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Imanza z'imbonezamubano, iz'inshinjabyaha, iz'ubucuruzi, iz'umurimo, iz'ubutegetsi, n'izireba amategeko anyuranye n'Itegeko Nshinga

Igitabo cya mbere 2011, nº 8

Mutarama, 2011

Abagize komite y'ubwanditsi bw'icyegeranyo cy'imanza

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KIBUKA Jean luc : Umwe mu bagize Komite, Umucamanza mu Rukiko Rukuru rw'Ubucuruzi

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KABASHA Védaste : Umwanditsi wa Komite, Umushakashatsi mu by'amategeko mu Rukiko rw'Ikirenga

Urwego ruhagarariye Icyegeranyo: URUKIKO RW'IKIRENGA

Icyegeranyo cy'ibyemezo b'inkiko ni igitabo gikusanya imanza zatoranijwe mu manza zaciwe n'inkiko. Iryo toranya rikorwa harebwa imanza zaba zifite icyo zigisha kandi zaba icyitegererezo mu gukemura ibibazo bisa. Gifasha kandi uwaba ashaka kubona urubanza mu ngeri runaka z'amategeko atabanje gusoma urupapuro ku rundi rw'urubanza abonye. Gitangazwa buri gihembwe n'Urwego rw'Ubutabera rurangajwe imbere n'Urukiko rw'Ikirenga. Gitegurwa na Komite igizwe n'abahagarariye inkiko zose z' u Rwanda, Ubugenzuzi bw'Inkiko na serivisi y'ubushakashatsi mu Rukiko rw'Ikirenga.

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Uburyo icyegeranyo gikoreshwa

Muri iki cyegeranyo, buri rubanza rubanzirizwa n'imirimo yarukozweho, igaragaza urukiko rwaciye urubanza bwa nyuma, ababuranyi, ikiburanwa, numero z'urubanza, itariki urubanza rwasomeweho, amagambo mpine, ibyerekezo by'urukiko. Hanyuma hagakurikiraho urubanza uko rwakabaye. Icyo twasobanura ni amagambo mpine n'ibyerekezo by'urukiko.

Amagambo mpine:

Ni amagambo agaragaza mu buryo buhinnye ingeri y'amategeko urubanza rubarizwamo n'ibibazo by'ibyenzi byakemuwe n'umucamanza muri urwo rubanza. Ni indorerwamo itanga igitekerezo ku ishusho y'urubanza cyangwa ku bibazo by'ingenzi biruvugwamo bitabaye ngombwa ko rusomwa ijambo ku rindi.

Ibyerekezo by'urukiko:

Mu gukemura ikibazo runaka kigaragara mu rubanza, icyemezo cy'umucamanza gifatwa nk'icyerekezo urukiko rufashe ku kibazo rukemuye no ku bindi bibazo bisa ruzongera kuregerwa cyangwa bizaregerwa inkiko ziri ku rwego rumwe cyangwa ku nzego zo hasi. Akaba ari nayo mpamvu bivugwa ko imanza zaciwe ari kimwe mu byifashishwa mu gukemura ibibazo by'amategeko, nk'uko hifashishwa amategeko, ibitekerezo byatangajwe n'impuguke mu mategeko, amahame rusange y'amategeko, umuco n'ibindi.

IRIBURIRO

Basomyi bacu, tubifurije Noheli nziza n'umwaka mushya muhire wa 2011. Iyi numero itangajwe ni igitabo cya mbere muri uyu mwaka dutangiye, ikaba iya 8 kuva Icyegerenyo cy'ibyemezo by'inkiko gitangiye gutangazwa mu mwaka wa 2005. Ku byerekeranye no gutangaza numero z'ibyegeranyo, ugereranyije n'indi myaka yahise, umwaka ushize waranzwe no kubahiriza amatariki yagenwe yo gutangaza numero buri gihembwe, bityo hakaba haratangajwe numero enye. Akaba ari na wo muhigo tuzihatira guhigura muri uyu mwaka dutangiye.

Turashimira abasomyi bakomeje kutugezaho ibitekerezo byabo bashima aka gatabo. Gusa, twongeye gusaba ko n'abandi batugezaho ibitekerezo byabo haba kuri numero zahise, haba kuri iyi numero, ndetse no kuri numero zizatangazwa mu gihe kiri imbere, batubwira ibyari bikwiye guhinduka cyangwa kuvugururwa, kugira ngo aka gatabo karusheho kuba igikoresho cyifashishwa haba mu mirimo y'inkiko cyangwa ku bifashisha amategeko bose.

Tuboneyeho kandi kongera gushishikariza abanyamategeko muri rusange n'abakoresha amategeko mu kazi kabo ka buri munsi, gusesengura no gutanga ibitekerezo ku bibazo by'amategeko byasuzumwe mu manza zitangazwa.

Muri iyi numero, turasangamo urubanza rurebana n'iyubahirizwa ry'Itegeko Nshinga, iz'inshinjabyaha, iz'imbonezamubano, iz' ubucuruzi, ururebana n'umurimo n'ururebana n'ubutegetsi.

CYANZAYIRE Aloysie

Perezida w'Urukiko rw'Ikirenga akaba na
Perezida w'Inama Nkuru y'Ubucamanza.

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N° Y'URUBANZA: RS/INCOSNT/CIV 0002/09/CS
ITARIKI Y'URUBANZA: 18/06/2010
UWATANZE IKIREGO: UWIMANA Jeannette na KANANGA Léopold (basaba gukuraho ingingo ya 106 y'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Inkiko nk'uko yahinduwe kandi ryujujwe kugeza ubu)

AMAGAMBO MPINE

IMANZA ZIGAMIJE GUKURAHO INGINGO INYURANYE N'ITEGEKO NSHINGA- UBUBASHA BW'URUKIKO RUKURU MU MANZA Z'IMBONEZAMUBANO KU RWEGO RW'UBUJURIRE-KUBA INGINGO IDATEGANYA IBISABWA BIMWE KU BAJURIRA KU RWEGO RWA MBERE NO KU RWEGO RWA KABIRI-KUTABIFATA NK'IVANGURA MU BABURANYI.

IKIBAZO CY' ITEGEKO RINYURANYE N'AMASEZERANO MPUZAMAHANGA MU MANZA ZIREBA AMATEGEKO ANYURANYIJE N'ITEGEKO NSHINGA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Urukiko Rukuru ruburanisha imanza z'imbonezamubano zajuririwe zaraciwe ku rwego rwa kabiri n'Urukiko Rwisumbuye mu gihe izo manza zitagaragaza na busa impamvu zashingiyeho mu icibwa ryazo, zishingiye ku itegeko ritariho cyangwa zaciwe n'urukiko rutabifitiye ububasha, zaciwe hashingiwe ku kimenyetso , inyandiko cyangwa imyanzuro byatanzwe nyuma yo gupfundikira iburanisha kandi hatabaye gusubukura iburanisha, zaciwe n'inteko itujuje umubare ugenwe, zasomwe n'umucamanza utaraziburanishije, zitaburanishijwe mu ruhame kandi nta muhezo wategetswe.

Kuba ingingo y'itegeko itagira icyo isaba umuburanyi ujurira bwa mbere ariko ikagira icyo itegeka ujurira ku rwego rwa kabiri, nta vangura iba igaragaje kuko abantu bose bajurira ku rwego rwa kabiri basabwa bimwe, hakaba rero hatagereranywa abantu batari ku rwego rumwe.

Kuba ingingo y'itegeko yaba inyuranye n'amasezerano mpuzamahanga, icyo kibazo nticyashyikirizwa Urukiko rw'Ikirenga nk'ikirego gitanzwe mu rwego rw'uko itegeko runaka rinyuranye n'Itegeko Nshinga.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUBURANISHA IKIREGO CYEREKERANYE NO GUSABA GUKURAHO INGINGO Y'ITEGEKO KUKO INYURANYIJE N'ITEGEKO NSHINGA, RUKIJIJE MU RUHAME URUBANZA RS/ INCONST/CIV 0002/09/CS NONE KU WA 18/06/2010 MU BURYO BUKURIKIRA:

ABATANZE IKIREGO:

UWIMANA Jeannette na KANANGA Léopold bene Kananga Paul na Mukagatare Monique, batuye mu Biryogo, Nyarugenge, Umujyi wa Kigali, baburanirwa na Me Kazungu Jean Bosco.

IKIREGERWA :

Gusaba gukuraho ingingo ya 106 y'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Inkiko nk'uko yahinduwe kandi ryujujwe kugeza ubu, (itegeko - ngenga n° 07/2004 du 25/4/2004 ryahinduwe kandi ryuzuzwa n'itegeko n° 14/2006 ryo kuwa 22/03/2006 ryasimbuwe n'itegeko ngenga n° 51/2008 ryo kuwa 09/09/2008).

Imiterere Y'urubanza

[1] Mu gihe cy'iburanisha ry'urubanza RCAA 0229/07/KIG mu Rukiko Rukuru aho UWIMANA Jeannette na KANANGA Léopold baburana na MUKANDOLI Mariciana inzu batsindiwe, Me KAZUNGU Jean Bosco ubaburanira yasabye ko iburanisha risubikwa kugira ngo abanze atange ikirego mu Rukiko rw'Ikirenga kijyanye n'uko ingingo ya 106 y'Itegeko ngenga n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, Imikorere n'Ububasha by'Inkiko nk'uko ryahinduwe kandi ryujujwe kugeza ubu, inyuranije n'iya 190 y'Itegeko Nshinga ryo ku wa 4/6/2003 nk'uko ryavuguruwe kugeza ubu, ndetse n'amategeko mpuzamahanga akoreshwa mu Rwanda.

[2] Me KAZUNGU, mu izina rya UWIMANA Jeannette na KANANGA Léopold yatanze icyo kirego muri uru Rukiko gihabwa n° RS/INCONST/CIV 0002/09/CS. Avuga ko ingingo ya 106 igika cya kabiri y'Itegeko Ngenga rimaze kuvugwa, iteganya ibyangombwa bidashoboka kuzuzwa kugira ngo ubujurire bwa kabiri bw'urubanza bwemerwe mu Rukiko Rukuru, ikaba kandi inyuranije n'amategeko mpuzamahanga ari hejuru y'amategeko ngenga n'asanzwe hashingiwe ku ngingo ya 190 y'Itegeko Nshinga.

[3] Urubanza rwaburanishijwe mu ruhame tariki ya 19/04/2010, urukiko rwumva ibisobanura byatanzwe kuri icyo kirego na Me Kazungu Jean Bosco n'Intumwa ya Leta Me RUBANGO K. Epimaque.

I. KU BYEREKEYE IYAKIRWA RY'IKIREGO N'UBUBASHA BW'URUKIKO

[4] Ingingo ya 352 y'Itegeko n° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu, iteganya ko kugira ngo ikirego cy'umuburanyi cyandikwe, agomba gutanga ingwate y'amagarama. Muri uru rubanza KANANGA Léopold nta ngwate y'amagarama yatanze, ikirego cye rero nticyagombaga kwandikwa kuko atubahirije ibiteganywa n'ingingo imaze kuvugwa, kikaba rero kitagomba kwakirwa ngo gisuzumwe.

[5] Ku byerekeye ikirego cyatanzwe na UWIMANA Jeannette, inyandiko ziri muri dosiye zigaragaza ko yatanze ingwate y'amagarama, ko kandi afite inyungu yo gutanga icyo kirego kuko aburana urubanza mu Rukiko Rukuru asanga ingingo aregera ishobora kumubangamira mu bujurire bwe. Icyo kirego na none kigaragaza itariki cyatangiweho, umukono wa Me KAZUNGU Jean Bosco wagitanze mu izina rye, kikaba kinerekana ikiregerwa n'impamvu ashingiraho, ndetse gifite ku mugereka kopi y'igazeti ya Leta yo ku wa 10/9/2008 irimo ingingo y'itegeko asaba ko ivanwaho. Ibisabwa n'Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu, byose yarabyubahirije, bityo ikirego cye gikwiye kwakirwa.

[6] Ku byerekeranye n'Ububasha bw'Urukiko rw'Ikirenga, ingingo ya 89 y'Itegeko Ngenga n° 01/2004 ryavuzwe iteganya ko "Urukiko rw'Ikirenga ari rwo ruburanisha ibirego byerekeranye no gusaba gukuraho itegeko ngenga, itegeko, itegeko-teka cyangwa itegeko ryemerera kwemeza amasezerano mpuzamahanga, haba kubikuraho byose cyangwa se zimwe mu ngingo zaryo zinyuranije n'Itegeko Nshinga". Nk'uko byavuzwe, Urukiko rw'Ikirenga

rwashyikirijwe ikirego kigamije gukuraho ingingo y'itegeko kuko ngo inyuranye n'Itegeko Nshinga, bityo icyo kirego kikaba kiri mu bubasha bwarwo.

II. KUBA INGINGO YA 106 IGIKA CYA 2 Y'ITEGEKO NGENGA N° 51/2008 RYO KUWA 09/09/2008 RIGENA IMITERERE, IMIKORERE N'UBUBASHA BY'INKIKO NK'UKO RYAHINDUWE KANDI RYUJUJWE KUGEZA UBU, INYURANIJE N'IYA 190 Y'ITEGEKO NSHINGA

[7] Ikibazo kigomba gusuzumwa n'urukiko ni ukureba niba koko ingingo ya 106 igika cya 2 y'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi ryujujwe kugeza ubu, inyuranije n'iya 190 y'Itegeko Nshinga.

[8] Mu gusobanura ikirego cya UWIMANA Jeannette aburanira, Me KAZUNGU avuga ko ibiteganyijwe muri iyo ngingo bigaragarira umunyamategeko wese ko ari ibintu bidashoboka kuko :

- Urubanza rutagaragaza impamvu rushingiyeho muri iki gihe rudashobora kubaho, kuko n'umucamanza watanga impamvu zidafite aho zihuriye n'ikiburanwa zaba ari impamvu.

- Urubanza rushingiye ku bimenyetso inyandiko cyangwa imyanzuro byatanzwe nyuma yo gupfundikira iburanisha kandi hatabayeho gusubukura iburanisha narwo ntirushobora kubaho no ku mucamanza ugitangira umwuga.

- Urubanza ruciwe n'inteko ituzuye narwo ubu ntirushoboka kuko imanza zicibwa n'umucamanza umwe uretse mu Rukiko rw'Ikirenga, hakaba kandi nta rukiko rwasaba umucamanza gusoma urubanza ataburanishije.

- Urubanza rutaburanishijwe mu ruhame nta muhezo wategetswe nabyo ntibyabaho.

[9] Ku bwa Me KAZUNGU, kuba ibyo byose bidashoboka, ubujurire buteganyijwe muri iyo ngingo ni nk'aho butariho cyangwa se budafitiye akamaro abanyarwanda. Ibyo bikaba rero bigaragaza ko iyo ngingo ya 106 igika cya 2 y'Itegeko ryavuzwe inyuranije n'Itangazo mpuzamahanga ku burenganzira bw'ikiremwa muntu (Déclaration universelle des droits de l'homme) mu ngingo yayo ya 8 iteganya ko umuntu wese afite uburenganzira bwo kujurira mu nkiko z'igihugu zifite ububasha (recours effectif) mu gihe habaye ibikorwa bihungabanya uburenganzira bwe bw'ibanze yemerewe n'Itegeko Nshinga n'andi mategeko. Avuga ko inanyuranije kandi n'Amasezerano mpuzamahanga mu by'imbonezamubano na politiki (Pacte international sur les droits civils et politiques) mu ngingo yayo ya 2 agace ka 3 (a) iteganya ko ibihugu byayashyizeho umukono byiyemeje ko umuntu wese uzaba yahungabanyirijwe uburenganzira buyateganyijwemo azabona uburyo bwo kurenganurwa bumufitiye akamaro (recours utile).

[10] Me KAZUNGU akomeza avuga ko nyamara ayo masezerano mpuzamahanga yombi aruta amategeko ngenga n'asanzwe hashingiwe ku ngingo ya 190 y'Itegeko Nshinga. Mu gihe rero hari ingingo y'itegeko inyuranije n'amasezerano mpuzamahanga bikaba bisobanuye mu buryo bugenekereje (par analogie) ko iba nayo inyuranije n'itegeko Nshinga, igomba rero kuvaho. Iyo ngingo kandi ngo ntiyubahiriza ihame ryo kureshya kw'ababuranyi imbere y'amategeko kuko umuntu ujurira bwa mbere adasabwa ibyangombwa bimwe n'ujurira bwa kabiri.

[11] Kuri ibyo bisobanuro ku kirego Me KAZUNGU yatanze mu izina rya UWIMANA Jeannette, Intumwa ya Leta isanga hatagaragazwa uburyo ingingo ya 106 igika cya 2 isabirwa kuvanwaho inyuranije n'iya 190 y'Itegeko Nshinga, kuko

ahubwo icyo bagaragaza ari uko inyuranyije n'ibiteganywa n'amasezerano mpuzamahanga, ibyo bikaba bitari mu bubasha bw'uru rukiko, ahubwo byasuzumwa n'Urukiko Rukuru rwajuririwe. Intumwa ya Leta ivuga na none ko kuba ibiteganywa n'iyo ngingo bigoye kubaho, bitafatwa nko kunyuranya n'ingingo ya 190 y'Itegeko Nshinga kuko yo iteganya ubusumbane mu gaciro bw'amategeko mu gihugu.

III. ISESENGURA RY'IKIBAZO N'UKO URUKIKO RUBIBONA

[12] Ingingo ya 106 igika cya kabiri y'Itegeko ngenga n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'Inkiko nk'uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko Urukiko Rukuru ruburanisha imanza z'imbonezamubano zajuririwe, zaciwe mu rwego rwa kabiri n'Urukiko Rwisumbuye, mu gihe izo manza:

1° zitagaragaza na busa impamvu zishingiyeho mu icibwa ryazo, zishingiye ku itegeko ritariho cyangwa zaciwe n'urukiko rutabifitiye ububasha;
2° zaciwe hashingiwe ku kimenyetso, inyandiko cyangwa imyanzuro byatanzwe nyuma yo gupfundikira iburanisha kandi hatabayeho gusubukura iburanisha;
3° zaciwe n'inteko itujuje umubare ugenwe;
4° zasomwe n'umucamanza utaraziburanishije;
5° zitaburanishijwe mu ruhame kandi nta muhezo wategetswe.

[13] Ingingo ya 190 y'Itegeko Nshinga yo iteganya ko iyo amaze gutangazwa mu Igazeti ya Leta, amasezerano mpuzamahanga yemejwe burundu mu buryo buteganywa n'amategeko, agira agaciro gasumba ak'amategeko ngenga n'ak'amategeko asanzwe keretse iyo adakurikijwe n'urundi ruhande.

[14] Harebwe muri rusange, Itegeko Ngenga n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, Imikorere n'Ububasha by'Inkiko nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ryubahiriza ihame ryo kujurira, riha umuburanyi uburenganzira bwo kujurirrira urubanza rwaciwe ku rwego rwa mbere n'urukiko akarushyikiriza urukiko rw'ubujurire agamije gukosoza amakosa yaba arurimo amurenganya. Ibyo niko bimeze ku manza zitangirira mu Rukiko rw'Ibanze zikajuririrwa mu Rukiko Rwisumbuye.

[15] Ingingo ya 106 igika cya kabiri y'iryo Tegeko Ngenga, iteganya ibigomba kuzuzwa kugirango urubanza rwajuririwe mu Rukiko Rwisumbuye rwakirwe mu bujurire bwa kabiri mu Rukiko Rukuru (conditions restrictives). Kuba Me KAZUNGU avuga ko ibiteganywa n'iyi ngingo bidashobora kubaho, ni ukwirengagiza ko bene ayo makosa akomeye mu icibwa ry'imanza ashobora kubaho n'ubwo atari kenshi aboneka. Ni muri urwo rwego, ku bujurire bw'Ubushinjacyaha, Urukiko rw'Ikirenga mu rubanza RPAA 0067/08/CS Ubushinjacyaha bwaburanaga na NDASHOBOKA Simon, rwemeje ko urubanza RPA 0168/07/HC/RSZ rutagaragaza na busa impamvu rushingiyeho rwemeza ko nta kimenyetso simusiga kimuhamya icyaha akurikiranweho bituma haba gushidikanya bigomba kumurengera. Rwasobanuye ko umucamanza yabyemeje atyo atabanje gusesengura ibimenyetso byatanzwe n'Ubushinjacyaha no kugaragaza icyo bishidikanywaho.

[16] Birumvikana na none kandi ko ikigamijwe muri iyo ngingo ari uko ubujuririre bugomba kugira aho buhagararira kuko ibirego byose bidashobora kuzamuka mu nzego zose z'inkiko.

[17] Mu bihugu bimwe nka Australie, ubujurire mu Rukiko Rukuru bugomba gutangirwa uruhushya rudasanzwe (permission spéciale). Mu gufata icyo cyemezo, urukiko rugomba gusuzuma niba urubanza rusabirwa

uruhushya rwo kujuririrwa rwerekeye ikibazo cy'amategeko gikomeye by'umwihariko, ikibazo inkiko zitavugaho rumwe mu manza (jurisprudence des cours divisée) cyangwa se ikigomba gusuzumwa ku nyungu rusange z'ubutabera (bonne administration de la justice)[1]. Mu gihugu cya Canada naho Urukiko rw'Ikirenga rutanga uburenganzira bwo kujurira (autorisation d'appel) ku manza gusa zifitiye rubanda akamaro gakomeye karenze inyungu bwite gusa z'ababuranyi. Ibyo bikaba biba bigamije gukumira imanza zinjira mu nkiko nkuru z'igihugu, hakinjira koko ibirego bifite uburemere.

[18] Ku byerekeranye no kuba ingingo isabirwa kuvanwaho yaba ivangura ababuranyi kuko umuntu ujurira bwa mbere ntacyo asabwa naho ujurira ku rwego rwa kabiri we itegeko rikagira ibyo ritegeka, Urukiko rurasanga nta vangura rihari kuko abantu bose bajurira ku rwego rwa kabiri mu Rukiko Rukuru basabwa bimwe, hakaba rero hatagereranywa abantu batari ku rwego rumwe. Ikindi kandi ni uko, mu rwego rw'amategeko ivangura riba iyo umuntu adafashwe mu buryo buringaniye nk'abandi nta mpamvu igaragara hagamijwe kumurenganya hashingiye ku bwoko, umuryango, inzu, igisekuru, ibara ry'umubiri, igitsina, akarere, ibyiciro by'ubukungu, idini cyangwa ukwemera, ibitekerezo, umutungo, itandukaniro ry'umuco, ururimi, ubukungu, ubumuga bw'umubiri cyangwa ubwo mu mutwe no ku rindi vangura iryo ari ryo ryose[2]. Ibyo rero ntibigaragara mu ngingo yaregewe.

[19] Hakurikijwe ibimaze kuvugwa bigaragara ko ubujurire bufitiye agaciro ababukora (recours utile et effectif) harebwe ingingo ya 8 y'Itangazo mpuzamahanga ku burenganzira bw'ikiremwa muntu n'ingingo ya 2 agace ka 3 (a) y'Amasezerano mpuzamahanga mu by'imbonezamubano

[1] http://www.unidroit.info/mm/LesytemeJudiciaireAustralien.pdf

[2] Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003, nk'uko ryavuguruwe kugeza ubu, ingingo ya 11.

na politiki (Pacte international sur les droits civils et politiques) bwubahirizwa mu Rwanda.

[20] Ku byerekeranye n'uko ingingo ya 106 igika cya kabiri y'iryo Tegeko Ngenga yavuzwe inyuranije n'iya 190 y'Itegeko Nshinga, Urukiko rurasanga Uwimana Jeannette nta ngingo atanga zibigaragaza. Kuba Me KAZUNGU avuga ko inyuranije n'amasezerano mpuzamahanga u Rwanda rwashyizeho umukono, nta shingiro bifite. Urukiko rurasanga Itegeko Nshinga ryarasobanuye uburyo amateko mu gihugu asumbana (hierarchie des normes). Mu gihe rero itegeko cyangwa itegeko ngenga ryaba rinyuranije n'amasezerano mpuzamahanga icyo kibazo nticyashyikirizwa Urukiko rw'Ikirenga nk'ikirego mu rwego rw'uko rinyuranye n'Itegeko nshinga (question d'inconstitutionnalité).

IV. ICYEMEZO CY'URUKIKO

[21] Rwemeye kwakira ikirego cya UWIMANA Jeannette kuko cyatanzwe mu buryo bukurikije amategeko.

[22] Ruvuze ko icyo kirego nta shingiro gifite.

[23] Rwemeje kutakira ikirego cya KANANGA Léopold kuko cyatanzwe mu buryo budakurikije amategeko.

[24] Rutegetse UWIMANA Jeannette na KANANGA Léopold gufatanya kwishyura 8.800 Frw y'amagarama y'urubanza, ni ukuvuga 4.400 Frw buri wese, batayatanga, ayo mafaranga agakurwa mu byabo ku ngufu za Leta.

NI UKO RUCIWE KANDI RUSOMEWE MU RUHAME NONE TARIKI YA 18/06/2010 N'URUKIKO RW'IKIRENGA RUGIZWE NA RUGEGE SAM: PEREZIDA, MUGENZI LOUIS MARIE, MUTASHYA JEAN BAPTISTE, NYIRINKWAYA IMMACULEE, MUKANYUNDO PATRICIE, KAYITESI R.EMILY, MUKAMULISA MARIE THERESE, MUKANDAMAGE MARIE-JOSEE NA RUGABIRWA RUBEN: ABACAMANZA, BAFASHIJWE NA GAKURU AHMED, UMWANDITSI.

Perezida

RUGEGE Sam

ABACAMANZA

MUGENZI Louis Marie

KAYITESI R.Emily,

MUTASHYA Jean Baptiste

MUKAMULISA Marie Thérèse

NYIRINKWAYA Immaculéé

MUKANDAMAGE Marie-Josée

MUKANYUNDO Patricie

RUGABIRWA Ruben

Umwanditsi W'urukiko

GAKURU AHMED

IMANZA Z'INSHINJABYAHA

2. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: PRA 0282/08/CS
ITARIKI Y'URUBANZA: 12/03/2010
HABURANA: UBUSHINJACYAHA / NYIRANGONDO Virginie

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA-KUDAFATA UKWEMERA IBYAHA BITINZE NK'IMPAMVU YO KUTAGABANYIRIZWA IBIHANO

UBUBASHA BW'UMUCAMANZA BWO KUGABANYIRIZA CYANGWA KUTAGABANYIRIZA IBIHANO UMUBURANYI WEMEYE ICYAHA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Ukwemera icyaha bitinze ntibyaba ubwabyo impamvu yo kutagabanyiriza umuburanyi igihano kuko nta gihe ntarengwa cyagenwe n'itegeko cyo kuba uregwa yagarura umutima akemera icyaha.

Kugabanya igihano cyangwa kutakigabanyiriza umuburanyi wemeye icyaha si itegeko ku mucamanza kabone n'iyo yasanga uko kwemera kuzuye; bityo mu gihe yasanga hari impamvu iryo gabanyagihano ridakwiye, ashobora kutagabanya igihano.

URUKIKO RW'IKIRENGA, RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA, RUKIJIJE MU RUHAME, KU WA 12/03/2010 URUBANZA N° RPA 0282/08/CS MU BURYO BUKURIKIRA :

I. ABABURANA:

UBUSHINJACYAHA
Na
NYIRANGONDO Virginie mwene Nzigihima na Nyiramivumbi, utuye Nyangeso,Rugarama Intara y'Amajyaruguru . Ufungiye muri Gereza Nkuru ya Kigali (PCK) ;

II. IBYAHA NYIRANGONDO AKURIKIRANYWEHO

-Kuba ari mu Kagali ka Nyangeso ,Umurenge wa Rugarama ,Akarere ka Murambi ,Intara y'Umutara muri Repubulika y'uRwanda muri 1994 yararoze umwana wa Ntawusigumuruho hashira icyumweru agapfa ,ingingo ya 315 y'igitabo cy'amategeko ahana ibyaha mu Rwanda .

- Kuba ari aho havuzwe haruguru muri icyo gihe ,yararoze umwana wa Samvura agapfa hashize ibyumweru bibili.Ingingo ya 315 y'igitabo cy'amategeko ahana ibyaha mu Rwanda.

III. IMITERERE Y'URUBANZA :

[1] NYIRANGONDO yashyizwe mu majwi n'abaturage b'iwabo mu Kagari ka Nyangeso, umurenge wa Rugarama, Akarere ka Murambi, mu ntara y'u Mutara, bavuga ko ari umurozi wishe abana babiri, uwa NTAWUSIGUMURUHO n'uwa SAMVURA.

[2] Agejejwe mu Bugenzacyaha yemeye ko yishe umwana wa NTAWUSIGUMURUHO amuhaye ikijumba kiroze, ko yanaroze umwana wa SAMVURA amuhaye umusururu uroze ariko mu ibazwa rye mu Bushinjacyaha ahakana

icyaha avuga ko mbere yacyemejwe n'inkoni, avuga ko atari we waroze abo bana ahubwo ko yabonye barogwa n'uwitwa MUKANDORI.

IV .IMIGENDEKERE Y'URUBANZA

[3] Mu Rukiko Rukuru, ku cyicaro cyarwo i Kigali, NYIRANGONDO yabanje guhakana icyaha, ariko nyuma aracyemera, anasobanura uburyo yagikoze nk'uko yari yabivuze mbere mu Bugenzacyaha.

[4] Urukiko rwamuhanishije igifungo cya burundu, rusobanura ko n'ubwo yemeye icyaha adakwiye igabanyagihano kuko yabanje kuruhanya.

[5] NYIRANGONDO yajuririye Urukiko rw'Ikirenga, umucamanza w'ibanzirizasuzuma yemeza ko ubujurire bwe bwakiriwe.

[6] Itegeko n°003/2010/rp ryo kuwa 21/01/2010 rya Perezida w'Ukukiko rw'Ikirenga ryashyize iburanisha ku wa 10/02/2010, uwo munsi ugeze ababuranyi baritaba, NYIRANGONDO yiburanira, naho Ubushinjacyaha buhagarariwe na RUBERWA Bonaventure.

[7] Umucamanza wateguye urubanza amaze gusoma raporo yarwo, NYIRANGONDO yahawe ijambo kugira ngo asobanure impamvu z'ubujurire bwe,nkuko yari yazigaragaje mu myanzuro ye yanditse muri ubu buryo: Kuba Urukiko Rukuru rwaramuhamije icyaha atigeze akora, nta n'ibimenyetso rushingiyeho, no kuba harirengagijwe ko abana aregwa ko yaroze bapfuye mbere y'intambara, we agafatwa nyuma y'intambara ahungutse.

[8] Atangiye gusobanura ubujurire bwe, NYIRANGONDO yavuze ko impamvu zivuzwe haruguru atakizishingiyeho

kuko abamwandikiye umwanzuro bazimushyiriyemo kandi we atari zo ashingiye ho, impamvu nyakuri y'ubujurire bwe akaba ari ukwemera icyaha akagisabira imbabazi, anasaba ko Urukiko rw'Ikirenga rwamugabanyiriza igihano yahawe mbere.

[9] NYIRANGONDO yavuze ko yemera rwose ko ari we wishe umwana wa NTAWUSIGUMURUHO amuhaye ikijumba kiroze, avuga ko uburozi yari yabuhawe na MUKANDOLI. Yasobanuye ko n'umwana wa SAMVURA ari we wamwishe, amuhaye umusururu uri mo uburozi yari yahawe na MUKANDOLI.

[10] Abajijwe impamvu yamuteye kwica abo bana, NYIRANGONDO yavuze ko yabitewe n'uko yari yarapfushije abana batatu, akagira umujinya abonye abandi bana bakina.

[11] Uhagarariye ubushinjacyaha nawe yahawe ijambo, avuga ko Urubanza rwajuririwe rwari rwasobanuye neza ko impamvu NYIRANGONDO atagabanyirijwe ibihano n'ubwo yemeye icyaha ari uko yacyemeye yabanje kuruhanya.

[12] Yavuze ko mu Rukiko Rukuru, NYIRANGONDO yari yabanje guhakana icyaha abeshya ko mbere yari yacyemejwe n'inkoni, iburanisha rigeze ku musozo akaba ari bwo yemeye icyaha ari uko agaragarijwe ko guhakana ntacyo byamumarira kuko ibimenyetso byakimuhamije nawe agasanga azitiwe, ibyo rero bikaba bitari ukwemera icyaha gushyitse nk'uko guteganywa mu ngingo ya 35 y'Itegeko rigenga imiburanishirize y'imanza z'inshinjabyaha. Yavuze ko asanga nta gabanyagihano NYIRANGONDO akwiye, ko ahubwo hahamaho imikirize y'urubanza yajuririye.

[13] NYIRANGONDO yongeye guhabwa ijambo kugirango agire icyo yongera ku miburanire ye, avuga ko atemeye icyaha ari uko agoswe n'ibimenyetso nk'uko ubushinjacyaha bubivuga, ko ahubwo yagihakanaga mbere kubera ko yari ataramenya uburyo yaburana neza, asoza yongera kuvuga ko asaba imbabazi z'icyaha yakoze n'iz'uko yabanje kujuragiza urukiko atavugisha ukuri.

[14] Urukiko rwashoje iburanisha, ababuranyi bamenyeshwa ko urubanza ruzasomwa ku wa 12/03/2010, nyuma ruriherera, ruruca mu buryo bukurikira:

V. UKO URUKIKO RUBIBONA

[15] NYIRANGONDO avuga yajurijwe no kuba Urukiko Rukuru rwanamuhanishije igihano cy'igifungo cya burundu ntirumugabanyirize igihano kandi icyaha aregwa cyo kuba yarishe abana babiri abaroze yaracyemeye akagisabira imbabazi. Anemera ko, nk'uko urwo Rukiko rwabivuze, yemeye icyaha amaze kuruhanya, yabanje kubeshya ko kuba yari yaracyemeye mbere mu Bugenza cyaha byatewe n'inkoni.

[16] Ku mpamvu Ubushinjacyaha buvuga y'uko NYIRANGONDO yemeye icyaha mu Rukiko Rukuru ariko bitinze, yabanje kuruhanya nk'uko urwo Urukiko rwabivuze, uru Rukiko rurasanga kwemera icyaha bitinze bitaba ubwabyo impamvu yo kutagabanyirizwa igihano gutegangwa mu ngingo ya 35 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha, kuko nta gihe ntarengwa cyayigenwemo cyo kuba uregwa yagarura umutima akemera icyaha.

[17] Iki gitekerezo kandi kiboneka no mu mikirize y'imanza ahandi, nko mu Rukiko Mpanabyaha rwa Arusha rwashyiriwe ho u Rwanda, aho mu rubanza N° ICTR-97-32-I rwo ku wa 01/06/2000 rw'Ubushinjacyaha na Georges Omar Ruggiu, Urwo rukiko rwemeje ko

kuba, ku wa 11/04/2000 yaremeye ibyaha byombi yaregwaga bimubera impamvu nyoroshyacyaha zituma agabanyirizwa igihano, kandi mu ikurikiranwa rye imbere y'urwo Rukiko ku wa 24/10/1997 yari yabanje guhitamo kuburana abihakana. Uru rukiko rurasanga rero, kugabanyirizwa igihano cyangwa kutakigabanyirizwa kuri NYIRANGONDO bitashingira ko yemeye icyaha atinze, ahubwo byashingira ku isesengura ry'ibyo itegeko riteganya ku bemera icyaha.

[18] Ingingo ya 35 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinja byaha iteganya igabanyagihano ku bemeye icyaha, yumvikanisha ko igihe ukekwa ho icyaha acyiyemereye mu buryo bwuzuye ntacyo ahishe, umucamanza ashobora kumugabanyiriza igihano, kugeza ku cyakabiri cy'icyateganyirijwe icyaha akurikiranyweho.

[19] Byumvikana neza muri iyo ngingo ko ukurikiranyweho icyaha ashobora kugabanyirizwa igihano mu buryo busobanuwe haruguru, ari uko yemeye icyaha avugisha ukuri kwose, ariko ntaho bivuzwe ko agomba kuba yatangiranye uko kuri rugikubita, ku buryo iyo ngingo itakoreshwa mu gihe yakwemera icyaha yabanje kugihakana mbere.

[20] Nyamara ariko, nk'uko nanone iyo ngingo y'Itegeko ibigaragaza, kugabanya igihano cyangwa kutakigabanyiriza uwemeye icyaha ntabwo ari itegeko ku mucamanza usanze habaye uko kwemera, bivuga rero ko ashobora no kutagabanya igihano mu gihe yasanga hari impamvu iryo gabanyagihano ridakwiye.

[21] Ku byerekeye NYIRANGONDO, uru Rukiko rurasanga, nta gabanyagihano akwiye n'ubwo yemeye icyaha, rutabishingiye ko yemeye yabanje guhakana cyane mbere, ahubwo rushingiye ku bugome bw'umwihariko bugaragara mu cyaha yakoze cyo kwica abana ubugira kabiri, ayobowe n'umujinya w'uko yari yarapfushije abe,

nyamara nta n'uruhare anakeka kuri abo yishe cyangwa se ku babyeyi babo. Urukiko rero rurasanga ubugome bugeze aho budakwiye gutuma NYIRANGONDO agabanyirizwa igihano.

