MUSENGIMANA v EUCL

[Rwanda URUKIKO RUKURU - RCA 00324/2022/HC/KIG (Nkusi, P.J.) 08 Gicurasi 2024]

Amategeko agenga imanza z'imbonezamubano – Impanuka – Indishyi zikomoka ku mpanuka y'amashanyarazi - Indishyi z'akababaro – Mu mpanuka zikomoka ku muriro w'amashanyarazi, indishyi z'akababaro zigenwa mu bushishozi bw'urukiko.

Amategeko agenga imanza z'imbonezamubano – Impanuka – Indishyi zikomoka ku mpanuka y'amashanyarazi - Ibarwa ry'indishyi – Indishyi mbonezamusaruro - Indishyi mbonezamusaruro zikomoka ku mpanuka y'amashanyarazi zibarwa hitabwa ku ngano y'ubumuga ndetse n'imyaka uwagize ubumuga asigaje yo gukora ngo ajye mu kiruhuko cy'izabukuru.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo uwitwa Musengimana aregera indishyi avuga ko ubwo yakoraga ku modoka itwara ibishingwe mu kimoteri cya Nduba, bageze aho bamena ibishingwe yavuye ku modoka ajya gufata inkoni bakinguzaga urugo rw'imodoka hanyuma ahura n'urutsinga rwari rwarashishutse rurimo umuriro w'amashanyarazi ucungwa na Energy Utility Corporation Ltd (EUCL) rumutwika ku mutwe ndetse no ku kuboko. Yaje kujya kwivuza, abaganga bemeza ko yagize ubumuga buhoraho bungana na 92% ndetse n'ibangamira ry'uburanga kuko ukuboko kwe kwaje gucika. Yaje gutanga ikirego mu Rukiko rwisumbuye rwa Gasabo asaba indishyi zitandukanye maze rumugenera indishyi z'akababaro zinga na miliyoni 5.000.000 Frw ariko ntiyanyurwa ajurira icyo cyemezo mu Rukiko Rukuru.

Urukiko rukuru rwakiriye ubwo bujurire maze rusuzuma ikibazo cyo kumenya niba indishyi zatanzwe zitarabazwe mu buryo bukwiye no kumenya icyashingirwaho mu kugena izo ndishyi n'uko zabarwa. Musengimana avuga ko indishyi zagombaga kugenwa hashingiwe ku Iteka rya Perezida N°31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga akagenerwa indishyi zitandukanye ariko EUCL yo ikavuga ko ntaho izo ndishyi ziteganywa mu itegeko bityo zitagomba gutangwa. Mu kumenya indishyi zigomba gutangwa, uko zibarwa n'ugomba kuzitanga, urega avuga ko izo ndishyi zabarwa hagendewe ku ngingo ya 18 y'Iteka rya Perezida N°31/01 ryavuzwe hejuru kuko yagize ubumuga buhoraho butuma nta kindi kintu ashobora gukora ndetse agatakaza n'uburanga. Uregwa we avuga ibivugwa n'iryo teka bijyanye n'impanuka zo mu muhanda gusa.

Incamake y'icyemezo: 1. Mu mpanuka zikomoka ku muriro w'amashanyarazi, indishyi z'akababaro zigenwa mu bushishozi bw'urukiko;

2. Indishyi mbonezamusaruro zikomoka ku mpanuka y'amashanyarazi zibarwa hitabwa ku ngano y'ubumuga ndetse n'imyaka uwagize ubumuga asigaje yo gukora ngo ajye mu kiruhuko cy'izabukuru.

Ubujurire bwatanzwe bufite ishingiro.

Amategeko yashingiweho:

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, 156;
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 9.

