REPUBULIKA Y'U RWANDA

URUKIKO RW'IKIRENGA
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ICYEGERANYO CY'IBYEMEZO BY'INKIKO

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

Igitabo cya kabiri, nº 5

Mata, 2010

Abagize komite y'ubwanditsi bw'icyegeranyo cy'imanza

MUGENZI Louis-Marie	**:** Perezida wa Komite, umucamanza mu Rukiko rw'Ikirenga
NYIRINKWAYA Immaculée	**:** Umwe mu bagize Komite, umucamanza mu Rukiko rw'Ikirenga
KALIWABO Charles	**:** Umwe mu bagize Komite, Umugenzuzi w'Inkiko
BWIZA Marie- Blanche	**:** Umwe mu bagize Komite, umucamanza mu Rukiko Rukuru
KIBUKA Jean luc	**:** Umwe mu bagize Komite, umucamanza mu Rukiko Rukuru rw'Ubucuruzi
YARAMBA Athanase	**:** Umwe mu bagize komite, Umucamanza mu Rukiko Rwisumbuye rwa Musanze
MUBIHAME Alphonse	**:** Umwe mu bagize Komite, umucamanza mu Rukiko rwa Gisirikare
BAZIHANA Fidèle	**:** Umwe mu bagize Komite, umucamanza mu Rukiko rw'Ibanze rwa Nyamirambo
NKUBITO William	**:** Umwanditsi wa Komite, umushakashatsi mu Rukiko rw'Ikirenga
KABASHA Védaste	**:** Umwanditsi wa Komite, umushakashatsi mu Rukiko rw'Ikirenga

Urwego ruhagarariye Icyegeranyo: URUKIKO RW'IKIRENGA

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

Aho icyegeranyo kibarizwa:

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Icyitonderwa

Icyegeranyo ntikigurishwa, gitangirwa ubuntu. Cyandikwa ku nkunga y'umushinga w'Igihugu cy'Ubuholandi ukorera mu Rukiko rw'Ikirenga (PACT), ugamije gutera inkunga ibikorwa by'inkiko z'u Rwanda.

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

Kuva Urukiko rw'Ikirenga rwatangira gutangaza ibyegeranyo by'imanza, mu mwaka wa 2005, iyi numero isohotse ni iya gatanu. Hagati aho, abacamanza ku nzego zitandukanye, abahagararira n'abunganira abandi mu nkiko, abashinjacyaha n' abanyamategeko mu nzego zitandukanye z'igihugu ndetse n'abandi bantu bajya bifashisha amategeko, bakomeje kuduha ibitekerezo byabo ku cyakorwa kugira ngo imanza zaciwe burundu zirusheho kugerwaho n'abazikenera bose, hagamijwe inyigisho runaka zihatse, kandi zirusheho kwifashishwa mu gukemura ibibazo byerekeye amategeko bisa cyangwa bijya gusa n'ibyakemuwe muri izo manza.

Ni muri urwo rwego, kuva ku cyegeranyo giherutse cya numero ya 4, amashakiro akorwa hagendewe ku rutonde rw'ibibazo by'amategeko byakemuwe mu manza zitangajwe mu cyegeranyo, aho gukorwa hakurikijwe gusa ababuranyi, kuko, nk'uko byifujwe n'abakoresha icyegeranyo, umushakashatsi aba ashishikajwe n'ikibazo ahamagariwe gukemura, cyaba icye bwite cyangwa icyo yashyikirijwe. Aba ashaka kureba umurongo cyangwa icyerekezo umucamanza yafashe akemura ibindi bibazo bisa n'ibye. Kugendera ku mazina y'ababurana mu rubanza ntacyo byamarira ushaka kumenya urubanza rwamufasha kandi rwakemuwemo ibibazo bisa n'ibye.

Kugira ngo kandi ibyegeranyo birusheho kugera ku babikeneye, byatangiye kujya bitangazwa ku bubiko bw'ikoranabuhanga kurubuga rwa internet rw'Urukiko rw'Ikirenga. Bikaba ari byiza kuko aho waba uri hose ku isi, ushobora kubona umurongo wa internet kandi ushaka kumenya amakuru yerekeye ibyatangajwe mu byegeranyo by'imanza, wasura urubuga rwacu, ukagera ku makuru ukeneye.

Undi mwihariko kuri iyi numero, ukaba ari uko hatangajwemo imanza zo mu ngeri zose zo mu bubasha bw'Urukiko rw'Ikirenga, mu gihe mu zindi numero zahise, hari aho bitashobotse ko haboneka imanza zo gutangaza mu ngeri runaka. Bityo turasangamo imanza 12, zisaranganyijwe mu ngeri irebana n'iyubahiriza ry'itegeko nshinga(urubanza 1) y'imanza z'inshinjabyaha (urubanza 1), imbonezamubano (urubanza 1), ubucuruzi(imanza 5) , umurimo(imanza 2) n'ubutegetsi(imanza 2). Nk'uko bigaragara, muri iyi numero hakaba hari ubwiganze bw'imanza z'ubucuruzi.

CYANZAYIRE Aloysie

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

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N° Y'URUBANZA: RS/INCONSTITUT/PÉN. 0001/07/CS

ITARIKI Y'URUBANZA: 11/01/2008
HABURANA: MUTEBWA ALFRED (ASABA GUKURAHO INGINGO YA 121 Y'ITEGEKO RYO KUWA 17/05/2004 RYEREKEYE IMIBURANISHIRIZE Y'IMANZA Z'INSHINJABYAHA NK'UKO RYAHINDUWE KUGEZA UBU, KUKO INYURANYIJE N'ITEGEKO NSHINGA.)

AMAGAMBO MPINE

IMANZA ZIREBA AMATEGEKO ANYURANYIJE N'ITEGEKO NSHINGA – GUSABA GUKURAHO INGINGO Y'ITEGEKO –GUSABA GUKURAHO INGINGO YA 121 Y'ITEGEKO N° 13/2004 RYO KUWA 17/05/2004 RYEREKEYE IMIBURANISHIRIZE Y'IMANZA Z'INSHINJABYAHA NK'UKO RYAHINDUWE KUGEZA UBU – AGACE K'INGINGO KADAHUJE N'ITEGEKO NSHINGA

UMWIHARIKO WO GUKURIKIRANA IBYAHA – ICYAKORWA URUKIKO RUSANZE HARI ABANDI BANTU BAKEKWAHO ICYAHA BATAREZWE N'UBUSHINJACYAHA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Urukiko rw'Ikirenga rufite ububasha bwo gukuraho Itegeko Ngenga, Itegeko, Itegeko-teka cyangwa Itegeko ryemerera kwemeza Amasezerano Mpuzamahanga, haba kubikuraho byose cyangwa se zimwe mu ngingo zabyo zinyuranyije n'Itegeko Nshinga, cyane iyo ikibi gishobora gutandukanywa n'icyiza bitabangamiye icyari kigamijwe n'Umushingamategeko.

- Iyo bigaragariye Urukiko ko Ubushinjacyaha budashaka gukurikirana abantu ntirushobora kubahamagaza ngo iburanisha rikomeze, kuko

inshingano z'umucamanza mu manza z'inshinjabyaha ari ukwakira no kuburanisha ibirego yashyikirijwe n'ubushinjacyaha bigamije guhana umuntu iyo icyaha kimuhamye, ntabwo inshingano ze ari ugukurikirana ibyaha, kuko uwo ari umwihariko w'Ubushinjacyaha buhabwa n'Itegeko Nshinga.

-Mu gihe cy'iburanisha, iyo Urukiko rusanze hari impamvu zikomeye zituma umuntu akekwa, rushobora gutegeka Ubushinjacyaha kuzana mu rubanza abantu rusanze barafatanyije icyaha cyangwa ari ibyitso byabo.

URUKIKO RW'IKIRENGA RULI I KIGALI, RUBURANISHA IKIREGO CYEREKERANYE NO GUSABA GUKURAHO INGINGO Y'ITEGEKO KUKO INYURANYIJE N'ITEGEKO NSHINGA, RWAKIJIJE MU RUHAME URUBANZA RS/ Inconst/Pén.0001/07/CS KUWA 11 MUTARAMA 2008 MU BURYO BUKURIKIRA :

Uwatanze ikirego: MUTEBWA Alfred

Ikiregerwa :

Gusaba gukuraho ingingo ya 121 y'Itegeko ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu, kuko inyuranyije n'Itegeko Nshinga.

URUKIKO RW'IKIRENGA;

Rushingiye ku Itegeko Nshinga rya Repubulika y'u Rwanda ;

Rushingiye ku Itegeko Ngenga n° 07/2004 ryo kuwa 25/04/2004 rigena imiterere, imikorere n'ububasha by'inkiko nkuko ryahinduwe kugeza ubu ;

Rushingiye ku Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nkuko ryahinduwe kugeza ubu ;

Rushingiye ku Itegeko n° 13/2004 ryo kuwa 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu ;

Rukijije mu ruhame urubanza RS/Inconst/Pén.0001/07/CS mu buryo bukurikira:

1. Imiterere Y'urubanza

[1]. Ikirego cyavuzwe harurugu Urukiko rw'Ikirenga rwashyikirijwe, gikomoka ku rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge Ubushinjacyaha burega Kalisa Alfred ibyaha by'ubuhemu, gukora no gukoresha inyandiko mpimbano, gutonesha, gushakira inyungu mu mirimo atemerewe gukora no kunyuranya n'ingingo ya 18 na 24 z'itegeko n° 08/99 ryo kuwa 18/06/1999 rishyiraho amategeko agenga amabanki ndetse n'ingingo ya 5 n'iya 8 z'amabwiriza n° 08/2003 yo kuwa 19/12/2003 ya Banki Nkuru y'Igihugu , ibyo byose akaba yarabikoze ari umuyobozi mukuru wa BCDI akaba n'umuyobozi w'Inama y'Ubutegetsi ya BCDI ; Ubushinjacyaha bukarega kandi muri urwo Rukiko Rutajoga Eugène icyaha cyo gukora no gukoresha inyandiko mpimbano igihe yari Umubaruramari Mukuru wa BCDI.

[2]. Habayeho imanza nyinshi za procédure zishamikiye kuri icyo kirego, kugeza ubwo habayeho urwo kuwa **24/05/2007**, umucamanza yafashemo icyemezo cyo gusaba Ubushinjacyaha gukurikirana abagize inama y'ubutegetsi ya BCDI ku byaha Kalisa Alfred aregwa, butabikora Urukiko rukazabahamagaza bakaburanishwa.

[3]. Icyo cyemezo akaba yaragifashe ashingiye ku ngingo ya 121 y'itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu igira iti : « **Urukiko mu gihe cy'iburanisha, rushobora gutegeka Ubushinjacyaha gukurikirana no kuzana mu rubanza abantu rusanze barafatanyije icyaha cyangwa ari ibyitso by'ukurikiranywe igihe rusanze hari ibimenyetso bibashinja icyaha. Iyo bigaragariye Urukiko ko Ubushinjacyaha budashaka gukurikirana abo bantu, rushobora kubahamagaza mu rubanza**

nabo bakaburanishwa ». Abagize inama y'ubutegetsi ya BCDI bakaba ari : Nkera John, Kamurase Déo, Gatera Egide, Habiyakare Léonard, Rusagara Jean Bosco, Gatera Jean Pierre, Kajangwe Callixte, Mutebwa Alfred na Simba Manassé.

2. Ikirego mu Rukiko rw'Ikirenga :

a) Itangwa ry'ikirego

[4]. Ahereye kuri icyo cyemezo, Mutebwa Alfred, umwe mubari bagize Inama y'Ubutegetsi ya BCDI, yatanze ikirego mu Rukiko rw'Ikirenga cyerekeranye no gusaba gukuraho ingingo ya 121 y'itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu, kuko inyuranyije n'Itegeko Nshinga. Akaba ashingira ku mpamvu eshatu :

- **iya mbere** ikaba ari uko iyo umucamanza akoresheje iyo ngingo, ubwo niwe ubwe wikorera ibikorwa byose by'iperereza(actes d'instruction) n'ibikorwa by'ikurikiranabyaha(actes de poursuite), ibyo yabirangiza agahindukira agaca n'urubanza ; bikaba binyuranyije n'ingingo ya 160 n'iya 161 z'Itegeko Nshinga kuko izo ngingo ziha Ubushinjacyaha bwonyine inshingano yo kuba aribwo bukurikirana ibyaha mu gihe cyose ;

- **iya kabiri** ikaba ari uko iriya ngingo ya 121 y'itegeko ryavuzwe haruguru inyuranyije n'ingingo ya 19 y' Itegeko Nshinga ivuga ko umuntu wese afatwa nk'umwere ku cyaha aregwa igihe cyose kitaramuhama burundu kuko gushinja umuntu ukanamuburanisha , nyuma ukanamucira urubanza, bigaragaza ko imbere y'uwo mucamanza uba utari umwere ; kandi ko n'iburanisha

riba ritaboneye(procès équitable) mu gihe umuntu umwe agushinja kandi akanakuburanisha ;

- **iya gatatu** ikaba ari uko nanone iriya ngingo ya 121 y'itegeko ryavuzwe haruguru inyuranyije n'ingingo ya 140 y' Itegeko Nshinga kuko hateganijwemo ko Ubushinjacyaha bushobora kwanga kubahiriza icyemezo cy'Urukiko kibutegeka kuzana mu rubanza abafatanyacyaha cyangwa ibyitso by'ukurikiranywe, kandi Itegeko Nshinga muri iyo ngingo ya 140, riteganya ko ibyemezo by'Urukiko byubahirizwa n'abo bireba bose.

b) Ububasha bw'Urukiko rw'Ikirenga

[7]. Ingingo ya 89 y'Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nkuko ryahinduwe kugeza ubu, iteganya ko « *Urukiko rw'Ikirenga arirwo 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 zabyo zinyuranyije n'Itegeko Nshinga* » .

[8]. Urukiko rw'Ikirenga rukaba rwarashyikirijwe ikirego kigamije gusaba gukuraho ingingo y'itegeko kuko inyuranyije n'Itegeko Nshinga, ingingo imaze kuvugwa rero ikaba yarubahirijwe, bityo ikirego cyatanzwe kikaba kiri mu bubasha bw'Urukiko rw'Ikirenga.

c) Iyakirwa ry'ikirego

[5]. Ingingo ya 89 y'Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nkuko ryahinduwe kugeza ubu yarubahirijwe kuko ikirego cyatanzwe n'umuntu ku giti cye kandi ufite inyungu mu rubanza kuko yaruhamagawemo.

[6]. Ingingo ya 90 y'Itegeko Ngenga rimaze kuvugwa nayo yarubahirijwe kuko ikirego kiriho itariki kandi cyasinywe n'uwagitanze. Kikaba cyerekana ikiregerwa n'impamvu zishingirwaho. Urega akaba yaratanze kandi ku mugereka w'ikirego, itegeko ririmo ingingo asabira kuvaho, bityo ikirego kikaba kigomba kwakirwa.

3. Iburanisha ry'urubanza

[9]. Urubanza rwarahamagawe mu Rukiko kuwa 02/11/2007 hakurikijwe itegeko n° 0087/2007/RP ryo kuwa 26/10/2007 rya Perezida w'Urukiko rw'Ikirenga.

[10]. Kuri uwo munsi Urukiko rwasanze ko nubwo ingingo ya 92 y'Itegeko Ngenga n° 01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nkuko ryahinduwe kugeza ubu iteganya ko ibirego bisaba kuvanaho itegeko kuko rinyuranyije n'Itegeko Nshinga biburanishwa hashingiwe gusa ku nyandiko, ari ngombwa, hashingiwe ku ngingo ya 113 y'iryo tegeko ngenga, guhamagara Mutebwa Alfred watanze ikirego kugirango agisobanure, hagahamagazwa kandi na Leta y'u Rwanda ihagarariwe na Mandataire Général kugirango igire icyo ivuga kuri icyi kirego kigamije gukuraho ingingo y'Itegeko, ibitekerezo byayo ikabitanga mu nyandiko, urubanza rwimurirwa kuwa 20/11/2007.

[11]. Iyo tariki igeze, iburanisha ryarakomeje Maître Kayitare Serge mu mwanya wa Mutebwa Alfred, yitabye Urukiko ; Leta y'u Rwanda yari yahamagajwe ntiyitaba ariko nkuko kandi byari byifujwe, Intumwa Nkuru ya Leta yohereje inyandiko ikubiyemo ibitekerezo byayo ishyirwa muri dossier.

[12]. Iburanisha ritangiye, Urukiko rwabanje gusuzuma ibaruwa ya Maître Rwihandagaza Richard ruyisuzumana n'icyifuzo

cya Maître Rwangampuhwe yagaragarije mu Rukiko, bombi bifuza ko Kalisa Alfred yahamagarwa muri uru rubanza, biba ngombwa ko Urukiko rwiherera kugirango rufate umwanzuro kuri icyo cyifuzo cyabo.

[13]. Urukiko rwasanze Maître Rwihandagaza Richard na Maître Rwangampuhwe bitiranya ibirego bisanzwe n'ikirego kigamije gusaba kuvanaho itegeko kuko rinyuranyije n'Itegeko Nshinga kuko, nkuko Itegeko Ngenga n°01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga ribisobanura mu ngingo yaryo ya 92, ikirego kigamije gusaba kuvanaho itegeko kuko rinyuranyije n'Itegeko Nshinga kiburanishwa hashingiwe gusa ku nyandiko. Kuba Urukiko rwarahamagaye Mutebwa Alfred, nuko rwari rwasanze ari ngombwa kugirango asobanure ikirego yatanze, Leta y'u Rwanda ikaba yarasabwe kugira icyo ibivugaho nk'urwego rushinzwe iby'amategeko, ikaba itarabisabwe nk'umuburanyi. Kalisa muri uru rubanza rwa « recours en inconstitutionnalité » akaba atari umuburanyi , bityo n'icyifuzo cye cyo kuruhamagarwamo kikaba kitakiriwe ;

[14]. Nyuma yo gusomera mu ntebe kandi mu ruhame icyo cyemezo, Maître Kayitare Serge yahawe ijambo kugirango asobanure ikirego yatanze mu mwanya wa Mutebwa Alfred, avuga ko mu izina ry'uwo yunganira, asaba ko ingingo ya 121 y'itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu, yavanwaho kuko iha umucamanza ububasha bwo gukora ibikorwa byose byo gukurikirana ibyaha kandi ubwo bubasha Itegeko Nshinga mu ngingo zaryo za 160 na 161, rikaba yarabugeneye gusa Ubushinjacyaha.

[15]. Yakomeje avuga kandi ko iyo ngingo ya 121 y'itegeko ryavuzwe haruguru, inyuranyije nanone n'ingingo ya 19 y'Itegeko Nshinga. Iyi ngingo ikaba ivuga ko umuntu wese ukurikiranywe afatwa nk'umwere igihe cyose atarahamwa n'icyaha. Maître Kayitare Serge akavuga ko iyo umucamanza yategetse ko umuntu yitaba urukiko kubera ko yasanze ari umufatanyacyaha, urubanza aba yarangije kuruca kandi uwahamagawe atarisobanura ; ibyo bikaba binyuranyije na rya hame ryavuzwe.

[16]. Maître Kayitare Serge mu bisobanuro bye, yarangije avuga ko ingingo ya 140 y'Itegeko Nshinga ivuga ko ibyemezo by'Urukiko byubahirizwa na buri wese, ariko ko iyo usomye ingingo ya 121 y'itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu, usanga yemerera Parike kuba itakubahiriza ibyo yasabwe n'Urukiko, bikaba rero binyuranye n'ibyo Itegeko Nshinga rivuga kuko na Parike iri mubagomba kubahiriza ibyemezo by'Urukiko.

[17]. Urukiko rwashatse kumenya niba hari ubundi buryo Maître Kayitare Serge abona bwakoreshwa mu gihe Parike idakurikiranye kandi umucamanza abona hari impamvu zikomeye zituma umuntu akekwa, avuga ko ingaruka abona kuri iriya ngingo isabirwa kuvaho, ni uko ari Urukiko ruhamagaza umuntu, rukishakira ibimenyetso rwarangiza rukanamuburanisha ; ko hagombye kubaho inzego ebyiri zitandukanye, urushinzwe gukurikirana n'urushinzwe guca urubanza.

[18]. Mu nyandiko Intumwa ya Leta yashyikirije Urukiko, avuga ko ingingo ya 121 y'itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu, itabangamira Ubushinjacyaha Bukuru bwa Repubulika

mu nshingano bufite zo gukurikirana ibyaha nkuko ingingo za 160 na 161 z'Itegeko Nshinga zibiteganya kuko idaha umucamanza ubwo bubasha ahubwo imuha ububasha bwo gutegeka umushinjacyaha « kuzana mu rubanza abantu rusanze barafatanyije icyaha cyangwa ari ibyitso by'abakurikiranywe igihe rusanze hari ibimenyetso bibashinja icyaha ». Akomeza avuga ko umushinjacyaha aramutse yanze gukurikiza icyo cyemezo cy'Urukiko, ntibyari bikwiye ko umucamanza yashinja ngo anahindukire aburanishe, ko ahubwo icyakorwa ari uko yakwiyambaza inzego zimukuriye kugirango icyemezo gishobore kubahirizwa ; arangiza avuga ko kubera ko itegeko ntacyo ribivugaho, byaba byiza rikosowe.

[19]. Urukiko rumaze kumva ibisobanuro byatanzwe, rwatangaje ko rugiye kwiherera rukazasoma urubanza kuwa 04/01/2008, ariko uwo munsi ntirwasomwa rwimurirwa kuwa 11/01/2008.

4. Uko Urukiko rw'Ikirenga rubibona.

Isesengura ry'ikirego

[20]. Ingingo ya 160 y'Itegeko Nshinga rya Repubulika y'u Rwanda, igika cyayo cya mbere, igira iti : « Hashyizweho urwego rw'Ubushinjacyaha rwitwa « Ubushinjacyaha Bukuru bwa Repubulika » , mubyo rushinzwe harimo gukurikirana ibyaha mu Gihugu hose. Ingingo ya 161 y'iryo Tegeko Nshinga ikerekana inzego z' Ubushinjacyaha Bukuru bwa Repubulika uko zigenda zikurikirana, n'imikorere yazo. Itegeko Nshinga rikaba ryarahaye Ubushinjacyaha Bukuru bwa Repubulika umwihariko wo gukurikirana ibyaha. Nta rundi rwego Itegeko Nshinga ryigeze riwusangiza nabwo. Uwo mwihariko kandi ukaba wongera gushimangirwa n'itegeko n°13/2004 ryo

kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu, mu ngingo yaryo ya 2 aho igira iti : « Ikirego cy'ikurikiranacyaha ni ikirego gitangwa mu izina rya rubanda, imbere y'inkiko ziburanisha imanza z'inshinjabyaha, kigamije guhana umuntu wahamwe n'icyaha . Icyo kirego gikurikiranwa n'Ubushinjacyaha".

[21]. Ingingo ya 121 y'itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu, arinayo isabirwa kuvanwaho, igika cyayo cya mbere, igira iti : « Urukiko, mu gihe cy'iburanisha, rushobora gutegeka Ubushinjacyaha kuzana mu rubanza abantu rusanze barafatanyije icyaha cyangwa ari ibyitso by'ukurikiranywe igihe rusanze hari ibimenyetso bibashinja icyaha.

Igika cya kabiri cy'iyo ngingo kikavuga ko iyo bigaragariye Urukiko ko Ubushinjacyaha budashaka gukurikirana abo bantu, rushobora kubahamagaza, iburanisha rigakomeza.

[22]. Inshingano z'Umucamanza mu manza z'inshinjabyaha ni ukwakira ibirego ashyikirijwe n'ubushinjacyaha bigamije guhana umuntu iyo icyaha kimuhamye ; ntabwo rero inshingano ze ari izo gupererereza no gukurikirana ibyaha kuko ibyongibyo Itegeko Nshinga ryabihariye urwego rw'Ubushinjacyaha .

[23]. Uretse kandi kuba biri mu Itegeko Nshinga rya Repubulika y'u Rwanda, iyi ngingo inyuranije n'ihame rihuriweho n'ibihugu byinshi ryo "*gutandukanya ubutegetsi*" ndetse n'iryo *kugenzurana kw'ubutegetsi* ("*checks and balances* / *Equilibre des pouvoirs*"). Ubutegetsi nyubahirizategeko, Ubucamanza n'Ubutegetsi Nshingamategeko bugomba gutandukanywa.

[24]. Iri hame ryashyizweho kugirango abantu bave mu bihe aho mu butegetsi bwa cyami, umwami yabaga ari umushinjacyaha, umucamanza, ndetse akaba ari na we ushyira mu bikorwa ibyemezo bye. Ibi byamuhaga ububasha bwinshi, akenshi ubwo bubasha akabukoresha nabi. Mu bihe bya demokarasi tugezemo, umucamanza ntiyagombye gukora iperereza, hanyuma ngo ashinje, ndetse anace n'urubanza. Itegeko Nshinga n'andi mategeko agenera mu buryo bugaragara izo nshingano inzego zitandukanye.

[25]. Inkiko hirya no hino zakunze kugaragaza ko zidashaka kwivanga mu kazi k'Ubushinjacyaha. Mu rubanza People v. Robles 72 NY 2nd 689 (1979), urukiko rwo muri Leta Zunze Ubumwe za Amerika, rwagize ruti : "*respect for the basic separation of powers lodged in the executive, legislative and judicial branches of government compels this court not to interfere with the Prosecutor's authority*". Ni ukuvuga ko kwubaha itandukanywa ry'ubutegetsi nyubahirizategeko, Nshingamategeko n'Ubucamanza bitegeka urukiko kutivanga mu kazi k'Umushinjacyaha. Ubushinjacyaha bubarirwa mu butegetsi nyubahirizategeko (n'ubwo mu Itegeko Nshinga ry' u Rwanda bufite ubwigenge buringaniye).

[26]. Mu rundi rubanza, United States v. Crouch, 478 F. Supp. 867 (E.D. Cal. 1979), urukiko rwagize ruti: "*In exercising whatever discretion it has* [relating to the investigation and prosecution]*, the court removes itself from its proper function and becomes enmeshed in the prosecution's fact gathering process and defendant's trial tactics. Such does not appear to me to comport with the court's proper role*". Ibi bivuze ngo, "ku byerekeye gukora iperereza no gushinja icyaha, mu gihe urukiko ruvuga

ko rurimo gukoresha ubushishozi, rureka inshingano yarwo nyakuri, ahubwo rugasanga rurimo gukora imirimo y'umushinjacyaha no guhangana n'uregwa. Ku bwanjye ibi bitandukanye n'akazi k'urukiko".Ibi ariko ntibibujije ko igihe umucamanza asanze hari ibitarakozwe mu iperereza, ko yabyuzuza nkuko ingingo ya 46 y'itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu, ibimwemerera.

[27]. Umucamanza aramutse akoze imirimo y'ubushinjacyaha byarebeka nk'aho adafite ubwigenge agomba kugira muguca imanza nk'uko biteganywa n'ingingo ya 22 y'Itegeko n° 06 bis/2004 ryo ku wa 14/04/2004 rigenga abacamanza n'abakozi b'inkiko nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu, iyo ngingo nayo ikaba ishingiye ku ngingo ya 140 y' Itegeko Nshinga. Mu rubanza ruherutse kuba muri Afrika y'Epfo, Urukiko rushinzwe kurinda Itegeko Nshinga rwavuze ko bidahwitse ko umucamanza ashyirwa muri Komisiyo aho mu mirimo ye **yagombaga gukora iperereza no gushinja**. Rwavuze ko ibyo binyuranyije n'Itegeko Nshinga kuko iyo mirimo itabangikanywa n'iy'ubucamanza kubera ko ubwigenge bw' umucamanza bwabangamirwa. Urukiko rwabivuze muri aya magambo:

"It is important that the Judiciary be independent and it be perceived to be independent. If it were to be held that this intrusion of a judge into the executive domain is permissible, the way would be open for judges to be appointed for indefinite terms to other executive posts, or to perform other executive functions which are not appropriate to the central mission of the judiciary. This would undermine the separation of powers and the independence of the judiciary …" *South African Association of Personal Injury Lawyers v. Heath* 2000 (1) BCLR 77 (CC) para 46.

Ni ukuvuga ngo: "Ni ngombwa ko urukiko rwigenga kandi rukabonwa nk'urwigenga. Mu gihe byaba byemewe ko umucamanza akora iyo mirimo mu butegetsi nyubahirizategeko, byatuma abacamanza bashyirwa mu mirimo itandukanye yo mu butegetsi nyubahirizategeko inyuranyije n'inshingano y'ibanze y'Ubucamanza, ari yo guca imanza."

[28]. Ikirego cya Mutebwa cyasabye kuvanaho ingingo ya 121 y'itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu. Urukiko rusanga iyo ngingo ifite uduce tubiri twatandukanywa.

[29]. Agace ka mbere kavuga ko « **Urukiko mu gihe cy'iburanisha, rushobora gutegeka Ubushinjacyaha gukurikirana no kuzana mu rubanza abantu rusanze barafatanyije icyaha cyangwa ari ibyitso by'ukurikiranywe igihe rusanze hari ibimenyetso bibashinja icyaha**». Urukiko rurasanga aka gace muri rusange nta kibazo gateye, uretse mu myandikire no guhuza uko bivugitse mu ndimi eshatu zikoreshwa mu gihugu, kuko mu rurimi rw'igifaransa haravugwa " indices sérieux de culpabilité ", mu kinyarwanda hakavugwa " ibimenyetso ", mu cyongereza hakavugwa "strong evidence" kandi ntibivuga bimwe, ibyo bikaba byatera urujijo mu mikoreshereze y'iyo ngingo. Urukiko rukaba rusanga havugwa " indices sérieux de culpabilité " mu gifaransa, "impamvu zikomeye zituma umuntu akekwa" mu kinyarwanda, na " reasonable grounds to suspect wrong doing" mu cyongereza.

[30]. Igihe urukiko rusanze hari impamvu zikomeye (indices sérieux de culpabilité) zituma umuntu akekwaho ko yaba yarafatanyije n'ushinjwa gukora icyaha, noneho rugasaba

Ubushinjacyaha kumukurikirana, ntabwo bibangamiye ubwigenge n' ubushishozi bw' ubushinjacyaha. Kandi ntibyatuma umucamanza agaragara nkaho yemeza ko uwo muntu koko yakoze icyaha.

[31]. Agace ka kabiri, Urukiko rurasanga ari ko gateye ibibazo. Karavuga ngo: "**Iyo bigaragariye Urukiko ko Ubushinjacyaha budashaka gukurikirana abo bantu, rushobora kubahamagaza, iburanisha rigakomeza.**" Ni ukuvuga ko bahamagazwa bagakurikiranwa. Itegeko ntirivuga ukora igikorwa cyo gukurikirana (les actes de poursuite cyangwa prosecution). Ariko birumvikana ko niba ubushinjacyaha budashaka kubakurikirana, ari umucamanza ugomba gukora ibikorwa by' iperereza no gushinja. Ibi bikaba binyuranije n'inshingano yo guca imanza mu bwigenge nta kubogama, ndetse bibangamiye ihame ryuko iburanisha rigomba kuba riboneye(procès équitable).

[32]. Icyo iyi ngingo yari igamije kwari ukugira ngo umushinjacyaha akurikirane abakoze icyaha abo aribo bose ari nta guhishira cyangwa gutinya kandi niba adashoboye kubakurikirana kubera impamvu idasobanutse mu gihe hari impamvu zikomeye zituma bakekwa ho icyaha, urukiko rube rwamutegeka kubakurikirana. Impamvu y'iyi ngingo irumvikana urebye amateka y' igihugu ariko kubera ko inzego z'ubutabera zavuguruwe, Ubushinjacyaha buvuguruye bukwiye kugirirwa icyizere hakubahirizwa amahame ari mu Itegeko Nshinga kandi ahuje n'amahame mpuzamahanga yo gutandukanya inshingano z'ubushinjacyaha n'iz'ubucamanza. Bityo agace ka kabiri k'ingingo ya 121 y'itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu , kakaba kagomba kuvanwaho.

[33]. Kuvanaho ingingo ukayitandukanya n' itegeko ryose birasanzwe mu guca imanza zireba Itegeko Nshinga. Amategeko yacu nayo arabyemera. Ingingo ya 89 y' Itegeko Ngenga n°01/2004 ryo kuwa 29/01/2004 rigena imitunganyirize, imikorere n' ububasha by' Urukiko rw' Ikirenga nkuko ryahinduwe kugeza ubu iha Urukiko rw'Ikirenga ububasha bwo gukuraho itegeko ngenga, itegeko, itegeko-teka, cyangwa itegeko ryemerera kwemeza amasezerano mpuzamahanga, haba kubikuraho byose cyangwa se zimwe mu ngingo zabyo zinyuranyije n'Itegeko Nshinga.

[34]. Urukiko rurasanga gukuramo agace k' ingingo nabyo byemewe hakurikijwe ibikorwa mu zindi nkiko zisuzuma ibirego byerekeye gukuraho amategeko anyuranyije n' Itegeko Nshinga. Icyangombwa n'uko "ikibi n' ikiza" biba bishobora gutandukanywa bitabangamiye icy' ingenzi cyari kigamijwe n' umushingamategeko. Ibi byasobanuwe n' Urukiko rushinzwe kurinda Itegeko Nshinga muri Afrika y' Epfo muri aya magambo: "the trite test can properly be applied: if the good is not dependent on the bad and can be separated from it, one gives effect to the good that remains after the separation if it still gives effect to the main objective of the statute. The test has two parts: first, is it possible to sever the invalid provisions and second, if so, is what remains giving effect to the purpose of the legislative scheme?" *Coetzee v The Government of the Republic of South Africa* 1995 (4) SA 631 (CC) para 16. Nkuko byasobanuwe haruguru, agace kambere ('the good') k' ingingo ya 121 y' itegeko ryerekeye imiburanishirize y' imanza nshinjabyaha ubwako gakubiyemo icyingenzi umushingamategeko yashakaga kugeraho kakaba rero kaguma mwitegeko akakabiri ('the bad') kagavamo.

[35]. Muri iri sesengura ry'ikirego, Urukiko rurasanga ingingo nyamukuru yatanzwe na Mutebwa ari uko umucamanza atagomba kwivanga mu mirimo yagenewe ubushinjacyaha n'Itegeko Nshinga. Uko kwivanga kukaba kwagira ingaruka nko guca urubanza rutaboneye mu gihe umucamanza akurikirana, akaburanisha nyuma agaca n'urubanza. Uwo kandi ukaba ariwo mwanzuro w'Urukiko.

[36]. Nyuma y'uwo mwanzuro, Urukiko rukaba rusanga atari ngombwa kwiririrwa rusuzuma izindi ngingo zatanzwe n'umuburanyi kuko zose ziganisha ku mwanzuro umwe w'uko umucamanza atagomba gukora imirimo yagenewe ubushinjacyaha.

5. Icyemezo cy'Urukiko

[37]. Urukiko rw'Ikirenga rwemeye kwakira ikirego Mutebwa Alfred yarushyikirije, cyerekeranye no gusaba gukuraho ingingo ya 121 y'itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu, kuko inyuranyije n'Itegeko Nshinga.

[38]. Urukiko rw'Ikirenga ruvuze ko ingingo ya 121 igika cya kabiri y'itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu , inyuranyije n'Itegeko Nshinga.

[39]. Urukiko rw'Ikirenga rutegetse ko **igika cya kabiri** cy'ingingo ya 121 y'itegeko n°13/2004 ryo kuwa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nkuko ryahinduwe kugeza ubu, kivaho.

[40]. Urukiko rw'Ikirenga rutegetse ko amagarama aherera ku isanduku ya Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 11/01/2008 N'URUKIKO RW'IKIRENGA, RUGIZWE NA RUGEGE SAM: PEREZIDA, MUTASHYA JEAN BAPTISTE, NYIRINKWAYA IMMACULEE, MUKANYUNDO PATRICIE, KAYITESI EMILY, HAVUGIYAREMYE JULIEN, HATANGIMBABAZI FABIEN, KANYANGE FIDELITE, NA MUKAMULISA MARIE THERESE: ABACAMANZA, BAFASHIJWE NA UWARUGIRA JEAN BAPTISTE: UMWANDITSI W'URUKIKO.

RUGEGE Sam
Perezida
Sé

<u>ABACAMANZA</u>:

MUTASHYA Jean Baptiste	**NYIRINKWAYA Immaculée**
Sé	**Sé**
MUKANYUNDO Patric	**KAYITESI Emily**
Sé	**Sé**
HAVUGIYAREMYE Julien	**HATANGIMBABAZI Fabien**
Sé	**Sé**
KANYANGE Fidélité	**MUKAMULISA Marie Thérèse**
Sé	**Sé**

UWARUGIRA JEAN BAPTISTE
Umwanditsi
Sé

IMANZA Z'INSHINJABYAHA

2. URUKIKO RW'IKIRENGA

Nº Y'URUBANZA : RPA0125/08/CS
ITARIKI Y'URUBANZA : 30/11/2009
HABURANA : UBUSHINJACYAHA / MUNYURANGABO Patrick

AMAGAMBO MPINE

IMANZA Z'INSHINJABYAHA - KUREKA IKIREGO CY'UBUJURIRE BIKOZWE N'USHINJWA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Nta kibuza ushinjwa kuba yareka ubujurire bwe apfa gusa kubikora mu buryo bweruye.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'INSHINJABYAHA RUKIJIJE MU RUHAME KUWA 30/11/2009 URUBANZA RPA 0125/08/CS MU BURYO BUKURIKIRA:

HABURANA

UBUSHINJACYAHA

Na

MUNYURANGABO Patrick, mwene MUSHAYIJA Jean Damascène na MUKAMPUNGA Marciana, wavutse mu 1975 mu Kagari ka Ntunga, Umurenge wa Mwurire, Akarere ka Rwamagana, Intara y'Iburasirazuba akaba abarizwa mu Karere ka Kicukiro, Umurenge wa Niboye, Umujyi wa Kigali.

Ibyaha akurikiranyweho:

MUNYURANGABO Patrick afatanyije na bagenzi be NKURUNZIZA Jacques na MICOMBERO Michel baregwa kuba ku matariki atandukanye n'ahantu hatandukanye mu Mujyi wa Kigali barakoze ibyaha bikurikira:

-Gukora no gukoresha inyandiko mpimbano y'indangamuntu mu kugurisha uwitwa GASASIRA Céléstin inzu ya MUKESHIMANA Georgette.

-Gukoresha uburiganya agatwara MUTANGANA amafaranga 360.000 ya avance ku kiguzi cy'inzu yamugurishaga. Icyaha giteganywa kandi gihanishwa ingingo ya 428 y'Igitabo cy'Amategeko ahana ibyaha.

-Gukoresha uburiganya agatwara amafaranga 1.500.000 ya RWANDA MICROFINANCE ubwo yayihaga ingwate ku nzu

itari iye agamije kuyambura. Icyaha cy'uburiganya giteganywa kandi gihanishwa ingingo ya 428 y'Igitabo cy'Amategeko ahana ibyaha.

-Gukora no gukoresha inyadiko mpimbano mu kugwatiriza inzu ya MUNYAZIKWIYE Etienne. Icyo cyaha giteganywa kandi gihanishwa ingingo ya 202 y'Igitabo cy'Amategeko ahana ibyaha .

-Icyaha cyo gutanga sheki eshatu zitazigamiwe. Icyaha giteganywa kandi
gihanishwa ingingo ya 435 y'Igitabo cy'Amategeko ahana ibyaha .

IKIBURANWA: kujuririra icyemezo cy'ibanzirizasuzuma

I. IMITERERE Y'URUBANZA

[1] Bimaze kumeyekana ko MUNYURANGABO Patrick afatanyije na bagenzi be bakoze ibyaha byavuzwe haruguru, barafashwe barafungwa. Mu ibazwa ryabo mu bugenzacyaha abaregwa bemeye icyaha ariko bagashinja MUNYURANGABO ko ariwe wabibashoyemo abigisha uburiganya bwose bagiye bakoresha mu kubikora. Bavuga ko mu kugurisha amazu, uriya NKURUNZIZA wakoraga akazi k'ubukomisiyoneri nawe yabigizemo uruhare runini kuko ngo yabaga azi ba nyiramazu n'ibibazo afite.

II. IMIGENDEKERE Y'URUBANZA MU NKIKO.

A. URUBANZA MU RUKIKO RWISUMBUYE RWA GASABO

[2] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa

Gasabo MUNYURANGABO na bagebzi be bakurikiranyweho ibyaha byavuzwe haruguru. Ikirego cy'Ubushinjacyaha cyanditswe kuri n° RP 0225/TGI/GSBO. Kubera ko NKURUNZIZA atitabaga, urubanza rwe rwatandukanijwe n'urwa bagenzi be. Urukiko rwaciye urubanza kuwa 10/07/2007, rwemeza ko MUNYURANGABO Patrick ahamwa n'ibyaha akurikiranyweho, rumuhanisha igifungo cy'imyaka itanu kubera impamvu nyoroshya cyaha kuko yemeye ibyaha akurikiranyweho akabisabira imbabazi. MICOMBERO Michel we rwasanze ahamwa n'icyaha cyo gukora no gukoresha inyandiko mpimbano gusa , rumuhanisha igifungo cy'umwaka umwe kuko ngo yemera icyaha akanagisabira imbabazi.

B. URUBANZA MU RUKIKO RUKURU

[3] MUNYURANGABO Patrick ntiyishimiye imikirize y'urubanza ajuririra Urukiko Rukuru rwa Repubulika i Kigali. Urwo Rukiko rwaciye urubanza RPA 0368/07/HC/KIG kuwa 02/04/2008 rwemeza ko rutakiriye ubujurire bwe kuko bwatanzwe bukererewe.

C. URUBANZA MU RUKIKO RW'IKIRENGA

[4] Na none MUNYURANGABO yajuririye icyo cyemezo mu Rukiko rw'Ikirenga mu ibaruwa ye yageze mu bwanditsi bw'urwo rukiko kuwa 21/04/2008. Ubujurire bwakorewe ibanzirizasuzuma, umucamanza warishinzwe mu cyemezo yafashe kuwa 19/05/2008, avuga ko butakiriwe kuko ingingo yatanze ajurira zidahura n'iziteganywa n'ingingo ya 43 y'Itegeko-Ngenga n° 01/2004 ryo kuwa 29/01/2004 ryerekeye imitunganyirize, imiterere n'ububasha by'Urukiko rw'Ikirenga.

[5] Tariki 22/09/2008, MUNYURANGABO yamenyeshejwe icyemezo cy'ibanzirizasuzuma maze akijuririra mu ibaruwa

ye yo kuwa 24/09/2008 yanyujije mu buyobozi bwa Gereza ya Remera ikagera mu bwanditsi bw'Urukiko rw'Ikirenga kuwa 14/10/2008.

[6] Tariki 02/09/2009, MUNYURANGABO yandikiye Umwanditsi Mukuru w'Urukiko rw'Ikirenga ibarwa ifite impamvu igira iti « Gusaba Urukiko rw'Ikirenga gukuraho ikirego naruregeye kigahabwa n° RPAA 0125/08/CS-RPAA 0035/08/CS ».

[7] Itegeko rya Perezida w'Urukiko rw'Ikirenga ryashyize iburanisha ry'urubanza kuwa 21/09/2009, uwo munsi ntirwaburanishwa kubera ko habaye ikiruhuko gitunguranye cy'umunsi mukuru wa Id-el-Fitri, rwimurirwa kuwa 11/11/2009. Uwo munsi rwaburanishijwe hitabye MUNYURANGABO Patrick yiburanira naho Ubushinjacyaha Bukuru buhagarariwe na NTAWANGUNDI Béatrice.

[8] Nyuma yo kumva raporo y'umucamanza wateguye urubanza, MUNYURANGABO yasabwe kugeza ku Rukiko icyifuzo cye avuga ko yari yajuririye uru rukiko arusaba ko rwamusabira Urukiko Rukuru gusubira ku cyemezo cyarwo cyo kwanga kwakira ubujurire bwe maze rukamuburanisha. Yakomeje asobanura ko amaze kubona ko icyemezo cy'ibanzirizasuzuma cyanze kwakira ubujurire bwe, yasabye gusubirishamo ingingo nshya urubanza RPA 0368/07/HC/KIG mu Rukiko Rukuru, uru Rukiko rukaba rwaramaze gufata icyemezo ku buryo budasubirwaho; bityo akaba asaba ko ikirego cy'ubujurire ku cyemezo cy'ibanzirizasuzuma yari yaratanze cyasibwa mu bitabo by'Urukiko kuko nta nyungu akibifitemo.

[9] **Uhagarariye Ubushinjacyaha** yasabwe kuvuga icyo abitekerezaho, avuga ko yumva nta bintu byinshi yavuga kuko ngo niba MUNYURANGABO ariwe wari wajuriye none ubu akaba avuga ko ntacyo agishaka muri uru Rukiko, asanga icyifuzo cye cyakubahirizwa kuko ntacyo

kibangamiyeho Ubushinjacyaha .

[10]MUNYURANGABO yabajijwe gusobanura neza niba aretse ubujurire ku cyemezo cy'ibanzirizasuzuma cyangwa niba aretse urubanza, asubiza ko yifuza ko ikirego muri uru Rukiko kivaho ,mbese ko aretse urubanza.

[11]Iburanisha ryarashojwe ababuranyi bamenyeshwa ko icyemezo cy'Urukiko kizatangazwa kuwa 30/11/2009, nyuma ruriherera ruruca mu buryo bukurikira.

III. UKO URUKIKO RW'IKIRENGA RUBIBONA

[12]Urukiko rusanga MUNYURANGABO Patrick yaranditse ibaruwa kuwa 02/09/2009 asaba kureka ikirego cye cyo kujuririra icyemezo cy'ibanzirizasuzuma ndetse n'icy'ubujurire yari yaratanze muri uru rukiko, impamvu atanga akaba ari uko asanga nta nyungu agifite zo gukomeza kuburana nyuma y'aho Urukiko Rukuru rufatiye icyemezo kidakuka ku rubanza rwe ku kirego yari yarushyikirije asaba gusubirishamo ingingo nshya urubanza yari yajuririye mu Rukiko rw'Ikirenga.