VI. ICYEMEZO CY'URUKIKO.

[22] Rwemeye kwakira ubujurire bwa NYIRANGONDO Virginie kuko bwaje mu buryo no mu nzira bikukurikije amategeko;

[23] Rwemeje ko ubwo bujurire nta shingiro bufite;

[24] Ruvuze ko imikirize y'urubanza RP 0060/05/HC/Kig rwajuririwe idahindutse;

[25] Rutegetse NYIRANGONDO kwishyura amagarama y'urubanza angana na 16.350 frw atayatanga mu gihe cy'iminsi umunani, agafungwa iminsi 15 y'ubugwatiramubiri, ayo mafaranga agakurwa mu bye ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KU WA 12/03/2010, N'URUKIKO RW' IKIRENGA, RUGIZWE NA: MUGENZI LOUIS - MARIE: PEREZIDA, KAYITESI RUSERA Emily NA MUKANDAMAGE MARIE JOSEE: ABACAMANZA, BAFASHIJWE NA : GAKURU AHMED: UMWANDITSI W'URUKIKO.

MUGENZI Louis-Marie
Perezida

KAYITESI R.Emily **MUKANDAMAGE MARIE JOSEE**
Umucamanza **Umucamanza**

GAKURU Ahmed
Umwanditsi w'Urukiko

IMANZA z'imbonezamubano

3. URUKIKO RW'IBANZE RWANYAKILIBA

N° Y'URUBANZA: RC 0033/08/TB/NYABA
ITARIKI Y'URUBANZA: 27/02/2008
HABURANA: NYABUHU Anne / GAFISHI Etienne

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO- AMASEZERANO Y'IGURISHA RY'IKINTU CY'UNDI

IKIGARAGAZA UBUKURU MBONEZAMUBANO BW'UMUNTU

UBUSHOBOZI NKA KIMWE MU BISABWA KUGIRA NGO AMASEZERANO AGIRE AGACIRO

KUGURISHA IBINTU UMUNTU YASIGIWE N'ABO YUMVA NEZA KO BAPFUYE AKABAZUNGURA NYUMA BAKAZA KUBONEKA

IBIKORWA BYAKOZWE NTA BURYARYA N'UBITUNZE KU BUTAKA BW'UNDI

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Igurisha ry'ikintu cy'undi ni imfabusa.

Ubukuru mbonezamubano ntibugaragarira ku gikuriro ahubwo bugaragarira mu myaka umuntu afite, nayo ikamenyekana hagendewe ku byangombwa biranga umuntu byemewe n'amategeko.

Ubushobozi ni kimwe mu bya ngombwa bisabwa kugira ngo amasezerano agire agaciro. Nta muntu ushobora kugurisha ibintu yasigiwe n'abo yazunguye mu gihe nyirabyo akiriho kabone n'iyo

yaba abyemera, bityo akaba ntawakwitwaza ko yari azi ko ababyeyi be bapfuye kugira ngo agurishe ibyo bamusigiye kandi bigaragarako bakiriho.

Iyo amazu, ibyubatswe cyangwa ibihingwa byakozweho n'ubitunze nta buryarya akoresheje ibyubakishwa cyangwa ibimera bye, nyirubutaka ntashobora gusaba ko bivanwaho; agomba kwishyura ubitunze igiciro cy'ibyubakishijwe hamwe n'ibimera n'ibyishyuwe ababikoze cyangwa se inyunguragaciro ubutaka bwahaboneye.

URUKIKO RW'IBANZE RWA NYAKILIBA RURI MU MURENGE WA KANAMA RUHABURANISHIRIZA MU RUHAME URUBANZA RW'IMBONEZAMUBANO N° RC 0033/08/TB/ NYABA MU RWEGO RWA MBERE RURUKIJIJE MU BURYO BUKURIKIRA KU WA 27/02/2008 :

HABURANA :

UREGA : NYABUHU Anne mwene KANYAMANZA na BUCYUKUNDI, wavutse 1947,utuye Kabatezi umurenge wa Jenda akarere ka NYABIHU Intara y'Iburengerazuba .

UREGWA : GAFISHI Etienne mwene MUTURUZA na NYIRAKANANIRA, wavutse 1960 utuye Mbugangari umurenge wa Gisenyi akarere ka RUBAVU Intara y'Iburengerazuba.

IKIBURANWA : Inzu na pariseli yayo

URUKIKO

1. RUSHINGIYE ku Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 nk'uko ryahinduwe kugeza ubu ingingo zaryo za 140-143 na150;

2. RUSHINGIYE kw'itegeko ngenga n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko mu ngingo ya 7,67 121;

3. RUSHINGIYE ku itegeko n°18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu;

I. IMITERERE Y'URUBANZA

4. Ku wa 16/01/2008 NYABUHU Anne yaregeye inteko y'abunzi bo mu kagari Nyamikongi arega GAFISHI ko

amubereye mu nzu iri mu murima akaba atazi uburyo abirimo,GAFISHI we avuga ko inzu arimo yayiguze na MUSAFIRI kandi akaba nta kibazo afitanye n'uwo baguze,abunzi bafashe umwanzuro bategeka ko GAFISHI asubiza inzu ari uko NYABUHU amaze kumugarurira umutungo we yatanze: akamuha miriyoni imwe n'ibihumbi maganatanu bingana n'agaciro k'amafaranaga ibihumbi ijana na mirongo itanu yaguze inzu na pariseri bya NYABUHU mu 1998 na miriyoni imwe n'ibihumbi maganatanu ahwanye n'agaciro k'inzu ya kijyambere GAFISHI yahubatse;

5. Ku wa 13/02/2008 NYABUHU Anne yagejeje ikirego cye mu bwanditsi bw'Urukiko rw'ibanze rwa Nyakiriba aregera umwanzuro w'abunzi gihabwa nomero RC 0033/08/TB/NYABA;

6. Itegeko rya Perezida w'Urukiko ryo ku wa 13/02/2008 rushyira umunsi w'iburanisha ku wa 17/03/2008;

II. IMIGENDEKERE Y'URUBANZA

1. Kuri uwo munsi iburanisha rirasubikwa rishyirwa ku munsi utazwi;
2. Ku wa 28/04/2008, iburanisha ryarasubukuwe ababuranyi bombi bitabye NYABUHU ahagarariwe na Me UWIMANA Prosper, GAFISHI yiburanira;

3. Me UWIMANA ahabwa ijambo ngo asobanure icyo atishimiye mu mikirize y'abunzi akavuga ko abunzi batubahirije amategeko ajyanye n'amasezerano y'ubugure. Akomeza avuga ko NYABUHU yahunze mu 1994, yahunguka agasanga GAFISHI yarigabije inzu ye na pariseli yayo yamubaza impamvu akamusubiza ko yayigurishijwe n'umuhungu we MUSAFIRI avuga ko ababyeyi be bapfuye, ngo icyo gihe MUSAFIRI agurisha yari afite imyaka 18 y'amavuko;

4. Me UWIMANA yakomeje asaba urukiko gutesha agaciro amasezerano y'ubugure ari hagati ya MUSAFIRI na GAFISHI ashingiye ku ngingo ya 8 CCLIII igika cya kabiri ngo kuko icyo gihe MUSAFIRI nta bushobozi yari afite, ndetse n'iya 277 CCLIII ngo kuko MUSAFIRI atagombaga kuzungura abantu bakiriho;

5. GAFISHI yahawe ijambo ngo yisobanure avuga ko yaguze iyo nzu n'ikibanza cyayo ku wa 18/12/1998 imbere y'ubuyobozi ko imyaka ye atari ayizi uretse ko yabonaga ari mukuru;

6. Me UWIMANA yabajijwe impamvu icyemezo cy'amavuko cya MUSAFIRI kitagaragaza itariki ye y'amavuko avuga ko ari ubuyobozi bwibeshye. Kuri uwo munsi urubanza rwarasubitswe kugirango bagobokeshe MUSAFIRI rushyirwa ku wa 12/05/2008;
7. Uwo munsi ugeze, ababuranyi bombi bitabye, urubanza rwimurirwa ku wa 23/06/2008 kubera iyimurwa ry'abacamanza, igeze UWIMANA na GAFISHI bitabye ariko MUSAFIRI atitabye rwimurirwa ku wa 07/07/2008 hafatwa icyemezo ko MUSAFIRI nataboneka ruzaburanishwa;

8. Ku wa 07/07/2008 urubanza rwarasubukuwe ruburanishwa hari NYABUHU na GAFISHI, MUSAFIRI atitabye; NYABUHU yarongeye asubira mu kirego cye GAFISHI avuga ko agura iyo nzu yabonaga MUSAFIRI ari mukuru, muramu wa MUSAFIRI yaramusinyiye ngo akaba abona NYABUHU atamukurikirana kandi

ngo bamaze no guhunguka umukwe wabo yarababikuriye amafaranga ibihumbi mirongwirindwi na bibili (72000Frw) by'ubwo bugure nyamara NYABUHU we akavuga ko ayo mafaranga ari ay'ubukode bw'iyo nzu ngo yakodeshwaga na MUSAFIRI;

9. NYABUHU yakomeje avuga ko nta muryango wamusinyiye ko n'umugabo we yiyambaje ubuyobozi ngo buhagarike GAFISHI akanga, ariko we akavuga ko yaguze na MUSAFIRI ababyeyi be bari hanze, NYABUHU akavuga ko batigeze bagurisha GAFISHI akagurishwa n'umwana mbere yo gucibwa miriyoni eshatu yaciwe n'abunzi akazicibwa ku bye ko GAFISHI yasanga abamugurishije bakamuha ibye ngo kuko NYABUHU ntawe yatumye; GAFISHI yongeye kuvuga ko uwamugurishije ari umwana wa NYABUHU ko ariwe umufite kandi ngo amafaranga ibihumbi mirongo irindwi na bibiri umubitsi yarayababikuriye;

10. NYABUHU yarangije asaba urukiko ko rwategeka GAFISHI akamusubiza ibye nawe agakurikirana uwamugurishije;

11. Mu mwanzuro MUSAFIRI yashyikirije urukiko arusaba ko ruramutse rusanze yasubiza aho hantu yaguze hahabwa agaciro k'inka umunani yatanze ahagura, inka imwe igahabwa agaciro k'amafaranga ibihumbi maganatanu (500.000frw) ubwo ngo akaba yasubizwa miriyoni enye z'amafaranga y'u Rwanda, akanasubizwa amafaranga miriyoni eshatu (3.000.000 frw) z'agaciro k'inzu ya kijyambere yahubatse amaze kuhagura, ngo NYABUHU akayamuha yose mbere y'uko arekura ibyo bintu ngo atayatanga mu gihe giteganijwe n'amategeko akahagumana kuko yahaguze, yongeye gusaba amafaranga angana n'ibihumbi maganabiri by'indishyi z'akababaro no kuba yarashowe mu manza, yasabye ko MUSAFIRI atagira icyo akurikiranwaho ngo kuko atigeze amunyaga cyangwa ngo agire aho amurega, asaba urukiko ko rwakwemeza ko NYABUHU atsinzwe;

12. Iburanisha ry'urwo rubanza ryarasojwe isomwa ryarwo rishyirwa ku wa 18/07/2008;
13. Uwo munsi ugeze urubanza ntirwasomwa kuko urukiko

rumaze kwiherera rwasanze ibimenyetso byatanzwe n'ababuranyi bituzuye bityo mbere yo gusoma urubanza ku wa 18/07/2008 nk'uko rwabimenyesheje ababuranyi NYABUHU akabanza akagaragaza icyemezo cy'amavuko cya MUSAFIRI kuko muri dosiye harimo icyemezo kiranga umuntu nacyo kitagira itariki cyandikiweho, ababuranyi bombi bagashyikiriza ubwanditsi bw'Urukiko ibimenyetso byanditse by'umwimerere bihamya ibyo bavuga;

14. Urubanza rwasubukuwe ku wa 11/02/2009 hari NYABUHU Anne, GAFISHI atitabye kandi nta mpamvu yagaragarije urukiko yatumye atitaba, NYABUHU atanga icyemezo cy'amavuko cyandikiwe mu murenge wa Jenda ku wa 18/08/2008 kigaragaza ko MUSAFIRI yavutse mu mwaka wa 1978,abazwa icyo avuga ku byemezo by'amavuko bibiri bya MUSAFIRI icya mbere kitagaragaza igihe cyandikiwe kerekana ko yavutse mu 1980, icya kabiri cyigaragaza igihe cyandikiwe kigaragaza ko MUSAFIRI yavutse mu 1978, akavuga ko

icyemezo cy'amavuko cyashingirwaho ari icyo batumwe n'urukiko bwa kabiri;

15. Urubanza rwarasojwe, isomwa ryarwo rishyirwa ku wa 27/02/2009;

IV. UKO URUKIKO RUBIBONA

16. MUSAFIRI yagiranye amasezerano na GAFISHI yo kugurisha inzu na pariseri by'ababyeyi ba MUSAFIRI igihe ababyeyi be bari mu buhungiro;

17. Igihe GAFISHI yaguraga na MUSAFIRI iyo nzu na pariseri yayo ku wa 18/12/1998 nta bushobozi MUSAFIRI yari afite kuko icyemezo cye cy'amavuko cyatanzwe n'ubuyobozi bw'umurenge wa Jenda akarere ka Nyabihu cyo ku wa 18/08/2008 kigaragaza ko MUSAFIRI Ildéphonse yavutse mu mwaka wa 1978, mu gihe yagurishaga akaba yari

afite imyaka makumyabiri bityo MUSAFIRI akaba nta myaka y'ubukure yari afite;

18. Aho GAFISHI avuga ko yabonaga MUSAFIRI ari mukuru ntiyabyitwaza kuko ubukuru butagaragarira ku gikuriro ahubwo bugaragarira mu myaka umuntu afite, naho aho avuga ko yasinyiwe n'umuryango arabeshya kuko muramu wa MUSAFIRI wamusinyiye ariwe BASEBANYA atari we wenyine ugize umuryango wa NYABUHU cyane cyane ko MUSAFIRI yiyemereye imbere y'inteko y'abunzi ko mu masezerano y'ubugure harimo bashiki be babiri NYIRANTAMATI na NTABARESHYA Beriya banditswe nyuma MUSAFIRI na BASEBANYA bakabaterera ibikumwe;

19. NYABUHU avuga ko yaciwe miriyoni eshatu ku bye nyamara abunzi bari bamutegetse gutanga amafaranga GAFISHI yatanze agura inzu ya NYABUHU yahawe agaciro k'amafaranga miriyoni imwe n'igice, na miriyoni imwe n'igice y'agaciro k'inzu GAFISHI yubatse nyuma yo kugura mwa NYABUHU, bikaba bigaragara ko NYABUHU aramutse ajyanye ku busa inzu GAFISHI yubatse nyuma yaba abonye indonke atavunikiye;

20. Mu mwanzuro watanzwe na GAFISHI asaba urukiko ko NYABUHU atamukurikirana kuko amafaranga 72.000 yasigaye ku kiguzi yahawe

RUDUHIRE, NYABUHU yisobanuye avuga ko ayo mafaranga ibihumbi mirongo irindwi na bibiri (72000frw) bayahawe ari ay'ubukode bw'iyo nzu yakodeshwaga na MUSAFIRI akayabitsa BASEBANYA ariko GAFISHI bifatwa gityo;

21. Aho GAFISHI avuga ko aramutse asubije NYABUHU ibyo yaguze n'umuhungu we, yamusubiza agaciro kabyo kangana na 4.000.000frw ntibyemewe kuko ni nk'aho NYABUHU yaba yongeye akagurishwa umutungo we

kandi GAFISHI ajya kugura yaraguze n'utari nyiribintu. Naho ku byerekeye inzu GAFISHI yubatsemo nyuma yo kuhagura, bigaragara ko yahubatse nta buryarya aziko ari ahe agomba kwishyurwa igiciro cy'ibyubakishijwe;

22. Ingingo ya 431 y'itegeko n°42/1988 interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano iteganya ko ubukure bushyizwe ku myaka makumyabiri n'umwe (21 ans) yuzuye, kuri iyo myaka umuntu ashobora gukora ibintu byose bimuhuza n'abandi. Hakurikijwe ibivugwa muri iyo ngingo GAFISHI yaguze na MUSAFIRI ataruzuza imyaka y'ubukure, ni ukuvuga ko nta bushobozi yari afite bityo ayo masezerano y'ubugure akaba nta gaciro afite;

23. Ingingo ya 8 CCLIII ibyerekeye inshingano n'amasezerano ku gika cya kabiri ivuga ko ibyangombwa by'iremezo kugirango amasezerano agire agaciro ari ubushobozi bwo gukora isezerano. Hakurikijwe ibivugwa muri iyo ngingo MUSAFIRI ajya gukora amasezerano y'ubugure nta bushobozi yari afite kuko yari atarageza ku myaka makumyabiri n'umwe y'amavuko, bityo ayo masezerano akaba nta gaciro afite;

24. Ingingo ya 276 CCLIII iteganya ko igurisha ry'ikintu cy'undi ari imfabusa, hakurikijwe na none ibivugwa muri iyi ngingo amasezerano y'ubugure yo ku wa 18/12/1998 yakozwe hagati ya GAFISHI na MUSAFIRI ni imfabusa kuko GAFISHI yaguze inzu na pariseri abigura n'utari nyirabyo;

25. Ingingo ya 277 CCLIII iteganya ko nta we ushobora kugurisha ibintu yasigiwe n'abo yazunguye mu gihe nyirabyo akiriho kabone n'iyo yaba abyemera, ibyo bikaba bishaka kuvuga ko mu masezerano y'ubugure batakwitwaza ngo bari baziko ababyeyi ba MUSAFIRI bapfuye kandi bigaragara ko bakiriho;
26. Ingingo ya 24 CLII igitabo cyerekeye ibigenga ibintu

n'ubutaka iteganya ko iyo amazu, ibyubatswe cyangwa ibihingwa byakozweho n'ubitunze nta buryarya akoresheje ibyubakishwa cyangwa ibimera bye, nyirubutaka ntashobora gusaba ko bivanwaho; agomba kwishyura ubitunze igiciro cy'ibyubakishijwe hamwe n'ibimera n'ibyishyuwe ababikoze cyangwa se inyunguragaciro ubutaka bwahaboneye, bityo NYABUHU akaba agomba kwishyura GAFISHI igiciro cy'inzu yubatswe na GAFISHI nk'uko cyari cyagenwe n'inteko y'abunzi;

V. ICYEMEZO CY'URUKIKO

27. RWEMEYE kwakira ikirego cya NYABUHU Anne kuko cyatanzwe mu buryo no mu nzira byemewe n'amategeko, rugisuzumye rusanga gifite ishingiro;

28. RWEMEJE ko NYABUHU Anne atsinze naho GAFISHI Etienne atsinzwe kuko yaguze n'utari nyir'inzu na pariseri yayo, kandi akagura n'utabifitiye ubushobozi;

29. RWEMEJE ko amasezerano y'ubugure yo ku wa 18/12/1998 I Jenda abaye imfabusa;

30. RUTEGETSE GAFISHI gusubiza NYABUHU pariseri ye n'inzu;

31. RUTEGETSE NYABUHU gusubiza GAFISHI amafaranga angana na miriyoni imwe n'ibihumbi maganatanu (1.500.000 Frw) angana n'agaciro k'ibyubakishijwe inzu yubatse muri iyo pariseri n'inyunguragaciro ubutaka bwahaboneye;

32. RUTEGETSE GAFISHI gutanga amagarama y'urubanza angana na ibihumbi bitanu na maganane na mirongwitanu (5450frw), 2000frw agasubizwa NYABUHU, 3450frw akajya mu isanduku ya Leta atayatanga akavanwa mu bye ku ngufu za Leta;

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME MU RUKIKO RW'IBANZE RWA NYAKILIBA RURI MU MURENGE WA KANAMA NONE KU WA 27/02/2009 RUGIZWE NA MUKABARERA DOMINA UMUCAMANZA, NA MUKARUGWIZA M. CAIRE UMWANDITSI.

UMUCAMANZA	UMWANDITSI
MUKABARERA Domina	MUKARUGWIZA M.Claire
(Sé)	(Sé)

4. URUKIKO RW'IBANZE RWA BWISHYURA

N° Y'URUBANZA: RC 033/10/TB/BWSHY
ITARIKI Y'URUBANZA: 28/06/2010
HABURANA: MVUYEKURE Salathiel / NDUGU Clauvisse
ABAGOBOTSE: NZABANDORA Jean Bosco, MUKACYUBAHIRO Xavérine

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO -KUGOBOKA MU RUBANZA -IBISABWA

UBURENGANZIRA BWA BURI MUNTU KU MUTUNGO WE

KUGURISHA IKINTU CY'UNDI

AGACIRO K'IBIKORWA BYAKOZWE MU BURYARYA KU BUTAKA BW'UNDI

INKURIKIZI Y'IGIKORWA CY'UMUNTU CYANGIRIJE UNDI

IRANGIZARUBANZA RY'AGATEGANYO KU BITIMUKANWA

UKWIYEMERERA MU RUBANZA K'UMUBURANYI

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Kugira ngo ikirego cye cyakirwe, ugoboka agomba kugaragaza inyungu yemewe n'amategeko , itaziguye kandi ye bwite, yaba ishingiye ku mutungo we cyangwa ku mutimanama .

Buri muntu afite uburenganzira ku mutungo we, waba uwe ku giti cye cyangwa uwo afatanyije n'abandi. Umutungo w'umuntu ni

ntavogerwa kandi ntushobora guhungabanywa keretse ku mpamvu z'inyungu rusange mu bihe no mu buryo buteganywa n'amategeko kandi habanje gutangwa indishyi ikwiye.

Igurisha ry'ikintu cy'undi ni imfabusa ; rishobora gutangirwa indishyi iyo umuguzi atigeze amenya ko icyo kintu ari icy'undi.

Iyo uwakoze ibikorwa ku butaka yari atunze ku buryarya cyangwa ku bundi buryo budahamye, nyirabwo ashobora guhitamo , ari ugusaba kuvanamo ibyubatswe, uwabikoresheje akaba ari we ubyishyura hamwe n'indishyi bibaye ngombwa, ari ukwishyura icyo byatanzweho cyangwa inyungura-gaciro y'ibyo bikorwa ku butaka.

Igikorwa cyose cy'umuntu cyangirije undi, gitegeka nyiri ugukora ikosa rigikomokaho kuriha ibyangiritse.

Irangizarubanza ry'agateganyo ribujijwe ku byerekeye ibintu bitimukanwa, iyo ari byo biburanwa.

Ukwiyemerera mu rubanza ni amagambo umuburanyi cyangwa umuhagarariye avugira mu rukiko agira ibyo yemera; ayo magambo atsindisha uwayavuze.

URUKIKO RW'IBANZE RWA BWISHYURA, RURI I BWISHYURA, RUHABURANISHIRIZA IMANZA Z'IMBONEZAMUBANO, RUHAKIRIJE URUBANZA RC 033/10/TB/BWSHY MU RWEGO RWA MBERE KU WA 28/06/2010, MU BURYO BUKURIKIRA :

HABURANA :

UREGA : MVUYEKURE Salathiel, mwene Sekamonyo na Mukakimenyi, utuye mu mudugudu wa Cyimigenge, akagari ka Kibirizi, umurenge wa Rubengera, akarere ka Karongi, intara y'Iburengerazuba,

UREGWA : NDUGU Clauvisse, mwene Kanyamahanga na Mukakamali, utuye mu mudugudu wa …., akagari ka Bugina, umurenge wa Mushubati, akarere ka Rutsiro, intara y'Iburengerazuba,

ABAGABOTSE :

1. NZABANDORA Jean Bosco, mwene Kanyamugenga na Nyirakabanza.

2. MUKACYUBAHIRO Xavérine, mwene Kanyamugenga na Nyirakabanza, utuye mu mudugudu wa Nyambande, akagari ka Mwendo, umurenge wa Mukura, akarere ka Rutsiro, intara y'Iburengerazuba.

IKIREGERWA : Ubwiherero na Fosse Septique yabwo.

I. IMITERERE Y'URUBANZA

1. Tariki ya 16/02/2010, Abunzi b'akagari ka Kibirizi bakijije ikibazo cyari hagati ya Ndugu waregaga Mvuyekure ko yamusenyeye ubwiherero na fosse septique yabwo, bigatuma inzu ye ita agaciro. Abunzi banzura ko Mvuyekure atsindwa, bityo agomba kuriha Ndugu ubwiherero bwe na fosse septique ye yasenye bifite agaciro k'amafaraga ibihumbi magana cyenda na mirongo itandatu na bitanu (965.000 Frws). Icyo cyemezo cy'Abunzi nticyashimishije Mvuyekure , niko kuregera Urukiko rw'Ibanze rwa Bwishyura ngo rumurenganure.

2. Amaze kugaragaza ingwate y'amagarama yarishywe ku wa 28/02/2010, ikirego cye cyandikwa mu gitabo cy'imanza z'imbonezamubano kuri RC 033/10/TB/BWSHY. Nyuma ku wa 05/04/2010, Nzabandora na Mukacyubahiro, bamaze kugaragaza ingwate z'amagarama batanze ku wa 05/04/2010, bagoboka ku bushake bwabo mu rubanza rwavuzwe haruguru.

II. IMIGENDEKERE Y'URUBANZA

3. Itegeko rya Perezida w'Urukiko ryo ku wa 26/02/2010 ryashyize umunsi w'iburanisha ku wa 17/06/2010, ababuranyi babimenyeshwa mu buryo bukurikije amategeko.

4. Uwo munsi ugeze, ababuranyi baritaba , Mvuyekure yunganiwe na Me Bimenyimana Félicien, Ndugu aburanirwa na Me Ruhumuriza, naho Nzabandora na Mukacyubahiro biburanira, Mvuyekure asabwe gusobanura ikirego cye, avuga ko ku wa 24/12/2008 yaguze isambu n'abanyamuryango wa Nyirakabanza Esther, abanyamuryango bose baramusinyira nk'uko bigaragara ku nyandiko y'ubugure, nyuma ku wa 19/01/2010 Ndugu aramurega avuga ko aho yaguze na we yari yarahaguze na Nyirakabanza, asabye abunzi gutumira mu rubanza Nyirakabanza ngo asobanure impamvu yamugurishije ahantu yari yaragurishije baranga.

5. Me Bimenyimana Félicien wunganira Mvuyekure avuga ko mu masezerano hari ahagaragara ko Nyirakabanza yemeye kuzasubiza Ndugu amafaranga ye , ngo none akaba atabona impamvu Ndugu yareze Mvuyekure aho kurega Nyirakabanza, akomeza asaba urukiko kubanza gusuzuma iyo nzitizi mbere yo kwinjira mu mizi y'urubanza, abajijwe akamaro k'iyo nzitizi mu gihe ari bo bareze, avuga ko impamvu ari uko mu bunzi bayirengagije bakaruca.
6. Me Ruhumuriza na we yazamuye inzitizi, avuga ko hakurikijwe ingingo ya 26 y'itegeko rigenga abunzi, ikirego cya Mvuyekure kitakwakirwa ngo kuko kuba Mvuyekure yaremeye gusinya ku mwanzuro w'abunzi yawemeye, akaba atabona icyo aregera, ngo naho ku byerekeye inzitizi yazamuwe na mugenzi we, abona nta nzitizi irimo ngo kuko Ndugu yareze uwamwangirije inyubako kandi akaba yaremeye kuburana. Kuri ibyo, Me Bimenyimana avuga ko kuba Mvuyekure yaremeye kuburana kandi agasinya ku mwanzuro bitavuga ko yemeye kwishyura.

7. Urukiko rubanza gufata icyemezo ku nzitizi zazamuwe n'ababuranyi :
- Ku nzitizi yazamuwe na Me Bimenyimana y'uko Ndugu yagombye kuba yarareze Nyirakabanza aho kurega Mvuyekure, rusanga iyo nzitizi nta shingiro ifite kuko Ndugu yagombaga kurega uwo asanze mu kibanza cye kuko ari uburenganzira bwe bwo gukurikirana uwo ari we wese umubereye mu bintu (Droit de suite),
- naho kuba Me Ruhumuriza avuga ko ntacyo Mvuyekure aregera ngo kuko yasinye ku mwanzuro w'Abunzi ngo bityo akaba yaremeye ibyo wategekaga, nta shingiro bifite kuko gusinya ku mwanzuro w'Abunzi ari inshingano ku muburanyi wari uhari akawusomerwa ahibereye, bikaba rero ntaho bihuriye no kwemera ibiwukubiyemo kuko ibyo abafitanye ikibazo bumvikanaho biba bigaragara mu mwanzuro ku buryo budashidikanywaho.

8. Me Ruhumuriza asabwe kwiregura ku byo uwo ahagarariye yarezwe, avuga ko icyo kirego nta shingiro gifite ngo kuko ku

wa 03/02/2009, Mvuyekure yemereye mu nzego z'Ibanze ko agiye gusubiza Ndugu ibintu bye yangije, yongeraho ko ibyo, yongeye kubyemera ku wa 22/09/2009. Akomeza asobanura ko mu nteko y'Abunzi, Mvuyekure yiyemereye ko yaguze ahantu yirengagije ko haguzwe na Ndugu, ngo bityo rero, hashingiwe ku ngingo ya 276 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, ubugure bwa Mvuyekure bukaba nta gaciro bwahabwa, imyanzuro y'Abunzi ikagumana agaciro kayo.

9. Mvuyekure abajijwe niba ajya kugura na Nyirakabanza atari azi ko aho agiye kugura haguzwe na Ndugu, avuga ko yabimenye uwo munsi agiye kugura ngo kandi Nyirakabanza yamwizezaga ko nihavuka ikibazo azahariha, abajijwe impamvu we yemeye kugura ahantu amaze kumenya neza ko haguzwe n'undi, avuga ko abo baguze bamwizezaga ko basahishyura, Me Bimenyimana yongeraho ko ngo Mvuyekure yaguze nta masezerano y'ubugure bwa Ndugu yabonye ngo arebe uko ateye. Abajijwe uko we yumva byagenda biramutse bigaragaye ko yaguze ahantu hamaze kugurishwa, avuga ko byabazwa abagurishije ngo kandi barahari, ngo ibyo yatsindiwe mu bunzi bikushyurwa na Nyirakabanza. Mvuyekure abajijwe ukuntu ahaburanwa hari hameze, avuga ko hari fosse septique itarimo sima hasi cyangwaku mpande kandi idasibye n'ubwiherero bwubakishije rukarakara busakajwe shitingi, ngo maze icyobo aragisiba n'ubwiherero arabusenya ahubaka inzu.

10. Me Ruhumuriza abajijwe uko byagenda biramutse bigaragaye ko Mvuyekure yaguze ahantu hari haraguzwe na Ndugu, avuga ko Mvuyekure yakuramo ibyo yashyizemo agasubizamo ibyari birimo, abajijwe icyo anenga imikirize y'abunzi bari bategetse Mvuyekure guha Ndugu agaciro k'umutungo we yagiyemo, avuga ko na bo batari bishimiye uwo mwanzuro, ko baboneyeho gusaba ko Ndugu asubizwa ahantu he yambuwe hagasubizwa n'ibyari birimo ngo kuko yakinze inzu ye kubera kubura aho ashyira ubwiherero.

11. Nzabandora asabwe gusobanura impamvu yatumye agoboka, avuga ko nyina Nyirakabanza yaguze na Ndugu, abajijwe niba ahaburanwa ari ahe cyangwa hari ubundi burenganzira ahafite, avuga ko atari ahe kuko bahagurishije, abajijwe inyungu afite ku kiburanwa, avuga ko inyungu afite ari uko Mvuyekure yahagumana.

12. Mukacyubahiro asabwe gusobanura impamvu yagobotse, avuga ko ahaburanwa haguzwe na Mvuyekure ahaguze n'umuryango mu buryo bukurkije amategeko kandi ngo akaba nta nyungu ahafiteho kuko hagurishijwe.

13. Mvuyekure abajijwe icyo yongera ku rubanza, avuga ko aho yaguze yahagurishijwe n'umuryango, ko rero ntacyo Ndugu yagombye kumurega, naho Me Bimenyimana asaba ko urukiko rwazasuzuma ingingo za 33 na 264 z'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano.

14. Me Ruhumuriza we avuga ko urukiko rwashingira ku ngingo ya 110 y'itegeko ry'ibimenyetso, ingingo ya 2, na 94 z' itegeko rigena imiburanishirize y'imanza z'imbonezamubano (PCCSA) n'ingingo ya 276 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, rugategeka Mvuyekure guha Ndugu amafaranga ku byo yatakaje hashingiwe ku mwanzuro w'Abunzi n'amafaranga ibihumbi mirongi itandatu (60.000 Frws) y'indishyi, akishyura n'amafaranga ibihumbi magana abiri (200.000 Frws) by'igihembo cy'Avoka, ubundi rugategeka irangiza-rubanza ry'agateganyo.

15. Mvuyekure abajijwe icyo avuga ku ndishyi asabwa, avuga ko inzu ye itigeze ihagarara gukora, akaba nta ndishyi yayitangira, kandi ngo n'igihembo cy'avoka na we yaragitanze, naho Me Bimenyimana we avuga ko nta rangizarubanza ry'agateganyo rigomba kubaho.

16. Nzabandora abajijwe icyo yongera ku rubanza, avuga ko urukiko rwareba ubugure bufite agaciro hagati y'ubwa

Mvuyekure n'ubwa Ndugu, naho Mukacyubahiro yongeraho ko urukiko rutaha agaciro ubugure bwa Ndugu kuko yihereranye umucyecuru akamusinyisha ubugure bugoramye. Ababuranyi bamaze kumenyeshwa ko urubanza ruzasomwa ku wa 28/06/2010, iburanisha rirapfundikirwa.

III. UKO URUKIKO RUBIBONA

17. Ingingo ya 114 y'itegeko nº 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, igira iti : « kugira ngo ikirego cye cyakirwe, ugoboka agomba kugaragaza inyungu yemewe n'amategeko, itaziguye kandi ye bwite yaba ishingiye ku mutungo we cyangwa ku mutimanama », rurebye ibivugwa muri iyi ngingo, rubona ibirego byo kugoboka byatanzwe na Nzabandora na Mukacyubahiro bitagomba kwakirwa ngo bisuzumwe kubera ko na bo ubwabo bivugira ko nta nyungu n'imwe cyangwa uburenganzira ubwo ari bwo bwose bafite ku kiburanwa, bityo ibirego byabo bikaba bitagomba kwakirwa ngo bisuzumwe kuko nta nyungu babifitemo nk'uko biteganywa n'ingingo ya 2 n'iya 94 z'itegeko ryavuzwe haruguru.

18. Ku wa 24/12/2008, Mvuyekure Salathiel yaguze isambu irimo inzu eshatu na Nyirakabanza ari kumwe n'umuryango we ku mafaranga miliyoni imwe n'ibihumbi magana inani (1.800.000 Frws), mu hagurishijwe harimo ahantu hangana na 4 m 90 kuri 2 m 90 hari haraguzwe na Ndugu Clauvisse ahaguze na Nyirakabanza ku mafaranga ibihumbi mirongo ine (40.000 Frws), yarahubatse ubwiherero bw'amatafari ya rukarakara ayisakaza shitingi, yaranacukuyemo fosse septique yabwo, hongera kugurishwa ubwa kabiri na Nyirakabanza, abana be witwaje ko ubugure bwa Ndugu nta gaciro bufite ngo kuko yari yaguze na Nyirakabanza umuryango wose udahari.

19. Mu masezerano y'ubugure Mvuyekure yagiranye na Nyirakabanza, bigaragara ko Mvuyekure yari azi neza ko aho hantu agiye kugura haguzwe na Ndugu, nk'uko na we abyivugira

mu gika cya 9, aho avuga ko yabimenye uwo munsi agiye kugura, ngo kandi Nyirakabanza akaba yaramwizezaga ko nihavuka ikibazo azahariha, muri icyo gika , Mvuyekure yaniyemereye ko amaze kugura aho hantu yahise asenya ubwiherero bwari buhari asiba n'icyobo cyari gihari, ahubaka inzu ye.

20. Ingingo ya 110 y'itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, igira iti : « ukwiyemerera mu rubanza ni amagambo umuburanyi cyangwa umuhagarariye avugira mu rukiko agira ibyo yemera. Ayo magambo atsindisha uwayavuze ». Rurebye ibivugwa muri iyi ngingo, rubona kuba Mvuyekure yiyemerera ko yaguze ahantu azi neza ko haguzwe n'undi kandi nta rubanza rwabayeho rwatesheje agaciro amasezerano y'ubwo bugure bwa mbere cyangwa ngo abe yarasheshwe n'abayakoranye ubwabo, akaniyemerera ko ari we ubwe wasenye ubwiherero yahasanze akanasiba icyobo cya fosse septique Ndugu yari yacukuje akubakamo inzu, byerekana umutima w'uburiganya yari afatanyije na Nyirakabanza wo kugura no kugurisha ahantu batari bafitiye uburenganzira, no gusenya ibyo ahasanze, bityo rero, akaba agomba kubiryozwa nk'uko amategeko abiteganya.

