NIYIGENA v. ECOBANK RWANDA PLC N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00005/2023/SC (Mukamurisa, P.J., Hitiyaremye na Kazungu, J.) 28 Kamena 2024]

Amategeko mbonezamubano – Amasezerano – Amasezerano y'ubwishingire – Itangwa ry'ingwate – Ingwate itangwa hishingirwa umwenda uriho, ishobora no kwishingira umwenda cyangwa imyenda izafatwa nyuma, ariko mu masezerano y'ubugwate bikwandikwamo neza ko iyo ngwate izishingira n'umwenda cyangwa imyenda runaka, hakagaragazwa ingano yayo, icyo izaba igamije, n'ibindi.

Incamake y'ikibazo: Kantarama Felicie yareze Niyigena Eraste mu Rukiko rw'Ubucuruzi ku kuba yaranze kwishyura umwenda yahawe na Ecobank Rwanda Plc akamwishingira ariko bikaza kurangira ingwate yamutije igurishijwe mu cyamunara. Ecobank igobokeshwa muri urwo rubanza.

Urwo Rukiko rwaciye urubanza rwemeza ko ikirego cya Kantarama gifite ishingiro, rutegeka Niyigena kumwishyura 261.173.067 Frw y'agaciro k'umutungo we ufite UPI: 5/04/03/01/2936 yari yaramutije, runamutegeka kumwishyura indishyi.

Niyigena atishimiye icyo cyemezo yajuririye mu Rukiko Rukuru rw'Ubucuruzi avuga ko umwenda yahawe wishyuwe bityo atarakwiye gutegekwa kwishyura Kantarama Félicie 261.173.067 Frw y'ingwate yagurishijwe na Ecobank ndetse n'indishyi.

Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko imikirize y'urubanza rwaciwe n'Urukiko rw'ubucuruzi idahindutse.

Niyigena yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urwo rubanza rwasubirishwamo ku mpamvu z'akarengane, nawe amaze gusuma impamvu z'ubwo busabe agasanga zifite ishingiro, yandikira Perezida w'Urukiko rw'Ikirenga asaba ko rwasubirwamo, yemeza ko rusubirwamo ruburanishwa n'Urukiko rw'Ikirenga.

Mu miburanire ye mu rubanza rusubirwamo ku mpamvu z'akarengane, Niyigena avuga ko Urukiko Rukuru rw'Ubucuruzi rwafashe ibintu uko bitari rwemeza ko amazerano hagati ye na Kantarama yo gutiza ingwate atubahirijwe kuko umutungo yamutije wagurishijwe mu cyamunara RDB imaze kubitangira icyemezo. Akavuga ko icyo uwo mutungo wagurishirijwe bitari ukutubahiriza amasezerano y'umwenda yahawe na Ecobank wiswe *avance de démarrage*, wishingiwe na Kantarama kuko wishyuwe kandi uburenganzira kuri iyo ngwate bukaba bwari burangiriye aho, ahubwo ari uburangare bwa Ecobank bwo kuba nyuma yo kumuha indi myenda itandikishije ingwate aho byasabaga ko Kantarama abanza kwemera ko ingwate ye ikomereza no ku zindi nguzanyo, hakabaho kongera kwandikisha ingwate, ko kuba ibyo bitarabaye, uburenganzira bwa Ecobank ku ngwate Niyigena Eraste yari yaratijwe na Kantarama Félicie bwagarukiraga gusa ku mwenda wa 284.747.744 Frw.

Ecobank Rwanda Plc yiregura ivuga ko ibivugwa na Niyigena ko Kantarama Félicie yishingiye gusa umwenda wa *advance payment guarantee* nta shingiro bifite, ndetse Kantarama akaba yeremereye Ecobank ko iyo ngwate yakomeza kwishingira imyenda yose Niyigena azahabwa niyo Banki. Ikavugako kuba yaraniwe kwishyura imyenda yahawe aribyo byabaye intandaro yo kugurisha iyo ngwate mu cyamunara.

Kantarama ku ruhande rwe avuga ko kuba Ecobank yiyemerera ko umwenda yishingiye wamaze kwishyurwa ariko ikabirengaho ikamugurishiriza ingwate, ikwiye kwirengera izo ngaruka, agahakana ko atemereye Ecobank ko ingwate ye izishingira iyindi myenda Niyigena azafata ndetse kuba yarandikishijwe inshuro imwe, nta wundi mwenda yagombaga kwishingira, ndetse nta kigaragaza ko hari undi mwenda yandikishijweho. Agasaba ko Ecobank yirengera amakosa yose yakoze.

Incamake y'icyemezo: Ingwate itangwa hishingirwa umwenda uriho, ishobora no kwishingira umwenda cyangwa imyenda izafatwa nyuma, ariko mu masezerano y'ubugwate bikwandikwamo neza ko iyo ngwate izishingira n'umwenda cyangwa imyenda runaka, hakagaragazwa ingano yayo, icyo izaba igamije, n'ibindi.

Ikirego gifite ishingiro.

Amategeko yashingiweho:
Itegeko ryo ku wa 30/07/1888 ry'urwuge rw'amategeko y'imbonezamubano, ingingo ya 555;
Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa, ingingo ya 4 n'iya 11.

Imanza zifashishijwe:
RS/INJUST/RCOM 00011/2022/SC; BUGINGO Jean Claude, Ecobank vs KADOGI Jean Paul rwaciwe n'Urukiko rw'Ikirenga kuwa 08/03/2024.
RCOMA 0138/12/CS; GAJU Cyinthia vs Access Bank Ltd rwaciwe n'Urukiko rw'Ikirenga kuwa 16/05/2014.

Inyandiko z'abahanga zifashishijwe:
Patrick Tafforeau, Droit des sûretés, sûretés personnelles et réelles, Edition Bruylant, Bruxelles, 2020.
Manuella BOURASSIN na Vincent BREMOND, Droit des sûretés, 7ème Edition Dalloz, 2019.
Philippe MALAURIE, Laurent AYNES, Droit des Sûretés, 15 éditions, 2021.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi Kantarama Félicie arega Niyigena Eraste kuba yaranze kwishyura umwenda yari afitiye Ecobank bigatuma ingwate yari yaramutije ngo yishingire uwo mwenda igurishwa mu cyamunara, hamwe n'indishyi zinyuranye zikomoka ku kwica amasezerano, Ecobank igobokeshwa mu rubanza.

[2] Ku itariki ya 08/02/2022, Urukiko rw'Ubucuruzi rwaciye urubanza RCOM 01291/2021/TC, rwemeza ko ikirego cya Kantarama Félicie gifite ishingiro kuri bimwe, ruvuga ko Ecobank itari ikwiye kugobokeshwa ku gahato mu rubanza, rutegeka Niyigena Eraste kwishyura Kantarama Félicie 261.173.067 Frw y'agaciro k'umutungo we ufite UPI:

5/04/03/01/2936 yari yaramutije, runamutegeka kumwishyura 600.000 Frw akubiyemo indishyi z'ikurikiranarubanza n'igihembo cya Avoka hamwe n'igarama, rumutegeka kandi kwishyura Ecobank 500.000 Frw y'igihembo cya Avoka.

