

RWANDA / JUDGMENT

KABANDA v. DEVELOPMENT BANK OF RWANDA (BRD) N'UNDI

RCA 00001/2024/CA

COURT

Court of Appeal

DECIDED

21 February 2025

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KABANDA v. DEVELOPMENT BANK OF RWANDA (BRD) N'UNDI

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Text

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KABANDA v. DEVELOPMENT BANK OF RWANDA (BRD) N'UNDI [Rwanda URUKIKO RW'UBUJURIRE – RCA 00001/2024/CA (Ngagi, P.J.) 21 Gashyantare 2025] Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Gutambamira urubanza – Gutambamira urubanza bikorwa n'umuntu urufitemo inyungu ariko yaba we cyangwa abo ahagarariye bakaba batarigeze baba ababuranyi mu rubanza rutambamirwa, kandi muri icyo gihe Urukiko rusuzuma ingingo uwatambamiye urubanza anenga, kugira harebwe ko urubanza rutambamirwa ruvaho cyangwa ruhinduka bitewe n'ibyo asaba. Incamake y'ikibazo: Kabanda Benjamin yagurishijwe na Koperative Goboka ubutaka bubaruye kuri UPI 1/02/10/04/1419 na UPI 1/02/10/04/1100 ariko iyo Koperative ntiyabumwandikishaho bituma ayirega mu Rukiko Rwisumbuye rwa Gasabo, Urwo Rukiko rwemeza ko ikirego cya Kabanda gifite ishingiro ndetse rutegeka ko ubwo butaka bumwandikwaho, Koperative Goboka ijuririra mu Rukiko Rukuru, narwo rwemeza ko nta gihindutse ku mikirize y'urubanza rujuririrwa. BRD nyuma yo kumimenyeshwa n'ushinzwe gucunga igihombo cya Koperative GOBOKA, yatambamiye urwo rubanza rwaciwe n'Urukiko

Rukuru RCA 00255/2020/HC/KIG isaba Urukiko Rukuru gusuzuma niba ubutaka bubaruye kuri UPI 1/02/10/04/1100 atari ingwate ya BRD, gusuzuma ihindurwa ry'imanza RC 00616/2019/TGI/GSBO na RCA 00255/2020/HC/KIG, no gusuzuma indishyi na cyane ko n'iy ubwo bugure bwaba bwarabayeho, uwaguze yaba yaragize uburangare bukabije. Urukiko Rukuru mu guca urubanza rwemeje ko urubanza RCA 00255/2020/HC/KIG rwaciwe n'Urukiko Rukuru ruhindutse kuri byose. Rutegeka ko ikibanza gifite UPI :1/02/10/04/1100 gikomeza kwandikwa kuri GOBOKA iri mu iseswa kandi igakomeza kuba ingwate ya BRD kugeza igihe inguzanyo yahaye Koperative GOBOKA yishyuriwe, kandi ko ikibanza kibaruye kuri UPI: 1/02/10/04/1100 kitagomba kwandikwa kuri Kabanda Benjamin ahubwo akaba agomba gusubizwa amafaranga yatanze amaze kuyerekanira ibimenyetso akayasubizwa n'Ushinzwe iseswa rya Koperative GOBOKA mu mutungo wayo. Kabanda yajuririye mu Rukiko rw'Ubujurire avuga ko Urukiko Rukuru rutagombaga kwakira ikirego cyo gutambamira urubanza cyatanzwe na BRD, kuko mu rubanza rwatambamiwe hatigeze haburanwamo ibijyanye n'ingwate, ahubwo haburanwe amasezerano. Avuga kandi ko Urukiko Rukuru rwakoze ikosa ryo kwemeza ko ubutaka bufite UPI:1/02/10/04/1100 bukomeza kwandikwa kuri Koperative GOBOKA, kuko rwirengagije ibimenyetso yatanze byerekana ko yabuguze mbere y'uko butagwaho ingwate muri BRD. Ku rundi ruhande, BRD yiregura ivuga ko ifite inyungu mu gutambamira urwo rubanza rwemeje ko umutungo waburanwaga ari uwa Kabanda, kandi uwo mutungo waramaze gutangwaho ingwate na Koperative muri BRD. Ivuga kandi ko ubwo butaka yabuhawe ingwate muri 2008 mbere yuko habaho amasezerano y'ubugure bwabwo hagati ya Koperative GOBOKA na Kabanda. Incamake y'icyemezo: 1. Gutambamira urubanza bikorwa n'umuntu urufitemo inyungu ariko yaba we cyangwa abo ahagarariye bakaba batarigeze baba ababuranyi mu rubanza rutambamirwa,

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kandi muri icyo gihe Urukiko rusuzuma ingingo uwatambamiye urubanza anenga, kugira harebwe ko urubanza rutambamirwa ruvaho cyangwa ruhinduka bitewe n'ibyo asaba. Ubujurire bufite ishingiro kuri bimwe. Amagarama ahwanye n'ibyakozwe mu rubanza. Amategeko yashingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 161 n'ya 162. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Mu rubanza RC 00616/2019/TGI/GSBO, Kabanda Benjamin yareze Koperative GOBOKA mu Rukiko Rwisumbuye rwa Gasabo avuga ko yamugurishije ubutaka bubaruye kuri UPI 1/02/10/04/1419 na UPI 1/02/10/04/1100 mu mwaka wa 2011 na 2012 bigera mu wa 2020 itaramwandikishaho ubwo butaka baguze, asaba urwo Rukiko kwemeza ko ubwo butaka ari ubwe bukamwandikwaho. Urwo Rukiko rwemeje ko ikirego cya Kabanda Benjamin gifite ishingiro kuri bimwe, ko ubutaka bubaruye kuri UPI 1/02/10/04/1419 na UPI 1/02/10/04/1100 bwandikwa kuri Kabanda Benjamin ariko nawe akishyura GOBOKA ibihumbi magana ane (400.000 Frw) yarasigaje kwishyura nk'uko babyumvikanye. Koperative GOBOKA yajuririye urwo rubanza mu Rukiko Rukuru, hanyuma mu rubanza RCA 00255/2020/HC/KIG, urwo Rukiko rwemeza ko ubujurire bwa Koperative GOBOKA iri mu iseswa nta shingiro bufite, ko imikirize y'urubanza rwajuririwe idahindutse. [2] Nyuma y'uko BRD imenye iby'urubanza RCA

00255/2020/HC/KIG yararutambamiye, ivuga ko yabimenyesheje n'ushinzwe gucunga igihombo cya Koperative GOBOKA, Me Barahira Eric mu ibaruwa yayandikiye ku wa 13/03/2022 akoresheje e-mail, hanyuma mu ibaruwa ye, Me Barahira akaba yavuze ko abona ko kuva mu mwaka wa 2013 bumwe mu butaka buburanwa bufite UPI 1/02/10/04/1100 bwari ingwate ya BRD yanditse mu bitabo by'Umwanditsi Mukuru muri RDB kubera umwenda iyi Koperative ifitiye BRD, kandi ikaba yarananiwe kwishyura. BRD yasabye Urukiko Rukuru gusuzuma niba ubutaka bubaruye kuri UPI 1/02/10/04/1100 atari ingwate ya BRD, gusuzuma ihindurwa ry'imanza RC 00616/2019/TGI/GSBO na RCA 00255/2020/HC/KIG, no gusuzuma indishyi na cyane ko n'iyi ubwo bugure bwaba bwarabayeho, uwaguze yaba yaragize uburangare bukabije. [3] Koperative GOBOKA mu kwiregura ivuga ko ibyo BRD ivuga ko Koperative GOBOKA ishaka kuburizamo ingwate yayo atari byo, kuko kuba yarashowe mu manza na Kabanda Benjamin ashingiye ku masezerano atarabayeho, nta ruhare yabigizemo ikaba ari yo mpamvu na yo isaba ko imanza RC 00616/2019/TGI/GSBO na RCA 00255/2020/HC/KIG ziteshwa agaciro, Urukiko rukemeza ko umutungo ubaruye kuri UPI 1/02/10/04/1100 wahawe ingwate BRD, bityo ko

