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

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Mata, 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. Gitangazwa buri gihembwe n’Urwego rw’Ubutabera rurangajwe imbere n’Urukiko rw’Ikirenga. Gitegurwa na Komite igizwe n’abahagarariye inkiko zose z’ u Rwanda, Ubugenzuzi bw’Inkiko na serivisi y’ubushakashatsi mu Rukiko rw’Ikirenga.

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Icyitonderwa

Icyegeranyo ntikigurishwa, gitangirwa ubuntu.

Uburyo icyegeranyo gikoreshwa

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

Amagambo mpine:

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

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;

Turashima cyane mwe mukomeza kutugaragariza ko musoma iki cyegeranyo, ndetse munaduha ibitekerezo kandi tubizeza ko ibitekerezo byanyu tugerageza kubishira mu bikorwa kugira ngo turusheho kunoza imitunganyirize y'iki cyegeranyo.

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

Muri iyi numero turasangamo imanza ebyiri z'inshinjabyaha, eshashatu z'ubutegetsi, ebyiri z'imbonezamubano.Izi manza zaciwe n'inkiko nkuru (Urukiko rw'Ikirenga n'Urukiko Rukuru). Turizera ko zizaba ikitegererezo mu nyandikire no mu rwego rwo gutanga umurongo ku bibazo by' amategeko bikaba byafasha abacamanza mu zindi nkiko.

Sam RUGEGE

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

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IMANZA Z'INSHINJABYAHA

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N° Y'URUBANZA: RPA0029/08/CS
ITARIKI Y'URUBANZA: 27/01/2012
HABURANA: UBUSHINJACYAHA na MBONERA Protais na bagenzi be

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA-KUDAHAMWA N'ICYAHA MU RWEGO RWA MBERE-UBUJURIRE BW'UREGERA INDISHYI-KUBA UBUSHINJACYAHA BUTARAJURIYE-GUHAMWA N'ICYAHA MU RWEGO RW'UBUJURIRE-KUTAGENA IGIHANO KU WARI WAGIZWE UMWERE MU RWEGO RWA MBERE-GUSHINGIRA KU RUHARE RWE MU IKORWA RY'ICYAHA MU KUGENA INDISHYI.

.INDISHYI MBONEZAMUSARURO-ISANO IRI HAGATI Y'UZISABA N'UWAKOREWE ICYAHA-INSHINGO UWAKOREWE ICYAHA YARI AFITE ZO KWITA KURI UWO USABA INDISHYI.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Kuba ubushinjacyaha butarajuriye hakajurira gusa uregera indishyi ntibibuza Urukiko gusuzuma ibijyanye n'icyaha, iyo rusanze abari bagizwe abere mu rwego rwa mbere bahamwa n'icyaha nta bihano rubagenera ahubwo uruhare rwabo mu ikorwa ry'icyaha rushingirwaho mu gusuzuma ikibazo cy'indishyi .

-Iyo uwatanze ikirego cy'indishyi yagitanze ku giti cye ntashobora kuzisabira umuryango wose, nawe kandi ku bimureba agomba kwerekana inshingano yihariye uwakorewe icyaha yari afite zo kumwitaho kugira ngo agenerwe indishyi mbonezamusaruro.

URUKIKO RW'IKIRENGA RURI I KIGALI RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA RUHAKIRIJE MU RUHAME KU WA 27/01/2012 URUBANZA n° R.P.A 0029/08/CS MU BURYO BUKURIKIRA : ABABURANA:

Mbonera Protais
Ntakamaro Adrien
Kayijuka Bonaventure
Matabaro Joseph
Iyamuremye Ildebrand
Ndahindurwa Cyprien
Kayitaba
Kivunja Claver
N'UBUSHINJACYAHA
***Uregera indishyi* : Gatera Egide**
IBYAHA BIKURIKIRANYWE :
Ubwicanyi
Kurema umutwe w'abagizi ba nabi

[1] Urubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Rusizi, Mbonera Protais, Iyamuremye Ildebrand, Kayijuka Bonaventure, Ntakamaro Adrien, Kayitaba, Matabaro, Kivunja Claver na Ndahindurwa baregwa icyaha cyo kurema umutwe w'abagizi ba nabi, hamwe n'icy'ubwicanyi bwakorewe Gashema Emmanuel mu mwaka w'1993.

[2] Urukiko rwemeje ko Mbonera Protais, Ntakamaro Adrien, Kayijuka Bonaventure na KIVUNJA Claver ibyaha bibahama, ruhanisha buri wese igifungo cy'imyaka itanu gisubitswe mu gihe cy'umwaka umwe ; rwemeje ko Iyamuremye Ildebrand, Matabarao na Ndahindurwa Cyriaque bahanaguwe ho icyaha.

[3] Mbonera Protais, Ntakamaro Adrien na Kayijuka Bonaventure bajuririye Urukiko rw'Ikirenga, kimwe na Gatera Egide uregera indishyi, wanasabye n'abagizwe abere bahamagazwa kuko

yabajuririye bose. Ubwo bujurire bwombi bwaburanishijwe ku wa 21/12/2011 hari Mbonera, Ntakamaro Adrien, Matabaro na Iyamuremye bunganiwe na Me Sebahizi Alexandre, Ndahindurwa yiburanira, Gatera yunganirwa na Me Bayingana Edmond, naho Kayitaba, Kayijuka na Kivunja batitabye ariko barahamagawe ahatazwi mu buryo bukurikije amategeko; Ubushinjacyaha huhagarirwa na Mutangana J.Bosco

IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

a) Kumenya niba hari ibimenyetso bihamya icyaha Mbonera, Ntakamaro na Kayijuka

[4] Mbonera Protais na Ntakamaro bavuga ko batishimiye kuba hari abatangabuhamya bari bifuje ko babazwa nyamara Urukiko ntirwabumva, ndetse n'abagabo Gatera yatanze akaba ari abo bafitanye isano yagiye gushaka ngo batange ubuhamya yitwaje akazi yakoraga ka gisirikare. Bananenga imvugo ya Nsengumuremyi Aloys igihe cy'iperereza, bakavuga ko idakwiye guhabwa agaciro kuko nyuma yabwiye Urukiko ko mbere atigeze abazwa kandi ko umwirondoro wavuzwe udahura neza n'uwe.

[5] Mbonera yongeraho ko Urukiko rwirengagije ko yageze aho Gashema yiciwe yamaze gupfa, kandi n'abatangabuhamya bose bemeje ko bamubonye ariko ko nta kintu yigeze akora. Anavuga ko Gashema yizize kuko yari igisambo kandi hari abantu yigeze no kwica.

[6] Ntakamaro anavuga ko atuye kure cyane y'aho icyaha cyabereye,ahubwo ko yaje ahuruye bamubwiye ko Kayijuka yaraye atewe n'amabandi, aza nk'umwe mu bagize ishyirahamwe bari bahuriyeho.

[7] Uwunganira Mbonera na Ntakamaro avuga ko Umucamanza wa mbere yirengangije ikibazo cy'umutekano muke wari mu gace abaregwa batuyemo bitewe n'amabandi yari yarahayogoje nk'uko byemejwe na Tabaro J.M.Vianney wari ukuriye iryo shyirahamwe akaba yari na Perezida w'Urukiko. Anavuga ko

uwo mutekano muke ari wo watumye Mbonera na bagenzi be bashinga ishyirahamwe ryo kwirengera ryitwa « Dutabarane », kandi ko igihe icyaha kiba bari bavuye mu nama y'iryo shyirahamwe ariko hari n'abandi bantu benshi, ku buryo nta wamenya neza uwishe Gashema.

[8] Anavuga ko se wa Gatera witwa Karumiya yanditse avuga ko Gashema yari umujura kandi ko nta wamenya uwamwishe, ariko ko iyo baruwa itaboneka muri dosiye. Agasaba ko hazarebwa n'inyandiko ya Tabaro wemeje ko Gashema yishwe na Kivunja na Kayitaba.

[9] Kayijuka utaritabye Urukiko, agaragaza mu ibaruwa ye y''ubujurire ahuriyeho na Mbonera na Matabaro, ko ahakana icyaha kandi agashingira ku ngingo zimwe na bagenzi be.

[10] Uhagarariye Ubushinjacyaha avuga ko ibyo Mbonera Protais na Ntakamaro bavuga ko hari abatangabuhamya batabajijwe ku ruhande rwabo nta gaciro byahabwa, kuko batagaragaje icyo bari guhindura kuri dosiye Urukiko rwari rufite, ndetse ko batagaragaje icyo abo bifuza ko babazwa bari kugaragaza kirenze iby'abandi bavuze. Anongeraho ko kuvuga ko Gatera yateye ubwoba ababajijwe ngo kuko yari umusirikare nta bimenyetso abitangira, ndetse ko n'iby'amasano avuga yaba afitanye n'abatangabuhamya nta shingiro bifite kuko Ubushinjacyaha busanga nta nenge ababajijwe bafite yatuma ubuhamya bwabo butakwakirwa. Anavuga ko ntawaha agaciro ibaruwa ivugwa ko yanditswe na se wa Gashema kuko uretse n'uko batayigaragaza, niyo umuntu yaba ari igisambo aba agomba kurengerwa na Leta bitanabujije uwe gukurikirana indishyi.

[11] Yongeraho ko ahubwo kuri Mbonera, hari uwitwa Habimana Jean umushinja, ibyo yavuze bigahura n'ibyo nyiri ubwite yivugira nyamara we ntiyigeze amuvuga mu bafitanye isano na Gatera. Anavuga ko Habimana yamushinje, ndetse ahuza na Mwitende Jean Marie. Agasanga ibyo Mbonera avuga ko

yageze aho Gashema yiciwe yarangije gupfa binanyomozwa na Ndahindurwa usobanura ko yaje mbere ari kumwe n'abandi batwaye Gashema ndetse aramuhobera. Yongeraho ko kuvuga ko Gatera yasengereye abishe mukuru we bitumvikana, ndetse ko n'imvugo y'uko abishe Gashema batamenyekanye nta shingiro ifite.

[12] Uhagarariye Ubushinjacyaha anavuga ko imvugo ya Ntakamaro unenga ubuhamya bwatanzwe kuko ba nyira bwo bafitanye isano na Gatera nta shingiro ifite, bitewe n'uko hari abandi bamushinja nyamara ntavuge ko nabo hari isano bafitanye na Gatera, uretse ko no kubivuga gusa bidahagije kuko bigomba ibimenyetso. Anavuga ko kwitwaza ko aturuka kure y'ahabereye icyaha atari ikimenyetso cyamushinjura, kandi akaba atagaragaza ko yari ahandi icyo gihe, ko ariko usibye n'ibyo, hari abatangabuhamya bamushinja.

[13] Anasanga ibivugwa n'abaregwa bajuriye ko Urukiko ruca urubanza rwashingiye ku byavuye mu iperereza gusa ntiyita ku miburanire yabo atari ukuri kuko bigaragara ko ibyavuzwe byose mu iburanisha byanditswe kandi Urukiko rugenda rubigarukaho; akavuga ko icyaha Mbonera, Ntakamaro, Kayijuka, Kayitaba na Kivunja bahamijwe kibahama, ko rero nta mpamvu ituma imikirize y'urubanza rwa mbere ihinduka.

[14] Gatera n'umwunganira bavuga ko ibimenyetso bishinja abajuriye icyaha byagaragajwe, kandi ko Gatera atishimiye imikirize y'urubanza kubera ko Umucamanza aterekanye ingingo z'amategeko z'imiburanishirize y'imanza z'inshinjabyaha n'iz'Igitabo cy'amategeko ahana ibyaha yashingiyeho ahakana icyaha cyo kurema umutwe w'abagizi ba nabi.

[15] Banavuga ko Umucamanza yishe amategeko nkana mu rwego rwo gukingira ikibaba abagizi ba nabi aho yabahanishije igihano cy'imyaka 5 nabwo gisubitse mu gihe cy'umwaka 01, nyamara ntagaragaze itegeko yashingiyeho cyane cyane ko nta n'umwe mu baregwa wigeze asaba igihano gisubitswe.

[16] Bongeraho ko Urukiko rwumvise ibintu uko bitari cyane cyane ku bijyanye n'icyaha cyo kurema umutwe w'abagizi ba nabi, ndetse ntirwita ku byo abaregwa biyemerera ko bari barashyizeho ishyirahamwe ryitwa «Dutabarane» rigamije kurinda ibisambo nyamara rikaba ritari rizwi. Uretse ko n'inshingano zo kurinda umutekano zikaba zifite inzego z'ubutegetsi zibishinzwe. Banasanga ipfundo ry'ikibazo ari ukumenya icyo abaregwa bahereyeho bita Gashema igisambo. Banavuga ko ibyavuzwe na Nsengumuremyi ko Gatera yashimiye abishe Gashema abagurira inzoga, uretse ko bitanashoboka, mu babajijwe bose ari uwo Nsengumuremyi wenyine ubivuga, bagasanga byarahimbwe n'abaregwa.

[17] Ku bijyanye n'ibyayavuzwe ku isano iri hagati ya Gatera n'ababajijwe, uwunganira Gatera yasabye Urukiko kwita ku rundi rubanza RPA 0059/08/CS rwo ku wa 19/11/2010 rwaciwe n'Urukiko rw'Ikirenga rwemeje ko niyo haba hari amasano hagati y'urega n'ababajijwe, icyo Urukiko rwitaho ari ukuri kw'ubuhamya bwatanzwe.

[18] Urukiko rusanga kuri Mbonera Protais, Ntakamaro na Kayijuka, n'ubwo bahakana icyaha bakavuga ko ababashinje ari bene wabo wa Gatera, muri dosiye hari imvugo z'abandi babashinje nyamara batavuga ko hari icyo bapfana. Muri rusange ubuhamya bushinja Mbonera Ntakamaro na Kayijuka bukaba burimo ubwa Habimana Jean, Gahonga Ladislas, Hategekimana, Nsengumuremyi Aloys, Mwitende Jean Marie n'abandi. Nk'uko kandi Urukiko rubanza rwabisobanuye, bose babahurizaho bemeza ko bagize uruhare mu rupfu rwa Gashema. Nta mpamvu rero ibyavuzwe n'abo batangabuhamya bitahabwa agaciro cyane cyane ko imvugo zabo zigenda zuzuzanya.

[19] Ku bireba by'umwihariko Nsengiyaremye Aloys, Urukiko rusanga nta mpamvu ikomeye ituma ubuhamya bwe buteshwa agaciro kuko dosiye igaragaza ko yabajijwe igihe cy'iperereza ndetse akanabisinyira, kuba yarageze mu Rukiko agahindura imvugo ye akaba atari byo bituma ibyo yemeje mbere biteshwa

agaciro kuko nk'uko byavuzwe, ibyo yavuze bihura n'iby'abandi batangabuhamya bemeje, kandi akaba ari ntawigeze agaragaza ko inyandikomvugo y'ibazwa rye ari impimbano.

[20] Ku batangabuhamya baba bafitanye isano na Gatera, Urukiko rusanga amasano atari yo yatuma ibyo bavuze bititabwaho mu gihe nta nenge igaragara mu buhamya bwabo, ahubwo imvugo zabo zikaba zuzuzanya n'iz'abandi.

[21] Ubuhamya bwavuzwe kandi bwuzuzanya n'ibyo Ndahindurwa yabwiye uru Rukiko aho yagaragaje ko ku munsi Gashema yishweho, haje imodoka ya Iyamuremye, hanarimo Mbonera Protais, Ntakamaro na Kayitaba, igeze aho bari bari irahagarara, Mbonera abaza Hategekimana aho Gashema ari, undi arahamwereka, Mbonera ahobera Gashema nk'umukumbuye, ako kanya we n'abo bari bazanye baramufata bamwinjiza mu modoka banajyana na Hategekimana. Akavuga ko imodoka igiye kugenda Mbonera yanyujije umutwe mu idirishya abwira abaturage bari bahuruye ngo baze kwumva urubanza rwa Gashema. Anongeraho ko we n'abandi bari aho bakurikiye iyo modoka, bageze kuri Segiteri aho bakekaga ko ariho imodoka ijyanye Gashema, basanga ntawe, barakomeza bageze mu i Rango basanga Gashema barangije kumwica, Kivunja ari iruhande rw'umurambo afite ubuhiri, naho abari muri ya modoka bamuhagarikiye.

[22] Hakurikijwe ibisobanuro byatanzwe, nk'uko Urukiko rubanza rwabyemeje, Mbonera, Ntakamaro na Kayijuka bahamwa n'icyaha. Nyamara n'ubwo Gatera uregera indishyi yinubira uko igihano abahamwe n'icyaha bakatiwe cyagenwe, ashaka ko cyongerwa, ntacyo Urukiko rwahindura ku gihano cyagenwe ku rwego rwa mbere, kuko Ubushinjacyaha butabajuririye. Ahubwo icyo Urukiko rugomba gusuzuma ni ibijyanye n'indishyi hashingiwe ku ngingo ya 164 Ngenga rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi ryujujwe kugeza

ubu, hamwe n'ibisobanuro bitangwa n'abahanga mu mategeko.[1]

b) Kumenya niba hari ibimenyetso byari byagaragajwe ku bahanaguwe ho icyaha.

[23] Gatera Egide, uregera indishyi, avuga ko Iyamuremye, Matabaro na Ndahindurwa bahanaguwe ho icyaha kandi hari ibimenyetso bikibahamya, cyane cyane ko bose bari bahuriye mu ishyirahamwe rimwe n'abahamijwe icyaha, agasaba ko bategekwa bose gufatanya kumuha indishyi.

[24] Matabaro Joseph avuga ko n'ubwo yahamagajwe mu rukiko ntacyo azi ku rupfu rwa Gashema kuko atigeze agera aho yiciwe kandi akaba anatuye kure yaho. We n'umwunganira basaba ko yakurwa muri dosiye kuko na mbere yari yagizwe umwere.

[25] Iyamuremye n'umwunganira bavuga ko imodoka ye yari itwawe n'umushoferi we witwa Nsengamungu waje kwitaba Imana, ariyo yagiye gushaka Gashema imugejeje mu i Rango abari bayirimo bamukuramo baramukubita baramwica, nyamara ko Iyamuremye nta ruhare yagize mu rupfu rwa Gashema kuko atari ahari.

[26] Ndahindurwa avuga ko muri 1993 yari ashinzwe umutekano iwabo, ko umunsi Gashema yicwa yamwumvise atongana na Hategekimana agiye kureba icyo bapfa, Hategekimana aravuga ngo Gashema naramuka abuze (Ndahindurwa) azabyirengere.

[1]Iyo ngingo ivuga itya : « *Kuba ushinjwa yagizwe umwere mu rwego rwa mbere ntibibuza abaregera indishyi kuba bazijuririra mu rwego rw'ubujurire. Muri icyo gihe, iyo uregera indishyi ajuriye, urubanza rwose rwongera gusuzumwa mu mizi yarwo* ». Ibivugwa muri iyi ngingo bihura n'ibisobanuro by'abahanga mu mategeko nabo bavuga ko ubujurire bw'uregera indishyi busuzumwa gusa ku bijyanye n'indishyi, ko mu gihe Ubushinjacyaha butajuriye, Umucamanza adashobora kwongera ibihano uregwa yahawe mbere. (…..*Le juge d'appel examinera cette question sous le seul angle des dommages-intérêts sans pouvoir prononcer de peine à charge du prévenu si le ministère public n'a pas formé appel.) Reba* M. Franchimont & Ann Jacobs, Adrien Masset, Manuel de procédure pénale, 2ème éd, Larcier, 2006, p.900.

Yongeraho ko mu kanya gato haje imodoka ya Iyamuremye irimo abo yamaze kuvuga haruguru, kandi ko abo bose yabasanze aho Gashema yiciwe bahagarikiye Kivunja, ariko ko we nta ruhare yagize mu iyicwa rya nyakwigendera kandi ko nta n'umugambi yigeze agirana n'abamufashe bakamwica. Akaba asaba kugirwa umwere nk'uko na mbere yari yahanaguweho icyaha.

[27] Uhagarariye Ubushinjacyaha avuga ko ku bagizwe abere bakajuririrwa n'uregera indishyi, ntacyo yavuga ku bijyanye n'icyaha kubera ko Ubushinjacyaha butabajuririye. Yongeyeho ariko ko asanga ibyo Ndahindurwa yabwiye Urukiko ku ruhare rwa bamwe mu baregwa Urukiko rwazabisuzuma.

[28] Matabaro Joseph avuga ko n'ubwo yahamagajwe mu Rukiko ntacyo azi ku rupfu rwa Gashema kubera ko atigeze agera aho yiciwe kandi akaba anatuye kure yaho. We n'umwunganira basaba ko yakurwa muri dosiye kuko na mbere yari yagizwe umwere.

[29] Iyamuremye n'umwunganira bavuga ko imodoka ye yari itwawe n'umushoferi we witwa Nsengamungu waje kwitaba Imana, ariyo yagiye gushaka Gashema imugejeje mu i Rango abari bayirimo bamukuramo baramukubita baramwica, nyamara ko Iyamuremye nta ruhare yagize mu rupfu rwa Gashema kuko atari ahari.

[30] Urukiko rusanga kuri Matabaro, yari yarezwe hamwe n'abandi bahamijwe icyaha hashingiwe ku buhamya bwa Nyiringango, ariko ubwo buhamya bukaba butaragize ikindi kimenyetso kibushyigikira. Kubera iyo mpamvu akaba agomba kugirwa umwere bitewe no kubura ibimenyetso.

[31] Kuri Iyamuremye nawe wari wagizwe umwere, n'ubwo avuga ko nta ruhare yagize mu rupfu rwa Gashema, akavuga gusa ko icyo yemera ari uko imodoka ye ariyo yagiye gushaka Gashema ikanamugeza aho yiciwe, Gahonga Ladislas mu

nyandiko mvugo ye yo ku wa 29/12/1994 na Nsengumuremyi Aloys hamwe na Mwitende Jean Marie mu nyandiko mvugo zabo zo ku wa 5/08/1998 bamushinja ko nawe yagize uruhare mu ifatwa rya Gashema ryakurikiwe no kumwica, kandi nta nenge agaragaza kuri ubwo buhamya. Akaba rero ahamwa n'icyaha.

[32] Urukiko rusanga Ndahindurwa, nawe wagizwe umwere, ashinjwa na Hategekimana mu mvugo ye yamaze kuvugwa, hamwe na Habimana Jean, Gahonga Ladislas na Nsengumuremyi Aloys ko ari mu bafashe Gashema. By'umwihariko umutangabuhamya Nsengumuremyi Aloys yemeje ko Ndahindurwa ari we wazanye umugozi yazirikishije Gashema. N'imbere y'uru Rukiko Ndahindurwa yerekana ko yakurikiye imodoka ngo ariko agasanga bamaze kumwica. Ibi nabyo bihujwe n'ubuhamya byavuzwe, bigaragaza ko yagize uruhare mu iyicwa rya Gashema cyane ko atabashije kwerekana icyo yaba yarakoze nk'uwari ushinzwe umutekano igihe yabonaga Gashema afashwe akanajyanwa n'abantu bari bagamije kumugirira nabi kandi aniyemerera ko yageze aho bagiye banyuza Gashema hose kugeza bamwishe.

[33] Urukiko rurasanga rero Iyamuremye na Ndahindurwa bahamwa n'icyaha, nyamara kuba baragizwe abere ku rwego rwa mbere, Ubushinjacyaha ntibubajuririre ahubwo bakajuririrwa n'uregera indishyi, bituma n'ubwo bahamwa n'icyaha, nta bihano Urukiko rwabagenera, ahubwo uruhare rwabo rugomba gushingirwaho mu gusuzuma ikibazo cy'indishyi nk'uko byasobanuwe haruguru.

c) Ku bijyanye n'indishyi zisabwa na Gatera Egide

[34] Gatera Egide avuga ko asaba abaregwa bose indishyi ziteye gutya :

- Indishyi mbonezamusaruro zingana na 400 Frw ku munsi (igihembo cy'umuhinzi) gukuba n'imyaka 21 nyakwigendera yari asigaje yo kubaho. Asobanura ko izo ndishyi zishingiye ku mpamvu y'uko Gashema wari imfura y'iwabo ari we

witaga kumuryango we, none Gatera nk'umwana wa kabiri niwe wasigaranye izo inshingano.

- Indishyi z'akababaro zingana na 8.000.000 Frws kubera kubura uwo muvandimwe we imburagihe, akicwa azize amaherere cyane azize ubwoko bwe bw'umututsi butari kugira uruvugiro kubera ubutegetsi bubi bw'icyo gihe bwakingiraga ikibaba amashyirahamwe y'abagizi ba nabi, ndetse no kubera igisebo umuryango we wasizwe cyo kwitwa ko wabyaye umwana w'igisambo.

[35] Mbonera, Ntakamaro, Iyamurenye, Matabaro na Ndahindurwa buri wese yavuze ko nta ndishyi akwiye gusabwa kuko nta cyaha afite.

[36] Urukiko rusanga ku bijyanye n'indishyi mbonezamusaruro, Gatera yaratanze ikirego cy'indishyi ku giti cye, bityo rero akaba atazisabira umuryango we wose, kandi ku bimureba, nta bimenyetso yatanze bigaragaza ko Gashema yari afite inshingano yo kumwitaho ku buryo yagenerwa indishyi z'ibyo yaba yaratakaje kubera kumubura.

