RUKERIKIBAYE v. ECOBANK LTD

[Rwanda URUKIKO RW'IKIRENGA – RCOM A 00057/13/CS – (Mukanyundo, P.J., Rugabirwa na Hitiyaremye, J.) 19 Gashyantare 2016]

Amategeko agenga imanza z'ubucuruzi – Amasezerano – Amasezerano y'inguzanyo – Amasezerano y'ikodeshagurisha – Nta muburanyi wavuga ko banki yishe amasezerano mu kutamuha amafaranga y'inguzanyo bumvikanye mu gihe bigaragara ko banki yubahirije inshingano zayo zo gutanga amafaranga y'inguzanyo impande zombi zumvikanye.

Amategeko agenga imikorere ya zabanki – Amasezerano y'inguzanyo – Imicungire ya konti y'umukiliya – Ikigo gishinzwe gutanga inguzanyo kigomba buri gihe kujya cyandika kuri konti y'umukiliya wayo, ubwoko (nature) bwa buri "opération" gikoze kuri iyo konti, kikanagaragaza umubare w'amafaranga ayishyizweho n'itariki bikoreweho, n'umubare w'amafaranga ayisigayeho – Mu gihe habaye ubukererwe, kwibeshya cyangwa kwibagirwa kwandika "opération" bifatwa nk'ikosa rishobora gutuma icyo Kigo kibitangira indishyi ku mukiliya wacyo cyangwa ku wundi wese wangirijwe naryo .

Amategeko agenga amasezerano – Amasezerano y'inguzanyo – Kwishyura umwenda umukiya afite mu yindi banki – Umukiliya wumvikanye na banki kumugurira umwenda yari afite muyindi banki akavuga n'umwenda yagurirwa, banki yiyemeje kumwishyurira igasanga hari amafaranga yiyongereye kuyo umukiliya yayibwiye, iyo nyongera ntibazwa banki mu gihe banki yamuguriye umwenda yabikoze itarizi ingano ya wa mwenda kandi ikabikora nta gutinda.

Amategeko agenga imikorere y'amabanki – Amasezerano y'inguzanyo – Amasezerano guhuza konti – Uretse igihe amasezerano n'amategeko yihariye abiteganya ukundi, amasezerano yerekeye guhuza konti (conventions d'unicité ou de fusion de comptes), ateganya ko konti banki ifunguriye umukiriya wayo ifatwa nka konti imwe rukumbi isanzwe (compte courant), ko Banki ishobora kuyikoreraho "opérations zose zirimo izo kubitsa no kubikuza nta yindi mihango igombye kubahiriza.

Amategeko agenga amasezerano – Amasezerano y'ikodeshagurisha – Amasezerano yarangije igihe – Mu gihe amasezerano y'inguzanyo ajyanye n'ikodeshagurisha yarangiye, ntaho banki iba ishobora guhera isaba gusubizwa icyo amasezerano ashingiyeho mu gihe iba itarabikoze ayo masezerano agifite agaciro – Ukodesha agura ahubwo aba agomba kwegukana icyo amasezerano ashingiyeho akiguze ku kiri hasi cyane impande zombi zumvikanyeho.

Incamake y'ikibazo Ku wa 06/02/2008, Rukerikibaye yandikiye ECOBANK Ltd ayisaba kumuguriza amafaranga yo kugura amabisi ane (4) yo mu bwoko bwa Mercedes Benz n'amabisi atatu (3) yo mu bwoko bwa Zongtong azakoresha mu bucuruzi bwe bwo gutwara abantu n'ibintu, ayo kumwishyurira umwenda yari afitiye COGEBANQUE Ltd n'ayo gukoresha mu bucuruzi bwe bwa buri munsi (fond de roulement**)**.

Ku wa 13/03/2008, impande zombi zagiranye amasezerano agaragaza ko hari umubare w'amafaranga ECOBANK yemeye kumuguriza, nawe akazishyura ayo mafaranga hiyongereyeho inyungu zayo mu gihe kivugwa muri ayo masezerano. Ku wa 26/03/2008, impande zombi zongeye kugirana amasezerano y'ikodeshagurisha (crédit –bail) arebana gusa n'inguzanyo y'imodoka zavuzwe haruguru.

Ayo masezerano yose yashyizwe mu bikorwa, ariko nyuma y'aho, ababuranyi b'impande zombi batanze ibirego byavuzwe haruguru mu Rukiko Rukuru rw'Ubucuruzi, bihurizwa hamwe kuri n° RCOM 0229/11/HCC-RCOM 0009/12/HCC, Rukerikibaye arega ECOBANK Ltd kuba itarubahirije amasezerano bagiranye kubera ko itamuhaye amafaranga yose y'inguzanyo bari barumvikanye muri ayo masezerano bikamutera igihombo gikomeye, ko kandi yagiye ibikuza amafaranga kuri konti ze uko yishakiye bituma ubucuruzi bwa Hotel Le Belvedère budindira, nyamara butararebwaga n'izo nguzanyo, ndetse ko hari n'amafaranga yatanze ku modoka 7 mu mwanya wayo. Asaba ko ECOBANK Ltd yamusubiza ayo mafaranga yose yaciwe ku maherere n'ayo yishyuriye imodoka mu mwanya wayo hiyongereyeho inyungu z'ubukererwe zayo hamwe n'indishyi zinyuranye.

ECOBANK Ltd nayo yareze Rukerikibaye muri urwo Rukiko ivuga ko yamuhaye amafaranga yose y'inguzanyo yayisabye ndetse iranayarenza, ko ahubwo ariwe utarubahirije amasezerano bagiranye kuko atayishyuye imyenda yose yamuhaye n'inyungu zayo. Isaba ko Rukerikibaye yayishyura ayo mafaranga hiyongereyeho inyungu zayo z'ubukererwe, ndetse n'indishyi zinyuranye, akanayisubiza imodoka 7 zavuzwe haruguru zaguzwe mu buryo bw'ikodeshagurisha (crédit-bail).

Urwo Rukiko rwaciye urubanza n° RCOM 0229/11/HCC-RCOM 0009/12/HCC ku wa 08/05/2013, rwemeza ko ECOBANK Ltd itubahirije amasezerano yagiranye na Rukerikibaye, ruyitegeka kumuha 40.000.000 Frw yasigaye ku nguzanyo ya « fond de roulement » itamuhaye, akazayishyurira hamwe n'indi myenda asigaranye, ko umwenda wa 256.200.000 Frw Rukerikibaye afitiye ECOBANK Ltd ugomba kwishyurwa hamwe n'inyungu za 18% mu gihe cy'amezi 48 agomba kubarwa kuva ECOBANK Ltd itanze 40.000.000 Frw yasigaye kuri « fond de roulement », ko umwenda wa 165.000.000 Frw ukomeza kwishyurwa ukwawo, ariko ugafatirwa aho wari ugeze muri « Octobre » 2011, rutegeka ECOBANK Ltd kwishyura Rukerikibaye Raphaël 15.000.000 Frw y'indishyi z'uko itubahirije amasezerano bagiranye, runayitegeka kumuha 3.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avocat, rutegeka ko Rukerikibaye akimara guhabwa 40.000.000 Frw yasigaye kuri « fond de roulement », azahita atangira kwishyura umwenda usigaye kuri 256.200.000 Frw ugashyirwa hamwe na 40.000.000 Frw azaba amaze guhabwa, yose hamwe akaba 296.200.000 Frw, akajya ayishyurira inyungu zibarirwa ku gipimo cya 18% mu gihe cy'amezi 48, akishyura n'umwenda usigaye kuri 165.000.000 Frw hamwe n'inyungu zawo za 16% mu gihe cy'amezi 24.

Rukerikibaye na ECOBANK Ltd bajuririye urwo rubanza mu Rukiko rw'Ikirenga basaba ko imikirize yarwo ihinduka. Rukerikibaye Raphaël avuga ko yagenewe indishyi nkeya cyane uzigereranyije n'izo yasabye zirenga miriyari imwe, akaba asaba ko izo ndishyi zakwiyongera cyane bitewe n'uko amakosa ECOBANK Ltd yamukoreye mu mitangire y'inguzanyo no mu mikorere yayo mu rwego rwo kwiyishyura inguzanyo yatumye ubucuruzi bwe burimo n'ubwa Hotel Le Belvedère butarebwaga n'izo nguzanyo buhomba. Naho ECOBANK Ltd isaba ko Rukerikibaye yayishyura imyenda ayibereyemo hiyongereyeho inyungu zayo, ndetse n'indishyi zinyuranye akanayisubiza imodoka zavuzwe haruguru.

Incamake y'icyemezo: 1. ECOBANK Ltd yahaye Rukerikibaye 285.000.000 Frw y'ikiguzi cyose cy'amabisi ane (4) yo mu bwoko bwa Mercedes Benz n'amabisi atatu (3) yo mu bwoko bwa Zongtong. Bityo, imvugo ya Rukerikibaye Raphaël y'uko ECOBANK Ltd itamuhaye 285.000.000 Frw bumvikanye mu masezerano bagiranye ikaba nta shingiro ifite.

2. Ikigo gishinzwe gutanga inguzanyo kigomba buri gihe kujya cyandika kuri konti y'umukiliya wayo, ubwoko (nature) bwa buri "operation" gikoze kuri iyo konti, kikanagaragaza umubare w'amafaranga ayishyizweho n'itariki bikoreweho, n'umubare w'amafaranga ayisigayeho. Iyo kitabikoze kibitangira indishyi. Bityo, kuba ECOBANK Ltd yarashyize konti ya Rukerikibaye Raphaël muri "solde négatif" ku wa 31/03/2009, ariko ikaba yaratinze kuyishyira muri "solde positif", ahubwo ikaba yarabikoze ku wa 28/01/2010 ubwo yayishyiragaho 124.000.000 Frw, bigaragaza ko yamuteje igihombo kibariwe ku gipimo cya 16% ku mwaka cyumwikanweho n'impande zombi mu masezerano bagiranye, icyo gihombo kikaba kingana na 15.912.381 Frw kigomba kwiyongeraho n'inyungu z'ubukererwe zingana na 16% ku mwaka cyumvikanweho n'impande zombi mu masezerano bagiranye, izo nyungu zingana na 2.395.601 Frw, yose hamwe akaba 18.307.982 Frw. Icyo kigo kandi kiryozwa n'amafaranga cyakuye kuri konti y'umukiliya ku buryo bw'amaherere cyangwa cyishyuje umukiliya bitari ngombwa hashingiwe ku masezerano bafitanye.

3. Igihe impande zombi zagiranaga amasezerano yo kumwishyura umwenda wa COGEBANQUE, nta kimenyetso kidashidikanywaho kigaragaza ko impande zombi zari zizi ingano y'umwenda Rukerikibaye Raphaël yari abereyemo COGEBANQUE Ltd. Bityo, bikaba bigaragara ko 4.595.505 Frw yiyongereye ku mwenda wa 40.000.000 Frw Rukerikibaye yaguriwe na ECOBANK ataturutse ku bukererwe bwaba bwaratewe n'uko ECOBANK Ltd yatinze kumwishyurira uwo mwenda, ahubwo byatewe n'uko ariko uwo mwenda wanganaga icyo gihe; bivuze rero ko Rukerikibaye Raphaël agomba kwiyishyurira 4.595.505 Frw.

4. Amasezerano yerekeye guhuza konti (conventions d'unicité ou de fusion de comptes), ateganya ko konti banki ifunguriye umukiriya wayo ifatwa nka konti imwe rukumbi isanzwe (compte courant), ko Banki ishobora kuyikoreraho "operations" zose zirimo izo kubitsa no kubikuza nta yindi mihango igombye kubahiriza. Bityo, kuba nta masezerano yihariye Rukerikibaye Raphaël yagiranye na ECOBANK Ltd agaragaza ko itazakoresha konti ye ifite n°101-000060-01-97 yise Rukerikibaye/Hotel Le Belvedère mu kumuha cyangwa mu kwiyishyura inguzanyo yamuhaye, bigaragara ko iyo konti ikwiye gufatwa nka konti isanzwe (compte courant).

Ubujurire bufite ishingiro kuri bimwe.
Urubanza n° RCOM 0229/11/HCC-RCOM 0009/12/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 08/05/2013, ihindutse kuri bimwe.
Amagarama aherereye ku isanduku ya Leta.

Amategeko yashingiweho:
Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, ingingo ya 33 na 258.

Inyandiko z'abahanga zifashishijwe:
Thierry Bonneau, "Droit Bancaire", 7ème Edition, Montchrestien, Paris, 2007, p.259.
Georges Vermelle, "Droit Civil, Les Contrats Spéciaux", 5ème Edition, Dalloz, Paris, 2006, p.92.
Sophie Sabathier, "Droit du crédit", Collection Mise au Point, "Ellipes", p.193.

Imanza zifashishijwe:

Urubanza nº RCOMAA 0001/05/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/06/2005, haburana Banque de Kigali na Nsengiyumva Jean de Dieu.