[3] Niyigena Eraste yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi avuga ko atagobokesheje Ecobank mu rwego rwa mbere, ko ahubwo yifuzaga ko izanwa mu rubanza kugira ngo iryozwe amakosa yakoze igurisha ingwate yahawe ubwo yatangaga ubwishingizi ku mafaranga Niyigena Eraste yahawe na WDA akishyurwa nta ruhare ibigizemo. Yavugaga kandi ko umwenda ungana na 284.747.744 Frw utatanzwe na Ecobank, ko kandi uwo mwenda wishyuwe, ko rero atari akwiye gutegekwa kwishyura Kantarama Félicie 261.173.067 Frw y'ingwate yagurishijwe na Ecobank ndetse n'indishyi.

[4] Urukiko Rukuru rw'Ubucuruzi rwasuzumye ibibazo bitatu bikurikira :

i. Kumenya niba Niyigena Eraste ataragobokesheje Ecobank mu rwego rwa mbere ;
ii. Kumenya niba umwenda uburanwa utaratanzwe na Ecobank, kandi ko wishyuwe ;
iii. Kumenya niba urega ataragombaga gutegekwa kwishyura Kantarama Félicie 261.173.067 Frw.

[5] Ku itariki ya 25/11/2022, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00190/2022/HCC rwemeza ko imikirize y'urubanza rwajuririwe idahindutse, ko ubujurire bwa Niyigena Eraste bufite ishingiro gusa ku bijyanye nuko mu rwego rwa mbere atagobokesheje Ecobank, ko ahubwo yasabye ko ihamagarwa nk'umwishingizi waryozwa ibyo yaregwaga, rumutegeka kwishyura Ecobank na Kantarama Félicie, buri wese indishyi zingana na 300.000 Frw y'igihembo cya Avoka mu bujurire.

[6] Mu gufata iki cyemezo, Urukiko rwashingiye ku mpamvu zikurikira :

- ✓ Kuba mu rwego rwa mbere Niyigena Eraste ataragobokesheje Ecobank, ko ahubwo yasabye ko ihamagarwa nk'umwishingizi waryozwa ibyo yaregwaga, akaba atarasabye ko yagaragara mu rubanza mu buryo busanzwe bwo kugobokesha ku gahato umuburanyi ;
- ✓ Kuba Niyigena Eraste atarabashije kugaragariza Urukiko ibyemeza ko umwenda ungana na 284.747.744 Frw utatanzwe na Ecobank, ko kandi wishyuwe.

[7] Niyigena Eraste yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza RCOMA 00190/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku itariki ya 25/11/2022 rwasubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubwo busabe, yohereje Perezida w'Urukiko rw'Ikirenga raporo yarukozeho asaba ko rwasubirwamo, na we yemeza ko rwongera kuburanishwa ruhabwa RS/INJUST/RCOM 00005/2023/SC.

[8] Mu nama ntegurarubanza, ababuranyi bemeranyijwe ko icyo Ecobank yishingiye ari *avance de démarrage* yatanzwe na WDA, ko kandi yishyuwe nta ruhare Ecobank ibigizemo, bityo ko itari mu myenda Niyigena Eraste ayifitiye. Ikibazo cyabaye icy'uko Niyigena Eraste yafatiye indi myenda muri Ecobank ku ngwate yari yaratijwe na Kantarama Félicie ubwo Ecobank yishingiraga *avance de démarrage* imaze kuvugwa. Hakaba hibazwa niba Ecobank yarashoboraga

kwimurira iyo ngwate ku yindi myenda Kantarama Félicie atabimenyeshejwe ngo abyemere nk'uko byagenze kuri *avance de démarrage*.

[9] Urubanza rwaburanishijwe mu ruhame ku itariki 15/05/2024, Niyigena Eraste yunganiwe na Me Bayingana Janvier, Ecobank ihagarariwe na Me Bimenyimana Eric, naho Kantarama Félicie ahagarariwe na Me Ngendakuriyo Célestin. Muri uru rubanza hasuzumwe ikibazo cyo kumenya niba Ecobank yari ifite uburenganzira bwo kwimurira ku yindi myenda ingwate Kantarama Félicie yatije Niyigena Eraste hishingirwa *avance de démarrage* itabimumenyesheje, n'ikibazo kijyanye no kumenya ingano y'indishyi zigomba kwishyurwa Kantarama Félicie, hamwe n'ikibazo kijyanye n'izindi ndishyi zisabwa muri uru rubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

- **Kumenya niba Ecobank yari ifite uburenganzira bwo kwimurira ku yindi myenda ingwate Kantarama Félicie yatije Niyigena Eraste hishingirwa avance de démarrage itabimumenyesheje.**

[10] Me Bayingana Janvier wunganira Niyigena Eraste avuga ko akarengane kabaye mu rubanza basabye ko rwasubirwamo, ari uko Urukiko Rukuru rw'Ubucuruzi rwafashe ibintu uko bitari bigatuma rwibeshya rugafata icyemezo ku kibazo kitariho, kuko rwafashe ko umwenda wari wishingiwe n'ingwate ya Kantarama Félicie utishyuwe bigatuma rwemeza ko amasezerano yo gutiza ingwate yagiranye na Niyigena Eraste yishwe. Avuga ko Ecobank yitwikiriye imyenda yindi Niyigena Eraste yari ayibereyemo, ariko itandukanye cyane n'umwenda Kantarama Félicie yari yaratangiye ingwate ye, bituma isaba RDB kugurisha ingwate ya Kantarama Félicie ku mwenda nyamara itari yarandikishirije ingwate. Avuga ko hanarebwe uburenganzira bwo kugurisha bwatanzwe na RDB *(permit to sale),* usanga umwenda watangiwe ingwate yagurishijwe ari *avance de démarrage* yonyine.

[11] Akomeza asobanura ko ingwate imaze kuvugwa ijya gutangwa, ku itariki ya 13/01/2014, hagati ya ECOTRAP/Niyigena Eraste, Kantarama Félicie na Ecobank, habaye amasezerano arebana n'umwenda ungana na 284.747.744 Frw, nyuma iyo ngwate irandikishwa. Avuga ko mu gihe iyo nguzanyo yari imaze kwishyurwa, inshingano za Kantarama Félicie zari zirangiye, ko ku yindi myenda itarishyuwe Ecobank ivuga yahaye Niyigena Eraste ku ngwate ya Kantarama Félicie, byari ngombwa ko abanza kwemera ko ingwate ye ikomereza no ku zindi nguzanyo, hakabaho kongera kwandikisha ingwate, ko kuba ibyo bitarabaye, uburenganzira bwa Ecobank ku ngwate Niyigena Eraste yari yaratijwe na Kantarama Félicie bwagarukiraga gusa ku mwenda wa 284.747.744 Frw.

