

UMUJYI WA KIGALI v. MACO MUSONI

[Rwanda URUKIKO RW'UBUJURIRE – RADA
00005/2018/CA (Mukanyundo, P.J., Mukandamage na
Kanyange J.) 05 Ukwakira 2018]

Amasezerano – Amasezerano y'ubugure –Umutungo utimukanwa – Ugushikiriza (délivrance) – Gutanga ibintu byimukanwa byagurishijwe bikajya mu bubasha no mu butunzi bw'umuguzi (délivrance) biba iyo habaye itangwa nyakuri ry'ikintu, cyangwa hatanzwe imfunguzo z'inyubako birimo, cyangwa se hakurikijwe ukwemera kw'abagiranye amasezerano, iyo ugutangwa kw'ikintu kudashobora kuba umunsi w'igurisha cyangwa se niba ugura yari asanzwe agifite ku bundi buryo ubwo ari bwo bwose.

Amategeko agenga inshingano – Uburyozwe – Uburangare – Ushinzwe kurinda n'ukwita ku bintu aryozwa ibyangijwe nibyo ashizwe kwitaho mugihe biba byatewe n'uburangare bwe.

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Kwiregura – Uwireguza impamvu itunguranye kandi idashobora kwirindwa (cas de force majeure) – Uwireguza impamvu itunguranye kandi idashobora kwirindwa (cas de force majeure) agomba kugaragaza ko ingaruka zayo zidashoboraga kwirindwa.

Incamake y'ikibazo : Nyuma yaho igiti kiri ku muhanda Remera – Gishushu cyigwiriye imodoka minibus Hiace RAA 089 K ikangirika, nyirayo yareze Umujyi wa Kigali mu Rukiko Rukuru asaba indishyi zikubiyemo yo gukoresha imodoka

amafaranga iyo modoka yingizaga buri muni mu gihe cyose yamaze ihagaze n'amafaranga y'ikurikiranarubanza. Urwo Rukiko rwaciye urubanza rwemeza ko igiti cyawo cyagwiriye iyo modoka ikangirika, bityo, ukaba ugomba kuryozwa ibyangiritse kuri iyo modoka, rumugenera n'amafaranga iyo modoka yagombaga kuba yarinjije iyo iza kuba ikora.

Umujyi wa Kigali wajuririye urwo rubanza mu Rukiko rw'Ikirenga, nyuma yivugurura ry'inkiko rwimurirwa mu Rukiko rw'Ubujurire. Aho uvuga ko ubujurire bwayo bushingiye ku mpanvu ko Urukiko rubanza rutasuzumye niba imodoka asabira indishyi ari iy'awareze cyangwa ari iy'undi muntu, ko rutesenguye impamvu y'iyi mpanuka ngo rubone ko udakwiye kuryozwa impanuka yatewe n'impamvu itunguranye kandi itawuturutseho (cas de force majeure) kandi ko rwagennye indishyi nyinshi zidakwiye.

Mu kwiregura nyiri modoka avuga ko yatanze ibimenyetso bigaragaza ko ariwe nyiri imodoka ko kandi nta wundi muntu uyikurikiranye, igiti cyagwiriye iyo modoka ari icy'Umujyi wa Kigali, cyaguye ku uburangare bwa nyiracyo kuko cyari gishaje kandi kititabwagaho, ko kandi indishyi zagenwe n'Urukiko rubanza zikwiye kongerwa kubera ko n'ubu imodoka itarakorwa.

Incamake y'icyemezo: 1. Gutanga ibintu byimukanwa byagurishijwe bikajya mu bubasha no mu butunzi bw'umuguzi (délivrance) biba iyo habaye itangwa nyakuri ry'ikintu, cyangwa hatanzwe imfunguzo z'inyubako birimo, cyangwa se hakurikijwe ukwemera kw'abagiranye amasezerano, iyo ugutangwa kw'ikintu kudashobora kuba umunsi w'igurisha cyangwa se niba ugura yari asanzwe agifite ku bundi buryo ubwo ari bwo bwose, bityo n'ubwo mu guhererekanya imodoka

yagize impanuka hagati y'abayiguze mu bihe bitandukanye, "carte jaune" yayo itaragiye ihindurirwa amazina ngo yandikweho uguze, bigaragara ko iyo modoka ari iyo uregwa, kuko yayiguze, ikaba yaragize impanuka ariwe uyitunze n'ibyangombwa byayo..

