NTABARESHYA v MUHORAKEYE N'UNDI

[Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RC 00002/2019/CA (Mukandamage, P.J, Ngagi na Rugabirwa, J.) 21 Gashyantare2020]

Amategeko agenga imanza mbonezamubano – Itangwa ry'ingwate – Ntawemerewe gutanga ingwate ku kintu yamaze kugurisha atabiherewe uburenganzira na nyiracyo.

Incamake y'ikibazo: Urubanza rwahereye mu Rukiko rw'Ibanze rwa Nyarugenge Muhorakeye arega Mudakikwa kumwishyura amafaranga ye kuko atubahirije amasezerano bagiranye akamuha n'indishyi, ikirego cyaje guhuzwa n'icya Ntabareshya wari waratambamiye urundi rubanza rwo gufatira imodoka ya Mudakikwa. Urukiko rwaciye urubanza rwemeza ko ikirego cya Muhorakeye n'icya Ntabareshya bifite ishingiro; ko Mudakikwa yishyura umwenda abereyemo Muhorakeye akamuha n'indishyi zingana, ruvuga ko Mudakikwa natishyura ku neza, ingwate y'imodoka yo mu bwoko bwa Pick up izaherwaho hashakishwa ubwishyu; rwategetse kandi Mudakikwa asubiza Ntabareshya amafaranga y'imodoka bari baguze no kumuha indishyi z'akababaro.

Ntabareshya ntiyishimiye imikirize ajuririra Urukiko rw'Isumbuye rwa Nyarugenge narwo ruca urubanza rwemeza ko amasezerano y'ubugure bw'imodoka hagati ya Ntabareshya na Mudakikwa ashidikanywaho; ko nta kigaragaza ko amasezerano yo kugurizwa amafaranga hagati ya Muhorakeye na Mudakikwa yatanzwemo ingwate y'imodoka nk'uko Ntabareshya yabivugaga; kandi ko urubanza rwajuririwe rudahindutse mu ngingo zarwo zose, rwemeza ko Ntabareshya nta ndishyi akwiye guhabwa.

Ntabareshya ntiyishimiye imikirize y'urwo rubanza asaba ko rusubirwamo ku mpamvu z'akarengane. Urubanza rwaburanishirijwe mu Rukiko rw'Ubujurire avuga ko Urukiko rw'Isumbuye rwakoze amakosa, aho rwemeje ko amasezerano y'ubugure bw'imodoka hagati ye na Mudakikwa ateye gushidikanya kandi abayagiranye ubwabo bayemera, ko urwo Rukiko rwanenze amasezerano ruvuga ko imodoka yari icyanditse kubayigurishije Mudakikwa, rwirengagije ko n'ubwo byari bimeze bityo, Mudakikwa yari afite uburenganzira bwo kuyigurisha, kandi ko iyo "mutation" yaje gukorwa hagati Mudakikwa n'abayimugurishije bitari kubuza ko ikomeza hagati ye na Mudakikwa. Ntabareshya avuga ko ahandi ahagaragarira akarengane ke, ari mu rubanza n'Urukiko rw'Ibanze rwa Nyarugenge rwashimangiwe n'Urukiko Rwisumbuye rwa Nyarugenge, aho uru Rukiko rwasanze koko harabaye amasezerano y'ubugure bw'imodoka, ariko rukemeza ko Mudakikwa amusubiza 3.500.000 Frw, y'ikiguzi yamuhaye bagura imodoka kuko yamugurishije imodoka yatanzeho ingwate nyamara itangwa ry'ingwate ryarabaye nyuma y'amezi ane yose aguze iyo modoka, kandi akaba yarahise atangira kuyikoresha akimara kuyigura.

Mudakikwa avuga ko Mudakikwa atigeze ahakana amasezerano yagiranye na Ntabareshya, ari nayo mpamvu Urukiko rwagize ibyo rumugenera, asobanura kandi ko ubwo baguraga imodoka hari amafaranga Ntabareshya yamusigayemokugira ngo *mutation* ishoboke, ko kuba imodoka itaramwanditsweho ari uko atari yakishyura ayo mafaranga. Ku kibazo cyo kumenya niba Mudakikwa yarashoboraga gutanga ingwate ku modoka yagurishije Ntabareshya yashubije ko nta burenganzira yari afite bwo kuyitangaho ingwate, ko ariko aho gusubiza imodoka, Mudakikwa yaha Ntabareshya agaciro kayo, kuko iyo modoka yamaze kugurishwa abandi bantu

Incamake y'icyemezo: 1 Ntawemerewe gutanga ingwate ku kintu yamaze kugurisha atabiherewe uburenganzira na nyiracyo, bityo Ntabareshya akaba agomba gusubizwa imodoka yaguze na Mudakikwa kuko Mudakikwa yatanze ingwate ku modoka itari iye.

