REPUBULIKA Y'U RWANDA

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

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

Igitabo cya mbere 2014, nº 20

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Igitabo cya mbere 2014, nº 20

Mutarama, 2014

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,
Perezida w'Urukiko Rukuru

BWIZA Marie- Blanche **:** Umwe mu bagize Komite,
Umucamanza mu Rukiko Rukuru

KIBUKA Jean Luc **:** Umwe mu bagize Komite,
Umucamanza mu Rukiko Rukuru rw'Ubucuruzi

YARAMBA Athanase **:** Umwe mu bagize komite,
Perezida w'Urukiko Rwisumbuye rwa Nyamagabe

HATEGEKIMANA Bernard : Umwe mu bagize Komite, Umucamanza mu Rukiko Rukuru rwa Gisirikare

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

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

Urwego ruhagarariye Icyegeranyo: URUKIKO RW'IKIRENGA

Icyegeranyo cy'imanza zaciwe ni igitabo gikusanya imanza zatoranijwe mu manza zaciwe n'inkiko. Iryo toranya rikorwa harebwa imanza zaba zifite icyo zigisha kandi zaba icyitegererezo mu gukemura ibibazo bisa. Gifasha kandi uwaba ashaka kubona urubanza mu ngeri runaka z'amategeko atabanje gusoma urupapuro ku rundi rw'urubanza abonye. Gitangazwa buri gihembwe n'Urwego rw'Ubucamanza rurangajwe imbere n'Urukiko rw'Ikirenga. Gitegurwa na Komite igizwe n'abahagarariye inkiko zose z' u Rwanda, Ubugenzuzi bw'Inkiko na serivisi y'ubushakashatsi mu Rukiko rw'Ikirenga.

Aho icyegeranyo kibarizwa

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

Icyitonderwa

Icyegeranyo ntikigurishwa, gitangirwa ubuntu.

Uburyo icyegeranyo gikoreshwa

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

Amagambo mpine:

Ni amagambo agaragaza mu buryo buhinnye ingeri y'amategeko urubanza rubarizwamo n'ibibazo by'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 2014. Iyi numero itangajwe ni igitabo cya mbere muri uyu mwaka dutangiye, ikaba igitabo cya 20 kuva aho Urukiko rw'Ikirenga rutangiriye gutangaza icyegeranyo cy'ibyemezo by'inkiko mu mwaka wa 2005.

Muri uyu mwaka dushoje, hatangajwe ibitabo bine, nk'uko twari twabyiyemeje mu ntego twari dufite dutangira umwaka dushoje, tukaba tubizeza ko ari na ko bizagenda muri uyu mwaka.

Dukomeje kandi gushimira abasomyi b'aka gatabo bakomeje kutugaragariza ko bakishimiye. Gusa dukomeza gusaba ko n'abandi bakomeza kutugezaho ibitekerezo byabo batubwira ibikwiye guhinduka cyangwa ibyavugururwa kugira ngo aka gatabo gakomeze kunogera abakifashisha mu mirimo yabo ya buri munsi haba mu mirimo y'inkiko cyangwa se abandi bifashisha amategeko mu kazi kabo.

Twibutse ko iki icyegeranyo cy'ibyemezo by'inkiko kimwe n'ibindi byabanje, gitangazwa ku buryo bw'igitabo cyanditse no ku buryo bw'ikoranabuhanga ku rubuga rwa Interineti rw'Urukiko rw'Ikirenga : http://www.judiciary.gov.rw-jurisprudence-receuil, mu rwego rwo kugira ngo kirusheho kugera kuri benshi haba mu Rwanda no mu mahanga.

Muri iyi numero turasangamo imanza zirebana no gusaba gukuraho ingingo z'amategeko zinyuranyije n'Itegeko Nshinga (imanza 2), urubanza rurebana n'impaka zivutse mu matora

y'abagize Inteko Ishinga Amategeko, higanjemo kandi imanza z'inshinjabyaha (imanza 5), imanza z'ubucuruzi (imanza 2) .

Prof Sam RUGEGE

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

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IMANZA ZIREBA AMATEGEKO ANYURANYIJE N'ITEGEKO NSHINGA

1. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RS/INCOST/PEN0001/13/CS

ITARIKI Y'URUBANZA:04/10/2013

UWATANZE IKIREGO :

BIMENYIMANA André (Gusaba Urukiko rw'Ikirenga gukuraho ingingo ya 86 y'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga nk'uko ryahinduwe kugeza ubu, kubera ko inyuranye n'Itegeko Nshinga mu ngingo yaryo ya 16.)

AMAGAMBO MPINE

IMANZA ZEREKEYE INGINGO Z'AMATEGEKO ANYURANYE N'ITEGEKO NSHINGA - INTEGO Y'INKIKO GACACA - KUNGA NO KONGERA KUBANISHA ABANTU-KURANDURA UMUCO WO KUDAHANA .

ICYASHINGIWEHO MU GUSHYIRAHO INGINGO YA 86 Y'ITEGEKO NGENGA N° 03/2012/OL RYO KUWA 13/06/2012 RIGENA IMITERERE, IMIKORERE N'UBUBASHA BW'URUKIKO RW'IKIRENGA - KWITA

KU MPAMVU INKIKO GACACA ZAGIYEHO - KUBA UBWAZO ZIHARIYE KUKO IMPAMVU N'INTEGO ZAZO NAZO ZIHARIYE.

UKUDASUBIRWAMO KW'IMANZA ZACIWE N'INKIKO GACACA KU MPAMVU Z'AKARENGANE

KUTABIFATA NKO KUBA BINYURANYIJE N'INGINGO YA 16 Y'ITEGEKO NSHINGA - ABABURANISHIJWE N'IZO NKIKO BAFATWA KIMWE KANDI KU BURYO BUNGANA NTA VANGURA RIRIMO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Mu nkiko Gacaca ubutabera bwari butegerejwe ntibwari bugamije guhana gusa nko mu nkiko zisanzwe, bwari bunagamije kunga abantu no kongera kubabanisha, kubagarura mu nzira iboneye bakava ibuzimu bakajya ibuntu, no kurandura umuco wo kudahana.

Mu gushyiraho ingingo ya 86 y'itegeko-ngenga Nº03/2012OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga, umushingamategeko yashingiye ku mpamvu zatumye Inkiko Gacaca zishyirwaho, intego yazo n'uburyo zashyizweho bwihariye bitewe n'ibibazo byihariye igihugu cyari kivuyemo bivuze ko nazo ari Inkiko zihariye.

Kuba ababuranishijwe n’Inkiko Gacaca batemererwa gusubirishamo imanza zabo ku mpamvu z’akarengane nk’uko ingingo ya 86 y’itegeko-ngenga Nº03/2012OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n’ububasha bw’Urukiko rw’Ikirenga nk'uko ryahinduwe kugeza ubu, ntibyafatwa nk’ivangura ribujijwe mu ngingo ya 16 y’Itegeko-Nshinga kubera ko ababuranishijwe n’Inkiko Gacaca itegeko ribafata kimwe kandi ku buryo bungana.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUBURANISHA IKIREGO CYEREKERANYE NO GUSABA GUKURAHO INGINGO Y'ITEGEKO KUBERA KO INYURANIJE N'ITEGEKO-NSHINGA, RUKIJIJE MU RUHAME URUBANZA RS/INCONST/PEN/0001/13/CS NONE KUWA 04/10/2013 MU BURYO BUKURIKIRA:

HABURANA:

<u>UREGA</u>:

BIMENYIMANA André mwene NTORE na KAMBIBI, wavutse mu 1948, utuye Gitega, Akarere ka Nyarugenge, Umujyi wa Kigali, ubu akaba afungiye muri Gereza Nkuru ya Kigali, yunganirwa na Me NSABAYEZU Evariste na Me TWAGIRA Eugène.

<u>IKIBURANWA</u>:

Gusaba urukiko kuvanaho ingingo ya 86 agace ka nyuma y'Itegeko Ngenga no 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga kuko inyuranije n'ingingo ya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04 Kamena 2003 nk'uko ryavuguruwe kugeza ubu.

I. IMITERERE Y'URUBANZA

[1] Me NSABAYEZU Evariste avuga ko uwo yunganira yaburanishijwe n'Urukiko Gacaca rw'Ubujurire rwa Kimisagara rumugira umwere ariko ngo nyuma yaho bisabwe n'Urwego rw'Igihugu rushinzwe Inkiko Gacaca yongera kuburanishwa n'Urukiko Gacaca rw'Ubujurire rwa Nyakabanda rumuhamya icyaha cya jenoside. BIMENYIMANA André avuga ko ari akarengane yamenyesheje Urwego rw'igihugu rushinzwe Inkiko Gacaca maze mu kumusubiza, rumubwira ko agomba kwakira icyemezo yahawe nta bindi bisobanuro kandi ko nta burenganzira afite bwo kugira icyo abivugaho.

[2] Me NSABAYEZU Evariste mu izina rya BIMENYIMANA André yatanze ikirego mu Rukiko rw'Ikirenga asaba ko ingingo ya 86, igika cyayo cya nyuma, y'Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko ibijyanye no gusubirishamo urubanza ku mpamvu z'akarengane hakurikijwe ibiteganywa n'ingingo ya 81 y'iryo tegeko bitareba imanza zaciwe n'Inkiko Gacaca, yakurwaho kubera ko asanga inyuranyije n'ingingo ya 16 y'Itegeko Nshinga iteganya ko abantu bose bangana imbere y'amategeko, iyi myumvire akaba ayihuza na Me TWAGIRA Eugène nawe wunganira BIMENYIMANA André.

[3] Mu mwanzuro yashyikirije Urukiko, Me RUBANGO K. Epimaque uhagarariye Leta y'u Rwanda avuga ko ibiteganijwe mu ngingo y'itegeko rigena ububasha bw'Urukiko rw'Ikirenga rinengwa na

BIMENYIMANA André, bitanyuranyije n'Itegeko Nshinga, ko kandi byubahiriza ihame ry'uko abantu bose bareshya imbere y'amategeko riteganyijwe mu ngingo ya 16 y'Itegeko Nshinga, akavuga ko ku mpamvu zumvikana Umushingamategeko ashobora gushyiraho amategeko atandukanye, ku bantu batandukanye, icya ngombwa ni uko aba yashingiye ku mpamvu ndakuka zumvikana.

[4] Iburanisha ry'urubanza ryashyizwe kuwa 31/07/2013, uwo munsi ugeze hitaba BIMENYIMANA André yunganiwe na Me NSABAYEZU Evariste ndetse na Me TWAGIRA Eugène, Minisiteri y'Ubutabera yari yasabwe gutanga ibitekerezo ihagarariwe n'Intumwa ya Leta Me RUBANGO K. Epimaque.

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

[5] Ku byerekeranye n'ikirego cyatanzwe na Me NSABAYEZU Evariste mu izina rya BIMENYIMANA André, inyandiko ziri muri dosiye zigaragaza ko yatanze ingwate y'amagarama. Kigaragaza kandi itariki cyatangiweho, umukono wa Me NSABAYEZU Evariste wagitanze mu izina rya BIMENYIMANA André, ikiregerwa n'impamvu ashingiraho, ndetse kinafite ku mugereka wacyo kopi y'Igazeti ya Leta yo ku wa 09/07/2012 ifite Nº 28 irimo ingingo y'Itegeko Ngenga asaba ko ikurwaho, bityo ibisabwa n'ingingo ya 54 y'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga byose bikaba byarubahirijwe.

[6] Kubijyanye n'inyungu muri uru rubanza, Me NSABAYEZU Evariste avuga ko BIMENYIMANA André azikomora ku kuba yaraburanye urubanza mu Rukiko rw'Ubujurire rwa Gacaca rw'Umurenge wa Kimisagara akagirwa umwere ku byaha yari akurikiranyweho bya jenoside, urwo rubanza rukaba rwarongeye kuburanishwa n'Urukiko rw'Ubujurire rwa Gacaca rw'Umurenge wa Nyakabanda, rukamuhamya icyaha. Akaba asanga ari akarengane kagombye gukemuka hakurikijwe ibiteganywa n'ingingo ya 81 y'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, akaba ariyo mpamvu asaba ko ingingo ya 86 y'iryo tegeko agace kayo ka nyuma ahavugwa ko uwahamijwe icyaha cya jenoside n'Inkiko Gacaca atemerewe gukoresha iyo nzira, yavanwaho kubera ko asanga inyuranyije n'ingingo ya 16 y'Itegeko Nshinga iteganya ko abantu bose bangana imbere y'amategeko.

[7] Ku byerekeranye n'Ububasha bw'Urukiko rw'Ikirenga, ingingo ya 145,3° y'Itegeko Nshinga n'ingingo ya 53 y'Itegeko Ngenga N° 03/2012/OL rimaze kuvugwa haruguru, ziteganya ko « Urukiko rw'Ikirenga ari rwo ruburanisha ibirego byerekeranye no gusaba gukuraho Itegeko Ngenga, Itegeko, Itegeko-Teka cyangwa Itegeko ryemerera kwemeza amasezerano mpuzamahanga, haba kubikuraho byose cyangwa se zimwe mu ngingo zaryo zinyuranije n'Itegeko Nshinga ». Urukiko rw'Ikirenga rwashyikirijwe ikirego kigamije gukuraho ingingo ya 86, agace kayo ka nyuma y'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere,

imikorere n'ububasha by'Urukiko rw'Ikirenga, kuko inyuranije n'ingingo ya 16 y'Itegeko Nshinga, bityo ikirego cya BIMENYIMANA André kikaba kiri mu bubasha bw'Urukiko rw'Ikirenga.

II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA.

- ✓ ***Kumenya niba ingingo ya 86 igika cya nyuma y'Itegeko nº 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga inyuranyije n'ingingo ya 16 y'Itegeko Nshinga***

[8] Me NSABAYEZU Evariste avuga ko ingingo ya 86 y'Itegeko Ngenga nº 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'urukiko rw'Ikirenga iteganya ko imanza zishobora gusubirishwamo ku mpamvu z'akarengane hakurikijwe ibiteganywa mu ngingo ya 81 y'iri Tegeko Ngenga, ariko ngo igika cyayo cya nyuma kigateganya ko ibiyivugwamo bitareba imanza zaciwe n'Inkiko Gacaca. Akaba asanga ako gace ari ivangura kandi ko kanyuranije n'ingingo ya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04 Kamena 2003 nk'uko ryavuguruwe kugeza ubu iteganya ko abantu bose bareshya imbere y'amategeko kandi ko itegeko ribarengera nta vangura iryo ari ryo ryose ribayeho. Avuga kandi ko iyi ngingo ya 86 idaha uburemere bumwe akarengane uko kaba kameze kose, kandi yakabaye irengera abantu bose bakagiriwe ntawe uvanguwe.

[9] Me TWAGIRA Eugène avuga ko atabona impamvu abakatiwe ku cyaha cya jenoside bakurwa mu

Itegeko nk'abagomba gusubirishamo urubanza kubera impamvu z'akarengane, kandi Itegeko Nshinga rirengera abantu bose mu buryo bungana, akaba asaba ko agace ka nyuma k'ingingo ya 86 y'Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'urukiko rw'Ikirenga kavanwaho maze BIMENYIMANA André akabona uburenganzira bwo kuregera icyemezo kimurenganya cyafashwe n'Urukiko Gacaca rw'Ubujurire rw'Umurenge wa Nyakabanda.

[10] Leta y'u Rwanda ihagarariwe na Me RUBANGO K. Epimaque ivuga ko ibigenga Inkiko Gacaca hakurikijwe Itegeko ryazo bitandukanye n'ibiteganijwe mu ngingo y'Itegeko rigena ububasha bw'Urukiko rw'Ikirenga rinengwa na BIMENYIMANA André, kuko ku mpamvu zumvikana, Umushingamategeko ashobora gushyiraho amategeko atandukanye, ku bantu batandukanye, icya ngombwa ni uko aba yashingiye ku mpamvu ndakuka zumvikana. Ikindi ni uko ibyo byemejwe mu rubanza RS/Inconst/PEN/0005/12/CS, ndetse n'uwitwa Justice Frankfurter wo muri Leta Zunze Ubumwe za Amerika aho avuga ko kureshya imbere y'amategeko no kurengerwa kimwe n'amategeko atari amahame afatwa atyo gusa, ko ahubwo ibigambiriwe n'ayo mahame bigomba guhuzwa na gahunda z'Igihugu zishingiye ku bibazo byihariye, icyerekezo n'uburyo bwo kubigeraho. Kandi ko umushingamategeko aba afite ubwisanzure mu kumenya uburyo abantu bashobora gufatwa bitandukanye, hagamijwe kugeza igihugu

ku ntego cyihaye[1]. Uhagarariye Leta y'u Rwanda akaba kandi avuga ko Itegeko Nshinga rireba abakatiwe icyaha cya jenoside nk'abandi bantu bose. Bityo rero akaba abona ikirego cya BIMENYIMANA André nta shingiro gifite.

UKO URUKIKO RUBIBONA

[11] Ingingo ya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda iteganya ko ko abantu bose bangana imbere y'amategeko, ko itegeko ribarengera ku buryo bumwe nta vangura iryo ariryo ryose[2]. Iri hame ni naryo ryagarutsweho n'amasezerano mpuzamahanga yerekeye uburenganzira bwa muntu mu by'imbonezamubano na politiki mu ngingo yaryo ya 7 iteganya ko abantu bose bareshya imbere y'amategeko[3].

[12] Ingingo ya 81 y'Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko imanza zaciwe mu rwego rwa nyuma zishobora gusubirwamo kubera impamvu runaka, naho ingingo ya 86 y'iryo tegeko yo, igateganya ko

[1] *http://www.caselaw.lp.findlaw.com/data/constitution/amendment14/19.html.*

[2] *Tous les êtres humains sont égaux devant la loi. Ils ont droit, sans aucune distinction , à une égale protection de la loi.*

[3] *Tous sont égaux devant la loi et ont droit sans distinction à une égale protection de la loi. Tous ont droit à une protection égale contre toute discrimination qui violerait la présente Déclaration et contre toute provocation à une telle discrimination. Amasezerano yemejwe n'Inteko Rusange y'Umuryango w'Abibumbye kuwa 16/12/1966, yatangiye gukurikizwa kuwa 23/03/1976, akaba yaremejwe mu Rwanda n'Itegeko –Teka n° 08/75 ryo kuwa 12/02/1975.*

imanza zaciwe ku rwego rwa nyuma mbere y'uko iri tegeko ngenga ritangazwa mu Igazeti ya Leta ya Repubulika y'u Rwanda zishobora gusubirishwamo ku mpamvu z'akarengane hakurikijwe ibiteganywa n'ingingo ya 81 y'iri Tegeko Ngenga, naho agace kayo ka nyuma kagateganya ko ibivugwa muri iyi ngingo bitareba imanza zaciwe n'Inkiko Gacaca.

[13] Kugirango ikibazo kiri muri uru rubanza kirusheho gusobanuka, ni ngombwa gutandukanya imitunganyirize n'ububasha by'inkiko zisanzwe n'iby'Inkiko zihariye za Gacaca.

[14] Inkiko zisanzwe zifite uko zatunganyijwe n'itegeko, rizigenera uko zikurikirana kuva ku ruto kugera ku ruzisumbye zose, rinagena ububasha bwazo n'abagomba kuziburaniramo, zikaburanisha imanza zisanzwe haba iz'imbonezamubano cyangwa iz'inshinjabyaha. Ibyo niko byari biteye mbere ya jenoside yakorewe Abatutsi muri 1994.

[15] Muri 1994, Igihugu cy'u Rwanda cyahuye n'akaga gakomeye cyane kubera jenoside yabaye igahitana imbaga y'abantu, abo itahitanye bagasigarana ibikomere kubera ibyaha binyuranye bakorewe, abandi bagahunga imitungo igatikira n'izindi ngaruka zijyana n'amahano nk'ayo. Kubera imanza nyinshi zari zihari z'abari bakurikiranyweho icyo cyaha kandi zitari gushobora gucibwa n'inkiko zisanzwe mu gihe gikwiye, kubera kandi uburemere bw'icyaha n'ubwinshi bw'abagikurikiranwagaho, byabaye ngombwa ko hashyirwaho Inkiko Gacaca aho abaturage b'inyangamugayo batowe na

bagenzi babo, bahereye ku makuru yakusanyijwe, bakoraga anketi, bagatanga ibimenyetso cyane cyane bishingiye ku butangabuhamya, bagatanga ibihano ndetse n'indishyi, ibyo bakabikora ubwabo bitabaye ngombwa ko bifashisha abunganizi. Bwari uburyo bushya bwihariye budasanzwe bwo guca imanza butandukanye n'ubwari busanzwe mu nkiko zisanzwe, kubera ko n'icyaha kitari gisanzwe. Mu Nkiko Gacaca kandi, ubutabera bwari butegerejwe ntibwari bugamije guhana gusa nko mu nkiko zisanzwe, bwari bunagamije kunga abantu no kongera kubabanisha, kubagarura mu nzira iboneye bakava ibuzimu bakajya ibuntu, no kurandura umuco wo kudahana. Ibimaze kuvugwa bigaragaza ko intego, n'icyerekezo by'imicire y'imanza mu nkiko zisanzwe bitandukanye n'ibyo mu Nkiko Gacaca.

[16] Urukiko rurasanga ingingo ya 81 y'Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga itunganya ikanagena ububasha bwarwo, kandi Urukiko rw'Ikirenga ni rumwe mu nkiko zisanzwe rukaba ari narwo ruzikuriye, bityo ibyo iyi ngingo iteganya, ikaba ibiteganyiriza ababuranye imanza zisanzwe bashaka kuzisubirishamo ku mpamvu z'akarengane.

[17] Urukiko rurasanga kandi umushingamategeko ashyiraho ingingo ya 86 y'itegeko rimaze kuvugwa haruguru, yarashingiye cyane ku mpamvu zatumye Inkiko Gacaca zishyirwaho, intego yazo n'icyo zari zigamije, zikaba zarashyizweho mu buryo

bwihariye bitewe n'ibibazo byihariye ndetse n'akaga igihugu cyari kivuyemo nazo ubwazo zikaba ari inkiko zihariye[1]. Nta vangura rero ryabayeho nkuko BIMENYIMANA André abivuga, icyari gutera ikibazo ni uko ababuranishijwe n'Inkiko Gacaca itegeko ritababafata kimwe, ariko kuba abahamijwe icyaha cya jenoside n'Inkiko Gacaca bose itegeko ribafata mu buryo bungana, ntibyafatwa nk'aho ari ivangura ribujijwe mu ngingo ya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda. Kuba ababuraniye mu Nkiko Gacaca nk'urwego rwihariye batemerewe gusubirishamo imanza zabo ku mpamvu z'akarengane, nabyo ntibyafatwa nkaho iyo ngingo inyuranyije n'Itegeko Nshinga, kuko bigenda mu murongo umwe w'imitunganyirize y'Inkiko Gacaca nkuko byasobanuwe mu gika kibanziriza iki.

