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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 mbare, nº 12

Mutarama, 2012

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. Gihagarariwe n’Urukiko rw’Ikirenga. Gitegurwa na Komite igizwe n’abahagarariye inkiko zose z’ u Rwanda, Ubugenzuzi bw’Inkiko na serivisi y’ubushakashatsi mu Rukiko rw’Ikirenga.

Aho icyegeranyo kibarizwa

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Icyitonderwa
Icyegeranyo ntikigurishwa, gitangirwa ubuntu.

Uburyo icyegeranyo gikoreshwa

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

Amagambo mpine:

Ni amagambo agaragaza mu buryo buhinnye ingeri y'amategeko urubanza rubarizwamo n'ibibazo by'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,

Tubifurije umwaka mushya wa 2012!

Turashima cyane abakomeje kutugaragariza ko basoma iki cyegeranyo, ndetse banaduha ibitekerezo.

Twizere ko muri uyu mwaka dutangiye tuzarushaho kubona ibitekerezo byanyu tukaba tunabashishikariza gusohora inyandiko zagira icyo zivuga kuri izi manza hagamijwe guteza imbere imyumvire y'amategeko anyuranye agenda akoreshwa mu mikirize y'imanza.

Tubibutse ko kugira ngo iki cyegeranyo kirusheho kugera kuri benshi gitangazwa ku buryo bwanditse no mu buryo bw'ikoranabuhanga, ku rubuga rwa internet rw'Urukiko rw'Ikirenga (http:// www. supremecourt.gov.rw- jurisprudence-recueil).

Muri iyi numero turasangamo urubanza rurebana no gusaba gukuraho icyemezo cy'Inteko Ishinga Amategeko, Imanza ebyiri z'inshinjabyaha, enye z'ubucuruzi, eshatu z'imbonezamubano n'urubanza rumwe rw'ubutegetsi .

Sam RUGEGE

Perezida w'Urukiko rw'Ikirenga akaba na

Perezida w'Inama Nkuru y'Ubucamanza

ISHAKIRO

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URUBANZA RUREBANA NO GUSABA GUKURAHO ICYEMEZO CY'INTEKO ISHINGAMATEGEKO

1. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RS/SPEC001/11/CS
ITARIKI Y'URUBANZA: 26/08/2011
UWATANZE IKIREGO: ASHINZWUWERA Alexandre Dumas (ajurira icyemezo cy'inteko rusange y'Umutwe w'Abadepite yateranye kuwa 18/07/2011 akaza kugishyikirizwa tariki ya 19/07/2001 saa 5:35pm).

AMAGAMBO MPINE

URUBANZA RUREBANA NO GUSABA GUKURAHO ICYEMEZO CY'INTEKO ISHINGAMATEGEKO CYIRUKANA UMUDEPITE KUBERA IMYITWARIRE MIBI – KWEMEZA KO UMUDEPITE UGARAGAYEHO RIMWE CYANGWA MENSHI MU MAKOSA AKURWA KU MIRIMO YE

IKURIKIRANWA RY'UMUDEPITE MU MANZA NSHINJABYAHA NTIBYAMBURA UBUBASHA UMUTWE W'ABADEPITE BWO KUMUKURIKIRANA KU BIREBANA N'IMYITWARIRE YE.

GUFATIRWA IBIHANO MU RWEGO RW'AKAZI- KUTABIFATA NKO KUNYURANYA N'IHAME RY'UKO UMUNTU AFATWA NK'UMWERE IGIHE ATARAHAMWA N'ICYAHA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Iyo bisabwe na komite ishinzwe imikorere y'Umutwe w'Abadepite, imyitwarire n'ubudahangarwa bw'Abadepite bikemezwa na bitatu bya gatanu (3/5), Inteko Rusange ishobora kwemeza ko Umudepite ugaragayeho rimwe cyangwa menshi mu makosa akurwa ku mirimo ye.

- Kuba hari isano ry'ibyaha umudepite aburana mu nkiko n'amakosa ye nk'umudepite ntibyambura inteko ishingamategeko ububasha bwo gukurikirana amakosa ye nk'umudepite, isuzuma koko niba ayo makosa amuhama ikamufatira ibihano mu rwego rw'akazi k'Ubudepite.

- Kuba Umudepite yafatirwa ibihano mu rwego rw'akazi ku bijyanye n'imyitwarire igomba kumuranga mu kazi, ntabwo binyuranije n'ibiteganywa n'ingingo ya 19 y'Itegeko-Nshinga n'ihame ry'uko umuntu afatwa nk'umwere igihe cyose icyaha akurikiranyweho kitaramuhama.

URUKIKO RW'IKIRENGA RURI I KIGALI RUHABURANISHIRIZA URUBANZA RS/SPEC0001/11/CS MU RUHAME RUSABA KUVANAHO ICYEMEZO CYAFASHWE, RURUCIYE MU BURYO BUKURIKIRA:

HABURANA:

Ashinzwuwera Alexandre Dumas mwene Nkuliyingoma Augustin na Uwineza Rachel, yavutse tariki ya 20/09/1984, abarizwa mu Mujyi wa Kigali, akarere ka Nyarugenge, umurenge wa Gitega . Ni umunyarwanda, akaba n'ingaragu.

Uregwa:

IKIBURANWA:

Kujuririra icyemezo cy'Inteko rusange y'Umutwe w'Abadepite yateranye ku wa 18/07/2011 nkaza kugishyikirizwa tariki ku wa19/07/2011 saa 5:35pm.

I. Imiterere y'urubanza

[1] Ashinzwuwera Alexandre Dumas yatorewe kuba umwe mubagize Inteko Ishinga Amategeko, Umutwe w'Abadepite. Tariki ya 30/05/2011, Perezida w'Inteko Ishinga Amategeko, Umutwe w'Abadepite yandikiye Perezida wa Komite ishinzwe imikorere y'umutwe w'Abadepite, imyitwarire, imyifatire, n'ubudahangarwa bw'abadepite asaba ko iyo Komite yakurikirana ikibazo cya Depite Ashinzwuwera Alexandre Dumas ku mpamvu z'ibyamuvugwagaho ko yaba yarabangamiye Polisi y'u Rwanda mu kurangiza inshingano ihabwa n'itegeko. Abadepite bagize Komite yashinzwe icyo kibazo batangiye kugikurikirana no kugicukumbura babaza abantu batandukanye.

[2] Ababajijwe n'itsinda ry'abadepite bagize Komite ni abantu barindwi. Batanu ni abapolisi, umuturanyi wa Depite Ashinzwuwera Alexandre Dumas na Ashinzwuwera Alexandre Dumas akaba yarabonanye n'iryo tsinda rigira ibyo rimubaza arabisubiza. Tariki ya 13 Nyakanga 2011 Perezida w'Inteko Inshinga Amategeko, Umutwe w'Abadepite yagejejweho raporo na Komite ku kibazo cya Depite Ashinzwuwera Alexandre Dumas.

[3] Iyo raporo yagejejwe ku nNteko Rusange y'Abadepite tariki ya 18 Nyakanga 2011.Iyo Nteko yafashe icyemezo cyo kwirukana Depute Ashinzwuwera Dumas ku mirimo y'ubudepite. Mu gufata umwanzuro, Inteko yasanze Depite Ashinzwuwera Alexandre Dumas tariki ya 30 Werurwe 2011 yarabangamiye Polisi y'u Rwanda ayibuza kurangiza inshingano zayo ihabwa n'amategeko ngo ibyo bikaba byaragaragajwe n'imwe mu myitwarire ye ikurikira:

- Kwanga gutanga mushiki we Tuyishime Josiane kugirango yitabe umuyobozi wa CID;
- Kurwanya Polisi no gushishikariza bashiki be kuvuza induru kugeza ubwo abahisi n'abagenzi bahurura;Urubanza RS/ SPEC 0001/11/CS Ashinzwuwera Alexandre Dumas
- Kutiyubaha no kutubaha izindi nzego, kwitesha agaciro no kugatesha urwego arimo.

[4] Depite Ashinzwuwera Alexandre Dumas ntabwo yishimiye umwanzuro wafashwe wo kumuhagarika ku mirimo y'ubudepite, tariki ya 20 Nyakanga 2011 yatanze ikirego mu Rukiko rw'Ikirenga asaba ko icyo cyemezo cyavaho ngo kuko yirukanywe biciye mu nzira zidakurikije amategeko kandi ko ibyashingiweho yirukanwa bidafite ishingiro. Urubanza rwaburanishijwe ku tariki ya 22/08/2011, Ashinzwuwera Alexandre Dumas yunganirwa na Me Mbera Ferdinand hamwe na Me Sebaziga Sophonie naho ku ruhande rwa Leta hitabye Me Sebazungu Alphonse, Intumwa Nkuru ya Leta yungirije. Nyuma y'iburanisha mu ruhame, Urukiko rwavuze ko urubanza ruzasomwa tariki ya 26/08/2011

II. Ibibazo biri mu rubanza n'isesengura ryabyo

a) Kumenya niba inzira Inteko Ishinga Amategeko, Umutwe w'Abadepite yakoresheje yirukana Ashinzwuwera Alexandre Dumas zinyuranije n'amategeko.

[5] Ashinzwuwera Alexandre Dumas hamwe n'abamwunganira bavuga ko inzira zakoreshejwe yirukanwa zinyuranye n'amategeko. Bavuga ko ingingo ya 18 y'Itegeko Nshnga yishwe ngo kuko atahawe umwanya wo kwisobanura imbere y'inteko rusange y'Umutwe w'abadepite. Uhagarariye Leta we avuga ko uburenganzira bwo kwisobanura yabuhawe kuko ngo yabonanye, kandi akanabazwa na Komite ishinzwe imikorere y'umutwe w'Abadepite, imyitwarire, imyifatire, n'ubudahangarwa bwabo. Ashinzwuwera Alexandre Dumas, n'Intumwa ya Leta, bose bemera ko Komite ishinzwe imikorere y'umutwe w'Abadepite, imyitwarire, imyifatire, n'ubudahangarwa bw'abadepite yabonanye na Ashinzwuwera Alexandre Dumas imuha umwanya wo kwisobanura ku makosa yamuvugwagaho

[6] Tariki ya 24/06/2011, Abadepite bagize Komite ishinzwe imikorere y'umutwe w'Abadepite, imyitwarire, imyifatire, n'ubudahangarwa bw'abadepite babonanye na Ashinzwuwera Alexandre Dumas, bamubaza ibibazo bitandukanye birebana n'imyitwarire ye arabisubiza. Urukiko rurasanga ku uru rwego (Committee level) Ashinzwuwera Alexandre Dumas yarahawe uburenganzira bwo kwisobanura ubwo yahuraga na Komite ikamubaza uko ikibazo giteye akakisobanuraho. Nkuko yari ibifitiye uburenganzira ihabwa n'amategeko, Komite yasabye ko Ashinzwuwera Alexandre Dumas yahagarikwa. Ibyo Komite isabye muri raporo, Inteko Rusange irabisuzuma, igafata umwanzuro biciye mu matora. Ingingo ya 90 y'Itegeko Ngenga No 06/2006 ryo ku wa 15/02/2006 rigena imikorere y'umutwe w'abadepite nk'uko ryahinduwe kandi ryujujwe kugeza ubu ibivuga muri aya magambo "Bisabwe na Komite ishinzwe imikorere y'Umutwe w'Abadepite, imyitwarire, imyifatire

n'ubudahangarwa bw'Abadepite bikemezwa na bitatu bya gatanu (3/5) by'abagize Umutwe w'Abadepite, Inteko Rusange ishobora kwemeza ko Umudepite ugaragayeho rimwe cyangwa menshi mu makosa akurwa ku mirimo ye y'ubudepite ......". Ashinzwuwera Alexandre Dumas ntabwo agaragaza Urubanza RS/SPEC 0001/11/CS Ashinzwuwera Alexandre Dumas aho ahera avuga ko yagombaga kwisobanura imbere y'Inteko Rusange y'Umutwe w'abadepite.

b) Kumenya niba ikurikirana ry'umudepite mu manza nshinjabyaha ribuza ko yakurikiranwa ku birebana n'imyitwarire ye.

[7] Ashinzwuwera Alexandre Dumas avuga ko uburyo yirukanywemo budakurikije amategeko ngo kuko hari urubanza rw'inshinjabyaha yaburanye akarutsinda naho urundi rukaba rutaracibwa burundu. Ashinzwuwera Alexandre Dumas n'abamwunganira aribo Me Mbera Ferdinand na Me Sebaziga Sophonie bavuga ko ingingo ya 19 y'Itegeko Nshinga ndetse n'izindi ngingo z'amasezerano mpuzamahanga zivuga ko umuntu afatwa nk'umwere mu gihe atarahamwa n'icyaha burundu, zishwe. Kuri iki kibazo intumwa ya Leta ivuga ko Inteko Rusange y'Umutwe w'Abadepite yafashe icyemezo ishingiye ku makosa yabonye kuri Ashinzwuwera Alexandre Dumas ko bitari ngombwa gushingira ku manza. Ashinzwuwera Alexandre Dumas yaburanye urubanza RP0069/11/TB/NYB mu Rukiko Rwibanze rwa Nyamirambo aregwa n'ubushinjacyaha aratsinda. Hari n'urundi rubanza aregwamo n'ubushinjacyaha ibyaha by'urukozasoni rukorewe abarinzi b'amahoro, ubwigomeke, gukubita no gukomeretsa. Izi manza ni izinshinjabyaha.

[8] Kuba hari urubanza Ashinzwuwera Alexandre Dumas yaburanye akarutsinda hari n'urundi ategereje kuburana ntibibuza ko hasuzumwa ibirebana n'amakosa ashingiye

ku myifatire ye. Ibyakozwe n'Inteko Rusange y'Umutwe w'Abadepite byari bishingiye ku makosa Ashinzwuwera Alexandre Dumas yaregwaga ntabwo byari bishingiye ku byaha yaregwaga n'ubushinjacyaha. Ikosa ryatumye avanwa ku rutonde rw'abadepite niryo kwitesha agaciro no kugatesha urwego arimo, ibi kandi ntabwo ari icyaha gihanwa n'amategeko mpanabyaha. Kuba haba hari isano ry'ibyaha aburana mu nkiko n'amakosa akurikiranyweho n'urwego abarizwamo ntibyambura urwo urwego ububasha bwo gukurikirana amakosa ye nk'umudepite rusuzuma koko niba ayo makosa amuhama. Ingingo ya 19 y'Itegeko Nshinga rya Repubulika y'u Rwanda ndetse n'izindi ngingo zigaragara mu masezerano mpuzamahanga zivuga ko umuntu afatwa nk'umwere igihe cyose icyaha aregwa kitaramuhama burundu, ntabwo zishwe kuko agifashwe nk'umwere kubyaha akurikiranyweho mu nkiko. Icyo yahaniwe ni amakosa ajyanye n'imyitwarire igomba kuranga umudepite.

[9] Iby'uko ikirego cy'inshinjabyaha kidashobora kubangamira ugukurikirana ikosa umuntu yakoze mu kazi bigaragara kandi no mu rubanza No RAD A0012/07/CS rwari hagati ya Leta y'u Rwanda na Nkongoli, no mu rubanza RSOCAA 0019/09/CS RSOC0002/09/HC/KIG rwa Kabanda Janvier na ECOBANK zaciwe n'Urukiko rw'Ikirenga. Bene izi manza ntabwo ari umwihariko w'u Rwanda gusa. Urukiko rw'Ubujurire ruburanisha imanza z'ubutegetsi rw'i Bordeaux mu gihugu cy'Ubufaransa rwaciye urubanza tariki ya 4/11/2008 rwemeza ko ntacyari kubuza ko Mme Juliette X watanze ikirego akurikiranwa ku birebana n'imyitwarire mu kazi[1]

[1] Urubanza RS/SPEC 0001/11/CS Ashinzwuwera Alexandre Dumas(poursuites disciplinaires) nubwo haba hari ikirego cy'inshinjabyaha kidashobora kubangamira ikurikiranwa ku birebana n'imyitwarire mu kazi.

c) Ikibazo cyo kumenya niba ibyashingiweho Ashinzwuwera Alexandre Dumas yirukanwa ku mwanya w'ubudepite bifite ishingiro.

[10] Ashinzwuwera Alexandre Dumas avuga ko amakosa yahamijwe yo kwitwara nabi nta shingiro afite ko ahubwo ari akagambane k'abo basangiye ishyaka. Kuri iyi ngingo uhagarariye Leta we avuga ko icyemezo cyafatiwe uwareze cyo kwirukanwa gifite ishingiro ngo kuko hari amakosa Komite ishinzwe imikorere y'umutwe w'Abadepite, imyitwarire, imyifatire, n'ubudahangarwa bw'abadepite yagaragaje muri raporo.Inteko Rusange y'Umutwe w'Abadepite yafashe icyemezo ishingiye kuri raporo yakozwe na Komite imaze kuvugwa.

[11] Mu gace ka 5 k'ingingo ya 90 y'Itegeko Ngenga No 06|2006 ryo ku wa 15/02/2006 rigena imikorere y'umutwe w'abadepite nk'uko ryahinduwe kandi ryujujwe kugeza ubu, havugwamo ko bisabwe na Komite ishinzwe imikorere y'Umutwe w'Abadepite, imyitwarire, imyifatire n'ubudahangarwa bw'Abadepite bikemezwa na bitatu bya gatanu (3/5) by'abagize Umutwe w'Abadepite, Inteko Rusange ishobora kwemeza ko Umudepite ugaragayeho kwiyandarika no kwitesha agaciro cyangwa kugatesha urwego arimo akurwa kuri iyo mirimo ye. Mu gukora raporo, Komite yabajije abantu bari mu byiciro bitandukanye harimo na Ashinzwuwera Alexandre Dumas ubwe. Mu iburanisha ry'uru rubanza muri uru Rukiko ntabwo yashoboye kuvuguruza imvugo z'ababajijwe na Komite ishinzwe imikorere y'umutwe w'Abadepite, imyitwarire,imyifatire, n'ubudahangarwa bw'abadepite. Ntiyigeze atanga kandi ikimenyetso icyo aricyo cyose kivuguruza ibyo Komite yavuze muri raporo. Kubw'ibyo, Urukiko rurasanga icyemezo cyo gukura ku rutonde rw'Abadepite Ashinzwuwera AlexandreDumas cyafashwe n'Inteko rusange y'Umutwe w'Abadepite gifite

ishingiro cyane cyane ko cyubahirije ibiteganywa mu ngingo imaze kuvugwa[2].

III. Icyemezo cy'Urukiko

[12] Urukiko rw'Ikirenga rwemeye kwakira no gusuzuma ikirego rwashyikirijwe na Ashinzwuwera Alexandre Dumas.

[13] Rwemeje ariko ko nta shingiro gifite.

[14] Rukijije ko Ashinzwuwera Alexandre Dumas atsinzwe.

[15] Rumutegetse kwishyura amagarama y'urubanza angana na 9700 FRW ahwanye n'ibyakozwe mu rubanza.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 26/08/2011 N'URUKIKO RW'IKIRENGA.

Sé
RUGEGE Sam
Perezida

Sé
Emily R. KAYITESI
Umucamanza

Sé
Fabien HATANGIMBABAZI
Umucamanza

Sé
Germain RUSINGIZA
Umwanditsi

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[2] *http://bordeaux.cour-administrative-appel.fr/ta-caa/, Cour Administrative d'Appel de Bordeaux, N° 07BX01721, 2ème chambre (formation à 3), 4 novembre 2008. ..“... Considérant, en quatrième lieu, qu'en vertu du principe de l'indépendance de la répression disciplinaire et de la répression pénale, l'autorité administrative peut déclencher des poursuites disciplinaires sans que l'éventualité de poursuites pénales soit de nature à exercer une incidence sursa liberté de décision ; que par suite la circonstance que les faits reprochés à la requérante aient également pu faire l'objet de poursuites devant un tribunal répressif ne faisait pas obstacle à ce que soit engagée, à raison des mêmes faits, une procédure disciplinaire, ni à ce que soit prononcée, pour les faits dont s'agit, une sanction disciplinaire ; que dans ces conditions, Mme X n'est pas fondée à soutenir que les droits de la défense ont été méconnus à son égard en ce que la matérialité des faits commis ne pouvait être constatée que par la juridiction pénale ...»*

IMANZA Z'INSHINJABYAHA

2. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RPA0274/08/CS
ITARIKI Y'URUBANZA: : 07/01/2011
HABURANA: UBUSHINJACYAHA
na MBANZAMIHIGO Jean Pierre

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA - UBUSEMBURE - NTIBYITWA UBUSEMBURE IYO IGIKORWA UBUSHINGIRAHO CYABAYE IMPITAGIHE AHUBWO BYITWA KWIHORERA.