[37] Ku bijyanye n'indishyi mpozamarira, Urukiko rusanga Gatera akwiye kuzigenerwa kubera umuvandimwe we wishwe ku bw'amaherere nyuma yo gushinyagurirwa nk'uko dosiye ibigaragaza, ariko kuko 8.000.000 Frw asaba ari ikirenga, Urukiko rukaba rugomba kuzigena mu bushishozi bwarwo rwitaye ku gahinda yatewe n'iyicwa rya Gashema n'uburyo yishwemo; bityo akaba akwiye kugenerwa 2.000.000 Frw, kandi hashingiwe ku byasobanuwe haruguru, akazihabwa n'abahamwe n'icyaha bose ari bo Mbonera, Ntakamaro, Iyamurenye na Ndahindurwa, hamwe na Kivunja, Kayijuka na Kayitaba bahamwe n'icyaha ariko ntibajurire.

[38] Urukiko rusanga kandi Gatera akwiye kugenerwa amafaranga y'ikurikiranarubanza ahwanye na 200.000 Frw agenwe mu bushishozi bw'Urukiko hakurikijwe igihe uru rubanza

rwatangiriye n'uko uziregera aturuka kure ; akwiye kandi kugenerwa amafaranga y''igihembo cya avoka wamuburaniye ahwanye na 300.000 Frw kuri buri rwego, ni ukuvuga 600.000 Frw ku nzego zombi. Bityo indishyi zose hamwe Gatera agomba guhabwa na Mbonera, Ntakamaro, Iyamurenye Ndahindurwa, Kivunja, Kayijuka na Kayitaba zikaba ari 2.000.000 Frw + 200.000 Frw + 600.000 Frw, zose hamwe zikaba 2.800.000 Frw.

III. ICYEMEZO CY'URUKIKO

[39] Rwemeje ko ubujurire bwa Mbonera Protais, Ntakamaro Adrien na Kayijuka Bonaventure nta shingiro bufite ;

[40] Rwemeje ko ubujurire bwa Gatera bufite ishingiro kuri bimwe ;

[41] Rutegetse Mbonera, Ntakamaro, Kayijuka, Iyamuremye Ndahindurwa Kivunja na Kayitaba gufatanya kwishyura Gatera indishyi zihwanye na 2.800.000 Frw, bakanafatanya kuyatangira 4 % y'umusogongero wa Leta, ahwanye na 112.000 frw, batayatanga mu gihe cy'ukwezi akavanwa mu byabo ku ngufu za Leta;

[42] Rubategetse gufatanya gutanga amagarama y'urubanza angana na 41.950 Frw abariyemo n'ayo mu Rukiko Rukuru, batayatanga mu gihe cy'iminsi umunani, bagafungwa iminsi cumi n'itanu y'ubugwatiramubiri, ayo mafaranga akavanwa mu byabo ku ngufu za Leta.

[43] Ruvuze ko urubanza rwajuririwe ruhindutse kuri bimwe.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KU WA 27/01/2012 N'URUKIKO RW'IKIRENGA.

Sé
MUGENZI Louis Marie
Perezida

Sé
MUKAMULISA M-Thérèse
Umucamanza

Sé
MUNYANGERI N.Innocent
Umucamanza

Sé
GAKURU Ahmed
Umwanditsi

2. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RPA0043/09/CS
ITARIKI Y'URUBANZA: 18/11/2011
HABURANA: UBUSHINJACYAHA na Pte HABUFITE Vincent

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA-UBURENGANZIRA BWO KUNGANIRWA-UBURENGANZIRA BUDASHOBORA GUHUNGABANYWA-KUTUBAHIRIZA IRYO HAME-IBYEMEZO BYAFASHWE BITESHWA AGACIRO.

.KWIMWA UBURENGANZIRA BWO KUNGANIRWA-IKOSA RIKOMEYE-GUTA AGACIRO KW'IMIBURANIRE YA MBERE-URUKIKO RWAJURIRIWE RUSUZUMA BWA MBERE IBIJYANYE N'ICYAHA.

.UWAREZWE AFUNZE-GUKOMEZA KUMERA ATYO KUGEZA IGIHE URUBANZA RUCIRIWE.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Mu gihe ihame ryo kwiregura no kunganirwa mu bihe byose, ahantu hose, mu nzego zose z'ubutegetsi, iz'ubucamanza n'izindi zose zifata ibyemezo ritubahirijwe, igihano cyabyo ni uko imihango yose yakozwe iteshwa agaciro.

-Iyo Urukiko rwaciye urubanza hatubahirijwe ihame ryo kwiregura no kunganirwa, urubanza rwaciwe ruta agaciro, urukiko rwajuririwe rugasuzuma bundi bushya imiburanire ijyanye n'icyaha uregwa akurikiranyweho.

-Niba uwarezwe yari afunzwe mbere y'urubanza, ari muri gereza cyangwa yarafunguwe by'agateganyo ku munsi Urukiko rwaregeweho, akomeza kumera atyo kugeza igihe urubanza ruciriwe.

URUKIKO RW'IKIRENGA RURI I KIGALI RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA, RUHAKIRIJE MU RUHAME URUBANZA RPA 0043/09/CS NONE KUWA 18/11/2011 MU BURYO BUKURIKIRA :

HABURANA :

UBUSHINJACYAHA
na

Pte HABUFITE Vincent (uregwa wajuriye) : mwene NGAMIJE Phénéas na SIYOMALI Concessa , wavukiye mu Karere ka Karongi, Intara y'Iburengerazuba mu mwaka w'1979, umusirikare mu ngabo z'u Rwanda, abarizwa muri 3rd Bn, ingaragu.

ICYAHA GIKURIKIRANYWE :

Pte HABUFITE Vincent n'abandi bataramenyekana baregwa kuba ku itariki ya 5/6/2008, bari i Mukamira mu Karere ka Nyabihu, barishe babigambiriye umukobwa witwa NYIRAGUHIRWA Marie Jeanne alias MALINGA, ingingo za 90 na 312 z'igitabo cy'amategeko ahana y'u Rwanda.

I. IMITERERE Y'URUBANZA

(1) Urukiko Rukuru rwa Gisirikare rwaregewe icyaha Pte HABUFITE Vincent akurikiranyweho, maze igihe rutangiye iburanisha kuwa 23/02/2009, rubanza kubaza Pte HABUFITE niba yemera icyaha, asubiza ko atacyemera, abajijwe niba araburana, asubiza ko ataburana, ko agishakisha umwunganira ; ko yatumye iwabo mu rugo ngo bamumushakire, akaba atarabona igisubizo ; akaba adashobora kwiburanira kandi nta mategeko azi.

(2) Nyuma y'aho Urukiko Rukuru rwa Gisirikare rwafashe icyemezo cy'uko iburanisha ry'urubanza rikomeza mu mizi y'urubanza, Pte HABUFITE asabwa kwiregura ku cyaha aregwa. Urubanza rucibwa kuwa 24/02/2008, Urukiko ruhanisha PTE HABUFITE igifungo cya burundu ku cyaha yahamijwe cyo kuba, afatanije n'abandi bataramenyekana barishe babigambiriye umukobwa witwa NYIRAGUHIRWA Mari Jeanne alias MALINGA. Mu kumuhamya icyo cyaha, Urukiko rwashingiye ku mvugo y'uwitwa Furaha waje kwigamba ko azi uburyo Malinga yapfuye, ko mu bamwishe harimo Pte HABUFITE.

(3) PTE HABUFITE yajuriye mu Rukiko rw'Ikirenga avuga ko atemera icyaha ; akaba asanga imvugo ya Furaha imushinja nta kuri kurimo kubera ko mbere yari yarashinje undi muntu witwa HAKUZA.

(4) Urubanza rwaburanishijwe mu ruhame muri uru Rukiko kuwa 17/10/2011, PTE HABUFITE yunganirwa na Maitre RUGEYO Jean, naho ubushinjacyaha bwa Gisirikare buhagarariwe na Lt NTAMUKUNZI.

(5) Mbere ariko y'uko iburanisha mu mizi ritangira, HABUFITE n'umwunganira basabye Urukiko kubanza gusuzuma inzitizi batanze y'uko iburanisha ry'urubanza ryabereye mu Rukiko Rukuru rwa Gisirikare, ryanyuranije n'ingingo ya 39 y'itegeko n°13/2004 ryo kuwa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu, ndetse n'ingingo ya 18 y'itegeko nshinga, bitewe n'uko PTE HABUFITE yimwe uburenganzira bwo gushaka umwunganira, akaba asaba ko urwo rubanza rwaba impfabusa, maze agahita afungurwa.

II. IBYASUZUMWE N'URUKIKO

- **Ni iyihe ngaruka ku rubanza rwaciwe umuburanyi yimwe uburenganzira bwo gushaka umwunganira?**

(6) Kuri iki kibazo, Me RUGEYO wunganira PTE HABUFITE avuga ko uyu yasabye Urukiko Rukuru rwa Gisirikare kumushakira umwunganira kubera ko atazi iby'amategeko, ariko ngo Perezida w'iburanisha amusubiza ko ikibazo atari amategeko, ari bwo yafataga icyemezo cyo kuburanisha urubanza atunganiwe; akaba asanga ibyo binyuranyine n'ingingo ya 18 y'itegeko nshinga, akaba asaba Urukiko rw'Ikirenga kubanza gusuzuma iyo nzitizi rukavuga ko urubanza rwaciwe n'Urukiko Rukuru rwa Gisirikare runyuranyije n'itegeko nshinga, maze rugategeka ko urwo rubanza ruvanwaho (annulé), PTE HABUFITE akarekurwa nta kindi bisabye (sans conditions) bitewe n'uko uburenganzira bwe bw'ibanze bwabangamiwe.

(7) Me RUGEYO yongeyeho ko igihe cyose uregwa agaragaje icyifuzo cyo kunganirwa ubwo burenganzira, agomba kubuhabwa, cyane cyane ko bwari ubwa mbere PTE HABUFITE yitabye ubutabera kandi aregwa icyaha gikomeye, ibyo bikaba bigomba gutuma atimwa amahirwe yo kunganirwa.

(8) Uhagarariye Ubushinjacyaha yavuze ko bemera koko ko ari uburenganzira bw'UREGWA bwo kunganirwa, ko ariko si ko buri gihe bishoboka; bakaba basanga ibyo bitatuma urubanza rwose rwaburanishijwe uregwa atunganiwe ruteshwa agaciro keretse habonetse iyindi nenge. Byongeye kandi akaba asanga nta "obligation" iryo tegeko riha Urukiko ryo gushakira umuburanyi umwunganira.

(9) Yakomeje avuga ko Urukiko rwabajije PTE HABUFITE niba hari imyiteguro yatangiye yo gushaka Avocat asubiza ko nta we arabona, aho urubanza rutangiriye kuburanishwa yemera kuburana, ku buryo yagiye asubiza ku bibazo byose yabazwaga yiregura, asanga nta burenganzira bwe bwahungabanijwe.

(1) Kuri iki kibazo kijyanye n'uburenganzira bwo kunganirwa, Urukiko rurasanga ingingo ya 18 y'itegeko nshinga yemerera ukurikiranyweho icyaha kumenyeshwa imiterere n'impamvu yacyo, kwiregura, no kunganirwa ahantu hose kandi mu bihe byose, ubwo burenganzira bukaba budashobora guhungabanywa.

(2) Igihano cyo kutubahiriza ayo mahame ni uko ibyemezo biba byafashwe biteshwa agaciro. Ibyo biboneka mu bisobanuro by'imanza zinyuranye zagiye zicibwa kuri iki kibazo.

(3) Mu rubanza rwaciwe n'Urukiko Rusesa Imanza rwo mu Bufaransa, urwo Rukiko rwatesheje agaciro urubanza rwari rwaciwe n'Urukiko rw'Ubujurire rwa Douai kuwa 02/12/2009, bitewe n'uko rwaciwe uregwa adafite umwungaira. Urukiko Rusesa Imanza rwibukije ko *mu bihe byose, iyo umuburanyi yitabye mu rubanza nshinjacyaha, uyu afite uburenganzira bwo kunganirwa; ko iyo ukurikiranyewho icyaha yitabye ari wenyine, Urukiko rufite inshingano yo kumwibutsa ubwo burenganzira, rukumva neza niba adakeneye kugira umwunganira[1].*

(4) Mu rundi rubanza rwaciwe nanone n'Urukiko Rusesa Imanza rwo mu Bufaransa urwo Rukiko rwatesheje agaciro urubanza rwari rwaciwe n'Urukiko rw'Ubujurire rw'i Paris kuwa 24/03/2010, bitewe n'uko rwanze isubikwa ry'urubanza ryari ryasabwe n'*ukurikiranyewho icyaha wifuzaga kubanza kubona umwunganira, rwitwaza ko yabonye igihe cyo gutegura imiburanire ye.[2]*

[1] Cass, Crim, arret 10-80551, du 24/11/2010, Bulletin Criminel 2010, no 188 (Legifrance.gouv.fr)
[2] Cass, Crim, arret 10-82772, du 24/11/2010, Bulletin Criminel 2010, no 189 (Legifrance.gouv.fr)

(5) Si aho gusa ariko, kuko no mu rubanza rwa Kartritsh arega Ubufaransa rwaciriwe i Strasbourg kuwa 04/11/2010 n'Urukiko rw'i Burayi rwerekeye uburenganzira bw'ikiremwamuntu, icyo kibazo cyagarutsweho, biturutse ku rubanza rwaciwe kuwa 27/11/2006 n'Urukiko rw'Ubujurire rw'i Amiens, aho rwakatiye uregwa (Kartritsh) igifungo cy'umwaka umwe, rukanategeka ko yirukanwa ku butaka bw'u Bufaransa, nyamara uregwa yari yasabye isubikwa ry'urubanza kugirango ashobore gutegura ukwiregura kwe abifashijwemo n'Avoka batangiranye.

(6) Ikirego cye gisaba iseswa ry'urwo rubanza kimaze kwangwa, Kartritsh yatanze ikirego mu Rukiko rw'i Burayi rwerekeye uburenganzira bw'ikiremwamuntu, uru Rukiko ruza kwemeza ko kuba umuburanyi yarangiwe isubikwa ry'iburanisha ry'urubanza rwe, inkiko zanyuranije n'uburenganzira buhabwa umuburanyi bwo kubona igihe n'ibyangombwa akeneye kugirango ategure ukwiregura kwe, kandi abone umwunganira.

(7) Urukiko rwibukije ko ubwo bwari ubwa mbere umuburanyi yitaba abacamanza baburanisha mu mizi urubanza rwe, iburanisha mu bujurire ryamuhaga amahirwe mbonekarimwe yo kugirango yisobanure ku byo aregwa (*La Cour relève …. que le requérant comparaissait pour la première fois devant les juges du fond et que l'audience d'appel représentait l'unique occasion pour lui de se faire entendre sur les faits qui lui étaient reprochés*)[3].

(8) Ibisobanuro bimaze gutangwa mu manza zibukijwe haruguru birumvikanisha ko uburenganzira bwo kwiregura bufite agaciro gakomeye nk'uko bivugwa mu ngingo ya 18 y'itegeko nshinga; rukaba rusanga mu gihe iryo hamwe ritubahirijwe, igihano cyabyo ari uko imihango yose yakozwe iteshwa agaciro.

[3] Cour Européenne des droits de l'homme, arrêt du 04/11/2010 Kartritsh c. France,

(18) Kuba rero muri uru rubanza, Pte HABUFITE yarimwe n'Urukiko Rukuru rwa Gisirikare uburenganzira bwo gushaka umwunganira, Urukiko rurasanga ari ikosa rikomeye rigomba gutuma urubanza rwaciwe rutagira agaciro, Urukiko rwajuririwe rukaba rugomba gusuzuma bundi bushya imiburanire ijyanye n'icyaha Pte HABUFITE akurikiranyweho.

- **Kumenya niba uregwa utarahawe umwunganira yafungurwa mu bujurire**

(19) Urukiko rurasanga ku bijyanye no gufungurwa Pte HABUFITE yifuza, ingingo ya 116 y'itegeko nº 13/2004 ryo ku wa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko mu gihe *"uwarezwe yari afunzwe mbere y'urubanza, ari muri gereza ….. ku munsi urukiko rwaregeweho, akomeza kumera atyo kugeza igihe urubanza ruciriwe....".*

(20) Hashingiwe ku bivugwa n'iyo ngingo, Urukiko rurasanga ubwo Pte HABUFITE yari asanzwe muri gereza igihe yashyikirizwaga Urukiko Rukuru rwa Gisirikare, agomba kumera atyo kugeza igihe uru Rukiko ruzafatira icyemezo ku rubanza rwe, bityo ibyo asaba byo gufungurwa ataraburana bikaba nta shingiro bifite.

III. ICYEMEZO CY'URUKIKO RW'IKIRENGA

(19) Rwemeye kwakira inzitizi yatanzwe na Pte Habufite Vincent kuko yatanzwe mu buryo n'inzira bikurikije amategeko.

(20) Rwemeje ko iyo nzitizi ifite ishingiro kuri bimwe

(21) Rwemeje ko Urukiko rw'Ikirenga rwajuririwe ruzasuzuma bundi bushya imiburanire ijyanye n'icyaha Pte HABUFITE akurikiranyweho.

(22) Rwemeje ko iburanisha mu mizi y'urubanza rizasubukurwa

ku itariki ababuranyi bazamenyeshwa n'ubwanditsi bw'Urukiko.

(23) Rutegetse ko amagarama y'urubanza abaye asubitswe.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 18/11/2011

Sé
MUTASHYA Jean Baptiste
Perezida

Sé
HATANGIMBABAZI Fabien
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
RUKUNDAKUVUGA Olivier
Umwanditsi

IMANZA Z'IMBONEZAMUBANO

3. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCAA003/10/CS
ITARIKI Y'URUBANZA: 06/01/2012
HABURANA: GAKWAYA Emmanuel / Fonds de Garantie Automobile (FGA)

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO-GUSUBIRISHAMO URUBANZA INGINGO NSHYA-KUJURIRA ICYEMEZO CYAFASHWE KU KIREGO GISABA GUSUBIRISHAMO URUBANZA INGINGO NSHYA-KUTAKIRA UBUJURIRE KU RUBANZA RUSUBIRISHAMO INGINGO NSHYA.

.INDISHYI Z'IKURIKIRANA RUBANZA-IGIHEMBO CY'AVOKA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Urubanza ruciwe ku kirego gisaba gusubirishamo urubanza ingingo nshya ruba rubaye itegeko nk'uko urwasabirwaga gusubirishwamo ingingo nshya narwo rwari rwarabaye itegeko, bityo rero rukaba rutakorerwa ubujurire busanzwe, bivuze ko ubujurire ku cyemezo gifashwe ku kirego cyasabaga gusubirishamo urubanza ingingo nshya budashobora kwakirwa.

- Iyo ubujurire butakiriwe nta ndishyi zitangwa nyamara umuburanyi yemerewe gusaba kugenerwa amafaranga y'ikurikiranarubanza kimwe n'ay'igihembo cy'Avoka.

URUKIKO RW'IKIRENGA RURI I KIGALI,RUBURANISHA IMANZA Z'IMBONEZAMUBANO, RUKIJIJE MU RUHAME KUWA 06/01/2012, URUBANZA N° RCAA 0003/10/CSMU BURYO BUKURIKIRA:

HABURANA :

<u>Uwajuriye</u> : **GAKWAYA Emmanuel**, mwene Mulindwa Zacharie na Ugiriwabo Andronique, utuye Ruhashya, Umurenge wa Rugogwe, Akarere ka Huye, Intara y'Amajyepfo.

Uregwa: Fonds de Garantie Automobile (FGA) mu izina ry'Umuyobozi Mukuru wayo.

Ikiburanwa :

- Indishyi zikomoka ku bintu byanjye byangijwe n'impanuka y'imodoka yabaye kuwa 30/01/1998 i Rusatira ;
- Indishyi zikomoka ku gihombo natewe n'iyo mpanuka zihwanye na 13.317.121 Frw.

Ikiregerwa muri uru rukiko :

- Kujuririra icyemezo N°RCIV0069/10/Pré-ex/CS cy'ibanzirizasuzuma cyafashwe kuwa 15/10/2010mu rubanza N° RCAA0003/10/CS

IMITERERE Y'URUBANZA

1. Ku bujurire bwa Fonds de Garantie Automobile mu rubanza yari yarezwemo na GAKWAYA Emmanuel asaba indishyi z'ibintu bye byangirikiye mu mpanuka y'imodoka yabereye i Rusatira mu Karere ka Nyanza, Urukiko Rukuru, urugereko rwa Nyanza rwemeje ko nta mafaranga agomba guhabwa, rumutegeka kwishyura Fond de Garantie Automobile amafaranga 500.000 y'igihembo cya avoka n'ingendo.

2. GAKWAYA yasubirishijemo urubanza RCA 1345/05/HC/NYA rwo kuwa 13/07/2007 ingingo nshya mu Rukiko Rukuru, urugereko rwa Nyanzarwemeje ko ikiregocye kitakiriwe kuko ibimenyetso ashingiraho byari bisanzwe muri dosiye.

3. GAKWAYA yajuririye Urukiko rw'Ikirenga, umucamanza w'ibanzirizasuzuma yemeza ko ubujurire bwe butakiriwe kubera ko bwakorewe urubanza rutajuririrwa. GAKWAYA yamenyeshejwe iki cyemezo tariki ya 08/12/2010, akijuririra tariki ya 23 z'uko kwezi ni ukuvuga mu gihe cy'iminsi 15 iteganywa n'ingingom ya 55 y'Itegeko Ngenga nº 01/2004 ryo kuwa 29/01/2004 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu, avuga ko umucamanza w'ibanzirizasuzuma yirengagije ibiteganywa n'amategeko kuko Urukiko rw'Ikirenga arirwo rufite ububasha bwo kuburanisha imanza zaciwe n'Urukiko Rukuru mu rwego rwa kabiri. Ikindi ngo ni uko umucamanza avuga ko imanza zasubirishijwemo ingingo nshya zitajuririrwa aterekana amategeko ashingiraho.

4. Iburanisha ry'urubanza mu ruhame ryabaye tariki ya 06/12/2011, GAKWAYA Emmanuel yiburanira naho Fond de Garantie Automobile ihagarariwe na Me Uwimana Juvénal.

I. **ISESENGURA RY'IBIBAZO BIGIZE URUBANZA**

a. **Kumenya niba ubujurire bwa GAKWAYA ku rubanza rusubirishamo urundi ingingo nshya bushobora kwakirwa**

5. GAKWAYA avuga ko umucamanza w'ibanzirizasuzuma yemeje ko ubujurire bwe butakiriwe kubera ko bwakorewe urubanza rutajuririrwa yirengagije ibiteganywa n'ingingo ya 108 y'Itegeko Ngenga n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere,imikorere n'ububasha by'inkiko iteganya ko imanza zaciwe ku rwego rwa kabiri n'Urukiko Rukuru zijuririrwa mu Rukiko rw'Ikirenga, ko kandi ibyo avuga ko imanza zasubirishijwemo ingingo nshya zitajuririrwa aterekana itegeko ashingiraho kuko we asanga ikitabujijwe n'amategeko kiba cyemewe. Avuga kandi ko mu gusuzuma ubujurire bwe umucamanza yibeshye, kuko yavuze ko urubanza yajuririye muri uru rukiko ari RCA 0084/09/HC/NYA kandi we yarajuririye imanza ebyiri zigize urubanza rumwe, ni ukuvuga RCA 0084/09/HC/NYA na RCA 1345/05/HC/NYA .

5. Akomeza avuga ko muri rumaze ya 3 umucamanza yerekanye ko urubanza RCA 0084/09/HC/NYA rwajuririwe mu Rukiko rw'Ikirenga rwaciwe ku rwego rwa kabiri n'Urukiko Rukuru, bivuze ko urwo rubanza rujuririrwa rwaburanishwa n'Urukiko rw'Ikirenga mu gihe rwaba rwujuje ibiteganywa n'ingingo ya 43y'Itegeko Ngenga nº 01/2004 ryo kuwa 29/01/2004 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu. Avuga kandi ko nta mpamvu ubujurire bwe butakwakirwa ngo buburanishwe n'Urukikorw'Ikirenga kuko arirwo ingingo ya 45 y'Itegeko Ngenga nº 01/2004 ryo kuwa 29/01/2004 ryahaye ububasha bwo gusubiramo urubanza rwaciwe burundu. Mu gusoza asaba uru rukiko kwemeza ko urubanzaRCA 1345/05/HC/NYArwaciwe kuwa 13/07/2007 n'urubanza RCA 0084/09/HC/NYA rwaciwe kuwa 30/11/2009 ku rwego rwa kabiri ziri mu bubasha bw'uru rukiko.

6. Me Uwimana Juvénal uhagarariye Fonds de Garantie Automobile avuga ko imanza zasubirishijwemo zikajuririrwa mu Rukiko rw'Ikirenga zivugwa mu ngingo ya 108 y'Itegeko Ngenga nº 51/2008 ryo kuwa 09/09/2008 ryerekeye imitunganyirize, imikorere n'ububasha by'inkiko ari izakorewe « opposition » mu Rukiko Rukuru, zikaba zitandukanye n'izasubirishijwemo ingingo nshya (recours en révision) nk'urubanza nºRCA 0084/09/HC/NYA.

7. Akomeza avuga ko ibivugwa na GAKWAYA ko umucamanza w'ibanzirizasuzuma atagaragaza ingingo y'itegeko ashingiraho yemeza ko imanza zasubirishijwemo ingingo nshya zitajuririrwa nta shingiro bifite kuko mu cyemezo yafashe bigaragara ko yashingiye ku ngingo ya 56 y'Itegeko Ngenga nº 01/2004 ryo kuwa 29/01/2004 ryavuzwe haruguru avuga ko urwo rubanza rwajuririwe rutari mu bubasha bw'Urukiko rw'Ikirenga kandi ko nta rundi rukiko rwahawe ubwo bubasha, anashingira kandi ku ngingo za 43 na 45 z'itegeko ryavuzwe, yemeza ko nta na hamwe hateganyijwe ko Urukiko rw'Ikirenga rujuririrwa imanza zasubirishijemo izindi ingingo nshya.

