REPUBULIKA Y'U RWANDA

URUKIKO RW'IKIRENGA
B.P. 2197 KIGALI
www.judiciary.gov.rw

ICYEGERANYO CY'IBYEMEZO BY'INKIKO

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

Igitabo cya gatatu 2013, nº 19

Ukwakira, 2013

REPUBULIKA Y'U RWANDA

URUKIKO RW'IKIRENGA
B.P: 2197 Kigali
www.judiciary.gov.rw

ICYEGERANYO CY'IBYEMEZO BY'INKIKO

Imanza zireba amategeko anyuranye n'Itegeko nshinga, Imanza z'imbonezamubano, iz'inshinjabyaha, iz'ubucuruzi, iz'umurimo, iz'ubutegetsi

Igitabo cya Gatatu 2013, nº 19

Ukwakira, 2013

Abagize komite y'ubwanditsi bw'icyegeranyo cy'imanza

MUGENZI Louis-Marie : Perezida wa Komite, *Umucamanza mu Rukiko rw'Ikirenga*

NYIRINKWAYA Immaculée : Umwe mu bagize Komite, *Umucamanza mu Rukiko rw'Ikirenga*

KALIWABO Charles : Umwe mu bagize Komite, *Perezida w'Urukiko Rukuru*

BWIZA Marie- Blanche : Umwe mu bagize Komite, *Umucamanza mu Rukiko Rukuru*

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

YARAMBA Athanase : Umwe mu bagize komite, *Perezida w'Urukiko Rwisumbuye rwa Nyamagabe*

HATEGEKIMANA Bernard : Umwe mu bagize Komite, Umucamanza mu Rukiko Rukuru rwa Gisirikare

NDAYAMBAJE Savio : Umwanditsi wa Komite, *Umushakashatsi mu by'amategeko mu Rukiko rw'Ikirenga*

IRIZABIMBUTO Dieudonné : Umwanditsi wa Komite, Umushakashatsi mu by'amategeko mu Rukiko rw'Ikirenga

Urwego ruhagarariye Icyegeranyo: URUKIKO RW'IKIRENGA

Icyegeranyo cy'imanza zaciwe 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'Ubucamanza 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.

Aho icyegeranyo kibarizwa

Repubulika y' u Rwanda
Urukiko rw'Ikirenga
B.P: 2197 - Kacyiru/Kigali
Fax: (250) 517649
Tél gratuit: (+250) 3670
Tél:(250)582276
Email: info@judiciary.gov.rw
Site Web: www.judiciary.gov.rw

Icyitonderwa

Icyegeranyo ntikigurishwa, gitangirwa ubuntu.

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, 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 na yo 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,

Urukiko rw'Ikirenga rukomeje gutangaza icyegeranyo cy'imanza gisohoka buri gihembwe, kuva muri 2009, iyi nimero ikaba ibaye iya 19.

Turashima cyane ubwitabire bugaragazwa n'abasomyi bacu b'abanyamategeko mu kwifashisha mu buryo bunyuranye ibyemezo by'imanza zishyirwa muri iki cyegeranyo, bigafasha kumenyekanisha imikirize y'imanza ku bibazo bisa, binafasha kwubaka ihuzamikirize ry'imanza rigamijwe.

Twakwibutsa ko kugira ngo icyegeranyo cy'ibyemezo by'inkiko kigere kuri benshi, gitangazwa ku buryo bw'igitabo cyanditse no ku buryo bw'ikoranabuhanga ku rubuga rwa Interineti rw'Urukiko rw'Ikirenga http://www.judiciary.gov.rw-jurisprudence-receuil.

Muri iyi numero turasangamo imanza eshatu z'inshinjabyaha, rumwe rw'imbonezamubano, ebyiri z'ubucuruzi n'enye z'ubutegetsi.

Prof Sam RUGEGE

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

ISHAKIRO

Amagambo mpine **Urupapuro**

1. IMANZA Z'INSHINJABYAHA.

1.1. • ICYAHA CYO GUPFOBYA JENOSIDE-GUTANGA RUSWA HAGAMIJE KO UGIKURIKIRANYWEHO AGIRWA UMWERE-KUTABIFATA NKO GUKORA ICYAHA CYO GUPFOBYA JENOSIDE HAHISHYIRWA IBIMENYETSO BYAYO 3

1.2. • RAPOROY'UMUHANGA-UGUSHIDIKANYA K'UMUHANGA - KUTABIFATA NK'UGUSHIDIKANYA KURENGERA USHINJWA GUTEGANYIJWE N'AMATEGEKO.
• KUBA UMUHANGA ATEMEZA CYANGWA NGO AHAKANE KO IGIKORWA RUNAKA KIGIZE ICYAHA CYABAYEHO-KUTABIFATA UBWABWO NK'IMPAMVU ITUMA HEMEZWA KO ICYAHA KITABAYEHO....................15

1.3. • INYITO Y'ICYAHA-KUYIHINDURA IYO IGIKORWA CYAKOZWE KIDAHUYE N'IBYO AMATEGEKO ATEGANYA-UBURENGANZIRA BW'UMUCAMANZA.
• KWEMERA ICYAHA KIDAHUYE N'ICYO URUKIKO RWEMEJE - KUTABIFATA NKO KWEMERA ICYAHA MU BURYO BUDASHIDIKANYWAHO....................25

2. IMANZA Z'IMBONEZAMUBANO

2.1. • GUSESA AMASEZERANO YASINYWE HAGATI Y'UMUYOBOZI W'IKIGO N'UNDI MUNTU BIKOZWE NA PEREZIDA W'INAMA Y'UBUTEGETSI-KUBA UNDI MUNTU ATARASHOBORAGA KUMENYA IMIKORERE Y'IKIGO N'UBUBASHA BWA PEREZIDA W'INAMA Y'UBUTEGETSI N'UMUYOBOZI W'IKIGO-KUBITANGIRA INDISHYI KUBERA KO ABA ASESHWE MU BURYO BUDAKURIKIJE AMATEGEKO.
• GUKORANA AMASEZERANO N'USA N'AHO AFITE UBUTUMWA-KWIBWIRA KO UWO MUGIYE GUSINYANA AYO MASEZERANO AFITE UBUTUMWA YAHAWE N'IKIGO AYOBOYE – KUBA UKO GUSA NK'AHO UBUTUMWA BUHARI KUDATUMA UNDI MUNTU ATAGENZURA UBUBASHA BW'UWO BAGIYE GUSINYANA- KUBAHIRIZA AYO MASEZERANO UKO YAKABAYE N'USA N'UWATANZE UBWO BUTUMWA....................37

3. IMANZA Z'UBUCURUZI

3.1. • UBURENGANZIRA BWO GUCUNGA UMUTUNGO W'UMURYANGO-KUWUCUNGA GUSA NO KUWIKENUZA- KUTABUFATA NK'UBURENGANZIRA BWO KUWUTANGAHO INGWATE, KUWUGURISHA CYANGWA KUWUTANGA
• ICYEMEZO CY'URUKIKO GITANGA UBURENGANZIRA BWO GUCUNGA UMUTUNGO W'ABANA-GUKOMEZA GUCUNGA UMUTUNGO W'ABANA BAGEJEJE KU MYAKA Y'UBUKURE-KUBA UBWABYO BIDAHAGIJE MU KUWUTANGAHO INGWATE, KUWUGURISHA CYANGWA KUWUTANGA ATABYUMVIKANYEHO N'ABANA AREBERERA.

• KUGIRA URUHARE KU MUTUNGO UCUNGIYE ABANA-KUBA NTACYEREKANA URUHARE RW'UCUNZE UWO MUTUNGO-KUBIFATA NK'AHO UWO MUTUNGO UKIRI UW'UMURYANGO........ 53

3.2 • IMPANUKA ITUMA IKINYABIZIGA KITONGERA GUKORA-INDISHYI ZITANGWA – KUZISHINGIRA KU MASEZERANO IMPANDE ZOMBI ZAGIRANYE.

• KUGENA INDISHYI-KUZIGENA HAFASHWE AGACIRO K'IMODOKA YARI IFITE MBERE Y'UKO IKORA IMPANUKA HAKURWAMO AGACIRO K'IBISIGAZWA BYAYO-AGACIRO KEMEZWA N'UMUHANGA MU BYO KUBARA AGACIRO K'IBINYABIZIGA........71

4. IMANZA Z'UBUTEGETSI

4.1. • IKOSA RITEGANYIJWE MU MATEGEKO NGENGAMIKORERE-IGIHANO CYATEGANYIJWE MURI AYO MATEGEKO-INDISHYI KU MUKORESHA UTANZE IGIHANO KINYURANYIJE N'IGITEGANYIJWE MU MATEGEKO NGENGAMIKORERE.

• INDISHYI ZIGENERWA UWAHAWE IGIHANO KINYURANYIJE N'IGITEGANYIJWE MU MATEGEKO NGENGAMIKORERE-KUZIGENA MU RUGERO RUCIRIRITSE HAZIRIKANWA KO UMUKOZI ABA ATIRUKANIWE UBUSA........85

4.2. • UBUBASHA BW'URUKIKO MU KUGIRA ICYO RUTEGEKA LETA GUKORA CYANGWA KUDAKORA-KUBIKORA IYO HARI URUBANZA RWAREGEWE.

• IBYEMEZO BYAFASHWE N'IZINDI NZEGO Z'UBUYOBOZI - KUTABISHINGIRAHO MU KUGIRA ICYO URUKIKO RUTEGEKA LETA GUKORA CYANGWA KUDAKORA........103

4.3. • KUBARA IBIHE BY'UBUJURIRE MU MANZA MBONEZAMUBANO-IBIHE BIBARWA MU MEZI NO MU MYAKA-IYO UMUNSI WA NYUMA UHUYE N'IKIRUHUKO HONGERWAHO UMUNSI W'AKAZI UKURIKIRA .

• ITEGEKO RIHURIZA IMANZA HAMWE ZIKABURANISHIRIZWA HAMWE-KUBA NTAWABISABYE NGO URUKIKO RUBYANGE-KUBIFATA NK'INENGE ISHOBORA GUTESHA AGACIRO URUBANZA MU GIHE HARI UMUBURANYI UGARAGAJE KO BYAMWANGIRIJE.

• IBIREGO BY'ABANTU BENSHI BYAHURIJWE HAMWE-INDISHYI ZIGENEWE ABANTU BATANDUKANYE MU RUBANZA RUMWE-KUZIFATA NK'IZAGENYWE MU RUBANZA RUMWE KUBERA KO IMANZA ZIBA ZARAHUJWE ZIKABURANISHIRIZWA MU KIREGO KIMWE........117

4.4. • IMANZA Z'UBUTEGETSI- UMUKOZI WA LETA WUMVA WARENGANYIJWE AKAJURIRIRA UBUTEGETSI-KUBA NTA TEGEKO RIMUBUZA KUBA YAGANA INKIKO KUGIRA NGO ARENGANURWE-ITEGEKO RIMWEMERERA INZIRA EBYIRI KUGIRA NGO ARENGANURWE.

- ICYEMEZO KIRENGANYA UMUKOZI-KUBA UMUKOZI ADATEGETSWE BYANZE BIKUNZE GUSABA KO GIKURWAHO-ICYO YEMERERWA N'AMATEGEKO MURI RUSANGE NI GUSHYIKIRIZA INKIKO AKARENGANE KE
- ICYEMEZO CYO GUTAKAMBA KITAKIRIWE-KUBA UBWACYO CYIHAGIJE NK'ICYEMEZO GIFASHWE MURI UBWO BURYO-GISHOBORA KUREGERWA MU NKIKO
- INDISHYI ZIGENERWA UMUKOZI UGENGWA NA SITATI RUSANGE Y'ABAKOZI BALETA - KUZIGENA HADASHINGIWE KU ITEGEKO RY'UMURIMO - IBISHINGIRWAHO MU KUGENA BENE IZO NDISHYI 133

IMANZA Z'INSHINJABYAHA

1. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RPAA 0127/11/CS

ITARIKI Y'URUBANZA:21/06/2013

HABURANA : UBUSHINJACYAHA na MIGAMBI Aloys

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA - ICYAHA CYO GUPFOBYA JENOSIDE - GUTANGA RUSWA HAGAMIJE KO UKURIKIRANYWEHO ICYAHA CYA JENOSIDE AGIRWA UMWERE - KUTABIFATA NKO GUKORA ICYAHA CYO GUPFOBYA JENOSIDE HAHISHYIRWA IBIMENYETSO BYAYO.

IKIBAZO CY'AMATEGEKO CYAGARAGAJWE

Byafatwa nko kugenekereza bibujijwe mu manza nshinjabyaha guhamya umuntu icyaha cyo gupfobya jenoside hahishirwa ibimenyetso byayo hashingiwe ko yatanze ruswa agamije ko umuntu ukurikiranyweho icyaha cya Jenoside agirwa umwere, kuko ibimenyetso byayo n'abatangabuhamya biba bihari ntaho byagiye.

URUKIKO RW'IKIRENGA, RURI IKIGALI RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA, RUKIJIJE MU RUHAME KUWA 21/06/2013, URUBANZA Nº RPAA0127/11/CSMU BURYO BUKURIKIRA:

HABURANA :

UBUSHINJACYAHA

Na

UREGWA:

MIGAMBI Aloys, mwene NKOMEZAMIHIGO Ephrem na MUKARUGAMBWA, wavutse 1978, avukira Rubengera-Karongi-Intara y'Iburengerazuba.

ICYAHA AREGWA:

Icyaha cyo gutanga ruswa. Icyaha giteganywa kandi kigahanishwa ingingo ya 641 y'Itegeko - Ngenga Nº01/2012OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda n'icyaha cyo guhishira ibimenyetso bya Jenoside, ubwo yahaga inyangamugayo za Gacaca ruswa kugira ababyeyi be ngo zibagire abere, icyaha giteganywa kandi kigahanishwa ingingo ya 135 y'Itegeko ngenga rimaze kuvugwa.

I. IMITERERE Y'URUBANZA.

(1) Urukiko Rwisumbuye rwa Karongi rwahamije MIGAMBI Aloys icyaha cyo gutanga ruswa n'icy'ingengabitekerezo ya Jenoside, rumuhanisha igifungo cy'imyaka 13 n'ihazabu ya 75.000 frw, rushingiye ku kuba nawe yaremeraga ko yafashwe agerageza gutanga ruswa ya 35.000 frw yari yahawe na se NKOMEZAMIHIGO ngo ayashyikirize NDAGIJIMANA Gaspard w'inyangamugayo ya Gacaca na MUNYAKAZI Bonaventure wahohotewe muri Jenoside yakorewe abatutsi. Mu kumuhamya ingengabitekerezo ya Jenoside, rwashingiye ku kuba yaratanze ayo mafaranga agamije guhishira icyaha cya Jenoside kugirango abakurikiranyweho icyo cyaha bagirwe abere.

(2) MIGAMBI yajuririye Urukiko Rukuru, Urugereko rwa Rusizi, narwo ruca urubanza rwemeza ko ubujurire bwe nta shingiro bufite, ko nta mpamvu nyoroshyacyaha yagaragaje zatuma yongera kugabanyirizwa ibihano yahawe, kubera ko imyiregurire ye y'uko yagiye gutanga ruswa yumvira umubyeyi we ari uburyo bwo guhunga icyaha.

(3) Urukiko Rukuru rwasanze kandi kuba MIGAMBI adakurikiranyweho icyaha cya Jenoside ubwabyo atari impamvu yatuma adahanwa ku cyaha cy'ingengabitekerezo ya Jenoside, rwemeza iby'Urukiko Rwisumbuye rwabonye by'uko

MIGAMBI mu gutanga ruswa yagiraga ngo umunyacyaha agirwe umwere, bikaba byari ukuyobya uburari hagamijwe gupfobya Jenoside, icyo cyaha rero hamwe n'icyo gutanga ruswa bikaba bimuhama mu buryo bw'impurirane y'imbonezamugambi, akaba adakwiye no kugabanyirizwa ibihano kuko atemera icyaha ku buryo bweruye.

(4) MIGAMBI yajuririye Urukiko rw'Ikirenga avuga ko n'ubwo mbere yari yemeye icyaha cya ruswa gusa, nyuma yaje gutekereza asanga n'icyaha cyo gupfobya Jenoside kijyanye n'icya ruswa, bityo nacyo akaba acyemera akanagisabira imbabazi (n'ubwo umwunganira we asanga kitamuhama), naho Ubushinjacyaha bukavuga ko ukwemera icyaha kwa MIGAMBI kutuzuye neza, bityo ubujurire bwe bukaba butahabwa agaciro.

(5) Urubanza rwaburanishijwe mu ruhame kuwa 29/04/2013, MIGAMBI yunganiwe na Me MANIRAKIZA Claude, naho Ubushinjacyaha buhagarariwe na MUNYANEZA NKWAYA Eric.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.

Muri uru rubanza hagomba kurebwa niba ibikorwa MIGAMBI yakoze bigaragaramo icyaha cyo gupfobya jenoside, hakanasuzumwa niba MIGAMBI yagababyirizwa ibihano kubera yemera ibyaha aregwa.

Kumenya niba ibikorwa MIGAMBI yakoze bigaragaramo icyaha cyo gupfobya jenoside.

(6) Me MANIRAKIZA Jean Claude wunganira MIGAMBI avuga ko mu by'ukuri abona ibigize icyaha cy'ingengabitekerezo hahishirwa ibimenyetso byayo bituzuye, ko umucamanza yagombaga kubanza kugaragaza ibigize icyaha cya ruswa yarangiza akanagaragaza ibigize icyaha cy'ingengabitekerezo ya Jenoside, ko kuvuga ko
MIGAMBI yashakaga kuyobya uburarí ataribyo kuko icyo yari agamije ari ugukura umubyeyi we imbere y'Urukiko kuko abatangabuhamya n'ibimenyetso byari bihari, akaba asanga harabayeho icyaha kimwe gusa cyo gutanga ruswa kidafitanye isano n'ingengabitekerezo ya Jenoside havanwaho ibimenyetso, kuko kuyitanga umuntu akaba yagirwa umwere bitavuze ko n'ibimenyetso biba bivuyeho.

(7) Ubushinjacyaha buvuga ko gutanga ruswa ku cyaha cya Jenoside bihura no gupfobya Jenoside, kuko iyo hatanzwe ruswa haba hagamijwe ko ibimenyetso bya Jenoside yakozwe bitagaragara bihishirwe cyangwa byangizwe, ko MIGAMBI atanga ruswa icyari kigamijwe atari gufunguza se gusa ahubwo harimo kugira ngo ibimenyetso bya Jenoside akurikiranyweho bitagaragara.

(8) Avuga ko ibyo uwunganira MIGAMBI avuga ko ibigize icyaha bituzuye ataribyo kuko itegeko rivuga uhishira cyangwa uwonona ibimenyetso bya Jenoside,

ko mu gutanga ruswa icyo MIGAMBI yari agamije atari gufunguza se gusa, ko ahubwo harimo guhishira ibimenyetso bya Jenoside, bityo ukwemera icyaha kwe kukaba kutuzuye, akaba adakwiye kugabanyirizwa ibihano yahawe.

(9) Ingingo ya 4 y'itegeko Nº Itegeko n°33 bis/2003 ryo kuwa 06/09/2003 rihana icyaha cya jenoside, ibyaha byibasiye inyoko muntu n'ibyaha by'intambara iteganya ibihano ku muntu uzaba wakoze ibikorwa biganisha ku gupfobya Jenoside yakorewe Abatutsi, muri ibyo bikorwa hakabamo no gushaka guhisha cyangwa kwonona ibimenyetso byayo.

(10) Urukiko rurasanga mu gutanga ruswa MIGAMBI yari agamije gusa gufasha umubyeyi we kugirwa umwere n'Urukiko ku cyaha cya jenoside aregwa, ariko atitaye ku kuba urukiko rwakwangiza cyangwa rugahisha ibimenyetso. Ibyo Ubushinjacyaha buvuga ko mu gutanga ruswa MIGAMBI yari agamije guhishira ibimenyetso bya Jenoside, bikaba nta shingiro byahabwa kuko abatangabuhamya n'ibimenyetso ntaho byagiye, byongeye kandi kugenekereza mu manza nshinjabyaha bikaba bibujijwe.

(11) Urukiko rurasanga rero, icyaha cy'ingengabitekerezo ya Jenoside MIGAMBI akurikiranweho kitamuhama, kuko gutanga ruswa umuntu akaba yagirwa umwere bitavuze ko byanze bikunze biba bijyanye no gukuraho ibimenyetso.

b. Kumenya niba MIGAMBI Aloys ashobora kugabanyirizwa ibihano.

(12) MIGAMBI avuga ko yaburanye yemera gusa icyaha cya ruswa ariko ko nyuma yaje gutekereza agasanga icyaha cyo gupfobya Jenoside kijyana n'icyaha cya ruswa yari agiye gukora, akaba abyemera byombi akabisabira imbabazi, bityo agasaba kugabanyirizwa ibihano.

(13) Me MANIRAKIZA Jean Claude avuga ko uwo yunganira yemeraga icyaha cya ruswa aho yavuze ko yari intumwa ya se wamuhaye amafaranga ngo ayamutangire, nyamara ibi umucamanza akaba yarabifashe nko guhakana icyaha.

(14) Ubushinjacyaha buvuga ko MIGAMBI Aloys adasobanura neza uburyo yakoze icyaha akurikiranyweho, ko inyungu ziteganyijwe mu ngingo ya 35 y'itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha atazihabwa kubera ko ibyo avuga birimo urujijo.

(15) Urukiko rurasanga, MIGAMBI wemera icyaha ntacyo asize inyuma, nta cyatuma ukwemera icyaha kwe kutemerwa ngo agabanyirizwe igihano hashingiwe ku ngingo ya 35 y'itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko umucamanza ashobora kugabanyiriza igihano uwemera icyaha kugeza ku cya ½ cy'igihano yagombaga guhabwa.

c. Ibyerekeranye n'ibihano.

(16) Ingingo ya 8 y'Itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ko mu gihe hari amategeko abiri ahana, rimwe ryariho mu gihe icyaha cyakorwaga, irindi ryaratangajwe kuva icyaha gikozwe, ariko urubanza rutaracibwa burundu, itegeko rishya rigomba gukurikizwa iyo riteganya igihano cyoroheje, naho ingingo ya 675 y'iryo tegeko yo igateganya ko icyaha cyakozwe mbere y'uko iri tegeko ritangira gukurikizwa gihanwa hakurikijwe iri tegeko mu gihe gusa riteganya ibihano byoroheje[1].

(17) Urukiko rurasanga ku byerekeye icyaha cya ruswa, MIGAMBI agomba guhanwa hakurikijwe ibiteganywa n'ingingo ya 641 y'iri tegeko Ngenga rimaze kuvugwa, iteganya ko umuntu wese uha undi muntu, ku buryo bweruye cyangwa buteruye, washatse kumuha, wamuhaye ku buryo buziguye cyangwa butaziguye, impano cyangwa indonke iyo ari yo yose cyangwa yamugiriye amasezerano yabyo kugira ngo amukorere cyangwa akorere undi muntu ibinyuranyije n'amategeko cyangwa areke gukora ibiri mu nshingano ze, ahanishwa igifungo kirenze imyaka itanu kugeza ku myaka irindwi n'ihazabu y'amafaranga y'u Rwanda yikubye inshuro kuva kuri ebyiri kugeza ku icumi z'agaciro k'indonke yatanze cyangwa yashatse gutanga.

---

[1]*Icyakora, icyaha cyakozwe mbere y''uko iri tegeko ngenga ritangazwa mu Igazeti ya Leta ya Repubulika y'u Rwanda gihanwa hakurikijwe itegeko ryakigengaga keretse mu gihe iri tegeko ngenga riteganya ibihano byorohereje*

(18) Urukiko rurasanga kuba MIGAMBI yemera icyaha ku buryo bweruye kandi agaragaza umutima wicuza, nta n'icyaha yigeze akurikiranywaho n'inkiko ngo kimuhame ibi bigize impamvu nyoroshyacyaha zituma agabanyirizwa ibihano yahawe nk'uko biteganywa n'ingingo ya 78 agace ka 3 y'itegeko Ngena Nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, bityo akaba yahanishwa igifungo cy'imyaka itatu ku cyaha kimuhama cyo gutanga ruswa.

III. ICYEMEZO CY'URUKIKO.

(19) **Rwemeje** ko ubujurire bwa MIGAMBI Aloys bufite ishingiro kuri bimwe.

(20) **Ruvuze** ko imikirize y'urubanza RPA0094/10/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi, ihindutse ku byerekeye ibihano n'icyaha cyo gupfobya jenoside ahanaguweho.

(21) **Ruhanishije** MIGAMBI Aloys igifungo cy'imyaka itatu (3 ans).

(22) **Rutegetse** ko amagarama y'uru rubanza aherera ku Isanduku ya Leta kuko uwajuriye afunze.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 21/06/2013.

Se
MUGENZI Louis Marie
Perezida

Se	**Se**
KAYITESI R.Emily	**MUNYANGERI N. Innocent**
Umucamanza	**Umucamanza**

Se
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

2. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RPAA0229/09/CS

ITARIKI Y'URUBANZA: 26/04/2013

HABURANA : MP C/ NTAMBARA

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA
RAPORO Y'UMUHANGA - UGUSHIDIKANYA K'UMUHANGA - KUTABIFATA NK'UGUSHIDIKANYA KURENGERA USHINJWA GUTEGANYIJWE N'AMATEGEKO.

