REPUBULIKA Y'U RWANDA

URUKIKO RW'IKIRENGA
B.P: 2197 Kigali
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ICYEGERANYO CY'IBYEMEZO BY'INKIKO

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

Igitabo cya kane, nº 11

Ukwakira, 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*

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

KABERUKA Claude : Umwe mu bagize Komite, Umucamanza mu Rukiko Rukuru rwa Gisirikare

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

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

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

Urwego ruhagarariye Icyegeranyo: URUKIKO RW'IKIRENGA

Icyegeranyo cy’imanza zaciwe ni igitabo gikusanya imanza zatoranijwe mu manza zaciwe n’inkiko. Iryo toranya rikorwa harebwa imanza zaba zifite icyo zigisha kandi zaba icyitegererezo mu gukemura ibibazo bisa. Gifasha kandi uwaba ashaka kubona urubanza mu ngeri runaka z’amategeko atabanje gusoma urupapuro ku rundi rw’urubanza abonye. Gitangazwa buri gihembwe n’Urwego rw’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

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

Icyitonderwa

Icyegeranyo ntikigurishwa, gitangirwa ubuntu.

Uburyo icyegeranyo gikoreshwa

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

Amagambo mpine:

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

Ibyerekezo by'urukiko:

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

IRIBURIRO

Basomyi bacu,

Mu rwego rwo gutangaza imanza zigaragaza umurongo ibibazo bimwe na bimwe byagiye bihabwa mu nkiko, iyi nomero ni iya cumi na rimwe kuva Urukiko rw'Ikirenga rwatangiza iyi gahunda mu mwaka wa 2005; akaba kandi ari igitabo cya kane gitangajwe muri uyu mwaka wa 2011.

Icyo dushyize imbere akaba ari ugutangaza imanza zakemuwemo ibibazo byihariye mu mategeko, ku buryo byafasha mu gukemura ibindi bisa nabyo mu zindi manza cyangwa bikaba intango y'ubushakashatsi bwimbitse mu bibazo bisanzwe bigibwaho impaka mu mategeko.

Kugira ngo ibyegeranyo birusheho kugera ku babikeneye, iyi nomero yatangajwe ku buryo bwanditse no mu buryo bw'ikoranabuhanga, kurubuga rwa internet rw'Urukiko rw'Ikirenga (http:// www.supremecourt.gov.rw- jurisprudence-recueil).

Muri iyi numero harabonekamo imanza z'ingeri zose usibye izijyanye n'amategeko y'umurimo. Ziganjemo imanza zirebana n'amategeko y'ubucuruzi(imanza 7) zikazafasha abakora imirimo ijyanye n'ubucuruzi kureba uburyo ibibazo bijyanye n'imirimo yabo bikemurwa mu nkiko. Habonekamo kandi urubanza rujyanye no gusaba gukuraho ingingo z'amategeko anyuranije n'Itegeko-Nshinga, urujyanye n'imanza z'inshinjabyaha, urujyanye n'imanza z'imbonezamubano, n'izijyane n'imanza z'ubutegetsi (imanza 2) .

CYANZAYIRE Aloysie

Perezida w'Urukiko rw'Ikirenga akaba na

Perezida w'Inama Nkuru y'Ubucamanza

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IMANZA ZIREBA AMATEGEKO ANYURANIJE N'ITEGEKO NSHINGA

1. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RS/Inconst/Pén.0001/11/CS
ITARIKI Y'URUBANZA: 29/04/2011
UWATANZE IKIREGO: MPANGARE Hope (asaba gukuraho ingingo ya 39 y'itegeko No 59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina).

AMAGAMBO MPINE

IMANZA ZIREBANA N'AMATEGEKO ANYURANIJE N'ITEGEKO NSHINGA – IYAKIRWA RY'IKIREGO-URUBANZA RWACIWE BURUNDU RUHINDUKA ITEGEKO

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Ikirego gisaba kuvanaho ingingo y'Itegeko inyuranije n'itegeko Nshinga nticyakirwa iyo hari urubanza rwaciwe burundu kuri iyo ngingo, iyo ibisabwa urukiko rw'Ikirenga gukora ari bimwe mu byasabwe mu rubanza rwaciwe mbere kandi rwabaye itegeko.

- Urukiko ntirwirirwa rwongera gusuzuma mu mizi ko ingingo runaka inyuranije n'Itegeko Nshinga igihe hari urubanza rwaciwe burundu kuri iyo ngingo isabirwa kuvaho.

URUKIKO RW'IKIRENGA RUKIJIJE URUBANZA RS/Inconst/Pén.0001/11/CS KUWA 29 Mata 2011 MU BURYO BUKURIKIRA :

UWATANZE IKIREGO:

Mpangare Hope mwene Rwamushayija na Nyaruromba utuye mu Mudugudu wa Ruturusu, Akagali ka Rukili II, Umurenge wa Remera, Akarere ka Gasabo, Umujyi wa Kigali

IKIREGERWA :

Gusaba Urukiko rw'Ikirenga kuvanaho ingingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, kuko inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04 Kamena 2003 nk'uko ryavuguruwe kugeza ubu.

[1] Uwitwa Tumusime Naboth yatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo arega Mpangare Hope, asaba ko bagabana imitungo bashakanye mu gihe babanaga nk'umugabo n'umugore. Mbere y'uko urwo rubanza rucibwa burundu n'Urukiko Rwisumbuye rwa Gasabo, Mpangare Hope yatanze ikirego mu Rukiko rw'Ikirenga asaba ko ingingo ya 39, igika cya kabiri y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina yavanwaho kuko inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda.

[2] Urubanza rwaburanishijwe n'Urukiko rw'Ikirenga tariki ya 04/04/2011, Urukiko rusuzuma inyandiko itanga ikirego ikubiyemo n'umwanzuro yatanzwe na Me Kazungu Jean Bosco uburanira Mpangare Hope. Asoma raporo y'urubanza, Umucamanza waruteguye yibukije inteko iburanisha ko ikirego

gisa nk'iki cyatanzwe na Gatera Johnson na Kabalisa Teddy mu rubanza RS/Inconst/Pén.0003/10/CS rwaciwe n'Urukiko rw'Ikirenga tariki ya 07 Mutarama 2011. Urukiko rwatangaje ko urubanza ruzasomwa tariki ya 29 Mata 2011

I. Ikibazo kigomba gusuzumwa muri uru rubanza

[3] Muri uru rubanza, ikibazo cy'ibanze kigomba gusuzumwa ni icyerekeranye n'iyakirwa ry'ikirego cyo gusaba kuvanaho ingingo y'itegeko kuko inyuranye n'Itegeko Nshinga kandi hari urundi rubanza rwaciwe rufite ikirego gisa nk'icyo..

II. Isesengura ry'ikibazo n'uko Urukiko rubibona

[4] Ingingo Mpangare Hope asaba ko Urukiko rw'Ikirenga rwavanaho ni iya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryose rishingiye ku gitsina. Iyo ngingo igira iti "ababanaga nk'umugore n'umugabo batashyingiranywe mu buryo buteganywa n'amategeko, bashyingirwa hakurikijwe ihame ry'ubushyingiranywe bw'umugabo umwe n'umugore umwe.

Mu gihe umwe mu barebwa n'ibivugwa mu gika kibanziriza iki, yabanaga n'abagore cyangwa abagabo benshi, abanza kugabana ku buryo bungana na buri wese mu bo babanaga, umutungo bari bafitanye cyangwa bahahanye mbere y'uko ashyingirwa (.....)." Uwatanze ikirego avuga ko igika cya kabiri cy'iyi ngingo kinyuranye n'Itegeko Nshinga rya Repubulika y'u Rwanda mu ngingo yaryo ya 26.

[5] Ikirego cyatanzwe na Me Kazungu Jean Bosco mu izina rya Mpangare Hope gisa n'icyatanzwe na Gatera Johnson na Kabalisa Teddy mu rubanza RS/Inconst/Pén.0003/10/CS rwaciwe n'Urukiko rw'Ikirenga tariki ya 07 Mutarama 2011. Ingingo ya 89, igika cya mbere y'Itegeko Ngenga n° 01/2004

ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ivuga ko « Urukiko rw'Ikirenga arirwo ruburanisha ibirego byerekeranye no gusaba gukuraho itegeko-ngenga, itegeko, itegeko-teka, cyangwa itegeko ryemerera kwemeza amasezerano mpuzamahanga, haba kubikuraho byose cyangwa se zimwe mu ngingo zabyo zinyuranyije n'Itegeko Nshinga, (annulation en tout ou en partie../ partial or complete abrogation) ». Nk'uko biri muri iki gika, Urukiko rw'Ikirenga rufite ububasha bwo gukuraho itegeko ryose cyangwa igice cyaryo. Ingingo ya 95 yo, ikavuga ku buryo bweruye ko bene izo manza zidashobora kongera kuburanishwa, zifite ingufu nk'iz'Itegeko (decisions abrogating ....are not subject to review, they have the force of law .....=.. ils ont l'autorité absolue de la chose jugée). Ntabwo Urukiko rw'Ikirenga rwakongera gusuzuma niba ingingo yasabiwe kuvanwaho inyuranye n'Itegeko Nshinga kuko ikirego nk'icyo rwari rwaragisuzumye rwemeza ko, ingingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina itanyuranye n'Itegeko Nshinga rya Repubulika y'u Rwanda.

[6] Iby'uko urubanza rwaciwe ku kirego cyerecyeranye no gusaba kuvanaho itegeko cyangwa igice cyaryo kuko binyuranye n'Itegeko Nshinga rufite ingufu nk'iz'Itegeko byemejwe kandi n'Urukiko rw'Ikirenga mu rubanza RS/Inconst/Pén.0002/10/CS rwo ku wa 23 Nyakanga 2010. Kubw'ibyo, Urukiko rurasanga ikirego cyatanzwe na Mpangare Hope kitagomga kwakirwa kuko Urukiko rwafashe umwanzuro ku ngingo yasabiwe kuvanwaho kuko inyuranye n'Itegeko Nshinga, ndetse no mu mwanzuro w'uwatanze ikirego nta zindi ngingo nshya zitandukanye n'izatanzwe mu rubanza RS/Inconst/Pén.0003/10/CS rwaciwe n'uru Rukiko tariki ya 07 Mutarama 2011 yerekanye zishobora gutuma Urukiko ruhindura umurongo rwafashe ku birebana n'ingingo yasabiwe kuvanwaho.

III. Icyemezo cy'Urukiko

[7] Urukiko rw'Ikirenga rwemeje ko ikirego rwashyikirijwe na Mpangare Hope kitakiriwe kubera impamvu zasobanuwe haruguru.

[8] Rutegetse Mpangare Hope kwishyura amagarama y'uru rubanza angana na 6800FRW.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 29/04/2011.

Sé
RUGEGE Sam
Perezida

<u>ABACAMANZA</u>:

Sé MUTASHYA Jean Baptiste	Sé NYIRINKWAYA Immaculée
Sé MUKANYUNDO Patricie	Sé KANYANGE Fidélité
Sé HAVUGIYAREMYE Julien	Sé MUKAMULISA M. Therese
Sé KAYITESI R.Emily	Sé MUKANDAMAGE Marie Josée

Sé
MUNYANDAMUTSA Jean Pierre
Umwanditsi

IMANZA Z'INSHINJABYAHA

2. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RPAA 0054/10/CS
ITARIKI Y'URUBANZA: 30/06/2011
HABURANA: UBUSHINJACYAHA
na KAMBANDA Hussein

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA-AGACIRO KAGOMBA GUHABWA IGISUBIZO CYA TEST ADN

ISANO Y'AMARASO IRI HAGATI Y'ABAPIMWE–IYO IJANISHA RIBAYE 99,99% IGISUBIZO CYA TEST ADN KIBA CYIZEWE

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Igisubizo cya ADN kibonetse , cyemeza ko nta sano iri hagati y'abapimwe, cyangwa se ko bafitanye isano. Iyo icyo gisubizo cya Test ADN gitanze ijanisha ringana na 99,99%, icyo gisubizo kiba cyizewe.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA, RUHAKIRIJE MU RUHAME URUBANZA RPAA 0054/09/CS KUWA 30/06/2011, MU BURYO BUKURIKIRA:

<u>HABURANA</u> :
KAMBANDA Hussein, mwene KAREKEZI na MUKANGEMANYI, wavutse mu 1955, avukira mu Kagari ka Kavumu, Umurenge wa Kavumu, Akarere ka Kigoma, mu Ntara y'Amajyepfo, utuye i Nyamirambo, Umujyi wa Kigali, umunyarwanda, umushoferi.
N'UBUSHINJACYAHA

<u>UREGERA INDISHYI:</u>

NYIRABAHIZI Hawa, uhagarariwe na nyina NYIRASHYAKA Raïya, utuye Rwezamenyo - Kimisagara, Umujyi wa Kigali, ahagarariwe na Me MUNYESHEMA Napoléon.

<u>IKIREGERWA:</u>

Kujuririra urubanza RPA 0908/06/HC/KIG rwaciwe n'Urukiko Rukuru ruri i Kigali kuwa 05/03/2009.

<u>ICYAHA AREGWA:</u>

Kuba kuwa 17/09/2004, ari i Nyamirambo, mu Mujyi wa Kigali, yarasambanyije NYIRABAHIZI Hawa, umwana w'imyaka 16 y'amavuko. Icyaha giteganywa kandi gihanishwa ingingo ya 33 na 34 y'Itegeko n° 27/2001 ryo kuwa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa.

I. IMITERERE Y'URUBANZA

[1] Urukiko rw'Umujyi wa Kigali rwaciye urubanza kuwa 09/12/2005, rwemeza ko KAMBANDA Hussein ahamwa n'icyaha cyo gusambanya umwana witwa NYIRABAHIZI Hawa, rumuhanisha igihano cy'igifungo cy'imyaka 25 n'ihazabu ya 100.000 Frw, rumutegeka guha NYIRASHYAKA Raïya 800.000 Frw y'indishyi z'akababaro, no gutanga 32.000 Frw y'umusogongero wa Leta.

[2] KAMBANDA Hussein yajuririye urwo rubanza mu Rukiko Rukuru ruri i Kigali, urubanza rucibwa kuwa 05/03/2009, Urukiko rwemeza ko imikirize y'urubanza rwajuririwe

[3] KAMBANDA yajuririye Urukiko rw'Ikirenga, umucamanza w'ibanzirizasuzuma yemeza ko ubujurire bwe bwatanzwe mu buryo n'inzira bikurikije amategeko, kandi ko buri mu bubasha bw'uru Rukiko.

[4] KAMBANDA Hussein avuga ko ari umwere, naho Ubushinjacyaha bukavuga ko yakoze icyaha aregwa cyo gusambanya umwana.

[5] Urubanza rwaburanishijwe mu ruhame kuwa 25/05/2011, KAMBANDA Hussein yiburanira, Ubushinjacyaha buhagarariwe na KALIWABO Denis, naho uregera indishyi ariwe NYIRASHYAKA Raïya, uhagarariye umwana we NYIRABAHIZI Hawa, ahagarariwe na Me MUNYESHEMA Napoléon.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO:

Kumenya agaciro kagomba guhabwa igisubizo cya « Test ya ADN »

[6] KAMBANDA Hussein avuga ko impamvu nyamukuru y'ubujurire bwe ari uko Urukiko Rukuru rwamuhamije icyaha cyo gusambanya umwana rushingiye ku cyemezo cya « Test ya ADN » gishidikanywaho ngo kuko kigaragaza ko ari se w'umwana wa NYIRABAHIZI Hawa ku ijanisha rya 99,9999 %. Avuga nyamara ko icyo cyemezo gifite inenge zigomba kugitesha agaciro zikurikira :

1. Dr Abel KAGAME yashidikanyiije ku ijanisha rya 99,9999 %, avuga ko ridashobora kuba irya se n'umwana, ko ahubwo icyo gisubizo kigaragaza ko amaraso yapimwe ari ay'umuntu umwe cyangwa ari ay'abantu bava indi imwe.
2. Icyo cyemezo gishidikanywaho kuko Dr MUNYANKINDI Laurent, wasuzumye NYIRABAHIZI Hawa, yemeje ko hari ikinyuranyo hagati y'itariki aherukiraho mu mihango n'amezi "échographie" yerekana, ngo bivuga ko uwo mwana yatewe inda nyuma y'ihohoterwa.
3. Icyo cyemezo ntikiriho kashe ya "Laboratoire" yo mu Budage yakiriye ayo maraso, nta kashe y'uwayasuzumye, uretse isinya ye gusa, nta ndahiro n'imikono by'abahanga bakoze iyo raporo.

[7] Avuga ko izindi mpamvu z'ubujurire bwe ari uko Urukiko Rukuru rwamuhamije icyaha:

- rwirengagije ko umucamanza wo mu bujurire yagendeye ku cyemezo cy'umucamanza wa mbere;

- ko atageze ahitwa MINALOC yo muri Segiteri Nyakabanda, aho NYIRABAHIZI Hawa yari yagiye gushakira ibyangombwa by'amashuri umunsi afatwaho;

- rutabajije abatangabuhamya yatanze, ko ahubwo rwashingiye ku mvugo ya MUNYANDEKWE Radjab ngo wapfuye mbere y'uko icyaha aregwa gikorwa, runagendera k'ubuhamya bwa MUKANTAGARA Amina rutagaragaje inyandiko-mvugo ye iriho indahiro ye n'aho atuye, kandi ko rwashingiye ku mvugo ya NIKUZE Aisha utari uzi umuryango we;

- rwirengagije guha agaciro imvugo y'Umuyobozi w'Akarere ka Nyamirambo wavuze ko Akarere karihiye abanyeshuri, bivuga rero ko uburyo NYIRABAHIZI Hawa yafashwemo ataribwo, ndetse ntirwita ku byavuzwe n'Umuyobozi w'ishuri rya TTC ZAZA wemeje ko NYIRABAHIZI Hawa atigeze yirukanwa ku ishuri;

- rudahaye agaciro ukwivuguruza kwa NYIRABAHIZI Hawa, kuko mu Bugenzacyaha yavuze ko atari amuzi, ariko ageze mu Bushinjacyaha, avuga ko yamubajije amazina ye, ay'ababyeyi be n'aho batuye;

- rwirengagije ko icyaha ashinjwa cyakozwe ngo arwariye mu bitaro bya “La Confiance”.

[8] Uhagarariye Ubushinjacyaha avuga ko abahanga mu gupima « ADN » bavuga ko iyo bayipimye ikagaragaza ijanisha rya 99,9999 %, hemezwa nta shiti ko uwo bapimye aba ari se w’umwana.

[9] Avuga ko kuba harapimwe « ADN » iri mu maraso ya KAMBANDA Hussein n’iri mu maraso y’umwana wabyawe na NYIRABAHIZI Hawa, maze igisubizo cya « Test ya ADN » kikagaragaza ijanisha rya 99,9999 %, cyerekana nta gushidikanya ko KAMBANDA Hussein ari se w’umwana wa NYIRABAHIZI Hawa yasambanyije nk’uko na Dr Abel KAGAME yabyemeje.

[10] Akomeza avuga ko atakwiririrwa asubiza ku zindi mpamvu z’ubujurire za KAMBANDA kuko Inkiko zibanza zamuhamije icyaha zishingiye ku gisubizo cya « Test ya ADN » kigaragaza ko yasambanyije umwana.

[11] Yongeraho ko kuba icyo cyemezo kitariho indahiro y’umuhanga wapimye ADN, ari uko yapimwe n’Ikigo kibifitiye ubumenyi n’ubushobozi byo ku rwego mpuzamahanga ku buryo igisubizo gitanze kiba cyizewe. Ikindi n’uko icyo cyemezo kiriho ibirango by’ibitaro byo mu Budage byakiriye ayo maraso n’umukono wa muganga wayapimye, bivuga rero ko kitagomba guteshwa agaciro nk’uko KAMBANDA abivuga.

[12] Uhagarariye uregera indishyi ariwe NYIRABAHIZI Hawa, uhagarariwe na nyina NYIRASHYAKA, avuga

ko ikimenyetso cya ADN cyatanzwe muri uru rubanza kigaragaza nta shiti ko KAMBANDA Hussein yasambanyije NYIRABAHIZI Hawa, bityo ko icyaha aregwa kigomba kumuhama. Avuga ko KAMBANDA atagomba kugira ibyo anenga abatangabuhamya, kuko ariwe wari warabitangiye mbere.

[13] Urukiko rurasanga Umushinjacyaha yarasabye umuganga wemewe na Leta y'u Rwanda wo mu bitaro byo ku MUHIMA gufata amaraso ya KAMBANDA Hussein n'ay'umwana IYIZIRE wabyawe na NYIRABAHIZI Hawa, kugira ngo hazakorwe « Test ya ADN » mu rwego rwo kumenya niba ari se cyangwa atari we. Nyuma yo kuyafata, ayo maraso yoherejwe mu Kigo cyo mu Budage cyitwa Institute of Legal Medicine, Dept. of Forensic Molecularbiology, aho Dr Christa Augustin yapimye ayo maraso yemeza ko KAMBANDA Hussein ari se wa IYIZIRE NYIRABAHIZI ku ijanisha rya 99,9999 %.

[14] Urukiko rurasanga icyo cyemezo cyerekana ko hapimwe amaraso ya KAMBANDA Hussein n'ay'umwana IYIZIRE NYIRABAHIZI, kikaba kinagaragaraho ibirango by'Ikigo cyo mu Budage cyakiriye ayo maraso ndetse n'amazina n'umukono bya muganga wayapimye, bityo icyo cyemezo kikaba kitagomba guteshwa agaciro nk'uko KAMBANDA Hussein abivuga.

[15] Abahanga bemeza ko iyo igisubizo cya "ADN" kibonetse, cyemeza ko nta sano iri hagati y'abapimwe, cyangwa kikemeza ko bafitanye isano ku ijanisha riri hejuru ya

99 %[1], bakongeraho ko iyo ijanisha ribaye 99,99 %[2], icyo gisubizo kiba cyizewe. %[3], bakongeraho ko iyo ijanisha ribaye 99,99 %[4], icyo gisubizo kiba cyizewe.

[16] Ibyo bisobanuro bihuje kandi n'ibyemejwe na Dr Abel KAGAME wasobanuriye Urukiko ko kuba igisubizo cya "test ya ADN" ari 99,9999 %, hari isano hagati ya KAMBANDA 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.