21. Rubona rushingiye ku ngingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ivuga ko buri muntu afite uburenganzira ku mutungo we bwite, waba uwe ku giti cye cyangwa uwo afatanyije n'abandi.
Umutungo bwite, uw'umuntu ku giti cye cyangwa uwo asangiye n'abandi ntuvogerwa.
Ntushobora guhungabanywa keretse ku mpamvu z'inyungu rusange mu bihe no mu buryo buteganywa n'amategeko kandi habanje gutangwa indishyi ikwiye, Mvuyekure yaravogereye ku bwende ikibanza cya Ndugu, akamusenyera ibikorwa yari yahashyize, akaba agomba kumuvira mu kibanza, agasubizamo n'ibikorwa yahasanze nk'uko byifujwe na Ndugu.

22. Rubona kubera ibyo byose rwasobanuye, rushingiye ku ngingo ya 276 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano igira iti : « igurisha ry'ikintu cy'undi ni impfabusa; rishobora gutangirwa indishyi iyo umuguzi atigeze amenya ko icyo kintu ari icy'undi », ahantu ha 4 m 90 kuri 2 m 90 hubatswe inzu ya Mvuyekure ari mu kwa Ndugu kuko Mvuyekure yahaguze haramaze kugurwa na Ndugu, bityo Mvuyekure akaba agomba kuhazibukira.

23. Rubona, rushingiye kuri ibyo byose rwasobanuye, rukanashingira ku ngingo ya 24 y'igitabo cya kabiri cy'urwunge rw'amategeko mbonezamubano igira iti : « […] Iyo uwakoze ibyo byose yari atunze ubutaka ku buryarya cyangwa ku bundi buryo budahamye, nyirabwo ashobora guhitamo, ari ugusaba kuvanaho ibyubatswe cyangwa ibyatewe, uwabikoresheje akaba ari we ubyishyura hamwe n'indishyi bibaye ngombwa, ari ukwishyura icyo byatanzweho cyangwa inyungura-gaciro nk'uko bivugwa haruguru », Mvuyekure agomba gusenya inzu yubatse mu kibanza cya Ndugu kuko yayihubatse azi neza ko yahaguze mu buryo bw'uburiganya akahagura n'utari nyiraho kandi abizi nk'uko yabyiyemereye.

24. Rubona hashingiwe ku ngingo ya 258 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, ivuga ko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse, kuba Ndugu asaba gusubizwa agaciro k'ibye byangijwe hashingiwe ku mwanzuro wAbunzi, harimo agaciro k'ubwiherero k'amafaranga ibihumbi ijana na mirongo itanu , agaciro ka fosse septique k'amafaranga ibihumbi magana abiri na mirongo itanu n'amafaranga y'ubukode bw'inzu ibihumbi ijana na makumyabiri, bifite ishingiro, ariko rukabona ayo mafaranga ari menshi, hashingiwe ku ngano, imiterere n'ibikoresho byari ku bwiherero na fosse septique, bityo akaba agenewe amafaranga y'ubwiherero na fosse septique yose hamwe ibihumbi ijana na mirongo itanu (150.000 Frws), naho amafaranga ibihumbi ijana na makumyabiri y'ubukode bw'inzu yagombye kuba yarabonye, rubona ntayo

agomba guhabwa kuko iyo nzu yakomeje gukorerwamo nk'uko byavuzwe na Mvuyekure kandi Ndugu ntabinyomoze. Ku byerekeye indishyi z'ibihumbi mirongo itandatu, rubona ntazo ahawe kuko atigeze asobanura izo ari zo , mu gihe ku gihembo cy'avoka cy'amafaranga ibihumbi magana abiri, rumugeneye ibihumbi ijana (100.000 Frws) kuko atashoboye kwerekana amasezerano bagiranye n'avoka ngo rurebe niba koko ari cyo gihembo bavuganye.

25. Rubona rushingiye ku ngingo ya 208 y'itegeko nº 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ivuga ko irangiza-rubanza ry'agateganyo ribujijwe ku byerekeye ibintu bitimukanwa, iyo ari byo biburanwa, icyifuzo cya Me Ruhumuriza ko urubanza rwarangizwa by'agateganyo kidahawe ishingiro kuko kinyuranyije n'amategeko.

IV. ICYEMEZO CY'URUKIKO

26. Rwemeye kwakira ikirego rwashyikirijwe na Mvuyekure Salathiel, rugisuzumye rusanga nta shingiro gifite.

27. Rwemeje ko ibirego byo kugoboka ku bushake rwashyikirijwe na Nzabandora na Mukacyubahiro bitakiriwe ngo bisuzumwe kubera impamvu zasobanuwe.

28. Rwemeje ko Mvuyekure Salathiel agomba gusenya inzu ye yubatse mu kibanza cya Ndugu, atabikora igasenywa ku ngufu za Leta, amafaranga yakoreshejwe mu gusenya akishyurwa na we.

29. Rwemeje ko Mvuyekure Salathiel atanga amafaranga ibihumbi ijana na mirongo itanu (150.000 Frws) yo kubaka ubwiherero na fosse septique bya Ndugu yasenye.

30. Rukijije ko Mvuyekure Salathiel, Nzabandora Jean Bosco na Mukacyubahiro Xavérine batsinzwe , naho Ndugu Clauvisse atsinze.

31. Rutegetse ibyavuzwe mu gika cya 28 na 29 by'uru rubanza.

32. Ruvuze ko ingwate z'amagarama zatanzwe na Mvuyekure Salathiel, Nzabandora Jean Bosco na Mukacyubahiro Xavérine zihwanye n'ibyakozwe muri uru rubanza.

33. Rutegetse Mvuyekure Salathiel, guha Ndugu Clauvisse amafaranga ibihumbi ijana (100.000 Frws) y'igihembo cy'Avoka.

34. Rwibukije ko kujurira bikorwa mu gihe cy'ukwezi kumwe kuva urubanza rusomwe.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME, NONE KU WA 28/06/2010 MU RUKIKO RW'IBANZE RWA BWISHYURA, RUGIZWE NA MURENZI SAMUEL, UMUCAMANZA, AFASHIJWE NA MUGABO OLIVIER, UMWANDITSI.

UMUCAMANZA :	UMWANDITSI
MURENZI SAMUEL (sé)	**MUGABO OLIVIER (sé)**

5. URUKIKO RW'IBANZE RWA KACYIRU

N° Y'URUBANZA: RC 0223/08/TB/KCY
ITARIKI Y'URUBANZA: 06/11/2009
HABURANA: KACHELEWA Jonathan / NYIRARUKUNDO Chantal

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO- IMPAMVU Z'UBUTANE-GUHOZWA KU NKEKE NO GUTUKWA IBITUTSI NYANDAGAZI.

KUTABANA NK'UMUGORE N'UMUGABO KW'ABASHAKANYE KU BURYO BATAGISHOBOYE GUSHINGA UMURYANGO NDEMYABUZIMA

KWITA KU NYUNGU Z'UMWANA MU KUGENA UMUBYEYI UHABWA ABANA

IVANGAMUTUNGO RUSANGE

IRANGIRA RY'AMASEZERANO Y'IVANGAMUTUNGO RUSANGE RITEWE NO GUTANA BURUNDU KW'ABASHYINGIRANYWE-IGABANA RY'UMUTUNGO

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Guhozwa ku nkeke ni imwe mu mpamvu z'ubutane. Kuba umwe mu bashakanye arega mugenzi we ko amuhoza ku nkeke kandi akamutuka ibitutsi nyandagazi, mugenzi we akemera ko yamututse mu buryo buteye isoni ariko ashotowe, ntashobore gutanga ibimenyetso by'uko uwo babana yamushotoye, bituma ahamwa n'icyaha cyo guhoza ku nkeke no gutuka uwo bashakanye ibitutsi nyandagazi.

Umucamanza mu gutanga ubutane ntagomba kureba gusa niba umwe mu bashyingiranywe yarishe inshingano ikomoka ku ishyingirwa, icyo agomba kureba ni ukwerekana ko kubana kw'abashyingiranywe kutagishobotse. Bityo iyo kubana kw'abashyingiranywe kwananiranye, umucamanza, akurikije impamvu ziteganyijwe n'itegeko , akabona ko hari ukutabana no kwangirika kudasubirwaho kw'amasezerano y'abashyingiranywe, agena ingaruka atitaye ku ufite ikosa.

Abana bahabwa umubyeyi watsindiye ubutane keretse urukiko ubwarwo cyangwa bisabwe n'umwe mu batandukanijwe, rutegetse ko bitabwaho n'umwe mu babyeyi cyangwa se n'undi muntu bishingiye ku byagirira abana akamaro. Icyakora mu byemezo byose bireba umwana hagomba kwitabwaho mbere na mbere inyungu ze.

Ivangamutungo rusange ni amasezerano abashyingiranywe bagirana bumvikana gushyira hamwe umutungo wabo wose, ibyimukanwa n'ibitimukanwa kimwe n'imyenda yabo yose.

Gutana burundu kw'abashyingiranywe ni imwe mu mpamvu ituma ivangamutungo rirangira. Icyo gihe abashyingiranywe bagabana mu buryo bungana umutungo n'imyenda bahuriyeho. Ibigabanwa mu gihe cy'ubutane ni imitungo iriho baba barakoreye ibarura hagaragazwa n'imyenda bafitiye abandi. Iyo nta myenda ihari, ibihari babigabanya mo kabiri mu buryo bungana, buri wese agatwara igice kimwe undi ikindi.

URUKIKO RW'IBANZE RWA KACYIRU RURI KU CYICARO CYARWO I REMERA MU KARERE KA GASABO, RUHABURANISHIRIZA IMANZA Z'IMBONEZAMUBANO, RUKIJIJE URUBANZA MU RWEGO RWA MBERE MU RUHAME RUFITE N° RC 0223/08/TB/KCY KU WA 06/11/2009 MU BURYO BUKURIKIRA :

ABABURANYI :

UREGA: KACHELEWA Jonathan mwene NYIRIKIGURA na NYIRARUFIRIRA wavutse mu mwaka wa 1967 akaba atuye mu mudugudu wa Bwiza, Akagari ka Nyamugali, Umurenge wa Gatsata, akarere ka Gasabo, Umujyi wa Kigali .
UREGWA: NYIRARUKUNDO Chantal, mwene NDAYISENGA na NYIRANGENDAHAYO, wavutse mwaka wa 1975 akaba atuye mu mudugudu wa Bwiza, Akagari ka Nyamugali, Umurenge wa Gatsata, Akarere ka Gasabo, Umujyi wa Kigali .

IKIBURANWA: Ubutane.

I. IMITERERE Y'URUBANZA

1. Ku wa 13/06/2008, KACHELEWA Jonathan yatanze ikirego mu Rukiko rw'Ibanze rwa KACYIRU, arega umugore we NYIRARUKUNDO Chantal, asaba ubutane bwa burundu, ni uko icyo kirego cyandikwa mu bitabo by'ibirego kuri RC 0223/08/TB/KCY .

2. Kuwa 17/09/2009, bakorewe umuhango wo kungwa maze kubunga birananirana,Urukiko rwemerera urega gukomeza ikirego cye cy'ubutane .

3. Itegeko rya Perezida w'Urukiko ryo kuwa 18/09/2009 ryashyize umunsi w'iburanisha ry'urwo rubanza kuwa 21/10/2009 saa mbili za mu gitondo.

II. IMIGENDEKERE Y'URUBANZA

4. Kuwa 21/10/2009 ababuranyi bombi bitabye Urukiko, KACHELEWA Jonathan yiburanira ku giti cye naho NYIRARUKUNDO Chantal yunganirwa na Me SEBAZIGA Sofonie, maze ababuranyi basaba ko urubanza rwaburanishirizwa mu muhezo ngo kuko hari byinshi biri buruvugirwemo bumva ko byaba byiza byumviswe n'Urukiko gusa, maze Urukiko rufata icyemezo cyo kuburanishiriza urwo rubanza mu muhezo, ibijyanye nawo byose birakorwa .

5. KACHELEWA Jonathan yasobanuye ikirego cye avuga ko yashakanye na NYIRARUKUNDO Chantal mu buryo bwemewe n'amategeko ariko ngo ntibakibanye neza kubera ubusambanyi bwe, kumuhoza ku nkeke, gusesagura umutungo no kutita ku muryango, ndetse akomeza avuga ko kuri ubwo busambanyi bwe ko ikibugaragaza ari uko yabibwiwe n'abakozi noneho ngo agahita abirukana kandi ngo kuva yashakana n'umugore we NYIRARUKUNDO Chantal ngo mu kurangiza inshingano z'abashakanye mu buriri,umugore we yarababaraga bituma amujyana kumupimisha kwa muganga basanga arwaye imitezi .

6. KACHELEWA Jonathan yakomeje avuga ko yaje kuganira n'umugore we amubwira ko amaze gukuramo inda kabiri ariko ngo aza kumubabarira kubera ko yashakaga kubaka ariko ngo yabibwiye nyirasenge maze amutegeka gusaba imbabazi anamwemerera ko yasambanaga uretse ko ngo atakibikora, akomeza avuga ko kumuhoza ku nkeke bikorwa n'umugore we, ngo bigaragazwa n'uko iyo yatahaga yamutukaga cyane kandi ngo bageraga no ku buriri ngo ntiyemere ko baryamana ndetse ngo yigeze kumutuka ngo arakarongora nyina .

7.KACHELEWA Jonathan akomeza avuga ko umugore we asesagura umutungo kubera ko ngo yamuhaga amafaranga akayakoresha ibyo ashaka ngo yigeze kumuha 300.000 frw ngo acuruze ,aza kumubwira ko yahombye noneho ngo aza no kumwongera andi 350.000frw yo gucuruza imyenda ariko ngo arabyanga ahubwo ahitamo gufatanya na nyina gucuruza

imyaka noneho ngo biza kugera aho abo yarimo imyenda baza kumwishyuza ,aza no kumuha amafaranga angana na 12.000.000 frw mu byiciro bibiri ariko ngo ayo mafaranga yose ntiyamenye irengero ryayo, akomeza avuga ko yamuhaye amafaranga y'ishuri agera kuri 350.000 frw ariko ngo ntabwo yigeze ayatanga kandi ngo NYIRARUKUNDO Chantal yaje no kuza gushaka akazi ariko ntiyamubwira ko yaje kukabona ngo amusabye gutunga urugo arabyanga ngo kandi kuva kuwa 06/01/2006 ntibakibana nk'umugore n'umugabo ngo none ubu umugore we NYIRARUKUNDO yatangiye gucura imigambi yo kumwica.

8.NYIRARUKUNDO Chantal yahawe ijambo ngo yiregure avuga ko yashakanye na KACHELEWA mu buryo bwubahirije amategeko ngo yaje kumuharika abyara umwana hanze ngo ubu afite imyaka hagati y'itanu n'itandatu ngo uwo mugore babyaranye ,Kachelewa yamwubakiye inzu i CYANGUGU ngo kuba rero amushinja ubusambanyi , nta kimenyetso abifitiye ntibyahabwa agaciro.Akomeza avuga ko ku kibazo cyo kumuhoza ku nkeke ngo ntabwo abikora ahubwo ni KACHELEWA, ubikora ngo kuko anamukubita ngo naho ibyo gusesagura umutungo ntabwo abikora kuko atazi umutungo w'umugabo we ngo umugabo ntahahira urugo ku buryo byaje kugera aho ajya gushaka akazi ko mu rugo aho ahembwa 30.000 Frw kugira ngo abone icyo gutungisha abana .

9.NYIRARUKUNDO Chantal yakomeje avuga ko umugabo we yabeshye ngo ntabwo hashize imyaka irenga itatu batakibana nk'umugore n'umugabo kuko ngo iyo myaka itaragera ngo ariko iri hafi kuzura kandi ngo kuba umugabo avuga ko yashatse kumwica ngo ni ukubeshya kuko ahubwo ariwe waterefonnye se avuga ko atazongera kubona umukobwa we ngo akibyumva yahise ajya kumurega kuri polisi .Ndetse akomeza avuga ko KACHELEWA yaje kubakira umukobwa inzu amubwira ko azamujyana ngo uwo mukobwa abimenye ko afite abana arabyanga , ngo bityo we nta butane ashaka ngo kuko agikunda umugabo we .

10. Me SEBAZIGA Sofonie wunganira NYIRARUKUNDO Chantal yahawe ijambo avuga ko ingingo ya 9 CPCCSA ku gika cya mbere ivuga ko urega agaragaza ibimenyetso ku bikorwa byose byerekanwa n'ingingo ya 237 CCLI , ngo bityo ashingiye kubyo KACHELEWA amaze kuvuga ngo nta kimenyetso yerekanye ngo kuvuga ko NYIRARUKUNDO yasambanye ngo nta kimenyetso na kimwe yagaragaje kuko we yivugira ko yumvise gusa ngo akaba ari kimwe no kumuhoza ku nkenke ngo ahubwo niwe ubikora ngo bityo urukiko kugira ngo rumenye ukuri ngo rwazakora iperereza, ndetse akomeza avuga ko Urukiko ruramutse rusanze ari ngombwa ko batana ngo urukiko rwahereza abana kuri NYIRARUKUNDO Chantal ngo ariko ubundi bo ntibashaka ubutane .

11. KACHELEWA Jonathan yahawe ijambo ngo agire icyo abivugaho avuga ko NYIRARUKUNDO Chantal ubwe yemeye ko batakibana ngo hashize imyaka irenga itatu kubera ko yamututse kuri nyina ngo ibindi bimenyetso abifite kuri cassette ngo uretse ko atayizanye ngo kandi ibyo byose yabisobanuriye se wa NYIRARUKUNDO Chantal ndetse akomeza avuga ko no mu muhango wo kungwa NYIRARUKUNDO ubwe ngo yemeye ko yamututse kuri nyina .

12. NYIRARUKUNDO yahawe ijambo ngo agire icyo abivugaho avuga ko yemera ko yamututse ngo arakarongora nyina ngo ariko impamvu yamututse ngo ni uko nawe yari amaze kumubwira ko azarongora nyina ngo akaba yumva iyo mpamvu idahagije ngo ubutane butangwe .

13.Ababuranyi babajijwe imitungo yabo bafitanye (en commun),maze KACHELEWA avuga ko yasezeranye na NYIRARUKUNDO bagahitamo ivanga mutungo rusange ngo bakaba bafite inzu imwe ihereye mu kagari ka Nyamugali,Umurenge wa Gatsata ngo ariko iyo nzu yayubakiye abana be ngo arasaba ko batayigabana ahubwo Urukiko rukemeza ko ari iy'abana bakayirererwamo , ngo undi mutungo bari bafitanye ni inka zari mu RDC ariko ngo zarariwe.

14. NYIRARUKUNDO Chantal yahawe ijambo maze avuga ko bafite inzu imwe iherereye mu kagari ka Nyamugali,Umurenge wa Gatsata ngo ariko iyo nzu yahabwa abana maze ntigabanwe , ngo kuko ariboyubakiwe ngo naho inka ziri mu RDC ngo zirahari ibyo kuvuga ko zariwe ni ukubeshya .

15. Babazwa niba hari abana bafitanye ndetse niba baratekereje ku kibazo cyabo mu gihe baba batandukanye, KACHELEWA Jonathan avuga ko bafite abana 5 aribo MUHIMPUNDU Esther wavutse wavutse mu mwaka wa 1997, UMUGWANEZA Alice , wavutse mu mwaka wa 2000, MUSHIMIRE Fred , wavutse mu mwaka wa 2001,MUHETO David wavutse mu mwaka wa 2002,NSHUTI Josué wavutse mu mwaka wa 2004. NYIRARUKUNDO abazwa niba ari byo ati nibyo.

16.KACHELEWA Jonathan yakomeje avuga ko kubera ko akorera hanze ngo agera mu rugo agasanga abana badafashwe neza ngo bityo yabahabwa akabana nabo .
17. NYIRARUKUNDO yahawe ijambo avuga ko ku kibazo cy'abana ngo yumva batarerwa na mukase kandi akiriho ngo akaba yumva ariwe wabarera kuko bagikeneye uburere kuri nyina.

18. Me SEBAZIGA yahawe ijambo avuga ko kubera inyungu z'abana ngo kandi hakurikijwe imyitwarire mibi ya KACHELEWA ngo abana bahabwa NYIRARUKUNDO ngo akaba ariwe ubarera akabarerera mu nzu yabo .

19. KACHELEWA Jonathan yabajijwe icyo yongera ku rubanza maze avuga ko ashaka ubutane ngo kandi agahabwa abana be akabarerera mu nzu yabubakiye.

20. NYIRARUKUNDO Chantal nawe yahawe ijambo ngo agire icyo yongera ho avuga ko icyo asaba ari ukubana n'abana be akabarera ngo kuko batabana na mukase ngo ariko icya mbere n'uko adashaka ubutane .

21.Me SEBAZIGA Sophonie yahawe ijambo avuga ko KACHELEWA ahembwa 750.000 frws buri kwezi ngo bityo bakaba basaba ko NYIRARUKUNDO Chantal yahabwa amafranga 400.000 Frw buri kwezi yo gutunga abana mu gihe Urukiko rwategeka ko abo bana barerwa na nyina .

22. KACHELEWA Jonathan yahawe ijambo ngo agire icyo avuga ku mafaranga asabwe avuga ko amafaranga ayakoresha byinshi ngo kandi ntahembwa 750.000 Frw ngo kuko mu mafaranga ahembwa asigarana ibihumbi ijana na mirongo itanu (150.000frws) ngo kandi arasaba kurera abana kuko ashaka kubajyana kwiga muri Uganda .

23. NYIRARUKUNDO Chantal yahawe ijambo ngo agire icyo avuga maze avuga ko ngo yaje kumenya ko Kachelewa azajyana abana muri Uganda ngo kandi yaramubwiye ko azivuna umwanzi none ngo arasaba kurenganurwa .

24. Me SEBAZIGA Sophonie yahawe ijambo ngo agire icyo yongereho avuga ko kujyana abana Uganda atari byo ngo kuko abana bagikeneye uburere bwa nyina .

25. Urukiko rumaze kubona ko ingingo zose zasuzumwe, iburanisha ryarapfundikiwe, maze ababuranyi n'abari aho bose babwirwa ko urubanza ruzasomerwa mu ruhame ku wa 06/11/2009 saa tatu za mu gitondo ku cyicaro cy'Urukiko, n'uko ruriherera maze ruruca mu buryo bukurikira:

III.UKO URUKIKO RUBIBONA

26. Ingingo ya 237 y'Itegeko n°42/1988 ryo kuwa 27 ukwakira 1988 rishyiraho interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano iteganya ko : " Buri wese mu bashyingiranywe ashobora gusaba gutana burundu kubera

a. Igihano cy'icyaha gisebeje cyane
b. Ubusambanyi

c. Guhoza undi ku nkeke
d. Kwanga gutanga ibitunga urugo."
e. Guta urugo nibura igihe cy'amezi 12 nibura;
f. Kumara nibura imyaka 3 batabana ku bushake bwabo.

Hashingiwe kuri iyi ngingo, Urukiko rurasanga KACHELEWA Jonathan asaba ubutane bwa burundu n'uwo bashakanye NYIRARUKUNDO Chantal, kubera ko uyu mugore we amuhoza ku nkeke, amucunaguza, akaba asambana,asesagura umutungo ,ntatange ibitunga urugo no gushaka kumwica ndetse akavuga ko hashize imyaka irenga itatu batabana nk'umugore n'umugabo kuko umwe aba ukwe.

27. Urukiko rubona ku bijyanye no guhozwa ku nkeke, mu myiregurire ya NYIRARUKUNDO Chantal hamwe n'umwunganira, ahakana iryo kosa akavuga ko atamutuka ibitutsi nyandagazi ndetse akavuga ko nta n'ibimenyetso KACHELEWA agaragaza gusa akemera ko bigeze gutukana ariko biturutse kuri KACHELEWA.

28.Urukiko rushingiye ku mvugo z'ababuranyi n'ibimenyetso ,rubona guhozwa ku nkeke kwa KACHELEWA Jonathan yo kuba yaratutswe n'umugore we, bikwiye gufatwa nk'ukuri ko byabayeho koko, kuko na NYIRARUKUNDO Chantal ubwe,yiyemerera ko bajya batukana ndetse akivugira ko yabwiye umugabo we ngo azarongore nyina n'ubwo avuga ko yabivuze biturutse kuri KACHELEWA,ibyo ntabwo yigeze abigaragariza ibimenyetso uretse kuba yarabivuze gusa,bityo hashingiwe ku itegeko n° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ariryo ryose rishingiye ku gitsina,risobanura inkeke icyo aricyo,rubona ntaho rwahera rutemeza ko NYIRARUKUNDO Chantal yahojeje ku nkeke umugabo we amutuka ibitutsi nyandagazi.Bityo iryo kosa ryo guhoza ku nkeke umugabo we rikaba rimuhama.

29.Urukiko rurasanga ku bijyanye no kuba KACHELEWA Jonathan arega umugore we, ubusambanyi,gusesagura

umutungo ,kudatanga ibitunga urugo no gushaka kumwica ,NYIRARUKUNDO Chantal abihakana,bityo nk'uko ingingo ya 3 n'iya 2 z'itegeko n°15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana atanga ibimenyetso,Urukiko rubona usibye kuba KACHELEWA Jonathan yaravuze biriya arega umugore we byo kuba asambana,asesagura umutungo,adatanga ibitunga urugo no gushaka kumwica,nta bimenyetso yabigaragarije ngo Urukiko rupime koko ko ari ukuri .

30. Ingingo ya 209 y'itegeko ryavuzwe iteganya ko: "Abashyingiranywe bagomba kudahemukirana gutabarana no gufashanya," naho ingingo ya 210 yaryo igateganya ko :"Ugushyingirwa biha abashyingiranywe uburyo bwo gushinga umuryango ndemyabuzima kukanabaha itegeko ryo kubana."

Hashingiwe kuri izi ngingo zombi, Urukiko rurasanga nyuma y'ibimaze gusobanurwa haruguru, umubano w'aba baburanyi bombi nk'abashakanye udashobotse ku buryo n'izi nshingano z'ingenzi batazubahiriza . Ibyo biragaragazwa n'uko hashize imyaka yenda kugera kuri itatu (3 ans) batakibana nk'umugore n'umugabo nk'uko bose babyivugira kandi ugushyingirwa ubundi kubategeka kubana, kukanabategeka gushinga umuryango ndemyabuzima .

31. Urukiko rushingiye ku nyandiko y'umuhanga mu mategeko witwa ALAIN DUELZ mu gitabo cye " Le droit du divorce", 3e éd.,2002 yavuze ko umucamanza mu gutanga ubutane atagomba kureba gusa niba umwe mu bashyingiranywe yarishe inshingano ikomoka ku ishyingirwa, ko icyo agomba kureba ari ukwerekana ko kubana kw'abashyingiranywe kutagishobotse (Le juge n'est plus ammené à rechercher la violation par tel époux d'une obligation essentielle du mariage mais à constater l'échec de communauté de vie que ce mariage tendait à établir). Na none uyu muhanga mu mategeko agira akomeza agira ati:"La désunion est irrémediable dès qu'il apparaît que l'un des

conjoints a perdu toute affection et qu'il renonce irrévocablement à toute forme de communauté de vie."

32.Urukiko rushingiye kandi ku nyandiko y'umuhanga mu mategeko witwa NTAMPAKA Charles mu gitabo cye cyitwa Droit de personnes et de la famille,ku rupapuro rwa 117 aho yavuze amoko y'ubutane,yavuzemo ubutane nk'umuti (Divorce-remède):La communauté conjugale peut aboutir à un echec,le juge,suivant les conditions spécifiées dans la loi constate l'echec et la destruction irremediable du mariage,il determine les effets independement de toute notion de faute,bishatse kuvuga ko ukubana kw'abashyingiranwe gushobora kunanirana ,umucamanaza akurikije impamvu ziteganyijwe n'itegeko akabona ko kutabana no kwangirika kudasubirwaho kw'amasezerano y'abashyingiranwe,agena ingaruka atitaye k'ufite ikosa .

33. Urukiko rurasanga rero no ku birebana n'aba baburanyi ziriya nshingano z'abashyingiranywe zitagishoboka kuri bo, kuko usanga urukundo, ugukenerana n'ugushakana hagati yabo nta bigihari ndetse nta n'ibishoboka cyane cyane kuri KACHELEWA Jonathan kuko ubona asa n'uwazinutswe, aho yivugira ati nihanganiye amakosa menshi y'umugore ariko noneho ndayarambiwe sinkishoboye kuyihanganira ndetse no kuba bamaze imyaka yenda igera kuri itatu batabana nk'umugabo n'umugore,mu miburanire yabo,umwe akagaragaza ko mugenzi we yamunaniye kubera amakosa amukorera, ibi bigaragaza ko umubano wabo udashobotse.

34. Bityo bakaba bakwiye gutandukana mu buryo bwemewe n'amategeko nk'uko KACHELEWA Jonathan abisaba, kandi impamvu abisaba hakaba harimo izifite ishingiro, nko guhozwa ku nkeke n'umugore we basezeranye mu buryo bwemewe n'amategeko.

35. Urukiko rurasanga ku bijyanye n'imitungo ,ingingo ya 24 y'itegeko n° 22/99 ryo kuwa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano

kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashingiranywe, impano n'izungura, ivuga ko ivangamutungo rusange rirangira iyo habayeho gutana burundu kw'abashyingiranywe. Iyo ivangamutungo rirangiye abashyingiranywe bagabana ku buryo bungana umutungo n'imyenda bahuriyeho. Ingingo ya 3 y'itegeko ryavuzwe haruguru, ivuga ko ivangamutungo rusange ari amasezerano abashyingiranywe bagirana bumvikana gushyira hamwe umutungo wabo wose, ibyimukanwa n'ibitimukanwa kimwe n'imyenda yabo yose. Kuba kandi n'inyandiko z'abahanga mu mategeko (Les écrits doctrinaux) zivuga ko ibigabanwa mu gihe cy'ubutane ari imitungo iriho muri icyo gihe, baba barakoreye ibarura hagaragazwa n'imyenda bafitiye abandi bantu (….La masse à partager se compose des biens existants au jour du divorce, sur base de l'inventaire,.. tout en déterminant le passif commun) Reba, ku mpapuro za 266-267 mu gitabo cya ALAIN DUELZ, Le droit du divorce, 3 eme éd., De Boeck & Larcier, Bruxelles, 2002) .Muri icyo gitabo bakomeza bavuga ko iyo nta myenda ihari, ibihari babigabanyamo kabiri mu buryo bungana, buri wese agatwara igice kimwe undi ikindi(S'il reste un actif, il se partage par moitié) .

36. Hashingiwe ku bimaze gusobanurwa, Urukiko rubona ibijyanye n'imitungo yabo, ababuranyi bose bemeza ko basezeranye byemewe n'amategeko bahitamo ivangamutungo rusange ndetse bakemeranya ko bafite inzu imwe iherereye mu kagari ka Nyamugali,Umurenge wa Gatsata,Akarere ka Gasabo,Umujyi wa Kigali ndetse bakemeranya ko iyo nzu yubakiwe abana itagabanwa ahubwo yaba iy'abana babyaranye bakayirererwamo,Urukiko rurasanga iyo nzu itagabanwa nk'uko ababuranyi bombi babisaba naho undi mutungo NYIRARUKUNDO Chantal, avuga bafitanye ugizwe n'inka zihererereye muri Repuburika iharanira Democratie ya Congo, KACHELEWA Jonathan ahakana ko ntazo bagifite ngo kuko zariwe, bityo Urukiko rukaba rubona ntaho rwahera rubagabanya izo nka kuko nta bimenyetso bagaragaza ko bazifite .

37. Ku kibazo cy'abana babyaranye,ingingo ya 283 y'Itegeko

n°42/1988 ryo kuwa 27 ukwakira 1988 rishyiraho interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano iteganya ko : "Abana bahabwa umubyeyi watsindiye ubutane keretse urukiko ku bwarwo cyangwa rubisabwe n'umwe mu bashyingiranywe, rutegetse ko bitabwaho n'umwe mu babyeyi babo cyangwa se n'undi muntu, rushingiye ku byagirira abana akamaro.

38. Ingingo ya 9 al.1 y'itegeko n°27/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa iteganya ko"mu byemezo byose bireba
umwana, hagomba kwitabwaho mbere na mbere inyungu ze", naho ingingo ya 7 al 3 y'itegeko rimaze kuvugwa ikavuga ko igihe cyose umwana ataragira imyaka 6 y'amavuko agomba kubana na nyina mu gihe bitabangamiye inyungu z'umwana. »

39. Hashingiwe kuri izi ngingo,Urukiko rasanga ku nyungu z'abana ba KACHELEWA Jonathan na NYIRARUKUNDO Chantal aribo MUHIMPUNDU Esther, UMUGWANEZA Alice , MUSHIMIRE Fred ,MUHETO David,NSHUTI Josué barerwa na nyina NYIRARUKUNDO Chantal kuko bigaragara ko bagikeneye by'umwihariko uburere bwa nyina ubabyara cyane ko na KACHELEWA ubwe yivugira ko akorera hanze y'u Rwanda ,bityo bikaba bigaragara ko abana batajya bamubona kenshi kandi bakeneye uburere bw'ababyeyi kuko bakiri bato ndetse no kuba avuga ko iyo avuye mu kazi asanga abana badafashwe neza,ibyo uretse kuba yarabivuze gusa nta bimenyetso abigaragariza ngo Urukiko rwemeze ko ari ukuri. Bityo aba bana bakaba bagomba kubana na nyina, akabarerera mu nzu yabo ihererereye mu kagari ka Nyamugali,Umurenge wa Gatsata,Akarere ka Gasabo,Umujyi wa Kigali kuko KACHELEWA Jonathan na NYIRARUKUNDO Chantal bose bemeranya ko iyo nzu yabo itagabanwa ahubwo yahabwa abana bakayibamo .

40. Urukiko rubona ariko KACHELEWA Jonathan akwiye kwemererwa gusura abana igihe abishakiye ndetse nabo bakamusura, akanafatanya na nyina kuzuza inshingano za

kibyeyi zo kubarera atanga amafaranga ibihumbi mirongo itanu (50.000 frws) buri kwezi agenwe n'Urukiko mu bushishozi bwarwo kuko ayasabwe ahwanye na 400.000frws buri kwezi, Urukiko rwasanze ari ikirenga kandi NYIRARUKUNDO Chantal akaba ataragaragaje aho rwahera ruyagena kuko ibyo yavuze byose nta kimenyetso yigeze abitangira .

IV. ICYEMEZO CY'URUKIKO

41. Urukiko rwemeye kwakira ikirego rwaregewe na KACHELEWA Jonathan kuko cyaje mu buryo no mu nzira zemewe n'amategeko kandi nyuma yo kugisuzuma rwemeje ko gifite ishingiro.

42. Rwemeje ko KACHELEWA Jonathan mwene NYIRIKIGURA na NYIRARUFIRIRA na NYIRARUKUNDO Chantal mwene NDAYISENGA na NYIRANGENDAHAYO bari barashyingiranywe mu buryo bwemewe n'amategeko ku wa 09/11/1996 imbere y'ubuyobozi bw'umurenge wa Nyarugenge, batandukanye ku buryo bwemewe n'amategeko.

43. Rutegetse ko iki cyemezo cyandikwa mu bwanditsi bw'irangamimerere y'aho KACHELEWA Jonathan na NYIRARUKUNDO Chantal bakoreye amasezerano y'ubushingiranwe. _

44. Rutegetse ko abana ba KACHELEWA Jonathan na NYIRARUKUNDO Chantal aribo MUHIMPUNDU Esther, UMUGWANEZA Alice, MUSHIMIRE Fred, MUHETO David na NSHUTI barerwa na nyina NYIRARUKUNDO Chantal .

45. Rutegetse ko KACHELEWA Jonathan azajya asura abana be igihe abishakiye, ndetse nabo bakamusura igihe babishakiye kandi akaba agomba gufatanya na NYIRARUKUNDO Chantal kurangiza inshingano zabo zo kubarera atanga amafaranga ibihumbi mirongo itanu (50.000frws) buri kwezi ayo mafaranga agahabwa NYIRARUKUNDO Chantal .

46. Rutegetse ko umutungo abashakanye bafitanye ugizwe

n'inzu iherereye mu kagari ka Nyamugali, Umurenge wa Gatsata, akarere ka Gasabo, Umujyi wa Kigali, ababuranyi bose bemeranya ko iyo nzu yaba iy'abana babyaranye bityo ikaba itagabanyijwe abana bakaba bagomba gukomeza kuyibamo .

47. Rutegetse NYIRARUKUNDO Chantal gutanga amafaranga angana n' ibihumbi bine magana atanu y'u Rwanda (4500Frw), ahwanye n'ibyakozwe mu rubanza, atayatanga mu gihe cy'iminsi 8 kuva uru rubanza rubaye ndakuka akavanwa mu mutungo we ku ngufu za Leta.

48. Rwibukije ababuranyi ko kujuririra uru rubanza bikorwa mu gihe cy'ukwezi kumwe, guhera igihe urubanza ruciriweho, ababuranyi bahari cyangwa bakabimenyeshwa .