2. Ushinzwe kurinda n'ukwita ku bintu ariyozwa ibyangijwe n'ibyo ashizwe kwitaho mugihe biba byatewe n'uburangare bwe, bityo Umujyi wa Kigali ugomba kwishyura amafaranga yo gukoresha imodoka yangiritse kubera impanuka yatewe n'igiti cyayo cyo ku muhanda n'indishyi z'akababaro.

3. Uwireguza impamvu itunguranye kandi idashobora kwirindwa agomba kugaragaza ko ingaruka zayo zitashoboraga kwirindwa.

**Ubujurire bufite ishingiro kuri bimwe.
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe.
Amagarama y'urubanza aherereye k'Umujyi wa Kigali.**

Amategeko yashingiweho :

Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 12,152

Itegeko N° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 2.

Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano (CCLIII), ingingo ya 260, igika cya

1

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Maco Musoni Oscar Léonce yareze Umujyi wa Kigali mu Rukiko Rukuru asaba indishyi zingana na 24.450.000 Frw, zikubiyemo 3.304.000 Frw yo gukoresha imodoka ye minibus Hiace RAA 089 K yagize impanuka ku wa 09/09/2010 itewe n'igiti cyo ku muhanda Remera – Gishushu cyayigwiriye ikangirika, 30.000 Frw ku muni iyo modoka yakoreraga mu gihe cyose yamaze ihagaze kuva ku itariki ya 10/09/2010 kugeza urubanza ruciwe, n'amafaranga y'ikurikiranarubanza.

[2] Ku wa 19/04/2013, Urukiko Rukuru rwaciye urubanza n° RAD 0108/11/HC/KIG Umujyi wa Kigali udahari, rwemeza ko igiti cyawo cyagwiriye imodoka ya Maco Musoni Oscar Léonce ikangirika cyane nk'uko bigaragazwa n'inyandikomvugo y'impanuka (procès verbal d'accident) yo ku wa 17/09/2010 na "devis de réparation", bityo ukaba ugomba kuryozwa ibyangiritse kuri iyo modoka hashingiwe ku biteganywa n'ingingo ya 260 y'Itegeko ryo ku wa 30/07/1888 ryerekeye imirimo nshinganwa cyangwa amasezerano (CCLIII), maze ukamuha 14.025.000 Frw imodoka yagombaga kuba yarinjije iyo iza kuba ikora, agenwe mu bushishozi, abariwe kuri 15.000Frw ku muni mu gihe cy'iminsi 935, amafaranga angana na 3.304.000 Frw yo kuyikoresha n'indishyi z'akababaro zingana na 200.000 Frw zo kubura imodoka muri icyo gihe cyose, nazo zigenwe mu bushishozi.

[3] Umujyi wa Kigali wajuririye urwo rubanza mu Rukiko rw'Ikirenga ruhabwa n° RADA 0001/14/SC, nyuma

rwimurirwa mu Rukiko rw'Ubujurire hashingiwe ku biteganywa n'ingingo ya 105 y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, maze ruhabwa n° RADA 00005/2018/CA.

[4] Mu bujurire bwawo, Umujyi wa Kigali uvuga ko Urukiko Rukuru rwageneye indishyi Maco Musoni Oscar Léonce rudasuzumye niba imodoka asabira indishyi ari iye cyangwa ari iy'undi muntu, ko rutasesenguye impamvu y'iyi mpanuka ngo rubone ko udakwiye kuryozwa impanuka yatewe n'impamvu itunguranye kandi itawuturutseho (cas de force majeure), ko ndetse rwagenyeye indishyi nyinshi zidakwiye, naho MACO MUSONI Oscar Léonce akavugaga ko yatanze ibimenyetso bigaragaza ko ariwe nyiri imodoka ko kandi nta wundi muntu uyikurikiranye, ko igiti cyayigwiriye ari icy'Umujyi wa Kigali kubera uburangare wagize kuko cyari gishaje, ko kandi indishyi zagenwe n'Urukiko Rukuru zikwiye kongerwa kubera ko n'ubu imodoka itarakorwa.

