REPUBULIKA Y'U RWANDA

URUKIKO RW'IKIRENGA
B.P. 2197 KIGALI
www.judiciary.gov.rw

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 mbere 2013, nº 16

MUTARAMA, 2013

ABAGIZE KOMITE Y'UBWANDITSI BW'ICYEGERANYO CY'IMANZA

MUGENZI Louis-Marie	**:** Perezida wa Komite, Umucamanza mu Rukiko rw'Ikirenga
NYIRINKWAYA Immaculée	**:** Umwe mu bagize Komite, Umucamanza mu Rukiko rw'Ikirenga
KALIWABO Charles	**:** Umwe mu bagize Komite, Umugenzuzi w'Inkiko
BWIZA Marie- Blanche	**:** Umwe mu bagize Komite, Umucamanza mu Rukiko Rukuru
KIBUKA Jean luc	**:** Umwe mu bagize Komite, Umucamanza mu Rukiko Rukuru rw'Ubucuruzi
HATEGEKIMANA Bernard	**:** Umwe mu bagize Komite, Umucamanza mu Rukiko Rukuru rwa Gisirikare
YARAMBA Athanase	**:** Umwe mu bagize komite, Umucamanza mu Rukiko Rwisumbuye rwa Muhanga
BAZIHANA Fidèle	**:** Umwe mu bagize Komite, Umucamanza mu rukiko rw'Ibanze rwa Muhoza
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

Uburyo icyegeranyo gikoreshwa

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

Amagambo mpine:

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

Ibyerekezo by'urukiko:

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

IRIBURIRO

Basomyi bacu, tubifurije umwaka mushya muhire wa 2013. Iyi nimero itangajwe ni igitabo cya mbere muri uyu mwaka dutangiye, ikaba iya 16 kuva aho Urukiko rw'Ikirenga rutangiriye gutangaza ibyemezo by'Inkiko rubinyujije mu cyegeranyo cy'ibyemezo by'Inkiko, mu mwaka ushize hatangajwe nimero enye nk'uko twari twabyiyemeje , akaba ari nawo muhigo tuzihatira guhigura muri uyu mwaka hagatangazwa igitabo buri gihembwe.

Mu rwego rwo korohereza abakoresha cyane iki cyegeranyo ubu hamaze gukorwa ishakiro rikomatanyije kandi iryo shakiro ryashyizwe ku rubuga rwa interneti rw'Urukiko rw'Ikirenga, rikaba rifasha abashakashatsi n'abandi bose bakoresha aka gatabo kumenya numero y'igitabo bari bushakiremo ikibazo runaka cyakemuwe n'Urukiko ndetse na paji bari busangeho urubanza rwakemuwemo icyo kibazo.

Turashimira abasomyi bacu bakomeje kutwereka ko bishimira aka gatabo banatugezaho ibitekerezo bigamije kunoza imitunganyirize yako.

Turashimira kandi inkiko zikomeje kohereza imanza ubwazo zibona ko zakemuwemo ibibazo runaka mu rwego rw'amategeko, ibi byose bikaba bituma aka gatabo karushaho kuba igikoresho cyiza cyifashishwa mu mirimo y'inkiko tutibagiwe n'abandi bose bakoresha amategeko mu kazi kabo ka buri munsi.

Kugira ngo kandi ibyegeranyo birusheho kugera ku babikeneye bose, iyi nimero ya 16 (kimwe n'izayibanjirije) yatangajwe nk'igitabo gisanzwe inashyirwa ku rubuga rwa interineti rw'Urukiko rw'Ikirenga (www.judiciary.gov.rw/sc/collection.aspx). Ubu buryo bwombi buzatuma ibikubiyemo bigera ku bantu benshi kandi banyuranye b'imihanda yose.

Muri iyi numero murasangamo imanza icumi na rumwe (11) ziri mu ngeri zikurikira: imanza eshatu z'inshinjabyaha, imanza enye z'imbonezamubano, imanza ebyiri z'ubucuruzi, urubanza rumwe rw'ubutegetsi n'urubanza rumwe rw'umurimo.

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

ISHAKIRO

AMAGAMBO MPINE ***Urupapuro***

1.IMANZA Z'INSHINJABYAHA.

1.1 . IMANZA Z'INSHINJABYAHA- IMIGIRIRE N'IMYITWARIRE BIDASANZWE BY'UKURIKIRANYWEHO ICYAHA-KUTABIFATA UBWABYO NK'INDWARA Y'IBISAZI ITEGANYWA N'AMATEGEKO AHANA IBYAHA.

• IMYITWARIRE Y'UWAKOZE ICYAHA N'IBYARI BIKIKIJE ICYO CYAHA-KUBI-HERAHO NK'IMPAMVU NYOROSHYACYAHA.. 3

1.2. IMANZA Z'INSHINJABYAHA- ICYAHA CYO KUREMA UMUTWE W'ABAGIZI BA NABI- KWISHYIRA HAMWE MU MUGAMBI WO KUGIRA NABI-KUTITA KU MUBARE W'ABISHYIZE HAMWE NO KU GIHE UWO MUTWE UZAMARA

• KUBA UWO MUTWE UDAFITE UMUYOBOZI-KUGAMBIRIRA GUKORA ICYA-HA KIMWE-KUBA UBWABYO BIHAGIJE NGO ICYAHA CYO KUREMA UMUTWE W'ABAGIZI BA NABI KIBE CYABAYE.

• KWIFATANYA N'ABAGIZI BA NABI HAGAMIJWE KUBIMENYESHA INZEGO Z'UBUYOBOZI-KUTABIFATA NK'ICYAHA.. 13

1.3. IMANZA Z'INSHINJABYAHA- INYANDIKO ITAGAMIJE KWIHESHA UBURENGANZIRA-KUDATERA IGIHOMBO UNDI MUNTU-KUTABIFATA NK'ICYAHA CYO GUKORA NO GUKORESHA INYANDIKO MPIMBANO.

• IKINYOMA CYANDITSE-KUTAGIFATA BURI GIHE NK'ICYAHA MU GIHE ICY-ANDITSWE KITADETAGANYIJWE N'AMATEGEKO AHANA.......................... 27

2. IMANZA Z'IMBONEZAMUBANO

2.1. IMANZA Z'IMBONEZAMUBANO-URUBANZA RUBANZIRIZA URUNDI-KAMERE Y'URUBANZA RUTAMBAMIRA URUBANZA RUBANZIRIZA URUNDI-KUTARUJURIRA RWONYINE.. 39

2.2. IMANZA Z'IMBONEZAMUBANO- UBUBASHA BW'INTUMWA-GUKORA IBIRI MU MBIBI Z'UBUBASHA YAHAWE-KUTARYOZWA IBYEREKEYE AMA-SEZERANO YAKOZE IYO YAYAKOZE ITARENZE IMBIBI Z'UBUBASHA YAHAWE.

• GUKORA IBITARI MU MBIBI Z'UBUTUMWA YAHAWE- KUGIRA INSH-INGANO KU BANDI IYO HARI AMAKOSA YAKOZE MU BUTUMWA YA-HAWE.. 45

2.3. IMANZA Z'IMBONEZAMUBANO- INYUNGU MU MASEZERANO MBONEZAMUBANO-GUHENDWA MURI AYO MASEZERANO-IBY'INGENZI KUGIRA NGO HEMERWE KO HABAYEHO UGUHENDWA MU MASEZERANO-UKU GUHENDWA BYEMEZWA N'UMUCAMANZA.

• INYUNGU ZIRENZE IZISANZWE BIGARAGARIRA BURI WESE-KUBA ZIGARAGARA KO BYATEWE N'INTEGE NKE, UBUSHOBOZI CYANGWA UBUMENYI BUKE KU RUHANDE RW'UWAZEMEYE-UGUHENDWA KWEMERWA IYO URUNDI RUHANDE RWARI RUZIKO UWEMEYE AFITE IBYO BIBAZO....................51

2.4. IMANZA Z'IMBONEZAMUBANO-INYANDIKO Z'IRANGAMIMIRERE ZITARIHO UMUKONO W'UMWANDITSI W'IRANGAMIMERERE-KUTABIFATA UBWABYO NK'INENGE YATUMA AMASEZERANO Y'UGUSHYINGIRWA ATESHWA AGACIRO.

•INYANDIKO IFITE INENGE Y'IMYANDIKIRE-KUTABIFATA UBWABYO NK'INENGE YATUMA ITESHWA AGACIRO URETSE MU BURYO NO MU GIHE BITEGANYIJWE N'AMATEGEKO....................61

3.IMANZA Z'UBUCURUZI

3.1. IMANZA Z'UBUCURUZI- URUBANZA RWASIBWE KUBERA KUTABURANISHWA-KONGERA KURUBYUTSA NK'INZIRA YO NYINE YO KONGERA KURUBURANA MU RUKIKO RWARI RWARAREGEWEMO....................69

3.2. IMANZA Z'UBUCURUZI- KWISHINGIRA ISHYIRAHAMWE RITAGIRA UBUZIMA GATOZI- KUTABA UBWABYO URWITWAZO KU BISHINGIZI MU KUTUBAHIRIZA AMAZESERANO Y'UBWISHINGIRE BASINYE.

• ISHYIRAHAMWE RITAGIRA UBUZIMAGATOZI-KUTABA IMPAMVU UBWAYO YO GUTESHA AGACIRO AMASEZERANO RYASINYE KUBIFATA AHUBWO NK'IMPAMVU ITUMA RITAGARAGAZA NK'ISHYIRAHAMWE IMBERE Y'AMATEGEKO NA RUBANDA....................75

4. IMANZA Z'UBUTEGETSI

4.1. IMANZA Z'UBUTEGETSI- KUDATAKAMBA MBERE YO GUSHYIKIRIZA IKIBAZO INKIKO KU MPAKA ZIVUTSE HAGATI Y'UMUKOZI N'IKIGO CYA LETA –KUTABIFATA UBWABYO NK'IMPAMVU YO KUTAKIRA IKIREGO.

• KUTABA NGOMBWA KO UFATA ICYEMEZO MU RWEGO RW'AKAZI AKURIZA ICYEMEZO CY'UMUCAMANZA MPANABYAHA-KUBISUZUMA HAKURIKIJWE IMITERERE YA BURI RUBANZA....................83

5.IMANZA Z'UMURIMO

5.1. IMANZA Z'UMURIMO- IMYANDIKIRE Y'AMASEZERANO Y'UMURIMO -IKIGAMIJWE MU MASEZERANO Y'IGERARAGEZWA -KUBANZA GUSUZUMA UMUKOZI- GUKORWA MBERE Y'UKO HASINYWA AMASEZERANO Y'AKAZI KU BURYO BUDASUBIRWAHO.

• IYONGERWA RY'AMASEZERANO Y'IGERAGEZWA-KUMENYESHWA UMUKOZI MU BURYO BWERUYE-GUKOMEZA GUKORA K'UMUKOZI URI MU IGERAGEZWA-KUTABIFATA NK'AHO YEMEYE IRYO YONGERWA RY'IGIHE CY'IGERARAGEZWA IYO ATARIGIZEMO URUHARE.

• IYONGERWA RY'IGIHE CY'IGERAGEZWA RITUBAHIRIJE AMATEGEKO-GUFATA UMUKOZI NK'UGENGWA N'AMASEZERANO Y'UMURIMO KU BURYO BUDASUBIRWAHO-KUBITANGIRA INDISHYI IYO ASHESHWE IGIHE KITARANGIYE..95

IMANZA Z'INSHINJABYAHA

1. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RPA0119/09/CS
ITARIKI Y'URUBANZA: 26/10/2012
HABURANA: UBUSHINJACYAHA na MURERAKURE Espérance

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA-IMIGIRIRE N'IMYITWARIRE BIDASANZWE BY'UKURIKIRANYWEHO ICYAHA-KUTABIFATA UBWABYO NK'INDWARA Y'IBISAZI ITEGANYWA N'AMATEGEKO AHANA IBYAHA.

IMYITWARIRE Y'UWAKOZE ICYAHA N'IBYARI BIKIKIJE ICYO CYAHA-KUBIHERAHO NK'IMPAMVU NYOROSHYACYAHA.

IKIBAZO CY'AMATEGEKO CYAGARAGAJWE

-Kuba uregwa afite ibibazo cyangwa imigirire idasanzwe ntibibuza ko aryozwa icyaha yakoze kuko aba atarwaye ibisazi, ahubwo mu kugena ibihano, umucamanza ashobora gushingira kuri iyo myitwarire y'uwakoze icyaha (personnalité) no ku byari bikikije imigirire y'icyaha nk'impamvu nyoroshya cyaha.

URUKIKO RW'IKIRENGA, RURI I KIGALI RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA, RUHAKIRIJE MU RUHAME KUWA 26/10/2012 URUBANZA N°RPA0119/09/CS MU BURYO BUKURIKIRA:

HABURANA;

UBUSHINJACYAHA

NA

MURERAKURE Espérance, mwene HATEGEKIMANA na KAMONDO, wavutse muri 1984, utuye mu Kagali ka Murunda, Umurenge wa Mburamazi, Akarere ka Rutsiro, Intara y'Iburengerazuba, umuhinzi, ntiyigeze afungwa bizwi n'amategeko, ubu afungiye muri Gereza Nkuru ya Kigali.

IBYAHA AREGWA

Gukuramo inda ku bushake no kwiba umwana yarangiza akamwica, ibyaha biteganywa kandi bigahanishwa ingingo ya 30 y'itegeko N°27/2001 ryo kuwa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa n'ingingo ya 312 yo mu gitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda.

I. IMITERERE Y'URUBANZA

[1]. Dosiye y'Ubushinjacyaha igaragaraza ko MURERAKURE Espérance yijyanye ku mugabo, avayo atwite inda y'amezi atatu, aza kuyikuramo, nyuma yaho yiba umwana w'imyaka ibili (2) ngo agamije kugaragaza ko ari uwo yabyaye muri ya nda yari atwite ariko nawe aza kumufata nabi arapfa, umurambo ajya kuwuta mu musarani w'urugo rwari mu wundi Murenge atari atuyemo.

[2].Urukiko Rukuru, Urugereko rwa Rusizi rwaregewe rwemeje ko MURERAKURE ahamwa n'ibyaha ashinjwa, rumuhanisha igihano cya burundu. MURERAKURE yajuririye Urukiko rw'Ikirenga, avuga ko Urukiko Rukuru rwamuhanishije igihano kirekire rutitaye ku nyoroshya cyaha z'uko yemera

icyaha agasaba n'imbabazi. Avuga kandi ko ibyo yakoze yabitewe n'ibibazo yari arimo byatumye afata icyemezo kibi ndetse ko na n'ubu arwaye mu mutwe akaba yivuriza mu bitaro by'indwara zo mu mutwe i Ndera, akaba asaba Urukiko rw'Ikirenga ko rwasuzuma izi ngingo zose maze rukamugabanyiriza igihano.

[3]. Iburanisha ry'urubanza mu ruhame ryabaye kuwa 06/02/2012, hitabye MURERAKURE yunganiwe na Me HAGUMA Diane naho Ubushinjacyaha buhagarariwe na NTAWANGUNDI Béatrice. Mu rubanza rubanziriza urundi rwasomwe ku wa 09/03/2012, urukiko rwemeje ko mbere y'uko urubanza rucibwa burundu, rugomba kugezwaho icyemezo cya muganga w'indwara zo mu mutwe kigaragaza ko MURERAKURE afite uburwayi bwo mu mutwe. MURERAKURE yashyizwe mu kigo kivura indwara zo mu mutwe kugira ngo abaganga bamukurikirane hazakorwe raporo ku bibazo byo mu mutwe avuga ko afite. Iyo raporo yakozwe kuwa 23/09/2012 ishyikirizwa Urukiko rw'Ikirenga, mu iburanisha ryo ku itariki ya 26/09/2012, Ubushinjacyaha bugira icyo buyivugaho.

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

a. *Kumenya niba MURERAKURE yarakoze ibyaha akurikiranyweho afite uburwayi bwo mu mutwe ku buryo byamubera impamvu imukuraho uburyozwacyaha nk'uko amategeko abiteganya.*

[4]. MURERAKURE avuga ko ibyaha akurikiranyweho yabikoze abitewe n'uburwayi bwo mu mutwe afite, bugaragazwa n'uko afata imiti yandikiwe n'abaganga bo mu bitaro by'indwara zo mu mutwe by'i Ndera, ko n'ubwo yatangiye kwivuza ubwo burwayi ageze muri Gereza Nkuru ya Kigali, na mbere yaho yari abufite akaba yarivurizaga mu baganga ba gihanga. Me HAGUMA Diane, umwunganira, yongeraho ko ibyo MURERAKURE avuga ari ukuri kuko hari icyemezo cy'uko yivurizaga ku bavuzi ba gihanga. Akomeza avuga ko hatakwirengangizwa ko abo mu muryango wa MURERAKURE bavuze ko mu mikurire ye yaranzwe n'imyifatire idasanzwe, ko nawe yakoze iperereza aho

MURERAKURE yari atuye agasanga mu muryango wabo bagira imyifatire idasanzwe kuko yabwiwe n'Umunyamabanga Nshingwabikorwa w'Akagari batuyemo ko Se nawe agira imyitwarire idasanzwe ndetse na musaza we akaba yarigeze gushaka gukura amabati ku nzu ye ngo azibere hanze nk'amatungo; asoza asaba ko uwo yunganira yakurwaho uburyozwa-cyaha hashingiwe ku ngingo ya 101 y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana.

[5]. Ku byerekeranye na raporo za muganga (*expertises médicales*) z'isuzumwa ryakorewe MURERAKURE, iya mbere yakozwe na Dr GASINZIGWA Raphaël, yo kuwa 22/02/2012, ivuga ko uburwayi bwo mu mutwe MURERAKURE avuga ariwe ubwivugira kuko ibizamini byakozwe bitashoboye kubwerekana; naho raporo ya muganga (*expertise médicale*) yo kuwa 23/09/2012 yakozwe nyuma y'amezi agera kuri abili (2) MURERAKURE asuzumirwa mu Bitaro by'Indwara zo mu mutwe i Ndera, aho yakurikiranywe na Dr GASINZIGWA Raphaël afatanyije n'abaforomo, umuhanga mu myitwarire y'abantu (*psychologue*) n'ushinzwe imibanire y'abantu (*Assistante sociale*) ikavuga ko ku byerekeranye n'imyitwarire, MURERAKURE «akunze kuguma hamwe wenyine, akagira uburakari buhubutse agashaka kurwana; kudasinzira neza; kugira agahinda no kutagira icyo akora muri « salle » (gukubura, koza amasahani n'ibindi).»

[6]. Raporo ya muganga ikubiyemo kandi imvugo z'ababyeyi n'abavandimwe ba MURERAKURE bumviswe nawe, zivuga ko amaze kugira imyaka 13 kugera kuri 15, yatangiye kugira imyitwarire idasanzwe nko kuba atari acyubaha ababyeyi, ko yazindukaga mu gitondo cya kare akirirwa azerera agataha nijoro, ko yijyanye ku mugabo yagerayo akajya akunda gufata amadeni mu bantu bakaza kwishyuza umugabo, ibi bikaba byaratumye batandukana asubira iwabo, naho agezeyo agakunda kujya kwiba imyaka y'abandi kandi ababyeyi ntibamenye aho ayishyira, bajya kumuvuza mu bavuzi ba gihanga, ariko nyuma aza gutoroka ajya kuba ahitwa « Kongo Nil ». Dr GASINZIGWA yanzura avuga ko adashobora kwemeza ko MURERAKURE yakoze ibyaha arwaye cyangwa atarwaye ko ariko hatakwirengangizwa ubuhamya bwatanzwe n'abo mu muryango we, ko kandi umuntu ashobora kurwara yakoroherwa akamara igihe kirekire ubwo burwayi butarongera kugaruka.

[7]. Uhagarariye Ubushinjacyaha avuga ko MURERAKURE yivuguruza kubera ko iyo aba arwaye, atari gusaba kugabanyirizwa igihano kuko urwaye bene izo ndwara ataryozwa icyaha yakoze, kandi ko ibimenyetso bishingiye ku buvuzi bwa gihanga nko kuraguza bitemewe n'amategeko. Yongeraho ko iyo usuzumye dosiye ya MURERAKURE usanga ntaho yigeze agaragaza ko arwaye ahubwo ko uburwayi bwo mu mutwe ataka abuvugiye bwa mbere mu Rukiko rw'Ikirenga, nyamara abaganga baravuze ko nta ndwara y'ibisazi bamusanganye, kandi bakaba bataragaragaje ko akora icyaha yari afite ubwo burwayi avuga. Asoza avuga ko nta cyatuma rero MURERAKURE adahanwa kubera ko bigaragara ko nta ndwara y'ibisazi afite, kandi ko ukurikije imiburanire ye, ubona ibyo yakoze yarabikoze abizi kandi afite ubwenge.

[8]. Ingingo ya 101, igika cya mbere, y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ivuga ko «Nta buryozwa cyaha bubaho iyo ushinjwa yari arwaye ibisazi mu gihe yakoraga icyaha.»[1]

[9]. Urukiko rw'Ikirenga rurasanga MURERAKURE akimara gufatwa yaragejejwe imbere y'Ubugenzacyaha, nyuma agezwa imbere y'Ubushinjacyaha, arabazwa asobanura uko yakoze ibyaha, ndetse n'imbere y'inkiko n'uko byagenze, akaba atarigeze na rimwe arangwa n'imyitwarire y'umuntu urwaye ibisazi nko kunyuranya amagambo gukabije mu gihe cy'ibazwa, cyangwa gusubiza ibyo atabajijwe byatuma hakekwa ko afite indwara y'ibisazi. Na none uretse mu Rukiko rw'Ikirenga, ntiyigeze avuga ko arwaye indwara yo mu mutwe mu rukiko rubanza ndetse nta n'umwe mu batangabuhamya babajijwe igihe cy'iperereza wigeze avuga ko abona ari umusazi.

[1O]. Urukiko rw'Ikirenga rurasanga ibyo MURERAKURE n'umwunganira bavuga ubu ko arwaye indwara yo mu mutwe, ko ari nayo yaba yarabaye intandaro yo gukora ibyaha akurikiranyweho, nta kimenyetso babitangira kuko na raporo ya muganga (*expertise médicale*) itemeza ko arwaye ibisazi nk'uko iyo ndwara ivugwa mu ngingo ya 101, igika cya mbere, y'Itegeko Ngenga N°

[1] Iyi ngingo ya 101, igika cya mbere, y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana isimbura ingingo ya 70 y'Itegeko-Teka N° 21/77 ryo ku wa 18/08/1977 ryashyiragaho Igitabo cy'amategeko ahana mu Rwanda ryakurikizwaga igihe icyaha cyakorwaga, ikaba yarateganyaga ko «Nta buryozwa cyaha bubaho k'ushinjwa wari urwaye ibisazi mu gihe yakoraga icyaha…….»

01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru, bityo Urukiko rukaba ntaho rwahera rwemeza ko MURERAKURE yakoze ibyaha ashinjwa arwaye indwara y'ibisazi ku buryo yakurwaho uburyozwacyaha ntakurikiranyweho ibyaha aregwa. Ibi bikaba bishimangirwa n'abahanga mu by'amategeko ahana, bavuga ko kuba uregwa afite ibibazo cyangwa imigirire idasanzwe bitabuza ko aryozwa icyaha kuko aba atarwaye ibisazi, ahubwo ko mu kugena ibihano, umucamanza ashobora gushingira ku myitwarire y'uwakoze icyaha (*personnalité*) no kubyari bikikije imigirire y'icyaha nk'impamvu nyoroshya cyaha.[2]

b. *Kumenya niba hari impamvu nyoroshyacyaha zishobora gutuma MURERAKURE agabanyirizwa igihano.*

[11]. MURERAKURE avuga ko atishimiye igihano yahawe kuko ari kirekire nyamara yaremeye icyaha agitangira kubazwa ndetse no mu nkiko, akagaragaza ko yakoze ibyaha abitewe n'imibereho mibi yari afite, akaba avuga ko yicuza ibyo byaha, agasaba imbabazi, no kugabanyirizwa igihano.

[12]. Uhagarariye Ubushinjacyaha avuga ko ukwemera icyaha kwa MURERAKURE kutuzuye kubera ko mu Rukiko Rukuru yemeye gusa icyaha cyo gukuramo inda akaba ari ubwa mbere yemeye icyaha cyo guhotora umwana yari yibye ariko ko nacyo atacyemera neza kuko imbere y'Urukiko rw'Ikirenga yavuze ko umwana yapfuye kubera imibereho mibi we yari afite ikagira ingaruka ku buzima bw'uwo mwana nyamara mu ibazwa rye mu Bugenzacyaha no mu Bushinjacyaha yaravuze ko yamujugunye atarahwana neza. Yongeraho ariko ko kubera ko ari ubwa mbere akurikiranywe n'inkiko, Urukiko rushobora kumugabanyiriza igihano yahawe n'Urukiko Rukuru rushingiye ku ngingo ya 82-83 z'Itegeko-Teka N° 21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana mu Rwanda akava ku gihano cya burundu yari yahawe, akaba yahanishwa igifungo cy' imyaka makumyabili n'itanu (25).

[2] Frederic Desportes na Francis Le Guhenec, *Droit Pénal Général*, Paris: Economica, 2007, p.73 disent que : «Le juge … peut prononcer, en considérant la personnalité du coupable et les circonstances de l'infraction, une peine plus faible.»,
- Nyabirungu Mwene Songa, *Traité de Droit Pénal Congolais*, Kinshasa: Editions Universitaires, 2007, p.393 dit que :«les circonstances atténuantes [peuvent inclure] la misère sociale [et] les carences affectives particulièrement graves…»

[13]. Ku byerekeranye n'impamvu nyoroshyacyaha zituma uregwa ashobora kugabanyirizwa igihano, ingingo ya 76, igika cya mbere y'Itegeko Ngenga no 01/2012/OL ryo ku wa 02/05/2012 ryamaze kuvugwa iteganya ko «Umucamanza ubwe aha agaciro impamvu nyoroshyacyaha, ari iza kibanjirije cyangwa izagikurikiye». Igika cya kabiri cy'iyi ngingo cyo kivuga ko «kwemeza impamvu zoroshya uburemere bw'icyaha bigomba gusobanurwa.»

[14]. Naho ingingo ya 77, agace ka 1^{o}, y'Itegeko Ngenga N°01/2012/OL ryo kuwa 02/05/2012 ryavuzwe haruguru iteganya ko urukiko rushobora kugabanya ibihano iyo, mbere yo gukurikiranwa, ushinjwa yemeye icyaha akagisabira imbabazi ku buryo budashidikanywa ndetse akanicuza. Agace ka 3^{o} k'iyo ngingo kakavuga ko ushinjwa ashobora kugabanyirizwa ibihano iyo yireze akemera icyaha mu buryo budashidikanywaho mu ntangiriro z'iburanisha ku rwego rwa mbere.

[15]. Urukiko rw'Ikirenga rurasanga, nk'uko bigaragara muri dosiye y'urubanza, MURERAKURE yemera icyaha cyo kwikuramo inda n'icyo kwica umwana ku buryo budashidikanywaho, n'ubwo adasobanura neza uko yishe uwo mwana, kandi agasaba imbabazi ku byaha yakoze. Kuba kandi ari ubwa mbere ahamijwe icyaha n'inkiko ku buryo buzwi; hiyongeyeho imibereho yabayemo mu muryango we nkuko Me Haguma Diane abisobanura ntawashidikanya ko byagize ingaruka ku migirire idasanzwe imugaragaraho ivugwa muri raporo ya muganga no mu buhamya bwatanzwe igihe cy'iperereza n'ababyeyi bamubyara, abavandimwe be n'umugabo yari yarishyingiyeho, byose bikaba byamubera impamvu nyoroshyacyaha.

[16]. Ku byerekeranye n'inyito y'ibyaha MURERAKURE akurikiranyweho, n'ubwo yarezwe icyaha cyo kwihekura, Urukiko rw'Ikirenga rurasanga, nyuma yo gusuzuma ibimenyetso biri muri dosiye n'imvugo ya MURERAKURE ubwe uvuga ko yakuyemo inda y'amezi atatu, bigaragara ko icyaha yakoze ari ugukuramo inda ku bushake ; icyaha cyateganywaga n'ingingo ya 30 y'Itegeko № 28/2001 ryo ku wa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa ryakoreshwaga igihe icyaha cyakorwaga, ubu kikaba giteganywa n'ingingo ya 162 y'Itegeko Ngenga N°01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana.

[17]. Naho ku byerekeranye n'icyaha cy'ubuhotozi Ubushinjacyaha bwakurikiranyeho MURERAKURE hakurikijwe ingingo ya 312 y'Itegeko-Teka

N° 21/77 ryo ku wa 18/08/1977 ryavuzwe haruguru, Urukiko rw'Ikirenga rusanga, hakurikijwe imiterere ya dosiye y'urubanza, icyaha yakoze ari icyaha cy'ubwicanyi cyateganywaga n'ingingo ya 311 y' Itegeko-Teka N° 21/77 ryo ku wa 18/08/1977 ryavuzwe haruguru[3].

[18]. Urukiko rw'Ikirenga rurasanga icyaha cyo kwikuramo inda n'icyaha cy'ubwicanyi MURERAKURE yakoze bigize impurirane mbonezacyaha, bityo akaba agomba guhanishwa ibihano biteganijwe kuri buri cyaha hashingiwe ku biteganywa n'ingingo ya 94 y' Itegeko-Teka N° 21/77 ryo ku wa 18/08/1977ryavuzwe haruguru, ryakurikizwaga igihe icyaha cyakorwaga.