[18] Urukiko rurasanga kandi ibimaze kuvugwa mu gika kibanziriza iki ari nabyo byemejwe n'Urukiko rw'Ikirenga mu rubanza N° RS/Inconst/PEN/0005/12/CS, aho narwo mu gufata icyemezo rwahereye ku cyemezo cyafashwe n'Akanama k'Umuryango w'Abibumbye Gashinzwe Uburenganzira bwa Muntu (*United Nations Human Rights Committee*)[2], aho mu kirego cyari cyakagejejweho na Jacob na Jantina Van Oord barega igihugu cy'Ubuhorandi kunyuranya n'ingingo ya 26 y'amasezerano mpuzamahanga, *International Convenant on Civil and Political Rights* (ICCPR) ibuza

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[1] *Reba ingingo ya 2 y'itegeko –ngenga nº 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, mu gace kayo ka 2 nk'uko yavuguruwe kandi yujujwe kugeza ubu.*

[2] *www.unhcr.org/refworld/type, Human Rights committee, General Comment XVIII, Non-discrimination (1989, para 13.*

ivangura iryo ari ryo ryose, kemeje ko kuba abantu bashobora gufatwa ku buryo butandukanye bitavuze ko ari ivangura kuko kubatandukanya hashingiwe ku ngingo zumvikana zidafite uruhande zibogamiyeho atari ivangura[1]. Ibi na none bishimangirwa na Justice Frankfurter wo muri Leta zunze ubumwe za Amerika aho avuga ko kureshya imbere y'amategeko no kurengerwa kimwe n'amategeko atari amahame afatwa atyo gusa, ko ahubwo ibigambiriwe n'ayo mahame bigomba guhuzwa na gahunda z'Igihugu zishingiye ku bibazo byihariye, icyerekezo n'uburyo bwo kubigeraho[2].

[19] Hashingiwe ku bimaze kuvugwa, Urukiko rurasanga ikirego cya BIMENYIMANA André kigamije gusaba ko hakurwaho agace ka nyuma k'ingingo ya 86 y'Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga kuko

[1] *http:/www.umun.edu/humanrts/undocs.htm, Human Rights Committee, Oord v. The Netherland. Communication no 658/1995.23 July 1997.*

[2] *"The equal protection of the Law" and "laws is not abstract propositions". And " the do not relate to abstract units, A,B and C, but are expressions of policy arising out of difficulties, addressed to the attainment of specific ends by the use of specific remedies. The constitution does not require things which are different in fact or opinion to be treated in law as though they were the same. The mere fact of classification will not void legislation, then, because in the exercise of its powers a legislature has considerable discretion in recognizing the difference between and among person and situation, "class legislation, discriminating against some and favoring others, is prohibited; but legislation which, in carrying out a public purpose, is limited in the application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment". In this test, "the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. Available at: http://www.caselaw.lp.findlaw.com/data/constitution/amendment14/19.html.*

kanyuranije n'Itegeko Nshinga rya Repubulika y'u Rwanda mu ngingo yaryo ya 16, nta shingiro gifite.

II. ICYEMEZO CY'URUKIKO

[20] **Rwemeye** kwakira ikirego cyatanzwe na BIMENYIMANA André ;

[21] **Rwemeje** ariko ko nta shingiro gifite;

[22] **Rwemeje** ko igika cya nyuma cy'ingingo ya 86 y'Itegeko Ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga kitanyuranyije n'ingingo ya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda ;

[23] **Rutegetse** ko amafaranga y'ibyakozwe mu rubanza aherera ku isanduku ya Leta.

RUKIJIJWE KANDI RUSOMEWE MU RUHAME NONE KUWA 04/10/2013.

PEREZIDA
KAYITESI Zainabo Sylvie

ABACAMANZA:

MUTASHYA Jean Baptiste
MUKANYUNDO Patricie

HAVUGIYAREMYE Julien
MUNYANGERI Innocent

KAYITESI R.Emily
HATANGIMBABAZI Fabien

KANYANGE Fidélité
MUKANDAMAGE M. Josée

UMWANDITSI :
MUHIMAKAZI Léoncie

2. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RS/INCONST/AD0001/13/CS

ITARIKI Y'URUBANZA: 04/10/2013

UREGA :

SOCIETE GENERALE D'EQUIPEMENT ET DE SERVICE., S.G.E.S en sigle (Gusaba Urukiko rw'Ikirenga gukuraho ingingo ya 1, iya 33 n'iya 78 z'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2013 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga kubera ko zinyuranye n'Itegeko Nshinga mu ngingo yaryo ya 144)

AMAGAMBO MPINE

IMANZA ZEREKEYE INGINGO Z'AMATEGEKO ANYURANYE N'ITEGEKO NSHINGA - IHAME RIJYANYE N'ISUBIRWAMO RY'IMANZA RITEGANYIJWE MU NGINGO YA 144 Y'ITEGEKO NSHINGA - ISHYIRWA MU BIKORWA RY'IRYO HAME N'ANDI MATEGEKO.

INGINGO YA 1 Y'ITEGEKO NGENGA N° 03/2012/ OL RYO KUWA 13/06/2012 RIGENA IMITERERE, IMIKORERE N'UBUBASHA BY'URUKIKO RW'IKIRENGA ITEGANYA ISUBIRWAMO RY'IMANZA KU MPAMVU Z'AKARENGANE

ISHYIRWA MU BIKORWA RY'IHAME RITEGANYIJWE MU NGINGO YA 144 Y'ITEGEKO NSHINGA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Ingingo ya 144 y'Itegeko Nshinga rya Repubulika y'u Rwanda iteganya ihame rijyanye n'isubirwamo ry'imanza, iyi ngingo ishyirwa mu bikorwa n'andi mategeko, ni muri urwo rwego Umushingamategeko ateganya impamvu z'isubirwamo ry'urubanza n'uburyo rikorwa mu yandi mategeko harimo agenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, agenga imiburanishirize y'imanza z'inshinjabyaha ndetse n'Itegeko-Ngenga rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga.

Ingingo ya 1 y' Itegeko-Ngenga Nº03/2012 ryo ku wa 13/06/2013 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya impamvu zo gusubirishamo urubanza harimo n'impamvu z'akarengane, ingingo ya 33 y'iryo tegeko iteganya ububasha bw'Urukiko rw'Ikirenga ku birebana no gusubirishamo urubanza ku mpamvu z'akarengane n'ingingo ya 78 iteganya uburyo bikorwamo n'inzego zibikora; ntaho izi ngingo zose zinyuranyije n'ingingo ya 144 y'Itegeko-Nshinga kubera ko zose ziteganya uburyo ihame riteganywa n'iyi ngingo rishyirwa mu bikorwa.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IKIREGO CYEREKERANYE NO GUSABA GUKURAHO INGINGO Z'ITEGEKO NGENGA KUBERA KO ZINYURANYE N'ITEGEKO NSHINGA, RUKIJIJE MU RUHAME URUBANZA Nº RS/INCONST/AD0001/13/CS NONE KUWA 04/10/2013, MU BURYO BUKURIKIRA:

UWATANZE IKIREGO: SOCIETE GENERALE D'EQUIPEMENT ET DE SERVICE (S.G.E.S.) Ltd mw'izina ry'Umuyobozi wayo, ifite icyicaro mu Murenge wa Nyarugenge, Akarere ka Nyarugenge, Umujyi wa Kigali.

IKIREGERWA:

- Gusaba Urukiko rw'Ikirenga gukuraho ingingo ya 1, iya 33 n'iya 78 z'Itegeko- Ngenga Nº 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga kuko zinyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda mu ngingo yaryo ya 144.

I. IMITERERE Y'URUBANZA

1. Mu gihe cy'iburanisha ry'urubanza RS/REV./INJ/AD001/13/CS rushingiye ku rubanza R.Ad.A 0003/10/CS rusabirwa isubirwamo, rwaburanyemo SGES na EWSA, Me RUKANGIRA Emmanuel, uhagarariye S.G.E.S., yagaragaje impungenge z'uko abona hari ingingo z'Itegeko Ngenga Nº 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga zashingiweho ikirego gitangwa, zinyuranyije n'Itegeko Nshinga, asaba Inteko iburanisha kubanza gukemura icyo kibazo kubera ko ari ikibazo kivutse mu iburanisha ry'urundi rubanza.

2. Inteko yafashe icyemezo ako kanya ko uhagarariye S.G.E.S.

agomba gutanga ikirego kihariye ku kibazo abyukije, kuko ikirego ku ngingo z'amasezerano mpuzamahanga n'iz'amategeko zinyuranyije n'Itegeko Nshinga gifite uburyo n'inzira amategeko ateganya ko gitangwamo.

3. Kuwa 19/06/2013, S.G.E.S. yatanze ikirego gisaba gukuraho ingingo ya 1, iya 33 n'iya 78 z'Itegeko Ngenga Nº 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga ivuga ko zinyuranije n'ingingo ya 144 y'Itegeko Nshinga, kubera ko zishyiraho ubundi buryo bwo gusubirishamo urubanza rwaciwe burundu ku mpamvu z'akarengane budateganijwe n'Itegeko Nshinga, bikabangamira amahame amwe ndetse n'amategeko.

4. Urubanza rwaburanishijwe mu ruhame kuwa 31/07/2013, Urukiko rwumva ibisobanuro byatanzwe kuri icyo kirego na Me RUKANGIRA Emmanuel, Me SHEMA GAKUBA Charles na Me BUZAYIRE Angèle baburanira S.G.E.S , hari kandi na Me RUBANGO K. Epimaque, uhagarariye Ministeri y'Ubutabera watanze ibitekerezo kuri icyo kibazo.

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

5. Dosiye igaragaza ko S.G.E.S. yatanze ingwate y'amagarama, ko kandi ifite inyungu yo gutanga ikirego kubera ko ingingo z'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 ryavuzwe haruguru ivuga ko zinyuranyije n'ingingo ya 144 y'Itegeko Nshinga arizo uwo baburana (EWSA) yashingiyeho asaba gusubirishamo urubanza ku mpamvu z'akarengane. Ikirego cya S.G.E.S. kigaragaza itariki cyatangiweho, umukono wa Me RUKANGIRA Emmanuel wagitanze mu izina ryayo, ikiregerwa, impamvu ikirego gishingiyeho na kopi y'igazeti ya Leta yo kuwa 09/07/2012 irimo ingingo z'Itegeko Ngenga S.G.E.S. isaba ko zikurwaho. Ibisabwa n'Itegeko Ngenga Nº

03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga byose byarubahirijwe, bityo ikirego cya S.G.E.S. kikaba gikwiye kwakirwa.

6. Ingingo ya 53, igika cya kabiri y'Itegeko Ngenga Nº 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko "Urukiko rw'Ikirenga ari rwo ruburanisha ibirego byerekeranye no gusaba gukuraho Itegeko Ngenga, Itegeko, Itegeko-Teka, kubera ko binyuranyije n'Itegeko Nshinga, haba kubikuraho byose cyangwa se zimwe mu ngingo zabyo zinyuranyije n'Itegeko Nshinga."

7. Me RUKANGIRA Emmanuel uhagarariye S.G.E.S. yashyikirije Urukiko rw'Ikirenga ikirego kigamije gukuraho ingingo ya 1, iya 33 n'iya 78 z'Itegeko Ngenga Nº 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga avuga ko zinyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda, mu ngingo yaryo ya 144, iki kirego kikaba kiri mu bubasha bw'Urukiko rw'Ikirenga.

III. IKIBAZO KIRI MURI URU RUBANZA N'ISESENGURA RYACYO

Kumenya niba ingingo ya 1, iya 33 n'iya 78 z'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw' Ikirenga, zinyuranyije n'ingingo ya 144 y'Itegeko Nshinga.

8. Abahagarariye S.G.E.S., basaba ko ingingo ya mbere[1]

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[1] *Iyo ngingo ivuga ko: "Urukiko rw'Ikirenga ni rwo Rukiko rukuriye izindi nkiko zose mu Gihugu. Ibyemezo byarwo ntibijuririrwa uretse gusa ibyerekeye imbabazi za Perezida wa Repubulika, isubirwamo ry'urubanza rwaciwe uregwa adahari, gusubirishamo ingingo nshya urubanza no gusubirishamo urubanza ku mpamvu z'akarengane."*

y'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 ryavuzwe haruguru yavanwaho kubera ko inyuranije n'ingingo ya 144 y'Itegeko Nshinga, kuko ku mpamvu zo gusubirishamo urubanza zateganyijwe n'iyo ngingo y'Itegeko Nshinga arizo: imbabazi no gusubirishamo urubanza ingingo nshya, ingingo ya mbere y'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 yongeraho izindi ebyiri (2): isubirwamo ry'urubanza rwaciwe uregwa adahari no gusubirishamo urubanza ku mpamvu z'akarengane. Bavuga ko ingingo ya 184 y'Itegeko Nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ariyo isobanura kandi igashyira mu bikorwa ingingo ya 144 y'Itegeko Nshinga, iyi ikaba iteganya gusa isubirwamo ry'urubanza rishingiye ku ngingo nshya, ari naryo ryonyine Umushingamategeko yashatse gusobanura bikaba bitandukanye no gusubirishamo urubanza kubera akarengane.

9. Ku byerekeranye n'ingingo ya 33[1] n'iya 78[2] z'Itegeko Ngenga Nº 03/2012/OL ryo kuwa 13/06/2012 ryavuzwe haruguru, abahagarariye S.G.E.S bavuga ko nazo zinyuranye n'ingingo ya 144 y'Itegeko Nshinga kubera ko izi ngingo zombi arizo zisobanura ubwoko bw'imanza zisubirishwamo ku mpamvu z'akarengane, ibisabwa kugirango zisubirishwemo n'Urukiko rubifitiye ububasha, bikaba bitumvikana uko Itegeko Ngenga ryavuguruza Itegeko Nshinga aho kugira ngo riryubahirize nk'Itegeko risumba ayandi mu Gihugu. Bongeraho ko izo ngingo zizana ikindi gitekerezo cyo gusubirishamo urubanza, aricyo "gusubirishamo urubanza kubera akarengane",

[1] *Ingingo ya 33, igika cya 2, igira iti: "Urukiko rw'Ikirenga rushobora kandi gusubirishamo ku mpamvu z'akarengane imanza zaciwe burundu n'urwo Rukiko cyangwa n'izindi nkiko, hakurikijwe ibiteganywa n'iri Tegeko ngenga."*

[2] *Iyi ngingo igira iti: "Urukiko rw'Ikirenga ni rwo ruburanisha ibirego byerekeranye no gusubirishamo ku mpamvu z'akarengane imanza zaciwe ku rwego rwa nyuma byemejwe na Perezida w'Urukiko rw'Ikirenga."*

nyamara nta rindi subirwamo ry'urubanza Itegeko Nshinga rivuga uretse isubirishamo ry'urubanza kubera ingingo nshya zabonetse ari naryo Umushingamategeko asobanura mu ngingo ya 184 y'Itegeko No 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru.

10. Abahagarariye S.G.E.S bavuga na none ko isubirwamo riteganywa n'ingingo ya 144 y'Itegeko Nshinga rikorwa n'inkiko bisabwe n'ababuranyi ubwabo, mu gihe isubirwamo ku mpamvu z'akarengane risabwa n'Urwego rw'Umuvunyi rutari umuburanyi rutari no mu nzego z'ubucamanza, ndetse hakazamo n'Urwego rw'Ubugenzuzi bw'inkiko rudaca imanza. Bavuga ko kandi imanza zose zabaye ndakuka zifatwa ko zaciwe mu kuri, ko kubireba S.G.E.S, urubanza rwayo na EWSA rwari rwarabaye ndakuka ku buryo itegeko ritagombaga gusubira inyuma ngo ribangamire inyungu zayo, ko kandi ubundi iyo banyiri urubanza batanyuzwe hari uburyo bwo gusubirishamo urubanza ingingo nshya amategeko yateganyije, ko kwemerera Urwego rw'Umuvunyi gusaba gusubirishamo imanza zabaye ndakuka kandi urwo rwego rutari mu baburanyi binyuranya n'ihame ry'uko urubanza rujuririrwa na banyirarwo cyangwa n'undi urufitemo inyungu.

11. Uhagarariye Minisiteri y'Ubutabera, mu gusobanura ibitekerezo yatanze mu nyandiko ku kirego cya S.G.E.S, avuga ko ibyo abahagarariye S.G.E.S. bavuga nta shingiro bifite kubera ko bavugisha ingingo ya 144 y'Itegeko Nshinga ibyo idateganya, kuko iyo ngingo ishyiraho gusa ihame ry'isubirwamo ry'urubanza rwaciwe, iryo hame rikaba rigomba gushyirwa mu bikorwa n'andi mategeko, gusubirishamo urubanza ku mpamvu z'akarengane akaba ari imwe mu nzira zo gushyira mu bikorwa iyo ngingo butegenywa n'ingingo ya 1, iya 33, n'iya 78 z'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 ryavuzwe haruguru nk'uko amategeko yerekeranye n'imanza z'imbonezamubano cyangwa

iz'inshinjabyaha ateganya gusubirishamo urubanza ingingo nshya. Yongeraho ko ingingo ya 144 y'Itegeko Nshinga iri mu ngingo zidashobora gushyirwa mu bikorwa hatabayeho andi mategeko azishyira mu bikorwa (non self-executing provisions), ari nabyo byakozwe n'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 ryavuzwe haruguru , mu ngingo ya 33 n'iya 78.

UKO URUKIKO RUBIBONA

12. Ku byerekeranye n'isubirishamo ry'urubanza, ingingo ya 144 y'Itegeko Nshinga ivuga ko: "Urukiko rw'Ikirenga ari rwo rukiko rukuriye izindi mu Gihugu. Ibyemezo byarwo ntibijuririrwa uretse ibyerekeye imbabazi n'isubirwamo ry'urubanza…".[1] Ingingo ya mbere, igika cya mbere y'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ikavuga ko: "Urukiko rw'Ikirenga ari rwo rukiko rukuriye izindi mu Gihugu. Ibyemezo byarwo ntibijuririrwa uretse gusa ibyerekeye imbabazi za Perezida wa Repubulika, isubirwamo ry'urubanza rwaciwe uregwa adahari, gusubirishamo urubanza ingingo nshya no gusubirishamo urubanza ku mpamvu z'akarengane"; Ingingo ya 33 y'iryo Tegeko Ngenga ikavuga ko : Urukiko rw'Ikirenga rushobora kandi gusubirishamo ku mpamvu z'akarengane imanza zaciwe burundu n'urwo Rukiko cyangwa n'izindi nkiko, hakurikijwe ibiteganywa n'amategeko; naho ingingo ya 78 y'iryo Tegeko Ngenga ikavuga ko: Urukiko rw'Ikirenga arirwo ruburanisha ibirego byerekeranye no gusubirishamo ku mpamvu z'akarengane imanza zaciwe ku rwego rwa nyuma byemejwe na Perezida w'Urukiko rw'Ikirenga. Ingingo ya 184 y'Itegeko Nº 21/2012 ryo kuwa 14/06/2012 ryerekeye

[1] *Ingingo ya 144 y'Itegeko Nshinga igira iti:"Urukiko rw'Ikirenga ni rwo rukiko rukuriye izindi mu Gihugu. Ibyemezo byarwo ntibijuririrwa uretse ibyerekeye imbabazi n'isubirwamo ry'urubanza. Byubahirizwa n'abo bireba bose, zaba inzego za Leta, abayobozi bose b'imirimo ya Leta, aba gisiviri, aba gisirikare, abo mu rwego rw'ubucamanza n'abantu ku giti cyabo."*

imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, igira iti : "Gusubirishamo urubanza ingingo nshya ni ugushaka ko urubanza rwaciwe burundu ruvanwaho hakongera gusuzumwa bundi bushya uko ibintu byagenze n'uko amategeko abiteganya".

13. Urukiko rurasanga, ingingo ya 144 y'Itegeko Nshinga iteganya ihame ry'isubirwamo ry'urubanza, bisobanuye ko iyi ngingo ishyirwa mu bikorwa n'andi mategeko, ko Umushingamategeko ashyiraho amategeko asobanura impamvu n'uburyo ufite uburenganzira bwo gusubirishamo urubanza azahabwa ubutabera n'Urukiko rubifitiye ububasha, akaba ari muri urwo rwego mu gushyira mu bikorwa ingingo ya 144 y'Itegeko Nshinga, Umushingamategeko ateganya impamvu z'isubirwamo ry'urubanza n'uburyo rikorwa mu yandi mategeko harimo agenga imiburanishirize y'imanza, iz'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, n'agenga imiburanishirize y'imanza z'inshinjabyaha ndetse n'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 ryavuzwe haruguru.

14. Ubu buryo kandi nibwo bukoreshwa no mu bindi bihugu nko mu Buhinde aho ingingo ya 137 y'Itegeko Nshinga iteganya ko itegeko rizagena uburyo Urukiko rw'Ikirenga ruzashyira mu bikorwa ububasha bwarwo bwo gusubirishamo urubanza rwaciye cyangwa icyemezo rwafashe ("*Subject to the provisons of any law made by Parliament or any under rules made under article 145, the Supreme Court shall have power to review any judgement pronounced or order made by it.*"),[1]

15. Ibi na none bishimangirwa n'abahanga mu by'amategeko, aho uwitwa Pierre WIGNY, avuga ko Itegeko Nshinga rishyiraho amahameremezo Igihugu kigenderaho, amategeko asanzwe akagena uburyo ayo mahame- remezo ashyirwa mu bikorwa

[1] *Article 137 of the Constitution of India [As on 1st December 2011], Government of India, Ministry of Law and Justice.*

n'inzego zitandukanye[1]; naho uwitwa Bradley na Ewing bakavuga ko bidashoboka ko Itegeko Nshinga ryanditse riba rikubiyemo ibyo inzego za Leta zikeneye byose, ko nk'urugero, amabwiriza agenga amatora y'abagize Inteko Ishingamategeko mu bisanzwe adashyirwa mu Itegeko Nshinga ahubwo ashyirwa mu mategeko asanzwe yatowe n'Abashingamategeko hashingiwe ku bubasha bahabwa n'Itegeko Nshinga.[2]

16. Urukiko rurasanga rero, ingingo ya mbere, igika cya mbere y'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, iteganya impamvu z'isubirwamo ry'urubanza, harimo iyerekeye ingingo nshya, n'ishingiye ku karengane, ingingo ya 33 y'iryo Tegeko Ngenga igateganya ububasha bw'Urukiko rw'Ikirenga ku birebana n'isubirwamo ry'urubanza ku mpamvu z'akarengane, naho ingingo ya 78 y'iryo Tegeko Ngenga igateganya uburyo iryo subirwamo ry'urubanza rikorwa n'inzego zibikora; rukaba rusanga zose ziteganya uko ihame ry'isubirwamo ry'urubanza rishyirwa mu bikorwa, ibi rero bikaba ntaho binyuranije n'ingingo ya 144 y'Itegeko Nshinga.