[5] Urubanza rwaburanishijwe mu ruhame ku wa 12/09/2018, Umujyi wa Kigali uhagarariwe na Me Kayiranga Rukumbi Bernard, naho Maco Musoni Oscar Léonce ahagarariwe na Me Bizimana Shoshi Jean Claude.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. Ubujurire bw'Umujyi wa Kigali

a. Kumenya niba Maco Musoni Oscar Léonce yararegeye indishyi zikomoka ku mpanuka y' imodoka mu Rukiko Rukuru kandi adafite ububasha bwo kuziregera.

[6] Me Kayiranga Rukumbi Bernard, uburanira Umujyi wa Kigali, avuga ko ikirego gisaba indishyi cyatanzwe na Maco Musoni Oscar Léonce mu Rukiko Rukuru kitagombaga kwakirwa, ko hagombaga kubanza gusuzumwa niba koko imodoka azisabira ari iye. Akomeza avuga ko mu nyandikomvugo y'impanuka (procès-verbal d'accident) ku rupapuro rwa 4 hagaragaramo ko nyiri imodoka yitwa Ntare Mathias, ko icyari kugaragaza nyirayo ari "carte jaune", ko ariko Maco Musoni Oscar Léonce ntayo yatanze muri urwo Urukiko, hakaba rero nta kigaragaza ukuntu iyo modoka yanditse kuri Ntare Mathias yabaye iya Twagirimana Emmanuel mu buryo bwemewe n'amategeko, ku buryo nawe yashoboraga kuyigurisha maco Musoni Oscar Léonce nk'uko biri mu masezerano y'ubugure.

[7] Asanga rero mu gihe icyo kimenyetso kiranga imodoka kitagaragajwe, hashobora kuba uburiganya, Maco Musoni Oscar Léonce akiyitirira imodoka y'undi muntu, kuko hari n'igihe umutungo ushobora kubaho udafite nyirawo (bien abandonné), hakaba rero hadakwiye gushingirwa ku ihame ry'uko ufite umutungo wimukanwa ari we nyirawo.

[8] Me Bizimana Shoshi Jean Claude, uhagarariye Maco Musoni Oscar Léonce, avuga ko muri dosiye harimo amasezerano agaragaza ko yaguze imodoka na Twagirimana Emmanuel ku wa 24/07/2010, ko ndetse Ntare Mathias ugaragara kuri "carte jaune" ko ari nyirayo yiyemereye mu nyandiko ye yo ku wa 09/01/2018 ko iyo modoka itakibarizwa mu mutungo we, kuko yayigurishije na Niyonzima Théogène,

waje nawe kuyigurisha na Twagirimana Emmanuel, ko kandi bisanzwe ko umuntu yagura imodoka yanditse ku wundi akayitunga nta nkomyi. Asanga rero imodoka yakoze impanuka ari iya Maco Musoni Oscar Léonce, ko kandi ari Ntare Mathias cyangwa Twagirimana Emmanuel ntawigeze aza kuyiburana ngo habe hariho impaka.

[9] Akomeza avuga ko “carte jaune” atari cyo kimenyetso kiranga nyiri imodoka n’ubwo ishobora kwifashishwa, ko ariko mu gihe habayeho ubugure, ugura n’ugurisha bakumvikana ku giciro no ku kigurwa, amasezerano y’ubugure aba yuzuye, ko rero guhinduza imodoka muri Rwanda Revenue Authority ari umuhango gusa utuma hamenyekana uzatanga umusoro w’imodoka.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 2 y’Itegeko N° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo iteganya ko *“ikimenyetso cyo mu rubanza ni uburyo bukoreshwa kugira ngo ukuri kw’ibyabaye kugaragare”*. Naho ingingo ya 12, igika cya 1, y’Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsu iteganya ko *“Urega agomba agomba kugaragaza ibimenyetso by’ibyo aregera. Iyo abibuze, uwarezwe aratsinda”*.

[11] Ku byerekeye inshingano z’umugurisha, ingingo ya 283 y’Igitabo cya gatatu cy’urwunge rw’amategeko y’imbenezamubano (CCLIII) iteganya ko gutanga ibintu byimukanwa byagurishijwe bikajya mu bubasha no mu butunzi bw’umuguzi (délivrance) biba iyo habaye itangwa nyakuri

ry'ikintu, cyangwa hatanzwe imfunguzo z'inyubako birimo, cyangwa se hakurikijwe ukwemera kw'abagiranye amasezerano, iyo ugutangwa kw'ikintu kudashobora kuba umunsi w'igurisha cyangwa se niba ugura yari asanzwe agifite ku bundi buryo ubwo ari bwo bwose.