Imanza zifashishijwe:
RS/INJUST/RC 00013/2021/CA, Manirarora Jean de Dieu na RWANDA RUDNIKI Ltd na SANLAM AG Ltd, rwaciwe n'Urukiko rw'Ubujurire ku wa 28/06/2022;
RS/INJUST/RC 00013/2021/CA, Manirarora Jean de Dieu Vs RWANDA RUDNIKI Ltd na SANLAM AG Ltd, rwaciwe n'Urukiko rw'Ubujurire ku wa 28/06/2022;
RADA 0054/12/CS, Kabayijuka Gaspard na Leta y'u Rwanda (Minisanté), rwaciwe n'Urukiko rw'Ikirenga ku wa 19/12/2014;
RCAA 0049/14/CS, SORAS AG Ltd n'Umuhoza Pacifique n'abandi, rwaciwe n'Urukiko rw'Ikirenga ku wa 25/11/2016.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Musengimana Jean Baptiste yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge avuga ko yakoraga ku modoka itwaye ibishingwe ibijyanye mu kimoteri cya Nduba, giherereye mu murenge wa Nduba, mu karere ka Gasabo mu mujyi wa Kigali, kuwa 17/04/2019, i saa 18 h30 ubwo iyo modoka yari iparitse avamo, agira ngo akingure urugi rw'imodoka ibone uko isuka imyanda, agiye gufata inkoni bakoreshaga bayikingura yagonganye n'urutsinga rw'amashanyarazi rwa Energy Utility Corporation Ltd (EUCL), rwariho rutendera, rwaranashishutse rumutwika mu mutwe, n'ukuboko kw'iburyo, ata ubwenge akanguka agejejwe mu bitaro bya CHUK, bimuviramo ubumuga budahoraho bungana na 90%, buzamara igihe cy'amezi atandatu (6), banamuca ukuboko kw'iburyo nk'uko byemejwe muri raporo yo kuwa 28/06/2019 ya muganga w'ibyo ibitaro;

[2] Musengimana Jean Baptiste yavugaga ko kuwa 31/01/2020 yegereye Energy Utility Corporation nyiri izo nsinga z'amashanyazi, ngo imuhe indishyi yasabaga mu bwumvikane bikananirana kuko yamusaba ko yamenyekanisha impanuka y'amashanyarazi yagize, kandi yarayihaye dosiye ikibiyemo inyandiko za ngombwa zose zashingirwaho mu kumwishyura. Musengimana Jean Baptiste yasabag urukiko gutegeka ko agenerwa indishyi zikwiye zingana na 38.750.400 Frws y'indishyi mbangamirabukungu, 10,000,000 Frws y'indishyi z'akababaro, 416,217 Frws y'indishyi z'amafaranga yakoresheje mu kwivuza n'ingendo, ndetse n'amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka ndetse no gusubizwa ingwate y'amagarama y'Urukiko;

[3] Ku ruhande rwa Energy Utility Corporation (EUCL) yabanje kwiregura ivuga ko iki kigo kidakwiye kuryozwa indishyi zikomoka kuri iyo mpanuka y'amashanyarazi isabwa, kuko nta kigaragaza ko yabaye, kandi nta n'ikibazo cyabaye ku nsinga z'amashanyarazi z'umuyoboro wayo uherereye i Nduba. Mu iburanisha uwari uhagarariye Energy Utility Corporation yavugaga ko idafite umuyoboro w'insinga zica i Nduba, ko ubaye unahari Musengimana Jean Baptiste yaba yaragize uburangare agasagarira insinga zayo kuko abazwa yavuze ko yazikojejeho umutwe

n’ukuboko, kandi ko ikigaragza ko iyo mpanuka itabaye ari uko itariki 17/04/2019 Musengimana Jean Baptiste avuga ko yabereyeho ivuguruzanya n’itariki ya 17/05/2019 igaragara muri raporo ya muganga w’ibitaro bya CHUK, itariho na reference, kandi na Musengimana Jean Baptiste atagaragaza ikimenyetso cyerekana ko ari umukozi w’iyo Company yari itwaye ibishingwe mu kimoteri cya Nduba, kandi yari umuyede.

[4] Energy Utility Corporation (EUCL) yasabaga ko ikirego cya Musengimana Jean Baptiste kitahabwa ishingiro, bitewe n’uko kidashingiye ku itegeko, ahubwo gishingiye gusa ku mvugo ze n’iz’abatangabuhamya yatangiye mu bugenzacyaha, bikaba bidahuye na kamere y’ikiburanwa;

