MARIE MERCI MODERN MARKET LTD N'ABANDI v I&M BANK LTD

[Rwanda URUKIKO RW'IKIRENGA – RCOM 0007/15/CS – RCOMA 0190/15/HCC (Rugege, P.J., Mukanyundo na Karimunda, J.) 28 Kanama 2015]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Irangizwa ry'urubanza ry'agateganyo – Amasezerano agomba kuba mpamo mu gihe yakorwaga – Iyo impande zombi zagiranye amasezerano zibisabye, amasezerano ashobora kwemezwa ko ari mpamo n'umunoteri kabone n'iyo itegeko ritabiteganya kandi akaba yarangizwa by'agateganyo.

Incamake y'ikibazo: Marie Merci Modern Market Ltd yareze I&M Bank Ltd mu Rukiko rw'Ubucuruzi isaba kwemeza ko mu masezerano y'inguzanyo bagiranye harimo inshingano zidashobora kubahirizwa ku mpamvu zitayiturutseho, guhagarika ibarwa ry'inyungu zisanzwe n'iz'ubukererwe kugeza urubanza ruciwe burundu. I&M Bank Ltd nayo yatanze ikirego irega Marie Merci Modern Market Ltd n'abishingizi bayo isaba kwishyurwa umwenda remezo, inyungu n'indishyi zinyuranye. Yasabye kandi ko urubanza rurangizwa by'agateganyo. Urukiko rw'Ubucuruzi rwa Nyarugenge nyuma yo kuzihuza zikaburanishizwa hamwe rwemeje ko Marie Marci Modern market Ltd yishyura umwenda yahawe habariwemo n'inyungu n'indishyi zinyuranye. Urukiko kandi rwemeje ko irangiza ry'urubanza by'agateganyo ritashoboka n'ubwo amasezerano rishingiyeho ari imvaho kuko umwenda utari wakageze igihe cyo kwishyurwa cyaseranywe.

Marie Marci Modern market Ltd yajuririye mu Rukiko Rukuru rw'Ubucuruzi ivuga ko itishimiye imikirize y'urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge maze rwemeza ko imikirize y'urubanza rujuririrwa idahindutse uretse ibyiyongereyeho mu bujurire bigizwe n'ingano y'umwenda wiyongereye no kurangiza urubanza by'agateganyo kuko Urukiko rwasanze amasezerano y'inguzanyo ari inyandikomvaho kubera ko yakorewe imbere ya Noteri ndetse rusanga amasezerano atagomba gusubirwamo, umwenda ukishyurwa wose

Marie Merci Modern Market Ltd yongeye ijuririra mu Rukiko rw'Ikirenga, itanga n'ikirego cyihutirwa kigamije guhagarika irangizarubanza ry'agateganyo ryategetswe n'Urukiko Rukuru rw'Ubucuruzi. Uwarezwe mu bujurire yavuze ko irangizarubanza ry'agateganyo ryagumaho kuko uwajuriye yemeye umwenda mu rubanza kandi ko no mu gihe yatanga ikrego mu Rukiko rw'Ubucuruzi itigeze ihakana umwenda kandi ko yagiye yisabira ko yakwigurishiriza ingwate kugira ngo yishyure.

Incamake y'icyemezo: Urubanza rurangizwa by'agateganyo iyo ikimenyetso cy'ikiburanwa ari inyandikomvaho. Bityo, kuba ikimenyetso cy'umwenda hagati y'ababuranyi muri uru rubanza ari inyandiko mvaho, nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze rwemeza ko urubanza rurangizwa by'agateganyo.

Ikirego cyihutirwa nta shingiro gifite.
Imikirize y'urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi igumeyeho.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashinhgiweho:

Itegeko N°13bis/2014 ryo kuwa 21/05/2014 rigenga umurimo w'Ubunoteri, ingingo ya 27.
Ingingo Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 212.

Nta manza zifashishijwe:

Urubanza

I. IMITERERE Y'IKIBAZO MURI MAKE

[1] Urubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Marie Merci Modern Market Ltd irega I&M BANK Ltd isaba Urukiko kwemeza ko mu masezerano y'inguzanyo bagiranye harimo inshingano zidashobora kubahirizwa ku mpamvu zitayiturutseho, guhagarika inyungu zisanzwe n'iz'ubukererwe kugeza urubanza ruciwe burundu. Nyuma yo gutanga icyo kirego I&M Bank Ltd nayo yatanze ikirego muri urwo rukiko irega Marie Merci Modern Market Ltd n'abishingizi bayo aribo Aboyezantije Louis na Uwimana Vestine, isaba kwishyurwa umwenda yabagurije, inyungu zawo n'indishyi zinyuranye. Izo manza zaje guhuzwa ziburanishirizwa hamwe. Urukiko rwaciye urwo urubanza kuwa 24/03/2015 rwemeza ko Marie Merci Modern Market Ltd n'abayishingiye, bishyura I&M Bank Ltd amafaranga 1.899.804.432 Frw y'umwenda remezo, inyungu n'indishyi zinyuranye. Muri uru rubanza I&M Bank yari yasabye irangizarubanza ry'agateganyo, Urukiko rwemeza ko nubwo amasezerano umwenda ushingiyeho ari inyandiko mvaho, iranginzarubanza ry'agateganyo risabwa ritakwemerwa kuko umwenda wose wari utarageza igihe cyasezeranywe cyo kwishyurwa, kandi ko nta nubwihutirwe bw'ibyakwangirika bidasubirwaho riramutse ritemejwe