[12] Nk'uko bigaragara mu nyandiko ziri muri dosiye, imodoka minibus Toyota Hiace RAA 089 K yakoze impanuka ku wa 09/09/2010 yanditse kuri Ntare Mathias, uyu akaba yaranditse hamwe n'umugore we Dusabimana Hawa bavuga ko iyo modoka itakiri mu mutungo wabo kuko bayigurishije Niyonzima Théogène, nawe aza kuyigurisha Twagirimana Emmanuel nk'uko amasezerano bagiranye ku wa 30/09/2005 abisobanura, nyuma igurwa na Maco Musoni Oscar Léonce nk'uko amasezerano yo ku wa 24/07/2010 abigaragaza, ikaba rero yarakoze impanuka ayimaranye hafi amezi abiri.

[13] Urukiko rurasanga n'ubwo mu guhererekanya imodoka minibus Toyota Hiace RAA 089 K hagati y'abayiguze mu bihe bitandukanye, "carte jaune" yayo itaragiye ihindurirwa amazina ngo yandikweho uguze, ibimenyetso Maco Musoni Oscar Léonce yatanze bigaragaza ko ari iye, kuko yayiguze, ikaba yaragize impanuka ariwe uyitunze n'ibyangombwa byayo.

[14] Urukiko rurasanga kandi, Umujyi wa Kigali nta kimenyetso watanze kigaragaza ko, ubwo iyo modoka yagiraga impanuka, yari idafite nyirayo ku buryo Maco Musoni Oscar Léonce yayiyitiriye.

[15] Hashingiwe rero ku ngingo z'amategeko zavuzwe haruguru no ku bisobanuro bimaze gutangwa, Urukiko rurasanga ntacyari kubuza Maco Musoni Oscar Léonce kuregera indishyi zikomoka ku mpanuka y'imodoka minibus Toyota

Hiace RAA 089 K nk'uko yabikoze, ngo anzihabwe mu gihe zaba zifite ishingiro.

b. Kumenya niba Umujyi wa Kigali utagomba kuryozwa indishyi z'impanuka yatewe n'igiti cyangije imodoka ya Maco Musoni Oscar Léonce

[16] Me Kayiranga Rukumbi Bernard, uburanira Umujyi wa Kigali, avuga ko Urukiko Rukuru rwageneye indishyi Maco Musoni Oscar Léonce rudasesenguye neza impamvu yateje impanuka, ngo rwumve niba koko Umujyi wa Kigali waryozwa impanuka yatewe n'imvura yaguye irimo umuyaga mwinshi igatuma igiti cyo ku muhanda kigwa.

[17] Akomeza avuga ko adahakana ko igiti cyagwiriye imodoka ari icy'Umujyi wa Kigali, ko ariko uburyozwe bwawo bwabaho ari uko hagaragaye ko utacunze neza ibiti byawo, ko rero icyabaye atari ukutabyitaho, ahubwo impanuka yatewe n'impamvu Umujyi wa Kigali utashoboraga guteganya cyangwa kwirinda (cas de force majeure), ko rero hashingiwe ku biteganywa n'ingingo ya 46 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbenezamubano (CCLIII) yakurikizwaga icyo gihe, Umujyi wa Kigali udakwiye kuryozwa indishyi izo arizo zose.

[18] Me Bizimana Shoshi Jean Claude, uhagarariye Maco Musoni Oscar Léonce, avuga ko uburyozwe bw'Umujyi wa Kigali bushingiye ku biteganywa n'ingingo ya 260 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbenezamubano (CCLIII), kubera ko igiti cyagwiriye imodoka ye ari icyawo, kikaba cyaraguye kubera uburangare bwawo ndetse no kutacyitaho (manque d'entretien). Asobanura ko umunsi impanuka iba hari haguye imvura irimo n'umuyaga, ko ariko

nta kiza cyabayeho, kuko ibiti byose mu muji bitaguye, cyangwa se ngo hagire ikintu cyangirika kidasanzwe, ko haguye gusa ibiti bikuze bitasazuwe, ko ndetse nyuma y'iyi mpanuka ibiti byari bisigaye byatemwe byose hasigara gusa ibikiri bito. Asanga rero uwo muyaga usanzwe wabayeho icyo gihe utabarirwa mu mpamvu zitunguranye kandi zitashoboraga kwirindwa (cas de force majeure) nk'uko bisobanurwa n'umuhanga mu mategeko O. De Grandcourt¹.

