

RWANDA / JUDGMENT

31KAGABA v. ACCESS BANK Ltd

2014SC

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Text

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KAGABA v. ACCESS BANK Ltd [Rwanda URUKIKO RW'IKIRENGA – 2014SC – (Mukanyundo , P.J., Rugabirwa na Hitiyaremye , J.) 17 Ukwakira 2014] Amategeko agenga amasezerano– Uburenganzira bwo Kurega Uwishingiye undi umwenda– Uwatanze umwenda afite Uburenganzira bwo kurega Uwishingiye undi umwenda mu gihe yamwemerereye yuko uwo yishingiye nananirwa kwishyura, azamwishyurira hatabanje gushakisha ubwishyu mu mutungo w'uwishingiwe–Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 560. Amategeko agenga amasezerano–Inyungu zibyawe n'imari y'iremezo – Inyungu zibyawe n'imari y'iremezo, zibyara izindi nyungu biturutse k'urubanza cyangwa ku masezerano yihariye ababuranyi baba bashikirije Urukiko–Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 52. Amategeko y'imiburanishirize y'imanza z'ubucuruzi– Indishyi z'ikurikiranarubanza n'igihembo cy'Avoka –Ntabwo zitangwa mu gihe Uregwa afite ibyo yatsindiye mu rubanza. Incamake y'ikibazo: ACCESS BANK Ltd yaguriye KAGABA PIERRE CORNEILLE 20.000.000 Frw, ishingiyeye ku masezerano y'inguzanyo hamwe n'inzu ye iri ku kimihurira yatanzeho ingwate, bumvikana ko mu gihe azaba yananiwe kwishyura, iyo nzu izatezwa cyamunara nta rubanza rubayeho.Haje kuba andi masezerano,umwenda

urongerwa ugera kuri 35.000.000Rfrws,ingwate ikomeza kuba yayindi,banongeraho yuko mu gihe hazavuka ikibazo haziyambazwa inzira y'Ubukemurampaka, bitashoboka, kigakemurwa n'inkiko z'u Rwanda. Nyuma ACCESS BANK yaje guha Rwanda Restaurants & Hotels Sarl (RESTOTEL Sarl) ihagarariwe na KAGABA hamwe na MUHIRE FRÉDÉRIC,Inguzanyo ya 39.000.000 Frw, bumvikana ko ingwate ari inzu ya KAGABA iri i Nyamirambo hamwe n'inzu ya MUHIRE iba i Remera,ko nihavuka kibazo haziyambazwa inzira y'Ubukemurampaka,bitashoboka, hakiyambazwa inkiko.Iyo nguzanyo yishingiwe kandi na KAGABA hamwe na MUHIRE. KAGABA yandikiwe na ACCESS BANK ibaruwa y'integuza, imwishyuza 7.300.853 Frw y'umwenda ayibereyemo ku giti cye na 29.537.238 Frw y'umwenda wa RESTOTEL yishingiye.Anashikirizwa n'Umuheshaw'Inkiko inyandiko ifatira inzuyo ku kimihurura kugira ngo itezwe cyamunara maze ubwishyu bwa Banki buboneke.yahise arega mu Rukiko Rukuru rw'Ubucuruzi avuga ko atakwishyura 37.392.117 Frw y'umwenda, asaba yuko inyandiko y'Umuhesha w'Inkiko yateshwa agaciro,akanahabwa 2.000.000 Frw y'ikurikiranarubanza. ACCESS BANK nayo yatanze ikirego kiregera kwiregura,isaba ko KAGABA na RESTOTEL bafatanya kuyishyura 37.392.117 Frw y'umwenda, kandi ko inyungu zawo zizakomeza kubarwa kugeza umwenda wose wishyuwe.inasaba guhabwa 3.739.211 Frw y'igihembo cya Avoka. Urukiko Rwategetse KAGABA kwishyura 63.316.676 Frw akomoka k'umwenda yafashe ku giti cye,hamwe n'uwa RESTOTEL yishingiye, ni ukuvuga 62.816.676 Frw y'umwenda-remezo, n'inyungu zawo hamwe nay'igihembo cya Avoka, Rutegeka ko habaho irangizarubanza ry'agateganyo kabone n'ubwo urubanza rwajuririrwa.

