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

Igitabo cya gatatu 2011, nº 10

Nyakanga, 2011

Abagize komite y’ubwanditsi bw’icyegeranyo cy’ibyemezo by’Inkiko

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

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

YARAMBA Athanase : Umwe mu bagize komite,
Umucamanza mu Rukiko Rwisumbuye rwa Muhanga

BAZIHANA Fidèle : Umwe mu bagize Komite,
Umucamanza mu Rukiko rw’Ibanze rwa Muhoza

NKUBITO William : Umwanditsi wa Komite,
Umushakashatsi mu Rukiko rw’Ikirenga

MINANI Epimaque : Umwanditsi wa Komite,
Umushakashatsi mu Rukiko rw’Ikirenga

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

Aho icyegeranyo kibarizwa

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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.

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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,

Iyi nimero itangajwe ni iya 10 kuva Icyegeranyo cy'ibyemezo by'Inkiko gitangiye gutangazwa mu 2005, kikaba igitabo cya gatatu muri uyu mwaka. Abanyamategeko muri rusange n'abakoresha amategeko mu kazi kabo ka buri munsi by'umwihariko bakomeje kutugaragariza ko iki cyegeranyo kibafasha kibagezaho imanza z'icyitegererezo bifashisha mu gukemura ibibazo by'amategeko bahura nabyo mu nshingano zabo.

Turacyategereje ariko ko bagira uruhare mu gusohora inyandiko zisesengura zinatanga ibitekerezo ku bibazo by'amategeko bigaragara mu manza zitangazwa muri iki cyegeranyo; ibyo byatuma iki gikorwa kirushaho kugenda neza.

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Muri iyi nimero murasangamo urubanza rureba iyubahirizwa ry'Itegeko Nshinga, urw'Ubutegetsi, imanza z'inshinjabyaha, iz'imbonezamubano, n' iz'ubucuruzi.

CYANZAYIRE Aloysie

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

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IMANZA ZIREBA AMATEGEKO ANYURANYIJE N'ITEGEKO NSHINGA

1. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RS/Inconst/Civ.0001/10/CS
ITARIKI Y'URUBANZA: 18/06/2010
UWATANZE IKIREGO: NZARAMBA Martin (Asaba Urukiko kuvanaho ingingo ya 106, igika cya kabiri, agace ka 1°, y'Itegeko Ngenga n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko kuko inyuranyije n'Itegeko Nshinga n'andi mategeko).

AMAGAMBO MPINE

IMANZA ZIREBA AMATEGEKO ANYURANYIJE N'ITEGEKO NSHINGA -INSHINGANO Y'URUKIKO YO KUGARAGAZA IMPAMVU RWASHINGIYEHO RUCA URUBANZA

UBUBASHA BW'URUKIKO RUKURU BWO KUBURANISHA IMANZA KU RWEGO RW'UBUJURIRE – IMANZA ZACIWE KU RWEGO RWA KABIRI N'URUKIKO RWISUMBUYE ZITAGARAGAZA NA BUSA IMPAMVU ZASHINGIWEHO MU ICIBWA RYAZO

ICYO INGINGO YA 106, IGIKA CYA KABIRI, AGACE KA 1°, Y'ITEGEKO NGENGA N° 51/2008 RYO KUWA 09/09/2008 RIGENA IMITERERE, IMIKORERE N'UBUBASHA BY'INKIKO IGAMIJE – KUDAFATA KO INYURANYIJE N'INGINGO YA 141 IGIKA CYA KABIRI, Y'ITEGEKO NSHINGA

UBUBASHA BW'UMUCAMANZA MU GUSUZUMA NIBA IMIKIRIZE Y'URUBANZA ITAGARAGAZA NA BUSA IMPAMVU ZASHINGIWEHO MU KURUCA

KUDAFATA NK'AHO UMUSHINGAMATEGEKO YANYURANYIJE N'AMASEZERANO MPUZAMAHANGA ASUMBANYA ABABURANYI MU GUTEGENYA IBIGOMBA KUBAHIRIZWA KUGIRA NGO UMUBURANYI AKORE UBUJURIRE BWA KABIRI

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Urubanza rwose rugomba kugaragaza impamvu rushingiweyeho kandi rukandikwa mu ngingo zarwo zose.

- Iyo Urukiko Rwisumbuye rwaburanishije urubanza ku rwego rwa kabiri ntirugaragaze na busa impamvu rwashingiyeho mu kuruca, biba imwe mu mpamvu ituma Urukiko Rukuru rujuririrwa.

- Mu guhitamo ko mu bujurire bwa kabiri hemerwa gusa imanza zitagaragaza na busa impamvu zashingiweho, umushingamategeko yari agamije gukumira imanza nyinshi zinjira muri urwo Rukiko mu gihe zasuzumwe mu nzego ebyiri zazisuzumye mbere. Kuba rero ingingo ya 106 y'Itegeko Ngenga n° 51/2008 iteganya ko Urukiko Rukuru ruburanisha imanza mbonezamubano zajuririwe, zaciwe mu rwego rwa kabiri n'Urukiko Rwisumbuye mu gihe izo manza zitagaragaza na busa impamvu zishingiyeho, ntibyafatwa ko inyuranyije n'ingingo ya 141 igika cya kabiri, y'Itegeko Nshinga, iteganya ko urubanza rwose rwaciwe rugomba kugaragaza impamvu rushingiyeho, ahubwo irayishimangira yerekana ko kuba urubanza rutagaragaza impamvu na busa zashingiweho mu kuruca, ari impamvu ituma ubujurire bwa kabiri bw'umuburanyi utarishimiye iyo mikirize bwakirwa.

- Mu gusuzuma niba urubanza rutagaragaza "na busa" impamvu rushingiyeho, umucamanza abikora mu buryo bwagutse, butamuzitirira gusa ku kuvuga ko nta kantu na gato kagaragajwe mu itangwa ry'impamvu; ahubwo ashobora no kureba niba mu gisa n'impamvu zatanzwe biboneka ko ntaho bitaniye no kudatanga impamvu na "busa". Bityo, igihe hari imikirize yivuguruza ku buryo bukabije kandi bugaragarira buri wese, ku buryo binatuma n'ireme ry'imikirize y'urubanza ubwarwo rihinduka, urwo rubanza ruba rugomba gufatwa nk'urutagaragaza na busa impamvu rushingiyeho.

- Uburinganire bw'ababuranyi nta handi bugomba kureberwa atari ku mahirwe bafite yo gufatwa kimwe no kwisobanura imbere y'umucamanza kandi ku rwego rumwe rw'iburanisha. Bityo, kuba amategeko ateganya ibigomba kubahirizwa kugira ngo umuburanyi akore ubujurire bwa kabiri, ntibyafatwa ko habayeho isumbanya ry'ababuranyi rinyuranyije n'Amasezerano Mpuzamahanga, igihe ababuranyi bari ku rwego rumwe basabwa bimwe.

URUKIKO RW'IKIRENGA RULI I KIGALI, RUBURANISHA IKIREGO CYEREKERANYE NO GUSABA GUKURAHO INGINGO Y'ITEGEKO KUKO INYURANYIJE N'ITEGEKO NSHINGA, RWAKIJIJE MU RUHAME URUBANZA RS/Inconst/Civ.0001/10/CS KUWA 18/06/2010 MU BURYO BUKURIKIRA :

UWATANZE IKIREGO:

NZARAMBA Martin, mwene MUVUZANKWAYA na MUKAGATARE Epiphanie, utuye mu Murenge wa Kinyinya, Akarere ka Gasabo, Umujyi wa Kigali. Ahagarariwe na Me RUTABINGWA Athanase

IKIREGERWA :

Gusaba urukiko kuvanaho ingingo ya 106, igika cya kabiri, agace ka 1°, y'Itegeko Ngenga n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko kuko inyuranyije n'Itegeko Nshinga n'andi mategeko.

I. IMITERERE Y'URUBANZA :

[1] Ku bujurire bwa KAYITESI Doreen, Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza RCA 0101/08/TGI/GSBO kuwa 09/04/2009 rwemeza ko ubutane NZARAMBA Martin yasabye butanzwe kubera amakosa ye yo guta urugo atabiherewe uburenganzira n'icyemezo cy'urukiko , rubagabanya imitungo bafite.

[2] NZARAMBA Martin yajuririye Urukiko Rukuru ku cyicaro cyarwo i Kigali ashingiye ku ngingo ya 106, igika cya , agace ka

1°, y'Itegeko Ngenga *n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko n'iya 147 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kuko ngo ashingiye ku ngingo y'itegeko imaze kuvugwa haruguru asanga urukiko rwaraciye urubanza nta mpamvu na busa rushingiyeho kuko ngo icyaregewe ataricyo cyaciriweho urubanza kuko Urukiko rwemeje ko NZARAMBA atana na Kayitesi ku mpamvu ko NZARAMBA yataye urugo kandi ataricyo cyaregewe, icyari cyaregewe akaba ari uko KAYITESI yahozaga NZARAMBA ku nkeke.*

[3] Me RUTABINGWA uburanira NZARAMBA Martin yasabye ko iburanisha ryasubikwa kugira ngo atange mu Rukiko rw'Ikirenga ikirego gisaba gukuraho ingingo ya 106 y'Itegeko Ngenga n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha bw'inkiko kuko inyuranyije n'ingingo ya 141 , igika cya kabiri, y'Itegeko Nshinga, ikaba na none inyuranya n'amasezerano mpuzamahanga cyane cyane Itangazo Mpuzamahanga ku burenganzira bw'ikiremwamuntu kuko isumbanya ababuranyi imbere y'amategeko.

[4] Urubanza rwaburanishijwe mu ruhame kuwa 19/04/2010, hahamagajwe NZARAMBA Martin n'intumwa ya Leta kugira ngo bagire ibyo basobanura ku kirego cyashyikirijwe Urukiko.

II. IMIGENDEKERE Y'URUBANZA MU RUKIKO RW'IKIRENGA

A. IMIBURANIRE Y'ABABURANYI

1. Ingingo z'uwatanze ikirego

[5] Me RUTABINGWA uburanira NZARAMBA Martin avuga

ko ingingo ya 106 inyuranyije n'Itegeko Nshinga kubera ko iyi ngingo iteganya ko ubujurire bwa kabiri bw'umuburanyi bwakirwa gusa iyo urubanza rujuririwe rutagaragaza na busa impamvu zashingiweho mu kuruca, ibyo bikaba binyuranye n'ibiteganywa n'ingingo ya 141, igika cya kabiri, y'Itegeko Nshinga kuko iyi ngingo isaba umucamanza kugaragaza mu buryo burambuye impamvu zose ashingiraho yanga cyangwa yemera ingingo z'umuburanyi.

[6] Mu gusobanuro ikirego, avuga ko kugaragaza impamvu byonyine bidahagije ahubwo ko izo mpamvu zigomba kuba zifatika, umucamanza ntatange impamvu za nyiraruresha zo kurangiza umuhango gusa. Yasabye Urukiko rw'Ikirenga kwemeza ko igihe umucamanza asuzumye ubujurire bwa kabiri agasanga impamvu zatanzwe zidafatika cyangwa urubanza rwaraciriwe ku kitaregewe, byafatwa ko nta mpamvu zatanzwe.

[7] Me RUTABINGWA avuga kandi ko ingingo ya 106 inyuranyije n'amasezerano mpuzamahanga ateganya ko ababuranyi bagomba kungana imbere y'amategeko kuko isumbanya ababuranyi. Aha yasobanuye ko umuburanyi ujurira ubwa mbere atanga ingingo ze zose, naho ujurira ubwa kabiri, agashyirwaho amananiza (restrictions) amutegeka kujurira gusa iyo nta mpamvu na busa zatanzwe, bivuga ko uwatsinzwe hashingiwe ku mpamvu zidafatika cyangwa zivuga ku kitaregewe nk'uko yabisobanuye haruguru adafite urwinyagamburiro rwo gusubirishamo urubanza rwamurenganyije.

[8] Yarangije asaba Urukiko ko ingingo ya 106 , igika cya kabiri, agace ka 1°, yavanywaho cyangwa ikandikwa mu buryo bunogeye ababuranyi bagana inkiko bashaka ubutabera, abajijwe niba ibyo avuga ko itegeko ridasobanuye neza byaba impamvu yo kuvuga ko rinyuranyije n'Itegeko Nshinga, asubiza

ko icyo baregeye ari uko inyuranyije n'Itegeko Nshinga ariyo mpamvu basaba ko amagambo „ na busa“ akwiye kuvanywa muri iriya ngingo.

2. Uko Intumwa ya Leta ibona ikirego cyatanzwe

[9] Intumwa ya Leta y'u Rwanda , Me RUBANGO Epimaque yahawe ijambo kugira ngo atange igitekerezo ku bivugwa na Me RUTABINGWA, asobanura ko ingingo ya 106 isabirwa kuvanywaho asanga ahubwo yuzuzanya n'ingingo ya 141, igika cya kabiri , y'Itegeko Nshinga aho kunyuranya nayo, kuko iyo ari nta mpamvu na busa Urukiko rwatanze, umuburanyi yemerewe kujurira, naho kuba impamvu zatanzwe zidashimishije umuburanyi akaba ari ikibazo cyabarizwa ahandi. Yavuze ko niba hari ibyakongerwa kuri iriya ngingo ya 106 kugira ngo isobanuke neza byakorwa ariko ko itanengwa kunyuranya n'Itegeko Nshinga.

III. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA N'UKO URUKIKO RUBIBONA

[10] Muri uru rubanza Urukiko rwasuzumye ibibazo bibiri: hari ikibazo cyo kumenya niba ikirego cya NZARAMBA cyujuje ibisabwa kugira ngo cyakirwe, hari n'icyo kumenya niba ingingo ya 106 igika cya kabiri, agace ka mbere, y'Itegeko n° 51/2008 ryo kuwa 09/09/2008,
nyuranyije n'ingingo ya 141, igika cya kabiri, y'Itegeko Nshinga ndetse n'amasezerano mpuzamahanga.

1. Ku byerekeye iyakirwa ry'ikirego n'ububasha bw'Urukiko rw'Ikirenga

[11] Ikirego cya NZARAMBA Martin kigomba kwakirwa kigasuzumwa kuko kiri mu bubasha bw'uru Rukiko hakurikijwe

ibiteganywa n'ingingo ya 89 y'Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu. Ikindi ni uko yagitanze yubahirije ingingo ya 90 y'Itegeko n°01/2004 ryo kuwa 29/01/2004 rimaze kuvugwa kuko yabikoze ku giti cye, afite inyungu mu rubanza aburana n'umugore we KAYITESI Doreen; ikirego cyujuje ibisabwa kuko kiriho itariki n'umukono we, cyerekana kandi ikiregerwa n'impamvu zishingirwaho. NZARAMBA yatanze ku mugereka w'ikirego, kopi y'Igazeti ya Leta irimo ingingo y'itegeko asabira kuvaho nk'uko biteganywa n'amategeko.

2. **Ku byerekeye kumenya niba ingingo ya 106, igika cya kabiri, agace ka mbere, y'Itegeko Ngenga n° 51/2008 ryo kuwa 09/09/2008 inyuranyije n'ingingo ya 141, igika cya kabiri, y'Itegeko Nshinga.**

[12] Ingingo ya 141, igika cya kabiri, y'Itegeko Nshinga iteganya ko "Urubanza rwose rwaciwe rugomba kugaragaza impamvu rushingiyeho kandi rukandikwa mu ngingo zarwo zose".

[13] Ingingo ya 106, igika cya kabiri, agace ka 1°, y'Itegeko Ngenga n° 51/2008 ryo kuwa 09/09/2008 iteganya ko Urukiko Rukuru ruburanisha imanza mbonezamubano zajuririwe, zaciwe mu rwego rwa kabiri n'Urukiko Rwisumbuye mu gihe izo manza zitagaragaza na busa impamvu zishingiyeho mu icibwa ryazo, zishingiye ku Itegeko ritariho cyangwa zwaciwe n'Urukiko rutabifitiye ububasha;

[14] Harebwe ibiteganywa n'ingingo ya 141, igika cya kabiri, y'Itegeko Nshinga, usanga Umushingamategeko yaratanze ihame rusange ry'uko urubanza rwose rugomba kugaragaza impamvu zashingiweho mu gufata icyemezo, naho mu ngingo ya 106 isabirwa kuvanywaho, Umushingamategeko yerekana ibigomba kuzuzwa kugira ngo urubanza rwakirwe

mu Rukiko Rukuru mu bujurire bwa kabiri. Urukiko rurasanga ntaho ingingo y'Itegeko Ngenga ivuguruza iy'Itegeko Nshinga ahubwo iyishimangira yerekana ko kuba urubanza rutagaragaza impamvu na busa zashingiweho mu kuruca, ari impamvu ituma ubujurire bwa kabiri bw'umuburanyi utarishimiye iyo mikirize bwakirwa.

[15] Urukiko rurasanga na none Umushingamategeko ahitamo ko mu bujurire bwa kabiri hakwemerwa imanza zidatanga impamvu na busa zashingiweho mu icibwa ryazo, kwari ugushaka gukumira imanza nyinshi zinjira muri urwo Rukiko, nk'igihe hari hakiriho Urukiko Rusesa Imanza, kandi zarasuzumwe mu nzego ebyiri z'inkiko zaziciye mbere; nibwo rero ateganyije ko imanza zemerewe kwakirwa mu Rukiko Rukuru ari izitagaragaza na busa impamvu zashingiweho mu kuzica. Nyamara mu gusuzuma niba urubanza rutagaragaza „na busa“ impamvu rushingiyeho, umucamanza abikora mu buryo bwagutse, butamuzitirira gusa ku kuvuga ko nta kantu na gato kagaragajwe mu itangwa ry'impamvu; ahubwo akaba yabasha no kureba niba mu gisa n'impamvu zatanzwe biboneka ko ntaho bitaniye no kudatanga impamvu „na busa“.

[16] Muri urwo rwego, mu rubanza RPAA 0067/08/CS Ubushinjacyaha bwaburanaga na NDASHOBOKA Simon, Urukiko rw'Ikirenga mu cyemezo n° RP 0329/08/Pré-ex/CS cy'ibanzirizasuzuma mu rubanza RPAA 0067/08/CS cyo kuwa 14/10/2008, rumaze kubona ko imikirize y'urubanza n° RPA 0168/07/HC/RSZ idasobanura icyashingiweho hemezwa ko nta kimenyetso simusiga gihamya uregwa icyaha akurikiranyweho, rwemeje ko urwo rubanza rutagaragaza na busa impamvu rushingiyeho.

[17] Kuri icyo kibazo, Urukiko rw'Ikirenga na none mu rubanza RCom.AA 0008/05/CS rwo kuwa 26/04/2006 haburana

KAMPIRE Claire, SIBOMANA Eugène na Banque de Kigali S.A (B.K.) no mu rubanza R.SOC AA 0003/06/CS- R.SOC AA 0008/05/CS rwo kuwa 18/01/2007 haburana BRALIRWA SA na MASUMBUKO Jean Bosco, hombi rwemeje ko igihe hari imikirize yivuguruza ku buryo bukabije kandi bugaragarira buri wese, ku buryo binatuma n'ireme ry'imikirize y'urubanza ubwarwo rihinduka, ko urwo rubanza rugomba gufatwa nk'urutagaragaza na busa impamvu rushingiyeho.