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KU RWEGO RWA MBERE NONE KUWA 06/11/2009, MU RUKIKO RW'IBANZE RWA KACYIRU RUGIZWE NA :

UMUCAMANZA	UMWANDITSI
GASANA Jean Damascène	**HAKIZIMANA Célestin**

IMANZA Z'ubucuruzi

6. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOM 0002/10/CS
ITARIKI Y'URUBANZA: 28/05/2010
HABURANA: CONFERENCE EPISCOPALE DU RWANDA ASBL (CER) C/ HYDROBATEL sarl

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI- KURANGIZA BY'AGATEGANYO URUBANZA IYO UREGWA YEMERA IGICE CY'UMWENDA GUSA – KUTARENZA, MU KURURANGIZA, AGACIRO K'IGICE CY'UMWENDA WEMEWE.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Irangizarubanza ry'agateganyo ryemezwa n'urukiko rubyibwirije ndetse nta ngwate iyo ikiburanwa ari umwenda wemewe mu rubanza n'uregwa. Iyo urega atemera umwenda wose, irangizarubanza ry'agateganyo rikorwa gusa ku gice cy'umwenda wemewe mu rukiko, ntirishobora gukorwa ku gice atemera.

URUKIKO RW'IKIRENGA RURI I KIGALI RUHABURANISHIRIZA MU RUHAME IMANZA Z'UBUCURUZI, RUHAKIRIJE MU RUHAME NONE KUWA 28/05/2010 URUBANZA N° RCOM 0002/10/CSMU BURYO BUKURIKIRA:

HABURANA:

CONFERENCE EPISCOPALE DU RWANDA ASBL (CER) représentée par Mr l' Abbé INCIMATATA Oreste, ayant pour conseil Me HABIMANA Augustin;
na
HYDROBATEL sarl, représentée par Mr KATABARWA André et KATABARWA Aimé, ayant pour conseils Me RUSANGANWA Jean Bosco;

IKIBURANWA: Ikirego cyihutirwa kigamije gusaba Urukiko guhagarika irangizarubanza ry'agateganyo ryategetswe n'Urukiko Rukuru rw'Ubucuruzi mu rubanza RCOM N° 143/09/ HCC rwaciwe kuwa 16/04/2010.

1. Imiterere y'urubanza

[1] Ku itariki ya 03/09/2004, HYDROBATEL na CONFERENCE EPISCOPALE DU RWANDA(CER) bagiranye amasezerano agamije kubaka inyubako yagombaga gukoreshwa nka bureau na parking.

[2] Kuwa 12/08/2009, HYDROBATEL yatanze ikirego mu Rukiko Rukuru rw' Ubucuruzi, isaba ko CER yategekwa kuyishyura 638.399.961 frw, Intérêts, D.I et frais de procédure, cyandikwa kuri n°RCOM 0143/09/HCC.

[3] Urubanza rwaciwe kuwa 16/04/2010, Urukiko rutegeka CER kwishyura HYDROBATEL 500.138.511 frw yiyongereyeho inyungu z'ubukererwe za 21% ku mwaka kugeza yishyuwe,

runategeka irangizarubanza ry'agateganyo ku mafaranga 445.123.275.

[4] Kuwa 21/04/2010 , Me HABIMANA Augustin, mu izina rya CER, yajuririye urwo rubanza mu Rukiko rw'Ikirenga. Uwo munsi yatanze n' ikirego cyihutirwa kigamije gusaba ihagarikwa ry'irangizarubanza ry'agateganyo ryategetswe, ikirego cyandikwa kuri n° RCOMA0041/10/CS.

[5] Urubanza ku kirego cyihutirwa rwahamagawe kuburanishwa kuwa 25/05/2010 hakurikijwe Itegeko n° 0052/2010 ryo kuwa 06/05/2010 rya Perezida w' Urukiko rw' Ikirenga, Urukiko rusanga ababuranyi bitabye, ruburanishwa mu ruhame CER ihagarariwe na Me HABIMANA Augustin, HYDROBATEL ihagarariwe na Me RUSANGANWA Jean Bosco.

[6] Nyuma yo kumwa raporo y'umucamanza wateguye urubanza, Me HABIMANA yahawe ijambo, avuga ko irangizarubanza ry'agateganyo ryatanzwe mu buryo bunyuranije n'ingingo ya 210-2° y'Itegeko n°18/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kuko ryatanzwe ku mafaranga CER itigeze yemera imbere y'Urukiko. Asobanura ko Urukiko rwitiranyije kwemera amafagitire 27,28,29,31,32 na 33 no kwemera umwenda kandi rwirengagije ko hari amafaranga HYDROBATEL nayo igomba kwishyura CER.

[7] Yasabye Urukiko guhagarika iryo rangizarubanza ry'agateganyo ryatanzwe mu buryo bunyuranije n'amategeko, rwasanga icyo cyemezo kitavanwaho ku mafaranga yose, rugakurikiza ibiteganywa n'ingingo ya 212, 3er y'Itegeko ryavuzwe, irangiza rubanza rikareba gusa umwenda wemerewe imbere y'urukiko uhwanye na 102.586.491 FRW kuko ariwo wemewe imbere y'umucamanza.

[8] Me RUSANGANWA J Bosco, uhagarariye HYDROBATEL yahawe ijambo kugira ngo agire icyo avuga ku cyifuzo cya CER maze asobanura ko Urukiko Rukuru rw'Ubucuruzi

mu gutegeka irangizarubanza ry'agateganyo nta mategeko rwishe, ahubwo ko rwubahirije ingingo ya 210 -2° yavuzwe haruguru, iteganya ko « irangizwa ry'agateganyo ryemezwa n'urukiko rubyibwirije ndetse nta ngwate iyo ikiburanwa ari umwenda wemewe mu rubanza n'uregwa». Yakomeje avuga ko ku birebana n'uru rubanza irangizarubanza ry'agateganyo ryategetswe ku ma fagitire CER yemeye imbere y'umucamanza.

[9] Urukiko rwashoje iburanisha, rumenyesha ababuranyi ko urubanza ruzasomwa kuwa 28/05/2010, nyuma ruriherera ruruca mu buryo bukurikira:

2. Uko Urukiko rubibona

[10] Ingingo ya 210-2° y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi umucamanza wa mbere yashingiyeho ategeka irangizarubanza ry'agateganyo ku mafaranga 445.123.275 frw, iteganya ko irangizarubanza ry'agateganyo ryemezwa n'Urukiko rubyibwirije iyo ikiburanwa ari umwenda wemewe mu rubanza n'uregwa.

[11] Umucamanza mu kwemeza abyibwirije irangiza rubanza ry'agateganyo ku mafaranga 445.123.275 yahereye ku ma fagitire ngo CER yemeye mu rukiko.

[12] Urukiko rusanga ariko kuba hari amafagitire CER yemeye, bitasobanura ko yemeye imbere y'Urukiko umwenda wose yategetswe kwishyura kuko, nk'uko bigaragara mu gace ka 15 y'urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, uwari uyihagarariye yaburanye avuga ko hari amafaranga HYDROBATEL ifitiye CER agomba gukurwa muyo nayo igomba kwishyura, kandi ko iyo babibaze basanga amafaranga CER isigaje kwishyura angana na 102.586.461frw.

[13] Urukiko rusanga rero irangizarubanza ry'agateganyo

ryategetswe n'Urukiko Rukuru rw'Ubucuruzi rigomba kugumaho, ariko rigakorwa gusa ku mafaranga 102.586.461 kuko ariwo mwenda CER yemeye imbere y'Urukiko nk'uko biteganywa n'ingingo ya 210-2° y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryavuzwe haruguru.

3. Icyemezo cy'urukiko

[14] Rwemeye kwakira ikirego kihutirwa cya CONFERENCE EPISCOPALE DU RWANDA;

[15] Rwemeje ko gifite ishingiro kuri bimwe.

[16] Rutegetse ko irangiza rubanza ry'agateganyo rikorwa gusa ku mwenda wemewe mu rukiko ungana na 102.586.461frw.

[17] Rutegetse CONFERENCE EPISCOPALE DU RWANDA kwishyura amagarama y'urubanza angana na 52.950frw, itayatanga mu gihe giteganywa n'amategeko agakurwa mu byayo ku ngufu za Leta.

RUKIKJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KUWA 28/5/2010 N'URUKIKO RW'IKIRENGA RUGIZWE NA NYIRINKWAYA IMMACULÉE: PEREZIDA, HATANGIMBABAZI FABIEN NA RUGABIRWA RUBEN, ABACAMANZA, BAFASHIJWE NA HABYARIMANA MARCEL, UMWANDITSI W'URUKIKO.

Sé
NYIRINKWAYA Immaculée
Perezida

Sé
HATANGIMBABAZI Fabien
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
HABYARIMANA Marcel
Umwanditsi

7. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMAA 0031/09/CS
ITARIKI Y'URUBANZA: 28/05/2010
HABURANA: KAYOMBYA ROBERT / BCR

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI- UBUBASHA BW'URUKIKO RW'IKIRENGA BUSHINGIYE KU KIBURANWA IYO AGACIRO KACYO KATIGEZE KAGARAGAZWA CYANGWA AKAGARAGARA MU NYANDIKO ZIREBANA N'IKIBURANWA KARI HASI YA 20.000.000 FRW

UBUJURIRE BUSHINGIYE KU KUBA URUBANZA RWACIWE RUTAGARAGAZA IMPAMVU ZIHAGIJE RUSHINGIYEHO

KUDATANGA IBIREGO BYEREKEYE INGINGO Z'AMATEGEKO ANYURANYE N'ITEGEKO NSHINGA MU MANZA Z'UBUCURUZI

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Iyo agaciro k'ikiburanwa katigeze kagaragazwa n'urega mu nyandiko itanga ikirego cyangwa se ngo kemezwe n'umucamanza, ndetse n'ababuranyi ubwabo, inyandiko bagaragaza zijyanye n'ubugure n'ubugwate bw'inzu zikaba zigaragaza agaciro kari hasi ya 20.000.000 frw , urubanza ntabwo ruba ruri mu bubasha bw'Urukiko rw'Ikirenga.

Iyo urubanza rwajuririwe rugaragaza impamvu rushingiyeho ariko ujurira akanenga ko zidahagije, ntibifatwa nk'aho rutagaragaza impamvu na busa, bityo n'ubwo bujurire buba nta shingiro bufite.

Ibirego byerekeye amategeko anyuranye n'Itegeko Nshinga ntibisuzumirwa mu manza z'ubucuruzi; bikemurirwa mu manza zisuzuma ibirego bisaba gukuraho ingingo inyuranye n'itegeko nshinga.

URUKIKO RW'IKIRENGA, RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUCIYE MU RUHAME URUBANZA RCOMAA 0031/09/CS NONE KU WA 28/05/2010 MU BURYO BUKURIKIRA:

HABURANA:

Uwajuriye: KAYOMBYA Robert ubarizwa i Nyarugenge, Umujyi wa Kigali, B.P. 781 Kigali, uburanirwa na Me Jean Damascène NKEZABO.

Uregwa: Banki y'Ubucuruzi y'u Rwanda (BCR), iburanirwa na Me NKURUNZIZA François Xavier.

IKIREGERWA: Ubujurire ku cyemezo cy'ibanzirizasuzuma RCOM 0040/09/Pré-ex/CS mu rubanza RCOMAA 0014/09/CS.

I. IMITERERE Y'URUBANZA

[1] Mu rubanza RC 38693/02 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali, KAYOMBYA Robert yemerewe kwandikwaho inzu iri mu kibanza n° 1874 kiri mu Rugunga yari yaraguze na IMEX, maze Banki y'Ubucuruzi y'u Rwanda (BCR) yari ifite certificat d'enregistrement yacyo kubera umwenda yahaye IMEX itegekwa kuyimusubiza no kumuha 400.000 frw y'indishyi z'akababaro n'ikurikiranarubanza.

[2] Ku bujurire bwa Banki y'Ubucuruzi y'u Rwanda (BCR), Urukiko Rukuru rw'Ubucuruzi rwo rwemeje ko KAYOMBYA yaregeye ubusa, rumutegeka kuyiha 3.000.000 frw y'indishyi n'ikurikiranarubanza.

[3] KAYOMBYA yajuririye Urukiko rw'Ikirenga, umucamanza w'ibanzirizasuzuma yemeza ko ubwo bujurire butari mu bubasha bw'Urukiko rw'Ikirenga, ajuririra icyo cyemezo avuga ko ikiburanwa gifite agaciro karenze amafaranga 20.000.000, n'urubanza yajuririye

rukaba rutagaragaza na busa impamvu rushingiyeho, maze ibyo byombi bigatuma ubujurire bwe buba mu bubasha bw'Urukiko rw'Ikirenga.

[4] Urubanza rwaburanishijwe ababuranyi bose bahari ku wa 16/02/2005, iburanisha ryongera gufungurwa ku wa 8/4/2010 kugirango hasuzumwe ibyerekeye agaciro k'inzu iri mu kibanza cyavuzwe, isomwa ryarwo rishyirwa tariki ya 7/5/2010 riza kwimurirwa ku wa 28/5/2010.

II. KU BYEREKEYE IYAKIRWA RY'UBUJURIRE

[5] Icyemezo kijuririrwa cyamenyeshejwe Me NKEZABO J. Damascène uburanira KAYOMBYA ku itariki ya 21/08/2009 akijuririra mu izina rye ku wa 10/09/2009. Urukiko rurasanga ubwo bujurire bwarubahirije igihe cy'iminsi 15 y'ubujurire ku cyemezo cy'ibanzirizasuzuma, giteganywa n'ingingo ya 55 y'Itegeko Ngenga n° 01/2004 ryo ku wa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu, n'ingingo ya 401 y'itegeko n° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu. Nta n'ikindi atubahirije ku bijyanye n'iyakirwa ry'ubujurire, bityo rero, ubujurire bwe bukaba bugomba kwakirwa bugasuzumwa.

III. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Ku byerekeye agaciro k'ikiburanwa.

[7] Me NKEZABO J. Damascène uburanira KAYOMBYA avuga ko certificat d'enregistrement atari iy'ubutaka gusa ahubwo ari iy'inzu ifite agaciro karenze 20.000.000 Frw, kuko yaguzwe 15.000.000 Frw muri 1991, agaciro kayo rero kakaba karagiye kiyongera mu myaka yose

yakurikiye, bitewe n'uko agaciro k'ifaranga ry'u Rwanda kagiye kagabanuka ugereranyije n'idolari, hakaba kandi haranakozwe kuri iyo nzu imirimo yayongereye agaciro nyuma y'uko KAYOMBYA ayiguze.

[9] Me NKURUNZIZA François Xavier uburanira Banki y'Ubucuruzi y'u Rwanda (BCR) avuga ko urubanza rutangira ikiburanwa kitigeze gihabwa agaciro kuko haburanwaga gusa mutation no gusaba BCR gutanga certificat d'enregistrement. Asanga agaciro gatangwa ubu kabariwe mu madorari kandi inzu yaraguzwe amafaranga y'amanyarwanda, atari ko kashingirwaho mu kugena agaciro k'inzu, ko ariko bibaye ngombwa harebwa agaciro ka 8.800.000 Frw yanditse ku nyandiko y'ubugwate yahawe BCR.

[10] Ku bw'amategeko, ingingo ya 43, igika cya kabiri, 7° y'Itegeko Ngenga n° 01/2004 ryo ku wa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu, iteganya ko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha mu rwego rw'ubujurire imanza zaciwe n'Urukiko Rukuru mu rwego rwa kabiri, iyo izo manza zagenwemo n'urukiko indishyi zingana cyangwa zirenze 20.000.000 Frw hatitawe ku bwoko bwazo, cyangwa se zifite agaciro kagenwe n'urega mu nyandiko itanga ikirego cyangwa kemejwe n'umucamanza igihe habaye impaka kangana cyangwa karenze 20.000.000 Frw.

[11] Urukiko rurasanga muri uru rubanza, agaciro k'ikiburanwa katarigeze kagaragazwa n'urega mu nyandiko itanga ikirego cyangwa se ngo kemezwe n'umucamanza, ndetse n'ababuranyi ubwabo inyandiko bagaragaza zijyanye n'ubugure n'ubugwate bw'inzu isabirwa mutation na certificat d'enregistrement, zikaba zigaragaza agaciro kari hasi ya 20.000.000 FRW, bityo rero iyi ngingo y'ubujurire ikaba nta shingiro ifite.

2. Ku ngingo yo kutagaragaza na busa impamvu urubanza rushingiyeho

[12] Uburanira KAYOMBYA avuga ko n'ubwo urubanza rurimo impamvu icyemezo cyarwo gishingiyeho, bigaragara ko izo mpamvu zidahagije, kandi Itegeko Nshinga mu ngingo yaryo ya 141 igika cya kabiri ndetse n'itegeko n° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu mu ngingo ya 147, biteganya ko urubanza rwose rwaciwe rugomba kugaragaza impamvu rushingiyeho. Asanga rero gutanga impamvu zidahagije ntaho bitaniye no kutagaragaza impamvu na busa.

[13] Uburanira Banki y'Ubucuruzi y'u Rwanda (BCR) we avuga ko ubwo uwo baburana yiyemerera ko urubanza ajuririra rwatanze impamvu, ubujurire bwe ku cyemezo cy'ibanzirizasuzuma nta shingiro bufite.

[14] Urukiko rurasanga ingingo ya 43, igika cya kabiri, 2° y'Itegeko Ngenga n° 01/2004 ryavuzwe haruguru, iteganya ko urubanza rwaciwe ku rwego rwa kabiri n'Urukiko Rukuru ruba mu bubasha bw'Urukiko rw'Ikirenga iyo rutagaragaza na busa impamvu rushingiyeho. Kuba uburanira KAYOMBYA yiyemerera ubwe ko impamvu urubanza rushingiyeho ziriho, byerekana ko ubujurire bwe nta shingiro bufite. Kuba na none asanga ingingo ya 43 y'Itegeko Ngenga n° 01/2004 ryo ku wa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu inyuranije n'iya 141 y'Itegeko Nshinga, ibyo ntibyasuzumirwa muri uru rubanza rw'ubucuruzi kuko bene icyo kirego gisuzumirwa mu manza ziregera amategeko anyuranye naryo (formation constitutionnelle).

IV. ICYEMEZO CY'URUKIKO

[15] Rwemeye kwakira ubujurire bwa KAYOMBYA Robert kuko bwatanzwe mu buryo bukurikije amategeko.

[16] Rwemeje ko ubwo bujurire nta shingiro bufite.

[17] Ruvuze ko icyemezo cy'ibanzirizasuzuma RCOM 0040/09/Pré-ex/CS cyo ku wa 04/06/2009kidahindutse

[18] Rutegetse KAYOMBYA Robert kwishyura amafaranga y'amagarama y'urubanza ahwanye na 34.300 Frw, atayatanga, ayo mafaranga agakurwa mu bye ku ngufu za Leta.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME NONE TARIKI YA 28/05/2010 N'URUKIKO RW'IKIRENGA RUGIZWE NA MUGENZI LOUIS MARIE, PEREZIDA, KAYITESI R. EMILY NA MUKANDAMAGE MARIE-JOSEE, ABACAMANZA, BAFASHIJWE NA MUNYANDAMUTSA JEAN PIERRE, UMWANDITSI W'URUKIKO.

Sé
MUGENZI Louis Marie
Perezida

Sé **Sé**
KAYITESI R. Emily **MUKANDAMAGE Marie-Josée**
Umucamanza **Umucamanza**

Sé
MUNYANDAMUTSA Jean Pierre
Umwanditsi w'Urukiko

8. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMA 0030/10/CS
ITARIKI Y'URUBANZA: 17/09/2010
HABURANA: KAYINAMURA Fidèle / Umutesi Aimée hamwe & Mbabajimana Jean Bosco

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI- IKIREGO KITAKIRIWE KUBERA IBURABUBASHA RY'UREGA-IKIREGO GISHINGIYE KU MASEZERANO UMWE MU BASHAKANYE YAGIRANYE N'ABANDI-IBURABUBASHA RY'UTANZE IKIREGO YITWAJE GUSA KO YASHAKANYE N'URUHANDE RUMWE MU BASINYE AYO MASEZERANO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Buri wese mu bashyingiranywe afite uburenganzira bwo kuregera no gukurikirana umutungo w'urugo. Ariko, ku bibazo byavuka mu ishyirwa mu bikorwa ry'amasezerano umwe mu bashyingiranye mu buryo bw'ivanga mutungo yagiranye n'abandi, uwashakanye n'uwasinye amasezerano ntashobora gutanga ikirego nta burenganzira ahawe na mugenzi we, kuko ni abantu badashobora kwitiranywa ku buryo igikorwa cy'umwe cyakwitirirwa undi. Uwashyize umukono ku masezerano aba yiyemeje kuyubahiriza ku giti cye gusa, bikaba bitabazwa mugenzi we, kabone n'ubwo ayo masezerano yaba arebana n'inyungu z'umuryango. Icyashoboka ni uko umwe mu bagiranye amasezerano yahagararira uwo bashakanye wabimuhereye uburenganzira , akaba yatanga ikirego mu izina ry'uwasinye amasezerano, ariko atacyise icye.

Iburabubasha ni imwe mu mpamvu ituma ikirego kitakirwa hatinjiwe mu iremezo ryacyo.

URUKIKO RW'IKIRENGA, RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUKIJIJE MU RUHAME, KUWA 17/09/2010, URUBANZA N° RCOMA 0030/10/CS-RCOM 0176/09/HCC MU BURYO BUKURIKIRA:

HABURANA :

Kayinamura Fidèle wajuriye, utuye mu Mudugudu w'Itetero, Akagari ka Nyagatovu, Umurenge, wa Kimironko, Akarere ka Gasabo, ahagarariwe na Ruzindana Ignace hamwe na Me Butare Godefrey.

Na

Umutesi Aimée, utuye mu Mudugudu w'Itetero, Akagari ka Nyagatovu, Umurenge, wa Kimironko, Akarere ka Gasabo, cell : 07 88 35 30 44, uhagarariwe n`umugabo we Mwiza Mutagoma yunganiwe na Me Mutungirehe Anastasie

Mbabanjimana Jean Bosco, utuye mu Kagali ka Kibagabaga, Umurenge wa Kimironko, Akarere ka Gasabo, ahagarariwe na Me Mutabazi Innocent.

IKIBURANWA:

- Dommages et intérêts pour abus dans le contrat d'achat du Fonds de commerce dénommé ``Alimentation MEDI`` pour un montant de 21.728.000 frw.
- Remboursement de 4.000.000 frw comme frais locatifs perçus par Kayinamura Fidèle.
- Remboursement d`une somme de 5.437.200 frw équivalente aux articles avariés suite a la non récupération de la maison à temps .
- Remboursement de 5.000.000 frw suite au déménagent brutal qui a causé des dégâts énormes a l`equipement d`une valeur de 230.434.000 frw.

I. IMITERERE Y'URUBANZA.

[1]. Uru rubanza rukomoka ku masezerano yabaye hagati ya Mwiza Mutagoma na Mbabanjimana, yerekeye ubugure bwa Alimentation MEDI ikorera mu nyubako irimo na Hoteli, ku mafaranga 21.728.000 frw. Kuri ayo masezerano, Umutesi Aimée umugore wa Mwiza Mutagoma yayashyizeho umukono nk`umuhamya. Mbabanjimana Jean-Bosco yaje kugurisha iyo nyubako uwitwa Kayinamura Fidèle.

[2]. Imikoranire ya Mwiza Mutagoma na Kayinamura yagenze nabi, bituma Umutesi atanga ikirego kuwa 18/09/2009 mu Rukiko rw`Ubucuruzi, ruca urubanza kuwa 19/03/2010, Kayinamura aratsindwa, arujuririra mu Rukiko rw`Ikirenga, avuga ko atari azi ko inzu yaguze yakodeshwaga Mwiza Mutagomwa, kuko atamenyeshejwe amasezerano bivugwamo, Mutagoma yagiranye na Mbabanjimana, akaba rero atarashoboraga gucibwa indishyi mu gihe atarebwa n`ayo masezerano. Arasaba ariko ko habanza gusuzumwa inzitizi y'iburabubasha (défaut de qualité) kuri Umutesi watanze ikirego ku birebana n'amasezerano atagizemo uruhare.

[3]. Urubanza rwaburanishijwe kuwa 12/8/2010, Kayinamura Fidèle ahagarariwe na Me Ruzindana Ignace hamwe na Me Butare Godefrey, Umutesi Aimée ahagarariwe na Mwiza Mutagoma yunganiwe na Me Mutungurirehe Anastasie, Mbabanjimana Jean-Bosco ahagarariwe na Me Mutabazi Innocent.

II. ISESENGURA RY`IKIBAZO KIGIZE URUBANZA.

Ku kibazo cy`ububasha bwa Umutesi Aimée bwo kuregera Urukiko ku birebana n`amasezerano yasinywe n`umugabo we Mwiza Mutagoma.

[4]. Ikigomba gusuzumwa mu ikubitiro ry`uru rubanza ni ukumenya niba Umutesi yari afite ububasha bwo kuregera inkiko.

[5]. Kuri iyi nzitizi y`iburabubasha, Me Ruzindana Ignace uburanira Kayinamura ashingiye ku ngingo ya 94 y`Itegeko N°18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y`imanza z`imbonezamubano, iz`ubucuruzi, iz`umurimo n`iz`ubutegetsi nkuko ryahinduwe kandi rikuzuzwa kugeza ubu, avuga ko Umutesi Aimée nta bubasha yari afite bwo gutanga ikirego mu Rukiko, gikomoka ku masezerano atamureba, kuko yashyizweho umukono gusa na Mwiza Mutagoma na Mbababanjimana bayagiranye, Umutesi akaba gusa ayagaragaraho nk`umuhamya (témoin).

[6]. Me Butare nawe wunganira Kayinamura, ashingiye ku ngingo ya 63 y`Igitabo cya gatatu cy`urwunge rw`amategeko y`imbonezamubano, yungamo avuga ko nta shingano (obligations) umuntu yagira mu masezerano yagiranywe n`abandi, nta ruhare yayagizemo ; ko kandi ari abayagiranye gusa agiraho inkurikizi.

[7]. Kuri icyo kibazo cy`ububasha bw`uwareze, Me Mutabazi wunganira Mbabanjimana avuga ko, nk'uko byemejwe mu manza zabanjirije uru, Umutesi afite ububasha bwo kurega, asobanura ko hashingiwe ku ingingo ya 21 y`Igitabo cya gatatu cy`urwunge rw`amategeko y`imbonezamubano n`iya 17 y`Itegeko N° 22/99 ryo kuwa 12/11/1999 ryerekeye imicungire y`umutungo w`abashyingiranwe, impano n`izungura, asanga Kayinamura ntaho yahera avuga ko nta bubasha yari afite bwo kurega cyangwa kuburana, ku birebana n`umutungo nawe afiteho uruhare.

[8]. Me Mutungirehe Anastasie wunganira Umutesi Aimée na Mwiza Mutagoma nawe avuga ko Urukiko Rukuru rw`Ubucuruzi rwemeje ko Umutesi afite ububasha bwo kurega, rushingiye kuri izo ngingo zombi z`amategeko avuzwe haruguru, asobanura ko ingingo ya 17 igaragaza neza ko buri wese mu bashakanye mu buryo bw`ivangamutungo, afite ububasha bwo gukurikirana no guhagararira umutungo rusange w`urugo.

[9]. Mwiza Mutagoma we, avuga ko kuba Kayinamura yarandikiye Umutesi amwishyuza amafaranga y`ubukode (800.000 frw), atarakwiye guhakana ko anafite ububasha bwo kurega.

[10]. Ingingo ya 94 y`Itegeko N018/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y`imanza z`imbonezamubano, iz`ubucuruzi, iz`umurimo n`iz`ubutegetsi nkuko ryahinduwe kandi rikuzuzwa kugeza ubu, iteganya ko ``impamvu ituma ikirego kitakirwa ni ingingo yose isaba kutakira ikirego cy`umuburanyi, hatinjiwe mu iremezo ryacyo, kubera ko adafite uburenganzira bwo kurega, nko kuba adafite ububasha……..``.

[11]. Nk`uko iyo ngingo ibivuga, bimwe mu bisabwa ushaka kuregera inkiko, ni ububasha (la qualité). Abahanga mu mategeko basobanura ko ``ububasha`` ari ubushobozi (pouvoir) umuntu agomba kuba afite bwo kuregera inkiko (La qualité est le pouvoir en vertu duquel une personne exerce l`action en justice). Ubwo bubasha bujyana buri gihe n`inyungu y`umuntu ku giti cye, itaziguye kandi ifatika (personnel, direct et concret); ko rero ihame rirebana no kurega ari uko utanga ikirego abyikorera ku giti cye, akaba atabikorera undi nta burenganzira yabiherewe (« Le principe est que celui qui agit en justice le fait pour soi-même ; il n`agirait pour autrui que s`il en a reçu le pouvoir »). [3]

[12]. Ingingo ya 33 y`Igitabo cya gatatu cy`Urwunge rw`amategeko y`imbonezamubano ivuga ko amasezerano agira agaciro hagati y`abayagiranye; mu gika cyayo cya kabiri, hakavugwa ko yakurwaho gusa n'uko babyumvikanyeho cyangwa ku mpamvu zemewe n`Itegeko, byumvikana ko rero umuntu utarayagizemo uruhare atakwemererwa kurega mu gihe havutse ikibazo, kuko aba adafite bwa bubasha bukomoka ku bushake bw'uwayagize, unagaragaza inyungu afite ku giti cye kandi itaziguye.

[3]Gasasira Ephrem, Procedure Civile et Commerciale, 1993, page 16

[13]. Na none kandi kuba ingingo ya 17 y`Itegeko N° 22/11/1999 ryerekeye imicungire y`umutungo w`abashyingiranywe, impano n`izungura ivuga ko ``abashyingiranywe bumvikana k'ucunga umutungo bahuriyeho kandi bafite ububasha bungana bwo kuwukurikirana no kuwuhagararira``, byumvikanisha ko buri wese afite uburenganzira bwo kuregera no gukurikirana umutungo w`urugo, ariko ntibivuga ko umwe yakwitiranywa n`undi mu bikorwa byabo byerekeye amasezerano bagiranye n'abandi, kuko uwayashyizeho umukono aba yiyemeje kuyubahiriza ku giti cye gusa, bikaba bitabazwa mugenzi we, kabone n`iyo yaba arebana n`inyungu z`umuryango.

[14]. Muri uru rubanza, icyaregewe si umutungo runaka w`urugo rw`abashakanye ngo buri wese abe yawukurikirana cyangwa yawuregera ku giti cye mu gihe havutse ikibazo

kiwukomokaho, ahubwo ikirego cyatanzwe, ni ukutubahiriza amasezerano yabaye hagati ya Mbabanjimana na Mwiza Mutagoma. Kuba rero byatangirwa ikirego n`undi utari umwe mu bayagiranye, ntibyashakirwa igisobanuro mu kuba uwareze yaba yarashakanye mu buryo bw`ivangamutungo n`umwe mu bashyize umukono kuri ayo masezerano.

[15]. Ku birego birebena n`amasezerano umwe mu bashakanye yaba yaragiranye n`undi muntu, n`ubwo umwe yagira uburenganzira bwo kurega mu mwanya w`undi amuhagarariye bishingiye ku masezerano y`abashakanye, ntibikuraho ko ari abantu badashobora kwitiranwa ku buryo igikorwa cy`umwe cyakwitirirwa undi, kuko ari abantu batandukanye.

[16]. Hashingiwe kuri ibyo bisobanuro, Urukiko rurasanga Umutesi Aimée nta bubasha (qualité) yari afite bwo gutanga ikirego ku giti cye, mu gihe gikomoka ku masezerano adafitemo inshingano n`imwe kuko atariwe wayagiranye na Mbabanjimana, ndetse nta n`inyungu ku giti cye zitaziguye (intérêt personnel et direct) ayafitemo.

[17]. Urukiko rurasanga ahubwo icyashoboka mu rubanza rushingiye ku mpaka zikomoka kuri ayo masezerano, ari uko umwe mu bayagiranye yabasha guhagararirwa n`uwo bashakanye (représentation en justice) wabimuhereye uburenganzira, akaba yatanga ikirego mu izina ry`uwayasinye, ariko atacyise icye nk`uko Umutesi yabigenje kandi azi neza ko ayo masezerano aregera, yabaye gusa hagati y`umugabo we Mutagoma na Mbabanjimana, naho we akaba yarayashyizeho umukono nk`umuhamya[4] .

[18]. Urukiko rurasanga rero kuba Urukiko Rukuru rw`Ubucuruzi rwaremeye kwakira ikirego cy`uwareze utabifitiye ububasha ari impamvu ituma icyemezo cyarwo kigomba kuvanwaho, bikaba rero bitakiri ngombwa gusuzuma izindi ngingo z`ubujurire bwa Kayinamura.

III. ICYEMEZO CY`URUKIKO

[19]. Rwemeye kwakira inzitizi y`iburababubasha yatanzwe na Kayinamura Fidèle;

[20]. Rwemeje ko iyo nzitizi ifite ishingiro;

[21]. Rwemeje ko Umutesi Aimée nta bubasha yari afite bwo gutanga ikirego;

[22]. Ruvuze ko urubanza N° RCOM 0176/09/HCC rwaciwe kuwa 17/9/2009 n'Urukiko Rukuru rw'Ubucuruzi ruvanyweho;

[23]. Rutegetse Umutesi Aimee gutanga amagarama y`urubanza angana na 39.300 frw, atayatanga mu gihe cy`iminsi cumi n`itanu, ayo mafaranga agakurwa mu bye ku ngufu za Leta.

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[4]Reba amasezerano yo kuwa yo kuwa 10/12/2007 hagati ya Mwiza Mutagoma na Mbabanjimana

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 17/9/2010.

sé
MUGENZI Louis-Marie
Perezida

Sé
KAYITESI R.Emily
Umucamanza

sé
MUKANDAMAGE Marie-Josée
Umucamanza

sé
HABYARIMANA Marcel
Umwanditsi w'Urukiko

9. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOM AA 0005/07/CS
ITARIKI Y'URUBANZA: 30/07/2010
HABURANA: BANKI NKURU Y'IGIHUGU, ECOBANK / NTEGEYE BERNARD

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI -KUNANIRWA KWISHYURA UMWENDA WA BANKI HAGAFATIRWA INGWATE

KUTARENGA IMBIBI Z'ICYAREGEWE MU GUCA URUBANZA

IKIREGO CY'UBUJURIRE BWURIRIYE KU BUNDI-IGISABWA KUGIRA NGO CYAKIRWE

INZIRA YO GUSESA AMASEZERANO ATANGIYE GUSHYIRWA MU BIKORWA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Nubwo itegeko ryateganyaga ko " iba imfabusa ingingo yose yaramuka iteganyije ko uwatanze umwenda mu gihe azaba atishyuye afite uburenganzira bwo gutwara burundu ikintu kitimukanwa yahaweho ingwate", ntibibujije ko umutungo watanzweho ingwate ushobora kwegukanwa n'utarishyuwe habaye andi masezerano anoza aya mbere, agenwamo agaciro k'ingwate, ikiguzi ihawe kikavanwa mu mwenda uwabuze ubwishyu yari agezemo.

Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine

Ubujurire bwuririye ku bundi ni ubujurire bukorwa n'uwarezwe mu rwego rw'ubujurire, akabukora akenshi mu iburanisha kubera ko na mbere yari afite igitekerezo cyo kujurira, ariko agatangwa n'uwo baburana, cyangwa se ari igice cy'imikirize y'urubanza atari yaremeye,

akaba abonye umwanya wo kubivuga kugira ngo bikosorwe. Gusa icyo utanga ubujurire bwuririye ku bundi asaba guhabwa cyangwa se asaba ko gikosorwa, kiba cyararegewe kikagibwaho impaka mu rukiko rubanza ariko utanga ubwo bujurire ntashimishwe n'ikivuyemo.

Iyo amasezerano yatangiye gushyirwa mu bikorwa, ushaka ko aseswa agomba kubisaba urukiko rukaba ari rwo rubyemeza.

URUKIKO RW'IKIRENGA RURI I KIGALI RUHABURANISHIRIZAIMANZAZ'UBUCURUZI,RUHAKIRIJE MU RUHAME, KUWA 30 NYAKANGA 2010 URUBANZA R.Com.AA 0005/08/CS MU BURYO BUKURIKIRA:

UWAJURIYE :

-BANKI NKURU Y'IGIHUGU

-ECOBANK

UREGWA:

NTEGEYE Bernard, BP 2920 Kigali.

IKIREGERWA :

Ibisabwa na NTEGEYE Bernard :

- kwemeza ko BCDI(ECOBANK) itubahirije ingingo ya 6 y'amasezerano bagiranye bise" acte de cession" tariki ya 9/02/2001;

- gusesa amasezerano y'ubugure bw'inzu iri mu kibanza n° 1200 kiri Kacyiru –Nord ;

- guhabwa indishyi mbonezamusaruro zingana na 10.000.000Frw;

- dommage moral zingana na 5.000.000Frw ;

- amafaranga y'ikurikiranarubanza angana na 7.000.000Frw.

Ibisabwa na ECOBANK(BCDI) :

- kwemeza ko amasezerano y'ubugure yabaye hagati ya BCDI(ECOBANK) na Banki Nkuru y'u Rwanda afite agaciro ;

- gutegeka NTEGEYE Bernard kwishyura 28.232.000 Frw hubahirijwe ingingo ya 2 y'amasezerano yagiranye na BCDI(ECOBANK)(acte de cession) ;

- kumutegeka kandi kwishyura indishyi kubera kuyizerereza(BCDI) mu nkiko nta mpamvu

1. Imiterere y'urubanza

[1]. Muri 1993, NTEGEYE Bernard avuga ko yatse inguzanyo muri BACAR yo kubaka inzu muri parcelle 1200 Kacyiru Nord, Umujyi wa Kigali, akayihabwa.

