NTAGANDA v. BANK OF KIGALI PLC

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00030/2020/CA (Gakwaya, P.J.) 31 Kanama 2020]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ubujurire bwa kabiri ku kirego gisaba gutesha agaciro cyamunara – Ikirego gisaba gutesha agaciro cyamunara gishobora kujuririrwa bwa kabiri kuko aba ari ikirego cyigenga cyangwa cyihagije kidashamikiye ku kindi kirego cy'iremezo kandi kikajuririrwa mu gihe kitarenze iminsi itatu – Bifata isura y'ibirego byihutirwa ku birebana n'ibihe byo kurega no kuburanishwa gusa, hagamijwe cyane cyane ko izo manza zidatinda mu nkiko harebwe agaciro (importance) kazo ku baburanyi – Itegeko no 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 188 igika cya 2.

Amategeko agenga ububasha bw'inkiko – Ububasha bw'Urukiko rw'Ubujurire – Gutsindwa ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe – Kugira ngo Urukiko rw'Ubujurire rwemeze ko rufite cyangwa rudafite ububasha bwo kuburanisha urubanza kubera ko umwe mu baburanyi yaba yaratsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, ni uko rusesengura impamvu zashingiweho n'inkiko zombi n'ubwo haba hatarakoreshejwe amagambo amwe mu gusobanura impamvu zashingiweho kugira ngo zigere ku cyemezo cyazo.

Incamake y'ikibazo: Bank of Kigali Plc yahaye Ntaganda inguzanyo ya 626.750.000 Frw, Ntaganda ntiyabasha kuyishyura nk'uko babyumvikanye, bituma ku wa 19/11/2019, umutungo utimukanwa ubaruye kuri n° UPI: 1/01/06/04/394, wanditse kuri Ntaganda na Umubyeyi Noëlla, wari waratanzweho ingwate utezwa cyamunara.

Nyuma yo guteza cyamunara, Ntaganda yatanze ikirego mu Rukiko rw'Ubucuruzi asaba gutesha agaciro cyamunara aho yavugaga ko umutungo we wateshejwe agaciro, ko umutungo we waguzwe kuri cyamunara ya mbere, ko kandi habayemo ruswa mukuwugura.

Yaba Urukiko rw'Ubucuruzi ndetse n'Urukuru rw'Ubucuruzi zasuzumye ikirego n'ubujurire bwari bwatanzwe na Ntaganda zisanga nta shingiro ikirego cye gifite kuko zasanze umutungo we utarateshwjwe agaciro kandi ukaba waraguzwe kuri cyamunara yakozwe ku nshuro ya gatanu, ko kandi ibimenyetso by'abatangabuhamya yatanze avuga ko habayemo ruswa inkiko zitabihaye agaciro kuko mu bitabiriye cyamunara abo batangabuhamya batagaragaye.

Ntaganda yarongeye ajuririra Urukiko rw'Ubujurire avuga ko umutungo we wateshejwe agaciro, ko inyandiko yatanze z'abatangabuhamya b'abakomisiyoneri bari bahari zitahawe agaciro, ko kandi umutungo we waguzwe ku ncuro ya mbere.

Banki of Kigali, Ngendahayo n'Akagera Motors baregwaga muri uru banza batanze inzitizi ebyiri (2) zo kutakira ubujurire bwa Ntaganda. Inzitizi ya mbere bavugaga ko Ntaganda yatanze ubujurire bwa kabiri ku birego byihutirwa kandi bitemewe naho inzitizi ya kabiri bavugaga ko Urukiko rw'Ubujurire butakwiye kwakira ubujurire bwe kubera ko yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe.

Ku nzitizi ya mbere, Ntaganda yireguye avuga ko n'ubwo ibirego bya cyamunara ku birebana n'ibihe bifatwa nk'ibirego byihutirwa, mu byerekeye gutanga ikirego bifatwa nk'imanza zisanzwe, akaba nta makosa yakoze atanga ubujurire bwa kabiri.

Ku nzitizi ijyanye n'iburabubasha bw'Urukiko rw'Ubujurire, Ntaganda yireguye avuga ko inkiko zombi zabanje, mu guca imanza zitashingiye ku mpamvu zimwe, ko ikirego cya cye kiri mu bubasha bw'Urukiko rw'Ubujurire.

Incamake y'icyemezo: 1. Nubwo ikirego gisaba guhagarika cyangwa gutesha agaciro cyamunara kiburanishwa mu bihe byashyiriweho ibirego byihutirwa nta kibuza ko gikorerwa ubujurire bwa kabiri kuko aba ari ikirego cyigenga cyangwa cyihagije kidashamikiye ku kindi kirego cy'iremezo. Bityo, inzitizi yo kutakira ikirego yatanzwe na Ngendahayo, AKAGERA Motor na Bank of Kigali PLC, nta shingiro ifite.