[12] Ku bijyanye n'ibivugwa na Ecobank ko mu masezerano y'itizwa ry'ingwate (*procuration)* yo ku itariki ya 07/01/2014, Kantarama Félicie yemereye Niyigena Eraste gukomeza gukoresha ingwate ye mu gihe cy'imyaka icumi, Me Bayingana Janvier asobanura ko iyo myumvire atari yo kuko iyo *procuration* yarebanaga n'amasezerano yandi Niyigena Eraste yashoboraga kuzakorana n'ibindi bigo byose by'imari, ko atari *spécifique* ku myenda ya Ecobank.

[13] Arangiza avuga ko Urukiko rwaciye urubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane rwahaniye Niyigena Eraste amakosa yakozwe na Ecobank, bityo agasaba uru Rukiko kubikosora, Ecobank akaba ari yo yirengera ingaruka z'amakosa yayo, rugategeka ko amafaranga

yaciwe muri urwo rubanza yacibwa Ecobank kuko ari yo yakoze amakosa yo kugurisha ingwate ya Kantarama Félicie kandi umwenda yari yishingiye warishyuwe.

[14] Me Bimenyimana Eric uhagarariye Ecobank avuga ko ibivugwa na Niyigena Eraste ko Kantarama Félicie yishingiye gusa umwenda wa *advance payment guarantee* nta shingiro bifite, kubera ko mu masezerano yo ku itariki ya 13/01/2014, Kantarama Félicie yashyizeho umukono, mu ngingo yayo ya 3, igika cya 3, ubwe yemereye Ecobank ko ingwate ye ishobora no kuba yakomeza gukoreshwa no ku yindi myenda (yemeye guhindura *mode d'utilisation*), ko ari muri urwo rwego umutungo we wakomeje gufatwa nk'ingwate ku myenda yose yahabwaga Niyigena Eraste. Avuga ko uretse n'ibyo, amasezerano yo ku itariki ya 07/01/2014 yakorewe imbere ya Noteri w'ubutaka mu Karere ka Kayonza aho umutungo watijwe uherereye, yari ayo guha Niyigena Eraste uburenganzira bwo gutangaho ingwate umutungo wa Kantarama Félicie mu gihe cy'imyaka icumi (10), akaba atarigeze amukumira ku myenda azafata.

[15] Akomeza asobanura ko, ashingiye ku bimaze kuvugwa, ari muri urwo rwego guhera ku itariki ya 14/01/2015, Niyigena Eraste yagiye afata imyenda itandukanye yumvikana na Banki ko umutungo yatijwe na Kantarama Félicie uzaba ingwate, mu byo yategetswe hakaba harimo kuwufatira ubwishingizi bw'inkongi y'umuriro, kandi akaba yaragiye abikora igihe cyose uwo mutungo wari ukiri mu bugwate. Avuga ko umwenda yahawe ku itariki ya 20/05/2015 ungana na 250.000.000 Frw yananiwe kuwishyura, habaho kuvugurura amasezerano yawo *(restructuration)*, umwenda urazamuka ugera kuri 308.909.333 Frw, ari byo byaje kuba intandaro yo kugurisha mu cyamunara ingwate yari yaratanze.

[16] Me Bimenyimana Eric yabajijwe icyatumye habaho kugurisha ingwate ya Kantarama Félicie mu gihe yemera ko umwenda ungana na 284.747.744 Frw wishyuwe, nta n'indi *permit to sale* ku yindi myenda avuga yatanzwe, asubiza ko ingwate igurishwa hashingiwe kuri *invoice discouting* yo ku itariki ya 28/07/2016, yahinduraga umwenda wishingiwe. Asobanura ko mbere y'uko Banki ijya kugurisha ingwate hari imihango (*procedures)* ibanza irimo nko kwibutsa uyibereyemo umwenda inshingano zo kwishyura, no kuri Niyigena Eraste akaba ari ko byagenze.

[17] Ku kibazo cyo kumenya umwenda uvugwa niba ari umwe ku baburanyi bose kuko basa nk'abavuga imyenda itandukanye, asobanura ko hari imyenda itandukanye Ecobank yahaye Niyigena Eraste, bakumvikana ko mu bigomba kwishingira iyo myenda harimo n'inzu ya Kantarama Félicie, ko kandi yari isanzwe yanditse, ari yo mpamvu batongeye kongera kuyandikisha. Yongeraho ko ibimaze kuvugwa bihura n'ibyo Kantarama Félicie yumvikanyeho na Ecobank na Niyigena Eraste mu ngingo ya 3 y'amasezerano bagiranye, aho bemereye Banki kuba yakwimurira iyandikisha ry'ingwate ku wundi mwenda, ibyo akaba aribyo Ecobank yashingiyeho iteza cyamunara ingwate yahawe nyuma yo kubona ko hari umwenda wishingiwe n'iyo ngwate Niyigena Eraste atishyuye.

[18] Me Ngendakuriyo Célestin uhagarariye Kantarama Félicie avuga ko kuba umwenda ungana na 284.747.744 Frw Kantarama Félicie yari yaratangiye ingwate Ecobank yiyemerera ko wishyuwe wose, ariko ikaba yarabirenzeho ikamugurishiriza ingwate, ariyo ikwiriye kwirengera ingaruka zabyo. Avuga ko ibyo uhagarariye Ecobank avuga ko Kantarama Félicie yari yaremeye kwishingira imyenda yose Niyigena Eraste yari kuzahabwa atari ukuri, kuko ingingo ya 2, igika cya 2, y'amasezerano y'ubugwate impande zose zagiranye ku itariki ya 13/01/2014, igaragaza uburyo ingwate ye yagombaga gukoreshwa. Kuba rero Kantarama Félicie atarigeze yishingira

izindi nguzanyo zahawe Niyigena Eraste, asanga Ecobank ikwiriye kwirengera ingaruka zose zatewe no kugurishirizwa ingwate.

[19] Me Ngendakuriyo Célestin akomeza asobanura ko hashingiwe ku ngingo ya 4 y'Itegeko ryerekeye ubugwate ku mutungo utimukanwa, ingwate yandikwa inshuro imwe gusa ku mwenda umwe, ko kuba rero ingwate ya Kantarama Félicie yari yaratangiwe umwenda umwe wa 284.747.744 Frw ikanandikishwa inshuro imwe kuri uwo mwenda, nta wundi mwenda yagombaga kwishingira, cyane cyane ko nta kigaragaza ko hari undi mwenda yandikishijweho.

UKO URUKIKO RUBIBONA

[20] Ingingo ya 555 y'Itegeko ryo ku wa 30/07/1888 ry'urwuge rw'amategeko y'imbonezamubano ryakurikizwaga ubwo amasezerano avugwa muri uru rubanza yasinywaga, yateganyaga ko ubwishingire budakekwa, ko bugomba kwemerwa ku buryo bweruye, ko kandi budashobora kwagurwa ngo burenge inshingano uwishingiye undi yiyemeje. Ingingo ya 576 y'iryo Tegeko yo igateganya ko uwishingiye undi ntacyo ashobora kwishyuzwa, iyo uburenganzira bwe bwo gusimbura ugomba kwishyurwa mu burenganzira bwe, mu ngwate ze z'ibintu bitimukanwa no mu bwizimbe bwe, atagishoboye kubukoresha kubera ikosa ry'ugomba kwishyurwa.