[2]. Kubera ko imirimo y'ubwubatsi itarangiye, byabaye ngombwa ko asubira muri BACAR gusaba indi nguzanyo y'inyongera, arayemererwa ariko amarorerwa yo muri 1994 aba atarayihabwa. NTEGEYE Bernard yaje kwegera BCDI imuha inguzanyo ya 50.000.000 Frw, muri zo akuramo 42.485.087 Frw yo kwishyura BACAR , asigaye angana na 7.516.953 Frw ntiyashobora kurangiza imirimo y'ubwubatsi yari icyenewe, dore ko n'ibyari byarakozwe byari byarononekaye kubera intambara, kandi n'ibiciro bikaba byari byarazamutse, hagati aho ariko umwenda wo ugakomeza ugakura kubera ko inyungu zo zitahagararaga.

[3]. Umwenda warakuze ugeza aho ugera kuri 73.839.942 Frw, biba ngombwa ko BCDI na NTEGEYE Bernard bicara bakareba icyakorwa, aribwo bumvikanaga ko NTEGEYE Bernard kubera umwenda abereyemo BCDI, yayegurira inzu yarimo kubaka yatanzeho ingwate, ikaba yari igeze ku gaciro ka 41.484.288 Frw hakiyongera ho 4.122.750 Frw ahwanye n'ibikoresho

byari birunze mu kibanza, yose hamwe akaba 45.607.038 Frw, babikorera amasezerano.

[4]. Kubera ko NTEGEYE Bernard yari arimo BCDI umwenda ungana na 73.839.942 Frw, bakoze ihwanyamyenda hasigara 73.839.942 Frw - 45.607.038 Frw= 28.232.904 Frw NTEGEYE Bernard yagombaga kwishyura, BCDI ikaba ivuga ko kugeza nubu nta faranga na rimwe yigeze yishyura.

[5]. Ingingo ya 6 y'amasezerano yabaye hagati ya BCDI na NTEGEYE Bernard yo kuwa 09/02/2001 yerekeranye no kwegurira inzu BCDI kubera umwenda ungana na 73.839.942 Frw NTEGEYE Bernard yari ayirimo, ivuga ko BCDI niramuka iyigurishije mbere y'imyaka icumi kuva iyeguriwe, NTEGEYE Bernard ariwe uzaza mbere mu baguzi.

[6]. NTEGEYE Bernard avuga ko BCDI yirengagije ayo masezerano igurisha inzu Banki Nkuru y'Igihugu kuwa 11.04.2003 itamubajije niba ashaka kuyigura yitwaje ko yayobewe aho imubariza, bityo akaba asaba ko ayo masezerano y'ubugure hagati ya BCDI na Banki Nkuru y'Igihugu yaseswa.

[7]. BCDI nayo igasaba ko amasezerano y'ubugure yagumana agaciro kayo, ikanishyurwa n'umwenda wari usigaye n'inyungu zawo, ndetse n'indishyi z'akababaro.

1. Imigendekere y'urubanza.

a. Mu Rukiko Nkemurampaka

[8]. Uko kutumvikana rero kwatumye BCDI na NTEGEYE Bernard biyambaza Urukiko Nkemurampaka. Uru rukiko igihe rwari rutangiye gusuzuma ikibazo, NTEGEYE Bernard yasabye ko Banki Nkuru y'Igihugu yahatirwa kugoboka mu rubanza Urukiko narwo rurabimwemerera.

[9]. Mu rubanza rwaciye kuwa 02/12/2005, rwemeje ko « l'acte de cession n'a pas été violé et que partant l'acte de vente intervenue entre la BCDI et la BNR reste valable;
condamne NTEGEYE Bernard au paiement de 28.232.000Frw contenu dans l'acte de cession, condamne la BCDI au paiement de 5.000.000Frw à NTEGEYE Bernard à titre de DI pour avoir manqué à son devoir de l'informer ; décide que la BNR n'a aucun droit aux DI et ordonne les deux parties à payer les frais et honoraires à parts égales et fixés à 6.000.000Frw » bivuga ngo amasezerano yabaye hagati ya BCDI na NTEGEYE Bernard yo kuwa 09/02/2001 yerekeranye no kwegurira inzu BCDI kubera umwenda ungana na 73.839.942 Frw NTEGEYE Bernard yari ayirimo, ntabwo yishwe, ko rero amasezerano y'ubugure hagati ya BCDI na BNR agumana agaciro kayo ; ko NTEGEYE Bernard ategetswe kwishyura 28.232.000Frw avugwa mu masezerano yo kuwa 09/02/2001, ko BCDI itegetswe kwishyura NTEGEYE Bernard 5.000.000Frw kubera ko yagurishije inzu itabanje kubimumenyesha, ko BNR nta ndishyi igomba kubona, hanyuma BCDI na BNR bagafatanya kwishyura 6.000.000Frw y'ikurikiranarubanza n'aya ba Avocats.

b. Mu Rukiko Rukuru rwa Repubulika

[10]. NTEGEYE Bernard yajuririye icyo cyemezo mu Rukiko Rukuru rwa Repubulika i Kigali ruca urubanza R.Com.A 0020/05/HCKIG kuwa 31/05/2007 mu buryo bukurikira :

Rwemeje ko ubujurire bwa NTEGEYE Bernard bukwiye kwakirwa bugasuzumwa kuko bwaje mu nzira zikurikije amategeko, rubusuzumye rusanga bufite ishingiro;

„Rwemeje ko ubujurire bwuririye ku bundi bwa BCDI bukwiye kwakirwa bugasuzumwa kuko bwaje mu nzira zikurikije amategeko, rubusuzumye rusanga ariko nta shingiro bufite;

Rwemeje ko amasezerano BCDI yagiranye na NTEGEYE Bernard bise « acte de cession d'immeuble » asheshwe ku

mpamvu zasobanuwe hejuru, bityo NTEGEYE agasubirana inzu ye iri mu kibanza n°1200 Kacyiru-Nord ;

Rwemeje ko indishyi NTEGEYE Bernard agomba guhabwa na BCDI ari izi zikurikira : 6.000.000Frws y'indishyi mbonezamusaruro y'ubukode yavukijwe (manque à gagner) na 5.000.000Frws y'indishyi z'akababaro nk'uko byasobanuwe muri « Rusanze » ;

Rwemeje ko nta mwenda NTEGEYE Bernard abereyemo BCDI nk'uko byasobanuwe muri « Rusanze » ;

Rukijije ko BCDI na BNR batsinzwe, naho NTEGEYE Bernard atsinze ;

Rutegetse ko icyemezo cyafashwe n'urukiko Nkemurampaka tariki ya 2/12/2005 kivanweho ;

c. Mu Rukiko rw'ikirenga

[11]. BCDI na Banki Nkuru y'Igihugu bajuririye urwo rubanza mu Rukiko rw'Ikirenga, ubujurire bwa BCDI bugera mu bwanditsi bw'Urukiko kuwa 29/06/2007 naho ubwa Banki Nkuru y'Igihugu buhagera mu kuwa 31/08/2007, bwombi buhabwa n° R.Com. AA 0005/07/CS.

[12]. Perezida w'Urukiko rw'Ikirenga mu itegeko rye n° 0024/07 ryo ku wa 11/09/2007 yagennye umucamanza w'ibanzirizasuzuma ry'uru rubanza.

[13]. Umucamanza w'ibanzirizasuzuma mu cyemezo n° R. Com.AA 0005/07/CS cyo ku wa 05/10/2007, yemeje ko ubujurire bwa BCDI na Banki Nkuru y'Igihugu bwatanzwe mu buryo no mu nzira bikurikije amategeko, ko kandi buri mu bubasha bw'Urukiko rw'Ikirenga.

[14]. Perezida w'Urukiko rw'Ikirenga mu Itegeko rye n° 0001/2008/R.C ryo ku wa 15/01/2008 yashyize iburanisha ry'uru rubanza ku wa 05/02/2008 sa mbiri n'igice za mu gitondo, uwo munsi ariko nubwo ababuranyi bari bitabye, ntirwaburanishwa kubera ko ihererekanya ry'imyanzuro ritari ryabaye mu gihe, rwimurirwa kuwa 17/04/2008.

[15]. Nyuma y'aho, Maître MUTAGWERA Frédéric na Maître MUNDERERE Léopold bunganira NTEGEYE Bernard, bagejeje mu Rukiko kuwa 04/04/2008, inyandiko ikubiyemo ingingo zigamije kuvuga ko ubujurire bwa BCDI na Banki Nkuru y'Igihugu butagomba kwakirwa mu Rukiko rw'Ikirenga kubera ko ikiregerwa ndetse n'indishyi zatanzwe mu rubanza nta nakimwe kigejeje kuri 20.000.000 Frw nkuko ingingo ya 43,7° y'Itegeko-Ngenga n°01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nkuko ryahinduwe kandi rikuzuzwa kugeza ubu ibiteganya.

[16]. Kuwa 17/04/2008 ababuranyi baritabye, Banki Nkuru y'Igihugu ihagarariwe na Maître RUTAGENGWA François Xavier, ECOBANK ihagarariwe na Maître RWAGATARE Janvier, naho NTEGEYE Bernard yunganiwe na Maître MUTAGWERA Frédéric na Maître MUNDERERE Léopold.

[17]. Iburanisha rigitangira, Maître MUTAGWERA Frédéric na Maître MUNDERERE Léopold bunganira NTEGEYE Bernard, bibukije ko batanze inzitizi y'iburabubasha, bakaba bifuza ko ariyo yabanza gusuzumwa mbere yo kwinjira mu mizi y'urubanza.

[18]. Icyo cyifuzo Urukiko rwaracyemeye, rubanza gusuzuma iyo nzitizi, maze mu cyemezo rwafashe kuwa 24/10/2008 ruvuga ko nta shingiro ifite, ko ubujurire bwatanzwe na BCDI na BNR buri mu bubasha bw'Urukiko rw'Ikirenga, ruvuga kandi ko umunsi ruzaburanishirizwaho mu mizi uzamenyeshwa ababuranyi n'ubwanditsi bw'Urukiko.

[19]. Urubanza rwashyizwe kuwa 24/02/2009, iyo tariki ababuranyi barayimenyeshwa igeze bose baritaba, Banki Nkuru y'Igihugu ihagarariwe na Maître RUTAGENGWA François Xavier, ECOBANK ihagarariwe na Maître RWAGATARE Janvier, naho NTEGEYE Bernard yunganiwe na Maître MUTAGWERA Frédéric na Maître MUNDERERE Léopold.

[20]. Maître RWAGATARE Janvier yahawe umwanya kugirango asobanure ubujurire bwa ECOBANK ahagarariye avuga ko Urukiko rwasobanuye nabi « Acte de cession » yasinywe kuwa 09/02/2001 hagati ya BCDI na NTEGEYE Bernard, ntirwasesengura neza ugushaka kw'abagiranye amasezerano, kuko rwirengagije ko mbere yuko« Acte de cession » isinywa, inzu iri muri parcelle n° 1200/Kacyiru-Nord yari ingwate ya Banque iri ku murongo wa mbere, ko icyo abagiranye amasezerano bumvikanyeho, ari uko NTEGEYE Bernard yagombaga kwegurira Banque inzu mu rwego rwo kwishyura igice cy'umwenda yari ayibereyemo, akagomba no kuyishyikiriza impapuro zose z'iyo nzu bityo
ikaba ibaye umutungo wayo mu buryo busesuye aho kuyimurindira nkuko Urukiko rwabyemeje rwibeshye. Umwenda yari asigayemo icyo gihe ukaba ungana na 28.232.000 Frw. Yakomeje avuga ko Urukiko rwaciriye urubanza ku kitararegewe kuko rwavuze ko « Acte de cession » yo kuwa 09/02/02001 isheshwe kandi nta muntu numwe wigeze atanga ikirego gisaba iseswa ryayo.

[21]. Maître Rwagatare Janvier yakomeje gusobanura ubujurire bwa ECOBANK avuga ko NTEGEYE Bernard mu ibaruwa yo kuwa 30/03/2001 ECOBANK(BCDI) yamwandikiye, yamwibukije umwenda ayifitiye, inamusaba kuyigezaho uburyo abona azawishyura, NTEGEYE Bernard akaba atakwitwaza ko atayibonye kuko Avocat we Maître BIRASAMASHYO Augustin yari yarahaye ububasha busesuye butagira umupaka bwo kumuhagararira, yayibonye kuwa 26/04/2001 akanabisinyira, ariko ari Maître BIRASAMASHYO Augustin, ari NTEGEYE Bernard bose baterera agati mu ryinyo ntihagira n'umwe

usubiza kugeza kuwa 20/09/2004 hashize amezi arenga 40, aho NTEGEYE Bernard yandikiye ECOBANK(BCDI) asaba ko uburenganzira bwe bwo kuza mbere mu baguzi(droit de préférence) bugomba kubahirizwa, ECOBANK ikamusubiza ko inzu yayigurishije kugirango yiyishyure umwenda yari ayibereyemo, akaba abona nta kosa yakoze.

[22]. Yakomeje avuga ko ahubwo NTEGEYE Bernard yari kugaragaza niba ibyo yiyemeje gukora yarabirangije, ni ukuvuga niba umwenda yari abereyemo ECOBANK(BCDI) yararangije kuwishyura, byaba ari uko bimeze akagaragaza aho yishyuriye kuko iyo usomye ibaruwa ye yo kuwa 02/11/2004 asa nk'utemera umwenda wa 28.232.000 Frw kandi uvugwa mu ngingo ya 2 ya « Acte de cession » yasinyanye na ECOBANK(BCDI).

[23]. Yavuze kandi ko Urukiko rwibeshye ruvuga ko NTEGEYE Bernard nta mwenda yari agifitiye ECOBANK(BCDI) rushingiye kuri extraits de compte zo kuwa 31/12/2001 no kuwa 30/01/2002 ngo zagaragazaga ko compte n° 1102534703-9 ya NTEGEYE Bernard nta mwenda uyirangwaho, ngo bikaba byarerekanye ko Urukiko rutasobanukiwe neza imikorere y'amabanki, cyane cyane ku byerekeranye n'uburyo umwenda n'inyungu zose ziwukomokaho bibarwa.

[24]. Yarangije ubujurire bwe avuga ko Urukiko rwibeshye aho rwavuze ko amabwiriza n° 05/2000 ya Banki Nkuru y'Igihugu (BNR) adakuraho amasezerano yakorewe imbere ya Noteri wa Leta kuko aba afite agaciro k'itegeko hagati y'abayagiranye, kandi nyamara nubwo ayo masezerano aba afite agaciro k'itegeko hagati y'abayagiranye, ntashobora na rimwe kuvuguruza amabwiriza ya Banki Nkuru y'Igihugu (BNR) nayo aba ashyira mu bikorwa ingingo za 34 na 35 z'itegeko n° 18/06/1999 ryerekeye imitunganyirize y'Amabanki n'ibindi Bigo by'imari, mu gihe twemera ko itegeko ryihariye ariryo riza mbere y'itegeko rusange. Ko hakurikijwe ingingo ya 1 igika cya 2 y'iryo bwiriza, abakiriye(clients) batujuje inshingano zabo ntacyo baba bagikurikiranye iyo ingwate batanze kugirango babone

inguzanyo igurishijwe ipfa kugurishwa mu gihe kitarenze imyaka ibiri, kandi ko défaillance ya NTEGEYE Bernard ubwayo ikuraho « Acte de cession ». Ko kuba ECOBANK(BCDI) yaragurishije iriya nzu nta kosa yakoze kuko NTEGEYE Bernard yari yananiwe kuzuza inshingano ze(client défaillant).

[25]. Yashoje asaba ko ubujurire bwa ECOBANK(BCDI) bwakwakirwa bugasuzumwa, NTEGEYE Bernard agategekwa kwishyura umwenda wari wasigaye ungana na 28.232.000 Frw n'inyungu zawo kugeza urangiye.

[26]. Maître RUTAGENGWA François Xavier nawe yahawe umwanya wo gusobanura ubujurire bwa Banki Nkuru y'Igihugu avuga ko Urukiko rwaciriye urubanza ku kitararegewe kuko rwasheshe amasezerano yo kwegurira ECOBANK(BCDI) inzu(« Acte de cession d'immeuble») kandi rwari rwaregewe gusesa ayo ubugure bw'inzu hagati ya ECOBANK(BCDI) na Banki Nkuru y'Igihugu (« acte de vente »). Ikindi ni uko Urukiko rwategetse Banki Nkuru y'Igihugu na ECOBANK(BCDI) gufatanya kwishyura amagarama kandi nta nahamwe mu kirego cyatanzwe na NTEGEYE Bernard, Banki Nkuru y'Igihugu yigeze igira icyo iregwa cyangwa ngo igire icyo isabwa gutanga noneho ngo ibe ibitsindiwe. Byongeye kandi, Banki Nkuru y'Igihugu ikaba itaragombaga gucibwa amagarama kuko nkuko biteganywa n'ingingo ya 72 y'itegeko n°11/97 ryo kuwa 26/07/1997 ryerekeye sitati ya BNR, Banki Nkuru y'Igihugu (BNR) ni ikigo cya Leta, kubera izo mpamvu isonerwa gutanga amafaranga yakwa mu nkiko, n'amahôro yakwa ku nyungu za Leta.

[27]. Yakomeje avuga ko uretse no kuba rutari rwabiregewe, Urukiko rwirengagije amahame yerekeye iseswa ry'amasezerano kuko rwasheshe amasezerano ECOBANK(BCDI) yagiranye na NTEGEYE Bernard bise(« Acte de cession d'immeuble »), ruterekanye inenge ayo masezerano afite. Ko ahubwo icyo rwari gukora, ni ukwerekana ko umwe mu bayagiranye hari ibyo atubahirije noneho akaba yabicirirwa indishyi, umuti ntube uwo kuyasesa.

[28]. Maître RUTAGENGWA François Xavier yakomeje avuga ko Urukiko rwitiranyije amasezerano y'ubugure(contrat de vente) n'ingingo yo kuba wasubirana icyo wagurishije ishobora gushyirwa mu masezerano y'ubugure(clause de rachat) aho rwavuze ko nta bugure bwabaye ngo kuko iyo buza kuba, nta mpamvu n'imwe abayagiranye bari guteganya ko umwe muri bo afite « droit de préférence » mu gihe izaba igiye kugurishwa ngo kandi ubundi iyo habayeho ubugure, uwagurishije atakaza uburenganzira bwose ku kintu yagurishije kuko kiba kigiye mu maboko y'uwaguze. Ibyo bisobanuro by'Urukiko Maître RUTAGENGWA François Xavier akaba avuga ko binyuranye na « clause de rachat » ndetse bikaba binanyuranye n'ibivugwa n'abanditsi b'abahanga mu by'amategeko nka Jean Marc MOUSSERON mu gitabo yise « Technique contractuelle, 2ème édition, 1999 », n'imanza zagiye zicibwa mu bindi bihugu ku kibazo gisa nk'icyi(Cass. ,3ème civ. 30 avril 1997) .

[29]. Yarangije avuga ko Urukiko rwasesenguye nabi amasezerano yabaye hagati ya NTEGEYE Bernard na ECOBANK(BCDI) (« Acte de cession d'immeuble») kuko icyari kigamijwe si ukurindira inzu NTEGEYE Bernard, ahubwo ubugure bwarabaye ariko NTEGEYE Bernard akagumana bwa burenganzira bwo kuba yayigarura(faculté de rachat) mu gihe kitarenze imyaka icumi(10). Asaba ko NTEGEYE Bernard yaha Banki Nkuru y'Igihugu 5.000.000 Frw y'ikurikiranarubanza

[30]. Maître MUTAGWERA Frédéric na Maître MUNDERERE Léopold batanze ibyireguro byabo bavuga ko nta bugure bw'inzu bwabaye hagati ya NTEGEYE Bernard na ECOBANK(BCDI) ahubwo NTEGEYE Bernard yayihaye ECOBANK(BCDI) kugirango iyirangize iyibyaze umusaruro yiyishyure, kandi ko niyo n'ubwo bugure bwaba bwarabaye, nta gaciro bwagira kuko inzu yari ingwate ya ECOBANK(BCDI) . Bakomeje basobanura ko amasezerano yose yaba agamije gutwara umuntu ikitimukanwa cye kubera ko yabuze ubwishyu nta gaciro agira nkuko bivugwa mu ngingo ya 17 y'Iteka ryo kuwa 15/05/1922 ryerekeye ubugwate bw'ibitimukanwa(régime hypothécaire),

ko rero amasezerano yabaye hagati ya NTEGEYE Bernard na ECOBANK(BCDI) (« Acte de cession d'immeuble») nta gaciro agomba kugira.

[31]. Bakomeje basobanura ko Urukiko rutigeze rurengera ngo rucire urubanza ku kitararegewe rusesa amasezerano yo kuwa 09/02/2001, kuko mu kirego cyatanzwe hagaragaramo ko byari byaregewe. Icyo kirego kikaba cyari giteye gitya : « procéder à la résolution de tous les actes intervenus sur la parcelle n° 1200 Kacyiru-Nord faisant obstacle à l'exercise du droit de préférence conféré à NTEGEYE Bernard ». Ko kuvuga ko bitari byaregewe nta shingiro bifite. Kandi ko n'ubwo byaba bitararegewe, ubu babiregeye kuko ari ndemyagihugu(d'ordre public).

[32]. Ku kibazo cya adresse ya NTEGEYE Bernard, Maître MUTAGWERA Frédéric na Maître MUNDERERE Léopold bavuze ko ECOBANK(BCDI) yari isanzwe iyizi, ko yari inasanzwe imwohererezaho amabaruwa kandi akamugeraho, ko batakwitwaza ko Avocat we niba yarabonye kopi ye yari yagenewe bivuze ko NTEGEYE Bernard ubwo yari abonye iyo yandikiwe.

[33]. Bakomeje bavuga ko ku byerekeye amabwiriza ya Banki Nkuru y'Igihugu asimbura itegeko, ko ibyo bidashoboka ko kwaba ari ukwirengagiza uko amategeko asumbana. Kuba Banki Nkuru y'Igihugu yaragize ibyo icibwa kandi uwareze ntabyo yasabye, abunganira NTEGEYE Bernard bavuze ko ubwo bujurire bufite ishingiro no kuba yaraciwe amagarama kandi ari ikigo cya Leta, nabyo ko bifite ishingiro.

[34]. Ku ngingo yo kuba Urukiko rwarasheshe amasezerano ECOBANK(BCDI) yagiranye na NTEGEYE Bernard bise(« Acte de cession d'immeuble »), ruterekanye inenge ayo masezerano afite, bavuze ko nta shingiro ifite kuko inenge yari ihari nkuko bisobanurwa n'ingingo ya 17 y'Iteka ryo kuwa 15/05/1922 ryerekeye ubugwate bw'ibitimukanwa(régime hypothécaire) yavuzwe haruguru.

[35]. Ku ngingo yuko Urukiko rwitiranyije amasezerano y'ubugure(contrat de vente) n'ingingo yo kuba wasubirana icyo wagurishije ishobora gushyirwa mu masezerano y'ubugure(clause de rachat), bavuze ko nta shingiro ifite kuko Urukiko rwabisobanuye neza kandi nabo bakaba basanga ibisobanuro byatanzwe bibanyura.

[36]. Nyuma yo kwiregura ku bujurire bwa ECOBANK(BCDI) na Banki Nkuru y'Igihugu, NTEGEYE Bernard yatanze ikirego cy'ubujurire bwuririye ku bundi asaba ko amasezerano yo kwegurirwa inzu yabaye hagati ye na ECOBANK(BCDI) bise(« Acte de cession d'immeuble »), aseswa kuko anyuranije n'ingingo ya 17 y'Iteka ryo kuwa 15/05/1922 ryerekeye ubugwate bw'ibitimukanwa(régime hypothécaire) ndetse n'iya 368 y'Itegeko n°18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nkuko ryahinduwe kandi rikuzuzwa kugeza ubu. Ko uru Rukiko rwazakosora amakosa yakozwe n'Urukiko Rukuru rwa Repubulika, rukagenera NTEGEYE Bernard indishyi zitubutse kuko izo yari yahawe ari nkeya. Urukiko Rukuru rwa Repubulika rukaba rwari rwabariye kuri 125.000 Frw ku kwezi kandi Expert wa ECOBANK(BCDI) ARI-Co s.a.r.l. yari yabaze 3.164 $ ku kwezi kuwa 11/03/1998. Urukiko
rwaba rutegetse ko NTEGEYE Bernard yaba hari icyo agomba guha ECOBANK(BCDI) hagakorwa ikinyuranyo y'ayo yaba asabwa gutanga n'ayo ECOBANK(BCDI) yatwaye itayakwiye abariwe kuri 3.164 $ ku kwezi uhereye kuwa 11/03/1998 kugeza ku munsi urubanza ruzasomererwaho ni ukuvuga amezi 123.

[37]. Nyuma yo kumva ibisobanuro byatanzwe n'ababuranyi, iburanisha ryarashojwe, ababuranyi bamenyeshwa ko urubanza ruzasomwa kuwa 20/03/2009, uwo munsi ugeze rufata icyemezo cy'uko mbere yo guca urubanza burundu, rugomba kongera kumva ababuranyi bakarushaho gusobanura ingano y'umwenda NTEGEYE Bernard yari abereyemo ECOBANK(BCDI) igihe inzu igurishwa, urubanza rwimurirwa kuwa 30/04/2009.

[38]. Kuri iyo tariki ababuranyi baritabye, Banki Nkuru y'Igihugu ihagarariwe na Maître Rutagengwa François Xavier, ECOBANK ihagarariwe na Maître Rwagatare Janvier, naho NTEGEYE Bernard yunganiwe na Maître Munderere Léopold.

[39]. Maître Rwagatare Janvier yahawe ijambo kugirango asobanure umwenda nyakuri NTEGEYE Bernard abereyemo ECOBANK, akavuga ko inkomoko y'uru rubanza ari amasezerano ya „acte de cession d'immeuble" yo kuwa 09/02/2001 yabaye hagati ya NTEGEYE Bernard na BCDI(ECOBANK). Yavuze ko muri ayo masezerano, NTEGEYE Bernard yatanze inzu ye yari ikiri chantier yishyura igice cy'umwenda yari abereyemo BCDI(ECOBANK). Ko mu ngingo ya 2 y'ayo masezerano, havugwamo ko NTEGEYE Bernard asigayemo BCDI(ECOBANK) 28.232.000 Frw.
[40]. Yakomeje avuga ko aya mafaranga atagombaga kugaragara kuri compte courant ya NTEGEYE Bernard, ko ahubwo akorerwa indi compte yitwa compte de financement, arinaho umucamanza wo mu Rukiko Rukuru yibeshyeye, kuko yagendeye kuri extraits zerekanaga solde zero kuri compte courant ya NTEGEYE Bernard, kandi kugeza ubu kuri ariya mafaranga 28.232.000 Frw, nta narimwe arishyura. Ko mu by'ukuri hari compte ebyiri za NTEGEYE Bernard: compte courant ifite n° 01-2534703-09 na compte de financement ifite n° 25347-02-08, kandi ko ibi ariko bigenda mu mabanki yose, ko Urukiko rusanze ari ngombwa rwakwiyambaza impuguke muri za opérations bancaires akaza akabisobanura.

[41]. Maître RWAGATARE Janvier yakomeje ibisobanuro bye avuga ko ECOBANK itagurishije iriya nzu ishaka kwiyishyura kuko inzu yari isanzwe ari iyayo, ariyo mpamvu mu masezerano ya „acte de cession d'immeuble", hateganyijwemo ko ECOBANK iramutse iyigurishije, NTEGEYE Bernard azaza mbere mu baguzi, ibyo bikaba bitashoboka inzu isanzwe ari iye. Ko gusa ubwo burenganzira NTEGEYE Bernard atabuhawe kubera ko atari yarishyuye umwenda yarimo.

[42]. Yarangije avuga ko amasezerano yabaye hagati ya BCDI na NTEGEYE Bernard yo kuwa 09/02/2001 yerekeranye no kwegurira inzu BCDI(acte de cession d'immeuble) ari inyandikomvaho(acte authentique), ko uwashaka kuyavuguruza yashingira ku ngingo ya 13 y'itegekon°15/2004 ryo kuwa12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

[43]. Maître RUTAGENGWA François Xavier nawe yahawe umwanya wo kugira icyo avuga ku mwenda ugibwaho impaka hagati ya NTEGEYE Bernard na ECOBANK, avuga ko compte de financement ya NTEGEYE Bernard niyo yagombaga kugaragaza ubwishyu, asaba ko NTEGEYE Bernard yakwerekana uburyo amafaranga yavaga kuri compte courant ye akajya kuri compte de financement kuko ariyo yagombaga kwishyuriraho. Arangiza nawe avuga ko asanga hakwiyambazwa impuguke mu by'amabanki kugirango isobanurire Urukiko uburyo izo comptes zikoreshwa mu kwishyura umwenda. .

[44]. Urukiko rwasabye NTEGEYE Bernard ko yarwereka aho yishyuriye uriya mwenda wa 28.232.000 Frw uvugwa mu ngingo ya 2 y'amasezerano y'iyegurirwa ry'inzu(acte de cession d'immeuble), asubiza ko buri kwezi ECOBANK yamwohererezaga extrait igaragaza uko umwenda ugenda wishyurwa n'amafaranga asigaye, ko ibyo baje guhimba nyuma byitwa « compte de financement » we atabizi, ko iyo azi ari compte courant ye yakoreshaga kandi ikaba ariyo yishyuriragaho.

[45]. Yakomeje avuga ko yishyuraga mu buryo butandukanye hakurikijwe ihame rya « unicité de compte » riba mu mabanki yose, ibyo kandi akaba yarabanje kubyumvikanaho n'uwari Umuyobozi Mukuru wa BCDI. Ko ngo mu biganiro bagiranye, bumvikanye ko inzu BCDI iyifata ikayubaka noneho yamara kuzura ikayikodesha, ikazajya yiyishyura mu mafaranga y'ubukode azayivamo, gusa ko ibyo biganiro bagiranye ntaho byanditse byari mu magambo gusa, ariko ko iyo « esprit » igaragara mu masezerano y'iyegurirwa ry'inzu(acte de

cession d'immeuble) yabaye hagati ye na BCDI, kandi ko n'ikimenyimenyi mbere yuko BCDI iyigurisha Banki Nkuru y'Igihugu , yayikodeshaga na PAM.

[46]. Urukiko rwongeye kubaza NTEGEYE Bernard, niba akivuga ko nta compte de financement yigeze agira, asubiramo ko ntayo.

[47]. Ku byerekeye iyo « compte de financement », Maître RWAGATARE Janvier yahise ashyikiriza Urukiko inyandiko yo kuwa 25/08/1998 BCDI yandikiye NTEGEYE Bernard ko yamwemereye umwenda yayisabye ungana na 50.000.000 Frw, inamumenyesha numero ya compte de financement uwo mwenda uzajya wishyurirwaho, iyo numero ikaba ari 25347-02-08, iyo nyandiko NTEGEYE Bernard akaba yarayibonye akanayisinyaho.

[48]. NTEGEYE Bernard amaze kubona iyo nyandiko yavuze ko yari yibagiwe ko iyo compte yabayeho, ariko ko impamvu yari yibagiwe ari uko iyo compte itigeze iba « activé », arangiza avuga ko umwenda wa 28.232.000 Frw wari usigaye yarangije kuwishyura, ko ntacyo agomba ECOBANK.

[49]. Maître Munderere Léopold nawe yafashe ijambo, avuga ko ikigomba kurebwa ari za extraits NTEGEYE Bernard yerekanye zigaragaza ko yarangije kwishyura. Yakomeje avuga ko ingingo ya 17 y'Iteka ryo kuwa 15/05/1922 ryerekeye ubugwate bw'ibitimukanwa(régime hypothécaire), itemera ko iyo nzu yari kuba iya ECOBANK(BCDI), ko niba iyo clause de rachat irimo ari amakosa.

[50]. Iburanisha ryarashojwe, ababuranyi bamenyeshwa ko urubanza ruzasomwa kuwa 29/05/2009, uwo munsi ariko ntirwasomwa kubera ko umwe mu bacamanza baruburanishije yari mu butumwa mu mahanga, isomwa ryimurirwa kuwa 05/06/2009, kuri uwo munsi Urukiko rufata icyemezo cyo guhamagaza impuguke muri za « opérations bancaires », kugirango arusobanurire inzira zose zinyurwamo mu itangwa

rya crédit, uburyo yishyurwa, itandukaniro rya compte courant na compte de financement, unicité de compte, n'ibindi bisobanuro Urukiko ruzamucyeneraho bijyanye n'uru rubanza, iburanisha ryimurirwa kuwa 16/07/2009. Urukiko rwahamagaye impuguke HABIMANA José kugirango azabe ari mu Rukiko kuri iriya tariki.

[51]. Kuri iyo tariki ababuranyi baritabye ndetse na HABIMANA José yitabye, ariko urubanza ntirwaburanishwa kubera ko Banki Nkuru y'Igihugu yanditse isaba ko rwakwimurirwa ku yindi tariki kugirango izabanze ibone uyihagararira kuko uwo yari ifite atakihakora, rwimurirwa kuwa 03/09/2009. Kuri uwo munsi ababuranyi baritabye, Banki Nkuru y'Igihugu ihagarariwe na Maître NKURUNZIZA François Xavier, ECOBANK ihagarariwe na Maître RWAGATARE Janvier, naho NTEGEYE Bernard yunganiwe na Maître MUNDERERE Léopold na Maître NKURUNZIZA Jean Chrysostome.
Urukiko rwabanje kwereka ababuranyi impuguke rwahamagaje ariyo HABIMANA José kugirango bavuge niba bayemeye, bose bavuga ko bayemeye ntacyo bayivugaho.

[52]. Urukiko rwabajije impuguke HABIMANA José kurusobanurira inzira zose zinyurwamo mu itangwa ry'inguzanyo, avuga ko usaba inguzanyo yandika, ibyo asabwa kuba yujuje bigaterwa n'ubwoko bw'inguzanyo yaka. Yabajijwe itandukaniro hagati ya „compte courant" na „compte de financement" asubiza ko „compte de financement" ari compte interne ya Banque icungiraho compte y'umukiriya, ko nta chéquier umukiriya ayigirira kuko adashobora kuyikoresha. Naho „compte courant" , yavuze ko ari compte umukiriya ashobora gukoresha mu buzima bwe bwa buri munsi. Iyo „compte courant", umukiriya akaba ariyo anyuzaho amafaranga yishyura umwenda, noneho Banque ikayakuraho ikayashyira kuri „compte de financement". Amaze kwerekwa historique y'umwenda wa NTEGEYE Bernard yatanzwe na ECOBANK, yavuze ko ntaho bigaragara ko amafaranga yavuye kuri „compte courant" ajya kuri „compte de financement" kwishyura umwenda, cyakora ko yabimenya neza ari uko afite dosiye yose.

[53]. Yabajijwe niba hakurikijwe ihame rya „unicité de compte“ , umukiriya ufite comptes ebyiri imwe ari iya madevises, Banque ishobora kwiyishyura kuri comptes zombi avuga ko bishoboka, ko ari nabyo bikorwa. Ku kibazo cyo kumenya niba „compte de financement“ umukiriya aba ayizi, yavuze ko kubera ko bamuha plan de remboursement, aba ayizi.

[54]. Urukiko rwamubajije niba igihe „compte de financement“ yerekana solde 0, hari amafaranga umukiriya aba agifitiye Banque, asubiza ko ubundi nta mwenda wagombye kuba ugihari, ariko ko ari ngombwa kubanza kureba aho iyo solde 0 yaturutse, bikaba bisaba ko yajya muri Banque yatanze inguzanyo akifashisha documents zaho kuko hari byinshi adashobora gusubiza ubungubu kubera kutagira dosiye yose y'inguzanyo. Yongeyeho ariko ko amabanki yajyaga akora „amortissement de créance“ solde ikaba zéro(0) abantu bakagirango nta deni bafite, ndetse bagashobora kujya kwisabira umwenda ahandi mu yindi Banque ntibigaragare ko hari uwundi bari basanganywe. Ko ariko ubu Banki Nkuru y'Igihugu yategetse ko hajya hakorwa amalisiti ya bene abo bantu agashyirwa ku ruhande kugirango bamenyekane.

[55]. Urukiko rwasanze ikibazo nyamukuru kiri muri uru rubanza, ari ukumenya niba NTEGEYE Bernard yarishyuye ECOBANK cyangwa atarishyuye. Nyuma y'ibisobanuro byari bimaze gutangwa n'impuguke HABIMANA José, Urukiko rwasanze nkuko yabisabye, bikwiye ko yajya muri ECOBANK agasuzuma dosiye y'umwenda NTEGEYE Bernard yahawe, uko wishyuwe, numero ya compte wishyuriweho, ingano y'amafaranga yagombaga kwishyura, ayo yishyuye, asigaye niba ahari, kureba niba nta yandi macomptes NTEGEYE Bernard yari afite muri ECOBANK, kureba niba kuri ayo macomptes(niba ahari) nta mafaranga yavuyeho yishyuraga uwo mwenda, n'izindi mouvements zose zabaye zigamije kwishyura, n'ibindi byose byafasha Urukiko gusobanukirwa n'iby'uyu mwenda. Urukiko rwasabye kandi ECOBANK na NTEGEYE Bernard buri wese ku bimwerekeye, kuzamushyikiriza za pièces bashingiraho ibyo

basaba, kugirango abigereranye n'ibyo azaba yiboneye muri dosiye yo muri Banque.