17. Ku birebana n'ibyo ababuranira S.G.E.S bavuga ko isubirwamo ry'urubanza ku mpamvu z'akarengane ritatira

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[1] *"Trouve-t-on dans [la Constitution] toutes les dispositions organiques de l'Etat, l'ensemble des statuts de la Nation? On ne manquera pas d'objecter que pour le Pouvoir législatif, le droit électoral est fixé par des lois particulières... De même encore pour le pouvoir judiciaire, les règles d'organisation, de compétence et de procédure sont données par le législateur ordinaire".Reba Pierre WIGNY, Droit Constitutionnel: Principes et Droit Positif, Bruxelles, Bruylant, 1952, pp.172-173*

[2] *'Neither can a written constitution contain all the detailed rules upon which government depends. Thus the rules for electing the legislature are usually found not in the written constitution but in ordinary statutes enacted by the legislature within the limits laid down by the Constitution.' Reba A W Bradley and K D Ewing, Constitutional Law and Administrative Law, London, Pearson-Longman, 2003, p.4*

ihame ry'urubanza rwabaye ndakuka n' ihame ryo kudasubira inyuma kw'itegeko (non retroactivité), ko kuba iryo subirwamo ry'urubanza risabwa n'Urwego rw'Umuvunyi rutari umuburanyi rutari no mu nzego z'ubucamanza binyuranije n'ihame ry'uko urubanza rujuririrwa na banyirarwo cyangwa n'undi urufitemo inyungu, hakazanwamo ndetse n'Urwego rw'ubugenzuzi bw'inkiko rudaca imanza, Urukiko rurasanga abahagarariye S.G.E.S batagaragaza aho ibyo bavuga binyuranije n'ingingo y'144 y'Itegeko Nshinga bashingiyeho batanga ikirego, bityo rukaba rusanga ntaho rwahera rubisuzuma.

IV. ICYEMEZO CY'URUKIKO

18. Rwemeye kwakira ikirego cyatanzwe na Société Générale d'Equipement et de Service (S.G.E.S.) Ltd;

19. Rwemeje ariko ko nta shingiro gifite;

20. Rwemeje ko ingingo ya mbere, iya 33, n'iya 78 z'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, zitanyuranije n'ingingo ya 144 y'Itegeko Nshinga rya Repubulika y' u Rwanda ryo kuwa 04 Kamena 2003, nkuko ryavuguruwe kugeza ubu.

21. Rutegetse Société Générale d'Equipement et de Service **(S.G.E.S.) Ltd**.gutanga amagarama y' urubanza angana na 9.600 Frw.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 04/10/2013.

Sé
KAYITESI Zaïnabo Sylvie
Perezida

Sé
MUTASHYA Jean Baptiste
Umucamanza

Sé
HATANGIMBABAZI Fabien
Umucamanza

Sé
MUKANYUNDO Patricie
Umucamanza

Sé
MUKANDAMAGE Marie Josée
Umucamanza

Sé
KAYITESI R. Emily
Umucamanza

Sé
RUGABIRWA Ruben
Umucamanza

Sé
KANYANGE Fidélité
Umucamanza
Sé
MUNYANGERI N. Innocent
Umucamanza

Sé
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

URUBANZA RUREBANA N'IMPAKA ZIVUTSE MU MATORA Y'ABADEPITE

3. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RS/SPEC/0001/13/CS

ITARIKI Y'URUBANZA: 26/09/20123

<u>UREGA</u> :

RWAMUCYO GISAZA Séverin (Kujurira ku matora yakozwe ku wa 18/09/2013 ku mwanya w'umudepite uhagarariye abafite ubumuga, asaba ko yasubirwamo)

AMAGAMBO MPINE

IMANZA ZIREBANA N' IMPAKA ZIVUTSE MU MATORA Y'ABAGIZE INTEKO ISHINGA AMATEGEKO- AMATEKA CYANGWA AMABWIRIZA ANYURANYIJE N'ITEGEKO-NSHINGA N'ANDI MATEGEKO-UBURENGANZIRA BW'INKIKO BWO KUDAKURIKIZA AYO MATEKA CYANGWA AMABWIRIZA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Inkiko zikurikiza amateka cyangwa amabwiriza iyo atanyuranyije n'Itegeko Nshinga n'andi mategeko, Ikirego kijyanye n'impaka zivutse mu matora y'abagize inteko ishinga amategeko gishingira ku Itegeko ngenga Nº03/2012/OL ryo ku wa 13/06/2012 rigena , imiterere, imikorere, n'ububasha by'urukiko rw'Ikirenga aho gushingira ku ngingo ya 82 y'amabwiriza ya Komisiyo y'amatora Nº03/2013 yo ku wa 23/07/2013 agenga amatora y'abagize Inteko Inshinga Amategeko, Umutwe w'Abadepite.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUKIRIJE MU RUHAME URUBANZA N° RS/spec/0001/13/CS NONE KUWA 26/09/2013, MU BURYO BUKURIKIRA:

UWATANZE IKIREGO:

Rwamucyo Gisaza Séverin mwene BIRAGARA J. Baptiste na MUKARUSANGA Cécile, yashakanye na Nibagwire Marie Claire. Atuye mu mudugudu w'Inshuti, Akagari ka Rukatsa, Umurenge wa Kagarama, Akarere ka Kicukiro.

Ikiregerwa :

- Kujurira ku matora yakozwe kuwa 18/09/2013 ku mwanya w'Umudepite uhagarariye abafite ubumuga bityo nkaba nasabaga ko yasubirwamo.

I. IMITERERE Y'URUBANZA

1. Ku itariki ya 18/09/2013, Komisiyo y'Igihugu y'Amatora yakoresheje amatora ku mwanya w'Umudepite uhagarariye abafite ubumuga[1]. Bamwe mu bakandida biyamamaje kuri uwo mwanya ni Rusiha Gastone na Rwamucyo Gisaza Séverin. Kuri uwo munsi, Komisiyo y'Igihugu y'Amatora yatangaje by'agateganyo ko Rusiha Gastone ariwe watsindiye uwo mwanya w'Umudepite uhagarariye abafite ubumuga. Ku itariki ya 20/09/2013, Rwamucyo Gisaza Séverin yatanze ikirego mu Rukiko w'Ikirenga kijuririra ibyavuye mu matora yabaye kuwa 18/09/2013 ku mwanya w'umudepite uhagarariye abafite ubumuga, asaba ko amatora yaseswa agasubirwamo.

[1]*Reba ingingo ya 76, 4° y'Itegeko Nshinga "… Umutwe w'Abadepite ugizwe n'Abadepite 80 bakurikira : …… **umwe utorwa n'inama y'igihugu y'abantu bafite ubumuga**"*

2. Nkuko Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere, n'ububasha by'Urukiko rw'Ikirenga mu ngingo yaryo ya 66 ribiteganya, ku wa mbere tariki ya 23/09/2013, Perezida w'Urukiko rw'Ikirenga yandikiye Minisitiri ufite amatora mu nshingano ze na Perezida wa Komisiyo y'Igihugu y'Amatora, abamenyesha ko Urukiko rw'Ikirenga rwashyikirijwe ikirego na Rwamucyo Gisaza Séverin asaba ko amatora yabaye ku wa 18/09/2013 ku mwanya w'Umudepite uhagarariye abafite ubumuga yaseswa, amatora agasubirwamo bushyashya. Ku munsi ukurikiyeho, Komisiyo y'Igihugu y'Amatora na Rusiha Gastone bahamagawe mu bwanditsi bw'Urukiko rw'Ikirenga bahabwa imyanzuro ikubiyemo ikirego cyatanzwe na Rwamucyo Gisaza Séverin, basabwa kugira icyo bakivugaho mu nyandiko.

3. Ku itariki ya 25/09/2013, Urukiko rw'Ikirenga rwakiriye imyanzuro yatanzwe n'Intumwa ya Leta, Me Rubango Epimaque igaragaza icyo Komisiyo y'Igihugu y'Amatora ivuga ku kirego cyatanzwe na Rwamucyo Gisaza Séverin. Urukiko rw'Ikirenga rwanakiriye kandi imyanzuro yatanzwe na Rusiha Gastone igaragaza icyo avuga kuri icyo kirego.

4. Iburanisha ry'urubanza ryashyizwe ku itariki ya 25/09/2013, saa cyenda z'amanywa. Nkuko biteganywa n'ingingo ya 71 y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere, n'ububasha by'Urukiko rw'Ikirenga, iburanisha ry'urubanza ryabereye mu ruhame, Urukiko ruburanisha rushingiye ku nyandiko gusa. Isomwa ry'urubanza ryashyizwe ku itariki ya 26/09/2013.

II. Ibibazo biri mu rubanza n'isesengura ryabyo.

A) Kumenya niba ikirego cyatanzwe na Rwamucyo Gisaza Séverin kitagomba kwakirwa kuko atabanje kukigeza kuri Komisiyo y'Igihugu y'Amatora.

5. Mu nyandiko itanga ikirego mu Rukiko rw'Ikirenga, Rwamucyo Gisaza Séverin avuga ko ikirego yagishyikirije Urukiko ashingiye ku ngingo ya 145 y'Itegeko Nshinga iha ububasha Urukiko rw'Ikirenga bwo guca imanza zerekeye amatora y'abagize Inteko Ishinga Amategeko.

6. Mu mwanzuro we, yisobanura ku kirego cyatanzwe na Rwamucyo Gisaza Séverin, Rusiha Gastone asaba Urukiko kutakira ikirego kuko uwagitanze atabanje kukigeza kuri Komisiyo y'Igihugu y'Amatora nk'uko biteganywa n'ingingo ya 82 y'Amabwiriza ya Komisiyo y'Igihugu y'Amatora N° 03/2013 yo kuwa 23/07/2013 agenga amatora y'abagize Inteko Ishinga Amategeko, Umutwe w'Abadepite.

Uko Urukiko rubibona

7. [7] Ingingo ya 145, 5° y'Itegeko Nshinga ivuga ko Urukiko rw'Ikirenga rushinzwe by'umwihariko guca imanza zerekeye amatora ya Perezida wa Repubulika, ay'abagize Inteko Ishinga Amategeko, n'aya referandumu. Iyi ngingo y'Itegeko Nshinga igaragaza ko Urukiko rw'Ikirenga rwahawe ububasha bwo kuburanisha imanza zerekeye amatora y'abagize Inteko Ishinga Amategeko, yunganirwa n'andi mategeko asobanura mu buryo burambuye uko iki kirego gitangwa, abafite uburenganzira bwo kugitanga n'uko kiburanishwa mu Rukiko rw'Ikirenga.

8. Ingingo ya 82 y'Amabwiriza ya Komisiyo y'Igihugu y'Amatora N° 03/2013 yo kuwa 23/07/2013 agenga amatora y'abagize Inteko Ishinga Amategeko, Umutwe w'Abadepite, yo ivuga ko iyo havutse ibibazo mu gihe cyo kwiyamamaza, Abakandida

bagomba kwiyambaza urwego rwa Komisiyo y'Igihugu y'Amatora, ibyo bibazo byaba bidakemutse hakaregerwa inzego z'ubutabera zibifitiye ububasha.

9. Nubwo ingingo ya 82 y'Amabwiriza ya Komisiyo y'Igihugu y'Amatora ivugwa mu gika kibanziriza iki, iteganya ko iyo havutse ibibazo mu gihe cyo kwiyamamaza bigomba kubanza gushyikirizwa Komisiyo mbere yuko haregerwa inzego z'ubutabera zibifitiye ububasha, Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere, n'ububasha by'Urukiko rw'Ikirenga ryo ntiriteganya ko ikirego cyerekeranye n'impaka zivuka mu bikorwa by'amatora kibanza gushyikirizwa Komisiyo y'Igihugu y'Amatora mbere yuko gitangwa mu Rukiko rw'Ikirenga.

10. Ingingo ya 67 y'iryo Tegeko Ngenga ivuga ko iyo hari impaka ku bijyanye n'iyandikwa ry'abakandida ku mwanya wa Perezida wa Repubulika cyangwa uw'abagize Inteko Ishinga Amategeko, cyangwa se ku mihango y'amatora n'uburyo amatora yakozwemo yaba aya Perezida wa Repubulika, ay'abagize Inteko Ishinga Amategeko kimwe n'aya Referendumu, ababifitiye uburenganzira bavuzwe mu ngingo ya 66[1] y'iri Tegeko Ngenga baregera Urukiko rw'Ikirenga basaba kuvanaho icyemezo kibabangamiye cyangwa gusesa amatora yakozwe bitewe n'ikibazo icyo ari cyo cyose mu gihe kitarenze amasaha mirongo ine n'umunani (48) uhereye igihe ilisiti y'abakandida itangarijwe cyangwa igihe ibyavuye mu matora byatangarijweho by'agateganyo. Iyi ngingo igaragaza ko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha ikirego cyerekeranye n'impaka zivuka mu bikorwa by'amatora, ikanagena uburyo icyo kirego gitangwamo. Iyo ngingo y'Itegeko Ngenga ntiteganya ko mbere yo gutanga ikirego kibanza gushyikirizwa Komisiyo y'Igihugu y'Amatora.

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[1] *Ingingo ya 66 ivuga iti " uburenganzira bwo kuregera Urukiko rw'Ikirenga buhariwe buri mwenegihugu wese, buri mukandida, buri mutwe wa Politiki, cyangwa Komisiyo y'Igihugu y'Amatora……"*

11. Uretse Itegeko Ngenga rigena imiterere, imikorere, n'ububasha by'Urukiko rw'Ikirenga, n'Itegeko N° 27/2010 ryo kuwa 19/06/2010 rigenga amatora nkuko ryahinduwe kandi ryujujwe kugeza ubu, rigena kuva ku ngingo yaryo ya 71 kugeza kuya 79 inzira ikurikizwa mu manza zirebana n'amatora ya referandumu, aya Perezida wa Repubulika, n'ay'abagize Inteko Ishinga Amategeko, iri Tegeko Ngenga naryo, nta na hamwe rivuga ko ibirego muri izi manza bibanza kugezwa kuri Komisiyo y'Igihugu y'Amatora mbere yuko bitangwa mu Rukiko.

12. Ingingo ya 93 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavuguruwe kugeza ubu igena uburyo amategeko atorwamo n'ubusumbane bwayo. Mu gika cya nyuma cy'iyo ngingo, harimo ko nta na rimwe itegeko ngenga rivuguruza Itegeko Nshinga, nta nubwo itegeko risanzwe cyangwa itegeko teka rivuguruza itegeko ngenga, cyangwa se ngo iteka cyangwa amabwiriza bivuguruze itegeko. Iyi ngingo kandi yuzuzwa n'iya 141, igika cya gatatu ivuga ko Inkiko zikurikiza amateka cyangwa amabwiriza iyo atanyuranyije n'Itegeko Nshinga n'andi mategeko. Urukiko rw'Ikirenga rushingiye kuri izi ngingo, rusanga iyakirwa ry'ikirego rwashyikirijwe na Rwamucyo Gisaza Séverin rigomba gushingira ku Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere, n'ububasha by'Urukiko rw'Ikirenga aho gushingira ku ngingo ya 80 y' amabwiriza ya Komisiyo y'Igihugu y'Amatora N° 03/2013 yo kuwa 23/07/2013 agenga amatora y'abagize Inteko Ishinga Amategeko, Umutwe w'Abadepite.

13. Rwamucyo Gisaza Séverin yatanze ikirego igihe cy'amasaha 48 kivugwa mu ngingo 67 y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere, n'ububasha by'Urukiko rw'Ikirenga kitararangira kuko yagitanze ku itariki 20/09/2013. Bikaba bitari ngombwa ko abanza kugeza icyo kirego kuri Komisiyo y'Igihugu y'Amatora. Urukiko rw'Ikirenga

rukaba rusanga yaratanze ikirego anyuze mu nzira ziteganywa n'amategeko, bityo ikirego yatanze kikaba gikwiye kwakirwa.

B) Kumenya niba hari impamvu amatora yabaye ku itariki ya 18/09/2013 ku mwanya w'Umudepite uhagarariye abafite ubumuga akwiye guseswa.

14. Rwamucyo Gisaza Séverin watanze ikirego asaba ko amatora ku mwanya w'Umudepite uhagarariye abafite ubumuga yabaye kuwa 18/09/2013 yaseswa kubera ko Rusiha Gastone watangajwe by'agateganyo ko ariwe watsinze kuri uwo mwanya, yatsinze hakoreshejwe umwanya abayobozi bafite mu nyungu zabo bwite bagatanga "briefing" ndetse ngo hakaba haranabonetse ruswa ikabije.

15. Rwamucyo Gisaza Séverin avuga ko Rusiha Gastone yakoresheje umwanya afite mu nyungu ze bwite nk'umuyobozi w'Inama y'Igihugu y'Abafite Ubumuga, anakoresha Ndayisaba Emmanuel, Umunyamabanga Nshingwabikorwa w'Inama y'Igihugu y'Abafite ubumuga kugirango amwamamaze. Akomeza avuga ko Ndayisaba Emmanuel yahamagaye abahuzabikorwa b'Inama y'Igihugu y'Abafite ubumuga b'Intara y'Amajyaruguru, Intara y'Amajyepfo n'Umujyi wa Kigali ababwira ko bagomba gushyigikira no kwamamaza Rusiha Gastone.

16. Akomeza avuga ko hari na sms zoherejwe n'abo bahuzabikorwa zisaba inteko itora, gutora Rusiha Gastone. Ko kandi icyo gikorwa cyaranzwe na ruswa yagaragajwe na cheque yahawe Sekamonyo Venuste ingana na 500.000 FRW yahawe abari bagize inteko itora hakoreshejwe MTN mobile money na TIGO Cash.

17. Intumwa ya Leta, Me Rubango Epimaque uhagarariye Komisiyo y'Igihugu y'Amatora, yavuze ko ibyo Rwamucyo Gisaza Séverin yavuze nta bimenyetso yabitangiye, akaba asanga gahunda yo kwiyamamaza kw'abakandida bafite

ubumuga yagenze neza, nta gikorwa kinyuranije n'ingingo ya 80 y'Amabwiriza ya Komisiyo y'Igihugu y'Amatora cyabayeho, cyane cyane ko nta n'ikirego Komisiyo yakiriye muri urwo rwego.

18. Rusiha Gastone avuga ko Rwamucyo Gisaza Séverin atigeze agaragaza ibikorwa binyuranije n'amategeko byaba byarakozwe na Ndayisaba Emmanuel amwamamaza, ko na sms nk'uburyo bw'itumanaho zitabujijwe n'amategeko mu gikorwa cyo kwiyamamaza. Rusiha Gastone avuga kandi ko atigeze asaba Ndayisaba Emmanuel kumwamamaza. Ku byerekeye cheque, Rusiha Gastone avuga ko ntayo yigeze aha abamutoye kandi n'uwareze nta kimenyetso abitangira.

19. Rusiha Gastone avuga na none ko atigeze akoresha umwanya w'ubuyobozi bw'Inama y'Igihugu y'Abafite ubumuga kuko igihe amatora yabaga yari yarahagaritse imirimo ye kuri uwo mwanya by'agateganyo.

Uko urukiko rubibona

20. Rwamucyo Gisaza Séverin avuga ko uburyo Rusiha Gastone yakoresheje yiyamaza butanyuze mu nzira zikurikije amategeko. Amabwiriza ya Komisiyo y'Igihugu y'Amatora mu ngingo yayo ya 80 ateganya uko kwiyamamaza kw'abakandida bafite ubumuga bikorwa, Itegeko N° 27/2010 ryo kuwa 19/06/2010 rigenga amatora nkuko ryahinduwe kandi ryujujwe kugeza ubu, mu ngingo yaryo ya 30 ryo ryerekana ibibujijwe mu gihe cyo kwiyamamaza.

21. Ingingo ya 80 y'Amabwiriza ya Komisiyo y'Igihugu y'Amatora N° 03/2013 yo kuwa 23/07/2013 agenga amatora y'abagize Inteko Ishinga Amategeko, Umutwe w'Abadepite igira iti"Abakandida ku mwanya w'Umudepite ufite ubumuga biyamamaza ku munsi w'itora imbere y'abagize Inteko itora, bahurizwa hamwe ku rwego rw'Igihugu ahagenwa na Komisiyo y'Igihugu y'Amatora. Ariko mbere y'umunsi

w'itora, Umukandida ubyifuje ashobora gutegura gahunda ye yihariye yo kwiyamamaza imbere y'Abagize inteko itora, akayimenyesha mu nyandiko ubuyobozi bw'Akarere k'aho yifuza kwiyamamariza hasigaye nibura amasaha makumyabiri n'ane (24) kugira ngo yiyamamaze. Ishami rya Komisiyo y'Igihugu y'Amatora ku rwego rw'Akarere ry' aho ashaka kwiyamamariza rigenerwa kopi kugira ngo rishobore gukurikirana ukwiyamamaza kw'Abakandida". Iyi ngingo igaragaza ku buryo busobanutse uko Abakandida ku mwanya w'Umudepite ufite ubumuga biyamamaza. Icyo Rwamucyo Gisaza Séverin avuga ko kitagenze nkuko iyi ngingo ibiteganya, n'uko haba harabayeho kwiyamamaza no kwamamaza Rusiha Gastone mbere y'uko abagize Inteko itora, bahurizwa hamwe ku rwego rw'Igihugu ahagenwe na Komisiyo y'Igihugu y'Amatora.