Urukiko rusanga ntacyo amategeko ateganya ku byerekeye ukureka ikirego cy'ubujurire k'ushinjwa, cyaba icy'ubujurire busanzwe cyangwa ubudasanzwe, ariko inyandiko z'abahanga mu mategeko ndetse n'imanza zaciwe mu nkiko z'ahandi byerekana ko nta kibuza ushinjwa kuba yareka ubujurire bwe, apfa gusa kubikora mu buryo bweruye (reba Michel FRANCHIMONT, Manuel de procédure pénale, p.896; Les Novelles, Tome III, Droit de procédure congolais, p.336 n°754 ; Chambre Correctionnellle, arrêt n° 18 du 12/05/2003

(Burkinafaso); lexinter.net, Repertoire de Jurisprudence IV (2004) ; Cass, crim (France), désistement du prévenu et caducité de l'appel incident in Bulletin criminel 2004, n° 73, p.275; http://www.paperblog.fr/181727/faux-espoirs publié le 10 septembre par Nicolas CREISSON); bityo MUNYURANGABO Patrick akaba agomba kwemererwa ukureka ikirego cye nk'uko yagaragaje icyo cyifuzo mu buryo bweruye mu ibaruwa ye yo ku wa 02/09/2009 no mu miburanire ye muri uru Rukiko.

IV. ICYEMEZO CY'URUKIKO:

[13] **Rwemeye** kwakira ukureka ikirego kwa MUNYURANGABO Patrick;

[14] **Rumutegetse** gutanga amagarama y'ibyakozwe muri uru rubanza angana na 29.000Frw, atayatanga mu gihe cy'iminsi umunani agafungwa iminsi 15 y'ubugwatiramubiri, akavanwa mu bye ku ngufu za Leta;

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 30/11/2009 N'URUKIKO RW'IKIRENGA, RUGIZWE NA MUKANYUNDO PATRICIE: PEREZIDA, HAVUGIYAREMYE JULIEN NA MUKANDAMAGE MARIE JOSEE : ABACAMANZA, BAFASHIJWE NA UWARUGIRA JEAN BAPTISTE, UMWANDITSI W'URUKIKO.

MUKANYUNDO Patricie
Perezida

HAVUGIYAREMYE Julien
Umucamanza

MUKANDAMAGE Marie Josée
Umucamanza

IMANZA Z'IMBONEZAMUBANO

UWARUGIRA Jean Baptiste
Umwanditsi w'Urukiko

3. URUKIKO RW'IBANZE RWA TWUMBA

N° Y'URUBANZA: RC0060/09/TB/TWB
ITARIKI Y'URUBANZA: 05/05/2009
HABURANA: NZIREBERA Jean / NYIRAHABARUREMA Patricie

AMAGAMBO MPINE

IMANZA Z'IMBONEZAMUBANO - GUSABA UBUTANE BISHINGIYE KU MPAMVU Y'UBUSAMBANYI BUKOZWE N'UMWE MU BASEZERANYE IMBERE Y'AMATEGEKO BATARABABANA

UKUTITABA NTA MPAMVU K'UREGWA

KUDAHABWA INDISHYI ZIKOMOKA KU MAKOSA UTATANGIYE IBIMENYETSO

GUKURIKIRANA IKIREGO CY'UBUTANE NTA BWUMVIKANE BUBANJE

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Iyo abasezeraniye imbere y'ubutegetsi batarabana nk'umugore n'umugabo umwe muri bo agaca undi inyuma mu buryo ubwo aribwo bwose, byitwa ubusambanyi, uwo basezeranye ashobora kuregera urukiko asaba ubutane. Iyo urukiko rusanze ibyo aregera bifite ishingiro, arabuhabwa.

Iyo mu iburanishwa rya mbere uregwa atitabye nta mpamvu, urega ashobora gusaba ko urubanza rwimurirwa ku yindi tariki cyangwa ko

ruburanishwa uregwa adahari.
Mu rubanza ruregerwamo ubutane, iyo umwe mu baburanyi adashoboye kugera ku rukiko, Perezida w'Urukiko avuga aho iyunga rizabera. Iyo iyunga ridashobotse cyangwa se uregwa akabura, Perezida w'Urukiko yemeza ko kwiyunga bitabaye cyangwa ko uregwa yabuze akemerera urega gukurikirana ikirego cye.

Uregera indishyi agomba gutanga ibimenyetso bigaragaza amakosa yakorewe ashingiraho azaka.

IKIZA RY'URUBANZA RC0060/09/TB/TWB Urupapuro rwa 1

URUKIKO RW'IBANZE RWA TWUMBA, RURI I TWUMBA, RUHABURANISHIRIZA IMANZA Z'IMBONEZAMUBANO, RUCIYE URU RUBANZA MU RUHAME MU RWEGO RWA MBERE NONE KUWA 05/05/2009 MU BURYO BUKURIKIRA :

REPUBLIQUE RWANDAISE Au nom du Peuple Rwandais

UREGA : NZIREBERA Jean mwene Murera na Nyirarukundo, utuye Umudugudu wa Rangi, Akagari ka Nyarugunga, Umurenge wa Nkomane, Akarere ka Nyamagabe, Intara y'Amajyepfo.

UREGWA : NYIRAHABARUREMA Patricie mwene Mbabazabahizi na Mukabadege, utuye Umudugudu wa Ngeso, Akagari ka Rwufi, Umurenge wa Mutuntu , Akarere ka Karongi, Intara y'Iburengerazuba;

IKIREGERWA : Ubutane ;

URUKIKO;

RUSHINGIYE ku Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nkuko ryavuguruwe kugeza ubu, mu ngingo yaryo ya 151;

RUSHINGIYE ku Itegekeko Ngenga n° 51/2008 ryo kuwa 09/09/2008, rigena imiterere, imikorere n'ububasha by'Inkiko mu ngingo yaryo ya 67;

I. IMITERERE Y'URUBANZA

1. Kuwa 26/03/2009 nibwo NZIREBERA Jean yashyikirije ikirego cye Urukiko rw'Ibanze rwa Twumba arega umugore we NYIRAHABARUREMA Patricie asaba Urukiko butane , maze ikirego kigeze mu Rukiko cyandikwa mu gitabo cy'ibirego kuri N° RC0060/09/TB/TWB, Perezida w'Urukiko ashyira iburanisha ry'uru rubanza kuwa 14/04/2009, uwo munsi umenyeshwa umuburanyi ku buryo bwemewe n'amategeko, ugeze hitaba Nzirebera Jean wenyine naho NYIRAHABARUREMA Patricie atitabye ariko se Mbabazabahizi ari mu Rukiko yazanye hamagara y'umukobwa we ari nawe wayimusinyiheho, ahita avuga ko atazi aho ari, abazwa niba umukobwa we yarashatse undi mugabo nk'uko uwo bari barashyingiranywe abivuga, asubiza ko atabizi ;

II. IMIGENDEKERE Y'URUBANZA

2. Nzirebera yabajijwe ibimenyetso by'uko uwo bashyingiranywe yaba yarashatse ahandi asubiza ko yabibwiwe n'abantukuri Téléphone bamubwir ako umugore we yashatse ahandi kandi ngo yagiye atwite, maze rubisuzumye urubanza rurimurwa kugirango NZIREBERA Jean azajye kuzana ibimenyetso by'uko umugore we yashatse undi mugabo koko nkuko abivuga, rushyirwa kuwa 22/04/2009 Mbabazabahizi se wa NYIRAHABARUREMA Patricie nawe asinyira iyo tariki ko agiye kuyimenyesha umukobwa we, igeze hongera kwitaba NZIREBERA wenyine naho umugore we atitabye ariko na none se umubyara ari mu Rukiko ari gukurikirana imigendekere y'urubanza maze Nzirebera urega asaba ko rwaburanishwa umugore adahari kuko ababyeyi be bahari kandi bakaba bazi aho aherereye rubisuzumye rubiha ishingiro ;

3. Nzirebera Jean amaze gutanga inyandiko yo kuwa 21/04/2009 yatanzwe n'ubuyobozi bw'akagali ka Rwufi bwemeza ko NYIRAHABARUREMA Patricie wari washakanye byemewe n'amategeko na Nzirebera Jean kuwa 30/07/2008 yagiye kwishakira undi mugabo , yakomeje asobanura ikirego avuga ko yari yarashakanye byemewe n'amategeko na NYIRAHABARUREMA Patricie hanyuma aza kumuca inyuma ajya kwishakira undi mugabo none ngo arasaba ko urukiko rwabatandukanya nawe akishakira undi mugore , abazwa impamvu yifuza gutandukana n'uwo bari barashyingiranywe asubiza ko nawe ashaka uburenganzira bwo kwishakira ahandi kuko uwo yari yarashatse nawe yishakiye undi mugabo bakaba bari kumwe;

4. Nzirebera yabajijwe icyo yongera ku rubanza asubiza ko ababyeyi ba NYIRAHABARUREMA Patricie bagomba kumwishyura igihe cyose yataye akurikirana uru rubanza kandi ngo banamusubije inkwano yari yabahaye, se wa NYIRAHABARUREMA Patricie ahita atanga inyandiko yo kuwa 02/03/2009 yishyuriyeho Umukwe we iyo nkwano yari yarakiriye ;

III. UKO RUBIBONA

5. **RUBONA** ari Nzirebera Jean uregera umugore we NYIRAHABARUREMA Patricie akaba asaba urukiko ko rwabatanya nawe akishakira ahandi kuko umugore yamuciye inyuma akishakira undi mugabo;

6. **RUBONA** ingingo ya 26 y'Itegko Nshinga rya Repuburika y'u Rwanda ryo kuwa 04/06/2003 nkuko ravuguruwe kugeza ubu bavugako ubushyingiranwe bw'umugabo umwe n'umgore umwe bukorewe mu butegetsi bwa Leta nibwo bwonyine bwemewe, kandi kugeza ubu Nzirebera Jean mwene Murera Dismas na Nyirarukundo yari yarashyingranwe byemewe n'amategeko na Nyirahabarurema Patricie mwene Mbabazabahizi na Mukabadege kuwa 30/07/2008 imbere y'umuyobozi w'umurenge wa Mutuntu Bwana Ntakirutimana Gaspard, ariko mu gihe bari batarabana nk'umugabo n'umugore, Nyirahabarurema Patricie yamuciye inyuma yishakira undi mugabo nk'uko byemezwa n'ubuyobozi bw'umudugudu n'Akagali k'iwabo mu nyandikoyo kuwa 21/04/2009, bigashimangirwa n'inyandiko yo kuwa 02/03/2009 se wa Nyirahabarurema Patricie yashyikrije urukiko avuga ko yarangije kwishyura umukwe we inkwano ye, bivuga ko nawe azi ko umukobwa we yagiye gushaka ahandi, bityo bakaba bakwiye gutandukana Nzirebera nawe agashobora kwishakira undi mufasha ;

7. **RUBONA** ingingo ya 52 y'Itegeko N° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nkuko ryahinduwe kandi ryujujwe kugeza ubu bavuga ko iyo mu ibranishwa rya mbere uregwa atitabye nta mpamvu urega ashobora gusaba ko urubanza rwimurirwa kuyindi tariki cyangwa se ko ruburanishwa uregwa adahari kandi Nzirebera yasabye ko ruburanishwa uregwa adahari rubiha ishingiro ;

8. **RUBONA** ingingo ya 243 igika cya kabiri y'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano (CCLI) ivuga ko iyo umwe mu basaba ubutane atashoboye kukugera ku rukiko Perezida w'urukiko avuga aho iyunga rizabera. Iyo iyunga ridashobotse cyangwa se uregwa akabura Perezida yemeza ko kwiyunga bitabaye cyangwa ko uregwa yabuze akemerera urega gukurikirana ikirego cye kandi NYIRAHABARUREMA Patricie yanze kwitaba urukiko ariko ababyeyi be bigaragara ko bazi aho yashatse kuko se aza buri gihe gukurikirana urubanza rwe, akaba yaranarangije kwishyura inkwano yari yarakiriye nkuko yabyemareye urukiko akab ariyo mpamvu rwafashe icyemezo cyo kwemerera Nzirebera gukurikirana ikirego cye nta bwiyunge bubaye ;

9. RUBONA kandi ingingo ya 237 mu gace kayo ka b) y'icyo gitabo kimaze kuvugwa mu gika kibanziriza iki bavuga ko ubusambanyi ari imwe mu mpamvu umwe mubashyingiranywe ashobora guheraho asaba ubutane kandi kugeza ubu NYIRAHABARUREMA Espérance yaciye inyuma umugabo we Nzirebera Jean ajya gusambana n'undi mugabo kugeza na n'ubu akaba akibana nawe nkuko inzego z'ubuyobozi bwaho atuye bubyemeza mu nyandiko yo kuwa 21/04/2009 ;

IV. ICYEMEZO CY'URUKIKO

10. **RWEMEYE kwakira** ikirego cya Nzirebera Jean kuko cyaje mu nzira no muburyo bukurikije amategeko kandi rugisuzumye rusanga gifite ishingiro ;

11. **RWAMEJE** ko Nzirebera Jean mwene Murera Dismas na Nyirarukundo wari warashyingiranywe byemewe n'amategeko na Nyirahabarurema Patricie mwene Mbabazabahizi na Mukabadege kuwa 30/07/2008 imbere y'umuyobozi w'umurenge wa Mutuntu Bwana Ntakirutimana Gaspard, batandukana kubera amakosa y'umugore waciye inyuma umugabo we mu gihe bari batarabana nk'umugabo n'umugore akishakira undi mugabo nkuko byasobanuwe muri rubona ya 2 ;

IKIZA RY'URUBANZA RC0060/09/TB/TWB Urupapuro rwa 3

12. **RUKIJIJE** ko NYIRAHABARUREMA Patricie atsinzwe ko Nzirebera Jean atsinze ;

13.**RUTEGETSE** ko Nzirebera Jean mwene Murera Dismas na Nyirarukundo wari warashyingiranywe byemewe n'amategeko na Nyirahabarurema Patricie mwene Mbabazabahizi na Mukabadege kuwa 30/07/2008 imbere y'umuyobozi w'umurenge wa Mutuntu bwana Ntakirutimana Gaspard, batandukana kubera amakosa y'umugore waciye inyuma umugabo we mu gihe bari batarabana nk'umugabo n'umugore akishakira undi mugabo, ariko ibyerekeye indishyi NZIREBERA ari kwaka ababyeyi ba Nyirahabarurema ntazo akwiye kuko nta kimenyetso yagaragaje cyemeza ko aribo boheje umukobwa wabo kujya gushaka ahandi;

14. **RUTEGETSE** NYIRAHABARUREMA kwishyura amagarama y'uru rubanza uko ari ibihumbi bibiri na magana abiri na mirongo itanu (2250frw) akayishyura kuva urubanza rubaye indakuka atayishyura agakurwa mu bye ku ngufu za Leta, urukiko narwo rugasubiza Nzirebera Jean amafranga ibihumbi bibiri (2000frw) yatanzeho ingwate arega ;

15. **RWIBUKIJE** ko gusubirishamo urubanza ari iminsi 15 kuva aho uwo ruciwe adahari arumenyeye;

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 05/05/2009 N'URUKIKO RW'IBANZE RWA TWUMBA, RUGIZWE NA Justin NSHIMIYIMANA UMUCAMANZA WARUBURANISHIJE AFASHIJWE NA DUSINGIZIMANA Albert, UMWANDITSI

UMUCAMANZA
Justin NSHIMIYIMANA
/Sé/

UMWANDITSI
DUSINGIZIMANA Albert
/Sé/

Mbyandukuye uko byanditswe ku rupapuro rw'umwimerere,
none kuwa 12/11/2009
Umwanditsi w'Urukiko rw'Ibanze rwa Twumba
DUSINGIZIMANA Albert

URUKIKO RW'IBANZE RWA TWUMBA

IMANZA Z'UBUTEGETSI

Itariki y'urubanza : 15/01/2010
Haburana : GONE FISHIN SARL / LETA Y'U RWANDA

4. URUKIKO RW'IKIRENGA

Nº Y'URUBANZA : RAD0016/08/CS
ITARIKI Y'URUBANZA : 15/01/2010
HABURANA : GONE FISHIN SARL / LETA Y'U RWANDA

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI – KUTAGAMBIRIRA IKIBI (MAUVAISE FOI) MU MASEZERANO

KUTABASHA KUGARAGARIZA URUKIKO UWAGAMBIRIYE IKIBI MU MASEZERANO

IKIREGO KIGAMIJE IBIGOMBA GUKORWA BIDATEGANIJWE MU MASEZERANO

AGACIRO K'IBIMENYETSO BISABWA N'UMUBURANYI

KWAKA INDISHYI ZIKOMOKA KU KABABARO K'UNDI

IKIREGO KU RWEGO RW'UBUJURIRE KITAGARAGAZA INENGE MU IFATWA RY'ICYEMEZO KIJURIRIRWA

IKIREGO GITANZWE BWA MBERE MU BUJURIRE

IBIGIZE INDISHYI ZIGENEWE UGOMBWA INSHINGANO IGIHE AMASEZERANO ATUBAHIRIJWE N'UWO BAYAGIRANYE

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Iyo mu biganiro bibanziriza amasezerano impande zombi zitumvikanye ku ngingo runaka nyuma zigashyira umukono kuri ayo masezerano buri wese nta gahato, byitwa ko zemeye ibiyakubiyemo, ko kandi zemeye kuzayakurikiza. Bityo, igihe cyo kuyashyira mu bikorwasezerano, iyo uruhande rumwe rwakomeje gutsimbarara ku gitekerezo cyarwo ntibyitwa ko rwabikoranye uburyarya rugambiriye ikibi ((mauvaise foi).

- Kugira ngo hemerwe ko habaye uburyarya (mauvaise foi) mu masezerano, ni ngombwa ko haba habayeho kugambirira ikibi mu kuyashyira mu bikorwa bigaragazwa no kudasobanura cyangwa kugira ububasha (imbaraga) budasanzwe hagati y'abayagiranye, bugakoreshwa n'umwe mu nyungu ze, kandi akaba abangamira undi kugeza ubwo ubangamiwe afata ingamba zo kuzirwanaho.

- Amasezerano niyo agaragaza inshingano za buri ruhande mu bayagiranye. Ibitarakozwe bitari muri ayo masezerano n'ingaruka zabyo nta ruhande rwabiryozwa igihe bitateganijwe.

- Umucamanza aha ibimenyetso bisabwe agaciro iyo asanze bifite ireme kandi bimufasha kumenya aho ukuri guherereye.

- Impande zombi zagiranye amasezerano ziba zifite inshingano yo gushyira mu bikorwa ibikubiye mu masezerano zagiranye. Ibitari mu masezerano ntibiba no mu nshingano.

- Indishyi zigenewe ugombwa inshingano zishingiye muri rusange ku gihombo byamuteye no ku nyungu byamuvukije. Ziryozwa uruhande bigaragara ko ari rwo ntandaro y'ibitarakozwe

- Indishyi zikomoka ku gisebo zitangwa gusa igihe bigaragara ko

uwazatse yagize akababaro ku giti cye, bityo, ikigo gifite ubuzima gatozi ntigishobora kwaka indishyi cyitwaje akababaro kagizwe n'umuyobozi wacyo.
- Iyo uwajuriye atagaragaza icyo anenga ku rubanza rwajuririwe, ubujurire bwe nta gaciro buhabwa.

- Ku rwego rw'ubujurire ntihashobora kuregerwa ikirego gitanzwe bwa mbere, keretse iyo haregerwa guhwanya imyenda cyangwa gutanga ikirego cyo kwiregura ku kirego cyatanzwe mu rukiko rw'ubujurire.

URUKIKO RW'IKIRENGA RURI I KIGALI RUHABURANISHIRIZA IMANZA Z'UBUTEGETSI, RUKIJIJE MU RUHAME URUBANZA RAD 0016/08/CS MU BURYO BUKURIKIRA:

HABURANA

Uwajuriye : GONE FISHIN' SARL

Uregwa : LETA Y'U RWANDA

Ikiburanwa : Kujurira urubanza Rad0018/08/HC/Kig rwaciwe n'Urukiko Rukuru ku wa 01/10/2008 (Dommages et intérêts suite à la mauvaise exécution du contrat / Damages due to the bad implementation of the contract)

I. IMITERERE Y'URUBANZA

[1] Muri gahunda yayo yo kureka imirimo y'ubucuruzi, Leta y'u Rwanda yatangiye kugurisha ibigo byayo, ibindi ibyegurira abikorera ku giti cyabo, inagurisha imigabane yari ifite mu bigo yashoyemo imari. Ni muri urwo rwego, "Centre Piscicole" ya Kigembe, ikigo cya Leta cyari gifite inshingano zo korora amafi nacyo cyashyizwe ku rutonde rw'ibigo bigomba kwegurirwa abikorera ku giti cyabo.

[2] Mu kwezi kwa 9/1996, Umuyobozi Mukuru wa GONE FISHIN'Sarl Christopher Alden Thorne amaze kugenzura uko "centre piscicole " ya Kigembe imeze, yagaragaje ubushake bw'uko yahabwa icyo kigo, kugirango nyuma yo kukivugurura azagikoreremo ubworozi bw'amafi. GONE FISHIN'Sarl yamenyeshejwe mu ibaruwa N°338/Priv/SV/

MPH yo ku wa 28/09/1998 ya "privatization secretariat", ko yemerewe kuzakorera muri icyo kigo. Ku wa 02/04/1999 nibwo amasezerano yasinywe hagati y'impande zombi, ni ukuvuga Leta y'u Rwanda ihagarariwe na Minisiteri y'Imari n'Igenamigambi ku ruhande rumwe, na GONE FISHIN'Sarl ihagarariwe n'Umuyobozi Mukuru wayo ariwe Christopher Alden Thorne ku rundi ruhande.

[3] Ingingo z'ingenzi zikubiye muri ayo masezerano zirebana n'ibyo buri ruhande rwiyemeje gukora. Kuri Leta y'u Rwanda yakodesheje GONE FISHIN'Sarl icyo kigo mu gihe cy'imyaka 15, GONE FISHIN'sarl nayo yiyemeza kuzajya yishyura igiciro cy'ubukode kingana na 20.000US$ buri mwaka. Ikindi GONE FISHIN'sarl yasabwe, ni ugushyira mu bikorwa umushinga wo gushora imari muri icyo kigo, nk'uko wagaragarijwe Leta y'u Rwanda mbere y'uko amasezerano asinywa.

[4] Kugirango GONE FISHIN'sarl ibashe gushyira uwo mushinga mu bikorwa, yatse inguzanyo muri Banki. Ariko inguzanyo ntabwo yayihawe nk'uko yayatse, ibyo bikaba byaratumye, nk'uko GONE FISHIN'sarl ibivuga, umushinga yari yarerekanye mu gihe cyo guhabwa na Leta y'u Rwanda icyo kigo wo gushora imari, udashyirwa mu bikorwa nk'uko wari wagaragajwe.

[5] Mu mabaruwa atandukanye, GONE FISHIN'sarl yasabye ko Leta y'U Rwanda yayifasha kubona amafaranga yo gushora imari muri icyo kigo, by'umwihariko GONE FISHIN'sarl yasabaga ko Leta y'u Rwanda yayishingira kugirango Banki itange umwenda.

[6] Ku wa 16/12/2002 GONE FISHIN'sarl yamenyesheje Leta y' u Rwanda ko izahagarika imirimo yakoreraga muri "centre piscicole"ya Kigembe ku wa 18/02/2003, inyandiko y'iherekanya bubasha (remise et reprise/ handover) yakozwe ku wa 15/02/2003. Leta y'u Rwanda na GONE FISHIN'sarl

batangiye kureba uko bakemura ikibazo kirebana n'ibyo buri ruhande rugomba urundi, kugeza ubwo ku wa 24/02/2005 GONE FISHIN'sarl ireze Leta y'u Rwanda mu Rukiko Rukuru rwa Repubulika.

II. URUBANZA MU RUKIKO RUKURU

[7] Urubanza rwaburanishijwe n'Urukiko Rukuru, ruruca ku wa 01/10/2008. Mu miburanire ya GONE FISHIN'sarl, yagaragaje ko Leta y'u Rwanda yagize "mauvaise foi contractuelle/ contractual bad faith" yatumye ishyirwa mu bikorwa ry'amasezerano y'ubukode bwa "centre piscicole" ya Kigembe bagiranye rikorwa nabi. Ngo Leta y'u Rwanda ikaba itarubahirije ibyari bikubiye mu ngingo ya 5 y'amasezerano ndetse n'ibyari ku mugereka wayo masezerano. Ibyo nibyo byatumye GONE FISHIN'sarl irega isaba indishyi, ndetse inasaba amafaranga yari yaratanze ivugurura icyo kigo.

[8] Ku ruhande rwa Leta, uyihagarariye yagaragaje ko nta ruhare Leta y' u Rwanda yagize mu bibazo GONE FISHIN' sarl yahuye nabyo byatumye itubahiriza amasezerano y'ubukode yari yagiranye na Leta y'u Rwanda. Yanagaragaje ko GONE FISHIN'sarl ariyo yanditse isaba iseswa ry'amasezerano. Leta y'u Rwanda yanatanze ikirego cyo kwiregura, isaba indishyi zitandukanye, amafaranga y'ubukode GONE FISHIN'sarl itishyuye, n'andi mafaranga yakoreshejwe mu gukora expertise ya " centre piscicole" ya Kigembe nyuma yuko "GONE FISHIN'sarl" isheshe amasezerano. Urwo rubanza rwaciwe tariki ya 1/10/2008.

[9] Mu guca urubanza, Urukiko Rukuru rwemeje ko Leta y'u Rwanda nta "mauvaise foi/ bad faith" yagize mu ishyirwa mu bikorwa ry'amasezerano y'ubukode, bityo n'indishyi zatswe na GONE FISHIN'sarl ntiyazihabwa, ndetse n'amafaranga yatanze ivugurura ikigo "centre piscicole" ya Kigembe ntiyayahabwa. Urukiko rwemeje kwakira ikirego cyo kwiregura cyatanzwe na Leta y'u Rwanda, rugisuzumye rusanga gifite ishingiro gusa ku bijyanye n'amafaranga y'ubukode itahawe,

rutegeka GONE FISHIN'sarl kwishyura Leta y'u Rwanda 31.735.200FRW , 4% yayo y'umusogongero wa Leta ungana na 1.269.408FRW n'amagarama angana na 49.000FRW.

III. URUBANZA MU RUKIKO RW'IKIRENGA

[10] GONE FISHIN'sarl ntabwo yishimiye imikirize y'urubanza rwaciwe n'Urukiko Rukuru, maze irujuririra mu Rukiko rw'Ikirenga ku wa 30/10/2008**.** Dosiye yakorewe ibanzirizasuzuma, umucamanza wabishinzwe yemeza ko ubujurire bwakozwe mu buryo no mu nzira bikurikije amategeko, dosiye ishyikirizwa Perezida w'Urukiko rw'Ikirenga kugirango agene umunsi izaburanishirizwaho. Perezida w'Urukiko rw'ikirenga yashyizeho itegeko rigena umunsi w'iburanisha wo ku wa 12/03/2009, uwo munsi ugeze, hitabye Me Kayitana Dominique Xavio ahagarariye GONE FISHIN'sarl, naho Leta y'u Rwanda ihagarariwe na Me SEBAZUNGU Alphonse. Uhagarariye Leta yasabye ko urubanza rusubikwa kuko uwari waruteguye yagize ibyago, maze iburanisha ryimurirwa ku wa 07/05/2009. Kuri uwo munsi hitaba Leta ihagarariwe n'intumwa yayo Me MBARUSHIMANA JMV, naho GONE FISHIN'sarl iburanirwa na Me NSENGIYUMVA Viateur afatanije na KAYITANA Dominique Xavio, urubanza rurasubikwa bisabwe n'uhagarariye Leta kuko hari ibimenyetso yari akibona bivuye muri BRD, akaba atari yabonye umwanya wo kubisuzuma.

[11] Iburanisha ryashyizwe ku wa 24/06/2009, kuri uwo munsi hitaba abahagarariye GONE FISHIN'sarl, n'umuyobozi wayo Christopher Alden Thorne, n'intumwa ya Leta Me MBARUSHIMANA JMV. Urubanza ntabwo rwaburanishijwe kuko Christopher Alden Thorne yavuze ko hari ibimenyetso bishya ashaka kugaragariza Urukiko, ndetse akaba akeneye n'umusemuzi, urubanza rwimuriwe ku munsi utazwi. Nyuma rwaje gushyirwa kuri gahunda yo kuburanishwa ku itariki ya 11/11/2009. Uwo munsi urubanza rwaburanishijwe GONE

FISHIN'sarl ihagarariwe na Me KAYITANA Domonique Xavio afatanije na Me NSENGIYUMVA Viateur naho Leta y'u Rwanda iburanirwa n'Intumwa zayo arizo Me MBARUSHIMANA J.M.V na Me BUTARE Emmanuel.

III. 1. INGINGO Z'UBUJURIRE ZA GONE FISHIN'sarl N'IMYIREGURIRE YA LETA Y'u Rwanda

[12] Me KAYITANA Dominique Xavio yahawe ijambo ngo atange impamvu zatumye ijurira avuga ko izo mpamvu yanazigaragaje mu mwanzuro igihe yatangaga ubujurire, atangira avuga ko umucamanza yaciye urubanza ku binyuranye n'ikirego, icyaregewe si uko ishyirwa mu bikorwa ry'amasezerano ritashobotse ahubwo ikirego cyari ukugaragaza ko ryakozwe nabi bitewe na Leta y'u Rwanda. Ngo iyo myumvire niyo yatumye umucamanza yemeza ko nta kosa Leta y'u Rwanda yakoze, bituma hemezwa ko nta ndishyi GONE FISHIN'SARL igomba guhabwa. Yakomeje avuga ko umucamanza yanze kujya kureba "ferme piscicole de Kigembe" kugira ngo yumve neza akababaro GONE FISHIN'sarl yagize, yanga guha agaciro ibimenyetso byari byagaragajwe mu iburanisha(video n'amafoto), yanga no gutumiza abatangabuhamya. Yongeyeho ko umucamanza yanze guha agaciro ikimenyetso GONE FISHIN'sarl yavanye kuri internet cyerekana icyo muri droit administratif/ administrative law bita ikosa cyangwa imyifatire ifatwa nk'ikosa ry'ubutegetsi.

[13] Me KAYITANA Dominique Xavio yakomeje gutanga impamvu z'ubujurire avuga ko Leta y'u Rwanda yanze kwishingira GONE FISHIN'sarl, kandi hari ibaruwa ya BCR yo ku wa 27/12/1999 yemereraga GONE FISHIN'sarl inguzanyo iyibura kuko Leta y'u Rwanda itayishingiye. Yakomeje avuga ko umucamanza yemeje ko nta kimenyetso GONE FISHIN'sarl yatanze cy'uko Leta yagabanije igihe cy'ubukode kugira ngo ibure inguzanyo kandi nyamara na Leta ikaba idahakana ko icyo gihe yakigabanije. Indi mpamvu yatanzwe

n'uhagarariye GONE FISHIN'sarl nuko hari ibimenyetso abahagarariye GONE FISHIN'sarl baba barashoboye kubona babirangira umucamanza ariko ntiyajya kubishaka. Ibyo bimenyetso bikaba biri muri minisiteri y'imari, bikaba bijyanye n'amafaranga USAID, na BAD/ADB bari bemeye guha GONE FISHIN'sarl. Yashoje avuga ko umucamanza atategetse ko GONE FISHIN'sarl yasubizwa amafaranga yatanze y'ubushakashatsi bwakozwe mbere yo gupiganira ikigo, ndetse n'amafaranga yashowe muri kiriya kigo kuko cyeguriwe abikorera kidakora kuko cyari cyarangiritse, GONE FISHIN'sarl ikaba ariyo yagisannye.

[14] Intumwa ya Leta Me MBARUSHIMANA J.M.V yahawe ijambo avuga ko umucamanza wa mbere yaciye urubanza ku cyo yaregewe, akaba atarigeze atandukira. Yavuze ko Leta y'u Rwanda nta kosa yigeze ikora, ntabwo GONEFISHIN' sarl yigeze itanga ibimenyetso byashingirwaho mu kwemeza ko Leta y'u Rwanda itubahirije amasezerano. Ku mpamvu yuko Urukiko rutageze kuri centre piscicole ya Kigembe, uhagarariye Leta yavuze ko Urukiko rushobora kujya mu iperereza iyo rubonye ko ari ngombwa. Ariko rushobora no guca urubanza rushingiye ku bindi bimenyetso iyo rusanze bihagije. Ikindi nuko iryo perereza nta cyo ryari kugaragaza kuko icyo kigo cyongeye kugurishwa nyuma yuko GONE FISHIN'sarl ivuyemo, hakaba hashize imyaka irenga itandatu.

[15] Me MBARUSHIMANA JMV yakomeje ijambo avuga no ku kirego GONE FISHIN'sarl yatanze cy'uko Leta y'u Rwanda itigeze igira bonne foi mu kubahiriza amasezerano. Yasabye Urukiko kwemeza ko icyo kirego nta shingiro kuko nta bimenyetso yabitangiye. Leta y'u Rwanda ikaba yarakoze ibyo yasabwe byose, yubahiriza amasezerano. Yongeyeho ko hari amafaranga GONE FISHIN'sarl yahawe na BRD imaze kuyabona nibwo yahisemo kureka ibyo yakoraga. Ku birebana n'amafaranga GONE FISHIN'sarl yaba yaratanze ku bushakashatsi uhagararaiye Leta yavuze

ko GONE FISHIN'sarl itasaba kuyasubizwa kuko itigeze ibyemererwa, nta masezerano ahari agaragaza ko ayo mafaranga agomba gusubizwa. Kubirebana n'amafaranga yagombaga gutangwa na USAID ndetse na BAD, Me MBARUSHIMANA JMV yavuze ko Leta y'u Rwanda ntaho ihuriye nayo, ikaba itanayazi. Naho amafaranga yaba yarakoreshejwe mu gusana ikigo, Me MBARUSHIMANA JMV yavuze ko mu masezerano bidateganijwe, ko ahubwo igiteganijwe ari "indemnité" nayo yashoboraga gutangwa mu gihe bibaye ngombwa, kandi bigakorwa nyuma y'uko impuguke zihagarariye impande zombi zigaragaje agaciro k'ibyakozwe.

[16] Intumwa ya Leta, Me BUTARE Emmanuel, yahawe ijambo avuga ko umucamanza yaciye urubanza ashingiye ku cyaregewe. Naho kuba Leta itarigeze ifasha GONE FISHIN'sarl, yavuze ko GONE FISHIN'sarl ariyo yari ifite inshingano yo gukora ibyo yiyemeje mu masezerano, ntabwo byari ngombwa ko Leta iyifasha mu gushyira mu bikorwa inshingano zayo.

[17] Me NSENGIYUMVA Viateur uhagarariye GONE FISHIN'sarl yahawe ijambo avuga ko nta gahato kabaye mu gihe cyo gusinya amasezerano, ariko ntabwo Leta yorohereje GONE FISHIN'sarl mu gushyira mu bikorwa ayo masezerano. Yakomeje avuga ko amabanki yabonye ko amasezerano y'ubukode azamara imyaka 15, yanga gutanga inguzanyo kuko igihe cyari gitoya, ubukode iyo buza kuba mu gihe cy'imyaka 30 byari gufasha GONE FISHIN'sarl kubona inguzanganyo. Kubirebana n'amafaranga yagombaga gutangwa na ADB/BAD n'andi yari gutangwa na USAID, ibimenyetso byayo biri muri Minisiteri y'imari. Yakomeje avuga ko Urukiko rwaciye urubanza rwajuririwe rwasabwe kujya kureba ibyo bimenyetso ariko ntabwo rwabikoze.

[18] Me NSENGIYUMVA Viateur abajijwe niba Leta yari ifite inshingano zo gufasha GONE FISHIN'sarl kubona inguzanyo, yavuze ko mu masezerano yasinywe iyo

nshingano itagaragara, ariko izo nshingano zikaba zigaragara ku mugereka w'ayo masezerano cyane cyane ingingo ya 2 y'umugereka ihujwe n'ingingo ya 5 y'amasezerano. Yakomeje avuga ko GONE FISHIN'sarl yasheshe amasezerano kuko yari yashyizwe muri stuation itarayemerereraga gukomeza gukora. Ikindi nuko ingingo ya 2 y'itegeko rya privatization ivuga ibirebana n'umutekano w'igihugu, no kwihaza mu biribwa nabyo bikaba birebana n'umutekano w'igihugu, ibi kandi bikaba byahuzwa n'ibiteganywa mu ngingo ya 5 y'amasezerano. Yakomeje avuga ko GONE FISHIN'sarl yasabye ko hakorwa expertise Leta iranga, nyuma Leta iza kwiherera iyikoresha yonyine.

[19] Me MBARUSHIMANA JMV yahawe ijambo avuga ko remise et reprise / handover hagati ya Leta na GONE FISHIN'sarl yabaye ariko GONE FISHIN'sarl ntiyatanga impampuro zigaragaza ishusho y'umutungo. Leta ishatse kongera gushyira icyo kigo ku isoko hakozwe audit, ikigo kiza kwegurirwa abandi. Yakomeje avuga ko mu masezerano hateganijwe ko Leta y'u Rwanda ishobora kugira ibyo iha GONE FISHIN'sarl ko ariko ibyo atari inshingano, kandi nabyo byari gusuzumwa iyo GONE FISHIN'sarl iza kuba yaremeye ko hakorwa expertise nk'uko yari iteganijwe mu masezerano. Abajijwe niba ikigo kitarigeze kivugururwa na GONE FISHIN'sarl asubiza ko GONE FISHIN'sarl ariyo yagombaga kubigaragaza ikaba itarabikoze. Yakomeje avuga ko niba GONE FISHIN'sarl yaratanze amafaranga mu kuvugurura kiriya kigo, kwari ukugira ngo ibone umusaruro w'amafi, kandi mu gihe yahamaze yarawubonye, ikaba nayo yarungukaga.

[20] Me NSENGIYUMVA Viateur yashubijwe ijambo avuga ko mu rwandiko rwa remise et reprise /hand over ntahagaragara ko Leta yasabye expertise ngo GONE FISHIN'sarl ibyange. Ahubwo Leta niyo itaragize ubushake bw'uko iyo expertise ikorwa kuko GONE FISHIN'sarl yari yanditse ibisaba

nk'uko bigaragazwa n'urwandiko rwo ku wa 16/12/2002. Yashoje avuga ko expertise yakozwe na Leta y'u Rwanda itakwemerwa kuko yakozwe n'uruhande rumwe.

[21] Me KAYITANA Dominique Xavio yabajijwe niba hari inyungu cyangwa uburiganya Leta yari ifite mu kunaniza GONE FISHIN'sarl asubiza ko bigoye kwerekana degre y'uburiganya Leta y'u Rwanda yari igamije, ko ariko bugaragazwa nuko Leta y'u Rwanda yanze kugira icyo ikora kugirango GONE FISHIN'sarl igere ku nshingano yari yihaye.

[22] Me NSENGIYUMVA Viateur yakomeje avuga ko uburiganya bwa Leta bureberwa mu bikorwa bitandukanye bikurikirana. Yakomeje avuga ko amasezerano nk'ariya yasabaga imyaka nka 90 kugirango nyir'umushinga yunguke. Imyaka 15 yateganywaga yagabanyirije nyir'umushinga amahirwe yo kubona inguzanyo. Yongeyeho ko buri gihe GONE FISHIN'sarl yatangaga ibyifuzo byayo ariko nta na rimwe Leta yo yigeze igaragaza aho ihagaze. Ndetse n'umucamanza wa mbere yasabye ko habanza kubaho imishyikirano, na Embassy ya Leta Zunze Ubumwe z'Amerika nayo niyo nama yabagiriye ariko ntabwo Leta y'u Rwanda yagaragazaga aho ihagaze. Abajijwe agaciro aha inyandiko yavuye kuri internet igatangwa nk'ikimenyetso kandi hatagaragara uwayanditse yashubije ko Urukiko rwazabisuzuma.

[23] Me NSENGIYUMVA Viateur yabajijwe icyo amafaranga y'umwenda yatanzwe na BRD agahabwa GONE FISHIN'sarl yishingiwe na Leta y'u Rwanda icyo yakoze, yashubije ko ayo mafaranga yakoreshejwe mu gusana ikigo "centre piscicole de Kigembe" kugirango cyongere gikore. Yakomeje avuga ko amafaranga yatanzwe na BRD nk'umwenda agomba kwishyurwa na Leta kuko yashowe mu kigo kigakora, nyuma kikaza kugurishwa, cyagurishijwe kuko cyakoraga, kandi cyakoze kubera wa mwenda cyahawe. Inguzanyo yakoreshejwe mu kubaka ibyuzi 32. Abajijwe niba GONE

FISHIN'sarl yarishyuraga amafaranga y'ubukode nk'uko byari mu masezerano, yashubije ko yishyuye 1..000.000FRw gusa kuko andi itari kuyabona.

[24] Intumwa ya Leta, Me BUTARE Emmanuel yahawe ijambo ahakana ko amafaranga yatanzwe na BRD yakoreshejwe mu gusana ikigo, iyo biza kuba ariko byagenze biba byarashyizwe mu masezerano.

[25] Ku mafaranga asabwa na Leta y'u Rwanda, Me KAYITANA Dominique Xavio yavuze ko Leta y'u Rwanda ariyo yakwirengera amafaranga y'umwenda yatanzwe na BRD kuko yashowe mu kigo nyuma Leta irakigurisha.

[26] Mu kwanzura, Me NSENGIYUMVA Viateur yasabye ko GONE FISHIN'sarl yahabwa 114.683 US$ yakoreshejwe mu bushakashatsi, 74.765US$ yo gusana ikigo cya Kigemebe, inyungu zingana na 2.830.000US$, indishyi zatewe n'ikiganiro cyasebeje GONE FISHIN'sarl zingana na 1.000.000US$, n'izo gusebya umuyobozi wayo zingana na 1.000.000US$, amafaranga y'ikurikiranarubanza angana na 6% z'ayo GONE FISHIN'sarl isaba ahwanye na 637.000US$.

[27] Mu kwanzura, Me MBARUSHIMANA JMV intumwa yahawe ijambo avuga ko amafaranga yatanzwe ku bushakashatsi Leta itayishyura nk'uko byasobanuwe. Ku birebana n'amafaranga yo gusana ikigo, yavuze ko GONE FISHIN'sarl itayahabwa kuko adateganijwe mu masezerano, naho indishyi zo gusebanya yavuze ko nta bimenyetso byatanzwe bigaragaza ko uko gusebanya kwabayeho. Ndetse n'andi mafaranga yose abahagarariye GONE FISHIN'sarl batse akaba atatangwa. Yashoje asaba Urukiko ko rwakwakira ubujurire bwuririye ku bundi bwatanzwe na Leta y'u Rwanda, n'ibikubiye mu mwanzuro bigahabwa agaciro.

[28] Iburanisha ryarasojwe, Urukiko ruvuga ko urubanza ruzasomwa ku wa 15 Mutarama 2010.

IV. ISESENGURA RY'URUBANZA

[29] Uru rubanza rwajuririwe mu Rukiko rw'Ikirenga rwatangiriye mu Rukiko Rukuru, harega GONE FISHIN'sarl irega Leta y'u Rwanda. Ikirego gituruka ku isesa ry'amasezerano hagati y'impande zombi. Nyuma y'uko ubujurire bwakiriwe, Urukiko rugomba gusuzuma ingingo zatumye GONE FISHIN' sarl ijurira. Mu gusuzuma izo ngingo, ni ngombwa ko hanasesengurwa ibikubiye mu masezerano impande zombi zagiranye, kuko GONE FISHIN'sarl ivuga ko Leta y'u Rwanda yayinanije bigatuma amasezerano adashyirwa mu bikorwa nk'uko yumvikanyweho n'impande zombi.

[30] GONE FISHIN'sarl ivuga ko habaye uburyarya ku ruhande rwa Leta, bugaragazwa n'ibikorwa bitandukanye byatumye itabona inguzanyo n'andi mafaranga byari gutuma igera ku nshingano zayo zo korora amafi. Impamvu zatanzwe ku rwego rw'ubujurire zikaba zishingiye kuri iyi ngingo.

[31] Mu gutanga ubujurire GONE FISHIN'sarl isobanura ko Leta y'u Rwanda yagize uburyarya mu gushyira mu bikorwa amasezerano y'ubukode (mauvaise foi contractuelle/ contractual bad faith). Ihame ryo kubahiriza amasezerano nta buryarya riboneka mu mategeko y'u Rwanda mu ngingo ya 33 al3 CCLIII, rikanaboneka mu mategeko y'ibindi bihugu, nk'ingingo za 1134 yo mu gitabo cy'amategeko mbonezamubano cy'Ubufaransa[1], ingingo ya 242 yo mugitabo cy'amategeko mbonezamubano cy'Abadage[2], ndetse bikaboneka muri "*Uniform Commercial Code (UCC)*[3]" yo muri Leta Zunze Ubumwe z'Amerika. Iryo hame riboneka kandi no mu mahame agenga amasezerano y'ubucuruzi mpuzamahanga yashyizweho n'Umuryango w'Abibumbye[4]

[1]Biboneka kuri http://www.droit-des-societes.net/documents/article-code-civil-1134.php .

[2]Biboneka kuri http://fr.jurispedia.org/index.php/Code_civil_Art.242_(de)

[3] "Every contract imposes upon each party a duty of good fait and fair dealing in its performance and its enforcement » UCC, VCC 1-203, 1-304

[4]Unidroit Principles of International Commercial Contracts, 1994.

yo mu 1994, mu ngingo yayo ya 1 agace ka 7. Gerald Cornu mu nkoranyamagambo y'amategeko yanditse mu 2000[5], yasobanuye ko « bonne foi/ good faith » ari ukutagambirira ikintu kibi mu masezerano (absence d'intention malveillante).