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KAGABE yaje kujurira mu Rukiko rw'Ikirega ku mpamvu z'uko: (1) yategetswe kwishyura umwenda we n'uwa RESTOTEL iyi,itaranahamagawe mu rukiko ngo yosobanure,hirengagizwa ko ari imyenda ibiri itandukanye,(2) yagombaga gusa kwishyuzwa umwenda-remezo yafashe ku giti cye hamwe n'inyungu zayo na RESTOTEL ikishyuzwa umwenda remezo yafashe hamwe n'inyungu zawo,ikindi ni buryo inyungu zagiye zishyirwa ku mwenda-remezo zikongera zikabyara izindi (capitalisation) mu buryo budasobanutse. ACCESS BANK yashubije yuko : (1)KAGABE agomba kwishyura umwenda we hamwe n'uwa RESTOTEL kubera yuko yayishingiye, aniyemerera mu masezerano yagiranye na Banki yuko azahita ayishyura umwenda wa RESTOTEL bitabaye ngombwa ko ubwishyu bubanza gushakirwa mu mutungo wayo,(2)Umwenda wabazwe hashingiwe ku masezerano y'inguzanyo bagiranye,ateganya mu ngingo yayo ya 3 ko inyungu zisanze z'umwenda ari 18 %, ariko ko mu gihe habaye ubukererwe ziziyongeraho 4 %, zose hamwe zikaba 22 %, ko rero umwenda Kagaba agomba kuyishyura utiyongereye bitewe n'uko wabazwe hakoreshejwe uburyo bwa "capitlisation". ACCESS BANK yahise itanga ubujurire bw'uririye k'ubundi isaba yuko KAGABA yishyura umwenda yafashe ku giti cye hiyongereyeho 78.910.393 Frw y'umwenda wa RESTOTEL, nkuko agaragarira kuri "historiques" zayo,akanishyura amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kubera gukomeza kuyishora mu manza ku maherere. Mu gusubiza ku bujurire bw'uririye ku bundi busaba amafaranga y'ikurikirana rubanza n'igihembo cya avoka, KAGABA avuga yuko ACCESS BANK itayahabwa kuko ariyo yatumye yiyambanza inkiko kugira ngo arenganurwe. Incamake y'icyemezo:1.Mu gihe uwatse

umwenda ananiwe kuwishyura. Umwishingizi we akaba yaremereye Banki yuko, uwo yishingiye nananirwa kwishyura, azahita amwishurira hatabanje gushakisha ubwishyu mu mutungu w'uwishingiye. Banki ifite uburenganzira bwo kurega uwishingiye umwenda wenyine, bitayabe ngombwa yuko uwishingiye ahamagazwa mu Rukiko. 2. Inyungu zibyawwe n'imari remezo zishobora nazo kubyara izindi nyungu biturutse k'urubanza cyangwa ku masezerano yihariye ababuranyi b'impande zombi baba bashikirije Urukiko, bityo uburyo bwa "capitalisation des intérêts" ntabwo bushobora gukoreshwa mu kubara inyungu mugihe nta rubanza cyangwa amasezerano yihariye yigeze abaho. 3. Urega ntabwo yahabwa amafaranga y'ikurikiranarubanza, n'igihembo cya Avoka mu gihe Uregwa afite ibyo yatsindiye mu rubanza. Ubujurire bufite ishingiro kuri bimwe; Ubujurire bw'Uriye ku bundi nta shingiro; Uwareze ategutse kwishyura uwarezwe 66.936.857 Rwf; Urubanza rwajuririwe rurahindutse; Amagarama y'Urubanza aherereye ku mpande zombi. Amategako yashingiweho: Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 33, 52, 560;