[21] Ingingo ya 4 y'Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa nk'uko ryahinduwe kandi ryujuwe kugeza ubu, iteganya ko byitwa ko ubugwate bufite agaciro iyo bwanditswe mu gitabo cyandikwamo ingwate ku mutungo utimukanwa mu biro by'Umwanditsi Mukuru.

[22] Ingingo ya 11 y'Itegeko rimaze kuvugwa, iteganya ko uwatanze ingwate afite uburenganzira bwo gusubizwa ingwate ye igihe cyose amaze kwishyura umwenda we wose hakurikijwe ibyumvikanyweho mu masezerano y'ubugwate.

[23] Ibiteganywa n'ingingo imaze kuvugwa, byasobanuwe n'Urukiko rw'Ikirenga mu rubanza rwaciye ku itariki ya 19/06/2020 haburana Kayombya Robert, I&M Bank Rwanda Plc na IMEX Sarl, aho rwifashishije ibisobanuro bitangwa n'abahanga mu mategeko, rwasobanuye 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, ko mu gihe umwenda wari wishingiwe urangije kwishyurwa wose, ingwate yawishingiraga ihita irekurwa, uretse mu gihe byaba byarateganyijwe ukundi mu masezerano.[1]

[24] Ababuranyi muri uru rubanza bemeranya ku kuba umwenda wari wishingiwe n'umutungo wa Kantarama Félicie ufite UPI : 5/04/03/01/2936 mu masezerano y'ubugwate yo ku itariki ya 13/01/2014 *(convention d'ouverture de crédit avec constitution d'hypothèque)* warishyuwe kandi nta ruhare Ecobank ibigizemo. Bemeranya kandi ko nyuma y'aho uwo mwenda wishyuriwe, Niyigena Eraste wari waratijwe ingwate yayifatiyeho indi myenda, umwe muri yo ntiwishyurwa, bituma ingwate igurishwa mu cyamunara. Icyo batemeranyaho nuko Niyigena Eraste na Kantarama Félicie bavuga ko iyo ngwate itagombaga kugurishwa kuko umwenda yishingiye

[1] Urubanza n° RCOMAA0026/2016/SC rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 19/06/2020, igika cya 39 n'icya 40.

wishyuwe, Ecobank yo ariko ikavuga ko kuba Niyigena Eraste yarakomeje gufatira kuri iyo ngwate indi myenda, umwe muri yo ntiwishyurwe, ntacyari gutuma ingwate itagurishwa.

[25] Inyandiko zigize dosiye y'urubanza zigaragaza ko ku itariki ya 23/12/2013, Ecobank na ECOTRAP ihagarariwe na Niyigena Eraste bagiranye amasezerano y'umwenda wa 284.747.744 Frw ugamije kwishingira avansi y'itangira ry'imirimo *(avance de démarrage)* ECOTRAP yari yahawe nyuma yo gutsindira isoko muri WDA[2]. Izo nyandiko zigaragaza ko ku itariki ya 13/01/2014, hagati ya Ecobank, Niyigena Eraste na Kantarama Félicie, hasinywe amasezerano y'ubugwate ku mwenda Niyigena Eraste yari yemerewe na Ecobank. Muri ayo masezerano uwatanze ingwate yo kwishingira uwo mwenda akaba ari Kantarama Félicie.

[26] Hashingiwe kuri ayo masezerano yombi amaze kuvugwa, no ku ngingo ya 4, igika cya mbere, y'Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryavuzwe haruguru, ku itariki ya 13/01/2014, Ecobank yandikishije mu Biro by'Umwanditsi Mukuru ingwate yatanzwe na Kantarama Félicie igizwe n'umutungo ubaruye kuri UPI : 5/04/03/01/2936 uherereye mu Ntara y'Iburasirazuba, Akarere ka Kayonza, Umurenge wa Kabarondo, ifite agaciro ka 261.173.067 Frw, ku mwenda wa 284.747.744 Frw wavuzwe haruguru.

[27] Inyandiko zigize dosiye nanone zerekana ko Ecobank na ECOTRAP ihagarariwe na Niyigena Eraste bagiranye andi masezerano y'inguzanyo, mu byishingiye izo nguzanyo bashyiramo n'umutungo wa Kantarama Félicie ubaruye kuri UPI : 5/04/03/01/2936. Ayo masezerano ni aya akurikira :

> i. Amasezerano y'inguzanyo yiswe *invoice discounting* ya 109.000.000 Frw yasinywe ku itariki ya 16/04/2014 ; ii. Amasezerano y'inguzanyo yiswe *invoice discounting* ya 125.000.000 Frw yasinywe ku itariki ya 26/08/2014 ; iii. Amasezerano y'inguzanyo yiswe *invoice discounting* ya 250.000.000 Frw yasinywe ku itariki ya 14/01/2015 ; iv. Amasezerano y'inguzanyo yiswe *invoice discounting* ya 250.000.000 Frw yasinywe ku itariki ya 20/05/2015 ; v. Amasezerano y'inguzanyo yiswe extension of *invoice discounting* ya 276.302.945 Frw yasinywe ku itariki ya 28/07/2016.

[28] Urukiko rurasanga ariko, nubwo muri ayo masezerano amaze kuvugwa handitswemo ko mu byishingiye imyenda iyavugwamo harimo n'umutungo wa Kantarama Félicie ubaruye kuri UPI : 5/04/03/01/2936, nta kigaragaza ko Banki yongeye kuwandikisha nk'ingwate mu Biro by'Umwanditsi Mukuru nk'uko yari yabigenje ku mwenda wa mbere wa 284.747.744 Frw. Kandi uwo muhango ni ngombwa kugira ngo ingwate igire agaciro ku mwenda runaka nk'uko biteganywa n'ingingo ya 4, igika cya mbere, y'Itegeko N° 10/2009 ryavuzwe haruguru.

[29] Mu miburanire ya Ecobank, uyihagarariye yabwiye Urukiko ko ubwo hasinywaga amasezerano y'ubugwate, mu ngingo yayo ya 3, igika cya 3, Kantarama Félicie yemereye Ecobank ko ingwate ye ishobora no kuba yakomeza gukoreshwa no ku yindi myenda (yemeye guhindura *mode d'utilisation*) Niyigena Eraste yari kuzafata, ko ari muri urwo rwego umutungo we wakomeje gufatwa nk'ingwate ku myenda yose yahabwaga. Urukiko rurasanga muri iyo ngingo Kantarama Félicie ntabyo yemera, ahubwo icyumvikana muri iyo ngingo ni uko Banki yisigiye uburenganzira bwo kuba yahindura icyo umwenda yatanze wagombaga gukoreshwa *(La Banque*

[2] 284.747.744 Rfw to secure the tender won with WDA for the ward of the contract to construct and rehabilitate ESTB Busogo.

se réseve cependant le droit au terme d'un mode d'utilisation du crédit de le remplacer par un autre mode d'utilisation).

[30] Ibirebana no kuba Kantarama Félicie yaremeye kwishingira n'imyenda izabaho mu gihe kizaza, bivugwa mu ngingo ya 5 y'amasezerano y'ubugwate yavuzwe haruguru, ahateganyijwe ko utanze ingwate yemeye kwishingira imyenda afitiye Banki haba muri iki gihe, haba no mu gihe kizaza. Babyanditse mu magambo akurikira mu rurimi rw'Igifaransa : *A la sûreté et garantie du remboursement de toutes sommes en principal, intérêts, commissions, débours et frais dont il se trouve actuellement ou à l'avenir débiteur envers la Banque, par suite de l'utilisation de l'ouverture de crédit qui lui est consentie aux termes du chapitre I des présentes, le Constituant déclare expressément affecter et hypothéquer pour le compte du Client au profit de la Banque qui accepte les immeubles suivant avec les constructions y érigées ou qui y seront érigées ultérieurement et les biens qui y sont ou y seront attachés par destination ou incorporation.*

[31] Ku birebana no kuba ingwate yakwishingira imyenda izabaho nyuma, abahanga mu mategeko babitangaho ibisobanuro bikurikira :

i. Patrick Tafforeau, mu gitabo cye yise *« Droit des sûretés, sûretés personnelles et réelles »*, asobanura ko bishoboka ko ingwate yakwishingira imyenda umuntu afite ubu ndetse n'iyo azagira mu gihe kizaza. Avuga ko ariko kuri iyo ya nyuma, igomba kuba ari imyenda ishobora kumenyekana, ko kubera iyo mpamvu, mu masezerano y'ubugwate hagomba gushyirwamo ingingo isobanura neza ubwoko bw'umwenda wishingiwe. *([...] l'hypothèque peut désormais garantir une ou plusieurs dettes actuelles mais aussi futures ; pour ces dernières, à condition cependant que qu'elles soient déterminables. Il faut donc rédiger une clause déterminant avec le plus de précision possible le type de créances ainsi couvertes par la sûreté)*[3] *[...].*

ii. Manuella BOURASSIN na Vincent BREMOND, mu gitabo cyabo « *Droit des sûretés* », bavuga ko kugira ngo imyenda yo mu gihe kizaza yishingirwe, igomba kuba ishobora kumenyekana. Ni ukuvuga kuba umuntu ashobora kumenya mu buryo bworoshye ubwoko bwayo, impamvu yayo n'ingano yayo. *(Les créances futures doivent être « déterminables », c'est-à-dire qu'il doit être possible relativement aisément d'en déterminer la nature, la cause et le montant)*[4].

iii. Philippe MALAURIE na Laurent AYNES, bavuga ko amategeko yemera ko ingwate ishobora gutangwa kugira ngo yishingire umwenda cyangwa imyenda iriho cyangwa izabaho mu gihe kizaza. Ku birebana n'imyenda y'igihe kizaza, bavuga ko igomba kuba ishobora kumenyekana, atari ingano yayo gusa kuko ingano y'umwenda iba igomba gushyirwa mu masezerano, ko ahubwo ibyo byiyongera no ku mpamvu y'uwo mwenda na yo igomba gushyirwa mu masezerano. Bavuga ko ibyo ari ngombwa kugira ngo igihe uwatanze umwenda azaba agiye gukoresha uburenganzira bwe ku birebana n'ingwate, hatazabaho gushidikanya mu kumenya niba umwenda uyu n'uyu wari wishingiwe. *([...] D'une part, les créances futures doivent être « déterminables » : non seulement leur montant, puisque l'acte doit indiquer un montant déterminé en capital indépendamment du montant de la créance. De plus les éléments de détermination requis s'ajoutent à la cause de la créance, qui doit, créance présente ou créance future, être*

---

[3] Patrick Tafforeau, Droit des sûretés, sûretés personnelles et réelles, Edition Bruylant, 2020, Bruxelles, § 915. [4] Manuella BOURASSIN na Vincent BREMOND, Droit des sûretés, 7ème Edition Dalloz, 2019, § 2030.

déterminée dans l'acte. Bien que la loi ne précise pas quels sont les éléments permettant la détermination, on peut penser qu'il s'agit de la désignation du créancier, de celle du débiteur, de la nature de l'opération d'où naitra la créance… L'objectif est d'éviter que, le moment venu (spécialement lorsque le créancier prétendra exercer son droit hypothécaire), il puisse y avoir un doute sur le point de savoir si telle créance est garantie)[4]*. […]*

[32] Urukiko rurasanga ibivugwa n'abahanga mu mategeko byerekana ko nubwo ingwate itangwa hishingirwa umwenda uriho, ishobora no kwishingira umwenda cyangwa imyenda izafatwa nyuma, ko ariko mu masezerano y'ubugwate bigomba kwandikwamo neza ko ingwate itanzwe izishingira n'umwenda cyangwa imyenda runaka, hakagaragazwa ingano yayo, icyo izaba igamije, n'ibindi. Bikaba byumvikana ko umuntu atatanga ingwate yo kuzishingira umwenda cyangwa imyenda atazi, adashobora no kumenya kugira ngo yumve neza uburemere bw'inshingano afashe. Ibi binahura n'ibyasobanuwe n'Urukiko rw'Ikirenga mu rubanza rwaburanwagamo na Bugingo Jean Claude, Ecobank na Kadogi Jean Paul, aho rwavuze ko ubwishingire bugomba kugaragaza mu buryo bweruye ingano y'umwenda uwishingiye yemeye kwishingira, bitaba ibyo ubwishingire bugafatwa nk'ubutigeze bubaho.[5]

[33] Ku birebana n'uru rubanza, Urukiko rurasanga igihe Kantarama Félicie yashyiraga umukono ku masezerano y'ubugwate yo ku itariki ya 13/01/2014, inguzanyo yari yishingiye mu buryo bweruye yari iya 284.747.744 Frw kuko ari yo yagaragaraga muri ayo masezerano, kandi ni no kuri iyo nguzanyo yemereye Ecobank kwandikisha ingwate ye nk'uko bikubiye mu ngingo ya 5 y'ayo masezerano[6]. Iyo nguzanyo ikaba yarishyuwe nk'uko n'ababuranyi bose babyemeranyaho. Nubwo abashyize umukono ku masezerano y'ubugwate amaze kuvugwa bemeranyije ko uwatanze ingwate yishingiye imyenda afitiye Banki haba muri iki gihe, haba no mu gihe kizaza, ku birebana n'imyenda yo mu gihe kizaza, Urukiko rurasanga muri ayo masezerano haragombaga kugaragazwa iyo myenda mu buryo busobanutse kugira ngo Kantarama Félicie abe azi neza imyenda yishingiwe n'ingwate ye iyo ariyo. Kuba rero ibyo bitarabaye, bikaba bituma asonerwa uburyozwe bw'ubwishingire ku nguzanyo Ecobank ivuga yahaye Niyigena Eraste ariko Kantarama Félicie ntabimenyeshwe.

