NIYITEGEKA v ONE ACRE FUND TUBURA

[Rwanda URUKIKO RUKURU – RSOCA 00003/2021/HC/RSZ – (Karangwa, P.J.) 18 Werurwe 2022]

Amategeko agenga imanza z'umurimo – Ikosa rikomeye – Gusaba, gutanga cyangwa kwakira ruswa cyangwa indonke – Ikosa rikomeye ari ikosa rikozwe n'umukozi, hashingiwe ku buremere by'icyakozwe, ikitakozwe, imyitwarire, uburyo ryakozwemo cyangwa ingaruka ryateje ku buryo umukoresha aba atagishoboye gukomeza kumukoresha – Umukozi wasabye, watanze cyangwa wakiye ruswa cyangwa indonke aba akoze ikosa rikomeye rituma habaho iseswa ry'amasezerano y'umurimo nta nteguza – Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda, ingingo ya 3.

Amategeko agenga ibimenyetso n'itangwa ryabyo – Ibimenyetso bishingiye ku buhamya – Agaciro k'ubuhamya – Urukiko nirwo rusuzuma rukareba agaciro ruha ibivugwa n'umutangabuhamya kandi ubuhamya ntirubutesha agaciro gusa ngo nuko buvuzwe n'ufite inyungu mu rubanza cyangwa ufite icyo apfa n'umuburanyi.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Karongi, Niyitegeka arega umukoresha we ko yamwirukanye mu buryo budakurikije amategeko, aho avuga ko yandikiwe ibaruwa imusezerera ku kazi ku mpamvu yuko yaba yarakiriye amafaranga ya rwiyemezamirimo wari wahawe isoko ryo kugemura ibikoresho kugira ngo azazane ibikoresho bitujuje ibisabwa. Avuga ko ntaho yari ahuriye no kwakira ibikoresho ku buryo yari gusaba ubigemura ruswa cyangwa ngo amurushye mu gihe cyo kubyakira ku buryo yari kugombera kubitangira ruswa kugira ngo byakirwe; akaba asaba indishyi zitandukanye zijyanye n'uko yirukanwe mu buryo budakurikije amategeko.

Umukoresha w'Urega ari yo One Acre Fund TUBURA ivuga ko amasezerano y'akazi yasheshwe biturutse ku makosa akomeye yakozwe n'Urega kuko nyuma y'iperereza ryakozwe hagaragaye ibimenyetso bihamya ko yakaga kandi akakira ruswa kugira ngo yakire ibikoresho bitujuje ubuziranenge yagomba kwifashisha mu mikorere yayo ya buri munsi. Icyo gikorwa kikaba cyitaragombaga kwihanganirwa akaba ariyo mpamvu yahise yirukanwa nta nteguza.

Nyuma yo kwakira ikirego cy'Urega gisaba indishyi zinyuranye z'uko yirukanywe mu buryo budakurikije amategeko, Urukiko rwemeje ko nta shingiro gifite kuri byose. Urega yajuririye Urukiko Rukuru, Urugereko rwa Rusizi, avuga ko Urukiko rwirengagije ko yirukanwe atamenyeshejwe ikosa rikomeye mu gihe cy'amasaha 48h, ko mu mpapuro zose zatanzwe nta hantu na hamwe higeze hagaragazwa ko yaba yarari mu itsinda ry'abatanga amasoko, ko rwavuze ko yakoze ikosa rikomeye, ko rwumvise umutangabuhamya Habumugisha wamushinjaga ko yamwatse ruswa rubishingiraho rwemeza ko koko yamwatse ruswa, ibi kandi akaba ari nabyo byashingiweho yirukanwa, akaba asanga Urukiko rwararengereye aho rwamwemeje icyaha cyo kwakira ruswa, rwarangiza rukavuga ko byahawe RIB ngo ikomeze iperereza.

Mu bujurire bwe, Uregwa avuga ko Urega yirukanwe mu buryo bukurikije amategeko, kuko yirukanwe nyuma yo gukorwaho iperereza hagatahurwa ko yakaga ruswa umwe muri barwiyemezamurimo wagombaga kumugemurira ibikoresho. Ibyo ngo bikaba bigize ikosa rikomeye ritari gutuma akomeza akazi. Akomeza avuga ko urukiko rufite ubunganzira busesuye bwo guha agaciro ubuhamya bwatanzwe n'umutangabuhamya, rugasuzuma niba buhuye n'ukuri maze rugaca urubanza.

Ku kibazo kijyanye no kumenya agaciro kahabwa imvugo z'umutangabuhamya Habumugisha cyasuzumwe muri uru rubanza, Urega avuga ko Urukiko Rwisumbuye rwumvise uwo mutangabuhamya wamushinjaga ko yamwatse ruswa, rubishingiraho rwemeza ko koko yamwatse

ruswa akaba asanga Urukiko ruburanisha imanza z'umurimo rwarihaye manda yo kuburanisha imanza nshinjabyaha rumuhamya icyaha cya ruswa nta na raporo y'ubugenzacyaha cyangwa ubushinjacyaha rwagaragarijwe, akaba asanga harabayeho kubogama mu buryo bukomeye.

Uregwa avuga ko kuba Habumugisha yaratanze ubuhamya mu rukiko, kandi Urega akaba atarigeze ahakana ubuhamya yatanze, asanga nta mpamvu Urukiko rutagombaga gushingira kuri ubwo buhamya, kuko bwatanzwe mu buryo bukurikije amategeko. Ikindi ni uko Urukiko rutakoze akazi k’ubushinjacyaha cyangwa ubugenzacyaha, kuko icyari kigamijwe kwari ukumenya niba ikosa rikomeye ryo kwaka ruswa Urega yahakanaga ko ntaryo yakoze, yararikoze koko, ko ukuri kumaze kugaragazwa nta mpamvu Urukiko rutari gushingira ku bimenyetso ngo rufate icyemezo, cyane ko mu rwego rw’amategeko, kuba umuntu atarakurikiranyweho icyaha ntibibuza ko ikosa yakoze ryashingirwaho agafatirwa ibyemezo mu rwego rw’akazi.

Incamake y’icyemezo: Urukiko nirwo rusuzuma rukareba agaciro ruha ibivugwa n’umutangabuhamya kandi ubuhamya ntirubutesha agaciro gusa ngo nuko buvuzwe n’ufite inyungu mu rubanza cyangwa ufite icyo apfa n’umuburanyi. Bityo, ubuhamya bwa Habumugisha Jean Réné ntibwateshwa agaciro kuko ibyo yashinje Niyitegeka Etienne bishimangira ikosa rikomeye yakoze ndetse nta n’mpamvu yatuma butashingirwaho kuko ntacyo bapfaga ku buryo yamushinja amubeshyera dore ko batari basanzwe baziranye.

Ubujurire nta shingiro bufite.
Urubanza rwaciwe n’Urukiko Rwisumbuye rwa Karongi ntiruhindutse.
Amagarama ahwanye n’ibyakozwe.

Amategeko yashingiweho:

Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda, ingingo ya 3 n’iya 26.