[5] Urukiko rushingiye ku bimenyetso byatanzwe na Musengimana Jean Baptiste bigizwe n’abuhamya bwatangiwe ku rwego rw’ubugenzacyaha n’abakoranaga na Musengimana Jean, aho bose bahuriza kuko kuba impanuka y’amashanyarazi Musengimana Jean Baptiste yagize yarabereye mu kimoteri cya Nduba ku itariki ya 17/04/2019 ubwo bari bagiyeyo kuhamena ibishingwe babikuye Nyacyonga, babonye ibishashi by’amashanyarazi biturika mu kirere nk’aho umurimo ukubise umuntu, hakaba inyandiko-mvugo yo mu bushinjacyaha igaragara muri dosiye, ndetse na raporo ya muganga w’Ibitaro bya CHUK, n’uw’Ibitaro bya Kanombe bamusuzumye, bose bemeje neza ko iyo mpanuka yabaye kuwa 17/04/2019 yateye n’urutsinga rw’amashanyarazi rwamufashe ku mutwe no ku kuboko, bikamuviramo ubumuga buraho agacibwa ukuboko rwemeje ko ikirego cya Musengimana Jean Baptiste gifite ishingiro kuri bimwe;

[6] Urukiko rwasanze mu kubara indishyi rutashingira ku iteka rya Perezida nº 31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw’umubiri buturutse ku mpanuka zitewe n’ibinyabiziga kuko iyi itari impanuka yo ku muhanda;

[7] Urukiko rwategetse ENERGY UTILITY CORPORATION kwishyura Musengimana Jean Baptiste indishyi z’akababaro zingana na 5,000,000 frws zibazwe mu bushishozi bw’urukiko, ndetse n’indishyi z’amafaranga yakoresheje mu kwivuza n’ingendo zingana na 516,217 frws, yose hamwe akaba 5,516,217 frws.

[8] Musengimana Jean Baptiste ntiyishimiye imikirize y’urubanza ajurira mu Rukiko Rukuru avuga ko indishyi zatanzwe zitabazwe mu buryo bukwiye; Urukiko rutagaragaje icyo rwashingiye ruzigena, ngo zikaba zidahura n’uko Musengimana Jean Baptiste yakomeretse (prejudice) kuko abaganga bemeje yagize ubumuga buhoraho bungana na 92% ndetse n’ibangamira ry’uburanga akaba nta kindi azongera gukora, cyangwa gukorera umuryango we, nyamara akiri muto;

[9] Energy Utility Corporation Ltd (EUCL) mu bujurire yiregura itemera indishyi igahakana ko nta mpanuka yabaye kuri Musengimana Jean Baptiste itewe n’urutsinga rw’amashanyarazi rwa EUCL, kandi ko atari umukozi wo mu kimoteri cya Nduba. EUCL Ltd yatanze ikirego kiregera kwiregura isaba guhabwa amafaranga y’igihembo cy’avoka n’ikurikiranarubanza;

[10] Urukiko rurasuzuma niba indishyi urukiko rwageneye Musengimana Jean Baptiste zitarabazwe mu buryo bukwiye, harebwe n’ibijyanye n’igihembo cy’avoka;

II. ISESENGURA RY’IBIBAZO BIGIZE URUBANZA

A. Kumenya niba indishyi zatanzwe zitarabazwe mu buryo bukwiye

[11] Uhagarariye Musengimana Jean Baptiste mu myanzuro ye avuga ko mu gika cya 28 cy'urubanza RC 01087/2020/TGI/NYGE rujuririrwa, Urukiko rwavuze ko rugeneye Musengimana Jean Baptiste indishyi z'akababaro zingana na 5.000.000frw akaba asanga izi ndishyi zatanzwe zitaragararijwe aho Urukiko rwashingiye ruzigena kuko asanga zidahura n'uko Musengimana Jean Baptiste yakomeretse (prejudice) kuko abaganga bagaragaje ko yagize ubumuga buhoraho bungana na 92% ndetse n'ibangamira ry'uburanga, bigaragara ko nta kindi azongera gukora, cyangwa gukorera umuryango we, nyamara akiri na mutoya arebye imyaka afite. Nkuko yari yabigaragaje ko nta tegeko rihari rigaragaza uburyo izi ndishyi zikwiye kubarwa;

