UWANYIRIGIRA N'ABANDI v SPECIAL GUARANTEE FUND

[Rwanda URUKIKO RW'UBUJURIRE - RCAA 00020/2021/CA (Munyangeri, P. J.,) 29 Mata 2022]

Indishyi – Ibarwa ry'indishyi zikomoka ku mpanuka zitewe n'ibinyabiziga – Indishyi mbangamirabukungu – Indishyi mbangamirabukungu zibarwa hashingiwe inyandiko mpamo zerekana inyungu uzisaba yacyuye ku mwuga wabo mu gihe cy'amezi 12 yabanjirije impanuka, mu gihe izo nyandiko zitagaragajwe indishyi zibarwa hashingiwe ku mushahara muto w'umwaka udashobora kugibwa munsi wemewe nk'uko biteganywa n'amategeko agenga ibipimo byo guhuza imishahara n'ihindagurika ry'ibiciro by'ibintu nkenerwa – Itegeko Nº 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri kandi bigenda ku butaka, ingingo ya 4, igika cya 5 n'icya 8.

Incamake y'ikibazo: Ku wa 11/02/2019 Harorimana ubwo yaratwaye imodoka yakoze impanuka yamuhitanye biturutse ku ikamyo itaramenyekanye yamugonze ikamurenza umuhanda agapfa ndetse n'imodoka ye ikangirika cyane. Abagize umuryango we barimo umugore we witwa Uwanyirigira n'abana be Kirenga, Rwema na Rwamurangwa basabye indishyi zikomoka ku mpanuka Special Guarrantee Fund kuko imodoka yamugonze itabashije kumenyekana ibasubiza ko izo ndishyi batazihabwa kuko inyandikomvugo yakozwe n'umugenzacyaha kuri iyo mpanuka yagaragaje ko nyakwigendera ariwe nyirabayazana w'iyo mpanuka. Ibi byatumye Uwanyirigira mu izina rye ndetse no mu izina ry'abana be atanga ikirego mu Rukiko Rwisumbuye rwa Ngoma barega Special Guarantee Fund basaba indishyi zikomoka ku mpanuka yahitanye Harorimana.

Urukiko Rwisumbuye rwasanze icyo kirego gifite ishingiro hanyuma rutegeka ko Special Guarantee Fund yakwishyura abarega indishyi zinyuranye ariko uregwa ntiyanyurwa bituma ajurira icyo cyemezo mu Rukiko Rukuru urugereko rwa Rwamagana asaba Urukiko gusuzuma niba impanuka yahitanye Harorimana yaratewe n'ikinyabiziga kitamenyekanye, niba abatangabuhamya urukiko rwashingiyeho ari abo kwizerwa no gusuzuma ko indishyi zatanzwe zategetswe zarabazwe mu buryo bukurikije amategeko.

Urukiko Rukuru rwemeje ko ubujurire bufite ishingiro, ko imikirize y'urubanza rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ihindutse ku bijyanye n'indishyi mbangamirabukungu. Urega ntiyanyuzwe n'iyo mikirize y'urubanza bituma ajurira mu Rukiko rw'Ubujurire asaba kumenya niba inyandiko yiswe "Profit and loss account 31 December 2018" ifite inenge ku buryo itagenderwaho mu kubara indishyi, iyi nyandiko akaba ariyo urega avuga ko igaragaza umutungo nyakwigendera yinjizaga.

Mu iburanisha urega avuga ko Urukiko rubanza rutahaye agaciro iyo nyandiko ngo kuko yakozwe kandi igatangwa na Uwanyirigira ngo kuko yari umugore wa Nyakwigendera bigatuma rufata Harorimana nk'umuntu utaragiraga icyo akora kinjiza. Uregwa we asanga iyo nyandiko yaragombaga gushingirwaho kuko uwayitanze ariwe wasigaye mu mirimo ya sosiyete yakorwaga na nyakwigendera. Akomeza avuga ko iyo nyandiko igaragaza umushahara, inyungu ku mwaka ndetse n'umusoro bityo ko nyakwigendera atagakwiye kubarwa nk'utagira icyo yinjiza.

