# NDATINYA N'UNDI v GAKWAYA

[Rwanda URUKIKO RW'UBUJURIRE – RCAA 00002/2020/CA (Ngagi, P.J.) 28 Nyakanga 2022]

*Itegeko rigenga amasezerano – Inshingano mu masezerano – Iyo igihe cyo gukora igisabwa mu masezerano kigeze ugomba kugikora ntagikore, bifatwa ko ariwe wishe amasezerano, bityo n'urundi ruhande nta kosa ruba rukoze iyo rutubahirije ibyo rusabwa.*

*Itegeko rigenga Amasezerano – Gusesengura amasezerano – Gusesengura amasezerano cyangwa zimwe mu ngingo zayo ni ugusobanura icyo ayo masezerano agamije n'icyasezeranyijwe, ukurikije ibiyavugwamo.*

*Itegeko rigenga imiburanishirize y'imanza mbonezamubano – ubujurire – kuba Urukiko rutasuzumye buri mpamvu y'ubujurire ukwayo nk'uko yatanzwe n'ababuranyi ahubwo rukagira izo ruhuriza hamwe rukazisuzumira hamwe rukazifataho icyemezo, ntibyafatwa nko kudasuzuma icyajuririwe cyose (infra petita) cyangwa kurengera icyajuririwe (ultra petita),*

**Incamake y'ikibazo:** Uru rubanza rwatangiye Gakwaya arega Ndatinya mu Rukiko Rwisumbuye rwa Nyarugenge avuga ko baguze umutugo utimukanwa kuwa 20/06/2017 kuri 80,000,000Frw kandi akaba amaze kwishyura 50.900.000Frw, bivuze ko hasigaye 29.100.000Frw ariko Ndatinya ngo yanze kubahiriza ibyo amasezerano yateganyaga birimo kuvana icyangombwa cy'ubutaka muri banki kugira ngo nawe atange amafaranga asigaye. Asaba Urukiko gutegaka Ndatinya kubahiriza amasezerano y'ubugure bw'inzu bagiranye, kumuha indishyi z'akababaro zo kwica amasezerano, igihembo cya Avoka n'amafaranga y'ikurikiranarubanza. Anasaba ko Biberabagabo agobokeshwa mu rubanza. Ndatinya yiregura avuga ko ibyo Gakwaya avuga nta kuri kurimo, ko ari we wanze kubahiriza amasezerano kuko yagombaga gutanga 30.000.000Frw ku munsi w'amasezerano, andi akazayatanga bitarenze ku wa 01/01/2018. Ko yahawe 13.000.000Frw mu bice bibiri, agategereza ko ahabwa andi agaheba, ko kandi na yo yayamushubije ayanyujije kuri konti ye. Asaba Urukiko kudaha ishingiro ikirego cye no kumutegeka kumuha amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

Biberabagabo wagobokeshejwe mu rubanza yavuze ko ntaho ahuriye n'urubanza ngo kuko 10.000.000Frw Gakwaya avuga ko yamuhaye, atigeze ayamuha.

Ndatinya na Biberabagabo basabye Urukiko guhagarika iburanisha kugira ngo babanze baregere inyandiko yo ku wa 09/10/2017, Gakwaya avuga ko yahereyeho Biberabagabo Jean Bosco 10.000.000Frw ngo ayashyire Ndatinya kandi ashyire umukono kuri iyo nyandiko, Urukiko rwasanze ibi nta shingiro byahabwa.

Urukiko rwaciye urubanza RC00289/2018/TGI/NYGE rwemeza ko nta kigaragaza ko Gakwaya yubahirije ku gihe ibyo yasabwaga mu masezerano, ko ayo masezerano yasheshwe n'uko atayubahirije ku gihe, ko Ndatinya na we nta nshingano yari afite yo kuyubahiriza, kandi ko agomba gusubiza Gakwaya 50.900.000Frw yari amaze guhabwa havuyemo 13.000.000Frw yamusubije. Rwemeza kandi ko nta hinduranyamutungo (mutation) ry'amazu aburanwa Ndatinya agomba gukorera Gakwaya, ko nta kigaragaza ko Gakwaya yahaye Ndatinya cyangwa Biberabagabo 10.000.000Frw.

Gakwaya ntiyishimiye imikirize yurwo rubanza, maze arujuririra mu Rukiko Rukuru, avuga ko Urukiko rwahaye igisobanuro kinyuranye n'isezeranya, rwemeza ko amasezerano y'ubugure asheshwe n'uko atayubahirije ku gihe kandi ngo mu ngingo ya 2 yayo masezerano, hateganyijwe ko umuguzi azishyura amafaranga asigaye hakuwemo umwenda ugurishije abereyemo Banki, ko rwirengagije nkana ingingo ya 2 n'iya 4 z'amasezerano, asaba kandi guhabwa amafaranga

yagombaga gukura mu bukode bw’ayo mazu mu gihe Ndatinya yari kubahiriza amasezerano, indishyi zo gushorwa mu manza z’amaherere n’igihembo cya Avoka.

Ndatinya nawe yarajuriye, avuga ko Urukiko rwarengereye icyo rwaregewe, ko rwemeje ibintu rutaherewe ibimenyetso, rukanamwima indishyi mu buryo bunyuranije n’amategeko, anasaba indishyi mu bujurire.

Urukiko Rukuru rwaciye urubanza RCA00021/2019/HC/KIG-RCA 00026/2019/HC/KIG rwemeza ko ubujurire bwa Gakwaya bufite ishingiro kuri bimwe, ko ubujurire bwatanzwe na Ndatinya nta shingiro bufite, ko urubanza rujurirwa ruhindutse ku bijyanye no gusubiza amafaranga ahubwo amasezerano agashyirwa mu bikorwa. Rutegeka Ndatinya gukorera Gakwaya ihinduranyamutungo (mutation) ku kibanza baguze. Gakwaya na we akishyura ikiguzi kingana 29.100.000Frw.

Ndatinya ntiyishimiye imikirize y’urubanza arujuririra mu Rukiko rw’Ubujurire, arusaba gusesengura amasezerano y’ubugure impande zombi zagiranye no kumenya uruhande rwatumye atubahirizwa n’inkurikizi zabyo, gusuzuma ingano y’ubwishyu Gakwaya yashyikirije Ndatinya, kumenya niba mu rubanza rujuririrwa harabayeho kudasuzuma icyajuririwe cyose (infra petita) no kureba niba harabayeho kurengera icyajuririwe (ultra petita).

Gakwaya avuga ko amasezerano y’ubugure hagati ye na Ndatinya ateganya ko ikiguzi cy’umutungo baguze ari 80.000.000Frw, ko, Ugura atanze avance ya 30.000.000Frw ko: “50.000.000Frw azazishyura hakuwemo umwenda abereyemo Bank, bivuze ko yagombaga kumwishyura amafaranga asigaye ari uko Ndatinya abanje kwishyura umwenda afitiye banki, avuga kandi ko Gakwaya atari we wari kujya kwishyura banki kubera ko nta masezerano yari afitanye nayo, bavuga ko ibyo Gakwaya yasabwaga n’amasezerano gukora yabikoze, ariko Ndatinya we ntakore ibyo yari yiyemeje.Biberabagabo avuga ko atazi impamvu yazanywe mu rubanza kuko ntaho ahuriye n’amasezerano ari hagati ya Ndatinya na Gakwaya,avuga ko ikirego cyatanzwe nabi. Urukiko rw’Ubujurire rwemeje ko Gakwaya ariwe utarubahirije amasezerano kuko igihe bumvikanye yagombaga guha Ndatinya igice cya kabiri cy’amafaranga yaramusigayemo atacyubahirije. Urukiko rwemeje ko Ndatinya agomba gusubiza Gakwaya amafaranga yose yamuhaye hiyongereyeho inyungu zibazwe kuri 18% uhereye igihe yamuhereye ayo mafaranga kugeza igihe urubanza ruciriwe.

Urukiko rwemeje ko ibibazo by’ingenzi byashyikirijwe Urukiko Rukuru rwabifasheho icyemezo kandi nta kurengera cyangwa kujya munsi y’ikiburanwa byababayeho.

**Incamake y’icyemezo:1.** Gusesengura amasezerano cyangwa zimwe mu ngingo zayo ni ugusobanura icyo ayo masezerano agamije n’icyasezeranyijwe, ukurikije ibiyavugwamo. Bityo iyo mu masezerano y’ubugure, bavuze ko igice cy’ikiguzi kizishyurwa n’ ugura hakuwemo umwenda ugurisha abereyemo Banki, bivuze ko ubwishyu bwa banki buzava kuri icyo gice kitarishyurwa, ntibivuze ko icyo gice kizishyurwa aruko banki ibanje kwishyurwa.

2. kuba Urukiko rutasuzumye buri mpamvu y’ubujurire ukwayo nk’uko yatanzwe n’ababuranyi ahubwo rukagira izo ruhuriza hamwe rukazisuzumira hamwe rukazifataho icyemezo, ntibyafatwa nko kudasuzuma icyajuririwe cyose (infra petita) cyangwa kurengera icyajuririwe (ultra petita),

3.Iyo igihe cyo gukora igisabwa mu masezerano kigeze ugomba kugikora ntagikore, bifatwa ko ariwe wishe amasezerano, bityo n’urundi ruhande nta kosa ruba rukoze iyo rutubahirije ibyo rwasabwaga.

**Amategeko yashingiweho:**

Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64, 66,68,79,80 na 84.
Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, ingingo ya 2 na 3.
Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo, ingingo ya 155 na156.

**Imanza zifashishijwe.**

Urubanza MAHESHE v ECOBANK Ltd; RCOMA 0027/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 14/11/2014.

Urubanza NDAYISABA N'UNDI v RUTAGENGWA; RCAA 00033/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 14/01/2022.