22. Urukiko rusanga imvugo ya Rwamucyo Gisaza Séverin yuko Ndayisaba Emmanuel, Umunyamabanga Nshingwabikorwa w'Inama y'Igihugu y'Abafite ubumuga yahamagaye abahuzabikorwa b'Inama y'Igihugu y'Abafite ubumuga b'Intara y'Amajyaruguru, iy'Amajyepfo n'Umujyi wa Kigali mbere yuko inteko itora ihurizwa hamwe, akabasaba gutora no gutoresha Rusiha Gastone rutayishingiraho rwemeza ko kwamamaza Rusiha Gastone byatangiye mbere y'igihe kivugwa mu ngingo ya 80 y'Amabwiriza ivugwa mu gika kibanziriza iki, kuko uretse kubivuga nta kimenyetso na kimwe yigeze ageza ku Rukiko kigaragaza ko ibyo bintu byabayeho.

23. Kubirebana no kuba Rusiha Gastone yarakoresheje umwanya afite mu nyungu ze bwite nk'umuyobozi w'Inama y'Igihugu y'Abafite Ubumuga akiyamamaza mbere yuko abagize Inteko itora, bahurizwa hamwe ku rwego rw'Igihugu ahagenwe na Komisiyo y'Igihugu y'Amatora, Urukiko rurasanga uretse kubivuga gusa nta kimenyetso na kimwe gitangwa na Rwamucyo Gisaza Séverin kigaragaza ukuri kw'ibyo avuga. Uretse nibyo kandi, ku itariki ya 22/08/2013, Rusiha Gastone

yandikiye Visi Perezida w'Inama y'Igihugu y'Abafite ubumuga amumenyesha ko ahagaritse by'agateganyo imirimo yo kuba Perezida w'iyo Nama.

24. Ku birebana n'ibyo Rwamucyo Gisaza Séverin avuga ko hari sms zaba zarohererejwe inteko itora, bigomba gusuzumwa hagendewe ku biteganywa n'amategeko. Ingingo ya 29 bis y'Itegeko N° 27/2010 ryo kuwa 19/06/2010 rigenga amatora nkuko ryahinduwe kandi ryujujwe kugeza ubu, igira iti " mu matora yose, umukandida afite uburenganzira bwo kumanika ibimwamamaza no gukoresha ibindi byose bimwamamaza.....". Ingingo ya 30 y'iri Tegeko yo ikagira iti "birabujijwe mu gihe cyo kwiyamamaza cyangwa kwamamaza gukora ibintu bikurikira hagamijwe guhindura cyangwa kugerageza guhindura imitekerereze by'ugomba gutora: Gukoresha umutungo wa Leta aho waba uri hose mu buryo bunyuranyije n'amategeko; Gutuka cyangwa gusebya mu buryo ubwo aribwo bwose undi mukandida; Gushingira ku ivangura iryo aririyo ryose n'amacakubiri"

25. Urukiko rurasanga, hashingiwe ku bivugwa mu ngingo zivugwa mu gika kibanziriza iki, gukoresha sms mu kwiyamamaza no kwamamaza ubwabyo bitabujijwe, ahubwo ikibazo gishobora kuba uburyo izo sms zikoreshejwe, icyo zivuga n'igihe zitangiwe. Kubireba n'uru rubanza, sms zatanzwe na Rwamucyo Gisaza nk'ikimenyetso, ntizisobanutse. Ni izo yohererejwe nyuma y'amatora, ntabwo ari izakoreshejwe mu kwiyamamaza cyangwa mu kwamamaza Rusiha Gastone. Ntanubwo zigaragaza ko Rusiha Gastone yatowe ku gahato, n'uwaba yarabigizemo uruhare. Zigaragaza gusa imvugo zitagize icyo zisobanuye nko kuvuga ngo "byananiranye, barashaka ko turobinga so wanyu RG, ariko twifashe turindiriye ibyo mu kazu", "hari iturufu ije ngo nadatorwa arivumbura, ngibyo aho byavuye", " pole badukozeho nyine".

26. Kubirebana na ruswa yaba yaratanzwe binyuze kuri cheque ya 500.000 FRW Rwamucyo Gisaza Séverin avuga ko

yahawe Sekamonyo Venuste ngo ahabwe abagize inteko itora, iyo cheque ntabwo yigeze yerekwa Urukiko. Uretse nibyo, ntabwo Rwamucyo Gisaza Séverin atanga andi makuru kuri iyo cheque nka Banki yari kwifashishwa mu kubikuza iyo cheque, numero zayo, ndetse n'uwayitanze, n'ikimenyetso cyuko ayo amafaranga yari guhabwa abagize inteko itora. Ibi byose byari gufasha Urukiko gusuzuma icyo kimenyetso avuga.

27. Urukiko rurasanga byaba gukoresha umwanya umuntu afite mu nyungu ze bwite, na cheque ya 500.000 FRW Rwamucyo Gisaza Séverin avuga ko yari igenewe inteko itora, nta kimenyetso na kimwe uwareze abitangira. Naho kubirebana n'ibyo asaba ko Urukiko rwamushakira, Urukiko rurasanga amakuru yarushyikirije adahagije ku buryo byarworohera kumenya uwohereje amafaranga n'uwayohererejwe, n'impamvu ayo mafaranga yoherejwe. Ikindi kandi, uwareze niwe ufite inshingano yo kugeza ku Rukiko ibimenyetso. Iyo abibuze aratsindwa.

III. Icyemezo cy'Urukiko

28. Urukiko rw'Ikirenga rwemeye kwakira ikirego rwashyikirijwe na Rwamucyo Gisaza Séverin.

29. Rwemeje ko icyo kirego kidafite ishingiro.

30. Rwemeje ko amatora yabaye ku itariki 18/09/2013 ku mwanya w'uhagarariye abafite ubumuga mu Nteko Ishinga Amategeko adasheshwe.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 26/09/2013.

Sé
Sam RUGEGE
Perezida

Sé
KAYITESI Zainabu
Umucamanza

Sé
Mugenzi L. Marie
Umucamanza

Sé
MUTASHYA Jean Baptiste
Umucamanza

Sé
MUKANYUNDO Patricie
Umucamanza

Sé
KAYITESI R. Emily
Umucamanza

Sé
HATANGIMBABAZI Fabien
Umucamanza

Sé
KANYANGE Fidélité
Umucamanza

Sé
MUKANDAMAGE M. Josée
Umucamanza

Sé
MUNYANDAMUTSA Jean Pierre
Umwanditsi

IMANZA Z'INSHINJABYAHA

4. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RPA0015/10/CS

ITARIKI Y'URUBANZA: 12/07/2013

HABURANA:
UBUSHINJACYAHA
na
UWIMANA Jean Pierre na NTAWUMENYUMUNSI

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA - UBUHAMYA BUTANZWE N'ABAFITANYE ISANO N'UWAKOREWE ICYAHA - NTA KIBUZA UMUCAMANZA KUBUSHINGIRAHO BWONYINE.

IKOSA RY'IMYANDIKIRE MU IBAZWA RY'ABATANGABUHAMYA - KUTABIFATA NK'IKOSA RYATESHA AGACIRO UBWO BUHAMYA - KUBA UBWO BUHAMYA BUHURA N'IMIKORERE Y'ICYAHA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Nta kibuza ko abafitanye isano n'abahohotewe batanga ubuhamya kandi bugashingirwaho mu rukiko hakurikijwe ibiteganywa n'amategeko.

Kuba harakozwe ikosa rijyanye n'imyandikire mu ibazwa ry'umutangabuhamya (nko kwibeshya ku izina ry'uwakorewe icyaha) ntibyafatwa nk'ikosa ryatesha agaciro ubuhamya mu gihe ibyo umutangabuhamya yemeje bihura neza n'imikorere y'icyaha n'ibyo abandi batangabuhamya bemeje.

URUKIKO RW'IKIRENGA, RURI I KIGALI, RUBURANISHA IMANZA Z'INSHINJABYAHA, RUKIJIJE MU RUHAME KUWA 12/07/2013, URUBANZA RPA 0015/10/CS - RPA 0278/09/CS MU BURYO BUKURIKIRA:

<u>ABABURANYI</u>:

UBUSHINJACYAHA

Na

1. UWIMANA J. Pierre alias Rukara wajuriye, mwene UWIMANA na NYIRASINUMVA Béatrice, wavutse mu 1985, utuye mu Mudugudu wa Kiguri, Akagali ka Busoro, Umurenge wa Nyamyumba, Akarere ka Rubavu, Intara y'Iburengerazuba, yahoze ari local defense, ubu afungiye muri Gereza ya Gisenyi.
2. NTAWUMENYUMUNSI J. Bosco alias Gasongo, wajuriye, mwene NTAMUSHOBORA na MUKANYONGA, wavutse mu 1980, mu Kagali ka Busoro, Umurenge wa Nyamyumba, Akarere ka Rubavu, Intara y'Iburengerazuba.

<u>ICYAHA BAREGWA</u>:

Kuba tariki ya 15/05/2008 mu ma saa tatu n'igice z'ijoro, bari mu Kagali ka Kiranga, umurenge wa Nyamyumba, Akarere ka Rubavu, Intara y'Iburengerazuba, ari gatozi, bafatanyije, cyangwa umwe ari icyitso cy'undi nk'uko biteganywa n'ingingo ya 89, 90 na 91 z'Itegeko-teka nº 21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ryakurikizwaga icyo gihe, barahotoye uwitwa

HABIYAREMYE bamurasiye hafi y'iwe aho bari bamutegeye avuye kuroba. Icyaha giteganywa kandi kigahanishwa ingingo ya 312 y'iryo tegeko-teka.

I. IMITERERE Y'URUBANZA

[1] Ubushinjacyaha bwaregeye Urukiko Rukuru, Urugereko rwa Musanze, bushinja UWIMANA Jean Pierre alias Rukara, NTAWUMENYUMUNSI Jean Bosco alias Gasongo, bari ba local defense na TWIZERIMANA J. Claude, kuba barahotoye uwitwa HABIYAREMYE bamurasiye hafi y'iwe aho bari bamutegeye avuye kuroba, buvuga ko bamuzizaga imiraga bari baribye bakayimuha ngo ayibagurishirize ntabahe amafaranga.

[2] Urwo Rukiko rwemeje ko icyaha cy'ubuhotozi baregwa kibahama, rubahanisha igifungo cya burundu rushingiye ku buhamya bwatanzwe na NZABONIMPA wavuze ko bamujijije imiraga yari yarabimye, ko kandi yiboneye UWIMANA na NTAWUMENYUMUNSI muri iryo joro aho nyakwigendera yiciwe arashwe na NTAWUMENYUMUNSI, ndetse n'ubwa KAGABO Hassan ushinja TWIZERIMANA ko yabwiye nyakwigendera ko naramuka adasubije iyo miraga ya NTAWUMENYUMUNSI ku neza azayisubiza ku ngufu.

[3] UWIMANA J. Pierre yajuririye Urukiko rw'Ikirenga avuga ko urukiko rwirengagije ibisobanuro yatanze bigaragaza ko nta ruhare yagize mu rupfu rwa nyakwigendera HABIYAREMYE, maze rumuhamya icyaha nta bimenyetso bifatika. Avuga kandi ko rutakoze iperereza mu buyobozi bw'Akagali ka Busoro kandi yararisabye, rukaba rutaragombaga guha agaciro ubuhamya bwa NZABONIMPA n'ubwa

BENIMANA chantal kuko ari abo mu muryango umwe. Igihe cy'iburanisha ariko yavuze ko izi mpamvu z'ubujurire aziretse akaba yemera icyaha agasaba imbabazi.

[4] NTAWUMENYUMUNSI nawe yajuririye Urukiko rw'Ikirenga avuga ko urukiko rwirengagije ibisobanuro yatanze bigaragaza ko nta ruhare yagize mu rupfu rwa nyakwigendera HABIYAREMYE kandi ari iby'ukuri, rumuhamya icyaha nta bimenyetso. Avuga ko ubuhamya bwa BENIMANA butari guhabwa agaciro kuko ari umugore wa nyakwigendera kimwe n'ubwa murumuna we NZABONIMPA ndetse n'ubwa NDIMUBANZI wavuze ko yabonye umuntu muremure kandi atari we muremure wenyine muri ako Kagali.

[5] Urubanza rwaburanishijwe mu ruhame tariki ya 29/05/2013, UWIMANA Jean Pierre yunganiwe na Me MUNYANDATWA NKUBA Milton, NTAWUMENYUMUNSI Jean Bosco yunganiwe na Me ABASA Fazil, naho Ubushinjacyaha buhagarariwe na HIGANIRO Hermogène, Umushinjacyaha ku rwego rw'Igihugu.

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

A. UBUJURIRE BWA UWIMANA J. PIERRE :

Kumenya niba yagabanyirizwa igihano kubera ko yemeye icyaha.

[6] UWIMANA avuga ko yari yajuriye ahakana icyaha abitewe n'uko mugenzi we yakomeje kumusaba kugihakana amubwira ko badakwiye kucyemera kuko

batafatiwe mu cyuho, ko ariko nyuma yaje gusanga icyaha yakoze ari kibi, maze yandikira urukiko kuwa 30/04/2013 acyemera kandi atesha agaciro umwanzuro we wa mbere, none akaba yiyemeje gushyira ahagaragara ukuri agasaba imbabazi.

[7] Asobanura ko ari we, NTAWUMENYUMUNSI na TWIZERIMANA bishe nyakwigendera HABIYAREMYE bamuhoye imiraga bari bamugurishije mu mwaka wa 2008 bumvikana 85.000 Frw, abaha 5.000 Frw gusa ababwira itariki azabaheraho andi, igeze bajya iwe mu rugo ababwira ko nta deni abarimo, bacura umugambi wo kumwambura imiraga tariki ya 15/05/2008 ariko batagambiriye kumwica, imbunda bari bitwaje ikaba yari iyo kumutera ubwoba. Akomeza avuga ko bagiye iwe basanga yagiye kuroba, bajya kumutegera hepfo y'iwe, aza ari kumwe na mwene nyina NZABONIMPA, maze UWIMANA arabahagarika, NTAWUMENYUMUNSI arasa HABIYAREMYE kubera ko bari bateranye amagambo, bamusiga aho batazi ko yapfuye, NZABONIMPA we ariruka, baterura imiraga barigendera n'imbunda babijyana kwa NTAWUMENYUMUNSI, akaba rero asaba imbabazi umuryango wa nyakwigendera n'urukiko rukaba rwamugabanyiriza igihano.

[8] Me NKUBA Milton umwunganira avuga ko urukiko rwashingira ku ngingo ya 35 y'Itegeko nº 13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo za 76 na 78 z'Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana zerekeranye n'impamvu nyoroshyacyaha, maze rukamugabanyiriza igihano yahawe kuko yemeye icyaha agafasha urukiko kugira ngo ukuri kugaragare.

[9] Umushinjacyaha avuga ko kuba UWIMANA yemera icyaha nta mbogamizi ihari urukiko rumugabanyirije kuko nta gihe ntarengwa cyo kwigarura umuntu agasaba imbabazi.

Uko urukiko rubibona

[10] Ku byerekeranye n'impamvu nyoroshyacyaha no kugabanyirizwa ibihano muri rusange, ingingo ya 82 y'Itegeko - teka nº 21/ 77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ryakurikizwaga igihe UWIMANA yakoraga icyaha, iteganya ko umucamanza ariwe uha agaciro impamvu zigabanya ubugizi bwa nabi bw'uwakoze icyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye, yaba azemeje akagomba kubisobanurira impamvu, naho iya 83 yaryo ikavuga uburyo ibihano bigabanywa iyo hari impamvu zoroshya icyaha, ko igihano cy'igifungo cya burundu gisimbuzwa icy'igihe kitari munsi y'imyaka ibiri.

[11] Urukiko rurasanga UWIMANA yarabanje guhakana icyaha, ubu akaba yarisubiyeho akacyemera kandi akaba acyicuza mu buryo budashidikanywaho, ibyo bikaba byamubera impamvu nyoroshyacyaha akagabanyirizwa igihano, bityo igihano cy'igifungo cya burundu yahawe kikaba gikwiye kugabanywa, agahanishwa imyaka 10 y'igifungo, akazabasha kwikosora.

B. UBUJURIRE BWA NTAWUMENYUMUNSI JEAN BOSCO :

Kumenya niba yarahamijwe icyaha nta bimenyetso bikimuhamya.

[12] NTAWUMENYUMUNSI avuga ko urukiko rwamuhamije icyaha nta bimenyetso, rwirengagije ibisobanuro yatanze bigaragaza ko nta ruhare yagize mu rupfu rwa nyakwigendera HABIYAREMYE. Avuga ko ubuhamya bwa BENIMANA Chantal butagombaga guhabwa agaciro kuko ari umugore wa nyakwigendera kimwe n'ubwa murumuna we NZABONIMPA ndetse n'ubwa NDIMUBANZI wavuze ko yabonye umuntu muremure kandi atari we muremure wenyine mu Kagali, ko n'ubwatanzwe na UZABAKIRIHO nta shingiro bwahabwa kuko ibyo yavuze ari ibyo yumvise.

[13] Avuga kandi ko urukiko rwashingiye kuri ubwo buhamya kandi ababutanze batarabanje kurahira, akaba yumva rero nta gaciro bufite. Ikindi kandi ngo NZABONIMPA abazwa yisobanuye ku rupfu rwa HABIYAKAREMYE, nyamara uwapfuye yitwa HABIYAREMYE, akaba ari abantu batandukanye. Na none mu buhamya bwa BENIMANA Chantal, ngo yavuze ko iby'urupfu rwa nyakwigendera atabizi, ubwo buhamya bwose rero bukaba bushidikanywaho, uko gushidikanya kukaba kugomba kumurengera.

[14] Asanga na none hakwiye kubaho iperereza ryimbitse kuko nta « expertise » ya muganga yakozwe ngo hemezwe ko nyakwigendera yishwe n'amasasu, akavuga kandi ko UWIMANA ahisha abo bakoranye icyaha kuko uwitwa NDIMUBANZI yavuze ko yamubonanye n'undi muntu bikoreye imiraga, akaba atarigeze avuga ko yabonye NTAWUMENYUMUNSI.

[15] Ku byerekeye ukwemera icyaha kwa UWIMANA, avuga ko kumutunguye, ko kandi ibyo amushinja atari byo kuko abitewe n'ubwumvikane buke bafitanye kuko bigeze kuregana mu Mudugudu ku kibazo cya matela y'umuturage yari yafatiriye, aho bagereye muri gereza nabwo akaba yaramubwiye ko azamugerekaho ibuye atazitura, akaba asaba ko icyaha yemeye yakibazwa wenyine.

[16] Yongeraho ko ibyo UWIMANA avuga nta shingiro ryabyo kuko bitashoboka ko bagurisha imiraga 85.000 Frw ngo bishyurwe gusa 5.000 Frw nibura adahuye n'icya kabiri.

[17] Me RUBERWA umwunganira nawe avuga ko urukiko rwashingiye ku buhamya bw'umuntu wavuze ko yabonye umuntu muremure kandi atariwe muremure wenyine, ko kandi kuba ubuhamya bwa UWIMANA buvuga ko nta mugambi bari bafite wo kwica, nyamara urukiko rubanza rwo rwaravuze ko umugambi wari uhari, byatuma NTAWUMENYUMUNSI agirwa umwere.

[18] Uhagarariye Ubushinjacyaha avuga ko ibyo UWIMANA avugiye mu rukiko bihura neza n'ubuhamya bwa NZABONIMPA, wemeje ko umuvandimwe we yishwe arashwe na NTAWUMENYUMUNSI, ko kuba nta « expertise » ya muganga yakozwe ngo abyemeze ntacyo byahindura kuko nayo ari ikimenyetso mu bindi, ko ariko mu gihe uwo bafatanyije icyaha acyemera, akavuga ko nyakwigendera yishwe arashwe, urukiko rwabiha agaciro.

[19] Ku byerekeranye n'ubuhamya bwashingiweho n'urukiko, avuga ko kuba ababutanze batararahijwe harabayeho kwibeshya, ko ariko urukiko ruramutse rusanze indahiro hari icyo yahindura, ibibukubiyemo

byafatwa nk'amakuru yatanzwe, naho ku birebana n'amazina y'uwarashwe, asanga nabwo harabayeho ukwibeshya kwakosorwa kuko uwapfuye ari HABIYAREMYE.

[20] Uhagarariye Ubushinjacyaha asanga rero kuri NTAWUMENYUMUNSI, hari ibimenyetso bihagije bimushinja icyaha, urukiko rukaba rugomba kugumishaho imikirize y'urubanza rwa mbere.

Uko urukiko rubibona

[21] Ku byerekeranye n'ibazwa ry'abatangabuhamya, ingingo ya 56 y'Itegeko nº 13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko *« nyuma yo gutanga umwirondoro no kurahira kuvugisha ukuri, abatangabuhamya bumvwa umwe umwe kandi ukurikiranywe adahari. Ibisobanuro byabo bikorerwa inyandikomvugo ».*

[22] Inyandikomvugo ziri muri dosiye zigaragaza ko hari abatangabuhamya babajijwe batarahijwe abandi bararahizwa. Urukiko rurasanga ariko urukiko rubanza rutarashingiye icyemezo cyarwo kuri ubwo buhamya bwose, ahubwo rwarashingiye gusa ku bwatanzwe na NZABONIMPA, UZABAKIRIHO na KAGABO Hassan barahijwe, bityo ubuhamya bwabo bukaba butateshwa agaciro. Urukiko rurasanga na none ku byererekeranye n'itangwa ry'ubuhamya, nta tegeko ribuza ko abantu bafitanye isano n'uwahohotewe batanga ubuhamya bugashingirwaho n'urukiko.

[23] Ku byerekeranye n'imikorere y'icyaha, NZABONIMPA Jean, murumuna wa nyakwigendera yasobanuye uko

urupfu rw'umuvandimwe we bari kumwe rwagenze avuga ko yarashwe n'abantu bambaye imyenda ya ba « local defense » amenyamo uwitwa RUKARA ariwe UWIMANA. Kuba yarabajijwe ku rupfu rwa HABIYAKAREMYE aho kuba HABIYAREMYE, urukiko rurasanga ari ikosa ryabaye ariko ritatesha agaciro ireme ry'ubuhamya yatanze buhura n'ubwo UWIMANA wemera icyaha yavugiye imbere y'uru rukiko, avuga ko yafatanyije icyaha na NTAWUMENYUMUNSI na TWIZERIMANA watorotse.