Uhagarariye Special Guarantee Fund avuga ko ikigo ahagarariye kitemera ko impanuka ivugwa ko yatewe n'imodoka itaramenyekanye yabayeho kuko abatangabuhamya batanze amakuru batigeze babona iba kubwo ibyo ko n'urubanza rwajuririwe rwateshwa agaciro. Anavuga kandi ko

abareze bashingiye ku nyandikomvugo zigaragaza neza ko iyo mpanuka yatewe nuko nyakwigendera yataye umuhanda. Akomeza avuga ko inyandiko yiswe “Profit and loss account 31 December 2018’’ idakwiye gushingirwaho habarwa indishyi kubera ko ari iya sosiyete kandi usabirwa indishyi akaba ari umuntu ku giti cye ndetse ko iyo sosiyete yayoborwaga na Uwanyirigira umugore we, ikaba itanagaragaza umusaruro Harorimana yatahanaga bityo akaba akwiye kubarirwa indishyi hagendewe ku mushahara muto ubarirwa abatagira akazi.

Incamake y’icyemezo: 1. Indishyi mbangamirabukungu zibarwa hashingiwe inyandiko mpamo zerekana inyungu uzisaba yacyuye ku mwuga wabo mu gihe cy’amezi 12 yabanjirije impanuka, mu gihe izo nyandiko zitagaragajwe indishyi zibarwa hashingiwe ku mushahara muto w’umwaka udashobora kugibwa munsi wemewe nk’uko biteganywa n’amategeko agenga ibipimo byo guhuza imishahara n’ihindagurika ry’ibiciro by’ibintu nkenerwa, bityo rero inyandiko abasaba indishyi bashingiraho ikaba itashingirwaho kuko itagaragaza ko nyakwigendera yaba yari afite akazi kamuhemba umushahara buri kwezi muri sosiyete yitwa “Vision Work Company Ltd”, cyangwa izindi nyungu zagaragajwe n’inyandiko mpamo.

2. Nta nenge zagaragajwe na Special Gaurantee Fund zatuma urubanza rujuririrwa ruteshwa agaciro.

3. Ku bijyanye no gutumiza urwego rwa polisi rushinzwe umutekano wo mu muhanda n’urw’Ubushinjacyaha ku rwego Rwisumbuye rwa Ngoma; Urukiko rurasanga nta mpamvu yo guhamagaza izo nzego muri uru rubanza kuko iperereza ababuranyi bisabiye ko Urukiko Rukuru, Urugereko rwa Rwamagana rukora rwarikoze.

4. ku bijyanye no kuba Ubushinjacyaha bwagombye kuba bwarabaye umuburanyi muri uru rubanza, Urukiko rusanga iyi mvugo nta shingiro ifite, kuko uru rubanza ari urubanza rw’imbonezamubano, Ubushinjacyaha bukaba butaza mu bwoko bw’izi manza nk’uko biteganywa n’itegeko.

Ubujurire nta shingiro bufite;

Amategeko yashingiweho

Itegeko Nº 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y’abangirijwe n’impanuka zitewe n’ibinyabiziga bigenzwa na moteri kandi bigenda ku butaka, ingingo ya 4;

Itegeko Nº 014/2018 ryo ku wa 04/04/2018 rigena imitunganyirize, imikorere n’ububasha bw’Ubushinjacyaha Bukuru n’Ubushinjacyaha bwa Gisirikare, ingingpo ya 43;

Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo ya 111, 158.

Imanza zifashishijwe

RCAA 00003/2017/SC; SORAS ASSURANCES GENERALES Ltd na Sebigomba, rwaciwe n’Urukiko rw’Ikirenga ku itariki ya 28/07/2017.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Ku wa 11/02/2019, Harorimana Jean Baptiste wari utwaye imodoka TOYOTA HILUX RAB 572 T yakoreye impanuka mu Mudugudu w'Amahoro, Akagari ka Nyaruhumbu, Umurenge wa Rukira, Akarere ka Ngoma, Intara y'iburasirazuba, biturutse ku ikamyo yamusatiriye, mu kuyihunga imodoka yari atwaye irenga umuhanda ikora impanuka yamuhitanye n'imodoka yari atwaye irangirika bikomeye. Uwanyirigira Josée (umugore wa Harorimana Jean Baptiste), n'abana be Kirenga Manzi Loyke, Rwema Jean Luc na Rwamurangwa Octave basabye indishyi zikomoka ku mpanuka muri SPECIAL GUARANTEE FUND kuko ikamyo yateje impanuka itashoboye kumenyekana, SPECIAL GUARANTEE FUND yanga kuzitanga ishingiye ku bikubiye mu nyandikomvugo yakozwe n'Umugenzacyaha wakoze dosiye y'impanuka, wagaragaje ko Harorimana Jean Baptiste ari we nyirabayazana w'iyo mpanuka.