Urubanza MUZIMA N'ABANDI; RCAA 00003/2021/CA-RCAA 00004/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 15/07/2022.

## Urubanza

## I. IMITERERE Y'URUBANZA

[1] Ku wa 20/06/2017, Ndatinya Védaste na Gakwaya Aloys bagiranye amasezerano y'agateganyo y'ubugure bw'umutungo utimukanwa uri mu kibanza kibaruye kuri UPI: 1/03/03/02/145 giherereye mu Mudugudu wa Kanserege II, Akagari ka Kanserege, Umurenge wa Gikondo, Akarere ka Kicukiro, Umujyi wa Kigali, bumvikana ku giciro cya 80.000.000Frw, ko ugura atanze 30.000.000 Frw,50.000.000Frw zisigaye kwishyurwa ugura akazazishyura hakuwemo umwenda abereyemo Banki. Gakwaya Aloys yareze Ndatinya Védaste mu Rukiko Rwisumbuye rwa Nyarugenge avuga ko kugeza ubu amaze kwishyura 50.900.000Frw, bivuze ko hasigaye 29.100.000Frw ariko Ndatinya Védaste yanze kubahiriza ibyo amasezerano yateganyaga birimo kuvana icyangombwa cy'ubutaka muri banki kugira ngo nawe atange amafaranga yarasigaye.

[2] Yavuze kandi ko byageze n'aho yandikira Ndatinya Védaste amwihanangiriza ku wa 19/02/2018, iyo baruwa ikamugeraho ku wa 01/03/2018, aho kubahiriza ibyo bumvikanye muri ayo masezerano, ahubwo agahindura imvugo avuga ko Gakwaya Aloys ari we utarubahirije amasezerano, ndetse ashyira kuri konti ye 13.000.000Frw avuga ko ari yo yari yaramuhaye, aho kuba 50.900.000Frw yagiye amuha mu bihe bitandukanye, ko kandi yahaye mukuru we Biberabagabo Jean Bosco 10.000.000Frw nk'uko bigaragazwa n'inyandiko yo ku wa 09/10/2017, nka nyir'umutungo w'ukuri nubwo ngo wanditse kuri Ndatinya Védaste. Asaba Urukiko gutegaka Ndatinya Védaste kubahiriza amasezerano y'ubugure bw'inzu bagiranye, kumuha indishyi z'akababaro zo kwica amasezerano, igihembo cya Avoka n'amafaranga y'ikurikiranarubanza. Anasaba ko Biberabagabo Jean Bosco agobokeshwa mu rubanza.

[3] Ndatinya Védaste yavuze ko ibyo Gakwaya Aloys avuga nta kuri kurimo, ko ari we wanze kubahiriza amasezerano ngo kuko yateganyaga ko agomba gutanga 30.000.000Frw ku munsi w'amasezerano, andi akazayatanga bitarenze ku wa 01/01/2018. Ko yahawe 13.000.000Frw mu bice bibiri, agategereza ko ahabwa andi agaheba, bigatuma yiyambaza banki ikamuha inguzanyo agakemura ibibazo yari afite. Ko nta yandi mafaranga Gakwaya Aloys yamuhawe uretse ayo 13.000.000Frw gusa, ko kandi na yo yayamushubije ayanyujije kuri konti ye. Asaba Urukiko kudaha ishingiro ikirego cye no kumutegeka kumuha amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

[4] Biberabagabo Jean Bosco wagobokeshejwe mu rubanza yavuze ko ntaho ahuriye n'urubanza ngo kuko 10.000.000Frw Gakwaya Aloys avuga ko yamuhaye, atigeze ayamuha. Ko umukono uri ku nyandiko yo ku wa 09/10/2017 avuga ko yayamuhereyeho atari uwe, kandi ko atanabaye umuhamya kuri iyo nyandiko. Asaba Urukiko kudaha ishingiro kugobokeshwa kwe mu rubanza no gutegeka Gakwaya Aloys kumuha indishyi zo kumuzana mu rubanza n'igihembo cya Avoka wamuburaniye.

[5] Ndatinya Védaste na Biberabagabo Jean Bosco basabye Urukiko guhagarika iburanisha kugira ngo babanze baregere inyandiko yo ku wa 09/10/2017, Gakwaya Aloys avuga ko yahereyeho Biberabagabo Jean Bosco 10.000.000Frw ngo ayashyire Ndatinya Védaste kandi ashyire umukono

kuri iyo nyandiko. Urukiko rwasanze nta shingiro byahabwa kuko Gakwaya Aloys yavugaga ko atazi neza uwashyize umukono kuri iyo nyandiko uretse kuba yarahawe Biberabagabo nk'umutangabuhamya muri iyo nyandiko ariko yanditse ko Ndatinya Védaste ahawe amafaranga.

[6] Ku wa 28/12/2018, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza RC00289/2018/TGI/NYGE rwemeza ko nta kigaragaza ko Gakwaya Aloys yubahirije ku gihe ibyo yasabwaga mu masezerano yo ku wa 20/06/2017, ko ayo masezerano yasheshwe n'uko atayubahirije ku gihe, ko Ndatinya Védaste na we nta nshingano yari afite yo kuyubahiriza, kandi ko agomba gusubiza Gakwaya Aloys 50.900.000Frw yari amaze guhabwa havuyemo 13.000.000Frw yamusubije. Rwemeza kandi ko nta hinduranyamutungo (mutation) ry'amazu ari mu kibanza kibaruye kuri UPI: 1/03/03/02/145 giherereye mu Mudugudu wa Kanserege II, Akagari ka Kanserege, Umurenge wa Gikondo, Akarere ka Kicukiro, Umujyi wa Kigali, Ndatinya Védaste agomba gukorera Gakwaya Aloys, ko nta kigaragaza ko Gakwaya Aloys yahaye Ndatinya Védaste cyangwa Biberabagabo Jean Bosco 10.000.000Frw, ndetse ko nta ndishyi Gakwaya Aloys na Ndatinya Védaste bakwiye guhabwa. Rutegeka kandi Gakwaya Aloys guha BIBERABAGABO Jean Bosco 500.000Frw y'igihembo cya Avoka 100.000Frw y'ikurikiranarubanza.

[7] Gakwaya Aloys ntiyishimiye iyo mikirize y'urubanza, maze arujuririra mu RukikoRukuru, ubujurire bwe bwandikwa kuri RCA00021/2019/HC/KIG, avuga ko Urukiko rwahaye igisobanuro kinyuranye n'isezeranya, rwemeza ko amasezerano yo ku wa 20/06/2017 yasheshwe n'uko atayubahirije ku gihe kandi mu ngingo ya 2 y'amasezerano agibwaho impaka, hateganyijwe ko umuguzi azishyura amafaranga asigaye hakuwemo umwenda ugurishije abereyemo Banki, ko rwirengagije nkana ingingo ya 2 n'iya 4 z'amasezerano, aho ingingo 2 iteganya inkomyi itangiza inshingano, aho impande zombi zumvikanye ko umwenda wose uzishyurwa ari uko ugurisha abanje kwishyura umwenda abereyemo banki, nahoingingo ya 4 igateganya uko impaka zizakemurwa, asaba kandi guhabwa amafaranga yagombaga gukura mu bukode bw'ayo mazu mu gihe Ndatinya Védaste yari kubahiriza amasezerano, indishyi zo gushorwa mu manza z'amaherere n'igihembo cya Avoka.

[8] Ndatinya Védaste nawe yarajuriye ubujurire bwe bwandikwa kuri RCA0026/2019/HC/KIG, avuga ko Urukiko rwarengereye icyo rwaregewe, ko rwemeje ibintu rutaherewe ibimenyetso, rukanamwima indishyi mu buryo bunyuranije n'amategeko, anasaba indishyi mu bujurire. Izo manza zombi zahurijwe hamwe maze ziburanishirizwa hamwe.

[9] Ku wa 23/01/2020, Urukiko Rukuru rwaciye urubanza RCA00021/2019/HC/KIG-RCA 00026/2019/HC/KIG rwemeza ko ubujurire rwashyikirijwe na Gakwaya Aloys bufite ishingiro kuri bimwe, ko ubujurire bwatanzwe na Ndatinya Védaste nta shingiro bufite, ko urubanza RC00289/2018/TGI/NYGE rujuririrwa ruhindutse ku bijyanye no gusubiza amafaranga ahubwo amasezerano agashyirwa mu bikorwa. Rutegeka Ndatinya Védaste gukorera Gakwaya Aloys ihinduranyamutungo (mutation) ry'amazu ari mu kibanza kibaruye kuri UPI: 1/03/03/02/145, Gakwaya Aloys na we akishyura ikiguzi kingana 29.100.000Frw. Rutegeka Ndatinya Védaste guha Gakwaya Aloy 500.000Frw y'ikurikiranarubanza na 500.000Frw y'igihembo cya Avoka.

[10] Ndatinya Védaste ntiyishimiye imikirize y'urubanza arujuririra mu Rukiko rw'Ubujurire, arusaba gusesengura amasezerano y'ubugure impande zombi zagiranye ku wa 20/06/2017 no kumenya uruhande rwatumye atubahirizwa n'inkurikizi zabyo, gusuzuma ingano y'ubwishyu Gakwaya Aloys yashyikirije Ndatinya Védaste, kumenya niba mu rubanza rujuririrwa harabayeho kudasuzuma icyajuririwe cyose (infra petita) no kureba niba harabayeho kurengera icyajuririwe (ultra petita), anasaba amafaranga y'igihembo cya Avoka n'ikurikiranarubanza. Ubujurire bwe bwandikwa kuri RCAA00002/2020/CA.