3. **Kubyerekeye kumenya niba ingingo ya 106, igika cya kabiri, agace ka mbere, y'Itegeko Ngenga n° 51/2008 ryo kuwa 09/09/2008 inyuranye n'amasezerano mpuzamahanga kuko isumbanya ababuranyi**

[18] Me RUTABINGWA uhagarariye NZARAMBA avuga ko ingingo ya 106**,** igika cya kabiri, agace ka mbere isumbanya ababuranyi ngo kuko ujurira ubwa mbere abikora uko ashaka ntacyo asabwa, naho ujuririra ubwa kabiri agategekwa ibyo agomba kuzuza kugira ngo ikirego cye cyakirwe. Urukiko rurasanga uburinganire bw'ababuranyi nta handi bugomba kureberwa atari ku mahirwe bafite yo gufatwa kimwe no kwisobanura imbere y'umucamanza kandi ku rwego rumwe rw'iburanisha (Droit à un traitement égal devant la juridiction dans une même instance) nk'uko biteganywa n'ingingo ya 14 y'Amasezerano Mpuzamahanga ku byerekeye Uburenganzira mu by'Imbonezamubano na Politiki (Pacte International des Droits Civils et Politiques.

[19] Urukiko rurasanga kuba amategeko ateganya ibigomba kubahirizwa kugira ngo umuburanyi akore ubujurire bwa kabiri, bidasobanura ko Umushingamategeko yashatse kunyuranya n'ibiteganywa n'ingingo ya 11 y'Itegeko Nshinga kuko ababuranyi bari ku rwego rumwe basabwa bimwe hatarebwe, aho umuntu akomoka, ubwoko, ibara ry'umubiri, umuryango, inzu, igisekuru, akarere, idini, ukwemera, umutungo, igitsina n'ibindi.

[20] Muri uru rubanza, hagomba kumvikana ko ingingo y'itegeko isabirwa kuvanwaho idasumbanya abajurira ku rwego rw'ubujurire rwa mbere n'abajurira ku rwego rw'ubujurire rwa kabiri, ahubwo ko ikigenderewe ari ugushaka ko imanza zajya zijuririrwa bwa kabiri ari uko zabonetsemo amakosa akomeye avugwa mu ngingo ya 106, igika cya kabiri, y'Itegeko Ngenga n° 51/2008 ryo kuwa 09/09/2008 ryavuzwe.

[21] Ibyo kuyungurura imanza zijuririrwa mu nkiko nkuru ntibiboneka mu mategeko y'u Rwanda gusa, kuko no mu bindi bihugu hari aho batemera ko imanza zose zijuririrwa ngo zibe zagera mu nkiko zo hejuru. Nko mu gihugu cya Afurika y'Epfo, mu itegeko n° 59 ryo mu 1959 rishyiraho Urukiko rw'Ikirenga mu ngingo yaryo ya 21 irebana n'imanza zijuririrwa muri urwo rukiko, agace ka kane kayo[1] gateganya ko muri rusange imanza mbonezamubano zaciwe n'Inkiko z'Intara zitajuririrwa, agace ka kane b ko kavuga ko iyo bibaye ngombwa ko bikorwa, bigomba kubanza kwemezwa n'Urukiko rwaciye urubanza

cyangwa urwajuririwe. Ibi kandi bigaragara no mu itegeko n° 15 ryo mu 1990, ingingo ya 14, rishyiraho Urukiko rw'Ikirenga rw'Igihugu cya Namibiya[2].

[22] Hakurikijwe ibimaze gusobanurwa haruguru, Urukiko rurasanga ingingo ya 106, igika cya kabiri, agace ka 1° y'Itegeko Ngenga n° 51/2008 ryo kuwa 09/09/2008 ryavuzwe

[1] www.justice.gov.za/legislation/acts/1959-059.pdf , *Supreme Court Act 59 of 1959 (No appeal shall lie against judgment or order of the court of provincial or local division in any civil proceedings or against any judgment or order of that court given on appeal to it except…….in any other case, with the leave of the court against whose judgment or order the appeal is to be made or, where such leave has been refused, with the leave of the appellate division.*

[2] www.superiorcourt.org.na; *Namibia Supreme Court Act, °15 of 1990.*

itanyuranya n'ingingo ya 141, igika cya kabiri, y'Itegeko Nshinga ahubwo ishimangira ihame Inkiko zigenderaho ryo kugaragaza impamvu zashingiyeho zica imanza.

IV. ICYEMEZO CY'URUKIKO

[23] **Rwemeye** kwakira ikirego cya NZARAMBA Martin kuko cyatanzwe mu buryo bukurikije amategeko.

[24] **Rwemeje** ko nta shingiro gifite .

[25] **Rutegetse** NZARAMBA Martin kwishyura amagarama y'urubanza angana na 8.800 Frw, atayatanga mu gihe cy'iminsi munani , agakurwa mu bye ku ngufu za Leta.

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

RUGEGE Sam
Perezida

ABACAMANZA:

MUGENZI Louis-Marie
KAYITESI R. Emily

MUTASHYA Jean Baptiste
MUKAMULISA Marie-Thérèse

NYIRINKWAYA Immaculée
MUKANDAMAGE Marie-Josée

MUKANYUNDO Patricie
RUGABIRWA Ruben

GAKURU Ahmed
Umwanditsi w'Urukiko

IMANZA Z'INSHINJABYAHA

2. URUKIKO RUKURU

N° Y'URUBANZA: RPA 0458/10/HC/Kig
ITARIKI Y'URUBANZA: 25/03/2011
HABURANA: Ubushinjacyaha/ NSENGIYUMVA Joseph; NUBAHA Mathias; INTWARI Eustache; GASANA Venant

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA – UKWEMERA ICYAHA BITINZE – KUTABIFATA NK'IMPAMVU UBWAYO YO KUTAGABANYIRIZWA IBIHANO

ICYAHA CY'UBWAMBUZI BUSHUKANA NK'INGARUKA Z'ICYAHA CYO GUKORA NO GUKORESHA INYANDIKO MPIMBANO – IGIHE BIFATWA KO HABAYE N'ICYAHA CY'UBWAMBUZI BUSHUKANA KU WAKOZE ICYAHA CYO GUKORA NO GUKORESHA INYANDIKO MPIMBANO.

GUKURIKIRANA UWAKOZE ICYAHA CY'UBWAMBUZI BUSHUKANA HAKORESHEJWE INYANDIKO MPIMBANO

UBUBASHA BW'URUKIKO BWO GUTANGA NO KUDATANGA ISUBIKAGIHANO

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Kuba umuburanyi yemeye icyaha bwa mbere kandi yaragiye agihakana mu nzego zose byonyine ntibyatesha agaciro ukwemera kwe ngo bitume atagabanyirizwa ibihano, kuko kwemera icyaha bitinze ubwabyo bitaba

impamvu yo kutagabanyirizwa igihano mu gihe nta gihe ntarengwa cyagenwe cyo kuba uregwa yagarura umutima akemera icyaha.

-Icyaha cyo gukora no gukoresha inyandiko-mpimbano ubwacyo kiba gihagije kugirango habe icyaha cy'ubwambuzi bushukana iyo iyo nyandiko ubwayo yihagije kugirango igire uwo iha uburenganzira kabone n'ubwo yaba yarakozwe n'umwambuzi ku giti cye.

-Mu gihe nyir'ugukora ubwambuzi bushukana ari nawe wakoze inyandiko mpimbano, uretse gukurikiranwaho ubwambuzi bushukana, anakurikiranwaho icyaha cyo gukora inyandiko mpimbano n'icyo kuyikoresha, inyandiko mpimbano yaba yakozwe n'undi muntu mu buriganya, uyu akaba ashobora gukurikiranwaho icyaha cy'inyandiko - mpimbano n'ubufatanyacyaha mu cyaha cy'ubwambuzi bushukana.

-Iyo uwakatiwe ntabindi bihano yaciwe mbere hose by'igifungo kirenga amezi abiri, muri urwo rubanza, inkiko zikoresheje icyemezo gisobanuriwe impamvu, zishobora gutegeka guhagarika irangiza rubanza ku bihano byose biciwe by'iremezo cyangwa by'umugereka, cyangwa kuri bimwe muri byo; ariko kandi ni ngombwa ko igihano cy'iremezo cy'igifungo kitarenga imyaka itanu.

URUKIKO RUKURU RURI I KIGALI KU CYICARO CYARWO GIKURU RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA MU RWEGO RW'UBUJURIRE, RUCIYE MU RUHAME URUBANZA N° RPA 0458/10/HC/Kig KU WA 25/03/2011 MU BURYO BUKURIKIRA:

HABURANA :

UBUSHINJACYAHA

NA

ABAJURIYE :

- NSENGIYUMVA Joseph mwene Zikuze na Mujawimana, wavutse 1975 mu Gihugu cya Congo(RDC), ubu akaba yabarizwaga mu mudugudu w'Umuhoza, Akagari ka kigarama, Umurenge wa Gitega, Akarere ka Nyarugenge, mu Mujyi wa Kigali, akurikiranywe afunzwe by'agateganyo muri Gereza Nkuru ya Kigali.

- NUBAHA Mathias mwene Buhake na Nyirayuhi, wavutse 1976, avukira CUBI mu Karere ka Kamonyi, Intara y'Amajyepho, ubu akaba yabarizwaga mu Murenge wa Kimisagara, Akarere ka Nyarugenge, mu Mujyi wa Kigali, akurikiranywe afunzwe by'agateganyo muri Gereza Nkuru ya Kigali.

- INTWARI Eustache mwene Kubwimana na Nyirahabimana, wavutse 1986 avukira mu Kagari

ka Kamuhoza, Umurenge wa Kimisagara, Akarere ka Nyarugenge, mu Mujyi wa Kigali ni naho atuye, akurikiranywe afunzwe by'agateganyo muri Gereza Nkuru ya Kigali.

- GASANA Venant alias zero faute mwene Ruzindana Faustin na Nyirababiligi, wavutse1978 mu Murenge wa Kigarama, Akarere ka Kicukiro, mu Mujyi wa Kigali ni naho yabarizwaga, akurikiranywe afunzwe by'agateganyo muri Gereza Nkuru ya Kigali.

ICYAHA BAKURIKIRANWEHO:

a)Kuri NSENGIYUMVA Joseph:

- Icyaha cyo gukora no gukoresha inyandiko mpimbano, icyaha giteganywa kandi gihanishwa ingingo ya 202 y'igitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda.
- Icyaha cy'ubwambuzi bushukana giteganywa kandi gihanishwa ingingo ya 428 y'igitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda.
- Icyaha cyo gukwirakwiza amafaranga y'amahimbano, giteganywa kandi gihanishwa ingingo ya 196 y'igitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda.

b) Kuri NUBAHA Mathias:

- Icyaha cyo gukora no gukoresha inyandiko mpimbano, icyaha giteganywa kandi gihanishwa ingingo ya 202

y'igitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda.

- Icyaha cyo kwiyitirira umulimo w'Igihugu adakora giteganywa kandi gihanishwa ingingo ya 217 y'igitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda.
- Icyaha cy'ubwambuzi bushukana giteganywa kandi gihanishwa ingingo ya 428 y'igitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda.

c) Kuri INTWARI Eustache:

- Icyaha cyo gukora no gukoresha inyandiko mpimbano, icyaha giteganywa kandi gihanishwa ingingo ya 202 y'igitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda.
- Icyaha cyo gukwirakwiza amafaranga y'amahimbano, giteganywa kandi gihanishwa ingingo ya 196 y'igitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda.
- Icyaha cy'ubwambuzi bushukana giteganywa kandi gihanishwa ingingo ya 428 y'igitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda.

d)Kuri GASANA Venant:

- Icyaha cyo gukora no gukoresha inyandiko mpimbano, icyaha giteganywa kandi gihanishwa ingingo ya 202 y'igitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda.
- Icyaha cy'ubwambuzi bushukana giteganywa kandi gihanishwa ingingo ya 428 y'igitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda.

I. IMITERERE Y'URUBANZA

1. Ku tariki 8/04/2010, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza RP 0131/09/TGI/NYGE rwemeza ko icyaha cyo gukwirakwiza amafaranga y'Amahimbano, icyaha cyo gukora no gukoresha inyandiko mpimbano n'icyaha cy'ubwambuzi bushukana NSENGIYUMVA Joseph ashinjwa bimuhama, naho GASANA Venant na INTWARI Eustache bakaba bahamwa gusa n'ibyaha byo gukora no gukoresha inyandiko mpimbano n'icyaha cy'ubwambuzi bushukana, rwemeza ko NUBAHA Mathias ahamwa n'ibyaha byose, icyo kwiyitirira umulimo w'Igihugu adakora, gukora no gukoresha inyandiko mpimbano n'icyaha cy'ubwambuzi bushukana; ruhanisha NSENGIYUMVA Joseph, INTWALI Eustache na GASANA Venant igifungo cy'imyaka itandatu (6), naho NUBAHA Mathias akaba ahanishijwe igihano cy'imyaka ine(4), rubategeka kwishyura amagarama y'urubanza.

2. Bose ntibishimiye imikirize y'urwo rubanza, barujuririra mu Rukiko Rukuru.

NSENGIYUMVA Joseph yajuriye ashaka kugaragaza ko yahereye hasi ahakana icyaha ariko abandi akaba yaragiye agaragaza uruhare rwa buri wese, ko uruhare rwe mbere atari yarusobanukiwe neza, none ubu ngo aje kugaragaza uruhare rwe avugisha ukuri kuko mu Rukiko rwa mbereatemeye icyaha neza.

INTWALI Eustache nawe yajuliye ashaka kugaragaza ko yemera uruhare rwe muri bimwe atabayemo umwere nk'icyaha giteganywa n'ingingo ya 202 y'igitabo cy'amategeko, ngo akaba yemera icyaha cyo gukora ariko ntiyakoze icyaha cyo gukoresha; ko ku cyaha cy'ubwambuzi bushukana ntaruhare yakigizemo kuko ntawe yigeze yambura amushutse kandi ntaho yigeze ajyana na NSENGIYUMVA Joseph.

NUBAHA Mathias akaba yarajuriye ashaka kugaragazako ko Urukiko rwa mbere rwamuhanishije ibihano bihanitse rutitaye ku mpamvu nyoroshya cyaha yagaragaje mu rubanza kandi ko Urukiko rutasuzumye impamvu yatanze asaba gusubikirwa.

Naho GASANA Venant akaba yarajuriye ashaka kugaragaza ko yaburanye mbere ahakana none ubu amaze gusoma ingingo ya 91 igika cya 5 y'igitabo cy'amategeko ahana ibyaha mu Rwanda, akaba aburana yemera uruhare yagize rwo guhishira umunyacyaha , ariko ngo yahakanye kuko ntaruhare yagize mu byaha birebana n'ingingo za 202 na 428 y'igitabo cy'amategeko ahana ibyaha mu Rwanda.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

Kuri NSENGIYUMVA Joseph, kumenya niba ukwemera kwe kugomba kwakirwa.

3. Mu bujurire bwe, NSENGIYUMVA Joseph avuga ko asaba imbabazi kuko mu Rukiko rwa mbere ahakana icyaha

kuko bamushizeho ibyaha bitari ibye; ngo yaregwaga inyandiko mpimbano kandi atari we wayikoreshaga ahubwo ari INTWALI Eustache, ko we uruhare rwe ari uko yajyaga kwa INTWALI Eustache kuzana permis maze akazizanira NUBAHA Mathias bakazitanga. Avuga ko yemera ubufatanyacyaha kuri icyo cyaha ndetse ko yemera n'icyaha cy'ubwambuzi bushukana kuko yatangaga za permis azi neza ko zitemewe n'amategeko; avuga ko icyaha cyo gukwirakwiza amafranga y'amahimbano aracyemera, ko ku bijyanye n'amafaranga ya Tanzania niwe wayatwaraga kwa MAGIGI Hamisi nawe akirirwa ayatanga, ngo yaramuvuze arafatwa ariko aza kurekurwa. Asoza avuga ko kuri ibyo byaha byose abisabira imbabazi kandi ko asaba gusubikirwa ibihano kuko arwara umutima, ko kandi afite abana be arera ndetse n'abandi b'imfubyi.

4. Uhagarariye ubushinjacyaha avuga ko NSENGIYUMVA Joseph yemeye icyaha kugirango agabanyirizwe ibihano, ko kuba yarajuriye rero n'uko yabonye atarenga ibimenyetso ubushinjacyaha bwagaragaje; ngo ku cyaha cyo gukora no gukoresha inyandiko mpimbano yemeye ubufatanyacyaha ariko ku cyaha cy'ubwambuzi bushukana ntiyagisobanuye neza ndetse ngo no ku cyaha cyo gukwirakwiza amafranga y'amahimbano ntiyavuze aho ayo mafranga yavaga naho yajyaga.

5. Urukiko rurasanga kuba NSENGIYUMVA Joseph yemera ibyaha akurikiranweho ndetse no mu myanzuro ye

akaba yaragaragaje uruhare rwe mu mikorere y'ibyo byaha, akanagaragaza abo babifatanyije; kuba kandi uko yasobanuye imikorere y'icyaha kubijyanye n'uruhare rwe bihura n'imvugo z'abandi uko nabo basobanuye uruhare rwa NSENGIYUMVA Joseph, Urukiko rurasanga ukwemera kwe kugomba kwakirwa; kuba kandi aribwo bwa mbere yemera ibyo byaha n'ubwo yagiye abihakana mu nzego zose, ibyo bitavanaho ukwemera kwe; ibyo bikaba bishimangirwa n'urubanza **RPA 0282/08/CS rwaciwe n'Urukiko rw'Ikirenga tariki 12/03/2010 (§16 p.20)** aho rwasanze ko kwemera icyaha bitinze bitaba ubwabyo impamvu yo kutagabanyirizwa igihano guteganywa mu ngingo ya 35 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha, kuko nta gihe ntarengwa cyayigenwemo cyo kuba uregwa yagarura umutima akemera icyaha.

6. Urukiko rero rurasanga hashingiwe ku ngingo ya 35 y'Itegeko n°13/2004 ryo ku wa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kandi ryujujwe kugeza ubu, hashingiwe no ku gihano cy'igifungo cy'imyaka itandatu yahawe n'Urukiko rwisumbuye rwa Nyarugenge, NSENGIYUMVA Joseph agomba guhanishwa igihano cy'igifungo cy'imyaka ine.

Naho kubyerekeranye isubika gihano yasabye, hashingiwe ku nyandiko ikubiyemo ikirego (acte d'accusation) yakozwe n'ubushinjacyaha aho ku mwirondoro wa NSENGIYUMVA Joseph bugaragaza ko yigeze guhanishwa igihano cy'imyaka

itanu n'Inkiko z'u Rwanda; hashingiwe kandi ku ngingo ya 97 y'igitabo cy'amategeko ahana ibyaha mu Rwanda, uru Rukiko rurasanga nta subika gihano agomba guhabwa.

Kuri INTWALI Eustache, kumenya niba ukwemera kwe kugomba kwakirwa, no kumenya kandi niba icyaha cy'ubwambuzi bushukana kimuhama kubera ko ari ingaruka y'icyaha cyo gukora no gukoresha inyandiko mpimbano.

7. Mu bujurire bwe, INTWARI Eustache avuga ko asaba imbabazi kuko yabanje kurushya Urukiko ku rwego rwa mbere, ngo uruhare rwe ni uko inyandiko nyinshi ziri muri dosiye zakorwaga n'imashini ariwe wazikoraga zose maze NSENGIYUMVA Joseph akaza kuzifata. Avuga kandi ko ibindi byaha ntabyo yakoze, ko asaba imbabazi kuko atazongera gukora icyo cyaha, ko yifuza gusubira mw'ishuri aho yari ageze mu mashuri makuru.

8. Uhagarariye ubushinjacyaha avuga ko bitumvikana ukuntu INTWARI Eustache atazi icyo izo nyandiko mpimbano zakoreshwaga, ko uburyo yemera icyaha bitasobanutse.