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

Itegeko N° 15/2004 wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, ingingo ya 65, 71 n’ya 72.

Iteka rya Minisitiri Nº 002/19.20 ryo ku wa 17/03/2020 rishyiraho urutonde rw’amakosa akomeye, ingingo ya 2.

Imanza zifashishijwe:

Ubushinjacyaha v Twajeneza Pierre Célestin, RPAA 0016/14/CS rwaciwe n’Urukiko rw’Ikirenga kuwa 07/07/2017.

Ubushinjacyaha v Nshimiyimana Alexis n’Abagenzi be, RPAA 0059/08/CS rwaciwe n’Urukiko rw’Ikirenga kuwa 19/11/2010.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Urubanza rwatangiriye mu rukiko Rwisumbuye rwa Karongi, Niyitegeka Etienne arega One Acre Fund TUBURA ko bagiranye amasezerano y’akazi ku wa 04/03/2015, akaba yari amaze imyaka itatu akorana nayo bigeze kuwa 22 Ukwakira 2019 yandikiwe ibaruwa imusezerera mu kazi, ngo akaba yarirukanywe mu buryo budakurikije amategeko, kuko yirukanwe ku mpamvu yuko yaba yarakiriye amafaranga ya rwiyemezamirimo wari wahawe isoko ryo kugemurira ibikoresho TUBURA kugira ngo azazane ibikoresho bitujuje ibisabwa. Akaba yarakorewe iperereza ariko

atabimenyeshejwe kugira ngo agire icyo abivugaho kandi akaba ari ntaho yari ahuriye no kwakira ibikoresho ku buryo yari gusaba ubigemura ruswa cyangwa ngo amurushye mu gihe cyo kubyakira ku buryo yari kugombera kubitangira ruswa kugira ngo byakirwe; akaba asaba indishyi zitandukanye zijyanye n’uko yirukanwe mu buryo budakurikije amategeko.

[2] One Acre Fund TUBURA yaburanye ivuga ko amasezerano y’akazi yagiranye Niyitegeka Etienne yasheshwe biturutse ku makosa akomeye yakozwe na Niyitegeka Etienne, kuko nyuma y’iperereza ryakozwe n’umukoresha (*internal investigation*) hagaragaye ibimenyetso bihamya ko Niyitegeka Etienne yakaga kandi akakira ruswa kugira ngo yakire ibikoresho bitujuje ubuziranenge byagomba kwifashishwa na One Acre mu mikorere yayo yaburi munsi. Icyo gikorwa kikaba cyitaragombaga kwihanganirwa akaba ariyo mpamvu yahise yirukanwa nta nteguza. Niyitegeka Etienne yamenyeshejwe ibijyanye no kwirukanwa mu masaha 48 nk’uko biteganyijwe n’amategeko kandi agenerwa, ibyo amategeko ateganyiriza umukozi wirukanwe harimo umushahara we wanyuma, ndetse n’amafaranga ahwanye n’ikiruhuko cy’umwaka atari yarahawe;

[3] Urukiko Rwisumbuye rwaciye urubanza rwemeza kwakira ikirego gisaba indishyi zinyuranye gitangwa na Niyitegeka Etienne, avuga ko zikomoka kukwirukanwa binyuranyije n’amategeko, ariko rugisuzumye rusanga nta shingiro gifite kuri byose. Rwategetse ko amafaranga y’amagarama yatanze atanga ikirego ahwanye n’ibyakozwe mu rubanza.

[4] Niyitegeka Etienne ntiyishimiye icyemezo cyafashwe n’Urukiko Rwisumbuye arajurira ikirego gihabwa RSOCA 00003/2021/HC/RSZ.

[5] Niyitegeka Etienne avuga ko yajurijwe nuko urukiko rwirengagije ingingo ya 26 y'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda, ntirwamumenyesha ikosa rikomeye mu gihe cy’amasaha 48h. Ikindi ngo nuko mu mpapuro zose zatanzwe nta hantu na hamwe higeze hagaragazwa ko Niyitegeka Etienne yaba yarari mu itsinda ry'abatanga amasoko. Na none kandi ngo urukiko rwavuze ko yakoze ikosa rikomeye, rutabanje kugaragaza isano Habumugisha Jean Réné afitanye na TUBURA, kuko atagaragaza byibuze niba ku giti cye hari isoko yigeze akora muri TUBURA ngo bigaragare ko haricyo yimwe cyangwa yavukijwe. Ikindi na none ngo nuko Urukiko Rwisumbuye rwumvise umutangabuhamya Habumugisha Jean Réné wamushinjaga ko yamwatse ruswa, rubishingiraho rwemeza ko koko yamwatse ruswa, ibi kandi akaba ari nabyo byashingiweho yirukanywa, ngo akaba asanga Urukiko rwararengereye aho rwamwemeje icyaha cyo kwakira ruswa, rwarangiza rukavuga ko byahawe RIB ngo ikomeze iperererereza, ngo akaba asanga Urukiko ruburanisha imanza z'umurimo rwarihaye manda yo kuburanisha imanza nshinjabyaha, ndetse rumuhamya icyaha cya ruswa nta na raporo y'ubugenzacyaha cyangwa ubushinjacyaha rwagaragarijwe. Asoza asaba ko indishyi atahawe ku rwego rwa mbere yazihabwa.

[6] Me Habakurama Francois Xavier uburanira One Acre Fund TUBURA mu izina ry’umuyobozi wayo avuga ko Niyitegeka Etienne yirukanwe mu buryo bukurikije amategeko, kuko yirukanwe nyuma yo gukorwaho iperereza hagatahurwa ko yakaga ruswa umwe muri barwiyemezamurimo witwa Habumugisha Jean Réné wagombaga kugemurira One Acre Fund TUBURA ibikoresho. Ibyo ngo bikaba bigize ikosa rikomeye ritari gutuma akomeza akazi, kandi ko iyo umukozi akoze ikosa rikomeye yirukanwa hakurikijwe ibiteganywa n’ingingo ya 26 y’Itegeko ry’umurimo yavuzwe hejuru. Ikindi ngo nuko ibimenyetso bashyikirije urukiko n'ibisobanuro bijyanye nabyo bigaragaza ko amasaha 48 yubahirijwe mukumenyesha Niyitegeka Etienne ikosa rikomeye, kuko uruhererekane rwa *emails* bagaragaje zerekana ko icyemezo cyo kwirukanwa cyafashwe mu masaha atarenze 48. Na none kandi mu rubanza rujuririrwa ngo basanga ntaho Urukiko Rwisumbuye rwemeje ko Niyitegeka Etienne yari mu bagize akanama ko gutanga amasoko, kuko iyi ngingo itari muzashingiweho asezererwa. Akomeza avuga ko Urukiko rufite ubunganzira busesuye bwo guha agaciro ubuhamya bwatanzwe n’umutangabuhamya, rugasuzuma niba buhuye n’ukuri maze rugaca urubanza. Kuba Habumugisha Jean Réné yaratanze ubuhamya mu rukiko, kandi

Niyitegeka akaba atarigeze ahakana ubuhamya yatanze, ngo basanga nta mpamvu urukiko rutagombaga gushingira kuri ubwo buhamya. Basoza basaba indishyi. Ikindi ngo nuko urukiko rutakoze akazi k'ubushinjacyaha cyangwa ubugenzacyaha, kuko icyari kigamijwe kwari ukumenya niba ikosa rikomeye ryo kwaka ruswa Niyitegeka Etienne yahakanaga ko ntaryo yakoze, yararikoze koko, ko ukuri kumaze kugaragazwa nta mpamvu urukiko rutari gushingira ku bimenyetso ngo rufate icyemezo, cyane ko mu rwego rw'amategeko, kuba umuntu atarakurikiranyweho icyaha ntibibuza ko ikosa yakoze ryashingirwaho agafatirwa ibyemezo mu rwego rw'akazi.