UBUHOTOZI BUTEWE NO KWITABARA – BYITWA UBUSEMBURE IYO WUGARIJWE MURI AKO KANYA N'IKINTU GISHOBORA KUGIRIRA NABI - NTIBYITWA KWITABARA IYO WIRINDA IKIZABA MU NZAGIHE.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Uwireguza ukwitabara ku cyaha cy'ubuhotozi agomba kugaragaza ko ubusembure bwababayeho ako kanya ka hafi ko kandi bwamuteye ububabare cyangwa umujinya atashoboraga kwigobotora, iyo ashingira ubusembure ku bikorwa by'igihe cyashize ntibyitwa ubusembure ahubwo byitwa ukwihorera.
- Uvuga ko yakoze icyaha yitabara agomba kwerekana ko yari yugarijwe muri ako kanya n'ikintu kigamije kumugirira nabi ku buryo aramutse atitabaye ashobora kuhasiga ubuzima.Nta kwitabara

kubaho ku kintu wakorewe kera, iyo bibayeho nabyo byitwa ukwihorera biturutse ku mujinya wahemberewe.

- Ntibyitwa kwitabara iyo ubiburanisha yerekana ko icyo yirindaga ari icyari kuzaba mu gihe kizaza, icyo wirinda ntikigomba kuba ari ikizaba mu nzagihe(Futur).

URUKIKO RW'IKIRENGA RULI I KIGALI, RUBURANISHA IMANZA Z'INSHINJABYAHA, RWAKIJIJE MU RUHAME URUBANZA RPA 0274/08/CS KUWA 07 MUTARAMA 2011 MU BURYO BUKURIKIRA :

<u>HABURANA</u> :

Ubushinjacyaha

Na

MBANZAMIHIGO Jean Pierre, wajuriye mwene Ndengeyinka na Kankindi, wavutse muri 1941 I Musange –Gikongoro, utuye Gahosha-Nziranziza-Ngenda, washakanye na Kandamage, umuhinzi, udafite icyo atunze;

<u>Ibyaha akurikiranyweho:</u>

- Kuba we na HAKIZIMANA Japhet na MBONABUCYA Pierre bari mu Kagari ka Gashonga umurenge wa Nziranziza, Akarere ka Ngenda, Intara ya Kigali- Ngari, bararemye umutwe w'abagizi ba nabi. Icyaha giteganywa kandi gihanishwa n'ingingo ya 281 na 282 z'igitabo cy'amategeko ahana.

- Kuba mu ijoro ryo kuwa 08/08/2004, bari aho hantu havuzwe haruguru, barahotoye uwitwa NZABAKURANA Innocent. Icyaha giteganywa kandi gihanishwa n'ingingo ya 312 y'igitabo cy'amategeko ahana.

I. IMITERERE Y'URUBANZA

[1] MBANZAMIHIGO Jean Pierre yahamijwe n'Urukiko Rukuru rwa Repubulika icyaha cyo kurema umutwe w'abagizi ba nabi afatanyije na bagenzi be, n'icy'ubuhotozi bakoreye NZABAKURANA Innocent, rubakatira igihano cyo kwicwa uretse MBONABUCYA Pierre wahise atoroka icyaha kikimara kuba.

[2] Inyandiko zikubiye muri dosiye arinazo Urukiko Rukuru rwa Repubulka rwashingiyeho, zerekana ko nyakwigendera yari avuye mu kabare atashye aribwo MBANZAMIHIGO Jean Pierre afatanyije na bagenzi be bamutegaga baramutemagura bamukerera n'ijosi, umurambo we bawujugunya mu muringoti barenzaho itaka barigendera. Muri urwo Rukiko, MBANZAMIHIGO Jean Pierre yaburanaga avuga ko yamwishe yitabara .

[3] MBANZAMIHIGO Jean Pierre yarajuriye, urubanza ruhamagarwa kuwa 08/11/2010, ruburanishwa mu ruhame, MBANZAMIHIGO Jean Pierre yiburanira naho Ubushinjacyaha buhagarariwe na HABINEZA Jean Damascène, Umushinjacyaha ufite ububasha ku rwego rw'igihugu.

[4] Mu bujurire bwe , MBANZAMIHIGO Jean Pierre avuga ko asaba imbabazi ngo kubera ko yishe NZABAKURANA Innocent kubera :

- Ubusembure no
- Kwitabara.

[5] Kuri ubwo bujurire, Ubushinjacyaha buvuga ko

MBANZAMIHIGO Jean Pierre yishe NZABAKURANA Innocent yabiteguye kandi yabigambiriye kuko yamuteze igico, ko nta busembure bwabayeho kuko nta ntonganyi cyangwa ubushotoranyi byabaye hagati yabo mbere y'ubwo buhotozi, ahubwo bakaba bari biriwe basangira inzoga mu kabare bamusengerera. Ubushinjacyaha bwavuze kandi ko nta kwitabara kwabayeho kuko batigeze barwana ngo maze MBANZAMIHIGO Jean Pierre abe yaramwishe ari ukugirango akize amagara ye.

II. <u>Isesengura ry'ibibazo bigize urubanza</u>

Ku byerekeye kumenya niba ubuhotozi bwaratewe n'ubusembure

[6] Mu mwanzuro we no mu miburanire ye, MBANZAMIHIGO Jean Pierre avuga ko NZABAKURANA Innocent ariwe wabaye nyirabayazana w'urupfu rwe ngo kubera ko ariwe wamusembuye amutegera mu nzira buri gihe akamukubita, kandi akaba yari yarigeze no kumwiba akabihanirwa n'ubuyobozi, ibyo byose ngo bikaba aribyo byabaye intandaro yo kugirango nawe amwikize.

[7]. Urukiko rurasanga iyo mvugo ya MBANZAMIHIGO Jean Pierre nta shingiro ifite kuko nta busembure agaragaza bwari bwabayeho muri ako kanya ka hafi bwari bwamuteye ububabare cyangwa umujinya atashoboraga kwigobotora, ngo bibe

aribyo byamuteye kwica NZABAKURANA Innocent amutemaguye. Ahubwo bari basangiye inzoga, baganira, basabana, ariko ari uburyo bwo kumugumana kugirango igihe bari bihaye cyo kumwica kigere.

[8]. Kuvuga ko ngo yigeze kumutegera mu nzira akamukubita, niba byaranabayeho, icyo gikorwa ntikiba kikitwa ubusembure kuko kiba cyarabaye impitagihe, ahubwo byakwitwa kwihorera, binakubitiyeho ko nkuko MBANZAMIHIGO Jean Pierre abyivugira ubwe, yari yarabimureze mu buyobozi burabimuhanira, ariko ntibyamubujije kubirwara inzika. Ikindi kigaragaza ko nta busembure bwabayeho, ni uko mbere yuko MBANZAMIHIGO Jean Pierre agera ku mugambi we mubisha, byamufashe igihe cyo kujya gushaka abazamufasha icyo gikorwa kigayitse, bajya mu biciro bemeranywa ko azabaha ibihumbi myakumyabiri(20.000 Frw), ayo mafaranga kandi koko yarayabahaye bamaze kumufasha gukora iryo shyano.

Ku byerekeye kumenya niba ubuhotozi bwaratewe no kwitabara

[9]. MBANZAMIHIGO Jean Pierre avuga ko yishe NZABAKURANA Innocent yitabara ngo kuko yahoraga amutera ubwoba amubwira ko azamwica mu gihe cy'ukwezi.

[10]. Urukiko rurasanga iyo myiregurire ye nta shingiro ifite kuko kugirango uvuge ko wakoze icyaha witabara, ni

uko uba wugarijwe muri ako kanya n'ikintu kigamije kukugirira nabi ku buryo uramutse utitabaye ushobora kuhasiga ubuzima. Kuvuga ko wakoze icyaha witabara ku kintu wakorewe cyera, ntabwo biba bikitwa kwitabara, ahubwo nabyo ni ukwihorera (sentiment de vengeance) biturutse ku mujinya wahembereye no ku nzika umaranye iminsi.

[11]. MBANZAMIHIGO Jean Pierre nta kintu cyari kimwugarije muri ako kanya ku buryo yagombaga kwitabara akiza amagara ye. NZABAKURANA Innocent ntiyigeze amurwanya ngo noneho undi abe yaramwishe yitabara. Yamwishe yabiteguye, abizi neza kandi abishaka.

[12]. Ikindi kigaragaza ko iriya mvugo ya MBANZAMIHIGO Jean Pierre yuko yishe NZABAKURANA Innocent yitabara ngo kuko yahoraga amutera ubwoba amubwira ko azamwica mu gihe cy'ukwezi nta shingiro ifite, ni uko kugirango wireguze ko witabaraga, ni uko icyo cyago ushaka kwirinda wirwanaho, atari ikizaba mu nzagihe(futur), kuko icyo gihe wagombye kwiyambaza inzego z'ubutabera zikabikurikirana aho kwihanira. MBANZAMIHIGO Jean Pierre niba koko NZABAKURANA Innocent yarahoraga amutera ubwoba amubwira ko azamwica, yagombaga kubishyikiriza inzego zibishinzwe zikamurenganura aho kumwica.

[13]. Ibimaze kuvugwa kandi binashimangirwa n'abahanga muby'amategeko . Aha twavuga nka Jean Claude SOYER mu gitabo cye « DROIT PENAL ET PROCEDURE PENALE,

8ème édition, LGDJ , 1990, page109 » aho agira ati : « Conditions de la légitime défense Pour que l'auteur d'un délit soit justifié, il faut que la défense soit d'une nécessité absolue, c'est-à-dire que l'auteur ait été menacé d'un mal imminent contre lequel il n'a pu réagir qu'en commettant un délit. Celui qui réagit contre un mal passé n'est inspiré que par un sentiment de vengeance ; il peut d'ailleurs porter plainte lorsqu'un délit a été commis contre lui. Quand le mal est simplement éventuel, futur, l'auteur du délit n'est pas davantage justifié ; si les menaces constituent une infraction, il doit s'adresser à la justice pour la faire réprimer, et non se faire justice à lui-même. »

[14]. Hashingiwe ku bimaze kuvugwa, Urukiko rurasanga ubujurire bwa MBANZAMIHIGO Jean Pierre nta shingiro bufite, akaba agomba guhanirwa kiriya cyaha cy'ubuhotozi yakoze.

[15]. Urukiko rurasanga ariko nubwo MBANZAMIHIGO Jean Pierre icyo cyaha kimuhama, atigeze akurikiranwa mbere n'ubutabera mu buryo buzwi, ibyo bikaba byamubera impamvu yo kumugabanyiriza igihano hashingiwe ku ngingo ya 82 na 83 z'igitabo cy'amategeko ahana.

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

[16]. **Rwemeje** ko ubujurire bwa MBANZAMIHIGO Jean Pierre nta shingiro bufite;

[17]. **Rumuhanishije** igifungo cy'imyaka 20;

[18]. **Rwemeje** ko imikirize y'urubanza rwaciwe n'Urukiko Rukuru rwa Repubulika rwa Kigali, ihindutse gusa ku gihano MBANZAMIHIGO Jean Pierre yari yahawe;

[19]. **Rumutegetse** gutanga amagarama y'uru rubanza angana na 18.950 Frw habariwemo n'ayo yaciwe mu Rukiko Rukuru rwa Repubulika , atayatanga mu gihe cy'iminsi munani , agafungwa iminsi makumyabiri y'ubugwatiramubiri akavanwa mu bye ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 07/01/2011 N'URUKIKO RW'IKIRENGA, RUGIZWE NA: MUTASHYA JEAN BAPTISTE: PEREZIDA,: HAVUGIYAREMYE JULIEN NA RUGABIRWA RUBEN:ABACAMANZA, BAFASHIJWE NA MUSENGAMANA VIATEUR: UMWANDITSI W'URUKIKO.

Sé
MUTASHYA Jean Baptiste
Perezida

Sé HAVUGIYAREMYE Julien Umucamanza	Sé RUGABIRWA Ruben Umucamanza

Sé

MUSENGAMANA Viateur
Umwanditsi

3. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RPA0244/08/CS
ITARIKI Y'URUBANZA: 30/09/2011
HABURANA: UBUSHINJACYAHA na MUSABYIMANA Marie

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA-ICYAHA CYO KUROGA-IBYO KURYA CYANGWA KUNYWA BISHOBORA KWICA BWANGU CYANGWA BITINZE.

KUGAMBIRA UBUZIMA BW'UMUNTU –GUKORESHA UBUROZI –KUTITA KU NGARUKA BWAGIZE KU MUNTU-KWIYAMBAZA UBUHANGA BW'ABAGANGA CYANGWA ABAHANGA MU BY'IMITI N'UBUTABIRE.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Byitwa kuroga kugambira ubuzima bw'umuntu umuha ibintu arya (breuvage) bishobora kwica bwangu cyangwa bitinze, hatitawe ku ngaruka byagize ku buzima bw'uwabihawe.

- Kugira ngo ibyahawe umuntu byitwe uburozi ni ngombwa ko hitabazwa abuhanga bw'abaganga cyangwa abahanga mu byerekeye imiti n'ubutabire.

URUKIKO RW'IKIRENGA, RUBURANISHA IMANZA Z'INSHINJABYAHA, RUKIJIJE MU RUHAME URUBANZA RPA 0244/08/CS KU WA 30/09/2011 MU BURYO BUKURIKIRA:

ABABURANYI:

Uwajuriye :
Musabyimana Marie, mwene Rucogoza François na Kabega Anastasie, wavutse mu 1979, avukira i Dusego, Ngiryi, mu Karere ka Nyamagabe, Intara y'Amajyepfo, ni naho atuye, umunyarwandakazi, yashakanye na Harindintwari Athanase, aburana afunze.
N'Ubushinjacyaha, buhagarariwe na Ntawangundi Béatrice.

ICYAHA AREGWA :
Kuba ari mu Kagari ka Ngara, mu Murenge wa Mbazi, Akarere ka Nyamagabe, Intara y'Amajyepfo, yararoze abana b'abaturanyi batandukanye, bamwe bagapfa abandi bakavuzwa bagakira. Icyaha cyo kuroga giteganywa kandi kigahanishwa ingingo ya 315 y'Igitabo cy'amategeko ahana ibyaha.

I. IMITERERE Y'URUBANZA

[1] Musabyimana Marie yashyizwe mu majwi n'abaturanyi be bavuga ko yabarogeye abana bamwe bagapfa abandi bakavuzwa bagakira. Ubushinjacyaha bwamukurikiranyeho icyaha cyo kuroga, maze Urukiko Rukuru, Urugereko rwa Nyanza rwemeza ko kimuhama, rumuhanisha igifungo cya burundu kubera ko yacyemeye mu Bushinjacyaha kandi akaba agishinjwa n'abaturanyi ndetse n'umugabo we.

[2] Musabyimana yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru, rwirengagije ibimenyetso yatanze byerekana ko yivuzaga mu kinyarwanda ashaka urubyaro agahabwa umuti wo kwambara, ko ariko utari uburozi. Avuga kandi ko urwo rukiko rutahaye agaciro ubuhamya bw'umugabo we Harindintwari Athanase wasobanuye icyo uwo muti wamaraga. Na none ngo abamushinja ntibagaragaza abana babo yishe cyangwa yaba yaranduje.

[3] Urubanza rwaburanishijwe tariki ya 9/3/2011 na 25/07/2011, Musabyimana yiburanira hari n'Ubushinjacyaha buhagarariwe na Ntawangundi Béatrice.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO.

Kumenya niba hari abana barozwe hakoreshejwe umuti Musabyimana yambaraga.

[4] Musabyimana avuga ko yabyaye kenshi abana be bapfa, ajyana n'umugabo we Harindintwari Athanase ku mupfumu witwa Manyogote Léocadie amuha agati arakambara aza kubyara, noneho mukeba we akuyemo inda amubeshyera ko yamuroze. Asobanura ko icyo yemera ari uko yambaye uwo muti, ko ariko atari uburozi, ko ndetse n'aho afungiwe, umugabo we yabyemeje atyo, ariko urukiko ntirwabiha agaciro.

[5] Ku kibazo cyo kumenya impamvu abaturanyi be bamushinja ko yabarogeye abana, yasubije ko bose bafitanye ikibazo cy'amasambu, n'amashyari bamufitiye kuko babonye abyaye, ko kandi abana babo bariho kuko ntawe yishe.

[6] Umushinjacyaha avuga ko mu ibazwa rye mu Bugenzacyaha, Musabyimana yemeye ko yaroze abana ba Nyirabakundukize Béata, Ngabonziza Alfred, Gakwisi Noël, Niyoyaremye, Mporendore, Nsabimana Samuel na Rukomeza Célestin bamushinja. Mu nama y'abacamanza naho ngo yemeye icyaha asobanura ko hari umuti yari afite yicishaga abana.

[7] Ku kibazo cyo kumenya niba agati k'umwase kafatiriwe ariko karoze abo bana, Umushinjacyaha yasubije ko ako gati katapimwe ngo hagaragare ko ari uburozi, ko rero hatamenyekanye uburyo uburozi bwe bwicaga.

[8] Ku byerekeranye n'icyaha cyo kuroga, ingingo ya 315 y'Igitabo cy'amategeko ahana ibyaha, iteganya ko « byitwa kuroga, kugambirira ubuzima bw'umuntu umuha ibintu bishobora kwica bwangu cyangwa bitinze, batagombye kwitegereza ibyakoreshejwe cyangwa uko byahawe nyiri ukubigirirwa n'inkurikizi zabyo (…) ».

[9] Iyi ngingo yumvikanisha ko kugira ngo habeho icyaha cyo kuroga, umuntu aba yahawe mu buryo bwo kurya cyangwa kunywa ibintu bishobora kwica bwangu cyangwa bitinze.

[10] Umuhanga mu mategako Robert KINT[3] wasesenguye iyi ngingo asanga ko kugirango icyaha cyo kuroga kibeho hagomba kubaho « kugambirira ubuzima bw'umuntu no gukoresha ibintu bishobora kwica bwangu cyangwa bitinze ». Na none kandi kugira ngo icyo cyaha kibeho ni ngombwa ko haba hakoreshejwe uburozi, hatitawe ku ngaruka bwagize ku muntu. Kugirango umenye ko ibyakoreshejwe ari uburozi, ni ngombwa kwiyambaza ubuhanga bw'abaganga cyangwa abahanga mu by'imiti n'ubutabire.

[3] *Droit pénal spécial, 1993, p.76-77*

[11] Ku byerekeye imikorere y'icyaha Musabyimana akurikiranweho, mu iperereza ry'inyongera ryakozwe n'Ubushinjacyaha, abakorewe icyaha babisobanura mu buryo bukurikira :

a. Ngabonziza Alfred avuga ko Musabyimana yamurogeye umwana Ntiyantengushye Gaudence mu kwezi kwa gatanu 2003, ubwo umugore yari amumusigiye, ageze mu rugo umwana araremba, abona igihorohori cyabyimbye. Umwana yamusubije Musabyimana ngo amuvure kuko yari azi ko Manyogote yamuhaye umuti witwa biheko, aramuvura arakira. Yongeraho ko umugabo we bari baramuciye mu bandi, noneho ahiga ibyo birozi arabigaragaza mu nama y'Umudugudu, umugore we yemera ko aroga.

b. Nyirabakundukize Béata yabwiye umushinjacyaha ko Musabyimana yamurogeye umwana Habimana Emmanuel apfa mu kwezi kwa cyenda 2003, ubwo bari bahuriye k'uwitwa Sikubwabo Martini yabatumiye, bicaranye banywa inzoga. Asobanura ko hari ikintu Musabyimana yambaraga, mwahura uhetse umwana agafatwa aruka, agahitwa, akabyimba igihorihori, cyamanuka agapfa, waba utwite inda ikakurya ikavamo. Icyatumye ngo amukeka ngo ni uko yavugwaga ko aroga, ko kandi umugabo we yamufatanye ubwo burozi yarogeshaga abana abuzana ku Murenge, Musabyimana nawe arabyemera.

c. Rukomeza Célestin nawe avuga ko umugore we yaciye ku rugo rwa Musabyimana ahetse

umwana Niyonsenga Claude bahurira ku marembo, ageze mu rugo umwana ararema, bakeka ko yamwanduje kuko yari amaze iminsi yanduza abana, bajya kumuvuza k'uwitwa Seburikoko, arakira.

d. Niyoyaremye Jean nawe yavuze ko Musabyimana yamurogeye umwana Yumvabayisenga Alodiya ari uko ahuye n'umugore we amuhetse, bajya kumuvuza kwa Mukarutesi Vasita arakira.

e. Mporendore nawe ashinja Musabyimana ko yamurogeye umwana Uwimbabazi Joséphine muri ubwo buryo, aravurwa arakira. Yasobanuye ko habaye ikibazo cy'abana banduye n'inda zivamo, bamenya ko ariwe wabikoze abyemereye mu nama y'Umudugudu.

