FENG ZHIGANG V NDAYISABA N'UNDI.

[Rwanda URUKIKO RW'UBUJURIRE – RC00002/2022/CA (Ngagi, P.J.) 20 Werurwe 2023]

Amategeko agenga imiburanishirize y'imanza – Inzitizi – Inzitizi ijyanye n'ingwate y'abanyamahanga – Kutajuririra icyemezo cy'Umwanditsi - umuburanyi utajuririye icyemezo cy'umwanditsi ntiyemerewe kuzamura iyo nzitizi imbere y'inteko iburanisha.

Amategeko agenga imiburanishirize y'imanza – Impamvu z'iyakira ry'ikirego ku ivuguruzanya ry'imanza– Ikirego kigamije gusaba gukemura ivuguruzanya hagati y'imanza, ku munsi cyaregewe kigomba kuba cyujuje icyarimwe ibintu bitatu by'ingenzi (conditions cumulatives essentielles) – Izo manza bivugwa ko zivuguruzanya zigomba kuba: Zarabaye ndakuka; Zaraciwe ku kiburanwa cyangwa ikibazo gifite kamere imwe cy'ibyabaye cyangwa icy'amategeko (même question de fait ou de droit); no Kuba umwanzuro wafashwe mu rubanza rumwe uhabanye n'uwafashwe mu rundi rubanza ku buryo ibyemezo byombi bidashobora kurangizwa hatabayeho ivuguruzanya hagati yabyo (décisions inconciliables).

Incamake y'Ikibazo: uru rubanza rwatangiye Feng Zhigang arega Mugiraneza mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko yamukorera ihererekanyamutungo (mutation) ku mutungo utimukanwa baguze ku wa 27/04/2018, ariko Mugiraneza yanga kumukorera ihererekanyamutungo.

Urukiko mu rubanza RC00475/2020/TGI/NYGE rwemeje ko umutungo uburanwa wavuzwe haruguru ugomba kwandikwa kuri Feng Zhigang runategeka Mugiraneza indishyi z'amagarama, igihembo cya Avoka n'izikurikirana rubanza.

Uwitwa Ndayisaba (Kazungu) nawe yaje kurega Mugiraneza mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko yategekwa kumukorera ihererekanyamutungo (mutation) ry'ubutaka bumwe nk'ubwaguzwe na Feng Zhigang, maze Urukiko mu rubanza RC00532/2020/TGI/NYGE rwemeza ko ubwo butaka bwanditse kuri Mugiraneza bwandikwa kuri Ndayisaba (Kazungu), anacibwa indishyi.

Izi manza zose zaburanishijwe Mugiraneza adahari.

FENG Zhigang yatanze ikerego mu Rukiko rw'Ubujurire arusaba gukemura ikibazo cyo kuvuguruzanya kuri hagati y'ibyemezo byafashwe mu rubanza RC00475/2020/TGI/NYGE n'urubanza RC00532/2020/TGI/NYGE zaciwe ku rwego rwa nyuma,

Urukiko rw'Ubujurire rwabanje gusuzuma inzitizi ijyanye no kumenya niba ikirego cya Feng Zhigang kitagomba kwakirwa kuberako atatanze ingwate itangwa n'abanyamahanga,

Urukiko mu rubanza RC 00002/2022/CA rwemeje ko nubwo Mugiraneza V asaba ko ikirego cya Feng Zhigang kitakirwa ariko inzitizi atanga ijyanye no gutanga ingwate itangwa n'abanyamahanga ntabwo ari inzitizi ituma ikirego kitakirwa ahubwo ni inzitizi igamije gusubikisha iburanisha ry'urubanza kugira ngo habanze hatangwe iyo ngwate. Bityo rwemeza ko iyo nzitizi nta shingiro ifite.