[12] Uhagarariye Musengimana Jean Baptiste avuga ko asanga hari gukoreshwa kugenekereza 'interpretation par analogie' hakifashishwa Iteka rya Perezida n°31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga hagatangwa indishyi zinabazwe muri ubu buryo: Indishyi mbangamirabukungu : 3000frw×30×12×39×92% ÷ 1+ (7%×39) = 18.900.000frw ÷ 3,45 = 10.388.847frw hagendewe ku ingingo ya 18 y'Iteka rya Perezida n°31/01 ryo kuwa 25/08/2003; - Ingingo ya 47 Itegeko ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga Indishyi z'ibangamira riterekeye umutungo - Ububabare bw'umubiri (pretium doloris): 3.000frw x 30jrs x 12×150% = 1.620.000frw; Ubusembwa k'umubiri (préjudice esthétique) : 3.000frw x 30jrs x 12×100% = 1.080.000frw. Uhagarariye Musengimana Jean Baptiste yasabaga Urukiko kuzareba kandi n'urubanza RCA00214/2021/HC/KIG rwaciwe n'Urukiko Rukuru;

[13] Uhagararire Energy Utility Corporation Ltd (EUCL) mu myanzuro avuga ko Musengimana Jean Baptiste yabajijwe n'urukiko aho yahereye abara indishyi, agaragaza ko yashingiye ku itegeko rigena uburyo indishyi zibarwa iyo habaye impanuka y'ikiyabiziga kigendesha moteri, kandi ubu si bwo bwoko bw'impanuka bwamubayeho. Uhagararire Energy Utility Corporation Ltd (EUCL) akaba yumva ahubwo urukiko rwaragombaga kwemeza ko nta ndishyi ahawe kuko atagaragaje amategeko ashingiraho azisaba bityo akaba yumva ibisobanuro bya EUCL bitarasuzumwe, cyane ko Musengimana atigeze akora muri sosiyete zitwara imyanda, kuko abazwa muri RIB kuwa 1/10/2019 yemeje ko ari Umuyede.

[14] Uhagararire Energy Utility Corporation Ltd (EUCL) yumva mu nyungu z'ubutabera Musengimana agomba kugaragaza sosiyete yakoreraga kuko wasanga yaranamufatiye ubwishingizi iby'iyi mpanuka bikaba byarishyuwe akaba ari kubiregera ku nshuro ya kabiri agira ngo yikungahaze nta mpamvu. Ikindi niba ari umuyede wari wagiye mu kimboteri kugira ibyo ashaka mu myanda (ibi bibaho), ntabwo impanuka yahura na yo yayiryoza EUCL kuko atemerewe nyine kujya mu kimboteri, impamvu ya gatatu ni uko nta nsinga ya EUCL ipfutse ica mu kimboteri cya Nduba.

[15] Uhagararire Energy Utility Corporation Ltd (EUCL) avuga ko uyu Musengimana ashobora kuba yarahuriye n'impanuka ahandi, yabona ko atabasha kuyisobanura agahimba ko yayigiriye mu kimboteri cya Nduba, akaba ariyo mpamvu agomba kubanza kugaragaza ko yari yemerewe kujya muri icyo kimboteri, akagaragaza kandi n'uburyo yahuye n'urusinga rupfutse kandi nta ruhaba, akabanagaraza impamvu nta musekirite cyangwa se umushoferi wari utwaye iyo modoka bigeze babazwa mu bugenzacyaha. Ikindi kandi ubugenzacyaha si bwo bwemeza uwateje impanuka, kuko ntibwigeze bugera aho ibyo byabereye, bwashingiye ku magambo bwabwiwe gusa bityo indishyi zatanzwe zikwiye gukurwaho kuko ntacyo zishingiyeho.

[16] Uhagararire Energy Utility Corporation Ltd (EUCL) arasaba Urukiko kandi kuzasuzuma niba Musengimana yarajyeze aho yakoreye impanuka mu kimoteri cya Nduba mu gihe yibarizwa kuwa 01/10/2019 yivugiye ko ari umuyede kandi akaba atarigeze agaragaza company y'isuku yakoreraga bityo iyi mpanuka ikaba yaratewe n'izindi mpamvu cyangwa ahandi hantu atabasha kugaragaza mbere yo kuregera indishyi akwiye kubanza kugaragaza ibimenyesto bihuye n'ibyo yivugiye yerekana aho yahuriye n'ikimoteri cya Nduba kandi yari umuyede hakaba nta chantier yari yo. Uhagararire Energy Utility Corporation Ltd (EUCL) avuga ko kubijyanye no kwemera responsabilite ntaho bihuriye no kwishyura ntabwo EUCL yijyeze yemera responsabilite.