2. Bigaragaza ko n'ubwo haba hatarakoreshejwe amagambo amwe mu gusobanura impamvu zashingiweho kugira ngo zigere ku cyemezo cyazo, Urukiko Rukuru ndetse n'Urukiko Rukuru rw'Ubucuruzi zarashingiye ku mpamvu zimwe mu gusubiza ibibazo NTAGANDA Joseph yari yagaragaje asaba gutesha agaciro cyamunara yabaye ku wa 19/11/2019. Bityo, inzitizi yatanzwe na Ngendahayo, na AKAGERA Motor na Bank of Kigali Plc ifite ishingiro, ubujurire bwa Ntaganda bukaba butagomba kwakirwa.

Inzitizi y'iburabubasha bw'urukiko ifite ishingiro.
Ubujurire ntibwakiriwe.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko n° 30/2018 ryo ku wa 2/6/2018 rigena ububasha bw'inkiko, ingingo ya 52, igika cya gatatu.
Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111, 185, 188 igika cya gatatu na 260 igika cya gatanu.

Imanza zifashishijwe:
Urubanza n° RCOMAA 0043/2016/SC-RCOMAA 0047/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 23/2/2017, haburana Nzaramba Edouard na Guaranty Trust (GT) Bank Rwanda Ltd.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Bank of Kigali Plc yahaye Ntaganda Joseph inguzanyo ya 626.750.000 Frw, Ntaganda Joseph ntiyabasha kuyishyura nk'uko babyumvikanye, bituma ku wa 19/11/2019, umutungo utimukanwa ubaruye kuri n° UPI: 1/01/06/04/394, wanditse kuri Ntaganda Joseph na Umubyeyi Noëlla, wari waratanzweho ingwate utezwa cyamunara.

[2] Ntaganda Joseph yaregeye Urukiko rw'Ubucuruzi, asaba ko iyo cyamunara yateshwa agaciro kuko yakozwe mu buryo bunyuranyije n'amategeko, avuga ko igenagaciro ryakozwe mu gihe cy'itangwa ry'umwenda ryagaragaje ko uwo mutungo ufite agaciro ka 908.215.632 Frw, ariko ko mu cyamunara wateshejwe agaciro ku buryo bukabije, kuko wagurishijwe kuri

582.000.000 Frw, ko wahise ugurishwa kuri cyamunara ya mbere kuko ku zindi nshuro nta cyamunara zabayeho kubera ko nta baguzi bigeze bitabira, ko ushinzwe kugurisha yirengagije amategeko, arimo ingingo ya 11 n'iya 12 z'Amabwiriza y'Umwanditsi Mukuru n° 03/2010/ORG yo ku wa 16/11/2010, agenga ibyerekeye gukodesha, kugurisha muri cyamunara ndetse no kwegukana ingwate.

[3] Mu rubanza n° RCOM 02588/2019/TC rwo ku wa 27/1/2020, Urukiko rw'Ubucuruzi rwemeje ko ikirego cya NTAGANDA Joseph nta shingiro gifite, rumutegeka kwishyura buri wese mu baregwa 600.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[4] Ntaganda Joseph ntiyishimiye icyo cyemezo, ajuririra Urukiko Rukuru rw'Ubucuruzi, muri urwo Rukiko, Banque de Kigali Plc na Ngendahayo Sylvère batanga inzitizi bavuga ko ubujurire budakwiye kwakirwa kuko atubahirije ibihe byo kujurira, ko urubanza rwajuririwe rwaciwe ku wa 27/1/2020, ajurira ku wa 30/1/2020, kandi ingingo ya 188, igika cya kabiri (2), y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko igihe cyo kujuririra icyemezo cyafashwe ku birego byihutirwa ari iminsi itarenze itatu (3) y'akazi, uhereye ku munsi icyemezo cyasomeweho cyangwa ababuranyi bakimenyeyeho, bityo ko umunsi wa nyuma wo kujurira wari ku wa 29/2/2020.

[5] Nyuma yo gusobanura ko rusanga Ntaganda Joseph yarubahirije ibihe byo kujurira kuko umunsi icyemezo cyasomeweho cyangwa ababuranyi bakimenyeyeho, utabarwa mu minsi itatu yo kujurira, ahubwo ko iyo minsi itangira kubarwa nyuma y'umunsi icyemezo cyasomeweho cyangwa ababuranyi bakimenyeyeho, Urukiko Rukuru rw'Ubucuruzi, mu rubanza n° RCOMA 00120/2020/HCC rwo ku wa 10/3/2020, rwemeje ko ibihe byo kujurira byubahirijwe. Rwaciye kandi urubanza mu mizi, rusuzuma ikibazo cyo kumenya niba cyamunara yarakozwe mu buryo bunyuranyije n'amategeko n'ibirebana n'indishyi, rwemeza ko ubujurire bwa Ntaganda Joseph nta shingiro bufite, runamutegeka kwishyura abaregwa 300.000 Frw y'igihembo cya Avoka mu bujurire, kuri buri wese.