[11] Iburanisha ryabaye ku wa 12/10/2020, Ndatinya Védaste yunganiwe na Me Rwigema Vincent, Gakwaya Aloys yunganiwe na Me Shema Gakuba Charles na Me Sadi Jashi, naho

Biberabagabo Jean Bosco yunganiwe na Me Bayingana Janvier, hasuzumwa inzitizi y'iburabubasha bw'Urukiko rw'Ubujurire ishingiye ku gutsindwa ku mpamvu zimwe mu nkiko zombi zabanje, maze ku wa 30/10/2020, Urukiko rwemeza ko rufite ububasha bwo kuburanisha ubujurire bwatanzwe na Ndatinya Védaste, ko iburanisha mu mizi rizaba ku wa 16/11/2020. Kuri uwo munsi Urukiko rwafashe icyemezo cyo gusubika iburanisha kugira ngo habanze hapimwe imikono iri ku nyandiko yo ku wa 09/07/2017. Mu iburanisha ryo ku wa 31/05/2021, Urukiko rumaze kugaragaza ko ipimwa ry'iyo nyandiko yo ku wa 09/07/2017 ridashoboka kuko iyo nyandiko yatanzwe atari umwimerere, rwemeje ko icyemezo rwafashe cy'uko iyo nyandiko ipimwa kivuyeho, urubanza rugakomeza ku bimenyetso bihari, ariko iburanisha rigenda risubikwa kubera impamvu zitandukanye.

[12] Urubanza rwongeye guhamagazwa ku wa 09/05/2022, maze ruhabwa indi nteko, ariko ntirwaburanishwa kubera ko Me Shema Gakuba Charles wunganiraga Gakwaya Aloys yari mu kiruhuko cy'uburwayi, iburanisha ryimurirwa ku wa 24/05/2022. Kuri uwo munsi nabwo rwimurirwa ku wa 08/06/2022 kugira ngo ababuranyi bajye gukemura ikibazo bafitanye mu bwumvikane, hanyuma uwo munsi ababuranyi bavuga ko ubwumvikane butakunze, iburanisha ryimurirwa ku wa 15/06/2022 kubera ko Me Shema Gakuba Charles na Me Rwigema Vincent bari bikuye mu rubanza bitewe nuko bari mu muhango wo kumvikanisha ababuranyi. Urubanza ruburanishwa ku wa 15/06/2022, Ndatinya Védaste ahagarariwe na Me Twayigize Jean Claude, Gakwaya Aloys yunganiwe na Me Bagabo Faustin, naho Biberabagabo Jean Bosco yunganiwe na Me Bayingana Janvier.

## II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

### 1.Kumenya uruhande rwatumye amasezerano y'ubugure yo ku wa 20/06/2017 atubahirizwa n'inkurikizi zabyo

[13] Uhagarariye Ndatinya Védaste avuga ko mu rubanza rujuririrwa Urukiko Rukuru rwasesenguye amasezerano yo ku wa 20/06/2017 uko atari, bituma bifatwa ko ari Ndatinya Védaste wishe amasezerano kandi atari byo. Asobanura ko mu ngingo ya 3 y'amasezerano havugwa ko izindi 50.000.000Frw zizishyurwa bitarenze 01/01/2018, ko iyo tariki nigera atarishyurwa amasezerano azahita aseswa, ko rero kutishyura ikiguzi cyose ari impamvu isesa amasezerano nk'uko bikubiye muri ayo masezerano, ko rero amasezerano yasheshwe kubera ko Gakwaya Aloys atayubahije. Asobanura kandi ko ingingo ya 3 y'amasezerano yateganyaga inkomyi nsesamasezerano, ko nyuma yuko inkomyi ibayeho, amasezerano yahise aseswa nk'uko biteganywa n'ingingo ya 79 y'Itegeko rigenga amasezerano, ko rero kuba yaritabaje indi Banki ikamugurira umwenda kugira ngo batamutereza cyamunara umutungo, atanyuranyije n'amategeko kubera ko amasezerano ye na Gakwaya Aloys yari yamaze guseswa ku bw'itegeko.

[14] Avuga kandi ko Urukiko Rukuru rwirengagije ko amasezerano agaragaza ko 50.000.000Frw ari zo zagombaga kuvanwamo umwenda Ndatinya Védaste yari afitiye Banki. Asobanura ko ijambo « hakuwemo » ryumvikanisha ko 50.000.000Frw, zari zisigaye hazabanza kwishyurwamo amafaranga y'ideni Ndatinya Védaste yari afitiye Banki, kugira ngo babone icyangombwa, nyuma bakore ihererekanya mutungo, ko ari nayo mpamvu Ndatinya Védaste yagurishije inzu ye kugira ngo abashe gukemura ikibazo cy'ideni yari afitiye Bank of Africa.

[15] Gakwaya Aloys n'umwunganira bavuga ko amasezerano y'ubugure yo ku wa 20/06/2017 yabaye hagati ya Gakwaya Aloys na Ndatinya Védaste asobanutse neza. Basobanura ko ingingo ya kabiri y'ayo masezerano ivuga ko : "ikiguzi ari 80.000.000Frw, ko : "Ugura atanze avance ya 30.000.000Frw" ko: "50.000.000Frw zisigaye kwishyurwa, ugura azazishyura hakuwemo umwenda abereyemo Banki.", ko byumvikana neza ko Gakwaya Aloys waguraga yagombaga kumwishyura amafaranga asigaye ari uko Ndatinya Védaste abanje kwishyura umwenda afitiye banki, ari nayo mpamvu Gakwaya Aloys yamuhaye avansi ya 30.000.000Frw kugira ngo yishyure banki nayo imuhe

icyangombwa, hanyuma akabona kumwishyura asigaye angana na 50.000.000Frw bigatuma bashobora gukorana ihererekanyamutungo (mutation), ko iyo Ndatinya Védaste aza kuba atarayahawe aba ari we watanze ikirego nk'uko byateganywaga mu ngingo ya kane (4) y'ayo masezerano, atagombye kugeza ku wa 01/01/2018 ataragitanga.

[16] Basobanura ko iyo basomye ingingo ya gatatu (3) y 'amasezerano y'ubugure yo ku wa 20/06/2020, basanga Gakwaya Aloys yaragombaga kwishyura bitarenze ku wa 01/01/2018, ariko Ndatinya Védaste abanje kumwereka ko umwenda wa Banki uvugwa mu ngingo ya 2 y'amasezerano y'ubugure yo ku wa 20/06/2017 wamaze kwishyurwa, kugira ngo yishyure icyiciro cya kabiri (2), hanyuma ahabwe ibyangombwa by'umutungo yaguze kuko byari mu maboko ya Banki. Ko kuba byarageze ku wa 01/01/2018 Ndatinya Védaste atarishyura Banki ngo agobotore ibyo byangombwa muri Banki kugira ngo Gakwaya Aloys abone uko yishyura amafaranga asigaye, ahubwo agakomeza kumwishyuza kandi atarabona icyo yaguze mu rwego rw'amategeko, nk'uko bigaragazwa n'amafaranga yamwongeye mu bihe bitandukanye, ageze 50.900.000Frw agira ngo arebe ko yazana ibyo byangobwa, ariko nabyo bikaba iby'ubusa ntabizane, ko basanga Ndatinya Védaste ari we wabaye intandaro yo kutubahirizwa kw'ayo masezerano.

[17] Bavuga kandi ko Gakwaya Aloys atari we wari kujya kwishyura banki kubera ko nta masezerano yari afitanye na Banki, ko kandi Banki yari yaragurije Ndatinya Védaste amasezerano akaba agira ingaruka (effets) hagati y'impande zayagiranye. Basoza bavuga ko ibyo Gakwaya Aloys yasabwaga n'amasezerano gukora yabikoze, ariko Ndatinya Védaste we ntakore ibyo yari yiyemeje, ko rero ingaruka zabyo ari uko Ndatinya Védaste agomba guhatirwa kubahiriza amasezerano impande zombi zagiranye.

[18] Biberabagabo Jean Bosco n'umwunganira bavuga ko kuva urubanza rwatangira icyo Gakwaya Aloys yaregeye ari ukubahiriza amasezerano. Basobanura ko muri ayo masezerano havugamo ibintu 2, icya mbere ni uko Ndatinya Védaste yemeraga ko azaha Gakwaya Aloys inzu hanyuma Gakwaya Aloys nawe yemera ko azamuha amafaranga, ko muri ayo masezerano nta kintu na kimwe Biberabagabo Jean Bosco yigeze yiyemeza gukora kandi nta kintu na kimwe yategetswe n'Urukiko mu manza zabanje usibye kumva ibintu uko bitari byakozwe muri izo manza.

[19] Basobanura kandi ko iyo inzu iba ari iya Biberabagabo Jean Bosco nk'uko Gakwaya Aloys abivuga yari kuba muri ayo masezerano, ko kuba rero atarayabayemo bigaragaza ko ibyo atari ukuri, ko iyo bizaba kuba ari ukuri amasezerano aba yarabaye hagati ya Gakwaya Aloys na Biberabagabo Jean Bosco cyangwa hagati ya Gakwaya Aloys, Biberabagabo Jean Bosco na Ndatinya Védaste, bakaba bibaza igituma Gakwaya Aloys yareze Ndatinya Védaste hanyuma akavuga Biberabagabo Védaste, ko rero ikirego cyatanzwe nabi, icyo Urukiko rwagombaga gukora ari ukumubwira uko yari gutanga ikirego.

[20] Bavuga kandi ko Urukiko rwirengagije icyo ayo masezerano yari agamije ku mpande zombi, igihe ntarengwa mu gushyirwa mu bikorwa, kwikura mu masezerano no gusubiza icyo yari ashingiyeho kijyanye n'amafaranga yasubijwe Gakwaya Aloys. Basobanura ko Urukiko by'umwihariko rwirengagije amasezerano mashya yakozwe nyuma y'uko Ndatinya Védaste yivana mu masezerano yari yaragiranye na Gakwaya Aloys, ndetse ko gutegeka mutation ku nzu iri mu bugwate bwa Banki itari umuburanyi muri uru rubanza, hashingiwe kuri ayo masezerano, ari amakosa akwiye gukosorwa n'Urukiko rw'Ubujurire mu rwego rwo kwirinda gukungahaza Gakwaya Aloys nta mpamvu ("principe de non enrichissement sans cause"), ngo batibagiwe n'imanza z'urudaca zishobora gushozwa n'abatari muri uru rubanza kandi batanarumenyeshejwe.