Urubanza nº 13-17046 rwaciwe n'Urukiko Rusesa Imanza rwo mu gihugu cy'Ubufaransa ku wa 16/12/2014, hagati ya sosiyete Roumy Auto Location na Banki yitwa "CIC EST"

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 06/02/2008, Rukerikibaye Raphaël yandikiye ECOBANK Ltd ayisaba kumuguriza amafaranga yo kugura amabisi ane (4) yo mu bwoko bwa Mercedes Benz n'amabisi atatu (3) yo mu bwoko bwa Zongtong azakoresha mu bucuruzi bwe bwo gutwara abantu n'ibintu, ayo kumwishyurira umwenda yari afitiye COGEBANQUE Ltd n'ayo gukoresha mu bucuruzi bwe bwa buri munsi (fond de roulement).

[2] Ku wa 13/03/2008, impande zombi zagiranye amasezerano agaragaza ko hari umubare w'amafaranga ECOBANK yemeye kumuguriza, nawe akazishyura ayo mafaranga hiyongereyeho inyungu zayo mu gihe kivugwa muri ayo masezerano. Ku wa 26/03/2008, impande zombi zongeye kugirana amasezerano y'ikodeshagurisha (crédit –bail) arebana gusa n'inguzanyo y'imodoka zavuzwe haruguru.

[3] Ayo masezerano yose yashyizwe mu bikorwa, ariko nyuma y'aho, ababuranyi b'impande zombi batanze ibirego byavuzwe haruguru mu Rukiko Rukuru rw'Ubucuruzi, bihurizwa hamwe kuri n° RCOM 0229/11/HCC-RCOM 0009/12/HCC, Rukerikibaye Raphaël arega ECOBANK Ltd kuba itarubahirije amasezerano bagiranye kubera ko itamuhaye amafaranga yose y'inguzanyo bari barumvikanye muri ayo masezerano bikamutera igihombo gikomeye, ko kandi yagiye ibikuza amafaranga kuri konti ze uko yishakiye bituma ubucuruzi bwa Hotel Le Belvedère budindira, nyamara butararebwaga n'izo nguzanyo, ndetse ko hari n'amafaranga yatanze ku modoka 7 mu mwanya wayo. Asaba ko ECOBANK Ltd yamusubiza ayo mafaranga yose yaciwe ku maherere n'ayo yishyuriye imodoka mu mwanya wayo hiyongereyeho inyungu z'ubukererwe zayo hamwe n'indishyi zinyuranye.

[4] ECOBANK Ltd nayo yareze Rukerikibaye Raphaël muri urwo Rukiko ivuga ko yamuhaye amafaranga yose y'inguzanyo yayisabye ndetse iranayarenza, ko ahubwo ariwe utarubahirije amasezerano bagiranye kuko atayishyuye imyenda yose yamuhaye n'inyungu zayo. Isaba ko RUKERIKIBAYE Raphaël yayishyura ayo mafaranga hiyongereyeho inyungu zayo z'ubukererwe, ndetse n'indishyi zinyuranye, akanayisubiza imodoka 7 zavuzwe haruguru zaguzwe mu buryo bw'ikodeshagurisha (crédit-bail).

[5] Urwo Rukiko rwaciye urubanza n° RCOM 0229/11/HCC-RCOM 0009/12/HCC ku wa 08/05/2013, rwemeza ko ECOBANK Ltd itubahirije amasezerano yagiranye na Rukerikibaye Raphaël, ruyitegeka kumuha 40.000.000 Frw yasigaye ku nguzanyo ya « fond de roulement » itamuhaye, akazayishyurira hamwe n'indi myenda asigaranye, ko umwenda wa 256.200.000 Frw Rukerikibaye Raphaël afitiye ECOBANK Ltd ugomba kwishyurwa hamwe n'inyungu za 18% mu gihe cy'amezi 48 agomba kubarwa kuva ECOBANK Ltd itanze 40.000.000 Frw yasigaye kuri

« fond de roulement », ko umwenda wa 165.000.000 Frw ukomeza kwishyurwa ukwawo, ariko ugafatirwa aho wari ugeze muri « Octobre » 2011, rutegeka ECOBANK Ltd kwishyura Rukerikibaye Raphaël 15.000.000 Frw y'indishyi z'uko itubahirije amasezerano bagiranye, runayitegeka kumuha 3.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoca, rutegeka ko Rukerikibaye Raphaël akimara guhabwa 40.000.000 Frw yasigaye kuri « fond de roulement », azahita atangira kwishyura umwenda usigaye kuri 256.200.000 Frw ugashyirwa hamwe na 40.000.000 Frw azaba amaze guhabwa, yose hamwe akaba 296.200.000 Frw, akajya ayishyurira inyungu zibarirwa ku gipimo cya 18% mu gihe cy'amezi 48, akishyura n'umwenda usigaye kuri 165.000.000 Frw hamwe n'inyungu zawo za 16% mu gihe cy'amezi 24.

[6] Rukerikibaye Raphaël na ECOBANK Ltd bajuririye urwo rubanza mu Rukiko rw'Ikirenga basaba ko imikirize yarwo ihinduka. Rukerikibaye Raphaël avuga ko yagenewe indishyi nkeya cyane uzigereranyije n'izo yasabye zirenga miriyari imwe, akaba asaba ko izo ndishyi zakwiyongera cyane bitewe n'uko amakosa ECOBANK Ltd yamukoreye mu mitangire y'inguzanyo no mu mikorere yayo mu rwego rwo kwiyishyura inguzanyo yatumye ubucuruzi bwe burimo n'ubwa Hotel Le Belvedère butarebwaga n'izo nguzanyo buhomba. Naho ECOBANK Ltd isaba ko Rukerikibaye Raphaël yayishyura imyenda ayibereyemo hiyongereyeho inyungu zayo, ndetse n'indishyi zinyuranye akanayisubiza imodoka zavuzwe haruguru.

[7] Urubanza rwaburanishijwe mu ruhame ku wa 16/09/2014 no ku wa 28/10/2014, Rukerikibaye Raphaël yunganiwe na Me Karongozi André Martin, naho ECOBANK Ltd ihagarariwe na Me Rukangira Emmanuel afatanyije na Me Buzayire Angèle, iburanisha rishojwe Urukiko rumenyesha ababuranyi ko ruzasomwa ku wa 05/12/2014.

[8] Ku wa 05/12/2014, Urukiko rwaciye urubanza rubanziriza urundi, rwemeza ko mbere yo guca urubanza burundu, ari ngombwa gushyiraho abahanga (Experts) batatu (3) bafite ubumenyi buhagije ku birebana n'imikorere y'amabanki n'ibaruramari rijyana nayo, ku micungire ya konti z'abakiriya (clients) no ku bucuruzi mpuzamahanga, rutegeka Rukerikibaye Raphaël na ECOBANK Ltd kurushyikiriza amazina y'abahanga bihitiyemo bitarenze tariki ya 22/12/2014, Urukiko narwo rukazagena umuhanga warwo kuri iyo tariki, ruvuga ko iburanisha rirebana n'ishyirwaho ry'abahanga no kubaha inshingano rizaba tariki ya 10/02/2015.

[9] Ku wa 02/04/2015, Urukiko rwafashe icyemezo gishyiraho abahanga mu buryo bukurikira: Gatera Nsanzimfura Damien yashyizweho nk'impuguke yatanzwe na Rukerikibaye Raphaël, Musabyimana Rukundo Innocent nk'impuguke yatanzwe na ECOBANK Ltd, naho Ayinkamiye Spéciose ashyirwaho nk'impuguke yatanzwe n'uru Rukiko. Abo bahanga bahawe inshingano zitandukanye zigaragarira muri icyo cyemezo.

[10] Ku wa 12/08/2015, izo mpuguke zashyikirije uru Rukiko raporo yazo imwe zumvikanyeho, nyuma y'aho, Rukerikibaye Raphaël yatanze umwanzuro w'inyongera agira ibyo ayinenga, bituma ku wa 03/11/2015, izo mpuguke zitanga indi raporo yiswe "ADDENDUM" ikosora iya mbere, maze iburanisha ry'urubanza ku birebana n'ibikubiye muri izo raporo rishyirwa ku wa 10/11/2015, uyu munsi ugeze, urubanza ruburanishwa mu ruhame Rukerikibaye Raphaël yunganiwe na Me Karongozi André Martin, naho ECOBANK Ltd ihagarariwe na Me Rukangira Emmanuel afatanyije na Me Rutembesa Phocas, hari n'abahanga batatu bavuzwe haruguru, iburanisha rishojwe Urukiko rumenyesha ababuranyi ko ruzasomwa ku wa 22/01/2016.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

A. UBUJURIRE BWA RUKERIKIBAYE Raphaël

1. Kumenya uburyo amasezerano y'inguzanyo yo kugura imodoka Rukerikibaye Raphaël yagiranye na ECOBANK Ltd yagombaga gushyirwa mu bikorwa

A. Kumenya niba ECOBANK Ltd yarahaye Rukerikibaye Raphaël inguzanyo yose yo kugura imodoka bumvikanye mu masezerano bagiranye.

[11] Rukerikibaye Raphaël na Me Karongozi André Martin umwunganira bavuga ko hashingiwe ku ibaruwa ye yo ku wa 06/02/2008 yandikiye ECOBANK Ltd ayisaba inguzanyo yo kugura imodoka no ku masezerano ya "Leasing" bagiranye ku wa 26/03/2008, 285.000.000 Frw yayisabye yari akubiyemo 180.000.000 Frw y'ikiguzi cy'amabisi 4 yo mu bwoko bwa Mercedes Benz hamwe na 105.000.000 Frw y'ikiguzi cy'amabisi atatu (3) yo mu bwoko bwa Zongtong, ariko ko itubahirije ayo masezerano kuko kuri 180.000.000 Frw yo kugura bisi enye (4) zo mu bwoko bwa Mercedes Benz bari bumvikanye, yamuhaye 165.000.000 Frw, ntiyamuha 15.000.000 Frw asigaye, bimutera igihombo kuko byatumye yishyura ku mufuka we amafaranga yatumye izo modoka zigera i Kigali. Bavuga rero ko ECOBANK Ltd ikwiye kumuha 15.000.000 Frw itamuhaye ikamuha n'indishyi z'igihombo yamuteje.

[12] Ababuranira ECOBANK Ltd bavuga ko hashingiwe ku masezerano yagiranye na Rukerikibaye, ECOBANK Ltd yagombaga kumuguriza gusa 285.000.000 Frw yo kugura amabisi 7 yo mu bwoko bwa Mercedes Benz n'ubwa Zongtong, ko kandi ECOBANK Ltd yamuhaye ayo mafaranga yose nk'uko yayasabye, ndetse ko yanayarengeje bitewe n'uko hari andi mafaranga yagiye imuha atuma izo modoka zigurwa ziranaza ku buryo zageze i Kigali nk'uko na Rukerikibaye Raphaël abyiyemerera.

UKO URUKIKO RUBIBONA

[13] Amasezerano y'inguzanyo yo ku wa 13/03/2008 impande zombi zagiranye agaragaza ko ECOBANK Ltd yemeye kuguriza Rukerikibaye Raphaël 285.000.000 Frw azakoreshwa mu kumugurira amabisi ane (4) yo mu bwoko bwa Mercedes Benz n'amabisi atatu (3) yo mu bwoko bwa Zongtong hakoreshejwe uburyo bwa "Crédit Documentaire" nk'uko Rukerikibaye Raphaël yabisabye mu ibaruwa ye yo ku wa 06/02/2008, banumvikana ko Rukerikibaye Raphaël azishyura iyo nguzanyo mu gihe cy'amezi 48 ku birebana n'amabisi yo mu bwoko bwa Mercedes Benz ku gipimo cya 16 %, no mu gihe cy'amezi 36 ku bijyanye n'amabisi yo mu bwoko bwa Zongtong.

[14] Ingingo ya mbere y'amasezerano y'ikodeshagurisha (contrat de crédit-bail) impande zombi zagiranye ku wa 26/03/2008, iteganya ko ECOBANK Ltd nka nyir'imodoka yemeye kuguriza Rukerikibaye Raphaël nk'uzikodesha agura, 285.000.000 Frw yo kugura amabisi ane (4) yo mu bwoko bwa Mercedes Benz n'amabisi atatu (3) yo mu bwoko bwa Zongtong.

[15] Isesengura ry'amasezerano yavuzwe haruguru impande zombi zagiranye, rigaragaza ko ECOBANK Ltd yemeye kuguriza Rukerikibaye Raphaël amafaranga yose hamwe (montant maximum) angana na 285.000.000 Frw y'ikiguzi cy'amabisi ane (4) yo mu bwoko bwa Mercedes Benz n'amabisi atatu (3) yo mu bwoko bwa Zongtong hakoreshejwe uburyo bwa "Crédit

Documentaire", Rukerikibaye Raphaël nawe akishyura 285.000.000 Frw y'umwenda-remezo hiyongereyeho inyungu zayo.