Muri uru rubanza urukiko rurasuzuma ibibazo bikurikira:

- Kumenya niba Niyitegeka Etienne yarirukanywe mu buryo bunyuranyije n'amategeko no kumenya niba yaragombaga guhabwa indishyi;
- Kumenya agaciro kahabwa imvugo z'umutangabuhamya Habumugisha Jean Réné muri uru rubanza;
- Kumenya niba indishyi Niyitegeka Etienne atagenewe ku rwego rwa mbere yazihabwa;
- Kubijyanye n'ishingiro ry'indishyi z'amafaranga yakoreshejwe mu rubanza.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Ibyerekeranye no kumenya niba Niyitegeka Etienne yarirukanywe mu buryo bunyuranyije n'amategeko no kumenya niba yaragombaga guhabwa indishyi

[7] Niyitegeka Etienne avuga ko yajurijwe nuko urukiko urukiko rwirengagije ingingo ya 26 y'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda aho umushingamategeko yavuze ko iyo ikosa rikomeye ribonetse rimenyeshwa umukozi mu gihe kitarenga amasaha 48h, ngo akaba asanga icyo urukiko rwashingiyeho hemezwa ikosa rikomeye ari raporo ya audite yabaye kuwa 0/10/2019, yirukanywa kuwa 23/10/2019, bityo ko iyi ngingo ya 26 y'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda itarubahirijwe, agasaba Urukiko kwemeza ko icyemezo cyafashwe n'urukiko Rwisumbuye rwa Karongi, gikuweho kuko cyafashwe hashingiwe kumarangamutima.

[8] Ikindi ngo nuko mu mpapuro zose zatanzwe nta hantu na hamwe higeze hagaragazwa ko Niyitegeka Etienne yaba yarari mu itsinda ry'abatanga amasoko, ngo bakaba basaba urukiko kutazabishingiraho, kuko byavuzwe n'umutangabuhamya w'indarikwa, bituma arenganywa, ngo akaba asaba urukiko ko rwamurenganura.

[9] Me Habakurama Francois Xavier uburanira One Acre Fund TUBURA mu izina ry'umuyobozi wayo avuga ko Niyitegeka Etienne yirukanwe mu buryo bukurikije amategeko, kuko yirukanwe nyuma yo gukorwaho iperereza hagatahurwa ko yakaga ruswa umwe muri barwiyemezamurimo witwa Habumugisha Jean Réné wagombaga kugemurira One Acre Fund TUBURA ibikoresho (*plastic basins and T-Shits*). Iby'uko yakaga ruswa byamenyekanye nyuma y'iperereza ryakozwe na One Acre Fund TUBURA ubwo yari imaze kwakira ikirego cy'uwo rwiyemezamurimo avuga ko ibicuruzwa agemura bisubizwa inyuma kuko abayanze gutanga ruswa, ko ariko aho ayitangiye bimwe byakiriwe. Akaba na none yaragaragazaga ko yohereje Niyitegeka Etienne amafaranga hifashishijwe mobile money kandi Niyitegeka Etienne ntiyigeze abihakana, ubwo yabazwaga muri iryo perereza ryakozwe, bikaba kandi binagaragazwa na message yoherejwe kuri telephone ye aho yakiriye ibihumbi mirongo itanu (50,000frw), hakaba kandi haranashingiwe ku mategeko ngenga mikorere ya One Acre Fund TUBURA.

[10] Avuga ko mu gihe cy'iburanisha Habumugisha Jean Réné yatumujwe mu rubanza atanga ubuhamya bwe mu rukiko, Niyitegeka Etienne yari ahari, ariko ntiyigeze avuga ko ubuhamya atanze atabwemera. Bityo ko hashingiwe ku ngingo ya 3 y'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda isobanura ko ikosa rikomeye ari ikosa rikozwe n'umukozi, hashingiwe ku buremere by'icyakozwe, ikitakozwe, imyitwarire, uburyo ryakozwemo cyangwa ingaruka ryateje ku buryo umukoresha aba atagishoboye gukomeza kumukoresha. Kuba rero Niyitegeka Etienne yarakaga ruswa, One Acre Fund TUBURA yasanze ari kosa ritari gutuma akomeza akazi, ikindi kandi n'ingingo 2 y'Iteka rya Minisitiri N^{o} 002/19.20 ryo ku wa 17/03/2020 rishyiraho urutonde rw'amakosa akomeye, igaragaza ko igikorwa cyo gusaba, gutanga cyangwa kwakira ruswa cyangwa indonke ari ikosa rikomeye. Iyo umukozi akoze ikosa rikomeye rero yirukanwa hakurikijwe ibiteganywa n'ingingo ya 26 y'Itegeko ry'umurimo ryavuze hejuru.

[11] Avuga ko ibyo Niyitegeka Etienne avuga mu rwego rw'ubujurire ko atirukanywe kubera ikosa rikomeye nk'uko biteganywa n'ingingo ya 26 y'Itegeko ry'umurimo nta shingiro bikwiye guhabwa, ngo kuko atagaragaza icyo anenga icyemezo cy'Urukiko Rwisumbuye, kuko rwashingiye ku bimenyetso bifatika ndetse n'ubuhamya bwatangiwe imbere y'Urukiko bwahamyaga ko Niyitegeka Etienne yakoze ikosa rikomeye ryo kwaka no kwakira ruswa.

[12] Avuga ko ibimenyetso Urukiko rwasabye n'ibisobanuro bijyanye nabyo bigaragaza ko amasaha 48 yubahirijwe, uruhererekane rwa *emails* zerekana ko icyemezo cyo kwirukanwa cyafashwe mu masaha atarenze 48; nkuko babigaragarije urukiko mu iburanisha ryo ku wa 26/01/2022, hari ibimenyetso bigizwe n'ubutumwa bwagiye buhererekanywa kuri emails hagati y'abakozi ba TUBURA n'Abayobozi bafite aho bahuriye no gufata ibyemezo byo kwirukana umukozi. Ubwo butumwa (*emails*) ngo ntabwo bari barabushyize mu bimenyetso kuko muri policy ya Tubura itemera ihererekanya ry'ubutumwa bwatanzwe kuri *email* ku mpamvu iyo ariyo yose keretse byatangiwe uburenganzira; ko Urukiko rwabisabye mu iburanisha, umukozi wari uhagarariye Tubura wari waje gukurikirana urubanza (Vianney Kironde) akaba ari nawe wakoze raporo igaragaza ikosa ryakozwe na Niyitegeka, yasabye uburenganzira bwo kuba yahererekanya zimwe muri emails zigaragaza uko icyemezo cyafashwe kandi amasaha 48 avugwa mu itegeko akaba yarubahirijwe.