[2] Marie Merci Modern Market Ltd ntiyishimiye imikirize y'urwo rubanza, irujuririra mu Rukiko Rukuru rw'Ubucuruzi, narwo ruca urubanza kuwa 12/06/2015, rwemeza ko imikirize y'urubanza rujuririrwa idahindutse uretse ibyiyongereyeho mu bujurire bigizwe n'ingano y'umwenda wiyongereye no kurangiza urubanza by'agateganyo kuko Urukiko rwasanze amasezerano y'inguzanyo ari inyandikomvaho kubera ko yakorewe imbere ya Noteri w'Akarere ka Kicukiro ndetse rusanga amasezerano atagomba gusubirwamo, umwenda ukishyurwa wose.

[3] Marie Merci Modern Market Ltd ntiyishimiye uko urwo rubanza rwakijijwe, irujuririra mu Rukiko rw'Ikirenga, itanga n'ikirego cyihutirwa kigamije guhagarika irangizarubanza ry'agateganyo ryategetswe mu rubanza RCOMA0190/15/HCC.

[4] Iburanisha kuri icyo kirego cyihutirwa ryabaye kuwa 26/08/2015 hitabye Aboyezantije Louis, Umuyobozi wa Marie Merci Modern Market Ltd kandi Marie Merci Modern Market iburanirwa na Me Nzirabatinyi Fidèle na Me Kananga Protogène naho I&M Bank Ltd iburanirwa na Me Rusanganwa Jean Bosco. Nyuma yo gupfundikira iburanisha ry'urubanza, Urukiko rwatangaje ko icyemezo kizasomwa kuwa 28/08/2015.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURA RYACYO.

a. Kumenya niba amasezerano y'umwenda hagati ya Marie Merci Modern Market na I&M Bank atari inyandiko mvaho ku buryo irangizwa ry'agateganyo ry'urubanza rwajuririwe ryahagarara.

[5] Me Nzirabatinyi avuga ko imvano y'impaka ziri hagati ya Marie Merci Modern Market Ltd aburanira na I&M Bank Ltd, ari uko mu mikoranire yabo habayemo amasezerano abiri avuga ibintu bitandukanye, akaba yarakozwe ku itariki imwe, amwe yandikwa mu rurimi rw'igifaransa ndetse aba ariyo ajyanwa imbere ya Noteri kuwa 18/06/2012, andi masezerano yandikwa mu rurimi rw'icyongereza asinywa hagati ya Aboyezantije wenyine na I&M Bank Ltd ariko ntiyajyanwa imbere ya notaire.

[6] Me Nzirabatinyi avuga ko mu masezerano y'igifaransa mu ngingo yayo ya 2, hateganyijwe ko igihe cyo kwishyura cyari imyaka 15 naho ay'icyongereza akavuga ko igihe cyo kwishyura gishyizwe ku myaka 7, ariko bikaba bitumvikana ukuntu mu gufata icyemezo Urukiko Rukuru rw'Ubucuruzi rwashingiye ku masezerano y'imyaka 15 yagiye kwa Noteri hatangwa irangizarubanza ry'agateganyo ariko mu gusuzuma urubanza muri rusange, ku birebana n'ubukerererwe n'uburyo bwo kwishyura, rukoresha amasezerano y'imyaka 7, bityo rero irangizarubanza ry'agateganyo rikaba ryaratanzwe mu karengane kuko Urukiko rwagendeye ku masezerano atari ay'inyandikomvaho.

[7] Avuga ko inkiko zabanje zagiye zikoresha amasezerano yombi kandi atavuga ibintu bimwe bituma Umucamanza mu Rukiko Rukuru rw'Ubucuruzi akoresha ingingo ya 212 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi mu buyo butaribwo.

[8] Avuga kandi ko bitari ngombwa kuregera inkiko hashingiwe ku biteganywa n'amasezerano yagiye kwa notaire, bityo hakaba harirengagijwe ibikubiye mu ngingo ya 16 n'iz'ikurikira z'Itegeko ry'ingwate ku bitimukanwa kuko bagombaga kwandikira Umwanditsi Mukuru, basaba uburenganzira bwo kugurisha ingwate.