8. Yongeraho ko icyemezo cy'ibanzirizasuzuma gihura kandi n'ibiteganywa n'ingingo ya 189 igika cya gatatu, 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 rikuzuzwa kugeza ubu, iteganya ko « iyo gusubirishamo urubanza bitemewe, urubanza ruciwe rugomba gutegeka ko urubanza rwa mbere rugomba kurangizwa nk'uko rwaciwe nta gihindutse na busa ».

9. Mu gusoza, Me Uwimana avuga ko ibyo umucamanza w'ibanzirizasuzuma yemeje bihura n'ibyanditswe n'umuhanga mu mategeko Serge GUINCHARD[4]uvuga ko Urukiko rw'ubujurire rwa RIOM mu Bufaransa rwanze kwakira ubujurire ku rubanza rwaciwe ku kirego gisaba gusubirishamo urubanza ingingo nshya kubera ko urubanza rwa mbere rwari rwaraciwe ku rwego rwa nyuma, akaba rero asanga ubujurire bwa GAKWAYA budakwiye kwakirwa.

10. Ku byerekeranye n'urubanza rwajuririwe muri uru rukiko, Urukiko rurasanga mu mwanzuro utanga ubujurire GAKWAYA yashyikirije ubwanditsi b'uru rukiko kuwa 09/12/2009, hagaragaramo ko urubanza yajuririye ari urufite nº RCA 0084/09/HC/NYA rwaciwe kuwa 30/11/2009 n'Urukiko Rukuru, urugereko rwa Nyanza, uru rubanza rukaba rukomoka ku kirego gisubirishamo ingingo nshya urubanzanºRCA 1345/05/HC/NYA. Urukiko rurasanga iyi nyandiko ye y'ubujurire ihamya ku buryo budashidikanywaho ko urubanza yajuririye ari nº RCA0084/09/HC/NYA rwasubirishagamo ingingo nshya urubanza nºRCA 1345/05/HC/NYA, bityo ubujurire burebana narwo akaba aribwo bwagombaga gusuzumwa mu ibanzirizasuzuma.

[4]Serge GUINCHARD, Droit et Pratique de la Procédure Civile, Dalloz, 1999, p 1278, dit que la Cour de RIOM a refusé de déclarer recevable l'appel d'un jugement statuant sur le recours en révision au motif que le jugement originaire était en dernier ressort. Elle a ainsi refusé de considérer que l'instance en révision était autonome de l'instance d'origine.

11. Urukiko rurasanga gusubirishamo urubanza kuvugwa mu ngingo ya 108 y'Itegeko Ngenga nº 51/2008 ryo kuwa 09/09/2008 GAKWAYA ashingiraho ubujurire bwe ntaho guhuriye no gusubirishamo urubanza ingingo nshya kuko urubanza rusabwa gusubirishwamo (rukorewe opposition) ari urwaciwe umwe mu baburanyi adahari, kandi ko rwongera kuburanishwa n'urukiko rwaruciye rukaba rero ntaho ruhuriye n'urubanza rusubirishwamo ingingo nshya kuko rwo ruba rwaramaze kuba itegeko, bivuga ko inzira z'ubujurire zisanzwe ziba zitagishobotse kuri rwo.

12. Ku byerekeranye n'Urukiko rufite ububasha bwo kuburanisha ubujurire ku manza zasubirishijwemo ingingo nshya, urukiko rurasanga haba mu ngingo ya 43y'Itegeko Ngenga nº 01/2004 ryo kuwa 29/01/2004 ivugwamo ububasha busanzwe bw'uru rukiko, haba no mu ngingo yaryo ya 45 ivugwamo ububasha bwarwo budasanzwe, nta hateganyijwe ko Urukiko rw'Ikirenga rujuririrwa urubanza rwaciwe ku kirego gisaba gusubirishamo urubanza ingingo nshya.

13. Uwo ni nawo murongo wafashwe n'uru rukiko mu zindi manza zaciwe ku kibazo nk'iki (RCOM A 001/06/CS rwo kuwa 02/02/2007, RCAA 0026/05/CS rwo kuwa 22/02/2008 na RCAA 0065/09/CS rwo kuwa 20/07/2009), uwo murongo ukaba wasobanurwa ni uko urubanza ruciwe kuri « recours en révision » ruba rwarabaye itegeko nk'uko urwasabirwaga gusubirishwamo ingingo nshya narwo rwari rwarabaye itegeko, ko rero rutakorerwaubujurire busanzwe. Uwo murongo kandi wafashwe kuri iki kibazo unahura n'ibyo bamwe mu bahanga mu mategeko bavuga [5], bikanahura kandi n'ibyemejwe mu rubanza rwaciwe i RIOM mu Bufaransa rwavuzwe n'uburanira Fonds de Garantie Automobile.

[5]Albert FETTWEIS, Manuel de Procédure Civil, 2 ème édition, Faculté de Droit de Liège, 1987, p578-579, n° 914. Il n'existe pas d'appel contre une décision rendue à la suite d'une requête civile (procédure, qui dans notre législation a été remplacée par le recours en révision, mais qui sont pratiquement les mêmes) car il s'agit d'une voie de rétractation portée devant un juge qui a redu une décision passée en force de chose jugée. La requête civile ne peut avoir pour effet de rouvrir contre cette décision un délai d'appel expiré.

14. Ku birebana n'uru rubanza rero, urukiko rurasangaubujurire ku rubanzanº RCA 0084/09/HC/NYArwaciwe kuwa 30/11/2009 n'Urukiko Rukuru, urugereko rwa Nyanza, rutarashoboraga kwakirwa n'Urukiko rw'Ikirenga, bityo kuba umucamanza yaremeje mu cyemezo cy'ibanzirizasuzuma ko urubanza rwaciwe ku kirego gisaba gusubirishamo urundi ingingo nshya kitajuririrwa ntaho yanyuranyije n'amategeko, ubujurire bwa GAKWAYA Emmanuel bukabarero nta shingiro bufite.

a. Kumenya niba amafaranga y'igihembo cya Avoka Fonds de Garantie Automobile isaba ikwiye kuyahabwa

15. Me Uwimana Juvénal uhagarariye Fonds de garantie Automobile asaba ko GAKWAYA yayishyura amafaranga 500.000 y'igihembo cy'avoka n'ikurikirana rubanza kubera kuyishora mu manza.

16. GAKWAYA avuga ko Fonds de Garantie nta ndishyi ikwiye ngo kuko urubanza rutaragera mu iburanisha mu mizi.

17. Urukiko rurasanga kuba Fonds de Garantie Automobile yarakomeje gukurikirana uru rubanza kuri uru rwego, ikwiye kugenerwa amafaranga y'igihembo cya avoka n'ikurikiranarubanza ariko ko ibihumbi magana atanu (500.000 Frw) yagenewe ku rwego rwa mbere ari mu rugero rukwiye akaba ariyo agomba kugumaho.

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

18. Rwemeje kwakira ubujurire bwa GAKWAYA Emmanuel ku cyemezo cy'ibanzirizasuzuma ariko bubusuzumye rusanga nta shingiro bufite.

19. Rwemeje ko icyemezo cy'ibanzirizasuzuma nº RCIV 0069/ Pré-ex/10/CS cyo kuwa 16/11/2010 kidahindutse.

20. Rutegetse GAKWAYA kwishyura Fonds de Garantie Automobile amafaranga y'igihembo cy'avoka

n'ikurikiranarubanza angana n'ibihumbi magana atanu (500.000 Frw) yari yagenewe n'Urukiko Rukuru.

21. **Rumutegetse** kandi kwishyura amafaranga 4% y'umusogongero wa Leta ahwanye n'amafranga 20.000.

22. **Rumutegetse**na none kwishyura amagarama y'urubanza angana na 75.550 Frw,abariwemo n'ayo yaciwe n'Urukiko Rukuru, atayatanga mu gihe cy'iminsi 8, ayo mafaranga agakurwa mu bye ku ngufu za Leta.

RUKIJIJWE GUTYO KANDI RUSOMEWE MU RUHAME KUWA 06/01/2012

Sé
MUKANYUNDO Patricie
Perezida

Sé
KANYANGE Fidélité
Umucamanza

Sé
MUKANDAMAGE M. Josée
Umucamanza

Sé
GAKURU Ahmed
Umwanditsi w'Urukiko

4. URUKIKO RUKURU

N° Y'URUBANZA: RCA0017/10/CS
ITARIKI Y'URUBANZA: 20/06/2011
HABURANA: KAGAME Alexis / MUSONI Théophile

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO- KURANGIZA URUBANZA-KUGURISHAMU CYAMUNARA UMUTUNGO UTIMUKANWA-ICYEMEZO CY'UMUCAMANZA-KWIMURA ICYAMUNARA-KONGERA GUSABA ICYEMEZO CY'UMUCAMANZA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Kurangiza urubanza ku bijyanye no guteza mu cyamunara umutungo utimukanwa ni ngombwa icyemezo cy'umucamanza, iyo habonetse impamvu ituma cyamunara yimurwa umuhesha w'Urukiko agomba kongera gusaba icyemezo cy'umucamanza kiyimurira ku yindi tariki.

URUKIKO RUKURU, URUGEREKO RWA RWAMAGANA RUHABURANISHIRIZA IMANZA Z'IMBONEZAMUBANO KU RWEGO RW'UBUJURIRE, RUKIJIJE MU RUHAME, NONE KU WA 20/06/2011, URUBANZA RCAA 0017/10/HC/RWG MU BURYO BUKURIKIRA :

Haburana :

Urega: **KAGAME Alex**, mwene KIMONYO Mathias na MUKARUKAKA Didacienne, utuye mu murenge wa Kimironko, akagari ka Gasabo, umujyi wa Kigali.

Uregwa: **MUSONI Théophile,** mwene MURUNGO na MUKAMUSONI, utuye mu mudugudu w'Isangano - Kabuga, akagari ka Karenge, umurenge wa Kibungo, akarere ka Ngoma, Intara y'Iburasirazuba. Ahagarariwe na Me RUTURWA Esron.

Ikiregerwa: Kujuririra urubanza RC 0070/09/TGI/Ngoma, rwaciwe kuwa 18/06/2010 n'Urukiko Rwisumbuye rwa Ngoma.

I. IMITERERE Y'URUBANZA

[1] Urukiko rw'Ubucuruzi rwa Nyaragenge, rwaciye ku wa 25/04/2008 urubanza RC Com 064/08/Nyge rutegeka MUSONI Théophile guha Banki y'Abaturage y'u Rwanda amafaranga 4.845.742. Mu kurangiza urwo rubanza ku wa 17/07/2009 habaye cyamunara y'inzu ya MUSONI iri mu karere ka Rwamagana mu kibanza n° 1020. Bisabwe na nyiri inzu cyamunara yimurirwa ku wundi munsi. Ku wa 04/08/2009 cyamunara yarabaye inzu igurwa na GASHUMBA. MUSONI Théophile yareze mu rukiko Rwisumbuye rwa Ngoma KAGAME Alex Umuhesha w'inkiko w'umwuga, asaba ko irangiza ry'urubanza RC Com 064/08/Nyge riteshwa agaciro kubera ko ritubahirije amategeko. GASHUMBA yarugobotsemo.

[2] Mu rubanza RC 0070/09/TGI/Ngoma, urwo rukiko rushingiye ku ngingo ya 304 y'itegeko ryerekeye Imiburanishirize y'Imanza z'Imbonezamubano, iz'Umurimo n'Ubutegetsi iteganya ko "Iyo urimo umwenda, iyo yumwa ko igiciro gitanzwe ari gitoya cyangwa kidakwiye ashobora gusaba ko icyamunara gishyirwa ku wundi munsi, ariko udashobora kurenga ukwezi kuva umunsi icyamunara cya mbere cyatangiriye gutezwa. Icyemezo cy'umucamanza ni ngombwa kugirango icyo gihe cyongerwe", rwasanze KAGAME yarirengagije iyo ngingo ateza cyamunara atongeye kubisabira icyemezo cy'umucamanza. Rwategetse ko cyamunara yo ku wa 04/08/2009 aho Umuhesha w'inkiko w'umwuga (huissier) KAGAME yateje cyamunara inzu ya MUSONI ikagurwa na GASHUMBA iteshejwe agaciro. Rwemeje ko kugoboka kwa GASHUMBA nta shingiro gufite.

[3] KAGAME yajuririye uru rukiko avuga ko umucamanza w'urukiko Rwisumbuye yaciye urubanza yirengagije ibiteganyijwe n'Itegeko ryerekeye uilmiburanishirize y'imanza z'imbonezamubano.

[4] Ikibazo muri uru rubanza ni ugusuzuma niba iyo urimo umwenda asanze igiciro gitanzwe mu cyamura kidakwiye agasaba ko cyamura ishyirwa undi munsi, icyemezo cy'umucamanza ari ngombwa buri gihe.

II. UKO URUKIKO RUBIBONA

[5] MUSONI ajurira asobanura ko icyemezo cy'umucamanza kivugwa mu ngingo ya 304 y'itegeko n° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo n'iz'ubutegetsi, nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ari ngombwa gusa iyo cyamunara yimuriwe mu gihe kirenze ukwezi.

[6] Umucamanza wa mbere yavuze ko **iyo cyamunara yimuriwe undi munsi icyemezo cy'umucamanza buri gihe n'ingombwa,** abishimangira atangaho urugero urubanza

RCA 0081/08/HCR/Kig rwaciwe ku wa 04/09/2008 n'Urukiko Rukuru. Urwo rubanza rusobanura iyo ngingo ya 304 y'itegeko n° 18/2004 : "Ntaho umukozi ushinzwe guteza cyamunara ahabwa ububasha bwo kuyimurira ku yindi tariki ahubwo ko umushingamategeko yategetse icyemezo cy'umucamanza ko ari ngombwa kugira ngo icyo gihe cyongerwe, ariko ibyo bigakorwa ukwezi kutararangira uhereye igihe cyamunara ya mbere yatangiriye. Iyi ngingo rero ikaba igomba kwifashishwa mu kumvikanisha ko kugira ngo igihe cyo guteza cyamunara ku nshuro ya kabiri icyemezo cy'umucamanza ari ngombwa".

[7] Uru rukiko rusanga ibi bimaze kuvugwa ko iyo cyamunara yimuwe icyemezo cy'umucamanza ari ngombwa, biri no mu manza zaciwe mu gihugu cy'Ubufaransa "Chaque fois qu'il y a lieu à prorogation de délai d'adjudication, que ce soit sous la forme d'un report ou d'un sursis, celle-ci ne peut prendre effet qu'à compter de la publication du jugement qui l'ordonne. **Cass. 2è civ., 5 févr. 1997 : Bull. civ. II, n° 37, in Marc DONNIER et Jean Baptiste DONNIER, Voies d'exécution et procédures de distribution, 7è édition, Litec, p. 509 n° 1378.**

[8] Urukiko rusanga kandi ku byerekeye irangiza ry'imanza, no mu gihugu cy'ububiligi itegeko (article 1396 code judiciare) riha umucamanza ububasha bwo gukurikirana no kugenzura ku buryo buhoraho abashinzwe kurangiza imanza «rôle d'encadrement et de surveillance». Abahanga mu by'amategeko basobanura iyo ngingo bavuga ko : « Le notaire procède à la vente sous sa seule responsabilité. Il n'échappe pas cependant à tout contrôle, le juge des saisies, ayant ainsi qu'on l'a vu, mission d'effectuer une surveillance constante sur les officiers publics et ministériels commis aux exécution forcées ». **Georges de LEVAL, Droit du recouvrement, La saisie immobilière, 4è édition, Larcier, p. 294 n° 404.**

[9] Umuhesha w'inkiko w'umwuga KAGAME yemera ko cyamunara yimuwe bisabwe na MUSONI urimo umwenda nk'uko biteganyijwe n'ingingo ya 304 y'itegeko n° 18/2004 ryo

ku wa 20/06/2004 ryavuzwe, uru rukiko narwo rusanga nk'uko iyo ngingo ya 304 ibivuga, nyuma y'iryo yimurwa rya cyamunara, icyemezo cy'umucamanza cyo guteza indi cyari ngombwa, bityo ubujurire bwe bukaba nta shingiro ifite.

III. ICYEMEZO CY'URUKIKO

[10] RWEMEJE ko ubujurire bwa KAGAME Alex nta shingiro ifite.

[11] RWEMEJE ko imikirize y'urubanza RC 0070/09/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 18/06/2010 igumyeho mu ngingo zayo zose.

[12] RUTEGETSE KAGAME Alex kwishyura amafaranga 19.700 angana n'amagarama
y'urubanza.

N'UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME NONE KUWA 20/06/2011, N'URUKIKO RUKURU, URUGEREKO RWA RWAMAGANA, RUGIZWE NA MURARA ODETTE (UMUCAMANZA), AFASHIJWE NA BINEGO JOSEPH (UMWANDITSI).

Sé	**Sé**
MURARA Odette	**BINEGO Joseph**

IMANZA ZIJYANYE NO GUKOSORA NO GUSOBANURA IMANZA

5. URUKIKO RW'IKIRENGA

N°Y'URUBANZA: RS/RECT002/09/CS-RCAA0062/08/CS
ITARIKI Y'URUBANZA: 09/09/2009
HABURANA: KABANDANA Venant/ Médecins Sans Frontieres (M.S.F) Hollande.

AMAGAMBO MPINE

URUBANZA RUKOSORA URUNDI-KURUBURANISHA ABABURANYI BATIRIWE BAHAMAGARWA-GUKOSORA AMAKOSA YAKOZWE N'URUKIKO KU BIJYANYE N'IMIBARE ISHINGIRWAHO MU KUBARA AMAFARANGA Y'UBUKODE-KUDAHINDURA ICYEMEZO CYAFASHWE MU RUBANZA RUKOSORWA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Urukiko rwaciye urubanza rukosora amakosa yarukozwemo ariko rutagize icyo ruhindura ku cyemezo rwafashe, nyamara ibijyanye n'amakosa y'imyandikire cyangwa se kwibeshya mu mibare (nk'umubare w'amezi mu kubara amafaranga y'ubukode) ntacyabuza Urukiko kubikosora, bene izi manza ziburanishwa ababuranyi bitabaye ngombwa ko bahamagarwa.

URUKIKO RW'IKIRENGA, RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'IMBONEZAMUBANO, RUHAKIRIJE MU RUHAME NONE KU WA 09/09/2009 URUBANZA RS/RECT002/09/09/CS RUKOSORA URUBANZA RCAA0062/08/CS MU BURYO BUKURIKIRA:

ABABURANA:

KABANDANA Venant

na

Médecins Sans Frontières (M.S.F) Hollande

IKIBURANWA

- Payement du prix de location du véhicule Minibus Toyota immatriculé CB 2400 pour la période allant du 5/10/1995 au jour de la remise du véhicule à raison de 2,015$ en vertu du contrat de location de véhicule signé le 5/10/1995;

- Payement d'intérêts moratoires au taux de 25% l'an sur la totalitédes sommes dues;

- Résolution du contrat du précité en raison de son inexécution par le locataire; Payement de dommages et intérêts divers.

IMITERERE Y'URUBANZA MURI MAKE

[1] Uru rubanza ruturuka ku masezerano y'ubukode bw'imodoka Kabandana Venant yagiranye na Médecins sans Frontières(MSF) Hollande ku itariki ya 05/10/94.Iyo modoka yaje kubura, ari naho ibibazo byatangiye, bigena n'ubwo bijya mu nkiko.

[2] Nyuma y'urubanza RCAA0062/08/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 31/07/2009, Me Mugemana J.M.V uburanira MSF Hollande, ku itariki ya 10/08/2009 yatanze ikirego muri uru rukiko avuga ko hari ikosa ryakozwe muri urwo rubanza, asaba ko ryakosorwa ku bijyanye n'uburyo amafaranga y'ubukode MSF Hollande itishyuye Kabandana yabazwe.

[3] Perezida w'Urukiko rw'Ikirenga yashyizeho Itegeko no 0028/09/R.C ryo ku wa 20/08/2009 rishyira iburanisha ry'icyo kirego ku wa 01/09/2009.

IMIGENDEKERE Y'URUBANZA

[4] Hakurikijwe ibiteganywa n'ingingo ya 154 y'Itegeko no 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'ubucuruzi n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ikirego cyaburanishirijwe ababuranyi batiriwe bahamagazwa.

[5] Urukiko rwasuzumye ibisabwa na MSF Hollande nk'uko ibisobanuro. Iburanisha rirangiye Urukiko rwamenyesheje ko urubanza ruzasomwa ku itariki ya 11/09/2009, ariko bitewe n'uko Kabandana yasabye ko rwihuta kubera ikibazo kihutirwa afite, isomwa ryarwo rishyirwa ku itariki ya 09/09/2009.

IBYASUZUMWE N'URUKIKO N'UKO RUBIBONA

[6] Hakurikijwe imyanzuro yashyikirijwe Urukiko rw'Ikirenga, Me Mugemana avuga ko amafaranga y'ubukode MSF Hollande itishyuye Kabandana ari ay'amezi 9 n'iminsi 17, abazwe kuva ku itariki ya 05/12/1994 kugeza ku wa 22/09/1995.

[7] Ku wa 14/08/2009, Me Nzirabatinya Fidèle uburanira Kabandana nawe yagejeje ku Rukiko rw'Ikirenga imyanzuro ye, agaragaza ko yemeranywa n'ibisabwa na Me Mugemana.

[8] Urukiko rurasanga koko mu kubara amezi yashingiweho habarwa amafaranga y'ubukode MSF Hollande itishyuye Kabandana , harabaye ikosa kuko aho kwandika ko ayo mafaranga agomba kubarwa guhera ku itariki ya 05/10/1994, ni ukuvuga itariki y'amasezerano y'ubukode bw'imodoka, mu rubanza rusabirwa gukosorwa handitse ko ayo mafaranga abarwa guhera tariki ya 05/12/1994.Ibyo rero bikaba bigomba gukosorwa hadaherewe ariko ku mezi

MSF Hollande ivuga , ahubwo hashingiwe ku miterere ya dosiye iburanwa.

[9] Hakurikijwe ibimaze kuvugwa, amafaranga y'ubukode bw'imodoka MSGF itishyuye Kabamdana agomba kubarwa guhera ku itariki ya 05/10/1994, ni ukuvuga umunsi amasezerano y'ubukode bw'imodoka yasinyiweho, kugeza ku itariki ya 22/09/1995, ubwo Me Mpayimana Isaïe waburaniraga MSF yandikiraga Me Mutalikanwa waburaniraga Kabandana , avuga ko imodoka yakodeshejwe yabuze, bityo rero amezi y'ubukode MSF Hollande igomba guha Kabandana Venant akaba ari 11 n'iminsi 17, ni ukuvuga kuva ku itariki ya 05/10/1994 kugeza ku itariki ya 22/09/1995.

[10] Amafaranga y'ubukode Kabandana Venant akwiye guhabwa ahwanye rero na =[2015$X11X560(taux en cours)+2015$X17/30X560]=
12.412.400Frw+639.426.67=**13.051.826,67Frw.**

[11] Inyungu z'ayo mafaranga MSF Hollande igomba gutanga zihwanye na = (13.051.826,67Frw_X9,5%Xmyaka 14) +(13.051.826,67 Frw X7,5%X7/12)
= 17.358.929,47Frw +571.017,42Frw=**17.929.946,86Frw.**

Bityo amafaranga yose ajyanye n'ubukode bw'imodoka MSF Hollande igomba guha Kabandana akaba ari=13.051.826,67+ 17.929.946,89Frw=**30.981.773,56Frw**.

[12] Hakurikijwe imibare yakosowe, amafaranga yose hamwe MSF Hollande igomba guha Kabandana Venant angana na = 13.051.826,67Frw+17.929.946,89Frw (agaciro k'imodoka) +1.000+000Frw (y'ikurikiranarubanza)=**40.409.200,56Frw**

ICYEMEZO CY'URUKIKO

[13] Rwemeye kwakira ikirego cya MSF Hollande gisaba gukosora urubanza RCAA0062/08/CS kuko cyaje mu buryo no mu nzira byemewe n'amategeko.

[14] Rwemeje ko urubanza RCAA0062/08/CS rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 31/07/2009 rukosowe mu buryo bukurikira:

[15] Indishyi zose hamwe MSF Hollande igomba kwishyura Kabandana Venant zingana na **40.409.200,56Frw**. MSF Hollande igomba kandi kuyatangira 4% y'umusogongero wa Leta ahwanye na **1.616.368,02Frw**.

[16] Rutegetse ko amagarama y'urubanza angana na 7000Frw aherera ku Isanduku ya Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 09/09/2009 N'URUKIKO RW'IKIRENGA, RUGIZWE NA MUTASHYA Jean Baptiste: PEREZIDA, KANYANGE FIDELITE NA MUKAMULISA M-THERESE: ABACAMANZA, BAFASHIJWE NA UWARUGIRA J.BAPTISTE: UMWANDITSI W'URUKIKO.