[13] Avuga ko ari muri urwo rwego hari *emails* zabaye *forwarded* ku wa 02/02/2022 ziva kuri *email* ya Vianney Kironde (vianney.kironde@oneacrefund.org) zoherezwa kuri *email* ya Me Nzeyimana Bonaventure (bonaventurenzeyimana@gmail.com) wahagarariye Tubura mu rubanza. Izo *emails* zigaragaramo ibi bikurikira;

- Kuri email yabaye *forwarded* ku wa 02/02/2022 saa 07:01: hagaragaraho *email* yoherejwe ku wa 03/10/2019 yoherejwe n'uwitwa Claire Brosnihan (*Director of Field Operations*) ifite *subject* yitwa: *Requesting to finalized report on Etienne + next step on termination*. *Report* yavugwaga ni *report* ya *investigation* yagaragaje amakosa Etienne yakoze ari nayo yatumye yirukanwa. Ku murongo wa nyuma w'iyo *email* yasoje asaba uwitwa Thierry na Dan abasaba ko bazagirana inama (*termination meeting*) icyumweru gikurikiraho hagati yo ku wa gatatu no ku wa gatanu. Iyo nama yaje kuba ku wa 5 tariki ya 10/10/2019. Nyuma y'iyo nama *technique*, hagombaga kuba indi yo gufata ibyemezo.
- Kuri email yabaye *forwarded* ku wa 02/02/2022 saa 07:07, emails zabaye forwarded ni 2 zirimo iyo ku wa 03/03/2020 yoherejwe n'uwitwa Scholastique Mukandayisenga. Nubwo ifite subject yitwa termination of Etienne's contract with One Acre Fund, iyi urukiko rwayirengagiza, impamvu igaragara ni uko itari gutandukanywa n'izayibanjirie zose zohererejwe hamwe; ko iyo bashaka ko Urukiko rwitaho ari email iri ku rupapuro rwa 2 yoherejwe na Claire Brosnihan ayohereza ku wa 22/10/2019, ifite subject yitwa Termiantion of Etienne's contract with One Acre Fund. Muri iyo email niho Claire M. Brosnihan (Director of Field Operation) akaba ari umwe mu bagize Sinior Management ya Tubura,

yamenyesheje abandi bari barakoze kuri case ya tubura ibijyanye n'uko hemejwe ko amasezerano ya Etienne aseswa. Iyo email ni iyo ku wa 22/10/2019. Uwo munsi nibwo ibaruwa isesa amasezerano yasinywe na Etienne arayihabwa. Aha biragaragara neza ko amasaha 48 ateganywa n'itegeko yubahirijwe kuko raporo y'iperereza ubwayo ntabwo ihagije kuko uyikora siwe ufata icyemezo. Ahubwo ku wa 22/10/2019, nibwo ikibazo cyagejwejwe ku Buyobozi Bukuru aba aribwo bwemeza ko ari ikosa rikomeye umukozi agomba kwirukanirwa. Muri email yoherejwe, iravuga ngo *I'm writing to you to let you know about the termination of Etienne Niyitegeka's contract with One Acre Fund/TUBURA as of this morning*). Muri icyo gitondo nibwo Ubuyobozi Bukuru bwari bwagejejweho raporo ari nabwo bufite ububasha bwo gufata icyemezo.

[14] Niyitegeka Etienne yabajijwe icyo avuga kuri SMS bivugwa ko yandikiranye na Jean René asubiza ko uyu Habumugisha Jean Réné ari umuntu wakoreshejwe mukumugambanira kubera umwanya mwiza yari afite mu kigo yakoreraga, kandi SMS ngo ntayo yigeze amwoherereza, dore ko n'uburyo bayigaragazagamo budasobanutse, kuko baterekana igihe yayohereje, ndetse n'aya mafaranga avugwa ngo ntiyigeze ayemera kuva ku mugenzuzi w'umurimo. Na none kandi ko ibyo Urukiko rwabikoze ngo ntirwabanje kugaragaza isano Habumugisha Jean Réné afitanye na TUBURA, kuko atagaragaza byibuze niba ku giti cye hari isoko yigeze akora muri TUBURA ngo bigaragare ko haricyo yimwe cyangwa yavukijwe. Ikindi ngo nuko uyu mutangabuhamya uvuga ko yari yatsindiye isoko ryo kugemura ibintu nta kintu yigeze agaragariza Urukiko gihamya ko ari rwiyemezamirimo, kandi ko akurikije *protocol* yuko amasoko atangwa buri soko rigira *bon de commande, bon de livraison* na *reception*, kuba atabigaragaza ngo asanga nta n'icyo Urukiko rwari gushingiraho rusuzuma niba ariwe wari ufite inshingano zo kwakira ibyo bintu, kuko bitari mu nshingano ze, ngo akaba asaba Urukiko rwajuririwe gutesha agaciro ubuhamya bwe.

[15] Me Habakurama Francois Xavier uburanira One Acre Fund TUBURA mu izina ry'umuyobozi wayo avuga ko ntaho basanga Urukiko Rwisumbuye rwemeje ko Niyitegeka Etienne yari mu bagize akanama ko gutanga amasoko, kuko iyi ngingo itari muzashingiweho asezererwa, Urukiko Rwisumbuye icyo rwasuzumye kandi kikabonerwa ibimenyetso harimo n'ubuhamya bwatanzwe mu gihe cy'iburanisha, ni ukumenya niba Niyitegeka Etienne yarakoze ikosa rikomeye. Kuba rero harabonetse ibimenyetso bihamya ko yakaga kandi akakira ruswa, kuba yaba yari mu bashinzwe gutanga amasoko cyangwa atari ko byagenze ngo ntacyo byamumarira, cyane ko nawe mu miburanireye yemeraga ko hari ibikoresho barwiyemezamurimo bagemuraga akavuga ko bitujuje ibisabwa, icyo gihe bigasubizwayo, aho rero ngo niho yaheraga agasaba ruswa ba Rwiyemezamurimo babaga babigemuye. Kuba avuga ko hari *protocol* y'amasoko, ngo itegeko bazi rireba amasoko ya Leta, kuri TUBURA ngo hakozwe inyandiko isaba kugemura kandi yakurikiwe n'igihe Niyitegeka Etienne yasabiye indonke. Iyo hari amasoko yashatswe hakagira ubisabira indonke ingaruka nuko yirukanwa. Naho ibyo avuga by'amasano ya Habumugisha Jean Réné na TUBURA, ngo muri dosiye hari ibimenyetso bigizwe na *certificate of registration* ya *papeterie messanger*.