[17] Urukiko rurasanga kuba icyemezo cya "test ya ADN" cyizewe kandi kidashidikanywaho cyerekana ko KAMBANDA Hussein ari se wa IYIZIRE ku ijanisha rya 99,9999 %, bigaragaza nta shiti ko KAMBANDA Hussein yasambanyijе NYIRABAHIZI Hawa, bityo icyaha cyo gusambanya umwana kikaba kigomba kumuhama nk'uko Urukiko Rukuru rwabyemeje.

[18] Urukiko rusanga rero atari ngombwa kwiririrwa rusuzuma izindi mpamvu z'ubujurire za KAMBANDA Hussein zavuzwe haruguru zirimo n'imvugo ya Dr MUNYANKINDI Laurent kuko zidashobora kuvuguruza ibyagaragajwe n'icyemezo cya "test ya ADN cyavuzwe haruguru.

[1] *L'analyse de l'ADN … permet d'arriver à des réponses particulièrement tranchées : soit elle écarte la filiation, soit elle conclura à une très forte probabilité de filiation supérieure à 99 % in http://www. mon-genome.com.*
[2] *Grâce à des calculs statistiques, l'index de paternité est obtenu. Les résultats sont fiables à 99,99 % in http://www.doctissimo.fr/html/dossier/genetique/13090-test-paternite.htm.*
[3] *L'analyse de l'ADN … permet d'arriver à des réponses particulièrement tranchées : soit elle écarte la filiation, soit elle conclura à une très forte probabilité de filiation supérieure à 99 % in http://www. mon-genome.com.*
[4] *Grâce à des calculs statistiques, l'index de paternité est obtenu. Les résultats sont fiables à 99,99 % in http://www.doctissimo.fr/html/dossier/genetique/13090-test-paternite.htm.*

Ku byerekeye indishyi

[19] Ku byerekeranye n'indishyi, KAMBANDA Hussein avuga ko Urukiko Rukuru rwamuciye indishyi zingana na 300.000 Frw ziyongera kuzo yari yaciwe mbere, kandi ari indezo zari zajuririwe, maze asaba ko zavanwaho.

[20] Uhagarariye uregera indishyi avuga ko baburanye indishyi n'indezo mu Rukiko rubanza, ariko Urukiko rusanga ari ikirego cy'indishyi gifite ishingiro, ariko rubagenera indishyi nkeya, bazijuririye mu Rukiko Rukuru, rubongereraho izindi. Ko rero ibyo KAMBANDA avuga ku byerekeranye n'indishyi nta shingiro bifite kuko zaburanweho mu nzego zombi.

[21] Urukiko rurasanga Urukiko rw'Umujyi wa Kigali rwarategetse KAMBANDA guha NYIRASHYAKA Raïya, uhagarariye umwana we wavuzwe, indishyi z'akababaro zihwanye na 800.000 Frw, azijuririye mu Rukiko Rukuru, ategekwa kumuha 300.000 Frw y'indishyi z'akababaro ziyongera kuzo yaciwe mbere. Ku byerekeye indezo, Inkiko zombi zemeje ko ikirego cy'indezo kitagomba gusuzumwa muri uru rubanza, kuko kidatangirwa mu rubanza rw'inshinjabyaha.

[22] Urukiko rurasanga rero indishyi KAMBANDA Hussein yaciwe zitagomba kuvanwaho nk'uko abivuga, kuko zaburanweho mu Nkiko zibanza zisanga zifite ishingiro, bityo KAMBANDA Hussein agomba guha NYIRABAHIZI Hawa, uhagarariwe na nyina NYIRASHYAKA Raïya, amafaranga y'indishyi yaciwe mbere.

Ubujurire bw'uregera indishyi bwuririye ku bwa KAMBANDA

[23] Uhagarariye uregera indishyi avuga ko atanze ubujurire bwuririye ku bwa KAMBANDA, maze asaba ko NYIRABAHIZI Hawa, uhagarariwe na nyina NYIRASHYAKA, yahabwa 500.000 Frw y'igihembo cya Avoka.

[24] KAMBANDA Hussein avuga ko nta mafaranga y'igihembo cya Avoka yatanga kuko atariwe wamutumye kuburanira NYIRABAHIZI Hawa.

[25] Urukiko rurasanga ubujurire bwuririye ku bundi bwa NYIRABAHIZI Hawa, uhagarariwe na nyina NYIRASHYAKA, bufite ishingiro kuko yari ahagarariwe na Avoka muri uru Rukiko, bityo mu bushishozi bwarwo, Urukiko rumugeneye 300.000 Frw y'igihembo cya Avoka yiyongera kuyo yagenewe n'Inkiko zibanza.

III. ICYEMEZO CY'URUKIKO

[26] RWEMEYE kwakira ubujurire bwa KAMBANDA Hussein n'ubujurire bwa NYIRASHYAKA Raïya, uhagarariye umwana we NYIRABAHIZI Hawa, bwuririye ku bwa KAMBANDA, kuko bwatanzwe mu buryo n'inzira bikurikije amategeko.

[27] RWEMEJE ko ubujurire bwa KAMBANDA Hussein nta shingiro bufite.

[28] RWEMEJE ko ubujurire bwa NYIRASHYAKA Raïya, uhagarariye umwana we NYIRABAHIZI Hawa, bwuririye ku bundi bufite ishingiro.

[29] RUVUZE ko imikirize y'urubanza RPA 0908/06/HC/KIG rwaciwe n'Urukiko Rukuru ruri i Kigali kuwa 05/03/2009, ihindutse gusa ku bijyanye n'amafaranga y'igihembo cya Avoka.

[30] RUTEGETSE KAMBANDA Hussein guha NYIRASHYAKA Raïya, uhagarariye NYIRABAHIZI Hawa, 1.100.000 Frw y'indishyi z'akababaro na 300.000 Frw y'igihembo cya Avoka, bityo amafaranga yose hamwe akaba 1.400.000 Frw, akanayatangira 56.000 Frw y'umusogongero wa Leta, atayatanga mu gihe cy'iminsi umunani, agakurwa mu bye ku ngufu za Leta.

[31] RUTEGETSE KAMBANDA Hussein gutanga amagarama y'uru rubanza angana na 80.250 Frw, abariwemo n'ayo mu Rukiko Rukuru, atayatanga mu gihe cy'iminsi umunani, agakurwa mu bye ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 30/06/2011.

Sé
MUTASHYA Jean Baptiste
Perezida

Sé MUKAMULISA M.Thérèse Umucamanza	Sé RUGABIRWA Ruben Umucamanza

Sé

UWARUGIRA Jean Baptiste
Umwanditsi w'Urukiko

IMANZA Z'IMBONEZAMUBANO

3. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCAA 0097/010/CS
ITARIKI Y'URUBANZA: 06/05/2011
HABURANA: NZARUBARA Jean Marie Vianney / NTAWUKURIRYAYO Therese, MUKARUGOMWA Catherine na KAGORO Claude

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO – AGACIRO K'IKIBURANWA -UREGA NIWE UGENA AGACIRO K'IKIBURANWA AREGERA MU NYANDIKO ITANGA IKIREGO - IYO HAVUTSE IMPAKA KURI AKO GACIRO UMUCAMANZA YAZIKEMURA YIFASHISHIJE RAPORO Y'UMUHANGA (EXPERTISE).

IMPAKA KU GACIRO K'IKIBURANWA ZISHOBORA KUVUKA MU RWEGO RWA MBERE CYANGWA SE MU RWEGO RW'UBUJURIRE-NTA KIBUZA UMUCAMANZA MU RWEGO RW'UBUJURIRE KUZIKEMURA AKORESHEJE RAPORO Y'UMUHANGA (EXPERTISE).

IBIBAZO BY'AMATEGEKO BY AGARAGAJWE

- Agaciro k'ikiburanwa gashobora kugenwa mu rwego rw'ubujurire niyo mu rwego rwa mbere ako gaciro kaba kataragenwe.

- Urega niwe ugena agaciro k'icyo aregera mu nyandiko itanga ikirego akakumvikanaho n'uwo arega, iyo havutse impaka kagenwa n'umucamanza yifashishije expertise .

- Impaka ku gaciro k'ikiburanwa zivugwa mu ngingo ya 43,7o y'itegeko No 01/2004 ryo kuwa 29/01/2004 rigena imitunganirize, Imikorere n'ububasha bw'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi ryujujwe kugeza ubu zishobora kuvukira mu rwego rwa mbere cyangwa se zikavukira mu rwego rw'ubujurire, iyo zivutse mu rwego rw'ubujurire ntacyabuza umucamanza kuzikemura akoresheje expertise.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA MU RUHAME IMANZA Z'IMBONEZAMUBANO, RUKIJIJE KUWA 06 GICURASI 2011 URUBANZA RCAA 0097/10/CS MU BURYO BUKURIKIRA:

HABURANA:

UWAJURIYE :

NZARUBARA Jean Marie Vianney, mwene NSANZUMUHIRE na NYIRAKAROMBA utuye umudugudu, wa Taba mu Kagali ka Butare , Umurenge wa Ngoma akarere ka Huye intara y'amajyepfo

ABAREGWA :

1. Ntawukuriryayo Therese mwene NSHUTI na NYIRAHABYARA utuye Umudugudu w'Intwali, Akagali ka Nyamugari, Umurenge wa Gatsata, Akarere ka Nyarugenge Umujyi wa Kigali ;
2. MUKARUGOMWACatherinemweneNSHUTInaNYIRAHABYAa utuye umudugudu w'Intwali , akagali ka Nyamirambo, umurenge wa Nyamirambo, akarere ka Nyarugenge , Umujyi wa Kigali
3. KAGORO Claude mwene NSHUTI na NYIRAHABYARA utuye mu gihugu cya TANZANIYA ahitwa BAAHAL Beach.

IKIBURANWA :

- Gusaba gusubizwa uburenganzira ku nzu y'icumbi ry'abanyeshuri riri i Kibeho mu Karere ka Nyaruguru.
- Gusubizwa amafaranga yose yinjiye mu mwaka wa 1995-2005 ahwanye na 15.000.000 Frw
- indishyi z'akababaro n'ay'ikurikiranarubanza.

I. Imiterere y'ikibazo

1. NTAWUKURIRYAYO yaregeye Urukiko rw'icyahoze ari intara ya Gikongoro mu rubanza RC 134/05/TP/GIRO arega NZARUBARA JMV ko yamwambuye uburenganzira ku nzu y'icumbi ry'abanyeshuri iri i KIBEHO yasigiwe na musaza we Padiri MAHAME Chrisologue .

2. Muri icyo kirego cye avuga ko nyakwigendera Padiri MAHAME afatanyije na NZARUBARA JMV bubatse home yitwa NSHUTI –ALBERT, ko kuva muri 1987 ishuri ritangira kugeza 1994, ntakibazo cyabaye ngo kuko ibyo babonaga babigabanaga.

3. Ngo ikibazo cyavutse muri 1997 aho ishuri ritangiriye nyuma ya genocide yahitanye Padiri MAHAME. NTAWUKURIRYAYO avuga ko ngo NZARUBARA JMV yikubiye ibiva muri home wenyine, ntiyamuha umugabane we kandi ari mushiki wa Padiri MAHAME ari nawe wahawe uburenganzira bwo kumuzungura .

4. Urubanza rwaje gusibwa mu gitabo cy'ibirego , nyuma yaho nibwo NTAWUKURIRYAYO yaje gutanga ikirego cyo kurubyutsa. Urukiko rwemeza ko NTAWUKURIRYAYO ariwe ugomba kuzungura umutungo wa musaza we Padiri MAHAME, bityo akaba agomba kugira uruhare rungana n'urwa NZARUBARA JMV ku nzu y'icumbi iri i Kibeho.

5. NZARUBARA JMV yajuririye Urukiko Rukuru i Nyanza, abavandimwe ba NTAWUKURIRYAYO bitwa MUKARUGOMWA Catherine na KAGORO Claudien barugobokeshwamo. Urubanza rukizwa kuwa 24/02/2010 rwemeza ko NTAWUKURIRYAYO, MUKARUGOMWA Catherine na KAGORO Claudien bafatanyije bafite uruhare rungana n'urwa NZARUBARA JMV ku nzu y'icumbi iburanwa.

6. NZARUBARA JMV yajuririye Urukiko rw'Ikirenga 19/03/2010 ubujurire bwandikwa kuri RCAA 0052/10/CS. Umucamanza

w'ibanzirizasuzuma mu cyemezo yafashe kuwa 06/08/2010, yavuze ko ubujurire bwe butari mu bubasha bw'Urukiko rw'Ikirenga kubera ko agaciro k'ikiburanwa kangana cyangwa karengeje 20.000.000 Frw avuga, katigeze kagaragazwa n'ababuranyi haba mu nyandiko itanga ikirego cyangwa se karemejwe mu manza zaciwe.

7. Icyemezo yakimenyeshejwe kuwa 13/09/2010 akijuririra kuwa 28/09/2010, ubujurire bwandikwa kuri RCAA 0097/10/2011 ,iburanisha rishyirwa kuwa 22/03/2011. Kuri iyo tariki, ababuranyi baritabye, NZARUBARA JMV aburanirwa na Maître KARANGWA Jean Bosco na Maître BIGARABA John, naho abaregwa baburanirwa na Maître HAKUNDANABAHARI Théotime.

8. Mu ngingo zabo z'ubujurire, Maître KARANGWA Jean Bosco na Maître BIGARABA John bavuga ko, igihe ikirego cyatangwaga, nta gaciro k'ikiburanwa kari mu nyandiko itanga ikirego, n'umucamanza ntako yagennye, ko iyo bigenze bityo, umucamanza wo mu rwego rw'ubujurire niwe ukagena ashingiye kuri expertise, bityo rero umucamanza w'ibanzirizasuzuma yari kugendera kuri rapport d'expertise yakozwe urubanza rugeze mu bujurire, iyo raporo ikaba igaragaza ko agaciro k'ikiburanwa kangana na 62.540.390 Frw.

9. Kuri icyo kibazo, Maître HAKUNDANABAHARI Théotime yavuze ko agaciro k'ikiburanwa mu gihe katigeze kagenwa n'urega mu rwego rwa mbere cyangwa se ngo kemezwe n'urukiko, kadashobora kugenwa mu rwego rw'ubujurire kuko haba hirengagijwe ibiteganywa n'ingingo ya 43,7° y'itegeko ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, nkuko ryahinduwe kugeza ubu.

II. <u>ISESENGURA RY'IBIBAZO N'UKO URUKIKO RUBIBONA.</u>

10. IKibazo bigomba kwibazwa muri uru rubanza :

- kumenya niba agaciro k'ikiburanwa kavugwa mu ngingo ya 43 igika cya 7 y'itegeko ngenga rigenga Urukiko rw'Ikirenga, nkuko

ryahinduwe kugeza ubu, gashobora kubarwa haherewe kuri expertise ikorewe mu rwego rw'ubujurire mu gihe mu rwego rwa mbere, ako gaciro katigeze kagenwa.

11. Ku byerekeranye n'ibishingirwaho mu kugena ububasha bw'inkiko bushingiye ku bushobozi bw'urukiko cyangwa ku kiburanwa, ingingo ya 109 y'itegeko ngenga n°51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko iteganya ko mu manza z'imbonezamubano, ububasha bwo guca urubanza bugaragazwa n'imiterere y'ikiregerwa n'igiciro cyacyo, ko igiciro cy'ikiregerwa kigizwe n'ikiburanwa cy'iremezo cyiyongereyeho inyungu zumvikanyweho mu masezerano.

12. Ingingo ya 116 y'iryo tegeko ngenga nayo igateganya ko iyo ibishingirwaho mu kugena ububasha bw'Urukiko bivugwa mu ngingo kuva ku ya 109 kugeza ku ya 115 z'iri tegeko ngenga bidashobora kugaragaza agaciro k'ikiburanwa, ababuranyi nibo bagena igiciro k'ikiburanwa, bitashoboka kikagenwa n'umucamanza.

13. Ingingo ya 43,7° y'itegeko ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, nkuko ryahinduwe kugeza ubu ivuga ko „Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha mu rwego rw'ubujurire imanza zaciwe n'Urukiko Rukuru, iyo izo manza zagenwemo n'Urukiko indishyi zingana cyangwa zirenze amafaranga miliyoni makumyabiri (20.000.000 Frw hatitawe ku bwoko bwazo cyangwa se zifite agaciro kagenwe n'urega mu nyandiko itanga ikirego cyangwa kemejwe n'umucamanza igihe habaye impaka, kangana cyangwa karenze amafaranga miliyoni makumyabiri (20.000.000 Frw).

14. Izi ngingo uko ari eshatu zose zihuriza kuvuga ko urega ariwe ugena agaciro k'icyo aregera mu nyandiko itanga ikirego akakumvikanaho n'uwo arega, haba havutse impaka, kakagenwa n'umucamanza yifashishije expertise.

15. Ikibazo rero icyo kumenya iyo urega atagennye agaciro k'ikiburanwa mu nyandiko itanga ikirego, n'umucamanza wa mbere ntabe yarakagennye, niba ababuranyi bashobora kukagenera mu rwego rw'ubujurire, cyangwa se n'umucamanza wo mu rwego rw'ubujurire ugejejweho icyo kibazo agashobora kukagena.

16. NTAWUKURIRYAYO atanga ikirego mu Rukiko rw'icyahoze ari Intara ya Gikongoro, yaregaga NZARUBARA JMV ko yamwambuye uburenganzira ku nzu y'icumbi ry'abanyeshuri iri i Kibeho yasigiwe na musaza we Padiri MAHAME Chrisologue. Akavuga ko iyo nzu NZARUBARA yayikubiye wenyine kandi nawe ayifiteho uburenganzira. Birumwikana ko mu by'ukuri icyateraga impaka ni iyo nzu y'icumbi NZARUBARA JMV na Padiri MAHAME Chrisologue bafatanyije kubaka.

17. Nta gaciro kayo NTAWUKURIRYAYO yigeze ashyira mu kirego, kandi n'umucamanza ntako yagennye, nta n'impamvu yari kukagena kuko sicyo cyaburanwaga, icyari kigamijwe kwari ukwerekana ko iyo nzu bayisangiye.

18. Impaka ku gaciro k'ikiburanwa zivugwa mu ngingo ya 43,7° y'itegeko ngenga ryavuzwe haruguru, zishobora kuvuka mu rwego rwa mbere nkuko zishobora kuvukira mu rwego rw'ubujurire. Iyo zivukiye mu rwego rw'ubujurire, Urukiko rusanga nta cyabuza umucamanza kuzicyiranura akoresheje expertise, dore ko biri no mu nshingano ze zo gukiranura ababuranyi igihe bo batashoboye kumvikana. Ni ukuvuga ko, mu gihe urega nta gaciro k'ikiburanwa yashyize mu nyandiko y'ikirego, n'umucamanza wa mbere ntakagene,umucamanza wo mu rwego rw'ubujurire ashobora gukoresha expertise kugirango amenye agaciro k'ikiburanwa, cyangwa ababuranyi ubwabo bakayikoresha, ako gaciro kakaba ariko kazagena ububasha bw'Urukiko rw'Ikirenga hashingiwe ku ngingo ya 43,7° y'itegeko ngenga ryavuzwe haruguru.

19. Ku byerekeranye noneho n'uru rubanza, igihe rwari rugeze mu rwego rw'ubujurire, hakozwe expertise y'inzu y'icumbi ivugwa, bisabwe na NZARUBARA, ikorwa na architecte NSENGIMANA Jean Marie Vianney kuwa 22/09/2010, yerekana ko agaciro kayo ikiri nshya kari 62.540.390 Frw, naho agaciro kayo k'ubu muri iki gihe, kakaba kangana na 32.521.003 Frw. Ako gaciro kakaba ariko kashingirwaho mu kugena ububasha bw'Urukiko rw'Ikirenga. Bityo Urukiko rukaba rusanga ubujurire bwa NZARUBARA JMV buri mu bubasha bw'Urukiko rw'Ikirenga, kuko agaciro k'ikigibwaho impaka karengeje 20.000.000 Frw.

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

20. Rwemeye kwakira ubujurire bwa NZARUBARA JMV ;

21. Rwemeje ko bufite ishingiro;

22. Rwemeje ko ubujurire bwa NZARUBARA JMV buri mu bubasha bw'Urukiko rw'Ikirenga;

23. Ruvuze ko urubanza ruzaburanishwa mu mizi ku munsi ababuranyi bazamenyeshwa n'ubwanditsi bw'Urukiko;

24. Ruvuze ko amagarama aba asubitswe.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KU WA 06/05/2011 N'URUKIKO RW'IKIRENGA RUGIZWE NA:

Sé
MUTASHYA Jean Baptiste
Perezida

Sé	Sé
HATANGIMBABAZI Fabien	MUNYANGERI N. Innocent
Umucamanza	Umucamanza

Sé
MUNYANDAMUTSA Jean Pierre
Umwanditsi

IMANZA Z'UBUCURUZI

4. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMA0017/10/CS
ITARIKI Y'URUBANZA: 15/04/2011
HABURANA: RUMANYIKA Jean Marie Vianney,
RUSEKAMPUNZI Rumanyika Agathe/
RUZINDANA Egide.

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI – GUTEGANYA INYUNGU MU MASEZERANO Y'IGURIZA – KUTABIFATA NKO KWIHA IMIRIMO YA BANKI.

UBUBASHA BW'UMWE MU BASHYINGIRAMWE KU BURYO BW'IVANGAMUTUNGO BWO GUKORA IGIKORWA GISHOBORA KUGIRA INGARUKA KU NYUNGU Z'UMURYANGO.

KUGIRA UBUBASHA BUNGANA KW'ABASHYINGIRANWE KU BURYO BW 'IVANGAMUTUNGO BWO GUKURIKIRANA UMUTUNGO NO KUWUHAGARARIRA NTIBIVUGA KO UMWE YAKWITIRANYWA N'UNDI MU BIKORWA BYABO BYEREKEYE AMASEZERANO BAGIRANYE N'ABANDI.

UWASHYIZE UMUKONO KU MASEZERANO ABA YIYEMEJE KUYUBAHIRIZA KU GITI CYE, KABONE NIYO YABA AREBA INYUNGU Z'UMURYANGO.

IMPAMVU ITUNGURANYE KANDI IDASHOBORA KWIRINDWA-NTIBIFATWA NK'IMPAMVU ITUNGURANYE KANDI IDASHOBORA KWIRIRWA IYO HARI UBUNDI BURYO BWASHOBORA GUTEGANYWA CYANGWA GUKORESHWA KUGIRA NGO IYO MPAMVU YIRINDWE

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Kuba abantu bateganya inyungu mu masezerano y'inguzanyo si ukwitwara nka Banki kuko yo ishinzwe kwakira amafaranga y'abantu ikayaguriza abandi, kuba mu masezerano hateganywamo inyungu byemewe n'amategeko.