[34] Urukiko rurasanga kandi, usibye no kuba inguzanyo zindi Ecobank ivuga yahaye Niyigena Eraste nyuma na zo zikishingirwa n'ingwate yatijwe na Kantarama Félicie zaragombaga kugaragara mu masezerano y'ubugwate nk'uko bimaze gusobanurwa, banki yari ifite n'inshingano yo kujya imuha amakuru yose y'imyenda yahaye Niyigena Eraste yishingiwe n'umutungo we, cyane cyane mu gihe iyo myenda itishyuwe uko bikwiye no mu gihe ingwate ye yendaga kugurishwa, kugira ngo ashobore gufata ingamba zikwiriye bibaye ngombwa. Ibi byatanzweho umurongo n'uru Rukiko mu rubanza rwaciye ku itariki ya 16/05/2014, haburana GAJU Cyinthia

---

[4] Philippe MALAURIE, Laurent AYNES, Droit des Sûretés, 15 éditions, 2021, LGDJ, § 405.

[5] Urubanza n° RS/INJUST/RCOM 00011/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 08/03/2024, haburana BUGINGO Jean Claude, Ecobank na KADOGI Jean Paul, igika cya 41.

[6] …La Banque est autorisée par le Client et les propriétaires constituants à obtenir auprès du Registraire Général une inscription hypothécaire sur les biens immeubles ci-dussus énumérés et à concurrence de : 1° En principal deux cent quatre vingt quatre millions sept cent quarante sept mille sept cent quarante quatre francs rwandais (284.747.744 Frw)…

na Access Bank Ltd[7], no mu rubanza rwaciwe ku itariki ya 08/03/2024, haburana Bugingo Jean Claude, Ecobank na Kadogi Jean Paul[8].

[35] Ku bivugwa na Ecobank mu miburanire yayo ko amasezerano yo ku itariki ya 07/01/2014 Kantarama Félicie yakoreye imbere ya Noteri w'ubutaka yahaga Niyigena Eraste uburenganzira bwo gutangaho ingwate umutungo we mu gihe cy'imyaka icumi (10), akaba atarigeze amukumira ku myenda azafata, Urukiko rurasanga ibyo nta shingiro bifite kuko ibisobanuro byatanzwe haruguru bigaragaza ko ayo masezerano adakuraho inshingano za banki zo guha umwishingizi amakuru ahagije ajyanye n'inguzanyo yahaye uwo yishingiye, ayo makuru akaba ari nayo umwishingizi yaheraho asesa amasezerano bibaye ngombwa. Uretse n'ibyo kandi, nk'uko byasobanuwe haruguru, kuba izo nguzanyo Ecobank ivuga yahaye Niyigena Eraste nyuma zitagaragara mu masezerano y'ubugwate Kantarama Félicie yashyizeho umukono, zikaba zitarebwa n'ingwate yatije Niyigena Eraste, cyane cyane ko itongeye kwandikishwa no kuri iyo myenda nk'uko biteganywa n'amategeko kugira ngo ingwate ku mwenda runaka igire agaciro.

[36] Hashingiwe ku ngingo z'amategeko no ku bisobanuro byose byatanzwe haruguru, mu gihe Ecobank nta kimenyetso igaragaza cy'uko hari aho yamenyesheje Kantarama Félicie iby'umwenda wa 250.000.000 Frw yahaye Niyigena Eraste waje guhinduka 308.909.333 Frw kubera kutishyurwa, Urukiko rurasanga ntaho rwahera rwemeza ko n'uwo mwenda yawishingiye ku buryo ingwate ye yagombaga kugurishwa bitewe n'uko utishyuwe.

[37] Hashingiwe kandi ku ngingo ya 11 y'Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryavuzwe haruguru, mu gihe Ecobank yarenze ku nshingano zayo zo gusubiza ingwate nyirayo kubera ko umwenda wari wishingiwe wishyuwe nk'uko byasobanuwe haruguru, ahubwo ikayigurisha kubera undi mwenda yatanze nyuma utarishyuwe, nyir'ingwate akaba atarigeze amenyeshwa ibijyanye na wo, ni yo igomba kubitangira indishyi, aho kugira ngo zitangwe na Niyigena Eraste nk'uko byari byategetswe n'inkiko zabanje kuko zo zari zafashe ko umwenda wa 284.747.744 Frw wishingiwe n'ingwate Kantarama Félicie yari yamutije utishyuwe.

- **Kumenya ingano y'indishyi Ecobank Rwanda Plc igomba guha Kantarama Félicie.**

[38] Me Bayingana Janvier wunganira Niyigena Eraste, avuga ko Kantarama Félicie aregera Urukiko rw'Ubucuruzi yarusabaga gutegeka Niyigena Eraste kumwishyura indishyi zo kwica amasezerano yo gutiza ingwate, iz'imbonezamubano, n'iz'ikurikiranarubanza. Avuga ko mu guca urubanza RCOM 01291/2021/TC, Urukiko rw'Ubucuruzi rwategetse Niyigena Eraste kwishyura Kantarama Félicie 261.173.067 Frw y'agaciro k'umutungo we ufite UPI : 5/04/03/01/2936 yari yaramutije n'indishyi zitandukanye. Avuga ko mu kugena ibi, Urukiko rwirengagije ko Niyigena Eraste atigeze yica amasezerano kuko yishyuye WDA ku neza 284.747.744 Frw ahwanye na 20 % by'agaciro k'isoko ryose yari yarahawe na WDA nta ruhare Ecobank ibigizemo.

[39] Ku kibazo kijyanye no kuba Urukiko Rukuru rw'Ubucuruzi rwarategetse ko Kantarama Félicie ahabwa 261.173.067 Frw ahwanye n'agaciro k'ingwate ye mu gihe Ecobank yo yavugaga ko ayo mafaranga ari menshi cyane ugereranyije n'agaciro k'ingwate igihe yandikishwaga, Me

[7] Urubanza n° RCOMA 0138/12/CS rwaciwe ku itariki ya16/05/2014, haburana GAJU Cyinthia na Access Bank Ltd, igika cya 16.

[8] Urubanza n° RS/INJUST/RCOM 00011/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 08/03/2024, haburana BUGINGO Jean Claude, Ecobank na KADOGI Jean Paul, igika cya 35.

Bayingana Janvier avuga ko iyo umuntu ajya gusaba umwenda banki ifite inshingano zo kugenzura ko agaciro k'ingwate yatanzwe gahuye neza koko n'agaciro kagaragajwe mu igenagaciro. Akomeza avuga ko uhereye igihe ingwate yatangiwe n'igihe yagurishirijwe, agaciro k'ingwate kaba karahindutse, ko hagombye gukorwa irindi genagaciro rigaragaza neza agaciro k'ingwate, kubera ko bitangaje kubona muri uru rubanza amazu yari afite agaciro ka 261.173.067 Frw igihe yatangwagaho ingwate, nyuma y'imyaka 10 kaba karagabanutse nk'uko Ecobank ishaka kubyumvikanisha.

[40] Kuri icyo kibazo, Me Bimenyimana Eric uhagarariye Ecobank avuga ko agaciro k'umutungo mu gihe hatangwaga umwenda kimwe n'akagaragajwe mu gihe cy'igurisha byose byakozwe n'abahanga. Avuga ko mu gihe cy'igurisha, umutungo wa Kantarama Félicie wakorewe igenagaciro basanga ufite agaciro gahwanye na 76.070.000 Frw, uwatanze igiciro kinini atanga 42.100.000 Frw, bivuze ko aka ari ko gaciro kawo ari na ko kagomba guhabwa Kantarama Félicie bibaye ngombwa.