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Acte de cautionnement solidaire et indivisible yo kuwa 30/05/2006, Ingingo ya 2; Amasezerano y'inguzanyo yo kuwa 15/02/2007; Nta manza zifashishijwe. Ibitekerezo by'abahanga: F. Nteziryayo, *Le Cautionnement, Etude comparative des Droits belge, français et rwandais*, Imprimerie Pallotti – Presse, 1995, p.15 Imikuriza I. IMITERERE Y'URUBANZA [1] Kuwa 14/10/2004, ACCESS BANK Ltd (ex-BANCOR SA) yagiranye na Kagaba Pierre Corneille amasezerano y'inguzanyo, maze imuguriza 20.000.000 Frw, nawe ayiha ingwate igizwe n'inzu ye iri mu kibanza n° 1365 kiri ku Kimihurura, banumvikana ko mu gihe Kagaba Pierre Corneille atishyuye iyo nguzanyo, iyo nzu ye izatezwa cyamunara nta rubanza rubayeho (vente par voie parée). [2] Kuwa 09/12/2005, ACCESS BANK Ltd yakoranye na Kagaba Pierre Corneille andi masezerano y'inguzanyo bumvikana ko uwo mwenda ubaye 35.000.000 Frw, ko inzu ye iri ku Kimihurura ikomeje kuba ingwate yayo, ko mu gihe havutse ikibazo hagati y'impande zombi kizakemurwa binyuze mu nzira y'Ubukemurampaka, bitashoboka, kigakemurwa n'inkiko z'u Rwanda zibifitiye ububasha. [3] Kuwa 20/12/2005, impande zombi zagiranye amasezerano y'ubugwate, bumvikana ko Kagaba Pierre Corneille abereyemo ACCESS BANK Ltd umwenda ungana na 35.000.000 Frw, ko inzu ye iri ku Kimihurura ikomeje kuba ingwate yayo, ko mu gihe havutse ikibazo, iyo nzu izatezwa cyamunara nta rubanza rubayeho (vente par voie parée). [4] Kuwa 30/05/2006, ACCESS BANK Ltd yagiranye na Sosiyete yitwa Rwanda Restaurants & Hotels Sarl (RESTOTEL Sarl) ihagarariye na Kagaba Pierre Corneille hamwe na Muhire Frédéric, aho Banki yayigurije 39.000.000 Frw, bumvikana ko ingwate zayo ari inzu ya Kagaba Pierre Corneille iri mu kibanza n° 2457 kiri i Nyamirambo hamwe n'inzu ya Muhire Frédéric iri mu kibanza n° 11391 kiri i Remera, mu Mujyi wa Kigali, banumvikana ko ikibazo kizavuka hagati y'impande zombi kizakemurwa binyuze mu nzira y'Ubukemurampaka, bitashoboka, hakiyambazwa inkiko z'u Rwanda zibifitiye ububasha. Iyo nguzanyo yishingiye kandi na Kagaba Pierre Corneille hamwe na Muhire Frédéric (cautions solidaires et indivisibles). [5] Kuwa 15/02/2007, ACCESS BANK Ltd na Kagaba Pierre Corneille bagiranye amasezerano ya "restructuration" y'umwenda we, bumvikana ko Kagaba Pierre Corneille ayifitiye 35.000.000 Frw y'umwenda, ko inzu ye iri ku

Kimihurura ikomeje kuba ingwate yayo, ariko ko mu gihe havutse ikibazo, kizakemurwa mu nzira y'Ubukemurampaka, cyananirana, hakiyambazwa inkiko z'u Rwanda zibifitiye ububasha.