## UKO URUKIKO RUBIBONA

[21] Kuri iyi ngingo y'ubujurire, Urukiko rurabanza rusesengure amasezerano impande zombi zagiranye kugira ngo hamenyekane uruhande rwatumye amasezerano atubahirizwa, hanyuma rugaragaze ingaruka yabyo.

## A. GUSESENGURA AMASEZERANO

[22] Ikigaragara muri uru rubanza ni uko impande zombi zitumvikana ku bisobanuro by'amagambo akubiye mu ngingo ya 2 y'amasezerano, agira ati: "50.000.000 Frw zisigaye kwishyurwa ugura azazishyura hakuwemo umwenda abereyemo Banki". Ndatinya Védaste asobanura ko ayo magambo yumvikanisha ko 50.000.000Frw, zari zisigaye kwishyurwa Gakwaya Aloys azazishyura yabanje gukuramo amafaranga y'ideni Ndatinya Védaste yari afitiye Banki, naho Gakwaya Aloys we avuga ko ayo magambo yumvikanisha neza ko ugura (Gakwaya Aloys) yagombaga kwishyura 50.000.000Frw zisigaye ari uko Ndatinya Védaste abanje kwishyura umwenda afitiye banki.

[23] Ingingo ya 66 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, iteganya ibikurikira : Gusesengura amasezerano cyangwa imwe mu ngingo zayo ni ugusobanura icyo ayo masezerano agamije n'icyasezeranyijwe. Ingingo ya 68 y'iryo Tegeko iteganya ibikurikira : « Inyandiko y'amasezerano isesengurwa uko yakabaye. Izindi nyandiko zijyanye n'amasezerano zisesengurirwa hamwe ».

[24] Urukiko rusomeye hamwe ingingo 66 n'iya 68 z'Itegeko N° 45/2011 ryavuzwe haruguru, zumvikanisha ko gusesengura amasezerano cyangwa zimwe mu ngingo zayo ari ugusobanura icyo ayo masezerano agamije n'icyasezeranyijwe, ukurikije ibiyavugwamo.

[25] Dosiye y'urubanza igaragaza amasezerano y'ubugure bw'inzu yo ku wa 20/06/2017, yabaye hagati ya Ndatinya Védaste na Gakwaya Aloys yashyizweho umukono na Noteri Kiteretse Hubert Vieri. Mu ngingo ya 2 y'ayo masezerano impande zombi zumvikanye ibikurikira : "Ugura atanze avance ya miliyoni mirongo itatu y'u Rwanda (30.000.000Frw), miliyoni mirongo itanu (50.000.000Frw) zisigaye kwishyurwa ugura azazishyura hakuwemo umwenda abereyemo Banki. Mu ngingo ya 3 y'ayo masezerano impande zombi zumvikanye ko uguze azishyura amafaranga asigaye bitarenze tariki ya mbere Mutarama 2018 (01/01/2018). Uguze natubahiriza iyi ngingo azasubizwa avance yari yatanze, amasezerano aseswe.

[26] Urukiko rurasanga mu gusobanura amagambo ababuranyi batumva kimwe akubiye mu ngingo ya 2 y'amasezerano impande zombi zagiranye ku wa 20/06/2017, ari ngombwa gusesengura iyo ngingo yose. Nk'uko byagaragajwe haruguru mu ngingo ya 2 y'amasezerano impande zombi zumvikanye ibikurikira : "Ugura atanze avance ya miliyoni mirongo itatu y'u Rwanda (30.000.000Frw), miliyoni mirongo itanu (50.000.000Frw) zisigaye kwishyurwa ugura azazishyura hakuwemo umwenda abereyemo Banki." Urukiko rurasanga iyi ngingo yumvikanisha ko ugura ari we Gakwaya Aloys yishyuye 30.000.000Frw ya avansi, 50.000.000Frw zisigaye azazishyura akuyemo amafaranga y'umwenda Ndatinya Védaste abereyemo Banki, cyane ko ijambo hakuwemo ryumvikanisha ko 50.000.000Frw arizo zizakurwamo ubwishyu bw'umwenda Ndatinya Védaste abereyemo Banki.

[27] Urukiko rurasanga ibyo Gakwaya Aloys n'umwunganira bavuga ko ayo magambo yumvikanisha neza ko ugura (Gakwaya Aloys) yagombaga kwishyura 50.000.000Frw zisigaye ari uko Ndatinya Védaste abanje kwishyura umwenda afitiye banki, nta shingiro bifite kuko nk'uko byasobanuwe haruguru, 50.000.000Frw niyo yagombaga kuvamo ubwishyu bw'umwenda Ndatinya Védaste yari abereyemo banki, cyane cyane ko ntaho bigaragara ko 30.000.000Frw ya avansi yahawe

Ndatinya Védaste yari ayo kubanza kwishyura umwenda abereyemo Banki, ahubwo icyumvikana nuko muri 50.000.000Frw asigaye hazabanza gukurwamo ayo Ndatinya Védaste abereyemo Banki.

[28] Urukiko rurasanga ibyo Gakwaya Aloys n'umwunganira bavuga ko Gakwaya Aloys atari we wari kujya kwishyura banki kubera ko nta masezerano yari afitanye na Banki, ko kandi Banki yari yaragurije Ndatinya Védaste amasezerano akaba agira ingaruka (effets) hagati y'impande zayagiranye, Urukiko rurasanga ntacyo byabamarira kuko ntaho bigaragara mu masezerano ko Gakwaya Aloys ari we wagombaga kujya kwishyurira Ndatinya Védaste, ahubwo ikigomba kumvikana nuko muri ayo mafaranga yari asigaye, Ndatinya Védaste yari afite inshingano zo kubanza kuvanamo aya Banki kugira ngo abone icyangombwa cy'umutungo, bitume ashobora no gukorera Gakwaya Aloys ihererekanyamutungo.

## B. KUMENYA URUHANDE RUTUBAHIRIJE AMASEZERANO N'INKURIKIZI YABYO

[29] Ndatinya Védaste avuga ko Gakwaya Aloys ari we utarubahirije amasezeranokuko atishyuye amafaranga yari asigaye ku itariki ya 01/01/2018 nk'uko babyumvikanye mu masezerano, naho Gakwaya Aloys akavuga ko NdatinyaVédaste ari we utarubahije amasezerano bagiranye kuko byageze ku wa 1/1/2018,Ndatinya Védaste atarishyura banki ngo agobotore ibyangombwa muri Banki kugira ngo nawe abone uko yishyura amafaranga asigaye, bityo ko Ndatinya Védaste ari we utarubahirije amasezerano ari nayo mpamvu bamureze basaba Urukiko kumutegeka kuyubahiriza.

[30] Ingingo ya 79, y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 ryavuzwe haruguru iteganya ibikurikira : « Iyo amasezerano ateganya inkomyi ituma inshingano z'ufite inshingano zirangira, mu gihe iyo nkomyi ibayeho, nta nshingano ufite inshingano aba agifite, keretse iyo ikintu cyagizwe inkomyi kibaye kubera ko ufite inshingano atubahirije inshingano ze cyangwa se kibaye nticyongere ku buryo bugaragara inshingano z'ufite inshingano ».

[31] Ingingo ya 80, igika cya kabiri, y'Itegeko N° 45/2011 ryavuzwe haruguru, iteganya ibikurikira : « Iyo igihe cyo gukora ibisabwa mu masezerano kigeze, kutabikora bifatwa nko kwica amasezerano ».

[32] Ingingo ya 84 y'Itegeko N° 45/2011 ryavuzwe haruguru, iteganya ibikurikira :«Uruhande rumwe ntirushobora gusaba urundi ruhande kurangiza inshingano zarwo rutabanje gukora ibyo rwasabwaga by'ingenzi mu gihe hari inshingano magirirane ».

[33] Nk'uko byagaragajwe haruguru, mu ngingo ya 3 y'amasezerano yo ku wa 20/06/2017, impande zombi zumvikanye ko uguze azishyura amafaranga asigaye bitarenze tariki ya mbere Mutarama 2018 (01/01/2018). Uguze natubahiriza iyi ngingo azasubizwa avance yari yatanze, amasezerano aseswe.

[34] Urukiko rurasanga Gakwaya Aloys yaragombaga kwishyura amafaranga asigaye bitarenze ku wa 01/01/2018, bitaba ibyo agasubizwa avansi yari yatanze,amasezerano agaseswa nk'uko impande zombi zabyumvikanyeho mu ngingo ya 3 y'amasezerano yo ku wa 20/06/2017. Kuba rero igihe cyo gukora igisabwa mu masezerano cyarageze ariko Gakwaya Aloys wagombaga kugikora ntagikore, kandi bikaba byasobanuwe ko ari we wagombaga kwishyura 50.000.000Frw, habanje kuvanwamo umwenda Ndatinya Védaste yari afitiye Banki, kutabikorabyari bihagije kugira ngo amasezerano aseswe ; bityo Ndatinya Védaste akabanta nshingano yari agifite yo gukorera Gakwaya Aloys ihererekanyamutungo, akaba rero atafatwa ko ari we wishe amasezerano.