Sé	**Sé**	**Sé**
KANYANGE Fidelité	**MUTASHYA J.Baptiste**	**MUKAMULISA M-Thérèse**
Umucamanza	**Perezida**	**Umucamanza**

Sé
UWARUGIRA J. Baptiste
Umwanditsi

6. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RS/Inter/R.C0001/11/CS
ITARIKI Y'URUBANZA: 21/11/2011
HABURANA: NYIRABIZIMANA Zilipa / MUSONI NDAMAGE Thadée

AMAGAMBO MPINE

URUBANZA RUSOBANURA URUNDI-GUSHYIRA MU BIKORWA ICYEMEZO CY'URUKIKO-KUTABA NGOMBWA KO URUKIKO RURONDORA ABO BIREBA.

.KURANGIZA URUBANZA-IMYANDIKIRE Y'IMANZA-KUTABA NGOMBWA KO IBYEMEJWE BISUBIRWAMO MURI RUTEGETSE-KURANGIZA IGICE KIREBANA N'ICYEMEZO CY'URUKIKO CYOSE-KUTAREBA GUSA RUTEGETSE.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Ibyemezo by'Urukiko bishyirwa mu bikorwa n'abo bireba bose, si ngombwa ko mu ica ry'urubanza Urukiko rurondora abo bireba bose.

- Igice cy'urubanza kirangizwa n'icyemezo cy'Urukiko muri rusange ntiharebwa gusa ibiri muri rutegetse, kandi si ngombwa ko icyemejwe n'Urukiko gisubirwamo muri rutegetse; rutegetse na rwemejwe icyo bihuriyeho n'uko byose bigize icyemezo cy'Urukiko kiba kigomba gushyirwa mu bikorwa n'abo bireba bose.

URUKIKO RW'IKIRENGA RURI I KIGALI RUHABURANISHIRIZA IMANZA Z'IMBONEZAMUBANO, RUHAKIRIJE URUBANZA RUSOBANURA URUNDI MU RUBANZA RCAA0015/09/CS MU BURYO BUKURIKIRA:

HABURANA:

Urega: NYIRABIZIMANA Zilipa

Uregwa: MUSONI NDAMAGE Thaddée mwene Ndamage Eliabu na Nyirabizimana Zilipa, utuye mu Mudugudu wa Muhabura, Akagari ka Kiyovu, Umurenge wa Nyarugenge, Akarere ka Nyarugenge, mu Mujyi wa Kigali.

Ikiburanwa: Gusaba urubanza rusobanura urundi mu rubanza RCAA 0015/09/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 29/04/2011.

I. IMITERERE Y'URUBANZA

[1] NYIRABIZIMANA Zilipa yajuririye mu Rukiko rw'Ikirenga urubanza RCA 0123/08/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 27/02/2009.

[2] Kuwa 29/04/2011, Urukiko rw'Ikirenga rwaciye urubanza RCAA0015/09/CS hagati ya NYIRABIZIMANA Zilipa na MUSONI NDAMAGE Thaddée, Urukiko rukaba rwaremeje ko ibibanza no 579/Quartier Commercial na 710/Kacyiru biva mu mazina ya MUSONI NDAMAGE Thaddée bikandikwa kuri NYIRABIZIMANA Zilipa nk'uhagarariye umuryango wa NDAMAGE Eliabu, akaba ariwe ufite uburenganzira bwo kubicunga. Tariki ya 26/09/2011, Me RWAGATARE Janvier uhagarariye NYIRABIZIMANA Zilipa, yagejeje ikirego mu bwanditsi bw'Urukiko rw'Ikirenga gisaba gusobanura uru rubanza.

[3] Muri icyo kirego, Me RWAGATARE Janvier avuga ko irangiza ry'urubanza ritashyizwe mu bikorwa n'ababishinzwe bose kubera kutumvikana kwa bamwe ku cyemezo cy'Urukiko. Mu gace k'urubanza ka [31] Urukiko rwemeje ko ibibanza no 579/Quartier Commercial n'ikibanza no 710/Kacyiru biva mu mazina ya MUSONI NDAMAGE Thaddée bikandikwa kuri NYIRABIZIMANA Zilipa nk'uhagarariye umuryango wa NDAMAGE Eliabu. Avuga ko bamwe mu bashinzwe kubishyira mu bikorwa bavuga ko bitabareba kuko nka COGEBANQUE yandikiye Me Rwagatare kuwa 24/08/2011 ivuga ko mu rubanza rwaciwe n'Urukiko rw'Ikirenga tariki ya 29/04/2011, mu gace karwo ka [27] ntaho byanditse by'umwihariko ko igomba gusubiza titre ya parcelle no 579/Quartier Commercial k'umubitsi w'impapuro mpamo z'ubutaka. Me Rwagatare Janvier asaba ko Urukiko rwasobanura abo bireba bose abo aribo nkuko biri mu gace ka [27].

[4] Muri icyo kirego kandi, Me RWAGATARE Janvier arasaba ko hasobanurwa itandukanyirizo hagati ya "Rwemeje" na "Rutegetse" kuko uwaburanye n'uwo ahagarariye yabyitwaje avuga ko mu rubanza RCAA 0015/09/CS Urukiko ntacyo "rwategetse" ngo ahubwo "rwemeje" gusa.

II. IBIBAZO BIRI MURI URU RUBANZA

[5] Ibibazo biri muri uru rubanza bikubiye mu bice bibiri:

a) Gusobanura abarebwa n'irangiza ry'urubanza RCAA0015/09/CS kubirebana n'ibibanza n'amazu arimo bivugwa mu gika cya [27] cy'urwo rubanza;

b) Gusobanura itandukanyirizo hagati ya za "Rwemeje" na za "Rutegetse" ziri muri uru rubanza.

a. Ikibazo kirebana no gusobanura abo urubanza rureba bose kugirango rurangizwe.

[6] Iki kibazo kigaragara mu gika cya [27] cy'urubanza rwasabiwe gusobanurwa. Icyo gika kigira kiti "Me Mhayimana

Isaie uburanira Musoni Ndamage Thaddée yavuze ko certificat d'enregistrement zanditse kuri Musoni Ndamage Thaddée zidashobora gukorwaho mu gihe nta rubanza rwo gusaba kuzikuraho rwabaye kandi Leta yabayemo umuranyi kuko ibyo byangombwa byatanzwe n'ubuyobozi. Kuri iki kibazo, Urukiko rw'Ikirenga rusanga kimwe mu birego Nyirabizimana Zilipa yatanze mu Rukiko rw'Umujyi wa Kigali mu mwaka wa 2005 yarasabaga ko Musoni Ndamage Thaddée yagarura amazu yihaye yari ay'ababyeyi be. Aha rero ikigomba gusuzumwa ni ukureba ko koko niba ayo mazu ari aya Musoni Ndamage Thaddée cyangwa se niba ari ay'ababyeyi be, abo bireba bose harimo n'umubitsi w'impapuro mpamo bagashyira mu bikorwa icyemezo cy'Urukiko. Niba Umuyobozi w'Umujyi wa Kigali ariwe wari umubitsi w'impapuro mpamo yarashingiye ku nyandiko yiswe iy'ivanguramutungo agakora mutation y'ibibanza, mu gihe iyo nyandiko iteshejwe agaciro, icyemezo kiyitesha agaciro kigomba kubahirizwa naburi wese bityo imitungo ikandikwa kuwo uru rubanza rwagennye".

[7] Muri iki gika cya [27], Urukiko rwavugaga ko ibibanza byagombaga kwandikwa kuwo urubanza rwagennye. Mu bujurire bw'uru rubanza mu Rukiko rw'Ikirenga ibibanza byaburanwaga ni bitatu (ikibanza no579/quartier commercial, ikibanza no710/Kacyiru, ikibanza no711/Kacyiru). Ababuranaga ibyo bibanza ni Musoni Ndamage Thaddée na Nyirabizimana Zilipa. Nkuko bikubiye mu gika cya [31] cy'urubanza rusobanurwa, icya mbere n'uko ibibanza no579/Quartier commercial na 710/Kacyiru bigomba kuva ku mazina ya Musoni Ndamage Thaddee, icya kabiri byamara kuva kuri ayo mazina bikandikwa kuri Nyirabizimana Zilipa. Ugomba kwandukura amazina ya Musoni Ndamage Thaddee kuri ibyo bibanza nyuma akandikaho amazina ya Nyirabizimana Zilipa nuwo amategeko yabihereye ububasha, akaba ari ushinzwe kubika impapuro mpamo. Aha rero abo bireba bose Urukiko rwavuze ni ababa bafite izo mpapuro mpamo, baba abantu ku giti cyabo, ibigo cyangwa inzego izarizo zose. Ntibagomba kuzimana no kuzigundira, bagomba kuzishyikiriza umubitsi wazo, agakora

ibyo amategeko amuhera ububasha birimo kwandukura no kwandikaho amazina, akabikora hashingiwe kubyavuzwe mu rubanza. Birumvikana ko Urukiko rutarondora abo bireba bose kuko rutamenya ababa bazifite cyangwa aho zaba ziherereye.

b. Ikibazo kirebana no gusobanura itandukanyirizo hagati ya "RWEMEJE" na "RUTEGETSE".

[8] Me Rwagatare Janvier asaba ko hasobanurwa aho "Rwemeje" na "Rutegetse" bigagaragara mu manza bitandukaniye, ariko Urukiko rukaba rusobanura gusa "Rwemeje" na "Rutegetse" zigaragara mu rubanza rwasabiwe gusobanurwa. Ayo magambo agaragara mu bika kuva ku cya [29] kugeza ku cya [33] by'urubanza rusabirwa gusobanurwa. Mu kumenya igisobanuro n'agaciro ayo magambo afite muri urwo rubanza ni ngombwa gushimangira ko yombi aherereye mu gice cya IV cyarwo cyitwa "icyemezo cy'urukiko (dispositif)". Mu myandikire y'imanza si ngombwa ko ibyemejwe bisubirwamo muri "Rutegetse". Byaba ari ugusubiramo bitari ngombwa (tautology). Mu kurangiza urubanza, harangizwa igice kirebana n'icyemezo cy'urukiko cyose (dispositif); ntabwo harebwa gusa "Rutegetse". Yaba "Rwemeje" cyangwa "Rutegetse" icyo bihuriyeho nuko bigira icyemezo cy'urukiko kigomba gukurikizwa n'abo bireba bose, hashingiwe ku bivugwa mu ngingo ya 140 y'Itegeko Nshinga mu gace kayo ka gatanu aho bivuze ngo: "Ibyemezo by'ubucamanza bigomba gukurikizwa n'abo bireba bose, zaba inzego z'ubutegetsi bwa Leta cyangwa abantu ku giti cyabo. Ntibishobora kuvuguruzwa keretse binyuze mu nzira no mu buryo buteganywa n'amategeko." Ni ukuvuga ko ibyemejwe n'ibyategetswe kuva ku gika cya [28] kugeza ku cya [33] mu rubanza RCAA0015/09/CS bigomba kubahirizwa bigashyirwa mu bikorwa n'abo bireba bose nk'uko byasobanuwe mu gika cya [7] cy'uru rubanza rusobanura urundi.

I

II. ICYEMEZO CY'URUKIKO

[9] Urukiko rwemeye kwakira ikirego gisaba gusobanura urubanza RCAA 0015/09/CS kuko cyatanzwe mu buryo n'inzira bikurikije amategeko.

[10] Rwemeje ko gifite ishingiro.

[11] Rutegetse ko kubyanditse mu gika cya [27] cy'urubanza RCAA 0015/09/CS hakurikizwa ibivugwa mu gika cya [7] cy'uru rubanza rusobanura urundi.

[12] Rutegetse ko ibyemejwe n'ibyategetswe kuva ku gika cya [28] kugeza ku cya [33] mu rubanza RCAA0015/09/CS bigomba kubahirizwa bigashyirwa mu bikorwa.

URUBANZA RUSOBANURA URUNDI RUSOMEWE MU RUHAME NONE KU WA 21/11/2011 N'URUKIKO RW'IKIRENGA RUGIZWE NA Sam RUGEGE: Perezida, Immaculée NYIRINKWAYA, Thérèse MUKAMULISA: Abacamanza BAFASHIJWE NA MUNYANDAMUTSA Jean Pierre (Umwanditsi).

(sé)	(sé)	(sé)
Immaculée NYIRINKWAYA	**Sam RUGEGE**	**Therese Mukamulisa**
Umucamanza	**Perezida**	**umucamanza**

(sé)
MUNYANDAMUTSA Jean Pierre
Umwanditsi

IMANZA Z'UBUTEGETSI

7. URUKIKO R'IKIRENGA

N° Y'URUBANZA: R.AD.A 0037/09/CS
ITARIKI Y'URUBANZA: 08/04/2011
HABURANA: MUNYARUKIKO Jean Damascene / Banki Nkuru y'u Rwanda na Leta y'u Rwanda

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI-GUSHYIRWA MU KIRUHUKO CY'IZABUKURU-IKIGENDERWAHO MU KUGENA IMPEREKEZA N'ISHIMWE-UMUSHAHARA UHANITSE UMUKOZI YARI AGEZEHO ASHIRWA MU KIRIUHUKO CY'IZABUKURU-UMUSHAHARA WA NYUMA UBARIRWAHO UBWITEGANIRIZE-KUWUBARIRAHO ISHIMWE RY'UMUKOZI UGIYE MU KIRUHUKO CY'IZABUKURU .

.INDISHYI ZO KWIRUKANIRWA UBUSA-KUBURA KW'AMASEZERANO Y'AKAZI-KUTAZIGENA IYO UZISABA ATAGENGWA N'ITEGEKO RY'UMURIMO(Code du travail)

.IGIHANO CYO GUHATIRA KWISHYURA-UBUSHAKE BUBI BWO KWISHYURA-KUTAKIGENA IYO BIGARAGARA KO HARI UBUSHAKE BWO KWISHYURA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Igishingirwaho mu kugena imperekeza ku mukozi ushyizwe mu kiruhuko cy'izabukuru ni umushahara uhanitse wa nyuma umukozi yari agezeho ashyirwa mu kiruhuko cy'izabukuru ntabwo ari intera umukozi yari agezeho mu bakozi ba leta (Grade muri fonction publique).

- Nta ndishyi zo kwirukanirwa ubusa zitangwa ku mukozi ugengwa na sitati rusange y'abakozi ba Leta kubera ko nta

masezerano aba yaragiranye na Leta akaba atagengwa n'Itegeko rigenga umurimo(code du Travail).

- Igihano gihatira umuburanyi kurangiza urubanza kigamije guhana umuburanyi udafite ubushake bwo kurangiza urubanza ku neza, icyo gihano ntigitangwa iyo bigaragara ko nta bushake bubi ugomba kwishyura yagaragaje mu kwanga kwishyura.

URUKIKO RW'IKIRENGA RURI I KIGALI RUHABURANISHIRIZA IMANZA Z'UBUTEGETSI, RUHAKIRIJE MU RUHAME URUBANZA R.AD.A 0037/09/CS NONE KUWA 08/04/ 2011 MU BURYO BUKURIKIRA:

I. <u>HABURANA:</u>

a) **Uwajuriye kandi aregwa** : MUNYARUKIKO Jean Damascène, wahoze ari Visi Guverineri wa BNR , mwene Rwanyamukeba na Nyirandezi, utuye Kiyovu- Nyarugenge- Umujyi wa Kigali. Aburanirwa na Me MUNDERERE Léopold na Me NSABIMANA Jean Baptiste.

b) **Uwajuriye kandi aregwa**: Banki Nkuru y'Igihugu, mu magambo ahinnye BNR, iburanirwa na Me NKURUNZIZA François Xavier.

c) **LETA Y'U RWANDA** mu izina ry'Intumwa Nkuru ya Leta, iburanirwa na Me RUBANGO Epimaque.

II. IKIBURANWA

1. *Demande d'indemnités de fin de carrière, dommages et intérêts pour rupture abusive du contrat de travail et frais de procédure et de recouvrement.*

2. *Imperekeza, indishyi z'akababaro n'amagarama y'urubanza n'ibyakoreshejwe.*

III. IMITERERE Y'URUBANZA

(1) Kuwa 08/06/2006, MUNYARUKIKO Jean Damascène yareze Banki Nkuru y'Igihugu mu Rukiko Rukuru, ikirego nk'uko cyanditse haruguru : *« indemnités de fin de carrière, dommages et intérêts pour rupture abusive du contrat de travail et frais de procédure et de recouvrement »,* cyandikwa mu bitabo by'ibirego kuri n° RAD 058/06/HC/KG.

(2) Bigeze kuwa 11/03/2009, ni ukuvuga hashize hafi imyaka itatu atanze ikirego cya mbere, arega Leta y'u Rwanda na Banki Nkuru y'Igihugu ikirego nk'uko cyanditse gutya : *« imperekeza, indishyi z'akababaro n'amagarama y'urubanza n'ibyakoreshejwe »,* cyandikwa kuri n° RAD 0030/09/HC/KIG. Izo manza zose zaje guhuzwa mu rubanza rumwe.

(3) Mu bisobanuro bye, MUNYARUKIKO Jean Damascène yavugaga ko yagizwe Vsi Guverineri wa kabiri wa BNR kuwa 07/03/1996, kuri "mandat" y' imyaka itandatu (6 ans). Kuwa 13/11/2000 BNR ngo yamwandikiye ivuga ko "mandat" ye irangiye iyo myaka itandatu itarashira, kuwa 01/03/2001, akaba yarashyizwe muri « pension » ; kuva icyo gihe ngo yakomeje gusiragira asaba ibyo amategeko amugenera, yaba BNR cyangwa Leta y'u Rwanda ntacyo bamumariye, ahubwo ngo bakomeje gusiganira uzamwishyura bigeza aho arega BNR yamukoresheje ; na nyuma aza kurega Leta y'u Rwanda imanza zombi zirahuzwa.

(4) MUNYARUKIKO Jean Damascène asaba ko yahabwa ibyo amategeko amugenera aribyo ishimwe ry'amafaranga 766.632 yahembwaga buri kwezi gukuba n'amezi 12 angana na 9.199.584 Frw, agasaba indishyi (DI) z'amafaranga 10.000.000, indishyi z'ubukererwe z'amafaranga 1.471.967 ngo kuko yari kuba yarayabonye akayakoresha, Leta na BNR bakaba baranze kumwishyura, anasaba kandi igihembo cy'Avoka n'amafaranga 10% y'ayo basaba yose hakanashyirwaho astreinte y'amafaranga 200.000 buri kwezi.

(5) Uhagarariye Leta y'u Rwanda we yasobanuye ko MUNYARUKIKO Jean Damascène atigeze asaba Leta y'u Rwanda imperekeza, ko ahubwo yayisabye BNR nayo yandikira Fonction Publique, ko rero bigaragara ko atubahirije inzira (procédures) zikoreshwa kuko

yagombaga kumenya ibyo asaba n'uwo abisaba , dore ko niba asaba imperekeza biteguye kuzimuha bahereye kuri grade yari agezeho ya Secrétaire Général ngo kuko hagenderwa kuri « carrière », hatagenderwa kuri « mandat » umuntu yahawe, kandi ko ku bijyanye na « pièces » z'amafaranga yahembwaga bazizana vuba ; ko no kuba atararangije « mandat » biva k'uwayimuhaye ushobora kuyimwaka akamushyira mu bindi ;

(6) Uhagarariye BNR we yavuze ko uhereye ku byo MUNYARUKIKO arega abantu babiri BNR na Leta y'u Rwanda, asanga atagaragaza uwo asaba ibyo aregera, akomeza avuga ko atigeze aba umukozi wa BNR, kubera ko yari sous mandat ; yanavuze ko ibya indemnités de fin de carrière, akwiye kubisaba Leta ; bakanibaza uwo MUNYARUKIKO arega imperekeza uwo ariwe, bakaba basabira BNR indishyi z'uko bagendeshwa mu manza ku maherere kuva hashize imyaka 8.

(7) Nyuma y'ibisobanuro by'impande zose , Urukiko Rukuru rwemeje:

- Ko Leta y'u Rwanda igomba guha MUNYARUKIKO Jean Damascène ishimwe rijyanye no gushyirwa mu kiruhuko cy'izabukuru ry'amafaranga 576.650 x 6 = 3.459.900 hamwe n'indishyi z'ikurikiranarubanza n'igihembo cy'Avoka zingana n'amafaranga 300.000 hiyongereyeho ½ cy'amafaranga 12.000 yatanzeho ingwate arega mu manza zombi.
- Ko nta ndishyi BNR igomba guhabwa na MUNYARUKIKO Jean Damascène kubera impamvu zasobanuwe muri za « Rubona » z'uru rubanza.

(8) Yaba BNR, yaba MUNYARUKIKO, bose bajuririye urubanza rwaciwe n'Urukiko Rukuru nk'uko bikubiye mu myanzuro bashyikirije Urukiko. Icyajurije BNR ni uko itahawe indishyi z'akababaro yari yasabye. Naho MUNYARUKIKO akaba yarajurijwe n'uko atishimiye ishimwe yabariwe n'Urukiko

Rukuru hashingiwe ku ntera yari agezeho ya Secrétaire Général, akaba yifuza iribariwe ku mushahara wa 766.632 Frw, ngo akaba ari wo mushahara wari uhanitse wafatirwagaho umusanzu we w'ubwiteganyirize muri BNR. Ikindi yifuza n'indishyi ndetse na astreinte ya 200 000 Frw yasabye ngo ariko ntabihabwe.

(9) Urubanza rwaburanishijwe mu mizi mu ruhame kuwa 08/03/2011 mu Rukiko rw'Ikirenga, Leta y'u Rwanda ihagarariwe na Me RUBANGO Epimaque, BNR ihagarariwe na Me NKURUNZIZA François Xavier, naho MUNYARUKIKO Jean Damascène ahagarariwe na Me MUNDERERE Léopold na Me NSABIMANA Jean Baptiste.

IV. IBYASUZUMWE N'URUKIKO RW'IKIRENGA

(10) Hakurikijwe ingingo zatanzwe n'abajuriye bombi, ikibazo cya mbere cyazusumwa ni icyo kumenya niba hashingiwe ku ngingo ya 125 y'itegeko ryo kuwa 09/07/2002 rishyiraho stati rusange y'abakozi ba Leta, MUNYARUKIKO agomba guhabwa ishimwe hashingiwe ku ntera yari agezeho ya Secrétaire Général nk'uko byemejwe n'Urukiko Rukuru, cyangwa niba agomba guhabwa ishimwe ribariwe ku mushahara wa 766.632 Frw yahembwaga na BNR. Nanone hakurikijwe ubujurire bwa MUNYARUKIKO, ikindi kibazo ni ikijyanye no kumenya ugomba gutanga ishimwe ryo gushyirwa mu kiruhuko cy'izabukuru (prime de fin d'activité) n'ishimwe y'inyongera zivugwa mu ngingo ya 125 yavuzwe haruguru, hamwe n'indishyi cyangwa amafaranga y'ikurikiranarubanza avugwa muri uru rubanza. Icya nyuma ni ikijyanye ni ubujurire bwa BNR, kigamije kumenya niba MUNYARUKIKO yarareze BNR ku bw'amaherere (action téméraire et vexatoire).

1. Ku kibazo cyo kumenya niba MUNYARUKIKO agomba guhabwa ishimwe ribariwe ku mushahara wa 766.632 Frw yahembwaga na BNR cyangwa ku mushahara wa Secrétaire Général ungana na 576 650 Frw.

(11) Kuri iki kibazo, ingingo ya 125 yavuzwe haruguru, iteganya ibikurikira:

- *" Kwemererwa no gushyirwa mu kiruhuko cy'izabukuru bikorwa n'umutegetsi ubifitiye ububasha mu birebana n'abakozi ba Leta kandi bigaha umukozi wa Leta uburenganzira bwo guhabwa amafaranga y'ishimwe ahwanye n'amezi atandatu (6) y'umushahara uhanitse wafatiweho umusanzu w'ubwiteganyirize uwo mukozi yigeze kugeraho mu mirimo ye mu butegetsi bwa Leta y'u Rwanda.*
- *Umukozi wa Leta ugiye mu kiruhuko cy'izabukuru, afite imyaka mirongo itanu n'itanu (55) y'amavuko, ahabwa amafaranga y'ishimwe y'inyongera ahwanye n'umushahara w'amezi atandatu (6) uvugwa mu gika cya mbere cy'iyi ngingo".*

(12) Na none kuri iki kibazo, ingingo ya 22 y'itegeko N°11/97 ryo kuwa 26/07/1997 rishyiraho amategeko agenga Banki Nasionali ryakurikizwaga ku gihe cya MUNYARUKIKO ari Visi Guverineri, iteganya ibikurikira :

- *"Mu gihe cy'imyaka ibiri (2) kuri Guverineri n'umwaka umwe kuri ba Visi Guverineri , kuva bavuye mu mirimo yabo, ntibashobora gufasha ikigo cy'abikorera ku giti cyabo, cyangwa kwakira igihembo bahawe nacyo kubera umurimo cyangwa inama batanze.*
- *Muri ubwo buryo no muri ibyo bihe biteganijwe kuri buri wese, bakomeza gufata umushahara n'ibindi bihembo nk'uko babihabwaga bakiri ku murimo.*
- *Iyo muri ibyo bihe biteganijwe kuri buri wese, Guverineri cyangwa umwe mu ba Visi Guverineri ahawe umurimo wa Leta, ibyo bahembwa bishya bigomba kuba bingana*

byibura n'imishahara n'ibindi bihembo bahabwaga mu gihe bakoraga imirimo ya Banki. Iyo bidashyitse ibyo bari basanganywe, ikinyuranyo gitangwa na Banki.......“

(13) Me NKURUNZIZA François Xavier uburanira BNR avuga ko umushahara uvugwa mu ngingo ya 125 yavuzwe haruguru, ugomba kujyana na “carrière“ y'umukozi; ngo kubera ko mu gifaransa handitse “salaire net le plus élevé atteint au cours de sa carrière“.