[19]. Ku cyaha cyo kwikuramo inda, hashingiwe ku ngingo ya 162 y'Itegeko Ngenga N°01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, iya 8 n'iya 765, igika cya 2, z'iryo tegeko[4], ahanishijwe igifungo cy'umwaka umwe (1) n'ihazabu y'amafranga ibihumbi mirongo itanu

(50.000 Frws).

[20]. Naho ku cyaha cy'ubwicanyi cyateganywagwa n'ingingo ya 311 y' Itegeko-Teka N° 21/77 ryavuzwe haruguru, hashingiwe ku ngingo ya 83 y' iryo Tegeko-Teka ryakurikizwaga igihe icyaha cyakorwaga kuko ariyo iteganya ibihano byoroheje, MURERAKURE ahanishijwe igifungo cy'imyaka icyenda (9); bityo igihano ku byaha byombi kikaba ari igifungo cy'imyaka icumi (10).

---

[3] Ubu icyaha cy'ubwicanyi giteganywa n'ingingo ya 140 y'Itegeko Ngenga no 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana.

[4] Ingingo ya 8 n'iya 765, igika cya 2 z'Itegeko Ngenga N°01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ziteganya ko icyaha cyakozwe mbere y'itegeko rishya gihanwa hakurikijwe itegeko ryakigengaga keretse iyo itegeko rishya riteganya ibihano byorohereje.

III. ICYEMEZO CY'URUKIKO

[21]. Rwemeje ko ubujurire bwa MURERAKURE Espérance bufite ishingiro kuri bimwe.

[22]. Rwemeje ko ahamwa n'icyaha cyo kwikuramo inda n'icyaha cy'ubwicanyi.

[23]. Rumuhanishije igifungo cy'imyaka icumi (10) n'ihazabu y'amafranga ibihumbi mirongo itanu (50.000 Frws).

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME NONE KUWA 26/10/2012

Sé

KAYITESI Zainabo Sylvie

Perezida

Sé

MUKANYUNDO Patricie
Umucamanza

Sé

MUKAMULISA M. Thérèse
Umucamanza

Sé

UWARUGIRA Jean Baptiste

Umwanditsi w'Urukiko

2. URUKIKO RUKURU

N° Y'URUBANZA: RPA1356, 1357,1309/11/HC/KIG
ITARIKI Y'URUBANZA: 24/02/2012
HABURANA: UBUSHINJACYAHA na AFRICA Bernard, UWAMAHORO Théoneste.

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA-ICYAHA CYO KUREMA UMUTWE W'ABAGIZI BA NABI- KWISHYIRA HAMWE MU MUGAMBI WO KUGIRA NABI-KUTITA KU MUBARE W'ABISHYIZE HAMWE NO KU GIHE UWO MUTWE UZAMARA.

-KUBA UWO MUTWE UDAFITE UMUYOBOZI-KUGAMBIRIRA GUKORA ICYAHA KIMWE-KUBA UBWABYO BIHAGIJE NGO ICYAHA CYO KUREMA UMUTWE W'ABAGIZI BA NABI KIBE CYABAYE.

KWIFATANYA N'ABAGIZI BA NABI HAGAMIJWE KUBIMENYESHA INZEGO Z'UBUYOBOZI-KUTABIFATA NK'ICYAHA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Icyaha cyo kurema umutwe w'abagizi ba nabi kiba cyabaye iyo abantu bishyize hamwe bagamije kugirira nabi umuntu cyangwa ibintu hatitawe ku mubare w'abishyize hamwe, igihe uwo mutwe uzamara cyangwa kuba uwo mutwe ufite umuyobozi ; kabone n'iyo haba hagambiriwe gukora icyaha kimwe gusa.

-Abantu bifatanyije n'abaremye umutwe w'abagizi ba nabi ariko bagamije kubimenyesha inzego z 'ubuyobozi ntibashobora gukurikiranwa.

URUKIKO RUKURU, RURI I KIGALI KU CYICARO CYARWO, RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA, RUCIYE MU RUHAME URUBANZA RPA 1356/11/HC/KIG – RPA 1357/11/HC/KIG – RPA 1309/11/HC/KIG NONE TARIKI YA 24/02/2012, MU RWEGO RW'UBUJURIRE MU BURYO BUKURIKIRA:

HABURANA:

UBUSHINJACYAHA: buhagarariwe na Jean Bosco MUTANGANA, Umushinjacyaha ku rwego rw'Igihugu.

ABAREGWA: AFRICA Bernard, mwene KWIREMA na NYIRAMARARO, wavutse mu mwaka wa 1969, avukira mu Mudugudu wa NYAGATOVU, Akagari ka KABASORO, Umurenge wa KARENGE, Akarere ka RWAMAGANA, Intara y'IBURASIRAZUBA, akaba ari naho atuye, yashakanye na MUSENGIMANA, umunyarwanda, utarakurikiranywa bizwi n'Inkiko.

UWAMAHORO Théoneste, mwene RWABUKWERERE na HIRWANDAME, wavutse mu 1978, avukira mu Kagari ka BUYUYU, Umurenge wa MUYUMBU, Akarere ka RWAMAGANA, Intara y'IBURASIRAZUBA, akaba atuye mu Mudugudu wa KABEZA, Akagari ka GAKO, Umurenge wa KICUKIRO, Akarere ka KICUKIRO, Umujyi wa KIGALI, Ingaragu, umunyarwanda, umucuruzi, utarakurikiranwa bizwi n'Inkiko.

Bunganiwe na Me RUGEYO Jean.

ICYAHA BAREGWA: Kurema umutwe w'abagizi ba nabi.

UREGERA INDISHYI: NDAGIWENIMANA Jean Népomuscène, mwene MUGABUJYAYO na NYIRAZIREHE, wavutse mu 1964, utuye mu Mudugudu wa BICACA, Akagari ka RUGARAMA, Umurenge wa NZIGE, Akarere ka RWAMAGANA, Intara y'IBURASIRAZUBA, Umwarimu.

URUBANZA RWAJURIRIWE : Urubanza RP 0651/11/TGI/NYGE, rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge, ku wa 10/10/2011.

I. IMITERERE Y'URUBANZA

1. Uru rubanza rutangira, AFRIKA Bernard na UWAMAHORO Théoneste barezwe mu Rukiko Rukuru, icyaha cy'ubwinjiracyaha cy'ubuhotozi, Ubushinjacyaha bukaba bwarabaregaga ko bacuze umugambi wo kwica NDAGIWENIMANA Jean Népomuscène, uwo bagejejeho umugambi ahitamo kubavamo, abibwira Polisi, bafatwa igihe bari bagiye guhemba uwo bari batumye, wababwiye ko yarangije kwica NDAGIWENIMANA, abazaniye n'ikimenyetso cy'ikoti rye na telephone ye. Urukiko Rukuru rwemeje ko nta bwinjiracyaha cy'ubuhotozi bwabayeho kubera ko ibikorwa AFRIKA Bernard na UWAMAHORO Théoneste bakoze ari ibikorwa bitegura icyaha (actes préparatoires) kandi ibikorwa nk'ibyo bikaba bidahanwa n'amategeko nk'ubwinjiracyaha, kuko ibikorwa bihanwa nk'ubwinjiracyaha ari ibikorwa bishyira mu bikorwa umugambi (actes de mise en exécution). Urukiko Rukuru rwemeje ko ahubwo ibikorwa AFRIKA Bernard na UWAMAHORO Théoneste bakoze bigize icyaha cyo kurema umutwe w'abagizi ba nabi, bityo rwohereza urubanza mu Rukiko Rwisumbuye rwa Nyarugenge.

2. Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko icyaha cyo kurema umutwe w'abagizi ba nabi gihama AFRIKA Bernard na UWAMAHORO Théoneste, rubahanisha igifungo cy'imyaka itandatu (6) buri wese, rubategeka guha NDAGIWENIMANA Jean Népomuscène indishyi z'akababaro z'amafaranga 1.000.000, n'amafaranga 200.000 y'insimburamubyizi, ingendo, kurya, guhamagara (téléphone), kwandikisha no gufotoza inyandiko.

3. AFRIKA Bernard na UWAMAHORO Théoneste ntibishimiye iyo mikirize, bayijuririra muri uru Rukiko, bavuga ko bahamijwe icyaha cyo kurema umutwe w'abagizi ba nabi kandi nta mutwe w'abagizi ba nabi bigeze barema.

4. Hagomba gusuzumwa niba ibikorwa AFRIKA Bernard na UWAMAHORO Théoneste baregwa ko bakoze byujuje ibisabwa kugira ngo habeho icyaha cyo kurema umutwe w'abagizi ba nabi. Hagomba no gusuzumwa, mu gihe icyaha cyaba kibahama, niba kurema umutwe w'abagizi ba nabi bishobora gutuma uwagombaga kugirirwa nabi abihererwa indishyi.

II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA

KU BYEREKEYE KUMENYA NIBA IBIKORWA AFRIKA BERNARD NA UWAMAHORO THÉONESTE BAREGWA KO BAKOZE BYUJUJE IBISABWA KUGIRA NGO HABEHO ICYAHA CYO KUREMA UMUTWE W'ABAGIZI BA NABI.

5. AFRIKA Bernard avuga ko kubera ikibazo yari afitanye na muramu we NDAGIWENIMANA Jean Népomuscène, wivangaga mu bibazo by'iwabo anamwambuye n'amafaranga 200.000, ngo yashatse UWAMAHORO Théoneste, nawe amushakira umusirikare witwa HOPE, uyu nawe amushakira umupolisi witwa NKURIKIWENIMANA Gaston. AFRIKA Bernard avuga ko we yashakaga uwamufungira NDAGIWENIMANA, ariko uyu mupolisi azana igitekerezo ko aho gufunga NDAGIWENIMANA ahubwo bamwica, ariko ngo batandukana batumvikanye ku mafaranga yamuhemba. Nyuma ngo uyu NKURIKIWENIMANA Gaston yagiye amuterefona, amubwira ko yavugana na UWAMAHORO Théoneste, nyuma ngo nibwo NKURIKIWENIMANA Gaston yamuhamagaye amubwira ko yarangije kwica NDAGIWENIMANA, bumvikana ko azamureba ku munsi ukurikiyeho, bamufata mu gitondo cy'uwo munsi. Avuga ko ukurikije uko ibintu byagenze nta cyaha cyo kurema umutwe w'abagizi ba nabi, kubera ko batigeze baterana inshuro nyinshi nk'uko Urukiko Rwisumbuye rwabivuze mu guca urubanza, ahubwo ngo bateranye inshuro imwe, kandi ibyo ngo ntibyakwitwa kurema umutwe w'abagizi ba nabi.

6. UWAMAHORO Théoneste avuga ko we ntaho ahuriye n'ibyabaye kubera ko ngo amaze guhuza AFRIKA Bernard na Hope na NKURIKIWENIMANA Gaston ntaho yongeye guhurira nabo, bityo ngo ntabwo akwiye gushyirwaho icyaha.

7. Me RUGEYO avuga ko abo yunganira hari ibikorwa bakoze bemera, ariko ngo ibyo Urukiko Rwisumbuye rwemeje ko bemeye icyaha cyo kurema umutwe w'abagizi ba nabi sibyo, kuko batigeze bacyemera. Avuga ko n'ubwo ingingo ya za 281 na 283 z'igitabo cy'amategeko ahana ibyaha mu Rwanda zidasobanura neza ingingo zigize icyaha cyo kurema umutwe w'abagizi ba nabi, ngo hifashishijwe ingingo ya 332-71 y'igitabo cy'amategeko ahana ibyaha yo mu Bufaransa, kugira ngo icyaha cyo kurema umutwe w'abagizi ba nabi kibeho, bisaba kumvikana ko bagiye kurema umutwe, gusobanura icyo uzakora n'uburyo uzakora. Uwo mutwe kandi ngo ugomba kugira izina, ubuyobozi n'aho uzakorera, ibyo ngo Ubushinjacyaha ntibugaragaza

ko byabayeho. Me RUGEYO avuga kandi ko ibikorwa abo yunganira bemera bakoze bitaba kurema umutwe w'abagizi ba nabi, ahubwo iyo haza kuba hari icyaha cyabaye, byari kuba ubufatanyacyaha (participation criminelle), kandi ngo ubufatanyacyaha butandukanye no kurema umutwe w'abagizi ba nabi. Asobanura ko n'uwitwa KAYIJUKA NGABO agaragaza, mu isomo ry'amategeko ahana ibyaha mu Rwanda (Notes de Cours de Droit Pénal Général) atanga muri Kaminuza, ko kurema umutwe w'abagizi ba nabi bisaba ko uwo mutwe uba uzamara igihe (l'entente revêt un caractère permanent), kandi ko haba hagamijwe ibyaha byinshi, ibyo byaba bidahari bikaba byaganisha k'ubufatanyacyaha, ariko ngo bikaba bitakwitwa kurema umutwe w'abagizi ba nabi kuko ibisabwa byaba bituzuye.

8. Umushinjacyaha avuga ko ingingo ya 281 y'igitabo cy'amategeko ahana ibyaha mu Rwanda ihana kurema umutwe w'abagizi ba nabi kandi ngo icyo cyaha cyarakozwe kuko umutwe w'abagizi ba nabi, ugizwe n'abantu bagera kuri bane, wabayeho, ibyo ngo bikaba bigaragazwa no kuba baragiye batumanaho hagati yabo bakoresheje telefone, kuba baragiye bahura, kuba baraganiriye ku giciro, kuba barashatse umusirikare n'umupolisi bo gushyira mu bikorwa umugambi. Avuga kandi ko n'ibyari bigamijwe bihura n'ibiteganywa n'iyi ngingo, kuko icyari kigamijwe ari ukwica NDAGIWENIMANA, iyo ngingo ikaba ihana kurema umutwe w'abagizi ba nabi hagamijwe kugirira nabi abantu cyangwa ibintu. Umushinjacyaha avuga ko ibyo abaregwa baburanisha, ko icyaha cyo kurema umutwe w'abagizi ba nabi kibaho ari uko umutwe uba ugamije gukora ibyaha byinshi, kandi ari umutwe uzahoraho, atari ukuri kuko ingingo ihana iki cyaha igihana hatarebwe umubare w'abagize umutwe n'igihe uzamara, bityo ngo igihe cyose abantu bagiye inama yo kugirira nabi abantu cyangwa ibintu, baba bakoze icyaha cyo kurema umutwe w'abagizi ba nabi.

9. Urukiko rurasanga icyaha cyo kurema umutwe w'abagizi ba nabi ari icyaha kimaze igihe mu mategeko ahana ibyaha y'ibihugu bigendera ku mategeko yanditse (civil law), cyane cyane mu Gihugu cy'ubufaransa. Iki cyaha n'ubwo cyakomeje kwitwa "kurema umutwe w'abagizi ba nabi" (association des malfaiteurs), ingingo zikigize (éléments constitutifs) zo zagiye zihinduka. Kugira ngo izo ngingo zumvikane, ni ngombwa kureba amateka y'iki cyaha, harebwa uko ingingo zikigize zagiye zihinduka, kugeza ubwo icyaha cyandikwa nk'uko cyanditse ubu mu ngingo ya 281 kugeza ku ya 283 z'igitabo cy'amategeko ahana ibyaha mu Rwanda.

10. Iki cyaha cyo kurema umutwe w'abagizi ba nabi, nk'uko bisobanurwa muri Encyclopédie Dolloz[1], cyatangiye guhanwa mu Gihugu cy'Ubufaransa mu mwaka wa 1810 (Code Pénal Français de 1810), mu gihe cya Revolisiyo y'abafaransa. Icyo gihe hahanwaga kurema umutwe nyawo w'abagizi ba nabi, ugizwe n'abantu benshi, ufite abawuyobora kandi ushyizweho ku buryo buramba (association des malfaiteurs, structurée d'une manière spéciale et permanente). Byasabaga kandi ko abawugize baba basanzwe bazwiho ko ari abagizi ba nabi (malfaiteurs). Iki gitabo gisobanura kandi ko iyi mitwe y'abagizi ba nabi yarwanyijwe, igera n'aho icika. Ariko nyuma hagiye haba abantu bakora ibyaha bagiye inama, ariko batishyize hamwe ku buryo buhoraho cyangwa bufite inzego z'ubuyobozi (des criminels ont continué à se réunir pour préparer ou commettre leurs méfaits, mais d'une manière éphémère et peu structurée). Aba bakurikiranwaga hakoreshejwe amategeko asanzwe y'ubwinjiracyaha n'ubufatanyacyaha, kuko babaga bataremye umutwe w'abagizi ba nabi nk'uko wasobanurwaga icyo gihe (ufite inzego z'ubuyobozi : structurée et hiérarchisée), ibikorwa byaba bidashobora guhanwa hakoreshejwe iyo nzira, ntibahanwe. Byatumye mu mwaka wa 1893 bavugurura igitabo cy'amategeko ahana ibyaha, ingingo zihana icyaha cyo kurema umutwe w'abagizi ba nabi (ingingo za 265 – 268) zirahindurwa, babyegereza icyaha cya "complot" (cyangwa « conspiracy » cyo mu Bihugu bya common law) cyari gisanzweho mu byaha byo guhungabanya umutekano w'Igihugu, aho bahanira abantu kuba bagiye umugambi wo guhungabanya umutekano w'igihugu. No kuri iki cyaha cyahoze ari ukurema umutwe w'abagizi ba nabi, amategeko yashyizweho yari agamije guhana igikorwa cyo kumvikana mu mugambi (résolution collective) wo kugirira nabi abantu cyangwa ibintu, ibyo bigahanwa ari uko hari ibikorwa byakozwe mu gushyira mu bikorwa umugambi. Bityo ibigize icyaha byarahindutse, ingingo ya 265 y'igitabo cy'amategeko ahana ibyaha mu Bufaransa yahanaga icyaha cyo kurema umutwe w'abagizi ba nabi irahindurwa, ihana abishyize hamwe cyangwa bagiranye ubwumvikane (association formée ou entente établie) hagamijwe gukora ibyaha byo kugirira nabi abantu cyangwa ibintu[2]. Uko izo ngingo zahinduwe, ni nako ingingo ya 281 kugeza ku ya 283 z'igitabo cy'amategeko y'u Rwanda zanditswe.

1 Encyclopédie Dalloz, Répertoire de droit pénal et de procédure pénale, Tome I, Editions Dalloz, Paris, 1999, V° Association des malfaiteurs.

2 Ingingo ya 265, mu gitabo cy'amategeko ahana ibyaha cy'abafaransa cyo mu mwaka wa 1810, yavugaga ngo « Toute association de malfaiteurs envers les personnes ou les propriétés, est un crime contre la paix publique », yarahinduwe iba « Quiconque aura participé à une association formée ou à une entente établie en vue de la préparation, concrétisée par un ou plusieurs faits matériels, d'un ou de plusieurs crimes contre les personnes ou les biens, sera puni d'un emprisonnement de cinq à dix ans et pourra être interdit de séjour ».

Nk'ingingo ya 281 y'igitabo cy'amategeko ahana ibyaha mu Rwanda ivuga ngo « tout association formée », biragaragara ko iyi ngingo yanditswe nyuma y'ivugurura ry'igitabo cy'amategeko ahana ibyaha mu Bufaransa, kandi iryo vugurura ryari rigamije guhana umutwe w'abagizi ba nabi n'ubwo waba utashyizweho mu buryo buhoraho, udafite n'abayobozi bawuyobora. Kuba icyaha cyo kurema umutwe w'abagizi ba nabi nk'uko cyashyizwe mu mategeko y'u Rwanda, bigaragara ko bitandukanye n'umutwe w'abagizi ba nabi wahanwaga mu gitabo cy'amategeko ahana ibyaha mu Bufaransa cyo mu mwaka wa 1810, wagombaga kuba ufite abawuyobora (association structurée et hiérarchisée), kandi ishyiriweho kuzaramba, bigaragarira no mu magambo agaragara mu ngingo ya 281 y'igitabo cy'amategeko ahana ibyaha mu Rwanda, avuga ngo « hatitawe ku mubare w'abawugize no ku gihe ugomba kumara » (quel que soit le nombre de ses membres ou sa durée). Bityo biragaragara ko kugira ngo habeho umutwe w'abagizi ba nabi, bidasaba kuba umutwe ugizwe n'abantu benshi bagera ku mubare runaka, ntibisaba kandi ko umutwe uba wahawe izina n'abawuyobora, nta n'ubwo bisaba ko uba ushyiriweho kumara igihe kirekire (caractère permanent).

11. Urukiko rurasanga ibyo Me RUGEYO avuga, ko AFRIKA Bernard na UWAMAHORO Théoneste batakurikiranwaho icyaha cyo kurema umutwe w'abagizi ba nabi kuko ngo Ubushinjacyaha butagaragaza ko uwo mutwe washyizweho ugahabwa izina n'abawuyobora, nta shingiro bifite, kuko nk'uko bimaze gusobanurwa, kurema umutuwe w'abagizi ba nabi ntibigombera kuba uwo mutwe wahawe izina n'abawuyobora.

12. Urukiko rurasanga ibyo Me RUGEYO Jean avuga ko Ubushinjacyaha butagaragaza ko habayeho « kurema » (former) umutwe w'abagizi ba nabi, nta shingiro bifite, kuko kugira ngo ko habeho « kurema » umutwe w'abagizi ba nabi, bidasaba ko haba habaye inama rusange n'inyandiko mvugo yayo nk'uko bigenda mu gushyiraho andi mashyirahamwe. Ahubwo kuba umuntu yagira igitekerezo cyo kugirira nabi abantu cyangwa ibintu, akakigeza ku wundi, uwo akigejejeho akacyemera, baba bishyize hamwe, baba « baremye » umutwe w'abagizi ba nabi. Bityo kurema umutwe w'abagizi ba nabi ni uko abantu baba bagiye bahura (cyangwa bavuganye mu bundi buryo kuko bashobora kuvugana no kuri telefone), mu rwego rwo gutegura igikorwa cyo kugirira nabi abantu cyangwa ibintu. Ntibisaba kuba bashyizeho umutwe ufite izina n'abayobozi bawuyobora. Ibi kandi bihuje n'ibyemejwe mu rubanza RPA 0158/05/CS rwa BIZIMUNGU Pasteur na bagenzi be, rwaciwe n'Urukiko rw'Ikirenga ku wa 17/02/2006, aho bahamijwe icyaha cyo kurema umutwe w'abagizi ba nabi, kubera ko

bahuye inshuro zitandukanye bagamije gutegura ibikorwa by'ubugizi bwa nabi ku bantu no ku bintu. Ntiharebwe ko uwo mutwe waba warahawe izina n'abayobozi bawuyobora, ahubwo hashingiwe gusa ku kuba harabaye inama zitandukanye zigamije gutegura ubugizi bwa nabi. Nta n'ubwo kandi kurema umutwe w'abagizi ba nabi bisaba ko abantu baba barahuye kugira ngo bategura ibyaha byinshi, kuko no gutegura icyaha kimwe bihagije ngo byitwe kurema umutwe w'abagizi ba nabi (L'association formée en vue de la commission d'un seul attentat suffit à constituer l'intention)[3]. Ikibazo gishobora kubaho ni icyo kugaragaza ko abantu, mu guhura kwabo, bari bagamije kugirira nabi abantu cyangwa ibintu. Ni ukuvuga kugira ngo iki cyaha gihanwe, ikibazo kigoye ni icyo kubona ibimenyetso ko abantu bahujwe n'uwo mugambi. Ariko mu gihe hari ibimenyetso bigaragaza ko bahuye, kandi ko byakozwe mu mugambi wo kugirira nabi abantu cyangwa ibintu biba bahagije mu kugaragaza ko habayeho « kurema » umutwe w'abagizi ba nabi. Umuhanga mu mategeko Michel VERON, mu Gitabo Droit Pénal Spécial, nawe asobanura ko atari ngombwa ko umutwe w'abagizi ba nabi uba ari umutwe ufite inzego, ufite abawuyobora kandi ugizwe n'abantu benshi, cyangwa ugamije gukora ibyaha byinshi. Atanga kandi urugero ko gushaka umuntu kugira ngo akore icyaha cyo guhohotera umuntu, ukamwereka aho icyaha kizakorerwa, ukamuha amabwiriza y'uburyo icyaha kizakorwamo, ni ukurema umutwe w'abagizi ba na nabi (l'association de malfaiteurs n'est pas nécessairement un groupement fortement structuré, hiérarchisé et composé de nombreuses personnes, ni constitué pour commettre un nombre important de crimes. Tombe ainsi sous cette qualification, le fait de recruter une personne pour commettre une agression, de repérer les lieux et de fournir des instructions et des renseignements à la personne recrutée)[4].

13. Urukiko rurasanga ibyo Me RUGEYO avuga ko uwitwa KAYIJUKA NGABO agaragaza, mu isomo atanga ry'amategeko ahana ibyaha mu Rwanda (Droit Pénal Général, Notes de Cours), ko kurema umutwe w'abagizi ba nabi bisaba ko uwo mutwe uba uzamara igihe (l'entente revêt un caractère permanent), kandi ko haba hagamijwe ibyaha byinshi, ibyo ngo byaba bidahari bikaba byaganisha k'ubufatanyacyaha, ariko ngo bikaba bitakwitwa kurema umutwe w'abagizi ba nabi kuko ibisabwa byaba bituzuye, nta shingiro bifite, kuko niba uko Me RUGEYO abivuga ari ko uwo mwarimu wo muri

3 AKELE ADAU (Pierre) et al, Cours de Droit Pénal Spécial, Université Protestante au Congo, Faculté de Droit, Notes de Cours, Année Académique 2003- 2004, p 262.

4 VERON (Michel), Droit Pénal Spécial, 6e édition, Armand Colin, Paris 1998, p7.

kaminuza yabivuze, (kuko ibyo Me RUGEYE yahaye Urukiko ari impapuro nke, urukiko rukaba rudafite uburyo bwo kungenzura ko koko ari ibyanditswe n'uwo mwarimu), ibyo uwo KAYIJUKA NGABO yaba avuga byaba birimo kwitiranya icyaha cyo kurema umutwe w'abagizi ba nabi n'ibindi byaha bisa nacyo. Haba mu mategeko y'Abafaransa, haba mu mategeko y'Ababirigi, iruhande rw'iki cyaha cyo kurema umutwe w'abagizi ba nabi cyari gisanzweho (participation à une association formée en vue de porter atteinte aux personnes ou aux biens), bashyizeho ikindi cyaha cyitwa « participation à une organisation criminelle », cyo gisaba ko umutwe w'abagizi ba nabi (organisation criminelle) uba ufite uko uteguye kandi ufite ubuyobozi (structurée et hiérarchisée), kandi ushyiriweho igihe kirekire. Aha hakaba ari naho harimo imitwe y'iterabwoba. Nyamara ku mutwe w'abagizi ba nabi nk'uko uteganywa n'ingingo ya 281 y'igitabo cy'amategeko ahana ibyaha mu Rwanda, icyaha kibaho hatitawe ku gihe uzamara « quel que soit sa durée », cyane cyane na none ko nk'uko byasobanuwe, umutwe w'abagizi ba nabi uvugwa mu ngingo ya 281 y'igitabo cy'amategeko ahana ibyaha mu Rwanda, ushobora kubaho ugamije gukora icyaha kimwe, kandi inshuro imwe, byarangira nawo ukaba urangiye, ibyo bikaba bigaragaza ko bidasaba ko umutwe uba washyiriweho kuzamara igihe kirekire. Ahubwo icyoroshye gitandukanya kurema umutwe w'abagizi ba nabi n'ubufatanyacyaha, ni uko kurema umutwe w'abagizi ba nabi bihanwa nk'icyaha ukwacyo, gitandukanye n'ibyaha byari bigambiriwe, bivuga ko mu gihe ibyaha byari bigambiriwe nabyo bishyizwe mu bikorwa, hazaba habayeho kurema umutwe w'abagizi ba nabi nk'icyaha ukwacyo, hazaba habayeho kandi ubufatanyacyaha muri ibyo byaha byari bigambiriwe kandi bigakorwa. Nk'uko umushinjacyaha abisobanura, abantu baramutse bacuze umugambi wo kugirira nabi abantu cyangwa ibintu, baba barangije gukora icyaha cyo kurema umutwe w'abagizi ba nabi. Baramutse bawushyize mu bikorwa, baba bakoze n'ibyo bindi byaha. Ariko ababateye inkunga mu gukora ibyo byaha, bazahanirwa icyo cyaha cyo gutera inkunga (ubufatanyacyaha), ntibazahanirwa kurema umutwe w'abagizi ba nabi, mu gihe nta ruhare bagize mu gutegura umugambi. Ni ibyaha birebwa ku nzego zitandukanye (umugambi, ishyirwamubikorwa ry'umugambi) no ku bantu batandukanye, ariko kimwe ntikibuza ikindi kubaho.