[17] Me Twagirayezu Kanuma Christophe uburanira Musengimana mu iburanisha yasobanuye ko bajuriye kubera ko urukiko rwabaze nabi indishyi akaba asaba ko indishyi zabarwa hashingiwe ku iteka rya Perezida nomero 31/01 rigena uko babara indishyi ku mpanuka zitewe n'ibinyabiziga hagendewe ku bumuga Musengimana Jean Baptiste bwa 92%. Me TWAGIRAYEZU Kanuma Christophe avuga ko ibyo EUCL ishaka kugarura bijyanye n'ikibazo cya responsabilite, bihabanye n'ingingo ya 150 CPCCSA kuko bajuririye gusa uburyo indishyi zabazwemo, nta kongera gutanga ubundi bujurire kandi icyo kibazo cya responsabilite cyarafashweho umurongo EUCL ntiyabijuririra, ikaba igomba kwiregura ku bujurire bwabo gusa.

[18] Me Niyitegeka Eraste uhagarariye EUCL Ltd yiregura amafaranga 5.00.00FRW yari yategetswe mu rubanza rujuruirirwa nta mpamvu zari gutuma bajurira ariko ubwo Musengimana Jean Baptiste yaje kujurira bakaba babigaruye. Me Niyitegeka Eraste anenga ko uwari utwaye imodoka atigeze abazwa kimwe n'ushinzwe kuharinda, hakaba nta mategeko yirengagijwe yari gutuma bajurira. Bumva kandi nta tegeko umucamanza yishe akoresha ingingo ya 9 CPCCSA.

UKO URUKIKO RUBIBONA

1. Kumenya niba hari impanuka yabaye itewe n'urutsinga rw'amashanyarazi ya Energy Utility Corporation Ltd (EUCL)

[19] Uhagararire Energy Utility Corporation Ltd (EUCL) arasaba Urukiko kandi kuzasuzuma niba Musengimana yarajyeze aho yakoreye impanuka mu kimoteri cya Nduba mu gihe yibarizwa kuwa 01/10/2019 yivugiye ko ari umuyede kandi akaba atarigeze agaragaza company y'isuku yakoreraga bityo iyi mpanuka ikaba yaratewe n'izindi mpamvu cyangwa ahandi hantu atabasha kugaragaza mbere yo kuregera indishyi akwiye kubanza kugaragaza ibimenyesto bihuye n'ibyo yivugiye yerekana aho yahuriye n'ikimoteri cya Nduba kandi yari umuyede hakaba nta chantier yari yo.

[20] Uhagarariye Musengimana Jean Baptiste avuga ko icyo kibazo cya responsabilite cyarafashweho umurongo EUCL ntiyabijuririra, ikaba igomba kwiregura ku bujurire bwabo gusa;

[21] Ingingo ya 156 y'itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko urukiko rwajuririwe ruburanisha gusa ubujurire mu mbibi z'icyajuririwe. Urukiko rufata icyemezo ku ngingo zatumye uwatanze ubujurire ajurira cyangwa uwabwuririyeho na we akajurira. Urukiko mu gusuzuma imyanzuro yo kujurira rurasanga uwajuriye ari Musengimana Jean Baptiste gusa ajurirra ko indishyi yagenewe ari nkeya, ntaho Energy Utility Corporation Ltd (EUCL) yigeze itanga ubujurire busanzwe cyangwa ubujurire bwuririye ku bundi ihakana ko impanuka yabaye

cyangwa ihakana uruhare rwayo. Urukiko rukaba rusanga muri ubu bujurirre igikwiye gusuzumwa ari ukumenya niba indishyi Musengimana Jean Baptiste yagenewe zarabazwe neza cyangwa niba ari nkeya kuzo yari akiriye guhabwa;