- Abashyingiranwe bumvikana ku icunga ry' umutungo bahuriyeho kandi bafite ububasha bungana bwo kuwukurikirana no kuwuhagararira, ariko ibi ntibivuga ko umwe yakwitiranywa n'undi mu bikorwa byabo byerekeye amasezerano bagiranye n'abandi, kuko uwayashyizeho umukono aba yiyemeje kuyubahiriza ku giti cye gusa bikaba bitabazwa mugenzi we, kabone niyo yaba arebana n'inyungu z'umuryango.

- Kuba umugore n'umugabo barasezeranye ivangamutungo ntibibuza umugabo kugirana amasezerano n'abandi bantu.

- Impamvu itunguranye kandi idashobora kwirindwa yumvikana nk'impamvu idashobora guteganywa kandi umuntu adashobora kugira icyo akoraho, iyo hari ubundi buryo bushobora gukoreshwa kugira ngo hirindwe ingaruka zayo, iyo mpamvu ntiba urwitwazo rwo kutuzuza inshingano zikomoka ku mazeserano.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUKIJIJE MU RUHAME URUBANZA RCOMA 0017/10 CS KU WA 15/4/2011 MU BURYO BUKURIKIRA:

ABABURANYI:

Abajuriye :

- RUMANYIKA Jean Marie Vianney, mwene Nzamwita Jean na Mujawabega Gaudence, wavutse mu 1961, utuye mu Mudugudu wa Kana, Akagari ka Kabasengerezi, Umurenge wa Muhima, Akarere ka Nyarugenge, Umujyi wa Kigali, uburanirwa na Me NDUWAMUNGU Jean Vianney.

- RUSEKAMPUNZI RUMANYIKA Agathe, mwene Urayeneza Léopold na Mukankundiye Caroline, utuye mu Mudugudu wa Kana, Akagari ka Kabasengerezi, Umurenge wa Muhima, Akarere ka Nyarugenge, Umujyi wa Kigali, uburanirwa na Me BIZIMANA SHOSHI.

Uregwa :

- RUZINDANA Egide, mwene Murasanyi Aloys na Nyirangirabagenzi Véronique, utuye Minnesota 55105, USA, uburanirwa na Me KAYIGANWA Auréa.

IKIREGERWA :

- *Paiement d'une créance de 814.716 $ majorée d'intérêts commerciaux de 20% par l'an ;*

- *Dommages et intérêts moraux ;*

- *Mesures conservatoires pour la gestion et/ou la saisie des biens de la société OKAPI Hotel & Resorts s.a.r.l et ceux dont la destination a été changée par la défenderesse ainsi que les biens immobiliers donnés en hypothèque et les revenus y relatifs ;*
- *Exécution provisoire nonobstant tout recours ;*
- *Frais et dépens, astreinte judiciaire.*

I. IMITERERE Y'URUBANZA

[1] RUZINDANA na RUMANYIKA bagiranye amasezerano atandukanye agamije ubucuruzi. Mu ntangiriro, RUZINDANA yamukodesheje imodoka 5 zitwara abagenzi, nyuma bagirana umushinga w'ubufatanye mu bucuruzi ku kigereranyo cya 50% (projet de partenariat), RUZINDANA aza no guhabwa imigabane ihwanye na 50% y'imari fatizo (capital) muri sosiyete OKAPI Hotels & Resorts yari igizwe na RUMANYIKA n'abana be babiri.

[2] Byaje kugera aho ubwo bufatanye bwabo mu bucuruzi bugira ibibazo by'imicungire y'umutungo, biyemeza gukora amasezerano ku wa 19/09/2008 (contrat de remboursement des apports) agaragaza uburyo RUMANYIKA azishyura RUZINDANA 814.716 USD yari amaze gushora n'inyungu zayo.

[3] RUMANYIKA ntiyubahirije ayo masezerano, maze RUZINDANA atanga ikirego mu Rukiko Rukuru rw'Ubucuruzi, asaba kwishyurwa umwenda amubereyemo, inyungu zawo, indishyi zitandukanye, ndetse no gufatira imitungo ya OKAPI Hotels & Resorts, ingwate yahawe n'amafaranga y'ubukode bwabyo. Muri urwo rubanza hagobotsemo RUSEKAMPUNZI RUMANYIKA Agathe umugore wa RUMANYIKA, nawe asaba kurengera umutungo w'umuryango bafatanije.

[4] Urukiko rwaciye urubanza rutegeka RUMANYIKA kwishyura

RUZINDANA 814.716 USD y'umwenda remezo, 5.500 USD y'ibihano bumvikanye mu masezerano, 6.428,93 USD y'inyungu z'ubukererwe zumvikanwe mu masezerano na 1.500.000 Frw y'igihembo cy'Avoka n'ikurikiranarubanza. Rwamutegetse kandi kumwishyura 500 USD buri kwezi mu gihe atazaba yubahirije ibyategetswe n'urubanza, ariko ayo mafaranga ntashobore kurenga 10.000 USD (astreinte).

[5] RUMANYIKA yajuririye Urukiko rw'Ikirenga avuga ko amasezerano yagiranye na RUZINDANA afite inenge, ko kandi Urukiko rwafashe RUZINDANA nk'aho yamugurije, nyamara RUZINDANA atari Banki ku buryo yaguriza umuntu amafaranga, akaba rero ataragombaga kugenerwa inyungu yasabye hamwe n'amafaranga y'ibihano (pénalités) kuko binyuranyije n'amategeko.

[6] Urukiko kandi ngo ntirwitaye ku bisobanuro yaruhaye ko yagize ibibazo bitamuturutseho kandi atashoboraga kugira icyo akoraho (cas de force majeure), kuko imodoka zitwara abagenzi zavagamo ubwishyu zafungiwe « parking».

[7] RUSEKAMPUNZI nawe yajuriye avuga ko Urukiko ntacyo rwashubije ku kibazo yarugejejeho ko atigeze agira uruhare mu masezerano yakozwe n'umugabo we RUMANYIKA na RUZINDANA, akaba rero nta gaciro yahabwa kuko hirengagijwe uburenganzira afite ku mitungo bafatanyije ndetse n'ubw'abana.

[8] Urubanza rwaburanishijwe mu ruhame ku matariki atandukanye, iya nyuma ikaba iya 17/03/2011, RUMANYIKA aburanirwa na Me NDUWAMUNGU Jean Vianney, RUZINDANA aburanirwa na Me KAYIGANWA Auréa, naho RUSEKAMPUNZI aburanirwa na Me BIZIMANA SHOSHI.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. *Kumenya agaciro k'amasezerano yabaye hagati ya RUMANYIKA na RUZINDANA.*

- ***Ku birebana n'inenge RUMANYIKA avuga ko amasezerano afite.***

[9] Uburanira RUMANYIKA avuga ko amasezerano yabaye hagati ye na RUZINDANA tariki ya 19/09/2008 afite inenge kuko avugwamo inyungu za 12% n'ibihano kandi RUZINDANA atari Ikigo cy'imari (Institution financière) cyemewe mu Rwanda gitanga inguzanyo, akaba rero anyuranije n'amategeko. Asanga rero RUZINDANA ataragombaga kugenerwa inyungu n'ibihano by'ubukererwe kuri 814.716 USD y'umwenda remezo, kuko amasezerano bagiranye atari ay'inguzanyo nk'uko urukiko rwabifashe, ahubwo habayeho "contrat de remboursement des apports".

[10] Uburanira RUZINDANA avuga ko mu rubanza rwajuririwe, Urukiko rwashimangiye ibyemeranijweho n'abagiranye amasezerano rushingiye ku Gitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano mu ngingo yacyo ya 478 iteganya ko mu masezerano asanzwe yerekeye inguzanyo, yaba iy'amafaranga cyangwa ibindi bintu byimukanwa byemewe guteganya inyungu, n'ingingo ya 480 y'icyo gitabo ivuga ko ingano y'inyungu ikomoka ku masezerano ishyirwaho ku bwumvikane bw'abayagiranye. Asanga rero inyungu za 12% zihuye n'amategeko ndetse n'icyifuzo cy'abayagiranye bashaka kurangiza ibibazo by'imicungire mibi y'amafaranga yashowe na RUZINDANA.

[11] Ingingo ya 478 y'igitabo cy'amategeko cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko mu masezerano asanzwe yerekeye inguzanyo, yaba iy'ibiribwa cyangwa

iy'ibindi bintu byimukanwa, guteganya inyungu byemewe. Ku byerekeranye n'inguzanyo ibyara inyungu, ingingo ya 480 y'icyo gitabo iteganya ko « ingano y'inyungu ikomoka ku masezerano ishyirwaho ku bwumvikane bw'abayagiranye, kubitangira ibimenyetso bikurikiza amategeko asanzwe ».

[12] Nk'uko Urukiko Rukuru rw'Ubucuruzi rwabisobanuye, Urukiko rurasanga amasezerano yabaye tariki ya 19/09/2008 hagati ya RUMANYIKA na RUZINDANA yiswe « contrat de remboursement des apports » ari ay'inguzanyo isanzwe ya 814.716 USD yagombaga kwishyurwa mu gihe cy'imyaka icumi (10), kandi RUZINDANA ataritwaye nka Banki kuko yo ishinzwe kwakira amafaranga y'abantu ikayaguriza abandi. Kuba muri ayo masezerano hateganyijwemo inyungu ya 12%, byemewe n'amategeko amaze kuvugwa, bityo rero ayo masezerano nta nenge afite.

- ***Kuba RUSEKAMPUNZI yaba ataramenye amasezerano yabaye hagati ya RUMANYIKA na RUZINDANA byayatesha agaciro ?***

[13] Uburanira RUSEKAMPUNZI avuga ko Urukiko rutashubije ikibazo yarushyikirije asaba ko amasezerano yabaye hagati y'umugabo we RUMANYIKA na RUZINDANA yateshwa agaciro kuko atayamenye kandi ntayashyireho umukono. Ayo masezerano kandi ngo anyuranije n'amategeko arengera umutungo w'umuryango, cyane Itegeko nº 22/11/2009 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranwe, impano n'izungura, mu ngingo yaryo ya 29, Itegeko Ngenga nº 08/2005 ryo ku wa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda mu ngingo yaryo ya 35 n'Itegeko nº 10/2009 ryo ku wa 14/05/2009 ryerekeye ingwate ku mitungo itimukanwa (hypothèques) mu ngingo yaryo ya 5.

[14] Uburanira RUMANYIKA we asanga ikirego RUZINDANA yatanze kigamije gufatira umutungo wose wa RUMANYIKA gitandukanye n'amasezerano bagiranye. Yemera ariko ko RUMANYIKA yashyize umukono ku masezerano ku giti cye.

[15] Uburanira RUZINDANA avuga ko RUSEKAMPUNZI yari azi ubucuruzi RUMANYIKA afatanije na RUZINDANA, ko kandi amasezerano hagati yabo agomba kugira agaciro haba ku mugore we n'abana. N'ubwo kandi ngo RUSEKAMPUNZI atari mu bagize Sosiyete OKAPI Hotels & Resorts, yemera ko umwenda wagiriye akamaro umuryango wabo.

[16] Itegeko nº 22/11/2009 ryo ku wa 12/11/1999 mu ngingo yaryo ya 17 yavuzwe haruguru riteganya ko « abashyingiranwe bumvikana k'ucunga umutungo bahuriyeho kandi bafite ububasha bungana bwo kuwukurikirana no kuwuhagararira » byumvikana ko buri wese afite uburenganzira bwo kuregera no gukurikirana umutungo w'urugo, ariko ntibivuga ko umwe yakwitiranywa n'undi mu bikorwa byabo byerekeye amasezerano bagiranye n'abandi, kuko uwayashyizeho umukono aba yiyemeje kuyubahiriza ku giti cye gusa, bikaba bitabazwa mugenzi we, kabone n'iyo yaba arebana n'inyungu z'umuryango.

[17] Muri uru rubanza icyaregewe si umutungo w'umuryango wa RUMANYIKA na RUSEKAMPUNZI (ubutaka cyangwa se ibindi), ahubwo ni ukutubahiriza amasezerano RUMANYIKA yagiranye na RUZINDANA yerekeranye n'uburyo azishyura umwenda wa 814.716 USD RUZINDANA yashoye mu bucuruzi bwa Sosiyete OKAPI Hotels & Resorts bari bafatanije, inyungu zawo n'ibihano byo kutishyurira igihe.

[18] Kuba RUSEKAMPUNZI avuga ko ayo masezerano atahabwa agaciro kuko nta ruhare yayagizemo cyane ko ngo atari anayazi, Urukiko rurasanga nta shingiro bifite kuko, nk'uko

byavuzwe haruguru, kuba yarashakanye na RUMANYIKA mu buryo bw'ivangamutungo bitabuza RUMANYIKA kugirana amasezerano n'abandi bantu. Bigaragara kandi ko mu gihe ayo masezerano yabaga ku wa 19/09/2008, Itegeko nº 10/2009 ryo ku wa 14/05/2009 ryerekeye ingwate (hypothèques) ryari ritarabaho, RUSEKAMPUNZI akaba rero ataryifashisha muri uru rubanza ku birebana n'ingwate zatazwe n'umugabo we RUMANYIKA agamije kuzihakana.

[19] Ku birebana n'aya masezerano, ikigaragara na none ni uko yabaye hagati y'abantu bari bahuriye kuri Sosiyete OKAPI Hotels & Resorts igizwe na RUZINDANA, RUMANYIKA n'abana be babiri, RUSEKAMPUNZI atarimo kuko yinjiyemo ku wa 1/09/2009, bikaba rero bitarashobokaga ko asinya ku masezerano arebana na sosiyete adafitemo imigabane, bityo rero ubujurire bwe bukaba nta shingiro bufite.

b. Ese ibibazo RUMANYIKA avuga byatumye atishyura RUZINDANA ntibyamuturutseho, byaramutunguye, ntacyo yashoboraga kubikoraho?

[20] Uburanira RUMANYIKA ntahakana umwenda RUMANYIKA abereyemo RUZINDANA, ahubwo avuga ko kuba atarubahirije ingengabihe mu kwishyura nk'uko babisezeranye byaratewe n'ibibazo yagize biturutse ku ifungwa rya « parking » ya SOTRA, byatumye aburana na RWANDA PAINT bayikodeshaga. Asobanura ko iryo funga ari ikintu kitamuturutseho. Ikindi ngo ntiyashoboraga kuriteganya kuko yari yarakoranye amasezerano y'ubukode bw'igihe kirekire na nyiri « parking » amwishyura n'amafaranga y'ubukode bw'amezi 12, atungurwa n'uko ayo masezerano asheshwe. RUMANYIKA na none ngo ntacyo yashoboraga gukora ku cyemezo cyafashwe n'Ubuyobozi bw'Akarere ka Nyarugenge bwaje kumuvana muri iyo « parking ».

[21] Akomeza avuga ko ibyo byose Urukiko rutabyitayeho, nyamara yari yarasezeranye na RUZINDANA ko mu gihe habaye « cas de force majeure » batazasesa amasezerano, ahubwo ruvuga ko yagombaga gukora ibishoboka amafaranga yava hose, mu gihe ariko bigaragara ko nta mafaranga yashoboye kubona, bityo rero akaba ntacyo yaryozwa.

[22] Uburanira RUZINDANA we avuga ko amasezerano agomba gushingirwaho ari ayo ku wa 19/09/2008 hagati ya RUMANYIKA na RUZINDANA yiswe « contrat de remboursement des apports », ko kandi RUZINDANA atashoye imari muri « transport » gusa, ubwishyu bukaba rero butaragombaga kuva mu modoka zonyine kuko OKAPI Hotels & Resorts kimwe na SOTRA zitigeze zihagarara gukora, ngo abe yarabuze ubwishyu. Yasobanuye ko mu masezerano RUMANYIKA yahawe igihe gihagije cyo kwitegura kwishyura, nyamara ariko na mbere y'uko « parking » ifungwa akaba atarishyuraga neza kuko yarezwe ari uko hashize amezi 6 atishyura. Ku byerekeraye n'ifungwa rya « parking », yavuze ko ibaruwa y'ubuyobozi yanditswe tariki ya 06/02/2009 ishyirwa mu bikorwa mu kwezi kwa kane 2009 ariko ko RUMANYIKA ntacyo yakoze ngo yishyure, ko ahubwo yagize ubushake bucye, kandi atananiwe kwigobotora ibibazo avuga ko yagize.

[23] « Cas de force majeure » yumvikana nk'impamvu itunguranye, idashoboraga guteganywa kandi umuntu adashobora kugira icyo akoraho.

[24] Urukiko rurasanga nk'uko Urukiko rubanza rwabisobanuye, kuba « parking » y'imodoka za SOTRA yarafunzwe atari « cas de force majeure » yatumye RUMANYIKA atishyura RUZINDANA nk'uko babisezeranye kuko yashoboraga guteganya aho imodoka zakwimukira mu gihe iyo « parking » yakodeshaga nyirayo yayisubiza. Na none kandi si ikintu

atashoboraga kugira icyo akoraho kuko yashoboraga gushaka indi « parking », imirimo yo gutwara abagenzi igakomeza. Byongeye kandi mu masezerano bagiranye nta kigaragaza ko ubwishyu bwagombaga guturuka gusa ku mafaranga ava muri « transport » ikorwa na SOTRA.

c. Ku byerekeye inyungu zisabwa na RUZINDANA n'amafaranga y'ikurikiranarubanza

[25] Uburanira RUZINDANA yatanze ubujurire bwuririye ku bwa RUMANYIKA asaba ko yahabwa inyungu za 12 % kuri buri kwezi kutishyuwe kugeza urubanza ruciwe nk'uko biri mu ngengabihe bumvikanyeho. Asaba kandi ko n'ibihano byo kutishyurira igihe bya 500 USD (astreinte) buri kwezi kutishyuwe byakomeza kubarwa nabyo kugera urubanza ruciwe, akagenerwa n'igihembo cya « avocat » gihwanye na 15% y'umwenda uburanwa.

[26] Uburanira RUMANYIKA avuga ko RUZINDANA atagomba gusaba inyungu za 12% kuko yitwaye nka Banki, izo nyungu rero zikaba zinyuranije n'amategeko.

[27] Nk'uko byagaragajwe haruguru, Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, ingingo ya 478 yemera ko umuntu ashobora kwaka inyungu ku nguzanyo. Na none ingingo ya 52 yacyo iteganya ko « inyungu zibyawe n'imari remezo zishobora nazo kubyara inyungu biturutse ku rubanza cyangwa ku masezerano yihariye, zipfa gusa, ari mu kirego cyangwa mu masezerano, kuba ari inyungu nibura z'umwaka wuzuye ».

[28] Amasezerano ya « remboursement des apports » yo ku wa 19/9/2008 ateganya ko RUMANYIKA azishyura inyungu za 12% ku mwaka ku mwenda wa 814.716 USD, no ku mafaranga azaba yakerewe kwishyura. Uburanira

RUZINDANA asobanura ko mu kugena izo nyungu nta kindi bashingiyeho uretse ubwumvikane bwabo gusa, naho uburanira RUMANYIKA akavuga ko zitagombaga gucibwa. Urukiko rurasanga inyungu ya 12% yumvikanyweho muri ayo masezerano ari ikirenga hashingiwe ku nyungu zakwaga icyo gihe ku nguzanyo ku isoko mpuzamahanga ry'amadolari[5] ku mwaka zihwanye na 3.3709 %. Muri iki gihe izo nyungu zirabarirwa kuri 0.7797 %, bigaragara ko idolari ryagabanutse mu gaciro. Hashingiwe kuri ibyo byose, Urukiko rurasanga, mu bushishozi bwarwo, inyungu RUMANYIKA yaciwe na RUZINDANA zikwiye gushyirwa kuri 6% ku mwaka, zikaba zibazwe mu buryo bukurikira :

$$\frac{814.716 \text{ USD} \times 6 \times \text{iminsi } 734}{100 \times \text{iminsi } 360} = 99.666{,}92 \text{ USD}$$

[29] Inyungu z'ubukererwe ku mezi 24 atishyuwe (1/4/2009-1/4/2011) nazo zihwanye na :

$$\frac{99.666{,}92 \text{ USD} \times 6 \times \text{iminsi } 720}{\text{Iminsi } 360 \times 100} = 11.960{,}03 \text{ USD}$$

[30] Ku byerekeye « asteinte » ya 500 USD buri kwezi RUMANYIKA na RUZINDANA bumvikanye mu gihe azaba atishyuriye igihe, Urukiko rurasanga kuva tariki ya 1/4/2009 kugeza ubu ahwanye na 500 USD x amezi 24 = 12.000 USD.

[31] Urukiko rurasanga umwenda RUMANYIKA agomba kwishyura RUZINDANA ungana na 814.716 USD y'umwenda remezo hiyongereyeho inyungu zingana na 99.666,92 USD, inyungu z'ubukererwe 11.960,03 USD n'amadolari 12.000 y'ibihano byo kutishyurira igihe, yose hamwe akaba 938.342,95 USD.

[32] Ku birebana n'amafaranga y'ikurikirana rubanza n'igihembo cya avoka, Urukiko rurasanga ayo RUZINDANA asaba ari ikirenga mu bushishozi akaba agenewe 500.000

[5] *Reba Wall Street Journal (WSJ) LIBOR :Historical Data :2008*

Frw yiyongera kuri 1.500.000 FRW yagenwe n'Urukiko rubanza, yose hamwe akaba 2.000.000 Frw.

III. ICYEMEZO CY'URUKIKO

[33] Rwemeje ko ubujurire bwatanzwe na RUMANYIKA Jean Marie Vianney nta shingiro bufite.

[34] Rutegetse RUMANYIKA kwishyura RUZINDANA Egide 938.342,95 USD n'amafaranga 2.000.000 y'igihembo cya « avocat », no kuyatangira umusogongero wa Leta wa 4% uhwanye na 37.533,72$ US ahwanye n'amafaranga y'u Rwanda 22.573.226 Frw[6], yongeweho umusogongero wa 4% ya 2.000.000 frw ahwanye na 80.000 Frw, umusogongero wa Leta wose ukaba ari 22.653.226 Frw, atayatanga, ayo mafaranga agakurwa mu bye ku ngufu za Leta.

[35] Rwemeje ko ubujurire bwa RUSEKAMPUNZI RUMANYIKA Agathe nta shingiro bufite.

[36] Rwemeje ko ubujurire bwa RUZINDANA Egide bwuririye ku bwa RUMANYIKA bufite ishingiro kuri bimwe.