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- [6] Kuwa 31/01/2011, ACCESS BANK Ltd yandikiye Kagaba Pierre Corneille ibaruwa y'integuza imusaba kuyishyura 7.300.853 Frw y'umwenda ayibereyemo ku giti cye akanayishyura 29.537.238 Frw y'umwenda wa RESTOTEL Sarl yishingiye, yose hamwe akaba 36.838.091 Frw.
- [7] Kuwa 25/05/2011, ACCESS BANK Ltd yatangiye imihango yo kugurisha inzu ya Kagaba Pierre Corneille iri ku Kimihurura yahawe ingwate, maze Umuhesha w'Inkiko amushyikiriza inyandiko y'ifatira ryayo (exploit de commandement valant saisie immobilière). Muri iyo nyandiko ACCESS BANK Ltd ikaba yaramusabaga ko yayishyura 37.392.117 Frw y'umwenda ayibereyemo mu gihe cy'iminsi 15, atayishyura, iyo nzu igatezwa cyamunara kugira ngo Banki yiyishyure uyu mwenda wayo. [8] Kagaba Pierre Corneille yareze ACCESS BANK Ltd mu Rukiko Rukuru rw'Ubucuruzi avuga ko atakwishyura 37.392.117 Frw y'umwenda, ko kandi inyandiko y'Umuhesha w'Inkiko ikwiye guteshwa agaciro, maze ACCESS BANK Ltd ikamuha 2.000.000 Frw y'ikurikiranarubanza. [9] ACCESS BANK Ltd nayo yatanze ikirego kiregera kwiregura muri urwo Rukiko isaba ko Kagaba Pierre Corneille na RESTOTEL Sarl bafatanyaga kuyishyura 37.392.117 Frw akomoka ku myenda yabaguriye yavuzwe haruguru, ariko ko inyungu zayo zizakomeza kubarwa kugeza umwenda wose wishyuwe bakanayihira 3.739.211 Frw y'igihembo cya Avoka. [10] Urwo Rukiko rwaciye urubanza, rutegeka Kagaba Pierre Corneille kwishyura ACCESS BANK Ltd 63.316.676 Frw akomoka ku myenda yaguriye Kagaba Pierre Corneille na RESTOTEL Sarl yishingiye, ni ukuvuga 62.816.676 Frw y'umwenda-remezo n'inyungu zawo hamwe na 500.000 Frw y'igihembo cya Avoka, rutegeka kandi ko hagomba kubaho irangizarubanza ry'agateganyo kabone n'ubwo urwo rubanza rwajuririrwa. [11] Kagaba Pierre Corneille yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rw'Ubucuruzi rutagombaga kumutegeka kwishyurira RESTOTEL Sarl umwenda wayo kuko itigeze ihamagarwa mu rubanza kugira ngo iwuburane, ko ahubwo rwagombaga kumutegeka kwishyura ACCESS BANK Ltd 10.000.000 Frw y'umwenda ayibereyemo ku giti cye. ACCESS BANK Ltd nayo yatanze ubujurire bwuririye ku bundi isaba ko Kagaba Pierre Corneille yayishyura 16.592.761 Frw akomoka ku mwenda yafashe ku giti cye hiyongereyeho 78.910.393 Frw y'umwenda wa RESTOTEL Sarl yishingiye, yose hamwe akaba 95.503.700 Frw. [12] Urubanza rwaburanishijwe mu ruhamwe kuwa 16/09/2014, Kagaba Pierre Corneille ahagarariwe na Me Rusanganwa Jean Bosco afatanyije na Me Munyamasoko Jovit, naho ACCESS BANK Ltd ihagarariwe na Me Buzayire Angèle. II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO
1. Kumenya niba Kagaba Pierre Corneille nk'umwishingizi yategekwe kwishyura umwenda wa RESTOTEL Sarl idahamagajwe mu rubanza kugira ngo iwuburane