UKO URUKIKO RUBIBONA

[16] Urukiko rusanga Urukiko rusanga Niyitegeka Etienne yarajuriye akaba anenga urubanza ko Urukiko rwirengagije ko umukoresha we atubahirije ibivugwa mu ngingo ya 26 y'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda ivuga ko Mu gihe iseswa ry'amasezerano y'umurimo ritewe n'ikosa rikomeye, umukoresha agomba kumenyesha umukozi mu nyandiko mu gihe kitarenze amasaha mirongo ine n'umunani (48) uhereye igihe ibimenyetso by'ikosa rikomeye bigaragariye kandi akagaragaza impamvu z'iseswa. Ngo akaba asanga icyo Urukiko rwashingiyeho hemezwa ikosa rikomeye ari raporo ya *audite* yabaye kuwa 01/10/2019, yirukanywa kuwa 22/10/2019, ngo akaba asanga ingingo ya 26 y'Itegeko N° 66/2018 ryo ku wa

30/08/2018 rigenga umurimo mu Rwanda itarubahirijwe, agasaba Urukiko kwemeza ko icyemezo cyafashwe n'Urukiko Rwisumbuye rwa Karongi, gikuweho kuko cyafashwe hashingiwe ku marangamutima.

[17] Rusanga mu kwiregura kwa One Ancre Fund TUBURA yo ivuga ko Niyitegeka Etienne atirukanywe mu buryo bunyuranyije n’amategeko kuko yirukaniwe ikosa rikomeye, kuvuga ko ibivugwa mu ngingo ya 26 y’Itegeko ry’umurimo bitubahirijwe ngo nta shingiro bikwiye guhabwa, ngo kuko atagaragaza icyo anenga icyemezo cy’Urukiko Rwisumbuye, kuko rwashingiye ku bimenyetso bifatika ndetse n’ubuhamya bwatangiwe imbere y’Urukiko bwahamyaga ko Niyitegeka Etienne yakoze ikosa rikomeye ryo kwaka no kwakira ruswa.

[18] Urukiko rusanga mbere yo kureba niba igihe umukoresha yamenyesheje umukozi ikosa rikomeye cyarubahirijwe, Urukiko rurabanza kureba niba Niyitegeka Etienne yarakoze ikosa rikomeye kuko nabyo atemera ko yarikoze.

[19] Rusanga mu nyandiko yo kuwa 22/10/2019 One Acre Fund TUBURA yarasheshe amasezerano y’umurimo yari ifitanye na Niyitegeka Etienne ngo kuko yakoze ikosa rikomeye, muri iyi nyandiko One Acre Fund TUBURA ivuga ko nyuma y’iperereza ryakozwe n’iki kigo cyasanze Niyitegeka Etienne yaratse indonke umugurisha, basanga iryo ari ikosa rikomeye rinyuranyije n’amabwiriza Ngengamikorere One Ancre TUBURA igenderaho, ndetse rikaba rinyuranyije n’Itegeko ry’umurimo.

[20] Rusanga iri perereza ryarakozwe na One Acre Fund TUBURA, ritangazwa muri *Investigation report on the case of suspected solicitation for a bribe/ kickback from a vendor by Mr* Etienne Niyitegeka yo ku wa 01/10/2019, iyi raporo kandi ishimangirwa n’ubuhamya bwa Habumugisha Jean Réné yatangiye mu Rukiko Rwisumbuye ubwo yahabwaga ijambo avuga ko yari afite isoko ryo gushaka amabasi, isoko yari yarihawe n’uwitwa Karo Nuwasasira, nyuma aza kubona telefoni imuhamagaye imubwira ko ari kuzana sampo y’amabasi atariyo, akomeza kumuhamagara cyane, nyuma aza kumubaza ati mbese urashaka iki, amubwira ko ashaka ko amuha amafaranga 600.000, amusubiza ko ari menshi atayabona. Yaje kongera kumuhamagara aza no kumubwira ko yitwa Niyitegeka Etienne ko akora muri TUBURA, baravugana baza kumvikana ko aba amwoherereje amafaranga 200.000, asa naho atuje gato. Yongera kuza kumuhamagara nibwo yabazaga uwamuhaye isoko icyo yakora, amwoherereza za messages zose bandikiranye, nibwo amubwiye ko umukozi wabo, nakomeza atyo isoko aza kurireka. Bamusabye kongera kugira ayo amwemerera bakazayamusubiza bumvikana amafaranga 50.000, kugira ngo babone ibimenyetso, yarabikoze nibwo yaje gufatwa ndetse yumva ko bamwirukanye, nawe ngo bamusubiza amafaranga ye 50.000. Habumugisha Jean Réné yakomeje avuga ko bitarangiriye aho kuko Niyitegeka Etienne yamukoreye iterabwoba amwoherereza umuntu i Kigali amusaba ko bahurira hafi yaho akorera kuri City Tower, ari mu modoka ifunze amusaba ko yamwandikira ko amafaranga 50.000 yahaye Niyitegeka yari ayo yamwishyuraga, amusubiza ko ibyo bintu atabikora, aramubwira ngo mbese azi uwo ariwe, aramusubiza ko nawe atamuzi amusaba ko bamuvana mu bintu byabo.

[21] Rushingiye ku ngingo ya 3 y’Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda agace kayo ka karindwi 7º gasobanura ko ikosa rikomeye ari ikosa rikozwe n’umukozi, hashingiwe ku buremere by’icyakozwe, ikitakozwe, imyitwarire, uburyo ryakozwemo cyangwa ingaruka ryateje ku buryo umukoresha aba atagishoboye gukomeza kumukoresha.

[22] Urukiko rusanga mu gusobanura ikosa rikomeye hakwifashishwa ibivugwa mu ngingo ya 2 y’Iteka rya Minisitiri Nº 002/19.20 ryo ku wa 17/03/2020 rishyiraho urutonde rw’amakosa akomeye ivuga ko Ibikorwa bikurikira bifatwa nk’amakosa akomeye: agace kayo ka cyenda 9° kavuga ibijyanye no gusaba, gutanga cyangwa kwakira ruswa cyangwa indonke.

[23] Rusanga iyi ngingo isoza ivuga ko Umukozi ukoze igikorwa icyo ari cyo cyose mu bikorwa bivugwa mu gika cya mbere cy'iyi ngingo aba akoze ikosa rikomeye rituma habaho iseswa ry'amasezerano y'umurimo nta nteguza.

[24] Rushingiye ku bivugwa n'izi ngingo ndetse nkuko n'Urukiko Rwisumbuye rwabibonye mu isesengura ryakozwe kuva ku gika cya makumyabiri [22] kugeza ku cya makumyabiri na gatanu [25]; igikorwa cyakozwe cyo na Niyitegeka Etienne cyo kwaka ruswa uwari wahawe isoko ryo kuzanira One Acre Fund TUBURA ibikoresho kigize ikosa rikomeye.