[37] Rutegetse RUMANYIKA na RUSEKAMPUNZI Agathe gufatanya kwishyura amafaranga 53.400 y'amagarama y'urubanza, abariwemo n'ayaciwe n'Urukiko Rukuru rw'Ubucuruzi, batayatanga, ayo mafaranga agakurwa mu byabo ku ngufu za Leta.

[6] *Reba "Currency exchange rates, BNR,Thursday, April 14,2011".*

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME KUWA 15/04/2011.

Sé
KAYITESI R. Emily
Perezida

Sé
MUKANDAMAGE M.Josée
Umucamanza

Sé
MUNYANGERI N. Innocent
Umucamanza

Sé
HABYARIMANA Marcel
Umwanditsi w'Urukiko

5. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMA0033/10/CS
ITARIKI Y'URUBANZA: 03/06/2011
HABURANA: MUKAKABANDA Amerberga / MAGERWA S.A

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI – URUPAPURO RUTANGWA MU KOHEREREZANYA IBICURUZWA IYO UGURA N'UGURISHA BATARI MU GACE KAMWE

UWAKIRIYE IBICURUZWA NTARYOZWA IKINYURANYO KIBONETSE HAGATI Y'IBICURUZWA BYAGUZWE N'IBYO UMWIKOREZI YAMUSHYIKIRIJE

UBURENGANZIRA BWO KUREKA URUBANZA -NTIBWEMERWA IYO IBURANISHA RYAPFUNDIKIWE.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Mu gihe uwagurishije n'ugura batari hamwe, habaho uburyo bwo kohererezanya ibyagurishijwe hagatangwa urwandiko rugaragaza ibyo bintu byagurishijwe, urwo rwandiko rugaragaza ibintu bitatu by'ingenzi aribyo: Ubwoko bw'ibyaguzwe, Ingano n'uburyo ibicuruzwa byoherejwemo, rugaragaza kandi n'uburyo ibicuruzwa byapakiwemo.

- Uburyozwe bw'uwakiriye ibyaguzwe abihawe n'umwikorezi bufite aho buva n'aho bugarukira, uwakiriye ibyaguzwe ntaryozwa ikinyuranyo kiri hagati y'ibyaguzwe n'ibyo umwikorezi yashyikirije ubyakira.

- Ababuranyi bafite uburenganzira bwo kureka urubanza kandi bikemerwa aho rwaba rugeze hose, ibi bisobanura aho iburanisha ryaba rigeze hose, iyo urubanza rwapfundikiwe hasigaye kurusoma ubwo burenganzira ntibuba bugishobotse, igihe urubanza rukiburanishwa hasigaye isomwa ryarwo ntawasaba kurureka kuko ubwo burenganzira buba bwararangiye igihe iburanisha ryapfundikiwe.

URUKIKO RW'IKIRENGA RURI I KIGALI RUHABURANISHIRIZA IMANZA Z'UBUCURUZI RUCIYE URUBANZA RCOM A 0033/10/CS MU RUHAME MU BURYO BUKURIKIRA:

HABURANA:

Uwajuriye : Mukakabanda Amerberga

Uregwa: MAGERWA SA

I. IKIBURANWA:

Kujuririra urubanza Rcom 0131/09/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 5/03/2010

1. Gutegeka MAGERWA ko ishyikiriza Mukakabanda Amerberga uhagarariye Société STANDARD "groupe élèctrogène" ye SDMO –GS 88 K, 88KVA, 1700kg ifite agaciro ka 11.440.932 Frw n'indishyi z'akababaro za 3.000.000 Frw;

2. Gutegeka MAGERWA gutanga inyungu z'ubucuruzi zihwanya na 25% kugeza Mukakabanda Amerberga arenganuwe;

3. Gutegeka MAGERWA kwishyura igihembo cy'Avocat n'irangizarubanza bihwanye na 10% akaba angana na 2.016.340 Frw;

4. Gutegeka irangizarubanza ry'agateganyo kuri 11.440.932Frw;

5. Gutegeka igihano gihatira kurangiza urubanza (astreinte) ya 500.000Frw buri kwezi mu gihe rubanza ruzamara.

II. Imiterere y'urubanza

[1] Mukakabanda Amerberga yaguze groupe élèctrogène i Dubai, irapakirwa ngo izanwe mu Rwanda. Igihe kigeze Mukakabanda Amerberga yahawe avis d'arrivée na MAGERWA yerekana ko groupe élèctrogène SDMO –GS 88 K, 88KVA, 1700kg yahageze. Nyuma, MAGERWA yandikiye Mukakabanda Amerberga imumenyesha ko avis d'arrivée yari yahawe yarimo ikosa , ahabwa avis d'arrivée ikosoye yerekana ko groupe élèctrogène yakiriwe na MAGERWA ari iyo mu bwoko bwa SDMO, 33KVA, ipima 1000Kg. Iyi groupe élèctrogène niyo Mukakabanda Amerberga yahawe na MAGERWA naho we akayanga. Nyuma Mukakabanda Amerberga yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi arega MAGERWA SA asaba ko yahabwa "groupe élèctrogène" ifite ibiyiranga bikurikira:SDMO –GS 88 K, 88KVA, 1700kg. Yanasabye ko yahabwa indishyi z'akababaro, inyungu z'ubucuruzi, n'igihembo cy'avoka. Urukiko rwaregewe rwaciye urubanza tariki ya 5/03/2010, rwemera kwakira ikirego cyatanzwe na Mukakabanda Amerberga ariko ruvuga ko nta shingiro gifite.

[2] Mukakabanda Amerberga ntiyishimiye imikirize y'urubanza, yarujuririye mu Rukiko rw'Ikirenga. Urubanza rwakorewe ibanzirizasuzuma n'umucamanza wabishinzwe yemeza ko urubanza rwakiriwe. Iburanisha ryarwo ryabaye tariki 5/5/2011 ababuranyi bamenyeshwa ko urubanza ruzasomwa tariki 3/06/2011.

III. Ikibazo kiri mu rubanza n'isesengura ryacyo

[3] Mukakabanda Amerberga yajuriye asaba ko yahabwa groupe élèctrogène SDMO –GS 88 K, 88KVA, 1700kg ifite agaciro ka 19200USD. MAGERWA yasabwa gutanga iyi groupe élèctrogène isabwa na Mukakabanda Amerberga mu gihe yaba yarayakiriye. Ikibazo kiri muri uru rubanza ni ukumenya niba groupe élèctrogène isabwa na Mukakabanda Amerberga

wajuriye yarakiriwe na MAGERWA ikaba igomba kuyisubiza.

[4] Mu kujurira, Mukakabanda Amerberga avuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije avis d'arrivée yatanzwe na MAGERWA naho Me Batware Jean Claude uburanira MAGERWA akiregura avuga ko avis d'arrivée yatanzwe mbere yarimo ikosa, nyuma rikaba ryarakosowe uwajuriye arabimenyeshwa. Yasabye ko imikirize y'urubanza rwajuririwe yagumaho Mukakabanda Amerberga agahabwa groupe élèctrogène ye MAGERWA yashyikirijwe n'umwikorezi. Groupe élèctrogène iburanwa yaguzwe i Dubai, ihabwa umwikorezi JACAJU Cargo CLEARING & FORWARDING, nawe ayishyikiriza MAGERWA. Groupe élèctrogène yageze muri MAGERWA niyo Mukakabanda agomba guhabwa. Ikimenyetso cyerekana ubwoko bwa groupe élèctrogène MAGERWA yakiriwe ni bill of lading nk'urwandiko rutangwa n'umwikorezi rugaragaza ibicuruzwa cyangwa ibintu byikorewe.

[5] Mu gihe uwagurishije n'ugura batari hamwe, habaho uburyo bwo kohererezanya ibyagurishijwe hagatangwa urwandiko rugaragaza ibyo bintu byagurishijwe byoherererezwa uwaguze. Urwo rwandiko rukora ibintu bitatu byingenzi. Kimwe muri byo, nuko rwerekana ubwoko, ingano n'uburyo ibicuruzwa byoherejwe bimeze kandi rukagaragaza nuburyo byapakiwemo. Prof. Richard Williams we yabivuze muri aya magambo *"since the buyer and seller of goods are not normally present together at the shipment, the seller is reluctant to release the goods until he is paid whereas the buyer is reluctant to pay for the goods before he receives them. Therefore, some form of mechanism is required to bridge the trust gap. That mechanism being a bill of lading has thus developed three major functions: 1. Receipt of the goods shipped-* ***stating the type****, quantity and condition of the goods and confirming the fact that exactly those described have been loaded on board the vessel intended to carry them to their (theoretical) final destination…………………….. "*[7].

[7] *Richard Williams, Limitation of Maritime Liability, 4th edition, University of Wales, Swansea, p 15. 2005*

Ubwoko bwa groupe élèctrogène MAGERWA yakiriye ni ubugaragara kuri bill of lading. Ubwoko bwa groupe élèctrogène Mukakabanda Amerberga asaba ko MAGERWA yamuha ntagaragaza ko bene iyo groupe élèctrogène yageze muri MAGERWA n'uwayihagejeje nk'umwikorezi.

[6] Mukakabanda Amerberga niba koko groupe élèctrogène asaba ariyo yaguze, ntabwo yari akwiye kuyisaba MAGERWA ahubwo yari kuyaka uwo yayishyikirije cyane cyane ko iyo hagaragaye ikinyuranyo hagati y'ibintu byashyikirijwe umwikorezi n'ibyo umwikorezi yashyikirije ubyakira, uwabyakiriye ntabwo aryozwa icyo kinyuranyo. "......*in case of difference between contractual description of the cargo with the one actually delivered, liability for any such discrepancy will primarily be with the carrier and not the shipper…*"[8]. Uburyozwe bw'uwakiriye ibintu abihawe n'umwikorezi bufite aho buva naho bugarukira. Ntabwo uwakiriye ibintu yaryozwa ibyo atashyikirijwe. Kuba Urukiko Rukuru rw'Ubucuruzi rwarashingiye ku rwandiko rugaragaza ipakira "Bill of lading" nta kosa rwakoze, agaciro kahawe urwo rwandiko n'Urukiko Rukuru rw'Ubucuruzi uru Rukiko narwo rurasanga rugakwiye.

[7] Mukakabanda Amerberga avuga ko groupe élèctrogène yaguze i Dubai yayiguze ku giciro cya 19.200U$ ifite1700kg naho iyo MAGERWA imuha ikaba ifite agaciro kangana na 19.200AED ifite1000kg. Mu gihe cyo kugaragaza ibyo yaguze kugirango abitangire umusoro (declaration), Mukakabanda Amerberga yerekanye ko icyaguzwe ari Generator ifite 1000kg, yaguzwe 19.200AED. Iyo yerekanye ashaka gutanga umusoro itandukanye niyo asaba gusubizwa. Mu iburanisha ry'uru rubanza mu bujurire ntabwo uhagarariye Mukakabanda Amerberga yigeze ahakana iyo declaration yakoze.

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[8] *Yaroslavna Lasytsya, Role of bills of lading in International Seaborne Trade, Erasmus University Rotterdam, 2006, p15. Available on www.maritimeeconomics.com/system/files*

Groupe élèctrogène Mukakabanda Amerberga asaba ko MAGERWA yamuha iyo aza kuba yarayiguze aba yarayigaragaje mu gihe cyo gutanga imisoro. N'agaciro k'iyo yaka aba yarakagaragaje mu gihe cyo gusora. Urukiko rw'Ikirenga rurasanga hakurikijwe ibisobanuwe muri iki gika ndetse no mu bika bibanziriza iki, nta mpamvu Mukakabanda Amerberga wajuriye yatanze ifatika yatuma imikirize y'urubanza rwajuririwe ihinduka.

[8] Tariki ya 31/05/201, Mukakabanda Amerberga yandikiye Urukiko asaba kureka urubanza kuko yumvikanye na MAGERWA ko rwahagarara ikibazo kikarangira binyuze munzira yo kwikiranura. Kuri uwo munsi, MAGERWA nayo yandikiye Urukiko irumenyesha ko ubwo bwumvikane bwabayeho kandi ko ibwemera. Kureka urubanza biteganywa n'ingingo ya 131 y'itegeko No 18/2004 ryo ku wa 20/06/2004 rigenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nkuko ryahinduwe kandi ryujujwe kugeza ubu. Iyo ngingo ivuga ko "*urega aba aretse urubanza iyo yamaze kururegera hanyuma akareka* ***kuruburana****, uwo yaregaga akabyemera*. ...." Naho iya 132 yo ikavuga ko kureka urubanza bishobora gukorwa no kwemerwa aho urubanza rwaba rugeze hose. Nk'uko biri mu ngingo ya 131, kureka urubanza bikorwa umuburanyi asaba kureka kuruburana. Byumvikane ko urubanza rukiburanwa nirwo umuburanyi ashobora kureaka. Muri uru rubanza ntabwo urega yarakiruburana, iburanisha ryari ryararangiye hasigaye kurusoma. Kuvuga ko kureka urubanza bishobora gukorwa no kwemerwa aho urubanza rwaba rugeze hose bisobanura aho iburanisha ryaba rigeze hose. Mu gace ka nyuma k'ingingo ya 132 y'Itegeko rivugwa muri iki gika, umushingamategeko yabishimangiye avuga ko bishora no gukorwa imbere y'urukiko mu iburanisha. Mu gihe ababuranyi batakiburana, urubanza rutakiburanishwa hasigaye isomwa ryarwo ntawasaba kurureka kuko ubwo burenganzira buba bwararangiye igihe iburanisha ryapfundikirwaga.

IV. ICYEMEZO CY'URUKIKO

[9] Urukiko rw'Ikirenga rwemeye kwakira ikirego cy'ubujurire rwashyikirijwa na Mukakabanda Amerberga rugisuzumye rusanga nta shingiro gifite.

[10] Rwemeje ko hagumaho imikirize y'urubanza rwajuririwe.

[11] Rukijije ko Mukakabanda Amerberga atsinzwe

[12] Rumutegetse gutanga amagarama y'urubanza angana na 42.500FRW.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 03/06/2011 N'URUKIKO RW'IKIRENGA.

Sé
Sam RUGEGE
Perezida

Sé
Patricie MUKANYUNDO
Umucamanza

Sé
Julien HAVUGIYAREMYE
Umucamanza

Sé
Jean Pierre MUNYANDAMUTSA
Umwanditsi

6. URUKIKO R'IKIRENGA

N° Y'URUBANZA: R.COMA005/10/CS
ITARIKI Y'URUBANZA: 10/06/2011
HABURANA: ECOBANK SA / INDIA NOVEMBER

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI – SHEKI ZO KU RUGENDO (CHEQUES DE VOYAGES)-IYO ZIBWE BANKI YAZITANZE IGOMBA KWISHYURA UMUKIRIYA.

UWIBWE IZO CHEQUES AKORA VUBA IMENYEKANISHA KURI BANKI YAZIMUGURISHIJE- GUHITA YISHYURWA KABONE NIYO MU ZIBWE HABA HARIMO IZARANGIJE KWISHYURWA ABANDI.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Mu gihe chèques de voyages zibwe, umukiriya akazikorera imenyekanisha kuri Banki yazimugurishije (Banque intermédiaire) hakiri kare, iyi banki igomba guhita imwishyura amafaranga yahawe, kabone n'ubwo haba hari amasheki yishyuwe mbere y'iryo menyesha, kereka igaragaje ko ayo mafaranga yohererejwe Banki yakoze ayo masheki (Banque émettrice).

Uwibwe chèques de voyage akanakora imenyesha mu gihe gikwiye agomba kuba yishyuwe mu gihe kitarenze amasaha 48 abazwe guhera ku munsi iryo menyesha ryakoreweho.

Iyo umukiriya yibwe chèques de voyage akabikorera imenyesha mu gihe cya vuba agomba kwishyurwa mu gihe kitarenze amasaha 48,iyo bidakozwe Banki yakoreweho imenyesha igomba kubitangira indishyi.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUHAKIRIJE MU RUHAME URUBANZA RCOM.A 0005/10/CS KUWA 10/06/2011, MU BURYO BUKURIKIRA:

<u>HABURANA</u>:

<u>UWAJURIYE</u>:
ECOBANK SA, mu izina ry'Umuyobozi Mukuru wayo, ihagarariwe na Me RWAGATARE Janvier.

<u>UREGWA</u>:
INDIA NOVEMBER mu izina ry'Umuyobozi Mukuru wayo, ifite icyicaro i Bujumbura, ihagarariwe na Me Shema Gakuba Charles.

<u>IKIREGERWA</u> :
Kujuririra urubanza R COM 0066/09/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 20/11/2009.

<u>IKIBURANWA</u>:
- Paiement d'une somme de 8.000 USD dollars américains ;
- Paiement des dommages et intérêts de retard ;
- Frais de procédure et de recouvrement.

I. IMITERERE Y'URUBANZA

[1] ECOBANK SA (ex-BCDI) yagurishije Isidore NDABARASA wari uhagarariye INDIA NOVEMBER "Chèques de Voyage" (Travellers Cheques) za CITICORP zihwanye n'amadorari y'amanyamerika 8.000, ECOBANK iyabikuza kuri konti INDIA NOVEMBER yari ifite muri iyo Banki.

[2] Nk'uko bivugwa n'ababuranyi bombi, ayo ma "Chèques de Voyage" yibwe afitwe na Isidore NDABARASA, ariko azikorera "opposition" kuwa 19/06/2001, ECOBANK inabimenyesha CITICORP kuwa 20/06/2001, iyi nayo ngo ibimenyesha andi ma Banki kugira ngo atazishyura. Kuwa 17/06/2001, "Chase Forex Bureau" yo muri Kenya, yari yazishyuyemo 2.000 USD abajura bayahavunjishirije.

[3] INDIA NOVEMBER yagiye yandikira ECOBANK iyisaba kuyisubiza 8.000 USD yabikuje kuri konti yayo. ECOBANK ikavuga ko ari CITICORP igomba kuyisubiza ayo madorari kuko ariyo nyiri ayo masheki no kuba ariyo yohererejwe ayo madorari. CITICORP ikavuga ko itayasubiza ngo kuko Isidore NDABARASA yajyanye ayo masheki atabanje kuyasinyira imbere y'umukozi wa ECOBANK wayamugurishije.

[4] INDIA NOVEMBER yareze ECOBANK mu Rukiko Rukuru rw'Ubucuruzi, urubanza rwacibwa kuwa 20/11/2009, Urukiko rutegeka ECOBANK guha INDIA NOVEMBER 8.000 USD yaguze "Chèques de Voyage", 8.960 USD y'inyungu zayo z'imyaka umunani, 5.000 USD y'indishyi z'akababaro, 5.000 USD y'ikurikiranarubanza na 500.000 Frw y'igihembo cy'Avoka, inategekwa gutanga 634.688 Frw y'umusogongero wa Leta.

[5] Urubanza rwaburanishijwe mu mizi mu ruhame bwa

nyuma kuwa 25/04/2011, ECOBANK ihagarariwe na Me RWAGATARE Janvier, naho INDIA NOVEMBER ihagarariwe na NKURIKIYE Salvator yunganiwe na Me SHEMA GAKUBA Charles na Me RWAJAYIJA John.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO:

Iyo "Chèques de Voyage" zibwe n'iyihe Banki hagati ya Banki yagurishije ayo masheki na Banki yayakoze igomba kwishyura umukiriya wayaguze

[6] Uburanira ECOBANK avuga ko yagurishije INDIA NOVEMBER ihagarariwe na Isidore NDABARASA "Chèques de Voyage" zihwanye na 8.000 USD, anavuga ko INDIA NOVEMBER yayimenyesheje ko ayo masheki yibwe (opposition) kuwa 19/06/2001, nayo ibimenyesha CITICORP kuwa 20/06/2001.

[7] Avuga ko umucamanza wa mbere yayitegetse guha INDIA NOVEMBER amafaranga menshi atagaragaje uruhare rwayo mu ibura rya "Travellers Cheques" cyangwa mu kudasubiza INDIA NOVEMBER amafaranga yayo. Avuga kandi ko ECOBANK itagomba kuryozwa amakosa ya CITICORP yanze gusubiza INDIA NOVEMBER amafaranga yayo nk'uko bigaragarira mu ibaruwa yayo yo kuwa 26/03/2002, ngo kuko Isidore NDABARASA atayasinyiye imbere y'umukozi wa ECOBANK wayamugurishije.

[8] Ababuranira INDIA NOVEMBER bavuga ko Isidore NDABARASA yaguze "Chèques de Voyage" muri ECOBANK kuwa 01/06/2001 zihwanye na 8.000 USD. Bavuga ko zimaze kwibwa kuwa 16/06/2001, yazikoreye "opposition" anabimenyesha ECOBANK kuwa 19/06/2001,

ko ariko kuwa 17/06/2001, abajura bari bayishyuwemo 2000 USD na "Chase Forex Bureau" yo muri Kenya. Basabye ko 8.000 USD yakwishyurwa na ECOBANK hakiyongeraho n'indishyi zayo ngo kuko itagaragaje ko yoherereje CITICORP amadorari yagurishije ayo masheki.

[9] Igihe Urukiko rwiherereraga kugira ngo ruce urubanza burundu, rwasanze ari ngombwa ko rwifashisha impuguke mu mikoreshereze y'ama "Chèques de Voyage" kugira ngo igire ibyo irusobanurira, maze rushyiraho Bwana GAKWAYA Dominiko.

[10] Nyuma yo kurahira ko avugisha ukuri, avuga mu ncamake ko iyo umukiriya aguze "Chèques de Voyage", Banki yazimugurishije (Banque intermédiaire) igakura amafaranga kuri konti ye, hanyuma zikibwa, umukiriya agomba kwihutira kubimenyesha iyo Banki (opposition). Avuga ko iyo umukiriya yarangaye akabikora akererewe, ahomba kuko aba yarahawe amakuru yose yazamufasha igihe yazibwe.

[11] Akomeza avuga ko iyo umukiriya akoze "opposition" hakiri kare, Banki yamugurishije "Chèques de Voyage" niyo igomba kuyamwishyura, kabone n'ubwo hari amasheki yishyuwe mbere ya "opposition", kuko we aba yarakoze ibimureba, keretse iyo banki yayamugurishije igaragaje ko yohereje amafaranga kuri Banki yakoze ayo masheki (Banque émettrice).

[12] Urukiko rurasanga umuhanga mu mikoreshereze ya "Chèques de Voyage" wavuzwe haruguru yasobanuriye uru Rukiko ko iyo izo "chèques" zibwe, umukiriya akazikorera "opposition" kuri Banki yazimugurishije (Banque intermédiaire) hakiri kare, ari iyi Banki igomba kumwishyura amafaranga yahawe, keretse igaragaje ko

ayo mafaranga yohererejwe Banki yakoze ayo masheki (Banque émettrice).