[6] Ntaganda Joseph ntiyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ubujurire ku wa 13/3/2020, avuga ko atishimiye icyemezo cyafashwe n'Urukiko Rukuru rw'Ubucuruzi, aho rwemeje ko ubujurire bwe nta shingiro bufite kandi cyamunara yarakozwe ku nshuro ya mbere bagahita bagurisha umutungo we na Umubyeyi Noëlla, ko umutungo wagurishijwe ku giciro gito cyane ugereranyije n'agaciro nyakuri wari usanganywe, kandi ko Urukiko rwatesheje agaciro inyandiko mvaho yakozwe n'aba *commissionaires,* mu buryo bunyuranyije n'amategeko.

[7] Ngendayaho Sylvère, AKAGERA Motor na Bank of Kigali Plc batanze inzitizi mu rubanza, bavuga ko uru rubanza ari ikirego cyihutirwa kandi ko cyatangiriye mu Rukiko rw'Ubucuruzi, ko hashingiwe ku ngingo ya 188, igika cya gatatu (3) y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamuano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, kigomba kujuririrwa inshuro imwe, ariko ko uru rubanza rwo ari inshuro ya kabiri rujuririwe, bityo ko ikirego kitagomba kwakirwa. Ngendahayo Sylvère na Bank of Kigali Plc bavuga nanone ko Ntaganda Joseph yatsinzwe ku mpamvu zimwe mu rwego rwa mbere n'urwa kabiri, bityo ko ikirego cye kitari mu bubasha bw'uru Rukiko.

[8] Urubanza rwaburanishijwe mu ruhame ku wa 20/8/2020, Ntaganda Joseph ahagarariwe na Me Munyandamutsa Jean-Pierre, Banque of Kigali Plc ihagarariwe na Me Horanimana Jeanne d'Arc, AKAGERA Motor gahagarariwe na Me Kalimba Daniel, Ngendahayo Sylvère yunganirwa na Me Kalisa Dominique, habanza gusuzumwa inzitizi zatanzwe na Ngendahayo Sylvère, AKAGERA Motor na Bank of Kigal Plc.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO.

a. Kumenya niba iki kirego gisaba gutesha agaciro cyamunara kitaragombaga kujuririrwa bwa kabiri

[9] Me Kalisa Dominique, wunganira Ngendahayo Sylvère, avuga ko hashingiwe ku ngingo ya 260, igika cya gatanu (5), y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo n'iz'ubutegetsi, ikirego cyatanzwe na Ntaganda Joseph ari ikirego cyihutirwa, ko urubanza rwatangiriye mu Rukiko rw'Ubucuruzi ikirego gifite n° RCOM 02588/2019/TC, urubanza rujuririrwa mu Rukiko Rukuru rw'Ubucuruzi kuri n° RCOMA 000120/2020/HCC, ko iyi ari inshuro ya kabiri kijuririwe kandi hashingiwe ku ngingo ya 188 y'itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo n'iz'ubutegetsi, ibirego byihutirwa bijuririrwa inshuro mwe gusa.

[10] Me Kalimba Daniel, uhagarariye AKAGERA Motor, avuga ko mu kurega Ntaganda Joseph yashingiye ku gace ka munani (8) k'ingingo ya 52 y'Itegeko n° 30/2018 ryo ku wa 2/6/2018 rigena ububasha bw'inkiko, kandi nyamara hari gushingirwa ku ngingo ya 188 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo n'iz'ubutegetsi hamwe n'ingingo ya 260 y'iryo tegeko, ko mu kurega hashingiwe ku gaciro k'ikiburanwa, kandi hari gushingirwa ku zindi ngingo zihariye ku birego byuhutirwa.

[11] Me Horanimana Jeanne d'Arc, uburanira Bank of Kigali Plc, avuga ko kuba ikiburanwa atari agaciro k'ikiburanwa ahuwo ari *procédure* ya cyamunara, mu kwakira ikirego hadakwiye kurebwa agaciro k'ikiburanwa, ko rero hashingiwe ku ngingo ya 188, igika cya gatatu (3), y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ubujurire bw'ibyemezo byafashwe ku birego byihutirwa bushyikirizwa Urukiko rwisumbuyeho kandi bijuririrwa inshuro imwe gusa, kandi ko izindi nzira zo kujurira ziteganijwe n'amategeko zibujijwe mu miburanishirize y'imanza z'ikirego kihutirwa, basanga nta rundi Rukiko Ntaganda Joseph yagombaga kujuririra.