[35] Urukiko rurasanga ibivugwa na Gakwaya Aloys ko kuba atarishyuye ku gihe amafaranga yari asigaye yabitewe nuko Ndatinya Védaste atari yagakuyeicyangombwa cy'umutungo yaguze muri Banki, nta shingiro byahabwa kuko ari we utarubahirije amasezerano, cyane ko n'ibaruwa yandikiye Ndatinya Védaste amusaba kubahiriza amasezerano yayanditse ku wa 19/02/2018, nyuma y'itariki yo ku wa 01/01/2018, impande zombi zumvikanye ko Gakwaya Aloys agomba kuba yishyuye amafaranga yose asigaye, atabikora agasubizwa avansi yatanze, hanyuma amasezerano agaseswa, kuba rero atarishyuye amafaranga yari asigaye kuri iyo tariki kandi yari impamvu ituma amasezerano aseswa, birumvikana ko ari we wishe amasezerano.

[36] Hashingiwe ku mpamvu zasobanuwe haruguru, Urukiko rurasanga Gakwaya Aloys atarubahirije amasezerano impande zombi zagiranye, akaba ari nta mpamvu ihari igomba gutuma Ndatinya Védaste ategekwa kuyubahiza, bityo Urukiko Rukuru ntirwagombaga gutegeka Ndatinya Védaste gukorera Gakwaya Aloys ihererekanyamutungo *(mutation*) ry'amazu ari mu kibanza kibaruye kuri UPI: 1/03/03/02/145, giherereye mu Mudugudu wa Kanserege II, Akagari ka Kanserege, Umurenge wa Gikondo, Akarere ka Kicukiro, Umujyi wa Kigali. Urukiko rurasanga rero ihererekanyamutungo ryategetswe n'Urukiko Rukuru nta shingiro rifite, rikaba rivanweho, ahubwo ikigomba gukorwa ni uko Ndatinya Védaste agomba gusubiza Gakwaya Aloys amafaranga yose yishyuye nk'uko aza kugaragazwa mu ngingo ikurikira iyi.

**2.Kumenya ingano y'amafarangaNDATINYA Védaste agombagusubiza Gakwaya Aloys**

[37] Uhagarariye Ndatinya Védaste avuga ko mu ngingo ya 2 y'amasezera havugwako hishyuwe 30.000.000Frw ariko ko ntakigaragaza ko yishyuwe, ko hanavugwa ko izindi 50.000.000Frw zizishyurwa bitarenze 01/01/2018, ko iyo tariki nigera atarishyurwa amasezerano azahita aseswa, ko rero kutishyura ikiguzi cyose ari impamvu isesa amasezerano nk'uko bikubiye muri ayo masezerano. Abajijwe niba nta mafaranga yishyuwe avuga ko ayishyuwe ari 13.000.000Frw kandi Ndatinya Védaste yayashubije ku wa 23/02/2018. Abajijwe igituma mu masezerano handitse ko ugura atanze avansi ya 30.000.000Frw, asubiza ko kubabyanditse gutyo atari ikimenyetso cyerekana ko Gakwaya Aloys yayishyuye, ko ibyanditswe atari ukuri, ko byanditswe gutyo kubera icyizere bari bafitanye kandi bisanzwe bikorwa mu bacuruzi bitewe n'icyizere baba bafitanye.

[38] Avuga kandi ko Gakwaya Aloys yaranzwe no guhindaguranya imvugo ku bijyanye n'uburyo yagiye yishyuramo, ko kandi nta mvugo n'imwe atangira ibimenyetso bihamya ubwishyu avuga ko yatanze. Ko mu myanzuro yo mu RukikoRwisumbuye rwa Nyarugenge yagarazaga ko yishyuye avansi ingana na 30.000.000Frw ivugwa mu masezerano, hanyuma ku wa 09/07/2017 akishyura andi 10.000.000Frw, nyuma yaho ku itariki itazwi akishyura 10.900.000Frw yose hamwe akaba 50.900.000Frw. Ko mu myanzuro ye yo mu Rukiko Rukuru, ku kibazo (issue) kijyanye no kumenya niba yarubahirije uburyo bwo kwishyura, yagaragaje ko yishyuye mu byiciro bibiri, avansi ya 30.000.000 Frw na 20.900.000Frw yatanze nyuma. Ko mu gihe cy'iburanisha ry'urubanza rujuririrwa Gakwaya Aloys yavuze ko ubwishyu yagiye abutanga abunyujije kuri mukuru wa Ndatinya Védaste witwa Biberabagabo Jean Bosco, akanagaragaza imibare y'amafaranga yagiye abikuzwa kuri *historique* ya konti ye muri Banki nk'uko bigaragara mu gika cya 27 cy'urubanza rujuririrwa. Ko kandi iyo mibare nta kimenyetso yayitangiye kigaragaza ko ari iy'ukuri kugira ngo hagaragazwe isano ifitanye n'ubwishyu, ndetse n'iyo uyiteranije ubona 25.475.000Frw.

[39] Asobanura ko kuba Gakwaya Aloys ubwe adashobora gusobanura mu buryo bumwe buhamye uko yishyuye ngo abitangire n'ibimenyetso ari impamvu ihagije ituma atsindwa. Avuga ko nubwo nta kimenyetso na kimwe gihamya ko yishyuye 50.900.000Frw, Urukiko Rukuru mu gika cya 42 cy'Urubanza rujuririrwa rwemeje ko yayishyuye, ndetse ko yari asigaje kwishyura 20.100.000Frw akaba azayishyura nyuma yo gukorerwa ihererekanyamutungo. Ko ibyo basanga bihabanye n'ibivugwa mu ngingo ya 2 n'iya 3 z'itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye

ibimenyetso mu manza n'itangwa ryabyo, aho iteganya ko ikimemyetso mu rubanza ari uburyo bukoreshwa kugira ngo ukuri kw'ibyabaye kugaragare, ko kandi buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. Ko kuba Gakwaya Aloys atarabashije kugaragaza ukuri kw'iyishyurwa rya 50.900.000Frw, hanyuma urukiko ntirubyiteho rukemeza ko yayishyuye, rwirengagije ibiteganywa n'ingingo ya 4 y'Itegeko ryavuzwe haruguru, aho iteganya ko Urukiko ruca urubanza rwaregewe hakurikijwe ibimenyetso bihuje na kamere y'ikiburanwa.

[40] Akomeza avuga ko bajya gukora ayo masezerano Gakwaya Aloys yamuhaye mu ntoki 7.000.000 Frw, amwandikira reçu aba ari we uyitwara, n'andi 6.000.000Fw yayamuhaye ingunga imwe ari kuri chantier nyuma y'iminsi atibuka, nabwo amuha reçu, ko ayo mafaranga 13.000.000 Frw yayamusubije kuri konti ye nk'uko bigaragara kuri bordereau bashyize muri système.

[41] Avuga na none ko ibyavuzwe na Gakwaya Aloys atari ukuri, kubera impamvu enye, iya mbere ari uko ibyo avuga ubu bihabanye n'inyandiko itanga ikirego kigitangira mu Rukiko Rwisumbuye rwa Nyarugenge kuko nta historique yagaragazaga, ko yavugaga ko yishyuye 30.000.000Frw, 10.000.000Frw yo mu nyandiko yo ku wa 09/07/2017, na 10.900.000 Frw yatanze mu ntoki adafitiye ibimenyetso; impamvu ya kabiri ari uko iyo ugereranyije iyo inyandiko yo ku wa 09/07/2017 na historique yagaragajwe na Gakwaya Aloys, hagaragaramo kuvuguruzanya, aho historique igaragaza ko mbere yo ku wa 09/07/2017, Gakwaya Aloys yaramaze kwishyura 22.275.000Frw, mu gihe iyo nyandiko yo ivuga ko yari amaze kwishyura 30.000.000Frw; ko impamvu ya gatatu ari uko inyandiko yo ku wa 09/07/2017 ivuguruzanya n'ibyo Gakwaya Aloys yabwiye Urukiko ko atigeze yishyura Ndatinya Védaste, nyamara muri iyo nyandiko yaragaragazaga ko yishyuye Ndatinya Védaste, Biberabagabo Jean Bosco akaba umutangabuhamya, ko n'abo batangabuhamya batemerewe gutanga ubuhamya mu magambo hakurikijwe ingingo ya 64 y'Itegeko ry'ibimenyetso mu manza n'itangwa ryabyo, ku kiburanwa kirengeje 50.000Frw, hakarebwa n'igihe babutangiye barakurikiye urubanza; impamvu ya kane, avuga ko bakurikije ukuntu historique ivuga ko Gakwaya Aloys yatanze amafaranga, n'icyari kigambiriwe, ngo ingwate igomborwe mbere yo ku wa 01/01/2018 n'uburyo yatanzwemo ntaho bihuriye n'icyari kigamijwe gukorwa.

[42] Gakwaya Aloys n'umwunganira bavuga ko biregura kuri iyi mpamvu y'ubujurire bavuga ko Ndatinya Védaste ayisobanura uko yishakiye ugereranyije n'imyanzuro ye hamwe n'ibyemejwe mu rubanza rujuririrwa. Basobanura ko ikigaragaza ko Gakwaya Aloys yatanze 30.000.000Frw icyambere ari amasezerano bagiranye yanditsemo ko atanze avansi ya 30.000.000Frw, ko ikimenyetso cya 2 kigaragaza ko yayatanze ari ibaruwa yo ku wa 19/02/2018, Me Mutabazi Innocent mu izina rya Gakwaya Aloys yandikiye Ndatinya Védaste amwihanangiriza, ko kandi Ndatinya Védaste atigeze asubiza ko ayo mafaranga ntayo yabonye.