[12] Hashingiwe ku mvugo z'abo bantu bashinja Musabyimana, bigaragara ko yaketswe ko ariwe waroze abana bavugwa ariko nta n'umwe wemeza ko yabahaye ibintu bishobora kwica bwangu cyangwa bitinze mu buryo buteganywa n'ingingo ya 315 y'Igitabo cy'amategeko ahana ibyaha yavuzwe haruguru, ahubwo bavuga ko iyo wahuraga nawe umwana yanduraga cyangwa inda umugore atwite ikavamo.

[13] Byongeye kandi, nta kigaragaza ko agati k'umwase Musabyimana yafatanywe kagaragajwe n'umugabo we kandi yemera ko yambaraga ari uburozi kuko katapimwe nk'uko Umushinjacyaha abyemeza. Nta kigaragaza kandi ko hari umwana Musabyimana yagahaye agapfa cyangwa se bikamugiraho izindi ngaruka mbi. Kuba umugabo we Harindintwari

Athanase yaravuze ko yakambaraga yahuran'abagenzi bahetse abana bagahita bandura, ntibyafatwaho ukuri mu gihe nawe yemeza kimwe n'umugore we ko wari umuti bashatse kugira ngo babone urubyaro, batagambiriye kwica abana b'abaturanyi.

[14] Urukiko rurasanga rero nta cyaha cyo kuroga Musabyimana yakoze, akaba akwiye kugihanagurwaho.

III. ICYEMEZO CY'URUKIKO

[15] Rwemeje ko ubujurire bwa Musabyimana Marie bufite ishingiro.

[16] Rwemeje ko adahamwa n'icyaha cyo kuroga.

[17] Rutegetse ko ahita afungurwa urubanza rukimara gusomwa.

[18] Ruvuze ko urubanza RP 0413/06/HC/NYA rwaciwe n'Urukiko Rukuru, urugereko rwa Nyanza tariki ya 29/05/2008 rwajuririwe ruhindutse kuri byose.

[19] Rutegetse ko amafaranga 23.500 Frw y'amagarama y'urubanza aherera ku isanduku ya Leta.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME KUWA 30/09/2011.

Sé
MUKANYUNDO Patricie
Perezida

Sé
MUKANDAMAGE Marie-Josée
Umucamanza

Sé
KANYANGE Fidélité
Umucamanza

Sé
UWARUGIRA Jean Baptiste
Umwanditsi w'Urukiko

IMANZA Z'IMBONEZAMUBANO

4. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCA0008/10/CS
ITARIKI Y'URUBANZA: 21/01/2011

HABURANA:

MUKAMURENZI Diane na AKINGENEYE Jean de Dieu / KARANGWA Elisé na MUKARUTESI Espérence

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO – KUJURIRA URUBANZA BIHAGARIKA IRANGIZA RYARWO-IKIREGO GISABA GUHARIKA IRANGIZA RY'URUBANZA RWAJURIRIWE-GUSABA IBYO USANGANYWE.

IBIREGO BYIHUTIRWA-BIGOMBA KUBA BYUJUJE IBINTU BITATU BY'INGENZI- INDISHYI ZIJYANYE NO GUKURURWA MU MANZA-INDISHYI Z'IKURIKIRANARUBANZA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Kujurira urubanza ubwabyo bihagarika irangiza rwarwo, gusaba ko irangizarubanza ry'urubanza rwajuririwe rihagarikwa byitwa gusaba ibyo usanganywe bityo ikirego nticyakirwa kuko nta mpamvu yacyo(sans objet) .

- Ibirego byihutirwa bigomba kuba byujuje ibintu bitatu by'ingenzi bikurikira: Gukorwa mu buryo bwihuse cyane kugira ngo bigire icyo biramira ku buryo bitinze haba igihombo kitagira igaruriro; Icyemezo kigomba kuba ari icy'agateganyo; ntikigomba kubangamira urubanza rw'iremezo mu mizi yarwo.

- Mu rubanza rurebana n'ikirego cyihutirwa ntihatangwa indishyi zo gukururwa mu manza ku maherere ahubwo zitangwa mu rubanza rw'iremezo ikirego cyihutirwa cyuririyeho, nyamara indishyi z'ikurikiranarubanza kimwe n'ay'igihembo cy'avoka zishobora gutangwa.

URUKIKO RW'IKIRENGA RULI I KIGALI, RUBURANISHA MU RUHAME IMANZA Z'IMBONEZAMUBANO, RWAKIJIJE URUBANZA KU KIREGO CYIHUTIRWA RCA 0008/10/CS KUWA 21 MUTARAMA 2011 MU BURYO BUKURIKIRA:

HABURANA :

ABAJURIYE :
MUKAMURENZI Diane, mwene Sebifuranindi na Mukandutiye, utuye mu Mudugudu wa Kanserege, Akagali ka Kamutwa, Umurenge wa Kacyiru, Akarere ka Gasabo, Umujyi wa Kigali.

AKINGENEYE Jean de Dieu , mwene Sebifuranindi na Mukandutiye, utuye mu Mudugudu wa Kanserege, Akagali ka Kamutwa, Umurenge wa Kacyiru, Akarere ka Gasabo, Umujyi wa Kigali

ABAREZWE : KARANGWA Elisé, mwene Gashumba Bernard na MUKARUTESI Espérance, utuye Scotland

MUKARUTESI Espérance mwene Serubibi Jean na Mukantabana, utuye mu Mudugudu wa Kagara ka Nyabisindu, Umurenge wa Remera, Akarere ka Gasabo, Umujyi wa Kigali

IKIBURANWA : Kujuririra icyemezo cy'urukiko mu kirego cyihutirwa mu rubanza RCA 0229/10/HC/KIG rutambamira urubanza RCA 0015/08/HC/KIG - RCA 0016/08/HC/KIG -RCA 0017/08/HC/KIG

1. Inkomoko y'urubanza

[1]. Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo kuri RC 0185/07/TGI/GSBO, MUKAMURENZI Diane na AKINGENEYE Jean de Dieu barega KABERA Vianney, SEBERA Antoine na MUKARUTESI Espérance, amazu abiri manini na annexes imwe, ikibanza n'inzu ya cadastré biri mu Mujyi wa Kigali, urubanza rucibwa kuwa 6/12/2007, Urukiko rwemeza ko icyo kirego gifite ishingiro, rutegeka KABERA Vianney, SEBERA Antoine na MUKARUTESI Espérance kuva mu mazu aburanwa agahabwa MUKAMURENZI Diane na AKINGENEYE.

[2]. KABERA Vianney, SEBERA Antoine na MUKARUTESI Espérance bajuririye urwo rubanza mu Rukiko Rukuru, ruri i Kigali, ubujurire bwabo bwandikwa kuri RCA 0015/8/HC/KIG - RCA 0016/08/ HC/KIG - RCA 0017/8/HC/KIG, urubanza rucibwa kuwa 24/2/2010, Urukiko rutegeka KABERA Vianney guha MUKAMURENZI Diane na AKINGENEYE Jean de Dieu ingurane ya 971.550 Frw y'ikibanza n'amazu yasenye akanatanga 38.862 Frw y'umusogongero wa Leta, rutegeka MUKARUTESI Espérance guha MUKAMURENZI Diane na AKINGENEYE inzu yaguze iri Gasabo, mu Mujyi wa Kigali, nabo bakamuha 2.772.333 Frw y'ingurane y'ibikorwa nyungura-gaciro yakoze muri icyo kibanza kirimo inzu basubijwe, ruvuga ko amasezerano y'ubugure ya SEBERA Antoine adasheshwe kuko yayagiranye na SEMUTAKIRWA, rutegeka MUKAMURENZI Diane na AKINGENEYE Jean de Dieu guha SEBERA Antoine 300.000 Frw y'ikurikirarubanza n'ay'igihembo cy'Avoka;

[3]. MUKARUTESI Espérance yajuririye Urukiko rw'Ikirenga arega MUKAMURENZI na AKINGENEYE Jean de Dieu nk'uko bigaragazwa n'ibaruwa ye y'ubujurire yageze mu Bwanditsi bw'uru Rukiko kuwa 19/3/2010.

[4]. MUKAMURENZI Diane na AKINGENEYE Jean de Dieu nabo bajuririye urwo rubanza mu Rukiko rw'Ikirenga nk'uko bigaragazwa n'ibaruwa yabo yageze mu Bwanditsi bw'uru Rukiko kuwa 23/3/2010, ubujurire bwabo bose uko ari batatu bwandikwa kuri RCAA 0023/10/CS;

[5]. Umucamanza w'ibanzirizasuzuma yafashe icyemezo kuwa 23/06/2010 ko ubujurire bwa MUKARUTESI Espérance MUKAMURENZI Diane na AKINGENEYE Jean de Dieu bwatanzwe mu buryo n'inzira bikurikije amategeko, ariko ko butari mu bubasha bw'Urukiko rw'Ikirenga.

[6]. MUKARUTESI Espérance yajuririye icyo cyemezo kuwa 19/07/2010, iburanisha kuri ubwo bujurire rikaba riteganyijwe kuwa 08/03/2011.

[7]. Mu gihe urubanza rwajuririwe rutaraburanishwa, KARANGWA Elisé ahagarariwe na Maître KARANGWA Vincent, yatanze ikirego mu Rukiko Rukuru kuwa 30/08/2010 cyo gutambamira urubanza RCA 0015/08/HC/KIG-RCA 0016/08/HC/KIG -RCA 0017/08/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 24/02/2010.

[8]. Ashingiye ku kirego cyo gutambamira urubanza yari yatanze, KARANGWA Elisé yatanze ikirego kihutirwa tariki ya 03/09/2010 gisaba guhagarika irangizwa ry'urubanza rwavuzwe haruguru rwaciwe n'Urukiko Rukuru. Urukiko Rukuru mu cyemezo cyarwo cyo kuwa 21/10/2010, rwemeje ihagarika ry'irangiza ry'urwo rubanza mu gihe urubanza RCA 0229/10/HC/KIG rwarutambamiye rutaracibwa.

2. Urubanza mu Rukiko rw'Ikirenga

[9]. MUKAMURENZI Diane na AKINGENEYE Jean de Dieu bajuririye icyo cyemezo mu Rukiko rw'Ikirenga, ubujurire bwabo bwandikwa kuri RCA 0008/10/2010. Iburanisha ry'urubanza ryashyizwe kuwa 18/01/2011, MUKAMURENZI Diane na AKINGENEYE Jean de Dieu bahagarariwe na Maître BAKASHYAKA Gérardine.

[10]. Maître KARANGWA Vincent uburanira KARANGWA Elisé yandikiye Urukiko asaba ko urubanza rwasubikwa ngo kuko yagize urugendo rutunguranye mu nama yatumiwemo muri Kenya. Urukiko rumaze gusuzuma icyifuzo cye rwasanze nta mpamvu urubanza rwasubikwa kubera ko yari amaze igihe kirekire azi iyo nama kuko ibaruwa imutumira ari iyo kuwa 01/12/2010, bivuze ko yari afite umwanya uhagije wo gushaka undi uzamusimbura mu rubanza cyangwa se akabimenyesha nyiri urubanza akishakira undi.

[11]. MUKARUTESI Espérance yaritabye ariko amenyesha Urukiko ko nta Avoka afite, ko adashobora kwiburanira kubera ko atazi amategeko. Ko asaba ko urubanza rwasubikwa akazabanza agashaka Avoka.

[12]. Icyo cyifuzo cye Urukiko rwaracyanze kubera ko MUKARUTESI Espérance usaba isubika ry'urubanza, yari asanzwe azi kuva kera itariki urubanza rwe ruzaburanishirizwaho, yagombye rero kuba yaravuganye na Avoka kuva mbere hose, agategura urubanza rwe. Urukiko rwafashe umwanzuro wo kuburanisha urubanza.

[13]. KABERA Vianney na SEBERA Antoine nubwo Urukiko rwari rwabahamagaye, rwasanze batagombye guhamagarwa muri iki kirego kihutirwa kuko, nkuko Urukiko Rukuru rwabibonye, Maître KARANGWA Vincent waburaniraga KARANGWA

Elisé muri urwo Rukiko, yavuze ko yabahamagaje gusa mu buryo bwo kuba bagira icyo basobanura ngo kuko ubugure bwabo buhuje n'ubugure bwa KARANGWA Elisé, ariko ubwabo bukaba bwaremewe, naho ubwa KARANGWA Elisé bugaseswa.

[14]. Ingingo z'ubujurire za MUKAMURENZI Diane na AKINGENEYE Jean de Dieu zigamije kuvuga ko urubanza KARANGWA Elisé yatambamiye, ari narwo asabira guhagarikira irangiza ryarwo, rwajuririwe mu Rukiko rw'Ikirenga ubu rukaba rutaracibwa. Ko gusaba ihagarikarubanza ku rubanza rwajuririwe nta shingiro byagira mu gihe ubujurire ubwabwo buhagarika irangizarubanza. Ikirego kihutirwa yatanze kigamije guhagarika irangiza ry'urubanza kikaba nta shingiro ryacyo, kuko nta rubanza rwo kurangiza ruhari. Baravuga kandi mu myanzuro yabo ko indishyi bari basabye mu Rukiko Rukuru kubera gukururwa mu manza ku manzaganya batazihawe, bakaba basaba 500.000 Frw y'ikurikiranarubanza, na 500.000 Frw y'igihembo cya Avoka.

[15]. Iburanisha ryarashojwe ababuranyi bamenyeshwa ko urubanza ruzasomwa kuwa 21/01/2011 nyuma yaho ruriherera ruruca mu buryo bukurikira:

[16]. Muri uru rubanza hari ibibazo bibiri bigomba gusuzumwa:

a. gusaba ihagarika ry'irangizarubanza ku rubanza rwajuririwe
b. indishyi zikomoka ku gukururwa mu manza by'amaherere

3. Uko Urukiko rubibona

Ku byerekeye ihagarika ry'irangizarubanza ku rubanza rwajuririwe

[17]. Ikirego kihutirwa cyatanzwe na KARANGWA Elisé cyari kigamije gusaba guhagarika irangizarubanza ry'urubanza RCA0015/08/HC/KIG-RCA0016/08/HC/KIG-RCA0017/08/HC/KIG rwaciwe n'Urukiko Rukuru rwa Kigali, ubu rukaba ruri mu Rukiko rw'Ikirenga ku bujurire bwa MUKARUTESI Espérance, MUKAMURENZI Diane na AKINGENEYE Jean de Dieu, aho hategerejwe gusuzuma ubujurire bwa MUKAMURENZI Diane na AKINGENEYE Jean de Dieu ku cyemezo cy'ibanzirizasuzuma.

[18]. Ingingo ya 171 igika cya kabiri y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nkuko ryahinduwe kugeza ubu, iteganya ko" kujuririra urubanza iyo bikozwe, bihagarika irangizwa ryarwo, keretse iyo urwo rubanza rwategetse irangizwa ry'agateganyo cyangwa rikaba ryarategetswe n'urukiko rw'ubujurire, mbere yo kurucyemura".

[19]. Mu rubanza RCA 0015/08/HC/KIG-RCA 0016/08/HC/KIG -RCA 0017/08/HC/KIG rwaciwe n'Urukiko Rukuru rwa Kigali kuwa 24/02/2010, nta rangizwa ry'agateganyo ryarutegetswemo, bivuze ko uwarujuririra uwo ariwe wese mu baruburanye, ubwabyo bihagarika irangiza ryarwo nkuko ingingo ya 171 y'itegeko ryavuzwe haruguru ibivuga, cyane cyane ko nubwo bujurire butararangiza gusuzumwa mu Rukiko rw'Ikirenga.

[20]. Ingingo ya 320 y'itegeko ryavuzwe haruguru, iteganya ko: „iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza

rwaregewe urukiko rutaraburanishwa, ikirego kihutirwa gishyikirizwa umucamanza ushinzwe kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara".

[21]. Ingingo ya 324 y'iryo tegeko, ikavuga ko: „ umucamanza uburanisha ibirego byihutirwa afata ibyemezo ku bibazo byose byihuta, ariko mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo".

[22]. Isesengura ry'izi ngingo ryerekana ko ibirego byihutirwa bigomba kuba byujuje ibintu bitatu by'ingenzi:

- gukorwa mu buryo bwihuse cyane kugirango bigire icyo biramira ku buryo bitinze haba igihombo kitagira igaruriro;
- icyemezo kigomba kuba ari icy'agateganyo;
- ntikigomba kubangamira urubanza rw'iremezo mu mizi yarwo.

[23]. Urukiko rurasanga KARANGWA Elisé ubwihutirwe asaba bwo guhagarika irangizarubanza ry'urubanza RCA 0015/08/HC/KIG-RCA 0016/08/HC/KIG -RCA 0017/08/HC/KIG rwaciwe n'Urukiko Rukuru, ari ugusaba ibyo asanganywe kuko nubundi ntirwari kurangizwa kubera rwajuririwe mu Rukiko rw'Ikirenga, kandi ubujurire bukaba buhagarika irangizarubanza nkuko byasobanuwe haruguru. Bityo ubujurire bwa MUKAMURENZI Diane na AKINGENEYE Jean de Dieu bukaba bufite ishingiro, icyemezo cyafashwe n'Urukiko Rukuru kikaba kigomba kuvaho.

Ku byerekeye indishyi zikomoka ku gukururwa mu manza ku maherere

[24]. Maître BAKASHYAKA Gérardine uhagarariye MUKAMURENZI Diane na AKINGENEYE Jean de Dieu,

mu ngingo z'ubujurire zabo yavuze ko mu Rukiko Rukuru yasabye indishyi kubera gukururwa mu manza ku maherere ntiyazihabwa, agasaba n'amafaranga y'ikurikirana rubanza n'ay'igihembo cya Avoka.

[25]. Urukiko rusanga indishyi zikomoka ku gukururwa mu manza ku maherere bazazisaba mu rubanza rw'iremezo. Ku mafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka basaba, rukaba rusanga bayahabwa kuko hari ibyo bakoresheje n'umwanya bataye bakurikirana iby'uru rubanza, kandi bakaba barifashishije Avoka kuva urubanza rwatangira. Mu bushishozi bwarwo rukaba rubageneye bombi 800.000 Frw kuko 1.000.000 Frw basaba ari ikirenga.

4. Icyemezo cy'Urukiko

[26]. Rwemeye kwakira ubujurire bwa MUKAMURENZI Diane na AKINGENEYE Jean de Dieu kuko bwubahirije amategeko;

[27]. Rwemeje ko bufite ishingiro;

[28]. Ruvuze ko icyemezo cyafashwe n'Urukiko Rukuru ruri i Kigali kuwa 21/10/2010 ku kirego kihutirwa cyatanzwe na KARANGWA Elisé kivuyeho kuko nta mpamvu yacyo(sans objet)

[29]. Rutegetse KARANGWA Elisé guha MUKAMURENZI Diane na AKINGENEYE Jean de Dieu 800.000 Frw ni ukuvuga buri muntu 400.000 Frw, akanayatangira 4% y'umusogongero wa Leta angana na 32.000 Frw.

[30]. Rumutegetse kandi gutanga amagarama y'urubanza angana na 11.900 Frw, atayatanga mu gihe gitegetswe akava mu bye ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 21/01/2011 N'URUKIKO RW'IKIRENGA, RUGIZWE NA: MUTASHYA JEAN BAPTISTE: PEREZIDA, HATANGIMBABAZI FABIEN NA MUNYANGERI N. INNOCENT: ABACAMANZA, BAFASHIJWE NA MUNYANDAMUTSA JEAN PIERRE : UMWANDITSI W'URUKIKO.