[32] Ku bwa Professor Ejan Mackaay, kugirango hemezwe ko habayeho uburyarya ni ngombwa ko ibintu bitatu bibanza kugaragazwa : 1° kudasobanura cyangwa kugira ububasha (imbaraga) budasanzwe hagati y'abagiranye amasezerano 2° bukoreshwa n'umwe mu nyungu ze kandi abangamira undi 3° kugeza n'ubwo ubangamiwe afata ingamba zo kuzirwanaho (1° an asymmetry of information or coercive power between the parties ; 2° exploited by one to its advantages and to the detriment of the other(s) ; 3° to such a degree that it might provoke significant self-protective measures amongst the latter for the future)[6]. Kugirango habe hakwemezwa ko Leta y'u Rwanda yaba yaragize uburyarya mu masezerano yabaye hagati yayo na GONE FISHIN'sarl, ni ngombwa kugaragaza ko hari ibyo Leta yaba yarakoze mu nyungu zayo, ikabikora ifite umugambi wo kunaniza GONE FISHIN'sarl.

[33] Mu kujurira, GONE FISHIN'sarl ivuga ko igikorwa cya mbere kigaragaza uburyarya ku ruhande rwa Leta y'u Rwanda ni uko yakodesheje na GONE FISHIN'sarl ikigo cya "KIGEMBE" mu gihe cy'imyaka 15 aho kuba 30 nk'uko bari babyumvikanye. GONE FISHIN'sarl ikavuga ko kuba igihe cy'ubukode cyari kigufi aribyo byatumye itabona inguzanyo ku buryo bworoshye. Mu gutanga iyi mpamvu, GONE FISHIN'sarl irashaka kwerekana ko icyo ari igikorwa cy'uburyarya mu masezerano (mauvaise foi contractuelle/ contractual bad faith). Kuba mu biganiro bibanziriza amasezerano (Preliminary discussions) byabaye hagati

[5]Gérald Cornu, Vocabulaire juridique, Association Henri Capitant, Quadrige, PUF, 2000, p.119.
[6]Ejan Mackaay, E*conomics of the civil law of contract*, Montreal, October, 2009, p.14.

y'impande zombi, GONE FISHIN'sarl yarifuzaga ko ubukode bwamara imyaka 30, urundi ruhande ntirubyemere, nyuma impande zombi zikumvikana ko ubukode buzamara imyaka 15, GONE FISHIN'sarl ntabwo yahindukira ngo ivuge ko habayeho uburyarya. Ikindi nuko kuba ikifuzo cy'uko ubukode bwamara imyaka 30 kitarubahirijwe, GONE FISHIN'sarl yari ifite uburenganzira bwo kudashyira umukono kuri ayo amasezerano, ariko yahisemo kuyasinya kuko yari yemeye ibiyakubiyemo, ikaniyemeza kubyubahiriza, kandi kimwe mu byari muri ayo masezerano, nuko ubukode bwagombaga kumara imyaka 15. Nk'uko bisobanuwe muri iki gika, iyi mpamvu yatanzwe na GONE FISHIN'sarl ijurira nta shingiro.

[34] Ku mpamvu y'ubujurire y'uko Leta y'u Rwanda yanze kwishingira GONE FISHIN'sarl muri banki ngo ibone amafaranga y'umwenda yari gushora mu gikorwa cy'ubworozi bw'amafi, Urukiko rusanga Leta y'u Rwanda nta nshingano ikomoka ku masezerano y'ubukode yari ifite yo kwishingira GONE FISHIN'sarl. Ntaho biteganijwe mu masezerano, na GONE FISHIN'sarl ntabwo yabashije kugaragaza ikimenyetso cy'uko Leta y'u Rwanda yari ifite iyo nshingano. Icyo GONE FISHIN'sarl yishingikirizaho ivuga ko Leta yagombaga kuyifasha kubona inguzanyo, n'uko Leta y'u Rwanda ngo yaba yariyemeje kugira uruhare mu gufatanya na GONE FISHIN'sarl kongera umusaruro w'amafi, ikabivuga ishingiye ku biri ku mugereka w'amasezerano (inyandiko yitwa proposal: ***privatization of Kigembe Fishery, Butare***,) aho GONE FISHIN'sarl igaragaza raison d'être yayo, mu gace ka kabiri, ahanditse ngo "*active participation with Government, National NGO's and Cooperatives in both the qualitative and quantitative improvement of Rwanda's Nationwide lake and pond fishing capacity*". "Active participation" ivugwa hano ntabwo ari Leta yasabwaga kuyigira ahubwo ni GONE FISHIN'sarl yagombaga gufatanya na Leta, NGO's, cooperatives kugirango umusaruro w'amafi wiyongere haba mu bwiza no bwinshi. Iyi nyandiko kandi GONE FISHIN'sarl

yayigaragaje kugirango ibe yabasha kwereka Leta ibyo izakora mu gihe yaba ihawe "Centre piscicole ya Kigembe" ngo iyikodeshe.

[35] GONE FISHIN'sarl yatanze impamvu y'ubujurire ivuga ko Leta yagize uburyarya kuko yabonaga raporo ntigaragaze ibyo itishimiye. Amasezerano y'ubukode yabaye hagati ya GONE FISHIN'sarl yateganyaga ibyo buri ruhande rugomba gukora. Ku ruhande rwa Leta, yagombaga gutanga ikigo cya Kigembe, GONE FISHIN'sarl nayo yari ifite inshingano zo kwishyura igiciro cy'ubukode ndetse no kuzuza izindi nshingano zikubiye mu masezerano. Ku ruhande rwa Leta, inshingano yayo yo guha GONE FISHIN'sarl ikigo gikodeshwa yarayujuje. Ariko kandi, Leta yari ifite uburenganzira bwo kugenzura niba ibyo GONE FISHIN'sarl yiyemeje mu gihe cyo gupiganira isoko ryo kwegukana ikigo cya Kigembe bishyirwa mu bikorwa nk'uko biteganijwe mu masezerano. Kuba rero Leta yari ifite uburenganzira (droit/ right) bwo kugenzura, ntabwo ari inshingano (obligation), kuburyo GONE FISHIN'sarl yaherako ivuga ko Leta yabonaga raporo z'ibikorwa ntigire icyo izivugaho, kuburyo ukutagira icyo ivuga kuri izo raporo byakwitwa uburyarya mu masezerano. Ingingo ya 5 y'amasezerano y'ubukode, iteganya uko ishoramari ryagombaga gukorwa na GONE FISHIN'sarl mu kigo yari imaze guhabwa ngo igikodeshe, iyo ngingo inateganya ko Leta izajya igenzura, ikanakurikirana ishyirwa mu bikorwa ry'iryo shoramari, ntabwo ivuga ko GONE FISHIN'sarl izafashwa mu kubona inguzanyo.

[36] Indi mpamvu yatumye GONE FISHIN'sarl ijurira ngo ni uko umucamanza atahaye agaciro ibimenyetso byagaragajwe mu iburanisha, ibyo ni video n'amafoto, kutajya kureba ikigo cyakodeshejwe, ndetse ngo akaba yaranze no gutumiza abantangabuhamya. Mu gutanga iyi mpamvu, GONE FISHIN'sarl ntabwo igaragaza niba ibyo bimenyetso bivugwa ari ibyari kwerekana ko Leta y'u Rwanda hari inshingano zikomoka ku masezerano yabaye hagati y'impande zombi itubahirije, cyangwa se niba byari kwerekana ko Leta

yagize uburyarya mu ishyirwa mu bikorwa ry'amasezerano nk'uko ababuranira GONE FISHIN'sarl batanze ubujurire bavuga ko ishyirwa mu bikorwa ry'amasezerano ryagenze nabi kubera uburyarya ku ruhande rwa Leta y'u Rwanda. Umucamanza aha ibimenyetso agaciro iyo asanze ibyo bimenyetso bifite ireme kandi bimufasha kumenya aho ukuri guherereye. Naho kubirebana n'ingingo yuko Umucamanza atagiye kureba ikigo cyakodeshejwe, Urukiko rusanga niyo aza kuba yaragiye kureba icyo kigo, icyo yari kubona ni uko ikigo cyari gihagaze mu gihe cyo kujyayo, nyamara GONE FISHIN'sarl ikaba yari yarakivuyemo, gikorerwamo n'abandi, ntabwo uko cyari kimeze GONE FISHIN'sarl ivamo ariko cyari kuba kikimeze mu gihe GONE FISHIN'sarl yasabaga ko Umucamanza yajya kukireba.

[37] GONE FISHIN'sarl ivuga ko ikindi inenga urubanza rwajuririwe ari uko Urukiko rwaruciye rutigeze rutegeka Leta y'u Rwanda ko yasubiza amafaranga GONE FISHIN'sarl yatanze mu bushakashatsi, ndetse n'andi mafaranga yaba yaratanzwe mbere y'uko itsindira isoko ryo gukodesha ikigo cya "Kigembe". Kuri iyi ngingo, Urukiko rurasanga ayo mafaranga yatanzwe na GONE FISHIN'sarl muri ibyo bikorwa, ntaho ahuriye n'amasezerano. GONE FISHIN'sarl yayatanze igirango ipiganwe n'abandi, kandi igirango irebe ko izunguka mu gihe yaramuka itsinze, ntabwo rero byakwitwa contractual bad faith/ mauvaise foi contractuelle cyane ko n'ayo masezerano yari atarasinywa. Kubw'ibyo rero, iyi mpamvu yatanzwe na GONE FISHIN'sarl ijurira ikaba nta shingiro ifite.

[38] GONE FISHIN'sarl yajuriye kandi ivuga ko Leta y'u Rwanda yishe ingingo ya 3 y'amasezerano. Isesengura ry'iyi ngingo rigaragagaza ko ikubiyemo ibitekerezo bitatu aribyo: 1° Leta y'u Rwanda yemeye gutanga ibintu byimukanwa n'ibitimukanwa, inyubako, ubutaka, ibiti ngo bikodeshwe, yishingiye kandi ko ukodesheje azakoresha ibyo akodesheje

ntawumubangamiye. Ukodesheje afite uburenganzira bwo gucunga no kubyaza umusaruro ibintu biri mu bukode; 2° nta kintu kigomba guhindurwa ku mutungo Leta y'u Rwanda itabanje gutanga uburenganzira; 3°kugirango uhagarariye Leta asure ikigo, ukodesheje azajya abimenyeshwa mu masaha 24 abanziriza iryo sura. Mu bivugwa muri iyi ngingo nta na kimwe GONE FISHIN'sarl igaragaza ko Leta y'u Rwanda itubahirije ngo kibe cyarabaye intandaro yo gusesa amasezerano.

[39] GONE FISHIN'sarl kandi yajuriye isaba ko icyemezo cyafashwe n'umucamanza waciye urubanza rwajuririwe cy'uko itahabwa amafaranga yatanze ikora "rehabilitation" ko cyavanwaho. Ibyo ikabisaba ishingiye ku ngingo ya 5 y'amasezerano y'ubukode. Ibivugwa mu ngingo ya 5 y'amasezerano, birebana n'icyakorwa mu gihe amasezerano y'ubukode yaba arangiye (expiration), ni ukuvuga nyuma y'imyaka 15 kuko aricyo gihe yari kumara. Ibyo GONE FISHIN'sarl isaba ni ibyari gukorwa igihe amasezerano yari kuba amaze imyaka 15 (...à l'expiration du contrat de bail). Gusa, iryo rangira ry'amasezerano riherekejwe n'itsinda ry'amagambo rivuga ngo ku mpamvu iyo ariyo yose (pour quelque cause que ce soit). Ariko kandi, kuvuga ngo ku mpamvu iyo ariyo yose ntabwo byari ngombwa kuko basoza bavuga ngo mu gihe amasezerano yaba atongerewe (et en cas de non renouvellement du bail...), iyo igihe amasezerano yagombaga kurangira gishize nibwo yongerwa gusa, naho iyo arangiye ku zindi mpamvu ntabwo yongerwa, byumvikane ko irangira ry'amasezerano rivugwa hano ari iryari kuba nyuma y'imyaka 15, kuko arinabwo yashoboraga kongerwa. Yaba atongerewe hakaba hatangwa "indemnité". Kuba GONE FISHIN'sarl isaba ibikubiye mu ngingo ya 5 y'amasezerano, kandi ayo masezerano ataramaze imyaka 15 nk'uko impande zombi zari zabyiyemeje, ahubwo akaba yarasheshwe cya gihe cy'imyaka 15 kitarangiye, ntabwo ibyo isaba yabihabwa.

[40] GONE FISHIN'sarl yanajuriye isaba ko yahabwa 2.830.000USD y'inyungu yavukijwe. Ingingo ya 47 y'Igitabo cya Gatatu cy'Urwunge rw'Amategeko Mbonezamubano iteganya ko "indishyi zigenewe ugombwa inshingano zigizwe, muri rusange, n'igihombo byamuteye hamwe n'inyungu byamuvukije.......". 2.830.000USD GONE FISHIN'sarl ikaba iyaka nk'indishyi zigizwe n'inyungu yavukijwe. Leta y'u Rwanda yaryozwa izo ndishyi mu gihe byaba bigaragaye ko ariyo yatumye GONE FISHIN'sarl idakomeza imirimo yagombaga gukorera mu kigo cya Kigembe ariyo yari kubyara inyungu zakwa. Nyamara GONE FISHIN'sarl niyo ubwayo yasheshe amasezerano, kandi ibikora nta kosa ku ruhande rwa Leta ryagaragajwe, Leta ikaba yarubahirije inshingano zayo zikubiye mu masezerano nk'uko byasobanuwe hejuru. Kuba nta sano riri hagati y'uguhagarika imirimo kwa GONE FISHIN'sarl na Leta (absence de cause à effet/ lack of the relation of cause and effect) niyo mpamvu Leta itasabwa gutanga indishyi. Kubera ibigaragajwe muri iki gika, iyi mpamvu y'ubujurire ikaba nta shingiro ifite.

[41] GONE FISHIN'sarl yajuriye kandi isaba ko yahabwa 1.000.000USD y'indishyi z'akababaro kuko ngo yaba yarasebejwe binyuze kuri Television y'u Rwanda no mu kinyamakuru N*ew Times.* Iyi mpamvu y'ubujurire nta shingiro ifite kuko ababuranira GONE FISHIN'sarl ntibigeze bagaragaza, ngo banatange ibimenyetso by'ukuntu Leta y'u Rwanda yaba yarasebanije. Nta nyandiko cyangwa imvugo bya Leta y'u Rwanda birimo gusebanya kwaba kwarakorewe GONE FISHIN'sarl byagaragarijwe Urukiko, kubw'ibyo, iyi mpamvu y'ubujurire nta shingiro ifite.

[42] GONE FISHIN'sarl yanatanze impamvu y'ubujurire inenga icyemezo cyafashwe n'umucamanza cy'uko atayigeneye 1.000.000USD y'indishyi z'igisebo umuyobozi wayo yatewe n'ikiganiro cyahise kuri television, n'inkuru yatangajwe muri *New Times*. Kuri iyi mpamvu, Urukiko rurasanga GONE

FISHIN'sarl yareze ifite ubuzima gatozi, ikaba itakwaka indishyi z'uko umuyobozi wayo yasebejwe. Indishyi zisabwa, zitangwa igihe bigaragaye ko uwazatse yagize akababaro ku giti cye, ntabwo GONE FISHIN'sarl yakwaka indishyi yitwaje ko akababaro kagizwe n'umuyobozi wayo. Niba uwo muyobozi yaragize akababaro, niwe watanga ikirego nkanyiracyo agaragaza akababaro yagize n'uwakamuteye. Ku bw'ibyo, iyi mpamvu yatanzwe na GONE FISHIN'sarl ijurira nta shingiro ifite.

V. **Ubujurire bwuririye ku bundi bwa Leta y'u Rwanda**

[43] Leta y'u Rwanda isaba ko yahabwa amafaranga yishyuriye GONE FISHIN'sarl muri Banque Rwandaise de Développement angana na 93.966.955FRW kubera umwenda yari yarishingiye, ikanaka 3.953.000FRW yatanzwe hakorwa "expertise" kugirango ikigo cyongere kigurishwe nyuma y'uko GONE FISHIN'sarl isheshe amasezerano. Mu gusaba ayo mafaranga, ntabwo ababuranira Leta bigeze bagaragariza Urukiko icyo banenga icyemezo cyafashwe n'umucamanza waciye urubanza rwajuririwe ku birebana n'amafaranga Leta yaba yarishyuriye GONE FISHIN'sarl, nayo yaba yarishyuye abakoze "expertise", bityo kubirebana n'aya mafaranga hakaba hagumyeho umwanzuro wafashwe mu rubanza rwajuririwe.

[44] Leta y'u Rwanda irasaba kandi ko yahabwa indishyi zikomoka ku gisebo cy'uko GONE FISHIN'sarl yavuze ko Leta yayikoreye uburiganya ndetse n'izindi ndishyi zo gusiragizwa mu manza. Iyi mpamvu Leta y'u Rwanda itanga ntabwo yasuzumwa kuko ije bwa mbere ku rwego rw'ubujurire, ingingo ya 168 y'Itegeko N°18/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu ikaba iteganya mu gika cyayo cya mbere ko, ku rwego rw'ubujurire hadashobora kuregerwa ikirego gishya keretse kuregera guhwanya imyenda cyangwa gutanga

ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu rukiko rw'ubujurire.

VI. ICYEMEZO CY'URUKIKO

[45] Urukiko rw'Ikirenga rwemeye kwakira no gusuzuma ubujurire rwashyikirijwe na GONE FISHIN'sarl.

[46] Rwemeje ko ubwo bujurire nta shingiro .

[47] Rwemeye kwakira ubujurire bwuririye ku bundi bwatanzwe na Leta y'u Rwanda.

[48] Rwemeje ko ubwo bujurire nta shingiro bufite.

[49] Ruvuze ko imikirize y'urubanza rwajuririwe arirwo R.Ad 0018/08/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 01/10/2008 igumyeho.

[50] Rutegetse GONE FISHIN'sarl kwishyura Leta y'u Rwanda 31.735.200FRW nk'uko yagenwe mu rubanza rwajuririrwe, yaba itabikoze mu gihe cy'amezi atatu akavanwa mu byayo kungufu za Leta.

[51] Rutegetse GONE FISHIN'sarl gutanga 4% ya 31.735.200FRW y'umusogongero wa Leta angana na 1.269.408FRW, yaba itabikoze mu gihe cy'ukwezi, akavanwa mu byayo kungufu za Leta.

[52] Ruyitegetse kandi gutanga 71900FRW y'amagarama y'urubanza akiyongera kuri 49.000FRW yaciwe mu rubanza rwajuririwe, itayatanga mu gihe cy'iminsi umunani akavanwa mu byayo kungufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 15.01.2010 N'URUKIKO RW'IKIRENGA, RUGIZWE NA RUGEGE Sam: PEREZIDA, MUTASHYA Jean Baptiste, KANYANGE Fidélité, ABACAMANZA, BAFASHIJWE NA Jean Pierre MUNYANDAMUTSA: UMWANDITSI W'URUKIKO.

RUGEGE Sam
Perezida
Sé

MUTASHYA Jean Baptiste
Umucamanza

KANYANGE Fidélité
Umucamanza

Sé

MUNYANDAMUTSA Jean Pierre
(umwanditsi)

5. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: R.AD.A 0012/07/CS
ITARIKI Y'URUBANZA: 27/03/2009
HABURANA: LETA Y'U RWANDA / NKONGOLI John

AMAGAMBO MPINE

IMANZA Z'UBUTEGETSI – GUSABA IBIGENERWA UMUKOZI IYO AKUWE KU KAZI NTA KOSA NTA N'IBARUWA IMUSEZERERA – INGARUKA KU MUKOZI Z'IBYEMEZO BIFATWA MU RWEGO RW'AKAZI IYO MU RUKIKO AGIZWE UMWERE

IBISABWA KUBANZA GUKORWA KUGIRANGO UMUKOZI WA LETA AFATIRWE IBIHANO BYO MU RWEGO RW'AKAZI

AGACIRO K'ICYEMEZO GISIMBUZA UMUKOZI UNDI KU BYEREKEYE UBURENGANZIRA BW'USIMBUWE MU KAZI

IKIREGO GISHYA GITANZWE KU RWEGO RW'UBUJURIRE

AGACIRO K'IMYANZURO ITANZWE NYUMA MU RUKIKO UGERERANYIJE N'IYATANZWE MBERE

KUDASUBIZWA MU NTOKI AMAFARANGA Y'UBWITEGANYIRIZE K'UMUKOZI WAKUWE KU KAZI IGIHE AYATSINDIYE

GUSABA INDISHYI ZIKOMOKA KU GIHOMBO CY'UMUKOZI WAFUNZWE KANDI ARI UMWERE

KUDAFATA ABAKOZI KIMWE BARI MU BIHE (CIRCONSTANCES) BIMWE

IKOMATANYA RY'INDISHYI ZIKOMOKA KU GIHOMBO CY'UMUKOZI IYO UMUKORESHA ATUBAHIRIZA SITATI

RUSANGE Y'ABAKOZI BA LETA

IMENYESHA RY'IBYEMEZO BIREBA UMUNTU KU GITI CYE
IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Iyo ikiburanwa kidahindutse ugereranyije n'uko cyari giteye umuburanyi atanga imyanzuro ye ya mbere, mbere y'uko urubanza ruburanishwa akaza gutanga imyanzuro mishya isimbura iya mbere kandi agaha kopi yayo urundi ruhanda, imyanzuro mishya ikagibwaho impaka, kandi uwayitanze akavuga ko atagihagaze ku ya mbere, nta wavuga ko hari ikindi kirego gishya cyatanzwe.

-Nta gihano gishobora gufatirwa umukozi hatabanje kugaragazwa ikosa yakoze mu kudakora ibyo ashinzwe kandi akabanza guhabwa umwanya wo kuryisobanuraho mu nyandiko.

-Kuba umuntu yaragizwe umwere mu rukiko ntibivuga ko atashobora gufatirwa ibihano mu rwego rw'akazi, kuko ikirego cy'inshinjabyaha ntaho gihuriye n'ibihano byo mu rwego rw'akazi bikomoka ku ikosa ryo mu kazi, bityo bikaba bitagomba no kuvangwa.

-Icyemezo cy'ubutegetsi gihindurwa cyangwa kigakurwaho n'ikindi cyemezo cy'ubwoko bumwe; kigomba no gufatwa n'umutegetsi wo mu rwego rumwe, cyangwa rurusumbye kikanamenyeshwa uwo cyafatiwe. Bityo, umukozi ukuwe ku kazi ntamenyeshwe ku buryo bweruye icyemezo icyo ari cyo cyose cyaba cyaramufatiwe, aba akitwa umukozi mu rwego rw'amategeko ; akaba akwiye indishyi, kabone n'ubwo yaba yarafatiwe ibihano. Kuba umwanya yarimo warashyizwemo undi hakoreshejwe iteka rya Minisitiri, rigatangazwa mu igazeti ya Leta, ntibyitwa ko abimenyeshejwe.

-Inkiko zifite ububasha bwo kuburanisha imanza z'ubutegetsi zigezwaho harimo izisaba indishyi zikomoka mu kutubahiriza sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta ; izo ndishyi ntizivangurwa kandi ntibibujijwe ko zikomatanywa.

-Amafaranga y'ubwiteganyirize bw'abakozi umukozi yavukijwe akiri

mu kazi ntashobora kuyahabwa mu ntoki kugirango ayakoreshe icyo ashaka, iyo ayatsindiye yarakavuyeho.
-Iyo umuntu yafunzwe kubera ibyo akurikiranyweho n'inzego zibifitiye ububasha nyuma akagirwa umwere n'urukiko, ntashobora kubyakira indishyi, keretse iyo agaragaje ko izo nzego zamuhohoteye zigamije kumugirira nabi gusa.

-Ibyemezo bitareba rubanda muri rusange bigira agaciro guhera igihe bimenyeshejwe abo bireba. Ku muntu utishoboye (incapable), iryo menyesha rikorwa k'umuhagarariye mu rwego rw'amategeko, yaba afunze rikajyanwa muri gereza afungiyemo.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA MU RUHAME IMANZA Z'UBUTEGETSI, RUKIJIJE KUWA 27 WERURWE 2009 URUBANZA R.Ad.A 0012/07/CS MU BURYO BUKURIKIRA:

<u>Haburana:</u>

Uwajuriye: Leta y'u Rwanda (Civil Aviation Authority) mu izina ry'Intumwa Nkuru ya Leta;

<u>Uregwa</u>: Nkongoli John, mwene Munyemana Evariste na Murerakazi Dorothéé,
utuye mu Murenge wa Kicukiro, Akarere ka Kicukiro, Umujyi wa Kigali.

<u>Ikiburanwa</u>:

" R*ecouvrement des créances sur les arriérés de salaire, avantages sociaux, dommages matériel et moral pour détention illégale et arbitraire*".

Imiterere y'urubanza

(1) Uru rubanza rwatangiriye mu Rukiko Rukuru rwa Repubulika kuri n° R.Ad 0055/06/HC/KIG Nkongoli John arega Leta y'u Rwanda na Civil Aviation Authority, asaba " *recouvrement des créances sur les arriérés de salaire, avantages sociaux, dommages matériel et moral pour détention illégale et arbitraire*" nyuma y'urubanza rw'inshinjabyaha yari yarezwemo ibyaha binyuranye akaza kugirwa umwere ku rwego rw'Urukiko Rukuru rwa Repubulika.

(2) Mu kirego cye Nkongoli yashingiraga ku mpamvu z'uko yari Umuyobozi mukuru wa Régie y'Ibibuga by'Indege by'u Rwanda (Régie des Aéroports du Rwanda), ko kuva aho afatiwe agafungwa kuwa 19/06/2002 nyuma akaza kurekurwa kugeza igihe yatangaga ikirego, nta cyemezo cyanditse icyo aricyo cyose (nk'icyo kumuhagarika ku kazi, kumusezerera ku kazi, mesure disciplinaire, etc..) umukoresha we yigeze amufatira ngo akimumenyeshe. Kubera izo mpamvu yasangaga akiri umukozi wa Leta, agasaba rero gusubizwa uburenganzira bwe bwose yavukijwe.

Imigendekere y'urubanza

Mu Rukiko Rukuru rwa Repubulika

(3) Urubanza R.Ad 0055/06/HC/KIG rwaciwe kuwa 15/06/2007, urukiko rufata icyemezo gikubiyemo iby'ingenzi bikurikira:

"Rwemeje ko Nkongoli yasezerewe ku buyobozi bwa Régie des Aéroports du Rwanda guhera kuwa 22/11/2002, bityo guhera kuri iyo tariki akaba atakiri umukozi wa Leta kubera impamvu zasobanuwe muri za Rusanze;

Rwemeje ko *Nkongoli J. yasezerewe kuri uwo murimo mu buryo bunyuranije n'amategeko mu kutamenyeshwa icyemezo yafatiwe*, akaba agomba ku biherwa indishyi kubera impamvu zasobanuwe muri za Rusanze;

Rwemeje kandi rutegetse ko Leta y'u Rwanda igomba guha Nkongoli John *indishyi z'uko yasezerewe ku kazi mu buryo bunyuranije n'amategeko mu kutamenyeshwa icyemezo yafatiwe, zingana na 5.000.000 frw* kubera

impamvu zasobanuwe muri za Rusanze;

Rwemeje kandi rutegetse ko Civil Aviation Authority igomba guha Nkongoli J.*amafaranga y'ibirarane by'imishahara y'amezi atandatu atahembwe angana na 4.946.406 frw* kubera impamvu zasobanuwe muri za Rusanze;

Rwemeje kandi rutegetse Leta y'u Rwanda na Civil Aviation Authority gufatanya guha Nkongoli J. 400.000 frw y'ikurikirana rubanza nk'uko yasobanuwe muri Rusanze, buri wese agatanga kimwe cya kabiri cyayo, ni ukuvuga 20.000 frw;

Rutegetse Civil Aviation Authority gutanga amafaranga y'umusogongero wa Leta wa 4% ya 4.946.406 frw + 200.000 frw, ungana na 205.856 frw, itayatanga mu gihe gitegetswe ayo mafaranga akavanwa mu mutungo wayo ku ngufu za Leta;

Rwemeje kandi rutegetse ko ikindi gice cy'amafaranga y'umusogongero wa Leta giherera ku Isanduku ya Leta";

Kuwa 13/07/2007, Leta y'u Rwanda yajuririye icyo cyemezo, ubujurire bwandikwa kuri n°R.Ad.A 0012/07/CS, umucamanza washinzwe ibanzirizasuzuma ry'ubwo bujurire, mu cyemezo R.Ad 0017/07/Pré-ex/CS yafashe kuwa 30/10/2007, asanga bwaratanzwe mu buryo n'inzira bikurikije amategeko;

Mu Rukiko rw'Ikirenga

[4] Itegeko n° 0004/2008/R.Ad ryo kuwa 15/01/2008 rya Perezida w'Urukiko rw'Ikirenga ryashyize iburanisha ry'uru rubanza ku itariki ya 19/02/2008, uwo munsi ntirwaburanishwa kubera ko inteko itari yuzuye;

(5) Rwongeye guhamagazwa ku itariki ya 22/04/2008, uwo munsi ababuranyi baritaba, Nkongoli John aburanirwa na Me Rwangampuhwe François, naho Leta y'u Rwanda ihagarariwe na Me Sebazungu Alphonse, Intumwa Nkuru ya Leta yungirije;

(6) Umucamanza wateguye urubanza amaze gusoma raporo, **Intumwa ya Leta yungirije**, Me Sebazungu, yahawe ijambo kugirango asobanure impamvu Leta y'u Rwanda yajuriye, avuga ko izo mpamvu zikubiye mu myanzuro ibiri yatanzwe, ko umwanzuro wa mbere watanzwe kuwa 13/07/2007 wafatwa nk'uwakwifashishwa bibaye ngombwa (subsidiaire), naho uwa kabiri ukaba ariwo wafatwa nk'uwibanze (principal);

(7) Yakomeje avuga ko umucamanza yibeshye ashingira icyemezo cye ku mpamvu z'uko Nkongoli ngo atigeze amenyeshwa ko yasezerewe, ko kubera iyo mpamvu Leta yakoze amakosa igomba kuryozwa. Yakomeje asobanura ko uwo mucamanza yibeshye afata Nkongoli wari ufunze nk'aho yari mu kazi kandi ingingo ya 39 y'itegeko rusange rigenga abakozi ba Leta igaragaza ibyiciro binyuranye umukozi wa Leta iyo abirimo afatwa ko ari mu kazi koko (mu butumwa, mu mahugurwa, mu kiruhuko), muri ibyo byiciro Nkongoli akaba nta na kimwe yarimo kuko yari muri gereza ku mpamvu zimuturutseho, bivuze rero ko atari mu kazi;

(8) Ku birebana n'umushahara, yavuze ko ingingo ya 106 y'iryo tegeko isobanura igihe umukozi wa Leta aba afite uburenganzira ku mushahara, ko iyo adakora adashobora guhembwa, uwo mushahara kandi nk'uko biteganywa n'ingingo ya 113 y'itegeko rigenga abakozi ba Leta ryavuzwe ukaba utangwa kuva igihe umukozi yatangiriye akazi, ugahagarikwa igihe akaviriyeho ;

(9) Yavuze ko mu gihe hari hashyizweho undi mukozi usimbura Nkongoli (acte contraire) wari icyo gihe muri situation y'umukozi utari ku kazi, ngo abe yanabimenyeshwa, byari bihagije kugirango relations yari afitanye na Leta zibe zihagaze bitabaye ngombwa kubimumenyesha;

(10) Ku byerekeranye n'impamvu Nkongoli yafatiwe ibihano birimo no kwirukanwa, yavuze ko Nkongoli yahagaritswe ku kazi kubera ikibazo cy'imicungire mibi y'ibya Leta, by'umwihariko amasoko yatanze mu buryo budakurikije amategeko, ko nubwo urukiko rwavuze ko nta cyaha yakoze, Leta yo yasanze atarakoze akazi ke neza, muri make ko atari inyangamugayo, aha ibyemezo bifatwa mu rwego rw'akazi (action disciplinaire) bikaba bigomba gutandukanywa n'ibyo yafatiwe mu rwego rwo gukurikiranwa n'Ubushinjacyaha (action pénale);

(11) Ku byerekeranye n'indishyi z'akababaro Urukiko Rukuru rwa Repubulika rwamugeneye ku mpamvu z'uko yafunzwe, Intumwa ya Leta yavuze ko nta shingiro zifite mu rwego rw'amategeko, kuko kugeza ubu nta tegeko riteganya ko umuntu wafunzwe mu buryo busanzwe buteganywa n'amategeko nta bugome bikoranywe agenerwa indishyi, ko niba hari n'aho biteganywa mu bindi bihugu, mu gihugu cyacu atariko bimeze muri iki gihe; byongeye kandi izo ndishyi zikaba zitabangikana n'indishyi mbonezamusaruro. Yongeyeho ko icyo Nkongoli yakora ari ukugaragaza uwaba yaramufungishije agamije kumugirira nabi, Leta ikaba yamukurikirana, ko ariko atari yo yaryozwa izo ndishyi;

(12) Intumwa ya Leta yasabwe kugaragariza urukiko, nk'uko yabivuze, icyemezo cyaba cyarasimbuye icyashyiragaho

Nkongoli ku buyobozi bwa Régie y'Ibibuga by'Indege by'u Rwanda, akanarusobanurira icyabanjirije ikindi hagati yo gufungwa kwa Nkongoli no kwirukanwa kwe, asubiza ko icyo cyemezo ari iteka rya Minisitiri w'Intebe ryo kuwa 31/12/2002 ryashyiragaho uwamusimburaga, ari we Rutaboba Ephrem, ko mu ngingo ya 2 y'iryo teka rya Minisitiri w'Intebe ryashyiragaho uwo Rutaboba hateganywaga ko ingingo zose zaribanjiirije kandi zinyuranye naryo zivanyweho, bivuze ko Nkongoli atari akiri Umuyobozi wa Régie y'Ibibuga by'Indege, naho ku byerekeranye n'ifungwa n'iyirukanwa, asobanura ko Nkongoli yafunzwe bakimara kumukeka, ariko ko hagati aho hari uwamusimbuye by'agateganyo (intérimaire), nyuma y'amezi abiri atangira kubihemberwa nk'uko amategeko abiteganya, byumvikana rero ko hari abandi bahembwaga umushahara wa Nkongoli, akaba atahabwa umushahara w'igihe atari ahari;

(13) **Nkongoli** nawe yahawe ijambo ngo asubize ku bujurire bw'Intumwa ya Leta, abanza kuvuga ko yagiye afungwa urukiko rukamufungura, akongera agafungwa agafungurwa, icyo gihe cyose akaba yarafungirwaga ubusa, n'ibyemezo inkiko zifashe bikavuguruzwa, ko iby'Intumwa ya Leta yavuze yemeza ko yafunzwe kubera kunyereza umutungo wa Leta ataribyo, akaba atagomba no kumuhamya icyaha mu gihe inkiko zakimuhanaguyeho;

(14) Yakomeje avuga ko mbere yo kuregera inkiko habanje imishyikirano kugirango ikibazo cye kibe cyakemurwa mu bwumvikane, inyandiko Intumwa ya Leta yakoze icyo gihe ikaba yarerekanaga ko Leta yakoze amakosa, ko hagati aho yatanze ikirego atanguranwa n'igihe giteganyijwe mu manza z'ubutegetsi kugira ngo kitamurengana, ko atumva impamvu we yarenganywa mu gihe mu bamusimbuye hari uwaje gufungwa nyuma agasubizwa mu kazi, hakaba hari

n'abandi bagiye bafungwa bagahabwa imishahara yabo, bagakorerwa na décompte final, kimwe n'abandi benshi bagiye bakurwa mu kazi bagakomeza guhembwa kugeza igihe babamenyeshereje ibyemezo bibafatiwe burundu.

(15) Ku byerekeranye n'uwo akurikiranye, yasobanuye ko yafunzwe na Leta, akaba ariyo igomba kubiryozwa, kuko ababikoze bari abakozi bayo babikoraga mu izina ryayo;

(16) **Me Rwangampuhwe** umwunganira nawe yahawe ijambo, avuga ko atemera imvugo y'Intumwa ya Leta ko imyanzuro yayo ya mbere yafatwa à titre subsidiaire kandi ariyo ikubiyemo impamvu z'ubujurire, muri iyo myanzuro intumwa ya Leta ikaba yaremeraga ko Nkongoli yarenganye, ko icyo yari ifiteho ikibazo icyo gihe ari indishyi yavugaga ko zidahuye n'akababaro Nkongoli yagize ariko principe y'izo ndishyi ayemera, akaba yaranavugaga kandi ko umushahara wabariweho atari wo, nabyo byerekana ko principe y'uko Nkongoli yahabwa uwo mushahara yayemeraga; ko hakurikijwe ingingo ya 170 y'itegeko n°18/2004 ryo kuwa 20/6/2006 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ababuranyi bagomba kuguma mu mbibi z'icyajuririwe, ku rwego rw'ubujurire hakaba hadashobora kuregerwa ikirego gishya nk'uko Intumwa ya Leta yabigenje ikosora impamvu yari yashingiyeho ubujurire bwa Leta, ibyo bikaba binareba ibyerekeranye na action disciplinaire itigeze iburanwaho;

(17) Ku byerekeranye n'imvugo ko Nkongoli yanyereje amafaranga, yavuze ko ari ikinyoma, ikibigaragaza akaba ari uko bagiye banahindagura imibare, babanza kuvuga miliyoni 38, nyuma mu Nteko Ishinga Amategeko havugwa miliyoni 96, bigeze mu nkiko aza kuba miliyoni 146 nyamara nta kimenyetso na kimwe kigaragajwe,

ikigamije kikaba cyari ukubeshya abayobozi bakuru b'igihugu;

(18) Avuga ku byerekanye n'ingero z'abandi bakozi ba Régie y'ibibuga by'Indege bafunzwe nyuma bagasubizwa uburenganzira bwabo nk'abakozi ba Leta, burimo gusubizwa imishahara yabo yo mu gihe bari bafunze, Me Rwangampuhwe yashingiye ku ibaruwa ya Bumaya André wahoze ari Minisitiri w'Abakozi ba Leta yandikiye Umuyobozi w'Ibibuga by'Indege amubwira ko umukozi ufunze akomeza guhembwa kimwe cya kane (1/4) cy'umushahara, yarekurwa burundu agizwe umwere agasubizwa imishahara ye, ko rero nta kuntu wafungira umuntu ubusa ngo nagusaba gusubizwa uburenganzira bwe ubumwime;

(19) Yavuze ko ikigaragaza ko akarengane ka Nkongoli kagikomeza no mu bundi buryo ari uko Leta idashaka no gukura kuri site internet yayo amakuru yashyizeho mbere ngo yemeze noneho ko Nkongoli yari yarareze yagizwe umwere;

(20) Yagarutse ku ngingo Intumwa ya Leta yashingiyeho mbere ijurira ko indishyi urukiko rwahaye Nkongoli ari nyinshi, avuga ko nta shingiro ifite, kuko aterekana uburyo ayo mafaranga ari menshi, principe ya propotionnalité ashingiraho ikaba itabaho, ko ikibaho ahubwo ari principe de la réparation intégrale, ko no ku byerekeranye n'umushahara washingiweho, Nkongoli yashingiye ku mushahara wa Régie y'Ibibuga by'Indege;

(21) Ku byerekeranye n'uburyo Intumwa ya Leta isobanuramo ikurwaho rya Nkongoli ishingiye ku bikubiye mu iteka rya Minisitiri w'Intebe ryashyizeho uwamusimbuye, Me Rwangampuhwe yavuze ko ubwo buryo bunyuranye

n'imyumvire nyakuri y'ihame rya "parallélisme des formes et des compétences" na "principe de l'acte contraire", iyo myumvire y'Intumwa ya Leta ngo ikaba inanyuranye n'ingingo ya 118 n'iya 119 z'Itegeko Nshinga, kimwe n'ingingo ya 38 n'iya 116 z'itegeko n°22/2002 ryo kuwa 09/09/2002 rishyiraho sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta, ko amagambo" ingingo zose zibanziriza iri teka kandi zinyuranye naryo zivanyweho" avugwa mu iteka rya Minisitiri w'Intebe rishyiraho Rutaboba wasimbuye Nkongoli, arebana na relations zari hagati ya Leta y'u Rwanda na Rutaboba, ko rero ntawayakomozaho ngo yemeze ko iryo teka ari naryo Nkongoli yirukanywemo nubwo bitavuzwe, kuko"tacite révocation" itabaho mu mategeko agenga ubutegetsi bwa Leta, kimwe n'uko umucamanza adashobora kwirukana umukozi wa Leta nk'uko umucamanza wo mu Rukiko Rukuru rwa Repubulika yabigenje kuri Nkongoli mu gihe yemezaga ko ishyirwaho ry'uwamusimburaga ryafatwa nk'aho ariryo ryanamuvanagaho;

(22) Yavuze ko hatanashobora gushingirwa ku bisanzwe bikorwa (usages) nk'uko umucamanza nabyo yashatse kubyumvikanisha avuga ko nta bayobozi b'Ikigo babiri bashobora kubangikana, ngo niba hagiyeho umuyobozi usimbura uwari uriho, uwo wa mbere aba avuyeho bitarinze kuvugwa, imvugo nk'iyo kuri Me Rwangampuhwe ngo ikaba nta gaciro igomba guhabwa kuko kwaba ari ugushyigikira kwica amategeko mu gihe ibyo byitwa ko bisanzwe bikorwa ubwabyo ari bibi;

(23) Ku byerekeranye n'uko ngo Nkongoli atakoraga, ko rero nta mushahara yagombye guhabwa, yavuze ko umukozi wa Leta atari nyakabyizi, ko agengwa n'itegeko, igihe cyose yashyizwe mu mwanya uyu n'uyu mu gihe atarawukurwaho mu buryo buteganywa n'amategeko

(arrêté de révocation ou démission volontaire ou forcée), agomba kugumana statut ye n'uburenganzira agenerwa;

(24) Yavuze ko Leta y'u Rwanda ariyo igomba kubazwa ibyerekeranye n'akarengane Nkongoli yagiriwe afungirwa ubusa, ikaba ari nayo igomba kukaryozwa binyuze muri Minisiteri na serivisi zayo, ko kubera imikorere mibi ya Serivisi zayo, by'umwihariko Ubushinjacyaha bwamufungaga buri gihe yabaga afunguwe by'agateganyo butitaye ku ihame ko gufungwa by'agateganyo ari exception, ko na Minisiteri y'Abakozi ba Leta ifitemo uruhare mu gihe bayigaragarije ko hari umuntu urengana ntigire icyo ibikoraho;

(25) Yasobanuye ko mu rwego rw'amategeko ubwo buryozwe bwa Leta bwashingira ku ngingo ya 258 n'iya 259 z'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, Leta guhakana uruhare rwayo bikaba ntaho bishingiye mu gihe iterekana ko ntaho ihuriye n'abakozi bayo bakoreye Nkongoli ibikorwa bimurenganya bikamutera igihombo n'akababaro;

(26) Yavuze ko uretse n'amategeko y'u Rwanda, n'amategeko mpuzamahanga arenganura Nkongoli, by'umwihariko Pacte international relatif aux droits civils et politiques, mu ngingo yayo ya 9 ku birebana n'ubwiteganyirize bw'abakozi;

(27) Nyuma y'ibyo byose, yavuze ko muri make basaba ibi bikurikira:

-Ko Nkongoli akurwa kuri site internet ya Leta aho berekana ko ari umujura;

-77.724.776,78 Frw pour dommages matériels répartis comme suit:

1/Arriérés de salaires depuis le 19/06/2002, date de l'arrestation, arrêtés provisoirement au mois de juin 2008 soit la somme de 57.907.292,15 frw;
2/Crédit véhicule, soit la somme de 12.000.000 frw conformément au plan de réforme du charroi de l'Etat: Plan crédit véhicule du 25/04/2005;

3/ Soins médicaux forfaitaires, référence faite au contrat signé avec la RAMA conformément à la loi n°29/2002 du 19/09/2002 modifiant et complétant la loi n°24/2001 du 27/04/2001 portant organisation et fonctionnement de la société d'assurance maladie RAMA dont l'article 5 dispose que l'employeur supporte les soins médicaux à concurrence de 7,5%, soit la somme de 57.907.292,15 x 7,5%= 4.343.046,91 frw;

4/ Cotisation mensuelle pour la sécurité sociale à raison de 6% sur salaire, soit la somme de 57.907.292,15 x 6%= 3.474.437,72 frw;

Indishyi z'akababaro

100.000.000 frw (compte tenu de la longueur de la détention, des graves accusations et de la souffrance morale infligée au requérant et à sa famille;

(28) **Me Sebazungu** yongeye guhabwa ijambo, avuga ko adafata Nkongoli nk'umunyabyaha nk'uko byavuzwe n'uwo baburana, ko icyavuzwe ari uko nubwo urukiko rwemeje ko ari umwere, Leta yo ifite uko yabifashe isanga yarakoze amakosa, bituma ifata icyemezo cyo kumusimbura, nk'uko byasobanuwe mbere, action disciplinaire ikaba igomba gutandukanywa na action pénale;

(29) Ku byerekeranye n'amafaranga urukiko rwageneye Nkongoli, yavuze ko atari menshi gusa, ko ahubwo atari anakwiye kuyahabwa, ay'indishyi z'akababaro kubera impamvu zasobanuwe ko nta muntu ufungwa mu buryo busanzwe buteganyijwe n'amategeko nta bugome bikoranywe ngo agenerwe indishyi mu gihe agizwe umwere, naho ku byerekeranye n'umushahara, Nkongoli akaba atari akiri umukozi wa Leta;

(30) Ku byerekeranye n'abandi bakozi ba Régie y'Ibibuga by'Indege by'u Rwanda, yavuze ko ikibazo cya Chrisologue gitanduakanye n'icya Nkongoli kuko we yari yarahagaritswe by'agateganyo nyuma aza gusubizwa ku kazi;

(31) Ku byerekeranye n'imyanzuro ya mbere yatanzwe n'Intumwa ya Leta nyuma hagatangwa indi yasabye ko ariyo yafatwa à titre principal, Me Sebazungu yavuze ko harebwa icyo amategeko ateganya, ko ariko iyo umuntu yibeshye yikosora, hakaba haratewe indi ntambwe kandi ko Leta itacyemera imyanzuro ya mbere, akaba anasanga ibyakozwe ntaho binyuranije n'ibiteganywa n'ingingo ya 168 y'itegeko n° 18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi;

(32) Yasobanuye ko icyo Leta igamije ari ukugaragaza ko hari amategeko atubahirijwe, ko muri urwo rwego utamara kwemeza ko umuntu atakiri umukozi wa Leta ngo uhindukire umugenere amafaranga;

(33) Ku byerekeranye n'uko Nkongoli wari warashyizweho n'iteka rya Minisitiri w'Intebe yagombaga gukurwaho n'irindi teka ryo mu rwego rumwe, yavuze ko ibyo yabisobanuye

kandi ko binagaragara mu iteka rya Minisitiri w'Intebe ryashyiragaho Rutaboba Ephrem, ko bwaba ubwo buryo bwakoreshejwe icyo gihe cyangwa ubundi bwo gufata arrêtés ebyiri zitandukanye, imwe ivanaho umukozi wari mu mwanya n'indi ishyiraho umusimbura, ubwo buryo bwombi bukoreshwa, icyemezo cy'Urukiko rw'Ikirenga kikaba kigomba gusobanura neza ikigomba gukorwa kiboneye, bityo iyo jurisprudence ikazajya igenderwaho;

(34) Yavuze ko kugeza ubu ntawigeze akoma imbere Nkongoli ngo amubuze kwikorera ibyo yishakiye, cyane cyane ko ntawe ukimufata nk'umukozi wa Leta;

(35) Yongeye kuvuga ko indishyi zose zasabwe nta shingiro ryazo ku mpamvu zasobanuwe, hashingiwe ku mategeko agenga abakozi ba Leta no kuba nta muntu ugenerwa indishyi z'akababaro kuko yafunzwe hakurikije amategeko nyuma akagirwa umwere, ko kubera izo mpamvu asaba ibikurikira:

-Kwakira ubujurire bwa Leta no kuvuga ko bufite ishingiro;
-Kwemeza ko indishyi Nkongoli asaba nta shingiro zifite;
-Kwemeza ko Nkongoli nta mishahara yahabwa, ariko urukiko rusanze yayihabwa hakabarirwa ku mushahara yari asanzwe ahembwa;

(36) **Nkongoli** yagarutse kuri cas ya Ngarambe Chrisologue, avuga ko isa neza n'iye kuko ngo bafunganywe, baburanira hamwe, bagirwa abere, amaze gufungurwa ahabwa ibirarane by'imishahara ye, asezerewe ahabwa na décompte final;

(37) Urukiko rwashoje iburanisha rumenyesha ababuranyi ko urubanza ruzasomwa kuwa 21/05/2008, kuri iyo tariki ntibyashoboka kuko isuzumwa ry'urubanza ryari

ritararangira, isomwa ry'urubanza ryimurirwa kuwa 12/06/2008,.