[22] Ibyo uburanira Energy Utility Corporation Ltd (EUCL) yireguza ko nta rutsinga rwa EUCL ruca mu kimoteri I Nduba, cyangwa ko umushoferi wari utwaye imodoka atabajijwe, urukiko Rukuru rurasanga, n'ubwo rutabyinjiyemo mu mizi, byarafashweho icyemezo gikwiye n'Urukiko Rwisumbuye rwa Nyarugenge, kuko ibimenyetso rwashyingiyeho byo kwa muganga n'inyandiomvugo z'abatanguhamya mu bugenzacyaha ari ibimeneyetso byari bihuje kamere n'ikiburanwa byakiranuraga impaka kuri iki kibazo. Kuba Energy Utility Corporation Ltd (EUCL itarabijuririye ahubwo ikabishyira mu byo yireguza, urukiko rurasanga ari ugusubiza ibintu inyuma kandi itarabijuririye;

2. Kumenya icyashingirwaho mu kubara indishyi Musengimana Jean Baptiste agomba guhabwa.

[23] Ku ruhande rwa Musengimana Jean Baptiste avuga ko mu kubara indishyi asanga hari gukoreshwa kugenekereza 'interpretation par analogie' hakifashishwa iteka rya Perezida N°31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga hagatangwa indishyi zitandukanye zirimo indishyi mbangamirabukungu hagendewe ku ingingo ya 18 y'Iteka rya Perezida n°31/01 ryo kuwa 25/08/2003 n'Ingingo ya 47 Itegeko ngenga n° 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga Indishyi z'ibangamira riterekeye umutungo - Ububabare bw'umubiri (pretium doloris);

[24] Ku ruhande rwa Energy Utility Corporation Ltd (EUCL) avuga ko Musengimana Jean Baptiste yabajijwe n'urukiko aho yahereye abara indishyi, agaragaza ko yashingiye ku itegeko rigena uburyo indishyi zibarwa iyo habaye impanuka y'ikiyabiziga kigendesha moteri, kandi ubu ngo atari bwo bwoko bw'impanuka bwamubayeho. Uhagararire Energy Utility Corporation Ltd (EUCL) akaba yumva ahubwo urukiko rwaragombaga kwemeza ko nta ndishyi ahawe kuko atagaragaje amategeko ashingiraho azisaba;

[25] Ingingo ya 9 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko Umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko;

[26] Urukiko rurasanga nta tegeko rihari rirebana n'indishyi zikomoka ku mpanuka yatewe n'amashanyaraazi, kubera iyo mpamvu rushingiye ku ngingo ya 9 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru rurasanga mu kugenera Musengimana Jean Baptiste indishyi hagomba gushingirwa ku ihame rusange ryerekeye uburyozwe buturutse ku byangijwe n'ibintu umuntu ashinzwe kurinda (responsabilité du fait des choses) nk'uko byemejwe mu rubanza

RS/INJUST/RC 00013/2021/CA, rwaciwe n'urukiko rw'Ubujurire ku wa 28/06/2022 aho Manirarora Jean de Dieu yaregeraga indishyi ziturutse ku mpanuka yo mu birombe[1].

[27] Nk'uko byemejwe muri uru rubanza RS/INJUST/RC 00013/2021/CA rwavuzwe hejuru Urukiko rurasanga gushingira ku Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga kubera ko zose ari impanuka nta shingiro bifite, kuko nk'uko iri Teka ubwaryo ribiteganya, rirebana gusa n'impanuka zitewe n'ibinyabiziga. Itegeko cyangwa iteka ryihariye (spécial) rikaba rigomba gukoreshwa ku mwihariko waryo, ibidafite itegeko ryihariye bigakemurwa n'amahame cyangwa amategeko rusange[2]. Izi mpanuka zo mu muhanda zatewe n'ibinyabiziga bifite moteri urukiko rurasanga zitandukanye n'impanuka Musengimana Jean Baptiste yagize kuko we yakomerekejwe n'urutsinga rw'amashanyarazi, bityo iri Teka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga rikaba ritagomba gushingirwaho muri uru rubanza kuko ridahuye n'ikiburanwa;