Ku kibazo cyo kumenya niba ikirego cyatanzwe na Feng Zhigang ku ivuguruzanya hagati y'urubanza RC00475/2020/TGI/NYGE n'urubanza RC00532/2020/TGI/NYGE gikwiye kwakirwa, Urukiko rwemeje ko kitujuje ibisabwa ikirego cyo kuvugruzanya kugirango cyakirwe kuko urubanza RC 00475/2020/TGI/NYGE rwajuririwe mu Rukiko Rukuru na Mugiraneza, ruza gusibwa, ariko Mugiraneza akaba yararubyukije, icyo kirego cye kikaba kitaraburanishwa. Bityo urwo rubanza ntiruraba Itegeko, nta nubwo rwaregerwa mu kirego cy'imanza zivuguruzanya.

Incamake y'icyemezo:1. Ntabwo inzitizi ijyanye n'itangwa ry'ingwate y'ubanyamahanga ari inzitizi ituma ikirego kitakirwa. Bityo inzitizi ijyanye n'ingwate isabwa abanyamahanga igamije gusubikisha

iburanisha ry'urubanza kugira ngo habanze hatangwe iyo ngwate kandi igatangirwa mu nama ntegurarubanza, umwanditsi uriyoboye agafata icyemezo utanyuzwe nacyo akaba yakijuririra kwa Perezida w'Urukiko.

2. Ikirego cyo kuvuguruzanya hagati y'imanza, mu gihe gitangwa, izo manza bivugwa ko zivuguruzanya zigomba kuba zarabaye ndakuka, zaraciwe ku kiburanwa cyangwa ikibazo gifite kamere imwe cy'ibyababaye cyangwa icy'amategeko (même question de fait ou de droit); no Kuba umwanzuro wafashwe mu rubanza rumwe uhabanye n'uwafashwe mu rundi rubanza ku buryo ibyemezo byombi bidashobora kurangizwa hatabayeho ivuguruzanya hagati yabyo (décisions inconciliables).

Ikirego cyo kuvuguruzanya hagati y'urubanza RC00475/2020/TGI/NYGE n'urubanza RC00532/2020/TGI/NYGE ntigikwiye kwakirwa ngo gisuzumwe.

Amategeko yashingiweho:
Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 91,92,111

Imanza zifashishijwe:
Urubanza RCOMAA 00007/2022/CA rwa Mua Insurance Rwanda Ltd V Village Health Works (VHW rwaciwe n'Urukiko rw'Ubujurire ku wa 30/11/2022,
Urubanza RCOM00001/2019/CA rwa MININTCO ® Ltd, Dresoceco Ltd V Unitex Rwanda Ltd rwaciwe n'Urukiko rw'Ubujurire ku wa 03/07/2020.
Urubanza RCOM 00011/2020/CA rwa Whitefield Investment Company Ltd V Thomas and Piron Grand Lacs, Colarie Piron, Sengi Philip, rwaciwe n'Urukiko rw'Ubujurire ku wa 12/03/2021.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Feng Zhigang yareze Mugiraneza Vincent mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko yamukorera ihererekanyamutungo (mutation) ku mutungo utimukanwa ufite UPI :1/03/03/01/60, uherereye mu Mudugudu wa Kagunga I, Akagari ka Kagunga, Umurenge wa Gikondo, Akarere ka Kicukiro, Umujyi wa Kigali, ukandikwa ku mazina ye avuga ko uwo mutungo yawuguze ku wa 27/04/2018, ariko Mugiraneza Vincent yanga kumukorera ihererekanyamutungo (mutation).

[2] Mu rubanza RC00475/2020/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 30/12/2020, Urukiko rwemeje ko umutungo wavuzwe haruguru ugomba kwandikwa kuri Feng Zhigang runategeka Mugiraneza Vincent kumwishyura 500.000Frw y'igihembo cya Avoka kandi agasubizwa 20.000Frw y'ingwate y'amagarama yatanze arega.

[3] Ndayisaba Emmanuel (Kazungu) nawe yaje kurega Mugiraneza Vincent mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko yategekwa kumukorera ihererekanyamutungo (mutation) ry'ubutaka bwavuzwe haruguru, maze mu rubanza RC00532/2020/TGI/NYGE rwaciwe ku wa 06/05/2021, Urukiko rwemeza ko ubwo butaka bwanditse kuri Mugiraneza Vincent bwandikwa kuri Ndayisaba Emmanuel (Kazungu), uyu nawe ategekwa kwishyura 1.000.000Frw. Izo manza zombi zaburanishijwe Mugiraneza Vincent adahari.