14. Urukiko rurasanga AFRIKA Bernard na UWAMAHORO Théoneste barakoze icyaha cyo kurema umutwe w'abagizi ba nabi, kuko AFRIKA Bernard yemera ko yacuze umugambi wo kugirira nabi NDAGIWENIMANA, akawugeza k'UWAMAHORO Théoneste, uyu nawe akawemera. Ibyo avuga ko atigeze amubwira ibyo kwica

NDAGIWENIMANA (n'ubwo mbere hose yemeraga ko ariwo wari umugambi), ko icyo yari agamije ari uko afungwa, n'ubwo byaba ari ibyo kumufungisha yari agamije, nabyo ntibimukuraho icyaha, kuko ntiyaregaga NDAGIWENIMANA icyaha runaka yakoze, ahubwo niba yarashakaga kumufungisha nk'uko abivuga, yashakaga kumufungisha mu buryo bunyuranyije n'amategeko, ibyo kandi ni ukugirira nabi umuntu kandi nabyo birahanirwa. Ariko si no kumufungisha yari agamije, ahubwo yari agamije kumwica, kuko yafashwe amaze gutanga amafaranga yo guhemba NKURIKIWENIMANA Gaston, wari umaze kumwemeza ko amaze kwica NDAGIWENIMANA nk'uko yari yabimusabye.

15. Urukiko rurasanga ibyo AFRIKA Bernard avuga ko Ubushinjacyaha buvuga ko bahuye inshuro nyinshi kandi barahuye inshuro imwe, nta shingiro bifite, kuko n'ubwo baba batarahuye inshuro zirenze imwe, kuba barakomeje kuvugana kuri telefone, nabyo bifatwa nko guhura. Kandi AFRIKA Bernard ntahakana ko nyuma yo kugeza umugambi k'UWAMAHORO Théoneste, nawe akamuhuza n'uzawushyira mu bikorwa, yakomeje kugenda avugana na UWAMAHORO Théoneste mu buryo bwo kuwushyira mu bikorwa, ndetse akomeza kuvugana na NKURIKIWENIMANA Gaston, wagombaga kuwushyira mu bikorwa. Ibyo AFRIKA Bernard avuga ko Ubushinjacyaha butagaragaza abagize uwo mutwe, nabyo nta shingiro bifite kuko abawuremye ari AFRIKA Bernard na UWAMAHORO Théoneste, bashatse kwinjizamo Hope na NKURIKIWENIMANA Gaston. Kuba aba badashobora gukurikiranwa, ntibyaba urwitwazo ko uwo mutwe utabayeho, kuko wabayeho igihe AFRIKA Bernard na UWAMAHORO Théoneste bari bamaze kwemeranwa ku mugambi wo kwica NDAGIWENIMANA. Abandi bari kuza bawinjiramo. Ingingo ya 283 y'igitabo cy'amategeko ahana ibyaha mu Rwanda, igika cya kabiri, yemera ko abagaragarije abayobozi umutwe w'abagizi ba nabi batakurikiranwa iyo babikoze mbere y'uko bakurikiranwa. Bityo iyo HOPE na NKURIKIWENIMANA Gaston baza kwifatanya na AFRIKA Bernard na UWAMAHORO Théoneste mu mugambi umwe, bose bari gukurikiranywaho kurema umutwe w'abagizi ba nabi. Ariko kubera ko binjiye muri gahunda y'uwo mutwe kugira ngo babone uko babigeza ku nzego z'umutekano ziburizemo umugambi, ntibakurikiranwa nk'uko ingingo ya 283 imaze kuvugwa ibisobanura, ariko ntibyabuza kuba umutwe w'abagizi ba nabi warabayeho.

16. Urukiko rurasanga ibyo UWAMAHORO avuga ko we atagombye gukurikiranwa kuko ntacyo yapfaga na NDAGIWENIMANA nta shingiro bifite kuko yagejejweho umugambi wo kugira ngo NDAGIWENIMANA

yicwe arawemera, ashaka n'abawushyira mu bikorwa, ibyo birahagije kugira ngo icyaha kimuhame, n'ubwo we nta kibazo cyihariye yari afitanye na NDAGIWENIMANA cyatuma ajya mu mugambi wari wateguwe na AFRIKA Bernard. Kuba yaba yarinjiye mu mugambi mu rwego rwo gufasha AFRIKA Bernard ntibimukuraho icyaha.

17. Kubera impamvu zimaze gusobanurwa, ubujurire bwa AFRIKA Bernard na UWAMAHORO Théoneste nta shingiro bufite.

KU BYEREKEYE INDISHYI

18. NDAGIWENIMANA avuga ko kuba AFRIKA Bernard na UWAMAHORO Théoneste barateguye umugambi wo kumugirira nabi byatumye we n'umuryango we bahungabana. Niyo mpamvu asaba indishyi z'amafaranga 40.000.000. Avuga ko abo arega bafite imitungo myinshi, ngo baciwe indishyi nyinshi byabaca intege mu migambi yabo yo kumugirira nabi, kuko babishukwamo n'iyo mitungo. Asaba kandi amafranga 500.000 yo gukurikirana urubanza.

19. Me RUGEYO Jean avuga ko nta ndishyi NDAGIWENIMANA yahabwa, kuko nta cyaha yakorewe, kuko kurema umutwe w'abagizi ba nabi atari icyaha kiba gikorewe umuntu. Bityo ngo kumuha indishyi byaba binyuranye n'ingingo ya 258 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, ivuga ko uwishyura indishyi ari uwakoreye undi ikosa bikamutera igihombo. AFRIKA Bernard avuga ko nta ndishyi yaha NDAGIWENIMANA kuko icyaha baregwa cyo kurema umutwe w'abagizi ba nabi ntaho gihurira na NDAGIWENIMANA. UWAMAHORO avuga ko ntaho ahuriye n'indishyi zisabwa kuko ntaho ahuriye na NDAGIWENIMANA.

20. Urukiko rurasanga kugira ngo habeho kuryozwa indishyi, hagomba kuba habayeho ikosa, habayeho igihombo, kandi iryo kosa ariryo ryateje icyo gihombo.

21. Urukiko rurasanga ibyo abaregwa bavuga ko icyaha baregwa nta buryo cyatera igihombo NDAGIWENIMANA bifite ishingiro kubera ko bafashwe bagitegura kumugirira nabi. Nta gikorwa bakoze kimugirira nabi, bityo nta ndishyi yagenerwa. Kuba baracuze umugambi wo kumugirira nabi ntibyafatwa nk'aho byamuhungabanyije, kuko byari kumuhungabanya iyo baza kuba hari ibikorwa bamukozeho mu rwego rwo kugerageza kumugirira nabi, kandi nta gikorwa na kimwe cyo muri urwo rwego Urukiko rwemeje. Ariko kuba baragize umugambi byonyine ntacyo byagombye kuba byaramuhungabanyijeho.

III. ICYEMEZO CY'URUKIKO

22. Rwemeje ko ubujurire bwa AFRIKA Bernard na UWAMAHORO Théoneste nta shingiro bufite ku byerekeye icyaha bahamijwe n'ibihano bahanishijwe.

23. Rwemeje ko ubujurire bwa AFRIKA Bernard na UWAMAHORO Théoneste bufite ishingiro ku byerekeye indishyi bari bategetswe guha NDAGIWENIMANA.

24. Rwemeje ko imikirize y'urubanza RP 0651/11/TGI/NYGE, rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge, ku wa 10/10/2011, idahindutse, uretse ku byerekeye indishyi zari zagenwe.

25. Rwemeje ko nta ndishyi AFRIKA Bernard na UWAMAHORO Théoneste bagomba guha NDAGIWENIMANA.

26. Rutegetse AFRIKA Bernard na UWAMAHORO Théoneste gutanga amagarama y'uru rubanza, angana n'amafaranga 54.400, bakayatanga uru rubanza rukimara kuba itegeko, batayatanga ku neza agakurwa mu byabo ku ngufu za Leta.

NI UKO RUCIWE KANDI RUSOMEWE MU RUHAME NONE KU WA 24/02/2012 N'URUKIKO RUKURU RUGIZWE NA HITIMANA J M VIANNEY, UMUCAMANZA, AFASHIJWE NA NYIRANEZA Fortunée, UMWANDITSI.

Umucamanza	**Umwanditsi**
(Sé)	**(Sé)**
HITIMANA J M VIANNEY	**NYIRANEZA Fortunée**

3. URUKIKO RUKURU

N° Y'URUBANZA: RPA0898/10/HC/KIG
ITARIKI Y'URUBANZA: 06/04/2012
HABURANA: UBUSHINJACYAHA na Dr DUFITUMUKIZA Jean Claude

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA-INYANDIKO ITAGAMIJE KWIHESHA UBURENGANZIRA-KUDATERA IGIHOMBO UNDI MUNTU-KUTABIFATA NK'ICYAHA CYO GUKORA NO GUKORESHA INYANDIKO MPIMBANO.

IKINYOMA CYANDITSE-KUTAGIFATA BURI GIHE NK'ICYAHA MU GIHE ICYANDITSWE KITADETAGANYIJWE N'AMATEGEKO AHANA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Bigize icyaha cyo gukora no gukoresha inyandiko mpimbano mu gihe iyo nyandiko yakozwe mu rwego rwo kwihesha uburenganzira runaka , cyangwa se igamije gutera igihombo undi muntu.

Ikinyoma cyose cyanditse ntigifatwa nk'icyaha, kugira ngo gihanwe ni ngombwa ko icyo kinyoma cyanditse kiba gihuje n'ibiteganywa n'igitabo cy'amategeko ahana.

URUKIKO RUKURU RURI I KIGALI KU CYICARO CYARWO GIKURU RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA MU RWEGO RW'UBUJURIRE, RUCIYE MU RUHAME URUBANZA N° RPA 0898/10/HC/Kig KU WA 6/04/2012 MU BURYO BUKURIKIRA:

<u>HABURANA</u> :

UBUSHINJACYAHA

NA

USHINJWA :

- Dr DUFITUMUKIZA Jean Claude mwene Kanyeshyamba Joseph na Kanyeshyamba Marthe, wavutse 1962, utuye Kimironko- Remera- Gasabo- Umujyi wa Kigali.

UREGERA INDISHYI :

- MUPFASONI CLAUDINE mwene Kanyeshyamba Joseph na Kanyeshyamba Marthe, wavutse 1971, akaba abarizwa mu gihugu cy'Ubudage, ahagarariwe na Me Murenzi Eugène.

ICYAHA AKURIKIRANWEHO:

Icyaha cyo gukora no gukoresha inyandikompimbano. Icyaha giteganywa kandi gihanishwa ingingo za 202 na 204 y'igitabo cya kabiri cy'amategeko ahana ibyaha mu Rwanda.

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

1. Ku tariki 23/06/2010, Urukiko Rwisumbuye rwa GASABO rwaciye urubanza RP02586/09/TGI/GSBO rwemeza ko icyaha cy'inyandikompimbano Dr DUFITUMUKIZA Jean Claude akurikiranyweho

   kitamuhama, MUPFASONI akaba nta ndishyi yahabwa; rutegeka ko amagarama y'urubanza aherera kuri Leta.

2. MUPFASONI Claudine ntiyishimiye imikirize y'urwo rubanza, arujuririra mu Rukiko Rukuru agamije gusaba Urukiko ko harebwa uburiganya bwose bwakoreshejwe kugirango yamburwe ikibanza cye; ko Urukiko

rwakwemeza ko amasezerano hagati ya Dr DUFITUMUKIZA Jean Claude na Col. Agaba Charles ari inyandikompimbano kuko ngo ubwo bugure butabayeho; ko kandi icyaha cy'inyandikompimbano gihama Dr DUFITUMUKIZA Jean Claude, rukanamutegeka guha MUPFASONI Claudine indishyi.

3. Dr DUFITUMUKIZA Jean Claude n'abamwunganira bavuga ko nta buriganya bwabayeho kuko ngo Agaba Charles yagurishaga umutungo we kandi umugore we akabisinyira, ko nta masezerano Mupfasoni yasinye agaragaza ko yaguze na Col. Agaba Charles, ko kandi hari urubanza RC 0164/08/TGI/GSBO rwabaye itegeko rwaciwe n'Urukiko Rwisumbuye rwa Gasabo kuwa 28/11/2008 rwemeje ko amasezerano y'ukuri ari ayakozwe hagati ya Col. Agaba Charles na Dr DUFITUMUKIZA Jean Claude, rutesha agaciro inyandiko bwite bise amasezerano yakozwe na Col. Agaba Charles kuko ngo ariwe wayisinyiye wenyine.

Ikibazo kigomba gusuzumwa muri uru rubanza n'ukumenya niba amasezerano yabaye hagati ya Dr DUFITUMUKIZA Jean Claude na Col. Agaba Charles yafatwa nk'inyandikompimbano hakurikijwe ibiteganywa n'amategeko.

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

4. Mu bujurire bwabo Me MURINZI uhagarariye MUPFASONI Claudine uregera indishyi avuga ko ubujurire bwabo bushingiye k'ubyo Dr DUFITUMUKIZA Jean Claude yiyemerera ubwe harimo n'inyandiko yakoresheje ariko ngo Urukiko rwa mbere ntirwabihaye agaciro ngo rumuhamye icyaha; avuga ko bagaragaje ko hari ubugure bwabaye hagati ya Col. Agaba Charles na MUPFASONI Claudine bugaragazwa na 6% yatanzwe mugihe MUPFASONI Claudine yari amaze kugura iyo parcelle, ndetse ngo na Col. Agaba Charles hari inyandiko zitandukanye yanditse yemera ko yagurishije na MUPFASONI Claudine; Urukiko rwabajije Me

MURINZI niba hari amasezerano yanditse, avuga ko Col. Agaba Charles yamuhaye ″reçu″; asobanura ko ibyo bimenyetso bishinja Dr DUFITUMUKIZA babyerekanye mu Rukiko ariko ntibyahabwa agaciro; ngo Col. Agaba Charles amaze kubona ko Dr DUFITUMUKIZA Jean Claude yabeshye yahise atanga ikirego muri Police, anamenyesha MUPFASONI Claudine, Umurenge n'Akarere.

5. Me MURINZI avuga kandi ko ibyo Dr DUFITUMUKIZA Jean Claude avuga binyuranyije n'ibyo yanditse tariki 18/01/2008, ko harebwe iyo nyandiko mu gice cya kabiri, yemezaga ko ikibanza ari icya MUPFASONI Claudine, ko inyandiko mpimbano igaragarira muri iyo nyandiko aho ihindura ibihari maze igaha uburenganzira Dr DUFITUMUKIZA ku mutungo kandi ufite nyirawo.

6. Me IDAHEMUKA Tharcisse nawe uhagarariye MUPFASONI Claudine avuga ko indishyi baregera zishingiye ku cyaha cyavuzwe cy'inyandiko mpimbano; ngo ku tariki 18/01/2008 hari amasezerano abiri ku kibanza kimwe n°7916 kiri Bibare-Kimironko, amwe akaba ari hagati ya Dr DUFITUMUKIZA Jean Claude na Ngiriyomba Eric, andi akaba hagati ya Col. Agaba Charles na Dr DUFITUMUKIZA Jean Claude, noneho muri aya yakabiri Ngiriyomba Eric akagaragaramo nk'umugabo (témoin), ngo muri ayo masezerano yombi nta kuri kurimo, ahubwo ngo bakaba bibaza ayo yemera muri yombi; Me IDAHEMUKA Tharcisse yakomeje avuga ko ashingira ku ngingo ya 110 y'Itegeko ry'ibimenyetso, Dr DUFITUMUKIZA Jean Claude nta hakana ayo masezerano yombi kandi yombi akaba yarayakoresheje ashaka ingwate n'icyemezo cy'umutungo azi neza ko uwo mutungo atari uwe, ngo ntibyumvikana ukuntu Umucamanza yashingiye ku ngingo ya 153 y'Itegeko n°13/2004 ryo ku wa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha; asaba ko bibaye ngombwa, Urukiko rwakumva Dr Nkurunziza Aaron na madame Agaba Antoinette ndetse n'uwitwa Munyaneza Focas wubatse inzu.

7. Uhagarariye Ubushinjacyaha avuga ko basanga ubujurire bwa MUPFASONI Claudine bufite ishingiro, ngo muri uru rubanza ikidashidikanwaho n'uko uwo mutungo wari uwa Agaba Charles akawugurisha na MUPFASONI Claudine nkuko ngo bigaragazwa n'urwandiko rwo kuwa 15/04/2008 Agaba Charles yandikiye executif w'Umurenge; ngo n'umugore we, mw'ibazwa rye yasobanuye uko iryo gurisha ryagenze, ko nawe atemera ubugure hagati ya Agaba Charles na Dr DUFITUMUKIZA Jean Claude ndetse ngo yanabiregeye Urukiko, ko rero basanga ayo masezerano ari impimbano kuko itariki 18/01/2008 ayo yabereyeho, hari n'andi yakozwe kuri uwo munsi yabaye hagati ya Dr DUFITUMUKIZA Jean Claude na Ngiriyomba Eric umunsi umwe; ko Ngiriyomba Eric abazwa tariki 22/1/2008 (p.3, cote6) yavuze ko ayo masezerano bayise ay'ubugure kugirango byorohere Dr DUFITUMUKIZA muri «mutation» ariko nta mafranga yahaye Agaba Charles, ko iyo mvugo ihura n'ibisobanuro madame Agaba yatanze; uhagarariye Ubushinjacyaha yakomeje avuga ko abahanga mu by'amategeko

nka Robert Kint basobanura neza uko inyandiko mpimbano ziba ziteye, ko basanga amasezerano hagati ya Agaba Charles na Dr DUFITUMUKIZA Jean Claude nta kuri kurimo, ko ndetse n'Urukiko Rwisumbuye rwabonye inenge maze runabivugaho ariko rurangije ntirwabifata nk'icyaha (p.5, §25).

8. Mu kwiregura, Dr DUFITUMUKIZA Jean Claude avuga ko icyaha aregwa atacyemera, ko yemera ko tariki 18/01/2008 habaye amasezerano abiri ariko ngo nta mahimbano arimo kuko ngo Ngiriyomba Eric yamugurishije icyo kibanza, bagirana amasezerano ariko asanga ikibanza kicyanditse kuri Agaba Charles, ko bahise bajya kureba Agaba Charles amubwira ko ikibanza ari icye nta wundi wakigurisha, ko aribwo Dr DUFITUMUKIZA Jean Claude na Agaba Charles bakoze andi masezerano, Ngiriyomba Eric ayasinya nk'umugabo (témoin), ngo ibya MUPFASONI Claudine yabimenye nyuma arimo gusinya ayo masezerano na Agaba Charles ariko yibwira ko wenda Ngiriyomba Eric yakiguze na MUPFASONI Claudine; Dr DUFITUMUKIZA Jean Claude yasobanuye kandi ko amasezerano yagiranye na Agaba Charles yujuje ibyangombwa ngo n'ubwo baje kumwisubirana kugirango ikibanza kitamwandikwaho, ndetse ngo amaze kugura icyo kibanza yajyanye n'umudamu wa Agaba Charles mu Murenge bamuha icyemezo cy'ubugure n'icy'umutungo; ko byongeye kandi amasezerano hagati ya Agaba Charles na MUPFASONI Claudine nta tariki yanditseho ndetse ngo na MUPFASONI Claudine ntiyigeze ayasinyaho kandi hakaba handitse ko MUPFASONI Claudine ari umuvandimwe wa Agaba Charles.

9. Me MUSONERA Alexis wunganira Dr DUFITUMUKIZA Jean Claude avuga ko byanditse neza ko ikibanza kiri mu mazina ya Agaba Charles, ko
Uwitwa Kabanda Moussa yakigurishije na Ngiriyomba Eric nawe akigurisha Dr DUFITUMUKIZA Jean Claude kandi uyu akabona ko nta kindi kibazo.

10. Me MUKANYANDWI Annonciata nawe wunganira Dr DUFITUMUKIZA Jean Claude avuga ko bashingira ku ngingo ya 14 y'Itegeko ryerekeye ibimenyetso n'itangwa ryabyo n'ingingo ya 30, ngo hashobora kuba amasezerano menshi kandi akabera itegeko abayagiranye; ngo kuba Ngiriyomba Eric yemera amasezerano yasinyanye na Dr DUFITUMUKIZA Jean Claude kandi yaragurishaga umutungo utari uwe, ngo n'ikimenyetso kigaragaza ko Ngiriyomba Eric atubahirije amategeko maze bituma yemera gusinya nk'umugabo kuya kabiri; Me MUKANYANDWI Annonciata yatanze nk'ikimenyetso kopi y'urubanza RC 0164/08/TGI/GSBO rwabaye itegeko avuga ko urwo

rubanza rwemezaga ko amasezerano y'ukuri ari ayakozwe hagati ya Agaba Charles na Dr DUFITUMUKIZA Jean Claude.

11. Urukiko rurasanga Dr DUFITUMUKIZA Jean Claude akurikiranweho n'Ubushinjacyaha icyaha cyo gukora no gukoresha inyandiko-mpimbano, uhagarariye Ubushinjacyaha akaba asobanura ko ku tariki 18/01/2008 Dr DUFITUMUKIZA Jean Claude yagiranye n'abantu babiri amasezerano y'ubugure atandukanye kandi agamije kugura ikintu kimwe (ikibanza n°7916 kiri mu Mudugudu w'Intwali, Akagali ka Bibare, Umurenge wa Kimironko, Akarere ka Gasabo); amasezerano amwe ngo akaba yarayagiranye n'uwitwa Agaba Charles, andi ayagirana n'uwitwa Ngiriyomba Eric.

12. Rurasanga mu masezerano y'ubugure bw'ikibanza cyavuzwe haruguru hagati ya Dr DUFITUMUKIZA Jean Claude na Ngiriyomba Eric, handitse ko icyo kibanza ki kiri mu mazina ya Col. Agaba Charles wakigurishije umudamu witwa MUPFASONI Claudine nawe wahaye uburenganzira umugabo witwa Kabanda Moussa bwo kukigurisha, akaba ariwe wakigurishije Ngiriyomba Eric nkuko bigaragazwa n'amasezerano yabaye hagati ya bombi kuwa 22/05/2007; Urukiko rurasanga ariko n'ubwo icyo kibanza cyari cyagurishijwe, impapuro zitandukanye ziri muri dosiye (contrat de location na fiche castrale) zigaragaza ko koko cyari ki kiri mu mazina ya Agaba Charles.

13. Urukiko rurasanga mw'ibazwa rya Ngiriyomba Eric wagurishije ikibanza na Dr DUFITUMUKIZA Jean Claude, yarasobanuriye Ubugenzacyaha ko bise
amasezerano y'ubugure inyandiko yabaye hagati ya Agaba Charles na Dr DUFITUMUKIZA Jean Claude mu buryo bwo korohereza Dr DUFITUMUKIZA Jean Claude ″mutation″ kandi ngo akaba nta mafaranga yigeze aha Agaba Charles, ko ahubwo ariwe (Ngiriyomba Eric) Dr DUFITUMUKIZA Jean Claude yahaye amafranga y'ubugure kuko ariwe baguze icyo kibanza, ngo akaba ari nayo mpamvu yemeye gusinya nk'umugabo kuri ayo masezerano yabaye hagati ya Agaba Charles na Dr DUFITUMUKIZA Jean Claude.

14. Urukiko rurasanga iyo mvugo ya Ngiriyomba Eric ishimangirwa n'imvugo y'umudamu wa Agaba Charles witwa Mushimiyimana Antoinette mw'ibazwa rye imbere y'Ubugenzacyaha, aho yasobanuye ko kuberako ikibanza Ngiriyomba Eric yaguze na Kabanda Moussa watumwe na MUPFASONI Claudine, nawe akakigurisha Dr DUFITUMUKIZA Jean Claude, kitari cyarakorewe „mutation" hagati ya Agaba Charles na MUPFASONI Claudine, ngo niyo mpamvu

basabye Agaba charles ngo akorane na Dr DUFITUMUKIZA Jean Claude inyandiko isa n'ubugure kugirango bizamworohereze muri „mutation", ariko ngo Agaba Charles yemeye kubikora amaze kwerekwa impapuro zigaragaza ubugure hagati ya Ngiriyomba Eric na Kabanda Moussa watumwe na MUPFASONI Claudine.

15. Urukiko rurasanga inyandiko Agaba Charles yandikiye Executive w'Umurenge wa Kimironko imenyesha gusa ko nta wundi muntu yigeze agurisha ikibanza cye usibye MUPFASONI Claudine; rugasanga iyo mvugo itavanaho ko nyuma y'ubwo bugure bwabaye hagati ya Agaba Charles na MUPFASONI Claudine, harabaye na none kugurisha icyo kibanza kuko uwari umaze kukigura (le nouveau acquéreur) ariwe MUPFASONI Claudine yari abifitiye uburenganzira; ubu bugure bukaba bugaragazwa n'amasezerano yavuzwe haruguru mu gika cya 12 yabaye hagati ya Kabanda Moussa na Ngiriyomba Eric, bukagaragazwa kandi n'imvugo ya Ngiriyomba Eric mu Bugenzacyaha aho avuga ko mbere y'uko yishyura Kabanda Moussa amafaranga yose, yamenye ko Kabanda Moussa yari yaragurishije icyo kibanza n'uwitwa Nkurunziza Aaron, nibwo Police yategetse Ngiriyomba Eric gusa nkaho yishyuriye Kabanda Moussa avance yari yafashe ya Nkurunziza Aaron, yemera gutanga amafaranga 1.000.000 hari bashiki ba Kabanda Moussa, n'ukuvuga barumuna ba MUPFASONI Claudine, ngo akaba aricyo ashingiraho avuga ko MUPFASONI Claudine yar'azi ubugure bwabaye hagati ya Kabanda Moussa na Ngiriyomba Eric; byongeye kandi kuba Agaba Charles yaremeye gusinya inyandiko igaragaza ubugure hagati ye na Dr DUFITUMUKIZA Jean Claude, n'uko nawe yagaragarijwe kandi akemera ko icyo kibanza kitari kikiri umutungo wa MUPFASONI Claudine.

16. Urukiko rukaba rusanga amasezerano yabaye hagati ya Dr DUFITUMUKIZA Jean Claude na Agaba Charles atafatwa nk'amasezerano y'ubugure bw'ikibanza n°7916 kuko atariyo yahesheje Dr DUFITUMUKIZA Jean Claude uburenganzira ku kibanza, byongeye kandi bikaba bitari gushoboka ko Agaba Charles agurisha umutungo utari ukiri uwe, dore ko nawe yivugira ko nta wundi yigeze agurisha ikibanza cye usibye MUPFASONI Claudine, ndetse n'uru Rukiko rukaba rwagaragaje ko icyo kibanza cyagurishijwe Ngiriyomba Eric nawe akigurisha Dr DUFITUMUKIZA Jean Claude.

17. Kuba na none amasezerano yabaye hagati ya Dr DUFITUMUKIZA Jean Claude na Agaba Charles nta burenganzira yahesheje Dr

DUFITUMUKIZA Jean Claude cyangwa ngo iyo nyandiko ibe yar'igamije gutera igihombo umuntu uwari we wese, nkuko byemezwa n'abahanga mu by'amategeko[1], aho bavuga ko inyandiko-mpimbano ihanwa gusa iyo iyo nyandiko igamije kugaragaza uburenganzira, iyo iyo nyandiko igamije gutera igihombo; ndetse bakanibaza niba mu gihe hari amasezerano nyakuri yakozwe, hanyuma impande zombi zigakorana andi masezerano ariko adashingiye ku mpamvu y'ukuri yashingiweho mu masezerano ya mbere (contrat simulé), bibaza niba aya masezerano ya kabiri ashobora gufatwa nk'inyandiko-mpimbano ku mpamvu y'uko ibivugwamo atari ukuri; mu gusubiza ibyo, bakavuga ko ugushidikanya gushoboka mu gihe hatabayeho kubeshyana ku mpande zombi.

18. N'umuhanga mu by'amategeko, Robert KINT[2], mu gutanga bimwe mu bisobanuro bigize ingingo ya 202 y'igitabo cya kabiri cy'amategeko ahana
ibyaha mu Rwanda, avuga ko ikinyoma cyose cyanditse ntigifatwa nk'icyaha; ko ikinyoma, n'iyo cyaba cyanditse, ntigihanwa n'itegeko. Kugira ngo gihanwe, ni ngombwa ko icyo kinyoma cyanditse kiba gihuje n'ibiteganywa n'igitabo cy'amategeko ahana; ngo umuntu yavuga ko rero itegeko rihana inyandiko zishobora guhesha uzikoze uburenganzira ubwo aribwo bwose cyangwa uburenganzira bwo kurega.

19. Kubera impamvu zose rwagaragaje, Urukiko rurasanga Dr DUFITUMUKIZA Jean Claude atahamwa n'icyaha akurikiranweho cyo gukora no gukoresha inyandiko-mpimbano, rero akaba agomba kugirwa umwere; bityo ubujurire bwatanzwe na MUPFASONI Claudine burebana n'indishyi bukaba nta shingiro bufite.

---

1 Jean PRADEL et Michel DANTI-JUAN, **Manuel de droit pénal spécial**, 4ème édition, ÉDITIONS CUJAS, Paris,
Juillet 2007, p.815-817: « Le faux n'est reprehensible que si le document a pour objet ou pour résultat de prouver
un droit…..le faux doit être un acte de nature à causer un prejudice…..Enfin, on s'est demandé s'il peut y avoir
faux intellectuel en cas de *simulation*, cette technique bien connue des civili-tés(…); l'hésitation est permise dans la
mesure où les parties ne se trompent pas mutuellent.»