KUBA UMUHANGA ATEMEZA KO IGIKORWA RUNAKA KIGIZE ICYAHA CYABAYEHO - KUTABIFATA UBWABWO NK'IMPAMVU ITUMA HEMEZWA KO ICYAHA KITABAYEHO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Ugushidikanya k'umuhanga ntigushobora kwitiranywa n'ugushidikanya kurengera uregwa, ahubwo umucamanza niwe ufite ububasha bwo gushishoza akareba niba uko gushidikanya koko kuriho.

- Kuba Muganga yarashidikanyije mu kwemeza cyangwa ngo ahakane ko habayeho gusambanya umwana, ntibihagije ubwabyo ngo hemejwe nta cyaha cyo gusambanya umwana cyabayeho.

URUKIKO RW'IKIRENGA, RURI I KIGALI RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA, RUKIJIJE MU RUHAME, URUBANZA Nº RPAA 0229/09/CS KUWA 26/04/2013 MU BURYO BUKURIKIRA:

HABURANA:

UBUSHINJACYAHA

Na

NTAMBARA, mwene MUKARAGE Aloys na MUKANGERI Beata wavutse 1990, avukira mu Kagari ka Bicumbi, Akarere ka Gasabo, ubu akaba atuye mu Kagari ka Gihara, Umurenge wa Runda, Akarere ka Kamonyi, Intara y'Amajyepfo.

ICYAHA AREGWA:

Kuba tariki ya 15/09/2007, NTAMBARA ari mu Kagari ka Gihara, Umurenge wa Runda mu Karere ka Kamonyi, Intara y'Amajyepfo, yarakoze icyaha cyo gusambanya umwana w'imyaka ibiri y'amavuko, icyaha giteganywa kandi kigahanishwa ingingo ya 33 na 34 z'itegeko Nº27/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa.

III. IMITERERE Y'URUBANZA.

(1) NTAMBARA yaketsweho icyaha cyo kuba yarasambanyije umwana w'umukobwa witwa SABATONZIZA Alice w'imyaka 2 y'amavuko, ubwo yari ajyanye nawe kwahira ubwatsi maze akamusambanyiriza kwa Lazaro akanamusigayo, umwana akaza yigunze bamubaza akavuga ko ari NTAMBARA wamusambanyije.

(2) Urukiko Rwisumbuye rwa Muhanga rwaregewe rwaciye urubanza, rwemeza ko NTAMBARA ahamwa n'icyaha aregwa, rumuhanisha igifungo cy'imyaka icumi.

(3) NTAMBARA yajuririye Urukiko Rukuru, Urugereko rwa Nyanza avuga ko Urukiko Rwisumbuye rwamuhamije icyaha atakoze rugendeye ku cyemezo cya Muganga nyamara kirimo ugushidikanya, urwo rukiko rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

(4) Na none NTAMBARA yajuririye Urukiko rw'Ikirenga avuga ko Urukiko rwamuhamije icyaha nta bimenyetso bikimuhamya rushingiyeho. Ubushinjacyaha bwo buvuga ko NTAMBARA yahamijwe icyaha hashingiwe ku bimenyetso bihagije kandi bidashidikanywaho.

(5) Urubanza rwaburanishijwe mu ruhame kuwa 27/03/2013, NTAMBARA yitabye yunganiwe na Me RUMENGE Nkundimana Victor naho Ubushinjacyaha buhagarariwe na NTAWANGUNDI Beatrice.

IV. IKIBAZOKIGIZEURUBANZAN'ISESENGURA RYACYO.

Kumenya niba hari ibimenyetso bihamya NTAMBARA icyaha ashinjwa.

(6) NTAMBARA avuga ko Urukiko Rukuru rwamuhamije icyaha atigeze akora, rushingiye ku cyemezo cya Muganga kirimo gushidikanya kuko Muganga wagikoze yivugira ko adashobora kwemeza cyangwa guhakana ko habayeho gusambanya umwana. Asobanura ko abatangabuhamya babajijwe batigeze bavuga ibyo babonye, ko ahubwo bavuze ibyo bumvanye abandi.

(7) Avuga ko Muganga yemeje ko habayeho kugerageza imibonano mpuzabitsina, ko ariko NTAMBARA abona bidashoboka kuko hakurikijwe imyaka umwana yari afite, gutegura igikorwa cy'imibonano mpuzabitsina kidashoboka.

(8) Me RUMENGE Nkundimana Victor nawe avuga ko nta cyaha cyo gusambanya umwana cyabayeho, ko rero uwo yunganira yagombye kugirwa umwere hashingiwe ku ngingo ya 153 y'itegeko Nº13/2004 ryo kuwa 13/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko gushidikanya birengera uregwa, cyane ko nta mutangabuhamya n'umwe wigeze amufatira mu cyuho asambanya uwo mwana, ko ahubwo bavuze ibyo bumvanye abandi.

(9) Uhagarariye Ubushinjacyaha avuga ko Muganga atari we ugomba gufata umwanzuro uhamya NTAMBARA icyaha aregwa kuko atari umuhanga mu mategeko. Avuga ko hashingiwe ku ngingo ya 33 y'itegeko Nº27/2001 ryo kuwa 28/04/2001 ryerekeye uburenganzira bw'umwana

n'uburyo bwo kumurinda ihohoterwa, ibyo NTAMBARA yakoze bigize icyaha cyo gusambanya umwana.

(10) Avuga ko kandi NTAMBARA wasambanyije uriya mwana bari bonyine ari nawe uzi icyo yakoresheje n'uburyo yabikozemo, ko rero hakurikijwe ibiteganywa n'iyi ngingo y'itegeko imibonano yose uko yaba ikoze kose n'icyo yaba ikoreshejwe cyose byitwa gusambanya umwana.

(11) Uhagarariye Ubushinjacyaha avuga na none ko ibyo NTAMBARA avuga ko nta wamubonye asambanya umwana, ko ahubwo bamubonye ajyanye na we kwa Lazaro, arangwa no kwivuguruza kubera ko mbere yari yahakanye ko atamujyanye kwa Lazaro, nyamara muri uru rukiko akaba abyemera kandi binahura n'ibyo abatangabuhamya bavuze. Asobanura ko NTAMBARA yamujyanye kwa Lazaro kubera ko yari azi ko badahari kugira ngo abone uko amusambanya, yarangiza akajijisha amutumaho abandi bana ngo bajye kumushaka aho yamusize.

UKO URUKIKO RUBIBONA.

(12) Icyemezo cya Muganga cyakozwe na Dr UZABAKIRIHO Florence kuwa 29/08/2007 cyemeza ko ku gitsina cy'umwana hagaragaye udusebe duto, ko n'ubwo habayeho kugerageza imibonano mpuzabitsina adashobora kwemeza cyangwa ngo ahakane ko habayeho gusambanya umwana ku ngufu.

(13) Ingingo ya 76 y'itegeko Nº15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso n'itangwa ryabyo mu manza igira iti: «Ubuhamya bw'abahanga ni ubugamije guha urukiko ibisobanuro bishingiye ku bumenyi kimwe n'umwanzuro

urenze ubumenyi busanzwe bw'umucamanza mu kazi ke bitewe n'uko ibiburanwa bishingiye ku buhanga bwihariye».

(14) Ibivugwa muri iyi ngingo ni nabyo bishimangirwa n'abahanga mu mategeko nka HENRI-D-BOSLY na DAMIEN VENDREMEERSCH mu gitabo cyabo cyitwa Droit de la Procédure Pénale ku rupapuro rwa 418, aba bahanga bakomeza bavuga ko ugushidikanya k'umuhanga kutakwitiranywa n'ugushidikanya kurengera ushinjwa, ko umucamanza ari we ufite ububasha bwo gushishoza akareba niba uko gushidikanya koko kuriho[2].

(15) Urukiko rurasanga kuba Muganga yarashidikanyije mu kwemeza cyangwa guhakana ko habayeho ugusambanywa umwana bitagenderwaho kugira ngo hemezwe ko icyaha cyo gusambanya umwana kitakozwe, kuko muri raporo ye yabonye ko ku gitsina hariho udusebe nk'uko na nyina w'umwana yabivuze. Yanavuze ko habaye kugerageza imibonano mpuzabitsina, icyo atamenye ni uko kugerageza gutyo ku mwana biba ari ukumusambanya byuzuye.

(16) Kuba byaba kugeragezwa rero bikaba bitabuza kwemeza ko icyaha cyakozwe kuko, ingingo ya 33 y'itegeko Nº27/2001 ryo kuwa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa iteganya ko imibonano yose mpuzabitsina cyangwa ishingiye ku bitsina ikorewe umwana uko yaba ikozwe kose, n'icyaba cyakoreshejwe cyose, ari icyaha cyo gusambanya umwana.

(17) Urukiko rurasanga kandi ibyo NTAMBARA aburanisha avuga ko abatangabuhamya bavuze ibyo bumvise ku

[2] *Ainsi le doute émis par un expert ne constitue pas ipso facto le doute qui doit profiter à l'inculpé, le juge restant libre d'apprécier l'existence de ce doute*

bandi nta shingiro bifite, kubera ko NAMBAJIMANA yatumye kuzana SABATONZIZA yemeza ko yasanze yicaye yigunze, yamubaza icyo yabaye akavuga ko NTAMBARA yamusambanyije, MUKANDAMUTSA nyina w'umwana nawe akaba yemeza ko yagiye kumukarabya akamubwira ko arimo kubabara yamubaza icyamubayeho agasubiza ko NTAMBARA yamusambanyije.

(18) Urukiko rurasanga NTAMBARA ahamwa n'icyaha cyo gusambanya umwana SABATONZIZA Alice, hashingiwe ku cyemezo cya muganga no kuba atarashoboye kwerekana impamvu yatumye amujyana kwa Lazaro azi ko nta muntu uriyo yarangiza akamusigayo, kumusigayo wenyine bikaba nta kindi cyabimuteye uretse guhunga icyaha yari amaze gukora cyo kumusambanya, bityo akaba agomba kugihanirwa hashingiwe ku ngingo ya 34 y'itegeko ryavuzwe iteganya ko umuntu wese uzaba yasambanyije umwana utarageza ku myaka cumi n'ine y'amavuko azahanishwa igifungo cya burundu n'ihazabu y'amafaranga kuva ku bihumbi ijana kugeza ku bihumbi magana abiri.

V. ICYEMEZO CY'URUKIKO.

(19) **Rwemeje** ko ubujurire bwa NTAMBARA nta shingiro bufite.

(20) **Ruvuze** ko imikirize y'urubanza RPA 0185/08/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyaza, idahindutse.

(21) **Rutegetse** ko amagarama y'urubanza aherera ku isanduku ya Leta, kuko uwajuriye afunze.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 26/04/2013.

Se
MUGENZI Louis- Marie
Perezida

Se	**Se**
HATANGIMBABAZI Fabien	**MUNYANGERI N. Innocent**
Umucamanza	**Umucamanza**

Se
MUNYANDAMUTSA Jean Pierre
Umwanditsi w'Urukiko

3. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RPA0033/11/CS

ITARIKI Y'URUBANZA: 14/09/2012

HABURANA : MP C/ NYAWERA Célestin

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA- INYITO Y'ICYAHA-KUYIHINDURA IYO IGIKORWA CYAKOZWE KIDAHUYE N'IBYO AMATEGEKO ATEGANYA-UBURENGANZIRA BW'UMUCAMANZA.

KWEMERA ICYAHA KIDAHUYE N'ICYO URUKIKO RWEMEJE-KUTABIFATA NKO KWEMERA ICYAHA MU BURYO BUDASHIDIKANYWAHO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Guhindura inyito y'icyaha ku mucamanza ni uburenganzira bwe ndetse n'inshingano afite, mu gihe igikorwa cyakozwe kidahuye n'ibyo amategeko ateganya.

- Ntibyafatwa nko kwemera icyaha mu buryo budashidikanywaho mu gihe icyaha uregwa yemera gitandukanye n'icyaha cyamuhamye.

- Kuba uregwa adashobora kugabanyirizwa igihano kubera ko icyaha yemeraga mu rwego rwa mbere kidahuye n'icyamuhamye, ntibibuza ko ashobora kugabanyirizwa igihano mu rwego rw'ubujurire mu gihe bigaragaye icyamuhamye atari cyo yakoze (guhamwa n'ubwinjiracyaha bw'ubuhotozi nyamara ari ubwinjiracyaha bw'ubwicanyi)

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA, RUHAKIRIJE MU RUHAME URUBANZA RPA 0033/11/CS KUWA 14/09/2012, MU BURYO BUKURIKIRA :

<u>HABURANA</u> :

Ubushinjacyaha

na

NYAWERA Célestin (uwajuriye), mwene RWANJONGO Malakiya na MUKAKABARAGA Anastasie, wavutse mu 1956, utuye mu Kagari ka MUSASA, Umurenge wa Gashali, Akarere ka KARONGI, Intara y'Iburengerazuba.

Uregera indishyi : SIMPUNGA Dominique mwene RWANJONGO na MUKAKABARAGA, wavutse mu 1953, utuye Akagari ka Musasa, Umurenge wa Gashali, Akarere ka Karongi, Intara y'Iburengerazuba

Ikiregerwa : Kujurira urubanza RP 0040/08/HC/RSZ rwaciwe kuwa 02/04/2009 n'Urukiko Rukuru Urugereko rwa Rusizi.

Icyaha NYAWERA akurikiranyweho:

Kuba kuwa 23/09/2007, yaratemye SIMPUNGA inshuro eshatu ku gikanu no mu maso inshuro ebyiri, icyaha cyateganywaga kandi kigahanishwa ingingo ya 320 Itegeko-Teka N°21/77 ryo ku wa 18 Kanama 1977 rishyiraho Igitabo cy'amategeko ahana.

I. IMITERERE Y'URUBANZA

[1] Urugereko rw'Urukiko Rukuru rwa Rusizi rumaze guhamya NYAWERA Célestin Ubwinjiracyaha cy'ubuhotozi, kubera ko yatemye SIMPUNGA Dominique ku ijosi no mu maso, rukamuhanisha igifungo cy'imyaka icumi, runamuca indishyi zihwanye n'amafaranga 560.000Frw. NYAWERA yajuririye Urukiko rw'Ikirenga, avuga ko yemeye icyaha akagisabira imbabazi ariko agahabwa ibihano bihanitse, kuba yarahanwe ku cyaha cy'ubwinjiracyaha mu buhotozi kandi ataricyo yarezwe mu Bugenzacyaha n'Ubushinjacyaha, ndetse no kuba urukiko rwaraciye urubanza rugendeye ku mvugo z'ibinyoma zavuzwe n'uregera indishyi.

[2] Urubanza rwaburanishijwe mu ruhame kuwa 25/07/2012, NYAWERA yiburanira, Ubushinjacyaha buhagarariwe na Béatrice NTAWANGUNDI, na SIMPUNGA uregera indishyi yitabye.

VI. IBIBAZO KIGIZE URUBANZA N'ISESENGURWA RYABYO

A. KUMENYA NIBA ICYAHA NYAWERA YAHAMIJWE ATARICYO YARI YAREZWE

[3] NYAWERA avuga ko kuva yafatwa, haba mu Bugenzacyaha no mu Bushinjacyaha, yaregwaga icyaha cyo gukubita no gukomeretsa bikomeye, nyuma mu guca urubanza, Urukiko rukamuhamya icyaha cy'ubwinjira cyaha cy'ubuhotozi, we akabibonamo ukwivuguruza gukabije k'Urukiko.

[4] Uhagarariye Ubushinjacyaha avuga ko nta na kimwe cyahindutse ku cyaha cyakozwe usibye guha inyito ibyaha yakoze bigahuzwa n'amategeko, ibyo bikaba byarakozwe n'Umucamanza w'Urukiko rw'Ibanze rwa Gashari kandi n'amategeko akaba abimwemerera mu gihe Umushinjacyaha atabikoze.

[5] Uhagarariye Ubushinjacyaha ashingiye ku bitekerezo by'umuhanga mu by'amategeko witwa Nyabirungu mwene Songa mu gitabo cye «Droit pénal zaïrois, 1989, P 110-111» wemeje ko icyaha cy'ubwinjiracyaha cy'ubuhotozi kirangwa n'intwaro yakoreshejwe kimwe n'ahatemwe, abona NYAWERA aricyo cyaha kimuhama kubera ko yakoresheje intwaro yica (umuhoro), akubita mu cyico (ku gikanu). Yakomeje avuga ko bigaragara ko yari afite umugambi wo kwica akawuteshwa n'abatabaye.

[6] Urukiko rusanga guhindura inyito y'icyaha ku mucamanza ari uburenganzira ndetse n'inshingano afite, mu gihe igikorwa cyakozwe kidahuye n'ibyo amategeko ateganya[3], bityo rero kuba NYAWERA yarakurikiranwaga n'Ubushinjacyaha ku gukubita no gukomeretsa ariko nyuma Umucamanza akaza gusanga hari ibigize icyaha byirengagijwe agahindura inyito y'icyaha nta tegeko yishe, ikibazo gusa kikaba icyo kureba niba inyito yatanze ariyo yari ikwiye.

[7] Ku byerekeye uburyo icyaha cyakozwe, SIMPUNGA avuga ko yari kumwe n'abaturage bari baje mu kibazo cy'umuhungu we na NYAWERA, nyuma aza kubasiga

[3] *Reba urubanza RPAA 0117/07/CS rwaciwe n'Urukiko rw'Ikirenga rw'u Rwanda ku wa 17Nzeri 2010, haburana Ubushinjacyaha na Cpl Ngabonziza.*

anyarukiye iwe, ageze ku irembo ryo kwa NYAWERA uyu amubaza icyo akora ku irembo rye maze ahita amutema.

[8] NYAWERA we avuga ko yamutemye abitewe n'uko yamusanze mu rugo rwe akamucyurira ko arwaye Sida kandi ko azapfa ari incike nta gahungu asize, bikabaviramo kugundagurana aribwo yamutemesheje umuhoro yari agiye kwahiza ibyatsi by'amatungo.

[9] Urukiko rurasanga igikorwa NYAWERA ubwe yiyemerera ko yakoze cyo gukubita SIMPUNGA umuhoro (intwaro yica) ku gice cy'umutwe (mu cyico) kandi agatema ubugira kabiri nk'uko raporo ya muganga ibigaragaza bitagize icyaha cyo gukubita no gukomeretsa gusa, kuko harebwe aho yatemaga, igikoresho yakoreshaga,n'inshuro yatemye, nta gushidikanya ko yari afite ubushake bwo kwica umuntu, bikaba byarabujijwe n'uko abantu batabaye maze bagahagarika igikorwa cye, bityo akaba ahamwa n'ubwinjiracyaha mu bwicyanyi, bwateganywaga n'ingingo za 21, 22 na 311 z'Igitabo cy'amategeko ahana cyahozeho ubwo icyaha cyakorwaga.

[10] Urukiko rugendeye kuri ibyo bisobanuro, rurasanga n'ubwo bigaragara ko NYAWERA yatemye SIMPUNGA afite ubushake bwo kumwica, ntacyerekana ko yabikoze yabigambiriye cyangwa yateze igico nk'uko Urukiko Rukuru rwabyemeje, bikaba ahubwo byaraturutse ku magambo mabi bavuganye ubwo SIMPUNGA yari amusanze mu rugo rwe, kandi akamutemesha umuhoro yari afashe ako kanya.

B. KU KIBAZO CYO KUMENYA NIBA NYAWERA YABA YAREMEYE ICYAHA ARIKO NTAGABANYIRIZWE IBIHANO.

[11] NYAWERA avuga ko atigeze arushya ubutabera kuva yafatwa, ko yaburanye yemera icyaha, yicuza kandi asaba n'imbabazi, ariko Urukiko rukabirengaho rukamuhanisha ibihano bihanitse.

[12] Uhagarariye Ubushinjacyaha avuga ko NYAWERA yagabanyirijwe ibihano kuko yahanishijwe igifungo cy'imyaka cumi kandi yaragombaga guhanishwa igifungo cya burundu ku cyaha cy'ubwinjiracyaha mu buhotozi nkuko byateganywaga n'ingingo ya 312 y'Igitabo cy'amategeko ahana.

[13] Urukiko rurasanga mu gihe icyaha NYAWERA yahamijwe ari icy'ubwinjiracyaha mu buhotozi, icyo we yemeraga ari ugukubita no gukomeretsa, ntiyavuga ko ukwemera kwe kwagombaga guhabwa agaciro kandi icyo avuga yemera atari cyo kimuhama. Binagaragara kandi mu mikirize y'urubanza ko kuba yarahanishijwe igihano cy'imyaka icumi ari uko ari uko rwamugabanyrije ibihano rusobanura ko ataruhije ubutabera.

[14] Urukiko rurasanga, niba NYAWERA atagabanyirizwa ibihano hashingiwe ku kwemera icyaha kuko ikimuhama ataricyo yemera, atabura kugabanyirizwa igihano cy'imyaka icumi yahawe n'Urukiko Rukuru rwamuhamije ubwinjiracyaha mu buhotozi, nyamara bikaba bigaragaye ko ubwinjira cyaha yakoze ari ubw'ubwicanyi. Igihano

yahawe cyava ku myaka icumi, kigashyirwa ku myaka itanu.

C. KUBYEREKEYE INDISHYI.

[15] SIMPUNGA avuga ko Urukiko rwamugeneye amafaranga make akurikije

ayo yakoresheje yivuza n'ubumuga yakuyemo, ko yivuje i Kirinda kuri 80.000 frw, i Kabgayi kuri 60.000 frw, mu Birambo agatanga 37.000 frw, kandi ko agikomereka yakodesheje imodoka akagura n'amafunguro bikamutwara amafaranga arenga 100.000, gukurikirana urubanza bikamutwara hafi 200.000 frw, naho kuba yaratemwe byaramuruhije bikageza aho afunga akabari yacururizagamo ndetse akaba yaragize n'ubumuga akaba abisabira indishyi za 3.000.000 frw.

[16] NYAWERA avuga ko aho SIMPUNGA yivuje ari hafi akaba yaratahaga mu rugo, ko n'amafaranga yakoresheje atarenze 20.000 frw, naho indishyi z'ubumuga akaba asanga zitarenga 30.000 frw.

[17] Urukiko rurasanga ibyo SIMPUNGA yaka mu rwego rw'indishyi bidaherekejwe n'ibimenyetso bifatika byaherwaho mu kuzibara, mu bushishozi bwarwo rugasanga yazigenerwa nk'uko Urukiko Rukuru rwazemeje kuko ziri mu rugero nk'uko rwabisobanuye rukagena 80.000 frw yo kwivuza, 80.000 frw y'ingendo, 400.000 frw y'indishyi z'akababaro yatewe no kwangizwa mu mutwe

no ku mubiri, kuri izo ndishyi yagenewe mbere, hakaba hakwongerwaho 150.000 frw y'ikurikiranarubanza, yose hamwe akaba 710.000 frw.

III. ICYEMEZO CY'URUKIKO

[18] Rwemeje ko ubujurire bwa NYAWERA Célestin bufite ishingiro kuri bimwe;

[19] Rwemeje ko NYAWERA ahamwa n'icyaha cy'ubwinjiracyaha mu bwicanyi aho kuba mu buhotozi;

[20] Ruhanishije NYAWERA igifungo cy'imyaka itanu;

[21] Rumugetse NYAWERA guha SIMPUNGA Dominique indishyi zingana na 710.000 frw.

[22] Rumutegetse gutanga 4% y'umusogongero wa Leta ku ndishyi za 710.000 frw aciwe, ni ukuvuga 28.400 frw.

[23] Rutegetse NYAWERA gutanga, mu gihe cy'iminsi umunani icya ½ cy'amagarama y'uru rubanza angana na 36.050 frw, ni ukuvuga 18.025 frw.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 14/09/2012.

Sé
MUGENZI Louis- Marie
Perezida

Sé
MUKANDAMAGE M.Josée
Umucamanza

Sé
MUNYANGERI Innocent
Umucamanza

Sé
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

IMANZA Z'IMBONEZAMUBANO

4. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCAA0114/11/CS
ITARIKI Y'URUBANZA: 21/06/2013

HABURANA: Association APECOM C/NYIRINGANGO Emmanuel.

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO – GUSESA AMASEZERANO YASINYWE HAGATI Y'UMUYOBOZI W'IKIGO N'UNDI MUNTU BIKOZWE NA PEREZIDA W'INAMA Y'UBUTEGETSI – KUBA UNDI MUNTU ATARASHOBORAGA KUMENYA IMIKORERE Y'IKIGO N'UBUBASHA BWA PEREZIDA W'INAMA Y'UBUTEGETSI N'UBW'UMUYOBOZI W'IKIGO - KUBITANGIRA INDISHYI KUBERAKO ABA ASESHWE MU BURYO BUDAKURIKIJE AMATEGEKO.