[25] Kubyerekeranye no kuba Niyitegeka Etienne yarajuriye avuga ko ikitwa ikosa rikomeye ryagaragaye kuwa 01/10/2019 ngo amasezerano y'umurimo aseswa kuwa 22/10/2019, bityo akaba avuga ko igihe cy'amasaha 48 avugwa mu ngingo ya 26 kitubahirijwe; ku ruhande rwa One Acre Fund TUBURA uyiburanira avuga ko muri One Acre Fund TUBURA ikosa rikomeye ribanza gusuzumwa n'inzego zitandukanye ubuyobozi bukuru akaba aribwo bufata icyemezo cy'uko igikorwa umukozi aba yakoze ari ikosa rikomeye bagafata icyemezo cyo gusesa amasezerano.

[26] Rusanga uburanira One Acre Fund TUBURA akomeza agaragaza *email* zitandukanye zagiye zihererekanywa mu bakozi ba One Ancre Fund TUBURA, kuva kuwa kuri *email* yabaye *forwarded* ku wa 02/02/2022 saa 07:07, kugeza kuyoherejwe na Claire Brosnihan ayohereza ku wa 22/10/2019, ifite *subject* yitwa *Termiantion of Etienne's contract with One Acre Fund*. Muri iyo *email* niho Claire M. Brosnihan (*Director of Field Operation*) akaba ari umwe mu bagize *Sinior Management* ya TUBURA, yamenyesheje abandi bari barakoze kuri *case* ya TUBURA ibijyanye n'uko hemejwe ko amasezerano ya Etienne aseswa. Iyo email ni iyo ku wa 22/10/2019. Uwo munsi nibwo ibaruwa isesa amasezerano yasinywe na Etienne arayihabwa, ngo bakaba basanga amasaha 48 ateganywa n'itegeko yarubahirijwe kuko raporo y'iperereza ubwayo ntiyari ihagije, kuko uyikora atariwe ufata icyemezo, kuwa 22/10/2019, ngo nibwo ikibazo cyagejejwe ku Buyobozi Bukuru aba aribwo bwemeza ko ari ikosa rikomeye umukozi agomba kwirukanirwa.

[27] Rusanga kuba ubuyobozi Bukuru bwa One Acre Fund TUBURA, nk'urwego rwa nyuma muri One Acre Fund TUBURA aribwo bwemeza ko igikorwa umukozi yakoze kigize ikosa rikomeye, kuba bwaremeje ko Niyitegeka Etienne yakoze ikosa rikomeye kuwa 22/10/2022, uwo munsi akanandikirwa ibaruwa isesa amasezerano, urukiko rusanga uyu munsi ufatwa ko ariwo igihe ibimenyetso by'ikosa rikomeye byagaragaye, kuko aribwo urwego rufite ububasha rwemeje ko ibyakozwe bigize ikosa rikomeye; bityo igihe giteganywa n'amategeko cyo kumenyesha ikosa rikomeye cyarubahirijwe.

[28] Rusanga Niyitegeka Etienne anenga urubanza ko rwavuze ko yakoze ikosa rikomeye nyamara mu nyandiko zose zatanzweho ibimenyetso nta hantu na hamwe higeze hagaragazwa ko Niyitegeka Etienne yaba yarari mu itsinda ry'abatanga amasoko, ngo bakaba basaba urukiko kutazabishingiraho, kuko byavuzwe n'umutangabuhamya w'indarikwa, bituma arenganywa, ngo akaba asaba Urukiko ko rwamurenganura; Rusanga ku ruhande rwa One Acre Fund TUBURA uyiburanira avuga ko ntaho basanga Urukiko Rwisumbuye rwemeje ko Niyitegeka Etienne yari mu bagize akanama ko gutanga amasoko, kuko iyi ngingo itari muzashingiweho asezererwa.

[29] Rusanga mu rubanza rujuririrwa ntaho Urukiko rwavuze ko Niyitegeka Etienne yari mubashinzwe gutanga amasoko, icyo urukiko rwashingiyeho ni ukuba One Acre Fund TUBURA yarasheshe amasezerano y'umurimo yari ifitanye na Niyitegeka Etienne ku mpamvu zuko yakiriye amafaranga kugira ngo yakire ibikoresho Habumugisha Jean Réné yagemuraga ku isoko yari yatsindiye ryo kugemura utubase duto, Urukiko Rwisumbuye rwasanze Niyitegeka Etienne yarakiriye amafaranga Habumugisha Jean Réné kugira ngo yakire ibyo yagombaga kugemura iyi akaba ari impamvu ikomeye yatuma amasezerano y'umurimo aseswa nta nteguza kuko ibikorwa

yakoze ari icyaha gihanirwa n'amategeko bityo Niyitegeka Etienne akaba yarirukanwe mu buryo bukurikije amategeko;

[30] Rusanga rero ntaho urukiko rwavuze ko ayo mafaranga Niyitegeka Etienne yayakiriye kuko yari ashinzwe isoko, ahubwo nuko yari umwe mubareba qualite y'ibyagemuwe, nkuko bigaragazwa n'inyandko zitwa *procurement quality checking & Delivery Note* aho Niyitegeka Etienne yagiye yakirira ibikoresho nk'iyo kuwa 20/05/2019 n'iyo kuwa 28/05/2019. Muri uku kwakira ibikorsho akaba ariho yahereye asaba amafaranga Habumugisha J. Réné kugira ngo yakire amabase yari agemuye muri One Acre Fund TUBURA, bityo iyi mpamvu y'ubujurire nta shingiro yahabwa.

[31] Rusanga na none Niyitegeka Etienne anenga urubanza ko umucamanza uburanisha imanza z'umurimo yihaye manda y'ubugenzacyaha ndetse n'umushinjacyaha amuhamya icyaha cya ruswa, iyi mpamvu y'ubujurire nayo nta shingiro ifite kuko umucamanza cyangwa urugereko ruburanisha imanza z'umurimo rufite ububasha bwo kwemeza ko ikosa ryakozwe n'umukozi ari ikosa rikomeye, hatabaye ho ikurikirana ikurikirana cyaha imbere y'inkiko ziburanisha imanza z'umurimo, bityo ibyakozwe n'Urukiko Rwisumbuye ubwo rwemeza ko Niyitegeka Etienne yakoze ikosa rikomeye ryo kuba yarasabye akanakira indonke ntibinyuranyije n'amategeko.

[32] Rusanga kuvuga na none ko hatagaragajwe isano Habumugisha Jean Réné yari afitanye na One Acre Fund TUBURA, ibi nabyo nta shingiro bifite kuko muri dosiye hagaragaramo inyandiko ya *Full registration Information of Domestic Company* yo kuwa 02/11/2017 igaragaza ko Papeterie Messanger Supply Ltd yanditse kuri Jean Réné Habumugisha, iyi Papiterie kandi niyo yahawe *Purchase Order* yo kuwa 26/04/2019 igaragaza ko One Acre Fund TUBURA igomba kwishyura Papeterie Messenger Supply Ltd amafaranga 6,786,400, izi nyandiko zikaba zigaragaza ko Papeterie Messenger Supply Ltd yanditse kuri Habumugisha Jean Réné isanzwe ikorana na One Acre Fund TUBURA, bityo ibyo Niyitegeka Etienne avuga ko ntaho Habumugisha Jean Réné ahurira na One Acre Fund TUBURA nta shingiro byahabwa.