9. INTWALI Eustache yongeye asobanura ko ibyo yakoraga yabaga azi ibyo yakoze binyuranye n'amategeko ariko ngo aho byajyaga gukoreshwa ntiyahamenyaga rwose; ko uruhare rwe rwari ugukora izo nyandiko mpimbano kandi akaba abisabira imbabazi.

10. Urukiko rurasanga INTWARI Eustache yemera icyaha cyo gukora no gukoresha inyandiko mpimbano, ariko hashingiwe ku ngingo ya 35 y'Itegeko n°13/2004 ryo ku wa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kandi ryujujwe kugeza ubu, uru Rukiko rurasanga ukwemera kwe kutagomba kwakirwa kuko atasobanuye mu buryo bwumvikana uburyo yakoze icyo cyaha ndetse akaba aterekana ubufatanye bwe n'abandi mu mikorere y'acyo.

11. Kubyerekeranye n'icyaha cy'ubwambuzi bushukana, ingingo ya 428 y'igitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda iteganya ko: «*Umuntu wese, abigiliye kwambura icy'undi, uzaba watumye bamuha amafranga, ibintu by'imukanwa(...), ali uko yiyise amazina atali aye, cyangwa yiyitiliye umwanya adafite, ali uko akoresheje amaliganya yubwambuzi agirango yemeze imilimo adafite, ububasha(…)akaba yarambuye undi imali ye yose cyangwa igice cyayo, azahanishwa igifungo kuva ku mezi atatu kugera ku myaka itanu n'ihazabu y'amafaranga atarenga ibihumbi makumyabili , cyangwa kimwe muli ibyo bihano(…)*».

12. Mu gushaka kumenya niba icyaha cyo gukora no gukoresha inyandiko-mpimbano ubwacyo gihagije kugirango habe icyaha cy'ubwambuzi bushukana, Urukiko rwifashishije umuhanga mu by'amategeko

Michel VÉRON (<u>Droit pénal spécial</u>, 6ème édition, éditions Dalloz, Janvier 1998, p.209) wasobanuye ko kwerekana inyandiko (la production de documents écrits) nibwo buryo bukunze gukoreshwa n'umwambuzi ushukana mu gushaka guha agaciro ibinyoma bye. Rimwe na rimwe izo nyandiko ziba ubwazo ari ukuri ariko zitakoreshejwe icyo zari zigenewe. Akenshi ziba ari inyandiko zakozwe (documents fabriqués), zahimbwe (contrefaits) cyangwa zahinduwe (falsifiés) n'abandi cyangwa se n'uwo mwambuzi ushukana ubwe. Ntihitabwa cyane kuri kamere y'iyo nyandiko, yaba ikubiyemo uburenganzira cyangwa butarimo, ntihitabwa cyane na none ku nkomoko yayo, yaba yarakozwe n'umutegetsi cyangwa umuntu ku giti cye, ntihitabwa na none cyane kuburyo iyo nyandiko yakozwe, haba mu biyigize (faux intellectuel) cyangwa mu myandikire (faux matériel); cyakora byitwa ubwambuzi bushukana iyo iyo nyandiko ubwayo yihagije kugirango igire uwo iha uburenganzira kabone n'ubwo yaba yarakozwe n'umwambuzi ku giti cye (...Si l'écrit produit vaut titre par lui-même et suffit à créer des droits il y a escroquerie, même si le document falsifié est établi par l'escroc personnellement....).

13. Uwo muhanga mu by'amategeko akomeza asobanura ko mu gihe nyir'ugukora ubwambuzi bushukana ari nawe wakoze inyandiko mpimbano, uretse gukurikiranwaho ubwambuzi bushukana, azanakurikiranwaho icyaha cyo gukora inyandiko mpimbano n'icyo kuyikoresha.

-Mu gihe iyo nyandiko mpimbano yakozwe n'undi muntu mu buriganya, uyu ashobora gukurikiranwaho icyaha cy'inyandiko mpimbano n'ubufatanyacyaha mu cyaha cy'ubwambuzi bushukana (...si le faux est l'oeuvre d'un tiers de mauvaise foi, celui ci pourra être poursuivi pour faux et complicité d'escroquerie); rero mu guhuza ibimaze gusobanurwa n'ibikorwa byakozwe na INTWALI Eustache, Urukiko rurasanga ubufatanyacyaha mu cyaha cy'ubwambuzi bushukana kimuhama, bityo hashingiwe ku ngingo za 89 na 91 igika cya 3 z'igitabo cy'amategeko ahana ibyaha mu Rwanda, akaba agomba kugihanirwa nkuko byemejwe n'Urukiko Rwisumbuye rwa Nyarugenge.

Kuri NUBAHA Mathias, kumenya niba umucamanza wa mbere yaritaye ku ukwemera kwe kandi niba haritawe kw'isabwa ry'isubika-gihano.

14. Mu bujurire bwe, NUBAHA Mathias avuga ko mu rubanza rwaciwe mu Rukiko rubanza (p.11, §33) umucamanza yavuze ko yafashije ubutabera, ko kuba kandi ibyaha aregwa baravuze ko ari impurirane y'imbonezamugambi yari guhanishwa ikinini muri byo aricyo inyandiko mpimbano, ngo rero akibaza impamvu yasabiwe gufungwa imyaka umunani (8), ikagabanywa ikageza kuri ine (4) nyamara bagenzi be barimo n'abatemera icyaha barahawe imyaka itandatu y'igifungo. Akomeza avuga kandi ko hirengagijwe ko ari ubwa mbere ahamwe n'icyaha kandi afunzwe, ko

umucamanza wa mbere yirengagije kandi impamvu yatanze asaba gusubikirwa ibihano kuko ntacyo yabivuzeho mu rubanza; asaba uru Rukiko gusuzuma impamvu yari yatanze asaba gusubikirwa ibihano kuko anafite abana arera b'imfubyi.

15. Uhagarariye ubushinjacyaha avuga ko NUBAHA Mathias yemeye icyaha kuva mbere, ko hitawe ku rupapuro rwa 12 rw'urubanza rwajuririwe, umucamanza yasobanuye neza uburyo yamugabanyirije igihano kuko ingingo ya 202 y'igitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda ivuga ko icyaha NUBAHA Mathias aregwa gihanishwa kuva ku myaka itanu kugeza kw'icumi; ngo kubirebana n'isubika-gihano niba umucamanza wa mbere atarabivuze ntibyatuma urubanza rwa mbere ruhinduka. Asaba ko mu bushishozi bw'Urukiko NUBAHA Mathias yagabanyirizwa agahabwa igifungo cy'imyaka ibiri (2).

16. Urukiko rurasanga NUBAHA Mathias yaremeye ibyaha akurikiranweho mu nzego zose yagiye abarizwamo ndetse no mu iburanisha mu Rukiko rubanza akaba yarasobanuye imikorere y'ibyaha ku buryo budashidikanwaho, arinabyo umucamanza wa mbere yashingiyeho amugabanyiriza ibihano nkuko yabisobanuye mu rubanza ku rupapuro rwa 11-12 mu gace ka 33; Urukiko rurasanga ariko, nkuko bikubiye mu mwanzuro wa NUBAHA Mathias yashikirije Urukiko rubanza aho yasabaga isubika-gihano, umucamanza atarasobanuye ngo agaragaze impamvu atatanze iryo subika-gihano.

17. Ingingo ya 97 y'igitabo cy'amategeko ahana ibyaha mu Rwanda iteganya ko: «*Iyo uwakatiwe ntabindi bihano yaciwe mbere hose by'igifungo kirenga amezi abili, muli urwo rubanza, inkiko zikoresheje icyemezo gisobanuliwe impamvu, zishobora gutegeka guhagalika irangiza rubanza ku bihano byose biciwe by'iremezo cyangwa by'umugereka, cyangwa kuli bimwe muli byo; aliko kandi ni ngombwa kw'igihano cy'iremezo cy'igifungo kitarenga imyaka itanu*».

18. Hashingiwe ku nyandiko ikubiyemo ikirego (acte d'accusation, cote 124) yakozwe n'ubushinjacyaha, mu gice kya mbere kyerekeranye n'umwirondoro wa NUBAHA Mathias , bigaragara ko atigeze akurikiranwa mu nzego z'ubutabera; bityo hakurikijwe ingingo yavuzwe haruguru Urukiko rurasanga agomba gusubikirwa ibihano byaciwe n'Urukiko Rwisumbuye rwa Nyarugenge mu rubanza RP 0131/09/TGI/NYGE, ariko hagasubikwa gusa igifungo cy'imyaka ibiri, n'ukuvuga ko agomba gufungwa imyaka ibiri (2), ariko na none akaba atagomba gukora icyaha mu gihe cy'imyaka ine (période de suspension).

Kuri GASANA Vénant kumenya niba ukwemera kwe kugomba kwakirwa.

19. Mu bujurire bwe GASANA Vénant avuga ko mu Rukiko rubanza ntiyamenye kuburana neza, ko icyaha aregwa cy'ubufatanyacyaha acyemera
kuko yahishiriye NUBAHA Mathias; avuga ko asaba

imbabazi Urukiko ko mu kazi ke k'ubushoferi bwa taxi-voiture azajya ashishoza akamenya abo atwara, asoza asaba kugabanyirizwa ibihano kubera impamvu z'uburwayi afite.

20. Uhagarariye ubushinjacyaha avuga ko GASANA Vénant yemeye icyaha mu rwego rw'ubujurire, ko atagombye kugabanyirizwa ibihano.

21. Urukiko rurasanga GASANA Vénant yemera ubufatanyacyaha ku cyaha cyo gukora no gukoresha inyandiko mpimbano n'icyaha cy'ubwambuzi bushukana, ariko hashingiwe ku ngingo ya 35 y'Itegeko n°13/2004 ryo ku wa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kandi ryujujwe kugeza ubu, uru Rukiko rurasanga ukwemera kwe kutagomba kwakirwa ngo agabanyirizwe ibihano kuko n'ubwo avuga ko yamenye ibyo bikorwa akabihishira, akavuga ko atigeze afatanya na NUBAHA Mathias mu gukora ibyaha bakurikiranweho kuko we yakoreraga amafranga mu kazi ke k'ubushoferi; nyamara Urukiko rurasanga NUBAHA Mathias yaramushinje agaragaza uruhare rwe mu mikorere y'ibyo byaha ndetse akanasobanura uburyo bakoranye inshuro nyinshi; rero rugasanga atarakoze ubufatanyacyaha gusa nkuko abisobanura ahubwo nawe yarabaye gatozi (auteur**)** mu bikorwa bigize ibyaha bakurikiranweho; bityo ibihano yahawe n'Urukiko rubanza bikaba bigumyeho.

III. ICYEMEZO CY'URUKIKO

Urukiko Rukuru:

22. Rwemeje ko ubujurire bwatanzwe na NSENGIYUMVA Joseph na NUBAHA Mathias bufite ishingiro kuri bimwe; ko ubujurire bwatanzwe na INTWALI Eustache na GASANA Vénant nta shingiro bufite;

23. Rwemeje ko urubanza RP 0131/09/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge kuwa 08/04/2010 ruhindutse kuri bimwe;

24. Ruhanishije NSENGIYUMVA Joseph igihano cy'igifungo cy'imyaka ine (4), ruhanishije NUBAHA Mathias igihano cy'igifungo cy'imyaka ibiri (2), ruhanishije INTWALI Eustache na GASANA Vénant buri wese igihano cy'igifungo cy'imyaka itandatu (6);

25. Rubategetse gufatanya kwishyura amagarama y'urubanza ahwanye n'amafaranga 60.750, buri wese agatanga amafaranga 15.187, batabikora mu gihe gitegetswe n'amategeko, agakurwa mu byabo ku ngufu za Leta.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME NONE KU WA 08/04/2011 N'URUKIKO RUKURU RUGIZWE NA BWIZA N. BLANCHE (UMUCAMANZA), HARI N'UMWANDITSI IMANIRAHARI Jérôme.

(Sé)	(Sé)
IMANIRAHARI Jérôme	BWIZA N. Blanche.
Umwanditsi	Umucamanza

3. URUKIKO RUKURU

N° Y'URUBANZA: RPA 0900/10/HC/KIG
ITARIKI Y'URUBANZA: 04/02/2011

HABURANA: Ubushinjacyaha/ KABANDANA Marc;
MUGISHA Faustin; RWAKA Dominique;
MBABAZI Annet;
BUTERA Robert;
MUPENZI Samuel ;KAGAME Steven;
SHYAKA Gerard;
BAZATSINDA Alexis;
KWIRINGIRA Stephen;
MUGABO Richard

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA – UBUBASHA BW'ABABURANYI BWO GUTANGA NO KUREKA IBIREGO

UBUBASHA BW'UBUSHINJACYAHA BWO GUKURIKIRANA CYANGWA KUDAKURIKIRANA UWAKOZE ICYAHA

UBUBASHA BW'UBUSHINJACYAHA BWO KUREKA UBUJURIRE – UKUDAFATWA NK'AHO KWASABWE N'URWO RWEGO IGIHE BYAKOZWE N'UMUSHINJACYAHA UBWE KU GITI CYE WARI URI MURI URWO RUBANZA – KUTAKWAKIRA

GUKORESHA ITEGEKO RYEREKEYE IMIBURANISHIRIZE Y'IMANZA Z'IMBONEZAMUBANO, IZ'UBUCURUZI, IZ'UMURIMO N'IZ'UBUTEGETSI MU GIHE NTA YANDI MATEGEKO ATEGANYIJWE

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Ababuranyi nibo batanga ibirego, kandi bakagira uburenganzira bwo kubihagarika igihe cyose urubanza rutaracibwa cyangwa ngo ikirego kizime ku bw'itegeko.

- Ubushinjacyaha nibwo bureba niba bukwiye cyangwa budakwiye gukurikirana uwakoze icyaha (opportunité de poursuite). Muri uko guhitamo gukurikirana cyangwa kudakurikirana, nta kibuza ko n'ubwo Ubushinjacyaha bwaba bwaregeye Urukiko, ariko bugasanga bitakiri ngombwa gukomeza gukurikirana uwakekwaga, bwareka ikirego.

- Kureka ubujurire bw'Ubushinjacyaha birashoboka mu gihe nta tegeko ribibuza. Nyamara, mu kuvuga ko aretse ubujurire bwari bwatanzwe, iyo Umushinjacyaha atagaragaje ko ari ibyo yatumwe n'ufite ububasha bwo kuvuga mu izina ry'urwo rwego, ahubwo akabivuga mu magambo nk'Umushinjacyaha ubwe wari urimo kuburana urwo rubanza, ntibyafatwa nk'aho ari icyemezo cy'urwego rw'Ubushinjacyaha, bityo uko kureka ikirego kukaba kutakwemerwa.

- Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ni naryo rigenga imiburanishirize y'izindi manza mu gihe nta yandi mategeko yihariye ateganyijwe.

URUBANZA RUBANZIRIZA URUNDI

URUKIKO RUKURU, RURI I KIGALI KU CYICARO CYARWO, RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA, RUCIYE MU RUHAME URUBANZA RUBANZIRIZA URUNDI MU RUBANZA RPA 0900/10/HC/KIG NONE TARIKI YA 04/02/2011, MU BURYO BUKURIKIRA:

HABURANA:

UBUSHINJACYAHA : Buhagarariwe na MUKURARINDA Alain Bernard, Umushinjacyaha ku rwego rw'Igihugu

ABASHINJWA: KABANDANA Marc, mwene GASASIRA na KABAGWIZA, wavutse mu mwaka wa 1964, avukira ahitwa NGOZI ho mu Burundi, atuye mu Kagali ka RUGANDO, Umurenge wa KIMIHURURA, Akarere ka GASABO, Umujyi wa Kigali, yari Umuyobozi mukuru w'Ikigo cya RIAM.

MUGISHA Faustin, mwene BASEBYA Bernard na NUMUKOBWA Bernadette, wavutse mu mwaka wa …., I MBARARA muri UGANDA, atuye mu Mudugudu

wa GASARABA, Akagali ka NONKO, Umurenge wa NYARUGUNGA, Akarere ka KICUKIRO, Umujyi wa KIGALI.

NKUBITO Fidèle, mwene RWIYINGABO François na KAMPIRE Joy, wavutse mu mwaka wa 1974, mu Gihugu cya Uganda, abarizwa mu Murenge wa NYARUGUNGA, Nonko, mu Karere ka Kicukiro, Umujyi wa Kigali, yari umukozi mu Inyange Industries.

RWAKA Dominique, mwene NYAMAKWA Dismas na KANKINDI, wavutse 1960, mu BIRAMBO, ku KIBUYE, atuye mu Murenge wa KIMIHURURA, Akarere ka GASABO, Umujyi wa KIGALI, Umwubatsi.

MBABAZI Annet, mwene KALISA Evariste na MUPFASONI Marie, utuye Umudugudu w'Amahoro, Akagali ka NONKO, Umurenge wa NYARUGUNGA, Akarere ka KICUKIRO, Umujyi wa Kigali, yari Umucungamutungo muri RIAM.

BUTERA Robert, mwene MUSAYA na MUKAMUSONI, wavutse mu mwaka wa

1954, avukira mu Gihugu cya UGANDA, akaba abarizwa mu Kagali ka NONKO, Umurenge wa NYARUGUNGA, Akarere ka KICUKIRO, Umujyi wa Kigali.

MUPENZI Samuel, mwene KANYEJWI Alphonse na KANGENEYE Jeovanie, wavutse mu mwaka wa 1959, ubarizwa mu Kagali ka NONKO, Umurenge wa NYARUGUNGA, Akarere ka KICUKIRO, Umujyi wa Kigali.

KAGAME Steven, mwene HIGIRO na MUKAGATARE, wavutse mu mwaka wa 1980, atuye mu Murenge wa MUHAZI, Akarere ka RWAMAGANA, Intara y'Iburasirazuba.

SHYAKA Gerard, mwene KANINGWA Joseph na MUKANDANGA, wavutse mu mwaka wa 1961, atuye mu Murenge wa KIZINGURO, Akarere ka GATSIBO, Intara y'Uburasirazuba.

BAZATSINDA Alexis, mwene KAYENZI na KANGENEYE, wavutse mu mwaka wa 1965,

atuye mu Murenge wa MASAKA, Akarere ka KICUKIRO, Umujyi wa KIGALI.

KWIRINGIRA Stephen, mwene MUGWIZA na NYIRABUTUNTU, wavutse mu mwaka wa 1962, atuye mu Murenge wa GIKONDO, mu Karere ka KICUKIRO, Umujyi wa KIGALI.

MUGABO Richard, mwene GASANGWA Pierre na MUTETELI Alice, wavutse mu mwaka 1962, i TORO mu Gihugu cya Uganda, atuye mu Murenge wa KANOMBE, Akarere ka KICUKIRO, Umujyi wa KIGALI.

IBYAHA BAREGWA: Kuri KABANDANA Marc, MUGISHA Faustin na MBABAZI Annet : kunyereza umutungo wa Leta, kutamenyekanisha umutungo ku Rwego rw'Umuvunyi, kwica amategeko agenga amasoko ya Leta.

Kuri RWAKA Dominique, BUTERA Robert, NKUBITO Fidèle, MUPENZI Samuel, KAGAME Steven, SHYAKA Gerard, BAZATSINDA Alexis,

RWIRINGIRA Stephen, MUGABO Richard : ubufatanyacyaha mu cyaha cyo kunyereza umutungo.

<u>IKIBURANWA</u>: Ubujurire bw'urubanza RP 0785/09/TGI/NYGE.