[43] Bavuga kandi ko mu rubanza rujuririrwa yasobanuye ko ubwishyu bwa 30.000.000Frw nka avansi biri mu masezerano yo ku wa 20/06/2017 mu ngingo yayo ya kabiri (2), ko banashyikirije Urukiko ibimenyetso birimo bank statement ya BK Plc kandi iri muri dosiye ko kandi Ndatinya Védaste na Biberabagabo Jean Bosco batigeze bayivuguruza ngo bagaragaze ko ari impimbano. Ko Urukiko rwashingiye ku buhamya bwatanzwe na Rutaganda Théophile, Nshimyumukiza Evariste, Murekezi Théogène na Kanywabahizi Charles, aho bemeje ko Biberabagabo Jean Bosco yemereye imbere yabo ko Gakwaya Aloys yamwishyuye 50.900.000Frw, ariko akanga kubikorera inyandiko. Ko icyo ari ikimenyetso kigaragaza uguhuguza kwa Ndatinya Védaste na Biberabagabo Jean Bosco ; bityo ko Gakwaya Aloys yagaragarije Urukiko ibimenyetso byose bihagije bihamya ko yishyuye 50.900.000 Frw bivuguruza imvugo za Ndatinya Védaste na Biberabagabo Jean Bosco.

[44] Basobanura ko 50.900.000Frw yanyuze kuri Biberabagabo Jean Bosco, ko inzu yari iye ariko yanditse kuri Ndatinya Védaste murumuna we. Ko ayo mafaranga yagiye atangwa hakoreshejwe sheki za BK Plc kuri compte 00040-000- 42128-63 ya GAKWAYA Aloys, aziha Biberabagabo Jean Bosco. Ko yatangiye gutangwa ku wa 12/06/2017 mbere y'ubugure, aho yamuhaye 2.500.000Frw

akoresheje chèque no 486313, kuri iyo tariki amuha 75.000Frw, akoresheje chèque 486344, mbere y'ikorwa ry'amasezerano yari abererewemo 2.575.000Frw, ko ku wa 23/06/2017, yishyuye 4.000.000 Frw akoresheje sheki no 536086, ku wa 27/06/2017, yishyuye 12.500.000Frw akoresheje sheki no 467819, ku wa 30/06/2017 yishyuye 3.400.000Frw akoresheje sheki no 565173, ku wa 14/08/2017 yishyuye 3.000.000Frw akoresheje sheki no 824200. Ku wa 01/12/2017 yatanze 500.000 Frw akoresheje sheki no 208697, ku wa 14/12/2017 yishyuye 1.000.000Frw akoresheje sheki no 267255. Ayishyuwe kuri sheki yose akaba 24.400.000Frw.

[45] Bavuga kandi ko hari n'ayandi mafaranga yagiye amuha mu ntoki mu bihe bitandukanye amwishyurira ibibina n'ahandi, ko hari n'andi 10.000.000Frw yamuhaye, ko bamaze kugura icyo kibazo inshuti zabahuje Biberabagabo Jean Bosco akiyemerera ko yari amaze kumuha agera kuri 50.900.000Frw, uretse ko nta nyandiko babikoreye, uretse abatangabuhamya babizi, ko iyo aba atarayabonye kandi undi afite amasezerano, buri wese atari kugenda ngo atuze, abirekere iyo, ko bagiye no kwa notaire gusinya.

[46] Bavuga ko niba inzu atari iya Biberabagabo Jean Bosco bibaza impamvu 13.000.000Frw yahawe Biberabagabo Jean Bosco yasubijwe na Ndatinya Védaste, ko kandi amafaranga Ndatinya Védaste yemera atagaragaza uburyo yayahawe.

[47] Biberabagabo Jean Bosco n'umwunganira bavuga ko nk'uwagobokeshejwe ku gahato kugira ngo atsindirwe hamwe n'uwarezwe, asanga nta mafaranga yahawe na Gakwaya Aloys afite aho ahuriye n'impaka yazanye mu nkiko hashingiwe ku bimenyetso yashyikirije Urukiko.

[48] Bavuga kandi ko ikimenyetso cyo ku wa 09/10/2017, basaba ko kitazashingirwaho kubera ko Urukiko Rwisumbuye rwa Nyarugenge rwagitesheje agaciro kandi ntibyajuririrwa, ko kandi muri uru Rukiko hashingiwe ku ngingo ya 44-50 y'itegeko ry'ibimenyetso habayo kukiregera ko ari inyandiko mpimbano kuko Gakwaya Aloys yavugaga ko azakomeza kugikoresha ariko yanga gutanga inyandiko y'umwemere. Bityo ko icyo kimenyetso cya 10.000.000Frw kitagomba gushingirwaho.

[49] Bakomeza bavuga ko bigaragaye ko Biberabagabo Jean Bosco hari amafaranga yahawe ntiyayaha Ndatinya Védaste byaba ari ikibazo cy'ibimenyetso cyangwa Ndatinya Védaste yaregwa ubuhemu, ariko ko ntacyo byafasha muri uru rubanza, ko kandi amafaranga ari muri historique bancaire Biberabagabo Jean Bosco yabikuje atari ikimenyetso gishimangira ibyo Gakwaya Aloys aregera, akaba kandi atari n'ikimenyetso gituma agira ibyo ategekwa muri uru rubanza.

## UKO URUKIKO RUBIBONA

[50] Ingingo ya 3, igika cya mbere, y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ibikurikira : « Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana ».

[51] Nk'uko byagaragajwe mu kibazo (issue) kibanziriza iki, ingingo ya 2 y'amasezerano impande zombi zagiranye igaragaza ko ku wa 20/06/2017, Gakwaya Aloys yahaye Ndatinya Védaste avansi ya 30.000.000Frw.

[52] Urukiko rurasanga amafaranga Gakwaya Aloys yishyuye Ndatinya Védaste agaragarizwa ibimenyetso bidashidikanywaho ari 30.000.000Frw ya avansi Ndatinya Védaste yemeye ko yakiriye nk'uko bigaragara mu ngingo ya 2 y'amasezerano impande zombi zagiranye ku wa 20/06/2017. Urukiko rurasanga ibyo uhagarariye Ndatinya Védaste avuga ko Gakwaya Aloys ari we ugomba kugaragaza uko yatanze 30.000.000Frw nta shingiro bifite kuko ibyo Ndatinya Védaste yiyemeye mu masezerano byihagije, akaba ari nta kimenyetso kiruta ibyo yiyemereye mu masezerano yashyizeho umukono nta gahato.

[53] Ku bijyanye n'ibyo uhagarariye Ndatinya Védaste avuga ko amafaranga yakiriye ya avansi ari 13.000.000Frw gusa, ko nta kigaragaza ko yakiriye avansi ya 30.000.000Frw, Urukiko rurasanga nta shingiro bifite kuko amasezerano impande zombi zagiranye agaragaza neza ko ku wa 20/06/2017, Ndatinya Védaste yahawe avansi ingana na 30.000.000Frw hagasigara 50.000.000Frw, kuba rero Ndatinya Védaste atabasha kugaragaza ibimenyetso bivuguza ibyanditse mu masezerano yashyizeho umukono kandi akaba atagaragaza ko yashyizweho agahato, birumvikana ko ibyanditse mu masezerano ari byo bigomba gushingirwaho kandi bigafatwa nk'ukuri.

[54] Urukiko rurasanga inyandiko yo ku wa 09/07/2017, Gakwaya Aloys ashingiraho avuga ko hari andi 10.000.000Frw yishyuye Ndatinya Védaste nta gaciro yahabwa muri uru rubanza, kuko iyo nyandiko atari umwimerere kandi Ndatinya Védaste na Biberabagabo Jean Bosco bakaba batayemera, ndetse Biberabagabo Jean Bosco akaba yarasabye ko imikono iyiriho ipimwa ikagereranywa n'imikono yabo ariko nyuma y'aho Urukiko rubibemereye bikaba bitarashobotse kuko itabasha gupimwa n'abahanga kandi atari inyandiko y'umwimerere, bityo rero ibivugwa na Ndatinya Védaste ko iyo nyandiko Urukiko Rukuru rutagombaga kuyishingiraho bifite ishingiro ; cyane cyane ko no mu iburanisha ry'uru rubanza ryabaye ku wa 31/05/2021, uru Rukiko rwayifasheho icyemezo ko ruzashingira ku bindi bimenyetso.

[55] Urukiko rurasanga ikindi kimenyetso Gakwaya Aloys ashingiraho avuga ko hari andi mafaranga yishyuye Ndatinya Védaste ni historique ya konti ye igaragaza amafaranga Biberabagabo Jean Bosco yagiye abikuza kuri konti ye. Urukiko rurasanga iki kimenyetso kitashingirwaho kuko nta masezerano y'ubugure yabaye hagati ya Gakwaya Aloys na Biberabagabo Jean Bosco kandi nta kigaragaza ko Ndatinya Védaste yigeze aha Biberabagabo Jean Bosco ububasha bwo kwakira amafaranga y'ubwishyu atanzwe na Gakwaya Aloys, byumvikana ko amafaranga Biberabagabo Jean Bosco yaba yarabikuje kuri konti ya Gakwaya Aloys ntaho ahuriye n'amafaranga Gakwaya Aloys yagombaga kwishyura Ndatinya Védaste cyane ko ari abantu babiri batandukanye. Ku byo Gakwaya Aloys avuga ko inzu yari iya Biberabagabo Jean Bosco ariko yanditse kuri Ndatinya Védaste, ariyo mpamvu ari we yagiye yishyura nta shingiro byahabwa, kuko nta kibigaragaza cyane ko icyangombwa cy'umutungo ubaruye kuri UPI: 1/03/03/02/145 cyanditse kuri Ndatinya Védaste 100%, kandi akaba ari nawe bakoranye amasezerano.