[24] BENIMANA Chantal nawe yararahiye, avuga ko atamenye abishe umugabo we ko ariko yumvise amasasu araswa, akaba akeka UWIMANA na NTAWUMENYUMUNSI bamuhoye imiraga, kubera ko no muri iyo minsi bari bamwatse amafaranga 5.000.

[25] NDIMUBANZI nawe yararahiye, avuga ko tariki ya 15/05/2008, ubwo yari ari ku izamu nka saa yine z'ijoro yabonye « local defense » RUKARA yambaye igikoti cya gisirikare hejuru, n'ipantalo ya « local defense » n'inkweto za « botine » nk'iz'abapolisi ashoreye umuntu wikoreye imiraga nawe wambaye ibya « local defense », baturuka mu nzira iva kwa ba nyakwigendera HABIYAREMYE Claude, akaba akeka ko aribo bamwishe.

[26] Urukiko rurasanga rero hari ibimenyetso bihagije bihamya NTAWUMENYUMUNSI icyaha byiyongera ku mvugo ya UWIMANA wemera icyaha. Hashingiwe na none kuri ubwo buhamya, urukiko rurasanga nta rindi perereza rikenewe kugira ngo hamenyekane niba koko nyakwigendera HABIYAREMYE yarishwe arashwe amasasu, bityo ubujurire bwe bukaba nta shingiro bufite.

[27] Ku byerekeranye n'igihano NTAWUMENYUMUNSI akwiye guhabwa, urukiko rurasanga, mbere y'uko akurikiranwa kuri iki cyaha nta kirugaragarira ko yarasanzwe afite imyitwarire mibi, ibyo bikaba byamubera impamvu nyoroshyacyaha akagabanyirizwa icyo gihano hashingiwe ku ngingo za 82 na 83 z'Itegeko-teka nº 21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga, bityo igihano cy'igifungo cya burundu yahawe kikaba gikwiye kugabanywa, agahanishwa imyaka 15 y'igifungo.

III. ICYEMEZO CY'URUKIKO

[28] Rwemeje ko ubujurire bwa UWIMANA Jean Pierre bugamije kugabanyirizwa igihano bufite ishingiro.

[29] Rwemeje ko ubujurire bwa NTAWUMENYUMUNSI Jean Bosco nta shingiro bufite.

[30] RUHANISHIJE UWIMANA Jean Pierre igifungo cy'imyaka 10.

[31] RUHANISHIJE NTAWUMENYUMUNSI Jean Bosco igifungo cy'imyaka cumi n'itanu (15).

[32] Ruvuze ko urubanza rwajuririwe RP 0070/08/HC/MUS rwaciwe tariki ya 06/10/2009 n'Urukiko Rukuru, urugereko rwa Musanze ruhindutse kuri abo gusa ku birebana n'ibihano.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME KUWA 12/07/2013.

Sé
MUTASHYA Jean Baptiste
Perezida

Sé
MUKANDAMAGE M.Josée
Umucamanza

Sé
KANYANGE Fidélité
Umucamanza

Sé
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

5. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RPAA0070/10/CS

ITARIKI Y'URUBANZA: 18/10/2013

HABURANA:
UBUSHINJACYAHA C/ HABAKUBAHO Félix.

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA - KUBURANIRA IMBERE Y'UMUCAMANZA ITEGEKO RIGENERA UMUNTU - UBURENGANZIRA BUKOMEYE BUTEGANYWA N'ITEGEKO NSHINGA - IKURWAHO RY'IBYEMEZO BYAFASHWE HIRENGAGIJWE IRYO HAME.

IKURWAHO RY'URUBANZA RWACIWE HIRENGAGIJWE IHAME RITEGANYWA N'ITEGEKO NSHINGA - KUBURANISHWA BWA MBERE N'URUKIKO RWAJURIRIWE.

IMPURIRANE Z'IMPAMVU ZONGERA UBUBI BW'ICYAHA, ZIKIGABANYA, IZ'INSUBIRACYAHA N'IZICYOROSHYA - UBURYO INKIKO ZICA IBIHANO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Kuburanira imbere y'umucamanza itegeko rigenera umuntu ni uburenganzira bukomeye buteganywa n'Itegeko Nshinga umuntu adashobora kuvutswa, ibyemezo byose bifashwe hirengagijwe iryo hame bigomba guteshwa agaciro bikavanwaho.

Iyo urubanza rwajuririwe rwaciwe hirengagijwe iryo hame rukurwaho, rukaburanishwa bwa mbere n'urukiko rwajuririwe bitabaye ngombwa ko rwoherezwa mu rukiko rwagombye kuruca ku rwego rwa mbere.

Iyo hari impurirane z'impamvu zongera ububi bw'icyaha, zikigabanya, iz'insubiracyaha n'izicyoroshya, inkiko zica ibihano zikurikije ko izi mpamvu zikurikirana.

URUKIKO RW'IKIRENGA, RURI I KIGALI RUHABURANISHIRIZA MU RUHAME IMANZA Z'INSHINJABYAHA, RUKIJIJE URUBANZA Nº RPAA0070/10/CS KUWA 18/10/2013 MU BURYO BUKURIKIRA:

HABURANA:

UBUSHINJACYAHA

Na

HABAKUBAHO Félix wajuriye, mwene UWIRINDA na NYIRAMBUGA, wavutse mu 1989, utuye Byimana-Ruhango-Intara y'Amajyepfo.

ICYAHA AREGWA: Aregwa icyaha cyo gusambanya umwana w'umukobwa witwa ISHIMWE Claudine w'imyaka 7 y'amavuko. Icyaha giteganywa kandi kigahanishwa ingingo ya 190 n'iya 191 z'itegeko-ngenga Nº12/2012 OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda.

I. IMITERERE Y'URUBANZA.

[1] HABAKUBAHO Félix yahamijwe icyaha cyo gusambanya umwana witwa ISHIMWE w'imyaka irindwi y'amavuko n'Urukiko Rwisumbuye rwa Muhanga, rumuhanisha igifungo cy'imyaka icumi n'ihazabu y'amafaranga ibihumbi ijana.

[2] HABAKUBAHO yajuririye Urukiko Rukuru, Urugereko rwa Nyanza avuga ko yaburanishijwe ari umwana

kandi atunganiwe no kuba yarahawe ibihano birebire. Urukiko Rukuru rwemeje ko nta gihindutse ku mikirize y'urubanza rwajuririwe. Yajuririye Urukiko rw'Ikirenga avuga ko ataburaniye mu rugereko ruburanisha abana, ko atagabanyirijwe ibihano hashingiwe ku mpamvu nyoroshyacyaha yagaragarije urukiko. Ubushinjacyaha buvuga ko inyoroshyacyaha asaba yazihawe, ko urubanza rwajuririwe rwagombye kugumaho.

[3] Urubanza rwaburanishirijwe mu ruhame kuwa 04/09/2013, HABAKUBAHO yunganiwe na Me SESONGA Théobald, naho Ubushinjacyaha buhagarariwe na NTAWANGUNDI Béatrice.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.

Muri uru rubanza hagomba gusuzumwa niba HABAKUBAHO Félix yaragombaga kuburanishwa n'urugereko rwihariye ruburanisha abana, kumenya niba hari ibimenyetso bimuhamya icyaha aregwa no kumenya niba yagabanyirizwa igihano.

a) Kumenya niba HABAKUBAHO Félix yaragombaga kuburanishwa n'urugereko rwihariye ruburanisha abana.

[4] Me SESONGA wunganira HABAKUBAHO Félix avuga ko icyemezo cy'amavuko kiri muri dosiye kigaragaza ko yavutse mu 1991, icyaha kikaba cyarakozwe mu 2007, bikaba byumvikana ko HABAKUBAHO yakoze icyaha aregwa afite imyaka 16 y'amavuko, ko rero yagombaga kuburanishwa n'urugereko rwihariye rw'abana.

[5] Uhagarariye Ubushinjacyaha nawe avuga ko asanga HABAKUBAHO yarakoze icyaha ari umwana, anaburanishwa ari umwana ko kandi haba mu Rukiko Rukuru ndetse no mu Rukiko Rwisumbuye bitigeze biburanwaho, ko ariko busanga ibihano byatanzwe bikwiye.

UKO URUKIKO RUBIBONA.

[6] Ingingo ya 47 y'Itegeko Nº14/2006 ryo kuwa 22/03/2006 rihindura Itegeko Ngenga n◦ 07/2004 ryo kuwa 14/07/2004 rigena imiterere, imikorere n'ububasha bw'inkiko yakoreshwaga igihe HABAKUBAHO Félix yakoraga icyaha n'igihe yaburanishwaga mu Rukiko Rwisumbuye rwa Muhanga iteganya ko abana bakurikiranyweho icyaha icyo ari cyo cyose baburanishwa ku rwego rwa mbere n'urugereko rw'abana rw'Urukiko Rwisumbuye.

[7] Harebwe nomero y'urubanza (RP0365/07/TGI/MUH) rwanditswe mu bitabo bisanzwe by'Urukiko, aho kuba RP/Min 0365/07/TGI/MUH, bigaragara ko umuhango uteganywa mu ngingo ivuzwe haruguru wo kuburanishiriza abana mu rugereko rwihariye, utubahirijwe n'Urukiko Rwisumbuye rwa Muhanga HABAKUBAHO yaburaniyemo bwa mbere kuko ataburanishijwe n'urugereko rw'abana rw'urwo rukiko.

[8] Ingingo ya 19 igika cya 2 y'Itegeko Nshinga rya Repebulika y'u Rwanda, iteganya ko ntawe ushobora kuvutswa kuburanira imbere y'umucamanza Itegeko rimugenera, ubu akaba ari uburenganzira buri muntu wese yemererwa n'Itegeko-Nshinga budashobora guhungabanywa, nk'uko byemejwe mu rubanza NºRPA0043/09/CS rw'Ubushinjacyaha na Pte

HABUFITE Vincent rwaciwe n'Urukiko rw'Ikirenga kuwa 18/11/2011, aho rwemeje ko igihano cyo kutubahiriza ihame riteganyijwe mu Itegeko Nshinga ari uko ibyemezo biba byarafashwe biteshwa agaciro.

[9] Ibisobanuro bimaze gutangwa haruguru byerekana ko uburenganzira bwo kuburanira imbere y'umucamanza itegeko rigenera umuntu bufite agaciro gakomeye nk'uko buteganyijwe mu ngingo ya 19, 2 y'Itegeko Nshinga, bityo ibyemezo byose byafashwe muri uru rubanza hirengagijwe iryo hame ryo kubahiriza ubwo burenganzira bikaba bigomba guteshwa agaciro, bikavanwaho.

[10] Urukiko rurasanga hakurikijwe ibimaze kuvugwa rugomba gusuzuma bundi bushya ibijyanye n'icyaha HABUKUBAHO Félix akurikiranyweho.

b) Kumenya niba hari ibimenyetso bihamya HABAKUBAHO Félix icyaha aregwa.

[11] HABAKUBAHO Félix n'umwunganira bavuga ko yemera icyaha aregwa akanagisabira imbabazi. Basobanura ko kuwa 03/03/2007 saa kumi n'ebyiri n'igice, ubwo yaragiraga inka za KAYIJUKA Eugène se wa Ishimwe yagiye kuryama, nyuma uwo mwana akamusanga ku buriri, akamusambanya. Uhagarariye ubushinjacyaha nawe avuga ko HABAKUBAHO yaburanye yemera icyaha, bityo akaba agomba kugihanirwa.

[12] Urukiko rurasanga icyaha HABAKUBAHO akurikiranyweho kimuhama kuko kuva mbere hose yaburanye yemera icyaha kugeza n'ubu akicyemera, asaba gusa kugabanyirizwa igihano, igisigaye akaba ari ukureba niba yagabanyirizwa igihano.

c) Kumenya niba hari impamvu zatuma HABUKUBAHO Félix agabanyirizwa ibihano.

[13] HABAKUBAHO Félix asaba kugabanyirizwa igihano kuko yakoze icyaha ari umwana, kandi akaba anacyemera akagisabira imbabazi. Avuga ko atazagisubira kubera ko yumvise ububi bwacyo. Me SESONGA nawe avuga ko uwo yunganira yakoze icyaha ari umwana muto akaba yagombye nawe kurengerwa n'itegeko nk'abandi bana bose, bityo ingingo ya 77 y'itegeko Nº13/2004 ryo kuwa 17/07/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha yakoreshwaga igihe yakoraga icyaha ikaba yagombye kwitabwaho.

[14] Uhagarariye Ubushinjacyaha avuga ko nawe yemera ko uregwa yakoze icyaha ari umwana koko, ariko ko abona inkiko zaritaye ku buto bwe mu kumuhana, akaba ariyo mpamvu yahanishijwe igifungo cy' imyaka 10 mu gihe yari guhanishwa igifungo cy'imyaka 25 nk'uko byateganywaga n'ingingo ya 34 y'Itegeko Nº21/2001 ryo kuwa 28/04/2001 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda ihohoterwa.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 8[1] n'iya 765[2] z'Itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ziteganya uburyo ibyaha byakozwe mbere y'uko iri tegeko rijyaho bihanwa, bityo hakurikijwe

[1] Mu gihe hari amategeko abiri ahana, rimwe ryariho mu gihe icyaha cyakorwaga, irindi ryaratangajwe kuva icyaha gikozwe, ariko urubanza rutaracibwa burundu, itegeko rishya ni ryo ryonyine rigomba gukurikizwa iyo riteganya igihano cyoroheje.

[2] Icyakora, icyaha cyakozwe mbere y'uko iri tegeko ngenga ritangazwa mu Igazeti ya Leta ya Repubulika y'u Rwanda gihanwa hakurikijwe itegeko ryakigengaga keretse mu gihe iri tegeko ngenga riteganya ibihano byorohereje

ibyateganywaga n'ingingo ya 34 y'itegeko Nº21/2001 ryo kuwa 28/04/2001 ryavuzwe ryateganyaga igihano cya burundu n'ingingo ya 191 y' z'Itegeko Ngenga Nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ibyaha riteganya igihano cya burundu cy'umwihariko ku cyaha cyo gusambanya ku gahato, HABUKUBAHO Félix akaba agomba guhanwa hakurikijwe itegeko ryakurikizwaga igihe yakoraga icyaha kuko aririyo riteganya ibihano byoroheje.

[16] Ingingo ya 88 y'Itegeko-Teka N°21/77 ryo kuwa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda ryakoreshwaga igihe HABUKUBAHO Félix yakoraga icyaha yateganyaga uko bigenda igihe hari amahurirane y'impamvu zongera icyaha, zikigabanya, iz'insubiracyaha n'izicyoroshya, inkiko nkuru n'intoya zikaba zaragombaga guca igihano zikurikije uko impamvu zavuzwe muri iyi ngingo zikurikiranye.

[17] Urukiko rurasanga ku byerekeye HABUKUBAHO Félix hari impamvu zongera ububi bw'icyaha zituruka ku kuba yarahohoteye umwana w'umukobwa w'imyaka 7 y'amavuko, bikaba bigaragara ko yamurutaga cyane, bityo hakurikijwe ibyateganywaga n'ingingo ya 34 y'itegeko Nº21/2001 ryo kuwa 28/04/2001 ryavuzwe, akaba agomba guhanishwa igifungo cya burundu.

[18] Urukiko rurasanga ariko HABUKUBAHO Félix yarakoze icyaha afite imyaka 16 y'amavuko, iyi ikaba ari impamvu ishobora gutuma agabanyirizwa igihano giteganyijwe n'itegeko hakurikijwe ibyateganywaga n'ingingo ya 77 agace ka 2 y'Itegeko-Teka N°21/77 ryo kuwa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda ryakoreshwaga igihe

HABUKUBAHO Félix yakoraga icyaha[1], bityo akaba agomba guhanishwa igifungo cy'imyaka 10, ariko kuba yaraburanye yemera icyaha kandi anasaba imbabazi, nabyo bikaba bituma igihano ahawe kigabanywa kigashyirwa ku myaka irindwi.

III. ICYEMEZO CY'URUKIKO

[19] Rwemeje ko urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza RPA 0288/08/HC/NYZA kuwa 28/01/2010 ruvanyweho.

[20] Rwemeje ko HABUKUBAHO ahamwa n'icyaha cyo gusambanya umwana utarageza ku myaka 14 y'amavuko.

[21] Rumuhanishije igifungo cy'imyaka irindwi.

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

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[1] *Iyo uwakoze icyaha cy'ubugome cyangwa gikomeye cyangwa icyitso cye, afite imyaka y'amavuko irenze cumi n'ine aliko idashyitse cumi n'umunani mu gihe icyaha gikorwa, iyo bibaye ngombwa guca igihano, ibihano bitangwa ni ibi: iyo akwiye igihano cyo kwicwa cyangwa cyo gufungwa burundu, azacibwa igihano cy'igifungo cy'imyaka kuva kw'icumi kugeza kuli makumyabili.*

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 18/10/2013.

Sé
KAYITESI ZAINABO Sylvie
Perezida

Sé
HATANGIMBABAZI Fabien
Umucamanza

Sé
MUNYANGERI N. Innocent
Umucamanza

Sé
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

6. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RPA0280/09/CS

ITARIKI Y'URUBANZA: 04/10/2013

HABURANA:

UBUSHINJACYAHA C/ NDAYISABA Disvald.

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA - GUSEMBURWA - IMPAMVU ITUMA UREGWA AGABANYIRIZWA IBIHANO - GUHUNGA UWO MWARWANAGA AKAGUSANGA IWAWE.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Byitwa gusemburwa bituma uregwa agabanyirizwa igihano ku cyaha cyo kwica umuntu, iyo uwo mwarwanaga nyuma yo kumuhunga agusanze mu rugo, agatangira gukubita abo mubana ku buryo bukabije kandi ntaho bahuriye n'imirwano yabanje.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA, RUKIJIJE MU RUHAME NONE KUWA 04/10/2013, URUBANZA Nº RPA 0280/09/CS MU BURYO BUKURIKIRA:

HABURANA:

UBUSHINJACYAHA

NA

NDAYISABA Disvald mwene GATEBUKE Léopold na NTIRUGIRISONI Noelina, wavutse muri 1974 mu Mudugudu wa Giheta, Akagali ka Cyambwe, Umurenge wa Musambira, Akarere ka Kamonyi, Intara y'amajyepfo, akaba ari naho atuye ubu akaba afungiwe muri Gereza ya Muhanga.

ICYAHA AREGWA:

Ubwicanyi, icyaha giteganywa kandi gihanishwa ingingo ya 311 y'Itegeko-Teka No 21/77 ryo kuwa 18 Kanama 1977 rishyiraho igitabo cy'amategeko ahana cyakoreshwaga icyo gihe.

I. IMITERERE Y'URUBANZA

1. Urukiko Rukuru, Urugereko rwa Nyanza, rwahamije NDAYISABA Disvald icyaha cyo kwica HABIYAMBERE Ignace amuteye icyuma cya fer à béton mu mutima, rumuhanisha igifungo cy'imyaka makumyabiri (20), kubera ko bwari ubwa mbere akurikiranywe n'inzego z'ubutabera.

2. NDAYISABA Disvald ntiyismiye imikirize y'urubanza ajurira mu Rukiko rw'Ikirenga, avuga ko yagombaga kugabanyirizwa igihano bitewe nuko yishe HABIYAMBERE asembuwe kuko

yari amusanze iwe mu rugo akanamukubitira umugore wari uhetse umwana.

3. Urubanza rwaburanishijwe mu ruhame kuwa 02/09/2013, NDAYISABA Desvald yitabye kandi yunganiwe na Me BASHAYIJA David naho Ubushinjacyaha buhagarariwe na MUTAYOBA Alphonse.

II. <u>IKIBAZO KIGIZE URUBANZA N'UKO URUKIKO RUBIBONA</u>

Kumenya niba hari izindi mpamvu zatuma NDAYISABA Disvald yongera kugabanyirizwa igihano

4. NDAYISABA avuga ko Urukiko Rukuru rwabogamiye kubarega ntirubaze abandi batangabuhamya aribo GAKWAYA Pierre, KARANGWA, USABYIMANA Eburoje, HARERIMANA Damien na NGOBOKA babonye uko yatewe, kutababaza bikaba binyuranye n'Itegeko Nº 15/04 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo. Avuga na none ko Urukiko rwirengagije ibisobanuro bye by'uko abamuteye yabanje kubakiza barwana, baza kumuhindukirana baramukubita, ariko akaza kubacika abahungira iwe mu nzu, bamukurikirayo bitwaje amabuye n'ibiti, basanga umugore we wari uhetse umwana ari mu gikoni baramukubita yitura hasi, maze yumvise umwana na nyina batakiye rimwe abadukana icyuma cya fer à béton arasohoka, abwira HABIYAMBERE kumurekurira umugore, aho kumurekura akaza amusatira, nibwo kumukubita iyo fer à béton kabiri mu mutima arapfa.

5. Me BASHAYIJA David avuga ko uretse kuba uwo yunganira yemera icyaha akanagisabira imbabazi, uyu yatangiye akora igikorwa cyiza cyo gukiza abarwanaga. Yongeraho ko kumutera

mu rugo rwe ari icyaha cyo kumuvogerera urugo (violation du domicile) gihanywa n'amategeko, ko no kumukubitira umugore ndetse wari uhetse umwana wabo bikwiye gufatwa nk' ubusembure; ko rero igihano yahawe cyagabanywa hashingiwe ku ngingo ya 75 y'Itegeko Ngenga Nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana.

6. Uhagarariye Ubushinjacyaha avuga ko ntacyo bimaze kubaza abandi batangabuhamya, ko kwemera icyaha kwa NDAYISABA guhagije kugirango Urukiko rwemeze ko yagikoze; ko kandi yivugiye ko abamuteye bari basinze, nta ntwaro bari bitwaje, ko kandi yateye nyakwigendera fer à béton inshuro ebyiri mu mutima, ibi byose bikagaragaza ko, nubwo yaba yarasembuwe, atishe HABIYAMBERE kubw'impanuka, bityo Urukiko Rukuru rukaba rwari rufite ishingano yo kwemeza ko yari yagambiriye kwica nyakwigendera. Yongeraho ko NDAYISABA yagabanyirijwe kuva ku gifungo cya burundu kugeza ku myaka makumyabiri (20) kubera ko bwari ubwa mbere akoze icyaha, ariko ko n'ubu yongeye kugabanyirizwa ntaho byaba binyuranyije n'amategeko.