I. IMITERERE Y'URUBANZA

1. Ubushinjacyaha bwareze KABANDANA Marc, MUGISHA Faustin, MBABAZI Annet, RWAKA Dominique, BUTERA Robert, NKUBITO Fidèle, MUPENZI Samuel, KAGAME Steven, SHYAKA Gerard, BAZATSINDA Alexis, KWIRINGIRA Stephen, MUGABO Richard mu Rukiko Rwisumbuye rwa NYARUGENGE, rurega bamwe icyaha cyo kunyereza umutungo wa Leta, kutamenyekanisha umutungo ku Rwego rw'Umuvunyi no kwica amategeko agenga amasoko, abandi baregwa nk'abafatanyacyaha ku cyaha cyo kunyereza umutungo wa Leta.

2. Urukiko rwaburanishije KABANDANA Marc, MUGISHA Faustin, MBABAZI Annet, RWAKA Dominique, BUTERA Robert, NKUBITO Fidèle bahari, naho MUPENZI Samuel, KAGAME Steven, SHYAKA Gerard, BAZATSINDA Alexis, KWIRINGIRA Stephen na MUGABO Richard baburanishwa nk'abatorotse ubutabera. KABANDANA Marc yahamwe n'icyaha

cyo kunyereza umutungo wa Leta n'icyaha cyo kwica amategeko agenga amasoko ya Leta, ahanishwa igifungo cy'imyaka itanu n'amezi atandatu n'ihazabu y'amafaranga ibihumbi Magana abiri na mirongo itanu, MUGISHA Faustin ahamwa n'icyaha cyo kunyereza umutungo wa Leta n'icyo kutamenyekanisha umutungo ku rwego rw'Umuvunyi, ahanishwa igifungo cy'imyaka itanu n'amezi atandatu n'ihazabu y'amafaranga ibihumbi Magana abiri na mirongo itanu naho MBABAZI Annet ahamwa n'icyaha cyo kunyereza umutungo wa Leta, ahanishwa igifungo cy'imyaka itanu n'amezi atandatu n'ihazabu y'amafaranga ibihumbi makumyabiri na bitanu. RWAKA Dominique, BUTERA Robert, NKUBITO Fidèle MUPENZI Samuel, KAGAME Steven, SHYAKA Gerard, BAZATSINDA Alexis, KWIRINGIRA Stephen na MUGABO Richard bahamwe n'icyaha cy'ubufatanyacyaha mu kunyereza umutungo wa Leta, RWAKA Dominique, BUTERA Robert, NKUBITO Fidèle bahanishwa igifungo cy'imyaka itanu n'amezi atandatu n'ihazabu y'amafaranga ibihumbi makumyabiri na bitanu, naho MUPENZI Samuel, KAGAME Steven, SHYAKA Gerard, BAZATSINDA Alexis, KWIRINGIRA Stephen na MUGABO Richard bahanishwa igifungo cy'imyaka irindwi n'amezi atandatu n'ihazabu y'amafaranga ibihumbi makumyabiri na bitanu.

3. Ubushinjacyaha ntibwishimiye iyo mikirize, buyijuririra muri uru Rukiko, bwandikwa kuri RPA 0971/10/HC/KIG.

4. KABANDANA Marc, MUGISHA Faustin, MBABAZI Annet, RWAKA Dominique, NKUBITO Fidèle na BUTERA Robert ntibishimiye imikirize y'urubanza, bayijuririra muri uru Rukiko, ubujurire bwandikwa kuri RPA 0900/10/HC/KIG, RPA 0865/10/HC/KIG, RPA 0871/10/HC/KIG, RPA 0840/10/HC/KIG, RPA 0891/10/HC/KIG na RPA 0869/10/HC/KIG.

5. Urubanza rwahamagawe ku wa 11/01/201, Urukiko rusanga MUPENZI Samuel, KAGAME Steven, SHYAKA Gerard, BAZATSINDA Alexis, KWIRINGIRA Stephen na MUGABO Richard, Ubushinjacyaha bwareze mu bujurire, batitabye, batanarahamagajwe, Umushinjacyaha avuga ko atari ngombwa ko bahamagazwa kuko Ubushinjacyaha buretse ubwo bujurire. Urubanza rwimuriwe ku yindi tariki kugira kubera ko hari abatari bafite ababunganira basabye ko rwimurwa, hemezwa ko kuri iyo tariki aribwo ibyo Umushinjacyaha avuga ko Ubushinjacyaha buretse ubujurire bizasumwa. Hagomba gusuzumwa niba Umushinjacyaha ashobora kureka Ubujurire.

II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA

IBYEREKEYE KUMENYA NIBA AMATEGEKO YEMERARA UMUSHINJACYAHA KUREKA UBUJURIRE BWAKOZWE N'UBUSHINJACYAHA.

6. Umushinjacyaha avuga ko atari ngombwa ko MUPENZI Samuel, KAGAME Steven, SHYAKA Gerard, BAZATSINDA Alexis, KWIRINGIRA Stephen na MUGABO Richard bahamagazwa, kuko n'ubwo Ubushinjacyaha bwari bwajuriye, ubwo bujurire aburetse.

7. Urukiko rurasanga iki kibazo cyakemurwa hasesengurwa amategeko, kuko ntacyo itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ku byerekeranye kureka ikirego. Ariko hifashishijwe ingingo ya mbere y'itegeko n° 18/2004 ryo ku wa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, nk'uko ryujujwe kandi ryahinduwe kugeza ubu, ivuga ko iri tegeko rigenga imiburanishirize y'izindi manza mu gihe nta yandi mategeko yihariye ayigengenga, ni ngombwa kureba niba ibiteganywa n'iri tegeko ku byerekeye kureka ibirego, byakemura iki kibazo.

8. Ingingo ya 3 y'itegeko rivugwa mu gika kibanziriza iki,

ivuga ko ababuranyi aribo batanga ibirego, kandi bakagira uburenganzira bwo kubihagarika igihe cyose urubanza rutaracibwa cyangwa ngo ikirego kizime ku bw'itegeko. Mu manza z'inshinjabyaha, ingingo ya 2 y'itegeko n° 13/2004 ryo ku wa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, nk'uko ryujujwe kandi ryahinduwe kugeza ubu, ivuga ko ikirego cy'ikurikiranacyaha gikurikiranwa n'Ubushinjacyaha. Ubushinjacyaha kandi nibwo bureba niba bukwiye cyangwa budakwiye gukurikirana uwakoze icyaha, aribyo byitwa mu rurimi rw'igifaransa "opportunité de poursuite". Aha niho mu Bihugu bimwe bahera bavuga ko muri uko guhitamo gukurikirana cyangwa kudakurikirana, nta kibuza ko n'ubwo Ubushinjacyaha bwaba bwaregeye Urukiko, ariko bugasanga bitakiri ngombwa gukomeza gukurikirana, bwareka ikirego, aribyo byitwa "décision de nolle prosequi"[3]. Ndetse no mu Gihugu cy'Ubufaransa, basanzwe bavuga ko Ubushinjacyaha budashobora kureka ikirego, hari icyemezo cy'Urukiko Rusesa Imanza rw'Ubufaransa, kigaragaza ko kureka ubujurire bw'Ubushinjacyaha (appel principal) bishoboka, kuko muri icyo cyemezo, rwavuze ko mu gihe nta tegeko ribuza Ubushinjacyaha kureka ubujurire bwabwo, bushobora no kwisubiraho mu gihe kureka ikirego kwari kutarakirwa (Elle (la Cour de Cassation) considère "que, si aucune disposition légale n'interdit au ministère public de se désister de son

3 Stefani G. et al, Procédure Pénale, Précis Dalloz, onzième édition, Paris 1980, p430, n° 410.

appel principal, ce désistement peut être rétracté, …"[4]. Ariko biragaragara ko uru rwego rw'Ubushinjacyaha, kuko arirwo muburanyi, ari narwo rwaba rufite ububasha bwo kureka ikirego. Muri uru rubanza, Ubushinjacyaha ni bwo bwatanze ikirego cy'ubujurire. Nyamara Umushinjacyaha, mu kuvuga ko aretse ubujurire bwari bwatanzwe, ntagaragaza ko ari ibyo yatumwe n'ufite ububasha bwo kuvuga mu izina ry'urwo rwego, ni ukuvuga uhagarariye Ubushinjacyaha. Ahubwo yabivuze mu magambo nk'Umushinjacyaha wari urimo kuburana urwo rubanza, kandi ibyo Umushinjacyaha avuze mu magambo, mu gihe bitandukanye n'ibyanditse, aba abivuze nk'igitekerezo cye, afitiye n'uburenganzira bwo gutanga mu iburanisha, ntaba abivuze nk'uwabitumye n'abamukuriye mu kazi, hashingiwe ku ihame ryo mu rurimi rw'igifaransa rivuga ngo "la plume est serve, mais la parole est libre". Bityo ibyo ibyo Umushinjacyaha avuga ko aretse ubujurire bikaba bitafatwa nk'aho ari iby'Urwego rw'Ubushinjacyaha, bityo uko kureka ikirego kukaba kudakwiye kwemerwa, kuko kwakozwe n'umuntu utabifitiye ububasha.

4 Note de Annabelle Couilleaux, intitulé « la rétractation du désistement de l'appel principal demeure possible tant que la juriridiction du second degré n'en a pas donné acte, tirée lue sur la page web :http://www.legalnewsnotaires.com/index.php?option=com_content&view=article&id=187028&catid=921:marches-publics&Itemid=361, ce 2/2/2011.

III. ICYEMEZO CY'URUKIKO

9. Rwemeje ko kureka ikirego kwakozwe n'Umushinjacyaha kutakiriwe.
10. Rutegetse ko iburanisha rikomeza no kuri MUPENZI Samuel, KAGAME Steven, SHYAKA Gerard, BAZATSINDA Alexis, KWIRINGIRA Stephen na MUGABO Richard, Umushinjacyaha yari yavuze ko aretse ubujurire bwabo.

NI UKO RUCIWE KANDI RUSOMEWE MU RUHAME NONE KU WA 04/02/2011 N'URUKIKO RUKURU RUGIZWE NA HITIMANA Jean-Marie Vianney (PEREZIDA), BWIZA NYANZIGA Blanche na NZAMUYE Jean-Marie Vianney (ABACAMANZA), BAFASHIJWE NA MUREKATETE Bernadette, UMWANDITSI.

UMUCAMANZA	**PEREZIDA**	**UMUCAMANZA**
(Sé)	**(Sé)**	**(Sé)**
NZAMUYE Jean-Marie Vianney	**HITIMANA Jean-Marie Vianney**	**BWIZA NYANZIGA Blanche**

Umwanditsi

(Sé)

MUREKATETE Bernadette

IMANZA Z'IMBONEZAMUBANO

4. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCAA 0050/09/CS
ITARIKI Y'URUBANZA: 09/07/2010
HABURANA: Succession Abdallahaman SADALA/ KAZENEZA Théophile

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO – INSHINGANO Y'UMUBURANYI YO GUTANGA INGWATE Y'AMAGARAMA MU ITANGWA RY' IKIREGO

ITANGWA RY'AMAGARAMA IYO ITSINDA RY'ABABURANYI RIREGA CYANGWA RIREGWA MU RUBANZA – INSHINGANO YO KWISHYURA INGWATE Y'AMAGARAMA KURI BURI WESE MU BARIGIZE

UKUTABA NGOMBWA KO URUKIKO RWAJURIRIWE RUSUZUMA INENGE ZABAYE KU NZEGO ZIBANZA MU RUBANZA RWAJURIRIWE, MU GIHE RWEMEJE KO UBUJURIRE BUTAKIRIWE

IBIBAZO BY'AMATEGEKO BY AGARAGAJWE

- Kugira ngo ikirego cye cyakirwe, umuburanyi agomba gutanga ingwate y'amagarama.Iyo atayitanze, nticyakirwa.

- Iyo abasangiye inyungu mu rubanza ari benshi**,** barega cyangwa baregwa, buri wese ku bimureba afite uburenganzira n'inshingano z'ababuranyi. Bityo, igihe itsinda ridafite ubuzima gatozi ritanze ikirego, buri wese mu barigize agomba gutanga ingwate

y'amagarama kugira ngo ikirego cye cyakirwe kuko buri wese muri bo afite inshingano z'umuburanyi zirimo n'iyo gutanga ingwate y'amagarama.

- Mu gihe urukiko rwemeje kutakira ubujurire, ntirwiririrwa rusuzuma izindi nenge zaba zarabaye mu byemezo byafashwe mbere kuri urwo rubanza mu nkiko zabanje zagaragajwe n'umuburanyi wajuriye.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'IMBONEZAMUBANO, IZ'UBUCURUZI, IZ'UMURIMO N'IZ'UBUTEGETSI, NONE KUWA 09/07/2010, RUHAKIRIJE MU RUHAME URUBANZA N° RCAA 0050/09/CS MU BURYO BUKURIKIRA:

ABABURANYI

Uwajuriye : Succession Abdallahaman SADALA ihagarariwe na BITWAYIKI Amri (tél 0788742456), utuye Cyivugiza, Umurenge wa Nyamirambo, Akarere ka Nyarugenge, Umujyi wa Kigali.

Uregwa

KAZENEZA Théophile, mwene Muzigampfizi na Mukamanzi, utuye Akagali ka Kacyiru, Umurenge wa Kacyiru, Akarere ka Gasabo, Umujyi wa Kigali.

IKIBURANWA

- Recouvrement d'une créance de 27.913.130 Frw d'honorainres suivant le contrat du 21/10/1996 conclu entre Me KAZENEZA Théophile et Abdallahaman SADALA ;
- Et d'une créance de 5.500.000 Frw d'honoraires suivant le contrat du 30/09/2000 et frais de 15.000.000 Frw ;
- Dommages et intérêts, astreinte
- Frais et débours.

I. <u>IMITERERE Y'URUBANZA</u>

[26] Urukiko Rwisumbuye rwa Nyarugenge rumaze gutegeka Succession Abdallahamani SADALA kwishyura Me KAZENEZA Théophile, amafaranga y'igihembo cya Avocat angana na 33.413.130 Frw n'indishyi za 2.000.000 Frw, Succession Abdallahaman SADALAyajuririye Urukiko Rukuru rwemeje ko ubwo ubujurire budashobora kwakirwa kubera ko abayigize batatanze ingwate y'amagarama.

[27] Succession Abdallahaman SADALA ihagarariwe na BITWAYIKI yajuririye Urukiko rw'Ikirenga ivuga ko Urukiko Rukuru rwahaye urubanza numero itariyo maze ruca urubanza ku kitasabwe, ko Succession Abdallahaman yagombaga gufatwa nka « entité autonome » kuko ariko yari yarezwe mu rwego rwa mbere, ko kandi niba harabaye kurega nabi ibyo byaryozwa Me KAZENEZA watangije urubanza, maze hakemezwa ko imanza zose zabanjirije uru ziteshejwe agaciro.

[28] Iburanisha ryabaye kuwa 03/06/2010 ababuranyi bose bahari, Succession Abdallahaman SADALA ihagarariwe na Me RUKANGIRA Emmanuel naho KAZENEZA Théophile yiburanira.

[29] KAZENEZA yasabye ko mbere y'uko abajuriye bageza ku rukiko ingingo zabo, habanza gusuzumwa inzitizi atanze yo kutakira ubujurire kuko abagize Succession Abdallahaman yajuriye batatanze ingwate y'amagarama.

[30] Urukiko rwemeje ko habanza gusuzumwa iyo nzitizi.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Ku byerekeranye n'inzitizi y'iyakirwa ry'ikirego rijyanye n'itangwa ry'ingwate y'amagarama

[31] KAZENEZA asobanura ko ikirego cy'ubujurire cya Succession Abdallahaman SADALA kitagomba kwakirwa kubera ko asanga haratanzwe igarama ry'umuntu umwe ryitiririrwa Succession , kandi iyo Succession igizwe n'abantu benshi. Yavuze ko we atanga ikirego mu rwego rwa mbere yareze Succesion Abdallahaman ariko hagahamagarwa buri wese mu bayigize yiburanira ku giti cye.

[32] Me RUKANGIRA Emmanuel uburanira Succession Abdallahaman SADALA yavuze ko nta kibazo abibonamo kuko ngo uwatanze ingwate y'amagarama ari BITWAYIKI Amri , uyu akaba ari mu bagize Succession ko kandi ariwe uburana. Yavuze kuba KAZENEZA watanze ikirego mu rwego rwa mbere arega Succession Abdallahaman, yarareze umuntu udafite ububasha, ibyo byaba ari ikibazo gikomeye kuko bireba amategeko ndemyagihugu (ordre public) bivuga ko uru rukiko rwagombye gutesha agaciro imanza zaciwe n'inkiko za mbere bitewe nuko zaciwe hishwe amategeko ndemyagihugu arebana n'ububasha bw'umuburanyi (qualité).

[33] Dosiye y'urubanza igaragaza ko igice cya Succession Abdallahaman SADALA kivuga ko gihagarariwe na BITWAYIKI Amri kigizwe na Uwamahoro Salama, Abdallahaman Malik, Hussein Murenzi, Lina Umugwaneza, Djazila Abdallahaman, Hawa Uwimana Amina Gahongayire, Amini Maniraguha na Bitwayiki Amri.

[34] Urukiko rurasanga inyandiko itanga ikirego cy'ubujurire mu Rukiko rw'Ikirenga yarashyizweho umukono na BITWAYIKI Amri uvuga ko ahagarariye Succession Abdallahaman na gitansi yo kuwa 17/07/2009 yatangiweho ingwate y'amagarama ya 8000 Frw ubundi asabwa umuburanyi umwe, , ikaba yanditseho ko yishyuwe na Succession Abdallahaman SADALA.

[35] Ingingo ya 352, 3°, y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko mu birego by'ubujurire, kugira ngo ikirego cy'ababuranyi cyandikwe, bagomba gutanga ingwate y'amagarama, ingingo ya 20 y'Itegeko rimaze kuvugwa nayo iteganya ko iyo abasangiye inyungu mu rubanza ari benshi , barega cyangwa baregwa, buri wese ku bimureba afite uburenganzira n'inshingano z'ababuranyi.

[36] Ingingo 52 y'Itegeko-Ngenga n°01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nayo ivuga ko "ujuriye wese agomba gutanga mu bwanditsi bw'urukiko icyemezo

kigaragaza ko yarishye amagarama", naho Ingingo 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 ikavuga ko ikirego kitakirwa iyo umuburanyi atatanze igarama.

[37] Urukiko rurasanga kuba Succession Abdallahaman SADALA idafite buzima gatozi, bituma buri wese mu bayigize yaragombaga kwitangira ingwate y'amagarama kugira ngo ikirego cye cyakirwe kuko buri wese muri bo afite inshingano z'umuburanyi zirimo gutanga ingwate y'amagarama hakurikijwe ibiteganywa n'ingingo z'amategeko amaze kuvugwa haruguru.

[38] Iki kandi nicyo cyerekezo cyafashwe n'Urukiko rw'Ikirenga mu zindi manza zaciwe, nko mu rubanza n° R.ADA 0022/08/CS Succession KABERUKA Déogratias yaburanaga na Succession Kassim DADAN. Urukiko rurasanga ubujurire bwatanzwe na Succession Abdallahaman SADALA bwaratanzwe mu buryo bunyuranije n'ibiteganywa n'amategeko, bityo bukaba butagomba kwakirwa ngo busuzumwe.

[39] Mu gihe rero Urukiko rwemeje kutakira ubujurire ngo rubusuzume, byumvikana ko nta handi rwahera rusuzuma izindi nenge zaba zarabaye mu byemezo byafashwe mbere kuri uru rubanza mu nkiko zabanje nk'uko uburanira Succession Abdallahaman SADALA abyifuza.

III. ICYEMEZO CY'URUKIKO

[40] **Rwemeje** ko ubujurire bwa Succession Abdallahaman SADALA butakiriwe.