Gusubirishamo ku mpamvu z'akarengane bifite ishingiro;
Urubanza rwasubirishijwemo ku mpamvu z'akarengane rurahindutse.

Amategeko yashingiweho :
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo 111
Itegeko Nº 45/2011 ryo ku wa 25/11/2011 ryerekeye amasezerano, ingingo ya 64
Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 110

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 30/06/2016, Mudakikwa Jacques yagurishije Ntabareshya Jérémie imodoka ifite "plaque" nomero RAA 525 J ku gaciro ka 7.000.000 Frw, yishyurwa 3.500.000 Frw, bemeranya ko amafaranga asigaye azayishyurwa nyuma y'amezi atatu, babishyiraho umukono hamwe n'abatangabuhamya, imodoka n'ibyangombwa byayo byose bishyikirizwa Ntabareshya Jérémie, atangira no kuyikoresha mu mirimo itandukanye.

[2] Ku wa 21/10/2016, Muhorakeye Géraldine yagurije Mudakikwa Jacques 3.300.000 Frw, bumvikana ko agomba kuyamwishyura ku wa 21 Ukwakira 2016[1], Mudakikwa Jacques amuha ingwate ya sheki n'iy'imodoka ifite *plaque* RAA 525[2] J yari yaragurishije Ntabareshya Jérémie, ariko Mudakikwa Jacques ntiyubahiriza amasezerano, bituma Muhorakeye Géraldine amurega mu Rukiko rw'Ibanze rwa Nyarugenge asaba ko amwishyura, akamuha n'indishyi hamwe n'igihembo cya Avoka.

[3] Iki kirego cyahujwe n'icya Ntabareshya Jérémie watanze ikirego muri uru Rukiko atambamira urubanza RC 00092/2017/TB/NYGE rwaciwe ku wa 25/05/2017 rukemeza ko imodoka ifite icyapa nimero RAA 525 J ya Mudakikwa Jacques ifatirwa, asaba ko hasuzumwa niba amasezerano y'ubugure bw'imodoka ifite «plaque » nomero RAA 525 J yo ku wa 30/06/2016, yagiranye na Mudakikwa Jacques afite ishingiro no gusesengura ibikorwa biganisha ku ihererekanya ry'imodoka yakoze nyuma y'ubugure. Mudakikwa Jacques yavuze ko 3.300.000 Frw aregwa atari yo kuko yishyuyeho 1.300.000 Frw agasubizwa sheki, ko yasigayemo 2.000.000 Frw gusa, naho ku birebana n'ibyo Ntabareshya Jérémie aregera, avuga ko Urukiko rwabisuzuma.

[4] Ku wa 27/11/2017, Urukiko rw'Ibanze rwa Nyarugenge rwaciye urubanza RC 00091/2017/TB/NYGE/RC 00154/2017/NYGE, rwemeza ko ikirego cya Muhorakeye Géraldine n'icya Ntabareshya Jérémie bifite ishingiro; ko Mudakikwa Jacques abereyemo MUHORAKEYE Géraldine umwenda wa 2.000.000 Frw, rumutegeka kuyamwishyura akamuha n'indishyi zingana na 300.000 Frw, igihembo cya Avoka kingana na 500.000 Frw no kumusubiza ingwate y'amagarama

[1] Itariki amasezerano yakoreweho, niyo Mudakikwa Jacques yagombaga kwishyuriraho nk'uko inyandiko y'amasezerano yiswe ay'ingwate ibigaragaza.
[2] Muri iyo nyandiko handitse ko imodoka ifite *plaque* RAA 5255, ariko hagomba kuba harabaye ikosa mu myandikire

yatanze angana na 25.000 Frw, ruvuga ko Mudakikwa Jacques natishyura ku neza, ingwate y'imodoka ifite *plaque* RAA 525 J, yo mu bwoko bwa Pick up, Daihatsu/Delta ifite nimero ya moteri 4Y2007467 na nimero ya *chassis* V 10806543 izaherwaho hashakishwa ubwishyu.

