wa 10/06/2014 yishyuzaga amezi abiri);
- Kuba Umucamanza yarirengagije ibikubiye mu masezerano y'ubukode cyane ibiri mu ngingo ya 6 ivuga ko mu kwishyura ibirarane Hestia Ltd yagombaga guhera ku 3.402$ yari yatanze nk'ingwate cyane ko ababuranyi bayemeranywaho, ariko Umucamanza we akaba ntacyo yabivuzeho.

[8] Mu rubanza nº RCOMA 0490/15/HCC, Urukiko rwemeje ko ikirego cyatanzwe na Hestia Ltd gifite ishingiro ku byerekeranye no kuba mu mafaranga yagombaga kwishyura haragombaga kuvanwaho 3.402$ yari yatanze y'ingwate, ibindi bikaguma uko byemejwe mu rubanza rusubirishwamo ingingo nshya, kubera impamvu zikurikira:

- Kuba inyandiko Hestia Ltd ishingiraho ivuga ko zitabonywe n'umucamanza atari byo, kuko umucamanza yazibonye ndetse akanazishingiraho, bitandukanye b'ibivugwa na Hestia Ltd.
- Kuba Umoja House Ltd idahakana ko yahawe 3.402$ nk'ingwate kandi hakaba ntaho bagaragaza ko bayaburanyeho cyangwa ngo abe yarahereweho mu kwishyura;

[9] Hestia Ltd ntiyanyuzwe n'icyo cyemezo maze yandikira Urwego rw'Umuvunyi isaba ko urubanza nº RCOMA 0490/15/HCC rwasubirishwamo ku mpamvu z'akarengane kubera ko mu icibwa ryarwo hirengagijwe amategeko n'ibimenyetso bigaragarira buri wese.

[10] Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza nº RCOMA0490/15/HCC rusubirwamo ku mpamvu z'akarengane, maze nawe, nyuma yo gusuzuma raporo y 'Ubugenzuzi Bukuru bw'Inkiko, yemeza ko rwongera kuburanishwa; ruhabwa nº RS/INJUST/RCOM 00002/2018/SC.

[11] Urubanza rwahamagawe ku wa 06/06/2019, ariko uwo munsi ntirwaburanishwa, no ku matariki abiri rwagiye rwimurirwaho (ku wa 10/09/2019 no ku wa 08/11/2019) ntirwaburanisha ku mpamvu z'ababuranyi. Ku wa 09/01/2020 nibwo ababuranyi bose bitabye, Hestia Ltd ihagarariwe na Me Rugemintwaza Jean Marie Vianney naho Umoja House Ltd ihagarariwe na Me Bahati Vedaste; urubanza ruraburanishwa.

[12] Mu izina rya Hestia Ltd, Me Rugemintwaza Jean Marie Vianney yasobanuye impamvu z'akarengane kayo mu buryo bukurikira:

- Urukiko Rukuru rw'Ubucuruzi rwafashe icyemezo cy'uko Hestia Ltd yishyura 17.000$ y'ubukode kandi icyaburanwaga kwari ukumenya uwishe amasezerano n'ugomba gutanga integuza;
- Umoja House Ltd imaze kwirukana Hestia Ltd mu nzu yahise ishyiramo abandi nyamara Urukiko Rukuru rw'Ubucuruzi ruyigenera amafaranga y'integuza, akaba isanga ibyo byaba ari ukwikungahaza nta mpamvu.

[13] Me Bahati Vedaste uhagarariye Umoja House Ltd avuga ko Hestia Ltd ariyo yishe amasezerano kuko yananiwe kwishyura ikava mu nzu idasezeye, idatanze n'integuza yirengagije ibyateganywaga n'ingingo ya 8 y'amasezerano y'ubukode bagiranye ku wa 01/01/2014.

[14] Ababuranyi bose basoza basaba indishyi.