[41] **Rutegetse** Succession Abdallahaman SADALA kwishyura amagarama y'urubanza angana na 86.350Frw, ikayatanga mu gihe cy'iminsi 8, itayatanga, agakurwa mu byayo ku ngufu za Leta.

RUKIJIJWE GUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 09/07/2010 N'URUKIKO RW'IKIRENGA RUGIZWE NA MUGENZILOUIS MARIE : PEREZIDA, MUKANYUNDO PATRICIE NA KAYITESI R. EMILY :ABACAMANZA, BAFASHIJWE NA HABYARIMANA MARCEL, UMWANDITSI W'URUKIKO.

sé
MUGENZI Louis Marie
Perezida

Sé
MUKANYUNDO Patricie
Umucamanza

Sé
KAYITESI R.Emily
Umucamanza

sé
HABYARIMANA Marcel
Umwanditsi w'Urukiko

IMANZA Z'UBUCURUZI

5.URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMA 0054/10/CS
ITARIKI Y'URUBANZA: 18/03/2011
HABURANA: NDIGELA & Co / ALLIED TRANSPORT AGENT (ATA)

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI - ITANDUKANIRO HAGATI Y'AMASEZERANO Y'UBWIKOREZI N'AMASEZERANO Y'UBUKODE GUSA BW'IMODOKA

KURYOZA INDISHYI UMWIKOREZI UTUBAHIRIJE INSHINGANO YO GUSHYITSA IBYO YIKOREYE AHO BYAGOMBAGA KUGEZWA

UBURYOZWE BW'UMWIKOREZI KU BIKORWA BYAKOZWE N'ABASHOFERI BE – ISHINGIRO RYABWO – KUTITIRANYA UBURYOZWACYAHA N'UBURYOZWANDISHYI KU MUKORESHA BUSHINGIYE KU MAKOSA CYANGWA ICYAHA CYAKOZWE N'UMUKOZI WE

UBURENGANZIRA BWA NYIR'IMIZIGO BWO GUHITAMO MU KUREGERA INDISHYI HAGATI Y'UMWIKOREZI N'UMUSHOFERI WE ZISHINGIYE KU BYO UMUKOZI WE YAKOZE KU MIZIGO YARI YIKOREYE

ITANGWA RY'INGWATE YAKWA UMUNYAMAHANGA UREGWA - ABASONERWA KUYITANGA - UKUTAKA INGWATE AMASOSIYETE AKOMOKA MU BIHUGU BIRI MU MURYANGO W'AFURIKA Y'IBURASIRAZUBA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Iyo rwiyemezamirimo watanze imodoka ye ho ubukode atari we uyigenzurira ntiyitwa umwikorezi -(transporteur), ahubwo aba ari uwakodesheje gusa (bailleur), nyamara ibyo bitandukanye n'igihe iyo modoka yaba yakodeshejwe ikanatanganwa umushoferi, kuko icyo gihe ayo masezerano yitwa ay'ubwikorezi mu gihe umushoferi akomeje kugengwa n'uwatanze imodoka.

- Uretse impamvu zitunguranye cyangwa ntarengwa, umwikorezi yishingira isohoza ry'abantu cyangwa ibintu yikoreye. Aryozwa ibyangiritse mu gihe aterekana ko ukwangirika, ugutakara cyangwa impanuka zaturutse ku yindi mpamvu itamuturutseho kandi idashobora kumushinjwa.

- Indishyi zakwa umwikorezi ziturutse ku bikorwa by'abashoferi be zishobora gushingira ku buryozwe bw'umukoresha ku bikorwa byakozwe n'umukozi we buteganijwe n'itegeko , no ku buryozwe bushingiye ku masezerano y'ubwikorezi ubwayo. Bityo, umwikorezi ntiyakwitwaza ihame ry'uko uburyozwacyaha ari gatozi ngo yange kwishyura indishyi, kuko ari uburyozwe bubiri butandukanye, kandi icyo aba aryozwa atari icyaha cyakozwe n'abashoferi be, ahubwo ari indishyi zikomoka kubyo bakoze.

- Iyo nyuma yo kugirana amasezerano y'ubwikorezi habayeho kuzimira kw'imizigo biturutse ku makosa cyangwa ku byaha by'abashoferi b'umwikorezi, nyir'imizigo aba afite amahitamo yo kuba yakurikirana indishyi ahereye ku masezerano yagiranye n'umwikorezi cyangwa akaba yazikurikirana ku bashoferi ubwabo.

- Bisabwe n'urega, umunyamahanga uregwa agomba gutanga amafaranga y'ingwate. Nyamara igihe ibihugu by'amahanga byagiranye n'u Rwanda amasezerano, abaturage babyo ntibakwa iyo ngwate.

- Amasosiyete yo mu bihugu bigize umuryango w'Afurika y'Iburasirazuba afatwa nk'amasosiyete yo mu Rwanda, bityo, ntashobora kwakwa ingwate yakwa abanyamahanga baregwa mu Rwanda.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUHAKIRIJE MU RUHAME KU WA 18 WURURWE 2011, URUBANZA N° RCOMA 0054/10/CS MU BURYO BUKURIKIRA:

Urega: NDIGELA & Co ifite icyicaro i Dal-ès-Salam, PO Box 60499 Dal-ès-Salam.

Uregwa: ALLIED TRANSPORT AGENT (ATA), PO Box 35365 Dal-ès-Salam.

Ikiburanwa :

- Gutegeka NDIGELA & Co kwishyura agaciro k'imitwaro igizwe n'ibigori yagombaga kugeza i Goma : $US 65,000.00
- Gutegeka NDIGELA & Co gusubiza avance ya transport yari yahawe.
- Indishyi mbonezamusaruro n'indishyi mpozamarira.
- Gutegeka NDIGELA & Co kwishyura amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

I. Imiterere y'urubanza

[1] Sosiyete ALLIED TRANSPORT AGENT (ATA) yatsindiye isoko rya ''WORLD Food Programme''(WFP) rihwanye na $ US 65.000.00 ryerekeranye no gutwara ibiribwa ibivana muri Tanzania ibijyana kuri Goma (RDC). Bitewe nuko ATA nta modoka yari ifite, yagiranye amasezerano y'ubwikorezi na Sosiyete NDIGELA & Co yo kuvana ibigori Isaka ibijyana i Goma, ikodesha amakamyo 2 ya NDIGELA kuri $ US 11.000.00, iyiha avance ya $ US 5.000.00.

[2] ATA ivuga ko izo modoka zigeze i Gisenyi abashoferi bazo bagurishije ibigori bari batwaye, bituma irega NDIGELA kuba itarubahirije amasezerano bagiranye y'ubwikorezi maze bikayitera igihombo.

[3] Urukiko Rukuru rw,Ubucuruzi rumaze kwemeza ko ikirego cya ATA gifite ishingiro, rwategetse NDIGELA kwiyishyura $US 32,214.10 yakaswe na WFP ahwanye na toni 61 z'ibigori abashoferi bayo bagurishije, hakiyongeraho $US 5.000.00 ahwanye na avance NDIGELA yari yahawe ndetse na $US 1000.00 y'igihembo cya Avoka.

[4] Mu bujurire mu Rukiko rw'Ikirenga, uburanira NDIGELA avuga ko Ikirego cya ATA kitagombaga kwakirwa idatanze ingwate y'amagarama isabwa abanyamahanga barega, akanavuga ko NDIGELA itari ikwiye kuryozwa amakosa y'abashoferi bagurishije ibyo bari batwaye kandi ari ATA yabihereye akazi hakurikijwe amasezerano y'ubwikorezi ATA yagiranye na NDIGELA, ikindi kandi abagize uruhare mu irigiswa ry'ibigori byabuze banabyiyemerera abakaba ari bo bakwiye kwishyura kuko bahamwe n'icyaha mu rubanza nshinjabyaha rwabaciriwe, ndetse hakaba hari n'inyandiko basinye bemera kwishyura.

[5] Urubanza rwaburanishijwe mu ruhame ku wa 17/02/2011, NDIGELA & Co ihagarariwe na Me GUMISIRIZA Hilary, naho ALLIED TRANSPORT AGENT ihagarariwe na Me NDUTIYE Yussuf.

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

<u>Ku byerekeye ingwate NDIGELA ivuga ko ATA yagombaga gutanga nk'umunyamahanga uregwa.</u>

[6] NDIGELA ivuga ko Urukiko Rukuru rutagombaga kwakira ikirego cya ATA idatanze ingwate isabwa abanyamahanga kuko ari sosiyete y'inyamahanga.

[7] Nk'uko uburanira ATA abivuga kandi bikaba byaranasobanuwe n'Urukiko Rukuru rw'Ubucuruzi, ingingo ya 81 y'Itegeko no 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu, iteganya ko, iyo bisabwe n'uregwa, umunyamahanga wese uregwa agomba gutanga amafaranga y'ingwate, uretse igihe haba hariho amasezerano ibihugu by'amahanga byaba byaragiranye n'u Rwanda asonera abaturage babyo ingwate.

[8] NDIGELA yasobanuriwe ko, usibye n'amasezerano nk'ayo avugwa muri iyo ngingo y'itegeko, hari itegeko nyirizina, nº 14/2010 ryo kuwa 07/05/2010 rihindura kandi ryuzuza itegeko n° 07/2009 ryo kuwa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi riteganya, mu ngingo yaryo ya 12 ko amasosiyete yo mu bihugu bigize umuryango wa Afurika y'Iburasirazuba afatwa nk'amasosiyete yo mu Rwanda. Ubujurire rero bwa NDIGELA idahakana ko Sosiyete ATA yo muri Tanzaniya, kimwe mu bihugu bigize uwo muryango irebwa n'iryo tegeko, nta shingiro bufite.

<u>Ku kibazo cyo kumenya niba amasezerano yabaye hagati ya NDIGELA na ATA ari ay'ubwikorezi cyangwa ay'ubukode gusa bw'imdoka.</u>

[9] NDIGELA ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije amasezerano yagiranye na ATA yo guha ATA imodoka maze ikishakira abashoferi yagombaga no kwiyishyurira, bityo rero, NDIGELA ikemeza ko itaryozwa ingaruka z'amasezerano y'ubwikorezi kandi ntayo yagiranye na NDIGELA.

[10] Kuri iyi ngingo, ATA isubiza ko ibyo NDIGELA ivuga byo

kuba barasezeranye ko ATA izishakira abashoferi atari ukuri, igahamya ko amasezerano bagiranye ari ay'ubwikorezi NDIGELA yagombaga gukora, ikoresheje imodoka n'abashoferi bayo.

[11] Mu nyandiko y'amasezerano NDIGELA yakoranye na ATA, nta na hamwe hateganyijwe ko ATA izishakira abashoferi nk'uko NDIGELA ibivuga, ikaba itarigeze igaragaza aho ibikura. Urukiko rurasanga, mu gihe NDIGELA itagaragaza ko abashoferi banyereje imizigo batari abayo nk'uko ibivuga, bigomba kwemezwa ko bari abayo, inabafiteho ububasha, amasezerano yagiranye na ATA akaba rero agomba kwitwa amasezerano y'ubwikorezi, aho kuba ay'ubukode bw'imodoka.

[12] Iki gisobanuro kandi gihura n'ibyemezwa n'abanditsi b'abahanga mu mategeko,aho basobanura ko iyo rwiyemezamirimo atariwe ugenzura imodoka yatanze, aba adakwiye kwitwa umwikorezi, ahubwo aba ari uwakodesheje gusa iyo modoka, ibyo bikaba bitandukanye n'igihe imodoka y'ubwikorezi yaba yakodeshejwe igatanganwa n'umushoferi, kuko aha ariho amasezerano noneho yitwa ay'ubwikorezi, mu gihe umushoferi akomeje kugengwa n'uwatanze imodoka[5].

[13] Kuba amasezerano NDIGELA yagiranye na ATA ari ay'uyubwikorezi nk'uko bisobanuwe haruguru, bituma umwikorezi NDIGELA agomba kuryozwa kuba atarabashije gushyitsa ibyo yikoreye aho byagombaga kugera, kuko byari inshingano ze (obligation de resultat) hakurikijwe ibiteganywa

[5] *'' Lorsque l'entrepreneur n'a pas la maitrise du déplacement du véhicule qu'il fournit, il ne mérite pas la qualité de transporteur : il est un simple bailleur ou plus exactement un fréteur engagé dans un contrat d'affrètement avec un chauffeur. Cependant, si l'engin de transport est loué avec son conducteur, les solutions sont differentes : le contrat doit être requalifié de location en transport, dès l'instant que le conducteur est resté sous les ordres du prétendu bailleur '', François COLLART DUTILLEUL et Philippe DELEBECQUE, Contrats civils et commerciaux, 7e édition, Paris, Dalloz, 2004, p.698.*

n'ingingo ya 16 n'iya 18 z'Itegeko ryo kuwa 19 mutarama 1920 ryerekeye intumwa mu bucuruzi n'abikorezi[6].

<u>Ku kibazo cy'uko ATA itakurikiranye ubwishyu ku bashoferi barigishije ibintu, ndetse n'abo babigurishijeho kandi baragaragaye.</u>

[14] NDIGELA ivuga ko n'iyo byafatwa ko abashoferi barigishije ibintu bari abayo, atari yo yakwishyuzwa ibyo barigishije kandi biboneka ko ari bo babikoze kuko icyaha ari gatozi, ndetse n'abahishe ibyo bintu bakaba barabihaniwe mu rubanza nshinjabyaha banemera kwishyura.

[15] Kuri icyo kibazo, ATA isubiza ko NDIGELA ariyo igomba gutanga indishyi kuko abashoferi barigishije ibyo bari bikoreye bari abayo, kandi ikaba yari ifite inshingano zo kugeza ibiribwa ahari hateganyijwe, naho kuba yarahisemo gukurikira indishyi ishingiye ku masezerano aho gushingira ku ikurikiranacyaha, ATA ivuga ko ari amahitamo ihabwa n'amategeko.

[16] Urukiko rurasanga NDIGELA itaburanisha ihame ry'uko uburyozwacyaha ari gatozi ku wagikoze, mu gihe ntawigeze ayikurikiranaho icyaha cyakozwe n'abandi, ahubwo uburyozwe kuri yo buturutse ku bikorwa by'abashoferi bayo bukaba bwashingira ku ngingo ya 260 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya uburyozwe bw'umukoresha ku bikorwa by'umukozi we[7],

[6] *Iyo ngingo ya 16 igateganya ko « Uretse impamvu zitunguranye cyangwa ntarengwa, umwikorezi yishingira isohoza ry'abantu cyangwa ibintu mu gihe cyasezeranywe, iyo nta gihe cyasezeranywe abikora akurikije uko bikorwa mu karere ...», naho iya 18 igateganya ko umwikorezi aryozwa ibyangiritse cyangwa ibyatakaye cyangwa ndetse n'impanuka zaba kubo atwaye mu gihe aterekana ko ukwangirika, ugutakara cyangwa impanuka zaturutse ku yindi mpamvu itamuturutseho kandi idashobora kumushinjwa ».*

[7] *Iyo ngingo iteganya ko umuntu ataryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangijwe n'ibikorwa by'abo yishingiye cyangwa by'ibintu ashinzwe kurinda, ikanasobanura ko ba shebuja n'abakoresha baryozwa ibyangijwe n'abakozi babo, iyo bakora imirimo babashinze.*

no ku buryozwe bushingiye kuri kamere y' masezerano y'ubwikorezi nk'uko yasobanuwe haruguru.

[17] Naho kuvuga ko ATA yabuze gukurikirana ubwishyu ku banyerejeibintukandibabyemera,iyonayosiingingoyakuraho uburyozwa bwishyu ku mwikorezi wari ufite inshingano zo kugeza ibintu aho yiyemeje, kuko ATA wagombaga kubigerezwa aho bumvikanye yari afite amahitamo yo kuba yakurikirana indishyi ahereye ku masezerano y'ubwikorezi yagiranye na NDIGELA, cyangwa se akaba yazikurikirana mu nzira yo kuziregera ku banyerejeje ibintu byabuze. Ntaho rero NDIGELA yashingira ivuga ko ATA yagombaga byanze bikunze gukurikirana indishyi mu rubanza rw'inshinjabyaha cyangwa se iruhereyeho.

Ku byerekeye indishyi ATA isaba mu bujurire bwuririye ku bundi.

[18] ATA irasaba indishyi zihwanye na 500.000 frw y'igihembo cya Avoka, na 1.000.000 frw yo gusiragizwa mu nkiko, NDIGELA yo igasubiza ko izo ndishyi ntacyo zishingiyeho.

[19] Urukiko rurasanga koko byarabaye ngombwa ko ATA ishyiraho avoka uyiburanira muri ubu bujurire bwa NDIGELA, ikaba ikwiye kubihererwa indishyi, ariko kuko izo isaba ari ikirenga, ikaba yagenerwa, mu bushishozi bw'Urukiko 300.000 frw y'igihembo cya avoka yiyongera ku yo yari yagenewe mbere.

[20] Harebwe kandi ingingo z'ubujurire bwa NDIGELA muri uru Rukiko n'isesengurwa ryazo nk'uko ryagaragajwe haruguru, bigaragara ko
nta mpamvu zishyitse zagombaga gutuma NDIGELA ijuririra urubanza yatsindiwe mu Rukuko Rukuru rw'ubucuruzi, bityo

rero indishyi ATA isaba zo kuba yarasiragijwe mu nkiko zikaba zifite ishingiro, ariko ikaba yagenerwa 300.000 frw mu bushishozi bw'Urukiko, kuko ayo isaba ari ikirenga.

III. ICYEMEZO CY'URUKIKO

[21] Rwemeye kwakira ubujurire bwa NDIGELA & Co n'ubwa ALLIED TRANSPORT AGENT (ATA) bubwuririyeho kuko bwaje mu buryo n'inzira bikurikije amategeko;

[22] Rwemeje ko ubujurire bwa NDIGELA & Co nta shingiro bufite; ko ubwa TRANSPORT AGENT bufite ishingiro ;

[23] Rutegetse NDIGELA & Co kwishyura ATA indishyi zihwanye n' amadolari ya Amerika 38.214,10 yaciwe n'Urukiko Rukuru rw'Ubucuruzi, hiyongereyeho 600.000 frw iciwe muri uru Rukiko, itayatanga mu gihe cy'iminsi 15, agakurwa mu byayo ku ngufu za Leta.

[24] Ruyitegetse kwishyura umusogongero wa Leta, uhwanye na 4% y'igiteranyo cy'indishyi zose iciwe, atayatanga mu gihe cy'iminsi 15 , agakurwa mu byayo ku ngufu za Leta.

[25] Ruyitegetse kwishyura amagarama y'urubanza ahanye na 32.400 frw, itayatanga mu gihe cy'iminsi umunani, agakurwa mu byayo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME, KU WA 18 WERURWE 2011.

Sé

MUGENZI Louis-Marie
Perezida

Sé	**Sé**
MUKAMULISA Marie Therese	**RUGABIRWA Ruben**
Umucamanza	**Umucamanza**

Sé
MUSENGAMANA Viateur
Umwanditsi w'Urukiko.

6. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMA 0070/10/CS
ITARIKI Y'URUBANZA: 25/03/2011
HABURANA: IKIGO CY'IGIHUGU GISHINZWE KWINJIZA IMISORO N'AMAHORO (RRA) / KOBIL PETROLEUM S.A.R.L

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI - IBARWA RY'INYUNGU MU GIHE CY'ISORESHWA RY'UMUSORO KU NYUNGU – IVANWA RY'IGIHOMBO MU NYUNGU Y'IBIKORWA Y'IBIHE BY'UMUSORO WAKWA ISOSIYETE – IGIHE RIDAKORWA

KUDAFATA KO HABAYEHO IHINDUKA RY'AGACIRO CYANGWA RY'IMIGABANE MU GIHE SOSIYETE ITAKIRIHO BITEWE N'UKO YAGUZWE YOSE N'INDI SOSIYETE - KUTIMA AMAHIRWE SOSIYETE YAYIGUZE YO KUVANIRWAHO IGIHOMBO CY'IYO YAGUZE MU NYUNGU ZISORESHWA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Iyo ibarwa ry'inyungu y'ibikorwa ryerekanye igihombo mu gihe cy'umusoro, icyo gihombo gishobora kuvanwa mu nyungu y'ibikorwa y'ibihe by'umusoro bitanu (5) bikurikiyeho. Nyamara, ibi ntibikurikizwa ku birebana n'ibihombo byagizwe n'iyo sosiyete, iyo mu gihe cy'umusoro, habaye ihinduka, haba mu gaciro cyangwa mu mubare w'imigabane, ringana cyangwa rirenze (25%) ry'umutungo w'imigabane, mu buryo buziguye cyangwa butaziguye, mu burenganzira bwo gutora bw'isosiyete ifite imigabane idacuruzwa ku isoko ry'imari ryemewe.

- Igurisha ry'imigabane ntiryakwitiranywa n'igurishwa rya sosiyete nyirizina mu gihe yaguzwe n'indi uko yakabaye, kuko, ihinduka mu gaciro cyangwa mu mubare w'imigabane bibaho gusa kuri sosiyete igurisha kandi ikiriho, agaciro cyangwa umubare w'imigabane bikaba bitafatwa ko byahindutse kuri sosiyete itakiriho. Bityo, Iyo sosiyete yaguzwe n'indi uko yakabaye, ibihombo byayo bikomeza kurebwa no kuri sosiyete yayiguze, icyo gihe bikaba bigomba kuvanwa ku nyungu zisoreshwa kuri iyo sosiyete.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUHAKIRIJE MU RUHAME KU WA 25 WERURWE 2011, URUBANZA N° RCOMA 0070/10/CS MU BURYO BUKURIKIRA:

Uwajuriye: IKIGO CY'IGIHUGU GISHINZWE KWINJIZA IMISORO N'AMAHORO (RRA), BP : 3987 Kigali
Uregwa: KOBIL PETROLEUM S.A.R.L, yanditswe mu bitabo by'ubucuruzi by'u Rwanda kuri n° RCA 1526/KIG, BP : 5048 Kigali.
Ikiburanwa:
- Kujurira icyemezo cya Komiseri Mukuru cyanditswe mu ibaruwa n° Réf. 194/09/CG/&BS/RRA yo kuwa 20/11/2009.
- Kwishyura ibigenda ku rubanza n'igihembo cya Avoka

IV. IMITERERE Y'URUBANZA

[26] Kuwa 02/11/2005, bisabwe na Leta y'u Rwanda, KOBIL PETROLEUM S.A.R.L yeguriwe sosiyete SHELL RWANDA yegurirwa n'imitungo yayo yose. KOBIL PETROLEUM S.A.R.L yakomeje gukorera no gusorera kuri nº ya SHELL RWANDA, kugeza ubwo ishatse ko izina ryayo risimbura irya SHELL RWANDA mu bitabo by'Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'Amahoro(RRA), icyo kigo kibanza gukora igenzura ry'imisoro SHELL RWANDA igomba kwishyura kugeza kuwa 31/01/2006 ubwo yahagarikaga imirimo yayo y'ubucuruzi mu Rwanda, gisanga iyo misoro ingana na 1.225.289.044 frw.

[27] RRA yaje kongera gukorera KOBIL PETROLEUM igenzura ku gihe cyo guhera mu kwezi kwa kabiri kugeza mu kwa cyenda 2006, isanga KOBIL PETROLEUM yarakoze

iyimurwa "report" ry'ibihombo bya SHELL RWANDA ariko RRA irabyanga, ivuga ko KOBIL PETROLEUM itagaragaje ko yaguze imigabane ya SHELL RWANDA ku isoko ry'imari ryemewe nk'uko biteganywa n' igika cya 3 cy'ingingo ya 29 y'Itegeko n° 16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku nyungu.

[28] Byatumye KOBIL PETROLEUM iregera Urukiko Rukuru rw'Ubucuruzi, rwemeza ko itsinze, rusobanura ko SHEL RWANDA itagurishije imigabane yayo ngo yo igumeho nka sosiyete, rutegeka ko igihombo kingana na 1.225.289.044 frw kigomba kuvanwa mu nyungu y'ibikorwa y'ibihe by'umusoro bitanu, rutegeka kandi RRA guha KOBIL PETROLEUM indishyi zingana na 45.000.000 frw kubera amahirwe yayivukije iyima icyemezo cyo kutagira umwenda w'umusoro (attestation de non créance).

[29] Mu bujurire bwayo mu Rukiko rw'Ikirenga, RRA ivuga ko Urukiko rubanza rwasesenguye nabi itegeko, rwemeza ko KOBIL PETROLEUM yagombaga kwemererwa iyimurwa ry'igihombo[8], kandi iyo sosiyete yaragurishije imigabane yayo irenga 25% bitanyuze ku isoko ry'imari ryemewe nk'uko itegeko ribiteganya[9].

[30] RRA inanenga kandi urubanza yajuririye kuba rwaranashingiye ku ngingo ya 306 y'Itegeko n° 07/2009 ryo kuwa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi, kandi iyo ngingo ireba amasosiyete yahujwe(fusion), nyamara atari byo byabaye kuri KOBIL PETROLIUM na SHELL RWANDA, ikanavuga ko indishyi zagenewe KOBIL PETROLIUM ntacyo

[8] *hashingiwe ku gika cya 3 cy'ingingo ya 29 y'Itegeko n° 16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku nyungu*

[9] *Igika cya mbere cy'ingingo ya 29 y'Itegeko n° 16/2005 ryavuzwe haruguru .*

zishingiyeho. KOBIL PETROLIUM nayo yatanze ubujurire bwuririye ku bundi isaba ko indishyi yagenewe zakongerwa.

[31] Urubanza rwaburanishijwe mu ruhame ku wa 24/02/2011, Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'Amahoro(RRA) gihagarariwe na Me GASANA Raoul na Me MUGIRE Joseph, naho KOBIL PETROLIUM ihagarariwe na Me NZAMWITA Toy.

IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

A. **Ku kibazo cyo kumenya niba ingingo ya 29 y'itegeko n° 16/2005 ituma KOBIL PETROLIUM yaguze SHELL RWANDA ibasha kuvanirwa igihombo mu nyungu**.

[32] Ingingo ya 29 y'itegeko n° 16/2005 rigena imisoro itaziguye ku nyungu, ari nayo ababuranyi muri uru rubanza batumva kimwe, ishyiraho, mu gika cya mbere, ihame ry'uko iyo ibarwa ry'inyungu y'ibikorwa ryerekanye igihombo mu gihe cy'umusoro, icyo gihombo gishobora kuvanwa mu nyungu y'ibikorwa y'ibihe by'umusoro bitanu (5) bikurikiyeho.

[33] Igika cya gatatu cy'iyo ngingo cyo kizana irengayobora(exception), ry'uko "*Iyo mu gihe cy'umusoro, habaye ihinduka, haba mu gaciro cyangwa mu mubare w'imigabane, ringana cyangwa rirenze makumyabiri na gatanu ku ijana (25%) ry'umutungo w'imigabane, mu buryo buziguye cyangwa butaziguye, mu burenganzira bwo gutora bw'isosiyete ifite imigabane idacuruzwa ku isoko ry'imari ryemewe, ibikubiye mu gika cya mbere cy'iyi ngingo ntibikurikizwa ku birebana n'ibihombo byagizwe n'iyo sosiyete mu gihe cy'umusoro no mu bihe by'umusoro byashize*."

[34] RRA yumva ko ibyo iyo ngingo iteganya ari uko iyo habaye igurisha ry'imigabane ingana cyangwa irenga 25% bikozwe na sosiyete imwe, iryo gurisha ntirikorerwe ku isoko ry'imari ryemewe, sosiyete yaguze iyo migabane itemererwa kwimura igihombo cyagizwe na sosiyete yagurishije.

[35] RRA ikaba isanga ibyo binareba sosiyete yagurishije 100% by'imigabane yayo yose, kuko biba birenze 25% iteganyijwe mu itegeko, bityo igika cya 3 kikaba aricyo cyagombaga gukoreshwa; ikavuga ko ingaruka zo kutagurishiriza imigabane ku isoko ry'imari ryemewe ryirengerwa na sosiyete yaguze.

[36] RRA ivuga ko Urukiko Rukuru rw'Ubucuruzi rwibeshye rwemeza ko ibiteganywa mu gika cya 3 cy'ingingo ya 29 y'itegeko ryavuzwe haruguru bikurikizwa gusa iyo hatabayeho igurishwa ry'umutungo wose wa sosiyete, kandi ngo sosiyete yagurishije akaba ariyo bireba gusa.

[37] KOBIL PETROLEUM yo isanga igika cya 3 cy'ingingo ya 29 y'Itegeko n° 16/2005 ryo kuwa 18/08/2005 kitagombye gukoreshwa nk'uko RRA igishingiraho kuko KOBIL PETROLEUM RWANDA itaguze imigabane ya SHELL RWANDA, ahubwo yaguze umutungo wayo wose (patrimoine), ibiriho ndetse n'imyenda (actif et passif), ndetse ikomeza no gukoresha nimero y'umusoreshwa ya SHELL RWANDA.

[38] Naho kuba KOBIL PETROLEUM itaraguze imigabane ku isoko ry'imari ryemewe, ivuga ko ibyo bitabera RRA urwitwazo kandi izi neza ko igihe yaguraga umutungo (patrimone) wa SHELL RWANDA, isoko ry'imari ryari ritarabaho, byongeye kandi igurwa rya SHELL RWANDA rikaba ryaremejwe na Leta y'u Rwanda, ari nayo yemeje ko ari KOBIL PETROLEUM iyigura kuko yabonaga ariyo ibifitiye ubushobozi, SHELL RWANDA ikaba nta mahitamo yari ifite yo kujyana umutungo

wayo ku rindi soko Leta itabyemeye, bityo rero RRA nk'ikigo cya Leta y'u Rwanda kikaba kitagombye kuyiryoza ibyo Leta y'u Rwanda yemeje.

[39] Urukiko rurasanga igika cya gatatu cy'ingingo ya 29 y'Itegeko n° 16/2005 ryo kuwa 18/08/2005 ryavuzwe haruguru yumvikanisha ko ihinduka mu gaciro cyangwa mu mubare w'imigabane bibaho kuri sosiyete igurisha kandi ikiriho, kuko agaciro cyangwa umubare w'imigabane bitafatwa ko byahindutse kuri yo kandi itakiriho. Ntabwo igurisha ry'imigabane ryakwitiranywa n'igurishwa rya sosiyete nyirizina.

[40] Ku bijyanye n'uru rubanza, imigabane ya SHELL RWANDA yagurishijwe yose, SHELL RWANDA isibwa mu bitabo, bityo bikaba bitafatwa ko ari agaciro cyangwa umubare w'imigabane yayo wahindutse wose nk'uko RRA ibiburanisha.

[41] Nk'uko itegeko riteganya ko ibihombo bishyirwa ku bihe by'umusoro bitanu, muri iyo myaka itanu akaba ari bwo KOBIL PETROLEUM yaguze umutungo (patrimoine) wa SHELL RWANDA, ibyo bihombo bikomeza kurebwa no kuri KOBIL PETROLEUM yabiguze, bityo bikaba bigomba kuvanwa ku nyungu zisoreshwa nk'uko Urukiko Rukuru rw'Ubucuruzi rwabyemeje.

[42] RRA ivuga kandi ko ingingo ya 306 y'Itegeko n° 07/2009 ryo kuwa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi Urukiko rwakoresheje itagombaga gushingirwaho kuko irebana n'ukwibumbira hamwe kw'amasosiyete, mu gihe ku birebana n'uru rubanza, habayeho igurwa ry'imigabane hagati ya SHELL RWANDA na KOBIL PETROLEUM.

[43] Kuri iki kibazo, Urukiko rurasanga koko nta mpamvu umucamanza yari gushingira ku ngingo ya 306 ivuzwe haruguru, kuko nk'uko bigaragara muri iyo ngingo ndetse n'umutwe ihererereyemo mu itegeko, irebana n'ukwibumbira hamwe kw'amasosiyete (fusion), kandi atari byo byabaye hagati ya SHEL RWANDA na KOBIL PETROLEUM, usibye ko n'iryo tegeko ritashoboraga gukoreshwa ubusubira inyuma. Ishingiro rero ry'icyemezo cyafashwe n'Urukiko rubanza kandi cyemezwa n'uru Rukiko nk'uko byasobanuwe haruguru, rirareberwa gusa ku ngingo ya 29 y'Itegeko n° 16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku nyungu.

B. <u>Ku byerekeye indishyi KOBIL PETROLEUM yagenewe n'Ukiko rubanza</u>.

[44] RRA ivuga ko indishyi zingana na 45.000.000 frw Urukiko rwemeje ko igomba guha KOBIL PETROLEUM nta shingiro zifite kuko nta kosa yayikoreye ngo ibe ari yo yayiteje igihombo ivuga ko yagize, kandi ko biramutse binemejwe ko icyo gihombo gikurwa mu nyungu isoreshwa, umusoro KOBIL PETROLEUM yaciwe utahita uvaho wose kuko hari umusoro ukwiye kwishyurwa kandi ikaba itawuhakana, ikaba rero n'ubundi itari guhabwa icyemezo cyo kutagira umwenda w'imisoro cyari gutuma ibona amasoko ivuga yavukijwe.

[45] Kuri iyi ngingo, KOBIL PETROLEUM isubiza ko nta wundi mwenda RRA igaragaza yaba yaremeye wagombaga gutuma itahabwa icyemezo cyo kutagira umwenda mu misoro, kandi ko kutagihabwa byayivukije amahirwe yo gupiganira amasoko manini y'ibicuruzwa byayo, nk'iryatanzwe na Rwanda Demobilization and Reintegration Commission, irya na National Institute of Statistics of RWANDA, irya Care International, irya ISAR, irya MINADEF n'irya OCIR THE.

[46] Urukiko rurasanga kuba RRA yemeza ko niyo igihombo cyakurwa mu nyungu zisoreshwa, umusoro KOBIL PETROLEUM yaciwe utahita uvaho wose nta shingiro bifite, kuko itagaragaza uwo musoro usigara ivuga ko KOBIL PETROLEUM yemera wari gutuma itahabwa icyemezo cyo kutagira umwenda w'imisoro. Indishyi RRA yaciwe n'Urukiko Rukuru rw'Ubucuruzi rero zigomba kugumaho, kuko ntacyo RRA igaragaza cyatuma zivaho.

[47] Naho ku bijyanye n'ubujurire bwuririye ku bundi KOBIL PETROLIUM yatanze isaba ko indishyi yagenewe zakongerwa igahabwa amadolari y'amanyamerika 200.000, RRA ikaba ivuga ko n'izo yagenewe mbere nta shingiro zifite, Urukiko rurasanga KOBIL PETROLIUM itagaragaza impamvu yaka indishyi zingana gutyo, kuko kuba yaba yarabuze amahirwe yo kujya mu mapiganwa, ari nabyo yaherewe indishyi mu rukiko rubanza, bitavuga ko yari gutsindira ayo mapiganwa byanze bikunze kandi ngo nyuma inayabyaze inyungu zigera ku kigero cy'izo isaba. Ubwo bujurire bwuririye ku bundi rero nta shingiro bufite.

V. ICYEMEZO CY'URUKIKO

[48] Rwemeye kwakira ubujurire bw'Ikigo cy'Igihugu gishinzwe kwinjiza Imisoro n'Amahoro, n'ubwa KOBIL PETROLIUM bubwuririyeho, kuko bwaje mu buryo n'inzira byemewe n'amategeko;

[49] Rwemeje ko ubwo bujurire bwombi nta shingiro bufite;

[50] Rutegetse Ikigo cy'Igihugu gishinzwe kwinjiza Imisoro n'Amahoro kwishyura amagarama y'urubanza, ahwanye na 14.200 frw.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME, KU WA 25 WERURWE 2011.

MUGENZI Louis-Marie
Perezida

MUKAMULISA Marie Therese
Umucamanza

RUGABIRWA Ruben
Umucamanza

RUSINGIZA Germain
UMWANDITSI W'URUKIKO

7. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMA 0049/09/CS
ITARIKI Y'URUBANZA: 03/12/2010
HABURANA: RUBAYIZA Edouard / BUCYENSENGE Charles

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI – INSHINGANO YIHARIYE YA BANKI

IGURIZA RIBYARA INYUNGU RIKOZWE N'UMUTURAGE USANZWE – KUTARISHAKIRA MU MIRIMO YA BANKI

KUTITIRANYA AMASEZERANO Y'IGURIZA RIBYARA INYUNGU N'ANDI MASEZERANO YIHARIYE

UBUBASHA BW'UMUCAMANZA BWO KUGARURA KU RWUNGUKO RUSANZWE INYUNGU Z'IKIRENGA ZASABWE UGOMBA KWISHYURA – IGIHE BIKORWA

KUTAZANA KU RWEGO RW'UBUJURIRE IBIREGO BITAGIWEHO IMPAKA KU RWEGO RUBANZA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Banki ni ikigo (institution) gikora mu buryo busanzwe (de façon habituelle) umurimo wo kwakira amafaranga ya rubanda kikanatanga inguzanyo ku giti cyacyo kandi ntawe ushobora gukora imirimo y'amabanki atabanje kubyemererwa na Banki Nkuru y'Igihugu.

- Gukora amasezerano y'iguriza ribyara inyungu ubwabyo ntibyafatwa nko kwivanga mu mirimo amategeko yahariwe amabanki mu gihe uwatanze inguzaryo ari umuturage usanzwe kandi nta kamenyero ko gutanga bene izo nguzanyo afite cyangwa ngo abe ariwo murimo akora (umutunze), kuko amategeko yemera itangwa ry'inguzanyo y'amafaranga ibyara inyungu (prêt à intérêt), kandi nta n'aho ateganya ko ari umwihariko w'abantu runaka. Bityo, uwarikoze afatwa nk'uwakoze igikorwa cy'ingoboka (acte isolé), kitakwitiranywa n'ibikorwa byahariwe amabanki kuko zo zibikora mu buryo busanzwe (de façon habituelle).

- Amasezerano y'iguriza ribyara inyungu abarirwa mu bwoko bw'amasezerano azwi (contrats nommés) ateganywa mu rwunge rw'amategeko mbonezamubano akaba agomba gutandukanywa n'andi masezerano yihariye.

- Urukiko rubisabwe n'ugomba kwishyura umwenda, rugarura inshingano ze kugeza ku nyungu isanzwe iyo urwunguko rurengeje ku buryo bugaragara urwunguko rusanzwe, mu gihe ubisaba agaragaje ko uberewemo umwenda yamuboneranye kubera ubukene, intege nke, irari cyangwa ubujiji.

- Ikirego kitagiweho impaka mu rwego rwa mbere ntigishobora kuzanwa ku rwego rw'ubujurire.

URUKIKO RW'IKIRENGA, RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUKIJIJE MU RUHAME KUWA 03/12/2010 URUBANZA N° RCOMA 0049/09/CS MU BURYO BUKURIKIRA :

ABABURANA:

RUBAYIZA Edouard mwene Seruhago Jean Baptiste na Nyirantambara Marina, utuye Umudugudu w'Imena , Akagari ka Kiyovu, Umurenge wa Rugenge, Akarere ka Nyarugenge, Umujyi wa Kigali. Aburanirwa na Me Nkurunziza Jean Chrysostome, Me Nkurunziza François Xavier na Me Habimana Théogène.