Sé
MUTASHYA Jean Baptiste
Perezida

Sé
HATANGIMBABAZI Fabien
Umucamanza

Sé
MUNYANGERI N. Innocent
Umucamanza

Sé
MUNYANDAMUTSA Jean Pierre
Umwanditsi

5. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCAA0050/11/CS
ITARIKI Y'URUBANZA: 07/10/2011

HABURANA:
GAHIRIMA Jean de Dieu/ Succession KAGARAGU Antoine na HITIYISE Anastase.

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO – URUBANZA RWACIWE KU RWEGO RWA NYUMA – GUTAMBAMIRA URWO RUBANZA-UBUJURIRE BWARWO NTIBWAKIRWA IYO URUBANZA RUTAMBAMIRWA RWARI RWARACIWE KU RWEGO RWA NYUMA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Hakurikijwe ibiteganywa n'ingingo ya 181 y'Itegeko Ngenga ryo kuwa 25/04/2004 rigena imiterere, imikorere n'ububasha by'Inkiko, urubanza rutambamira urubanza rwaciwe ku rwego rwa nyuma, urubanza ruciwe ku itambimira rubanza rushobora kujuririrwa nk'uko biteganywa n'iyo ngingo imaze kuvugwa, nyamara ubwo bujurire ntibushoboka iyo butujuje ibisabwa kugira ngo bwakirwe n'Urukiko rubarunisha ubujurire; bivuze ko ubwo bujurire butakirwa iyo urubanza urubanza rwatambamiwe rwari rwaraciwe ku rwego rwa nyuma.

URUKIKO RW'IKIRENGA, RURI I KIGALI, RUHABURANISHIRIZA MU RUHAME IMANZA Z'IMBONEZAMUBANO, RUHAKIRIJE NONE KU WA 07/10/2011 URUBANZA N° RCAA 0050/11/CS MU BURYO BUKURIKIRA:

ABABURANYI :

***UWAJURIYE**:*

GAHIRIMA Jean de Dieu, mwene SEMAHERU Pie na MUKAMUDENGE, utuye i Kana, Akagari ka Kabasengerezi, Umurenge wa Muhima, Akarere ka Nyarugenge, Umujyi wa Kigali.

ABAREGWA: (mu rubanza mu mizi)

- **Succession KAGARAGU Antoine,** ihagarariwe na MUKARUGEZI Julienne, mwene BIGIRUMWE na NYIRAMUHAYIRWA, Utuye Bushekeri, Nyamasheke, Intara y'Iburengerazuba.

- **HITIYISE Anastase,** mwene SEKANYANA na NYIRAKIMONYO, utuye Ngenzi – Bibare – Kimironko – Gasabo – Umujyi wa Kigali.

IKIBURANWA (mu mizi):

- Ndamurega ko yanga kumvira mu nzu

- Ikibanza cyanjye (Ikibanza n° 1214 na annexe irimo)

IKIREGERWA:

- Ubujurire ku cyemezo cy'ibanzirizasuzuma

I. IMITERERE Y'URUBANZA MURI MAKE

(1) Urukiko rwa Mbere rw'Iremezo rwa Kigali rwaciye urubanza ku ikirego cya Hitiyise Anastase wavugaga ko yaguze ikibanza n'uwitwa Hitimana Innocent, umuhungu wa Kagaragu Antoine, akavuga ko nyuma yo kuyigura ubuyobozi bwanze kumuha uburenganzira bwo gukora « mutation » buvuga ko icyo kibanza kigifite ibibazo, kuko Gahirima Jean de Dieu yavugaga ko se Semaheru Pie ari we wari warakiguze mbere na Kagaragu akiriho.

(2) Urukiko rwemeje ko Hitiyise atsinze, rutegeka Gahirima kumwishyura 6.150.000 Frw, runategeka kandi Gahirima gutanga 246.000 Frw y'umusogongero wa Leta.

(3) Gahirima yajuririye Urukiko rw'Ubujurire rwa Kigali, ruciye urubanza rwemeza ko Semaheru, Gahirima agenderaho atigeze agura cyangwa ngo ahabwe ikibanza 1214 kuko aho cyagombaga kuba cyanditswe kuri fiche cadastrale yo kuwa 20/07/1993 handitse igifite 1217 Gahirima atavuga nyiracyo.

(4) Nyuma y'urwo rubanza, Gahirima yaregeye Urukiko Rusesa Imanza, nyuma dosiye yoherezwa mu Rukiko Rukuru rwa Repubulika ngo rube arirwo ruca urubanza ku rwego rwa nyuma hashingiwe ku byateganywaga n'ingingo yariho ya 181, 6º y'Itegeko Ngenga n° 07/2004 ryo kuwa 25/04/2004 rigena imiterere, imikorere n'ububasha by'Inkiko.

(5) Urukiko Rukuru rwa Repubulika rwaciye urubanza, rwemeza ko ikirego gifite ishingiro kuri bimwe, ko ikibanza 1214 kiburanwa nyiracyo atari Kagaragu Antoine, ntanabe na Semaheru Pie, ko rero Hitiyise Anastase atari nyiracyo. Rwanemeje ko Gahirima uvuga ko ikibanza ari icya se Semaheru Pie, na Hitiyise uvuga ko ari icye, bose bagitsindiwe; bityo ko ibyo basabye bijyanye nacyo batabihawe.

(6) Abazungura ba Kagaragu batambamiye imikirize y'urubanza rwaciwe n'Urukiko Rukuru rwa Repubulika, urwo Rukiko ruciye urubanza rwemeza ko urubanza rwatambamiwe ruteshejwe agaciro, rutegeka ko hagumyeho imikirize y'urubanza rwaciwe n'Urukiko rw'Ubujurire rwa Kigali.

(7) Nyuma y'urwo rubanza Gahirima yarujuririye Urukiko rw'Ikirenga, habaye ibanzirizasuzuma, Umucamanza warishinzwe yemeza ko ubujurire butari mu bubasha bw'Urukiko rw'Ikirenga. Mu bisobanuro yatanze, Umucamanza yasanze urubanza rwari mu Rukiko Rusesa Imanza rwaroherejwe mu Rukiko Rukuru ngo ruruce ku rwego rwa nyuma hashingiwe ku ngingo yahozeho ya 181 y'Itegeko Ngenga nº 07/2004 ryamaze kuvugwa, bityo asanga urubanza Gahirima yajuririye mu Rukiko rw'Ikirenga rwaragombaga kurangirira mu Rukiko Rukuru rwa Repubulika, ko niyo hataba kurutambamira, rutari kugera mu Rukiko rw'Ikirenga, ko rero na nyuma y'ikirego kirutambamira, rudashobora gukomeza mu Rukiko rw'Ikirenga hakoreshejwe inzira y'ubujurire busanzwe.

(8) Gahirima yamenyeshejwe icyo cyemezo ku wa 09/05/2011, akijuririra ku wa 23/05/2011 avuga ko n'ubwo urukiko Rukuru rwoherererejwe urubanza ngo ruruce ku rwego rwa nyuma, kuba urwo Rukiko rwaraciye urubanza ku kirego cy'itambamirarubanza, nta kibuza ko habaho ubujurire kuri urwo rubanza rwatambamiye urundi, akabishingira ku ngingo ya 181 y'Itegeko nº 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'izubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu[4].

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[4] *Iyo ngingo ivuga ko "urubanza ruciwe n'Urukiko habaye itambamirarubanza rushobora kujuririrwa hakoreshejwe inzira zimwe n'izikoreshwa mu kujuririra izindi manza."*

(9) Iburanisha ry'urubanza ryabaye mu ruhame ku wa 06/09/2011, Gahirima aburanirwa na Me Kazeneza Theophile, Abazungura ba Kagaragu baburanirwa na Me Nubumwe, naho Hitiyise yiburanira.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO

Iyo Urukiko Rukuru ruciye urubanza ku rwego rwa nyuma, urwo rubanza rugatambamirwa, ubujurire mu Rukiko rw'Ikirenga kuri urwo rubanza rw'itambamira burashoboka ?

(10) Uburanira Gahirima avuga ko hakurikijwe imiterere y'urubanza, ubundi rwagombaga gucibwa ku rwego rwa nyuma n'Urukiko Rukuru, kuko rwari rwarwohererejwe ruvuye mu Rukiko Rusesa Imanza rwahozeho, nyamara ko kuba urwo Rukiko rwaremeye ikirego cyo gutambamira urubanza rwari rwaciye mbere, byatumye urubanza rwari rwaciwe ruhinduka, ko rero hashingiwe ku ngingo ya 181 y'Itegeko nº 18/2004 ryo ku wa 20/06/2004 ryavuzwe haruguru, nta kibuza ko urwo rubanza kujuririrwa kuko rufatwa nk'izindi manza zose ziciwe n'urwo Rukiko.

(11) Uburanira Kagaragu asubiza ko atemeranywa n'uwo baburana, kuko ingingo ya 181 y'Itegeko nº18/2004 ryo ku wa 20/06/2004 ashingiraho idashobora gukoreshwa bitewe n'uko Urukiko Rukuru rwaciye urubanza rurwohererejwe ngo rucibwe ku rwego rwa nyuma, anongeraho ko n'iyo hacibwa urubanza ku itambamira by'urwo rubanza, rudashobora kujuririrwa mu Rukiko rw'Ikirenga kuko nta bubasha uru Rukiko rufite kubera ko ubwo bujurire butujuje ibisabwa mu ngingo ya 43 y'Itegeko Ngenga nº 01/2004 ryo ku wa 29/01/2004 rigena imitunganyirize imikorere n'ububasha bw'Urukiko rw'Ikirenga.

(12) Hitiyise avuga ko icyemezo cy'ibanzirizasuzuma nta nenge gifite ituma kijuririrwa.

(13) Urukiko rusanga ubujurire bwa Gahirima bwarubahirije iminsi cumi n'itanu yo kujuririra icyemezo cy'ibanzirizasuzuma ivugwa mu ngingo ya 55 y'Itegeko Ngenga nº 01/2004 ryo ku wa 29/01/2004 ryamaze kuvugwa, bityo bukaba bukwiye kwakirwa bugasuzumwa.

(14) Ku bijyanye n'impamvu z'ubujurire, Urukiko rusanga ingingo yahozeho ya 181, agace kayo ka 6 y'Itegeko Ngenga n° 07/2004 ryo kuwa 25/04/2004 rigena imiterere, imikorere n'ububasha by'Inkiko yaravugaga ko «*imanza zasabiwe iseswa mu Rukiko Rusesa Imanza zizaburanishwa n'inkiko zibifitiye ububasha bwo kuziburanisha mu rwego rwa nyuma, ……* », bityo hakurikijwe iyo ingingo, urubanza rwari mu Rukiko Rusesa Imanza rrwoherejwe mu Rukiko Rukuru rwa Repubulika ngo ruruburanishe ku rwego rwa nyuma, akaba ari aho rugomba kugarukira nk'uko umucamanza w'ibanzirizasuzuma yabyemeje.

(15) Urukiko rusanga kandi ingingo Gahirima ashingiraho ya 181 y'Itegeko nº 18/2004 ryo ku wa 20/06/2004 ryamaze kuvugwa, yumvikanisha ko imanza zaciwe n'Urukiko habaye itambamirarubanza, zishobora kujuririrwa iyo zujuje ibisabwa n'amategeko, nyamara nk'uko byavuzwe haruguru, urwo Gahirima yajuririye muri uru Rukiko, rukaba rwaragombaga kurangirira mu Rukiko Rukuru rwa Repubulika.

(16) Hakurikijwe ibisobanuro byatanzwe, nta mpamvu ituma icyemezo cy'ibanzirizasuzuma gihinduka.

III. ICYEMEZO CY'URUKIKO

(17) Rwemeye kwakira ubujurire bwa Gahirima kuko bwaje mu buryo n'inzira bikurikje amategeko ;

(18) Rwemeje ko ubwo bujurire nta shingiro bufite ;

(19) Ruvuze ko icyemezo cy'ibanzirizasuzuma nº R.Civ.0021/11/preex/CS

(20) kidahindutse

(21) Rutegetse Gahirima gutanga amagarama y'uru rubanza ahwanye na 33.297 abariyemo n'ayo mu Rukiko Rukur, ayo mafaranga atayatanga mu gihe cy'iminsi umunani, agakurwa mu bye ku ngufu za Leta.

RUKIJIJWE RUTYO MU RUHAME NONE KU WA 07/10/2011 N'URUKIKO RW'IKIRENGA.

Sé
MUGENZI Louis Marie
Perezida

Sé
MUKAMULISA M.Thérèse
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
GAKURU Ahmed
Umwanditsi

IMANZA Z'UBUCURUZI

6. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMA0019/09/CS
ITARIKI Y'URUBANZA: 28/01/2011

HABURANA:
RWANGAMPUHWE François / Banque de Kigali S.A

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI - GUSESA AMASEZERANO KUBERA KUTISHYURA - KUTAGIRA IBYO USABA WURIRIYE KU MAKOSA WAKOZE -GUKOMEZA KUBARA INYUNGU.

AMASEZERANO Y'UBWISHINGIZI KU BICURUZWA BYATANGIWE INGUZANYO NA BANKI - INSHINGANO Z'UWAHAWE INGUZANYO ZO GUKURIKIRANA IBICURUZWA BYANGIRITSE-KUBIMENYESHA BANKI YAGENEWE KUZISHYURWA N'UMWISHINGIZI.

GUTANGAZA ABATARISHYUYE AMABANKI HAKURIKIJWE AMABWIRIZA YA BANKI NKURU Y'U RWANDA-NTIBIFATWA NKO KWANDAGAZA ABANTU-BIGAMIJE KUBUMBATIRA UBUKUNGU BW'IGIHUGU.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Iyo umwe mu bagiranye amasezerano ya mpa-nguhe (synallegmatique) ateshutswe ku nshingano

ze, uwo bayagiranye aba afite impamvu yumvikana yo kudakomeza inshingano ze, iyo mu masezerano impande zombi zagiranye hateganijwemo inyungu, kuba uruhande rumwe rwahagarika kubahiriza inshingano zarwo ntibihagarika gukomeza kubarwa kw'inyungu zumvikanyweho.

- Kuba uruhande rumwe mu bagiranye amasezerano y'inguzanyo ruhagaritse inshingano zarwo zo gukomeza gutanga inguzanyo biturutse ku makosa y'ugomba guhabwa iyo nguzanyo, uyu ntashobora guhindukira ngo yake indishyi zijyanye n'uko guhagarika inguzanyo kuko biba byatewe n'amakosa ye.

- Iyo igihe cyo kwishyura umwenda watanzwe na Banki cyarenze ugashyirwa mu cyiciro cy'imyenda itishyurwa, ubarirwa inyungu hashingiwe ku mabwiriza ya BNR, ugurijwe yemeye gukurikiza igihe asinya amasezerano. Inyungu zisanzwe ziba zarumvikanyweho mu masezerano y'itangwa ryawo ntiziba zigifite agaciro.

- Mu masezerano y'ubwishingizi bw'ibicuruzwa, nyir'ibicuruzwa n'ugomba kwishyurwa iyo ibicuruzwa bigize ikibazo bafite inshingano zo gukurikirana umwishingizi igihe havutse ikibazo, ariko uwatangiye gukurikirana ikibazo agomba kubikomeza kandi akabimenyesha undi.

- Itangazwa ry'abatarishyuye amabanki mu binyamakuru ntirigamije kwandagaza abatangajwe ahubwo rigamije gukumira ibyakwangirika mu rwego rw'Ubukungu kandi batangazwa hakurikijwe amabwiriza ya Banki Nkuru y'u Rwanda.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUHAKIRIJE MU RUHAME KU WA 28 MUTARAMA 2011 URUBANZA N° RCOM AA 0019/09/CS MU BURYO BUKURIKIRA:

<u>ABABURANA</u>:

RWANGAMPUHWE Francois (wajuriye)

na

Banque de Kigali S.A.(BK)

<u>IKIBURANWA</u>:

Recouvrement d'une créance de 129.727.710 frw et frais de procédure et de recouvrement.

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

[1] Kuva mu kwezi kwa cumi n'abiri 1994 kugeza mu kwa kane 1998, RWANGAMUHWE yahawe na Banque de Kigali inguzanyo zinyuranye, iza kumurega mu kwa cumi 2001, imwishyuza 129.727.710 frw y'umwenda-remezo, hamwe n'inyungu n'amafaranga y'ikurikirana rubanza n'ikurikirana-bwishyu.

[2] Urukiko rwa Mbere rw'Iremezo rwaciye urubanza rwemeza ko RWANGAMPUHWE agomba kwishyura BK igiteranyo cy'amafaranga 207.345.235 frw, maze ku bujurire bwa RWANGAMPUHWE, Urukiko Rukuru narwo rwemeza imikirize y'urubanza rwa mbere, BK yongererwa 800.000 frw ku ndishyi yari yagenewe mbere.

[3] RWANGAMPUHWE yajuririye Urukiko rw'Ikirenga, asaba mu ikubitiro ko havanwaho imanza yaciriwe mbere kuko urubanza rwa mbere rwaburanishijwe atarahamagawe bikurikije amategeko. Aranavuga ko urubanza yajuririye rufite inenge yo kuba rwaremeje umubare agomba kwishyura BK nta bimenyetso bishingiweho, no mu kubara inyungu rukaba rwarirengagije urugero rw'izo yari yumvikanyeho na banki.

[4] Aranenga kandi urubanza yajuririye kuba rwarabariye Banki inyungu zinajyanye n'igihe yari yamaze kumuhagarikira inguzanyo kandi yari yasheshe amasezerano, akanavuga ko urwo rubanza rwageneye BK inyungu zitari zasabwe mu nyandiko itanga ikirego. Arasaba indishyi zo kuba BK yaramuteye igihombo imuhagarikira inguzanyo mu buryo butemewe, ikirengagiza kwishyura umwishingizi nyuma y'uko ibicuruzwa bye byishyuwe na BK mbere y'igihe byononekaye, no kuba yaramwandagaje ikamutesha agaciro imwandikisha mu kinyamakuru nk'umuntu wambuye banki .

[5] Urubanza rwaburanishijwe mu ruhame kuwa 04/01/2011, RWANGAMPUHWE yiburanira, naho Banque de Kigali iburanirwa na Me RUKANGIRA Emmanuel.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. <u>KU BYEREKEYE IHAMAGARA MU RUBANZA RIDAKURIKIJE AMATEGEKO.</u>

[6] RWANGAMPUHWE avuga ko urubanza rwaburanishijwe mu Rukiko rwa Mbere rw'Iremezo atahamagahawe mu buryo bukurikije amategeko, hatubahirijwe ingingo za 12 na 13

z'itegeko ryagengaga imiburanishirize y'imanza z'amahugu n'ubucuruzi, kuko ihamagarwa ryashyikirijwe umukozi we, mu gihe we atari ahari. Abajijwe uwo mukoziwe uwo ariwe n'aho yakiriye inyandiko ihamagara, RWANGAMPUHWE yashubije ko atabyibuka.

[7] Uburanira BK asubiza ko amategeko RWANGAMPUHWE avuga yemeraga ko inyandiko ihamagara ishobora gusigirwa umukozi w'uhamagarwa, RWANGAMPUHWE rero wiyemerera ko ariko byagenze akaba nta mpamvu agaragaza ituma abinenga.

[8] Ku bijyanye n'icyo kibazo, ingingo ya 12 y'Itegeko ryo kuwa 15 Nyakanga 1964 ryagengaga imiburanishirize y'imanza z'amahugu n'ubucuruzi, yateganyaga ko inyandiko ihamagara ishyikirizwa uregwa ubwe, cyangwa igashyirwa aho atuye, naho ingingo ya 13 y'iryo tegeko igateganya ko iyo iyo nyandiko ishyizwe aho uregwa atuye, ishyikirizwa umubyeyi we, uwo bashakanye, umukoresha cyangwa umukozi.

[9] Kuba rero RWANGAMPUHWE atagaragaza icyaba cyarirengagijwe muri iryo hamagara, akaba avuga ko atibuka uko byagenze, nyamara yemera ko inyandiko ihamagara yasigiwe umukozi we, byumvikana ko ubujurire bwe kuri iyi ngingo nta shingiro bufite.