[5] Urukiko kandi rwategetse Mudakikwa Jacques gusubiza Ntabareshya Jérémie 3.500.000 Frw y'imodoka bari baguze, kumuha indishyi z'akababaro zingana na 300.000 Frw, kumusubiza 500.000 Frw y'igihembo cya Avoka na 25.000 Frw yatanzeho ingwate y'amagarama.

[6] Urukiko rw'Ibanze rwasanze kuba amasezerano y'igurizwa ry'amafaranga yarabaye ku wa 21/10/2016, hagati ya Muhorakeye Géraldine na Mudakikwa Jacques ari naho amafaranga yagombaga kwishyurwa, ndetse ari naho sheki yagombaga kubikuzwa, bituma habaho ugushidikanya ku gihe yakorewe, ariko ko ikizwi ari uko kwishyura byagombaga gukorwa kuri iyo tariki. Rwasanze kandi amasezerano y'ubugure bw'imodoka yarabaye ku wa 30/06/2016, ariko Ntabareshya Jérémie ntiyahita atwara imodoka ye, ahubwo ategereza ko Muhorakeye Géraldine aregera amasezerano y'umwenda n'ifatira ry'imodoka yahaweho ingwate, kandi bigaragara ko iyo modoka yanditswe kuri Mudakikwa Jacques ku wa 25/08/2016, bituma rwanzura ko nta kimenyetso gihari kigaragaza amasezerano yakozwe mbere.

[7] Ntabareshya Jérémie ntiyishimiye imikirize y'urwo rubanza, ajuririra Urukiko Rwisumbuye rwa Nyarugenge, urwo Rukiko ruca urubanza RCA 00008/2018/TGI/NYGE ku wa 24/09/2018, rwemeza ko amasezerano yo ku wa 30/06/2016, yitwa ay'ubugure bw'imodoka RAA 525 J, *marque* Daihatsu/Delta yo mu bwoko bwa Pick up, hagati ya Ntabareshya Jérémie na Mudakikwa Jacques ashidikanywaho; ko nta kigaragaza ko amasezerano yo kugurizwa 3.300.000 Frw hagati ya Muhorakeye Géraldine na Mudakikwa Jacques yatanzwemo ingwate y'imodoka ifite *plaque* RAA 525 J, ari « *banque Lambert* nk'uko Ntabareshya yabivugaga; kandi ko urubanza rwajuririwe rudahindutse mu ngingo zarwo zose, rwemeza ko Ntabareshya Jérémie nta ndishyi akwiye guhabwa, ahubwo rumutegeka guha Muhorakeye Géraldine 500.000 Frw y'igihembo cya Avoka na 100.000 Frw y'ikurikiranarubanza.

[8] Ntabareshya Jérémie Ntiyishimiye Imikirize Y'urwo Rubanza, Yandikira Perezida W'urukiko Rukuru, Asaba Ko Urubanza Rca 00008/2018/Tgi/Nyge Rwaciwe N'urukiko Rwisumbuye Rwa Nyarugenge Ku Wa 24/09/2018, Rwasubirwamo Ku Mpamvu Z'akarengane; Nyuma Yo Gusesengura Urubanza Perezida W'urukiko Rukuru Yandikira Perezida W'urukiko Rw'ikirenga Asaba Ko Urwo Rubanza Rwasubirwamo Ku Mpamvu Z'akarengane.

[9] Mu cyemezo 099/CJ/2019 cyo ku wa 30/4/2019, Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza RCA 00008/2018/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 24/09/2018, rusubirwamo ku mpamvu z'akarengane kandi ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ubujurire kugira ngo rwandikwe mu bitabo byabugenewe kugira ngo rwongere ruburanishwe.

[10] Urubanza rwaburanishijwe mu ruhame ku wa 14/01/2020, Ntabareshya Jérémie yunganiwe na Me Mukakabanda Athanasie, Mudakikwa Jacques ahagarariwe na Me Gatari Salim Steven, Muhorakeye Géraldine atitabye ariko yarahamagawe mu buryo bukurikije amategeko, nyuma yo kumva imiburanire y'impande zombi, Urukiko rwagiriye ababuranyi inama yo kujya gukemura ikibazo cyabo mu bwumvikane, nabo barabyemera, iburanisha ryimurirwa ku wa 04/02/2020, mu gihe batumvikanye.