[56]. Abahagarariye NTEGEYE Bernard bavuze ko bo basanga nta mpamvu yuko impuguke yajya muri ECOBANK kuko niyo yajuriye yagombaga kuba yaratanze ibimenyetso ishingiraho ubujurire bwayo, ariko ko ubwo Urukiko rubifasheho icyemezo, yazazirikana ko bo bafite extrait ya ECOBANK iriho solde 0, akazanita kandi kuri Règlement des opérations de crédit.

[57]. HABIMANA José yagejeje raporo ya expertise mu bwanditsi bw'Urukiko kuwa 09/10/2009. Urubanza rwahamagawe kuwa 13/10/2009 kugirango ababuranyi bagire icyo bayivugaho. Uwo munsi bitabye Urukiko ariko bose bavuga ko ntayo babonye , basaba Urukiko ko babanza kuyishyikirizwa bakayisoma mbere yuko bagira icyo bayivugaho, Urukiko rurabibemerera urubanza rwimurirwa kuwa 12/01/2010 ariko nabwo ntirwaburanishwa kubera ko umwe mu bacamanza barutangiye yari arwaye rwimurirwa kuwa 02/03/2010, uwo munsi ababuranyi baritaba uko bisanzwe, Banki Nkuru y'Igihugu ihagarariwe na Maître NKURUNZIZA François Xavier, ECOBANK ihagarariwe na Maître RWAGATARE Janvier, naho NTEGEYE Bernard yunganiwe na Maître MUNDERERE Léopold na Maître NKURUNZIZA Jean Chrysostome, na HABIMANA José yaje kugirango asobanure raporo ya expertise yakoze.

[58]. Kubera ko umucamanza urwaye yasimbuwe mu rubanza hakajyamo undi, byabaye ngombwa ko umucamanza wateguye urubanza abanza kwibutsa imiterere yarwo, aho rwari rugeze ruburanishwa, imiburanire y'ababuranyi ikubiyemo ingingo z'ubujurire n'ibyireguro, n'ibyemezo byarufashwemo. Nyuma y'ibyo, HABIMANA José yahawe umwanya kugirango asobanure raporo ya expertise yakoze. Yatangiye abwira Urukiko uburyo yakoresheje kugirango yuzuze inshingano yari yahawe, avuga ko yasomye yitonze dosiye ya crédit ya NTEGEYE Bernard muri ECOBANK kugirango asobanukirwe uko umwenda watanzwe, icyo watangiwe n'uburyo bari bumvikanye

uzishyurwa, amafaranga yishyuwe, n'asigaye kwishyurwa, uko umwenda witwaye muri „évolution" yawo. Yakomeje avuga ko yasomye yitonze amategeko ya Banki Nkuru y'Igihugu kugirango asobanukirwe ibyo amabanki agomba kubahiriza mu byerekeranye na „gestion du risque crédit". Ko kandi yaganiriye n'impande zombi ziburana kugirango barebe ko hari ibindi bisobanuro cyangwa se ibindi bimenyetso byakwiyongera kubyavuye muri dosiye ya ECOBANK, anasubira no mu mibare yahawe na Banque kugirango arebe ko inoze, ko ihuje n'amasezerano hagati yayo na NTEGEYE Bernard. .

[59]. Yasobanuye ko ku byerekeye „compte courant" numero 101-02534702-08 ya NTEGEYE Bernard, kuwa 23/11/1998, hariho 3.837 Frw. Ko habayeho versement imwe rukumbi ya 47.000 Frw kuwa 01/09/1999, ko kuva icyo gihe nta yindi mouvement ya NTEGEYE Bernard yongeye kunyuraho. Yakomeje avuga ko, kubera „frais de tenue de compte" zingana na 200 Frw buri kwezi, iyo compte courant yari yarabaye „débiteur". Cyakora kubera iriya versement ya 47.000 Frw , yongeye kuba créditeur ya 35.300 Frw, aya mafaranga akaba ariyo yagiye akoreshwa mu kwishyura „frais de tenue de compte", kuwa 31/12/2002, hakaba hari hasigaye 26.085 frw n'ubu akaba ariyo akiriho, ku buryo kuva icyo gihe ECOBANK yayifashe nka compte dormant.

[60]. Ku byerekeye „compte de financement" numero 101-02534703-09 ya NTEGEYE Bernard, HABIMANA José yasobanuye ko yasanze iyi compte itarakoze mu buryo yakagombye gukora nkuko contrat ya crédit ibivuga, kuko iyo compte yabarwagaho intérêts débiteurs na commissions buri kwezi, kandi igakurwaho „frais de tenue de compte", ubundi ibyo bitabaho kuri „compte de financement". Ikindi ngo ni uko „compte de financement" igomba gukurikiza plan de remboursement ikorwa mu buryo bujyanye n'amasezerano y'inguzanyo, iyo plan de remboursement ikaba ntayari ihari.

[61]. Muri raporo ye, impuguke HABIMANA José yagaragaje

imbonerahamwe ya comptes za NTEGEYE Bernard yari afite muri BCDI(ECOBANK).

Hari :

- compte 101-02534701-07 USD. Kuri iyi compte, yavuze ko ubu iriho solde 0. Ko mouvement ya nyuma yayikoreweho, yakozwe kuwa 13/02/1998, compte ifungwa burundu kuwa 13/11/2000 kubera ko yamaze igihe nta mafaranga ariho, amadolari 92,16 yaherukagaho akaba yarakoreshejwe mu kwishyura imirimo yakozwe bayifunga.
- compte courant 101-02534702-08. Kuri iyi compte, yavuze ko ubu iriho solde ya 26.085 Frw. Ko mouvement ya nyuma yayikoreweho, yakozwe kuwa 01/09/1999, Banque ihagarika kuyikuraho frais de tenue de compte kuwa 31/12/2002 bivuze ko guhera icyo gihe yasaga nkaho itakibaho.
- compte de financement 101-02534703-09. Kuri iyi compte, yavuze ko ubu iriho solde 0. Ko mouvement ya nyuma yayikoreweho, yakozwe kuwa 30/01/2002, compte ifungwa burundu uwo munsi. Yavuze ko mubyo yasobanuriwe kandi bijyanye n'imikorere ya Banque, ni uko Banque yahisemo gushyira compte kuri 0 mu bitabo byayo(livres comptables) kubera impamvu ebyiri:

-Iya mbere ni uko umwenda wari usanzwe utishyurwa, kuwufata mu gihombo bikaba byarumvikanaga. Uretse ko ngo atari na byiza kubara inyungu zitizewe ko zizishyurwa,

- Iya kabiri ikaba ari uko hari hamaze gusinywa acte de cession yerekana umwenda usigaye wa 28.232.000 Frw. Uwo mwenda wari usigaye wagombaga gusubira mu bitabo(livres comptables) igihe NTEGEYE Bernard na Banque bari bamaze kumvikana uburyo uwo mwenda uzishyurwa, hagakorwa amasezerano mashya y'inguzanyo, hagakorwa na plan de remboursement nshyashya. Yavuze ko ibi bitigeze bishyirwa mu bikorwa nubwo acte de cession yari yabiteganyije, Banque ikaba ivuga ko ari NTEGEYE Bernard wabiteye kuko atigeze agaragaza ubushake kubera ko yamwandikiye kuwa 30/03/2001 ibaruwa n° DAF/ JUR/BB/087/03-2001 yakiriwe na NTEGEYE Bernard cyangwa umuhagarariye kuwa 26/04/2001, ariko ntiyagira igisubizo atanga.

-compte 101-02534704-10. Kuri iyi compte, yavuze ko ubu iriho solde 0. Ko iyi compte itigeze igira mouvement nimwe.

[62]. HABIMANA José yavuze ko mu rwego rwo gushaka ibimenyetso bijyanye n'iriya nguzanyo, yakiriye NTEGEYE Bernard n'umwunganira, ibimenyetso bamuhaye bari bafite bikaba ari :

- extrait ya „compte de financement" yerekana solde 0 na,
- Réglement général des opérations bancaires cyane cyane ahavugwa icyo solde 0 bisobanura, mu gihe HABIMANA José we nkuko abivuga, yari yiteze ko bamuha nka bordereau de versement(chèques, cyangwa se espèces), attestation de non créance cyangwa extrait de compte.

[63]. Mu mwanzuro wa raporo ye, impuguke HABIMANA José yavuze ko nta kigaragaza ko inguzanyo ya 28.232.000 Frw yishyuwe kubera impamvu zikurikira:
a. nta gihamya cyerekana amafaranga yaba yarashyizwe kuri compte ya NTEGEYE Bernard agamije kwishyura,
b. kuri compte zose za NTEGEYE Bernard nkuko zagaragajwe , nta mafaranga yazivuyeho agamije kwishyura umwenda. Ko izo comptes zitigeze zinagira amafaranga ahagije yakwishyura n'ukwezi kumwe kubera ko plan de remboursement yari 1.140.390 Frw,
c. nta barwa yaba yarasinywe na ECOBANK (BCDI) ibabarira umwenda wa NTEGEYE Bernard yigeze igaragara,
d. „compte de financement" yagize solde 0 atari ukubera kwishyura umwenda ahubwo ari ukubera ko Banque yafashe umwenda wari usigaye kuri compte nk'igihombo(amortissement de la créance).

[64]. Maître RWAGATARE Janvier kuri iyo raporo yavuze ko ntacyo bayivugaho, ko ihuye n'imyanzuro bashyikirije Urukiko. Maître NKURUNZIZA François Xavier yavuze ko bemera uburyo raporo ikoze, ko ikibazo cyari ukumenya niba NTEGEYE Bernard hari amafaranga abereyemo ECOBANK (BCDI), akaba

asanga „méthodologie“ yakoreshejwe na Expert ariyo. Bivuze ko kuva kuwa 09/02/2001 umunsi NTEGEYE Bernard yegurira ECOBANK (BCDI) inzu kubera kubura ubwishyu, kugeza kuwa 11/04/2003 umunsi ECOBANK (BCDI) yayigurishije na Banki Nkuru y'Igihugu, nta faranga narimwe yari yarishyuye. Maître RWAGATARE Janvier yongeye gusaba ko NTEGEYE Bernard yakwishyura 28.232.000 Frw n'inyungu zayo zibariwe kuri „taux“ ya 18% yabarirwagaho ku mwenda wa mbere ya „acte de cession d'immeuble“ zikabarwa uhereye umunsi ukurikira uwa „acte de cession d'immeuble“ kugeza igihe azarangiriza umwenda, akavuga ko kugeza kuwa 24/02/2009 umwenda wose wanganaga na 107.329.693 Frw.

[65]. Maître MUNDERERE Léopold na Maître NKURUNZIZA Jean Chrysostome bavuze ko iyo raporo batayemera, ko itashubije mu buryo budafite aho bubogamiye ibibazo yabajijwe n'Urukiko mu rwego rwo kurufasha mu gufata icyemezo mu rubanza ECOBANK (BCDI) ifitanye na NTEGEYE Bernard. Bakomeje bavuga ko bagejeje ku mpuguke HABIMANA José extrait ya compte de financement iriho solde 0, réglement général des opérations, ariko ko igikomeye kurusha ibindi ari ikimenyetso bamweretse akakirengagiza nkana cyerekanaga ko hagati y'umwaka wa 2004 na 2005, compte 101-02534701-07 USD yanyujijweho amadolari y'amanyamerika arenga ibihumbi mirongo irindwi(70.000 USD). Ko iyo NTEGEYE Bernard aza kuba afitiye umwenda ECOBANK (BCDI), iba yariyishyuye hakurikijwe ihame rya „unicité de compte“.

[66]. Iburanisha ryarashojwe, ababuranyi bamenyeshwa ko urubanza ruzasomwa kuwa 02/04/2010, uwo munsi ariko ntirwasomwa kubera ko habaye congé mu gihugu hose, isomwa ryimurirwa kuwa 23/04/2010, nabwo ntirwasomwa kubera ubwinshi bw'imanza zasabaga umwiherero w'abacamanza n'uru rurimo, rwimurirwa kuwa 30/04/2010.
Uwo munsi Urukiko rwasanze hari ibintu bitarasobanuka ku byerekeye uburyo ECOBANK (BCDI) yari ifite bwo kwiyishyura n'ukuntu yabukoresheje, rufata icyemezo cyo guhamagara

ababuranyi rukongera rukagira ibyo rubasobanuza kuri raporo yatanzwe n'impuguke HABIMANA José, nawe kandi akazaba ahari. Runasaba kandi ECOBANK (BCDI) na NTEGEYE Bernard kuzaza bazanye historique ya compte 101-02534701-07 USD, urubanza rwimurirwa kuwa 03/06/2010. Kuri uwo munsi ababuranyi baritabye, Banki Nkuru y'Igihugu ihagarariwe na Maître NKURUNZIZA François Xavier, ECOBANK ihagarariwe na Maître RWAGATARE Janvier, naho NTEGEYE Bernard yunganiwe na Maître MUNDERERE Léopold na Maître NKURUNZIZA Jean Chrysostome.

[67]. Abunganira NTEGEYE Bernard babajijwe gusobanura iby'amadolari y'amanyamerika bavuga yanyujijwe kuri compte 101-02534701-07 USD ya NTEGEYE Bernard muri ECOBANK (BCDI), basubiza ko nkuko bigaragazwa na historique y'iyo compte bashyikirije Urukiko, hagati y'umwaka wa 2004 na 2005, compte 101-02534701-07 USD yanyujijweho amadolari y'amanyamerika arenga ibihumbi mirongo irindwi(70.000 USD), ko iyo NTEGEYE Bernard aza kuba afitiye umwenda ECOBANK (BCDI), iba yariyishyuye hakurikijwe ihame rya „unicité de compte", kandi ko icyo kimenyetso bacyeretse impuguke HABIMANA José.
Kuri icyo kibazo, Maître RWAGATARE Janvier yavuze ko kugeza kuwa 31/12/2003, iyo compte yari ifite solde 0, nta mouvement nimwe iyikorerwaho, ko amafaranga yatangiye gushyirwaho kuva kuwa 15/04/2004 ariko ECOBANK (BCDI) ikaba ntacyo yari kuyakoraho kubera ko nta „quotité cessible" yari yumvikanyweho n'ababuranyi bombi, bitewe nuko nta „plan de remboursement" yigeze ibaho biturutse ku makosa ya NTEGEYE Bernard utarigeze uboneka, ko ngo iyo ECOBANK (BCDI) iyakuraho, yari kuba yishe amasezerano kuko ateganya ko ibyerekeye no kwishyura bizakurikiza gahunda izumvikanwaho n'abagiranye amasezerano.
Maître NKURUNZIZA François Xavier yavuze ko uvuga ko yishyuye Banki ariwe ugomba kugaragaza aho yishyuriye. Ko niba NTEGEYE Bernard yemera ko yari afitiye ECOBANK (BCDI) umwenda urenga 28.000.000 Frw, none ubu ngo

akaba yararangije kuwishyura, niwe ugomba kwerekana aho yawishyuriye. Ko ku byerekeranye n'ihame rya „unicité de compte", ngo iyo nta „plan de remboursement" ihari, Banki nta mafaranga yakuraho kuko ari nka „compensation", kandi ntishobora gukorwa nta bintu „exigibles" bihari.

[68]. HABIMANA José yabanje gusobanura ko ngo ayo madolari yanyuze kuri compte atari „solde créditaire" ahubwo ari „mouvement créditaire" kubera ko atanyuzeho ari umubumbe wa 70.000 USD, ahubwo ko hazaga duke duke. Cyakora ngo iyo aza kuba ariwe wari muri Banki, n'utwo duke yari kuzajya adufatira, akaba asanga harabayeho uburangare bwa Banki cyangwa se uwagombaga gukora iyo „opération" akaba ataramenyeshejwe ko hari „acte de cession", kuko nyuma yuko isinywa, compte ya NTEGEYE Bernard yari ifite solde 0.
Ku byerekeye kuba yareretswe historique ya compte 101-02534701-07 USD ngo ntagire icyo ayivugaho, yahakanye avuga ko baba abunganira NTEGEYE Bernard, yaba NTEGEYE Bernard ubwe, nta numwe wigeze ayimwereka, ko icyo bamweretse nkuko yabisobanuye ari extrait ya „compte de financement" yerekana solde 0, na Réglement

général des opérations bancaires. Yavuze kandi ko mu kwiyishyura, iyo hari „plan de remboursement" Banki niyo ikurikiza, ko ngo ariko iyo idahari, bigaragara ko hari „mauvaise foi", Banki ishobora kuyafatira. Yarangije avuga ko nyuma ya „acte de cession", nta nyandiko cyangwa ikindi kimenyetso yabonye kigaragaza ko NTEGEYE Bernard yishyuye. Maître RWAGATARE Janvier kuri iyo historique, yavuze ko nubwo HABIMANA José ayibonye ako kanya, yasobanurira Urukiko niba ariya madolari yaranyuze kuri compte agamije kwishyura umwenda

[69]. Urukiko rwashatse kumenya uko iriya nzu yiswe igeze mu maboko ya ECOBANK (BCDI), niba yariswe ubwishyu, ihwanyamyenda(compensation), cyangwa yarakomeje kwitwa ingwate, NTEGEYE Bernard avuga ko yakomeje kwitwa ingwate,

ko atigeze ayigurisha na ECOBANK (BCDI), ko atari kuyigurisha ngo mu masezerano hashyirwemo „droit préférentiel" iramutse igurishijwe. Yarangije avuga ko yemera uburyo Birasamashyo Augustin yamuhagarariye, ko atamwihakana, ko ubutumwa yari yamuhaye yabwubahirije ariko ko bamusinyishije ibyo atari(NTEGEYE Bernard) yumvikanye na ECOBANK (BCDI).
Maître RWAGATARE Janvier yavuze ko inzu ikiri mu maboko ya NTEGEYE Bernard, yitwaga ingwate, ariko ko yagiye mu maboko ya ECOBANK (BCDI) yitwa ubwishyu ku gice cy'umwenda(paiement partiel) nkuko bigaragara mu masezerano bakoranye(acte de cession). Ko ngo iyo aza kuba ayabonamo inenge, aba yaratanze ikirego asaba ko aseswa.

[70]. Ku byerekeye ingingo ya 17 y'Iteka ryo kuwa 15/05/1922 ryerekeye ubugwate bw'ibitimukanwa(régime hypothécaire), Maître RWAGATARE Janvier yavuze ko NTEGEYE Bernard yayeguriye Banki ku bushake bwe kugirango yishyure igice cy'umwenda, ntabwo ari Banki yayihaye kubera kubura ubwishyu kwa NTEGEYE Bernard kuko byo bibujijwe(le créancier ne s'est pas approprié de l'hypothèque, elle lui a été cédée par le débiteur).
Kuri icyo kibazo, Maître NKURUNZIZA François Xavier yavuze ko amasezerano ubwayo ari „acte de cession", kandi ko „cession" ikorwa mu buryo bubiri. Ko ishobora kuba ubugure(vente) cyangwa impano(donation). Akaba ngo asanga harabaye ubugure kubera ko icyaguzwe cyumvikanyweho, hakagenwa igiciro, kandi ko ngo mu ngingo ya 6 y'amasezerano ya „acte de cession", NTEGEYE Bernard yemeye ko ari ubugure. Arangiza avuga ko ntacyabuza Banki kuba yagura ingwate y'umukiriya, ko ikibujijwe ari ukuyifata ukayiha iyo umukiriya yabuze ubwishyu. Yavuze kandi ko NTEGEYE Bernard atigeze arega avuga ko „acte de cession" atayemera, ko ahubwo yareze avuga ko hakurikizwa ingingo ya 6 yayo. Yarangije avuga ko amasezerano yo gukora cyangwa kudakora(obligation de faire ou de ne pas faire) atari impamvu yo gusesa amasezerano, ahubwo ko bishobora kuba impamvu yo gusaba indishyi.
Maître NKURUNZIZA Jean Chrysostome yasabye Urukiko ko

mu gusesengura ibikubiye muri ariya masezerano, rutahagarara ku nyuguti zanditse gusa, ahubwo ko rwareba icyo abagiranye amasezerano bashakaga kugeraho.

[71]. Maître MUNDERERE Léopold yavuze ko ECOBANK (BCDI) yahaye NTEGEYE Bernard umwenda ungana na 50.000.000 Frw kuwa 25/08/1999, „acte de cession" isinywa kuwa 09/02/2001, akaba yibaza taux yakoreshejwe kugirango uwo mwenda ube nyuma y'umwaka umwe ungana na 73.000.000 Frw. Yabajijwe niba NTEGEYE Bernard ahakana umwenda abereyemo ECOBANK (BCDI) asubiza ko atawuhakana. Yabajijwe kandi niba hari ikirego bigeze bashyikiriza inkiko gisaba gusesa amasezerano yo kuwa 09/02/2001 yerekeranye na „acte de cession d'immeuble" kubera inenge afite nkuko babivuga, asubiza ko ntacyo batanze.
Iburanisha ryarashojwe, ababuranyi bamenyeshwa ko urubanza ruzasomwa kuwa 16/07/2010, nyuma Urukiko rwagiye mu mwiherero kugirango ruruce.

[72]. Ibibazo bigomba gusuzumwa muri uru rubanza:

1. Gucira urubanza ku kitararegewe;
2. Birashoboka ko umukiriya na Banki bakumvikana, ikamugurira inzu ye yari ingwate yayo ku mwenda yamuhaye, kugirango ugabanuke cyangwa ushireho burundu? (isesengura ry'ingingo ya 17 y'Iteka ryo kuwa 15/05/1922 ryerekeye ubugwate bw'ibitimukanwa(régime hypothécaire).

3. Kwemeza niba amasezerano yo kuwa 09/02/2001 ari ay'ubugure.
4. Kwemeza niba NTEGEYE Bernard hari umwenda afitiye ECOBANK (BCDI),
5. Kwemeza niba extrait ya „compte de financement" yerekana solde 0, bivuga byanze bikunze ko nta mwenda umukiriya aba agifitiye Banque.

2. Isesengura ry'ibibazo n'uko Urukiko rubibona.

I. Ku byerekeye gucira urubanza ku kitararegewe

[72]. Muri uru rubanza, habaye amasezerano y'ubwoko bubiri. Hari ayabaye kuwa 09/02/2001 hagati ya BCDI (ECOBANK) na NTEGEYE Bernard yiswe „acte de cession d'immeuble", nayabaye kuwa 11/04/2003 hagati ya BCDI (ECOBANK) na Banki Nkuru y'Igihugu yiswe „contrat de vente".

[73]. Mu rubanza rwajuririwe, Urukiko rwasheshe amasezerano yo kuwa 09/02/2001 yitwa „acte de cession d'immeuble" yabaye hagati ya BCDI (ECOBANK) na NTEGEYE Bernard, ngo kubera ko iyo Banki yakoresheje uburiganya bwo kugurisha inzu ye itabimumenyesheje.
Mu Rukiko Nkemurampaka no mu Rukiko Rukuru rwa Repubulika, nta kirego NTEGEYE Bernard yigeze ahatanga kigamije gusesa amasezerano yo kuwa 09/02/2001 yiswe „acte de cession d'immeuble", ahubwo mu gusobanura ikirego cye, yavugaga ko BCDI(ECOBANK) itubahirije ingingo ya 6 y'amasezerano bagiranye kuwa 9/02/2001 bise" acte de cession d'immeuble", akanasaba ko amasezerano y'ubugure bw'inzu iri mu kibanza n° 1200 kiri Kacyiru –Nord yabaye hagati ya BCDI (ECOBANK) na Banki Nkuru y'Igihugu yaseswa. Ibyo bikaba bivuga ko ntacyo yanengaga amasezerano ubwayo, ahubwo yaranengaga ishyirwa mu bikorwa ryayo. Abamwunganira nabo, bakaba baremeje mu iburanisha ryo kuwa 03/06/2010 muri uru Rukiko, ko nta kirego kigamije gusesa amasezerano yo kuwa 09/02/2001 yiswe „acte de cession d'immeuble"bigeze batanga. Ingingo ya 7 y'itegeko n°18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nkuko ryahinduwe kugeza ubu, iteganya ko umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine.

Nkuko byasobanuwe haruguru, Urukiko rwaciriye urubanza kubyo rutasabwe rutavuze n'impamvu, aho rwerekanye ko amasezerano y'ubugure hagati ya BCDI (ECOBANK) na Banki Nkuru y'Igihugu yabayemo uburiganya(dol) uretse ko

nabwo bwagombaga gutangirwa ibimenyetso, aho gusesa ayo masezerano nkuko rwari rumaze kubivuga, rurarenga rusesa ayabaye hagati ya NTEGEYE Bernard na BCDI (ECOBANK) atagize aho ahuriye n'ayongayo, n'abayagiranye atari bamwe kandi rutabiregewe. Urukiko rukaba rusanga iyi ngingo ifite ishingiro.

2. Birashoboka ko umukiriya na Banki bakumvikana, ikamugurira inzu ye yari ingwate yayo ku mwenda yamuhaye, kugirango ugabanuke cyangwa ushireho burundu?

(isesengura ry'ingingo ya 17 y'Iteka ryo kuwa 15/05/1922 ryerekeye ubugwate bw'ibitimukanwa(régime hypothécaire).

[74]. Iyo ngingo igira iti": Iba impfabusa, ingingo yose yaramuka iteganyije ko uwatanze umwenda mu gihe azaba atishyuwe afite uburenganzira bwo gutwara burundu ikintu kitimukanwa yahaweho ingwate.
Kugirango inzu yari yatanzweho ingwate ive mu maboko ya nyirayo ariwe NTEGEYE Bernard ijye mu maboko ya BCDI (ECOBANK), habanje kubaho ibiganiro hagati yabo bombi, baricara baganira ku buryo umwenda uzishyurwa kuko wari umaze kuba munini birenze ubushobozi bwa NTEGEYE Bernard, bagira ibyo bumvikanaho, bakora amasezerano, mu mwanya wa NTEGEYE Bernard hasinya uwitwa Birasamashyo Augustin yari yarahaye uburenganzira busesuye kandi nawe akaba yemera ibyo yakoze nk'umuntu wari umuhagarariye. Bumvikana ko NTEGEYE Bernard yegurira BCDI (ECOBANK) inzu, bakagena agaciro kayo aho yari igeze yubakwa, noneho ikiguzi ihawe kikavanwa mu mwenda NTEGEYE Bernard yari agezemo ungana na 73.839.942 Frw, bihita binashyirwa mu bikorwa kuko umwenda waramanutse ugera kuri 28.232.000 Frw.

[75]. Iki gikorwa bakoze, kikaba kirebana n'amasezerano abantu babiri bashobora kugirana mu rwego rwo kunoza ayari asanzwe, ashingiye ku kwiyemerera kwa buri muntu(consentement). Aya

masezerano akaba ntaho ahuriye n'ibivugwa mu ngingo ya 17 y'iteka ryavuzwe, kuko yo icyo yabuzaga(kuko ubu itegeko ryarahindutse), ni ugushyira iriya ngingo mu masezerano y'ubugwate.
Aya masezerano rero yabaye hagati ya NTEGEYE Bernard na BCDI (ECOBANK) ntiyareberwa mu ngingo ya 17 y'iteka ryavuzwe haruguru, ahubwo yafatwa mu rwego rw'amasezerano yaturutse ku bwumvikane bwa bombi hashakishwa uburyo bwo kwishyura, NTEGEYE Bernard nawe akaba ayemera, ndetse akaba yari yaranashyizwe mu bikorwa.

[76]. Kuri iki kibazo, n'Umushingamategeko akaba yarasanze amasezerano nkayo ntaho yaba abangamiye uwatanze ingwate kuko mu itegeko rishya n° 13/2010 ryo kuwa 07/05/2010 rihindura itegeko n° 10/2009 ryo kuwa 14/05/2009 mu ngingo ya 2, ho yanagiye kure kurushaho kuko ibyari bibujijwe gushyirwa muri ya masezerano y'ubugwate, yemeye ko bijyamo. Iyo ngingo mu gika cyayo cya mbere n'icya kabiri, ibivuga muri ubu buryo: „amasezerano y'ubugwate agaragaza ingingo ziha ububasha uwahawe ingwate bwo kuyicunga, kuyikodesha, kuyigurisha cyangwa kuyegukana igihe uwatanze ingwate atabashije kwishyura. Amasezerano kandi agaragaza igihe, ahantu, n'ibikurikizwa kugirango ubwo buryo bushyirwe mu bikorwa.
Igihe uwatanze ingwate atabashije kwishyura, uwahawe ingwate amenyesha mu nyandiko uwatanze ingwate ko agiye gukoresha bumwe mu buryo bwavuzwe mu gika kibanziriza iki, akagenera kopi Umwanditsi Mukuru".

[77]. Ikindi kandi nkuko byasobanuwe haruguru, NTEGEYE Bernard ntiyigeze atanga ikirego kigamije gusesa amasezerano yo kuwa 09/02/2001 yiswe „acte de cession d'immeuble" avuga ko arimo ingingo ifite inenge. Arayemera, gusa akanenga ishyirwa mu bikorwa ryayo(ingingo ya 6 y'ayo masezerano). Iyo amasezerano yatangiye gushyirwa mu bikorwa, ushaka ko ayo masezerano aseswa, agomba kubisaba Urukiko rukaba arirwo rubyemeza. Ibyo kandi bishimangirwa n'abahanga mu mategeko nka Boris STARCK, Henri ROLAND na Laurent

BOYER mu gitabo cyabo „DROIT CIVIL, Obligations, contrat et quasi-contrat, régime général, 2ème édition, page 297 et 298" aho bagira bati:

„La procédure de la nullité, nécessité du recours en justice.

Pour autant, la situation ne se présente pas de la même manière selon que le contrat a déjà été réalisé ou qu'il n'a pas encore reçu un commencement d'exécution.
Le contrat a été exécuté (en tout ou en partie) –En ce cas, celui qui prétend qu'il est nul doit l'attaquer par une action en nullité . La nullité- qu'elle soit relative ou absolue- n'est jamais automatique ; elle doit être prononcée par le tribunal à la demande de la partie qui a qualité pour intenter l'action.[….]
3. Kwemeza niba amasezerano yo kuwa 09/02/2001 ari ay'ubugure.

[78]. Umwenda NTEGEYE Bernard yari amaze kugeramo BCDI (ECOBANK), wari 73.839.942 Frw, NTEGEYE Bernard atagishoboye kuwishyura wose. Yegereye BCDI (ECOBANK), barabiganira, bashaka uburyo uwo mwenda wakwishyurwa cyangwa se wagabanuka. Uburyo bumvikanyeho bombi, ni uko NTEGEYE Bernard yakwegurira BCDI (ECOBANK) inzu yarimo yubaka ariko itararangira, BCDI (ECOBANK) nayo ikamuha ikiguzi cy'aho yari igereye. Baricaye rero bayiha agaciro kangana na 41.484.288 Frw, hakwiyongera ho 4.122.750 Frw ahwanye n'ibikoresho byari birunze mu kibanza, agaciro kose kakaba 45.607.038 Frw, haba ihwanyamyenda umwenda NTEGEYE Bernard yari afitiye BCDI (ECOBANK) uramanuka ugera kuri 28.232.000 Frw, babikorera amasezerano.

[79]. Ingingo ya 263 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko mu masezerano y'ubugure, hari ibintu bigomba kuyagaragaramo byanze bikunze. Hari ikigurishwa, igiciro cyacyo, no gushyikiriza icyaguzwe uwakiguze. NTEGEYE Bernard yari afite inzu, mu buryo bwo kugirango yishyure umwenda wari umaze kumubana munini,

yegera BCDI (ECOBANK) bumvikana ku giciro cyayo, BCDI (ECOBANK) irishyura, inzu irayegurirwa, ndetse mu ngingo ya 4 y'amasezerano, bateganyamo ko NTEGEYE Bernard azashyikiriza BCDI (ECOBANK) impapuro zose zirebana n'iyo nzu, akazanakurikirana ibyo kuvana izina rye kuri iyo nzu rikandikwa kuri BCDI (ECOBANK) . Igiciro ku nzu cyagiweho impaka kiremezwa, BCDI (ECOBANK) irishyura, „formalités" zose zigendana na „mutation" zirakorwa, impapuro zose zirebana n'iyo nzu zishyikirizwa BCDI (ECOBANK) , Urukiko rukaba rusanga ibikenewe kugirango amasezerano yo kuwa 09/02/2001 yitwe ay'ubugure byuzuye.

4. Kwemeza niba NTEGEYE Bernard hari umwenda afitiye ECOBANK (BCDI).

[80]. Ibimenyetso NTEGEYE Bernard yerekanye agaragaza ko nta mwenda agifitiye BCDI (ECOBANK) , ni extrait iriho solde 0 na Réglement général des opérations bancaires cyane cyane ahavugwa ko solde 0 bisobanura ko nta mwenda uba ugihari. Uhagarariye BCDI (ECOBANK) ariko we, akavuga ko kuba solde ari 0 mu mikorere ya Banki bidasobanura ko nta mwenda uba umurangwaho.

Impuguke Urukiko rwitabaje yavuze ko ubundi nta mwenda wagombye kuba ugihari, ariko ko ari ngombwa kubanza kureba aho iyo solde 0 yaturutse kuko ngo amabanki yajyaga akora „amortissement de créance" solde ikaba zéro(0) abantu bakagirango nta deni bafite, ndetse bagashobora kujya kwisabira umwenda ahandi mu yindi Banque ntibigaragare ko hari uwundi bari basanganywe, ko kuri ikibazo bisaba ko yajya muri BCDI (ECOBANK) agasuzuma documents zose zijyanye n'inguzanyo yahawe NTEGEYE Bernard .

[81]. Urukiko rusanga NTEGEYE Bernard afitiye BCDI (ECOBANK) umwenda kubera ko impuguke HABIMANA José amaze gusuzuma inyandiko zose zijyanye n'inguzanyo NTEGEYE Bernard yahawe ndetse na za comptes ze zose agira muri BCDI (ECOBANK) mu mwanzuro wa raporo ye, yavuze ko nta kigaragaza ko inguzanyo ya 28.232.000 Frw yishyuwe kubera impamvu zikurikira:

a. nta gihamya cyerekana amafaranga yaba yarashyizwe kuri compte ya NTEGEYE Bernard agamije kwishyura,

b.kuri compte zose za NTEGEYE Bernard nkuko zagaragajwe , nta mafaranga yazivuyeho agamije kwishyura umwenda. Ko izo comptes zitigeze zinagira amafaranga ahagije yakwishyura n'ukwezi kumwe kubera ko plan de remboursement yari 1.140.390 Frw,

c. nta barwa yaba yarasinywe na ECOBANK (BCDI) ibabarira umwenda wa NTEGEYE Bernard yigeze igaragara,

d. „compte de financement" yagize solde 0 atari ukubera kwishyura umwenda ahubwo ari ukubera ko Banque yafashe umwenda wari usigaye kuri compte nk'igihombo(amortissement de la créance).

Iyi raporo Urukiko rukaba ruyiha agaciro kayo kuko impuguke yakoze imirimo ye mu murongo Urukiko rwari rwamuhaye, kandi ntiyabyihereranye yabikoranye n'ababuranyi nkuko bari barabimenyeshejwe ko bagomba kumuba hafi bakamuha ibimenyetso bumva byabafasha muri uru rubanza. Kuba abahagarariye NTEGEYE Bernard batemera ibyo impuguke yakoze, bikaba nta shingiro bifite kuko atigeze atandukira cyangwa se ngo bamuhe ikimenyetso akirengagize.

Ku byerekeye 70.000 $ NTEGEYE Bernard avuga ko yanyujijwe kuri compte ye ECOBANK (BCDI) ntiyafate.

[82]. Nkuko historique y'iyo compte ibyerekana, ayo madolari yanyuze kuri compte atari „solde créditaire" ahubwo ari „mouvement créditaire" nkuko n'impuguke HABIMANA José abivuga, kubera ko atanyuzeho ari umubumbe wa 70.000 USD, ahubwo ko hazaga duke duke. Urukiko, mu bika bibanziriza iki, rwerekanye ko NTEGEYE Bernard afitiye BCDI (ECOBANK) umwenda rushingiye ahanini kuri raporo y'impuguke. Uretse ko kuri compte hanyuraga udufaranga duke duke natwo bagahita

batuvanaho nkuko bigaragazwa na historique y'iyo compte yatanzwe mu Rukiko, ariko nanone kuba Banque itarayakuyeho, ntibisobanura ko nta mwenda NTEGEYE Bernard yari afitiye BCDI (ECOBANK), kuko nkuko raporo y'impuguke ibigaragaza, nta gihamya cyerekana amafaranga yaba yarashyizwe kuri compte ya NTEGEYE Bernard agamije kwishyura umwenda.

