REPUBULIKA Y'U RWANDA

URUKIKO RW'IKIRENGA
B.P. 2197 KIGALI
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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, nº 18

Nyakanga, 2013

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Igitabo cya Gatatu, nº 18

Nyakanga, 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, *Umugenzuzi w'Inkiko*

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, *Umucamanza mu Rukiko Rwisumbuye rwa Muhanga*

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
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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. Hanyuma hagakurikiraho urubanza uko rwakabaye. Icyo twasobanura ni amagambo mpine n'ibyerekezo by'urukiko.

Amagambo mpine:

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

Ibyerekezo by'urukiko:

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

IRIBURIRO

Basomyi bacu,

Kuva iki cyegeranyo gitangiye gutangazwa mu myaka 8 ishize, abagikoresha bakomeje kutugaragariza akamaro kacyo cyane cyane mu rwego rwo kwubaka ihuza mikirize y'imanza (juris prudence), akaba ari igikorwa gishimishije.

Tukaba dushishikariza abacamanza n'abandi banyamategeko batagikoresha gutangira kugikoresha kuko kizabafasha kumenya uko Inkiko Nkuru zakemuye ibibazo zashyikirijwe, bikarushaho guteza imbere ubutabera bw'u Rwanda.

Tuboneyeho kwibutsa kandi ko kugira ngo icyegeranyo cy'ibyemezo by'inkiko kigere kuri benshi, gitangazwa buri gihe 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 harimo imanza z'ubutegetsi, iz'ubucuruzi ndetse n'urubanza rw'imbonezamubano.

Prof Sam RUGEGE

Perezida w'Urukiko rw'Ikirenga akaba na

Perezida w'Inama Nkuru y'Ubucamanza

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IMANZA Z'UBUCURUZI

1. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMA0122/11/CS

ITARIKI Y'URUBANZA: 22/02/2013

HABURANA:
NDARIHORANYE Jean Baptiste C/ FINA BANK Ltd

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI - IBIGIZE IBIKORWA BY'UBUCURUZI - IBIKORWA BY'UBUCURUZI KU BW'IBANZE NO KU BW'INGOBOKA.

IMPAKA KU BIKORWA BY'UBUCURUZI - UMUCURUZI UVUGA KO IGIKORWA RUNKA KITINJIRA MU BUCURUZI BWE NIWE UBITANGIRA IBIMENYETSO.

IGIKORWA CY'UBUCURUZI- ISANO HAGATI YACYO N'IBIKORWA IKIGO CY'IMARI CYANGWA UMUNTU KU GITI CYE BASANZWE BAKORA .

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Ibikorwa by'ubucuruzi bigizwe n'ibikorwa by'ubucuruzi ku bw'ibanze n'ibindi by'ubucuruzi ku bw'ingoboka, ibi bikorwa birangwa no kuba umucuruzi abikoranye n'utari umucuruzi cyangwa umucuruzi. Birangwa no kuba ibikorwa bibishamikiyeho bifitanye isano n'ibikorwa umucuruzi asanzwe akora.

- Mu gihe ibikorwa bimaze kuvugwa biteye impaka, umucuruzi wemeza ko igikorwa cye kitinjira mu bucuruzi bwe niwe ugomba kubitangira ibimenyetso.

- Byitwa igikorwa cy'ubucuruzi iyo ikigo cy'imari cyangwa umuntu ukora ubucuruzi bakoze igikorwa gifitanye isano n'ibikorwa by'ubucuruzi basanzwe bakora

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUKIJIJE MU RUHAME URUBANZA RCOMA 0122/11/ CS KUWA 22/02/2013 MU BURYO BUKURIKIRA :

HABURANA :

NDARIHORANYE Jean Baptiste (wajuriye) mwene SEBURIKOKO na NTWERA, ubarizwa muri Cabinet ya Me NYIRAHABINKA Félicité, iri mu Mudugudu wa Mpano, Akagari ka Cyivugiza, Umurenge wa Nyamirambo, Akarere ka Nyarugenge, Umujyi wa Kigali, B.P. 3505 Kigali.

na

FINA BANK Ltd (uregwa) mu izina ry'uyihagarariye.

IKIBURANWA:
Ubwishingizi FINA BANK igomba NDARIHORANYE Jean Baptiste kuko yambuwe inzu baguze.

IKIREGERWA:
Kujuririra urubanza RCOM 0165/11/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 28/09/2011.

I. IMITERERE Y'URUBANZA

[1] KANKWANZI Madeleine yahawe na BACAR (yaje guhinduka FINA BANK) inguzanyo yo kubaka inzu, nyuma ntiyashobora kuyishyura maze BACAR imurega mu Rukiko rwa Mbere rw'Iremezo rwa Kigali. Mu kurangiza urwo rubanza hatezwa cyamura ya nzu kuko yari yaratanzweho ingwate y'umwenda wishyuzwa, inzu yegukanwa na BACAR yari muri iyo cyamunara, nyuma nayo iyishyira ku isoko igurwa na NDARIHORANYE Jean Baptiste.

[2] KANKWANZI yaje kuregera kandi atsindira ko iyo cyamunara yari yagurishijwemo inzu ye iteshwa agaciro, Urukiko rutegeka ko asubizwa inzu ye.

[3] NDARIHORANYE yatambamiye urwo rubanza, nyuma rwoherezwa mu Rukiko rw'Ubucuruzi rwa Nyarugenge, hakurikijwe ububasha bushya bw'inkiko, rwemeza ko rutari mu bubasha bwarwo kuko ibisabwa mu rubanza birengeje agaciro ka 20.000.000 frw, NDARIHORANYE ajuririye Urukiko Rukuru rw'Ubucuruzi rwemeza ko ubujurire bwe butakiriwe kuko yabutanze impitagihe (nyuma y'iminsi 15).

[4] NDARIHORANYE yaje kurega FINA BANK RWANDA Ltd mu Rukiko Rukuru rw'Ubucuruzi arusaba kuyitegeka gushyira mu bikorwa ubwishingire ku nzu yamugurishije none akaba yarayambuwe, urwo rukiko rwemeza ko ubugure bw'inzu bwabaye kuwa 21/03/1991 hagati ya BACAR SA na NDARIHORANYE ari ubugure busanzwe (vente civile), bityo ko n'impaka zikomoka

kuri ubwo bugure hagati y'abagiranye amasezerano zigomba kuregerwa inkiko zisanzwe zitari iz'ubucuruzi, rwemeza ko ububasha bufitwe n'Urukiko Rwisumbuye rwa Nyarugenge mu gihe rwaba ruregewe.

[5] NDARIHORANYE yajuririye Urukiko rw'Ikirenga, avuga ko Urukiko Rukuru rw'ubucuruzi rwiyambuye ububasha kandi urubanza rwe ari urw'ubucuruzi, urubanza ruburanishwa mu ruhame ku wa 17/01/2013, NDARIHORANYE aburanirwa na Me MPINGANZIMA Marie Goretti na Me NYIRAHABINKA Félicité naho FINA BANK iburanirwa na Me BIMENYIMANA Eric.

II. **IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO**.

[6] Muri uru rubanza hagomba gusuzumwa niba ubugure bwabaye hagati ya NDARIHORANYE na FINA BANK bugize cyangwa butagize igikorwa cy'ubucuruzi, kugira ngo harebwe urukiko rufite ububasha ku kirego kijyanye n'ubwo bugure.

[7] Ababuranira NDARIHORANYE bavuga ko Urukiko Rukuru rw'Ubucuruzi, mu kwemeza ko rudafite ububasha ku rubanza rwe, rwanyuranyije n'ingingo ya 3 agace ka 3 k'Itegeko Ngenga n° 59/2007 ryo kuwa 16/12/2007 rishyiraho Inkiko z'Ubucuruzi rikanagena imiterere, imikorere n'ububasha byazo ryavuzwe haruguru, aho ivuga ko « ibibazo by'ubucuruzi bivuga imanza z'ubucuruzi, iz'imari, iz'imisoro n'amahoro n'ibindi bifitanye isano byerekeye impaka ziturutse ku masezerano abantu bagirana n'ibigo by'imari ».

[8] Bavuga ko inzu iburanwa yari yaratanzweho ingwate na, KANKWANZI ku mwenda wa FINA BANK, ikagurishwa mu cyamunara maze FINA BANK akaba ariyo iyigura ikongera ikayigurisha NDARIHORANYE mu rwego rwo kugira ngo igarure amafaranga yayo mu bucuruzi, bityo iryo gurisha akaba ari igikorwa cy'ubucuruzi.

[9] Basobanura ko FINA BANK ari ikigo cy'imari kuko mu mirimo yacyo ya buri munsi ikora ibikorwa by'ubucuruzi byabarwamo n'igurisha ry'iyo nzu yari yahaweho ingwate, kuyigurisha bikaba byarakozwe mu rwego rwo kugaruza amafaranga yayo, bikaba bigaragara ko harimo isano hagati y'iryo gurisha n'ubucuruzi iyo banki ikora.

[10] Uburanira NDARIHORANYE we avuga ko ikibazo cya NDARIHORANYE na FINA BANK kirebana n'amasezerano asanzwe, kubera ko gitandukanye n'amasezerano KANKWANZI yari yagiranye na FINA BANK ajyanye n'inguzanyo yo mu rwego rw'ubucuruzi, naho ayo NDARIHORANYE yagiranye n'iyo banki ubwo yamugurishaga inzu akaba ari amasezerano atajyanye n'ibyubucuruzi kuko idakora ibikorwa byo kugura amazu no kuyagurisha, kandi NDARIHORANYE akaba atarahawe iyo nzu nk'umwenda w'iyo banki.

[11] Asobanura ko FINA BANK imaze kugura inzu yahise ijya mu mutungo wayo, kuyigurisha undi muntu rero bikaba atari igikorwa cy'ubucuruzi cyari kigikomeje cyane cyane ko mu masezerano y'ubugure bw'iyo nzu na NDARIHORANYE ntaho banditse ko igurishijwe kugira ngo igaruze amafaranga ya KANKWANZI, bityo rero NDARIHORANYE akaba akwiye kujyana ikibazo cye

mu nkiko zisanzwe.

[12] Urukiko rurasanga iki kibazo gikwiye gusuzumwa hashingiwe ku biteganywa n'ingingo ya 3 ,agace ka mbere n'aka gatatu y'Itegeko Ngenga n° 59/2007 ryo kuwa 16/12/2007 rishyiraho Inkiko z'Ubucuruzi rikanagena imiterere, imikorere n'ububasha byazo isobanura ko : « ibibazo by'ubucuruzi bivuga imanza z'ubucuruzi, iz'imari, iz'imisoro n'amahoro n'ibindi bibazo bifitanye isano byerekeye: 1° impaka zivutse ku masezerano cyangwa ku bikorwa by'ubucuruzi hagati y'abantu cyangwa ibigo by'ubucuruzi…, 3° impaka ziturutse ku masezerano abantu bagirana n'ibigo by'imari…».

[13] Kuba FINA BANK ari ikigo cy'imari gikora ibikorwa by'ubucuruzi, ni ukuri kutagibwaho impaka n'ababuranyi muri uru rubanza, ikibazo gisigaye akaba ari icyo kumenya niba igurisha ry'inzu yakoreye NDARIHORANYE rigaragara mu rwego rw'ibibazo by'ubucuruzi nk'uko biteganywa n'ingingo ya gatatu y'Itegeko n° 59/2007 rivuzwe haruguru.

[14] Mu gusesengura iyo ngingo y'Itegeko, hakwiyambazwa ibisobanurwa n'abahanga mu mategeko bagaragaza ko mu bikorwa by'ubucuruzi habamo iby'ubucuruzi ku bw'ibanze bigaragara neza nk'iby'ubucuruzi nyirizina, n'ibindi by'ubucuruzi ku bw'ingoboka (*actes de commerce par accessoire*) ibi bikarangwa no kuba bikozwe n'umucuruzi, abikorana n'umucuruzi cyangwa n'utariwe, icyakabiri kibiranga kikaba ari uko igikorwa gishamikiye cyangwa se gifitanye isano n'ibikorwa by'ubucuruzi umuntu asanzwe akora. Mu gihe byaba biteye impaka,

umucuruzi wemeza ko igikorwa cye kitinjira mu bijyanye nabwo niwe usabwa kubitangira ikimenyetso[1].

[15] Urukiko rurasanga kuba FINA BANK n'ubwo ubusanzwe itajya mu bikorwa byo kugura cyangwa kugurisha amazu, yaraguze mu cyamunara inzu yari yarahaweho ingwate ku mwenda yatanze ntiwishyurwe maze ikayigurisha, byumvikana bitagoranye ko icyo yari igamije ari ukugaruza amafaranga y'uwo mwenda no kuziba icyuho cyatewe nawo, kuba ntaho byanditse ko ari cyo cyari kigamijwe nk'uko ibiburanisha bikaba atari byo byabuza iyo myumvire kuko ishingiye ku gikorwa ubwacyo kigaragaza ko cyari kigamije kugaruza umwenda watanzwe mu rwego rw'ubucuruzi FINA BANK isanzwe ikora, ahubwo ikaba ariyo yari ikwiye kwerekana ko icyo gikorwa yakoze nk'umucuruzi kidafitanye ihuriro n'ubucuruzi ikora, nyamara ikaba itarigeze ibigaragariza ibimenyetso.

[16] Urukiko rurasanga rero, igurisha ry'inzu ryabaye hagati ya BACAR na NDARIHORANYE ari igikorwa cy'ubucuruzi kubera isano gifitanye n'ibikorwa

[1] Reba MICHEL Pédamon, Droit commercial, commerçants et fonds de commerce, concurrence et contrats du commerce, 2ème édition, Dalloz, Paris, 2000, pages 168 -169 aho agira ati: '' Ce sont des actes qui ne constituent pas la trame d'une activité commerciale et qui ne sont pas non plus objectivement commerciaux. Ils devraient être civils. Ils accèdent cependant à la commercialité parce qu' ils sont accomplis par un commerçant en liaison avec son commerce ... Ainsi pour que s'applique cette théorie, il faut que deux conditions soient remplies :
- d'une part que les actes concernés soient accomplis par un commerçant, personne physique ou personne morale; peu importe que l'autre partie ait ou non la qualité de commerçant.
- d'autre part que ces actes se rattachent à l'activité commerciale principale de leur auteur, qu'ils en soient le complément nécessaire ou au moins normal…"
" …C'est donc à celui qui veut se prévaloir du caractère civil de tels actes qu'il appartient de démontrer qu'ils sont sans lien avec l'exploitation du commerce."
- Reba na Dimitri HOUTCIEFF, Droit commercial, Actes de commerce, Commercants, Fonds de commerce, Instruments de Payement et de crédit, 2 ème édition, Dalloz , Paris 2008, page 67 aho avuga ku bikorwa byihariye bidasanzwe ari iby'ubucuruzi ariko biba byo ku bw'ingoboka kubera isano bifitanye n'ubucuruzi (Emprunt de commercialité et théorie ''de l'accessoire'') agira ati: '' un acte à caractère civil est qualifié d'acte de commerce parcequ'il se rattache à un acte de commerce ou qu'il est accompli par un commerçant ''.

by'ubucuruzi iyo banki isanzwe ikora, bityo ibibazo bishingiye ku masezerano ajyanye n'ubwo bugure bikaba biri mu bubasha bw'inkiko z'ubucuruzi, ku rwego rw'Urukiko rw'ubucuruzi, hakurikijwe ingingo 12 y'Itegeko ngenga nº 06/2012/OL ryo ku wa 14/09/2012 rigena imiterere, imikorere n'ububasha by'inkiko z'ubucuruzi.

III. ICYEMEZO CY'URUKIKO

[17] Rwemeje ko ubujurire bwa NDARIHORANYE Jean Baptiste bufite ishingiro ;

[18] Rwemeje ko urubanza rwe na FINA BANK ruri mu bubasha bw'inkiko z'ubucuruzi ku rwego rw'Urukiko rw'Ubucuruzi ;

[19] Rutegetse ko dosiye y'uru rubanza yoherezwa mu Rukiko rw'ubucuruzi rwa Nyarugenge kugira ngo abe ari rwo ruruburanisha.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 22/02/2013

MUGENZI Louis-Marie
Perezida

HATANGIMBABAZI Fabien MUKAMULISA Marie Thérèse
Umucamanza Umucamanza

MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

2. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: R.COM.A 0064/11/CS

ITARIKI Y'URUBANZA: 28/12/2012

HABURANA:

Association Momentanée SOBETRA SARL &sobetra(U) LTD, B.P 2290 Kigali C/ OFFICE RWANDAIS DES RECETTES (RRA).

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI - AMASHYIRAHAMWE Y'IGIHE GITO-KUTAGIRA AMATEGEKO SHINGIRO-KUBA UBWABYO BITAYEMERERA KUREGERA INKIKO.

IKIREGO CY'AMASHYIRAHAMWE Y'IGIHE GITO-NTICYAKIRWA IYO KIDATANZWE N'ABAGIZE ISHYIRAHAMWE BOSE.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- N'ubwo hakurikijwe ingingo ya 249 y'itegeko nº 06/1988 ryo ku wa 12/02/1988 ryerekeye itunganywa ry'amasosiyete y'ubucuruzi, amashyirahamwe y'igihe gito adategetswe kugira amategeko shingiro kuko ashobora kugaragazwa n'uburyo ubwo aribwo bwose, ibi ntibikuraho ko igihe ayo mashyirahamwe yiyemeje kuregera inkiko, hari ibyo agomba kuba yujuje kugira ngo ikirego cyayo cyakirwe.

- Hakurikijwe ibyateganywaga n'ingingo ya 3 y'itegeko nº 06/1988 ryo ku wa 12/02/1988 ryerekeye itunganywa ry'amasosiyete y'ubucuruzi, ikirego cy'amashyirahamwe y'igihe gito ntigishobora kwakirwa iyo kitatanzwe n'abarigize bose, kuko bene ayo mashyirahamwe adashobora kurega cyangwa kuregwa.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUHAKIRIJE MU RUHAME NONE KUWA 28/12/2012 URUBANZA R.COM.A 0064/11/CS MU BURYO BUKURIKIRA :

ABABURANA :

Association Momentanée SOBETRA SARL & SOBETRA (U) LTD, B.P 2290 Kigali, iburanirwa na Me Mhayimana Isaïe na Me Basomingera Albert.

na

OFFICE RWANDAIS DES RECETTEES (RRA), iburanirwa na Me Mugire R. Joseph na Me Kabibi Spéciose.

IKIBURANWA :

Umusoro ungana na 71.859.345 Frw ugizwe na « impôt mobilier » na « TVA à l'inverse » by'imyaka ya 2005 .

I. IMITERERE Y'URUBANZA MURI MAKE

1. Uru rubanza rukomoka ku igenzura RRA yakoreye Association Momentanée SOBETRA SARL & SOBETRA (U), iyica umusoro ungana na 72.466.022 Frw ukubiyemo umusoro ku bihembo (TPR) ku myaka ya 2003 na 2005, umusoro ku nyongeragaciro (TVA) ku myaka ya 2004 na 2005 na « impôt mobilier » yumwaka wa 2005. Association Momentanée SOBETRA SARL & SOBETRA (U) ntiyishimiye uwo musoro, ijuririra Komiseri Mukuru w'imisoro, maze ihanagurirwaho umusoro wa TPR w'umwaka wa 2003 ungana na 586.677 Frw, isabwa kwishyura umusoro ungana na 71.859.345 Frw. Uyu musoro nawo ntiyawishimiye, ijuririra Komisiyo y'ubujurire nayo yemeza umusoro nk'uko wari waciwe mbere.

2. Nanone Association Momentanée SOBETRA SARL & SOBETRA (U) ntiyanyuzwe n'icyo cyemezo, itanga ikirego mu Rukiko Rukuru rw'Ubucuruzi, ruca urubanza rwemeza ko icyo kirego kitakiriwe ku mpamvu y'uko Association Momentanée SOBETRA SARL & SOBETRA (U) idafite ububasha bwo kurega.

3. SOBETRA SARL & SOBETRA (U) Ltd yajuririye Urukiko rw'Ikirenga, ivuga ko ingingo z'itegeko nº 06/1988 rigenga itunganya ry'amasosiyete y'ubucuruzi Urukiko Rukuru rw'Ubucuruzi rwashingiyeho zitareba amashyirahamwe y'igihe gito, ndetse ko kuyibuza kuregera inkiko kandi itaranyuzwe n'umusoro yaciwe, ari ukuyivutsa uburenganzira bwayo bwo kwiregura.

4. Urubanza rwaburanishijwe kuwa 31/05/2012 no kuwa

22/11/2012, Association Momentanée SOBETRA SARL & SOBETRA (U) Ltd ihagarariwe na Me Mhayimana Isaïe na Me Basomingera Albert, RRA ihagarariwe na Me Mugire Joseph na Me Kabibi Spéciose.

II. IKIBAZO KIGOMBA GUSUZUMWA N'ISESENGURWA RYACYO

Kumenya niba Association Momentanée SOBETRA SARL & SOBETRA (U) Ltd ifite ububasha bwo kuregera inkiko.

5. Ababuranira Association Momentanée SOBETRA SARL & SOBETRA (U) Ltd bavuga ko icyatumye ijurira, ari uko nyuma yo kutishimira icyemezo cya Komisiyo y'ubujurire, yaregeye Urukiko Rukuru rw'Ubucuruzi, rwemeza ko idafite ububasha bwo kurega rushingiye ku ngingo ya 18 y'Itegeko nº 06/1988 ryo kuwa 12/02/1988 ryerekeye itunganywa ry'amasosiyete y'ubucuruzi, kandi ntaho iyo ngingo ivuga ubuzima gatozi bwa sosiyete. Bongeraho ko icyo SOBETRA SARL & SOBETRA (U) Ltd yakoze iregera inkiko ari nk'uburyo bwo kujurira kubera ko itari yanyuzwe n'icyemezo cyayifatiwe, ko rero bitandukanye no gutanga ikirego mu buryo busanzwe.

6. Banavuga ko hakurikijwe ingingo ya 249 y'itegeko nº 06/1988 ryavuzwe haruguru, amashyirahamwe y'igihe gito ashobora kugaragazwa n'uburyo bwose bwemewe n'itegeko, ko ariko adategetswe gukora inyandiko shingiro. Banemera ko SOBETRA SARL & SOBETRA (U) Ltd yagombaga gusoreshwa nk'abandi basoreshwa bose, ko ahubwo ikitumvikana ari uburyo

yemerewe kujuririra Komisiyo y'ubujurire, nyamara yajya mu Rukiko nyuma yo kutanyurwa n'icyemezo cy'iyo Komisiyo, ikirego cyayo nticyakirwe kandi irega yarashingiye ku ngingo ya 38 y'itegeko nº 25/2005 rigena imitunganyirize y'isoreshwa ivuga ko umusoreshwa utishimiye umusoro yaciwe ashobora kuregera inkiko.

7. Ababuranira SOBETRA SARL & SOBETRA (U) Ltd banasanga ubwo RRA yayifashe nk'umusoreshwa, yari ifite uburenganzira bwo kuregera inkiko nta yandi mananiza ishyizweho, kuko kuyangira kurega ari ukuyivutsa uburenganzira bwo kwiregura ihabwa n'ingingo ya 18 y'itegeko Nshinga cyane cyane ko nta bundi buryo ifite bwo kurenganurwa.

8. Banavuga ko uburenganzira bwa SOBETRA SARL & SOBETRA (U) Ltd bwo kurega bunashingiye ku ngingo ya 2 y'Itegeko nº 06/1988 ryamaze kuvugwa, igaragaza amoko ane y'amasosiyete yemewe, ikanavuga ko amashyirahamwe agengwa n'itegeko ryihariye ; hamwe n'ingingo ya 3 y'iryo tegeko ivuga ko Itegeko ryemera amashyirahamwe y'igihe gito n'amashyirahamwe ashingiye ku migabane, kandi ko ayo mashyirahamwe atagira ubuzima gatozi ; bityo rero ko amashyirahamwe y'igihe gito atagomba kwitiranywa n'amasosiyete asanzwe y'ubucuruzi.