[12] Me Munyandamutsa Jean-Pierre, uburanira Ntaganda Joseph, avuga ko n'ubwo ibirego bya cyamunara ku birebana n'ibihe bifatwa nk'ibirego byihutirwa, mu byerekeye gutanga ikirego bifatwa nk'imanza zisanzwe, Ntaganda Joseph akaba nta makosa yakoze ajuririra uru Rukiko.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 185, y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igira iti: " *Iyo hari ikiregο cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinzwe kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara. Ikirego cyihutirwa gitangwa mu buryo bumwe n'ubw'ikirego gisanzwe".*

[14] Ingingo ya 188, igika cya gatatu (3), y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko '' *Ubujurire bw'ibyemezo byafashwe ku birego byihutirwa bushyikirizwa urukiko rwisumbuyeho kandi bijuririrwa inshuro imwe gusa''*.

[15] Ingingo ya 260, igika cya gatanu (5), y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko '' *Ibirego bivugwa muri iyi ngingo bitangwa kandi bikaburanishwa mu bihe by'ibirego byihutirwa''*.

[16] Dosiye y'uru rubanza igaragaza ko iki kirego cyatanzwe bwa mbere mu Rukiko rw'Ubucuruzi kuri n° RCOM 02588/2019/TC, Ntaganda Joseph asaba urwo Rukiko gutesha agaciro cyamunara yabaye ku wa 19/11/2019, ku mutungo ubaruye kuri n° UPI 1/01/06/04/394, wanditse kuri Ntaganda Joseph na Umubyeyi Noëlla, aho yavugaga ko umutungo we wateshejwe agaciro ukagurishwa ku giciro gito cyane (582.000.000 Frw) ugereranyije n'agaciro ka 908.215.632 Frw, wari ufite ubwo watangwagaho ingwate, uru rubanza akaba yararujuririye mu Rukiko Rukuru rw'Ubucuruzi, kuri n° RCOMA 00120/2020/HCC, narwo rurufataho icyemezo.

[17] Urukiko rw'Ubujurire rurasanga n'ubwo ibirego bisaba gutesha agaciro cyamunara bitangwa bikanaburanishwa nk'ibirego byihutirwa, Umushingamategeko ntiyabyambuye kamere yabyo y'ibirego ubwabyo byihagije, ni ukuvuga ibirego remezo (action principale) kuko nta bindi bishamikiyeho, ahubwo nk'uko bigaragara mu ngingo ya 260 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, yavuze ko bitangwa kandi bikaburanishwa mu bihe by'ibirego byihutirwa, ni ukuvuga ko yashatse ko bifata isura y'ibirego byihutirwa ku birebana n'ibihe byo kurega no kuburanishwa gusa, hagamijwe cyane cyane ko izo manza zidatinda mu nkiko harebwe agaciro (importance) kazo ku baburanyi, kuko zivuka nyuma yo kurangiza urubanza rwabaye itegeko.

[18] Urukiko rw'Ubujurire rurasanga kandi n'ubwo ibirego birebana no gutesha cyamunara agaciro bitangwa bikanaburanishwa mu bihe biteganywa ku manza zihutirwa, ibyo birego bidafite kamere y'ibirego byihutirwa bivugwa mu ingingo ya 185 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, kuko ku byerekeranye n'ibyo birego, inkiko zica mu mizi imanza burundu (décisions définitives), zikaba zidafata ibyemezo by'agateganyo (ordonnances ou décisions provisoires) nk'uko biteganywa muri iyo ngingo ya 185.

[19] Urukiko rw'Ubujurire rurasanga, hashingiwe ku bimaze kuvugwa mu duce tubanziriza aka, no kuba Umushingamategeko atabibuza, ikirego kirebana no gutesha agaciro cyamunara, gitangwa kandi kikaburanishwa mu bihe by'ibirego byihutirwa nk'uko biteganyijwe mu ngingo ya 260, igika cya gatanu (5) y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, gishobora

kujuririrwa bwa kabiri, nk'uko bigenda ku bindi birego bitari ibirego byuhutirwa bivugwa mu ingingo ya 185 yavuzwe haruguru, mu gihe cyaba cyujuje ibisabwa n'amategeko.

[20] Urukiko rw'Ubujurire rurasanga rero ibyo abaregwa bavuga ko mu kujurira NTAGANDA Joseph yagombaga kugendera ku biteganywa n'ingingo ya 188 y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryavuzwe haruguru, irebana no kujuririra ibirego byihutirwa, nta shingiro bifite, kuko ikirego cye muri kamere yacyo atari ikirego cyihutirwa.