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amasezerano y'ingwate yabaye hagati ya Koperative GOBOKA na BRD kuri uwo mutungo agumana agaciro kayo. [4] Kabanda Benjamin yireguye avuga ko ikirego cya BRD kidakwiye kwakirwa ngo gisuzumwe kuko iregera ibyerekeranye no gusuzuma ko ubutaka bubaruye kuri UPI:1/02/10/04/1100 atari ingwate ya BRD ikanasaba gusuzuma ko imanza RC 00616/2019/TGI/GSBO na RCA 00255/2020/HC/KIG zihindurwa, kandi atari byo byasuzumwe mu rubanza atambamira, kuko izo manza zari zishingiye ku masezerano y'ubugure bw'ubutaka bufite UPI:1/02/10/04/1100 Koperative GOBOKA yagurishije Kabanda Benjamin ntiyayubahiriza yanga ko abwandikwaho. Ibyo bikaba ntaho bihuriye n'ingwate kuri buriya butaka kuko itaburanywe ngo inkiko zibe zarayifasheho icyemezo, asaba indishyi zo gushorwa mu manza z'amaherere. [5] Mu rubanza RC 00012/2022/HC/KIG rwaciye ku wa 15/02/2024, Urukiko Rukuru rushingiye ku bimenyetso byatanze na Kabanda Benjamin birimo amasezerano y'ubugure hagati ya Bayito Innocent/Goboka na Kabanda Benjamin yo ku wa 05/3/2012 hamwe n'icyemezo cy'inkomoko y'umutungo cyatanze n'ushinzwe gusesa Koperative GOBOKA ku wa 29/5/2019, n'ibimenyetso byatanze na BRD birimo amasezerano y'inguzanyo hagati ya BRD na GOBOKA yo muri 2008, hamwe n'amasezerano y'inyongera yo ku wa 21/11/2012 yatanze ingwate ikibanza kibaruye kuri UPI 1/02/10/04/1100 yakurikiye no kwandikisha ingwate hagatangwa Certificate of Registration of Mortgage mu nyungu za RDB yo ku wa 01/04/2013, ku kibanza 1100, rwemeje ko ikirego cyo gutambamira urubanza cyatanze na BRD gifite ishingiye kuri bimwe, ko urubanza RCA 00255/2020/HC/KIG rwaciye n'Urukiko Rukuru ruhindutse kuri byose. Rutegeka ko ikibanza gifite UPI :1/02/10/04/1100 gikomeza kwandikwa kuri GOBOKA iri mu iseswa kandi igakomeza kuba ingwate ya BRD kugeza igihe inguzanyo yahaye Koperative GOBOKA yishyuriye, kandi ko ikibanza kibaruye kuri UPI : 1/02/10/04/1100 kitagomba kwandikwa kuri Kabanda Benjamin ahubwo akaba agomba gusubizwa amafaranga yatanze amaze kuyerekanira ibimenyetso akayasubizwa n'Ushinzwe iseswa rya Koperative GOBOKA mu mutungo wayo. [6] Kabanda Benjamin yajuririye uru Rukiko, ubujurire bwe bwandikwa kuri RCA 00001/2024/CA. Urubanza

rwaburanishijwe mu ruhame ku wa 10/02/2025, Kabanda Benjamin yunganiwe na Me Nzaramba Louis, BRD ihagarariwe na Me Mbera Martine, Koperative GOBOKA ihagarariwe Me Barahira Mukazana Fidella, ababuranyi bemeranywa n'Urukiko ko hazasuzumwa ikibazo cyo kumenya niba Urukiko Rukuru rutaragombaga kwakira ikirego cyo gutambamira urubanza RCA 00255/2020/HC/KIG cyatanzwe na BRD, kumenya niba Kabanda Benjamin yaraguze ikibanza kibaruye kuri UPI:1/02/10/04/1100 cyaramaze gutangwaho ingwate muri BRD, n'icyo kumenya niba indishyi zo gushorwa mu manza, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka bisabwa muri uru rubanza bifite ishingiye. [7] Muri make Kabanda Benjamin avuga Urukiko Rukuru rutagombaga kwakira ikirego cyo gutambamira urubanza RCA 00255/2020/HC/KIG cyatanzwe na BRD, kuko mu rubanza rwatambamiwe hatigeze haburanwamo ibijyanye n'ingwate, ahubwo haburanwe amasezerano. Avuga kandi ko Urukiko Rukuru rwakoze ikosa kwemeza ko ubutaka bufite UPI:1/02/10/04/1100 bukomeza kwandikwa kuri Koperative GOBOKA, kuko rwirengagije ibimenyetso yatanze byerekana ko yabuguze mbere y'uko butagwaho ingwate muri BRD, ibyo bimenyetso bikaba bigizwe n'amasezerano y'ubugure yagiranye na Koperative GOBOKA yakozwe mu buryo

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bukurikije amategeko, ko yabuguze mbere y'uko butangwaho ingwate ku wa 21/01/2013, ko kandi ibibanza Koperative GOBOKA yatanze ingwate muri 2008 biri Kibagabaga naho ikibanza gifite UPI:1/02/10/04/1100 kiri i Kinyinya. Asoza asaba indishyi zo gushorwa mu manza, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka. BRD yiregura ivuga ko nta mpamvu ikirego cyayo cyo gutambamira urubanza RCA 00255/2020/HC/KIG kitari kwakirwa kuko yari afite inyungu zo gutambamira urubanza rwemeje ko umutungo yahawe ingwate wandikwa kuri Kabanda Benjamin. Avuga kandi ko nta bimenyetso byirengagijwe kuko ubutaka bufite UPI :1/02/10/04/1100, BRD yabuhawe nk'ingwate kuwa muri 2008 nubwo numero z'ubutaka zagiye zihinduka, ko rero n'ubwo amasezerano y'ubugure Kabanda Benjamin ashingiraho afite inenge, ko n'iyi nta nenge yari kuba afite, nta gaciro yari guhabwa kuko ingwate yatanze mbere y'uko ayo masezerano y'ubugure abaho. Koperative GOBOKA ivuga ko umutungo ufite UPI :1/02/10/04/1100 wari ingwate ya BRD, ko rero yari ifite inyungu zo gutambamira urubanza RCA 00255/2020/HC/KIG. Ivuga kandi ko muri 2008, habaye amasezerano y'inguzanyo Koperative GOBOKA iha BRD ingwate y'imitungo iri Kibagabaga, kandi bagaragaza na numero z'ibyo bibanza, ari nabyo muri 2013, bagaragaje numero nshya byahawe, biza kugaragara ko hari ibiri Kinyinya, cyane ko Kinyinya yegeranye na Kibagabaga. Bityo ko ikibanza Kabanda Benjamin avuga ko yaguze nacyo kiri mu bibanza Koperative GOBOKA yatanze ingwate muri BRD nk'uko bigaragara muri ayo masezerano. II.ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1.Kumenya niba Urukiko Rukuru rutaragombaga kwakira ikirego cyo gutambamira urubanza RCA 00255/2020/HC/KIG cyatanzwe na BRD [8] Kabanda Benjamin n'umwunganira bavuga ko Urukiko Rukuru rutari rukwiye kwakira ngo rusuzume ikirego cya BRD cyo gutambamira imikirize y'urubanza RCA 00255/2020/HC/KIG kuko mu rubanza rwatambamiwe hatigeze haburanwamo ibijyanye n'ingwate, ahubwo haburanwemo amasezerano y'ubugure. Basobanura ko mu rubanza rwatambamiwe, Urukiko rwari rwemeje ko amasezerano Kabanda Benjamin

