UWAMWEZI v. RUGENERA N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00076/2019/CA (Munyangeri, P.J.) 26 Kamena 2020]

Amategeko agenga umuryango – Umutungo wa bashakanye – Ubugure bw'inzu – Inzu yagurishijwe n'umwe mu bashakanye akagura indi igabana ritararangira – Iyo abashakanye bari barumvikanye uburyo bagabana imitungo ariko iryo gabana rikaza guteshwa agaciro kandi hari umwe wamaze kugurisha umutungo bari baragabanye nyuma akaguramo undi, uwaguze umutungo wagabanywe mbere ntiyahungabanywa mu burenganzira bwe ahubwo abashakanye baba bagomba kugabana umutungo waguzwe nyuma y'iryo gurisha mu buryo bungana.

Incamake y'ikibazo: Uwamwezi yashakanye na Ranguella mu buryo bukurikije amategeko baza kugera ho bumvikana kugabana imitungo yabo bakora "*contrat de partage*". Mu mitungo yeguriwe Ranguella uherereye i Nyarugenge yaje kuwegurira sosiyete SOGIS Ltd nayo iwugurisha Rugenera Marc n'umugore we Kitenge

Uwamwezi yatanze ikirego mu Rukiko rw'Ubucuruzi asaba ko amasezerano y'ubugure bw'inzu yagurishijwe Rugenera n'umugore yateshwa agaciro kuko bayigurishijwe atabitangiye uburenganzira kandi ari umutungo bahuriyeho. Urukiko rwemeje ko ikirego cya Uwamwezi gifite ishingiro kuko ari umugore w'isezerano kandi na "*contrat de partage*" yabo ikaba yari yarateshejwe agaciro n'Urukiko rw'Ikirenga. Icyo gihe rwategetse ko SOGIS Ltd gusubiza Rugenera n'umugore we 120.000.000 frw y'ikiguzi cy'inzu.

Ranguella na SOGIS Ltd ku ruhande rumwe bajuririye Urukiko Rukuru rw'Ubucuruzi ku rundi ruhande Rugenera n'umugore we nabo barajurira bavuga ko bavuga ko batishimiye imikirize y'urubanza maze Urukiko Rukuru rw'Ubucuruzi rwemeza ko ubujurire bwa Ranghella na SOGIS Ltd nta shingiro bufite ko ubwa Rugenera n'umugore we Kitenge bufite ishingiro kuko nyuma yo kugura inzu ya Nyarugenge Ranghella yaguze indi nzu Kamonyi, ko iyo ariyo Ranghella yagabana na Uwamwezi mu buryo bungana.

Uwamwezi yajuririye Urukiko rw'Ubujurire avuga ko ubugure bwabaye hgati ya SOGIS Ltd na Rugenera n'umugore we Kitenge bwateshwa agaciro ngo kuko igihe inzu yagurwaga "contrat de partage" itari ikiriho kuko yari yarakuweho n'Urukiko rw'Ikirenga.

Ranguella na SOGIS Ltd bo bireguye bavuga ko umutungo wagurishijwe ari uwa SOGIS Ltd kuko rwemeje ko ubugure Rugenera n'umugore we bagiranye na sosoiyete bufite agaciro; bityo ko Uwamwezi nta ruhare yagira ku mutungo w'inzu ya Kamonyi kuko ari uwa sosiyete.

Rugenera n'umugore we Kitenge bireguye bavuga ko baguze inzu mu buryo bwemewe na sosoiyete SOGIS Ltd knadi n'urukiko rukaba rwari rufite amakuru ko amafaranga yavuye mu kiguzi cy'inzu baguze yaguzwe indi nzu ku Kamonyi; bityo basaba ko batahungabanywa mu mutungo baguze kuko amakimbirane y'abashakanye atakagombye kubagiraho ingaruka.

Incamake y'icyemezo: Abashakanye bari barumvikanye uburyo bagabana imitungo ariko iryo gabana rikaza guteshwa agaciro kandi hari umwe wamaze kugurisha umutungo bari baragabanye nyuma akaguramo undi, uwaguze umutungo wagabanywe mbere ntiyahungabanywa mu burenganzira bwe ahubwo abashakanye baba bagomba kugabana umutungo waguzwe nyuma

y'iryo gurisha mu buryo bungana. Bityo, Uwamwezi Joséphine na RANGHELLA Giuseppe bagomba kugabana agaciro k'inzu iri ku Kamonyi mu kibanza nº 2603 ku buryo bungana, haba hari umwe mu bashakanye ushaka kuyigumana agasubiza undi 1⁄2 cy'agaciro kayo mu mafaranga.

Ubujurire nta shingiro bufite.
Urubanza nº RCOMA 00774/2018/CHC/HCC–RCOMA 00784/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 21/06/2019 ntiruhindutse.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko n° 22/99 ryo kuwa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranwe, impano n'izungura, ingingo ya 24.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uwamwezi Joséphine na Ranguella Giuseppe bari barashakanye mu buryo bukurikije amategeko, baza kugirana amasezerano yo kugabana umutungo bari basangiye, babikora mu cyo bise «*contrat de partage*». Mu mitungo bahuriyeho hari iyagiye ku ruhande rwa Ranghella Giuseppe irimo inzu y'ubucuruzi iri mu kibanza UPI 1/01/09/03/788 kiri i Nyarugenge. Iyo nzu Ranguella Giuseppe yaje kuyegurira sosiyete yitwa SOGIS Ltd, nayo iza kuyigurisha Rugenera Marc n'umugore we Kitenge Berthe.

[2] Uwamwezi Joséphine n'umwana wabo Barbara Ranguella baje gutanga ikirego mu Rukiko rw'Ubucuruzi, barega Ranguella Giuseppe, Rugenera Marc, Kitenge Berthe na SOGIS Ltd, basaba urukiko gutesha agaciro amasezerano y'ubugure bw'iyo nzu, hamwe n'amasezerano yose y'ihererekanyamutungo yakorewe kuri iyo nzu 'icyangombwa cy'ubutaka cyayo.

[3] Uwamwezi Joséphine asobanura ko Ranguella Giuseppe yashyize uwo mutungo muri sosiyete SOGIS Ltd atabitangiye uburenganzira kandi ari umutungo bari bahuriyeho nk'abashakanye, iyo sosiyete nayo, ikaba yarawugurishije Rugenera Marc n'umugore we Kitenge Berthe. Barbara Ranguella we akavuga ko ari umunyamigabane wa SOGIS Ltd, kandi ko iyo nzu yari umutungo wayo yagurishijwe atabyemeye, kuko icyemezo cyo kuyigurisha cyafatiwe mu nama atatumiwemo.

[4] Mu rubanza nº RCOM 01311/2018/TC rwaciwe ku wa 31/10/2019, Urukiko rw'Ubucuruzi rwemeje ko ikirego cya Uwamwezi Joséphine gifite ishingiro, kuko ari umugore w'isezerano, umugabo we Ranguella Giuseppe, akaba yaragurishije umutungo w'umuryango, ashingiye kuri «*contrat de partage*» yateshejwe agaciro n'Urukiko rw'Ikirenga mu rubanza nº RS/REV/INJUST/CIV/0012/CS.

[5] Urukiko rwanzuye ko amasezerano y'ubugure ateshejwe agaciro, kuko SOGIS Ltd yagurishije ibitari ibyayo, ruvuga ko SOGIS Ltd isubiza Rugenera Marc na Kitenge Berthe 120.000.000 Frw bari baguze iyo nzu, rutegeka Ranguella Giuseppe na SOGIS Ltd guha Uwamwezi Joséphine indishyi z'akababaro zingana na 1.000.000 Frw, rutegeka kandi Ranguella Giuseppe, SOGIS Ltd, Rugenera Marc na Kitenge Berthe guha Uwamwezi Joséphine indishyi z'ibyo yatakaje ku rubanza; harimo 200.000 Frw y'ikurikiranarubanza, 500.000 Frw y'igihembo cya Avoka na 50.000 Frw y'igarama.

[6] Ku birebana n'ikirego cyatanzwe na Barbara Ranguella, Urukiko rwemeje ko nta shingiro gifite, kuko asaba ibijyanye n'inzu yita iya SOGIS Ltd kandi Urukiko rw'Ikirenga rwaramaze gutesha agaciro amasezerano yo kugabana umutungo «*contrat de partage*» yashingiweho igihe iyo nzu yahabwaga sosiyete SOGIS Ltd.

[7] Ranguella Giusseppe na SOGIS Ltd barajuriye mu Rukiko Rukuru rw'Ubucuruzi, ubujurire buhabwa nº RCOMA 0784/2018/CHC/HCC, Rugenera Marc na Kitenge Berthe nabo barajurira, urubanza rwabo ruhabwa nº RCOMA 00774/2018/CHC/HCC, izo manza zombi zihurizwa hamwe.

[8] Mu rubanza nº RCOMA 00774/2018/CHC/HCC-RCOMA0784/2018/CHC/HCC rwaciwe ku wa 21/06/2019, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa Ranguella Giuseppe na SOGIS Ltd nta shingiro bufite, rwemeza ko ubujurire bwa Rugenera Marc na Kitenge Berthe bufite ishingiro, ko inzu iri mu kibanza n◦ 2603 iherereye ku Kamonyi ikomoka ku mutungo uri mu kibanza n◦ 778 kiri i Nyarugenge cyahoze mu mutungo w'abashakanye, rwemeza ko ubugure n'ibyangombwa by'icyo kibanza n◦ 778 budateshejwe agaciro, rwemeza ko agaciro k'umutungo uri mu kibanza n◦ 2603, ari ko kagomba kugabanwa mu buryo bungana hagati ya Uwamwezi Joséphine na Ranguella Giuseppe, rutegeka Uwamwezi Joséphine guha Rugenera Marc na Kitenge Berthe indishyi z'ibyagiye ku rubanza zingana na 700.000 Frw, rutegeka kandi Ranguella Giuseppe na SOGIS Ltd gufatanya guha Uwamwezi Joséphine indishyi zagenwe ku rwego rwa mbere zingana na 1.750.000 Frw, kongeraho 700.000 Frw y'ibyagiye ku rubanza mu bujurire.

[9] Uwamwezi Joséphine na Barbara Ranguella bongeye kujurira mu Rukiko rw'Ubujurire basaba ko amasezerano y'ubugure n'ibyangombwa by'ikibanza n◦ 778 biteshejwe agaciro.

[10] Iburanisha ry'urubanza ryabaye mu ruhame ku wa 18/05/2020 Uwamwezi Joséphine na Barbara Ranguella bahagarariwe na Me Ndagijimana Emmanuel, Rugenera Marc na Kitenge Berthe bahagarariwe na Me Twiringiyemungu Joseph, naho Ranguella Giuseppe na SOGIS Ltd bahagarariwe na Me Nkurunziza François Xavier.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba amasezerano y'ubugure bw'inzu iri mu kibanza nº UPI 1/01/09/03/788 kiri i Nyarugenge, akwiye guteshwa agaciro

[11] Ndagijimana Emmanuel uhagarariye Uwamwezi Joséphine na Barbara Ranguella avuga ko Urukiko Rukuru rw'Ubucuruzi rutari rukwiye kwemeza ko amasezerano y'ubugure SOGIS Ltd yakoranye na Rugenera Marc na Kitenge Berthe agumana agaciro kayo, mu gihe mu rubanza nº RCOM 01311/2018/TC, Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko amasezerano

y'ihererekanya mutungo yabaye hagati ya Ranguella Giusseppe na SOGIS Ltd ku mutungo uri mu kibanza n° 99 Nyarugenge cyaje guhinduka n° 778 Nyarugenge yakozwe ku wa 30/04/2009 ashingiye kuri «*contract de partage* » yakozwe mu buryo bunyuranyije n'amategeko, nkuko byemejwe mu rubanza RS/REV/INJUST/CIV.0012/CS n'Urukiko rw'Ikirenga.

[12] Akomeza avuga ko ku wa 30/04/2009 «*contract de partage* » itari ikiriho, ko bityo n'amasezerano y'ubugure yabaye hagati ya SOGIS Ltd na Rugenera Marc na Kitenge Berthe nayo agomba guteshwa agaciro, kuko SOGIS Ltd yagurishije umutungo utari uwayo.

[13] Me Nkurunziza François Xavier uburanira Ranguella Giuseppe na SOGIS Ltd avuga ko Uwamwezi Joséphine na Barbara Ranguella baregeye gutesha agaciro amasezerano y'ubugure n'ihererekanya ry'inzu, bakaba basanga nta masezerano y'ubugure yabaye hagati ya Ranguella na SOGIS, bityo ko Urukiko rutagombaga guca urubanza ku cyo rutaregewe, ko mu gihe iyo *contrat* itigeze iregerwa kugira ngo iteshwe agaciro n'urukiko rw'abakemurampaka rubifitiye ububasha, nkuko biteganyijwe mu ngingo ya 5 y'ayo masezerano, urukiko rutayatesha agaciro ngo bishoboke, ko ahubwo Urukiko rw'Ikirenga rwategetse ko Uwamwezi Joséphine na Ranguella Giuseppe bagabana ku buryo bungana imitungo bari basangiye, kandi iyo mitungo igabanwa yavuye muri ya nzu yavunjwemo imigabane ishyirwa muri sosiyete SOGIS Ltd.

[14] Avuga kandi ko kuba urukiko rwaremeje ko agaciro k'umutungo uri mu kibanza no 2603, kiri ku Ruyenzi kagomba kugabanwa ku buryo bungana hagati ya Ranguella Giuseppe na Uwamwezi Joséphine, nta kindi bivuze bitari ukwemeza ko abanyamigabane ba SOGIS Ltd bagabanijwe umutungo wayo utimukanwa kandi bidashoboka, kuko icyemezo cy'Urukiko Rukuru rw'Ubucuruzi cyaturutse ku myumvire itariyo, aho rwemeje ko inzu iri mu kibanza no 2603 ikomoka ku mutungo uri mu kibanza no 778 i Nyarugenge ngo cyahoze mu mutungo w'abashakanye kandi atari byo.

[15] Akomeza avuga ko mu rubanza nº RS/REV/INJUUST/CIV.0012/CS, Urukiko rw'Ikirenga rwategetse ko Ranguella agabana na Uwamwezi ku buryo bungana imigabane ye iri muri SOGIS Ltd ingana na 3.170, umwe akagira 49,50% yayo bivuze ko Uwamwezi yemerewe kuba umunyamigabane muri SOGIS Ltd, bityo agira uruhare ku migabane yavunjwe mo inzu iri mu kibanza no 778 kiri i Nyarugenge.

[16] Avuga na none ko kuba SOGIS Ltd yaragurishije iyo nzu Rugenera Marc na Kitenge Berthe, amafaranga yishyuwe ikayubakamo indi nzu mu kibanza no 2603 ku Ruyenzi, bivuze ko iyo nzu ari umutungo wa SOGIS Ltd, ko Uwamwezi agabanye na Ranghella uwo mutungo, byaba ari ukubagabana umutungo wa sosiyete kandi bidashoboka. Kuba muri Rwemeje ya kane, Urukiko Rukuru rw'Ubucuruzi rwaremeje ko ubugure hagati ya SOGIS Ltd na Rugenera Marc na Kitenge Berthe n'ibyangombwa by'icyo kibanza no 778 bidateshejwe agaciro kandi koko aribyo, bivuze ko urukiko rwasanze koko umutungo wagurishijwe ari uwa SOGIS Ltd, ko rero urukiko rutahindukira ngo ruvuge ko Ranguella na Uwamwezi bagabana agaciro k'umutungo uri mu kibanza no 2603 kandi bigaragara ko uwo mutungo ari uwa SOGIS Ltd ukomoka ku bugure bw'inzu yagiranye na Rugenera Marc na Kitenge Berthe, akaba asanga ibisobanuro urukiko rwatanze bidahwitse na gato.

[17] Asoza avuga ko kuvuga ko Uwamwezi azagabana na Ranguella iyo nzu byaba ari ukugabana inshuro ebyiri ikintu kimwe kuko mu rubanza rwaciwe n'Urukiko rw'ikirenga

Ranguella na Uwamwezi bagabanijwe imigabane ku buryo bungana kandi iyo migabane harimo iyakomotse ku nzu iri mu kibanza no 778 yahinduwemo imigabane, bityo kubagabanya na none inzu iri mu kibanza no 2603 ku Ruyenzi yubatswe mu kiguzi cy'inzu iri mu kibanza no 778 i Nyarugenge byaba ari ukubagabanya ikintu kimwe inshuro ebyiri.

[18] Me Twiringiyemungu Joseph, uhagarariye Rugenera Marc na Kitenge Berthe avuga ko ku itariki ya 30/04/2009, aribwo inama rusange ya SOGIS Ltd yemereye Ranguella Giuseppe gushyira iyo nzu muri SOGIS Ltd, kandi ibyo byakozwe «*contract de partage* » igifite agaciro, kuko urubanza ruyitesha agaciro rwaciwe n'Urukiko rw'Ikirenga mu mwaka wa 2018, ariko Urukiko rukaba rwari rufite amakuru ko amafaranga yavuye muri iyi nzu yaguzwemo indi nzu ku Kamonyi rubikemura ruvuga ko bagabana iyo nzu yavuye mu mafaranga yagurishijwe iyo ya Nyarugenge, kandi ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikibanza no 778 kitakiri mu mutungo w'abashakanye, ko ahubwo ikigomba gusuzumwa ari ukugabana agaciro mu mafaranga hagati ya Uwamwezi na Ranguella, bivuze ko Rugenera na Kitenge bagumana umutungo baguze, icyo cyemezo Uwamwezi akaba atarigeze akivuguruza, ahubwo abifata nk'aho nta cyemezo cyabayeho kuri icyo kibazo.

[19] Avuga ko Urukiko rw'Ubucuruzi rutagombaga gutegeka ko umuryango wa Rugenera Marc wamburwa umutungo wawo ufite mu buryo bwemewe n'amategeko hagendewe ku mpaka zari mu muryango wa Ranguella Giuseppe na Uwamwezi Joséphine, cyane cyane ko ikibazo kiri mu muryango kiba kitagomba guhungabanya abandi bantu batagize aho bahuriye na cyo. Avuga ko inkiko zasesenguye ikibazo cyabo zirinze guhungabanya ibyagiye bikorwa na buri wese ku mutungo yegukanye, ari yo mpamvu imitungo yegukanywe na Uwamwezi Joséphine akayitangaho ingwate yananirwa kwishyura ikagurishwa, abayiguze batigeze bategekwa kuyigarura nkuko urukiko rwabigenje ku mutungo waguzwe na Rugenera Marc na Kitenge Berthe.

[20] Asoza avuga ko Urukiko rw'Ikirenga, ntaho rwemeje ko iyo nzu atari iya SOGIS Ltd, ari na yo mpamvu rwategetse ko urukiko rw'Ubucuruzi ruramutse rusanze Uwamwezi atsindira ibijyanye n'iyo nzu, yazabona agaciro mu mafaranga, aho kuvuga ko uwayiguze ayamburwa. Na none ko nyuma yo kubisuzuma Urukiko Rukuru rw'Ubucuruzi rwasanze inzu yaguzwe n'umuryango wa Rugenera Marc ari yo yavuyemo inzu yindi yaguzwe ku Kamonyi, akaba ari yo yazagabanwa n'abagize umuryango hashingiwe no ku cyemezo cy'Urukiko rw'Ikirenga.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 24 y'Itegeko n° 22/99 ryo ku wa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranwe, impano n'izungura iteganya ko *ivangamutungo rusange cyangwa w'umuhahano rirangira ari uko habaye ugutana burundu kw'abashyingiranwe, kutabana by'agateganyo, uguhindura uburyo bw'icugamutungo. Iyo ivangamutungo rirangiye abashyingiranywe bagabana ku buryo bungana umutungo n'imyenda bahuriyeho.*

[22] Dosiye y'uru rubanza igaragaza ko mbere y'uko Uwamwezi Joséphine na Ranguella Giuseppe bahabwa ubutane bwatanzwe mu rubanza nº RC 0422//10/TB/KCY rwaciwe n'Urukiko rw'Ibanze rwa Kacyiru ku wa 13/02/2012, ubwo butane bukaza kwemezwa n'Urukiko Rwisumbuye rwa Gasabo mu rubanza nº RCA 0127/12/TGI/GSBO rwaciwe ku wa 27/01/2014, bari baragiranye amasezerano yiswe "*contrat de partage*" yo ku wa 07/06/2007, mu byagabanywe

hakaba harimo inzu yari mu kibanza n° 99 i Nyarugenge yaje guhinduka n°778, ari nayo yaguzwemo inzu iri i Kamonyi mu kibanza nº 2603 ikomoka ku mutungo uri mu kibanza nº 778 i Nyarugenge cyahoze mu mutungo w'abashakanye.

[23] Dosiye y'uru rubanza igaragaza kandi urubanza nº RS/REV/INJUST/CIV.0012/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 01/06/2018, Uwamwezi Joséphine yatanzemo ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane, muri urwo rubanza Urukiko rw'Ikirenga, rukaba rwaratesheje agaciro amasezerano yiswe "*contrat de partage*", kuko anyuranye n'ibiteganywa n'ingingo ya 24 y'Itegeko ryagarutsweho, maze rugabanya abashakanye imitungo bari basigaranye ku buryo bungana, runemeza ko urubanza rukiburanwa ku nzu yari mu kibanza n° 99 i Nyarugenge yaje guhinduka n°778, ari nayo yaguzwemo inzu iri i Kamonyi mu kibanza nº 2603 ikomoka ku mutungo uri mu kibanza no 778 i Nyarugenge cyahoze mu mutungo w'abashakanye bazagabana agaciro karwo mu mafaranga, Uwamwezi Joséphine aramutse arutsinze.

[24] Bigaragara na none ko mu rubanza nº RS/REV/INJUST/CIV.0012/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 01/06/2018, ku bijyanye n'umutungo utimukanwa, urwo Rukiko rwemeje ko nta mutungo utimukanwa ukibaho mu Rwanda, uretse inzu yari mu kibanza n° 99 Nyarugenge cyaje guhinduka n°778 i Nyarugenge, ari nayo Ranguella Giuseppe yahaye SOGIS Ltd, nayo ikayigurisha Rugenera Marc na Kitenge Berthe ku giciro cya 120.000.000 Frw, ayo mafaranga SOGIS Ltd ikayaguramo indi nzu iri ku Kamonyi yubatse mu kibanza n° 2603.

[25] Urukiko rurasanga, harebwe urubanza rwaciwe n'Urukiko rw'Ikirenga rwavuzwe haruguru, rwatesheje agaciro amasezerano yiswe "*contrat de partage"* yakozwe hagati y'abashakanye, rukemeza ko ivangamutungo rirangira hanshingiwe ku biteganywa n'ingingo ya 24 y'Itegeko n° 22/99 ryo ku wa 12/11/1999 ryavuzwe haruguru, hagomba kwemezwa ko inzu yari mu kibanza n° 99 i Nyarugenge cyaje guhinduka n°778 i Nyarugenge Ranguella Giuseppe yahaye SOGIS Ltd, nayo ikayigurisha Rugenera Marc na Kitenge Berthe, ikaguramo indi nzu iri ku Kamonyi yubatse mu kibanza n° 2603, iyo nzu ikibarirwa mu mutungo w'abashakanye ugomba kugabanwa ku buryo bungana, kuko yasohowe muri uwo mutungo hashingiwe ku masezezerano yiswe "*contrat de partage"* yateshejwe agaciro n'Urukiko rw'Ikirenga, akaba ari yo mpamvu Urukiko rw'Ikirenga rwakuye iyo nzu mu mutungo wa SOGIS Ltd rukemeza ko agaciro k'urubanza rukiburanwa kuri iyo nzu kazagabanwa ku buryo bungana n'abashakanye, Uwamwezi Joséphine aramutse arutsinze, bityo rero inzu iri ku Kamonyi yubatse mu kibanza n° 2603, ikaba igomba kugurishwa Uwamwezi Joséphine na Ranguella Giuseppe bakagabana agaciro kayo ku buryo bungana, haba hari umwe mu bashakanye ushaka kuyigumana agasubiza undi 1⁄2 cy'agaciro kayo mu mafaranga.

[26] Urukiko rurasanga, ibisabwa na Uwamwezi Joséphine na Barbara Ranguella ko amasezerano y'ubugure bw'inzu yabaye hagati ya SOGIS Ltd na Rugenera Marc na Kitenge Berthe agomba guteshwa agaciro, inzu igasubira mu mutungo w'umuryango nta gaciro byahabwa, kubera ko Urukiko rw'Ikirenga mu rubanza RS/REV/INJUST/CIV.0012/CS rwavuzwe haruguru, rwahisemo kugabanya ku buryo bungana imitungo itimukanwa n'iyimukanwa abashakanye barugaragarije bari basigaranye mu gihe cyo guca urwo rubanza, runemeza mu gika cya 67 cy'urwo rubanza, ko Uwamwezi Joséphine azagabana ku buryo bungana na Ranguella Giuseppe agaciro kazava mu rubanza rukiburanwa rurebana n'iyo nzu naramuka arutsinze, bivuze ko rwari rwemeye ko imicungire yakozwe na buri muntu ku mitungo yari afite nyuma y'amasezerano bise

“*contrat de partage”* itagomba guhungabanywa, ahubwo bagabanywa ku buryo bungana ibyo bari bafite icyo gihe.

[27] Mu gusobanura icyemezo cyarwo, Urukiko rw’Ikirenga rwagaragaje ko imyenda UWAMWEZI Joséphine yari afitiye banki, yayishyuye amaze kugurisha amazu yari amuherereyeho, ko ariko adakwiye kubazwa iby’ayo mazu, ahubwo ko amafranga yasigaye ku igurishwa ryayo agomba kugabanwa ku buryo bungana n’abashakanye, kuko byarugaragariye ko ayo mazu atagihari. Ni nako rwabibonye ku bijyanye n’ikibanza n° 99 i Nyarugenge cyaje guhinduka n°778 i Nyarugenge, cyaje kugurwamo indi nzu iri ku Kamonyi yubatse mu kibanza n° 2603, ari cyo kiburanwa muri uru rubanza, kuko rwagaragaje ko ikomoka ku kibanza n° 99 i Nyarugenge cyaje guhinduka n°778, ikaba ariyo isigaye gusa mu mutungo itumukanwa wabashakanye ubarizwa mu Rwanda.

[28] Urukiko rusanga, ibivugwa n’uhagarariye Ranguella Giuseppe na sosiyete SOGIS Ltd, ko nta gabana rindi ryabaho, kuko Urukiko rw’Ikirenga rwategetse ko Uwamwezi Joséphine agabana ku buryo bungana na Ranguella Giuseppe 99% y’imigabane afite muri SOGIS Ltd, kandi mu bigize iyo migabane hakaba harimo n’agaciro k’iyo nzu iburanwa, nta shingiro bifite, kuko nkuko Urukiko Rukuru rw’Ubucuruzi rwabibonye kandi n’uru Rukiko akaba ariko rubibona, Urukiko rw’Ikirenga rwamaze kwemeza ko iyo migabane bayigiraho uruhare bombi ku buryo bungana, kandi runemeza ko hari inzu iri ku Kamonyi ikibarizwa mu mitungo y’abashakanye, kuko ikomoka ku igurishwa ry’umutungo bari bahuriyeho, bityo rero Urukiko rw’Ikirenga rwavuze ko uwo mutungo ukiriho, kuko wabyaye undi uri Kamonyi, runemeza ko wagabanwa mu gihe Uwamwezi Joséphine yatsinda urubanza, kubera ko nyine rwabonye ko agaciro k’inzu bari bahuriyeho katari muri SOGIS Ltd.

[29] Hashingiwe ku ngingo ya 24 y’Itegeko n° 22/99 ryo ku wa 12/11/1999 ryavuzwe no ku rubanza n° RS/REV/INJUST/CIV.0012/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 01/06/2018, hamwe n’ibisobanuro byatanzwe haruguru, Urukiko rusanga ubujurire bwatanzwe na Uwamwezi Joséphine n’ubwa Barbara Ranguella nta shingiro bufite.

2. Ku birebana n’indishyi, amafaranga y’ikurikiranarubanza n’igihembo cya Avoka

[30] Me Ndagijimana Emmanuel, uhagarariye Uwamwezi Joséphine asaba 2.000.000 Frw akubiyemo ay’ikurikiranarubanza n’igihembo cya Avoka muri ubu bujurire.

[31] Me Twiringiyemungu Joseph uhagarariye Rugenera Marc na Kitenge Berthe avuga ko basaba Urukiko rw’Ubujurire gutegeka Uwamwezi Joséphine kubaha 2.000.000 Frw y’indishyi zo gushorwa mu manza na 3.000.000 Frw y'igihembo cya Avoka kuri buri muntu kuri uru rwego, yose hamwe akaba 10. 000.000 Frw.

[32] Me Nkurunziza François Xavier uburanira Ranguella Giuseppe na SOGIS Ltd avuga ko basaba Urukiko rw’Ubujurire kubagenera indishyi bari basabye mu rubanza rujuririrwa zigatangwa kuri buri wese, zingana na miliyoni eshanu (5.000.000 Frw), kubera gusiragizwa mu manza nta mpamvu yumvikana na miliyoni ebyiri (2.000.000Frw) y’ikurikiranarubanza n’igihembo cya Avoka hiyongereyeho 1.000.000 Frw muri ubu bujurire.

UKO URUKIKO RUBIBONA

[33] Urukiko rurasanga amafaranga y'indishyi z'ikurikiranarubanza n'igihembo cya Avoka zisabwa na Uwamwezi Joséphine ndetse na Ranguella Giuseppe na SOGIS Ltd badakwiye kuzihabwa, kubera ko bagomba kugabana ku buryo bungana, buri wese akaba agomba guherezwaho ibyo yatakaje mu gukurikirana uru rubanza.

[34] Urukiko rurasanga Rugenera Marc na Kitenge Berthe bakwiye guhabwa ibyo batakaje ku rubanza bigizwe n'igihembo cya Avoka kingana na 700.000 Frw kigenwe mu bushishozi bw'urukiko, kuko izo basabye ari nyinshi, bakaba bagomba kuzihabwa na Uwamwezi Joséphine, kuko ari we wabareze, naho indishyi zo gushorwa mu manza, bakaba batazihabwa, kuko bagombaga kuba ababuranyi muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[35] Rwemeje ko ubujurire bwa Uwamwezi Joséphine n'ubwa Barbara Ranguella nta shingiro bufite.

[36] Rwemeje ko urubanza n° RCOMA 00774/2018/CHC/HCC–RCOMA 00784/2018/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 21/06/2019 rudahindutse.

[37] Rutegetse Uwamwezi Joséphine gusubiza Rugenera Marc na Kitenge Berthe amafaranga y'igihembo cya Avoka angana n'ibihumbi Magana arindwi (700.000 Frw).

[38] Rutegetse ko amagarama y'urubanza ahwanye n'ibyarukozwemo.