[2] Uwanyirigira Josée mu izina rye no mu izina ry'abana yabyaranye na Harorimana Jean Baptiste bavuzwe haruguru, batanze ikirego mu Rukiko Rwisumbuye rwa Ngoma, barega SPECIAL GUARANTEE FUND, basaba indishyi zikomoka ku mpanuka yahitanye Harorimana Jean Baptiste.

[3] Mu rubanza Nº RC 00158/2019/TGI/NGOMA rwaciwe ku wa 05/03/2020, Urukiko Rwisumbuye rwa Ngoma rwemeje ko ikirego cyatanzwe na Uwanyirigira Josée, Kirenga Manzi Loyke, Rwema Jean Luc, Rwamurangwa Octave bahagarariwe na Uwanyirigira Josée gifite ishingiro, rutegeka SPECIAL GUARANTEE FUND kwishyura Uwanyirigira Josée indishyi mbangamirabukungu zihwanye na 86.400.000 Frw n'indishyi z'akababaro zihwanye na 1.080.000 Frw, kwishyura Kirenga Manzi Loyke, Rwema Jean Luc na Rwamurangwa Octave bahagarariwe na Uwanyirigira Josée indishyi z'akababaro zingana na 2.430.000 Frw ni ukuvuga 810.000 Frw kuri buri wese, kwishyura Uwanyirigira Josée ibyo yatanze mu ishyingurwa rya Harorimana Jean Baptiste bihwanye na 500.000 Frw, 9.420.400 Frw y'ibyangiritse ku modoka ye, 150. 000 Frw y'ibyakoreshejwe mu kugura dosiye, kujya kuri Polisi, mu Bushinjacyaha no mu Rukiko, 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka, no kubishyura 20. 000 Frw y' amagarama batanze barega.

[4] SPECIAL GUARANTEE FUND yajuririye icyo cyemezo mu Rukiko Rukuru, Urugereko rwa Rwamagana, isaba gusuzuma niba impanuka yo ku wa 11/02/2019 yahitanye Harorimana Jean Baptiste yaratewe n'ikinyabiziga kitamenyekanye, kumenya niba ubuhamya bwashingiweho n'Urukiko ari ubwo kwizerwa no kumenya niba indishyi zategetswe zarabazwe mu buryo buteganywa n'amategeko.

[5] Mu rubanza Nº RCA 00034/2020/HC/RWG rwaciwe ku wa 18/10/2021, Urukiko Rukuru, Urugereko rwa Rwamagana, rwemeje ko ubujurire bwatanzwe na SPECIAL GUARANTEE FUND bufite ishingiro kuri bimwe, ko imikirize y'urubanza Nº RC 00158/2019/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 05/03/2020 ihindutse ku ndishyi mbangamirabukungu, ko SPECIAL GUARANTEE FUND igomba guha Uwanyirigira Josée indishyi mbangamirabukungu zingana na 6.152.569 Frw, ko nta mafaranga y'indishyi z'igihembo cya Avoka n'iz'ikurikiranarubanza agomba gutangwa kuri urwo rwego, 40.000 Frw yatanzweho ingwate y'amagarama ahwana n'ibyakozwe mu rubanza.

[6] Ku wa 16/11/2021, Uwanyirigira Josée yajuririye icyo cyemezo mu Rukiko rw'Ubujurire, ubujurire bwandikwa kuri Nº RCAA 00020/2021/CA, asaba kumenya niba inyandiko yiswe

“Profit and loss account 31 December 2018” ifite inenge ku buryo itagenderwaho mu kubara indishyi.