2. KU NGINGO YO KUBA URUBANZA RWARACIRIWE KU KITAREGEWE.

[10] RWANGAMPUHWE avuga ko Urukiko Rukuru rwaciriye urubanza ku kitasabwe, agasobanura ko urega yari yasabye gusa kwishyurwa umwenda-remezo, Urukiko rumwihera na 64.504.254 y'inyungu atigeze aregera.

[11] Uregwa mu bujurire we yemeza ko yaregeye umwenda-remezo n'inyungu, akaba atumva impamvu RWANGAMPUHWE avuga ko izo nyungu zitaregewe.

[12] Urukiko rurasanga, mu nyandiko itanga ikirego ya BK yo ku wa 08/10/2001, haragaragajwe bidashidikanywa ko ikiregerwa ari umwenda-remezo n'inyungu, hamwe n'amafaranga y'ikurikiranarubanza n'ikurikiranabwishyu, ndetse hanasobanurwa ko izo nyungu zabarirwaga icyo gihe kuri 64.504.254 frw. Ubujurire bwa RWANGAMPUHWE rero kuri iyo ngingo nta shingiro bufite.

3. KU KIBAZO CYO KUBA RWANGAMPUHWE YABA YAREMEJWE UMWENDA HATAGARAGAJWE UBURYO WABAZWE.

[13] RWANGAMPUHWE avuga ko Urukiko rutagaragaje aho ruvana umubare w'amafaranga y'umwenda n'inyungu rwamwemeje, agasobanura ko rutitaye kureba ko inguzanyo yahawe zitandukanye, ari ku mataliki ari no ku nyungu zibarirwaho. Avuga ko hatanitawe ku nyandiko zigaragaza ibihe yagiye yishyurira, kugirango hagaragare umwenda nyakuri asigaje kwishyura. Asanga n'umuhanga washyizwe ho n'Urukiko ataragaragaje imibare nyakuri, ahubwo yarakurikije gusa ibyo BK yamubwiye, ndetse akaza no kugaragaza imibare irenga iyo BK yivugiraga.

[14] BK yo isubiza ko umuhanga washyizweho n'Urukiko yagaragaje imibare amaze gusuzuma amakonti yose ya RWANGAMPUHWE n'inyandiko zinyuranye zijyanye n'imyenda yahawe, akaba ari we wari ukwiye kugaragaza ibimenyetso byavuguruza iyo mibare. Ku kibazo cy'uko umuhanga yagaragaje imibare irenga iyo BK yavugaga, BK

isobanura ko byumvikana kuko uko igihe gihita imibare igenda ihinduka kubera inyungu ziyongera.

[15] Dosiye igaragaza ko Urukiko Rukuru rwashyizeho umuhanga kugira ngo agaragaze urugero rw'umwenda RWANGAMPUHWE afitiye BK kuko RWANGAMPUHWE atemeraga imibare yerekanwaga na BK, akaba yaranasabwe kuba yagaragaza imibare yaba yemeza ko ari yo y'ukuri, agasubiza ko atabashije kuyibara.

[16] Ku kibazo cy'ugomba gutanga ibimenyetso mu baburanyi, ingingo ya 9 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko urega ariwe ugomba kugaragaza ibimenyetso by'ibyo aregera, naho uvuga ko icyo yategekwaga gukora atagitegetswe kugikora akaba ariwe ugomba kubigaragaza.

[17] Byumvikana ko Banki yaregeye umwenda ariyo yagombaga kuwutangira ibimenyetso, ikaba kandi yaragaragaje urugero rwawo n'ibisobanuro RWANGAMPUHWE atemeraga, ari nacyo cyatumye hashyirwaho umuhanga wo kugaragaza umwenda nyakuri. Nyuma y'aho rero, RWANGAMPUHWE niwe wagombye gutanga ibimenyetso bivuguruza ibyagaragajwe, akerekana umwenda we yemera, nyamara ntawo yabashije kugaragaza ngo avuguruze uwerekanywe n'umuhanga washyizweho n'Urukiko.

[18] Mu gihe RWANGAMPUHWE atagaragaza icyatuma ukuri kw'umuhanga washyizweho kwakemangwa, kandi akaba n'ubu nta yindi mibare agaragaza y'umwenda arimo BK, ivuguruza iyo uwo muhanga yerekanye, nta mpamvu yatuma

iyo mibare yagaragajwe n'umuhanga idafatwa ho ukuri, kandi muri raporo ye, yaragaragaje umwenda amaze gusuzuma mu buryo butandukanye, inguzanyo RWANGAMPUHWE yagiye ahabwa, n'ibihe zagombaga kwishyurwamo, n'inyungu zagenewe buri nguzanyo, anagaragaza amafaranga RWANGAMPUHWE yagiye yishyura kuri buri mwenda n'ayo asigaje kwishyura. Ubujurire bwa RWANGAMPUHWE kuri iyi ngingo rero nta shingiro bufite.

4. KU NGINGO YO KUBA INYUNGU ZARAKOMEJE KUBARWA NYUMA Y'UKO BK IHAGARITSE INGUNZANYO.

[19] RWANGAMPUHWE avuga ko BK yasheshe amasezerano y'inguzanyo mu buryo butemewe kuko batabyumvikanyeho, bikaba byaratumye inshingano zabo bombi zivaho, akavuga rero ko nta nyungu yagombaga kubarirwa nyuma y'iryo seswa ry'amasezerano.

[20] Uregwa mu bujurire we asubiza ko RWANGAMPUHWE ananiwe kwishyura yihanangirijwe asabwa kuzuza inshingano ze kugeza ubwo Banki yiyemeje kumukurikiranaho ubwishyu, anasobanura ko nta kibuza ko uwahawe umwenda akomeza kubarirwa inyungu igihe atarishyura.

[21] Urukiko rurasanga, mu masezerano Banki yagiranye na RWANGAMPUHWE yari yarahawe ibihe byo kwishyura ariko ntiyabyubahiriza, bikaba byumvikana ko Banki yari ifite impamvu yumvikana yo kudakomeza inshingano zayo(denoncer le credit) muri ayo masezerano mpanguhe(synallagmatique) urundi ruhande rutubahirizaga, ibi kandi bikaba byari biteganyijwe muri règlement des ouvertures de crédit yasinyiye ko yemera, ikaba irebanwa hamwe n'inyandiko y'amasezerano ubwayo.

[22] Naho ku bijyanye n'inyungu zakomeje kubarwa na nyuma y'uko ayo masezerano yari yaretse kubahirizwa, RWANGAMPUHWE ntagaragaza impamvu, umwenda yahawe akabura kuwishyura wareka kubarirwa inyungu mu gihe atarawishyura kandi izo nyungu zarasereranywe. Byaba ari ukwirengagiza ibiteganywa n'ingingo ya 33 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano, iteganya ko amasezerano abera itegeko abayagiranye. Nta n'ubwo RWANGAMPUHWE yakura impamvu mu kuba BK yariyemeje kudakomezanya nawe iyubahirizwa ry'amasezerano y'inguzanyo (dénonciation du crédit) mu gihe ariwe wabanje kutubahiriza inshingano ze kandi amasezerano bagiranye ari ayo mu bwoko mpa-nguhe (synallagmatique), hakaba kandi n'ihame mu mategeko ry'uko ntawe ukwiye kugira ibyo asaba yuririye ku makosa ye[5].

5. KUBA INYUNGU ZARABARIWE KU RUGERO RUNYURANYE N'URWO RWANGAMPUHWE YUMVIKANYEHO NA BANKI.

[23] RWANGAMPUHWE avuga ko inyungu yari yarumvikanyeho na Banki ari 15.75%, akaba rero asanga inyungu za 18.75% Urukiko rwabariyeho inyungu agomba kwishyura nta shingiro zifite, kubarira kuri urwo rugero rutumvikanyweho bikaba binyuranye n'ibiteganywa mu ngingo ya 33 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano.

[24] BK yo isobanura ko n'ubwo inguzanyo yatanzwe koko ku nyungu iri ku rugero RWANGAMPUHWE avuga, byageze igihe ajya mu cyiciro cy'abatishyura imyenda bahawe, abo bakaba babarirwa inyungu zirenze izo bari baremerewe mbere, hakurikijwe amabwiriza ya Banki Nkuru y'Igihugu.

[5] *'Nul ne peut se prévaloir de sa propre turpitude"*

[25] Urukiko rurasanga, nk'uko BK ibisobanura, RWANGAMPUHWE atakwirengagiza ayo mabwiriza ya Banki Nkuru y'Igihugu ngo avuge ko atarutishwa amasezerano yikoraniye na BK, mu gihe bigaragara ko no mu gusinya ayo masezerano, yemeye no kwubahiriza amategeko rusange ajyanye n'inguzanyo, harimo n'amabwiriza ya Banki Nkuru y'Igihugu muri urwo rwego, aya mabwiriza rero nayo akaba areberwa hamwe n'amasezerano basinyanye, akaba agomba kubahirizwa, hakurikijwe ibiteganywa n'ingingo ya 33 yavuzwe haruguru.

6. KU KIBAZO CYO KUBA RWANGAMPUHWE YAKURIRWAHO AMADOLARI Y'AMERIKA 82.544 BK YAMWISHYURIYE IBICURUZWA KANDI ATARABIGEJEJWEHO.

[26] Kuri icyo kibazo, RWANGAMPUHWE asobanura ko mu masezerano yari afitanye n'uwamwohererezaga ibicuruzwa biva mu mahanga, byari bisobanuye ko uyu ari we ubyishingira kugera bimugezeho kandi banki ikaba itarashoboraga kubyishyura bitaramugeraho, akaba ariyo mpamvu asaba ko amafaranga BK yabyishyuriye hamwe n'inyungu zayo yavanwa mu yo iyo banki imwishyuza.

[27] BK yo isubiza ko yagombaga kwishyura ibicuruzwa ari uko ibonye ko byapakiwe (documents d'embarquement) biva mu Buholandi, nyuma rero RWANGAMPUHWE aza kuvuga ko bitabashije kugera mu Rwanda kubera imvura yabyangirije muri Kenya, ariko ntacyo bo bari babimenyeshejweho.

[28] Urukiko rurasanga, kuba BK yaragombaga kwishyura ibicuruzwa ari uko ibonye byageze kuri RWANGAMPUHWE atari ukuri, kuko RWANGAMPUHWE ubyemeza atagaragaza

inyandiko abikomoraho, ahubwo bikaba bigaragara ko BK yishyuraga ibicuruzwa byatumijwe na RWANGAMPUHWE ari uko ibonye byoherejwe (a l'embarquement) nk'uko biboneka mu ibaruwa yo ku wa 12/01/1996 ,iyo ku wa 28/02/1996, n'iyo ku wa 07/06/96 ayo mabaruwa akaba ari ayo BK yandikiye RWANGAMPUHWE ku bijyanye n'inguzanyo zinyuranye yari yamuhaye, zirimo n'iyo gutumiza ibintu mu mahanga (crédit documentaire).

7. KU KIBAZO CYO KUBA BK ITARAKURIKIRANYE UBWISHYU BW'UBWISHINGIZI KU BICURUZWA RWANGAMPUHWE AVUGA KO BYANGIRIKIYE MURI KENYA.

[29] RWANGAMPUHWE asaba indishyi zo kuba BK yaranze gukurikirana indishyi z'ubwishingizi kuri ibyo bicuruzwa bitamugezeho kandi ariyo yari yaragenewe kwishyurwa n'umwishingizi. Avuga ko iyo myitwarire ya BK yatumye ahomba 82.544 $USD, akaba anayasabira inyungu n'indishyi.

[30] BK yo ivuga ko atari yo yarebwaga bwa mbere (premier bénéficiaire) n'ubwishingizi, n'ubwo ariyo yagenwe kuzishyurwa n'umwishingizi, akaba ari RWANGAMPUHWE wagombaga gukurikirana bwa mbere ubwo bwishyu niba bwariho koko, kuko ariwe wakoze amasezerano yabwo, amasezerano akaba areba abayagiranye nkuko biteganywa n'ingingo ya 63 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano.

[31] Urukiko rurasanga, n'ubwo koko amasezerano areba abayagiranye nk'uko biteganywa n'ingingo ya 63 ivuzwe haruguru, BK nayo itari ibuze inyungu mu masezerano

y'ubwishingizi yakorewe kugeza neza ibicuruzwa kuri RWANGAMPUHWE, kuko ariyo yagenwe kuba yakwishyurwa n'umwishingizi igihe yaba agomba kwishyura. Nyamara ibyo ntibivuze ko RWANGAMPUHWE yaba atakirebwa n'ayo masezerano ngo abe yaratakaje uburenganzira bwo gukurikirana umwishingizi cyangwa ngo abe yaravaniweho inshingano zo kuba yagaragaza ibyaba byarangiritse bigomba kwishyurwa.

[32] Dosiye inagaragaza kandi ko iki gisobanuro kitari gitandukanye n'imyumvire ya RWANGAMPUHWE, ubwo ku italiki ya 02/04/1998, yandikiraga ''ALPHA MILK POWDER" yamwohererezaga ibicuruzwa, ayimenyesha ko , kuri toni 64 zapakiwe ku italiki ya 04/10/1997, izamugezeho ku wa 24/12/1997 ari toni 32 gusa, umwikorezi HIGWAY CARRIES wazizanye akaba yaramubwiye ko agiye kuvugana na WEC LINE Nederland B.V. kugirango icyo kibazo gikemuke, ariko akaba ntaho bigaragara ko yaba icyo gihe yaramenyesheje BK iyo mishyikirano.

[33] Urukiko rurasanga RWANGAMPUHWE atagaragaza impamvu, yamubujije gukomeza gukurikirana uko bikwiye ubwo bwishingizi maze ngo abe yakwifashisha na BK, cyane ko atanayimenyesheje rugikubita ibyabuze cyangwa byangiritse, bityo akaba rero adakwiye kuryoza BK kuba itarakurikiranye ubwishyu ku mwishingizi.

8.KUBYEREKEYE INDISHYI RWANGAMPUHWE ASABA ZO KUBA BK YARAMWANDAGAJE IMWANDIKISHA MU KINYAMAKURU MU BAMBUYE BANKI.

[34] RWANGAMPUHWE avuga ko n'iyo yaba yaragiranye

na banki ibibazo byo kwishyura, ibyo bitaba impamvu ya kumwasasa mu binyamakuru bamuzitira ngo atabasha kuba yakorana n'andi mabanki, akaba abisabira indishyi za 150.000.000 frw, ndetse akaba yaka izindi zigera kuri 100.000.000 frw kubera ko uko kumwandagaza byamuhungabanyije mu buzima bwe n'ubw'umuryango we.

[35] BK yo isubiza ko gutangazwa mu binyamakuru by'abatarishyuye amabanki atari igikorwa cyayo, ahubwo ari icya BNR, yo ikora urutonde rw'abatishyura bagomba gutangazwa.

[36] Dosiye igaragaza ko urutonde rw'abantu barimo RWANGAMPUHWE batishyuye amabanki rwasohotse mu kinyamakuru ''Umuseso'' rwasinywe n'uhagarariye ishyirahamwe ry'amabanki mu Rwanda, ruherekejwe n'ibisobanuro by'uko amabanki asabwa kudakorana nabo ndetse ko hanagamijwe kubimenyesha abantu bose bakorana n'abari kuri urwo rutonde.

[37] Bigaragara ko amabwiriza yashyiriweho gutangaza abo bantu agamije gukumira ibyakwangirika mu rwego rw'ubukungu ku mabanki no ku bantu kugiti cyabo, iryo tangazwa rero ry'abatishyura amabanki rikaba ritagamije kwandagaza nk'uko RWANGAMPUHWE abivuga.

III. <u>UMWANZURO W'URUKIKO</u>

[38] Rwemeje ko ubujurire bwa RWANGAMPUHWE nta shingiro bufite;

[39] Ruvuze ko imikirize y'urubanza rwajuririwe idahindutse;

[40] Rutegetse RWANGAMPUHWE kwishyura amagarama y'urubanza angana na 42.000 frw, atayatanga mu gihe cy'iminsi umunani, ayo mafaranga agakurwa mu bye ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME, KU WA 28 MUTARAMA 2011.

Sé
MUGENZI LOUIS-MARIE
Perezida

Sé	**Sé**
MUKAMULISA MARIE THERESE	**RUGABIRWA RUBEN**
Umucamanza	**Umucamanza**

Sé
MUNYANDAMUTSA JEAN PIERRE.
Umwanditsi w'Urukiko.

7. URUKIKO R'IKIRENGA

N° Y'URUBANZA: R.COMAA003/10/CS
ITARIKI Y'URUBANZA: 09/09/2011

HABURANA:
Banki ya Kigali S.A / Banki y'Abaturage y'u Rwanda na RWANDEX S.A en liquidation

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI – UBUBASHA BWO KUREGA - KUTABUTANDUKANYA N'INYUNGU UREGA ABA AFITE IYO YITABAJE URUKIKO NGO RUKEMURE IKIBAZO CYE

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Ububasha bw'umuburanyi bwo kurega ntibutandukanywa cyane n'inyungu aba afite iyo arega.

URUKIKO RW'IKIRENGA RUBURANISHA IMANZA Z'UBUCURUZI, RUKIJIJE MU RUHAME URUBANZA RUBANZIRIZA URUNDI RCOMAA 0003/11/CS KU WA 9/9/2011 MU BURYO BUKURIKIRA:

ABABURANYI:

Uwajuriye : Banki ya Kigali, mu izina ry'Uyihagarariye, BP. 175 Kigali, iburanirwa na Me RUKANGIRA Emmanuel.

Abaregwa:

- Banque y'Abaturage y'u Rwanda Ltd, mu izina ry'Uyihagarariye, iburanirwa na Me Mpayimana Isaïe na Me Muhayeyezu Albert.

- RWANDEX sa en liquidation, B.P 357 Kigali, iburanirwa na Me Mugemana Jean Marie Vianney.

IKIBURANWA : Kuvanaho icyemezo gitegeka isaranganywa rya gatatu ryo kuwa 23/11/2010 no kwemeza ko 620.994.884 frw ari kuri compte n° 0040-0305117-85 yiswe "Rwandex en liquidation-jugement" aherwaho yishyurwa Banki ya Kigali.

I. IMITERERE Y'URUBANZA

[1] Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza R.COM 0896/08/2006 kuwa 28/08/2006 rwemeza ko Rwandex ishyizwe mu gihombo guhera mu ntangiriro z'umwaka wa 2004, rutegeka ko abo ibereyemo imyenda bagomba kuyitangariza ubwanditsi bw'urwo Rukiko

bitarenze tariki ya 17/11/2008. Iyo tariki Rwandex yashyiriweho mu gihombo yaje guhindurwa mu rubanza R.COM 2032/08/TC/NYGE bisabwe na Banki ya Kigali ishyirwa ku wa 18/04/2008, bishimangirwa n'Urukiko rw'Ikirenga mu rubanza RCOMAA 0005/09/CS.

[2] Banki ya Kigali yamenyekanishije umwenda wayo uhwanye na 1.853.000.000 Frw ariko ntiwemerwa na Komite y'abashinzwe igihombo kuko itubahirije ibiteganywa n'itegeko ryerekeye ibihombo. Tariki ya 18/04/2010 yongeye kumenyekanisha umwenda wayo icyo gihe wanganaga na 912.001.935 frw, inasaba kwishyurwa nk'ufite ingwate izigamiwe (créance privilégiée).

[3] Tariki ya 23/11/2010 umucamanza mu Rukiko rw'Ubucuruzi rwa Nyarugenge ushinzwe igihombo cya Rwandex yafashe icyemezo gitegeka ko konti n° 0040-0305117-85 yiswe "Rwandex en liquidation – jugement" iri muri Banki ya Kigali ifungurwa, maze amafaranga 620.994.884 ariho agahabwa Banki y'Abaturage y'u Rwanda, Interfreight Corporation, Briqueterie Rwandaise Ruriba, SECAF na SKYNET zemejwe nk'iziberewemo imyenda na Rwandex en liquidation.

[4] Imaze kumenyeshwa icyo cyemezo, Banki ya Kigali yaregeye Urukiko Rukuru rw'Ubucuruzi isaba ko icyo cyemezo kivanwaho, hakemezwa ko ayo mafaranga aherwaho yishyurwa Banki ya Kigali kubera umwenda wayo. Urubanza rwahawe nº RCOM A 0381/10/HCC, maze Banki y'Abaturage y'u Rwanda na Rwandex en liquidation zirugobokamo.