[4] Feng Zhigang yatanze ikerego mu Rukiko rw'Ubujurire arusaba gukemura ikibazo cyo kuvuguruzanya kuri hagati y'ibyemezo byafashwe mu rubanza RC00475/2020/TGI/NYGE n'urubanza RC00532/2020/TGI/NYGE zaciwe ku rwego rwa nyuma, ikirego gihabwa RC00002/2022/CA.

[5] Iburanisha ry'urubanza ryabaye mu ruhame ku wa 06/03/2023, Feng Zhigang ahagarariwe na Me Ndoba Augustin, Ndayisaba Emmanuel (Kazungu) yunganiwe na Me Uzamukunda Jeanne, Mugiraneza Vincent yunganiwe na Me Muhire Jean Marie Eugène; Urukiko rusanga rugomba kubanza gusuzuma niba ikirego cyatanzwe na Feng Zhigang kitagomba kwakirwa kubera ko ari umunyamahanga ariko akaba ataratanze ingwate itangwa n'abanyamahanga, rwasanga nta shingiro rukabona gusuzuma niba hari ukuvuguruzanya hagati y'imanza zavuzwe haruguru, naho ibyo Mugiraneza Vincent avuga ko atari umuburanyi rurasanga nta shingiro bifite, kuko yarezwe, kandi akaba agaragara nk'umuburanyi.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

Kumenya niba ikirego cya FENG Zhigang kitagomba kwakirwa kuberako atatanze ingwate itangwa n'abanyamahanga

[6] Me Muhire Jean Marie Eugène, wunganira Mugiraneza Vincent na Me Uzamukunda Jeanne, wunganira Ndayisaba Emmanuel (Kazungu), bavuga ko Feng Zhigang ari umunyamahanga ariko akaba ataratanze ingwate itangwa n'abanyamahanga, ko rero hashingiwe ku ngingo za 91 na 92 z'Itegeko Nº 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ikirego cye kitagomba kwakirwa.

[7] Me Ndoba Ugustin uhagarariye Feng Zhigang avuga ko inzitizi yerekeranye n'ingwate itangwa n'abanyamahanga nta shingiro ifite, kuko Mugiraneza Vincent yazanwe mu rubanza kugira ngo atange amakuru ku mutungo bivugwa ko yawugurishije abantu babiri.

UKO URUKIKO RUBIBONA

[8] Ingingo ya 91 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: "Usibye igihe baregera ibyabo bavukijwe kandi babifitiye ibimenyetso, umunyamahanga wese uretse uwo mu bihugu by'Umuryango w'Afurika y'Iburasirazuba, ureze bwa mbere cyangwa ugobotse mu rubanza, bisabwe n'uregwa, mbere y'iyindi nzitizi mu rubanza, agomba gutanga amafaranga y'ingwate ashobora kuvamo amagarama n'indishyi z'akababaro ashobora gucibwa, uretse igihe haba hariho amasezerano ibihugu by'amahanga byaba byaragiranye n'u Rwanda asonera abaturage babyo ingwate".

[9] Ingingo ya 92 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru igira iti : "Umuburanyi wifuza kubyutsa inzitizi irebana n'ingwate itangwa n'abanyamahanga abikora mu myanzuro yo kwiregura. Umwanditsi uyoboye inama ntegurarubanza abaza ababuranyi icyo bayivugaho, akabifataho icyemezo. Icyemezo gitegetse ko ingwate itangwa kigaragaza uburyo itangwamo n'agaciro kayo. Umuburanyi utishimiye icyemezo cy'umwanditsi ku ngwate itangwa n'abanyamahanga ashobora kukijuririra mu gihe kitarenze amasaha mirongo ine n'umunani (48) kwa Perezida w'urukiko, akagifataho icyemezo mu rwego rw'ubuyobozi. Ubwo bujurire butuma inama ntegurarubanza iba isubitswe kugeza igihe icyemezo gifatiwe. Icyemezo kuri ubwo bujurire gifatwa mu gihe kitarenze amasaha mirongo ine n'umunani (48)".