UKO URUKIKO RUBIBONA

[19] Ingingo ya 260, igika cya 1, y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbenezamubano (CCLIII) iteganya ko Umuntu ntaryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangijwe n'ibikorwa by'abantu yishingiye cyangwa n'ibintu ashinzwe kurinda.

[20] 20. Nk'uko bigaragara mu miburanire yabo, ababuranyi bemeranya ko igiti cyagwiriye imodoka minibus Toyota Hiace RAA 089 K ya Maco Musoni Oscar Léonce nk'uko byasobanuwe haruguru, ari icy'Umujyi wa Kigali, ko kandi umunsi impanuka iba hari haguye imvura irimo umuyaga. Icyo batumvikanaho ni ukumenya niba umuyaga wagushije icyo giti wafatwa nk'impamvu itunguranye kandi itarashoboraga kwirindwa (cas de force majeure) yatuma Umujyi wa Kigali utaryozwa indishyi izo ari zo zose zikomoka kuri iyo mpanuka.

[21] Abahanga mu mategeko, basobanura ko ikiza (catastrophe naturelle) gitandukanye n'impamvu itunguranye

¹ O. De Grandcourt, La responsabilité du propriétaire d'arbres, in Revue Forestière Française.

kandi idashobora kwirindwa (cas de force majeure), ko kuba hari n'icyemezo cy'ubuyobozi kigaragaza ko habayeho imvura idasanzwe, bidasobanuye byanze bikunze ko habayeho impamvu itunguranye kandi idashobora kwirindwa, ko ariko byombi bigira ingaruka zimwe². Bakomeza basobanura ko umuyaga ushobora kuba impamvu itunguranye kandi idashobora kwirindwa iyo hatashoboye kwirindwa ingaruka zawo kandi bikaba bitarashobokaga guteganya ko uri bubeho. Ugomba kuba ari umuyaga ukomeye cyane mu gace wabayemo cyangwa se ingaruka zawo zitashoboraga kwirindwa³.

[22] Ku bijyanye n'uru rubanza, Urukiko rurasanga, uretse kuvuga gusa ko ku wa 09/09/2010 haguye imvura irimo umuyaga watumye igitigi cyo ku muhanda kigwira imodoka, Umujyi wa Kigali nta kimenyetso utanga kigaragaza ko habaye umuyaga udasanzwe, ko sevisi z'iteganyagihe zitashoboraga kuwuteganya kugira ngo hirindwe ingaruka zawo, cyangwa se

² Philippe Le Tourneau, Cyril Bloch, Jérôme Julien, Christophe Guettier, Didier Krajieski, André Giudicelli et Matthieu Poumarède, Droit de la responsabilité et des contrats, Régimes d'indemnisation, Dalloz, Février 2014, p.749..... “Néanmoins, il n'y a pas d'identité entre l'état de catastrophe naturelle et la force majeure ; ainsi, la décision administrative de classement de pluies dans la première catégorie ne vaut pas ipso facto reconnaissance d'un cas de force majeure ; mais les effets d'une catastrophe naturelle sont les mêmes que ceux qui résultent d'une circonstance de force majeure”.

³ Op, cit. p. 750... “Le vent sera un cas de force majeure, à la condition qu'il n'ait pas été possible d'en éviter les conséquences, et qu'il n'ait pas été prévisible. Le vent ne sera donc un cas de force majeure que s'il est établi que sa violence a présenté une intensité insolite dans la région considérée ou si les inconvénients en résultant ne pouvaient pas être conjurés. Un vent de 112 km/h est un cas de force majeure exonérant le constructeur d'un camion de l'accident survenu à celui-ci”.

ko usibye icyo giti hari n'ibindi bintu byaba byarangiritse mu gace impanuka yabereyemo.