[21] Kubera izo mpamvu zose, Urukiko rw'Ubujurire rurasanga iyi nzitizi yatanzwe na Ngendahayo Sylvère, AKAGERA Motor na Bank of Kigali PLC, nta shingiro ifite.

b. Kumenya niba Ntaganda Joseph yaratsinzwe mu rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, ubujurire bwe bukaba butari mu bubasha bw'uru Rukiko

[22] Me Kalisa Dominique, wunganira Ngendahayo Sylvère, avuga ko impamvu Ntaganda Joseph yatanze ajurira ari nazo zamutsinze mu nkiko zibanza, ko rero hashingiwe ku ngingo ya 52 y'Itegeko n° 30/2018 ryo ku wa 2/6/2018 rigena ububasha bw'inkiko, ikirego cye kitagomba kwakirwa. Avuga ko ibyo bigaragarira mu gace ka cumi n'umunani (18) k'urubanza rwaciwe n'Urukiko rw'Ubucuruzi no mu gace ka cumi n'umunani (18) k'urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, mu gace ka cumi n'icyenda (19) n'aka makumyabiri (20) tw'urubanza rwaciwe n'Urukiko rw'Ubucuruzi n'aka cumi na karindwi (17) k'urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, bikanagaragarira kandi mu gace ka makumyabiri na kane (24) k'urubanza rwaciwe n'Urukiko rw'Ubucuruzi no mu ka makumyabiri na rimwe (21) k'urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi.

[23] Me Kalimba Daniel, uburanira AKAGERA Motor, avuga ko hashingiwe ku ngingo ya 52, igika cya gatatu (3), y'Itegeko n° 30/2018 ryo ku wa 2/6/2018 rigena ububasha bw'inkiko, ikirego cya Ntaganda Joseph kitagomba kwakirwa, kuko mu mwanzuro we, impamvu yajuririye, arizo zamutsinze mu Rukiko rw'Ubucuruzi, ndetse no mu Rukiko Rukuru rw'Ubucuruzi.

[24] Me Horanimana Jeanne d'Arc, uburanira Bank of Kigali Plc, avuga ko imyanzuro y'uregwa ari ikimenyetso cy'uko inkiko zabanje zasuzumye ibibazo bimwe zigafata n'umwanzuro umwe. Asobanura ko mu Rukiko rw'Ubucuruzi, urubanza rwaburanishijwe Ntaganda Joseph agatsindwa, ko mu gace ka cumi n'umunani (18) k'urubanza, urwo Rukiko, nyuma yo gusesengura imvugo z'ababuranyi n'ibimenyetso bitandukanye rwashyikirijwe, rwasanze imvugo ya Ntaganda Joseph ivuga ko umutungo we ufite ufite n° UPI 1/01/06//04/394 wateshejwe agaciro muri cyamunara atari byo, ko cyamunara yabaye ku nshuro ya gatanu kuko byagiye biba ngombwa ko cyamunara yimurwa kugeza ku nshuro ya gatanu, ari nayo ya nyuma, kandi ko muri izo nshuro zose, cyamunara yagiye yimurwa nyuma yo gutangazwa nk'uko amategeko abiteganya.

[25] Me Horanimana Jeanne d'Arc asobanura nanone ko mu gace ka makumyabiri (20) k'urubanza rwaciye, Urukiko rw'Ubucuruzi rwasobanuye ko umutungo ufite n° UPI 1/01/06//04/394 wagurishijwe ku giciro kiri hejuru ya 75%, nk'uko ingingo ya 255, igika cya munani (8), y'Itegeko n° 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano n'iz'ubucuruzi iz'umurimo n'izubutegetsi ibiteganya, ko rero kuba waragurishijwe kuri 582.000.000 Frw kandi igenagaciro ryo ku wa 19/7/2019 rigaragaza ko igiciro cyo hasi kingana na 478.178.078 Frw naho igiciro cyo hejuru kingana na 683.111.540 Frw, rusanga utarateshejwe agaciro nk'uko urega abivuga, kuko wagurishijwe ku giciro kingana na

84%. Avuga ko ari nabyo byashingiweho mu rubanza n° RCOMA 00120/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 10/3/2020, mu duce twa 16, 17, 18 na 20, naho Ntaganda Joseph akaba yaratsinzwe, ko kuba yararegeye ikirego cyihutirwa mu Rukiko rw'Ubucuruzi agatsindwa, akajurira Urukiko Rukuru rw'Ubucuruzi naho agatsindwa ku mpamvu zimwe, ubujurire bwe budakwiye kwakirwa hashingiwe ku ngingo ya 52, igika cya gatatu (3) y'Itegeko n° 30/2018 ryo ku wa 2/6/2018 rigena ububasha bw'inkiko.

[26] Me Munyandamutsa Jean-Pierre avuga ko inkiko zombi zabanje, mu guca imanza zitashingiye ku mpamvu zimwe, ko ikirego cya Ntaganda Joseph kiri mu bubasha bw'uru Rukiko.

UKO URUKIKO RUBIBONA

[27] Ingingo ya 52, igika cya gatatu (3), y'Itegeko n° 30/2018 ryo ku wa 2/6/2018 rigena ububasha bw'inkiko, igira iti:'' Icyakora kandi ubujurire bwa kabiri ntibushobora kwakirwa ku manza z'ababuranye bemera ibyo baregwa, cyangwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe''.