3. Kumenya indishyi zigomba gutangwa, uko zibarwa, n'ugomba kuziryozwa

[28] Ku ruhande rwa Musengimana Jean Baptiste bashingira ku iteka rya Perezida n°31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga bagasaba ko hatangwa indishyi mbangamirabukungu: 3000frw×30×12×39×92% ÷ 1+ (7%×39) = 18.900.000frw ÷ 3,45 = 10.388.847frw hagendewe ku ingingo ya 18 y'Iteka rya Perezida n°31/01 ryo kuwa 25/08/2003; indishyi z'ibangamira riterekeye umutungo - Ububabare bw'umubiri (pretium doloris): 3.000frw x 30jrs x 12×150% = 1.620.000frw; Ubusembwa k'umubiri (préjudice esthétique) : 3.000frw x 30jrs x 12×100% = 1.080.000frw. Naho ku ruhande rwa Energy Utility Corporation Ltd (EUCL) bakavuga izi ndishyi zitatangwa kuko nta mategeko zishingiyeho kandi ibyabayeho ari bwoko bw'impanuka zo mu muhanda;

[29] Urukiko rurasanga hari murongo watanzwe ku kibazo gisa n'iki mu rubanza RS/INJUST/RC 00013/2021/CA rwavuzwe hejuru, rwaciwe n'urukiko rw'Ubujurire ku wa 28/06/2022 aho Manirarora Jean de Dieu yaregeraga indishyi ziturutse ku mpanuka yo mu birombe ashingiye ku iteka rya Perezida n°31/01 ryo kuwa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga ariko RUDINIKI baburanaga akavuga ko nta tegeko ashingiraho azisaba kuko bitari impanuka zo mu muhanda. Urukiko rw'Ubujurire rushingiye ku ngingo ya 9 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi rwemeje ko Manirarora Jean de Dieu agomba kugenerwa indishyi z'akababaro mu bushishozi bw'urukiko kubera ububabare yatewe n'impanuka yagize, n'indishyi mbonezamusaruro kubera ko impanuka yagiriye mu kirombe cya RWANDA RUDNIKI Ltd yamuvukije umusaruro yahoraga abona kuko yamusigiye ubumuga buhoraho. Urukiko rw'Ubujurire kandi rwanavuzeko mu kubara indishyi mbonezamusaruro hakitabwa ku ngano y'ubumuga yagize, ku myaka yari asigaje kugira ngo agere ku myaka 65 (imyaka yo kujya mu

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[1] 1 Urubanza RS/INJUST/RC 00013/2021/CA, Manirarora Jean de Dieu aburana na RWANDA RUDNIKI Ltd na SANLAM AG Ltd, rwaciwe n'urukiko rw'Ubujurire ku wa 28/06/2022

[2] Opcit

kiruhuko cy'izabukuru)[3]. Ubu buryo ni nabwo Urukiko rw'Ikirenga rwakoresheje mu rubanza RADA 0054/12/CS, rubarira Kabayijuka Gaspard indishyi mbonezamusaruro kubera ubumuga yatewe n'urushinge yaterewe ku Kigo Nderabuzima cya Nyarubuye, aho Urukiko rw'Ikirenga rwafashe umushahara w'ukwezi ruwukuba n'amezi cumi n'abiri (12), rukuba n'ingano y'umubuga n'igihe cyo gukora yari asigaje, rubigabanya ku ijana[4].

[30] Urukiko rushingiye ku murongo wafashwe n'urukiko rw'Ubujurire mu rubanza RS/INJUST/RC 00013/2021/CA rurasanga Musengimana Jean Baptiste agomba kugenerwa indishyi z'akababaro mu bushishozi bw'urukiko kubera ububabare yatewe n'impanuka yagize ikamusigira ubumuga buhoraho bwa 92%, agacibwa akaboko, izi ndishyi yahabwa zikaba ari miliyoni ebyiri (2.000.000Frw) aho kuba miliyoni eshanu (5.000.000Frw) zemejwe mu rubanza rujuririrwa kuko ari ikirenga;