(38) Kuri iyo tariki urukiko rwaciye urubanza rubanziriza urundi, rufata icyemezo ko mbere yo guca urubanza mu mizi, ruzabanza kumenya icyakurikiye ibaruwa yo kuwa 23/02/2006 Intumwa Nkuru ya Leta (Mandataire Général) yandikiye icyo gihe Minisitiri w'Ibikorwa Remezo, ko kandi ari ngombwa kugira dosiye y'akazi (personnel) ya Nkongoli muri Civil Aviation Authority yasimbuye Régie y'Ibibuga by'Indege by'u Rwanda.

(39) Urubanza rwongeye kuburanishwa kuwa 26/02/2009, ababuranyi bose bitabye kandi bahagarariwe nka mbere.

(40) Intumwa ya Leta yasabwe kugeza ku rukiko ibyo yagezeho ku byerekeranye n'ibyo urukiko rwasabye, avuga ko ku birebana na dosiye y'akazi ya Nkongoli, bayisabye inshuro nyinshi Civil Aviation Authority ko ariko nta gisubizo bigeze babona, akaba asanga imyitwarire nk'iyo ari ugushaka ko ukuri kutagaragazwa, ko no ku byerekeranye n'icyaba cyarakurikiye ibaruwa yo kuwa 23/02/2006 uwari Mandataire Général yari yandikiye Minisitiri w'Ibikorwa Remezo, naho nta gisubizo kigeze gitangwa, nyuma y'ibyo byose akaba asanga urukiko rwagendera ku myanzuro ya nyuma yatanzwe n'Intumwa ya Leta ku biyireba no ku bindi byangombwa rufite muri dosiye.

(41) Nkongoli yahawe ijambo yibutsa ko nyuma y'uko agizwe umwere yandikiye Minisitiri w'Ibikorwa Remezo asaba gusubizwa uburenganzira bwe, nawe yandikira Minisitiri w'Ubutabera amusaba inama, ko amagambo intumwa ya Leta yarangirijeho ubwo yasubizaga uwo Minisitiri yemera ko Leta yakoze amakosa, inatanga igitekerezo cy'uburyo ikibazo cya Nkongoli na Leta y'u Rwanda cyarangizwa mu

bwumvikane ari mubyo bashingiyeho basaba ko ubwo burenganzira bwashyirwa mu bikorwa, ko ibyo aribyo byose yizeye ubutabera.

(42) Me Rwangampuhwe nawe yagarutse ku mishyikirano yari yaratangiye hagati yabo na Mandaire général mu rwego rwo gushaka uko ikibazo cyarangizwa mu bwumvikane, agaruka ku bandi bakozi ba Régie des Aéroports du Rwanda nka Ngarambe Chrisologue bari barafunganywe na Nkongoli, nyuma yo gufungurwa Minisitiri w'Ibikorwa Remezo agatanga itegeko ko basubizwa mu kazi bagahabwa n'ibirarane by'imishahara yabo.

(43) Yakomeje yongera kwibutsa ko mu rwego rw'amategeko nta cyemezo kigeze gifatirwa Nkongoli gikuraho icya mbere cyamugiraga Umukuru w'Ibibuga by'Indege by'u Rwanda, ko kuba na Civil Aviation Authority idatanga dosiye ye y'akazi ari ikimenyetso ko imikorere mibi bamurega ntayabayeho.

(44) Intumwa ya Leta yongeyeguhabwa ijambo, ivuga ko ibyo Me Rwangampuhwe na Nkongoli bavuga ko Minisitiri w'Ibikorwa Remezo yari yasabye Mandataire ko yakumvikana nabo ari iby'icyo gihe muri 2005, ko hagati aho habaye urubanza ruranajuririrwa, arangiza avuga ko muri uru rubanza yisobanuye bihagije ku birebana na "principe de l'acte contraire" et du "parallélisme des formes et des compétences", kimwe no ku bibazo bindi byerekeranye n'amategeko bijyanye n'uru rubanza.

(45) Urukiko rwashoje iburanisha rumenyesha ko urubanza ruzasomwa kuwa 27/03/2009, nyuma ruriherera ruruca mu buryo bukurikira:

Uko urukiko rubibona

(46) Ku kibazo cy'imyanzuro yatanzwe ikanaburanwa n'intumwa ya Leta itandukanye n'iyari yatanzwe mbere kuwa 13/07/2007, uhagarariye Leta yasobanuye ko mu guhindura iyo myanzuro yari agamije kwerekana ukuri no gukurikiza amategeko, ko hagati y'imyanzuro ya mbere n'iya nyuma hari haratewe indi ntambwe kandi ko iyo umuntu yibeshye yikosora.

(47) Kuri iyo ngingo, uburanira Nkongoli we akavuga ko ibyo uhagarariye Leta yakoze binyuranije n'ibivugwa mu ngingo ya 170 y'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ababuranyi bagomba kuguma mu mbibi z'icyajuririwe, ko ku rwego rw'ubujurire hadashobora kuregerwa ikirego gishya, agasanga kuba intumwa ya Leta yarakosoye impamvu yari yashingiyeho ubujurire byafatwa nko kuva mu mbibi z'icyajuririwe;

(48) Nyuma yo gusuzuma imyanzuro yatanzwe n'intumwa ya Leta, urukiko rurasanga ikibazo kigomba gusuzumwa mu buryo bwaguye, muri urwo rwego ikigaragara akaba ari uko muri rusange ikiburanwa gikomeje kuba kimwe nk'uko cyari giteye mbere Nkongoli atanga ikirego cye aricyo "recouvrement des créances sur les arriérés de salaire, avantages sociaux, dommages matériels et moral pour détention illégale et arbitraire", icy'ingenzi ariko akaba ari uko nubwo imyanzuro yahindutse, byabaye mbere y'iburanisha kandi urundi ruhande rurabimenyeshwa, iyo myanzuro ikaba yaraburanyweho ku buryo ntawavuga ko hari ikirego gishya cyatanzwe; byongeye kandi abahanga mu mategeko bakaba banashimangira ku byerekeranye n'itangwa ry'imyanzuro, ko iyo umuburanyi yatanze indi myanzuro akagaragaza ko atagihagaze ku yambere, iyo ya mbere iba itaye agaciro (reba Jean Vincent et

Serge Guinchard, Procédure civile, Edition Dalloz, 26 ème édition, p.1459, b), bityo ingingo z'ubujurire za Leta zikubiye mu mwanzuro wa nyuma zikaba zigomba kwakirwa zigasuzumwa;

(49) Ku byerekeranye n'urubanza mu mizi, nk'uko intumwa ya Leta yabigaragaje mu mwanzuro wayo, ndetse no mu miburanire yayo, ubujurire bwa Leta y'u Rwanda bushingiye ku ngingo ko mu gihe Nkongoli asaba guhabwamo ibyo avuga ko afitiye uburenganzira, atari mu kazi ka Leta kuko yari yarahagaritswe kubera amakosa yakoze, by'umwihariko imicungire mibi y'ibya Leta , muri make ko atakoze akazi ke neza, byongeye kandi kuba yaragizwe umwere mu rwego rw'urubanza nshinjabyaha bikaba bitabuzaga ko afatirwa ibihano mu rwego rw'akazi (sanctions sur le plan disciplinaire), ko rero hashingiwe kuri izo mpamvu ntacyo Leta imugomba.

(50) Ku kibazo kirebana n'uburyo umukozi wa Leta afatirwa ibihano, ingingo ya 90 y'itegeko rishyiraho sitati igenga abakozi ba Leta n'inzego z'imirimo ya Leta iteganya ko nta gihano gishobora gufatirwa umukozi hatabanje kugaragazwa ikosa yakoze mu kudakora ibyo ashinzwe kandi akabanza guhabwa umwanya wo kuryisobanuraho mu nyandiko.

(51) Muri urwo rwego, Urukiko rushingiye ku nyandiko ziri muri dosiye y'urubanza rufite yonyine nyuma y'uko rutumije dosiye y'akazi ya Nkongoli Civil Aviation Authorty ikanga kuyitanga, rusanga ntahagaragara ko Nkongoli yigeze ahanirwa ikosa iri n'iri ryamuhamye amaze kuryiregureho, bityo rero ibyo intumwa ya Leta yemeza ko Nkongoli yahaniwe kuba atarakoze akazi ke neza no kutaba inyangamugayo akaba nta bimenyetso yashoboye kubitangira.

(52) Ku byerekeranye n'ibyo intumwa ya Leta ivuga ko kuba Nkongoli yaragizwe umwere bitavuga ko atashoboraga gufatirwa ibihano mu rwego rw'akazi hashingiwe ku mpamvu z'uko ikirego cy'inshinjabyaha mu nkiko ntaho gihuriye n'ibihano byo mu rwego rw'akazi bikomoka ku ikosa kandi ko bitagomba kuvangwa, urukiko rusanga ari ukuri nk'uko n'abahanga mu mategeko barimo Georges Dupuis, Marie-Josée Guédon na Patrice Chrétien babivuga mu gitabo cyabo, Droit administratif, 10e édition, page 381 aho bagira bati:

(53) *"***Une faute professionnelle** *d'un fonctionnaire peut entraîner, à la fois, une* ***répression disciplinaire*** *et une* ***répression pénale****. Dans les deux cas, il s'agit d'édicter une sanction en réponse à une faute. Il existe toutefois une réelle indépendance des deux procédures. L'autonomie de la répression disciplinaire tient à son lien avec l'exercice d'une fonction: la faute est fonctionnelle et la peine l'est aussi, alors que la répression pénale concerne tous les individus pour des faits qui ne sont pas liés à une fonction, et que la sanction pénale ne vise pas le coupable dans sa fonction mais dans sa liberté ou sa propriété. Pratiquement, la décision de l'autorité disciplinaire ne lie jamais le juge pénal: de nombreux agissements sont des fautes disciplinaires sans être, pour autant, des délits (Ikosa ry'akazi ry'umukozi wa Leta rishobora gutuma hafatwa icyarimwe igihano mu rwego rw'akazi n'igihano mu rwego rw'amategeko nshinjabyaha. Aho hombi ni igihano kiba gifashwe kubera ikosa runaka riba ryakozwe. Ubwo buryo bwo gufata ibihano ariko buratandukanye kandi bukoreshwa mu bwisanzure. Igihano gifashwe mu rwego rw'akazi kiba gifitanye isano ya hafi n'imikorere y'ako kazi n'ugakora mu gihe igihano gifatwa mu rwego rw'amategeko nshinjabyaha kiba kireba abantu bose kubera ibiba byakozwe bitaba*

bifitanye isano n'imikorere y'umurimo runaka, byongeye kandi igihano mu rwego rw'amategeko nshinjabyaha ntikiba kigamije mbere na mbere kugira k'uwagize nabi ingaruka mu rwego rw'umurimo runaka, ahubwo kimugiraho ingaruka mu burenganzira bwe cyangwa mu mutungo we. Muri rusange, nta tegeko ku mucamanza ryo gukurikiza icyemezo kiba cyafatiwe umuntu mu rwego rw'akazi; imyitwarire myinshi ifatwa nk'ikosa ry'akazi kandi nyamara ntifatwe nk'icyaha).

(54) Abo bahanga bongeraho ariko ko ibyo bimaze kuvugwa bireka kuba ihame iyo umucamanza wo mu rwego rw'imanza nshinjabyaha yafashe icyemezo gihamya ko ibikorwa ibi n'ibi bikurikiranywe ku mukozi *byabayeho cyangwa bitabayeho nta gushidikanya, aribyo bavuga mu buryo bukurikira*:

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

(55) Ku bireba by'umwihariko Nkongoli, Urukiko Rukuru rwa Repubulika mu rubanza RPA 0079/05/HC/KIG rwaciye kuwa 26/08/2005, rwagaragaje ko ibisabwa (élément matériel et moral) n'ingingo ya 228 y'igitabo cy'amategeko ahana kugira ngo icyaha giteganywa n'iyo ngingo kibahame (Nkongoli n'abo bari bakurikiranywe hamwe) bitabagaragaraho, bityo ruvuga ko icyo cyaha kitabahama.

(56) Hashingiwe ku rubanza rumaze kuvugwa, urukiko rurasanga ntaho rwahera rwemeza ko habaye ikosa rya Nkongoli mu rwego rw'akazi ryerekeye imicungire y'ibya Leta nk'uko uburanira Leta abivuga, bityo rero rukaba

rukomeza kwemeza ko Nkongoli yirukanywe mu buryo bunyuranije n'amategeko.

(57) Ku byerekeranye no kumenya niba ishyirwaho rya Rutaboba Ephrem wasimbuye Nkongoli ryari rihagije ryonyine kugira ngo hemezwe ko Nkongoli atari akiri Umuyobozi wa Régie y'Ibibuga by'Indege by'u Rwanda, urukiko rurasanga kuba mu ngingo ya 2 y'iteka rya Minisitiri w'Intebe ryo kuwa 31/12/2002 ryashyiragaho uwo Rutaboba hari hateganyijwemo ko ingingo zose zaribanjirije kandi zinyuranye naryo zivanyweho bitari bihagije, kuko iyo ngingo yarebaga mbere na mbere uwo wasimbuye Nkongoli n'umukoresha we, hakaba haragombaga guteganywa mu rwego rwo gukorera mu mucyo (transparence), gucunga neza abakozi ba Leta no kubahiriza uburenganzira bwabo irindi teka rireba by'umwihariko Nkongoli, rinamukura ku buyobozi yari asanzweho, ubwo buryo bukaba aribwo bwari kuba bukurikije ihame jurisprudentiel rya " parallélisme des formes et des compétences" n'ihame rya acte contraire, bivuga ko *icyemezo cy'ubutegetsi gihindurwa cyangwa kigakurwaho n'ikindi cyemezo cy'ubwoko bumwe kigomba kunafatwa n'umutegetsi wo mu rwego rumwe cyangwa ururusumbye*.

(58) Urukiko rurasanga ariko nubwo iryo hame ritubahirijwe, igihe Leta yashyiragaho umuyobozi usimbura Nkongoli, icyari kigamijwe nubwo kitavuzwe bwose ku buryo bweruye cyangwa ngo gifatirwe icyemezo kihariye, kwari no gukuraho uwo Nkongoli mu by'ukuri utari ukiri physiquement muri uwo mwanya ariko mu rwego rw'amategeko atarawukuweho, ku buryo iteka rya Minisitiri w'Intebe ryari ryarashyizeho Nkongoli ritashoboraga mu by'ukuri kubangikana n'irishya ryashyiragaho

umusimbuye muri uwo mwanya.

(59) Ku byerekeranye n'ingingo y'uhagarariye Leta ko umucamanza yibeshye ashingira icyemezo cye ku mpamvu z'uko Nkongoli atigeze amenyeshwa ko yasezerewe, bigatuma yemeza ko Leta yakoze amakosa igomba kuryozwa, amategeko y'u Rwanda ateganya uburyo ibyemezo bifashwe n'ubutegetsi, byaba ibyerekeranye n'inyungu rusange cyangwa ibyerekeranye n'abantu ku giti cyabo bimenyeshwa (kureba ordonnance législative n°R/60 yo kuwa 28/06/1962 sur la publication des actes officiels des autorités publiques du Rwanda), ingingo ya 7 y'iyo ordonnance ikaba iteganya ko ibyemezo bitareba rubanda muri rusange bigira agaciro guhera igihe bimenyeshejwe abo bireba; kuri iki kibazo cy'imenyesha abahanga mu mategeko bakavuga ko ku muntu utishoboye (incapable), iryo menyesha rikorwa k'umuhagarariye mu rwego rw'amategeko, yaba afunze rikajyanwa muri gereza afungiyemo (*si l'intéressé est incapable, la notification doit être faite à son représentant légal. S'il est seulement interné, elle doit être adressée à l'établissement où il réside, Traité de contentieux administratif, Tome 1 par J.Auby et R.Drago, 3ème édition, 1984, p.915)*.

(60) Hashingiwe ku bimaze kuvugwa, Urukiko rurasanga Nkongoli atigeze amenyeshwa mu buryo buteganywa n'amategeko, cyaba icyemezo gishyiraho uwamusimbuye, cyangwa ikimuvana ku mwanya w'Umuyobozi wa Régie y'Ibibuga by'Indege kitigeze kinabaho mu buryo bweruye no mu mucyo (transparence/transparency), impamvu yatanzwe n'uburanira Leta ko ari uko Nkongoli yari muri gereza ikaba nta shingiro nk'uko bimaze kugaragazwa, kuko gereza Nkongoli yari afungiyemo yari izwi, hakaba nta n'impamvu idasanzwe yagaragajwe yari gutuma

atahamenyesherezwa icyemezo yari kuba yafatiwe ;

(61) Hakurikijwe ibyasobanuwe byose haruguru, urukiko rurasanga kuba Nkongoli atigeze amenyeshwa icyemezo icyo aricyo cyose cyaba cyaramufatiwe mu rwego rw'amategeko mu gihe nyamara yari yararangije no gufatirwa ibihano, byaramushyize mu gihirahiro, bimwanduriza isura ye, ndetse n'iy'umuryango we, ibyo rero akaba agomba kubihererwa indishyi z'akababaro zigenwe n'Urukiko, zigatangwa na Leta y'u Rwanda nk'uko byemejwe n'urukiko rubanza.

(62) Ku byerekeranye n'ingingo intumwa ya Leta iburanisha ko izo ndishyi zitabangikana n'indishyi mbonezamusaruro, urukiko rusanga ntakibibuza kubera impamvu zikurikira:

(63) Ingingo ya 93 y'itegeko ngenga n°51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko iteganya ko mu birego inkiko zifite ububasha bwo kuburanisha imanza z'ubutegetsi zigezwaho, harimo ibisaba indishyi zikomoka mu kutubahiriza sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta, itegeko rikaba ritavangura indishyi nk'uko ritavuga ko izo ndishy zidashobora gukomatanywa.

(64) Abahanga mu mategeko nabo bemeza ihame ry'uko ibyangijwe n'Ubutegetsi bigomba kurihwa nta gutandukanya indishyi iyo bagira bati:

1° En premier lieu, sont susceptibles d'ouvrir droit à réparation non seulement les préjudices matériels mais aussi les préjudices moraux.
Les premiers s'analysent, soit comme des dommages aux personnes (dommages corporels, par exemple, causés par un accident), soit comme des dommages aux biens

(par exemple, détérioration d'un bâtiment, diminution de valeur d'une propriété). Ils ont en commun de se traduire par une perte pécuniaire, objectivement mesurable et leur réparation ne se heurte à aucune difficulté de principe… Les seconds sont de l'ordre des sentiments. Dans l'état actuel de la jurisprudence administrative sont (comme en droit civil) réparables les préjudices moraux les plus divers et notamment: -l'atteinte à la réputation et à l'honneur des personnes (1);-les souffrances physiques éprouvées lors d'accidents corporels ou des opérations chirurgicales que ces accidents ont rendus nécessaires2()-le préjudice esthétique…3()-les troubles dans les conditions d'existence…(4)-la douleur morale…

(65) Mu kugena indishyi mbonezamusaruro, urukiko rurasanga hagomba kwitabwaho ko guhera kuwa 22/11/2002 Nkongoli yasezerewe ku murimo w'Ubuyobozi Bukuru bwa Régie y'Ibibuga by'Indege by'u Rwanda kuko yasimbujwe undi muyobozi nk'uko byasobanuwe haruguru, ko mbere y'iyo tariki ariko, ni ukuvuga guhera kuwa 19/06/2002 igihe yafungiwe kugeza kuwa 22/11/2002 asimbuwe, Nkongoli yari akiri umukozi wa Leta.

(66) Nubwo hagati y'itariki ya 19/06/2002 n'iya 22/11/2002 Nkongoli atakoraga kubera ko yari akurikiranywe n'inzego z'ubutabera, urukiko rusanga ibyo atari we byari biturutseho, ahubwo byari biturutse ku mukoresha we utaranakoze ibyo amategeko ateganya ngo amumenyeshe icyemezo yamufatiye nyuma y'uko ahawe uburenganzira bwo kwisobanura; bityo rero igihombo yagize akaba akwiye kugiherwa indishyi zihwanye n'umushahara yagombye kuba yarafashe muri icyo gihe, ni ukuvuga guhera mu kwezi kwa 06/2002 kugeza mu kwezi kwa 11/2002.

(67) Urukiko rurasanga hashingiwe ku nyandiko igaragara

kuri cote ya 134 ya dosiye y'urubanza uwo mushahara ushingirwaho mu kugena indishyi ungana na 824.401 frw ku kwezi, ni ukuvuga mu mezi atandatu 824.401 frw x 6= 4.946.406 frw, ayo mafaranga akayahabwa na Civil Aviation Authority nk'uko byemejwe n'urukiko rubanza.

(68) Urukiko rurasanga ibindi Nkongoli asaba bijyanye n'ibirarane by'imishahara nyuma yo kuwa 21/11/2002, crédit véhicule na soins médicaux forfaitaires, nta shingiro bifite kuko nk'uko byagaragajwe haruguru, kuva kuri iyo tariki ya 22/11/2002 Nkongoli atari akiri umukozi wa Leta.

(69) Ku byerekeranye n'amafaranga y'ubwiteganyirize bw'abakozi, ay'igihe Nkongoli yari akiri umukozi wa Leta, ni ukuvuga guhera kuwa 19/06/2002 kugeza kuwa 22/11/2002, urukiko rurasanga nubwo ayafiteho uburenganzira atayahabwa directement ngo ayikoreshereze icyo ashaka, kuko ubundi ayo mafaranga umukoresha atayaha umukozi ahubwo ayatanga mu Isanduku y'Ubwiteganyirize bw'Abakozi, muri uru rubanza Nkongoli akaba ariwe wisabira kuyahabwa, naho aya nyuma y'uko asezerewe ku kazi nk'uko byasobanuwe akaba nta burenganzira ayafiteho kuko atakiri umukozi wa Leta kandi nayo akaba atasaba kuyahabwa we ubwe.

(70) Ku byerekeranye na 100.000.000 frw y'indishyi z'akababaro Nkongoli asaba kubera kuba by'umwihariko kuba yarafunzwe no kubera ibirego bikomeye yarezwe, urukiko rusanga ntaho agaragaza ko inzego za Leta zibifitiye ububasha zamukurikiranaga zari zigamije kumugirira nabi no kumuhohotera, bityo izo ndishyi asaba akaba atazihabwa.

(71) Urukiko rurasanga kandi ibyo Nkongoli asaba byo gukurwa kuri site internet ya Leta nta shingiro bifite, kuko nta bimenyetso yatanze nibura bigaragaza ko iyo site ari

iya Leta y'u Rwanda.

Icyemezo cy'urukiko

Urukiko:

(72) **Rwemeye** kwakira ubujurire bwa Leta y'u Rwanda, kuko bwatanzwe mu buryo n'inzira bikurikije amategeko, rubusuzumye rusanga nta shingiro bufite;

(73) **Rwemeye** kwakira ubujurire bwuririye ku bundi bwa Nkongoli rubusuzumye busanga nta shingiro bufite;

(74) Rwemeje ko urubanza rwajuririwe rudahindutse mu ngingo zarwo zose, rukaba rugomba kurangizwa uko ruri.

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

(76) **RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KUWA 27 WERURWE 2009 N'URUKIKO RW'IKIRENGA, RUGIZWE NA MUTASHYA JEAN BAPTISTE:PEREZIDA, HAVUGIYAREMYE JULIEN NA HATANGIMBABAZI FABIEN : ABACAMANZA, BAFASHIJWE NA RUSINGIZA GERMAIN,**
(77) **UMWANDITSI W'URUKIKO.**

MUTASHYA JEAN BAPTISTE
Perezida
Sé

HAVUGIYAREMYE Julien
Umucamanza
Sé

HATANGIMBABAZI Fabien
Umucamanza
Sé

RUSINGIZA Germain
Umwanditsi
Sé

IMANZA Z'UBUCURUZI

6. URUKIKO RW'IKIRENGA

Nº Y'URUBANZA : RCOMAA0006/07/CS
ITARIKI Y'URUBANZA : 19/06/2009
HABURANA : MUNYABURANGA JEAN DAMASCENE/
ECOBANK

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI – GUHAMAGARA UMUBURANYI –IKOSA KU MWIRONDORO W' UMUNTU WASIGIWE INYANDIKO IHAMAGARA ARIKO BIGARAGARA KO YAGEZE KURI NYIR'UBWITE.

KUGOBOKESHA MU RUBANZA KU RWEGO RW'UBUJURIRE (Ibisabwa).

AGACIRO K'AMAGAMBO UMUBURANYI YIVUGIYE MU RUBANZA.

IRANGIZA RUBANZA RY'AGATEGANYO KU BINTU BITIMUKANWA BITABURANWA (byatanzweho ingwate).

AGACIRO KEMEJWE MU CYAMUNARA KARI HASI Y'AGACIRO NYAKURI K'IKIGURISHWA (Icyakorwa).

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Iyo habaye ikosa ku mwirondoro w'usigiwe inyandiko ihamagara umuburanyi, ariko bikagaragarira urukiko ko yageze kuri nyir'ubwite

(nyir'uguhamagarwa) ku gihe, ntibishobora kuyitesha agaciro, cyane ko uyisize adafite inshingano zo kugenzura niba imyirondoro y'uyisigiwe ari yo; ahubwo asabwa kwandika ibyo amubwiye kandi bakabishyiraho umukono.

-Ku rwego r'ubujurire, ntawe utumizwa nk'ugobokeshejwe, igihe bigaragara ko adashobora kuzatambamira imikirize yarwo, ahubwo atumizwa nk'umutangabuhamya.

-Amagambo umuburanyi cyangwa umuhagarariye avugiye mu rukiko agira ibyo yemera atsindisha uruhande ruyavuze.

-Irangiza rubanza ry'agateganyo ribujijwe ku byerekeye ibintu bitimukanwa iyo ari byo biburanwa. Iri hame ntirikurikizwa iyo ikitimukanwa ari icyatanzweho ingwate ku mwenda uburanwa.

-Iyo mu cyamunara igiciro gifashwe kiri hasi y'agaciro nyako k'ikintu kigurishwa, nyir'ikintu afite uburenganzira bwo gusaba icyemezo gihagarika icyamunara, ubwo burenganzira kandi bugaragazwa mu nyandiko mvugo y'icyamunara aho baha umwanya w'abatishimiye igiciro gitanzwe.

URUKIKO RW'IKIRENGA RURI I KIGALI, KUWA 19/06/2009 RUHABURANISHIRIZAMU RUHAME IMANZA Z'UBUCURUZI, RUKIJIJE MU RUBANZA R.COMAA 0006/07/CS, URUBANZA RUBANZIRIZA URUNDI MU BURYO BUKURIKIRA:

HABURANA:

Uwajuriye
-MUNYABURANGA Jean Damascène, mwene MUNYAKAYANZA na MADAMU Madalina , wavukiye i Kibungo mu 1958, utuye Umudugudu wa Gishushu, Akagari ka Nyarutarama, Umurenge wa Remera, Akarere ka Gasabo Umujyi wa Kigali, ufite Telefone igendanwa n° 078835592, B.P 2175 Kigali, ufite registre de commerce n° A 4947/KIG.

na

Uregwa
ECOBANK, ancienne Banque de Commerce, de Développement et d'Industrie, BCDI en sigles, dont le siège social est établi à Kigali , Avenue de la Paix, inscrit au registre de commerce de Kigali sous le numéro RCA 937/KIG, B.P 3268 Kigali, dont les statuts tels que modifiés ont été publiés au journal officiel n° 16 du 15 Août 1996 ;

IKIBURANWA :
-Recouvrement d'une créance dont les encours s'élèvent au 30 juillet 2001 à trente six millions neuf cent quarante deux mille deux cent cinquante six francs(36.942.246Frw) ;
-Application d'un taux de pénalité de 21% sur le solde impayé ;

-Frais de procédure et de recouvrement s'élevant à trois millions huit cent quarante six mille sept cent vingt quatre francs(3.846.724 Frw), ce au 30 juin 2001 ;

IKIREGERWA :
Kujuririra urubanza R.COM A 0018/05/HC/KIG rwaciwe kuwa 28/09/2007 n'Urukiko Rukuru rwa Repubulika ku cyicaro cyarwo i Kigali.

I. IMITERERE Y'URUBANZA MURI MAKE

[15] Tariki ya 08/08/1996, BCDI yahaye MUNYABURANGA inguzanyo (crédit de caisse) ingana na 10.000.000frw yo gukoresha mu bucuruzi bwe, na we atanga ingwate y'inzu iri i Kimihurura, mu kibanza n°1089, yongeraho n'agaciro k'ubucuruzi bwe (fond de commerce) kugeza ku rugero rwa 20.000.000frw. Iyi nguzanyo yagombaga kurangiza kwishyurwa kuwa 13/08/1997.

[16] Tariki ya 04/10/1996, MUNYABURANGA yandikiye BCDI ayisaba inguzanyo ya 30.000.000frw yo kurangiza inzu y'igorofa yubakaga mu kibanza n° 5435 i Remera-Nyarutarama.Tariki 31/01/1997, BCDI yamumenyesheje ko imwemereye inguzanyo yasabye. MUNYABURANGA atanga ingwate ho iyo nzu yubakaga hiyongereyeho n'agaciro k'ubucuruzi bwe ku rugero rwa 60.000.000frw. Iyi nguzanyo yagombaga kurangiza kwishyurwa kuwa 31/01/2000.

[17] Tariki ya 18/02/1998, BCDI yandikiye MUNYABURANGA imuha "1ère mise en demeure".Tariki 01/04/1998, yamwandikiye "2ème mise en demeure".Tariki ya 03/09/1998, yamuhaye "3ème et dernière mise en demeure".

[18] Tariki ya 16/04/1999,BCDI na MUNYABURANGA bahurije imyenda yose mu mwenda umwe ungana na 30.686.465 (consolidation des engagements en une seule ligne amortissable), uzishyurwa mu mezi 60, yishyura 779.235 buri kwezi guhera kuwa 10/05/1999.

[19] Tariki ya 24/08/1999, BCDI yamwandikiye imwibutsa ibyo bumvikanye, imusaba kwishyura ibirarane ayifitiye . Kuwa 19/10/2000 no kuwa 31/10/2000 MUNYABURANGA yandikiye banque asaba réaménagement ya plan de remboursement.

[20] Kuwa 25/07/2001, BCDI yatanze ikirego mu Rukiko rwa Mbere rw'Iremezo rwa Kigali isaba ko MUNYABURANGA yayishyura umwenda remezo ungana na 36.942.246 frw, inyungu z'ubukererwe zibariye kuri 21%, amafaranga y'ibyatanzwe ku rubanza n'igihembo cya Avoka angana na 3.846.724frw.

II.IMIGENDEKERE Y'URUBANZA MU NKIKO

A. URUBANZA MU RUKIKO RWA MBERE RW'IREMEZO RWA KIGALI

[21] Uru rubanza rwatangiriye muri urwo rukiko , rwandikwa kuri n° RC 35782/01, iburanishwa rya mbere rishyirwa tariki ya 18/12/2001. Kuri kopi y'inyandiko itumira MUNYABURANGA kuza kuburana kuri iyo tariki, umuhesha w'inkiko Mudenge yanditseho " *tugeze iwe i Remera-Rukiri I, dusanga yagiye hanze y'Igihugu; inyandiko ihamagara tuyisigiye mama we Mukarugwiza Thérèse ngo ayimushyikirize, dont acte le 19/11/2001, Umuhesha w'inkiko Mudenge*". Kuri iyo nyandiko hariho umukono w'umuhesha w'inkiko Mudenge n'igikumwe cy'uwo avuga ko yasigiye ihamagara ariwe Mukarugwiza.

[22] Urubanza rwaburanishijwe kuwa 18/12/2001 MUNYABURANGA adahari, urukiko ruvuga ko yarumenyeshejwe ku buryo bwemewe n'amategeko, ruruca kuwa 16/01/2002, rwemeza ko atsinzwe, rumutegeka kwishyura BCDI sa 40.217.791Frw y'umwenda yafashe urubanza rukimara gusomwa kabone n'ubwo rwasubirishwamo cyangwa se ngo rujuririrwe, rumuca n'andi 100.000Frw n'umusogonero wa Leta ungana na 412.711,64frw.

B. URUBANZA MU RUKIKO RW'UBUJURIRE RWA KIGALI

[23] Kuwa 12/03/2002, MUNYABURANGA yamenyeshejwe imikirize y'urubanza rwaciwe adahari. Tariki 13/05/2002, ajuririra Urukiko rw'Ubujurire rwa Kigali, ikirego cye cyandikwa kuri n° RPA 13.859/Kig .

[24] Tariki ya 27/05/2002, MUNYABURANGA yatanze muri urwo rukiko ikirego cyihutirwa gisaba guhagarika irangizarubanza ry'agateganyo ryategetswe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali.

[25] Amazu ya MUNYABURANGA yari yaratanzweho ingwate yagurishijwe muri cyamunara mbere y'uko inkiko zahozeho mbere y'ivugururwa ry'urwego rw'ubucamanza zifata icyemezo ku birego yari yatanze.

[26] Ivugurura ry'urwego rw'ubucamanza muri 2004 ryasanze ibirego MUNYABURANGA yari yashyikirije Urukiko rw'Ubujurire rwa Kigali bitarasuzumwa, ndetse n'amazu ye yaramaze kugurishwa muri cyamunara.

C. URUBANZA MU RUKIKO RUKURU RWA REPUBULIKA

[27] Nyuma y'ivugururwa ry'Urwego rw'Ubucamanza, urubanza rwoherejwe mu Rukiko Rukuru rwa Repubulika ku cyicaro cyarwo gikuru i Kigali, dosiye ihabwa n° RCom A 0018/05/HC/Kig.

[28] Urubanza rwaburanishijwe kuwa 10/07/2007, BCDI ititabye. MUNYABURANGA yaburanye asaba ko urubanza yajuririye rwavanwaho kuko amategeko agenga ihamagara atubahirijwe, uwo babeshya ko bahaye inyandiko ihamagara atari nyina kuko uyu yitwaga Madamu Madalina kandi yapfuye muri jenoside nk'uko bigaragazwa n'icyemezo cy'urupfu yashyikirije urukiko. Yaburanye kandi avuga ko umucamanza wa mbere yatanze muri urwo rubanza irangizarubanza ry'agateganyo ridafite aho rishingiye, bituma inzu ye igurishwa mu buriganya no ku giciro kidakwiriye.

[29] Urukiko Rukuru rwa Repubulika rwaciye urubanza kuwa 28/09/2007, rwemeza ko nta gihindutse ku rubanza RC 35.782/01 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali tariki 16/01/2002.

[30] Mu gusobanura icyemezo cyarwo, Urukiko rwavuze ko mu cyemezo MUNYABURANGA yarushyikirije rwasanze Mukarugwiza ari nyirakuru wa Munyaburanga aho kuba nyina (icyo cyemezo kivuga ko Madamu Madeleine, mwene NCHONORI na MUKARUGWIZA yitabye Imana kuwa 12/04/1994). Rwavuze ko Munyaburanga yatumijwe kuburana urubanza RC 35.782/01 mu buryo bukurikije amategeko kuko inyandiko ihamagara yagejejwe iwe ijyanywe n'umuhesha w'inkiko muri BCDI, nk'uko na we yivugira ko yayihasanze avuye muri Kenya, ko kuba umuhesha w'inkiko yaribeshye akavuga ko Mukarugwiza ari nyina wa Munyaburanga yasigiye inyandiko itumira kuburana kandi ari nyirakuru atari impamvu yatuma avuga ko atamenyeshejwe itariki y'iburanisha ry'urubanza

yaburanaga na BCDI kuko icyo amategeko asaba ari uko mu gihe uregwa ubwe adahari iyo nyandiko ihabwa umuntu bafitanye isano, uwo bashakanye cyangwa umukozi we.

[31] Ku byerekeye irangizarubanza ry'agateganyo ryari ryategetswe, urukiko rwavuze ko iyo Munyaburanga abangamirwa n'iryo rangizarubanza, aho amenyeye urubanza kuwa 12/03/2002 yashoboraga kurusubirishamo (opposition) cyangwa kurujuririra agasaba ko iryo rangizarubanza ry'agateganyo rihagarikwa mu gihe ritarashyirwa mu bikorwa, akaba yarashoboraga kandi no gusaba ko icyamunara gihagarikwa; kuba atariyambaje inzira zose zateganywaga n'amategeko urubanza rukarangizwa by'agateganyo nk'uko byategetswe, bikaba bidashobora kuba ingingo y'ubujurire muri uru rubanza kuko ntawahagarika irangizarubanza nyuma y'uko rikorwa .

D. URUBANZA MU RUKIKO RW'IKIRENGA

[32] MUNYABURANGA yajuririye icyemezo cy'Urukiko Rukuru rwa Repubulika mu Rukiko rw'Ikirenga, ikirego cye cyandikwa kuri n° R.COM AA 0006/07/CS. Cyakorewe ibanzirizasuzuma, Umucamanza ubishinzwe yemeza kuwa 17/01/2008, ko ubujurire bwe bwatanzwe mu gihe no mu buryo bikurikije amategeko kandi ko buri mu bubasha bw'Urukiko rw'Ikirenga.

[33] Itegeko n°0006/2008/RCom ryo kuwa 20/03/2008 rya Perezida w'Urukiko rw'Ikirenga ryashyize iburanisha ry'urubanza kuwa 23/04/2008, uwo munsi ugeze ruburanishwa hitabye MUNYABURANGA Jean Damascène aburanirwa na Me Munderere Léopold naho ECOBANK ihagarariwe na Me Rwagatare Janvier.

[34] Nyuma yo kumva raporo y'umucamanza wateguye urubanza; Me Rwagatare Janvier uburanira ECOBANK yasabye ijambo ageza ku Rukiko icyifuzo cye ko umuhesha w'inkiko Mudenge Didace yahatirwa kugoboka muri uru rubanza kugira ngo asobanure ikibazo cy'inyandiko ihamagara ababuranyi iruvugwamo kuko ariwe wayijyanye kwa MUNYABURANGA; yongeraho ko ikindi gituma asanga agomba kugobokeshwa akaba ari inyandiko yagiye yandikirana na MUNYABURANGA kuri internet, uyu amubaza iby'inyandiko y'ica ry'urubanza.

[35] **Me Munderere** uburanira MUNYABURANGA yabajijwe icyo atekereza ku nzitizi itanzwe na Me RWAGATARE, asubiza ko nta mpamvu yatuma umuhesha w'inkiko ahamagazwa kuko nta kintu na kimwe yaza kubwira urukiko kitanditse; ko kandi ukugobokesha umuntu ku rwego rw'ubujurire binyuranyije n'ingingo ya 116, 117 na 118 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu, ahubwo ko bo basanga yazatumizwa nk'umutangabuhamya, ariko ko urukiko arirwo rwabifataho icyemezo.

[36] Urukiko nyuma yo kwiherera rwasanze igobokesha mu rubanza ry'umuhesha w'inkiko Mudenge ridashoboka, kuko hashingiwe ku biteganywa n'ingingo ya 117 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 rimaze kuvugwa haruguru, Mudenge adashobora gutambamira uru rubanza, uko kumugobokesha Me Rwagatare asaba kukaba kutujuje ibyangombwa; bityo Urukiko rukaba rwamutumiza gusa nk'umutangabuhamya ruramutse rusanze hari ibyo rukeneye kugira ngo asobanure muri uru rubanza.

[37] Me Mundererere yakomeje asobanura ko MUNYABURANGA yajurijwe n'uko Urukiko Rukuru rwa Repubukika rwakomeje kwemeza ko yamenyeshejwe itariki y'urubanza mu buryo bukurikije amategeko, ruvuga ko inyandiko ihamagara yashyikirijwe nyirakuru aho kuba nyina; bityo rukaba rwarakoze ibinyuranye n'ibyo amategeko ateganya kuko rwavuguruje ibyo umuhesha w'inkiko ubifitiye ububasha yiyandikiye ko yahaye inyandiko ihamagara nyina wa MUNYABURANGA witwa Mukarugwiza Thérèse.

[38] Yakomeje avuga ko nta kuntu umuhesha w'inkiko yari guha nyina wa Munyaburanga inyandiko ihamagara kandi atakiriho kuko yapfuye muri jenoside yo mu 1994 kandi ko yitwaga Madamu Madalina, ko na nyirakuru yapfuye mu 1980 nk'uko icyemezo cyatanzwe n'abayobozi b'Umurenge wa Kibungo kuwa 10/04/2008 yarugejejeho kibyerekana, uwo mukecuru na we akaba yaritwaga Mukarugina Verediyana; kuba rero umuhesha w'inkiko Mudenge yaravuze ibintu bitabaho nta kindi urukiko rwari gukora uretse kuvanaho ibyakoreshejwe byose iriya nyandiko ihamagara idakurikije amategeko.

[39] Yavuze ko ikindi cyajurije MUNYABURANGA ari uko ECOBANK yagurishije inzu ye kuwa 31/05/2003 kuri 21.500.000Frw muri cyamunara ya mbere, icyo giciro ngo kikaba kiri hasi cyane kuko expertise Banki yisabiye ko yakorwa yari yerekanye ko iyo nzu ifite agaciro kangana na 68.212.080Frw, ndetse ko agaciro kayo kaje kwiyongera aho iboneye" certificat d'enregistrement". Ikindi atishimiye ni uko Urukiko Rukuru rwa Repubulika rwategetse irangiza rubanza ry'agateganyo ku nzu yari yaratanzweho ingwate kandi bitemewe n'amategeko.

[40] Me Mundererere yavuze kandi ko MUNYABURANGA anenga

ibyo Urukiko rwavuze ko yashoboraga gusubirishamo urubanza rwaburanishijwe adahari kandi yari yarweretse ko bitashobokaga kuko aho yaviriye mu rugendo yari yagiyemo muri Kenya yasanze ibihe byararenze; icyo yakoze akaba ari uko kuwa 27/05/2002 yasabye ihagarika ry'irangizarubanza ry'agateganyo ariko Urukiko rw'Ubujurire yitabaje ntirwagira icyo rumumarira bitewe nuko icyo gihe inkiko zitakoraga nk'uko bisanzwe kubera ivugurura ry'urwego rw'ubucamanza ryari ryatangiye.

[41] Yasabye ko MUNYABURANGA yasubizwa inzu ye y'igorofa kugira ngo abone uko yishyura umwenda afitiye ECOBANK; byaba bidashobotse, akishyurwa 234.245.000Frw ahwanye n'agaciro ifite ubu cyangwa agahabwa agaciro yari ifite ubwo bayigurishaga maze ECOBANK igafata amafaranga ayibereyemo, ikamusubiza ikinyuranyo; yasabye kandi ko inyungu zitakomeza kubarwa kuko ECOBANK ariyo nyirabayazana w'ibibazo biri mu rubanza baburana; yongeraho ko ECOBANK yategekwa kumwishyura amafaranga y'ubukode bw'inzu ya buri kwezi angana na 1.700.000 mu gihe cy'amezi 67, bihwanye na 113.900.000Frw, inyungu zayo zibariwe kuri 19% bihwanye na 21.641.000Frw, indishyi z'akababaro kubera ko ari umucuruzi za 2.000.000Frw , indishyi zatewe no gusiragira ku rubanza za 1.500.000Frw.

[42] Yashoje asaba ko imanza zose zaciwe zateshwa agaciro kuko zikomoka ku nyandiko ihamagara idakurikije amategeko.