GUKORANA AMASEZERANO N'USA N'AHO AFITE UBUTUMWA – KWIBWIRA KO UWO MUGIYE GUSINYANA AYO MASEZERANO AFITE UBUTUMWA YAHAWE N'IKIGO AYOBOYE – KUBA UKO GUSA NK'AHO UBUTUMWA BUHARI KUDATUMA UNDI MUNTU ATAGENZURA UBUBASHA BW'UWO BAGIYE GUSINYANA – AYO MASEZERANO AGOMBA KUBAHIRIZWA UKO YAKABAYE N'USA N'UWATANZE UBWO BUTUMWA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Perezida w'inama y'ubutegetsi usheshe amasezerano yitwaje ko ayo masezerano yasinywe hagati y'umuyobozi w'ikigo na rwiyemezamirimo ikigo gishobora kubitangira indishyi, iyo bigaragaye ko rwiyemezamirimo yari asanzwe agirana amasezerano n'umuyobozi w'ikigo, akaba kandi atarashoboraga kumenya imikorere y'ikigo ku buryo yamenya ububasha bw'umuyobozi bw'ikigo n'ubwa Perezida w'inama y'ubutegetsi mu bijyanye no gusinya amasezerano.

Mu bihe bisa nk'aho hari ubutumwa, undi muntu ashobora kwibwira ko uwo bagiye kugirana amasezerano yabiherewe ubutumwa, kandi iyi myumvire ye ishobora gutuma undi muntu atagenzura ububasha bw'uwo bagiye gusinyana amasezerano, amasezerano akozwe muri ubu buryo agomba kubahirizwa uko yakabaye n'usa n'uwatanze ubwo butumwa.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'IMBONEZAMUBANO, RUHAKIRIJE MU RUHAME URUBANZA RCAA 0114/11/CS, KUWA 21/06/2013, MU BURYO BUKURIKIRA:

HABURANA:

UWAJURIYE:

ASSOCIATION APECOM, ikorera mu Mudugudu w'Akabingo, Akagari ka Gakenke, Umurenge wa Kiramuruzi, Akarere ka Gatsibo, Intara y'Iburasirazuba, ihagarariwe na Me Shema Gakuba Charles.

UREGWA:

NYIRINGANGO Emmanuel, mwene Rwicaninyoni na Mukarushema, wavutse mu mwaka wa 1965, utuye mu Mudugudu w'Akabingo, Akagari ka Gakenke, Umurenge wa Kiramuruzi, Akarere ka Gatsibo, Intara y'Iburasirazuba, ahagarariwe na Me Mbonyimpaye Elias.

IKIBURANWA: Igihombo gitewe na APECOM kubera kwiha gutesha agaciro amasezerano twagiranye.

IKIREGERWA: Kujuririra urubanza RCA 0002/11/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, kuwa 08/09/2011.

I. IMITERERE Y'URUBANZA

[1] Kuwa 12/01/2009, Collège APECOM, ihagarariwe n'Umuyobozi wayo, Nyandwi Aimé Frodouard, yagiranye amasezerano na Rwiyemezamirimo witwa Nyiringango Emmanuel, nyiri Home Uburezi-bwiza, yo gucumbikira no kugaburira abanyeshuri b'abahungu mu gihe cy'umwaka wose wa 2009.

[2] Muri ayo masezerano, impande zombi zumvikanye ko buri mwana aziyishyurira cyangwa azishyurirwa n'umushinga 30.000 Frw buri gihembwe, ko mu gihe umwana wishyurirwa n'umushinga atishyuye, ishuri rizishyura Nyiringango Emmanuel ayo mafaranga. Ikindi n'uko Collège APECOM yagombaga guha Nyiringango 1.000 Frw kuri buri mwana yo gusana ibyo abanyeshuri bazaba bangije muri uwo mwaka.

[3] Kuwa 28/04/2009, Rwigamba Célestin, Perezida w'Inama y'Ubutegetsi ya Association APECOM yandikiye Nyiringango Emmanuel ibaruwa amumenyesha ko atesheje agaciro ayo masezerano kubera ko Nyandwi Aimé Frodouard, bayagiranye atari afite ububasha bwo gusinya ayo masezerano mu izina rya Association APECOM mu gihe itari yabimuhereye uburenganzira, kandi ko ayo masezerano agamije guhombya Association APECOM, kuko yamuhaye amafaranga ya "caution" anemera ko azamwishyura amafaranga y'abanyeshuri bazaba banze kwishyura amafaranga yabo.

[4] Kuwa 29/04/2009, Mugenzi Frédéric, Umuyobozi w'agateganyo wa Collège APECOM, yatanze itangazo rihamagarira abanyeshuri bacumbitse muri Home Uburezi-bwiza kwihutira kugera mu Kigo kugira ngo berekwe aho bazacumbikirwa kubera ko amasezerano yavuzwe haruguru yasheshwe.

[5] Nyiringango Emmanuel yareze Association APECOM mu Rukiko Rwisumbuye rwa Nyagatare asaba ko yamuha indishyi zose hamwe zingana na 44.987.556 Frw kubera ko yasheshe ayo masezerano bikamutera igihombo. Urwo Rukiko rwategetse Association APECOM guha Nyiringango Emmanuel indishyi zingana na 12.880.000 Frw, ikanatanga 300.000 Frw y'igihembo cya Avoka.

[6] Association APECOM yajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, rwemeza ko urubanza rwajuririwe rudahindutse.

[7] Association APECOM yajuririye Urukiko rw'Ikirenga ivuga ko itateje Nyiringango Emmanuel igihombo kuko Nyandwi Aimé Frodouard, wari Umuyobozi wa Collège APECOM, atari afite ububasha bwo gusinya amasezerano bagiranye atabiherewe uburenganzira na Association APECOM, naho Nyiringango Emmanuel akavuga ko iyo Association yamuteje igihombo kuko yatesheje agaciro ayo masezerano, kandi ko Nyandwi Aimé Frodouard bayagiranye yari afite ububasha bwo gusinya ayo masezerano mu izina ryayo.

[8] Urubanza rwaburanishijwe mu ruhame kuwa 30/04/20013, Association APECOM ihagarariwe na Me Shema Gakuba Charles, naho Nyiringango Emmanuel ahagarariwe na Me Mbonyimpaye Elias.

II. <u>IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO</u>:

1. <u>Kumenya niba amasezerano yo kuwa 12/01/2009, Collège APECOM yagiranye na Nyiringango Emmanuel yaragombaga guseswa</u>

[9] Uburanira Association APECOM avuga ko Urukiko Rukuru rutagombaga kugenera Nyiringango Emmanuel indishyi zingana na 13.180.000 Frw kandi Nyandwi Aimé Frodouard, wari Umuyobozi wa Collège APECOM, bagiranye amasezerano yo kuwa 12/01/2009, atari afite ububasha bwo gusinya ayo masezerano mu gihe atari yabiherewe uburenganzira na Perezida w'Inama y'Ubutegetsi w'iyo Association.

[10] Avuga kandi ko urwo Rukiko rwirengagije ko Association APECOM itishyuraga Nyiringango Emmanuel amafaranga y'ibiryo n'ay'icumbi ishingiye kuri ayo masezerano, ko ahubwo yamwishyuraga izo serivisi ihereye ku byo Nyandwi Aimé Frodouard wari Umuyobozi w'ishuri yabaga yasabye (réquisitions), ariko ko yamwirukanye bituma imenya ko yari yarasinye amasezerano yo kuwa 12/01/2009, maze Perezida w'Inama y'Ubutegetsi ya Association APECOM asesa ayo masezerano kuko atari yabimuhereye ububasha.

[11] Anavuga ko urwo Rukiko rwategetse Association APECOM kwishyura Nyiringango Emmanuel izo ndishyi, rwirengagiza ko yagaburiraga n'abanyeshuri bo muri CFJ, bikayiteza igihombo. Yongeraho ko niba Nyiringango yumva yaragize igihombo, yarega Nyandwi Aimé Frodouard ku giti cye kugira ngo amwishyure indishyi z'igihombo yaba yaramuteje hashingiwe ku ngingo ya 33 CCLIII, aho kuzishyuza Association APECOM batagiranye amasezerano.

[12] Uburanira Nyiringango Emmanuel avuga ko Association APECOM ikwiye kumwishyura 13.180.000 Frw y'indishyi kubera ko Nyandwi Aimé Froduard bagiranye amasezerano yo kuwa 12/01/2009 yari afite ububasha bwo kuyasinya kubera ko yari ashinzwe n'imibereho myiza y'abanyeshuri, naho Perezida w'Inama y'Ubutegetsi ya Association APECOM akaba yari ashinzwe guhagararira iyo Association muri rusange.

[13] Anavuga ko Association APECOM yamwishyura izo ndishyi bitewe n'uko yanamwishyuye igihembwe cya mbere cyo mu mwaka wa 2009 hashingiwe ku masezerano yavuzwe haruguru, kandi ko Perezida w'Inama y'Ubutegetsi ya Association APECOM yigeze kumusinyira amasheki azi neza ko arimo kumwishyura amafaranga y'ibiryo n'ay'icumbi y'abanyeshuri babaga muri Home Uburezi-bwiza nk'uko bigaragazwa n'amasezerano atandukanye ari muri dosiye arimo amasezerano yo kuwa 20/05/2008,

yari yaragiranye na Nyandwi Aimé Frodouard wayoboraga Collège APECOM hamwe n'ayo kuwa 20/01/2006, yari yaragiranye na Nkwaya Wellars yasimbuye kuri uwo mwanya.

UKO URUKIKO RUBIBONA

[14] Urukiko rurasanga ibyo uburanira Association APECOM avuga y'uko Nyandwi Aimé Frodouard, wari Umuyobozi (Directeur) wa Collège APECOM, atari afite ububasha bwo gukorana amasezerano na Nyiringango Emmanuel, nyiri Home Uburezibwiza, nta shingiro bifite, kubera ko amasezerano anyuranye ari muri dosiye agaragaza ko uyu yari asanzwe agirana amasezerano yo gucumbikira no kugaburira abanyeshuri n'abayobozi batandukanye ba Collège APECOM akishyurwa kugeza n'ubwo yishyuwe n'amafaranga y'igihembwe cya mbere cy'umwaka wa 2009 hakaba hari hasigaye gusa ay'ibihembwe bibiri byo muri uwo mwaka bitari bishyurwa.

[15] Ayo masezerano ni aya akurikira:

- Amasezerano yo kuwa 12/01/2009 aburanwa muri uru rubanza yabaye hagati ya Nyandwi Aimé Frodouard, wari Umuyobozi (Directeur) wa Collège APECOM, na Nyiringango Emmanuel, nyiri Home Uburezi-bwiza, yo gucumbikira no kugaburira abanyeshuri b'abahungu mu gihe cy'umwaka wa 2009. Muri aya masezerano, ababuranyi bombi bemeranywa

ko Association APECOM yishyuye Nyiringango Emmanuel amafaranga y'igihembwe cya mbere cyo muri uwo mwaka, usibye gusa ko Association APECOM ivuga ko itari izi ko serivisi yamwishyuraga zari zishingiye kuri ayo masezerano.

- Amasezerano yo kuwa 20/05/2008, Nyiringango Emmanuel yari yaragiranye na Nyandwi Aimé Frodouard ahagarariye Collège APECOM, yo gucumbikira no kugaburira abanyeshuri b'abakobwa babaga muri iyo Home mu mwaka wa 2008, kandi "autorisation de retrait bancaire" yo kuwa 06/04/2011 n'iyo kuwa 22/04/2011 zigaragaza ko Collège APECOM yishyuye Nyiringango Emmanuel amafaranga 147.200 na 2.000.000 Frw y'umwenda yari imubereyemo yo muri uwo mwaka.
- Amasezerano yo kuwa 20/01/2006 yabaye hagati ya Nkwaya Wellars wari Umuyobozi wa Collège APECOM, na Nyiringango Emmanuel yo gucumbikira no kugaburira abanyeshuri 107 mu mwaka wa 2006. Nyiringango Emmanuel yemeje ko yishyuwe ayo mafaranga, nyamara uburanira Association APECOM ntiyabasha kumuvuguruza.

[16] Urukiko rurasanga kandi usibye ayo masezerano, hari n'amasezerano yo kuwa 01/12/2008 yabaye hagati ya Nkwaya Wellars wari uhagarariye Collège APECOM na Rwiyemezamirimo witwa Kambanda Philippe yo kudodera abanyeshuri imyenda y'ishuri (uniformes), kandi uyu yishyuwe ayo mafaranga hakurikijwe uko abo banyeshuri bagendaga bagura iyo myenda.

[17] Byongeye kandi, Urukiko rurasanga kuba Nyiringango Emmanuel nka Rwiyemezamirimo atarashoboraga kumenya imikoranire y'inzego za Association APECOM ku buryo atashoboraga gutandukanya ububasha bw'umuyobozi w'ishuri n'ubwa Perezida w'Inama y'Ubutegetsi ya Association APECOM, bigaragaza ko yumvaga ko Nyandwi Aimé Frodouard yari afite ububasha bwo gusinya amasezerano yo kuwa 12/01/2009 bitewe n'uko yabonaga yari Umuyobozi w'ishuri no kuba bari basanzwe bagirana amasezerano akishyurwa nk'uko byasobanuwe haruguru, bityo kuba Perezida w'Inama y'Ubutegetsi ya Association APECOM yarasheshe ayo masezerano bigateza Nyiringango igihombo bituma Association APECOM igomba kubimuhera indishyi nk'uko n'Urukiko Rukuru rwabyemeje.

[18] Urukiko rurasanga ibyo bihuje kandi n'ibisobanuro by'abahanga mu mategeko bitwa Philippe le Tourneau na Loïc Cadiet, banditse bagira bati: "Le mandat apparent suppose la *croyance légitime* du tiers dans l'existence du mandat, qui suppose elle-même que les circonstances le dispensaient de vérifier les pouvoirs du pseudo mandataire…". La totalité des effets de la convention conclue par le mandataire apparent doivent être exécutés par le prétendu mandant)[1]. Ibyo bisobanuye ko mu bihe bisa nk'aho hari uwabiherewe ubutumwa (ububasha) (mandat apparent), undi muntu

[1] *Philippe le Tourneau et Loïc Cadiet, Droit de la Responsabilité, Dalloz Action, 1998, Paris, p. 544.*

(un tiers) ashobora kwibwira ko uwo bagiye kugirana amasezerano yabiherewe ubutumwa (ububasha), kandi ko iyi myumvire ye ishobora gutuma uyu muntu (un tiers) atagenzura ububasha bw'uriya, kandi ko amasezerano akozwe muri ubwo buryo agomba gushyirwa mu bikorwa uko yakabaye n'usa n'uwatanze bene ubwo butumwa (mandant).

B. <u>Kumenya niba Nyiringango Emmanuel yahabwa indishyi asaba mu bujurire bwuririye ku bundi</u>

[19] Uburanira Nyiringango Emmanuel avuga ko atanze ubujurire bwuririye ku bundi asaba ko Association APECOM yamuha 1.318.000 Frw y'igihembo cya Avoka, 1.191.550 Frw y'igihombo yagize bitewe n'ibiryo yasubije aho yari yarabiguriye harimo n'ay'ubwikorezi bwabyo, 500.000 Frw y'ingendo, 1.000.000 Frw y'ibihano byo kudindiza uru rubanza ku maherere na 4.000.000 Frw y'indishyi z'akababaro yamuteye.

[20] Uburanira Association APECOM avuga ko itaha Nyiringango Emmanuel izo ndishyi kuko nta shingiro ryazo.

<u>UKO URUKIKO RUBIBONA</u>

[21] Urukiko rurasanga Nyiringango Emmanuel atararusobanuriye akababaro n'igihombo yagize, kandi nta n'ibimenyetso by'icyo gihombo yarushyikirije, bigaragara rero ko Association APECOM itagomba kumuha indishyi z'akababaro n'iz'igihombo asaba.

[22] Urukiko rurasanga kandi kuba Association APECOM yari ifite uburenganzira ihabwa n'amategeko bwo kujuririra urubanza rwaciwe n'Urukiko Rukuru itishimiye, bigaragara ko itadindije uru rubanza ku maherere, bityo ikaba itagomba guha Nyiringango Emmanuel indishyi zirebana n'idindizwa ry'urubanza ku maherere asaba.

[23] Urukiko rurasanga ariko kuba Nyiringango Emmanuel yarakurikiranye uru rubanza, kandi akaba yari afite Avoka wamuburaniye muri uru Rukiko, bigaragara ko Association APECOM igomba guha Nyiringango Emmanuel 200.000 Frw y'ikurikiranarubanza na 300.000 Frw y'igihembo cya Avoka agenwe mu bushishozi bwarwo kuko ayo yasabye ari ikirenga, bityo amafaranga yose hamwe akaba ari 500.000 Frw yo kuri uru rwego yiyongera ku yo yahawe mbere.

III. <u>ICYEMEZO CY'URUKIKO</u>

[24] Rwemeje ko ubujurire bwa Association APECOM nta shingiro bufite;

[25] Rwemeje ko ubujurire bwa Nyiringango Emmanuel bwuririye ku bundi bufite ishingiro kuri bimwe;

[26] Rutegetse Association APECOM guha Nyiringango Emmanuel 500.000 Frw y'ikurikiranarubanza n'ay'igihembo cya Avoka yiyongera ku yo yahawe mbere;

[27] Ruvuze ko imikirize y'urubanza RCA 0002/11/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko

rwa Rwamagana, kuwa 08/09/2011, ihindutse gusa ku birebana na 500.000 Frw y'ikurikiranarubanza n'ay'igihembo cya Avoka yiyongera ku yo yahawe mbere;

[28] Rutegetse Association APECOM gutanga amagarama y'uru rubanza angana na 62.500 Frw, habariwemo n'ayo yaciwe mu Rukiko Rukuru, Urugereko rwa Rwamagana, itayatanga mu gihe cy'iminsi umunani, ayo mafaranga agakurwa mu byayo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KUWA 21/06/2013.

Sé
MUTASHYA Jean Baptiste
Perezida

Sé
MUKANYUNDO Patricie
Umucamanza

Sé
RUGABIRWA Ruben
Perezida

Sé
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

IMANZA Z'UBUCURUZI

5. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMA0099/10/CS
ITARIKI Y'URUBANZA: 30/11/2012
HABURANA: Succ RUGUMIRE François Xavier, RUGUMIRE Thierry na GUMIRA Patrick C/ FINA BANK S.A, E[se] SHAMUKIGA Charles na KAYIRANGWA Marie Claire.

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI - UBURENGANZIRA BWO GUCUNGA UMUTUNGO W'UMURYANGO - KUWUCUNGA GUSA NO KUWIKENUZA - KUTABUFATA NK'UBURENGANZIRA BWO KUWUTANGAHO INGWATE, KUWUGURISHA CYANGWA KUWUTANGA

ICYEMEZO CY'URUKIKO GITANGA UBURENGANZIRA BWO GUCUNGA UMUTUNGO W'ABANA - GUKOMEZA GUCUNGA UMUTUNGO W'ABANA BAGEJEJE KU MYAKA Y'UBUKURE- KUBA UBWABYO BIDAHAGIJE MU KUWUTANGAHO INGWATE, KUWUGURISHA CYANGWA KUWUTANGA ATABYUMVIKANYEHO N'ABANA UREBERERA.

KUGIRA URUHARE KU MUTUNGO UCUNGIYE ABANA - KUBA NTACYEREKANA URUHARE RW'UCUNZE UWO MUTUNGO-KUBIFATA NK'AHO UWO MUTUNGO UKIRI UW'UMURYANGO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Uhawe uburenganzira bwo gucunga umutungo w'umuryango aba ahawe uburenganzira bwo kuwucunga gusa no kuwikenuza, ntashobora kuwutangaho ingwate, kuwugurisha cyangwa kuwutanga atabiherewe ububasha n'Urukiko.

- Kuba umubyeyi wasigaye wahawe uburenganzira bwo gucunga umutungo yarakomeje kuwucunga nyuma y'uko abo yawucungiraga bageze ku myaka y'ubukure ariko nta bundi burenganzira bamuhaye, ntashobora kuwutangaho ubwishingire n'ingwate atabyumvikanyeho n'abana be.

- N'ubwo umubyeyi wasigaye nawe aba afite uruhare ku mutungo acungira abana, mu gihe ntacyerekana uruhare rwe muri uwo mutungo ntashobora kugira ibyo atangaho ingwate, kugurisha cyangwa gutanga kubera ko uwo mutungo uba ukuri uw'umuryango(indivision)

URUKIKO RW'IKIRENGA RUBURANISHA IMANZA Z'UBUCURUZI RUKIJIJE MU RUHAME URUBANZA RCOM A 0099/10/CS MU BURYO BUKURIKIRA:

HABURANA:

ABAJURIYE:

- Succession Rugumire François Xavier mu izina rya Mukabagire Jeanne d'Arc, utuye i Nyamirambo, Akarere ka Nyarugenge, Umujyi wa Kigali, aburanirwa na Maîtres Rwabukumba Mussa na Nkubayingoga Sam.
- Rugumire Thierry na Gumira Patrick , bene Rugumire François Xavier na MUKABAGIRE Jeanne d'Arc, B.P 681 Kigali, baburanirwa na Maître Buzayire Angèle.

ABAREGWA:

- FINA BANK S.A, BP. 331 Kigali, iburanirwa na Kabagambe Joël.
- Entreprise Shamukiga Charles ihagarariwe na Shamukiga Christophe, BP 6813 Kigali, iburanirwa na Maître Nzirabatinyi Fidèle.
- Kayirangwa Claire BP 6813 Kigali, aburanirwa na Maître Nzirabatinyi Fidèle

IKIBURANWA:

- Kwishyurwa umwenda ungana na 50.731.320 frw hakiyongeraho inyungu zumvikanyweho mu masezerano zibazwe kuri 18% buri mwaka guhera kuwa 20/09/2006

kugeza igihe uwo mwenda wose uzishyurirwa;

- Guhabwa indishyi z'akababaro n'iz'ibyatanzwe ku rubanza, irangizarubanza ry'agateganyo no guhatirwa kubahiriza icyemezo cy'urukiko.

I. I. IMITERERE Y'URUBANZA:

[1] Nyuma yo kubona ko Entreprise Shamukiga ihagarariwe na Shamukiga Christophe itubahirije amasezerano y'inguzanyo bagiranye, Fina Bank yaregeye Urukiko Rukuru rw'Ubucuruzi isaba ko itegekwa ifatanyije n'abo yita abishingizi bayo aribo Kayirangwa Claire na Succession Rugumire François Xavier kwishyura umwenda n'inyungu iyibereyemo, Rugumire Thierry na Gumira Patrick, abana ba Rugumire François Xavier na Mukabagire Jeanne d'Arc bagoboka muri urwo rubanza basaba ko amasezerano y'ubwishingire n'ingwate (caution solidaire avec constitution d'hypothèque) Mukabagire Jeanne d'Arc yagiranye na Fina Bank kuwa 08/01/2004 yishingira Entreprise Shamukiga yateshwa agaciro ngo kuko nta bubasha yari afite bwo gutanga ingwate ku mutungo wa Succession Rugumire François Xavier abazungura bose batabyumvikanyeho.

[2] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza kuwa 17/09/2010, rwemeza ko ikirego cya Fina Bank gifite ishingiro, rutegeka Entreprise Shamukiga Charles guha Fina Bank 103.793.953 frw y'umwenda iyibereyemo ifatanyije na Kayirangwa Claire, rutegeka na Succession Rugumire François Xavier gufatanya

nabo kwishyura uwo mwenda ku kigero gikubiye mu masezerano y'ubwishingire n'ingwate yagiranye na Fina Bank. Bose kandi bategetswe guha Fina Bank 1.000.000 frw akubiyemo indishyi zo gushorwa mu rubanza nta mpamvu n' iz'ibyatanzwe mu rubanza n'igihembo cy'avoka.

[3] Ku byerekeranye n'imyiregurire ya Mukabagire Jeanne d'Arc y'uko amasezerano y'ubwishingire n'ingwate yagiranye na Fina Bank agomba guteshwa agaciro kuko yayasinye atazi ibyo akora, Urukiko Rukuru rw'Ubucuruzi rwavuze ko nta kimenyetso yagaragaje cy'uko igihe yasinyaga ayo masezerano nta bwenge buzima yari afite kugira ngo bigaragare koko ko atari azi ibyo akora.

[4] Ku byerekeranye n'imyiregurire ya Rugumire Thierry na Gumira Patrick y'uko nta bubasha Mukabagire Jeanne d'Arc yari afite bwo gutanga ubwishingire n'ingwate ku mutungo wa Succession Rugumire François Xavier abazungura bose batabyumvikanyeho, Urukiko Rukuru rw'Ubucuruzi rwavuze ko icyo yari abujijwe ari ugutangaho ingwate igice kirenze icyakabaye uruhare rwe ku mutungo wose w'abazungura ba Rugumire Francois Xavier atabyemerewe n'abandi bazungura, kandi ko batagaragaza ko ikigero cy'umwenda yishingiye kirenze uruhare rwe muri uwo mutungo.

[5] Urukiko Rukuru rw'Ubucuruzi rwavuze kandi ko niyo byafatwa ko umutungo Mukabagire Jeanne d'Arc

yatanzeho ingwate ari uwo yagombaga gucungira abazungura ba Rugumire Francois Xavier, kuba amasezerano yarakozwe kuwa 08/01/2004, umwenda ugatangwa, ugakoreshwa ndetse ukagera n'aho utishyurwa, ari Mukabagire Jeanne d'Arc, ari n'abana be, hakaba nta n'umwe ugaragaza ko atishimiye ayo masezerano cyangwa ngo agire icyo ayakemangaho ngo anayasabire iseswa, kuba kandi bataragaragaje ikimenyetso kigaragaza ko batashoboraga guhura cyangwa gushyikirana byari gutuma atababwira icyo gikorwa yakoze, nyuma y'aho Fina Bank ireze akaba aribwo basaba ko ayo masezerano ateshwa agaciro, ari ikimenyetso gituma rudashobora kwemeza ko Rugumire Thierry na Gumira Patrick batari bayazi .