[10] Ingingo zimaze kuvugwa haruguru zisesenguriwe hamwe zumvikanisha ko ingwate itangwa n'abanyamahanga itangwa n'umunyamahanga ureze bwa mbere, uretse uregera ibye yavukijwe, uwo mu bihugu by'Umuryango w'Afurika y'Iburasirazuba, cyangwa igihe haba hariho amasezerano ibihugu by'amahanga byaba byaragiranye n'u Rwanda asonera abaturage babyo ingwate. Iyi ngwate itangwa kugira ngo izavanwemo ubwishyu bw'amagarama cyangwa indishyi z'akababaro uwo munyamahanga aba ashobora gucibwa. Ikindi, ni uko inzitizi y'ingwate itangwa n'abanyamahanga itangwa mu myanzuro yo kwiregura, Umwanditsi uyoboye inama ntegurarubanza akayifataho icyemezo gishobora kuba icy'uko iyo ngwate itangwa cyangwa se ko idatangwa, noneho utishimiye icyemezo cy'Umwanditsi w'urukiko akakijuririra kwa Perezida w'urukiko mu gihe kitarenze amasaha mirongo ine n'umunani (48) icyemezo gifashwe, Perezida w'Urukiko akagifataho icyemezo mu rwego rw'ubuyobozi.

[11] Mu rubanza RCOMAA00007/2022/CA rwaciwe ku wa 30/11/2022, haburana Mua Insurance Rwanda Ltd na Village Health Works (VHW) na Roko Construction Rwanda Ltd, uwari uhagarariye Mua Insurance Rwanda Ltd yari yatanze inzitizi y'ingwate itangwa n'abanyamahanga, Urukiko rw'Ubujurire rwemeza ko kuba Mua Insurance Rwanda Ltd itarajuririye kwa Perezida w'uru Rukiko icyemezo cyafashwe n'Umwanditsi warwo ku wa 01/09/2022, kuri iyo nzitizi nk'uko biteganywa n'amategeko, hari inzira y'imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yirengagije, ko rero itagarura iyo nzitizi imbere y'Urukiko, kuko mu gihe itajuririye icyo cyemezo, byumvikanisha ko yemeye ibigikubiyemo.[1]

[12] Dosiye y'uru rubanza igaragaza ko mu nama ntegurarubanza yabaye ku wa 12/01/2023, ari bwo Me Muhire Jean Marie Eugène, wunganira Mugiraneza Vincent, yatanze inzitizi y'ingwate itangwa n'abanyamahanga, aho yavugaga ko Urukiko rw'Ubujurire rutagomba kwakira ikirego cyatanzwe na Feng Zhigang kubera ko ari umunyamahanga, ariko akaba ataratanze ingwate itangwa n'abanyamahanga, maze Umwanditsi w'urukiko wari uyoboye inama ntegurarubanza ashingiye ku ngingo ya 92, igika cya 1 n'icya 2, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, afata icyemezo cy'uko inama ntegurarubanza ikomeza kuko Me Muhire Jean Marie Eugène wunganira Mugiraneza Vincent atanga inzitizi y'itangwa ry'ingwate ku banyamahanga asaba kutakira ikirego, aho gusaba ko hatangwa iyo ngwate agaragaza n'ingano yayo, ko rero ibyo kutakira ikirego byazasuzumwa n'inteko izasuzuma urubanza.

[13] Urukiko rusanga nubwo Mugiraneza Vincent asaba ko ikirego cya Feng Zhigang kitakirwa ariko inzitizi atanga ijyanye no gutanga ingwate itangwa n'abanyamahanga ntabwo ari inzitizi ituma ikirego kitakirwa ahubwo ni inzitizi igamije gusubikisha iburanisha ry'urubanza kugira ngo habanze hatangwe iyo ngwate kuko Feng Zhigang urega ari umunyamahanga, rusanga ariko na none iyi nzitizi igomba gutangirwa mu nama ntegurarubanza, Umwanditsi uyoboye inama ntegurarubanza akayifataho icyemezo ari nako byagenze muri uru rubanza, kuba rero Umwanditsi yarafashe icyemezo kuri iyo nzitizi nk'uko byavuzwe haruguru, mu gihe Mugiraneza Vincent yari kuba atishimiye icyo cyemezo yari kukijurira kwa Perezida w'Urukiko akagifataho icyemezo, kuba rero ibyo bitarakozwe, Urukiko rurasanga inzitizi y'ingwate itangwa n'abanyamahanga itagomba kwakirwa ngo isuzumwe.