2 Robert KINT, Droit Pénal Spécial, 1993, p.19 : «…tout mensonge écrit n'est pas infractionnel. Le mensonge
comme tel, même écrit, n'est pas réprimé par la loi. Pour qu'il soit punissable, il faut que le mensonge écrit soit
entouré des circonstances prévues par le code pénal… En principe on peut dire que la loi vise avant tout les écrits
pouvant servir de fondement à l'exercice d'un droit ou d'une action.»

III. ICYEMEZO CY'URUKIKO

Urukiko Rukuru:

20. Rwemeje ko ubujurire bwatanzwe MUPFASONI Claudine nta shingiro bufite;

21. Rwemeje ko urubanza rwajuririwe RP 02586/09/TGI/GSBO rugumanye agaciro karwo.

22. Rutegetse MUPFASONI Claudine kwishyura amafaranga y'amagarama y'urubanza ahwanye n'amafranga 32.500, atayatanga mu gihe giteganywa n'amategeko akava mu bye ku ngufu za Leta.

23. Ruvuze ko rutasomwe kuwa 6/04/2012 kubera ko yari umunsi wa konji.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME KUWA 09/04/2012 N'URUKIKO RUKURU RUGIZWE NA BWIZA Blanche (UMUCAMANZA) HARI N'UMWANDITSI NDUMVIRIYE Charles.

(Sé)	(Sé)
NDUMVIRIYE Charles	**BWIZA Blanche**
UMWANDITSI	**UMUCAMANZA**

Copie certifiée conforme à l'original
Fait à Kigali le………………………
Le greffier…………………………....

IMANZA Z'IMBONEZAMUBANO

4. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCAA0051/11/CS
ITARIKI Y'URUBANZA: 20/04/2012
HABURANA: MUKABARUNGI Julienne C/ GATSINZI Marcel

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO-URUBANZA RUBANZIRIZA URUNDI-IMITERERE Y'URUBANZA RUTAMBAMIRA URUBANZA RUBANZIRIZA URUNDI-KUTARUJURIRA RWONYINE.

IKIBAZO CY'AMATEGEKO CYAGARAGAJWE

Urubanza uko rwaba rumeze kose ruciwe ku kirego gitambamira urubanza rubanziriza urundi rufata kamere y'urwatambamiwe, bivuze ko rudashobora kujurirwa rwonyine rusize urubanza ku kirego cy'iremezo

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA MU RUHAME IMANZA Z'IMBONEZAMUBANO, RUKIJIJE KUWA 20/04/2012 URUBANZA N° RCAA 0051/11/CS MU BURYO BUKURIKIRA:

HABURANA:

Uwajuriye :

Mukabarungi Julienne, mwene Ruhigira Barnabé na Bwandinga Gaudence, utuye 29 St Pierre, France, akaba ahagarariwe na Me Jean Bosco Rusanganwa.

Uregwa:

Gatsinzi Marcel, mu izina ry'umwana we Irebe Gatsinzi Lars, utuye mu Mudugugu wa Nyabisindu, Akagali ka Nyabisindu, Umurenge wa Remera, Akarere ka Gasabo, Umujyi wa Kigali.

Ikiregerwa: Kujuririra icyemezo nº Rciv 0038/11/Pré-ex/CS cy'umucamanza w'ibanzirizasuzuma mu rubanza RCAA 0102/10/CS cyafashwe kuwa 18/04/2011.

I.Uko ikibazo giteye muri make

1) Nyuma y'uko icyahoze ari Urukiko rwa Mbere rw'Iremezo rwa Kigali rwemeje ko ubutane na Mukabarungi Julienne Marcel Gatsinzi yasabaga butanzwe kubera amakosa yabo bombi, rukemeza ko imitungo igizwe n'inzu iri mu kibanza nº3119 mu Rugunga , n'isambu iri i Gasogi igurishwa bakagabana ibivuyemo mu buryo buringaniye, rugafata n'icyemezo ku birebana n'abana babyaranye, Mukabarungi yajuririye urwo rubanza mu Rukiko Rukuru agamije kugaragaza ko umutungo agomba kugabana na Gatsinzi Marcel utagizwe gusa n'ibimaze kuvugwa, ko ahubwo ko hagombye kwiyongeraho undi mutungo nawo basangiye bagombye kugabana.

2) Mu gihe urubanza kuri icyo kirego cy'iremezo rwari rutaracibwa, urwo rukiko rwaciye urubanza rubanziriza urundi RCA 0039/05/HC/KIG rurimo icyemezo kigaragaza ku ruhande rumwe urutonde rw'imitungo yose Gatsinzi na Mukabarungi basangiye bagomba kugabana, muri iyo mitungo harimo n'ikibanza nº 4423 n'inzu yubatsemo biri i Remera III, Akarere ka Gasabo, Umujyi wa Kigali, ku rundi ruhande harimo ko n'agaciro k'iyo mitungo kagomba kugenwa n'umuhanga mu by'ubwubatsi ababuranyi bombi bagomba kumvikanaho, rukazamushyikirizwa kuwa 01/06/2010, bitaba ibyo urukiko rukazaba arirwo rumugena kuri uwo munsi.

3) Nyuma y'urwo rubanza rubanziriza urundi, Gatsinzi Marcel mu izina ry'umwana we Irebe Gatsinzi Lars, yatanze ikirego kirutambamira asaba ko ikibanza nº4423 n'inzu bivuzwe haruguru bikurwa mu mutungo agomba kugabana na Mukabarungi Julienne kubera ko uwo mutungo ari uw'uwo Gatsinzi Irebe Lars, ukaba ufite n'ibyangombwa byawo bitapfa kuvanwaho.

4) Mu rubanza RCA 0099/10/HC/KIG rwaciwe kuwa 16/09/2010, Urukiko Rukuru rwemeje ko ikibanza nº 4423 n'inzu irimo birebwa n'ikirego cya Gatsinzi ari ibya Irebe Gatsinzi Lars nk'uko certificat d'enregistrement ibigaragaza, ko rero itari mu mutungo ugomba kugabanywa hagati ya Gatsinzi Marcel na Mukabarungi Julienne.

5) Mukabarungi Julienne ahagarariwe na Me Rusanganwa Jean Bosco yajuririye urwo rubanza mu Rukiko rw'Ikirenga, umucamanza w'ibanzirizasuzuma, amaze kugaragaza ko urubanza ruciwe ku kirego cy'itambamirarubanza rufata kamere y'urubanza rwatambamiwe rugashyirwa no ku rwego rumwe, afata icyemezo ko ubwo bujurire butari mu bubasha bw'Urukiko rw'Ikirenga kuko impamvu Mukabarungi atanga nta n'imwe ihura n'iziteganywa n'ingingo ya 43, igika cya kabiri y'itegeko nº 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize , imikorere n'ububasha by'Urukiko rw'Ikirenga.

6) Mukabarungi Julienne yamenyeshejwe icyo cyemezo kuwa 25/05/2011, akijuririra mu Rukiko rw'Ikirenga mu gihe no mu nzira biteganywa n'amategeko.

7) Urubanza rwaburanishijwe mu ruhame kuwa 05/01/2012, Mukabarungi Julienne ahagarariwe na Me Rusanganwa Jean Bosco, naho Gatsinzi Marcel n'umuhungu we Irebe Gatsinzi Lars bahagarariwe na Me Kazungu Jean Bosco.

8) Mu gusobanura ubujurire bwa Mukabarungi, Me Rusanganwa umwunganira avuga ko umucamanza yirengagije ko inzu isabirwa gukurwa mu mutungo uzagabanwa hagati ya Gatsinzi Marcel na Mukabarungi Julienne mu gihe cy'ubutane ifite agaciro karengeje 20.000.000 frw, bagashingira ku mpamvu ko ari inzu ya niveaux ebyiri (étage),ifite na annexes zayo biri i Remera kandi bigenewe ubucuruzi, ikibazo nyamukuru kikaba cyari icyo kumenya agaciro kayo kugira ngo hamenyekane agaciro k'ibyo Gatsinzi Marcel yatanze.

9) Me Kazungu avuga ko mu mwanzuro Me Rusanganwa yatanze mu mwanya wa Mukabarungi hatagaragaramo agaciro k'inzu asaba ko ikurwa mu mutungo ugomba kugabanwa igihe cy'ubutane, ko rero ntacyo umucamanza w'ibanzirizasuzuma yanengwa mu gihe umuburanyi atamuhaye ibyo agomba

gushingiraho, kuba Me Rusanganwa atabikoze akaba atabyirengagiza ngo avuge ko umucamanza yagenekereje mu cyemezo yafashe.

II. Ikibazo kiri muri uru rubanza n'icyo Urukiko rubitekerezaho

Kumenya niba ubujurire bwa Mukabarungi Julienne ku rubanza rutambamira urubanza rubanziriza urundi bushobora kwakirwa

10) Ku byerekeranye no kumenya niba uru rubanza rwarashoboraga kujuririrwa mu Rukiko rw'Ikirenga, Me Rusanganwa avuga ko ikibazo Gatsinzi Irebe yatanze mu Rukiko Rukuru atambamira urubanza RCA 0039/10/HC/KIG bwari ubwa mbere gitanzwe, ko rero nta mpamvu yatuma urubanza rwaciwe kuri icyo kirego rutajuririrwa mu Rukiko rw'Ikirenga. Asobanura ko kuba umucamanza w'ibanzirizasuzuma yaremeje ko urubanza rwatambamiwe ubwarwo (urubanza n° RCA0039/10/HC/KIG) rutazagera mu Rukiko rw'Ikirenga, ko rero n'urubanza rwarutambamiye ari narwo Mukabarungi yajuririye ari uko, rukaba narwo rudashobora kuba mu bubasha bw'Urukiko rw'Ikirenga, yaciye igitekerezo mo kabiri, ko iyo aza kugikomeza yari kubona ko urubanza Mukabarungi aburana na Gatsinzi atari ur'urw'ubutane gusa, ko mu gihe rwari rugeze ku rwego rwa kabiri mu Rukiko Rukuru, ku kibazo cy'ubutane cyaburanwaga kugeza icyo gihe hashamikiyeho ikibazo cy'imitungo ine irimo inzu umuburanyi umwe asaba ko ikurwa mu mitungo izagabanwa, ko rero urubanza rwaciwe bwa mbere kuri icyo kibazo cy'imitungo rwaciwe ku rwego rwa mbere, urubanza rwarutambamiye Mukabarungi yajuririye narwo rukaba ari uko, bityo akaba atavutswa uburenganzira bwo kujurira mu Rukiko rw'Ikirenga.

11) Me Kazungu avuga ko mu by'ukuri ikiburanwa kikiri urubanza rw'iremezo rw'ubutane rwaje gushamikiraho ku rwego rw'Urukiko Rukuru ibibazo by'umutungo, ko iyo ibyo bibazo biza kumvikanwaho harimo n'umutungo Mukabarungi we asaba ko utavanwa mu mutungo rusange ugomba kugabanwa igihe cy'ubutane, urubanza rw'ubutane ruba rwararangiriye mu Rukiko Rukuru, akaba asanga ubujurire bwa Mukabarungi butafatwa nk'ubwa mbere mu gihe inkomoko y'urubanza ikomeje kuba ubutane.

12) Nyuma yo kumva imiburanire y'impande zombi Urukiko rurasanga ikibazo nyamukuru kiri muri uru rubanza nk'uko byavuzwe haruguru ari icyo kumenya niba urubanza rwatambamiye urubanza rubanziriza urundi rushobora kujuririrwa mbere yo gusuzuma ibirebana n'ububasha bw'urukiko.

13) Nk'uko dosiye y'urubanza ibigaragaza, urubanza Mukabarungi Julienne yajuririye rushamikiye ku rubanza rwatambamiye icyemezo cyafashwe mu rubanza rubanziriza urundi RCA0039/10/HC/KIG rwagaragazaga urutonde rw'imitungo igomba kugabanwa, kikanateganya ishyirwaho n'impande zombi ry'umuhanga mu by'ubwubatsi ugomba kuzagena agaciro k'iyo mitungo.

14)Nk'uko umucamanza w'ibanzirizasuzuma yabivuze, urubanza ruciwe ku kirego cy'itambamirarubanza rufata kamere y'urubanza rwatambamiwe.

15)Nk'uko nanone byavuzwe haruguru, Gatsinzi yatambamiye urubanza rubanziriza urundi, urubanza rwaciwe kuri icyo kirego rukaba rwarafashe kamere y'urwo rubanza rubanziriza urundi.

16) Ingingo ya 162 y'itegeko nº 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu iteganya ko *"kujuririra imanza zibanziriza izindi bikorwa gusa iyo urubanza rusoza iburanisha rurangiye, kandi bigakorerwa rimwe"*,naho ingingo ya 176 y'iryo tegeko igateganya ko *urubanza rwose rushobora gutambamirwa cyeretse iyo amategeko abiteganya ukundi*.

17)Kuba umushingamategeko w'u Rwanda yarateganyije ingingo yihariye ku birebana n'uko imanza zibanziriza izindi uko zaba ziteye kose zitajuririrwa zonyine zisize urubanza ku kirego cy'iremezo yari agamije kudatinza imanza, bityo ibinengwa muri izo manza zibanziriza izindi bikaba byakosorwa mu gihe cy'iburanisha ry'urubanza rw'iremezo, nyuma y'uko rurangiye hakaba ari naho hatangwa ubujurire ku muburanyi waba utishimiye icyemezo gifashwemo mu gihe ubwo bujurire bwaba bushoboka hakurikijwe amategeko.

18)Urukiko rushingiye ku bivuzwe mu gika cya 16 n'icya 17, rusanga ubujurire bwa Mukabarungi butagomba kwakirwa kuko bwakorewe urubanza rutajuririrwa harebwe kamere yarwo nk'uko byasobanuwe haruguru..

III. ICYEMEZO CY'URUKIKO

19)**Rwemeye** kwakira ubujurire bwatanzwe na MUKABARUNGI Julienne ku cyemezo cy'umucamanza w'ibanzirizasuzuma kuko bwatanzwe mu buryo n'inzira bikurikije amategeko.

20) **Rwemeje** ko nta shingiro bufite

21) **Rutegetse** MUKABARUNGI Julienne gutanga amagarama y'urubanza angana na 30.700 frw, atayatanga mu minsi umunani agakurwa mu bye ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KUWA 20/04/2012

Sé

HAVUGIYAREMYE Julien

Perezida

Sé

KANYANGE Fidélité

Umucamanza

Sé

KAYITESI R.Emily

Umucamanza

Sé

MUHIMAKAZI Léoncie

Umwanditsi

5. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCAA0019/11/CS
ITARIKI Y'URUBANZA: 15/06/2012
HABURANA: DUSABIMANA Jean Népomuscene C / RURANGWA Antoine.

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO-UBUBASHA BW'INTUMWA-GUKORA IBIRI MU MBIBI Z'UBUBASHA YAHAWE-KUTARYOZWA IBYEREKEYE AMASEZERANO YAKOZE IYO YAYAKOZE ITARENZE IMBIBI Z'UBUBASHA YAHAWE.

-GUKORA IBITARI MU MBIBI Z'UBUTUMWA YAHAWE- KUGIRA INSHINGANO KU BANDI IYO HARI AMAKOSA YAKOZE MU BUTUMWA YAHAWE.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Igihe uwatumwe akoze ibiri mu mbibi z'ububasha yahawe, uwamutumye niwe uryozwa ibyerekeye amasezerano yakozwe n'iyo ntumwa.

Intumwa igira inshingano ku bandi bantu iyo hari amakosa yakoze mu butumwa yahawe, igakora ibitari mu mbibi z'ubutumwa yahawe.

URUKIKO RW'IKIRENGA RUBURANISHIRIZA MU RUHAME IMANZA Z'IMBONEZAMUBANO, RUKIJIJE URUBANZA RCAA 0019/11/CS MU BURYO BUKURIKIRA:

HABURANA:

UWAJURIYE: DUSABIMANA Jean Nepomuscène, mwene Ruhabura Antoine na Mukasine Gaudence, utuye mu Murenge wa Muhoza, Akarere ka Musanze, Intara y'Amajyaruguru.

UREGWA: RURANGWA Antoine mwene Mukurira Elias na Nyiramatama Catherine, utuye mu Murenge wa Kagarama, Akarere ka Kicukiro, Umujyi wa Kigali.

IKIREGERWA:

-Amafaranga y'ubukode bw'umurima agomba gusubiza Rurangwa Antoine angana na 14.000.000 frw;

-Inyungu za 20% z'ayo mafaranga zingana na 2.800.000 frw;

-Indishyi z'ingano n'ibirayi byari muri uwo murima zihwanye na 6.000.000 frw.

I. IMITERERE Y'URUBANZA

1. Kuwa 16/08/2008 Rurangwa yakoranye amasezerano y'ubukode bw'isambu n'uwitwa Rukundo Félix, iyo sambu ikaba ari iy'uwitwa Ntuyenabo Fidèle. Ayo masezerano agaragaza ko yagombaga kumara igihe cy'imyaka 5 ku mafaranga 14.000.000.

2. Rukundo yaje kuvanwa ku micungire y'iyo sambu nk'uko bigaragazwa n'ibaruwa yandikiwe kuwa 29/12/2008, kuwa 06/05/2009 akorana amasezerano na Dusabimana na Rurangwa yasinyeho, bemeranya kuzubahiriza amasezerano ya mbere, nyuma haza kuvuka ikibazo kijyanye no kutayubahiriza bituma Rurangwa atanga ikirego mu Rukiko Rwisumbuye rwa Musanze. Mu rubanza rwaciwe Dusabimana adahari, yategetswe gusubiza Rurangwa 14.000.000 frw y'icyatamurima, kumuha 1.000.000 frw y'indishyi z'akababaro na 1.000.000 frw y'ibirayi yari yarahinze hamwe na 1.000.000 frw y'igihembo cya avocat.

3. Dusabimana yasubirishjemo urwo rubanza ariko ikirego cye nticyakirwa, ajuririra mu Rukiko Rukuru, urugereko rwa Musanze rwemeza ko ubujurre bwakiriwe ariko ko nta shingiro bufite. Ku birebana n'uburyozwe bw'ibyo aregwa, urukiko rwasanze Dusabimana yemera ko yasinye ku masezerano yo kuwa 06/05/2009 aho yemeye ko azubahiriza amasezerano ya Rurangwa, ko kuvuga ko yari ahagarariye komite atari byo kuko mu mutwe w'amasezerano havugwamo ko ahagarariye Musana Landry, ko kandi n'ubwo yaba ahagarariye komite, ariwe Rurangwa akwiye kureba kuko ayihagarariye.

4. Rwasanze kandi ingingo ya 532 CCL3 iteganya ko intumwa itegetswe kurangiza ubutumwa yahawe….kandi iryozwa indishyi zikomoka ku kutubahiriza ubutumwa yahawe, ko rero yakwirengera uburyozwe bw'ibyo yasinyiye, yazashaka agakurikirana uwamutumye nk'uko biteganywa n'ingingo ya 539 CCL3.

5. Dusabimana yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko atari we wagombaga kuregwa, ko kandi mu gihe urukiko rwasanga ariwe wagombaga kuregwa rwasubiza urubanza mu Rukiko Rwisumbuye kuko nyuma yo kwakira ikirego gisubirishamo urubanza (opposition), Urukiko Rukuru rutashoboraga kukiburanisha mu gihe droit d'évocation itakiriho.

6. Urubanza rwaburanishijwe kuwa 03/01/2012 Dusabimana ahagarariwe na Me Mutembe Protais naho Rurangwa ahagarariwe na Me Kavuyekure Dieudonné, rwongera kuburanisha kuwa 08/05/2012 Dusabimana na Rurangwa bahibereye nk'uko urukiko rwari rwabitegetse, bunganirwa na ba Avocats bavuzwe mbere, hari na Rukundo nawe wahamagawe bitegetswe n'urukiko.

II. <u>IKIBAZO KIRI MU RUBANZA</u>

Kumenya niba Dusabimana ariwe ugomba kuryozwa amafaranga Rurangwa akurikiranye muri uru rubanza.

7. Me Mutembe avuga ko nyuma yo kwakira ikirego cya Dusabimaba cyo gusubirishamo urubanza, Urukiko Rukuru rwagombaga kuvuga ko urubanza rwaciwe n'Urukiko Rwisumbuye ruvuyeho kuko rwamuburanishije kandi ataragombaga kuregwa, ko kandi umucamanza yagombaga kubyibwiriza. Asobanura ko urukiko rwashingiye ku ngingo ya 532 CCL3 rutegeka Dusabimana kwishyura ibyo Rurangwa yaregeye kandi nyamara ibivugwa muri iyo ngigo bireba inshingano ziri hagati y'uwatumye (mandant) n'intumwa (mandataire), ko ahubwo hagombaga gushingirwa ku ngingo ya 526 CCL3.

8. Akomeza asobanura ko amasezerano yo kuwa 06/05/2009 Rurangwa ashingiraho ikirego cye ari ubwumvikane bwabaye hagati y'intumwa ebyiri ziyemezaga gukurikiza amasezerano ya mbere yakozwe mu nyungu no mu izina by'uwatumye ari we Ntuyenabo, ko rero ayo masezerano ntacyo ahindura ku bubasha bwa Dusabimana (qualité) nk'intumwa kandi Rukundo akaba atari gumuha ububasha nawe adafite.

9. Na none kandi ngo mu gihe Dusabimana yakoze ibiri mu bubasha yahawe, ntacyo agomba kubazwa kuko bibazwa uwamutumye nk'uko ingingo ya 539 CCL3 ibiteganya.

10. Nyuma yo kumva ibisobanuro byatanzwe mu iburanisha ryo kuwa 08/05/2012 na Dusabimana, Rurangwa na Rukundo, Me Mutembe yavuze ko asanga ikirego cyaratanzwe nabi (action mal dirigée) kuko harezwe Rurangwa mu gihe Rukundo yemera ko ari we wakiriye amafaranga aregerwa, kandi nta kimenyetso cy'uko yayashyikirije

nyina wa Ntuyenabo avuga ko yari ahagarariye cyangwa undi muntu Ntuyenabo yaba yaratumye. Avuga ko ntacyo Dusabimana yabazwa kuko no mu masezerano yo kuwa 06/05/2009 atigeze yemera kwishyura amafaranga yahawe Rukundo.

11. Me Kavakure mu mwanya wa Rurangwa avuga ko ububasha bwa Dusabimana bwo kuregwa abufite kandi bushingiye ku ngingo za 33 na 532 CCL3 kuko yasinye amasezerano yo kuwa 06/05/2009, bikaba kandi bigaragara ko yakozwe nyuma y'igihe kirekire Rukundo yarahagaritswe mu isambu ku buryo we nta nshingano yari akigomba Rurangwa kuko hari habonetse umwishingizi mushya wagombaga kubahiriza amasezerano Rurangwa yari afitanye na Rukundo

12. Rurangwa nawe avuga ko Dusabimana yamwangiye gukomeza guhinga aho yari yarakodesheje no gusarura ibyari bisigaye mu murima, abanza kunyuza ikibazo mu bantu b'inshuti Dusabimana yemera ko azamwishyura 14.000.000 frw, amusaba ko babyandikirana imbere y'Ubuyobozi arabyemera, hakorwa amasezerano yo kuwa 06/05/2009 aho bigaragara ko mu ngingo ya kabiri yemeye kwishyura ariya mafaranga.

UKO URUKIKO RUBIBONA

13. Amafaranga Rurangwa akurikiranye muri uru rubanza ni ayo avuga ko yahaye Rukundo Félix nawe akamukodesha isambu ya Ntuyenabo Fidèle mu gihe cy'imyaka 5. N'ubwo nta nyandiko cyangwa ikindi kimenyetso bigaragaza urwego Rukundo yakodeshejemo iyo isambu, bigaragarira mu nyandiko (procuration) Ntuyenabo yanditse kuwa 26/12/2008 ari i Nairobi, ko kugeza icyo gihe Rukundo Félix ari we wacungaga isambu ye (gestion), akavuga ariko ko kuva uwo munsi asimbuwe n'umuhungu we Musana Landry muri iyo micungire (gestion), anashyiraho komite y'abantu batatu barimo Dusabimana na Rukundo bashinzwe iyo micungire, iyo komite igakora igenzurwa na Musana, anahabwa ububasha bwo kuba yavana muri iyo komite uwakora ibinyuranije n' inyungu z'umuryango.

14. Bigaragara kandi ko kuwa 29/12/2008, Musana wari wahawe uburenganzira bwo gucunga isambu ya Ntuyenabo, yandikiye Rukundo amumenyesha ko ahagaritswe mu micungire y'iyo sambu, bivuze ko amasezerano yakozwe kuwa 06/05/2009 hagati ya Rukundo na Dusabimana ari nayo Rurangwa ashingiraho yishyuza ibikubiye mu kirego yatanze, yakozwe Rukundo atagifite uburenganzira ku isambu ya Ntuyenabo, akaba rero ntaho yari gushingira agira ibyo yumvikana na Dusabimana birebana n'imicungire y'isambu yari yarambuwe, bikaba bitanafatwa ko Dusabimana yabaye intumwa Rukundo yisimbuje kugira ngo irangize ibyo yari yarashinzwe nk'uko bivugwa mu ngingo ya 535 CCL3 kuko ibyo yari kubikora mu gihe yari kuba agifite ubutumwa bwo gucunga isambu.

15. Kuba mu masezerano yo kuwa 06/05/2009 hari ibyo Dusabimana yemeye ko bizubahirizwa birebana n'amasezerano Rukundo yari yaragiranye na Rurangwa ariko ntibikorwe, urukiko rurasanga atari we ugomba kubibazwa hashingiwe ku byasobanuwe

haruguru ndetse no ku biteganywa n'ingingo ya 539 CCL3 ishyira inshingano k'uwatumye (mandant) yo kubahiriza amasezerano intumwa yagiranye n'abandi bantu, ikurikije ububasha yahawe.

16. Ibimaze kuvugwa bihura n'ibyanditswe n'abahanga mu mategeko nabo bemeza ko mu gihe intumwa yakoze ibiri mu mbibi z'ububasha yahawe, uwatumye ariwe ubazwa ibyerekeye amasezerano yakozwe n'iyo ntumwa[1]. Kuba rero Dusabimana atari we watanze ubutumwa igihe Rukundo yasinyaga amasezerano na Rurangwa, byumvikana ko atari we waryozwa ingaruka zayo.

17. Kuba uburanira Rurangwa ashingira uburyozwe bwa Dusabimana ku ngingo ya 532 CCL3 iteganya ko intumwa iryozwa indishyi zikomoka ku kutarangiza ubutumwa yahawe, urukiko rurasanga nta shingiro bifite kuko usibye n'uko Dusabimana atari we wasinye amasezerano yo kuwa 16/08/2008 ari nayo shingiro ry'ibyo Rurangwa aregera, ariko kandi iyo ngingo yumvikanisha ko ibiteganyijwemo birebana n'inshingano intumwa (mandataire) igomba uwatumye (mandant) kuko uyu ariwe ugomba kumenya niba ubutumwa yatanze bwarakozwe neza cyangwa nabi, abandi bantu (les tiers) bakaba batamenya niba intumwa yarakoze akazi ikurikije ubutumwa yahawe.

18. Uko ni nako bisobanuye mu nyandiko z'abahanga mu mategeko aho bigaragara ko ingingo iteganya bimwe n'ibyo iya 532 CCL3 ivuga, igaragara mu gice kirebana n'inshingano intumwa igomba uwatumye (obligations du mandataire envers le mandant)[2], bikumvikana rero ko atari inshingano intumwa ifite ku bandi bantu (obligations envers les tiers), abo bahanga bakavuga ko ahubwo izo nshingano ku bandi bantu zibaho mu gihe intumwa yakoze amakosa, yaba ibishaka cyangwa itabishaka[3], ikirego Rurangwa yatanze kikaba kandi kidashingiye ku makosa ahubwo gishingiye ku masezerano yo kuwa 06/05/2009.

1 Si le mandataire a agi dans la limite de ses pouvoirs, la représentation joue et rend le mandant partie aux conventions conclues par son mandataire. …..Par l'effet du mandat, le mandataire s'efface et le mandant est lié aves les tiers. Le principe est général et vaut pour les contrats passés par le mandataire, mais aussi pour tous les actes juridiques qu'il a pu accomplir au nom du mandant: François Collart Dutilleul et Philippe Delebecque, Contrat civils et commerciaux, 7e edition, 2004p.561

2 Jérome Huet, Traité de droit civil, les principaux contrats spéciaux, 2e edition, 2001, p.1157.

3 Le mandataire est personnellement responsable envers les tiers des délits et quasi -délits qu'il peut commettre, soit spontanément, soit meme sur les instructions du mandant…..: François Collart Dutilleul et Philippe Delebecque, op.cit, p.564.

19. Hashingiwe ku byasobanuwe byose, urukiko rurasanga Dusabimana atari we ugomba kuryozwa ibyo Rurangwa akurikiranye muri uru rubanza, bityo ubujurire bwe bukaba bufite ishingiro.