[33] Na none kandi kuvuga ko Habumugisha Jean Réné atakoranaga na One Acre Fund TUBURA, kandi hagaragazwa *Purchase Order* yo kuwa 26/04/2019 igaragaza ko One Acre Fund TUBURA yagombaga kwishyura Papeterie Messenger Supply Ltd amafaranga 6,786,400, rusanga ibi uretse kubivuga gusa Niyitegeka Etienne atavuguruza ibi bimenyetso, kuko nkuko bigaragajwe haruguru ibimenyetso bishimangira imikoranire y'aba bombi.

[34] Kuvuga ko urukiko rutagenzuye niba Niyitegeka Etienne ariwe wagombaga kwakira ibintu byagemuwe na Habumugisha Jean Réné, rusanga iyi mpamvu y'ubujurire nayo nta shingiro ifite kuko urukiko rusanga harimo no kwivuguruza mu miburanire ya Niyitegeka Etienne, nko mu mpamvu ze z'ubujurire zabanje yabanje guhakana rwose ko nta naho Habumugisha Jean Réné ahuriye na One Acre Fund TUBURA, nyamara arongera avuga ko atariwe wari kumwakira bivuga ko nawe yemerako hari imikoranire ye na One Acre Fund TUBURA.

[35] Aburana kandi kuri uru rwego naho yaranzwe no kwivuguruza, kuko nubwo yahakanye ko nta mikoranire Habumugisha Jean Réné afitanye One Acre Fund TUBURA, urukiko rwo rusanga ibimenyetso bigaragajwe haruguru, bigaragaza ko iyo mikoranire ihari, kandi na none usanga Habumugisha Jean Réné ubwo yabazwaga kuri SMS bivugwa ko yandikiranye na Jean René uburyo yasubijemo bugaragaza ko azi Habumugisha Jean Réné kuko yavuze ko ari umuntu wakoreshejwe mukumugambanira kubera umwanya mwiza yari afite mu kigo yakoreraga, SMS zo avuga ko ntazo yigeze amwohererereza, dore ko n'uburyo bayigaragazamo budasobanutse, iyi miburanire igaragaza ko yemera ko hari SMS zagaragajwe yandikiranye na Habumugisha Jean Réné gusa akavuga ko uburyo zagaragajwemo budasobanutse, ubundi agahakana atsemba ko nta na SMS bandikiranye nyamara uwakoze *Investigation report on the case of suspected solicitation for a bribe/ kickback*

from a vendor by Mr Etienne Niyitegeka yo kuwa 01/10/2019, agaragaza ko Habumugisha Jean Réné izo message yazibagaragarije.

2. Ibyerekeranye no kumenya agaciro kahabwa imvugo z'umutangabuhamya Habumugisha Jean Réné muri uru rubanza

[36] Niyitegeka Etienne avuga ko yajurijwe nuko urukiko rwisumbuye rwumvise umutangabuhamya Habumugisha Jean Réné wamushinjaga ko yamwatse ruswa, rubishingiraho rwemeza ko koko yamwatse ruswa, ibi kandi akaba ari nabyo byashingiweho yirukanywa, ngo akaba asanga urukiko rwararengereye aho rwamweje icyaha cyo kwakira ruswa, rwarangiza rukavuga ko byahawe RIB ngo ikomeze iperereza, ngo akaba asanga urukiko ruburanisha imanza z'umurimo rwarihaye manda yo kuburanisha imanza nshinjabyaha, ndetse rumuhamya icyaha cya ruswa nta na raporo y'ubugenzacyaha cyangwa ubushinjacyaha rwagaragarijwe, akaba asanga harabayeho kubogama mu buryo bukomeye.

[37] Me Habakurama Francois Xavier uburanira One Acre Fund TUBURA mu izina ry'umuyobozi wayo avuga ko urukiko rufite ubunganzira busesuye bwo guha agaciro ubuhamya bwatanzwe n'umutangabuhamya, rugasuzuma niba buhuye n'ukuri maze rugaca urubanza. Kuba Habumugisha Jean Réné yaratanze ubuhamya mu rukiko, kandi Niyitegeka akaba atarigeze ahakana ubuhamya yatanze, ngo basanga nta mpamvu Urukiko rutagombaga gushingira kuri ubwo buhamya, kuko bwatanzwe mu buryo bukurikije amategeko. Ikindi ngo nuko urukiko rutakoze akazi k'ubushinjacyaha cyangwa ubugenzacyaha, kuko icyari kigamijwe kwari ukumenya niba ikosa rikomeye ryo kwaka ruswa Niyitegeka Etienne yahakanaga ko ntaryo yakoze, yararikoze koko, ko ukuri kumaze kugaragazwa nta mpamvu urukiko rutari gushingira ku bimenyetso ngo rufate icyemezo, cyane ko mu rwego rw'amategeko, kuba umuntu atarakurikiranyweho icyaha ntibibuza ko ikosa yakoze ryashingirwaho agafatirwa ibyemezo mu rwego rw'akazi.

[38] Ikindi ngo nuko icyemezo Niyitegeka Etienne yafatiwe ari icyemezo cy'ubuyobozi kandi ubugenzacyaha (RIB) burigenga na One Acre Fund TUBURA irigenga, ngo urwego rumwe ntiruha amabwiriza urundi. Ikindi ngo nuko nkuko n'ingingo ya 2 y'Iteka Nº 002/19.20 ryo kuwa 17/03/2020 ivuga urutonde rw'amakosa akomeye ntivuga ko habanza kuba urubanza.

UKO URUKIKO RUBIBONA

[39] Urukiko rusanga ingingo ya 65 y'Itegeko N° 15/2004 wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w'abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira.

[40] Urukiko rushingiye no ku manza zitandukanye zaciwe n'Urukiko rw'Ikirenga nk'urubanza RPAA 0016/14/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 07/07/2017, haburana Ubushinjacyaha vs/ Twajeneza Pierre Célestin, rushingiye ku ngingo ya 71 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, rwabonye ko abatangabuhamya bose batuma urubanza rucibwa neza bavuga icyo baruziho, ko kandi urukiko rudashobora kubuza umutangabuhamya w'ingirakamaro kuvuga icyo azi ku rubanza cyangwa se ngo ababuranyi bamwihane. Icyakora ababuranyi bashobora kuvuga impamvu zose zituma batakwizera ko abatangabuhamya babatangira ubuhamya bw'ukuri. Rushingira na none ku ngingo ya 72 y'iryo Tegeko ivuga ko Urupapuro rw'iburanisha rwandikwamo ibyo umuburanyi yaba anenga uwatanzweho umutangabuhamya. Rwabonye ko urukiko rwonyine arirwo rusuzuma ishingiro ryabyo kandi rukabiha agaciro rubona.