[15] Urukiko rurasanga ibibazo bikwiye gusuzumwa muri uru rubanza ari ibi bikurikira:

1) Kumenya uwishe amasesezerano hagati ya Hestia Ltd na Umoja House Ltd;

2) Kumenya niba Hestia Ltd igomba kwishyura amezi atandatu ya préavis itatanze;

3) Ibyerekeye indishyi zisabwa n'impande zombi.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1) Kumenya uwishe amasezerano hagati ya Hestia Ltd na Umoja House Ltd

[16] Me Rugemintwaza Jean Marie Vianney avuga ko ingingo ya 2 y' amasezerano y'ubukode bw'inzu Hestia Ltd yagiranye na Umoja House Ltd ku wa 01/01/2014 ivuga ko ubukode buzajya bwishyurwa buri kwezi (Le loyer est payé mensuellement). Avuga ko Hestia Ltd yishyuye amezi atatu y'avance n'ukwezi kumwe kwa caution ijya kwinjira mu nzu, ubundi ikaba yaragombaga kujya yishyura buri kwezi gushize. Nyamara, ngo ukwezi kwa 5/2014 gushize aho kugira ngo Umoja House Ltd ikore facture y'ukwezi kumwe kwa gatanu nk'uko amasezerano abiteganya, Umoja House Ltd yakoze facture n° 20 yo ku wa 10/06/2014 yishyuza amezi abiri, ukwa 5/2014 kurangiye ishyiraho n'ukwezi kwa 6/2014, Hestia Ltd irayishyura kuko ngo Umoja House Ltd yari ifite ibibazo by'amafaranga yashakaga gukemura.

[17] Icyatangaje Hestia Ltd nk'uko Me Rugemintwaza Jean Marie Vianney abivuga ngo ni uko Hestia Ltd yongeye kwishyuzwa ukwezi kwa 7 n'ukwa 8 yabaza impamvu yishyuzwa amezi abiri kandi atari byo biteganyijwe mu masezerano[1], ngo aho gukemura ikibazo, Umoja House Ltd igahita iyandikira ibaruwa ya mise en garde, ikanatanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge ivuga ko yishe amasezerano kandi atari byo. Icyakora, Hestia Ltd yemera ko itishyuye amezi atatu (Juillet, Août & Septembre) ukwezi kwa 10 itakwemera, igasobanura ko kutishyura yabitewe no kuba bari bari mu manza.

[18] Me Bahati Vedaste avuga ko Umoja House Ltd itigeze yishyuza Hestia Ltd amezi abiri, ko ahubwo nk'uko bigaragara kuri facture, kubera ko Hestia Ltd yabaga itishyuye ukwezi kurangiye,

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[1] Ingingo ya 2 y'amasezerano y'ubukode yakozwe hagati ya Hestia Ltd na Umoja House Ltd mu gika cyayo cya 2 ivuga ko "*Le loyer est payé mensuellement*".

byabaga ngombwa ko yishyuzwa ukwezi gutangiye ndetse n'ikirarane cy'ukwezi kurangiye. Ibi kandi basanga Hestia Ltd yari yarabyemeye kuko yanabishyize mu bikorwa muri factures zibanza, kuko kuri factures z'ukwezi kwa gatanu n'ukwa gatandatu, Hestia Ltd yayishyuye ku itariki ya 22/07/2014, na sheki ya Fina Bank.

[19] Ku byerekeye factures y'ukwezi kwa karindwi n'ukwa munani, Me Bahati Vedaste avuga ko na bwo Hestia Ltd yemeye kwishyura ubwo yahaga Umoja House Ltd Ordre de Paiement yo ku wa 29/09/2014, ariko itariki yo kujya kureba amafaranga kuri banki, Hestia Ltd ikabwira Umoja House Ltd ko nta mafaranga aragera kuri konti zayo ko bityo ikwiriye gutegereza.

[20] Ku byerekeye ibaruwa Hestia Ltd yise "mise en garde", Me Bahati Vedaste avuga ko aho Hestia Ltd yishyurijwe ukwezi kwa cyenda n'ukwa cumi, yatinze kwishyura, biba ngombwa ko yandikirwa ibaruwa ya "mise en garde" yo ku wa 07/10/2014, kuko uretse n'ubwishyu bw'ayo mezi abiri yari atarishyurwa, na facture y'ukwezi kwa karindwi n'ukwa munani yatangiwe ordre de paiement ariko ntiyishyurwe. Uko kubura ubwishyu bw'amezi 4 (Nyakanga, Kanama, Nzeri n' Ukwakira), ngo byatumye Hestia Ltd iva mu nzu yakodeshaga idasezeye ku wa 28/11/2014, idatanze n'integuza.

