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

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

Igitabo cya gatatu, nº 14

NYAKANGA, 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'Ubucamanza rurangajwe imbere n'Urukiko rw'Ikirenga. Gitegurwa na Komite igizwe n'abahagarariye inkiko zose z' u Rwanda, Ubugenzuzi bw'Inkiko na serivisi y'ubushakashatsi mu Rukiko rw'Ikirenga.

Aho icyegeranyo kibarizwa:

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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 na yo 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,

Urukiko rw'Ikirenga rwihaye gahunda idakuka yo gutangaza mu buryo buhoraho imanza z'icyitegererezo zagiye zicibwa n'inkiko. Kuva iyo gahunda yatangira mu mwaka wa 2005, iki gitabo ni icya cumi na kane (14) ; by'umwihariko akaba ari igitabo cya gatatu (3) gisohotse muri uyu mwaka wa 2012.

Intego y'Urukiko rw'Ikirenga mu gusohora bene ibi bitabo bizwi ku izina ry'Icyegeranyo ni ugutangaza imanza bigaragara ko zakemuye ibibazo bijyanye n'amategeko, ibyo bigafasha mu kugena umurongo wo gukemura ibibazo bisa na byo mu zindi manza ; hejuru y'ibyo byose bikanafasha abashakashatsi mu by'amategeko, abakora cyangwa abakoresha amategeko mu kazi kabo ka buri munsi.

Iki cyegeranyo kandi mu rwego rwo gufasha abantu b'ingeri zitandukanye kandi b'imihanda yose, gitangazwa mu buryo bw'ibitabo ndetse no ku rubuga rwa interineti rw'Urukiko rw'Ikirenga (www.judiciary.gov.rw) mu gace k'Imanza.

Muri iyi nimero muri busangemo urubanza rumwe rurebana no gusaba gukuraho ingingo z'amategeko zinyuranye n'Itegeko Nshinga, imanza eshatu (3) z'inshinjabyaha, iz'imbonezamubano na zo eshatu (3), ebyiri (2) z'ubucuruzi, rumwe (1) rw'ubutegetsi n'urundi rw'umurimo.

Sam RUGEGE

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

ISHAKIRO

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1. **IMANZA ZIREBA AMATEGEKO ANYURANYIJE N'ITEGEKO NSHINGA**

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• KUBA INGINGO ITAGARAGAZA IBYO ABABURANYI BAGOMBA GUKORA KUGIRA NGO BITITWA KO BARANGAYE- KUTABIFATA NK'AHO IYO NGINGO INYURANYIJE N'ITEGEKO NSHINGA.

• KUTEMERERWA KONGERA KUBURANA URUBANZA RWASIBWE RURI MU BUJURIRE, RWASUBIRISHIJWEMO, RWASUBIRISHIJWEMO INGINGO NSHYA RWABYUKIJWE KUTABIFATA NK'AHO BINYURANIJE N'IHAME REMEZO RYO KUBAKA LETA IGENDERA KU MATEGEKO.

• GUSUBIRISHAMO URUBANZA, KUBYUTSA URUBANZA, KUJURIRA URUBANZA –KUDAKURIKIRANA IKIREGO HAGASHIRA IGIHE CY'AMEZI ATANDATU -KUTONGERA KUBURANISHA BENE IZO MANZA IYO ZASIBWE -KUBA IBIHE BYAGENEWE BENE IZO NZIRA BIBA BYARARENZE URUBANZA RWARABAYE ITEGEKO NTAKUKA…………………………….. 2

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-KUGEZA KU RUKIKO IBITARASESENGUWE MU MYANZURO Y'ABABURANYI-NTABWO ARI UBURENGANZIRA -UBUBASHA BW'URUKIKO BWO KUYEMERERA CYANGWA KUTAYEMERERA.

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-KUBIGIRA IMPAMVU YO KUVANAHO URUBANZA IYO UBISABA ASHOBOYE KUGARAGAZA KO ARI INENGE YO MU RWEGO RUTESHA

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.INSHINGANO Z'ISANDUKU Y'UBWITEGANYIRIZE BW'ABAKOZI YO KWISHYUZA IMISANZU Y'ABAKOZI-KUTABIFATA NK'AHO BIBUZA UMUKOZI WAKAYITANGIWE KWIBUTSA CYANGWA GUSABA KO YATANGWA...103

IMANZA ZIREBA AMATEGEKO ANYURANYIJE N'ITEGEKO-NSHINGA

1. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: N^{O} RS/INCONST/002/10/CS
ITARIKI Y'URUBANZA:27/04/2012

UWATANZE IKIREGO: NTAWUBURINTIMBA Alivera (Gusaba Urukiko rw'Ikirenga kwemeza ko ingingo ya 138 n'iya 141 z'itegeko N^{o} 18/2004 ryo ku wa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryavuguruwe kandi ryujujwe kugeza ubu, zinyuranyije n'Itegeko-Nshinga).

AMAGAMBO MPINE

.IMANZA ZIGAMIJE GUKURAHO INGINGO ZINYURANYIJE N'ITEGEKO-NSHINGA-GUSIBA URUBANZA-GUHAMAGARA ABABURANYI MBERE YO KURUSIBA.

.KUBA INGINGO ITAGARAGAZA IBYO ABABURANYI BAGOMBA GUKORA KUGIRA NGO BITITWA KO BARANGAYE-KUTABIFATA NK'AHO IYO NGINGO INYURANIJE N'ITEGEKO-NSHINGA.

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.GUSUBIRISHAMO URUBANZA, KUBYUTSA URUBANZA , KUJURIRA URUBANZA –KUDAKURIKIRANA IKIREGO HAGASHYIRA IGIHE CY'AMEZI ATANDATU-KUTONGERA KUBURANISHA BENE IZO MANZA IYO ZASIBWE-KUBA IBIHE BYAGENEWE BENE IZO NZIRA BIBA BYARARENZE URUBANZA RWARABAYE ITEGEKO NTAKUKA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Isesengura ry' ingingo ya 138 y'itegeko N^{o} 18/2004 ryo ku wa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, , iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryavuguruwe kandi ryujujwe kugeza ubu, iragaragaza neza ko umushingamategeko atigeze abuza Umucamanza guhamagara ababuranyi mu gihe agiye gusuzuma ibijyanye no gusiba urubanza rubaba rumaze igihe cy'amezi atandatu rudakurikiranywa, cyane cyane ko ibyo guhamagara ababuranyi byateganyijwe mu ngingo ya 18 yíryo tegeko.

- Kuba inkiko zimwe na zimwe zaba zisiba imanza zitabanje guhamagara ababuranyi ntibyafatwa nk'aho ingingo ya 138 y'itegeko N° 18/2004 ryo ku wa 20/06/2004, inyuranyije n'itegeko Nshinga, haramutse hari inkiko zibikora, ayo yaba ari amakosa yakosorwa mu buryo bw'imiyoborere n'imitunganyirize y'inkiko.

- Kuba mu ngingo ya 138 z'itegeko N° 18/2004 ryo ku wa 20/06/2004 hatararondowe ibyo umuburanyi umaze gutanga ikirego cye akora kugira ngo kidasibwa ntibyafatwa nk'aho inyuranije n'itegeko-Nshinga kuko ntakiyiteganyijwemo ubwayo kinyuranyije naryo, iramutse ikeneye gusobanurwa cyangwa kuzuzwa kurushaho byakorwa n'Umushingamategeko mu gihe byagaragara ko ari ngombwa.

- Urubanza rwasubirishijwemo, rwasubirishijwemo ingingo nshya, rwajuririwe, cyangwa rwabyukijwe rukamara amezi atandatu rutaburanishijwe ntiruba rucyongeye kuburanishwa kubera ko ibihe byagenwe kuri izo nzira zose biba byararenze, urubanza rukaba rwaramaze kuba itegeko ntakuka, ariko ibi ntibibuza umucamanza ko mbere yo gufata icyemezo cyo gusiba bene ibi birego agomba guhamagara abatanze ibirego.
- Ingingo ya 141 y'itegeko N° 18/2004 ryo ku wa 20/06/2004, nta burenganzira na bumwe ibuza umuburanyi kubera ko aba yarahawe igihe gihagije cyo gukurikirana urubanza rwe ntabikore, kuba kandi iyo rusibwe kubera ubusaze atongera kugira icyo arukoraho ntabwo ari ukumuvutsa uburenganzira ahabwa n'Itegeko-Nshinga bwo kwiregura mu nzego zose zifatirwamo ibyemezo ,ahubwo ni uko ibihe yagenewe n'Itegeko byo gutangamo ibirego biba byararenze.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUBURANISHA IKIREGO CYEREKERANYE NO GUSABA GUKURAHO INGINGO Z'ITEGEKO KUBERA KO ZINYURANIJE N'ITEGEKO - NSHINGA, RUKIJIJE MU RUHAME URUBANZA N° RS/INCONST/002/10/CS NONE KUWA 27/04/2012, MU BURYO BUKURIKIRA:

UWATANZE IKIREGO:

NTAWUBURINTIMBA Alivera mwene NGIRUWONSANGA na MUKABAZIGA utuye mu mudugudu wa Kabirizi, Umurenge wa Gitega, Akarere ka Nyarugenge, Umujyi wa Kigali, uhagarariwe na Me MHAYIMANA Isaïe (Avoka).

IKIREGERWA :

Gusaba Urukiko rw'Ikirenga kwemeza ko ingingo ya 138 n'iya 141 z'itegeko N° 18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryavuguruwe kandi ryujujwe kugeza ubu, zinyuranije n'Itegeko-Nshinga.

I. **IMITERERE Y'URUBANZA**

[1]. NTAWUBURINTIMBA Alivera ahagarariwe na Me MHAYIMANA Isaïe yatanze ikirego N°RSOCA0140/08/HC/KIG mu Rukiko Rukuru asaba kubyutsa urubanza N°RSOCA 0089/06/HC/KIG rwasibwe ku mpamvu z'uko urega atakurikiranye urubanza rwe ngo ruburanishwe.

[2]. Me MHAYIMANA Isaïe mu izina ry'uwo ahagarariye yatanze ikirego mu Rukiko rw'Ikirenga, asaba ko ingingo ya 138 n'iya 141 z'itegeko N°18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu zavaho kuko zinyuranije n'ingingo ya 9-4°, iya 18 n'iya 19-2° z'Itegeko-Nshinga. Akaba asaba ko ingingo zavuzwe haruguru zivaho hashingiwe ku ngingo ya 145 (3) y'Itegeko Nshinga iha Urukiko rw'Ikirenga ubwo bubasha hamwe n'ingingo ya 93 y'Itegeko - Nshinga igaragaza uko amategeko agenda arutana.

[3]. Ikirego kimaze kwandikwa mu gitabo cy'ibirego kuri n° N°RS/INCONST/CIV002/10/CS, Perezida w'Urukiko rw'Ikirenga yashyizeho Itegeko rigena umunsi w'iburanisha ry 'uru rubanza wo kuwa 08/03/2012, uwo munsi ugeze hitaba NTAWUBURINTIMBA Alivera ahagarariwe na Me MHAYIMANA Isaïe, Minisiteri y'Ubutabera yari yasabwe gutanga ibitekerezo ihagarariwe n'Intumwa ya Leta Me SEBAZUNGU Alphonse.

[4]. Nyuma yo kumva raporo ikubiyemo incamake y'itangwa ry'ikirego,

Me MHAYIMANA Isaïe uhagarariye urega yatanze ibisobanuro ku bijyanye n'ingingo z'amategeko asaba ko zivaho, n'Intumwa ya Leta igira icyo ibivugaho. Birangiye, iburanisha ryarashojwe, Urukiko rutangaza ko urubanza ruzasomwa kuwa 13/04/2012, uwo munsi ariko ntibyashoboka kubera izindi gahunda zari zihateganyijwe, isomwa ryimurirwa kuwa 27/04/2012, nyuma ruriherera ruruca mu buryo bukurikira :

II.KU BYEREKEYE IYAKIRWA RY'IKIREGO N'UBUBASHA BW'URUKIKO

[5]. Ku byerekeranye ikirego cyatanzwe na Me MPAYIMANA Isaie mu izina rya NTAWUBURINTIMBA Alivera inyandiko ziri muri dosiye zigaragaza ko yatanze ingwate y'amagarama , ko kandi afite inyungu zo gutanga icyo kirego kuko afite urubanza yatanze mu Rukiko Rukuru rujyanye no kubyutsa urubanza rwasibwe ruri mu bujurire akaba asanga ingingo aregera zishobora kumubangamira mu mikirize y'urubanza rwe, ikirego cya NTAWUBURINTIMBA Alivera kigaragaza kandi itariki cyatangiweho, umukono wa Me MPAYIMANA Isaie wagitanze mu izina rye, kikaba kinerekana ikiregerwa n'impamvu ashingiraho, ndetse kinafite ku mugereka wacyo kopi y'igazeti ya Leta yo kuwa 20/06/2004 irimo ingingo z'itegeko asaba ko zavanywaho, ibisabwa n'ingingo ya 90 y'itegeko ngenga N°001/2004 ryo kuwa 29/04/2004 rigena imitunganirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi ryujujwe kugeza ubu byose byarubahirijwe, bityo ikirego cye kikaba gikwiye kwakirwa.

[6]. Ku byekeranye n'Ububasha bw'Urukiko rw'ikirenga , ingingo ya 89 y'Itegeko- ngenga N°001/2004 rimaze kuvugwa haruguru iteganya ko « Urukiko rw'Ikirenga ari rwo ruburanisha ibirego byerekeranye no gusaba gukuraho itegeko-ngenga, itegeko, itegeko-teka cyangwa itegeko ryemerera kwemeza amasezerano mpuzamahanga, haba kubikuraho byose cyangwa se zimwe mu ngingo zaryo zinyuranije n'Itegeko-Nshinga », Urukiko rw'Ikirenga rwashyikirijwe ikirego kigamije gukuraho ingingo ya 138 n'iya 141 z'itegeko N° 18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kuko ngo inyuranije n'Itegeko-Nshinga, bityo icyo kirego kikaba kiri mu bubasha bw'Urukiko rw'Ikirenga.

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

1. **KUBA INGINGO YA 138 Y'ITEGEKO N° 18/2004 RYO**

KUWA 20/06/2004 RIGENA IMIBURANISHIRIZE Y'IMANZA Z'IMBONEZAMUBANO, IZ'UBUCURUZI, IZ'UMURIMO N'IZ'UBUTEGETSI INYURANIJE N'INGINGO YA 9 - 4° N'IYA 18 Z'ITEGEKO NSHINGA.

[7]. Mu gusesengura iki kibazo, hari ibibazo bibiri bigomba gusuzumwa :

- Kumenya niba ingingo ya 138 y'itegeko n° 18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nkuko ryahinduwe kugeza ubu ibuza umucamanza guhamagara ababuranyi mu rubanza rwabo mbere yo kurusiba,

- Kuba iyo ngingo itagaragariza ababuranyi ibyo bagomba kuba bakoze kugirango bititwa ko barangaye, batakurikiranye urubanza rwabo.

A.Ku byerekeranye nuko ingingo ya 138 y'itegeko ryavuzwe haruguru ibuza umucamanza guhamagara ababuranyi mu rubanza rwabo mbere yo kurusiba.

[8]. Me MHAYIMANA Isaïe avuga ko ingingo ya 138 y'itegeko ryavuzwe haruguru inyuranije n'ingingo ya 18 y'Itegeko-Nshinga kubera ko yemerera umucamanza gukora iburanisha rijyanye no gusiba urubanza kandi uwaruregeye adahari cyangwa atabimenyeshejwe ngo akoreshe uburenganzira bwe bwo kwiregura no kunganirwa , ubu bukaba ari uburenganzira busesuye kandi bwemewe mu nkiko zose ndetse no mu nzego izo arizo zose zifatirwamo ibyemezo.

[9]. Intumwa ya Leta mu izina rya Minisiteri y'Ubutabera ivuga ko ingingo ya 138 y'itegeko n° 18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nkuko ryahinduwe kugeza ubu igomba kureberwa hamwe n'ingingo ya 139 y'iryo tegeko kuko zuzuzanya, ko ingingo ya 138 yemeza ihame rusange riteganya igihe imanza zidakurikiranywe n'ababuranyi zigomba kumara kugira ngo zisibwe, naho ingingo ya 139 igashyiraho umwitangirizwa, ko kandi impamvu y'uwo mwitangirizwa ari uko mu gihe urubanza rwajuririwe cyangwa rwasabiwe gusubirishamo urubanza ingingo nshya kongera kurubyutsa biba bitagishobotse kubera ko igihe itegeko ritanga ngo uburenganzira bwo kujurira cyangwa gusubirishamo urubanza ingingo nshya, kiba cyararenze.

[10]. Intumwa ya Leta ivuga kandi ko n'ubwo inkiko zisiba imanza zibyibwirije nta kibuza ko umucamanza ahamagaza ababuranyi kuko iyo ngingo ibiteganya. Ko kuba bidakorwa, bitafatwa ko iyo ingingo inyuranije n'Itegeko-Nshinga, ahubwo ko ari ikibazo cy'imikorere, gishobora gukosorwa ku bundi buryo.

[11]. Ingingo ya 18 y'Itegeko-Nshinga iteganya ko « ……… kwiregura kunganirwa ni uburenganzira budahungabanywa mu bihe byose, ahantu hose, mu nzego z'ubutegetsi, iz'ubucamanza n'izindi zose zifata ibyemezo ».

[12]. Urukiko rusanga ingingo ya 138 y'itegeko n° 18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ntaho ibangamira ihame ryo kubaka Leta igendera ku mategeko kubera ko ntaho ibuza Urukiko guhamagara ababuranyi kuza mu iburanisha rijyanye no gusiba urubanza ruba rumaze amezi 6 rutaraburanishijwe . Umushingamategeko ntiyigeze abuza umucamanza guhamagara ababuranyi mu gihe agiye gusuzuma ibijyanye no gusiba urubanza kubera ko rumaze igihe cy'amezi atandatu rudakurikiranywa, cyane cyane ko ibyo guhamagara ababuranyi byateganijwe mu zindi ngingo zijyanye n'imiburanishirize y'imanza z'imbonezamubano by'umwihariko mu ngingo ya 18 y'iryo tegeko[1]; kuba bitanditse mu ngingo ya 138 y'itegeko ryavuzwe haruguru ntibyakwitiranywa no kuba iyi ngingo inyuranije n'Itegeko-Nshinga.

[13]. Bityo, inkiko zimwe na zimwe zisiba imanza zitabanje guhamagara ababuranyi kandi ingingo ya 138 z'itegeko n°18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryavuguruwe kandi ryujujwe kugeza ubu itabibuza, ntibyafatwa nk'aho iyo ngingo inyuranije n'Itegeko-Nshinga, ayo yaba ari amakosa yakosorwa mu buryo bw'imiyoborere n'imitunganyirize y'inkiko.

B.Ku byerekeranye no kuba iyo ngingo itagaragariza ababuranyi ibyo bagomba kuba bakoze kugirango bititwa ko barangaye

[14]. Me MHAYIMANA Isaïe avuga ko ingingo ya 138 y'itegeko n° 18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nkuko ryahinduwe kugeza ubu, inyuranije n'ingingo ya 9-4° y'Itegeko-Nshinga kubera ko iha uburyo abacamanza babishaka bwo kwitirira

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[1]Nyuma y'imihango yo kwandika ikirego, umwanditsi w'urukiko ashyikiriza Perezida w'urukiko dosiye ikubiyemo inyandiko zose kugira ngo ayihe itariki yo kuburanishwa ; Iyo urubanza rumaze guhabwa itariki, umwanditsi w'urukiko ategura inyandiko zihamagara ababuranyi.

ababuranyi amakosa cyangwa kwibeshya byaturutse ku nkiko, ibyo bikaba binyuranye n'ihame rishyirwaho n'iyo ngingo y'Itegeko-Nshinga imaze kuvugwa ryo kubaka Leta igendera ku mategeko, iri hame rikaba ritajyana na busa no kurenganya ababuranyi, bityo bikaba bitera akarengane gakomeye ku bagana inkiko.

[15]. M^e^ MHAYIMANA Isaïe avuga kandi ko ako karengane kagaragazwa nuko mu ngingo ya 138 y'itegeko ryavuzwe haruguru, nta hantu nahamwe hateganywa ibyo uwareze ategetswe gukora nyuma y'aho arangirije gutanga ikirego cye, kugirango urubanza rwe ruhamagarwe cyangwa ruburanishwe. Nta n'ahantu nahamwe muri iryo tegeko hateganywa inshuro agomba gusiragira ku rukiko arusaba guhamagara urubanza ngo ruburanishwe. Ahangaha bigaha umucamanza inzira yo gushingira ku mpamvu yitoranyirije yo gusiba urubanza.

[16]. Intumwa ya Leta ivuga ko kuba ingingo ya 138 y'itegeko ryavuzwe haruguru idateganya ibyo umuburanyi agomba gukora nyuma yo gutanga ikirego kugira ngo ikirego cye kidasibwa, bitahuzwa no kunyuranya n'Itegeko Nshinga kuko hari inyandiko nyinshi zagombye kuba ziri muri dosiye zikamenyesha Urukiko ko umuburanyi yitaye cyangwa atitaye ku rubanza rwe. Ko impamvu atari ngombwa ko bishyirwa mu ngingo ya 138 ari uko izo nshingano zigaragara mu zindi ngingo z'itegeko, ko rero haramutse habaye amakosa yo kutagendera kuri izo nyandiko ziri muri dosiye bitakwitiranywa no kuvuga ko ingingo ya 138 inyuranije n'Itegeko-Nshinga ko ahubwo byabarirwa ku mikorere y'Urukiko.

[17]. Ingingo ya 138 y'itegeko n°18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko «Urubanza rwose rwaregewe rugahagarara amezi atandatu (6) rutaburanywe biturutse ku mpamvu z'urega, ntiruba rukiburanywe rutongeye gutangirwa ingwate y'amagarama bundi bushya » .

[18]. Ingingo ya 9-4° y'Itegeko-Nshinga iteganya ko « Leta y'u Rwanda yiyemeje kubaka Leta igendera ku mategeko n'ubutegetsi bwa demokarasi ishingiye ku bitekerezo bya politiki………… ».

[19]. Urukiko rw'Ikirenga rurasanga kuba itegeko ritararondoye muri iyo ngingo ibyo umuburanyi asabwa gukora nyuma yo gutanga ikirego cye kugira ngo kidasibwa, bitagomba gufatwa nk'aho iyo ngingo inyuranije n'Itegeko Nshinga, kuko nta nakimwe kiyiteganyijwemo kinyuranije naryo. Kuba yaba ikeneye gusobanurwa cyangwa kuzuzwa kurushaho, bikaba ari ibyakorwa n'Umushingamategeko

mu gihe byagaragara ko ari ngombwa.

2.KUBA INGINGO YA 141 Y'ITEGEKO N° 18/2004 RYO KUWA 20/06/2004 RIGENA IMIBURANISHIRIZE Y'IMANZA Z'IMBONEZAMUBANO, IZ'UBUCURUZI, IZ'UMURIMO N'UBUTEGETSI INYURANIJE N'INGINGO YA 18 Y'ITEGEKO NSHINGA.

Ikibazo kigomba gusuzumwa ahangaha ni ukumenya niba abatemererwa n'ingingo ya 141 y'itegeko rimaze kuvugwa kongera kuburana urubanza rwabo, binyuranije n'Itegeko Nshinga .

[20]. Me MHAYIMANA Isaïe mu gusobanura ikirego, avuga ko ingingo ya 141 y'itegeko n°18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'ubutegetsi nk'uko ryavuguruwe kandi ryujujwe kugeza ubu, inyuranije n'ingingo ya 18 y'Itegeko Nshinga kubera ko ifungira inzira uburyo bwo gukosora ukwibeshya cyangwa ikosa ryakorwa n'urukikomu gusiba urubanza, bityo ikaba ibuza umuburanyi kwiregura ku ikosa yageretsweho by'amaherere.

[21]. Akomeza avuga ko kandi inyuranije n'ingingo ya 9-4° y'Itegeko Nshinga , iteganya ko Leta y'u Rwanda yiyemeje kugendera ku ihameremezo ryo kubaka Leta igendera ku mategeko, ikanabangamira n'ihame riteganywa n'ingingo ya 19- 2 ry'Itegeko Nshinga ry'uko ntawe ushobora kuvutswa uburenganzira bwo kuburanira imbere y'umucamanza itegeko rimugenera kimwe n'ihame ryo kwitabaza inzira z'ubujurire mu kurengera uburenganzira bwa muntu.

[22]. Intumwa ya Leta ivuga ko ibyo ingingo ya 141 y'itegeko ryavuzwe haruguru iteganya, nuko mu gihe urubanza rwajuririwe, rwasabiwe gusubirishwamo cyangwa gusubirishwamo ingingo nshya kongera kurubyutsa biba bitagishobotse kubera ko igihe itegeko ritanga ngo uburenganzira bwo kujurira, gusubirishwamo cyangwa gusubirishwamo urubanza ingingo nshya, kiba cyararenze.

[23]. Ingingo ya 141 y'itegeko n° 18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryavuguruwe kandi ryujujwe kugeza ubu, iteganya ko « Iyo urubanza rwasubirishijwemo , rwajuririwe cyangwa rwasabiwe gusubirishwamo ingingo nshya rukaza gusibwa, ruhama uko rwaciwe ntirwongere kuburanishwa ». Ingingo ya 9-4° y'Itegeko-Nshinga iteganya ko «Leta y'u Rwanda yiyemeje kubaka Leta igendera ku mategeko n'ubutegetsi bwa demokarasi ishingiye ku bitekerezo bya politiki………………. » ingingo ya 19,2° y'Itegeko - Nshinga iteganya ko «………Ntawe ushobora kuvutswa kuburanira imbere y'umucamanza itegeko rimugenera », ingingo ya

18 y'iryo tegeko igateganya ko « …………, kwiregura no kunganirwa ni uburenganzira budahungabanywa mu bihe byose, ahantu hose, mu nzego z'ubutegetsi ; iz'ubucamanza n'izindi zose zifata ibyemezo » .

[24]. Urukiko rusanga, ingingo ya 141 y'itegeko n° 18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryavuguruwe kandi ryujujwe kugeza ubu igamije guhana umuburanyi wajuriye, wasubirishijemo urubanza, cyangwa wasubirishijemo urubanza ingingo nshya, yarangiza akinumira ntakurikirane urubanza rwe, nyamara yarahawe igihe gihagije cyo kuba yarukurikirana ariko ntagire icyo arukoraho, rugasibwa yaba ahari cyangwa adahari. Iyi ngingo ikaba igomba kureberwa hamwe n'izindi ngingo z'iryo tegeko nk'ingingo ya 5, 11 n'iya 24. Izi ngingo zikaba zerekana ibyo umuburanyi agomba gukora iyo amaze gutanga ikirego, yaba ntacyo akoze urubanza rugasibwa nyuma y'amezi atandatu[2].

[25]. By'umwihariko umuburanyi wasubirishijemo urubanza, wajuriye cyangwa wasubirishijemo urubanza ingingo nshya, iyo yatanze ikirego kimwe muri ibyo akarambika ntagikurikirane ya mezi atandatu agashira, urubanza rwe ntiruba rucyongeye kuburanishwa nk'uko ingingo ya 141 y'itegeko ryavuzwe haruguru ibiteganya. Ibyo ariko birumvikana kuko ibihe byagenwe gusubirishamo urubanza, kujurira cyangwa gusubirishamo urubanza ingingo nshya biba byararenze, urubanza ruba rwabaye itegeko ntakuka. Imyumvire y'iyi ngingo ishimangirwa n'ibyo abahanga mu mategeko agenga imiburanishirize nka *SERGE Guinchard* Frédérique FERRAND bavuga ku busaze bw'ikirego cyatanzwe muri ubwo buryo[3]. Iyo ngingo ariko

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[2]Ingingo ya 5 y'itegeko N°18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya ko « Ababuranyi bakurikirana urubanza bubahiriza inshingano zabo. Ni bo bakora ibijyanye n'inyandiko z'iburanisha mu buryo no mu gihe cyagenwe » naho ingingo ya 11 y'iri tegeko igateganya ko Imanza zigomba kuburanishwa mu gihe kitarenze amezi atandatu (6) kuva urukiko rushyikirijwe ikirego. Bitaba ibyo, Perezida w' urukiko rwaregewe agasobanurira Perezida w'Urukiko rw' Ikirenga mu nyandiko impamvu zabiteye kandi zikamenyeshwa ababuranyi.
Usibye kumva ibirego byihutirwa biboneka mu manza, imanza zose zihabwa itariki yo kuburanishwa hakurikijwe uko zagiye zandikwa mu gitabo cy'ibirego.
Ingingo ya 24 y'iri tegeko rimaze kuvugwa nayo igateganya ko "Umuburanyi wese ushaka guhamagaza undi mu rubanza ashyikiriza umwanditsi w'urukiko rwaregewe, mu nyandiko cyangwa mu magambo, ibyangombwa byose kugira ngo abashe kwandika urwandiko rumutumiza"

[3] Lorsque la péremption se produit en appel ; au moment où elle se produit il y a déjà longtemps que les délais d'appel sont expirés, et on ne peut plus

ntibuza umucamanza guhamagara ababuranyi iyo hagiye gufatwa icyemezo kijyanye no gusiba urubanza rwabo.

[26]. Urukiko rw'Ikirenga rurasanga ingingo ya 141 y'itegeko n° 18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'ubutegetsi nk'uko ryavuguruwe kandi ryujujwe kugeza ubu, nta burenganzira na bumwe ibuza umuburanyi kubera ko aba yahawe igihe gihagije cyo gukurikirana urubanza rwe ntabikore, igihe cy'amezi atandatu aba yahawe kikaba kiza kiyongera ku gihe cy'iminsi 15 iba yahawe umuburanyi ushaka gusubirishamo urubanza rwe n'igihe cy'ukwezi k'ujurira. Kuba muri urwo rwego urubanza rwe rutongera kuburanishwa iyo rwasibwe kubera ubusaze ntabwo ari ukuvutsa uburenganzira ahabwa n'Itegeko Nshinga ahubwo ni uko ibihe yagenewe n'itegeko byo gutangamo ibirego biba byararenze nk'uko byasobanuwe.

[27]. Hashingiwe ku byavuzwe mu bika bibanza, Urukiko rw'Ikirenga rurasanga ingingo ya 138 n'ingingo ya 141 z'itegeko n° 18/2004 ryo kuwa 20/06/200 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'ubutegetsi nk'uko ryavuguruwe kandi ryujujwe kugeza ubu, zitanyuranije n'Itegeko Nshinga .