9. Bongeraho ko amategeko y'u Rwanda ntacyo avuga ku birego bitanzwe n'amashyirahamwe y'igihe gito, kandi ko n'inkiko z'ahandi zitavuga rumwe kuri iki kibazo kuko hari bamwe bemera ko ayo mashyiramwe ashobora kurega, n'abandi bemeza ko atabyemerewe, akavuga ko bo bagendera ku bemera ko ayo mashyirahamwe

ashobora kurega. Basanga kandi urubanza R.Ad.A 0022/08/CS RRA ishingiraho, rudahura n'ikiburanwa muri uru rubanza, kuko ntaho bigaragara ko ikibazo gihari ari ikijyanye n'imisoro.

10. Ababuranira RRA basubiza ko, nk'uko Urukiko rwabyemeje, ingingo ya 18 y'Itegeko nº 06/1988 ryavuzwe haruguru, igaragaza ibyo sosiyete yifuza kurega igomba kuba yujuje, birimo kuba yaratangaje inyandiko shingiro yayo, yaba itabyubahirije ikirego cyayo nticyakirwe, ndetse ko ibivugwa muri iyo ngingo bireba n'amashyirahamwe y'igihe gito. Ikindi kandi, bavuga ko iyo ngingo yuzuzanya n'ibivugwa mu ngingo ya 248 y'Itegeko nº 06/1988 ryamaze kuvugwa, ivuga ko amashyirahamwe y'igihe gito nayo yubahiriza amategeko rusange agenga amasosiyete y'ubucuruzi.

11. Bongeraho ko SOBETRA SARL & SOBETRA (U) Ltd yitiranya inzego ebyiri zitandukanye, kubera ko kuba yarafashwe nk'umusoreshwa, biterwa n'uko yakoze ibikorwa bisoreshwa nk'uko bivugwa mu ngingo ya 4 n'iya 31 z'Itegeko nº 25/2005 ryavuzwe haruguru, nyamara ko imihango y'isoresha idakuraho ibigomba kuzuzwa n'umuntu wese wifuje kuregera inkiko, bitewe n'uko icyo gihe hakurikizwa amategeko ajyanye n'itangwa ry'ibirego, ko bitabaye ibyo, ababaye abasoreshwa bose bajya babyitwaza ntibubahirize ibisabwa mu gutanga ikirego.

12. Bavuga kandi ko mu rubanza rwa mbere, ntaho Umucamanza yigeze avuga ibijyanye n'ubuzima gatozi bwa SOBETRA SARL & SOBETRA (U) Ltd, ko ahubwo yerekanye ko itatangaje itegeko shingiro ryayo,

ko rero kubera iyo mpamvu, hanashingiwe ku ngingo ya 91 na 94 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, bigaragara ko idafite ububasha bwo kuregera inkiko kuko itujuje ibisabwa n'amategeko. Kuri bo kandi, kugira ngo ikirego cy'iryo shyirahamwe cyakirwe, ryashoboraga kugitanga ryisunze umwe mu banyamuryango baryo.

13. Ababuranira RRA banasabye ko mu gukemura iki kibazo hazifashishwa urubanza R.Ad.A 0022/08/CS rwaciwe n'Urukiko rw'Ikirenga hagati ya Succession Kaberuka Déogratias na Succession Kassim Dadan na Conservateur des Titres Fonciers, aho rwanze kwakira ikirego cy'umwe mu bagize Succession Kaberuka kubera ko kitubahirije ibyo amategeko asaba.

14. Urukiko rusanga, Umucamanza waciye urubanza rwajuririwe wemeje ko ikirego cya SOBETRA SARL & SOBETRA (U) Ltd kitakiriwe, yarashingiye ku ngingo ya 248[2], 249[3] y'Itegeko nº 06/1988 ryo ku wa 12/02/1988 ryerekeye itunganywa ry'amasosiyete y'ubucuruzi ryakurikizwaga, hamwe no ku ngingo ya 18 y'iryo tegeko[4], maze asanga kuba Association momentanée SOBETRA SARL & SOBETRA (U) Ltd itaratangaje inyandiko shingiro yayo, nta burenganzira yari ifite bwo kuregera urukiko.

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[2] Yavugaga itya : « Amashyirahamwe y'igihe gito n'ashingiye ku migabane ashyirwaho bikurikije amasezerano abayagiranye biyumvikaniyeho, bitabujije ko amategeko rusange agenga amasosiyete y'ubucuruzi atabangamiye iyi nteruro yakurikizwa»

[3] Yavugaga ko : "Amashyirahamwe y'igihe gito n'ashingiye ku migabane ashobora kugaragazwa n'uburyo ubwo ari bwo bwose bwemewe n'itegeko".

[4] Yavugaga ko : « Ikirego cyose cy'isosiyete itaratangaje inyandiko yayo ntigisuzumwa n'Urukiko, kimwe n'ikirego kiterekana aho iyo nyandiko shingiro yatangajwe ».

15. N'ubwo ababuranira SOBETRA SARL & SOBETRA (U) Ltd bemeza ko amashyirahamwe y'igihe gito atagomba kwitiranywa n'amasosiyete y'ubucuruzi, kandi ko adategetswe kugira amategeko shingiro kuko ashobora kugaragazwa n'uburyo bwose bwemewe n'itegeko hashingiwe ku ngingo ya 249 y'itegeko nº 06/1988 ryo ku wa 12/02/1988 ryavuzwe haruguru, ibyo ntibikuraho ko igihe ayo mashyirahamwe yiyemeje kuregera inkiko, hari ibyo agomba kuba yujuje kugira ngo ikirego cyayo cyakirwe, kuko iyo bitubahirijwe, biba impamvu ituma ikirego kitakirwa hakurikijwe ibivugwa mu ngingo ya 94 y'Itegeko nº 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga igihe cyo gutanga ikirego n'igihe cyo kujurira.[5]

16. Urukiko rusanga bitewe n'imiterere y'amashyirahamwe y'igihe gito, no kuba cyane cyane atagira ubuzima gatozi nk'uko bisobanurwa mu ngingo ya 3 y'Itegeko nº 06/1988 ryo ku wa 12/02/1988 ryavuzwe haruguru, bituma ikirego cyayo mu nkiko kidashobora kwakirwa. Ibi bihura n'ibisobanurwa n'abahanga mu mategeko, bemeza ko kubera ko amashyirahamwe y'igihe gito atagira ubuzima gatozi, adashobora kurega cyangwa ngo aregwe, ahubwo ko abayagize aribo bashobora kurega no kuregwa mu mwanya wayo.[6]

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[5] Iyo ngingo yavugaga itya : " Impamvu ituma ikirego kitakirwa ni ingingo yose isaba kutakira ikirego cy'umuburanyi, hatisnjiwe mu iremezo ryacyo, kubera ko adafite uburenganzira bwo kurega…"

[6] - DIRK METS et al ; Le contrôle des associations momentanées : Aspects juridiques, comptables, fiscaux et révisoraux, 29 Septembre 1996, p. 25 : « …L'Association momentanée ne peut en tant que telle ester en justice, elle doit passer par le biais de ses associés ou de celui d'entre eux qui dispose d'un mandat ad litem ».www.businessandlaw.be_ droit-fiscalité-belge.com : "La société momentanée n'a pas de personnalité juridique…Il en résulte les conséquences suivantes: ….. elle ne peut exercer d'action en justice ni être assignée comme telle: seuls les associés assignent et défendent personnellemt et directement…..Cependant, en raison de la solidarité entre associés, un seul associé membre d'une société momentanée peut être assigné par le tiers avec qui tous les coassociés ont traité".

17. Ibimaze kuvugwa bishimangirwa nanone n'ibyemezo by'inkiko z'ahandi, aho mu manza z'ubutegetsi zaciwe n'Urukiko rw'Inama ya Leta rw'igihugu cy'Ububiligi, urwo Rukiko rwemeje ko ikirego kidatanzwe n'abagize ishyirahamwe ry'igihe gito bose kitakirwa.[7]

18. Hashingiwe ku bisobanuro byamaze gutangwa, Urukiko rusanga Association Momentanée SOBETRA SARL & SOBETRA (U) Ltd nta burenganzira yari ifite bwo kuregera inkiko, bityo ubujurire bwayo bukaba nta shingiro bufite.

III. ICYEMEZO CY'URUKIKO

19. Rwemeje ko ubujurire bwa Association Momentanée SOBETRA SARL & SOBETRA (U) Ltd nta shingiro bufite ;

20. Ruyitegetse gutanga amagarama y'urubanza angana na 41.450 Frw, abariyemo n'ayo yaciwe mu Rukiko Rukuru rw'Ubucuruzi, itayatanga mu minsi umunani, ayo mafaranga agakurwa mu byayo ku ngufu za Leta.

[7] Ingero : Arr. Conseil d'Etat, nº 38.292, 10 décembre 1991, Arr. Conseil d'Etat, nº 33.685, 19 décembre 1989: "Une action qui ne serait pas introduite par l'ensemble des associés, sera déclarée irrecevable ...".

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KUWA 28/12/2012.

MUTASHYA J. Baptiste
Perezida

HAVUGIYAREMYE Julien
Umucamanza

MUKAMULISA Marie-Thérèse
Umucamanza

MUNYANDAMUTSA Jean Pierre
Umwanditsi

3. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RS/REV/RCOM0011/11/CS

ITARIKI Y'URUBANZA: 15/03/2013

HABURANA:
RWEMA MUHAMAHORO Pascal C/RWANDATEL SP

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI - GUSUBIRISHAMO URUBANZA INGINGO NSHYA-IKIMENYETSO GISHYA KANDI CYA KAMARAMPAKA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Bifatwa nk'ikimenyetso gishya gishobora gutuma urubanza rusubirishwamo ingingo nshya, iyo ikimenyetso gitangwa ari gishya kandi ari kamarampaka ku buryo iyo kiba cyarabonetse mbere y'uko urubanza rucibwa haba harafashwe icyemezo gitandukanye n'icyafashwe (Urugero nk'urubanza rwaciwe nyuma kandi rwabaye itegeko)

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUHAKIRIJE MU RUHAME URUBANZA N° RS/REV/ RCOM 0011/11/CS, KUWA 15/03/2013, MU BURYO BUKURIKIRA:

HABURANA :

UWATANZE IKIREGO :

RWEMA MUHAMAHORO Pascal**,** mwene Mpagazehe na Nyirarukundo, utuye mu Mudugudu w'Itetero, Akagari ka Nyagatovu, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali, yunganiwe na Me Mutalindwa.

UREGWA:

RWANDATEL SP, ifite icyicaro i Nyarugenge, 303 Avenue de la Paix, B.P. 1352 Kigali, mu izina ry'Umuyobozi Mukuru wayo, ihagarariwe na Me Buzayire Angel na Me Gahongerwa K. Goretti.

IKIREGERWA:

Gusubirishamo ingingo nshya urubanza RCOMA 0021/09/ CS rwaciwe n'Urukiko rw'Ikirenga kuwa 12/11/2010.

IKIBURANWA:

- Paiement d'une somme de 18.814.600 Frw ;
- intérêts de retard de 50.000 Frw par jour de retard;

- Dommages et intérêts pour inexécution de l'obligation de 50.000.000 Frw;
- Frais de recouvrement et honoraires d'avocat de 30% de la valeur du litige.

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru rw'Ubucuruzi, Rwema Muhamahoro Pascal arega Rwandatel SP 18.814.600 Frw y'umwenda, inyungu n'indishyi zinyuranye na 4.523.900 Frw y'agaciro k'ibikoresho bye yayihaye mu rwego rw'amasezerano ya « sous-traitance » bagiranye kugira ngo imucururize umuriro wa "cash power" wa Electrogaz.

[2] Rwandatel SP nayo yatanze ikirego kigamije kwiregura isaba ko Rwema Muhamahoro Pascal yayishyura 37.173.008 Frw y'umwenda ayibereyemo n'indishyi zayo ukomoka ku yandi masezerano bagiranye yo kuyicururiza amakarita ya telefone na telephone zigendanwa, igamije ko habaho guhwanya iyo myenda yombi, maze usigayemo undi umwenda akabona kuwumwishyura.

[3] Urwo Rukiko rwategetse Rwema Muhamahoro Pascal kwishyura Rwandatel SP 28.834.174 Frw havanwemo 2.100.000 Frw y'agaciro ka "imprimantes" na "panneaux publicitaires" bye, ikanamusubiza "ordinateur portable" imwe na cartes EVDOS eshatu.

[4] Rwema yajuririye Urukiko rw'Ikirenga, urubanza RCOMA 0021/09/CS rucibwa kuwa 12/11/2010, rutegeka Rwema kwishyura Rwandatel SP 1.871.154 Frw, rutegeka Rwandatel SP kwishyura Rwema 2.200.000 Frw y'agaciro ka "imprimantes" na "panneaux publicitaires", ikanamusubiza EVDOS 3 hamwe na "ordinateur portable" imwe.

[5] Kuwa 02/12/2011, Rwema yatanze ikirego gisubirishamo ingingo nshya urubanza RCOMA 0021/09/CS, icyo kirego cyandikwa kuri RS/REV/RCOM 0011/11/CS.

[6] Icyo kirego cyakorewe ibanzirizasuzuma, umucamanza wabishinzwe, afata icyemezo RCOM 002/12/Pré-ex/CS kuwa 02/02/2012, yemeza ko ikirego cya Rwema cyakiriwe kuko cyaje mu buryo n'inzira biteganywa n'amategeko, kandi ko yemerewe gusubirishamo urwo rubanza ingingo nshya, ariko ko ishingiro ryacyo rizasuzumwa igihe cy'iburanisha ry'urubanza mu mizi.

[7] Urubanza rwaburanishijwe mu ruhame kuwa 13/11/2012 no kuwa 07/02/2013, Rwema Muhamahoro Pascal yunganiwe na Me Mutalindwa, naho Rwandatel SP ihagarariwe na Me Buzayire Angèle na Me Gahongerwa K. Goretti.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO:

1. Kumenya niba ikimenyetso kigizwe n'urubanza RCOMA 0059/10/CS cyaratanzwe mu gihe cyemewe n'amategeko

[8] Ababuranira Rwandatel SP bavuga ko batanze inzitizi igamije kutakira ikirego cya Rwema ku birebana n'ikimenyetso yita gishya kigizwe n'urubanza RCOMA 0059/10/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 27/05/2011, ashingiraho asubirishamo ingingo nshya urubanza RCOMA 0021/09/CS kuko cyakererewe.

[9] Basobanura ko Rwema yamenye icyo kimenyetso kuwa 27/05/2011, ubwo urubanza RCOMA 0059/10/CS rwasomwaga, ariko ko yatanze ikirego cya "révision" kuwa 02/12/2011, akererewe kuko yagitanze igihe cy'amezi abiri (2) yateganywaga n'ingingo ya 185 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga igihe Rwema yatangaga icyo kirego, cyararangiye.

[10] Bavuga ariko ko mu gihe Urukiko rwasanga icyo kirego kitarakererewe, urubanza RCOMA 0059/10/CS atari ikimenyetso gishya kuko ntaho ruhuriye n'ibyasuzumwe binafatwaho icyemezo mu rubanza asubirishamo ingingo nshya, kubera ko kuba yaratsindiwe amafaranga yari akurikiranye kuri

Rwandatel SA bigatuma Rwandatel SP itamuha 12.211.200 Frw ya "commission", ari uko Urukiko Rukuru n'Urukiko rw'Ikirenga, zasanze atari afite ububasha bwo kuregera ayo mafaranga kuko atari aye.

[11] Rwema n'umwunganira bavuga ko urubanza RCOMA 0059/10/CS ari ikimenyetso gishya kandi ko gikwiye kwakirwa kuko cyatanzwe mu gihe cyemewe n'amategeko.

[12] Ku bijyanye n'urubanza mu mizi, bavuga ko hari 4.240.000 Frw yakomotse ku makarita ya telefoni yacururije Rwandatel SP kuri MINAGRI na PRIMATURE, ariko ko igihe MINAGRI yishyuraga Rwandatel SP 800.000 Frw na PRIMATURE ikayishyura 3.440.000 Frw (= 1.720.000 Frw x 2), ayo mafaranga yayobeye kuri konti za Rwandatel SA, bituma Rwandatel SP itamwishyura 12.211.200 Frw ya "commission" bari barumvikanye.

[13] Banavuga ko yareze Rwandatel SA asaba ko yamusubiza ayo mafaranga akajya kuyishyura Rwandatel SP, arabitsindirwa, kuko Urukiko Rukuru rw'Ubucuruzi n'Urukiko rw'Ikirenga, mu manza RCOM 0002/10/HCC na RCOMA 0059/10/CS, zemeje ko atari afite ububasha bwo kuregera ayo mafaranga kuko atari aye, ko ahubwo ari Rwandatel SP ifite ubwo bubasha kubera ko ari ayayo, ko rero RCOMA 0059/10/CS ari ikimenyetso gishya gikwiye gushingirwaho mu gusubirishamo ingingo nshya urubanza RCOMA

0021/09/CS, kuko rwaje kugaragaza ko Rwandatel SP yishyuwe ayo mafaranga n'ubwo yari ataragera kuri konti yayo, ko rero Urukiko rwakwemeza ko yishyuye Rwandatel SP ayo mafaranga kugira ngo agabanye umwenda imwishyuza n'ubwo asanga yarayishyuye amafaranga aruta ayo yayigombaga.

UKO URUKIKO RUBIBONA

[14] Ku birebana n'inzitizi yatanzwe na Rwandatel SP, ingingo ya 185 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga igihe Rwema yatangaga icyo kirego, ivuga ko "*Igihe cyo gusubirishamo ingingo nshya urubanza rwaciwe burundu ari amezi abiri kuva igihe impamvu ituma urwo rubanza rusubirwamo yabonekeye*".

[15] Urukiko rurasanga kuba urubanza RCOMA 0059/10/CS, Rwema yita ko ari ikimenyetso gishya ashingiraho asubirishamo urubanza RCOMA 0021/09/CS ingingo nshya, rwaraciwe n'Urukiko rw'Ikirenga kuwa 27/05/2011, ariko akaba yaratanze ikirego gisubirishamo ingingo nshya uru rubanza kuwa 02/12/2011 nk'uko bigaragazwa n'inyandiko ziri muri dosiye, bigaragara ko icyo kirego cyakererewe kuko cyatanzwe mu gihe kirenze amezi abiri (2) yateganywaga n'ingingo ya 185 y'Itegeko ryavuzwe haruguru, bityo kikaba kitagomba kwakirwa.

2. Kumenya niba ikimenyetso kigizwe n'imanza RP 0140/09/TB/NYGE - RPA 0406/10/TGI/NYGE gifite ishingiro

[16] Rwema n'umwunganira bavuga ko urubanza RP 0140/09/TB/NYGE rwaciwe n'Urukiko rw'Ibanze rwa Nyarugenge kuwa 03/09/2010 hamwe n'urubanza RPA 0406/10/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge kuwa 16/11/2011 zafatwa nk'ikimenyetso gishya gikwiye gutuma urubanza RCOMA 0021/09/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 12/11/2010 ruhinduka, kuko muri izo manza, abakozi ba Rwandatel SP biyemereye ko yabahaye amafaranga mu buryo bukurikira: Michael Arlt: 1.225.000 Frw, 550.000 Frw, 300 USD na 500 euros; Umukunzi Jeanine: 2.500.000 Frw, naho Hanyurwimfura Daniel: 6.000.000 Frw, kandi ko biyemereye ko bayahaye Rwandatel SP, ndetse ko nayo ubwayo yiyemereye ko yayahawe, ko rero ayo mafaranga agomba kuvanwa mu mwenda ungana na 28.834.173 Frw imwishyuza kugira ngo ugabanuke.

[17] Kuri iyo ngingo, ababuranira Rwandatel SP bavuga ko izo manza z'inshinjabyaha zitari ikimenyetso gishya cyashingirwaho mu gusubirishamo ingingo nshya urubanza RCOMA 0021/09/CS kuko ibizivugwamo bishimangira ibyaburanyweho mbere, kandi ko ayo mafaranga atari mu mwenda wanganaga na 37.173.008 Frw yari ayibereyemo. Ikindi ni uko icyo kimenyetso ntacyo cyamumarira kuko urubanza

asubirishamo ingingo nshya rwarangijwe ku buryo habayeho guhwanya imyenda y'impande zombi maze Rwema ahabwa 328.846 Frw, ni ukuvuga ikinyuranyo ku mafaranga Rwema yategetswe guha Rwandatel SP n'ayo Rwandatel SP yategetswe guha Rwema (2.200.000 Frw - 1.871.154 Frw).

UKO URUKIKO RUBIBONA

[18] Nyuma y'itangwa rya raporo y'Ubugenzuzi (Audit) yakozwe n'umuhanga Habineza Emmanuel wa sosiyete Deloitte & Touche ku bijyanye n'imyenda Rwema Muhamahoro Pascal na Rwandatel SP bari baberanyemo, Urukiko Rukuru rw'Ubucuruzi rwategetse Rwema kwishyura Rwandatel SP 28.834.173 Frw y'umwenda yari ayibereyemo.

[19] Urukiko rw'Ikirenga, mu rubanza RCOMA 0021/09/CS, muri ayo mafaranga yemejwe n'Urukiko Rukuru rw'Ubucuruzi, rwasanze hari atari yarakuwemo mu mwenda Rwema Muhamahoro yari afitiye Rwandatel SP, angana na 14.290.700 Frw, nyuma y'ihwanya ry'imyenda, rutegeka Rwema kwishyura Rwandatel SP 1.871.154 Frw.

[20] Nyuma y'icibwa ry'urubanza RCOMA 0021/09/CS rusabirwa gusubishwamo ingingo nshya, haciwe imanza z'inshinjabyaha RP 0140/09/TB/NYGE rwaciwe n'Urukiko rw'Ibanze rwa Nyarugenge kuwa 03/09/2010 na RPA 0406/10/TGI/NYGE rwaciwe

n'Urukiko Rwisumbuye rwa Nyarugenge kuwa 16/11/2011, zagaragaje ko hari amafaranga abakozi ba Rwandatel SP biyemereye ko bahawe na Rwema, kandi ko bayashyikirije Rwandatel SP ndetse nayo ikaba yariyemereye ko yayakiriye. Ayo mafaranga akaba ari: 2.500.000 Frw kuri Umukunzi Jeanine, 6.000.000 Frw kuri Hanyurwimfura Daniel na 1.225.000 Frw, 550.000 Frw, 300 USD na 500 euros kuri Michael Arlt, kandi bikaba bigaragara ko atakuwe mu mwenda rusange Rwandatel SP yaregaga Rwema Muhamahoro Pascal ko yari ayibereyemo ungana na 37.173.008 Frw.

[21] Urukiko rukaba rusanga imanza z'inshinjabyaha zavuzwe haruguru, hashingiwe ku byateganywaga n'ingingo ya 184, 3° y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga igihe Rwema yatangaga icyo kirego[8], ari ikimenyetso gishya, kandi cya kamarampaka kuko iyo kiza kuba cyarabonetse mbere y'icibwa ry'urubanza rusubirishwamo ingingo nshya, Urukiko rw'Ikirenga ruba rwarafashe icyemezo gitandukanye n'icyo rwafashe, bityo ayo mafaranga akaba agomba kuvanwa mu yo Rwandatel SP yishyuza Rwema, bivuga rero ko mu ihwanya ry'imyenda ryakozwe n'Urukiko rw'Ikirenga, hakaba haragombaga kongerwamo 10.850.000 Frw, ni ukuvuga: 2.500.000 Frw + 6.000.000 Frw + 1.225.000 Frw + 550.000 Frw, 180.000 Frw (=300 USD) + 395.000 Frw (= 500

[8] Agace k'iyo ngingo kavuga ko "iyo kuva aho urubanza ruciriwe habonetse ibimenyetso bya kamarampaka bigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo".

euros)[9], maze umwenda Rwema afitiye Rwandatel SP ukaba waragombaga kugabanuka mu buryo bukurikira: 28.834.173 Frw – (12.672.319 Frw + 10.850.000 Frw) = 5.311.854 Frw, aho kuba 16.161.854 Frw yari yaremejwe mu rubanza rusubirishwamo ingingo nshya.