[11] Ku wa 04/02/2020, urubanza rwaburanishijwe mu ruhame, hitabye Ntabareshya Jérémie n'umwunganira, Me Mukakabanda Athanasie, Mudakikwa Jacques na Muhorakeye Géraldine

batitabye kandi batanahagariwe, ariko baramenyeshejwe itariki y'iburanisha mu buryo bukurikije amategeko, Me Mukakabanda Athanasie abwira Urukiko ko batigeze bahura n'abo baburana ngo bagerageze gukemura ikibazo cyabo mu bwumvikane, ko rero asanga urubanza rwaburanishwa rugakomereza aho rwari rugeze, Urukiko rwanzura ko iburanisha rikomeza.

II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURA RYABYO

1. Kumenya amasezerano agomba guhabwa agaciro n'ingaruka zayo

[12] Ntabareshya Jérémie avuga ko ku wa 14/01/2016, Mudakikwa Jacques yaguze n'ikigo cy'ishuri cya I.J.W. Kibogora, imodoka yo mu bwoko bwa Daihatsu, ifite *plaque* RAA 525 J, nimero ya *chassis* V10806543 na nimero ya moteri 4Y2007467 ku giciro cya 6.600.000 Frw, ariko ko icyo kigo kitahise kimukorera "*mutation*", ko nyuma yaho, ku wa 30/06/2016, Mudakikwa Jacques yayimugurishije ku giciro cya 7.000.000 Frw, amwishyura 3.500.000 Frw, bemeranya ko amafaranga asigaye azayishyura nyuma y'amezi atatu, babishyiraho umukono hamwe n'abatangabuhamya, imodoka arayishyikirizwa n'ibyangombwa byayo byose, atangira no kuyikoresha mu mirimo itandukanye.

[13] Akomeza avuga ko yaje gutungurwa n'uko yaje kuyamburwa n'Umuhesha w' Inkiko w'Umwuga wamweretse icyemezo cy'Urukiko RC 00092/2017/TB/NYGE cyategekaga ko iyo modoka ifatirwa by'agateganyo n'uwitwa Muhorakeye Géraldine akaba ari we uyibika kugeza urubanza mu mizi ruciwe, bituma nawe ahita atambamira icyo cyemezo kimwambura uburenganzira bw'imodoka yaguze nta buriganya (*de bonne foi*), ariko ko haba Urukiko rw'Ibanze rwa Nyarugenge, haba n'Urukiko Rwisumbuye rwa Nyarugenge yajuririye, izi nkiko zombi zanze guha agaciro amasezerano y'ubugure bw'imodoka yagiranye na Mudakikwa Jacques ku wa 30/06/2016.

[14] Ntabareshya Jérémie avuga ko akarengane ke kagaragarira mu isesengura ryakozwe n'Urukiko Rwisumbuye rwa Nyarugenge, aho rwemeje ko nta kimenyetso gihari kigaragaza amasezerano yakozwe mbere hagati y'ayakozwe hagati ye na Mudakikwa Jacques bagura imodoka n'ayo uyu yakoranye na Muhorakeye Géraldine amuguriza amafaranga, nyamara mu iburanisha yaragaragaje ko imodoka yayiguze ku wa 30/06/2016 mbere y'amezi ane ngo habe amasezerano y'igurizwa hagati ya Mudakikwa Jacques na Muhorakeye Géraldine, kuko yo yabaye ku wa 21/10/2016.

[15] Avuga ko Urukiko Rwisumbuye rwa Nyarugenge rwakoze amakosa, aho rwemeje ko amasezerano y'ubugure bw'imodoka yo ku wa 30/06/2016 hagati ye na Mudakikwa Jacques ateye gushidikanya kandi abayagiranye ubwabo bayemera, ko urwo Rukiko rwanenze amasezerano yo ku wa 30/06/2016, ruvuga ko imodoka yari icyanditse kuri I.J.W Kibogora, rwirengagije ko n'ubwo byari bimeze bityo, Mudakikwa Jacques yari afite uburenganzira bwo kuyigurisha, kandi ko kuba ku wa 25/08/2016, iyo "mutation" yarakozwe hagati ye na I.J.W. Kibogora bitari kubuza ko ikomeza hagati ye na Mudakikwa Jacques, kuko atari gusaba I.J.W Kibogora iyo "mutation" ntacyo baguze.

[16] Ntabareshya Jérémie avuga ko ahandi hagaragarira akarengane ke, ari mu rubanza Nº RC 00091/2017/TB/NYGE-RC 00154/2017/TB/NYGE rwaciwe n'Urukiko rw'Ibanze rwa Nyarugenge rwashimangiwe n'urubanza N° RCA 00008/2018/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 24/09/2018, aho uru Rukiko rwasanze koko harabaye amasezerano y'ubugure bw'imodoka, ariko rukemeza ko Mudakikwa Jacques amusubiza 3.500.000 Frw, y'ikiguzi yamuhaye bagura imodoka ku wa 30/06/2016, kuko yamugurishije imodoka yatanzeho ingwate nyamara itangwa ry'ingwate ryarabaye ku wa 21/10/2016, nyuma y'amezi ane yose aguze iyo modoka, kandi akaba yarahise atangira kuyikoresha akimara kuyigura, ndetse n'Umuhesha w'Inkiko w'Umwuga

akaba yarayifatiriye mu maboko ye nk'uko bigaragazwa n'inyandikomvugo y'ifatira yo ku wa 10/08/2017.

[17] Avuga kandi ko Urukiko rw'Ibanze rwategetse ko Mudakikwa Jacques amusubiza 3 500.000 Frw baguze imodoka, rwirengagije ko yayiguze 7.000.000 Frw kandi ko yarangije kuyishyura ndetse hakaba hari ibindi bikorwa byinshi yayikozeho byiyongera ku kiguzi yatanze, rufata n'icyemezo cyo gusesa ayo masezerano y'ubugure kandi nta wabisabye, Urukiko rwajuririwe narwo rukaba rutarakosoye aya makosa, ahubwo narwo rukomeza kumurenganya rwirengagije ibimenyetso yarushyikirije. Asoza avuga ko asaba Mudakikwa Jacques ko yamusubiza imodoka baguze, kuko hari ibyo yayongereyeho, ko kuba yahabwa agaciro kayo atabyemera kuko Mudakikwa Jacques nta bushobozi afite bwo kukamuha kuko imitungo ye yose yafatiriwe.

[18] Me Mukakabanda Athanasie, wunganira Ntabareshya Jéremie, avuga ko Mudakikwa Jacques yaguze imodoka na I.J.W.Kibogora ku wa 14/01/2016 kuri 5.600.000 Frw nyuma yahoo ayimugurisha kuri 7.000.000 Frw amuha iby'ingenzi bituma ikoreshwa birimo *contrôle technique*, nyuma amuzanira na *carte jaune* imwanditseho amaze guhinduza n'uwo bari bayiguze abanza kumuha igice, basezerana ko andi azayamuha bamaze guhinduza (*mutation*), ariko ko nyuma yaje kwamburwa iyo modoka bamubwira ko yatanzweho ingwate mu masezerano Mudakikwa Jacques yagiranye na Muhorakeye Géraldine kandi ari yo yakozwe nyuma, kuko yakozwe ku wa 21/10/2016, ko ubu iyo modoka imaze kugurishwa inshuro ebyiri.

[19] Akomeza avuga ko amasezerano yakozwe na Muhorakeye Géraldine aguriza Mudakikwa Jacques amafaranga ari nabwo iyi modoka yatanzweho ingwate afite inenge, kuko Muhorakeye Géraldine atayashyizeho umukono, ko nta n'umutangabuhamya uyagaragaraho ndetse "plaque" y'imodoka yanditsemo itandukanye n'iri mu masezerano, bityo ko nta gaciro akwiye guhabwa, ko rero Ntabareshya Jéremie asaba Urukiko gutegeka ko amasezerano yagiranye na Mudakikwa Jacques ari yo afite agaciro.

[20] Me Gatari Salim Steven avuga ko Mudakikwa Jacques ahagarariye atigeze ahakana amasezerano yagiranye na Ntabareshya Jérémie, ari nayo mpamvu Urukiko rwagize ibyo rumugenera, asobanura kandi ko ubwo baguraga imodoka hari amafaranga Ntabareshya Jérémie yamusigayemo, akaba yaragombaga kuyishyura bitarenze ku wa 31/12/2016, kugira ngo "mutation" ishoboke, ko kuba imodoka itaramwanditsweho ari uko atari yakishyura ayo mafaranga.

[21] Avuga ko ku birebana no kuba Mudakikwa Jacques ari we wenyine wasinye kuri ayo masezerano ubwo yatangaga ingwate nta karengane karimo, kuko ari we wari uyitanze kandi ko ukwemera k'uyihawe atari ngombwa, ko rero umukono wa Muhorakeye Géraldine utari ngombwa, kandi ko iyo Ntabareshya Jérémie abona ayo masezerano atari yujuje ibisabwa bari kuyaregera mu bundi buryo. Ku birebana na "plaque" iri mu masezerano ya Muhorakeye Géraldine na Mudakikwa Jacques urega avuga ko itabaho, avuga ko habayeho kwibeshya, handikwa RAA 5255, aho kuba RAA 525 J.

[22] Ku bijyanye no kuba Urukiko rwarategetse ko Ntabareshya Jérémie ahabwa amafaranga aho kwemeza amasezerano agahabwa imodoka avuga ko yaguze, Me Gatali Salim Steven avuga ko Urukiko Rwisumbuye rwa Nyarugenge rwahaye agaciro amasezerano yagiranye na Mudakikwa Jacques, rushingiye ku kuba uyu atarigeze ayahakana, rumuha ibingana n'agaciro kari mu masezerano, ko rero Ntabareshya Jérémie nta karengane yakorewe.

[23] Ku kibazo cyo kumenya niba Mudakikwa Jacques yarashoboraga gutanga ingwate ku modoka yagurishije Ntabareshya Jérémie, Me Gatali Salim Steven yashubije ko nta burenganzira

yari afite bwo kuyitangaho ingwate, ko ariko aho gusubiza imodoka, Mudakikwa Jacques yaha Ntabareshya Jérémie agaciro kayo, kuko iyo modoka yamaze kugurishwa abandi bantu.

[24] Muhorakeye Géraldine we ntacyo avuga kuri iki kibazo kuko atitabye Urukiko nk'uko byasobanuwe haruguru.

UKO URUKIKO RUBIBONA

[25] Ingingo ya 64 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 ryerekeye amasezerano iteganya ko "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko kubayagiranye". (…).

[26] Ingingo ya 263 y'Igatabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yakurikizwaga ubwo habagaho amasezerano y'ubugure bw'imodoka hagati ya Mudakikwa Jacques na Ntabareshya Jérémie iteganya ibikurikira: Igurisha ni amasezerano atuma umwe yiyemeza gutanga ikintu naho undi akishyura igiciro cyemeranijwe. Ashobora gukorwa mu nyandiko-mvaho cyangwa se mu nyandiko bwite". Ingingo ya 264 y'icyo Gitabo kimaze kuvugwa haruguru, iteganya ko: Igurisha riba ryuzuye hagati y'abagiranye amasezerano kandi umugurisha akegurira burundu umuguzi icyagurishijwe mu gihe bumvikanye ku kintu no ku giciro cyacyo n'ubwo ikigurishwa kitari cyatangwa n'ikiguzi cyacyo kikaba kitari cyishyurwa".

[27] Dosiye y'urubanza igaragaramo amasezerano y'ubugure bw'imodoka yo mu bwoko bwa Daihatsu, ifite nimero ya "chassis" V10806543 yabaye ku wa 30/06/2016, aho Mudakikwa Jacques yagurishije iyo modoka Ntabareshya Jérémie ku giciro cya 7.000.000 Frw, uyu amwishyura 3.500.000 Frw, bemeranywa ko andi mafaranga azayishyura nyuma y'amezi atatu, bayashyiraho umukono hamwe n'abatangabuhamya.

[28] Dosiye igaragaramo kandi inyandiko yo ku wa 21/10/2016, aho Mudakikwa Jacques avuga ko yemeye ko ahawe na Muhorakeye Géraldine 3.300.000 Frw, azamwishyura ku wa 21/10/2016 (ni ukuvuga uwo munsi akoreyeho inyandiko), akaba atanze sheki izabikuzwa ku wa 21/10/2016, ko kandi atanze n'ingwate y'imodoka ifite nimero za *plaque* RAA 5255[3], izifashishwa mu kwishyura mu gihe cyose azaba ananiwe kuzuza inshingano ze zo kwishyura.

[29] Dosiye igaragaramo na none icyemezo n° RC 00092/2017/TB/NYGE cy'Urukiko rw'Ibanze rwa Nyarugenge cyo ku wa 25/05/2017, cyategetse ko iyo modoka ifatirwa by'agateganyo n'uwitwa Muhorakeye Géraldine akaba ari we uyibika kugeza urubanza mu mizi ruciwe, iyo modoka koko ikaba yarafatiriwe, iva mu maboko ya Ntabareshya Jérémie wayikoreshaga imirimo ye.