[56] Ku byerekeye inyandiko y'ubuhamya bw'inshuti za Gakwaya Aloys ahuriyeho na Biberabagabo Jean Bosco, Gakwaya Aloys ashingiraho avuga ko amaze kwishyura 50.900.000Frw, Urukiko rurasanga iyi nyandiko nta shingiro yahabwa, kuko icyo inshuti ze zihamya muri iyo nyandiko nuko Biberabagabo Jean Bosco yabemereye ko yakiriye 50.900.000Frw ya Gakwaya Aloys, ariko ko atazamuha inzu ahubwo azamusubiza amafaranga ye mu gihe cy'amezi atandatu, bamusabye kubishyira mu nyandiko arabyanga, nk'uko rero byasobanuwe haruguru amasezerano aburanwa muri uru rubanza yabaye hagati ya Ndatinya Védaste na Gakwaya Aloys kandi Ndatinya Védaste niwe nyir'umutungo nk'uko bigaragazwa n'icyemezo cy'umutungo, bityo rero amafaranga Gakwaya Aloys yaba yarahaye Biberabagabo Jean Bosco ntaho ahuriye n'ubwishyu yagombaga guha Ndatinya Védaste mu gihe nta kimenyetso atanga cyerekana ko Ndatinya Védaste yahaye Biberabagabo Jean Bosco ububasha bwo kumufatira ayo mafaranga. Urukiko rurasanga rero ntaho rwahera rushingira kuri ubwo buhamya rwemeza ko Biberabagabo Jean Bosco yabemereye ko yakiriye 50.900.000Frw ya Gakwaya Aloys, cyane ko n'abo batangabuhamya bivugira ko Biberabagabo Jean Bosco yanze gukorera inyandiko ibyo bavuga yababwiye kandi akaba atarasinye no kuri iyo nyandiko y'ubuhamya.

[57] Urukiko rurasanga amafaranga Ndatinya Védaste agomba gusubiza Gakwaya Aloys ari 30.000.000Frw ya avansi yamuhaye hakuwemo 13.000.000Frw, akamusubiza 17.000.000Frw, ariko hakiyongeraho n'inyungu, kuko andi yose Gakwaya Aloys avuga nta bimenyetso bidashidikanywaho ayatangira.

[58] Urukiko rurasanga mu bushishozi bwarwo 17.000.000Frw, Ndatinya Védaste agomba gusubiza Gakwaya Aloys agomba kuyatangira inyungu z'igihe gishize atayakoresha zibariwe ku kigero banki zitangiraho inguzanyo kingana na 18% burimwaka guhera ku wa 02/01/2018, ubwo yagombaga kuba yamusubije amafarangaya avansi yamuhaye kugeza umunsi urubanza ruciriweho (ku wa 28/07/2022). Urukiko rurasanga inyungu zibariwe ku kigero cya 18% arizo Urukiko rw'Ikirenga rwatanze mu rubanza RCOMA0027/13/CS rwaciwe ku wa 14/11/2014, haburana Maheshe Munyerenkana Floride na ECOBANK Ltd, akaba ari nazo zatanzwe n'uru Rukiko mu rubanza Nº RCAA 00033/2020/CA rwaciwe ku wa 14/01/2022, haburana Ndayisaba Jean Damascène na Rutagengwa Georges hamwe na Rutagengwa Matter Elisabeth[1] ndetse no mu rubanza RCAA00003/2021/CA-RCAA00004/2021/CA rwaciwe ku wa 15/07/2022, haburana Muzima Rutikanga Frederick na Succession Habimana ihagarariwe na Karigirwa Félicité n'abandi.[2]

[59] Urukiko rurasanga inyungu Gakwaya Aloys agomba guhabwa zigomba kubarwamu buryo bukurikira : 17.000.000 Frw x 18 x 1666 (iminsi) : 365 x 100 =**13.967.013 Frw**. Urukiko rurasanga amafaranga yose hamwe Gakwaya Aloysagomba guhabwa na Ndatinya Védaste ari 17.000.000Frw + 13.967.013Frw = 30.967.013Frw.

### 3. Kumenya niba harabayeho kudasuzuma icyajuririwe cyose (infra petita)no kureba niba harabayeho kurengera icyajuririwe (ultra petita)

[60] Uhagarariye Ndatinya Védaste avuga ko mu Rukiko Rukuru impande zombi zajuriye, Ndatinya Védaste akajurira anenga ko Urukiko Rwisumbuye rwa Nyarugenge rwarengereye ku cyo rwaregewe, naho Gakwaya Aloys agasaba guhabwa inzu, hanyuma Urukiko rwasanga atayikwiriye rukamugenera amafaranga. Ko kandi Ndatinya Védaste na Gakwaya Aloys mu Rukiko Rukuru bayemeranywagaho, ariko mu gufata icyemezo Urukiko Rukuru ntirugire icyo ruyivugaho, maze rukanyuranya n'ibiteganywa n'ingingo ya 10 na 156 z'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Bavuga ko iyo ruza kuyisuzuma rwari gusanga ifite ishingiro, aho kuvuga ko ubujurire bwe budafite ishingiro uko bwakabaye nk'uko byemejwe mu gika cya 39 cy'urubanza rujuririrwa. Ko ari nako byagenze ku bijyanye n'indishyi z'akababaro zingana na 5.000.000Frw yari yasabye ku rwego rwa mbere, urukiko rukazimwima ku mpamvu zidashingiye ku mategeko, hanyuma yabijuririra urukiko ntirugire icyo rubivugaho mu mu gufata icyemezo.

[61] Avuga kandi ko Urukiko rwarengereye mu gufata icyemezo, aho Gakwaya Aloys yatanze ingingo z'ubujurire zitajyanye n'ibyemezo byafashwe mu rubanza yajuririraga, Ndatinya Védaste akaziregurahо yerekana ko izo ngingo zitagamije kunenga ibyo Urukiko Rwisumbuye rwa Nyarugenge rwemeje mu gika cya 14 nk'uko biteganywa n'ingingo ya 150 y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru. Ko kuba Urukiko Rukuru rutarafashe icyemezo kuri iyo nenge, byatumye rudashobora kuguma mu murongo w'icyafashweho icyemezo mu rubanza N° RC 00289/2018/YGI/NYGE, nk'uko bigaragara kuva mu gika cya 26 kugeza ku cya 28 by'urubanza rujuririrwa, aho rwasuzumye ibijyanye no kumenya niba koko hari amafaranga Gakwaya Aloys yahaye NdatinyaVédaste na Biberabagabo Jean Bosco, aho kugira ngo rwemeze ko hari ibimenyetso rwagaragarijwe bihamya buri cyiciro cy'ubwishyu Gakwaya Aloys avuga ko yatanze, ahubwo rukarengera maze mu gika cya 30 cy'urubanza rujuririrwa rugahamya ko inyandiko y'ubwishyu bwa 10.000.000 Frw ifite agaciro, ngo nkuko byemejwe mu mikirize y'urubanza RC 00289/2018/YGI/NYGE.

[62] Gakwaya Aloys n'umwunganira bavuga ko Ndatinya Védaste na Biberabagabo Jean Bosco atari bo basobanura ikirego cye, ko yareze asaba ko Ndatinya yategekwa kubahiriza amasezerano

[1] Reba igika cya 32 n'icya 34 by'urubanza No RCAA 00033/2020/CA rwavuzwe haruguru
[2] Reba igika cya 53 cy'urubanza RCAA00003/2021/CA-RCAA 00004/2021/CA rwavuzwe haruguru.

y’ubugure yo ku wa 20/06/2017, hanyuma mu gusobanura ikirego akavuga uburyo yagiye yishyura, aho rimwe yishyuraga Ndatinya Védaste ubundi akanyuza amafaranga kuri Biberabagabo Jean Bosco, ari nayo mpamvu yagobokeshejwe mu rubanza. Bavuga kandi ko ari ho Urukiko Rwisumbuye rwa Nyarugenge rwashingiye rutegeka Ndatinya Védaste kumusubiza 50.900.000Frw yari yarishyuwe kuko atari kugumana umutungo yagurishije ngo agumane n’amafaranga y’ikiguzi kuko byari kuba ari « indû ». Bityo ko iyi mpamvu y’ubujurire nta shingiro ifite kuko ibisobanuro biyitangwaho ntaho bihuriye no guca urubanza infra petita (statuer infra petita).

[63] Bavuga kandi ko hajuririwe urubanza atari inyandiko, ko inyandiko ari ikimenyetso, ko cyagiweho impaka mu Rukiko Rukuru rukagifataho icyemezo, ko mu gihe hari ikimenyetso kitahawe agaciro ku rwego rubanza, mu bujurire urukiko rukemeza ko gifite agaciro atari amakosa, ko kandi hajuririwe urubanza aho kuba ikimenyetso.

[64] Biberabagabo Jean Bosco n’umwunganira bavuga ko iyi mpamvu y’ubujurire ikwiye gusobanurwa na Gakwaya Aloys na Ndatinya Védaste ngo kuko ari bo bazi imbibi z’ikirego batanze ku nzego zose banyuzemo kimwe n’ibyo basabye urukiko kubasuzumira. Bongeraho ko habayeho Ultra Petita ku bireba Biberabagabo Jean Bosco wagobokeshejwe muri uru rubanza, kubera ko inyandiko yo ku wa 09/07/2017 yakozwe na Gakwaya Aloys akayitirira Ndatinya Védaste na Biberabagabo Jean Bosco yafashweho icyemezo mu RC00289/2018/YGI/NYGE, ariko ko mu rubanza rujuririrwa Urukiko Rukuru rwayifashe nk’ikimenyetso gisanzwe Urukiko rushobora gusuzuma, aho kugira ngo ifatwe nk’icyemezo cy’urukiko cyagombaga kujuririrwa hamwe n’urubanza rwose. Ko kuba Urukiko rwarayigarutseho itarajuririwe rwakoze amakosa yo kurenga imbibi z’icyajuririwe, akaba agomba gukosorwa n’uru rukiko.

## UKO URUKIKO RUBIBONA

[65] Ingingo ya 156, igika cya kabiri, 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 ibikurikira: « Urukiko rufata icyemezo ku ngingo zatumye uwatanze ubujurire ajurira cyangwa uwabwuririyeho na we akajurira ».