NA

BUCYENSENGE Charles mwene Munyanshongore na Mujawingoma, utuye m'Umudugudu w'i Nyange, Akagari ka Bibare, Umurenge wa Kimironko, Akarere ka Gasabo. Aburanirwa na Me Rwigema Vincent hamwe na Me Habimana Adolphe.

ikiburanwa:

- Umwenda uhwanye na 153.063.828Frw harimo n'inyungu z'ubukererwe,
- Ifatiramwenda w'ubucuruzi

I. IMITERERE Y'URUBANZA:

[1] Rubayiza Edouard yagurije Bucyensenge Charles

amafaranga, bumvikana ko azamuha inyungu zisanzwe, inyungu z'ubukererwe na „commissions". Bucyensenge yananiwe kumwishyura biba ngombwa ko Rubayiza ajyana ikirego mu Nkiko.

[2] Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikirego cya Rubayiza Edouard nta shingiro gifite, rumutegeka gusubiza Bucyensenge Charles 8.889.740Frw, arenga ku yo yagombaga kumwishyura. Rwasobanuye ko ibikorwa byo gucuruza amafaranga amategeko yabihariye abanyamwuga barimo amabanki n'ibindi bigo by'imari, Rubayiza akaba we atabyemerewe, bityo inyungu asaba ku nguzanyo yatanze zikaba nta shingiro zifite.

[3] Rubayiza yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rushingiye ku mategeko agenga amabanki n'ibindi bigo by'imari kandi amasezerano yagiranye na Bucyensenge agomba kugengwa n'amategeko y'imbonezamubano. Avuga kandi ko Urukiko rwakoresheje mu buryo butari bwo ingingo ya 131bis y'Iteka rishyiraho igitabo cya gatatu cy'amategeko mbonezamubano (Code Civil Livre III mu magambo ahinnye CC LIII), rwemeza kandi ko haba ihwanyamyenda kandi nta mafaranga abereyemo Bucyensenge, na none rwanga gusubiza ku kibazo yarugejejeho cyerekeranye n'ifatira ry'ibicuruzwa Bucyensenge yatanzeho ingwate nta mpamvu rutanze .

[4] Iburanisha ryabaye kuwa 07/10/2010 ababuranyi bose bitabye.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

a. Kumenya niba igikorwa cyo gutanga inguzanyo cyakozwe na Rubayiza kiri mu mwihariko w'Amabanki n'ibindi bigo by'imali

[5] Rubayiza Edouard n'abamwunganira bavuga ko amasezerano y'iguriza yagiranye na Bucyensenge ari amasezerano yakozwe mu rwego rw'amategeko mboneza mubano, ko Urukiko Rukuru rw'Ubucuruzi rwatandukiriye rukoresha mu rubanza rwe amategeko agenga amabanki n'ibindi bigo by'imali bikusanya amafaranga ya rubanda bikayabika, bikayacuruza bikanatanga inguzanyo mu gihe Rubayiza ari umuturage usanzwe, udacuruza amafaranga ahubwo ko yagurije Bucyensenge rimwe abimusabye kuko yari akeneye amafaranga (dans le besoin) akemera no gutanga inyungu mu rwego rw'ibiteganywa n'ingingo 478 CC LIII, iyi ngingo ikaba yemerera abantu kuguzanya amafaranga kandi akabyara inyungu. Rubayiza avuga ko umwenda Bucyensenge agomba kumwishyura ugeze ubu kuri 210.346.911Frw.

[6] Ababuranira Bucyensenge bavuga ko Rubayiza yivuguruza kuko amasezerano y'iguriza yagiranye na Bucyensenge agamije inyungu , ibyo bikaba binagaragazwa ni uko yaregeye Urukiko Rukuru rw'Ubucuruzi asaba kwishyurwa. Bavuga kandi ko Rubayiza atakwitwaza ibiteganywa n'ingingo rusange ya 478 CC LIII, maze ngo ayuririreho yemeza ko ibyo yakoze acuruza amafaranga mu buryo bunyuranyije n'amategeko

bifite ishingiro kandi yararenze ku mategeko y'umwihariko agenga imicuririze y'amafaranga mu Rwanda, nk'ingingo ya 4 y'Itegeko nº 08/99 ryo kuwa 18/06/1999 rishyiraho amategeko agenga amabanki n'ibindi bigo by'imali nk'uko ryahinduwe kugeza ubu, ibuza buri wese utabyemerewe gukora ibikorwa bya Banki.

[7] Ingingo ya mbere y'itegeko nº 08/99 ryo kuwa 18/06/1999 rimaze kuvugwa, yo iteganya ko banki ari ikigo gikora **ubusanzwe** (de facon habituelle) imirimo yo kwakira amafaranga ya rubanda kandi kigatanga inguzanyo ku giti cyayo. Naho ingingo ya 4 y'iryo tegeko mu gika cyayo cya mbere igateganya ko ntawe ushobora gukora imirimo ya Banki muri Repubulika y'u Rwanda atabanje kubyemererwa na Banki Nkuru y'Igihugu.

[8] Ibiteganywa n'ingingo zimaze kuvugwa, byumvikanisha ko abakora umurimo wa Banki ari ibigo (Institutions) ni ukuvuga , les personnes morales", kandi ibikorwa bigize umurimo wa Banki bigakorwa ku buryo busanzwe. Nk'uko byavuzwe haruguru, imwe mu mirimo ya Banki ni ugutanga inguzanyo. Umuhanga mu matageko witwa Thierry BONNEAU asobanura ko impamvu Banki zitwa ko zagize umwuga umurimo wo gutanga inguzanyo ari uko zibikora kenshi[10]

[9] Ni ngombwa rero kureba niba igikorwa Rubayiza yakoze

[10] *Droit bancaire, 7 ème édition, Montchrestien, 2007, 669pages, p88, nº121. Les banques accomplissent des opérations de crédit à titre habituel . L'accomplissement de celles-ci constitue une profession à partir du moment où il ya répétition des actes.*

kibarirwa mu mirimo iri mu mwihariko wa Banki, ni ukuvuga niba yarakusanyije amafaranga ya rubanda cyangwa akanatanga inguzanyo kandi ibyo akabikora mu buryo busanzwe (de façon habituelle) nk'uko bisobanuye muri „définition" ya Banki yatanzwe haruguru.

[10] Urukiko rurasanga kuba Rubayiza ari umuturage usanzwe kandi nta cyerekana ko afite akamenyero ko gutanga inguzanyo zibyara inyungu cyangwa ko ariwo murimo akora (umutunze) kuko amasezerano rwagaragarijwe ari ayo yakoranye na Bucyensenge wenyine, bigomba gufatwa ko inguzanyo yatanze ari igikorwa cy'ingoboka (acte isolé), gitandukanye n'ibikorwa na Banki kuko zo zibikora mu buryo busanzwe. Umuhanga mu mategeko Thierry BONNEAU avuga ko ntawakwitirira ikigo cyagize umwuga gutanga inguzanyo, abatabikora ku buryo busanzwe[11].

[11] Urukiko rurasanga rero igikorwa Rubayiza yakoze kitareberwa mu mirimo amategeko yahariye Banki, ahubwo cyareberwa mu biteganywa n'ingingo ya 478 CCI LIII, yemera inguzanyo y'amafaranga ibyara inyungu(prêt à intérêt), iyo ngingo kandi ikaba ntaho iteganya ko gukora amasezerano y'iguriza ribyara inyungu ari umwihariko w'abantu runaka . Ibi binahura n'ibyo abahanga mu mategeko François Collart Dutilleul na Phillippe Delebecque bavuga ko, amasezerano y'iguriza ribyara inyungu abarirwa mu bwoko

[11] *Op cit, la qualification d'Etablissement de crédit est écarté lorsque les personnes n'en font pas leur profession δabituelle.*

bw'amasezerano **azwi (contrats nommés)** ateganywa mu Rwunge rw'amategeko mbonezamubano akaba agomba gutandukanywa n'andi masezerano yihariye. Nabo bemera ko gutanga inguzanyo y'amafaranga mu buryo busanzwe ari umwihariko w'amabanki, ariko ko gutanga inguzanyo mu buryo bw'ingoboka byemerewe uwariwe wese ubifitiye ububasha[12] (capacité).

[12] Hakurikijwe ibyasobanuwe haruguru, Urukiko rurasanga amasezerano y'iguriza ribyara inyungu Rubayiza yakoranye na Bucyensenge akurikije amategeko, ahubwo hagasuzumwa gusa niba inyungu zayateganyijwemo zitarenze ingano y'izisanzwe nk'uko bivugwa mu ngingo ya 131 bis CC L III.

b. Kumenya niba ingingo ya 131 bis CC L III yaba yarakoreshejwe nabi

[13] Ababuranira Rubayiza bavuga ko ibyo Urukiko Rukuru rw'Ubucuruzi rwashingiyeho rumuvutsa inyungu ziteganyijwe mu masezerano yagiranye na Bucyensenge ari uko izo nyungu ari ikirenga kandi atazisorera, ibyo bikaba ntaho bihuriye n'ibiteganywa n'ingingo ya 131 bis CCL III , kuko iyo ngingo ivuga amasezerano yakozwe utanze inguzanyo ahenze uwahawe amafaranga amuboneranye kubera ubukene, intege nke, irari cyangwa ubujiji (harimo lésion), maze akemera gutanga inyungu cyangwa ibindi birenze ibisanzwe, ibyo akaba atariko byagenze kuri Bucyensenge

[12] *<u>Contrats civils et commerciaux</u>, 8 ème edition , 2007, Dalloz, p 772, n° 826 et p 771, n° 825. Si le prêt d'argent est une opération de crédit, le prêt d'argent est également l'un des contrats nommés du code civil qu'il faut distinguer d'autres conventions particulières.Un prêt habituel et consenti à titre onéreux, c'est-à-dire, à intérêt, et donc soumis au monopole bancaire. ………il ne faut pas oublier que l'opération de prêt d'argent, si elle n'est pas habituelle, est ouverte à toute personne capable.*

w'umucuruzi w'umwuga wasabye inguzanyo kubera ko yari akeneye amafaranga kandi aba ariwe wishyiriraho inyungu azishyura.

[14] Bavuga kandi ko Urukiko rutagombaga kwakira ikirego gisaba kugabanyirizwa inyungu cya Bucyensenge kuko cyatanzwe mu buryo bw'ikirego gisaba kwiregura aho kubikora mu buryo bw'ikirego cyihariye. Ikindi ngo ni uko cyatanzwe impitagihe kuko amafaranga Bucyensenge yishyuye yari arengeje igihe cy'imyaka itatu giteganywa mu ngingo ya 131 bis, igika cya kabiri.

[15] Ababuranira Bucyensenge bavuga ko nta nenge babona mu cyemezo cy'Urukiko kuko ibyo rwavuze kuri iriya ngingo ya 131 bis , byashimangiraga igitekerezo rwari rwavuze mu bika bibanza ko Rubayiza atemerewe gucuruza amafaranga. Bavuga ko Bucyensenge yasabye kugabanyirizwa ingano y'inyungu bitewe nuko Rubayiza yamufatiranye ubwo yari afite ibibazo byo kuvuza umugore we mu gihugu cya Afurika y'Epfo ndetse n'iby'imisoro, kandi ko iby'amaburakindi yabaye intandaro yo kwemera inyungu z'umurengera bakaba barabitangiye ibimenyetso mu rukiko rubanza.

[16] Bongeraho ko mu gihe uru Rukiko rwasanga inguzanyo Rubayiza yatanze ari ibyara inyungu, rwakwita ku bibazo Bucyensenge yari afite byatumye yaka iyo nguzanyo, maze rugashyira mu gaciro rukagenera Rubayiza inyungu zibazwe nibura ku rugero rwa 10%. Ikindi ngo ni uko bitari ngombwa gutanga ikirego cyihariye cyo gusaba kugabanyirizwa inyungu, naho ku byo abunganira Rubayiza bavuga ko nta gabanywa ryakorwa kubera ko habaye ubusaze, bavuze ko Rubayiza yagombye kugaragaza ko Bucyensenge yatanze ikirego imyaka itatu ivugwa mu itegeko

yararangiye kuko mu mwanzuro we yiyemerera ko amafaranga ya nyuma yishyuwe tariki 22/05/2008.

[17] Urukiko rurasanga n'ubwo ingingo ya 480 CC L III yemerera abagiranye amasezerano kumvikana ku ngano y'inyungu, ingingo ya 131 bis iteganya ko urukiko rubisabwe n'ugomba kwishyura umwenda, rugarura inshingano ze kugeza ku nyungu isanzwe iyo urwunguko rurengeje ku buryo bugaragara urwunguko rusanzwe, mu gihe ubisaba agaragaje ko uberewemo umwenda yamuboneranye kubera ubukene, intege nke, irari cyangwa ubujiji…..

[18] Ibyo Rubayiza n'abamwunganira bavuga ko gusaba ibivugwa mu ngingo imaze kuvugwa bigomba gukorwa mu kirego cyihariye, urukiko rurasanga nta shingiro bifite kuko nta tegeko rikumira umuburanyi kubikora mu kirego kiregera kwiregura mu gihe gifitanye isano n'ikirego remezo.

[19] Mu bisobanuro Bucyensenge yatanze yerekana impamvu zatumye ajya gusaba Rubayiza inguzanyo, avuga ibibazo by'uburwayi bw'umugore we yagombaga kuvuza hanze y'igihugu ndetse n'ibyimisoro byari bimwugarije nk'uko yabitangiye ibimenyetso bitavugurujwe, bikaba rero byumvikanisha intege nke yari afite imbere ya Rubayiza zatumye yemera ibyo yamusabye kugira ngo ashobore kubikemura. Mu masezerano yo kuwa 08/07/2005 ndetse n'andi yagiye ayavugurura, bigaragara ko hateganyijwemo koko inyungu z'umurengera za 16,500USD angana na 9 .405.000 Frw mu gihe cy'amezi atatu, inyungu z'ubukererwe zingana na 15% ku kwezi ni ukuvuga 180% mu mwaka….), zikaba zigomba kugarurwa mu rugero rw'inyungu zisanzwe, iryo gabanya ariko rigakorwa gusa ku mafaranga atarengeje igihe cy'imyaka itatu guhera igihe Bucyensenge yabisabiye, ni ukuvuga kuwa 18/05/2006.

[20] Mu gukora iryo gabanya , Urukiko rwashingira ku nyungu ya 10% ku mwaka inkiko zikunze gufatiraho mu kugenera inyungu utari umucuruzi, bityo Rubayiza akagenerwa amafaranga abazwe mu buryo bukurikira (hashingiwe ku masezerano yo kuwa 08/07/2005, taux de change ya 1$=570 Frw n'imibare igaragara kuri cote 61, 62, 63 na 64 za dosiye yakozwe na Rubayiza) :

- Umwenda Rubayiza yahaye Bucyensenge kuwa 08/07/2005 ungana na 57.100 USD hatabariwemo inyungu bari bumvikanye, bakaba barawugabanyije mu byiciro hakurikijwe igihe bari bumvikanye cyo kwishyura :

- igice cya mbere kingana na 2,000USD, igice cya kabiri na 5,100 USD, igice cya gatatu na 16,666 USD, igice cya kane na 16,666USD, igice cya gatanu na 16,666USD.

- hakurikijwe ibigaragara ku mbonerahamwe ziri kuri cote 61 na 62 za dosiye, umwenda remezo n'inyungu zawo ku gice cya mbere, icya kabiri n'icya gatatu byarishyuwe, bivuga ko hari hasigaye kwishyurwa umwenda w'igice cya kane n'icya gatanu. Ibyo bice byombi bingana na 16,666 USD +16,666 USD=33,332USD ahwanye na 18.999.240 Frw.

- amafaranga Bucyensenge yishyuye ku gice cya kane n'icya gatanu angana na 6.139.307 Frw bivuze ko umwenda remezo nyawo Bucyensenge yari afitiye Rubayiza kuwa 18/05/2006 ungana na 18.999.240 Frw - 6.139.307 Frw = 12.860.685Frw

- Kuva tariki 18/05/2006 kugeza tariki 03/12/2010 urubanza ruciriweho, harimo igihe kingana n'imyaka ine amezi atandatu n'iminsi itatu bihwanye n'iminsi 1623, bityo inyungu Bucyensenge agomba kwishyura Rubayiza zikaba zingana na : (12.860.685Frw x10 x1623j) : 100 x 360= 5.798.025Frw.

*Hashingiwe ku bimaze kugaragazwa, amafaranga yose hamwe Bucyensenge agomba kwishyura Rubayiza angana na : 12.860.685Frw y'umwenda remezo hiyongeyeho inyungu za 5.798.025Frw, bingana na **18.658.710Frw.***

c. Kumenya niba ihwanyamyenda ryemejwe n'Umucamaza wa mbere ryari rikwiye muri uru rubanza.

[21] Ababuranira Rubayiza bavuga ko Urukiko rwakoresheje nabi ingingo ya 181 CCLIII ubwo rwategekaga ihwanya ry'imyenda (*compensation*) kandi nta mwenda Rubayiza yigeze aberamo Bucyensenge.

[22] Ababuranira Bucyensenge nabo bavuga ko batemera ibyo Urukiko rwavuze ko haba ihwanyamyenda ari ukwibeshya ku nyito y'ibintu ahubwo ko hari hakwiye kuvugwa gusubiza ibyo wishyuwe utabigombwa, bivugwa mu ngingo za 252, 253 na 254 CC LIII, bitewe nuko Rubayiza yakoresheje uburyarya atwara ibyo atagombwaga.

[23] Urukiko rurasanga ingingo ya 181 CCLIII ivuga ku byerekeranye n'ihwanya ry'imyenda itaragombaga gukurikizwa kuko ikigaragara ari uko Rubayiza nta mwenda yari abereyemo Bucyesenge nk'uko nawe abyemera**.**

d. Kumenya niba ikirego cy'ifatirabugwate ry'ibicuruzwa kitaraciriweho urubanza

[24] Ababuranira Rubayiza bavuga ko Urukiko rwanze guca urubanza ku kirego cy'ifatirabugwate y'ibicuruzwa bya Bucyensenge kandi rutagaragaje impamvu, ibi bikaba binyuranyije n'ingingo ya 9 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine.

[25] Ababuranira Bucyensenge bavuga ko iyo ngingo itigeze igibwaho impaka mu iburanisha nubwo byari mu kirego cy'iremezo, ko rero ntacyo Rubayiza yari akwiye kunenga imikirize kuri icyo kibazo. Bavuga kandi ko kuba Rubayiza avuga ko amasezerano yagiranye na Bucyensenge ari ay'imbonezamubano, adakwiye gusaba ifatirwa ry'umwenda w'ubucuruzi kuko byaba binyuranije n'ibivugwa mu ngingo ya 250 CC LIII.

[26] Urukiko rurasanga iyi ngingo y'ubujurire nta shingiro ifite kuko ikibazo cy'ifatirabugwate ry'ibicuruzwa bya Bucyensenge kitagiweho impaka mu rwego rwa mbere, ingingo ya 168 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ikaba ibuza ababuranyi kuzana ibirego bishya mu rwego rw'ubujurire.