[41] Urukiko rw'Ikirenga kandi mu rubanza RPAA 0059/08/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 19/11/2010 haburana Ubushinjacyaha vs/ Nshimiyimana Alexis, na bagenzi be rwagaragaje ko Uwo ariwe wese ashobora kumvwa mu rubanza nk'umutangabuhamya, apfa gusa kuba nta tegeko ribimubuza, Urukiko rukaba arirwo rwonyine ruha agaciro ukuri gukubiye mu buhamya bwe. Bityo, ubuhamya bw'abantu ntibwateshwa agaciro gusa no kuba bafitanye amasano hagati yabo cyangwa se bafite inyungu mu rubanza, kuko agaciro k'ubuhamya kadashingira ku babutanga, ahubwo gashingira ku kuri kubukubiyemo.[1] Nkuko izi manza zombi zibigaragaza ndetse byanagarutsweho mu ngingo ya 65 yavuzwe, Urukiko nirwo rusuzuma rukareba agaciro ruha ibivugwa n'umutangabuhamya, kandi ubuhamya ntirubutesha agaciro gusa ngo nuko buvuzwe n'ufite inyungu mu rubanza cyangwa ufite icyo apfa n'umuburanyi.

[42] Muri uru rubanza rusanga ubuhamya bwa Habumugisha Jean Réné butateshwa agaciro, kuko uyu mutangabuhamya ibyo yashinje Niyitegeka Etienne umukoresha we One Acre Fund TUBURA nawe yabanje kubishakira ibimenyetso ubwo yagezaga ikibazo kuwamuhaye isoko ku cyo yakora kuko Niyitegeka Etienne yari kumwaka ruswa, Habumugisha Jean Réné bamugiriye inama ko niyongera kugira amafaranga amusaba amwemerera bakazayamusubiza, ngo bumvikanye amafaranga 50.000, muri *Investigation report on the case of suspected solicitation for a bribe/ kickback from a vendor by Mr* Etienne Niyitegeka yo ku wa 01/10/2019, bagaragaza ko amafaranga 49,000 Niyitegeka Etienne yohererejwe na Habumugisha Jean Réné yemeye ko yayakiriye, urukiko rero rubona ibyemejwe n'umutangabamya nta mpamvu bitashingirwaho cyane ko ntacyo yapfaga na Niyitegeka Etienne ku buryo yamushinja amubeshyera, ndetse aba bombi bavuga ko batari basanzwe baziranye.

3. Ibyerekeranye no kumenya niba indishyi Niyitegeka Etienne atagenewe ku rwego rwa mbere yazihabwa

[43] Niyitegeka Etienne avuga ko asaba urukiko ko nyuma yo gusuzuma impamvu atanga ajurira asaba urukiko gutegeka ko ibyo basabye byose mu rubanza RSOC 0003/2020 yabihabwa kuko yirukanywe mu buryo budakurikije amategeko.

[44] Me Habakurama Francois Xavier uburanira One Acre Fund TUBURA mu izina ry'umuyobozi wayo avuga ko Niyitegeka Etienne yasezerewe mu kazi mu buryo bukurikije amategeko, ndetse ahabwa ibyo amategeko ateganyiriza uwirukanwe. Kuba rero Niyitegeka Etienne yarakoze ikosa rikomeye bikamuvuramo gusezererwa ku kazi, kandi agahabwa ibyo yemererwa n'amategeko, ngo ntaho Urukiko rwari gushingira rumugenera indishyi yasabaga kandi zidakurikije amategeko, ngo Urukiko Rukuru ruzasuzume ingingo atanga z'ubujurire rwemeze ko nta shingiro zifite.

UKO URUKIKO RUBIBONA

[45] Rusanga nkuko urukiko Rwisumbuye rwabibonye izi ndishyi Niyitegeka Etienne atazihabwa kuko ibyo asaba yabihawe muri décompte final kandi akaba atagaragaza niba ibo yabariwe byaba byarabazwe nabi.

4. Ku bijyanye n'ishingiro ry'indishyi z'amafaranga yakoreshejwe mu rubanza

[46] Me Habakurama Francois Xavier uburanira One Acre Fund TUBURA mu izina ry'umuyobozi wayo avuga ko kuba Niyitegeka Etienne yarakoze amakosa bigatuma yirukanwa, ubu akaba akomeje gushora One Acre Fund TUBURA mu manza biyitera igihombo gikabije, kuko

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[1] Icyegeranyo cy'Ibyemezo by'Inkiko, imanza z'imbonezamubano, iz'inshinjabyaha, iz'ubucuruzi, iz'umurimo, iz'ubutegetsi, n'izireba amategeko anyuranyije n'Itegeko Nshinga, Igitabo cya kabiri 2011, nº 9 Mata, 2011, p.27.

yishyura Abavoka bayiburanira, bityo akaba akwiye gutegekwa kuyisubiza amafaranga angana na 1,000,000 y'ikurikirarubanza ndetse agasubiza n'igihembo cya Avoka kingana n'amafaranga 1,000,000 yatanze kugira ngo ayiburanire mu nkiko. Aya mafaranga mu rwego rwa mbere yari yasabwe ariko Urukiko ntirwagira icyo ruyavugaho, bityo ngo bakaba basaba Urukiko Rukuru gukosora iryo kosa maze rukemeza ko yishyurwa. Ndetse ngo akazanategekwa gutanga indishyi zo gukurikirana urubanza n'igihembo cya Avoka 800.000F ku rwego rw'ubujurire zingana n'amafaranga 800,000.

[47] Niyitegeka Etienne avuga ko izi ndishyi asabwa yumva zitahabwa ishingiro ngo kuko ari umushomeri akaba afite ubushobozi buke.

UKO URUKIKO RUBIBONA

[48] Urukiko rushingiye ku ngingo 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 ivuga 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. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe.

[49] Rusanga indishyi Niyitegeka Etienne agomba guha One Acre Fund/TUBURA zingana n'amafaranga 1,000,000, akubiyemo indishyi z'ikurikiranarubanza n'igihembo cya Avoka ku rwego rw'ubujurire agenwe mu bushishozi bw'Urukiko.

III. ICYEMEZO CY'URUKIKO

[50] Rwemeje ko ikirego cy'ubujurire rwashyikirijwe na Niyitegeka Etienne nta shingiro gifite.

[51] Rwemeje ko Niyitegeka Etienne agomba guha One Acre Fund/TUBURA indishyi zingana n'amafaranga 1,000,000, akubiyemo indishyi z'ikurikiranarubanza n'igihembo cya Avoka.

[52] Rutegetse ko urubanza RSOC 00003/2020/TGI/KNG rwaciwe n'Urukiko Rwisumbuye rwa Karongi, kuwa 31/03/2021 rudahindutse.

[53] Rutegetse ko ingwate y'amagarama ihwanye n'ibyakozwe n'Urukiko.