[22] Hakurikijwe ibyo bisobanuro, Urukiko rusanga Rwandatel SP igomba kwishyura Rwema Muhamahoro Pascal 14.290.700 Frw y'umwenda imufitiye nk'uko byemejwe mu rubanza rusubirishwamo ingingo nshya, naho Rwema akaba agomba kuyishyura umwenda ungana na 5.311.854 Frw ayibereyemo. Hakozwe ihwanya ry'iyo myenda yombi, Urukiko rusanga Rwandatel SP igomba kwishyura Rwema Muhamahoro Pascal ikinyuranyo cy'iyo myenda yombi, ni ukuvuga 14.290.700 Frw - 5.311.854 Frw = 8.978.846 Frw, bityo urubanza RCOMA 0021/09/CS rusubirishwamo ingingo nshya rukaba rugomba guhinduka ku birebana gusa n'amafaranga arebana n'iryo hwanya ry'imyenda hakurikijwe ibiteganywa n'ingingo ya 191, igika cya 2 y'Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[10].

[9] Hakurikijwe igipimo cy'ivunjisha (taux) cya BCR cyo kuwa 14/03/2013 kigaragaza ko 1$ = 600 Frw, ni ukuvuga ko 300 USD y'Amanyamerika ari 180.000 Frw. Icyo gipimo kigaragaza na none ko 1 euro = 790 Frw, bivuga ko 500 euros ari 395.000 Frw.

[10] Iyo ngingo ivuga ko "Iyo isubirwamo ryemewe ku ngingo imwe mu rubanza, iyo ngingo ni yo yonyine ivanwaho, keretse iyo izindi ari yo zishingiyeho".

3. Kumenya niba ababuranyi bahabwa indishyi basaba

[23] Rwema Muhamahoro Pascal n'umwunganira basaba ko Rwandatel SP yamuha amafaranga asobanuye mu buryo bukurikira: 35.082.340 Frw ashingiye ku manza ebyiri zavuzwe yatanze nk'ibimenyetso bishya, 5.500.000 Frw y'indishyi z'akababaro n'ay'igihembo cya Avoka Rwandatel SP yaciwe mu manza z'inshinjabyaha zavuzwe haruguru, 2.002.165 Frw y'igihembo cy'umuhanga kuko bemeranyijwe nayo ko uzatsindwa azayasubiza mugenzi we, 50.000.000 Frw y'izindi ndishyi z'akababaro yagiye asaba, ariko akayatsindirwa kuko Inkiko zavugaga ko ayifitiye umwenda kandi ntawo ayibereyemo, kuyica 50.000 Frw ku munsi z'inyungu z'ubukererwe zibariwe kuri 8 % ku mafaranga yose imufitiye, ikanamwishyura 30 % ya frais z'ikurikiranarubanza (recouvrement) kuko nta kigaragaza ko izayamwishyura ku neza, ikanacibwa n'igihano kiyihatira kurangiza urubanza (astreinte) cy'amafaranga abarwa buri munsi mu gihe izaba itamwishyuye.

[24] Ababuranira Rwandatel SP bavuga ko nta ndishyi Rwema yahabwa kuko nta kimenyetso gishya kandi cya kamarampaka yashyikirije Urukiko cyatuma urubanza RCOMA 0021/09/CS rusubirishwamo ingingo nshya, ko ahubwo ariwe ugomba kuyiha 5.000.000 Frw y'indishyi z'ikurikiranarubanza, ay'igihembo cya Avoka hamwe n'indishyi z'akababaro kubera ko yayishoye mu manza ku maherere.

UKO URUKIKO RUBIBONA

1. **Ku birebana n'indishyi zisabwa na Rwema Muhamahoro Pascal**

- **Ku byerekeranye indishyi z'akababaro n'inyungu z'ubukererwe Rwema Muhamahoro Pascal asaba,** Urukiko rurasanga nta ndishyi z'akababaro nta n'inyungu z'ubukererwe yahabwa kubera ko n'ubwo hari amafaranga yatsindiye, bigaragara ko nawe hari umwenda yari abereyemo Rwandatel SP.

- **Ku birebana n'igihembo cy'umuhanga,** Urukiko rurasanga atahabwa ayo mafaranga kuko nta muhanga wigeze wiyambazwa muri uru rubanza rusubirishwamo ingingo nshya.

- **Ku byerekeranye na 30 % ya frais za "recouvrement" n'igihano gihatira RWANDATEL SP kurangiza urubanza (astreinte),** Urukiko rurasanga ibyo asaba atabihabwa kuko atarugaragariza ko Rwandatel SP itazamwishyura ku neza amafaranga yatsindiye, cyane cyane ko urubanza asubirishamo ingingo nshya hari ibyari byararurangijwemo kandi ku neza.

- **Ku byerekeranye n'igihembo cya Avoka,** Urukiko rurasanga Rwandatel SP igomba guha Rwema 300.000 Frw y'igihembo cya Avoka kuko bigaragara ko hari Avoka wari umwunganiye muri uru rwego.

2. Ku birebana n'indishyi Rwandatel SP isaba

- **Ku byerekeranye n'indishyi zo gushorwa mu manza ku maherere** ay'ikurikiranarubanza n'ay'igihembo cya Avoka Rwandatel SP isaba, Urukiko rurasanga Rwandatel SP itazihabwa kuko ari uburenganzira bwa Rwema bwo gukurikirana aho inyungu ze ziri mu gihe asanga yarabangamiwe.

I. ICYEMEZO CY'URUKIKO

[25] Rwemeje kwakira ikirego cya Rwema Muhamahoro Pascal gisubirishamo ingingo nshya urubanza RCOMA 0021/09/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 12/11/2010, ku birebana n'ikimenyetso gishya kigizwe n'imanza RP 0140/09/TB/NYGE na RPA 0406/10/TGI/NYGE, kuko cyatanzwe mu buryo n'inzira byemewe n'amategeko;

[26] Rwemeje ko ikimenyetso gishya kigizwe n'imanza RP 0140/09/TB/NYGE na RPA 0406/10/TGI/NYGE gifite ishingiro;

[27] Rwemeje kutakira ikirego cya Rwema Muhamahoro Pascal ku byerekeranye n'ikimenyetso yita gishya kigizwe n'urubanza RCOMA 0059/10/CS;

[28] Rutegetse Rwandatel SP guha Rwema Muhamahoro Pascal 8.978.846 Frw na 300.000 Frw y'igihembo cya Avoka;

[29] Ruvuze ko urubanza RCOMA 0021/09/CS

rwaciwe n'Urukiko rw'Ikirenga kuwa 12/11/2010 rusubirishwamo ingingo nshya, ruhindutse gusa ku birebana n'amafaranga yerekeranye n'ihwanya ry'imyenda;

[30] Ruyitegetse gutanga amagarama y'uru rubanza angana na 15.600 Frw, itayatanga mu gihe cy'iminsi umunani, agakurwa mu byayo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 15/03/2013.

MUTASHYA Jean Baptiste
Perezida

HAVUGIYAREMYE Julien
Umucamanza

RUGABIRWA Ruben
Umucamanza

MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

IMANZA Z'IMBONEZAMUBANO

4. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCAA0029/12/CS
ITARIKI Y'URUBANZA: 08/03/2013

HABURANA:
BUSINGYE Pascaline C/
MUKARUSHEMA Epiphrodisie.

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO - GUTUNGA IKITIMUKANWA MU BURYO BW'UBURYARYA- KUBITANGIRA IBIMENYETSO K'UBIBURANISHA- KUKIGURA CYANGWA KUGITUNGA HATAZWI AMAKOSA ACYIHISHE INYUMA .

- KUGURA IKITIMUKANWA MU BURYO BUTARI UBW'UBURYARYA - KUGIRA UBURENGANZIRA KUBYONGEREWEHO NO KUTAKWA IKIGUZI CY'UBUKODE .

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Uburanisha ko utunze ikintu agitunze mu buryo bw'uburyarya niwe ugomba kubitangira ibimenyetso, iyo ibyo bimenyetso bibuze bifatwa ko ugitunze aba agitunze buryo butari ubw'uburiganya, kuko aba yarakibonye cyangwa yarakiguze atazi amakosa akihishe inyuma .

- Uwaguze ikintu kitimukanwa (inzu) mu buryo butari ubw'uburiganya afite uburenganzira bwo gusubizwa n'uwerekanye ko ariwe nyiracyo ikiguzi cy'ibyo yongereyeho kandi ntiyishyuzwa ubukode bw'igihe aba amaranye icyo kintu.

URUKIKO RW'IKIRENGA, RUHABURANISHIRIZA IMANZA Z'IMBONEZAMUBANO, RUCIYE URUBANZA MU RUHAME RCAA 0029/12/CS NONE KU WA 08/03/2013 MU BURYO BUKURIKIRA:

HABURANA:

Uwajuriye: BUSINGYE Pascaline, mwene Cyizere Pascal na Mukangango Anathalie, wavutse muri 1989, utuye mu Kagali ka Kageyo, Umurenge wa Kibagabaga, Akarere ka Gasabo, Umujyi wa Kigali.

Uregwa mu bujurire: **MUKARUSHEMA Epiphrodosie**, mwene Balibutsa Juvénal na Kankindi Josephine, wavutse 1950 utuye mu Kagali ka Kibagabaga, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali.

Ikiburanwa: Gusaba gusubizwa inzu yasigiwe n'ababyeyi be, ruhabwa amafaranga 9.000.000 y'ubukode abariwe ku 100.000Frws buri kwezi kuva mu kwa 04/2004 kugeza mu kwa 10/2010

I. IMITERERE Y'URUBANZA

[20] Busingye Pascaline yareze MUKARUSHEMA mu Rukiko Rwisumbuye rwa Gasabo asaba ko yamusubiza inzu y'ababyeyi be yaguze na RUKESHAMBUGA Innocent mu buryo budakurikije amategeko kubera ko yayigurishijwe n'utari nyirayo kandi nta n'icyemezo cy'urukiko kibimwemerera. BUSINGYE Pascaline yasabaga kandi ko yahabwa 9.000 000 Frw ahwanye n'ubukode bw'iyo nzu mu gihe cyose amaze atayibamo. Ku wa 20/01/2011 Urukiko rwemeje ko ubugure bwakozwe busheshwe, rutegeka MUKARUSHEMA gusubiza Busingye Pascaline n'umuvandimwe we inzu y'ababyeyi babo, runemeza ko amafaranga y'ubukode Busingye Pascaline yasabye nta shingiro afite kuko MUKARUSHEMA yaguze inzu nta buriganya (*de bonne foi*).

[21] MUKARUSHEMA yajuririye mu Rukiko Rukuru, ku wa 16/03/2012 rwemeza ko MUKARUSHEMA asubiza BUSINGYE Pascaline n'umuvandimwe we Kamugabirwa Francine inzu basigiwe n'ababyeyi babo, ko kandi hashingiwe kuri "Expertise" yakozwe n'impuguke yashyizweho n'Urukiko, abasubijwe inzu baha MUKARUSHEMA 16.919.108 Frw ahwanye n'ibikorwa byakozwe kuri iyo nzu kuva yagurwa, batabikora gutyo igatezwa cyamunara ku bwumvikane bwabo, abasubijwe inzu bagahabwa 57% naho MUKARUSHEMA waguze agahabwa 43% by'ikiguzi cy'iyo nzu.

[22] BUSINGYE Pascaline yajuririye urubanza mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwivuguruje kuko rwatesheje agaciro ubugure ariko rukarenga rukamutegeka kugira ibyo asubiza uwaguze no kuba umucamanza atarabageneye amafaranga y'ubukode bw'iyo nzu mu gihe cyose MUKARUSHEMA yayimazemo.

[23] Iburanisha ry'urubanza ryabereye mu ruhame ku wa 29/11/2012 BUSINGYE Pascaline yunganiwe na Me RUZINDANA Ignace, MUKARUSHEMA yunganiwe na Me NKUBA Milton, mu iburanisha ababuranyi ntibumvikanye ku gaciro k'ikiburanwa (inzu) katanzwe n'impuguke yashyizweho n'Urukiko, aho yemeje ko inzu igurwa yari ifite agaciro ka 22.505.905 Frw, ko MUKARUSHEMA yongereyeho ibingana na 16.919.108Frw.

[24] Uburanira Mukarushema akerekana ko bitumvikana ukuntu inzu yaguzwe 1.500.00Frw yahabwa agaciro ka 22.505.905Frw, ko agaciro k'inzu kazamuwe cyane, mu gihe uburanira Busingye Pascaline we avuga ko agaciro katanzwe ari ko nta gukabya kurimo ahubwo ko inzu yagurishijwe 1.500.000Frw kubera ko yagurishwaga n'utari nyirayo ayitanga ku gaciro kadahuye n'ako yari ifite.

[25] Urukiko rumaze gusuzuma ibyavuzwe n'ababuranyi bombi, rwasanze ari ngombwa ko rwakwigerera ku kiburanwa kugirango ruhuze ibyo ababuranyi bavuga n'ibiri muri raporo y'umuhanga wagenwe n'Urukiko Rwisumbuye rwa Gasabo, maze rukora iperereza ababuranyi bombi bahari banamenyeshwa ko urubanza

ruzakomeza ku wa 05/02/2013, iburanisha ryabereye mu ruhame, Busingye Pascaline yunganiwe na Me RUZINDANA Ignace naho MUKARUSHEMA yunganiwe na Me NKUBA Milton.

I. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a) *Kumenya niba MUKARUSHEMA yaraguze inzu iburanwa mu buriganya (de mauvaise foi) ku buryo atasubizwa ibyo yayikozeho.*

[26] Me RUZINDANA Ignace uburanira BUSINGYE Pascaline avuga ko MUKARUSHEMA ntacyo agomba guhabwa kubera ko yari azi ko inzu ayiguze mu buryo butemewe n'amategeko, ngo ibi bikaba bigaragazwa n'uko inzu yagurishijwe ku giciro cyo hasi cyane (1.500.000 Frw) kuko yagurishwaga n'utari nyirayo nk'uko byaje kwemezwa n'urubanza rw'inshinjabyaha muri 2008 ubwo RUKESHAMBUGA wagurishije iyo nzu yahamwe n'icyaha cyo kugurisha umutungo utari uwe agahanishwa igifungo cy'imyaka ibiri, ko rero Urukiko Rukuru rutari gutesha agaciro ubugure ngo rwongere rutegeke BUSINGYE Pascaline utarakiriye amafaranga y'ubugure kugira icyo aha MUKARUSHEMA.

[27] Me NKUBA Milton uburanira MUKARUSHEMA asubiza ko hashingiwe ku ngiyo ya 276 CCLIII nawe yemera ko ubugure bugomba kuba impfabusa ariko ko uwo aburanira yaguze nta buriganya (*acquéreur de bonne foi*) kubera ko igihe cy'igurisha BUSINGYE Pascaline

yari ahari ntiyagira icyo akemanga nubwo yari akiri muto, ko kandi abayobozi b'inzego z'ibanze bamusinyiye kuri ubwo bugure, ko rero MUKARUSHEMA wari utuye GIKONDO atari kumenya ko RUKESHAMBUGA wari utuye KIBAGABAGA atari nyir'inzu, ko kandi uwagurishije ariwe wareraga BUSINGYE Pascaline na murumuna we, ku buryo ikiguzi cy'inzu cyifashishijwe mu kubarera, bityo akaba agomba gusubizwa ikiguzi cy'inzu kijyanye n'ibyo yayongereyeho kandi ko atagomba kubazwa ubukode kubera ko atayirimo nk'umukodesha, ahubwo ayirimo nka nyirayo.

UKO URUKIKO RUBIBONA

[28] Urukiko rurasanga, nk'uko byagaragajwe mu iburanisha ry'uru rubanza, igihe amasezerano y'ubugure yakorwaga hagati ya MUKARUSHEMA na RUKESHAMBUGA ku wa 17/02/2004, BUSINGYE Pascaline wari ufite imyaka 15 y'amavuko yari ahari kandi ntacyo yakoze cyari kugaragariza MUKARUSHEMA ko inzu igiye kugurishwa n'utari nyirayo, ikindi n'uko abayobozi b'ibanze basinye ku masezerano y'ubugure,[11] ibi bikaba byaratumye MUKARUSHEMA agira icyizere cy'uko agurishijwe na nyir'umutungo. BUSINGYE n'Umuhagarariye bakaba baterekana ko hari ikindi kimenyetso cyashoboraga kugaragariza MUKARUSHEMA ko inzu agiye kuyigura n'utari nyirayo nko kuba yaraburiwe ko agiye kugura inzu y'imfubyi ngo bimutere amakenga y'igikorwa agiye gukora cyangwa ko yaguze rwihishwa nta muyobozi w'ibanze

[11] Amasezerano y'ubugure yo ku wa 17/02/2004 ari muri dosiye yasinyweho na Nyumbakumi na Chef de zone

uhari, bityo Urukiko rukaba rusanga, hashingiwe ku mahame y'amategeko ndetse ko ku ngingo ya 17 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yerekeye amasezerano n'imirimo nshinganwa, yakurikizwaga igihe amasezerano yasinywaga, urega uburyarya niwe ubutangira ibimenyetso[12] kandi iyo ibyo bimenyetso bibuze bifatwa ko utunze ikintu nta buryarya aba afite, ahubwo yibeshye ko ariwe wabaye nyir'ikintu bitewe n'uko aba atazi amakosa akihishe inyuma.[13]

[29] Urukiko rw'Ikirenga rurasanga rero MUKARUSHEMA yaraguze inzu nta buriganya (*de bonne foi*), bityo akaba afite uburenganzira bwo gusubizwa ikiguzi cy'ibyo yongereye kuri iyo nzu nyuma yo kuyigura, kandi akaba adakwiye kwishyuzwa ubukode ku gihe amaze muri iyo nzu, ibi nabyo bishimangirwa n'abahanga mu mategeko y'imboneza mubano aho bavuga ko « Uwari utunze inzu nta buriganya afite uburenganzira k'umusaruro uturutse mu byo atunze n'uburenganzira bwo kudasubiza ibyo yavanye muri uwo mutungo iyo nyirawo awushubijwe.»[14]

b) *Kumenya ibyo MUKARUSHEMA akwiye gusubizwa.*

[30] Me RUZINDANA Ignace uhagarariye BUSINGYE Pascaline avuga ko inzu yaguzwe mu buriganya, uwayiguze akaba yari azi ko igurishijwe n'utari nyirayo, bityo ko nta cyo MUKARUSHEMA agomba gusubizwa, ahubwo akaba agomba gutanga inzu y'ababyeyi ba BUSINGYE

[12] Ingingo ya 17 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano,-amasezerano n'imirimo nshinganwa iteganya ko uburiganya budakekwa, bugomba kugaragazwa.

[13] «Le possesseur est de bonne foi quand il croit à tort, être devenu propriétaire, parce qu'il ignore les vices du titre en vertu duquel il a acquis », Jean Carbonnier, Droit Civil : Les Biens; Tome 3; 14e édition, Paris : 1991, p. 203.

[14]«Le possesseur de bonne foi a droit aux fruits de la chose possédée, ce qui lui permet de ne pas les restituer lorsque la chose aura été revendiquée par le véritable propriétaire » Philipe Simler et François Terré, Droit Civil. Les biens, 7ème édition, Paris : Dalloz, 2006, pp.167-168.

Pascaline ndetse akanatanga 9.000.000 Frw y'ubukode ahwanye n'igihe ayimazemo.

[31] MUKARUSHEMA na Me NKUBA Milton umuburanira bavuga ko badahakana ko inzu yasubizwa BUSINGYE Pascaline, ariko kubera ko uko inzu yaguzwe yari imeze muri 2004 atari uko imeze ubu kuko hari ibyo yashyizeho, bityo MUKARUSHEMA akaba asaba ko yasubizwa ikiguzi cy'ibyo yayongereyeho.

UKO URUKIKO RUBIBONA

[32] Urukiko rw'Ikirenga rurasanga, nkuko rwabyiboneye mw'iperereza, inzu imaze kugurwa yarongeweho ibintu byinshi harimo agapande ku nzu n'akandi hanze ku gikoni, uruzitiro ku bipande bibiri, ibice by'ama « carreaux » bisimbura sima yari muri «salon» na «corridor», «plafond», «planche de rive», «plainte»,umuyoboro w'amazi, umusarani ushaje mu nzu (*toilette à siège*), uretse ibyo amadirishya n'inzugi nabyo byaraguwe hashyirwaho ibinini bikoze mu byuma (*métallique*), bityo igenagaciro ryakozwe n'umuhanga wagenwe n'Urukiko Rwisumbuye rwa Gasabo rikaba rifite ishingiro ; MUKARUSHEMA akaba agomba gusubizwa ikiguzi cy'ibyo yakoze kuri iyo nzu.

[33] Urukiko rw'Ikirenga rusanga, nk'uko bigaragara muri dosiye, igenagaciro ryavuzwe haruguru ryerekana ko ubu inzu ifite agaciro ka 39.425.013 Frw akubiyemo 22.505.905 Frw y'agaciro yari ifite mbere y'uko igurwa na 16.919.108 Frw ahwanye n'ibyo MUKARUSHEMA yongeye kuri iyo nzu, bivuze rero ko uruhare rwa

BUSINGYE Pascaline na murumuna we rungana na 57%, naho urwa MUKARUSHEMA rukaba rungana na 43% nk'uko byemejwe n'Urukiko Rukuru.

[34] Urukiko rw'Ikirenga rurasanga rero ababuranyi bombi baramutse bahisemo kugurisha inzu, BUSINGYE Pascaline agomba guhabwa 57% y'ikiguzi cy'inzu, naho MUKARUSHEMA agatwara 43% yacyo.

II. ICYEMEZO CY'URUKIKO

[35] Rwemeje ko ubujurire bwa BUSINGYE Pascaline nta shingiro bufite.

[36] Rwemeje ko imikirize y'urubanza NºRCA0035/11/HC/KIG idahindutse.

[37] Rutegetse ko MUKARUSHEMA asubiza BUSINGYE Pascaline na murumuna we inzu basigiwe n'ababyeyi babo.

[38] Rutegetse ko BUSINGYE Pascaline asubiza MUKARUSHEMA 43% y'ikiguzi cy'iyo nzu.

[39] Rutegetse ko mu gihe bahisemo kugurisha inzu, BUSINGYE Pascaline na murumuna we bagomba gufata 57% y'ikiguzi cy'inzu, naho MUKARUSHEMA agafata 43% y'ikiguzi cy'inzu.

[40] Rutegetse ko amagarama y'urukiko aherera ku isanduku ya Leta kubera ko BUSINGYE Pascaline atishoboye.[15]

[15] Ingingo ya 361,1º y'Itegeko Nº21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

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

Sé
KAYITESI ZAINABO Sylvie
Perezida

Sé **KANYANGE Fidélité** **Umucamanza**	**Sé** **RUGABIRWA Ruben** **Umucamanza**

Sé
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

IMANZA Z'UBUTEGETSI

5. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RADA0031/11/CS
ITARIKI Y'URUBANZA: 19/04/2013

HABURANA:
DUSABIRANE Joseph et Crts C/ Umujyi wa Kigali.

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI - ICYEMEZO CY'UMUYOBOZI - KUGIFATA NO KUKIMENYESHA MU MAGAMBO - KUBA UBWABYO BIDAHAGIJE KUGIRA NGO GIFATWE NK'IKIDAKURIKIJE AMATEGEKO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Kudahabwa ibaruwa ikubiyemo icyemezo cyo guhagarikwa ku kazi ubwabyo ntibyatuma iyirukanwa rifatwa nk'iridakurikije amategeko kubera ko n'ubwo muri rusange ibyemezo by'ubuyobozi bishyirwa mu nyandiko nta kibuza ko ibyemezo bimwe na bimwe bishobora gufatwa no kugezwa ku bo bireba mu magambo

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUTEGETSI RUKIJIJE MU RUHAME NONE KUWA 19/04/2013 URUBANZA RADA 0031/11/CS MU BURYO BUKURIKIRA:

HABURANA:

Abajuriye:

1. **Dusabirane Joseph**, mwene Seburago Léonard na Mukasekuru Vérédiana, utuye mu Mudugudu wa Nyakabingo, Akagali ka Kimisagara, Umurenge wa Kimisagara, Akarere ka Nyarugenge, Umujyi wa Kigali.