7. Ingingo ya 65, igika cya 2 y'Itegeko No 15/04 ryo kuwa 12/06/2004 ryavuzwe haruguru igira iti: "Urukiko nirwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w'abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no kuburyo babivuga uko byagenze nta cyo bihimbira. Naho ingingo ya 75, agace ka 1 y'Itegeko Ngenga Nº 01/2012/OL ryo kuwa 02/05/2012 ryavuzwe haruguru ivuga ko: "Iyo hagaragajwe impamvu zishingiye ku busembure bw'uwakoze icyaha ibihano bigabanywa kuburyo bukurikira: 1º ku cyaha cy'ubugome gikwiranye n'igihano cyo gufungwa

burundu cyangwa cyo gufungwa burundu y'umwihariko, igihano kiragabanuka kikaba kuva ku myaka ibiri (2) kugeza ku myaka itanu (5)."

8. Urukiko rw'Ikirenga rurasanga, inyandiko za dosiye zigaragaza ko abatangabuhamya NIYIRORA Léonard na NDAYAMBAJE Vianney bavuze ko intandaro y'urupfu rwa HABIYAMBERE ari imirwano yabereye kwa NDAYAMBAJE hagati ya HABIYAMBERE (nyakwigendera) na KAYIGI, NDAYISABA abakijije baramuhindukirana baramukubita, abahungiye iwe bose uko ari batatu bamukurikirayo, bahageze batangira kumukubitira umugore wari uhetse umwana bahasanze, NDAYISABA yumvise ugutaka k'umugore we n'umwana, asohokana icyuma cya fer à béton, aricyo yakubise HABIYAMBERE mu mutima, wari uje amusatira, bimuviramo gupfa(cotes 6 na 7), izi mvugo zikaba zihura n'uko NDAYISABA yasobanuye imikorere y'icyaha aregwa.

9. Urukiko rw'Ikirenga rurasanga NDAYISABA yarasembuwe, kuko kuba HABIYAMBERE nabo bari kumwe barateye NDAYISABA mu rugo rwe, nyamara yari yabahunze, bahagera bakamukubitira umugore akagwana hasi n'umwana yari ahetse, nyamara ntaho yari ahuriye n'imirwano barimo, byarateye NDAYISABA ububabare n' umujinya atashoboraga kwigobotora muri ako kanya yakozemo icyaha, ibi kandi bikaba bihuje n'ibyemejwe n'uru Rukiko mu rubanza RPA 0274/08/CS hagati y'*Ubushinjacyaha na Mbanzamihigo Jean Pierre* rwo kuwa 07/01/2011[1].

10. Urukiko rw'Ikirenga rurasanga rero, nk'uko biteganywa n'ingingo ya 75 y'Itegeko Ngenga No 01/2012/OL ryo kuwa 02/05/2012 ryavuzwe haruguru ndetse bikanashimangirwa

[1] Urubanza hagati y'***Ubushinjacyaha na Mbanzamihigo Jean Pierre*** RPA 0274/08/CS rwo kuwa 07/01/2011, igice cya 7.

n'abahanga mu mategeko ahana[1] n'inkiko z'ibindi bihugu,[2] ko ubusembure ari impamvu y'igabanyagihano, NDAYISABA akwiye kongera kugabanyirizwa igihano, agahanishwa imyaka 5 y'igifungo.

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

11. Rwemeje ko ubujurire bwa NDAYISABA Disvald bugamije kugabanyirizwa igihano bufite ishingiro;

12. Rumuhanishije igifungo cy'imyaka itanu (5) harimo n'igihe amaze afunzwe.

13. Rwemeje ko imikirize y'urubanza NºRP0177/08/HC/NYA, rwo kuwa 30/10/2009 ihindutse kubijyanye n'igihano gusa.

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[1] *Carel R Snyman, Criminal Law, Durban, Lexis Nexis, 2008, pp234-244.*

[2] *Reba urugero S v. Graeme Michael Eadie 2002 1 SACR 663 (SCA) na Cassation, Chambre Criminelle, 18/07/1972, Bulletin Criminel Cour de Cassation Chambre criminelle N. 247 P. 647 (1972).*

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME NONE KUWA 04/10/2013.

Sé
KAYITESI ZAINABO Sylvie
Perezida

Sé
HATANGIMBABAZI Fabien
Umucamanza

Sé
MUNYANGERI N. Innocent
Umucamanza

Sé
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

7. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RS/REV/PEN0016/10/CS
ITARIKI Y'URUBANZA: 08/11/2013

HABURANA:

UBUSHINJACYAHA C/ FAYIRARA Ananias.

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA - GUSUBIRISHAMO URUBANZA INGINGO NSHYA – IKIMENYETSO GISHYA KANDI CYA KAMARAMPAKA - KUBA CYARI GISANZWEHO N'UREGWA AKIZI - KWEREKANA IMPAMVU ITIGOBOTORWA ZATUMYE KITAGARAGARIZWA URUKIKO MU GIHE CY'IBURANISHA**.**

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Ntibyafatwa nk'ikimenyetso gishya kandi cya kamarampaka gishobora gutuma urubanza rusubirishwamo ingingo nshya, mu gihe ikimenyetso gitangwa cyari gisanzweho uregwa nawe ubwe akizi mu gihe cy'iburanisha ry'urubanza rusubirishwamo iyo aterekana impamvu ntakumirwa zamubujije kugaragariza urukiko ko icyo kimenyetso cyariho.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA, RUKIJIJE MU RUHAME NONE KUWA 18/10/2013 URUBANZA Nº RS/REV/PEN0016/10/CS, MU BURYO BUKURIKIRA:

HABURANA:

UBUSHINJACYAHA

NA

FAYIRARA Ananias mwene GAFARASI Anatole na MUKAMUGANGA Stéphanie, wavutse 1965, utuye mu Kagali ka Kigabiro, Umurenge wa Ruharambuga, Akarere ka Bukunzi, Intara y'Uburengerazuba, ubu akaba afungiye muri Gereza ya Rusizi.

IKIREGERWA:

Kujuririra icyemezo cy'ibanzirizasuzuma Nº RP 0410/09/Pré-ex/CS cyafashwe kuwa 26/10/2009 ku kirego cyo gusubirishamo ingingo nshya urubanza Nº RPAA 0103/08/CS rwaciwe n'Urukiko rw'Ikirenga.

I. IMITERERE Y'URUBANZA

1. Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rusizi, FAYIRARA Ananias aregwa gufatanya na MUNYANEZA Joseph na KAZUNGU kwigana ibimenyetso by'amafaranga y'u Rwanda no kuyakwirakwiza mu baturage bakoresheje uburyo bwo kuyabavunjira. Urukiko Rwisumbuye rwasanze FAYIRARA yarafatanyaga n'Abanyekongo.

2. FAYIRARA yajuririye Urukiko Rukuru, Urugereko rwa Rusizi, avuga ko Urukiko Rwisumbuye rutahaye agaciro imvugo ye, ahubwo rwamuhamije icyaha rushingiye ku mvugo z'ushinja gusa. Urukiko Rukuru rwasanze ubujurire bwa FAYIRARA nta shingiro bufite rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

3. FAYIRARA yajuririye icyo cyemezo mu Rukiko rw'Ikirenga avuga ko yahaniwe icyaha cyakozwe na MUNYANEZA Joseph, ko atazi muri Congo ndetse nabo banyekongo bavugwa muri dosiye bataziranye. Mu rubanza Nº RPAA0103/08/CS/, Urukiko rwasanze ubujurire bwa FAYIRARA nta shingiro bufite, rwemeza ko nta gihindutse ku mikirize y'inkiko za mbere.

4. FAYIRARA yaregeye gusubirishamo urwo rubanza ingingo nshya mu Rukiko rw'Ikirenga, ikirego cye cyandikwa kuri No RS/REV/PEN0039/09/CS-RPAA0103/08/CS/, umucamanza w'ibanzirizasuzuma agisuzumye asanga atagaragaza aho ubushya bw'ibimenyetso yatanze buherereye, afata icyemezo No RP 0410/09/ Pré-ex/ CS cyo kuwa 26/10/2009 ko atemerewe isubirishamo ry'urubanza ingingo nshya kuko nta mpamvu abitangira yemewe n'amategeko.

5. FAYIRARA yajuririye icyo cyemezo cy'ibanzirizasuzuma muri uru Rukiko, ubujurire bwe bwandikwa kuri RS/REV/ PEN 0016/10/CS. Urubanza rwaburanishijwe mu ruhame kuwa 02/10/2013, FAYIRARA yitabye kandi yunganiwe na Me KAYITARE Dieudonné, naho Ubushinjacyaha buhagarariwe na MUKURARINDA Alain.

II. IKIBAZO KIGIZE URUBANZA N'UKO URUKIKO RUBIBONA

- ***Kumenya niba inyemezabuguzi (Risi/recu) FAYIRARA yagaragaje nyuma y'urubanza yafatwa nk'ikimenyetso gishya***

6. FAYIRARA Ananias avuga ko Umucamanza w'ibanzirizasuzuma yanze kwakira ikirego cye kuko atahaye agaciro ikimenyetso ashingiraho asaba gusubirishamo urubanza rwe ingingo nshya, cyerekeranye n'inyemezabuguzi (Risi/recu) yagiranye na MUNYANEZA Joseph igaragaza ko imashini ivugwa muri dosiye atari iyo kwigana amafaranga ahubwo ari iyo kudoda, ko iyo nyemezabuguzi atigeze ayiburanisha mbere kubera ko yari yarayibuze, ngo nubwo yari azi ko iriho ntiyari kuburanisha ikimenyetso adashobora kugaragariza Urukiko.

7. Avuga ko iyo mpamvu ikwiye gutuma yemererwa gusubirishamo urubanza rwe ingingo nshya hashingiwe ku ngingo ya 180, agace ka 4 y'Itegeko No 13/2004 ryo kuwa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakoreshwaga igihe yatangiye ikirego. Naho Me KAYITARE Dieudonné umwunganira yongeraho ko icyo asaba Urukiko ari ukurenganura FAYIRARA ruha agaciro inyemezabuguzi yagiranye n'uwamuhaye akazi, ko kuva FAYIRARA yemeza ko iyo nyemezabuguzi ari umwimerere, Urukiko rwabifata nk'ukuri.

8. Uhagarariye Ubushinjacyaha avuga ko ubushya bw'inyemezabuguzi FAYIRARA yashikirije umucamanza ubwo yasabaga ko urubanza rusubirishwamo ingingo nshya nta shingiro bufite kubera ko iyo nyemezabuguzi ari we wayikoranye n'uwo avuga wamuhaye akazi, ko aburana mbere yari azi ko iyo nyemezabuguzi iriho, ko nubwo atashoboraga kuyigaragariza Urukiko yakagombye

kuba yaravuze ko iriho kugirango izashakishwe ishyikirizwe Urukiko, ko mu gihe atagaragaza ko itari izwi igihe yaburanaga, nta cyabuza ko yaba yarayihimbye nyuma y'icibwa ry'urubanza, akagerageza guhuza ibyo yaburanishije n'igipapuro yanditse; asoza avuga ko asanga icyemezo cy'umucamanza w'ibanzirizasuzuma nta nenge gifite.

UKO URUKIKO RUBIBONA

9. Kubyerekeye impamvu zigomba gushingirwaho kugirango ikirego cyakirwe, ingingo ya 180 y'Itegeko No 13/2004 ryo kuwa 15/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakoreshwaga igihe ikirego cyatanzwe, iteganya ko : "Gusubirishamo urubanza rw'inshinjabyaha rwaciwe burundu ingingo nshya bishobora gusabwa ku nyungu z'umuntu wese wahamijwe icyaha cy'ubugome cyangwa gikomeye iyo :

1º umuntu amaze gucibwa urubanza rw'uko yicanye, hanyuma hakaboneka ibimenyetso bihagije byemeza ko uwo bakeka ko yishwe atapfuye;

2º bamaze gucira umuntu urubanza ku cyaha yashinjwaga, hakaboneka urundi rubanza nk'urwo rwahannye undi muntu kuri icyo cyaha izo manza zombi zivuguruzanya kandi zigaragaza ko umwe mu bakatiwe yarenganye;

3º umwe mu batangabuhamya yahaniwe kuba yarabeshyeye uwahanwe kandi urubanza rumuhana rwaramaze gucibwa;

4º n'iyo bamaze guca urubanza, hakaboneka ibimenyetso bitagaragaye mbere byerekana ko uwakatiwe yatsinzwe azize akarengane ".

10. Urukiko rurasanga icyemezo cy'ibanzirizasuma No RP 0410/09/Pré-ex/CS cyo kuwa 26/10/2009 kigaragaza

ko impampamvu zatanzwe na FAYIRARA yamenye nyuma y'icibwa ry'urubanza, yita nshya, umucamanza yashingiyeho afata icyemezo ari : 1) Ko amafaranga aregwa yatanzwe n'uwitwa Bellancille wayashyiriye iwabo ayakuye k'uwo bita KAYIRANGA, 2) Ko ayo mafaranga yakorewe ahitwa mu Mwaga k'uwo bita KARINDA Antoine wari wahawe akazi na KAYIRANGA, 3) Ko inyito y'icyaha aregwa yahinduwe hakabaho no guhindagura amagambo kubyo yavuze bakamwandikira ibyo bashatse, 4) Ko hari umutangabuhamya usobanura uburyo umugambi wo kumufungisha wakozwe n'abawuteguye.

11. Urukiko rurasanga na none mu idosiye y'urubanza hari ibaruwa yo kuwa 26/07/2009, FAYIRARA yandikiye Urukiko rw'Ikirenga asaba gusubirishamo urubanza rwe ingingo nshya, avugamo ko, mu mpamvu ashingiraho ikirego cye harimo kuba "hari na risi (recu) yabonetse atari akibuka ko yaba yari igihari"; iyo nyemezabuguzi (risi /recu) FAYIRARA yagiranye na MUNYANEZA Joseph, yometswe kuri iyo barwa (cote 1, urupapuro rwa 4.). Biragaragara ko umucamanza atayisuzumye bitewe nuko na nyirubwite atayigarutseho mu myanzuro ye ndetse no mu nyandiko yo kuwa 10/03/2010 yandikiye Urukiko yongera kurusaba gusubirishamo urubanza ingingo nshya (cote 1, 2, 3). Ariko kandi niyo umucamanza aza kuyisuzuma yari gusanga atari ikimenyetso gishya, kuko nkuko FAYIRARA abyiyemerera ubwe, yari azi ko iyo nyemezabuguzi (risi /recu) ihari, gusa akaba atarayiburanishije mu nkiko zibanza kuko atari kuyibona, ibi bikaba bishimangira ko iyo nyemezabuguzi (risi /recu) atari ikimenyetso gishya kuko, ikindi ni uko abahanga mu mategeko bavuga ko ikirego gisaba gusubirishamo urubanza ingingo nshya kitakirwa, iyo uregwa yarafite inyemezabuguzi igihe cy'iburanisha, kandi ntanashobore kugaragariza Urukiko impamvu ndakumirwa

zamubujije kugaragariza Urukiko ko iyo nyemezabuguzi yariho,[1] bityo ikimenyetso cyatanzwe na FAYIRARA kikaba kitashingirwaho ngo yemererwe isubirishamo ry'urubanza ingingo nshya.

III. ICYEMEZO CY'URUKIKO

12. Rwemeje ko ubujurire bwa FAYIRARA Ananias ku cyemezo cy'ibanzirizasuma No RP 0410/09/Pré-ex/CS cyo kuwa 26/10/2009 nta shingiro bufite.

13. Rwemeje ko icyemezo cy'ibanzirizasuma No RP 0410/09/Pré-ex/CS cyo kuwa 26/10/2009 kidahindutse.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME NONE KUWA 18/10/2013.

Sé
KAYITESI ZAINABO Sylvie
Perezida

Sé
HATANGIMBABAZI Fabien
Umucamanza

Sé
MUNYANGERI N. Innocent
Umucamanza

Sé
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

[1] *«Est irrecevable la demande en révision fondée sur une facture en possession du requérant lors du procès et qu'il n'allègue pas avoir été dans l'impossibilité de produire au cours des débats.» Reba Michel Franchimont et alii, Manuel de Procédure Pénale, 2ème edn, Bruxelles, Larcier, 2006, p.1200.*

8. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RPA002/GEN/0013/CS

ITARIKI Y'URUBANZA: 08/11/2013

HABURANA:
UBUSHINJACYAHA C/ HAKIZIMANA Augustin

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA - UBUREMERE BW'IMANZA ZACIWE BURUNDU - GUFATA KIMWE URWACIWE KU RWEGO RWA MBERE (INZIRA Z'UBUJURIRE ZARARANGIYE) N'URWACIWE KU RWEGO RWA MBERE NTIRUJURIRIRWE RUGAHINDUKA ITEGEKO.

KAMERE Y'URUBANZA RUSUBIRISHAMO INGINGO NSHYA - KUTAJURIRIRWA KW'IMANZA ZASUBIRISHIJWEMO INGINGO NSHYA - KUTITA KU RWEGO URUBANZA RWACIRIWEHO.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Imanza zaciwe burundu zinganya uburemere hatitawe ku rwego zarangiriyeho, kuko urubanza rwaciwe ku rwego rwa mbere ntirujurirwe cyangwa rukajuririrwa ntirwakirwe rurangizwa kimwe n'urwaciwe ku rwego rwa nyuma.

Icyemezo ku rubanza rusubirishwamo ingingo nshya ntigishobora kujuririrwa kabone niyo urubanza rusubirishwamo ingingo nshya rwaba rwaraciwe ku rwego rwa mbere, ku mpamvu z'uko urubanza rusubirishwamo ruba rwarabaye itegeko kandi ururusubirishamo ingingo nshya rukaba rufata kamere y'urwo rusimbuye bivuze ko narwo ruhita ruba itegeko.

URUKIKO RW'IKIRENGA RUBURANISHA MU RUHAME IMANZA ZA JENOSIDE, RUKIJIJE URUBANZA RPA 0002/GEN/13/CS KU BURYO BUKURIKIRA:

HABURANA:

Uwajuriye :
Ubushinjacyaha

Uregwa:
Hakizimana Augustin, mwene Musaningwe na Nyiransabimana, wavukiye muri Komini Runyinya, Perefegitura ya Butare, utuye i Kamutwa, Kacyiru, Gasabo, mu Mujyi wa Kigali

Ibyaha akurikiranyweho :

- Icyaha cya jenoside
- Icyaha cy'ubuhotozi
- Icyaha cyo kurema umutwe w'abagizi ba nabi
- Icyaha cyo kuyogoza igihugu

I. IMITERERE Y'URUBANZA:

[1] Hakizimana Augustin yahamijwe ibyaha byavuzwe haruguru usibye icyo kuyogoza igihugu mu rubanza RP 209/CSK rwo kuwa 06/04/2001 rwaciwe n' Urukiko rwa Mbere rw'Iremezo rwa Kigali, urugereko rwihariye ruburanisha imanza z'ibyaha by'itsembabwoko n'itsembatsemba n'ibyaha byibasiye inyoko-muntu n'ibindi byaha bifitanye isano, ahanishwa igihano cyo kwicwa, ategekwa no gutanga indishyi z'akababaro za 10.000.000frw ku bangirijwe n'ubwicanyi yakoze.

[2] Hakizimana yajuririye urwo rubanza mu Rukiko rw'Ubujurire rwa Kigali, rwemeza ko ubujurire bwe nta shingiro bufite. Urwo rubanza yarusabiye iseswa mu Rukiko Rusesa Imanza, nyuma y'ivugururwa ry'inzego z'ubucamanza ikirego cye kiburanishwa

n'Urukiko rw'Ikirenga ruvuguruwe, rwemeza ko ikirego cye kitakiriwe kuko cyaje mu nzira zidakurikije amategeko.

[3] Hakizimana yasubirishijemo ingingo nshya urubanza RP 209/ CSK mu Rukiko Rwisumbuye rwa Gasabo, avuga ko nyuma yo gucibwa urubanza hari abantu byagaragaye ko bakiriho n'abandi bapfuye nyuma ya jenoside kandi yarahaniwe ko yabishe muri jenoside. Yavugaga kandi ko hari abo yahamijwe ko yishe nyamara Inkiko Gacaca zarahamije abandi bantu icyaha cyo kwica abo bantu, abo bantu bakaba bataramushinje ko bafatanyije. Yanavugaga ko hari n'abatangabuhamya bamushinjura ko nta ruhare yagize muri jenoside.

[4] Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza RP/GEN 0001/10/TGI/GSBO kuwa 02/02/2012, rwemeza ko ikirego cya Hakizimana gifite ishingiro ku byerekeye umugore wa Célestin yashinjwaga ko yishe kandi yarapfuye urupfu rusanzwe nyuma ya jenoside, na Ndayisenga Bernard ukiriho. Rwemeje ariko ko izindi ngingo yatanze zishingiye ku manza zaciwe n'inkiko gacaca zo mu murenge wa Kacyiru, n'ubuhamya bw'abantu batandukanye zimuhanaguraho urupfu rw'abandi bantu ashinjwa ko yagize uruhare mu rupfu rwabo nta shingiro zifite.

[5] Hakizimana yajuririye urwo rubanza mu Rukiko Rukuru. Ubushinjacyaha bubyutsa inzitizi y'iburabubashabuvuga ko urubanza rwasubirishijwemo ingingo nshya rutajuririrwa, urukiko rwemeza mu rubanza rubanziriza urundi rwo kuwa 08/02/2013 ko iyo nzitizi nta shingiro ifite.

[6] Rwasobanuye ko urubanza rwasubirishijwemo ingingo nshya rujuririrwa rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku rwego rwa mbere kuko rwafashe kamere y'urwa mbere rwaciwe ku rwego rwa mbere, ko rero nta cyarubuza kujuririrwa mu Rukiko Rukuru kuko itegeko rigena imiterere, imikorere n'ububasha by'inkiko riha Urukiko Rukuru ububasha bwo kuburanisha mu bujurire imanza zaciwe n'Urukiko Rwisumbuye ku rwego rwa mbere.