[28] Isesengura ry'iyi ngingo ryumvikanisha ko ''*impamvu*'' ari ibyashingiweho n'Urukiko mu kugaragariza no gusobanurira ababuranyi icyatumye Urukiko rufata icyemezo ku birebana n'icyaregewe, akaba arizo zituma ababuranyi basuzuma niba imiburanire yabo yarasesenguwe n'Urukiko, kubera ko buri cyemezo cy'Urukiko kigomba kuba cyasobanuriwe impamvu cyemejwe gityo, kikaba kiva mu mpamvu zatanzwe, nk'uko byanemejwe mu rubanza n° RCOMAA 0043/2016/SC-RCOMAA 0047/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 23/2/2017[1].

[29] Ku birebana n'uru rubanza, mu kumenya niba Ntaganda Joseph yaratsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, hagomba gusesengurwa ibyashingiweho n'Urukiko rw'Ubucuruzi n'Urukiko Rukuru rw'Ubucuruzi ku bibazo Ntaganda Joseph yari yagaragaje, kugira ngo zigere ku cyemezo zafashe.

[30] Dosiye y'uru rubanza igaragaza ko, Urukiko rw'Ubucuruzi, mu rubanza n° RCOM 02588/2019/TC rwo ku wa 27/1/2020, agace ka cumi n'umunani (18), aka cumi n'icyenda (19) n'aka makumyabiri (20), ku birebana no kuba umutungo ubaruye kuri n° UPI: 1/01/06/04/394, mu gutezwa cyamunara warateshejwe agaciro no kuba waragurishijwe ku nshuro ya mbere ya cyamunara, rwasobanuye ko uwo mutungo wagurishijwe ku nshuro ya gatanu (5) ya cyamunara, ko byagiye biba ngombwa ko cyamunara yimurwa kugeza kuri iyo nshuro, ari nayo ya nyuma kandi ko muri izo nshuro zose cyamunara yimuwe, yagiye itangazwa nk'uko amategeko abiteganya, ko ku mpamvu z'uko yari cyamunara yo ku nshuro ya nyuma, igiciro cyatanzwe kingana na 582.000.000 Frw, ari nacyo cyari hejuru y'ibindi, cyakiriwe, n'ubwo kitageraga ku gaciro fatizo kangana na 683.111.540 Frw. Rwasobanuye ko umutungo n° UPI:1/01/06/04/394 wagurishijwe ku giciro kiri hejuru ya 75% nk'uko ingingo ya 255, igika cya munani (8), y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano ibiteganya, ko rero kuba waragurishijwe agaciro ka 582.000.000 Frw kandi igenagaciro (expertise) ryo ku wa 19/7/2019, rigaragaza ko igiciro cyo hasi ari 478.178.078 Frw naho icyo hejuru ari

[1] Reba urubanza n° RCOMAA 0043/2016/SC-RCOMAA 0047/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 23/2/2017, haburana Nzaramba Edouard na Guaranty Trust (GT) Bank Rwanda Ltd.

683.111.540 Frw, rusanga umutungo n° UPI:1/01/06/04/394 utarateshejwe agaciro nk'uko urega abivuga, kuko wagurishijwe ku kigero cya 84%.

[31] Ku birebana no kuba Ntaganda Joseph ataramenyeshejwe agaciro kahawe umutungo we, mu gace ka makumyabiri na kabiri (22), Urukiko rw'Ubucuruzi rwasobanuye ko mu ibaruwa ye yo ku wa 31/7/2019, yanditse anyomoza agaciro k'umutungo, ko ibyo bigaragaza ko yakamenye. Rwavuze kandi ko yamenyeshejwe *expertise* yo ku wa 19/7/2019, igaragaza agaciro kazagenderwaho muri cyamunara yo ku wa 19/11/2019, ku mutungo ufite n° UPI: 1/01/06/04/394, ko ibi bigaragazwa n'inyandiko y'Umuhesha w'Inkiko yo ku wa 27/9/2019. Mu gace ka makumyabiri na gatatu (23), rwasobanuye nanone ko ikindi kigaragaza ko yamenyeshejwe igiciro, ari uko yamenyeshejwe amabwiriza azagenderwaho mu igurishwa ry'ingwate ifite n° UPI: 1/01/06/04/394 nk'uko bigaragazwa n'ibaruwa yo ku wa 7/10/2019, yamenyeshejwe ku wa 11/10/2019.

[32] Ku birebana no kuba muri cyamunara yakozwe harabaye akagambane na ruswa, mu gace ka makumyabiri na kane (24) k'urubanza rwaciwe, Urukiko rw'Ubucuruzi rwavuze ko nta bimenyetso Ntaganda Joseph abitangira, ko nta kigaragaza ko hari uwatanze igiciro kiri hejuru akangirwa kwegukana umutungo. Naho ku birebana no kuba umwenda Bank of Kigali Plc yishyuza utandukanye n'umwenda nyakuri, rwavuze ko uregwa nawe adahakana ko hari umwenda ayibereyemo.