2. **Mukashyaka Ana**, mwene Mugaragu Francis na Kayisenge Collette, utuye mu Mudugudu wa Rusenyi, Akagali ka Murama, Umurenge wa Kanyinya, Akarere ka GAsabo, Umujyi wa Kigali

3. **Musoni Augustin** , Mwene Karake na Mukanyonga, utuye mu Mudugudu wa Murambi, Akagali ka Nyanza,Umurenge wa Gatenga, Akarere Kicukiro,umujyi wa Kigali.

4. **Rudasingwa M. Claire**, mwene Rudasingwa Pierre Célestin na Mukanyonga Eustochie, utuye mu Mudugudu w'Intashyo, Akagali ka Bibare, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali.

5. **Rudasingwa N. Alexis** mwene Migabo Médard na Mujijima Marciana, wavutse mu 1958, utuye mu Mudugudu wa Taba, Akagali ka Rugando, Umurenge wa Kimihurura, Akarere ka Gasabo, Umujyi wa Kigali.

6. **Uwamariya Alice** mwene Nzitatira Célestin na Gasanabandi Thérese utuye mu Mudugudu wa Kigarama, Akagali ka Niboye, Umurenge wa Niboyi, Akarere ka Kicukiro, Umujyi wa Kigali.

7. **Uwanziga Laétitia**, mwene Gakuba Canisius na Mukancunda Consolate, wavutse mu 1972, utuye mu Mudugudu wa Kanserege ya mbere, Akagali ka Kanserege, Umurenge wa Gikondo, Akarere ka Kicukiro, Umujyi wa Kigali.

8. **Uwemeyinkiko Emmanuel,** mwene Mutabazi Andre na Nyirandenzi Pascasie,wavutse mu 1968, utuye mu Mudugudu w 'Akanyirazaninka, Akagali ka Mumena, Umurenge wa Nyamirambo, Akarere ka Nyarugenge, Umujyi wa Kigali.

Uregwa:
Umujyi wa Kigali (MVK) mu izina ry'Umuyobozi wawo.

UREGWA:

Umujyi wa Kigali, mu izina ry'Umuyobozi wawo.

IKIBURANWA:

- Licenciement abusif ; Salaires impayés ; Salaires impayés pendant la période de suspension ; Dommages et intérêts moraux ; Salaires impayés ; Salaires impayés pendant la période de suspension ;

I. IMITERERE Y'URUBANZA MURI MAKE

[1] Dusabirane Joseph, Mukashyaka Ana, Musoni Augustin, Rudasingwa M. Claire, Rudasingwa N. Alexis, Uwamariya Alice, Uwanziga Laétitia, Uwemeyinkiko Emmanuel, bavuga ko bari abakozi b'Umujyi wa Kigali, nyuma baza gusezererwa ku kazi ku buryo bavuga ko bwabatunguye ndetse ntibahembwa amafaranga y'amezi 4 bari bamaze gukora. Ubwumvikane bw'impande zombi bwabayeho, ntacyo bwagezeho bituma hiyambazwa Inkiko.

[2] Urukiko Rukuru rwaregewe, rwaciye urubanza kuwa 12/07/2011, rwemeza ko ikirego cya Dusabirane Joseph, Mukashyaka Ana, Musoni Augustin, Rudasingwa M. Claire, Rudasingwa N. Alexis, Uwamariya Alice, Uwanziga Laétitia, Uwemeyinkiko Emmanuel, nta shingiro gifite, rubategeka gufatanya gutanga amagarama y'urubanza angana na 10.050 Frw.

[3] Abatsinzwe bose bajuriye mu Rukiko rw'Ikirenga bavuga ko Umucamanza w'Urukiko Rukuru atigeze atanga impamvu ashingiraho avuga ko ikirego cyabo nta shingiro gifite .

[4] Urubanza rwaburanishijwe mu ruhame kuwa 12/03/2013, abajuriye bose bahagarariwe na Me Muvunyi J.M Pascal, naho Umujyi wa Kigali uhagarariwe n'Intumwa Nkuru ya Leta yungirije, Me SEBAZUNGU Alphonse.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO.

A. Ubujurire bw'abahoze ari abakozi ba MVK

❖ **Kumenya niba amafaranga y'imishahara y'amezi 4 abajuriye basaba bagomba kuyahabwa**

[5] Uburanira abajuriye avuga ko Umucamanza w'Urukiko Rukuru mu gufata icyemezo, atigeze agaragaza impamvu yashingiyeho. Aavuga ko abaregaga batsinzwe, kandi Avoka waburaniraga MVK yari yemereye imbere y'Urukiko ko yakwishyura imishahara y'amezi 4 batahembwe kuva tariki ya 01/01/2006 kugeza tariki ya 05/05/2006 kuko ariho babonye ibaruwa ibamenyesha ku buryo bwemewe n'amategeko ko bahagaritswe ku kazi by'agateganyo, ko ibyo uburanira MVK avuga ko ngo avoka wa mbere yemeye yibeshye, nta shingiro bifite

kuko yavuze ibyo MVK yamutumye, cyane ko MVK idasobanura kugeza ubu "situation juridique" barimo muri kiriya gihe cy'amezi ane".

[6] Yabajijwe niba koko barakoraga, asubiza ko buri gitondo bazindukaga bajya ku kazi ariko umukoresha ntagire akazi abaha, babaza uko ibintu bimeze ntibabone igisubizo, ko kuva batarigeze bamenyeshwa impinduka zabaye mu kazi mu buryo bwemewe, ahubwo bagashyirwa mu rujijo, bivuga ko bari bakiri abakozi kugeza tariki 05/05/2006, ubwo bahabwaga ibaruwa ibamenyesha ko bahagaritswe ku kazi by'agateganyo. Avuga ko Urukiko ruhereye k'ukwemera kwa MVK, rwagombaga kuvuga ko itsinzwe kuko amagambo umuburanyi yemereye imbere y'Urukiko amutsindisha nk'uko biteganywa n'ingingo ya 110 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

[7] Uburanira Umujyi wa Kigali asobanura ko imishahara y'amezi 4 abajuriye basaba nta mpamvu yayo, kubera ko birengagiza ko ivugururwa ry'ubutegetsi bwite bwa Leta ryabaye muri 2005 nk'uko nabo babyivugira mu mabaruwa yabo yo kuwa 19/07/2010 bandikiye Umunyamabanga Nshingabikorwa wa Komisiyo y'Abakozi ba Leta bavuga ko bahagaritswe ku kazi by'agateganyo tariki ya

01/01/2006 kubera "réforme" y'Inzego za Leta yabaye umwaka wa 2005 urangira, ko rero batasaba ko ibyabaye bihindurwa maze ngo hemezwe ko bahagaritswe mu kwa gatanu kandi ibaruwa ibahagarika by'agateganyo yaraje basanzwe barahagaritswe, akaba asanga imishahara basaba ntayo bakwiye guhabwa kuko muri icyo gihe batakoraga nk'uko bivugwa mu ngingo ya 107 ya sitati y'abakozi ba Leta[16] bitewe nuko imirimo (postes) bakoraga yari yaravanyweho harashyizwe mu myanya abakozi bashya hashingiwe kuri "cadre organique "nshya.

[8] Akomeza avuga ko ibyo uhagarariye abajuriye avuga ko Umujyi wa Kigali hari ibyo wiyemereye imbere y'Urukiko, ataribyo kuko niba yaranabikoze bitafatwa nko kwemera ahubwo ko ibyo yavuze habayemo ukwibeshya kubera kutamenya neza uko dosiye iteye, akaba asanga ibyo avoka yemeye ariko bidashingiye ku kuri nta gaciro byahabwa.

[16] Ingingo ya 107 ivuga ko « Igihembo kigeze igihe cyo kwishyurwa kubera akazi kakozwe, kigizwe n'umushahara fatizo ubazwe uhereye aho buri mwanya w'umurimo uri ku mbonerahamwe y'imishahara nk'uko umugereka wa II ubyerekana ».

UKO URUKIKO RUBIBONA

[9] Inyandiko zikubiye muri dosiye zigaragaza ko abajuriye bahagaritswe by'agateganyo ku kazi babibwiwe mu magambo n'Ubuyobozi bwa MVK tariki ya 01/01/2006, ariko nyuma y'aho MVK iza kubandikira ibaruwa ikubiyemo icyo cyemezo tariki ya 05/05/2006. Urukiko rurasanga kuba ibaruwa ibamenyesha ko bahagaritswe yaraje nyuma y'amezi ane bidasobanura ko bahagaritswe mu buryo budakurikije amategeko kuko nubwo muri rusange ibyemezo by'ubuyobozi bishyirwa mu nyandiko, nta kibuza ko ibyemezo bimwe na bimwe bishobora no kugezwa kubo hakoreshejwe amagambo iyo amategeko atabiteganya ukundi, icyangombwa akaba ari uko abo bireba babimenyeshwa.

[10] Ku birebana n'uru rubanza, Urukiko rurasanga hashingiwe kuri "théorie de la connaissance acquise",[17] abari abakozi ba MVK bajuriye bemera ko bamenyeshejwe ko bahagaritswe guhera tariki ya 01/01/2006, kuba batarahise babona ibaruwa ikubiyemo icyo cyemezo bikaba bitaba impamvu yo kwambura agaciro icyemezo cyari cyafashwe n'Ubuyobozi bwa MVK. Umuhanga

[17] La théorie de la connaissance acquise consiste à démontrer que le requérant a eu connaissance personelle de la décision querellée, alors même que celle-ci ne lui a pas été notifiée. Il est ainsi considéré que la connaissance d'une décision peut se réaliser par des procédés autres que la notification ou publication. Trouvé sur lesite internet http://www. territorial.fr, la survivance de la théorie del a connaissance acquise.

mu mategeko René Chapus nawe avuga ko Umuyobozi w'Umujyi ashobora gufata ibyemezo bimwe na bimwe mu magambo, ndetse ko ko bitabujijwe ko n'Umuyobozi wo mu butegetsi bwite bwa Leta, nk'Umuyobozi muri Minisiteri y'Ubutabera yafata icyemezo mu magambo gihagarika umukozi wa Leta ku mirimo ye[18].

[11] Hashingiwe ku bimaze gusobanurwa, Urukiko rurasanga imishahara Dusabirane na bagenzi be basaba ntayo bahabwa kuko bari barahagaritswe ku kazi mu buryo bukurikije amategeko, kuvuga ko bazaga ku kazi bikaba bitafatwaho ukuri kuko batari kubikora bitewe nuko bari bazi neza ko imyanya yabo yashyizwemo abakozi bashya hakurikijwe " cadre organique" nshya.

[12] Urukiko rurasanga ahubwo ikibazo cyabaye ari uko MVK itashyize mu bikorwa ibiteganywa n'ingingo ya 66 y'Itegeko nº 22/2002 ryo kuwa 09/07/2002 rishyiraho sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta, iteganya ko umukozi uhagaritswe by'agateganyo kubera ivanwaho ry'umurimo ahembwa 2/3 by'umushahara yabonaga buri kwezi. Nta gushidikanya rero ko iyo myifatire ya MVK yo kutubahiriza ibikubiye

[18] René Chapus , Droit administratif général, Tome 1, 4e édition, p. 332-333, nº 560. ……Il arrive notamment qu'un maire prenne une décision verbale à l'égard d'un agent des services municipaux ou bien refuse verbalement une autorisation . Et il n'est pas exclu qu'une décision verbale soit prise par une autorité d'Etat, par exemple décision d'un directeur d'administration centrale au ministère de la justice prescrivant à un fonctionnaire de cesser ses fonctions.

muri sitati igenga abakozi ba Leta yabateye akababaro n'ibihombo, bityo ikaba igomba kubitangira indishyi hashingiwe ku biteganywa n'ingingo ya 258 CCLIII.

[13] Urukiko rurasanga ariko hashingiwe ku biteganywa n'ingingo ya 66 imaze kuvugwa, imishahara y'amezi ane basaba batayihabwa kubera ko batakoraga, ko ahubwo iyo amategeko aza kubahirizwa bari guhabwa 2/3 by'umushahara bari bagezeho, mu bushishozi bwarwo rukaba rubageneye indishyi zingana na 2/3 by'umushahara w'ukwezi kuri buri wese abazwe mu buryo bukurikira:

1. Dusabirane Joseph= 227.035 Frw×1 mois x 2/3 = **151.356 Frw;**
2. Mukashyaka Anne= 209.172 Frw× 1mois x 2/3 = **139.448 Frw;**
3. Musoni Augustin= 168.402 Frw×1 mois x 2/3 = **112.268 Frw;**
4. Rudasingwa M. Claire= 267.552 Frw×1 mois x 2/3 = **178.368 Frw;**
5. Rudasingwa N. Alexis= 369.349 Frw×1 mois x 2/3 = **246.232 Frw**;
6. Uwamariya Alice= 267.552 Frw× 1mois x 2/3 = **178.368** Frw;

7. Uwanziga Laetitia= 189.792 Frw × 1mois x 2/3 = **126.528 Frw**;
8. Uwemeyinkiko Emmanuel= 411.415 Frw × 1mois x2/3 = **274.276 Frw**

[14] Ku birebana n'amafaranga y'umushahara ugenerwa umukozi wahagaritswe ku kazi by'agateganyo kubera ivanwaho ry'umurimo, ingingo ya 66 yavuzwe haruguru, iteganya ko Umukozi wa Leta uhagaritswe by'agateganyo ku murimo kubera ivanwaho ry'umurimo, muri icyo gihe, ahabwa bibiri bya gatatu (2/3) by'umushahara bwite w'intera n'urwego agezeho. Nk'uko abajuriye babivuga kandi bikaba binagaragara muri dosiye y'urubanza, MVK yahagaritse abakozi bayo barebwaga n'iryo vugururwa kuwa 01/01/2006, bivugwa ko icyo gihe cy'ihagarikwa cyagombaga kurangira tariki 30/06/2006, ni ukuvuga mu gihe cy'amezi atandatu (6 mois) , ko rero hashingiwe ku biteganywa n'ingingo ya 66 statut imaze kuvugwa bagombaga guhembwa 2/3 by'umushahara, ayo mafaranga bakaba bagomba kuyahabwa kuko ntayo bigeze bahembwa. Hashingiwe ku mushahara buri wese yahembwaga, Urukiko ruyabaze mu buryo bukurikira:

1. Dusabirane Joseph= 151.356 Frw× 6 mois = **908.140 Frw;**

2. Mukashyaka Ana= 139.448 Frw× 6 mois = **836.688 Frw;**
3. Musoni Augustin= 112.268 Frw× 6 mois = **673.608 Frw;**
4. Rudasingwa M. Claire= 178.368 Frw×6 mois = **1.070.208 Frw;**
5. Rudasingwa N. Alexis= 246.232 Frw× 6 mois = **1.477.396 Frw**;
6. Uwamariya Alice= 178.368 Frw× 6mois =**1.070.208** Frw;
7. Uwanziga Laetitia= 126.528 Frw × 6mois =**759.168 Frw**;
8. Uwemeyinkiko Emmanuel= 274.276 Frw × 6mois = **1.645.660 Frw**

❖ **Ku byerekeranye no kumenya niba abajuriye bahabwa ibibarane by'amafaranga y'ishimwe (cotes) ajyanye n'isuzumabushobozi batakorewe**

[15] Uburanira Dusabirane na bagenzi be avuga ko kuba abo ahagarariye batarigeze bakorerwa isuzumabushobozi riteganywa n'ingingo ya 72 ya sitati y'abakozi ba Leta, kuva muri 2002 kandi ari uburenganzira ntakuka bw'umukozi wa Leta byatumye umushahara wabo utiyongera hashingiwe ku ishimwe buri wese yari

guhabwa, bibateza n'igihombo igihe MIFOTRA yababariraga imperekeza kuko bahawe adakwiye kubera ko yabariwe ku mushahara utariwo, bakaba basaba rero ko bakorerwa "regularisation". Me Muvunyi yakomeje asobanura ko gukora isuzumabushobozi ry'abakozi biri mu nshingano y'umukoresha, avuga ko ibyo uburanira MVK avuga ko umugenzo wariho ari uko ritakorwaga bikaba nta gaciro byahabwa kuko uwo mugenzo utasimbura itegeko.

[16] Uburanira MVK asobanura ko mbere ya reforme yo mu mwaka wa 2005, igikorwa cyo gusuzuma ubushobozi no gutanga cotes bitashoboraga gukorwa n'inzego za Leta kubera ko zari zitegereje Iteka rya Minisitiri w'Intebe rishyira mu bikorwa ibivugwa muri sitati igenga abakozi ba Leta, bityo rero iyi ngingo y'ubujurire ikaba nta shingiro ifite.

UKO URUKIKO RUBIBONA

[17] Ku birebana n'isuzumabushobozi abakozi ba Leta bagomba gukorerwa , ingingo ya 72 ya sitati y'abakozi ba Leta iteganya ko isuzumabushobozi rigamije kugaragariza ubuyobozi imiterere y'umukozi wa Leta, ubushobozi

bwe n'ukuntu akora. Ni ryo rishingirwaho, buri myaka ibiri, kugira umukozi wa Leta agire uburenganzira bwo kuva mu cyiciro cy'ingazintambike ajya ku kindi no kuzamurirwa umushahara, igika cya kabiri cy'iyi ngingo kikaba kivuga ko uburyo bw'isuzumabushobozi n'izamura mu ntera by'abakozi bishyirwaho n'iteka rya Minisitiri w'Intebe.

[18] N'ubwo MVK nk'umukoresha yagombaga gukora isuzumabushobozi ry'abakozi bayo, Urukiko rurasanga ariko bitarashobokaga muri icyo gihe kuko n'iteka rya Minisitiri w'Intebe rishyiraho uburyo bukoreshwa mu isuzumabushozozi n'izamurwa mu ntera ry'abakozi ba Leta ryashyizweho n'itegeko nº 121/03 ryo kuwa 08/09/2010, ritangazwa mu Igazeti ya Leta ya nº 41 yo mu Ukwakira uwo mwaka, MVK rero nta makosa yakoze kuko kuba itarujuje inshingano zayo bitatewe n'umwete muke yagize ahubwo nuko bitashobokaga, kandi icyo kibazo cyari rusange ku bakozi ba Leta bose, bikaba rero byumvikana ko abari abakozi ba MVK badakwiye kubifata n'akarengane bagiriwe.

- ❖ **<u>Ku bijyanye no kumenya igihe abakozi bajuriye basezerewe nta mpaka</u>**

[19] Uburanira abajuriye avuga ko Urukiko rwemeje ko

Dusabirane na bagenzi be birukanwe burundu nyuma y'amezi atandatu bahagaritswe ku kazi by'agateganyo, nyamara muri dosiye ibaruwa ibamenyesha ko birukanywe burundu yaranditswe kuwa 24/01/2011, ikabamenyesha ko birukanwe guhera tariki ya 01/07/2006. Avuga ko MVK nayo yiyemerera ko basezerewe burundu kuri iriya tariki ya 24/01/2011 kuko iyo iza kubona atariko bimeze itari kubishyira mu nyandiko, ko rero batanenga ko MVK yabirukanye kuri iriya tariki ahubwo icyo banenga ari icyemezo cy'Urukiko kivuguruza ibyo nyirubwite yiyemerera, kandi ibyo bavuga bihura n'ibiteganywa n'ingingo ya 65 ya sitati iteganya ko ihagarikwa ry'agateganyo ridashobora kurenga amezi atandatu, iya 68 yo ikavuga uko umukozi bimugendekera nyuma y'aya mezi atandatu. Kuba batarahise bamenyeshwa ko birukanywe bivuga ko bakomeje kuba abakozi ba MVK akaba ariyo mpamvu basaba ko yategekwa kubishyura imishahara y'amezi 52 ahwanye n'igihe cyari gishize ihagarikwa ry'agateganyo rirangiye, kuko nk'uko yabisobanuye mu ngingo ya mbere y'ubujurire, MVK itigeze yerekana "situation juridique" y'aba bakozi hagati y'itariki ya 01/07/2006 n'iya 24/01/2011.

[20] Uburanira MVK asobanura ko n'ubwo abakozi bamenyeshejwe bitinze ko basezerewe burundu ku kazi guhera tariki ya 01/07/2006, amafaranga basaba bavuga ko bari bagikora bitewe nuko iriya baruwa bayibonye igihe cyararenze ntayo bahabwa kuko itegeko risobanura neza ko iyo umukozi ahagaritswe by'agateganyo, nta kindi kintu abaza nyuma y'amezi atandatu, yongeraho ko abajuriye bahawe kandi imperekeza bashyirwa no mu mashyirahamwe, ibindi basaba bakaba nta tegeko babishingiraho.

UKO URUKIKO RUBIBONA

[21] Urukiko rurasanga nyuma y'igihe cy'amezi atandatu y'ihagarikwa ry'agateganyo giteganywa n'ingingo ya 65 ya sitati rusange y'abakozi ba Leta , umukoresha afite inshingano yo kumenyesha umukozi niba amusubije ku kazi cyangwa niba amwirukanye burundu nk'uko biteganywa n'ingingo ya 68 ya sitati rusange y'abakozi ba Leta. Ku birebana n'uru rubanza, MVK yagombaga kwandikira abakozi bayo bahagaritswe ko ibasezereye nta mpaka kuko imirimo bakoraga yari yavanyweho. Kuba MVK itarigeze imenyesha abakozi bayo tariki 01/07/2006 ko basezerewe ku kazi nta mpaka kubbera ko igihe cy'ihagarikwa ry'agateganyo riteganywa mu ngingo

ya 66,1º kirangiye nk'uko biteganywa n'ingingo ya 120, agace ka 3º, ya sitati y'abakozi ba Leta, ahubwo ikabikora igihe cyararenze cyane, ni ukuvuga mu ibaruwa yandikiye buri wese tariki 24/01/2011 nyamara abayobozi b'inzego zinyuranye[19] abakozi bagiye batakambira batarahwemye kuyibutsa ko igomba gukorera abakozi bayo baseserewe inyandiko ibibamenyesha kugira ngo MIFOTRA ibahe ibyo bagenerwa n'amategeko, iyo myifatire hari icyo yavukije abakozi, haba kuri bo ndetse no ku miryango yabo.

[22] Urukiko rurasanga ariko imvugo y'abajuriye ko nyuma y'igihe cy'ihagarikwa bakomeje kuba abakozi ba MVK kubera ko ntacyo yigeze ibabwira ari ugufata ibintu uko bitari kuko nabo bazi neza ko icyo gihe batakoraga kandi bakaba nabo biyemerera ko batashoboraga gusubizwa mu kazi bitewe n'uko n'ubundi bari bahagaritswe kubera ko imirimo yabo yari yaravanyweho mu rwego rw'ivugurura, bityo bakaba batarenga ku bimaze kuvugwa basaba umushahara w'icyo gihe kuko batakoraga, ahubwo kuba MVK yarabamenyesheje itinze ko ibasezereye nta mpaka tariki ya 01/07/2006 , bikaba byafatwa ko basezerewe mu buryo budakurikije amategeko, bityo MVK ikaba igomba kubibahera

[19] Minisiteri y'Abakozi ba Leta n'Umurimo, Minisiteri y'Ubutegetsi bw'Igihugu, Umuyobozi wa Komisiyo ishinzwe abakozi ba Leta, Urwego rw'Umuvunyi

indishyi hashingiwe ku ngingo ya 258 CCLIII kuko kuba yarabahejeje mu gihirahiro ntibahe ibaruwa bagombaga kujyana mu nzego zibishinzwe kugira ngo bahabwe kimwe n'abandi bakozi bari basezerewe ibyo amategeko abagenera, nta gushidikanya ko byabagizeho ingaruka, zirimo ibibazo binyuranye by'imibereho bahuye nabyo kubera kutamenya icyerekezo bashyizwemo. Urukiko mu bushishozi bwarwo rukaba rubageneye indishyi zingana n'umushahara w'amezi abiri kuri buri wese abaze mu buryo bukurikira:

1. Dusabirane Joseph= 151.356 Frw× 2 mois = **302.712 Frw;**
2. Mukashyaka Ana= 139.448 Frw× 2 mois = **278.896 Frw;**
3. Musoni Augustin= 112.268 Frw× mois = **224.536 Frw;**
4. Rudasingwa M. Claire= 178.368 Frw×2 mois = **356.736 Frw;**
5. Rudasingwa N. Alexis= 246.232 Frw×2 mois = **492.464 Frw**;
6. Uwamariya Alice= 178.368 Frw× 2mois = **356.736** Frw;
7. Uwanziga Laetitia= 126.528 Frw × mois = **253.056 Frw**;

8. Uwemeyinkiko Emmanuel= 274.276 Frw × 2mois = **548.552 Frw**

B. UBUJURIRE BWURIRIYE KU BUNDI BWA MVK

[23] Uburanira MVK yatanze ubujurire bwuririye kubwa Dusabirane na bagenzi be asaba ko buri wese mu bajuriye yategekwa kwishyura 500.000 Frw y'indishyi kubera ko yashowe mu manza z'amaherere nta mpamvu kuko ibyo baregera nta shingiro bifite, yose hamwe akaba 3.500.000 Frw.