[30] Urukiko rurasanga, hashingiwe ku ngingo z'amategeko zakurikizwaga igihe amasezerano y'ubugure bw'imodoka ifite nimero ya chassis V10806543 yabaga ku wa 30/06/2016, hagati ya Mudakikwa Jacques na Ntabareshya Jérémie, bigaragara koko ko yari yujuje ibisabwa n'amategeko kugira ngo agumane agaciro kayo, maze Ntabareshya Jérémie akegurirwa imodoka yaguze, kuko nta nenge Mudakikwa Jacques yagaragaje yatuma ayo masezerano ateshwa agaciro, cyangwa se atubahirizwa.

[31] Urukiko rurasanga mu gihe bimaze kugaragara ko amasezerano yo ku wa 30/06/2016 afite agaciro, umutungo weguriwe Ntabareshya Jérémie n'ubwo atari yagakorerwa "mutation", kuko nk'uko bigaragara muri dosiye, Mudakikwa Jacques nawe yagurishije iyo modoka atarakorerwa "mutation" kuko ku wa 25/08/2016, ari bwo habaye "*mutation*" hagati ye na I.J.W.Kibogora bari

[3] Twibutse ko ari ikosa ry'imyandikire, ni RAA 525 J

bayiguze, bivuze ko nyuma y'aho agurishije iyo modoka, yari asigaranye inshingano yo gukora "*mutation*" hagati ye na Ntabareshya Jérémie, imodoka ikava ku mazina ye, ikajya ku mazina ya Ntabareshya Jérémie, kuko nawe ubwo yaguraga iyo modoka atategereje gukorerwa "mutation " ngo abone kuyegukana, ahubwo nk'uko byibukijwe haruguru, yagurishije iyo modoka atarakorerwa "mutation" na I.J.W.Kibogora yari yarayimugurishije.

[32] Urukiko rurasanga nta burenganzira Mudakikwa Jacques yari agifite bwo gutanga ingwate y'imodoka yagurishije, kuko iyo modoka yari yaramaze kuyegurira Ntabareshya Jérémie, bivuze ko yatanze ingwate ku mutungo utakiri uwe, kandi ntaho agaragaza ko yaba yarabyemerewe na Ntabareshya Jérémie. Urukiko ruributsa ko no mu iburanisha mu ruhame ryabaye ku wa 14/01/2020, ubwo rwabazaga uhagarariye Mudakikwa Jacques niba yemera ko mbere y'itariki ya 31/12/2016, itariki Ntabareshya Jérémie yagombaga kwishyura igice cy'amafaranga yari asigaje kwishyura, iyemereye ko nta burenganzira Mudakikwa Jacques yari afite bwo kuyitanga, kandi ko Mudakikwa Jacques yiteguye kwishyura agaciro k'imodoka yatanzeho ingwate, kuko ubu iyo modoka yamaze kugera mu maboko y'abantu benshi, uku kwiyemerera k'uhagarariye Mudakikwa Jacques kukaba kumutsindisha nk'uko biteganywa n'ingingo ya 110 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, bityo nk'uko Ntabareshya Jérémie abisaba uru Rukiko, Mudakikwa Jacques akaba agomba kumusubiza imodoka ye ifite nimero ya "plaque" RAA 525 J, nimero ya "chassis" V10806543, nimero ya moteri 4Y2007467 yatanze nk'ingwate nta burenganzira abifitiye, bigatuma ayamburwa ku maherere.

2. Kumenya ishingiro ry'indishyi Ntabareshya Jérémie asaba no kumenya niba amafaranga yaciwe mu nkiko zabanje yavanwaho

[33] Ntabareshya Jérémie asaba Urukiko gutegeka Mudakikwa Jacques na Muhorakeye Géraldine gufatanya kumuha 1.500.000 Frw y'igihembo cya Avoka, 500.000 Frw y'ikurikiranarubanza, 2.000.000 Frw y'indishyi z'akababaro[4] kubera ko imodoka ye yafatiriwe hashingiwe ku masezerano arimo inenge kandi ashidikanwaho, bikaba byaramuteye igihombo gikomeye, kuko yabujijwe by'amaherere uburenganzira ku modoka yaguze mu buryo bukurikije amategeko (*acquéreur de bonne foi*) n'amagarama yatanzwe mu nkiko zose ndetse n'indishyi zingana na 600.000 Frw yaciwe akavanwaho.