[6] Succession Rugumire François Xavier ihagarariwe na Mukabagire Jeanne d'Arc ku ruhande rumwe, Rugumire Thierry na Gumira Patrick ku rundi ruhande bajuririye urwo rubanza mu Rukiko rw'Ikirenga bavuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije imyiregurire yabo.

[7] Urubanza nyuma yo kugenda rusubikwa ku mpamvu zinyuranye, ndetse kuwa 11/09/2012 Shamukiga Christophe agategekwa gutanga ihazabu mbonezamubano kubera gutinza urubanza ku bushake, rwaburanishijwe mu ruhame kuwa 23/10/2012, Succession Rugumire Francois Xavier mw'izina rya Mukabagire Jeanne d'Arc ihagarariwe na Me Rwabukumba Mussa na Me Nkubayingoga Sam,

Rugumire Thierry na Gumira Patrick ku giti cyabo bahagarariwe na Me Buzayire Angèle, Entreprise Shamukiga na Kayirangwa Claire bahagarariwe na Me Nzirabatinyi Fidèle, Fina Bank ihagarariwe na Me Kabagambe Joël.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA:

A) Kumenya niba amasezerano y'ubwishingire n'ingwate Mukabagire Jeanne d'Arc yagiranye na Fina Bank yishingira Entreprise Shamukiga yateshwa agaciro.

[8] Uwunganira Rugumire Thierry na Gumira Patrick avuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko Mukabagire Jeanne d'Arc ari umuzungura wa Rugumire François Xavier rushingiye ku cyemezo cy'Akarere ka Kicukiro cyo kuwa 18/03/2002, ariko rwirengagije ingingo za 66 na 70 z'itegeko ryuzuza Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano mu gice kijyanye n'imicungire y'umutungo w'abashyingiranywe zerekana ko Mukabagire Jeanne d'Arc yari yemerewe gusa kuwucunga no kuwikenuzamo, akaba nta burenganzira busesuye yari afite ku mutungo yatanzeho ingwate.

[9] Avuga kandi ko ingingo ya 530 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano ivuga ko ‘’ ubutumwa (mandat) butanzwe mu buryo bwa rusange burebana gusa n'ibikorwa byo gucunga'', ndetse ko ''iyo hari ibikorwa byerekeye guhara ikintu cyangwa gutanga ingwate ku bintu bitimukanwa, cyangwa ikindi

gikorwa cyemerewe nyir'ibintu gusa, amasezerano y'ubutumwa agomba kubigaragaza ku buryo bweruye'', ishimangira ko ubutumwa Mukabagire Jeanne d'Arc yahawe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali kuwa 24/12/1996 ari ubwo gucunga gusa umutungo wa Succession Rugumire François Xavier.

[10] Abunganira Mukabagire Jeanne d'Arc bavuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ko uburenganzira ku mutungo wa Succession Rugumire François Xavier yari yarahawe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali bugarukira gusa ku kuwucunga, akaba yarasinye yibeshye ku bubasha yari afite, Fina Bank ibigizemo uruhare nk'umunyamwuga (professionnel) kuko itamuhaye ibisobanuro bikwiye.

[11] Abunganira Mukabagire Jeanne d'Arc hamwe n'uwunganira Rugumire Thierry na Gumira Patrick bavuga nanone ko Urukiko Rukuru rw'Ubucuruzi mu kwemeza ko Mukabagire Jeanne d'Arc yashoboraga gutangaho ingwate umutungo w'abazungura ba Rugumire ku gice kitarenze uruhare rwe muri uwo mutungo, rwasesenguye nabi ingingo rwashingiyeho ya 32 y'Igitabo cya kabiri cy'urwunge rw'amategeko mbonezamubano kuko iyo ngingo ivuga ko ''nta n'umwe mu basangiye ikintu ushobora, abandi batabyemeye, guhindura icyo cyagenewe cyangwa kukigerekaho ubundi burenganzira burenze ubw'uruhare agifiteho'', ikaba yumvikanisha ko niyo Mukabagire yaba umuzungura wa Rugumire François

Xavier, atashoboraga gutanga ubwishingire n'ingwate ku mutungo uri muri ''indivision" atabyemeranyijeho n'abo bawusangiye.

[12] Basobanura ko nta na hamwe Urukiko Rukuru rw'Ubucuruzi rwerekanye ko Rugumire Thierry na Gumira Patrick bigeze bemera ibijyanye n'amasezerano y'ubwishingire n'ingwate yabaye hagati ya Mukabagire Jeanne d'Arc na Fina Bank, kuvuga nk'uko urwo rukiko rwabikoze ko batigeze barega berekana ko nyina yarengereye ububasha bwe akaba ari ukwirengagiza imyiregurire yabo ko batigeze bamenya iby'ayo masezerano kugira ngo bayasabire guseswa, cyangwa bayatambamire.

[13] Basoza bavuga ko Urukiko Rukuru rw'Ubucuruzi rwitiranyije mu cyemezo cyarwo inzu ya Succession Rugumire iri Kicukiro yatanzweho ingwate mu masezerano Mukabagire Jeanne d'Arc yagiranye na Fina Bank kuwa 15/04/2002 atarebana n'uru rubanza, n'inzu n°1756 iri i Nyamirambo ivugwa mu masezerano Mukabagire yagiranye na Fina Bank kuwa 08/01/2004 aburanwa muri uru rubanza, bakaba basaba Urukiko kubikosora.

[14] Uburanira Entreprise Shamukiga Charles avuga ko niba Mukabagire Jeanne d'Arc yarasabwe kuyishingira mw'izina rya Succession Rugumire François Xavier, ibijyanye n'imihango yagombaga kubahirizwa kugira ngo ubwo bwishingire bwuzure kandi bugire agaciro

byarasabwaga mbere na mbere Fina Bank kuko ariyo yateguye amasezerano ikamusaba ibikenewe byose kugira ngo itange umwenda itekanye.

[15] Ku ruhande rwa Fina Bank, Me Gatera Gashabana, mu mwanzuro we wanditse wo kuwa 25/10/2011 usubiza uw'abajuriye, avuga ko ubujurire bwa Mukabagire Jeanne d'Arc kimwe n'ubwa Rugumire Thierry na Gumira Patrick ntacyo bushingiyeho mu mategeko kuko Mukabagire Jeanne d'Arc yari asangiye n'umugabo we umutungo yatanzeho ingwate, Me Kabagambe Joël wayiburaniye mu rukiko we akavuga ko Urukiko rwasuzuma ibikubiye mu mwanzuro wanditse wa Me Gatera Gashabana, naho kubijyanye n'ikosa ryaba ryarabaye ryo kwitiranya ingwate, akavuga ko umucamanza yagendeye kubyo yahawe muri dosiye, ko nta kosa yakoze.

<u>Uko Urukiko rubibona :</u>

[16] Urukiko rusanga, nk'uko inyandiko ziri muri dosiye zibigaragaza, amasezerano yo kuwa 08/01/2004[1] avugwa muri uru rubanza arebana n'ingwate y'inzu iri mu kibanza nº 1756 i Nyamirambo mu Mujyi wa Kigali, atarebana n'inzu n° 1676 iri Kicukiro ivugwa mu nyandiko yiswe « icyemezo cy'ubuzungure » cyatanzwe n'Ubuyobozi bw'Akarere ka Kicukiro kuwa 18/03/2002, bityo icyo cyemezo cyashingiweho n'Urukiko Rukuru mu kwemeza ko Mukabagire Jeanne

[1] *Reba imiburanire mu Rukiko Rukuru rw'Ubucuruzi ya Me Gatera Gashababa ku rupapuro rwa 2 aho avuga ko kuwa 08/01/2004 habaye constitution d'hypothèque hagati ya Entreprise Shamukiga, Fina Bank na Succession Rugumire François Xavier.*

d'Arc ari umuzungura wa Rugumire François Xavier[2] kibaba nta gaciro kigomba guhabwa muri uru rubanza.

[17] Kubyerekeye no kumenya niba amasezerano y'ubwishingire n'ingwate avugwa muri uru rubanza agomba guteshwa agaciro, ikigaragarira Urukiko n'uko ayo masezerano atashyizweho umukono na Mukabagire Jeanne d'Arc mw'izina rye bwite, ahubwo yayasinye mw'izina rya Succession Rugumire François Xavier, hakaba rero hagomba kurebwa niba yari abifitiye ububasha.

[18] Urukiko rusanga uburenganzira Mukabagire Jeanne d'Arc yahawe n'urwahoze ari Urukiko rwa Mbere rw'Iremezo rwa Kigali mu cyemezo n° 965/i.j.b/96 cyo kuwa 24/12/1996 ari ubwo gucunga umutungo wa Succession Rugumire François Xavier urimo n'inzu iri mu kibanza nº 1756 i Nyamirambo yatanzweho ingwate hashingiwe ku ngingo ya 349 y'Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano ivuga ko ''ububasha bwa kibyeyi bugizwe cyane cyane n'uburenganzira bwo kumenya umwana, kumucungira umutungo no kwikenuza ibiwukomokaho", bivuze ko uwo mutungo atashoboraga kuwutangaho ingwate atabiherewe ububasha n'Urukiko hakurikijwe ingingo ya 353 y'icyo gitabo ivuga ko"gutanga, kugurisha cyangwa kugwatiriza ibintu by'umwana ku buryo bigabanura umutungo we, ntibishobora gukorwa nta ruhusa rw'urukiko".

[2] *Reba agace ka 12 k'urubanza RCOM 0216/09/HCC aho Urukiko ruvuga ko Mukabagire Jeanne d'Arc ari umuzunguea wa Rugumire François Xavier nkuko bigaragazwa n'icyemezo cy'ubuzungure cyatanzwe n'umuyobozi w'Akarere ka Kicukiro kuwa 18/03/2002.*

[19] Urukiko rusanga kandi niba Mukabagire Jeanne d'Arc yaba yarakomeje gucunga umutungo wa Succession Rugumire François Xavier nyuma y'uko abana be bageze ku myaka y'ubukure ariko nta bundi burenganzira bamuhaye, hakwiye gukurikizwa ingingo ya 530 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano ivuga ko '' ubutumwa butanzwe mu buryo bwa rusange burebana gusa n'ibikorwa byo gucunga'', iyi ngingo nayo ikaba yumvikanisha ko atashoboraga kuwutangaho ubwishingire n'ingwate atabyumvikanyeho n'abana be.

[20] Urukiko rusanga kandi niyo Mukabagire Jeanne d'Arc yaba afite uruhare ku mutungo wa Succession Rugumire François Xavier nk'uko Fina Bank ibiburanisha , mu gihe nta cyerekana icyakabaye uruhare rwe, ntaho rwahera rwemeza ko yatanze ubwishingire n'ingwate ku gice kitarenze uruhare rwe, cyane ko umutungo wa Succession Rugumire François Xavier wari ukiri muri ''indivision'' igihe yashyiraga umukono kuri ayo masezerano.

[21] Urukiko rusanga rero mu gihe nta kimenyetso Fina Bank itanga cyerekana ko Mukabagire Jeanne d'Arc yatanze ubwishingire n'ingwate ku mutungo wa Succession Rugumire François Xavier abifitiye ububasha, ni ukuvuga yarabiherewe uburenganzira n'Urukiko cyangwa n'abana be ubwabo aho bakuriye, icyemezo cy'Urukiko Rukuru rw'Ubucuruzi kivuga ko amasezerano atateshwa agaciro kuko abana be bagobotse muri uru rubanza batayasabiye iseswa

mbere y'uko Fina Bank itanga ikirego, kigomba kuvaho kuko atari bo bagomba gutanga ikimenyetso ko batamenye ariya masezerano ahubwo usaba ko ashyirwa mu bikorwa niwe ugomba kugaragaza ko bari bayazi.

[22] Urukiko rusanga rero amasezerano y'ubwishingire n'ingwate Mukabagire Jeanne d'Arc yagiranye na Fina Bank agomba guteshwa agaciro kuko yayakoze nta bubasha abifitiye, Fina Bank ikaba igomba kwirengera ingaruka zabyo kuko nk'umunyamwuga, ari nayo yateguye amasezerano yagombaga kureba niba asobanukiwe uburenganzira ahabwa n'amategeko, ikanasuzuma ububasha bwe.

B) Ku bijyanye n'ubujurire bwuririye ku bundi bwa Kayirangwa Claire.

[23] Uburanira Kayirangwa Claire avuga ko ureste ibishingiwe ku kindi kimenyetso cyaba kitari mu masezerano, ntaho bigaragara ko yishingiye Entreprise Shamukiga Charles, akaba yuririye ku bujurire bw'abarega mu bujurire asaba Urukiko kwemeza ko umwenda uvugwa muri uru rubanza utamureba, no gutegeka Fina Bank kwishyura 5.000.000 frw y'indishyi z'akababaro na 500.000 frw y'igihembo cy'avoka.

[24] Uburanira Fina Bank avuga ko izo ndishyi zidakwiye gutangwa kuko Kayirangwa Claire atagaragaza ko atishingiye Entreprise Shamukiga Charles.

[25] Urukiko rusanga usibye kuvuga ko Kayirangwa Claire

yishingiye Entreprise Shamukiga Charles, Fina Bank itagaragaza, haba mu myanzuro yanditse, haba mu miburanire yayo, itariki n'uburyo ubwo bwishingire bwakozwemo, muri dosiye naho inyandiko irimo yitirirwa Kayirangwa Claire ikaba itagaragaza umukono we n'itariki yaba yarakoreweho, bityo icyemezo cy'Urukiko Rukuru rw'Ubucuruzi kivuga ko agomba gufatanya na Entreprise Shamukiga kwishyura umwenda wa 103.793.953 frw kikaba kigomba kuvanwaho hashingiwe ku ngingo ya 9 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko ''urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze aratsindwa''.

[26] Ku byerekeye indishyi z'akababaro Kayirangwa Claire asaba, Urukiko rusanga ntazo akwiye guhabwa kuko nta bisobanuro azitangira.

[27] Ku byerekeye amafranga y'ikurikirana rubanza n'igihembo cya avoka, Urukiko rusanga akwiye kuyahabwa kuko yakuruwe mu rubanza bitari ngombwa, anaburanirwa na avoka, ariko agahabwa 300.000 FRW mu bushishozi bwarwo kuko 500.000 FRW asaba ari ikirenga.

C) Ku bijyanye n'ubujurire bwuririye ku bundi bwa Fina Bank.

[28] Me Gatera Gashabana mu mwanzuro we wanditse avuga ko Fina Bank yuririye ku bujurire bw'abarega isaba

kwishyurwa 2.115.633 frw y'umwenda uko ubazwe kugeza kuwa 25/10/2011, inyungu za 18% ku mwaka kuva amasezerano ashyizweho umukono kugeza yishyuwe na 1.000.000 frw y'ikurikirana rubanza.

[29] Uburanira Entreprise Shamukiga avuga ko Urukiko Rukuru rw'Ubucuruzi rwavuze ku byasabwe byose, rukora imibare, rwemeza amafaranga agomba kwishyurwa, akaba asanga nta yandi mafaranga Fina Bank ikwiye kwishyurwa.

[30] Urukiko rusanga amafaranga yose Fina Bank yaregeye mu rwego rwa mbere yarayahawe, nta yandi mafaranga Entreprise Shamukiga yategekwa kwishyura ku bijyanye n'uru rubanza kubera ko nta kimenyetso iyagaragariza.

III. ICYEMEZO CY'URUKIKO:

[31] Rwemeje ko ubujurire bwa Succession Rugumire François Xavier ihagarariwe na Mukabagire Jeanne d'Arc n' ubwa Rugumire Thierry na Gumira Patrick bufite ishingiro.

[32] Rwemeje ko amasezerano y'ubwishingire n'ingwate Mukabagire Jeanne d'Arc mw'izina rya Succession Rugumire François Xavier yagiranye na Fina Bank yishingira Entreprise Shamukiga nta gaciro afite.

[33] Rwemeje ko ubujurire bwuririye ku bundi bwa Kayirangwa Claire bufite ishingiro.

[34] Rwemeje ko nta kigaragaza ko yishingiye umwenda wa Entreprise Shamukiga Charles ukurikiranwa muri uru rubanza.

[35] Rutegetse Fina Bank guha Kayirangwa Claire 300.000 frw y'ikurikirana rubanza n'igihembo cy'avoka.

[36] Rwemeje ko ubujurire bwuririye ku bundi bwa Fina Bank nta shingiro bufite.

[37] Rutegetse Entreprise Shamukiga Charles kwishyura yonyine amafaranga yategetswe mu rwego rwa mbere, ni ukuvuga 103.793.953 frw y'umwenda na 1.000.000 frw y'indishyi.

[38] Rutegetse Shamukiga Christophe ku giti cye kwishyura 150.000 FRW y'ihazabu mbonezamubano yategetswe n'uru rukiko kuwa 11/09/2012 kubera gutinza urubanza ku bushake, atayishyura mu gihe cy'iminsi umunani, ayo mafaranga akavanwa mu bye ku ngufu za Leta.

[39] Rutegetse Entreprise Shamukiga Charles kwishyura amagarama y'urubanza mu rwego rwa mbere angana na 17.700 frw.

[40] Rutegetse Fina Bank kwishyura amagarama y'urubanza muri uru rukiko angana na 22.600 frw.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME KUWA 30/11/2012.

Sé
Mukandamage M.Josée
Umucamanza

Sé
Nyirinkwaya Immaculée
Perezida

Sé
Munyangeri N.Innocent
Umucamanza

Sé
Muhimakazi Léoncie
Umwanditsi

6. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMA0150/11/CS

ITARIKI Y'URUBANZA: 24/05/2013

HABURANA: SORAS Assurances Générales Ltd mu izina ry'umuyobozi wayo C/ Fermes des Grands Lacs mu izina ry'umuyobozi wayo

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI - IMPANUKA ITUMA IKINYABIZIGA KITONGERA GUKORA-INDISHYI ZITANGWA –KUZISHINGIRA KU MASEZERANO IMPANDE ZOMBI ZAGIRANYE**.**

KUGENAINDISHYI-KUZIGENAHAFASHWEAGACIRO K'IMODOKA YARI IFITE MBERE Y'UKO IKORA IMPANUKA HAKUWEMO AGACIRO K'IBISIGAZWA BYAYO - AGACIRO KEMEZWA N'UMUHANGA MU BYO KUBARA AGACIRO K'IBINYABIZIGA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Mu kugena indishyi zigomba gutangwa mu gihe ikinyabiziga kishingiwe kigize impanuka ituma kitongera gukoreshwa burundu zigomba gushyingira ku masezerano impande zombi ziba zaragiranye (conditions générales des assurences automobiles).

- Indishyi zitangwa mu bihe bimeze nk'ibi ziba zihwanye n' agaciro imodoka yari ifite mbere y'impanuka hakuwemo ibisigazwa byayo, agaciro kagenywa n'umuhanga mu byo kubara agaciro k'ikinyabiziga hagendewe ku busaze bwayo.

URUKIKO RW'IKIRENGA, RUBURANISHA MU RUHAME IMANZA Z'UBUCURUZI, RUKIJIJE URUBANZA Nº RCOMA 0150/11/CS MU BURYO BUKURIKIRA :

HABURANA :

Soras Assurances Générales Ltd yajuriye mu izina ry'umuyobozi wayo.
Fermes des Grands Lacs iregwa mu izina ry'umuyobozi wayo.

IKIBURANWA:

- Indishyi ku mpanuka y'imodoka zingana na 22.000.000 Frw y'agaciro fatizo k'imodoka kumvikanyweho mu masezerano y'ubwishingizi;
- Indishyi kubera igihe imodoka yamaze itarishyurwa,
- Amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

I. IMITERERE Y'URUBANZA

[1] Ku itariki ya 26/11/2007 Fermes des Grands Lacs yagiranye na Soras Assurances Générales Ltd amasezerano y'ubwishingizi (omnium) bw'imodoka Toyota Land Cruiser NK 5828 BB , bumvikana ko agaciro kayo ari USD 37.000 angana na 22.200.000 Frw na 824.040 Frw ya prime yishyurwa ku mwaka.

[2] Iyo modoka yakoze impanuka ku itariki ya 12/07/2009, irangirika cyane, Soras Assurances Générales Ltd imenyeshwa iby'iyo mpanuka kuwa 17/07/2009, Fermes des Grands Lacs ivuga ko imodoka itashoboraga gusanwa ku buryo yasubira mu muhanda.

[3] Fermes des Grands Lacs ivuga ko yanditse inshuro nyinshi yishyuza Soras Assurances Générales Ltd indishyi z`ibyangiritse, iza gusubiza yemera kwishyura ariko havanyweho agaciro k'ubusaze gahwanye na 65%, Fermes des Grands Lacs ntiyabyemera, bituma iregera Urukiko Rukuru rw'Ubucuruzi, rwemeza ko Soras Assurances Générales Ltd itsinzwe, ruyitegeka kwishyura Fermes des Grands Lacs 26.000.000 Frw akubiyemo 20.000.000 Frw y'agaciro k'imodoka, 5.000.000 Frw y'indishyi z'uko Soras Assurances Générales Ltd yatinze kwishyura na 1.000.000 Frw y'igihembo cy'avoka n'ay'ikurikiranarubanza.

[4] Soras Assurances Générales LTD yajuririye urwo rubanza mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko Fermes des Grands

Lacs igomba kwishyurwa 20.000.000 Frw y'agaciro k'imodoka kumvikanyweho mu masezerano kandi ako gaciro gatandukanye kure n'ako imodoka yari ifite igihe cy'impanuka. Yananenze imikirize y'urwo rubanza ivuga ko urukiko rwemeje ko Soras Assurances Generales Ltd igomba guha Fermes des Grands Lacs indishyi zingana na 5.000.000 Frw yirengagije ingingo ya 44 y'amasezerano rusange y'ubwishingizi bw'ibinyabiziga bigenzwa na moteri.

[5] Ubujurire bwakorewe ibanzirizasuzuma, Umucamanza yemeza ko bwakiriwe, urubanza ruburanishwa mu ruhame kuwa 18/04/2013, Soras Assurances Générales Ltd iburanirwa na Me Nkurunziza François Xavier, naho Fermes des Grands Lacs iburanirwa na Me Buzayire Angèle.

II. ISESENGURA RY'IBIBAZO BIGIZE URU RUBANZA

Ku birebana n`indishyi Soras Assurances Générales G Ltd igomba kwishyura Fermes des Grands Lacs ku modoka yayo yakoze impanuka.

[6] Uburanira Fermes des Grands Lacs avuga ko umucamanza yemeje ko Fermes des Grands Lacs igomba kwishyurwa 20.000.000 Frw y'agaciro k'imodoka kishingiwe atitaye ku masezerano y`ubwishingizi impande zombi zagiranye.

[7] Avuga ko ubusanzwe iyo habaye impanuka hishyurwa

ibyangiritse, ko rero impuguke zagaragaje ko imodoka ya Fermes des Grands Lacs yakoze impanuka igeze ku gaciro ka 8.566.200 Frw, nyamara yo igasaba ko yakwishyurwa agaciro k`imodoka nshya, mu gihe Soras Assurances Générales LTD yo yemeraga kuyishyura 12.000.000 Frw ariko nabyo Fermes des Grands Lacs ikabyanga, igatanga ikirego mu nkiko yirengagije ko imodoka yagiye isaza.

[8] Uburanira Fermes des Grands Lacs avuga ko igihe Soras Assurances Générales Ltd yemeraga kwishingira iriya modoka, yayibariye agaciro ka 20.000.000 Frw, ko igena prime yagombaga kwishyurwa buri mwaka ititaye ku busaze bw`imodoka, ko rero bitumvikana ukuntu mu kwishyura indishyi yagena agaciro k`imodoka hagendewe ku busaze bwayo.

[9] Avuga ko umwishingizi ariwe ugena agaciro k`ibyishingiwe akoresheje impuguke ze, ko rero iyo Soras Assurances Générales Ltd isanga ari ngombwa kugena agaciro hakurikijwe ubusaze bw`imodoka yishingiwe iba yarabikoze igihe yashyiragaho ``prime d'assurance`` Fermes des Grands Lacs yasabwaga kwishyura buri mwaka, aho kuyisaba kwishyura umubare wa ``prime`` idahinduka kandi agaciro k`imodoka kagabunuka kubera ubusaze bwayo. Yanzura asaba ko urukiko rwakwemeza ko Soras Assurances Generales Ltd igomba kuriha iriya modoka igendeye ku gaciro k'imodoka kishingiwe yanaherewe ``prime`` ihoraho nk'uko umucamanza wa mbere yabyemeje.

Uko Urukiko rubibona :

[10] Urukiko rurasanga ababuranyi badafite imyumvire imwe ku gaciro-fatizo k`imodoka kagenderwaho mu kubara indishyi zigomba kwishyurwa mu gihe imodoka yishingiwe yagize impanuka ikangirika burundu.