[7] Iburanisha ry’urubanza ryashyizwe ku wa 07/03/2022, uwo munsi ntirwaburanishwa kubera ko Avoka wa SPECIAL GUARANTEE FUND yari yagiye mu butumwa bw’akazi, ryimurirwa ku wa 06/04/2022 uwo munsi ruburanishwa mu ruhame, Uwanyirigira Josée n’abana be Kirenga Manzi Loyke, Rwema Jean Luc na Rwamurangwa Octave bahagarariwe na Me Kayitare Serge, SPECIAL GUARANTEE FUND ihagarariwe na Me Nibakure Florence.

II. IBIBAZO BIGIZE URUBANZA N’ISESENGURA RYABYO

1. Kumenya niba inyandiko yiswe “Profit and loss account 31 December 2018” ikwiye gushingirwaho mu kubara indishyi z’ibangamirabukungu

[8] Me kayitare Serge avuga ko mu gika cya 57 cy’urubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Rwamagana rwavuze ko rutagenera Uwanyirigira Josée indishyi rushingiye ku nyandiko yiswe “Profit and loss account 31 December 2018” ari na yo Urukiko Rwisumbuye rwa Ngoma rwari rwashingiyeho ruzimugenera, rushingiye ku kuba Uwanyirigira Josée ari we washatse iyo nyandiko akaba yari n’umufasha wa Harorimana Jean Baptiste, we akaba asanga nta cyabuza Urukiko kuyishingiraho kuko n’ubundi Uwanyirigira Josée ari we wasigaye mu mirimo yakorwaga na nyakwigendera.

[9] Me Kayitare Serge akomeza asobanura ko inyandiko yiswe “Profit and loss account 31 December 2018” igaragaza amafaranga yakoreshejwe hakubiyemo n’imishahara, inyungu ku mwaka n’umusoro watanzwe ugera kuri 5.593.814 Frw, ko kandi nta kindi cyangombwa gitangwa na Rwanda Revenue Authority, ko kuba agaragaza inyungu nyakwigendera yakuraga mu bucuruzi yakoraga, zigashimangirwa n’imenyekanisha ry’umusoro yabaga yishyuye, Urukiko rutagombaga kubara indishyi rufashe Harorimana Jean Baptiste nk’udafite icyo yinjizaga nyamara haratanzwe ikimenyetso kibigaragaza.

[10] Akomeza avuga ko ikibazo gikwiye kumenyekana ari icyo kumenya ukuri kw’ibikubiye muri iyo nyandiko, aho kureba uwayitanze kubera ko n’iyo ataba umugore wa Harorimana Jean Baptiste, n’umwana we yashoboraga kuyitanga nk’umuzungura we, ko rero iyo inyandiko ivugwa ihabwa agaciro, indishyi mbangamirabukungu zari gukomeza kungana n’izatanzwe mu rwego rwa mbere. Asoza avuga ko Harorimana Jean Baptiste yari umunyamigabane wa sosiyete yitwa “Vision Work Company Ltd”, afite uburenganzira ku nyungu ibonetse, bakaba bifuza ko izo nyungu ari zo zishingirwaho habarwa indishyi mbangamirabukungu.

[11] Me Nibakure Florence avuga ko ikigo ahagarariye kitemera ko impanuka bivugwa ko yakozwe n’imodoka itaramenyekanye yabayeho, kubera ko abatangabuhamya batanze amakuru batigeze babona iba, ko amafoto agaragaza ko imodoka ivugwa itigeze ikora kuri Harorimana Jean Baptiste, kandi ko abarega batanze ikirego bashingiye ku nyandikomvugo y’impanuka yakozwe na polisi no ku nyandikomvugo y’inyongera yakozwe n’Ubushinjacyaha, izo nyandiko zose zikaba zigaragaza ko Harorimana Jean Baptiste ari we wataye inzira.