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[13] Me Rusanganwa Jean Bosco na Me Munyamasoko Jovit bahagarariye Kagaba Pierre Corneille bavuga ko Urukiko Rukuru rwagombaga kumutegeka kwishyura ACCESS BANK Ltd 7.300.853 Frw y'umwenda-remezo yafashe ku giti cye hamwe n'inyungu zawo, yose hamwe akaba 10.000.000 Frw, ko rutubahirije ingingo ya 33 CCLIII yahindutse iya 64 y'Itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano mu Rwanda kubera ko rwamutegetse kuyishyura 63.316.676 Frw harimo n'amafaranga akomoka ku mwenda wafashwe na RESTOTEL Sarl, rwirengagiza ko ari imyenda ibiri itandukanye, ni ukuvuga 7.300.853 Frw asigaye ku mwenda we wishingiwe n'umugore we na 29.537.238 Frw akomoka ku mwenda wa RESTOTEL Sarl yishingiye ukaba ufite n'amasezerano y'inguzanyo, ay'ingwate n'igihe uzishyurirwa bitandukanye n'umwenda yafashwe ku giti cye. [14] Bavuga ko urwo Rukiko rwagombaga guhamagaza RESTOTEL Sarl muri urwo rubanza kugira ngo iburane umwenda wayo kuko amasezerano y'inguzanyo agira inkurikizi hagati y'abayagiranye gusa, bivuze ko atagomba kumubangamira ku giti cye hakurikijwe ibiteganywa n'ingingo ya 64 y'Itegeko n° 45/2011 ryavuzwe haruguru, noneho ingano yawo yamara kumenyekana akaba aribwo bagombaga gufatanya kuwishyura (paiement in solidum) nk'uko amasezerano y'ubwishingire abiteganywa. [15] Me Buzayire Angèle uburanira ACCESS BANK Ltd avuga ko nta kosa urwo Rukiko rwakoze ubwo rwategekaga Kagaba Pierre Corneille kuyishyura 63.316.676 Frw abariwemo n'umwenda wa RESTOTEL Sarl kubera ko mu masezerano y'ubwishingire Kagaba Pierre Corneille yagiranye n'iyo Banki yiyemereye ko azahita ayishyura umwenda wa RESTOTEL Sarl bitabaye ngombwa ko ubwishyu bubanza gushakirwa mu mutungo wayo (Il a renoncé au bénéfice de discussion et de division), ko kandi uwo mwenda wari ugeze igihe cyo kwishyurwa (exécution) kuko Kagaba Pierre Corneille na RESTOTEL Sarl bari barananiwe kuwishyura mu gihe cyumvikanyweho mu masezerano bituma yiyambaza Umuhesha w'Inkiko kugira ngo agurishe ingwate yayo. UKO URUKIKO RUBIBONA [16] Ku kibazo cyo kumenya niba ACCESS BANK Ltd ifite uburenganzira bwo gukurikirana Kagaba Pierre Corneille wishingiye umwenda itabanje kuwukurikiranaho RESTOTEL Sarl yawufashe, ingingo ya 560 y'Igitabo cya gatatu cy'urwunge rw'amategako y'imbonezamubano cyakurikizwaga igihe Kagaba yaregaga, iteganya ko "Uwishingiye undi ashinzwe kwishyura ugomba kwishyurwa gusa iyo ugomba kwishyura atashoboye kubikora, ubwishyu bugomba kubanza gushakwa mu bintu by'ugomba kwishyura, keretse rero uwamwishingiye yariyemereye kuzahita yishyura bitabaye ngombwa ko ubwishyu bubanza gushakirwa mu bintu by'ugomba kwishyura..." . [17] Naho umuhanga mu mategeko witwa Nteziryayo Faustin mu gitabo cye cyitwa "Le Cautionnement, Etude comparative des Droits belge, français et rwandais", yasobanuye ko uwishingiye undi wiyemereye kuzahita yishyura bitabaye ngombwa ko ubwishyu bubanza gushakirwa mu bintu by'ugomba kwishyura (caution solidaire et indivisible) ashobora