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

20. Rwemeje ko ubujurire bwa Dusabimana Jean Nepomuscène bufite ishingiro;

21. Rwemeje ko atari we ugomba kuryozwa ibyo Rurangwa akurikiranye muri uru rubanza;

22. Rwemeje ko urubanza rwajuririwe ruhindutse kuri byose;

23. Rutegetse Rurangwa gutanga amagarama y'urubanza angana na 42.250 frws, atayatanga mu gihe cy'iminsi umunani ayo mafaranga akavanwa mu bye ku ngufu za Leta.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME KUWA 15/06/2012

Sé	Sé	Sé
KANYANGE Fidélité	MUTASHYA J.Baptiste	HAVUGIYAREMYE Julien
Umucamanza	Perezida	Umucamanza

Sé
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

6. URUKIKO RUKURU

N° Y'URUBANZA: RCA004/11/HC/KIG
ITARIKI Y'URUBANZA: 07/10/2011
HABURANA: MUKANDAMAGE Hélène C/BIZIMANA Vincent

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO- INYUNGU MU MASEZERANO MBONEZAMUBANO-GUHENDWA MURI AYO MASEZERANO-IBY'INGENZI KUGIRA NGO HEMERWE KO HABAYEHO UGUHENDWA MU MASEZERANO-UKU GUHENDWA BYEMEZWA N'UMUCAMANZA.

INYUNGU ZIRENZE IZISANZWE BIGARAGARIRA BURI WESE-KUBA ZIGARAGARA KO BYATEWE N'INTEGE NKE, UBUSHOBOZI CYANGWA UBUMENYI BUKE KU RUHANDE RW'UWAZEMEYE-UGUHENDWA KWEMERWA IYO URUNDI RUHANDE RWARI RUZIKO UWEMEYE AFITE IBYO BIBAZO .

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Byitwa guhendwa mu masezerano mbonezamubano ajyanye n'inyungu iyo bigaragaye ko iryo hendwa ryujuje ibyangombwa 2 by'ingenzi kimwe kijyanye n'amasezerano ubwayo, ikindi kijyanye n'awakoze amasezerano uvuga ko yahenzwe, ibi byangombwa byose bigomba kubonekera rimwe kandi byose bigahabwa agaciro n'umucamanza uburanisha urubanza.

Uko guhendwa kugomba kugararira buri wese ko inyungu zateganyijwe mu masezerano zirenze izisanzwe kandi inshingano z'abayagiranye zihabanye cyane, bigaragara ko zaturutse ku ntege nke z'uwazemeye, ubushobozi cyangwa ubumenyi buke kandi uwo bagiranye amasezerano aziko uwo bayagiranye afite ibyo bibazo.

URUKIKO RUKURU RURI I KIGALI KU CYICARO CYARWO RUHABUNISHIRIZA IMANZA Z'IMBONEZAMUBANO MU RWEGO RW' UBUJURIRE RUHAKIRIJE URU RUBANZA RCA0004/11/HC/KIG MU RUHAME NONE KU WA 07/10/2011 MU BURYO BUKURIKIRA:

HABURANA

UREGA:MUKANDAMAGE Hélène mwene MUSHUMBA Augustin na MUKANDAMURUHURSE Bernadette, utuye RUHERU, RUHANGO, GISOZI, Akarere ka GASABO, Umujyi wa KIGALI.

UREGWA:BIZIMANA Vincent mwene GASARABWE Canisius na MUKANKUSI Cansilde ,utuye mu Mudugudu wa RUNYINYA , Akagari ka KAGARAMA, Umurenge wa NYAMIRAMBO , Akarere ka NYARUGENGE, Umujyi wa KIGALI.

IKIBURANWA :Kujuririra urubanza RC0107/10/TGI/GSBO rwaciwe n' Urukiko Rwisumbuye rwa GASABO ku wa 19/10/2010.

…………………………………………………………………………....

II.IMITERERE Y' URUBANZA

[1] Ku wa 19/10/2010 Urukiko Rwisumbuye rwa GASABO rwaciye urubanza RC0107/10/TGI/GSBO BIZIMANA Vincent yaburanye na MUKANDAMAGE Hélène,kutubahiriza amasezerano, hasubirishwamo urubanza RC 0387/09/TGI/GSBO na rwo rwaciwe n' Urukiko Rwisumbuye rwa GASABO ku wa 09/03/2010, maze urwo Rukiko rumaze gusobanura ko inyungu zateganyijwe mu masezerano y' igurizanya zitanyuranyije n' amategeko, rutegeka ko MUKANDAMAGE Hélène agomba BIZIMANA Vincent miliyoni eshatu, ibihumbi magana inani na mirongo ine na kimwe na magana atandatu (3.841.600 Frws), zikomoka ku mafaranga bari bagurizanye muliyoni imwe, ibihumbi magana abiri na makumyabiri na kimwe na magana atandatu (1.221.600 frws), anahabwa igihe cy' amezi atatu cyo kwishyura, maze ibijyanye n' ingwate y' inzu yari yatanzwe rusanga itemewe n' amategeko uko bisobanuye mu magambo arambuye muri kopi y' urubanza rujuririrwa.

[2] MUKANDAMAGE Hélène ntabwo yishimiye iyo mikirize maze ajuririra urwo rubanza, ubujurire bwandikwa kuri n⁰RCA0004/11/HC/KIG muri uru Rukiko, ruburanishwa ku wa 13/09/2011 impamvu z' ubujurire zituma hagarukwa ku bibazo bigize urubanza bikurikira :

- Kumenya niba MUKANDAMAGE Hélène atarajuriye atinze

bityo ikirego kikaba kitakwakirwa
- Ishingiro ry' izindi mpamvu z' ubujurire.
- Ibijyanye n' ubujurire bwuririye ku bundi bugaragara mu myanzuro.

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

- ***Ku bijyanye n'ibihe by' ijurira n' iyakirwa ry' ikirego***

[3] MUKANDAMAGE Hélène avuga ko yagiye yitaba amenyeshwa iyimurwa ry' isoma ry' urubanza, ko hari ubwo bitabye ariko batabwiwe itariki yo gusomerwa ko hari igihe bababwiye ko Perezida w' Urukiko adahari ntibabamenyesha itariki y' isomwa ry' urubanza akaba ariyo mpamvu yatinze kujurira.

[4] BIZIMANA Vincent avuga ko amatariki yose yimuriweho urubanza bagiye bayamenyeshwa.

[5] Ingingo ya 163 y' Itegeko ryerekeye imiburanishirize y' imanza z' imbonezamubano, iz' ubucuruzi, iz' umurimo n' iz' ubutegetsi uko ryahiduwe kandi ryujuwe kuri bimwe kugeza ubu igira iti: :« *Igihe ntarengwa cyo kujurira ni ukwezi kumwe. Icyo gihe gitangira kubarwa, ku manza zaciwe ababuranyi bombi bahari cyangwa ku manza ababuranyi bamenyeshejwe umunsi w'isoma ntibitabe, kuva umunsi zisomwe(…)*».

[6] Uko bigaragara muri dosiye y' urubanza rujuririrwa, MUKANDAMAGE Hélène yajuriye ku wa 06/01/2011 ajuririra urubanza RC 0107/10/TGI/GSBO rwaciwe ku wa 19/10/2010 , inyandiko mvugo y' iburanisha ryo ku wa 08/09/2010 ikaba igaragaza ko iburanisha risojwe isomwa ry' urubanza rishyirwa ku wa 28/09/2010 (*cote 40-47*), hageze isomwa ryimurirwa ku wa 05/10/2010 ababuranyi bombi barabisinyira, ariko ku wa 05/10/2010(*cote 39*), akaba nta nyandiko mvugo igaragaza ko uwo munsi ugeze, isomwa ryongeye gushyirwa ku wa 19/10/2010 umunsi rwasomweho uko bigaragazwa n' inyandiko mvugo y' isoma ry' urubanza yo ku wa 19/10/2010 na kopi y' urubanza, bigaragaza rero ko nta kigaragaza ko isoma ry' urubanza ryagiye ryimurwa ku buryo ababuranyi bose babimenya kuko n' iyo batakwitaba bazakurikirana ibijyanye n' isoma ry' urubanza rwabo.

[7] Urukiko rubona kandi ibyo binahuza n' ibikubiye mu rubanza R.AD.AA 0008/09/CS rwaciwe n' Urukiko rw' Ikirenga ku wa 27/11/2009(*reba igika cya 33-34 cy' urwo rubanza mu cyegeranyo cy' ibyemezo by' Inkiko nº4, Mutarama 2010, p.142*) kuko rugaragaza ko ubujurire butakwakirwa ari ubukozwe n' umuburanyi wabuze mu isoma ry' urubanza ryimuriwe ku yindi tariki **yatangajwe n' Urukiko mu ruhame bigakorerwa**

inyandiko mvugo, ari nayo mpamvu urwo Rukiko rwasobanuye ko uko kutitaba kandi ababuranyi bari mu iburanisha bakamenyeshwa umunsi w' isomwa bitabuza urubanza gukomeza kuba urwaburanishijwe bahari(*contradictoire*), bityo ikirego cya MUKANDAMAGE Hélène kikaba kigomba kwakirwa kigasuzumwa mu mizi, kuko bigaragara ko ijurira ritanyuranyije n' ibihe biteganywa n' ingingo yavuzwe haruguru.

➢ ***Ku bijyanye n' ishingiro ry'izindi mpamvu z' ubujurire zijyanye n' imizi y' urubanza***

[8] MUKANDAMAGE avuga ko impamvu zikubiye mu myanzuro zigaruka ku bijyanye no kuvuga ko urubanza rujuririrwa rwaciwe rwashingiye ku itegeko ryashaje, ko urubanza rusubirishwamo ari rwo RC0107/10/2010 rutari gushingirwaho mu gutanga impamvu (*motivation*), guhabwa n' Urukiko igihe gito cyo kwishyura, umubare w' amafaranga BIZIMANA yaba yarahaye MUKANDAMAGE , uvuga ko yakiriye ibihumbi magana atatu(300.000 Frws) gusa aho kuba miliyoni imwe n' ibihumbi magana abiri na makumyabiri na kimwe na magana atandatu (1.221.600 Frws),gusaba ko hakurikizwa ibiteganywa n' ingingo ya 131 *bis* y' Igitabo cya gatatu cy' urwunge rw' amategeko mbonezamubano kuko avuga ko indishyi bagennye mu masezerano zidakurikije amategeko, n' uko nta mafaranga y' ikurikiranarubanza no guhemba avoka yari gutangwa igihe uregwa atunganiwe ,ku bindi akavuga ko atanze kwishyura ari yo mpamvu rutanarangizwa by' agateganyo gusa asaba guhabwa igihe.

[9] BIZIMANA Vincent avuga ko itegeko avuga ryashingiweho atari ryo nta shingiro kuko atari ryo ryamutsinze, akibaza urwandiko yazanye mu Rukiko rujyanye no kuvuga ko inzu yatanzweho ingwate ari iya MUTSINZI icyo rwaje kumara, kandi hari inyandiko atanga zigaragaza ko inzu ari iye inyungu zikaba zizamura umwenda w' ifatizo, akaba yarahawe umwenda kuko isoko yatsindiye ryari riremereye, indishyi zikaba zitari kuburamo kandi nawe avuga ko ari umucuruzi agomba kwishyura inzu, ibijyanye n' amafaranga y' ikurikiranarubanza no guhemba avoka, mu Rukiko rubanza akavuga ko yari amufite, anasaba ko urubanza rwarangizwa by' agateganyo.

[10] Ku ngingo ijyanye no kuvuga ko urubanza rwashingiye ku itegeko ryashaje, Urukiko rubona nta shingiro ifite kuko igika cya cyenda (9) cy' urubanza rujuririrwa avuga kigaragara mo ko mu kugaruka ku Itegeko ryo ku wa 15/05/1992 ryerekeye ubugwate ku bintu bitimukanwa, Urukiko Rwisumbuye rwashakaga kugaragaza ko ingwate MUKANDAMAGE Hélène yatanzwe bidakozwe mu nyandiko mvaho, bityo ruvuga ko ingwate y' inzu yatanzwe mu masezerano hagati ya BIZIMANA Vincent

na MUKANDAMAGE Hélène nta shingiro ifite, ibi rero bikaba bitaza mu mpamvu z' ubujurire kandi biri mu nyungu z' uwajuriye nta n' icyo bimwangirizaho.

[11] Ingingo ijyanye no kuvuga ko urubanza rusubirishwamo ari rwo RC0107/10/2010 rutari gushingirwaho mu gutanga impamvu (*motivations*) ,uru Rukiko rubona nta shingiro ifite kuko uko MUKANDAMAGE abivuga atari ko byagenze kubera ko Urukiko ahubwo rwabivuze rugaragaza ibyo agomba uwo baburana rusobanura ko bihuye n' uko byemejwe mu rubanza rusubirishwamo, urubanza rusubirishwamo rero rukaba rutarashingiweho nk' impamvu imutsindisha ahubwo , Urukiko Rwisumbuye, nyuma yo kugaragaza impamvu zishingirwaho mu rubanza rujuririrwa rwagaragaje ko hari ibyo uregwa agomba kugenerwa nk' uko yabigenewe mu rubanza rwa mbere.

[12] Ku ngingo ijyanye no kuba MUKANDAMAGE yaba yarahawe n' Urukiko igihe gito cyo kwishyura, Urukiko rubona nta shingiro ifite kuko ibyo byakozwe mu bushishozi bwarwo uko byasobanuwe mu gika cya munani(8) cy' urubanza rujuririrwa hashingiwe ku bushobozi bw' ugomba kwishyura n' ibiteganywa n' ingingo ya 142 y' Igitabo cya gatatu cy' urwunge rw' amategeko mbonezamubano(***CCL.III***) mu gika cyayo cya kabiri(*al.2*), Urukiko rukaba rwaranashoboraga kudatanga icyo gihe , rukareka hakubahirizwa amasezerano ababuranyi bagiranye kuko iyo ngingo yashingiweho igira iti :« *Ugomba kwishyura ntashobora guhatira uberewemo umwenda kwakira igice cy'ubwishyu, n'ubwo umwenda waba ugabanyika. Icyakora Inkiko, zitaye ku bushobozi bw' ugomba kwishyura, kandi mu bwitonzi n' ubushishozi bwazo,* ***zishobora gutanga igihe*** *kigereranije cyo kwishyura, no gusubika ikurikirana ry'ibirego, ibintu byose bikaguma uko byari biri*».

[13] Ingingo ijyanye n' umubare w' amafaranga BIZIMANA yaba yarahaye MUKANDAMAGE , uvuga ko yakiriye ibihumbi magana atatu(300.000 Frws) gusa aho kuba miliyoni imwe n' ibihumbi magana abiri na makumyabiri na kimwe na magana atandatu (1.221.600 Frws), uru Rukiko rubona nta shingiro na yo ifite kuko aya mafaranga ya nyuma ari yo agaragara mu masezerano yo ku wa 25/03/2009 MUKANDAMAGE yemeye mu iburanisha, bityo ingingo ya 33 y' Igitabo cya gatatu cy' urwunge rw' amategeko mbonezamubano(CCL.III) ikaba ariyo igomba gukurikizwa uko igira iti :«*Amasezerano akozwe ku buryo bukurikije amategeko, aba itegeko ku bayagiranye.Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko.Agomba kwubahirizwa nta buryarya*», kuko bigaragara ko MUKANDAMAGE ariyo bombi basinyiye ko agurijwe hari n' abahamya(*cote 11*).

[14] Ku bijyanye n' uko hakurikizwa ibiteganywa n' ingingo ya 131 *bis* y' Igitabo cya gatatu cy' urwunge rw' amategeko mbonezamubano(CCL. *III.)* kubirebana n' inyungu zateganyijwe muri ayo masezerano, uru Rukiko rubona, mu kwanga icyo kifuzo ku rwego rwa mbere harashingiwe ku biteganywa n' ingingo ya 478 y' icyo gitabo(*CCL.III*) igira iti :« *Mu masezerano asanzwe yerekeye inguzanyo, yaba iy' amafaranga, iy' ibiribwa cyangwa iy' ibindi bintu byimukanwa, guteganya inyungu biremewe*», n' iya 480 *CCL.III* igira iti :« *Ingano y' inyungu ikomoka ku masezerano ishyirwaho ku bwumvikane bw' abayagiranye; kuyitangira ibimenyetso bikurikiza amategeko asanzwe*», Urukiko rukabona mu gushingira kuri izo ngingo Umucamanza wa mbere yari afite ukuri kuko ababuranyi bombi babyumvikanyeho, bakagena inyungu ku bushake bwabo nta gahato, MUKANDAMAGE rero akaba yakagombye kugaragaza niba yaba yaremeye izo nyungu hari impamvu iteganywa n' ingingo ya 131 *bis CCL.III.* ibiteye .

[15] Urukiko rwemeza ibyo kuko rubona iyi ngingo yakurikizwa igihe bigaragajwe ko habayeho ihendwa ryujuje ibyangombwa bibiri(2) by' ingenzi birimo ibireba amasezerano ubwayo (*conditions objectives*), n' ibireba uwakoze amasezerano avuga ko yahenzwe (*conditions subjectives*), kandi ibyo byose bigahabwa agaciro mu bushishozi bw' Urukiko uko byanasobanuwe n' umuhanga mu mategeko Alphose M. NGAGI, (*mu isomo rye rya Droits des obligations*, Université Nationale du Rwanda ,2002-2003,p.78-79) anatanga ikitegererezo ku manza RA 1010/13.03/85 rwo 17 Mata 1986 na RA 0352/13.03/87 rwo ku wa 24 Ugushyingo 1987 aho asobanura ko ibyo byangombwa byombi bigomba kubonekera rimwe, hagaragazwa ko inyungu zivugwa mu masezerano zigomba kuba zigaragarira buri wese ko zirenze izisanzwe, kandi inshingano z' abagiranye amasezerano zihabanye cyane, izo nyungu zigaragara ko zijyanye n' uguhendwa biturutse kuntege nke,ubushobozi cyangwa ubumenyi buke bw' uzemeye kandi uwo bagiranye amasezerano azi ko uyu afite ibyo bibazo, agaragaza ko Urukiko Rusesa Imanza rw' igihe izo manza zaciriwe rwarwanyije cyane ukugabanya inyungu zumvikanyweho ruvuga ko Umucamanza atari afite ububasha bwo guhindura amasezerano yumvikanyweho n' impande zombi[1], ibi

---

1 *[(...)Il faut d'abord établir l'existence simultanée de deux conditions pour que la lésion soit constituée: condition objective et condition subjective : Il faut que le créancier se soit fait promettre pour lui même ou pour autrui, un intérêt ou d' autres avantages excédant manifestement l' intérêt normal. La lésion suppose une inégalité des prestations (...) Ces avantages doivent être soutirés en abusant des besoins de faiblesse, de passion, ou de l' ignorance du débiteur. Il est important de remarquer que celui qui invoque la lésion doit nécessairement prouver que l' autre partie avait connaissance de la situation délicate de son cocontractant au moment de la conclusion du contrat. Il faut donc établir que l'autre a sciemment profité de cette situation. En l'espèce dans une affaire opposant J.S. à N.B., la Cour de cassation a rejeté le pourvoi introduit par le requérant J.S., au motif qu'il avait pas prouvé*

rero bikaba ntabyo MUKANDAMAGE Hélène yarugaragarije, kuko we uko yabisobanuye yasabye inguzanyo mugenzi we kuko yari amaze gutsindira isoko, akaba ari we rero wari uzi inyungu yari gukuramo, agereranyije n' ibyo yasezeranyije uwo bagiranye amasezerano.

[16] Urukiko rubona impamvu y' ubujurire ijyanye no kuvuga ko nta mafaranga y' ikurikiranarubanza no guhemba avoka yari gutangwa nta shingiro ifite kuko iyo mpamvu isubizwa n' ubusobanuro bwatanzwe haruguru ku bijyanye n' uko izo ndishyi zatanzwe ari izo mu rubanza rwasubirishwagamo, Umucamanza yashatse kwibutsa atari izindi ndishyi agennye ku rwego rw' ubujurire kuko muri urwo rubanza RC0387/09/TGI/GSBO rwo BIZIMANA Vincent yari yunganiwe na M[e] NKUNDABATWARE Albert uko bigaragazwa na kopi yarwo .

- ***Ibijyanye n' ubujurire bwuririye ku bundi bugaragara mu myanzuro.***

[17] Urukiko rubona indishyi z' ikurikiranarubanza zisabwa na BIZIMANA Vincent zigaragara mu myanzuro ye, nyamara MUKANDAMAGE Hélène ayishyikirizwa uwayimushyikirije akaba yaravuze ko yanze kuyitwara ntiyanayisinyaho n' ubwo yavuze ko yayisomye , bityo kuva ibyo bitaragarutseho urubanza rutaratangira cyangwa rugeze hagati BIZIMANA Vincent atanga ubwo bujurire bwe bwuririye ku bundi ngo undi abwiregureho, uru Rukiko rukabona rutagira uko ruzigena kuko byaba binyuranyije n' ibiteganywa n' ingingo ya 167 y' Itegeko nº18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y' imanza z' imbonezamubano, iz' ubucuruzi, iz' umurimo n' iz' ubutegetsi uko ryahinduwe kandi ryujujwe kuri bimwe kugeza ubu uko igira iti :«*Uregwa mu Rukiko rujuririrwa ashobora na we kujurira yuririye ku bujurire bw'urega mbere y'iburanisha cyangwa mu iburanisha, n'aho yaba yaramenyeshejwe urubanza rwe ntagaragaze ko hari icyo arukemangaho. Ubujurire bwuririye ku bundi bukorwa n'uwarezwe mu bujurire bwerekeye ku wajuriye cyangwa ku bandi barezwe mu bujurire. Ubujurire bwuririye ku bundi ntibushobora kwakirwa mu gihe ubujurire bw'ibanze butakiriwe cyangwa bwasibwe Ubujurire bwuririye ku bundi ntibutangirwa ingwate y'amagarama.*».

---

que N.B. avait abusé des besoins de faiblesse, de passion, ou d'ignorance du débiteur. C'est donc à bon droit que la Cour d'appel n'avait retenu la lésion dans le contrat conclu entre les deux parties en cause. Par ailleurs, la Cour de cassation dans plusieurs arrêts, a manifesté la réticence à admettre l'application de l'art. 131 bis, au motif que le juge n'a pas le pouvoir de modifier le contrat convenu entre parties conformément à la loi.(….)- RA 0352/13.03/87 du 24 novembre 1987, in Recueil des arrêts de la Cour de cassation années 1987-1992, pp.5-9., RA 1010/13.03/85 du 17 avril 1986, in Recueil des arrêts de la Cour de cassation années 1983-1986, pp. 346-348]

[18] Ibijyanye n' irangizarubanza ry' agateganyo rubona ntaryaburanywe ku rwego rwa mbere bityo mu bujurire bitasuzumwa hakurikijwe ibiteganywa n' ingingo ya 168 y' Itegeko nº18/2004 ryo ku wa 20/06/2004 rivuzwe uko igira iti:« *Ku rwego rw'ubujurire ntihashobora kuregerwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu Rukiko rw'ubujurire. Ariko ababuranyi bashobora kwaka inyungu, ibyishyuwe ku bukodeshe n'ibindi bintu by'inyongera byabonetse kuva aho urubanza rwaciriwe, n'indishyi z'akababaro z'igihombo umuburanyi yagize kuva urubanza ruciwe*».

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

[19] RWEMEYE kwakira ubujurire rwashyikirijwe na MUKANDAMAGE Hélène kuko bwakurikije mategeko, rubusuzumye rusanga nta shingiro bufite.

[20] RWEMEJE ko nta mpamvu y' ubujurire yatuma urubanza rujuririrwa ari rwo RC0107/10/TGI/GSBO rwaciwe n' Urukiko Rwisumbuye rwa GASABO ku wa 19/10/2010 ruhinduka uko byasobanuwe.

[21] RUKIJIJE ko MUKANDAMAGE Hélène atsinzwe, ko BIZIMANA Vincent atsinze.

[22] RUTEGETSE MUKANDAMAGE Hélène kwishyura amagarama ahwanye n'ibyakozwe n' uru rubanza anabariwemo ayo yategetswe kwishyura ku rwego rwa mbere, ahwanye n' ibihumbi makumyabiri n' icyenda (29.000 Frws) akayishyura ahereye ku yo yatanzweho ingwate ajurira ibihumbi bitandatu (6.000 Frws), ni ukuvuga ko asigaje kwishyura ibihumbi makumyabiri na bitatu (23.000 Frws), kuva urubanza rubaye ndakuka bitaba ibyo agakurwa mu bye ku ngufu za Leta.

RUKIJIJWE GUTYO KANDI RUSOMEWE MU RUHAME NONE KU WA 07 UKWAKIRA 2011 N'URUKIKO RUKURU RURI I KIGALI KU CYICARO CYARWO RUGIZWE N'UMUCAMANZA : NDAGIJIMANA Eugène AFASHIJWE N'UMWANDITSI WARWO INGABIRE Solange.

Sé/ ***Sé/***

NDAGIJIMANA Eugène
UMUCAMANZA

INGABIRE Solange
UMWANDITSI

Iyi kopi ihuje n' inyandiko y' umwimerere
Itanzwe none ku wa ……./……../………………
Umwanditsi …………………………………....

7. URUKIKO RWISUMBUYE

N° Y'URUBANZA: RCA0048/12/TGI/GIC
ITARIKI Y'URUBANZA: 07/06/2012
HABURANA: MUSABYIMANA Clémentine C/BAZIRAKE Robert

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO-INYANDIKO Z'IRANGAMIMIRERE ZITARIHO UMUKONO W'UMWANDITSI W'IRANGAMIMERERE-KUTABIFATA UBWABYO NK'INENGE YATUMA AMASEZERANO Y'UGUSHYINGIRWA ATESHWA AGACIRO.

INYANDIKO IFITE INENGE Y'IMYANDIKIRE-KUTABIFATA UBWABYO NK'INENGE YATUMA ITESHWA AGACIRO URETSE MU BURYO NO MU GIHE BITEGANYIJWE N'AMATEGEKO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Kuba imwe mu nyandiko zibikwa n'ibiro by'irangamimerere zemeza habayeho ugushyingiranwe itariho umukono w'umwanditsi w'irangamimerere ntibihagije kugira ngo amasezerano yo gushingiranwa ateshwe agaciro.

Nta nyandiko ishobora guteshwa agaciro kubera inenge y'imyandikire keretse mu bihe biteganyijwe n'itegeko ku buryo budashidikanywaho, iyo hari umuhango simusiga cyangwa w'indemyagihugu utarubahirijwe cyangwa se iyo umuburanyi ubisaba agaragaje icyo byamwangirije.

URUKIKO RWISUMBUYE RWA GICUMBI, RURI KU CYICARO CYARWO RUHABURANISHIRIZA IMANZA Z'IMBONEZAMUBANO MU RWEGO RW'UBUJURIRE RUCIYE MU RUHAME URUBANZA RCA 0048/12/TGI/GIC KUWA 7/06/2012 MU BURYO BUKURIKIRA :

HABURANA

UWAJURIYE : MUSABYIMANA Clémentine mwene MUHIGIRWA Diogène na KABUMBURI Joséphine, wavutse 1977, utuye muri Centre Mulindi, akagari ka Mulindi, umurenge wa Kaniga, akarere ka Gicumbi, Intara y'Amajyaruguru, yunganirwa na Me DUSABIREMA Marthe.

UREGWA : BAZIRAKE Robert mwene KABURABUZA Wilson na NYIRABAZUNGU Loyce, wavutse 1964, utuye muri Centre Mulindi, akagari ka Mulindi, umurenge wa Kaniga, akarere ka Gicumbi, Intara y'Amajyaruguru, yunganirwa na Me MBONYIMPAYE Elias.

IKIBURANWA : gusaba urukiko gutesha agaciro amasezerano yo gushyingirwa MUSABYIMANA avuga ko yagiranye na BAZIRAKE Robert kuwa 14/11/2000 (Kujuririra urubanza RC 0144/011/TB/KNG rwaciwe n'urukiko rw'ibanze rwa Kaniga kuwa 27/01/2012).

I. IMITERERE Y'URUBANZA

1. BAZIRAKE Robert yatanze ikirego mu rukiko rw'ibanze rwa Kaniga asaba urukiko gutesha agaciro amasezerano yo gushyingiranwa bavuga ko yagiranye na Clémentine MUSABYIMANA. Urukiko rw'ibanze rwa Kaniga rwafashe icyemezo cy'uko ishyingirwa ryabaye hagati ya BAZIRAKE Robert na MUSABYIMANA Clémentine kuwa 14/11/2000 yakozwe mu buryo bunyuranije n'amategeko ko rero ateshejwe agaciro. Rwemeza ko BAZIRAKE Robert na MUSABYIMANA Clémentine bafite uburenganzira n'ishingano bingana ku bana babyaranye no kumutungo bashakanye mu gihe bari kumwe nk'umugore n'umugabo. Rutegeka MUSABYIMANA Clémentine guha BAZIRAKE Robert amafranga 400.000 frw y'ikurikirana rubanza n'amafranga 400.0000 frw y'igihembo cy'uwamuhagarariye mu rubanza. MUSABYIMANA Clémentine ntabwo yishimiye imikirize y'urwo rubanza rwaciwe n'urukiko rw'ibanze rwa Kaniga bituma ajururira mu rukiko rwisumbuye rwa Gicumbi.
2. Impamvu zatumye MUSABYIMANA Clémentine ajurira nuko yasezeranye n'umugabo we BAZIRAKE Robert tariki ya 14/11/2000 mu murenge wa Rushaki ariko uburanira BAZIRAKE Robert akavuga ko ayo masezerano yateshwa agaciro kubera ko ushinzwe irangamimerere ntabwo yigeze abyemeza ngo abisinyire.
3. Ikibazo cyibazwa muri uru rubanza:
    - Ese amasezerano yo gushyingirwa yateshwa agaciro ku mpamvu y'uko ushinzwe irangamimerere atasinye nta na kashe yashyizweho.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA.