[33] Dosiye y'urubanza igaragaza nanone ko, Urukiko Rukuru rw'Ubucuruzi, mu gace ka cumi na karindwi (17) k'urubanza n° RCOMA 00120/2020/HCC, rwaciye, rwasobanuye ko hashingiwe ku nyandiko z'isubika rya cyamunara ziri muri dosiye y'urubanza, bigaragara ko kuva ku wa 22/10/2019, ubwo cyamunara yagombaga gutangira, yagiye yimurwa kuko nta bantu babaga bayitabiriye, ko ku munsi wa nyuma, ku wa 19/11/2019, ubwo habonetse abantu icyenda (9), umutungo waguzwe kuri 582.000.000 Frw kuko aricyo giciro kinini cyari gutanzwe. Rwavuze ko ibyo urega avuga ko habaye cyamunara inshuro imwe, nta shingiro bifite kuko bigaragara ko yagiye isubikwa kubera ko nta baguzi bari bahari ngo batange ibiciro mu ipiganwa, ko ku munsi wa nyuma, ku wa 19/11/2019, ariho habonetse abaguzi icyenda (9), umutungo wegukanwa n'uwatanze igiciro kinini.

[34] Nk'uko bigaragara kandi mu gace ka cumi n'icyenda (19) na makumyabiri (20) tw'urubanza n° RCOMA 00120/2020/HCC, Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko muri dosiye harimo ibimenyetso binyuranye bigaragaza ko Ntaganda Joseph yamenyeshejwe ibya cyamunara, birimo *expertise* y'umutungo wagombaga kugurishwa n'icyemezo cy'Umwanditsi Mukuru cyo ku wa 24/9/2019 cyemeza kugurisha uwo mutungo wari waratanzweho ingwate, ko byose Umuhesha w'Inkiko yabimumenyesheje ku wa 27/9/2019. Rwavuze kandi ko Ntaganda Joseph yamenyeshejwe amabwiriza ya cyamunara ku wa 11/10/2019, binyuze ku mukozi we, ko Ntaganda Joseph yanatanze ikirego (RCOM 0218/2019/TC) asaba guhagarika cyamunara yo ku wa 29/10/2019.

[35] Ku birebana no kuba muri cyamunara harabaye akagambane na ruswa, Urukiko Rukuru rw'Ubucuruzi, mu gace ka makumyabiri na rimwe (21) k'urubanza rwaciye, rwasobanuye ko nta shingiro bifite kuko inyandiko yo ku wa 19/11/2019, Ntaganda Joseph yagaragaje nk'ikimenyetso cy'ibiganiro byabaye hagati y'uwaguze n'abakomisiyoneri itagaragaza uwayanditse n'uwo yandikiraga, ko ibikubiye muri iyo nyandiko nta cyemeza aho bihuriye na cyamunara yo ku wa

1911/2019, ku buryo hakwemezwa ko habaye ruswa, ko n'ubuhamya bwa Ndahimana, Masengesho, Mukeshimana na Tumusifu bukubiye mu nyandiko yashyikirije Urukiko budakwiye gushingirwaho kuko batagaragara mu bitabiriye cyamunara.

[36] Harebwe ibyashingiweho n'inkiko zombi, ku mpamvu nyamukuru zari zatumye Ntaganda Joseph atanga ikirego mu Rukiko rw'Ubucuruzi, akanajuririra Urukiko Rukuru rw'Ubucuruzi, Urukiko rw'Ubujurire rurasanga ku birebana no kuba umutungo waragurishijwe ku munsi wa mbere wa cyamunara ukanateshwa agaciro ugurishwa ku giciro gito, Urukiko Rukuru n'Urukiko Rukuru rw'Ubucuruzi zarashingiye ku kuba cyamunara yarakozwe ku nshuro ya gatanu kuko yagiye isubikwa kubera ko ntababaga bayitabiriye, kandi ko ku munsi wa nyuma, ariyo ya gatanu, ariho yabaye, umutungo ugurishwa ku giciro cyo hejuru cyatanzwe kingana na 582.000.000 Frw.

[37] Urukiko rw'Ubujurire rurasanga kandi, ku birebana no kuba Ntaganda Joseph ataramenyeshejwe ibijyanye na cyamunara, nk'uko byagaragajwe haruguru, Urukiko rw'Ubucuruzi n'Urukiko Rukuru rw'Ubucuruzi, zombi zaremeje ko Ntaganda Joseph yamenyeshejwe ibijyanye na cyamunara, ubwo yamenyeshwaga *expertise* yo ku wa 19/7/2019 igaragaza agaciro kazagenderwaho muri cyamunara yo ku wa 19/11/2019 ku mutungo ufite n° UPI: 1/01/06/04/394 nk'uko bigaragazwa kandi n'inyandiko y'Umuhesha w'Inkiko yo ku wa 27/9/2019, ko kandi yanamenyeshejwe amabwiriza azagenderwaho mu igurishwa ry'ingwate ifite n° UPI:1/01/06/04/394 nk'uko bigaragazwa n'ibaruwa yo ku wa 7/10/2019 yamenye ku wa 11/10/2019.