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kwishyuzwa n'ugomba kwishyurwa (créancier) umwenda wose amubereyemo atiriwe abanza kwishyura uwafashe umwenda yishingiye (débiteur garanti)¹. [18] Ku birebana n'uru rubanza, mu ngingo ya mbere n'ya 2 z'inyandiko yiswe "Acte de cautionnement solidaire et indivisible" yo kuwa 30/05/2006, Kagaba Pierre Corneille yiyemereye anasinyira ACCESS BANK Ltd ko azahita ayishyura 39.000.000 Frw y'umwenda- remezo yaguriye RESTOTEL Sarl nk'uwafashe umwenda (débiteur principal) hiyongereyeho n'inyungu zawo bitabaye ngombwa ko ibanza gushakira ubwishyu mu mutungo wa RESTOTEL Sarl yishingiye. [19] Hashingiwe ku mategeko, amasezerano n'ibisobanuro by'umuhanga byavuzwe haruguru, Urukiko rurasanga kuba Kagaba Pierre Corneille yaremereye ACCESS BANK Ltd ko azahita ayishyura umwenda yishingiye wahawe RESTOTEL Sarl wavuzwe haruguru, ubwishyu butabanje gushakirwa mu mutungo wayo, bigaragara ko iyo Banki yari ifite uburenganzira bwo kumurega uwo mwenda wenyine, bivuze rero ko ibyo Kagaba aburanisha by'uko RESTOTEL Sarl yagombaga guhamagazwa mu rubanza kugira ngo iburane umwenda wayo, ingano yawo yamara kumenyekana akaba aribwo bafatanyaga kuwishyura ACCESS BANK Ltd nta shingiro bifite.

2. Kumenya ingano y'umwenda Kagaba Pierre Corneille agomba kwishyura ACCESS BANK Ltd [20] Me Rusanganwa Jean Bosco na Me Munyamasoko Jovit bahagarariye Kagaba Pierre Corneille bavuga ko Urukiko Rukuru rutagombaga kumutegeka kwishyura ACCESS BANK Ltd 63.316.676 Frw wenyine, ko ahubwo rwagombaga kumutegeka kuyishyura 7.300.853 Frw y'umwenda-remezo yafashe ku giti cye hamwe n'inyungu zayo, yose hamwe akaba 10.000.000 Frw, naho RESTOTEL Sarl ikaziyishyurira 49.000.000 Frw, yose hamwe akaba 59.000.000 Frw kuko rutasobanuye uburyo 37.392.117 Frw yaregeye ku rwego rwa mbere yiyongereyeho 25.924.559 Frw mu gihe cy'amezi 11 gusa, ayo mafaranga akaba 63.316.676 Frw, bakaba basanga ko kugira ngo uriya mwenda wiyongere vuba kugeza kuri kiriya kigero nta kindi cyabiteye atari uko wabazwe ku buryo inyungu zagiye zishyirwa ku mwenda-remezo zikongera zikabyara izindi (capitalisation). [21] Bavuga ariko ko mu gihe Urukiko rw'Ikirenga rwasanga Kagaba Pierre Corneille agomba kwishyura ACCESS BANK Ltd umwenda wafashwe na RESTOTEL Sarl, rwamutegeka kuyishyurira 49.000.000 Frw agaragara kuri "historiques" zatanze n'iyi Banki hiyongereyeho 10.000.000 Frw asigaye ku mwenda yafashe ku giti cye, yose hamwe akaba 59.000.000 Frw. [22] Me Buzayire Angèle uburanira ACCESS BANK Ltd avuga ko impamvu umwenda Kagaba afitiye ACCESS BANK Ltd wavuye kuri 37.392.117 Frw ukaba 63.316.676 Frw yategetswe kwishyura wenyine ku rwego rwa mbere ari uko wabazwe hashingiwe ku masezerano y'inguzanyo yagiranye n'iyi Banki, ateganya mu ngingo yayo ya 3 ko inyungu zisanzwe z'umwenda ari 18 %, ariko ko mu gihe habaye ubukererwe ziziyongeraho 4 %, zose 1La caution solidaire a renoncé à cet avantage du bénéfice de discussion. Le créancier peut lui réclamer paiement sans même s'adresser préalablement au débiteur garanti, par NTEZIRYAYO Faustin, Le Cautionnement, Etude comparative des Droits belge, français et rwandais, 1994, P.15.