(14) Akaba asanga rero umushahara uvugwa muri iyo ngingo ugomba kugenerwaho MUNYARUKIKO « prime de fin d'activités» ari uw'intera uyu yari agezeho muri “carrière“ ye nk'umukozi wa Leta muri “Fonction Publique“, ndetse akanawuhabwa n'umukoresha we muri “Fonction Publique“, (ni ukuvuga MIFOTRA), kubera ko MUNYARUKIKO ngo nawe yiyemerera ko yari umukozi wa Leta, akanemera ko atari umukozi wa BNR ; ngo bigashimangirwa n'uko yavuye muri BNR agasubira muri “Fonction Publique“ afite grade ya “SG sans Poste“, ngo kuko nta kazi yahise ahabwa, ahubwo akaba yaragiye muri “retraite“. Yongeyeho ko ingingo ya 125 ivuga ko umukozi ahabwa imperekeza harebwe umushahara wa nyuma muri « cadre ya Fonction Publique » ; kuri MUNYARUKIKO, ngo Secrétaire Général akaba yarahembwaga 576 650 Frw.

(15) Me NKURUNZIZA François Xavier yakomeje avuga ko MUNYARUKIKO atakwitwaza ko BNR yamuhaye “attestation de Salaire“, kubera ko ngo yayihawe kugirango Isanduku y'Ubwiteganyirize bw'Abakozi mu Rwanda (CSR) imukorere ibyo igomba kumukorera.

(16) Yashoje yongera kwemeza ko MUNYARUKIKO atigeze aba umukozi wa BNR, ngo kuko yahakoze ari kuri “mandat”; ngo kubera iyo “mandat” hakaba hari ibyo yagenerwaga na BNR; ko ariko bitavuga ko yari umukozi wayo; ko kuba BNR yaramuhaye «Attestation de servise accomplis » ataribyo bimuhindura Umukozi wa BNR.

(17) Me RUBANGO Epimaque uhagarariye Leta na we yavuze ko ku bijyanye no kumenya niba umushahara uherwaho ari uwo MUNYARUKIKO yahawe muri BNR cyangwa yahembwe muri "Fonction Publique", asanga hakwiye kurebwa umushahara wa 576 650 Frw wa Secrétaire Général uhwanye na grade yari ariho muri "Fonction Publique"; ko kuba ashaka imperekeza ashingiye ku mushahara wa BNR byaba bitandukiriye, ngo kubera ko ibijyanye na BNR bigomba guhuzwa na Statuts za BNR, bitaba ibyo, Leta ntigire indishyi isabwa na MUNYARUKIKO.

(18) Urukiko, iyo rusuzumye ibivugwa mu ngingo ya 125 ya Statut y'abakozi ba Leta n'ingingo ya 22 ya Statut ya BNR yakurikizwaga ku gihe MUNYARUKIKO yari Visi Guverineri, rurasanga ibisobanuro by' uhagarariye BNR na Leta bidahuje n'ibiteganywa mu ngingo ya 125 yavuzwe haruguru kubera ko bashaka kuvugisha iyo ngingo ibyo itavuga.

(19) Iyo ngingo ivuga neza "*ishimwe rihwanye n'amezi atandatu (6) y'umushahara uhanitse wafatiweho umusanzu w'ubwiteganyirize umukozi yigeze kugeraho mu mirimo ye mu butegetsi bwa Leta y'u Rwanda".* Mu gifaransa bikaba ari *„prime de fin d'activité égale au sextuple du salaire net le plus élevé atteint au cours de sa carrière sur lequel sont assises les cotisations dues à la Caisse Sociale"*

(20) Haba mu myandikire yo mu kinyarwanda, haba mu myandikire yo mu gifaransa, Urukiko rurasanga ntahanditse ko mu kugenerwa imperekeza, hagomba "kurebwa umushahara uhwanye na grade umukozi yari ariho muri "Fonction Publique"" nk'uko bivugwa n'uburanira BNR; emwe nta n'ahavugwa intera umukozi yari agezeho. Ikivugwa. ni umushahara uhanitse umukozi yari agezeho. Nta n'ahanditse « cadre ya Fonction Publique » ; kuko icyo ingingo ya 125 itegeka kugenera umukozi, ntabwo

ari uwo mushahara uhwanye na grade yari ariho muri "Fonction Publique", ahubwo ni uwo yahembwaga uhanitse yari agezeho ashyirwa mu zabukuru (retraite).

(21) Uko biteye kuri MUNYARUKIKO rero, ni uko yavanywe ku murimo wa Visi Guverineri kuwa 26/09/2000 hakurikijwe Iteka no 45/03 rya Minisitiri w'Intebe ryo kuwa 26/09/2000.

(22) Ingingo ya 22 ya Statut ya BNR yavuzwe haruguru, iteganya ko *"Mu gihe* cy'umwaka umwe kuri Visi Guverineri , kuva avuye mu mirimo ye, akomeza gufata umushahara n'ibindi bihembo nk'uko yabihabwaga akiri ku murimo we wa BNR.

(23) Hakurikijwe iyo ngingo, MUNYARUKO nk'uwahoze ari visi Guverineri, umwaka umwe yari yemerewe wo gukomeza guhembwa na BNR wagombaga kurangira kuwa 26/09/2001, uhereye itariki ya 26/09/2000 Minisitiri w'Intebe amushyira mu zabukuru.

(24) Iyo ngingo ya 22 ya Statut ya BNR yavuzwe haruguru itegeka nanone ko mu gihe Visi Guverineri ahawe umurimo wa Leta, ibyo ahembwa bishya bigomba kuba bingana byibura n'imishahara n'ibindi bihembo yahabwaga mu gihe yakoraga imirimo ya Banki.

(25) Kuri MUNYARUKIKO rero, icya mbere kigomba kumvikana ni uko ashyirwa mu zabukuru kuwa 26/09/2000, ntabwo yahembwaga amafaranga ya Secrétaire Général uhagarariye BNR na Leta bavuga, ahubwo yahembwaga amafaranga angana na 766.632 Frw, kandi ayo mafaranga ni BNR yayamuhembaga; ibyo nayo ikaba yarabikoraga yubahiriza ibiteganywa n'ingingo ya 22 ya Statut ya BNR, iteganya ko *"Mu gihe cy'umwaka umwe kuri Visi Guverineri, kuva avuye mu mirimo ye, akomeza gufata umushahara n'ibindi bihembo nk'uko yabihabwaga akiri ku murimo we wa BNR.*

(26) Icya kabiri ni uko ibyo uburanira BNR na Leta bavuga by'uko umushahara ugomba kubarirwaho rya shimwe ugomba kungana n'uwa grade umukozi afite muri fonction publique

hakurikijwe ingingo ya 125 ya Statut des agents de l'Etat aho ivuga "carriere", nta shingiro bifite, kuko kwaba kuvugisha iyo ngingo y'itegeko ibyo itavuga nk'uko byasobanuwe haruguru.

(27) Icya gatatu, ni uko ibyo bavuga biciye ukubiri n'ibiteganyirizwa MUNYARUKIKO, nk'uwahoze ari Visi Guverineri, nk'uko biteganywa mu ngingo ya 22 ya Statut ya BNR yavuzwe haruguru.

(28) Bitewe rero n'uko MUNYARUKIKO yashyizwe mu kiruhuko cy'izabukuru, atararangiza umwaka yemererwaga n'ingingo ya 22 ya Statut ya BNR, birumvikana ko atigeze abona uburyo bwo gusubira muri Leta nk'uko bivugwa n'iyo ngingo, kugira ngo, nka Visi Guverineri, ahabwe umurimo mushya wa Leta. Akaba ari nayo mpamvu nta wundi mushahara wa nyuma yigeze ahabwa uretse uwo BNR yamuhaye akiri mu gihe cy'umwaka umwe gihemberwa na BNR nk'uko abyemererwa n'ingingo ya 22 ya Statut ya BNR

(29) Iby'uko kandi BNR yabyubahirije, bigaragazwa na Bulletin de paie ziri muri dosiye zo guhera mu kwezi kwa gatatu 2001, aho bigaragara ko BNR yahembye MUNYARUKIKO umushahara ungana na 766.632 Frw, akaba ari na wo wafatiweho ubwiteganyirize bwe muri "Caisse Sociale" nk'uko byanditse kuri Code 216 na 220 z'izo "bulletins", hakurikijwe ibiteganywa n'ingingo ya 125 yavuzwe haruguru.

(30) Urukiko rero ntabwo rubona aho uhagarariye BNR na Leta bakura undi mushahara wafatirwagaho ubwiteganyirize bwa MUNYARUKIKO muri "Caisse Sociale" hakurikijwe ibiteganywa n'ingingo ya 125 yavuzwe haruguru, bikumvikanisha ko hakurijwe iyo ngingo ya 125, ndetse n'ingingo ya 22 ya Statut ya BNR, umushahara wa nyuma wa MUNYARUKIKO ari 766.632 Frw, akaba rero ari wo ugomba kubarirwaho ishimwe yo gushyirwa mu kiruhuko cy'izabukuru rihwanye n'amezi atandatu (6) y'umushahara, ni ukuvuga 766.632 Frw x 6 = 4,599,792 Frw; ndetse n'ishimwe ry'inyongera naryo rihwanye n'umushahara w'amezi atandatu (6), ni ukuvuga 766.632 Frw x 6 = 4,599,792; ayo mashimwe yombi akaba ateganywa n'ingingo ya 125 yavuzwe haruguru; yose hamwe bikaba 9,199,584 Frw.

2. ***Ku bijyanye n'indishyi, ikurikirana rubanza n'igihembo cy'avoka bisabwa na MUNYARUKIKO***

(31) Mu mwanzuro we w'ubujurire, MUNYARUKIKO yifuza ko yahabwa indishyi zingana na 15.000.000 Frw hamwe na 5.000.000 Frw y'ikurikirana rubanza, ngo kubera ko hashize imyaka 8 irenga akurikirana uru rubanza, akanasaba 500.000 Frw y'igihembo cy'avoka.

(32) Urukiko rurasanga koko hashize igihe kirekire MUNYARUKIKO akurikirana kuri BNR na Leta y'u Rwanda uburenganzira bwe ahabwa n'amategeko, bikaba byumvikana ko yahababariye muri iriya myaka yose ishize atabona igisubizo, kandi abashinzwe kukimuha bahari, akaba ari yo mpamvu rusanga akwiye indishyi z'ikurikirana rubanza zigenwe mu bwitonzi bw'Urukiko zingana na 1.000.000 Frw, kuko 5.000.000 Frw yifuza akabije kuba menshi. Kubera kandi ko yunganiwe muri uru Rukiko, Urukiko rusanga nabwo akwiye kugenerwa 300.000 Frw y'igihembo cy'avoka yiyongera ku yo yagenewe n'Urukiko Rukuru.

(33) Urukiko rusanga ariko indishyi MUNYARUKIKO asaba za 15.000.000 Frw, n'ubundi yarazisabaga yitwaza ko yirukaniwe ubusa (dommages et intérêts pour rupture abusive du contrat de travail) nk'uko bigaragara mu kirego cye, izo ndishyi zikaba rero nta shingiro zifite nk'uko byasobanuwe n'Urukiko Rukuru, kuko yaba BNR, yaba Leta, nta masezerano y'akazi yagiranye nawe, kuko yari umukozi ugengwa na Statut y'abakozi ba Leta, utagengwa rero n'Itegeko rigenga umurimo (Code du Travail).

3. ***Ku bijyanye no kumenya ugomba gutanga ishimwe ryo gushyirwa mu kiruhuko cy'izabukuru (prime de fin d'activité) n'ishimwe y'inyongera zivugwa mu ngingo ya 125 yavuzwe haruguru.***

(34) Kuri iki kibazo, Urukiko rurasanga Leta yemera guha MUNYARUKIKO gusa ishimwe ribariwe ku mafaranga 576 650 Frw nk'uko yari yemejwe n'Urukiko Rukuru, ikaba itaranabijuririye. Ariko nk'uko byasobanuwe haruguru, hakurikijwe ubujurire bwatanzwe na MUNYARUKIKO, Urukiko rurasanga iryo shimwe rigomba kubarirwa ku mafaranga 766.632 Frw, kandi rigatangwa nk'uko biteganywa n'ingingo ya 125 ya Statut y'abakozi ba Leta, ni ukuvuga ishimwe rijyana no gushyirwa mu kiruhuko cy'izabukuru, n'ishimwe ry'inyongera nk'uko byabazwe haruguru, ayo mashimwe yose agatangwa na Leta y'u Rwanda.

4. ***Ku bijyanye no guhatira kwishyura (astreinte).***

(35) Ku bijyanye na "astreinte" MUNYARUKIKO yasabye ya 200 000 Frw ku kwezi, Urukiko rurasanga nta mpamvu yayo, kuko haba mbere hose, haba na n'ubu, nta bushake bubi Leta yigeze igaragaza mu kwanga kwishyura MUNYARUKIKO ibyo agenerwa bijyanye no gushyirwa mu zabukuru. Ikibazo cyabaye ni uko habaye agasigane hagati ya Leta na BNR k'ugomba kumwishyura, ariko

bigaragara ko no mu miburanire ya Leta, uyihagarariye atigeze ahakana ko itazaha MUNYARUKIKO ibyo agenerwa byemejwe n'inkiko. Ku bw'iyo mpamvu rero, nta kuyihatira kwishyura mu gihe igifite ubushake bwo kumuha uburenganzira bwe..

5. ***Ku bijyanye n'indishyi z'ubukererwe.***

(36) MUNYARUKIKO asaba ko yahabwa amafaranga 1.471.967 y'indishyi z'ubukererwe ngo kuko amafaranga yari kuba yarayabonye, aba yarayakoresheje, ngo ariko Leta na BNR bakaba baranze kuyamwishyura. Urukiko rurasanga ariko nk'uko byavuzwe haruguru, mu gihe hari hakiri agasigane hagati ya Leta na BNR k'ugomba kumwishyura, nta mpamvu ihari y'uko Leta iryozwa ubwo bukererwe, mu gihe inkiko zari zitarakemura ikibazo cy'ako gasigane.

6. ***Ku bijyanye no kumenya niba MUNYARUKIKO yarareze BNR ku bw'amaherere.***

(37) Ku bijyanye n'ubujurire bwa BNR, bugamije gusaba indishyi zingana n'amafaranga miliyoni makumyabiri (20 millions) habariwemo na 5.000.000 Frw z'igihembo cy'avoka ndetse n'ikurikiranarubanza, ngo kuko MUNYARUKIKO yareze BNR ku bw'amaherere (action téméraire et vexatoire), ngo akaba yaragombaga gukora désistement y'ikirego yari yareze BNR, amaze gusanga agomba no kurega Leta y'u Rwanda, Urukiko rurasanga biriya byose byaratewe na BNR na LETA y'u Rwanda, kuko batigeze bafasha MUNYARUKIKO kubona uburenganzira bwe, bakamusiganira. Ziriya manza yareze rero, ntabwo byari amaherere, ni uko ahubwo yashakaga uburyo yarenganurwa. Ku bw'iyo mpamvu, Urukiko rurasanga yaba indishyi, yaba igihembo cy'Avoka, BNR itagomba kubibaza MUNYARUKIKO, ahubwo ikwiye kubirega LETA bafatanyije gusiganira umukozi bakoresheje.

(38) Hashingiwe ku bisobanuro bimaze gutangwa haruguru, amafaranga Leta y'u Rwanda igomba guha MUNYARUKIKO ni akurikira:

- 4.599.792 Frw y'ishimwe yo gushyirwa mu kiruhuko cy'izabukuru rihwanye n'amezi atandatu (6) y'umushahara (766.632 Frw x 6);
- 4.599.792 Frw y'ishimwe y'inyongera naryo rihwanye n'umushahara w'amezi atandatu (766.632 Frw x 6);
- 1.000.000 Frw y'ikurikirana rubanza mu gihe cy'imyaka 8 irenga;
- 300.000 Frw y'ikurikiranarubanza n'igihembo cy'avoka mu Rukiko Rukuru;
- 300.000 Frw y'igihembo cy'avoka mu Rukiko rw'Ikrenga.

Byose hamwe bikaba 10.799.584 Frw.

V. ICYEMEZO CY'URUKIKO RW'IKIRENGA

(39) Urukiko rwemeye kwakira ubujurire bwa Banki Nkuru y'Igihugu n'ubwa MUNYARUKIKO kuko bwaje mu buryo n'inzira bikurikije amategeko.

(40) Rwemeje ko ubujurire bwa Banki Nkuru y'Igihugu nta shingiro bufite.

(41) Rwemeje ko ubujurire bwa MUNYARUKIKO bufite ishingiro kuri bimwe

(42) Rutegetse LETA y'u RWANDA guha MUNYARUKIKO amafaranga akurikira:

- 4,599,792 Frw y'ishimwe yo gushyirwa mu kiruhuko cy'izabukuru rihwanye n'amezi atandatu (6) y'umushahara (766.632 Frw x 6)
- 4,599,792 Frw y'ishimwe y'inyongera naryo rihwanye n'umushahara w'amezi atandatu (766.632 Frw x 6).
- 1.000.000 Frw y'ikurikirana rubanza mu gihe cy'imyaka 8 irenga
- 300.000 Frw y'ikurikiranarubanza n'igihembo cy'avoka mu Rukiko Rukuru;
- 300.000 Frw y'igihembo cy'avoka mu Rukiko rw'Ikrenga

Yose hamwe akaba 10,799,584 Frw.

(41) Rwemeje ko imikirize y'urubanza R.AD 058/06/HC/KIG ihindutse kuri bimwe.

(42) Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 08/04/2011.

Sé
MUTASHYA Jean Baptiste,
PEREZIDA

Sé
HATANGIMBABAZI Fabien
UMUCAMANZA

Sé
MUNYANGERI N.Innocent
UMUCAMANZA

Sé
UWARUGIRA Jean Baptiste
UMWANDITSI W'URUKIKO

8. URUKIKO RW'IKIRENGA

N° y'urubanza: RADA0041/09/CS
Itariki y'urubanza: 07/10/2011
Haburana: KABERA Etienne na bagenzi be / Pte BIMENYIMANA Bosco na Leta y'u Rwanda

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI-INGWATE Y'AMAGARAMA-ABAJURIRA BENSHI BAHUJE IKIBURANWA-KUDASUZUMA UBUJURIRE BW'UTATANZE AMAGARAMA.

-UBURYOZWE BW'INDISHYI KURI LETA –IBYANGIJWE N'UMUKOZI LETA ISHINZWE KUREBERERA-IGIKORWA GIKOZWE MU RWEGO RW'IMIRIMO UMUKOZI ASHINZWE-KUGARAGAZA KO HARI UMUYOBOZI WABIMENYE AKABIMWEMERERA CYANGWA SE AKABIRANGARAHO.

-IGIKORESHO CYAKORESHEJWE –KUGARAGAZA KO YAGISHIKIRIJWE N'UGISHINZWE

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Utanga ikirego cyangwa ubujurire agomba kwishyura ingwate y'amagarama, iyo mu batanze ikirego cyangwa ubujurire harimo utaratanze ingwate y'amagarama ikirego nticyakirwa ngo gisuzumwa kuri uwo utaranze ingwate y'amagarama.

- Kugira ngo umukoresha aryozwe ibyangijwe n'amakosa y'umukozi ashinzwe kureberera ni ngombwa kugaragaza ko igikorwa cyateye ayo makosa cyabaye mu rwego rw'akazi umukozi yari ashinzwe cyangwa se kigahereyeho, ntibihagije kwerekana ko hari abumvise ko hari amakosa agiye gukorwa hagomba kugaragazwa ko hari umuyobozi wamenye ko amakosa agiye gukorwa akabimwerererera cyangwa akabirangaraho.

-Kuba igikoresho cyakoreshejwe ari icy’akazi ntibihagije ngo habe habaye ikosa ry’akazi rituma hatangwa indishyi, usaba ko umukoresha aryozwa ibyangijwe n’ayo makosa agomba kugaragaza ko umukozi yagihawe n’ubishinzwe kandi abona ko kigiye gukoreshwa amakosa.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUTEGETSI, RUHAKIRIJE MU RUHAME, NONE KUWA 07/10/2011, URUBANZA RADA 0041/09/CS, MU BURYO BUKURIKIRA:

Abarega mu bujurire:

- KABERA Etienne,mwene Mbonyubwabo na Nyiranteziryayo, wavutse muri 1951, utuye Mogozi-Rusenyi, mu ntara y'Iburengerazuba.

- KABERA Etienne uhagarariye abana be bato UWUMUREMYI Beatrice, NSHIMYUMUKIZA Etienne, HABUMUGISHA Jean Bosco, na UWINEZA Christine.

- NYINAWINYANGE Spéciose, Siyori na Nyirabundayi, wavutse muri 1954, utuye Mogozi-Rusenyi, mu ntara y'Iburengerazuba.

- HARELIMANA Thaddée, mwene Kabera Etienne na Nyinawinyange Speciose, wavutse muri 1980, utuye Mogozi-Rusenyi, mu ntara y'Iburengerazuba.

- NYIRANSABIMANA Marceline, mwene Kabera Etienne na Nyinawinyange Speciose, wavutse muri 1983, utuye Mogozi-Rusenyi, mu ntara y'Iburengerazuba.

- MUSABE Monique, mwene Kabera Etienne na Nyinawinyange Speciose, wavutse muri 1975, utuye Mogozi-Rusenyi, mu ntara y'Iburengerazuba.

- HAGENIMANA Faustin, mwene Kabera Etienne na Nyinawinyange Speciose, wavutse muri 1986, utuye Mogozi-Rusenyi, mu ntara y'Iburengerazuba.

Abaregwa:

- Pte BIMENYIMANA Bosco, mwene Bapfakurera Joseph na Mukarushema Marie, wavukiye i Mugusa mu ntara y'Amajyepfo, muri 1977, wari umusilikare mu Ngabo z'u Rwanda.

- LETA Y'U RWANDA mu izina ry'Intumwa Nkuru yayo.

Ikiburanwa:
Indishyi zikomoka ku rupfu rwa Niyitegeka Justin rwabaye ku wa 05/05/2009 arashwe na Pte BIMENYIMANA Bosco.

I. IMITERERE Y'URUBANZA.

[1] Nyuma y'urubanza Pte BIMENYIMANA Bosco yaciriwe n'Urukiko rwa Gisilikare,rukamuhanisha igifungo cy'imyaka 7 rumuhamije icyaha cyo kuba yarishe NIYITEGEKA Justin, abo mu muryango wa NIYITEGEKA baregeye Urukiko Rukuru basaba ko Pte BIMENYIMANA na Leta y'u Rwanda yamukoreshaga bategekwa gutanga indishyi zikomoka kuri icyo cyaha.

[2] Urukiko Rukuru rwemeje ko Pte BIMENYIMANA agomba kwishyura indishyi zihwanye na 8.469.200 frw ku giti cye, kuko Leta y'u Rwanda nta ruhare yagize mu rupfu rwa NIYITEGEKA, nibwo abo mu muryango we bajuriye mu Rukiko rw'Ikirenga basaba ko Leta y'u Rwanda yategekwa gufatanya na Pte BIMENYIMANA kwishyura indishyi.

[3] Urubanza rwaburanishijwe ku wa 06/09/2011, Leta y'u Rwanda ihagarariwe na Me MBONERA Theophile, naho Me TUGANUMUREMYI Donata ahagarariye KABERA Etienne n'abana be bato UWUMUREMYI Beatrice, NSHIMYUMUKIZA Etienne, HABUMUGISHA Jean Bosco, na UWINEZA Christine, anahagarariye NYINAWINYANGE Speciose, HARELIMANA Thadee, NYIRANSABIMANA Marceline, MUSABE Monique na HAGENIMANA Faustin. Pte BIMENYIMANA we ntiyari yitabye n'ubwo yari yahamagawe mu buryo bukurikije amategeko; Urukiko rwemeza kuburanisha adahari.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

[4] Usibye ikibazo cy'urugero rw'indishyi zatanzwe n'icyo kumenya niba Leta y'u Rwanda igomba gufatanya na Pte Bimenyimana kuzishyura, hari n'ikibazo cy'uko bamwe mu bajuriye baba bataratanze ingwate y'amagarama.

KU BIJYANYE N'ITANGWA RY'INGWATE Y'AMAGARAMA.

[5] Iburanisha ritangiye, uburanira Leta y'u Rwanda yabyukije inzitizi y'uko bamwe mu bajuriye baba bataratanze igarama, kuko yashyikirijwe imyanzuro y'abajuriye barindwi nyamara akaba asanga igarama ryaratanzwe na KABERA wenyine, asaba rero ko bibaye ariko bimeze ubujurire bw'abataratanze igarama butakwakirwa.

[6] Me TUGANUMUREMYI yashubije ko hatanzwe imyanzuro n'igarama kuri buri wese mu bajuriye, Urukiko rubamenyesha ababuranyi ko inteko izasuzuma icyo kibazo mbere y'ingingo z'urubanza mu mizi.

[7] Mu isuzuma ry'urubanza mu mwiherero, Urukiko rwasanze muri dosiye hagaragaramo imyanzuro y'abajuriye barindwi, aribo KABERA Etienne, KABERA Etienne uhagarariye abana be bato, Harelimana Thadee, Nyiransabimana Marceline, Hagenimana Faustin, Nyinawinyange Speciose na Musabe Monique, kandi hagaragaramo gitansi z'ingwate z'amagarama zabo, usibye iya Kabera Etienne uhagarariye abana be bato.