[11] Ingingo ya 44 mu gace ka 1 y`amasezerano rusange y`ubwishingizi bw'ibinyabiziga bigenzwa na moteri Soras Assurances Générales Ltd yagiranye na Fermes des Grands Lacs igira iti : L`assurance ne pouvant être pour l`assuré une source de bénéfice, l`indemnité doit représenter exactement, mais uniquement , la perte matérielle. Naho mu gace ka 2 k`iyo ngingo ivuga ko :``La valeur vénale du véhicule est déterminée par expertise ou par l`application à la valeur conventionnelle d`un barême forfaitaire tenant compte de l`âge du véhicule et de son utilisation, barême tenu à la disposition de l`assuré à sa demande``.

[12] Ingingo ya 45 y`ayo masezerano iteganya ko : `` Lorsque les frais de réparation admis par l`expert de la Société atteignent ou dépassent la valeur vénale du véhicule, la Société paie à l`assuré l`indemnité résultant de la valeur vénale sous déduction de la valeur de l`épave``.

[13] Izi ngingo zumvikanisha ko iyo habaye impanuka, umwishingizi yishyura ibyangiritse ku modoka. Iyo ariko yangiritse burundu, indishyi zigenwa hashingiwe ku gaciro imodoka ifite igihe ikoze impanuka kagenwa n`umuhanga mu byo kugena agaciro k`imodoka,

cyangwa kakagenwa hashingiwe ku gaciro kanditse mu masezerano hakoreshejwe ``barème forfaitaire`` hakagenderwa ku busaze bw`imodoka n`uburyo yakoreshejwe. Iyo agaciro k`ibyangiritse kangana cyangwa karengeje agaciro k`imodoka umunsi w`impanuka, umwishingizi yishyura ako gaciro k`imodoka umunsi w`impanuka havanywemo agaciro k`ibisigazwa byayo (épave).

[14] Urukiko rusanga mu kugena indishyi, hagomba kurebwa agaciro imodoka yari ifite mbere y`uko ikora impanuka, nk`uko aya masezerano rusange y`ubwishingizi bw`ibinyabiziga abiteganya mu ngingo ya 44-2 yagaragajwe haruguru. Ako gaciro kakaba kagomba kugenwa n`umuhanga mu byo kubara agaciro k`imodoka hagendewe ku busaze bwayo.

[15] Ku birebana n`uru rubanza, Urukiko rusanga Soras Assurances Generales Ltd ari ubwo buryo yakurikije igenera indishyi Fermes des Grands Lacs igihe imodoka yangirikaga burundu kubera impanuka yagize, kuko yagennye indishyi zishingiye ku gaciro iyo modoka yari ifite icyo gihe igira impanuka kabazwe n`umuhanga mu by`agaciro k`imodoka wanagaragaje agaciro k`ibisigazwa byayo nk`uko bigaragazwa na `` Procès-verbal d`expertise et d`évaluation contradictoire`` yasinyweho n`impande zombi kuwa 16/12/2009, igaragara muri dosiye.

[16] Kuba Urukiko rubanza rwaragennye indishyi rushingiye

ku gaciro k`imodoka yari ifite igitangira kwishingirwa nk`aho kadahinduka, nk`uko uwishingiwe yabyifuzaga, uru Rukiko rusanga binyuranyije n`ibyo amasezerano rusange agenga impande zombi ateganya, n`ubwo mu kugena ``prime`` yagombaga kwishyurwa buri mwaka Soras Assurances Générales Ltd itagendeye ku gaciro k`imodoka gashingiye ku busaze nk`uko byagombaga kubarwa.

[17] Urukiko rusanga rero agaciro k`imodoka yarifite igihe cy`impanuka kagaragajwe n`umuhanga mu nyandiko zashyizweho n`impande zombi ari 17.132.401Frw hakavanwamo agaciro k`ibisigazwa byayo (valeur d`épave) kangana na 8.566.200Frw, hagasigara 8.566.201Frw, akaba ariyo Soras Assurances Générales Ltd igomba kwishyura Fermes des Grands Lacs, kandi FGL ikagumana ibisigazwa by`imodoka (épave).

i. <u>Kumenya niba Soras Assurances Générales Ltd yaragombaga gucibwa indishyi z`ubukererwe .</u>

[18] Uburanira Soras Assurances Générales Ltd avuga ko umucamanza yemeje ko igomba guha Fermes des Grands Lacs indishyi zingana na 5.000.000 Frw z'uko yatinze kuyishyura ngo yirengagije ibiteganywa n`ingingo ya 44 y'amasezerano rusange y'ubwishingizi bw'ibinyabiziga bigenzwa na moteri.

[19] Avuga ko iyo habaye impanuka hishyurwa ibyangiritse, ko ntaho itegeko ryavuze ko hishyurwa ubukererwe. Avuga kandi ko ubukererwe bwatewe na Fermes des

Grands Lacs ubwayo kuko impanuka yabaye kuwa 12/07/2009, iyimenyekanisha kuwa 31/09/2009, nyuma y'igihe gito Soras Assurances Générales Ltd ikoresha ubugenzuzi (expertise), kuwa 16/02/2009 yohereza imbonerahamwe (devis) y`ibyangiritse n`indishyi igomba kwishyura, Fermes des Grands Lacs yanga inyishyu, ko rero ariyo yikerereje.

[20] Uburanira Fermes des Grands Lacs avuga ko Soras Assurances Générales Ltd yabakereje kuko bagiye bayandikira amabaruwa menshi ariko ntiyishyure kandi yaragombaga kwishyura ikibona impapuro zimenyesha ko habaye impanuka (déclaration d`accident).

[21] Avuga ko kuva impanuka ibaye kugeza ikibazo kigeze mu nkiko, hashize imyaka ibiri, ko rero bakomeje kwishyuza, babona Soras Assurances Generales Ltd ntacyo ibikozeho, bakodesha imodoka yo kwifashisha, ko bagaragarije urukiko amafaranga y'ubukode bagiye batanga n'ubwo umucamanza atahaye agaciro ibyo bimenyetso, akabagenera 5.000.000 Frw gusa mu bushishozi bwe.

[22] Urukiko rusanga nk`uko inyandiko zahererekanyijwe hagati y`impande zombi zibigaragaza, impanuka y`imodoka Toyota Land cruiser Nº NK 5828 BB yarabaye kuwa 12/7/2009, Fermes des Grands Lacs ibimenyesha Soras Assurances Generales Ltd kuwa 17/7/2009 ndetse iyohereza n`imbonerahamwe y`ibyangiritse (devis de réparation) kuwa 31/08/2009; Soras nayo yohereza Fermes des Grands Lacs ``contre-

expertise`` kuwa 27/10/2009 hashize igihe kingana hafi n`amezi 3, ndetse Soras Assurances Generales LTD yemera kwishyura indishyi zagaragajwe n`umuhanga w`iby`agaciro k`imodoka zingana na 8.566.201 Frw, Fermes des Grands Lacs ntiyayemera, ihitamo kugana inkiko. Kuba rero itarishyurwa kugeza ubu ntibyabarwa ku makosa ya Soras Assurances Générales Ltd, hakaba rero nta mpamvu yagombaga kugenerwa indishyi z`ubukererwe, cyane cyane ko n`ibyo yaregeye nta shingiro ryabyo, bityo ubujurire bwa Soras Assurances Générales Ltd kuri iyi ngingo bukaba bufite ishingiro.

ii. <u>Ku bijyanye n'ubujurire bwuririye ku bundi bwatanzwe na Fermes des Grands Lacs.</u>

[23] Uburanira Fermes des Grands Lacs avuga ko umucamanza yagennye indishyi nkeya, akaba atanze ubujurire bwuririye ku bwa Soras Assurances Générales Ltd, yongera kuyisabira 127.600$ nk'uko yari yayasabye mu rwego rwa mbere na 2.000.000 Frw y'ikurikiranarubanza n'igihembo cya avoka.

[24] Soras Assurances Générales Ltd ivuga ko izo ndishyi zishingiye ku mpanuka Fermes des Grands Lacs idakwiye kuzigenerwa mu gihe nta tegeko na rimwe zishingiyeho, ko nta n`impamvu yagenerwa amafaranga y`ikurikiranarubanza hamwe n`ay`igihembo cy`avoka mu gihe ariyo yakoze amakosa yanga ubwishyu.

[25] Uru Rukiko rurasanga indishyi zisabwa na Fermes des Grands Lacs ntazo yagenerwa kuko izo yagenewe haruguru zingana na 8.566.201 Frw arizo ikwiye guhabwa nk`uko byasobanuwe haruguru, hakaba kandi

nta n'amafaranga y`ikurikiranarubanza n`ay'igihembo cy`avoka yahabwa kuko ntacyo itsindiye.

III. ICYEMEZO CY'URUKIKO

[26] **Rwemeje ko** ubujurire bwatanzwe na Soras Assurances Geénérales Ltd bufite ishingiro ;

[27] **Rwemeje ko** ubujurire bwuririye ku bundi bwatanzwe na Fermes des Grands Lacs nta shingiro bufite ;

[28] **Rutegetse** Soras Assurances Générales Ltd kwishyura Fermes des Grands Lacs indishyi zingana na 8.566.201 Frw kubera imodoka yayo Nº NK 5828 BB yangiritse burundu, kandi Fermes des Grands Lacs ikagumana ibisigazwa byayo ;

[29] **Rutegetse** Fermes des Grands Lacs kwishyura amagarama y`urubanza angana na 26.600 Frw, itayishyura mu minsi 15, agakurwa mu byayo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 24.05.2013.

sé
Kayitesi R.Emily
Perezida

sé
Mukandamage M. Josée
Umucamanza

sé
Kanyange Fidélité
Umucamanza

sé
Muhimakazi Léoncie
Umwanditsi w`Urukiko

IMANZA Z'UBUTEGETSI

7. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RADA0034/11/CS

ITARIKI Y'URUBANZA: 14/06/2013

HABURANA: DICKY SA MUTERERE Hokie C/ Ishuri Rikuru Nderabarezi rya Kigali (KIE) mu izina ry'umuyobozi waryo

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI- IKOSA RITEGANYIJWE MU MATEGEKO NGENGAMIKORERE-IGIHANO CYATEGANYIJWE MURI AYO MATEGEKO-INDISHYI KU MUKORESHA UTANZE IGIHANO KINYURANYIJE N'IGITEGANYIJWE MU MATEGEKO NGENGAMIKORERE.

INDISHYI ZIGENERWA UWAHAWE IGIHANO KINYURANYIJE N'IGITEGANYIJWE MU MATEGEKO NGENGAMIKORERE-KUZIGENA MU RUGERO RUCIRIRITSE HAZIRIKANWA KO UMUKOZI ABA ATIRUKANIWE UBUSA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Umukozi ugaragaweho ikosa rikomeye hakurikijwe amategeko ngengamikorere ikigo runaka cyishyiriyeho agomba guhabwa igihano giteganyijwe muri ayo mategeko, iyo bidakozwe uko bishobora gutangirwa ku mukoresha uba watanze icyo gihano.

- Indishyi zigenerwa wahawe igihano kidateganyijwe mu mategeko ngengamikorere zigomba kuba mu rugero ruciriritse hazirikanwa ko atirukaniwe ubusa.

URUKIKO RW'IKIRENGA, RURI I KIGALI RUBURANISHA IMANZA Z'UBUTEGETSI, RUKIJIJE MU RUHAME KUWA 14/06/2013, URUBANZA Nº RADA0034/11/CS MU BURYO BUKURIKIRA:

HABURANA:

UWAJURIYE: DICKY SA MUTERERE Hokie, mwene MUTERERE na Rose BAKAGYEREHO, ufite ubwenegihugu bw'Ubugande, Utuye mu Mujyi wa Nairobi-Igihugu cya Kenya.

UREGWA: Ishuri Rikuru Nderabarezi rya Kigali (KIE) mu izina ry'umuyobozi waryo.

IKIBURANWA:

- Indishyi zikomako ku iseswa ry'amasezerano y'igihe kizwi mu buryo budateganyijwe n'amategeko.
- Indishyi z'akababaro
- Indishyi z'ikurikiranarubanza n'igihembo cy'avoka

I. IMITERERE Y'URUBANZA.

(1) MUTERERE yavuzweho imyitwarire idahuye n'indangagaciro z'Ishuri Rikuru Nderabarezi rya Kigali (KIE), yo kugirana ubucuti n'abanyeshuri yigisha buganisha ku mibonano mpuzabitsina, bigatuma atumizwa mu nama ishinzwe imyitwarire myiza y'abakozi. Nyuma yo kumva ibisobanuro bye kuri icyo kibazo kuwa 02/03/2009, hafashwe icyemezo cyo gusesa amasezerano y'umurimo yari afitanye n'iryo shuri. MUTERERE ntiyanyuzwe n'icyo cyemezo, ashyikiriza ikibazo cye umugenzuzi w'umurimo w'Akarere ka Gasabo ariko ikibazo nticyakemuka.

(2) Yaregeye Urukiko Rukuru avuga ko yirukanywe mu buryo budakurikije amategeko, urwo Rukiko rwemeza ko amasezerano y'igihe kizwi ya MUTERERE yaseshwe kubera impamvu yumvikana, rutegeka KIE kwishyurira MUTERERE imisanzu y'amezi 62 mu isanduku y'ubwiteganyirize bw'abakozi y'u Rwanda, kumuha 10800USD ahwanye n'indishyi zo kuba itaramuhaye icyemezo cy'umukoresha n'amadolari 3.600USD ahwanye n'imperekeza atahawe.

(3) Urukiko Rukuru rwemeje ko ibyo MUTERERE asaba bijyanye no kuba hari amafaranga yagiye akurwa ku mushahara we nta shingiro bifite kubera ko ayo yumvikanye na KIE nawe ubwe yiyemerera ko yayabonye, ko ayo yahawe ashingiye kuri pay roll ntaho rwahera rwemeza ko ariyo mafaranga

yagombaga kujya ahembwa buri kwezi kuva aho asinyiye amasezerano.

(4) Ku bijyanye no kuba atarahawe amafaranga agenerwa abantu bahawe akazi nk'abanyamahanga, Urukiko rwasanze ntaho rwahera ruyamuha kubera ko nta bimenyetso yatanze by'uko yahawe akazi nk'umunyamahanga.

(5) Ku bijyanye n'indishyi z'ikurikiranarubanza n'igihembo cy'avoka Urukiko rwasanze buri ruhande rufite ibyo rutsindira biturutse ku makosa y'urundi ruhande, bityo rutegeka ko indishyi buri ruhande rwagombaga urundi zihwanirizwamo hashingiwe ku ngingo ya 182 y'Igitabo cya gatatu cy'amategeko mbonezamubano.

(6) MUTERERE ntiyishimiye imikirize y'urubanza ajuririra Urukiko rw'Ikirenga ku mpamvu zikurikira:

- Kuba umucamanza yaremeje ko yirukanywe ku mpamvu yumvikana nyamara yirengagije ibimenyetso yahawe kubera atigeze agaragaza niba hari igikorwa cy'ubusambanyi cyari kubaho kugira ngo abanyeshuri batsinde, ko kandi iyo aba yarirukaniwe sexual Harassment aba yarakurikiranywe n'Ubushinjacyaha.

- Kuba umucamanza yarirengagije ko mu mategeko agenga KIE nta gihano cyo gusesa amasezerano giteganyirijwe icyaha cya sexual Harasment.

- Kuba umucamanza yarirengagije ko MUTERERE yakoraga nk'umunyamahanga akaba yaragombaga guhabwa amafaranga abagenerwa iyo amasezerano y'umurimo arangiye no kuba ataramuhaye indishyi z'ikurikiranarubanza n'igihembo cya avoka kandi yaramugaragarije ko aburana aturuka kure mu guhugu cya Kenya.

(7) Uhagarariye KIE we avuga ko izi mpamvu z'ubujurire nta shingiro zifite, ko MUTERERE yirukanywe kubera imyitwarirere ye igayitse inyuranye n'amategeko ngengamikorere ya KIE, ko kandi n'ibyo asaba atahawe n'Urukiko Rukuru nta shingiro bifite nk'uko Urukiko rwabyemeje, asaba ko ahubwo MUTERERE yakwishyura amafaranga 3.000.000 yo kuyikurura mu manza nta mpamvu.

(8) Urubanza rwaburanishirijwe mu ruhame kuwa 07/05/2013, DICKY SA MUTERERE Hokie aburanirwa na Me GUMISIRIZA Hilary na Me NKURUNZIZA François Xavier naho Ishuri Rikuru Nderabarezi rya Kigali (KIE) riburanirwa na Me KAZUNGU Jean Bosco na Me UWASE Irène.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.

Muri uru rubanza hagomba gusuzumwa niba amasezerano y'akazi ya MUTERERE yaraseshwe ku mpamvu yumvikana, niba MUTERERE yarahawe akazi nk'umunyamahanga n'umushahara yahembwaga, no kureba ibijyanye n'indishyi zisabwa muri uru rubanza.

1. Kumenya niba amasezerano y'umurimo ya DICKY MUTERERE Hokie yaraseshwe ku mpamvu itumvikana.

(9) Ababuranira MUTERERE bavuga ko nta bimenyetso bifatika umucamanza yagendeyeho yemeza ko yirukanywe kubera imyitwarire ye idahwitse, ko yagombaga kwerekana ko ibikorwa MUTERERE yakoze hari aho bihuriye n'igikorwa cyo gukorana imibonano mpuzabitsina nk'uko KIE ibivuga, ko kandi kuba MUTERERE yaremeye ko yagiye ahamagarana n'abo banyeshuri bidahagije kwemeza ko habayeho sexual Harassment, ko hari hakwiye kugaragazwa ibiganiro yagiranye n'abo banyeshuri abahatira gukorana nabo imibonano mpuzabitsina akoresheje ububasha cyangwa igitinyiro abafiteho, ko rero SMS yohererejwe abo banyeshuri itagaragaraza icyaha cy'ihohotera.

(10) Ababuranira MUTERERE bavuga ko yirukanywe atisobanuye ku byo aregwa kubera ko atigeze yerekwa

raporo yakozwe na Komite y'imyitwarire myiza, ikaba nta mukono we uyigaragaraho, ko iyo aza kubona ibikubiye muri iyo raporo yari kubyisobanuraho kuko ibikubiyemo ari ibihimbano, umucamanza akaba ataragombaga kuyishingiraho bityo KIE ikaba yaragombaga gutanga ibindi bimenyetso by'ibyo MUTERERE yirukaniwe.

(11) Ababuranira MUTERERE bavuga ko kandi iyo aba yarirukaniwe sexuael Harassment bitaba aribyo kuko ari icyaha akaba yaragombaga gukurikiranwa n'inzego zibishinzwe kuko KIE idasimbura izo nzego, ko n'amategeko ngengamikorere yayo atigeze akurikizwa kuko afite uburyo ateganya ku bijyanye n'ibyo MUTERERE yakurikiranwagaho, muri ayo mategeko hakaba nta gihano kijyanye no gusesa amasezerano kirimo, bityo rero umucamanza akaba yaragombaga kwemeza ko MUTERERE yirukanywe ku mpamvu itumvikana, n'uburyo yirukanywemo budakurikije amategeko.

(12) Me KAZUNGU Jean Bosco na Me UWASE baburanira KIE bavuga ko ibyo abunganira MUTERERE baburanisha nta shingiro bifite kuko ibimenyetso byose byatanzwe byasuzumwe n'Urukiko nta na kimwe cyirengagijwe, MUTERERE akaba yarirukanywe kubera imyitwarire ye mibi.

(13) Naho ku bijyanye n'ikibazo cya sexual harassment, KIE ivuga ko MUTERERE nawe ubwe yiyemerera ko

bariya banyeshuri ibyo bavuze koko aribyo ahubwo agerageza kubisobanura abiha agaciro gato avuga ko bakuze nyamara akirengagiza ko nk'umurezi atemerewe gukora ibikorwa bigayitse nk'ibyo byatumye abanyeshuri bamuregera ubuyobozi.

(14) Bavuga ko kandi n'ubwo ibihano yahawe byaba bidateganyijwe mu mategeko ngengamikorere ya KIE, yo yasanze ibintu yakoze ari ikosa rikomeye ritari gutuma aguma kuba umurezi wayo isesa amasezerano, ko ibyo gutanga ikirego mu bugenzacyaha bitayireba, bikaba byari gukorwa n'abanyeshuri ubwabo, ko rero ibyo KIE yari gukora ku ruhande rwayo yabikoze,

(15) Ku mpamvu ijyanye n'uko mu mategeko ngengamikorere ya KIE igihano yahawe cyo kwirukanwa kidateganyijwe, bavuga ko nta shingiro bifite kuko amategeko ngengamikorere ya KIE ataruta ibyo itegeko riteganya.

(16) Ku bijyanye no kuvuga ko atigeze yisobanura ku makosa KIE ivuga ko yamwirukaniye, bavuga ko nabyo ataribyo kuko yahamagawe akisobanura muri Komite ishinzwe imyitwarire myiza ari nabwo yavuze ko kuri we abona ari ibintu byoroheje kubera ko abakobwa bamushinja bakuze, bityo rero ko kubasaba gukora imibonano mpuzabitsina ari ibintu bisanzwe.

(17) Ku bijyanye no kumenya niba MUTERERE yarirukanywe nta mpamvu, Urukiko rurasanga mu

nyandiko zigize dosiye[1] harimo inyandiko yo kuwa 05/02/2009 yakozwe na Joan Mutesi aho yemeza ko kuva mu 2006 akigera mu mwaka wa mbere MUTERERE yatangiye kumusaba ko baba inshuti ariko amusubiza ko afite umuhungu bakundana nyamara undi ntabyumve agahora amusaba kumusura anamusaba ko bakorana imibonano mpuzabitsina. Uyu munyeshuri avuga ko ibi byo kumuhoza ku nkenke amusaba ko baryamana ari nabyo byabaye intandaro yo gutsindwa amwe mu masomo yigaga, harimo n'ayo MUTERERE yamwigishaga.

(18) Naho uwitwa Marie Thérèse NYIRAHABIMANA we avuga ko MUTERERE yatangiye kumusaba gukorana imibonano mpuzabitsina kuva mu 2007, ko yagendaga amusaba kumusura iwe ku gisimenti undi akabyanga, ko kandi ibi byakomeje kugeza mu 2008 bigatuma atangira kujya asiba ishuri ndetse kugeza ubwo yiga umwaka umwe inshuro ebyiri zose.

(19) Urukiko rurasanga kandi mu nyandiko zigize urubanza harimo ubutumwa bugufi (SMS) MUTERERE yandikiye Marie Thérèse NYIRAHAMANA amubwira ati:« kubera ko utavuze igihe uzira, ngiye mu buriri kuba nduhutse.Umuryango w'imbere urafunguye, nuza usunike urugi winjire, nuko ukomange ku rugi rw'icyumba cyanjye», ibi kandi bishimangirwa n'ibyo MUTERERE ubwe yiyemereye ubwo yitabaga

---

[1]Inyandiko ziri kuri cote ya 110 na 111 mu nyandiko zigize urubanza za NYIRAHABIMANA Marie Thérèse na Joan MUTESI zifite umutwe ugira uti SEXUAL HARASMENT COMPLAINT AGAINST MR MUTERERE HOKIE

akanama gashinzwe imyitwarire, yabazwa kuri iki kibazo agasubiza ko abanyeshuri bamurega ari bakuru, ku buryo kubasaba gukorana imibonano mpuzabitsina ari ibintu bito cyane.

(20) Ingingo ya 3.4.2 mu duce twayo twa a,b na c y'amategeko ngengamikorere y'Ishuri Rikuru Nderabarezi rya Kigali[2] ibuza ibyerekeye gushora abanyeshuri cyangwa abakozi bakorera muri icyo kigo mu mibonano mpuzabitsina hitwajwe ubuyobozi cyangwa igitinyiro, icyo ari cyo cyose, iyi ngingo iteganya ko imyitwarire nk'iyi idashobora kwihanganirwa, ibi bikumvikanisha ko imigirire nk'iyi ifatwa nk'amakosa akomeye k'uwayakoze.

(21) Ku myiregurire ye yuko atigeze akurikiranwaho icyaha cyo guhoza abanyeshuri ku nkenke ishingiye ku gitsina, Urukiko rurasanga iyo itaba impamvu imukuraho ikosa rikomeye yirukaniwe mu rwego rw'akazi, kuko imikurikiranire y'ikosa ry'akazi nk'iryo MUTERERE yakurikiranyweho itandukanye n'imikurikiranire y'ibyaha. Iki gitekerezo ni nacyo kigaragara mu rubanza NºRADA0022/09/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 10/02/2011, aho EWSA yirukanye NGIRIYUMVA imuziza kuba yaragize uburangare

[2]*It is unacceptable for anyone to make use of his/her position of authority for any sexual motives as in the following cases:*

a) *to implicitly or explicitly impose condition on student admission, grading or academic progress*

b) *to implicitly or explicitly impose condition on staff recruitment, selection,appraisal or careerprogress*

c) *to create an intimidating or offensive learning or working environment, that interferes with academic or work performance*

bigatuma hibwa amazi no kuba yaratumye abaturage bahabwa amazi mabi nyamara akaza kwirukanwa bitabaye ngombwa ko akurikiranwaho n'inkiko icyaha cy'ubujura.

(22) Urukiko rurasanga, MUTERERE yarakoze ikosa rikomeye yamenyeshejwe akanaryisobanuraho imbere y'inama ishinzwe imyitwarire myiza y'abakozi kuwa 24/02/2009, ryo gushaka gushora abanyeshuri ashinzwe kurera mu mibonano mpuzabitsina, ubwo yari imuhamagaje bitewe n'inyandiko z'abanyeshuri 2 bamurega kubahoza ku nkenke abasaba ko baryamana [3]. Iri rikaba ari ikosa yagombaga guhanirwa.