[7] Ku bijyanye n'imanza Ubushinjacyaha bwari bwatanze nk'ikimenyetso cy'uko urubanza ruciwe ku kirego cyo

gusubirishamo urubanza ingingo nshya rutajuririrwa hagendewe ku murongo watanzwe n'Urukiko rw'Ikirenga, rwavuze ko zitakwifashishwa muri uru rubanza kuko atari imanza z'inshinjabyaha, zikaba zaraciwe ku rwego rwa nyuma, ku buryo nta handi zajuririrwa, ibyo bikaba bitandukanye n'uru rubanza rwaciwe ku rwego rwa mbere.

[8] Rwavuze kandi ko ingingo ya 193 y'itegeko n°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ibuza kujuririra urubanza rwasubirishijwemo ingingo nshya, itashingirwaho muri uru rubanza kuko ikurikizwa mu manza nshinjabyaha iyo nta tegeko ryihariye rihari, akaba atariko bimeze muri uru rubanza kuko ibyo gusubirishamo urubanza ingingo nshya biteganyijwe mu ngingo za 180 kugeza ku ya 183 z'itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'ishinjabyaha, ndetse ibyerekeranye n'ubujurire bw'izo manza bikaba biteganyijwe muri rusange mu itegeko rigena imiterere, imikorere n'ububasha by'inkiko ivuga ko imanza z'inshinjabyaha ziciwe ku rwego rwa mbere n'Urukiko Rwisumbuye zijuririrwa mu Rukiko Rukuru.

[9] Nyuma y'urwo rubanza rubanziriza urundi, urubanza rwaburanishijwe mu mizi, urukiko ruca urubanza kuwa 21/06/2013, rwemeza ko Hakizimana agizwe umwere kubyaha byose aregwa, rutegeka ko ahita afungurwa.

[10] Ubushinjacyaha bwajuririye urwo rubanza mu Rukiko rw'Ikirenga kuwa 12/07/2013, buvuga ko Urukiko Rukuru rwirengagije ko ntaho biteganyijwe mu mategeko ko urubanza rwasubirishijwemo ingingo nshya rujuririrwa.

[11] Urubanza rwaburanishijwe mu ruhame kuwa 07/10/2013, Hakizimana yunganiwe na Me Murinzi Jean de Dieu, Me Mutarindwa Félix na Me Protais Mutembe, naho Ubushinjacyaha buhagarariwe na PN Ruberwa Bonaventure.

II. <u>ISESENGURA RY'IBIBAZO BIGIZE URU RUBANZA</u>:

A. Kumenya niba ubujurire bw'Ubushinjacyaha butagomba kwakirwa

[12] Abunganira Hakizimana batanze inzitizi yo kutakira ikirego cy'Ubushinjacyaha bavuga ko butemerewe kujurira *à titre principal* icyemezo cy'urukiko cyemeza ko rufite ububasha bwo kuburanisha urubanza, ndetse ko ikirego cyabwo kitagombaga kwandikwa mu gitabo cy'ibirego, bakaba basaba uru rukiko gukosora ikosa ryakozwe n'Umwanditsi Mukuru w'Urukiko rw'Ikirenga.

[13] Basobanura ko iyo nzitizi bayishingira ku ngingo ya 18 n'iya 90 z'itegeko n°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[14] Ubushinjacyaha buvuga ko iyo nzitizi nta shingiro ifite kuko ntaho ziriya ngingo z'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano zibuza kujuririra iburabubasha, ahubwo zisobanura ko iyo urukiko rwemeje ko rufite ububasha, icyo cyemezo kijuririrwa hamwe n'urubanza mu mizi, bivuze ko ikibujijwe ari ukujuririra urubanza rubanziriza urundi rwemeje ko urukiko rufite ububasha, mbere y'uko urubanza mu mizi rucibwa.

[15] Ubushinjacyaha buvuga kandi ko n'ingingo ya 28 y'itegeko-ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga nayo ishimangira ko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha imanza zaciwe n'Urukiko Rukuru mu rwego rw'ubujurire iyo izo manza zaciwe n'urukiko rutabifitiye ububasha.

[16] Ingingo ya 90,2° y'itegeko ryavuzwe ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko "*iyo urukiko rwemeje ko rufite ububasha, umuburanyi utishimiye icyo cyemezo akijuririra hamwe n'urubanza rw'iremezo*", naho iya 18,6° y'iryo tegeko irebana n'ibirego Umwanditsi w'Urukiko adashobora

kwakira ngo abyandike mu bitabo by'Urukiko, ikavuga ko atakira"*ubujurire ku cyemezo cy'urukiko rwemeza ko rufite ububasha bwo kuburanisha*"".

[17] Urukiko rusanga ingingo ya 90, 2°itabuza kujuririra icyemezo cy'urukiko cyemeza ko rufite ububasha bwo kuburanisha urubanza, ahubwo icyo ibuza ari ukukijuririra cyonyine, hadategerejwe icyemezo cyarwo ku birebana n'urubanza mu mizi.

[18] Ku bijyanye n' ingingo ya 18, 6º, Urukiko rusangaiyo irebewe hamwe n'iya 90, 2°, yumvikanisha ko ikirego Umwanditsi w'Urukiko abujijwe kwakira ari ubujurire ku cyemezo cy'urukiko rwemeje ko rufite ububasha kije urubanza mu mizi rutaracibwa.

[19] Urukiko rusanga kandi abunganira Hakizimana mu isesengura bakora ry'ingingo za 18, 6º na 90, 2°birengagiza ko impamvu ituma icyo cyemezo cy'ububasha kigomba kujuririrwa hamwe n'urubanza mu mizi ari uko kiri mu rwego rw'imanza zibanziriza izindi, ingingo ya 162, 2° y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano ikaba ivuga ko kujuririra imanza zibanziriza izindi bikorwa gusa iyo urubanza rw'iremezo rwaciwe kandi bigakorerwa rimwe.

[20] Hashingiwe kuri ibyo bisobanuro, Urukiko rurasanga inzitizi yo kutakira ikirego yatanzwe n'abunganira Hakizimana Augustin nta shingiro ifite, hakaba hagomba gusuzumwa ubujurire bwatanzwe n'Ubushinjacyaha.

B. Kumenya niba Urukiko Rukuru rutari rufite ububasha bwo kwakira ubujurire ku rubanza Hakizimana yasubirishijemo ingingo nshya mu Rukiko Rwisumbuye rwa Gasabo

[21] Ubushinjacyaha buvuga ko urubanza rwaciwe n'Urukiko Rukuru rukwiye guteshwa agaciro kuko ntaho biteganyijwe ko urubanza rwasubirishijwemo ingingo nshya rujuririrwa.

[22] Busobanura ko mu rubanza RS/REV/GEN 0005/07/CS bwaregagamo Rwahama Anaclet, Urukiko rw'Ikirenga rwasobanuye neza ko urubanza rusubirishijwemo ingingo nshya rufata kamere y'urwasubirishijwemo, bityo narwo rukaba ruhita ruba itegeko ntirube rucyongeye kujuririrwa, ndetse ko hari n'izindi manza nyinshi zashimangiye uwo murongo nka RADA 0026/10/CS (Nzabandora Alex Vs Leta y'u Rwanda), RCAA 0065/09/CS (Mulemba Vs Kabona Justin) na RCOMA 001/06/CS (Nzabamwita Emmanuel Vs SONARWA), Urukiko Rukuru rukaba rwaragombaga kugendera muri uyu murongo kuko ibyemezo by'Urukiko rw'Ikirenga bigomba kubahirizwa n'izindi nkiko.

[23] Buvuga kandi n'ubwo itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryariho igihe urubanza rwacibwaga mu Rukiko Rukuru ntacyo ryavugaga ku byerekeye ubujurire bw'imanza zasubirishijwemo ingingo nshya, Urukiko rukuru rwari no gushingira ku itegekon°21/2012 ryo kuwa 14/06/2012ryerekeye imiburanishirize y'imanza z'imbonezamubano, ivuga mu ngingo yaryo ya 192 ko icyemezo cyafashwe mu gusubirishamo urubanza ingingo nshya kitemera inzira z'ubujurire izo arizo zose.

[24] Abunganira uregwa bavuga ko ingingo ya 192 Ubushinjacyaha buburanisha ntaho ihuriye n'ibyo aburanisha kuko ivuga gusa ko gusubirishamo urubanza ingingo nshya bidashoboka iyo urwo rubanza rwigeze gusubirishwamo ingingo nshya "révision sur révision ne vaut".

[25] Bavuga kandi ko ingingo ya 373,3° y'itegeko n° 21/2012 ryo kuwa 14/06/2012 rigenga imiburanishirize y'imanza z'imbonezamubano, ivuga ko iryo tegeko ridakurikizwa iyo ribangamiye uburenganzira bw'umuburanyi yari afite mbere y'uko rijyaho, ko rero Urukiko rutagomba gushingira kuri iryo tegeko kuko ryaba rirenganya Hakizimana.

[26] Ku bijyanye n'imanza zatanzwe n'Ubushinjacyaha mu rwego rwo gusobanura ikirego cyabwo, bavuze ko ntaho zihuriye n'urubanza rwa Hakizimana kuko zo zari zaraburanishijwe ku

rwego rwa nyuma, mu gihe uru rwaburanishijwe ku rwego rwa mbere, hakaba nta cyabuza ko rujuririrwa.

[27] Bavuga kandi ko Urukiko rw'Ikirenga nk'urukiko rukuriye izindi, rwazanashingira ku kuri rukarenganura Hakizimana bitabaye ngombwa gutsimbarara ku bintu byanditse kandi umuntu arengana, ngo kuko ariko bigenda muri "common law"kandi n'u Rwanda rukaba ariho ruri kwerekeza.

Uko urukiko rubibona:

[28] Urukiko rw'Ikirenga mu manza nyinshi[1] zaciwe hagikurikizwa itegeko nº13/2004 ryagengaga imiburanishirize y'imanza z'inshinjabyaha n'itegeko n ° 18/2004 ryo kuwa 20/06/2004 ryagengaga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi rwasobanuye ko nubwo ayo mategeko atabisobanuraga mu buryo bweruye, imanza zasubirishijwemo ingingo nshya zitajuririrwa kubera ko ''révision'' ari uburyo budasanzwe buha umucamanza inzira yo kwisubiraho (rétractation) iyo habonetse impamvu mu zo itegeko riteganya, igaragaza ko urubanza rwari gucibwa mu bundi buryo iyo ruburanishwa iyo mpamvu izwi, ariko ko butagamije kongera gufungura ubujurire bwarangiye ku rubanza rwaciwe burundu kuko urubanza rusubirishijwemo rufata kamere y'urwo rusimbuye, narwo ruba rwaraciwe burundu.

[29] Urukiko rusanga ibyo Urukiko Rukuru rwavuze ko umurongo watanzwe n'Urukiko rw'Ikirenga warebaga gusa imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nta shingiro bifite kuko hari imanza z'inshinjabyaha zaciwe kuri icyo kibazo, urugero akaba ari urubanza Ubushinjacyaha bwaregagamo Rwahama Anaclet rwaciwe kuwa 24/07/2009[2] rwasobanuyemo ko nta rukiko

[1] *RADA 0026/10/CS (Nzabandora Alex Vs Leta y'Urwanda), RCAA 0065/09/CS (Mulemba Vs Kabona Justin), RCOMA 001/06/CS (Nzabamwita Emmanuel Vs SONARWA.*

[2] *RS/REV/GEN 0005/07/CS (MP vs Rwahama Anaclet).*

itegeko ngenga rigena imiterere, imikorere n'ububasha by'inkiko rwahaye ububasha bwo kujuririrwa imanza zasubirishijwemo ingingo nshya. Ikindi kandi nta mpamvu ishingiye ku mategeko yari gutuma hemezwa ko imanza z'inshinjabyaha zasubirishijwemo ingingo nshya zishobora kujuririrwa, mu gihe nyamara bidashoboka ko imanza z'imbonezamubano zisubirishijwemo ingingo nshya zijuririrwa.

[30] Urukiko rusanga n'ibyo Urukiko Rukuru rwavuze ko umurongo watanzwe n'Urukiko rw'Ikirenga warebaga gusa imanza zaciwe ku rwego rwa nyuma ntaho bishingiye kuko n'ubundi imanza zaciwe ku rwego rwa nyuma ziba zitagishobora kujuririrwa mu nzira zisanzwe.

[31] Urukiko rusanga kandi imanza zaciwe burundu ziba zinganya uburemere hatitawe ku rwego zarangiriyeho kuko urubanza ruciwe ku rwego rwa mbere ntirujuririrwe, cyangwa rukajuririrwa ariko ubujurire ntibwakirwe rurangizwa kimwe n'urwaciwe ku rwego rwa nyuma, kuba rero urubanza rusubirishijwemo ingingo nshya rufata kamere y'urwo rusimbuye, ibyo byumvikanisha ko rudashobora kongera kujuririrwa nubwo rwaba rwaraciwe ku rwego rwa mbere kuko n'urwo rusimbuye rwari rwarangije kuba itegeko.

[32] Urukiko rusanga umurongo rwafashe ku bijyanye n'ubujurire bw'imanza zasubirishijwemo ingingo nshya waraje no gushimangirwa n'itegeko n° 21/2012 ryo kuwa 14/06/2012 rigenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryasohotse mu igazeti ya Leta mbere y'uko Urukiko Rukuru rufata icyemezo cyarwo, ivuga mu ngingo yaryo ya 193 ko icyemezo gifashwe mu gusubirishamo urubanza ingingo nshya nta na rimwe kijuririrwa cyangwa ngo gisubirwemo, ibi nabyo bikaba byumvikanisha ko urubanza rwasubirishijwemo ingingo nshya ruba ruciwe burundu nk' urwo rusimbuye.

[33] Urukiko rusanga nanone uwo murongo waraje no gushimangirwa n'Itegeko-Ngenga n°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko

rw'Ikirenga ryasohotse mu igazeti ya Leta kuwa 09/07/2012 mbere y'uko Urukiko Rukuru rufata icyemezo cyarwo, ivuga mu ngingo yaryo ya 34,11° ko Umwanditsi Mukuru adashobora kwakira ikirego cy'ubujurire ku rubanza rwasubirishijwemo ingingo nshya, ibi nabyo bikaba byumvikanisha ko bene izo manza (ari iz'imbonezamubano, ari n'iz'inshinjabyaha) zitajuririrwa kuko nta mpamvu yatuma ubujurire budashoboka mu Rukiko rw'Ikirenga ariko bugashoboka mu nkiko zo hasi.

[34] Ku bijyanye n'ibyo ababuranira Hakizimana bavuga ko urukiko rwareba ahari ukuri ntirwite ku bintu byanditse gusa nk'uko bigenda muri "common law", urukiko rusanga nta shingiro bifite kuko uretse no kuba muri "common law" batirengagiza imanza zaciwe n'amategeko akurikizwa, ntaho ikibazo gisuzumwa muri uru rubanza gihuriye no kumenya niba uregwa ahamwa n'icyaha cyangwa kitamuhama, ahubwo igisuzumwa ni ububasha bw'Urukiko Rukuru ku bujurire bw'urubanza rwasubirishijwemo ingingo nshya mu Rukiko Rwisumbuye.

[35] Hashingiwe kuri ibyo bisobanuro byose rero, uru rukiko rurasanga Urukiko Rukuru nta bubasha rwari rufite bwo kuburanisha mu bujurire urubanza rwasubishijwemo ingingo nshya mu Rukiko Rwisumbuye.

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

[36] **Rwemeje** ko ubujurire bw'Ubushinjacyaha bufite ishingiro.

[37] **Rwemeje** ko Urukiko Rukuru rutari rufite ububasha bwo kwakira ubujurire bw'urubanza RP/GEN 0001/10/TGI/GSBO rwaciwe kuwa 02/02/2012.

[38] **Rwemeje** ko urubanza RPA/GEN/0001/12/HC/KIG ruteshejwe agaciro.

[39] **Ruvuze** ko amagarama y'urubanza aherera ku isanduku ya Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 08/11/2013

Sé
KAYITESI ZAINABO Sylvie
Perezida

Sé
NYIRINKWAYA Immaculée
Umucamanza

Sé
MUKAMULISA M. Thérèse
Umucamanza

Sé
MUNYANDAMUTSA Jean Pierre
Umwanditsi w'Urukiko

IMANZA Z'UBUCURUZI

9. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: R.COMA0087/11/CS

ITARIKI Y'URUBANZA: 19/04/2013

HABURANA:

GAKIRE Kabeho Viviane C/ SONARWA S.A

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI - UBWISHINGIZI BW'IKINYABIZIGA BWIHARIYE - KUTAGOBOKWA N'UMWISHINGIZI IYO KIGIZE IMPANUKA UGITWAYE HARI IBYO ATUJUJE BITEGANYWA N'AMATEGEKO ASANZWE .

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Kuba utunze ikinyabiziga yarafashe ubwishingizi bwihariye (tous risques) ubwabyo ntibihagije kugira ngo agobokwe n'umwishingizi we igihe uwari utwaye ikinyabiziga gikora impanuka atari yujuje ibyangombwa bisabwa n'amategeko ashyiraho amabwiriza rusange agenga imihanda n'uburyo bwo kuyigendamo (nk'uruhushya rwo gutwara imodoka) .

URUKIKO RW'IKIRENGA RUBURANISHA MU RUHAME IMANZA Z'UBUCURUZI, RUCIYE KUWA 19/04/2013 URUBANZA MU BURYO BUKURIKIRA:

UWAJURIYE:

GAKIRE KABEHO Viviane, utuye mu Nyakabanda, Umurenge wa Niboye, Akarere ka Kicukiro, Umujyi wa Kigali.

UREGWA:

Société Nouvelle d'Assurance du Rwanda s.a (SONARWA) mu izina ry'uyihagarariye.

IKIREGERWA:

- Condamner la SONARWA au paiement de 38.000.000 Frw pour la valeur assurée du véhicule en vertu du contrat d'assurance omnium du véhicule ;
- Rembourser les frais utilisés pour le transport de Gakire après l'accident jusqu'au jour du jugement définitif ;
- Dommages et intérêts résultant du refus d'exécution du contrat ;
- Frais de consignation et de procédure ; honoraires d'avocat.

I. IMITERERE Y'URUBANZA

1. Gakire Kabeho Viviane yakoranye na SONARWA amasezerano y'ubwishingizi bw'imodoka ye yo mu bwoko bwa ''assurance tous risques''. Iyo modoka yagize impanuka kuwa 01/04/2009

itwawe n'umugabo we Muzale Jude irangirika cyane. Gakire avuga ko yabanje kugirana imishyikirano na SONARWA kumvikana ku mafaranga yagombaga kumwishyura ariko ntibashobora kumvikana, asaba SONARWA ko hashyirwaho umuhanga wakwemeza agaciro imodoka yari ifite, ivuga ko igiye kubitekerezaho ariko ntiyagira igisubizo itanga, ahubwo kuwa 16/09/2009 Gakire ahabwa ibaruwa ya SONARWA ivuga ko ntacyo ishobora kumumarira hashingiwe ku biteganywa n'ingingo ya 24 (6) y'amasezerano rusange y'ibinyabiziga bigenzwa na moteri ku butaka ya SONARWA, kuko imodoka yari itwawe n'umuntu utabifitiye uburenganzira bugenwa n'amategeko.

2. Gakire yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi ruca urubanza kuwa 12/07/2011, rwemeza ko ikirego cye nta shingiro gifite rubishingiye ko Muzale Jude wari utwaye imodoka yakoze impanuka nta ruhushya rwo gutwara imodoka afite. Rwategetse Gakire kwishyura SONARWA 300.000 Frw y'indishyi zo kuyishora mu manza na 300.000 Frw y'igihembo cya ''avocat ''.

3. Mu gufata icyo cyemezo, Urukiko rwavuze ko rutaha agaciro uruhushya rwo gutwara ibinyabiziga nº D/P 311123 Muzale yagaragaje kuko inyandiko za Uganda Police na Uganda Revenue Authority zigaragaza ko urwo ruhushya rutanditse mu bitabo byabo, ko kandi muri ''déclaration d'accident'' Muzale yakoze kuwa 03/04/2009, iminsi ibiri nyuma y'impanuka, yiyemereye ko nta ruhushya rwo gutwara ibinyabiziga agira, ibyo bikaba bihuje n'imvugo ikubiye mu nyandikomvugo y'impanuka yakozwe kuwa 27/04/2009 aho Umugenzacyaha yemeje ko nta ruhushya rwo gutwara ibinyabiziga Muzale afite.

4. Urukiko rwavuze kandi ko niba yari yibagiwe uruhushya

umunsi w'impanuka, yari kubivuga ako kanya cyangwa akabivuga igihe yamenyekanishaga impanuka muri SONARWA, akanabibwira Umugenzacyaha wakoze inyandikomvugo ya mbere mu gihe gisobanutse (délai raisonable) aho gutegereza amezi hafi abiri kugira ngo agaragaze urwo ruhushya rwatangiwe i Bugande, ko rero rushingiye kubyavuzwe byose, rutaha agaciro inyandikomvugo y'inyongera ivuga ko Muzale afite uruhushya rwo gutwara ibinyabiziga, cyane cyane ko atabashije kuvuguruza ikimenyetso cyatanzwe na SONARWA.

5. Gakire yajuririye mu Rukiko rw'Ikirenga avuga ko Urukiko rwasuzumye ikibazo cy'uruhushya rwo gutwara ibinyabiziga gusa ariko ntirwasuzuma ibyo amasezerano y'ubwishingizi yo mu bwoko bwa ''tous risques'' ateganya, ko kandi urukiko rwashingiye ku kimenyetso cyatanzwe na SONARWA kirebana n'iperereza yakoze mu gihugu cya Ugande ku ruhushya rwo gutwara ibinyabiziga rwa Muzale kandi kidakurikije imihango iteganywa n'itegeko ku byerekeye inyandiko mpimbano.

6. Urubanza rwaburanishijwe mu ruhame kuwa 14/03/2013, Gakire aburanirwa na Me Isaac Bizumuremyi, SONARWA iburanirwa na Me Mugemana J.M Vianney.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba Gakire atarebwa n'ibiteganywa n'ingingo ya 24 (6) ya ''conditions générales" za SONARWA kubera ubwoko bw'ubwishingizi yari afite.