yagiranye na Koperative GOBOKA ikamugurisha ubutaka bufite UPI :1/02/10/04/1100 agumaho, akandikwaho ikibanza cye nk'uko ari cyo yari yaregeye. Bityo rero akaba asanga Urukiko rwaciye urubanza rujuririrwa rwaragombaga gushingira ku ngingo ya 161, igika cya 2, y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, iteganya ko "Gutambamira urubanza bireba gusa, bitewe n'uwabisabye, ingingo zasuzumwe anenga, kugira ngo hasuzumwe bundi bushya uko byagenze n'uko amategako abiteganywa"; maze akabona ko BRD itari yubahirije ibiteganywa n'iyi ngingo kugira ngo ikirego cyayo kube cyakwagirwa. [9] Bavuga kandi ko ibyo BRD ivuga ko yari ifite inyungu muri uru rubanza bidakwiye guhabwa ishingiro, kuko n'ubwo yaba ifite inyungu nk'uko ishingira ku ngingo ya 162, igika cya 1, y'Itegeko No 22/2018 ryavuzwe haruguru, ariko itagaragaza ko yujuje ibiteganywa n'ingingo ya 161, igika cya 2, yibukijwe haruguru, kuko mu rubanza itambamira hataburanywe ingwate ndetse n'ingingo zashingiweho zerekanywe n'amasezerano y'ubugure atari amasezerano y'ubugwate ku mutungo utimukanwa; ko rero basanga kugira ngo gutambamira imikurizwe y'urubanza byakozwe na BRD byakirwe yaragombaga kuba yarujuye icya rimwe ibiteganywa n'ingingo za 161(1) na 162(2), z'Itegeko No 22/2018 ryavuzwe haruguru. Bityo, ko umutungo Kabanda Benjamin

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yatsindiye Koperative GOBOKA ikabyemera ntaho BRD yari ikwiye guhera itambamira urubanza rwawumweguriye kuko umutungo waburanywe utari uwayo, ari nayo mpamvu basaba Urukiko rw'Ubujurire gukosora ikosa ryakozwe, rukemeza ko Urukiko Rukuru rutari rukwiye kwakira ngo rusuzume ikirego cya BRD, hanyuma rugashingira ku biteganywa n'ingingo 158, igika cya 1, y'Itegeko No 22/2018 ryavuzwe haruguru ivuga uko bigenda mu gihe Urukiko rwajuririye rwasanze ikirego kitaragombaga kwakirwa ku rwego rwa mbere, rugatesha agaciro imikurizwe y'urubanza RCA 00012/2022/HC/KIG rwaciye n'Urukiko Rukuru ku wa 15/02/2024, hakagumaho urubanza RCA 00255/2020/HC/KIG. [10] Uhagarariye BRD ashingiye ku ngingo ya 162, igika cya 1, y'itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru iteganya ko, umuntu utareze cyangwa ngo aregwe mu rubanza ariko arufitemo inyungu, ashobora gutambamira urwo rubanza rumurenganya ashaka ko rusubirwamo iyo, ari we cyangwa ari n'abo ahagarariye nta warutumiwemo, avuga ko icyaregerwaga mu rubanza RCA 00255/2020/HC/KIG cyari ukwemeza ko ubutaka buri mu bibanza UPI: 1/02/10/04/1419 na UPI:1/02/10/04/1100 ari ubwa Kabanda Benjamin yaguze na Koperative GOBOKA ku wa 08/07/2011. BRD itanga ikirego cyo gutambamira imikurizwe y'urubanza RCA 00255/2020/HC/KIG rwaciye ku wa 08/10/2021, yerekana ko irufitemo inyungu kuko umwe mu mitungo yaburanwaga muri urwo rubanza itatumiwemo, ufite UPI :1/02/10/04/1100 ari umutungo ifiteho ingwate yahawe na Koperative GOBOKA kubera umwenda utarishyurwa iyo Koperative iyibereyemo, kandi uwo mutungo ukaba warandikishijwe mu bitabo by'ingwate, ukaba rero uri mu maboko ya BRD igihe cyose Koperative GOBOKA itarayishyura umwenda iyibereyemo. Bityo ko ibyo urega avuga byo kuba ikirego cya BRD kitaragombaga kwakirwa nta shingiro bifite kubera iyo nyungu BRD yagaragaje. [11] Avuga kandi ko umutungo waburanwe mu rubanza RCA 00255/2020/HC/KIG ufite UPI :1/02/10/04/1100 wari ingwate ya BRD, ko bawita umutungo, BRD ikawita ingwate yayo kuko uwo mutungo BRD yari

yarawuhawe nk'ingwate, asanga bidakuraho ko uwo mutungo ari wo waburanwe ; bityo ko nta mpamvu ikirego cyayo cyo gutambamira urubanza RCA 00255/2020/HC/KIG kitari kwakirwa kuko yari afite inyungu zo gutambamira urubanza rwemeje ko umutungo yahawe ingwate wandikwa kuri Kabanda Benjamin. [12] Koperative GOBOKA iri mu iseswa ivuga ko umutungo ufite UPI :1/02/10/04/1100 wari ingwate ya BRD, ko rero yari ifite inyungu zo gutambamira urubanza RCA 00255/2020/HC/KIG. UKO URUKIKO RUBIBONA [13] Kuri iyi ngingo y'ubujurire yatanze na Kabanda Benjamin, Urukiko rurasuzuma niba Urukiko Rukuru rutaragombaga kwakira ikirego cyo gutambamira urubanza RCA 00255/2020/HC/KIG cyatanze na BRD. [14] Ikigaragara muri dosiye ni uko mu iburanisha ry'urubanza rujuririrwa RC 00012/2022/HC/KIG ryo ku wa 16/01/2024, Kabanda Benjamin yatanze inzitizi yo kutakira ikirego cya BRD kuko itambamira urubanza RCA 00255/2020/HC/KIG ivuga ko ingwate kandi akaba ari nta ngwate yigeze iburanwa muri urwo rubanza, ahubwo haburanwe amasezerano. Ikindi kigaragara ni uko Urukiko Rukuru rutigeze rusuzuma iyo nzitizi yatanze na Kabanda Benjamin,