[24] Kuri icyo kibazo, uburanira abajuriye avuga ko indishyi MVK isaba nta shingiro zifite kuko bigaragara ko yagiriye abakozi bayo akarengane itubahiriza amategeko, bityo rero ikaba itahera ku makosa yayo isaba indishyi, ahubwo ko ariyo igomba kubaha igihembo cya avoka kuri uru rwego kingana na 2.000.000 Frw.

<u>UKO URUKIKO RUBIBONA</u>

[25] 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 ». Urukiko rurasanga Dusabirane na bagenzi be bariyambaje inkiko kubera ko MVK itari yashoboye

gukemura ikibazo bari bafitanye, bakaba rero bafite impamvu n'uburenganzira bwo kuregera inkiko kugira ngo zibarenganure kandi ko hari ibyo batsindiye, bityo ubujurire bwuririye ku bundi bwatanzwe na MVK bukaba nta shingiro bufite, ikaba ahubwo igomba kwishyura Dusabirane na bagenzi be amafaranga y'igihembo cya avoka angana na 500.000 Frw kuko 2.000.0000 Frw basaba ari menshi.

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

[26] **Rwemeje** ko ubujurire bwa Dusabirane Joseph, Mukashyaka Ana, Musoni Augustin, Rudasingwa M. Claire, Rudasingwa N. Alexis, Uwamariya Alice, Uwanziga Laétitia, Uwemeyinkiko Emmanuel bufite ishingiro kuri bimwe;

[27] **Rwemeye** kwakira no gusuzuma ubujurire bwuririye ku bundi bwatanzwe n' Umujyi wa Kigali (MVK) kuko bwaje mu buryo no mu nzira bikurikije amategeko ariko ko nta shingiro bufite.

[28] **Rutegetse** Umujyi wa Kigali kwishyura Dusabirane Joseph **1.362.204 Frw**, Mukashyaka Anne **1.255.032 Frw**, Musoni Augustin **1.010.412 Frw**, Rudasingwa M. Claire **1.605.312 Frw**, Rudasingwa N. Alexis **2.216.088**

Frw, Uwamariya Alice **1.605.312 Frw**, Uwanziga Laétitia **1.138.752 Frw**, Uwemeyinkiko Emmanuel **2.468.484 Frw**, amafaranga yose hamwe y'indishyi Umujyi wa Kigali ugomba kwishyura akaba ari **12.661.596 Frw**

[29] **Ruyitegetse** kandi kwishyura abari abakozi bayo bajuriye muri uru rubanza amafaranga y'igihembo cya avoka angana na **500.000 Frw**.

[30] **Rutegetse** Umujyi wa Kigali kwishyura amagarama y'urubanza angana na 28.250Frw.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME NONE KUWA 19/04/2013.

Mutashya Jean Baptiste
Perezida

Mukanyundo Patricie — **Umucamanza**

Rugabirwa Ruben — **Umucamanza**

Muhimakazi Léoncie
Umwanditsi w'Urukiko

6. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RADA0016/11/CS
ITARIKI Y'URUBANZA: 19/10/2012

HABURANA: Leta y'u Rwanda (Office de l'Auditeur Général des finances de l'Etat/OAG) C/ RWIGEREZAHO F. Xavier

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI - KUZAMURWA MU NTERA HAKURIKIJWE AMATEGEKO NGENGAMIKORERE - KUBITANGIRA IMPAMVU IYO BIDAKOZWE - KUBIGIRA IMPAMVU YO KUBYAKIRA INDISHYI IYO UMUKORESHA NTA MPAMVU YAMENYESHEJE UMUKOZI YATUMYE ATAZAMURWA MU NTERA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Iyo mu mategeko ngengamikorere y'ikigo hateganyijwe ko umukozi ashobora kuzamurwa mu ntera nyuma y'igihe runaka nyuma yo gukorerwa isuzumamikorere, bigomba gukorwa gutyo, iyo bidakozwe bigomba gutangirwa impamvu, iyo nta nta mpamvu yatanzwe umukozi ashobora kubyakira indishyi.

URUKIKO RW'IKIRENGA, RURI I KIGALI RUBURANISHA IMANZA Z'UBUTEGETSI, RUKIJIJE MU RUHAME KUWA 19/10/2012 URUBANZA Nº RADA 0016/11/CS MU BURYO BUKURIKIRA:

HABURANA :

Leta y'u Rwanda (Office de l'Auditeur Général des finances de l'Etat /OAG), yajuriye, ihagarariwe na Me BUTARE Emmanuel.

RWIGEREZAHO François Xavier uregwa, mwene Ntibiramira Philippe na Nyirabayoboke Gaudence, utuye mu Mudugudu wa Munini, Akagali ka Kamuhoza, Umurenge wa Kimisagara, Akarere ka Nyarugenge, Umujyi wa Kigali, uburanirwa na Me NSABIMANA Jean Baptiste.

IKIBURANWA :

- Kwirukanwa binyuranyije n'amategeko,
- Icyemezo cy'umukoresha wa nyuma atahawe,
- Umushahara we wa nyuma atahawe;
- Indishyi z'akababaro n'igihembo cya avoka,
- Guhabwa amafaranga ajyanye n'impamyabumenyi ye atigeze ahabwa (régularisation de salaire suivant son diplôme académique),
- Kutazamurwa mu ntera,
- Amafaranga y' ikurikiranarubanza n'irangiza ryarwo

I. IMITERE Y'URUBANZA

(1) RWIGEREZAHO François Xavier yabaye umukozi mu kigo cy'Umugenzuzi Mukuru w'Imari ya Leta agengwa n'amasezerano y'igihe kitazwi. Ayo masezerano yaje guseswa kuwa 16/07/2007 kubera amakosa umukoresha avuga ko yamubonyeho yo kutagirwa inama no kwihanangirizwa ntahinduke.

(2) RWIGEREZAHO yandikiye inzego zitandukanye ari zo, Minisitiri w'abakozi ba Leta n'Umurimo, hamwe n'Urwego rw'Umuvunyi asaba ko yarenganurwa ndetse aniyambaza Umugenzuzi w'Umurimo mu Karere ka Gasabo, ariko ikibazo nticyakemuka mu bwumvikane, maze aregera Urukiko Rukuru, asaba indishyi z'uko yirukanwe mu buryo bunyuranije n'amategeko n'izindi zijyanye nazo zingana na 20.169.926 frw.

(3) Urukiko Rukuru rwemeje kuwa 30/03/2010, ko ikirego cye gifite ishingiro kuri bimwe, rutegeka Leta (Ikigo cy'Umugenzuzi Mukuru w'Imari ya Leta) kumuha 7.864.536 frw, akubiyemo 3.056.790 frw[20] yo kuba yarirukanywe nta mpamvu atanahawe umwanya wo kwisobanura, 3.056.790 frw yo kuba atarahawe icyemezo cy'umukoresha, 775.456 frw y'imperekeza z'iyirukanwa ku kazi, 475.500 frw ya ''prime de fidelité'' na 500.000 frw y'ikurikiranarubanza.

(4) Urukiko rwavuze ariko ko RWIGEREZAHO atagenerwa 1.000.000 frw y'igihembo cya

20 Incuro eshanu z'umushahara n'ibindi yagenerwaga ku kwezi

avoka yasabaga kuko yiburaniye, aho ba avoka bagaragara akaba ari ku myanzuro ye gusa basinye, runavuga ko atahabwa amafaranga 2.370.308 frw y'ikinyuranyo gituruka kukuringaniza umushahara we n'impamyabushobozi ye, hamwe na 5.640.000 frw yaka yo kuba atarazamuwe mu ntera, ndetse na 10.000.000 frw y'indishyi z'akababaro no gusiragira. Rwanavuze ko atahabwa amafaranga y'integuza, ay'ikiruhuko atafashe n'ay'iminsi yakoze y'ukwezi kwa nyuma kuko yayahawe muri ''décompte final''.

(5) Leta y'u Rwanda yajuririye Urukiko rw'Ikirenga, ivuga ko kuba umucamanza wa mbere yarakoresheje itegeko ritari ryo, akanemeza ko nta cyemezo cy'umukoresha cyahawe RWIGEREZAHO, byatumye Leta icibwa indishyi bitari ngombwa, ikanavuga ko yategetswe gutanga imperekeza zitari zaregewe kandi n'itegeko yashingiyeho ritaziteganya.

(6) RWIGEREZAHO avuga ko kubijyanye no kubahiriza amategeko nta nenge urubanza rwaciwe n'Urukiko rubanza rufite, ahubwo ko mu bujurire bwuririye ku bundi asaba ko indishyi yagenewe ziyongera.

(7) Urubanza rwaburanishijwe mu ruhame kuwa 03/04/2012 no ku wa 17/07/2012 RWIGEREZAHO aburanirwa na Me NSABIMANA Jean Baptiste, naho Leta y'u Rwanda ihagarariwe na Me BUTARE Emmanuel.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.

Muri uru rubanza hagomba gusuzumwa niba urubanza rwajuririwe rwaraciwe hakoreshejwe itegeko ritari ryo, niba iyirukanwa rya RWIGEREZAHO ryaranyuranyije n'amategeko, hakanasuzumwa ikibazo cy'indishyi zisabwa.

a) Ku bijyanye n'itegeko ryagombaga gushingirwaho hasuzumwa ikibazo cy'iyirukanwa rya RWIGEREZAHO.

(8) Uburanira Leta avuga ko ikibazo umucamanza yagombaga kubanza gusobanura ari icyo kumenya niba umukozi ukorera Leta afite amasezerano y'igihe kitazwi agengwa na sitati rusange y'abakozi ba Leta cyangwa se niba agengwa n'itegeko ry'umurimo mu Rwanda.

(9) Asobanura ko RWIGEREZAHO yirukanwe yagengwaga n'amasezerano y'igihe kitazwi, ko kuba umucamanza yarashingiye ku itegeko rigenga abakozi ba Leta akemeza ko atahawe umwanya wo kwisobanura, yibeshye kuko ikibazo cyari gukemurwa hashingiwe ku itegeko rigenga umurimo, cyane ko n'amasezerano y'umurimo ubwayo ateganya ko mu gihe habayeho ibidateganyijwe muriyo hagomba kurebwa ibiteganywa n'amategeko agenga umurimo.

(10) Me NSABIMANA Jean Baptiste na RWIGEREZAHO yunganira bavuga ko yoherejwe mu kigo cy'Umugenzuzi Mukuru w'Imari ya Leta n'icyemezo cy'Inama y'Abaminisitiri, agasinya amasezerano

y'akazi y'igihe kitazwi, bivuze ko yagengwaga n'amategeko y'umurimo mu Rwanda, akanagengwa n'amategeko agenga abakozi ba Leta, kandi ko haramutse hakurikijwe rimwe muri ayo mategeko cyangwa yombi nta kibazo babibonamo.

- Urukiko rurasanga, mu nyandiko zikubiye muri dosiye nta n'imwe yerekana ko RWIGEREZAHO yaba yarigeze yinjizwa mu bakozi ba Leta bagengwa na stati, ndetse nawe akaba yiyemerera ko nta teka ryigeze rimushyira mu rwego rw'abo bakozi, ahubwo akaba ari kuri listi y'abemejwe n'Inama y'Abaministri ko bashyirwa mu bigo bya Leta nk'abakozi nyuma y'uko batsinze ibizamini, akaba ari muri ubwo buryo RWIGEREZAHO yabaye umukozi w'Ikigo cy'Umugenzuzi Mukuru w'Imari ya Leta, ari nacyo basinyanye amasezerano, bityo rero ikibazo cy'iyirukanwa rye muri icyo kigo kikaba kigomba gusuzumwa hashingiwe ku Itegeko nº 51/2001 ryo kuwa 30/12/2001 ryagengaga umurimo mu Rwanda ari naryo ryakoreshwaga igihe Rwigerezaho yirukanwa, aho gushingira kuri stati rusange igenga abakozi ba Leta.

b) Kumenya niba iyirukanwa rya RWIGEREZAHO ryarakozwe mu buryo bunyuranyije n'amategeko.

(11) Uburanira Leta avuga ko kuwa 03/02/2006 RWIGEREZAHO yandikiwe ibaruwa yiswe ″warning ,, agaragarizwa ko adakora neza akazi ashinzwe, ko ibyo bigaragaza ko yari yihanangirijwe, ariko nyuma y'umwaka wose isuzumamikorere yakorewe

(évaluation) rigaragaza ko ibyo yasabwe gukosora ntabyo yakoze, bituma yirukanwa, akaba rero asaba urukiko kwemeza ko iyirukanwa rya RWIGEREZAHO ryakurikije amategeko.

(12) Uburanira RWIGEREZAHO avuga ko uyu yirukanwe hadakurikijwe amategeko kubera ko yari mu butumwa i Nyagatare ahamagarwa igitaraganya noneho ageze ku kazi bamuha ibaruwa imwirukana nta kosa amenyeshejwe yaba yakoze.

(13) Ingingo ya 21 y'itegeko n°51/2001 ryo kuwa 30/12/2001 rishinga amategeko agenga umurimo mu Rwanda, iteganya ko umukozi adashobora kwirukanwa hatagaragajwe impamvu yumvikana, naho iya 26 y'iryo tegeko igateganya ko «iseswa ryose ry'amasezerano y'umurimo ridashingiye ku mpamvu yumvikana rishobora gutuma hatangwa indishyi z'akababaro zihabwa umukozi wirukanwe. Indishyi zihabwa umukozi wirukaniwe ubusa ntizishobora kurenga umushahara we w'amezi atandatu hongeweho indamunite n'ibindi umukozi yari afitiye uburenganzira ku kwezi ».

(14) Urukiko rurasanga, kuba RWIGEREZAHO yarahamagajwe byihutirwa, agakurwa mu butumwa yari yagiyemo i Nyagatare, yagera ku kazi agahabwa ibaruwa imusezerera burundu ku kazi, muri iyo baruwa hakaba hataragaragajwemo igikorwa runaka kigize ikosa yaba yirukaniwe, byerekana nta shiti ko yirukanwe nta mpamvu, naho kuvuga ko yari asanzwe yarasabwe kwikosora ntabikore ibyo bikaba bidahagije kugaragaza ikosa runaka yirukaniwe. Urukiko rukaba rusanga rero akwiye guhabwa indishyi ziteganywa mu

ngigo ya 26 yavuzwe haruguru, ariko kubyerekeye urugero rwazo asaba ko rwakongerwa aho kubarirwa ku mezi atanu zikabarirwa kuri atandatu, bikaba nta shingiro bifite, kuko uburyo yazigenewe bihuje n'amategeko kandi zikaba ziri mu rugero rukwiye.

Ku byerekeye icyemezo cy'umukoresha RWIGEREZAHO avuga ko atahawe.

(15) Uburanira Leta avuga ko indishyi zo kudatanga icyemezo cy'akazi zitatangwa kuko bakimuhaye akacyanga, RWIGEREZAHO we akavuga ko Ikigo cy'Umugenzuzi Mukuru w'Imari ya Leta cyamwimye icyemezo cy'umukoresha, akaba abisabira indishyi.

(16) Urukiko rurasanga, nta kimenyetso uburanira Leta yagaragaje cyerekana ko RWIGEREZAHO ariwe wanze gufata icyo cyemezo mu gihe, hakurijkijwe ingingo ya 30 y'itegeko n°51/2001 ryo kuwa 30/12/2001 rishinga amategeko agenga umurimo mu Rwanda, umukoresha ariwe ugomba kugaragaza ko yagitanze hamwe na décompte final ako kanya yirukana umukozi. Akwiye rero kubihererwa indishyi, ariko ku byerekeye urugero rwazo asaba ko rwakongerwa aho kubarirwa ku mezi atanu zikabarirwa kuri atandatu, bikaba nta shingiro bifite, kuko uburyo yazigenewe bihuje n'amategeko kandi zikaba ziri mu rugero rukwiye.

c) Izindi ndishyi zisabwa muri uru rubanza

(17) Mu bujurire bwuririye ku bundi RWIGEREZAHO asaba ko indishyi zijyanye n'integuza, imperekeza, ikiruhuko cy'umwaka, umushahara w'ukwezi kwa nyuma atahawe, indishyi z'akababaro, amafaranga

ajyanye n'impamyabumenyi ye, kuzamurwa mu ntera no kongererwa amafaranga yagenewe n'urukiko Rukuru, akaba asaba ko indishyi yagenewe ziyongera zigahwana na 29.815.796 frw.

(18) Ku ngingo uburanira Leta aburanisha y'uko kuba RWIGEREZAHO atarazamuwe mu ntera ari uko amategeko ngengamikorere y'Ikigo cy'Umugenzuzi Mukuru w'Imari ya Leta ateganya gusa ko ukwo kuzamurwa ari ibishoboka, ndetse Umugenzuzi Mukuru w'Imari ya Leta akaba yabasha gufata icyemezo cy'uko umukozi atazamurwa mu ntera, uru Rukiko rurasanga iyo ngingo itumvikanisha ko iryo zamurwa ryareka gukorwa bitagaragarijwe impamvu. Kuba rero Umugenzuzi Mukuru yabasha gufata icyemezo cy'uko umukozi wujuje imyaka ibiri atazamurwa bikaba ari ibigomba gusobanurirwa impamvu muri icyo cyemezo, nyamara hakaba hataranerekanwe impamvu gishingiyeho. Ubujurire bwa RWIGEREZAHO rero kuri iyi ngingo bufite ishingiro, akaba agomba guhabwa 5.640.000 frw ajyanye no kuzamurwa mu ntera nk'uko yayagaragarije imibare iri muri dosiye, urundi ruhande rukaba rutarayivuguruje.

(19) Ku byerekeye amafaranga y'igihembo cya Avoka RWIGEREZAHO atagenewe, uru Rukiko rurasanga Urukiko rubanza nta bisobanuro bihagije rwabitangiye, mu gihe rwivugira ko n'ubwo RWIGEREZAHO atabur aniwe na avoka muri urwo Rukiko, hari abavoka babiri rwemera ko aribo basinye imyanzuro, ibyo ubwabyo bikaba byerekana ko bamufashije gutegura imiburanire y'urubanza, bikaba ari umurimo

bahemberwa. Ubujurire bwa RWIGEREZAHO kuri iyi ngingo nabwo bufite ishingiro, ariko kubera ko 1.000.000 frw asaba ari ikirenga, yagenerwa, mu bushishozi bw'Urukiko 200.000 frw ku rwego rwa mbere yaburaniyemo, naho ku rwego rw'uru Rukiko aho yanaburaniwe na avoka, akagenerwa 300.000 frw.

(20) Ku ngingo yo kuba RWIGEREZAHO ataragenewe amafaranga y'ikinyuranyo gituruka ku iringaniza ry'umushahara we n'impamyabushobozi ye, Urukiko rurasanga, ayo mafaranga atayahabwa, kuko nk'uko uburanira Leta yabigaragaje kandi na RWIGEREZAHO ntabinyomoze, yarasabwe kwandikira Ministeri y'Uburezi kugira ngo imuhe "équivalence de diplôme ", ariko ntabikore, ubujurire bwe rero kuri iyi ngingo bukaba nta shingiro bufite.

(21) Ku kibazo cy'amafaranga y'integuza, ay'ikiruhuko RWIGEREZAHO atafashe n'ay'iminsi y'ukwezi kwa nyuma yakoze, Urukiko rurasanga ibisobanuro byatanzwe n'Urukiko Rukuru by'uko yayahawe muri ''décompte final'' bidahagije, kuko rutatandukanyije iby'integuza, iby'ikiruhuko RWIGEREZAHO atafashe, n'iby'umushahara w'ukwezi kwa nyuma, kandi ibyo ababuranyi bombi bagiyeho impaka ubwo bari imbere y'Umugenzuzi w'umurimo bakemeranywa ko hari amafaranga yashyizwe kuri konti ya RWIGEREZAHO ari ay'umushahara w'ukwezi kwa nyuma bavugaga ko ari ''décompte final'' (reba inyandiko mvugo yo kutumvikana), ayo rero RWIGEREZAHO akaba atakongera kuyahabwa, ariko amafaranga y'integuza n'ay'ikiruhuko RWIGEREZAHO atafashe akaba akwiye kuyahabwa, ariko akabarirwa ku mushahara

uvanywemo ubwishyu bwo mu rwego rw'akazi, ni ukuvuga 775.456 frw (=387.728 frw X2) ku byerekeye integuza, na 387.728 frw ku byerekeye ikiruhuko cy'umwaka atafashe.

(22) Ku bijyanye n'amafaranga y'imperekeza (indemnitéde licenciement) uburanira Leta avuga ko zitaregewe, naho RWIGEREZAHO akavuga ko baziburanye, inyandiko y'imikirize y'urubanza yerekana, mu gace ka 33 ko zaburanyweho nk'uko n'Urukiko Rukuru rwabisobanuye, uburanira Leta rero akaba atagaragaza indi mpamvu yatuma RWIGEREZAHO atazihabwa. Urukiko rurasanga ariko RWIGEREZAHO wifuza ko izo mperekeza zabarirwa ku mushahara wose, aterekana icyo anenga Urukiko Rukuru rwazibaze havanywemo ubwishyu bwo mu rwego rw'akazi, zikaba rero zigomba kuguma ku mubare wemejwe n'urwo rukiko uko ari 775.456 frw.

(23) Kubyerekeye indishyi z'akababaro za 10.000.000 frw RWIGEREZAHO asaba, Urukiko rurasanga nta bisobanuro bishyitse azitangira mu gihe agenewe indishyi z'ingeri zinyuranye nk'uko zasobanuwe haruguru.

(24) Kubyerekeye amafaranga y'ikurikiranarubanza n'irangiza ryarwo RWIGEREZAHO asaba ko yabarirwa kuri 1/10 y'indishyi yagenerwa, Urukiko rurasanga, agomba kugira indishyi ahabwa muri urwo rwego kuko hari ibyo yatakaje arukurikiranye, ariko kuko ayo asaba ari ikirenga atagaragariza ibimenyetso, Urukiko rurasanga yagenerwa, mu bushishozi bwarwo 200.000 frw yiyongera kuri 500.000 frw yagenewe ku rwego rwa mbere, yose hamwe akaba 700.000 frw.