IV. ICYEMEZO CY'URUKIKO

[28]. Rwemeye kwakira ikirego rwashyikirijwe na NTAWUBURINTIMBA Alivera kuko cyatanzwe mu buryo no mu nzira bikurikije amategeko;

[29]. Rwemeje ko nta shingiro gifite;

[30]. Rwemeje ko ingingo ya 138 n'iya 141 z'itegeko n° 18/2004 ryo kuwa 20/06/2004 rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryavuguruwe kandi ryujujwe kugeza ubu, ntaho zinyuranije n'Itegeko-Nshinga rya Repubulika y'uRwanda ryo kuwa 04/06/2003 nk'uko ryahinduwe kandi ryujujwe kugeza ubu;

[31]. Rukijije ko NTAWUBURINTIMBA Alivera atsinzwe;

[32]. Rutegetse NTAWUBURINTIMBA Alivera gutanga amagarama

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faire une autre recours ; par conséquent, le jugement de première instance passe en force de chose jugée et la péremption d'instance produit son effet d'anéantissement sur le droit lui-même . Cette solution est affirmée par l'article 390 du nouveau Code . La même solution est valable dans le cas d'opposition. Serge GUINCHARD et Frédéric FERRAND, Procédure civile, 28e édition Dalloz- 2006, p. 1016, n°1355 a

y'urubanza angana na 9.700Frw, atayatanga agakurwa mu bye ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 27/04/2012.

Sé **KAYITESI Zaïnabo Sylvie** **Perezida**	**Sé** **MUGENZI Louis Marie** **Umucamanza**
Sé **MUTASHYA Jean Baptiste** **Umucamanza**	**Sé** **MUKANYUNDO Patricie** **Umucamanza**
Sé **HAVUGIYAREMYE Julien** **Umucamanza**	**Sé** **KANYANGE Fidelité** **Umucamanza**
Sé **MUKAMULISA M .Thérèse** **Umucamanza**	**Sé** **MUKANDAMAGE M. Josée** **Umucamanza**
Sé **RUGABIRWA Ruben** **Umucamanza**	**Sé** **MUNYANDAMUTSA Jean Pierre** **Umwanditsi**

IMANZA Z'INSHINJABYAHA

2. URUKIKO RW'IKIRENGA

Nº Y'URUBANZA: RPA 0061/11/CS
ITARIKI Y'URUBANZA: 17/02/2012
HABURANA: UBUSHINJACYAHA C/UWIMANA NKUSI Agnès na MUKAKIBIBI Saidati.

AMAGAMBO MPINE

IMANZA Z'ISHINJABYAHA - UBUFASHA BW'ISHUTI Y'URUKIKO (AMICUS CURIAE) - NI RYARI BYEMEWE ? UKO PROCEDURE YA AMICUS CURIAE IKORESHWA AHANDI.

AMICUS CURIEA GUFASHA URUKIKO - KUBA ABABURANYI UBWABO BADASHOBORA GUFASHA URUKIKO BIHAGIJE MU GUCYEMURA IKIBAZO - GUFASHA URUKIKO MU BUMENYI BUTANDUKANYE.

GUKORESHA AMICUS CURIAE KUBA IDATEGANYIJWE MU RWANDA -IGIHE CYOSE URUKIKO RUSANGA BYAGIRA AKAMARO MU GUCA IMANZA NEZA YAKORESHWA.

IBIGOMBA KUZUZWA KUGIRANGO AMICUS CURIAE YEMERWE - KUGIRA UBUMENYI BUKWIRIYE - KUGEZA KU RUKIKO IBITARASESENGUWE MU MYANZURO Y'ABABURANYI - NTABWO ARI UBURENGANZIRA - UBUBASHA BW'URUKIKO BWO KUYEMERERA CYANGWA KUTAYEMERERA .

KUBA NTA GISHYA AMICUS CURIAE IZANYE MU RUKIKO - KUTAYEMERERA KUGIRA ICYO IVUGA MU RUBANZA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Kumenya niba procedure ya amicus curiae yakoreshwa mu Rwanda n'ibigomba kugaragazwa ngo ikoreshwe.

-Ubufasha bw'inshuti z'Urukiko(Amicus Curiae) bukwiye kuba ari ibitekerezo, ibisobanuro bitabonetse mu myanzuro y'ababuranyi cyangwa inkuru y'umwihariko byafasha Urukiko mu ica ry'urubanza birenze ibyo ababuranyi bashobora gutanga, amicus curiae ifatwa nk'uwafasha Urukiko mu manza abacamanza bumva ababuranyi ubwabo badashobora kubafasha bihagije mu gukemura ikibazo.

-Nubwo ikoreshwa ry'inshuti z'Urukiko (Amicus Curiae) idateganijwe mu

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA, RUHAKIRIJE MU RUHAME URUBANZA RUBANZIRIZA URUNDI MU BURYO BUKURIKIRA:

ABAJURIYE:

1. UWIMANA Nkusi Agnès mwene Nkusi Déo na Twagiramungu Geneviève wavutse mu 1976, avukira i Nyabitekeri-Akarere ka Nyamasheke/Intara y'Iburengerazuba, akaba abarizwa Kivugiza, Nyamirambo, Nyarugenge/Umujyi wa Kigali. Umupfakazi, afite umwana umwe, umunyarwanda, akora umwuga w'itangazamakuru, yigeze guhanirwa icyaha cy'ivangura n'amacakubiri.

2. MUKAKIBIBI Saidati mwene Kayinamura Hamisi na Nyirababirigi Mariamu, wavutse mu 1960, avukira mu Biryogo, Nyamirambo, Nyarugenge/Umujyi wa Kigali, akaba abarizwa i Kabagesera, Runda, Kamonyi/Intara y'Amajyepfo. Umupfakazi, afite abana bane, umunyarwanda, akora umwuga w'itangazamakuru, ntarahamwa n'icyaha ku buryo buzwi n'inkiko.

Na

UBUSHINJACYAHA

<u>Igisuzumwa mu rubanza rubanziriza urundi</u>: Gusuzuma niba abasabye kuba amicus curiae muri uru rubanza babyemererwa.

I. Imiterere y'ikibazo muri uru rubanza rubanziriza urundi

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru rufite n° RP 0082/10/HC/KIG maze rusomwa kuwa 04/02/2011, rujuririrwa mu Rukiko rw'Ikirenga ruhabwa n° RPA 0061/11/CS. Mu iburanisha ryo kuwa 30/01/2012, umuryango mpuzamahanga Avocats sans Frontières (ASF) uhagarariwe na Me NGOGA Mukama Olivier n'umuryango mpuzamahanga Article 19 uhagarariwe na Me NGAMIJE Kirabo Guido hamwe na Me MUCHAI Stéphanie basabye kwemerwa kugira icyo bavuga mu rubanza RPA 0061/11/CS nk'inshuti z'Urukiko (amicus curiae).

[2] Abahagarariye iyi miryango mpuzamahanga basobanuriwe n'urukiko ko ibyerekeye kwemererwa kwa amicus curiae bidateganijwe mu mategeko agenga imiburanishirize y'imanza mu Rwanda, basabwa kugaragariza urukiko impamvu n'uburyo byakwemerwa muri uru rubanza.

[3] Me NGOGA Mukama Olivier avuga ko ASF ari umuryango mpuzamahanga umaze igihe kinini ukorera mu Rwanda aho ufasha mu guteza imbere ubutabera mu rwego rwo kongera ubushobozi, akaba ari muri urwo rwego uwo muryango wasabye gutanga umusanzu muri uru rubanza nk'inshuti y'urukiko. Ibyo kandi ngo akaba abishingira kubyo u Rwanda rukora mu Rukiko Mpuzamahanga rwashyiriweho u Rwanda (ICTR) kuko Leta y'u Rwanda ndetse n'Urugaga rw'Abavoka mu Rwanda bemerewe kuba "amicus curiae" muri urwo Rukiko, akaba rero asanga no mu Rwanda byakorwa mu rwego rwa "réciprocité" cyane ko bitanyuranije n'Itegeko Nshinga ry'u Rwanda bikaba kandi byafasha mu miburanishirize y'imanza mu Rwanda.

[4] Me NGOGA Mukama Olivier akomeza avuga ko Urukiko rushobora kwifashisha inyandiko z'abahanga mu bijyanye n'amategeko cyangwa ubundi bumenyi kugira ngo bifashe Urukiko mu guca urubanza, bikaba ntacyo byabangamira ubwigenge bw'Urukiko mu gufata icyemezo. Avuga kandi ko amategeko atagira umupaka kuko hari ibihugu bitigeze biteganya "amicus curiae" mu mategeko yabyo ariko ko inkiko zagiye zibyemera maze bitangira bityo, agatanga urugero rw'igihugu cy'Ubufaransa.

[5] Me NGOGA Mukama Olivier asaba Urukiko ko ingingo ya 6 y'itegeko n° 18/2004 ryo ku wa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryavuguruwe kugeza ubu yakurikizwa. Iyo ngingo ivuga ngo:"Abacamanza ntibashobora guca imanza bashyiraho ingingo rusange z'amategeko n'iz'amabwiriza ku manza bashyikirijwe. Baca imanza ahubwo bashingiye ku ngingo z'amategeko zirebana n'ikirego baregewe cyangwa iyo nta tegeko rijyanye n'ikiburanwa, bagashingira ku mategeko basanga bashyiraho mu gihe baba bashinzwe kuyashyiraho, bifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko". Arangiza avuga ko kwemera guha ijambo inshuti z'urukiko (amicus curiae) ntacyo bibangamiyeho urukiko, agasaba ko mu bushishozi bw'urukiko byakwemerwa bikaba jurisprudence n'ubwo bidateganijwe mu mategeko.

[6] Ku ruhande rwa Article 19, Me NGAMIJE KIRABO Guido avuga ko ubusanzwe kugira ububasha bwo kuburana bisaba kuba biteganijwe mu mategeko ariko ko "amicus curiae" ntaho iteganijwe mu mategeko y'u Rwanda. Akomeza avuga ko mu mategeko agenga imiburanishirize havugwa ko mu gihe itegeko ntacyo riteganya mu ica ry'urubanza hakoreshwa "doctrines" na "jurisprudences" by'ahandi, ko ariko nta rubanza afite rwagaragaza uko ahandi bikorwa, uretse ko mubushakashatsi yakoze bugaragaza ko mu gihugu cy'Ubufaransa bemera inshuti z'urukiko (amicus curiae) kandi bidateganijwe mu mategeko.

[7] Me MUCHAI Stéphanie avuga ko Article 19 iteganya kwimakaza kw'isi hose umuco wo kuvuga ibyo abantu batekereza, uyu musanzu rero ngo akaba asaba ko wagera ku Rukiko kugira ngo bagaragaze ibigenda bibera ahandi (comparative study) bifitanye isano n'uru rubanza, n'ingero mu rwego rw'amategeko kubijyanye no kubahiriza ubwisanzure mu kugaragaza ibitekerezo. Asoza avuga ko Urukiko rutahatirwa kwemera ibitekerezo byabo, ko ariko bizera ko Urukiko rwasanga ari ingirakamaro mu gihe cyo gusuzuma ifatwa ry'icyemezo.

[8] Uhagarariye Ubushinjacyaha PN HABINEZA Damasceène avuga ko uyu musanzu wo gufasha Urukiko yumva akamaro kawo, ariko ko ikibazo cy'amategeko aricyo cyagombye kubanza gusubizwa mbere yo gusuzuma icyo uwo musanzu wamara. Akomeza avuga ko aho kwemera "amicus curiae" bikorwa ari uko biba biteganijwe mu mategeko, cyane cyane ko n'abasaba kuba inshuti z'urukiko biyemereye ko kuba u Rwanda rwarabisabye muri TPIR ari uko byari biteganijwe mu miburanishirize y'urwo Rukiko, kuba rero mu Rwanda ntaho biteganijwe mu mategeko akaba asanga "jurisprudence" ya TPIR itakora mu Rwanda kuko TPIR yabikoze ishingiye ku mategeko yayo.

[9] PN HABINEZA akomeza avuga ko abasabye kuba "amicus curiae" bavuze ko igihugu cy'Ubufaransa cyemeje "amicus curiae" kandi bidateganijwe mu mategeko yacyo ariko ko batashoboye kugaragaza iyo "jurisprudence". Uhagarariye Ubushinjacyaha asaba Urukiko kutemera "amicus curiae" kuko bidateganijwe mu mategeko y'u Rwanda.

[10] Abunganira abaregwa muri uru rubanza bashyigikiye icyifuzo cy'abasabye kuba inshuti z'urukiko.

[11] Urukiko rwemeje ko iburanisha ry'urubanza mu mizi rikomeza maze hakazafatwa icyemezo kuwa 17/02/2012 kubijyanye n'uko iyi miryango yombi yakwemererwa cyangwa ntiyemererwe gutanga ibitekerezo mu iburanisha ry'uru rubanza nk'inshuti z'urukiko, ababuranyi bakazamenyeshwa itariki y'isomwa ry'urubanza mu mizi.

II. Isesengura ry'ikibazo.

(a) Kureba uko procedure ya amicus curiae ikoreshwa mu bindi bihugu no mu nkiko mpuzamahanga.

[12] Procedure ya "amicus curiae" ikoreshwa mu bihugu bitandukanye nka Leta Zunze Ubumwe za Amerika (USA) aho iteganijwe mu mategeko ngengamikorere ya Federal Courts kandi ikaba inakoreshwa n'inkiko zo hasi (district courts) muri icyo gihugu. Kugira ngo byemerwe, impande zose mu rubanza zigomba kuba zemeranijwe ku bushake kuza mu rubanza kwa "amicus curiae" cyangwa urukiko rwabyemeye. Inkiko zifite ububasha busesuye bwo kwemera cyangwa kutemera uwasabye kuba inshuti y'urukiko nk'uko byasobanuwe mu rubanza rwa "*Fluor Corp v. U.S.,35 Fed. Cl. 284, 285 (1996")*[1]. Procedure ya "amicus curiae" inateganijwe kandi mu ngingo ya 37 y'amategeko ngengamikorere y'Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe za Amerika (Supreme Court)[2] aho isobanura ko "amicus curiae" yemerwa igihe ubufasha izanye ari ingirakamaro (relevant) kandi bitarigeze bizanwa n'ababuranyi mu iburanisha ku buryo byafasha urukiko cyane. Ibi akaba aribyo byashimangiwe mu rubanza rwa "*Voices for Choices v. Ill. Bell Tel.co."*[3], aho umucamanza

[1] http://www.investigativeproject.org : Fluor Corp. & Affiliates v. United States, 35 Fed. Cl. 284, 285 (1996): "There is no inherent right to file an amicus curiae brief with the Court. It is left entirely to the discretion of the Court."

[2] Rule 37(1) of the Supreme Court of United States Rules 2010: "An amicus curiae brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored. An amicus curiae brief may be filed only by an attorney admitted to practice before this court as provided in Rule 5."

[3] Voices for Choices v Ill. Bell Tel.Co., 339 F.3d 545: "No matter who a would be amicus curiae is, therefore, the criterion for deciding whether to permit the filing of an amicus brief should be the same: whether the brief will assist

Posner yafashe icyemezo cyo kutemerera abashinga mategeko babiri bo muri Leta ya Illinois kuba "amicus curiae" agaragaza ko igishingirwaho kugirango ubufasha bw'inshuti y'urukiko bwemerwe gikwiye kuba kimwe kuri bose: ubufasha bw'inshuti y'urukiko (amicus curiae) bukwiye kuba ari ibitekerezo, ibisobanuro bitabonetse mu myanzuro y'ababuranyi cyangwa inkuru y'umwihariko byafasha urukiko birenze ibyo ababuranyi bashobora gutanga .

[13] Iteganijwe kandi mu mategeko ngengamikorere y'Urukiko rw'Ikirenga rwa Canada yo mu mwaka wa 2002 (SOR 2002-156) mu ngingo yayo ya 92[4] ivuga ko urukiko rushobora gushyiraho inshuti y'urukiko kurwunganira. Amategeko ngengamikorere y'inkiko z'intara za Manitoba[5], Saskatchewan[6] nayo agena ibyerekeye "amicus curiae".

[14] Ubufaransa bwatangiye gukoresha iyi "procedure" ya "amicus curiae" mu rubanza rwaciwe n'urukiko rw'ubujurire rw'i Paris[7]. Uru rubanza akaba arirwo rugero ruhari rugaragaza ko "amicus curiae" yemewe n'urukiko kandi bidateganijwe mu mategeko y'Ubufaransa cyangwa mu mategeko ngengamikorere y'urwo Rukiko. Nk'uko bigaragara muri urwo rubanza, Urukiko rubyibwirije nirwo rwasabye "amicus curiae" kuza mu rubanza igihe rwasanze ari ngombwa gushaka umuntu w'impuguke wafasha urukiko gusobanukirwa ibibazo rusange biri mu rubanza[8]. "Amicus Curiae" yanakoreshejwe mu Rukiko Rusesa Imanza mu Bufaransa aho abashinzwe iby'ubuvuzi, abarimu bo muri Kaminuza bigisha amategeko ndetse n'abashakashatsi batandukanye baje nka "amicus curiae" mu rubanza kugirango batange ibitekerezo kubijyanye no gusuzuma ibijyanye n'icyaha cyo kwica utabigambiriye umwana wari ukiri munda (possibilité de qualification d'homicide involontaire à un enfant à naître), akaba ubwinshi bw'abatanga ibitekerezo kandi binyuranye bituma icyemezo cy'Urukiko kigira agaciro kurushaho.[9]

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the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties 'briefs. The criterion is more likely to be satisfied in a case in which a party is inadequately represented; or in which the would-be amicus has a direct interest in another case that may be materially affected by a decision in this case; or in which the amicus has a unique perspective or specific information that can assist the court beyond what the parties can provide."

[4]Rule 92 of the Supreme Court of Canada Rules 2002 (SOR/2002-156):" The Court or a judge may appoint an amicus curiae in an appeal."

[5] Manitoba Court of Queen's Bench Rules, Man.Reg. 553/88, R. 13.02 : "Any person may, with leave of the court or at the invitation of the court and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument."

[6] Saskatchewan Queen's Bench Rules, R.75 [am.Sask. Gaz., Pt. 1, November 13, 1987: "With leave of the Court, a person may, without becoming a party to the proceeding, intervene therein as amicus curiae for the purpose of rendering assistance to the court by way of argument, or by presentation of evidence, on such terms as to costs or otherwise as the court may impose."

[7] Arrêt rendu par la Cour d'appel de Paris le 6 juillet 1988 : Laurin Y., La notion d'amicus curiae, Gaz. Pal. Du 18/10/1988/, p. 702.

[8] http://m2bde.u-paris10.fr/: La place de l'amicus curiae en procédure civile française et allemande -Par Gaëtan Klein: «La Cour d'appel de Paris l'a accueilli dans un arrêt rendu le 21 juin 1988. Elle fut saisie par un avocat au barreau d'Evry d'une demande en annulation d'une décision du Conseil de l'ordre des avocats du barreau d'Evry portant sur les activités dominantes de l'avocat. La Cour désigna alors le bâtonnier de l'ordre des avocats du barreau de Paris en qualité d'amicus curiae (Laurin Y., L'amicus curiae, JCP 1992, 1. 3603, p. 347). Cependant, la technique de l'amicus curiae n'est pas encadrée par le Code de procédure civile français».

[9] http://m2bde.u-paris10.fr/: La place de l'amicus curiae en procédure civile française et allemande -Par Gaëtan Klein: «C'est ainsi que plusieurs amici curiae sont intervenus lors de l'instruction du pourvoi de l'arrêt rendu par la Chambre

[15] Mu gihugu cy'Ubwongereza "procedure" ya "amicus curiae" niho yatangiriye. Muri icyo gihugu, urubanza rushobora gucibwa hakoreshejwe ibimenyetso byatanzwe n'ababuranyi cyangwa bivuye no hanze y'urukiko, akaba rero ari muri urwo rwego inkiko zagiye zemerera abantu cyangwa imiryango kugira uruhare mu iburanisha n'ubwo bwose baba atari ababuranyi. Mu Rukiko rw'Ikirenga muri icyo gihugu, "amicus curiae" iteganijwe mu mategeko ngengamikorere yarwo yo mu mwaka wa 2009 (SI 2009/1603) mu ngingo ya 15[10]. Umurongo ngenderwaho mu kwemerera "amicus curiae" wasobanuwe n'urwahoze ari Urukiko rw'Ikirenga rw'Ubwongereza (House of Lords) mu rubanza *In re E (a child)* aho rugaragaza ko kwemerera imiryango itegamiye kuri Leta cyangwa ikigo cyemewe n'amategeko kuba "amicus curiae" mu rubanza ari ukugira ngo bigeze ku rukiko imyanzuro yanditse cyangwa batange ibitekerezo mu magambo mu iburanisha kandi Urukiko rukaba rufite ikizere ko ibyo "amicus curiae" ari bugaragaze biruta ibyo rwari kwibonera ubwarwo, bityo bikaba byaba ari nta kamaro niba "amicus curiae" asubiramo ingingo uwajuriye yamaze gutanga bikaba byatuma urukiko rutakaza umwanya.[11] Urwahoze ari Urukiko rw'Ikirenga rw'Ubwongereza (House of Lords), rwagaragaje ko inkiko zitabyishimira iyo "amicus curiae" asubiramo ibyavuzwe n'ababuranyi kuko bituma ababuranyi bishyura amafaranga menshi kubijyanye n'urubanza kandi nibyo bavuze nta nyongeragaciro byatanze mu iburanisha, akaba ariyo mpamvu mu mategeko y'Ubwongereza bateje imbere "amicus curiae" nk'uwafasha Urukiko mu manza urukiko rwumva ababuranyi ubwabo badashobora gufasha Urukiko bihagije gukemura.

[16] Mu gihugu cy'Ubudage, "amicus curiae" iteganijwe gusa mu mategeko ngengamikorere y'Urukiko rurinda Itegeko Nshinga (German Constitutionnal Court), avuga ko urwo rukiko rushobora guha abantu batari ababuranyi ariko babifitiye ubumenyi umwanya wo gutanga ibitekerezo mu rubanza[12]. Mbere y'uko iri tegeko rijyaho muri 1998, ntibyabuzaga Urukiko rurinda Itegeko Nshinga rw'Ubudage gukoresha "amicus curiae" gutanga ibitekerezo mu gufata ibyemezo.

plénière de la Cour de Cassation le 29 juin 2001. Tous les faits étaient connus des juges, mais ces derniers se heurtaient à une question d'ordre général dont la réponse était essentielle à la résolution du litige. Des professeurs de droit, l'académie de médecine et le comité national d'éthique et des sciences de la vie ont ainsi exposé leur avis sur la possibilité d'appliquer la qualification d'homicide involontaire à un enfant à naître (Encinas de Munagorri R., L'ouverture de la Cour de Cassation aux amici curiae, RTD civ., 2005, p. 91). Ce pluralisme permet au juge civil français de recueillir plusieurs avis. La construction de sa jurisprudence n'en sera alors que meilleure. De plus, la prise en compte d'intérêts différents, voire potentiellement conflictuels, confère à la décision de la cour une plus grande légitimité».

[10] Rule 15 of the Supreme Court of United Kingdom Rules 2009 (SI 2009/1603): "Any person and in particular-(a) any official body or non-governmental organization seeking to make submissions in the public interest or (b) any person with interest in proceedings by way of judicial review, may make written submissions to the Court in support of an application for permission to appeal and request that the Court takes them into account".

[11] In re E (a child) (Northern Ireland) (AP) [2008] UKHL 66 per Lord Hoffman: "In recent years the House has frequently been assisted by the submissions of statutory bodies and non-governmental organizations on questions of general public importance. Leave is given to such bodies to intervene and make submissions, usually in writing but sometimes orally from the bar, in the expectation that their fund of knowledge or particular point of view will enable them to provide the House with a more rounded picture than it would otherwise obtain. The House is grateful to such bodies for their help. An intervention is however of no assistance if it merely repeats points which the appellant or respondent has already made. An intervener will have had sight of their printed cases and, if it has nothing to add, should not add anything. It is not the role of an intervener to be an additional counsel for one of the parties. This is particularly important in the case of an oral intervention. I am bound to say that in this appeal the oral submissions on behalf of the NIHRC only repeated in rather more emphatic terms the points which had already been quite adequately argued by counsel for the appellant. In future, I hope that interveners will avoid unnecessarily taking up the time of the House in this way."

[17] Mu nkiko mpuzamahanga, Urukiko Mpuzamahanga Mpanabyaha rwashyiriweho u Rwanda (ICTR) ruteganya "amicus curiae" mu mategeko ngengamikorere yarwo mu ngingo ya 74[13], Urukiko Mpuzamahanga Mpanabyaha rwashyiriweho icyari Yougoslavia (ICTY) ruteganyako "amicus curiae" mu mategeko ngengamikorere yarwo mu ngingo ya 74[14] n'urukiko Mpuzamahanga Mpanabyaha (ICC) ruteganya "amicus curiae" mu mategeko ngengamikorere yarwo mu ngingo ya 103(1)[15], aho bagaragaza ko "amicus curiae" ishobora kwemerwa mu rubanza igihe rusanga bikenewe kugirango urubanza rucibwe neza. Urukiko rw'Iburayi rw'Uburenganzira bwa Muntu (ECHR) narwo ruteganya "amicus curiae" mu mategeko ngengamikorere yarwo mu ngingo ya 44[16].

[18] Urukiko rurasanga muri ibyo bihugu n'izo nkiko zivuzwe bemerera umuntu cyangwa imiryango kuba inshuti y'urukiko (amicus curiae) kugirango batange ubufasha ku Rukiko mu bumenyi butandukanye byagirira akamaro Urukiko mu ica ry'urubanza.

(b) Gusuzuma niba imiryango ASF na Article 19 yakwemerwa nk'inshuti z'urukiko muri uru rubanza.

[19] Nk'uko byavuzwe, mu mategeko y'u Rwanda ntabwo hateganijwe ibyerekeye "amicus curiae" cyangwa inshuti z'urukiko. Nyamara, biragaragara ko ubufasha bw'inshuti z'urukiko muri rusange ari ingirakamaro kuko zishobora gufasha Urukiko mu gusuzuma amategeko n'ibibazo biri mu rubanza cyane cyane ahakenewe ubumenyi budasanzwe, ubusanzwe butagezwa ku Rukiko n'ababuranyi cyangwa ngo bube bwagaragarira abacamanza bikoreye ubushakashatsi. Ni nayo mpamvu u Rwanda rumaze kugira uruhare mu manza nka "amicus curiae" mu Rukiko Mpuzamahanga Mpanabyaha rwashyiriweho u Rwanda (ICTR) kuko ruba rufite amakuru yafasha urwo rukiko mu gufata ibyemezo. Hakurikijwe uko bikorwa mu bindi bihugu n'izindi nkiko, nta mpamvu ikomeye yatuma iyi "procedure" ya "amicus curiae" idakoreshwa mu Rwanda igihe cyose urukiko mu bushishozi bwarwo rusanga byagira akamaro mu guca imanza neza n'ubwo bidategenijwe mu mategeko.

[20] Nk'uko isuzuma ry'uko bikorwa mu bindi bihugu ryabigaragaje hejuru, Urukiko rurasanga hari ibigomba kubahirizwa kugira ngo abantu cyangwa imiryango/ibigo babe bakwemererwa kugira uruhare mu rubanza nk'inshuti z'urukiko. Amategeko y'ahandi n'imanza zaciwe (jurisprudence) bigaragaza ko ibi bikurikira bigomba kubahirizwa:

[12] The Bundesverfassungsrichtsgesetz, kann sachkundigen Dritten Gelegenheit zur Stellungnahme geben., 27a BVerfGG.

[13] Rule 74 of the ICTR Rules 1995 as amended up to date: "A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any state, organization or person to appear before it and make submissions on any issue specified by the Chamber." [14] Rule 74 of the ICTY Rules 1994 as amended up to date: "A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a state, organization or person to appear before it and make submissions on any issue specified by the Chamber."

[15] Rule 103(1) of the ICC Rules 2002: "At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a state, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate."

[16] Rule 442 (b) of the ECHR Rules 2009: "If a Contacting Party wishes to exercise its rights under Article 36(1) of the Convention to submit written comments or take part in hearing, it shall so advise the Registrar in writing not later than twelve weeks after the transmission or notification referred to in the preceding sub-paragraph. Another time limit may be fixed by the President of the Chamber for exceptional reasons."

1. Kuba ushaka kuba "amicus curiae" abifitiye ubumenyi bukwiriye;
2. Kuba ibyo ashaka kugeza ku Rukiko bitagaragara cyangwa bitarasesenguwe mu myanzuro cyangwa izindi nyandiko z'ababuranyi. "Amicus Curiae" ntagomba gusubiramo ibivugwa n'ababuranyi mu yandi magambo. "Amicus Curiae ntabwo ari abunganizi binyongera;
3. Kwemererwa kuba "amicus curiae" ntabwo ari uburenganzira bw'umuntu cyangwa umuryango/ikigo, ahubwo Urukiko rufite ububasha busesuye bwo kubyemera cyangwa kutabyemera mu bushishozi bwarwo.

[21] Impamvu yo kutemerera buri wese kugira icyo avuga mu rubanza kabone n'ubwo yaba ari inzobere mu biri mu rubanza ni ukugira ngo Urukiko n'ababuranyi badatakaza umwanya nta mpamvu no kugira ngo amafaranga agenda ku rubanza haba kuruhande rw'Urukiko, haba no ku baburanyi atiyongera nta mpamvu igaragara.

[22] Imiryango ASF na Article 19 izwi kuba ifite ubunararibonye (expertise) kubijyanye n'amategeko, ariko rero, nk'uko byasobanuwe, kugirango wemererwe kugira icyo uvuga mu rubanza nk'inshuti y'urukiko ugomba kuba hari ikintu uzanye mu rubanza gitandukanye n'ibyo abaregwa n'abunganizi babo bagaragaje, ukaba ufite amakuru afatika cyangwa y'umwihariko atarigeze atangwa n'ababuranyi ashobora gufasha urukiko kurusha ibyo ababuranyi batanga bityo bigafasha abacamanza mu ica ry'urubanza, ibyo bikaba byakorwa mu buryo bwo gutanga ibitekerezo no gukora isesengura ry'amategeko.