[16] Ku kibazo kijyanye no kumenya niba ECOBANK Ltd yarahaye Rukerikibaye Raphaël 285.000.000 Frw y'ikiguzi cy'imodoka 7 bumvikanye mu masezerano bagiranye yavuzwe haruguru, inyandiko ziri muri dosiye zigaragaza ko ECOBANK Ltd yamuhaye amafaranga mu buryo bukurikira: Ku wa 24/06/2008, ECOBANK Ltd yashyize kuri konti n° 101-00006018-37 ya Rukerikibaye Raphaël 165.000.000 Frw (date valeur ku wa 23/06/2008) yakoreshejwe mu kugura amabisi ane (4) yo mu bwoko bwa Mercedes Benz, ku wa 31/03/2009, imuha 106.362.093 Frw iyanyujije kuri konti n° 101-00006001-97 ya Rukerikibaye/Hotel Le Belvedère yo kugura amabisi atatu (3) yo mu bwoko bwa Zongtong, naho ku wa 07/12/2009, imuha 25.843.284 Frw yo kwishyurira amabisi atatu (3) yo mu bwoko bwa Zongtong imisoro ya Gasutamo iyanyujije kuri konti n°101-00006001-97 ya Rukerikibaye/Hotel Le Belvedère, bityo yose hamwe aba 297.205.377 Frw.

[17] Hashingiwe ku bisobanuro bimaze kuvugwa haruguru, Urukiko rurasanga ECOBANK Ltd yarahaye Rukerikibaye Raphaël 285.000.000 Frw y'ikiguzi cyose cy'amabisi ane (4) yo mu bwoko bwa Mercedes Benz n'amabisi atatu (3) yo mu bwoko bwa Zongtong, ndetse kiranarenga, kuko yamuhaye 297.205.377 Frw nk'uko n'abahanga biyambajwe n'uru Rukiko babigaragaje muri raporo yabo barushyikirije tariki ya 11/08/2015, bityo imvugo ya Rukerikibaye Raphaël y'uko ECOBANK Ltd itamuhaye 285.000.000 Frw bumvikanye mu masezerano bagiranye ikaba nta shingiro ifite.

B. Kumenya hagati ya ECOBANK Ltd na Rukerikibaye Raphaël uwagombaga kwishyura amafaranga y'ubwikorezi, ay'ubwishingizi, aya "Droits d'entrée" ay'umusoro ku nyongeragaciro (TVA) n'ay'ibihano bya Gasutamo mu igura ry'imodoka 7 zavuzwe haguru, no kumenya niba hari amakosa ECOBANK Ltd yamukoreye mu mikoranire y'impande zombi ku buryo yayaryozwa

[18] Rukerikibaye Raphaël na Me Karongozi André Martin umwunganira bavuga ko hashingiwe ku ibaruwa ye yo ku wa 06/02/2008 no ku masezerano yagiranye na ECOBANK Ltd amafaranga 285.000.000 yasabye yari akubiyemo ikiguzi cy'imodoka 7 zavuzwe haruguru hamwe n'amafaranga y'ubwikorezi bwazo, ay'ubwishingizi bwazo kuva ku cyambu cya Dar- es - Salam kugeza zisohotse muri MAGERWA, Rukerikibaye Raphaël nawe yamara kuzishyikirizwa i Kigali, akazishyurira andi mafaranga y'ubwishingizi bwazo atangiye kuzikoresha, akanatangira kwishyura ECOBANK Ltd 285.000.000 Frw y'umwenda-remezo n'inyungu zawo akoresheje umusaruro wagombaga kwinjizwa n'izo modoka.

[19] Bavuga ko ECOBANK Ltd itubahirije ayo masezerano bagiranye kuko itamuhaye amafaranga y'ubwikorezi bw'imodoka, aya "formalités de port et transit" zazo, ay'imisoro n'ibihano yaciwe kubera ko zatinze gusohoka muri za Gasutamo, n'ay'ubwishingizi bwazo kuva Dar- es - Salam kugera i Kigali, bituma akoresha amafaranga akuye mu mufuka we, nyamara ECOBANK Ltd nka nyir'imodoka ariyo yagombaga kuzishyurira ayo mafaranga.

[20] Bakomeza bavuga ko ECOBANK Ltd yagiye imukorera amakosa atandukanye arimo kumutwara amafaranga inshuro ebyiri, kumuca amafaranga y'umusoro ku nyogeragaciro (TVA) bitari ngombwa, kumuca inyungu zikomoka ku mwenda-remezo w'imodoka kandi itari

yazimushyikiriza. Basaba rero ko ECOBANK Ltd yategekwa kumusubiza amafaranga yishyuye mu mwanya wayo ikanaryozwa ayo makosa yamukoreye asobanuye mu buryo bukurikira:

- 25.974.170 Frw Rukerikibaye Raphaël yishyuye mu mwanya wa ECOBANK Ltd akomoka ku nyemezabuguzi (factures) zirebana n'ubwikorezi bw'imodoka n'ubwishingizi bwazo hamwe na "formalités de port et transit" yazo. Rukerikibaye Raphaël asobanura ko mu mafaranga yishyuye harimo 6.308 U$ y'ibihano (amende) yishyuye ku cyambu cya Dar-es-Salam kubera ko imodoka zahatinze bitewe n'uko ECOBANK Ltd yatinze kohereza "bill of loading" yazo, 6.150 y'amadorari ya Amerika y'ubwikorezi bwazo kuva kuri icyo cyambu kugera i Kigali, na 1.100.000 Frw y'ubwishingizi bwazo.

- Kwirengera 2.323.800 Frw y'ibihano (amende) ECOBANK Ltd yaciwe na MAGERWA bitewe n'uko izo modoka zahatinze, ECOBANK Ltd ikaba itaragombaga kuyongera ku mwenda yamuhaye.

- Kwirengera 25.853.000 Frw ECOBANK Ltd yishyuye Gasutamo akubiyemo umusoro wa « TVA » na « droits d'entrée » y'amabisi atatu (3) yo mu bwoko bwa Zongtong, bivuze rero ko ECOBANK Ltd itagombaga kwiyishyura ayo mafaranga iyabikuje kuri konti ye n° 101-000060-01-97 ya Hotel Le Belvedère itararebwaga n'inguzanyo, ahubwo ECOBANK Ltd ikaba yaragombaga kuvana 2.323.800 Frw y'ibihano yaciwe na MAGERWA byavuzwe haruguru muri 25.853.000 Frw, 23.529.200 Frw asigaye akayishyura hamwe n'indi myenda yamuhaye.

- Kwirengera 9.691.432 Frw agizwe na 8.213.080 Frw ya « droits d'entrée » y'amabisi 4 yo mu bwoko bwa Mercedes Benz na 1.478.352 Frw ya «TVA », ECOBANK Ltd yishyuye Ikigo cy'Imisoro n'Amahôro (RRA), ikayamwishyuza mu gihe cy'amezi ane gusa, ko kandi itagombaga kuyabikuza kuri konti ye n° 101-00060-01-97 ya Hotel Le Belvedère idafite aho ihuriye n'inguzanyo yahawe.

- Kumusubiza 9.691.432 Frw ECOBANK Ltd yamutwaye inshuro ebyiri zose tariki ya 23/02/2010 kuko ayo mafaranga agaragara kuri « restructuration » y'umwenda wa 256.200.000 Frw wakorewe « amortissement » ukwawo, akongera akagaragara mu bwishyu bwihariye bwo kuva ku wa 22/02/2010 kugera ku wa 30/04/2010, ikanamuha n'inyungu z'ayo mafaranga zibarirwa ku gipimo cya 18% zibazwe kuva ku wa 23/02/2010 kugeza ku wa 31/08/2014 zingana na 20.978.085 Frw.

- Kumusubiza 22.278.216 Frw y'inyungu yaciwe na ECOBANK Ltd zikomoka ku mwenda-remezo wa 106.362.093 Frw yakoreshejwe mu kugura imodoka zo mu bwoko bwa Zongtong, kandi itari yamushyikiriza izo modoka. Rukerikibaye Raphaël asobanura ko yishyuye izo nyungu mu gihe cy'amezi 9 ubwo zongerwaga ku mwenda-remezo wa 256.200.000 Frw wavuguruwe ku wa 24/12/2009, nyamara atarigeze asaba ko hakorwa ayo masezerano yavuguruye uwo mwenda, ko ahubwo yayasinye kubera agahato yashyizweho n'abakozi ba ECOBANK Ltd kugira ngo isibanganye icyuho cy'amafaranga angana na 249.472.901 Frw cyari kimaze kugaragara kuri konti ye ya Hotel Le Belvedère ku wa 31/12/2009.

- Guca ECOBANK Ltd indishyi z'uko yamukoreye ikosa ryo gushyira konti ye muri "solde négatif" bigatuma atongera kuyikoresha, ikanakura 106.362.093 Frw kuri konti ye itabanje kuyamuha (mis en place du crédit), ariko ko Urukiko Rukuru

rw'Ubucuruzi rwirengagije kuyiryoza ayo makosa, ruvuga ko icyangombwa ari uko « Fournisseur » w'amabisi yishyuwe.

- Gusubiza Rukerikibaye Raphaël 3.942.196 Frw na 18.233.141 Frw y'umusoro ku nyongeragaciro (TVA) yaciwe ku maherere ukomoka kuri 25.843.284 Frw yishyuwe muri Gasutamo (Douane).

[21] Ababuranira ECOBANK Ltd bavuga ko hashingiwe ku ngingo ya 3 y'amasezerano y'ikodeshagurisha impande zombi zagiranye, ECOBANK Ltd yagombaga guha Rukerikibaye Raphaël 285.000.000 Frw y'ikiguzi cy'imodoka zirindwi (7) zavuzwe haruguru, nawe akazishyurira andi mafaranga yose asigaye arimo ay'ubwikorezi bwazo, ay'ubwishingizi bwazo, n'ay'ibihano yaciwe bitewe n'uko zatinze gusohoka muri za Gasutamo. Bavuga kandi ko indi mpamvu ituma Rukerikibaye Raphaël atahabwa amafaranga y'ubwikorezi n'ay'ubwishingizi bw'imodoka asaba yo kuva ku cyambu cya Dar-es-Salam kugera i Kigali ari uko nta bimenyetso ayatangira.

[22] Bavuga na none ko kuba hari amafaranga ECOBANK Ltd yishyuriye Rukerikibaye Raphaël arimo 25.853.000 Frw y'umusoro ku nyongeragaciro (TVA) na « droits d'entrée » y'imodoka, yarangiza, ikayamwishyuza mu gihe gito iyakuye ku makonti ye, nta kosa yamukoreye kubera ko ariwe n'ubundi wagombaga kuyishyura hashingiwe ku masezerano bagiranye.

UKO URUKIKO RUBIBONA

[23] Amasezerano y'inguzanyo ECOBANK Ltd yagiranye na Rukerikibaye Raphaël ku wa 13/03/2008, hamwe n'amasezerano y'ikodeshagurisha (contrat de crédit-bail) yo ku wa 26/03/2008, mu ngingo yayo ya mbere, agaragaza ko impande zombi zumvikanye ko ECOBANK Ltd izamuguriza 285.000.000 Frw y'ikiguzi cy'imodoka 7 zavuzwe haruguru, kandi ECOBANK Ltd yamuhaye ayo mafaranga nk'uko byasobanuwe haruguru.

[24] Naho ingingo ya 3 y'amasezerano y'ikodeshagurisha (contrat de crédit-bail) amaze kuvugwa haruguru, iteganya ko izo modoka zizatumizwa ku mafaranga kandi zikirengerwa n'uzikodesha agura (Locataire) akabikora mu izina rye bwite cyangwa nk'intumwa y'Ukodesha agurisha (Bailleur)[1].

[25] Mu gusesengura amasezerano impande zombi zagiranye yavuzwe haruguru mu rwego rwo kumenya icyo abayagiranye bashakaga, Urukiko rurasanga barumvikanye ko ECOBANK Ltd izaguriza Rukerikibaye Raphaël amafaranga yose hamwe (montant maximum) angana na 285.000.000 Frw y'ikiguzi cy'amabisi arindwi (7) yavuzwe haruguru hakoreshejwe uburyo bwa "Crédit Documentaire", Rukerikibaye Raphaël akazazishyurira andi mafaranga yose asigaye arimo ay'ubwikorezi, ay'ubwishingizi n'aya "formalités de port et transit" ya za Gasutamo kugeza azishyikirijwe mu maboko ye.

[26] Hashingiwe ku ngingo ya 33 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yakurikizwaga igihe ayo masezerano yakorwaga, Urukiko rurasanga ayo masezerano agomba kubahirizwa n'abayagiranye kuko yabaye itegeko hagati yabo.

---

[1]"L'équipement commandé est livré aux frais, aux risques et sous la responsabilité du Locataire, agissant tant pour son compte qu'en qualité de mandataire du Bailleur".

[27] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga imvugo ya Rukerikibaye Raphaël n'umwunganira ko 285.000.000 Frw yari akubiyemo ikiguzi cy'imodoka zirindwi (7) zavuzwe haruguru hamwe n'amafaranga y'ubwikorezi bwazo, ay'ubwishingizi bwazo, aya "formalités de port et transit" ya za Gasutamo yazo kugeza zisohotse muri MAGERWA, no kuba amabisi 4 yo mu bwoko bwa Mercedes Benz yaragombaga kugura 180.000.000 Frw, naho amabisi 3 yo mu bwoko bwa Zongtong akagurwa 105.000.000 Frw nta shingiro ifite, kubera ko ataribyo yumvikanye na ECOBANK Ltd mu masezerano bagiranye yavuzwe haruguru, bikaba bigaragara ko basesenguye nabi ibikubiye mu masezerano.