Kumenya niba ikirego cyatanzwe na FENG Zhigang ku ivuguruzanya hagati y'urubanza RC00475/2020/TGI/NYGE n'urubanza RC00532/2020/TGI/NYGE gikwiye kwakirwa

[14] Me Muhire Jean Marie Eugène, wunganira Mugiraneza Vincent avuga ko urubanza RC00475/2020/TGI/NYGE rutaraba itegeko kubera ko Mugiraneza Vincent yarujuririye mu Rukiko Rukuru ikirego kikandikwa kuri RCA00112/2020/HC/KIG, ko ariko urwo rubanza rutigeze

[1] Urubanza Nº RCOMAA 00007/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 30/11/2022, MUA INSURANCE RWANDA Ltd v VILLAGE HEALTH WORKS (VHW) na ROKO CONSTRUCTION RWANDA Ltd.

ruburanishwa mu mizi kuko rwasibwe ku wa 11/01/2022, ko nyuma yo kumenya ko urubanza rwasibwe Mugiraneza Vincent yarubyukije ku wa 12/01/2023, ikirego kikaba gifite Pst RC 00010/2023/HC/KIG, ko rero na kashempuruza yatewe ku rubanza RC00475/2020/TGI/NYGE mu buryo budakurikije amategeko, bityo ko ikirego cyatanzwe na Feng Zhigang kitagomba kwakirwa.

[15] Me Uzamukunda Jeanne avuga ko urubanza RC00475/2020/TGI/NYGE rwateweho kashempuruza ku wa 04/03/2021, kandi rwarajuririwe mu Rukiko Rukuru rugahabwa RCA00112/2020/HC/KIG rugasibwa ku wa 11/01/2022, ko rero urubanza RC00475/2020/TGI/NYGE rwateweho kashempuruza rutaraba itegeko.

[16] Me Ndoba Augustin uhagarariye Feng Zhigang, avuga ko ibyo Mugiraneza Vincent avuga y'uko urubanza rutaraba itegeko nta shingiro ifite, kuko urubanza RC00475/2020/TGI/NYGE Mugiraneza Vincent yarujuririye kuri RCA00112/2020/HC/KIG, ariko ntarukurikirane bigatuma ku wa 11/01/2022, Urukiko rufata icyemezo cyo kurusiba nyuma yo gusanga nta nyungu yari arufitemo, ko rero urubanza RC00475/2020/TGI/NYGE ari rwo rwagumyeho.

[17] Avuga kandi ko ikirego cyatanzwe na Mugiraneza Vincent cyo kubyutsa urubanza RCA00112/2020/HC/KIG cyatanzwe mu buryo budakurikije amategeko kuko kitakurikije ibiteganywa n'ingingo ya 55 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, mu gika cyayo cya kabiri, naho ku bijyanye no kuba urubanza RC00475/2020/TGI/NYGE rwarashyizweho kashempuruza mu buryo bunyuranije n'amategeko, avuga ko atari byo kuko Urukiko rutera kashempuruza ari uko rumaze kugenzura niba koko urwo rubanza rwubahirije ibihe byo kuyiteraho.

UKO URUKIKO RUBIBONA

[18] Mu rubanza RCOM00001/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 03/07/2020, uru Rukiko rwemeje ko ikirego kigamije gusaba gukemura ivuguruzanya hagati y'imanza, ku munsi cyaregewe kigomba kuba cyujuje ibintu bitatu by'ingenzi (conditions cumulatives essentielles) kugira ngo cyakirwe ari byo:

Kuba imanza bivugwa ko zivuguruzanya zarabaye ndakuka kabone nubwo zaba zitaraciwe n'Urukiko rumwe cyangwa n'inkiko ziri ku rwego rumwe.