[23] Mu myanzuro iyi miryango mpuzamahanga ASF na Article 19 batanze mu Rukiko, bagarutse ku ngingo ya 34 y'Itegeko Nshinga rya Repubulika y'U Rwanda ryo kuwa 04/06/2003 nk'uko ryavuguruwe kugeza ubu, Amasezerano y'Ibihugu by'i Burayi ku kubungabunga uburenganzira bwa Muntu n'ubwisanzure bw'ibanze (ECHR), Amasezerano y'Ibihugu by'Amerika y'uburenganzira bwa Muntu (ACHR), ingingo ya 9 y'Amasezerano Nyafurika y'Uburenganzira bwa Muntu (ACHPR), ingingo ya 19 y'Amasezerano Mpuzamahanga y'Uburenganzira bwa Muntu (UDHR) n'ingingo za 19 na 20 y'Amasezerano Mpuzamahanga y'Uburenganzira ku Mibereho na Politiki (ICCPPR). Basobanura ko ashimangira ihame ry'ubwisanzure mu mitekerereze n'itangazamakuru, ndetse akaba ariyo iyi miryango yifashishije mu gusobanura ko ibyanditswe n'abaregwa mu kinyamakuru Umurabyo atari ibyaha ahubwo ko ibyo bakoze ari uburenganzira bwo kwisanzura mu mitekerereze n'itangazamakuru. Iyi miryango kandi yanatanze icyegeranyo cy'igereranya-manza n'imikorere myiza isumba indi (comparative jurisprudence and best practice) mu nkiko mpuzamahanga no mu bihugu bitandukanye kw'isi kubijyanye n'ibyemezo byagiye bifatwa kubijyanye n'ubwisanzure mu mitekerereze n'itangazamakuru. Iyi miryango na none inagaragaza ibibazo ivuga ko bikomeye biri mu rubanza rwaciwe n'Urukiko Rukuru birebana n'ubwisanzure bw'itangazamakuru aribyo kuba ngo ibyaha abaregwa bakurikirankweho bidafite umugambi wo kukora icyaha (elément moral/mens rea) n'igikorwa kigaragara kihariye (elément matériel/actus reus) ndetse ko n'ibihano abaregwa bahawe ari indengakamere.

[24] Urukiko rusanga ibyo iyi miryango yagaragaje mu myanzuro yayo nta gishya kirimo cyafasha urukiko kuko ntaho bitandukaniye n'ibyo abaregwa n'abunganizi babo basobanuye ku buryo burambuye mu myanzuro yabo no mu iburanisha. Kwemerera iyi miryango nka "amicus curiae" muri uru rubanza byaba ari ugusuzuma ibintu inshuro ebyiri, bityo rero ibyo ASF na

III. Icyemezo cy'Urukiko.

[25] Urukiko rwemeye gusuzuma icyifuzo cy'imiryango ASF na Article 19 cyo kugeza ku Rukiko ibitekerezo byayo nk'inshuti z'urukiko (amici curiae), ariko rwemeje ko icyo cyifuzo kitagomba kwemerwa kuko nta gishya iyo miryango izanye muri uru rubanza.

[26] Rutegetse ko urubanza RPA 0061/11/CS ruzasomwa kuwa 16/03/2012.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 17/02/2012 N'URUKIKO RW'IKIRENGA.

(sé)
Sam RUGEGE
Perezida

(sé)
Immaculée NYIRINKWAYA
Umucamanza

(sé)
Marie Josée MUKANDAMAGE
Umucamanza

(sé)
Marcel HABYARIMANA
Umwanditsi

3. URUKIKO RW'IKIRENGA
N° Y'URUBANZA: RPAA001/GEN/10/CS
ITARIKI Y'URUBANZA: 13/01/2012
HABURANA: UBUSHINJACYAHA na Major BIZIMANA André

AMAGAMBO MPINE

.IMANZA Z'INSHINJABYAHA-UBURYOZWE BW'ICYAHA CYAKOZWE N'ABO USHINZWE KUYOBORA-KUBA IGIKORWA CYARAKOZWE N'UYOBORWA NTIBIBUZA UMUYOBOZI WE KUBIRYOZWA-KUBA YARI AZI CYANGWA YARARASHOBORAGA KUMENYA KO UTEGEKWA YAKOZE CYANGWA YITEGUYE GUKORA ICYAHA - KUDAFATA ICYEMEZO GIKWIYE CYO GUHANA AFITIYE UBUBASHA KIGAMIJE KUBUZA IKORWA RY'ICYAHA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Ku bijyanye n'uburyozwacyaha bw'umuyobozi ku byaha byakozwe n'abo ayobora, umuyobozi ntashobora guhunga uburyozwacyaha iyo yari azi cyangwa yarashoboraga kumenya ko uwo ategeka yari yiteguye gukora icyaha ntabe yarafashe ibyemezo bikwiye afitiye ububasha kugira ngo aburizemo ikorwa ryacyo cyangwa ntabe yarakoze ibishoboka byose kugira ngo uwakoze icyaha ashyikirizwe inzego zibishinzwe ahanwe kandi yari abishoboye.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA ZA JENOSIDE, RUHAKIRIJE MU RUHAME URUBANZA RPAA 0001/GEN/10/CS KUWA 13/01/2012, MU BURYO BUKURIKIRA:

HABURANA:

Major Bizimana André, mwene Senkoko Charles na Bendera Marie, wavukiye i Bwisige, Intara y'Amajyaruguru, yashakanye na Nyirabatemberezi Esther, bafitanye abana batatu, atunze inzu n'ishyamba, ntarakurikiranwa n'Inkiko ku buryo buzwi.
N'Ubushinjacyaha bwa Gisirikare.

IKIREGERWA:
Kujuririra urubanza RPA/Gen 0001/09/HCM rwaciwe n'Urukiko Rukuru rwa Gisirikare kuwa 27/11/2009.

IBYAHA AREGWA:

Kuba ari mu cyahoze ari mu Ntara ya Gisenyi hagati ya 01/10/1990 na 15/02/1994 yarakoze icyaha cya jenoside;

Kuba ari aho hantu no mu bihe byavuzwe haruguru, yarafashe agafunga abantu binyuranyije n'amategeko, akabakorera ibikorwa by'urugomo n'ihohotera bazira ko ari abatutsi bibaviramo urupfu barimo umusaza witwa Nzigiyimana Ezéchiel waguye mu Mujyi wa Gisenyi, icyaha giteganywa kandi kigahanishwa ingingo ya 388, al. 5 CP;
Kuba ari aho hantu no mu bihe byavuzwe haruguru, yarakoze ubufatanyacyaha mu buhotozi bw'abatutsi benshi, bamwe baguye Bisizi, abandi i Nyamirango, icyaha giteganywa kandi kigahanishwa ingingo za 89, 91 na 312 CP;

Kuba ari aho hantu no mu bihe byavuzwe haruguru, yarabaye icyitso mu gusambanya ku gahato Solange, umugore wa Itegere Ignace, icyaha giteganywa n'ingingo ya 360 CP hamwe n'ingingo ya 51 y'Itegeko - Ngenga n° 16/2004 ryo kuwa 19/06/2004 rigena imiterere, imikorere, ububasha by'Inkiko Gacaca zishinzwe gukurikirana no gucira imanza abakoze ibyaha bya jenoside n'ibindi byaha byibasiye inyokomuntu nk'uko ryahinduwe kandi ryujujwe kugeza ubu, kigahanishwa ingingo ya 72 y'iryo Tegeko - Ngenga.

I. IMITERERE Y'URUBANZA

[1] Urukiko rwa Gisirikare rwaciye urubanza kuwa 12/12/2008, rwemeza ko Major Bizimana André ahamwa n'icyaha cy'ubuhotozi, icy'ubufatanyacyaha mu gusambanya ku gahato Solange n'icyaha cyo gufata ku rugomo no gukora urugomo rw'urugaraguro, rwemeza kandi ko ibyo byaha bigize icyaha cya jenoside, ruvuga ko ibyo byaha ari impurirane mbonezamugambi, rumuhanisha igifungo cya

burundu.

[2] Major Bizimana yajuririye Urukiko Rukuru rwa Gisirikare, urubanza rucibwa kuwa 27/11/2009, Urukiko rwemeza ko Major Bizimana ahamwa n'icyaha cyo gutegura jenoside y'abatutsi n'icyaha cy'ubufatanyacyaha mu bwicanyi bwabereye i Nyamirango, rwemeza ko adahamwa n'icyaha cy'ubufatanyacyaha mu gusambanya Solange ku gahato, ruvuga ko ibyaha bimuhama ari impurirane mbonezamugambi, rumuhanisha igifungo cya burundu.

[3] Major Bizimana yajuririye nanone Urukiko rw'Ikirenga avuga ko ari umwere, naho Ubushinjacyaha bwa Gisirikare bukavuga ko yakoze icyaha cyo gutegura jenoside y'abatutsi n'icy'ubufatanyacyaha mu bwicanyi bw'abagogwe bwabereye i Nyamirango.

[4] Urubanza rwaburanishijwe mu ruhame kuwa 04/05/2011, ariko rwagiye rusubukurwa nyuma y'iyo tariki kubera impamvu zumvikana, Major Bizimana André yunganiwe na Me Bikotwa Bruce, naho Ubushinjacyaha bwa Gisirikare buhagarariwe na Lt Mukunzi Faustin cyangwa Lt Mvuyekuye Théoneste.

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

1. <u>Kumenya niba ubuhamya bwa Major Bizimana bwo kuwa 24/06/2007 bugomba guhabwa agaciro</u>

[5] Major Bizimana André avuga ko Urukiko Rukuru rwa Gisirikare rwamuhamije ibyaha byavuzwe haruguru rushingiye ku buhamya yatanze mu rwego rw'Igihugu rushinzwe Inkiko Gacaca kuwa 24/06/2007, rwirengagiza ko burimo amakosa menshi yahimbye kuko yabwanditse afite imibereho mibi yo muri Gereza yatewe n'ubucucike bukabije bw'abagororwa no kuba yarabwanditse arwaye, arimo no kunyagirwa n'imvura, atacyibuka neza ibikorwa by'ubwicanyi byabaye icyo gihe. Avuga ko nyuma yaho, yanditse amabaruwa menshi akosora ubwo buhamya.

[6] Kuri iyo ngingo, uhagarariye Ubushinjacyaha avuga ko ubwo buhamya bufite agaciro kuko Major Bizimana André yabwanditse atuje, kandi azi neza ibikorwa bya jenoside byabereye mu cyahoze ari Perefegitura ya Gisenyi kuko yari umuyobozi wa Jandarumeri ya Gisenyi igihe byakorwaga.

<u>Uko Urukiko rubibona</u>

[7] Major Bizimana André yoherereje Umunyamabanga Nshingwabikorwa w'Urwego rw'Igihugu rushinzwe Inkiko Gacaca ubuhamya yanditse kuwa 24/06/2007. Ubwo buhamya bukubiyemo ibisobanuro birambuye byerekeranye n'ibikorwa bya jenoside yakorewe abatutsi mu cyahoze ari Perefegitura ya Gisenyi kuva kuwa 01/10/1990 kugeza kuwa 15/02/1994, ubwo yayoboraga Jandarumeri muri iyo Perefegitura. Muri ubwo buhamya, Major Bizimana yasobanuye ibijyanye n'itumizwa ry'inama y'umutekano ya Perefegitura ya Gisenyi yo kuwa 05/10/1990, uburyo yari muri iyo nama, uburyo iyo nama yafatiwemo icyemezo cyo gufata no gufunga abitwaga ibyitso by'Inkotanyi, n'uburyo icyo cyemezo cyashyizwe mu bikorwa kuwa 06/10/1990, hamwe n'ibisobanuro birambuye byerekeranye n'ubwicanyi bwabereye i Nyamirango n'ababugizemo uruhare.

[8] Mu iburanisha ry'uru rubanza, Major Bizimana yasabye ko ubwo buhamwa bwateshwa agaciro ngo kuko bwuzuyemo amakosa yihimbiye ubwe bitewe n'uko yabwanditse atisanzuye kubera ubucucike bukabije bw'abagororwa, no kuba yarabwanditse arwaye, anyagirwa n'imvura, kandi atacibuka neza ibikorwa by'ubwicanyi byabereye mu cyahoze ari Perefegitura ya Gisenyi.

[9] Urukiko rurasanga nta kimenyetso kigaragaza ko Major Bizimana yashyizweho agahato igihe yandikaga ubwo buhamya, ahubwo bigaragara ko yabukoze mu bwisanzure afite ubwenge n'umutimanama bye byose harebwe uburyo yasobanuye ibikorwa bya jenoside byakorewe abatutsi mu Mujyi wa Gisenyi icyo gihe n'ababigizemo uruhare. Uretse n'ibyo kandi, ibyinshi mu bikubiye mu buhamya bwe, ninabyo yivugiye ubwe imbere y'uru Rukiko igihe yaburanaga.

[10] Urukiko rurasanga rero ubwo buhamya bugomba kugumana agaciro kabwo maze bugasuzumwa hamwe n'ibindi bimenyetso biri muri dosiye ku bijyanye no kumenya niba Major Bizimana yaragize uruhare mu itegurwa rya jenoside mu cyahoze ari mu Mujyi wa Gisenyi hamwe n'ubwicanyi bwabereye i Nyamirango.

2. **<u>Kumenya niba Major Bizimana André yaba yarateguye jenoside y'abatutsi mu cyahoze ari mu Mujyi wa Gisenyi</u>**

[11] Major Bizimana André avuga ko Urukiko Rukuru rwa Gisirikare rwamuhamije icyaha cyo gutegura jenoside y'abatutsi ngo kuko yagiriye inama Commandant de Place w'icyahoze ari Perefegitura

ya Gisenyi, Bwana Bahufite Juvénal, yuko Perefe yatumiza inama y'umutekano y'iyo Perefegitura no kuba yaritabiriye iyo nama akanayitangamo amalisiti y'abitwaga ibyitso by'Inkotanyi bafashwe bagafungwa, bakanahohoterwa bazira ubwoko bwabo bw'abatutsi.

[12] Avuga ko urwo Rukiko rwirengagije ko inama yagiriye Commandant de Place, Bwana Bahufite Juvénal, itari inama yo gutegura jenoside, ko ahubwo yari inama isanzwe y'akazi kuko kwari ukugira ngo izindi serivisi z'umutekano zibahe amakuru ahagije yari gutuma bamenya niba Inkotanyi zari zaracengeye mu Mujyi wa Gisenyi no kumenya niba hari abashoboraga kuzibera ibyitso.

[13] Asobanura ko ikigaragaza ko atari afite umugambi wo gutegura jenoside ari uko ari Commandant de Place Bahufite wamwihamagariye ubwe ngo amugire inama kuko uyu yari yabonye telegaramu yari ivuye muri Etat Major y'Ingabo i Kigali yamutegekaga gufata Inkotanyi ngo zari zaracengeye mu Mujyi wa Gisenyi hamwe n'ibyitso byazo.

[14] Avuga kandi ko kuba yaritabiriye iyo nama y'umutekano yo kuwa 05/10/1990 ari uko yari umwe mu bari bayigize, kandi ko atayitanzemo lisiti y'ibyitso by'Inkotanyi, kuko iyo abari muri iyo nama bajya kuba bari barateguye ayo malisiti, baba barahise bafata abari bayanditseho, aho kwirirwa bakora umukwabu mu Mujyi wa Gisenyi.

[15] Asobanura ko inama y'umutekano ya Perefegitura ya Gisenyi yateranye mugitondo cyo kuwa 05/10/1990, igizwe n'amaserivisi yari afite umutekano mu nshingano zayo kugira ngo ahane amakuru yerekeranye n'Inkotanyi n'ibyitso byazo, ariko ko basanze batayafite, usibye uwari ushinzwe iperereza wahise atanga amazina y'abantu barindwi (7) yakekaga ko ari ibyitso by'Inkotanyi. Avuga ko bemeranyijwe ko buri serivisi isubira aho yakoreraga kugira ngo ishakishe ayo makuru, banemeranywa ko bongera guhurira kuri Parike saa munani. Avuga ko iyo saa yarageze, uretse Jandarumeri ya Gisenyi yayoboraga, abayobozi b'izindi nzego zose batanze amalisiti yabo, bemeza ko umukwabu wo gufata ibyitso by'Inkotanyi uzaba kuwa 06/11/1990, saa kumi n'imwe za mugitondo.

[16] Akomeza avuga ko kuwa 06/11/1990, abayobozi b'Amaselire na ba Nyumbakumi bayobowe na Porokireri wa Gisenyi, ndetse n'uwari Superefe Bikumbi, bakoze umukwabu mu Mujyi wa Gisenyi no mu nkengero zawo maze bafata abantu bagera ku ijana 100 bakekwaga kuba bari ibyitso by'Inkotanyi cyangwa abashakanye nabo. Anavuga

ko nyuma y'ijonjora ryakorewe kuri Sitade Umuganda, hasigaye abantu 30 hafi ya bose ari abatutsi, bajyanywa kuri Brigade ya Jandarumeri, aho Porokireri yabakoreye inyandiko zo kubafunga, arangije, bajya gufungirwa muri Gereza ya Gisenyi.

[17] Urukiko rwamubajije niba nta bantu bafashwe ngo banahohoterwe mu Mujyi wa Gisenyi kubera ko bitwaga ibyitso by'Inkotanyi, asubiza ko ibyo bikorwa byabayeho koko, ariko ko Jandarumeri ya Gisenyi yayoboraga itigeze ibigiramo uruhare kuko yacungaga umutekano w'abayobozi bayoboraga ibikorwa by'umukwabu n'uw'ibyitso by'Inkotanyi byafatwaga icyo gihe.

[18] Kuri iyo ngingo, uhagarariye Ubushinjacyaha avuga ko Major Bizimana yakoze icyaha cyo gutegura jenoside y'abatutsi kubera impamvu zikurikira:

1. niwe wagiriye Commandant de Place w'icyahoze ari Perefegitura ya Gisenyi yuko Perefe yatumiza inama y'umutekano kugira ngo bashyire mu bikorwa amabwiriza bari barahawe na Etat Major y'Ingabo yerekeranye no gufata, gufunga no guhohotera abitwaga ibyitso by'Inkotanyi, kandi ko iyo nama yateranye incuro ebyiri kuwa 05/10/1990.
2. yari muri iyo nama, kandi ko yakorewemo amalisiti y'abitwaga ibyitso by'Inkotanyi, ndetse ko nawe yayitanzemo lisiti y'abo Jandarumeri ya Gisenyi yakekaga ko ari ibyitso by'Inkotanyi.
3. iyo nama yari iyobowe na Superefe Bikumbi bari bahuje ubwoko, aho kuyoborwa n'uwari Perefe Nshunguyinka kuko bavugaga ko yari umututsi.
4. Abajandarume yayoboraga nibo bafataga abitwaga ibyitso by'Inkotanyi kuko aribo bari bafite imbunda, babifashijwemo n'abayobozi b'inzego z'Ibanze.
5. abo bajandarume ninabo bacungaga umutekano wa Superefe Bikumbi n'uwa Porokireri wa Gisenyi bari bayoboye ibikorwa by'ifatwa, ifungwa n'ihohoterwa ry'abitwaga ibyitso by'Inkotanyi.

<u>Uko Urukiko rubibona</u>

[19] Mu buhamya bwe bwo kuwa 24/06/2007 bwavuzwe haruguru, Major Bizimana André avuga ko yagiriye inama Commandant de Place w'icyahoze ari Perefegitura ya Gisenyi yuko Perefe yatumiza inama y'umutekano w'iyo Perefegitura kugira ngo serivisi z'umutekano zihane amakuru yerekeranye n'Inkotanyi zishobora kuba zaracengeye mu Mujyi wa Gisenyi n'abashoboraga kuzibera ibyitso.

[20] Muri ubwo buhamya bwe, avuga ko iyo nama yateranye kuwa 05/11/1990, saa moya za mugitondo, ayirimo, noneho uwari ushinzwe iperereza atanga amazina y'abantu barindwi (7) yakekaga ko bari ibyitso by'Inkotanyi, ko ariko kubera ko batari bafite amakuru ahagije, buri serivisi yasubiye aho yakoreraga kugira ngo ishakishe amakuru yuzuye. Akanavuga ko bongeye guhurira kuri Parike saa munani, maze buri serivisi y'umutekano yari muri iyo nama itanga lisiti y'abantu yakekaga ko bashoboraga kubika abacengezi b'Inkotanyi cyangwa kubabera ibyitso.

[21] Nanone mu buhamya bwe, akomeza avuga ko gahunda yo gufata abo bantu yashyizwe kuwa 06/11/1990, saa kumi n'imwe za mugitondo. Anavuga ko kuri uwo munsi, hafashwe abari barashyizwe kuri lisiti bari barakoze, kandi ko hafi ya bose bari abatutsi cyangwa abashakanye nabo, ko nyuma y'ijonjora ryabereye kuri Stade Umuganda no kuri Brigade ya Jandarumeri, hasigaye abantu 30 hafi ya bose ari abatutsi, bajya gufungirwa muri gereza ya Gisenyi.

[22] Ku bijyanye n'iryo fatwa ry'abitwaga ibyitso by'Inkotanyi, umutangabuhamya Nshunguyinka François wari Perefe wa Perefegitura ya Gisenyi icyo gihe, yasobanuye mu buhamye bwe ko Major Bizimana André yahurizaga hamwe akanagenzura ibikorwa by'ifatwa ry'ibyitso by'Inkotanyi, kandi ko mu ifatwa ryabyo yabaga ahibereye ubwe.

[23] Hasesenguwe ibikubiye muri ubwo buhamya bwombi, Urukiko rurasanga hari ibimenyetso bihagije kandi bidashidikanywaho ku ruhare rwa Bizimana André mu cyaha cyo gutegura jenoside y'abatutsi mu cyahoze ari mu Mujyi wa Gisenyi, kuko icya mbere, ariwe wagiriye Commandant de Place w'icyahoze ari Perefegitura ya Gisenyi yuko Perefe yatumiza inama y'umutekano ya Perefegitura.

[24] Urukiko rurasanga iyo nama yateranye kuwa 05/10/1990, yari igamije gutegura jenoside kuko yakorewemo amalisiti y'abakekwaga kuba ari ibyitso by'Inkotanyi byagombaga gufatwa bigafungwa, kandi ko abafashwe, bagafungwa ndetse bakanahohoterwa icyo gihe, ari abari kuri ayo malisiti, kandi ko hafi ya bose bari abatutsi.

[25] Icya kabiri n'uko Major Bizimana André yari muri iyo nama. Byongeye kandi kuba uyu yariyemereye ko buri serivisi yari muri iyo nama yatanze lisiti y'abo yakekaga ko ari ibyitso by'Inkotanyi, bigaragaza ko nawe yatanze bene iyo lisiti nk'uwari uhagarariye Jandarumeri ya Gisenyi yayoboraga. Icya gatatu n'uko igihe abitwaga ibyitso by'Inkotanyi bafatwaga, Major Bizimana yabaga ahibereye

ubwe, kandi ko yahurizaga hamwe ibyo bikorwa akanabigenzura hakurikijwe ubuhamya bwatanzwe na Nshunguyinka François wari Perefe wa Perefegitura ya Gisenyi bwavuzwe haruguru.

[26] Hakurikijwe ibyo bisobanuro, Urukiko rurasanga rero Major Bizimana André yarakoze icyaha cyo gutegura jenoside y'abatutsi mu cyahoze ari mu Mujyi wa Gisenyi nk'uko n'Urukiko Rukuru rwa Gisirikare rwabyemeje.

3. **<u>Kumenya niba Major Bizimana André yaryozwa ubwicanyi bwabereye i Nyamirango mu mwaka w'1992</u>**

[27] Major Bizimana n'umwunganira bavuga ko Urukiko Rukuru rwa Gisirikare rwamuhamije icyaha cy'ubufatanyacyaha mu bwicanyi bwabereye i Nyamirango rushingiye ku buhamya bwa Munyankirire Seth wamushinje kuba yarayoboye igitero cy'abajandarume ngo cyakoze ubwo bwicanyi, rwirengagiza ko uyu ari umuburanyi muri uru rubanza kuko icyo gihe yapfushije murumuna we witwaga Bihubi, ko rero yamugeretseho icyo cyaha kugira ngo azahabwe indishyi.

[28] Avuga ko Urukiko Rukuru rwirengagije kandi ko ubuhamya bwa Munyankirire Seth bwavugurujwe n'ubwa murumuna we witwaga Gashabuka wasobanuye ko ubwicanyi bw'i Nyamirango bwakozwe n'abasirikare bo mu Kigo cya Bigogwe ngo kuko aribo bazanwe n'amabisi ya ONATRACOM anabasubizayo, ndetse ko ubwo buhamya bwashimangiwe kandi na Général Rwarakabije wavuze ko abajandarume n'abasirikare batashoboraga kugendera hamwe mu ma bisi ya ONATRACOM batabiherewe uruhushya na Minisitiri w'Ingabo ngo kuko hari mu ifasi y'ibikorwa bya gisirikare kandi ko uyu atigeze atanga urwo ruhushya.

[29] Akomeza avuga ko abajandarume bagiye i Nyamirango bari baturutse kuri Komini Mutura, aho bacungaga umutekano wa Burugumesitiri w'iyo Komini, Bwana Ndabarinze. Anavuga ko atari afite ububasha bwo kubaha amabwiriza kuko Burugumesitiri yari yarabahawe n'Ubuyobozi bwa Perefegitura ya Gisenyi, usibye ko mu gihe bashoboraga gukora amakosa y'akazi yoroshye, yashoboraga kubafungira muri kasho, naho iyo bajya gukora amakosa akomeye, yari kubafungira muri kasho mu gihe cy'iminsi 15. Yongeyeho ko iyo bajya gukora ibyaha, yari kubohereza mu nzego zari zibifitiye ububasha kugira ngo zibakurikirane mu rwego rw'imanza z'inshijabyaha.

[30] Urukiko rwamubajije niba atarohereje Capitaine Ngerageze

wari ushinzwe Unité d'Intervention i Nyamirango, avuga ko yamwoherejeyo kugira ngo amurebere ibyahabereye, agezeyo amubwira ko hari umujandarume wahiciwe n'abaturage, maze abitangira raporo kwa Minisitiri w'Ingabo, kuko ntacyo yashoboraga gukora i Nyamirango kubera ko hagenzurwaga n'abasirikare.

[31] Yanabajijwe ingamba yaba yarafatiye abajandarume barasiye abagogwe i Nyamirango, asubiza ko nta byemezo yabafatiye kuko nta bwicanyi bahakoreye, kuko bahise bahunga batarashe abaturage ubwo bari bamaze kwica mugenzi wabo. Asobanura ko ibyo yanditse mu buhamya bwe agaragaza ko hari ubwicanyi bwahabereye ataribyo, kuko aribyo yihimbiye kuko yanditse ubwo buhamya afite imibereho mibi yo muri gereza yari afungiyemo.

[32] Akomeza avuga ko atagomba guhanirwa ubwicanyi bw'i Nyamirango kuko afite ikimenyetso gishya kigizwe n'ifishi ngo igaragaza ko ari abasirikare babaga mu Kigo cya Bigogwe bafatanyije na Rutitiri Ernest bahiciye abagogwe icyenda (9), kandi ko uyu yireze ubwo bwicanyi abusabira n'imbabazi, ndetse ko yabuhaniwe n'Urukiko Gacaca rw'i Nyamirango. Yongeraho ko mu gihe uru Rukiko rushidikanyije kuri icyo kimenyetso aruhaye, rwakwikorera iperereza rukabaza abacamanza bo muri urwo Rukiko kuko aribo bafite amakuru y'imvaho yerekeranye n'abagize uruhare muri ubwo bwicanyi.

[33] Kuri iyo ngingo, uhagarariye Ubushinjacyaha avuga ko Major Bizimana agomba kuryozwa ubwicanyi bwabereye i Nyamirango kubera impamvu zikurikira:

1. mu Nkiko zibanza yari yaremeye ko hari abajandarume babiri yayoboraga bagiye i Nyamirango, bagezeyo, umwe atemwa n'umuturage.
2. Munyankirire Seth yavuze ko nyuma y'iyicwa ry'uwo mujandarume, yiboneye ubwe Major Bizimana ayoboye igitero cy'abajandarume cyishe abagogwe. Asobanura ko ubuhamya bwa Munyankirire Seth bukwiye guhabwa agaciro kuko atari umuburanyi muri uru rubanza kuko ataregeye indishyi.
3. Major Bizimana yari i Nyamirango kuko yivugiye mu buhamya bwe ko hari umujandarume wirutse atarashe abaturage, ngo iyo atajyayo ntiyari kubimenya.
4. Abajandarume n'abasirikare bashoboraga kujyana i Nyamirango bari mu mabisi ya ONATRACOM kuko cyari igihe cy'intambara.

[34] Anavuga ko impamvu yatumye Major Bizimana asaba imbabazi mu buhamya bwe bwo kuwa 24/06/2007, ari uko yasanze atarahaye abajandarume yayoboraga amabwiriza yari gutuma batica abagogwe,

kandi icyo gihe, abatutsi bose bitwaga Inkotanyi. Ikindi n'uko yasanze atarabahanye mu rwego rw'akazi (sanctions disciplinaires) kandi yari abifitiye ububasha, ko rero yasanze uburyozwe bwe buhura n'ubw'umuyobozi w'ingabo ugomba kuryozwa ibikorwa by'ubwicanyi byakozwe n'abasirikare yayoboraga mu gihe atafashe ingamba zo kubikumira kandi yarabonaga barashoboraga kubikora.

[35] Akomeza avuga ko ikigaragaza ko Major Bizimana yayoboraga abajandarume bakoze ubwo bwicanyi, ari uko hari umujandarume wari kuri Komini ya Mutura wahise amuterefona amumenyesha ko hari ubwicanyi bwabereye i Nyamirango atarinze gusaba uruhushya kuri Burugumesitiri w'iyo Komini, ko rero agomba kuryozwa ubwo bwicanyi.

[36] Avuga nanone ko ikimenyetso Major Bizimana yahaye Urukiko ngo kigaragaza ko ari abasirikare babaga mu Kigo cya Bigogwe bakoze ubwicanyi bw'i Nyamirango bafatanyije na Rutitiri Ernest kitagomba guhabwa agaciro muri uru rubanza kuko Major Bizimana yivugiye ubwe ko hari umujandarume wahapfiriye ngo bikaba bigaragaza ko n'abajandarume bagiyeyo banahakorera ubwicanyi.

<u>Uko Urukiko rubibona</u>

<u>Ni bande bakoze ubwicanyi bw'i Nyamirango mu mwaka w'1992 ?</u>

[37] Mu buhamwa bwa Major Bizimana André bwavuzwe haruguru, uyu avuga ko muri Segiteri Nyamirango yo muri Komini Mutura, abajandarume barindaga umutekano wa Burugumesitiri w'iyo Komini bayobejwe na Konseye w'iyo Segiteri, abashora mu mutego waguyemo umujandarume umwe, maze bagenzi be mu gusubiza, batikiza inzirakarengane nyinshi.

[38] Akomeza avuga muri ubwo buhamya bwe ko hari Sergent wafashwe n'ubwoba ahita amuterefona igihe yateguraga raporo y'umutekano. Anavuga ko yabajije Sergent uko byagenze, uyu amusobanurira uko Konseye w'i Nyamirango yaje guhuruza n'uko we yohereje abo bajandarume. Muri ubwo buhamya, Major Bizimana asobanura ko yohereje Capitaine Ngerageze i Nyamirango, agezeyo, amubwira amakuru y'ibyahabereye byose amenya yuko ari inzirakarengane z'abagogwe zari zatwikiwe. Anavuga ko hatumijwe inama y'umutekano ya Perefegitura maze isanga ari Konseye wayobeje abajandarume bakica izo nzirakarengane abeshya ko zari kumwe n'Inkotanyi zashakaga gutera igihugu.