[9] Akomeza avuga ko hatigeze haba ibirarane by'imyaka 3, ko ahubwo Aboyezantije yagiye yishyura make, igihe atishyuye akaba ari igihe hari hatangiye imanza nawe ategereza ko zirangira kugira ngo amenye umubare wayo azishyura ndetse akaba yarahagaritse kwishyura amaze gusubiza agera kuri 700.000.000 Frw, bivuze ko igihe cy'ubukererwe kingana n'amezi 4 gusa.

[10] Asoza avuga ko irangizarubanza ry'agateganyo ryagenywe ritari ngombwa mu gihe hakiri urubanza mu hataramenyekana umubare nyakuri w'amafaranga agomba kwishyurwa n'igihe agomba kwishyurirwa.

[11] Me Kananga avuga ko irangizarubanza ryatanzwe riramutse ridakuweho hazabaho «préjudice irréparable» kuko ibintu byagurishijwe byaba bitakigarutse, bityo asaba ko ryahagarikwa kugeza urubanza ruciwe burundu mu mizi kugira ngo hamenyekane amasezerano agomba gukurikizwa, ibi kandi ngo bikaba aribyo byemejwe mu rubanza RCOM0007/14/CS haburana Mushimiyimana Thaciana na Ecobank rwaciwe n'Urukiko rw'Ikirenga kuwa

13/07/2012. Asoza avuga ko kandi bitumvikana ukuntu Urukiko rwategetse irangizarubanza ry'agateganyo ku mumtu utarasinye ku masezerano.

[12] Aboyezantije avuga ko amasezerano ataragiye kwa notaire yakozwe mu cyongereza atayemera kuko n'ubwo hariho umukono we, atazi igihe yakorewe ndetse avuga ko hari amafaranga menshi yari amaze kwishyura ku mwenda yari yagurijwe. mizi rutaraburanishwa kuko

[13] Me Rusanganwa uburanira I&M Bank Ltd asobanura ko amasezerano avugwa muri uru rubanza adatandukanye ahubwo yuzuzanya kuko hari ay'umwenda hagati y'abantu, ay'ingwate ndetse n'amasezerano y'ubwishingizi yasinwe na Aboyezantije n'umugore we Uwimana (Acte de Cautionnement Solidaire avec Constitution d'Hypothèque).

[14] Asobanura ko umwenda watanzwe uri mu masezerano ataragiye kwa notaire kuko muri «contrat principal» impande zombi zumvikanye ko hazatangwa ingwate kugira ngo hatazaba ikibazo mu gihe umwenda uzaba utishyuwe. Asobanura kandi ko «contrat principal» ariyo iteganya ko umwenda uzishyurwa mu myaka 7 naho iteganya imyaka 15 iri hagati y'abantu batatu ninayo yagiye kwa Noteri

[15] Avuga ko ikibazo cy'imyaka atari ngombwa kuko kireba ingwate gusa naho umwaka wo kwishyura ideni ntugomba guhuzwa n'umwaka w'ingwate kuko ingwate iza mu gihe habaye kwishyuza akaba ariyo mpamvu imyaka itandukanye kuko Aboyezantije n'umugore we basinye amasezerano y'umwenda bazi neza ko ari umwenda basinyiye ndetse barongera basinya nk'abishingizi ku giti cyabo.

[16] Avuga ko icyerekana ko Marie Merci Modern Market Ltd yemera umwenda irimo ari uko itanga ikirego mu Rukiko rw'Ubucuruzi itigeze ihakana umwenda yahawe ahubwo igasaba, ko amasezerano y'inguzanyo yahinduka kuko yabonaga adashoboka, ko ibijyanye n'ingano y'umwenda batigeze babiburanaho mu nkiko zibanza.

[17] Avuga ko ikindi cyerekana ko yemera umwenda ari uko ku itariki ya 12/08/2015, Aboyezantije yandikiye I&M Bank Ltd asaba ko yahabwa imitungo ye akayigurishiriza kandi na RRA ikaba yarayifatiriye, bityo rero kuba yemera ko imitungo ye igurishwa akaba ari uko yemera umwenda.

[18] Asobanura ko impamvu batagiye muri RDB ahubwo bagahitamo kujya mu nkiko ari uko ikijya muri RDB ari ingwate, bityo rero kuba hari abishingizi bikaba bitari ngombwa kujya muri RDB cyane ko mu masezerano hagaragara ko bemeranya ko ibibazo bizavuka bizajyanywa mu nkiko zibifitiye ububasha.