[28] Urukiko rurasanga kandi ibyo Rukerikibaye Raphaël n'umwunganira bavuga ko atakwishyura ECOBANK Ltd inyungu zingana na 22.278.216 Frw zikomoka ku nguzanyo y'imodoka ya 285.000.000 Frw kubera ko yazimuciye itari yamushyikiriza imodoka nta shingiro bifite, kuko mu masezerano yo ku wa 13/03/2008 yavuzwe haruguru, Rukerikibaye Raphaël yiyemerera ko azishyura inguzanyo ya 285.000.000 Frw hiyongereyeho n'inyungu zayo zibazwe guhera igihe ECOBANK Ltd isohoreye ayo mafaranga igiye kumugurira imodoka (from date of disbursement for Mercedes Benz buses and for Zongtong buses).

[29] Ku kibazo kijyanye no kumenya niba ECOBANK Ltd yarakoreye Rukerikibaye Raphaël ikosa igihe yamuhaga inguzanyo, inyandiko ziri muri dosiye zigaragaza ko ku wa 31/03/2009, ECOBANK Ltd yabikuje 106.362.093 Frw kuri konti n° 101-000060-01-97 ya Rukerikibaye/Hotel Le Belvedère yakoresheje mu kugura imodoka inayivanaho 25.843.284 Frw yo kuzishyurira imisoro ya za Gasutamo, ariko itinda kumuha 124.000.000 Frw yari asigaye ku mafaranga yo kugura imodoka kuko yayamuhaye ku wa 29/01/2010, uko gutinda kumuha ayo mafaranga kukaba kwaratumye konti ye ijya muri "solde négatif", bikamuvutsa uburenganzira bwo kuyikoresha mu gihe kingana n'iminsi 303, ni ukuvuga kuva ku wa 31/03/2009, igihe ECOBANK Ltd yashyiraga iyo konti muri "solde négatif", kugera ku wa 29/01/2010, igihe yayishyiragaho ariya mafaranga 124.000.000.

[30] Ku bijyanye n'imicungire ya konti y'umukiliya, umuhanga mu mikoreshereze y'amakonti witwa Thierry Bonneau mu gitabo cye yise "Droit Bancaire", asobanura ko Ikigo gishinzwe gutanga inguzanyo kigomba buri gihe kujya cyandika kuri konti y'umukiliya wayo, ubwoko (nature) bwa buri "opération" gikoze kuri iyo konti, kikanagaragaza umubare w'amafaranga ayishyizweho n'itariki bikoreweho, n'umubare w'amafaranga ayisigayeho. Icyo Kigo kigomba kuzuza iyo nshingano mu gihe kidatinze (ponctualité) hatabayeho kwibeshya (exactitude). Mu gihe habaye ubukererwe, kwibeshya cyangwa kwibagirwa kwandika "opération" bifatwa nk'ikosa rishobora gutuma icyo Kigo kibitangira indishyi ku mukiliya wacyo cyangwa ku wundi wese wangirijwe naryo[2].

[31] Hashingiwe ku bisobanuro bimaze kuvugwa haruguru, Urukiko rurasanga, kuba ECOBANK Ltd yarashyize konti ya Rukerikibaye Raphaël muri "solde négatif" ku wa 31/03/2009, ariko ikaba yaratinze kuyishyira muri "solde positif", ahubwo ikaba yarabikoze ku wa 28/01/2010 ubwo yayishyiragaho 124.000.000 Frw, bigaragaza ko yamuteje igihombo kibariwe

---

[2]« Le compte est tenu par l'établissement de crédit. Ce dernier indique à propos de chaque opération, la nature de celle-ci, son montant et sa date ainsi que le solde provisoire qui se dégage. Il doit accomplir cette obligation avec ponctualité et exactitude. Tout retard, toute erreur ou omission de sa part est une faute susceptible d'engager sa responsabilité s'il en résulte un dommage pour le client ou pour un tiers », par Thierry Bonneau, "Droit Bancaire", 7ème Edition, Montchrestien, Paris, 2007, p.259.

ku gipimo cya 16% ku mwaka cyumwikanweho n'impande zombi mu masezerano bagiranye, icyo gihombo kikaba kingana na 15.912.381 Frw.

[32] Urukiko rurasanga 15.912.381 Frw y'igihombo agomba kwiyongeraho inyungu zayo z'ubukererwe zibazwe kuva ku wa 28/01/2010, igihe ECOBANK Ltd yagombaga kumuheraho 15.912.381 Frw kugera ku wa 13/10/2010, igihe Banki yahagarikaga imikoranire nawe ku birebana n'amasezerano bari bafitanye (dénonciation de vos engagements), zibarirwa ku gipimo cya 16% ku mwaka cyumvikanweho n'impande zombi mu masezerano bagiranye, izo nyungu zingana na 2.395.601 Frw, yose hamwe akaba 18.307.982 Frw.

[33] Inyandiko ziri muri dosiye zigaragaza kandi ko ECOBANK Ltd yaciye Rukerikibaye Raphaël 3.942.196 Frw y'umusoro ku nyongeragaciro (TVA) ukomoka kuri 25.843.284 Frw yishyuwe muri Gasutamo, nyamara ari ECOBANK Ltd yagombaga kuwishyura bitewe n'uko ariyo yagombaga kuwusubizwa n'Ikigo cy'Imisoro n'Amahôro, bityo hashingiwe ku ngingo ya 258 y'Igitabo cy'urwunge rw'amategeko mbonezamubano[3], Urukiko rurasanga ECOBANK Ltd igomba gusubiza Rukerikibaye Raphaël ayo mafaranga angana na 3.942.196 Frw.

[34] Dosiye y'urubanza igaragaza na none ko ECOBANK Ltd yaciye Rukerikibaye Raphaël 18.233.141 Frw ya "TVA" akomoka ku mwenda wa 132.205.377 Frw wakoreshejwe mu kugura imodoka no kuzishyurira amafaranga yo muri Gasutamo, kandi ariyo yagombaga kuyasubizwa n'Ikigo cy'Imisoro n'Amahoro, ECOBANK Ltd rero ikaba igomba kuyamusubiza hiyongereyeho n'inyungu zayo zibarirwa ku gipimo cya 16% cyumvikanweho n'impande zombi mu masezerano bagiranye kuva ku wa 07/12/2009, igihe ECOBANK Ltd yatwaraga ayo mafaranga kugeza ku wa 13/10/2010, igihe Banki yahagarikaga imikoranire nawe ku birebana n'amasezerano bari bafitanye (dénonciation de vos engagements), zingana na 2.924.118 Frw.

[35] Muri raporo yabo, abahanga basobanura ko muri 18.233.141 Frw ya "TVA" agomba kuvanwamo 3.942.196 Frw ya "TVA" yavuzwe haruguru, maze 17.215.063 Frw ya "TVA" asigaye akabyara inyungu zayo z'ubukererwe kuva ku wa 13/10/2010, igihe ECOBANK Ltd yatwaraga ayo mafaranga kugeza ku wa 13/10/2010, igihe Banki yahagarikaga imikoranire nawe ku birebana n'amasezerano bari bafitanye (dénonciation de vos engagements), kugera ku wa 31/08/2015, igihe abahanga bahagarikiye kubara inyungu z'imyenda iburanwa muri uru rubanza bakanatanga raporo yabo, zibarirwa ku gipimo cya 21 % ku mwaka, ECOBANK Ltd yaciye abakiriya bayo yahaye inguzanyo icyo gihe, maze izo nyungu zikaba 30.889.367 Frw, bivuze rero ko amafaranga yose akomoka kuri 18.233.141 Frw ya "TVA yavuzwe haruguru ari: 18.233.141 Frw + 2.924.118 Frw + 30.889.367 Frw, 52.046.626 Frw, ayo mafaranga akaba agomba kuvanwamo 3.942.196 Frw ya "TVA yavuzwe haruguru, hagasigara 48.104.430 Frw.

[36] Inyandiko ziri muri dosiye zigaragaza kandi ko ECOBANK Ltd yaciye Rukerikibaye Raphaël 1.478.352 Frw ya "TVA" ikomoka kuri 9.691.432 Frw yakoreshejwe mu kwishyura "Droits d'entrée" y'imodoka iyakuye kuri konti n° 101-000060-01-97 ya Rukerikibaye/Hotel Le Belvedère, mu gihe ahubwo ariyo yagombaga kuyisubizwa n'Ikigo cy'Imisoro n'Amahoro.

[37] Urukiko rurasanga rero ECOBANK Ltd igomba kumusubiza 1.478.352 Frw ya "TVA" yamuciye ku maherere hiyongereyeho n'inyungu zayo zibazwe kuva ku wa 13/11/2009, igihe

---

[3]Ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, iteganya ko "*Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse*".

ECOBANK Ltd yamucaga ayo mafaranga kugeza ku wa 13/10/2010, igihe Banki yahagarikaga imikoranire nawe ku birebana n'amasezerano bari bafitanye (dénonciation de vos engagements), zibarirwa ku gipimo cya 16% ku mwaka cyumwikanweho n'impande zombi mu masezerano bagiranye, zingana na 247.718 Frw, yose hamwe akaba 1.726.070 Frw.

[38] Dosiye igaragaza na none ko ECOBANK Ltd yatwaye Rukerikibaye Raphaël 9.691.432 Frw ya "Droits d'entrée" y'imodoka inshuro ebyiri, kuko ku wa 13/11/2009 yayakuye kuri konti n° 101-000060-01-97 ya Rukerikibaye/Hotel Le Belvedère agizwe na (8.213.080 Frw na 1.478.352 Frw), yongera kuyakura kuri iyo konti mu gihe cy'amezi ane mu buryo bukurikira: Ku wa 23/02/2010 yatwaye 2.369.010 Frw, ku wa 28/02/2010 itwara 2.404.545 Frw, ku wa 31/03/2010 itwara 2.440.613 Frw, naho ku wa 30/04/2010, itwara 2.477.264 Frw, yose hamwe akaba 9.691.432 Frw, hiyongereyeho n'inyungu zayo zingana na 366.092 Frw, yose hamwe akaba 10.057.524 Frw.

[39] Urukiko rurasanga, nk'uko n'abahanga bashyizweho n'uru Rukiko babigaragaje muri raporo yabo yo ku wa 11/08/2015, ECOBANK Ltd igomba gusubiza Rukerikibaye Raphaël 9.691.432 Frw yamutwaye ku maherere mu bihe bitandukanye ikanamuha n'inyungu z'igihombo yamuteje zibarirwa ku mwenda-remezo ungana na 2.369.010 Frw yahereyeho imutwara ayo mafaranga tariki ya 23/02/2010 nk'uko byasobanuwe haruguru kugeza ku wa 13/10/2010, igihe Banki yahagarikaga imikoranire nawe ku birebana n'amasezerano bari bafitanye (dénonciation de vos engagements), zibarirwa ku gipimo cya 18% ku mwaka, ECOBANK Ltd yaciye abakiriya bayo igihe yamuhaga inguzanyo, zingana na 1.079.647 Frw hiyongereyeho 366.092 Frw yamutwaye ku maherere yavuzwe haruguru, yose hamwe akaba 11.137.171 Frw.

[40] Muri raporo yabo, abahanga bagaragaje ko amakosa ECOBANK Ltd yakoreye Rukerikibaye Raphaël harimo n'ayavuzwe haruguru yamuteje igihombo kingana na 43.360.538 Frw.

[41] Ingingo ya 76 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko : "Ubuhamya bw'abahanga ni ubugamije guha Urukiko ibisobanuro bishingiye ku bumenyi kimwe n'umwanzuro urenze ubumenyi busanzwe bw'Umucamanza mu kazi ke bitewe n'uko ibiburanwa bishingiye ku buhanga bwihariye", naho ingingo ya 98 y'iryo Tegeko igateganya ko "Urukiko ntirukurikiza byanze bikunze ibitekerezo by'abahanga mu gihe binyuranye n'imyumvire y'abacamanza".

[42] Hashingiwe ku biteganywa n'ingingo ya 98 y'Itegeko n° 15/2004 rimaze kuvuga haruguru, Urukiko rurasanga muri 43.360.538 Frw yafashwe n'abahanga nk'igihombo Rukerikibaye Raphaël yatewe na ECOBANK Ltd hagomba kuvanwamo 4.109.723 Frw akomoka ku madorari ya Amerika angana na 5.460 U$ y'ubwikorezi bw'imodoka na 3.285.293 Frw y'igihe izo modoka zamaze muri MAGERWA, akaba 7.395.016 Frw, bityo Rukerikibaye Raphaël akaba agomba kwirengera 7.395.016 Frw kubera ko ariwe wagombaga kwishyurira imodoka ayo mafaranga hashingiwe ku masezerano y'ikodeshagurisha yavuzwe haruguru, maze icyo gihombo kikaba 35.965.522 Frw, aho kuba 43.360.538 Frw yerekanwe n'abahanga.

2. Kumenya niba ECOBANK Ltd itarahaye Rukerikibaye Raphaël 80.000.000 Frw ya « fond de roulement » yo kugura "spare parts and other working capital requirement" cyangwa niba yarakoze amakosa mu itangwa ryayo ku buryo yabiryozwa.