[39] Muri ubwo buhamya kandi, Major Bizimana André avuga ko asaba imbabazi z'ubwicanyi bw'i Nyamirango bwabaye mu mwaka w'1992, aho abajandarume bakoreraga muri Groupement ya Gisenyi bishe abantu, kandi inshingano zabo zari izo kurinda umutekano w'abantu n'ibintu byabo. Akomeza avuga ko abisabiye imbabazi kubera ko yari umuyobozi wa Groupement ya Gisenyi abo bajandarume barimo (...).

[40] Urukiko rurasanga ubwo buhamya bugaragaza nta shiti ko abakoze ubwicanyi bw'abagogwe i Nyamirango mu mwaka w'1992, ari abajandarume bakoreraga muri Groupement ya Gisenyi, Major Bizimana André yayoboraga, bityo Urukiko rurasanga bitakiri ngombwa ko rukora iperereza mu gihe abakoze ubwo bwicanyi bamenyekanye.

[41] Urukiko rurasanga kandi ifishi Major Bizimana aburanisha ngo igaragaza ko ubwo bwicanyi bwakozwe n'abasirikare babaga mu Kigo cya Bigogwe ngo bafatanyije na Rutitiri Ernest, ntacyo yamumarira muri uru rubanza mu gihe byagaragaye ko ubwo bwicanyi bwakozwe n'abajandarume yayoboraga.

<u>Ese Major Bizimana André yaryozwa ubwicanyi bw'i Nyamirango</u> ?

[42] Ku bijyanye n'uburyozwe by'umuyobozi, ingingo ya 3, igika cya 2 y'Itegeko Ngenga nº 08/1996 ryo kuwa 30/08/1996 ryerekeye imitunganyirize y'ikurikirana ry'ibyaha bigize icyaha cy'Itsembatsemba cyangwa ibyaha byibasiye inyoko-muntu nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya ko " *Kuba igikorwa icyo aricyo cyose cyateganyijwe n'iri tegeko - ngenga cyarakozwe n'uyoborwa ntibibuza umuyobozi we kuryozwa icyaha cyakozwe mu gihe yari azi cyangwa yagombaga kumenya ko uwo ategeka yari yiteguye gukora icyo cyaha cyangwa yagikoze, umutegeka we ntabe yarafashe ibyemezo bikwiye kugira ngo abakoze icyaha bahanwe cyangwa abuze icyo cyaha gukorwa kandi yari abishoboye*".

[43] Ibisobanuro by'abahanga mu mategeko kimwe n'ibyemezo binyuranye by'Inkiko Mpanabyaha zashyiriweho u Rwanda n'icyahoze ari Yugosilaviya[4] birimo urubanza rwa Ignace Bagilishema, urwa Kordic and Cerkez n'urwa Aleksovski bigaragaza ko umuyobozi

[4]Bagilishema, (Trial Chamber), June 7, 2001, para. 38 : The Chamber held that the "three essential elements of command responsibility" are : (i) the existence of a superior-subordinate relationship of effective control between the accused and the perpetrator of the crime; and, (ii)

wa gisirikare cyangwa uwa gisivire ashobora kuryozwa, mu rwego rw'imanza z'inshinjabyaha, ibyaha byakozwe n'abo yayoboraga mu gihe atashoboye gukumira cyangwa kuburizamo ikorwa ryabyo kandi yari azi neza cyangwa yarashoboraga kumenya ko bashoboraga kubikora, cyangwa ko atabafatiye ibyemezo byari bikwiye kandi yari azi neza ko bakoze ibyaha.

[44] Ku byerekeye Major Bizimana André, Urukiko rurasanga Ubushinjacyaha n'ubuhamya bwa Munyankirire Seth bwavuzwe haruguru bitagaragaza nta shiti ko Major Bizimana André yayoboye igitero cy'abajandarume cyiciye abagogwe i Nyamirango.

[45] Urukiko rurasanga nyamara ubuhamya bwa Major Bizimana André bwavuzwe haruguru bugaragaza nta gushidikanya ko yamenye ko abajandarume yayoboraga biciye abagogwe i Nyamirango babaziza ubwoko bwabo bw'abatutsi nk'uko yanabisabiye n'imbabazi muri ubwo buhamya bwe.

[46] Urukiko rurasanga rero kuba Major Bizimana André yaramenye ko abajandarume yayoboraga bakoze ibyaha bya jenoside i Nyamirango, ariko ntabafatire ibyemezo byari bikwiye mu rwego rw'akazi kandi yarabifitiye ububasha cyangwa ngo abashyikirije izindi inzego zari zifite ububasha bwo kubakurikirana no kubahana mu rwego rw'imanza z'inshinjabyaha, agomba kuryozwa ibyo byaha, bityo akaba agomba guhamwa n'icyaha cy'ubufatanyacyaha mu cyaha cya jenoside nk'uko byemejwe n'Urukiko Rukuru rwa Gisirikare.

III. ICYEMEZO CY'URUKIKO

[47] RWEMEYE kwakira ubujurire bwa Major BIZIMANA André kuko bwatanzwe mu buryo n'inzira bikurikije amategeko;

[48] RWEMEJE ko ubwo bujurire nta shingiro bufite;

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the actual knowledge, or constructive knowledge, of the accused that the crime was about to be, was being, or had been committed; and (iii) the failure of the accused to take the necessary and reasonable measures to prevent or stop the crime, or after his/he knowledge of its commission to punish the perpetrator(s). Case Law of the International Criminal Tribunal for the Former Yugoslavia, http://www.hrw.org/reports/2004/ij/icty/7.htm

[49] RUVUZE ko imikirize y'urubanza RPA/Gen 0001/09/HCM rwaciwe n'Urukiko Rukuru rwa Gisirikare kuwa 27/11/2009 idahindutse;

[50] RUTEGETSE Major Bizimana André gutanga amagarama y'uru rubanza angana na 63.200 Frw, atayatanga mu gihe mu gihe cy'iminsi umunani, agakurwa mu bye ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 13/01/2012.

Sé
MUTASHYA Jean Baptiste
Perezida

Sé	Sé
MUKAMULISA M. Thérèse	RUGABIRWA Ruben
Umucamanza	Umucamanza

Sé
MUSENGAMANA Viateur
Umwanditsi w'Urukiko

4. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RPA0298/10/CS
ITARIKI Y'URUBANZA: 24/02/2012
HABURANA: UBUSHINJACYAHA na MUSHAYIDI Déogratias

AMAGAMBO MPINE

-IMANZA Z'INSHINJABYAHA-UMUNYA POLITIKI
- AMATEGEKO Y'U RWANDA - UMUNTU URANGWA N'IBITEKEREZO N'IMYUMVIRE MIZIMA BYO GUTEZA IMBERE IMIBEREHO MYIZA Y'ABATURAGE BOSE N'AMAJYAMBERE Y'IGIHUGU-KUGERA KU BUTEGETSI MU NZIRA ZA DEMOKARASI.

-UBWISANZURE BWA MUNTU MU GUTANGA IBITEKEREZO-KUBA BUSHOBORA KUZITIRWA N'AMATEGEKO YA BURI GUHUGU CYANE CYANE IYO ARI NGOMBWA KUBUNGABUNGA UMUTEKANO W'IGIHUGU-UTANGA IBITEKEREZO AGIRA AHO ATAGOMBA KURENGA MUBYO AVUGA CYANGWA YANDIKA-IYO BIGANISHA KU IVANGURA IRYO ARIRYO RYOSE N'AMACAKUBIRI.

.UBURENGANZIRA BWA MUNTU BWO GUTANGA IBITEKEREZO-NTIBUGOMBA KUBANGAMIRA UBW'ABANDI-KUTABUKORESHA MU NYUNGU BWITE Z'UMUNTU

.ICYAHA CY'UBUGAMBANYI-INAMA YO GUTEGURA UBUGAMBANYI-KUMVIKANA KU MUGAMBI W'UBUGAMBANYI-ABANTU BABIRI CYANGWA BARENZEHO-IFATWA RY'ICYEMEZO CY'UBUGAMBANYI-KUBA UBWABYO BIHAGIJE KUGIRANGO ICYAHA CY'UBUGAMBANYI KIBEHO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Umunyapolitiki mu mategeko y'u Rwanda ni umuntu wese urangwa n'ibitekerezo n'imyumvire bizima byo guteza imbere imibereho myiza y'abaturage bose n'amajyambere y'igihugu, agamije kugera ku butegetsi mu nzira za demokarasi n'amahoro, urangwa n' imigirire itandukanye n'iyi ntaba ari umunyepolitiki.

-Ubwisanzure mu bitekerezo, mu kubigaragaza, mu mutimanama, mu guhitamo idini, mu gusenga no kubigaragaza mu ruhame burengerwa na Leta mu buryo buteganywa n'amategeko, nyamara kwamamaza ivangura rishingiye ku isanomuzi, ku karere, ku bwoko cyangwa ku macakubiri ayo ari yo yose bihanwa n'amategeko. Uburenganzira bwo gutanga ibitekerezo, bushobora kuzitirwa n'amategeko ya buri gihugu, cyane cyane iyo ari ngombwa kubungabunga umutekano n'ubusugire by'igihugu, ituze rusange rya rubanda cyangwa imyitwarire iboneye.

-Uburenganzira umuntu ahabwa n'Itegeko-Nshinga ndetse n'andi mategeko bwo gutanga ibitekerezo bye mu bwisanzure, ntibugomba gukoreshwa bubangamira ubw'abandi, ariko cyane cyane ubukoresha ntagomba kubukoresha mu nyungu ze bwite.

-Ubugambanyi butangira kubaho igihe inama yo gukora icyaha ihuriweho kandi ikemezwa n'abantu babiri cyangwa benshi, iyo habaye inama , hakabaho kumvikana ku mugambi kandi hakagira ibyemezo bifatwa, birahagije kugira ngo icyaha cy'ubugambanyi kibe cyabayeho, gihanwa bitewe n'uko hari igikorwa cyo aricyo cyose gitegura gushyira mu bikorwa ubwo bugambanyi cyabaye.

URUBANZA RPA 0298/10/CS URUPAPURO RWA MBERE

URUKIKO RW'IKIRENGA RULI I KIGALI, RUBURANISHA MU RUHAME

IMANZA Z'INSHINJABYAHA, RWAKIJIJE URUBANZA RPA 0298/10/CS

KUWA 24 GASHYANTARE 2012 MU BURYO BUKURIKIRA:

HABURANA :

Ubushinjacyaha

Na

MUSHAYIDI Déogratias mwene Gakwaya na Twagiramariya, wavukiye i Rukoma mu Murenge wa Sake, Akarere ka Ngoma, Intara y'Iburasirazuba, mu mwaka wa 1961. Yunganiwe mu rubanza na Me MUTEMBE Protais na Me TWAGIRAYEZU Christophe.

IBYAHA AREGWA :

1. Icyaha cyo gukwirakwiza ibihuha bigamije kwangisha rubanda ubutegetsi buriho;
2. Icyaha cyo gucura umugambi wo kugirira nabi ubutehetsi buriho hakoreshejwe intambara;
3. Icyaha cyo kwihesha passeport y'impimbano no kuyikoresha.

I. **Imiterere y'urubanza**

1.MUSHAYIDI Déogratias ni umunyarwanda ariko wabaga mu Gihugu cy'Ububiligi kuva aho ahungiye u Rwanda mu mwaka wa 2000. Muri icyo gihugu, afatanyije n'abandi banyarwanda barwanya ubutegetsi buriho mu Rwanda, bishyize hamwe bashinga ishyaka rya Politiki bise Imbaga y'inyabutatu nyarwanda. Haje gushingwa kandi n'impuzamashyaka bise « Alliance igihango » yahuzaga amashyaka atatu ariyo Imbaga y'inyabutatu nyarwanda , Front Démocratique pour la libération du Rwanda (FDLR) na ARENA n'andi mashyaka yaje gukorana n'iyo Alliance Igihango ariyo UFDR, RDR na FRD.

2.Mu mwaka wa 2006, MUSHAYIDI Déogratias , afatanyije n'abandi, bashyizeho na none umutwe wa politiki wiswe « Partenariat Intwari » ugizwe n'amashyaka PDN, Convention Nationale Ubumwe, na FDLR-

CMC (commandement militaire pour le changement) .

3.Mu mwaka wa 2008, MUSHAYIDI Déogratias yashinze ishyaka rya Politiki yise PDP Imanzi, akaba yari aribereye umuyobozi.

4.Mu gihe yari mu mpuzamashyaka zinyuranye, na FDLR yari irimo, akaba yaragiye azibera umuvugizi.

5.Muri icyo gihe, ari mu Gihugu cy'Ububirigi, MUSHAYIDI Déogratias yagiye atangaza inyandiko zityaye zinyuranye zibasiye ubutegetsi buriho.

6.MUSHAYIDI Déogratias yaje kuva mu Bubiligi, aza mu Gihugu cya TANZANIYA , afite paseporo y'i Burundi, irimo ifoto ye ariko yanditsemo amazina ya NDUWIMANA Vincent. Inzego za Polisi ya TANZANIYA zaramufashe, zimushyikiriza u Burundi, kubera ko paseporo yakoreshaga yari iy'aho. U Burundi nabwo bwamushyikirije u Rwanda, kuko bwasanze n'ubwo afite iyo paseporo, mu by'ukuri ari umunyarwanda.

7.Ubushinjacyaha bwahise bumukurikiranaho ibyaha bikurikira: icyaha cyo gukorana n'imitwe y'iterabwoba, icyaha cyo kwamamaza ibihuha bigamije kwangisha rubanda ubutegetsi, icyaha cyo kurema umutwe w'abagizi ba nabi, icyaha cyo kugirira nabi ubutegetsi buriho, icyaha cyo gukora no gukoresha inyandiko mpimbano,icyaha cy'ingengabitekerezo, n'icyaha cyo gukurura amacakubiri.

8.Iperereza rirangiye Ubushinjacyaha bwashyikirije ikirego Urukiko Rukuru rwa Kigali, ruca urubanza kuwa **17/09/2010**, ruhamya MUSHAYIDI Déo ibyaha byo kwamamaza ibihuha bigamije kwangisha abaturage ubutegetsi buriho, icyo gucura umugambi wo kugirira nabi ubutegetsi buriho hakoreshejwe intambara, n'icyo kwihesha paseporo y'impimbano no kuyikoresha, rumuhanisha igifungo cya burundu. Naho ku byaha byo gukorana n'imitwe y'iterabwoba, icyo kurema umutwe w'ingabo, icy'ingengabitekerezo ya jenoside no gukurura amacakubiri, Urukiko rumugira umwere.

9.MUSHAYIDI Déogratias yajuririye Urukiko rw'Ikirenga, urubanza rukorerwa ibanzirizasuzuma, umucamanza yemeza ko ubujurire bwe bukwiye kwakirwa.

10. Iburanisha ryashyizwe kuwa 09/01/2012 , uwo munsi ababuranyi baritaba, MUSHAYIDI Déogratias yunganiwe na Me MUTEMBE Protais na Me TWAGIRAYEZU Christophe, naho Ubushinjacyaha buhagarariwe na MUTANGANA Jean Bosco na MUHUMUZA Richard , Abashinjacyaha bafite ububasha mu rwego rw'igihugu. Iburanisha ryarashojwe ababuranyi bamenyeshwa ko urubanza ruzasomwa kuwa 24/02/2012.

II. Isesengura ry'ibibazo bigize urubanza

11. Ibibazo biri muri uru rubanza ni ibi bikurikira:

- Ese MUSHAYIDI Déogratias ni umunyapolitiki nk'uko abivuga?
- Iyo umuntu atanga igitekerezo cye(opinion) nk'uko itegeko nshinga ribimwemerera, yemerewe kuvuga cyangwa kwandika ubutagira umupaka? Ntaho agarukira?
- Hashingiwe ku ngingo ya 165 na 169 z'igitabo cy'amategeko ahana, icyaha cy'ubugambanyi kitwa ko cyabaye ryari?
- Ese MUSHAYIDI Déogratias akwiye kugabanyirizwa igihano nkuko abyifuza?

<u>Ku byerekeranye no kumenya niba MUSHAYIDI Déogratias ari umunyapolitiki</u>

12. Mu bujurire bwe, MUSHAYIDI Déogratias avuga ko Urukiko rubanza rwemeje ko atari umunyapolitiki rushingiye ku itegeko ngenga nº 16/2003 ryo kuwa 27 kamena 2003 rigenga imitwe ya politiki n'abanyapolitiki ngo kuko ibyo avuga cyangwa yandika ari ibihuha atagaragariza ukuri kwabyo, bigamije gusa kwangisha abaturage ubutegetsi buriho, ariko we akaba atariko abibona. Akavuga ko ari umunyapolitiki, ko ibyo yanditse byose yabikoze mu rwego rwo kugaragaza ibitekerezo bye.

13. Abahagarariye Ubushinjacyaha, kuri iyo ngingo bakavuga ko MUSHAYIDI Déogratias atari umunyapolitiki, ko ibyaha yakoze yabikoze nk'umuntu ku giti cye mu nyungu ze za politiki, abinyuza mu nzira zisebanya aho kubinyuza mu nzira itegeko rimwereka, ibyo yakoze bikaba biteganywa n'ingingo ya 166 y'igitabo cy'amategeko ahana.

14. Ingingo ya 1 y'itegeko ngenga nº 16/2003 ryo kuwa 27 kamena 2003 rigenga imitwe ya politiki n'abanyapolitiki, yerekana umunyapolitiki uwo ari we. Ko ari umuntu wese ukora ibikorwa bya politiki ni ukuvuga ufite ibitekerezo n'imyumvire yo guteza imbere imibereho myiza y'abaturage bose n'amajyambere y'igihugu, agamije kugera ku butegetsi mu nzira za demokarasi n'amahoro kugirango abashe kubishyira mu bikorwa. Akaba yabikora ku giti cye cyangwa abinyujije mu mutwe wa politiki.

15. Mushayidi yarezwe n'Ubushinjacyaha ibirego bikurikira:

1° kuba yemeza ko hari ubusumbane hagati y'abahutu n'abatutsi;

2° kuba avuga ko ubutegetsi bugizwe n'agatsiko k'abasirikare bavuye Uganda;
3° kuba avuga ko Inteko Ishinga Amategeko igizwe n'ibiragi, ba Minisitiri ba baringa, ko hari abasirikare benshi bafunzwe igihe kirekire, kandi ahatazwi , n'igisirikare ngo kigizwe n'abatutsi biganje mu bwinshi ku bahutu;
4° kuba avuga ko Leta yica abacitse ku icumu;
5° kuba avuga ko hari quartiers z'abahutu;
6° kuba avuga ko mu Rwanda huzuyemo imfungwa zitagira dosiye;
7° kuba avuga ko ashaka gukuraho ubutegetsi buriho kugira ngo yemerere abahutu gushyingura abantu babo;
8° kuba avuga ko abantu bize igifaransa ntaho bagikora;
9° kuba avuga ko hari ivangura mu miturire, avuga ko hari abatuye muri "guetto" nka NYAMIRAMBO n'abandi batuye neza nka NYARUTARAMA;
10° kuba avuga ko FPR ntaho itandukaniye na MDR Parmehutu kuko ngo FPR ishingiye ku gatsiko k'abatutsi.

16. Uru rutonde rw'ibirego byose MUSHAYIDI Déogratias yemera ko koko yabyanditse, ariko akavuga ko yabyanditse cyangwa yabivuze nk'umunyapolitiki utanga ibitekerezo bye kandi ko itegeko nshinga ribimwemerera. Ko atari bihuha, ko nta kindi cyamuteye kubyandika uretse mu rwego rwo gusesengura ibijyanye na politiki iriho mu gihugu(analyse politique). Akavuga ariko ko nta perereza yabikoreye, ariko ko yabibwiwe n'abantu bizewe.

17. Isesengura ry'ingingo ya 1 y'itegeko ngenga nº 16/2003 ryo kuwa 27 kamena 2003 ryavuzwe haruguru, igaragaza ko umunyapolitiki ari umuntu urangwa n'ibitekerezo n'imyumvire bizima byo guteza imbere imibereho myiza y'abaturage bose n'amajyambere y'igihugu, agamije kugera ku butegetsi mu nzira za demokarasi n'amahoro.

18. Imiterere y'inyandiko za MUSHAYIDI Déogratias nkuko Ubushinjacyaha buzimurega kandi nawe akaba aziyemerera, inyuranye kure n'ibivugwa muri iyo ngingo ku bigomba kuranga umunyapolitiki, n'ibyo aba atezweho. Impamvu nuko aho kwandika ibyagirira igihugu akamaro n'abagituye nkuko umunyapolitiki witwa iryo zina yagombye kubikora, ahubwo MUSHAYIDI

Déogratias yandika inzandiko zitagira gihamya zigamije kwangisha abaturage ubutegetsi buriho no kubaryanisha kandi akazikwirakwiza hose. Bityo rero nkuko umucamanza wa mbere yabyemeje, MUSHAYIDI Déogratias akaba atari umunyapolitiki uvugwa mu itegeko ngenga nº 16/2003 ryo kuwa 27 kamena 2003 rigenga imitwe ya politiki n'abanyapolitiki mu Rwanda, kuko imigirire ye itandukanye n'ivugwa muri iryo tegeko. Hashingiwe ku bimaze kuvugwa ubujurire bwe kuri iyi ngingo bukaba nta shingiro bufite.

Ku byerekeranye no kumenya niba nta mipaka ihari mu kubahiriza uburenganzira buri muntu ahabwa n'Itegeko nshinga bwo kwisanzura mu bitekerezo.

19.MUSHAYIDI Déogratias mu bujurire bwe nanone avuga ko hashingiwe ku Itegeko Nshinga cyane cyane mu ngingo yaryo ya 33, nk'umunyapolitiki utavuga rumwe n'ubutegetsi, afite uburenganzira bwo kunenga ibyo abona bikwiye guhinduka, agamije kugera ku butegetsi, bityo akaba atagombye kubihanirwa, akaba asanga ibyo yanenze ku butegetsi bitagomba kwitwa ibihuha.

20. Kuri iki kibazo, abahagarariye Ubushinjacyaha bakavuga ko buri muntu afite uburenganzira busesuye bwo gutanga igitekerezo cye ariko ko afite aho atagomba kurenga, ntiyitiranye gutanga ibitekerezo no gusebanya yamamaza ibihuha bigamije kwangisha rubanda ubutegetsi buriho. Ko MUSHAYIDI Déogratias atavuga ko yemerewe kuvuga ibyo ashaka yiyita umunyapolitiki kuko, uretse ko atari n'Umunyapolitiki, ariko hashingiwe ku itegeko ngenga nº 16/2003 ryo kuwa 27 kamena 2003 rigenga imitwe ya politiki n'abanyapolitiki, n'Abanyapolitiki ubwabo bafite aho bagarukira mu bwisanzure bw'ibitekerezo byabo, nkuko byateganyijwe n'ingingo ya 40 y'iryo tegeko.

21. Ingingo ya 33 y'Itegeko Nshinga nkuko ryahinduwe kugeza ubu ivuga ko ubwisanzure mu bitekerezo, mu kubigaragaza, mu mutimanama, mu guhitamo idini, mu gusenga no kubigaragaza mu ruhame burengerwa na Leta mu buryo buteganywa n'amategeko. Ariko iyo ngingo mu gika cyayo cya kabiri, ikavuga ko kwamamaza ivangura rishingiye ku isanomuzi, ku karere, ku bwoko cyangwa ku macakubiri ayo ari yo yose bihanwa n'amategeko.

22. Ibyo binahura kandi n'ibiteganywa n'ingingo ya 19 y'Amasezerano Mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano na politiki[5] iteganya mu gace kayo ka 3 b, ko uburenganzira bwo gutanga ibitekerezo, bushobora kuzitirwa n'amategeko ya buri gihugu, cyane cyane iyo ari ngombwa kubungabunga umutekano n'ubusugire by'igihugu, ituze rusange rya rubanda cyangwa n'imyitwarire iboneye.

23. Nanone ingingo ya 40 y'itegeko ngenga nº 16/2003 ryo kuwa 27 kamena 2003 rigenga imitwe ya politiki n'abanyapolitiki, ikagira ibyo ibuza umunya-

[5]yemejwe n'Inteko Rusange y'Umuryango w'Abibumbye kuwa 16/12/1966, yatangiye gukurikizwa kuwa 23/03/1976, akaba yaremejwe mu Rwanda n'Itegeko –Teka n° 08/75 ryo kuwa 12/02/1975.

politiki n'umutwe wa politiki birimo gushyigikira cyangwa gukora ikintu icyo aricyo cyose cyatuma haba intambara, imidugararo n'ibindi byose bituma igihugu kijya mu bihe bidasanzwe, kugira igikorwa icyo aricyo cyose cyahungabanya cyangwa se kikabangamira ubusugire bw'igihugu, uburenganzira bwa muntu, demokarasi n'ubutabera, kugira ibikorwa imvugo cyangwa inyandiko zikurura ivangura iryo ariryo ryose n'amacakubiri mu banyarwanda.

24. Isesengura ry'izi ngingo rigaragaza ko umuntu wese yemerewe gutanga ibitekerezo bye mu bwisanzure akabigaragaza, ariko akagira aho atagomba kurenga mu byo avuga cyangwa yandika, cyane cyane ku biganisha ku ivangura iryo ariryo ryose n'amacakubiri mu banyarwanda.

25. Ndetse n'uwitwa umunyapolitiki mu gutanga ibitekerezo bye, hari imbago atagomba kurenga nko gukora ikintu icyo aricyo cyose cyakurura umwiryane mu banyarwanda cyangwa se kikabangamira ubusugire bw'igihugu.

26. Nkuko byasobanuwe haruguru, ibikubiye mu nyandiko za MUSHAYIDI Déogratias nkuko Ubushinjacyaha bubimushinja, ubwe yiyemerera ko uretse kubivuga, nta perereza rindi yabikoreye, bivuze ko nta bimenyetso abifitiye, bikaba nta kundi byakwitwa uretse ibihuha. Bikaba bigaragara ko icyo bigamije, ari ugukurura urwikekwe n'umwiryane mu banyarwanda, biganisha ku bushyamirane, ku ntambara n'imidugararo byahungabanya cyangwa se bikabangamira ubusugire bw'igihugu. Urukiko rurasanga mu gutanga ibitekerezo bye, MUSHAYIDI Déogratias yarenze imbibi z'ibyo amategeko amwemerera, aho gutanga ibitekerezo, ahubwo aratukana aranasebanya, bya bitekerezo ntibyaba bikiri ibitekerezo bigamije kubanisha abanyarwanda, ahubwo biba icyaha, akaba agomba kubyirengera kuko iyo uvuga cyangwa wandika ibintu bidafite gihamya bishyushya imitwe y'ababyumva cyangwa babisoma, ukabishyira mu maso ya rubanda, ntibiba bikiri ibyawe wenyine

kuko biba byinjiye mu mitwe y'abantu. Bityo rero, uburenganzira umuntu ahabwa n'Itegeko Nshinga ndetse n'andi mategeko bwo gutanga ibitekerezo bye mu bwisanzure, ntibugomba gukoreshwa bubangamira ubw'abandi, ariko cyane cyane ubukoresha ntagomba kubukoresha mu nyungu ze bwite. Nkuko Urukiko Rukuru rwabyemeje, akaba agomba kubihanirwa.

Ku byerekeranye no kumenya igihe icyaha cy'ubugambanyi kitwa ko cyabaye.

a) **Ku bijyanye n'ubugambanyi (complot)**

27.MUSHAYIDI Déogratias mu bujurire bwe avuga ko nta bugambanyi yagize, kubera ko n'ubwo yemera ko habayeho igitekerezo cyo gushyiraho umutwe w'ingabo mu gihe inzira y'ibiganiro (dialogue) izaba inaniranye, ntibyakwitwa ubugambanyi (complot) kubera ko, hakurikijwe ibivugwa mu ngingo y'169

y'igitabo cya kabiri cy'amategeko ahana ibyaha, "***Ubugambanyi butangira kuba bwo igihe inama (résolution) yo gukora icyaha ihuriweho (concertée) kandi ikemezwa (arrêtée) n'abantu babiri cyangwa benshi.***

28. Akomeza avuga ko akurikije ibivugwa muri iyo ngingo, asanga harabaye inama yagiranye na bagenzi be (résolution), bayihuriraho (concertation), ariko ko batigeze bemeza (arrêter) ko bagiye gushyiraho umutwe w'ingabo, kubera ko batekerezaga kuzashyiraho uwo mutwe w'ingabo ari uko inzira y'ibiganiro inaniranye. Avuga ko ibintu bikiri igitekerezo gusa, bitakwitwa ubugambanyi (complot), kubera ko utugingo tugize icyo cyaha(éléments constitutifs) turi mu ngingo ya 169 y'igitabo cya kabiri cy'amategeko ahana ibyaha tutuzuye, kubera ko ibyo bintu biba bitaremezwa (arrêtée);

29. Kuri iyi ngingo abahagarariye Ubushinjacyaha bavuga ko kugirango icyaha cy'ubugambanyi kibeho, bihagije kuba wahuye n'umuntu umwe mukabiganiraho, mukicara mukajya inama mukagira icyo mwemeza, ko icyo gihe ingingo ya 165 iba yuzuye. Bakomeza bavuga ko inama zabaye ndetse zihuriwemo n'abantu benshi, muri izo nama hafatwa umugambi wo gukuraho ubutegetsi buriho nkuko bigaragara mu nyandiko zinyuranye za MUSHAYIDI Déogratias.

30. Ingingo ya 169 y'igitabo cya kabiri cy'amategeko ahana ibyaha ivuga ko ubugambanyi buvugwa mu ngingo ya 165 y'icyo gitabo butangira kuba bwo igihe inama yo gukora icyaha ihuriweho kandi ikemezwa n'abantu babiri cyangwa benshi.

31.MUSHAYIDI Déogratias yemera ko inama zabaye kandi ziteraniyemo abantu benshi, baganira kucyari cyabahuje ariwo mugambi wo guhirika ubutegetsi buriho mu Rwanda, kandi barabyemeza nkuko bigaragara mu nyandiko ya MUSHAYIDI Déogratias yiswe « impinduramatwara nyakuri kandi yuzuye » aho MUSHAYIDI Déogratias avuga ngo « twafashe icyemezo gikomeye kandi kidakuka cyo kuvanaho vuba na bwangu ubwo butegetsi gito bukomeje kubuza abanyarwanda amahwemo », « icyemezo kidakuka twafashe cyo gusezerera Kagame n'agatsiko ke, n'andi magambo nkayo agaragaza ko nyuma y'amanama bakoze hari ibyemezo byafashwe.

32. Kuba rero harabaye inama, hakabaho no kumvikana ku mugambi kandi hakagira ibyemezo bifatwa, bihagije kugirango icyaha cy'ubugambanyi giteganywa n'ingingo ya 169 kibeho nkuko umucamanza wa mbere yabyemeje.

b) **Ku bijyanye n'igikorwa gitegura gushyira mu bikorwa ubugambanyi**

33.MUSHAYIDI Déogratias avuga ko kuba yaraje muri Tanzaniya kumenyekanisha ishyaka rye ubwabyo atari "acte matériel" yo gushyira mu bikorwa ubugambanyi. Kubera ko, usibye n'uko ubwo bugambanyi butabayeho, kumenyekanisha ishyaka no kurishakira abayoboke, aho ari ho hose, ntibibujijwe n'amategeko. Bityo ngo akaba atabona ukuntu icyo gikorwa ubwacyo cyaba ari ugutegura ishyirwa mu bikorwa ry'ubugambanyi (complot).

34. Kuri iyi ngingo abahagarariye Ubushinjacyaha bavuga ko nta shingiro ifite kuko nkuko umucamanza yabisobanuye, MUSHAYIDI Déogratias n'abakoranaga nawe bihaye intego yo gukuraho ubutegetsi buriho mu nzira zose zishoboka bavuga ko bakoresha inzira y'ibiganiro yananirana bagakoresha inzira y'intambara. Ko igikorwa cyo kuza kumenyekanisha ishyaka ubwaryo ryihaye intambara nk'imwe mu nzira ryagombaga gukoresha mu gukuraho ubutegetsi, ari igikorwa gitegura gushyira mu bikorwa ubugambanyi.

35. Icyaha cy'ubugambanyi kirimo ibice bibiri. Ingingo ya 169 y'igitabo cya kabiri cy'amategeko ahana iteganya igihe icyaha cy'ubugambanyi kiba cyabaye, iya 165 y'icyo gitabo, igateganya uko gihanwa bitewe nuko hari igikorwa cyo aricyo cyose gitegura gushyira mu bikorwa ubwo bugambanyi cyabaye, cyangwa se kitabaye.

36. Ku byerekeranye niba hari igikorwa gitegura gushyira mu bikorwa ubugambanyi cyabaye, MUSHAYIDI Déogratias mu nyandiko ze yemera ko intego z'ishyaka rye PDP Imanzi ari ugukuraho ubutegetsi buriho hakoreshejwe imishyikirano byananirana ishyaka rikabukuraho rikoresheje intambara. MUSHAYIDI Déogratias kandi yemera ko yaje muri Tanzania kumenyekanisha ishyaka PDP Imanzi mu bihugu bikikije u Rwanda nyuma yo kurimenyekanisha mu bihugu by'i Burayi.

37.MUSHAYIDI Déogratias n'abakoranaga nawe bateganyaga inzira ebyiri zo kuvanaho ubutegetsi buriho, iy'imishyikirano yananirana bagafata inzira y'intambara. Nkuko umucamanza wa mbere yabisobanuye, izi nzira zombi ntizishobora gutandukanywa mu gutegura ishyirwa mu bikorwa ubugambanyi. Nkuko nanone umucamanza yabisobanuye, kuba MUSHAYIDI Déogratias yaraje muri Tanzaniya kumvikanisha imigambi y'ishyaka rye, iyo migambi kandi nkuko MUSHAYIDI Déogratias ubwe yabyanditse, ikaba ari igamije kuvanaho ubutegetsi buriho mu Rwanda, mu rwego rwo gushaka abarishyigikira muri iyo migambi, icyo gikorwa ubwacyo ni igikorwa gitegura

gushyira mu bikorwa ubugambanyi hakoreshejwe bwa buryo iryo shyaka riteganya, ni ukuvuga imishyikirano cyangwa intambara. Bityo kubera ko icyo gikorwa gitegura gushyira mu bikorwa ubugambanyi cyabaye, MUSHAYIDI Déogratias akaba agomba guhanishwa igifungo cya burundu giteganywa n'ingingo ya 165 y'igitabo cya kabiri cy'amategeko ahana nkuko umucamanza wa mbere yari yabyemeje.

Ku byerekeye kugabanyirizwa igihano

38. Abunganira MUSHAYIDI Déogratias barasaba ko Urukiko ruramutse rusanze ibyaha bimuhama, rwamugabanyiriza ibihano rushingiye ku ngingo ya 82 na 83 z'igitabo cy'amategeko ahana ibyaha ngo kuko hari icyaha cyo kwihesha passeport y'impimbano no kuyikoresha yemeye akanagisabira imbabazi, yafashije ubutabera mu kubuha amakuru menshi ku buryo ari nayo ahanini n'Ubushinjacyaha bwashingiyeho mu kirego cyabwo, kuba afite umuryango yari atunze no kuba aribwo bwa mbere akurikiranywe n'inkiko.

39. Ingingo ya 82 y'igitabo cya kabiri cy'amategeko ahana ivuga ko umucamanza ubwe niwe uha agaciro impamvu zigabanya ubugizi bwa nabi bw'uwakoze icyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye. Naho ingingo ya 83 y'icyo gitabo ikagena uko ibihano bitangwa iyo izo mpamvu zibonetse.

40. Mu byo MUSHAYIDI Déogratias akurikiranyweho, harimo icyaha cyo kugambanira igihugu cye ashaka guhirika ubutegetsi buriho, ibyo akabikora abanje kubiba urwikekwe n'umwiryane mu bagituye akoresheje inyandiko ze. Urukiko rukaba rusanga uwo waba uriwe wese, byonyine kugambanira igihugu cyawe ugitezamo intambara utitaye ku mubare w'abantu bazayigwamo, ibizangirika, n'igihugu ubwacyo kigasenyuka, ari icyaha ndengakamere, ku buryo Urukiko rusanga MUSHAYIDI Déogratias nta mbabazi akwiye guhabwa kubera uburemere bw'ibyaha aregwa.

III. Icyemezo cy'Urukiko

41.Rwemeye kwakira ubujurire bwa MUSHAYIDI Déogratias;

42.Rwemeje ko nta shingiro bufite;

43. Ruvuze ko imikirize y'urubanza rwajuririwe idahindutse;

44. Rutegetse MUSHAYIDI Déogratias gutanga amagarama y'urubanza angana na 83.350 Frw, habariwemo n'ayo mu Rukiko Rukuru, atayatanga mu gihe gitegetswe, agafungwa iminsi makumyabiri(20) y'ubugwatiramubiri, akava mu bye ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 24/02/2012 N'URUKIKO RW'IKIRENGA, RUGIZWE NA:

Sé
MUTASHYA Jean Baptiste
Perezida

Sé
HATANGIMBABAZI Fabien
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
GAKURU Ahmed
Umwanditsi

IMANZA Z'IMBONEZAMUBANO

5. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCAA0028/11/CS
ITARIKI Y'URUBANZA: 11/05/2012
HABURANA: Nasira UWITONZE, RWAGASANA Jean Paul, ECOBANK-RWANDA / RWIGEMA Jeanne Chantal

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO. IGICIRO GITANZWE MU CYAMUNARA-UBURENGANZIRA BW'UBEREWEMO UMWENDA N'URIMO UMWENDA BWO GUSABA KO ICYAMUNARA GISHYIRWA KU WUNDI MUNSI-KUBISABA UKORESHA ICYAMUNARA .

.KUNGANIRWA MU NKIKO -UBUTUMWA BUHABWA UBUNGANIRA ABANDI MU NKIKO -KUBA AVOKA ASONERWA KUBUSABWA NTIBIVUZE KO ATAGOMBA KUBUGIRA -KUBUGARAGAZA BIBAYE NGOMBWA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Urimo umwenda kimwe n'uberewemo umwenda bafite uburenganzira bwo gusaba uteza icyamunara kucyimurira ku wundi munsi no kwanga igiciro gitanzwe iyo babona ko igiciro gitanzwe ari gito cyane, babisaba urimo guteza icyamunara aho giterezwa, ntabwo ari kujya kubisaba Perezida w'Urukiko.

- N' ubwo gukora amurimo w'avoka bitanga icyizere ko uwo aburanira yamuhaye ubutumwa bwo kumuhagararira atagombye kubitangira ikimenyetso (présomption simple d'avoir le mandat), ntibikuraho inshingano ye mu gihe abisabwe, yo kugaragaza ko abufite, aho buva n' aho bugarukira, haba mu rukiko n' ahatari mu rukiko.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'IMBONEZAMUBANO RUKIJIJE MU RUHAME KUWA 11/05/2012, URUBANZA RCAA 0028/11/CS MU BURYO BUKURIKIRA:

ABABURANA :

Abajuriye :

1. Nasira UWITONZE, Notaire wa Leta mu Karere ka Nyarugenge.

2. ECOBANK –RWANDA, iburanirwa na Me RUSANGANWA Jean Bosco.

3. RWAGASANA Jean Paul, utuye mu Kagali k'Ishema, Umurenge wa Kiyovu, Akarere ka Nyarugenge, uburanirwa na Me RWAGATARE Janvier, Me Minette MUTONI, Me Paulin MUHOZI, Me Djandjo TCHAYA na Me Alice UMULISA.

Uregwa mu bujurire: RWIGEMA Jeanne Chantal, utuye mu mudugudu w'Amahoro, Akagali ka Kimihurura, Umurenge wa Kimihurura, Akarere ka Gasabo.

IKIBURANWA :

- Gutesha agaciro icyamunara cy'inzu iri mu kibanza n° 3046 Nyarugenge, ya Madame RWIGEMA Chantal, cyo kuwa 04/11/2010 no kudaha ECOBANK amafaranga yavuye mu cyamunara ;

- Indishyi zinyuranye ;

- Amafaranga y'ikurikirana rubanza no kururangiza.

I. IMITERERE Y'URUBANZA

[1] Nyuma y'uko Umuhesha w'inkiko, UWITONZE Nasira ateje cyamunara inzu ya RWIGEMA Chantal, ikegukanwa na RWAGASANA Jean Paul ku mafaranga 201.010.000 frw, agahabwa ECOBANK yari ifitiwe umwenda, RWIGEMA yareze uwo muhesha w'inkiko mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko icyo cyamunara giteshwa agaciro na ECOBANK ntihabwe amafaranga yagurishijwe inzu, RWAGASANA agoboka mu rubanza, maze Urukiko rwemeza ko ikirego cya RWIGEMA nta shingiro gifite, ko rero icyamunara cyabaye kidateshejwe agaciro.

[2] RWIGEMA yajuririye urwo rubanza mu Rukiko Rukuru, rwemeza ko ikirego cye gifite ishingiro, ko icyamunara giteshejwe agaciro kuko umuhesha w'inkiko watezaga cyamunara yangiye avoka wa RWIGEMA kumuhagararira ubwo yashakaga kwanga igiciro gito cyatanzwe, rutegeka kandi ECOBANK, RWAGASANA na Nasira UWITONZE buri

wese guha RWIGEMA indishyi za 500.000 frw, yose hamwe akaba 1.500.000 frw.

[3] UWITONZE, ECOBANK, na RWAGASANA bajuririye urwo rubanza mu Rukiko rw' Ikirenga bagamije kugaragaza ko nta mategeko yishwe ngo bitume icyamunara giteshwa agaciro, ko rero n'indishyi baciwe zidafite ishingiro, ndetse RWAGASANA we akanatanga inzitizi yo kutakira ubujurire bwa RWIGEMA kuko aburana inzu itari umutungo we. RWIGEMA nawe yatanze ubujurire bwuririye ku bwabo asaba ko indishyi yagenewe zakwongerwa.

[4] Urubanza rwaburanishijwe mu ruhame kuwa 20/03/2012, UWITONZE aburanirwa na Me MASUMBUKO Nde Emile, ECOBANK iburanirwa na Me RUSANGANWA Jean Bosco, RWAGASANA aburanirwa na Me RWAGATARE Janvier, Me Minette MUTONI, Me Paulin MUHOZI, Me Djandjo TCHAYA Claude na Me Alice UMULISA, naho RWIGEMA aburanirwa na Me NDAGIJIMANA Emmanuel hamwe na Me NZAMUKWEREKA Venant.

II.IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

[5] Muri uru rubanza hagomba gusuzumwa ikibazo cyo kumenya niba RWIGEMA yari afite ububasha (qualité) bwo kuregera icyamunara cyakozwe, hakanasuzumwa niba muri icyo cyamunara hari amategeko yishwe byatuma giteshwa agaciro, nyuma hakarebwa indishyi zikwiye guhabwa uwaba yarangirijwe.

A. KU BYEREKEYE INZITIZI Y'IBURABUBASHA BWO KUREGA

[6] Ababuranira RWAGASANA bavuga ko RWIGEMA atari afite ububasha bwo kuregera inkiko icyamunara cyabaye kigurisha inzu, kuko iyo nzu itigeze iba iye, akaba yari kugaragaza ko ari iye iyo aza kuba ayifitiye icyemezo kiyimwanditseho (certificat d'enregistrement) nk'uko giteganywa n'ingingo ya 36 y'Iteka ryo ku wa 20/07/1920, riboneka mu gitabo cya kabiri cy'Urwunge rw'amategeko mbonezamubano. Avuga ko inzitizi y'iburabubasha ishobora gutangirwa ku rwego urwo ari rwo rwose nk'uko biteganywa n'ingingo ya 95 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo n'iz'ubutegetsi.

[7] Kuri iyo nzitizi, uburanira RWIGEMA asubiza ko uyu yari afite ububasha bwo kurega, kuko inzu yagurishwaga ari iye nk'uko bigaragazwa n'inyandiko y'amasezerano yayiguriyeho na BCDI yaje guhinduka ECOBANK, ingingo ya 264 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano ikaba iteganya ko igurisha riba ryuzuye hagati y'abagiranye amasezerano kandi umugurisha akegurira burundu umuguzi icyagurishijwe mu gihe bumvikanye ku kintu no ku giciro n'ubwo

ikigurishwa kitari cyatangwa n'ikiguzi kitarishyurwa, agasobanura ko BCDI yari yararangije gushyikiriza RWIGEMA inzu, imfunguzo n'impapuro zayo ndetse ayitangaho ingwate muri iyo banki atangira kuyikodesha, hakaba hari hasigaye gusa guhinduza uwo yanditsweho (mutation).

[8] Urukiko rurasanga, hatanabaye gukemura ikibazo cyo kumenya uwari nyir'inzu igihe yagurishwaga kuko atari cyo gisuzumwa muri uru rubanza, byonyine kuba RWIGEMA yari atunze iyo nzu yarayihaweho umwenda na ECOBANK kandi akaba ari n'uwo mwenda watumye inzu itezwa cyamunara bisabwe na ECOBANK mu Rukiko, byumvikanisha ko RWIGEMA yari afite uburenganzira bwo kuregera icyaba kitarakurikije amategeko muri icyo cyamunara.

[9] B. <u>KU KIBAZO CYO KUMENYA NIBA HARI AMATEGEKO YABA ATARUBAHIRIJWE MURI CYAMUNARA CYAGURISHIJE INZU</u>.

[10] Ababuranira RWAGASANA, UWITONZE na ECOBANK banenga urubanza rwajuririwe kuba rwaremeje ko icyamunara giteshejwe agaciro ku mpamvu z'uko avoka MUNYENGABE Henri Pierre yabujijwe kugira icyo avuga kandi yaragaragazaga ko ari avoka anasobanura ko ahagarariye RWIGEMA wagurishirizwaga inzu, nyamara atarigeze yerekana inyandiko ya RWIGEMA yaba yarahereweho ububasha bwo kumuhagararira (procuration) muri icyo cyamunara.

[11] Basobanura ko kuba MUNYENGABE ari avoka bimuha uburenganzira bwo kuterekana inyandiko imuha ububasha bwo guhagararira uwo aburanira imbere y'urukiko gusa, hakurikijwe ibiteganywa n'ingingo ya 50 y'itegeko nº 03/97 ryo kuwa 19/03/1997 rishyiraho Urugaga rw'abavoka mu Rwanda, guhagararira abandi ahatari mu Rukiko rero bikaba bigomba inyandiko ibigaragariza ububasha.

[12] Uhagarariye UWITONZE anongeraho ko ingingo ya 50 y'itegeko nº 03/97 ryo kuwa 19/03/1997 yavuzwe haruguru yaje guhindurwa n'ingingo ya 4 y'Itegeko nº 15/99 ryo kuwa 15/08/1999 rihindura kandi ryuzuza iryo rya mbere, mu buryo hanavanyweho ibyo gusonerwa gusabwa, imbere y'urukiko inyandiko igaragaza ububasha avoka yahawe bwo guhagararira uwo aburanira, ahatari mu rukiko rero akaba atariho haba ukwo gusonerwa.

[13] Ababuranira RWAGASANA banavuga ko iyimurwa ry'icyamunara Avoka MUNYENGABE avuga ko yashagaka gusaba kubera igiciro gito ritanashobokaga, kuko ingingo za 303 na 304 z'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano,iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ziteganya ko iyimurwa ry'icyamunara rishobora kubaho ari uko bitegetswe na Perezida w'Urukiko, avoka MUNYENGABE akaba atari yitwaje itegeko rya Perezida w'Urukiko ritegeka iyimurwa rya cyamunara.

[14] Bavuga kandi ko, ku byerekeye agaciro k'inzu yagurishijwe, Urukiko Rukuru rwagendeye ku mvugo ya RWIGEMA wagiye yivuguruza

agamije kwerekana ko inzu yagurishijwe ku giciro gito, akavuga ibiciro binyuranye kandi ntacyo ashingiyeho cyemewe.

[15] Uburanira RWIGEMA avuga ko kuba mu cyamunara Me MUNYENGABE yaravugaga ko ahagarariye RWIGEMA kandi akagaragaza ko ari avoka bitari ngombwa kwerekana inyandiko yahawe n'uwo ahagarariye, kuko ingingo ya 2 y'itegeko nº 03/97 ryavuzwe haruguru yemerera avoka guhagararira umuburanyi hanze y'urukiko itavuga ko agomba kwitwaza inyandiko y'ubutumwa yahawe.

[16] Anasobanura ko kuba ingingo ya 50 y'iryo tegeko yaraje guhindurwa n'itegeko nº 15/99 ryo kuwa 15/08/1999 ntihagarurwemo ko mu rukiko avoka adasabwa kugaragaza inyandiko y'ubutumwa yahawe, byerekana ko ububasha bwo guhagararira abandi, haba mu rukiko cyangwa hanze yarwo, abukura mu kuba ari avoka (qualité) aho kubukura mu nyandiko y'ubutumwa (procuration).

[17] Urukiko rurasanga, mu gukemura ikibazo cyo mu isesengura ry'ibiteganywa n'ingingo ya 2 n'iya 3 z'Itegeko nº 03/97 ryo kuwa 19/03/1997 rishyiraho Urugaga rw'abavoka mu Rwanda hagomba gutandukanywa ikibazo cy'ububasha avoka ahabwa n'itegeko nk'uko buboneka muri iyo ngingo ya 2, ni ukuvuga ibyo itegeko rimwemerera gukora mu mwuga we, n'ikibazo cyo kumenya niba avoka wemewe n'amategeko hari ubutumwa (mandat) yahawe n'uwo avuga ko ahagarariye.

[18] Urukiko rurasanga, kubyerekeye uburenganzira bwo kwanga igiciro gitanzwe mu cyamunara, nk'uko biteganywa n'ingingo ya 304 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucurizi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujwe kugeza ubu, urimo umwenda kimwe n'uwuberewemo, iyo yumva igiciro gitanzwe kidakwiye, afite uburangenzira bwo gusaba ko icyamunara gishyirwa ku wundi munsi, bikumvikana kandi ko ari ukubisaba nyine ushinzwe guteza cyamurara aho giterezwa, atari ukujya kubisaba Perezida w'Urukiko nk'uko ababuranira RWAGASANA babivuga, kuko atariko itegeko ribiteganya kandi ritanabiteganya gutyo kuko icyo cyamunara kitabashije guhagarikirwa aho ngo cyimurwe, byaba ari ukuzajya gusaba Perezida guhagarika icyarangije kuba.

[19] Urukiko rurasanga indi myumvire ababuranira RWAGASANA bafite kuri iyo ngingo ya 304, iterwa no kwitiranya igihe cyamunara ishobora kwimurirwaho kitarenga ukwezi kigenwa n'ushinzwe guteza cyamunara, no kuba hagomba icyemezo cy'umucamanza kugira ngo icyo gihe cyamaze gushyirwaho kibe cyakwongerwa.

[20] Ku mpaka zigibwa n'ababuranyi zijyanye no kumenya niba igiciro cyatanzwe cyari gikwiye cyangwa cyari gito, Urukiko rurasanga nacyo ataricyo kibazo gisusumwa muri uru rubanza, kuko ikibazo nyakuri ahubwo aricyo kwemererwa mu cyamunara uburenganzira buteganywa

mu ngingo ya 304 yavuzwe haruguru bwo gusaba ko cyamunara yimurwa iyo urimo umwenda cyangwa uwuberewemo asanga igiciro kidakwiye, ibyo rero bikaba bituruka mu buryo we abibona, bityo akaba atari ngombwa muri uru rubanza gusuzuma ibimenyetso bigamije kwerekana ko igiciro cyatanzwe cyari gihagije cyangwa kidahagije.

[21] Naho ku byerekeye impamvu Me MUNYENGABE atemerewe gufata ijambo mu mwanya wa RWIGEMA ngo abashe gusaba ko cyamunara yimurwa, Urukiko rurasanga, mu gihe atagaragaje ko yaje muri cyo cyamunara afite ubutumwa bwa RWIGEMA, ntaho ushinzwe guteza cyamunara yari guhera ku bw'amategeko amuha ijambo mu izina rya RWIGEMA, dore ko nawe yiyemerera ko nta butumwa bwanditse yagaragaje icyo gihe.

[22] Ingingo ya 72 y'itegeko n° 18/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko *''Ababuranyi bunganirwa mu nkiko hakurikijwe amategeko agenga Urugaga rw'Abavoka mu Rwanda'',* iya 73 y'iryo tegeko ikavuga ko *'' Abunganira ababuranyi n'ababahagarарira ntacyo bashobora gukora ngo cyemerwe iyo kirenze ububasha bahawe n'amategeko cyangwa kirenze ubutumwa bwabo» ,* ibi bikumvikanisha ko uwunganira cyangwa uhagararira undi mu rukiko agomba kubasha kugaragaza ubutumwa yahawe, ndetse n'aho buva naho bugera.

[23] Ingingo ya 50 y'itegeko n° 03/97 ryo ku wa 19/3/1997 rishyiraho Urugaga rw'Abavoka mu Rwanda nk'uko yahinduwe n'ingingo ya 4 y'Itegeko nº 15/99 ryo kuwa 15/08/1999 rihindura kandi ryuzuza iryo rya mbere, iteganya ko, usibye igihe itegeko ribiteganya ukundi, abavoka ari bo bonyine bafite uburenganzira bwo kuburanira imbere y'inkiko, cyakora umuburanyi akaba yashobora kwiburanira ku giti cye, cyangwa akaburanirwa n'abo mu muryango bavugwa muri iryo tegeko, bafite icyemezo cyanditse cyemewe n'umucamanza, kimwe n'umurera cyangwa umuhagarariye mu buryo bwemewe n'amategeko.

[24] N'ubwo ihindurwa n'iyuzuzwa rivuzwe haruguru ry'iyo ngingo ya 50 ritayigaruyemo interuro yavugaga ko ''*Avoka afite ububasha bwo kuburana imbere y'inkiko atagombye kwerekana ko hari uwamutumye, keretse iyo itegeko risaba ubutumwa bwihariye*[6]'', ibyo ntibyanavugaga ko avoka yajya guhagararira undi atabiherewe ubutumwa, ndetse n'uko kutagomba kubugaragaza bikaba bidasobanura ko bibaye ngombwa ko abisabwa atabwerekana, dore ko nk'uko abahanga mu mategeko babivuga,

6 Ntabwo inyandiko mvugo z'impaka mu Nteko Ishinga Amategeko zateguraga ihindurwa n'iyuzuzwa ry'iryo tegeko (Travaux prépa-ratoires) zigaragaza ibisobanuro ku mpamvu zatumye iyo nteruro itagarurwa muri iyo ngingo ya 50 y'iryo Itegeko.

kuba akora umurimo wa avoka bitanga gusa icyizere ko abufite (présomption simple) ku buryo rero bibaye ngombwa ashobora gusabwa kubugaragaza, kuko niba asonerwa kugomba kugaragaza ubutumwa bwanditse yahawe, bitavuze ko atagomba kuba abufite.[7]

[25] Urukiko rurasanga rero, niba avoka mu rukiko ashobora gusabwa kugaragaza inyandiko y'ubutumwa bw'uwo ahagarariye, kandi aba anarangwa n'umwambaro ubugenewe ategetswe kuba yambaye imbere yarwo nk'uko biteganywa n'ingingo za 52, 53, na 55 z'itegeko n° 03/97 ryo kuwa 19/3/1997 rishyiraho Urugaga rw'Abavoka mu Rwanda nk'uko ryahinduwe kandi ryujwe kugeza ubu[8], ndetse anagaragara ku rutonde rw'Abavoka rugirwa n'Urukiko, nta cyabuza ko n'ahatari mu rukiko yasabwa kugaragaza ko yahawe ubutumwa bw'uwo ahagarariye, bityo rero kuba Me MUNYENGABE wavugaga mu cyamunara ko ahagarariye RWIGEMA atarabashije kugaragaza inyandiko y'ubutumwa yabiherewe maze akimwa ijambo, nta tegeko ryishwe ngo bibe byatuma icyo cyamunara giteshwa agaciro. Ubujurire bwa RWAGASANA, UWITONZE na ECOBANK kuri iyi ngingo rero bufite ishingiro.

C. KU BYEREKEYE INDISHYI

[26] Nk'uko byagaragajwe haruguru ko icyamunara RWAGASANA yaguzemo inzu gikoreshejwe n'umuhesha w'inkiko UWITONZE kubera umwenda ECOBANK yishyuzaga RWIGEMA kitanyuranyije n'amategeko nk'uko uyu abivuga, indishyi zisuzumwa muri iki gice cy'urubanza ni izasabwe na RWAGASANA na ECOBANK, bitabaye ngombwa gusubiza kuzo RWIGEMA asaba guhabwa[9] mu gihe yatsinda urubanza.

[27] RWAGASANA arasaba ko RWIGEMA yamuha indishyi z'amafaranga 50.000.000 kuko yamubujije gutunga mu mutuzo inzu yiguriye akayandikwaho, ndetse akabuza n'uwayikodeshaga kwishyura amafaranga y'ubukode no kuyivamo, akaba anakomeza kwishyura inyungu za banki ku nguzanyo yafashe. Aranasaba amafaranga 10.000.000 frw y'igihembo cy'abavoka bamuburaniye bafatanyije, hamwe na 10.000.000 frw yo kuba yarashowe mu rubanza nta mpamvu.

[28] ECOBANK nayo irasaba ko RWIGEMA ayiha indishyi zingana na 5.000.000 frw yo kuba yarayishoye mu rubanza nta mpamvu, hamwe na 1.500.000 frw y'igihembo cya avoka ku nzego eshatu z'inkiko

[7] Reba inyandiko ya Emmanuel Durant: Le mandat de l'avocat, De la présomption ad litem a l'obligation de l'écrit, Nimes, 13 Octobre 2009, aho agira ati : « La loi dispense seulement l›Avocat de la production de la justification de son mandat. Il est présumé le détenir et non pas dispensé d›en détenir un. La présomption de mandat est une présomption simple qui supporte la preuve contraire ».

[8] RWIGEMA asaba 15.064 .500 frw ahwanye n'ubukode bw'inzu yavukijwe mu gihe cy'amezi 11, indishyi za 5.000.000 frw zo kuba yarashowe mu rubanza ku mahe-rere, na 2.000.000 frw y'ikurikiranarubanza n'igihembo cya avoka yiyongera kuri 1.500.000 frw yari yagenewe n'Urukiko Rukuru.

yaburaniyemo.

[29] Ku bijyanye n'indishyi zisabwa RWIGEMA, asubiza ko nta mpamvu zishingiyeho, kuko ku byerekeye ECOBANK hatabaye gushorwa mu rubanza ku maherere mu gihe ariyo yasabye igurishwa ry'inzu yatejwe cyamunara mu buryo budakurikije amategeko kandi igashyikirizwa amafaranga avuye muri iyo nzu, naho ku byerekeye RWAGASANA, akaba ariwe wahawe iyo nzu muri icyo cyamunara kidakurikije amategeko, ndetse akirukana abayikodeshaga bishyura amafaranga menshi.

[30] Urukiko rurasanga ECOBANK itaragaragaje ko yashowe mu manza ku maherere usibye kubivuga ityo, kuko iterekanye ko RWIGEMA yaba yarayireze nkana bigaragara ko nta kibazo bafitanye. Nyamara kubera ko ECOBANK itsinze urubanza RWIGEMA yayirezemo kandi ikaba yaragombye kwiyambaza avoka, Urukiko rurasanga yagenerwa, mu bushishozi bwarwo indishyi zihwanye na 1.500.000 frw y'ikurikiranarubanza n'igihembo cya avoka ku nzego eshatu z'inkiko yaburaniyemo.

[31] Ku bijyanye n'indishyi zisabwa na RWAGASANA, Urukiko rurasanga atarabashije kugaragaza igihombo yatewe na RWIGEMA nyuma y'uko aguze inzu mu cyamunara, dore ko yegukanye inzu yaguze akanabasha kuyibonera ibyangombwa, ndetse agakura mu nzu abari basanzwe bayikodesha. Urukiko rurasanga kandi atarabashije kurugaragariza ko RWIGEMA yamukuruye mu manza ku maherere, ahubwo ari we warugobotsemo ku bushake aje kurengera inyungu ze. Ariko kubera ko yagombye kwiyambaza abavoka muri uru rubanza, urukiko rurasanga yagenerwa, mu bushishozi bwarwo, indishyi zihwanye na 1.500.000 frw y'ikurikiranarubanza n'igihembo cya avoka ku nzego eshatu z'inkiko yaburaniyemo, bitabaye ngombwa kumugenera igihembo cy`abavoka benshi, kuko atarugaragarije ko hagombaga benshi byanze bikunze.

III. ICYEMEZO CY'URUKIKO

[32] Rwemeje ko ubujurire bwa RWAGASANA, ubwa UWITONZE n'ubwa ECOBANK bufite ishingiro;

[33] Rwemeje ko ubujurire bwa RWIGEMA bubwuririyeho nta shingiro bufite;

[34] Rutegetse RWIGEMA kwishyura RWAGASANA na ECOBANK buri wese indishyi zingana na 1.500.000 frw y'ikurikiranarubanza n'igihembo cya avoka, ni ukuvuga yose hamwe 3.000.000 frw, atayatanga mu gihe cy'ukwezi ayo mafaranga agakurwa mu bye ku ngufu za Leta;

[35] Rutegetse RWIGEMA kwishyura 4% y'umusogongero wa Leta kuri izo ndishyi aciwe, ni ukuvuga 120.000 frw, atayatanga mu gihe cy'ukwezi ayo mafaranga agakurwa mu bye ku ngufu za Leta;

[36] Rutegetse RWIGEMA kwishyura amagarama y'ibyakozwe mu rubanza, ahwanye na 49.450 frw, atayatanga mu gihe cy'iminsi umunani, ayo mafaranga agakurwa mu bye ku ngufu za Leta;

[37] Ruvuze ko imikirize y'urubanza rwajuririwe ihindutse.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 11/05/2012.

Sé
MUGENZI Louis-Marie
Perezida

Sé
MUKANDAMAGE M.Josée
Umucamanza

Sé
MUNYANGERI N. Innocent
Umucamanza

Sé
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

6. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCA0012/11/CS
ITARIKI Y'URUBANZA: 30/01/2012
HABURANA: MUGENGA Joseph / NISHIMWE Claudine na MASHAMI Gisèle

AMAGAMBO MPINE

IMANZAZ'IMBONEZAMUBANO-IKIREGOCYIHUTIRWA-UBWIHUTIRWA BUTUMA UMUCAMANZA AFATA ICYEMEZO HADATEGEREJWE KO URUBANZA RW'IBANZE RUCIBWA-KUBUSUZUMA HASHINGIWE KU MITERERE Y'URUBANZA, UBWIHUTIRWE N'IBINDI.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Ubwihutirwe butuma umucamanza yafata icyemezo hadategerejwe ko urubanza rw'ibanze rucibwa, busuzumwa n'umucamanza ashingiye ku miterere y'urubanza , icyo asabwa mu bwihutirwe n'ibindi byose byamufasha gufata icyemezo atabangamiye urubanza mu mizi.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'IMBONEZAMUBANO, RUHAKIRIJE MU RUHAME, NONE KUWA 30 MUTARAMA 2012, URUBANZA RCA 0012/11/CS MU BURYO BUKURIKIRA:

Haburana

Urega: MUGENGA Joseph mwene Mbanzabugabo na Rudodo, utuye Rukiri-Remera-Gasabo-V.Kigali.

ABAREGWA:

- NISHIMWE Claudine mwene Rwamanywa na Mukamusoni, utuye Kanserege-Kamutwa –Kacyiru –Gasabo-V-Kigali.
-MASHAMI Gisèle mwene Rwamanywa na Mukamusoni , utuye Rukiri-Remera-Gasabo-V.Kigali.

IKIREGERWA : Gutanga ikirego cy'ihutirwa.

I. IMITERERE Y'URUBANZA

[38] Abazungura ba RWAMANYWA, ari bo Nishimwe Claudine na Mashami Gisele batanze ikirego cy'inyandiko nsobanurakirego (Requete unilaterale) mu Rukiko Rwisumbuye rwa Gasabo, basaba gutesha agaciro (annuler) Titre de propriété Vol.R.XX Folio 66 iri mu mazina ya Mugenga Joseph, hashingiwe ku rubanza RC 36294/01 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali rukemeza ko inzu ivugwa muri iyo ''titre'' ari iyabo, urwo rubanza rukaba rwaramaze kuba itegeko.

[39] Umucamanza mu Rukiko Rwisumbuye rwa Gasabo yemeye kwakira icyo kirego maze ategeka ko urupapuro rw'ubutaka bw'ikibanza n° 1771(Titre de propriété) Vol.R.XX Folio 66 rwatanzwe kuwa 04/09/2000 ruteshwa agaciro, hakagomba gukorwa urundi ruri mu mazina y'abazungura ba Rwamanywa Jérémie aribo NISHIMWE Claudine na SHAMI Gisele.

[40] MUGENGA yajuririye icyo cyemezo mu Rukiko Rukuru, anatanga ikirego cyihutirwa (Référé) asaba ko icyemezo cy'umucamanza w'Urukiko Rwisumbuye rwa Gasabo cyahagarikwa hakazabanza kuburanwa ubujurire yatanze, asobanura ko hari ubwihutirwe buterwa n'uko bidakwiye ko ''Titre de propriete'' imwanditseho yateshwa agaciro nyamara bikaba byashobora guhindurwa n'icyemezo kizafatwa kuri ubwo bujurire.

[41] Ku wa 03/11/2011,Umucamanza w'ibirego byihutirwa mu Rukiko Rukuru yemeje ko ubwihutirwe MUGENGA avuga buteganywa n'ingingo ya 320 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ntaho bushingiye kuko icyemezo asabira guhagarikwa gishingiye ku rubanza

rwamaze kuba itegeko.

[42] Ku wa 17/11/2011,MUGENGA yajuririye icyo cyemezo mu Rukiko rw'Ikirenga, avuga ko asanga ibiteganywa n'ingingo ya 320 yavuzwe haruguru ku bijyanye n'ubwihutirwe byuzuye, ariko umucamanza akaba yarabyirengagije.

[43] Urubanza rwaburanishijwe mu ruhame ku wa 26/01/2012, MUGENGA aburanirwa na Me KAZUNGU J.Bosco na Me BATAGATA Andre, naho NISHIMWE yiburanira anahagarariye umuvandimwe we SHAMI.

IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

[44] Ikigomba gusuzumwa muri uru rubanza, ni ukumenya niba ikirego cyihutirwa cyatanzwe na MUGENGA mu Rukiko Rukuru cyari cyujuje ibisabwa n'amategeko kugirango icyemezo cy'Urukiko Rwisumbuye rwa Gasabo yajuririye kibe gihagaritswe.

[45] Ababuranira MUGENGA banenga icyemezo cy'umucamanza w'Urukiko Rukuru kuba cyarahakanye ko nta bwihutirwe burangwa mu kirego cyihutirwa yari yashyikirijwe na MUGENGA, kandi uyu yari yagaragaje ko gutesha agaciro urupapuro rw'ubutaka bw'ikibanza n° 1771 kimwanditseho byagira ingaruka zikomeye mu gihe icyemezo cy'umucamanza w'Urukiko Rwisumbuye rwa Gasabo yajuririye cyahinduka, nyamara we icyemezo asaba ko cyafatwa byihutirwa kikaba cyaba ari icy'agateganyo gusa, hategerejwe ko urubanza rucibwa.

[46] Ababuranira MUGENGA bavuga kandi ko umucamanza ajya guhakana ubwihutirwe yatandukiriye agashingira ku rubanza RC 36294/01 rwavuzwe haruguru rwemeje ko inzu iri mu kibanza n° 1771 ari iy'abo baburana kandi rudahuye n'ikirego yashyikirijwe, bakanavuga ko uwo mucamanza yirengagije kureba ko icyemezo cy'umucamanza w'Urukiko Rwisumbuye rwa Gasabo cyafashwe hirengagijwe amategeko menshi, harimo kwita ikirego ko cyari inyandiko nsobanurakirego (requete unilaterale) kandi ataribyo.

[47] NISHIMWE we asubiza ko nta bwihutirwe buboneka mu kirego cya MUGENGA gisaba guhagarika icyemezo cy'umucamanza w'Urukiko Rwisumbuye rwa Gasabo, kandi ko cyafashwe hubahirijwe amategeko yose, ahubwo MUGENGA wanze gutanga inyandiko y'ubutaka y'ikibanza yatsindiwe burundu akaba akomeje kwanga kurekura iyo nyandiko kuko yanayitanzeho ingwate muri banki, ubwihutirwe rero bukaba ahubwo ari ubwo kuyitesha agaciro hagakorwa iyanditswe kuri ba nyirinzu, kuko bitabaye bashobora no kubona Banki ibagurishirije inzu yitwaje ya nyandiko iriho amazina ya MUGENGA.

[48] Urukiko rurasanga, ikibazo cy'inenge MUGENGA avuga zaba zarabaye mu cyemezo cy'umucamanza w'Urukiko Rwisumbuye rwa Gasabo kigomba guharirwa Urukiko Rukuru rwajuririwe, ikigomba gusuzumwa ubu akaba ari ubwihutirwe bwaba bwarirengagijwe

n'umucamanza w'Urukiko Rukuru utaremeye guhagarika icyemezo cy'umucamanza w'Urukiko Rwisumbuye rwa Gasabo.

[49] Ingingo ya 320 y'Itegeko y'Itegeko n° 18/2004 ryo kuwa 29/01/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, yumvikanisha ko murwego rw'ibirego byihutirwa, umucamanza afata icyemezo hategerejwe ko urubanza rw'ibanze rucibwa, bitewe n'ubwihutirwe buri mu kibazo yashyikirijwe.

[50] Ubwihutirwe butuma umucamanza yafata icyemezo hadategerejwe ko urubanza rw'ibanze rucibwa, busuzumwa n'umucamanza ashingiye ku miterere y'urubanza, icyo asabwa gukora mu bwihutirwe, n'ibindi[10]...

[51] Urukiko rurasanga nta kosa ryakozwe n'umucamanza w'Urukiko Rukuru wemeje ko nta bwihutirwe buboneka mu kirego cyihutirwa cya MUGENGA, akirebanye n'impamvu Urukiko Rwisumbuye rwa Gasabo rwategetse ko hateshwa agaciro inyandiko y'ubutaka bw'ikibanza yanditseho MUGENGA kandi cyaratsindiwe burundu n'abo bakiburanaga, MUGENGA kandi, n'ubwo avuga ko gutesha agaciro iyo nyandiko y'ubutaka bishobora kugira ingaruka zikomeye, akaba atagaragariza uru Rukiko icyakwononekara mu buryo kitazabasha gusubizwa mu buryo, mu gihe yaramuka atsinze urubanza rw'iremezo yajuririye mu Rukiko Rukuru.

III. ICYEMEZO CY'URUKIKO

[52] Rwemeje ko ubujurire bwa MUGENGA Joseph ku cyemezo cy'umucamanza w'ibirego byihutirwa mu Rukiko Rukuru nta shingiro bufite;

[53] Rumutegetse gutanga amagarama y'ibyatanzwe kuri uru rubanza, ahwanye na 10.300 frw, atayatanga mu gihe cy'iminsi umunani, ayo mafaranga agakurwa mu bye ku ngufu za Leta.

[10] Reba Melina Douchy Oudot, Procedure civile, 2e edition , Paris 2006, n0 526, p 305, aho agira ati: '' La condition d'urgence ne fait pas l'objet d'une definition precise. Cette condition qui releve de l'appreciaition souveraine des juges du fond est fonction des circonstances propres a chaque affaire. Elle est appelee a varier en fonction du litige, de la mesure demandee au juge…''

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 30/01/2012.

Sé
MUGENZI Louis Marie

Sé
HAVUGIYAREMYE Julien
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
GAKURU Ahmed
Umwanditsi w'Urukiko

7. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCAA0117/11/CS
ITARIKI Y'URUBANZA: 27/01/2012
HABURANA: MUNYANDAMUTSA Pastor Issacar/ MUKARUKWAYA Christine.

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO-IMPAMVU URUBANZA RUSHINGIYEHO-IMIKIRIZE YIVUGURUZA KU BURYO BUKABIJE-GUHINDUKA KW'IREME RY'IMIKIRIZE Y'URUBANZA UBWARWO-KUBIFATA NK'AHO URUBANZA NTA MPAMVU NA BUSA RUSHINGIYEHO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Mu gusuzuma ko urubanza rwajuririwe nta mpamvu na busa rwashingiyeho, Urukiko rwajuririwe ntirusimbura urukiko rwaciye urubanza, icyo Urukiko rwajuririwe rusabwa ni ukureba niba nta mpamvu na busa urubanza rwajuririwe rutanga, nyamara igihe hari imikirize y'urubanza yivuguruza ku buryo bukabije ku buryo bituma ireme (substance) ry'imikirize y'urubanza ubwaryo rihinduka , urwo rubanza rugomba gufatwa nk'urutagaragaza na busa impamvu rushingiyeho.

-Umucamanza wagaragaje ko atabona uburyo umuntu yaje mu rubanza ntabwo yahindukira ngo yemeze ko uwo muntu yarubayemo umuburanyi, uko kwivuguruza gukabije kukaba gutuma urubanza rujuririrwa rufatwa nk'urutagaragaza na busa impamvu rushingiyeho.

URUKIKO RW'IKIRENGA RUBURANISHA MU RUHAME IMANZA Z'IMBONEZAMUBNO, RUKIJIJE URUBANZA RUBANZIRIZA URUNDI N° RCAA 0117/11/CS MU BURYO BUKURIKIRA:

HABURANA:

Uwajuriye: Munyandamutsa Pastor Issacar, mwene Gakuba na Kirashoka, utuye mu Kagali ka Rwezamenyo, Umurenge wa Rwezamenyo, Akarere ka Nyarugenge, Umujyi wa Kigali.

Uregwa: Mukarukwaya Christine, mwene Kamonyo na nyiramyavu, utuye mu Mudugudu wa Kabeza, Akagali ka kabasengerezi, Umurenge wa Muhima, Akarere ka Nyarugenge, Umujyi wa Kigali.

Ikiburanwa:
-Kujuririra icyemezo cy'ibanzirizasuzuma NO RCIV 0056/10/PREEX/CS mu rubanza RCAA 0051/10/CS.
-Gutambamira urubanza n° RC 28.068/99 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali kuwa 24/04/2000

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rwa Mbere rw'Iremezo rwa Kigali kuri n° RC 28.068/99 Mukarukwaya Christine asaba urukiko kwemeza ko umwana we Ishimwe Emery (wavutse 25/11/1980) yabyawe na Munyakaragwe Ezechiel. Mw'iburanisha rya mbere ry'urwo rubanza? Munyandamutsa Pastor Issacar, wari umuvandimwe wa Munyakaragwe, yasobanuye ko atemera ko Ishimwe Emery yabyawe na Munyakaragwe. Urukiko rwafashe icyemezo kuwa 24/04/2000, rwemeza ko Ishimwe Emery yabyawe na Munyakaragwe.

[2] Munyandamutsa wari warahawe mu rundi rubanza rwabanjirije uru uburenganzira bwo kuzungura umuvandimwe we Munyakaragwe umutungo ugizwe n'amazu arimo station ya lisansi iri mu Gatsata, Komine Rutungo, parcelle n° 5/578 yatambamiye urwo rubanza kuri n° RC 33.239/2000.

[3] Ivugururwa ry'amategeko muri 2004 ryasanze urwo rubanza rutaraburanishwa mu mizi, harafashwe gusa icyemezo cyanga kwakira icyifuzo cya Munyandamutsa cy'uko hakorwa test génétique ADN,

urubanza ruri mu Rukiko rw'Ubujurire rwa Kigali kuko Munyandamusta yari yarajuririye icyo cyemezo, maze Urukiko Rukuru rwa Repubulika rwohereza urubanza mu Rukiko Rwisumbuye rwa Nyarugenge kugira ngo abe ariho ruburanishirizwa.

[4] Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza RC 0116/06/TGI kuwa 10/08/2007, rwemeza ko ikirego cya Munyandamutsa kitagomba kwakirwa ngo kuko *"nk'uko bigaragara mu rubanza rwatambamiwe (… .) yari arurimo kuko yagize n'ibyo aruvugamo (…) uko kuba rero yari arurimo akaba atagaruka ngo arutambamire kuko binyuranyije n'ingingo ya 173 y' itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi* ".

[5] Munyandamutsa yajuririye Urukiko Rukuru avuga ko Urukiko Rwisumbuye rwaciye urubanza rushingiye ku itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ritariho igihe yatangaga ikirego, kandi ko rwemeje ntacyo rushingiyeho ko yabaye umuburanyi mu rubanza atambamira kandi atarigeze aruhamagarwamo cyangwa arugobokamo.

[6] Urukiko rwaciye urubanza RCA 0183/07/HC/KIG kuwa 14/05/2010, rwemeza ko ubujurire bwe nta shingiro bufite. Ku bijyanye n'itegeko n° 18/2004 ryo kuwa 20/06/2004 ryakurikijwe, rwasobanuye ko umucamanza wa mbere yubahirije ibiteganywa n'ingingo ya 404 y' itegeko iteganya ko *"imanza zizaba zikiburanishwa mu nkiko nkuru n'intoya igihe iri tegeko rizatangira gukurikizwa, zizaburanishwa mu buryo bukurikije iri tegeko, ariko ntacyo bihinduye ku mihango y'iburanisha yakozwe" Amategeko ya procedure akurikizwa akimara gushyirwaho, keretse iyo biteganyijwe ukundi (les lois de procédure sont d'application immédiate)",* kandi ko ingingo ya 173 y'itegeko rishya ntacyo itandukanyeho n'ingingo ya 241 y'itegeko ryo kuwa 15/07/1964 ryagengaga imiburanishirize y'imanza z'imbonezamubona n'iz'ubucuruzi igihe Munyandamamutsa yatangaga ikirego cyo gutambamira urubanza yateganyaga ko umuntu wemerewe gutambamira urubanza ari utarabaye umuburanyi mu rubanza rubangamira inyugu ze, kandi yaba we yaba abo ahagarariye bakaba batararuhamagawemo.

[7] Ku bijyanye n'impamvu y'ubujurire y'uko umucamanza wa mbere yemeje ntacyo ashingiyeho ko yabaye umuburanyi mu rubanza atambamira, Urukiko Rukuru rwasobanuye ko atari byo kuko *"… Munyadamutsa Pasteur yahawe ijambo muri urwo rubanza rugitangira kuburanishwa ahakana ko Ishimwe Emery yabyawe na Ezechiel Munyakaragwe nubwo (urubanza) rutagaragaza uburyo yarujemo* …..“

[8] Me Munyanzeza Kato Sylvain mw'izina rya Munyandamutsa yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko urubanza rwaciwe n'Urukiko Rukuku rutagaragaza na busa impamvu rwashingiyeho kuko kuba umuntu yaraje mu rubanza nk'utanga amakuru ntibivuze ko aba abaye umuburanyi (1), kandi ko rwashingiye ku itegeko ritariho mu gihe Munyandamutsa yatangaga ikirego (2).

[9] Urubanza rwakorewe ibanzirizasuzuma kuwa 28/08/2010, umucamanza wayikoze yemeza ko ubujurire bwe butari mu bubasha bw'Urukiko rw' Ikirenga kuko butujuje ibiteganywa n'ingingo ya 43 y'itegeko -ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi ryujujwe kugeza ubu.

[10] Ku bijyanye no kumenya niba urukiko rwarashingiye ku itegeko ritariho, umucamanza w'ibanzirizasuzuma yavuze ko kuba harakurikijwe itegeko rishya n° 18/2004 ryo kuwa 20/06/2004 aho gukurikizwa iryo kuwa 15/07/1964 ntacyo byononeye Munyandamutsa, ko icyangombwa ari uko hagombaga kubahirizwa ibiteganywa n'ingingo ya 404 y' itegeko n° 18/2004 ryo kuwa 20/06/2004.

[11] Ku bijyanye no kumenya niba urukiko rutarasobanuye icyemezo cyarwo, umucamanza w'ibanzirizasuzuma yavuze ko bigaragara mu mikirize y'urubanza ko umucamanza yatanze impamvu yashingiyeho icyemezo cye, kuba izo mpamvu zitaranyuze Munyandamutsa akaba ataribyo byatuma yemeza ko Urukiko rutazitanze.

[12] Munyandamutsa yamenyeshejwe icyemezo cy'ibanzirizasuzuma kuwa 09/11/2010, Me Ntigurirwa François mu izina rye akijuririra kuwa

15/11/2010, mu gihe cy'iminsi cumi n'itanu iteganywa n' itegeko-ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga.

[13] Urubanza rwaburanishijwe mu ruhame kuwa 22/12/2011, Munyandamutsa yiburanira, Mukarukwaya yunganiwe na Me Nkurunziza François Xavier.

II. IBIBAZO BIGOMBA GUSUZUMWA

a) Kumenya niba urubanza rwarashingiye ku itegeko ritariho.

[14] Munyandamutsa avuga ko kuba umucamanza yaraciye urubanza ashingiye ku itegeko n° 18/2004 ryo kuwa 20/06/2004 rigenga imiburanishirize y'imanza z'imbonezamubano kandi ikirego cye cyaratangiye hagikoreshwa itegeko ryo kuwa 15/07/1964, ari ukwica ihame ry'ubudasubira inyuma bw'amategeko (non rétroactivité des lois).

Me Nkurunziza avuga ko nta kosa umucamanza yakoze kuko amategeko y'imiburanishirize akurikizwa akimara gushyirwaho, keretse iyo biteganyijwe ukundi.

[15] Urukiko rusanga nk'uko umucamanza w'ibanzirizasuzuma yabivuze, kuba mu rubanza n° RC 28.068/99 harakurikijwe itegeko rishya n° 18/2004 ryo kuwa 20/06/2004 rigenga imiburanishirize y'imanza z'imbonezamubano aho gukurikizwa iryaribanjirije ryo kuwa 15/07/1964 ntacyo byononeye Munyandamutsa kuko, nk'uko byasobanuwe n'Urukiko Rukuru, ibivugwa mu ngingo ya 241 y'itegeko rya kera ko *"umuntu utarabaye umuburanyi mu rubanza rubangamira inyungu ze ashobora kurutambamira iyo we cyangwa abo ahagarariye bataruhamagawemo*" ntaho bitaniye n'ibivugwa mu ngingo ya 174 y'itegeko rishya, bityo iyi mpamvu y'ubujurire ikaba nta shingiro ifite.

b) Kumenya niba urubanza rwajuririwe rutagaragaza na busa impamvu rwashingiyeho.

[16] Munyandamutsa avuga ko kuba yaragaragaye mu rubanza

nk'umutangabuhamya, bitavuze ko atarutambamira, kubyemeza gutyo hadakozwe irindi sesengura rishingiye ku mategeko akaba ari ukutagaragaza na busa impamvu z'urubanza.

[17] Me Nkurunziza François Xavier avuga ko Urukiko rwasanze ahubwo Munyandamutsa yarahamagawe mu rubanza atambamira, aruzamo kandi atari umutangabuhamya, bivuze ko yarugobotsemo, akaba rero ntaho yahera avuga ko urubanza ajuririra nta mpamvu na busa rwatanze mu icibwa ryarwo.

[18] Ingingo ya 43 y'itegeko -ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nkuko ryahinduwe kandi ryujujwe kugeza ubu iha Urukiko rw'Ikirenga ububasha bwo kuburanisha imanza zaciwe n'Urukiko Rukuru mu rwego rwa kabiri iyo zitagaragaza na busa impamvu zashingiweho mu icibwa ryazo.

[19] Urukiko rusanga mu gusuzuma niba urubanza rwajuririwe rutagaragaza impamvu rushingiyeho, Urukiko rw'Ikirenga, nk'uko byasobanuwe mu manza zinyuranye, rutagomba gusimbura urukiko rwaciye urubanza rwajuririwe ngo rujye gucukumbura niba impamvu rwatanze zifite cyangwa zidafite ishingiro, icyo rusabwa n'itegeko akaba ari ukureba niba nta mpamvu urubanza rwajuririwe rutanga, ariko nyamara igihe hari imikirize yivuguruza ku buryo bukabije ku buryo bituma ireme (substance) ry'imikirize y'urubanza ubwarwo rihinduka, urwo rubanza rugomba gufatwa nk'urutagaragaza na busa impamvu rushingiyeho.

[20] Mu kwemeza ko Munyandamusta atemerewe gutambamira urubanza RC 28.068/99 kuko yarubayemo umuburanyi, Urukiko Rukuru rwasobanuye ko yaruhawemo ijambo mu rwego rwo kurengera inyungu ze nubwo ariko urubanza rutagaragaza uburyo yarujemo, uru rukiko rukaba rusanga ibi bisobanuro bivuguruzanya bikabije kuko umucamanza wagaragaje ko atabona uburyo umuntu yaje mu rubanza atahindukira ngo yemeze ko uwo muntu yarubayemo umuburanyi, uko kwivuguruza gukabije kukaba gutuma urubanza rujuririrwa rufatwa nk'urutagaragaza na busa impamvu rushingiyeho, bityo ubujurire bwa Munyandamutsa

mu Rukiko rw'Ikirenga bukaba bugomba kwakirwa bugasuzumwa.

[21] Urukiko rusanga mbere yo gukomeza urubanza ubwanditsi bw'Urukiko rw'Ikigenga bugomba gutumiza dosiye RC 28.068/99 rwo kuwa 24/04/2000 rwaciwe n' Urukiko rwa Mbere rw'Iremezo rwa Kigali.

III. ICYEMEZO CY'URUKIKO:

[22] **Rwemeye** kwakira ubujurire bwa Munyandamutsa Pastor Issacar ku cyemezo cy'ibanzirizasuzuma.

[23] **Rwemeje** ko bufite ishingiro.

[24] **Rwemeje** ko urubanza ruzakomeza kuwa 05/04/2012.

[25] **Ruvuze** ko bitarenze kuwa 10/02/2012, ubwanditsi bw'Urukiko rw'Ikirenga bugomba kuba bwatumije dosiye y'urubanza RC 28.068/99 rwaciwe kuwa 24/04/2000 n' Urukiko rwa Mbere rw'Iremezo rwa Kigali.

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

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME KUWA 27/01/2012.

Sé	Sé	Sé
Julien HAVUGIYAREMYE	Immaculée NYIRINKWAYA	Fidélité KANYANGE
Umucamanza	Perezida	Umucamanza

Sé
Marcel HABYARIMANA
Umwanditsi w'Urukiko.

IMANZA Z'UBUCURUZI

8. URUKIKO RW'IKIRENGA

N° Y'URUBANZA:RCOMA0007/10/CS
ITARIKI Y'URUBANZA:06/05/2011
HABURANA:UMWARI Marie Agnès, GAKWAYA Innocent, GAKIRENDEKWE Panthaléon, SENYANA Marie Noel, SOMAYIRE RUBONA Freddy na SPINETTE Génèvieve / Société SN BRUSSELS AIRLINES

AMAGAMBO MPINE

.IMANZA Z'UBUCURUZI-UBUJURIRE BWURIRIYE KU BUNDI-NTAKIBUZA KO BWANAREBANA N'IZINDI NGINGO Z'URUBANZA ZIPFA KUBA ZARABURANYWEHO MU RWEGO RWA MBERE-GUKORWA N'UREGWA MU BUJURIRE.

.GUHUZA IMANZA IYO IBIBURANWA BIFITANYE ISANO-ITEGEKO RYA PEREZIDA RIHUZA IMANZA-KUBIBURANISHIRIZA HAMWE NTA TEGEKO RYA PEREZIDA RYABITEGETSE-KUTABIGIRA IMPAMVU YO KUTAKIRA IKIREGO CYATANZWE MU BURYO BUKWIYE-KUBIGIRA IMPAMVU YO KUVANAHO URUBANZA IYO UBISABA ASHOBOYE KUGARAGAZA KO ARI INENGE YO MU RWEGO RUTESHA AGACIRO IBYAKOZWE MU RUBANZA.

.INSHINGANO Z'UMWIKOREZI-KUGEZA ABAGENZI AHO BASEZERANYE-GUKORA IBISHOBOKA BYOSE KUGIRA NGO IYO NSHINGANO IGERWEHO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Ubujurire bwuririye ku bundi ntibugarukira gusa ku ngingo z'uwajuriye w'ibanze(appel principal), bivuze ko ntacyabuza ko ubujurire bwuririye ku bw'uwajuriye w'ibanze bwanareba n'izindi ngingo z'urubanza, zipfa gusa kuba zaraburanyweho mu rwego rwa mbere kandi uregwa mu bujurire asanga ataranyuzwe muri byose mu mikirize y'urubanza rwa mbere.

-Iyo abarega cyangwa abaregwa ari benshi kandi ibiburanwa byose bifitanye isano bikaburanishirizwa hamwe hatabaye itegeko rya Perezida w'Urukiko rihuza ibyo birego, ntibyaba nyuma impamvu y'ivanwaho ry'urubanza mu gihe urisaba atabashije kwerekana ko ukwandika ibirego mu rubanza rumwe bidakozwe na Perezida w'Urukiko ari inenge yo mu rwego rutesha agaciro ibyakozwe mu rubanza (vice de fond).

Umwikorezi ntashobora guhunga inshingano zo kugeza abagenzi aho bagiye yitwaje ko habaye impamvu itunguranye kandi itigobotorwa iyo atagaragaje ko yakoze ibishoboka byose ngo ashake ubundi buryo bwo kugeza abagenzi aho bagiye.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUKIJIJE MU RUHAME, KU WA 06/05/2011, URUBANZA RCOMA 0007/10/CS,MU BURYO BUKURIKIRA:

ABABURANA: - UMWARI Marie Agnès
- GAKWAYA Innocent
- GAKIRENDEKWE Panthaléon
- NSENGIYUMVA Sylvestre
- SENYANA Marie Noel
- SOMAYIRE RUBONA Freddy
- SPINETTE Génèvieve

na

Société SN BRUSSELS AIRLINES

IKIBURANWA : - Action en dommages et intérêts pour violation du contrat de transport.
-Honoraires de 10% du montant de la condamnation
- Dépens

IMITERERE Y'URUBANZA

[1] UMWARI Marie Agnès, GAKWAYA Innocent, GAKIRENDEKWE Panthaléon, NSENGIYUMVA Sylvestre, SENYANA Marie Noel, SOMAYIRE RUBONA Freddy na SPINETTE Génèvieve baguze amatike y'indege ya Sosiyete SN BRUSSELS AIRLINES, yo kuva i Kigali bajya i Bruxelles no kugaruka, maze mu gihe bagombaga kugaruka iyo sosiyete ikuraho ingendo Entebbe / Nairobi - Kigali zari zisanzweho, bituma igarukiriza abo bagenzi i Kampala na Nairobi gusa, ikavuga ko byatewe n'uko Leta y'u Rwanda yari imaze guhagarika mu buryo butunguranye, indege yayo ku kibuga cy'indege i Kanombe maze ntibishoboke gutwara abagenzi kuri izo ngendo.

[2] Bareze iyo sosiyete basaba indishyi zo kuba yarabatereranye bakirwanaho ku mafaranga yose bakoresheje mu gihe bamaze i Kampala na Nairobi, ndetse no kuhava bagaruka i Kigali.

[3] Urukiko Rukuru rw'Ubucuruzi rwemeje ko BRUSSELS AIRLINES igomba gutanga indishyi mbonezamusaruro ziteye zitya : Gakwaya 364.262 frw, Nsengiyumva 287.174 frw, Spinette 282.894 frw, Senyana 247.192frw, Gakirendekwe 261.361 frw, Somayire 261.361 frw, Umwari 261.361 frw ; hamwe n'indishyi z'akababaro (dédommagement du préjudice moral) zihwanye na 1.283.939 frw (ahwanye na 1500 Euros)

kuri buri mugenzi, ndetse n'igihembo cy'avoka (honoraires d'avocat) gihwanye na 1.000.000 frw.

[4] Abarega bajuririye Urukiko rw'Ikirenga bavuga ko urukiko rubanza rwahaye agaciro gake akababaro bagize, bakaba basaba ko buri wese yagenerwa 15.000 euros bari basabye, kandi bakagenerwa igihembo cya avoka kingana na 10% y'ayo.

[5] BRUSSELS AIRLINES nayo yatanze ubujurire bwuririye ku bundi ivuga ko ibirego bitagombaga kwakirwa kuko byatanzwe mu buryo butubahirije amategeko, kuko abarega basa n'abifatanyije kandi ibirego byabo bikaba byarahujwe hatabaye itegeko (ordonnance) rya Perezida w'Urukiko rubifitiye ububasha, ikavuga kandi ko hirengagijwe ko urubanza rwagombaga gucibwa hashingiwe ku mategeko y' Ububiligi kuko BRUSSELS AIRLINES yatwaye abo bagenzi ari imbiligi, ikirego kikaba cyaranatanzwe cyarashaje, hakurikijwe amategeko y'icyo gihugu. Inavuga kandi ko hirengagijwe ko kutabasha kugeza abagenzi i Kigali byatewe n'impamvu zitunguranye zitakwigobotorwa(force majeure).

[6] Iyo sosiyete irasaba kwishyurwa 2.000 Euros y'ibyakoreshejwe mu rubanza harimo n'igihembo cya avoka, ikanasaba indishyi za 1000 Euros zo kuba yarashowe mu rubanza nta mpamvu (*action téméraire et vexatoire*).

[7] Urubanza rwaburanishijwe mu ruhame kuwa 31/03/2011, abarega bahagarariwe na Me NZAMWITA Toy, naho Brussels Airlines ihagarariwe na Me KAVARUGANDA Julien hamwe na Me NIZEYIMANA Boniface.

[8] Abarega babanje gusaba ko ubujurire bwuririye ku bwabo butakwakirwa kuko butagarukira gusa ku kibazo cy'indishyi z'akababaro bajuririye, abaregwa bo bakemeza ko ubwo ubujurire bwabo butanyuranyije n'amategeko; Urukiko rwemeza ko ruzabisuzumira hamwe n'ibindi bibazo bigize urubanza.

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

A. <u>KU BYEREKEYE IYAKIRWA RY'UBUJURIRE BWA BRUSSELS AIRLINES BWURIRIYE KU BUNDI</u>

[9] Inzitizi y'abarega igamije gusaba ko ubujurire bw'uregwa bwuririye ku bwabo butakwakirwa kuko batajuririye urubanza rwose ahubwo bajuririye gusa urugero rw'indishyi z'akababaro bagenewe n'Urukiko rubanza, bakavuga rero ko ubujurire bwuririye ku bundi butagombye

kurebana n'ikindi kitajyanye n'izo ndishyi. Brussels Airlines yo isanga nta kibuza ko ubujurire bwayo bwuririye ku bundi bwarebana n'ibindi bibazo bijyanye n'urubanza rwose.

[10] Harebwe ibiteganywa n'ingingo ya 167 y'Itegeko no 18/24 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo n'izubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, yemera ko uregwa mu bujurire ashobora nawe kujurira yuririye ku bujurire bw'urega, ntaho ivuga ko ubujurire bwuririye ku bundi bugarukira gusa ku kibazo cyajurije uwajuriye bwa mbere, Urukiko rurasanga nta kibuza ko ubujurire bwuririye ku bundi bwanarebana n'izindi ngingo z'urubanza, zipfa gusa kuba zaraburanyweho mu rwego rwa mbere.

[11] Iki gisobanuro kinajyanye kandi n'ibivugwa n'abahanga mu mategeko basobanura ko, ubujurire bwuririye ku bundi bushamikira ku bujurire bw'ibanze, bugakorwa n'uregwa mu bujurire, mu gihe asanga ataranyuzwe kuri byose mu mikirize y'urubanza rwa mbere[11], bikumvikana rero ko ibyo bishobora kuba bitaramunyuze bitaba gusa ibirebana n'ibyajurije uwo baburana.

B.<u>KU BIJYANYE N'UBURYO IKIREGO CYATANZWE MU RUKIKO RUKURU RW'UBUCURUZI</u>.

[12] Nk'uko yanabiburanishaga mu Rukiko Rukuru rw'Ubucuruzi, BRUSSELS AIRLINES ivuga ko abareze bari abantu barindwi batandukanye, bakaba barareze nk'itsinda hatagaragajwe ubwoko bwaryo n'ububasha rifite bwo kurega, kandi ibirego byabo bigahuzwa byandikwa ku inumero imwe bitemejwe n'itegeko (ordonnance) rya Perezida w'Urukiko.

[13] Uburanira abarega asubiza ko nta tegeko ryishwe, kuko n'ubwo ikirego cyatanzwe ari kimwe kuri bose, buri wese yatanze igarama.

[14] Urukiko rurasanga kuba abarega barashatse avoka umwe akajyanira ibirego byabo hamwe, ariko buri wese mu barega yaritangiye igarama nta tegeko byishe, ibyo birego rero bikaba byarubahirije ibiteganywa n'ingingo ya 20 y'Itegeko no 18/2004 ryerekeye imiburanishirize

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[11] ''*L'appel incident vient se greffer sur l'appel principal, il est le fait de l'intimé qui ne s'estime pas <u>totalement</u> satisfait de la solution des premiers juges*.''Reba igitabo cya Melina Douchy-Oudot: ''Procedure civile'', 2ème édition, Paris, 2006, page 366, no 638.

y'imanza z'imbonezamubano iz'umurimo n'iz'ubutegetsi, iteganya ko "*iyo abasangiye inyungu mu rubanza ari benshi, barega cyangwa baregwa, buri wese ku bimureba afite uburenganzira n'inshingano z'ababuranyi*", kuvuga ko bareze batagaragaza ububasha bafite ngo kuko bareze ari nk'ishyirahamwe bikaba nta shingiro bifite kuko batigeze biyita ishyirahamwe cyangwa ngo bagaragare nka ryo, ahubwo buri wese akaba yarigaragaje ku giti cye.

[15] Urukiko rurasanga rero nta mpamvu yagaragajwe ku bijyanye n'itangwa ry'ikirego yatuma ibirego byatanzwe bitakirwa, naho kuvuga ko byanabuzwa kwakirwa n'uko byaburanishirijwe hamwe kandi bitahujwe na Perezida w'Urukiko, iyo ikaba itaba impamvu yo kutakira ikirego cyatanzwe mu buryo bukwiye, ahubwo hashoboraga gusabwa ivanwaho ry'urubanza, iyo habasha kugaragazwa ko ukwandika ibirego mu rubanza rumwe bidahujwe na Perezida w'urukiko ari inenge yo mu rwego rutesha agaciro ibyakozwe mu rubanza, akaba atari byo BRUSSELS AIRLINES yasabye.

C. KU KIBAZO CYO KUMENYA NIBA AMATEGEKO Y'U RWANDA YARASHOBORAGA GUKORESHWA MURI URU RUBANZA.

[16] BRUSSELS AIRLINES ivuga ko hashingiwe ku ngingo ya 19 y'amategeko rusange (conditions générales) yayo agenga kontaro yo gutwara abantu n'ibintu, amasezerano yo gutwara abantu yabaye hagati yayo n'abarega agengwa n'amategeko y'u Bubiligi kuko iyo sosiyete ari iyo muri icyo gihugu, ayo mategeko rusange akaba yibutswa ku matike y'indege abagenzi bagura n'ubwo bataba bayazi ubwayo ariko bakaba bashobora kuyashaka bakayabona.

[17] BRUSSELS AIRLINES inahera aho yemeza ko ikirego cyatanzwe mu Rukiko Rukuru rw'Ubucuruzi cyashaje, kuko ubusaze bw'ibirego nk'ibyo bubaho nyuma y'umwaka umwe, hakurikijwe amategeko y'u Bubiligi.

[18] Ingingo ya 28 y'Amasezerano mpuzamahanga ya Varsovie yo ku wa 12/10/1929 u Rwanda n'u Bubiligi byashyizeho umukono, akaba asumba amategeko y'ibihugu, iteganya, mu gace kayo ka mbere, ko ku bijyanye n'ahagomba kuregerwa, urega afite guhitamo urukiko rw'aho utwara abantu abarizwa, urw'aho afite icyicaro cye cy'ibanze cy'aho akorera, urw'aho afite icyicaro amasezerano yakorewe, cyangwa urw'aho abagenzi bagomba kugezwa, ikanavuga, mu gace kayo ka kabiri ko amategeko y'iburanisha akurikizwa ari ay'aho urukiko rwaregewe.

[19] Bigaragara rero ko kuba abarega barahisemo kugana inkiko z'u Rwanda nk'uko babyemererwa n'Amasezerano Mpuzamahanga yavuzwe haruguru, bitashidikanywaho ko baregeye urukiko rubifitiye ububasha, kandi hakaba hagomba gukurikizwa amategeko y'u Rwanda, bityo, imiburanire y'uko bagombaga gukurikiza amategeko rusange y'iyo sosiyete iniyemerera ko bashobora kuba batarayabonye, ikaba nta shingiro ifite.

[20] No ku bijyanye n'ubuzime bw'ikirego uregwa avuga ko bugomba kureberwa ku mategeko y'Ububiligi hakemezwa ko ubwo buzime bubaho mu mwaka umwe, ingingo ya 29 y'amasezerano mpuzamahanga ya Varsovie yavuzwe haruguru, isobanura ko ubuzime bw'ikirego ari imyaka ibiri, ibarwa ryayo rigakurikiza amategeko y'urukiko rwaregewe, bityo, ubujurire bwa BRUSSELS AIRLINES busaba ko hakurikizwa amategeko y'u Bubiligi bukaba nta shingiro bufite.

D. <u>KU BYEREKEYE INDISHYI ZISABWA</u>

[21] Abarega bajuririye Urukiko rw'Ikirenga bavuga ko Urukiko rubanza rwahaye agaciro gake akababaro bagize, rubagenera indishyi z'akababaro nke cyane zihwanye na 1.500 Euros, bakaba basaba buri wese 15.000 Euros bari basabye kuko basanga ariyo ndishyi ikwiye. Barasaba kandi guhabwa amafaranga y'igihembo cya avoka angana na 10% y'indishyi basaba.

[22] Basobanura ko urwo rugero rw'indishyi basaba rushingiye ku kababaro gakomeye batewe na BRUSSELS AIRLINES yategereje umunsi bagombaga kuza i Kigali akaba ariho ibabwira ko itakihabagejeje, ikaba yaranashakiye abandi bagenzi izindi ndege zibageza aho bajyaga ariko bo ikabareka, ibizeza ko nibagera Kampala cyangwa Nairobi izabashakira ubundi buryo, nyamara bahagera ikabihorera ku buryo bahuye n'ibibazo bikomeye byo gushakisha amacumbi n'uburyo bwo kuyariha ndetse n'ibibatunga mu buryo buruhanyije kuko bitari bwiteguwe. Bavuga ko yabasuzuguye ikabafata nk'aho atari abantu.

[23] BRUSSELS AIRLINES yo ivuga ko nta ndishyi ikwiye gutanga kuko yananiwe kugeza abo bagenzi i Kigali bitewe n'uko indege yayo yagumishijwe na Leta y'u Rwanda i Kigali kandi ariyo yagombaga kuza gutwara abagenzi kuva Nairobi/Kampala, bikaba byarabaye impamvu itunguranye kandi itigobotorwa (force majeure) yatumye ingendo Kampala/Nairobi kugera i Kigali zidashoboka, cyakora ikaba yaremeye kubasubiza gusa amafaranga batanze bagura amatike y'izo ngendo

zitashobotse n'ibyo bakoresheje, babanje kubigaragariza impapuro zerekana ibyo bayakoresheje. BRUSSELS AIRLINES ihakana kuba yarabavanguye n'abandi bagenzi.

[24] Urukiko rurasanga, BRUSSELS AIRLINES, nka sosiyete itwara abantu n'ibintu, yari ifite inshingano zo kugeza abagenzi aho basezeranye (obligation de résultat) itabasha guhunga izo nshingano ivuga ko habaye impamvu itunguranye kandi itigobotorwa ngo nk'uko amasezerano mpuzamahanga ya Varsovie ateganya ko umwikorezi ataryozwa indishyi iyo agaragaje ko yakoze ibishoboka kugirango akumire ingaruka z'ibyakwangirika, nyamara nk'uko Urukiko rubanza rwabisobanuye, uwo mwikorezi akaba ataragaragaje ko yakoze ibishoboka ngo ashake ubundi buryo bwo kugeza abagenzi aho basezeranye, kabone n'ubwo byari bumuhende.

[25] Ku byerekeye urugero rw'indishyi z'akababaro zikwiye, hakurikijwe akababaro abarega bagize kandi bagatewe n'ubushake buke bw'umwikorezi wabashaga gushaka uko abakemurira ikibazo akarangiza inshingano ze, Urukiko rurasanga, buri wese mu barega yakongererwa indishyi z'akababaro zagenwe n'Urukiko rubanza, agahabwa 2.000.000 frw.

[26] Ku bijyanye n'amafaranga y'igihembo cya Avoka, Urukiko rurasanga ayo mafaranga akwiye kugenerwa abareze kuko bagombye kwiyambaza avoka mu rubanza, ariko kuko ayo basaba angana na 10% y'indishyi bifuzaga ari ikirenga, bakaba bagenerwa, mu bushishozi bw'Urukiko 300.000 frw buri wese kuri uru rwego, yiyongera kuri 1.000.000 frw yagenwe mu Rukiko rubanza.

<u>ICYEMEZO CY'URUKIKO</u>

[27] Rwemeje kwakira ubujurire bwatanzwe na UMWARI Marie Agnès, GAKWAYA Innocent, GAKIRENDEKWE Panthaléon, NSENGIYUMVA Sylvestre, SENYANA Marie Noel, SOMAYIRE RUBONA Freddy na SPINETTE Génèvieve, n'ubwa BRUSSELS AIRLINES bubwuririyeho kuko bwatanzwe mu buryo n'inzira bikurikije amategeko;

[28] Rwemeje ko ubujurire bwa UMWARI, GAKWAYA, GAKIRENDEKWE, NSENGIYUMVA, SENYANA, SOMAYIRE RUBONA na SPINETTE bufite ishingiro kuri bimwe, ko ubwa BRUSSELS AIRLINES nta shingiro bufite;

[29] Rukijije ko UMWARI, GAKWAYA, GAKIRENDEKWE, NSENGIYUMVA, SENYANA, SOMAYIRE RUBONA na SPINETTE batsinze; ko

BRUSSELS AIRLINES itsinzwe;

[30] Rutegetse BRUSSELS AIRLINES guha buri wese mu bareze bavuzwe haruguru indishyi z'akababaro zingana na 2.000.000 frw na 1.300.000 frw y'igihembo cya avoka, ni ukuvuga yose hamwe 3.300.000 frw, itayatanga mu gihe cy'ukwezi, ayo mafaranga agakurwa mu byayo ku ngufu za Leta;

[31] Ruyitegetse kwishyura 924.000 frw y'umusongongero wa Leta ahwanye na 4% y'igiteranyo cyose cy'indishyi iciwe (23.100.000 frw), itayatanga mu gihe cy'ukwezi ayo mafaranga akakurwa mu byayo ku ngufu za Leta;

[32] Ruyitegetse kwishyura amagarama y'uru rubanza, ahwanye na 41.700 frw, itayatanga mu gihe cy'iminsi umunani agakurwa mu byayo ku ngufu za Leta;

[33] Ruvuze ko imikirize y'urubanza rwajuririwe ihindutse.

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

Sé
MUGENZI Louis-Marie
Perezida

Sé
MUKAMULISA M. Thérèse
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
UWARUGIRA Jean Baptiste
Umwanditsi

9. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMA0076/09/CS
ITARIKI Y'URUBANZA: 10/02/2012
HABURANA: Société des Grands Lacs /Les associés de la société SOGECCO, Association des Frères Josephites, Frère SEBAKIGA Pie et Frère NDUWAYEZU Calipophore.

AMAGAMBO MPINE

.IMANZA Z'UBUCURUZI-ISOMWA RY'URUBANZA-IYIMURWA RY'ITARIKI Y'ISOMWA RY'URUBANZA-KUBIKORERA INYANDIKOMVUGO-ITARIKI IHERERWAHO MU KUBARA IBIHE BY'UBUJURIRE.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Igihe itariki y'isomwa ry'urubanza yamenyeshejwe ababuranyi bakayisinyira mu iburanisha, iyo kuri iyo tariki ababuranyi batitabye, isomwa rikimurwa inshuro nyinshi kandi bigakorerwa inyandiko mvugo Urukiko rusobanura n'impamvu rukanatangaza indi tariki isomwa ryimuriweho, itariki ihererwaho mu kubara ibihe by'ijurira ni iyo urubanza rwasomeweho ya nyuma ntabwo ari itariki ababuranyi bamenyesherejweho imikirize y'urubanza.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUBURANISHA IMANZA Z'UBUCURUZI, RUKIJIJE MU RUHAME KUWA 10/02/2012 URUBANZA Nº RCOM A 0076/09/CS MU BURYO BUKURIKIRA:

HABURANA:

Uwjajuriye: Société des Grands Lacs en sigle **"SGL"** ayant son siège à Goma au numéro 100/6, Avenue de la Corniche Chantier Mont Goma, Ville de Goma, Province du Nord Kivu en République Démocratique du Congo, ayant pour avocat Me Bugondo Natacha.

Abaregwa: **- Les associés de la Société SOGECCO S.A.R.L, BP 442 Kigali:**

- **Association des Frères Josephites B.P 37 Gitarama;**
- **Frère SEBAKIGA Pie, B.P 1330 Kigali;**
- **Frère Nduwayezu Calipophore, B.P 1330 Kigali,** bose bahagarariwe na Me Karambizi Canisius

Ikiburanwa

-Résiliation du contrat de prestation de services conclu le 16/05/2005
-Dommages et intérêts;
-Paiement du prix des travaux non réalisés estimé à 12.659.596 Frw;
-Intérêts de retard au taux de 18%;
-Frais de procédure et de recouvrement.

I. IMITERERE Y'URUBANZA

[1] Mu rubanza Société SOGECCO S.A.R.L igizwe na Association des Frères Josephites, Frère Sebakiga Pie na Frère Nduwayezu Calipophore yaregagamo Société des Grands Lacs(SGL) isaba iseswa ry'amasezerano bari bagiranye, Urukiko Rukuru rw'Ubucuruzi kuwa 29/09/2009 rwemeje ko ikirego cyabo gifite ishingiro, ko kontaro yo kuwa 16/05/2005 hagati ya Société SOGECCO S.A.R.L na SGL isheshwe ku makosa ya SGL, rutegeka SGL guha abareze 12.659.596 Frw ya fagitire zitishyuwe no kwishyura 18% yayo ku mwaka mu gihe hazaba ubukererwe mu kwishyura. SGL yategetswe kandi kubaha 500.000 Frw y'indishyi n'ayandi 500.000 Frw y'ikurikiranarubanza kandi yose ikayishyurira umusongongero wa Leta ubariwe kuri 4%.

[2] SGL yajuririye Urukiko rw'Ikirenga kuwa 29/10/2009, ubujurire bwayo bukorerwa ibanzirizasuzuma, umucamanza wabishinzwe yemeza ko butakiriwe kubera ko bwatanzwe bukererewe. SGL yamenyeshejwe icyo cyemezo kuwa 12/05/2010, ikijuririra kuwa 24/05/2010, ni ukuvuga

mu gihe cy'iminsi 15 giteganywa n'amategeko. Mu bujurire ku cyemezo cy'ibanzirizasuzuma, uburanira SGL avuga ko umucamanza yemeje ko ubujurire bwayo bwatanzwe bukererewe ariko yibeshye mu ibara ry'ibihe kuko bwatangiwe igihe.

[3] Iburanisha ryashyizwe bwa mbere kuwa 21/04/2011, ariko rigenda ryimurirwa ku matariki atandukanye kugira ngo Me Karambizi ageze ku rukiko icyemezo cy'uko Frère Nduwayezu yitabye Imana hamwe n'icyemezo cyerekana umuzungura we uzakomeza urubanza. Iburanisha nyirizina ryabaye tariki 10/01/2012, SGL ihagarariwe na Me Bugondo Natacha naho Société SOGECCO S.A.R.L ihagarariwena Me Karambizi Canisius.

[4] Me Karambizi yabanje kugeza ku Rukiko icyemezo cy'uwapfuye cya Frère Nduwayezu Calipophore cyatanzwe kuwa 07/11/2011 n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Kagano, anarugezaho icyemezo cyo kuwa 26/10/2011 kiriho umukono wa Notaire n'uwa Frère Justin Rutaganda (Supérieur Général et Représentant legal de la Congrégation des Frères Josephites au Rwanda), aho Frère Rutaganda yemeje ko ashingiye ku mategeko agenga umuryango ahagarariye mu rwego rw'amategeko na Code de Droit Canonique, ko umutungo wa nyakwigendera Frère Nduwayezu Calipophore witabye Imana tariki ya 15/06/2010, weguriwe " Congrégation des Frères Josephites". Urukiko rumaze gusuzuma inyandiko zose rwashyikirijwe, rwemeje ko " Congrégation des Frères Josephites" ari yo muzungura wa Frère Nduwayezu Calipophore, bityo ikaba ariyo igomba gukomeza urubanza rwe.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURA RYACYO

Kumenya niba ubujurire bwa SGL bwaratanzwe mu gihe hashingiwe ku biteganywa n'amategeko ku ibara ry'ibihe by'ubujurire mu manza z'ubucuruzi

[5] Me Bugondo avuga ko umucamanza w'ibanzirizasuzuma yanze kwakira ubujurire SGL yatanze kuwa 29/10/2009, urubanza rujuririrwa rwarasomwe kuwa 29/09/2009, avuga ko bwatanzwe bukererewe nyamara hashingiwe ku ngingo ya 163, 400 na 401 y'Itegeko n°18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, asanga yaribeshye mu ibara ry'ibihe bitewe n'uko ibihe bibarwa mu minsi bitangira kubarwa uhereye ku munsi ukurikira uwo igikorwa cyabayeho kandi ko iminsi y'ikiruhuko yemewe itabarwa.

[6] Yongeraho ko SGL yubahirije igihe cyo kujurira , ibyo akabishingira ku mpamvu y'uko ukwezi kwa cumi 2009 kwari gufite "dimanche/Sunday", enye (4). Avuga kandi ko umucamanza w'ibanzirizasuzuma yirengagije ko Urukiko rwimuye umunsi w'isomwa ry'urubanza kuko ababuranyi bari bamenyeshejwe ko ruzasomwa tariki ya 04/11/2009 ariko ruza gusomwa tariki ya 29/09/2009.

[7] Me Karambizi avuga ko urubanza rujuririrwa rwaciwe kuwa 29/09/2009, SGL itanga ubujurire bwayo kuwa 29/10/2009, ko rero hakurikijwe ibiteganywa n'ingingo ya 163 y'Itegeko n°18/2004 ryo ku wa 20/06/2004 iteganya ko ibihe byo kujurira ari ukwezi kubarwa haherewe ku munsi urubanza rwasomeweho n'iya 402 y'itegeko rimaze kuvugwa iteganya ko ibihe by'ubujurire bibarwa mu kwezi birangira ku munsi ubanziriza itariki ya nyuma igikorwa kigomba kurangiriraho, umunsi wa nyuma SGL yari ifite wo gutanga ubujurire ari tariki ya 28/10/2009, bityo akaba asanga umucamanza w'ibanzirizasuzuma yaremeje ko ubujurire bwa SGL bwakererewe ashingiye ku biteganywa n'ingingo zimaze kuvugwa.

[8] Ku byerekeye uburyo ibihe by'ubujurire bibarwa, ingingo ya 47 y'Itegeko Ngenga nº 01/2004 ryo kuwa 29/01/2004 rigenga imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi rikuzuwa kugeza ubu, iteganya ko mu manza mbonezamubano igihe cyo kujurira ari ukwezi kumwe gutangira kubarwa guhera ku munsi w'isomwa ry'icibwa ry'urubanza ku muburanyi wari uhari cyangwa ahagarariwe ku munsi wa nyuma w'iburanisha, ingingo ya 163 y'Itegeko n° 18/2004 ryo ku wa 20/6/2004 iteganya nayo ko *« igihe ntarengwa cyo kujurira ari ukwezi kumwe ; ko icyo gihe gitangira kubarwa, ku manza zaciwe ababuranyi bombi bahari cyangwa ku manza ababuranyi bamenyeshejwe umunsi w'isoma ntibitabe, kuva umunsi zisomwe »* .

[9] Ingingo ya 47 n'iya 163 zivuzwe haruguru, zigaragaza ko ibihe byo kujurira mu manza mbonezamubano n'iz'ubucuruzi bibarwa mu mezi aho kuba mu minsi nk'uko bivugwa n'uhagarariye SGL. Ingingo ya 402 y'Itegeko n°18/2004 ryo ku wa 20/06/2004 ryavuzwe haruguru iteganya ko " Ibihe byagenwe mu mezi no mu mwaka, bibarwa kuva ku itariki ibanza kugeza ku munsi ubanziriza itariki ya nyuma igikorwa kigomba kurangiriraho. Urukiko rurasanga rero urubanza SGL iburana na Société SOGECCO S.A.R.L ari urubanza rw'ubucuruzi, bityo ibihe by'ubujurire bikaba bigomba kubarwa mu mezi, ni ukuvuga ukwezi kumwe guteganywa n'ingingo z'amategeko zimaze kuvugwa.

[10] Ku kibazo cyo kumenya niba SGL yarajuriye ikererewe, dosiye igaragaza ko urubanza RCOM 0463/09/HCC rwaburanishijwe

kuwa 11/08/2009 ababuranyi bombi bahari, SGL ihagarariwe na Me Rwangampuhwe naho Société SOGECCO S.A.R.L ihagarariwe na Me Karambizi Canisius. Iburanisha rirangiye, Urukiko rwatangaje ko isomwa ry'urubanza rizaba kuwa 11/09/2009, ababuranyi bose bagenda basinyiye iyo tariki ; uwo munsi ugeze, urukiko rumenyesha ko isomwa ry'urubanza ryimuriwe kuwa 25/09/2009. Kuri uyu munsi isomwa nabwo ntiryabaye kubera ko hari ibyo urukiko rwari rugisuzuma, rumenyesha ko ryimuriwe kuwa 29/09/2009, ari naho rwasomwe mu ruhame, nta muburanyi numwe uhari.

[11] Hakurikijwe ingingo z'amategeko zavuzwe haruguru n'ibyabaye bivuzwe, Urukiko rurasanga SGL mu iburanisha rya nyuma yaramenyeshejwe ko isomwa ry'urubanza rizaba kuwa 11/09/2009, uwo munsi ntiyitaba. Kuba isomwa ryaragiye ryimurwa ariko urukiko rukabikorera inyandiko mvugo rusobanura impamvu kandi rugatangaza indi tariki isomwa ryimuriweho, SGL itabigira impamvu yatuma ubujurire yakoze ikererewe bwakirwa bitewe ni uko itamenye umunsi w'isomwa ry'urubanza, kuko iyo iza kuba yaritabiriye amasomwa y'urubanza n'uko yagiye yimurwa, yari kumenya neza uko byagendekeye urubanza rwayo, bityo ikamenya itariki nshya isomwa ryimuriweho. Urukiko rurasanga ahubwo, kuba SGL itaritabiriye imihango y'isomwa yafatwa nk'aho yamenyeshejwe umunsi w'isomwa ry'urubanza, bityo igihe cy'ukwezi cyo kujurira kikaba kigomba kubarwa guhera ku itariki ya 29/09/2009 urubanza rwasomweho.

[12] Urukiko rurasanga urubanza RCOM 0463/09/HCC, SGL yajuririye rwaraciwe kuwa 29/09/2009, ubujurire bwayo ibugeza mu bwanditsi bw'Urukiko rw'Ikirenga kuwa 29/10/2009, ni ukuvuga mu gihe kirenga ukwezi giteganywa n'ingingo ya 47 y'Itegeko Ngenga nº 01/2004 ryo kuwa 29/01/2004 ryavuzwe haruguru, ingingo za 163 na 402 z'Itegeko n° 18/2004 ryo ku wa 20/6/2004, bityo ubujurire bwayo ku cyemezo cy'ibanzirizasuzuma bukaba nta shingiro bufite.

IV. ICYEMEZO CY'URUKIKO

[13] **Rwemeye** kwakira ubujurire bwa Société des Grands Lacs (SGL) ku cyemezo cy'ibanzirizasuzuma kuko bwakozwe mu buryo n'inzira bikurikije amategeko;

[14] **Rwemeje** ko ubwo bujurire nta shingiro bufite;

[15] **Rutegetse** Société des Grands Lacs (SGL) gutanga amagarama y'uru rubanza angana na 34.300Frw, itayatanga mu gihe cy'iminsi umunani, akavanwa mu byayo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KUWA 10/02/2012

Sé
Sam RUGEGE
Perezida

Sé
MUKANYUNDO Patricie
Umucamanza

Sé
HAVUGIYAREMYE Julien
Umucamanza

Sé
GAKURU Ahmed
Umwanditsi w'Urukiko

IMANZA Z'UBUTEGETSI

10. URUKIKO R'IKIRENGA

N° Y'URUBANZA: R.AD.A 001/11/cs
ITARIKI Y'URUBANZA: 27/04/2012
HABURANA: KIST mu izina ry'uyihagarariye / HAFASHIMANA Anastase

AMAGAMBO MPINE

.IMANZA Z'UBUTEGETSI-GUTAKAMBA-GUTAKAMBA INSHURO NYINSHI-ITARIKI IHERERWAHO MU KUBARA IBIHE BYO KUREGERA URUKIKO-KUTABA NGOMBWA GUTEGEREZA IGISUBIZO CYERUYE CY'UMUTEGETSI WATAKAMBIWE

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Gutakamba bikorwa inshuro imwe, iyo habayeho gutakambira umutegetsi wafashe icyemezo inshuro nyinshi, itakamba rya mbere ryakozwe niryo riherwaho mu kubara ibihe byo gutanga ikirego, uwatakambye ategereje igisubizo cy'Ubutegetsi, ntagomba kurenza ibihe byateganyirijwe itangwa ry'ikirego.

URUKIKO RW'IKIRENGA RUBURANISHA IMANZA Z'UBUTEGETSI, RUKIJIJE MU RUHAME URUBANZA RADA 0001/11/CS KUWA 27/04/2012 MU BURYO BUKURIKIRA:

ABABURANYI:

Uwajuriye : KIST mu izina ry'uyihagarariye, iburanirwa na Me Mbonera Théophile.

Uregwa : Hashakimana Anastase, mwene Habimana na Mukankaka, utuye mu Mudugudu wa Kigarama, Akagari ka Nyakabanda II, Umurenge wa Nyakabanda, Akarere ka Nyarugenge, Umujyi wa Kigali, uburanirwa na Me Rudakemwa Jean Félix.