(25) Igiteranyo cy'indishyi Leta y'u Rwanda, igomba guha RWIGEREZAHO rero, ni 15.367.720 frw akubiyemo 3.056.790 frw (Indishyi zo kwirukanwa nta mpamvu) +3.056.790 frw (kudahabwa icyemezo cy'umukoresha) + 500.000 frw (igihembo cya avoka) +5.640.000 frw (kuba atarazamuwe mu ntera) +700.000 frw (Ikurikiranarubanza)+ 775.456 frw (Integuza) +387.728 frw (Ikiruhuko cy'umwaka)+775.456 frw (Imperekeza). +475.500 frw (prime de fidélité yagenewe n'Urukiko Rukuru)

III. ICYEMEZO CY'URUKIKO

(26) **RWEMEJE** ko ubujurire bwa Leta y'u Rwanda (Ikigo cy'Umugenzuzi Mukuru w'Imari ya Leta) nta shingiro bufite;

(27) **RWEMEJE ko** ubujurire bwa RWIGEREZAHO bwuririye kubundi bufite ishingiro kuri bimwe;

(28) **RWEMEJE** ko urubanza rwajuririwe ruhindutse ku byerekeye indishyi;

(29) **RUTEGETSE** Leta y'u Rwanda (Ikigo cy'Umugenzuzi Mukuru w'Imari ya Leta) guha RWIGEREZAHO François Xavier igiteranyo cy'indishyi zingana na 15.367.720 frw;

(30) **RUTEGETSE** ko amagarama y'urubanza aherera ku isanduku ya Leta.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME KUWA 19/10/2012.

Se
MUGENZI Louis-Marie
Perezida

Se	**Se**
RUGABIRWA Ruben	**MUNYANGERI N. Innocent**
Umucamanza	**Umucamanza**

Se
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

7. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RADA0020/09/CS
ITARIKI Y'URUBANZA: 28/09/2012

HABURANA:

Abazungura ba **MYASIRO Mathias** bahagarariwe na **MUTUYIMANA Judith** C/ Leta y'u Rwanda n'Abazungura ba **RUBANGURA Vedaste**

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI - AMASEZERANO Y'UBWUBATSI - UBURENGANZIRA BWA NYIR'INZU BWO GUSESA AMASEZERANO - KWISHYURA UMWUBATSI IBYO YAKORESHEJE N'INYUNGU YABYO.

UMUBARE W'ABAHANGA - UGOMBA KUBA IGIHARWE - KUTABIFATA NK'INENGE YATUMA ITESHWA AGACIRO IYO YAKOZWE N'ABAHANGA BABIRI BITURUTSE KU BWUMVIKANE BW'ABABURANYI

UBUTUMWA BWO KUBURANA MU NKIKO - KUTABA NGOMBWA KUBUTANGIRA INYANDIKO - IBIKORWA BIKOZWE N'AVOKA HANZE Y'URUKIKO - KUTABYITIRIRA UWO ABURANIRA MU GIHE ATABIGARAGARIJE UBUTUMWA .

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Nyir'inyubako afite uburenganzira bwo gusesa amasezerano ku bushake bwe bitabaye ngombwa ko abisaba Urukiko, icyo agomba gukora n'ukwishyura umwubatsi indishyi z'ibyo yakoresheje n'inyungu yari abitegerejemo

N'ubwo hateganyijwe ko umubare w'abahanga ugomba kuba igiharwe , ntibyafatwa nk'inenge irebana n'ireme ry'iyo raporo (vice de fond) yatuma iteshwa agaciro iyo hagenwa abahanga babiri biturutse ku bwumvikane bw'ababuranyi .

Mu rukiko honyine niho avoka yemerwa ko afite ubutumwa bw'uwo ahagarariye atagombye kubigaragariza inyandiko, ibindi bikorwa byose yakora ahatari mu Rukiko ntibyakwitirirwa uwo aburanira iyo bitaragaragarijwe ubutumwa yaherewe icyo gikorwa.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUTEGETSI, RUHAKIRIJE MU RUHAME KU WA 28 NZERI 2012, URUBANZA Nº RADA 0020/09/CS MU BURYO BUKURIKIRA:

ABABURANA:

- Abazungura ba MYASIRO Mathias, bahagarariwe na MUTUYIMANA Judith(wajuriye), mwene MYASIRO na NYIRARUGENDO, utuye mu Mudugudu wa Uwintwari, Akagari ka Kabasengerezi, Umurenge wa Muhima, Akarere ka Nyarugenge, Umujyi wa Kigali; baburanirwa na Me MUTEMBE Protais;
- Leta y' u Rwanda(yajuriye), ihagarariwe n'Intumwa Nkuru ya Leta RUBANGO Epimaque;
- Abazungura ba RUBANGURA Vedaste baburanirwa na Me UMUGWANEZA Claudine.

IKIREGERWA:

- Kujuririra urubanza R Ad 0010/05/HC/KIG rwaciwe kuwa 20/04/2009.

IKIBURANWA:

1. Condamner in solidum l'Etat Rwandais (Ministère des travaux publics et de l'énergie) et Védaste RUBANGURA à payer à la succession MYASIRO la somme de 34.599.172 frw , représentant les travaux

réalisés par leur auteur sur la parcelle située entre les bâtiments ministériels et l'OBK ;

2. Les condamner à lui payer la somme de 2.500.000.000 frw représentant le manque à gagner sur les revenus locatifs de l'immeuble prévu sur la parcelle n° 5157 au centre de la Ville de Kigali ;
3. Les condamner à lui payer 124.115.598 frw dus à la BACAR ;
4. Les condamner enfin à payer comme réparation du préjudice moral de la succession MYASIRO la somme de 5.000.000 frw chacun ×9 = 45.000.000 frw.

I. IMITERERE Y'URUBANZA

[1] Ku wa 16/12/1993, MYASIRO yagiranye amasezerano na Leta y'u Rwanda y'uko azayubakira, mu gihe cy'amezi 12 uhereye kuri iyo taliki, inzu y'amagorofa ane ku Kacyiru, yayirangiza nawe Leta ikamuha ikibanza nº 5157 kiri mu Mujyi wa Kigali.

[2] Mu gihe cya Jenoside yo muri 1994, MYASIRO yahunze amaze kwubaka inzu yo yasi, nyuma ya Jenoside, ku wa 06/04/1995, Leta y'u Rwanda isinyana na RUBANGURA Vedaste amasezerano yo kurangiza kwubaka iyo nzu, kuko MYASIRO wari warahunze atagarutse ngo ayirangize. Ibarura Leta yakoresheje ry'imirimo yari imaze gukorwa, ryagaragaje agaciro ka 9.716.294 Frw.

[3] Abazungura ba MYASIRO baje gutanga ikirego mu

Rukiko basaba ko Leta y'u Rwanda, ifatanyije na RUBANGURA, babishyura amafaranga 34.599.172 y'agaciro k'ibyakozwe na MYASIRO kuri iyo nzu, 2.500.000.000 Frw y'ubukode bavukijwe ku nzu yari kuzubakwa mu kibanza 5157 cyavuzwe haruguru, 124.115.598 Frw bishyuzwa na BACAR ku nguzanyo yahaye MYASIRO, 11.000.000 ya ''garantie de bonne fin des travaux" MYASIRO yari yarahaye Leta, n'indishyi z'akababaro za 45.000.000 frw.

[4] Urukiko Rukuru rwemeje ko Leta y'u Rwanda igomba guha abazungura ba MYASIRO 21.379.963 Frw y'agaciro k'ibikorwa yakoze ku nzu yubakiraga Leta[21], na 13.500.000 Frw y'indishyi z'akababaro, ariko nabo rubategeka guha abazungura ba RUBANGURA indishyi zingana na 1.000.000 frw zo kuba barabashoye mu rubanza nta mpamvu, kuko RUBANGURA atarebwaga n'amasezerano yabaye hagati ya Leta na MYASIRO, kandi ko hatagaragajwe ibimenyetso by'uko RUBANGURA yaba yaratwaye ibikoresho byaba byarasizwe na MYASIRO ahubakwaga iyo nzu nk'uko byavugwaga n'abazungura ba MYASIRO.

[5] Leta y'u Rwanda n'abazungura ba MYASIRO bajuririye urwo rubanza, Leta y'u Rwanda irunenga kuba rwarayiciye indishyi zo kutishyurira igihe kandi byaragaragajwe ko Abazungura ba MYASIRO bandikiwe basabwa gufata 9.716.294 Frw ndetse avoka wabo aranabyemera ariko nyuma ntibayafata, ikindi Urukiko rukaba rwaremeje indishyi z'akababaro nta

[21] Hakurikijwe aho ibiciro byari bigeze.

tegeko rushingiyeho. Leta y'u Rwanda irasaba indishyi za 2.000.000 Frw zo kuba yarashowe mu rubanza ku maherere.

[6] Abazungura ba MYASIRO bo bajurijwe n'uko Urukiko Rukuru rwirengagije ko Leta yasheshe amasezerano ku makosa yayo kuko yayasheshe igihe cyo kurangiza inyubako kitaragera, hakuwemo igihe cya Jenoside imirimo itashoboraga gukorwa, runirengagiza ko Leta itashoboraga gusesa amasezerano ku bushake bwayo yonyine itabanje kwishyura ibyakoreshejwe ku nyubako, n'inyungu uwubatse yari ategereje mu mirimo ye.

[7] Indi ngingo y'ubujurire bw'Abazungura ba MYASIRO ni ukuba Urukiko rutaremeje ko RUBANGURA yakomeje inyubako yatangiwe na MYASIRO ahereye ku bikoresho byasizwe n'uyu, kandi hari abatangabuhamya babyemeza[22], bigatuma bacibwa indishyi zo kuba barashoye abazungura ba RUBANGURA mu rubanza ku maherere.

[8] Mu bujurire bwuririye ku bundi, Abazungura ba RUBANGURA nabo barasaba kwongererwa indishyi bagenewe, bagahabwa 3.000.000 frw kubera ko bashowe mu rubanza ku maherere bakanatezwa urubwa ko basahuye iby'abandi.

[9] Urubanza rwaburanishijwe mu ruhame ku mataliki ya

[22] Urukiko rwo rwavuze ko hari abatangabuhamya bavuze ko ahubakwaga iyo nzu hari ibikoresho byinshi, ariko nta n'umwe muri bo cyangwa mu bazungura ba MYASIRO wabashije kuvuga uko byanganaga cyangwa igiciro cyabyo, Urukiko rero rukaba ntaho rwahera rugena agaciro kabyo.

24/02/2011, 19/07/2011, 05/04/2012 na 17/07/2012, Abazungura ba MYASIRO baburanirwa na Me MUTEMBE Protais na Me NIYOMUGABO Christophe, Leta y'u Rwanda ihagarariwe na Me BUTARE Emmanuel na Me SEBAZUNGU Alphonse, naho Abazungura ba RUBANGURA baburanirwa na Me RWAGATARE Janvier.

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

A. <u>KU KIBAZO CYO KUMENYA NIBA LETA Y'U RWANDA YARASHESHE MU BURYO BUKURIKIJE AMATEGEKO AMASEZERANO YAGIRANYE NA MYASIRO.</u>

[10] Abazungura ba Myasiro bavuga ko Urukiko Rukuru rutitaye ku kuba Leta y'u Rwanda yarasheshe amasezerano yagiranye na Myasiro kandi igihe cy'amezi 12 bumvikanye cyo kurangiza inyubako cyari kitaragera.

[11] Leta y'u Rwanda isubiza ko yasheshe amasezerano ari uko ibonye MYASIRO atarabashije kurangiza inzu mu gihe yiyemeje cy'amezi 12, ndetse ko yanazirikanye igihe cy'amezi atatu n'iminsi 13 MYASIRO atabashaga kugira icyo akora kuri iyo nyubako kubera ibihe bya Jenoside, uhereye ku wa 06/04/1994 kugeza kuwa 19/07/1994 aribwo inzego z'imirimo mu gihugu zabashije kwongera gukora.

[12] Urukiko rurasanga, nk'uko impande zombi zibyemeranywaho, harabaye ibihe bya Jenoside byatumye nta mirimo yabashaga gukorwa guhera ku wa 06/04/1994 kugera ku wa 19/07/1994, ari nacyo gihe hashyizweho Guvernoma nshya. Hagati y'ayo mataliki yombi, bigaragara ko harimo igihe cy'amezi atatu n'iminsi 12, kigomba kwongerwa ku cyari cyarumvikanweho mbere cyatangiraga ku wa 16/12/1993, kigomba kurangira ku wa 16/12/1994; italiki nshya rero MYASIRO yari akwiye kuba yarangirijeho inyubako ikaba ku wa 28/03/1995, bityo, iseswa ry'amasezerano ryakozwe na Leta igihe isinya andi masezerano na RUBANGURA kuwa 06/04/1995, rikaba ryarabaye igihe cyo kuba MYASIRO yararangije kwubaka inzu ya Leta cyararenze.

[13] Abazungura ba MYASIRO banavuga ko Urukiko Rukuru rwirengagije ko Leta y'u Rwanda itashoboraga gusesa amasezerano itabanje kubisaba Urukiko nk'uko byari biteganyijwe mu ngingo ya 7 y'amasezerano bagiranye, bikaba binateganywa n'ingingo ya 82 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano.

[14] Kuri icyo kibazo, Leta y'u Rwanda isubiza ko, usibye ko muri icyo gihe inkiko zari zitarabasha gukora kandi ikeneye byihutirwa inyubako yo gushyiramo abakozi bayo, ibyo rero bikaba byarabaye impamvu itigobotorwa(force majeure) yatumye bidashoboka, nta n'ubwo yari itegetswe kubanza kuregera inkiko, kuko ingingo ya 441 y'Igitabo cya gatatu cy'Urwunge

rw'amategeko mbonezamubano iha nyirinyubako uburenganzira bwo kuba yasesa amasezerano ku bushake bwe, naho ingingo ya 7 y'amasezerano ikaba yaravugaga ibyo kujya mu nkiko ari uko habaye amakimbirane kandi akaba nta yabayeho.

[15] Urukiko rurasanga, nk'uko byumvikana mu ngingo ya 441 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano, nyirinyubako afite uburenganzira bwo kuba yasesa amasezerano n'uwamwubakiraga, haba ku mpamvu z'amakosa y'uwubakaga cyangwa nta n'amakosa yakoze, bigaturuka gusa ku bushake bwe, apfa gusa guha uwubaka indishyi z'ibyo yakoresheje n'inyungu yari ateregerejemo, muri iyo ngingo hakaba hatagaragaramo ko ny'irinyubako agomba kubanza kujya kubisaba urukiko.

[16] Urukiko rurasanga kandi ingingo ya 7 y'amasezerano itashingirwaho ngo hemezwe ko Leta y'u Rwanda yashoboraga gusesa amasezerano ari uko ibanje kubisaba Urukiko, kuko icyo iyo ngingo iteganya, ari ukugana inkiko ngo zikemure amakimbirane yaramuka avutse, bikaba bitavuze gusaba iseswa ry'amasezerano.

[17] Bigaragara rero ko iseswa ry'amasezerano Leta yakoze ku bushake ryari rikurikije ibiteganywa n'ingingo ya 441 yavuzwe haruguru, hakaba hagomba noheho gususumwa ibyerekeye indishyi zijyanye n'iryo seswa ry'amasezerano, kimwe n'izindi ndishyi ziburanwa muri uru rubanza.

B. <u>KU BIJYANYE N'INDISHYI ZINYURANYE ZASABWE.</u>

- **<u>Indishyi Abazungura ba MYASIRO basaba Leta n'izo Leta ibaka.</u>**

[18] Abazungura ba MYASIRO bajuriye basaba ko indishyi zagenwe n'Urukiko Rukuru zijyanye n'ibyari byakozwe na MYASIRO ku nzu yubakiraga Leta zakongerwa harebwe agaciro kabyo mu gihe tugezemo, bakanasaba ko bahabwa izindi ndishyi zose bari basabye mu rwego rwa mbere.

[19] Leta y'u Rwanda yo yajuriye ivuga ko Urukiko Rukuru rwageneye Abazungura ba MYASIRO indishyi rutagaragaje amategeko rushingiyeho, ikanasaba 2.000.000 frw y'indishyi zo kuba yarashowe mu rubanza ku maherere.

1. **<u>Ku byerekeye indishyi zijyanye n'imirimo MYASIRO yari yarakoze ku nzu yubakiraga Leta y' u Rwanda.</u>**

[20] Ku bijyanye n'amafaranga y'ibyari bimaze gukorwa ku nzu MYASIRO yubakiraga Leta, Abazungura ba MYASIRO bavuga ko agaciro ka 21.379.963 frw kagaragajwe n'abahanga muri 2009 kakemezwa n'Urukiko Rukuru kataba ariko gakomeza kwemezwa muri iki gihe, kandi ibiciro bigenda bihinduka uko imyaka ihita.

[21] Mu iburanisha ry'uru rubanza, uru Rukiko rwashyizeho abahanga babiri babara ako gaciro, ariko bahereye ku nyandiko y'igenagaciro yakozwe n'abahanga muri 2009 bakaba bari bagaragaje icyo gihe agaciro ka 21.379.963 frw.

[22] Abahanga babiri bashyizweho n'Urukiko rw'Ikirenga bagaragaje ko agaciro k'imirimo yakozwe na MYASIRO ku nzu yubakiraga Leta kangana na 31.545.137 frw iyo mirimo ibariwe ku gaciro y'aho igihe kigeze, banasaba buri wese igihembo cy'amafaranga 590.000.

[23] Basabwe kugira icyo bavuga kuri iryo genagaciro k'imirimo yakozwe na MYASIRO ku nzu, no ku gihembo cy'abahanga, uhagarariye Leta yabanje kuvuga ko iyo nyandiko y'abahanga nta gaciro yahabwa kuko yakozwe n'abahanga babiri kandi itegeko[23] riteganya ko hashyirwaho umwe cyangwa batatu, nyuma ariko avuga ko kuba yarakozwe n'abahanga babiri nta kibazo kirimo kuko byari byemeranyijweho n'ababuranyi nk'uko byari byarakozwe ku igena gaciro mu Rukiko Rukuru.

[24] Kubyerekeye agaciro ubwako kagaragajwe n'abo bahanga, Uhagarariye Leta avuga ko imibare batanze idasobanutse, ko igenagaciro ryakozwe n'abo bahanga ritagendeye ku byiciro by'imyubakire byari byagendeweho mbere, kandi n'ibiciro babariyeho bihabanye cyane n'ibyari byagendeweho mu igenagaciro rya mbere. Abazungura ba MYASIRO bo

[23] Ingingo ya 79 y'Itegeko ryo ku wa 19/07/2004 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

bavuga ko ntacyo banenga iyo raporo y'igena gaciro yakozwe n'abo bahanga . Impande zombi kandi ntacyo zanenze ku gihembo cyasabwe n'abo bahanga.

[25] Urukiko rurasanga, mu guteganya ko abahanga bashyirwaho n'Urukiko bagomba kuba umwe cyangwa batatu, itegeko ryari rigamije ko haboneka uburyo abahanga bakemura impaka hagati yabo igihe cyo kwemeza raporo, haramutse hari ibyo batabona kimwe[24], kuba hagenwa babiri biturutse ku bwumvikane bw'ababuranyi bikaba bitafatwa nk'inenge irebana n'ireme ry'iyo raporo (vice de fond) yatuma biyitesha agaciro, bityo ikaba igomba kugumana agaciro kuko abahanga bayikoze bashyizweho bishingiye ku bwumvikane bw'ababuranyi kandi nta n'umwe muri bo byononera nk'uko babyivugira.

[26] Ku birebana n'umubare w'amafaranga yagaragajwe n'abo bahanga, Urukiko rurasanga nta yindi mibare Leta yerekana iyo raporo yari ikwiye kugaragaza, usibye kuvuga ko imibare itandukanye cyane n'iyo muri raporo yakozwe mbere, nyamara ikaba itagaragaza uburyo iryo tandukaniro rikabije, cyane ko iryo genagaciro ryakozwe nyuma y'imyaka ibiri y'irya mbere. Hasuzumwe kandi raporo zombi z'igenagaciro, bigaragara ko ibyiciro by'inyubako byagenewe agaciro muri 2009 ari nabyo byakurikijwe mu igenagaciro ryasabwe n'uru Rukiko.

[24] ''Le nombre impair a été choisi, à l'exclusion du nombre pair, pour les facilités de délibération lorsqu'il y a des points de vue différents'' : Gasasira Ephrem, Procédure civile et commerciale, Manuels de droit rwandais, 1993,p122.

[27] Urukiko rero rurasanga ntacyagaragajwe cyatuma rutemeza igenagaciro ryerekanye umubare w'amafaranga 31.545.137 frw ahwanye n'ibyo MYASIRO yatanze ku nzu yubakiraga Leta. No ku byerekeye igihembo cy'abahanga, Urukiko rurasanga cyakwemezwa uko bagisabye kuko nta muburanyi n'umwe wagaragaje ko cyaba kitari mu rugero rukwiye.

[28] Ku ngingo Leta iburanisha y'uko ari MYASIRO wanze kuza gufata mbere hose amafaranga 9.716.294 yari yarabariwe na Leta kandi yari yayemeye, ndetse avoka AHORUKOMEYE waburaniraga abazungura ba MYASIRO akaba yaranditse agaragaza ko bayemeye nyamara ntibaze kuyafata, Abazungura ba MYASIRO basubiza ko batigeze bemera gufata ayo mafaranga kandi ko n'uwo mu avoka batigeze bamutuma ko bayemeye; banasobanura ko banagiranye nawe amakimbirane ashingiye kuri icyo kibazo.

[29] Urukiko rurasanga, nk'uko biboneka muri dosiye, MYASIRO ubwe yari yaragaragaje mu ibaruwa yo ku wa 14/03/1997 ko atemeye 9.716.294 frw Leta yifuzaga kumuha, kuvuga ko avoka we yaje kuyemera bikaba bitaragaragarijwe ubutumwa yaherewe icyo gikorwa gitandukanye no kuburanira imbere y'Urukiko, aho avoka yemerwa ko afite ubutumwa bw'uwo ahagarariye atagombye kubigaragariza inyandiko, ndetse hakaba hari n'inyandiko muri dosiye igaragaza ko abazungura ba MYASIRO batemeye igikorwa cya Avoka wabo wavugaga ko bifuza gufata amafaranga Leta

yababariye. Ntabwo rero Leta yabashije kugaragaza ko MYASIRO yari yemeye gufata amafaranga akaba ariwe ubura kujya kuyafata.

2. **Ku byerekeye amafaranga ya ”garantie de bonne fin des travaux”**

[30] Abazungura ba MYASIRO bavuga ko Urukiko Rukuru rutashubije ku kibazo cy'amafaranga 11.000.000 ya ”garantie de bonne fin des travaux ‘’ bari basabye mu Rukiko Rukuru, Leta yo igasubiza ko iyo ngingo itaregewe, usibye ko n'amafaranga nk'ayo atasabwa kandi imirimo yagombaga gukorwa itarigeze irangira.

[31] Urukiko rurasanga, nk'uko bigaragara muri dosiye, mu mwanzuro wo ku wa 16/02/2011, Abazungura ba MYASIRO bise uwunganira uwo ku wa 18/05/2009, haragaragajwemo ko mu byo basaba harimo amafaranga 11.000.000 ya ” garantie de bonne fin des travaux”, aya mafaranga akaba yari yaranasabwe mu Rukiko Rukuru nk'uko bigaragara mu mwanzuro washyikirijwe urwo Rukiko kuwa 11/04/2005, ariko Urukiko Rukuru rukaba koko ntacyo rwayavuzeho.

[32] Urukiko rurasanga ariko, niba ayo mafaranga yaratanzwe nk'ingwate izasubizwa ari uko imirimo irangijwe neza, ntaho Abazungura ba MYASIRO bahera basaba kuyasubizwa, mu gihe atarangije imirimo neza, ahubwo hakaba harabaye kurenza ibihe byasezeranywe nk'uko byasobanuwe haruguru, ari naho Leta yahereye

isesa amasezerano.

3. **<u>Ku bijyanye n'indishyi z'amafaranga y'ubukode MYASIRO yavukijwe yari kuzava mu nzu yari kubakwa mu kibanza no 5157 cy'ingurane yagombaga guhabwa na Leta</u>**

[33] Abazungura ba MYASIRO bavuga ko Urukiko rwirengagije kubagenera indishyi z'amafaranga 2.500.000.000 yari kuzava mu bukode bw'inzu yari kubakwa mu kibanza Leta yari yamwemereye. Leta yu Rwanda yo ikavuga ko nta ndishyi Abazungura ba MYASIRO bari kugenerwa kuko Leta yasheshe amasezerano ku mpamvu zitayiturutseho nk'uko byasobanuwe haruguru.