[12] Ku ngingo y’ubujurire yo kuba abajuriye bavuga ko Urukiko rutahaye agaciro inyandiko yiswe “Profit and loss account 31 December 2018”, Me Nibakure Florence avuga ko iyo nyandiko

idakwiye gushingirwaho mu kubara indishyi, kubera ko ari iya sosiyete nk'igisa n'umuntu (personne morale) kandi usabirwa indishyi ari umuntu ku giti cye (personne physique). Avuga kandi ko Harorimana Jean Baptiste atari we wayoboraga iyo sosiyete, ahubwo yayoborwaga n'umugore we ari we Uwanyirigira Josée akaba akiriho, ko kandi ibikubiye muri iyo nyandiko bitagaragaza mu buryo buhagije umusaruro Harorimana Jean Baptiste yatahanaga. Avuga ko bishimangirwa n'ingingo ya 23 y'itegeko Nº 17/2018 ryo ku wa 13/04/2018 rigenga amasosiyete y'ubucuruzi, iteganya ko" Iyo inyandiko z'ishingwa ry'isosiyete zanditswe, isosiyete iba ishinzwe hakurikijwe iryo tegeko, nk'isosiyete ifite ubuzimagatozi bwite butandukanye n'ubw'abanyamigabane bayo."

[13] Me Nibakure Florence akomeza avuga ko hari umurongo watanzwe n'Urukiko rw'Ikirenga mu rubanza Nº RCAA 00003/2017/SC haburana SORAS na Sebigomba Innocent, aho ku kibazo kirebana no kumenya niba sosiyete yitwa SRC Ltd na Sebigomba Innocent ari abantu babiri batandukanye ku birebana n'inyungu yavaga mu masoko yatsindiye, mu gika cya 14 cy'urwo rubanza, Urukiko rw'Ikirenga rukaba rwarasanze mu Nkiko zose Sebigomba Innocent yaburaniyemo, atarashoboye kugaragaza inyandiko mpamo zerekana inyungu yakuraga mu mwuga akora, ko kuba Inkiko zabanje zarabariye ku nyungu "Société Rwandaise de Construction Ltd" yakuraga mu masoko yatsindiye, binyuranyije n'ibiteganywa n'amategeko, kuko SRC Ltd ari sosiyete igizwe n'umunyamigabane umwe, uwo munyamigabane na sosiyete akaba ari abantu babiri batandukanye., ko muri urwo rubanza, Urukiko rw'Ikirenga rwageneye Sebigomba Innocent 300.000 Frw y'umushahara nk'uwari Managing Director wa sosiyete.

[14] Akomeza asobanura ko mu rubanza ruri mu Rukiko rw'Ubujurire, Harorimana Jean Baptiste atari Managing Director wa sosiyete "Vision Work Company Ltd", ahubwo Uwanyirigira Josée ari we wari Umuyobozi Mukuru wayo (Managing Director). Asoza avuga ko ikibazo kiri kuri iriya nyandiko atari uwayizanye, ahubwo ikibazo gihari ari icyo kumenya icyo Harorimana Jean Baptiste yari ashinzwe muri sosiyete "Vision Work Company Ltd", ko inyandiko z'imisoro zagaragajwe ari iza sosiyete, ko kuba rero hataragaragajwe umushahara nyakuri wa Harorimana Jean Baptiste, bituma abaririrwa ku mushahara muto (SMIG) ugenerwa abadafite akazi.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 4, igika cya 5 y'itegeko Nº 41/2001 ryo ku wa 19/09/2001 ryerekeye imyishyurire y'abangirijwe n'impanuka zitewe n'ibinyabiziga bigenzwa na moteri kandi bigenda ku butaka iteganya ko" Abantu bakora imirimo bigengaho bagomba kwerekana inyandiko mpamo zerekana inyungu bacyuye ku mwuga wabo mu gihe cy'amezi 12 yabanjirije impanuka". Igika cya 8 cy'ingingo y'itegeko rimaze kuvugwa, igateganya ko "Iyo uwangirijwe atagaragaje inyandiko mpamo igaragaza umwuga akora, indishyi zibarwa hashingiwe ku mushahara muto w'umwaka udashobora kugibwa munsi wemewe nk'uko biteganywa n'amategeko agenga ibipimo byo guhuza imishahara n'ihindagurika ry'ibiciro by'ibintu nkenerwa". Na ho ingingo ya 3 y'itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko" Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana".

[16] Dosiye y'urubanza yashyizwemo inyandiko nyinshi zifitanye isano na rwo, ariko muri ubu bujurire, ababuranyi bafite ikibazo cyo kutumvikana ku mushahara muto w'umwaka ukwiye gushingirwaho mu kubarira indishyi mbangamirabukungu abazungura ba nyakwigendera

Harorimana Jean Baptiste, aho uruhande rwa Uwanyirigira Josée n'abana be bari mu rubanza, bavuga ko hakwiye gushingirwa ku nyandiko yiswe "Profit and Loss Account 31 December 2018", na ho uruhande rwa SPECIAL GUARANTEE FUND rukavuga ko idakwiye gushingirwaho kubera ko hatagaragajwe akazi kazwi Harorimana Jean Baptiste yakoraga.