[8] Urukiko rurasanga rero ubujurire butagomba kwakirwa muri uru rubanza ari ubwa Kabera Etienne uhagarariye abana be bato, hashingiwe ku ngingo ya 338 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ikirego kitakirwa iyo urega atatanze ingwate y'amagarama.

KU BIJYANYE N'UBURYOZWE BW'INDISHYI KURI LETA Y'URWANDA.

[9] Abajuriye bavuga ko Urukiko Rukuru rwagombaga kwemeza uburyozwe bw'indishyi kuri Leta y'u Rwanda rugategeka ko ifatanya na Pte BIMENYIMANA kuzishyura.

[10] Basobanura ko Leta yagombaga nayo kuryozwa indishyi kuko Pte BIMENYIMANA yakoze ubwicanyi yambaye imyenda ya gisilikare, akoresheje imbunda y'akazi, bakavuga ko n'ubwo Leta iburanisha ko itamutumye, bigaragara ko yabikoze mu rwego rw'akazi kandi Leta ikaba yaragize uburangare kuko yabashaga kumubuza, kuko abo bakorana bamubonye asubiye mu kigo anabasobanurira ko hari abantu bamututse mu kabari, babona ajyanye imbunda kandi avuga ko agiye kwihanira no kwihimura, ikindi kandi abamukuriye mu kazi akaba aribo bashinzwe kubika imbunda bagombaga kumenya uburyo ayitwaye.

[11] Banavuga ko mu rubanza rwajuririwe, uburanira Leta atahakanaga uburyozwe bwa Leta, ndetse akaba yaremeraga ko Leta yatanga indishyi.

[12] Bemeza ko Leta y'u Rwanda igomba gufatanya na Pte BIMENYIMANA kwishyura indishyi, hakurikijwe ibiteganywa n'ingingo za 258 na 260 z'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, kuko ibyo uwo musilikare yakoze yabikoze mu rwego rw'akazi.

[13] Uburanira Leta we asubiza ko nta buryozwe Leta ifite mu gikorwa cya Pte BIMENYIMANA kuko ingingo ya 260 iteganya uburyozwe igihe umukozi yakoze ikosa mu gihe akora ibyo yatumwe n'umukoresha, akaba atari ko byagenze ku byerekeye BIMENYIMANA, avuga ko hari n'izindi manza zaciwe muri uru Rukiko zigaragaza ko nta buryozwe buba kuri Leta buturutse ku bikorwa by'umukozi wayo mugihe bigaragara ko yabikoze mu nyungu ze Leta itabimutumye.

[14] Asobanura ko Pte Bimenyimana yari agiye kuvunjisha amafaranga ku kabari, adatumwe n'umukoresha,

icyamujyanye rero kikaba cyari mu nyungu ze, ahageze akora amahano.

[15] Ku ngingo y'uko bagenzi ba Pte BIMENYIMANA baba barabonye ajya gufata imbunda ntibamubuze kandi yaranavugaga ko agiye kwihorera, uburanira Leta avuga ko kopi y'urubanza rwamuhamije icyaha ntaho ibigaragaza, ko n'ibyo kuba Pte BIMENYIMANA yarabwiye bagenzi be ko agiye kwihorera ari imvugo ye ku giti cye, ko ahubwo yari asanzwe agira ukuntu abika imbunda ye atari mu kazi, nta wamenya rero niba yari ayifite cyangwa niba yari ayikuye mu bubiko, kandi kuba yaba afite imbunda cyangwa ibitswe mu bubiko, biterwa n'uburyo akazi ahawe kateguwe.

[16] Avuga ko niba bagenzi be baramubonye ajyanye imbunda bashobora kuba baratekereje ko asubiye mu kazi, naho ku byerekeye imyenda ya gisilikare, uburanira Leta avuga ko abasilikare ari bo bayibikira.

[17] Avuga ko ntaho bigaragara ko Leta yaba yaremeye gutanga indishyi, ko ahubwo ibyo yavuze bigaragara ku rupapuro rwa gatatu,agace ka gatanu k'inyandiko y'urubanza, byari ibyo mu gihe imiburanire y'ibanze yaba idahawe ishingiro(a titre subsidiaire), ndetse agace ka 5 k'urwo rubanza kakaba kagaragaza neza ko Leta itemeye uburyozwe.

[18] Ku bijyanye n'uburyozwe ku mukoresha buturutse ku makosa y'umukozi we, igika cya gatatu cy'ingingo ya 260 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, giteganya ko kugira ngo umukoresha aryozwe ibyangijwe ku makosa y'umukozi we ari uko uwo mukozi aba yabikoze mu rwego rw'imirimo ashinzwe.

[19] Ku byerekeye Pte BIMENYIMANA, inyandiko y'imikirize y'urubanza rwamuhamije icyaha igaragaza ko yishe NIYITEGEKA bihereye ku ntonganya yari yagiranye na Demob RWIGEMA ku kabari aho yari agiye kuvunjisha amafaranga, asubira ku kigo aho yabagaga yambara imyenda ya gisilikare afata imbunda ageze kuri ka kabari asanga

uwo batonganye yagiye, nibwo arashe NIYITEGEKA wamwegeraga ashaka kumufatana imbunda, Urukiko rukaba rusanga ntaho bigaragara ko icyo gikorwa cya Pte BIMENYIMANA cyaba cyarakozwe mu rwego rw'akazi yari ashinzwe cyagwa se kigahereyeho.

[20] Ku ngingo y'uko bagenzi ba Pte BIMENYIMANA baba barumvise avuga ko agiye kwihorera, Urukiko rurasanga nta muyobozi we wigeze agaragazwa ko yaba yaramenye ko agiye gukora amahano ngo abimwemerere cyangwa se ngo abirangareho, naho imyitwarire ya bagenzi be baba barumvise abivuga akaba atariyo yatuma Leta yamukoreshaga iryozwa indishyi.

[21] No kubyerekeye imbunda BIMENYIMANA yakoresheje arasa umuntu, abaregera indishyi ntibababashije kugaragaza ko yaba yarayishyikirijwe n'abashinzwe kuyibika mu gihe yayijyanaga ku kabari, bakaba rero batagaragaza ishingiro ry'uburyozwe basaba kuri Leta.

[22] Ku byerekeye ukwiyemerera uhagarariye Leta yaba yarakoreye mu Rukiko Rukuru adahakana uburyozwe bwa Leta, inyandiko y'imikirize y'urubanza mu Rukiko Rukuru igaragaza ko yagaragaje igitekerezo cye ku rugero rw'indishyi zagenerwa abaziregeye, ibyo ariko bikaba bitavuze ko yemeye uburyozwe bw'indishyi kuri Leta, mu gihe ahubwo bigaragara mu gace ka kane n'aka karindwi by'urwo rubanza ko yahakanye rwose uburyozwe bw'indishyi kuri Leta, kandi ingingo ya 110 y'Itegeko ryerekeye ibimenyetso n'itangwa ryabyo mu manza iteganya ko ukwiyemerera ari amagambo umuburanyi avugira mu rukiko agira ibyo yemera akaba agomba gutsindisha uwayavuze, ariko bikaba bitemewe kuvana amagambo amwe mu yo yavuze ngo abe ari yo bamutsindisha adafatiwe hamwe nk'uko yayavuze.

KU BYEREKEYE URUGERO RW'INDISHYI ZATANZWE

[23] Uburanira abajuriye avuga ko Urukiko Rukuru rwabageneye indishyi nke, harebwe akababaro bagize n'ibyo batanze, Harelimana, Nyiransabimana, Musabe na Hagenimana bari bagenewe buri wese 500.000 frw y'impozamarira na 50.000 frw y'ingendo n'ikurikiranarubanza bakaba basaba buri wese 1.500.000 frw y'impozamarira na 200.000 frw y'ikurikiranarubanza, Kabera wari wagenewe 2.000.000 frw akaba asaba 3.000.000 y'impozamarira, 300.000 frw yakoreshejwe mu gushyingura na 300.000 frw y'ikurikiranarubanza, naho Nyinawinyange wari wagenewe 2.000.000 frw akaba asaba 3.000.000 frw y'impozamarira na 200.000 frw y'ikurikiranarubanza.

[24] Uburanira Leta we avuga ko indishyi zatanzwe n'Urukiko Rukuru ari nyinshi, haba ku babyeyi haba no ku bavandimwe ba Nyakwigendera, zikaba zikwiye kugabanywa kuko n'ubwo habaye icyaha ariko hari habaye igisa no gusemburwa kandi uwarashwe sinawe Pte BIMENYIMANA yashakaga kurasa, bikaba ahubwo ari ibyamugwiririye. Asanga uko biri kwose atari Leta yatanga izo ndishyi kuko nta kosa yakoze kugira ngo habe ubwo bwicanyi.

[25] Urukiko rurasanga, abajuriye basaba iyongerwa ry'indishyi batagaragaza icyo bashingiraho bavuga ko bagenewe nke, hakaba hakwiye kugumaho izo bagenewe n'urukiko rubanza mu bushishozi bwarwo, kuko ziri mu rugero rukwiye.

ICYEMEZO CY'URUKIKO

[26] Rwemeje ko ubujurire bwa KABERA Etienne, HARELIMANA Thadee, NYIRANSABIMANA Marceline, HAGENIMANA Faustin, NYINAWINYANGE Speciose n'ubwa MUSABE Monique nta shingiro bufite ;

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

[28] Rutegetse KABERA Etienne, KABERA Etienne uhagarariye abana be bato, HARELIMANA Thadee, NYIRANSABIMANA Marceline, HAGENIMANA Faustin, NYINAWINYANGE

Speciose na MUSABE Monique kwishyura buri wese 1/7 cy'amagarama y'urubanza, ahwanye na 22297 frw, batayatanga mu gihe cy'iminsi umunani ayo mafaranga agakurwa mu byabo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 07/10/2011

Sé
MUGENZI Louis-Marie
Perezida

Sé
MUKAMULISA M. Thérèse
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
GAKURU Ahmed
Umwanditsi w'Urukiko

9. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RADA0030/09/CS
ITARIKI Y'URUBANZA: 04/11/2011
HABURANA: Leta y'u Rwanda mu izina ry'icyahozi ari Imprimerie Scolaire / HANYURWABAKE Juvénal.

AMAGAMBO MPINE

-IMANZA Z'UBUTEGETSI-UMUKOZI UGENGWA NA SITATI RUSANGE Y'ABAKOZI BA LETA-KUJURIRIRA INZEGO Z'UBUTEGETSI CYANGWA INKIKO ZIBISHINZWE-KUJURIRA KU BUTEGETSI BUKURIYE UWAHAWE IGIHANO –KUJURIRA KURI KOMISIYO Y'ABAKOZI BA LETA.

-ITEGEKO RISHYIRAHO URWEGO RUJURIRIRWA-ISHYIRWAHO RY'ABAYOBOZI B'URWEGO-UKUTABA NGOMBWA KUJURIRA IYO URWEGO RUJURIRIRWA RWASHYIZWEHO N'ITEGEKO ARIKO RUTAHABWA ABAYOBOZI.

-AMAKOSA YO MU RWEGO RW'AKAZI-UMUSHAHARA UMUKOZI YAHEMBWE-INSHINGANO Z'UMUKORESHA ZO KWEREKANA KO UMUKOZI ATAKOZE-KUDASABA URUKIKO GUSABA UMUKOZI KUGARURA IMISHAHARA YAHEMBWE IGIHE WARI UZI NEZA KO UMUKOZI AKORA AHANDI.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Umukozi ugengwa na Sitati rusange y'abakozi ba Leta wumva yararenganijwe ashobora kujuririra inzego z'ubutegetsi cyangwa se inkiko zibishinzwe; ubujurire ku rwego rwa mbere bukorwa ku butegetsi bukuriye uwahawe igihano naho ku rwego rwa

kabiri bugakorerwa kuri Komisiyo y'abakozi ba Leta bitarenze iminsi 30 uhereye ku munsi umukozi wa Leta yamenyeshejweho igihano .

- Ntibifatwa ko uwajuriye hari umuhango atubahirije iyo urwego ruteganywa n'itegeko yagombaga kujuriraho rwateganijwe n'itegeko ariko rutaratangira gukora.

- Umukoresha niwe ufite inshingano zo gukurikirana umunsi ku munsi imikorere y'umukozi, afite uburenganzira bwo kumufatira ibihano bijyanye n'imyifatire mu kazi, ni nawe ufite inshingano zo kumenya niba umukozi yarakoze, atarakoze cyangwa ko akwiriye guhembwa; ntashobora gusaba Urukiko gutegeka umukozi gusubiza amafaranga yahembwe mu gihe yari akiri ku kazi kandi nta bihano yigeze amufatira .

-Umushahara ni ikiguzi cy'umusaruro umukozi aba yagaragaje, mu gihe umukoresha azi ko umukozi nta musaruro agaragaza mu kazi ke kubera ko akora ahandi niwe ufite inshingano zo kutamuhemba, iyo akomeje kumuhemba ni uko aba abona ko hari umusaruro atanga.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUTEGETSI RUKIJIJE MU RUHAME KUWA 04/11/2011, URUBANZA R.AdA 0030/09/ CS MU BURYO BUKURIKIRA:

HABURANA

Uwajuriye:
Leta y'u Rwanda mu izina ry'icyahoze ari Régie de l'Imprimerie Scolaire (IMPRISCO) , iburanirwa na Me BUTARE Emmanuel.

Uregwa :

-HANYURWABAKE Juvénal, mwene Magera na Nyirabaganza, utuye Umudugudu wa Kinunga, Akagali ka Nyabisindu, Umurenge wa Remera, Akarere ka Gasabo, Umujyi wa Kigali, uburanirwa na Me HABIMANA Théogène.

IKIBURANWA :

- Gukuraho icyemezo nº 12/08.05/DIR/08 cyo kuwa 28/03/2008 kimuhagarika ku kazi by'agateganyo ;
- Indishyi z'akababaro zingana n'amezi 6 y'umushahara kubera guhagarikwa ku kazi nta mpamvu ;
- Kumuha umushahara w'ukwezi kwa Werurwe 2008 ;
- Kumuha umushahara w'amezi azaba yahagaze yose ;
- Kumuha imperekeza (décompte final).

I. IMITERERE Y'URUBANZA

[1] Nyuma y'uko bigaragaye ko Hanyurwabake Juvénal wari umukozi wa IMPRISCO akuriye service technique, yihanangirijwe asabwa n'ibisobanuro bijyanye no kuba afite amasezerano y'akazi yagiranye n'ikindi kigo cya Leta (Komisiyo y'Igihugu y'Amatora), kuwa 28/03/2008 yandikiwe

n'Umuyobozi Mukuru wa IMPRISCO ibaruwa imuhagarika ku kazi by'agateganyo mu gihe cy'amezi atandatu, anamubwira ko atazahembwa umushahara w'ukwezi kwa Werurwe 2008 kuko atagukoze. Hanyurwabake yamwandikiye amutakambira amusaba gukuraho icyemezo yafashe, abonye nta gisubizo ahawe atanga ikirego mu Rukiko Rukuru tariki 17/07/2008. Tariki 28/08/2008, Hanyurwabake akiri mu gihano, IMPRISCO yegurirwa abikorera ku giti cyabo mu rwego rwa "privatisation des Etablissements publics".

[2] Urukiko Rukuru rwemeje ko ikirego cya Hanyurwabake cyakiriwe, ko IMPRISCO yamuhagaritse by'agateganyo ku kazi mu buryo bwemewe n'amategeko, ruyitegeka kumuha 772.313 Frw ahwanye na 2/3 by'umushahara we w'amezi 5 kuko yasezerewe bitewe n'ivanwaho ry'umurimo, rumugenera kandi na 1.390.164 y'ishimwe n'umushahara w'ukwezi kwa Werurwe 2008 ungana na 231.694 Frw, yose hamwe aba 2.394.171 Frw.

[3] Mu izina rya IMPRISCO, Intumwa ya Leta yajuririye Urukiko rw'Ikirenga ivuga ko ikirego cya Hanyurwabake kitagombaga kwakirwa kubera ko atatakambiye inzego zose ziteganywa n'amategeko mbere yo kwitabaza inkiko. Ikindi ngo ni uko Urukiko rwafashe ibyemezo bibiri bivuguruzanya, rwemeza ko Hanyurwabake yahagaritswe ku kazi mu buryo bukurikije amategeko, ariko noneho aho kumuhanira amakosa ye rwemeza ahubwo ko agomba guhembwa imishahara ye yose.

[4] Iburanisha ry'urubanza ryabaye tariki 04/10/2011, IMPRISCO ihagarariwe n'Intumwa ya Leta Me BUTARE Emmanuel, naho Hanyurwabake Juvénal ahagarariwe na Me HABIMANA Théogène.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba ikirego cya Hanyurwabake kitaragombaga kwakirwa kuko yaba atarabanje gutakambira inzego zose ziteganywa n'amategeko

[5] Me Butare uburanira IMPRISCO avuga ko Urukiko Rukuru rutagombaga kwakira ikirego cya Hanyurwabake kuko atubahirije ibiteganywa n'ingingo ya 97 y'Itegeko nº 22/2002 ryo kuwa 09/07/2002 rishyiraho sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta, iteganya ko umukozi wumva yarenganijwe ashobora kujuririra inzego z'ubutegetsi cyangwa akajya mu nkiko. Asobanura ko ukoresheje uburyo bwo kujuririra inzego z'ubutegetsi agomba guhera k'umuyobozi wafashe icyemezo, atanyurwa akiyambaza Komisiyo ishinzwe abakozi ba Leta mbere yo kujya mu nkiko, kandi ko ibivugwa mu ngingo ya 97 yavuzwe bihura n'ibiteganywa n'ingingo ya 93 y'itegeko ryerekeye imiterere, imikorere n'ububasha by'inkiko[6]. Ku birebana na Hanyurwabake wari wahisemo inzira yo kujuririra inzego z'ubutegetsi (voie administrative), asanga itakamba rye ritarubahirije ingingo ya 97 yavuzwe kuko yatakambiye gusa Umuyobozi Mukuru wa IMPRISCO, abonye nta gisubizo amuhaye, ntiyitabaza Komisiyo y'abakozi ba Leta mbere yo kuregera inkiko kandi nyamara itegeko riyishyiraho ryaragiyeho muri Gashyantare 2007.

[6] Ku bijyanye n'inzitizi yo kutakira ikirego cya Hanyurwabake, Me Habimana umuburanira avuga ko ibyo yakoze bikurikije amategeko bitewe n'uko yatakambiye uwari umukuriye mu kazi nk'uko biteganywa n'ingingo ya 97 y'itegeko nº 22/2002 ryo kuwa 09/07/2002 ryavuzwe haruguru, akaba asanga nta kosa umucamanza yakoze kuko yakiriye ikirego ashingiye ku biteganywa n'ingingo ya 339 y'Itegeko nº 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize

[6] Iyo ngingo iteganya ko ko ibyemezo bishyikirizwa inkiko ari ibyafashwe mu rwego rwa nyuma n'abategetsi bavugwa muri iyo ngingo.

y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu. Asobanura ko Umuyobozi wa IMPRISCO wari wafashe icyemezo cyo guhagarika Hanyurwabake by'agateganyo ariwe yatakambiye, akaba asanga ingingo ya 97 itavuguruza iya 339. Avuga kandi ko kuba ataratakambiye Komisiyo nta kibazo byagombye kumutera ko ahubwo uwatakambiwe ariwe uhura nacyo iyo adasubije mu gihe giteganywa n'amategeko kuko icyo gihe icyemezo yafashe kivanwaho.

[7] Urukiko rurasanga ababuranyi bombi bemeranya ko Hanyurwabake yari umukozi wa Leta ugengwa na Sitati Rusange y'abakozi ba Leta, bityo ibyerekeranye n'inzira yo gutakamba bikaba bigomba kureberwa mu itegeko nº 22/2002 ryo kuwa 09/07/2002 ryavuzwe haruguru.

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

[9] Harebewe hamwe ibiteganywa n'ingingo zimaze kuvugwa, Urukiko rurasanga ubwo Hanyurwabake yari amaze gutakambira Umuyobozi wa IMPRISCO ntabone igisubizo, yagombaga kujuririra Komisiyo y'abakozi ba Leta bitarenze iminsi 30 uhereye ku munsi yamenyesherejweho icyemezo kimuhagarika by'agateganyo byananirana akabona kujya mu nkiko.

[10] N'ubwo Hanyurwabake yagombaga kujuririra Komisiyo y'abakozi ba Leta, Urukiko rurasanga ariko bitarashobokaga muri icyo gihe kuko iyo Komisiyo yashyizweho n'itegeko nº 06/2007 ryo kuwa 01/02/2007 mu igazeti ya Leta ya

Werurwe uwo mwaka, ikigaragara akaba ari uko itahise ikora kuko abayobozi bayo bashyizweho mu kwezi kwa kane 2008, bityo rero kuba Hanyurwabake yaratakambiye gusa Umuyobozi wa IMPRISCO bikaba bitaragombaga kuba impamvu yo kutakira ikirego cye mu Rukiko Rukuru.

2. Haba hari ukuvuguruzanya mu byemezo byafashwe n'Urukiko Rukuru ?

[11] Uburanira IMPRISCO avuga ko mu Rukiko Rukuru yaburanye yerekana ukuntu Hanyurwabake wari umukozi wayo yaje gukorana amasezerano y'umurimo na Komisiyo y'amatora, ayo masezerano akaba yaramuhaga inshingano yo kuba ku kazi igihe cyose. Kubera ko ibigo byombi byamuhembaga, bari basabye urukiko ko amafaranga yose yahembwe afite akandi kazi, yayasubiza IMPRISCO ndetse n'inyungu zayo kubera akazi kayo katakorwaga uko bikwiye, ariko mu guca urubanza Urukiko rwirengagiza imiburanire ya IMPRISCO kuko rwafashe ibyemezo bibiri bivuguruzanya nk'uko bigaragara mu gika cya 21, urupapuro rwa 6 rw'imikirize y'urubanza, rwemeza ko igihano Hanyurwabake yahawe cyafashwe mu buryo bukurikije amategeko ariko aho kumuhanira amakosa ye rumugenera amafaranga y'imishahara n'ibindi bihabwa abakozi badafite ibibazo.

[12] IMPRISCO irasaba uru Rukiko ko rwakosora imikirize y'urubanza, narwo rukemeza ko Hanyurwabake yirukanywe mu buryo bukurikije amategeko kandi ko bitewe n'uko yahembwaga n'ibigo bibiri, amafaranga yahembwe akoresheje uburiganya mu kwezi kwa mbere, ukwa kabiri n'ukwa gatatu 2008 angana na 641.082 ndetse n'inyungu zayo zibariwe ku ijanisha rya 18 zibyo yatakaje byose bikaba 756.477 Frw yayasubiza Leta.

[13] Uhagarariye IMPRISCO yabajijwe ikibazo kijyanye na "situation juridique" Hanyurwabake yarimo igihe IMPRISCO yegurirwaga abikorera ku giti cyabo, asubiza ko urukiko

rubisuzumye neza rwasanga yari afite amasezerano yagiranye na Komisiyo y'amatora yagombaga kurangira m'Ukuboza 2008, byumvikana neza rero ko atari akiri umukozi wa IMPRISCO.

[14] Uburanira Hanyurwabake avuga ko nta vuguruzanya abona mu mikirize y'urubanza rwajuririwe kuko kuba Hanyurwabake yarahagaritswe by'agateganyo bitari kumubuza uburenganzira bwe bwo guhemberwa akazi yakoze no guhabwa 2/3 by'amezi 5 kubera ivanwaho ry'akazi kuko IMPRISCO yeguriwe abikorera ku giti cyabo ryabaye tariki 28/08/2008, kuko icyo gihe yari akiri umukozi wa Leta, ko rero amafaranga IMPRISCO imusaba adakwiye kuyasubiza. Yongeraho kandi ko nta kosa yakoze asinyana amasezerano ya "consultance" na Komisiyo y'Igihugu y'amatora, kuko kuba umukozi wa Leta bitabuza gukora ikiraka nyuma y'amasaha y'akazi nk'uko Hanyurwabake yabikoraga.

[15] Ku byerekeranye n'ibyemezo bibiri bivuguruzanya byaba byarafashwe n'Urukiko Rukuru hirengagijwe ibyavugiwe mu iburanisha bivugwa n'uhagarariye IMPRISCO, Urukiko rurasanga ntaho Urukiko Rukuru rwivuguruje mu cyemezo rwafashe kuko rwasobanuye neza ko impamvu rwageneye Hanyurwabake umushahara w'ukwezi kwa gatatu 2008 IMPRISCO yari yanze kumuhemba ari uko itigeze irugaragariza ibimenyetso byerekana ko muri uko kwezi atakoze kandi n'uru Rukiko akaba ari ko rubibona kuko usibye kuvuga gusa ko hari iminsi yageraga ku kazi yakerewe nta kindi kimenyetso yatanze kigaragaza ko akazi yayikoreye muri uko kwezi kadakwiranye n'umushahara yagombaga kumuhemba .

[16] Ku byerekeranye n'imishahara y'amezi atatu ya mbere y'umwaka wa 2008, uburanira IMPRISCO asaba ko Hanyurwabake yasubiza Leta kuko yayihembwe afite n'akandi kazi muri Komisiyo y'Igihugu y'amatora, ingingo ya

84 y'Itegeko n° 22/2002 ryo kuwa 09/07/2002, iteganya ko « umukozi wa Leta wese agomba gutunganya akazi ashinzwe, yubahiriza amabwiriza yihariye cyangwa rusange ahabwa n'umukuriye cyangwa abiherewe uruhusa n'umutegetsi umukuriye ku kazi. Kuba rero Hanyurwabake wari umukozi wa IMPRISCO yarakoreraga Komisiyo y'amatora kandi nta ruhusa abiherewe n'umuyobozi umukuriye byari amakosa yo mu rwego rw'akazi yagombaga guhanirwa.