1. ku bijyanye no gutesha agaciro amasezerano yo gushyingirwa.

4. Iyo usomye raporo yakozwe n'umurenge wa Rushaki, usanga icyemezo cyo gushyingirwa cyatanzwe n'umurenge wa Rushaki hashingiwe ku gitabo cy'abashyingirwa Vol 1 kuri N° ya 727 kigaragaza itariki y'ishyingirwa yo kuwa 14/11/2000, umukono w'abasezeranye, amazina y'abahamya barimo MPAKANIYE na MUKASA, ikindi nuko kuri iyo tariki hagaragara abantu benshi basezeranye kuri iyo tariki. Ikibazo nuko icyo gitabo cyakoreshejwe kitarasinyweho na bourgmestre wa Kiyombe ndetse ntihaterwaho kashe gusa ikibazo kiri rusange kuko ku bantu 1073, abasinyiwe na bourgmestre ndetse n'umuyobozi w'akarere ka Rushaki ni 149 gusa.

5. Ikigaragara BAZIRAKE Robert yasezeranye na MUSABYIMANA Clémentine ariko ikibazo cyabayeho n'umwanditsi w'irangamimerere utarashyizeho umukono na kashe kuko nta kintu kigagaza ko icyo gitabo cy'irangamimerere cyaba cyarahimbwe cyane ko icyo gitabo kigaragaza amakuru yose kandi yujujwe neza nukuvuga N° y'ibarura : 727, amazina : Robert BAZIRAKE na Clementine, itariki y'ishyingirwa : 14/11/2000, igihe yavukiye: BAZIRAKE 1964, Clémentine 1977, abana afite : 2, aho yari atuye Robert Kaniga, Clémantine Mukarange, aho agiye gutura : Kaniga, N° ya karita imuranga: Robert 08514, Clementine 04846, icyo yakoye : 60.000 fr, amazina n'umukono w'abagabo GAHIMANO na NDAGIJIMANA uretse ko colonne ya nyuma ahanditse umukono wa burgumestri ntabwo yigeze asinya.

6. Ku bijyanye no gutesha agaciro amasezerano yo gushyingirwa, ingingo za 220-234 y'itegeko N° 42/1988 rishyiraho interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano zisobanura ibyerekeye guta agaciro k'ishyingirwa n'inkurikiziki z'ishyingirwa ryataye agaciro muri izo mpamvu zatuma amasezerano yo gushyingirwa ata agaciro harimo:
    a) Ishyingirwa ryabayeho abashyingiranywe batabyiyemereye cyangwa umwe muribo;
    b) Iyo umwe mu bashyingiranywe yibeshye ku muntu cyangwa ku mimerere ye y'ingenzi;
    c) Ishyirirwa ryose ribayeho riciye ku ngingo z'iri tegeko zerekeye imiziro y'ishyingirwa;
    d) Ishyingirwa ryose ritabereye mu ruhame cyangwa ritakozwe n'umwanditsi w'irangamimerere ubifitiye ububasha rishobora guta agaciro;

7. Urukiko rurasanga umukono (signature) wa bourgmestre na kashi atari impamvu zatuma amazerano yabaye hagati ya BAZIRAKE Robert na MUSABYIMANA Clémentine ateshwa agaciro kubera ko kuba bourgmestre atarasinye ngo ashyireho kashe ntabwo ari impamvu ikomeye yemewe n'amategeko yatuma amasezerano yo gushyingirwa ata agaciro cyane ko

n'ingingo ya 87 y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsi nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu iteganya ko nta nyandiko ishobora gufatwa nk'aho nta gaciro ifite kubera inenge y'imyandikire keretse mu bihe bikurikira: 1. iyo biteganyijwe n'itegeko ku buryo budashidikanywa; 2. iyo hari umuhango simusiga cyangwa w' indemyagihugu utubahirijwe; 3. iyo umuburanyi ubisaba agaragaje icyo bimwangiriza.

8. Urukiko rurasanga amasezerano yo gushyingirwa yabaye hagati ya BAZIRAKE Robert na MUSABYIMANA Clémentine atagomba guteshwa agaciro kubera ko kuba bourgmestre wabashyingiye atarasinye mu gitabo ntabwo yaba impamvu ikomeye yatuma ayo masezerano ateshwa agaciro cyane ko iyo mpamvu itanateganwa n'amategeko nk'uko byasobanuwe haruguru n'ikindi iri kosa ryabayeho rishobora gukosorwa mu gihe bourgmestre utarasinye ashobora kubikosora agasinya muri icyo gitabo cyandikwamo abashyiranywe.

9. Ku bijyanye n'igihembo cy'akavoka 250.000 frw n'amafranga y'ikurikirana rubanza 500.000 frw yasabwe n'uburanira MUSABYIMANA Clémentine, urukiko rurasanga yagenerwa mu bushishozi bw'urukiko ibihumbi ijana na mirongo itanu (150.000 frw) kubera ko amafranga asaba akabije kuba ikirenga.

III. ICYEMEZO CY'URUKIKO

10. RWEMEJE ko ubujurire bwatanzwe na MUSABYIMANA Clémentine bufite ishingiro.

11. RWEMEJE ko imikirize y'urubanza RC 0144/11/TB/KNG rwaciwe n'urukiko rw'ibanze rwa Kaniga kuwa 27/01/2012 ihindutse kuri byose, ikaba isimbujwe imikirize mishya y'uru rubanza.

12. RUTEGETSE ko amazerano yo gushyingirwa yabaye hagati ya MUSABYIMANA Clémentine na BAZIRAKE Robert agumana agaciro kayo kandi akubahirizwa nta gihindutse na busa.

13. RUTEGETSE BAZIRAKE Robert guha MUSABYIMANA Clémentine amafranga y'ikurikirana rubanza n'igihembo cy'avoka angana n'ibihumbi ijana na mirongo itanu (150.000 frw).

14. RUTEGETSE BAZIRAKE Robert kwishyura amafaranga ibihumbi cumi na bitandatu magana atanu na mirongo itanu (16550) y'amagarama y'urubanza atayatanga mu gihe cy'iminsi 8 urubanza rumaze kuba ndakuka agakurwa mu bye ku ngufu za leta.

15. RUTEETSE ko MUSABYIMANA Clémentine asubizwa n'urukiko rwisumbuye rwa Gicumbi amafranga ibihumbi bine yari yaratanze yinjiza ikirego.

RWIBUKIJE ko umuburanyi utishimiye imikirize y'urubanza arujuririra mu gihe cy'ukwezi uhereye igihe rusomewe.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME NONE KUWA 07/06/2012 RUGIZWE N'UMUCAMANZA BADARA Léonidas (Perezida) afashijwe na GAKWERERE Elie (umwanditsi).

Inteko

Perezida	Umwanditsi
BADARA Léonidas	GAKWERERE Elie

IMANZA Z'UBUCURUZI

8. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOMA0121/10/CS
ITARIKI Y'URUBANZA: 13/07/2012
HABURANA: LA BAGUETTE SARL / MICHEL FIETZEK.

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI-URUBANZA RWASIBWE KUBERA KUTABURANISHWA-KONGERA KURUBYUTSA NK'INZIRA YO NYINE YO KONGERA KURUBURANA MU RUKIKO RWARI RWARAREGEWEMO .

IKIBAZO CY'AMATEGEKO CYAGARAGAJWE

Nta bundi buryo bwumvikana buteganyijwe bwo kongera kuburana urubanza rwasibwe kubera kutaburanishwa uretse kurubyutwa gusa kandi nabwo umuburanyi akabyemererwa amaze gutanga impamvu zatumye atitaba ku munsi rwahamagaweho.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUKIJIJE MU RUHAME NONE KUWA 13/07/2012 URUBANZA RCOMA 0121/10/CS MU BURYO BUKURIKIRA:

HABURANA :

Uwajuriye: LA BAGUETTE SARL, en liquidation ihagarariwe na KARARA Charles washinzwe kwegeranya no kugabanya umutungo w'iyo Sosiyete, utuye mu Mudugudu w'Amajyambere, Akagali ka Kimihurura, Umurenge wa Kimihurura, Akarere ka Gasabo, Umujyi wa Kigali.

Uregwa : **MICHAEL FIETZEK**, ubarizwa mu Mudugudu w'Intambwe, Akagali ka Kimihurura, Umurenge wa Kimihurura, Akarere ka Gasabo, Umujyi wa Kigali.

Ikiregerwa : Umutungo wa LA BAGUETTE SARL, en liquidation ufitwe na Michael FIETZEK ufite agaciro kangana na 36.000.000 Frw, inyungu z'ubucuruzi zibariwe kuri 25% zihwanye na 134.814.827 Frw, ubwizigame bw'ibikoresho bungana na 4.600.000 Frw, inyungu ya 18% buri mwaka zingana na 179.108.61 7 Frw, impapuro zose zirebana n'umutungo wa La Baguette zitigeze zitangwa, 38.047.036 Frw y'igihembo cya avoka abariwe ku 10% by'agaciro k'ikiregerwa.

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

(1) LA BAGUETTE SARL en liquidation (iri mu iseswa), yashinzwe n'abanyamigabane batandatu, itangira gukora kuwa 16/07/1996. Intandaro y'ikibazo yaturutse mu nama y'inteko idasanzwe ya LA BAGUETTE SARL yo kuwa 8/12/1999 yafashe icyemezo cyo gusezerera Peter KUNNE, umwe mubagize sosiyete, imusimbuza MICHAEL Kunne, nyuma y'impaka zakuruwe n'icyo cyemezo, abanyamigabane ntibabyumvikanyeho bituma biyambaza Inkiko kugira ngo barebe ko ibibazo bafitanye bikemuka.

(2) Nyuma y'uko rushyikirijwe ikirego na bamwe mubanyamigabane bari bagize LA BAGUETTE SARL en liquidation, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza kuwa 20/01/2006 rwemeza ko LA BAGUETTE SARL, en liquidation isheshwe ndetse runasesa ibyemezo byafatiwe mu nama rusange za LA BAGUETTE SARL zo kuwa 08/12/2009 no kuwa 11/05/2002.

(3) LA BAGUETTE SARL, en liquidation yareze Michael FIETZ mu Rukiko Rukuru rw'Ubucuruzi, igamije kugaruza umutungo wayo, ikirego cyayo cyandikwa kuri RCOM 0147/09/HCC, urukiko ruca urubanza ko ikirego cya LA BAGUETTE SARL en liquidation gisibwe mu bitabo by'ibirego hashingiwe ku ngingo ya 50 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza mbonezamubano; iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsi nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu, kubera ko yareze ariko ntiyitabe kandi itamenyesheje Urukiko impamvu ititabye.

(4) LA BAGUETTE SARL, en liquidation yongeye gutanga ikindi kirego gisa nk'icyasibwe mu Rukiko Rukuru rw'Ubucuruzi, ikirego cyayo cyandikwa kuri RCOM 0231/10/HCC. Urukiko rwemeje ko ikirego cya LA BAGUETTE en liquidation kitakiriwe kubera ko cyatanzwe mu buryo budakurikije amategeko kuko aho kubyutsa urubanza nk'uko biteganywa n'ingingo ya 51 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza mbonezamubano; iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsi nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu, yo yahisemo kongera gutanga ikirego bundi bushya.

(5) LA BAGUETTE SARL, en liquidation yajuririye icyo cyemezo mu Rukiko rw'Ikirenga ivuga ko Urukiko rubanza rutahaye agaciro ingingo yaburanishije aho yasobanuye ko gusiba urubanza biba bitavanyeho uburenganzira bwo kongera kurega.

(6) Iburanisha ryabaye kuwa 29/05/2012, LA BAGUETTE SARL, en liquidation, ihagarariwe na Me Bimenyimana Eric naho MICHAEL FIETZEK aburanirwa na Me Nubumwe Jean Bosco.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1.Kumenya niba LA BAGUETTE yari yaratanze ikirego kigasibwa yarashoboraga gutanga ikirego bundi bushya aho kubyutsa icya mbere

(7) Me Bimenyimana Eric uhagarariye LA BAGUETTE SARL, en Liquidation avuga ko bajuriye kubera y'uko Urukiko Rukuru rw'Ubucuruzi rutahaye agaciro ingingo baburanishije aho bavugaga ko gusiba urubanza biba bitavanyeho uburenganzira bwo kongera kurega. Avuga ko iyo urubanza rusibwe ku rwego rwa mbere rutaraburanishwa mu mizi, biba bivuze ko nta kirego gihari, kandi ko nta rundi rubanza ruba rwaraciwe ku buryo rwarangizwa, ibyo bikaba bitandukanye n'ikirego gisibwa kiri ku rwego rw'ubujurire cyangwa se gisaba gusubirishamo urubanza, kuko gusiba bene ibi birego bihita biha imbaraga urubanza rwaciwe mbere kuko ikirego cyahagarikaga irangiza ryazo kiba kitagihari.

(8) Avuga ko iyo umuburanyi abyukije urubanza rwe, rwongera kugira ubuzima mu rwego rw'amategeko (vie juridique), ariko ko atariyo nzira yonyine yakoresha ku buryo aramutse atayikoresheje yaba atakaje burundu uburenganzira bwe bwo kurenganurwa n'inkiko kuko ntakimubuza igihe icyari cyo cyose kuba yakongera gutanga icyo kirego bundi bushya.

(9) Me NUBUMWE Jean Bosco uhagarariye uregwa, avuga ko Urukiko rwanze kwakira ikirego cya LA BAGUETTE SARL, en liquidation, rushingiye ku ngingo ya 51 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryavuzwe haruguru, iyi ngingo ikaba iteganya ko urubanza rwasibwe nta yindi nzira ruba rusigaje kugira ngo rwongere kuburanishwa usibye iyo kurubyutsa mu gihe giteganywa n'amategeko. Asaba Urukiko kutakira ikirego cya LA BAGUETTE SARL, en liquidation kuko ntaho gishingiye mu rwego rw'amategeko.

UKO URUKIKO RUBIBONA

(10) Ku byerekeye inzira yakoreshwa kugira ngo urubanza rwasibwe kubera kutitaba rubyutswe, ingingo ya 51 y'itegeko n° 18/2004 ryo kuwa 20/06/2004 ryavuzwe haruguru, iteganya ko « iyo urubanza rwasibwe mu bitabo by'urukiko, mu rwego urwo arirwo rwose, bitewe n'ikosa ry'ushaka kongera kurubyutsa, icyo kibazo cye nticyakirwa atabanje kugaragaza impamvu ikomeye yamubujije kuza kuruburana mbere.

Kongera kurubyutsa bikorwa mu gihe cy'iminsi cumi n'itanu(15) kuva umunsi urubanza rwasibweho.

Urukiko rwaregewe ni rwo rufite ububasha bwo kubimwemerera rusanze impamvu atanga ari zo. Icyemezo rufashe ntikijuririrwa.

Kubyutsa urubanza mu rwego rw'ubujurire ntibihagarika irangiza ryarwo.

(11) Ingingo imaze kuvugwa haruguru igaragaza ku buryo bwumvikana ko inzira yo kubyutsa urubanza ariyo yonyine amategeko ateganyiriza umuburanyi wasibiwe urubanza kubera kutitaba wifuza ko Urukiko rwarusibye rwongera kuburanisha ikirego cye, kandi nabwo rukabimwemerera ari uko abanje kwerekana impamvu nyazo zatumye atitaba ku munsi yari yahamagaweho mu buryo bukurikije amategeko.

(12) Urukiko rurasanga imvugo y'uburanira la BAGUETTE SARL, en liquidation y'uko kubyutsa urubanza bigomba gukorwa gusa n'uwaregaga mu bujurire kubera ko haba hari urubanza rwamaze kuburanishwa mu mizi rushobora kurangizwa, nta shingiro ifite, kuko mu gika cya mbere cy'ingingo ya 51 y'itegeko n° 18/2004 ryo kuwa 20/06/2004 ryavuzwe haruguru bigaragara ko kubyutsa urubanza bikorwa

hatitawe ku rwego urubanza rugezeho. Nk'uko kandi byasobanuwe n'umucamanza wa mbere, kuba ikirego gisibwe ntibyambura uwari wagitanze uburenganzira bwo kurenganurwa n'inkiko, kuko ingingo ya 51 yavuzwe imuha amahirwe yo kongera kuburana ikirego cye imbere y'urukiko yari yararegeye amaze gusobanura impamvu zatumye atitaba mbere, gushaka gutanga ikirego gishya bikaba byagaragara ahubwo nko guhunga ibitegekwa n'iyi ngingo.

(13) Ku byerekeye imvugo y'uburanira la BAGUETTE SARL, en liquidation ko uburenganzira bwo kongera gusaba umucamanza wasibye urubanza kongera kuruburanisha budafite igihe burangirira, Urukikio rurasanga mu ngingo ya 51 y'itegeko n° 18/2004 ryo kuwa 20/06/2004 ryavuzwe haruguru, umushingamategeko yarerekanye ku buryo bbwumvikana ugaragara ko uburenganzira bwo kubyutsa urubanza bumara gusa igihe cy'iminsi cumi n'itanu kuva urubanza rusibwe, bityo rero kumva ko umuburanyi ashobora gutanga ikirego nyuma y'icyo gihe bikaba ari ukwumva nabi ibyo itegeko riteganya.

(14) Hashingiwe ku bimaze kuvugwa, Urukiko rurasanga ingingo ya 51 nta rujijo iteye kuko ibikubiyemo bisobanutse ku buryo ntawakumva hari ubundi buryo urubanza rwasibwe rwakongera kuburanishwa hadakoreshejwe inzira yo kurubyutsa, bityo ubujurire bwa La BAGUETTE SARL, en liquidation bushingiye ku myumvire itandukanye n'ibiteganywa n'amategeko bukaba nta shingiro bufite.

2. Kumenya niba MICHAEL FIETZEK yahabwa amafaranga asaba

(15) Me Nubumwe asaba ko LA BAGUETTE SARL, en liquidation yaha uwo aburanira amafaranga 2.000.000 ajyanye n'ikurikiranarubanza n'igihembo cya avoka, uburanira LA BAGUETTE SARL en liquidation akavuga ko ikirego nta shingiro gifite kuko yagiye mu nkiko igamije kugaruza umutungo wayo cyane ko na MICHAEL FIETZEK ari umunyamigabane muri iyo Sosiyete, bityo akaba nta ndishyi akwiye gusaba.

(16) Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya avoka Michael FIETZEK asaba, atagomba kuyahabwa kuko atagaragaza aho ashingira ayasaba kuri uru rwego.

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

(17) **Rwemeje** ko ubujurire bwa LA BAGUETTE SARL en liquidation nta shingiro bufite.

(18) **Ruvuze** ko imikirize y'urubanza RCOM 0231/10/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 11/11/2010 idahindutse.

y'amagarama y'urubanza itayatanga mu gihe cy'iminsi umunani, ayo mafaranga agakurwa mu mutungo wayo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 13/07/2012

Sé
MUKANYUNDO Patricie

Perezida

Sé
KANYANGE Fidelité
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
MUNYANDAMUTSA Jean Pierre

Umwanditsi w'Urukiko

9. URUKIKO RW'IKIRENGA

N° Y'URUBANZA : RCOMA0102/10/CS
ITARIKI Y'URUBANZA: 06/07/2012
HABURANA : KAYITESHONGA Callixte / Banki y'u Rwanda Itsura Amajyambere (BRD) mu izina ry'umuyobozi wayo

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI-KWISHINGIRA ISHYIRAHAMWE RITAGIRA UBUZIMA GATOZI- KUTABA UBWABYO URWITWAZO KU BISHINGIZI MU KUTUBAHIRIZA AMAZESERANO Y'UBWISHINGIRE BASINYE.

ISHYIRAHAMWE RITAGIRA UBUZIMAGATOZI-KUTABA IMPAMVU UBWAYO YO GUTESHA AMASEZERANO RYASINYE AGACIRO-KUBIFATA AHUBWO NK'IMPAMVU ITUMA RITAGARAGAZA NK'ISHYIRAHAMWE IMBERE Y'AMATEGEKO NA RUBANDA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Uwiyemeje kwishingira ishyirahamwe kugira ngo rihabwe inguzanyo ntashobora kwitwaza ko iryo shyirahamwe yishingiye ryasinye amasezerano y'inguzanyo kandi nta buzimagatozi rifite ngo yange kubahiriza amasezerano ye yasinye kuko ari amasezerano abiri atandukanye.

Kuba ishyirahamwe ryasinye amasezerano ritagira ubuzimagatozi sibyo byatesha agaciro ayo amasezerano, ahubwo kuba ridafite ubuzimagatozi bituma ritigaragaza gutyo imbere y'amategeko cyangwa imbere ya rubanda.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUHAKIRIJE MU RUHAME KUWA 06/07/2012, URUBANZA RCOMA 0102/10/CS MU BURYO BUKURIKIRA:

HABURANA:

UWAJURIYE:

KAYITESHONGA Callixte, mwene Munyarugerero na Nzungize, utuye Gashoboroza, Akagari ka Kivugiza, Umurenge wa Nyange, Akarere ka Musanze, Intara y'Amajyaruguru, ahagarariwe na Me Murekatete Marguerite.

UREGWA:

Banki y'u Rwanda Itsura Amajyambere (BRD), mu izina ry'Umuyobozi Mukuru wayo, ihagarariwe na Me Mafaranga Anastase.

IKIREGERWA:

Kujuririra urubanza RCOM 0252/09/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, kuwa 19/10/2010.

IKIBURANWA:

Paiement de 40.410.742 Frw consécutifs à l'acte de cautionnement solidaire et indivisible signé le 31/01/2005.

I. IMITERERE Y'URUBANZA

[1] Kuwa 10/01/2006, Banki y'u Rwanda Itsura Amajyambere (BRD), yagiranye amasezerano y'inguzanyo nº 007/2006/UJ/KF/KF na Kayiteshonga Callixte ahagarariye COPROVAB nka Perezida w'Inama y'Ubutegetsi wayo, BRD iyiguriza 45.000.000 Frw yo gukora umushinga wo guhinga no gucuruza ingano, maze Abagize Inama y'Ubutegetsi yayo aribo Kayiteshonga Callixte, Birete Guillaume, Ndimubanzi Martin na Butunge Ndamiyabera Pascal, barayishingira (cautions solidaires et indivisibles) nk'uko bigaragazwa n'amasezerano y'ubwishingire yo kuwa 31/01/2005.

[2] COPROVAB ntiyishyuye inguzayo yahawe nk'uko yari yarabyiyemeje muri ayo masezerano, bituma BRD itanga ikirego mu Rukiko Rukuru rw'Ubucuruzi, isaba ko abishingiye umwenda wa COPROVAB bawishyura. Urwo rubanza rwagobotsemo ku bushake abafasha ba Birete, Ndimubanzi na Butunge, aribo

Nyiranzage, Kanakuze na Byukusenge, basaba ko imitungo y'imiryango yabo itakwishyura imyenda yafashwe n'abagabo babo mu gihe bayifashe batabyumvikanyeho.

[3] Urwo Rukiko rwaciye urubanza, rwemeza ko Kayiteshonga na bagenzi be hamwe n'abagobotse muri urwo rubanza batsinzwe, rutegeka Kayiteshonga Callixte, Birete Guillaume, Ndimubanzi Martin na Butunge Ndamiyabera Pascal kwishyura BRD 51.024.299 Frw.

[4] Kayiteshonga, Birete, Ndimubanzi, Butunge, Nyiranzage, Kanakuze na Byukusenge bajuririye Urukiko rw'Ikirenga, ubujurire bwabo bukorerwa ibanzirizasuzuma, umucamanza wabishinzwe, mu cyemezo cy'ibanzirizasuzuma nº RCOM 0030/11/Pré-ex/CS cyo kuwa 23/03/2011, yemeza ko ubujurire bwa Kayiteshonga Callixte, bwakiriwe kuko bwatanzwe mu buryo no mu nzira zikurikije amategeko, naho mu cyemezo cy'ibanzirizasuzuma nº RCOM 0023/12/Pré-ex/CS cyo kuwa 12/03/2012, yemeza ko ubujurire bwa Birete, Ndimubanzi, Butunge, Nyiranzage, Kanakuze na Byukusenge, butakiriwe kuko bwakererewe.

[5] Birete na bagenzi be bamenyeshejwe icyemezo cy'ibanzirizasuzuma nº RCOM 0023/12/Pré-ex/CS, ariko ntibakijuririra, bituma mu iburanisha ryo kuwa 05/06/2012 hasuzumwa ubujurire bwa Kayiteshonga gusa, ahagarariwe na Me Murekatete Marguerite, naho BRD, ihagarariwe na Me Mafaranga Anastase.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURWA RYACYO:

1. Kumenya niba amasezerano y'ubwishingire yo kuwa 31/01/2005 afite agaciro

[6] Uburanira Kayiteshonga Callixte avuga ko Urukiko rubanza rwashingiye ku ngingo ya 33 CCLIII no ku masezerano y'ubwishingire, rumutegeka gufatanya na bagenzi be kwishyura BRD 51.024.299 Frw, rwirengagiza ko batagomba kwishyura ayo mafaranga bitewe n'uko amasezerano y'inguzanyo nta gaciro afite kuko yasinywe na COPROVAB idafite ubuzimagatozi, ko rero amasezerano y'ubwishingire yakoze nayo, nta gaciro afite. Avuga ko indi mpamvu ituma atakwishyura ayo mafaranga, ari uko atasimbura BRD mu burenganzira bwayo nk'uko biteganywa n'ingingo ya 576 CCLIII.

[7] Avuga ko ahubwo BRD igomba kurega abanyamuryango bose ba COPROVAB kugira ngo bayishyure inguzanyo yahaye COPROVAB kubera ko igikora, kandi ko ifite indi Nama y'Ubutegetsi yasimbuye iya mbere.

[8] Uburanira BRD avuga ko Kayiteshonga agomba gufatanya na bagenzi be kwishyura BRD 51.024.299 Frw y'umwenda batsindiwe mu Rukiko rubanza, kubera ko aribo bishingiye umwenda ungana na 45.000.000 Frw COPROVAB

yahawe na BRD nk'uko bigaragazwa n'amasezerano y'ubwishingire bagiranye na BRD kuwa 31/01/2005.

[9] Avuga ko ayo masezerano y'ubwishingire afite agaciro kuko Kayiteshonga na bagenzi be bayasinye, bari bafite ububasha bwo gukora amasezerano (capacité de contracter), kandi ko biyemereye kuzishyura uwo mwenda igihe COPROVAB izaba yananiwe kuwishyura, ndetse ko baniyemeje kutazireguza inzitizi iyo ari yo yose kabonye n'ubwo yaba ijyanye no gusobanura amasezerano y'umwenda, ko rero ariyo mpamvu yatumye BRD ibarega, aho kwirirwa irega abanyamuryango bose ba COPROVAB kandi nta masezerano y'ubwishingire bagiranye nayo.

[10] Akomeza avuga ko Kayiteshonga atagomba kuburanisha inzitizi yerekeranye n'uko COPROVAB idafite ubuzimagatozi, kuko igihe BRD yayihaga inguzanyo, yari azi neza ko itabufite, bituma yiyemeza kuzayishakira ubuzimagatozi ahereye ku cyemezo cya Minisitiri ufite ubucuruzi mu nshingano ze bakoresheje mu gusaba inguzanyo.

<u>UKO URUKIKO RUBIBONA</u>

[11] Ku byerekeye agaciro k'amasezerano, ingingo ya 33 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano yakurikizwaga icyo gihe, yateganyaga ko "*amasezerano akozwe ku buryo bukurikije amategeko, aba itegeko ku bayagiranye, agomba kubahirizwa nta buryarya".*

[12] Dosiye y'urubanza igaragaza ko BRD yagiranye amasezerano y'ubwishingire kuwa 31/01/2005 na Kayiteshonga Callixte na bagenzi be, aho bishingiye inguzanyo ingana na 45. 00.000 Frw COPROVAB yagurijwe na BRD, biyemeza ko bazishyura iyo nguzanyo bitabaye ngombwa ko BRD ibanza gushakira ubwishyu mu mitungo ya COPROVAB.

[13] Urukiko rurasanga amasezerano Kayiteshonga na bagenzi be bagiranye na BRD yujuje ibisabwa n'amategeko kugira ngo agire agaciro, kuko bayasinye bafite ububasha, bakaba nta gahato cyangwa uburiganya bashyizweho kugira ngo bayasinye, bityo kuba nta nenge afite akaba agomba kubahirizwa nk'uko babyumvikanyeho.

[14] Ku kibazo cyo kumenya niba BRD ifite uburenganzira bwo gukurikirana abishigiye umwenda bitabaye ngombwa ko ikurikirana uwo bishingiye, ingingo ya 560 CCLIII, iteganya ko *"Uwishingiye undi ashinzwe kwishyura ugomba kwishyurwa gusa iyo ugomba kwishyura atashoboye kubikora, ubwishyu bugomba kubanza gushakwa mu bintu by'ugomba kwishyura, keretse rero uwamwishingiye yariyemereye kuzahita yishyura bitabaye ngombwa ko ubwishyu bubanza gushakirwa mu bintu by'ugomba kwishyura…" .*

[15] Mu masezerano Kayiteshonga na bagenzi be basinye, hateganyijwemo ko bemeye kuzishyura umwenda bishingiye bitabaye ngombwa ko ubwishyu bubanza gushakirwa ku wahawe umwenda, bityo BRD ikaba yari ifite uburenganzira bwo kurega abishingiye umwenda bonyine hashingiwe ku masezerano yavuzwe haruguru no ku biteganywa n'itegeko.