[13] Muri uru rubanza, Urukiko rurasanga ababuranyi bombi bemeranywa ko Isidore NDABARASA, wari uhagarariye INDIA NOVEMBER, yaguze “Chèques de Voyage” (Travellers Cheques) za CITICORP muri ECOBANK SA (ex-BCDI) zifite agaciro ka 8.000 USD, kandi ko ECOBANK yabikuje amafaranga ahwanye nayo kuri konti ya INDIA NOVEMBER yari muri iyo Banki.

[14] Urukiko rurasanga kandi ababuranyi bombi bemeranywa ko ayo masheki yibwe, kandi ko Isidore NDABARASA yayakoreye “opposition” mu gihe cya vuba, kuko yabimenyesheje ECOBANK kuwa 19/06/2001, nyuma y’iminsi itatu ayo masheki yibwe, ECOBANK nayo ibimenyesha CITICORP kuwa 20/06/2001, inayishyikiriza nomero za “chèques de Voyage” zibwe.

[15] Urukiko rurasanga rushingiye ku bisobanuro byatanzwe n’impuguke kandi narwo rusanga bifite ishingiro, kuba INDIA NOVEMBER yaribwe “Chèques de Voyage”, ikazikorera “opposition” mu gihe cya vuba, nyamara ECOBANK ikaba itagaragaza ko ayo mafaranga yayohereje CITICORP, ntinagaragaze aho CITICORP yasinyiye ko iyakiriye, kandi ntinagaragaze ko hari amafaranga CITICORP yaba yarishyuye akomoka kuri izo “Chèques de Voyage” zibwe, ECOBANK niyo igomba gusubiza INDIA NOVEMBER 8.000 USD ahwanye na “Chèques de Voyage” zibwe.

[16] Urukiko rurasanga kandi ayo mafaranga agomba kwiyongeraho inyungu z’ubukererwe, amafaranga y’ikurikiranarubanza hamwe n’ay’igihembo cy’Avoka nk’uko byemejwe n’Urukiko rubanza, ariko uru Rukiko rukaba rugomba gusubira mu mibare ruyagena, kuko hamwe rwagenye amafaranga y’ikirenga, ahandi rushingira

ku mibare itariyo. Inyungu z'ubukererwe zikaba zigomba kubarwa kugeza ku munsi urubanza ruciriwe nk'uko INDIA NOVEMBER yabisabye mu bujurire bwayo bwuririye ku bundi, uru Rukiko rusanga bufite ishingiro.

[17] Ku byerekeye inyungu z'ubukererwe, Urukiko rusanga kuba INDIA NOVEMBER yarakoze "opposition" mu gihe gikwiye, nyamara ECOBANK yayibona kuwa 19/06/2001, igakomeza kugundira 8.000 USD kugeza igihe yaregewe mu Rukiko Rukuru rw'Ubucuruzi, kandi yaragombaga guhita iyishyura nk'uko imikoreshereze ya "Chèques de Voyage" ibisaba[9], cyane ko INDIA NOVEMBER nk'umucuruzi yagombaga kuyabyaza umusaruro, bigaragara ko yayiteje igihombo, bityo ikaba igomba kubitangira inyungu z'ubukererwe zibariwe kuri 14 % ku mwaka nk'uko Urukiko rubanza rwabyemeje.

[18] Ku byerekeranye no kwishyura, abahanga mu mikoreshereze ya "Chèques de Voyage" bavuga ko iyo umukiriya yibwe "Chèques de Voyage" akanakora "opposition" mu gihe gikwiye, agomba kuba yishyuwe mu gihe kitarenze amasaha 48 abazwe guhera ku munsi yakoreyeho "opposition". Urukiko rusanga ECOBANK yarabonye "opposition" kuwa 19/06/2001, bityo hakurikijwe ibyo bisobanuro, ECOBANK igomba kwishyura INDIA NOVEMBER inyungu z'ubukererwe zibazwe guhera kuwa 21/06/2001, kugeza ku munsi w'icibwa ry'urubanza kuwa 10/06/2011, bityo izo inyungu zikaba zibazwe mu buryo bukurikira:

$$= \frac{8.000 \text{ USD } \times 14 \times 3.589 \text{ iminsi}}{100 \times 360} = 11.165 \text{ USD.}$$

[19] Ku bijyanye n'indishyi z'akababaro, Urukiko rubanza rwageneye INDIA NOVEMBER 5.000 USD y'indishyi

[9] *En cas de perte ou de vol de chèques de voyage, ... en général, le remboursement est effectué sous 48h" in http://www.alertes-meteo.com/astuce/ chèque-voyage.htm*.

z'akababaro. Urukiko rusanga INDIA NOVEMBER itari guhabwa inyungu z'ubukererwe hamwe n'indishyi z'akababaro, kuko igihe ECOBANK yamaranye amafaranga yayo, yayaboneye inyungu z'ubukererwe, bityo amadorari 5.000 y'indishyi z'akababaro yagenewe n'Urukiko rubanza akaba agomba kuvanwaho.

[20] Ku byerekeye amafaranga y'ikurikiranarubanza n'ay'igihembo cy'Avoka, mu rwego rwa mbere INDIA NOVEMBER yari yagenewe 5.000 USD y'ikurikiranarubanza na 500.000 Frw y'igihembo cy'Avoka. Urukiko rusanga bigaragara koko ko hari amafaranga INDIA NOVEMBER yatanze ikurikirana uru rubanza haba mu ngendo, ifunguro n'ibindi, ndetse hari n'Abavoka bayiburaniye mu nzego zombi. Bityo Urukiko rusanga mu bushishozi bwarwo ECOBANK igomba guha INDIA NOVEMBER 2.000 USD y'ikurikiranarubanza n'ay'igihembo cy'Avoka kuko 5.000 USD na 500.000 Frw yagenewe n'Urukiko rubanza ari ikirenga.

[21] Urukiko rurasanga rero amafaranga ECOBANK igomba guha INDIA NOVEMBER ari 8.000 USD yaguze "Chèques de Voyage", 11.165 USD y'inyungu z'ubukererwe na 2.000 USD y'ikurikiranarubanza n'ay'igihembo cy'Avoka, yose hamwe akaba ari 21.165 USD.

III. ICYEMEZO CY'URUKIKO

[22] RWEMEYE kwakira ubujurire bwa ECOBANK n'ubujurire bwa INDIA NOVEMBER bwuririye ku bwayo kuko bwatanzwe mu buryo n'inzira bikurikije amategeko;

[23] RWEMEJE ko ubujurire bwa ECOBANK bufite ishingiro kuri bimwe, ko ubujurire bwa INDIA NOVEMBER bwuririye ku bwayo bufite ishingiro;

[24] RUTEGETSE ECOBANK guha INDIA NOVEMBER 8.000 USD yabikuje kuri konti yayo igura "Chèques de Voyage", 11.165 USD y'inyungu z'ubukererwe na 2.000 USD y'ikurikiranarubanza n'ay'igihembo cy'Avoka, yose hamwe akaba ari 21.165 USD, ikanayatangira n'umusogongero wa Leta wa 4% ungana na 846 USD , itayatanga mu gihe cy'iminsi umunani, agakurwa mu byayo ku ngufu za Leta;

[25] RUVUZE ko imikirize y'urubanza R COM 0066/09/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 20/11/2009 ihindutse kuri bimwe;

[26] RUYITEGETSE gutanga amagarama y'urubanza angana na 40.900 Frw, abariwemo n'ayo yaciwe mu rwego rwa mbere, itayatanga mu gihe cy'iminsi umunani, agakurwa mu byayo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 10/06/2011.

Sé
MUTASHYA Jean Baptiste
Perezida

Sé
HAVUGIYAREMYE Julien
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
MUNYANDAMUTSA Jean Pierre
Umwanditsi w'Urukiko

7. URUKIKO RW'IKIRENGA

N° y'urubanza: RCOMA0024/09/CS
Itariki y'urubanza: 06/05/2011
Haburana: BUHIRE Etienne na KIMENYI Evariste / Banque Rwandaise de Développement na COCAF-AMIZERO

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI – KWISHINGIRA UMWENDA W'ISHYIRAHAMWE UKORERA – KWIRUKANWA K'UWISHINGIYE UMWENDA NTIBIMUKURAHO INSHINGANO YARI AFITE NK'UMWISHINGIZI.

INSHINGANO Z'UBWISHINGIRE ZIRANGIRA IYO UMWENDA UTAKIRIHO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Amasezerano y'ubwishingire aba itegeko ku bayakoranye keretse bagaragaje ko bayaseshe bitewe n'impamvu iteganywa n'amategeko nko kugaragaza ko uwo mwenda wishyuwe cyangwa wahinduwe, bawuhariwe, habaye ihwanya ry'imyenda cyangwa ivangamutungo.

- Kuba abishingiye umwenda w'ishyirahamwe barimo birikunywe si ikibazo kireba uwatanze umwenda n'abawishingiye ahubwo ni ikibazo hagati y'abanyamuryango b'ishyirahamwe ubwabo, iyo mpamvu ikaba idahuje n'iziteganywa n'amategeko zatuma amasezerano y'inguzanyo n'ay'ubwishingire aseswa.
- Amasezerano y'ubwishingire atakaza agaciro iyo umwenda wishingiwe wishyuwe.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUHAKIRIJE MU RUHAME URUBANZA R.COM.A 0024/09/CS KUWA 06/05/2011, MU BURYO BUKURIKIRA:

HABURANA:

ABAJURIYE:

BUHIRE Etienne, mwene SAGAHUTU na NYIRAMUGWERA, utuye mu Mudugudu wa Intsinzi, Umurenge wa Ngarama, Akarere ka Gatsibo, mu Ntara y'Iburasirazuba.

KIMENYI Evariste, uwatanze ingwate.

ABAREGWA:

Banque Rwandaise de Développement (BRD) ifite icyicaro i Kigali, BP 1341 KIGALI, mu izina ry'Umuyobozi Mukuru wayo.

COCAF – AMIZERO n'abanyamuryango bayo bishingiye umwenda (Cautions solidaires) wayo bakurikira : YANKURIJE Marie Goretti, NIYONSENGA Marie Chantal, MVUKIYEHE Juvénal, MBUNGIRA Fréderic, NDEMEZO Ephrem na UWAMURERA Alphonsine.

IKIREGERWA :

Kujuririra urubanza RCOM 0408/08/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 01/04/2009.

IKIBURANWA:

- Recouvrement d'une créance de 72.304.325 Frw calculée à la date du 20/08/2008 plus les intérêts jusqu'au jugement définitif ;
- Dommages et intérêts.

I. IMITERERE Y'URUBANZA

[1] Kuwa 03/01/2007, Banki y'u Rwanda Itsura Amajyambere (BRD) yagiranye na Koperative y'Abahinzi ba kawa (COCAF-AMIZERO) amasezerano yo kuguriza n◦ 002/2007/UJ/MM/mm, aho Banki yiyemeje kuyiguriza miliyoni ijana (100.000.000 Frw) agizwe na 65.600.000 Frw y'inguzanyo y'igihe kirekire yo kubaka uruganda rutunganya ikawa no kugura amamashini n'inguzanyo ya 34.400.000 Frw y'igihe gito yo kugura no gutunganya ikawa, bikaba byari biteganyijwe ko iyo nguzanyo y'igihe gito izatangira kwishyurwa kuva kuwa 31/01/2008 .

[2] Kuwa 18/01/2007, BRD yagiranye n'abanyamuryango ba COCAF-AMIZERO amasezerano y'ubwishingire (cautions solidaires et indivisibles), aho NDEMEZO Ephrem, BUHIRE Etienne, MBUNGIRA Frédéric, MVUKIYEHE Juvénal, KIMENYI Evariste, UWAMURERA Alphonsine, YANKURIJE M. Goretti na NIYONSENGA Marie Chantal biyemeje kuzubahiriza amasezerano y'inguzanyo yavuzwe haruguru banatanga ingwate zivugwa mu ngingo yayo ya 6.

[3] Nk'uko bivugwa na BRD, COCAF - AMIZERO ntiyishyuye iyo nguzanyo nk'uko byari biteganyijwe muri ayo amasezerano y'inguzanyo bituma iyiguriza 62.302.700 Frw, aho kuba 100.000.000 Frw. Nyuma BRD yareze COCAF - AMIZERO n'abishingizi bayo mu Rukiko Rukuru rw'Ubucuruzi, urubanza rucibwa kuwa 01/04/2009, rutegeka COCAF-AMIZERO gufatanya n'abanyamuryango bayo bishingiye ubwishyu bw'umwenda kwishyura BRD 72.304.325 Frw y'umwenda - remezo, inyungu zawo na « frais » na 2.558.705 Frw y'indishyi z'akababaro.

[4] BUHIRE Etienne na KIMENYI Evariste bajuririye Urukiko rw'Ikirenga, urubanza ruburanishwa mu ruhame kuwa 27/07/2010 ku bijyanye n'abagomba kuba ababuranyi

muri uru rubanza, BUHIRE Etiennne na KIMENYI bahagarariwe Me MUHOZA Janvier, BRD ihagarariwe na Me UMUBYEYI Béatrice, naho Me BARINABO Idrissa ahagarariye COCAF–AMIZERO n'abanyamuryango bayo bishingiye umwenda, uretse KIMENYI. Kuwa 27/08/2010, Urukiko rwafashe icyemezo cy'uko COCAF n'abanyamuryango bayo bishingiye kwishyura umwenda, uretse KIMENYI Evariste, batagomba guhamagazwa muri uru rubanza kuko batajuriye.

[5] Urubanza rwaburanishijwe mu mizi mu ruhame kuwa 29/03/2011, BUHIRE Etiennne na KIMENYI Evariste bahagarariwe Me MUHOZA Janvier, naho BRD ihagarariwe na Me UMUBYEYI Béatrice. Uburanira BUHIRE na KIMENYI avuga ko batagomba kwishyura umwenda n'inyungu zawo kubera ko abandi banyamuryango babirukanye hamwe n'ingwate zabo muri COCAF, naho uburanira BRD akavuga ko bagomba gufatanya n'abandi bishingizi mu kwishyura umwenda-remezo n'amafaranga awukomokaho.

II. <u>IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO</u>

Ese kuba BUHIRE Etiennne na KIMENYI Evariste barirukanwe muri COCAF - AMIZERO byabakuraho inshingano bari bafashe yo kwishingira ubwishyu bw'umwenda wa BRD ?

[6] Uburanira BUHIRE na KIMENYI avuga ko batagomba kwishyurira COCAF umwenda yagurijwe na BRD kuko abanyamuryango bayo babirukanye burundu n'ingwate zabo ntibashobora gukurikirana imikoreshereze y'iyo nguzanyo, bakaba basanga igomba kwishyurwa na COCAF ifatanyije n'abanyamuryango bayo bayisigayemo barenga magana abiri.

[7] Uburanira BRD avuga ko BUHIRE na KIMENYI bishingiye ubwishyu bw'umwenda wa COCAF–AMIZERO batanga ingwate y'ishyamba, urwuri n'inzu y'ubucuruzi, bityo ko bagomba kwishyura uwo mwenda n'amafaranga awukomokaho bafatanyije na COCAF ndetse n'abandi banyamuryango bayo bawishingiye kuko bagiranye amasezerano y'ubwishingizi n'ay'ingwate na BRD, aho kuyagirana na COCAF, kandi ko ayo masezerano adashobora gukurwaho n'urupfu rw'abishingizi cyangwa ibaruwa baba barandikiye Minisitiri w'ubucuruzi.

[8] Mu masezerano yo kuguriza n◦ 002/2007/UJ/MM/mm yo kuwa 03/01/2007, Banki y'u Rwanda Itsura Amajyambere (BRD) yemeye kuguriza COCAF – AMIZERO miliyoni ijana (100.000.000 Frw) yo kubaka uruganda rutunganya ikawa, kugura amamashini, kugura ikawa no kuyitunganya. Mu ngingo ya 6 y'ayo masezerano, abanyamuryango ba COCAF – AMIZERO barimo BUHIRE Etienne na KIMENYI Evariste bayihaye ingwate zigizwe n'urwuri, ishyamba ry'inturusu n'inzu y'ubucuruzi, maze BRD iguriza COCAF – AMIZERO 62.302.700 Frw.

[9] Ingingo ya 2 y'amasezerano y'ubwishingire yo kuwa 18/01/2007 iteganya ko:

1. Abishingizi bemereye Banki ko bishingiye bakomeje kandi ku buryo budasubirwaho ko inshingano zo kwishyura zumvikanweho mu masezerano yo kuguriza zizashyirwa neza mu bikorwa, ibyo bakabikora biyemeza kureka kuba bakwireguza inzitizi iyo ari yo yose ishobora gukomoka ku gusobanura ayo masezerano.

2. Abishingizi biyemeje gufatanya na Koperative kwishyura Banki, biyemeje kandi guhita bishyura bitabaye ngombwa ko ubwishyu bubanza gushakwa mu bintu bya Koperative.

3. Abishingizi biyemeje kwishyura umwenda wose Koperative yagurijwe, yasezeranyije kwishyura Banki, ariko ntibikore.

[10] Amasezerano y'inguzanyo n'ay'ubwishingire yavuzwe haruguru agaragaza ko BUHIRE Etienne na KIMENYI Evariste kimwe n'abandi bishingizi ba COCAF–AMIZERO biyemeje kuzayishyurira umwenda wose ibereyemo BRD mu gihe itabikoze, bityo Urukiko rurasanga BUHIRE na KIMENYI bagomba kubahiriza ayo masezerano kuko yabaye itegeko hagati yabo na BRD hakurikijwe ibiteganywa n'ingingo ya 33 y'igitabo cya gatatu cy'amategeko y'imbonzamubano, keretse mu gihe bagaragaje ko yasheshwe bitewe n'imwe mu mpamvu ziteganywa n'ingingo ya 132 y'icyo gitabo[10], nko kugaragaza ko uwo mwenda wishyuwe cyangwa wahinduwe, bawuhariwe, habaye ihwanya ry'imyenda cyangwa ivangamutungo…

[11] Nanone ku byerekeye impamvu zikuraho inshingano, Abahanga mu mategeko basobanura ko amasezerano y'ubwishingire atakaza agaciro iyo umwenda wishingiwe wishyuwe. (Le cautionnement est éteint à titre accessoire lorsque la dette cautionnée est payée) [11].

[12] Urukiko rurasanga haba mu Rukiko Rukuru rw'Ubucuruzi ndetse no mu iburanisha ry'urubanza mu Rukiko rw'Ikirenga, BUHIRE Etienne na KIMENYI Evariste bataragaragaje ko BRD yishyuwe umwenda - remezo n'amafaranga awukomokaho yagurije COCAF – AMIZERO, bityo bagomba gafatanya na COCAF – AMIZERO n'abanyamuryango bayo bishingiye ubwishyu bwawo kwishyura amafaranga batsindiwe mu Rukiko Rukuru rw'Ubucuruzi.

[10] Iyo ngingo iteganya ko "Inshingano zizimywa n'ubwishyu, ihindurwa ry'umwenda, guhara umwenda ku bushake, ihwanya ry'imyenda, ukwivanga k'umutungo, izimira ry'ikintu, uguta cyangwa uguteshwa agaciro, inkurikizi y'inkomyi nsesamasezerano".

[11] NTEZIRYAYO Faustin, LE CAUTIONNEMENT, Etude comparative des Droits belges, français et rwandais, Imprimerie Pallotti – Presse, 1994, p 94.

[13] Urukiko rurasanga impamvu ya BUHIRE Etienne na KIMENYI Evariste y'uko COCAF – AMIZERO yabirukanye n'ingwate zabo ntibashobora gukurikirana imikoreshereze y'inguzanyo nta shingiro ifite kuko atari ikibazo kireba BRD n'amasezerano yagiranye na BUHIRE na KIMENYI, ko ahubwo cyaba ari ikibazo hagati y'abanyamuryango ubwabo ba COCAF – AMIZERO. Iyo mpamvu kandi ntihuje n'iziteganywa n'amategeko zatuma amasezerano y'inguzanyo n'ay'ubwishingire bagiranye na BRD aseswa nk'uko byasobanuwe haruguru.

III. ICYEMEZO CY'URUKIKO

[14] RWEMEYE kwakira ubujurire bwa BUHIRE Etienne na KIMENYI Evariste kuko bwatanzwe mu buryo n'inzira bikurikije amategeko ;

[15] RWEMEJE ko nta shingiro bufite ;

[16] RUVUZE ko imikirize y'urubanza RCOM 0408/08/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 01/04/2009 idahindutse;

[17] RUTEGETSE BUHIRE Etienne na KIMENYI Evariste gufatanya gutanga amagarama y'urubanza angana na 39.100 Frw, batayatanga mu gihe cy'iminsi umunani, ayo mafaranga agakurwa mu byabo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 06/05/2011.

Sé
MUTASHYA Jean Baptiste
Perezida

Sé
HATANGIMBABAZI Fabien
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
MUNYANDAMUTSA Jean Pierre
Umwanditsi w'Urukiko

8. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMA007/10/CS
ITARIKI Y'URUBANZA: 29/04/2011
HABURANA: SDV-RWANDA / SONARWA S.A.

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI – ABACURUZI BASHOBORA GUHITAMO URUKIKO RUZABABURANISHA MU MASEZERANO BAGIRANA – UBUBASHA BW'INKIKO BUSHINGIYE KU IFASI MU MANZA ZEREKEYE AMASOSIYETE Y'UBUCURUZI N'AMATEGEKO AKURIKIZWA.

AMASEZERANO AGIRA AGACIRO KU BAYAGIRANYE GUSA- NTAKORESHWA KU BANDI BAKORA IBISA N'IBYA BAGIRANYE AMASEZERANO

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Mu masezerano y'ubucuruzi, abacuruzi bashobora kwihitiramo Urukiko ruzababuranisha igihe havutse ikibazo hagati yabo.

- Imanza zerekeye amasosiyete y'ubucuruzi n'indi miryango ifite ubuzima gatozi itari iya Leta ziburanishirizwa mu rukiko rwo mu ifasi irimo icyicaro cyabyo gikuru cyangwa aho ikiburanwa kiri, keretse iyo byateganijwe ukundi mu masezerano hagati y'impande ziburana.