[17] Urukiko rurasanga ariko Ubuyobozi bwa IMPRISCO aribwo bwari bufite inshingano yo gukurikirana imikorere y'abakozi b'icyo kigo umunsi ku wundi akaba ari nabwo bwari gutanga ibihano k'umukozi udakurikiza uko bikwiye amabwiriza agenga akazi. Kuba Umuyobozi wa IMPRISCO yarandikiye Hanyurwabake amusaba ibisobanuro ku kiraka yakoraga muri Komisiyo y'amatora kuva tariki 06/12//2007, akongera kumwandikira tariki 13/03/2008, akamuhagarika tariki 28/03/2008, Urukiko rurasanga IMPRISCO atariyo yagombye gusaba urukiko ko Hanyurwabake yasubiza imishahara yamuhembye kuko kuva muri Mutarama kugeza muri Werurwe 2008, bigaragara ko yari ifite amakuru ko akora ahandi, ko iyo iza gusanga nta kazi ayikorera na mba, yaragombaga kumuhagarika rugikubita. Kuba rero nta bihano yamufatiye ahubwo ikamuhemba ni uko yabonaga ko hari umusaruro yinjiza mu kigo, bityo amafaranga y'imishahara isaba gusubizwa ikaba nta bimenyetso iyatangira.

[18] Urukiko rurasanga na none Urukiko Rukuru nta kosa rwakoze rwemeza ko Hanyurwabake agomba guhabwa 2/3 by'umushahara we rushingiye ku ngingo ya 66, igika cya mbere y'itegeko nº 22/2002 ryo kuwa 09/07/2002 ryavuzwe, kuko nk'uko rwabisobanuye, Hanyurwabake wari warahagaritswe by'agateganyo kubera amakosa ye kugeza tariki 29/09/2008, yari akiri umukozi wa Leta hashingiwe ku biteganywa n'ingingo ya 38, agace ka 5 y'itegeko nº 22/2002 ryo kuwa 09/07/2002, kuko nta cyemezo cya burundu cyari cyakamufatiwe ngo yirukanwe burundu cyangwa se

asubizwe mu kazi, bityo rero akaba yaragombaga guhabwa ibyo amategeko agenera abandi bakozi bari bakiri mu kazi.

3. Kumenya niba amafaranga y'ikurikiranarubanza IMPRISCO isaba yayahabwa

[19] Uburanira IMPRISCO ayisabira amafaranga 500.000 y'ikurikiranarubanza yatangwa na Hanyurwabake kubera ko yayishoye mu manza kandi hejuru y'amakosa ye. Uburanira Hanyurwabake we ntacyo abivugaho.

[20] Urukiko rurasanga amafaranga y'ikurikirana rubanza IMPRISCO isaba itayahabwa kuko ntacyo itsindiye muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[21] Rwemeje ko ubujurire bwa IMPRISCO nta shingiro bufite.

[22] Ruvuze ko urubanza RAD 0034/08/HC/KIG rwaciwe kuwa 12/06/2009 n'Urukiko Rukuru ku cyicaro cyarwo i Kigali rudahindutse.

[23] Rutegetse ko amagarama y'urubanza angana na 34.550 Frw aherera ku Isanduku ya Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KUWA 04/11/2011.

(Sé)
MUKANYUNDO Patricie
Perezida

(Sé)	**(Sé)**
KAYITESI R. Emily	**MUKANDAMAGE Marie-Josée**
Umucamanza	**Umucamanza**

(Sé)
RUSINGIZA Germain
Umwanditsi w'Urukiko

10. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RADA0020/10/CS
ITARIKI Y'URUBANZA: 07/10/2011
HABURANA: Banque Nationale du Rwanda / RUTAGENGWA François.

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI-KUMENYESHA UMUKOZI IBYO AKURIKIRANYWEHO-UBURENGANZIRA BWO KWISOBANURA-GUFATIRWA IGIHANO.

-UMUKOZI W'URWEGO USHINZWE AMATEGEKO-UBUSHUTI HAGATI Y'UFITE IKIBAZO N'UMUKOZI USHINZWE AMATEGEKO-GUTEGURIRA UFITE IKIBAZO IBARUWA IGENEWE ABAYOBOZI-KUTABIFATA NK'IKOSA RY'AKAZI.

-GUTAKAZA AMAHIRWE-KUBITANGIRA IBIMENYETSO – KWEREKANA KO AYO MAHIRWE ATARI INZOZI CYANGWA SE IBYASHOBOKAGA-KUBITANGIRA INDISHYI.

-IHAME RY'ITANGWA RY'INDISHYI-GUSANA IBYANGIRITSE-KWEREKANA ICYANGIJWE

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Ikurikiranwa ry'umukozi(procédure disciplinaire) rigomba gutangizwa n'inyandiko imumenyesha ibyo akurikiranyweho kugira ngo abyisobanureho mbere y'uko afatirwa igihano icyo aricyo cyose.

- Umukozi ushinzwe amategeko mu rwego runaka mu gihe afite ikibazo arimo gukurikirana ntashobora kugereranywa

n'umucamanza ufite urubanza, ngo abure kuba yafasha umugana amwereka inzira yanyuramo kugira ngo ikibazo cye gikemuke. Kuba yamufasha amutegurira ibaruwa igenewe abayobozi nk'uko yabanikorera abandi ntibyakwita ikosa ry'akazi, kabone n'iyo yaba ari inshuti y'uwo ufite ikibazo usaba ko gikemuke, mu gihe bitagaragara ko yabikoze mu bwihisho cyangwa se hari inyungu runaka abitezemo, nta n'igongana ry'inyungu ribonekamo mu gihe haterekanwa ko hari icyo umukozi yabangamiyemo urwego akorera .

-Kuba umukozi ushinzwe amategeko ari inshuti y'ufite ikibazo akamufasha uburyo cyakemuka nk'uko afasha abandi nta nenge ubwabyo bifite mu gihe bitagaragara ko yabikoze mu bwihisho cyangwa se hari inyungu runaka abitezemo, nta n'igongana ry'inyungu ribonekamo mu gihe haterekanwa ko hari icyo umukozi yabangamiyeho urwego akorera.

- Usaba indishyi zijyanye no gutakaza amahirwe agomba gutanga ibimenyetso byerekana ko ayo mahirwe yari ategereje atari inzozi cyangwa se ibyashobokaga gusa(hypothetique).

-Ihame ry'indishyi ni ugusana ibyangiritse, usaba indishyi agomba kugaragaza ibimenyetso byerekana icyo igikorwa ziturukahaho cyamwononeye.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUHAKIRIJE MU RUHAME URUBANZA RADA 0020/10/CS KUWA 07/10/2011, MU BURYO BUKURIKIRA:

Urega mu bujurire: Banque Nationale du Rwanda sise Avenue Paul VI, Nyarugenge District.

Uregwa:Rutagengwa Francois, Fils de Kanyandekwe Alfred et de Mukamparaye Christiane, résident, District de Gasabo, Secteur Remera , Kigali.

Ikiburanwa:
1. Régularisations des salaires impayés et cotisation à la CSR et au fond de Pension complémentaire.

2. D.I Pour non régularisation des salaries pour la période allant du 9/07/ au 1/10/2009.
Dommages et intérêts pour décision de révocation abusive de fonction.
Dommages et intérêt pour perte de crédit maison
Paiement de l'indemnité de préavis
Paiement de l'indemnité de licenciement
Paiement de l'indemnité correspondant aux avantages de toutes natures dont j'aurai bénéficié pendant la durée du préavis.
Paiement de l'indemnité compensatrice de congé
Paiement de l'indemnité de contrevaleur des arriérés de congé
Dommages et intérêts pour refus de délivrer l'attestation de services rendus et le décompte définitive.
Dommages et intérêts pour accusations diffamatoires
Dommages et intérêts pour préjudices en formations
Condamner la BNR aux frais de procédure.

I.IMITERERE Y'URUBANZA.

[29] Amaze kwirukanwa mu kazi ka Banki Nkuru y'Igihugu(BNR), RUTAGENGWA François yaregeye Urukiko Rukuru, rutegeka Banki Nkuru y'Igihugu kumuha indishyi

zihwanye na 10.197.110 frw zo kuba yarahagaritswe ku kazi mu buryo bunyuranije n'amategeko, kuba yarirukaniwe ubusa, kuba yarayavukijwe inguzanyo n'amahirwe yo kujya mu mahugurwa, hamwe n'amafaranga y'ikurikirana rubanza.

[30] Urwo rubanza nirwo Banki Nkuru y'Igihugu yajuririye mu Rukiko rw'Ikirenga igamije kugaragaza ko RUTAGENGWA yirukaniwe impamvu zumvikana kandi mu buryo bukurikije amategeko, RUTAGENGWA nawe atanga ubujurire bwuririye ku bundi asaba ko yahabwa indishyi zose yari yasabye mu Rukiko rubanza.

[31] Urubanza rwaburanishijwe mu ruhame kuwa 06/09/2011, Banki Nkuru y'Igihugu iburanirwa na Me KAZUNGU Jean Bosco, naho RUTAGENGWA yunganiwe na Me MUTABAZI ABAYO Jean Claude.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

Ku kibazo cyo kumenya niba RUTAGENGWA yarirukanywe mu buryo bukurikije amategeko y'iyirukanwa.

[32] Kimwe mu byajurije BNR ni ukuba Urukiko rubanza rwaremeje ko yahagaritse RUTAGENGWA hadakurikijwe amategeko rukamugenera indishyi ku bw'ibyo, ruvuga ko yahagaritswe atabanje kumenyeshwa ikosa ku buryo bwanditse ngo yisobanure.

[33] BNR isobanura ko nyamara ingingo ya 28, agace ka 5 ya Stati y'abakozi ba BNR iteganya ko umukozi ashobora guhagarikwa bigamije gusa iperereza, akaba aribyo byabaye kuri RUTAGENGWA akabimeneshwa, bikaba rero bitakwitiranywa n'ibiteganywa mu ngingo ya 29 irebana n'igihe umukozi afashwe mu ikosa ndetse ikaba iteganya n'ibihano.

[34] RUTAGENGWA n'umwunganira bo bavuga ko hatabayeho kubahiriza amategeko mu kumuhagarika, kuko yafatiwe icyemezo cyo guhagarikwa ku kazi, hatabayeho ku mwandikira ngo abanze yisobanure kandi nta gihano gishobora gutangwa hatabanje gusabwa ugihawe kwisobanura.

[35] Bemeza ko guhagarikwa bigamije iperereza atari icyemezo gisanzwe kigamije imigendekere myiza y'akazi ''mesure d'ordre'' kuko cyo kitajyana n'ihagarikwa ry'imishahara, kikaba ntacyo cyononera uyifatiwe kandi ntikigire ingaruka zirenga imbibi z'urwego rw'akazi (interne).

[36] Nk'uko bigaragara muri dosiye, inyandiko yo ku wa 09/07/2009 ihagarika ku kazi RUTAGENGWA, yasobanuraga ko ahagaritswe kuko hari iperereza riri gukorwa ku ruhare yaba yaragize mu ibura ry'amafaranga ya prime de rendement yari agenewe umuryango wa Nyakwigendera Nkwaya, iyo baruwa iza gukurikirwa n'indi yo ku wa 15/09/2009 imusaba ibisobanuro kuri icyo kibazo, ibyo bisobanuro rero akaba yarabisabwe yamaze guhagarikwa.

[37] Urukiko rusasanga, imyiregurire ya BNR ivuga ko guhagarika umukozi wayo byatewe n'impamvu z'iperereza ry'ibyo akekwaho hashingiwe ku ngingo ya 28 ya Sitati y'abakozi ba BNR, idakuraho ko icyo cyemezo yafatiwe gituma anahagarikirwa umushahara cyari gifite isura y'igihano (caractere de sanction), ndetse, nk'uko Urukiko rubanza rwabigaragaje, iperereza kuri icyo kibazo rikaba ryari ryaratangijwe na BNR, iryo kurikiranwa ry'umukozi rero (procedure disciplinaire) rikaba ryaragombaga gutangizwa n'inyandiko imumenyesha ibyo akurikiranweho kugira ngo anabyisobanureho, hakurikijwe ibiteganywa n'ingingo ya 88 ya Sitati y'abakozi ba Leta, n'ingingo ya 40, igika cya 2 ya Sitati y'abakozi ba BNR.

[38] Uru Rukiko rero rurasanga, ubujurire bwa BNR bugamije kwerekana ko RUTAGENGWA yirukanwe mu buryo bwubahirije amategeko nta shingiro bufite.

Ku kibazo cyo kumenya niba RUTAGENGWA yarirukaniwe impamvu yumvikana.

[39] Ikindi cyajurije BNR ni uko isanga Urukiko rubanza rwemeje ko nta mpamvu ikomeye yatumye RUTAGENGWA

yirukanwa, rwirengagije ko yari umuyobozi ushinzwe Departement y'amategeko no kuburanira BNR, nyamara akaba yaragiriye inama umupfakazi wa Nyakwigendera NKWAYA wari ukurikiranye muri BNR ''prime de rendement'' yari igenewe umuryango wa NKWAYA, aniyemerera ko yari inshuti y'uwo muryango ndetse akaba ari nawe wateguriye uwo mugore ibaruwa ivugwamo ko hari impungenge ko iyo'' prime'' yaba yaranyerejwe.

[40] BNR isanga kuba RUTAGENGWA yaritwaye atyo kubera ubucuti afitanye n'umuryango wa NKWAYA kandi azi umwanya arimo ndetse abona ko ikibazo cyashoboraga kubyara urubanza hagati ya BNR n'uwo muryango, yaragombaga nibura kwifata kuko hari inyungu zigongana ''conflit d'interets'' mu gihe yari azi ko afite inshingano zo kurengera inyungu za BNR, kuba rero yararenze ku nshingano ze bikaba ari ikosa rikomeye ryashoboraga gutuma yirukanwa, ingingo ya 46 ya Stati y'abakozi ba BNR ikaba itarondora amakosa yose yatuma umukozi yirukanwa.

[41] BNR isobanura ko kwifata RUTAGENGWA yagombaga kugaragaza kubera igongana ry'inyungu kwari kuba guhuye n'igitekerezo cyo mu ngingo ya 98 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ibiteganya ku bacamanza.

[42] Kuri icyo kibazo, RUTAGENGWA n'umwunganira bavuga ko nta kosa yakoze mu kugira umupfakazi NYIRANJISHI inama yo kwandikira Guverineri wa BNR ku kibazo cy'amafaranga ya prime yasabaga, kuko abakozi ba BNR bagombaga kuyamwishyura bari barayanyereje kandi BNR yarayatanze ndetse ubu bikaba biri mu rubanza.

[43] Basobanura ko nta gongana ry'inyungu ryari kuri RUTAGENGWA muri icyo kibazo n'ubwo koko yari inshuti y'umuryango wa NKWAYA bigeze gukorana, ko ahubwo inyungu ze ari nazo zari iza BNR yari yaratanze ayo mafaranga agenewe uwo muryango, agafasha umupfakazi wa NKWAYA kuyakurikirana amutegurira umushinga w'ibaruwa yandikira Guverineri kuko byashoboraga gutahura abajura baba bihishe muri icyo kigo.

[44] Basanga kugereranya RUTAGENGWA n'umucamanza ufite urubanza abonamo igongana ry'inyungu atari byo, kuko ingingo ya 98 uburanira BNR avuga irebana no kwivana mu rubanza kw'umucamanza ikoreshwa mu manza zisanzwe(droit judiciaire), naho ikibazo yafashijemo nyiracyo kikaba kiri mu rwego rw'ibibazo by'ubutegetsi(droit administratif), aho umuntu agomba gushyikiriza ikibazo ugifitiye ububasha iyo we asanze atabufite.

[45] Urukiko rurasanga, kuba RUTAGENGWA wari ushinzwe ishami ry' 'amategeko muri BNR yaragejejweho na NYIRANJISHI, umupfakazi wa NKWAYA ikibazo kijyanye na ''Prime de rendement'' umuryango we wari utegereje kuri BNR, akamutegurira ibaruwa igenewe Guverineri kuri icyo kibazo nta kosa yakoze, cyane ko, usibye no kumufasha mu rwego rw'imirimo ye akamutegurira iyo baruwa, nta n'icyabuzaga ko RUTAGENGWA ubwe yashoboraga gukorera abamukuriye inyandiko isobanura uko yabonaga icyo kibazo.

[46] Urukiko rurasanga kandi kuba RUTAGENGWA yari inshuti y'umuryango wari ukurikiranye iyo ''prime de rendement'' agafasha muri icyo kibazo nk'uko yabashaga no gufasha abandi, nta nenge ubwabyo bigaragaza, mu gihe haterekanwa ko yaba yarakoze mu bwihisho cyangwa se hari inyungu runaka atezemo, hakaba nta gongana ry'inyungu riboneka muri icyo kibazo kuko ntakigaragazwa yabangamiye ho BNR cyangwa yabashaga kuyibangamiraho mu gihe yafashaga NYIRANJISHI, mu rwego rw'akazi ke, kugaragariza Ubuyobozi bwa BNR ko ''prime de rendement'' yari itegerejwe n'umuryango wa NKWAYA yaba yararigishijwe n'abakozi bayo; ibyo kwifata rero BNR ivuga kwagombaga kubaho bikaba nta shingiro bifite.

[47] Ibisobanuro bitanzwe haruguru bigaragaza rero ko ubujurire bwa BNR kuri iyi ngingo bugamije kwerekana ko RUTAGENGWA yirukaniwe impamvu yumvikana nta shingiro bufite.

Ku byerekeye ishingiro ry'indishyi RUTAGENGWA yagenewe

[48] BNR ivuga ko, usibye indishyi zijyanye no guhagarika no kwirukana RUTAGENGWA zagenwe bidakwiye, hari n' indishyi za 1.000.000 RUTAGENGWA yagenewe zo kuba yaravukijwe amahugurwa zidafite ishingiro, kuko ayo mahugurwa yashobokaga gusa ariko akaba yari atarayemerwa rwose, ndetse atarabona n'urwandiko rw'ubutumwa rutuma ayajyamo, ikindi kandi hakaba hataranagaragajwe uburyo icyo gihombo cyabazwe usibye kuvuga ko hashingiwe ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano.

[49] No ku byerekeye indishyi za 500.000 frw zagenewe RUTAGENGWA kubera inguzanyo yavukijwe, BNR ivuga ko izo ndishyi ntaho zishingiye kuko nta na kontaro y'iyo nguzanyo yari irasinywa, kandi RUTAGENGWA akaba ataranirukaniwe ubusa.

[50] Mu kirego kigamije kwiregura, BNR irasaba indishyi za 10.000.0000 frw zikubiyemo iz'akababaro za 5.000.000 frw na 5.000.000 frw y'ikurikiranarubanza mu nkiko zombi.

[51] RUTAGENGWA n'umwunganira bo bavuga ko indishyi zo kuba yaravukijwe amahirwe yo kubona inguzanyo zari ngombwa gutangwa, kuko ayo mahirwe yari menshi hasigaye gusa sinyatire ngo ayibone kandi ku nyungu nke cyane, no kubyerekeye amahugurwa yo mu mahanga yari ategereje, hakaba hari hasigaye gusa urwandiko rw'ubutumwa mu mahanga, ariko yarangije kubona itike y'indege, akaba ubu atabasha kubona icyo yiyishyurira ngo abone amahugurwa nk'ayo yavukijwe.

[52] Naho ku byerekeye indishyi za 10.000.000 frw BNR isaba, RUTAGENGWA n'umwunganira basubiza ko ntacyo zaba zishingiyeho, n'urugero rwazo rukaba nta gisobanuro rufite.

[53] Urukiko rurasanga, ihagarikwa n'iyirukanwa rya RUTAGENGWA byaramuvukije amahirwe menshi yo

kubona amahugurwa no kubona inguzanyo, ubwinshi bw'ayo mahirwe bukagaragazwa n'uko yari yamaze guhabwa itike y'indege yo kujya mu mahugurwa, ndetse n'inyandiko imwemerera inguzanyo nk'uko yabigaragaje muri dosiye y'urubanza, ku buryo ayo mahirwe y'ibyo yari atagereje bitari inzozi cyangwa se ibyashoboka gusa (hypothetique).

[54] Bigaragara rero ko ingingo z'ubujurire bwa BNR muri uru rubanza nta shingiro zifite, bityo n'indishyi isaba mu kirego kigamije kwiregura zikaba ntaho zashingira.

Ku byerekeye ubujurire bwa RUTAGENGWA bwuririye ku bundi.

[55] Mu bujurire bwuririye ku bundi, RUTAGENGWA n'umwunganira bavuga ko Urukiko Rukuru rwirengagije gukuraho(annulation) ibyemezo BNR yamufatiye bidakurikije amategeko, kandi bari barabisabye mu myanzuro n'ubwo bitari byasabwe mu nyandiko itanga ikirego, ndetse n'iyo bari kuba batabisabye Urukiko rukaba rwaragombaga kubyibwiriza kuko ari ikibazo ndemyagihugu.

[56] Basobanura ko ingaruka zo kuvanaho ibyo byemezo zari ugutuma asubizwa ku kazi akanahabwa imishahara yose atabonye, ari nacyo basaba ku bw'ibanze, ariko byaba bidashobotse nibura agahabwa imishahara y'amezi 12 kubera ko yirukaniwe ubusa, aho kuba iy'amezi 6 yagenewe n'Urukiko Rukuru.

[57] RUTAGENGWA yanajurijwe no kuba ataragenewe indishyi zo kudahabwa n'ubifitiye ububasha ''decompte final'', akavuga ko uwo amategeko ya BNR yageneraga kuyimusinyira ari Guverineri, bitashoboka igasinywa n'abayobozi (directeurs) bari barabiherewe ububasha na Guverineri, nyamara we akaba yarayisinyiwe n'umukozi utabifitiye ububasha, ikaba rero nta gaciro bifite, ntaho yayijyana, kimwe n'icyemezo cy'akazi kitanashoboraga gusinywa n'undi utari Guverineri wa BNR ubwe. Arabisabira indishyi zihwanye na 5762740 frw.

[58] Ibindi RUTAGENGWA asaba, ni amafaranga 800.000 frw y'ikurikiranarubanza kuko asanga 50000 frw yagenewe mbere ari make, akanavuga ko n'ubwo atari yasabye ay'igihembo cya avoka mbere, asanga yagenerwa 1.500.000 frw, akanasaba kandi ko BNR yategekwa kujya yishyura 960.970 frw buri kwezi ahwanye n'umushahara yari agezeho, mugihe yaba idahise irangiza urubanza, hakurikijwe ingingo ya 201 y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[59] Kuri ubwo bujurire bwuririye ku bundi, uburanira BNR asubiza ko ivanwaho ry'ibyemezo ritashyizwe mu byo baregera ari ikirego gishya, kidashobora kwakirwa mu bujurire, naho ku byerekeye ''decompte final'' n'icyemezo cy'akazi RUTAGENGWA asabira indishyi z'uko bitasinywe na Guverineri, akaba ntazo akwiye guhabwa kuko nta cyo byamwononeye. Avuga ko n'indishyi sizabwa mu gihe urubanza rutarangirizwa igihe ntaho zishingiye.

[60] Ku bijyanye n'ivanwaho ry'ibyemezo BNR yafatiye RUTAGENGWA, Urukiko rurasanga, iryo vanwaho (annulation) atarigeze arisaba mu nyandiko itanga ikirego nk'uko nawe abyiyemerera, bityo kurisuzuma bikaba byaba binyuranyije n'ingingo ya 4 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ibuza guhindura ikirego.

[61] Ku byerekeye ikibazo cy'icyemezo cy'akazi na ''decompte final'' RUTAGENGWA avuga ko byakozwe n'utabifitiye ububasha, Urukiko rurasanga icyo yaregeye ari ukubihererwa indishyi, ihame ry'itangwa ryazo akaba ari ugusana ibyangiritse, nyamara RUTAGENGWA wahumurijwe na Guverneri wa BNR amusobanurira ko uwabimusinyiye ariwe wabimuhereye ububasha, ndetse akaba yari yanabyakiriye usibye ko yasabaga ko hakosorwa amakosa yagaragaraga mu bibikubiyemo, akaba atagaragaza icyo byaba byaramwononeye nko kuba yaba yaragiye kubisabisha akazi ngo babihinyure, ahubwo akaba, mu miburanire ye mu Rukiko rubanza yaravugaga ko kuba yarakorewe ibyo byemezo na ''Directeur des ressources humaines'' yahoze akuriye asanga ari agasuzuguro, ibi

bikaba ntacyo byerekana yononewe cyatuma agenerwa indishyi.

[62] Ku byerekeye amafaranga y'ikurikiranarubanza RUTAGENGWA yagenewe akaba avuga ko ari make, nta bimenyetso agaragaza by'uko yari akwiye guhabwa 1.500.000 frw avuga, Urukiko rukaba rusanga yagenerwa kuri uru rwego 50.000 frw nk'ayo yari yagenewe ku rwego rwa mbere mu bushishozi bw'Urukiko, naho ay'igihembo cya avoka ku rwego rwa mbere akaba ntayo yagenerwa, kuko nawe ubwe yiyemerera ko atari yayasabye, ahubwo akaba yagenerwa kuri uru rwego, mu bushishozi bw'Urukiko 400.000 frw y'igihembo cya avoka kuko ubujurire bw'uwamureze muri uru Rukiko nta shingiro bwahawe nk'uko byasobanuwe haruguru.