Ku byerekeye ikirego cy'ubujurire bwuririye ku bundi cyatanzwe na NTEGEYE Bernard

[83]. NTEGEYE Bernard yatanze ikirego cy'ubujurire bwuririye ku bundi asaba ko amasezerano yo kwegurirwa inzu yabaye hagati ye na ECOBANK(BCDI) bise« Acte de cession d'immeuble », aseswa kuko anyuranije n'ingingo ya 17 y'Iteka ryo kuwa 15/05/1922 ryerekeye ubugwate bw'ibitimukanwa(régime hypothécaire). Ahangaha ni ngombwa ko habanza kwibutswa icyo ubujurire bwuririye ku bundi icyo aricyo n'icyo buba bugamije. Nkuko abahanga babisobanura, ubujurire bwuririye ku bundi ni ubujurire bukorwa n'uwarezwe mu rwego rw'ubujurire, akabukora akenshi mu iburanisha kubera ko na mbere yari afite igitekerezo cyo kujurira ariko agatangwa n'uwo baburana, cyangwa se ari igice cy'imikirize y'urubanza atari yaremeye, akaba abonye umwanya wo kubivuga kugirango bikosorwe. Serge GUINCHARD mu gitabo cye DROIT ET PRATIQUE DE LA PROCEDURE CIVILE, Dalloz, 2007, 5ème édition, page 1068, abivuga muri aya magambo: „ De l'appel incident. Il s'agit de l'appel, présenté le plus souvent par simples conclusions, formé par l'intimé, qui soit avait décidé de faire appel mais a été précédé dans cette demande par un autre plaideur mécontent, soit avait accepté une solution non satisfaisante totalement, mais profite de l'appel adverse pour tenter d'améliorer le résultat obtenu".
Ariko ibyo byose kugirango bishoboke, ni uko icyo utanga ubujurire bwuririye ku bundi asaba guhabwa, cyangwa se asaba ko gikosorwa, kiba cyararegewe kikagibwaho impaka mu rukiko rubanza, ariko utanga ubwo bujurire ntashimishwe n'ikivuyemo. Nkuko byasobanuwe haruguru kuri [77], NTEGEYE Bernard

ntiyigeze atanga ikirego kigamije gusesa amasezerano yo kuwa 09/02/2001 yiswe „acte de cession d'immeuble", bisobanura ko nta n'impaka cyakigiweho haba mu Rukiko Nkemurampaka cyangwa se mu Rukiko Rukuru rwa Repubulika. Bityo, gutanga ubujurire bwuririye ku bundi ku kirego kitigeze kiregerwa mu nkiko, ubwo bujurire ntibugomba kwakirwa.

Ku byerekeye ubujurire bwa Banki Nkuru y'Igihugu

[84]. Inzu iva mu maboko ya NTEGEYE Bernard ijya mu maboko ya ECOBANK(BCDI), habaye ubugure buturutse ku bwumvikane bwa bombi, inzu iba ibaye umutungo wa ECOBANK(BCDI), ikaba yarashoboraga kuyitunga cyangwa kuyigurisha. Kuba yarayigurishije Banki Nkuru y'Igihugu, bukaba bwari uburenganzira bwayo cyane cyane ko nta kigaragaza ko hari aho NTEGEYE Bernard yishyuriye umwenda yari yahawe nkuko byasobanuwe. Amasezerano y'ubugure hagati ya ECOBANK(BCDI) na Banki Nkuru y'Igihugu akaba afite agaciro, Banki Nkuru y'Igihugu ikaba itaragombaga kwakwa iyo nzu ngo isubizwe ECOBANK(BCDI).

[85]. Ku ngingo yuko Banki Nkuru y'Igihugu itagombaga gucibwa amagarama, ifite ishingiro kubera ko nkuko biteganywa n'ingingo ya 72 y'itegeko n°11/97 ryo kuwa 26/07/1997 ryerekeye sitati ya Banki Nkuru y'Igihugu (BNR), Banki Nkuru y'Igihugu (BNR) ni ikigo cya Leta, kubera izo mpamvu ikaba igomba gusonerwa gutanga amafaranga yakwa mu nkiko, n'amahôro yakwa ku nyungu za Leta.

Ku byerekeye amafaranga y'ikurikiranarubanza Banki Nkuru y'Igihugu (BNR) isaba, Urukiko rurasanga afite ishingiro kuko hari ibyo yakoze muri uru rubanza, mu bwitonzi bwarwo rukaba ruyigeneye 500.000 Frw kuko ayo yaka ari ikirenga.

Ku byerekeye ingano y'umwenda ugomba kwishyurwa

[86]. Mu ngingo ya 2 y'amasezerano yo kuwa 09/02/2001 yiswe

„acte de cession d'immeuble", hateganyijwemo ko umwenda usigaye hamaze kuvanwamo ikiguzi cy'inzu ari 28.232.000 Frw. Ko gahunda ngenderwaho y'uko uzishyurwa, izumvikanwaho n'abagiranye amasezerano. Iyo gahunda ngenderwaho ikaba ariyo yerekana umubare w'amezi umwenda uzishyurwamo, „taux d'intérêt", n'igihe ntarengwa uzishyurwamo, n'amafaranga agomba kwishyurwa buri kwezi.

[87]. Ingingo ya 33 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, iteganya ko amasezerano agomba kubahirizwa nta buryarya. Nyuma yo gusinyana amasezerano, bamaze kugira ibyo bemeranyaho, ECOBANK(BCDI) ntiyashyizeho umwete kugirango iriya gahunda ngenderwaho y'ubwishyu ikorwe kugirango n'uwahawe umwenda amenye aho ahera yishyura. Ibi ariko ntibivanaho ko NTEGEYE Bernard hari umwenda wa ECOBANK(BCDI) yagombaga kwishyura kandi ukaba ugomba kwishyuranwa n'inyungu zawo ariko hatitawe kuri „formule de capitalisation" kubera ko ECOBANK (BCDI) itabashije kugaragaza plan de remboursement yagombaga gushingirwaho mu kwishyura umwenda wavuzwe. Bityo rero, umwenda ukaba ugomba kubarwa kuva kuwa 10/02/2001 kugeza kuwa 30/07/2010 umunsi urubanza ruciriweho, mu buryo bukurikira: 28.232.000 Frw abarirwaho inyungu zifatiye ku mpuzandengo moyenne) ya „taux d'intérêt" yo muri ECOBANK(BCDI) kuri „prêt hypothécaire" yo mu mwaka wa 2001, ariwo mwaka amasezerano yasinywemo, ni ukuvuga imyaka icyenda(9) n'iminsi 170 = (28.232.000 Frw X 18%X imyaka icyenda)+ (28.232.000 Frw x 18%x iminsi 170:365) = 45.735.840 Frw + 2.366.847= 48.102.687 Frw

5. Icyemezo cy'urukiko

[88]. Rwemeye kwakira ubujurire bwa ECOBANK(BCDI) n'ubwa Banki Nkuru y'Igihugu (BNR) kuko bwakurikije amategeko kandi ko bufite ishingiro;

[89]. Rwemeje kutakira ubujurire bwuririye ku bundi bwatanzwe

na NTEGEYE Bernard;

[90]. Rutegetse NTEGEYE Bernard kwishyura ECOBANK(BCDI) 48.102.687 Frw

[91]. Rumutegetse gutanga 4% yayo y'umusogongero wa Leta angana na 48.102.687 Frw x 4% = 1.924.107 Frw atayatanga mu gihe gitegetswe akava mu bye ku ngufu za Leta.

[92]. Rumutegetse kandi guha Banki Nkuru y'Igihugu 300.000 Frw y'ikurikiranarubanza akayatanga mu gihe kitarenze amezi atatu(3), atayatanga akava mu bye ku ngufu za Leta.

[93]. Rumutegetse gutanga amagarama y'urubanza angana 67.150 Frw, atayatanga mu gihe gitegetswe akava mu bye ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 30/07/2010 N'URUKIKO RW'IKIRENGA, RUGIZWE NA: MUTASHYA JEAN BAPTISTE: PEREZIDA, NYIRINKWAYA IMMACULEE NA MUKAMULISA MARIE THERESE: ABACAMANZA, BAFASHIJWE NA MUNYANDAMUTSA JEAN PIERRE : UMWANDITSI W'URUKIKO.

Sé
MUTASHYA Jean Baptiste
Perezida

Sé
NYIRINKWAYA Immaculée
Umucamanza

Sé
MUKAMULISA Marie Thérèse
Umucamanza

Sé
MUNYANDAMUTSA Jean Pierre
Umwanditsi w'Urukiko

10 URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOM A 0014/08/CS
ITARIKI Y'URUBANZA: 06/08/2010
HABURANA: BUSHAYIJA PASCAL / COGEBANQUE S.A.

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI-IGIHANGANO CY'UMWIMERERE

UBURENGANZIRA BW'UMUHANZI KU BIHANGANO YATANGIYE UBURENGANZIRA RUNAKA

GUKORESHA IGIHANGANO MU BURYO BUTARI UBWUMVIKANYWEHO MU MASEZERANO

KUBARA INDISHYI ZIHABWA UWO IGIHANGANO CYE CYAKORESHEJWE MU BURYO BUNYURANIJE N'AMATEGEKO IYO BIDASHOBOKA KUMENYA AGACIRO K'INYUNGU NYIRI KUGIKORESHA YAKUYEMO

INSHINGANO Z'UWAKOZE IKOSA KUBIREBANA N'IBYANGIRITSE BITEWE N'IKOSA RYE

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Igihangano cy'umwimerere ni igihangano gituma uwagihimbye amenyekana bitewe n'ibikigize n'uko yagikoze cyangwa bitewe gusa n'uko gikoze.

Itangwa ry'uburenganzira rikozwe n'umuhanzi ku gihangano kimwe cyangwa byinshi ntirimwambura uburenganzira bwe bw'umuhanzi; kandi uwaguze igihangano ntibimuha uburenganzira bw'umuhanzi kuri cyo, bityo n'iyo umuhanzi yagurishije igihangano cye , akomeza kukigiraho uburenganzira bw'umuhanzi, imikoreshereze yacyo ikagarukira gusa mu byateganijwe muri ayo masezerano. Ibyo umuhanzi

atavuze muri ayo masezerano aba ari ibye, keretse iyo kugitubura bikozwe ku mpamvu zihariye z'uwagitubuye, iz'umuryango we cyangwa iz'ubushakashatsi.

Uguze igihangano ku mpamvu runaka zigaragara mu masezerano, akarenga akagitubura cyangwa akagikoresha mu bindi bitari mu masezerano abitangira indishyi hakurikijwe amategeko asanzwe akurikizwa mu gihugu.

Uwakoresheje igihangano cy'umuhanzi mu buryo bunyuranyije n'amategeko agomba kubitangira indishyi zibarwa mu bushishozi bw'urukiko iyo bidashoboka kumenya agaciro k'inyungu nyiri ukugikoresha yakuyemo.

Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyiri gukora ikosa rigikomokaho kuriha ibyangiritse.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUKIJIJE MU RUHAME KUWA 06/08/2010, URUBANZA R.COM.A 0014/08/CS MU BURYO BUKURIKIRA:

HABURANA :

UWAJURIYE :

BUSHAYIJA Pascal, mwene RWUBAHUKA André na BARASEBYA Scholastique, utuye mu Kagari ka NYUNDO, Umurenge wa RUGERERO, Akarere ka RUBAVU, Intara y'Iburengerazuba.

UREGWA:

COGEBANQUE SA, ifite icyicaro gikuru mu Mujyi wa KIGALI mu izina ry'Umuyobozi Mukuru wayo.

IKIBURANWA:
Indishyi zinyuranye zikomoka ku gihangano cyakoreshejwe na COGEBANQUE SA kuri sheki zayo itabiherewe uburenganzira na nyiracyo ariwe BUSHAYIJA Pascal. (Art. 32 et 34, Loi n° 27/1983 du 15/11/1983 régissant le droit d'auteur).

IMITERERE Y'URUBANZA

[1] COGEBANQUE SA yatanze « commande » kuri HOME DESIGN kugira ngo iyikorere ibihangano by'imitako. HOME DESIGN yiyambaje umuhanzi witwa BUSHAYIJA Pascal akora imitako irimo « tableau » yiswe « Ikigega » iburanwa muri uru rubanza. COGEBANQUE yishyuye HOME DESIGN. Nyuma COGEBANQUE yakoresheje icyo gihangano ku masheki, BUSHAYIJA arabimenya maze ayandikira ayimenyesha ko yakoresheje igihangano cye mu buryo bunyuranyije n'amategeko, COGEBANQUE imusubiza ko icyo gihangano ari icyayo

kuko yakiguze. BUSHAYIJA yareze COGEBANQUE mu Rukiko Rukuru rw'Ubucuruzi.

[2] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza R COM. 0300/08/HCC kuwa 29/10/2008, rwemeza ko COGEBANQUE SA yakoresheje igihangano cya BUSHAYIJA Pascal mu buryo butemewe n'amategeko, rutegeka COGEBANQUE guha BUSHAYIJA indishyi za 10.000.000 Frw zikomoka kuri sheki zatubuwe zigaragaramo icyo gihangano cye, 2.000.000 Frw z'indishyi z'akababaro na 300.000 Frw y'igihembo cya Avoka, rwemeza kandi ko mu gihe COGEBANQUE yaba ihisemo gukomeza gukoresha icyo gihangano, yamuha 5.000.000 frw.

[3] BUSHAYIJA Pascal na COGEBANQUE SA bajuririye Urukiko rw'Ikirenga, ubujurire bwa BUSHAYIJA burakirwa, naho ubwa COGEBANQUE ntibwakirwa kubera ubukererwe.

[4] Urubanza mu mizi ku bujurire bwa BUSHAYIJA rwaburanishijwe mu ruhame kuwa 18/08/2009, BUSHAYIJA Pascal ahagarariwe na Me MUHIKIRA Jean Claude, naho COGEBANQUE ihagarariwe na Me KAZUNGU Jean Bosco, impaka zigibwa ku bibazo byo kumenya niba igihangano kiburanwa ari umwimerere wa BUSHAYIJA, niba agifite uburenganzira kuri icyo gihangano yagurishije, niba COGEBANQUE yarakoresheje icyo gihangano mu nyungu z'ubucuruzi, no kumenya niba indishyi BUSHAYIJA yagenewe mu rwego rwa mbere zikwiye.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1.Ku byerekeye ikibazo cyo kumenya niba igihangano kiburanwa ari umwimerere wa BUSHAYIJA

[5] Uburanira COGEBANQUE avuga ko igihangano (tableau) cyitwa "Ikigega" BUSHAYIJA yakoze kitari umwimerere (originalité) we kuko kigizwe n'ibirangantego (logo) bya COGEBANQUE atihimbiye, ndetse n'ibigega bisanzwe biri mu muco wa kinyarwanda.

[6] Uburanira BUSHAYIJA avuga ko icyo gihangano ari umwimerere wa BUSHAYIJA kuko ariwe wagihanze nk'uko n'izina rye riri muri icyo gihangano ribigaragaza.

[7] Ingingo ya 1 y'Itegeko n° 27/1983 ryo kuwa 15/11/1983 rishyiraho uburenganzira bw'umuhanzi ivuga ko igihangano cy'umwimerere ari igihangano gituma uwagihimbye amenyekana bitewe n'ibikigize n'uko yagikoze (éléments caractéristiques et forme) cyangwa bitewe gusa n'uko gikoze (forme).

[8] Abahanga mu by'amategeko bavuga ko igihangano cy'umwimerere ari igifite kashe y'uwagihanze (L'oeuvre originale doit porter l'empreinte de la personnalité de l'auteur, c'est-à-dire exprimer son apport créatif).[5]

[9] Nanone ingingo ya 34 y'Itegeko ryavuzwe haruguru ivuga ko byitwa ko ari nyiri igihangano kugeza ubwo bigaragajwe ukundi, uwo izina rye rikigaragaraho ku buryo hatari ugushidikanya ku mwirondoro we.

[10] Hakurikijwe ibimaze kuvugwa haruguru, Urukiko rurasanga igihangano (tableau) cyitwa "Ikigega" ari umwimerere (originalité), kandi ko ari icya BUSHAYIJA kuko ariwe wagihimbye mu buryo buteganywa n'Itegeko n° 27/1983 ryavuzwe haruguru.

[5] Franck SOUTOUL et Jean-Philippe BRESSON, Protéger ses œuvres par le droit d'auteur, in http://www.irpi.ccip.fr/pages/imprimer.asp?id_arbo=112-cached- similar.

2. Ku kibazo cyo kumenya niba BUSHAYIJA agifite uburenganzira ku gihangano yagurishije.

[11] Uburanira BUSHAYIJA avuga ko uyu afite uburenganzira (droits d'auteur) ku gihangano cye, ariko ko COGEBANQUE ifite ubwo kugikoresha nk'umutako muri biro by'Umuyobozi Mukuru wayo, mu cyumba cy'inama no ku cyicaro gikuru cyayo nk'uko bigaragarira mu nyemezabuguzi (facture).

[12] Uburanira COGEBANQUE avuga ko ifite uburenganzira busesuye bwo gukoresha icyo gihangano icyo ari cyo cyose mu gihe ari uburyo bwihariye bwayo (usage privé et personnel) burimo n'ubwo kugikoresha mu buryo bwo kumenyekanisha ubucuruzi bwayo (publicité) uretse ko ataribyo yakoze, kuko icyo gihangano kiri mu mutungo wayo kuko yakiguze, kugitubura bikaba ari uburenganzira bwayo bwihariye.

[13] Ingingo ya 32 y'Itegeko n° 27/1983 ryavuzwe haruguru iteganya ko uretse ibiteganywa n'ingingo zihariye, uburenganzira bw'umuhanzi (droits d'auteur) bufitwe n'umuhanzi cyangwa abahanzi bahanze icyo gihangano, ingingo ya 53, igika cyayo cya nyuma, y'iryo tegeko ikavuga ko itangwa ry'uburenganzira rikozwe n'umuhanzi ku gihangano kimwe cyangwa byinshi, ritamwambura uburenganzira bwe bw'umuhanzi (droit d'auteur).

[15] Abahanga mu by'amategeko nabo basobanura ko uwaguze igihangano bitamuha uburenganzira bw'umuhanzi kuri cyo, ko n'iyo umuhanzi yagurishije igihangano cye, akomeza kukigiraho uburenganzira bw'umuhanzi (droits d'auteur)[6].

[6] Alexandra Touboul, Le contrat de commande d'une œuvre d'art en droit privé, in www.espaceculture.net/09_droit_culture/pdfetapes/Etape19.pdf-similar.

[16] Dosiye igaragaza ko COGEBANQUE yaguze igihangano na BUSHAYIJA ibinyujije kuri HOME DESIGN yari yabiherewe komande (commande) n'iyo Banki. Byumvikana rero ko BUSHAYIJA wagurishije igihangano cye cy'ikigega atatakaje uburenganzira bwe bw'umuhanzi kuri cyo nk'uko biteganywa n'ingingo ya 32 n'iya 53 zavuzwe haruguru, naho COGEBANQUE ikaba igifiteho uburenganzira bwo kugitunga (propriété du support matériel de l'œuvre) no kugikoresha nk'imitako ahantu havuzwe haruguru.

3. Ku kibazo cyo kumenya niba COGEBANQUE yarakoresheje icyo gihangano mu nyungu z'ubucuruzi bwayo.

[17] Uburanira BUSHAYIJA avuga ko COGEBANQUE yakoresheje igihangano cye mu nyungu z'ubucuruzi bwayo, kuko yagituburiye ku masheki no kuri « agendas » yahaye abakiliya bayo na rubanda igamije kumenyekanisha ubucuruzi bwayo (publicité), atayihaye uburenganzira bwo kugitubura (reproduire), ahubwo cyaragombaga gukoreshwa nk'umutako aho bemeranyijwe havuzwe mu nyemezabuguzi, akaba ariyo mpamvu COGEBANQUE igomba kubitangira indishyi.

[18] Uburanira COGEBANQUE asubiza ko iyo Banki itatuburiye igihangano cya BUSHAYIJA ku masheki igamije kumenyekanisha ubucuruzi bwayo, kuko ibigega bitagaragara ku masheki ku buryo bw'umwihariko mu buryo bwafatwa ko ari ariyo yabashishikarije kuza gufunguza amakonti muri iyo Banki, kandi ahubwo amasheki yarahawe abakiriya bayo barangije gufunguza amakonti muri iyo Banki. Asobanura ko ibyo gutubura mu buryo butemewe n'amategeko byari kubaho iyo COGEBANQUE iza kwigana igishushanyo cya mbere cyakozwe na BUSHAYIJA ikagikoramo ibindi igamije kubicuruza.

[19] Ingingo ya 9 y'Itegeko n° 27/1983 ryavuzwe haruguru ivuga ko uretse ibiteganyijwe ukundi n'iri tegeko, umuhanzi w'igihangano kirengerwa n'iri tegeko afite uburenganzira bwihariye bwo gukora cyangwa kwemeza ko hakorwa igikorwa kimwe ku gihangano cyose cyangwa ku gice cyacyo : kugituburamo kimwe cyangwa byinshi, kugikora mu bundi buryo cyangwa kugitangaza muri rubanda.

[20] Ingingo ya 10 y'iryo tegeko iteganya ko kugira ngo undi muntu agire uburenganzira buvugwa mu ngingo ya 9 imaze kuvugwa haruguru ku gihangano cy'umuhanzi, nyiracyo cyangwa abazungura be bagomba kubanza kubimuhera uruhushya rwanditse ruriho umukono na kashe bya Noteri cyangwa undi muyobozi wabiherewe ububasha. Ingingo yaryo ya 53 ikavuga ko uretse igihe undi muntu yeguriwe ubwo burenganzira n'itegeko, hagomba gukorwa amasezerano yanditse, kandi imikoreshereze y'igihangano igomba kugarukira mu byateganyijwe muri ayo masezerano. Ibyo umuhanzi atavuze muri ayo masezerano biba ari ibye.

[21] Cyakora ingingo ya 18 y'iryo tegeko iteganya ko atari ngombwa gusaba umunyabugeni uruhushya bwo gutubura igihangano cye cyangwa kubitangira amafaranga mu bihe ari ugutubura icyo gihangano kubera impamvu zihariye z'uwagitubuye cyangwa z'umuryango we n'iz'ubushakashatsi.

[22] Dosiye igaragaza ko nyuma yuko COGEBANQUE iguze igihangano cy'ikigega na BUSHAYIJA ibinyujije kuri HOME DESIGN, yagikoresheje uko cyakabaye ku masheki (chèques) no kuri « agendas » byayo, ibi byombi akaba ari ibintu yifashisha mu rwego rw'ubucuruzi bikayihesha inyungu mu buryo butaziguye, cyangwa se binyuze mu kumenyekanisha ibikorwa byayo mu buryo bbunyuranyije n'amategeko, cyane cyane ingingo za 9, 10 n'iya 53 zavuzwe haruguru.

3. Ku kibazo cyo kumenya niba indishyi BUSHAYIJA yagenewe mbere zikwiye

[23] Uburanira BUSHAYIJA avuga ko uyu yajurijwe n'uko umucamanza wa mbere yamugeneye indishyi nkeya, anavuga ko ari we ugomba gutanga ibimenyetso by'amasheki yatubuwe, nyamara hakurikijwe ibiteganywa n'ingingo ya 62 y'Itegeko n° 27/1983 ryavuzwe haruguru ari COGEBANQUE watubuye igomba kugaragaza umubare w'ibyatubuwe. Asobanura ko BUSHAYIJA adashobora kumenya umubare w'amasheki COGEBANQUE yatubuye mu gihe kirenga imyaka itanu (5), cyane ko igihe yazaga kumvikana nayo, yamuteye utwatsi ivuga ko itamuzi.

[24] Yasabye ko BUSHAYIJA yahabwa amafaranga y'indishyi abazwe mu buryo bukurikira: miliyoni ijana (100.000.000 frw) zikomoka mu bucuruzi bw'udutabo tw'amasheki yagurishije ariho igihangano cye, miliyoni cumi (10.000.000 frw) y'indishyi z'akababaro, 1.500.000 frw y'igihembo cya Avoka ku nzego zombi z'Inkiko yaburaniyemo, na miliyoni cumi (10.000.000 frw) mu gihe COGEBANQUE yaba ihisemo gukomeza gukoresha igihangano cye ku bundi buryo butari ubwo kukimurika aho bakirira abayigana babitsa cyangwa babikuza.

[25] Uburanira COGEBANQUE avuga ko nta ndishyi BUSHAYIJA akwiye guhabwa, kuko igihangano iyo Banki yatuburiye ku masheki ari icyayo kuko yakiguze. Avuga ko BUSHAYIJA yagenewe amafaranga yindishyi y'indonke (enrichissement sans cause) angana na 10.000.000 frw nyamara igihangano yakoze yarakigurishije amafaranga make angana na 251.720 Frw. Yongeraho ko BUSHAYIJA akwiye guha COGEBANQUE 1.000.000 Frw y'igihembo cya Avoka.

[26] Ingingo ya 80 y'Itegeko n° 27/1983 ryavuzwe

haruguru iteganya ko ikirego cy'indishyi ku byerekeye uburenganzira bw'umuhanzi gikurikiranwa hakurikijwe amategeko asanzwe akurikizwa (L'action civile résultant de l'exercise du droit d'auteur sera poursuivie conformément aux dispositions légales en vigueur).

[27] Ingingo ya 258 y'igitabo cya gatatu cy'amategeko y'imbonezamubano iragira iti : « Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse ».

[28] Urukiko rurasanga nk'uko byasobanuwe haruguru, COGEBANQUE yaratuburiye igihangano cya BUSHAYIJA ku masheki nta burenganzira ayihaye,kandi mu buryo bunyuranyije n'amategeko, bityo hakurikijwe ibiteganywa n'ingingo ya 258 imaze kuvugwa haruguru, COGEBANQUE ikaba igomba kubitangira indishyi, ariko izo ndishyi zikagenwa mu bushishozi bw'Urukiko, bitabaye ngombwa kumenya umubare w'amasheki yatubuwe kuko nta masezerano yo gutubura (contrat d'édition) BUSHAYIJA yagiranye na COGEBANQUE, bivuga ko ingingo ya 62 y'Itegeko n° 27/1983 ryavuzwe BUSHAYIJA ashingiraho asaba indishyi itakurikizwa muri uru rubanza.

Ku byerekeye indishyi zikomoka ku masheki yatubuwe

[29] Umucamanza wa mbere yageneye BUSHAYIJA miliyoni icumi (10.000.000 Frw) y'indishyi zikomoka ku masheki COGEBANQUE yatubuye ikayagurisha itabifitiye uburenganzira, mu gihe we yasabaga 100.000.000 frw.

[30] Urukiko rurasanga muri uko gukoresha igihangano cy'undi inyuranyije n'amategeko, COGEBANQUE yarakomeje kugurisha ayo masheki bikayinjiriza amafaranga ikanamenyekanisha ubucuruzi bwayo kuva mu 2007 kugeza ubu, bikubitiyeho no kwinangira imyaka irenga itatu, kuko BUSHAYIJA yayisabye n'imishyikirano kuri

icyo kibazo, ariko ikabimwangira nk'uko bigaragarira mu ibaruwa yamwandikiye kuwa 11/11/2007, bityo, Urukiko rukaba rusanga indishyi BUSHAYIJA yagenewe mbere zidahagije, ahubwo, akaba yagenerwa, mu bushishozi bw'Urukikiko indishyi za 30.000.000 frw.

Ku byerekeranye n'uko COGEBANQUE yaba ihisemo gukomeza gukoresha igihangano cya BUSHAYIJA.

[31] Umucamanza wa mbere yategetse COGEBANQUE guha BUSHAYIJA miliyoni eshanu (5.000.000 Frw) niba ihisemo gukomeza gukoresha igihangano cye ku masheki no kuri agendas. Urukiko rurasanga nyamara, Nyir'igihangano ugifiteho uburenganzira busesuye bw'umuhanzi atahatirwa kwegurira undi ubwo burenganzira ku kiguzi adashaka, kimwe n'uko ushaka kwegukana ubwo burenganzira ariwe wahitamo kwemera cyangwa kwanga ikiguzi acibwa, bityo, mu gihe COGEBANQUE yaba ihisemo gukomeza gukoresha igihangano cya BUSHAYIJA mu bundi buryo butari ubwo bemeranyijweho, ikaba igomba kubimuhera 10.000.000 frw asaba, bitaba ibyo, igahagarika, mu gihe cy'amezi abiri urubanza rusomwe, ibyo batemeranyijweho kugikoresha nk'uko bigaragara ku nyemezabuguzi yavuzwe haruguru.

Ku byerekeye indishyi z'akababaro

[32] Umucamanza wa mbere yageneye BUSHAYIJA miliyoni ebyiri (2.000.000 frw) kubera ko ibyo COGEBANQUE yamukoreye byamuteje akababaro, kandi ko yanamuteye utwatsi ubwo yasabaga ko bumvikana. Urukiko rurasanga, n'ubwo indishyi z'akababaro BUSHAYIJA yaka ari nyinshi, ariko akwiye kongererwa izo yagenewe mbere, kubera akababaro GOGEBANQUE yamuteye, rukaba rusanga, mu bushishozi bwarwo, yagenerwa 3.000.000 frw.

Ku bijyanye n'igihembo cya Avoka

[33] Umucamanza wa mbere yageneye BUSHAYIJA 300.000 frw y'igihembo cya Avoka ku rwego rwa mbere, aho we yasabaga 500.000 frw, ku rwego rwa kabiri akaba asaba 1.000.000 frw. Urukiko rurasanga BUSHAYIJA akwiye kugenerwa 800.000 frw, ni ukuvuga 400.000 frw, kuri buri rwego rw'Urukiko yaburaniyemo.

III. ICYEMEZO CY'URUKIKO

[34] RWEMEJE kwakira ubujurire bwa BUSHAYIJA Pascal kuko bwatanzwe mu buryo n'inzira bikurikije amategeko ;

[35] RWEMEJE ko ubwo bujurire bufite ishingiro ;

[36] RUVUZE ko imikirize y'urubanza R COM. 0300/08/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 29/10/2008 ihindutse ku byerekeye indishyi.

[37] RUTEGETSE COGEBANQUE guha BUSHAYIJA igiteranyo cy'indishyi zihwanye na miliyoni mirongo itatu n'eshatu nibihumbi magana inani (33.800.000 frw), itayatanga mu gihe cy'ukwezi kumwe, ayo mafaranga akavanwa mu byayo ku ngufu za Leta.

[38] RUTEGETSE COGEBANQUE guha BUSHAYIJA 10.000.000 frw mu gihe yaba ihisemo gukomeza gukoresha igihangano cye mu buryo butari ubw' imitako bumvikanyeho ku nyemezabuguzi, bitaba ibyo igahagarika, mu gihe kitarenze amezi abiri (2) urubanza rusomwe, kugikoresha mu buryo butari ubwo bumvikanye.

[39] RUYITEGETSE kandi gutanga umusogongero wa Leta wa 4% ku ndishyi ziciwe zingana na 33.800.000 frw, ni ukuvuga 1.352.000 frw, yakwiyongeraho 4% abariwe ku

ndishyi za 10.000.000 frw, ni ukuvuga 400.000 frw mu gihe yaba ihisemo gukomeza gukoresha igihangano cya BUSHAYIJA.

[40] RUYITEGETSE gutanga amagarama y'uru rubanza angana na 33.330 frw, itayatanga mu gihe cy'iminsi 8, akavanwa mu byayo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KUWA 06/08/2010 N'URUKIKO RW'IKIRENGA RUGIZWE NA : MUGENZI Louis - Marie: PEREZIDA, KAYITESI R. Emily NA RUGABIRWA Ruben, ABACAMANZA, BAFASHIJWE NA UWARUGIRA Jean Baptiste, UMWANDITSI W'URUKIKO.

MUGENZI Louis-Marie
Perezida
se

KAYITESI R. Emily
Umucamanza
se

RUGABIRWA Ruben
Umucamanza
se

UWARUGIRA Jean Baptiste
Umwanditsi w'Urukiko
se

11. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOM A 0065/09/CS
ITARIKI Y'URUBANZA: 18/06/2010
HABURANA: KOBIL PETROLEUM RWANDA SARL / CITIEX PETROLEUM de MILIMO

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI- KUBURA ISHINGIRO KW'IKIREGO GISABA KUBYUTSA URUBANZA (RWAHANAGUWE) KUBERA AMAKOSA Y'UTANZE IKIREGO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Iyo urubanza rwasibwe mu bitabo by'urukiko, mu rwego urwo arirwo rwose, bitewe n'uko urega atitabye, n'ikosa ry'ushaka kongera kurubyutsa, icyo kirego cye nticyakirwa atabanje kugaragaza impamvu ikomeye yamubujije kuza kuruburana mbere; iyo mpamvu ikomeye ntagomba kuba yarayumvikanyeho gusa n'uwo baburana, agomba kuba yarayimenyesheje urukiko ; ntigomba kandi gushingira ku makosa yakoze nkana, kuko nta muntu ukwiye kumvwa mu gihe ibyo avuga bishingiye ku makosa ye.

URUKIKO RW'IKIRENGA RURI I KIGALI RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUHAKIRIJE MU RUHAME URUBANZA R.COM A 0065/09/ CS NONE KUWA 18/06/2010 MU BURYO BUKURIKIRA : HABURANA :

- UREGA: KOBIL PETROLEUM RWANDA SARL ikorera KARURUMA GATSATA iburanirwa na Me HAGUMA Jean

- UREGWA : CITIEX PETROLEUM de MILIMO Gaspard iburanirwa na Me KAYITARE Serge

IKIBURANWA: Kubyutsa urubanza n° R.COM A 0017/09/CS rwo kuwa 29/09/2009.

I. IMITERERE Y'URUBANZA

(1) KOBIL PETROLEUM yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi isaba gusubizaho amasezerano yagiranye na CITIEX PETROLEUM, igasubizwa Station Service yakodesheje ndetse iyo Station igasubizwaho amarangi aranga KOBIL PETROLEUM. Yanasabaga nanone ko CITIEX PETROLEUM yategekwa gukora ibishoboka byose mu buryo bwihuse kugira ngo ibintu bisubire uko byari bimeze mbere y'uko CITIEX isesa amasezerano y'ubukode bagiranye, ndetse inasaba indishyi z'akababaro.

(2) Mu rubanza RCOM 0395/08/HCC rwaciwe kuwa 02/03/2009, Urukiko Rukuru rw'Ubucuruzi rwemeye kwakira ikirego cya Sosiyete KOBIL PETROLEUM, rwemeza ko gifite ishingiro kuri bimwe, rutegeka Sosiyete CITIEX PETROLEUM/ MIRIMO Gaspard kwishyura Sosiyete KOBIL PETROLEUM 39.739.712 Frw, ikanayisubiza ibikoresho byayo.

(3) Urukiko ntirwakiriye ikirego cyo kwiregura (demande reconventionnelle) cya CITIEX PETROLEUM kubera ko nta sano gifitanye n'ikirego cy'iremezo.

(4) Sosiyete KOBIL PETROLEUM ntiyishimiye imikirize y'urubanza, maze ijuririra mu Rukiko rw'ikirenga. Ikirego cyanditswe kuri n° R.COM A 0017/09/CS .

(5) Igihe cy'iburanisha ryo kuwa 29/09/2009, hitabye uhagarariye CITIEX/MIRIMO Gaspard, abwira Urukiko ko Avoka we atarakora imyanzuro isubiza bitewe n'uko nta myanzuro bagejejweho na Me HAGUMA Jean uhagarariye uwajuriye ari we Sosiyete KOBIL PETROLEUM, byongeye kandi na Me HAGUMA Jean akaba atashoboye kuboneka kubera ko yagiye mu rundi rubanza rw'inshinjabyaha mu Rukiko rw'ibanze.

(6) Urukiko rwafatiye icyemezo ku ntebe, rwemeza ko ikirego cy'Ubujurire n° R.COM A 0017/09/CS cya Sosiyete KOBIL PETROLEUM gisibwe mu bitabo by'Urukiko rw'Ikirenga, ruyitegeka no kwishyura amagarama y'urubanza angana na 15.200Frw.

(7) Ku itariki ya 12/10/2009, Sosiyete KOBIL PETROLEUM ihagarariwe na Me HAGUMA Jean yatanze ikirego mu Rukiko rw'Ikirenga isaba kubyutsa urubanza n° R.COMA 0017/09/CS rwasibwe, maze gihabwa n° R.COMA 0065/09/CS, urubanza ruburanishwa kuwa 04/05/2010.

II. IBYASUZUMWE N'URUKIKO

(8) Ikibazo kigomba gusuzumwa muri uru rubanza ni ukumenya niba Avoka w'umuburanyi umwe ashobora kwiyumvikanira na mugenzi we uburanira undi muburanyi, maze bikaba impamvu ikomeye yatuma ibyutswa ry'urubanza rwasibwe ryemerwa. Ikindi kibazo ni ukumenya niba kuba umuburanyi (warezwe mu bujurire) atarasubiza ku myanzuro yatanzwe n'undi muburanyi wajuriye nabyo byaba impamvu ikomeye yatuma ibyutswa ry'urubanza rwasibwe ryemerwa.