- Uburenganzira bwo kwihitiramo urukiko ruburanisha urubanza ntibureba amasosiyete atarigeze agira andi mahitamo, kandi ntashobora kwitiranywa na masosiyete yakoze ayo mahitamo yo guteganya urukiko ruzaburanisha ikirego cyayo.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUHAKIRIJE MU RUHAME KUWA 29/04/2011, URUBANZA N° RCOM AA 0007/10/CS MU BURYO BUKURIKIRA:

<u>HABURANA</u>:

<u>UWAJURIYE</u>

SDV – RWANDA (ex - TRANSINTRA), mu izina ry'Umuyobozi Mukuru wayo, ihagarariwe na Me BUGONDO Natacha.

<u>UREGWA</u>:

SONARWA SA, mu izina ry'Umuyobozi Mukuru wayo, ihagarariwe na Me MASUMBUKO NDE Emile.

<u>IKIREGERWA</u>:

Kujuririra icyemezo n° RCOM 0091/09/Pré-ex/CS cy''ibanzirizasuzuma ry'urubanza n° RCOM AA 0026/09/CS.

<u>IKIBURANWA</u>:

Remboursement des indemnités versées aux assurés suite aux manquants et pertes constatés sur leurs marchandises confiées à la Société TRANSINTRA, plus 10 % du principal à titre de frais de recouvrement, plus 25 % d'intérêts moratoires et DI de Frw 1.000.000.

I. IMITERERE Y'URUBANZA

[1] Urukiko rwa Mbere rw'Iremezo rwa Kigali rwaciye urubanza kuwa 28/09/1999, rutegeka TRANSINTRA (SDV – RWANDA) guha SONARWA 1.008.083 Frw yishyuye ibicuruzwa bya BRARILWA n'ibya TABARWANDA byangiritse n'ibyabuze, 252.020 Frw y'indishyi z'ubukererwe, 100.000 Frw y'ikurikiranarubanza, ikanatanga 54.404 Frw y'umusogongero wa Leta.

[2] Mu rubanza rwaciwe n'Urukiko Rukuru rw'Ucuruzi kuwa 03/08/2009, rwategetse SDV-RWANDA kwishyura SONARWA amafaranga yose hamwe angana na 5.420.624 Frw no gutanga 216.825 Frw y'umusogongero wa Leta.

[3] SDV-RWANDA yajuririye Urukiko rw'Ikirenga, kuwa 19/11/2009, umucamanza w'ibanzirizasuzuma yafashe icyemezo n° RCOM 0091/09/Pré-ex/CS cy'ibanzirizasuzuma ry'urubanza n° RCOM AA 0026/09/CS, yemeza ko ubujurire bwayo bwatanzwe mu buryo n'inzira bikurikije amategeko, ariko ko butari mu bubasha bw'Urukiko rw'Ikirenga, ategeka ko SDV-RWANDA imenyeshwa icyo cyemezo.

[4] SDV-RWANDA yamenyeshejwe icyo cyemezo kuwa 02/03/2010, ikijuririra muri uru Rukiko kuwa 23/03/2010, ubujurire bwayo bwandikwa kuri RCOM AA 0007/10/CS.

[5] Urubanza rwaburanishijwe mu ruhame kuwa 31/03/2011, SDV - RWANDA ihagarariwe na Me BUGONDO Natacha, naho SONARWA SA ihagarariwe na Me MASUMBUKO NDE Emile. Uburanira SDV – RWANDA avuga ko umucamanza w'ibanzirizasuzuma yagombaga kwemeza ko ubujurire bwayo buri mu bubasha bw'Urukiko rw'Ikirenga kuko Inkiko z'u Rwanda zaburanishije uru rubanza

kandi zitabifitiye ububasha, naho uburanira SONARWA akabihakana.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwari rufite ububasha bwo kuburanisha uru rubanza

[6] Uburanira SDV - RWANDA avuga ko umucamanza w'ibanzirizasuzuma yemeje ko ubujurire bwa SDV - RWANDA butari mu bubasha bw'Urukiko rw'Ikirenga, ashingiye ku gace ka 2 k'ingingo ya 43 y'Itegeko - Ngenga nº 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi ryujujwe kugeza ubu, yirengagiza ko Urukiko Rukuru rw'Ubucuruzi rwaburanishije uru rubanza rutabifitiye ububasha kuko amasezerano y'ubwikorezi (connaissement de transport combiné) agaragaza ko imirimo y'ubwikorezi bw'ibicuruzwa bya BRALIRWA na TABARWANDA yakozwe n'amasosiyete yo mu Bubiligi yitwa TRANSINTRA n.v ANTWERPEN na CMB Transport, kandi ko ayo masezerano arimo ingingo (clauses) zivuga ko ari Inkiko zo muri icyo gihugu zifitiye ububasha bwo kuburanisha urubanza ayo masosiyete aregwamo.

[7] Kuri icyo kibazo, uburanira SONARWA avuga ko nta kosa umucamanza w'ibanzirizasuzuma yakoze kuko yasobanuye icyemezo cye ashingiye ku mpamvu zatanzwe n'umucamanza wo mu Rukiko Rukuru rw'Ubucuruzi zigaragaza ko yari afite ububasha bwo kuburanisha uru rubanza, kandi ko SONARWA yahisemo kurega SDV – RWANDA kuko ari sosiyete nyarwanda, aho kurega SDV BELGIUM.

[8] Ku byerekeye ububasha bw'Inkiko z'u RWANDA, igika cya mbere cy'ingingo ya 165 y'Itegeko - teka n° 09/80 ryo kuwa 07/07/1980 rishinga imitunganyirize n'ububasha by'Inkiko yakoreshwaga igihe SONARWA yaregaga, ubu ikaba yarasimbuwe n'ingingo ya 123 y'Itegeko - Ngenga n° 51/2008 ryo kuwa 9/9/2008 rigena imiterere, imikorere n'ububasha by'Inkiko[12], yateganyaga ko: *"Urukiko rw'aho uregwa atuye, nirwo rwonyine rufite ububasha bwo kuburanisha urwo rubanza, kereka iyo hari andi mategeko yihariye abivuga ukund*i".

[9] Naho abahanga mu mategeko[13] bakavuga ko mu masezerano y'ubucuruzi, abacuruzi bashobora kwihitiramo Urukiko ruzababuranisha igihe havutse ikibazo hagati yabo.

[10] Mu masezerano y'ubwikorezi (connaissement de transport combiné)[14] yo kuwa 30/10/1997, TRANSINTRA n.v. yo mu Bubiligi yateganyije ko mu gihe havutse ibibazo hagati yayo n'andi masosiyete y'ubwikorezi bw'ibicuruzwa bya BRALIRWA na TABARWANDA arimo CMB TRANSPORT yo mu Bubiligi, izaburanishwa n'Urukiko rwo mu gihugu cy'Ububiligi ruri ahitwa ANVERS. Uburanira SDV – RWANDA akaba ahera kuri ayo masezerano, akavuga ko umucamanza w'ibanzirizasuzuma yagombaga kwemeza ko ubujurire bwayo buri mu bubasha bw'Urukiko rw'Ikirenga kuko Inkiko z'u Rwanda zaburanishije uru rubanza kandi zitabifitiye ububasha.

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[12] *Ingingo ya 123 y'Itegeko Ngenga n° 51/2008 iteganya ko: "Imanza zerekeye amasosiyete y'ubucuruzi n'indi miryango ifite ubuzimagatozi itari iya Leta, ziburanishirizwa mu rukiko rwo mu ifasi irimo icyicaro cyabyo gikuru, cyangwa aho ikiburanwa kiri".*

[13] *M. Ghislain de Monteynard, Le libre choix du juge par les Commerçants, www.Courdecassation.fr>, 2001.*

[14] *« Toute action contre l'émetteur du connaissement, née du présent document, sera jugée par les Tribunaux d'Anvers à l'exclusion de toute autre juridiction, ou, au choix du demandeur, par les Tribunaux compétents du lieu où le défendeur a son siège social, lequel, pour l'émetteur du connaissement, se trouve à Anvers et selon la loi belge ».*

[11] Urukiko rurasanga ariko ubwo burenganzira bwo kwihitiramo Urukiko ruzaburanisha urubanza butarebwa n'ababuranyi muri uru rubanza aribo SDV – RWANDA na SONARWA zitigeze zikora andi mahitamo y'aho zizaburanira, kandi zikaba zitakwitiranwa n'ayo masosiyete yavuzwe haruguru.

[12] Urukiko rurasanga rero nk'uko umucamanza w'ibanzirizasuzuma yabyemeje, Urukiko Rukuru rw'Ubucuruzi rwari rufite ububasha bwo kuburanisha uru rubanza, bityo icyemezo n° RCOM 0091/09/Pré-ex/CS cy''ibanzirizasuzuma cyo kuwa 19/11/2009 kikaba kitagomba guhinduka.

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

[13] RWEMEYE kwakira ubujurire bwa SDV – RWANDA ku cyemezo n° RCOM 0091/09/Pré-ex/CS cy''ibanzirizasuzuma ry'urubanza n° RCOM AA 0026/09/CS cyo kuwa 19/11/2009 kuko bwatanzwe mu buryo n'inzira bikurikije amategeko;

[14] RWEMEJE ko ubwo bujurire nta shingiro bufite;

[15] RUYITEGETSE gutanga amagarama y'uru rubanza angana na 22.550 Frw, itayatanga mu gihe cy'iminsi umunani, agakurwa mu byayo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 29/04/2011.

Sé
MUGENZI Louis Marie
Perezida

Sé
MUKAMULISA M.Thérèse
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
RUKUNDAKUVUGA JM Olivier
Umwanditsi w'Urukiko

9. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: R.COM.A 0086/09/CS
ITARIKI Y'URUBANZA: 20/05/2011
HABURANA: MIRIMO Gaspard / Rwanda Revenue Authority.

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI – KAMERE Y'AMAFARANGA ASORESHWA .

INYUNGU N'IBIHOMBO UMUCURUZI YAVUKIJWE IYO URUKIKO RWEMEJE KO AYASUBIZWA ARASORESHWA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Inyungu umucuruzi yavukijwe kimwe n'ibihombo yatewe n'igikorwa runaka iyo abisubijwe ajya mu mafaranga asanzwe muri kamere yayo atangirwa umusoro.
- Inyungu umucuruzi yavukijwe n'ibihombo yatewe n'igikorwa runaka, iyo byemejwe n'Urukiko ko ayo mafaranga ayasubizwa agomba kubarwa akuwemo umusoro kuko aba ari amafaranga yari kunguka iyo aza gukora kandi akaba ayasubijwe bityo rero abarwa nk'inyungu zari kwinjira icyo gihe atakoraga.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURAN-ISHIRIZA IMANZA Z'UBUCURUZI, RUCIYE MU RUHAME URUBANZA R.COM A 0086/10/CS KU WA 20/05/2011 MU BURYO BUKURIKIRA:

HABURANA:
Uwajuriye

- Rwanda Revenue Autority(RRA)

Uregwa

- MIRIMO Gaspard, mwene Karibushi François na Burakeba Vénantie, utuye Akarere ka Nyarugenge, Umujyi wa Kigali, B.P 1834 Kigali.

IKIBURANWA

- Ivanwaho ry'icyemezo cya Komiseri Mukuru kigena imisoro itariyo ingana na 115.925.170Frw
- Guhabwa indishyi z'akababaro zingana na 10.000.000 Frw
- Guhabwa amafaranga y'ikurikirana rubanza arimo n'igihembo cy'avoka angana na 7.555.510Frw.

I. IMITERERE Y'URUBANZA MURI MAKE

[1] RRA yoherereje Mirimo Gaspard inyandiko ikosora imenyekanishamusoro yari yakoze ku myaka ya 2003, 2004, 2005 na 2006. Mirimo yagize icyo ayivugaho, nyuma RRA imwoherereza inyandiko isoza igenzura. Mirimo ntiyishimiye ibyemejwe mu igenzura yakorewe nuko ajuririra Komiseri Mukuru ariko ntiyaza kunyurwa n'igisubizo yamuhaye aribwo yitabaje inkiko kugira ngo zimurenganure.

[2] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko ikirego cya Mirimo gifite ishingiro kuri bimwe, rwemeza ko amafaranga **161.615.986** atagombaga gusoreshwa mu mwaka wa 2004, ko amafaranga **107.884.603,** Urukiko rw'Ikirenga rwageneye Mirimo mu rubanza R.Ad A 0001/05/CS ashyirwa mu mafaranga yose agomba gusorera mu mwaka wa 2006, rutegeka RRA kwishyura Mirimo amafaranga 2.000.000 agenwe mu bwitonzi bwarwo akubiyemo indishyi z'akababaro, ay'ikurikiranarubanza n'igihembo cya Avoka.

[3] RRA ntiyishimiye imikirize y'urubanza ijuririra Urukiko rw'Ikirenga ivuga ko Urukiko rwa mbere rwumvise nabi imiburanire y'uwari uyihagarariye kuko ariya mafaranga **161.615.986,** rwakomeje kuyafata nka "charges deductibles" nk'uko Mirimo yari yabikoze, nyamara RRA yari yayakoreye réintégration mu gihe cy'igenzura bitewe nuko yasanze ibyo bayitiriraga bidahura n'ibyakoreshejwe nyabyo(charges effectives) hashingiwe ku biteganywa n'amategeko agenga isoresha.

[4] RRA ivuga na none ko itishimiye kuba yaraciwe amafaranga 2.000.000 akubiyemo indishyi z'akababaro, ay'ikurukiranarubanza n'igihembo cya avoka yaciwe.

[5] Iburanisha ry'urubanza ryabaye kuwa 28/04/2011, hitabye RRA ihagarariwe na Me Gasana Raoul naho Mirimo Gaspard yunganiwe na Me Nsengiyumva Abel.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. UBUJURIRE BWA RRA

a. Ikibazo cyo kumenya "nature comptable" y'amafaranga 161.615.986 kugira ngo hamenyekane niba agomba cyangwa atagomba gusoreshwa

[6] RRA ivuga ko mu Rukiko Rukuru rw'Ubucuruzi habaye kutumva ibintu neza kuko ngo rwemeje ko ku musoro wa 2004, amafaranga 161.615.986 atasoreshwa bitewe n'uko uwaruhagarariye RRA mu miburanire ye yavuze ko Mirimo yayise provision maze ntiyasoreshwa. Uburanira RRA asobanura ko haba mu mwanzuro washyikirijwe urukiko ndtse no mu nyandiko isoza igenzura, bigaragara ko iyo "provision" yanzwe gufatwa nka "charges déductibles " isubizwa mu nyungu zisoreshwa mu mwaka wa 2004(nibyo bise réintegration), kuko bitari bihuye n'ibyakoreshejwe nyabyo[15], hashingiwe ku biteganywa n'ingingo ya 10.2 y'Itegeko nº 08/97 ryo kuwa 26/06/1997 rishyiraho amategeko agenga imisoro itaziguye ku nyungu zinyuranye no ku bihembo.

[7] Uhagarariye RRA yasobanuye ko ariya mafaranga atujuje ibisabwa n'itegeko rivuzwe haruguru, muri byo hakaba harimo no kuba yarasohotse koko kandi bikagaragarizwa gihamya(justificatif). Yavuze ko amafaranga 161.615.986, Mirimo yayakuye mu nyungu zisoreshwa ayita guteganyiriza ibihombo yari yagize kubera gufungirwa bimwe mu bikorwa bye by'ubucuruzi n'Umujyi wa Kigali, nyamara ingingo ya 15, b, y'itegeko nº 08/97 ryo kuwa 26/06/1997 ryavuzwe haruguru iteganya uburyo ibihombo biteganyirizwa biba biteye kugira ngo byemererwe kuvanwa mu nyungu zisoreshwa. RRA ivuga ko muri 2004, igihombo Mirimo avuga yatewe no gufungirwa n'Umujyi wa Kigali niba cyari kinahari nta mubare nyawo ufite gihamya abigaragariza. Ikindi yongeyeho ni uko ngo iyo umucuruzi agize igihombo, akimurira ku myaka ikurikiyeho.

[15] *Kuko yari "expense"yari itaraba "effective",*

[8] Mirimo n'umwunganira babanje kuvuga ko ikibazo kiri kuri ariya mafaranga ari icyo kuyaha inyito idakwiye. Basobanuye ko RRA itagombaga kuyita " provisions" kuko ahwanye n'igihombo cyabayeho igihe yafungirwaga ibikorwa by'ubucuruzi n'Umujyi wa Kigali kandi ko cyemejwe n'umuhanga washyizweho n'Urukiko muri raporo ye yo kuwa18/06/2005 . Bavuga ko uburanira RRA ariho yahereye mu Rukiko rw'Ubucuruzi yemera ko ariya mafaranga ari igihombo akaba adashobora gusoreshwa , iyo mvugo ye umucamanza nawe ayiheraho abyemeza kuko kwari ukwiyemerera gukozwe imbere y'urukiko (aveu judiciaire). Bakomeje basobanura ko "provisions" ari amafaranga ateganyirizwa kuziba icyuho giterwa n'imyenda izwi kandi byagaragaye ko ishobora kutazishyurwa (provisions pour créances douteuses), ayo mafaranga akaba avanwa mu nyungu zisoreshwa amabanki hashingiwe ku ngingo ya 15 y'Itegeko nº 08/97 ryo kuwa 26/06/1997 ryavuzwe haruguru. Bavuga ko kubireba Mirimo, ariya mafaranga 161.615.986, RRA yayise " provisions" yibeshye kuko we nta myenda yari afitiwe n'abandi bantu, ahubwo ko ahwanye n'igihombo yagize, ariyo mpamvu yakigaragaje mu ibaruramari rye ryo muri 2004 kuri"compte 64".

[9] Urukiko rurasanga impande zombi zidasobanura kimwe kamere y'amafaranga 161.615.986 kuko RRA ivuga ko Mirimo yari yayateganyirije igihombo, bivuga ko atari yarigeze ayinjiza nk'umusaruro mu mutugo we maze nyuma aze kuyahomba ariyo mpamvu mu igenzura yamukoreye yayakoreye "reintegration" kuko ngo atujuje ibiteganywa n'ingingo ya 10, agace ka kabiri , y'Itegeko nº 08/97 ryo kuwa 26/06/1997 ryavuzwe haruguru kugira ngo avanywe mu nyungu zisoreshwa. Mirimo we avuga ko ariya mafaranga angana n'igihombo yagize yatewe no gufungirwa ibikorwa bitandukanye by'ubucuruzi, akavuga ko icyo gihombo cyari cyabaye kandi ko cyaje kwemezwa n'abahanga bashyizweho

n'Urukiko rw'Ikirenga mu rubanza yaburanaga n'Umujyi wa Kigali.

[10] Ingingo ya 10 y'Itegeko nº 08/97 ryo kuwa 26/06/1997 ryavuzwe haruguru isobanura muri rusange uburyo ibyakoreshejwe n'umusoreshwa mu gutunga Entreprise bikurwa mu nyungu zisoreshwa. Itangira ivuga ngo " le benefice est etabli sous déduction de toutes charges, que les frais et charges déductibles zigomba kugira conditions ziba zujuje, agace ka kabiri by'umwihariko kakagira gati 2º, correspondre à une charge effective et être appuyée de justification suffisante démontrant la réalité des opérations comptabilisées.

[11] Urukiko rurasanga hakurikijwe ibisobanuro bitangwa mu itegeko rimaze kuvugwa haruguru, ariya mafaranga 161.615.986, ari inyungu Mirimo yavukijwe(manque à gagner) akaba rero adakwiye gufatwa nk'ayo yakoresheje mu gutunga umwuga kuko icyo gihe atakoraga ngo byumvikane ko yari yayungutse koko. Mu kumenyekanisha umusoro wa 2004, Mirimo yayagize "charges", gutyo agabanya inyungu yagize uwo mwaka zigomba gusoreshwa, kuko yayafashe nk'aho yari yayakoresheje mu gutunga ubucuruzi bwe (aha byafatwa nkaho yigabanyirije umusoro yagombaga kwishyura). Ariya mafaranga 161.615.986, ntashobora kwitwa charges kuko nk'uko byasobanuwe ntiyigeze yinjira mu mutungo wa Mirimo maze ngo ayakoreshe akaba rero atakwitwa charges effectives nk'uko biteganywa n'itegeko dore ko na Mirimo atigeze yerekana gihamya z'uko yayakoreshejenk'inyemezabuguzi cyangwa izindinyandikoz'ibaruramari.

[12] RRA ikora "opération de reintegration", yakoze igikorwa cy'ibaruramari gituma haba equilibre ya compte en partie double maze bituma ikinyuranyo hagati y'ibyasohotse n'ibyinjiye kiba ubusa ku bijyanye n'ariya mafaranga

161.615.986. Gusubiza ariya mafaranga mu nyungu zigomba gusoreshwa ntibyarenganyije Mirimo, kuko yaje kuyasubizwa n'Urukiko nyuma y'urubanza.

b. Kumenya niba hari ikosa Urukiko rwakoze rugenera Mirimo indishyi z'akababaro

[13] RRA ivuga ko amafaranga 2.000.000 urukiko rwageneye Mirimo akubiyemo indishyi z'akababaro, ay'ikurikiranarubanza n'igihembo cya Avoka uretse no kuba ayo mafaranga ari menshi, urukiko ruterekanye n'ishingiro ryayo. Ivuga ko itumva akababaro yateje Mirimo mu gihe buri wese mu baburanyi hari ibyo yatsindiye.

[14] Uburanira Mirimo avuga ko mu Rukiko Rukuru rw'Ubucuruzi yari afite abavoka babiri kandi bagombaga guhembwa, akomeza avuga ko RRA nubwo yinubira indishyi yaciwe, iyo iza kwibwiriza igakora ibyo amategeko ateganya Mirimo ntajye mu Rukiko itari gucibwa ariya mafaranga.

[15] Urukiko rurasanga Mirimo yari afite uburenganzira bwo kwitabaza inkiko kugira ngo zimurenganure. Kuba kandi yaragize ibyo atsindira nta mpamvu yari kubuza urukiko kumugenera amafaranga y'ikurikiranarubanza ndetse nay'igihembo cya Avoka.