[43] MUNYABURANGA Jean Damascène na we yahawe ijambo maze yongera gushimangira ko nta nyandiko ihamagara bigeze bageza iwe; ko iyo bahagera ntibahamusange bari kuyishyira ku iduka rye kuko yari yarahatanzeho adresse, ko ikindi cyerekana ko hakozwe

uburiganya ari uko uwamuregaga ariwe wamuzaniraga inyandiko imuhamagara kuza kuburana.

[44] Yakomeje avuga ko mu byamujurije harimo ko Urukiko rwamutwerereye imvugo y'uko avuye muri Kenya yasanze inyandiko ihamagara iwe kandi icyo yavuze yasanze mu rugo ari kopi y'urubanza rwaciwe adahari; yongeraho ko ibyo urukiko rwavuze bidashoboka kuko mu gihe yaregeye inyandiko ihamagara idakurikije amategeko atari kubicaho ngo yemere ko yayibonye.

[45] MUNYABURANGA yabajijwe icyo azi ku izina „MUKARUGWIZA" asubiza ko uwo muntu atamuzi, ko iryo zina ryahimbwe n'umuhesha w'inkiko Mudenge, naho ku byerekeye umwirondoro wa nyina , avuga ko icyemezo cy'urupfu cyo kuwa 23/04/2004 Urukiko Rukuru rwa Repubulika rwashingiyeho rwemeza ko nyirakuru yitwa Mukarugwiza, kirimo ikosa kuko uwacyanditse yibeshye akandukura izina riri kuri ya nyandiko ihamagara anenga **yari yamweretse**, ariko ko icyemezo cy'urupfu cyo kuwa 10/04/2008 afite ubu cyerekana amazina nyayo ya nyina umubyara; akomeza avuga ko ECOBANK ivuga ko nyirakuru ariho ariyo yamuzana ikamwerekana, naho kuba yarandikiranye na Mudenge avuga ko bidakuraho amakosa yakozwe mu ihamagarwa rye, cyane ko yamwandikiye tariki 06/10/2003 urubanza rwararangiye.

[46] **Me Rwagatare** Janvier uburanira ECOBANK yavuze ko ibyo MUNYABURANGA avuga ko Urukiko rwamutwerereye imvugo atari iby'ukuri, kuko haba mu nyandiko mvugo y'iburanisha imbere y'Urukiko Rukuru rwa Repubulika, haba no mu ica ry'urubanza, bigaragara ko MUNYABURANGA yiyemereye imbere y'urukiko ko yasanze inyandiko ihamagara iwe mu rugo avuye muri Kenya; ikindi nuko amabaruwa yandikiranaga

n'umuhesha w'inkiko Mudenge Didace nayo yerekana ko inyandiko ihamagara yageze iwe.

[47] Yakomeje avuga ko MUNYABURANGA adahakana umwenda afitiye ECOBANK ariko ko agenda yivuguruza mu mvugo ze kuko rimwe avuga ko Umuhesha w'inkiko watanze inyandiko ihamagara ari uwa Banki, ubundi akavuga ko ibyo yakoze abiherwa ububasha n'amategeko kandi koko amategeko arabimwemerera.

[48] Me Rwagatare yagarutse ku kibazo cy'uwashyikirijwe inyandiko ihamagara, avuga ko umuhesha w'inkiko yasanze umukecuru mu rugo amubajije icyo apfana na MUNYABURANGA aramusubiza ngo "ndamubyaye", nuko arayimuha, yongeraho ko mu gusuzuma iki kibazo hatakwitabwa ku bugari bw'umuryango nyarwanda, ahubwo harebwa gusa ko inyandiko ihamagara yageze kwa MUNYABURANGA mu rugo; avuga ko ibyo MUNYABURANGA aburanisha ko ushinzwe irangamimerere yamwandikiye izina yabonye ku yandiko ihamagara atari byo kuko iyo aza gusanga harimo ikosa aba yarasabye ko rikosorwa; asoza avuga ko Urukiko nta kosa rwakoze kuko rwaciye urubanza rushingiye ku cyemezo MUNYABURANGA yitangiye ubwe.

[49] Iburanisha ryarashojwe ababuranyi bamenyeshwa ko urubanza ruzasomwa kuwa 22/05/2008; uwo munsi ruca urubanza rutegura urundi rwemeza ko mbere yo guca urubanza mu mizi ari ngombwa ko MUNYABURANGA Jean Damascène arugezaho urwandiko rw'inzira rw'abajya mu mahanga yakoreshaga kuva mu wa 2001 kugeza mu wa 2002 (passeport) n'inyandiko y'imenyesharubanza rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali kuwa 16/01/2002; rusaba kandi ubwanditsi bw'urukiko gutumiza uwitwa Mudenge Didace

wahoze ari umuhesha w'inkiko wa BCDI kugira ngo azagire ibyo asobanurira Urukiko bijyanye n'uru rubanza; ruvuga ko urubanza ruzasubukurwa ku itariki ubwanditsi bw'Urukiko buzamenyesha ababuranyi.

[50] Itegeko n° 0011/08/R.COM ryo kuwa 15/07/2008 rya Perezida w'Urukiko rw'Ikirenga ryongeye gushyira iburanisha kuwa 21/08/2008, uwo munsi ruburanishwa hitabye MUNYABURANGA yunganiwe na Me Munderere Léopold naho ECOBANK ihagarariwe na Me Rwagatare Janvier;

[51] Urukiko rwamenyesheje ababuranyi ko Mudenge wahoze ari umuhesha w'inkiko wa BCDI yahamagajwe, asinyira ko abonye inyandiko imuhamagara ariko ko atitabye, rubajije Me Rwagatare niba hari icyo abiziho asubiza ko ntacyo ariko ko atakiri umuhesha w'inkiko wa ECOBANK ahubwo ko asigaye ari "umuhesha w'inkiko de justice professionnel privé".

[52] Urukiko rwabajije MUNYABURANGA gusobanurira urukiko impamvu yanditse avuga ko inyandiko urukiko rwamutumye atabasha kuzibona, avuga ko icyo gihe batakoreshaga passeport ko ahubwo bakoreshaga „laisser-passer"; ariko ko iyo yarangiraga wayisubizaga kugira ngo baguhe indi. Akomeza avuga ko yagiye kureba Urwego rushinzwe abinjira n'abasohoka mu Gihugu bamubwira ko batabasha kuyibona .

[53] Yabajijwe ikimenyetso afite cyerekana igihe yagarukiye mu Rwanda avuye muri Kenya, avuga ko ntacyo afite, yongeraho ko ngo naho yaba ataragiye muri Kenya bitabuza ko yaba yarahamagajwe mu buryo budakurikije amategeko kuko nta kuntu bari kuvuga ngo basigiye inyandiko ihamagara nyina uba iwe mu rugo kandi uyu

yarapfuye kera ndetse akaba yaratanze n'icyemezo kibihamya.

[54] Munyaburanga yabajijwe impamvu ku cyemezo cyo gupfa cya Madamu Madeleine cyo kuwa 23/04/2004 yatanze mu Rukiko Rukuru rwa Repubulika kigaragaza ko nyina yitwa Mukarugwiza naho icyo yatanze kuwa 10/04/2008 muri uru rukiko cyanditseho ko **nyina wa Madamu ari Mukaruniga**, asubiza ko umukozi ushinzwe irangamimerere yibeshye akora icyemezo cya mbere ariko MUNYABURANGA amaze kubona ko habaye amakosa asaba ko byakosorwa.

[55] Me Munderere yabajijwe icyo avuga ku ibura rya Mudenge no ku byavuzwe n'uwo aburanira, asubiza ko kuba Mudenge atitabye atekereza ko ari ukwanga gukorwa n'isoni kubera amahano yakoze, naho ku byemezo byatanzwe n'uwo aburanira, avuga ko asanga icya mbere cyaratanzwe n'ubuyobozi bubifitiye ububasha kandi ko ari nabwo bwagikosoye , ko rero yumva nta kibazo cyaba kirimo akomeza avuga ko mu mikirize y'urubanza rwaciwe n'Urukiko Rukuru humvikana ko icyo MUNYABURANGA yamenyeshejwe ari imikirize y'urubanza aho kuba asssignation.

[56] **Me Rwagatare** yahawe ijambo avuga ko inyandiko ihamagara yageze kwa MUNYABURANGA tariki 19/09/2001, uwayijyanye akaba yarasanze MUNYABURANGA adahari, ayisigira uwitwa Mukarugwiza, uyu nawe ashyiraho igikumwe; akomeza avuga ko amakosa MUNYABURANGA avuga ko ari muri kiriya cyemezo cyo gupfa yatanze mbere atigeze abivuga mu Rukiko Rukuru rwa Repubulika kandi ko yakijyanye no kwa „Notaire“ bikaba bitumvikana ukuntu yajyana kwa notaire inyandiko atagenzuye neza, ahubwo ko

bigaragara ko yagiye gushaka kiriya yatanze muri 2008 amaze kubona ko icyo yatanze mbere aricyo gitumye atsindwa, bityo akaba atakwemererwa kuburanisha amakosa ye (Nul ne peut invoquer sa propre turpitude) ahubwo ko agomba kwirengera ingaruka zayo.

[57] Urukiko rwasanze ari ngombwa ko Umuhesha w'inkiko Mudenge yongera guhamagazwa, Me Rwagatare avuga ko azafasha urukiko kugirango yitabe kuko amuzi akaba azamushaka. Urubanza rwimuriwe kuwa 07/10/2008, uwo munsi ruhamagawe rusanga MUNYABURANGA yitabye yunganiwe na Me Munderere Léopold naho ECOBANK ititabye, umutangabuhamya Mudenge nawe atitabye kandi yaramenyeshejwe.

[58] **MUNYABURANGA** yabajijwe icyo abitekerezaho avuga ko ECOBANK yari yasinyiye itariki urubanza rwimuriweho, yizeza n'urukiko ko izitaba izanye na Mudenge, asaba ko iburanisha ryakomeza kuko ariwe ubihomberamo , Me Munderere umwunganira asaba urukiko kureba niba nta baruwa ECOBANK yanditse, urukiko ruvuga ko ntayo rwabonye.

[59] Urukiko rwavuze ko nta cyabuza urubanza kuburanishwa kuko ababuranyi bose bamenyeshejwe itariki kandi ntawasabye ko urubanza rwakwimurwa.

[60] Urukiko rwibukije ko Mudenge yahamagajwe mu iburanisha riheruka ntiyitaba ko yongeye guhamagazwa ariko umuhesha w'inkiko wajyanye inyandiko ihamagara agasanga yaragiye i Naïrobi muri Kenya, rubajije ababuranyi icyo babivugaho, MUNYABURANGA avuga ko n'ubushize Mudenge ataje kandi Me Rwagatare yari yemeye ko azamuzana, akaba abona ibyo barimo ari uburyo bwo gushaka gutinza urubanza, ko we yumva yaburana cyane ko uwo Mudenge atari we yareze .

[61] Me Munderere yavuze ko" déontologie „y'Urugaga rw'Abavoka itamwemerera kuburana mugenzi we adahari kandi atanabimumenyesheje, ko ariko niba MUNYABURANGA yiyemeje kwiburanira ku giti cye yaburana, MUNYABURANGA yiyemeza kwiburanira urubanza rurakomeza.

[62] MUNYABURANGA yavuze ko hari abatangabuhamya yari yazanye ngo banyomoze Mudenge, urukiko rumubwira ko abatangabuhamya batumizwa n'urukiko iyo rubona ari ngombwa, rumubaza niba hari icyo yongera ku rubanza rwe, avuga ko yagejeje ku rukiko ibimenyetso bigizwe n'icyemezo cy'umwirondoro wa nyina hamwe n'icyemezo cy'uko yitabye Imana, ibyo bimenyetso bikaba bizafasha urukiko kwibonera ko ibyo Mudenge Didace yanditse ku nyandiko ihamagara ivugwa muri uru rubanza ari ibinyoma. Yashoje avuga ko icyemezo cy'uko nyina yapfuye yatanze mu Rukiko Rukuru rwa Repubulika kirimo ikosa ariko ko yashatse ikindi gitunganye yashyikirije uru rukiko.

[63] Iburanisha ryarashojwe, ababuranyi bamenyeshwa ko icyemezo cy'urukiko kizasomwa kuwa 07/11/2008, igihe umwiherero wari utararangira MUNYABURANGA kuwa 01/10/2008 yandika ibaruwa asaba urukiko ko rwahamagaza abantu arugejejeho kugira ngo bazatange ubuhamya bw'ukuri bwabeshyuza ibyavuzwe na Mudenge kimwe n'ibyemejwe n'Urukiko Rukuru rwa Repubulika;

[64] Nyuma yo kwiherera rwasanze iburanisha rigomba kongera gufungurwa kugira ngo ababuranyi bagire ibindi bisobanuro barugezaho hatumizwe kandi Ntasoni Laurent, Ruzindana Augustin, Ndasaba Kalala, Mukamukama Marie Josée,Twagirayezu Marie Louise na Umuhoza Brigitte kugira ngo bumvwe nk'abatangabuhamya ;

ruvuga ko urubanza ruzongera kuburanishwa ku itariki Ubwanditsi bw'Urukiko buzamenyesha ababuranyi, hahamagajwe n'abantu bavuzwe haruguru;

[65] Iburanisha ryashyizwe kuwa 10/03/2009, uwo munsi ugeze rusanga hitabye MUNYABURANGA yunganiwe na Me Munderere Léopold, ECOBANK ititabye ariko bigaragara ko yahawe inyandiko ihamagara kuwa 04/03/2009, Me Munderere avuga ko babona inyandiko ihamagara itarubahirije amategeko ; bityo bakaba bahabwa indi tariki ariko ya hafi, iburanisha ryimurirwa kuwa 14/05/2009; uwo munsi ruburanishwa hitabye MUNYABURANGA na Me Munderere umuburanira, ECOBANK ititabye kandi yarahamagajwe mu buryo bukurikije amategeko nta n'impamvu yigeze imenyesha urukiko, haje kandi bamwe mu batangabuhamya bahamagawe aribo: Ruzindana Augustin, Ndasaba Kalala, Mukamukama Marie Josée,Twagirayezu Marie Louise na Umuhoza Brigitte

[66] Urukiko rwabajije MUNYABURANGA icyo avuga ku ibura rya ECOBANK, Me Munderere avuga ko abona amategeko y'ihamagara yarubahirijwe ku biyerekeye, ko kuba nta mpamvu uyiburanira yatanze, asanga urubanza rukwiye kuburanishwa kuko bitahora bityo cyane ko hari abatangabuhamya bitabye kabiri badatanga ubuhamya bwabo, ariko ko ataburana mugenzi we baburana adahari kandi ntacyo babivuganyeho; MUNYABURANGA avuga ko asanga ECOBANK isuzugura uru rubanza bitewe nuko nta nyungu ikirufitemo, asaba ko rwaburanishwa akiburanira, urukiko rwemeza ko urubanza ruburanishwa cyane cyane ko ECOBANK itigeze imenyesha urukiko impamvu yayiteye kutitaba.

[67] Umutangabuhamya **Ruzindana Augustin** amaze kuvuga ko ntacyo apfana na MUNYABURANGA uretse kuba

ari umuturanyi, yararahiye. Yabajijwe niba azi nyina wa MUNYABURANGA asubiza ko amuzi kuko bari baturanye avuga ko yitwaga Madamu Madeleine ariko ko yapfuye muri 1994 mu itsembabwoko ry'abatutsi, abajijwe niba azi nyirakuru wa Munyaburanga asubiza ko atamuzi.

[68] **Ruzindana** yabajijwe ibyerekeye icyemezo cyo kuwa 23/04/2004, we na Ntasoni Laurent basinyeho bemeza ko Madamu yapfuye, avuga ko ibyemezo nk'ibyo byatangwaga biturutse mu Kagari ko kandi na we ari umuhuzabikorwa w'Akagari kuva mu wa 2000 akaba ari muri urwo rwego yasinye ku cyemezo.

[69] **Mukamukama Josée** yavuze ko MUNYABURANGA ari musaza we bahuje nyina , bituma atarahira. Yabwiye urkiko ko nyina yitwaga Madamu Madaleine, akaba yarapfuye muri mata 1994, abajijwe niba azi umukecuru witwa Mukarugwiza asubiza ko nta muntu wo mu muryango wabo witwa iryo zina.

[70] **Ndasaba Kalala** yabajijwe icyo apfana na MUNYABURANGA avuga ko ari nyina wabo, bituma atarahira, abajijwe niba nta muntu wo mu muryango wabo cyangwa wo mu muryango w'umugore wa MUNYABURANGA witwa Mukarugwiza, asubiza ko uretse Madamu Madalina nyina wa MUNYABURANGA nta wundi muntu w'igitsina gore bavukana, ko abo mu muryango w'umugore wa MUNYABURANGA atabazi.

[71] **Twagirayezu Marie Louise** we yavuze ko MUNYABURANGA ari musaza we bahuje nyina gusa, abajijwe uko nyina yitwaga asubiza ko ari MADAMU Madaleine ko yapfuye muri 1994, abajijwe niba Mukarugwiza amuzi asubiza ko ntawe azi, abajijwe niba azi umukecuru wabaga kwa MUNYABURANGA asubiza ko yahagendaga ariko ko nta mukecuru wigeze ahaba.

[72] **Umuhoza Brigitte,** na we utararahiye kubera amasano afitanye na MUNYABURANGA, yavuze ko nyina wa MUNYABURANGA yari nyirasenge akaba yaritwaga Madamu Madeleine, avuga kandi ko amuzi neza kugeza apfuye muri 1994, abajijwe abo bavukana avuga ko abazi ko na nyina yitwaga Mukaruniga Verdiana.

[73] **MUNYABURANGA** yabajijwe icyo yongera ku buhamya bwatanzwe, avuga ko icyo yifuzaga ari uko ukuri kujya ahagaragara, ko rero bigaragaye ko ECOBANK yakoze uburiganya. Yabajijwe koko niba ariwe watanze icyemezo cy'uko nyina yapfuye avuga ko yabisobanuye ko habaye ikosa mu myandikire, abajijwe impamvu hashize iminsi myinshi atabikosoje, avuga ko mbere atari yabyitayeho, ko icyo yari yarebye gusa ari amazina y'uwapfuye, ko kureba ko habaye ikosa mu kwandika amazina ya nyina wa Madamu atabirebye, ko ariko amaze kubona harimo ikosa yagiye mu Mudugudu abibwira Ntasoni barabikosora.

[74] Yabajijwe icyo yongera ku rubanza rwe, asubiza ko yifuza ko urukiko rwakwemeza ko urubanza rwaciwe n'Urukiko rwa mbere rutubahirije amategeko agenga imiburanishirize y'imanza cyane cyane ingingo ya 12 n'iya 13 y'itegeko ryo muri 1964 ryerekeye imiburanishirize y'imanza z'imbonezamubano n'amahugu kuko atahamagajwe mu buryo amategeko ateganya bityo urubanza yajuririye rukavanwaho kuko nta gaciro rufite, yongeraho ko asaba n'indishyi.

[75] Ku byerekeye ikibazo cy'indishyi yongeye kuvuga ko Banque yagiye igurisha amazu ye ku giciro cyo hasi ugereranyije n'agaciro nyakuri kayo, akaba ashimangira ko inguzanyo yahawe ayemera kandi ko azayishyura

aramutse asubijwe amazu ye ku gaciro kayo. Yavuze ko inzu y'ubucuruzi y'igorofa iri muri parcelle n°5435 i Remera-Nyarutarama ifite agaciro ka 450.000.000Frw , ko n'urukiko rubishatse rwakoresha expertise. Yakomeje asobanura ko yasubizwa ibyo yahombye bifite agaciro ka 2.000.000Frw buri kwezi uhereye tariki 11/12/2003 cyamunara ibaye, ni ukuvuga mu gihe cy'imyaka itanu bingana na 120.000.000Frw , hiyongereyeho amezi 8 kuva ku iburanisha ryo kuwa 07/10/2008, ni ukuvuga 16.000.000Frw; inyungu za buri mwaka zingana na 4.320.000Frw.

[76] Ku nzu yo guturamo yubatse mu kibanza n°3358 Rukiri I/Remera, yavuze ko agaciro kayo ubu kangana na 70.000.000Frw, ko ibyo yayihombyeho bingana na 12.000.000Frw uhereye tariki 06/04/2004 cyamunara ibaye, ni ukuvuga mu gihe cy'imyaka ine, hiyongereyeho amezi 8 abarwa kuva ku munsi w'iburanisha ryo kuwa 07/10//2008, ni ukuvuga 2.000.000Frw, inyungu za 18% za buri mwaka, ni ukuvuga 540.000Frw buri mwaka na **100.000Frw ya fonds de commerce ye** . Yasabye amafaranga y'igihembo cya Avoka n'ay'ikurikirana rubanza angana na 1.500.000Frw. Yavuze ko ariya amazu ayashubijwe ECOBANK yagenda imusubiza ikinyuranyo hagati y'agaciro kayo n'amafaranga yari ayirimo mu gihe ruriya rubanza rutakurikije amategeko rwacibwaga.

[77] Urukiko rwashoje iburanisha rumenyesha ababuranyi ko urubanza ruzasomwa kuwa 12/06/2009, uwo munsi isomwa ryimurirwa kuwa 19/06/2009 kuko umwiherero w'abacamanza wari utararangira.

III . IBIBAZO BYASUZUMWE N'UKO URUKIKO RUBIBONA.

[78] MUNYABURANGA mu bujurire bwe avuga ko inyandiko

ihamagara igibwaho impaka muri ururubanza itabayeho kuko yanditseho ko uyihawe ari Mukarugwiza Thérèse, nyina wa Munyaburanga, nyamara nyina yarapfuye mu wa 1994 kandi ko yitwaga Madamu Madalina hakurikijwe icyemezo cyo gupfa cyo kuwa 16/09/2008, iyo attestation kandi ikerekana ko Mukarugwiza Thérèse atari nyirakuru nk'uko byemejwe n'Urukiko Rukuru rwa Repubulika ahubwo ko nyirakuru yitwa Mukarugina VeredIyana.

[79] MUNYABURANGA mu bujurire bwe asaba uru rukiko kwemeza ko imanza zose zaciwe ziyishingiyeho zigomba guteshwa agaciro, agasubizwa amazu ye cyangwa ikiguzi cy'agaciro kayo, agahabwa n'indishyi zikomoka ku karengane kose yagiriwe.

[80] Ku byerekeye itangwa ry'inyandiko ihamagara umuburanyi, ingingo ya 13 y'itegeko ryo kuwa 15/07/1964 rigena imiburanishirize y'imanza z'amahugu n'ubucuruzi ryakoreshwaga icyo gihe, yateganyaga ko iyo ihamagara ridashoboye gushyikirizwa uregwa ubwe, rigezwa iwe mu rugo cyangwa kw'icumbi rye, riherezwa ufitanye isano n'uhamagarwa cyangwa uwo bashakanye, umukoresha we cyangwa umukozi we, naho ingingo ya 14 yo igateganya ko ku rwandiko ruhamagara no kuri kopi yarwo handikwa izina ry'uwashyikirijwe ihamagara, isano, ubushyingirane cyangwa ubutegekane afitanye n'uregwa kandi byaba ngombwa hakandikwaho impamvu yabujije kopi gutangwa.

[81] Nubwo mu miburanire ye Munyaburanga ahakana ko iriya inyandiko ihamagara itigeze igera iwe, mu nyandiko mvugo y' iburanisha ryo kuwa 10/07/2007 imbere y'Urukiko Rukuru rwa Repubulika (pp5-6 y'inyandiko mvugo y'iburanisha) , handitse ko yasobanuye ko yabonye iyo inyandiko ihamagara avuye mu rugendo

rw'akazi muri Kenya, akaba yarabivuze mu magambo akurikira:"… *ubwo naje kujya mu rugendo rw'akazi muri Kenya marayo igihe , ngarutse ntangazwa no kubona hari inyandiko ihamagara yo kuwa 2/8/01 yampamagariraga kuburana kuwa 18/12/01, akaba ari nayo ntandaro y'ikibazo mbona aricyo gituma BCDI idashaka kuburana kuko yakoresheje uburiganya ibeshya abacamanza ngo inyandiko ihamagara bayishyikirije mama kandi izina ririho siryo rya mama, irye BCDI yari irizi irangije ibeshya abacamanza ituma ntamenyeshwa urubanza".*

Urukiko rurasanga nubwo Munyaburanga muri uru rukiko ahakana iyo mvugo iri haruguru avuga ko icyo yasanze mu rugo yabwiye urukiko ari "copie de jugement", bigaragara ko ibikubiye muri ziriya mvugo ze bitajyanye na "copie de jugement "ahubwo ko bijyanye neza na " inyandiko ihamagara". Ibyo aburanisha y'uko umwanditsi w'Urukiko Rukuru yamutwereye imvugo bikaba nta shingiro bifite kuko ariwe wivugira ku buryo bwumvikana itariki iyo nyandiko yakoreweho, itariki y'iburanisha ry'urubanza ivugwamo, aho yari yaragiye, Iyo mvugo ye rero imbere y'urwo rukiko ikaba igaragaza nta gushidikanya ko inyandiko ihamagara ivugwa yageze iwe mu rugo kuko amagambo umuntu yiyemereye mu rukiko amutsindisha nk'uko biteganywa n'ingingo ya 110 y'Itegeko n°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo;

[82] Urukiko rurasanga kandi nubwo umukecuru witwa Mukarugwiza Thérèse, umuhesha w'inkiko Mudenge Didace yasanze mu rugo kwa MUNYABURANGA bikandikwa ku nyandiko ihamagara yaba atari nyina nk'uko yabivuze, bitatuma iteshwa agaciro mu gihe

MUNYABURANGA atagaragariza urukiko icyo ibyo byamwononeye kuko icy'ingenzi ari uko ayibona kandi ku bimureba yiyemereye ko yayibonye. Ibi birahura n'ibisobanuro *by'ingingo ya 655 ya Nouveau Code de Procédure Civile français, 99e édition, 2008, p 455, n°9 7*, havugwako kwibeshya ku mwirondoro w'usigiwe inyandiko ihamagara bitayitesha agaciro. Ibyo kandi byongera gushimangirwa *n'umuhanga mu mategeko Pierre Rouard, wasobanuye mu gitabo cye „Traité élémentaire de droit judiciaire privé, p355, n° 381,* ko Komisiyo ya Sena y'u Bubiligi yasanze gutesha agaciro inyandiko z'inkiko zirimo n'inyandiko ihamagara kubera ko habaye ukwibeshya kuri „qualité" y'uzisigiwe byaba ari icyemezo gikarishye, ibyo bikaba byaratumye hakorwa ubugororangingo mu myandikire y'ingingo ya 861 ya Code de Procédure Civile bugamije kurekera umucamanza ubwisanzure bwo gusuzuma niba bene iryo kosa hari icyo ryononeye umuburanyi[8].

[83] Urukiko rusanga na none ku byerekeye „qualité"y'usigiwe inyandiko ihamagara mu gihe uhamagarwa adahari, ntaho itegeko riha umuhesha w'inkiko amabwiriza yo kugenzura ukuri kw'ibyo amubwiye haba ku mwirondoro we cyangwa ku masano afitanye n'uhamagarwa, ibi kandi birahura n'ibyanditse muri *Nouveau Code de Procédure Civile français , p 455, n° 9°,* ndetse n'ibyasobanuwe n'umuhanga Pierre ROUARD mu gitabo cyavuzwe haruguru kuri p319, n°284[9], y'uko icyo umuhesha w'inkiko

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[7] …….et les erreurs sur la qualité de la personne à qui a été remise l' inyandiko ihamagara n'entraînent pas la nullité de la signification.

[8] La nullité absolue en raison d'une erreur dans l'identité de la personne à laquelle sont remis les exploits –constitue une mesure trop sévère. En vertu de l'article 861, semblable erreur doit être laisée à l'appréciation du juge, qui estimera si elle a nui aux intérêts de la partie qui a été remise

[9] ………l'identité de la personne à qui a été remise l' inyandiko ihamagara

agomba gukora ari ukwandika gusa ati „ambwiye ibi" cyangwa „ambwiye ko ari", bikaba byumvikana ko no muri uru rubanza nta kindi umuhesha w'inkiko Mudenge yari gukora kitari kwandika ibyo yabwiwe.

[84] Urukiko rurasanga rero urubanza rwaburanishijwe kuwa 18/12/2001 Munyaburanga yararuhamagawemo mu buryo bukurikije amategeko nk'uko byemejwe n'Urukiko Rukuru.

[85] Ku byerekeye ingingo y'ubujurire y'uko urukiko rwategetse irangiza rubanza ry'agateganyo ku mazu ye kandi bitemewe n'amategeko, urukiko rurasanga ari ugusesengura mu buryo butari bwo ibivugwa mu ngingo ya 207, 3° y'itegeko ryo kuwa 15/07/1964 ryavuzwe haruguru, kuko inzu igomba kumvikana ari iba iburanwa (ariyo objet du litige) mu rubanza, iyo myumvire akaba ariyo umushingamategeko yasobanuye neza mu ngingo ya 208 , 3° y'itegeko n°18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'ubutegetsi aho agira ati"irangizwa ry'agateganyo ribujijwe mu byerekeye ibintu bitimukanwa, iyo aribyo biburanwa". Ibi rero binyuranye n'ibyo Munyaburanga avuga kuko ikiburanwa mu rubanza rwe na ECOBANK ari umwenda w'amafaranga ayibereyemo"; bityo ingingo ye y'ubujurire ikaba nta shingiro ifite cyane ko mu masezerano bagiranye, MUNYABURANGA yemeye ko inzu ze atanzeho ingwate zagurishwa aramutse ananiwe kwishyura imyenda ahawe.

[86] Ku byerekeye ingingo y'ubujurire ya MUNYABURANGA y'uko ko amazu ye yagurishijwe ku giciro cyo hasi hakurikijwe agaciro nyako yari afite, Urukiko rusanga amategeko yarahaga MUNYABURANGA inzira yo gusaba icyemezo gihagarika cyamunara igashyirwa ku wundi munsi mu gihe abonye ko igiciro gitanzwe kidakwiye

n'est pas un fait personnel que l'huissier de justice est légalement chargé de constater, non plus que la qualité qu'elle s'est donnée

nk'uko byateganywaga n'ingingo ya 351 ya ririya tegeko ryo muri 1964. Kuba rero atarakoresheje uburenganzira bwe neza bikaba ari amakosa ye, kuko mu nyandiko mvugo ya cyamunara bigaragara ko babajijie niba ntawe ufite ikibazo ku giciro gitanzwe, ntihagira uwigaragaza nyamara yari yaramenyeshejwe umunsi n'isaha iyo cyamunara izakorerwaho.

[87] Hakurikijwe ibimaze kuvugwa, Urukiko rurasanga ingingo zose z'ubujurire bwa Munyaburanga nta shingiro zifite.

IV. ICYEMEZO CY'URUKIKO

[88] **Rwemeye** kwakira ubujurire bwa MUNYABURANGA Jean Damascène kuko bwatanzwe mu buryo no mu nzira bikurikije amategeko.

[89] **Ruvuze** ko nta shingiro bufite.

[90] **Rumutegetse** kwishyura amagarama y'uru rubanza angana na 61.850Frw, atayatanga mu gihe amategeko ateganya , agakurwa mu bye ku ngufu za Leta.

[91] **Ruvuze** ko urubanza R.ComA 0018/05/HC/KIG rwaciwe n'Urukiko Rukuru rwa Repubulika ku cyicaro cyarwo i Kigali kuwa 28/09/2007 rudahindutse.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KU WA 19/06/2009 N'URUKIKO RW'IKIRENGA, RUGIZWE NA NYIRINKWAYA IMMACULEE: PEREZIDA, MUKANYUNDO PATRICIE NA HATANGIMBABAZI FABIEN: ABACAMANZA, BAFASHIJWE NA UWARUGIRA JEAN BAPTISTE : UMWANDITSI W'URUKIKO.

NYIRINKWAYA Immaculée
Perezida
Sé

MUKANYUNDO Patricie — **Umucamanza** — **Sé**

HATANGIMBABAZI Fabien — **Umucamanza** — **Sé**

UWARUGIRA JEAN BAPTISTE

Umwanditsi w'Urukiko
Sé

7. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: R.COM.AA 0008/05/CS
ITARIKI Y'URUBANZA: 26/04/2006
HABURANA: KAMPIRE CLAIRE & SIBOMANA Eugène / Banque de Kigali S.A (BK)

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI (URUBANZA RUBANZIRIZA URUNDI) - IMIKIRIZE Y'URUBANZA YIVUGURUZA KU BURYO BUKABIJE - URUBANZA RUTAGARAGAZA NA BUSA IMPAMVU IBYEMEZO BYAFASHWE BISHINGIYEHO

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

Mu gusuzuma niba urubanza mu Rukiko rw'Ikirenga ruri mububasha bwarwo kubera ko rutagaragaza na busa impamvu rwashingiyeho, Urukiko rw'Ikirenga ntirusimbura urukiko rwaciye urubanza rwajuririwe ngo rujye gucukumbura niba impamvu zatanzwe n'urukiko rwaruciye zifite cyangwa zidafite ishingiro, icyo rusabwa n'itegeko ni ukureba niba nta mpamvu na busa urubanza rwajuririwe rutanga. Nyamara igihe hari imikirize yivuguruza ku buryo bukabije kandi bugaragarira buri wese, ku buryo binatuma ireme (substance) ry'imikirize y'urubanza ubwarwo rihinduka, urwo rubanza rugomba gufatwa nk'urutagaragaza na busa impamvu rushingiyeho.

URUKIKO RW'IKIRENGA RURI I KIGALI RWAKIJIJE URUBANZA RUBANZIRIZA URUNDI KU WA 26/04/2006 MU BURYO BUKURIKIRA :

ABAJURIYE :

- KAMPIRE Claire, mwene RUBAMBANA Evariste na NYIRAMUGANZA Catherine,utuye Kivugiza, Akarere ka Nyarugenge, Umujyi wa Kigali

- SIBOMANA Eugène, mwene RUBAMBANA Evariste na NYIRAMUGANZA Catherine, utuye Kivugiza, Akarere ka Nyarugenge, Umujyi wa Kigali

UREGWA :

Banque de Kigali, S.A, B.P 175 KIGALI.

IKIREGERWA :

- Recouvrement d'une créance de 5.991.981 Frw en principal et 956.648 Frw d'intérêrts arrêtés au 20.05.1998
- Frais de procédure et de recouvrement

URUKIKO :

Rushingiye ku Itegeko Nshinga rya Repubulika y'u Rwanda ;

Rushingiye ku Itegeko-Ngenga n° 07/2004 ryo ku wa 25/04/2004

rigena imitunganyirize, imikorere n'ububasha by'Inkiko nk'uko ryahinduwe kandi rikuzuzwa n'Itegeko-Ngenga n° 14/2006 ryo ku wa 22/03/2006 ;

Rushingiye ku Itegeko-Ngenga n° 01/2004 ryo ku wa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi rikuzuzwa n'Itegeko-Ngenga n° 13/2006 ryo ku wa 21/03/2006 ;

Rushingiye ku Itegeko n° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi rikuzuzwa n'Itegeko n° 09/2006 ryo ku wa 02/03/2006 ;

Rushingiye ku Itegeko n°15/04 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ;

Rumaze kubona ubujurire bwa KAMPIRE na SIBOMANA bwombi bwashyikirijwe Urukiko rw'Ikirenga ku wa 28/06/2005, bajuririra urubanza RCA 0023/05/HC/KIG rwo ku wa 03/06/2005 rwaciwe n'Urukiko Rukuru rwa Repubulika, ibirego byabo bigahabwa n° R.Com.AA 0008/05/CS ;

Rumaze kubona icyemezo n° R.Com.0001/06/Pré-examen cyo ku wa 27/12/2005 cy'Umucamanza wakoze ibanzirizasuzuma ry'urubanza cyemeza ko ikirego cya KAMPIRE na SIBOMANA cyatanzwe mu buryo no mu nzira zikurikije amategeko ko kandi kiri mu bubasha bw'Urukiko rw'Ikirenga ;

Rumaze kubona itegeko n° 0021/2006 ryo ku wa 07/03/2006 rya Perezida w'Urukiko rw'Ikirenga rishyira iburanisha ry'urubanza n° R.Com.AA 0008/05/CS ku wa 16/03/2006, sa mbiri n'igice, uwo munsi ugeze hitaba Me MUNDERERE uhagarariye KAMPIRE, Me IYAMUREMYE Maurice, na Me HAGUMA Jean bahagarariye SIBOMANA, Me KAZUNGU J.Bosco na Me

RUSANGANWA J.Bosco bahagarariye B.K ;

Rumaze kubona ko iburanisha ritangiye Me KAZUNGU yatanze inzitizi y'uko Me IYAMUREMYE, mu rwego rw'imigenzereze myiza ya ba avoka « éthique » adakwiriye kuburana uru rubanza kubera ko se umubyara witwa IYAMUREMYE Félicien ari we wari Perezida w'inteko yaruburanishije mu Rukiko rwa Mbere rw'Iremezo rwemeje ko B.K igomba guha SIBOMANA na KAMPIRE 60.000.000 Frws kandi ikiburanwa cyari 5.000.000 Frws ;

Rumaze kwumva Me KAZUNGU abazwa niba hari impungenge afite imbere y'Urukiko rw'Ikirenga rwashyikirijwe urubanza ko rwaruca rudakoresheje ukuri maze agasubiza ko ntazo afite, ko ikibazo afite ari ikijyanye na « éthique » ko kandi amategeko yose ajyanye na « éthique » atari ayanditse gusa;

Rumaze kwumva Me IYAMUREMYE avuga ko inzitizi yatanzwe na Me KAZUNGU ntaho ishingiye mu rwego rw'amategeko kuko itajyanye n'ibiteganywa n'ingingo ya 56 y'Itegeko rigenga Urugaga rw'Abavoka iteganya ibihe Avoka abujijwe kuburana urubanza, ko kandi urubanza rujuririrwa atari urwaciwe n'Urukiko rwa Mbere rw'Iremezo ko ahubwo ari urwaciwe n'Urukiko Rukuru rwa Repubulika ;

Rumaze kwiherera no gusuzuma inzitizi yatanzwe na Me KAZUNGU, rugafata icyemezo gikurikira :

«*Rusanze inzitizi yatanzwe na Me KAZUNGU nta shingiro ifite kuko kuba se wa Avoka IYAMUREMYE yararuburanishije mu rwego rwa mbere atari impamvu ku bw'amategeko imubuza kurubamo avoka muri uru rukiko, kandi bikaba ntaho bibangamiye ubwabyo imigenzereze myiza n'imyitwarire igomba kuranga avoka imbere y'Urukiko, ari narwo rugomba kugenzura ko imiburanire y'ababuranyi ikorwa mu buryo bukwiye kandi*

mu bwisanzure bw'ababuranyi n'ababunganira, buri wese afite uburenganzira busesuye bwo kuzana ingingo zose zivuguruza mugenzi we, maze ukuri kwazo kugasuzumwa n'Urukiko „;

Rumaze kwumva Me RUSANGANWA avuga ko nawe atanga inzitizi ijyanye n'ububasha bw'Urukiko rw'Ikirenga ishingiye ku ngingo ya 43 y'Itegeko ngenga n° 1/2004 ryo ku wa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga, kubera ko ikiburanwa kidafite agaciro kageze kuri 20.000.000 Frws, naho izindi ngingo abajuriye batanga akaba ari izijyanye n'urubanza mu mizi ;

Rumaze kwumva Me MUNDERERE avuga ko ubujurire bwabo buri mu bubasha bw'Urukiko rw'Ikirenga hakurikijwe ingingo ya 43, 2° y'Itegeko-ngenga n° 01/2004 ryavuzwe haruguru kubera y'uko urubanza rwaciwe n'Urukiko Rukuru rwa Repubulika ruterekanye impamvu rushingiraho mu gihe muri Rusanze ya 5 ku rupapuro rwa 11 rwa kopi y'urubanza, Urukiko rwemeza ko BK yakoze amakosa yo guhindura ubwayo amasezerano nta n'ibisobanuro itanze, nyamara Urukiko ntirwerekane ukuntu ayo makosa atagomba gutuma BK icibwa indishyi ; avuga ko no muri Rusanze ya 2 ku rupapuro rwa 12, Urukiko rwavuze ko BK yananije SIBOMANA na KAMPIRE ariko ntirwerekana ukuntu uko kubananiza kudakwiriye gutuma B.K ibaha indishyi ;

Rumaze kwumva Me IYAMUREMYE avuga ko atari ngombwa ko impamvu zose zivugwa mu ngingo ya 43 y'Itegeko ngenga n° 01/2004 ryavuzwe haruguru ziba zihari, ko n'ingingo imwe muri zo ihagije kugira ngo urubanza rube mu bubasha bw'Urukiko rw'Ikirenga, ko kuri we urubanza ruterekanye aho rushingiye kuko nyuma yo gutondagura amakosa ya B.K rwemeje ko hatsinzwe SIBOMANA na KAMPIRE, bivuga ko nta nkurikizi ku makosa ya B.K ;

Rumaze kwumva avuga ko imihango simusiga y'iburanisha

itubahirijwe kuko ingingo ya 62 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi isobanura ibihe umucamanza ashobora kongera gufungura iburanisha, kandi ko mu manza z'imbonezamubano ababuranyi aribo bayobora urubanza, Urukiko rukaba rushobora kongera gufungura iburanisha ari uko rubonye ikimenyetso gishya, bityo akaba asanga amategeko aturubahirijwe ;

Rumaze kwumva Me IYAMUREMYE abazwa niba asanga ibijyanye no kwongera gufungura iburanishwa ari umuhango simusiga agasubiza ko urukiko rwazabisuzuma ;

Rumaze kwumva Me KAZUNGU na Me RUSANGANWA bavuga ko kuba abajuriye bavuga ko urubanza ruterekana impamvu rushingiyeho bidahagije kuko Urukiko Rukuru rwa Repubulika rwerekanye aho rwashingiye ruca urubanza, ibyo bikaba biboneka kuva ku rupapuro rwa 10 kugeza ku rwa 14 za kopi y'urubanza, naho kuvuga ko nta nkurikizi BK yabonye Urukiko rumaze kuvuga ko yakosheje atari byo kuko B.K itagenewe indishyi kandi umucamanza yari yemeye ko yavukijwe inyungu;

Rumaze kwumva Me KAZUNGU avuga ko ingingo za 61 na 62 z'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ntaho zibuza umucamanza kwongera gufungura iburanisha mu gihe ashaka ko ukuri kugaragara, ko icya ngombwa ari uko yita ku nyungu z'ababuranyi bose, naho umuhango simusiga Me IYAMUREMYE avuga akaba atari wo kuko iyo

Umushingamategeko ashaka ko umuhango runaka uba simusiga abyivugira, akaba atari ko bimeze ku byerekeye kongera gufungura iburanisha ;

Rumaze kubona ko iburanisha ry'urubanza ryakomeje mu mizi,

ababuranyi bagasobanura ingingo zabo, nyuma iburanisha rigasozwa bamenyeshejwe ko urubanza ruzasomwa ku wa 12/04/06, ariko uwo munsi ntirubashe gusomwa kuko Urukiko rwari rugikeneye ikindi gihe cyo gusuzuma ingingo z'ababuranyi, isomwa ryarwo rikimurirwa ku wa 26/04/06, maze Urukiko rugaca urubanza rubanziriza urundi mu buryo bukurikira :

Rusanze ku byerekeye ububasha bw'Urukiko, SIBOMANA na KAMPIRE barashingiye ubujurire bwabo ku ngingo ebyiri :

- Kuba Urukiko Rukuru rwa Repubulika rutarubahirije imihango simusiga yerekeye iburanisha mu gihe rwategekaga ko iburanisha ryongera gufungurwa kandi bitasabwe n'ababuranyi ;
- Kuba urubanza rwajuririwe rutagaragaza impamvu rushingiyeho (absence de motivation)

Rusanze ku ngingo y'uko iburanisha ryongeye gufungurwa bidasabwe n'ababuranyi, ntaho bibujijwe ko umucamanza, nyuma yo gusoza iburanisha yakongera kurifungura mu gihe asanga hari ibyo akeneye gusobanukirwa kugira ngo bimufashe gufata icyemezo, n'ingingo ya 62 y'Itegeko n° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi rikuzuzwa n'Itegeko n° 09/2006 ryo ku wa 02/03/2006 isobanura igihe ababuranyi bashobora gusaba ko urubanza rusubukurwa ikaba itabuza ko umucamanza yategeka iryo subukurwa abyibwirije ;

Rusanze ku byerekeye gusuzuma niba urubanza rwajuririwe rutagaragaza impamvu rushingiyeho, Urukiko rw'Ikirenga rutagomba gusimbura Urukiko rwaciye urubanza rwajuririwe ngo rujye gucukumbura niba impamvu rwatanze zifite cyangwa zidafite ishingiro, icyo rusabwa n'itegeko akaba ari ukureba niba nta mpamvu na busa urubanza rwajuririwe rutanga nk'uko biteganywa n'ingingo ya 43 y'Itegeko n° 01/2004 ryo ku wa

29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi rikuzuzwa n'Itegeko-Ngenga n° 13/2006 ryo ku wa 21/03/2006 ;
Rusanze nyamara igihe hari imikirize yivuguruza ku buryo bukabije kandi bugaragarira buri wese, ku buryo binatuma ireme(substance) ry'imikirize y'urubanza ubwarwo rihinduka, urwo rubanza rugomba gufatwa nk'urutagaragaza na busa impamvu rushingiyeho ;

Rusanze nk'uko bigaragara, mu mikirize y'urubanza rwajuririwe, Urukiko Rukuru rwa Repubulika rwemeje ubwarwo, ku buryo butaziguye kandi runashimangira, ko B.K yagize uruhare mu kuba SIBOMANA na KAMPIRE batarubahirije amasezerano y'inguzanyo bagiranye, kuko B.K yabashyizeho amananiza kandi ikora amakosa yo guhindura ku bwende bwayo amasezerano bagiranye itanasobanuye impamvu (*kopi y'urubanza, urupapuro rwa 11 n'urwa 12*), Urukiko rukaba rwaranivugiye ko ubujurire bwa SIBOMANA na KAMPIRE bufite ishingiro kuri bimwe (*kopi y'urubanza, urupapuro rwa 15*), nyamara nyuma y'ibyo bisobanuro byose ntihagire umwanzuro n'umwe rufata kuri iryo shingiro no ku mananiza n'amakosa ya B.K rwari rwemeje kandi ari nabyo SIBOMANA na KAMPIRE baburanishaga, ahubwo akaba ari bo bonyine rutegeka kwishyura amagarama y'urubanza ;

Rusanze rero uko kwivuguruza gukabije ku buryo ireme ry'imikirize y'urubanza rihinduka kugomba gutuma iyo mikirize ifatwa nk'itagaragaza na busa impamvu ishingiyeho ;

Rusanze mbere yo guca urubanza mu mizi hagomba gushyirwaho umuhanga wagaragaza igihombo SIBOMANA na KAMPIRE bavuga ko batewe no kuba B.K yarabimye igice cy'inguzanyo bari baremeranyijweho ;

Rusanze ingingo ya 79 y'Itegeko n°15/04 ryo kuwa 12/06/2004

ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko icyemezo cy'urukiko gitegeka igenzura ry'umuhanga ariko ko ababuranyi ubwabo bashobora kwumvikana bagashyiraho umuhanga umwe cyangwa 3, maze urukiko rukabyemeza ; bityo, Urukiko rukaba rusanga ababuranyi bakwiye gusabwa kwumvikana ku muhanga cyangwa abahanga bakenewe ;

KUBERA IZO MPAMVU :

Rwemeje ko iburanisha ry'uru rubanza rizongera gufungurwa ku wa 9/05/2006 kugira ngo hasuzumwe ishyirwaho ry'umuhanga wagaragaza igihombo SIBOMANA na KAMPIRE baba baratewe n'uko B.K itabahaye igice cy'inguzanyo bari baremeranyijweho ;

Rutegetse ko kuri iyo taliki ya 9/05/2006, ababuranyi ku mpande zombi bazaba bamaze kumvikana kuri uwo muhanga yangwa ku bahanga batatu, bitaba ibyo urukiko ubwarwo akaba ari rwo ruzamugena ;

Ruvuze ko amagarama y'urubanza asubitswe ;

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KUWA 26/04/2006 N'URUKIKO RW'IKIRENGA RUGIZWE NA MUGENZI LOUIS MARIE, PEREZIDA, MUKANYUNDO PATRICIE NA MUKAMULISA M-THERESE, ABACAMANZA, BAFASHIJWE NA RUSINGIZA GERMAIN, UMWANDITSI W'URUKIKO.