7. Me Bizumuremyi avuga ko urukiko rwasuzumye ikibazo cy'uruhushya rwo gutwara ibinyabiziga cyonyine ariko

ntirwasuzuma ubwoko bw'amasezerano Gakire yari afite kugira ngo rumenye ibyo SONARWA yishingiye n'ibyo itishingiye. Avuga ko ingingo ya 24 (6) ya ''conditions générales'' SONARWA yashingiyeho yanga kugoboka uwo yishingiye ngo kuko uwari utwaye imodoka nta burenganzira buteganywa n'amategeko yari afite, n'ubwo iteganyijwe ku bwishingizi butegetswe ku buryozwe (assurance obligatoire de responsabilité civile), itareba ubwoko bwa assurace ''tous risques'', ko inshingano n'uburenganzira bwa buri ruhande biteganywa mu gice cya kabiri cya ''conditions générales'' mu ngingo za 36-54 hiyongereyeho ingingo za 8,9,11,12,13,27,28,30-35, aho hose hakaba nta havugwa ibikubiye mu ngingo ya 24 (6).

8. Asobanura ko aho ''assurance tous risques'' itandukaniye n'ubundi bwishingizi ari uko iyo nyiri kwishingirwa atari we wakoze amakosa, agobokwa maze umwishingizi akazakurikirana uwagize amakosa nk'uko biteganywa n'ingingo za 26 na 46 za ''conditions générales'' za SONARWA, ko kuba Gakire atari we wari utwaye imodoka, ntacyabuza ko agobokwa maze SONARWA ikazishyuza uwateje impanuka.

9. Me Mugemana avuga ko nk'uko biteganywa n'Itegeko rya Perezida nº 85/01 ryo kuwa 02/09/2002 rishyiraho amabwiriza rusange agenga imihanda n'uburyo bwo kuyigenderamo, umuntu wese utwaye imodoka agomba kuba afite uruhushya rwo gutwara ibinyabiziga, yaba afite ubwishingizi busanzwe cyangwa ubwo mu bwoko bwa ''tous risques'', ko amasezerano rusange ya SONARWA ateganya mu ngingo ya 24 ko iyo imodoka igize impanuka itwawe n'umuntu udafite uruhushya (permis de conduire), umwishingizi ntacyo abazwa, ko n'ingigo ya 61 yayo iteganya '' déchéance '' ku byerekeye ubwishingizi bwa ''tous risques''.

10. Avuga ko mu nyandikomvugo y'impanuka hamwe no mw'imenyekanisha ryayo, Muzale wari utwaye imodoka yemeye ko nta ruhushya rwo gutwara ibinyabiziga yari afite, akaba yararuzanye nyuma y'amezi abiri mu gihe Itegeko ryavuzwe haruguru riteganya ko umuntu agomba kuba afite urwo ruhushya kandi arwitwaje (être titulaire et porteur), ko kandi iperereza SONARWA yakoze ryagaragaje ko urwo ruhushya Muzale yagaragaje nyuma rutazwi mu gihugu cya Uganda.

11. Ku kibazo cy'uko ubwishingizi bwa ‘'tous risques'' bugengwa n'ingingo zihariye ko rero hatakurikizwa ingingo ya 24 (6) ivuga iby'uruhushya rwo gutwara ibinyabiziga, Me Mugemana avuga ko ingingo zihariye nazo zigomba kuba zihuje n'itegeko, ko rero ingingo irebana n'uruhushya rwo gutwara ibinyabiziga ireba buri wese, haba mu bwishingizi busanzwe cyangwa mu bwishingizi bwa ‘'tous risques''.

12. Ku bivugwa n'uburanira Gakire ko SONARWA yagombaga kumwishyura igakurikirana uwakoze amakosa, Me Mugemana avuga ko Muzale ari umugabo wa Gakire, ko rero atatwaye imodoka ayibye ahubwo yayitwaye umugore abizi.

UKO URUKIKO RUBIBONA :

13. Ingingo ya 24 (6) y'amasezerano rusange y'ubwishingizi bw'ibinyabiziga (conditions générales de la police d'assurance automobile) SONARWA yashingiyeho imenyesha Gakire ko ntacyo yamumarira ku birebana n'impanuka imodoka ye yagize, iri mu mutwe wa gatanu w'igice cya mbere kirebana n'ubwishingizi butegetswe ku buryozwe, ikaba iteganya ko SONARWA ishobora gukoresha uburenganzira ihabwa

n'ingingo[1] ya 22 iyo mu gihe cy'impanuka ikinyabiziga cyari gitwawe n'umuntu utabifitiye uburenganzira bugenwa n'amategeko.

14. N'ubwo iyo ngingo ya 24 iri mu mutwe urebana n'ubwishingizi butegetswe ku buryozwe (assurance obligatoire de responsabilité civile), ntacyari kubuza SONARWA kuyishingiraho ku byerekeye ubwishingizi bwa ''tous risques'' Gakire yari afite kuko ingingo ya 39 y'amasezerano rusange y'ubwishingizi bw'ibinyabiziga iteganya ko *"Uwishingiwe nta burenganzira afite ku bwishingizi bw'ikinyabiziga ubwacyo mu gihe hari impamvu iteganywa n'itegeko cyangwa n'ingingo iyo ari yo yose y'igice cya mbere cy'izi ngingo rusange yari gutuma SONARWA itamugoboka mu bwishingizi bw'uburyozwe cyangwa imwishyuza indishyi yamutangiye".*

15. Byongeye kandi, hashingiwe ku biteganywa n'iyo ngingo, SONARWA yashoboraga no gushingira ku biteganywa n'itegeko rya Perezida nº 85/01 ryo kuwa 02/09/2002 rishyiraho amabwiriza rusange agenga imihanda n'uburyo bwo kuyigenderamo, aho mu ngingo yaryo ya 6 riteganya ko *"ntawe ushobora gutwara ikinyabiziga kigendeshwa na moteri mu nzira nyabagendwa adafite kandi atitwaje uruhushya rwo gutwara ibinyabiziga rwatanzwe na Polisi y'igihugu".*

16. Urukiko rurasanga kandi imiburanire y'uhagarariye Gakire

[1] *Ingingo ya 22 : Uretse ibivugwa mu ngigo ya 23, igihe cyose uwishingiwe atubahirije amasezerano atakaza uburenganzira bwo kugobokwa. Ariko iyo SONARWA igomba kwishyura abangijriwe (uko byagenda kose kubera amategeko ariho), ifite uburanginzira bwo kwishyuza uwishingiwe ibyo yamutangiye, bitayibujije ndetse n'ubundi burenganzira bwose yaba imufiteho.SONARWA ikurikirana uwishingiwe ku ndishyi zose yamutangiye, n'ibindi byose yatakaza, ndetse n'amagarama y'urukiko.*

y'uko SONARWA yagombaga kumwishyura nyuma igakurikirana uwakoze amakosa, nta shingiro ifite kuko ingingo za 26 na 46 z'amasezerano rusange y'ubwishingizi ashingiraho zirebana n'igihe impanuka yatejwe n'undi muntu, aho SONARWA ishobora kumukurikirana ku ndishyi yishyuye uwo yishingiye, izo ngingo zikaba rero zitakurikizwa ku birebana n'impanuka imodoka ya Gakire yakoze kuko itatejwe n'undi muntu. Kuba kandi atari Gakire wateje impanuka, Urukiko rurasanga ntacyo byahindura ku bimaze kuvugwa kuko atabashije kugaragaza ko yari yayibwe cyangwa ko yatwawe n'uwo atari yabihereye uburenganzira**.**

2. Ku kibazo cy'uko urukiko rwashingiye ku kimenyetso kitakurikije imihango yo kwemeza ko ari igihimbano.

17. Me Bizumuremyi avuga ko Urukiko rwashingiye ku Itegeko ryo mu 1913 ryerekeye abacuruzi n'ibimenyetso by'inshingano z'ubucuruzi yirengagiza itegeko ryo muri 2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo yaryo ya 46 igateganya ko uvuga ko inyandiko yatanzweho ikimenyetso ari impimbano, ashobora kuregera ko ari impimbano hagafatwa icyemezo hifashishijwe inzego z'iperereza.

18. Asobanura ko SONARWA yazanye ikibazo mu rukiko itabanje kubahiriza ibiteganywa n'ingingo ya 47 y'itegeko ryavuzwe haruguru, ko rero urukiko rutagombaga gushingira ku mvugo ya SONARWA kandi nta rwego rufite ububasha rwemeje ko ruriya ruhushya rwo gutwara ibinyabiziga ari uruhimbano. Na none kandi, ngo SONARWA ntiyagaragaje uburyo yakoze iperereza, nk'inzandiko yandikiye Uganda Revenue Authority na Police y'icyo gihugu zigaragaza ko zakiriwe n'uburyo yasubijwe kuko niba Muzale ashobora kubona uruhushya rw'impimbano, ntacyabuza SONARWA kubona impapuro

yatanzeho ikimenyetso kuko ifite ubushobozi buruta ubwa Muzale.

19. Akomeza avuga ko ku birebana n'uruhushya rwo gutwara imodoka, basobanuye ko igihe cy'impanuka, Muzale yabwiye abaje gukora iperereza ko uruhushya yarwibagiriwe mu rugo, ariko ahita ajyanwa kwa muganga kuko yari yakomeretse, mu minsi itatu agiye kumenyekanisha impanuka yerekana urwo ruhushya hakorwa inyandikomvugo y'inyongera, ko kandi umucamanza yagombaga kwemera ibivugwa muri iyo nyandiko.

20. Me Mugemana avuga ko urukiko rutari rutegetswe kwemera ibikubiye mu nyandikomvugo y'inyongera kuko umucamanza afite ububasha busesuye ahabwa n'amategeko bwo kuba yakwemera inyandiko cyangwa akayanga ko kandi SONARWA yamenye iby'uruhushya Muzale yatanze nyuma kubera imikoranire ifitanye n'andi masosiyete yo muri East African Community kandi ko iryo perereza ryatewe n'uko mu nyandikomvugo y'impanuka no mu nyandiko imenyekanisha impanuka, Muzale yavuze ko nta ruhushya rwo gutwara ibinyabiziga afite, nyuma y'amezi abiri arahindura avuga ko arufite ariko inzego zo mu gihugu cya Uganda zivuga ko zitaruzi. Akomeza avuga ko bitari ngombwa gukomeza dosiye y'inshinjabyaha, ko kandi mu rwego rw'ubucuruzi, ibimenyetso byose byemewe (la preuve est libre).

UKO URUKIKO RUBIBONA

21. Nk'uko bigaragara mu rubanza rwajuririwe, nta nyandiko Urukiko rwemeje ko ari impimbano nk'uko uburanira Gakire abivuga, icyakozwe ahubwo akaba ari uko rwahaye agaciro ibyavuye mu iperereza SONARWA yakoze mu gihugu cya Uganda igamije kumenya niba koko Gakire yari

afite uruhushya rwo gutwara ibinyabiziga igihe yakoraga impanuka. Urukiko rwagereranyije ibyavuye muri iryo perereza n'ibikubiye mu nyandiko yo kumenyekanisha impanuka hamwe no mu nyandikomvugo y'impanuka yakozwe kuwa 27/04/2009, zose zigaragaza ko nta ruhushya rwo gutwara ibinyabiziga Muzale yari afite, rubishingiraho rwanga guha agaciro inyandikomvugo y'inyongera ivuga ko Muzale afite urwo ruhushya.

22. Urukiko rurasanga kandi ikimenyetso SONARWA yagaragaje cyaratanzwe n'inzego zizwi kandi zizewe zo mu gihugu cya Uganda, zemeje ko uruhushya Muzale yagaragaje rutazwi muri izo nzego (no record), bityo mu gihe nta kigaragaza ko ibyo izo nzego zavuze atari ukuri, ntacyari kubuza Urukiko kubiha ishingiro.

23. Ku birebana n'uko Muzale yari yibagiwe uruhushya rwo gutwara ibinyabiziga mu rugo igihe yakoraga impanuka, Urukiko Rukuru rwasobanuye impamvu iyo miburanire itahabwa agaciro nk'uko byibukijwe mu gika cya kane cy'uru rubanza, uburanira Gakire akaba ntacyo yagaragaje cyatuma ibisobanuro urukiko rwatanze byamburwa agaciro, cyane ko atabashije gusobanura impamvu igihe yamenyekanishaga impanuka muri SONARWA kuwa 03/04/2009 yavuze ko nta ruhushya rwo gutwara ibinyabiziga afite (sans permis de conduire), ibi bikaba bivuguruza imvugo y'uko igihe cy'impanuka yari yarwibagiriwe mu rugo.

24. Hashingiwe rero ku byasobanuwe byose, Urukiko rurasanga impamvu z'ubujurire bwa Gakire Kabeho nta shingiro zifite, bityo urubanza rwajuririwe rukaba rudahinditse.

III. ICYEMEZO CY'URUKIKO

25. Rwemeje ko ubujurire bwa Gakire Kabeho Viviane nta shingiro bufite ;

26. Rwemeje ko urubanza rwajuririwe rudahindutse ;

27. Rutegetse Gakire Kabeho Viviane gutanga amagarama y'urubanza angana na 28.600 Frw, atayatanga mu gihe cy'iminsi umunani, ayo mafaranga akavanwa mu bye ku ngufu za Leta.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME KUWA 19/04/2013.

Sé
KAYITESI R.Emily
Perezida

Sé
MUKANDAMAGE M. Josée
Umucamanza

Sé
KANYANGE Fidélité
Umucamanza

Sé
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

10. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: R.COMA0006/13/CS

ITARIKI Y'URUBANZA: 01/10/2013

HABURANA:

CAF ISONGA Ltd C/ KABUNDI Joseph

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI - UBUBASHA BW'URUKIKO RW'IKIRENGA MU KUBURANISHA IBIREGO BYIHUTIRWA - IYO HARI URUBANZA RW'IREMEZO RWAREGEWE.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Mu gihe hari urubanza rw'iremezo rwaregewe Urukiko rw'Ikirenga, hari ikigomba kwemezwa by'agateganyo muri urwo rubanza mu gihe rutaraburanishwa, ubwabyo birahagije kugira ngo Urukiko rw'Ikirenga rugire ububasha bwo kuburanisha ikirego cyihutirwa rwashyikirijwe, si ngombwa kandi ko kiba cyatanzwe n'uwajuriye gusa.

URUKIKO RW'IKIRENGA RUBURANISHA IMANZA Z'UBUCURUZI, RUKIJIJE MU RUHAME URUBANZA RCOM 0006/13/CS KUWA 01/10/2013 MU BURYO BUKURIKIRA:

ABABURANYI

Urega: CAF ISONGA Ltd, mu izina ry'uyihagarariye, ifite icyicaro i Muhanga, mu Ntara y'Amajyepfo.

Uregwa: KABUNDI Joseph, mwene NZARUBARA Augustin, na MUKANGWIJE Vénéranda, utuye mu Mudugudu wa Kamugina, Akagali ka Gahogo, Umurenge wa Nyamabuye, Akarere ka Muhanga, Intara y'Amajyepfo.

IKIBURANWA: Ikirego cyihutirwa gisaba gufatira amafaranga 2.900.000 KABUNDI Joseph yishyuza CAF ISONGA LTD, kubera urubanza RSOCA 0007/11/HC/NYA mu gihe urubanza RCOMA 0127/12/CS rutaracibwa.

I. IMITERERE Y'URUBANZA

[1] CAF ISONGA yaburanye na KABUNDI Joseph wahoze ari umukozi wayo, itsindirwa amafaranga 2.900.000 mu rubanza RSOCA 0007/11/HC/NYA rwaciwe n'Urukiko Rukuru, urugereko rwa Nyanza.

[2] Ku rundi ruhande CAF ISONGA nayo yareze KABUNDI Joseph mu Rukiko Rukuru rw'Ubucuruzi isaba ko ayishyura umwenda ungana na 26.301.221 Frw n'inyungu zawo ayirimo ukomoka ku nguzanyo y'imodoka yamuhaye, urukiko rwemeza ko agomba kwishyura 7.549.499 Frw, ajuririra Urukiko rw'Ikirenga urubanza ruhabwa n^{o} RCOMA 0127/12/CS.

[3] Mu gihe urwo rubanza rutaraburanishwa, CAF ISONGA yatanze ikirego cyihutirwa isaba ko urukiko rufatira amafaranga 2.900.000 Frw KABUNDI Joseph arimo kuyishyuza yavuzwe haruguru, ngo kuko iramutse imutsinze, atazashobora kuyishyura.

[4] Urubanza rwaburanishijwe mu ruhame tariki ya 24/09/2013, CAF ISONGA iburanirwa na Me NGENDAHIMANA Alphonse, KABUNDI Joseph yunganiwe na Me MINYATI RUGAMBA Jacob.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO :

Kumenya niba ikirego cyihutirwa cyatanzwe na CAF ISONGA cyakwakirwa.

[5] Iburanisha ritangiye, KABUNDI n'umwunganira bavuze ko hari inzitizi zituma ikirego cyihutirwa cya CAF ISONGA kigamije gufatira amafaranga 2.900.000 Frw yayitsindiye mu rubanza RSOCA 0007/11/HC/NYA rwaciwe n'Urukiko Rukuru, urugereko rwa Nyanza, kitakirwa ngo gisuzumwe kuko uru rukiko nta bubasha rufite bwo kukiburanisha. Basobanura ko ingingo ya 317 CPCCSA iteganya ibyerekeye abacamanza basuzuma bene ibyo birego, umucamanza wo mu Rukiko rw'Ikirenga akaba atarimo, bakaba basanga ahubwo icyo kirego cyagombye kuba cyaratanzwe

ubwo baburanaga mu Rukiko rw'Ubucuruzi kuko urubanza RSOC 0007/11/HC/NYA rwari rumaze ukwezi rwarabaye itegeko.

[6] Bavuga ko kandi ingingo ya 309 CPCCSA iteganya inkiko zifite ububasha bwo gusuzuma ibirego byerekeye impaka zavutse mu mihango y'ifatira, hakaba hatarimo Urukiko rw'Ikirenga.

[7] KABUNDI n'umwunganira bavuga na none ko nk'uko biteganywa n'ingingo ya 316 CPCCSA, ikirego cyihutirwa kiba cyuririye ku kirego cy'iremezo umuburanyi yatanze, bikaba bitumvikana ukuntu CAF ISONGA itanga ikirego cyuririye ku kirego itigeze itanga, kuko ari we watanze ubujurire, byongeye kandi ngo amafaranga isaba gufatira ntaburanwa mu kirego cy'iremezo, ahubwo ni ayo yatsindiye mu rundi rubanza. Banzura bavuga ko nta n'inyungu CAF ifite yo gushinganisha ayo mafaranga kuko nta mwenda KABUNDI ayibereyemo kuko batazi uzatsinda urubanza.

[8] Me NGENDAHIMANA uburanira CAF ISONGA avuga ko yatanze ikirego cyihutirwa kubera ko KABUNDI Joseph yatangiye imihango yo kwishyuza ku ngufu, umuhesha w'inkiko akaba yarahaye CAF ISONGA itegeko ryishyuza amafaranga 2.900.000 yatsindiye mu rubanza RSOC 0007/11/HC/NYA, mu gihe hari urundi rubanza RCOMA 0127/12/CS baburana KABUNDI yatsindiwemo 7.549.499 Frw n'inyungu zayo, CAF ISONGA ikaba isaba ko ayo mafaranga yishyuzwa yafatirwa ikaba iyabitse mu gihe hagitegerejwe icibwa ry'urwo rubanza kugira ngo izayahereho yiyishyura rurangiye, kuko aramutse ayatwaye itazabona ubwishyu kuko KABUNDI yananiwe kwishyura kuva yafata inguzanyo.

[9] Ku byerekeranye n'ububasha bw'uru rukiko bwo kuburanisha ibirego byihutirwa, Me NGENDAHIMANA asanga Urukiko rw'Ikirenga rubufite, kuko itegeko riteganya ko hagomba kuba hariho ikirego cy'iremezo mu rukiko, ko ritavuga ko umuburanyi ashingira ku kirego yitangiye ubwe kugira ngo atange ikirego cyihutirwa, ko ndetse hari n'ibindi birego nk'iki rwakiriye rukabisuzuma, akaba asanga rero ingingo ya 316 CPCCSA ari rusange ku nkiko zose. Avuga kandi ko CAF ISONGA ifite inyungu yo kurega kuko KABUNDI ayibereyemo umwenda w'amafaranga menshi.

Uko urukiko rubibona

[10] Ku byerekeranye n'ububasha bw'urukiko bwo kuburanisha ibirego byihutirwa, ingingo ya 316 y'Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko *"iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihutirwa ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinzwe kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara".*

[11] Urukiko rurasanga, hashingiwe ku biteganywa n'iyo ngingo, mu gihe hari urubanza rw'iremezo rwaregewe Urukiko rw'Ikirenga, ariko hari ikigomba kwemezwa by'agateganyo kuri urwo rubanza mu gihe rutaraburanishwa, Urukiko rw'Ikirenga rufite ububasha bwo gusuzuma ikirego cyihutirwa rwashyikirijwe, si ngombwa kandi ko kiba cyatanzwe n'uwajuriye gusa.

[12] Ku birebana n'ikirego cyihutirwa CAF ISONGA yashyikirije uru Rukiko, rurasanga, n'ubwo hari urubanza rutaraburanishwa rufite nº RCOMA 0127/12/CS, KABUNDI Joseph aburana na CAF ISONGA umwenda w'amafaranga 26.301.221 Frw n'inyungu zayo, ibyo isaba mu kirego cyihutirwa ko amafaranga 2.900.000 Frw igomba kwishyura KABUNDI harangizwa urubanza RSOCA 0007/11/HC/NYA rwaciwe n'Urukiko Rukuru, urugereko rwa Nyanza afatirwa by'agateganyo ikayabika, ntaho bihuriye n'urwo rubanza, bityo icyo kirego kikaba kitagomba kwakirwa ngo gisuzumwe kuko kinyuranije n'ibiteganywa n'ingingo y'itegeko yavuzwe haruguru.

III. ICYEMEZO CY'URUKIKO

[13] Rwemeje ko ikirego cyihutirwa cyatanzwe na CAF ISONGA kitakiriwe kuko kidakurikije amategeko.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME KUWA 01/10/2013.

Sé
KAYITESI R. Emily
Perezida

Sé
MUKANDAMAGE M-Josée
Umucamanza

Sé
KANYANGE Fidélité
Umucamanza

Sé
MUHIMAKAZI Léoncie
Umwanditsi w'Urukiko

Printed by PROGRAPH LTD
P.o. Box 1882 Kigali - Rwanda
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