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ngo ruyifateho icyemezo. Bityo uru Rukiko rukaba rugomba gusuzuma niba ikirego cya BRD kitaragombaga kwakirwa. [15] Ingingo ya 161, igika cya 1 n'icya 2, y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira : “Gutambamira urubanza ni ugushaka ko ruvanwaho cyangwa ruhindurwa bisabwe n'umuntu utararuburanye. Gutambamira urubanza bireba gusa, bitewe n'uwabisabye, ingingo zasuzumwe anenga, kugira ngo hasuzumwe bundi bushya uko byagenze n'uko amategeko abiteganyaho.” [16] Ingingo ya 162, igika cya 1, y'iryo Tegeko iteganya ibikurikira : “Umuntu utareze cyangwa ngo aregwe mu rubanza ariko arufitemo inyungu, ashobora gutambamira urwo rubanza rumurenganya ashaka ko rusubirwamo iyo, ari we cyangwa ari n'abo ahagarariye nta warutumiwemo.” [17] Icyumvikana mu ngingo zimaze kuvugwa, ni uko ushobora gutambamira urubanza ari utararubayemo nk'urega cyangwa nk'uregwa, kandi we ubwe cyangwa abo ahagarariye bakaba batarigeze barutumirwamo, nyamara akaba arufitemo inyungu. Zumvikanisha kandi ko mu gutambamira urubanza, Urukiko rusuzuma niba ingingo uwatambamiye urubanza anenga zigomba gutuma urubanza rutambamirwa ruvaho cyangwa niba zigomba gutuma ruhinduka, bitewe n'ibyo agaragaza byamurenganyije mu rubanza rutambamirwa. [18] Ku birebana n'uru rubanza, dosiye igaragaza ko mu rubanza RCA 00255/2020/HC/KIG rwatambamiye mu Rukiko Rukuru, Kabanda Benjamin yarurezemo Koperative GOBOKA iri mu iseswa, asaba Urukiko kwemeza ko ubutaka buri mu bibanza N° 1/02/10/04/1419 na 1/02/10/04/1100 ubu bifite agaciro ka 26.050.595 Frw, ari ubwe yaguze n'iyi Koperative ku wa 08/07/2011. Muri urwo rubanza, Urukiko Rukuru rwemeje ko imikirize y'urubanza RC 00616/2019/TGI/GSBO idahindutse, kandi urwo rubanza rwaciye ku wa 24/07/2020, Urukiko Rwisumbuye rwa Gasabo rwari rwategetse ko ubutaka bufite UPI N°1/02/10/04/1419 na 1/02/10/04/1100 bukurwa ku mazina ya Koperative GOBOKA bukurikwa kuri Kabanda Benjamin abanje kwishyura Koperative GOBOKA iri mu iseswa, mu izina ry'ushinzwe iseswa ryayo, ibihumbi magana ane 400.000 Frw, ko kandi Koperative GOBOKA iri mu iseswa, mu izina ry'ushinzwe iseswa ryayo agomba kwishyura imisoro y'ibibanza UPI

N°1/02/10/04/1419 na 1/02/10/04/1100 kugeza ubwo mutation izakorerwa. [19] Dosiye igaragaza kandi ko mu rubanza rujuririrwa RC 00012/2022/HC/KIG, BRD yatambamiye urubanza RCA 00255/2020/HC/KIG isaba Urukiko Rukuru kwemeza ko urwo rubanza rukomoka ku rubanza RC 00616/2019/TGI/GSBO ruhindutse ku bijyanye n'ibyo rwemeje ku mutungo ubaruye kuri UPI : 1/02/10/04/1100, rukemeza ko uwo mutungo ari ingwate ya BRD. [20] Urukiko rurasanga, nk'uko byasobanuwe haruguru, gutambamira urubanza bikorwa n'umuntu urufitemo inyungu ariko yaba we cyangwa abo ahagarariye bakaba batarigeze baba ababuranyi mu rubanza rutambamirwa, ko kandi muri icyo gihe Urukiko rusuzuma ingingo

1 Reba igika cya 24 cy'urubanza No RS/INJUST/RCOM 00006/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 18/03/2022, haburana UBURIYEMUYE Jean Damascène na HOME BASKET SACCO Kimironko hamwe na RUGEMA ZIGA Jean Claude.

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uwatambamiye urubanza anenga, kugira harebwe ko urubanza rutambamirwa ruvaho cyangwa ruhinduka bitewe n'ibyo asaba. Kuba rero BRD yaratambamiye urubanza RCA 00255/2020/HC/KIG igaragaza ko irufitemo inyungu kuko ubutaka bubaruye kuri UPI : 1/02/10/04/1100, urwo Rukiko rwemeje ko ari ubwa Kabanda Benjamin kandi yari yarabuhaweho ingwate na Koperative GOBOKA ku mwenda yayihaye ikaba itarawishyura, kandi ikaba yarasabye ko urwo rubanza rutambamirwa ruhinduka ku bijyanye n'ubwo butaka yahaweho ingwate. Kuba kandi mu rubanza rwatambamiwe, Urukiko Rukuru rwaremeje ko ubwo butaka bwandikwa kuri Kabanda Benjamin nk'uko byasobanuwe haruguru, uru Rukiko rurasanga, nta kosa Urukiko Rukuru rwakoze ryo kwakira ikirego cyo gutambamira urubanza RCA 00255/2020/HC/KIG cyatanzwe na BRD. [21] Ku byo Kabanda Benjamin n'umwunganira bavuga ko ikirego cyo gutambamira urubanza RCA 00255/2020/HC/KIG cyatanzwe na BRD kitagombaga kwakirwa kuko muri urwo rubanza hatigeze haburwanwamo ingwate, Urukiko rurasanga nta nshingiro bifite, kuko nk'uko byasobanuwe haruguru, mu rubanza RCA 00255/2020/HC/KIG rwatambamiwe, Kabanda Benjamin yareze Koperative GOBOKA asaba Urukiko kwemeza ko ubutaka buri mu bibanza bufite UPI 1/02/10/04/1419 na 1/02/10/04/1100 ari ubwe yaguze n'iyi Koperative. Kuba rero BRD yaratambamiye urubanza rwemeje ko ubwo butaka ari ubwa Kabanda Benjamin bugomba kumwandikwaho, ivuga ko ubutaka bubaruye kuri UPI 1/02/10/04/1100 yabuhabweho ingwate, birumvikana ko yamenze ingingo ijyanye n'uko urwo Rukiko rwemeje ko ubutaka bubaruye kuri UPI 1/02/10/04/1100 bwandikwa kuri Kabanda Benjamin, isaba ko rwemeza ko ubwo butaka ari ingwate yayo. Bityo BRD ntaho yanyuranyije n'ibiteganywa mu ngingo ya 161, igika cya 2, y'Itegeko No 22/2018 yibukijwe haruguru, kuko icy'ingenzi atari ijambo ingwate, ahubwo ari umutungo watanzweho ingwate, kandi uwo mutungo ni wo waburanwe.