[17] Inyandiko yiswe" Profit and Loss Account 31 December 2018" igaragaza ko ari raporo y'ibaruramari yakorewe sosiyete yitwa "Vision Work Company Ltd", Uwanyirigira Josée abereye "Managing Director", iyo nyandiko ikaba igaragaza ko igihe yakorwaga iyo sosiyete yari yagize inyungu zingana na 20.224.990 Frw.

[18] Mu gika cya 57 cy'urubanza Nº RCA 00034/2020/HC/RWG, Urukiko Rukuru, Urugereko rwa Rwamagana rwasanze inyandiko yiswe" Profit and Loss Account 31 December 2018" yakozwe na Uwanyirigira Josée itafatwa nk'inyandiko mpamo ku buryo Urukiko rubanza rwashoboraga kuyigenderaho mu kugena indishyi, cyane ko niba yari azi ko nyakwigendera yari rwiyemezamirimo, nta cyari kumubuza gushaka inyandiko mpamo ziteganywa n'itegeko. Rwabonye ko iyo nyandiko igaragaza urwunguko rwa sosiyete, ariko ikaba itagaragaza imisoro yatanzwe, abakozi, imishahara bahabwa, ibi byose bituma idahabwa agaciro mu ibarwa ry'indishyi mbangamirabukungu.

[19] Nk'uko Urukiko rw'Ikirenga rwabitanzeho umurongo, sosiyete n'abanyamigabane bayo ni abantu babiri batandukanye, bafite ubuzimagatozi butandukanye, ko rero imitungo yabo iba itandukanye, akaba nta na rimwe umutungo w'umunyamigabane ugomba kwitiranywa n'uwa sosiyete afitemo imigabane, mu gihe atagaragaza ko hari igihembo agenerwa buri kwezi[1].

[20] Ku byerekeye aho uhagarariye Uwanyirigira Josée, Kirenga Manzi Loyke, Rwema Jean Luc na Rwamurangwa Octave avuga ko Urukiko Rukuru, Urugereko rwa Rwamagana rutahaye agaciro inyandiko yiswe "Profit and Loss Account 31 December 2018" rushingiye ku kuba yaratanzwe na Uwanyirigira Josée, Urukiko rw'Ubujurire rurasanga atari byo, ahubwo ashaka kuruvugisha ibyo rutavuze, kuko ibisobanuro byatanzwe mu gika cya 57 cy'urubanza rujuririrwa byumvikana neza.

[21] Urukiko rw'Ubujurire rurasanga nta bimenyetso by'inyandiko mpamo abasaba indishyi mbangamirabukungu bigeze bashyikiriza Inkiko byemeza umusaruro, umushahara cyangwa inyungu nyakwigendera Harorimana Jean Baptiste yabonye mu mezi cumi n'abiri (12) yabanjirije impanuka, inyungu zaba zarinjijwe na sosiyete "Vision Work Company Ltd" Uwanyirigira Josée abereye Umuyobozi Mukuru (Managing Director) zikaba zitagomba kwitirirwa Harorimana Jean Baptiste.

[22] Urukiko rw'Ubujurire rurasanga rero kuba nta nyandiko mpamo n'imwe abajuriye bagaragarije Urukiko yaba igaragaza ko Harorimana Jean Baptiste yaba yari afite akazi kamuhemba umushahara buri kwezi muri sosiyete yitwa "Vision Work Company Ltd", cyangwa izindi nyungu zagaragajwe n'inyandiko mpamo, nta kosa Urukiko Rukuru, Urugereko rwa Rwamagana rwakoze mu kwemeza ko inyandiko igaragaza urwunguko rwa sosiyete "Vision Work Company Ltd" idakwiye gushingirwaho mu kubara indishyi mbangamirabukungu, bityo, iyi ngingo y'ubujurire ikaba nta shingiro ifite.