MUGENZI Louis Marie
Perezida
Sé

MUKANYUNDO Patricie
Umucamanza
Sé

MUKAMULISA M-Thérèse
Umucamanza
Sé

RUSINGIZA Germain
Umwanditsi w'Urukiko
Sé

8. URUKIKO RW'IKIRENGA

N° Y'URUBANZA : R.COM.AA0008/05/CS
ITARIKI Y'URUBANZA : 06/06/2008
HABURANA : KAMPIRE Claire & SIBOMANA Eugène/
BANQUE DE KIGALI S.A (BK)

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI – GUHINDURA AMASEZERANO MU BURYO BUTUMVIKANYWEHO

GUSABA INDISHYI ZIKOMOKA KU GUTAKAZA AMAHIRWE (PERTE D'UNE CHANCE) BITEWE N'UTUBAHIRIJE INSHINGANO ZE

KWIYAMA AVOKA (MU RUBANZA RWO KU RWEGO RW'UBUJURIRE) KUBERA ISANO YA HAFI AFITANYE N'UMUCAMANZA WARUBURANISHIJE KU RWEGO RWA MBERE

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Kuba umu avoka ufitanye isano ya hafi n'umucamanza waburanishije urubanza ku rwego rubanza ntibishobora kuba impamvu ituma ataruburana ku rwego rw'ubujurire, bipfa gusa kuba, bitabangamiye imiburanishirize ikwiye, cyangwa imyitwarire myiza igomba kuranga aba avoka.

-Inshingano yose yo gukora cyangwa kudakora ikintu irangizwa

n'indishyi iyo uyigomba atayubahirije. Bityo iyo banki ihinduye ubwoko bw'inguzanyo, uburyo bwo kuyitanga ndetse no kuyishyura mu buryo butumvikanyweho n'umukiliya wayo bukamutera kugira ibyo atakaza mu bikorwa bye by'ubucuruzi, ibitangira indishyi.
-Iyo uwagombaga guhabwa inguzanyo na banki atayihawe yose nk'uko yari yabisezeranijwe bikamuviramo guhomba, ntibifatwa ko icyo gihombo ari icyo yagize ku byo yabyazaga amafaranga atahawe, ahubwo bifatwa ko yavukijwe amahirwe yo kubyaza inyungu ayo mafaranga yagombaga kubona iyo ayahabwa nk'uko byari byumvikanyweho.

-Kuvutswa amahirwe (perte d'une chance) bitanga uburenganzira ku ndishyi zigenwe mu bushishozi bw'umucamanza akurikije uko asanga ayo mahirwe yariho koko, ko yari make cyangwa menshi, ahereye uko ibintu byari bimeze. Zikaba atari izihwanye n'ibyo uwavukijwe amahirwe yizeraga kubona byose ahubwo ari izigereranyirizwa gusa ku mahirwe yari afite.

URUKIKO RW'IKIRENGA RURI I KIGALI RUHABURANISHIRIZA IMANZA Z'UBUCURUZI RUKIJIJE MU RUHAME, NONE KU WA 06/06/2008 URUBANZA MU BURYO BUKURIKIRA :

ABAJURIYE :

-KAMPIRE Claire, mwene RUBAMBANA Evariste na NYIRAMUGANZA Catherine, utuye Kivugiza, Akarere ka Nyarugenge, Umujyi wa Kigali.

-SIBOMANA Eugène, mwene RUBAMBANA Evariste na NYIRAMUGANZA Catherine, utuye Kivugiza, Akarere ka Nyarugenge, Umujyi wa Kigali.

UREGWA :

Banque de Kigali, S.A, B.P 175 KIGALI.

IKIREGERWA :

-Recouvrement d'une créance de 5.991.981 Frw en principal et 956.648 Frw d'intérêts arrêtés au 20.05.1998
-Frais de procédure et de recouvrement.

URUKIKO ;

Rushingiye ku Itegeko Nshinga rya Repubulika y'u Rwanda ;

Rushingiye ku Itegeko-ngenga n° 07/2004 ryo ku wa 25/04/2004 rigena imitunganyirize, imikorere n'ububasha by'Inkiko nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu ;

Rushingiye ku Itegeko-ngenga n° 01/2004 ryo ku wa 29/01/2004 rigena imitunganyirize, imikorere n'ububasha by'Urukiko rw'Ikirenga nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu ;
Rushingiye ku Itegeko n° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu ;

Rushingiye ku Itegeko n° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ;

Rumaze kubona urubanza RC.30.512/99 rwaciwe ku wa 24/05/2000 n'Urukiko rwa mbere rw'Iremezo rwa Kigali, BK irega SIBOMANA na KAMPIRE umwenda w'amafaranga 5.991.981 n'inyungu zawo, rucibwa abaregwa badahari, maze rubategeka kwishyura BK umwenda remezo ungana na 5.911.981 fw , inyungu zawo zingana na 1.278.442 Frw, na 100.000 Frw y'ikurikirana rubanza ;

Rumaze kubona urubanza RC 33.290/00 rwo ku wa 09/12/2002 rwaciwe n'Urukiko rwa Mbere rw'Iremezo, SIBOMANA na KAMPIRE basubirishijemo (opposition) urubanza RC.30.512/99 rwavuzwe haruguru, rukemeza ibi bikurikira:

« Rwemeje ko Banki ya Kigali yagiranye na SIBOMANA na KAMPIRE amasezerano y'inguzanyo „y'amafaranga 15.000.000 Frw (ouverture de crédit avec constitution d'yhpothèque), ayo „masezerano bayagirana imbere ya Notaire wa Leta, bayasinyaho bose uko ari 3 (KAMPIRE, „SIBOMANA na B.K) BK ntiyubahiriza ayo masezerano uko ateye ahubwo hashize igihe gito ihindura „ayo masezerano batabyumvikanyeho bose bityo rero ubwo ariyo (BK) yabaye nyirabayazana „y'iyicwa ry'ayo amasezerano, ikaba igomba kubitangira indishyi kandi ayo masezerano agaseswa „ku makosa ya B.K kuko itayubahirije nk'uko byasobanuwe ku buryo burambuye haruguru muri za „Rusanze ;
„ Rukijije ko B.K itsindiye umwenda wa 5.000.000 Frw yagurije SIBOMANA E. na KAMPIRE, ko aba „nabo batsindiye inyungu bavukijwe na B.K zingana

na (1.200L/Jour x « 13 FRW x 1996 jours) x 2 „stations = 62.275.200 Frw mu gihe cy'iminsi 1996 (5ans, 5 mois « et 16 jours) ;
„ Rutegetse B.K kubariha 62.275.200 Frw hiyongereyeho 500.000 Frw y'indishyi y'akababro nk'uko „yasobanuwe na 100.000 Frw y'ikurikirana rubanza ikabasubiza 4.444.000 Frw „ariko nayo (B.K) „ikabanza kuvanamo 5.000.000 Frw yatsindiye, yose hamwe ikaba ibagomba 67.315.200 Frw – „5.000.000 Frw = 62.315.200 "
„ Rutegetse ko amasezerano y'iguriza (ouverture de crédit avec constitution d'hypothèque) BK « yagiranye na SIBOMANA na KAMPIRE imbere ya Notaire wa Leta ku wa 07/05/1997 asheshwe ….“

Rumaze kubona urubanza RCA 0023/05/HC/KIG rwo ku wa 03/06/2005 rwaciwe n'Urukiko Rukuru rwa Repubulika, ku bujurire bwa BK, rugafata icyemezo gikurikira:

« Rwemeye kwakira ubujurire rwashyikirijwe na Banki ya Kigali kuko bwaje mu buryo buteganyijwe « n'amategeko rubusuzumye rusanga bufite ishingiro kuri bimwe ;
« Rwemeye kwakira ubujurire bwuririye ku bwa Banki ya Kigali rwashyikirijwe na SIBOMANA Eugène « na KAMPIRE Claire kuko bwatanzwe mu buryo bukurikije amategeko, rubusuzumye rusanga bufite « ishingiro kuri bimwe ;
« Rwemeje ko urubanza RC 33290/00 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali ku itariki « ya 09/12/2002 ruhindutse ;
« Rutegetse SIBOMANA na KAMPIRE kwishyura umwenda wa B.K ungana na 5.152.847 Frw ubazwe « kuva tariki ya 15/05/1997 kugeza 17/06/1997 ;
« Rubategetse kwishyura BK 300.000 Frw y'ikurikirana rubanza agenwe mu bushishozi bw'urukiko « kuko asabwa ari menshi ;
« Rubategetse kwishyura umusogongero wa Leta wa 4% ya 5.152.847 Frw + 300.000 Frw ungana « n'amafaranga 218.134 Frw, bakayatanga mu gihe giteganywa n'amategeko, batayatanga « akavanwa mu byabo ku ngufu za Leta ;
« Rutegetse ko uru rubanza rurangizwa by'agateganyo n'iyo rwajuririrwa ku birebana n'amafaranga « 5.152.847 ;…»

Rumaze kubona ubujurire bwa KAMPIRE na SIBOMANA bwombi bwashyikirijwe Urukiko rw'Ikirenga ku wa 28/06/2005, ibirego byabo bigahabwa n° R.Com.AA 0008/05/CS ;

Rumaze kubona icyemezo n° R.Com.0001/06/Pré-examen cyo ku wa 27/12/2005 cy'Umucamanza wakoze ibanzirizasuzuma

ry'urubanza cyemeza ko ubujurire bwa KAMPIRE na SIBOMANA bwatanzwe mu buryo no mu nzira bikurikije amategeko ko kandi buri mu bubasha bw'Urukiko rw'Ikirenga ;

Rumaze kubona itegeko n° 0021/2006 ryo ku wa 07/03/2006 rya Perezida w'Urukiko rw'Ikirenga rishyira iburanisha ry'urubanza n° R.Com.AA 0008/05/CS ku wa 16/03/2006, saa mbiri n'igice, uwo munsi ugeze hitaba Me MUNDERERE uhagarariye KAMPIRE, Me IYAMUREMYE Maurice na Me HAGUMA Jean bahagarariye SIBOMANA, na Me KAZUNGU J.Bosco na Me RUSANGANWA J.Bosco bahagarariye BK ;

Rumaze kubona icyemezo cy'Urukiko, mu iburanisha ryo ku wa 16/03/2006, ku nzitizi yatanzwe na Me KAZUNGU J Bosco, asaba ko Me IYAMUREMYE atakwemererwa kuburana uru rubanza kuko se umubyara yarubaye mo umucamanza ku rwego rwa mbere, Urukiko rukemeza ko *"inzitizi yatanzwe na Me KAZUNGU atari impamvu yabuza ko Avoka aburana urubanza cyane ko ntaho amategeko abibuza, kandi ntaho bibangamiye imiburanishirize ikwiye kuko buri muburanyi na Avoka bafite uburenganzira bwose bwo kuzana ingingo zose zivuguruza mugenzi we zikazasuzumwa n'Urukiko, nta n'icyo bibangamiye « éthique » kuko isuzumirwa mu myitwarire y'aba Avoka mu rubanza"* ;

Rumaze kubona icyemezo cy'Urukiko, mu rubanza rubanziriza urundi rwo ku wa 26/04/2006, ku nzitizi y'iburabubasha yatanzwe na Me RUSANGANWA, cyemeza ko uru rukiko rufite ububasha ku bujurire bwa SIBOMANA na KAMPIRE ;

Rumaze kumva, ku byerekeye urubanza mu mizi, Me MUNDERERE avuga ko ingingo zatumye bajurira zikubiye mu myanzuro bashyikirije Urukiko, ko ariko muri make impamvu ya mbere y'ubujurire bwabo irebana n'amatariki y'ibyabaye kuko

yerekana uruhare rwa BK mu makosa yabaye, ko :

- Ku wa 07/05/1997, imbere ya Noteri hasinywe amasezerano y'inguzanyo hagati ya BK na KAMPIRE na SIBOMANA
- Ku wa 15/05/1997 SIBOMANA na KAMPIRE batangiye gufata amafaranga B.K yabashyiriraga kuri konti yabo ;
- Ku wa 4/06/1997, SIBOMANA yakoze sheki ya 4.800.000 Frws ayiha E.R.P B.K yanga kuyishyura ;
- Ku wa 10/06/1997 : SIBOMANA agiye kubaza aho umwenda ugeze BK yamusinyishije „Règlement des ouvertures de crédits" ;

Rumaze kwumva Me MUNDERERE akomeza avuga ko Urukiko Rukuru rwa Repubulika rutagombaga kwita ku byabaye mbere y'itariki ya 10/06/1997 kuko bari batarasinya „Règlement des ouvertures de crédits", ko kandi kuva mbere y'iyo tariki BK yari yatangiye kudakurikiza amasezerano kuko yanze kuriha „fournisseur" wa SIBOMANA ku wa 4/06/1997 ishingiye ku ibaruwa yo ku wa 23/05/1997 ivuga ko yandikiye SIBOMANA nyamara atarigeze ayibona, ko kandi iyo baruwa yahinduraga uburyo inguzanyo SIBOMANA yari yaremerewe izajya itangwa ;

Rumaze kwumva avuga ko indi mpamvu y'ubujurire ari uko Urukiko Rukuru rwa Repubulika rwemeje amakosa ya BK muri „Rusanze" ya 5 ku rupapuro rwa 11ariko ntiruyahane, no muri „Rusanze" ya 2 urupapuro rwa 12 rukagerekaho ikosa SIBOMANA na KAMPIRE ryo kuba batumva neza „crédit de caisse" na „crédit escompte facture" kandi uburyo amafaranga y'inguzanyo basezeranye yagombaga gukoreshwa bwaragombaga gukurikizwa guhera tariki ya 10/06/1997 kuko ari bwo basinye „Règlement des ouvertures de crédits" nayo kandi igaragaza ko BK itagombaga gupfa guhindura amasezerano uko yishakiye;

Rumaze kwumva Me MUNDERERE yongera kuvuga ko ku

byerekeye indishyi SIBOMANA na KAMPIRE basaba zijyanye n'igihombo bagize, zarebwa mu buryo bukurikira :

1° Guhera ku mibare yatanzwe na ERP aho SIBOMANA na KAMPIRE baranguraga kuko iyo mibare ariyo BK yashingiyeho ibaha inguzanyo : inyungu za 1.962.583 Frw ya buri kwezi kuri station 1 x amezi 108 (yo kuva ku wa 7/05/1997 kugeza ku wa 07/05/2006 bifuza ko urubanza ruzacibwaho) x stations 4 = 847.838.856 Frws ;

2° Guhera kuri „historique“ ya konti ya SIBOMANA yakozwe na BK yerekana imikorere myiza ya SIBOMANA, kandi BK yayishingiyeho mu kumuha inguzanyo : 1.716.750 Frws x amezi 108 x Stations 4 = 741.636.000 Frws ;

3° Guhera kuri ku mushinga SIBOMANA yashyikirije BK mu gihe cyo kuyaka inguzanyo kandi BK yarawushimye kuko yamuhaye 1/3 y'ayo yari yemeye : inyungu za 38.802.000 x imyaka 9 (amezi 108) x stations 4 = 698.436.000 Frws ;

4° Kubara inyungu haherewe kuri „moyenne“ y'izi nzira zose :762.302.618 Frw ;

Rumaze kwumva Me IYAMUREMYE avuga ko BK yahaye SIBOMANA inguzanyo ishingiye ku mibare yari yarayishyikirije yerekana inyungu yari afite mu bucuruzi bwa „essence“, ko na „historique“ ya konti ye yerekana amafaranga yose yatangaga n'ayo yacuruzaga, ko ibivugwa na BK ko igihombo SIBOMANA yagize ari we cyaturutseho kuko yari afunze ikanavuga ko atubahirije amasezerano adashyira amafaranga kuri konti ye, atari byo, kuko SIBOMANA atigeze areka gushyira amafaranga kuri konti ye, avuga ko BK idakwiye guhakana ko ariyo yateje igihombo, ko rero igomba gutanga indishyi ;

Rumaze kwumva Me HAGUMA avuga ko muri rusange ashimangira ibyavuzwe na Me MUNDERERE na Me IYAMUREMYE, ko by'umwihariko amasezerano y'ibanze hagati ya BK na SIBOMANA na KAMPIRE ari ayakorewe kwa noteri, buri wese afite ibyo yagombaga kwubahiriza, ko n'iyo haza ibindi, ayo masezerano ariyo afite uburemere, ko mu kuyahindura hagombaga kwubahirizwa „théorie de l'acte contraire", haba hagize ikiyahindura bigakorwa mu nzira imwe n'aya mbere, ko ariko BK yo yahinduye „nature de crédit" ikuraho amasezerano igice ;

Rumaze kwumva Me HAGUMA avuga ko ibaruwa yo ku wa 23/05/1997 BK ivuga ko yoherereje SIBOMANA ivuga uko izamuha inguzanyo yari yemerewe itubahirije ibiteganywa na „Règlement des ouvertures de crédit" kuko iyo „Règlement" isobanura uburyo amabaruwa atangwa, ko rero kubera uko kutubahiriza amasezerano kwa BK, SIBOMANA yananiwe kwuzuza inshingano (obligations contractuelles) ze zo kwishyura amafaranga yari yafashe, yongeraho ko ariko yakomeje gushyira amafaranga kuri konti ye, ko rero ubwo ari BK yishe ibyo yari yiyemeje igomba gutanga indishyi kubera igihombo yateje yica amasezerano hamwe no kuba yaranditse SIBOMANA mu binyamakuru imubeshyera ko atubahirije ibyo yasabwaga ;

Rumaze kwumva SIBOMANA avuga ko yatse inguzanyo yo kumufasha gusana za stations yakodeshaga kugira ngo abashe kuzicururizamo, ku wa 07/05/1997 akagirana amasezerano na BK imuguriza 15.000.000 Frws yagombaga kwishyura hamwe n'inyungu mu gihe cy'imyaka 3 ; akomeza avuga ko ku wa 15 na 19/05/1997 BK yamuhaye amafaranga, ariko nyuma yaho aba ari bwo atangira kugirana ibibazo n'abakozi ba BK ngo bashakaga ko yabaha „ruswa" ngo kuko bamukoreye dosiye, ngo amaze kuyibima ni bwo ku wa 4/06/1997 BK yanze kuriha sheki ya 4.800.000 Frws yari yakoreye E.R.P yamugemuriraga „essence", inkurikizi yabyo iba y'uko E.R.P yasheshe

amasezerano bari baragiranye kuko hagati aho atabashaga kwakira „bons“ z'abakiriya bayo mu gihe yari agishakisha uko yakwishyura fagitire BK yari yanze kwishyura ; yongeraho ko BK yagiye ifatira amafaranga yari konti ye adafitanye isano n'inguzanyo, ahita agwa mu gihombo, ko rero kubera amananiza ya BK yananiwe kwishyura Petrorwanda na Perefegitura ya Cyangugu yakodesherezaga za stations, bituma bazifunga ;

Rumaze kwumva asobanura ko ku wa 10/06/1997 ari bwo yasinye „Règlement des ouvertures de crédit“ ko ariko mbere yaho BK yari yaratangiye kwica amasezerano, ko n'ibaruwa yo ku wa 23/05/1997 BK ivuga ko yamwandikiye imumenyesha uko inguzanyo yemerewe azayihabwa atigeze ayibona cyangwa ngo ayisinye, ko na BK itigeze iyisinya, avuga ko nyuma yaho ku wa 17/6/1997 BK yanditse ibaruwa ivuga ko nk'uko SIBOMANA yabisabye yongereye „crédit de caisse“ ikava kuri 5.000.000 Frs ikajya kuri 7.000.000 Frws kandi ntaho yigeze abiyisaba, asoza avuga ko n'Urukiko Rukuru rwa Repubulika rwemeje ko ari B.K yishe amasezerano, maze asaba Urukiko kumufasha kwishyurwa igihombo yatewe n'uko guhindagura amasezerano kwa B.K nta mpamvu igaragara ;

Rumaze kwumva Me RUSANGANWA avuga ko buririye ku bujurire bwa SIBOMANA na KAMPIRE ikaba isaba kwishyurwa 5.911.981 Frws y'inguzanyo yabahaye hamwe n'inyungu zayo zigomba kubarwa hakoreshejwe „capitalisation“ kuva igihe yemerewe inguzanyo kugeza arangije kwishyura, zose hamwe zikaba zingana na 14.360.177, asoza asaba ko SIBOMANA yabaha 1.056.800 Frws y'ikurikirana rubanza hamwe na 591.198 Frws ya „recouvrement“ ;

Rumaze kwumva Me RUSANGANWA avuga ko BK itigeze ihindura amasezerano yakorewe kwa Noteri kubera ko icyasinywe ari „Ouverture de crédit avec constitution d'hypothèque“, we afata nka „porte d'entrée“, ikaba yaragombaga kwuzuzwa

na „Règlement des ouvertures de crédit“ nk’uko bivugwa mu ngingo ya 2 y’ayo masezerano, ko kandi abajuriye bari bazi ibikubiye muri iyo „Règlement“ kuko mu mikorere ya banki n’abacuruzi bayigana bagendera kuri za „usages“ no kuri „bonne foi et confiance“, byongeye kandi, n’ibaruwa yo ku wa 23/1/1998 SIBOMANA yandikiye BK ayisaba „la mise en force du crédit de caisse“ yari yemerewe, ikaba yerekana ko yari azi iyo „Règlement“, no muri iyo baruwa akaba yaremeye ko inguzanyo yari yarahagaze kubera we, avuga ko kandi koko kuva ku wa 3/07/1997 kugeza ku wa 30/12/1997 SIBOMANA yari afunzwe, akaba nta mishyikirano yongeye kugirana na BK ;

Rumaze kwumva Me RUSANGANWA avuga ko uburyo amasezerano yagiye ahinduka babyumvikanyeho, ko kandi bitari ngombwa ko ibihindutse binyuzwa kwa Noteri kuko impamvu aya mbere yanyuzeyo kwari ukwubahiriza amategeko agenga „hypothèque“; yongeraho ko nyuma y’uko SIBOMANA atubahirije amasezerano BK yagiye imuha „mise en demeure“ ;

Rumaze kwumva Me RUSANGANWA abazwa umubare nyawo w’amafaranga SIBOMANA yafashe akavuga ko ari 5.000.000 Frws, naho ku mpamvu yatumye bamusinyisha „Règlement des ouvertures de crédit“ ku wa 10/06/1997 kandi yari yaratangiye guhabwa amafaranga, asubiza ko kwari ugushyira mu nyandiko ibyababaye mbere ; ku byerekeye impamvu BK itishyuye sheki ya SIBOMANA yo ku wa 4/06/1997, asubiza ko icyo SIBOMANA yari yemerewe ari “crédit escompte factures“ ko kandi nta „facture“ yatanze ngo BK yange kuyishyura ;

Rumaze kwumva Me RUSANGANWA na Me KAZUNGU bavuga ko indishyi abajuriye basaba nta shingiro zifite kuko nta sano (lien juridique) iri hagati yazo n’inguzanyo yatanzwe na BK, ko kandi imibare yazo ishingiye kuri projet bakoze, BK ikaba isanga izo ndishyi zikabije cyane kuko zidashingiye ku nyungu koko SIBOMANA yabonaga mu bucuruzi bwe ; banongeraho ko

kuba "crédit de caisse" yaravuye kuri 5.000.000 Frws ikajya kuri "7.000.000 Frws" byari mu nyungu z'uwatse inguzanyo ;

Rumaze kwumva Me KAZUNGU yongeraho ko abajuriye badahakana umwenda wa 5.911.981 Frws BK yabahaye, ko n'ubwo bahakana ibaruwa yo ku wa 23/05/1997, bafashe igice cy'inguzanyo bari bemerewe, ko iyo baba barengana bari kuba barareze BK bavuga ko itubahirije amasezerano, ko ariko igihombo ari SIBOMANA cyaturutseho kuko yafunzwe ntiyongere gucuruza, no kuba baramwanditse mu binyamakuru akaba ari „argument" atari „exception" ;

Rumaze kubona ko iburanisha ryasojwe ababuranyi bakamenyeshwa ko urubanza ruzasomwa ku wa 12/04/2006, ariko uwo munsi ntirubashe gusomwa kuko Urukiko rwari rugikeneye ikindi gihe cyo gusuzuma ingingo z'ababuranyi, isomwa ryarwo ryimurirwa ku wa 26/04/2006;

Rumaze kubona icyemezo cy'urubanza rubanziriza urundi cyo ku wa 26/04/2006, gitegeka ko iburanisha ry'urubanza ryari ryashojwe ku wa 16/03/2006 *"rizongera gufungurwa ku wa 09/05/2006 kugira ngo hasuzumwe ishyirwaho ry'umuhanga wagaragaza igihombo SIBOMANA na KAMPIRE baba baratewe n'uko BK itabahaye igice cy'inguzanyo bari baremeranyijweho; uwo munsi rukimurirwa ku wa* 30/05/2006 ababuranyi bahawe igihe cyo kugira umuhanga bakwumvikanaho; kuri uwo munsi ntibagira uwo bumvikanaho, maze Urukiko rufata icyemezo cyo kuzamugena ubwarwo, binyuze mu nzira z'ipiganwa;

Rumaze kubona icyemezo cyo ku wa 06/03/2007 gishyiraho umuhanga „Cabinet ABC Consultants", ababuranyi bamaze kumumenyeshwa no kumwemera, banamenyeshejwe igihembo

asaba gihwanye na 3.776.000 Frws ;

Rumaze kubona raporo y'umuhanga „Cabinet ABC Consultants", yashyikirijwe Urukiko rw'Ikirenga ku wa 06/07/2007 narwo ruyigeza ku baburanyi ngo bagire icyo bayivugaho ;
Rumaze kubona icyemezo cy'Urukiko cyo ku wa 05/09/2007 cyo gutumiza mu Rukiko umuhanga wakoze raporo kugira ngo azaze kuyisobanura ababuranyi bombi bahari kuko uwo munsi batayumvikanagaho, batayumva kimwe ;

Rumaze kubona ko ku wa 17/04/2008 Bwana KIMANUKA Pierre uhagarariye „Cabinet ABC Consultants" akaba na Manager expert comptable w'iyo Cabinet , yitabye Urukiko ; hari na SIBOMANA Eugène, yunganiwe na Me HAGUMA Jean, hari na Me IYAMUREMYI Maurice uburanira KAMPIRE Claire, BK iburanirwa na Me RUSANGANWA J.Bosco ;

Rumaze kwumva abo ku ruhande rwa SIBOMANA na KAMPIRE bavuga ko muri rusange bashima raporo yakozwe n'umuhanga, uretse gusa ko atavuze kuri „stations" ebyiri za essence za Gikongoro na Cyangugu, bavuga ko bifuza ko yabitangaho ibisobanuro ;

Rumaze kwumva Me RUSANGANWA J.Bosco avuga ko ku ruhande rwa BK hari inenge basanga ziri muri raporo yavuzwe, muri zo avuga izikurikira :

- uburyo (méthodologie) uwo muhanga yakoresheje : ntiyifashishije ibisanzwe bikorwa mu zindi banki z'ubucuruzi byerekeye uburyo bwo gutanga inguzanyo, kuko iyo abyitaho yari kumenya imiterere ya „escompte factures" n'uko ikoreshwa, ko rero butandukanye na sheki cyangwa „bordereau", kandi ngo yitiranyije ibintu avuga ko BK itasobanuriye SIBOMANA imikoreshereze y'iyo „escompte facture" ngo kuko mu mikorere y'ama banki n'abayagana, ibyinshi bivugwa mu magambo ariko ntibyandikwe ; ngo no kuba SIBOMANA avuga

ko yahombejwe n'uko BK itamuhaye inguzanyo yose yari yemerewe cyangwa ko BK yanze kuriha sheki yari yatanze, ngo n'umuhanga akabyemeza, ngo sibyo kuko ahubwo mu by'ukuri ari SIBOMANA utarubahirije ibyagombaga gukorwa;

- inyandiko yitwa „ouverture de crédit avec constitution d'hypothèque" itandukanye n'amasezerano SIBOMANA avuga ko yasinye, ngo kandi umuhanga ntiyitaye ku ngingo ya 2 y'iyo nyandiko ivuga ko hazakurikizwa „clauses et conditions générales du Règlement des ouvertures de crédit" kandi ari yo yerekerana uko inguzanyo SIBOMANA yari yemerewe yari kuyihabwa ;
- ayandi masezerano umuhanga yavuze ngo SIBOMANA yaba yaragiranye n'abandi bantu ntareba BK ;
- umuhanga abara igihombo nawe yakoresheje amagambo nka „perte probable", „perte éventuelle" n'ayandi…, ngo ibyo bikaba byerekana ko agenekereza mu kuvuga ko SIBOMANA yagize igihombo, ko rero imibare atanga ya 1.885.454 Frws ngo SIBOMANA yavukijwe buri kwezi idakwiye kwitabwaho kuko ari „hypothétiques" kuko bitumvikana ukuntu umuntu yakwunguka 99.000 Frws yashoye 5.000.000 Frws nk'uko umuhanga abivuga, ngo ariko akemeza ko hashowe 10.000.000 Frws inyungu zaba 1.244.604 Frws, kandi ngo n'imibare umuhanga yahereyeho abara igihombo avuga, nta shingiro ifite, kuko yagiye afata iminsi mike yo mu mezi yo kuva mu kwa 07 kugera 12/1996 SIBOMANA yacuruje, ngo ntiyanita kureba ko yashoboraga no gucuruza ahomba kandi nabyo bishoboka ;

Rumaze kwumva asoza avuga ko asaba urukiko kuzakurikiza ibiteganywa n'ingingo ya 98 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko urukiko rudakurikiza byanze bikunze ibyavuzwe n'umuhanga ;

Rumaze kwumva KIMANUKA Pierre asobanura ko raporo yakoze yubahirije ibyo yari yasabwe n'Urukiko rw'Ikirenga ari byo gusuzuma igihombo SIBOMANA yaba yaratewe no kubura igice cy'inguzanyo yari yemerewe na BK no kugaragaza imiterere n'urugero rwacyo ; akomeza asobanura ko bashingiye ku nyandiko n'ibisobanuro bagiye bahabwa n'ababuranyi bombi hamwe n'ibindi biri muri dosiye y'urubanza, ko rero icyo bakoze ari uko babyifashishije gusa nk'uko babisanze, kuko intego yabo itari ukwigisha abantu ;

Rumaze kwumva akomeza avuga ko kandi babara igihombo SIBOMANA yaba yaragize batashingiye ku mibare yatanzwe na SIBOMANA ubwe kuko bagiye berekana impamvu batayiha agaciro, ko ahubwo bitaye ku bintu babona bishoboka, banahera ku mibare yatanzwe na ERP aho SIBOMANA yaranguraga mu mwaka wa 1996, kuko ari we „fournisseur" wa SIBOMANA wenyine babashije kubonera inyandiko, ko kandi iyo nyandiko mu rwego rw'ibaruramari yari igifite agaciro kuko yari itararenza imyaka itanu iteganywa ngo inyandiko ibe yataye agaciro, anongeraho ko kuba SIBOMANA yararanguraga iminsi mike mu kwezi bidatangaje mu bucuruzi nk'ubwo yakoraga ;

Rumaze kwumva yongeraho ko kuba SIBOMANA atarabonye 10.000.000 Frws y'igice cy'inguzanyo BK yari yaramwemereye kandi 5.000.000 Frws yari yarayakoresheje asana za stations za lisansi, byatumye agomba gukoresha amafaranga yandi yari afite (ses propres fonds) ngo ibyo byagize ingaruka ku zindi stations ; akomeza avuga ko kubera ko BK yanze kwishyura sheki SIBOMNA yari yakoze yishyura fournisseur we ERP, byatumye uyu asesa amasezerano bari bafitanye yo kumuranguzaho lisansi, akaba asanga ibyo nabyo byaragize ingaruka ku zindi stations za SIBOMANA, anasobanura ko abara igihombo SIBOMANA yaba yaragize, yashingiye ku ihame rikoreshwa mu ibaruramari ry'uko iyo ushoye amafaranga menshi, „charges fixes" zo zidahinduka, bityo inyungu zikaba

nyinshi kurusha washoye make ; asoza avuga ko berekanye ko urukiko ari rwo rufite ububasha bwo kuzafata icyemezo cya nyuma ku mwanzuro barushyiirije ;

Rumaze kwumva Me RUSANGANWA avuga ko hari ibintu umuhanga yemeje kandi atari we bireba nko kuvuga ko 5.000.000 Frws y'inguzanyo SIBOMANA yabonye yazikoresheje asana za stations za lisansi ngo 10.000.000 Frws asigaye akaba yari ayo kugura lisansi, ko uretse n'uko nta bimenyetso bishyigikira iyo mvugo, imirimo yo gusana izo stations yari yaratangiye na mbere y'uko SIBOMANA yaka inguzanyo, ko kandi amasezerano ajyanye n'uko gusana SIBOMANA yayagiranye n'abandi bantu batari BK, ngo ikaba rero ntaho ihuriye nayo ;

Rumaze kwumva abazwa niba BK yemera ko SIBOMANA yagize igihombo kubera igice cya 10.000.000 Frw cy'inguzanyo atabonye, agasubiza ko „à titre principal", SIBOMANA nta gihombo yagize, ko ahubwo agifite 5.000.000 Frws za BK agomba gutangira inyungu nk'uko BK yazigaragaje mu mwanzuro wayo , ko „à titre subsidiaire", ku bijyanye n'uko SIBOMANA atabonye ibyo yari yemerewe, hazitabwa ku byemejwe n'Urukiko Rukuru rwa Repubulika, ku mpapuro za 13-15 za kopi y'urubanza ;

Rumaze kwumva Me HAGUMA avuga ko bo bashima ibyagaragajwe n'umuhanga werekanye ko igihombo cya SIBOMANA ari 1.885.854 Frws kuri station imwe ku kwezi, ko uwo mubare ugomba gukubwa n'amezi 132 abazwe kuva tariki 07/05/1997 kugeza urubanza ruciwe, yongeraho ko kandi SIBOMANA asaba BK indishyi z'akababaro za 5.000.000 Frws kubera ukuntu yamuruhije cyane mu nkiko (tracasseries judiciaires) kuva mu Rukiko rwa Mbere rw'Iremezo kugeza mu Rukiko rw'Ikirenga ;

Rumaze kwumva SIBOMANA avuga ko BK itari ikwiye kumwaka

amafaranga yamugurije akubiyemo n'inyungu imusaba kandi izi ko yamuhaye 5.000.000 Frws gusa andi ikayamwima, asaba ko urukiko rwamurenganura vuba agafungurirwa ibintu bye kuko ari umucuruzi nyamara umeze nk'uri muri „embargo" yashyizwemo na BK kandi ari yo yamwimye inguzanyo yari yamwemereye, ko ari nayo mpamvu basaba indishyi z'akababro zavuzwe haruguru, yongeraho ko ku ndishyi asaba hiyongeraho igihembo cy'avoka gikwiye kubarirwa ku myaka 8 urubanza rumaze ;

Rumaze kwumva Me IYAMUREMYE avuga ko ku byerekeye ibaruwa ya BK yo ku wa 23/05/1997, ingingo ya 1 ya „Conditions générales des ouvertures de crédit", BK iburanisha, ivuga ko kugira ngo ibaruwa ibe ifite agaciro ari uko iba yujuje ibyangobwa byose bisabwa birimo kuba isinye kandi ikanagezwa ku wo igenewe, ko nyamara ibyo nta byabaye, akomeza avuga ko ku ndishyi bari basabye mu Rukiko Rukuru rwa Repubulika hiyongeraho amafaranga yakoreshejwe mu isanwa rya za stations za lisansi na avances k'ubukode bwazo hamwe na 1.000.000 Frws y'ikurikirana rubanza, abazwe uhereye igihe imanza zatangiriye kugeza ubu ;

Rumaze kubona ko iburanisha ryasojwe, ababuranyi bakamenyeshwa ko urubanza ruzasomwa ku wa 30/05/2008, uwo munsi isomwa ryarwo ryimurirwa kuwa 06/06/2008, maze nyuma yo kwiherera, urukiko ruruca mu buryo bukurikira :

Rusanze, ku matariki ya 15/05/1997 na 19/05/1997, mu rwego rwo gushyira mu bikorwa amasezerano yo k'inguzanyo yo ku wa 07/05/1997, BK yarahaye SIBOMANA na KAMPIRE 5.000.000 Frws iyanyujije kuri konti n° 054-0031655-73/RWF bari bafatanyije (compte conjoint avec solidarité) ; ariko nyuma yaho BK ihindura, mu buryo butumvikanyweho, ubwoko bw'inguzanyo n'uburyo bwo kuyibaha ndetse n'igihe cyo kwishyura, kandi ibima igice cya 10.000.000 Frws cyari gisigaye itanabasobanuriye impamvu kuko SIBOMANA na

KAMPIRE banditse amabaruwa yo ku wa 07/06/1997 no ku wa 02/07/1997 basaba icyo gice cy'inguzanyo ariko ntibagira igisubizo bahabwa ;

Rusanze imyiregurire ya BK y'uko SIBOMANA na KAMPIRE basabye ihindurwa ry'ubwoko n'uburyo bw'itangwa by'inguzanyo itafatwaho ukuri kuko nta bimenyetso ibitangira mu gihe SIBOMANA na KAMPIRE babihakana ;

Rusanze, kuba BK yarahinduye amasezerano y'inguzanyo mu buryo butumvikanyweho ikanima abo bayagiranye igice cy'inguzanyo cya 10.000.000 Frws ari amakosa agaragara yakozwe na BK kandi bikaba byarononeye SIBOMANA na KAMPIRE bagombaga kubona ayo mafaranga ; bikaba byaranatumye batabasha kwishyura igice cya 5.000.000 Frws cy'inguzanyo BK yari yabahaye ; bityo rero BK ikaba igomba kubitangira indishyi hakurikijwe ibiteganywa n'ingingo ya 40 y'Igitabo cya III cy'Urwunge rw'amategeko y'imbonezamubano igira iti : "*Inshingano yose yo gukora cyangwa kudakora ikintu irangizwa n'indishyi iyo uyigomba atayubahirije*" ;

Rusanze B.K igomba guha SIBOMANA na KAMPIRE indishyi zijyanye n'igihombo bagize kubera kubura igice cy'inguzanyo gihwanye na 10.000.000 frw BK yagombaga kubaha, bateganya gushyira mu bikorwa umushinga w'ubucuruzi bwa lisansi bari baranatangirije ibikorwa byo gusana aho bazacururiza ;

Rusanze raporo y'umuhanga washyiriweho kugaragaza urugero rw'icyo gihombo, BK ikaba iyinenga, yarashingiye ku nyandiko umuhanga yabashije kubona, ariko zikaba zitagaragaza ku buryo buhagije ibyavaga mu bucuruzi bwa SIBOMANA na KAMPIRE, kuko nk'uko abyerekana, batamushyikirije inyandiko z'ingenzi z'ibaruramari zagombaga gushingirwaho mu kwerekana icyo ubucuruzi bwabo bwinjizaga, kugira ngo haboneke n'urugero fatizo nyakuri urukiko rwaheraho rusuzuma

amahirwe SIBOMANA na KAMPIRE bavukijwe yo kubyaza inyungu 10.000.000 Frws bagombaga kugurizwa na BK ;

Rusanze ingingo ya 98 y'itegeko n°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igira iti : *„Urukiko ntirukurikiza byanze bikunze ibitekerezo by'abahanga mu gihe binyuranye n'imyumvire y'abacamanza.“,* bityo, igenwa ry'indishyi rikaba ritashingira ku mibare yagaragajwe na raporo yakozwe n'umuhanga, mu gihe igaragaza inenge zisobanuwe haruguru;

Rusanze mu kugena indishyi z'igihombo SIBOMANA na KAMPIRE batewe no kuba BK yarabimye amafaranga 10.000.000 yagombaga kubaha nk'uko bari babisezeranye, hatafatwa ko ari igihombo bagize ku byo babyazaga ayo mafaranga nk'uko babiburanisha, kandi nyine ntayo babonye, ahubwo icyo bavukijwe ni amahirwe yo kubyaza inyungu ayo mafaranga bagombaga kubona nk'uko byari byumvikanyweho *(La perte d'une chance)* kandi kuvutswa amahirwe, bikaba bitanga uburenganzira ku ndishyi nk'uko n'abahanga mu mategeko babyemeza. (*Reba Yves CHARTIER, „La réparation du préjudice", Dalloz, 1996, pp 14ss);*

Rusanze, nk'uko abahanga mu mategeko babivuga, indishyi ziturukа mu kuvutswa amahirwe zigenwa n'umucamanza mu bushishozi bwe, akurikije ko asanga ayo mahirwe yariho koko (chance réelle), ko yari make cyangwa menshi, bitewe n'uko ibintu byari bimeze (reba *Claire BERAUD*, *„La réparation d'une perte d'une chance“, Faculté de Droit de Paris, Paris, 2001, p 29, 37-38 na Yves CHARTIER, op.cit, p.14*); indishyi zitangwa kandi zikaba atari izihwanye n'ibyo uwavukijwe amahirwe yizeraga kubona byose, ahubwo ari izigereranyirizwa gusa ku mahirwe yari afite, nk'uko nanone abahanga mu

mategeko kimwe ndetse n'imanza zaciwe ahandi babigaragaza (reba *Alain BENBENT*, *„Droit civil-les obligations"*, *Montchrétien, 11è éd., 2007, pp 477 ss* aho agira ati : ***„****Pour tenir compte du degré de probabilité afférent à la chance perdue, la réparation ne peut être que partielle : la victime ne peut obtenir la totalité de l'avantage espéré mais seulement une fraction plus ou moins grande selon sa probabilité";* n'urubanza n° 01-17426 rwo ku wa 7 janvier 2004 rwaciwe n'Urukiko Rusesa imanza rwo mu Bufaransa rugira ruti : *« ... la réparation du préjudice consistant dans la perte d'une chance doit être mesurée à la valeur de la chance perdue et ne peut être égale à l'avantage qu'aurait procuré cette chance si elle s'était réalisée* » ;

Rusanze iyo SIBOMANA na KAMPIRE baza guhabwa amafaranga 10.000.000 bari bategereje kuri BK hashingiwe ku masezerano bagiranye, bari bafite amahirwe nyakuri kandi menshi yo kuyabyaza inyungu, urugero rw'ayo mahirwe rukaba rwafatirwa ku bikorwa by'imyiteguro bari bakoze basana stations zo gucururizamo lisansi, kandi bikaba byaranagaragaye ko ubucuruzi bwa lisansi bari baranatangiye kubukora bataremererwa inguzanyo nk'uko byagaragajwe n'impapuro baranguriragaho ; Urukiko rero rukaba, rushingiye kuri ibyo, rusanga baravukijwe amahirwe menshi yo kubyaza inyungu inguzanyo bari bategereje, bituma rugomba kubagenera, mu bwisanzure bwarwo, indishyi zingana na 15.000.000. frw;

Rusanze, ku byerekeye indishyi mpozamarira (DI moraux) SIBOMANA na KAMPIRE basaba ziturutse kuba baranditswe ku rutonde rw'abantu banki zitagomba kwizera, kuba baratakaje icyizere cy'abo bakoranaga mu bucuruzi, no kuba barasiragiye imyaka myinshi mu nkiko, bakwiye kubihererwa indishyi koko, ariko kuko izo basaba ari ikirenga, urukiko, mu bushishozi bwarwo, rukaba rwabagenera buri wese 1.000.000 Frws ;

Rusanze ku byerekeye amafaranga y'ikurikirana rubanza n'igihembo cy'avoka SIBOMANA na KAMPIRE baka nayo afite ishingiro, ariko kubera ko ayo basaba ari ikirenga, urukiko rwagenera buri wese, 900.000 Frws ;

Rusanze ku byerekeye igice cy'inguzanyo gihwanye na 5.000.000 Frws BK isaba kwishyurwa na SIBOMANA na KAMPIRE yayishyurwa kuko yayabahayeho inguzanyo, nabo bakaba batayahakana, ariko inyungu BK iyasabira, ikaba itazihabwa kuko kuba batarishyuriye igihe icyo gice cy'inguzanyo, byatewe n'amananiza BK yabashyizeho nk'uko byasobanuwe haruguru, bityo ubujurire bwa BK bwuririye ku bwa SIBOMANA na KAMPIRE bukaba nta shingiro bufite ;

KUBERA IZO MPAMVU ;

Rwemeye kwakira ubujurire bwa SIBOMANA n'ubwa KAMPIRE kuko bwaje mu buryo n'inzira bikurikije amategeko ;

Rwemeje ko ubwo bujurire bufite ishingiro ;

Rwemeye kwakira ubujurire bwa B.K bwuririye ku bwa SIBOMANA na KAMPIRE kuko bwatanzwe mu buryo n'inzira bikurikije amategeko;

Rwemeje ko ubwo bujuriore nta shingiro bufite;

Rutegetse B.K guha SIBOMANA na KAMPIRE indishyi zingana na 15.000.000 Frws zo kuba itarubahirije amasezerano y'inguzanyo bagiranye, havanywemo 5.000.000 Frws SIBOMANA na KAMPIRE bagomba kuyishyura ; BK rero ikaba igomba kubaha 10.000.000 Frws ;

Rutegetse BK guha SIBOMANA na KAMPIRE 1.000.000 Frws

buri wese y'indishyi mpozamarira, hamwe na 900.000 Frws buri wese y'ikurikirana rubanza n'igihembo cy'avoka ; zose hamwe zikaba zingana na 3.800.000 Frws ;

Rutegetse BK kwishyura igiteranyo cy'indishyi zose zivuzwe haruguru gihwanye na 13.800.000 Frws itayatanga mu gihe cy'iminsi 15 urubanza rukimara gusomwa, akavanwa mu byayo ku ngufu za Leta ;

Rutegetse B.K gutanga 4% ya 13.800.000 Frws y'umusogongero wa Leta ahwanye na 552.000 Frws itayatanga mu gihe cy'iminsi 15 urubanza rukimara gusomwa, akavanwa mu byayo ku ngufu za Leta ;

Rutegetse B.K kwishyura 3.776.000 Frws y'igihembo cy'umuhanga ; itayatanga mu gihe cy'iminsi 15 urubanza rukimara gusomwa, akavanwa mu byayo ku ngufu za Leta ;

Rutegetse B.K gutanga amagarama y'urubanza angana na 46.100 Frws itayatanga mu gihe cy'iminsi 08 akavanwa mu byayo ku ngufu za Leta ;

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KU WA 06/06/2008 N'URUKIKO RW'IKIRENGA, RUGIZWE NA MUGENZI LOUIS MARIE : PEREZIDA, MUKANYUNDO PATRICIE NA MUKAMULISA M-THERESE : ABACAMANZA, BAFASHIJWE NA MUNYANDAMUTSA JEAN PIERRE : UMWANDITSI W'URUKIKO.