[34] Urukiko rurasanga impamvu Leta y'u Rwanda itategekwa gutanga izo ndishyi, ariko abazungura ba MYASIRO bazaka batagaragaje ishingiro ryazo, ngo berekana amahirwe nyakuri kandi ya bugufi[25] bavukijwe, mu gihe n'ikibanza ubwacyo cyari guhabwa MYASIRO ari uko abanje kwuzuza inzu ya Leta, turetse kuvuga ko nta n'igikorwa cyigeze gitangirwa mu myubakire y'iyo nzu, habe ndetse n'ibyaba byarateguriwe kuyubaka. Nta mahirwe nyakuri rero Abazungura ba Myasiro bigeze bagaragaza ku bijyanye n'ibyari kuzava mu nyubako y'ikibanza MYASIRO yari kuzahabwa.

[25] Amahirwe avutswa umuntu akabihererwa indishyi, ni amahirwe nyakuri kandi ya bugufi, arenze ibyashoboraga gusa kuzabaho cyangwa ntibibe. Reba urubanza R.Com.AA 0008/05/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 06/06/2008, KAMPIRE na SIBOMANA baburana na Banque de Kigali.

4. **Ku byerekeye indishyi zijyanye no kuba MYASIRO atarabashije kwishyura umweda w'inguzanyo wa 124.115.498 frw yahawe na BACAR**

[35] Abazungura ba MYASIRO baranasaba indishyi z'amafaranga 124.115.498 zo kuba atarabashije kwishyura umwenda BACAR yamuhaye, bitewe no kuba MYASIRO yarambuwe ubwubatsi bw'inzu bari bemeranyijwe na Leta.

[36] Leta y'u Rwanda isubiza ko amasezerano y'inguzanyo MYASIRO yaba yaragiranye na Banki itayireba, igasanga rero indishyi zisabwa kubera umwenda MYASIRO yafashe muri iyo banki zidakwiye gutangwa.

[37] Urukiko rurasanga amasezerano y'inguzanyo MYASIRO yaba yaragiranye na BACAR aribo areba, Abazungura ba MYASIRO bakaba batakwaka Leta amafaranga yo kwishyura Banki, kuko n'ubwo ukwamburwa isoko byaba byaragize uruhare mu kutabasha kwishyura Banki kwa MYASIRO, uretse ko bitanagaragajwe, ntibyafatwa ko ari impamvu itaziguye yaba yarateye MYASIRO igihombo, mu gihe hemejwe ko igihombo kitaziguye kijyanye n'ibyo MYASIRO yari amaze gutanga ku nyubako ya Leta kigomba gutangirwa indishyi nk'uko byasobanuwe haruguru.

5. Ku byerekeye indishyi z'akababaro z' ubukene abazungura ba MYASIRO batejwe.

[38] Abazungura MYASIRO bari basabye indishyi za 45.000.000 frw kubera ubukene Leta yabateje, ni ukuvuga 5.000.000 frw kuri buri wese muri bo uko ari icyenda, Urukiko Rukuru rubagenera mu bushishozi bwarwo 13.500.000 frw, ni ukuvuga 1.500.000 frw buri wese. Abazungura ba MYASIRO bajuriye basaba guhabwa izo ndishyi nk'uko bari bazisabye, bagasobanura ko zishingiye ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, iteganyaga ko uwangirije undi wese agomba kubitangira indishyi, naho Leta y'u Rwanda mu bujurire bwayo ikavuga ko Urukiko Rukuru rwaciye izo ndishyi rutagaragaje itegeko zishingiyeho.

[39] Urukiko rurasanga nta bisobanuro ku bw'amategeko Urukiko Rukuru rwagaragarije itangwa ry'indishyi zivuzwe haruguru, n'Abazungura ba MYASIRO bakaba batagaragaza impamvu yazo usibye kuvuga ko zishingiye ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, kandi ibyo Leta yangirije MYASIRO byagenewe indishyi zijyanye n'ibyo yari yaratanze ku nzu yubakiraga Leta, zikaba rero ubwazo zikuraho ubukene bwatewe n'igihombo yatejwe n'iseswa ry'amasezerano, bityo Abazungura ba MYASIRO bakaba nta zindi ndishyi bahabwa zo kuba baratejwe ubukene.

6. Ku bijyanye n'indishyi LETA y'u Rwanda isaba Abazungura ba MYASIRO.

[40] Mu bujurire bwayo, Leta y'u Rwanda ivuga ko Urukiko Rukuru rwageneye Abazungura ba MYASIRO indishyi zitagize amategeko zishingiyeho, ikanasaba 2.000.000 Frw y'indishyi zo kuba yarashowe mu rubanza ku maherere, naho Abazungura ba MYASIRO bakavuga ko Leta yagombaga gucibwa indishyi kubera ko yakoze amakosa mu gusesa amasezerano kandi bigateza igihombo, ko rero ikirego cyabo kitari icyo gushora Leta mu rubanza ku maherere.

[41] Urukiko rurasanga, kuba ubujurire bw'Abazungura ba MYASIRO bugize ishingiro ku bijyanye n'indishyi z'ibyo MYASIRO yatanze ku nyubako ya Leta, bigaragaza ko atashoye Leta mu rubanza ku maherere, bityo rero ubujurire bwa Leta y'u Rwanda bugamije kwaka indishyi zo kuba yarashowe mu rubanza nta mpamvu bukaba nta shingiro bufite.

b. Indishyi Abazungura ba MYASIRO basaba abazungura ba RUBANGURA, n'izo aba basaba abazungura ba MYASIRO.

[42] Mu byatumye Abazungura ba MYASIRO bajurira, harimo kuba Urukiko Rukuru rwarabategetse kwishyura Abazungura ba RUBANGURA indishyi za 1.000.000 frw zo kuba barabashoye mu rubanza nta mpamvu, bavuga ko RUBANGURA yatwaye ibikoresho bya

MYASIRO byari aho yubakiraga Leta inzu.

[43] Basobanura ko kuba Urukiko Rukuru rutarahaye icyo kirego ishingiro byatewe no kwirengagiza ko hari abatangabuhamya bemeje ko kuri iyo ‘’chantier‘’ hari harunze ibikoresho mbere y’uko RUBANGURA ahabwa kurangiza iyo nyubako, ari cyo cyatumye Urukiko Rukuru rwemeza ko Abazungura ba RUBANGURA bashowe mu rubanza nta mpamvu, rugahera aho rubaca indishyi za 1.000.000 frw. Bavuze ko hari umutangabuhamya wakwemeza ko hari ibikoresho bya MYASIRO byari birunze aho yubakaga inzu ya Leta, ariko ko bataramenya izina rye.

[44] Abazungura ba RUBANGURA bavuga ko Abazungura ba MYASIRO bagombaga gucibwa indishyi kuko babareze badafite ibimenyetso, mu bujurire bwuririye ku bundi bakaba basaba 3.000.000 Frw y’indishyi bari basabye mbere zo kuba barashowe mu rubanza nta mpamvu.

[45] Urukiko rurasanga, Abazungura ba MYASIRO batarabashije kugaragaza ko RUBANGURA yatwaye ibikoresho by’ubwubatsi bya MYASIRO nk’uko babivuga, dore ko no muri ubu bujurire babajijwe amazina y’umutangabuhamya bavugaga ko abyemeza ntibababashe kumugaragaza. Ubujurire bwabo rero kuri iyi ngingo nta shingiro bufite.

[46] Ku byerekeye ubujurire bw’Abazungura ba Rubangura

basaba kongererwa indishyi bagenewe ku rwego rwa mbere, Urukiko rurasanga izo bagenewe n'Urukiko Rukuru zihagije, bakaba batarabashije kugaragaza impamvu zakongerwa.

III. ICYEMEZO CY'URUKIKO

[47] Rwemeje ko ubujurire bwa MYASIRO bufite ishingiro kuri bimwe;

[48] Rwemeje ko ubujurire bwa Leta y'u Rwanda bufite ishingiro kuri bimwe;

[49] Rwemeje ko ubujurire bw'Abazungura ba RUBANGURA bwuririye ku bundi nta shingiro bufite;

[50] Rutegetse Leta y'u Rwanda kwishyura Abazungura ba MYASIRO indishyi zingana na 31.545.137 frw;

[51] Rutegetse Leta y'u Rwanda kwishyura 1.180.000 frw y'abahanga babiri biyambajwe n'Urukiko, NUSU Justin na KANOBANA Antoine, ni ukuvuga 590.000 frw kuri buri wese;

[52] Rutegetse ko 1/2 cy'amagarama y'uru rubanza angana na 120.000 frw giherera ku Isanduku ya Leta, ikindi cya kabiri (60.000 frw) kikishyurwa n'Abazungura ba MYASIRO.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME, KU WA 28 NZERI 2012.

MUGENZI Louis-Marie
Perezida

MUKAMULISA Marie Thérèse **RUGABIRWA Ruben**
Umucamanza **Umucamanza**

MUHIMAKAZI Léoncie
UMWANDITSI W'URUKIKO

8. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RADA006/12/CS
ITARIKI Y'URUBANZA: 04/01/2013

HABURANA:
NDAHINDURWA Kimenyi Jéremie C/ Leta y'u Rwanda

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI - KOHEREZWA MU BUTUMWA-GUTINDA KUGARUKA KU KAZI-KUTABIFATA NK' IMPAMVU YO GUSERERWA NTA MPAKA KUBERA KUBURA KU KAZI-KUBIFATA AHUBWA NK'IKOSA RYO MU KAZI RISHOBORA GUSABIRWA IBISOBANURO.

GUTINDA KUGARUKA KU KAZI-GUSERERWA NTA MPAKA UMUKOZI ATABYISOBANUYEHO-KUBIFATA NK'IMPAMVU ITUMA ICYEMEZO CYAFASHWE GITESHWA AGACIRO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Iyo umukozi wa Leta woherejwe mu butumwa atinze kugaruka ku kazi ntibifatwa nko kubura ku kazi ngo byitwe ko yataye akazi bituma asezererwa nta mpaka , bifatwa ahubwo nk'ikosa umukozi ashobora gusabirwa kwisobanuraho.

Umukozi woherejwe mu butumwa akarenza igihe cyo kugaruka ku kazi agomba gusabwa ibisobanuro, iyo bidakozwe uko agazesererwa nta mpaka icyemezo kimufatirwa giteshwa agaciro n'iteka ryagishingiyeho mu kumwirukana rigakurwaho.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUTEGETSI, RUHAKIRIJE MU RUHAME URUBANZA NO RADA 0006/12/CS MU BURYO BUKURIKIRA:

HABURANA:

Uwajuriye:
Ndahindurwa Kimenyi Jéremie, mwene Rutaha Job na Nyirarange Sophie, utuye mu Mudugudu wa Kabusunzu, Akagali ka Munanira, Umurenge wa Nyakabanda, Umujyi wa Kigali.

Uregwa:
Leta y'u Rwanda mu izina ry'Intumwa Nkuru yayo.

IKIBURANWA:

- Kuvanaho Iteka rya Minisitiri w'Intebe no 136/03/ ryo kuwa 25/10/2010
- Indishyi z'akababaro n'amafaranga y'ikurikiranarubanza angana na 15.000.000frw.
- Amafaranga y'ikurikiranarubanza angana na 1 500.000frw.

I. IMITERERE Y'URUBANZA

[1] Ndahindurwa Kimenyi Jéremie yari umushinjacyaha ku rwego rw`Isumbuye mu Bushinjacyaha. Nyuma yaje kubona uburenganzira bwo kujya gukora Programu ya ``Masters`` muri Afurika y'Epfo abifashijwemo n`Ubushinjacyaha Bukuru, binyuze mu nzira ya Minisiteri y`Uburezi (MINEDUC) na Minisiteri y`Abakozi ba Leta n`Umurimo (MIFOTRA), ahabwa inguzanyo n`Ikigega Gishinzwe Gutera Inkunga Abanyeshuri (SFAR). Kimenyi abanza guhabwa ``bourse`` y`umwaka umwe, hagati aho SFAR imwongeza indi ``bourse`` y`umwaka ku cyemezo cya MINEDUC kuko yari programu y`imyaka ibiri. Kimenyi yaje guhagarika amashuri kubera uburwayi, yongererwa amezi abiri kugirango arangize inyandiko isoza amashuri (dissertation) abone guhabwa impamyabushobozi mu kwezi kwa kabiri 2009, agaruka ku kazi mu mpera z`ukwezi kwa gatatu 2009.

[2] Kuwa 13/02/2009, Inama Nkuru y'Ubushinjacyaha yafashe icyemezo cyirukana burundu Kimenyi kubera ko yataye akazi kuko atagarutse ku murimo we nyuma y`umwaka umwe (1) yari yarahawe wo kujya gukora ``Masters`` muri Kaminuza ya Kwazulu Natal muri Afurika Yepfo, n`ubwo we avuga ko iyo ``Masters`` ikorwa mu gihe cy`myaka 2 ariyo mpamvu SFAR yamwongeye ``bourse`` ijyanye n`icyo gihe cy`imyaka ibiri, ndetse ikacyongeraho amezi atatu kubera uburwayi yagize, akaba yaragombaga kugaruka mbere y`impera

z`ukwezi kwa gatatu 2009, akaba ari nuko yabigenje. Hagati aho, bisabwe n`Inama Nkuru y`Ubushinjacyaha mu cyemezo cyayo cyo kuwa 13/02/2009, nyuma y`icyemezo cy`inama y`abaminisitiri, hafashwe iteka rya Minisitiri w'Intebe No 136/03 ryo kuwa 25/10/2010 ryirukana burundu Kimenyi.

[3] Kimenyi yatakambiye Minisitiri w'Intebe mu ibaruwa ye yo kuwa 02/03/2011, asaba ko icyo cyemezo cyahinduka, asubizwa ko bidashoboka.

[4] Kimenyi yaregeye Urukiko Rukuru i Kigali rwaciye urubanza RAD 0061/11/HC/KIG, kuwa 23/12/2011 rwemeza ko Ndahindurwa atsinzwe.

[5] Kimenyi yajuririye Urukiko rw'Ikirenga, avuga ko urubanza rujuririrwa rwavanwaho kuko rudafite ireme, kandi rugaragaramo ukwivuguruza, ko mbere yo kwirukanwa, atigeze asabwa kwisobanura nkuko amategeko abivuga, ko akwiye kubihererwa indishyi n`imishahara ye atahawe, gusubizwa ku kazi, no kugenerwa indishyi z`akababaro.

[6] Urubanza rwaburanishijwe kuwa 11/10/2012, Kimenyi yunganiwe na Me Musore Gakunzi Valérie na Me Niyindora Nsengiyumva naho Leta y'u Rwanda iburanirwa n`Intumwa ya Leta, Me Sebazungu Alphonse, kuwa 03/11/2012 hacibwa urubanza rubanziriza urundi kuwa 23/11/2012. Iburanisha ryongeye gufungurwa kuwa 03/12/2012, Kimenyi

ahari n`abasanzwe bamwunganira, Leta y`u Rwanda ihagarariwe n`intumwa yayo, Me Mbonera Théophile.

II. <u>ISESENGURA RY'IBIBAZO BIGIZE URUBANZA</u>

1. Kumenya niba ukwirukanwa nta mpaka kwa Ndahindurwa Kimenyi Jérémie bikurikije amategeko.

[7] Kimenyi n'abamwunganira bavuga ko yagiye kwiga Ubushinjacyaha bubizi ndetse aribwo bwanamusabiye kujyayo (recommendation), ko Ubushinjacyaha bwavuze ko yari yemerewe kwiga umwaka umwe mu gihe ubuyobozi bwa Mifotra n`ubwa Mineduc bwari bwemeye ko ari umwaka umwe ushobora kongerwa. Bavuga kandi ko SFAR yamuhaye ``bourse`` y`imyaka ibiri kubera ko aricyo gihe iyo programu ya ``Masters`` imara. Basobanura ko ubuyobozi bw`Ubushinjacyaha bwamusabiye kujya kwiga ``Masters`` butagaragaje mu ibaruwa bwandikiye MIFOTRA, MINEDUC na SFAR igihe ntarengwa yagombaga kumara, ndetse bumusabira no kugumana umushahara ngo utunge umuryango we.

[8] Abunganira Kimenyi basobanura na none kuri iyo myaka 2, kubera uburwayi Kimenyi yagize, yarengejeho amezi abiri kugirango arangize inyandiko isoza amashuri (dissertation), abyemerewe na MINEDUC, noneho SFAR imwongera ``bourse`` y`ayo mezi abiri, imuha

na tike yo gutaha mbere y`uko ukwezi kwa 3/2009 kurangira, kandi ko ibyo na Ambasade y'u Rwanda muri Africa y'Epfo yari ibizi.

[9] Ku bijyanye no kwirukanwa kubera guta akazi, Kimenyi n'abunganizi be bavuga ko atataye akazi kuko umukoresha we yari azi aho yagiye n`icyamujyanye, kandi ko yanamuhembaga, akavuga rero ko nta kuntu Ubushinjacyaha bwari kumurekera umushahara kugeza mu kwa gatatu 2009, bikaba bitumvikana rero ko aho agarukiye mu gihugu, yasanze baramufashe nk`uwataye akazi.

[10] Bavuga kandi ko atari gufatirwa icyemezo kimwirukana ku kazi batabanje kumumenyesha ngo ashobore kwisobanura, cyane ko n'ubuyobozi bwafashe icyo cyemezo bwari buzi aho aherereye, bakaba basanga yarirukanywe mu buryo bunyuranyije n'amategeko.

[11] Me Sebazungu uburanira Leta y'u Rwanda avuga ko Kimenyi yemerewe kwiga umwaka umwe, akamara ibiri nayo yashira ntahite agaruka maze Ubushinjacyaha bukabifata nko guta akazi.

[12] Avuga ko Kimenyi yivuganiraga na Mineduc na SFAR na Ambasade ntagire icyo amenyesha umukoresha we kandi ariwe wamusabiye kujya kwiga, ko iyo nshingano yo kubanza kumenyesha inzego zimukuriye iri mu ngingo ya 82 y'Itegeko rigenga Ubushinjacyaha1. Yongeraho ko ubusanzwe amahugurwa amara umwaka

umwe, umukozi akaba atawurenza umukoresha atabigizemo uruhare. Avuga ko iyo umwaka ushize umukozi atagarutse, ahita ashyirwa muri ``mise en disponibilité `` n'umushahara we ugahita uhagarikwa.

[13] Ku bijyanye no kuba Kimenyi yarafatiwe icyemezo atabanje kubimenyeshwa ngo yisobanure ku ikosa yakoze, Me Sebazungu avuga ko umuntu wataye akazi atagira aho ashakirwa ngo asabwe kwisobanura, ko ari nayo mpamvu atabanje guhamagazwa mu Nama Nkuru y'Ubushinjacyaha.

[14] Urukiko rusanga ihame ryo kubanza guha umukozi amahirwe yo kwisobanura riteganyijwe mu mategeko anyuranye agenga abakozi ba Leta mu Nzego zayo zinyuranye.Itegeko Ngenga N° 22/2004 ryo kuwa 13/08/2004 rigenga statut y'abashinjacyaha n'abakozi bo mubushinjacyaha bukuru.

[15] Ingingo ya 18, igika cya 3 y'Itegeko-Nshinga rya Repubulika y'Urwanda ivuga ko ``ntawe ushobora gufatirwa icyemezo atabanje kwiregura mu nzego zose zaba iz'ubutegetsi cyangwa iz'ubucamanza``.

[16] 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``.

[17] Ingingo ya 61 y`Itegeko-Ngenga nº 22/2004ryo kuwa 13/08/2004 rishyiraho amategeko ngengamikorere y`Abashinjacyaha n`abakozi bo mu Bushinjacyaha nkuko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko icyemezo cy`Inama Nkuru y`Ubushinjacyaha cyafashwe kimenyeshwa umushinjacyaha cyafatiwe hakurikijwe uburyo bw`imenyesha buteganyijwe mu ngingo ya 53 y`iri tegeko (ibaruwa ishinganye icishijwe ku i Posta).

[18] Amabaruwa y`Inzego zitandukanye ari muri dosiye agaragaza ko Kimenyi yahawe uburenganzira bwo kujya gukora ```Masters`` muri Kaminuza ya Kwazulu Natal, Afurika Yepfo, Ubushinjacyaha bubigizemo uruhare, bitangirwa uruhushya na MIFOTRA, MINEDUC na SFAR zitanga ``bourse``.

[19] Ku byerekeye igihe amashuri Kimenyi yagiyemo yagombaga kumara, inyandiko zikubiye muri dosiye zigaragaza ko ari imyaka ibiri (2), ariko ko inzego zose zabigizemo uruhare zitahanye amakuru kubera imikoranire itanoze, kuko nta kopi zigeze zigenwa n`urwego rumwe ku rundi, aribyo byatumye Ubushinjacyaha butamenya igihe ``Masters`` Kimenyi yari yemerewe gukora izamara. Urukiko rusanga rero kuba Ubushinjacyaha butaramenye ko Kimenyi aziga imyaka ibiri aho kuba umwaka umwe atari we wabiryozwa.

[20] Byongeye kandi, ku birebana nuko iyo myaka ibiri Kimenyi yayirengejeho amezi 3 (kuva mu kwezi kwa mbere kugeza mu kwa gatatu/2009), Urukiko rusanga hari inyandiko zigaragaza ko yongerewe igihe n`inzego bireba ndetse yongererwa n`amafaranga y`ishuri ajyanye n`ayo mezi atatu, ahabwa na tike yo kuwa 27/03/2009 imucyura mbere y`uko ukwezi kwa gatatu 2009 kurangira, kandi icyo gihe aracyubahiriza. Bityo uru Rukiko rukaba rusanga nta kosa Kimenyi yakoze.

[21] Ku byerekeye imyiregurire y`Intumwa ya Leta ivuga ko Kimenyi atirukanywe, ko ahubwo yasezerewe nta mpaka kuko yataye akazi (démission d`office), Itegeko-Ngenga nº 22/2004ryo kuwa 13/08/2004 rishyiraho amategeko ngenga-mikorere y`Abashinjacyaha n`abakozi bo mu Bushinjacyaha nkuko ryahinduwe kandi ryujujwe kugeza ubu, mu gace karyo ka 4º rivuga ko ``Umushinjacyaha asezererwa ku kazi nta mpaka iyo yataye akazi nta mpamvu mu gihe cy`iminsi 15 ikurikirana``.

[22] Iyi ngingo yumvikanisha ko ubu buryo bwo kuvana umushinjacyaha ku kazi bureba umukozi wari usanzwe akariho ntakagarukeho mu gihe cy`iminsi 15 yikurikiranyije, kandi nta mpamvu yagaragaraje, akaba yasezererwa ku kazi nta mpaka. Urukiko rusanga ibi bitandukanye n`iby`umukozi wari mu mashuri cyangwa mu butumwa, utagombye gusezererwa muri ubwo buryo kuko we aba atari asanzwe ku kazi ngo akabureho, byongeye kandi hari impamvu izwi yatumye

yarabaye agahagaritse mu gihe runaka, kabone n`iyo icyo gihe cyarenga.

[23] Kuba noneho uyu mukozi yafatirwa icyemezo cyo gusezererwa nta mpaka, n`ubwo atari igihano (peine) ariko kiri mu byemezo biremereye(sanctions) bidashobora gufatirwa umukozi wa Leta wagiye bitangiwe uruhushya kandi aho ari hazwi, akaba rero we agomba kwandikirwa asabwa ibisobanuro mu gihe atagarutse mu kazi, igihe yahawe cyo kwiga cyangwa kujya mu butumwa kirangiye.

[24] Hashingiwe ku ngingo z`amategeko zagaragajwe haruguru, ku birebana na Kimenyi, Urukiko rusanga kumara imyaka ibiri n`amezi atatu atari ukubura ku kazi ngo byitwe ko yagataye, ahubwo ari ugutinda kugaruka ku kazi, bityo Ubushinjacyaha bukaba bwari kubibonamo ikosa, bukabanza kurimusabira ibisobanuro, ndetse bukanasobanuza inzego za Leta zagize uruhare mu kumwohereza kwiga, zimuha uburenganzira n`uburyo, kuva mu kwezi kwa 2/2007 kugeza mu mpera z`ukwa 3/2009.