[1] Reba urubanza Nº RCAA 00003/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 28/07/2017 hagati ya SORAS ASSURANCES GENERALES Ltd na Sebigomba Innocent, igika cya 14.

2. Kumenya ishingiro ry'ubujurire bwuririye ku bundi bwatanzwe na SPECIAL GUARANTEE FUND.

[23] Me Nibakure Florence yatanze ingingo y'ubujurire bwuririye ku bwatanzwe na Uwanyirigira Josée n'abana be, asaba ko Urukiko rw'Ubujurire rutesha agaciro urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, rugategeka ko indishyi zemejwe mu rubanza Nº RCA 00034/2020/HC/RWG zikurwaho zose, kubera ko ikinyabiziga cyateje impanuka bitewe n'uko Harorimana Jean Baptiste yataye umuhanda akigusha. Asaba ko Polisi ishinzwe umutekano wo mu muhanda n'Ubushinjacyaha ku Rwego Rwisumbuye rwa Ngoma zihamagazwa muri uru rubanza nk'abatangabuhamya, kubera ko Polisi yageze aho impanuka yabereye igafata ibimenyetso byose harimo n'amafoto, ikaba yaza gusobanura ibyo yabonye n'ibyo yashingiyeho mu kwemeza ko imodoka yigushije. Asobanura ko ashingiye ku rubanza Nº RPAA 00024/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 13/12/2013, asanga Ubushinjacyaha bugomba guhagararirwa muri uru rubanza, kubera ko Inkiko zibanza zasubiye mu mikorere y'icyaha, Ubushinjacyaha budahagarariwe (yari yasabye kandi ko Urukiko rw'Ubujurire rutemerera abajuriye kureka ubujurire batanze, ariko basobanuye ko batigeze bagira icyo gitekerezo cyo kubureka).

[24] Me Kayitare Jean Pierre wari uhagarariye abajuriye mu nama ntegurarubanza yabaye ku wa 14/02/2022, avuga ko ubujurire bwuririye ku bundi bwa SPECIAL GUARANTEE FUND nta shingiro bukwiye guhabwa, kubera ko Inkiko zombi zabanje zagaragaje ko impanuka yatewe n'ikinyabiziga kitamenyekanye, ko ugomba kwirengera indishyi zisabwa ari SPECIAL GUARANTEE FUND. Avuga kandi ko ibisabwa n'uregwa mu bujurire ko Ubushinjacyaha butumizwa mu rubanza hashingiwe ku rubanza Nº RPAA 0024/09/CS nta shingiro byahabwa, kubera ko itegeko ryo muri 2019 ryerekeye imitunganyirize n'ububasha bw'Ubushinjacyaha ribuza urwo Rwego kuza mu manza mbonezamubano, ko kandi urubanza avuga rwaciwe n'Urukiko rw'Ikirenga ari urubanza rw'inshinjabyaha rwaregewemo indishyi, Ubushinjacyaha bukaba bugomba gutumizwa mu gihe uregera indishyi yajuriye, kandi ko asanga gutumiza izo nzego ari uburyo bwo gutinza urubanza.

UKO URUKIKO RUBIBONA

[25] Ku kibazo kirebana no gutesha agaciro urubanza Nº RCA 00034/2020/HC/RWG, Urukiko rw'Ubujurire rurasanga nta nenge zagaragajwe na SPECIAL GUARANTEE FUND mu ziteganywa n'itegeko[2] zatuma urubanza ruteshwa agaciro, iyo ngingo y'ubujurire ikaba nta shingiro ihawe.

[26] Ku byerekeranye n'icyifuzo gitangwa n'uruhande rwa SPECIAL GUARANTEE FUND cyo gutumiza urwego rwa polisi rushinzwe umutekano wo mu muhanda n'urw'Ubushinjacyaha ku rwego Rwisumbuye rwa Ngoma, Urukiko rurasanga nta mpamvu yo guhamagaza izo nzego

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[2] Ingingo ya 158, igika cya mbere 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"Iyo Urukiko rwajuririwe rusanze urubanza rwareregewe mu rwego rwa mbere mu buryo budakurikije amategeko cyangwa rwararegeye Urukiko rudafite ububasha, nyamara urwo Rukiko rukaba rwarafashe icyemezo cyo kurwakira, Urukiko rwajuririwe rwakira ubwo bujurire, rukagaragaza ko urwo rubanza rwari rwararegewe Urukiko rwa mbere mu buryo bunyuranyije n'amategeko, rugatesha agaciro ibyemezo byose byashingiye kuri iryo kosa, ubifitemo inyungu akaba yakongera agatanga ikirego bundi bushya".