UKO URUKIKO RUBIBONA

[21] Urukiko rusanga impande zombi zitana bamwana ku bijyanye n'amakosa yakozwe mu buryo bwo kwishyura amafaranga y'ubukode ari nabyo byaje kuviramo Hestia Ltd kugenda itishyuye itanatanze integuza nk'uko byari biteganyijwe mu masezerano, rukaba rugomba kubanza gusuzuma ayo makosa yakozwe n'ingaruka zayo mu masezerano y'ubukode mbere yo kumenya uwo byaryozwa.

[22] Muri rusange, Hestia Ltd ivuga ko Umoja House Ltd ariyo yishe amasezerano ubwo yishyuzaga amezi abiri (ukwezi kwa Nyakanga na Kanama /2014), nyamara nayo ikaba idahahakana ko yarinze isubiza imfunguzo ku wa 28/11/2015 itarishyura ukwezi na kumwe kuva mu kwezi kwa Nyakanga 2014. Ibyo mu buryo bw'amategeko bibyutsa ibibazo bibiri:

- Ese byari ngombwa ko Hestia Ltd yishyuzwa kugira ngo ibone kwishyura?
- Ese kwishyuzwa muri ubwo buryo ni impamvu ituma itarangiza inshingano zayo (exception d'inexécution)?

[23] Ku byerekeye ikibazo cya mbere, Urukiko rusanga hari ihame rimenyerewe mu mategeko, ko umwenda wishyuzwa, bikaba bidategetswe ko umuntu yibwiriza ngo yishyure (la dette est querrable et non portable). Icyakora mu bijyanye n'ubwishyu bw'ubukode bw'inzu, abahanga mu mategeko bemeranya ko ukodesha atakwitwaza ko nta wamwishyuje ngo yibere mu nzu y'abandi atishyura[2]. Ibyo Urukiko Rusesa imanza rw'Ubufaransa rwarabishimangiye, rubishingiye ahanini ku nshingano nyamukuru ukodesha inzu y'undi aba afite yo kwibwiriza akishyura ubukode[3]

[2] La clause de querrabilité ne peut déroger à l'obligation essentielle du locataire de s'acquitter effectivement du loyer. (Cass 3e civ. 28 Juin 2000 no 1066 FS-D, Ste Teissir c/Commune de Clichy et copr.2001 comm. No 57 obs. B. Vial-pedroletti) cité par par Ed. Francis LEFEBVRE et al, Baux commerciaux in Mémento expert, 2015, p762, no 60615

[3] La Cour de Cassation insiste sur le caractère fundamental de l'obligation du locataire de payer ses loyers, sous entendu de payer spontanément ses loyers, ce qui n'est en définitive qu'une application de l'obligation fondamentale

hakurikijwe ihame risanzwe ry'uko abagiranye amasezerano bagomba kuyubahiriza nta buryarya ndetse rinagaragara mu ngingo ya 70 y' Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano[4].

[24] Ku byerekeye ikibazo cya kabiri naho, Urukiko rusanga hari ihame rimenyerewe ko igihe umwe mu bagiranye amasezerano adakoze ibyo asabwa gukora cyangwa akabikora uko bidateganyijwe, ashobora na we kwiha uburenganzira bwo kudakora ibyo yari ategetswe (exception non adumpleti contractus). Aha ariko naho, ku bireba amasezerano y'ubukode bw'inzu, abahanga mu mategeko bemeranya ko nta kigomba kubuza ukodesha inzu y'undi kwishyura ubukode uretse igihe hari impamvu ikomeye yaba yaramubujije kuba muri iyo nzu cyangwa kuyikoresha yakodesheje nk'uko byemeranyijwe mu masezerano[5].

[25] Hakurikijwe ibisobanuro byatanzwe ku bibazo byabajijwe mu bika bibanziriza iki, Urukiko rurasanga kuba Hestia Ltd yarishyujwe ukwezi kwa karindwi n'ukwa munani icyarimwe n'ubwo binyuranye n'ibyo impande zombi zari zaremeranyije mu masezerano, bitayikuriraho inshingano zo kwishyura yitwaje ko yishyujwe mu buryo butari bwo, kuko nk'uko byasobanuwe yashoboraga kwishyura itanishyujwe cyangwa se ikishyura ay'ukwezi isanga igomba kwishyura aho kurekeraho ngo yibwire ko kwishyuzwa mu buryo itemera biyiha uburenganzira bwo kutagira ayo yishyura na make kandi ikiri mu nzu y'abandi.