[23] 23. Hashingiwe rero ku ngingo ya 260, igika cya 1, y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano (CCLIII) yavuzwe haruguru, no ku bisobanuro bimaze gutangwa, Urukiko rurasanga, nk'uko n'Urukiko Rukuru rwabyemeje, Umujyi wa Kigali ugomba kuryozwa indishyi zikomoka ku mpanuka y'imodoka minibus Toyota Hiace RAA 089 K yatejwe n'igiti cyo ku muhanda yari ishinze kurinda, bityo impamvu yayo y'ubujurire kuri iyi ngingo ikaba nta shingiro ifite.

c. Kumenya niba Urukiko Rukuru rwarageneye MACO MUSONI Oscar Léonce indishyi zidakwiye

[24] Me Kayiranga Rukumbi Bernard, uburanira Umujyi wa Kigali, avuga ko Urukiko Rukuru rwageneye Maco Musoni Oscar Léonce indishyi nyinshi zidakwiye, kubera ko imodoka yari yarayiguze 1.400.000 Frw, ikaba rero itakwangirika ngo ikoreshe ku mafaranga 3.304.000 Frw, ni ukuvuga inshuro zirenze ebyiri agaciro kayo. Asanga ahubwo hari kubaho kuyivana mu muhanda (déclassement), maze akishyurwa gusa agaciro kayo havuyemo ubusaze bwayo (amortissement).

[25] Ku byerekeye indishyi zo gusana imodoka Maco Musoni Oscar Léonce yagenewe n'Urukiko, Me Kayiranga rukumbi Bernard avuga ko niba imodoka yarashoboraga gusanwa, nyirayo nk'umucuruzi aba yarayikoresheje, ko rero Umujyi wa Kigali utari kuryozwa izo ndishyi zo kuyisana. Naho ku ndishyi z'igihombo yagenewe n'Urukiko, asanga kuba zarabariwe kuri 15.000 Frw ku munsu nayo ari menshi ukurikije ko hari ubwo taxis nyinshi zirirwa zihagaze zabuze abagenzi, izindi zapfuye

zikajyanwa mu ma garaji, ko ndetse no ku mafaranga y'inyungu zikorera havamo umusoro, kuzikoresha (entretien) n'ibindi.

[26] Me Bizimana Shoshi Jean Claude, uburanira Maco Musoni Oscar Léonce, avuga ko ibyo uhagarariye Umujyi wa Kigali avuga ko taxis nyinshi zirirwa zihagaze, ari amagambo gusa, kuko nta nyigo wabikoreye, ko rero asanga indishyi zagenwe n'Urukiko Rukuru zifite ishingiro, kandi uru rukiko rukwiye kongera izo ndishyi zikabarwa kugeza igihe uru rubanza ruciwe, kuko kugeza ubu imodoka ikiri mu igaraji kubera ko habuze amafaranga yo kuyikoresha, maze Maco Musoni Oscar Léonce akagenerwa izingana na 15.000 Frw x iminsi 2.666 = 39.990.000 Frw.

[27] Ku byerekeye amafaranga yo gukoresha imodoka, Me Bizimana Shoshi Jean Claude avuga ko nta buriganya bwabayeho mu kugena agaciro ko kuyisana, kuko hari igaraji ryatanze “devis de reparation” yemewe n'amategeko, kandi ko nta gitangaza kirimo ko imodoka yakoreshwa ku mafaranga arenze ayo yaguzwe.

UKO URUKIKO RUBIBONA

[28] Nk'uko byasobanuwe haruguru kandi hashingiwe ku biteganywa n'ingingo ya 260, igika cya 1, y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano (CCLIII), Umujyi wa Kigali ugomba kuryozwa indishyi zikomoka ku mpanuka yavuzwe haruguru.

[29] Urukiko rurasanga 3.304.000 Frw y'indishyi zo gukoresha imodoka Urukiko Rukuru rwageneye Maco Musoni Oscar Léonce mu rubanza rwajuririwe ariyo akwiye kugumaho,

kubera ko Umujyi wa Kigali, umaze kubona ibaruwa ye yo ku wa 28/12/2010 yanditse asaba kwishyurwa ibyangiritse ku modoka ye n'iyo ku wa 14/03/2011 yibutsa iyo ya mbere, ntacyo wamusubije cyangwa se ngo ukoreshe "contre-expertise" igaragaza ko iyo modoka igomba kuvanwa ku muhanda, maze akishyurwa agaciro kayo havuyemo "amortissement" nk'uko ububuranisha, ndetse no mu rukiko rwabanje ndetse n'ubu, ntugaragaza uko ibyo uburanisha bigomba gukorwa, uretse kuvuga gusa ko ayo mafaranga ari menshi.