[66] Dosiye y’urubanza igaragaza ko impamvu nyamukuru yatumye Gakwaya Aloys ajurira ari uko Urukiko Rwisumbuye rwa Nyarugenge rwategetse ko asubizwa amafaranga aho gutegeka ko amasezerano yubahirizwa. Naho Ndatinya Védaste yajuriye avuga ko GAKWAYA Aloys yahawe amafaranga ataregeye kandi adafite aho ashingiye, ko Urukiko rwemeje ko amafaranga yishyuwe Ndatinya Védaste yose hamwe angana na 50.900.000Frw hatagaragazwa icyashingiweho mukubyemeza, ko kandi rutamuhaye indishyi z’akababaro zingana na 5.000.000Frw; igihembo cy’Avoka kingana na 1.000.000Frw n’amafaranga y’ikurikiranarubanza angana na 500.000Frw.

[67] Urukiko rurasanga mu rubanza rujuririrwa, Urukiko Rukuru rwaremeje ko Gakwaya Aloys akorerwa ihererekanyamutungo, rutesha agaciro ibyemejwe n’Urukiko Rwisumbuye rwa Nyarugenge bijyanye no gusubizwa amafaranga yatanze, rwemeje kandi ko amafaranga amaze kwishyurwa angana na 50.900.000Frw, ko Gakwaya Aloys agomba kwishyura 29.100.000Frw asigaye, rwemeza ko Ndatinya Védaste atagomba guhabwa amafaranga y’ikurikiranarubanza n’igihembo cya Avoka kuko ubujurire bwe nta shingiro bwahawe. Urukiko rurasanga ibibazo by’ingenzi byashyikirijwe Urukiko Rukuru rwarabifasheho icyemezo, kuba rero rutarasuzumye buri mpamvu y’ubujurire ukwayo nk’uko zatanzwe n’ababuranyi ahubwo rukagira izo ruhuriza hamwe rukazisuzumira hamwe kandi rukazifataho icyemezo nta kosa rwakoze. Ku byo uhagarariye Ndatinya Védaste avuga ko Urukiko Rukuru rwarengereye mu gufata icyemezo, Urukiko rurasanga nta shingiro bifite kuko atagaragaza ibyo rwafasheho icyemezo rutashyikirijwe, bityo iyi mpamvu y’ubujurire nta shingiro ifite.

**3. Kumenya niba NDATINYA Védaste yaragombaga kugenerwa indishyi yasabye no kumenya niba indishyi hamwe n'amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka bisabwa muri uru rubanza bifite ishingiro**

[68] Uhagarariye Ndatinya Védaste avuga ko ku rwego rwa mbere yatsinze urubanza, ariko ntahabwe indishyi z'akababaro yari yasabye, hashingiwe ku kuba ngo ataravugishije ukuri ku ngano y'avansi yishyuwe, hanyuma akajuririra iyo ngingo, ariko Urukiko Rukuru mu gika cya 34 n'icya 35 cy'urubanza RCA00021/2019/HC/KIG-RCA00026/2019/HC/KIG rugasuzuma ibijyanye n'amafaranga y'igihembo cy'Avoka yonyine, rwagera mu gika cya 37 rukavuga ko nayo atari ayakwiriye ngo kuko ingingo ze z'ubujurire zidafite ishingiro, rwirengagije ko ayo yasabaga atari ayo mu bujurire gusa, kandi yari akubiye mu ngingo ye y'ubujurire ajyanye n'urubanza yatsinze mu Rukiko Rwisumbuye. Ko mu rubanza rujuririrwa yasabye indishyi z'akababaro zingana 5.000.000 Frw, ariko rwajya gufata icyemezo ntirugire icyo ruzivugaho. Asoza asaba Urukiko rw'Ubujurire gukosora iyo nenge.

[69] Gakwaya Aloys n'umwunganira bavuga ko kuba impande zombi zemeranya ko mu bujurire yatsinze, hanyuma imikirize y'urubanza RC00289/2018/YGI/NYGE igahinduka, nta kuntu Ndatinya Védaste yari kugenerwa indishyi kandi yaramushoye mu rubanza ku bw'uburiganya, ko kandi Urukiko rutari kumugenera amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kandi yaratsinzwe.

[70] Biberabagabo Jean Bosco asaba Urukiko rw'Ubujurire gutegeka Gakwaya Aloys kumuha 500.000Frw y'ikurikiranarubanza 1.000.000Frw y'ibihembo by'Abavoka yishyuye mu manza bitagenwemo, ku bwo gushorwa mu manza kuva mu nkiko zabanje kugeza aha mu bujurire.

[71] Gakwaya Aloys yiregura ku ndishyi zisabwa Biberabagabo Jean Bosco avuga ko atari kwakwa indishyi kandi yari yatsinze. Avuga kandi ko n'izo asabye aha zireba Ndatinya Védaste washoye urubanza nyuma yo kureba ishingiro ryazo, kuko Gakwaya Aloys atari we wajuriye.

[72] Avuga kandi ko asaba Urukiko rw' Ubujurire gutegeka Ndatinya Védaste kumuha indishyi z'akababaro zingana 5.000.000Frw kubera gushorwa mu manza z'amaherere, 1.500.000Frw y'igihembo cya Avoka, no kumusubiza 1.000.000Frw y'ikurikiranarubanza.

[73] Uhagarariye Ndatinya Védastey yiregura ku mafaranga asabwa na Gakwaya Aloys avuga ko nta shingiro afite kubera impamvu ebyiri (2) zirimo ko indishyi zigomba kuba zishingiye ku ikosa, ko kandi aha Gakwaya Aloys atagaragaza ko Ndatinya Védaste mu kujurira yaba yaranyuranije n'itegeko, ko kujurira ari uburenganzira bwe, akaba adakwiye kuryozwa indishyi izo ari zo zose. Ikindi kandi ngo nuko nta kimenyetso Gakwaya Aloys atanga gishimangira ibyo avuga ngo uretse kubivuga gusa.

[74] Ndatinya Védaste asaba Urukiko rw'Ubujurire gutegeka Gakwaya Aloys kumusubiza 1.000.000Frw y'ikurikiranarubanza hakubiyemo n'igarama yatanze, na 2.000.000Frw y'igihembo cya Avoka kubera ko ari we wabaye nyirabayazana w'uru rubanza rwatumye atakaza amafaranga yo kurukurikirana no guhemba Avoka.

[75] Gakwaya Aloys yiregura ku mafaranga asabwa na Ndatinya Védaste, avuga ko atari we wajuriye, ko we yazanywe mu bujurire na Ndatinya Védaste akaba atumva impamvu amusaba ayo mafaranga.

## UKO URUKIKO RUBIBONA

[76] Nk'uko byagaragajwe haruguru, Urukiko Rukuru rwasanze Ndatinya Védaste ari we utarubahije amasezerano yagiranye na Gakwaya Aloys, rwemeza ko amukorera ihererekanyamutungo, rutesha agaciro ibyemejwe n'Urukiko Rwisumbuye rwa Nyarugenge bijyanye nuko Gakwaya Aloys asubizwa amafaranga yatanze. Kuba rero urwo Rukiko rwarahinduye icyemezo cyafashwe n'Urukiko Rwisumbuye rwa Nyarugenge birumvikana ko bitari ngombwa ko rusuzuma niba Urukiko Rwisumbuye rwa Nyarugenge rwaragombaga kugenera Ndatinya Védaste indishyi mu gihe yari yatsinzwe mu Rukiko Rukuru, bityo hashingiwe ku ngingo ya 155 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'ubujurire cyakiriwe gituma ikibazo gisubira uko cyari kimeze mbere y'uko gicibwaho urubanza rujuririrwa, ariko ku ngingo zajuririwe gusa, nta kosa Urukiko Rukuru rwakoze ; bityo iyi mpamvu y'ubujurire ya Ndatinya Védaste nta shingiro ifite.

[77] Ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa na Ndatinya Védaste na Gakwaya Aloys, Urukiko rurasanga nta ruhande rukwiye kuyahabwa, kuko buri ruhande rufite ibyo rutsindiye n'ibyo rwatsindiwe. Urukiko rurasanga n'indishyi Gakwaya Aloys asaba atagomba kuzihabwa kuko ari we wishe amasezerano impande zombi zagiranye.

[78] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Biberabagabo Jean Bosco asaba Gakwaya Aloys atahawe mu rubanza rujuririrwa nta shingiro afite, kuko atari gutegekwa kuyishyura kandi ari we watsinze urubanza. Urukiko rurasanga n'ayo asaba kuri uru rwego atagomba kuyahabwa kuko Gakwaya Aloys ayasaba atari we wajuririye uru Rukiko.

## III. ICYEMEZO CY'URUKIKO

[79] Rwemeje ko ubujurire bwatanzwe na Ndatinya Védaste bufite ishingiro kuri bimwe.

[80] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Gakwaya Aloys nta shingiro bufite.

[81] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Biberabagabo Jean Bosco nta shingiro bufite.

[82] Rwemeje ko imikirize y'urubanza RCA00021/2019/HC/KIG-RCA 00026/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 23/01/2020, ihindutse kuri bimwe.

[83] Rwemeje ko nta ntahererekanyamutungo (mutation) ry'amazu ari mu kibanza kibaruye kuri UPI: 1/03/03/02/145 giherereye mu Mudugudu wa Kanserege II, Akagari ka Kanserege, Umurenge wa Gikondo, Akarere ka Kicukiro, Umujyi wa Kigali, Ndatinya Védaste agomba gukorera Gakwaya Aloys.

[84] Rwemeje ko Ndatinya Védaste agomba gusubiza Gakwaya Aloys 30.967.013Frw nk'uko yasobanuwe haruguru.

[85] Rugetse Ndatinya Védaste gusubiza Gakwaya Aloys 30.967.013Frw nk'uko yasobanuwe haruguru.

[86] Ruvuze ko amafaranga y'amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.