[5] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko ubujurire bwa Banki ya Kigali butakiriwe kuko icyemezo cyajuririwe kitajuririrwa, n'ubujurire bwuririye ku bundi bwatanzwe na Banki y'Abaturage y'u Rwanda na Rwandex en liquidation ntibwakirwa.

[6] Banki ya Kigali yajuririye Urukiko rw'Ikirenga, urubanza ruburanishwa tariki ya 21/06/2011, habanza gusuzumwa

inzitizi zatanzwe n'abaregwa zigamije kutakira ubwo bujurire, Banki ya Kigali ihagarariwe na Me Rukangira Emmanuel, Banki y'Abaturage y'u Rwanda Ltd, ihagarariwe na Me Mpayimana Isaïe na Me Muhayeyezu Albert, naho Rwandex en liquidation ihagarariwe na Me Mugemana Jean Marie Vianney.

II. INZITIZI ZATANZWE N'ISESENGURA RYAZO

1. Banki ya Kigali yaba idafite ububasha bwo kurega (qualité) kuko itemewe nk'ufitiwe umwenda na Rwandex en liquidation (créancier)?

[7] Ababuranira Banki y'Abaturage y'u Rwanda bavuga ko ubujurire bwa Banki ya Kigali butagomba kwakirwa kubera ko itagaragaza "qualité" ifite yo kuba "créancier" mu gihombo cya Rwandex en liquidation. Basobanura ko mu bujurire bwayo Banki ya Kigali yigaragaza nk'umu "créancier" warenganyijwe n'icyemezo cy'umucamanza cyo kuwa 23/11/2010 gitegeka isaranganya rya gatatu ry'umutungo wa Rwandex en liquidation, kandi umwenda wayo utaremewe, ikaba rero itemerewe gutanga ikirego kuko byemerewe gusa abemejwe ko Rwandex en liquidation ibafitiye imyenda. Bashingira ku ngingo ya 2 CPCCSA bavuga ko udafite "qualité atemererwa gutanga ikirego ngo cyakirwe, ko kandi iyo ngingo ari indemyagihugu, ikaba yabyutswa igihe icyo ari cyo cyose aho urubanza rwaba rugeze, ndetse n'Urukiko rubyibwirije.

[8] Uburanira Banki ya Kigali avuga ko Komite y'abashinzwe gucunga igihombo cya Rwandex cyangwa umucamanza ataribo batanga "qualité de créancier" mu byerekeye ibihombo. Asobanura ko ingingo ya 47 y'Iteka ryo kuwa 27/07/1934 ryerekeye ibihombo iteganya ko " les créanciers du failli déposent au greffe du tribunal de première instance la déclaration de leurs créances", naho ingingo ya 2 y'Itegeko n° 12/2009 ryo kuwa 26/05/2009 ryerekeye

izahura ry'ubucuruzi n'irangiza ry'ibibazo biturutse ku gihombo, igasobanura ko "créancier" ari "toute personne physique ou morale disposant d'une créance née avant la faillite". Asanga rero "qualité de créancier itabaho ari uko igihombo cyabaye, ko kandi Banki ya Kigali iyifite, ndetse no mu manza zabanjirije uru bikaba byaragiye byemezwa.

[9] Ingingo ya 2 y'Itegeko nº 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucururi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu , iteganya ko ikirego kitemerwa mu rukiko iyo urega adafite ububasha, inyungu n'ubushobozi bwo kurega.

[10] Hakurikijwe ibiteganywa n'iyi ngingo, byumvikana ko muri urubanza ikigomba gusuzumwa kubireba Banki ya Kigali ari ububasha ifite bwo kuregera icyemezo cyafashwe n'umucamanza ushinzwe igihombo cya Rwandex en liquidation, aho kuba ububasha ifite bwo kuba "créancier" wa Rwandex en liquidation.

[11] Ku byerekeranye n'ububasha bw'umuburanyi bwo kurega (qualité), abahanga mu mategeko basobanura ko budatandukanywa n'inyungu aba afite yo kurega, ko rero umuntu wese ufite inyungu yo kuregera urukiko ari ufite inyungu yo kugirango urukiko rukemure ikibazo cye[6].

[12] Urukiko rurasanga rero Banki ya Kigali ifite ububasha bwo kuregera mu Rukiko icyemezo cyafashwe

[6] *" la notion de qualité contribue, comme l'intérêt à désigner le titulaire du droit d'agir.(...)", Serge GUINCHARD, Droit et pratique de la procedure civile, cinquième édition, 2006, p.11.*

" Les personnes qui ont qualité pour agir sont celles qui ont le pouvoir d'intenter une action qui leur est personnelle. Conceptuellement, cette condition est bien distincte de l'intérêt, mais, en pratique, elle s'en distingue malaisément. Une première approche suggère que toute personne qui a un intérêt à agir a nécessairement qualité et inversement, que l'absence de qualité s'accompagne d'un défaut d'intérêt.Tel est bien le principe, car en règle générale, la loi accorde qualité à celui qui a intérêt". Hervé CROZE, Christian MOREL et Olivier FRANDIN, Procédure Civile, 3ème édition, 2005, p 115.

n'umucamanza ushinzwe igihombo cya Rwandex kuko ifite inyungu mu gushaka ko icyo cyemezo kivaho igamije kurengera inyungu zayo.

2. Kumenya niba ubujurire bwa Banki ya Kigali butagomba kwakirwa kuko nta rubanza rwabayeho mu Rukiko rw'Ubucuruzi.

[13] Ababuranira Banki y'Abaturage y'u Rwanda na Rwandex en liquidation bavuga ko nta rubanza rwabaye mu Rukiko rw'Ubucuruzi, ahubwo ko Banki ya Kigali yanyuze inzira y'ubusamo, itangira urubanza mu rwego rw'ubujurire, ubu hakaba haburanwa urubanza rufite nº RCOMAA ariko nta RCOM yigeze ibaho.

[14] Uburanira Banki ya Kigali avuga ko iyi nzitizi itagombye gutangwa ubu baburana ubujurire bw'urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, ahubwo yagombye kuba yarasuzumwe n'urwo rukiko. A titre subsidiaire, avuga ko kuvuga ko nta rubanza rwabayeho mu Rukiko rw'Ubucuruzi nta shingiro bifite kuko icyemezo cyajuririwe cyafashwe n'umucamanza wo muri urwo rukiko, Urukiko Rukuru rw'Ubucuruzi rugifataho icyemezo ari nacyo cyajuririwe mu Rukiko rw'Ikirenga.

[15] Urubanza RCOMAA 0003/11/CS ruburanishwa ubu, ni urw'ubujurire bw'Urubanza RCOMA 0381/10/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 28/01/2011. Muri urwo rubanza, abahagarariye Banki y'Abaturage y'u Rwanda na Rwandex en liquidation baburanye mu mizi ikirego cyatanzwe na Banki ya Kigali, urukiko rugifataho icyemezo ari nacyo cyajuririwe. Urukiko rurasanga mu bisobanuro byabo batanga, batagaragaza uburyo ibyo bavuga ari inzitizi iteganywa n'ingingo ya 94 CPCCSA, bityo bikaba bidakwiye kwakirwa nk'inzitizi.

3. Icyemezo gitegeka isaranganya rya gatatu ryo kuwa 23/11/2010 ry'umutungo wa Rwandex gishobora kujuririrwa ?

[16] Ababuranira Banki y'Abaturage y'u Rwanda n'uburanira Rwandex en liquidation bavuga na none ko ubujurire bwa Banki ya Kigali butagomba kwakirwa kuko icyemezo cy'umucamanza cyo kuwa 23/11/2010 gitegeka isaranganya rya gatatu atari urubanza, kandi kitajuririrwa, ahubwo ari icyemezo cyafashwe hashingiwe ku ngingo ya 16 y'Iteka ryo kuwa 27/07/1934 ryerekeye ibihombo iteganya ko " le juge peut statuer par simple ordonnance sur toutes les questions de forme ou de procédure qui lui sont soumises. Il ne peut être interjeté appel de ces ordonnances".

[17] Basanga icyo cyemezo, kimwe n'ibindi bibiri byakibanjirije, kigamije gukemura ibibazo byo gusaranganya amafaranga amaze kuboneka, abemejwe ko Rwandex en liquidation ibabereyemo imyenda.

[18] Uburanira Banki ya Kigali avuga ko iyi nzitizi irebana n'urubanza mu mizi, akaba ari imwe mu mpamvu z'ubujurire za Banki ya Kigali, kuko yajuriye ivuga ko Urukiko rwakoresheje nabi ingingo ya 16 y'Iteka ryo kuwa 27/07/1934 ryerekeye ibihombo, bityo iyo mpamvu y'ubujurire ikaba itabera inzitizi Banki y'Abaturage y'u Rwanda na Rwandex en liquidation. Avuga kandi ko ikijuririrwa muri uru rubanza atari icyemezo (ordonnance) cy'isaranganya, ahubwo ari urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi.

[19] Urukiko rurasanga, nk'uko uburanira Banki ya Kigali abivuga, ibivugwa n'abahagarariye Banki y'Abaturage y'u Rwanda na Rwandex en liquidation bitasuzumwa nk'inzitizi muri uru rubanza kuko ari byo byaciriweho urubanza rwajuririwe, akaba ari nabyo Banki ya Kigali inenga bizasuzumwa mu mizi.

III. ICYEMEZO CY'URUKIKO

[20] Rwemeje ko inzitizi yerekeranye n'ububasha bwa Banki ya Kigali bwo kurega yatanzwe na Banki y'Abaturage y'u Rwanda na Rwandex en liquidation nta shingiro ifite.

[21] Rwemeje ko ibindi byatanzwe nk'inzitizi bitakiriwe.

[22] Rwemeje ko iburanisha ry'urubanza rizakomeza tariki ya 22/11/2011.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME TARIKI YA 9/9/2011

Sé
MUKANDAMAGE M.Josée
Perezida

Sé
NYIRINKWAYA Immaculée
Umucamanza

Sé
KANYANGE Fidélité
Umucamanza

Sé
MUSENGAMANA Viateur
Umwanditsi w'Urukiko

8. URUKIKO RW'IKIRENGA

N° y'urubanza: RCOMA0005/11/CS
Itariki y'urubanza: 29/08/2011

Haburana:
RURANGIRWA Jean Baptiste / Banque Commerciale du Rwanda

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI – IRANGIZARUBANZA RY'AGATEGANYO – UMWENDA WEMEWE MU RUBANZA N'UREGWA- KUTEMERA INGANO Y'UMWENDA.

AMASEZERANO Y'INGUZANYO YATANZWEMO INGWATE- IRANGIZARUBANZA RY'AGATEGANYO- RISHOBORA GUTANGWA IYO MU GUTANGA IKIREGO HAREGEWE UMWENDA GUSA.

INYANDIKO MVAHO Y'UWO MWENDA YEMEWE N'UREGWA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Irangizarubanza ry'agateganyo rishobora gutangwa hashingiwe ku masezerano y'umwenda mu gihe uregwa yemera ko koko hari umwenda afitiye uwo baburana kabone niyo yaba adashaka kugira icyo avuga ku ngano yawo.

- Iyo umwenda waregewe mu Rukiko hashingiwe ku masezerano y'inguzanyo yatanzwemo ingwate, irangizarubanza ry'agateganyo rishobora gutangwa iyo mu gutanga ikirego haregewe uwo mwenda gusa, icyangombwa ni uko haba hariho inyandiko-mvaho y'uwo mwenda n'uregwa akaba yemera ko koko hari umwenda afitiye urega.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUKIJIJE URUBANZA N0 R.COMA 0005/11/CS MU BURYO BUKURIKIRA :

Uwajuriye :
Rurangirwa Jean Baptiste, mwene Ntamukunzi na Muzirankoni, utuye mu Bibare, umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali, wunganirwa na Me David Mucyesha.

Uregwa :
Banque Commerciale du Rwanda Ltd (BCR Ltd) ifite icyicaro mu Mujyi wa Kigali, mu izina ry'uyigarariye.
Ikiburanwa: Ikirego cyihutirwa gisaba ko icyemezo cy`irangiza-rubanza ry`agateganyo ry` urubanza R.COM 0224/10/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 17/07/2011, kivanwaho.

IMITERERE Y'URUBANZA

- BCR Ltd yagiranye na Rurangirwa amasezerano y`inguzanyo ashyirwaho umukono na Noteri. BCR iza kumuha igice cya mbere cy`inguzanyo kingana 92.420.175 Frw hashingiwe ku masezerano yo kuwa 06/05/2008 ; ariko nyuma ibonye Rurangirwa Baptiste atayubahirije ngo yishyure uwo mwenda, itanga ikirego mu Rukiko Rukuru rw`Ubucuruzi isaba ko yakwishyura umwenda ayibereyemo ungana na 92.420.175 Frw, ubazwe kugeza kuwa 03/05/2010, inyungu za 19% mu mwaka zibazwe kuva kuwa 03/05/2010 kugeza umwenda wishyuwe, 10% yayo kubera gushorwa mu rubanza,

gusubiza BCR 6000Frw y'amagarama y'urubanza no gutegeka ko urubanza rurangizwa by'agateganyo.

- Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza R.COM 0224/10/HCC kuwa 15/07/2011, rutegeka Rurangirwa kwishyura BCR 92.421.375 Frw y'umwenda, 1.848.427 Frw y'ikurikirana-rubanza, 4% y'umusogongero wa Leta ungana na 1.848 427 Fw no gutanga amagarama y'urubanza angana na 10.050 Frw. Urukiko rwategetse kandi ko urubanza rurangizwa by'agateganyo.

- Impamvu Urukiko rwashingiyeho rutegeka irangiza ry'agateganyo ni uko Rurangirwa yemereye imbere y'Urukiko ko afite umwenda wa BCR Ltd, akaba yaranasinye amasezerano imbere ya Noteri kuwa 17/07/2007 (inyandiko-mvaho), nk'uko biteganywa n'ingingo ya 210 y`Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu.

- Rurangirwa yaregeye uru Rukiko, asaba ko iryo rangiza-rubanza ry'agateganyo ry`urubanza R.COM 0224/10/HCC ryakurwaho, kuko atemera umwenda yishyuzwa, kandi ikiburanwa akaba atari amasezerano y`inguzanyo gusa, ahubwo ayo masezerano yerekeye n`ingwate y`inzu kandi yo itimukanwa.

- Urubanza rwaburanishijwe kuwa 25/08/2011, ababuranyi bose bitabye : BCR Ltd ihagarariwe na Me Mutuyimana Clémentine, naho Rurangirwa Jean-Baptiste ahagarariwe na Me David Mucyesha.

ISESENGURA RY`IBIBAZO BIRI MU RUBANZA

I. Rurangirwa yaba atemera umwenda ?

- Me David Mucyesha uburanira Rurangirwa avuga ko impamvu yatumye batanga ikirego ari uko irangiza-rubanza ry'agateganyo ry`urubanza ruvuzwe haruguru, ryatanzwe mu buryo bunyuranyije n'amategeko. Asobanura ko batemera umwenda neza, ngo kuko kugirango bivugwe ko wemera umwenda, ari uko ugomba kuba wemera amasezerano yawo n'ingano yawo, kandi mu Rukiko Rukuru rw'Ubucuruzi we atarigeze yemera uwo umwenda n'ingano yawo.

- Me Mutuyimana Clémentine uburanira BCR avuga ko Urukiko Rukuru rw'Ubucuruzi nta tegeko rwishe rutegeka irangiza-rubanza ry'agateganyo, kuko Rurangirwa yiyemereraga umwenda kandi yanashyize umukono ku masezerano arebana nawo, imbere ya Noteri.

- Me Mutuyimana Clémentine akomeza asobanura ko mu Rukiko Rukuru rw'Ubucuruzi, Rurangirwa atigeze ahakana umwenda, ko mu gace ka 5 na ka 7 k`urubanza bigaragara ko Rurangirwa yawemeye, ahubwo ashaka ko hagobokeshwa MINEDUC kugirango izawumwishyurire, ko hari n`amasezerano y'umwenda Rurangirwa yashyizeho umukono.

- Ingingo ya 210 y`Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ivuga ko ``irangizwa ry'urubanza ry'agateganyo ryemezwa n'Urukiko rubyibwirije ndetse nta ngwate, iyo:``1° ikimenyetso cy'ikiburanwa ari inyandikomvaho; 2° ikiburanwa ari umwenda wemewe mu rubanza n'uregwa``.

- Ikigaragara mu rubanza N0 R.COM 0224/10/HCC rwajuririwe, ku gace karwo ka 5 na ka 7 ni uko Rurangirwa yiregura, atigeze ahakana umwenda BCR yamwishyuzaga ungana na 92.400.000 Frw, gusa yasabaga ko MINEDUC yagobokeshwa mu rubanza kugira ngo izawumwishyurire, ibi bikaba ahubwo ari ikimenyetso cy`uko yemeraga umwenda yishyuzwa. Byongeye kandi mu myiregurire ye muri uru Rukiko, Rurangirwa yemera ko afitiye BCR umwenda, kuba adashaka kugira icyo avuga ku ngano yawo ntibyafatwa nkaho atawemera, ahubwo byazasuzumirwa mu rubanza mu mizi. Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga umwenda BCR yishyuza Rurangirwa atarigeze awuhakana, kuba avuga ko atawemera nta shingiro bifite.

II. Ikiburanwa cyaba ari amasezerano y'umwenda gusa cyangwa ni amasezerano y'umwenda n'ingwate yayo ?

- Uburanira Rurangirwa avuga ko ikiburanwa atari umwenda gusa, ko ahubwo ari umwenda n'ingwate yawo (inzu yatanzweho hypothèque) kuko ari ibintu bibiri bidashobora gutandukanywa (inséparable), akavuga ko rero irangizwa ry`urubanza ry'agateganyo ridashobora kwemezwa kubera ko na none ayo masezerano yerekeye inzu yatanzweho ingwate, ngo kuko ryaba rihabanye n'ibivugwa mu ngingo ya 208, igika cya 3 y`Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryavuzwe haruguru ``iteganya ko nta rangiza-rubanza ry'agateganyo ryakorwa ku mutungo utimukanwa``.

- Uburanira BCR avuga ko Rurangirwa ashaka guhindura ikiburanwa, kuko ingwate atari yo yaregewe mu Rukiko Rukuru rw'Ubucuruzi, ko icyaregewe ari ukutubahiriza amasezerano y`inguzanyo.

- Ku byerekeye ikiburanwa, inkomoko y`uru rubanza ni amasezerano y`inguzanyo atarubahirijwe. Haba mu nyandiko itanga ikirego, haba mu rubanza N0 R.COM 0224/10/HCC rwajuririwe, bigaragarira uru Rukiko ko kimwe mu byaregewe ni ukwishyuza umwenda wa 92.400.000 wemeranyijweho n`impande zombi mu masezerano yo kuwa 06/05/2008, ashingiye ku masezerano y'iremezo yashyizweho umukono na Noteri (inyandiko-mvaho) ntiyubahirizwe. Nta na hamwe rero ingwate igaragara nka kimwe mu byaregewe cyangwa mu biburanwa, n`ubwo ivugwa mu masezerano y`inguzanyo.
- Urukiko rw`Ikirenga rurasanga irangiza-rubanza ry'agateganyo rifite ishingiro kuko umucamanza yategetse ko rikorwa ashingiye ku nyandiko-mvaho no ku mwenda wemewe na nyirawo nkuko byagaragajwe, hashingiwe ku biteganywa n`ingingo ya 210 y`Itegeko ryavuzwe haruguru. Ubujurire bwa Rurangirwa bukaba nta shingiro bufite.

I. ICYEMEZO CY'URUKIKO

- Rwemeye kwakira ikirego cya Rurangirwa Jean-Baptiste gisaba ko icyemezo cy`irangiza- rubanza ry`agateganyo ry`urubanza N0 R.COM 0224/10/HCC rwaciwe kuwa 17/07/2011 kivanwaho, kuko cyatanzwe mu buryo n`inzira bikurikije amategeko.
- Rwemeje ariko ko icyo kirego nta shingiro gifite.
- Rutegetse Rurangirwa Jean-Baptiste gutanga amagarama y'urubanza angana na 9900 Frw, atayatanga mu gihe gitegetswe, akavanwa mu bye ku ngufu za Leta.