III. Ubujurire bwuririye ku bundi

Ikibazo cyo kumenya amasezerano afite agaciro muri uru rubanza

[27] Bucyensenge yatanze ubujurire bwuririye ku bundi asaba ko hakwemezwa ko umwenda yahawe na Rubayiza ari 15,000 USD ahwanye na 9.000.000 Frw(kuri taux de 570 y'icyo gihe) nkuko ugaragara mu masezerano yo kuwa 24/04/2004 aho kuba uwa 57,100USD Urukiko rwa mbere rwavuze ko impande zombi zemeranywaho. Avuga kandi ko kuba Urukiko rwaremeje ko Rubayiza nta nyungu akwiriye gusaba kubera ko atari umucuruzi, rwari kuvuga ko amasezerano yakozwe hagati y'ababuranyi ari inguzanyo isanzwe(simple prêt) maze rukamutegeka gusubiza Bucyensenge 43.289.592 Frw ahwanye n'ikinyuranyo

cya 52.289.592 Frw yamwishyuye hakuwemo 9.000.000Frw yamuhayeho inguzanyo, ariko hakiyongeraho inyungu zibazwe kuri 18% buri mwaka uhereye igihe yamwishyuriye. Yasabye kandi ko yagenerwa indishyi zingana na 5.000.000Frw zo kuba yarashowe mu manza nta mpamvu, na 3.000.000Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[28] Ababuranira Rubayiza bavuga ko nta mpamvu yo gushingira ku masezerano yo kuwa 24/04/2004 kuko yasheshwe n'abayagiranye ahubwo ko ayo bemera ari ayakozwe tariki 07/08/2005 kimwe n'andi yagiye ayakurikira.

[29] Ku byerekeye ubujurire bwuririye ku bwa Rubayiza bwatanzwe na Bucyensenge, Urukiko rurasanga impande zombi zaremeranyijwe ko amasezerano ya mbere yo kuwa 24/04/2004 asheshwe akaba asimbuwe nayo bise amasezerano nº2 yo kuwa 08/07/2005, na Bucyensenge yishyiriyeho umukono, bityo akaba ariyo agomba gushingirwaho nk'uko byari byasobanuwe haruguru.

[30] Ku birebana n'indishyi za 5.000.000Frw Bucyensenge asaba, Urukiko rurasanga atazigenerwa kuko atashowe mu manza nta mpamvu nk'uko abivuga, akaba atanagenerwa n'amafaranga 3.000.0000Frw y'ikurikirana rubanza kuko uwo baburana ariwe ugize ibyo atsindira kuri uru rwego.

IV . ICYEMEZO CY'URUKIKO

[31] **Rwemeje** ko ubujurire bwa Rubayiza Edouard bufite ishingiro kuri bimwe.

[32] **Rwemeye** kwakira ubujurire bwuririye ku bundi bwa Bucyesenge Charles kuko bwatanzwe mu buryo no mu nzira bikurikije amategeko.

[33] **Rwemeje** ariko ko ubwo bujurire nta shingiro bufite.

[34] **Rutegetse** Bucyesenge Charles kwishyura Rubayiza Edouard amafaranga angana na **18.658.710 Frws** akubiyemo umwenda w'iremezo n'inyungu.

[35] **Rutegetse** kandi Bucyensenge Charles kwishyura umusogongero wa Leta wa 4% wa 18.658.710 Frws ni ukuvuga 746.348Frw.

[36] Rumutegetse kwishyura amagarama y'urubanza angana na 36.500 Frw, atayishyura mu gihe gitegetswe, akavanwa mu bye ku ngufu za Leta.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME KUWA 03/12/2010.

MUKANYUNDO Patricie
Perezida

KANYANGE Fidelité
KAYITESI R. Emily
Umucamanza
Umucamanza

MUKAMURENZI Béatrice
Umwanditsi w'Urukiko

IMANZA Z'UBUTEGETSI

8. URUKIKO RUKURU

N° Y'URUBANZA: RAD 0106/10/HC/KIG
ITARIKI Y'URUBANZA: 14/01/2011
HABURANA: NASSOR Salim Sultan / Urwego rw'Umuvunyi

ABAGOBOTSE MU RUBANZA KU BUSHAKE: SAMIRA Sultan Salim; SAMIR Sultan Salim; AHMED Sultan Salim

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI – IFATWA RY'IBYEMEZO BY'UBUTEGETSI – KUDAFATA NK'ICYEMEZO CY'UBUTEGETSI RAPORO Y'IMYANZURO YAFASHWE N'URWEGO RW'UBUTEGETSI MU GUHUZA IMPANDE ZIFITANYE IKIBAZO - KUTAKIRA IKIREGO GISABA KUYIKURAHO CYATANZWE BINYUJIJWE MU NZIRA ZISABA GUKURAHO ICYEMEZO CY'UBUTEGETSI (recours en annulation)

UBUBASHA BW'URWEGO RW'UBUTEGETSI MU GUSHYIRISHA MU BIKORWA ICYEMEZO RWAFASHE MU RWEGO RW'UBUTEGETSI - UKUTABA NGOMBWA KO RUBISABA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Ikirego gisaba gukuraho icyemezo cy'umutegetsi (*recours en annulation*) cyakirwa gusa iyo cyerekeye icyemezo cy'umutegetsi cyeruye cyangwa kiteruye, kandi kigomba kuba kigaragaramo

icyemezo nyakuri kigomba gushyirwa mu bikorwa. Bityo, raporo y'imyanzuro yafashwe n'urwego rw'ubutegetsi mu guhuza impande zifitanye ikibazo ntiyafatwa nk'icyemezo cy'ubutegetsi mu gihe itagaragaza mu buryo busobanutse icyemezo cyafashwe n'urwo rwego rw'ubutegetsi ubwarwo cyangwa se icyo rwategetse.

- Kuba raporo y'imyanzuro yafashwe n'urwego rw'ubutegetsi mu guhuza impande zifitanye ikibazo idafatwa nk'icyemezo cy'ubutegetsi, ikibazo gisaba kuyikuraho nticyakirwa mu gihe gitanzwe kinyujijwe mu nzira zisaba gukuraho icyemezo cy'ubutegetsi (recours en annulation).
- Kimwe mu by'ingenzi biranga ibyemezo byafashwe n'urwego rw'ubutegetsi, ni uko mu kubishyirisha mu bikorwa, rutegeka rudasaba.

URUKIKO RUKURU, RURI I KIGALI KU CYICARO CYARWO GIKURU, RUHABURANISHIRIZA IMANZA Z'UBUTEGETSI KU RWEGO RWA MBERE, RUCIYE MU RUHAME URUBANZA NOMERO RAD 0106/10/HC/KIG KU WA 14/01/2011 MU BURYO BUKURIKIRA:

ABABURANA

Urega:	NASSOR Salim Sultan mwene Salim Sultan Ali Al-Harthy na Ghusaina Masoud Al-Harthia, utuye mu Mudugudu wa Gasoro, Akagari ka Kabutare, Umurenge wa Ngoma, Akarere ka Huye, Intara y'Amajyepfo, uhagarariwe na Me SAYINZOGA Jean Pierre.
Uregwa:	Urwego rw'Umuvunyi ruhagarariwe na MBONERA Théophile, Intumwa ya Leta.
Abagobotse mu rubanza ku bushake:	SAMIRA Sultan Salim, mwene Sultan Salim na Uwizeyimana Dancilla, wavutse mu 1982, utuye ku Kimihurura, Akarere ka Gasabo mu Mujyi wa Kigali, uhagarariwe na Me MUNYANGABE Henri Pierre. SAMIR Sultan Salim mwene Sultan Salim Sultan na Uwizeyimana Dancilla, wavutse mu 1986, utuye ku Kimihurura, Akarere ka Gasabo mu

Mujyi wa Kigali, uhagarariwe na Me MUNYANGABE Henri Pierre.

AHMED Sultan Salim mwene Sultan Salim Sultan na Uwizeyimana Dancilla, wavutse mu 1989, utuye ku Kimihurura, Akarere ka Gasabo mu Mujyi wa Kigali, uhagarariwe na Me MUNYANGABE Henri Pierre.

IKIBURANWA

- Gusaba Urukiko gukuraho ibyemezo byafashwe n'Urwego rw'Umuvunyi byo ku wa 28/04/2008;
- Indishyi zinyuranye.

I. IMITERERE Y'URUBANZA

1. NASSOR Salim Sultan yashyikirije uru Rukiko ikirego arusaba gukuraho ibyemezo avuga ko byafashwe n'Urwego rw'Umuvunyi, ngo bikaba bikubiye muri raporo yo ku wa 28/04/2008. Asaba kandi guhabwa indishyi zinyuranye. Impamvu NASSSOR Salim Sultan ashingiraho asaba ko ibyo byemezo bivanwaho ngo ni uko urwo rwego rwakoze ibitari mu bubasha bwarwo, kandi n'inyandiko ikubiyemo ibyo byemezo ubwayo ikaba nta gaciro ifite ngo kuko nta mukono w'uwayikoze uriho.

2. Me MBONERA Théophile uhagarariye Urwego rw'Umuvunyi na Me MUNYANGABE Henrie Pierre uhagarariye SAMIRA Sultan Salim, SAMIR Sultan Salim na AHMED Sultan Salim bagobotse ku bushake muri uru rubanza bavuga ko ibikubiye muri iyo raporo atari ibyemezo by'ubutegetsi ahubwo ari inyandikomvugo y'ubwumvikane hagati ya NASSOR Salim Sultan na KARANGWA Manassé bahujwe n'Urwego rw'Umuvunyi, bityo bagasaba ko

ikirego cya NASSOR Salim Sultan kitakirwa. Uhagarariye Urwego rw'Umuvunyi asaba indishyi za 1.000.000 frw kubera gisiragizwa mu manza na NASSOR Salim Sultan.

3. Ibibazo bigomba gusuzumwa muri uru rubanza ni ukumenya niba ibikubiye muri raporo yo ku wa 28/04/2009 ari ibyemezo by'ubutegetsi koko ku buryo byaregerwa hifashishijwe inzira yo gusaba ko bivaho (*recours en annulation*), mu gihe Urukiko rwasanga ari ibyemezo by'ubutegetsi rugasuzuma niba bikwiriye kuvaho ku mpamvu y'uko urwego rwabifashe rutari rubifitiye ububasha ndetse n'inyandiko bikubiyemo ikaba itagaragaza uwayikoze. Urukiko kandi rugomba gusuzuma niba indishyi zisabwa n'uhagarariye Urwego rw'Umuvunyi kubera gusiragizwa mu manza zifite ishingiro.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

- **Ku byerekeye kumenya niba ibikubiye muri raporo yo ku wa 24/08/2008 ari ibyemezo by'ubutegetsi ku buryo byaregerwa hifashishijwe inzira yo gusaba ko bivaho (*recours en annulation*)**

4. Me SAYINZOGA Jean Pierre avuga ko muri raporo yo ku wa 28/04/2008 yakozwe n'Urwego rw'Umuvunyi, urwo rwego rwafashe ibyemezo byo kwambura NASSOR Salim Sultan imitungo ye, ngo ibikubiye muri iyo raporo bikaba ari ibyemezo by'ubutegetsi kuko byaje no gushyirwa mu bikorwa n'inzego z'ibanze, iyo mitungo yamburwa NASSOR Salim Sultan ishyirwa mu maboko y'abandi bantu, mu gihe iyo raporo NASSOR Salim

Sultan atigeze ayishyiraho umukono ngo kuko atayemeraga. Me MBONERA Théophile avuga ko muri raporo yo ku wa 28/04/2009 yavuzwe haruguru nta cyemezo Urwego rw'Umuvunyi rwafashe, ko ahubwo ibikubiyemo ari imyanzuro yafashwe nyuma y'uko

Urwego rw'Umuvunyi rugerageje kumvikanisha KARANGWA Manassé na NASSOR Salim Sultan mu gihe hagitegerejwe ibyemezo by'inkiko ku bibazo bafitanye. Avuga kandi ko n'iyo myanzuro atari Urwego rw'Umuvunyi rwayifashe, ko ahubwo yafashwe bivuye ku biganiro impande zombi zagiranye kandi ku bwumvikane bwazo, ndetse ngo Urwego rw'Umuvunyi rukaba atari narwo rwayishyize mu bikorwa. Ashingiye kuri izo mpamvu zose, Me MBONERA Théophile asaba Urukiko kutakira ikirego cya NASSOR Salim Sultan. Icyo gitekerezo kandi agihuriyeho na Me MUNYANGABE Henri Pierre uhagarariye abagobotse mu rubanza ku bushake.

5. Urukiko rurasanga inyandiko Me SAYINZOGA Jean Pierre avuga ko ikubiyemo ibyemezo byafashwe n'Urwego rw'Umuvunyi asaba ko bivaho ari inyandiko yiswe "Raporo yo guhuza Nassor Salim Sultan na Karangwa Manassé" yo ku wa 28/04/2009. Uhagarariye urwego rw'Umuvunyi nawe ntahakana iyo raporo, gusa akavuga ko ari inyandikomvugo y'ubwumvikane. Urukiko rurasanga ibikubiye muri iyo raporo bigaragaza ko yakozwe biturutse ku kibazo KARANGWA Manassé yashyikirije Urwego rw'Umuvunyi arusaba kumuhuza na NASSOR Salim Sultan (*médiation*) kugira ngo hafatwe umwanzuro ku masezerano y'ubugure bw'inzu bagiranye. Iyo raporo kandi igaragaza ko imyanzuro iyikubiyemo ari nayo Me SAYINZOGA Jean Pierre avuga ko ari ibyemezo by'ubutegetsi yafashwe nyuma yo guhuriza hamwe ibitekerezo byose byagaragajwe n'abari bitabiriye iyo "*mediation*", mu gihe hagitegerejwe ibyemezo by'inkiko ku bibazo byasuzumwe.

6. Ingingo ya 339 y'Itegeko nimero 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu ivuga ko ikirego gisaba gukuraho icyemezo cy'umutegetsi cyakirwa gusa iyo cyerekeye icyemezo cy'umutegetsi cyeruye cyangwa kiteruye. Iyi ngingo cyakora ntisobanura icyo icyemezo cy'umutegetsi ari cyo, bityo akaba ari ngombwa kureba icyo abahanga mu mategeko

babivugaho. *Jean Rivero* na *Jean Walne* mu gitabo cyitwa "*Droit Administratif*", *Paris, Dalloz*, *20ème Edition* 2004, ku rupapuro rwacyo rwa 334 bavuga ko icyemezo cy'umutegetsi gishobora kuregerwa mu Rukiko hasabwa ko kivaho (*recours en annulation*) ari ikigaragaramo icyemezo nyakuri kigomba gushyirwa mu bikorwa ("*Seuls les actes contenant une véritable décision peuvent constituer une décision exécutoire, faisant grief, susceptible d'être déférée à la censure du juge de l'excès de pouvoir*).

7. Urukiko rurasanga hakurikijwe imiterere ya raporo yavuzwe haruguru, ndetse n'urwego yakozwemo rwo guhuza impande zombi (*médiation*) nk'uko byasobanuwe haruguru, imyanzuro yafashwe muri iyo raporo yerekeye uko imitungo ivugwamo igomba gucungwa itafatwa nk'icyemezo cy'ubutegetsi, cyane cyane ko no muri iyo raporo nta hagaragara mu buryo busobanutse ibyemezo byafashwe n'Urwego rw'Umuvunyi cyangwa se icyo urwo rwego rwategetse, ahubwo ikaba igaragaza ibyasuzumwe n'imyanzuro yafashwe hashingiwe ku bitekerezo byatanzwe n'abari bitabiriye iyo nama nk'uko bivugwa muri iyo raporo, ibi rero mu by'ukuri bikaba bitafatwa nk'icyemezo cy'ubutegetsi.

8. Urukiko kandi rurasanga kuba imyanzuro ikubiye muri iyo raporo itafatwa nk'icyemezo cy'ubutegetsi binashimangirwa n'ibaruwa NASSOR Salim Sultan ubwe yandikiye Umuvunyi Mukuru ku wa 19/11/2009 avuga ko ku wa 28/04/2009 yabagiriye inama akamuhuza na KARANGWA Manassé, bakagira ibyo bemeranya nabyo arondora muri iyo baruwa, ibi rero bikaba bigaragaza ko na NASSOR Salim Sultan nawe ubwe yiyemereraga ko icyo Urwego rw'Umuvunyi rwakoze ari uguhuza impande zombi rukazigira inama hanyuma zikagira ibyo zemeranyaho, bikaba byumvikanisha ko imyanzuro ikubiye muri iyo raporo yo ku wa 28/04/2009 atari ibyemezo by'Urwego rw'Umuvunyi ahubwo ari imyanzuro impade zombi zemeranyijweho nk'uko byasobanuwe haruguru.

9. Ikindi kigaragaza ko imyanzuro ikubiye muri raporo yo ku wa 28/04/2009 atari ibyemezo byafashwe n'Urwego rw'Umuvunyi bityo rero bikaba atari n'ibyemezo by'ubutegetsi, ni ibaruwa Umuvunyi Mukuru yandikiye NASSOR Salim Sultan ku wa 27/11/2009, aho nawe agaruka ku ngingo y'uko icyo Urwego rw'Umuvunyi rwakoze ari ukumugira inama, akanibutsa imyanzuro ivugwa muri iyo raporo ndetse akanavuga ko abona NASSOR Salim Sultan akwiriye gushyira mu bikorwa izo nama zose yagiriwe, Urukiko rukaba rusanga iyo Urwego rw'Umuvunyi ruba hari ibyo rwategetse muri iyo raporo rutari gukoresha iyo mvugo y'uko **akwiriye** gushyira mu bikorwa inama yagiriwe, ahubwo rwari gutegaka ko ibyemezo rwafashe bishyirwa mu bikorwa.

10. Urukiko rurasanga hakurikijwe ibimaze gusobanurwa haruguru kandi hashingiwe ku bivugwa mu ngingo ya 339 nayo yavuzwe haruguru, ikirego cya NASSOR Salim Sultan gisaba kuvanaho ibyemezo avuga ko ari iby'ubutegetsi byafashwe n'Urwego rw'Umuvunyi cyaratanzwe mu buryo bunyuranyije n'amategeko kuko ibyaregewe atari ibyemezo by'ubutegetsi nk'uko byasobanuwe haruguru, akaba rero ataragombaga kubiregera anyuze mu nzira yo gusaba ko bivaho (*recours en annulation*), kubera iyo mpamvu ikirego cye kikaba kitagomba kwakirwa, bityo akaba atari na ngombwa gusuzuma ibijyanye n'impamvu ashingiraho asaba ko ibyo yita ibyemezo by'ubutegetsi bivaho.

- **Ku byerekeye kumenya niba indishyi uhagarariye Urwego rw'Umuvunyi asaba zifite ishingiro**

11. Me MBONERA Théophile uhagarariye Urwego rw'Umuvunyu asaba indishyi zingana na 1.000.000 frw ngo kubera gusiragizwa mu manza. Me SAYINZOGA Jean Pierre uhagarariye NASSOR Salim Sultan avuga ko izo ndishyi zidakwiriye gutangwa ngo kuko nta kirego kigamije kwiregura uhagarariye Urwego rw'Umuvunyi yatanze. Urukiko rurasanga ntacyo rwagaragarijwe rwaheraho rugena izo ndishyi kuko uzisaba atazisobanuye ngo anagaragaze uburyo yasiragijwe mu manza.

III. ICYEMEZO CY'URUKIKO RUKURU

12. Urukiko Rukuru rwemeje kutakira ikirego rwashyikirijwe na NASSOR Salim Sultan kuko cyatanzwe mu buryo bunyuranyije n'amategeko.

13. Urukiko Rukuru rutegetse NASSOR Salim Sultan kwishyura amagarama y'urubanza angana n'amafaranga y'u Rwanda ibihumbi cumi na bitatu na magana cyenda (13.900 frw), atayishyura mu gihe giteganywa n'amategeko ayo mafaranga akavanwa mu mutungo we ku ngufu za Leta.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME KU WA 14/01/2011.

Sé	Sé
INGABIRE Louise	RUTAZANA Angéline
Umwanditsi	Umucamanza