[63] Urukiko rurasanga kandi indishyi z'ibihano byo kutarangiza urubanza mu gihe gitegetswe RUTAGENGWA asaba kuri BNR zitateganywa muri uru rubanza kuko atagaragaza aho ahera asaba ko icyemezo nk'icyo cy'umwihariko cyategekwa.

ICYEMEZO CY'URUKIKO

[64] Rwemeje ko ubujurire bwa Banki Nkuru y'Igihugu nta shingiro bufite ;

[65] Rwemeje ko ubujurire bwa RUTAGENGWA bwuririye ku bundi bufite ishingiro kuri bimwe ;

[66] Rutegetse BNR kwishyura RUTAGENGWA indishyi za 10.197.110 frw zategetswe mu rubanza rwajuririwe hiyongereyeho 50.000 frw y'ikurikiranarubanza na 400.000 frw y'igihembo cya avoka ku rwego rw'Urukiko rw'Ikirenga.

[67] Rutegetse BNR kwishyura amagarama y'urubanza, angana na 43850 frw.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 07/10/2011

(Sé)
MUGENZI Louis-Marie
Perezida

(Sé)
MUNYAGERI N. Innocent
Umucamanza

(Sé)
RUGABIRWA Ruben
Umucamanza

(Sé)
GAKURU Ahmed.
Umwanditsi w'Urukiko

11. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RADA0015/09/CS
ITARIKI Y'URUBANZA: 07/10/2011
HABURANA: MULINDAHABI Fidele / Leta y'u Rwanda mu izina ry'Intumwa Nkuru ya Leta.

AMAGAMBO MPINE

IKIMENYETSO MU MANZA –UBUHAMYA BWATANZWE MU RUNDI RUBANZA-KUBWIFASHSHA KU RUBANZA RUSA NARWO-KUTABIFATA NK'IKOSA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Umucamanza afite uburenganzira busesuye bwo kudasubiza inyuma ikimenyetso icyo aricyo cyose mu gihe abona kizamufasha mu kugaragaza ukuri, nta tegeko Urukiko ruba rwishe ruha agaciro ubuhamya bukuwe mu rundi rubanza igihe ikiburanwa muri izo manza zombi ari kimwe.

URUKIKO RW'IKIRENGA RULI I KIGALI, KUWA 07 UKWAKIRA 2011, RUBURANISHA MU RUHAME IMANZA Z'UBUTEGETSI, RWAKIJIJE URUBANZA RAd.A 0015/09/CS MU BURYO BUKURIKIRA :

HABURANA:

UWAJURIYE : MULINDAHABI Fidèle mwene MULINDA na MUKAZUZI Venantie utuye Kora-Gitega-Nyarugenge

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

Ikiregerwa : Igihombo yatewe no kuba Polisi yarafungiye imodoka ye kuri station ya Nyamirambo iyishyikirijwe na ATRACO n'izindi ndishyi zinyuranye .

Ikiburanwa : Kujurira urubanza N°RAD 0115/09/HC/KIG rwaciwe kuwa 08/10/2010

I. IMITERERE Y'URUBANZA

[1].MULINDAHABI avuga ko imodoka ye yafashwe na ATRACO nyuma iza gufatwa na polisi y'igihugu kugeza ubwo yangirikira mu maboko yayo. Byatumye atanga ikirego mu Rukiko Rukuru arega Leta y'u Rwanda, agamije kuyisaba indishyi z'akababaro zikomoka ku gihombo yatewe n'imodoka ye yangirikiye mu maboko ya polisi. Urukiko rwaciye urubanza kuwa 08/10/2010 rwemeza ko ikirego cya MULINDAHABI nta shingiro gifite .

[2].MULINDAHABI yajuririye urubanza mu Rukiko rw'Ikirenga, urubanza rwandikwa kuri N°RADA0015/09/CS rukorerwa ibanzirizasuzuma, Umucamanza yemeza ko ubujurire bwe bwaje mu buryo no mu nzira bikurikije amategeko.

[3].Iburanisha ryashyizwe kuwa 28/07/2011, uwo munsi ababuranyi baritaba MULINDAHABI aburanirwa na Me NGIRABAKUNZI Evariste naho Leta y'u Rwanda iburanirwa na Mandataire SEBAZUNGU Alphonse, Intumwa ya Leta.

II. ISESENGURA RY'IBIBAZO N'UKO URUKIKO RUBIBONA

[4]. MULINDAHABI ajurira avuga ko:
-umucamanza yatesheje agaciro imyanzuro y'intumwa ya Leta Me George KAREMERA kandi ari umuntu uhagarariye Leta kandi ariyo yamutumye, aho yemeye mu rubanza N°RC0025/08/TGI/Nyge, ko Polisi yafashe imodoka kubera amafaranga MULINDAHABI atari yishyuye ATRACO;

-ubuhamya bwa Rujugiro nta kuri kurimo;

-umucamanza yaciye urubanza ashingiye ku magambo ya RUJUGIRO Emmanuel utarumviswe mu rubanza n'impande zombi akaba nta kintu ababuranyi bayavuzeho ahubwo akaba yarabivanye muri kopi y'urubanza yashyikirijwe nyuma y'ipfundikirwa ry'iburanisha.

[5].Intumwa ya Leta ivuga ko MURINDAHABI mu myanzuro ye, nawe yemera ko imodoka ye yafashwe na ATRACO, ngo ibyo bikaba bihuza n'imvugo ya RUJUGIRO Emmanuel. Bikaba byerekana rero ko ibyo RUJUGIRO Emmanuel yavuze ari ukuri. Intumwa ya Leta ikomeza ivuga ko kuba mu rwego rwo kurinda umutekano Polisi yarakuye imodoka muri gare aho ATRACO yari yarayihagaritse atari ikosa, ko ahubwo MULINDAHABI hari amafaranga yagombye kwishyura Leta kubera icyo gikorwa yakoze, no kuba yarabikiwe imodoka. Arangiza atanga ikirego cy'ubujurire bwuririye ku bundi asaba ko MULINDAHABI yaha Leta 1.500.000 Fr kubera ko iburanirwa, na 2.000.000 Fr kubera ko polisi yayimubikiye. Kuri izo ndishyi Leta isaba, MULINDAHABI yavuze ko nta shingiro zifite.

[6].Ibibazo bigomba gusuzumwa muri uru rubanza ni ibi bikurikira:

1.Ese hari ikosa Polisi yakoze ivana imodoka ya MULINDAHABI aho ATRACO yari yarayiparitse ?

2.Ese kuba umucamanza mu gufata icyemezo yarifashishije ubuhamya bwatanzwe na RUJUGIRO Emmanuel abukuye mu rundi rubanza rusa narwo, ni ikosa ryo mu rwego rw'amategeko?

- **Ku byerekeye ikosa Polisi yaba yarakoze**

[7].MULINDAHABI mu miburanire ye, avuga ko imodoka ye yafashwe na ATRACO kubera amafaranga umushoferi we atari yishyuye. Yamara kuyishyura, ATRACO ntibihe agaciro bikaba aribyo byatumye ayirega, noneho yabona ayireze, ikiyambaza Polisi ikayiha iyo modoka maze nayo ikayifatira.

[8].Polisi mu kwiregura ikavuga ko itafatiriye imodoka ya MULINDAHABI, ahubwo ko yayikuye aho abagenzi bategera imodoka kuko yari ihamaze igihe kinini irimo guteza umutekano muke.

Urukiko rurabibona rute?

[9]. Mu nshingano za polisi harimo kurinda umutekano w'abantu n'ibintu byabo. Muri uko kuwurinda, hakaba harimo gutuma abantu batembera bisanzuye nta kintu na kimwe bikanga gishobora kubangamira umudendezo wabo.

[10].ATRACO yafatiriye imodoka ya MULINDAHABI kubera amafaranga umushoferi we witwa RUJUGIRO Emmanuel atari yishyuye. Nyuma yaho nkuko uyu mushoferi yabyemeje ubwo ATRACO yaburanaga na MULINDAHABI mu rubanza

N°RC0025/08/TGI/Nyge, ikibazo kikimara kuvuka Polisi yaragisuzumye hemezwa ko
MULINDAHABI asubizwa imodoka ye ariko we arabyanga ashaka ko babanza bakamuha versement y'umunsi imodoka yafatiriwe.

[11].Muri za nshingano zayo zo kurinda umutekano w'abantu n'ibintu byabo, harimo no kubungabunga umudendezo w'abagenzi aho bategera imodoka. Urukiko rurasanga mu gihe Polisi yari ibonye imodoka ikomeje kuguma ahantu abantu bategera imodoka kandi ihamaze iminsi, ikabona iri ahantu itagombaga kuba iri kubera ibindi byahateganyirijwe, yari ifite, ku mpamvu z'umutekano, inshingano zo kuyihakura, binakubitiyeho ko nyirayo atashakaga kuyihikurira ubwe. Urukiko rukaba rusanga nta kosa umucamanza wo mu Rukiko Rukuru yakoze yemeza ko polisi yayihakuye atari ukuyifatira, ahubwo ari uko yatezaga umutekano muke, ibangamira abagenzi. Bityo Leta ikaba nta ndishyi yaryozwa.

- **Ku byerekeye ubuhamya bwatanzwe na RUJUGIRO Emmauel**

[12]. Mu rubanza N°RC0025/08/TGI/Nyge ATRACO yaburanaga na MULINDAHABI, RUJUGIRO Emmanuel yavuze ko ikibazo kikimara kuvuka, Polisi yaragisuzumye hemezwa ko MULINDAHABI asubizwa imodoka ye ariko we arabyanga ashaka ko babanza bakamuha versement y'umunsi imodoka yafatiriwe. Ibyo akaba yarabivuze yiregura ku kirego cyo kumugobokesha mu rubanza rwa ATRACO na MULINDAHABI, nka shoferi w'imodoka yari yafashwe na ATRACO.

Urukiko rurabibona rute?

[13]. Urukiko rurasanga nta mategeko urukiko rubanza rwishe ruha agaciro ubuhamya bwa RUJUGIRO Emmanuel nubwo bwatanzwe mu rundi rubanza, kuko ikiburanwa muri izo manza zombi ni kimwe, ni imodoka, cyane cyane ko ariwe wayitwaraga

igihe yafatwaga na ATRACO. Ikindi kandi, umucamanza afite uburenganzira busesuye bwo
kudasubiza inyuma ikimenyetso icyaricyo cyose mu gihe abona kizamufasha kugaragaza ukuri mu rubanza.

[14].Ku kirego cya Leta cy'ubujurire bwuririye ku bundi isaba indishyi, Urukiko rurasanga nta shingiro gifite kuko ntacyo yangirijwe cyatuma ibona indishyi isaba, no kuba yaraburaniwe, ni umukozi wayo wayiburaniye kandi byari mu kazi ke.

III. ICYEMEZO CY'URUKIKO

[15].Rwemeye kwakira ubujurire bwa MULINDAHABI kuko bwaje mu nzira zemewe n'amategeko;

[16].Rwemeje ko nta shingiro bufite;

[17].Rwemeye kwakira ikirego cya Leta cy'ubujurire bwuririye ku bundi;

[18].Rwemeje ko nta shingiro gifite;

[19].Rwemeje ko imikirize y'urubanza rwajuririwe idahindutse;

[20].Rutegetse MULINDAHABI gutanga amagarama y'urubanza angana na 22.250 Fr atayatanga mu gihe gitegetswe akava mu bye ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 07/10/2011 N'URUKIKO RW'IKIRENGA, RUGIZWE NA:

(Sé)
MUTASHYA Jean Baptiste
Perezida

(Sé)
HATANGIMBABAZI Fabien
Umucamanza

(Sé)
MUNYANGERI N. Innocent
Umucamanza

(Sé)
UWARUGIRA Jean Baptiste
Umwanditsi

11. URUKIKO RUKURU

N° Y'URUBANZA: RADA0036/11/HC/KIG
ITARIKI Y'URUBANZA: 31/01/2012
HABURANA: BIG STAR / OCIR THE.

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI –IBIGIZE AMASEZERANO Y'UBUTEGETSI-IKITAGOMBA KUBURA KUGIRA NGO AMASEZERANO YITWE AY'UBUTEGETSI-KUBA UMWE MU BAYAGIRANYE AMASEZERANO ARI UBUTEGETSI-KUBA UBWABYO BIDAHAGIJE NGO YITWE AY'UBUTEGETSI.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Amasezerano y'ubutegetsi arangwa n'ibintu bitatu, icya mbere kirebana n'abayagiranye, umwe muribo agomba kuba ari Ubutegetsi; icya kabiri kirebana n'ibigamijwe muri kontaro ikigamijwe muri iyo kontaro kigomba kuba ari igikorwa kigamije inyungu rusange; icya gatatu kirebana n'ingingo zikubiye muri iyo kontaro kikaba ari uko iyo kontaro igaragaramo ingingo zihariye zitaboneka mu masezerano asanzwe abantu bagirana zituma Ubutegetsi busumba uwo bayagiranye(Clauses exorbitantes du droits commun).

-Mu bintu bitatu bigomba kuba bigize amasezerano y'ubutegetsi icya mbere kigomba kubonekamo, naho bibiri bikurikiyeho hagomba kubonekamo nibura kimwe(criteres alternatifs). Kuba umwe mu baburanyi ari Ubutegetsi ni ngombwa, ariko ntibihagije ubwabyo kugira ngo kontaro yitwe iy'ubutegetsi.

URUKIKO RUKURU RURI I KIGALI KU CYICARO CYARWO GIKURU RUHABURANISHIRIZA IMANZA Z'IMBONEZAMUBANO MU RWEGO RWA MBERE, RUCIYE MU RUHAME URUBANZA N° RAD 0036/11/HC/Kig KU WA 31/01/2012 MU BURYO BUKURIKIRA:

<u>HABURANA</u> :

UREGA :

BIG STAR- RWANDA Sarl mu izina ry'umuyobozi wayo mukuru KANYAMBO Alexandre. P.O Box 2690 Kigali

.

UREGWA:

OCIR THE, P.O Box 1344, Kigali mw'izina ry'umuyobozi wawo mukuru.

IKIBURANWA:

Kwishyura umwenda ungana n'amafranga 293.133.753.

I. IMITERERE Y'URUBANZA

1. Ku tariki 10/7/2009 habaye amasezerano hagati ya BIG STAR- RWANDA Sarl na OCIR THE y'ubwikorezi (contrat de transport) agamije gutwara icyayi kiva mu ruganda rwa MATA n'urwa KITABI kijya MOMBASSA muri Kenya. Ayo masezerano akaba yari ayi igihe cy'umwaka kuva tariki 10/07/2009 kugeza tariki 30/06/2010 nkuko bigaragazwa n'ingingo yayo ya 18.

2. Ku wa 21/09/2009 Uruganda rwa KITABI rweguriwe sosiyete RWANDA MOUNTAIN TEA Sarl nkuko bigaragazwa n'inyandiko-mvugo y'imurika ry'umutungo n'abakozi b'uruganda rwa KITABI; mu baruwa yayo yo

ku wa 21/12/2009 BIG STAR- RWANDA Sarl yandikiye OCIR THE iyisaba guhabwa indishyi kuko ngo kuvaho uruganda rwa KITABI rweguriwe abikorera ku giti cyabo, ryatumye ikiguzi cy'imirimo y'isoko rya mbere kigabanukaho ibirenze makumyabiri kw'ijana (20%).

3. Nkuko bigaragara mw'ibaruwa yo ku wa 3/03/2010, OCIR THE yandikiye BIG STAR- RWANDA Sarl iyimenyesha ko isheshe

amasezerano bagiranye y'ubwikorezi bw'icyayi, inayandikira ko izamenyeshwa indishyi z'ubukererwe izishyura OCIR THE.

4. Tariki 18/03/2011, BIG STAR- RWANDA Sarl yatanze ikirego mu Rukiko Rukuru, irega OCIR THE kwishyura umwenda ungana n'amafranga 293.133.753. Icyo kirego cyanditswe mu gitabo cyabigenewe, maze urubanza ruhabwa n° RAD 0036/11/HC/Kig.

5. Itegeko rya perezida ryashize iburanisha ry'urwo rubanza tariki 3/01/2012, Urukiko rubanza gusuzuma ibijyanye n'ububasha bw'Urukiko ndetse n'iyakirwa ry'ikirego cyatanzwe na BIG STAR- RWANDA Sarl.
Ikibazo kigomba kubanza gusuzumwa muri uru rubanza ni ukumenya niba uru Rukiko rufite ububasha bwo kuburanisha uru rubanza hakurikijwe ubwoko bw'amaseserano yabaye hagati ya BIG STAR- RWANDA Sarl na OCIR THE.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

Kumenya niba uru Rukiko rufite ububasha bwo kuburanisha ikirego rwashikirijwe na BIG STAR- RWANDA Sarl hakurikijwe ubwoko bw'amaseserano yabaye hagati ya BIG STAR- RWANDA Sarl na OCIR THE.

6. Me RUBASHA Herbet uhagarariye BIG STAR- RWANDA Sarl avuga ko, bashingiye ku ngingo ya 93 igika cya 5 y'Itegeko Ngenga n° 51/2008 rigena imiterere, imikorere n'ububasha by'Inkiko nkuko ryavuguruwe kugeza ubu, basanga uru Urukiko rufite ububasha bwo kuburanisha urwo rubanza, ndetse ngo bagahuza iyo ngingo n'ingingo ya 95 y'iryo Tegeko; ngo bimwe mu bisabwa kugirango amasezerano yitwe ay'ubutegetsi n'uko isinywa n'ikigo cya Leta, ko ingingo ya 4 y'Itegeko rishyiraho OCIR THE isobanura ko icyo kigo kirebererwa na ministre na Minicom, ndetse ngo n'ayo masezerano ubwayo yasinyweho n'umuyobozi wa OCR THE.
7. Me BUTARE Godefry nawe uhagarariye BIG STAR-RWANDA Sarl avuga ko, hashingiwe ku ngingo ya 93 igika cya 5 y'Itegeko Ngenga n° 51/2008 rigena imiterere, imikorere n'ububasha by'Inkiko nkuko ryavuguruwe kugeza ubu, asanga uru Rukiko rufite ububasha n'ubwo ″les clauses exorbitantes″ zitagaragara mu masezerano kuko rwabiherewe ububasha n'iyo ngingo.

8. Me RUTABINGWA Athanase uhagarariye OCIR THE avuga ko muri ayo masezerano n'ubwo yasinywe hagati y'ikigo cya Leta na sosiyete y'ikorera ku giti cyayo, ko kandi n'ubwo hari ″ clauses″ zimwe na zimwe ziburamo, ntibiyibuza kuba amasezerano y'ubutegetsi, ko rero uru Rukiko rufite ububasha bwo kuburanisha uru rubanza.

9. Urukiko rurasanga ababuranyi bombi bashingira ku ngingo ya 93 igika cya 5 y'Itegeko Ngenga n° 51/2008 rigena imiterere, imikorere n'ububasha by'Inkiko nkuko ryavuguruwe kugeza ubu, bagaragaza ko uru Rukiko rufite ububasha bwo kuburanisha uru rubanza; iyo ingingo ikaba ivuga iti: «*Urukiko Rukuru ruburanisha ibirego bijyanye n'imanza z'ubutegetsi kuva ku rwego rw'Intara n'urw'Umujyi wa Kigali kugeza ku rwego rwa*

Perezida wa Repubulika (…) ibirego birebana na za ***kontaro z'ubutegetsi****, zaba izigenywa n'amategeko ndemyagihugu cyangwa amategeko agenga imibanire y'abantu hagati yabo (contrats administratifs régis par le droit public ou par le droit privé)*».

10. Urukiko rurasanga iyo ngingo yerekana Urukiko rufite ububasha bwo kuburanisha ibirego birebana na za kontaro z'ubutegetsi, nyamara muri uru rubanza, Urukiko rukaba rugomba kubanza kumenya niba amasezerano yabaye hagati ya BIG STAR- RWANDA Sarl na OCIR THE ari amasezerano y'ubutegetsi (contrat administratif) cyangwa ari amasezerano y'imbonezamubano (contrat de droit privé) kuko ayo masezerano yombi agengwa n'amategeko atandukanye, ndetse ibyo bikanagira ingaruka ku bubasha bw'inkiko.

11. Rurasanga amategeko y'u Rwanda atagaragaza icyo amasezerano y'ubutegetsi ari cyo, rero rukaba rugomba kwifashisha ibivugwa n'abahanga mu mategeko[7]. Abo bahanga bakaba bagaragaza ko kontaro y'ubutegetsi irangwa n'ibintu bitatu: icya mbere kirebana n'abagiranye kontaro (les
parties au contrat), kikaba ari uko umwe muri bo agomba kuba ari Ubutegetsi (personne morale de droit public); icya kabiri kirebana n'ibigamijwe muri kontaro (l'objet du contrat), kikaba ari uko iyo kontaro iba ari iy'igikorwa cyo kugeza inyungu rusange kuri rubanda (exécution même du service public); icya gatatu kirebana n'ingingo zikubiye muri kontaro (les clauses du contrat), kikaba ari uko iyo kontaro igaragaramo ingingo zihariye zitaboneka mu masezerano asanzwe abantu bagirana, zituma Ubutegetsi busumba uwo bayagiranye (clauses exorbitantes du droit commun), kiriya cya mbere kikaba kigomba buri gihe kuboneka, naho muri bibiri bikurikiye hakaba hagomba nibura kuboneka kimwe (critères

[7]Jean Rivero et Jean Waline, **Droit administratif**, 20ème édition, DALLOZ, 2004 p.370 et ss.

alternatifs). Bityo ibijyanye no kuba umwe mu baburanyi agomba kuba Ubutegetsi bikaba ari ngombwa ariko ubwabyo bidahagije (la condition relative aux parties est donc nécessaire, mais non suffisante).

12. Urukiko rusanze amasezerano y'ubwikorezi BIG STAR-RWANDA Sarl yasinye ku wa 10/7/2009, yarayagiranye na OCIR THE, iki kigo kikaba ari ikigo cy'Igihugu gishinzwe guteza imbere icyayi; bityo icya mbere mu bisabwa kirebana n'uko umwe muri bo agomba kuba ari Ubutegetsi kugirango ayo masezerano yitwe ay'ubutegetsi kikaba cyujujwe.

13. Ku bijyanye n'icya kabiri gisabwa kugirango amasezerano yitwe ay'ubutegetsi: Mu gusesengura amasezerano yabaye hagati ya BIG STAR- RWANDA Sarl na OCIR THE, Urukiko rurasanga icyari kigamijwe ar'uko BIG STAR- RWANDA Sarl yikorera icyayi cya OCIR THE ikijyana mu mahanga kugirango kigurishwe, ibi rero akaba atari ibikorwa bigamije kugeza inyungu rusange kuri rubanda (exécution même du service public), ahubwo OCIR THE yaritwaye nk'umucuruzi kuko yakoze ibikorwa bisanzwe by'ubucuruzi; bityo ayo masezerano akaba atari ay'ubutegetsi (contrat administratif) ahubwo ari amasezerano y'imbonezamubano (contrat de droit privé) ari mu bubasha bw'izindi nkiko zitari iz'ubutegetsi.

14. Harebwe na none ayo masezerano y'ubwikorezi yabaye hagati ya BIG STAR- RWANDA Sarl na OCIR THE, Urukiko rurasanga nta ngingo irimo yihariye ituma OCIR THE, nk'ikigo cya Leta, igaragara nk'aho isumba BIG STAR- RWANDA Sarl kuko bigaragara ko bakoze ayo masezerano mu buryo bureshya (rencontre de deux volontés juridiquement égales), berekana ikigamijwe, inshingano ndetse n'inyungu za buri wese ku buryo bwisanzuye ; bityo icya gatatu kirebana n'ingingo zikubiye muri kontaro (les clauses exorbitantes du droit commun) mu bisabwa kugirango ayo masezerano abe

ay'Ubutegetsi kikaba kitujujwe.

15. Urukiko rurasanga rero, nkuko rwabisobanuye mu gace ka 11 (in fine), n'ubwo umwe mu baburanyi, ariwe OCIR THE, ari ikigo cya Leta nkuko bigaragazwa n'Itegeko n°49/2006 ryo kuwa 05/10/2006 rigena inshingano, imiterere, n'imikorere yacyo, ibyo byonyine bidahagije kugirango ruvuge ko amasezerano yabaye hagati ya BIG STAR- RWANDA Sarl na OCIR THE abe ay'ubutegetsi; bityo uru Rukiko rukaba rudafite ububasha bwo kuburanisha ikirego rwashikirijwe na BIG STAR-RWANDA Sarl.

III. ICYEMEZO CY'URUKIKO

16. Urukiko Rukuru:

- rwemeje ko uru Rukiko rudafite ububasha bwo kuburanisha ikirego rwashikirijwe na BIG STAR-RWANDA Sarl;

- rwemeje ko BIG STAR- RWANDA Sarl igomba kuregera urukiko rubifitiye ububasha;

- ruyitegetse kwishyura amafaranga y'amagarama y'urubanza angana n'amafaranga 7.250, itayatanga mu gihe giteganywa n'amategeko akava mu byayo ku ngufu za Leta.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME NONE KU WA 31/01/2012 N'URUKIKO RUKURU RUGIZWE NA BWIZA BLANCHE (UMUCAMANZA), HARI N'UMWANDITSI NYIRANEZA Fortunée.

(Sé)	**(Sé)**
NYIRANEZA Fortunée	**BWIZA N. Blanche.**
Umwanditsi	**Umucamanza**