RUKIJIJE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 29/08/2011.

sé
Kayitesi R.Emily
Perezida

sé
Hatangimbabazi Fabien
Umucamanza

sé
Rugabirwa Ruben
Umucamanza

sé
Rusingiza Germain
Umwanditsi w`Urukiko

9. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMA 001/11/CS
ITARIKI Y'URUBANZA: 25/03/2011
HABURANA:
MILIMO Gaspard / KOBIL PETROLEUM.

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI - GUSUBIRISHAMO URUBANZA -IYAKIRWA RY'IKIREGO CYO GUSUBIRISHAMO URUBANZA-IMPAMVU ITUMA IKIREGO KITAKIRWA-KUJURIRA ICYEMEZO CYAFASHWE KU KIREGO CYO GUSUBIRISHAMO URUBANZA CYO NYINE.

URUBANZA RUTEGURA URUNDI-KURUJURIRA HAMWE N'URUBANZA MU MIZI

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Ubujurire bw'imanza bubujijwe hakurikijwe ingingo ya 94 y'itegeko N°18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, ubucuruzi, iz‘umurimo n‘iz‘ubutegetsi n‘ubwakorwa ku manza zibanziriza izindi, bene izi manza zijuririrwa rimwe n'imanza zikomokaho.

- Icyemezo gifatwa ku rubanza rwo gusubirishamo urubanza si urubanza rutegura urundi kuko kitari icy'agateganyo, cyangwa ngo kibe kiganisha ku mikirize

y'urubanza mu mizi, ahubwo iri mu mpamvu ituma ikirego kitakirwa, bivuze ko bene ibi byemezo bishobora kujuririrwa byonyine bidategereje urubanza mu mizi .

- Urubanza rubanziriza urundi ni icyemezo gifatwa hategerejwe ko urubanza rucibwa mu mizi, izi manza ziba zirimo ibice bibiri : icya mbere kigizwe n'ibyemezo bigamije kurengera umuburanyi aho byaba bikenewe kubera ko gutinda k'urubanza bishobora kugira icyo byangiza (*jugements provisoires*) ; icya kabiri kigamije gushakisha ibikenewe byose byafasha urukiko kugira ngo ikibazo cy'urubanza gikemuke (*jugements relatifs à l'instruction*).

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUHAKIRIJE MU RUHAME URUBANZA R COM.A 0001/11/CS KUWA 25/03/2011, MU BURYO BUKURIKIRA:

<u>UWAJURIYE</u>:
MILIMO Gaspard, Commerçant propriétaire de l'Entreprise CITIEX PETROLEUM, B.P 1834 KIGALI, uhagarariwe na Me KAYITARE Serge.

<u>UREGWA</u>:

KOBIL PETROLEUM, SARL, mu izina ry'Umuyobozi Mukuru wayo, ihagarariwe na Me NZAMWITA Toy.

<u>IKIREGERWA</u>:

Kujuririra urubanza RCOM 0288/10/HCC rwemeje kwakira ugusubirishamo (opposition) urubanza RCOM 0103/09/HCC, byakozwe na KOBIL PETROLEUM RWANDA SARL.

<u>IKIBURANWA</u>:

- Action en réparation du préjudice causé par le non - respect du contrat de transport conclu en date du 01/05/2006 (valeur) Frw 717.496.266 au principal ;
- DI moraux ;
- Frais de procédure et honoraire d'Avocat.

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

[1] MILIMO Gaspard mu izina rye ry'ubucuruzi rya CITIEX PETROLEUM yareze KOBIL PETROLEUM mu Rukiko Rukuru rw'Ubucuruzi kuba itarubahirije amasezerano y'ubwikorezi bw'amavuta bagiranye kuwa 01/05/2006.

Urubanza rwaburanishijwe KOBIL idahari kuwa 09/03/2010, rucibwa kuwa 06/08/2010, Urukiko rwemeza ko KOBIL PETROLEUM itubahirije ayo masezerano, ruyitegeka kwishyura MILIMO 576.313.920 Frw y'igihombo yamuteje, 2.500.000 Frw y'ikurikiranarubanza n'ay'igihembo cya Avoka na 5.000.000 Frw y'indishyi z'akababaro, yose hamwe akaba 583.813.920 Frw, ikanatanga 23.352.556 Frw y'umusogongero wa Leta.

[2] KOBIL PETROLEUM yasubirishijemo urwo rubanza, Urukiko rwemeza kwakira isubirishamo ry'urubanza RCOM 0103/09/HCC kuko impamvu KOBIL yarugaragarije yatumye idashobora kwitaba mbere yari ikomeye kandi itunguranye, rutegeka ko urubanza mu mizi ruzaburanishwa kuwa 27/04/2011.

[3] MILIMO Gaspard yajuririye Urukiko rw'Ikirenga, kuko asanga Urukiko Rukuru rw'Ubucuruzi rwaremereye KOBIL gusubirishamo urubanza kandi nta mpamvu ikomeye yayibijije kwitaba mbere.

[4] Urubanza rwaburanishijwe mu ruhame kuwa 24/02/2011, MILIMO ahagarariwe na Me KAYITARE Serge, naho KOBIL ihagarariwe na Me NZAMWITA Toy, uyu abanza gutanga inzitizi yo kutakira ubujurire bwa MILIMO kuko yajuririye ukwarwo urubanza rubanziriza urundi kandi amategeko atabyemera. Ni kuri iyo nzitizi gusa urubanza rwaburanishijweho.

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

Kumenya niba icyemezo kijyanye n'iyakirwa ry'ikirego gisubirishamo urubanza gishobora kujuririrwa cyonyine.

[5] Mu gusaba ko ubujurire bwa MILIMO Gaspard butakirwa muri uru Rukiko, uburanira KOBIL PETROLEUM

ashingira ku ngingo ya 162, igika cya 2, y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko urubanza rubanziriza urundi rujuririrwa gusa hamwe n'urubanza mu mizi, icyemezo cyo kwakira isubirishamo ry'urubanza cyafashwe kikaba kiri mu rwego rw'imanza zibanziriza izindi, kikaba rero kitarashoboraga kujuririrwa cyonyine.

[6] Uburanira KOBIL PETROLEUM asobanura ko icyemezo cyo kwakira isubirishamo ry'urubanza kitari mu rwego rw'inzitizi zituma ikirego kitakirwa (fin de non - recevoir) zivugwa mu ngingo ya 94 y'Itegeko n° 18/2004 ryavuzwe haruguru nk'uko MILIMO abiburanisha, kuko iyo iza kuba inzitizi yo muri ubwo bwoko aba yarayibyukije mu Rukiko Rukuru rw'Ubucuruzi, nyamara akaba ntabyo yakoze.

[7] Uburanira MILIMO Gaspard we asubiza ko icyemezo cyafashwe n'Urukiko Rukuru rw'Ubucuruzi cyo kwemerera KOBIL PETROLEUM isubirishamo ry'urubanza, kitari mu rwego rw'imanza zibanziriza izindi itegeko ribuza ko zajuririrwa zonyine, akemeza ko ahubwo ari inzitizi ituma ikirego kitakirwa, kandi ko yari yaranayibyukije muri urwo Rukiko agaragaza ko nta mpamvu ikomeye yabujije KOBIL PETROLEUM kwitaba mbere.

[8] Bigaragarira Urukiko ko, ku bw'amategeko, ubujurire bubujijwe n'ingingo ya 94 y'Itegeko n° 18/2004 ryavuwe haruguru ari ubwakorwa ku manza zibanziriza izindi ukwazo, ibyo kandi n'ababuranyi babyemeranywaho, ikibazo kikaba aricyo kumenya niba icyemezo kijyanye no

kwemera isubirishamo ry'urubanza gifatwa nk'urubanza rubanziriza urundi.

[9] Nk'uko bisobanurwa n'abahanga mu mategeko[7] kandi binumvikana bitaruhije, urubanza rubanziriza urundi ni icyemezo gifatwa hategerejwe ko urubanza rucibwa mu mizi, icyiciro cyabyo cya mbere kikaba kigizwe n'ibyemezo bigamije kurengera umuburanyi aho byaba bikenewe kubera ko gutinda kw'urubanza bishobora kugira icyo bimwangiriza (*jugements provisoires*), naho icyiciro cya kabiri kikaba kigamije gushakisha ibikenewe byose byafasha Urukiko kugira ngo ikibazo cy'urubanza gikemuke (*jugements relatifs à l'instruction*), urugero akaba ari icyemezo gitegeka gukora iperereza cyangwa kugena agaciro k'ikiburanwa.

[10] Ibi bisobanuro bigaragaza ko icyemezo cyafashwe n'Urukiko rubanza ku byerekeye gusubirishamo urubanza kitari urubanza rubanziriza urundi, kuko kitari icy'agateganyo, cyangwa ngo kibe kiganisha ku mikirize y'urubanza mu mizi, ahubwo kiri mu rwego rw'impamvu zituma ikirego kitakirwa (fin de non - recevoir) nk'uko ziteganywa n'ingingo ya 94 y'Itegeko n° 18/2004 ryavuzwe haruguru isobanura neza ko impamvu ituma ikirego kitakirwa ari **ingingo yose** isaba kutakira ikirego cy'umuburanyi, hatinjiwe mu iremezo ryacyo, ingero zitangwa n'iyo ngingo rero zikaba atari zo zonyine zishoboka.

[11] Ku bijyanye no gusubirashamo urubanza, ingingo ya 160 y'Itegeko n° 18/2004 ryavuzwe haruguru iteganya ko *''Gusaba ko urubanza rusubirwamo byemerwa gusa iyo uregwa utaritabye mbere ashobora kugaragaza impamvu ikomeye yamubujije kwitaba",* bikumvikana ko

[7] *Jean VINCENT, Procédure civile, Dalloz, 18ème édition, Paris, 1976, pp.707-708 ; Serge Guinchard et Frédérique Ferrand, Procédure civile, Droit interne et droit communautaire, 28ème édition, 2006, Paris, pp.1029-1030.*

iyo mpamvu iri mu zituma ikirego kitakirwa (fin de non - recevoir) zivugwa mu ngingo ya 94 yibukijwe haruguru.

[12] Urukiko rurasanga rero, mu gihe byagaragajwe ko icyemezo cyajuririwe ari icyafashwe n'Urukiko rubanza ku mpamvu ituma ikirego kitakirwa, umuburanyi utacyishimiye ashobora kukijuririra, bityo, inzitizi yatanzwe na KOBIL PETROLEUM yo kutakira ubujurire bwa MILIMO ikaba nta shingiro ifite kuko icyo yajuririye ari icyemezo kijyanye n'impamvu ituma ikirego kitakirwa, aho kuba urubanza rubanziriza urundi.

III. ICYEMEZO CY'URUKIKO

[13] RWEMEYE kwakira inzitizi yatanzwe na KOBIL PETROLEUM kuko yatanzwe mu buryo bwemewe n'amategeko;

[14] RWEMEJE ko iyo nzitizi nta shingiro ifite;

[15] Rutegetse ko ubujurire bwa MILIMO Gaspard buzaburanishwa kuwa 12/07/2011 ;

[16] Ruvuze ko amagarama y'urubanza asubitswe.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 25/03/2011.

sé
MUGENZI Louis Marie
Perezida

sé
MUKAMURISA M.Thérèse
Umucamanza

sé
RUGABIRWA Ruben
Umucamanza

sé
RUSINGIZA Germain
Umwanditsi w'Urukiko

10. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: R.COM.A 0056/10/CS
ITARIKI Y'URUBANZA: 05/08/2011
HABURANA: AMSAR BURUNDI S.A, Succursale du Rwanda / Rwanda Revenue Authority.

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI – KAMERE Y'AMAFARANGA AVANWA MU NYUNGU ZISORESHWA-INYUNGU Z'UMURIMO-AMAFARANGA YASOHOTSE AJYANA N'IMIRIMO Y'UBUCURUZI-KUBA YARABARUWE BYEMEWE N'AMATEGEKO.

UBWIGENGE BW'UMWAKA W'ISORESHA-NTA MWAKA UVANGWA N'UNDI.

IGIKORESHO GIKORESHWA MU RUGO RW'UMUYOBOZI MU RWEGO RWO KUMWOROHEREZA AKAZI-AMAFARANGA YO GUTEGANIRIZA UBUSAZE BWACYO- KUTAYAKURA MU NYUNGU ZISORESHWA IYO ISANO ITAZIGUYE Y'ICYO GIKORESHO N'AKAZI ISHIDIKANYWAHO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

• Kugirango amafaranga runaka avanywe mu nyungu

zisoreshwa agomba kuba yarashowe mu birengera inyungu z'umurimo ku buryo butaziguye, cyangwa ku birebana n'icungwa risanzwe ry'umurimo; agomba kuba yarasohotse ajyana n'imirimo idashidikanywaho y'akazi kandi ifite gihamya ihagije igaragaza ukuri kw'ibyanditse mu ibaruramari; agomba kuba yarabaruwe, hakurikijwe amategeko abigenga, mu byatunze umurimo mu mwaka bifatwaho nk'umwenda udashidikanywa mu nyito no mu ngano.

- Iyo igikoresho gikoreshwa n'umukozi mu rugo iwe yarakiguriwe n'ikigo akorera, agikoresha mu mirimo y'akazi no mu mirimo ye bwite ishobora kuba idafite aho ihuriye n'iy'akazi, ibi bituma isano itaziguye ishidikanywaho bityo amafaranga agenewe guteganiriza ubasaze bwacyo (amortisement) ntakurwe mu nyungu zisoreshwa.

URUKIKO RW'IKIRENGA RURI I KIGALI RUHABURANISHIRIZA MU RUHAME IMANZA Z'UBUCURUZI, RUKIJIJE KUWA 05/08/2011 URUBANZA RCOMA Nº 0056/10/CS MU BURYO BUKURIKIRA:

HABURANA

UWAJURIYE:

AMSAR BURUNDI S.A, Succursale du Rwanda, dont les statuts ont été publiés au Journal Officiel numéro 3 du 1er Février 2007, en la personne de son Représentant.

UREGWA:

IKIGO CY'IGIHUGU GISHINZWE KWINJIZA IMISORO N'AMAHORO (Rwanda Revenue Authority) mu izina ry'ugihagarariye.

IKIBURANWA:
Impôt sur les bénéfices des Sociétés de l'année fiscale 2003 totalisant un montant de 24.331.125 frw (Appel contre l'arrêt RCOM 0115/09/HCC rendu par la Haute Cour de Commerce en date du 29/04/2010).

I. Imiterere y'urubanza muri make

- Sosiyete AMSAR BURUNDI SA, succursale du Rwanda, yakorewe igenzura ry'umusoro ku nyungu (Impôt sur les Bénéfices des Sociétés) w'umwaka wa 2003, icibwa umusoro nta nteguza (imposition d'office) ungana na 25.703.169 Frw. AMSAR yajuririye Komiseri Mukuru, ayisubiza ko

ubwo bujurire bufite ishingiro kuri bimwe, maze ku musoro yaciwe hagabanywaho 1.372.044 Frw, isigara yishyuzwa umusoro ungana na 24.331.125 Frw. AMSAR ntiyishimiye icyo cyemezo, iregera Urukiko Rukuru rw'Ubucuruzi isaba ko rwayikuraho uwo musoro isanga yaraciwe kandi muri uwo mwaka yaragize igihombo kingana na 31.862.937 Frw.

- Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikirego cya AMSAR nta shingiro gifite, ko umusoro wemejwe na Komiseri Mukuru wa Rwanda Revenue Authority asubiza ku itakamba rya AMSAR ugumyeho.

- Mu mpamvu rwashingiyeho, Urukiko rwasanze ku byerekeranye n'uko AMSAR yasoreshejwe nta nteguza byarakurikije amategeko, by'umwihariko ingingo ya 19 igika cya mbere n'iya 24 z'itegeko nº08/97 ryo kuwa 26/06/1997 ryagengaga icyo gihe imisoro itaziguye ku nyungu zinyuranye no ku bihembo. Ku birebana n'uko Rwanda Revenue Authority yanze gukura ''amortissement du groupe électrogène'' mu nyungu zisoreshwa, rwasanze ayo mafaranga adakwiye gukurwa muri izo nyungu hakurikijwe ibiteganywa n'ingingo ya 10, agace ka 1º, y'itegeko rivuzwe haruguru, naho ku birebana na 69.583.858 Frw avugwa muri note de débit AMSAR yasabaga ko yakurwa mu nyungu zisoreshwa mu mwaka yishyuriwemo, rusanga AMSAR itagaragaza ikimenyetso cy'uko yayasohoye mu mwaka wa 2003, uretse gusa kuba yaremeraga ko hari uwo igomba ayo mafaranga.

- AMSAR yajuririye urwo rubanza mu Rukiko rw'Ikirenga inenga kuba Urukiko Rukuru rw'Ubucuruzi rutarahaye agaciro note de débit ya 69.583.125 frw yerekeranye na pièces de rechange/spare parts n'imashini zinyuranye, rukanga ko akurwa mu nyungu zisoreshwa mu mwaka wa 2003 kandi nyamara AMSAR yararishye ayo mafaranga SOBIMAC, kandi ko rwanze gukura ''amortissement ya groupe électrogène''yakoreshwaga aho Umuyobozi Mukuru wungirije wa sosiyete yari atuye mu nyungu zisoreshwa. Ku ruhande rwayo Rwanda Revenue Authority ivuga ko izo

ngingo z'ubujurire nta shingiro zifite.

- Urubanza rwaburanishijwe kuwa 30/06/201, AMSAR ihagarariwe na Me MUNDERERE Léopold hamwe na Me MUGEMANA J.M.V, naho Rwanda Revenue Authority ihagarariwe na Me GASANA Raoul A.

IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. ***Kumenya niba 69.583.858 FRW ari kuri note de débit nº 004/2003/MAT yakurwa mu nyungu zisoreshwa mu mwaka wa 2003.***

- Me MUNDERERE Léopold uhagarariye AMSAR avuga ko AMSAR yishyuye ayo mafaranga SOBIMAC, ko ariko kubera ko ariho yari igitangira bitewe n'ibyangombwa byinshi yabanje kuzuza kugira ngo itangire gukorera mu Rwanda, ibishyira mu mwaka wa 2004, kandi ko kubera ko yakoze ihomba ikishyura amafaranga menshi, asanga ayo mafaranga agaragara kuri note de débit yabarwa nk'ayakoreshejwe (dépense) muri 2003.

- Me GASANA Raoul A. uhagarariye Rwanda Revenue Authority yibutsa ihame rijyanye na ''indépendance des exercices fiscaux'', bishatse kuvuga ko nta mwaka w'umusoro uvangwa n'undi. Asobanura ko amafaranga agaragara kuri iyo note de débit yari atarishyurwa muri 2003, ko ahubwo bigaragara ko hari uwo AMSAR yagombaga kuzayishyura, akaba rero atakurwa mu nyungu zisoreshwa zijyanye n'uwo mwaka hashingiwe ku ngingo ya 10,igika cya kabiri, y'itegeko nº 08/97 ryo kuwa 26/06/1997 ryagengaga imisoro itaziguye ku nyungu zinyuranye no ku bihembo.

- Ku byerekeranye n'inyemezabuguzi zatanzwe na AMSAR isaba ko zafatwa nk'ikimenyetso ko ibikoresho bijyanye n'ayo mafaranga byaguzwe bikanishyurwa,asobanura ko zitujuje ibiteganywa n'ingingo ya 35,igika cya gatatu y'itegeko nº

15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo,by'umwihariko ku birebana na kopi z'inyandiko zidateyeho icyemezo cy'uko zihuye n'inyandiko y'umwimerere,ko kandi zimwe muri zo zigaragaza ko amafaranga azigaragaraho yishyuwe muri 2005, andi muri 2006, ko rero nta kuntu zaza kugabanya umusoro wo muri 2003.

- Me Mugemana nawe asobanura ko ayo mafaranga yishyuwe ibikoresho SOBIMAC yari yaraguze na sosiyete ASTALDI nyuma nayo ibigurisha AMSAR iyigurije amafaranga kugirango iyorohereze mu rwego rw'imikoranire hagati yabonka sosiyete zifitanye isano.