B. <u>UBUJURIRE BWURIRIYE KU BUNDI BWATANZWE NA MIRIMO</u>

a. Kumenya niba Mirimo yasoreshwa amafaranga ahwanye n'inyungu yavukijwe n'andi arebana n'ibihombo yagize yagenewe n'Urukiko rw'Ikirenga

[16] Mirimo n'umwunganira bavuga ko umucamanza wa mbere yakoze ikosa ryo gusoresha amafaranga 107. 884. 603 ahwanye n'indishyi yagenewe n'Urukiko rw'Ikirenga

mu rubanza R.Ad A 0001/05/CS rwo kuwa 02/09/2005 ayita umusaruro yinjije kandi ntaho amategeko agenga imisoro ateganya ko indishyi zitanzwe mu rubanza zisoreshwa. Basobanura ko ingingo ya 4 y'Itegeko nº16/2005 ryo kuwa 18/08/2005 rigena umusoro utaziguye ku musaruro mu byo igaragaza bigize umusaruro ufite inkomoko mu Rwanda ntahavugwa ko indishyi zigenywe n'urukiko zisoreshwa. Uburanira Mirimo avuga kandi ko itegeko ry'imisoro ridasesengurwa ku buryo burambuye, ibyo bigatuma RRA idashobora gushyiraho umusoro udateganywa n'itegeko kuko byaba binyuranyije n'ingingo ya 81 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

[17] Basobanura na none ko amafaranga 107. 884. 583 urukiko rwayageneye Mirimo rumaze gukuramo umusoro nk'uko umuhanga werekanye igihombo yatewe no gufungirwa bimwe mu bikorwa by'ubucuruzi yari yawubaze muri raporo ye. Ikindi ngo ni uko basanga aya mafaranga ari inyishyu (compensation) y'igihombo cyabayeho akaba yaratanzwe kugira ngo azibe icyo gihombo Mirimo yagize. Mirimo yasabye ko atayasoreshwa kuko byaba bibaye kumusoresha ubugira kabiri (double imposition) .

[18] Uhagarariye RRA we avuga ko ingingo ya 16 y'Itegeko nº16/2005 ryo kuwa 18/08/2005 rigena umusoro utaziguye ku musaruro iteganya uko babara umusoro ku nyungu, hafatwa ibyinjijwe byose hagakuwamo ibyakoreshejwe (produits-charges), ko rero Mirimo atahakana ko ariya mafaranga yafatwa nk'ayinjijwe muri uwo mwaka. Ku mvugo ya Mirimo y'uko urukiko rwagennye ariya mafaranga habanje gukurwamo umusoro, Me Gasana avuga ko nta kimenyetso kigaragaza ko hari umusoro waciwe kuri ariya mafaranga , ko kandi haramutse hagaragaye ko yakuwemo umusoro, ikibazo cyo kuba yarishyuwe nabwo nticyaba gikemutse. We asanga ngo Mirimo agomba kwishyura umusoro w'ariya mafaranga

kuko ari umusaruro winjiye mu mutungo we ibyo avuga ko umuhanga yawubaze bikaba nta gaciro byahabwa kuko atari yashyizweho kugira ngo abare imisoro, kuko ubutumwa yari yahawe bwari ubwo kugaragaza igihombo gusa. Avuga kandi ko itegeko ry'umusoro ku nyungu riteganya ko iyo igihombo cyemejwe bashobora kugikorera "report" ku yindi myaka ikurikiyeho.

[19] Cabinet y'abahanga yitwa "tm auditors" yashyizweho n'Urukiko rw'Ikirenga kugira ngo yerekane umubare w'inyungu Mirimo yavukijwe ndetse n'igihombo yaba yaratewe no kuba yarafungiwe ibikorwa bye by'ubucuruzi mu rwego rw'urubanza R.Ad A 0001/05/CS yaburanaga n'Umujyi wa Kigali, yerekanye muri raporo yakoze yakiwe mu bwanditsi bw'Urukiko kuwa 20/06/2005, ko "manque à gagner" n'igihombo Mirimo yagize bingana na 161.615.986Frw. Muri iyo raporo ariko bigaragara ko ababuranyi bamaze gutanga observations zabo kuri raporo y'agateganyo, bamwe basabye ko inyungu Mirimo yavukijwe n'ibihombo yagize byabarirwa imisoro, ko rero ari mu rwego rwo gushyira mu bikorwa ibyifujwe na bamwe mubaburanyi ko "tm auditors" yabaze umusoro ku nyungu Mirimo agomba kwishyura bafatiye ku gipimo cya 35 % ya 161.615.986, bihwanye na 55. 565.595 Frw.

[20] Ku kibazo cyo kumenya niba amafaranga yose Mirimo yagenewe n'Urukiko rw'Ikirenga mu rubanza R.Ad A 0001/05/CS rwciwe kuwa 02/09/2005 yose ari indishyi, Urukiko rurasanga nk'uko byemejwe n'Urukiko Rukuru rw'Ubucuruzi, muri "Rutegetse" ya mbere y'urubanza hagaragaramo ko Mirimo yagenewe 117.884.603 Frw akubiyemo 107.884.6030Frw ahwanye n'inyungu yashoboraga kwinjiza (nibyo urukiko rwiswe manque à gagner) na 9.313.682 ahwanye n'igihombo yagize, muri rutegetse ya 3 rumugenera indishyi z'akababaro zisanzwe zingana n'amafaranga 10.000.000. Nk'uko bigaragara mu mibare imaze kuvugwa, amafaranga yose

Urukiko rw'Ikirenga rwageneye Mirimo agizwe n'ibice bibiri, igice kijyanye n'ibyo yavukijwe n'igihombo yatewe hamwe n'ikindi gice kigizwe n'indishyi z'akababaro zisanzwe.

[21] Urukiko rurasanga amafaranga 107.884.6030Frw agizwe n'inyungu Mirimo yavukijwe kimwe na 9.313.682 Frw ahwanye n'igihombo yagize, ari amafaranga muri kamere yayo asoreshwa kuko ari inyishyu (compensation) y'inyungu yari kubona iyo aza gucuruza ariko ntibyamushobokera kubera ko yari yafungiwe. Urukiko ariko rurasanga hashingiwe ku bimaze kuvugwa haruguru, amafaranga 161.615.986Frw yabazwe n'abahanga ko ariyo "manque à gagner" n'igihombo Mirimo yagize atarayishyuwe yose, kuko n'ubwo urukiko rwibagiwe kubivuga mu rubanza, bigaragara ko yatanzwe hamaze gukurwamo umusoro ku nyungu uhwanye na 55.565.595Frw, Mirimo akaba nta wundi musoro yayatangira kuko yaba yishyujwe kabiri umusoro umwe. Kuba uwategetswe n'Urukiko rw'Ikirenga kwishyura Mirimo yaba atarategetswe no kwishyura umusoro wari wabazwe n'umuhanga mbere y'uko amwishyura amafaranga asigaye ahwanye n'inyungu yavukijwe kimwe n'igihombo yagize, Mirimo siwe bigomba kugiraho ingaruka kuko nta ruhare yabigizemo.

b. Kumenya niba MIRIMO yagenerwa amafaranga y'ikurikirana rubanza n'ay'igihembo cya avoka

[22] Mirimo avuga ko ashingiye ku ngingo ya 258 CC LIII , RRA igomba kumwishyura amafaranga y'ikurikirana rubanza n'ay'igihembo cya avoka angana na 1.000.000 kuko iyo itajurira, ntiyari gusohora amafaranga yatanze ku rwego rw'ubujurire.

[23] Uhagarariye RRA yavuze ko ubujurire bwa Mirimo bwuririye ku bwabo nta shingiro bufite, ko rero n'amafaranga

y'ikurikirana rubanza ndetse n'ay'igihembo cya avoka nta mpamvu yayo.

[24] Urukiko rurasanga amafaranga y'ikurikiranarubanza nay'igihembo cya avoka Mirimo asaba yayahabwa kuko ubujurire bwuririye ku bwa RRA yakoze bufite ishingiro ariko mu bushishozi bwarwo rukaba rumugeneye 300.000 bitewe nuko 1.000.000 yasabye ari menshi.

III. ICYEMEZO CY'URUKIKO

[25] Rwemeje ko ubujurire bwa RRA bufite ishingiro kuri bimwe.

[26] Rwemeye kwakira ubujurire bwa Mirimo Gaspard bwuririye ku bwa RRA kuko bwakozwe mu buryo n'inzira bikurikije amategeko.

[27] Rwemeje ko amafaranga 161.615.698 agomba gusubizwa mu nyungu zisoreshwa kubera ko Mirimo yari yayakuyemo mu buryo budakurikije amategeko kandi ko bufite ishingiro.

[28] Rwemeje ko amafaranga 117.884.603 Frw akubiyemo 107.884.603 Frw ahwanye n'inyungu Mirimo yashoboraga kwinjiza hamwe na 9.313.682 Frw ahwanye n'ibihombo yagize, atagomba gusoreshwa kuko Urukiko rw'Ikirenga rwayamugeneye habanje gukurwamo umusoro ku nyungu.

[29] Rutegetse RRA kwishyura Mirimo 300.000 Frw y'ikurikiranarubanza n'igihembo cya avoka.

[30] Rutegetse RRA na Mirimo gutanga buri wese ½ cy'amagarama y'urubanza angana na 20.910 Frw ni ukuvuga 10.455Frw, batayatanga mu gihe cy'iminsi umunani urubanza rumaze gusomwa, ayo mafaranga agakurwa mu byayo ku ngufu za Leta.

RUKIJIJWE KANDI RUSOMEWE MU RUHAME KUWA 20/05/20011

Sé
MUKANYUNDO Paatricie
Perezida

sé
HAVUGIYAREMYE Julien
Umucamanza

sé
KAYITESI R.Emily
Umucamanza

sé
MUSENGAMANA Viateur
Umwanditsi w'Urukiko

10. URUKIKO RW'IKIRENGA

N° Y'URUBANZA : RCOM A0047/10/CS
ITARIKI Y'URUBANZA: 29/07/2011
HABURANA : Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro / MUNYANEZA Evariste

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI- UBUBASHA BW'IKIGO CY'IGIHUGU GISHINZWE KWINJIZA IMISORO N'AMAHORO BWO KWISHYUZAAMAHORO N'IHAZABU BITABAYE NGOMBWAKO UMUSORESHWA AKURIKIRANYWAHO ICYAHA ASHINJWA

KOMISERI WA GASUTUMO AKORESHA UBURYO BWO KWISHYUZA IHAZABU N'AMAHORO IYO UMUSORESHWA YEMERA ICYAHA GUSA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Komiseri Mukuru wa za Gasutamo afite ibimenyetso by'uko umusoreshwa yakoze icyaha giteganijwe n'itegeko rya East African Community Customs Manegement Act ashobora kurangiza ikibazo mu bwumvikane, umusoreshwa agategekwa amafaranga agomba kwishyurwa.

- Ububasha bwo gutegeka umusoreshwa amafaranga agomba kwishyura bukoreshwa gusa iyo umusoreshwa yemeye icyaha ashinjwa akabikora mu buryo bwateganijwe, iyo atemera icyaha ikurikiranacyaha rikorerwa imbere y'urukiko rufite ububasha bwo guhamya umuntu icyaha akurikiranyweho no gutanga ibihano biteganijwe.

URUKIKO RW'IKIRENGA, RUBURANISHA IMANZA Z'UBUCURUZI, RUKIJIJE MU RUHAME KUWA 29/07/2011 URUBANZA RCOMA 0047/10/CS MU BURYO BUKURIKIRA :

HABURANA :

UWAJURIYE : Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro (RRA), kiburanirwa na Me Kayitare Paul na Tugirumuremyi Raphaël;

UREGWA : Munyaneza Evariste, mwene Ndaguza na Mukantabana, utuye mu Mudugudu wa Nyanza, Akagari ka Nyanza, Umurenge wa Gatenga, Akarere ka Kicukiro, Umujyi wa Kigali, uburanirwa na Me Nsengiyumva Abel;

IKIBURANWA :

Gukuraho umusoro n'amahoro bingana na 921.490.807 frw

I. IMITERERE Y'URUBANZA

[1] Munyaneza Evariste yakorewe igenzura mu mwaka wa 2009 n'abakozi ba Gasutamo, basanga yarakoresheje inyemezabuguzi zitari iz'ukuri (false or incorrect documents) agamije gutubya agaciro kabarirwaho umusoro, bamumenyesha amafaranga agomba kwishyura, ajuririra Komiseri wa za Gasutamo nawe nyuma yo gusubiramo imibare amumenyesha ko agomba kwishyura 921.490.807 frw, muri ayo mafaranga hakaba hakubiyemo 480.609.416 frw y'imisoro yatubijwe (duties and taxes evaded) na 440.881.390 frw y'ihazabu (fines).

[2] Munyaneza yaregeye Urukiko Rukuru rw'Ubucuruzi arusaba gukuraho uwo musoro, rwemeza ko atagomba kuwishyura keretse icyaha ashinjwa cyo gukoresha inyemezabuguzi z'impimbano agamije gutubya agaciro kabarirwaho umusoro agihamijwe n'inkiko zisanzwe ziburanisha imanza z'inshinjabyaha. Icyo cyemezo umucamanza yagishingiye ahanini ku ngingo ya 219 (b) ya East African Community Customs Management Act ivuga ko Komiseri wa za Gasutamo adashobora gutegeka ko umusoreshwa ahanwa iyo atemera icyaha ashinjwa.

[3] Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro cyajuriye mu Rukiko rw'Ikirenga, urubanza ruburanishwa mu ruhame kuwa 28/06/2011, ababuranyi bose bitabye, Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro

gihagarariwe na Me Tugirumuremyi Raphaël hamwe na Me Kayitare Paul, Munyaneza Evariste ahagarariwe na Me Nsengiyumva Abel.

[4] Mu iburanisha ababuranira Ikigo cy'Igihugu cy'Imisoro n'Amahoro basobanuye ko ubujurire bw'Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro bushingiye ku mpamvu ebyiri : kuba umucamanza wa mbere yaraciye urubanza ku cyaha cy'inyandiko mpimbano ataregewe no kuba yaremeje ko nta bubasha Komiseri wa za Gasutamo afite bwo guca ibihano umusoreshwa utemera icyaha, yirengagije ko ingingo ya 135 ya East African Community Customs Management Act imuha ububasha bwo kwishyuza umuntu wasoze amafaranga make no kumuca ibihano hatagombye kumukurikiranaho icyaha.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

a) Kumenya niba Urukiko rwaraciye urubanza kubyo rwaregewe.

[5] Ababuranira Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro bavuga ko Urukiko rubanza aho gusuzuma umusoro n'amahoro Munyaneza agomba kwishyura rwibanze ku cyaha cy'inyandiko mpimbano batazi aho rwakivanye kuko mu nyandiko-mvugo y'igenzura bamukoreye no mu ibaruwa Komiseri wa za Gasutamo yamwandikiye bamumenyeshaga ko yakoze imenyekanisha rikosheje (incorrect declaration),

akaba asabwe kurikosora agasora neza nk'uko amategeko abiteganya.

[6] Me Nsengiyumva Abel uburanira Munyaneza avuga ko Urukiko rubanza rutarenze kubyo rwaregewe kuko Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro aricyo cyivugiye ko uwo yunganira yakoze imenyekanisha rishingiye ku nyandiko mpimbano, icyaha giteganywa n'ingingo ya 203 (b) ya East African Community Customs Management Act.

[7] Urukiko rurasanga Urukiko rubanza rutararenze imbibi z'icyaburanwaga kuko bigaragara mu nyandiko y'imikirize y'urubanza ko icyaha yita icy'inyandiko mpimbano mu rurimi rw'ikinyarwanda ntaho gitaniye n'icyaha cya « false or incorrect déclaration » mu rurimi rw'icyongereza kivugwa mu ngingo ya 203 ya East African Community Customs Management Act Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro giheraho gica Munyaneza imisoro, amahoro n'ibihano asaba gukurirwaho.

b) Kumenya niba Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro gifite ububasha bwo kwishyuza Munyaneza umusoro, amahoro n'ihazabu bitabaye ngombwa kumukurikiranaho icyaha.

[8] Ababuranira Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro bavuga ko Urukiko rubanza rutahaye agaciro ibiteganywa n'ingingo ya 135 ya East African Community Customs Management Act isobanura ko iyo umuntu yasoze

amafaranga make ugereranyije n'ayo yagombaga gusora asabwa gusora neza nk'uko yagombaga kubikora mbere, akaba ashobora gucibwa ibihano igihe atinze gusora neza yabimenyeshejwe hatagombye kubanza kumukurikiranaho icyaha.

[9] Bavuga kandi ko Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro kidakurikiranyeho Munyaneza icyaha kuko inshingano yacyo nyamukuru ari ukwishyuza imisoro n'amahoro, atari ugukurikirana icyaha gishobora gukurikiranwa cyangwa ntigikurikiranwe nk'uko biteganywa n'ingingo ya 228 ya East African Community Customs Management Act, bakaba basanga amafaranga y'ihazabu Munyaneza yaciwe yavanywaho niba yishyuye umusoro n'amahoro kuko nta mpamvu yo kumuca ihazabu ituruka ku cyaha adakurikiranyweho.

[10] Me Nsengiyumva Abel uburanira Munyaneza avuga ko ingingo ya 135 ya East African Community Customs Management Act itakoreshwa kuko irebana n'igihe umusoreshwa yasoze amafaranga make ugereranyije n'ayo yagombaga gusora cyangwa igihe yashubijwe amafaranga aruta ayo yagombaga gusubizwa iyo habanje kubaho imenyekanisha ry'agateganyo (provisional entry) nk'uko biteganywa n'ingingo ya 38 y'iryo tegeko, umusoreshwa agategekwa gutanga ingwate (deposit) yiyongera ku musoro w'agateganyo aba yatanze (in addition to the amount estimated as the duty for the purpose of making such provisional entry).

[11] Urukiko rurasanga ingingo ya 228 ya East African Community Customs Management Act itashingirwaho hemezwa ko Komiseri wa za Gasutamo afite ububasha bwo kwishyuza Munyaneza imisoro n' amahoro bitabaye ngombwa kumukurikiranaho icyaha kuko ireba gusa ufite ububasha bwo gukurikirana icyaha mu rukiko (the power of officer to prosecute), nta na hamwe ivuga ku bubasha Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro bwaba bufite bwo guhitamo uburyo bwo kwishyuza umusoreshwa utemera icyaha akekwaho cyo gukoresha inyandiko zitari iz'ukuri.

[12] Urukiko rurasanga ingingo ya 135 ya East African Community Customs Management Act nayo itashingirwaho hemezwa ko Komiseri wa za Gasutamo afite ububasha bwo kwishyuza Munyaneza bitabaye ngombwa kumukurikiranaho icyaha kuko ireba amafaranga umusoreshwa yishyuzwa iyo hari ikinyuranyo hagati y'amafaranga yagombaga kwishyura n'ayo yishyuye, cyangwa hagati yayo yagombaga gusubizwa n'ayo yasubijwe, bikaba atari ko bimeze muri uru rubanza rurebana n'imisoro n'ihazabu bishingiye ku cyaha cyo gukoresha inyandiko zitari iz'ukuri, giteganywa n'ingingo ya 203 (b) ya East African Community Customs Management Act, kigahanishwa ingingo ya 203 in fine iteganya igihano cy'igifungo kitarenze imyaka itatu cyangwa ihazabu itarenga 10.000 USD.

[13] Ingingo ya 219 ya East African Community Customs Management Act, mu gika cyayo cya mbere, iteganya ko mu gihe Komiseri wa za Gasutamo afite ibimenyetso by'uko umusoreshwa yakoze icyaha giteganywa n'iryo tegeko ashobora kurangiza ikibazo mu bwumvikane, umusoreshwa agategekwa amafaranga agomba kwishyura, mu gika cya kabiri igateganya ko ubwo bubasha abukoresha gusa iyo umusoreshwa yemeye icyaha ashinjwa akabikora mu buryo bwateganyijwe (prescribed form), naho ingingo ya 220 y'iryo tegeko rya East African Community Customs Management igateganya ko ikurikiranacyaha rikorwa imbere y'urukiko rufite ububasha bwo guhamya umuntu icyaha akurikiranyweho no gutanga ibihano biteganyijwe (…a prosecution for an offence under this Act may be heard and determined before a subordinate court; and where a such court hears and determines the prosecution, it shall have jurisdiction to impose any fine or any sentence of imprisonment which may be imposed under this Act on a person convicted of the offense).

[14] Urukiko rw'Ikirenga rurasanga rero hashingiwe kuri izo ngingo, nta bubasha Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro gifite bwo kwishyuza Munyaneza imisoro, amahoro n'ihazabu bishingiye ku cyaha atemera cyo gukoresha inyandiko zitari iz'ukuri agamije gutubya agaciro kabarirwaho umusoro keretse, nk'uko byemejwe n'umucamanza wa mbere, icyaha agihamijwe n'inkiko zisanzwe ziburanisha imanza z'inshinjabyaha.

III. ICYEMEZO CY'URUKIKO

[15] Rwemeje ko ubujurire bw'Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro nta shingiro bufite.

[16] Rwemeje ko urubanza RCOM 0012/10/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rudahindutse.

[17] Rutegetse ko amagarama y'urubanza aherera ku isanduku ya Leta.

Ni uko rukijijwe kandi rusomewe mu ruhame none kuwa 29/07/2011.

Sé

Nyirinkwaya Immaculée

Perezida

Sé
Kanyange Fidélité
Umucamanza

Sé
Mukandamage M.Josée
Umucamanza

Sé
Uwarugira Jean Baptiste
Umwanditsi w'Urukiko

IMANZA Z'UBUTEGETSI

11. URUKIKO RW'IKIRENGA

URUBANZA : RADA 0022/10/CS
ITARIKI Y'URUBANZA : 03/06/2011
HABURANA : HATEGEKIMANA Martin, GASARASI Samson / MUDOGO Athanase na Leta y'u Rwanda.

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI – UBUJURIRE BWURIRIYE KU BUNDI-BUSHOBORA KWAKIRWA NIYO UBUJURIRE BW'IBANZE BWABA BUTAKIRIWE.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Nta cyabuza umuburanyi watanze ubujurire bw'ibanze butakiriwe kuririra ku bujurire bw'uwundi muburanyi wamureze mu bujurire bw'ibanze bukakirwa.

URUKIKO RW'IKIRENGA, RURI I KIGALI, RUHABURANISHIRIZA MU RUHAME IMANZA Z'UBUTEGETSI, RUKIJIJE KUWA 03/06/2011 URUBANZA RUBANZIRIZA URUNDI N° RADA 00022/10/CS MU BURYO BUKURIKIRA:

<u>HABURANA:</u>

<u>Abajuriye</u> :

1. **Hategekimana Martin alias Majyambere**, mwene Migabo na Mukamparanyi, utuye mu Mudugudu wa Kabacuzi, Akagali ka Nyamugari, Akarere ka Nyamagabe, Intara y'Amajyepfo.

2. **Gasarasi Samson**, mwene Nzabandora Zéphanie na Mukansanga Phoibie, utuye mu Mudugudu wa Kabacuzi, Akagali ka Nyamugari, Akarere ka Nyamagabe, Intara y'Amajyepfo.