(23) Ku bijyanye n'ibihano ku cyaha cya sexual harassment gishyirwa mu makosa yo mu rwego rwa mbere, ingingo ya 3.7.2 y'amategeko agenga KIE iteganya ko umukozi wa KIE warifatwaho yahanishwa ibihano birimo:

- Kwihanangirizwa mu magambo;
- Kwihanangirizwa mu nyandiko;
- Kugawa (official blame);
- Gukatwa 1/3 cy'umushahara w'ukwezi;
- Guhagarikirwa iyongerwa ry'umushahara rikorerwa abakozi ku mwaka.

(24) Urukiko rurasanga, nubwo ibyo MUTERERE yakoze ari ikosa rikomeye, cyane ku murezi kubo yigisha akuriye, igihano yariherewe kitajyanye n'icyo amategeko ya KIE yiteganirije ubwayo kuri iryo

[3] *Reba raporo iri kuri cote ya 85 yitwa report of staff disciplinary committee meeting held on February 24 th, 2009.*

kosa. Kubw'ibyo akaba akwiye kugenerwa indishyi zitari iz'uko yaba yarirukaniwe ubusa, ahubwo z'uko yahanishijwe igihano kirenze igiteganyirijwe ikosa yakoze.

(25) Urukiko rurasanga rero, indishyi yahabwa zaba mu rugero ruciriritse hazirikanwa ko atirukaniwe ubusa, bityo akaba yahabwa indishyi zigenwe mu bushishozi bw'urukiko zingana n'umushahara we w'amezi atatu, ni ukuvuga 1800 USD x 3= 5.400 USD.

1. **Ku byerekeranye n'amafaranga anyuranye DICKY MUTERERE Hokie avuga ko atahawe n'umukoresha we.**

a) ***Ku byerekeye amafaranga avuga ko yagiye akatwa ku mushahara we n'amafaranga atahawe nk'uwahawe akazi nk'umunyamahanga.***

(26) Me GUMISIRIZA Hilary uburanira MUTERERE avuga ko Urukiko Rukuru rwirengagije ibimenyetso byerekana ko MUTERERE yahawe akazi nk'umunyamahanga, ko yagombaga guhabwa amafaranga asanzwe ahabwa abakozi b'abanyamahanga yitwa Gratuity, nk'uko na mugenzi we w'umunyamahanga witwa MURAYA yayahabwaga.

(27) Akomeza asobanura ko MUTERERE yigeze no guhabwa ayo mafaranga ya Gratuity hashingiwe ku masezerano y'akazi yari afite yiswe Expatriate

contract terms agenewe abanyamahanga, nyuma akaza kuyakatwa adasobanuriwe impamvu.

(28) Me UWASE uburanira KIE avuga ko MUTERERE atigeze akatwa ayo mafaranga nk'uko abivuga, ko ahubwo yahembwaga mu byiciro bibiri, kimwe mu manyarwanda ikindi mu madorali, ko rero iyo aza kuba yaragiye akatwa amafaranga yari kubibaza mu buyobozi bwa KIE.

(29) Urukiko rurasanga nk'uko Urukiko Rukuru rwabibonye ntaho rwahera rwemeza ko hari amafaranga MUTERERE yagiye akatwa ku mushahara we kubera ko nawe ubwe yemera ko ayo yumvikanye na KIE yayabonye, kuba yarigeze kubona amafaranga arenze kuyo yumvikanye na KIE bikaba bitafatwa ko ariyo yagombaga guhembwa buri kwezi kubera ko nta bimenyetso abitangira, ahubwo yaragiye ahabwa amasezerano y'akazi mu bihe bitandukanye n'imishahara itandukanye.

(30) Ku bijyanye n'amafaranga MUTERERE avuga ko yagombaga guhabwa nk'umukozi w'umunyamahanga ashingiye ku ibaruwa yandikiye Ubuyobozi bwa KIE kuwa 26/02/2004 abumenyesha ko atishimiye amasezerano y'akazi yasinyishijwe n'umushahara agomba kujya ahembwa, Urukiko rurasanga Ubuyobozi bwa KIE bwaramusubije mu ibaruwa yo kuwa 02/03/2004 bumumenyesha ko ikigo kidashobora kumuha amasezerano yifuza ya Expatriate contract terms, ko ahawe amasezerano ya Improved Local

contract terms kubera ko ahawe akazi ari imbere mu gihugu akaba atavanywe hanze[4] kandi akemera gukora akazi ahawe.

(31) Ibivuzwe haruguru bigaragaza ko MUTERERE yahawe akazi nk'umukozi w'imbere mu gihugu yemera no kugakora, kuba yarashyizwe kuri pay roll y'abanyamahanga bikaba byaratewe n'impamvu yo kwibeshya, bityo amasezerano yagiranye na KIE akaba agomba kubahirizwa hakurikijwe ingingo ya 64 y'itegeko n° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye**.**

b) Ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cy'avoka MUTERERE avuga ko atahawe n'Urukiko Rukuru.

(32) Ababuranira MUTERERE bavuga ko Urukiko Rukuru rwakoze ikosa ryo kwanga kumugenera amafaranga y'igihembo cya avoka n'ay'ikurikiranarubanza ku mpamvu z'uko hari ibyo yatsindiye na KIE ikagira ibyo itsindira, nyamara rwirengagije ko KIE nta kirego yigeze itanga cyaba igisanzwe cyangwa ikigamije kwiregura, ko rero itagombaga gusaba indishyi z'ikurikiranarubanza, bityo rero akaba akwiye guhabwa indishyi z'ikurikiranarubanza n'igihembo cy'avoka kubera ko aburana uru rubanza ava muri Kenya bikaba byaramuteje igihombo gikabije.

[4] *Amabaruwa ari kuri cote ya 60 na 61 yose ajyanye n'uburyo DICKY SA MUTERERE Hokie yahawe akazi n'imiterere y'amasezerano y'umurimo amugenga.*

(33) Ababuranira KIE bavuga ko amafaranga y'ikurikiranarubanza n'igihembo cy'avoka atagomba gutangwa kubera ko KIE nayo yari yatanze ikirego cyo kwiregura isaba indishyi zo gushorwa mu manza ku maherere, ko nabo kuri uru rwego basaba MUTERERE Hokie guha KIE 3.000.000 frw kubera gukomeza kuyishora mu manza nta mpamvu.

(34) Urukiko rurasanga, MUTERERE akwiye guhabwa amafaranga y'ikurikiranarubanza n'igihembo cya avoka kubera ko yaburaniwe na avoka kandi hari ibyo atsindiye kuri uru rwego, akaba mu bushishozi bw'urukiko yahabwa 600.000 frw akubiyemo ay'ikurikiranarubanza n'igihembo cya avoka, ubujurire bwa KIE bwuririye ku bundi bugamije kwaka indishyi zingana na 3.000.000 frw kubera gukururwa mu manza ku maherere bukaba nta shingiro bufite kuko yarezwe hari impamvu.

III. ICYEMEZO CY'URUKIKO.

(35) **Rwemeje** ko ubujurire bwa DICKY SA MUTERERE Hokie bufite ishingiro kuri bimwe;

(36) **Rwemeje** ko urubanza NºRAD0098/09/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 29/07/2011 ruhindutse kuri bimwe;

(37) **Rutegetse** KIE guha DICKY SA MUTERERE Hokie

indishyi zihwanye na 5.400 USD, hamwe na 600.000 frw y'ikurikiranarubanza n'igihembo cya avoka yiyongera ku yo yagenewe mu Rukiko Rukuru;

(38) **Rutegetse** KIE gutanga amagarama y'urubanza angana na 31.050 frw.

(39)

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME KUWA 14/06/2013.

Se
Sam RUGEGE
Perezida

Se
MUGENZI Louis- Marie
Umucamanza

Se
MUNYANGERI N. Innocent
Umucamanza

Se
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

8. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RADA0043/12/CS

ITARIKI Y'URUBANZA: 31/05/2013

HABURANA: Leta y'u Rwanda (MINEDUC) C/ Joint Venture Studio Landmark-Fusione .

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI- UBUBASHA BW'URUKIKO MU KUGIRA ICYO RUTEGEKA LETA GUKORA CYANGWA KUDAKORA-KUBIKORA IYO HARI URUBANZA RWAREGEWE.

IBYEMEZO BYAFASHWE N'IZINDI NZEGO Z'UBUYOBOZI-KUTABISHINGIRAHO MU KUGIRA ICYO URUKIKO RUTEGEKA LETA GUKORA CYANGWA KUDAKORA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Icyo ingingo ya 96 COCFJ yumvikanisha ni uko Urukiko rushobora kugira ibyo rutegeka gukora cyangwa kudakora mu gihe hari urubanza rwaregewe kandi ruri mu bubasha bwarwo.

- Urukiko ntirushobora kugira ibyo rutegeka Leta gukora cyangwa kudakora rushingiye ku byemezo byafashwe n'urundi rwego, kubera ko Urukiko rutegeka ubuyobozi gukora cyangwa kudakora iyo rufashe icyemezo mu manza z'ubutegetsi

URUKIKO RW'IKIRENGA RUBURANISHA MU RUHAME IMANZA Z'UBUTEGETSI, RUCIYE KUWA 31/05/2013 URUBANZA RADA A0043/12/CS MU BURYO BUKURIKIRA:

UWAJURIYE:

- **Leta y'u Rwanda (MINEDUC)** mw'izina ry'Intumwa Nkuru.

UREGWA:

- **Joint Venture Studio Landmark-Fusione**, Studio Landmark ikaba ari sosoyete nyarwanda ikorera ku Kimihurura, Akarere ka Gasabo, Umujyi wa Kigali; Fusione ikaba ari sosiyete y'ingande ikorera Kampala-Uganda

IKIBURANWA:

Gutegeka Leta y'u Rwanda (MINEDUC) gushyira mu bikorwa icyemezo nº 001/2001/NIRP cyafashwe n'Akanama k'ubujurire kigenga ku rwego rw'igihugu.

I. IMITERERE Y'URUBANZA

[1] Nyuma y'uko Joint Venture Studio Landmark-Fusione imenyeshejwe ko yegukanye isoko ryo kwiga, gutegura no kubakisha Faculty of Architecture and Environnement Design muri KIST), ariko igihe cyo gusinya amasezerano Minisiteri y'uburezi (MINEDUC) ntibikore ngo kuko byagaragaye ko umuyobozi w'iyo sosiyete witwa Eudes Kayumba yari umwe mu bagize inama y'ubutegetsi bwa KIS, yatakambiye MINEDUC ariko ntiyagira icyo isubiza, itanga ikirego mu kanama k'ubujurire kigenga ku rwego rw'igihugu, gategeka iyo Minisiteri gusubiza isoko uwaritsindiye ariwe Joint Venture Studio Landmark-Fusione.

[2] Joint Venture Studio Landmark-Fusione ivuga ko MINEDUC itigeze yubahiriza icyo cyemezo cyangwa ngo ikijuririre, bituma itanga ikirego mu Rukiko Rukuru isaba ko rutegeka Leta y'u Rwanda (MINEDUC) gushyira mu bikorwa icyemezo cy'akanama k'ubujurire kigenga ku rwego rw'igihugu.

[3] Urukiko rwemeje ko ikirego cya Joint Venture Studio Landmark-Fusione gitite ishingiro, rutegeka Leta y'u Rwanda (MINEDUC) kubahiriza icyemezo nº 001/2001/NIRP cyafashwe n'akanama k'ubujurire kigenga kuko cyabaye ndakuka nk'uko biteganywa n' ingingo ya 71 y'itegeko rigenga amasoko ya Leta, ko icyo cyemezo ari cyo kigomba kubahirizwa kuko MINEDUC nk'urwego rwatanze isoko, itigeze ibiregera mu rukiko rubifitiye ububasha ngo hagire ikindi cyemezo gifatwa kandi gihindura icyo cyafashwe n'ako kanama. Rushingiye ku ngingo ya 96 y'itegeko ngenga nº 58/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha

by'inkiko, rwasanze Leta y'u Rwanda igomba kubahiriza icyo cyemezo gisubiza isoko Joint Venture Studio Landmark-Fusione.

[4] Leta y'u Rwanda (MINEDUC) yajuririye urwo rubanza mu Rukiko rw'Ikirenga, ivuga ko urukiko rutasuzumye ingingo y'uko igihe MINEDUC yiteguraga gusinya amasezerano yasanze hari igongana ry'inyungu (conflict of interest), ko kandi kubera iryo gongana ry'inyungu BAD yamenyesheje iyo Minisiteri ko itazatanga inkunga yari iteganyirijwe isoko. Na none kandi ngo hirengagijwe ko akanama k'ubujurire kafashe icyemezo kadashishoje, ntikanatanga impamvu kashingiyeho (motivation) ku birebana n'igongana ry'inyungu MINEDUC yagaragaje. Leta inenga kandi ko urukiko rwategetse ko isoko ritangwa kandi bidashoboka.

[5] Iburanisha ryabaye kuwa 20/12/2012, Leta y'u Rwanda (MINEDUC) iburanirwa na Me Sebazungu Alphonse na Me Karemera George, Joint Venture Studio Landmark-Fusione iburanirwa na Me Mwine Geoffrey. Iburanisha ryongeye gufungurwa kuwa 23/04/2013 nk'uko Urukiko rwari rwabitegetse mu rubanza rubanziriza urundi rwo kuwa 15/02/2013 kugira ngo ababuranyi bagire icyo bavuga ku myumvire y'ingingo ya 96 y'itegeko ngenga nº 58/2008 ryo kuwa 09/09/2008 ryavuzwe haruguru, Urukiko Rukuru rwashingiyeho rufata icyemezo, irebewe hamwe n'ikirego Joint Venture Studio Landmark-Fusione yatanze muri urwo rukiko, uwo munsi ababuranyi biritaba bahagarariwe nka mbere.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba urukiko rwarashoboraga gutegeka Leta y'u Rwanda (MINEDUC) gushyira mu bikorwa icyemezo nº 001/2001/NIRP cyafashwe n'akanama k'ubujurire kigenga.

[6] Ababuranira Leta y'u Rwanda bavuga ko urukiko rwirengagije ko hari igongana ry'inyungu ryatumye MINEDUC idasinya amasezerano nk'uko biteganywa n'ingingo ya 16 y'itegeko rigenga amasoko ya Leta, ko kuba Kayumba yari umuyobozi wa sosiyete yapiganiye isoko akongera akaba umwe mu bagize inama y'ubutegetsi ya KSTari nayo mugenerwa bikorwa, byumvikana ko harimo igongana ry'inyungu.

[7] Bakomeza bavuga ko urukiko rwirengagije gusuzuma amabaruwa agaragaza igihe Kayumba yagiriye mu nama y'ubutegetsi bwa KIST n'igihe yaviriyemo, n'ibaruwa ya Ministre w'ubutabera yagiraga MINEDUC inama ku kibazo cy'iryo gongana ry'inyungu hamwe n'ibaruwa yaturutse muri Rwanda Public Procurement Authority yagaragaje ko Kayumba yari mu nama y'ubutegetsi bwa KIST.

[8] Bavuga kandi ko hirengagijwe ko ishyirwa mu bikorwa ry'icyemezo cy'akanama k'ubujurire ridashoboka kuko kubera ikibazo cy'igongana ry'inyungu BAD yavuze ko itazatanga amafaranga yari ateganyirijwe iryo soko ngo kuko binyuranije n'amahame remezo n'amategeko ngenderwaho y'iyo banki, bivuze ko MINEDUC itari gutanga isoko nta ngengo y'imari izishyura ibyo bikorwa, ibyo kandi ngo bikaba bihura n'ibiteganywa n'ingingo

ya 16 yavuzwe haruguru, ko rero n'ubwo MINEDUC itaregeye icyemezo cy'akanama k'ubujurire, bitari gutuma urukiko rwirengagiza ko icyo cyemezo kidashobora gushyirwa mu bikorwa kuko iyo nta mafaranga ahari n'isoko ritaba rihari. Basobanura kandi ko iryo soko ubu Leta irimo kuriha ababishoboye kuko itahatirwa kuriha umuntu ushaka kuyinyanganya.

[9] Na none kandi, ngo akanama k'ubujurire kigenga kafashe icyemezo nta bushishozi bukozwe, ntikanatanga impamvu kashingiyeho ku birebana n'igongana ry'inyungu kuri sosiyete yari yatsindiye isoko.

[10] Ku birebana n'imyumvire y'ingingo ya 96 y'itegeko ngenga nº 58/2008 ryo kuwa 09/0/2008 ryavuzwe haruguru, ababuranira Leta bavuga ko ariyo Urukiko Rukuru rwashingiyeho, ko ariko icyo urwo rukiko rushobora gutegeka ari ikiri mu bubasha bwarwo, ko rutategeka ikiri mu bubasha bw'izindi zego. Bavuga kandi ko icyaregewe atari amasezerano ahubwo ari icyemzo cyafashwe n'urundi rwego kandi ingingo ya 96 yo ivuga ku masezerano.

[11] Uburanira Joint Venture Studio Landmark-Fusione avuga ko ubujurire bwa Leta bugaruka ku kibazo cy'igongana ry'inyungu kandi nyamara igika cya 7 cy'ingingo ya 16 y'itegeko rigenga amasoko ya Leta, ivuga umukozi cyangwa ugize inama y'ubutegetsi w'urwego rwatanze isoko, urwo rwego rwatanze isoko akaba ari MINEDUC, ko rero Kayumba bitamureba, ko kuba yaba yarigeze gukora muri MINEDUC akaza kuvamo bitahabwa agaciro kuko isoko ryapiganiwe na sosiyete.

[12] Avuga kandi ko ababuranira Leta batagombye kugaruka ku kibazo cy'igongana ry'inyungu kandi nyamara icyasuzumwe n'Urukiko Rukuru ari ishyirwa mu bikorwa ry'icyemezo cy'akanama k'ubujurire nk'uko umucamanza yabisobanuye, icyo cyemezo kandi Leta ikaba itarakijuririye mu gihe giteganywa n'ingingo ya 163 y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Yongeraho ko inyandiko ababuranira Leta bavuga ko zititaweho ntacyo zari gucyemura kuko zidateganywa n'amategeko ahubwo ateganya inzego zishinzwe gucyemura amakimbirane yavuka mu masoko ya Leta kuva ku rwego rw'Akarere kugeza ku rwego rw'Igihugu.

[13] Yongera akavuga ko MINEDUC itakwanga gushyira mu bikorwa ibyemezo by'inkiko yitwaje ko umuterankunga yanze gutanga amafaranga kuko yashoboraga gushaka abandi baterankunga, kuba nta ngengo y'imari yari ihari nabyo bikaba bitahabwa ishingiro kuko yashoboraga kumvikana n'uwatsindiye isoko akishyurwa ku ngengo y'imari y'umwaka ukurikiye, ariko ikaba yarirengagije ibyo byose igakomeza gutanga isoko.

[14] Asobanura kandi ko akanama k'ubujurire ari rwo rwego rwemewe n'amategeko kandi icyemezo kafashe kikaba ari ndakuka, kuba ababuranira Leta bagihinyuza cyangwa bavuga ko kidasobanuye neza byagombye kuba byarareg ewe. Byongeye kandi ngo mbere yo gufata icyemezo ako kanama kandikiye MINEDUC, ikoresheje abanyamategeko bayo iriregura, karabisuzuma gafata icyemezo, ko rero Leta yategekwa gushyira mu bikorwa icyo cyemezo.

[15] Ku birebana n'imyumvire y'ingingo ya 96 y'itegeko ngenga nº 58/2008 ryo kuwa 09/0/2008 ryavuzwe haruguru, avuga ko iyo ngingo iha Urukiko Rukuru ububasha bwo gutegeka inzego za Leta gushyira mu bikorwa ibyemezo byabaye ndakuka, ko rero nta rundi rwego rutari urukiko rwategeka Leta gushyira mu bikorwa bene ibyo byemezo.

UKO URUKIKO RUBIBONA

[16] Icyemezo Joint Venture Studio Landmark-Fusione yaregeye isaba ko Leta itegekwa kugishyira mu bikorwa, ni icyafashwe n'akanama k'ubujurire kigenga ku rwego rw'igihugu kemeje ko iyo sosiyete igomba gusubizwa isoko yatsindiye. Icyo cyemezo cyabaye ndakuka nk'uko biteganywa n'ingingo ya 71, igika cya nyuma y'itegeko nº 12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta.

[17] Ku birebana n'ingingo ababuranira Leta basobanuye banenga icyemezo cy'Urukiko Rukuru, bigaragara ko zongera kunenga icyemezo cy'akanama k'ubujurire byagaragajwe haruguru ko cyabaye ndakuka, kikaba atari cyo cyaregewe ku buryo urukiko rwakongera kugisuzuma kugira ngo rugihindure cyangwa rucyemeze nk'uko umucamanza wa mbere yabisobanuye.

[18] Urukiko rurasanga ariko, ingingo ya 96 y'itegeko ngenga nº 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko Joint Venture Studio Landmark-Fusione yashingiyeho ikirego cyayo n'urukiko rukayishingiraho rutegeka Leta gushyira mu bikorwa icyemezo cyafashwe n'akanama k'ubujurire,

iteganya ko '*'mu bubasha bwarwo buteganywa n'ingingo zibanziriza iyi, urukiko rukuru rushobora gutegeka, rukoresheje icyemezo cyanditse, urwego rw'ubutegetsi gukora cyangwa kudakora igikorwa iki n'iki*".

[19] Iyo ngingo yumvikanisha ko Urukiko rushobora kugira ibyo rutegeka Leta gukora cyangwa kudakora mu gihe hari urubanza rwashyikirijwe ruri mu bubasha bwarwo nk'uko buteganywa n'ingingo zibanziriza ingingo yavuzwe mu gika cya 18.

[20] Mu gitabo cy'abahanga mu mategeko Charles Debbasch na Frédéric Colin banditse, bavuga ko kugira ngo Ubutegetsi bugire icyo butegekwa gukora cyangwa kudakora, bigomba kuba byasabwe mu rubanza, ko kandi ibyo bikorwa igihe icyemezo cy'umucamanza kitagaragaza mu buryo bweruye ingingo irebana n'ishyirwa mu bikorwa ry'icyo cyemezo[5]**.**

[21] Na none kandi inyandiko zigaragara ku rubuga rwa internet, nazo zivuga ko icyo Ubutegetsi butegekwa gukora cyangwa kudakora kirebana buri gihe n'irangiza ry'ibyemezo by'urukiko.[6]

[22] Ku birebana n'ikirego cyatanzwe na Joint Venture Studio Landmark-Fusione, nta rubanza Urukiko rukuru rwari rwaregewe mu rwego rw'ibirego biri mu bubasha

[5] *L'injonction suppose nécessairement qu'un jugement ou un arrêt émanant d'une juridiction fasse l'objet d'une demande addressée au juge visant à prendre une mesure d'exécution. Mais une telle possibilité n'est ouverte que si un acte juridictionnel ne contient pas par lui-même de mesure suffisamment explicite quant à la mesure d'exécution impliquée par le jugement ou l'arrêt en cause, Charles Debbasch, Frédéric Colin, Droit administratif, 8e édition, p.683.*

[6] *L'injonction addressée à l'administration s'inscrit toujours dans une logique d'une décision juridictionnelle, Mémoire online, L'exécution par l'administration des décisions du juge, http://www.memoireonline.com/02/10/3151/m*

bwarwo nk'uko biteganywa n'ingingo ya 96 yavuzwe haruguru, rwashoboraga gushingirwaho ngo Urukiko rugire icyo rutegeka Leta kuko icyemezo cyasabiwe gushyirwa mu bikorwa cyafashwe n'urundi rwego, kikaba kitashingirwaho ngo urukiko rugire ibyo rutegeka Leta mu rwego rw'ibiteganywa n'ingingo imaze kuvugwa.

[23] Ibimaze kuvugwa ni nako byumvikanishwa n'ingingo ya 346 y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga igihe ikirego cyatangwaga inahura n'ibiteganywa n'ingingo ya 343 y'itegeko ryarisimbuye, zivuga ko urukiko rugira ibyo rutegeka ubuyobozi gukora cyangwa kudakora iyo rufashe icyemezo mu manza z'ubutegetsi.[7]

[24] Hashingiwe rero ku bimaze kuvugwa, Urukiko rurasanga ikirego cya Joint Venture Studio Landmark-Fusione kitaragombaga kwakirwa kuko cyatanzwe mu buryo bunyuranije n'amategeko, bityo urubanza RAD 0044/12/HC/KIG rukaba rugomba kuvaho.

2. Kumenya niba amafaranga Joint Venture Studio Landmark-Fusione isaba afite ishingiro.

[25] Yuririye ku bujurire bwa Leta y'u Rwanda, uburanira Joint Venture Studio Landmark-Fusione asaba ko

[7] *Iyo urukiko rufashe icyemezo mu manza z'ubutegetsi, rushobora gutegeka ubutegetsi gukora icyo rwemeje cyangwa kudakora icyo rubujije kandi rugateganya igihano cyubahirizwa guhera ku itariki rugena mu gihe icyo rwemeje cyaba kidakurikijwe.*

yagenerwa 30% y'igiciro cy'isoko mu rwego rw'igihano mu gihe Leta itakubahiriza icyemezo cy'urukiko, ikanatanga 5.000.000 frw kubera ko yabashoye mu manza ku maherere, naho ababuranira Leta bakavuga ko izo ndishyi nta shigiro zifite kuko Leta itari gushyira mu bikorwa icyemezo kandi bidashoboka, ikaba kandi yari ifite uburenganzira bwo kujuririra icyemezo yafatiwe.