[43] Rukerikibaye Raphaël n'umwunganira bavuga ko hashingiwe ku masezerano bagiranye, ECOBANK Ltd yagombaga kumuha 80.000.000 Frw yo kugura ibyuma bisimbura ibishaje (pièces de rechange) by'imodoka 7 zavuzwe haruguru n'ayo gukoresha mu bucuruzi bwe bwa buri munsi (fond de roulement), ariko ko ECOBANK Ltd yamuhaye 40.000.000 Frw, ntiyamuha andi 40.000.000 Frw asigaye, ibyo bimuteza igihombo gikomeye kubera ko izo modoka zitakoze ngo zimwinjirize umusaruro nk'uko yari yarabiteganyije mu mushinga we w'ubucuruzi, kandi ko icyo gihombo cyatumye atishyura neza inguzanyo yahawe bitewe n'uko izo modoka zabuze ibyo byuma kuko ibyo yari yaguze akoresheje 40.000.000 Frw yamuhaye byatejwe cyamunara bikiri muri MAGERWA nk'uko bigaragazwa n'itangazo rya cyamunara riri muri dosiye.

[44] Basobanura ko ikimenyetso kigaragaza ko ECOBANK Ltd itahaye Rukerikibaye Raphaël 40.000.000 Frw ari uko 50.127.364 Frw akomoka ku nguzanyo yahawe na GROFIN yakoresheje mu kugura amabisi abiri (2) ataburanwa muri uru rubanza. Basaba rero ko ECOBANK Ltd ikwiye guha RUKERIKIBAYE Raphaël 80.000.000 Frw yo kugura ibyuma byavuzwe haruguru, ikanirengera 40.000.000 Frw y'igihombo yamuteje kubera ko yayaguzemo ibyuma by'imodoka byatejwe cyamunara bikiri muri MAGERWA bitewe n'uko itamuhaye amafaranga yo kubyishyurira muri Gasutamo, ikanamuha 454.046.643 Frw y'indishyi z'igihombo yamuteje kubera kumuvutsa umusaruro wagombaga kwinjizwa n'izo modoka hiyongereyeho n'inyungu zayo zingana na 125.516.649 Frw.

[45] Bakomeza bavuga ko ECOBANK Ltd ikwiye na none kumuha 843.229.481 Frw y'igihombo yamuteje gikomoka ku kuba imodoka 7 z'amabisi zavuzwe haruguru zitarakoze neza bigatuma n'imikorere y'izindi modoka ze 13 ihungabana. Basobanura ko ibyo bihombo byombi biteranyijwe bingana na 1.297.276.124 Frw, ariko ko aya mafaranga agomba kwiyongeraho inyungu zayo zibarirwa ku gipimo cya 12% ku mwaka zikaba 1.817.928.160 Frw.

[46] Ababuranira ECOBANK Ltd bavuga ko itaha Rukerikibaye Raphaël indishyi asaba zavuzwe haruguru kubera ko nta kosa yamukoreye, ko ahubwo ariwe wayiteje igihombo gikomeye kubera ko atigeze ayishyura imyenda yamuhaye nk'uko biteganywa n'amasezerano bagiranye, nyamara imodoka yaguriwe zarakomeje gukora, kandi ko kugeza ubu zicyanditse kuri ECOBANK Ltd.

[47] Bavuga kandi ko ibyo Rukerikibaye Raphaël n'umwunganira bavuga ko ECOBANK Ltd itamuhaye amafaranga yo kugurira imodoka ibyuma bisimbura ibishaje nta shingiro bifite, kuko zitari zibikeneye bitewe n'uko zari zikiri nshya, ko ahubwo akwiye kuyishyura imyenda yose yamuhaye hiyongereyeho inyungu zayo hamwe n'indishyi zinyuranye nk'uko iza kubisobanura mu bujurire bwayo.

UKO URUKIKO RUBIBONA

[48] Mu masezerano yo ku wa 13/03/2008 yavuzwe haruguru, impande zombi zumvikanye ko ECOBANK Ltd ihaye Rukerikibaye Raphaël inguzanyo y'igihe gito (ligne de crédit) ingana na 80.000.000 Frw yo kugura ibyuma bisimbura ibishaje (pièces de rechange) n'ibindi azakenera mu bucuruzi bwe bwa buri munsi (spare parts and other working capital requirement), ayo mafaranga akazayakoresha mu gihe adafite amafaranga ku makonti ye, Rukerikibaye Raphaël yiyemeza kuzishyura ECOBANK Ltd ayo mafaranga mu gihe cy'amezi 12, ni ukuvuga bitarenze

ku wa 31/03/2009, hiyongereyeho n'inyungu zayo zibarirwa ku gipimo cya 16% ku mwaka, ariko zikishyurwa buri kwezi.

[49] Mu miburanire ye imbere y'uru Rukiko, Rukerikibaye Raphaël yiyemerera ko ECOBANK Ltd yamuhaye 40.000.000 Frw, ikibazo kiri muri uru rubanza kikaba ari icyo kumenya niba itaramuhaye 40.000.000 Frw avuga ko yasigaye kuri uwo mwenda.

[50] Raporo yo ku wa 11/08/2015 yakozwe n'abahanga biyambajwe n'uru Rukiko igaragaza ko ku wa 31/12/2008, konti ya Rukerikibaye Raphaël n° 101-000060-01-97 yise Rukerikibaye/Hotel Le Belvedère igaragaraho "solde négatif" ya 46.987.851 Frw, naho konti ye yindi n° 101-000060-04-23 yise Rukerikibaye Raphaël/Belvedère Lines ikagaragaraho "solde négatif" ya 39.877.460 Frw, ku buryo izo "soldes négatifs" zombi zitanga "solde négatif" ya 86.865.311 Frw, kandi ko nyuma y'aho, umwenda wa 80.000.000 Frw wavuguruwe ku buryo wahindutse 124.000.000 Frw nk'uko bigaragazwa n'amasezerano yo ku wa 10/12/2009.

[51] Urukiko rurasanga imvugo ya Rukerikibaye Raphaël n'umwunganira y'uko ECOBANK Ltd itamuhaye 40.000.000 Frw asigaye ku nguzanyo ya 80.000.000 Frw bitewe n'uko atigeze asaba ko habaho amasezerano yo ku wa 10/12/2009 yavuguruye umwenda wa 80.000.000 Frw, ko ahubwo yayasinye kubera agahato yashyizweho na ECOBANK Ltd nta shingiro ifite kuko nta kimenyetso abitangira.

[52] Byongeye kandi, Urukiko rurasanga ikindi kimenyetso kigaragaza ko iyo mvugo ye nta shingiro ifite, ari uko mu ibaruwa ye yo ku wa 25/10/2010, Rukerikibaye Raphaël yandikiye ECOBANK Ltd ayisaba ko yakongera gukora "restructuration" y'imyenda ye ikayihuza n'iya sosiyete yitwa "LE CONTRAT" afitemo imigabane ingana na 80 % kugira ngo azayishyure mu gihe cy'amezi 60, anasobanura ko ari ibaruwa ye ya kabiri isaba "restructuration" y'imyenda ye kuko ije ikurikiye indi baruwa yayandikiye mbere asaba "restructuration", ndetse ko ECOBANK Ltd yanemeye iyo "restructuration" mu Kuboza 2009 (c'est la deuxieme requête de restructuration suivant celle approuvée en Décembre 2009).

[53] Hashingiwe ku bisobanuro bimaze kuvugwa haruguru, Urukiko rurasanga, kuba konti za RUKERIKIBAYE Raphaël zigaragaraho "soldes négatifs" ya 86.865.311 Frw, kandi nyuma y'aho umwenda wa 80.000.000 Frw ukaba waravuguruwe maze uhinduka 124.000.000 Frw, bigaragaza ko ECOBANK Ltd yamuhaye 80.000.000 Frw y'inguzanyo y'igihe gito, ndetse iranayarenza, akaba ntaho yahera avuga ko ECOBANK Ltd yamuteje igihombo ku birebana n'iyi nguzanyo, nta n'aho yahera asaba ko yamuha amafaranga itamuhaye harimo n'ayo yakoresheje mu kugura ibyuma bisimbura ibishaje (pièces de rechange) byatejwe cyamunara muri MAGERWA, ndetse n'indishyi zose asaba zishingiye kuri iyi nguzanyo.

3. Kumenya ingano y'amafaranga ECOBANK Ltd yagombaga kwishyurira Rukerikibaye Raphaël muri COGEBANQUE Ltd no kumenya niba hari amakosa yamukoreye muri iyo "opération"

A. Ku byerekeranye n'ingano y'umwenda ECOBANK Ltd yagombaga kwishyurira Rukerikibaye Raphaël muri COGEBANQUE Ltd

[54] Rukerikibaye Raphaël n'umwunganira bavuga ko mu masezerano y'inguzanyo yagiranye na ECOBANK Ltd ku wa 13/03/2008, bumvikanye ko izamwishyurira umwenda ungana na

40.000.000 Frw yari abereyemo COGEBANQUE Ltd, ariko ko yamwishyuriye 44.595.505 Frw bitewe n'uko yatinze kumwishyurira uwo mwenda mu gihe kirenga iminsi 33 bituma wiyongeraho 4.595.505 Frw, ko rero atakwishyura ECOBANK Ltd 4.595.505 Frw yiyongereyeho kubera iryo kosa ryayo.

[55] Ababuranira ECOBANK Ltd bavuga ko RUKERIKIBAYE Raphaël akwiye kuyishyura 44.595.505 Frw y'umwenda yamwishyuriye muri COGEBANQUE Ltd, kuko nyuma yo kugirana amasezerano yavuzwe haruguru ajyanye n'uko izamwishyurira 40.000.000 Frw y'umwenda yari afitiye COGEBANQUE Ltd, ECOBANK Ltd yandikiye COGEBANQUE Ltd iyisaba kuyimenyesha ingano y'umwenda Rukerikibaye Raphaël ayibereyemo kugira ngo iwumwishyurire wose, COGEBANQUE Ltd iyimenyesha ko ayibereyemo 44.595.505 Frw irawumwishyurira wose. Basobanura ko kuba umwenda waravuye kuri 40.000.000 Frw, ukaba 44.595.505 Frw, byatewe n'uko Rukerikibaye Raphaël atari afite amafaranga yo kuwishyura bituma ukomeza kwiyongera, ariko ko nta kosa rirebana n'ubukererwe ECOBANK Ltd yamukoreye igihe yawumwishyuriraga.

UKO URUKIKO RUBIBONA

[56] Ku kibazo kijyanye no kumenya niba ECOBANK Ltd yarakererewe kwishyurira Rukerikibaye Raphaël umwenda wa 40.000.000 Frw yari afitiye COGEBANQUE Ltd ku buryo atakwishyura 4.595.505 Frw arengaho, dosiye y'urubanza igaragaza ko nyuma y'uko impande zombi zigiranye amasezerano yo ku wa 13/03/2008, aho ECOBANK Ltd yemeye kuzishyurira Rukerikibaye Raphaël 40.000.000 Frw y'umwenda yari afitiye COGEBANQUE Ltd, ku wa 27/03/2008, ECOBANK Ltd yandikiye COGEBANQUE Ltd iyisaba kuyimenyesha ingano y'umwenda Rukerikibaye Raphaël ayibereyemo kugira ngo iwumwishyurire.

[57] Ku wa 31/03/2008, COGEBANQUE Ltd yasubije ECOBANK Ltd ko Rukerikibaye Raphaël ayibereyemo umwenda ungana na 44.595.505 Frw, ariko ko inyungu zawo zizakomeza kubarwa kugeza awishyuye wose. Ku wa 07/04/2008, ECOBANK Ltd yandikiye COGEBANQUE Ltd iyimenyesha ko iyoherereje sheki BNR ifite N° 0000001139239 iriho 44.595.505 Frw mu rwego rwo kwishyurira Rukerikibaye Raphaël uwo mwenda, COGEBANQUE Ltd iyakira ku wa 08/04/2008, ndetse iranabisinyira.

[58] Urukiko rurasanga igihe Rukerikibaye Raphaël yandikiraga ECOBANK Ltd ibaruwa yo ku wa 06/02/2008, ayisaba kumwishyurira 40.000.000 Frw y'umwenda yari afitiye COGEBANQUE Ltd, ndetse n'igihe impande zombi zagiranaga amasezerano yo ku wa 13/03/2008 yo kumwishyurira uwo mwenda, nta kimenyetso kidashidikanywaho kigaragaza ko impande zombi zari zizi ingano y'umwenda Rukerikibaye Raphaël yari abereyemo COGEBANQUE Ltd, ikigaragara ahubwo akaba ari uko Rukerikibaye Raphaël yashakaga ko ECOBANK Ltd yamugurira umwenda wose yari afitiye COGEBANQUE Ltd, kandi biranumvikana.