<u>Abaregwa mu bujurire:</u>

1. **Mudogo Athanase**, mwene Senkima Zacharie na Nyirampabwa Cathérine, utuye mu Mudugudu wa Kabacuzi, Akagali ka Nyamugari, Akarere ka Nyamagabe, Intara y'Amajyepfo.

2. **Leta y'u Rwanda**, Minisiteri y'Ibikorwa Remezo.

IKIBURANWA : Agaciro k'imitungo ya Mudogo Athanase yangijwe n'amazi mu iyubakwa ry'umuhanda Butare-Gikongoro-Cyangugu

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku kirego Mudogo Athanase yareze Leta y'u Rwanda, Ministeri ifite ibikorwa remezo mu nshingano zayo, avuga ko imvura igwa amazi aturuka mu muhanda Butare-Gikongoro-Cyangugu wubatswe mu mwaka wa 1986 akamusenyera kubera uburyo uwo muhanda wubakiwe n'uburyo ruhurura zari kuyayobora ahandi hatari mu mutungo we zubatswemo n'abandi bantu Leta yahaye ibibanza n'uburenganzira bwo kubaka, ikaba ntacyo yakoze ngo indi ruhurura yaje kubwaka muri 2009 yubakwe byihuse ngo bimurinde gusenyerwa n'imivu y'amazi ava mu muhanda.

[2] Urubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Nyanza, Gasarasi na Hategekimana bagobokeshwamo bisabwe na Leta y'u Rwanda yavugaga ko uburyo bubatse kuri za ruhurura yari yarubatse ngo amazi yikusanyirizemo maze acishwe ahandi hatari mu mutungo wa Mudogo aribyo byatumye amazi adatembera ahabugenewe, akishakira inzira noneho agatemba ajya mu mutungo wa Mudogo uri munsi y'umuhanda.

[3] Urukiko rwaciye urubanza kuwa 28/06/2011, rwemeza ko indishyi Mudogo asaba zingana na 6.340.000 frw habariwemo 50.000 frw y'ingendo zifite ishingiro, ko Leta igomba gutanga ½ cy'izo ndishyi, Gasarasi na Hategekimana bagafatanya gutanga igice gisigaye.

[4] Hategekimana na Gasarasi bajuririye urwo rubanza mu Rukiko rw'Ikirenga barega Mudogo na Leta y'u Rwanda. Leta y'u Rwanda nayo yarajuriye irega Mudogo. Umucamanza wakoze ibanzirizasuzuma ry'ubwo bujurire bwombi yemeje ko ubwa Hategekimana na Gasarasi bwakiriwe, naho ubwa Leta butakiriwe kuko yajuriye ikererewe.

[5] Urubanza rwaburanishijwe mu ruhame kuwa 19/04/2011,

Me Bya-Mukama Pascal ahagarariye Hategekimana na Gasarasi, Mudogo yiburanira, Leta y'u Rwanda ihagarariwe na Me Butare Emmanuel.

[6] Iburanisha rigeze hagati uhagarariye Leta y'u Rwanda yatanze ubujurire bwuririye ku bundi bugamije kugaragaza ko nta ruhare Leta ifite mu gusenyerwa kwa Mudogo, ndetse ko mu gusenyerwa kwe harimo uruhare rwa Hategekimana na Gasasira kuko bubatse hejuru ya za ruhurura Leta yari yarubatse, ababuranyi bajya impaka ku iyakirwa ry'ubwo bujurire bwuririye ku bundi mu gihe Leta y'u Rwanda yari yaratanze ubujurire bw'ibanze butakiriwe kubera ubukererwe, nyuma Urukiko rubamenyesha ko ruzabanza kubifataho icyemezo mbere yo gukomeza urubanza mu mizi yarwo.

II. <u>IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO :</u>

Ubujurire bwuririye ku bundi bwa Leta y'u Rwanda bugomba kwakirwa nubwo ubujurire bwayo bw'ibanze (appel principal) butakiriwe?

[7] Uhagarariye Leta y'u Rwanda avuga ko ubujurire bwayo bwuririye ku bundi bukwiye kwakirwa hashingiwe ku ngingo ya 167-1° y'Itegeko n°18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kuko yemerera uregwa mu bujurire kuririra ku bujurire bw'urega.

[8] Me Bya-Mukama uhagarariye Hategekimana na Gasarasi avuga ko ubujurire bwuririye ku bundi bwakozwe na Leta y'u Rwanda buteganywa n'amategeko kandi ko ntacyo bubabangamiyeho, naho Mudogo avuga ko Urukiko rwasuzuma niba bukwiye kwakirwa.

[9] Ingingo ya 167-1° y'Itegeko n°18/2004 ryo kuwa

20/06/2004 ryavuzwe ivuga ko "*uregwa mu rukiko rujuririrwa ashobora nawe kujurira yuririye ku bujurire bw'urega mbere y'iburanisha cyangwa mu iburanisha, naho yaba yaramenyeshejwe urubanza rwe ntagaragaze ko hari icyo arukemangaho*" naho mu gika cyayo cya kabiri, ikavuga ko "*ubujurire bwuririye ku bundi bukorwa n'uwarezwe mu bujurire bwerekeye ku wajuriye cyangwa ku bandi barezwe mu bujurire*".

[10] Iyi ngingo y'itegeko ntisobanura mu buryo bweruye niba uwatanze ubujurire bw'ibanze (appel principal) butakiriwe ashobora kuririra ku bujurire bw'uwo baburana agatanga ubujurire bwuririye ku bundi.
Urukiko rusanga mu gukemura iki kibazo hakwifashishwa ibyemezo byagiye bifatwa n'inkiko cyangwa inyandiko z'abahanga mu mategeko nk'uko bisobanurwa mu ngingo ya 6 y'Itegeko ryavuzwe ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[11] Mu rubanza MSF Hollande c/ Kabandana *(*RCAA 0062/08/CS rwo kuwa 31/07/2009), uru rukiko rwavuze ko *"ku byerekeye ingingo ya MSF y'uko Urukiko Rukuru rwakiriye ubujurire bwa Kabandana bwuririye ku bwa MSF Hollande kandi rwari rwanze ubujurire bw'ibanze (appel principal) yari yatanze, uru rukiko rusanga nta shingiro ifite kuko nubwo ubujurire bw'ibanze bwa Kabandana bwari bumaze kwangwa*[16]*, yagumye kuba uregwa (intimé) hashingiwe ku bujurire bwa MSF, bityo akaba nta cyamubuzaga gukora ubujurire bwuririye ku bundi nk'uko bivugwa n'ingingo* ya *167 y' itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi*".

[16] *Kuko bwari bwakarewe*

[12] Na none kuri iki kibazo, Urukiko Rusesa Imanza rwo mu Bufaransa mu rubanza rwaciwe kuwa 24/11/1987 rwavuguruje icyemezo cyari cyafashwe n'urukiko rw'ubujurire, rwemeza ko uwatanze ubujurire bw'ibanze butakiriwe adashobora kuvutswa uburenganzira bwo kujurira yuririye ku bujurire bw'ibanze bw'uwo baburana (*"Attendu que, pour déclarer Mlle Chane X… irrecevable en son appel incident, l'arrêt énonce que son mémoire ayant été déposé plus de deux mois après l'acte d'appel, elle ne peut, en raison de sa déchéance, se relever elle-même de la forclusion dont elle est frapée et se soustraire à la sanction d'ordre public édictée, en formant un appel incident sur un appel principal de l'autre partie….. Qu'en statuant ainsi, alors que sur l'appel principal antérieur de la SEDRE, le droit de relever incidemment appel restait ouvert à Mlle Chane X…la Cour d'appel a violé les textes …")*[17].

[13] Abahanga mu mategeko nabo basobanura ko uregwa mu bujurire ashobora gutanga ubujurire bwuririye ku bundi n'iyo ibihe byo gutanga ubujurire bw'ibanze byaba byararenze mu gihe ubujurire bw'ibanze yuririraho bwakiriwe ("….*la partie qui forme appel incident peut utilement agir même après l'expiration du délai de l'appel principal. Cependant si l'appel incident a été formé après le délai d'appel il ne sera reçu que si l'appel principal est lui-même recevable)*[18].

[14] Hashingiwe ku bimaze gusobanurwa, Urukiko rusanga nta cyabuza umuburanyi watanze ubujurire bw'ibanze butakiriwe kuririra ku bujurire bw'ibanze bw'uwundi muburanyi wamureze mu bujurire bw'ibanze bwakiriwe, bityo ubujurire bwuririye ku bundi bwa Leta y'u Rwanda bukaba bugomba kwakirwa bugasuzumwa nk'uko bivugwa n'ingingo ya 167-1° y'itegeko ryavuzwe

[17] *Chambre civil 3, pourvoi n° 86-70257 publié au bulletin de la Cour de cassation*
[18] *Pierre Julien et Natalie Fricero, Droit Judiciaire Privé, LDDJ, 2ème édition, 2003*

ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kuko yagumye kuba uregwa (intimé) hashingiwe ku bujurire bw'ibanze bwa Hategekimana na Gasarasi.

III. ICYEMEZO CY'URUKIKO

[15] **Rwemeye** kwakira ubujurire bwuririye ku bundi bwa Leta y'u Rwanda**.**

[16] **Ruvuze** ko urubanza mu mizi yarwo ruzakomeza kuwa 06/10/2011.

[17] **Ruvuze** ko amagarama y'urubanza asubitswe.

Ni uko rukijijwe kandi rusomewe mu ruhame none kuwa 03/06/2011.

Sé

Nyirinkwaya Immaculée

Perezida

Sé	**Sé**
Kanyange Fidélité	Mukandamage M.Josée
Umucamanza	Umucamanza

Sé

Uwarugira Jean Baptiste

Umwanditsi w'Urukiko

12. URUKIKO RW'IKIRENGA

URUBANZA : RADA 0022/09/CS
ITARIKI Y'URUBANZA : 11/02/2011
HABURANA : NGIRIYUMVA Samuel / RECO RWASCO (ex-ELECTROGAZ).

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI – GUHABWA INTEGUZA-KUTABIFATA NK'IKIMENYETSO CYO KWIRUKANWA BIDAKURIKIJE AMATEGEKO.

ICYEMEZO CY'AKAZI-UMUKORESHA WIRUKANYE UMUKOZI AHITA UMUHA N'ICYEMEZO CY'AKAZI AKO KANYA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Kuba umukozi yahabwa integuza ntibikuraho kuba yirukanywe ku mpamvu yumvikana.

- Umukoresha wirukanye umukozi ku mpamvu iyo ariyo yose ahita umuha atazuyaje icyemezo cy'akazi ako kanya.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUTEGETSI, RUKIJIJE MU RUHAME KUWA 11/02/2011 URUBANZA R. AD.A 0022/09/CS MU BURYO BUKURIKIRA:

HABURANA :

UWAJURIYE :

NGIRIYUMVA Samuel, mwene SEBISHYUNDA Elias na KANGEYO Marie, wavutse mu 1965, utuye Kagugu, Umurenge wa Gikondo, Akarere ka Kicukiro, mu Mujyi wa KIGALI, yunganiwe na Me KARAMIRA Jacques.

UREGWA: RECO RWASCO (ex-ELECTROGAZ), mu izina ry'Umuyobozi Mukuru wayo, ihagarariwe na Me NTAGANDA KABARE Festo.

IKIREGERWA : Kujuririra urubanza RAD 0117/07/HC/KIG rwaciwe n'Urukiko Rukuru ruri i Kigali kuwa 29/04/2009.

IKIBURANWA:

- Kwirukanwa ku kazi nta mpamvu;
- Imisanzu yo mu Isanduku y'Ubwiteganyirize bw'abakozi y'amezi 7 ;
- Icyemezo cy'umurimo atahawe.

I .IMITERERE Y'URUBANZA

[1] NGIRIYUMVA Samuel yakoreye RECO RWASCO (ex-ELECTROGAZ), akazi k'ububaji, ako kuvanga imiti n'amazi (Aide-épureur) n'ak'ubuzamu kuva kuwa 25/11/1999 kugeza imwirukanye kuwa 19/11/2005.

[2] NGIRIYUMVA yandikiye RECO RWASCO ayisaba kumusubiza ku kazi, ariko ntibyashoboka, bituma yandikira Umugenzuzi w'umurimo wo mu Karere ka Nyarugenge, uyu abumvikanisha kuri bimwe, uretse ku bijyanye n'indishyi z'iseswa ry'amasezerano y'umurimo, amafaranga y'amasaha y'akazi y'ikirenga n'ay'imisanzu y'amezi 7 yo mu Isanduku y'ubwiteganyirize bw'abakozi mu Rwanda.

[3] Mu rubanza rwaciwe n'Urukiko Rukuru ruri i Kigali kuwa 29/04/2009, rwemeje ko amasezerano y'umurimo NGIRIYUMVA yari afitanye na RECO RWASCO yasheshwe ku mpamvu zumvikana, ko yamutangiye imisanzu yose yo mu Isanduku y'Ubwiteganyirize bw'abakozi y'u Rwanda, kandi ko atagaragaje ibimenyetso by'uko yagiye gufata icyemezo cy'uko yayikoreye ikakimwima.

[4] NGIRIYUMVA yajuririye Urukiko rw'Ikirenga, avuga ko RECO RWASCO yamwirukaniye ubusa kuko gusiba ku kazi umunsi umwe atabiherewe uruhushya n'umukoresha we atari ikosa rikomeye ryari gutuma habaho isesa amasezerano y'umurimo bagiranye, cyane ko atakurikiranweho icyaha cyo kwiba amazi, kandi ko atakoze ikosa ryo guha abaturage amazi mabi. Asaba indishyi z'iyirukanwa k'umurimo mu buryo butemewe n'amategeko hamwe n'iz'ijyanye n'uko ataherewe rimwe icyemezo cy'akazi (attestation de services rendus) hamwe n'amafaranga y'imperekeza.

[5] RECO RWASCO ivuga ko nta ndishyi yatanga muri uru rubanza kuko yasheshe amasezerano y'umurimo yagiranye na NGIRIYUMVA Samuel ishingiye ku mpamvu zumvikana, ko kandi yari yaramukoreye icyemezo cy'akazi, ariko yanga ku kijyana ku bwende, umunsi yazaga gufata ibaruwa imwirukana ku kazi n'imperekeza, akaba yaracyanze agamije gushaka impamvu yo kuzayirega.

[6] Urubanza rwaburanishijwe mu ruhame kuwa 13/01/2011, NGIRIYUMVA Samuel yunganiwe na Me KARAMIRA Jacques, naho RECO RWASCO ihagarariwe na Me NTAGANDA KABARE Festo.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

Ku bijyanye n'amakosa yatumye NGIRIYUMVA Samuel yirukanwa ku kazi

[7] Uburanira NGIRIYUMVA Samuel avuga ko kuba yarasibye ku kazi umunsi umwe atabisabiye uruhushya hakibwa amazi atari ikosa rikomeye (faute lourde) ryari gutuma RECO RWASCO isesa amasezerano y'umurimo bagiranye, ko ahubwo yashoboraga guhabwa ikindi gihano cyoroheje, akanavuga ko iyo aza kuba yarakoze ikosa rikomeye atari guhabwa amafaranga y'integuza (préavis) n'ay'imperekeza (décompte final).

[8] Avuga nanone ko umucamaza wa mbere yemeje ko yakoze ikosa rikomeye ryo guha abaturage amazi mabi, nyamara yirengagiza ko ariwe wamenyesheje umukoresha we mu 2005, ko hari itiyo imena amazi mabi mu gipangu cy'umuturage, ko kandi uyu nawe atayanywaga, ko ahubwo yayakoreshaga mu mirimo ye y'ubwubatsi. Yongeraho ko asaba indishyi z'akababaro zihwanye n'incuro esheshatu z'umushahara yahembwaga.

[9] Uburanira RECO RWASCO avuga ko umucamanza wa mbere yasanze NGIRIYUMVA yaremeye ikosa ryo guta akazi atabisabiye uruhushya abamukuriye mu kazi n'iryo kuba yaratanze amazi mabi mu baturage, bituma yemeza ko RECO RWASCO yasheshe amasezerano y'umurimo bagiranye hashingiwe ku mpamvu zumvikana kandi zihagije, akaba ariyo mpamvu yemeje ko itagombaga kubimuhera indishyi.

[10] Urukiko rurasanga nk'uko Urukiko Rukuru rwabisobanuye, NGIRIYUMVA Samuel yarakoze ikosa rikomeye ryo guta akazi bikanatuma amazi yibwa, kimwe n'iryo guha abaturage amazi mabi, ayo makosa yombi akaba yarayemereye imbere y'Urukiko, ayo makosa akaba anagize impamvu zihagije zo kuba yarirukanwe.

[11] Naho kuba NGIRIYUMVA Samuel yarahawe integuza sibyo bikuraho kuba yarirukaniwe impamvu yumvikana, kuba mu ibaruwa imwirukana umukoresha yarayise amakosa « akomeye » bikaba nta ngaruka byamugizeho, kuko bitamubujije guhabwa integuza, kandi n'Urukiko rukaba ataricyo rwamwemeje.

[12] Ku myiregurire ye yuko atigeze akurikiranwaho icyaha cyo kwiba amazi, ahubwo cyarahamye undi muntu utari we, Urukiko rurasanga iyo itaba impamvu imukuraho ikosa yirukaniwe mu rwego rw'akazi, kuko imikurikiranire y'ikosa nk'iryo itandukanye n'imikurikiranire y'ibyaha.

<u>Ku bijyanye n'uko NGIRIYUMVA ataherewe ku gihe icyemezo cy'akazi</u>

[13] Uburanira NGIRIYUMVA Samuel avuga ko umucamanza wa mbere yirengagije kumuha indishyi z'uko RECO RWASCO itamuhereye rimwe icyemezo cy'akazi hamwe

n'ibaruwa imwirukana ku kazi. Asobanura ko yasiragiye inshuro nyinshi ikakimwima, ariko aza kugiheshwa n'Umugenzuzi w'umurimo w'Akarere ka Nyarugenge nyuma y'umwaka. Avuga ko umucamanza yanirengagije ko byamuteje igihombo gikabije kuko hagati aho atashoboraga kubona akandi kazi ko gutunga umuryango we adafite icyo cyemezo.

[14] Uburanira RECO RWASCO avuga ko nta ndishyi zijyanye n'icyemezo cy'akazi NGIRIYUMVA akwiye guhabwa, kuko cyakozwe umunsi yirukanwaga, ariko agisiga ku bwende bwe. Asobanura ko ari NGIRIYUMVA wari kugaragaza ko yaje kugishaka ikakimwima, kuko ubundi umukoresha ucibwa izo ndishyi ari uwanze kugitanga.

[15] Dosiye igaragaza ko RECO RWASCO yakoreye NGIRIYUMVA icyemezo cy'akazi kuwa 10/01/2007, aho kuba kuwa 19/11/2005, umunsi yamwirukanye ku kazi, bikaba bigaragaza ko imyiregurire yayo yuko yakoreye NGIRIYUMVA icyo cyemezo umunsi yamwirukanaga akanga kugitwara atari ukuri.

[16] Urukiko rurasanga kuba RECO RWASCO itarahise iha NGIRIYUMVA icyemezo cy'akazi umunsi yamwirukanaga, ahubwo ikagikora nyuma y'igihe kirekire NGIRIYUMVA yirukanwe nk'uko byasobanuwe haruguru, ikwiye gufatwa nk'umukoresha wanze kugitanga, hakurikijwe ibiteganywa n'ingingo ya 30, igika cya 2, y'itegeko nº 51/2001 ryo kuwa 30/12/2001 ryerekeye amategeko agenga umurimo mu Rwanda ryakurikizwaga icyo gihe, iteganya ko umukoresha wirukanye umukozi **ahita** amuha icyo cyemezo, bityo akaba ari RECO RWASCO yagombaga kugaragaza ko yahise ikimuha.

[17] Urukiko rurasanga rero RECO RWASCO igomba guha NGIRIYUMVA indishyi zijyanye n'uko itamuhereye ku gihe icyemezo cy'akazi, akaba yagenerwa indishyi zihwanye n'umushahara we w'amezi ane hakurikijwe ibiteganywa n'ingingo ya 30, igika cya 3, y'itegeko nº 51/2001 ryavuzwe haruguru, ni ukuvuga 62.311 Frw[19] x 4 = 249.244 Frw.

Ubujurire bwa RECO RWASCO bwuririye ku bwa NGIRIYUMVA

[18] RECO RWASCO isaba ko yahabwa 2.000.000 Frw y'indishyi z'akababaro n'ay'igihembo cy'Avoka mu Nkiko zombi kuko NGIRIYUMVA yayikuruye mu manza nta mpamvu.

[19] Kuri icyo kibazo, uburanira NGIRIYUMVA avuga ko nta ndishyi yatanga kuko impamvu yayizanye mu rubanza yumvikana nk'uko yabigaragaje mu miburanire ye.

[20] Urukiko rurasanga RECO RWASCO idakwiye guhabwa amafaranga y'indishyi isaba kuko hari ibyo NGIRIYUMVA yayitsindiye mu rwego rw'ubujurire, bikaba bigaragara rero ko atayikuruye mu manza nta mpamvu.

III. ICYEMEZO CY'URUKIKO

[21] RWEMEYE kwakira ubujurire bwa NGIRIYUMVA Samuel kuko bwaje mu buryo n'inzira bikurikije amategeko ;

[22] RWEMEJE ko ubwo bujurire bufite ishingiro kuri bimwe;

[23] RUVUZE ko urubanza RAD 0117/07/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 29/04/2009 ruhindutse kuri bimwe;

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[19] *Uyu niwo mushahara wa nyuma Ngiriyumva yahembwaga mu kwezi kwa 11/2005, ukaba ugaragarira mu nyandiko-mvugo y'Umugenzuzi w'umurimo wo mu Karere ka Nyarugenge igihe yamwumvikanishaga na RECO RWASCO kuri icyo kibazo kuwa 14/06/20007.*

[24] RUTEGETSE RECO RWASCO guha NGIRIYUMVA Samuel indishyi zingana na 249.244 Frw ikanazitangira n'umusogongero wa Leta wa 4% ungana na 9.969 Frw;

[25] RUTEGETSE RECO RWASCO na NGIRIYUMVA Samuel gufatanya gutanga amagarama y'uru rubanza angana na 24.900 Frw, batayatanga mu gihe cy'iminsi umunani, akavanwa mu byabo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 11/02/2011.

Sé
MUGENZI Louis Marie
Perezida

Sé
MUKAMURISA M.Thérèse
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
RUSINGIZA Germain
Umwanditsi