Kuba izo manza zaraciwe ku kiburanwa gifite kamere imwe cyangwa ku kibazo kimwe cy'ibyabaye cyangwa icy'amategeko (même question de fait ou de droit);

Kuba umwanzuro wafashwe mu rubanza rumwe uhabanye n'uwafashwe mu rundi rubanza ku buryo bigaragarira buri wese ko ibyemezo byombi bidashobora kurangizwa hatabayeho ivuguruzanya hagati yabyo (décisions inconciliables), bityo rwemeza ko kuba imanza ziregerwa kuvuguruzanya zigomba kuba zarabaye ndakuka, ari kimwe mu bisabwa kugira ngo ikirego cyakirwe (condition de recevabilité) kuko, mu gihe urubanza rutaraba ndakuka, icyemezo cyarufashwemo gishobora guhindurwa hakoreshejwe izindi nzira z'ubujurire bityo bigakuraho impamvu (l'objet) y'ikirego ku ivuguruzanya.[2]

[19] Ibyo byanagarutsweho mu rubanza RCOM00011/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 12/03/2021, aho Whitefield Investment Company Ltd yaregaga isaba gukemura ikibazo cyo kuvuguruzanya hagati y'imanza RC00393/2019/TGI/NYGE na RCOM1938/2016/TC/NYGE na

[2] Reba urubanza N° RCOM 00001/2019/CA rwa MININTCO ® Ltd, DRESOCECO Ltd na UNITEX RWANDA Ltd rwaciwe n'Urukiko rw'Ubujurire ku wa 03/07/2020.

RCOMA00072/2016/CHC/HCC, uru Rukiko rugasobanura ko kuba urubanza ari ndakuka bigomba kureberwa ko igihe rwaregewe nta rundi rwigeze ruruvanaho cyangwa se ko rugifite agaciro karwo.[3]

[20] Nk'uko byasobanuwe mu manza zimaze kuvugwa mu gika kibanziriza iki, kugira ngo ikirego gisaba gukemura ivuguruzanya hagati y'imanza cyakirwe ni ngombwa ko izo manza zivugwa ko zivuguruzanya ziba zarabaye ndakuka, ni ukuvuga zitakibasha kujuririrwa.

[21] Dosiye y'urubanza igaragaza ko urubanza RC00475/2020/TGI/NYGE rwajuririwe mu Rukiko Rukuru, ikirego gihabwa RCA00112/2020/HC/KIG, ariko urwo rubanza ruza gusibwa ku wa 11/01/2022. Ku wa 12/01/2023, Mugiraneza Vincent akaba yararubyukije, icyo kirego cye kikaba gifite Pst RC00010/2023/HC/KIG.

[22] Urukiko rurasanga urubanza RC00475/2020/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 30/12/2020, rutaraba ndakuka, kubera ko Mugiraneza Vincent yarujuririye mu Rukiko Rukuru ubujurire bukandikwa kuri RCA00112/2020/HC/KIG, nyuma urubanza kuri iki kirego rugasibwa kuwa 11/01/2022, ariko Mugiraneza Vincent akaza gutanga ikirego cyo kurubyutsa nk'uko bimaze gusobanurwa haruguru, bityo ikirego cyatanzwe na Feng Zhigang cyo gukemura ikibazo cyo kuvuguruzanya kuri hagati y'ibyemezo byafashwe mu rubanza RC00475/2020/TGI/NYGE, n'urubanza RC00532/2020/TGI/NYGE zaciwe ku rwego rwa nyuma, kikaba kitagomba kwakirwa, kuko kitujuje ibisabwa.

[23] Ku bivugwa na Me Ndoba Augustin, uhagarariye FENG Zhigang, ko n'ubwo Mugiraneza Vincent yabyukije urubanza RCA00112/2020/HC/KIG atubahirije ibiteganywa n'ingingo ya 55. igika cya 2, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, Urukiko rusanga ari nta shingiro bifite kuko iyo ngingo iteganya ko kubyutsa urubanza bikorwa mu gihe cy'iminsi cumi n'itanu (15) kuva umunsi urubanza rwasibiweho, bityo rero ibijyanye no gusuzuma ko ubyutsa urubanza yubahirije igihe bikaba bitagomba gusuzumwa n'uru Rukiko kuko rutaregewe ikirego cyo kubyutsa urubanza.