[26] Urukiko rurasanga ahubwo Hestia Ltd, mu kwanga kwishyura ubukode kubera ko yishyujwe amezi abiri icyarimwe (Nyakanga na Kanama 2014) ari urwitwazo rwo kwanga gushyira mu bikorwa ibyemeranyijwe mu masezerano, kuko ubwayo yemeye kwishyura ayo mezi yombi ndetse ku wa 29/09/2014 ikanatanga ordre de payement igamije kuyishyura hanyuma ikaza gusaba ko Umoja House Ltd itayikoresha mu kwiyishyura kuko itari izigamiwe. Iyo myitwarire mu ishyirwa mu bikorwa ry'amasezerano ibujujijwe n'ingingo ya 70 y' Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano ivuga ko buri ruhande rufite inshingano yo kurangiza amasezerano nta buriganya kandi rukarangwa n'imikorere myiza yemerwa ku bagiranye amasezerano. Iyo myitwarire mibi inagaragarira mu kuba aho yibukirijwe kwishyura ukwezi kwa Nzeri n'uk'Ukwakira 2014, aho kugira ngo yishyure yahisemo kwigendera nta n'integuza itanze, nyamara ingingo ya munani y'ayo masezerano yarateganyaga ko mbere yo gusesa amasezerano, uruhande bireba ruzabanza guha urundi integuza y'amezi atandatu.

[27] Kubera izo mpamvu rero, Urukiko rusanga Hestia Ltd ariyo yishe amasezerano kubera ko itishyuye ubukode hakurikije amasezerano yagiranye na Umoja House Ltd nk'uko byasobanuwe haruguru.

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d'exécuter de bonne foi les conventions (C. CIV. ART 1134, AL.3) cité par Ed. Francis LEFEBVRE et al, op.cit. p762, no 60615-60616

[4] Iyo ngingo ivuga ko buri ruhande rufite inshingano yo kurangiza amasezerano nta buriganya kandi rukarangwa n"imikorere myiza yemerwa ku bagiranye amasezerano.

[5] L'exception d'inexécution n'est admise qu'en cas d'impossibilité absolue d'utiliser les lieux loués ou d'user des lieux conformément à la destination prévue au bail. Voir Ed. Francis LEFEBVRE et al, Baux commerciaux in Mémento expert, 2015, p766, no 60780-60790

2) Kumenya niba Hestia Ltd igomba kwishyura amezi atandatu y'integuza (préavis) itatanze.

[28] Me Rugemintwaza Jean Marie Vianney avuga ko Hestia Ltd yarenganyijwe mu gutegekwa n'Urukiko Rukuru rw'Ubucuruzi kwishyura amezi atandatu ya préavis ku mpamvu zikurikira:

- Umoja House Ltd niyo yishe amasezerano bityo akaba ari nayo yagombaga gutanga integuza.
- Aho Hestia Ltd iviriye mu mazu ya Umoja House Ltd yari yarakodesheje hahise hajyamo abandi, bityo akaba asanga kwishyura Umoja House Ltd amafaranga y'amezi atandatu byaba ari ukwikungahaza nta mpamvu (enrichissement sans cause).

[29] Me Bahati Vedaste avuga ko basanga Hestia Ltd igomba kwishyura amafaranga y' integuza yose kuko yavuye mu nzu idatanze integuza nk'uko byari byemeranyijwe mu masezerano. Naho ku byerekeye kuba iyo nzu yarahise ijyamo abandi bayikodesha, Me Bahati Vedaste avuga ko itahise ikodeshwa yose, ko ahubwo buri wese ushatse gukodesha bamukatiraga agace gahwanye n'amafaranga yabona, ku buryo agace ka nyuma kagiyemo umuntu mu kwezi kwa 4 k'umwaka wa 2015; bityo akaba asanga nta kwikungahaza nta mpamvu (enrishissement sans cause) kwaba kubayeho.