[30] Ku byerekeye amafaranga y'igihombo Maco Musoni Oscar Léonce avuga ko imodoka ye iba yarakoreye kugeza ubu, Urukiko rurasanga 14.025.000 Frw yagenwe n'Urukiko Rukuru ko ariyo imodoka yagombaga kuba yinjiza iyo iza kuba ikora, yagenwe mu bushishozi gusa, akaba rero mu by'ukuri ntaho ashingiye, kuko uyasaba atagaragaje urwunguko yari asanzwe agira mu buryo bw'ibaturamari ngo hamenyekane icyo yatakaje, bityo rero, ayo mafaranga ntiyagombaga gutangwa, n'ubu kandi ntiyatangwa cyangwa se ngo yongerwe nk'uko abisaba, ahubwo agomba kuvanwaho kuko Maco Musoni Oscar Léonce atayagaragarije ibimenyetso nk'uko abisabwa n'ingingo ya 12 y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru.

B. Ubujurire bwuririye ku bundi bwa Maco Musoni

[31] Me Bizimana Shoshi Jean Claude uburanira Maco Musoni Oscar Léonce avuga ko indishyi z'akababaro zingana na 200.000 Frw yagenewe n'Urukiko Rukuru ari nkeya, ko uru rukiko rwamuha izingana na 15.000.000 Frw kubera ko Umujyi wa Kigali wamushoye mu manza nta mpamvu, akabaho nabi

n'umuryango we kandi yari yariteganyirije, hakiyongereyeho 2.500.000 Frw yo gukurikirana urubanza n'igihembo cy'Avoka.

[32] Me Kayiranga Rukumbi Bernard, uhagarariye Umujyi wa Kigali, avuga ko indishyi z'akababaro zisabwa na Maco Musoni Oscar Léonce nta shingiro zifite, kuko ari uburenganzira bw'umuburanyi kujurira, kandi Umujyi wa Kigali ntukwiye kuryozwa indishyi nk'uko byasobanuwe haruguru. Ku byerekeye amafaranga y'igihembo cy'Avoka, avuga ko asabwa ari menshi, ko bibaye ngombwa ko atangwa yahabwa 500.000 Frw nk'uko biteganywa n'amabwiriza y'Urugaga rw'Abavoka.

UKO URUKIKO RUBIBONA

[33] Ingingo ya 152 y'Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko uregwa mu rukiko rujuririrwa ashobora na we kugira ibyo asaba yiregura (...).

[34] Urukiko rurasanga indishyi z'akababaro Maco Musoni Oscar Léonce asaba Umujyi wa Kigali zifite ishingiro, kuko kuva imodoka ye yakora impanuka, atahwemye gusiragira agira ngo Umujyi wa Kigali umwishyure ibyangiritse ku modoka ye, ariko ntiyahabwa igisubizo biba ngombwa kwiyambaza inkiko, nabwo ntiwitaba mu rukiko rwabanje, ubu hakaba hashize imyaka 8 atarishyurwa, bikaba byaramuteye akababaro, ariko indishyi zingana na 15.000.000 Frw asaba avuga ko 200.000 Frw yagenwe n'Urukiko Rukuru ari make, ni menshi, mu bushisoyi bwawo akaba agenewe 1.000.000 Frw.

[35] Ku byerekeye 2.500.000 Frw yo gukurikirana urubanza n'igihembo cy'Avoka, Maco Musoni Oscar Léonce asaba Umujyi wa Kigali, Urukiko rurasanga atayagenerwa, kuko buri ruhanda rufite icyo rutsindiye muri uru rubanza ku byo rwasabaga.

III. ICYEMEZO CY'URUKIKO

[36] Rwemeje ko ubujurire bw'Umujyi wa Kigali bufite ishingiro kuri bimwe.

[37] Rwemeje ko ubujurire bwuririye ku bundi bwa Maco Musoni Oscar Léonce bufite ishingiro kuri bimwe.

[38] Rutegetse Umujyi wa Kigali kwishyura Maco Musoni Oscar Léonce 3.304.000 Frw y'indishyi zo gukoresha imodoka ye minibus Toyota Hiace RAA 089 K yangiritse kubera impanuka yatewe n'igiti cyo ku muhanda na 1.000.000 Frw y'indishyi z'akababaro yose hamwe akaba 4.304.000 Frw.

[39] Rutegetse Umujyi wa Kigali kwishyura 100.000Frw y'amagarama y'urubanza.