[26] Hashingiwe ku byasobanuwe ku birebana n'ubujurire bw'ibanze, Urukiko rurasanga amafaranga Joint Venture Studio Landmark-Fusione isaba itayagenerwa kuko ntacyo ashingiyeho.

III. <u>ICYEMEZO CY'URUKIKO</u>

[27] Rwemeje ko ikirego cya Joint Venture Studio Landmark-Fusione kitagombaga kwakirwa mu Rukiko Rukuru kuko cyatanzwe mu buryo bunyuranije n'amategeko;

[28] Rwemeje ko urubanza RAD 0044/12/HC/KIG rwaciwe n'Urukiko Rukuru ruvuyeho;

[29] Rutegetse Joint Venture Studio Landmark-Fusione gutanga amagarama y'urubanza angana na 16.600 Frw, itayatanga mu gihe cy'iminsi umunani ayo mafaranga akavanwa mu byayo ku ngufu za Leta.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME KUWA 31/05/2013.

Sé
MUTASHYA Jean Baptiste
Perezida

Sé
KANYANGE Fidélité
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko.

9. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RADA0012/12/CS

ITARIKI Y'URUBANZA: 14/06/2013

HABURANA: AKARERE KA GATSIBO mu izina ry'umuyobozi wako C/ NTEZIRIZAZA Adrien et Crts

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI- KUBARA IBIHE BY'UBUJURIRE MU MANZA MBONEZAMUBANO-IBIHE BIBARWA MU MEZI NO MU MYAKA-IYO UMUNSI WA NYUMA UHUYE N'IKIRUHUKO HONGERWAHO UMUNSI W'AKAZI UKURIKIRA .

ITEGEKO RIHURIZA IMANZA HAMWE ZIKABURANISHIRIZWA HAMWE - KUBA NTAWABISABYE KO ZIHUZWA NGO URUKIKO RUBANGE-KUBIFATA NK'INENGE ISHOBORA GUTESHA AGACIRO URUBANZA MU GIHE HARI UMUBURANYI UGARAGAJE KO BYAMWANGIRIJE.

IBIREGO BY'ABANTU BENSHI BYAHURIJWE HAMWE - INDISHYI ZIGENEWE ABANTU BATANDUKANYE MU RUBANZA RUMWE - KUZIFATA NK'IZAGENYWE MU RUBANZA RUMWE KUBERA KO IMANZA ZIBA ZARAHUJWE ZIKABURANISHIRIZWA MU KIREGO KIMWE.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

N'ubwo mu ngingo ya 371 y'itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi irebana n'ibihe by'ijurira bibarwa mu mezi no mu myaka hatanditswemo ko ibyo bihe byongerwa iyo umunsi wa nyuma uhuye n'ikiruhuko nk'uko byanditswe mu ngingo ya 370 y'iryo tegeko ku ibihe bibarwa mu masaha no mu minsi, ku bihe bibarwa mu mezi no mu myaka nabyo byongerwaho umunsi w'akazi ukurikira iyo umunsi wa nyuma uhuye n'ikiruhuko kubera nta mpamvu igaragara umushingamategeko yaba yarashatse ko kuri ibyo bihe byo bitakorwa nk'uko bigenda ku bihe bibarwa mu masaha no mu minsi.

Kuba hatarabaye itegeko rihuriza imanza hamwe nta n'uwabisabye ngo Urukiko rubyange ku manza zaraburanishirijwe hamwe, ni inenge ariko itatesha agaciro urubanza, mu gihe ntawe ugaragaje ko kuba bitarakozwe byamwangiriije, bityo indishyi zigenwa muri urwo rubanza ziba ziri mu rubanza rumwe .

N'ubwo Urukiko rwaba rwarakiriye imanza zitandukanye, ikiregerwa ari kimwe n'uregwa ari umwe, iyo izo manza zihujwe zikaburanishirizwa hamwe ibirego bigasuzumwa mu rubanza rumwe, indishyi ziciwe utsinzwe zifatwa nk'indishyi zigenywe mu rubanza rumwe .

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUTEGETSI, RUKIJIJE MU RUHAME, KUWA 14/06/2013 URUBANZA RADA 0012/12/CS MU BURYO BUKURIKIRA:

<u>HABURANA</u> :

AKARERE KA GATSIBO (kajuriye) mu izina ry'Umuyobozi wako ;

na

ABAREGWA:

1. **NTEZIRIZAZA Adrien** mwene BYAVU na MUKAMUTONI;
2. **NTAWUGASHIRA Jean Bosco** mwene KAVENYA na NYIRABARIBUTSA;
3. **NSHIMIYIMANA Léopold** mwene NYIRIMBIRIMA na NYIRANUMA;
4. **NIYONSABA Théodomir** mwene MUNYANSHONGORE na NAYINO;
5. **KARORERO Wellars** mwene KAGIMBA na NZITABAKUZE;
6. **MUKARUGINA Félicité** mwene BARANYERETSE na NGIRABARIRA ;
7. **NSANZAMAHORO Jean Damascène** mwene GATO na KABANYANA;
8. **NYIRARUKABUZA Cathérine** mwene BASABOSE na NYIRAMAGWIRIRE;

9. **NYIRAMABUMBA Pénine** mwene BASHYITSI na NYIRABAZUNGU;

10. **BUTEGWA Félicien** mwene MPORANYI na NYIRANDEGEYA;

11. **HABUMUREMYI Stanislas** mwene NYIRIMIHIGO na MUKANDUTIYE ;

12. **BIGIRIMANA Raphael** mwene SEKANYAMBO na ABIYINGOMA;

13. **HAKIZAMUNGU Gabriel** mwene BUJANJARI na NYIRAHABIMANA;

14. **TWAGIRAYEZU Anastase** mwene NYIRIMIHIGO na MUKANDUTIYE;

Bose babarizwa mu Kagari ka Matunguru, Umurenge wa Rugarama, Akarere ka Gatsibo, Intara y'Iburasirazuba.

IKIBURANWA: Gukuraho icyemezo cyafashwe n'Ubuyobozi bw'Akarere ka Gatsibo mu buryo butubahirije amategeko agenga indishyi zihabwa abavanywe mu byabo kubera inyungu rusange, indishyi zijyanye n'imyaka yangijwe.

IKIREGERWA: Kujuririra urubanza RADA 0011- 25/11/ HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana kuwa 05/10/2012.

I. IMITERERE Y'URUBANZA

[1] Ubuyobozi bw'Akarere ka Gatsibo bwatanze amasambu ya NTEZIRIZAZA na bagenzi nk'uko amazina yabo yavuzwe haruguru, buyaha COPRORIZ-NTENDE kugira

ngo ihingemo umuceri. Ba nyir'amasambu ntibishimiye icyo cyemezo, bageza ikibazo cyabo ku nzego za Leta zinyuranye ariko Akarere ka Gatsibo kanga kubaha ingurane cyangwa se amafaranga yatuma babona ahandi batura bakanahinga, kavuga ko aho bita ahabo hari igishanga cya Leta.

[2] Urukiko Rwisumbuye rwa Nyagatare rwaregewe n'abo baturage rwemeje ko icyemezo cyafashwe n'Akarere ka Gatsibo cyo gukura NTEZIRIZAZA na bagenzi be mu masambu yabo kidakurikije itegeko, rutegeka Akarere ka Gatsibo kubaha indishyi zikurikira : NTEZIRIZAZA = 8.500.000 frw, NTAWUGASHIRA = 5.300.000 frw, NSHIMIYIMANA =7.231.000 frw, NIYONSABA = 7.200.000 frw, KARORERO = 4.820.000 frw, MUKARUGINA = 3.546.000 frw, NSANZAMAHORO = 4.852.000 frw, NYIRARUKABUZA = 4.831.000 frw, NYIRAMABUMBA = 4.215.000 frw, BUTEGWA = 9.164.000 frw, HABUMUREMYI =5.687.666 frw, BIGIRIMANA = 5.039.333 frw, HAKIZAMUNGU = 4.431.000 frw na TWAGIRAYEZU = 4.609.133 frw.

[3] Abo bagenewe indishyi bajuririye Urukiko Rukuru, Urugereko rwa Rwamagana, bavuga ko izo ndishyi ari nke, Akarere ka Gatsibo nako kajuririra kavuga hirengagijwe ko amasambu aburanwa ari aya Leta, kandi ko n'indishyi zagenwe hadakozwe igenagaciro ry'ibikorwa zasabirwaga. Urukiko rwemeje ko ubwo bujurire bwombi bufite ishingiro kuri bimwe, rutegeka Akarere ka GATSIBO guha abo baburana indishyi zikurikira : NTEZIRIZAZA = 8.705.480 frw, NTAWUGASHIRA = 5.426.404 frw, NSHIMIYIMANA = 9.796.810 frw, Umuryango wa NIYONSABA = 8.939.300 frw, KARORERO = 4.027.900 frw, MUKARUGINA = 3.620.000 frw, NSANZAMAHORO = 5.320.300

frw, NYIRARUKABUZA = 6.062.750 frw, NYIRAMABUMBA = 4.420.000 frw, BUTEGWA = 13.335.658 frw, HABUMUREMYI = 5.050.200 frw, BIGIRIMANA = 6.064.000 frw, HAKIZAMUNGU = 4.467.080 frw na TWAGIRAYEZU = 3.524.300 frw.

[4] Akarere ka GATSIBO kajuririye Urukiko rw'Ikirenga, iburanisha riba mu ruhame kuwa 14/05/2013, Akarere ka GATSIBO kaburanirwa na Me MBONERA Théophile, abaregwa mu bujurire baburanirwa na Me SEBAZIGA Sophonie na Me MUHIZI Emile.

[5] Mbere y'uko hasuzumwa ubujurire mu mizi, Me SEBAZIGA yatanze inzitizi yo kutakira ubujurire bw' Akarere ka GATSIBO kubera impamvu eshatu zikurikira, ari nazo zagiwe ho impaka mu iburanisha: kuba bwaratanzwe nyuma y'igihe cy'ukwezi giteganywa n'amategeko, no kuba butari mu bubasha bw'Urukiko rw'ikirenga kuko indishyi zagenewe buri muburanyi zitagera kuri 50.000.000 frw, ndetse Akarere ka GATSIBO kakaba karatsinzwe mu nkiko ebyiri zibanza ku mpamvu zimwe.

II. <u>ISUZUMWA RY'INZITIZI ZATANZWE MURI URU RUBANZA:</u>

A. Kubyerekeranye n'inzitizi yo kutakira ubujurire kubera ko bwaje bukererewe

[6] Uburanira NTEZIRIZAZA na bagenzi be yasabye Urukiko kutakira ubujurire bw' Akarere ka GATSIBO, hashingiwe ku ngingo ya 371 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize

y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko igihe cyo kujurira kibarwa mu mezi n'imyaka kitongerwa hagendewe ko umunsi wa nyuma wari ikiruhuko, kuko ibyo bikorwa gusa mu bihe bibarwa mu minsi no mu masaha nk'uko ingingo ya 369 y'iryo tegeko ibiteganya.

[7] Uburanira Akarere ka GATSIBO yemera ko yajuriye igihe cy'ukwezi kumwe kirengaho umunsi umwe, kubera ko urubanza rujuririrwa rwasomwe kuwa 05/10/2012, ubujurire bugera mu Rukiko rw'Ikirenga kuwa 05/11/2012, agasobanura ko impamvu bitashobokeye Akarere ka GATSIBO kubahiriza icyo gihe cy'ukwezi ari uko umunsi wa nyuma wari ikiruhuko (ku cyumweru) ni ukuvuga kuwa 04/11/2012 urukiko rutakoze, akavuga ko iyo bigenze bityo umuburanyi aba yemerewe kujurira ku munsi w'akazi ukurikiyeho kuko aba adashobora kurega badakora.

[8] Asobanura ko ku byerekeye gutandukanya ibihe bibarwa mu mezi no mu myaka n'ibihe bibarwa mu minsi no mu masaha, ingingo ya 369 y'Itegeko n° 21/2012 ryavuzwe haruguru ivuga ku bihe bibarwa mu minsi no mu masaha, mu gihe ingingo ya 370 y'iryo tegeko yo ivuga ko umunsi wa nyuma iyo ugeze ari konji yemewe n'amategeko, uwo munsi wimurirwa ku munsi w'akazi ukurikiyeho, ariko ko kuyikoresha ku bujurire bwabo nta mategeko yishwe.

[9] Urukiko rurasanga, ikibazo cy'ibihe by'ubujurire bw' Akarere ka GATSIBO kigomba gusuzumwa hashingiwe ku itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, riteganya, mu ngingo ya 163 ko igihe cyo kujurira

ari ukwezi kumwe, rikanateganya ko, ku byerekeye ibihe byagenwe mu masaha no mu minsi, iyo umunsi igikorwa kigomba kurangiriraho ari umunsi w'ikiruhuko, icyo gihe cyongerwaho umunsi ukurikira w'akazi nk'uko biteganywa n'ingingo ya 370 y'iryo tegeko.

[10] Urukiko rurasanga, n'ubwo mu ngingo ya 371 y'itegeko n° 21/2012 ryavuzwe haruguru irebana n'ibihe bibarwa mu mezi no mu myaka, hatanditswemo ko ibyo bihe byongerwa iyo umunsi wa nyuma uhuye n'ikiruhuko nkuko bivuzwe mu ngingo ya 370 ku byerekeye ibihe bibarwa mu masaha no mu minsi, nta mpamvu igaragara Umushingamategeko yaba yarashatse ko ukwongera umunsi ukurikira w'akazi ku gihe cy'ubujurire cyarangiraga ku munsi w'ikiruhuko bitakurikizwa no ku byerekeye ibihe bibarwa mu mezi no mu myaka, bityo, igihe cy'ubujurire bw, Akarere ka GATSIBO cyagombaga kurangira ku cyumweru taliki ya 04/11/2012, kikaba kigomba kubarwa hongereweho umunsi ukurikira w'akazi, ni ukuvuga ku wa mbere taliki ya 05/11/2012, ari nawo munsi ubujurire bwashyikirijwe Urukiko rw'Ikirenga, bukaba rero bwaraziye igihe. Inzitizi rero y'ubukererwe yatanzwe n,uburanira NTEZIRIZAZA na bagenzi be nta shingiro ifite.

B. Kubyerekeye inzitizi y'iburabubasha kubera ko indishyi zatanzwe mu rubanza rujuririrwa zitagera kuri miliyoni 50

[11] Ababuranira NTEZIRIZAZA na bagenzi be bavuga ko ubujurire bw' Akarere ka GATSIBO butari mu bubasha bw'Urukiko rw'ikirenga kuko indishyi zagenwe mu rubanza rujuririrwa zitageze kuri 50.000.000 frw, hakaba

hatateranywa indishyi z'abazigenewe bose kuko ibirego byabo byatanzwe bitandukanye, bakaba baranazigenewe mu buryo butandukanye hakurikijwe ko buri muntu yatanze ikirego cye.

[12] Uburanira Akarere ka GATSIBO we avuga ko n'ubwo hatabaye icyemezo cyo guhuriza ibirego hamwe, bigaragara ko urubanza abareze baburanye n' Akarere ka GATSIBO ari rumwe, kuba baragenewe indishyi mu buryo butandukanye bikaba ari uko buri wese yaregeye ize, ariko ibyo bikaba bitabujije ko urubanza rwabaye rumwe.

[13] Ingingo ya 28,7° y'Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, iteganya ko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha mu rwego rw'ubujurire, imanza zaciwe n'Urukiko Rukuru, iyo: « izo manza zagenwemo n'Urukiko indishyi zingana nibura na 50.000.000 frw cyangwa se zifite agaciro kagenwe n'Umucamanza igihe habaye impaka, kangana nibura na 50.000.000 frw».

[14] Dosiye y'uru rubanza igaragaza ko Urukiko Rukuru, n'ubwo rwakiriye ubujurire bwa buri wese butandukanyijwe n'ubw'abandi kuko nyine ibirego byari bitandukanye, urubanza rwabaye rumwe rusuzuma ibirego byose kimwe ku kindi, kuba hatarabaye icyemezo cy'urukiko gihuriza mu rubanza rumwe ibyo birego akaba ari inenge ariko itatesha agaciro urubanza, mu gihe ntawe ugaragaza ko byaba byaramwangirije, dore ko nta n'uwabisabye ngo babimwangire.

[15] Urukiko rurasanga rero indishyi Akarere ka GATSIBO kaciwe mu Rukiko Rukuru zaragenwe mu rubanza rumwe, kandi zikaba zirenze miliyoni mirongo itanu, bityo ubujurire bw' Akarere ka GATSIBO bukaba buri mu bubasha bw'Urukiko rw'Ikirenga hakurikijwe ibiteganywa n'ingingo ya 28,7° y'Itegeko Ngenga n° 03/2012/OL ryavuzwe haruguru. Inzitizi y'iburabubasha ishingiye ku gaciro k'indishyi zikurikiranywe rero nta shingiro ifite.

C. Kubyerekeye inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga kubera ko uwajuriye yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe.

[16] Ababuranira NTEZIRIZAZA na bagenzi be bavuga ko impamvu zashingiweho kugira ngo Akarere ka GATSIBO gatsindwe mu nkiko zombi ari zimwe nk'uko zigaragara ku rupapuro rwa 5, agace ka 8 - 9 ku rubanza rwaciwe n'Urukiko Rwisumbuye rwa Nyagatare, ari nazo zigaragara ku rupapuro rwa 5 agace ka 14 ku rubanza rwaciwe ku rwego rw'ubujurire, ubujurire bw' Akarere ka GATSIBO bukaba butari mu bubasha bw'Urukiko rw'Ikirenga.

[17] Uburanira Akarere ka GATSIBO avuga ko impamvu atari zimwe ahubwo ko zivuguruzanya, ko mu Rukiko Rwisumbuye ku rupapuro rwa kabiri igika kibanziriza icya nyuma, Urukiko rwemeje ko Akarere ka GATSIBO gatsinzwe no kuba itegeko ry'ubutaka ryo muri 2005 ryasanze abaturage bafite ubwo butaka, bivuze ko ubutaka ari ubwabo, naho Urukiko Rukuru rushingira ku ibaruwa

y'Umunyamabanga Nshingwabikorwa w'Umurenge wa Rugarama, ivuga ko amasambu yari ay'abaturage.

[18] Ikibazo cyo kumenya niba impamvu Akarere ka GATSIBO katsinzwe mu rwego rwa mbere ari nazo zatumye gatsindwa mu rwego rwa kabiri nk'uko biteganywa n'ingingo ya 28, §5 y'Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, kigomba gusuzumwa harebwa, mu nyandiko z'imikirize y'urubanza mu nkiko zombi, ibyashingiweho icyemezo muri buri rukiko.

[19] Inyandiko y'imikirize y'urubanza mu Rukiko Rwisumbuye rwa Nyagatare kimwe n'iy'imikirize y'urubanza mu Rukiko Rukuru, Urugereko rwa RWAMAGANA, zigaragaza ko mu bisobanuro byatanzwe mu kwemeza ko Akarere ka GATSIBO gatsinzwe, hashingiwe, muri izo nkiko zombi ku mpamvu ebyiri: iya mbere ikaba ari ibaruwa y'Umunyamabanga Nshingwabikorwa w'Umurenge wa Rugarama, ivuga ko amasambu yari ay'abaturage, iya kabiri ikaba ari uko n'ubwo ahaburanwa haba hari igishanga, bitari kuba impamvu yo gusenyera abaturage bari bahatuye no kwonona ibyabo nta ngurane bahawe kandi bari barahahawe n'ubuyobozi.

[20] Urukiko rurasanga rero, hashingiwe ku biteganywa n'ingingo ya 28, §5 y'Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 ryavuzwe haruguru, ubujurire bw' Akarere ka GATSIBO katsinzwe mu nkiko ebyiri zibanza ku mpamvu zimwe butari mu bubasha bw'uru Rukiko, bityo, inzitizi y'iburabubasha yatanzwe na NTEZIRIZAZA na bagenzi be ikaba ifite ishingiro.

III. ICYEMEZO CY'URUKIKO

[21] Rwemeje ko inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga ku bujurire bw' Akarere ka GATSIBO ifite ishingiro;

[22] Rwemeje ko ubujurire bw' Akarere ka GATSIBO butari mu bubasha bw'Urukiko rw'Ikirenga, bukaba butakiriwe;

[23] Rutegetse Akarere ka GATSIBO kwishyura amagarama y'urubanza, angana na 12.100 frw.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 14/06/2013.

Sé
KAYITESI Zaïnabo Sylvie
Perezida

Sé
MUGENZI Louis Marie
Umucamanza

Sé
HATANGIMBABAZI Fabien
Umucamanza

Sé
MUNYANDAMUTSA J.Pierre
Umwanditsi w'Urukiko

10. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RADA0055/11/CS
ITARIKI Y'URUBANZA: 08/03/2013

HABURANA: LETA Y'U RWANDA (National University of Rwanda-NUR) C/ Dr KIZZA Charles

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI- UMUKOZI WA LETA WUMVA WARENGANYIJWE AKAJURIRIRA UBUTEGETSI-KUBA NTA TEGEKO RIMUBUZA KUBA YAGANA INKIKO KUGIRA NGO ARENGANURWE-ITEGEKO RIMWEMERERA INZIRA EBYIRI KUGIRA NGO ARENGANURWE .

ICYEMEZO KIRENGANYA UMUKOZI-KUBA UMUKOZI ADATEGETSWE BYANZE BIKUNZE GUSABA KO GIKURWAHO-ICYO YEMERERWA N'AMATEGEKO MURI RUSANGE NI GUSHYIKIRIZA INKIKO AKARENGANE KE

ICYEMEZO CYO GUTAKAMBA KITAKIRIWE-KUBA UBWACYO CYIHAGIJE NK'ICYEMEZO GIFASHWE MURI UBWO BURYO-GISHOBORA KUREGERWA MU NKIKO

INDISHYI ZIGENERWA UMUKOZI UGENGWA NA SITATI RUSANGE Y'ABAKOZI BALETA - KUZIGENA HADASHINGIWE KU ITEGEKO RY'UMURIMO - IBISHINGIRWAHO MU KUGENA BENE IZO NDISHYI

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Imyandikire y'ingingo ya 96 y'itegeko rishyiraho sitati y'abakozi ba Leta ntibuza umukozi wa Leta wumva warenganyijwe wakoresheje inzira yo kujurirara ubutegetsi kuba yakoresha indi nzira yo kugana inkiko kugira ngo arenganurwe, ikigaragara muri iyi ngingo ni uko uwo mukozi afite inzira ebyiri kugira ngo arenganurwe imwe ni ukujurira ubutegetsi indi ikaba iyo kugana inkiko.

Ingingo ya 96 kandi ntitegeka byanze bikunze umukozi wumva warenganyijwe gusaba ko icyemezo kimurenganya gikurwaho nk'uko biteganyijwe mu ngingo ya 339 y'itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, icyo imwerera muri rusange ni ugushyikiriza inkiko akarengane ke.

Kwemeza ko ikirego cy'ubutakambe kitakiriwe kubera ko cyakererewe nabyo ubwabyo n'icyemezo kiba gifashwe muri ubwo buryo bwo kutacyakira gishobora kuregerwa mu nkiko nk'uko amategeko abiteganya.

Mu kugena indishyi zihabwa umukozi ugengwa na sitati rusange y'abakozi ba Leta wirukanywe mu buryo budakurikije amategeko ntihashingirwa ku biteganywa n'itegeko ry'umurimo(ku nshuro z'umushahara) ahubwo mu kuzigena hagomba gushingirwa: ku cyo umukozi yangirijwe mu by'ukuri; Amakosa yakozwe n'ubutegetsi, indishyi zikaba nyinshi iyo habaye ikosa ry'ireme (vice de fonds) zikaba nkeya iyo hakozwe ikosa ryo kutubahiriza imihango (vice de forme) ; zikanashingirwa kandi ku ikosa ryakozwe n'umukozi rikaba ryatuma ahabwa nkeya cyangwa nyinshi.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUTEGETSI, RUHAKIRIJE MU RUHAME, KUWA 08/03/2013 URUBANZA RADA 0055/11/CS, MU BURYO BUKURIKIRA:

HABURANA :

LETA Y'U RWANDA (yajuriye) (National University of Rwanda – NUR), iburanirwa na Me MBONERA Théophile

na

Dr KIZZA Charles (uregwa) mwene Katabarwa George na Imelda Katabarwa, utuye Umudugudu wa Rugunga, Akagari ka Niboyi, Umurenge wa Niboyi, Akarere ka Kicukiro. Aburanirwa na Me KIZITO Safari.

IKIBURANWA:
- Dommages et intérêt pour licenciement abusif ;
- Arriéré des salaires ;
- Dommages et intérêts pour perte d'emploi ;
- Congés annuels non payés pour 8 exercices ;
- Indemnités de préavis ;
- Frais de procédures et honoraires d'Avocat.

IKIREGERWA:
Kujuririra urubanza RAD 0010/11/HC/NYA rwaciwe n'Urugereko rw'Urukiko Rukuru rwa Nyanza kuwa 30/11/2011.