2.Kumenya niba Kabanda Benjamin yaraguze ikibanza UPI:1/02/10/04/1100 cyaramaze gutangwaho ingwate muri BRD [22] Kabanda Benjamin n'umwunganira bavuga ko Urukiko Rukuru rwakoze ikosa ryo kwemeza ko ubutaka bufite UPI:1/02/10/04/1100 bwandikwa kuri Koperative GOBOKA kuko rwirengagije ibimenyetso yatanze byerekana ko yabuguze mbere y'uko butagwaho ingwate muri BRD, ibyo bimenyetso bikaba bigizwe n'amasezerano y'ubugure

yagiranye na Koperative GOBOKA kandi akaba yarakozwe mu buryo bukurikije amategeko, kuba Kabanda Benjamin yaraguze ubwo butaka butaratangwaho ingwate muri BRD, kuba ku wa 21/01/2013, ari bwo habayeho kuvugurura amasezerano y'inguzanyo, ikibanza Kabanda Benjamin yaguze, Koperative GOBOKA igitangaho ingwate, ko rero yatanze ingwate ku kibanza kitari icyayo, kuko cyari cyaramaze kuba icye. [23] Basobanura ko amasezerano y'ubugure Kabanda Benjamin yagiranye na Koperative GOBOKA yakozwe ku wa 05/08/2012, ikamugurisha ubutaka bufite UPI:1/02/10/04/1100, ikanamusezeranya kumuhesha ibyangombwa byabwo uretse ko yaje kubirengaho ikanga kubikora, bikaba ngombwa ko Urukiko Rwisumbuye rwa Gasabo rubitegeka mu gika cya 25 cy'urubanza RC 00616/2019/TGI/GSBO rwaciye ku wa 24/07/2020, aho rwategetse ko bumwandikwaho, ndetse n'Urukiko Rukuru mu rubanza RCA 00255/2020/HC/KIG rukemeza ko imikirize y'urubanza rwajuririwe idahindutse, mu gihe Inama idasanzwe y'Inama y'Ubuyobozi ya Koperative GOBOKA yabaye ku wa 21/1/2013 (Minutes of the Cooperative extraordinary Board

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of Directors' Resolution on 21st day of January 2013"), ari yo yafashe icyemezo cyo guha BRD ubwo butaka nk'ingwate; bityo ko yayihaye ubutaka Kabanda Benjamin yaguze, ndetse ko na Koperative GOBOKA yandikishije iyo ingwate muri RDB nk'uko bigaragazwa na "Certificate of Registration of Mortgage, Registration Number: 2198/2013/ORG ku wa 01/04/2013, bikaba bigaragara ko iyo ngwate yanditswe nyuma y'uko Kabanda Benjamin aguze ubwo butaka ku wa 05/08/2012. Ko rero basanga Urukiko Rukuru rwari rukwiye kubona ko iriya ngwate nta gaciro yagombaga guhabwa, kuko Koperative GOBOKA yayandikishije kuri BRD yaramaze kugurisha ubutaka bufite UPI :1/02/10/04/1100. [24] Bavuga kandi ko Urukiko Rukuru rwirengagije ibikurikira :

- Ko amasezerano y'ingwate (contrat à intérêt avec constitution d'hypothèque) yo ku wa 07/10/2008 atagaragaza ko ikibanza Kabanda Benjamin yaguze na GOBOKA kiri mu by'i Kibagabaga, Koperative GOBOKA yahayeho BRD ingwate, kuko icyo Kabanda yaguze cyo gihereye i Kinyinya ;
- Ko icyemezo cy'Inama y'Ubuyobozi bwa Koperative GOBOKA cyo ku wa 21/01/2013 cyavuguruye amasezerano y'inguzanyo yo ku wa 07/10/2008 (Amendement N°01/2012/LU/D/dm to the Loan and Mortgage Contract) cyeguriye BRD ikibanza cya Kabanda Benjamin ho ingwate (hypothèque) ku nguzanyo ya 944.000.000 Frw) nta gaciro cyari gikwiye guhabwa mu rubanza rujuririrwa kuko cyafashwe Kabanda Benjamin yararangije kugura ikibanza cye ku wa 5/3/2012 ;
- Ko icyemezo cyavuguruye amasezerano y'inguzanyo (Amendement N°01/2012/LU/D/dm to the Loan and Mortgage Contract) cyafashwe ku wa 21/11/2012, aho mu ngingo ya ryo ya mbere (1) banditse ko ikibanza UPI : 1/02/10/04/1100 cya GOBOKA (belonging to GOBOKA) gitanzweho hypothèque, nta gaciro cyagombaga kugira mu rubanza rujuririrwa kuko cyafashwe nyuma y'uko Koperative GOBOKA yari yaramaze kugurisha Kabanda Benjamin kuriya kibanza ku wa 05/03/2012 ku buryo itari igishoboye kugitangaho ingwate ;

- Ko kiriya cyemezo cya “Extraordinary Board Director’s Resolution” ya Koperative GOBOKA gifite inenge zigitesha agaciro nko kuba kigaragaza ko Ruzindana Munana Jean yayoboye inama cyafatiwemo ariko kigaragaza ko yasinyiye imbere ya Noteri nyamara kandi bigaragara ko yasinyiwe PO n’umuntu utazwi kuko nta mazina ye ariho. Bivuze ko Noteri yemeje umukono w’umuntu utazwi kandi imbere ye ibyo bikaba bitemewe n’itegeko kuko rivuga ko umuntu ahibereye, asinyira imbere ya Noteri ;
- ko iriya Board itari gufata icyemezo ngo kigire agaciro kuko itujuje ibiteganywa n’ingingo ya 7, igika cya 2, y’itegeko N°12/2011 ryo ku wa 27/05/2011 rihindura kandi ryuzuzwa itegeko N° 50/2008 ryo ku wa 18/09/2007 rigena inshingano, imiterere n’imikorere y’Amakoperative mu Rwanda yateganyaga ko “Inama y’Ubuyobozi igizwe n’abantu batanu (5) batorwa amategeko shingiro kandi aho bishoboka hakubahirizwa, ihame ry’uburinganire bw’abagore n’abagabo, kuko Inama itari igizwe n’abantu 5; ndetse n’ingingo ya 67,2° ya ririya tegeko N° 50/2008 ryo ku wa 18/09/2007 ryavuzwe haruguru yabuzaga Bayito Innocent kuba mu Nama y’Ubuyobozi bwa Koperative mu gihe yari umukozi wa Koperative GOBOKA imuhemba, kuko yari ayibereye Directeur General kandi iriya ngingo itarabimwemereraga aho igira iti: “Nta muntu wemerewe kuba mu Nama y’Ubuyobozi

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ari umukozi uhembwa muri iyo Koperative”. Bivuze ko ibyemezo byose iriya Board yafashe nta gaciro bifite. [25] Bakomeza bavuga ko mu rubanza rujuririrwa, Urukiko rwatandukiriye rucira urubanza ku kitaregewe. Basobanura ko BRD yatanze ikirego gitambamira urubanza RCA 00255/2020/HC/KIG rwemeje ko ubutaka bufite UPI 1/02/10/04/1100 ari ubwa Kabanda Benjamin yaguze na GOBOKA byemewe n’amategeko, ikaba yarasabye Urukiko kwemeza ko ubwo butaka ari ingwate yayo, ariko mu gika cya 25 cy’urubanza rujuririrwa, Umucamanza aratandukira avuga ko “ubugure Kabanda yitwaza nta gaciro bwahabwa ngo bube bwashingirwaho Urukiko rwemeze ko uwo mutungo ari uwe nk’uko yabiregeye”. Bityo ko bibaza aho Umucamanza yakuye ko Kabanda Benjamin yaregeye mu rubanza RC 00012/2022/HC/KIG asaba Urukiko kwemeza ko umutungo ari uwe. [26] Basobanura kandi ko mu cyemezo cy’urubanza rujuririrwa, Urukiko rwategetse ko ikibanza kitagomba kwandikwa kuri Kabanda Benjamin ahubwo akaba agomba gusubizwa amafaranga yatanze amaze kwerekana ibimenyetso akayasubizwa n’ushinzwe iseswa rya Koperative GOBOKA mu mutungo wayo. Ibyo rukaba rwarabyemeje rwirengagije ko Koperative GOBOKA yagitsindiye burundu ari na bwo yahisemo kwitabaza BRD ngo itambamire urubanza yatsinzwe ngo ivuge ko buriya butaka ari ingwate yayo kandi yaramaze kubugurisha Kabanda Benjamin. Byongeye kandi, ko bitigeze bigirwaho impaka n’impande zombi igihe cy’iburanisha, ko rero uru Rukiko rukwiye kubona ko Urukiko rwirengagije ibiteganywa n’ingingo ya 11 y’itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru ivuga ko Umucamanza adashobora gushingira icyemezo cye ku bitagaragajwe mu iburanisha, ko kandi adashobora guca urubanza ashingiye ku byo aruziho ku giti cye. [27] Bavuga na none ko basanga ahubwo BRD yagombye gukurikirana Koperative GOBOKA kuko ari yo yayibeshye ikayihya ingwate ku mutungo utari uwayo, aho gushaka kwambura Kabanda Benjamin ibyo yiguriye byemewe n’amategeko ndetse n’inkiko zikabishimangira. Bityo ko uru Rukiko rukwiye gukosora