UKO URUKIKO RUBIBONA

[30] Nk'uko byasobanuwe mu ngingo ya mbere yasuzumwe muri uru rubanza, Hestia Ltd niyo yishe amasezerano ku mpamvu zirimo no kugenda idatanze integuza, bityo akaba ari nayo igomba kuryozwa igihombo Umoja House Ltd yagize giturutse ku kutubahiriza ingingo yayisabaga kubanza gutanga integuza mbere yo gusesa amasezerano.

[31] Naho ku byerekeye umubare w'amafaranga ikwiye kuryozwa, Urukiko rurasanga mbere yo kuwemeza hagomba kubanza gusobanuka icyo indishyi zirebana no kutubahiriza itangwa ry' integuza (préavis) mu masezerano y'ubukode ziba zishingiweho.

[32] Urukiko rusanga igihe cy'integuza (préavis) mu masezerano y'ubukode kiba kigamije gufasha nyir'inzu gutangira gushaka uzajya mu nzu ye igihe uwari uyirimo azaba ayivuyemo kandi atabihombeyemo. Ku ruhande rw'ukodesha igihe cy'integuza kimufasha kubona umwanya wo gushaka aho azimukira, kugira ngo igihe asohotse mu nzu yakodeshaga atabura aho yerekeza. Mu gihe cy'integuza kandi impande zombi zikomeza kubahiriza amasezerano zagiranye ku byerekeranye n'ubwishyu bw'ubukode. Iyo hagize uwica amasezerano ku ngingo zirebana n'integuza, habaho uburyo igihombo kiryozwa uwagiteye mu ngeri ebyiri.

[33] Ingeri ya mbere ni irebana n'iryozabwishyu ry'ubukode bwari butegerejwe (buteganyijwe) mu gihe cy'integuza. Ubwo bwishyu bubarwa hakurikijwe amafaranga y'ubukode uwakodeshaga yari asanzwe atanga buri kwezi n'umubare w'iminsi uwakodeshaga yagiye atarangije cyangwa yateshejwe ku gihe cy'integuza cyari giteganyijwe. Icyakora, kubera ko impamvu y'ayo mafaranga ari ukuriha igihombo cyatewe n'uko kuva mu nzu mu buryo butiteguwe, iyo iyo nzu ibonye abayijyamo muri icyo gihe cy'integuza, icyo gihombo kiba kivuyeho bityo n'amafaranga yagombaga gutanga akaba atakiri ngombwa kuko nta shingiro aba agifite. Ubu buryo bwo kubara

amafaranga y'integuza atarishyuwe niko usanga abarwa no mu bihugu bimwe na bimwe nk'Ububiligi[6].

[34] Ingeri ya kabiri ni irebana n'indishyi nyir'izina (indemnités de rupture). Izi ndishyi si izigamije kwishyura amafaranga y'ubukode yari ateganyijwe mu gihe cy'integuza, ahubwo ni indishyi zigamije kwishyura ibyo umuntu yatakaje bindi aharanira kurengera uburenganzira bwe yavukijwe no kutubahiriza amasezerano ku ngingo zirebana n'integuza. Aya akenshi aba arebana n'amafaranga ajyanye no gushakisha indi nzu cyangwa undi muntu wayijyamo bitewe n'uwishe amasezerano. Ayo mafaranga rero aratangwa kabone n'iyo inzu yaba yagiyemo abandi bayikodesha mu gihe cy' integuza[7]. Ibihugu bimwe biyagena hakurikijwe igihe amasezerano y'ubukode ashesherejwe ugereranyije n'igihe yagombaga kumara; yaba asheshwe vuba izo ndishyi zikaba nyinshi, yaba asheshwe yegereje igihe yagombaga kumara zikaba nkeya: kuva ku mezi atatu kugera ku kwezi kumwe kw'amafaranga y'ubukode yemeranyijweho mu masezerano[8].

[35] Muri uru rubanza, Urukiko rurasanga ibyerekeranye n'indishyi nyir'izina (indemnités de rupture) ababuranyi ntacyo bazivuzeho; ahubwo ikigibwaho impaka ari iryozabwishyu ry'ubukode bwari butegerejwe (buteganyijwe) mu gihe cy'integuza; Hestia Ltd ikaba ivuga ko itemera umubare w'amafaranga yaciwe kuko ikimara kuva mu mazu yari isanzwe ikodesha na UmojaHouse Ltd, yahise agibwamo n'abandi. Urukiko rurasanga kandi hashingiwe ku bisobanuro byatanzwe mu bika bibanziriza iki, Hestia Ltd igomba kwishyura amafaranga y'ubukode bwari buteganyijwe mu gihe cy'integuza hakuwemo ayo yagombaga gutanga mu gihe ayo mazu yari yabonye abandi bayajyamo.