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hamwe zikaba 22 %, ko rero umwenda Kagaba agomba kuyishyura utiyongereye bitewe n'uko wabazwe hakoreshejwe uburyo bwa "capitlisation". [23] Avuga ko ahubwo ACCESS BANK Ltd itanze ubujurire bwuririye ku bundi kugira ngo Urukiko rw'Ikirenga rutegeke Kagaba Pierre Corneille kuyishyura 16.592.761 Frw akomoka ku mwenda yafashe ku giti cye hiyongereyeho 78.910.393 Frw y'umwenda wa RESTOTEL Sarl yishingiye, yose hamwe akaba 95.503.700 Frw agaragarira kuri "historiques" zayo yatanze muri uru Rukiko. UKO URUKIKO RUBIBONA [24] Ku byerekeye agaciro k'amasezerano, ingingo ya 33 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano yakurikizwaga igihe Kagaba yaregaga, yateganyaga ko "amasezerano akozwe ku buryo bukurikije amategeko, aba itegeko ku bayagiranye, agomba kubahirizwa nta buryarya". [25] Ku birebana n'uru rubanza, inyandiko ziri muri dosiye zirimo ibaruwa y'integuza yo kuwa 31/01/2011, zigaragaza ko kuri iyi tariki ACCESS BANK Ltd yamenyesheje Kagaba Pierre Corneille ko ayibereyemo 7.300.853 Frw akomoka ku mwenda yafashe ku giti cye hamwe na 29.537.238 Frw akomoka ku mwenda wafashwe na RESTOTEL Sarl yishingiye, yose hamwe akaba 36.838.091 Frw. [26] Mu masezerano y'inguzanyo yo kuwa 15/02/2007 ACCESS BANK Ltd yagiranye na Kagaba Pierre Corneille igihe yamugurizaga 35.000.000 Frw y'umwenda-remezo, no mu masezerano y'inguzanyo yo kuwa 30/05/2006, iyo Banki yagiranye na RESTOTEL Sarl igihe yayigurizaga 39.000.000 Frw y'umwenda-remezo, bumvikanye ko buri mwenda uzishyurwa mu gihe cy'amzei 36 ku gipimo cy'inyungu zisanzwe zingana na 18 %, ariko ko mu gihe habaye ubukererwe, izo nyungu ziziyongeraho 4 %, zose hamwe zikaba 22 %. [27] Urukiko rurasanga kuwa icyo gihe cyose Kagaba Pierre Corneille atarigeze yishyura ACCESS BANK Ltd umwenda yamugurije n'inyungu zawo nk'uko byari biteganyijwe mu masezerano yavuzwe haruguru nk'uko na Kagaba ubwe yabiyemereye imbere y'uru Rukiko. [28] Inyandiko yiswe "Echelle d'intérêts" ACCESS BANK Ltd yashyikirije uru Rukiko ziri muri dosiye (C34-C35) zigaragaza ko Kagaba Pierre Corneille agomba kuyishyura 16.592.761 Frw akomoka ku mwenda yafashe ku giti cye hamwe na 78.910.939 Frw akomoka ku mwenda wa RESTOTEL Sarl yishingiye, yose hamwe akaba 95.503.700 Frw, ariko Kagaba akaba atemera uyu mubare kuko atumva aho waturutse. [29] Ku byerekeranye n'ikibazo cy'uburyo umwenda Kagaba yishyuzwa na Banki wabazwe, inyandiko yiswe "Echelle d'intérêts" igaragaza ko Banki yafashe inyungu zibyawe n'umwenda- remezo nazo zikabyara izindi nyungu (système de capitalisation des intérêts) n'ubwo uburanira Banki abihakana. [30] Ku birebana n'uburyo inyungu zigomba kubarwa, ingingo ya 52 CCLIII, iteganya ko "Inyungu zibyawe n'imari y'iremezo zishobora nazo kubara izindi nyungu biturutse k'urubanza