ririya kosa, maze rushingiye ku biteganywa n'ingingo ya 157 y'itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru iteganya ko Urukiko rwajuririwe rushobora guhindura urubanza rwajuririwe mu ngingo zarwo zose cyangwa zimwe muri zo, cyangwa kurutesha agaciro, rukemeza ko urubanza RC 0012/2022/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 15/02/2024 ruhindutse kuri byose, ko urubanza rwari rwatambamiwe rugumanye agaciro karwo. Bityo ko basaba uru Rukiko gukosora amakosa yakozwe mu rubanza rwajuririwe, rukemeza ko ruhindutse mu ngingo zarwo zose. [28] Uhagarariye BRD avuga ko nta bimenyetso Urukiko Rukuru rwirengagije, kuko ubutaka bufite UPI :1/02/10/04/1100, BRD yabuhawe nk'ingwate kuva muri 2008 nubwo numero z'ubutaka zagiye zihinduka, ko rero n'ubwo amasezerano y'ubugure Kabanda Benjamin ashingiraho afite inenge, ko n'iyi nta nenge yari kuba afite, nta gaciro yari guhabwa kuko ingwate yatanze mbere y'uko ayo masezerano y'ubugure abaho. [29] Asobanura ko ibyo Kabanda Benjamin avuga ashaka kwereka ko ubugure bwe bwabaye mbere y'ubugwate, atari byo kuko yirengagiza ko amasezerano y'inguzanyo hatanzwe ingwate yakozwe ku wa 07/10/2008 (Contrat de prêt avec constitution d'hypothèque) akorerwa imbere ya Noteri hagati ya Banque de l'habitat na Koperative GOBOKA aza no kuvugururwa ku wa 21/11/2012, nayo akorerwa imbere ya Noteri; bityo akaba asanga atari we waguze mbere nk'uko

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abivuga, kuko uyu mutungo uburanwa uba ingwate ya BRD bwa mbere na mbere hari muri 2008 ikiri Banque de l'habitat, mu gihe Bayito na Kabanda bagiranye amasezerano muri 2012. [30] Asobanura kandi ko muri 2008 habaye amasezerano y'inguzanyo hatanzwe ingwate, ko kandi muri icyo gihe ibarura ry'ubutaka ryari ritarabaho Koperative GOBOKA itanga ibibanza 50 nk'ingwate biri Kibagabaga/Gasabo, noneho bigeze muri 2013 habaho kuvugurura ayo masezerano y'inguzanyo, hanyuma bagaragaza numero y'ibibanza bitanzweho ingwate na numero byahawe kandi icyo kibanza Kabanda avuga ko yaguze nacyo kirimo. Bityo ko ikigaragara ari uko nyuma ya 2008 bishoboka ko hari ibibanza byitwaga ko biri Kibagabaga ariko uko ibintu byagiye bihinduka ubu bikaba biri i Kinyinya nk'uko bigaragara mu ivugurura ry'ayo masezerano y'inguzanyo hatanzwe ingwate kuko bagaragaje numero ibyo bibanza byahawe muri 2013. [31] Avuga kandi ko ibyo uruhande rwa Kabanda Benjamin ruvuga nta shingiro bikwiye guhabwa, kuko amasezerano yo muri 2008 agaragaza inomero zitandukanye n'iz'ubu kuko icyo gihe hari hatarabaho ibarura ry'ubutaka, ariko bitavuze ko hari ubutaka bwa kera bwari bubaruye ku zindi numero. Asobanura ko uko izo numero zahindutse, ari nako Banki yahindutse ndetse ari nako RDB yaje kuvuka, ari nayo mpamvu habayeho kuvugurura amasezerano ngo bayajyanishe n'igihe, Amasezerano mashya rero akaba agaragaza inomero uko zagiye zihinduka mu ibarura ry'ubutaka, ndetse na resolution of board directors ikaba yarabishimangiye. [32] Akomeza avuga ko ibyo uruhande rwa Kabanda Benjamin ruvuga ko mu rubanza rujuririrwa Urukiko rwatandukiriye rucira urubanza ku kitaregewe, nta shingiro bifite, kuko nta kuntu ubugwate bwaregewe bwahabwa agaciro, amasezerano y'ubugure hagati ya Kabanda Benjamin na Koperative GOBOKA adateshejwe agaciro, cyane ko no mu cyemezo gitambamirwa, Urukiko rwari rwategetse ko ayo masezerano agumana agaciro kayo, kandi ingingo yo gutambamira urubanza ni ugushaka ko ruvanwaho cyangwa ruhindurwa bisabwe n'umuntu utararuburanye.

Bityo rero, ko nta kosa Urukiko Rukuru rwakoze kuko ntacyo rwari gukora rutabanje kuvanaho imbogamizi yariraho. [33] Uhagarariye Koperative GOBOKA avuga ko muri 2008 habaye amasezerano y'inguzanyo Koperative GOBOKA iha BRD ingwate y'imitungo iri Kibagabaga, kandi bagaragaza na numero z'ibyo bibanza, ari nabyo muri 2013 bagaragaje numero nshya byahawe, biza kugaragara ko hari ibiri Kinyinya, cyane ko Kinyinya yegeranye na Kibagabaga. Bityo ko ikibanza Kabanda Benjamin avuga ko yaguze nacyo kiri mu bibanza Koperative GOBOKA yatanzeho ingwate muri BRD nk'uko bigaragara muri ayo masezerano. UKO URUKIKO RUBIBONA [34] Mu rwego rwo kumenya niba Kabanda Benjamin yaraguze ikibanza UPI : 1/02/10/04/1100 cyaramaze gutangwaho ingwate muri BRD, Urukiko rurasuzuma ibimenyetso byatanzwe na buri ruhande hibandwa ku gusuzuma icyakozwe mbere hagati yo kugurisha icyo kibanza no kugitangaho ingwate muri BRD. [35] Ingingo ya 4 y'Itegeko No 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso iteganya ko Urega cyangwa utanze ikibazo agaragaza ikimenyetso cy'ibyo aregera cyangwa asaba. Uwiregura agaragaza ikimenyetso gishyigikira ukwiregura kwe (...). Naho ingingo ya 12, igika cya 2 y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza

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z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira : " Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Naho uvuga ko atagitegetswe gukora icyo yategekwe gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda". [36] Ku birebana n'uru rubanza, dosiye igaragaramo amasezerano y'ubugure bw'ikibanza yo ku wa 05/03/2012, yabaye hagati ya Koperative GOBOKA ihagarariye na Bayito Innocent na Kabanda Benjamin. Ayo masezerano agaragaza ko Koperative GOBOKA igurishije ikibanza kibaruye kuri UPI : 1/02/10/04/1100, gihereye mu Mudugudu wa Binunga, Akagari ka Murama, Umurenge wa Kinyinya, Akarere ka Gasabo, ko icyo kibanza kiguzwe na Kabanda Benjamin ku mafaranga miliyoni imwe n'ibihumbi magana atanu (1,500,000 Frw) kandi ko yishyuye Koperative GOBOKA yose cash. Igaragaramo icyemezo cy'inkomoko y'umutungo cyatanzwe n'ushinzwe iseswa rya Koperative GOBOKA cyo ku wa 29/05/2019, aho yemeje ko ikibanza kibaruye kuri UPI : 1/02/10/04/1100, gihereye Mudugudu wa Binunga, Akagari ka Murama, Umurenge wa Kinyinya, Akarere ka Gasabo, Umujyi wa Kigali ari umutungo bwite wa Kabanda Benjamin. [37] Dosiye igaragaramo amasezerano y'inguzanyo hatanzwe ingwate yiswe : "Contrat de prêt à intérêt avec constitution d'hypothèque" yo ku wa 07/10/2008, yabaye hagati ya Banque de l'Habitat du Rwanda, ubu yahindutse BRD na Koperative GOBOKA. Ingingo ya 2 n'ya 5 y'ayo masezerano zigaragaza ko hatanzwe ingwate z'ibibanza mirongo itanu (50) bigenewe kubakwamo amazu yo guturamo, ari byo : 10210,10211,10212,10213,10214,10215,10216,10217,10218,10219,10220,1021,10222,10223,10224,10225,11699,11700,11701,11702,11703,11756,11757,11759,11760,11761,11762,11763,11764,11765,11766,11767,11768,11769,11770,11771,11772,11773,11842,11843,11844,11845,11846,11847,11848,11850,11851,11852 na 11853, biri Kibagabaga muri Gasabo. [38] Dosiye igaragaramo amasezerano yo ku wa 21/11/2012, yabaye hagati ya Development Bank of Rwanda na Koperative GOBOKA yiswe : "Amendment No 01/2012/LU/DM/dm to loan and mortgage contract of 07/10/2008",

avugurura amasezerano y'inguzanyo hatanzwe ingwate yo ku wa 07/10/2008. Ingingo ya 1 y'ayo masezerano avuguruye, ivuga ko ingingo ya 5 y'amasezerano y'inguzanyo hatanzwe ingwate yo ku wa 07/10/2008 irebana n'ingwate ivuguruwe mu buryo bukurikira: Ko mu rwego rwo kugira ngo Banki igire icyizere cyo kwishyurwa inguzanyo, inyungu ndetse n'andi mafaranga yose yahaye Koperative GOBOKA, hatanzwe ingwate y'ibibanza bikurikira2: - Ikibanza No 2193 kiri mu Mudugudu wa Rwankuba, Akagari ka Gasharu, Umurenge wa Kinyinya, Akarere ka Gasabo, Umujyi wa Kigali ; - Ibibanza No 1/02/10/04/1001, No 1/02/10/04/1106, No 1/02/10/04/1100, No 1/02/10/04/1528, No 1/02/10/04/1442, No 1/02/10/04/1034, No 1/02/10/04/1121, No 1/01/10/04/1031, No 1/02/10/04/1049, No

2 The Article 5 of the loan and mortgage contract of 07/10/2008 related to the securities and guaranties is modified and completed as follows: In order for the Bank to guarantee the repayment of any amount vis- à-vis the capital, interests or any other kinds of Bank fees incurred for whatever reason or by whatever means, the Borrower shall provide to the Bank a guarantee as follows:

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1/02/10/04/1497, No 1/02/10/04/1548, No 1/02/10/04/1138, No 1/02/10/04/1891, No 1/02/10/04/1003, No 1/02/10/04/797, No 1/02/10/04/725, No 1/02/10/04/772, No 1/02/10/04/1083, No 1/02/10/04/1006, biri mu Mudugudu wa Binunga, Akagari ka Murama, Umurenge wa Kinyinya, Akarere ka Gasabo, Umujyi wa Kigali. [39] Dosiye igaragaramo inyandikomvugo y'inama idasanzwe y'Inama y'ubuyobozi ya Koperative GOBOKA yo ku wa 21/01/2013 yiswe : "Extraordinary Board Director's Resolution". Muri iyo nama hemejwe ko mu rwego rwo kugira ngo BRD izishyurwe umwenda yahaye Koperative GOBOKA, hatanzwe ingwate z'ibibanza biri mu Murenge wa Kinyinya byavuzwe haruguru. Inagaragaramo na none icyemezo cyo kwandikisha ingwate No 2198/2013/ORG cyatanze na RDB ku wa 01/04/2013, kigaragaza ko ikibanza UPI : 1/02/10/04/1100 Koperative igitanzeho ingwate muri BRD ku mwenda iyi yayihaye uhwanye na 944,000,000 Frw. [40] Nk'uko byagaragajwe haruguru, mu rubanza RCA 00255/2020/HC/KIG rwatambamiwe mu Rukiko Rukuru, urwo Rukiko rwemeje ko imikurizwe y'urubanza RC 00616/2019/TGI/GSBO idahindutse, kandi mu rubanza RC 00616/2019/TGI/GSBO rwaciwe ku wa 24/07/2020, Urukiko Rwisumbuye rwa Gasabo rwari rwategetse ko ubutaka bufite UPI N°1/02/10/04/1419 na 1/02/10/04/1100 bukurwa ku mazina ya Koperative GOBOKA bukurikwa kuri Kabanda Benjamin abanje kwishyura Koperative GOBOKA iri mu iseswa, mu izina ry'ushinzwe iseswa ryayo, ibihumbi magana ane (400.000 Frw. Naho imikurizwe y'urubanza rujuririrwa RC 00012/2022/HC/KIG, rutambamira urubanza RCA 00255/2020/HC/KIG, igaragaza ko Urukiko Rukuru rwategetse ko ikibanza gifite 1/02/10/04/1100 gikomeza kwandikwa kuri Koperative GOBOKA iri mu iseswa kandi igakomeza kuba ingwate ya BRD kugeza igihe inguzanyo yahaye GOBOKA yishyuriwe, ko icyo kibanza kitagomba kwandikwa kuri Kabanda Benjamin ahubwo agomba gusubizwa amafaranga yatanze amaze kuyerekanira ibimenyetso akayasubizwa n'Ushinzwe iseswa rya GOBOKA mu mutungo wayo. [41] Urukiko rurasanga, nk'uko byagaragajwe haruguru, mu bibanza mirongo itanu (50 parcelles) Koperative GOBOKA yatanze ingwate ku wa 07/10/2008, ubwo yahabwaga inguzanyo na Banque de l'Habitat du Rwanda yahindutse BRD, nta kibanza gifite UPI : 1/02/10/04/1100