- Ingingo ya 10 y'itegeko nº8/97 ryo kuwa 26/06/1997 rishyiraho amategeko agenga imisoro itaziguye ku nyungu zinyuranye no ku bihembo ryakurikizwaga mu mwaka wa 2003 iteganya ko urwunguko rugenwa havanyweho ibyasohotse byose. Isobanuraariko ko kugirango amafaranga ajyanye n'ibyo byasohotse, kimwe n'ibindi bitubya umutungo avanwe mu nyungu zisoreshwahagomba kuba hujujwe ibikurikira:

   1) Kuba amafaranga yarashowe mu birengera inyungu z'umurimo ku buryo butaziguye, cyangwa mu birebana n'icungwa risanzwe ry'umurimo;
   2) Kuba amafaranga yasohotse ajyana n'imirimo idashidikanywa y'akazi kandi ifite gihamya ihagije igaragaza ukuri kw'ibyanditse mu ibaruramari;
   3) Kuba byarabaruwe, hakurikijwe amategeko abigenga,mu byatunze umurimo mu mwaka bifatwaho nk'umwenda udashidikanywa mu nyito no mu ngano.

- Hashingiwe kuri iyi ngingo, cyane cyane mu duce twayo, aka (2) n'aka (5), Urukiko rurasanga dépenses zingana na 69.583.858 frw zigaragara muri note de débit yatanzwe na AMSAR zitakurwa mu nyungu zisoreshwa mu mwaka wa 2003, kuko nk'uko bigaragazwa n'iyo note de débit, ayo mafaranga atishyuwe koko muri 2003, ko ahubwo yishyuwe

nyuma.

- Urukiko rurasanga kandi ibimenyetso bindi AMSAR itanga bigizwe n'inyemezabuguzi, uretse n'uko bitubahiriza ibiteganywa n'ingingo ya 35 igika cya gatatu y'itegeko nº 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, bigaragaza nabyo ahubwo ko amafaranga amwe yishyuwe muri 2005, andi yishyurwa muri 2006, ndetse n'impamvu yishyuwe ikaba ahubwo ari indi, kuko basobanura ko ari ''remboursement des frais'' aho kuba kwishyura ibyo bikoresho bivugwa, bityo ingingo y'ubujurire ya AMSAR ko amafaranga ari kuri note de débit yakurwa mu nyungu zisoreshwa mu mwaka wa 2003 ikaba nta shingiro.

b)Kumenya niba amortissement du groupe électrogène yakoreshwaga mu icumbi ry'akazi ry'umuyobozi wungirije wa sosiyete yakurwa mu nyungu zisoreshwa.

- Kuri iyi ngingo Me MUNDERERE Léopold avuga ko basanga nta mpamvu Rwanda Revenue Authority yari kwemera amortissement ku bintu bimwe ngo iyange ku birebana na groupe électrogène ku mpamvu z'uko ngo atari ''dépense professionnelle''. Asobanura ko kubera ikibazo cy'umuriro cyariho mu mwaka wa 2003, uwo muyobozi rimwe yakoreraga akazi mu biro, ubundi agakorera mu rugo, ko hakurikijwe inshingano z'umuyobozi w'urwo rwego amafaranga yatanzwe kuri iyo ''groupe électrogène'' yagombye gushyirwa mu rwego rw'amafaranga yakoreshejwe mu bijyanye n'akazi akavanwa mu nyungu zisoreshwa.

- Me GASANA Raoul avuga ko ibintu bisobanutse mu ngingo ya 10 y'itegeko nº8/97 ryo kuwa 26/06/1997 rishyiraho amategeko agenga imisoro itaziguye ku nyungu zinyuranye no ku bihembo mu gace kayo ka mbere aho ivuga ibyerekeranye n'ibivanwa mu nyungu zisoreshwa (charges déductibles/ deductible expenses from company tax), ikaba igaragaza by'umwihariko ko ibyo bivanwamo ari ibyashowe mu birengera inyungu z'umurimo ku buryo butaziguye (dans l'intérèt direct de l'exploitation). Akomeza avuga ko

ikigomba kurebwa ari nacyo Rwanda Revenue Authority yashingiyehoari ibiba amortis, akaba ariyo mpamvu yemeye amortissementy'ibikoresho bimwe igakuramo ''groupe électrogène'' yakoreshwaga ku muyobozi mukuru wungirije wa sosiyete kuko ingingo y'itegeko ivuga ibifite «lien direct/ direct interest» n'akazi, ko atari ibifite lien«indirect»nk'uko bimeze ku bijyanye na ''groupe électrogène''yakoreshwaga mu rugo rw'umuyobozi mukuru wungirije, gutandukanya ibifitanye lien direct n'ibitayifite bikaba byagorana.

- Ingingo ya 10 y'itegeko nº8/97 ryo kuwa 26/06/1997 rivuzwe haruguru ryakurikizwaga mu mwaka wa 2003 mu gace kayo ka mbere iteganya ko urwunguko rugenwa havanyweho ibyasohotse byose, ko kugirango amafaranga yerekeranye n'ibyo byasohotse avanwe mu nyungu,agombakuba yarashowe mu birengera inyungu z'umurimo ku buryo butaziguye, cyangwa mu birebana n'icungwa risanzwe ry'umurimo.

- Hashingiwe kuri iyi ngingo,Urukiko rurasanga ''groupe électrogène'' ivugwa, n'ubwo muri rusange yakoreshwaga mu rwego rwo korohererza uwo muyobozi ngo ashobobore gutunganya inshingano ze neza z'akazi, kuba yarakoreshwaga no mu yindi mirimo yo mu rugo ishobora kuba idafite aho ihuriye n'inshingano ze z'akazi bituma isano itaziguye (lien direct)iteganywa n'itegeko ishidikanywaho, bityo amortisement ijyanye nayo ikaba itagomba kuvanwa mu nyungu zisoreshwa.

- Urukiko rurasanga kandi ku ruhande rwa AMSARabayihagarariye batarashoboye kurugaragariza ibyagenerwaga uwo muyobozi bijyanye no kumworohereza akazi birimo by'umwihariko ibyerekeranye n'imikoreshereze ya ''groupe électrogène'' ivugwa.

- Hashingiwe ku bimaze kuvugwa, urukiko rurasanga amortissement y'iyo groupe électrogèneitafatwa nka dépense professionnelle kugirango ivanwe mu nyungu zisoreshwa,

bityo ubujurire bwa AMSAR no kuri iyi ngingo bukaba nta shingiro bufite.

III ICYEMEZO CY'URUKIKO

- Rwemeye kwakira ubujurire rwashyikirijwe na AMSAR BURUNDI SA,, succursale du Rwanda kuko bwatanzwe mu buryo bukurikije amategeko, ko ariko nta shingiro bufite;

- Rwemeje ko urubanza RCOM 0115/09/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 29/04/2010 rudahindutse;

- Rutegetse AMSAR BURUNDI SA, succursale du Rwanda, gutanga amagarama y'urubanza angana na 23.300Frw, itayatanga mu gihe cy'iminsi umunani akavanwa mu byayo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 05/08/2011 N'URUKIKO RW'IKIRENGA.

Sé
MUKANYUNDO Patricie
Perezida

Sé
HAVUGIYAREMYE Julien
Umucamanza

Sé
KAYITESI R. Emily
Umucamanza

Sé
MUNYANDAMUTSA Jean Pierre
Umwanditsi

IMANZA Z'UBUTEGETSI

11. URUKIKO RW'IKIRENGA

N° Y'URUBANZA : RADA A0038/09/CS
ITARIKI Y'URUBANZA: 25/03/2011
HABURANA : ELECTROGAZ / NIWENSHUTI Nzaramba Valens

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI - ICYEMEZO CY'UMUCAMANZA NSHINJABYAHA - GUKURIKIZA ICYEMEZO CY'UWO MUCAMANZA IYO YEMEJE KO HABAYEHO CYANGWA HATABAYEHO KIMWE MU BYO UMUKOZI AREGWA N'UMUKORESHA.

KUTAGIRIRA UMUKOZI ICYIZERE- KUBIGIRA IMPAMVU Y'IYIRUKANWA-KUBITANGIRA IMPAMVU YUMVIKANA-KUBYANDIKA MU CYEMEZO CY'INTEGUZA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Umukoresha ntategetswe gukurikiza byanze bikunze ibyemejwe n'umucamanza nshinjabyaha, nyamara iyo umucamanza nshinjabyaha yemeje ko nta makosa cyangwa habayeho amakosa umukoresha arega umukozi, nibwo umukoresha ategetswe

gukurikiza icyemezo cy'umucamanza.

- Kwirukana umukozi kubera ko nta cyizere afitiwe bigomba gutangirwa impamvu yumvikana n'umukoresha kandi bigashyirwa mu cyemezo kimuteguza .

URUKIKO RW'IKIRENGA, RURI I KIGALI RUHABURANISHIRIZA IMANZA Z'UBUTEGETSI, RUKIJIJE MU RUHAME KUWA 25 WERURWE 2011 URUBANZA RADA 0021/09/ CS MU BURYO BUKURIKIRA:

HABURANA

ELECTROGAZ yajuriye, ihagarariwe na Me NIZEYIMANA Boniface.
NIWENSHUTI NZARAMBA Valens, mwene NZARAMBA na MUKANSENGA, utuye i Gikondo, Akarere ka Kicukiro, Umujyi wa Kigali.

IKIREGERWA :
Dommages et intérêts pour licenciement abusif, Manque à gagner, indemnités de préavis, indemnités du 13e mois, indemnités pour congé payé, D.I pour non délivrance de l'attestation de services rendus, frais de procédure et de recouvrement, D.I moraux, restitution des cotisations à la mutuelle de l'ELECTROGAZ et intérêts de retard. (Kujuririra urubanza RAD 0127/07/HC/KIG).

I. IMITERERE Y'URUBANZA

(1) NIWENSHUTI NZARAMBA Valens yakoreye ELECTROGAZ nka releveur kuva mu mwaka wa 2004. Yaje gukekwaho icyaha cyo kurigisa umutungo wayo, ashyikirizwa Urukiko Rwisumbuye rwa Gasabo rwaje kumugira umwere.

(2) Hagati aho NIWENSHUTI yaje kwirukanwa ku kazi, maze arega ELECTROGAZ mu Rukiko Rukuru. Urwo Rukiko rwemeje ko NIWENSHUTI NZARAMBA Valens atsinze kuko yirukanwe mu buryo bunyuranije n'amategeko,

rutegeka ELECTROGAZ kumuha indishyi zingana na 5.140.128 frw.

(3) ELECTROGAZ yajuririye mu Rukiko rw'Ikirenga ivuga ko itirukanye NZARAMBA mu buryo bunyuranye n'amategeko, ko rero indishyi yaregeye mu Rukiko rubanza nazo ntashingiro zagombaga guhabwa.

(4) Urubanza rwaburanishijwe kuwa 15/02/2011, NIWENSHUTI yiburanira, naho ELECTROGAZ iburanirwa na Me NIZEYIMANA Boniface.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Ikibazo cyo kumenya niba NIWENSHUTI NZARAMBA Valens yarirukanwe ku kazi binyuranyije n'amategeko.

(5) Kuri iki kibazo uhagarariye ELECTROGAZ avuga ko, Urukiko Rukuru rwibeshye rukemeza ko NIWENSHUTI yirukanwe mu buryo bunyuranyije n'amategeko kuko yari yagizwe umwere ku cyaha cyo kurigisa umutungo yari akurikiranweho, kandi icyatumye yo imwirukana ku kazi ari uko itari ikimufitiye icyizere, kubera ko uwitwa Manyurane Albert wahamwe n'icyaha, kimwe n'abaturage bamushinja kuba yaratangaga umuriro n'ibindi bikoresho bya ELECTROGAZ, maze amafaranga abivuyemo akayitwarira.

(6) NIWENSHUTI NZARAMBA Valens we avuga ko asanga iyo umuntu yahanaguweho icyaha nta wakagombye kongera ku kimukurikiranaho, kereka hari ikindi gishoboye kugaragazwa, ko rero kuba yaragizwe umwere yakagombye kuba yarashubijwe mu kazi yakoreraga ELECTROGAZ, aho kwirukanwa.

(7) Ingingo ya 20 y'itegeko n° 51/2001 ryo kuwa 30/12/2001 rigenga umurimo mu Rwanda iteganya ko amasezerano y'umurimo y'igihe kitazwi ashobora guseswa igihe cyose

umwe mu bayagiranye abishatse ariko ku mpamvu zumvikana. Iryo seswa ribanzirizwa n'integuza itanzwe n'urishaka.

(8) Naho ingingo ya 23 al 2 ikavuga ko iyo amasezerano y'umurimo asheshwe biturutse k'umukoresha, impamvu itumye umukozi yirukanwa yandikwa mu ibaruwa y'imperekeza.

(9) Ku bijyanye n'impamvu zumvikana, Urukiko rusanga ibyo ELECTROGAZ ivuga by'uko NIWENSHUTI yashinjwe na Manyurane Albert n'abandi baturage, nta shingiro bifite, kuko ibyo ishingiraho byari byasuzumwe n'umucamanza waciye urubanza rw'inshinjabyaha, agasanga ibyo bamushinja bidafite gihamya.

(10) Urukiko rurasanga nta yandi makosa ELECTROGAZ yerekana yakozwe na NIWENSHUTI, ku buryo rero uru Rukiko ntaho rwahera rwemeza ko yirukaniwe impamvu yumvikana.

(11) Ibi kandi birahuza n'ibyo abahanga mu mategeko barimo Georges Dupuis, Marie-Josée Guédon na Patrice Chrétien babivuga mu gitabo cyabo, Droit administratif, 10e édition, page 381 aho berekana ko umukoresha adategetswe gukurikiza ibyemejwe n'umucamanza w'inshinjabyaha, keretse iyo uyunguyu hari icyemezo yafashe yerekana ko habayeho cyangwa hatabayeho amakosa umukoresha arega umukozi. Bakavuga ko icyo gihe umukoresha ategetswe kubahiriza iby'uwo mucamanza[8].

(12) Muri uru rubanza rero, nta yandi makosa ELECTROGAZ yerekana NIWENSHUTI yakoze uretse ayo uwo mucamanza yaburiye gihamya; kubw'ibyo rero rukaba rusanga NIWENSHUTI yarirukanywe nta mpamvu

[8] *De même, l'autorité disciplinaire n'est pas liée par la décision du juge pénal, sauf lorsque ce dernier s'est prononcé sur l'existence ou l'inexistence de certains faits: ses constatations matérielles s'imposent à l'autorité administrative.*

yumvikana agaragarijwe nk'uko biteganywa n'ingingo ya 20 y'itegeko n° 51/2001 ryo kuwa 30/12/2001 rigenga umurimo mu Rwanda .

(13) Urukiko rurasanga ELECTROGAZ yirukana NIWENSHUTI nk'uko bigaragarira mu ibaruwa yo kuwa 30/03/2007 yandikiwe n'umuyobozi mukuru wayo, yaramubwiye ko kumusubiza mu kazi bitagishobotse kubera ko itakimufitiye icyizere, nyamara uko kumuburira icyizere ikaba itabitangira impamvu yumvikana kandi yanditse mu cyemezo cy'integuza nk'uko ingingo ya 20 na 23 z'itegeko n° 51/2001 ryo kuwa 30/12/2001 rigenga umurimo mu Rwanda zavuzwe haruguru zibiteganya.

(14) Hashingiwe ku bimaze kuvugwa haruguru, Urukiko rurasanga NIWENSHUTI yarirukanwe mu buryo bunyuranye n'ibiteganywa n'ingingo z'itegeko zavuzwe, akaba ariyo mpamvu ELECTROGAZ igomba kubimuhera 723.438 Frw y'indishyi nk'uko zagenwe n'Urukiko Rukuru.

2. Ikibazo cyerekeranye n' indishyi zisabwa na NIWENSHUTI.

(15) Ku byerekeye indishyi z'imishahara y'amezi 6 Urukiko Rukuru rwageneye NIWENSHUTI kubera kudahabwa icyemezo cy'umukoresha (attestation de services rendus), Uhagarariye ELECTROGAZ avuga ko zidakwiye kuko ataje kugifata kandi yari yarakimuteguriye.

(16) Kuri iyi ngingo NIWENSHUTI avuga ko iyo ELECTROGAZ iza kuba yaramutegueriye icyemezo cy'umukoresha wa nyuma iba yarakimuhaye igihe yagiye kwaka décompte final.

(17) Urukiko rusanga ingingo ya 30 al 2 y'itegeko n° 51/2001 ryo kuwa 30/12/2001 rigenga umurimo mu Rwanda itegeka umukoresha guha umukozi umushahara we wa nyuma (décompte final) hamwe n'icyemezo ko yamukoreye. Ikanateganya kandi ko iyo umukoresha yanze gutanga

icyo cyemezo, ashobora gutanga indishyi zitarenza amezi 6 y'umushahara.

(18) Kuba NIWENSHUTI yaraje kuri ELECTROGAZ, ikamuha umushahara we wa nyuma (décompte final) ntimuhe n'icyemezo ko yayikoreye, yanyuranije n'ibiteganywa n'ingingo imaze kuvugwa. Mu gihe cyose rero itagaragaje ko yakimuhaye, igomba kubimuhera indishyi ziteganywa n'ingingo ya 30 y'itegeko rigenga umurimo, ni ukuvuga amezi 6 ahwanye na 120.573 Frw x 6 mois = 723.438 Frw nk'uko byemejwe mu rubanza rwajuririwe.

(19) Ku birebana n'indishyi z'igihombo (manque à gagner) z'amezi 20 y'umushahara n'indishyi z'akababaro NIWENSHUTI yagenewe kubera kubeshyerwa n'igisebo, ELECTROGAZ ivuga ko NIWENSHUTI ntazo akwiye kuko ELECTROGAZ idafunga, byongeye kandi n'umucamanza akaba atarasobanuye impamvu azimugeneye.

(20) NIWENSHUTI avuga ko yaketsweho icyaha na ELECTROGAZ bigatuma afatwa agafungwa kandi ko gufungwa atari ishema, ko rero agomba kubiherwa indishyi.

(21) Urukiko rurasanga kuba NIWENSHUTI yarafunzwe bitewe n'uko yaketswe na ELECTROGAZ, nyuma akaza kugirwa umwere atari impamvu ELECTROGAZ yaryozwa indishyi, kuko mu gihe yamukekagaho ubujura yari ifite uburenganzira bwo gushyikiriza ikibazo cyayo inzego zishinzwe gukurikirana ibyaha. Rukaba rusanga rero indishyi zingana na 2.411.500 Frw y'igihombo ndetse na 500.000 Frw ajyanye no kubeshyerwa n'igisebo NIWENSHUTI yagenewe mu rubanza rwajuririwe muri urwo rwego nta shingiro zifite.

(22) Naho ku ndishyi zerekeranye na konji atishyuwe z'imyaka ya 2004, 2005 na 2006, ELECTROGAZ ivuga ko atagombaga kuzihabwa ngo kuko abakozi bakorera ku masezerano y'umurimo bagenerwa gusa konji y'iminsi 18 ku mwaka.

Urukiko rurasanga iyo ngingo ifite ishingiro, hashingiwe ku ngingo ya 71 y'itegeko n° 51/2001 ryo kuwa 30/12/2001 rigenga umurimo mu Rwanda iteganya ko umukozi afite uburenganzira ku kiruhuko kishyurwa kingana n'umunsi umwe n'igice mu kwezi, bityo rero NIWENSHUTI akaba agomba guhabwa gusa amafaranga 217.031 abazwe mu buryo bukurikira mu myaka itatu yavuzwe haruguru (120.573 x 18x 3/30), aho kuba 361.179 Frw yari yagenwe mu rubanza rwajuririwe.

(23) Urukiko rurasanga amafaranga agomba kugenerwa NIWENSHUTI ari ayakurikira: 723.438 Frw + 723.438 Frw + 120.573+217.031 + 300.000 Frw= 2.084.480 Frw.

III. ICYEMEZO CY'URUKIKO

(24) **RWEMEJE** ko ubujurire bwa ELECTROGAZ bufite ishingiro kuri bimwe.

(25) **RUTEGETSE** ELECTROGAZ kwishyura NIWENSHUTI amafaranga 2.084.480.

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

(27) **RUVUZE** ko urubanza rwajuririwe ruhindutse kuri bimwe.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KUWA 25/03/2011.

Se
MUTASHYA JEAN BAPTISTE
Perezida

Se
HATANGIMBABAZI FABIEN
Umucamanza

Se
MUNYANGERI N. INNOCENT
Umucamanza

Se
UWARUGIRA JEAN BAPTISTE
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