[59] Urukiko rurasanga rero kuba, ECOBANK Ltd yaramenyeshejwe na COGEBANQUE Ltd ku wa 31/03/2008, ko Rukerikibaye Raphaël ayibereyemo umwenda ungana na 44.595.505 Frw, nayo ikawumwishyurira tariki ya 08/04/2008, igihe COGEBANQUE Ltd yakiraga sheki ya BNR ifite N° 0000001139239 ya 44.595.505 Frw, bigaragara ko 4.595.505 Frw yiyongereye ku mwenda wa 40.000.000 Frw, ataturutse ku bukererwe bwaba bwaratewe n'uko ECOBANK Ltd

yatinze kumwishyurira uwo mwenda, ahubwo byatewe n'uko ariko uwo mwenda wanganaga icyo gihe, bivuze rero ko Rukerikibaye Raphaël agomba kwiyishyurira 4.595.505 Frw arengaho nk'uko byagaragajwe n'abahanga muri raporo yabo yo ku wa 11/08/2015.

[60] Naho ku kibazo kijyanye no kumenya niba ECOBANK Ltd yarakoreye Rukerikibaye Raphaël ikosa igihe yamuhaga inguzanyo, inyandiko ziri muri dosiye zigaragaza ko ECOBANK Ltd yashyize konti ye n° 101-000060-01-97 muri "solde négatif" bigatuma atayikoresha kuva ku wa 23/05/2008, igihe ECOBANK Ltd yayishyiraga muri "solde négatif" ya 44.595.505 Frw kugera ku wa 25/06/2008, igihe yayishyiraga muri "solde positif" ikayandikaho ko imuhaye 40.000.000 Frw, bigaragara ko ECOBANK Ltd yamuteje igihombo kibariwe ku gipimo cya 16% ku mwaka cyumvikanweho n'impande zombi mu masezerano bagiranye kingana na 586.667 Frw. Aya mafaranga akaba agomba kwiyongeraho inyungu zikomoka kuri iki gihombo zingana na 265.436 Frw, yose hamwe akaba 852.103 Frw nk'uko n'abahanga babibonye muri raporo yabo yavuzwe haruguru.

B. Kumenya niba ECOBANK Ltd yaratwaye Rukerikibaye Raphaël 44.595.505 Frw inshuro ebyiri ku buryo yategekwa kuyamusubiza.

[61] Rukerikibaye Raphaël n'umwunganira bavuga ko ECOBANK Ltd ikwiye kumusubiza 44.595.505 Frw yamutwaye inshuro ebyiri mu buryo bw'amaherere hiyongereyeho inyungu zayo z'ubukererwe zibarirwa ku gipimo cya 18% kuva ku wa 01/06/2008 kugera ku wa 31/08/2014 zingana na 125.516.649 Frw.

[62] Ababuranira ECOBANK Ltd bavuga ko itatwaye Rukerikibaye Raphaël 44.595.505 Frw inshuro ebyiri, ko ahubwo igihe yamwishyuriraga ayo mafaranga yabanje kwibeshya iyandika kuri konti ye n° 101-000060-01-97 ya Hotel Le Belvedère ku wa 23/05/2008, ariko ko ku wa 26/05/2008, yahise ikosora iyo « opération », maze iyandika kuri konti ye n° 101-00060-04-23 ya Rukerikibaye Raphaël/Belvedère Lines, maze Rukerikibaye Raphaël ayishyura umwenda wa 40.000.000 Frw akoresheje sheki ye yayihaye ku wa 24/03/2009.

UKO URUKIKO RUBIBONA

[63] Dosiye y'urubanza na raporo y'abahanga yo ku wa 11/08/2015 yavuzwe haruguru, bigaragaza ko ku wa 23/05/2008, ECOBANK Ltd yakuye 44.595.505 Frw kuri konti ye n° 101-000060-01-97 ya Rukerikibaye Raphaël/Hotel Le Belvedère mu rwego rwo kumwishyurira umwenda yari afitiye COGEBANQUE Ltd (Date valeur 01/05/2008), ibyita "Reprise de vos engagements à la COGEBANQUE Ltd". Ku wa 26/05/2008, ECOBANK Ltd yasubije 44.595.505 Frw kuri konti n° 101-000060-01-97 ya Rukerikibaye Raphaël/Hotel Le Belvedère (Date valeur 23/05/2008), ibyita "Engagements à la COGEBANQUE Ltd". Ku wa 26/05/2008, ECOBANK Ltd yashyize 44.595.505 Frw kuri konti n° 101-00060-04-23 ya Rukerikibaye Raphaël/Belvedère Lines (Date valeur 23/05/2008), irangije iyakuraho maze imwishyurira umwenda uhwanye n'ayo mafaranga yari afitiye COGEBANQUE Ltd, ibyita "Rectification de l'écriture du 23/05/2008 portant sur la comptabilisation de rachat de vos engagements à la COGEBANQUE Ltd".

[64] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga, nk'uko n'abahanga bashyizweho n'uru Rukiko babibonye, ECOBANK Ltd itaratwaye Rukerikibaye Raphaël 44.595.505 Frw inshuro ebyiri kuko amafaranga 44.595.505 ECOBANK Ltd yari yavanye kuri

konti n° 101-000060-01-97 ya Rukerikibaye Raphaël/Hotel Le Belvedère ku wa 23/05/2008, yayasubije kuri iyo konti tariki ya 26/05/2008 nk'uko byasobanuwe haruguru, bivuze rero ko ECOBANK Ltd itasubiza Rukerikibaye Raphaël 44.595.505 Frw asaba n'inyungu zayo z'ubukererwe.

C. Kumenya niba ECOBANK Ltd itaragombaga guca Rukerikibaye Raphaël inyungu zingana na 410.523 Frw.

[65] Rukerikibaye Raphaël n'umwunganira bavuga ko ECOBANK Ltd ikwiye kumusubiza 410.523 Frw y'inyungu yatwaye kandi itari yamuha inguzanyo ya 40.000.000 Frw.

[66] Ababuranira ECOBANK Ltd bavuga ko n'ubwo yatwaye Rukerikibaye Raphaël 410.523 Frw, ariko ko atari inyungu z'umwenda wa 44.595.505 Frw yamwishyuriye kubera ko itari kuzimwishyuza inshuro imwe gusa.

UKO URUKIKO RUBIBONA

[67] Amasezerano yo ku wa 13/03/2008 yavuzwe haruguru agaragaza ko impande zombi zumvikanye ko ECOBANK Ltd izishyurira Rukerikibaye Raphaël 40.000.000 Frw y'umwenda-remezo afitiye COGEBANQUE Ltd, nawe yiyemeza kuzishyura uwo mwenda mu gihe cy'amezi 24 kibazwe kuva ku itariki isohoreyeho amafaranga igiye kuwumwishyurira[4] hiyongereyeho n'inyungu zawo zibarirwa ku gipimo cya 16% ku mwaka, ariko zikishyurwa buri kwezi (16% per annum payable in monthly arrears).

[68] Dosiye y'urubanza igaragaza kandi ko ku wa 23/05/2008, ECOBANK Ltd yavanye kuri konti n° 101-000060-01-97 ya Rukerikibaye Raphaël/Hotel Le Belvedère 410.523 Frw iyita ko ari inyungu zo kuva ku wa 09/04/2008 kugera ku wa 30/04/2008" zikomoka ku mwenda-remezo yamwishyuriye muri COGEBANQUE Ltd (Perception des intérêts relatifs au rachat de vos engagements à la COGEBANQUE Ltd allant du 09/04/2008 au 30/04/2008).

[69] Urukiko rurasanga mu gihe ECOBANK Ltd yishyuriye Rukerikibaye Raphaël umwenda-remezo ungana na 44.595.505 Frw yari afitiye COGEBANQUE Ltd ku wa 08/04/2008 yarangiza ikamuca inyungu zawo zingana 410.523 Frw ikimara kuwumwishyurira nk'uko amasezerano bagiranye abiteganya, bigaragara ko nta kosa ECOBANK Ltd yamukoreye, bivuze rero ko Rukerikibaye Raphaël atasubizwa 410.523 Frw y'inyungu yaciwe mu buryo bukurikije amasezerano bagiranye.

4. Kumenya niba hari amakosa ECOBANK Ltd yakoze ubwo yabikuzaga amafaranga kuri konti n° 101-000060-01-97 ya Rrukerikibaye/Hotel Le Belvedère no kuri konti n° 101-000060-04-23 ya Rukerikibaye/Belvedère Lines mu rwego rwo kwiyishyura imyenda yamugurije

[70] Rukerikibaye Raphaël n'umwunganira bavuga ko ECOBANK Ltd ikwiye kumuha 266.000.000 Frw y'indishyi z'igihombo yamuteje bitewe n'uko yabikuje amafaranga arenga 234.409.925 Frw kuri n° 101-000060-01-97 ya Hotel Le Belvedère nta burenganzira ibifitiye (préjudice résultant des opérations irrégulières) bituma ubucuruzi bw'iyo Hoteli budindira, kandi

[4] Loan is to be repaid in 24 equal monthly instalments from the date of disbursement.

ko izo ndishyi zinakubiyemo inyungu z'ubukererwe z'inguzanyo yahawe na BRD na GROFIN yakoresheje mu kubaka iyo Hoteli kuko yabuze ubwishyu bwazo bitewe n'uko ECOBANK Ltd yabaga yabikuje amafaranga ku makonti ye.

[71] Basobanura ko 234.409.925 Frw yavuzwe haruguru ECOBANK Ltd yabikuje kuri iyo konti agizwe n'amafaranga akurikira: 410.523 Frw y'inyungu zikomoka ku mwenda yamwishyuriye muri COGEBANQUE Ltd, 523.976 Frw y'inyungu yamuciye ku wa 31/05/2008, 39.102 Frw ya "commissions", 1.958.523 Frw yatwaye mu gihe cy'amezi 24, yose hamwe akaba 47.004.552 Frw, 106.362.093 Frw yakoresheje mu kumugurira amabisi yo mu bwoko bwa Zongtong, 1.208.317 ya "commissions" ya CREDOC, 13.316.930 Frw y'inyungu z'umwenda yatwaye habaye kwibeshya, 1.478.352 ya "TVA", 8.213.080 Frw yishyuwe Gasutamo, 25.853.000 Frw yishyuwe Gasutamo, 30.000.000 Frw y'inyungu zo gutwara amafaranga mu buryo butari bwo kuva ku wa 23/05/2008 kugeza ku wa 31/12/2009, yose hamwe akaba 234.409.925 Frw, ndetse ko hari na 1.782.502 Frw y'umwenda-remezo n'inyungu zayo zingana na 120.000 Frw hakanaba 1.900.377 Frw n'inyungu zayo zingana na 191.903 Frw yamutwaye ku wa 23/02/2010.

[72] Bavuga kandi ko kuba ECOBANK Ltd yarabikuje 234.409.925 Frw kuri konti n° 101-000060-01-97 ya Hotel Le Belvedère, ndetse na 44.595.505 Frw yamutwaye inshuro ebyiri igihe yamwishyuriraga umwenda yari afitiye COGEBANQUE Ltd, byatumye abura ubwishyu bw'inguzanyo yahawe na BRD na GROFIN yakoresheje mu kubaka iyo Hoteli, maze BRD imuca inyungu z'ubukererwe zingana na 73.000.000 Frw, naho GROFIN imuca izingana na 193.000.000 Frw, basaba rero ko ECOBANK Ltd yamukoreye ayo makosa ikwiye kumuha indishyi zingana na 266.000.000 Frw zavuzwe haruguru.

[73] Ababuranira ECOBANK Ltd bavuga ko itaha Rukerikibaye Raphaël indishyi zingana na 266.000.000 Frw asaba kubera ko nta makosa yamukoreye kuko ihame rya "unicité des comptes" riyemerera no kubikuza amafaranga kuri konti n° 101-00060-01-97 yise RUKERIKIBAYE Raphaël/Hotel Le Belvedère mu rwego rwo kwiyishyura imyenda yamugurije.

UKO URUKIKO RUBIBONA

[74] Amasezerano impande zombi zagiranye ku wa 13/03/2008, ntacyo ateganya ku birebana n'imikoreshereze y'amakonti ya RUKERIKIBAYE Raphaël, bumvikanye gusa ko ibibazo bishobora kuvuka hagati yabo bidateganyijwe muri ayo masezerano, bizakemurwa mu bwumvikane mu yandi masezerano bazagirana[5], naho mu masezerano bagiranye ku wa 26/03/2008, bumvikanye ko ubwishyu bw'inguzanyo ya 285.000.000 Frw Rukerikibaye Raphaël ahawe azajya abunyuza buri kwezi kuri konti ye n° 101-000060-04-23 yise Rukerikibaye Raphaël/Belvedère Lines iri muri ECOBANK Ltd.

[75] Muri raporo yabo yo ku wa 11/08/2015 n'imbere y'uru Rukiko, abahanga biyambajwe n'uru Rukiko basobanura ko n'ubwo koko ECOBANK Ltd yakoresheje konti za Rukerikibaye Raphaël n° 101-000060-01-97 na konti n° 101-000060-04-23, haba mu kumuha inguzanyo, mu kubitsa cyangwa mu kwiyishyura izo nguzanyo nk'uko ihame ryo guhuza konti z'umukiriya ribiteganya (principe de l'unicité des comptes), uyu nawe yakomeje gukoresha izo konti ze uko

[5] The terms and conditions of this commitment are not limited to the above terms and conditions. Those matters which are not covered by or made clear in the above outline are subject to mutual agreement of the parties.

yishakiye, kandi ko nawe yashoboraga kubimenyesha ECOBANK Ltd mbere y'igihe kugira ngo ikosore iryo kosa niba yarabonaga rimubangamiye, ko kandi nawe yari afite n'ububasha bwo kwimura amafaranga imuhaye akayavana kuri konti yumvaga itariyo akayashyira kuri konti yayageneye, ariko ko atabikoze, ko ahubwo yakomeje gukoresha izo konti ze uko abishaka.