[25] Urukiko rusanga kuba Kimenyi yarafatiwe icyemezo cyo kwirukanwa kuwa 13/02/2009 n`Inama Nkuru y`Ubucamanza ukwezi kwa gatatu yagombaga kugarukamo kutararangira kandi ntacyo Ubushinjacyaha bukoze mu kumushakisha ngo abure, akirukanwa burundu n`Iteka rya Minisitiri w'Intebe No 136/03 ryo kuwa 25/10/2010 rishingiye kuri

icyo cyemezo, byarakozwe mu buryo bunyuranije n`amategeko.

[26] Uru Rukiko rusanga rero Kimenyi yarirukanwe adahawe amahirwe cyangwa uburenganzira bwo kwisobanura, bityo icyemezo kimwirukana kikaba kinyuranyije n`amategeko, n`iteka ryagishingiyeho rimwirukana burundu rikaba rigomba kuvanwaho.

2. Imishahara n`indishyi zinyuranye Kimenyi asaba

[27] [27]. Kimenyi avuga ko kuva Iteka rya Minisitiri w'Intebe risohotse, ryamubujije amahirwe yo gukomeza gukora, bityo akaba asaba imishahara yose atahembwe muri ayo mezi yose kugeza uru rubanza ruciwe bwa nyuma.

[28] Kimenyi asaba kandi indishyi z`akababaro zo kwirukanwa ku kazi ku maherere zingana na 15.000.000 Frw, agasobanura ko kwirukanwa byatumye ubu nta kazi yemerewe gukora mu gihugu ndetse ko yanangiwe kujya mu Rugaga rw'Abavoka. Asaba n`amafaranga y'ikurikirana, ay'igihembo cya avoka no gusubizwa amagarama y'urubanza angana 1.500.000 Frw.

[29] Intumwa Nkuru ya Leta ivuga ko nta mishahara Kimenyi agomba guhabwa, kuko yirukanywe mu buryo bukurikije amategeko kubera ko yataye akazi, akaba nta ndishyi akwiye kugenerwa.

[30] Urukiko rurasanga ku birebana n`indishyi zijyanye no kwirukanwa ku kazi, Kimenyi yarasezerewe ku kazi bidakurikije amategeko nkuko byagaragajwe haruguru, bituma avutswa umushahara we ku maherere, akaba rero agomba kubiherwa indishyi zihwanye n`imishahara ye havanyweho ibirihwa ku mushahara byose ku bw`amategeko. Izo ndishyi zikabarwa ku rugero rw`umushahara yahembwe bwa nyuma w`ukwezi kwa 3/2009 ungana na 315.264 Frw ku kwezi, kuva mu kwezi kwa kane 2009 kugeza kuwa 04/01/2013 urubanza ruciwe burundu, ni ukuvuga mu gihe cy`amezi 45, akaba ari amafaranga 315.264x45=14.186.880 Frw.

[31] Ku kibazo cyo kuba Kimenyi yasubizwa mu kazi nkuko abisaba, Urukiko rurasanga koko Kimenyi agomba gusubizwa mu kazi kuko yakavanywemo mu buryo bunyuranyije n`amategeko kandi hemejwe ko icyemezo cyamuvanyeho kigomba kuvaho, ariko kukukamusubizaho byaba bidashobokeye Leta, ikagomba kubimuhera indishyi zigenwe mu bushishozi bw`Urukiko ku rugero rw`umishahara yahembwaga ku kwezi mu gihe cy`amezi atandatu (6) ni ukuvuga 315.264x6=1.891.584 Frw.

[32] Ku byerekeye indishyi z`akababaro zihwanye na 15.000.000 abunganira Kimenyi basaba ko yahabwa kubera ko yatsindiye umwanya mu ipiganwa muri LPD, ntiyashobora guhabwa akazi, anashaka kujya mu Rugaga rw`Abavoka nabyo ntiyabyemererwa bitewe n`Ubushinjacyaha bwagiye bwandika buvuga ko afite

imiziro y`uko yirukanwe ku kazi, urukiko rurasanga indishyi z`akababaro Kimenyi avuga ko yagize, ntazo yahabwa kuko yagenewe izijyanye n`ibyo yavukijwe byose.

[33] Ku byerekeye amafaranga y`ikurikirana rubanza Kimenyi asaba, n`ay`igihembo cy`avoka angana na1.500.000 Frw, Urukiko rusanga hari ibyo koko yatakaje akurikirana urubanza rwe ku nzego zombi, ndetse aburanirwa n`abavoka babiri, akaba akwiye kuyayagenerwa nkuko yayasabye.

3. Ubujurire bwuririye ku bundi bwatanzwe n`Intumwa ya Leta

[34] Intumwa ya Leta ivuga ko isabira Leta indishyi za 2.500.000 frw kuko Kimenyi yakomeje kuyishora mu manza, ko uru rubanza ari urwa kabiri ayishoyemo, ko umukozi wa Leta uza kuburana yakabaye ari mu kandi kazi.

[35] Kimenyi avuga ko nta shingiro ry`ibyo Leta isaba kandi ariyo yamurenganyije imwirukana kukazi bidakurikije amategeko, Urukiko rusanga izo ndishyi ntazo Leta yagenerwa mu gihe ntacyo itsindiye muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[36] Rwemeje ko ubujurire bwa Kimenyi Ndahindurwa Jérémie bufite ishingiro.

[37] Rwemeje ko ubujurire bwa Leta bwuririye ku bundi nta shingiro bufite.

[38] Rwemeje ko iteka No 136/03 ryo kuwa 25/10/2010 rya Minisitiri w`Intebe ryirukana burundu Ndahindurwa Kimenyi Jérémie rivanyweho.

[39] Rutegetse Leta y`Urwanda guha Kimenyi Ndahindurwa Jeremie indishyi zijyanye n`imishahara atishyuwe zingana na 14.186.880 Frw.

[40] Rutegetse Leta y`u Rwanda gusubiza Kimenyi Ndahindurwa Jéremie ku kazi, mu gihe bidashobotse, ikamuha indishyi zingana na 1.891.584 Frw.

[41] Rutegetse Leta y`Urwanda kwishyura Kimenyi Ndahindurwa Jérémie amafaranga y`ikurikirana rubanza n`igihembo cy`avoka angana na 1.500.000 Frw.

[42] Ruvuze ko urubanza rwajuririwe Nº RAD 0061/11/HC/KIG rwaciwe n'Urukiko Rukuru i Kigali kuwa 23/12/2011 ruhindutse.

[43] Rutegetse ko amagarama y`urubanza aherera ku Isanduka ya Leta.

RUKIJIJE RUTYO KANDI RUSOMEWE MU RUHAME KUWA 04/01/2013

sé
Mugenzi Louis-Marie
Perezida

sé
Kayitesi R. Emily
Umucamanza

sé
Hatangimbabazi Fabien
Umucamanza

sé
Munyandamutsa J-pierre
Umwanditsi w`Urukiko.

9. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RADA0045/11/CS
ITARIKI Y'URUBANZA: 12/04/2013

HABURANA:
BITANDARO Maxime C/ Leta y'u Rwanda(MINEDUC)

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI-ICYEMEZO GISEZERERA UMUNKOZI WAHAGARITSWE BY'AGATEGANYO-KUGIFATA MU GIHE CY'AMEZI ATANDATU-KUBIFATA NKO KWIRUKANWA BIDAKURIKIJE AMATEGEKO IYO IHAGARIKWA BURUNDU RIBAYE NYUMA Y'AMEZI ATANDATU .

KUGENA INDISHYI ZIHABWA UWAHEZE MU GIHIRAHIRO NYUMA Y'AMEZI ATANDATU-KUTAZISHINGIRA KU MUSHAHARA UMUKOZI AYAHEMBWAGA-KUZIGENA AHUBWO MU BUSHISHOZI BW'UMUCAMANZA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Uwahagaritswe by'agateganyo agomba gufatirwa icyemezo kimusezerera burundu cyangwa kimusubiza mu kazi mu gihe kitarenga amezi atandatu, iyo yirukanwe nyuma y'icyo gihe aba yirukanywe mu buryo bunyuranyije n'amategeko.

Mu kugena indishyi zihabwa umukozi waheze mu gihirahiro nyuma y'amezi atandatu ihagarikwa ry'agateganyo rimara nta cyemezo afatiwe , ntizishingira ku mushahara yahembwaga ahubwo zigenywa mu bushishozi bw'umucamanza kuko muri icyo aba adakora.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUTEGETSI, RUHAKIRIJE MU RUHAME URUBANZA RADA 0045/11/CS, KUWA 12/04/2013, MU BURYO BUKURIKIRA:

UWAJURIYE:

BITANDARO Maxime, mwene Ndege François na Nyirakibundi Esther, utuye mu Kagari ka Agatare, Umurenge wa Niboyi, Akarere ka Kicukiro, Umujyi wa Kigali, ahagarariwe na Me Mudahogora Angélique.

UREGWA:

Leta y'u Rwanda (MINEDUC), mu izina ry'Intumwa Nkuru ya Leta, ihagarariwe na Me Sebazungu Alphonse.

IKIBURANWA:

Kwirukanwa ku kazi binyuranije n'amategeko, imperekeza, icyemezo cy'umukoresha (attestation de servises rendus), indishyi z'akababaro, « indemnité de préavis », amafaranga y'ikurikiranarubanza.

IKIREGERWA:

Kujuririra urubanza RAD 0138/09/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 21/09/2011.

I. IMITERERE Y'URUBANZA

[1] Kuwa 28/06/1999, Bitandaro Maxime yagizwe Umuyobozi w'Ishuri Ryisumbuye rya Frank Adamson i Kibogora mu Ntara y'Iburengerazuba (Cyangugu). Kuwa 16/03/2005, Umunyamabanga wa Leta ushinzwe Amashuri Abanza n'Ayisumbuye yamuhagaritse by'agateganyo kuri uwo murimo amumenyesha ko amushyikirije Minisiteri y'Abakozi ba Leta, Amahugurwa n'Umurimo. Iyi Minisiteri nayo yandikiye Bitandaro imumenyesha ko idashobora kumusezerera ku kazi cyangwa kumushakira undi mwanya, ko ahubwo ikibazo cye kigomba gukemurwa na Minisiteri y'Uburezi kuko ariyo izi impamvu yamukuye ku mwanya yari yaramuhaye.

[2] Kuwa 04/08/2008, Bitandaro yandikiye Umunyamabanga wa Leta ushinzwe Amashuri Abanza n'Ayisumbuye amusaba kumurenganura agahabwa ibyo amategeko ateganya birimo imishahara atahembwe kuva mu mwaka wa 2005, ariko ntiyabona igisubizo. Bitandaro yandikiye na none Minisiteri y'Uburezi ayibutsa ko amaze imyaka ine (4) yose ari mu gihirahiro, asaba ko ikibazo cye cyakemurwa mu bwumvikane bitabaye ngombwa ko yiyambaza Inkiko kugira ngo zimurenganure.

[3] Bitandaro abonye ko ikibazo cye kitakemuwe mu bwumvikane, yareze Leta y'u Rwanda (MINEDUC) mu Rukiko Rukuru i Kigali asaba ko yamuha

indishyi zikubiye mu kirego cyavuzwe haruguru, ariko uburanira Leta y'u Rwanda ahita atanga inzitizi zigamije kutakira ikirego cye ku mpamvu z'uko yagitanze atabanje gutakambira Umuyobozi wafashe icyemezo cyamuhagaritse by'agateganyo ku kazi no kuba yaragitanze akererewe.

[4] Urwo Rukiko rwasanze Bitandaro yaratakambye, rwemeza ariko ko ikirego cye kitakiriwe kuko cyakererewe, kubera ko yagombaga gutanga ikirego bitarenze kuwa 02/04/2009, ariko ko yagitanze akererewe kuwa 17/10/2009.

[5] Bitandaro yajuririye Urukiko rw'Ikirenga avuga ko ikirego cye cyagombaga kwakirwa kikaburanishwa mu mizi, kubera ko atagombaga gutakamba kuko nta cyemezo kimwirukana ku kazi yafatiwe, naho uburanira Leta y'u Rwanda avuga ko Bitandaro yagombaga gutakamba mbere yo kuregera Urukiko asaba ko rwamuha indishyi.

[6] Urukiko rwaburanishije iyo nzitizi kuwa 29/11/2012, tariki ya 28/12/2012, rwemeza ko ikirego cya Bitandaro Maxime cyakiriwe kubera ko atari ategetswe gutakamba bitewe n'uko yaregeye Urukiko Rukuru asaba ko yahabwa indishyi zishingiye ku iseswa ry'amasezerano y'akazi, rusobanura ko utakamba ari umukozi wafatiwe icyemezo n'umuyobozi runaka ashaka ko yisubiraho kugira ngo ibintu bisubire uko byari bimeze mbere.

[7] Urubanza rwaburanishijwe mu mizi kuwa 12/03/2013, Bitandaro Maxime ahagarariwe na Me Mudahogora Angélique, naho Leta y'u Rwanda (MINEDUC) ihagarariwe na Me Sebazungu Alphonse.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO:

1. Kumenya niba Bitandaro yarirukanywe cyangwa atarirukanywe ku kazi

[8] Uburanira Bitandaro avuga ko nyuma y'uko Umunyamabanga wa Leta ushinzwe Amashuri Abanza n'Ayisumbuye amuhagaritse by'agateganyo ku kazi kuwa 16/03/2005, Bitandaro yatakambye, ariko ntiyamurenganura, noneho akomeza kwandikira Minisiteri y'Uburezi na Minisiteri y'Abakozi ba Leta azisaba ko zakemura ikibazo cye, ariko ntizagikemura, ko ahubwo yakomeje kuba mu gihirahiro kuva mu mwaka wa 2005 kugeza ubu.

[9] Kuri iyi ngingo, uburanira Leta y'u Rwanda (MINEDUC) avuga ko Bitandaro atahagaritswe ku kazi mu buryo bunyuranije n'amategeko, kuko yahagaritswe by'agateganyo ku kazi hashingiwe ku gace ka b) k'ingingo ya 66 y'Itegeko nº 22/2002 ryo kuwa 09/07/2002 rishyiraho Sitati Rusange Igenga Abakozi ba Leta n'Inzego z'Imirimo ya Leta ryakurikizwaga icyo gihe[26]. Asobanura ko raporo yakozwe n'ushinzwe Dioscèse ya Cyangugu

[26] Agace ka b) k'ingingo ya 66 y'Itegeko ryavuzwe kavuga ko "iyo (umukozi) yahawe igihano cyo kuba ahagaritswe".

yagaragaje ko Bitandaro atabonekaga ku kazi, ko atitabiraga inama z'uburezi, ko ishuri yayoboraga ritagiraga isuku, kandi ko atasanaga ibyangiritse kuri iryo shuri, bituma asubizwa Minisiteri y'Uburezi yari yaramuhaye akazi, nayo isaba ko Minisiteri y'Abakozi ba Leta yakamushakira, ariko ikibazo cyabayeho akaba ari uko Bitandaro atamenyeshejwe ayo makosa ngo ayisobanureho mbere y'uko afatirwa icyemezo kimuhagarika by'agateganyo ku kazi. Yongeraho ko irindi kosa ryakozwe na Minisiteri y'Uburezi ari uko Bitandaro atasubijwe ku kazi cyangwa ngo yoherezwe ahandi.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 90 y'Itegeko nº 22/2002 ryo kuwa 09/07/2002 rishyiraho Sitati Rusange Igenga Abakozi ba Leta n'Inzego z'Imirimo ya Leta ryakurikizwaga igihe Bitandaro yahagarikwaga by'agateganyo ku murimo, ivuga ko "*Nta kosa na rimwe umukozi wa Leta ashobora guhanirwa atabanje kuryisobanuraho mu nyandiko*".

[11] Naho ingingo ya 65 y'Itegeko rimaze kuvugwa haruguru, ikavuga ko *"Ihagarikwa ry'agateganyo ku murimo ni igihe umukozi wa Leta, bitewe no gusiba kwe nta mpamvu zizwi cyangwa impamvu zihariye, ahagarikwa gukora akazi nk'uko bisanzwe.* Igika cya

2 cy'iyo ngingo kikavuga ko*: "Igihe cy'ihagarikwa ry'agateganyo ku murimo ntigishobora kurenza amezi atandatu (6)*".

[12] Nanone ingingo ya 68 y'Itegeko ryavuzwe haruguru, ivuga ko *"Ihagarikwa ry'agateganyo ku murimo ry'umukozi wa Leta rirangira bitewe no:*

"1º gusubizwa mu kazi iyo umwanya ubonetse;
2º gusubizwa mu kazi arangije igihano cy'igifungo cyangwa igihano cyo mu kazi;
3º kwirukanwa burundu cyangwa gusezererwa nta mpaka".

[13] Ku byerekeye uru rubanza, dosiye igaragaza ko Bitandaro Maxime yahagaritswe by'agateganyo ku Buyobozi bw'Ishuri Ryisumbuye rya Frank Adamson kuwa 16/03/2005 n'Umunyamabanga wa Leta ushinzwe Amashuri Abanza n'Ayisumbuye, maze amushyira mu maboko ya Minisiteri y'Abakozi ba Leta, Amahugurwa n'Umurimo, nayo imwandikira imumenyesha ko itazamusezerera ku kazi, kandi ko itazamushakira undi mwanya, ko ahubwo ari Minisiteri y'Uburezi igomba kuzakemura ikibazo cye, ariko bigaragarira Urukiko ko ikibazo cya Bitandaro kitigeze gikemurwa kugeza ubu.

[14] Urukiko rurasanga, hakurikijwe ibiteganywa n'ingingo ya 90 y'Itegeko ryavuzwe haruguru, Bitandaro yarahagaritswe by'agateganyo ku murimo mu buryo

bunyuranije n'amategeko, kubera ko yahagaritswe by'agateganyo ku kazi n'Umunyamabanga wa Leta ushinzwe Amashuri Abanza n'Ayisumbuye atabanje kwisobanura ku makosa yaregwaga.

[15] Urukiko rurasanga kandi, hakurikijwe ibiteganywa n'ingingo ya 65, igika cya 2 y'Itegeko ryavuzwe, kuba Bitandaro yarahagaritswe by'agateganyo ku kazi kuwa 16/03/2005, bigaragara ko igihe cy'amezi atandatu (6) cy'ihagarikwa rye ry'agateganyo ku kazi cyararangiye kuwa 17/09/2005, bikaba bifatwa ko nyuma y'icyo gihe yirukanwe mu buryo bunyuranije n'amategeko, kuko atemerewe gusubizwa mu kazi cyangwa ngo asezererwe nk'uko biteganywa n'ingingo ya 68 y'Itegeko ryavuzwe haruguru, bityo Leta y'u Rwanda (Minisiteri y'Uburezi) ikaba igomba kubimuhera indishyi.

2. **Kumenya ingano y'indishyi Bitandaro agomba guhabwa**

[16] Uburanira Bitandaro avuga ko Leta y'u Rwanda (Minisiteri y'Uburezi) yamwirukanye mu buryo bunyuranije n'amategeko ikwiye kumuha 11.400.000 Frw y'imishahara atahembwe mu gihe cy'amezi 95 yose, ni ukuvuga kuva muri mata 2005 kugeza muri Werurwe 2013 (120.000 Frw x 95 = 11.400.000 Frw). Anavuga ko ikwiye kumuha kandi 5.000.000 Frw y'indishyi z'akababaro hashingiwe ku biteganywa n'ingingo ya 258 y'Igitabo cy'urwunge rw'amategeko

y'imbonezamubano[27], kuko igikorwa cyayo cyo kumuhagarika by'agateganyo ku kazi cyamuvukije imishahara yahembwaga bituma agira ubuzima bubi burimo kutabona ibimutunga n'urugo rwe, kutishyurira abana amashuri, kutivuza bakoresheje RAMA n'ibindi. Yasabye na none ko yamuha 5.000.000 Frw ya "préjudice moral", kubera ko nyuma yo kumwirukana mu buryo butunguranye ku murimo, yafashwe nk'umutekamutwe, umukozi mubi, kandi ko byamuhesheje isura mbi muri rubanda. Mu gusoza, avuga ko inakwiye kumuha 1.000.000 Frw y'ikurikiranarubanza n'ay'igihembo cya Avoka, yose hamwe akaba 22.400.000 Frw.

[17] Uburanira Leta y'u Rwanda (MINEDUC) we avuga ko Bitandaro atahabwa amafaranga y'imishahara asaba, kubera ko atakoraga akazi icyo gihe, ariko ko yahabwa amafaranga mbumbe (forfait) asimbura indishyi zose asaba nk'uko byemejwe n'uru Rukiko mu rubanza Leta y'u Rwanda yaburanye na Nkongoli John no mu rubanza rwa Nayandi na Caisse Sociale du Rwanda. Avuga kandi ko Urukiko rwanamugenera amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka nk'uko rusanzwe rubigenza mu zindi manza.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 66, igika cya 1 n'icya 2 y'Itegeko ryavuzwe haruguru, ivuga ko igihe umukozi wa Leta yahagaritswe

[27] Iyo ngingo ivuga ko " Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

by'agateganyo ku murimo nta burenganzira aba afite ku mushahara.... Naho ingingo ya 106 y'iryo Tegeko, ikavuga ko "*Umukozi wa Leta kubera akazi akora, ahabwa buri kwezi igihembo...*" Iyi ngingo yumvikanisha ko umushahara uhabwa umukozi wa Leta wakoze akazi.

[19] Hashingiwe ku biteganywa n'izi ngingo z'Itegeko rimaze kuvugwa haruguru ryakurikizwaga igihe Bitandaro yahagarikwaga by'agateganyo ku kazi, Urukiko rurasanga Bitandaro atahabwa indishyi zibariwe ku mishahara kuko icyo gihe atakoraga, kubera ko yari yarahagaritswe by'agateganyo ku murimo, kuko umushahara uhembwa umukozi wa Leta wakoze akazi.

[20] Urukiko rurasanga n'ubwo Bitandaro atagenerwa indishyi zibariwe ku mushahara kuko icyo gihe atakoraga, akwiye ariko guhabwa indishyi z'akababaro yatewe no kuguma mu gihirahiro cy'igihe kirekire yashyizwemo n'icyemezo cyamuhagaritse by'agateganyo ku kazi cyavuzwe haruguru, ndetse kikaba cyaranamuteje n'igihombo kuko hari ibyo yavukijwe birimo imibereho myiza kuri we no ku muryango we, bityo Leta y'u Rwanda (Minisiteri y'Uburezi) ikaba ikwiye kubimuhera indishyi z'akababaro zingana na 5.000.000 Frw zigenwe mu bushishozi bwarwo kuko izo yasabye azita iza "préjudice moral" ari nyinshi.

[21] Urukiko rurasanga kandi, kuba Bitandaro yari

ahagarariwe muri uru rubanza, kandi hakaba hari ibyo atsindiye, byumvikana ko Leta y'u Rwanda (Minisiteri y'Uburezi) ikwiye no kumuha 200.000 Frw y'ikurikiranarubanza na 300.000 Frw y'igihembo cya Avoka, yose hamwe akaba 500.000 Frw.

[22] Urukiko rurasanga rero igiteranyo cy'amafaranga Leta y'u Rwanda (Minisiteri y'Uburezi) igomba guha Bitandaro Maxime ari: 5.000.000 Frw y'indishyi z'akababaro + 200.000 Frw y'ikurikiranarubanza + 300.000 Frw y'igihembo cya Avoka, bityo indishyi zose hamwe zikaba 5. 500.000 Frw.

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

[23] Rwemeje ko ubujurire bwa Bitandaro Maxime bufite ishingiro kuri bimwe;

[24] Ruvuze ko imikirize y'urubanza RAD 0138/09/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 21/09/2011 ihindutse kuri byose;

[25] Rutegetse Leta y'u Rwanda (Minisiteri y'Uburezi) guha Bitandaro Maxime miliyoni eshanu n'ibihumbi magana atanu (**5. 500.000 Frw**).

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KUWA 12/04/2013.

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