[34] Mu myanzuro ye, Me Gatali Salim Steven, uhagarariye Mudakikwa Jacques, avuga ko izi ndishyi zidakwiye gutangwa, kuko ntaho zishingiye. Avuga kandi ko amafaranga y'igihembo cya Avoka atatangwa n'uwo aburanira kuko akarengane avuga yagakorewe n'Urukiko ntagahari, kandi ko kuba yaremeye amasezerano bagiranye ari ubushake bwe, ko n'iyo aramuka afashe ibyo yagenewe n'Urukiko atari gusiragira mu nkiko.

[35] Muhorakeye Géraldine we ntacyo avuga kuri iki kibazo cy'indishyi kuko atitabye Urukiko nk'uko byasobanuwe haruguru.

UKO URUKIKO RUBIBONA

[36] Ingingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko: "Ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza

[4] Mu iburanisha mu ruhame ryo ku wa 04/02/2020, Avoka we yarahinduye avuga ko ari indishyi mbonezamusaruro aho kuba indishyi z'akababaro, ariko nabwo ntiyashobora kuzisobanurira Urukiko

kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".

[37] Ku byerekeranye na 1.500.000 Frw y'igihembo cya Avoka, 500.000 Frw y'ikurikiranarubanza, Ntabareshya Jérémie asaba ko Mudakikwa Jacques na Muhorakeye Géraldine bafatanya kumuha, Urukiko rurasanga ayakwiye, kuko yagiye yiyambaza Abavoka bo kumuburanira, kandi bikaba bigaragara ko yarenganyijwe mu nkiko zabanje. Urukiko rurasanga ariko ayo mafaranga agomba gutangwa na Mudakikwa Jacques wenyine, kuko nta kigaragaza ko haba hari ikosa Muhorakeye Géraldine yakoze mu kwakira ingwate yahawe na Mudakikwa Jacques.

[38] Ku byerekeranye n'indishyi mbonezamusaruro zingana na 2.000.000 Frw, Ntabareshya Jérémie asaba ko Mudakikwa Jacques na Muhorakeye Géraldine bafatanya kumuha, Urukiko rurasanga atazikwiye, kuko nk'uko bigaragara mu myanzuro ye yasabaga indishyi z'akababaro, ageze mu iburanisha ryo ku wa 04/02/2020, nabwo atangira avuga ko asaba indishyi z'akababaro, ariko ageze aho arahindura avuga ko asaba indishyi mbonezamusaruro, nabwo ntiyashobora gusobanurira Urukiko uburyo yazibaze, bityo rero kuba atarashoboye kuzisobanurira Urukiko, ntaho rwahera ruzimugenera.

[39] Ku byerekeranye na 600.000 Frw, Ntabareshya Jérémie avuga ko yaciwe n'inkiko zabanje, Urukiko rurasanga agomba kuyavanirwaho, ndetse n'amafaranga y'amagarama yatanze arega, ni ukuvuga 25.000 Frw mu Rukiko rw'Ibanze rwa Nyarugenge na 50.000 Frw yatanze mu Rukiko Rwisumbuye rwa Nyarugenge, akayasubizwa, kuko bigaragaye ko yakorewe akarengane.

III. ICYEMEZO CY'URUKIKO

[40] Rwemeje ko ikirego cya Ntabareshya Jérémie cyo gusubirishamo urubanza RCA 00008/2018/TGI/NYGE ku mpamvu z'akarengane gifite ishingiro;

[41] Rwemeje ko urubanza RCA 00008/2018/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 24/09/2018, ruhindutse mu ngingo zarwo zose;

[42] Rutegetse Mudakikwa Jacques gusubiza Ntabareshya Jérémie imodoka ifite "plaque" RAA 525 J, nimero ya "chassis "V10806543, nimero ya moteri 4Y2007467;

[43] Rutegetse Mudakikwa Jacques guha Ntabareshya Jérémie 1.500.000 Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza;

[44] Rutegetse ko 600.000 Frw Ntabareshya Jérémie yaciwe mu rubanza RCA 00008/2018/TGI/NYGE rwaciwe ku wa 24/09/2018, avanweho;

[45] Rutegetse Mudakikwa Jacques gusubiza Ntabareshya Jérémie 25.000 Frw y'amagarama yatanze mu Rukiko rw'Ibanze rwa Nyarugenge na 50.000 Frw yo mu Rukiko Rwisumbuye rwa Nyarugenge.