muri uru rubanza kuko iperereza ababuranyi bisabiye ko Urukiko Rukuru, Urugereko rwa Rwamagana rukora rwarikoze, rukaba rwaranabajije umutangabuhamya w'ingenzi witwa Gashayija Francis wari Umunyamabanga Nshingwabikorwa w'Umurenge wa Rukira ababuranyi bemeranyagaho ko ari we wageze aho impanuka yabereye, ubuhamya yatanze rukabuhuza n'ubwatanzwe n'abandi batangabuhamya banyuranye babonye cyangwa bageze aho impanuka yabereye ikimara kuba, rusanga ubwo buhamya bugomba guhabwa agaciro kabwo.

[27] Urukiko rw'Ubujurire rurasanga kandi kuba Urukiko Rukuru, Urugereko rwa Rwamagana rwarafashe icyemezo cyo kujya gukora iperereza aho impanuka yabereye, ari uko rwasanze ibikubiye mu nyandikomvugo y'impanuka yakozwe n'urwego rwa polisi biteye urujijo kuko rwabonye ko byari bitandukanye n'ibyatangajwe n'abatangabuhamya, akaba rero nta gishya izo nzego zaza gusobanura kuri uru rwego, kirenze ubuhamya bw'ababonye impanuka iba n'abageze aho yabereye ikimara kuba.

[28] Ku birebana no kuba SPECIAL GUARANTEE FUND ivuga ko Ubushinjacyaha bwagombye kuba bwarabaye umuburanyi muri uru rubanza, ishingiye ku murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza Nº RPAA 0024/09/CS, Urukiko rw'Ubujurire rurasanga iyi mvugo nta shingiro ifite, kuko uru rubanza ari urubanza rw'imbonezamubano, Ubushinjacyaha bukaba butaza mu bwoko bw'izi manza nk'uko biteganywa n'itegeko[3].

3. Kumenya niba abajuriye bahabwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka

[29] Uwanyirigira Josée, Kirenga Manzi Loyke, Rwema Jean Luc na Rwamurangwa Octave basaba Urukiko rw'Ubujurire gutegeka SPECIAL GUARANTEE FUND kubasubiza amafaranga bakomeje gutanga bakurikirana urubanza n'ay'igihembo cya Avocat, yose hamwe angana na miliyoni ebyiri (2.000.000 Frw).

[30] Me Nibakure Florence avuga ko abajuriye badakwiye guhabwa amafaranga basaba, ko bajuriye basaba indishyi badafiteho uburenganzira, kuko bazi neza ko ibyo bashingiraho bazisaba atari ukuri.

UKO URUKIKO RUBIBONA

[31] 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 gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Kiburanishirizwa rimwe n'ikirego cy'iremezo."

[32] Urukiko rurasanga kuba hagaragajwe ko ubujurire bwa Uwanyirigira Josée, Kirenga Manzi Loyke, Rwema Jean Luc na Rwamurangwa Octave nta shingiro bufite, amafaranga anyuranye basaba uwo barega, batagomba kuyahabwa.

[3] Ingingo ya 43, igika cya mbere y'itegeko nº 014/2018 ryo ku wa 04/04/2018 rigena imitunganyirize, imikorere n'ububasha bw'Ubushinjacyaha Bukuru n'Ubushinjacyaha bwa Gisirikare iteganya ko "Ubushinjacyaha buburana mu Rukiko imanza z'inshinjabyaha gusa […]"

III. ICYEMEZO CY'URUKIKO

[33] Rwemeje ko ubujurire bwatanzwe na Uwanyirigira Josée, Kirenga Manzi Loyke, Rwema Jean Luc na Rwamurangwa Octave, nta shingiro bufite.

[34] Rwemeje ko urubanza Nº RCA 00034/2020/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 18/10/2021, rudahindutse.

[35] Rutegetse ko ingwate y'amagarama yatanzwe n'abajuriye, ihwanye n'ibyakozwe muri uru rubanza.