[76] Abahanga mu bijyanye n'imikorere y'amabanki basobanura nabo ko uretse igihe amasezerano n'amategeko yihariye abiteganya ukundi, amasezerano yerekeye guhuza konti (conventions d'unicité ou de fusion de comptes), ateganya ko konti banki ifunguriye umukiriya wayo ifatwa nka konti imwe rukumbi isanzwe (compte courant), ko Banki ishobora kuyikoreraho "opérations" zose zirimo izo kubitsa no kubikuza nta yindi mihango igombye kubahiriza[6].

[77] Hashingiwe ku bisobanuro bimaze kuvugwa haruguru, Urukiko rurasanga, kuba nta masezerano yihariye Rukerikibaye Raphaël yagiranye na ECOBANK Ltd agaragaza ko itazakoresha konti ye ifite n°101-000060-01-97 yise Rukerikibaye/Hotel Le Belvedère mu kumuha cyangwa mu kwiyishyura inguzanyo yamuhaye, bigaragara ko iyo konti ikwiye gufatwa nka konti isanzwe (compte courant) hashingiwe ku masezerano yerekeye guhuza konti (conventions d'unicité ou de fusion de comptes) yavuzwe haruguru, bityo ECOBANK Ltd yashoboraga kuyikoresha mu kumuha no kwiyishyura imyenda yose yamuhaye yavuzwe haruguru, bivuze rero ko nta ndishyi ECOBANK Ltd ikwiye kumuha mu gihe yari ifite uburenganzira bwo gukoresha iyo konti ye nta yindi mihango igombye kubahiriza nk'uko byanemejwe n'abahanga bashyizweho n'uru Rukiko, cyane cyane ko nawe yari afite ububasha bwo kuvana amafaranga ahawe kuri iyo konti akayashyira ku yindi konti yifuzaga ko yajyaho, ariko akaba atarigeze abikora kandi nta bundi burenganzira yagombaga kubisabira.

[78] Ibyo bihuje kandi n'ibyemejwe mu rubanza nº RCOMAA 0001/05/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/06/2005, haburana Banque de Kigali na Nsengiyumva Jean de Dieu, aho rwashingiye ku masezerano yerekeye guhuza konti (conventions d'unicité ou de fusion de comptes) yavuzwe haruguru, maze rwemeza ko Banque de Kigali yari ifite uburenganzira bwo gufata amadorari 800.000 yari kuri konti yafunguwe mu madorari na Nsengiyumva Jean de Dieu mu rwego rwo kwiyishyura umwenda yayigombaga, ndetse bihuje n'ibyemejwe mu rubanza nº 13-17046 rwaciwe n'Urukiko Rusesa Imanza rwo mu gihugu cy'Ubufaransa ku wa 16/12/2014, aho rwashingiye ku masezerano yo guhuza konti, rwemeza ko "compte-titre" ya sosiyete Roumy Auto Location yari ifitiye umwenda Banki yitwa "CIC EST" ikwiye gufatwa nka konti isanzwe (compte courant), aho iyo Banki yari ifite uburenganzira bwo kwiyishyura uwo mwenda wayo ihereye ku mafaranga yari kuri "compte-titre" y'iyo sosiyete.

5. Kumenya niba Rukerikibaye Raphaël yahabwa izindi ndishyi asaba

[79] Rukerikibaye Raphaël n'umwunganira bavuga ko ECOBANK Ltd ikwiye kumuha na none 100.000.000 Frw y'indishyi z'igihombo n'iz'akababaro yamuteje (préjudice économique et moral) kubera ko yamwamamaje mu buryo bubi (publicité négative) bituma Ibigo by'Imari

---

[6]« Fonctionnement du compte-courant : Unicité de comptes et fusion de comptes: Sauf convention contraire ou réglementaire spécial, le compte que la Banque ouvre à son client est un compte-courant qui produit les effets juridiques attachés à un tel compte, transformant toutes les opérations en simples articles de crédit et de débit générateurs d'un solde unique. (…). La banque peut donc à tout moment et sans préavis, faire passer les écritures d'un compte unique (ou sous-compte) à un autre et/ou réunir les divers comptes (ou sous-comptes) ouverts en ses livres au nom du client, afin de les balancer en un seul", https://www.arkea-banque-ei.com/abei/fiches/ARKEA_conditions_generales.pdf, consulté le 19/01/2016.

(partenaires) bimutakariza icyizere ku buryo yumva ubucuruzi bwe buzahungabana mu gihe kirekire kiri imbere.

[80] Ababuranira ECOBANK Ltd bavuga ko itaha Rukerikibaye Raphaël izo ndishyi asaba kubera ko nta kosa yamukoreye, ko ahubwo ariwe ugomba kuyishyura imyenda, inyungu n'indishyi isaba muri uru rubanza.

UKO URUKIKO RUBIBONA

[81] Urukiko rurasanga, mu gihe Rukerikibaye Raphaël yagenewe indishyi zinyuranye zavuzwe haruguru kubera amakosa yagaragajwe ECOBANK Ltd yagiye imukorera mu mitangire no mu kwiyishyura inguzanyo yamuhaye, kandi RUKERIKIBAYE Raphaël nawe akaba afite ibyo yatsindiwe muri uru rubanza, ntaho rwahera rumugenera indishyi z'igihombo n'iz'akababaro (préjudice économique et moral) asaba muri uru rubanza.

6. Kumenya niba ECOBANK Ltd yaha Rukerikibaye Raphaël 1 % ya 405.000.000 Frw asaba

[82] Rukerikibaye Raphaël n'umwunganira bavuga ko ECOBANK Ltd itagombaga kumuca 1 % ya 405.000.000 Frw yo kwiga dosiye (frais), kandi yaramugurije 265.000.000 Frw gusa, ko rero ikwiye kumusubiza ayo mafaranga yamutwaye ku maherere.

[83] Ababuranira ECOBANK Ltd bavuga ko hashingiwe kuri "historiques bancaires" ziri muri dosiye, nta "commission" ya 1 % ya 405.000.000 Frw, ECOBANK Ltd yaciye Rukerikibaye Raphaël.

UKO URUKIKO RUBIBONA

[84] Inyandiko itanga ikirego Rukerikibaye Raphaël yatanze mu Rukiko Rukuru rw'Ubucuruzi ku wa 06/10/2011, igaragaza ko atigeze asaba ko ECOBANK Ltd imuha 1 % ya "commission" y'inguzanyo ya 405.000.000 Frw yamuciye bitari ngombwa.

[85] Ingingo ya 168, igika cya mbere y'Itegeko n° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "*Ku rwego rw'ubujurire ntihashobora kuregerwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu rukiko rw'ubujurire".*

[86] Hashingiwe ku biteganywa n'iyo ngingo, Urukiko rurasanga ibyo Rukerikibaye Raphaël asaba ko ECOBANK Ltd yamuha 1 % ya "commission" y'inguzanyo ya 405.000.000 Frw yamuciye ku maherere ari ikirego gishya, kikaba rero kitagomba kwakirwa ngo gisuzumirwe bwa mbere ku rwego rw'ubujurire.

B. UBUJURIRE BWA ECOBANK Ltd

1. Kumenya niba ECOBANK Ltd yahabwa imodoka n'indishyi isaba

[87] Ababuranira ECOBANK Ltd bavuga ko hashingiwe ku ngingo ya 10 y'amasezerano y'ikodeshagurisha yavuzwe haruguru, Rukerikibaye Raphaël agomba kuyisubiza imodoka 7 yamuhaye mu buryo bw'ikodeshagurisha zikiri mu mazina yayo, akanayiha 25% ya "valeur comptable" yazo abazwe kuva ku wa 07/10/2010, igihe yamusabaga kuyizisubiza (sommation), kugeza ku munsi izo modoka zizasubizwa ECOBANK Ltd, akanayiha 5% y'ibihano (pénalités) gihwanye n'amafaranga yose yishyuzwa muri uru rubanza.

[88] Rukerikibaye Raphaël n'umwunganira bavuga ko ibyo ECOBANK Ltd isaba nta shingiro bifite, ko ahubwo ariyo ikwiye kumuha indishyi asaba muri uru rubanza kubera ko itubahirije amasezerano y'inguzanyo bagiranye bigatuma ubucuruzi bwe bwa Hotel Le Belvedère n'ubwa Belvedère Lines buhomba.

UKO URUKIKO RUBIBONA

[89] Ku kibazo kijyanye no kumenya niba ECOBANK Ltd yasubizwa imodoka 7, ikanahabwa 25% ya "valeur comptable" yazo hamwe na 5% y'ibihano (pénalités) isaba, ingingo ya mbere n'iya 2 z'amasezerano y'ikodeshagurisha impande zombi zagiranye ku wa 26/03/2008, iteganya ko ECOBANK Ltd nk'Ikodesha igurisha igurije RUKERIKIBAYE Raphaël nk'Ukodesha agura 285.000.000 Frw yo kugura imodoka akazajya yishyura buri kwezi 5.101.249 Frw azakomoka ku bukode bw'imodoka zo mu bwoko bwa Mercedes Benz mu gihe cy'imyaka ine (4) na 3.691.487 Frw buri kwezi azakomoka ku bukode bw'imodoka zo mu bwoko bwa Zongtong mu gihe cy'imyaka itatu (3).

[90] Ingingo ya 9 y'ayo masezerano iteganya ko mu gihe aya masezerano arangiye (bitewe n'uko agejeje igihe kivugwa mu ngingo ya 2 yayo), impande zombi ziyemeje ko Ukodesha agura (Locataire) azagura izo modoka hashingiwe ku byo zizaba zumvikanyeho (conditions) mu yandi masezerano zizagirana, ariko ko zumvikanye ku ikubitiro ko agaciro kazo ari amafaranga ahwanye na 2% y'ikiguzi cyazo. (A cet effet, le prix de cession est d'ores et déjà estimé à 2% du prix d'acquisition de l'équipement).

[91] Naho ingingo ya 10 y'ayo masezerano, igateganya ko Ukodesha agurisha (Bailleur) azahita asesa ayo masezerano nyuma y'iminsi umunani (8) y'integuza mu gihe: 1° Ukodesha agura (Locataire) atishyuye amafaranga y'ubukode bw'imodoka cyangwa andi mafaranga yose ayibereyemo; 2° atubahirije imwe mu nshingano ze; 3° cyangwa mu gihe azaba yahombye, yahagaritse ibikorwa bye by'ubucuruzi cyangwa yagabanyije ingwate yayihaye[7].

---

[7]Article 9 : Engagement de rachat : A l'expiration de la période de location (période définie à l'article 2), il est convenu que le locataire rachetera les équipements dans les conditions qui feront l'objet d'un accord entre les parties. A cet effet, le prix de cession est d'ores et déjà estimé à 2% du prix d'acquisition de l'équipement. L'article 10 : Résiliation : Le présent contrat de crédit-bail sera résilié de plein droit par le Bailleur sans qu'il soit nécessaire d'accomplir aucune formalité judiciaire préalable, huit jours (8) après mise en demeure restée sans effets en cas de : - non exécution même partiel d'un loyer ou toute somme dûe.- d'inexécution de l'un des engagements du Locataire (…). – liquidation amiable ou judiciaire (…) cessation d'activité, diminution des garanties ou sûretés s'il y a lieu... Le locataire sera alors tenu vis-à-vis du Bailleur et sans délai : - de lui restituer les équipements ; - de lui payer les loyers impayés en principal, intérêt et accessoires ; de lui verser à titre de réparation du préjudice subi une somme égale au montant toutes taxes comprises, des loyers à échoir à la date de la résiliation (…). de lui verser à titre de pénalité une somme égale à 5% du montant, toutes taxes comprises, déterminé ci-dessus.

[92] Dosiye y'urubanza igaragaza kandi ko Rukerikibaye Raphaël atishyuye iyo nguzanyo nk'uko yari yarabyiyemeje mu masezerano yavuzwe haruguru, kugeza ubwo ku wa 07/12/2010, ECOBANK Ltd yamwandikiye ibaruwa y'integuza (sommation) imusaba kuyisubiza imodoka zayo ziyanditseho zo mu bwoko bwa Mercedes Benz zifite Plaques RAB 340 M, RAB 341 M, RAB 342 M na RAB 343 M, ariko n'ubwo Rukerikibaye Raphaël atayisubije izo modoka, ntabwo ECOBANK Ltd yasheshe ayo masezerano nk'uko byateganywaga n'ingingo ya 10 y'ayo masezerano kugeza igihe agaciro k'ayo masezerano karangiye ku wa 26/03/2012.

[93] Ku bijyanye n'agaciro k'amasezerano y'igihe kizwi, ingingo ya 393 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, iteganya ko "Ubukode burangira nta rubanza iyo igihe cyateganyijwe kirangiye bitabaye ngombwa kubisaba". Na none umuhanga mu mategeko witwa Georges Vermelle, mu gitabo cye yise "Droit Civil, Les Contrats Spéciaux", asobanura ko ubukode bw'igihe kizwi buhita burangira iyo icyo gihe kigeze[8].