[36] Nk'uko bigaragara mu ibaruwa yanditswe n'umunyamabanga nshingwabikorwa w'Akagari k'Ubumwe, nyuma y'aho Hestia Ltd isohokeye mu nzu ya Umoja House Ltd yakodeshaga, iyo nzu yarakodeshejwe ku giciro cya $17 kuri m2 n'abandi bantu ku buryo bukurikira :

- Wiredin company yagiyemo ku wa 01/01/2015;
- Rwanda Music Production yagiyemo ku wa 02/03/2015;

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[6] Voir à ce propos Isabelle DYKMANS , Fin de bail : la différence entre indemnités de rupture et préavis in L'Echo du 14 janvier 2020 accessible sur https://www.lecho.be/monargent/immobilier/fin-debail-la-difference-entre-indemnites-de-rupture-et-preavis/10126221.html « Le préavis doit éviter un vide locatif. Si le locataire quitte avant la fin du préavis, il doit donc s'acquitter des loyers restants. En revanche, si le locataire quitte les lieux avant la période de trois mois mais que le propriétaire parvient à relouer le bien directement, il ne peut pas réclamer le paiement du préavis de la part de l'ancien locataire ».

[7] « Le propriétaire peut réclamer des indemnités de rupture si le locataire donne son renon au cours des trois premières années du bail. Ceci n'a rien à voir avec l'occupation du bien. Cela signifie que, même si le propriétaire réussit à relouer directement le bien, il peut réclamer les indemnités. Elles visent à indemniser le propriétaire des frais liés à une relocation : publicité pour relouer le bien, organisation de visites, remise en ordre de l'une ou l'autre chose, frais d'agence éventuels, etc. » voir Isabelle DYKMANS, op.cit.

[8] En France par exemple, ce montant est fixé à trois mois de loyer hors charges et hors frais (sur la base du dernier loyer payé) si le locataire quitte l'appartement dans la première année du bail, à deux mois de loyer dans la deuxième année du bail et à un mois de loyer dans la troisième année du bail. Ensuite, le propriétaire ne peut plus réclamer d'indemnités. S'il s'agit d'un bail de courte durée (inférieure ou égale à trois ans), l'indemnité s'élève à un mois de loyer. Voir Isabelle DYKMANS, idem

- SUN ENTERPRISE yagiyemo ku wa 01/04/2015 Urukiko rusanga rero Hestia Ltd igomba kwishyura Umoja House Ltd iryozabwishyu ry'amafaranga y'ubukode bwari butegerejwe (buteganyijwe) mu gihe cy'integuza (préavis) bubazwe kuva igihe Hestia Ltd yasubirije imfunguzo z'inzu ku wa 28/11/2014 kugeza igihe inzu yakodeshaga yatangiye kugibwamo n'abandi bayikodesha.

[37] Icyakora, kuko nk'uko bigaragara ko iyo nzu batayigiriyemo rimwe uko yakabaye, kandi na buri buso bwakodeshwaga bukaba butari bwaragenewe igiciro cyihariye cy'ubukode (nk'uko bigaragara mu ngingo ya mbere y'amasezerano impande zombi zagiranye igiciro cy'ubukode cyari cyarabariwe hamwe), Urukiko rurasanga agomba kubarwa mu buryo bukurikira:

- Ukuboza 2014: Umoja House Ltd izishyurwa $ 3,402 ahwanye n'ukwezi kose k'ubukode yari isanzwe yishyurwa kuko uko kwezi kwashize itabonye ukodesha inzu Hestia Ltd yavuyemo;
- Mutarama na Gashyantare 2015: Umoja House Ltd izishyurwa ubukode bwa bibiri bya gatatu by'ubuso yakodeshaga mu gihe cy'amezi abiri, ni ukuvuga $ 3,402 x 2/3x2= $ 4,536, kuko kuva ku wa 01/01/2015 kimwe cya gatatu cy'ubuso Hestia Ltd yavuyemo cyari cyabonye undi ugikodesha.
- Werurwe 2015, Umoja House Ltd izishyurwa ubukode bwa kimwe cya gatatu cy'ubuso yakodeshaga mu gihe cy'ukwezi kumwe, ni ukuvuga $ 3,402 x 1/3x1= $ 1,134, kuko kuva ku wa 01/03/2015 bibiri bya gatatu by'ubuso Hestia Ltd yavuyemo byari byabonye abandi babikodesha.
- Mata na Gicurasi 2015: nta mafaranga Umoja House Ltd igomba kubona kuko ubuso Hestia Ltd yavuyemo bwose bwari bwabonye abandi babukodesha

Muri rusange rero, amadolari y'integuza Hestia Ltd igomba guha Umoja House Ltd yose hamwe ni: $ 3,402 +$ 4,536 + $ 1,134=$9072 (amadolari y'amerika ibihimbi icyenda na mirongo irindwi n'abiri).

3) Ibyerekeye n'indishyi zisabwa n'impande zombi

[38] Me Rugemintwaza Jean Marie Vianney uhagarariye Hestia Ltd avuga ko ishingiye ku ngingo ya 258 ya CCL III isaba indishyi n'amafaranga y'ikurikiranarubanza bingana na miliyoni icumi z'amafaranga y'u Rwanda (10.000.000 Frw) n'igihembo cya Avoka cya miliyoni eshanu z'amafaranga y'u Rwanda (5.000.000 Frw).

[39] Me Bahati Vedaste uhagarariye Umoja House Ltd avuga ko Hestia Ltd nta ndishyi ikwiriye kubona kuko ari yo itarubahirije amasezerano. Avuga ko ahubwo uko kutishyura ku gihe byateje Umoja House Ltd igihombo kidasubirwaho, kuko muri ubwo bwishyu bw'ubukode bw'amezi ane itishyuye, ariho havagamo n'amafaranga y'imisoro, isuku, amazi n'amashanyarazi; byose hamwe ndetse no gushorwa mu manza, Umoja House Ltd ikaba igomba kubiherwa indishyi na Hestia Ltd zingana na miliyoni cumi n'eshanu z'amafaranga y'u Rwanda (15.000.000 frw) ndetse n'igihembo cya Avoka cya miliyoni enye z'amafaranga y'u Rwanda (4.000.000 frw). Uko Urukiko rubibona

[40] Urukiko rurasanga indishyi Hestia Ltd isaba nta shingiro zifite kuko ariyo yishe amasezerano y'ubukode nk'uko byagaragajwe. Rurasanga kandi indishyi Umoja House Ltd isaba

nayo itazitangira ibimenyetso ngo inagaragaze uko zibazwe, ariko kuko Hestia Ltd yayiteje igihombo mu kutubahiriza amasezerano bagiranye, ikaba igomba kuyiha indishyi zihwanye n'amafaranga ibihumbi magana atanu (500,000 Frw) zigenwe mu bushishozi bw'Urukiko. Na ho ku bijyanye n'amafaranga y'igihembo cya Avoka, urukiko rurasanga ntayo igomba guhabwa kuko hari ibyo nayo yatsindiwe.

III. ICYEMEZO CY'URUKIKO

[41] Rwemeje ko ikirego cya Hestia Ltd kigamije gusubirishamo ku mpamvu z'akarengane urubanza no RCOMA 0490/15/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 11/12/2015, gifite ishingiro kuri bimwe ;

[42] Rwemeje ko hagumyeho imikirize y'urubanza no RCOMA 0490/15/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 11/12/2015, uretse ku bijyanye n'umubare w' amafaranga y'integuza Hestia Ltd igomba guha Umoja House Ltd ;

[43] Rutegetse Hestia Ltd guha Umoja House Ltd $ 9072 (amadolari y'Amerika ibihimbi icyenda na mirongo irindwi n'abiri) yishyura integuza itatanze mbere yo gusesa amasezerano y'ubukode bari bagiranye ;

[44] Rutegetse Hestia Ltd guha Umoja House Ltd amafaranga ibihumbi magana atanu (500,000 Frw) y'indishyi.