IKIBURANWA:

- Gusaba kwishyurwa agahimbazamusyi (prime de technicité) kajyana na ICT atahawe.
- Indishyi z'akababaro atahawe zingana na 2.000.000 frw.
- Amafaranga y'ikurikirana rubanza angana na 500.000 frw.
- Amafaranga y'igihembo cya avocat angana na 500.000 frw.

I. IMITERERE Y'URUBANZA

[1] Hashakimana Anastase yakoreye KIST ari umwarimu wa ICT, amaze gusezera ku kazi ku bushake, yandikira ubuyobozi bwa KIST asaba ibirarane by'agahimbazamusyi kagenerwaga abakozi bakora imirimo ya ICT kemejwe n'inama y'abaminisitiri atahawe mu gihe cy'imyaka itatu n'igice. Avuga ko yagiye yandika andi mabaruwa ariko ntabone igisubizo kugeza tariki ya 23/04/2009 aho yahabwaga igisubizo ko Minisiteri y'imari yavuze ko abakozi b'abarimu batazahabwa ako gahimbazamusyi.

[2] Kuwa 21/05/2009, Hashakimana yareze KIST mu Rukiko Rukuru, maze rwemeza ko KIST igomba kumuriha amafaranga yose hamwe angana na 4.535.000 frw akubiyemo ibirarane by'agahimbazamusyi kuko rwasanze abandi bakozi baragahawe, indishyi z'akababaro n'ay'igihembo cya avoka.

[3] Ku bijyanye n'inzitizi uburanira KIST yari yatanze avuga ko ikirego cye kitakwakirwa kuko yareze atinze, urukiko rwasobanuye ko itegeko ritavuga inshuro umuntu agomba gutakamba, rusanga ikirego cye kigomba kwakirwa kuko yatakambye inshuro nyinshi ariko akarega mu kwezi yatakambiyemo bwa nyuma.

[4] KIST yajuririye Urukiko rw'Ikirenga, uyiburanira avuga ko Urukiko rwakiriye ikirego cya Hashakimana kandi cyaratazwe mu gihe kirekire kitemewe n'amategeko nyuma yo gutakamba. Avuga na none ko Urukiko rutacukumbuye neza ngo rurebe ugenewe

guhabwa agahimbazamusyi uwo ari we hakurikijwe icyemezo cy'Inama y'abaminisitiri n'ibisobanuro bya Minisiteri y'abakozi ba Leta n'iy'Imari zari zishinzwe kugishyira mu bikorwa. Urukiko kandi ngo rwaciye indishyi KIST ruvuga ko yanze kwishyura nkana Hashakimana kandi yarashingiye ku mabwiriza y'urwego rushinzwe gushyira mu bikorwa icyemezo cy'inama y'abaminisitiri gitanga agahimabazamusyi.

[5] Mu bujurire bwuririye ku bundi, Hashakimana asaba 500.000 Frw yahaye Avoka mu rwego rw'ubujurire na 500.000 Frw y'ikurikiranarubanza kuri urwo rwego, n'inyungu za 24% z'amafaranga yatsindiye ku rwego rwa mbere zihwanye na 1.365.000 Frw.

[6] Urubanza rwaburanishijwe mu ruhame tariki ya 20/03/2012, KIST iburanirwa na Me Mbonera Théophile, naho Hashakimana aburanirwa na Me Rudakemwa Jean Félix.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO:

Kumenya niba ikirego cya Hashakimana kitaragombaga kwakirwa n'Urukiko Rukuru.

[7] Mbere yo gusuzumwa urubanza mu mizi, ni ngombwa kubanza gusuzuma niba Urukiko Rukuru rwaragombaga kwakira ikirego cyatanzwe na Hashakimana.

[8] Me Mbonera avuga ko Urukiko Rukuru rwakiriye ikirego cya Hashakimana ruvuga ko gifite ishingiro kandi kitaragombaga kwakirwa kuko cyakerewe hakurikijwe ibiteganywa n'ingingo ya 339 y'Itegeko nº 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Asobanura ko itakamba rya mbere Hashakimana yarikoze kuwa 18/01/2008 mu ibaruwa yandikiye KIST aho yagaragazaga ko yatangiye gusaba agahimbazamusyi mu kwezi kwa cyenda 2007 ari hamwe n'abandi bakozi bagenzi be, bo bakagahabwa, we ntagahabwe, byumvikanisha ko yatakambaga ngo agahabwe kuko yari amaze kumenya ko atashyizwe mu bagomba kugahabwa. Asanga rero Hashakimana yaragombaga kwitega igisubizo ku itakamba rye mu gihe kitarenze amezi abiri (2), kitamushimisha cyangwa ntasubizwe muri icyo gihe, agatanga ikirego mu rukiko mu gihe kitarenze amezi atandatu (6) uhereye igihe yasubirijwe cyangwa nyuma y'amezi 2 niba adasubijwe, ariko ngo siko yabigenje kuko yatanze ikirego mu mwaka wa 2009 hashize igihe kirenze umwaka n'igice atakambye.

[9] Me Mbonera avuga kandi ko Hashakimana yaje kumenya ko yakerewe kurega yongera kwandika bwa kabiri kuwa 9/4/2008 atakamba, ndetse n'ubwa gatatu kuwa 18/09/2008 nk'aho itakamba rye rya mbere ritari rifite agaciro gahagije katuma ariheraho atanga ikirego cye mu rukiko, kwakirwa kw'icyo kirego rero akaba ari

ugushyigikira uburangare bwe.

[10] Avuga na none ko kuba Urukiko Rukuru rwaravuze ko itakamba rikwiye guhabwa agaciro ari irya nyuma ngo kuko umuyobozi watakambiwe yaritanzeho igisubizo cyeruye, nta kuri kurimo kuko itakamba rikorewe ubutegetsi ntibutange igisubizo cyeruye ridata agaciro karyo, ko ahubwo uwatakambye ntasubizwe nyuma y'amezi 2 agira uburenganzira bwo kurega bumara amezi 6 (ingingo ya 339 y'Itegeko nº 18/2004 ryo kuwa 20/06/2004), atabukoresha akabutakaza.

[11] Me Rudakemwa uburanira Hashakimana avuga ko Urukiko Rukuru rwatanze ibisobanuro bihagije kandi byumvikana kuri iyo nzitizi yo kutakira ikirego cya Hashakimana yari yatanzwe na KIST, ubujurire bwayo bukaba ntaho bushingiye kuko ingingo ya 339 y'Itegeko nº 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, itavuga ko umuntu adashobora gutakamba inshuro zirenze imwe, ko iyo atakambye ntibamusubize bimubuza kongera gutakamba. Asanga rero mu gihe Hashakimana atari ahawe igisubizo mu gihe cy'amezi 2 yari afite ububasha bwo kongera gutakamba kugira ngo abone igisubizo kitaziguye.

[12] Ku byerekeye iyakirwa ry'ikirego gisaba gukuraho icyemezo cy'ubutegetsi, ingingo ya 339 y'Itegeko nº 18/2004 ryo kuwa 20/06/2004 ryavuzwe haruguru, iteganya ko icyo kirego cyakirwa gusa iyo cyerekeye icyemezo cyeruye cyangwa kiteruye. Mbere yo kugitanga, unenga icyemezo cy'umutegetsi agomba kubanza gutakambira umutegetsi wagifashe, nawe agasubiza mu gihe cy'amezi abiri (2), atasubiza ubutakambe bugafatwa ko atabwemeye. Mu gihe uwatakambye atishimiye igisubizo ahawe, afite igihe cy'amezi atandatu (6) cyo kuregera urukiko gitangira kubarwa kuva ku munsi yaboneyeho igisubizo, yaba nta gisubizo yabonye, icyo gihe kigatangira kubarwa nyuma y'amezi abiri (2) avugwa haruguru.

[13] Hashakimana yandikiye umuyobozi wa KIST kuwa 18/01/2008 asaba guhabwa ibirarane by'agahimbazamusyi by'imyaka ya 2003, 2004, 2005 n'igice cy'umwaka wa 2006, avuga ko atari ubwa mbere abisaba kandi ko bagenzi be bo bahawe ako gahimbazamusyi we ntakabone, yongera kwibutsa tariki ya 9/4/2008 avuga ko atanze ukwezi kugirango icyo kibazo kibonerwe umuti, bitaba akitabaza amategeko, aza gutanga ikirego mu Rukiko Rukuru tariki ya 21/05/2009.

[14] Urukiko rurasanga hakurikijwe ibiteganywa n'ingingo y'itegeko ryavuzwe haruguru, hatabaho gutakambira umutegetsi wafashe icyemezo inshuro nyinshi, ahubwo itakamba rya mbere rikozwe ari ryo riherwaho habarwa igihe cyo gutanga ikirego. Ibyo ni nabyo byemejwe n'Urukiko rw'Ikirenga, Ishami ry'Urukiko rw'Inama ya Leta mu manza zitandukanye[12]. Byongeye kandi, si ngombwa ko

[12] - Urubanza Nº 716 bis/14.06/98, Mbonabucya c/ Isanduku y'Ubwiteganyirize bw'Abakozi

utakamba ategereza igisubizo cyeruwe cy'umuyobozi kugirango abone gutanga ikirego cye, kuko mu gihe adasubijwe hagashira amezi abiri, bifatwa nk'aho yahakaniwe, akaba afite amezi 6 kugirango aregere urukiko.

[15] Bigaragara rero ko Hashakimana yareze KIST mu Rukiko Rukuru tariki ya 21/05/2009, igihe giteganywa mu ngingo yavuzwe cyararenze uhereye igihe yatakambiye bwa mbere kuwa 18/01/2008, ikirego cye kikaba kitaragombaga kwakirwa ngo gisuzumwe, bityo rero urubanza rwajuririwe rukaba rugomba kuvanwaho, hatiriwe hasuzumwa izindi mpamvu z'ubujurire za KIST, n'iz'ubujurire bwuririye ku bundi bwa Hashakimana.

III. ICYEMEZO CY'URUKIKO

[16] Rwemeje ko ubujurire bwa KIST bufite ishingiro.

[17] Rwemeje ko ikirego cya Hashakimana Anastase kitagombaga kwakirwa n'Urukiko Rukuru kuko cyakerewe.

[18] Rwemeje ko urubanza RAD 0059/09/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 30/11/2010 ruvanyweho.

[19] Rutegetse Hashakimana Anastase kwishyura amafaranga 16.400 y'amagarama y'urubanza, atayatanga mu gihe cy'iminsi 8, ayo mafaranga agakurwa mu bye ku ngufu za Leta.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME TARIKI YA 27/04/2012

Sé	Sé	Sé
MUKANDAMAGE M.Josée	**MUGENZI Louis Marie**	**MUNYANGERI N.Innocent**
Umucamanza	**Perezida**	**Umucamanza**

Sé
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

y'u Rwanda.
- Urubanza Nº 718/14.06/99, Muhayeyezu Albert c/ Leta y'u Rwanda.
- Urubanza Nº 670/14.06/2000, Musoni Frédéric c/ Leta y'u Rwanda.

IMANZA Z'UMURIMO

11. URUKIKO RUKURU

N° Y'URUBANZA: RSOCA0031/10/HC/KIG
ITARIKI Y'URUBANZA: 14/07/2011
HABURANA: GORILLAND SAFARI LTD / DUSABINEMA Alphonse

AMAGAMBO MPINE

IMANZA Z'UMURIMO-IMPAMVU ISHINGIRWAHO MU KWIRUKANA UMUKOZI-KUBA YUMVIKANA KANDI ISOBANUTSE-GUSHYIRWA MU IBARUWA YIRUKANA UMUKOZI-KUBA IMPAMVU IRI MU IBARUWA YIRUKANA UMUKOZI IDASOBANUTSE BIFATWA NK'AHO NTA MPAMVU NA BUSA YASHINGIWEHO MU KUMWIRUKANA.

.INSHINGANO Z'ISANDUKU Y'UBWITEGANYIRIZE BW'ABAKOZI YO KWISHYUZA IMISANZU Y'ABAKOZI-KUTABIFATA NK'AHO BIBUZA UMUKOZI WAKAYITANGIWE KWIBUTSA CYANGWA GUSABA KO YATANGWA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Umukozi yirukanwa hashingiwe ku mpamvu isobanutse kandi yumvikana, iyo mpamvu igomba gushyirwa mu ibaruwa imwirukana, iyo impamvu iri mu ibaruwa isesa amasezerano idasobanutse bifatwa nk'aho nta mpamvu na busa yashingiweho mu gusesa amasezerano y'akazi .

-Nubwo isanduku y'ubwiteganyirize bw'abakozi ariyo ifite inshingano yo kwishyuza imisanzu ku bakoresha batayitangiye abakozi babo, ntakibuza umukozi wakayitangiwe kwibutsa cyangwa gusaba ko iyo misanzu yatangwa.

URUKIKO RUKURU, RURI I KIGALI KU CYICARO CYARWO, RUBURANISHIRIZA MU RUHAME IMANZA Z'UMURIMO KU RWEGO RW'UBUJURIRE, RUCIYE URU RUBANZA MU BURYO BUKURIKIRA, NONE KUWA 14/07/2011:

ABABURANA :

GORILLAND SAFARIS LTD

na

DUSABINEMA Alphonse,mwene BARUTANUMWE na MUKANDOLI, Wavutse muri 1975,akaba atuye Nyakabanda-Nyarugenge-Umujyi wa Kigali.

IKIBURANWA: Ubujurire bw'urubanza RSOC 0014/09/TGI/Nyge;

I. IMITERERE Y'URUBANZA

1. Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza RSOC 0014/09/TGI/NYGE DUSABINEMA Alphonse yarezemo GORILLAND SAFARIS LTD, rukiza ko GORILLAND SAFARIS LTD itsinzwe, maze ntiyishimira icyo cyemezo, bituma ijuririra urwo rubanza muri uru Rukiko ;

2. GORILLAND SAFARIS LTD ikaba yarajuriye ivuga ko inenga urubanza ijuririra, kuba rwarayiciye indishyi nyinshi kandi yari yasobanuye impamvu DUSABINEMA Alphonse yirukanywe bitewe ni uko poste ye yari yabaye supprimé, kandi ko urwo rubanza rwahaye DUSABINEMA imperekeza kandi atari yigeze ayisaba mu bujyenzuzi bw'umurimo, ndetse rukaba rwaranamugeneye amafaranga yatangwaga mu gihe cya konji, kandi nta cyagaragazaga ko iyo konji ihari cyangwa ko yanayisabye ngo ayimwe, akanahabwa n'indishyi zituruka ku cyemezo cy'uburambe ku kazi, kandi atarigeze agisaba ngo akimwe,kuko cyari cyarakorewe rimwe na décompte final, bityo ko basaba ko ayo makosa yakosorwa muri uru rwego rw'ubujurire ;

3. Me MUTUYIMANA waburanye ahagarariye GORILLAND SAFARIS LTD anavuga ko bananenga uburyo urubanza rujuririrwa rwategetse uruhande ahagarariye kwishyura Caisse Sociale, hirengagijwe ingingo ya 10 y'itegeko n° 6/2003 ryo kuwa 22/03/2003 rihindura kandi rikuzuza itegeko teka ryo kuwa

22/08/1974 rigenga Caisse Sociale kuri paragraphe ya 2, aho umukoresha yishyuzwa na Caisse sociale, aho kwishyuzwa n'umukozi, ndetse ko bananenga n'uburyo Urukiko rwaciye uru rubanza ku rwego rwa mbere, rwabategetse kwishyura amafaranga y'ingendo atagira ibimenyetso, ndetse rukanabategeka kwishyura n'igihembo cya avoka babona ari kinini ;

4. Me MUNYANKINDI waburanye ahagarariye uruhande ruregwa, avuga ko abona impamvu uwajuriye atanga nta shingiro zifite, ko ahubwo batanze ubujurire bwuririye ku bwabo, basaba ko amafaranga y'indishyi z'akababaro n'iz'ituruka ku kwimwa icyemezo cy'akazi bagenewe ku rwego rwa mbere, yakwikuba 6 umushahara w'uwo ahagaragariye aho kwikuba 4 gusa, anasaba ko ibirarane by'imisanzu y'isanduku y'ubwiteganyirize bw'abakozi, y'igihe cy'amezi 11 yagezwa mu isanduku y'ubwiteganyirize bw'abakozi, ndetse ko n'indishyi zo gusiragizwa mu nkiko bazisabye bakazimwa ku rwego rwa mbere, ubu bakaba basaba ko uru Rukiko rwabikosora bakazigenerwa, anasaba ko rwanagena n'igihembo cya avoka kuri uru rwego rw'ubujurire ;

II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA

KU KIJYANYE N'IMPAMVU YATUMYE DUSABINEMA Alphonse YIRUKANWA MU KAZI

5. Me MUTUYIMANA waburanye ahagarariye uruhande rwajuriye, avuga ko ku rwego rwa mbere bemeje ko uregwa yirukanywe nta mpamvu yumvikana, bikanatuma babategeka kumwishyura indishyi nyinshi, kandi yarirukanywe kubera ko akazi ke kari katagihari nyuma yivugururwa ry'imirimo muri GORILLAND SAFARIS LTD ;

6. Uhagarariye uregwa avuga ko iyo mpamvu y'ubujurire nta shingiro ifite, ngo kuko abona uwo ahagarariye yarirukanywe nta mpamvu yumvikana nk'uko byemejwe ku rwego rwa mbere ;

7. Urukiko rukaba rubona nk'uko Urukiko rwaciye uru rubanza ku rwego rwa mbere rwabyemeje, DUSABINEMA Alphonse yarirukanywe mu kazi nta mpamvu yumvikana ishingiweho, kuko n'ubwo uhagarariye GORILLAND SAFARIS LTD yaburanye avuga ko anenga uburyo byemejwe ko uregwa yirukanywe nta mpamvu

yumvikana ishingiweho kandi barasobanuye ko bamwirukanye mu kazi bitewe ni uko akazi ke yakoraga kari kavanyweho, nyamara iyo urebye ibaruwa imusezerera mu kazi igaragara kuri cote ya 14 ya dosiye y'uru rubanza, mu gika cyayo cya 2, isobanura ko icyemezo cyo gusesa amasezerano y'umurimo cyafashwe kijyanye n'ivugurura ry'imiterere y'imirimo ikigo cya GORILLAND SAFARI cyiyemeje guhindura, ariko ikaba nta na hamwe igaragaza ko akazi ke nyirizina kavanyweho, ibyo bikaba bigaragaza ukudasobanuka kw'impamvu yatumye hafatwa icyemezo cyo kwirukana DUSABINEMA Alphonse mu kazi, kuko kuvuga gusa ko habaye ivugururwa mu miterere y'akazi y'ikigo, bidasobanuye ko akazi runaka katagihaye, ibyo rero, nk'uko abahanga mu mategeko babivuga, bikaba bivuze ko kuba impamvu yashingiweho n'umukoresha mu kwirukana uregwa mu kazi itarasobanutse, bifatwa nk'aho nta mpamvu na busa yashingiweho mu gusesa ayo masezerano y'umurimo(… *« l'imprécision des motifs invoqués par l'employeur pour justifier la rupture du contrat de travail, équivaut à l'absence des motifs »* ; reba MUKADI BONYI, in Litiges individuels du travail,p.65 ;

8. Kubera ibimaze gusobanurwa haruguru, rusanga iyi mpamvu y'ubujurire nta shingiro ifite, bityo kuba uregwa yaragenewe indishyi ku rwego rwa mbere zishingiye ku kwirukanwa mu kazi nta mpamvu yumvikana ishingiweho, bikaba nta kosa ribigaragaramo, ari nayo mpamvu uru Rukiko rubona ntacyo rwabihinduraho;

KU KIJYANYE N'IMPEREKEZA

9. Uwajuriye avuga ko banenga uburyo uregwa yagenewe amafaranga y'imperekeza kandi ntayo yigeze aregera mu bugenzuzi bw'umurimo, uhagarariye uregwa avuga ko iyo ngingo y'ubujurire nta shingiro ifite, ngo kuko iyo ngingo bayigejeje mu bujyenzuzi bw'umurimo ;

10. Urukiko rukaba rubona inyandiko yo mu Bujyenzuzi bw'umurimo igaragara kuri cote ya 17 y'iyi dosiye, igaragaza ko ibijyanye n'imperekeza byari bijyize imwe mu ngingo zagombaga kubanza guganirwaho n'impande zombi ziburana uru rubanza ;

KU KIJYANYE N'INDISHYI ZIHABWA UWIMWE ICYEMEZO CY'UMURIMO

11. Uwajuriye avuga ko uregwa yahawe indishyi zituruka ku kuba atarahawe icyemezo cy'akazi, kandi ntacyo yigeze asaba ngo akimwe, naho uhagarariye uregwa akaba avuga ko icyo cyemezo uwo ahagarariye yanditse agisaba umukoresha we nta kimuhe, ndetse ko kugeza na n'ubu ntacyo aramuha ;

12. Urukiko rukaba rubona kuri cote ya 17 y'iyi dosiye, ingingo impande zombi ziburana uru rubanza zari zihamagariwe kugerageza ubwumvikane imbere y'ubujyenzuzi bw'umurimo, icyemezo cy'umurimo, ari imwe muri zo, ndetse nk'uko uhagarariye uregwa yaburanye abivuga, ibaruwa yo kuwa 04/09/2008 uregwa yandikiye uwajuriye amusaba ko bakemura ikibazo mbere yo kugana inkiko, bikaba bigaragaza ko icyo cyemezo uregwa yagisabye uwari umukoresha we ntakimuhe, kandi kuba cyari cyakorewe rimwe na décompte final bikaba bitavuga ko yagihawe, bityo kuba yarahawe indishyi zateganywaga mu gika cya 3 cy'ingingo ya 30 y'itegeko n° 51/2001 ryo kuwa 30/12/2001 ryagengaga umurimo, uru Rukiko rukaba rusanga nta kosa ryakozwe ryakosorwa kuri uru rwego rw'ubujurire;

KU KIJYANYE NA KONJI

13. Uwajuriye avuga ko ananenga uburyo ku rwego rwa mbere Urukiko rwageneye uregwa amafaranga yatangwaga mu kigwi cya konji rutitaye ku kukumenya niba ayo ma konji ariho koko, cyangwa ko yanasabye umukoresha we kuzijyamo ngo azimwe,naho uhagarariye uregwa asubiza ko asanga kuba ku rwego rwa mbere uwo ahagarariye yaragenewe ayo mafaranga yatangwaga mu kigwi cya konji biri mu kuri,kuko yari amaze gusaba konji kabiri umukoresha atazimuha ;

14. Urukiko rukaba rubona koko muri dosiye y'uru rubanza kuri cote ya 19 n'iya 25, uregwa yarandikiye umukoresha we amusaba konji, umukoresha akaba ataragaragaje ko ayo ma konji yayemerewe akayajyamo,cyangwa se ko yari yarayagiyemo mbere yo kwandika ayasaba, kandi ari byo byari kugaragaza ko adakwiye guhabwa amafaranga atangwa mu kigwi cyayo, bityo kuba ku rwego rwa mbere yarahawe ayo mafaranga yateganywaga mu ngingo ya 72 y'itegeko n° 51/2001 ryo kuwa 30/12/2001

ryagengaga umurimo, rukaba rubona nta nenge ibirimo, ari nayo mpamvu bitagomba guhinduka kuri uru rwego rw'ubujurire;

KU KIJYANYE N'IMISANZU Y'ISANDUKU Y'UBWITEGANYIRIZE BW'ABAKOZI

15. Uwaburanye ahagarariye GORILLAND SAFARIS LTD avuga ko kuba urubanza rujuririrwa rwategetse uruhande ahagarariye kwishyura Caisse Sociale, asanga harirengagijwe ibiteganywa mu ngingo ya 10 y'itegeko n° 6/2003 ryo kuwa 22/03/2003 rihindura kandi rikuzuza itegeko teka ryo kuwa 22/08/1974 rigenga Caisse Sociale kuri paragraphe ya 2, aho umukoresha yishyuzwa na Caisse sociale, aho kwishyuzwa n'umukozi, naho uhagarariye uregwa akavuga ko we asanga kuba urukiko rwaciye uru rubanza ku rwego rwa mbere rwarategetse GORILLAND SAFARIS LTD gutanga ibirarane by'imisanzu yo mu isanduku y'ubwiteganyirize bw'abakozi bir mu kuri, ngo kuko ntayo yahawe ngo ayashyire mu mufuka we, bityo akaba asaba ko bitahinduka;

16. Ukuriko rukaba rubona, n'ubwo koko ingingo y'itegeko ryavuzwe haruguru rigenga isanduku y'ubwiteganyirize bw'abakozi iteganya ko Isanduku y'Ubwiteganyirize bw'Abakozi ari yo ifite inshingano yo kwishyuza iyo misanzu ku mukoresha utarayitanze, nta naho ibuza umukozi wakayitangiwe kwibutsa cyangwa gusaba ko byakorwa, cyane ko binumvikana ko ari we wa mbere ufite inyungu mu gutangirwa iyo misanzu, bityo rukaba rubona mu kugena ko uwajuriye yakuzuza inshingano ze yateshutsweho nk'umukoresha, nta kosa ribirimo ryakosorwa kuri uru rwego rw'ubujurire ;

KU KIJYANYE N'AMAFARANGA Y'INGENDO N'AY'IGIHEMBO CYA AVOKA

17. GORILLAND SAFARIS LTD yanajuriye uyihagarariye avuga ko ananenga urubanza rwaciwe ku rwego rwa mbere, kuba rwarageneye uregwa amafaranga y'ingendo adashingiye ku bimenyetso, ndetse rukanagena amafaranga y'igihembo cya avoka abona ari menshi, naho uhagarariye uregwa akavuga ko amafaranga y'ingendo bayahawe bishingiye ku kuba urubanza rwaraciye nyuma yo gusubikwa inshuro munani zose biturutse ku makosa ya GORILLAND SAFARIS LTD, bityo ko asanga nta kosa

ryakozwe mu kubagenera ayo mafaranga, kandi ko amafaranga y'igihembo cya avoka abona ari make ;

18. Uru Rukiko rukaba rubona koko muri dosiye y'uru rubanza bigaragara ko uru rubanza rwagiye rusubikwa kenshi(reba cote ya 28-41), ibyo bikaba bivuze ko kuba uregwa yarirukanywe mu kazi nta mpamvu yumvikana ishingiweho nk'uko byagaragajwe haruguru, ariyo ntandaro y'uru rubanza n'ingendo zakozwe mu kuruburana, bivuze ko kuba haragenwe indishyi kubera izo mpamvu, hakanatangwa n'igihembo cya avoka umucamanza yagennye mu bushishozi bwe,nta kosa ryakozwe, kuko ingingo ya 258 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano,iteganya iby'imirimo nshinganwa, ivuga ko igikorwa cyose cy'umuntu cyangirije undi, gitegeka nyir'ugukora ikosa rigikomokaho kuriha ibyangiritse ;

KU KIJYANYE N'UBUJURIRE BWURIRIYE KU BUNDI

19. Me MUNYANKINDI waburanye ahagarariye DUSABINEMA Alphonse, yavuze ko batanze ubujurire bwuririye ku bundi, basaba ko amafaranga y'indishyi bagenewe ku rwego rwa mbere ajyanye n'indishyi z'akababaro zihabwa uwirukanywe mu kazi nta mpamvu yumvikana ishingiweho, n'izihabwa umukozi wirukanywe akimwa icyemezo cy'umurimo(attestation de service rendu), yakubwe inshuro enye gusa, byahindurwa ku rwego rw'ubujurire akikuba gatandatu aho kwikuba kane, naho uhagarariye GORILLAND SAFARIS LTD asubiza ko abona izo ndishyi zidakwiye kongerwa, ngo kuko n'izikubye kane abona atazikwiye;

20. Uru Rukiko rukaba rubona kuba indishyi uregwa yahawe ku rwego rwa mbere zijyanye n'indishyi z'akababaro zihabwa uwirukanywe mu kazi nta mpamvu yumvikana ishingiweho, n'izihabwa umukozi wirukanywe akimwa icyemezo cy'umurimo zarakubwe na kane, bitanyuranije n'ibyo ingingo ya 26 n'iya 30 z'itegeko n°51/2001 ryo kuwa 30/12/2001 ryagengaga umurimo, kuko izo ngingo zombi ziteganya ko izo ndishyi zitagomba kurenga inshuro esheshatu umushahara w'ukwezi, ariko zikaba ntaho ziteganya ko zitajya munsi y'izo nshuro esheshatu, bityo ibyakozwe bikaba nta nenge rubibonamo, ari nayo mpamvu nta mpamvu yo kubihindura kuri uru rwego rw'ubujurire ;

21. Me MUNYANKINDI yanavuze ko indi ngingo atanga mu bujurire bwuririye ku bundi, ijyanye n'indishyi z'isiragigizwa,

yasabye ku rwego rwa mbere ntazihabwe, uhagarariye GORILLAND SAFARIS LTD yasubije ko abona izo ndishyi uregwa atazikwiye, ngo kuko n'ubundi batazihawe kubera ko nta gisobanuro cyazo bari batanze, avuga ko n'ubu abona nta shingiro zazo ;

22. Urukiko rukaba rubona kuba DUSABINEMA Alphonse yaragenewe amafaranga y'ingendo mu rubanza rujuririrwa, adakwiye kongera guhabwa andi, kuko byumvikana ko izo ngendo yazikoze asiragira kuri uru rubanza, bityo kuba atarazihawe ku rwego rwa mbere nabyo rukaba rutabibonamo ikosa ryakosorwa kuri uru rwego rw'ubujurire ;

III. ICYEMEZO CY'URUKIKO RUKURU

23. Rwemeje ko ikirego cy'ubujurire cyatanzwe na GORILLAND SAFARIS LTD, mu izina ry'uyihagarariye, kigomba kwakirwa ngo gisuzumwe, kuko cyatanzwe mu buryo bukurikije ibiteganywa n'amategeko, ariko rugisuzumye rusanga nta shingiro gifite;

24. Rwemeye kwakira ubujurire bwuririye ku bundi bwatanzwe na DUSABINEMA Alphonse kuko bwatanzwe mu buryo bukurikije ibyo amategeko ateganya, ariko rubusuzumye rusanga nta shingiro bufite;

25. Rwemeje ko urubanza RSOC 0014/09/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge rugumanye agaciro mu ngingo zarwo zose

26. RUTEGETSE ko amagarama y'uru rubanza ahwanye na 18.150frw aherera kuri GORILLAND SAFARIS LTD, mu izina ry'uyihagarariye, ikayatanga mu bihe biteganijwe n'itegeko, bitaba ibyo agakurwa mu byo itunze ku ngufu za Leta;

NI UKO URUKIKO RUCIYE KANDI RUSOMEYE URU RUBANZA MU RUHAME, RURI KU CYICARO CYARWO I KIGALI, NONE KUWA 14/07/2011

PEREZIDA	UMWANDITSI W'URUKIKO
BUKUBA U. Claire	**HABINEZA Jean de Dieu**
Sé/	**Sé/**