UKO URUKIKO RUBIBONA

[19] Ingingo ya 212 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko "irangizwa ry'agateganyo ryemezwa n'urukiko rubyibwirije ndetse nta ngwate, iyo: ikimenyetso cy'ikiburanwa ari inyandikomvaho; ikiburanwa ari umwenda wemewe mu rubanza n'uregwa". Urukiko Rukuru rw'Ubucuruzi rwahereye kuri iyi ngingo rutegeka ko urubanza rwajuririwe rurangizwa by'agateganyo.

[20] Ku itariki ya 18/06/2012, nibwo I&M Bank yandikiye Marie Merci Modern Market Ltd ibaruwa 0410/CRE/ME/0480-2012 iyimenyesha ko yemerewe umwenda (loan offer) ndetse n'ibizaba bigize amasezerano y'uwo mwenda. Iyi baruwa ubwayo siyo masezerano y'umwenda asabwa gushyirwa mu bikorwa nkuko ababuranira Marie Merci Modern Market Ltd babivuga. Urukiko rufata"Loan offer" yahawe Marie Merci Modern Market Ltd nk'icyemezo ku busabe bwayo kiyemerera umwenda, naho amasezerano y'umwenda akaza akurikira iyo loan offer mu gihe Marie Merci Modern Market yahawe iyo offer yemeye ibiyikibiyemo. Bikaba bivuga ko izo nyandiko zombi zuzunya.

[21] Inyandiko zikubiye muri dosiye zigaragaza ko ku itariki ya 18/06/2012 hasinywe amasezerano hagati ya I&M Bank na Marie Merci Modern Market yitwa "ouverture de crédit avec constitution d'hypothèque". Iby'ingenzi bikubiye muri ayo masezerano, birebana n'umwenda ungana na 1.800.000.000 Frw wahawe Marie Merci Modern Market Ltd, wishingiwe n'ingwate iri mu mu kibanza nº 202/LC giherereye mu Kagari ka Kabeza, Umurenge wa Kanombe, Akarere ka Kicukiro. Iyo ngwate ifite agaciro kangana na 1.600.000.000 Frw. Nkuko biri mu ngingo ya mbere yayo masezerano, ibirebana nuko inyungu zibarwa bigomba kuba biri mu masezerano yihariye. Ibi bigaragaza ko amasezero y'umwenda hagati ya I&M Bank na Marie Merci Modern Market ari amwe atari amasezerano abiri atandukanye nubwo bwose loan offer nayo masezerano byasinyiwe ku itariki imwe ya 18/06/2012.

[22] Ayo masezerano kandi agaragaza ko yakorewe imbere ya Ruzindana Landrine, Noteri w'Akarere ka Kicukiro, ndetse akurikirwa no kwandikisha ingwate muri RDB ku itariki ya 30/10/2012. Ingingo ya 27 y'Itegeko Nº13bis/2014 ryo kuwa 21/05/2014 rigenga umurimo w'Ubunoteri igira iti "Umunoteri yemeza ukurimpamo kw'amasezerano itegeko risaba ko agomba kuba mpamo mu gihe yakorwaga. Iyo impande zagiranye amasezerano zibisabye, amasezerano ashobora kwemezwa ko ari mpamo n'umunoteri kabone n'iyo itegeko ritabiteganya". Urukiko rw'Ikirenga ruhereye ku biteganywa n'iyi ngingo y'itegeko, rusanga amasezerano y'umwenda hagati I&M Bank ari inyandikomvaho kuko yakorewe imbere ya Noteri.

[23] Nkuko byasobanuwe mu bika bibanziza iki, kandi hashingiwe ku ngingo ya 212 y'Itegeko N° 21/2012 imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, urubanza rurangizwa by'agateganyo iyo ikimenyetso cy'ikiburanwa ari inyandikomvaho. Bityo kuba ikimenyetso cy'umwenda hagati y'ababuranyi muri uru rubanza ari inyandiko mvaho, uru Rukiko rurasanga nta kosa Urukiko Rukuru rw'Ubucuuuzi rwakoze rwemeza ko urubanza RCOMA0190/15/HCC rurangizwa by'agateganyo. Bivuze ko ikirego kihutirwa cyatanzwe na Marie Merci Modern Market isaba ko iryo rangizarubanza ry'agateganyo rihagaragara nta shingiro gifite.

III. ICYEMEZO CY'URUKIKO

[24] Rwemeje ko ikirego cyihutirwa cyatanzwe na Marie Merci Modern Market Ltd nta shingiro gifite.

[25] Rwemeje ko imikirize y’urubanza RCOMA 0190/15/HCC idahindutse ku birebana no kurangiza urwo rubanza by’agateganyo. ryo kuwa 14/06/2012 ryerekeye

[26] Ruvuze ko amagarama yatanzwe ahwanye n’ibyakozwe muri uru rubanza.