Kumenya niba amafaranga y'ikurikiranarubanza asabwa muri uru rubanzaafite ishingiro

[24] Me Uzamukunda Jeanne, wunganira Ndayisaba Emmanuel Kazungu avuga ko ashingiye ku biteganywa n'ingingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, asaba ko Urukiko rw'Ubujurire gutegeka Feng Zhigang guha Ndayisaba Emmanuel Kazungu 1.000.000Frw, kubera kumushora mu manza mu buryo bw'amaherere, ko kandi ayo mafaranga agomba kuyahabwa n'ubwo ikirego kitakwakirwa.

[25] Me NDOBA Augustin, uhagarariye Feng Zhigang avuga ko Urukiko rw'Ubujurire rudakwiye guha agaciro indishyi zisabwa na Ndayisaba Emmanuel Kazungu rushingiye ku kuba Feng Zhigang yatanze ikirego atagamije kumurega ngo agire ibyo ategekwa n'Urukiko, ko ahubwo yari agamije kugira ngo amenye ko umutungo yaguze ndetse Urukiko rugategeka ko umwandikwaho mu rubanza RC00532/2020/TGI/NYGE, yari yarawuguze mbere ye kandi nawe mu rubanza RC00475/2020/TGI/NYGE, urukiko rukaba rwaremeje ko umwandikwaho.

[26] Akomeza avuga ko uwo ahagarariye atari we wabaye intandaro y'imanza zavuzwe haruguru harimo n'uru, ko ahubwo uwabaye intandaro yazo ari Mugiraneza Vincent wakoze uburiganya bwo kugurisha umutungo abantu babiri mu bihe bitandukanye, bityo ko ntaho Urukiko rwahera rutegeka Feng Zhigang guha Ndayisaba Emmanuel amafaranga y'ikurikiranarubanza.

[3] Reba urubanza N° RCOM 00011/2020/CA rwa WHITEFIELD INVESTMENT COMPANY LTD v THOMAS AND PIRON GRAND LACS, COLARIE PIRON, SENGI Philip, rwaciwe ku wa 12/03/2021.

[27] Avuga kandi ko hashingirwa ku murongo wafashwe mu rubanza RSOCAA 00007/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 03/05/2019, aho rwavuze ko iyo ikirego kitatanzwe hagamijwe gusiragiza undi muburanyi mu nkiko kubw'amaherere, Urukiko, mu bushishozi bwarwo kandi rushingiye ku mpamvu zidasanzwe, rushobora kuvaniraho urega inshingano yo kwishyura igihembo cya Avoka n'amafaranga y'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[28] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya ko: "Ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".

[29] Urukiko rurasanga amafaranga y'ikurikiranarubanza Ndayisaba Emmanuel Kazungu asaba ayakwiye kuko kuba yararezwe muri uru rubanza hari icyo byamuhombeje bijyanye no gukurikirana dosiye kandi nyamara iki kirego kitaragombabaga gutangwa mu gihe urubanza RC00475/2020/TGI/NYGE rwari rutaraba itegeko, ariko na none kuko 1.000.000Frw asabwa ari menshi, mu bushishozi bw'Urukiko agenewe 200.000Frw y'ikurikiranarubanza.

[30] Urukiko rusanga ibivugwa na Me Ndoba Augustin ko Feng Zhigang atareze Ndayisaba Emmanuel Kazungu agamije kumusiragiza nta shingiro bifite kuko yagombaga kubanza gutegereza ko urubanza RC00475/2020/TGI/NYGE ruba itegeko akabona gutanga ikirego.

III. ICYEMEZO CY'URUKIKO

[31] Rwemeje ko inzitizi y'itangwa ry'ingwate itangwa n'abanyamahanga yatanzwe na Mugiraneza Vincent itakiriwe.

[32] Rwemeje ko ikirego cyatanzwe na Feng Zhigang kitakiriwe.

[33] Rutegetse Feng Zhigang kwishyura Ndayisaba Emmanuel Kazungu 200.000 Frw y'ikurikiranarubanza.

[34] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.