MUGENZI Louis Marie
Perezida

MUKANYUNDO Patricie
Umucamanza

MUKAMULISA M-Thérèse
Umucamanza

MUNYANDAMUTSA J.Pierre
Umwanditsi

9. URUKIKO RW'IKIRENGA

N° Y'URUBANZA: RCOM 0008/09CS
ITARIKI Y'URUBANZA: 26/06/2009
HABURANA: HARERIMANA Faustin / KANKINDI Marie & FINA BANK

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI – GUSABA MU KIREGO CYIHUTIRWA IHAGARIKWA RY'ICYEMEZO GITEGEKA IRANGIZA RY'URUBANZA - KUTAKIRA IKIREGO CYIHUTIRWA MU GIHE BIGARAGARA KO URUBANZA RW'UBUJURIRE REMEZO GISHINGIYEHO BUTAZAKIRWA

UBUJURIRE KU CYEMEZO CYAFASHWE MU KIREGO CYO KUBYUTSA URUBANZA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Umucamanza uburanisha ibirego byihutirwa afata icyemezo ku bibazo byose byihuta ariko ku buryo butabangamiye urubanza rw'iremezo mu mizi yarwo ; bityo, ikirego cyihutirwa ntikigomba gusuzumwa mu gihe bigaragara nta shiti ko ubujurire remezo ikirego gishingiyeho butazakirwa n'umucamanza wagombye kuzasuzuma urubanza mu mizi yarwo.

-Icyemezo Urukiko rwaregewe kubyutsa urubanza rufashe ntikijuririrwa

URUKIKO RW'IKIRENGA, RURI I KIGALI, RUHABURANISHIRIZA IMANZA Z'UBUCURUZI, RUKIJIJE MU RUHAME NONE KUWA 26/06/2009 URUBANZA RCOM 0008/09CS MU BURYO BUKURIKIRA:

HABURANA:

HARERIMANA Faustin, mwene Ngarukiye na Nyirarudodo, utuye Gishushu, Nyarutarama, Remera, Gasabo, Umujyi wa Kigali, uhagarariwe na Me MUNDERERE Léopold

na

-**KANKINDI Marie**, mwene Rubonezambuga na Kangwengwe, ukora MINEDUC, Inspection Générale de l'Enseignement.

-**FINA BANK**,mu izina ry'umuyobozi wayo.

IKIBURANWA:
Gusaba ihagarika ry'irangiza rubanza mu rubanza RCOMA 00264/08/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 31/03/2009

UKO IKIBAZO GITEYE:

(1) Tariki 08/08/2008, Urukiko Rukuru rw'Ubucuruzi rwasibye urubanza RCOM 0023/08/HCC rukomoka ku kirego HARERIMANA yarushyikirije ajuririra urubanza RCA 13010/KIG rwo kuwa 16/06/2006 rwaciwe n'Urukiko rw'Ubujurire rwa Kigali, rukemeza ko inzu HARERIMANA aburana ari iya HAGUMA Hilaire kuko yayiguze muri cyamunara harangizwa urubanza RC 983/91NGE BACAR yatsindiyemo

HARERIMANA Faustin n'umugore we UTUZA Emma umwenda w'amafaranga rwakijijwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali kuwa 04/05/1992.

(2) Tariki 22/08/2008, HARELIMANA yasabye kubyutsa urubanza RCOM 0023/08/HCC, Urukiko Rukuru rw'Ubucuruzi mu rubanza RCOM A 0264/08HCC rwo kuwa 31/03/2009 rwemeza ko ikirego cye nta shingiro gifite.

(3) Tariki 21/04/2009, Umuhesha w'inkiko yatangiye kurangiza urubanza RCA 13010/KIG- RC 983/91NGE.

(4) Tariki 28/04/2009, Me MUNDERERE wunganira HARERIMANA yajuririye urubanza RCOM A 0264/08/HCC, ikirego cye cyandikwa kuri n° RCOM AA 0015/09/CS mu Rukiko rw'Ikirenga.

(5) Tariki 02/06/2009, ubwo bujurire butarasuzumwa, Me MUNDERERE yatanze ikirego cyihutirwa gisaba ihagarikwa ry'irangizarubanza mu rubanza RCA 1310/KIG-RC 983/91NGE, ikirego cyandikwa kuri n°RCOM 0008/09/CS.

IBURANISHA RY'URUBANZA MU RUKIKO RW'IKIRENGA:

(6) Itegeko n°0023/09/R.COM ryo kuwa 16/06/2009 rya Perezida w'Urukiko rw'Ikirenga ryashyize iburanisha ry'uru rubanza kuwa 24/06/2009, uwo munsi ruburanishwa mu ruhame, HARERIMANA ahari, yunganiwe na Maître MUNDERERE Léopold , KANKINDI nawe ahari, yunganiwe na Maître NZAMUKWEREKA Vénant, FINA BANK ihagarariwe na Maître RWABAGANDE.

(7) Umucamanza wateguye urubanza amaze gusoma raporo y'urwo rubanza, ijambo ryahawe ababuranyi.

(8) Maître MUNDERERE yavuze ko impamvu zajurije HARERIMANA zikubiye mu mwanzuro yashyikirije uru rukiko kuwa 11/06/2009, zikaba ziteye zitya:

a) Urubanza ntabwo rugomba kurangizwa kuko rwajuririwe kandi nta rangizarubanza ry'agateganyo ryategetswemo nk'uko bisobanurwa mu ngingo ya 171 y'Itegeko n°18/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano,

iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ikaba ivuga ko *« irangizwa ry'urubanza riba rihagaritswe mu gihe cyo kujurira cyateganyijwe n'amategeko, keretse iyo irangizwa ry'agateganyo ryategetswe n'urwo rubanza »*;

b) Urubanza rurangizwa ntirwigeze rutegeka ko avanwa mu nzu;

c) Urubanza rurangizwa rwaciwe mu buryo budakurikije amategeko kuko KANKINDI wari mandataire yareze mu izina rye aho kurega mu izina ry'uwamutumye kandi ihamagara mu rubanza RCOM A 0023/08/HCC ntiryakurikije amategeko;

d) Inzu iburanwa ntabwo agomba kuyisohorwamo kuko ayifitiye certificat d'enregitrement kandi uwitwa nyirayo nta yindi certificat d'enregistrement isesa iyo HARERIMANA afite yerekana ;

e) Ikiburanwa ni inzu, ntabwo ari ikintu cyimukanwa HARERIMANA yarigisa.

(9) Maître NZAMUKWEREKA Vénant wunganira KANKINDI, yavuze ko urubanza RCOMA 0264/08/HCC HARERIMANA yajuririye mu Rukiko rw'Ikirenga rwamaze kuba itegeko kuko ingingo ya 51 y'Itegeko n°18/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko icyemezo urukiko rwaregewe kubyutsa urubanza rufashe kitajuririrwa, HARERIMANA akaba rero atakwitwaza ingingo ya 171 y'iryo tegeko kuko urubanza rurangizwa rutagishoboye kujuririrwa.

(10) Maître RWABAGANDE uhagarariye FINA BANK yavuze ko asaba urukiko gukurikiza amategeko nk'uko yasobanuwe na Maître NZAMUKWEREKA, rukavuga ko ikirego cya HARERIMANA kitakiriwe.

Maître MUNDERERE yasabwe kugira icyo avuga ku ngingo z'amategeko bagenzi be baburanisha no ku rubanza rwaciwe n'uru rukiko kuwa 12/02/2007 haburana DISCENTRE na

District ya HUYE, muri urwo rubanza umucamanza akaba yaremeje ko ibivugwa mu ngingo ya 324 y'tegeko n° 18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi bitabuza umucamanza washyikirijwe ikirego kihutirwa, kwanga kugisuzuma, mu gihe asanga ko ikirego cy'iremezo, ikirego kihutirwa gishingiyeho, gishobora kutakirwa n'umucamanza uzagisuzuma mu mizi yarwo, ari nawe uzemeza ku buryo budasubirwaho ko ubujurire bwatanzwe bwakererewe cyangwa, avuga ko ikibazo cy'iyakirwa ry'ikirego cy'iremezo kizasuzumwa muri urwo rubanza kandi ko umucamanza uburanisha ibirego byihutirwa afata icyemezo ku kibazo cyihuta yashyikirijwe mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo.

(11) Iburanisha ryarashojwe, Urukiko rumenyesha ababuranyi ko urubanza ruzasomwa kuwa 26/06/2009.

UKO URUKIKO RUBIBONA :

(12) Iki kirego cyihutirwa gishamikiye ku kirego cy'iremezo kigamije kujuririra icyemezo Urukiko Rukuru rw'Ubucuruzi rwafashe cyo kutakira ikirego gisaba kubyutsa urubanza rwasibwe hashingiwe ku ngingo ya 51 y'itegeko n° 18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

(13) Ikibazo kigomba kubanza gusuzumwa ni icyabyukijwe n'abunganira abaregwa bavuga ko ikirego cyihutirwa kidashobora kwakirwa kuko urubanza rw'iremezo gishamikiyeho rwarangije kuba itegeko.

(14) Urukiko rusanga ibivugwa mu ngingo ya 324 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ko *« umucamanza uburanisha ibirego byihutirwa afata icyemezo ku bibazo byose byihuta, ariko mu buryo butabangamiye urubanza rw'iremezo mu mizi yarwo »* , bitabuza umucamanza washyikirijwe ikirego cyihutirwa, kwanga kugisuzuma, nk'uko byasobanuwe mu rubanza rwaciwe n'uru rukiko kuwa 12/02/2007, DISCENTRE iburana na District ya HUYE, mu gihe bigaragara nta shiti ko ubujurire bw'iremezo bushobora kutakirwa (*la recevabilité*

du recours au principal ne doit pas, en principe, être examinée dans le cadre d' une procédure de référé, sous peine de préjuger la décision du Tribunal statuant au principal. Elle doit être réservée à l'analyse du recours au principal, sauf dans l'hypothèse où celui-ci apparaît, à première vue, manifestement irrecevable).

(15) Ikigaragarira buri wese muri uru rubanza, n'uko hari ikibazo cy'iyakirwa ry'ikirego cy'iremezo gifite ingaruka kw'iyakirwa ry'ikirego cyihutirwa kuko ingingo ya 51 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko *« icyemezo Urukiko rwaregewe kubyutsa urubanza rufashe kitajuririrwa",* Urukiko rw'Ikirenga mu byemezo byinshi rwafashe, rukaba rwaremeje, hashingiwe kuri iyo ngingo, ko bene ibyo byemezo bitajuririrwa.

(16) Urukiko rusanga rero ikirego cyihutirwa kitagomba gusuzumwa mu gihe bigaragara ko ubujurire remezo ikirego cyihutirwa gishingiyeho bushobora kutakirwa n'umucamanza uzasuzuma urubanza mu mizi yarwo.

ICYEMEZO CY'URUKIKO:

(17) **Rwemeje** ko ikirego cyihutirwa kitakiriwe ku mpamvu zasobanuwe haruguru.

(18) **Rutegetse** HARERIMANA Faustin gutanga amagarama y'uru rubanza angana na 9100frw, akayatanga mu gihe cy'iminsi umunani iteganyijwe n'amategeko, atayatanga akavanwa mu bye ku ngufu za Leta.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KUWA 26/06/2009 N'URUKIKO RW'IKIRENGA RUGIZWE N'ABACAMANZA : NYIRINKWAYA IMMACULEE, PEREZIDA, MUKANYUNDO PATRICIE NA HATANGIMBABAZI FABIEN, ABACAMANZA, BAFASHIJWE NA UWARUGIRA JEAN BAPTISTE, UMWANDITSI W'URUKIKO.

Sé

NYIRINKWAYA Immaculée
PEREZIDA

sé	
MUKANYUNDO Patricie	**HATANGIMBABAZI Fabien**
Umucamanza	**Umucamanza**

Sé
UWARUGIRA Jean Baptiste

10. URUKIKO RUKURU RW'UBUCURUZI

N° Y'URUBANZA: RCOM. 0076/09/HCC
ITARIKI Y'URUBANZA: 13/08/2009
HABURANA: Banque Populaire du Rwanda SA, Ishami rya Kibungo, Agashami ka Muhororo / Diocèse Catholique de Kibungo

AMAGAMBO MPINE

IMANZA Z'UBUCURUZI – GUSABA GUSUBIRISHAMO URUBANZA – KUTITABA K'UWAREGEYE GUSUBIRISHAMO URUBANZA – GUSIBISHA URUBANZA BIKOZWE N'UREGWA IYO UWAREZE ATITABYE – IBINDI BYIFUZO BYIYONGERA KURI IRYO SIBWA.

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Uregwa yemerewe gusaba ko urubanza aregwamo rusibwa iyo uwamuregaga atitabye urukiko nta mpamvu.

- Usaba isubirishwamo ry'urubanza afatwa nk'urega mu rubanza rusuzuma icyifuzo cye, bityo iyo atitabye, uregwa ashobora gusaba ko urubanza rusibwa.

- Urubanza rwasibwe ntirushobora kwifashishwa ukundi. Bityo, ntirwashingirwaho kugirango utsindiye isibwa ryarwo agenerwe ibirenze iryo sibwa bitari uguherereza amagarama y'urubanza rusibwe

URUKIKO RUKURU RW'UBUCURUZI RURI I KIGALI KU CYICARO CYARWO RUHABURANISHIRIZA IMANZA Z'UBUCURUZI RWACIYE KU WA 13/08/2009 URU RUBANZA MU BURYO BUKURIKIRA:

HABURANA :

UREGA :
Banque Populaire du Rwanda SA, Ishami rya Kibungo, agashami ka GAHORORO, mu izina ry'uyihagarariye.

UREGWA :
Diocèse Catholique de Kibungo, mu izina ry'uyihagarariye.

IKIBURANWA :
Gusubirishamo urubanza RCOM 0411/08/HCC

URUKIKO :

Rushingiye ku Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavuguruwe kugeza ubu;

Rushingiye ku Itegeko-Ngenga n°51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere
n'ububasha by'inkiko ;

Rushingiye ku Itegeko-Ngenga n°59/2007 ryo kuwa 16/12/2007 rishyiraho inkiko z'ubucuruzi rikanagena imiterere, imikorere n'ububasha byazo;
Rushingiye ku Itegeko n°18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize
y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nkuko ryahinduwe
kandi rikuzuzwa kugeza ubu;

Rushingiye ku Itegeko n°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza
n'itangwa ryabyo ;

Rushingiye ku itegeko nº 03/1997 ryo kuwa 19/03/1997 rishyiraho Urugaga rw'Abavoka mu Rwanda.

UKO IKIBAZO GITEYE

Kuwa 24/04/2009, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOM 0411/08/HCC Banque Populaire du Rwanda SA, Ishami rya Kibungo ryaregagamo Diocèse Catholique de Kibungo. Muri urwo rubanza rwaciwe uregwa adahari, Urukiko rwemeje ko hatsinze Banque Populaire du Rwanda SA maze rutegeka Diocèse Catholique de Kibungo kuyishyura 40.537.153 Frw, ikanatanga umusogongero wa Leta wa 4% ungana na 1.621.486 Frw hamwe n'amagarama y'urubanza ahwanye na 12.350 Frw.

Diocèse Catholique de Kibungo yaburanishijwe idahari, ijuririra Urukiko Rukuru rw'Ubucuruzi irusaba kwemera ko urubanza rwaciwe idahari rusubirishwamo noneho
rukaburanishwa impande zombi zihari. Ubwo bujurire bwageze mu Rukiko kuwa 20/05/2009 bwandikwa mu gitabo cy'ibirego kuri RCOM 0076/09/HCC, Urukiko rushyira umunsi w'iburanisha kuwa 21/07/2009 i saa mbiri za mugitondo kandi uwo munsi umenyeshwa ababuranyi mu buryo buteganywa n'amategeko.

UKO IBURANA RYAGENZE

Uwo munsi ugeze, hitaba gusa Banque Populaire SA, Ishami rya Kibungo ihagarariwe na Me MUTUNZI Donat naho Diocèse Catholique de Kibungo yongeye kutitaba kandi inyandiko ihamagara mu iburana ry'ibanze igaragaza ko yahamagajwe mu buryo buteganywa n'amategeko.

Urukiko rubajije icyo uhagarariye Banque Populaire du Rwanda SA, Ishami rya Kibungo abivugaho avuga ko Diocèse Catholique de Kibungo yajuriye none ikaba ariyo ititabye nta mpamvu, bityo asaba ko urubanza rwasibwa; asoza asaba ko Diocèse Catholique de Kibungo itegekwa kwishyura 500.000 Frw y'igihembo cya avoka wa Banque Populaire, inyungu ku mafaranga yatsindiwe mu rubanza rujuririrwa zikabarwa kugeza ku munsi w'iri buranisha kandi ikishyura 100.000 Frw y'ingendo.

UKO URUKIKO RUBIBONA

Ingingo ya 50 al. 1 y' Itegeko n°18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize
y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nkuko ryahinduwe
kandi rikuzuzwa kugeza ubu yemerera uregwa kuba yasaba ko urubanza aregwamo rusibwa iyo uwamuregaga atitabye urukiko nta mpamvu.

Urukiko rukaba rusanga nta mpamvu yarubuza gushingira kuri iyi ngingo yavuzwe haruguru no mu birebana n'imiburanishirize y'imanza zisabirwa gusubirishwamo aho nyir'ugusaba ko urubanza rusubirwamo akwiye gufatwa nk'urega mu rubanza rusuzuma icyifuzo cye. Bityo, rukaba rusanga Banque Populaire du Rwanda SA, Ishami rya Kibungo ikwiye guhabwa isibwa ry'uru rubanza nk'uko irisaba.

Iyo ngingo mu gika cyayo cya 2 ikaba kandi ivuga ko iyo urubanza rusibwe, icyo cyemezo kiba kivanyeho urubanza n'amagarama yatanzwe yose agaherera k'urega. Urukiko rukaba rusanga rwaba runyuranyije n'iyo ngingo ruramutse rugeneye umuburanyi usaba isibwa ry'urubanza ibirenze iryo sibwa ndetse no guherereza amagarama y'urubanza rusibwe kuwari wararuregeye, kuko bitakumvikana uburyo urubanza rwasibwe rukavanwaho rwazongera kwifashishwa uretse gusa mu kugaragaza ko rutakiriho no kwerekana amagarama na nyirukuyaryozwa. Bityo uru rukiko, muri uru rubanza rukaba rutagenera Banque Populaire du Rwanda SA, Ishami rya Kibungo igihembo cya avocat wayo, amafaranga y'ingendo ndetse no kubara inyungu bundi bushya yarusabye.

KUBERA IZO MPAMVU ZOSE:

RWEMEJE ko urubanza RCom 0076/09/HCC rusibwa mu bitabo by'uru Rukiko;

RUKIJIJE ko urubanza RCom 0411/08/HCC rwari rwasabiwe gusubirishwamo ntacyo ruhinduweho;

RUTEGETSE Diocèse Catholique de Kibungo gutanga 4.300 Frw ahwanye n'ibyakozwe byose muri uru rubanza, bakayatanga mu gihe giteganywa n'amategeko bahereye kuyo batanzeho ingwate baregera uru Rukiko.

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 13/08/2009
N'URUKIKO RUKURU RW'UBUCURUZI , RUGIZWE NA: KAMERE Emmanuel (UMUCAMANZA), AFASHIJWE NA NYINAWANKUSI Francine (UMWANDITSI W'URUKIKO).

KAMERE Emmanuel	**NYINAWANKUSI Francine**
Umucamanza,	**Umwanditsi W'urukiko,**
(Sé)	**(Sé)**

IMANZA Z'UMURIMO

11. URUKIKO RW'IKIRENGA

Nº Y'URUBANZA : RSOCAA 0008/09/CS,
ITARIKI Y'URUBANZA : 25/09/2009
HABURANA : EER/SEBUNUNGURI Adonia

AMAGAMBO MPINE

IMANZA Z'UMURIMO – GUBIRISHAMO URUBANZA - KUTITABA NTA MPAMVU IKOMEYE K'UHAGARARIYE UMUBURANYI.

INGARUKA Z'IMYITWARIRE MIBI Y'UHAGARARIYE UMUBURANYI MU RUBANZA

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

- Gusaba ko urubanza rusubirishwamo byemerwa gusa iyo uregwa utaritabye mbere agaragaza impamvu ikomeye yamubujije kwitaba.

- Iyo uhagarariye umuburanyi (avocat) amutengushye urubanza rukaburanishwa adahari (par défaut), bikamuviramo gutsindwa ayo mako sa ntashobora gufatwa nk'impamvu ikomeye (cause grave) yatuma uregwa yemererwa gusubirishamo urubanza.

- Iyo umuburanyi atengushywe n'umwunganira (avocat) mu rubanza yari yamuhaye kumuburanira ntabikore uko babivuganye, ashobora kumuregera indishyi hashingiwe ku mategeko asanzwe (droit commun) arebana n'indishyi (responsabilité civile), kugirango amuryoze amakosa kubera amahirwe yamutesheje.

URUKIKO RW'IKIRENGA RURI I KIGALI, RUHABURANISHIRIZA MU RUHAME IMANZA Z'UMURIMO, RUKIJIJE NONE KUWA 25/09/2009, URUBANZA RSOCAA 0008/09/CS MU BURYO BUKURIKIRA:

ABABURANA:

UWATANZE IKIREGO:
Eglise Episcopale au Rwanda (EER) - Diocèse de Kigali, iburanirwa na Me P. Céléstin BUHURU.

UREGWA:
Mgr SEBUNUNGULI Adonia, mwene Kabera na Ntabugi, utuye Biryogo, Umujyi wa Kigali, aburanirwa na Me KARAMBIZI Canisius.

IKIBURANWA :
Gusubirishamo urubanza RSOCAA 0008/09/CS rwaciwe kuwa 27/02/2009

URUKIKO;

I. IMITERERE Y' URUBANZA

(1). Kuwa 27/02/2009, mu Rukiko rw'Ikirenga, haciwe urubanza RSOCAA 0008/09/CS , haburana Eglise Episcopale au Rwanda, na Mgr SEBUNUNGULI Adonia, hakaba harafashwemo ibyemezo bikurikira:

- "Rwemeye kwakira ubujurire bwa Mgr SEBUNUNGULI n'ubwa EER/Kigali bubwuririyeho kuko bwaje mu buryo

n'inzira bikurikije amategeko;

- Rwemeje ko ubwo bujurire bwombi bufite ishingiro kuri bimwe;
- Rutegetse EER/Kigali guha Mgr SEBUNUNGULI 32.000.000 Frw abazwe kugeza urubanza rusomwe, nyuma y'aho ikamuha inzu yo kubamo cyangwa 200.000 Frw y'ubukode bw'inzu kugeza igihe we n'umugore we bazaba batakiriho; ayo mafranga ikayatangira 4% y'umusogongero wa Leta".

(2). Nyuma yo kumenyeshwa imikirize y'urwo rubanza, Eglise Episcopale au Rwanda, EER/Kigali, kubera ko yavugaga ko rwaciwe idahari, yatanze ikirego cyo gusubirishamo urubanza (opposition) nk'uko bigaragazwa n'ibaruwa yo kuwa 26/03/2009 yashyizweho umukono na Me BUHURU Celestin mu izina rya EER/Kigali. Ikirego cyanditswe kuri n° RSOCAA 0008/09/CS.

(3). Itegeko n°0007/09/ RSOC rya Perezida w`Urukiko rw`Ikirenga ryo kuwa 25/05/2009 ryashyize umunsi w`iburanisha ry`urubanza kuwa 18/06/2009, uwo munsi ugeze, ababuranyi bombi baritaba, Eglise Episcopale au Rwanda iburanirwa na Me BUHURU Célestin, naho SEBUNUNGULI aburanirwa na Me KARAMBIZI Canisius.

(4). Nyuma ya raporo y'urubanza yatanzwe n'umucamanza waruteguye, Eglise Episcopale au Rwanda yahawe umwanya kugirango isobanure impamvu zatumye isaba gusubirishamo urubanza, Mgr SEBUNUNGURI na we ahabwa umwanya kugirango agire icyo avuga ku mpamvu zatanzwe na Eglise Episcopale au Rwanda .

(5). Ababuranyi bombi bamaze kwinigura bihagije mu bisobanuro byabo, iburanisha ryarasojwe, urukiko rutangaza ko isomwa ry'urubanza rizaba kuwa 17/07/2009. Kuri iyo tariki, Urukiko rwasomeye mu ruhame urubanza rutegurira urundi, ruvuga ko ikirego cyatanzwe na EER/

Kigali cyo gusubirishamo urubanza RSOCAA 0008/09/CS rwaciwe n'uru Rukiko kuwa 27/02/2009 kigomba kwakirwa kuko cyatanzwe mu buryo amategeko yagiteganyije.

(6). Urukiko rwemeje ko iburanisha ry'uru rubanza rizakomeza kuwa 25/08/2009, rukazasuzuma niba EER/Kigali ifite impamvu ikomeye yayibujije kwitaba muri urwo rubanza rwaciwe idahari nk'uko bivugwa n'ingingo ya 160 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko „gusaba ko urubanza rusubirwamo byemerwa gusa iyo uregwa utaritabye mbere ashobora kugaragaza impamvu ikomeye yamubujije kwitaba".

(7). Ku itariki yavuzwe haruguru yo kuwa 25/08/2009, ababuranyi bombi baritabye, Mgr SEBUNUNGURI yunganirwa na Me KARAMBIZI Canisius, naho EER/Kigali ihagarariwe na Me BUHURU P. Célestin.

(8). Nyuma yo kwibutsa impamvu yatumye urubanza ruhamagazwa, Urukiko rwahaye ijambo Me BUHURU P. Célestin kugirango asobanure impamvu ikomeye yatumye EER/Kigali itaboneka mu iburanisha ryo kuwa 22/01/2009 ry'urubanza rwaciwe idahari.

(9). Me BUHURU yavuze ko mu iburanisha ry'ubushize, bari barazanye Me KARANGWA nk'umugabo muri uru rubanza bitewe n'uko yababwiye ko impamvu atashoboye kuburanira EER/Kigali, ari uko yari yaserukiye urugaga rw'abavoka mu mahanga nk'uko passeport ye ibyerekana.

(10). Yabajijwe impamvu noneho batongeye ngo bamwitwaze kandi bari bazi ko ikibazo gisuzumwa ari impamvu ikomeye yamubujije kwitaba, asubiza ko bavuganye kuri téléphone amubwira ko itariki uru rubanza rwagombaga kuburanishirizwaho atigeze ayimenyeshwa. Yongeyeho ko Me KARANGWA ariwe ufite „passeport original", akaba

ari yo mpamvu asaba ko Urukiko rwamuhamagaza bitewe n'uko itorero ryari ryaramuhaye mandat, ryamwambuye dosiye kuko atubahirije inshingano ze (manquement à ses obligations), kuko atabonetse ngo aburane urubanza yahawe.

(11). Yarangije avuga ko EER/Kigali aburanira itakagombye kuryozwa ibyo Avoka we yakoze byamwangirije, akigira muri gahunda ze zo guhagararira urugaga, kandi yarashoboraga kwandika asaba ko urubanza rusibira, cyangwa akoherezayo undi Avoka bakorana.

(12). Ku kibazo cyo kumenya igihe Me KARANGWA yagiriye muri ubwo butumwa, n'igihe yagarukiye, Me BUHURU yavuze ko umunsi urubanza ruburanishwa, ari bwo yagiye, agaruka kuwa 6/02/2009, ko ariko yari akwiye guhamagazwa kugirango aze yerekane passeport ye nk'ikimenyetso. Yabajijwe impamvu batayimusabye ubwabo, ubwo bari bazi ko ari icyo kibazo gisuzumwa, asubiza ko byatewe n'uko ubushize yari yaje; ko ariko itariki y'iri buranisha atigeze ayimenya.

(13). Ku bijyanye no kumenya impamvu Me KARANGWA atari yarasabye ko urubanza rusububikwa niba yari afite ubutumwa yagombaga koko kujyamo, Me BUHURU yasubije ko ibyo ari byo bituma basanga yarakoze amakosa, kuko yashoboraga no kohereza undi Avoka, ko ariko EER/Kigali idakwiye kuryozwa ayo makosa.

(14). Ijambo ryahawe Me KARAMBIZI, avuga ko ahereye kuri photocopie ya passeport ya Me KARANGWA, nta hantu na hamwe hagaragara itariki ya 22/01/2009. Yakomeje avuga ko muri uru rubanza, EER/Kigali yari ifite abavoka babiri, ari bo Me KARANGWA Vincent n'uwitwa RWABIGWI Augustin; ko rero niba KARANGWA atari ahari, yibaza aho RWABIGWI Augustin yari yagiye.

(15). Ku kibazo cy'uko amakosa ya Me KARANGWA adakwiye

kuryozwa uwamuhaye mandat, Me KARAMBIZI yasobanuye ko ubwo EER/Kigali yari ifite aba Avoka babiri, mu gihe uwambere yari afite impamvu yatumye ataboneka, yibaza impamvu badasobanura icyatumye Avoka wa kabiri ataboneka. Kuri we, akaba asanga kuba uwo EER/Kigali yahaye mandat ntiyubahirize ubutumwa yahawe, ari kimwe n'uko yari kumuburanira nabi agatsindwa, nyuma y'aho akavuga ko ashaka kwiburanira.

(16). Abajijwe niba umukiriya wahaye urubanza Avoka we, nyuma uyu akabura, uwo mukiriya agomba kubiryozwa, asubiza ko mu gihe wahaye umuntu urubanza, akaza kumutenguha (défaillant), uwamutumye agomba kujya kuregera urugaga rw'Abavoka, ubundi akaba yakwitabaza ingingo ya 258 y'igitabo cy'amategeko y'imboneza mubano.

(17). Me BUHURU yongeye guhabwa ijambo, avuga ko photocopie ya passeport ya Me KARANGWA itagaragara neza, ari yo mpamvu yifuza ko uyu yazazana original yayo. Abajijwe niba itariki yagarukiyeho igaragara muri izo photocopies (date d'entrée), ubwo avuga ko itariki yagendeyeho (date de sortie) itagaragara, asubiza ko atitaye kuzisuzuma neza, bitewe n'uko yari azi ko Me KARANGWA azaba ahari, ko ariko ashobora noneho kumusaba akazazana original ya passeport.

(18). Ku bijyanye na Me RWABIGWI , Me BUHURU yasobanuye ko nta"mandat" yigeze ahabwa na EER/ Kigali, ko ashobora kuba yaraje gusa gufasha urubanza Me KARANGWA, ariko ko nta nshingano yigeze ahabwa na EER/Kigali. Ku bijyanye n'uko Me KARANGWA akwiye kuregwa mu rugaga rwabo, Me BUHURU yavuze ko ubu bari imbere y'urukiko, Me KARANGWA akaba atarigeze atanga "moyens" ze zose z'uko yahawe akazi akakica, ko kandi ibyo bitagomba kuryozwa EER/Kigali.

(19). Yongeye kubazwa niba photocopie yerekanye hari akamaro ifitiye Urukiko, asubiza ko yayitanze kugirango

rurebe igihe Me KARANGWA yagarukiye, ko ariko kubera ko hari ibintu bitagaragara neza, yifuza kuzazana bukeye "original".

(20). Iburanisha ryarasojwe, urukiko rutangaza ko isomwa ry'urubanza rizaba kuwa 25/09/2009, nyuma ruriherera ruruca mu buryo bukurikira.

II. ISUZUMA RY'INGINGO ZATANZWE N'UKO URUKIKO RUBIBONA.

(21). Ikirego cyatanzwe na EER/Kigali cyo gusubirishamo urubanza, gikomoka, nk'uko byavuzwe mu ntangiriro, ku rubanza RSOCAA 0008/09/CS rwaciwe n'uru Rukiko kuwa 27/02/2009, aho Eglise Episcopale au Rwanda yategetswe guha Mgr SEBUNUNGULI amafaranga 32.000.000, n'inzu yo kubamo cyangwa amafaranga 200.000 y'ubukode bw'inzu kugeza igihe we n'umugore we bazaba batakiriho.

(22). Ku bijyanye no gusubirishamo urubanza (opposition), ingingo ya 160 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "gusaba ko urubanza rusubirwamo byemerwa gusa iyo uregwa utaritabye mbere ashobora kugaragaza impamvu ikomeye yamubujije kwitaba (L'opposition n'est recevable que si le défaillant excipe une cause grave qui justifie pleinement sa défaillance antérieure. La juridiction saisie apprécie souverainement la cause de défaillance alléguée. Dans tous les cas, opposition sur opposition ne vaut)".

(23). Ikibazo kigomba rero gusuzumwa muri uru rubanza, nk'uko byavuzwe haruguru, ni ukureba niba hari impamvu ikomeye yatumye EER/Kigali ititaba mu iburanisha ryo kuwa 22/01/2009, bigatuma kuwa 27/02/2009, uru Rukiko

ruyicira urubanza RSOCAA 0008/09/CS idahari.

(24). N'ubwo mu iburanisha ry'uru rubanza, uhagarariye EER/Kigali yavugaga ko Me KARANGWA wari watumwe na EER/Kigali kuyiburanira yakoze amakosa ntiyitabe Urukiko, ngo ntanasabe nibura ko iburanisha ry'urubanza rwimurwa bitewe n'uko atazaboneka, ahubwo agahitamo kwigira mu butumwa hanze y'Igihugu, Urukiko rurasanga inyandiko za passeport yarushyikirije igihe cy'iburanisha nta na hamwe zerekana ko mu by'ukuri, kuri iyo tariki yahise agenda, agasohoka mu Gihugu.

(25). Ikigaragara gusa muri izo nyandiko za Passeport, ni uko kuri iriya tariki ya 22/01/2009, ariho Me KARANGWA yahawe Visa Schengen, ikaba yari ifite agaciro (validité) guhera kuwa 23/01/2009 kugeza kuwa 19/02/2009. Ntaho bigaragara rero ko uwo munsi asinyirwa Visa ariho yahise asohoka mu Gihugu.

(26). Ikindi kigaragara ni uko, kugeza ubu, muri dosiye, nta nyandiko n'imwe Me KARANGWA yigeze yohereza uru Rukiko yerekana ko impamvu yamubujije kuza kuburanira umukiriya we EER/Kigali, ari uko yari yagiye mu butumwa mu mahanga, cyangwa niba hari indi mpamvu yamubujije kutamukomereza dosiye mu Rukiko.

(27). Hashingiwe ku bimaze kuvugwa, Urukiko rurasanga kugeza ubu, EER/Kigali itagaragaza impamvu ikomeye (cause grave) yatumye mu by'ukuri uwo yari yatumye Me KARANGWA ataboneka mu iburanisha ryo kuwa 22/01/2009 kugirango ayiburanire.

(28). Ibyo uhagarariye EER/Kigali avuga noneho, by'uko amakosa ya Me KARANGWA atagomba kuryozwa EER/Kigali yari yamutumye, Urukiko rurasanga ubwo na we ubwe yiyemerera ko ari amakosa, ayo makosa adashobora kwitwa impamvu ikomeye (cause grave) yatuma EER/Kigali yemererwa gusubirishamo urubanza

RSOCAA 0008/09/CS rwaciwe idahari nk'uko biteganywa n'ingingo ya 160 yavuzwe haruguru.

(29). Rurasanga ahubwo mu gihe habaye amakosa nk'ayo, EER/Kigali ifite uburenganzira bwo kuba yakurikirana uwo yari yatumye akayihemukira, kugirango imuryoze amakosa yayikoreye (responsabilité civile), yatumye hari icyo yahombye.

(30). Ibyo kandi bihuje n'ibisobanuro bitangwa n'abahanga mu mategeko, aho bavuga ko umukiriya (client) warishye imirimo y'umu Avoka, nyuma uyu ntamukorere imirimo bavuganye, ashobora kumukurikirana, mbere na mbere kubera akababaro yatewe (préjudice moral), nyuma akaba akanamukurikirana kuba atarakoresheje imbaraga ze zose, kugirango amuheshe amahirwe yose yagombaga guhabwa (Le client qui rémunère un service qui ne lui est pas rendu, peut tout d'abord se plaindre,… d'un préjudice moral. Il peut ainsi faire valoir qu'en ne le faisant pas bénéficier de tous ses efforts, l'avocat ne lui a donné la totalité des chances qui devaient normalement lui appartenir)[10].

(31). Bihuje kandi n'ibisobanuro bitangwa n'imanza zimwe na zimwe zagiye zicibwa n'inkiko zo mu mahanga, nk'urubanza rwaciwe kuwa 05/07/2006 n'Urukiko rw'Inama ya Leta rwo mu Bufaransa, rukemeza ko umukiriya w'umu Avocat yemerewe gusaba Avoka we indishyi y'igihombo yatewe n'ikosa rye, mu gihe hari ibyo atakoze yagombaga gukora (abstention), bigatuma abura amahirwe agaragara yari kubona yo guciribwa urubanza mu buryo bumushimije (le client d'un avocat à la Cour …… est fondé à demander réparation du préjudice qu'il a subi du fait de la faute de celui-ci, dû à une abstention, dans la mesure où celle-ci a entraîné pour le client, la perte d'une chance sérieuse d'obtenir une décision plus

[10]Jean Jacques, La Déontologie de l'Avocat, Dalloz, 4è édition, 2005, pp165-166

favorable….).[11]

(32). Ni kimwe n'ibyemejwe mu rundi rubanza, rwaciwe n'Urukiko Rusesa Imanza rw'icyo gihugu kuwa 05/07/2003, aho hemejwe ko Avoka wabuze igihe cy'iburanisha, bigatuma umukiriya we atsindwa, yakurikiranwa akabiryozwa, mu gihe uwo mukiriya yabonaga ko afite amahirwe yo kwemererwa n'umucamanza ibyo yaburanaga (Selon la Cour de cassation, la responsabilité de l'avocat ne peut être engagée à l'égard de son client condamné alors qu'il n'était pas représenté à l'audience, que si ce dernier avait des chances de voir la thèse qu'il défendait en instance, contre la partie adverse, soutenue par le juge).[12]

(33). Ikigaragarira urukiko, ni uko hashingiwe kuri ibyo basobanuro by'abahanga ndetse n'ibyemezo by'imanza byagiye bifatwa ku makosa yakozwe n'abavoka, nta yindi nzira umukiriya ashobora gukoresha kugirango akurikirane Avoka we wamutengushye, atari ukumuryoza ayo makosa hashingiwe ku mategeko asanzwe (droit commun), by'umwihariko akaba yamurega indishyi (responsabilité civile) kubera amahirwe yamutesheje mu rubanza yari yamuhaye kumuburanira, ntabikore uko babivuganye.

(34). Hakurikijwe ibisabwa n'ingingo ya 160 yavuzwe haruguru, Urukiko rurasanga EER/Kigali itakwemererwa gusubirishamo urubanza rwayo mu gihe itashoboye kugaragaza impamvu ikomeye yatumye ititabira iburanisha.

III. ICYEMEZO

URUKIKO RW'IKIRENGA:

(35). RWEMEJE kudasuzuma mu mizi urubanza RSOCAA

[11]www.net.iris.fr: Jurisprudence n° 15071: Conseil d'etat - 5 juillet 2006
[12]www.net.iris.fr: Jurisprudence n° 7795 : Cass / Civ - 8 juillet 2003

0008/09/CS kubera ko ikirego cyatanzwe na EER/Kigali cyo gusubirishamo urwo rubanza kitubahirije ibisabwa n'ingingo ya 160 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

(36). Rutegetse EER/Kigali gutanga amagarama y'uru rubanza angana na 13.300 Frw, itayatanga ku neza, agakurwa mu byayo ku ngufu za Leta.

RUCIWE RUTYO KANDI RUSOMEWE MU RUHAME NONE KUWA 25/09/2009 N'URUKIKO RW'IKIRENGA RUGIZWE NA : NYIRINKWAYA IMMACULEE, PEREZIDA, KAYITESI RUSERA EMILY NA HATANGIMBABAZI FABIEN, ABACAMANZA; BAFASHIJWE NA RUSINGIZA GERMAIN, UMWANDITSI W'URUKIKO.

NYIRINKWAYA Immaculée
Perezida

KAYITESI RUSERA Emily **HATANGIMBABAZI Fabien**
Umucamanza **Umucamanza**

RUSINGIZA Germain.
Umwanditsi w'Urukiko

12. URUKIKO RUKURU

N° Y'URUBANZA: R.Soc.A 0198/07/HC/KIG
- R.Soc.A0207/07/HC/KIG
ITARIKI Y'URUBANZA:15/01/2010
HABURANA: Association des Eglises de Pentecotes au Rwanda ASBL (ADPR) / NIZEYIMANA Théoneste

AMAGAMBO MPINE

IMANZA Z'UMURIMO – IMPAKA ZITURUTSE KU MPANUKA IBAYE KU MUKOZI UKORA NTA MASEZERANO Y'UMURIMO –IBIGARAGAZA KO HABAYEHO AMASEZERANO Y'UMURIMO HAGATI Y'UHEMBWA N'UHEMBA

IMANZA ZIBURANISHWA N'INGEREKO Z'IMIRIMO

UKUTAKIRWA KW'IKIREGO KIGAMIJE KWIREGURA IGIHE IKIREGO CY'IREMEZO KITAKIRIWE

IBIBAZO BY'AMATEGEKO BYAGARAGAJWE

-Iyo umushahara utangwa hashingiwe ku gihe umukozi amaze akora, hatitawe ku byakozwe, byumvikanisha ko uhemba ategeka uhembwa kandi akagenzurira hafi umurimo ukorwa, bityo impande zombi zikaba zigengwa n'amasezerano y'umurimo.

-Iyo umushahara utangwa hashingiwe ku murimo wakozwe,

umucamanza ntiyabishingiraho yemeza ko amasezerano hagati y'impande zombi ari ay'umurimo, kuko bene icyo gihembo gishobora guhabwa n'abandi bakozi batagengwa n'amasezerano y'umurimo mu kazi kabo, nka ba rwiyemezamirimo, abahembwa ku nyungu binjije mu bucuruzi n'abandi.

-Ingereko zihariye ziburanisha imanza z'umurimo ntizishobora kwakira no kuburanisha ibirego bishingiye ku mpaka zavutse hagati y'abantu badahujwe n'amasezerano y'umurimo.

-Iyo ikirego cy'iremezo kitakiriwe, ikirego kigamije kwiregura kicyuririyeho nacyo nticyakirwa ngo gisuzumwe.