[16] Kuba uburanira Kayiteshonga avuga ko amasezerano y'umwenda nta gaciro afite (nullité abasolue) ngo kuko COPROVAB yayasinye idafite ubuzimagatozi, akabiheraho avuga ko n'amasezerano y'ubwishingire nayo nta gaciro afite, Urukiko rusanga iyo miburanire nta shingiro ifite kuko usibye n'uko abahanga mu mategeko bavuga ko ayo masezerano yombi atandukanye[1], ariko kandi kuba COPROVAB idafite ubuzimagatozi si mpamvu yatuma amasezerano y'inguzanyo afatwa nk'atagira agaciro (nullité absolue) kuko ubiburanisha atagaragaza ko ayo masezerano anyuranije n'amategeko (illicite) cyangwa n'umuco w'imbonezabupfura (immoral), ahubwo kuba idafite ubuzimagatozi bituma itigaragaza gutyo imbere y'amategeko cyangwa imbere ya rubanda (les tiers), bitabujije ko yakora ibikorwa byayo ibinyujije ku bayigize.

[17] Kuba na none uburanira Kayiteshonga avuga ko adashobora kuzasimbura BRD mu burenganzira bwayo, mu ngwate z'ibintu bitimukanwa no mu bwizimbe bwayo nk'uko biteganywa n'ingingo ya 576 CCLIII, Urukiko rurasanga iyo mpamvu nayo nta shingiro ifite, kuko atagaragaza ikosa BRD yakoze ryatuma atayisimbura mu burenganzira bwayo, kuba yarahaye COPROVAB inguzanyo kandi idafite ubuzimagatozi bikaba bitafatwa nk'ikosa rivugwa mu ngingo imaze kuvugwa.

2. <u>Kumenya niba indishyi BRD isaba yazigenerwa</u>.

[18] BRD yatanze ikirego kigamije kwiregura isaba ko Kayiteshonga yafatanya na Birete, Ndimubanzi na Butunge kuyiha 5.000.000 Frw y'indishyi z'akababaro kubera ko bayishoye mu manza ku maherere na 3.000.000 Frw y'igihembo cya Avoka n'ay'ikurikiranarubanza.

[19] Uburanira Kayiteshonga avuga ko indishyi BRD isaba muri uru rubanza itazihabwa kuko Kayiteshonga afite burenganzira bwo kujurira, ko kandi ayo mafaranga ari umurengera.

[20] Urukiko rurasanga indishyi uburanira BRD asaba atazigenerwa kuko atagaragaza uburyo yashowe mu manza ku maherere mu gihe ariyo yatangije urubanza ikurikiranyemo umwenda yatanze, izo ndishyi zikaba kandi zidasobanutse kuko zisabwa n'abantu batakiri mu rubanza nk'uko byasobanuwe haruguru.

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

[21] Rwemeje ko ubujurire bwatanzwe na Kayiteshonga Callixte nta shingiro bufite;

[22] Rwemeje ko ikirego kigamije kwiregura cya BRD nta shingiro gifite;

[23] Ruvuze ko imikirize y'urubanza RCOM 0252/09/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 19/10/2010 idahindutse;

[1] NTEZIRYAYO Faustin, <u>Le Cautionnement, Etude comparative des Droits belge, français et rwandais</u>, 1994, P.31.

[24] Rutegetse Kayiteshonga Callixte gutanga amagarama y'uru rubanza angana na 37.250 Frw, atayatanga mu gihe cy'iminsi umunani, ayo mafaranga agakurwa mu bye ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KUWA 06/07/2012.

Sé	Sé	Sé
RUGABIRWA Ruben	MUKANYUNDO Patricie	KANYANGE Fidélité
Umucamanza	Perezida	Umucamanza

Sé

MUNYANDAMUTSA Jean Pierre

Umwanditsi w'Urukiko

IMANZA Z'UBUTEGETSI

10. URUKIKO RW'IKIRENGA

N° Y'URUBANZA : RADA0037/10/CS
ITARIKI Y'URUBANZA : 31/07/2011
HABURANA : EWSA(yahoze yitwa Electrogaz nyuma ikaza no kwitwa RECO-RWASCO) / NDAYOBOTSE Amon.

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI-KUDATAKAMBA MBERE YO GUSHYIKIRIZA IKIBAZO INKIKO KU MPAKA ZIVUTSE HAGATI Y'UMUKOZI N'IKIGO CYA LETA –KUTABIFATA UBWABYO NK'IMPAMVU YO KUTAKIRA IKIREGO.

KUTABA NGOMBWA KO UFATA ICYEMEZO MU RWEGO RW'AKAZI AKURIZA ICYEMEZO CY'UMUCAMANZA MPANABYAHA-KUBISUZUMA HAKURIKIJWE IMITERERE YA BURI RUBANZA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Ntihakorwa umuhango ujyanye no gutakamba mu manza z'ubutegetsi, iyo havutse impaka hagati y'umukozi ugengwa n'amasezerano y'igihe kitazwi n'ikigo cya Leta ahubwo ikibazo gishyikirizwa umugenzuzi w'umurimo byananirana kigashyikirizwa Inkiko zibifitiye ububasha.

Iby'uko ufata ibyemezo mu rwego rw'akazi atagomba gukurikiza byanze bikunze ibyemejwe n'umucamanza mpanabyaha, mu manza zirebana n'umurimo bisuzumwa hakurikijwe imiterere ya buri rubanza.

URUKIKO RW'IKIRENGA RURI I KIGALI RUBURANISHA IMANZA Z'UBUTEGETSI RUKIJIJE MU RUHAME KUWA 31/07/2012 URUBANZA R.Ad.A 0037/10/CS MU BURYO BUKURIKIRA:

<u>HABURANA</u> :

<u>-Uwajuriye</u> : EWSA(yahoze yitwa ELECTROGAZ nyuma ikaza kwitwa RECO-RWASCO), mu izina ry'Umuyobozi Mukuru wayo ;

<u>-Uregwa</u>: **NDAYOBOTSE Amon**, mwene Hategekimana Manassé na Mukamugema Julie, utuye Akagari ka Kinunga, Umurenge wa Nyabitekeri, Akarere ka Nyamasheke, Intara y'Iburengerazuba.

<u>Ikiburanwa</u>:

-Kwemeza ko ELECTROGAZ yanyirukanye nta mpamvu ishingiye ku itegeko ;

-Gutegeka ELECTROGAZ kumpa amafaranga ajyanye n'iryo yirukanwa angana na 5.17. 560 ;

-Gutegeka ELECTROGAZ kumpa amafaranga 2.590.092 y'imishahara y'amezi icyenda ;

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

1. Ndayobotse Amoni yari umukozi wa ELECTROGAZ yaje kwitwa RECO-RWASCO ubu yahindutse EWSA, agengwa n'amasezerano y'umurimo y'igihe kitazwi. ELECTROGAZ yamwandikiye imumenyesha ko imuhagaritse ku kazi ivuga ko nta cyizere ikimufitiye kubera kwiba amasinga anyuzwa mu butaka no gutanga umuriro abanje gusaba abafatabuguzi ruswa. Ndayobotse yaregeye Ubugenzuzi bw'umurimo, abonye ntacyo bitanze ikibazo cye akijyana mu Rukiko asaba ibintu binyuranye nk'uko bisobanuye mu kiburanwa.

2. Urukiko Rukuru, Urugereko rwa Rusizi rwemeje ko yirukanywe na ELECTROGAZ mu buryo budakurikije amategeko, rutegeka RECO-RWASCO kumwishyura indishyi zose hamwe zingana na 2.067.360 Frw.

3. Me Rusanganwa Jean Bosco mu izina rya EWSA, yajuririye icyo cyemezo mu Rukiko rw'Ikirenga, avuga ko Urukiko Rukuru rwanze guha agaciro nta mpamvu rwerekanye inzitizi yari yatanze yo kutakira ikirego cya Ndayobotse kubera ko atubahirije umuhango w'itakamba utegetswe mbere yo gutanga ikirego cy'ubutegetsi, kandi ngo runamugenera indishyi zinyuranye nabwo nta bisobanuro bishyitse rubitangiye.

4. Iburanisha ry'urubanza ryabaye kuwa 12/07/2012, EWSA ihagarariwe na Me Rusanganwa Jean Bosco naho Ndayobotse Amon ahagarariwe na Me Mwizerwa Alexis.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO

A. UBUJURIRE BWA EWSA

1. Kumenya niba Ndayobotse yaragombaga kwubahiriza umuhango wo gutakamba utegetswe mu birego by'ubutegetsi

5. Uburanira EWSA avuga ko Urukiko Rukuru rwemeje nta mpamvu rutanze ko gutakamba bitari ngombwa rwiregangije ibiteganywa n'ingingo ya 339 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, kandi ikirego Ndayobotse yatanze kirebana n'imanza z'ubutegetsi akaba nta nyandiko nimwe yagaragaje yerekana ko yubahirije umuhango w'itakamba uteganywa n'ingingo imaze kuvugwa. Asobanura ko Ndayobotse yagombaga kubahiriza ibihe byo gutanga ikirego hakurikijwe ibiteganywa n'amategeko ariko we aho gutakambira Umuyobozi wa EWSA, Urukiko ruvuga ko yagombaga kujya mu Bugenzuzi bw'Umurimo.

6. Uburanira Ndayobotse avuga ko gutakamba bitari ngombwa muri uru rubanza kuko ingingo ya 339 y'Itegeko n°18/2004 ryo kuwa 20/06/2004 EWSA iburanisha ikoreshwa mu birego byerekeye gusaba gukuraho icyemezo cy'umutegetsi, mu gihe icyaregewe muri uru rubanza ari indishyi zikomoka ku kwirukanirwa ubusa kuko icyemezo kirukana Ndayobotse ari icyemezo cyo gusesa amasezerano y'akazi, bivuga ko itegeko rigenga umurimo ariryo rigomba gukurikizwa.

7. Ku byerekeye ingingo y'ubujurire ya EWSA y'uko Urukiko rwemeje ko Ndayobotse atagombaga gutakamba rwirengagije ibiteganwa n'ingingo ya 339 y'Itegeko n° 18/2004 ryo kuwa 20/05/2004, Urukiko rurasanga itakamba riteganywa n'iyi ngingo rikorwa iyo uwafatiwe icyemezo n'umuyobozi runaka ashaka ko yisubiraho ibintu bigasubira uko byari mbere, ibyo rero akaba atari ko bimeze kuri Ndayobotse kuko icyemezo cy'umuyobozi wa EWSA ari icyo gusesa amasezerano y'akazi, icyo Ndayobotse yaregeye zikaba ari indishyi kubera iseswa ry'ayo masezerano.

8. Byongeye kandi, nk'uko bigaragara muri dosiye, Ndayobotse yagengwaga n' amasezerano y'akazi y'igihe kitazwi, bisobanura ko impaka zivutse mu ishyirwa mu bikorwa ryayo zigomba gukemurwa

hashingiwe ku itegeko rishinga umurimo. Hashingiwe kuri ibyo, ingingo ya 93 y'Itegeko Ngenga n° 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'Inkiko nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya mu gace kayo ka kane (4°), ko Urukiko Rukuru ruburanisha ibirego bijyanye n'imanza z'ubutegetsi kuva ku rwego rw'Intara n'urw'Umujyi wa Kigali kugeza ku rwego rwa Perezida wa Repubulika, ibirego birebana n'impaka zivutse mu kazi hagati y'abantu ku giti cyabo na Leta cyangwa ibigo byayo. Nk'uko byemejwe n'Urukiko Rukuru, Ndayobotse wagengwaga n'amasezerano y'akazi, yagombaga kujyana ikibazo mu Bugenzuzi bw'umurimo nk'uko byateganywaga n'ingingo ya 182 y'itegeko n° 51/2001 ryo kuwa 31/12/2001 ryavuzwe aho gutakambira Umuyobozi wa EWSA, byananirana akaregera Urukiko Rukuru nk'uko bitegnywa n'ingingo ya 93 imaze kuvugwa.

2. Kumenya niba Urukiko rwaratanze indishyi zidasobanutse

***a)* Kumenya niba Urukiko Rukuru rutaragombaga gushingira ku rubanza nshinjabyaha ngo rwemeze ko nta makosa mu rwego rw'akazi yabayeho**

9. Uburanira EWSA avuga ko Ndayobotse yagenewe indishyi zingana n'umushahara we w'amezi atandatu rushingiye ko mu rubanza nshinjabyaha yarezwemo yagizwe umwere nyamara rwirengagiza ko kugirwa umwere mu manza nshinjabyaha bidakuraho amakosa yo mu rwego rw'akazi yashingiweho yirukanwa kuko yigeze guhagarikwa ku kazi agakatwa n'umushahara mu gihe cy'iminsi 30 kubera guhishira uwitwa Uzabakiriho Félix wibaga umuriro akanarya ruswa y'umufatabuguzi Nzabamwita François, kandi icyo gihe amenyeshwa ko niyongera gukora irindi kosa azahita yirukanwa nta yindi nteguza.

10. Akomeza asobanura ko n'ubwo Ndayobotse yari yihanangirijwe, muri raporo yo kuwa 07/11/2002 n'iyo kuwa 24/03/2004, bigaragara ko yongeye gutahurwaho ubujura bwo kwiba insinga zinyura mu butaka akazigurisha, biba ngombwa ko ahita yirukanwa nk'uko yari yarabimenyeshejwe.

11. Uhagarariye Ndayobotse avuga ko EWSA yamwirukanye ivuga ko yafatanyije n'abandi bakozi kwiba insinga no gusaba ruswa abafatabuguzi ariko ko ibyo birego byasuzumwe mu rubanza rw'inshinjabyaha agirwa umwere, akaba asanga EWSA igomba kugaragaza impamvu ikomeye yatumye imwirukana kuko ibyo yashingiyeho imwirukana bitabayeho. Naho ku birebana n'ingano z'indishyi agomba gutabwa, avuga ko Umushingamategeko yavuze ko zitagomba kurenga umushahara w'amezi atandatu, bityo Urukiko rukaba nta tegeko rwishe mu kumugenera indishyi.

12. Ingingo ya 20 y' itegeko n° 51/2001 ryo kuwa 31/12/2001 rishinga umurimo ryakoreshwaga igihe Ndayobotse yirukanywaga, yateganyaga ko amasezerano y'umurimo y'igihe kitazwi ashobora guseswa igihe cyose umwe mu bayagiranye abishatse ariko ku mpamvu zumvikana. Iryo seswa ribanzirizwa n'integuza itanzwe n'urishaka.

13. Mu ibaruwa Nº 11.07.02/16/04/2004/DIR-DHR/1.c, EWSA yandikiye Ndayobotse imubwira ko raporo yakozwe ku bujura bw'insinga z'umuriro zinyuzwa mu butaka bwakorewe kuri Station ya Cyangugu yagaragaje ko yibye izo nsinga akazigurisha abafatabuguzi batandukanye, kandi ko muri iyi raporo havugwamo ko arya ruswa mu guha abantu umuriro w'amashanyarazi, bityo ikaba idashobora gukomeza kumukoresha kuko itakimufitiye icyizere.

14. Ibyo byaha Ndayobotse yirukaniwe na EWSA yabirezwe mu rubanza nshinjabyaha rwaciwe kuwa 22/01/2009 maze rumugira umwere. Imvugo y'uburanira EWSA ko kuba umwere mu rubanza nshinjabyaha bidakuraho amakosa umukozi yahanirwa mu rwego rw'akazi, Urukiko rurasanga ibyo ari ibintu bisuzumwa hakurikijwe imiterere ya buri rubanza ariko ko ku bireba Ndayobotse, kuba ibikorwa EWSA yashingiyeho imwirukana, ari nabyo yarezwe mu rukiko mpanabyaha nyuma rukemeza ko bitamuhama, mu gihe nta yandi makosa EWSA yagaragaje yashingiyeho imwirukana uretse ayo Urukiko rwaburiye ibimenyetso, byafatwa ko Ndayobotse yirukanwe hatagaragajwe impamvu yumvikana nk'uko biteganywa n'ingingo ya 20 yavuzwe haruguru [1], bityo EWSA ikaba igomba kubitangira indishyi nk'uko byemejwe n'Urukiko rwa mbere. Kuba kandi urwo rukiko rwaratanze indishyi zingana n'umushahara w'amezi atandatu rukaba nta kosa rwakoze kuko rutarenze ku biteganywa n'amategeko.

1 Ibi birahura n'ibyemejwe mu rubanza RADA 0038/09/CS rwaciwe kuwa 25/03/2011 n'Urukiko rw'Ikirenga, ELECTROGAZ iburana n'uwitwa Niwenshuti Nzaramba Valens. Muri uru rubanza Urukiko rwemeje ko iyo umukoresha yirukanye umukozi kubera impamvu runaka nyuma umucamanza mu rubanza nshinjabyaha akamugira umwere kuri ibyo byaha akurikiranyweho, icyo gihe umukoresha ategetswe kubahiriza icyemezo cy'uwo mucamanza. Urukiko rwasanze ibyo bihura n'ibivugwa n'abahanga mu mategeko Georges Dupuis, Marie-Josée Guédon na Patrice Chrétien, mu gitabo cyabo, Droit Administratif, 10ème édition, p381, aho bagira bati: "de même l'autorité disciplinaire n'est pas liée par la décision du juge pénal, sauf lorsque ce dernier s'est prononcé sur l'existence ou l'inexistence de certains faits: ses constatations matérielles s'imposent dans ce cas à l'autorité administrative.

b) Kumenya niba Ndayobotse ataragombaga guhabwa indishyi kubera kudahabwa icyemezo cy'umukoresha

15. Uhagarariye EWSA avuga ko Urukiko rwageneye Ndayobotse indishyi nta mpamvu yumvikana rushingiyeho kubera ko Ndayobotse atigeze asaba icyo cyemezo cy'umukoresha ngo acyimwe, kandi umukoresha ucibwa indishyi zivugwa mu ngingo ya 30 y'Itegeko rishinga umurimo ryavuzwe haruguru ari uwakimanye igihe umukozi agisabye. Avuga kandi ko amezi atandatu y'indishyi urukiko rwatanze rushingiye gusa ko umuburanyi yabisabye ashingiye ku biteganywa n'itegeko atari kamara kubera ko rushobora gutanga n'indishyi z'ukwezi kumwe cyangwa se abiri.

16. Kuri iki kibazo, Me Mwizerwa asaba urukiko kuzakurikiza ibiteganywa n'ingingo ya 30 y'Itegeko n° 51/2001 ryo kuwa 31/12/2001 ryavuzwe iteganya ko umukoresha wirukanye umukozi ahita amuha icyemezo cy'imirimo yakoze kandi EWSA ikaba atari ko yabikoze, kuko ntacyo yamuhaye ngo yanjye kugifata. Avuga ko ingingo y'ubujurire y'uko yagenewe indishyi z'amezi 6 y'umushahara itagombye gusuzumwa ku rwego rw'ubujurire kuko ku rwego rwa mbere icyo EWSA yavugaga gusa ari uko izo ndishyi nta shingiro zifite.

17. Ku byerekeranye n'itangwa ry'icyemezo cy'umurimo gitangwa n'umukoresha wa nyuma, ingingo ya 30 y'itegeko n°51/2001 ryo kuwa 30/12/2001 iteganya ko" Iyo amasezerano y'umurimo arangiye ku mpamvu iyo ariyo yose, umukoresha ahita akorera umukozi icyemezo kivuga gusa uburambe bwe muri icyo kigo n'imirimo yagiye agikoramo. Icyo cyemezo agiherwa rimwe n'umushahara wa nyuma. Igika cya kabiri cyayo kigateganya ko umukoresha wanze gutanga icyo cyemezo abitangira indishyi ingana n'umushahara umukozi yahembwaga , ariko ntirenze uw'amezi atandatu (6).

18. Urukiko rurasanga kuba EWSA yarirukanye Ndayobotse ariko ntimuhe kiriya cyemezo kuko n'uyiburanira yabwiye uru rukiko ko kugeza ubu itarakimuha ngo kubera ko ataje kugisaba, iyo myifatire yayo igomba gufatwa nk'iy'umukoresha wanze gutanga icyemezo cy'imirimo umukozi yakoze nk'uko biteganywa n'itegeko, bityo ikaba igomba kubitangira indishyi kuko itegeko rivuga ko umukoresha agomba gutanga kiriya cyemezo ako kanya akimara kwirukana umukozi bitabaye ngombwa ko agisabwa.

19. Naho ku byerekeye ingano y'indishyi uburanira EWSA avuga ko amezi 6 y'umushahara Urukiko rwatanze atari kamara, Urukiko rurasanga iyi ngingo nta shingiro ifite kuko Urukiko rutanga indishyi

mu bushishozi bwarwo rushingiye ku miterere ya buri rubanza kandi rukazigena rushingiye ku kigero kigenywa n'itegeko, kuba Urukiko Rukuru rwarahaye Ndayobotse indishyi zingana n'umushahara we w'amezi 6 ateganywa n'ingingo ya 30 yavuzwe haruguru rukaba nta kosa rwakoze.

c)Kumenya ingano y'igihe cy'integuza Ndayobotse agomba kwishyurirwa indishyi

20. Me Rusanganwa avuga ko iteka rya Minisitiri nº 11/19 ryo kuwa 14/03/2003 rigenga igihe cy'integuza risobanutse, ko kubireba Ndayobotse wari „ aide technicien", akoze igihe kitagera ku myaka itanu, yagombaga guhabwa integuza y'iminsi cumi n'itanu ariko Urukiko rukaba rwarabirenzeho rumuha amafaranga y'integuza y'iminsi 30 nta mpamvu rushingiyeho, rutanabanje gukuramo ay'iminsi 15, EWSA yamwishyuye nk'uko bigaragara muri „décompte final" yakorewe. Asobanura ko impapuro za „décompte final" yazikorewe ariko impamvu Ndayobotse avuga ko EWSA itayamuhaye byatewe ni uko yayiyishyuye kubera umwenda yari afitiye „Caisse d'Entraide" y'abakozi b'icyo kigo.

21. Uhagarariye Ndayobotse avuga ko Urukiko rwatanze indishyi zijyanye nº kudahabwa integuza hubahirijwe ibiteganywa n'ingingo ya 25 y'itegeko n°51/2001 ryo kuwa 31/12/2001 ryavuzwe haruguru, ko harebwe igihe yatangiriye akazi muri mu kwa 11/1999, akirukanywa mu kwa 4/2004, Ndayobotse yari arengeje imyaka itanu ku kazi kandi ko ibyo EWSA ivuga ko hari amafaranga y'integuza yamuhaye muri décompte final atari ashyikirizwa, ko kandi inguzanyo yari yarafashe mu Isanduku y'Ubwisungane y'abakozi yarangije kuyishyura, ariko ko mu kumwirukana mu buryo butunguye nta faranga bigeze bamuha kandi buri kwezi yaratangaga umusanzu wa 5000 Frw.

22. Ku byerekeranye n'igihe cy'integuza Ndayobotse yagombaga guhabwa, Iteka rya Minisitiri nº 11/19 ryo kuwa 14/03/2003 rigena igihe cy'integuza riteganya mu ngingo yaryo ya gatatu ko igihe cy'integuza kibarwa hashingiwe ku burambe mu kazi n'urwego rw'umurimo umukozi agezeho igihe yirukanwaga. Ku bireba Ndayobotse, avuga ko yakoze muri EWSA ari aide technicien, guhera tariki 22/11/1999 kugeza tariki 16/04/2004, bivuga ko yari ahakoze imyaka ine n'igice.

23. Ingingo ya gatatu y'Iteka rya Minisitiri rimaze kuvugwa, iteganya ko umukozi wo mu rwego rwa aide de métier nk'urwo Ndayobotse yari arimo, ufite uburambe ku kazi buri munsi y'imyaka itanu ahabwa igihe cy'nteguza kingana n'iminsi 15, bityo hakaba harabaye kwibeshya mu kumubarira igihe cy'integuza afiteho uburenganzira. Ku birebana n'amafarnga y'iminsi 15, uhagarariye EWSA avuga ko yishyuwe

Ndayobotse muri „décompte final", Urukiko rurasanga n'ubwo muri dosiye hari inyandiko igaragaza ko EWSA yamukoreye iyo" décompte final", Ndayobotse avuga ko ntayo yigeze abona, ikibazo cy'umwenda uhagarariye EWSA avuga watumye biyishyura amafaranga ya „décompte final" yagombaga kumuha ikaba nta bimenyetso yabitangiye kugira ngo hasuzumwe ishingiro ry'ihwanyamyenda yakoze yiyishyura, bityo rero Ndayobotse akaba agomba guhabwa amafaranga ye y'integuza angana na 33.360.

d)Kumenya niba Ndayobotse yahabwa indishyi zirebana n'uko amafaranga aregera atayaherewe igihe

24. Me Rusanganwa avuga ko kuba Urukiko rwari rwageneye Ndayobotse indishyi zo kwirukanwa nta mpamvu, rutari guhindukira ngo rumugenere izindi ndishyi ruzita nazo izo kwirukanirwa ubusa. Asobanura ko kuba EWSA yarasheshe amasezerano y'akazi bitambuye Ndayobotse ubushobozi bwo kuba yashaka akazi ahandi ku buryo yabitangira indishyi zingana na 1.000.000 Frw hatagaragajwe ibyangiritse ndetse n'ingano yabyo.

25. Uhagarariye Ndayobotse avuga ko indishyi za 1.000.000 Frw Urukiko rwamuhaye atari umubare ukanganye kuko bari basabye arenga miliyoni eshatu, ko izi ndishyi zishingiye ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amatgeko mbonezamubano, kuko kuva yirukanwa yasiragiye mu bugenzuzi bw'umurimo inshuro zigera kuri eshatu EWSA ikanga kwitaba, kandi ko kugeza n'ubu nta ndishyi iramuha nyamara iyo iza kumwishyura muri 2009, aya mafaranga aba yarayabyaje inyungu.

26. Urukiko rurasanga izo ndishyi Ndayobotse yita igihombo ntazo akwiye kugenerwa yahabwa kuko atagaragaza ko amafaranga aburana ari umwenda EWSA imubereyeyemo, uzwi ingano kandi ugeze igihe cyo kwishyurwa, ahubwo ari indishyi zigomba kwemezwa n'inkiko, EWSA rero ikaba ifite uburenganzira bwo gusaba kurenganurwa mu gihe yumva hari ibyo yaciwe nta mpamvu. Naho ibyo gusiragira mu Bugenzuzi bw'umurimo bikaba bijyanye n'ikurikiranarubanza yaherewe indishyi.

B. UBUJURIRE BWURIRIYE KU BUNDI

1. Kumenya niba amafaranga Ndayobotse asaba yayahabwa

27. Uburanira Ndayobotse asaba ko indishyi yagenewe zakongerwaho 200.000 Frw kubera gukurikirana uru rubanza muri uru rwego kuko aza kuburana aturuka i Rusizi, ko kandi yahabwa kuri uru rwego

amafaranga y'igihembo cya avoka angana na 300.000 Frw.

28. Me Rusanganwa avuga ko ubujurire bwuririye ku bundi bwa Ndayobotse nta shingiro bufite kuko impamvu EWSA yatanze zifite ishingiro, ariko ko urukiko rubibonye ukundi rwamugenera 200.000 Frw kuri byose.

29. Urukiko rurasanga umubare w'amafaranga y'ikurikiranarubanza n'ay'igihembo cya avoka Ndayobotse asaba atayahabwa yose kuko EWSA ifite nayo ibyo itsindiye muri uru rukiko, mu bushishozi bwarwo rukaba rumugeneye 250.000 kuri byombi.

30. Hashingiwe ku byasobanuwe haruguru, Urukiko rurasanga EWSA igomba guha Ndayobotse indishyi zikurikira: 400.320 Frw (kubera kudahabwa icyemezo cy'umukoresha), 33.360 Frw (zijyanye n'integuza atahawe), 400.320 Frw (kubera kwirukanwa ku kazi nta mpamvu yumvikana), 450.000Frw (ajyanye n'ikurikiranarubanza habariwemo n'igihembo cya avoka ku nzego zombi), yose hamwe akaba **1.284.000 Frw.**

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

31. Rwemeje ko ubujurire bwa EWSA bufite ishingiro kuri bimwe;

32. Rwemeye kwakira ubujurire bwa Ndayobotse bwuririye ku bwa EWSA kuko bwakozwe mu buryo n'inzira bikurikije amategeko kandi ko bufite ishingiro kuri bimwe;

33. Rutegetse EWSA guha Ndayobotse Amoni amafaranga yose hamwe angana na **1.284.000**, ikayatangira umusogongero wa Leta wa 4%, ni ukuvuga **51.360 Frw.**

34. Ruyitegetse gutanga amagarama y'urubanza angana na 29.700 Frw, itayatanga mu gihe cy'iminsi umunani, itayatanga agakurwa mu byayo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 31/07/2012

Sé	Sé	Sé
KANYANGE Fidelité **Umucamanza**	**MUKANYUNDO Patricie** **Perezida**	**RUGABIRWA Ruben** **Umucamanza**

Sé

MUNYANDAMUTSA Jean Pierre
Umwanditsi w'Urukiko

IMANZA Z'UMURIMO

11. URUKIKO RW'IKIRENGA

N° Y'URUBANZA : RSOCAA0017/10/CS
ITARIKI Y'URUBANZA: 22/06/2012
HABURANA : MUKUNDE Eugénie / AFRICARE B.P 137 Kigali mu izina ry‘ uyihagarariye

AMAGAMBO MPINE

IMANZA Z'UMURIMO- IMYANDIKIRE Y'AMASEZERANO Y'UMURIMO -IKIGAMIJWE MU MASEZERANO Y'IGERARAGEZWA -KUBANZA GUSUZUMA UMUKOZI- GUKORWA MBERE Y'UKO HASINYWA AMASEZERANO Y'AKAZI KU BURYO BUDASUBIRWAHO.