1. Ku bijyanye n'uko ababuranyi biyumvikaniye ubwabo kugirango basubikishe urubanza

(9) Kuri iki kibazo, Me HAGUMA Jean, yasobanuriye Urukiko, ko impamvu ashingiraho asaba kubyutsa urubanza ari uko yari yumvikanye n'uburanira CITIEX PETROLEUM/ MIRIMO ko basubikisha iburanisha ry'urubanza, ariko uyu ngo abirengaho asaba ahubwo ko urubanza rusibwa. Yakomeje asobanura ko yari yahamagawe kujya kunganira Madame MUKASINE Marie Claire mu rubanza yaburanaga n'Ubushinjacyaha mu Rukiko rw'Ibanze rwa Kacyiru, ko rero ubwihutirwe bwa dosiye ya Madame MUKASINE Marie Claire ari bwo bwatumye asaba uburanira CITIEX PETROLEUM/ MIRIMO ko yakwemera ko basubikisha urubanza.

(10) Me KAYITARE uburanira CITIEX PETROLEUM/MIRIMO, yavuze ko n'ubwo yemera ko ibyo mugenzi we Me HAGUMA Jean avuga yamusabye ari uko byagenze koko, ariko ko atari we mu by'ukuri wasabye ko urubanza rusibwa, kuko na we atari yageze ku Rukiko, ko ahubwo uwari wahageze ari umukiriya we, aba ari na we usaba ko urubanza rusibwa, ubwo yabonaga uwo baburanaga wajuriye yari yanze kwitaba.

(11) Yakomeje avuga ko ku ruhande rumwe, iyo we na Me HAGUMA bahibera, wenda Urukiko rwari kubemerera ko urubanza rusubikwa; ko ariko ku rundi ruhande, asanga n'ibyo umukiriya we yakoze abyemererwa n'amategeko, kuko biteganywa n'ingingo ya 51 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Akaba asanga rero kuri we, nta mpamvu ikomeye ihari yatuma ibyutswa ry'urubanza ryemerwa.

(12) Ingingo ya 51 y'Itegeko rimaze kuvugwa, iteganya ko "Iyo urubanza rwasibwe mu bitabo by'urukiko, mu rwego urwo ari rwo rwose, bitewe n'ikosa ry'ushaka kwongera kurubyutsa, icyo kibazo cye nticyakirwa atabanje kugaragaza impamvu ikomeye yamubujije kuza kuburana mbere".

(13) Nk'uko byavuzwe hejuru, urubanza rwasibwe, rwari rwahamagariwe kuburanishwa kuwa 29/09/2009. Ibyo kandi byakozwe ari Avoka w'uwajuriye, ari Avoka w'uregwa mu bujurire, bamaze kumvikana kuri iyo tariki mbere y'uko Urukiko ruyishyira kuri gahunda y'iburanisha. Ibyo ni ibigaragarira ku rupapuro rwa gatanu rw'inyandiko ya „mise en état" iri muri dosiye kuri cote ya 9, ikaba yarashyizweho umukono n'impande zombi kuwa 27/07/2009. Muri iyo nyandiko kandi impande zombi zerekanye nanone kuri urwo rupapuro rwa gatanu ko nta mbogamizi zibona yatuma urubanza rutaburanishwa.

(14) Urukiko rurasanga uburemere bw'urubanza rwa Madame MUKASINE Marie Claire, Maître HAGUMA avuga yari afite mu Rukiko rw'Ibanze rwa Kacyiru, atararubonye umunsi urubanza rwa Sosiyete KOBIL na Sosiyete CITIEX rwagombaga kuburanishwa mu Rukiko rw'Ikirenga kuwa 29/09/2010. Kuba rero kugeza kuri iyo tariki, nta kintu na kimwe yari yarigeze amenyesha Urukiko, ahubwo agahitamo kujya kwiyumvikanira n'Avoka w'umuburanyi we, Urukiko rurasanga bitakwitwa impamvu ikomeye ivugwa mu ngingo ya 51 y'Itegeko ryavuzwe haruguru.

2. Ku bijyanye n'uko igihe urubanza rwari rwahamagawe kuburanishwa, Sosiyete CITIEX PETROLEUM yari itarasubiza ku myanzuro yatanzwe na Sosiyete KOBIL PETROLEUM yajuriye.

(15) Indi ngingo Me HAGUMA Jean ashingiraho asaba kubyutsa urubanza rwasibwe, ngo ni uko igihe urubanza rwari rwahamagawe kuburanishwa kuwa 29/09/2009, Sosiyete CITIEX PETROLEUM yari itarasubiza ku myanzuro yatanzwe na Sosiyete KOBIL PETROLEUM yajuriye.

(16) Ikigaragarira Urukiko, ni uko muri ya nyandiko ya „mise en état" yavuzwe haruguru iri muri dosiye, Avoka wunganira uwajuriye (Sosiyete Kobil) yari yiyemeje ko mu byumweru bibiri

(2 weeks) uhereye tariki ya 27/07/2009, azaba yashyikirije imyanzuro y'ubujurire uregwa kugirango ayiregureho, ni ukuvuga bitarenze tariki ya 11/08/2009. Nyamara byageze kuwa 29/09/2009, urubanza ruhamagarwa, iyo myanzuro itaratangwa nk'uko byasobanuwe n'uregwa ari we CITIEX PETROLEUM wari witabye wenyine, na Maitre HAGUMA, Avoka w'uwajuriye, mu iburanisha ry'uru rubanza, akiyemerera koko ko iyo myanzuro atari yakayitanze.

(17) Kuba Maitre HAGUMA abiheraho, akavuga ko urubanza rutashoboraga kuburanishwa kuko ngo rutari „en état" kubera imyanzuro itatanzwe ngo inasubizwe, Urukiko rurasanga iyo mpamvu nta shingiro ifite, kuko atakwitwaza ko atatanze imyanzuro, ngo ahindukire avuge ko dosiye itagombaga kuburanishwa, ibyo bikaba binahuje n'ihame ry'uko uko nta muntu ukwiye kwumvwa mu gihe ibyo avuga bishingiye ku makosa ye (Nemo auditur turpidunem suam allegans).

(18) Hashingiwe ku bisobanuro byose byatanzwe haruguru, Urukiko rurasanga ibyo Abavoka biyumvikaniye hagati yabo, no kuba nta myanzuro y'ubujurire yatanzwe na Maitre HAGUMA kugirango uregwa mu bujurire ashobore kuyireguraho bitari impamvu ikomeye yatuma urubanza rwasibwe ku makosa y'uwajuriye rwemererwa kubyutswa.

III. ICYEMEZO CY'URUKIKO RW'IKIRENGA

(19) Rwemeje ko ikirego cyatanzwe na Sosiyete KOBIL PETROLEUM isaba kubyutsa urubanza n° R.COMA 0017/09/CS nta shingiro gifite.

(20) Rutegetse KOBIL PETROLEUM gutanga amagarama y'urubanza angana na 70.300 frw, nk'uko yabazwe n'ubwanditsi bw'uru Rukiko, itayatanga mu minsi umunani, agakurwa mu byayo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 18/06/2010, N'URUKIKO RW'IKIRENGA RUGIZWE NA: NYIRINKWAYA IMMACULEE, PEREZIDA, HATANGIMBABAZI FABIEN NA RUGABIRWA RUBEN, ABACAMANZA; BAFASHIJWE NA MUNYANDAMUTSA JEAN PIERRE, UMWANDITSI W'URUKIKO.

Sé
NYIRINKWAYA IMMACULEE
PEREZIDA

Sé
RUGABIRWA RUBEN
Umucamanza

Sé
HATANGIMBABAZI FABIEN.
Umucamanza

Sé
MUNYANDAMUTSA JEAN PIERRE
Umwanditsi w'Urukiko

IMANZA Z'ubuTEGETSI

12. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RAD AA 0001/10/CS
I**TARIKI Y'URUBANZA:** 06/08/2010
HABURANA: NKONGOLI John / Rwanda Civil Aviation & Richard Masozera

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI-KWANGA K'UMUTEGETSI NTA MPAMVU KURANGIZA URUBANZA IKIGO AYOBORA CYATSINZWEMO-IGIHANO GIHATIRA KURANGIZA URUBANZA-UGOMBA KUGIHABWA.

IGIHE NTARENGWA URUBANZA LETA YATSINZWEMO RUGOMBA KURANGIZWAMO

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Umutegetsi wanze kubahiriza ibyategetswe mu rubanza ashobora, bisabwe n'umuburanyi bifitiye inyungu, guhamagarwa mu rukiko rwafashe icyemezo, kugira ngo yisobanure kumpamvu zamubujije kubyubahiriza. Mu gihe impamvu zatumye atabyubahiriza nta shingiro zifite, urukiko rugena igihano gihatira umutegetsi ubwe kubahiriza urubanza mu gihe cyose ruzaba rutararangizwa.

Iyo urubanza rwabaye itegeko rutegeka Leta , ubutegetsi bw'Akarere cyangwa bw'Umujyi cyangwa ubw'Ikigo cya Leta kuriha amafaranga rwagennye, ayo mafaranga agomba kwishyurwa mu mezi atandatu, uhereye umunsi w'imenyesha ry'urubanza.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA MU RUHAME IMANZA Z'UBUTEGETSI, RUKIJIJE KUWA 06/08/2010, URUBANZA R.AD.AA 0001/10/CS MU BURYO BUKURIKIRA:

HABURANA:

UREGA:

NKONGORI John, mwene MUNYEMANA Evariste na MURERAKAZI Dorothée, utuye mu Mudugudu wa Nyabivumu, Akagari ka Nyamata, Umurenge wa Nyamata, Akarere ka Bugesera.

ABAREGWA:

-Rwanda Civil Aviation Authority (RCAA) mu izina ry'Umuyobozi Mukuru wayo.

-Richard MASOZERA, Umuyobozi Mukuru wa Rwanda Civil Aviation Authority,
utuye mu Mudugudu wa Kagunga, Akagari ka Kagunga, Umurenge wa
Gikondo, Akarere ka Kicukiro.

IKIBURANWA:

Requête tendant à faire condamner à l'astreinte administrative l'Entreprise Publique Rwanda Civil Aviation Authority pour l'exécution de l'arrêt.

I. IMITERERE Y'URUBANZA

[1] Urukiko Rukuru rwa Repubulika, i Kigali, rwaciwe urubanza R.AD. 0055/06/HC/KIG kuwa 15/06/2007, rwemeza ko NKONGORI John atsinze Leta y'u Rwanda na Rwanda Civil Aviation Authority.

[2] Urwo Rukiko rwategetse Leta y'u Rwanda guha NKONGORI John 5.000.000 Frw y'indishyi z'uko yasezerewe k'Ubuyobozi bukuru bwa Régie des Aéroports du Rwanda (Rwanda Civil Aviation Authority) mu buryo bunyuranyije n'amategeko kuko atamenyeshejwe icyemezo yafatiwe kimuhagarika cyangwa kimusezerera ku kazi.

[3] Rwanda Civil Aviation Authority yategetswe guha NKONGORI 4.946.406 Frw y'ibirarane by'imishahara by'amezi atandatu (6) atahembwe, 200.000 Frw y'ikurikiranarubanza na 22.975 Frw y'amagarama y'urubanza.

[4] Ku bujurire bwa Leta y'u Rwanda (Rwanda Civil Aviation Authority), Urukiko rw'Ikirenga rwaciye urubanza R.AD.A 0012/07/CS kuwa 27/03/2009, rwemeza ko imikirize y'urubanza rwajuririwe idahindutse mu ngingo zarwo zose, rutegeka ko urwo rubanza rurangizwa uko rwaciwe.

[5] Kuwa 10/06/2010, NKONGORI John yatanze ikirego mu Rukiko rw'Ikirenga arega Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo, Bwana Richard MASOZERA, kuba batarubahirije ibyemezo by'Inkiko byavuzwe haruguru, asaba ko bacibwa igihano kibahatira kurangiza izo manza batsindiwe.

[6] Urubanza rwaburanishijwe mu ruhame kuwa 08/07/2010, NKONGORI John yunganiwe na Me RWANGAMPUHWE, naho Rwanda Civil Aviation Authority na Richard

MASOZERA batitabye kandi barahamagajwe mu buryo bwemewe n'amategeko.

II. IBIBAZO BYASUZUMWA N'URUKIKO BIRI MU RUBANZA

[7] Muri uru rubanza, Urukiko rugiye gusuzuma ibibazo bitatu bikurikira :

1. Ese Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo, baba bafite impamvu zifite ishingiro zababujije kurangiza urubanza R.AD.A 0012/07/CS rwaciwe n'Urukiko rw'Ikirenga ?

2. Ese Rwanda Civil Aviation Authority yafatanya n'Umuyobozi Mukuru wayo kwishyura amafaranga y'igihano gihatira kurangiza urubanza igihe bibaye ngombwa gucibwa igihano ?

3. Ese muri uru rubanza NKONGORI John yahabwa amafaranga yasabye ya "décompte finale" na "attestation des services rendus" n'ibindi agenerwa n'amategeko?

1.Ku byerekeye ikibazo cyo kumenya niba Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo, baba bafite impamvu zifite ishingiro zababujije kurangiza urubanza R.AD.A 0012/07/CS.

[8] NKONGORI John avuga ko Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo, Bwana Richard MASOZERA, banze kurangiza urubanza R.AD.A 0012/07/CS rwaciwe n'uru Rukiko kuwa 27/03/2009. Asobanura ko urwo rubanza rwemeje ko imikirize y'urubanza R.AD. 0055/06/HC/KIG rwaciwe n'Urukiko Rukuru rwa Repubulika kuwa 15/06/2007 idahindutse, runategeka ko rugomba kubahirizwa uko rwaciwe.

[9] NKONGORI n'Umwunganira basobanuye ko Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo banze kumuha amafaranga yatsindiye mu rubanza rwavuzwe haruguru akurikira : 4.946.406 Frw y'ibirarane by'umushahara we w'amezi atandatu atahembwe, 200.000 Frw y'ikurikiranarubanza na 22.975 Frw y'amagarama.

[10] Basabye ko Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo bacibwa igihano kibahatira kurangiza urubanza R.AD.A 0012/07/CS kuko bagize agasuzuguro bakanga kururangiza. Ikindi n'uko Richard MASOZERA, Umuyobozi Mukuru w'icyo Kigo cya Leta, yanze kubahiriza amabwiriza yahawe n'Abayobozi bamukuriye mu kazi bamusabye kurangiza urwo rubanza barimo Minisitiri w'Ubutabera, Minisitiri w'Ibikorwa Remezo n'Umuvunyi Mukuru, nyamara Leta y'u Rwanda yo yaramwishyuye amafaranga yatsindiwe muri urwo rubanza.

[11] Ingingo ya 351 y'Itegeko n° 18/2004 ryo kuwa 29/01/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko "Umutegetsi wanze kubahiriza ibyategetswe mu rubanza ashobora, bisabwe n'umuburanyi kururangiza bifitiye inyungu, guhamagarwa mu rukiko rwafashe icyemezo, kugira ngo yisobanure ku mpamvu zamubujije kubyubahiriza. Iyo impamvu zatumye atabyubahiriza zifite ishingiro, ahabwa, hakurikijwe imiterere y'izo mpamvu, igihe ntarengwa agomba kubahiriza urwo rubanza. Iyo impamvu zatumye atabyubahiriza nta shingiro zifite (…), urukiko rugena igihano gihatira umutegetsi ubwe kubahiriza urubanza mu gihe cyose ruzaba rutararangizwa".

[12] Hakurikijwe ibiteganywa n'ingingo ya 351 y'Itegeko rimaze kuvugwa haruguru, Urukiko rurasanga Umuyobozi

Mukuru wa Rwanda Civil Aviation Authority ataritabye Urukiko umunsi w'iburanisha ry'urubanza kuwa 08/07/2010 kandi yarahamagawe mu buryo bukurikije amategeko, kugira ngo arusobanurire impamvu zatumye atarangiza urubanza R.AD.A 0012/07/CS rwaciwe n'uru Rukiko kuwa 27/03/2009, bigaragara rero ko nta mpamvu zifatika zamubujije kurangiza urwo rubanza.

2.Ku byerekeye ikibazo cyo kumenya niba Rwanda Civil Aviation Authority igomba gufatanya n'Umuyobozi Mukuru wayo kwishyura amafaranga bacibwa y'igihano gihatira kurangiza urubanza.

[13] NKONGORI John yasabye ko uru Rukiko rwategeka Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo, gufatanya kumuha ibihumbi magana atanu (500.000 Frw) buri kwezi abazwe kuva igihe urubanza R.AD.A 0012/07/CS rwabereye itegeko kuwa 27/03/2009, kugeza bamwishyuye amafaranga yatsindiye.

[14] Ingingo ya 350, igika cya mbere, y'Itegeko ryavuzwe haruguru iteganya ko "Iyo urubanza rwabaye itegeko rutegeka Leta, ubutegetsi bw'Akarere cyangwa bw'Umujyi cyangwa ubw'ikigo cya Leta kuriha amafaranga rwagennye, ayo mafaranga agomba kwishyurwa mu mezi atandatu (6) uhereye ku munsi w'imenyeshwa ry'urubanza".

[15] Dosiye igaragaza ko Urukiko rw'Ikirenga rwaciye urubanza R.AD.A 0012/07/CS kuwa 27/03/2009, ruvuga ko imikirize y'urubanza R.AD. 0055/06/HC/KIG rwaciwe n'Urukiko Rukuru rwa Repubulika kuwa 15/06/2007 idahindutse, rutegeka ko rugomba kurangizwa uko ruri. Bigaragara rero ko ubutegetsi bw'ikigo cya Leta, (Rwanda Civil Aviation Authority), bwategetswe kwishyura NKONGORI amafaranga yatsindiye angana na 5.169.381 Frw agizwe n'amafaranga 4.946.406 y'ibirarane by'umushahara

w'amezi atandatu (6) atahembwe, 200.000 Frw y'ikurikiranarubanza na 22.975 Frw y'amagarama.

[16] Hakurikijwe ibisobanuro NKONGORI John yatanze muri uru Rukiko by'uko Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo banze kurangiza urwo rubanza; hakurikijwe kandi n'uko muri dosiye hatagaragaramo ibaruwa uyu Muyobozi yandikiye abayobozi bamukuriye mu kazi abamenyesha ko yarangije urwo rubanza, nyamara barabimusabaga, bigaragarira Urukiko ko urubanza R.AD.A 0012/07/CS rutarangijwe, kuko NKONGORI atahawe amafaranga yatsindiye yavuzwe haruguru, bityo kuba abisabira igihano gihatira kurangiza urubanza (astreinte), bikaba biri mu kuri nk'uko biteganywa n'ingingo ya 351 y'Itegeko n° 18/2004 ryo kuwa 29/01/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu.

[17] Ku byerekeye ugomba kwishyura amafaranga, hakurikijwe ibiteganywa n'ingingo ya 351 y'Itegeko n° 18/2004 ryavuzwe haruguru, bigaragara ko ari umutegetsi wanze kubahiriza ibyategetswe mu rubanza nta mpamvu; Urukiko rurasanga muri uru rubanza, uwo mutegetsi ari Umuyobozi Mukuru wa Rwanda Civil Aviation Authority kuko ariwe ushinzwe ubuyobozi bw'ibikorwa n'imirimo byacyo bya buri munsi nk'uko biteganywa n'ingingo ya 5 n'iya 6 z'Itegeko Ngenga n° 14/2004 ryo kuwa 26/05/2004 ryishyiraho amategeko rusange yerekeye ibigo bya Leta.

[18] Urukiko rurasanga rero nta mpamvu yatuma Rwanda Civil Aviation Authority icibwa igihano kiyihatira kurangiza urubanza, kuko igihano kivugwa mu ngingo ya 351 yavuzwe haruguru, ari igihatira umutegetsi ubwe kubahiriza urubanza rwabaye itegeko, bityo Umuyobozi Mukuru wa Rwanda Civil Aviation Authority akaba ariwe

ubwe ugomba gutanga amafaranga y'igihano gihatira kurangiza urubanza (astreinte) buri kwezi kuva uru rubanza rusomwe kugeza ku munsi urubanza R.AD.A 0012/07/CS ruzarangirizwaho kubera impamvu zavuzwe haruguru, amafaranga ibihumbi magana atanu (500.000 Frw) NKONGORI asaba akaba agomba kuyahabwa kuko Urukiko rusanga ari mu rugero.

3. Ku byerekeye ikibazo cyo kumenya niba NKONGORI John yahabwa amafaranga ya "décompte finale" na "Attestation des services rendus" n'ibindi agenerwa n'amategeko.

[19] NKONGORI avuga ko Rwanda Civil Aviation Authority yamuha hamwe n'irangizarubanza yasabye, amafaranga ya "décompte finale", "attestation des services rendus" n'ibindi yemererwa n'amategeko.

[20] Muri uru rubanza, ikiburanwa ni ugusaba ko Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo bacibwa igihano kibahatira kurangiza urubanza R.AD.A 0012/07/CS rwaciwe n'uru Rukiko. Ibyo NKONGORI John asaba ko yahabwa "décompte finale" na "attestation des services rendus", ntibyigeze bicirirwaho urubanza, kubivuga bwa mbere ubungubu, Urukiko rukaba rusanga byaba ari ukubiregera mu rwego rwa mbere mu Rukiko rw'Ikirenga kandi ibyo amategeko ntabyemera, bityo icyo kirego kikaba kitagomba kwakirwa.

III. ICYEMEZO CY'URUKIKO

[21] RWEMEYE kwakira ikirego cya NKONGORI John kuko cyatanzwe mu buryo n'inzira bikurikije amategeko.

[22] RWEMEJE ko icyo kibazo gifite shingiro kuri bimwe.

[23] RUTEGETSE Umuyobozi Mukuru wa Rwanda Civil

Aviation Authority guha NKONGORI John amafaranga ibihumbi magana atanu (500.000 Frw) buri kwezi kuva uru rubanza rusomwe kugeza ku munsi urubanza R.AD.A 0012/07/CS ruzarangirizwaho.

[24] RUMUTEGETSE gutanga amagarama y'uru rubanza angana na 10.200 Frw, atayatanga mu gihe gitegetswe, akava mu bye ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 06/08/2010 N'URUKIKO RW'IKIRENGA, RUGIZWE NA: MUTASHYA JEAN BAPTISTE: PEREZIDA, HATANGIMBABAZI FABIEN NA RUGABIRWA RUBEN, ABACAMANZA, BAFASHIJWE NA MUNYANDAMUTSA JEAN PIERRE, UMWANDITSI W'URUKIKO.

Sé
MUTASHYA Jean Baptiste
Perezida

Sé
HATANGIMBABAZI Fabien
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
MUNYANDAMUTSA Jean Pierre
Umwanditsi w'Urukiko

IMANZA Z'UMURIMO

13. URUKIKO RUKURU, URUGEREKO RWA NYANZA

N° Y'URUBANZA: R.SOC.A 0014/09/HC/NYA
ITARIKI Y'URUBANZA: 20/04/2010
HABURANA: APADEM / NIYONSABA Justine

AMAGAMBO MPINE

IMANZA Z'UMURIMO- GUHINDURA IBIKUBIYE MU MASEZERANO Y'AKAZI UMUKORESHA ATABANJE KUBYUMVIKANAHO N'UMUKOZI- UMUKOZI WANZE UMURIMO YAHINDURIWE (UTADUKANYE N'URI MUMASEZERANO Y'AKAZI) AGAHITAMO KUREKA AKAZI IGIHE NTARENGWA CYO KUJURIRA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Iyo umukoresha afashe icyemezo cyo kugira ibyo ahindura ku masezerano y'akazi atabanje kubijyamo inama n'umukozi, umukozi ashobora, aho gukomeza guhora yinubira ibyo umukoresha we yahinduye ku masezerano y'umurimo, gufata icyemezo cyo kureka akazi. Yakwanga gukora mu buryo bushya yashyizwemo n'umukoresha , uko kureka akazi bigafatwa nko kwirukanwa. Mu guca urubanza, abacamanza bakazakurikiza amategeko akoreshwa mu gihe umukozi yirukanwe.

Mu manza z'imbonezamubano, iz'ubucuruzi , iz'umurimo n'iz'ubutegetsi, igihe ntarengwa cyo kujurira ni ukwezi kumwe. Icyo gihe gitangira kubarwa ku manza zaciwe ababuranyi bombi bahari cyangwa ku manza ababuranyi bamenyeshejwe umunsi w'isomwa ntibitabe, kuva umunsi zisomwe.

URUKIKO RUKURU, URUGEREKO RWA NYANZA, RURI KU CYICARO CYARWO, RUHABURANISHIRIZA MU RUHAME IMANZA Z'UMURIMO, RUKIJIJE MU RWEGO RW'UBUJURIRE, URU RUBANZA MU BURYO BUKURIKIRA.

IKIZA RY'URUBANZA MU RUHAME RYO KU WA 20/04/2010

UREGA : Ikigo cy'ishuri APADEM mu izina ry'ugihagarariye

UREGWA: NIYONSABA Justine mwene KAMUGUNGA Canisius na MUKANTABANA Félicitée, wavutse mu 1974, utuye mu mudugudu wa Rwara, akagari ka Munyinya, umurenge wa Busoro, akarere ka Nyanza, Intara y'Amajyepfo.

IKIREGERWA : Kujuririra urubanza R.Soc 0014/09/TGI/HYE rwaciwe ku wa 17/06/2009 n'Urukiko Rwisumbuye rwa Huye.

I. IMITERERE Y'URUBANZA

1. Ku wa 17/06/2009, Urukiko Rwisumbuye rwa Huye rwaciye urubanza R.Soc 0014/09/TGI/HYE, haburana Ikigo cy'Ishuri APADEM cyatsinzwe na NIYONSABA Justine watsinze.

2. APADEM ntiyishimiye imikirize y'urwo rubanza, ijurira muri uru rukiko ku wa 16/07/2009.

II. IMIGENDEKERE Y'URUBANZA

3. Mu iburanisha ryo ku wa 18/01/2010, ababuranyi bombi bitabye urukiko, APADEM ihagarariwe na KARINDA Alexis, yunganirwa na Me HAKIZIMANA Théogène, naho NIYONSABA Justine yunganirwa na Me NSABIMANA Gabriel, urubanza ruburanishirizwa mu ruhame.

4. KARINDA Alexis yasobanuye ingingo bashingiraho bajurira, avuga ko ingingo ya mbere ari uko NIYONSABA yabareze kwirukanwa mu buryo butubahirije amategeko, urukiko ruca

urubanza ku kirego kitaregewe cyo guhindurirwa inshingano, ingingo ya kabiri ikaba ko babonye ikimenyetso cy'uko yatangiye akazi kuri ESI MBATI, ku wa 25/05/2008, mu gihe bamuhagaritse ku kazi ku wa 03/06/2008, kutaboneka kw'icyo kimenyetso bikaba byarafashije NIYONSABA, kuko hagati yo ku wa 25/05/2008 no ku wa 03/06/2008 yari umukozi ahantu habiri, ingingo ya gatatu ikaba ko NIYONSABA yazimanganyije ibimenyetso by'uko yabatereye akazi, kuko yabonaga ko bamurega.

5. KARINDA yakomeje asobanura ko ku ibaruwa ihindurira inshingano NIYONSABA, yamugaragarizaga izindi nshingano agomba gukora kandi yari asanzwe yigisha.

6. Me HAKIZIMANA yasobanuye ko mu rwego rwa mbere urukiko rwaciye urubanza ku kitaregewe, kuko NIYONSABA yaregewe kwirukanwa, mu guca urubanza, urukiko rushingira ku guhindurirwa umurimo kandi mu bugenzuzi bw'umurimo, yararegeye imperekeza kandi nta mwaka yari amaze mu kazi, ko niyo urukiko rwari gusanga harabayeho guhindurirwa imirimo, ntirwari kubifata nko kwirukana NIYONSABA, akomeza asobanura ko urukiko rwakwemeza ko ibyo NIYONSABA yaregeye, urukiko rutabishasheho umwanzuro mu rwego rwa mbere, akomeza avuga ko basaba ko NIYONSABA yacibwa indishyi z'akababaro, harimo n'iz'ikurikirana rubanza n'igihembo cya avoka, bingana na 1.000.000frw

7. NIYONSABA yasobanuye ko ku ihamagara yahawe APADEM, handitseho kwirukanwa binyuranije n'amategeko, ko kubijyanye n'uko yirukanywe ku wa 03/06/2008, ataribyo kuko yahagaritse akazi ku wa 08/05/2008 kuko ari bwo yakoze ihererekanya bubasha (remise), akomeza avuga ko mu masezerano y'akazi afite contrat yo kuba Préfet des etudes, ko nta contrat afite yo kuba umwarimu.

8. Me NSABIMANA yasobanuye ko contrat yasinywe ku wa 02/01/2008, igaragaza akazi NIYONSABA yahawe ko kuba Préfet des etudes, ko atahawe akazi k'ubwarimu, amasezerano

y'akazi akaba yaratangiraga ku wa 01/01/2008 kugeza ku wa 31/12/2008, akaba yarahagaritswe amasezerano y'akazi agikomeza, akaba yariyambaje inkiko kuko yirukanywe mu buryo butemewe n'amategeko, akomeza avuga ko basaba igihembo cya avoka cya 200.000frw, ayikurikirana rubanza angana na 50.000frw n'indishyi y'akababaro ya 500.000frw.

9. Ababuranyi bari bamenyeshejwe ko urubanza ruzasomwa ku wa 03/03/2010, uwo munsi ugeze ntirwasomwa kuko Umucamanza yagize imirimo myinshi, isomwa ryarwo ryimurirwa ku wa 18/03/2010, uwo munsi ugeze ntirwasomwa kuko Urukiko rwasanze hari ibyo rugomba kubaza ababuranyi mbere yo guca urubanza, bityo iburanisha rirasubukurwa.

10. NIYONSABA yabajijwe igihe yamenye ko bamwirukanye ku kazi, asubiza ko yabonye ibaruwa imuhagarika ku wa 04/05/2008, ko yakoze remise ku wa 08/05/2008, ariko ku wa 06/05/2008 akaba yarabandikiye ko ibaruwa bamuhaye idakurikije amasezerano y'akazi bakoranye, ku wa 07/05/2008 bakaba baramusubije, ku wa 08/05/2008 akora remise na directeur, bamugira umwarimu asanzwe, ariko nta masezerano bagiranye, nyuma yo ku wa 08/05/2008 agenda gushaka akazi.

11. KARINDA Alexis yabajijwe igihe bamenyesheje NIYONSABA ibaruwa yo ku wa 03/06/2008 imwirukana, asubiza ko batari bazi aho aherereye, kuko bafashe icyemezo cyo kumusezerera ku kazi kuko bamwandikiye amabaruwa ane bamubaza aho aherereye, baramubuze, akomeza avuga ko ku mugenzuzi w'umurimo NIYONSABA atigeze ahakana ko atabonye ayo ma baruwa.

12. NIYONSABA yabajijwe niba nyuma yo gukora remise ku wa 08/05/2008, yarahise agenda, asubiza ko yahise agenda kuko nta contrat yindi bamuhaye, ko Atari kwigisha nta contrat afite.
13. KARINDA yasobanuye ko NIYONSABA yasabye akazi k'ubwarimu, ko préfet des études ari umwarimu nk'abandi, ko nta contrat bari gukorana n'umuntu batabona kuko yahise agenda.

UKO URUKIKO RUBIBONA

14. Ingingo ya 163 al 1 y'Itegeko n° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, nkuko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko: "Igihe ntarengwa cyo kujurira ni ukwezi kumwe. Icyo gihe gitangira kubarwa, ku manza zaciwe ababuranyi bombi bahari cyangwa ku manza ababuranyi bamenyeshejwe umunsi w'isomwa ntibitabe, kuva umunsi zisomwe", bityo ubujurire bwatanzwe n'ikigo cy'ishuri APADEM gihagarariwe na KARINDA Alexis bukaba bukwiye kwakirwa.

15. ku wa 07/01/2008, ubuyobozi bw'ikigo cy'ishuri APADEM, bwagiranye amasezerano y'akazi ko kuba Préfet des études muri icyo kigo na NIYONSABA Justine. Ayo masezerano yatangiraga kuva kuwa 01/01/2008 kugeza ku wa 31/12/2008. Ku wa 04/05/2008, Ubuyobozi bw'ikigo bwafashe icyemezo cyo guhindurira imirimo NIYONSABA Justine batabyumvikanye, avanwa ku mwanya wa Préfet des études, agirwa umwarimu usanzwe. Ku wa 08/05/2008, NIYONSABA Justine yakoze ihererekanya bubasha n'umuyobozi w'ikigo, ntiyemera gukora imirimo y'ubwarimu bamuhinduriye, ajya gushaka akazi ahandi.

16. Inyandiko y'abahanga ku bijyanye no kutemera guhindurirwa imirimo biturutse ku mukozi, igaragaza ko: " Lorsque l'employeur a unilatéralement pris la décision d'apporter une modification au contrat de travail, le salarié peut, plutôt que de continuer à travailler en faisant connaître son refus des modifications patronales, prendre l'initiative de la rupture. S'il cesse purement et simplement de travailler dans les conditions nouvelles que l'employeur lui impose, la rupture sera qualifiée de licenciement[7]. Les juges appliqueront toutes les règles de fond du licenciement »

[7]Soc. 31 mars 2004, RJS 6/04, n° 655; Soc. 28 novembre 2001, RJS 10/01, n° 1117, cité par J. PELISSIER, A. SUPIOT, A. JEAMMAUD, *Droit du travail*, 22e édition, Paris, Dalloz, 2004, p. 484

17. Ingingo ya mbere y'ubujurire bw'ikigo APADEM y'uko mu rwego rwa mbere, NIYONSABA yabareze kwirukanwa mu buryo butubahirije amategeko, urukiko ruca urubanza ku kirego kitaregewe cyo guhindurirwa inshingano, nta shingiro ifite kuko kuba NIYONSABA ataremeye gukora umurimo w'ubwarimu bari bamuhinduriye, ari ukwirukanwa, hashingiwe ku byasobanuwe haruguru, akaba ari nabyo NIYONSABA Justine yaregeye Urukiko Rwisumbuye rwa Huye, ku wa 18/07/2008, mu rwego rwa mbere, uko guhindurirwa amasezerano akaba ari nayo ngingo yaburanishije mu rwego rwa mbere.

18. Ingingo ya kabiri y'uko babonye ikimenyetso cy'uko NIYONSABA Justine yatangiye akazi kuri ESI MBATI, ku wa 25/05/2008, mu gihe bamuhagaritse ku kazi ku wa 03/06/2008, kutaboneka kw'icyo kimenyetso bikaba byarafashije NIYONSABA, kuko hagati yo ku wa 25/05/2008 no ku wa 03/06/2008 yari umukozi ahantu habiri. Iyo ngingo nayo nta shingiro ifite kuko guhera ku wa 08/05/2008 NIYONSABA yanze gukora imirimo y'ubwarimu bari bamuhinduriye.

19. Ingingo ya gatatu y'uko NIYONSABA yazimanganyije ibimenyetso by'uko yabatereye akazi, kuko yabonaga ko bamurega, nayo nta shingiro ifite, hashingiwe ku byasobanuwe mu gice cya 18.

20. Ku byerekeye amafaranga 200.000frw y'igihembo cya avoka, n'amafaranga 50.000frw y'ikurikirana rubanza, NIYONSABA asaba ko ikigo cy'ishuri cya APADEM cyamuha, urukiko rurasanga mu bushishozi bwarwo yagenerwa gusa amafaranga 200.000frw y'igihembo cya avoka kuko yayatangiye ibimenyetso, naho amafaranga 500.000frw y'indishyi y'akababaro asaba, akaba atayegenerwa kuko atashoboye gusobanurira urukiko akababaro yagize.

III. ICYEMEZO CY'URUKIKO

21. Rwemeje kwakira ubujurire bwatanzwe n'ikigo cy'ishuri

APADEM gihagarariwe na KARINDA Alexis kuko bwatanzwe mu buryo bukurikije amategeko.

22. Rwemeje ko ubwo bujurire nta shingiro bufite, nkuko byasobanuwe mu gice cya III (UKO URUKIKO RUBIBONA).

23. Rukijije ko ikigo cy'ishuri APADEM gihagarariwe na KARINDA Alexis gitsinzwe, ko NIYONSABA Justine atsinze.

24. Rutegetse ikigo cy'ishuri APADEM gihagarariwe na KARINDA Alexis guha NIYONSABA Justine amafaranga 200.000frw y'igihembo cya avoka, wamwunganiye mu rwego rw'ubujurire, nkuko byasobanuwe mu gice cya 20 (UKO URUKIKO RUBIBONA).

25. Rutegetse ikigo cy'ishuri APADEM gihagarariwe na KARINDA Alexis gutanga amafaranga 8000frw y'ane ku ijana (4%) y'umusogongero wa reta.

26. Rwemeje ko imikirize y'urubanza R.Soc 0014/09/TGI/HYE rwaciwe ku wa 17/06/2009 n'Urukiko Rwisumbuye rwa Huye, idahindutse.

27. Rutegetse ikigo cy'ishuri APADEM gihagarariwe na KARINDA Alexis gutanga amagarama y'urubanza angana na 13.650frw.
Rusomwe rutinze kuko ku wa 15/04/2010 habaye ikibazo cy'amashanyarazi.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME, NONE KU WA 20/04/2010, URUKIKO RUGIZWE N'UMUCAMANZA WARUBURANISHIJE N'UMWANDITSI.

UMUCAMANZA	UMWANDITSI
KAYISIRE J.P.Claver	NYAMUTAMA Hypax
(Sé)	(Sé)