URUKIKO RUKURU RURI I KIGALI KU CYICARO CYARWO GIKURU, RUHABURANISHIRIZA MU RUHAME URUBANZA RW'UMURIMO R.Soc.A 0198/07/HC/KIG-R.Soc.A 0207/07/HC/KIG KU RWEGO RW'UBUJURIRE, RURUKIJIJE KU WA 15/01/2010 MU BURYO BUKURIKIRA:

Haburana:

R.Soc.A 0198/07/HC/KIG

Uwajuriye**:** *Association des Eglises de Pentecôte du Rwanda ASBL* (ADEPR), iburanirwa na Me MUCYO Donatien;

Uregwa: Nizeyimana Théoneste mwene Kagenza na Kamanzi, utuye mu Gatenga-Gikondo mu Mujyi wa Kigali, uburanirwa na Me NIYIBIZI Jean Baptiste ;

R.Soc.A 0207/07/HC/KIG

Uwajuriye : Nizeyimana Théoneste mwene Kagenza na Kamanzi, utuye mu Gatenga-Gikondo mu Mujyi wa Kigali, uburanirwa na Me NIYIBIZI Jean Baptiste ;

Uregwa: *Association des Eglises de Pentecôte du Rwanda ASBL (*ADEPR), iburanirwa na Me MUCYO Donatien ;

Ikiburanwa muri izo manza zombi : - *Dommages et intérets suite à un accident de travail du 11/12/2003, dommage et intérets pour licenciement abusif, congés non payés ; décompte final, préavis, indemnités de licenciement, dommages et intérets pour non octroi de l'attestation de services rendus, frais de procédure* ;

URUKIKO RUKURU ;

I. Imiterere y'urubanza n'imigendekere yarwo ku rwego rwa mbere

1. NIZEYIMANA Théoneste avuga ko yakoreraga ADEPR ASBL mu isarumara (*Atelier de menuiserie*) yayo iri i Gikondo, hanyuma ku wa 11/12/2003 agiriramo impanuka y'akazi yamuteye ubumuga. Avuga ko iyo mpanuka itigeze imenyekanishwa mu Isanduku y'Ubwiteganyirize bw'Abakozi y'u

Rwanda ngo kuko ADEPR ASBL itari yaramuteganyirije muri iyo sanduku, bityo agasaba ko ADEPR ASBL imwishyura igihombo cyose yatewe n'iyo mpanuka ;

2. ADEPR ASBL yo ivuga ko itigeze igirana na NIZEYIMANA Théoneste amasezerano y'umurimo, bityo ibyo asaba byose bikaba nta shingiro bifite. Izo mpaka nizo zatumye ku wa 05/07/2007 NIZEYIMANA Théoneste aregera Urukiko rw'Umujyi wa Kigali, nyuma y'ivugururwa ry'amategeko dosiye yoherezwa mu Rukiko Rwisumbuye rwa Nyarugenge. Mu kirego cye NIZEYIMANA Théoneste asaba guhabwa indishyi z'akababaro zikomoka kuri iyo mpanuka, indishyi z'uko yasezerewe ku kazi nta mpamvu yumvikana, *décompte final*, integuza, amafaranga atangwa mu kigwi cya konji ihemberwa, amafaranga y'imperekeza atangwa mu gihe umukozi asezerewe ku kazi (*indemité de licenciement*), indishyi z'uko atahawe icyemezo cy'akazi kigaragaza imirimo yakoze (*Attestation de services rendus*) n'amafaranga y'ikurikiranarubanza ;

3. Urubanza rwaciwe ku wa 21/11/2007, Urukiko Rwisumbuye rwa Nyarugenge rwemeza ko bimwe mu byo NIZEYIMANA Théoneste aregera bifite ishingiro, rutegeka ADEPR ASBL kumwishyura 621.137 frw agizwe n'amafaranga y'integuza, imperekeza, indishyi z'uko atahawe icyemezo cy'akazi kigaragaza imirimo yakoze, indishyi zo kwirukanwa ku kazi nta mpamvu, amafaranga atangwa mu kigwi cya konji n'ay'ikurikiranarubanza. Impande zombi ntizishimiye iyo mikirize y'urubanza, ADEPR ASBL irujuririra ku wa 27/11/07 naho NIZEYIMANA Théoneste arujuririra ku wa 17/12/2007. Ubwo bujurire bwombi bwanditswe mu gitabo cy'imanza muri uru Rukiko, ubwa ADEPR ASBL buhabwa no R.Soc.A 0198/07/HC/KIG naho ubwa NIZEYIMANA Théoneste buhabwa no R.Soc.A 0207/07/HC/KIG, icyemezo cya Perezida w'Urukiko Rukuru cyo ku wa 21/04/2009 gifatanya izo manza zombi kinategeka ko ziburanishirizwa mu rubanza rumwe ;

II. Imigendekere y'urubanza mu Rukiko Rukuru

4. Urwo rubanza rwaburanishirijwe mu ruhame ku wa 05/05/2009, ADEPR ASBL ihagarariwe na Me MUCYO Donatien naho NIZEYIMANA Théoneste ahagarariwe na Me NIYIBIZI Jean Baptiste;

5. Ijambo ryabanje guhabwa Me MUCYO Donatien, ageza ku Rukiko impamvu zikurikira zatumye ADEPR ASBL ijurira :

   - Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza mu mizi kandi rwaragombaga kubanza gusuzuma no gufata icyemezo ku nzitizi yatanzwe na ADEPR ASBL y'uko Urugereko ruburanisha imanza

z'umurimo ziri hagati y'abakozi n'abakoresha nta bubasha rwari rufite bwo kuburanisha urwo rubanza, ngo kuko NIZEYIMANA Théoneste atigeze aba umukozi wa ADEPR ASBL ngo nayo imubere umukoresha, ko niba hari impaka hagati yabo zakemurirwa mu zindi nzego ;

- Ku rwego rwa mbere Urukiko rwemeje ko habayeho amasezerano y'umurimo hagati ya ADEPR ASBL na NIZEYIMANA Théoneste kandi atari ukuri ngo kuko ADEPR ASBL ishingiye ku bitegnywa n'ingingo ya mbere n'iya gatanu z'Itegeko rishinga amategeko agenga umurimo ryakurikizwaga icyo gihe, yerekanye ko NIZEYIMANA Théoneste atigeze aba umukozi wayo, ngo kuko hakurikijwe uko yakoraga atigeze ategekwa uko yagombaga gukora, kuko yakoraga umurimo w'ubufundi akurikije ubumenyi bwe, yarangiza agakora *facture* akishyurwa ;

- Ku rwego rwa mbere Urukiko rwategetse ADEPR ASBL kwishyura indishyi zinyuranye kandi itarigeze yiregura ngo kuko nta mpaka zagiwe ku bijyanye n'imizi y'urubanza ;

- Ku rwego rwa mbere Urukiko rwaciye urubanza rudashingiye ku byavuye mu iperereza rwikoreye mu kigo cya ADEPR ASBL ku wa 06/07/2007 ntiyanasobanura impamvu atabishingiyeho, ngo kandi mu byavuye muri iryo perereza nta kigaragaza ko NIZEYIMANA Théoneste yabaye umukozi wa ADEPR ASBL ;

6. Me NIYIBIZI Jean Baptiste uhagarariye NIZEYIMANA Théoneste nawe yahawe ijambo, avuga ko ubujurire bwa ADEPR ASBL nta shingiro bufite kubera impamvu zikurikira :

    - kuba ibyo yaregeye bijyanye n'umurimo birahagije kugira ngo bigaragaze ko urugereko ruburanisha imanza z'umurimo rufite ububasha bwo kuburanisha uru rubanza ;

    - ntahakana ko NIZEYIMANA Théoneste yakoraga kuri *pièces*, akorera mu ibarizo rya ADEPR ASBL agakoresha ibikoresho byabo, kandi akaba yarakozemo igihe kirekire, ni ukuvuga guhera mu mwaka wa 2001 kugeza mu mwaka wa 2003 kandi nta kigaragaza ko yigeze ahagarika akazi, ngo ariko hakurikijwe ibiteganywa n'ingingo ya 8 y'Itegeko rishinga amategeko agenga umurimo ryakurikizwaga icyo gihe, si ngombwa ko amasezerano y'umurimo aba yanditse kandi NIZEYIMANA Théoneste yatanze ibimenyetso byinshi, byavuye muri ADEPR ASBL (kote za 4, 12A, 13A, 14A na 15A) bigaragaza ko yahembwaga umushahara ;

    - imvugo y'uhagarariye ADEPR SARL y'uko Urukiko rwagennye indishyi kandi nta mpaka zabayeho ku bijyanye n'imizi y'urubanza si ukuri ngo kuko inyandikomvugo y'iburanisha igaragaza ko NIZEYIMANA

Théoneste yasobanuye ikirego cye anasaba indishyi, kuba ADEPR ASBL ntacyo yazivuzeho kandi yarahawe umwanya bikaba bivuze ko yazemeraga ;

- iperereza ryakozwe ku rwego rwa mbere asanga ritari ngombwa kuko yari yatanze ibimenyetso bihagije byavuye muri ADEPR ASBL, ngo kandi akaba asanga abakozi ba ADEPR ASBL babajijwe batari kuvugisha ukuri ari nayo mpamvu hari ibyavuyemo batemeye. Ngo kandi iryo perereza ryafashije kumenya umushahara wa NIZEYIMANA Théoneste ugereranyije n'uwo abandi bakozi bari ku rwego rumwe bahembwaga ;

- ikindi kigaragaza ko NIZEYIMANA Théoneste yari umukozi wa ADEPR ASBL ni uko bamwishyuye 1.080.000 frw ubwo yagiraga impanuka y'akazi, kandi hakurikijwe ibiteganywa n'ingingo ya 96, igika cya nyuma, y'Itegeko rishinga amategeko agenga umurimo ryakurikizwaga icyo gihe, kuba yarakiriye ayo mafaranga ntibimubuza uburenganzira bwo gusaba guhabwa ibyo atahawe kandi yemererwa n'amategeko ;

7. Urukiko rwasabye Me NIYIBIZI Jean Baptiste gusobanura akazi NIZEYIMANA Théoneste yari yasezeranye na ADEPR ASBL ko azakora, uburyo yagakoraga n'icyo bari basezeranye ko azahembwa, avuga ko basezeranye ko azakora akazi ko kubaza, ko azagakorera mu ibarizo rya ADEPR ASBL, ngo akaba yarahabwaga akazi (nko gukora intebe 100) yazirangiza agahabwa akandi, kandi ko guhagarika akazi (*interruption*) byashoboraga kubaho biturutse kuri ADEPR ASBL. Akomeza asobanura ko ingingo ya 9 mu gika cyayo cya 3, y'Itegeko rishinga amategeko agenga umurimo ryakurikizwaga icyo gihe iteganya ko guhagarika akazi bidaturutse ku mukozi bitabuza ko amasezerano y'akazi akomeza kuba ay'igihe kitazwi ;

8. Me MUCYO Donatien yongeye guhabwa ijambo, avuga ko ingingo ya 5 y'itegeko rishinga amategeko agenga umurimo yavuzwe haruguru iteganya ko amasezerano y'umurimo akorwa mu bwumvikane hagati y'umukozi n'umukoresha, ngo ibi bikaba bisobanuye ko impande zombi zigomba kuba zemera ko zisinye amasezerano. Yakomeje avuga ko mu nyandiko uhagarariye NIZEYIMANA Théoneste yavuze haruguru ko zigaragaza ko yahembwaga umushahara, hakoreshejwe imvugo itariyo, ngo kuko amabaruwa NIZEYIMANA Théoneste yandikiye ADEPR ASBL yishyuza (amabaruwa yo ku wa 17/01/03, ku wa 06/01/2003, ku wa 06/03/2003) agaragaza ko atahembwaga umushahara. Yavuze kandi ko ingingo ya 80 y'Itegeko rishinga amategeko agenga umurimo isobanura umushahara icyo ari cyo n'uko utangwa ;

9. Me MUCYO Donatien yakomeje avuga ko mu nyandiko yo ku wa 11/08/2003 havugwamo ko amafaranga yasohotse muri *Caisse* ari aya *main d'œuvre* naho mu nyandiko yo ku wa 18/09/2003 n'iyo ku wa 03/10/2003 bakavuga ko

ari aya ari aya *travaux journaliers* (imirimo yakorwaga buri munsi). Yavuze kandi ko hari n'indi nyandiko igaragaza amafaranga yishyuwe, yari yasigaye ku masezerano yarebanaga n'akazi ko gukora *plafond* konyine, ngo nyamara iyo hari amasezerano y'akazi mbere y'uko akazi gakorwa impande zombi zibanza kumvikana ku mushahara ; ko rero hagati ya ADEPR ASBL na NIZEYIMANA Théoneste habaye *contrat de service* ;

10. Urukiko rwabajije Me MUCYO Donatien niba ADEPR ASBL nayo yemera ko NIZEYIMANA Théoneste yakoreraga mu ibarizo ryayo, asubiza ko babyemera ariko ko bitababagaho buri gihe ngo kuko hari n'imirimo yakoreye ku Kacyiru .Yakomeje avuga ko umucamanza adashobora kugena umushahara w'umukozi mu gihe udateganyijwe mu masezerano, kandi ntashobora kuwugereranya ahereye ku mushahara abandi bakozi bahembwa kuko buri mukozi aba afite amasezerano ye y'akazi ;

11. Ku bijyanye n'impanuka NIZEYIMANA Théoneste yagize, Me MUCYO Donatien yavuze ko kuba hari amafaranga ADEPR ASBL yamwishyuye bitavuze ko bari baragiranye amasezerano y'umurimo, ngo kuko ashobora no kwishyurwa kubera kwibeshya, ku bireba NIZEYIMANA Théoneste ngo ADEPR ASBL ikaba yaramwishyuye kubera impuhwe (*considérations humanitaires*). Urukiko rwamubajije uko amasezerano (*contrat de services*) avuga yari hagati yabo yarangiye, avuga ko yarangijwe n'iyo mpanuka ngo kuko yagize ubumuga butari gutuma yongera gukora, ngo ADEPR ASBL ikaba itaramusezereye ku kazi nk'uko byemejwe mu rubanza rwajuririwe ;

12. Me NIYIBIZI Jean Baptiste yahawe ijambo avuga ko ADEPR ASBL itishyuye NIZEYIMANA Théoneste amafaranga y'impanuka kubera impuhwe ngo kuko yabanje kuyasaba. Yakomeje avuga ko ingingo ya 91 y'Itegeko rishinga amategeko agenga umurimo idateganya ko umushahara wishyurwa buri kwezi, ko ahubwo wishyurwa mu gihe umukozi n'umukoresha bumvikanye ;

13. Me NIYIBIZI Jean Baptiste yakomeje ageza ku Rukiko impamvu zikurikira zatumye NIZEYIMANA Théoneste ajurira :

- ku rwego rwa mbere Urukiko ntirwamugeneye indishyi z'uko atahawe icyemezo cy'akazi kigaragaza imirimo yakoze, n'indishyi z'uko yasezerewe ku kazi nta mpamvu zingana n'umushahara w'amezi atandatu nk'uko yari yazisabye, kandi na ADEPR ASBL itari yazihakanye cyangwa ngo ivuge ko izo yasabye nyinshi ;
- ku rwego rwa mbere Urukiko rwaribeshye rwanga kumugenera indishyi zikomoka ku mpanuka y'akazi rushingiye ku mpamvu y'uko ibyo biri mu nshingano z'Isanduku y'Ubwiteganyirize bw'abakozi, rwirengagiza nkana ko ADEPR ASBL itijuje inshingano zayo zo kwandikisha NIZEYIMANA Théoneste muri iyo Sanduku y'Ubwiteganyrize bw'abakozi; ngo akaba agomba guhabwa 10.098.000 frw y'indishyi

zikomoka ku mpanuka y'akazi, zingana na (45.000 frw x 12 x 31 x 70) - 1.080.000 (yahawe) ; indishyi z'akababaro zingana na 720.000 frw ; *dommage estétique* (indishyi z'uko yatakaje uburanga) zingana na 720.000 frw na *préjudice de carrière* zingana n'umushahara w'amezi atandatu (270.000 frw) ;

14. Me NIYIBIZI Jean Baptiste yakomeje avuga ko asaba ko uwo ahagarariye ahabwa 300.000 frw y'ikurikiranarubanza ku rwego rwa mbere na 400.000 yo ku rwego rw'ubujurire ;

15. MUCYO Donatien yahawe ijambo avuga ko indishyi z'uko atahawe icyemezo cy'akazi ntazo NIZEYIMANA Théoneste yagombaga kugenerwa kuko atabaye umukozi wa ADEPR ASBL, ko ariko no kuba urukiko rwaragennye izingana n'amezi abiri y'umushahara byemewe n'ingingo ya 30 y'Itegeko rishinga amategeko agenga umurimo. Ku bijyanye n'indishyi z'uko yasezerewe ku kazi nta mpamvu, Me MUCYO Donacien yavuze ko ntazo NIZEYIMANA Théoneste yagombaga guhabwa kuko atari umukozi wa ADEPR ASBL; ku bijyanye n'amafaranga y'ubwiteganyirize bw'abakozi avuga ko imisanzu ibarwa hashingiwe ku mushahara w'umukozi, kandi NIZEYIMANA Théoneste akaba atari umukozi wa ADEPR ASBL. Yakomeje avuga ko kandi indishyi zikomoka ku mpanuka zitagomba kubarwa hashingiwe ku gihe NIZEYIMANA Théoneste yari asigaje gukora ngo kuko itegeko riteganya ko amasezerano y'akazi ashobora guseswa, ngo ibi bikaba bivuze ko atari gukora kugeza agiye mu zabukuru. Yasoje avuga ko ADEPR ASBL ikomeza gusaba indishyi zingana na 500.000 frw yari yasabye ku rwego rwa mbere ;

16. Me NIYIBIZI Jean Baptiste yavuze ko ku bijyanye ne kumenya ubwoko bw'amasezerano yari hagati y'uwo ahagarariye na ADEPR ASBL, umukoresha ariwe ufite inshingano z'ibanze z'uko amasezerano asobanuka. Urukiko rwamusabye gusobanura uko NIZEYIMANA Théogène yirukanywe n'uburyo byakozwe, avuga ko yirukanywe ku kazi mu magambo ngo kuko n'amasezerano ye y'umurimo yari yarakozwe mu magambo, yongeraho ko impanuka ikimara kuba umukoresha atongeye kumukenera nk'uko na Me MUCYO Donatien yabyemeye, ko ariko n'ubwo yari afite ubumuga bwa 70% yari gukomeza gukora ku kigereranyo cya 30%. Urukiko kandi rwabajije Me NIYIBIZI Jean Baptiste niba NIZEYIMANA Théogène yaragiranye na ADEPR ASBL amasezerano inshuro imwe cyangwa se niba baragiranaga amasezerano uko bamukeneye, avuga ko bagiranye amasezerano menshi, amwe yanditse andi atanditse, kandi ko amasezerano y'akazi menshi akurikiranye abyara amasezerano y'igihe kitazwi;

17. Urukiko rwabajije ababuranyi niba hari icyo bongera ku miburanire yabo, Me MUCYO Donatien ashimangira o nta masezeranyo y'akazi ADEPR SABL yagiranye na NIZEYIMANA Théogène, ko kandi nyuma y'aho agiriye impanuka batari bakeneye kumukoresha kubera ubumuga bwa 70% yari

yagize bakaba batari kwemera ko akomeza kubakorera kuri 30%. NIZEYIMANA Théoneste we yavuze ko yakoraga buri gihe, bityo akaba yaragombaga gushyirwa mu Isanduku y'Ubwiteganyirize bw'Abakozi. Urukiko rwamubajije niba yarakoreshaga ibikoresho bya ADEPR ASBL cyangwa ibye, avuga ko yakoreshaga ibikoresho bya ADEPR ASBL gusa, agakora akazi gahoraho, ko kandi n'iyo yajyaga gukorera hane nko ku Kacyiru ari umukoresha we wabaga umwoherejeyo, kandi nabwo agakoresha ibikoresho byabo;

18. Iburanisha ryarasojwe, Urukiko rutagaza ko urubanza ruzasomwa ku wa 12/06/2009, kuri uwo munsi rufata icyemezo cyo kubanza gukora iperereza mu kigo cya ADEPR ASBL kugira ngo rusabe ibisobanuro by'inyongera ku bijyanye n'amasezerano yari hagati y'impande zombi ziburana muri uru rubanza. Iperereza ryakozwe ku wa 23/06/2009, Urukiko rugeze mu kigo cya ADEPR ASBL (muri *Parc Industriel*) ahari ibarizo ryayo, ruhasanga Ndamyabera Jean Pierre akaba yaratangiye gukora muri icyo kigo hagati y'umwaka wa 1995 n'uwa 1996, guhera mu mwaka wa 2007 ashingwa ibarizo;

19. Nyuma yo kurahira yabwiye Urukiko ko ibarizo rikora mu buryo bw'abakozi badahoraho, ko iyo hagize ubasaba ko bamubariza ibintu (*commande*) bashaka umukozi bakumvikana uko abikora n'igihembo azahabwa. Urukiko rwamubajije niba bashobora gusaba umukozi wabakoreye kongera kubakorera, avuga ko bishoboka. Urukiko kandi rwamubajije niba muri iryo barizo barigeze bakoresha abakozi bahoraho, avuga byabayeho hagati y'umwaka wa 1997 na 1998 na nyuma y'aho, umwe akaba yari umubaji ushinzwe umusaruro, undi ashinzwe gucunga ibarizo;

20. Urukiko rwamubajije niba azi uwitwa NIZEYIMANA Théoneste avuga ko amuzi nk'umuntu wakoraga ibiraka mu ibarizo, ko atamuzi nk'umukozi uhoraho wa ADEPR ASBL. Urukiko rwamubajije aho abakora ibiraka bakorera, avuga ko kugeza ubu bose bakorera mu kigo bakanakoresha ibikoresho bya ADEPR ASBL, ko ariko hagize ubisaba yakorera aho ashaka ngo kuko uba ari umurimo bigengaho bawurangiza bagahembwa bakagenda, uretse ko iyo babisabye bashobora no guhabwa *avance* ku mafaranga bumvikanye. Urukiko rwamubajije niba abo bakora mu rwego rw'ibiraka bagira amasaha y'akazi bubahiriza n'aho basinya, avuga ko ntawe ubagenzura gusa harebwa niba akazi mwumvikanye karangiye mu gihe mwumvikanye kandi gakoze neza. Urukiko kandi rwamubajije niba hari uburyo ADEPR ASBL igenzura ibyo abo bantu bakora cyane cyane ko baba bakoresha ibikoresho byayo, avuga ko atari ngombwa ko umuntu abahagarara hejuru, ko bataha agaciro ibikorwa bitararangira, kandi ko nta n'inshingano abo bakozi bafite zo kubereka aho bagejeeje akazi;

21. Urukiko kandi rwamubajije uko bigenda iyo abo bantu bakora ibiraka bagiriye impanuka mu kigo, avuga ko mu gihe ahamaze nta mpanuka iraba kandi ko

no mu masezerano bagirana n'abantu ntacyo babivugaho, yongeraho ko uwahaye umuntu ikiraka ariwe wagira umutima wo kumufasha mu gihe agize impanuka, kandi ko no kuri NIZEYIMANA Théogène ariko byagenze. Yeretse kandi Urukiko igitabo abakozi bahoraho ba ADEPR ASBL bakorera i Gikondo basinyamo igihe bageze ku kazi n'igihe batashye, rusanga abakorera mu ibarizo batagisinyamo;

22. Urukiko kandi rwahasanze uwitwa Bakundukize Laurent, mwene Nteziryayo Gabriel na Mukamasabo Ancialla wavutse mu 1969, nyuma yo kurahira arubwira ko hashize amezi atatu cyangwa ane akora akazi ko kubaza, bitewe n'uko kabonetse. Yavuze kandi ko akorera mu kigo ADEPR ASBL agakoresha ibikoresho by'icyo kigo. Urukiko rwamusabye kurusobanurira gahunda ye y'akazi, avuga ko iyo hari ikiraka aza gukora, akahagera hagati ya saa moya na saa moya n'igice kandi ko ntaho asinya; ko iyo nta kiraka gihari akorera ahandi. Urukiko rwamubajije niba umukoresha we ajya amubaza impamvu yakerewe, avuga ko gukererwa bitaramubaho kuko aba ashaka ko akazi ke kihuta , kandi ko iyo yagize impamvu ituma ataboneka abivuga. Urukiko rwamubajije niba iyo ikiraka kimwe kirangiye ahita abona ikindi, avuga ko bishoboka ko kirangira nta kindi gihari, kandi ko buri gihe bagirana amasezerano y'ibyo agiye gukora, akabibereka ari uko birangiye, yongeraho ko ashobora kurangiza akazi ke mbere y'iminsi bumvikanye akigendera;

23. Urubanza rwongeye guhamagarwa ku wa 04/08/2009 ariko kuri uwo munsi ntirwaburanishwa kuko Me MUCYO Donatien yari mu butumwa bw'akazi mu mahanga, na nyuma yaho iburanisha ryarwo rikomeza gusubikwa kubera impamvu zinyuranye, ruburanishwa ku wa 22/10/2009, ababuranyi bombi bitabye kandi bahagarariwe mu buryo bumwe n'ubwavuzwe haruguru. Nyuma yo kubagezaho ibyavuye mu iperereza Urukiko rwababajije niba hari icyo babivugaho, Me MUCYO Donatien avuga ko ryagenze neza kandi rikaba ryuzuzanya n'ibyo yavuze, asaba urukiko kuzaca urubanza rushingiye ku byo rwiboneye, rugafata umwanzuro ku rwego rwa mbere urukiko rutari rufite ububasha bwo guca urubanza mu mizi, rwasanga ubwo bubasha bwari buhari urubanza rukongera rukaburanishwa ku rwego rwa mbere, rwasanga kandi urubanza rwaraburanywe mu mizi yarwo rugasuzuma ubujurire bwa ADEPR ASBL. NIZEYIMANA Théoneste we yavuze ko yakoraga ibiraka bisimburana atigeze ahagarara, atanga urugero rw'iminsi 10 yakoze mu bitaro bya Nyamata adahagaze. Me NIYIBIZI Jean Baptse umuburanira yavuze ko imvugo z'ababajijwe mu iperereza zibogamiye ku mukoresha wabo, yongeraho ko inyandiko ya ADEPR ASBL yishyura NIZEYIMANA Théogène igaragaza ko atari ukubera ubugiraneza ahubwo byari ukuzuza inshingano zayo, asoza asaba ko uwo aburanira yasubizwa uburenganzira bwe;

24. Iburanisha ryarasojwe, Urukiko rutangaza ko urubanza ruzasomwa ku wa 15/01/2010, nyuma ruriherera ruruca mu buryo bukurikira:

III. Uko Urukiko Rukuru rubibona

25. Urubanza R.C42.908/05/R.Soc0627/05/TP/KIG rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 21/11/2007, ADEPR ASBL irujuririra ku wa 27/11/07 naho NIZEYIMANA Théoneste arujuririra ku wa 17/12/2007, ubwo bujurire bwombi bukaba bukwiriye kwakirwa bugasuzumwa kuko bwatanzwe mu gihe cy'ukwezi giteganywa n'ingingo ya 163 y'Itegeko no 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, kandi bukaba buri mu bubasha bw'uru Rukiko hakurikijwe ibiteganywa n'ingingo ya 3 y'Itegeko Ngenga nimero 04/2009/OL. ryo ku wa 29/07/2009 rihindura kandi ryuzuza Itegeko Ngenga n° 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko;

26. Imwe mu mpamvu zatumye ADEPR ASBL ijurira ngo ni uko ku rwego rwa mbere Urukiko rwemeje ko habayeho amasezerano y'umurimo hagati ya ADEPR ASBL na NIZEYIMANA Théoneste kandi atari ukuri, ngo kuko ADEPR ASBL ishingiye ku biteganywa n'ingingo ya mbere n'iya gatanu z'Itegeko rishinga amategeko agenga umurimo ryakurikizwaga icyo gihe, yerekanye ko atigeze aba umukozi wayo kuko hakurikijwe yakoraga umurimo w'ubufundi akurikije ubumenyi bwe, yarangiza agakora *facture* akishyurwa, atigeze ategekwa uko yagombaga gukora, ngo bityo Urugereko rwihariye ruburanisha imanza z'umurimo rukaba nta bubasha rwari rufite bwo kuburanisha ikirego cye. Urukiko rurasanga iyi mpamvu iriyo igomba kubanza gusuzumwa, kugira ngo rumenye niba koko ADEPR ASBL na NIZEYIMANA Théoneste baragiranye amasezerano y'umurimo;

27. Mu miburanire ye NIZEYIMANA Théoneste avuga ko yagiranye na ADEPR ASBL amasezerano y'umurimo anyuranye kandi akurikiranye, amwe yanditse andi atanditse, ngo hakurikijwe ibiteganywa n'ingingo ya 9 mu gika cyayo cya nyuma, y'Itegeko no 51/2001 ryo ku wa 30/12/2001 rishinga amategeko agenga umurimo ryakurikizwaga icyo gihe, ayo masezerano akaba agomba gufatwa nk'ay'igihe kitazwi. Ibimenyetso ashingiraho yemeza ko yari yaragiranye na ADEPR ASBL amasezerano y'umurimo ni uko ngo bari barasezeranye ko azakora akazi gahoraho ko kubaza, akagakorera mu ibarizo ryayo kandi agakoresha ibikoresho byayo kandi akaba yarakoraga buri gihe, ko n'iyo yajyaga gukorera hanze ari umukoresha wabaga amwohereje. Avuga kandi ko yahabwaga akazi, nko gukora intebe 100, yazirangiza agahabwa akandi, kandi ko guhagarika akazi *(interruption)* byashoboraga kubaho biturutse kuri ADEPR ASBL. Ikindi ashingiraho yemeza ko yari umukozi wa ADEPR ASBL ugengwa n'amasezerano y'umurimo ni inyandiko ziri muri dosiye avuga ko zigaragaza ko yahembwaga umushahara, no kuba ADEPR SABL yaramwishyuye 1.080.000 frw ubwo yagiraga impanuka y'akazi;

28. Muri dosiye harimo inyandiko yo ku wa 19/09/2003 yiswe Amasezerano y'akazi hagati ya UPG (*Unité de Production et de Gestion*) na NIZEYIMANA Théoneste, igaragaza ko uyu yemeye gukorera ADEPR ASBL *sous plafond* yo kwa Thomas ku Kacyiru kuri 2.500 frw kuri buri metero kare imwe, igihembo cyose cy'ako kazi kikaba cyaragombaga kungana na 139.125 frw, ako kazi kakaba karagombaga kuba karangiye ku wa 24/10/2003. Muri dosiye kandi harimo inyandiko zinyuranye zanditswe na NIZEYIMANA Théoneste ku matariki atandukanye mu mwaka wa 2002 n'uwa 2003 yishyuza amafaranga y'akazi babaga basezeranye ko akora kandi akaba yarabaga yakarangije, cyangwa se asaba guhabwa *avance* kuri ayo mafaranga mu gihe akazi kabaga katararangira. Izo nyandiko zigaragaza ko yabaga yasezeranye na ADEPR ASBL kuyikorera utubati, *plafond*, inzugi, ameza, *comptoire,* kubaka ubwiyuhagirir n'ibindi. Muri dosiye kandi harimo izindi nyandiko zitwa *Bon de sortie de caisse*, zigaragaza ko ADEPR ASBL yamuhaga *avance* yabaga yasabye, n'izindi zigaragaza ko yamwishyuraga igihembo cy'akazi babaga bumvikanye. Urukiko rurasanga izo nyandiko zose zimaze kuvugwa haruguru, zigaragaza ko NIZEYIMANA Théoneste yapatanaga na ADEPR ASBL kuyikorera igikorwa iki n'iki, nko gukora akabati, gukora ameza, kubaka ubwiyuhagiriro, gukora inzugi, bakumvikana igihe ako kazi kagomba kurangirira n'igihembo azahabwa, ako kazi karangira agahabwa igihembo cye bitabujije ko yashoboraga no guhabwa *avance* kuri icyo gihembo mbere y'uko akazi karangira;

29. Ingingo ya 5 y'Itegeko no 51/2001 ryo ku wa 30/12/2001 rishinga amategeko agenga umurimo ryavuzwe haruguru ryakurikizwaga icyo gihe, ivuga ko amasezerano y'umurimo ari agirwa hashingiwe ku bwumvikane hagati y'umukoresha n'umukozi, umukozi akemera gukorera umukoresha kandi agategekwa nawe, umukoresha nawe akemera kumuhemba umushahara bumvikanyeho. Ibikubiye muri iyi ngingo bigaragaza ko amasezerano y'umurimo agirwa hagati y'umukozi n'umukoresha. Ingingo ya 2 y'Itegeko no 51/2001 ryo ku wa 30/12/2001 ryavuzwe haruguru ivuga ko umukozi ari umuntu wese wemeye gukorera undi ku gihembo, akagengwa kandi agategekwa nawe. Hakurikijwe ibivugwa muri iyi ngingo, kimwe mu by'ingenzi kugira ngo umuntu yitwe umukozi w'undi ni uko agomba kuba agengwa nawe kandi agategekwa nawe. Ibyo binashimangirwa mu ngingo ya 53 y'iryo tegeko ivuga ko mu byo umukoresha ategetswe kubahiriza harimo kuyobora umukozi kandi akareba uko akazi gakorwa mu buryo budatesheje umukozi icyubahiro, n'ingingo ya 54 y'iryo tegeko ivuga ko mu byo umukozi ategetswe gukora harimo gukora akurikije amategeko ahabwa n'umukoresha cyangwa umuhagarariye hagamijwe kurangiza umurimo ashinzwe no gukurikiza amategeko y'ishami ry'ikigo, ay'ikigo cyangwa y'ahandi hantu agomba gukorera. Izi ngingo ariko nta bindi bisobanuro zitanga bigaragaza icyo *kugengwa, kuyoborwa no gutegekwa* n'umukoresha bivuze. Niyo mpamvu mu kubisobanura Urukiko rwifashisha inyandiko z'abahanga mu mategeko agenga umurimo. *Jean Pelissier, Alain Supiot na Antoine Jeammaud* mu

gitabo banditse yitwa *Droit du travail, 22eme Edition, Dalloz, 1353pp*, ku rupapuro rwa 185 bavuga ko mu rubanza "*Sociétè Générale*"rwo ku wa 16/11/1996, Urukiko rusesa imanza rwagize ruti: „*Le lien de subordination est caractérisé par l'exécution d'un travail sous l'autorité d'un employeur qui a le pouvoir de donner des ordres et des directives, d'en contrôler l'exécution et de sanctionner les manquements de son subordonnées*". Ibi bisobanuye ko kuba umukozi agengwa kandi agategekwa n'umukoresha bivuze ko umukoresha aba afite ububasha bwo kumuha amategeko n'amabwiriza akurikiza mu kazi ke, ububasha bwo kugenzura uko ako kazi gakorwa, n'ubwo kumuhana mu gihe hari ibyo atubahirije;

30. Abo bahanga mu mategeko kandi bavuga ko ibindi bigaragaza ko umukozi agengwa, ayoborwa kandi agategekwa n'umukoresha, ari ukuba hari amasaha y'akazi ahoraho yagenwe n'umukoresha agomba kubahirizwa n'umukozi, cyangwa se kuba umukoresha ashobora guhamagara umukozi igihe cyose ashakiye (reba igitabo cyavuzwe haruguru ku rupapuro rwa 197) :"*La subordination se marquera concrètement par l'obligation faite au travailleur de demeurer à la disposition de l'employeur confomément à l'horaire établi par ce dernier.........Lorsque la prestation n'est pas effectuée de façon continue suivant un horaire régulier, la subordination peut résulter de l'obligation de répondre à toute convocation du créancier de cette prestation...............Quand le travailleur est tenu de se rendre au lieu assigné et suivant un horaire imposé, le juge admettra aisément qu'il ya subordination juridique, donc contrat de travail. Cette acte de soumission est lui même significatif, et cette localisation à heure fixes parait constituer une condition de l'exercice effectif par l'employeur de son pouvoir de direction et de contrôle*";

31. Urukiko rurasanga nta kigaragaza ko mu gukora akazi ke nk'uko kavuzwe haruguru, NIZEYIMANA Théoneste yahabwaga na ADEPR ASBL amategeko n'amabwiriza agomba gukurikiza, cyangwa se ko ADEPR ASBL yagenzuraga uko agakora cyangwa se ko yamuhanaga mu gihe yabaga hari ibyo atubahirije, cyangwa se ko ibyo byashobokaga hakurikijwe amasezerano babaga bagiranye. Nta kigaragaza kandi ko nawe yagombaga kugaragariza ADEPR ASBL uburyo agakora mbere y'uko igihe bumvikanye kirangira. Nta n'ikigaragaza ko hari amasaha y'akazi ahoraho yari yaragenwe na ADEPR ASBL NIZEYIMANA Théoneste yagombaga kubahiriza, nko kuba hari aho yasinyaga ageze ku kazi cyangwa se atashye. Ibyo kandi bishimangirwa n'imvugo y'umukozi wa ADEP ASBL ukorera i Gikondo (muri *Parc Industriel*) aho iryo barizo riri, witwa Ndamyabera Jean Pierre wabwiye Urukiko ko azi uwitwa NIZEYIMANA Théoneste nk'umuntu wakoraga ibiraka muri iryo barizo; kandi ko ibyo biraka biba ari umurimo ababihawe bigengaho ntawe ubagenzura, gusa hakarebwa niba akazi mwumvikanye karangiye mu gihe mwumvikanye kandi gakoze neza, bakarangiza bagahembwa bakagenda; ko atari ngombwa ko ADEPR ASBL ibahagarara hejuru, kandi ko itaha agaciro ibikorwa bitararangira, ndetse ko n'abo bahawe ibiraka nta nshingano baba bafite zo kwereka ADEPR ASBL aho bagejeje akazi bakora. Binashimangirwa

kandi n'imvugo ya Bakundukize Laurent ukorera muri iryo barizo rya ADEPR ASBL wabwiye Urukiko ko agirana na ADEPR ASBL amasezerano y'ibyo agiye gukora, akaza gukora iyo habonetse ikiraka cyaba nta gihari agakorera ahandi, kandi ko ntaho asinya ko ahageze. Yavuze kandi ko bishoboka ko ikiraka kimwe kirangira nta kindi gihari; ko yerekana ibyo yakoze ari uko birangiye, kandi ko ashobora kurangiza akazi ke mbere y'iminsi bumvikanye bakamuhemba akigendera;

32. Urukiko rurasanga kandi kuba muri dosiye harimo inyandiko zivuga ko NIZEYIMANA Théoneste yahabwaga *avance sur salaire* ubwabyo byonyine bidahagije kugira ngo hemezwe ko yari umukozi ugengwa n'amasezerano y'umurimo. Inyandiko zavuzwe haruguru ziri muri dosiye NIZEYIMANA Théoneste yanditse yishyuza ibihembo bye n'izakozwe na ADEPR ASBL zigaragaza ko ibyo bihembo yabihawe, zigaragaza ko NIZEYIMANA Théoneste yahembwaga ari uko akazi yasezeranye gukora karangiye. Ntiyahembwaga nyuma y'igihe iki n'iki kizwi yumvikanyeho na ADEPR ASBL, cyaba umunsi, icyumweru, ukwezi, etc. N'ubwo umushahara nk'ikiguzi cy'umurimo wakozwe, waba utangwa nyuma y'igihe impamde zombi zumvikanyeho (*rémunération au temps*) cyangwa se waba utangwa igihe akazi impande zombi zumvikanye karangiye (*rémunération à la tâche)*, ari kimwe mu bigize amasezerano y'umurimo, Urukiko rurasanga wo wonyine udahagije kugira ngo hemezwe ko amasezerano hagati y'impande ebyiri ari ay'umurimo. Abahanga mu mategeko bavuzwe haruguru, ku rupapuro rwa 203 rw'igitabo cyabo nacyo cyavuzwe haruguru bavuga ko umushahara utanzwe nyuma y'igihe kizwi cyumvikanweho n'impande zombi kigaragaza ko uruhande rumwe rutegekwa n'urundi, ngo kuko bene uwo mushahara utangwa hashingiwe ku gihe umukozi amaze akora, hatitawe ku byakozwe, wumvikanisha ko uhemba agenzurira hafi umurimo ukorwa; bavuga ko kuba umushahara utangwa hashingiwe ku murimo wakozwe umucamanza atabishingiraho yemeza ko amasezerano hagati y'impande ebyiri ari ay'umurimo, ngo kuko n'ubwo bene uwo mushahara ushobora guhabwa umukozi ugengwa n'amasezerano y'umurimo, ushobora no guhabwa abandi bantu batagengwa n'amasezerano y'umurimo mu kazi kabo nk'aba *entrepreneur, agent commercial mandataire* (......*La rémunération au temps implique plus certainement la subordination: celui qui rémunère à la mesure du temps passé au travail, sans considération de la tâche accomplie, entend surveiller de près l'activité. En revanche, la rémunération à la tâche, à la commission ou au pourcentage ne constitue pas un facteur décisif car elle peut concerner un salarié, un entrepreneur ou un agent commercial mandataire*). Urukiko rero rurasanga hakurikijwe ibyo bisobanuro, kuba NIZEYIMANA Théoneste yarahemberwaga akazi yakoze byonyine bidahagije kugira ngo hemezwe ko yagengwaga n'amasezerano y'umurimo;

33. Ku bijyanye no kuba NIZEYIMANA Théoneste yarakoreraga mu ibarizo rya ADEPR ASBL kandi agakoresha ibikoresho byayo, Urukiko rurasanga nabyo byonyine bidahagije kugira ngo hemezwe ko yagengwaga, yayoborwaga cyangwa yategekwaga na ADEPR ASBL mu kazi ke, bityo ko yagengwaga n'amasezerano y'umurimo, kuko bishobora guterwa n'impamvu zinyuranye, zirimo kuba ugomba gukora akazi adafite ku giti cye aho yagakorera cyangwa se ibikoresho bikenewe kugira ngo gakorwe neza, ariko bitabujije ko afite ubumenyi bwo kugakora neza;

34. Urukiko rurasanga hakurikijwe ibisobanuro byose bimaze gutangwa haruguru, nta kigaragaza ko ibyo amategeko ateganya bituma habaho amasezerano y'umurimo hagati y'impande ebyiri byubahirijwe mu masezerano NIZEYIMANA Théoneste yagiranya na ADEPR ASBL, bityo rero hakaba hagomba kwemezwa ko nta masezerano y'umurimo yabayeho hagati y'izo mpande zombi. Nta n'ubwo yakwitwaza ko ADEPR ASBL yamwishyuye amafaranga y'impanuka yagize igihe yakoraga akazi bumvikanye ngo avuge ko bigaragaza ko yari umukozi wayo ugengwa n'amasezerano y'umurimo kuko nyine ayo masezerano ntayari ariho nk'uko byagaragajwe haruguru;

35. Ingingo ya 82 y'Itegeko ngenga no 07/2004 ryo ku wa 25/04/2004 rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi ryujuwe, ryakurikizwaga igihe urubanza rwajuririwe rwacibwaga, igira iti:
Hatabangamiwe izindi ngingo z'iri tegeko ngenga, ingereko z'umurimo ziburanisha:
   1. Impaka z'abantu ku giti cyabo cyangwa zihuriweho n'abantu benshi, zivutse biturutse ku murimo hagati y'abakoresha bikorera ku giti cyabo n'abakozi babo, zirebana na kontaro y'akazi cyangwa kontaro yo kwitoza akazi, amasezerano rusange cyangwa ibyemezo by'ubuyobozi biyasimbura;
   2. Impaka zivutse ku bw'umurimo hagati y'abakozi n'abakoresha bikorera ku giti cyabo;
   3. ...." Ibyo kandi ni nabyo biteganywa n'ingingo ya 81 y'Itegeko Ngenga no 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko rikurikizwa ubu, ku bijyanye n'ingereko zihariye ziburanisha imanza z'umurimo;

36. Urukiko rurasanga rero hakurikijwe ibivugwa muri izo ngingo zombi, ikirego cya NIZEYIMANA Théoneste kitari mu bubasha bw'Urugereko rwihariye rw'Urukiko Rwisumbuye rwa Nyarugenge, ruburanisha imanza z'umurimo, kuko nk'uko byasobanuwe haruguru nta masezerano y'umurimo yabayeho hagati ye na ADEPR ASBL, bikaba rero byumvikana ko mu by'ukuri ikiburanwa muri uru rubanza atari impaka zishingiye ku masezerano y'umurimo, bityo ikirego cye kikaba kitaragombaga kwakirwa n'urwo rugereko, kubera iyo mpamvu urubanza rwajuririwe rukaba rugomba kuvaho;

37. Urukiko rurasanga atari ngombwa gusuzuma izindi mpamvu z'ubujurire zatanzwe na ADEPR ASBL, kimwe n'ubujurire bwa NIZEYIMANA Théoneste kuko urubanza bari bajuririye ruvuyeho;

38. Urukiko rurasanga hakurikijwe ibivugwa mu ngingo ya 107 mu gika cyayo cya nyuma, y'Itegeko nimero 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ikirego cya ADEPR ASBL kigamije kwiregura, gisaba indishyi kubera *action téméraire et vexatoire* kidakwiriye kwakirwa ngo gisuzumwe kuko ikirego cy'iremezo kitakiriwe ;

IV. Icyemezo cy'Urukiko Rukuru

39. Urukiko Rukuru rwemeje kwakira Ubujurire bwa ADEPR ASBL kuko bwatanzwe mu gihe no mu buryo bikurikije amategeko;

40. Urukiko Rukuru rwemeje ko ubwo bujurire bufite ishingiro;

41. Urukiko Rukuru rwemeje ko nta masezerano y'umurimo yabayeho hagati ya NIZEYIMANA Théoneste na ADEPR ASBL;

42. Urukiko Rukuru rwemeje ko ikirego cya NIZEYIMANA Théoneste kitagombaga kwakirwa n'Urugereko rwihariye rw'Urukiko Rwisumbuye rwa Nyarugenge ruburanisha imanza z'umurimo kuko kitari mu bubasha bwarwo;

43. Urukiko Rukuru rutegetse ko urubanza R.C42.908/05/R.Soc0627/05/TP/KIG rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 21/11/2007 ruvuyeho;

44. Urukiko Rukuru rutegetse NIZEYIMANA Théoneste gutanga amagarama y'urubanza angana na 19.150 frw, atayatanga mu gihe giteganywa n'amategeko ayo mafaranga agakurwa mu mutungo we ku ngufu za Leta;

RUKIJIJWE RUTYO KANDI RUSOMEWE MU RUHAME KU WA 15/01/2010 N'URUKIKO RUKURU RUGIZWE NA RUTAZANA ANGELINE, UMUCAMANZA, AFASHIJWE NA NYIRANEZA FORTUNEE, UMWANDITSI W'URUKIKO.

Sé	Sé
RUTAZANA Angéline	NYIRANEZA Fortunée
Umucamanza	**Umwanditsi**