kigaragaramo. Ikigaragara ni uko icyo kibanza cyatanzweho ingwate mu ivugurura ry'amasezerano y'inguzanyo ryakozwe ku wa 21/11/2012, kandi cyari cyaragurishijwe ku wa 05/03/2012, nk'uko bigaragazwa n'amasezerano y'ubugure yibukijwe haruguru. [42] Urukiko rurasanga, kuba bigaragara ko ikibanza gifite UPI : 1/02/10/04/1100 Koperative GOBOKA yagitanzeho ingwate muri BRD, ku wa 21/11/2012, nyamara yari yarakigurishije Kabanda Benjamin ku wa 05/03/2012, ni ukuvuga mbere y'uko igitangaho ingwate, birumvikana ko cyatanzweho ingwate kitakiri umutungo wa Koperative GOBOKA. Bityo ntabwo Kabanda Benjamin yaguze ikibanza cyatanzweho ingwate, nk'uko uhagarariye BRD n'uhagarariye Koperative GOBOKA bashaka kubyumvikanisha. Ibi binashimangirwa ni uko ushinze iseswa rya Koperative GOBOKA ku wa 29/05/2019, yemeje ko ikibanza kibaruye kuri UPI : 1/02/10/04/1100, ari umutungo bwite wa Kabanda Benjamin, binashimangirwa kandi ni uko mu gihe Kabanda Benjamin yaburanaga na Koperative GOBOKA icyo kibanza mu rubanza RCA 00255/2020/HC/KIG, iyi itigeze ivuga ko icyo kibanza yagitanzeho ingwate muri BRD, byumvikana ko nayo yari izi ko yagitanzeho ingwate yaramaze kukigurisha Kabanda Benjamin.

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[43] Ku byo uhagarariye BRD n'uhagarariye Koperative GOBOKA bavuga ko ikibanza gifite UPI: 1/02/10/04/1100 kiri mu kibanza mironko itanu (50) byatanzweho ingwate ku wa 07/10/2008, ubwo Banque de l'Habitat du Rwanda yahindutse BRD yahaga Koperative GOBOKA inguzanyo kuko numero z'ibibanza zagiye zihinduka mu gihe cyo kubaruza ubutaka, Urukiko rurasanga nta shingiro bigomba guhabwa, kuko usibye kubivuga gusa nta kimenyetso na kimwe babitangira, kandi nk'uko byasobanuye haruguru, buri muburanyi afite inshingano zo kugaragaza ukuri ku ibyo avuga. Uretse n'ibyo, nk'uko byagaragajwe haruguru, ibibanza 50 byatanzweho ingwate ku wa 07/10/2008, biherereye Kibagabaga muri Gasabo, mu gihe ikibanza UPI : 1/02/10/04/1100 cyo gihereye mu Murenge wa Kinyinya, mu Karere ka Gasabo. [44] Urukiko rushingiye ku bisobanuro byatanzwe haruguru, rurasanga Kabanda Benjamin ataraguze ikibanza cyatanzweho ingwate muri BRD, ku buryo ikirego cyayo cyo gutambamira urubanza RCA 00255/2020/HC/KIG cyagombaga guhabwa ishingiro. Bikaba rero byumvikana ko Urukiko Rukuru rwakozwe ikosa kwemeza ko ikibanza kibaruye kuri UPI : 1/02/10/04/1100 gikomeza kwandikwa kuri Koperative GOBOKA iri mu iseswa kandi igakomeza kuba ingwate ya BRD kugeza igihe inguzanyo yahaye GOBOKA yishyuriwe, kandi ko kitagomba kwandikwa kuri Kabanda Benjamin. Bityo urubanza RC 00012/2022/HC/KIG rwaciye n'Urukiko Rukuru ku wa 15/02/2024, rurahindutse mu ngingo zarwo zose.

3.Kumenya niba indishyi zo gushorwa mu manza, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka bisabwa muri uru rubanza bifite ishingiro [45] Kabanda Benjamin n'umwunganira bavuga ko kuba Urukiko Rukuru rutarageneye Kabanda Benjamin 4.500.000 Frw akubiyemo 2.000.000 Frw y'indishyi yo gushorwa mu rubanza kumaherere, 2.000.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza ntirunagire icyo rubivugaho, basanga uru Rukiko rukwiye kubona ko Urukiko Rukuru rutubahirije ibiteganywa n'ingingo ya 10 y'itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru ivuga ko Umucamanza aca urubanza ku cyasabwe cyose

kandi kuri cyo cyonyine. Bityo, rugakosora iryo kosa, rugatega ko BRD iha Kabanda Benjamin ariya mafaranga 4.500.000 nk'uko yasobanuwe. [46] Bavuga kandi ko kuba byarabaye ngombwa ko Kabanda Benjamin ajuririra uru rubanza BRD yamushoyemo ku maharere, bikaba intandaro yo gutekereza uko azaruburana, agashaka Avoka ndetse agatanga ingwate y'amagarama ; BRD ikwiye kubyirengera ikamuha 4.550.000 Frw akubiyemo 2.000.000 Frw y'indishyi zo gushorwa mu rubanza kumaherere, 2.000.000 Frw y'igihembo cya Avoka, 500.000 Frw y'ikurikiranarubanza na 50.000 Frw yatanzeho ingwate y'amagarama. Bavuga kandi ko amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa na BRD nta shingiro afite. [47] Uhagarariye BRD avuga ko ibyo Kabanda Benjamin asaba nta shingiro byahabwa, kuko uwatsinzwe urubanza ari we utanga indishyi aho kuzihabwa, ko kandi nta n'aho zishingiye. Avuga kandi ko ibyo Kabanda Benjamin asaba nta shingiro bifite, ko kandi ntaho bishingiye. Avuga kandi ko ashingiye ku biteganywa n'ingingo ya 111 y'itegeko No 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, BRD isaba kugenerwa amafaranga miliyoni ebyeri (2.000.000 Frw) akubiyemo igihembo cya Avoka n'ikurikiranarubanza, ku nzego zombi.

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UKO URUKIKO RUBIBONA [48] Ingingo ya 111 y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira : "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'yo ikirego cy'iremezo cyaba kitakiriwe". [49] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Kabanda Benjamin asaba akwiye kuyahabwa, kuko ubujurire bwe bwahawe ishingiro kandi uru rubanza rwatumye ashaka Avoka wo kumwunganira, atakakaza n'amafaranga akurikirana urubanza, ariko ayo asaba ni menshi cyane ugereranyije n'imiterere y'uru rubanza ; bityo mu bushishozi bw'Urukiko rumugeneye miliyoni imwe (1.000.000 Frw) y'igihembo cya Avoka n'ibihumbi magana atatu (300.000 Frw) y'ikurikiranarubanza, ku nzego zose. Naho indishyi zo gushorwa mu rubanza asaba, Urukiko rurasanga ntazo akwiye guhabwa, kuko atabasha gusobanura aho zishingiye. Rurasanga amafaranga y'ibyagiye ku rubanza asabwa na BRD itagomba kuyahabwa, kuko ubujurire bwa Kabanda Benjamin bwahawe ishingiro. III. ICYEMEZO CY'URUKIKO [50] Rwemeje ko ikirego cy'ubujurire cyatanze na Kabanda Benjamin gifite ishingiro kuri bimwe. [51] Rwemeje ko urubanza rujuririrwa RC 00012/2022/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 15/02/2024, ruhindutse mu ngingo zarwo zose, hakaba hagumye urubanza RCA 00255/2020/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 08/10/2021, DEVELOPMENT BANK OF RWANDA Plc (BRD) yatambamiye. [52] Rutegetse DEVELOPMENT BANK OF RWANDA Plc (BRD), guha Kabanda Benjamin amafaranga miliyoni imwe (1.000.000 Frw) y'igihembo cya Avoka n'ibihumbi magana atatu (300.000 Frw) y'ikurikiranarubanza, ku nzego zose. [53] Ruvuze ko amagarama yatanze ahwanye n'ibyakozwe mu rubanza.

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