- IYONGERWA RY'AMASEZERANO Y'IGERAGEZWA-KUMENYESHWA UMUKOZI MU BURYO BWERUYE-GUKOMEZA GUKORA K'UMUKOZI URI MU IGERAGEZWA-KUTABIFATA NK'AHO YEMEYE IRYO YONGERWA RY'IGIHE CY'IGERARAGEZWA IYO ATARIGIZEMO URUHARE.

- IYONGERWA RY'IGIHE CY'IGERAGEZWA RITUBAHIRIJE AMATEGEKO-GUFATA UMUKOZI NK'UGENGWA N'AMASEZERANO Y'UMURIMO KU BURYO BUDASUBIRWAHO-KUBITANGIRA INDISHYI IYO ASHESHWE IGIHE KITARANGIYE.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Icyari kigamijwe mu ngingo ya y'itegeko n°51/2001 ryo kuwa 30/12/2001 rishinga amategeko agenga umurimo si imyandikire y'amasezerano, ahubwo ni uko abayagiranye bagera ku kigamijwe ari cyo kubanza gusuzuma umukozi, ibi kandi bikaba mbere y'uko hakorwa amasezerano y'akazi ku buryo budasubirwaho.

-Kwemera ibijyanye n'iyongerwa ry'igihe cy'igeragezwa ku mukozi uri mu igeragezwa bigomba kuba mu buryo bweruye (bwanditse), kuba rero umukozi yakomeza gukora ntibyafatwa nk'aho yemeye iyongerwa ry'igihe cy'igeragezwa atigeze arigiramo uruhare.

-Iyo iyongerwa ry'igihe cy'igeragezwa ritubahirije amategeko, umukozi akaguma gukora, aba yatangiye kugengwa n'amasezerano y'umurimo ku buryo budasubirwaho, kuyasesa igihe kitarangiye nta mpamvu bimuha uburenganzira ku ndishyi.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UMURIMO RUKIJIJE NONE KUWA 22/06/2012, URUBANZA RSOC AA 0017/10/CS MU BURYO BUKURIKIRA:

HABURANA :

<u>Uwajuriye</u>:

-MUKUNDE Eugénie, mwene Kayitaba na Mukunde, utuye mu Mudugudu wa Kalisimbi, Akagari ka Kibagabaga, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali.

Uregwa: AFRICARE, B.P. 137 Kigali mu izina ry'Uyihagarariye.

Ikiburanwa:

-Licenciement abusif, décompte final, attestation des services rendus, dommages et intérêts, congés non payés, frais de prédures et frais d'avocat.

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

[1] Mukunde Eugénie yahawe akazi na AFRICARE ku mwanya wa Program Manager, basinyana amasezerano y'umwaka ateganyijwemo igihe cy'igeragezwa cy'amezi atatu, ariko gishobora kongerwaho ukwezi kumwe mu gihe AFRICARE yasanga ataragira ubushobozi buhagije bwo gukora akazi yari yahawe. Uko kwezi kurangiye AFRICARE yakoze igenzura isanga n'ubundi ubushobozi bwa Mukunde bukiri buke, imwongerera igihe cy'igeragezwa ho andi mezi abiri. Icyo gihe kitararangira, AFRICARE yamwirukanye ivuga ko yasanze nta bushobozi afite bwo gukora akazi yari yahawe. Mukunde ntiyishimiye icyo cyemezo aregera Ubugenzuzi bw'umurimo kugira ngo bumwumvikanishe n'umukoresha we ariko ntibyakunda, nyuma y'aho ajyana ikibazo cye mu Rukiko asaba indishyi zihwanye n'imishahara y'amezi amasezerano yari asigaje n'izindi zo kuba AFRICARE yaramwimye icyemezo cy'imirimo yahakoze.

[2] Urukiko Rwisumbuye rwa Nyarugenge rwaregewe, rwemeje ko Mukunde atsinzwe, ko nta ndishyi akwiye rushingiye ko yirukanywe akiri mu igeragezwa, rumutegeka guha AFRICARE indishyi zingana na 200.000 Frw. Mukunde yajuririye Urukiko Rukuru rwakijije ko urubanza rwa mbere rudahindutse.

[3] Mukunde yajuririye nanone Urukiko rw'Ikirenga avuga ko Inkiko zabanje zamwimye indishyi zishingiye ko yirukanywe akiri mu igeragezwa kandi amasezerano y'akazi y'igihe kizwi yagiranye na AFRICARE adashobora guteganya igihe cy'igeragezwa, ko kandi n'ubwo ibyo byashoboka, igihe cy'igeragezwa kidashobora kongerwa impande zombi zitabyumvikanyeho. Avuga rero ko kuba yarirukanywe agengwa n'amasezerano y'igihe kizwi kandi nta mpamvu yumvikana, agomba kubihererwa indishyi akabona n'izindi zijyanye no kudahabwa icyemezo cy'umukoresha ndetse n'amafaranga y'ikurikiranarubanza n'ay'igihembo cya avoka kuko ibyo aburana bifite ishingiro.

[4] Iburanisha ry'urubanza ryabaye mu ruhame kuwa 22/05/2012, Mukunde Eugénie ahagarariwe na Me Munyeshema Napoléon, naho AFRICARE ihagarariwe na Me Munyaneza Remy.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO

1. Kumenya niba amasezerano y'akazi y'igihe kizwi Mukunde yagiranye na AFRICARE yarashoboraga guteganya igihe cy'igeragezwa

[5] Uhagarariye Mukunde avuga ko Urukiko Rukuru rwamurenganyije ruvuga ko nta mategeko yashingiyeho ateganya ko amasezerano y'igihe kizwi adashobora guteganya igihe cy'igeragezwa, nyamara yarasobanuye ko imvugo ye ayishingira ku biteganywa n'ingingo ya 14 y'Itegeko nº 51/2001 ryo kuwa 31/12/2001 ryerekeye amategeko ashinga umurimo, iyi ngingo ikaba iteganya ko igeragezwa rikorwa mbere y'uko umukozi asinya amasezerano y'umurimo adasubirwaho (contrat définitif). Asobanura ko uretse ibyo avuze biteganywa n'itegeko, Mukunde wari wagiranye amasezerano y'akazi y'igihe kizwi na AFRICARE, nta geragezwa yari gukoreshwa kuko yari yahawe akazi bitewe n'inararibonye n'ubumenyi afite, bityo akaba asanga AFRICARE igomba kumuha indishyi bitewe ni uko igihe yamwirukanaga yagengwaga n'amasezerano y'igihe kizwi.

[6] Uhagarariye AFRICARE avuga ko kuba amasezerano y'akazi y'igihe cy'umwaka Mukunde yagiranye na AFRICARE yari akubiyemo igihe cy'igeragezwa ntaho binyuranya n'itegeko kuko ingingo ya 14 y'Itegeko nº 51/2001 ryo kuwa 30/12/2001 ryavuzwe haruguru mugenzi we aburanisha ntaho ibuza gushyira igeragezwa mu masezerano y'igihe kizwi, kandi n'itegeko ngengamikorere rya AFRICARE ribiteganya mu gace karyo ka II.2[1].

1 Iyo ngingo ivuga ko umukozi wese mushya winjira muri AFRICARE agomba kubanza kugeragezwa igihe cy'amezi atatu, nyuma y'icyo gihe agakorerwa raporo ku igeragezwa, basanga adafite ubushobozi bukenewe agahagarikwa ku kazi.

[7] Ku birebana n'igihe cy'igeragezwa, ingingo ya 14 y'itegeko n°51/2001 ryo kuwa 30/12/2001 rishinga amategeko agenga umurimo ryakoreshwaga igihe Mukunde na AFRICARE bagiranaga amasezerano y'akazi, iteganya ko "*haba amasezerano y'umurimo w'igeragezwa iyo umukozi n'umukoresha, mbere y'uko bagirana amasezerano adasubirwamo, bemeranywa ko umukoresha asuzuma, cyane cyane imikorere y'umukozi n'umusaruro we, naho umukozi akagenzura, cyane cyane imiterere y'akazi, iy'imibereho, iy'umushahara, iy'ubuzima no kwirinda impanuka, kimwe n'iy'ubusabane bw'abo bakorana muri icyo kigo".*

[8] Hashingiwe ku biteganywa n'ingingo imaze kuvugwa, byumvikana ko kuba AFRICARE na Mukunde baremerenijwe gukora amasezerano y'igihe kizwi, nta cyari kubuza ko bumvikana no ku gihe cy'igeragezwa nk'uko ingingo y'itegeko yavuzwe haruguru ibiteganya. Na none kandi, kuba icyo gihe cy'igeragezwa kitarakorewe amasezerno yihariye, ahubwo kigashyirwa mu masezerano y'akazi ubwayo, ntibyashingirwaho ngo hemezwe ko habaye amasezerano adasubirwaho yonyine kuko abo bireba bakora amasezerano uko bibanogeye, bayandika atandukanye cyangwa bagateganya igihe cy'igeragezwa mu masezerano ubwayo, icy'ingenzi akaba ari uko iyo igeragezwa ryemeranijweho rigomba kugaragara mu buryo bweruye mu nyandiko y'amasezerano y'akazi cyangwa mu ibaruwa itanga akazi.

[9] Urukiko rusanga kandi gukora amasezerano y'akazi y'igihe kizwi ateganyamo igihe cy'igeragezwa atari umwihariko w'amategeko y'u Rwanda gusa kuko no mu bindi bihugu bafite amategeko ateye atyo nk'uko bigaragara mu nyandiko z'abahanga barimo Jean Claude JAVILLIER[2]. Byongeye kandi, Urukiko rusanga ikigambiriwe mu ngingo ya 14 yavuzwe haruguru, atari imyandikire y'amasezerano, ahubwo ari uko abayagiranye bagera ku kigamijwe ari cyo cyo kubanza gusuzuma imikorere y'umukozi n'umusaruro we ku birebana n'umukoresha, no kugenzura imiterere y'akazi, iy'imibereho, iy'umushahara n'umushyikirano urangwa mu kigo, ku ruhande rw'umukozi, ibi kandi bikaba mbere y'uko hakorwa amasezerano ku buryo budasubirwaho.

---

2 Dans son livre, Droit du Travail, 6 édition, 1998, L.G.D.J, p 234, nº 179, Jean Claude JAVILLIER écrit qu'une période d'essai peut être prévue par le contrat de travail, et précéder ainsi l'engagement définitif du salarié.

[10] Urukiko rurasanga kuba mu ibaruwa yo kuwa 13/10/2006, AFRICARE yandikiye Mukunde imuha akazi hari hateganyijwemo igihe cy'igeragezwa, ntaho binyuranyije n'amategeko; bityo ingingo ye y'ubujurire ikaba nta shingiro ifite;

2. Kumenya niba kongera bwa kabiri igihe cy'igeragezwa cya Mukunde byarubahirije amategeko

[11] Uhagarariye Mukunde avuga ko mu gihe hakwemezwa ko amasezerano y'akazi y'igihe kizwi ashobora guteganya igihe cy'igeragezwa, Urukiko rukwiye kubona ko igihe cyari cyumvikanyweho cyari cyararangiye, byumvikana ko yirukanwe yaratangiye gukorera ku masezerano y'igihe kizwi, bityo akaba akwiye kubona indishyi ziteganywa n'amategeko ku bijyanye no kutubahiriza ishyirwa mu bikorwa ry'ayo masezerano. Avuga ko kuba Mukunde yarakomeje gukora nyuma y'iyongera ry'igereragezwa yategetswe na AFRICARE mu ibaruwa yamwandikiye ariko batabyumvikanyeho (une lettre unilatérale), bitafatwa nko kwemera ibiyikubiyemo, ko ahubwo byatewe n'intege nke umukozi aba afite mu masezerano y'akazi maze kubera impamvu zo gushaka umurimo akemera ibyo umukoresha amutegetse kabone n'iyo byaba bimurenganya.

[12] Me Munyeshema asabira Mukunde indishyi zibazwe mu buryo bukurikira:

- indishyi z'akababaro zo kwirukanirwa ubusa : 1.185.000 Frw x 6 mois= 7.110.000 Frw;
- Umushahara w'igihe cyari gisigaye ngo amasezerano y'akazi arangire: 1.185.000 Frw x amezi 7= 8.295.000 Frw;
- Amafaranga y'imperekeza:1.185.000 Frw;
- Indishyi mpozamarira :10.000.000 Frw;

[13] Uhagarariye AFRICARE avuga ko Urukiko Rukuru rwerekanye ko Mukunde yirukanywe igihe cy'igeragezwa cy'amezi atandatu ateganywa n'ingingo ya 15 y'itegeko n°51/2001 ryo kuwa 30/12/2001 ryavuzwe kitararangira, ko kuba cyarongerewe nabyo nta kibazo biteye, kuko icyangombwa ari uko amezi yose ateranye atarenze igihe cyateganyijwe, bityo indishyi asaba zikaba nta shingiro zifite. Avuga kandi ko kuba Mukunde yarakomeje gukora ari ikimenyetso kigaragaza ko yemeraga iryo yongerwa.

[14] Ingingo ya 33 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yakoreshwaga igihe amasezerano y'akazi yabaga hagati ya AFRICARE na Mukunde iteganya ko " amasezerano akozwe mu buryo bukurikije amategeko, aba itegeko ku bayagiranye".

[15] Mu ibaruwa yo kuwa 13/06/2006 AFRICARE yahereyeho Mukunde akazi kandi nawe agasinya ko yemeye ibiyikubiyemo, havugwamo ko igihe cy'igeragezwa ari amezi atatu ashobora kongerwaho ukundi kwezi kumwe mu gihe igenzura ryagaragaza ko Mukunde ataragira ubushobozi bwo gukora neza imirimo ijyanye n'umwanya yashyizwemo. Dosiye y'urubanza igaragaza ko nyuma y'amezi ane y'igeragezwa yumvikanyweho n'impande zombi, AFRICARE mu ibaruwa yo kuwa 16/10/2006 yandikiye Mukunde ko ataragira ubushobozi buhagije, maze imwongerera igihe cy'igeragezwa ho andi mezi abiri.

[16] Kubirebana n'uburyo ukwemera k'umukozi kugaragazwa, inyandiko z'abahanga mu mategeko[3] nka Paul FIESCHI-VIVET (Droit du Travail, Sirey, 3e Edition, p 55; n° 116), zumvikanisha ko kugomba kuba kweruye, bivuze rero ko kuba Mukunde yarakomeje gukora bitafatwa ko yemeye iyongera ry'igihe cy'igeragezwa atigeze agiramo uruhare.

[17] Ibimaze kuvugwa ni nako byemejwe n'Urukiko Rusesa Imanza rwo mu Bufaransa aho mu rubanza rwaciye kuwa 25/11/2009[4], rwongeye

3 Dans les limites, la période d'essai peut être renouvelée si les parties l'estiment nécessaire. Mais d'une part l'accord d'un salarié à la prolongation de la période d'essai doit être expresse et ne saurait donc résulter de la seule poursuite du travail par l'intéressé. D'autre part, les conditions de renouvellement éventuellement prévues par voie conventionnelle doivent être appliqées à la lettre ……………..

4 Par un arrêt du 25 novembre 2009, la Cour de Cassation confirme sa position concernant les conditions d'acceptation, par le salarié, du renouvellemt de sa période d'essai. Elle rapelle que le renouvellemt de la période d'essai doit être accepté expressément et sans equivoque par le salarié (cass. Soc.11octobre 2000, nº 98- 45.170).En défaut, l'employeur s'expose, en cas de rupture de ce qu'il considère être encore une période d'essai, au paiement de dommages et interest pour licenciement sans cause réelle et sérieuse. Dans le même sens, l'arrêt du 11/03/2009, pourvoi nº 07- 44090, la cour dit que le renouvellement de la période d'essai ne peut resulter que d'un accord express des parties au cours de la période initiale et non d'une décision unilatéral de l'employeur. Il doit être accepté par de façon claire et non équivoque au risque pour l'employeur de se voir condammner pour rupture abusive du contrat de travail.

gushimangira icyerekezo rwari rwarafashe kuri iki kibazo maze rwemeza ko iyongera ry'igihe cy'igeragezwa rigomba kwemerwa n'umukozi mu buryo bweruye, ko iyo bidakozwe muri ubwo buryo, umukoresha akirukana umukozi avuga ko akiri mu igeragezwa, ashobora kubitangira indishyi kubera gusesa amasezerano y'akazi nta mpamvu yumvikana. Mu rundi rubanza urwo rukiko rwaciye tariki 12/07/2010, rwemeje ko kugira ngo hataba kwitiranya ibintu, umukozi agomba kwandika n'intoki ku ibaruwa y'umukoresha yongera igihe cy'igeragezwa amagambo agira ati "ndabisomye kandi ndabyemeye"[5].

[18] Hashingiwe ku ngingo ya 33 yavuzwe haruguru, igihe cy'igeragezwa cyagombaga kubahirizwa ni icyo impande zombi zumvikanyeho mu ibaruwa itanga akazi yo kuwa 03/10/2006", kuba icyo gihe cyararangiye AFRICARE ikacyongera mu ibaruwa yandikiye Mukunde ariko ntimuhe umwanya wo kugaragaza ko yemeye iryo yongera ritari riteganyijwe mu masezerano y'akazi, byumvikana ko iryo yongera ritubahirije amategeko.

[19] Urukiko rurasanga kandi kuba iyongera ry'igihe cy'igeragezwa ritarubahirije amategeko, byumvikana ko icyo gihe Mukunde yari yatangiye ahubwo kugengwa n'amasezerano adasubirwaho, kuyasesa igihe yagombaga kumara kitarangiye bikaba byaragombaga gutangirwa impamvu yemewe nk'uko byateganywaga n'ingingo ya 26 y'itegeko nº 51/2001 ryo kuwa 31/12/2001 ryakoreshwaga icyo gihe, kuba AFRICARE itarabikoze ikaba igomba kubitangira indishyi.

[20] Urukiko rusanga Itegeko n°51/2001 ryo kuwa 30/12/2001 ryashingaga amategeko agenga umurimo ryakurikizwaga igihe Mukunde yirukanywaga ritaravugaga mu buryo bweruye uko bigenda iyo mu masezerano y'igihe kizwi (contrat de travail à durée déterminée), umukoresha cyangwa umukozi bayasheshe igihe bumvikanye kitararangira. Kuri iki kibazo, abahanga mu by'amategeko arebana

5 le seul fait que le salarié appose sa signature sur un document prévoyant les conditions du renouvellement ne suffit pas à valider la prolongation de l'essai. En effet la Cour de cassation a jugé dans un arrêt du 12 Juillet 2010 que l'employeur doit apporter la preuve de la volonté non équivoque du salarié d'accepter le renouvellement. Pour éviter tout litige, celui-ci doit indiquer sur le document l'informant du renouvellement une mention telle que « lu et approuvé, bon pour accord sur le renouvellement de ma période d'essai », suivi de sa signature ; Le respect de ce formalisme est indispensable car, si le renouvellement n'est pas conforme à l'exigence des juges, le contrat devient définitif. La rupture de l'essai sera alors considéré comme injustifié avec à la clé pour l'employeur une condamnation pour licenciement abusif

n'umurimo bagira icyo babisobanuraho. Abitwa Jean Pelissier, Alain Supiot na Antoine Jeammaud mu gitabo cyabo" Droit du Travail, Dalloz, 22ème édition, page 384 , bavuga ko iyo umwe mu bagiranye amasezerano y'igihe kizwi ayasheshe, ku mpamvu zitateganyijwe n'itegeko, aba akoze ikosa rihanwa mu buryo butandukanye bitewe n'uko ryakozwe n'umukozi cyangwa umukoresha. Bavuga ko iyo ari umukoresha wakoze ikosa ryo kuyasesa, agomba guha umukozi indishyi z'akababaro zingana n'umubare w'amafaranga ungana byibura n'ibihembo yari kuzabona kugeza amasezerano arangiye, bitabujije n'andi mafaranga ajyana n'irangira ry'amasezerano[6].

[21] Na none kubyerekeranye n'indishyi zihabwa umukozi ugengwa n'amasezerano y'igihe kizwi wirukaniwe ubusa , umuhanga FRANCIS LEFEBVRE, Memento Social, 1999, p.686-689, asobanura ko izo ndishyi zidashobora kujya munsi y'umushahara wose n'ibindi bijyana nawo umukozi yemerewe yari guhembwa kugeza amasezerano arangiye [7].

[22] Hifashishijwe ibimaze gusobanurwa, Urukiko rurasanga Mukunde agomba guhabwa indishyi (indemnités) zihwanye n'umushahara w'ukwezi yahabwaga, ubariwe ku mezi 6 amasezerano y'akazi yari asigaje kugira ngo arangire kuko inyandiko ziri muri dosiye zigaragaza ko yahembwe umushahara w'amezi 6 kuri 12 amasezerano yagombaga kumara.

[23] Ku birebana n'umushahara Mukunde yahembwaga, bigaragara mu ibaruwa imuha akazi ko yahembwaga umushahara mbumbe wa 14.220.000 Frw mu mwaka ni ukuvuga ko mu kwezi yahembwaga umushahara mbumbe (salaire brut) ungana na 1.185.000 Frw nk'uko bigaragara mu myanzuro umuburanira yagejeje kuri uru rukiko, ariko uwo mushara ukaba waragombaga gukurwamo umusoro ku bihembo kimwe n'andi mafaranga akatwa ku mushahara w'umukozi

---

6 6" Lorsque l'une des parties rompt unilatéralement le contrat à durée déterminée, en dehors des cas autorisés par la loi, elle commet une irrégularité qui est sanctionnée de façon différente selon qu'elle émane de l'employeur ou du salarié. Si c'est l'employeur qui est l'auteur d'une rupture anticipée irrégulière, il doit au salarié des dommages et intérêts d'un montant au moins égal aux rémunérations que celui-ci aurait perçues jusqu'au terme du contrat, sans préjudice de l'indemnité de fin de contrat.."

7 Cette indemnité ne peut être inférieure au montant des salaires et avantages que le salarié aurait perçus jusqu'au terme de la période de validité du contrat…………..

ateganywa n'amategeko nk'ay'ubwiteganyirize bw'abakozi n'ayandi.

[24] Ku birebana n'umushahara Mukunde yatahanaga (salaire net) ku kwezi, bigaragara mu mwanzuro w'uwa muburaniraga mu rukiko rwa mbere ndetse no mu mvugo ze imbere y'urwo rukiko ko ari amafaranga 830.000, uyu mubare akaba ariwo washingirwaho mu kumubarira indishyi agenewe n'uru rukiko cyane ko n'uhagarariye AFRICARE atigeze awuhakana, bityo akaba agenewe indishyi zibazwe mu buryo bukurikira: 830.000 Frw x amezi 6 = **4.980.000 Frw**.

[25] Urukiko rurasanga izindi ndishyi zirebana n'iseswa ry'amasezerano y'igihe kizwi Mukunde asaba atazihabwa, kuko atagaragaza aho ashingira azisaba, cyane ko agenewe indishyi zingana n'umushahara w'igihe cy'amasezerano cyari gisigaye.

3. Kumenya niba AFRICARE yaranze guha Mukunde icyemezo cya nyuma cy'umukoresha ku buryo yabitangira indishyi

[26] Uburanira Mukunde avuga ko AFRICARE yamwimye icyemezo cy'umukoresha ikimara kumwirukana, kuko yategereje kukimuha ari uko agejeje ikibazo cye mu Bugenzuzi bw'umurimo. Asobanura ko kuba atarahise abona iki cyemezo cy'umukoresha byamwangirije kuko yashatse gusubira ku kazi ke muri ORTPN ariko ntibyamushobokera kubera ko yasabwe kiriya cyemezo akakibura, akaba asaba AFRICARE indishyi zingana n'umushahara we w'amezi ane ni ukuvuga : 1.185.000 Frw x 4 mois= 4.740.000 Frw, kubera ko yamuvukije amahirwe yo guhita abona akazi.

[27] Kuri iki kibazo, uburanira AFRICARE avuga ko Urukiko Rukuru rwasobanuye neza ko Mukunde atari akwiye gusaba icyemezo cy'umukoresha kuko icyo cyemezo gihabwa umukozi wirukanywe ariko yari yaratangiye akazi ku buryo budasubirwaho, kandi Mukunde we akaba yari akiri mu igeragezwa. Asobanura ko indishyi AFRICARE isabwa nta shingiro zifite kuko ingingo ya 30 y'itegeko nº 51/2001 ryo kuwa 30/12/2001 ryavuzwe haruguru iteganya ko zicibwa umukoresha wanze gutanga icyo cyemezo kandi, AFRICARE ikaba yakimuhereye mu bugenzuzi bw'umurimo yanga kucyakira.

[28] Ku byerekeranye n'icyemezo cy'umurimo gitangwa n'umukoresha, ingingo ya 30 y'itegeko n°51/2001 ryo kuwa 30/12/2001ryavuzwe haruguru iteganya ko" Iyo amasezerano y'umurimo arangiye

ku mpamvu iyo ariyo yose, umukoresha ahita akorera umukozi icyemezo kivuga gusa uburambe bwe muri icyo kigo n'imirimo yagiye agikoramo. Icyo cyemezo agiherwa rimwe n'umushahara wa nyuma. Igika cya kabiri cyayo kigateganya ko umukoresha wanze gutanga icyo cyemezo abitangira indishyi zingana n'umushahara umukozi yahembwaga , ariko ntizirenze uw'amezi atandatu (6).

[29] Hashingiwe ku byemejwe haruguru ko Mukunde yirukanywe agengwa n'amasezerano y'umurimo adasubirwaho, Urukiko rurasanga yaragombaga guhabwa icyemezo cy'umukoresha. Kuba AFRICARE yaramuhaye „décompte final„ ariko ntihite imuha n'icyemezo cy'uko yayikoreye nk'uko biteganywa n'ingingo ya 30 imaze kuvugwa, ahubwo igategereza kukimuha nyuma y'amezi abiri nabwo kandi ari uko abanje kuyirega mu Bugenzuzi bw'umurimo, iyo myifatire yayo igomba gufatwa nk'iy'umukoresha wanze gutanga icyemezo cy'imirimo umukozi yakoze nk'uko biteganywa n'itegeko, bityo ikaba igomba kubitangira indishyi zigenwe mu bushishozi bw'Urukiko zihwanye n'umushahara w'ukwezi kumwe Mukunde yatahanaga, ni ukuvuga: 830.000 Frw.

4. **Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, Mukunde asaba yayahabwa**

[30] Uburanira Mukunde avuga ko Urukiko Rukuru na none rwemeje ko adakwiye guhabwa amafaranga y'ikurikiranarubanza n'ay'igihembo cya avoka kuko ngo ikirego cye nta shingiro gifite, mu gihe we asanga aya mafaranga nayo ayafitiye uburenganzira kubera ko yirukanywe mu buryo no mu nzira binyuranyije n'amategeko bigatuma ajya mu Nkiko. Avuga ko ku rwego rwa mbere basabaga 500.000 Frw kubera gusiragira mu manza na 500.000 Frw y'igihembo cya avoka, ko mu Rukiko Rukuru nabwo basabye 1.000.000 Frw, bakaba basaba kuri uru rwego andi 1.000.000 , yose hamwe akaba 3.000.000 Frw.

[31] Uburanira AFRICARE avuga ko amafaranga y'ikurikiranarubanza n'ay'igihembo cya avoka uwajuriye asaba ntayo yagenerwa bitewe ni uko ibyo aregera nta shingiro bifite.

[32] Ku mafaranga ajyanye n'ibyakozwe mu gukurikirana urubanza hamwe nay'igihembo cya Avoka Mukunde asaba, Urukiko rurasanga ayakwiye, ariko rukaba mu bushishozi bwarwo rumugeneye **1.000.000 Frw** kuko 3.000.000 Frw asaba ari ikirenga.

III. ICYEMEZO CY'URUKIKO

[33] **Rwemeje** ko ubujurire bwa Mukunde Eugénie bufite ishingiro kuri bimwe;

[34] **Rutegetse** AFRICARE guha Mukunde Eugénie amafaranga y'indishyi angana na **5.810.000**; ay'ikurikiranarubanza hamwe n'igihembo cya avoka angana na **1.000.000** Frw, yose hamwe akaba **6.810.000 Frw**.

[35] **Ruyitegetse** kandi gutanga umusogongero wa Leta wa 4% ya **6.810.000,** angana na **272.400** Frw, ikayatanga mu gihe cy'ukwezi kumwe itayatanga akava mu byayo ku ngufu za Leta.

[36] **Ruyitegetse** gutanga amagarama y'urubanza angana na 28.650 Frw, itayatanga mu gihe gitegetswe, akava mu byayo ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 29/06/2012

Sé	Sé	Sé
KANYANGE Fidelité **Umucamanza**	**MUKANYUNDO Patricie** **Perezida**	**RUGABIRWA Ruben** **Umucamanza**

Sé

MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko