KAYOMBYA v I&M BANK RWANDA PLC N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA 0026/2016/SC (Mukamulisa, P.J., Nyirinkwaya na Cyanzayire, J.) 19 Kamena 2020]

Amategeko agenga imanza z'ubucuruzi – Ingwate – Kwandikwaho ingwate – Umutungo uri mu ngwate ushobora kwandikwa ku bifitemo inyungu mu gihe byagaragara ko umwenda wari watumye ingwate itangwa warangiye kwishyurwa wose – Uwatanze ingwate kandi afite uburenganzira bwo gusubizwa ingwate ye igihe cyose amaze kwishyura umwenda we wose hakurikijwe ibyumvikanyweho mu masezerano y'ubugwate – Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kugeza ubu, ingingo ya 11.

Amategeko agenga imanza z'ubucuruzi – Ingwate – Kugura umutungo uri mu ngwate – Ntacyabuza kugurisha umutungo uri mu ngwate mu gihe uwuguze yiyemeje kwishyura umwenda wari wishingiwe kugirango ayegukane – Uwatanze ingwate aba afite uburenganzira bwose ku ngwate yatanze, harimo no kuyigurisha, ariko uwahawe ingwate akaba nawe arengerwa no kuba ashobora kuyikurikirana ku wayiguze mu gihe yishyuye umwenda wose uwatanze ingwate akibereyemo uwayihawe.

Incamake y'ikibazo: Kayombya yareze I & M Bank Rwanda PLC (I&M Bank) na IMEX Sarl (IMEX) ariko IMEX ntiyitaba bituma Urukiko rumuhamagaza ahatazwi, urubanza ruburanishwa idahari. Icyatumye Kayombya yareze asaba ko amasezerano y'ubugwate bw'inzu iri mu kibanza N° 1874 yaguze na IMEX yaseswa kugira ngo abashe kubona uko imwandikaho kuko yagaragaza ko umwenda IMEX yahawe na I&M Bank wishyuwe.

I&M Bank yagaragaje ko inzu iburanwa ari ingwate yayo kubera umwenda yahaye IMEX itabashije kuwishyura wose. Nyuma yo gutsindwa mu bujurire bwa mbere, Kayombya yajuririye bwa kabiri Urukiko rw'Ikirenga, hasuzumwa niba inzu yatanzweho ingwate mu masezerano atagizemo uruhare yavanwa muri ubwo bugwate, akayigiraho uburenganzira busesuye.

Urukiko rwasanze ibyo byashoboka ari uko bigaragaye ko umwenda wari watumye ingwate itangwa warangije kwishyurwa wose ariko habanje gushyirwaho umuhanga mu ibaruramali kugira ngo agaragaze ko uburyo umwenda I&M Bank PLC yahaye IMEX Sarl wagiye wishyurwa.

Mu miburanire ya Kayombya yagiye agaragaza yaguze inzu iri mu bugwate amaze kubyemeranywaho na IMEX ndetse na I&M Bank. Akavuga ko ibyo bitari kubaho mu gihe I&M Bank yari igifitiwe umwenda; bityo agasaba ko inzu yaguze yamwandikwaho kuko I&M Bank yanze kumuha icyangombwa cy'ubutaka kugira ngo akorerwe iherekanyamutungo.

I&M Bank yakomeje yireguye ivuga ko inzu iburanwa ari iyayo kuko ikiri mu ngwate kuko umwenda yahaye IMEX itabashije kuwishyura wose. Ku kijyanye n'uko Kayombya asaba kwandikwaho inzu yaguze na IMEX, I&M Bank yireguye ivuga ko bitashoboka kuko hari urubanza yatsinzwe kandi rwabaye itegeko kandi ko n'umwenda IMEX ikiyibereyemo ukaba utarishyurwa wose.

Urukiko rwashyizeho umuhanga mu ibaruramali kugira ngo agaragaze imyenda yahawe IMEX n'uko yagiye yishyurwa ndetse niba hari umwenda igisigayemo I&M Bank.

Impande zombi zatanze ibitekerezo kuri raporo y'umuhanga aho ku ruhande rwa Kayombya rwagaragaza ko kabone n'ubwo raporo y'umuhanga igaragaza ko hari umwenda IMEX akibereyemo I&M Bank ariko mu gihe yaguraga inzu, IMEX yari yararangije kwishyura imyenda yari yarafashe mbere yo gufata indi mishya.

Ku ruhande rwa I&M Bank yavuze ko kuba raporo igaragaza ko IMEX hari umwenda ikiyisigayemo, inzu Kayombya yaguze itakurwa mu bugwate kuko imyenda yose yagiye iyitanga ishingiye ku ngwate zabaga zatanzwe hari n'inzu yaguzwe na Kayombya.

Incamake y'icyemezo: 1. Umutungo watanzweho ingwate uvanwamo mu gihe bigaragaye ko ko umwenda wari watumye ingwate itangwa warangiye kwishyurwa wose.

2. Uwatanze ingwate aba akiyifiteho uburengazira bwose, harimo no kuyigurisha. Icyakora, mu gihe ayigurishije, uyiguze ashobora guhura n'ikibazo cy'uko uwari wayihawe ashobora kuyimukurikiranaho kugirango yiyishyure. Kugirango ibyo bitabaho, uwaguze yishyura amafaranga y'ikiguzi uwari wahawe ingwate.

3. Uwaguze inzu yari mu ngwate ayegukana ari uko uwari wayitanzeho ingwate yishyuye umwenda wose. Bityo, kuba nta bimenyetso bigaragaza ko umwenda IMEX Sarl yari ibereyemo I&M Bank Rwanda PLC warangiye kwishyurwa, ku buryo inzu iri mu kibanza N^0 1874 yavanwa mu bugwate; ikirego cyatanzwe na KAYOMBYA Robert kikaba rero nta shingiro gifite.

Ubujurire nta shingiro bufite.
Urubanza nº RCOMA 0486/15/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 29/03/2016 ntiruhindutse.
Amagarama y'urubanza ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko Nº 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kugeza ubu, ingingo ya 11.
Itegeko Nº 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kugeza ubu

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:
Laurent AYNES et Pierre CROCQ, Droit des Suretes, 9eme edition, Lextenso, 2015, p.372.
Francois T'KINT, Suretes et principes generaux du droit de poursuite des creanciers, 3eme edition, Bruxelles, Larcier, 2000, p.280.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 20/06/1991, Kayombya Robert yaguze na IMEX Sarl inzu iri mu kibanza N^0 1874 giherereye mu Rugunga, ku gaciro ka 15.000.000 Frw. Yasabye ko haba *mutation* inzu ikamwandikwaho, ariko ntibyakunda kuko BCR SA (yabaye I&M Bank Rwanda PLC) yari ifite ibyangobwa byayo nk'ingwate ku myenda yahaye IMEX Sarl.

[2] Kayombya Robert yareze I&M Bank Rwanda PLC na IMEX Sarl mu Rukiko rw'Ubucuruzi rwa Nyarugenge asaba ko amasezerano y'ubugwate bw'inzu ifite N^0 1874 iri mu Rugunga, BCR SA yagiranye na IMEX Sarl, aseswa ku mpamvu y'uko ari iye yaguze; akavuga ko mbere y'uko ayigura, IMEX Sarl yari yararangije kwishyura imyenda yose yari ibereyemo BCR SA, harimo n'inyungu.

[3] I&M Bank Rwanda PLC yireguye ivuga ko Kayombya Robert nta burenganzira afite bwo gusaba ko ayo masezerano aseswa, kuko ntaho ahuriye nayo, kandi ko iby'ubwo bugwate KAYOMBYA Robert yagiye abiregera mu nkiko agatsindwa, akaba adakwiye kubigarura ubwa kabiri. I&M Bank Rwanda PLC ivuga ko iyo nzu yayihaweho ingwate mbere y'uko KAYOMBYA Robert ayigura, bityo Banki ikaba ikiyifiteho ububasha.

[4] Urubanza rwaburanishijwe IMEX Sarl idahari kuko itari yitabye kandi yarahamagajwe mu buryo bukurikije amategeko. Urukiko rwaciye urubanza N° RCOM 1234/13/TC/NYGE, rwemeza ko ikirego cya Kayombya Robert gifite ishingiro kuko inzu ivugwa yagurishijwe igihe cy'ubugwate

cyararangiye. Ruvuga ko amasezerano y'ubugwate yakozwe nyuma y'ubugure nta gaciro afite, rutegeka I & M Bank Rwanda PLC na IMEX Sarl gufatanya guha Kayombya Robert indishyi zingana na 1.000.000 Frw y'ikurikiranarubanza n'igihembo cy 'Avoka.

[5] I&M Bank Rwanda PLC yajuririye Urukiko Rukuru rw'Ubucuruzi, ruca urubanza (RCOMA 0486/15/HCC) ku wa 29/03/2016, rwemeza ko ubujurire bwa I&M Bank Rwanda PLC bwakiriwe kandi bufite ishingiro; ruvuga ko IMEX Sarl yagurishije Kayombya Robert iriya nzu ikiri mu bugwate, bityo ubwo bugure bukaba nta gaciro bufite, n' indishyi Kayombya Robert yari yagenewe ku rwego rwa mbere zikaba zivanyweho.

[6] Urukiko Rukuru rw'Ubucuruzi rwashingiye ku mpamvu zikurikira:

- Ku bijyanye n'inzitizi yo kutakira ubujurire bwa I&M Bank Rwanda PLC yari yatanzwe na KAYOMBYA Robert avuga ko I&M Bank Rwanda PLC itagombaga kurega IMEX Sarl mu bujurire kuko baregwaga hamwe mu rwego rubanza, ko ahubwo yagombaga kurega uwamutsinze (KAYOMBYA), Urukiko rwakiriye ubwo bujurire ku mpamvu y'uko IMEX Sarl yabaye umuburanyi ku rwego rwa mbere, rushingira ku ngingo ya 162, igika cya 11 n'iya 1692 z'Itegeko No 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'izubutegetsi;
- Ku bijyanye n'inzitizi yo kutakira ikirego yari yatanzwe na I&M Bank Rwanda PLC ku rwego rwa mbere ivuga ko ikirego cyatanzwe ari kimwe n'icyaburanywe mu rubanza N0 RC 38 693/02, rukajuririrwa kuri N0 RCOMA 0294/08/HCC, rugacibwa bwa nyuma kuri N0 RCOMAA 0031/09/CS, Urukiko rwavuze ko ibyo birego bitandukanye kuko mbere KAYOMBYA Robert yasabaga ko inzu imwandikwaho kandi I&M Bank Rwanda PLC igategekwa gusubiza certificat d'enregistrement yayo, ubu ikiburanwa kikaba ari ugusaba ko amasezerano y'ubugwate bw'inzu aseswa;
- Naho ku bijyanye no kumenya niba inzu iburanwa yaragurishijwe umwenda yatangiweho ingwate utarishyurwa, Urukiko rwagaragaje ko inzu iri mu kibanza No 1874 mu Rugunga yari yaratanzweho ingwate na IMEX Sarl ku nguzanyo ingana na 8.000.000 Frw yahawe na BCR SA ku wa 08/06/1988. Rwagaragaje kandi ko BCR SA yongeye kugirana na IMEX Sarl amasezerano y'inguzanyo ingana na 110.000.000 Frw ku wa 03/05/1989, mu ngwate zumvikanyweho hakaba harimo n'ikibanza No 1874 cyari gisanzwe ari ingwate ya BCR SA. Urukiko ruvuga kandi ko hatigeze hagaragazwa ko IMEX Sarl yishyuye iyi nguzanyo yose, kuko historique ya compte yabarirwagaho uwo mwenda yatanzwe na Banki ku wa 12/02/2016, igaragaza ko kugeza ku wa 01/07/1991 inzu igurishwa, IMEX Sarl yari igifitiye BCR SA umwenda ungana na 58.491.184 Frw.

[7] Kayombya Robert yajuririye Urukiko rw'Ikirenga atanga impamvu eshatu z'ubujurire zikurikira:

- - Urukiko rwirengagije amategeko, ruhengamira kuri I&M Bank Rwanda PLC;
- - Urukiko rwaciye urubanza ku kirego kitaregewe;
- - Urukiko rwaciye urubanza rutumvikana kuko rutagaragaje amafaranga I&M Bank Rwanda PLC igomba kwishyurwa n'amafaranga yavuye mu mitungo ya IMEX Sarl yagurishije.

[1] Umuntu wese wabaye umuburanyi mu rubanza ku rwego rwa mbere ashobora kurujuririra iyo abifitemo inyungu, keretse iyo amategeko abigena ukundi

[2] Ubujurire butuma ikibazo gisubira uko cyari kimeze mbere y'uko gicibwaho urubanza rujuririrwa, ariko ku ngingo zajuririwe gusa.

[8] Uburanira I&M Bank Rwanda PLC, mu mwanzuro wo kwiregura yatanze inzitizi y'iburabubasha avuga ko Urukiko rw'Ikirenga rudafite ububasha bwo kuburanisha ubujurire bwa KAYOMBYA Robert, ibyo akaba abishingira ku ngingo ya 28, igika cya 2, agace ka 7° n'igika cya 3, y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012, rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, kubera ko agaciro k'ikiburanwa katagejeje kuri 50.000.000 Frw ndetse n'indishyi zatanzwe mu rubanza rujuririrwa zikaba zitageze kuri 50.000.000 Frw.

[9] Iburanisha ry'urubanza ryashyizwe ku wa 19/12/2017, rigenda ryimurwa kubera impamvu zinyuranye. Ku wa 23/02/2018, mu rubanza rubanziriza urundi, hafashwe icyemezo ku nzitizi y'iburabubasha yari yatanzwe na I&M Bank Rwanda PLC, Urukiko rwemeza ko nta shingiro ifite. Urubanza rwaburanishijwe mu mizi bwa mbere ku wa 24/04/2018, ariko ntirwapfundikirwa. Rwongeye kuburanishwa ku wa 19/06/2018, rusomwa ku wa 29/06/2018 rwemeza ko hashyirwaho umuhanga uzarufasha kumenya:

- Imyenda itandukanye IMEX Sarl yahawe na BCR SA ubu yahindutse I&M Bank Rwanda PLC kuva mu 1988 kugeza mu Kuboza 1993;
- Ingwate IMEX Sarl yagiye iha Banki;
- Uko imyenda yagiye yishyurwa no kugaragaza niba yararangiye;
- Kugaragaza niba inzu iri mu kibanza No 1874 hari ubugwate yari irimo ku itariki ya 20/06/1991 ubwo Kayombya Robert yayiguraga.

[10] Urubanza rwongeye guhamagarwa ku wa 20/11/2018, ababuranyi basaba Urukiko kuba arirwo rushyiraho umuhanga, rwemeza ko hazashyirwaho Ayinkamiye Speqose, ababuranyi bamwemeranyaho. Urukiko rwategetse ko umuhanga washyizweho azakora raporo akayishyikiriza Urukiko, n'ababuranyi bakagira icyo bayivugaho.

[11] Urubanza rwongeye kuburanishwa ku wa 29/01/2019, ababuranira Kayombya Robert batanga inzitizi yo kwihana umwe mu bacamanza bagize inteko. Urukiko rwasubitse iburanisha, rwemeza ko rizakomeza nyuma yo gufata icyemezo ku bwihane. Icyemezo ku bwihane cyasomwe ku wa 15/02/2019, Urukiko rwemeza ko inzitizi igamije kwihana umucamanza yatanzwe na Kayombya Robert nta shingiro ifite. Urubanza rwongeye gushyirwa kuri gahunda ku wa 04/06/2019, rugenda rwimurwa kubera impamvu zitandukanye.

[12] Urubanza rwongeye kuburanishwa mu ruhame ku wa 13/09/2019, Kayombya Robert yitabye, yunganiwe na Me Niyibizi Diogene, Mukangabo Aurea, na Me Nsabiyumva Cyubahiro Jean Damascene; naho I&M Bank Rwanda PLC ihagarariwe na Me Nkurunziza Francois Xavier. IMEX Sarl ntiyitabye Urukiko, ariko yari yahamagajwe ahatazwi. Umuhanga washyizweho n'Urukiko Ayinkamiye Speqose nawe yitabye Urukiko kugira ngo asobanure raporo ye. Mu bisobanuro yatanze, abarega bagaragaje impungenge z'uko hari ibiburamo, cyane cyane ibijyanye no kumenya ingwate zose zagurishijwe, n'uburyo amafaranga yazivuyemo yafashije kugabanya umwenda. Urukiko rwasanze ari ngombwa ko raporo y'umuhanga ibanza kuzuzwa, urubanza ntirwapfundikirwa, rwemeza ko iburanisha rizakomeza ku wa 06/11/2019.

[13] Urukiko rwasabye umuhanga kugaragaza ibi bikurikira muri raporo y'inyongera:

- Ibyakozwe ku mafishi kuva mu 1988 kugeza mu 1991 mbere y'uko BCR SA itangira gukoresha ikoranabuhanga;
- Gushaka ibijyanye n'amafaranga yagurishijwe izindi ngwate ;
- Kugaragaza niba haratanzwe "main levee„ ku zindi ngwate zaba zaragurishijwe;
- Gusobanura ibijyanye n'amafaranga yagiye kuri konti y'umwenda nyuma y'umwaka wa 2000, n'aho amafaranga yagurishijwe izindi ngwate (niba zaragurishijwe) yagiye;

- Kugaragaza uko byagendekeye ingwate ku kibanza No 1584 - Kacyiru KAGOYIRE Cecile yahaye BCR SA ku nguzanyo ya 50.000.000 Frw yahawe IMEX Sarl ku wa 21/06/1993;
- Kureba niba hari inyandiko igaragaza ko hakozwe “opposition„ kuri "mutation" ku kibanza No 1874 IMEX Sarl yatanzeho ingwate muri BCR SA.

[14] Raporo y’inyongera yarakozwe ishyikirizwa Urukiko, n‘ababuranyi bagira icyo bayivugaho. Iburanisha ryongeye gusubukurwa ku wa 13/11/2019, rirapfundikirwa, ababuranyi bamenyeshwa ko urubanza ruzasomwa ku wa 05/12/2019. Umuhanga washyizweho n’Urukiko nawe yari yahamagawe mu iburanisha kugirango atange ibisobanuro kuri raporo yakoze.

[15] Umuhanga yagaragaje ibi bikurikira:

- Ku bijyanye n‘imyenda yahawe IMEX Sarl kuva 1988 kugeza mu kuboza 1993:

- Ku wa 13/08/1987, IMEX Sarl yandikiye BCR SA yiyemeza kwishyura umwenda remezo wa 90.000.000 Frw n’inyungu zayo bitarenze ku wa 31/12/1988 (ugizwe na credit de caisse ya 5.000.000 Frw, credit a I'exportation ya 50.000.000 Frw, na credit de stockage ya 35.000.000 Frw);
- Ku wa 03/05/1989, BCR SA yandikiye IMEX Sarl iyongerera inguzanyo kugera kuri 110.000.000 Frw inyuzwa kuri konti No 12.940/39;
- Ku wa 31/07/1989, IMEX Sarl yandikiye BCR SA yiyemeza kwishyura umwenda wa 110.000.000 Frw;
- Ku wa 28/08/1990 IMEX Sarl yandikiye BCR SA yiyemeza kwishyura umwenda ungana na 110.000.000 Frw uvugwa mu ibaruwa yo ku wa 31/07/1989 bitarenze ku wa 30/10/1990;
- Ku wa 20/03/1991, bigaragara ko ifishi y’inguzanyo No 109 yo ku wa 20/03/1991 isimbuye ifishi y’inguzanyo N° C/ 418 yo ku wa 31/07/1989 : supression du credit de caisse de 5.000.000 Frw et inclusion du credit de stockage de 35.000.000 Frw dans le credit a I'exportation ;
- Ku wa 25/06/1991, hakozwe ifishi y’inguzanyo N° 285 yasimbuye ifishi y’inguzanyo C/109 yo ku wa 20/03/1991 : suppression du credit a l’exportation de 70.000.000 Frw avec maintien du credit de stockage de 35.000.000 Frw;
- Ku wa 10/12/1991, ifishi y’inguzanyo N° 549 yakuyeho ifishi y’inguzanyo N° 285 yo ku wa 25/06/1991 kandi irayisimbura : Transformation du credit de stockage en un decouvert amortissable a raison de 13. 536.000 Frw a partir du 31/03/1992 ;
- Ku wa 01/02/1992, IMEX Sarl yandikiye BCR SA yiyemeza kwishyura umwenda ungana na 50.000.000 Frw bitarenze ku wa 30/06/1992 ;
- Ku wa 17/02/1992, BCR SA yandikiye IMEX Sarl igabanya inguzanyo, ikazishyira ku mubare ntarengwa wa 50.000.000 Frw, agomba kwishyurwa bitarenze ku wa 30/06/1992, binyujijwe kuri konti No 010-0161601-80;
- Ku wa 20/11/1992, IMEX Sarl yandikiye BCR SA yiyemeza kwishyura umwenda ungana na 50.000.000 Frw bitarenze ku wa 30/06/1993;
- Ku wa 31/03/1993, IMEX Sarl yandikiye BCR SA yiyemeza kwishyura :
    - Umwenda remezo ungana na 50.000.000 Frw;
    - *Credit de caisse* ya 25.000.000 Frw bitarenze ku wa 30/06/1993 ;

- *Escompte d'effets a I'exportation* ya 25.000.000 Frw bitarenze ku wa 30/06/1993 ;

- Ku wa 21/06/1993, BCR SA yandikiye IMEX Sarl iyemerera gukomeza gukoresha inguzanyo ya 50.000.000 Frw binyuze kuri konti No 010-0161601-80, itariki yo kwishyura ikaba ku wa 30/11/1993 ;
- Ku wa 22/06/1993, IMEX Sarl yandikiye BCR SA yiyemeza kwishyura inguzanyo ya 50.000.000 Frw.

- **Ku bijyanye n'uko imyenda yagiye yishyurwa, niba yararangiye kwishyurwa, n'igihe yaba yararangiriye kwishyurwa :**
  - Umuhanga yavuze ko mu biganiro yagiranye na I & M Bank Rwanda PLC, bamubwiye ko mbere ya 31/05/1991 bacungaga imyenda yose bakoresheje amafishi, bityo ko imbonerahamwe yatanze yayikuye kuri historique ya konti No 0001616-01-80;
  - Avuga ko amafaranga yose yaciye kuri iyo konti harimo ayishyuwe umwenda remezo, inyungu, frais bancaires na commissions , n'ayo IMEX Sarl yagiye ibikuza;
  - Avuga ko umwenda wose wari usigaye kwishyurwa ku wa 25/10/2005 ari - 82.354.999 Frw, ko kandi uwo mwenda washyizwe mu myenda itishyurwa neza kandi yarengeje igihe cy'iminsi 360 mu cyiciro cy'imyenda iri mu gihombo (credit radie/written off). Avuga ko bene uwo mwenda udakomeza kubyara inyungu, ugacungirwa kuri konti yihariye, ariko ko Banki ishobora gukomeza ibikorwa byo kwishyuza hashingiwe ku ngingo ya 18 y'amabwiriza rusange ya BNR No 12/2017 yo ku wa 23/11/2017 yerekeye ishyirwa mu byiciro by'imyenda no guteganya ingoboka.

- **Ku bijyamye na zimwe mu ngwate IMEX Sarl yagiye iha BCR SA:**
  - Ku wa 30/07/1988, hakozwe acte de cautionnement solidaire: Madame Kagoyire Cecile, Mr GIGLIOZZI Alberto, Mr Gatembasi Jean, bafatanyije kandi bitwa abishingizi biyemeje kwishingira IMEX Sarl kugeza kuri 90.000.000 Frw;
  - Ku wa 14/06/1988, IMEX Sarl ihagarariwe na GIGLIOZZI Alberto na Cecile Kagoyire bahaye BCR SA ho ingwate inzu yo guturamo iri mu kibanza No 1874;
  - Ku wa 03/05/1989, ku nguzanyo ya 110.000.000 Frw, IMEX Sarl yahaye BCR SA ingwate zinyuranye zikurikira:
    - Ubwishingizi magirirane(*caution solidaire*) bw'abashoramari ba IMEX Sarl;
    - Inzu yo guturamo iri mu kibanza No 1874;
    - Uburenganzira ku bwishingizi bw'inkongi y'umuriro ku nzu iri mu kibanza N° 1874.
  - Na none ku wa 03/05/1989:
    - Hasinywe *acte de cautionnement solidaire avec engagement immobilier*. Abasinye ni Kagoyire Cecile, GIGLIOZZI Alberto na GATEMBASI Jean, biyemeza kwishingira IMEX Sarl ku nguzanyo iyo ariyo yose kugeza ku mafaranga 110.000.000 Frw;
    - Hatanzwe *gage de fonds de commerce a concurrence de 55.000.000 Frw* ;

- Ku wa 31/03/1993: hatanzweho ingwate inzu iri mu kibanza No 37/D kiri I Duha ku nkengero z'ikiyaga cya Muhazi;
- Ku wa 21/06/1993 : hatanzwe ingwate ku nguzanyo ya 50.000.000 Frw zikurikira :
    - Inzu iri mu kibanza No 1564 ku Kacyiru, n'uburenganzira ku bwishingizi bw 'inkongi y'umuriro kuri iyo nzu;
    - Ingwate ku rwego rwa mbere ku nzu iri mu kibanza No 4330 I Butamwa;
    - Umutungo uri i Duha muri Gikoro;
    - Hemejwe kandi ko izindi ngwate IMEX Sarl yari yarahaye BCR zidahindutse (*les autres clauses restent inchangees, la presente n'emportant pas novation en matiere des garanties*).

- Ku bijyanye no kumenya niba inzu iri mu kibanza No 1874 yari mu bugwate Kayombya Robert ayigura ku wa 20/06/1991:

- Inzu iri mu kibanza No 1874 yatanzweho ingwate muri BCR SA nk'uko bigaragazwa na hypotheque conventionnelle yo ku wa 14/06/1988;
- Original ya certificat d'enregistrement d'une propriete fonciere y'iyo nzu ifitwe na I & M Bank Rwanda PLC;
- Copie conforme a l'original yayishyikirije Urukiko;
- Nta main levee d'hypotheque ku nzu iri mu kibanza No 1874 yabonye muri dosiye iri muri I & M Bank Rwanda PLC.

[16] Muri raporo y'inyongera, umuhanga yagaragaje ibi bikurikira:

- Ku bijyanye n'ibyakozwe ku mafishi kuva mu 1988 kugeza mu 1991 mbere y'uko BCR SA itangira gukoresha ikoranabuhanga:

- Ifishi y'inguzanyo N° 109 yo ku wa 20/03/1991 yakuragaho kandi igasimbura ifishi N° C/419 yo ku wa 31/07/1989, yatangiweho inguzanyo 2 : credit a I'exportation ya 70.000.000 Frw, na credit d'entreposage ya 35.000.000 Frw. Izo nguzanyo zombi zagombaga kwishyurwa bitarenze ku wa 31/10/1991;
- Ifishi y'inguzanyo N° 285 yo ku wa 25/06/1991 irebana n'inguzanyo ya escompte commerciale , yakuragaho kandi igasimbura ifishi N° 109 yo ku wa 20/03/1991;
- Ifishi y'inguzanyo N° 549 yo ku wa 10/12/1991 irebana n'umwenda wa 54.191.046 Frw(credit de caisse), wagombaga kwishyurwa bitarenze ku wa 31/03/1992, yasimbuye ifishi N° C/285;
- Ifishi y'inguzanyo N° 041 yo ku wa 04/02/1992 y'umwenda wa 50.000.000 Frw (credit de caisse) wagombaga kwishyurwa bitarenze ku wa 30/06/1992, yasimbuye ifishi N° 549 yo ku wa 10/12/1991;
- Ifishi y'inguzanyo N° 584 yo ku wa 22/12/1992 irebana n'umwenda wa 50.000.000 Frw(credit de caisse), wagombaga kwishyurwa bitarenze ku wa 30/06/1993, yasimbuye ifishi N° C/427 yo ku wa 27/08/1992;
- Ifishi y'inguzanyo N° 183 yo ku wa 31/03/1993 irebana na credit de caisse na credit a l'exportation, byagombaga kwishyurwa bitarenze ku wa 30/11/1993, yasimbuye ifishi N° 584 yo ku wa 22/12/1992.

- **Ku bijyanye n'ingwate zagurishijwe n’uburyo zagabanyije umwenda wa IMEX Sarl:**

  - Ku wa 23/09/2002 habaye ubwumvikane hagati ya succession KAREKEZI na BCR SA bwo kwishyura 8.220.290 Frw, kugirango inzu iri mu kibanza No 5189 ku Muhima ikurwe mu bugwate. Ayo mafaranga yashyizwe kuri konti ya IMEX Sarl muri BCR SA ku wa 25/10/2002 agabanya inguzanyo;
  - Ku wa 25/10/2005, hishyuwe 17.617.743 Frw kuri konti ya IMEX Sarl muri BCR SA, kugirango inzu iri mu kibanza No 320 ku Gisenyi ya BARIYANGA Alphonse ikurwe mu bugwate. Ayo mafaranga yagabanyije umwenda;
  - Ku wa 22/07/1999, BCR SA yandikiye KAGOYIRE Cecile imwemerera ko ashobora kugurisha inzu iri mu kibanza No 1564 ku Kacyiru yari yaratanzweho ingwate, ariko abanje kwishyura 8.192.336 Frw y’agaciro kayo. Ayo mafaranga yishyuwe ku wa 11/08/1999 anyujijwe kuri konti ya IMEX Sarl muri BCR SA, akaba agaragara muri historique.

- Ku bijyanye no kugaragaza niba hari itambama (opposition a mutation) ryakozwe ku kibanza No 1874 kiburanwa, umuhanga yavuze ko nta nyandiko yabonye ibigaragaza.

[17] Ku wa 05/12/2019, hasomwe urubanza rubanziriza urundi, hemezwa ko mbere yo guca urubanza burundu, ari ngombwa kubanza gusaba Ikigo gishinzwe imicungire n’imikoreshereze y’ubutaka mu Rwanda, kurugaragariza amateka y’ibibanza bikurikira:

- N° 4320 giherereye i Butamwa, cyari icya IMEX Sarl;
- N° 37/D giherereye i Duha ku nkengero z’ikiyaga cya Muhazi, cyari icya Kagoyire Cecile;
- N° 3270 giherereye i Remera-Kigali, cyari icya Bariyanga Alphonse;
- N° 3271 giherereye i Remera-Kigali, cyari icya Uwishema Alfred (hakurikijwe ibigaragara mu nyandiko yakozwe n’Umuhesha w’Inkiko wa BCR SA SEBANTU Isaac yatanzwe n’urega). Urukiko rwategetse Ikigo gishinzwe imicungire n’imikoreshereze y’ubutaka mu Rwanda kurugaragariza amateka y’ibibanza bimaze kuvugwa, by’umwihariko abagiye babigura n‘uwabigurishije, cyangwa ubundi buryo byaba byaragiye bihererekanywamo, kimwe na nimero zagiye zihabwa ibyo bibanza.

[18] Ku wa 31/01/2020, icyo Kigo cyamenyesheje Urukiko ko dosiye yabashije kuboneka ari iy’ikibanza N°3270 gusa giherereye i Remera. Muri iyo dosiye harimo icyemezo cyo guteza cyamunara (*acte d’adjudication publique*), kigaragaza ko ikibanza N° 3270 cya Bariyanga Alphonse cyagurishijwe muri cyamunara ku wa 31/10/2001, bikozwe na *Notaire* wa Leta Ndibwami Alain, ashyira mu bikorwa icyemezo N° 380/M.F/2001 cyafashwe n’Urukiko rwa Mbere rw’Iremezo rwa Kigali ku wa 23/10/2001; ikibanza kigurwa na RUBAGUMYA Sam ku mafaranga 15.832.000.

[19] Iburanisha ryongeye gufungurwa ku wa 07/02/2020 kugirango ababuranyi bagire icyo bavuga ku byagaragajwe n‘Ikigo gishinzwe imicungire n’imikoreshereze y’ubutaka mu Rwanda, isomwa ry‘urubanza rishyirwa ku wa 06/03/2020.

[20] Mu gihe Urukiko rwari mu mwiherero, rwasuzumye dosiye ijyanye n‘icyemezo N° 380/M.F/2001 cyafashwe n’Urukiko rwa Mbere rw’Iremezo rwa Kigali ku wa 23/10/2001. Muri iyo dosiye, hagaragaramo itangazo ryo guteza cyamunara ryatanzwe na *Notaire* wa Leta Ndibwmi Alain, rimenyesha abantu ko mu rwego rwo kurangiza urubanza N° 31.459/99 BCR SA yatsindiye, hazatezwa cyamunara umutungo wa IMEX Sarl, ugizwe n’amazu ari mu bibanza N° 4330, 5189, 3270 na 3271. Bigaragara kandi ko icyemezo N° 380/M.F/2001 gitegeka ko cyamunara y’inzu N° 3271 yari iteganyijwe ku wa 24/10/2001 ihagarara biturutse ku kibazo Urukiko rwagejejweho n’uwitwa Munyawera Charles wavugaga ko iyo nzu ari iye akagaragaza n’icyangombwa cyo kubaka, ko ntaho

ihuriye n'urubanza N° 31.459/99 rwarangizwaga. Icyo cyemezo gitegeka kandi ko cyamunara y'inzu N° 3270 ikomeza.

[21] Urukiko rumaze kubona ibigaragara muri dosiye ijyanye n'icyemezo N° 380/M.F/2001 cyafashwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali, rwasanze ari ngombwa gupfundura iburanisha kugirango ababuranyi bagire icyo babivugaho mbere yo gufata umwanzuro ku rubanza.

[22] Urubanza rwongeye kuburanishwa mu ruhame ku wa 20/05/2020, Kayombya Robert yitabye yunganiwe na Me Niyibizi Diogene na Me Nsabiyumva Cyubahiro Jean Damascene, naho I&M Bank Rwanda PLC ihagarariwe na Me Nkundabarashi Moise afatanyije na Me Nkurunziza Francois Xavier, bavuga ku byagaragaye muri dosiye ijyanye n'icyemezo N° 380/M.F/2001 cyavuzwe haruguru.

[23] Muri uru rubanza, ibibazo by'ingenzi byagiweho impaka bijyanye no kumenya niba Kayombya Robert ashobora gusaba ko amasezerano y'ubugwate yakozwe ku nzu iri mu kibanza N⁰ 1874 aseswa, hagamijwe ko iyo nzu ivanwa mu bugwate, no kumenya niba imyenda IMEX Sarl yari ibereyemo I&M Bank Rwanda PLC yararangije kwishyurwa ku buryo ingwate yarekurwa. Kayombya Robert n'abamwunganira bavuga ko amasezerano y'ubugwate ku nzu iburanwa yabaye hagati ya IMEX Sarl na I&M Bank Rwanda PLC akwiye guteshwa agaciro, inzu igakurwa mu bugwate, kuko umwenda IMEX Sarl yari ifitiye iyo Banki wamaze kwishyurwa. Uhagarariye I&M Bank Rwanda PLC we avuga ko Kayombya Robert adashobora gusaba ko amasezerano atagizemo uruhare aseswa, kandi ko inzu iburanwa ikiri mu bugwate kuko IMEX Sarl itishyuye umwenda wose yari yahawe.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba Kayombya Robert ashobora gusaba ko amasezerano y'ubugwate yakozwe ku nzu iri mu kibanza N⁰ 1874 aseswa, iyo nzu ikavanwa mu bugwate.

[24] Abunganira Kayombya Robert bavuga ko bashingiye ku ngingo ya 108[3] y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, basanga uwo bunganira afite ububasha bwo gusaba ko amasezerano atabayemo ateshwa agaciro mu gihe abifitemo inyungu n'igihe amwangiriza. Basobanura ko Kayombya Robert yaguze inzu mu buryo bukurikije amategeko kandi bikorerwa imbere ya *notaire*, akaba ari yo mpamvu batanze ikirego basaba gutesha agaciro amasezerano y'ubugwate kuri iyo nzu; kuyivana mu bugwate bikaba ari ingaruka yumvikana y'uko gutesha agaciro amasezerano.

[25] Me Nkurunziza Francois Xavier uburanira I&M Bank Rwanda PLC avuga ko hari urundi rubanza Kayombya Robert yaburanye na BCR SA asaba ko inzu imwandikwaho (*mutation*) akabitsindirwa, kandi urwo rubanza rukaba rwarabaye itegeko, akaba yaratsinzwe n'uko Urukiko rwasanze iyo nzu ikiri mu bugwate. Avuga ko kuba Urukiko rwaremeje ko yaguze inzu iri mu bugwate atahindukira ngo asabe ko ubugwate buteshwa agaciro, ari nayo mpamvu I&M Bank Rwanda PLC iburana ivuga ko KAYOMBYA Robert adashobora gusaba gutesha agaciro amasezerano atagizemo uruhare, keretse agaragaje ko inzu yatanzweho ingwate yari iye. Avuga ko IMEX Sarl yamugurishije ibintu yatanzeho ingwate ariyo yagombye kuba iregwa.

UKO URUKIKO RUBIBONA

[26] Urukiko rurasanga ipfundo ry'ikibazo, ari ukumenya niba Kayombya Robert yagira uburenganzira busesuye ku nzu yatanzweho ingwate mu masezerano atagizemo uruhare.

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[3] « Ibimenyetso bicukumbuwe no gusesengura urubanza ni ibimenyetso bitacukumbuwe n'amategeko, bicukumburwa n'ubwenge n'ubushishozi bw'abacamanza. Abacamanza bagomba kwemera gusa ibyo bimenyetso iyo bikomeye, bisobanuye kandi bihuje ».

[27] Ikigaragara mu miburanire ya Kayombya Robert ni uko icyo agamije ari uko inzu yaguze na IMEX Sarl iva mu bugwate ikamwandikwaho. Urukiko rusanga ibyo bishobora kugerwaho, igihe byagaragara ko umwenda wari watumye ingwate itangwa warangiye kwishyurwa wose, hashingiwe ku biteganywa n'ingingo ya 11 y'Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kugeza ubu. Iyo ngingo iteganya ko "uwatanze ingwate afite uburenganzira bwo gusubizwa ingwate ye igihe cyose amaze kwishyura umwenda we wose hakurikijwe ibyumvikanyweho mu masezerano y'ubugwate". Mu ngingo zikurikira, harasuzumwa niba umwenda IMEX Sarl yari ibereyemo I&M Bank Rwanda PLC wararangiye kwishyurwa ku buryo inzu iri mu kibanza N^0 1874 yavanwa mu bugwate.

2. **Kumenya niba umwenda IMEX Sarl yari ibereyemo I & M Bank Rwanda PLC wararangiye kwishyurwa ku buryo inzu iri mu kibanza N^0 1874 yavanwa mu bugwate**

[28] Kayombya Robert n'abamwunganira bavuga ko IMEX Sarl yarangije kwishyura imyenda yari ifitiye I&M Bank Rwanda PLC (yahoze ari BCR SA), ku buryo inzu iri mu kibanza N^0 1874 ikwiye kuva mu bugwate. Ibyo babishingira ku mpamvu zikurikira:

- Kuba IMEX Sarl yaragurishije Kayombya Robert inzu BCR SA ibizi, ntigire opposition ikora kandi ifite Titre de propriete y'iyo nzu, ahubwo ikabaza gusa niba ubwo bugure bwarabayeho;

- Kayombya yaguze inzu mu buryo bwemewe n'amategeko, bikorerwa imbere ya Notaire, kandi Notaire abanza kugenzura ko inzu iri mu bugwate. Amasezerano y'ingwate yabayeho hagati ya IMEX Sarl na BCR SA, ariko Kayombya Robert agura umwenda wari wararangiye bivuga ko nta bugwate bwariho;

- Umuhesha w'Inkiko witwa Sebantu wa BCR SA, yanditse agaragaza amazu 5 ya IMEX Sarl agomba kugurishwa, kandi yose akaba yaragurishijwe, ariko ntihagaragazwe amafaranga yavuye muri iyo cyamunara n'icyo yakoreshejwe;

- Hari ordonnance ya Perezida w'Urukiko igaragaza ko BCR SA yatanze ikirego cyo kugurisha mu cyamunara amazu 2 ari mu kibanza N° 4330 ya IMEX Sarl no mu kibanza N° 3270 ya Bariyanga Alphonse, kandi koko akaba yaragurishijwe; hiyongeraho n'andi mazu abari barishingiye IMEX Sarl ubwabo bigurishirije bishyura BCR SA. Ku wa 02/12/1998, BCR SA yemereye Kagoyire Cecile kugurisha amazu atatu, ari mu kibanza N° 1564 yanditse kuri Kagoyire Cecile, N° 4320 yanditse kuri Sosiyete IMEX Sarl n'indi yanditse kuri Kagoyire Cecile iri kuri Muhazi. Urukiko rubanza ntirwigeze rushaka kumenya iby'iyo mitungo yindi yagurishijwe na BCR SA;

- Kayombya Robert agura iyo nzu nta mwenda wari ugihari, kuko yagiye muri BCR SA ari kumwe n'abayobozi ba IMEX Sarl bakamwereka ko nta mwenda urimo;

- Ku wa 22/07/1991, BCR SA yandikiye ibaruwa MINECOFIN ivuga main levee ku ngwate z'imitungo yimukanwa, ikaba rero itari gutanga main levee kandi izi ko IMEX Sarl ikiyifitiye umwenda;

- BCR SA yandikiye IMEX Sarl ku wa 31/03/1993, iyisaba kwemeza ko habaye ubugure, nyuma ku wa 08/06/1993 IMEX Sarl nayo yandikira Conservateur des titres fonciers isabira Kayombya mutation bimenyeshwa BCR SA, bivuga ko iyo IMEX Sarl iba ifitiye umwenda BCR SA ayo mabaruwa atari kwandikwa.

[29] Ibyo uhagarariye I&M Bank Rwanda PLC asubiza ku ngingo ziburanishwa na Kayombya Robert:

- Kayombya agura inzu yari ikiri mu bugwate, nk'uko bigaragazwa na constitution d'hypotheque zashyikirijwe Urukiko, kandi kuba I&M Bank Rwanda PLC igifite umwimerere wa certificat d'enregistrement ni uko umwenda utarangiye, kuko iyo

urangiye bandukuza ingwate, certificat d'enregistrement igasubizwa nyirayo. Ibyo kandi bikaba byaraburanywe mu rubanza No RCOMA 0294/08/HCC rwabaye itegeko, rwasobanuye ko ingwate ivaho ari uko habaye kwishyura, habaye kureka ingwate cyangwa ingwate ivuyeho;

- Igihe Kayombya Robert yaguraga iyo nzu yari ikiri mu bugwate, kandi urega niwe ufite inshingano zo gutanga ibimenyetso by'uko agura inzu nta mwenda IMEX Sarl yari ibereyemo I & M Bank Rwanda PLC; avuga kandi ko na IMEX Sarl yari umuburanyi mu rubanza rujuririrwa, iyo iza kuba ifite ibimenyetso iba yarabitanze;

- - Habaye amasezerano hagati ya BCR SA na IMEX Sarl, aya mbere akaba ari ayo ku wa 03/05/1989, inzu iri mu kibanza N° 1874 itangwaho ingwate. Kugeza ku wa 16/07/1991, IMEX Sarl yari irimo umwenda ungana na 41.800.000 Frw, ikimenyetso akaba ari historique ya Banki. Mu 1992 ndetse no mu 1993 habayeho andi masezerano hemezwa ko ingwate zatanzwe zigumaho, hagenda haniyongeraho izindi. Amasezerano y'inguzanyo niyo yagiye avugururwa, ariko ingwate zo zigakomeza (tacite reconduction), kandi ingwate ikaba itakaza agaciro ari uko umwenda uvuyeho;

- Ibyo ababuranira Kayombya Robert bavuga ko kuba IMEX Sarl yaranditse isaba mutation bisobanura ko nta mwenda yari ifite sibyo, kuko baterekana igisubizo yahawe. BCR SA yabonye iyo baruwa, ariko ntiyagira icyo ivuga kuko nta risque yari ihari mu gihe yari ibitse umwimerere wa inscription d'hypotheque. Naho ibaruwa BCR SA yanditse ku wa 31/03/1993, icyo yari igamije ni ugushaka amakuru kugira ngo imenye uko yifata;

- Ku bijyanye no kugurisha ingwate, kuba hakozwe exploit de notification ntibivuze ko cyamunara yabayeho. Mu mitungo yose ivugwa hagurishijwemo inzu imwe gusa ifite N° 4330, amafaranga avuyemo agabanya umwenda. Impamvu cyamunara yahagaze ni uko abagurishaga (ba nyiri imitungo) basanze cyamunara nikorwa bahomba, basaba Banki kwigurishiriza, ariko umwenda wose ukaba utararangiye. Uhagarariye I&M Bank Rwanda PLC yavuze kandi ko cyamunara itakomeje kuko Kayombya Robert yasabye icyemezo cy'Urukiko kiyihagarika.

[30] Kuri raporo y'Umuhanga, Kayombya Robert n'abamwunganira bavuze ko bayinenga kubera ko atagaragaje uburyo inguzanyo zagiye zitangwa n'uburyo zishyuwe. Bavuga kandi ko hari indi mitungo yari yatanzweho ingwate yagurishijwe n'ubwo batabifitiye ibimenyetso, amafaranga yavuye mu byamunara akaba atagaragara muri raporo, bagasaba ko hashakwa amakuru mu Kigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda. Bavuga ko indi mitungo yagurishijwe ari iyi ikurikira:

- Ikibanza No 4320 cya IMEX Sarl giherereye i Butamwa, BCR SA ikaba yari yemereye Kagoyire Cécile kugurisha (ibaruwa yo ku wa 02/12/1998);

- Ikibanza No 37/D cya IMEX Sarl giherereye kuri Muhazi, nacyo BCR SA yari yemereye Kagoyire Cécile kukigurisha ;

- Ikibanza No 3270 cya IMEX Sarl giherereye i Remera, nacyo Kagoyire Cécile akaba yari yemerewe na BCR SA kukigurisha ;

- Ikibanza No 3271 cya IMEX Sarl giherereye i Remera, BCR SA yari yasabye Umuhesha w'Inkiko kugurisha, hashingiwe kuri exploit de notification yo ku wa 18/10/2000.

[31] Me Nkurunziza François Xavier uhagarariye I&M Bank Rwanda PLC avuga ko ntacyo anenga raporo yakozwe n'umuhanga. Asobanura ko mu mikoranire ya IMEX Sarl na I & M Bank Rwanda PLC, habaye amasezerano yagiye avugururwa, hakongerwamo indi myenda. Ingwate nazo zagendaga zongererwa igihe, hakongerwamo n'izindi, ariyo mpamvu ifishi yashoboraga gusimbura indi.

Asobanura kandi ko inzu iburanwa yatanzweho ingwate mu 1989, igakomeza kugeza mu 1993, kuko yabaga yongeye gutangwa mu gihe cyo kuvugurura amasezerano y'umwenda, ikongerwaho n'izindi ngwate. Yongeraho ko Kayombya Robert yaguze inzu ku wa 20/06/1991, kandi ku wa 20/03/1991 hari umwenda wari wongewe IMEX Sarl, inzu ikiri mu bugwate itarakorerwa *main levee*.

[32] Ku bijyanye n'ingwate zagurishijwe, uhagarariye I & M Bank Rwanda PLC atanga ibisobanuro bikurikira:

- Ikibanza kiri kuri Muhazi ntikigaragara mu nyandiko zinyuranye IMEX Sarl yagiranye na BCR SA;
- Ikibanza N° 320 kiri ku Gisenyi cyagurishijwe bisabwe na Bariyanga Alphonse, ikindi kiri ku Kacyiru(N° 1564) kigurishwa bisabwe na Kagoyire Cecile, kandi amafaranga yavuye mu ngwate zagurishijwe yashyizwe kuri konti ya IMEX Sarl agabanya umwenda;
- Hari urubanza rwabaye hagati ya IMEX Sarl na I & M Bank Rwanda PLC mu 2000, rwemeje ko iyibereyemo umwenda ungana na 140.000.000 Frw, ku buryo iyo haba hari ibibanza byagurishijwe mu 1998 byari kugabanya umwenda;
- Exploit de notification yakozwe n'Umuhesha w'Inkiko ku wa 18/10/2000 ntihagije mu kwerekana ko ikibanza N° 3271 cyagurishijwe, no kumenya niba hari amafaranga yishyuwe BCR SA;
- Cyamunara yabaye ku nzu iri mu kibanza N° 3270 ya Bariyanga Alphonse, nta kigaragaza ko yasabwe na BCR SA, nta n'ikigaragaza ko amafaranga yavuyemo yishyuwe BCR SA. Kuba BCR SA yari iyifiteho ingwate, ntibivuga ko ariyo yari iyifiteho uburenganzira yonyine.

[33] . Nyuma yo kubona ibyagaragaye muri dosiye ijyanye n'icyemezo N° 380/M.F/2001 cyafashwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali ku wa 23/10/2001, Kayombya Robert n'abamwunganira bagaragaje ibi bikurikira:

- I & M Bank Rwanda PLC yakomeje kwimana ibimenyetso, ariko ibyo Urukiko rwiboneye byerekana ko inzu iri mu kibanza N0 3270 ya IMEX Sarl yagurishijwe, kandi amafaranga yavuye mu cyamunara akaba atagaragara kuri historique ya konti ya IMEX Sarl;
- Ku bijyanye n'inzu iri mu kibanza N0 3271, bavuga ko badashobora guhamya ko itagurishijwe, kuko bishoboka ko I&M Bank Rwanda PLC yongeye gusaba ko igurishwa mu cyamunara, ko rero mu gihe nta rubanza rwigeze rubaho ruhagarika cyamunara y'imitungo yari ku rutonde rwakozwe n'Umuhesha w'Inkiko wa BCR SA, bivuze ko iyo mitungo yose yagurishijwe kandi ko umwenda wose wishyuwe;
- Ibyo I & M Bank Rwanda PLC iburanisha ko amafaranga yavuye mu cyamunara cy'inzu No 3270 atarangiza kwishyura umwenda IMEX Sarl yari iyifitiye nta shingiro bifite, kuko ikiburanwa atari umwenda ahubwo ari ugusaba ko inzu iri mu kibanza No 1784 ikurwa mu bugwate;
- Ibyo I&M Bank Rwanda PLC ivuga ko amafaranga yavuye mu cyamunara yose atishyuwe Banki sibyo, kuko bitumvikana uburyo ariyo yaba yarasabye cyamunara hanyuma ntiyishyurwe ku mafaranga ayivuyemo. Naho ku birebana n'amafaranga agera kuri 12.061.500 I&M Bank Rwanda PLC ivuga ko yishyuwe na Bariyanga Alphonse, bavuga ko ataribyo kuko ibivuga ikekeranya, kandi akaba ataragaragajwe muri raporo yakozwe n'umuhanga washyizweho n'Urukiko.

[34] Abahagarariye I&M Bank Rwanda PLC batanze ibisobanuro bikurikira:

- Inzu iri mu kibanza No 3270 yaragurishijwe koko, ariko amafaranga yavuye mu cyamunara ntagaragara kuri konti ya IMEX Sarl, bivuze ko ashobora kuba atarahise yishyurwa;
- Hari ibaruwa BARIYANGA Alphonse yandikiye BCR SA ku wa 06/05/2005, asaba ko mu gihe agitegereje ibizava mu rubanza No RC 36260/01, yakwemererwa kuba yishyuye amafaranga angana na 12.061.500 ajyanye n'ingwate ku kibanza No 320, ayo mafaranga akaba yarashyizwe kuri konti ku wa 23/08/2005. Bavuga ko batekereza ko ayo mafaranga ari 15.832.000 yavuye mu cyamunara cy'inzu iri mu kibanza No 3270, hamaze kuvanwamo frais zijyanye n'iyo cyamunara;
- Ku bijyanye n'inzu iri mu kibanza N0 3271, bavuga ko itagaragara muri acte de constitution d'hypotheque muri BCR SA, bivuze ko kuba harasabwe ko igurishwa byaba ari ikosa ryabaye;
- Ibigaragara muri dosiye irebana n'icyemezo NO 380/MF/2001 ntacyo byahindura ku rubanza, kuko amafaranga yavuye mu cyamunara ari make kurusha umwenda IMEX Sarl ibereyemo I & M Bank Rwanda PLC;
- Ibyo ababuranira KAYOMBYA Robert bavuga ko Banki yimana ibimenyetso nta shingiro bifite, kuko aribo barega akaba ari nabo bagomba gutanga ibimenyetso by'ibyo baregera, babibura bagatsindwa. Bongeraho ko ibyavuzwe n'urega ko amafaranga 12.061.500 BARIYANGA Alphonse yishyuye atagaragara muri raporo y'umuhanga ataribyo, kuko aboneka ku rupapuro rwa 17.

UKO URUKIKO RUBIBONA

[35] Mu miburanire yabo, abunganira Kayombya Robert bagiye bagaruka ku kuba inzu iri mu kibanza N^0 1874 yaraguzwe itakiri mu bugwate, Urukiko rukaba rusanga icyo kibazo kitagarukwaho muri uru rubanza kuko cyamaze gufatwaho icyemezo cyabaye ndakuka mu rubanza N^o RCOMA 0294/08/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/03/2009, hakemezwa ko nta kimenyetso gihari kigaragaza ko inzu yaguzwe itakiri mu bugwate. Urukiko rwabivuze muri aya magambo: "*Dans le cas present, il ya absence totale de preuve d'une renonciation expresse de l'appelante a son hypotheque ainsi que de I'une quelconque des causes d'extinction de l'hypotheque prevues*[4] *Le constat du premier juge selon lequel il decoule de la lettre du 31/03/1993 que l'appelante avait donne son accord a la vente de l'immeuble et renonce a l'hypotheque dont ce dernier etait greve est errone*„.

[36] Itegeko ryo ku wa 15/05/1922 ryerekeye ingwate ryakoreshwaga ubwo Kayombya Robert yaguraga na IMEX Sarl inzu iri mu kibanza N^0 1874 ikiri mu bugwate, ntiryabuzaga uwatanze ingwate kuba yayigurisha; icyakora uyiguze akaba agomba kwishyura umwenda wari wishingiwe kugirango ayegukane. Mu gihe atabikoze, uwari wahawe ingwate yari afite uburenganzira bwo kuyikurikirana k'uyifite kugirango yiyishyure umwenda wari wishingiwe. Ibyo nibyo bigaragara mu ngingo za 31,32 na 33 z'Itegeko rimaze kuvugwa[5]. Ibi byaje guhindurwa n'Itegeko N^o 10/2009 ryo ku wa 14/05/2009

[4] Mu gika kibanza cy'urubanza, havugwamo ingingo ya 47 y'Itegeko ryo ku wa 15/05/1922 ryakoreshwaga igihe urubanza rwacibwaga, yateganyaga ibi bikurikira : « les hypotheques s'eteignent dans les circonstances suivantes :

- L'extinction de l'obligation principale ;
- La renonciation du creancier a son hypotheque ;
- La perte totale de l'immeuble greve' ;
- Les causes determinees par l'article 48 et la peremption de l'inscription **».**

[5]"Les creanciers ayant hypotheque sur un immeuble le suive, en quelques mains qu'il passe, pour etre colloques et payes, suivant l'ordre de leurs creances ou inscriptions », article 31

«Le tiers detenteur jouit des termes et delais accordes au debiteur », article 32 « Faute par le tiers detenteur de payer les interets et capitaux exigibles garantis, a quelque somme qu'ils puissent monter, tout creancier hypothecaire a droit de faire vendre l'immeuble greve, deux mois apres le commandement fait au debiteur et sommation faite au tiers detenteur de payer la dette exigible » ; article 33

ryerekeye ubugwate ku mutungo utimukanwa, mu ngingo yaryo ya 7 igira iti:"Umutungo utimukanwa umaze gushyirwa mu bugwate uba ubaye umutungo ushinganye". Uwatanze ingwate n'uwahawe ingwate ntibemerewe kugira ubundi burenganzira batanga ku ngwate ivugwa mu gika cya mbere cy'iyi ngingo mu gihe kivugwa mu masezerano y'ubugwate. Bitewe n'uko Kayombya Robert yaguze mu 1991 hagikoreshwa Itegeko ryo ku wa 15/05/1922, ingingo za 31,32 na 33 z'iri Tegeko zavuzwe haruguru nizo zakurikizwa ku byakozwe icyo gihe.

[37] Ibivugwa mu ngingo za 31, 32 na 33 zavuzwe mu gika kibanza, binasobanurwa n'abahanga mu mategeko Laurent AYNES na Pierre CROCQ bavuga ko uwatanze ingwate aba akiyifiteho uburengazira bwose, harimo no kuyigurisha. Bakavuga ariko ko mu gihe ayigurishije, uyiguze ashobora guhura n'ikibazo cy'uko uwari wayihawe ashobora kuyimukurikiranaho kugirango yiyishyure. Kugirango ibyo bitabaho, uwaguze yishyura amafaranga y'ikiguzi uwari wahawe ingwate[6]. Bigarukwaho kandi n'umuhanga mu mategeko Francois T'KINT, avuga ko uwahawe umwenda aba afite uburenganzira bwose ku ngwate yatanze, harimo no kuyigurisha, ariko uwahawe ingwate akaba nawe arengerwa no kuba ashobora kuyikurikirana ku wayiguze.[7]

[38] Ku bijyanye n'uru rubanza, igihe Kayombya Robert yaguraga na IMEX Sarl inzu iri mu kibanza N^0 1874 ikiri mu bugwate, yashoboraga kwishyura BCR SA yari yarahawe iyo nzu ho ingwate amafaranga y'ikiguzi cyayo, kugirango nyuma itazayimukurikiranaho igamije kwiyishyura mu gihe IMEX Sarl itarangije kwishyura umwenda yahawe. Kubera ko ibyo bitakozwe, inzu yagumye ari ingwate ya BCR SA yahindutse I&M Bank Rwanda PLC. Icyakora, igihe byagaragara ko umwenda IMEX Sarl yagombaga kwishyura I&M Bank Rwanda PLC wamaze kwishyurwa wose, inzu yahita iva mu bugwate hashingiwe ku ngingo ya 11 y'Itegeko N^o 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kugeza ubu, iteganya ko "uwatanze ingwate afite uburenganzira bwo gusubizwa ingwate ye igihe cyose amaze kwishyura umwenda we wose hakurikijwe ibyumvikanyweho mu masezerano y'ubugwate„.

[39] Ibiteganywa n'ingingo ya 11 y'Itegeko N^o 10/2009 ryo ku wa 14/05/2009 rimaze kuvugwa, byagiye bisobanurwa n'abahanga mu mategeko. Francois T'KINT avuga ko ingwate ari uburenganzira bushingiye ku bundi, ni ukuvuga ku mwenda wishingiwe; imwe mu ngaruka z'ibyo ikaba ari uko ingwate izimana n'umwenda wari wishingiwe[8]. Laurent AYNES na Pierre CROCQ nabo

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[6]«Tant que le le creancier n'a pas realise son droit, le constituant- en general, le debiteur-, conserve toutes les prerogatives d'un proprietaire sur son immeuble: usus, abusus, fructus, ce qui est l'avantage, mais aussi le danger de l'hyotheque car le constituant risque de ne pas se rendre compte des consequences futures de son acte ; le debiteur peut donc jouir de l'immeuble et en percevoir les fruits, l'administrer et meme en disposer » ; Laurent AYNES et Pierre CROCQ, Droit des Suretes, 9eme edition, Lextenso, 2015, p.372.

«Le constituant a egalement le droit de vendre l'immeuble; cette vente expose l'acquereur au droit de suite dont beneficient les creanciers hypothecates, meme lorsqu'une partie seulement de l'immeuble est separee du principal. Si l'acquereur a un minimum de prudence, il offrira donc le paiement du prix aux creanciers, ou le consignera » ; Ibidem, p.373.

«Lorsque le constituant de l'hypotheque a aliene l'immeuble qui en etait greve, par exemple l'a vendu, le creancier hypothecate beneficie d'un droit de suite, c'est -a-dire du droit de saisir ulterieurement l'immeuble entre les mains du tiers acquereur, afin d'exercer sur le prix resultant de la vente forcee son droit de preference. Il n'en reste pas moins que le tiers acquereur subit un risque considerable: perdre la propriete qu'il a acquise. Aussi la loi lui confere le moyen de prevent le droit de suite, en eteignant les hypotheques grevant l'immeuble au moyen de la purge, procedure qui assure aux creanciers hypothecates des paiements correspondants a la valeur de l'immeuble » ; Ibidem, p. 381

[7]«Le debiteur hypothecate est laisse en possession de l'immeuble dont il conserve l'usage et les revenus (et meme la libre disposition car l'hypotheque ne fait pas obstacle a la vente) » ; Francois T'KINT, Suretes et principes generaux du droit de poursuite des creanciers, 3eme edition, Bruxelles, Larcier, 2000, p.280

«Le debiteur alienera valablement l'immeuble, car le creancier est protege par le droit de suite qui lui permet de le saisir, en vue de son adjudication forcee, entre les mains du tiers acquereur » ; Ibidem, p.318

«Lorsque le tiers detenteur est l'acquereur a titre particulier de l'immeuble, le creancier qui intente contre lui l'action hypothecaire exerce le droit de suite attache a l'hypotheque, qui lui permet de saisir l'immeuble en d'autres mains que celles du constituant »; Ibidem, p.326

[8] « L'extinction de la creance garantie entraine, par voie de consequence, l'extinction de l'hypotheque, qui est un droit accessoire » ; Francois T'KINT, Ibidem, p. 329

«Comme toute surete, l'hypotheque est un droit accessoire d'un autre droit, la creance qu'elle garantit. Plusieurs consequences decoulent de ce caractere accessoire : a) l'hypotheque suit le sort de la creance garantie. Elle s'etteint en cas

bavuga ko ingwate ishobora kuvaho nk'inkurikizi yo kuba umwenda wishingirwaga utakiriho, nko kuba wishyuwe[9].

[40] Hakurikijwe ibivugwa mu ngingo ya 11 yavuzwe mu gika kibanza, kimwe n'ibisobanuro by'abahanga, byumvikana ko igihe umwenda wishingirwaga urangije kwishyurwa wose, ingwate yishingiraga uwo mwenda ihita irekurwa, keretse byarateganyijwe ukundi mu masezerano. Mu bika bikurikira harasuzumwa niba IMEX Sarl yarishyuye umwenda wose yari ifitiye I&M Bank Rwanda PLC, ku buryo ingwate yari yatanze ku nzu iri mu kibanza N^0 1874 yishingira uwo mwenda yarekurwa, iyo nzu ikava mu bugwate.

[41] Umuhanga washyizweho n'Urukiko kugirango yerekane imyenda yose IMEX Sarl yahawe na BCR SA (yahindutse I&M Bank Rwanda PLC) kuva mu 1988, uko yagiye yishyurwa, no kwerekana niba yararangije kwishyurwa, yagaragaje ko ku wa 25/10/2005, hari hasigaye umwenda ungana na -82.352.527 Frw. Raporo y'umuhanga igaragaza ko uwo mwenda ariwo wari usigaye nyuma y'uko hagurishijwe zimwe mu ngwate zatanzwe n'abishingiye IMEX Sarl, zigaragara mu gika cya 16 cy'uru rubanza, ni ukuvuga:

- Inzu iri mu kibanza no 320 ku Gisenyi ya Bariyanga Alphonse;
- Inzu iri mu kibanza no 5189 ku Muhima ya Succession Karekezi;
- Inzu iri mu kibanza no 1564 ku Kacyiru ya Kagoyire Cecile.

[42] Umuhanga yasobanuye ko uwo mwenda wakorewe *written of,* ni ukuvuga umwenda wasibwe kubera kutishyurwa neza kandi ukaba wararengeje iminsi 360 mu cyiciro cy'imyenda iri mu gihombo. Umuhanga yasobanuye kandi ko Banki ishobora gukomeza ibikorwa byo kwishyuza nyuma yo gusiba umwenda, hashingiwe ku ngingo ya 18 y'amabwiriza rusange ya BNR N^o 12/2017 yo ku wa 23/11/2017 ku ishyirwa mu byiciro by'imyenda no guteganya ingoboka.

[43] Kayombya Robert n'abamwunganira bavuga ko hari izindi ngwate zagurishijwe zikishyura umwenda, ariko bikaba bitagaragara muri raporo y'umuhanga, arizo:

- Inzu iri mu kibanza no 4330 kiri I Butamwa;
- Inzu iri mu kibanza no 4320 kiri i Butamwa;
- Inzu iri mu kibanza no 3270 kiri i Remera;
- Inzu iri mu kibanza no 3271 kiri i Remera;
- Inzu iri mu kibanza no 37/D kiri kuri Muhazi.

[44] Ku bijyanye n'inzu iri mu kibanza N^o 4330, mu nyandiko zashyikirijwe Urukiko harimo inyandiko yo guteza cyamunara (*acte d'adjudication publique*), yakozwe na *Notaire* wa Leta Ndibwami Alain ku wa 27/03/2002, igaragaza ko ikibanza N^o 4330 giherereye ku Gitikinyoni, cya IMEX Sarl, cyagurishijwe muri cyamunara ku wa 05/12/2001, hashyirwa mu bikorwa icyemezo N^o 335/M.F/2001 cyatanzwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali. Iyo nyandiko igaragaza kandi ko ikibanza cyagurishijwe Ruterana Edouard, ku mafaranga 12.041.000. Icyemezo N^o 335/M.F/2001 cyatanzwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali kigaragaza ko cyamunara yasabwe na BCR SA mu rwego rwo gushyira mu bikorwa urubanza N^o RC 31.459/99 rwaciwe n'urwo Rukiko ku wa 19/9/2000.

[45] Hashingiwe ku bigaragazwa n'inyandiko zimaze kuvugwa mu gika kibanza, Urukiko rurasanga inzu iri mu kibanza N^o 4330 giherereye ku Gitikinyoni (Butamwa) yaragurishijwe bisabwe

d'extinction de cette creance » ; Francois T'KINT, Ibidem, p.282

9 « L'hypotheque peut disparaitre par voie accessoire, lorsque s'eteint la creance qu'elle garantit. Ainsi en est-il du paiement pur et simple... » ; Laurent AYNES et Pierre CROCQ, op.cit., p.390

na BCR SA, ku mafaranga 12.041.000. Urukiko rurasanga ariko ayo mafaranga atagaragara muyo umuhanga yerekanye ko yinjiye kuri konti N º 0001616-01-80 ya IMEX Sarl, kugirango agabanye umwenda iyo Sosiyete yahawe na BCR SA. Urukiko rurasanga kandi, ibyo uburanira I&M Bank Rwanda PLC yavugiye mu iburanisha ko amafaranga yavuye mu igurishwa ry'inzu iri mu kibanza Nº 4330 yagabanyije umwenda, bitagaragara muri *historique* ya konti yakoreshwaga mu kwishyura umwenda yavuzwe haruguru. Urukiko rukaba rusanga rero, amafaranga 12.041.000 yavuye mu igurishwa ry'inzu iri mu kibanza Nº 4330, agomba gukurwa mu mwenda umuhanga yagaragaje ko IMEX Sarl yari isigayemo ku wa 25/10/2005, ungana na 82.352.527 Frw. Bivuga ko haba hasigaye umwenda ungana na 82.352.527 Frw-12.041.000 Frw= 70.311.527 Frw.

[46] Ku bijyanye n' inzu iri mu kibanza Nº 4320 kiri i Butamwa, kimwe n'inzu iri mu kibanza Nº 37/D kiri kuri Muhazi, Urukiko rurasanga nta kimenyetso Kayombya Robert yatanze cyemeza ko izo nzu zagurishijwe. Urukiko rurasanga ibaruwa yo ku wa 02/12/1998 Kagoyire Cecile yandikiye BCR SA asaba uburenganzira bwo kugurisha ibyo bibanza kugirango yishyure umwenda idahagije, mu gihe nta kindi kimenyetso kigaragaza ko byagurishijwe koko amafaranga agakoreshwa mu kugabanya umwenda. Urukiko rusanga nanone *Exploit de notification et commandement prealable a la saisie immobiliere* yakozwe n'Umuhesha w'Inkiko wa BCR SA Sebantu Isaac atari icyemezo ko habaye cyamunara, kuko iyo nyandiko ishobora gukorwa ariko indi mihango ya cyamunara ntikomeze. Hashingiwe ku ngingo ya 12, igika cyayo cya mbere, 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 urega agomba kugaragaza ibimenyetso by'ibyo aregera, yabibura uwarezwe akamutsinda, Urukiko rurasanga ntacyo rwaheraho rwemeza ko inzu ziri mu bibanza Nº 4320 na Nº 37/D byavuzwe haruguru zagurishijwe, kandi amafaranga avuyemo ntakoreshwe mu kugabanya umwenda IMEX Sarl ibereyemo I & M Bank Rwanda PLC.

[47] Ku bijyanye n'inzu iri mu kibanza Nº 3270 kiri i Remera, dosiye yatanzwe n'Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda**,** igaragaza ko icyo kibanza cyari icya Bariyanga Alphonse, kigatangwaho ingwate ku wa 14/12/1993, ku nguzanyo BCR SA yahaye IMEX Sarl. Igaragaza kandi ko ku wa 31/10/2001, icyo kibanza cyatejwe cyamunara na *Notaire* wa Leta NDIBWAMI Alain, hashyirwa mu bikorwa icyemezo Nº 380/M.F/2001 cyatanzwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali, kikagurwa na RUBAGUMYA Sam ku mafaranga 15.832.000.

[48] Muri dosiye y'Urukiko rwa Mbere rw'Iremezo rwa Kigali, yerekeranye n'icyemezo Nº 380/M.F/2001, hagaragara itangazo ryo guteza cyamunara ryatanzwe na *Notaire* wa Leta Ndibwami Alain, rimenyesha abantu ko mu rwego rwo kurangiza urubanza Nº 31.459/99 BCR SA yatsindiye, hazatezwa cyamunara umutungo wa IMEX Sarl ugizwe n'amazu ari mu bibanza Nº 4330, 5189, 3270 na 3271. Hashingiwe ku bivugwa muri iri tangazo, Urukiko rurasanga inzu iri mu kibanza Nº 3270, yaratejwe cyamunara ku wa 31/10/2001 bisabwe na BCR SA. Urukiko rurasanga ariko, amafaranga 15.832.000 yavuye muri iyo cyamunara, ataragaragajwe n'umuhanga washyizweho n'Urukiko mu mubare w'ayinjiye kuri konti ya IMEX Sarl kugirango agabanye umwenda wayo.

[49] Ibyavuzwe na Me Nkurunziza Francois Xavier uhagarariye I&M Bank Rwanda PLC ko hari amafaranga angana na 12.061.500, agaragara muri raporo y'umuhanga ku rupapuro rwa 17, yashyizwe na Bariyanga Alphonse kuri konti ya IMEX Sarl ku wa 23/08/2005, akaba akeka ko ayo mafaranga ari 15.832.000 yavuye mu cyamunara cy'inzu iri mu kibanza Nº 3270, hamaze kuvanwamo *frais* zijyanye n'iyo cyamunara, Urukiko rusanga bitafatwaho ukuri kubera impamvu zikurikira:

- Umuhanga yagaragaje ko ku wa 23/08/2005, kuri konti ya IMEX Sarl hinjiyeho 5.500.000 Frw, 56.243 Frw, na 12.061.500 Frw, yose hamwe akaba 17.617.743 Frw, yishyuwe umwenda remezo ku wa 25/10/2005;
- Muri raporo y'inyongera, umuhanga yasobanuye ko ku wa 22/05/2005, BCR SA yari yandikiye Bariyanga Alphonse imumenyesha ko kugirango asubizwe icyangombwa (titre de propriete) cy'ikibanza No 320 kiri ku Gisenyi, kandi n'icyo kibanza kivanwe mu bugwate, agomba kubanza kwishyura 17.617.743 Frw. Umuhanga avuga ko ayo

mafaranga yishyuwe ku wa 25/10/2005 anyujijwe kuri konti ya IMEX Sarl yari muri BCR SA nk'uko bigaragara haruguru, bituma inzu iri mu kibanza No 320 ikurwa mu bugwate.

[50] Ibisobanuro bimaze gutangwa, bigaragaza ko amafaranga 12.061.500 yinjiye kuri konti ya IMEX Sarl ku wa 23/08/2005, ntaho ahuriye n'amafaranga 15.832.000 yavuye mu cyamunara cy'inzu iri mu kibanza N^{o} 3270. Urukiko rukaba rusanga rero, amafaranga 15.832.000 nayo yagombye kuvanwa mu mwenda ungana na 82.352.527 Frw wagaragajwe n'umuhanga, IMEX Sarl yari ifitiye BCR SA ku wa 25/10/2005; bivuga ko umwenda usigaye waba ungana na (82.352.527 Frw-12.041.000 Frw =70.311.527 Frw) - 15.832.000 Frw = 54.479.527 Frw.

[51] Ku bijyanye n'inzu iri mu kibanza N^{o} 3271 kiri i Remera, Kayombya Robert n'abamwunganira bavuga ko yagurishijwe bahereye ku nyandiko yitwa *Exploit de notification et commandement prealable a la saisie immobilize* yakozwe n'Umuhesha w'Inkiko wa BCR SA Sebantu Isaac, yamenyeshaga IMEX Sarl ko nitishyura mu gihe yahawe, iyo nzu(bigaragara ko yanditse kuri Uwishema Alfred) kimwe n'izindi zivugwa muri iyo nyandiko, zizagurishwa mu rwego rwo kurangiza urubanza N^{o} RC 31.459/99 rwavuzwe haruguru. Urukiko rusanga, uretse kuba iyo nzu ivugwa mu nyandiko y'Umuhesha w'Inkiko, nta handi bigaragara ko yaba yaratanzweho ingwate na IMEX Sarl cyangwa abishingizi bayo. Rusanga kandi, nk'uko byasobanuwe mu gika cya 51 cy'uru rubanza, iyo nyandiko y'Umuhesha w'Inkiko atari ikimenyetso ko inzu yagurishijwe.

[52] Urukiko rurasanga iyi nzu iri mu kibanza N^{o} 3271, igaragara mu itangazo ryo guteza cyamunara ryavuzwe haruguru, ryatanzwe na *Notaire* wa Leta Ndibwami Alain, rimenyesha abantu ko mu rwego rwo kurangiza urubanza N^{o} 31.459/99 BCR SA yatsindiye, hazatezwa cyamunara umutungo wa IMEX Sarl. Urukiko rusanga ariko, mu cyemezo N^{o} 380/M.F/2001 cyatanzwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali ku wa 23/10/2001, Perezida w'urwo Rukiko yarategetse ko cyamunara kuri iyo nzu ihagarara biturutse ku busabe bw'uwitwa Munyawera Charles, wanditse avuga ko ikibanza N^{o} 3271 ari icye akabitangira n'ibimenyetso, kandi ko ntaho gihuriye n'urubanza N^{o} RC 31.459/99. Urukiko rukaba rusanga rero ntaho rwahera rwemeza ko inzu iri mu kibanza N^{o} 3271 yatanzweho ingwate na IMEX Sarl, kandi ko yagurishijwe mu rwego rwo kwishyura umwenda iyo Sosiyete ibereyemo I&M Bank Rwanda PLC.

[53] Hashingiwe ku bisobanuro byose byatanzwe, Urukiko rurasanga nta bimenyetso bigaragaza ko umwenda IMEX Sarl yari ibereyemo I&M Bank Rwanda PLC warangiye kwishyurwa, ku buryo inzu iri mu kibanza N^{0} 1874 yavanwa mu bugwate; ikirego cyatanzwe na Kayombya Robert kikaba rero nta shingiro gifite.

3. Kumenya niba hari indishyi zatangwa mu rubanza

[54] .Abunganira Kayombya Robert bavuga ko I&M Bank Rwanda PLC igomba gutegekwa kwishyura 10.000.000 Frw, akubiyemo 7.000.000 Frw y'igihembo cy'Avoka, 2.500.000 Frw yo gushorwa mu manza, na 500.000 Frw yo gukurikirana urubanza, akanasubizwa 3.000.000 Frw yishyuwe umuhanga washyizweho n'Urukiko.

[55] Ababuranira I&M Bank Rwanda PLC, mu bujurire bwuririye ku bwa Kayombya Robert, bavuga ko basaba Urukiko kuyigenera amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka muri uru rwego kingana na 3.000.000 Frw.

UKO URUKIKO RUBIBONA

[56] Urukiko rurasanga amafaranga y'indishyi Kayombya Robert asaba atayahabwa kuko atsinzwe urubanza.

[57] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka I&M Bank Rwanda PLC isaba yayahabwa, kuko byabaye ngombwa gukurikirana urubanza no gushyiraho abayihagararira, ariko kuko ayo isaba ari menshi kandi idasobanura uko iyabara, ikaba igenewe mu bushishozi bw'Urukiko 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cy'Avoka, yose hamwe akaba 800.000 Frw.

III. ICYEMEZO CY'URUKIKO

[58] Rwemeje ko ikirego cy'ubujurire cyatanzwe na Kayombya Robert cyakiriwe, ariko ko nta shingiro gifite;

[59] Rwemeje ko urubanza Nº RCOMA 0486/15/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 29/03/2016, rudahindutse;

[60] Rwemeje ko umwenda wari watumye inzu iri mu kibanza N^{0} 1874 itangwaho ingwate utararangira kwishyurwa, bityo iyo nzu ikaba itava mu bugwate;

[61] Rutegetse Kayombya Robert kwishyura I & M Bank Rwanda PLC 800.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka;

[62] Rutegetse ko ingwate y'amagarama yatanzwe na Kayombya Robert ihwanye n'ibyakozwe mu rubanza.