[41] Ku birebana n'agaciro kagaragajwe igihe umutungo uvugwa muri uru rubanza watangwagaho ingwate, Me Bimenyimana Eric avuga ko ubusanzwe mu gihe cyo kwaka inguzanyo, akenshi habaho gushaka kuzamura agaciro k'ingwate kubera ko ari yo ishingirwaho mu itangwa ry'inguzanyo.

[42] Me Ngendakuriyo Innocent avuga ko Kantarama Félicie yakurikiranye Niyigena Eraste kubera ko yumvaga ari we utarubahirije inshingano ze zirebana na *avance de démarrage* Ecobank yari ibereye umwishingizi. Avuga ko mu gihe byagaragaye ko nta kosa Niyigena Eraste yakoze, ayo makosa yaryozwa Ecobank yagurishije ingwate y'umwishingizi kandi umwenda yishingiye warishyuwe neza.

[43] Ku birebana n'agaciro k'ingwate kagaragara mu igenagaciro ryakozwe mu gihe cy'igurisha, Me Ngendakuriyo Innocent avuga ko ryakozwe n'umugenagaciro wa Ecobank agamije gutubya umutungo, naho ubundi agaciro kawo kari 261.173.067 Frw nk'uko kagaragajwe n'umugenagaciro igihe cyo kwishingira umwenda. Avuga ko kuba Ecobank yaratesheje agaciro nkana ingwate, ayo makosa yaryozwa uwayakoze wirengagije agaciro nyakuri k'umutungo, Kantarama Félicie akaba yaragombaga guhabwa agaciro kajyanye n'ingwate ye hashingiwe ku gaciro yari igezeho igihe cya cyamunara.

UKO URUKIKO RUBIBONA

[44] Ingingo ya 10 y'amasezerano y'ubugwate yasinywe hagati ya Ecobank, Niyigena Eraste na Kantarama Félicie, yateganyaga ko mu gihe umwenda wose wahawe umukiriya uzaba utakiriho Banki yiyemeje kurekura ingwate yawishingiye iyandukuza *(Lors de l'extinction des obligations en principal, intérêts et frais, contractées par le client, la Banque s'engage à renoncer à la première demande du client à la garantie constituée en sa faveur en faisant procéder à la radition de l'hypothèque).* Ibi bigahura n'ibiteganywa n'ingingo ya 11 y'Itegeko N° 10/2009 ryo ku wa 14/05/2009 ryerekeye ubugwate ku mutungo utimukanwa ryavuzwe haruguru.

[45] Kantarama Félicie atanga ikirego mu Rukiko rw'Ubucuruzi, yaregaga Niyigena Eraste asaba indishyi zo kuba atarubahirije amasezerano bagiranye yanga kwishyura umwenda wishingiwe n'ingwate yamutije bigatuma igurishwa. Urwo Rukiko rwamutegetse kwishyura

Kantarama Félicie 261.173067 Frw ahwanye n'agaciro ingwate yari ifite yandikishwa, ruvuga ko ingwate yagurishijwe kugira ngo hishyurwe umwenda Niyigena Eraste yari ayibereyemo. Icyo cyemezo ni na cyo cyagumyeho mu rubanza rwasubirishijwemo ku mpamvu z'akarengane. Mu gufata icyo cyemezo, inkiko zabanje zaribeshye zifata ko umwenda wa 284.747.744 Frw wishingiwe n'ingwate ya Kantarama Félicie wahawe Niyigena Eraste atawishyuye.

[46] Isesengura ryakozwe mu ngingo ya mbere yasuzumwe muri uru rubanza, ryagaragaje ko umwenda wari wishingiwe n'ingwate ya Kantarama Félicie wishyuwe, bityo ko hakurikijwe ibisobanuro byatanzwe haruguru n'ibikubiye mu ngingo ya 10 y'amasezerano y'ubugwate yo ku itariki ya 13/01/2014 yasinywe hagati ya Ecobank, Niyigena Eraste na Kantarama Félicie, ingwate ya Kantarama Félicie yagombaga guhita ayisubirana umwenda ukimara kwishyurwa nk'uko bari babyumvikanyeho, kuko indi myenda Ecobank yahaye Niyigena Eraste nyuma ivuga ko yishingiwe n'iyo ngwate, Urukiko rwasanze atari byo kubera ko iyo myenda ntayigaragara mu masezerano Kantarama Félicie yashyizeho umukono.

[47] Urukiko rurasanga kuba Ecobank yaragurishije ingwate yari yahawe ivuga ko hari undi mwenda yahaye Niyigena Eraste wishingiwe n'iyo ngwate utarishyuwe, ariko nk'uko byasobanuwe haruguru, amasezerano y'uwo mwenda ntareba nyir'ingwate ari we Kantarama Félicie kuko atayamenyeshejwe ngo agire icyo ayavugaho bibaye ngombwa.

[48] Nk'uko byagarutsweho mu ngingo yasuzumwe haruguru, inkiko zabanje zemeje ko ari Niyigena Eraste utarubahirije amasezerano bituma zimutegeka kwishyura Kantarama Félicie 261.173.067 Frw ahwanye n'agaciro k'ingwate yari yaramutije. Nk'uko byemejwe haruguru, Ecobank yakoze amakosa yo kugurisha ingwate Niyigena Eraste yari yaratijwe na Kantarama Félicie kandi umwenda yari yishingiye warishyuwe. Kubera iyo mpamvu, Urukiko rurasanga indishyi zihwanye na 261.173.067 Frw Niyigena Eraste yategetswe kwishyura ari yo igomba kuzitanga.

[49] Ku bivugwa na Ecobank ko agaciro ingwate ya Kantarama Félicie yari ifite ari 42.100.000 Frw kubera ko ari yo yagurishijwe, Urukiko rurasanga ikibazo kirebana n'agaciro k'ingwate kitarigeze kiburanwaho mu manza zabanje, bityo kikaba kitasuzumwa bwa mbere kuri uru rwego binyuze mu nzira yo gusubirishamo urubanza ku mpamvu z'akarengane kuko byaba binyuranyije n'amategeko. Ibi byatanzweho umurongo n'uru Rukiko mu manza zinyuranye rwaciye.[9]

- **Ku bijyanye no kumenya niba indishyi zasabwe muri uru rubanza zatangwa.**

[50] Niyigena Eraste n'umwunganira bavuga ko Kantarama Félicie yamushoye mu manza yibwira ko atigeze yishyura WDA 284.747.744 Frw yatangiye ingwate. Bavuga ko ingwate ya Kantarama Félicie yagurishijwe kandi icyo yari yayitangiye cyari cyararangiye, Ecobank ikaba yaragombaga gusubiza Kantarama Félicie ingwate ye, ko kuba Ecobank yarayigurishije yirengagije ko umwenda ingwate yatangiwe warangije kwishyurwa, asaba Ecobank kumuha