I. IMITERERE Y'URUBANZA

[1] Dr KIZZA Charles, yari umukozi wa National University of Rwanda «NUR» nk'umwarimu kuva ku itariki ya 01/06/2000 kugeza ku itariki ya 02/11/2009 ubwo ubuyobozi bwa NUR bwamusezerereraga bumuziza guta akazi no kudakorana neza na bagenzi be. Nyuma yo gutakambira ubuyobozi bwa NUR na Komisiyo ishinzwe abakozi ba Leta ariko ntibigire icyo bitanga, Dr KIZZA yaregeye Urugereko rw'Urukiko Rukuru rwa Nyanza.

[2] Nyuma yo gusuzuma ikirego cye, Urukiko Rukuru rwemeje ko gifite ishingiro, rwemeza ko yirukanywe mu buryo bunyuranye n'amategeko, rutegeka NUR kumuha 3.543.621 frw y'indishyi zinyuranye.

[3] NUR yajuririye Urukiko rw'Ikirenga ivuga ko Urukiko rwemeje ko Dr KiZZA yirukanwe mu kazi mu buryo bunyuranyije n'amategeko, rumugenera indishyi atari akwiye guhabwa kubera ko yari yarataye akazi akajya gukora muri "Présidence" atabimenyesheje umuyobozi wa NUR.

[4] Urubanza rwaburanishijwe mu ruhame kuwa 17/01/2013, NUR iburanirwa na Me MBONERA Théophile, naho Dr KIZZA aburanirwa na Me KIZITO Safari. Mbere y'uko Urukiko rwinjira mu mizi y'urubanza, Me MBONERA Théophile yasabye ko habanza gusuzumwa ikibazo kijyanye n'uko ikirego cya Dr KIZZA kitagombaga kwakirwa mu Rukiko Rukuru.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

[5] Ibibazo biri muri uru rubanza ni ibyo kumenya ishingiro Urukiko rwaha inzitizi yo kuba ikirego cya Dr KIZZA mu Rukiko Rukuru kitaragombaga kwakirwa, kumenya niba Dr KIZZA yarirukanywe mu buryo bunyuranije n'amategeko, no kumenya niba hari indishyi Dr Kizza akwiye kugenerwa.

A. Ku bijyanye n'inzitizi yo kutakira ikirego cya Dr KIZZA mu Rukiko Rukuru.

[6] Me MBONERA avuga ko inzitizi batanze ari iy'uko ikirego cya Dr KIZZA kitari gikwiriye kwakirwa mu Rukiko Rukuru hashingiwe ku ngingo ya 96 ya Sitati y'abakozi ba Leta iteganya ko umukozi ashobora guhitamo inzira yo gutakira ubutegetsi cyangwa akitabaza inkiko, ko ibyo bisobanura ko ugomba guhitamo imwe muri izo nzira, ko rero iyo wahisemo inzira imwe, indi nzira uyireka, akaba asanga mu rwego rwo gutakira ubutegetsi, ubikora abanza kujuririra umuyobozi we yarangiza akajya muri komisiyo y'abakozi ba Leta.

[7] Me MBONERA avuga ko Dr KIZZA yabonye yarakoze nabi « procédure », ahitamo kujya mu rukiko nyamara yaragombaga guhagararira ahongaho, ntaze mu rukiko.

[8] Yakomeje asobanura ko ingingo ya 93 y'Itegeko ryerekeye imiterere, imikorere n'ububasha by'inkiko iteganya ko mu bubasha bw'Urukiko Rukuru harimo no gusuzuma ibyemezo byafashwe n'abayobozi ku rwego rwa nyuma, bo

bakaba basanga mu by'ukuri icyaregewe kitarafashweho umwanzuro mu rwego rwa nyuma kubera ko Komisiyo y'abakozi yanze kwakira ubutakambe bitewe n'uko Dr KIZZA yayijuririye akererewe, yarengeje igihe cy' iminsi mirongo itatu, bityo akaba ataragombabaga kuregera inkiko kandi yari yahisemo kurenganurwa mu nzira zo kujuririra abayobozi be « voie administrative ».

[9] Me KIZITO wunganira Dr KIZZA avuga ko ingingo ya 339 igika cya kabiri y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko mbere yo gutanga ikirego unenga icyemezo cy'umutegetsi agomba kubanza gutakambira umutegetsi wamufatiye icyemezo, ko iyo nzira idashobora kuvanaho indi, Dr KIZZA akaba yaratakambiye inzego z'ubuyobozi na Komisiyo, byanze yitabaza inkiko.

1. **Ku bijyanye n'uko ikirego cya Dr KIZZA kitagombaga kwakirwa mu Rukiko mu gihe yahisemo inzira yo gutakira ubutegetsi**

[10] Ingingo ya 96 ya Sitati y'abakozi ba Leta iteganya ko Umukozi wa Leta wumva yarenganijwe ashobora kujuririra inzego z'ubutegetsi cyangwa se inkiko zibishinzwe, iya 97 igateganya ko *"Ubujurire ku nzego z'ubutegetsi bukorerwa, mu rwego rwa mbere, ku butegetsi bukuriye uwahawe igihano, naho ku rwego rwa kabiri, bugakorwa kuri Komisiyo bitarenze iminsi 30 uhereye ku munsi umukozi wa Leta yamenyeshejweho igihano*[8]", naho

[8] *Art.97: Le recours administratif est introduit au premier degré auprès de l'autorité hiérarchique supérieure et au deuxième degré, auprès de la Commission, dans un délai ne dépassant pas trente (30) jours à partir de la notification de la décision à l'intéressé*

ingingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igateganya ko «Ikirego gisaba gukuraho icyemezo cy'umutegetsi cyakirwa gusa iyo cyerekeye icyemezo cy'umutegetsi cyeruye cyangwa kiteruye. Mbere yo gutanga ikirego, unenga icyemezo cy'umutegetsi agomba kubanza gutakambira umutegetsi wagifashe. …».

[11] Ku bijyanye no gusaba gukuraho icyemezo cy'umutegetsi (recours juridictionnel ou contentieux) bivugwa mu ngingo ya 339 yamaze kuvugwa y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Urukiko rurasanga ikirego uko cyatanzwe na Dr KIZZA nk'uko cyavuzwe haruguru, hatagaragaramo ko yifuzaga kuvanaho icyemezo yafatiwe n'ubuyobozi bwa NUR nk'uko bivugwa mu ngingo ya 339 yamaze kuvugwa, ahubwo icyo yisabiraga ari indishyi zijyanye no kuba yarirukanwe mu kazi mu buryo bunyuranyije n'amategeko.

[12] Ntabwo rero ikiburanwa gishingiye ku gukuraho icyemezo cy'umutegetsi nk'uko uburanira NUR ashaka kubyumvikanisha, ashaka no kugaragaza ko Dr KIZZA atagombaga kuregera inkiko mu gihe ubujurire kuri Komisiyo yaba yarakoze hakurikijwe ingingo ya 97 ya Sitati y'abakozi ba Leta butakiriwe kuko bwarengeje iminsi 30 ivugwa muri iyo ngingo.

[13] Ahubwo ikigaragara mu ngingo ya 96 imaze kuvugwa, ni uko umukozi warenganijwe n'ubutegetsi ashobora

gukoresha inzira ebyiri kugirango arenganurwe, imwe ikaba ari yo kujuririra ubutegetsi (recours administratif), indi ikaba iyo kugana inkiko. Hakurikijwe uko iyo ngingo yanditse, ntahagaragara ko uwakoresheje inzira yo kujuririra ubutegetsi (recours administratif) abujijwe kuba yakoresha n'indi nzira yo kugana inkiko kugirango arenganurwe.

[14] Iyo ngingo ya 96 ntinategeka umukozi warenganijwe gusaba byanze bikunze Urukiko gukuraho icyemezo cy'umutegetsi nk'uko biteganijwe mu ngingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, icyo imwemerera muri rusange ni ugushyikiriza inkiko akarengane ke.

[15] Nk'uko bivugwa n'abahanga mu mategeko nka Charles Debbasch na Jean Claude Ricci, uwo mukozi ashobora gusaba ko ubutegetsi bwarengereye ibijyanye n'imishahara ye cyangwa ibyo agenerwa na « Statut » ye, akerekana amategeko atarubahirijwe (moyens de légalité), noneho agasaba ko icyemezo cyamufatiwe kivanwaho. Abo bahanga bavuga ariko ko iyo uwo mukozi yisabira gusa ko Leta itegekwa kumwishyura iyo mishahara ye cyangwa ibyo agenerwa na « Statut » ye, kubera ibyo yangirijwe bitewe n'ikosa ry'ubutegetsi, icyo gihe agomba kuregera Urukiko rusuzuma ikibazo cyose[9].

[9] Charles Debbasch et Jean Claude Ricci, « Contentieux administratif », 5 eme édition, Dalloz, p.716 : Le fonctionnaire peut contester dans un recours pour excès de pouvoir une décicion concernant son traitement ou ses indemnités statutaires s'il se borne à invoquer des moyens de légalité, et à demander l'annulation de la dite décision (LAFEGE). Mais s'il demande que l'Etat soit condamné à lui payer ce traitement ou ces indemnités en réparation du préjudice lui causé

[16] Abandi bahanga batandukanya izo nzira zombi, iyo kujuririra ubutegetsi (recours administratif), n'iyo kugana inkiko ariko bakanavuga ko muri rusange, bitari ngombwa kubanza kujuririra ubutegetsi (recours administratif), mbere yo kugana umucamanza, usibye ko hari aho biba biteganijwe gutyo nko ku bijyanye no kwishyuza imisoro[10].

[17] Ibi birumvikanisha rero ko na Dr KIZZA, n'ubwo yari yabanje inzira yo kujurira ubuyobozi bwa NUR, nyuma akajuririra na Komisiyo y'abakozi ba Leta, ntacyamubuzaga kugana inkiko, atagamije gusaba gukuraho icyemezo yafatiwe na NUR, ariko agamije kwisabira indishyi zinyuranye nk'uko yabikoze, bityo rero hakaba ntacyari kubuza Urukiko Rukuru kwakira ikirego cye.

2. Ku bijyanye n'uko ikirego cya Dr KIZZA kitagombaga kwakirwa mu gihe nta cyemezo cyari cyamufatiwe na Komisiyo

[18] Uburanira NUR avuga nanone ko ikirego cya Dr KIZZA kitari kwakirwa kuko kitubahirije ibiteganywa n'ingingo ya 93,2° y'Itegeko Ngenga n° 07/2004 ryo kuwa 25/04/2004 ryerekeye imiterere, imikorere n'ububasha by'inkiko nk'uko ryavuguruwe kugeza ubu, iteganya ko Urukiko Rukuru rufite ububasha bwo kuburanisha ibirego bisaba ivanwaho ry'ibyemezo by'ubutegetsi, akaba asanga nta cyemezo Komisiyo y'abakozi ba Leta yigeze ifata, kuko yasanze Dr KIZZA yarakerewe kuyiregera.

---

par la faute de l'administration, le requérant doit former un recours de plein contentieux.

10 En règle générale, le recours administratif n'est pas obligatoire avant de saisir le juge mais il existe des exceptions (par exemple en matière de recouvrement de l'impôt sur le revenu): http://vosdroits.service-public.fr/F2474.xhtml

[19] Urukiko rurasanga ariko ibyo uhagarariye NUR avuga bidafite ishingiro, kuko ubwabyo kwemeza ko ikirego cy'ubutakambe bw'umuntu kitakiriwe ari icyemezo Komisiyo iba ifashe muri ubwo buryo bwo kutacyakira, kikaba gishobora kuregerwa mu Rukiko Rukuru hakurikijwe ingingo ya 93 imaze kuvugwa.

[20] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga inzitizi itangwa n'uhagarariye NUR yo kuba ikirego cya Dr KIZZA kitaragombaga kwakirwa nta shingiro ifite, hakaba rero hagomba gusuzumwa ubujurire bwa NUR ku bijyanye n'imizi y'urubanza.

B. Ku bijyanye no kumenya niba Dr KIZZA yaba yarirukanwe mu buryo bunyuranije n'amategeko

[21] [21] Me MBONERA avuga ko imwe mu mpamvu zabateye kujurira ari uko Urukiko rwemeje ko Dr KIZZA atataye akazi, nyamara mu byagaragarijwe Urukiko ari uko atari agikorera Kaminuza Nkuru y'u Rwanda, n'ibaruwa yandikiwe kuwa 02/11/2009 ikaba yari iyo kumumenyesha ko yataye akazi ku bushake, inamumenyesha icyo Kaminuza ibitekerezaho, ko bikomeje bityo yamufata nk'umukozi wisezereye, icyo gihe yandikirwa akaba yarimo gukorera muri "Présidence", iyo baruwa Dr KIZZA akaba atarigeze agira icyo ayisubizaho.

[22] [22] Me MBONERA yakomeje asobanura ko Dr KIZZA yahamagawe kuri telefoni kugirango atange ibizamini bya « deuxième session », nawe arabyohereza kuri internet, akaba asanga ariko akazi ke katari gusa gutanga ibizamini.

[23] [23] Avuga ko kuba Dr KIZZA yaramaze igihe kigera ku mezi icyenda atari ku kazi ka NUR, no kuba ntacyo yasubije ku ibaruwa yavuzwe yandikiwe kuwa 02/11/2009 ari byo byatumye Kaminuza imufata ko atakiri umukozi wayo, cyane ko atari gukorera ahantu habiri icyarimwe muri Serivisi za Leta, ni ukuvuga muri “Présidence” no muri Kaminuza, kandi nawe ubwe akaba yivugira ko yari yagiye muri “Présidence” gusinya amasezerano y’akazi y’imyaka itatu, Kaminuza ikaba itari kumara amezi icyenda yose nta wundi mukozi ifite wakora akazi Dr KIZZA yataye.

[24] [24] Me KIZITO avuga ko Dr KIZZA atigeze ata akazi nk’uko uburanira NUR abivuga, kubera ko Umuyobozi wa Kaminuza yari azi aho ari, bikagaragazwa n’uko yandikiye Directeur de Cabinet muri “Présidence” amubaza ku kibazo cye, ndetse bakaba batari kumuterefona ngo aze gutanga ibizamini batazi aho ari.

[25] [25] Me KIZITO avuga ko icy’urukiko rwasuzuma ari uburyo (procédure) Dr KIZZA yahagaritswemo, naho ku byerekeye amakosa mu kazi, yo akaba atabura, cyane cyane ko yigeze no kwandika asaba imbabazi, ariko uburyo yirukanwemo bukaba butemewe n’amategeko kuko atigeze ahabwa umwanya wo kwisobanura ku cyitwa amakosa bamuhoye.

[26] [26] Ingingo ya 117 y’Itegeko n° 22/2002 ryo kuwa 09/07/2002 rishyiraho sitati rusange igenga abakozi ba Leta n’inzego z’imirimo ya Leta iteganya ko «Gusezera ku kazi ku bushake bikorwa mu nyandiko ikozwe n’umukozi wa Leta ku buryo budashidikanywa, igaragaza ubushake

bwe bwo kuva burundu mu bakozi ba Leta n'inzego z'imirimo ya Leta».

[27] Kuba Dr KIZZA ataranditse asezera ku kazi ke, byemezwa n'umuyobozi wa NUR aho yasobanuye ko Dr Kizza yamubwiye mu magambo ko agiye kubona akazi mu biro bya Perezida. Ibyo rero uburanira NUR avuga ko Dr KIZZA yasezeye ku kazi ka NUR ku bushake, nta shingiro bifite kuko atagaragaza inyandiko yakoze ku buryo budashidikanywa, igaragaza ubushake bwe bwo kuva burundu kuri ako kazi nk'uko biteganywa n'ingingo ya 117 imaze kuvugwa haruguru.

[28] Mu ibaruwa yo kuwa 03/11/2009 Umuyobozi wa NUR yandikiye "Présidence", harimo kubaza niba mu cyumweru cya mbere cy'ukwezi kw'Ukwakira 2009, Dr KIZZA azaba afite akazi, bikaba byumvikana neza ko NUR yari izi aho umukozi wayo ari.

[29] Muri iyo baruwa imaze kuvugwa, Umuyobozi wa NUR agaragaza ko yasabaga Dr KIZZA kuzaza gutanga ibizamini aho agira ati: «Indeed his Head of Department by phone, sms and email implored him, Sitati ng NUR regulations that he must come and invigilate his exam for the second sitting of two courses in the 2nd semester...».

[30] Urukiko rurasanga Dr KIZZA atari kuba yarataye akazi nk'uko NUR ibiburanisha, maze ngo ihindukire imusabe kuza gutanga ibizamini, ahubwo uko kumusaba kuza gutanga ibizamini by'amasomo ye bigaragaza neza ko yari ikimubara nk'umukozi wayo ugifite inshingano ku masomo yahawe gukurikirana, bityo rero kwirukanwa

kwa Dr KIZZA hashingiwe ko yataye akazi bikaba byarakozwe ntaho bishingiye.

[31] Ku bijyanye kandi no kwirukanwa hashingiwe ku ikosa umukozi wa Leta yaba yakoze, ingingo ya 18, igika cya 3 y'Itegeko-Nshinga rya Repubulika y'u Rwanda ivuga ko ``ntawe ushobora gufatirwa icyemezo atabanje kwiregura mu nzego zose zaba iz'ubutegetsi cyangwa iz'ubucamanza``; naho ingingo ya 90 y' itegeko n°22/2002 ryo ku wa 09/07/2002 rishyiraho Sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta ikavuga ko ``nta kosa na rimwe umukozi wa Leta ashobora guhanirwa atabanje guhabwa umwanya wo kuryisobanuraho mu nyandiko kandi ko nta gihano na kimwe gishobora gushyirwa mu bikorwa ikosa ritarahama nyir'ubwite``.

[32] Urukiko rurasanga kuba mu kwirukana burundu Dr KIZZA, NUR yarashingiye ku ikosa ryo kuba yarataye akazi, atabanje guhabwa umwanya wo kwisobanura kuri iryo kosa mu nyandiko, iryo yirukanwa ryarakozwe mu buryo bunyuranyije n'ingingo ya 18 y'Itegeko-Nshinga hamwe n'ingingo ya 90 y' itegeko n°22/2002 ryo ku wa 09/07/2002 rishyiraho Sitati rusange igenga abakozi ba Leta , akaba rero agomba kubiherwa indishyi.

C. Ku bijyanye n' indishyi

a. Ku bijyanye n'indishyi zagenwe n'Urukiko Rukuru

[33] Me MBONERA avuga ko usibye n'uburyo Dr KIZZA yatayemo akazi, nta ndishyi na nkeya yagakwiye kubona, akaba asanga Urukiko rwaramugeneye indishyi rushingiye ku itegeko ritari ryo kubera ko rwashingiye ku ngingo ya 3

y'Itegeko ry'umurimo kandi iryo tegeko ritareba umuntu nka Dr KIZZA w'umu "sous statut" utagengwa n'Itegeko ry'umurimo.

[34] Me KIZITO avuga ko Umucamanza mu kugenera indishyi uwo yunganira Dr KIZZA, yakoresheje ibiteganyijwe mu itegeko ry'umurimo kubera ko nta rindi tegeko rihari, ko mu gihe rero hari icyuho mu mategeko (vide juridique), nta kosa uwo mucamanza yakoze yitabaza itegeko ry'umurimo.

[35] Urukiko rurasanga koko Dr Kizza ari umukozi wa Leta, bityo mu kugena indishyi akwiye guhabwa, hakaba hatagenderwa ku Itegeko ry'umurimo, ahubwo hakwiye kugenderwa kuri Sitati igenga abakozi ba Leta. Rurasanga ariko mu gihe Sitati igenga abakozi ba Leta iterekana uburyo indishyi zibarwa, hakwiye kwifashishwa ibisobanuro by'abahanga nabo bagendera ku byemezo byagiye bifatwa n'inkiko kuri iki kibazo, bakerekana ko mu kugena izo ndishyi, hagomba gushingirwa ku bintu bitatu[11] :

a. Icyo umukozi aba yarangirijwe mu by'ukuri (préjudice effectivement subi par l'agent);

b. Amakosa yakozwe n'ubutegetsi (faute commise par l'administration): abo bahanga bavuga ko indishyi ziba nyinshi iyo habaye ikosa ry'ireme (vice de fond), ariko zikaba nkeya iyo ari ikosa ryo kutubahiriza umuhango (vice de forme);

[11] *M.Long, P.Weil, G.Braibant, Les grands arrêts de la jurisprudence administrative, 7 édition, Collection Droit Public, Sirey, p.214*

c. Ikosa ryakozwe n'umukozi (fautes commises par l'agent): abo bahanga bakavuga ko iryo kosa rishobora gutuma umukozi ahabwa indishyi nkeya, cyangwa ntanagire izo abona.

[36] Hashingiwe ku bintu bitatu bimaze kuvugwa, Urukiko rurasanga, n'ubwo usaba indishyi, ari we Dr Kizza, yirukanywe mu buryo bunyuranije n'amategeko, ariko intandaro y'iryo yirukanwa ari amakosa ye nawe adahakana, kuko yiyemerera ko yagiye gukora muri "Présidence" , atarasezererwa ku kazi ka NUR, ikitarubahirijwe gusa kikaba ari imihango yagombaga gukurikizwa mu kumwirukana.

[37] Harebewe hamwe ibyo byose, Urukiko rusanga umubare w'indishyi Dr KIZZA yagenerwa, zijyanye no kuba yarirukanywe mu buryo bunyuranije n'amategeko wabarirwa mu bushishozi bwarwo ku rugero rw'umushahara yahabwaga buri kwezi wa 434.803 frw, ukubwe n'inshuro esheshatu, bikaba 6 x 434.803 frw = 2.608.818 frw ; akanahabwa 500.000 frw y'igihembo cy'Avoka n'ikurikirana rubanza, nk'uko yayagenewe n'Urukiko Rukuru, yose hamwe akaba 3.108.818 frw.

b. Ku bijyanye n'indishyi zisabwa mu bujurire bwuririye ku bundi

[38] Me KIZITO yuririye ku bujurire bwa NUR avuga ko Urukiko Rukuru rwageneye uwo yunganira Dr KIZZA indishyi nkeya, akaba asaba Urukiko kwemeza ko Dr KIZZA yavukijwe 30 000 000 frw y'imishahara yagombaga kubona muri "Présidence" bitewe n'uko

yari kuzajya ahembwa buri kwezi 1 200 000 frws, kandi akazajya agenda azamuka mu ntera; agasaba 60 000 000 frw ajyanye n'uko NUR yamusebeje ikanamuharabika mu rwego rw'igihugu hakurikijwe raporo yamukoreye; ndetse akaba yahabwa 6 000 000 frws yari kuzajya abona agiye muri mission. Yongeyeho ko yifuza n'amafaranga y'avoka angana na 2.000.000 frws yakubwa inshuro eshanu.

[39] Me MBONERA avuga ko izo ndishyi zose Dr KIZZA asaba zidafite ishingiro kubera ko raporo yakozwe igaragaza igihe yamaze atagera ku kazi n'uburyo yitwaraga mu kazi, akaba atagaragaza niba ibiyivugwamo atari ukuri.

[40] Urukiko rurasanga indishyi Dr KIZZA asaba mu bujurire bwe bwuririye ku bwa NUR zirenga 96.000.000 frw atazihabwa, kuko zikabije kuba nyinshi, kandi akaba nta bisobanuro bihagije azitangira, hiyongereyeho ko na we yakoze amakosa nk'uko byasobanuwe haruguru, kuko yiyemerera ko yagiye gukora muri "Présidence" , atarasererwa ku kazi ka NUR, rukaba rusanga agomba guhabwa izavuzwe haruguru.

[41] Urukiko rurasanga ariko Dr KIZZA yagenerwa mu bushishozi bwarwo kuri uru rwego amafaranga 500.000 y`igihembo cy`avoka wamuburaniye yiyongera kuyo yagenewe n'Urukiko Rukuru, kuko bigaragara ko kuri uru rwego rw'ubujurire yagombye gufata Avoka wo kumuburanira.

III. ICYEMEZO CY'URUKIKO

[42] Rwemeje ko ubujurire bwa NUR nta shingiro bufite.

[43] Rwemeje ko ubujurire bwa Dr KIZZA bwuririye ku bwa NUR bufite ishingiro gusa ku bijyanye na 500.000 frw y`igihembo cy'Avoka NUR igomba guha Dr KIZZA yiyongera ku yagenwe n'Urukiko Rukuru.

[44] Rutegetse NUR guha Dr KIZZA indishyi zingana na 2.608.818 frw zijyanye no kuba yarirukanywe mu buryo bunyuranije n'amategeko ; 500.000 frw y'igihembo cy'Avoka n'ikurikirana rubanza nk'uko yayagenewe n'Urukiko Rukuru na 500.000 y`igihembo cy`avoka wamuburaniye kuri uru rwego rw'ubujurire, yose hamwe akaba 3.608.818 Frw.

[45] Rutegetse NUR gutanga amagarama y'urubanza angana na 20.950 frw.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 08/03/2013.

Sé
MUGENZI Louis Marie
Perezida

Sé
MUKAMULISA Marie Thérèse
Umucamanza

Sé
HATANGIMBABAZI Fabien
Umucamanza

Sé
MUNYANDAMUTSA Jean Pierre
Umwanditsi

Printed by PROGRAPH LTD
P.o. Box 1882 Kigali - Rwanda
Tel : (+250) 788303889

Printed by PROGRAPH LTD