[38] Urukiko rw'Ubujurire rurasanga nanone ku birebana no kuba cyamunara yarabayemo akagambane na ruswa, yaba Urukiko rw'Ubucuruzi ndetse n'Urukiko Rukuru rw'Ubucuruzi, zombi zarashingiye ku kuba nta bimenyetso Ntaganda Joseph yagaragaje bihamya ko habayeho koko akagambane na ruswa, n'ubwo Urukiko Rukuru rw'Ubucuruzi rwo rwabisobanuye kurushaho rugaragaza ko ibimenyetso byatanzwe bidakwiye gushingirwaho, ko nta gaciro bifite, ariko rukaba rwaraganishaga mu kwerekana ko nta bimenyetso Ntaganda Joseph atanga bihamya ibyo avuga.

[39] Urukiko rw'Ubujurire rurasanga ibimaze kugaragazwa mu duce tubanziriza aka, bigaragaza ko, n'ubwo haba hatarakoreshejwe amagambo amwe mu gusobanura impamvu zashingiweho kugira ngo zigere ku cyemezo cyazo, Urukiko Rukuru ndetse n'Urukiko Rukuru rw'Ubucuruzi zarashingiye ku mpamvu zimwe mu gusubiza ibibazo Ntaganda Joseph yari yagaragaje asaba gutesha agaciro cyamunara yabaye ku wa 19/11/2019.

[40] Hashingiwe kuri izo mpamvu zose no ku ngingo ya 52, igika cya gatatu (3), y'Itegeko n° 30/2018 ryo ku wa 2/6/2018 ryavuzwe haruguru, rurasanga inzitizi yatanzwe na Ngendahayo Sylvère, na AKAGERA Motor na Bank of Kigali Plc ifite ishingiro, ubujurire bwa Ntaganda Joseph bukaba butagomba kwakirwa.

c. Kumenya niba abaregwa bakwiye amafaranga basaba

[41] Me Kalimba Daniel, uburanira AKAGERA Motor, asaba ko kahabwa 1.500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[42] Ngendahayo Sylvère asaba guhabwa 2.000.000 Frw, akubiyemo 1.000.000 Frw yo gushorwa mu manza na 1.000.000 Frw y'igihembo cya Avoka.

[43] Me Horanimana Jeanne d'Arc, uburanira Bank of Kigali Plc, asaba ko yahabwa 1.500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza.

[44] Ntaganda Joseph avuga ko indishyi zisabwa nta shingiro zifite kuko uwajuriye byari uburenganzira bwe, ko indishyi zidashobora gutangwa nta bimenyetso. Asaba ko ahubwo we yahabwa 5.000.000 Frw kuko yagurishirijwe inzu muri cyamunara mu buryo bunyuranyije n'amategeko na 10.000.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[45] Ingingo ya 111 y'Itegeko nº 22/2018 ryo ku wa 29/4/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko '' Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gis*hobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe*''.

[46] Urukiko rw'Ubujurire rurasanga n'ubwo ubujurire bwa Ntaganda Joseph butakiriwe, hari ibyo Bank of Kigali Plc, Ngendahimana Sylvère na AKAGERA Motor batanze kubera uru rubanza, bityo hakaba nta cyabuza ko bagenerwa amafaranga y'igihembo cya Avoka n'ikurikiranarubanza, ariko bakaba batagenerwa umubare w'ayo basaba kuko batagaragaza ko ariyo koko yagiye kuri uru rubanza, ahubwo harebwe imirimo yakozwe kuri uru rubanza rugarukiye ku isuzumwa ry'inzitizi, bakaba bagenerwa kuri uru rwego 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw, kuri buri wese.

[47] Urukiko rw'Ubujurire rurasanga ku birebana n'ibyo Ntaganda Joseph asaba, ntacyo akwiye kugenerwa, kuko ariwe watanze iki kirego kandi kikaba kitakirwe.

III. ICYEMEZO CY'URUKIKO

[48] Rwemeje ko inzitizi yatanzwe na Ngendahayo Sylvère, AKAGERA Motor na Bank of Kigali Plc ifite ishingiro;

[49] Rwemeje ko ubujurire bwa Ntaganda Joseph butakiriwe;

[50] Rutegetse Ntaganda Joseph kwishyura Ngendahayo Sylvère, AKAGERA Motor na Bank of Kigali Plc 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw, kuri buri wese;

[51] Rwemeje ko amafaranga y'ingwate y'amagarama yatanzwe na Ntaganda Joseph ahwanye n'ibyakozwe mu rubanza.