[94] Hashingiwe ku mategeko n'ibisobanuro bimaze kuvugwa haruguru, Urukiko rurasanga mu gihe amasezerano y'inguzanyo yarangiye ku wa 26/03/2012, ntaho ECOBANK Ltd yahera isaba gusubizwa imodoka 7 zavuzwe haruguru ngo inahabwe n'indishyi za 25 % z'agaciro kazo (valeur comptable) na 5 % y'ibihano isaba, mu gihe itabikoze ayo masezerano agifite agaciro, ahubwo hashingiwe ku ngingo ya 9 y'ayo masezerano, Rukerikibaye Raphaël agomba kwegukana izo modoka aziguze kuri 2% y'ikiguzi cyazo cyumvikanweho n'impade zombi mu masezerano bagiranye, ayo mafaranga rero akaba abazwe mu buryo bukurikira: 285.000.000 Frw y'ikiguzi cy'imodoka 7 zavuzwe haruguru x 2 : 100 = 5.700.000 Frw.

[95] Iki cyemezo gihuje kandi n'ibyo umuhanga witwa Sophie Sabathier yanditse mu gitabo cye yise "Droit du crédit", aho yasobanuye ko sosiyete ikoresha umutungo yakodesheje igura ishobora guhitamo kuwegukana cyangwa kuwusubiza ukodesha agurisha, ariko mu gihe ihisemo kuwegukana, igomba kuwugura ku giciro kiri hasi cyane cyumvikanweho n'impande zombi mu masezerano bagiranye, kandi ko icyo giciro aricyo kiyishishikaza kuwugura[9].

2. Kumenya ingano y'umwenda Rukerikibaye Raphaël agomba kwishyura ECOBANK Ltd

[96] Ababuranira ECOBANK Ltd bavuga ko Rukerikibaye Raphaël agomba kuyiha 471.626.383 Frw y'umwenda-remezo ayibereyemo ubazwe kugeza ku wa 03/01/2012, ariko ko inyungu zawo zizakomeza kubarwa kugeza igihe azawishyurira wose.

[97] Rukerikibaye Raphaël n'umwunganira bavuga ko ataha ECOBANK Ltd ayo mafaranga isaba kuko nta kosa yayikoreye, ko ahubwo ariyo igomba kumuha indishyi z'igihombo yamuteje yasabye muri uru rubanza.

UKO URUKIKO RUBIBONA

[8]« Le bail à durée déterminée prend fin de plein droit à l'arrivée du terme. Il n'est donc point besoin de donner congé", par Georges Vermelle, "Droit Civil, Les Contrats Spéciaux", 5ème Edition, Dalloz, Paris, 2006, p.92.

[9]« L'entreprise utilisatrice dispose d'une option, acquérir le bien loué ou le restituer. Ce choix résulte de la promesse unilatérale de vente que contient nécessairement le contrat de crédit-bail. L'acquisition se produit au prix stipulé lors de la conclusion du contrat, qui sera en général inférieur à la valeur marchande du bien, ce qui incite à l'acquisition, par Sophie Sabathier, "Droit du crédit", Collection Mise au Point, "Ellipes", p.193.

[98] Mu ibaruwa yayo yo ku wa 13/10/2010, ECOBANK Ltd yasheshe amasezerano y'inguzanyo yagiranye na Rukerikibaye Raphaël imusaba kuyishyura 388.441.182 Frw y'umwenda-remezo ubazwe kugera ku wa 13/10/2010, bigeze ku wa 08/08/2011, imwibutsa ko uwo mwenda ugeze kuri 437.564.386 Frw, ariko ko inyungu zawo zizakomeza kubarwa kugeza awishyuye wose, naho ku wa 21/10/2011, ECOBANK Ltd yongeye kumwandikira ibaruwa imumenyesha ko isheshe amasezerano yose y'inguzanyo bagiranye imusaba kuyishyura 536.809.750 Frw y'umwenda-remezo ayibereyemo, ariko ko inyungu zawo zizakomeza kubarwa kugeza awishyuye.

[99] Nk'uko byasobanuwe haruguru, amasezerano y'inguzanyo impande zombi zagiranye ku wa 13/03/2008 n'ay'ikodeshagurisha (crédit –bail) yo ku wa 26/03/2008 agaragaza ko ECOBANK Ltd igurije Rukerikibaye Raphaël 285.000.000 Frw yo kugura imodoka 7 zavuzwe haruguru, 80.000.000 Frw yo kuzigurira ibyuma bisimbura ibishaje n'ayo gukoresha mu bucuruzi bwe bwa buri munsi hamwe na 40.000.000 Frw yo kumugurira umwenda yari afitiye COGEBANQUE Ltd. Muri ayo mazeserano, Rukerikibaye Raphaël yiyemeje kuzishyura ECOBANK Ltd iyo myenda yose n'inyungu zayo zibarirwa ku gipimo cya 16% kugeza iyo myenda yose yishyuwe. Dosiye y'urubanza igaragaza kandi ko Rukerikibaye Raphaël yananiwe kuyishyura 80.000.000 Frw y'inguzanyo y'igihe gito bituma iyi nguzanyo ivugururwa maze ihinduka 124.000.000 Frw nk'uko bigaragazwa n'amasezerano yo ku wa 10/12/2009 nk'uko byasobanuwe haruguru.

[100] Ingingo ya 33 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano, iteganya ko "Amasezerano akozwe ku buryo bukurikije amategeko, aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buryarya".

[101] Hashingiwe ku ngingo ya 33 y'Igitabo kimaze kuvugwa haruguru, no ku ngingo ya 7 y'Amabwiriza Rusange n° 02/2011 ku ishyirwa mu byiciro ry'imyenda no guteganya ingoboka, iteganya ko uwahawe umwenda agomba kuwishyura n'inyungu zawo zose[10], Urukiko rurasanga Rukerikibaye Raphaël agomba kwishyura ECOBANK Ltd imyenda-remezo yamuhaye n'inyungu zayo zisanzwe n'iz'ubukererwe (Agios réservés) kubera ko nta kimenyetso yatanze kigaragaza ko yarangije kubyishyura nk'uko biteganywa n'amasezerano bagiranye yavuzwe haruguru.

[102] Ku bijyanye no kumenya ingano y'imyenda ECOBANK Ltd yahaye Rukerikibaye Raphaël n'uburyo yagiye ayishyura, raporo yo ku wa 11/08/2015 na "ADDENDUM" yayo yo ku wa 03/11/2015 yakozwe n'abahanga bifashishijwe n'uru Rukiko igaragaza ko ECOBANK Ltd yagurije Rukerikibaye Raphaël 536.284.138 Frw y'umwenda-remezo, ubyara inyungu zisanzwe zingana na 82.046.831 Frw, ko Rukerikibaye Raphaël yayishyuye 148.912.894 Frw y'umwenda-remezo na 82.046.831 Frw y'inyungu zisanzwe yose hamwe akaba 230.959.725 Frw.

[103] Muri iyo raporo yabo, abo bahanga bakomeza basobanura ko mu gihe 536.284.138 Frw y'umwenda-remezo avanwemo 148.912.894 Frw y'umwenda-remezo Rukerikibaye Raphaël yayishyuye, hasigara 387.371.244 Frw y'umwenda-remezo, ariko ko uyu mwenda ugomba kuvanwamo 43.360.538 Frw y'igihombo yatewe na ECOBANK Ltd ukaba 344.010.706 Frw, aho kuba 388.441.182 Frw ECOBANK Ltd yamwishyuzaga igihe cy'iseswa ry'amasezerano. Bavuga

---

[10] Iyo ngingo iteganya ko *"Inyungu zose ku mwenda itishyurwa neza zabariwe mbere mu mutungo, ariko ntizakirwe zigomba guhindurwa kandi zikandikwa kuri konti y'inyungu zahagaze kugeza igihe zishyuriwe n'uwasabye umwenda*".

na none ko nyuma y'aho, Rukerikibaye Raphaël yayishyuye 20.117.477 Frw ku buryo tariki ya 24/12/2012 umwenda-remezo wanganaga na 323.893.229 Frw, ariko ko ugomba kwiyongeraho 444.920.549 Frw y'inyungu zawo z'ubukererwe ukaba 768.813.779 Frw, ukavanwamo 48.104.430 Frw y'igihombo gikomoka kuri TVA ECOBANK Ltd yamuteje, maze akayishyura 720.709.349 Frw akubiyemo imyenda-remezo n'inyungu zayo bibazwe kugera ku wa 31/08/2015.

[104] Hashingiwe ku ngingo ya 98 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko Urukiko rudategetswe byanze bikunze gukurikiza ibitekerezo by'abahanga mu gihe binyuranye n'imyumvire yarwo. Muri uru rubanza hakaba hari ibyo Urukiko ruza gukurikiza biri muri iyo raporo yabo n'ibindi rutaza gukurikiza kubera ko bidahuje n'imyumvire yarwo.

[105] Hashingiwe ku nyandiko ziri muri dosiye no kuri raporo y'abahanga yavuzwe haruguru ku birebana n'aho ihuje n'imyumvire y'abacamanza, Urukiko rurasanga ECOBANK Ltd yaragurije RUKERIKIBAYE Raphaël 536.284.138 Frw y'umwenda-remezo, ubyara 82.046.831 Frw y'inyungu zisanzwe na 444.920.549 Frw y'inyungu z'ubukererwe (Agios réservés), yose hamwe akaba 1.063.251.518 Frw. Aya mafaranga akaba agomba kwiyongeraho 5.700.000 Frw y'ikiguzi cy'imodoka 7 zavuzwe haruguru, yose hamwe akaba **1.068.951.518 Frw.**

[106] Hashingiwe na none ku bimenyetso bimaze kuvugwa haruguru, Urukiko rurasanga Rukerikibaye Raphaël yarishyuye ECOBANK Ltd 148.912.894 Frw y'umwenda-remezo, 82.046.831 Frw y'inyungu zisanzwe na 20.117.477 Frw, yose hamwe akaba 251.077.202 Frw. Aya mafaranga akaba agomba kwiyongeraho 84.069.952 Frw y'igihombo yatewe na ECOBANK Ltd cyavuzwe haruguru kigizwe na (35.965.522 Frw + 48.069.952 Frw), yose hamwe akaba **335.147.154 Frw.**

[107] Hashingiwe ku ngingo ya 107 y'Itegeko n°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, iteganya ko "Iyo abantu babiri baberanyemo imyenda, hashobora kubaho ihwanya ryayo riyizimya yombi. Iyo myenda yombi izimangana ku mpande zombi kuva igihe ibereyeho, kugeza ku gaciro kayo kangana", Urukiko rurasanga RUKERIKIBAYE Raphaël agomba kwishyura ECOBANK Ltd amafaranga abazwe mu buryo bukurikira: 1.068.951.518 Frw - 335.147.154 Frw = **733.804.364 Frw.**

C. Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka impande zombi zisaba zayahabwa

[108] Rukerikibaye Raphaël n'umwunganira bavuga ko ECOBANK Ltd ikwiye kumuha 30.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka yari yarasabye ku rwego rwa mbere, aho kuba 3.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka yagenewe ku rwego rwa mbere kubera ko ari make cyane.

[109] Ababuranira ECOBANK Ltd bavuga ko itaha Rukerikibaye Raphaël izo ndishyi asaba kuko nta kosa yamukoreye, ko ahubwo ariwe ugomba kuyiha 10.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka, Urukiko rukavanaho indishyi zose yagenewe ku rwego rwa mbere.

UKO URUKIKO RUBIBONA

[110] Urukiko rurasanga Rukerikibaye Raphaël na ECOBANK Ltd batahabwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka basaba yavuzwe haruguru kuko buri wese afite ibyo yatsindiwe muri uru rubanza, bityo 3.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka RUKERIKIBAYE Raphaël yagenewe n'Urukiko Rukuru rw'Ubucuruzi nayo akaba agomba kuvanwaho.

III. ICYEMEZO CY'URUKIKO:

[111] Rwemeje ko ubujurire bwa Rukerikibaye Raphaël n'ubwa ECOBANK Ltd bufite ishingiro kuri bimwe.

[112] Rwemeje ko imikirize y'urubanza n° RCOM 0229/11/HCC-RCOM 0009/12/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 08/05/2013, ihindutse kuri bimwe.

[113] Rutegetse Rukerikibaye Raphaël kwishyura ECOBANK Ltd 733.804.364 Frw akubiyemo imyenda-remezo n'inyungu zayo.

[114] Rutegetse ko Rukerikibaye Raphaël yegukana imodoka 7 zigizwe n'imodoka enye (4) zo mu bwoko bwa Mercedes Benz n'eshatu (3) zo mu bwoko bwa Zongtong.

[115] Rutegetse ko 3.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka Rukerikibaye Raphaël yagenewe n'Urukiko Rukuru rw'Ubucuruzi avanweho.

[116] Rutegetse ko ingwate y'amagarama y'uru rubanza yatanzwe na Rukerikibaye Raphaël na ECOBANK Ltd aherera ku Isanduku ya Leta.