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cyangwa ku masezerano yihariye, zipfa gusa kuba, haba mu kirego cyangwa mu masezerano, ari nyungu z'umwaka wuzuye". [31] Urukiko rurasanga mu kwemeza umwenda Kagaba agomba kwishyura ACCESS BANK Ltd rutashingira ku mubare w'umwenda ugaragara mu nyandiko yiswe "Echelle d'intérêts" kuko wabazwe hashingiwe kuri "système de capitalisation des intérêts", ubwo buryo bukaba butujuje ibiteganywa n'ingingo ya 52 CCLIII yavuzwe haruguru kubera ko nta rubanza cyangwa amasezerano yihariye ababuranyi b'impane zombi barushyikirije bigaragaza ko amafaranga Kagaba azishyuzwa azaba abazwe muri bene ubwo buryo. Kuba ahubwo

uburanira Banki abihakana nk'uko byavuzwe haruguru, byumvikanisha ko nawe yemera ko ubwo buryo bwa "capitalisation des intérêts" butagombaga gukoreshwa mu kumubarira inyungu. [32] Urukiko rurasanga ahubwo Kagaba Pierre Corneille agomba kwishyura ACCESS BANK inyungu zisanzwe n'iz'ubukererwe z'amafaranga ayifitiye zibariwe ku gipimo cya 22 % ku mwaka nk'uko ziteganywa n'amasezerano bagiranye yavuzwe haruguru zibazwe guhera kuwa 31/01/2011, igihe iyo Banki yamwandikiraga ibaruwa y'integuza imusaba kuyishyura amafaranga yayo ayibereyemo kugera kuwa 17/10/2014, umunsi w'icibwa ry'urubanza, ni ukuvuga mu gihe cy'iminsi 1.337, izo nyungu zikaba zibazwe mu buryo bukurikira: $36.838.091 \text{ Frw} \times 22 \times \text{iminsi } 1.337 = 30.098.766 \text{ Frw}$. 100×360 [33] Urukiko rurasanga umubare w'amafaranga Kagaba Pierre Corneille agomba guha ACCESS BANK ari $36.838.091 \text{ Frw}$ y'umwenda-remezo + $30.098.766 \text{ Frw}$ y'inyungu zayo, yose hamwe akaba $66.936.857 \text{ Frw}$, bivuze rero ko ubujurire bwayo bwuririrye ku bundi bugamije kongererwa ingano y'umwenda Kagaba ayibereyemo nta shingiro bufite. 3. Ku birebana n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka [34] Me Buzayire Angèle uburanira ACCESS BANK Ltd avuga kandi ko itanze ubujurire bwuririrye ku bundi kugira ngo uru Rukiko rutegeke Kagaba Pierre Corneille kuyishyura amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ahwanye na 10% y'amafaranga imwishyuza muri uru rubanza kuko ariwe wakomeje kuyishyura mu manza ku maherere. [35] Ababuranira Kagaba Pierre Corneille bavugaga ko ataha ACCESS BANK Ltd ayo mafaranga kuko ariyo yatumye yiyambanza inkiko kugira ngo arenganurwe. UKO URUKIKO RUBIBONA [36] Urukiko rurasanga ACCESS BANK Ltd itahabwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka isaba mu bujurire bwuririrye ku bundi kuko Kagaba Pierre Corneille afite ibyo atsindiye muri uru rubanza, bivuze rero ko ubwo bujurire bwayo kuri iyi ngingo nta shingiro bufite. III. ICYEMEZO CY'URUKIKO

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[37] Rwemeje ko ubujurire bwa Kagaba Pierre Corneille bufite ishingiro kuri bimwe; [38] Rwemeje ko ubujurire bwa ACCESS BANK Ltd bwuririrye ku bundi nta shingiro bufite; [39] Rutegetse Kagaba Pierre Corneille kwishyura ACCESS BANK Ltd $66.936.857 \text{ Frw}$; [40] Ruvuze ko imikirize y'urubanza RCOM 0133/11/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 17/04/2012 ihindutse gusa ku birebana n'ingano y'amafaranga Kagaba Pierre Corneille agomba kwishyura ACCESS BANK Ltd; [41] Rutegetse Kagaba Pierre Corneille gufatanya na ACCESS BANK Ltd gutanga amagarama y'uru rubanza angana na 100.000 Frw , ni ukuvuga ko buri wese agomba gutanga 50.000 Frw .

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