[9] Reba Urubanza Nº RS/INJUST/RC 00024/2018/CS rwaciwe ku wa 21/02/2020, haburana Ngizweninshuti Albert na Muhima Giovanni, igika cya 21 ; Urubanza Nº RS/INJUST/RC 00007/2018/SC rwaciwe ku wa 13/03/2020, haburana Nditiribambe Samuel, Gatera Jason na Nyamaswa Faustin, igika cya 66 ; Urubanza Nº RS/ INJUST/RC 00004/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 28/07/2020 haburana MUKAMANA Mamique n'abandi na CANDALI Vérène, igika cya 23.C; Urubanza Nº RS/INJUST/RC 00009/2022/SC haburana SANLAM AG Plc na UWIHANGANYE Jean, igika cya 35.

indishyi z'akababaro zingana na 5.000.000 Frw kubera ko yamuteranyije na Kantarama Félicie bigatuma umubano wabo uzamo agatotsi bitari ngombwa, 5.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka yatanze kuva urubanza rutangira kugeza kuri uru rwego, ndetse na 40.000 Frw yatanze ajurira.

[51] Me Bimenyimana Eric uhagarariye Ecobank avuga ko indishyi zisabwa na Niyigena Eraste nta shingiro ryazo kuko n'ibyo aregera nta shingiro bifite, ahubwo ko Ecobank imusaba 1.000.000 Frw y'igihembo cya Avoka na 200.000 Frw y'ikurikiranarubanza.

[52] Me NGendakuriyo Innocent uhagarariye Kantarama Félicie na we yasabye indishyi avuga ko mu gufata icyemezo mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, Urukiko rwavuze ko adakwiye guhabwa indishyi z'ubukode bw'inzu ye yagurishijwe muri cyamunara ngo kubera ko nta kimenyetso kigaragaza ko umutungo ufite UPI : 5/04/03/01/2936 ari wo wakodeshwaga ku buryo yabishingiraho asaba indishyi mbonezamusaruro zikomoka ku bukode bwavaga muri uwo mutungo.

[53] Avuga ko muri urwo rubanza yari yagaragaje ikimenyetso cy'amasezerano anyuranye y'ubukode ariko Urukiko rurayirengagiza. Asaba ko muri uru rubanza icyo kimenyetso cyakwitabwaho agahabwa indishyi mbonezamusaruro zingana na 35.000.000 Frw kubera igihe amaze yaravukijwe uburenganzira ku mutungo we, izo ndishyi zikiyongera ku zategetswe mu rubanza RCOM 01291/2021/TC. Asaba kandi ko kuri uru rwego uwatsindwa yamusubiza 3.000.000 Frw y'igihembo cya Avoka wamuburaniye.

UKO URUKIKO RUBIBONA

[54] Urukiko rurasanga amafaranga ajyanye n'urubanza Niyigena Eraste asaba Ecobank agomba kuyahabwa kubera ko atsinze urubanza. Ariko kubera ko 5.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka asaba kuva urubanza rugitangira akabije kuba menshi kandi atagaragaza ko ari yo yakoresheje koko, mu bushishozi bwarwo, rumugeneye 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza kuri buri rwego muri eshatu yaburaniyemo, ni ukuvuga 2.400.000 Frw, hakiyongeraho na 40.000 Frw yatanze ajurira.

[55] Ku birebana n'indishyi z'akababaro Niyigena Eraste asaba, kugira ngo bene izo ndishyi zitangwe, uzisaba agomba kugaragaza ikosa yakorewe n'uwo azisaba, akababaro katewe n'iryo kosa *(préjudice moral)*, n'isano itaziguye iri hagati y'iryo kosa n'akababaro avuga yagize. Hashingiwe kuri ibyo bisobanuro, Urukiko rurasanga indishyi z'akababaro Niyigena Eraste asaba ntazo agomba guhabwa, kubera ko atagaragaza ikosa Ecobank azisaba yamukoreye, kuko uwo Urukiko rwasanze yarakorewe ikosa ari Kantarama Félicie kubera ko yagurishirijwe ingwate kandi umwenda yari yishingiye warishyuwe.

[56] Ku birebana n'indishyi zisabwa na Ecobank, Urukiko rurasanga ntazo igomba guhabwa kubera ko ari yo itsinzwe muri uru rubanza.

[57] Ku birebana na Kantarama Félicie, Urukiko rurasanga amafaranga y'igihembo cya Avoka asaba kuri uru rwego agomba kuyahabwa kuko atsinze urubanza, ariko kubera ko na we 3.000.000 Frw asaba akabije kuba menshi, mu bushishozi bw'Urukiko agenewe 500.000 Frw yiyongera kuri 600.000 Frw yahawe mu Rukiko rw'Ubucuruzi, na 300.000 Frwa yahawe mu Rukiko Rukuru

rw'Ubucuruzi, yose hamwe akaba 1.400.000 Frw. Ayo mafaranga agomba kuyahabwa na Ecobank kubera ko ari yo itsinzwe urubanza.

[58] Ku birebana n'indishyi mbonezamusaruro Kantarama Félicie asaba, Urukiko rurasanga ntazo agomba guhabwa kubera ko adashobora kuririra ku kirego cyatanzwe n'uwasubirishijemo urubanza ngo na we abe yagira ibyo asaba ko bisuzumwa bitamushimishije muri urwo rubanza kuko byaba binyuranyije n'amategeko. Uyu akaba ari umurongo watanzwe n'Urukiko rw'Ikirenga mu manza zinyuranye rwaciye[10].

II. ICYEMEZO CY'URUKIKO

[59] Rwemeje ko ikirego cyo gusubirishamo urubanza RCOMA 00190/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku itariki ya 25/11/2022 cyatanzwe na Niyigena Eraste gifite ishingiro;

[60] Rwemeje ko urubanza RCOMA 00190/2022/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku itariki ya 25/11/2022 ruhindutse mu ngingo zarwo zose;

[61] Rutegetse Ecobank Rwanda Plc kwishyura Kantarama Félicie 261.173.067 Frw ;

[62] Rutegetse Ecobank Rwanda Plc kwishyura Kantarama Félicie 1.400.000 Frw akubiyemo ay'igihembo cya Avoka kuri uru rwego n'andi yagenewe mu nkiko zabanje ;

[63] Rutegetse Ecobank Rwanda Plc kwishyura Niyigena Eraste 2.440.000 Frw akubiyemo ay'igihembo cya Avoka, ay'ikurikiranarubanza n'ay'igarama.

[10] Urubanza RS/INJUST/RSOC 00001/2018/SC rwaciwe ku wa 02/07/2021, haburana Banki y'Abaturage y'u Rwanda na Ukwibishaka; urubanza Nº RS/INJUST/RC 00002/2018/SC rwaciwe ku wa 21/02/2020, haburana Uwimana Marine na Kagitare Dancille; urubanza N° RS/INJUST/RC 00004/2018/SC rwaciwe ku wa 21/02/2020, haburana Nicyabera Espérance na Mukagatare Mariane.