[31] Urukiko rurasanga no mu kubarira Musengimana Jean Baptiste indishyi mbonezamusaruro hashingiwe ku mushahara muto ntarengwa w'amafaranga ibihumbi bitatu ku munsi (3.000 Frw)[5] wemejwe n'Urukiko rw'Ikirenga mu rubanza No RCAA 0049/14/CS, haburana SORAS AG Ltd n'Umuhoza Pacifique n'abandi x 12 (iminsi yashoboraga gukora mu kwezi) x 12 (amezi y'umwaka) x (igipimo cy'ubumuga) x (igihe cyo gukora yari asigaje kugira ngo agire imyaka 65): 100. Kuko Musengimana Jean Baptiste atabasha kugaragaza amasezerano y'akazi cyangwa ngo agaragaze ko yakoraga buri munsi, urukiko rurasanga mu bushishozi bwaro indishyi zagenwa hagendewe ko yakoraga iminsi itatu (3) mu cyumweru, mu kwezi ikaba iminsi cumi n'ibiri (12);

[32] Urukiko rurasanga Musengimana Jean Baptiste yari akwiriye guhabwa na Energy Utility Corporation Ltd (EUCL) indishyi mbonezamusaruro zingana na 3000Frw (umushahara muto ntarengwa) x 12 (iminsi yashoboraga gukora mu kwezi) x 12 (amezi y'umwaka) x 92 (igipimo cy'ubumuga yagize) x 39 (igihe cyo gukora yari asigaje kugira ngo agire imyaka 65 kuko yagize impanuka afite imyaka 26): 100 = 15,500,160 Frw;

[33] Urukiko rurasanga kuba mu myanzuro y'ubujurire Musengimana Jean Baptiste yari yasabye indishyi ziteranyirijwe hamwe zingana na 13,088,847 (10.388.847frw yitaga ndishyi mbangamirabukungu + 1.620.000frw yitaga ay'indishyi z'ububabare bw'umubiri cyangwa pretium doloris) + 1.080.000frw yitaga ay'indishyi z'Ubusembwa ku mubiri cyangwa préjudice esthétique) zikaba ziri munsi y'aya amafaranga 15,500,160 Frw urukiko rwabaze, rurasanga igiteranyo cy'indishyi yasabye cya 13,088,847Frw ari cyo akwiriye guhabwa nk'indishyi mbonezamusaruro mu rwego rwo kwirinda ko urukiko rwamugenera ibirenze ibyo yasabye (statuer Ultra petita) kuko n'ubundi ajurira nizo yumva akwiriye, izi ndishyi zikiyongera ku ndishyi z'akababaro za 2.000.000Frw zisimbura izo urukiko Rwisumbuye rwari rwamugeneye mu rubanza rujuririrwa;

B. Ibyerekeranye n'indishyi z'ikurikiranarubanza ku rwego rw'ubujurire

[3] Reba igika cya 56 cy'urubanza RS/INJUST/RC 00013/2021/CA, Manirarora Jean de Dieu Vs RWANDA RUDNIKI Ltd na SANLAM AG Ltd, rwaciwe n'urukiko rw'Ubujurire ku wa 28/06/2022;

[4] Reba urubanza N0 RADA 0054/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/12/2014, haburana Kabayijuka Gaspard na Leta y'u Rwanda (Minisanté) mu gika cyarwo cya 31.

[5] Reba igika cya 28 cy'urubanza Nº RCAA 0049/14/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 25/11/2016, haburana SORAS AG Ltd n'Umuhoza Pacifique n'abandi.

[34] Ku ruhande rwa Musengimana Jean Baptiste barasaba Urukiko rwajuririwe guha Musengimana Jean Baptiste igihembo cya avocat ku rwego rw'ubujurire kingana na 700.000frw na 200.000frw y'ikurikiranarubanza;

[35] Ku ruhande rwa Energy Utility Corporation Ltd (EUCL) avuga ko nta ndishyi zikwiye gutangwa kubera ko nta kigaragaza ko uzisabwa hari ikosa yakoze. Uhagarariire Energy Utility Corporation Ltd (EUCL) irasaba urukiko ko rwagenera EUCL igihembo cy'avoka ku nzego zombi kingana na 2.000.000 frw kubera ko ku rwego rwa mbere nta cyatanzwe, kuko uregwa yatsinzwe.

UKO URUKIKO RUBIBONA

[36] Ingingo ya 111 y'itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo […]. Urukiko rushingiye ko impanuka yo Musengimana Jean Baptiste yagize yatewe n'urutsinga rwa Energy Utility Corporation Ltd (EUCL), rurasanga nta ndishyi Energy Utility Corporation Ltd (EUCL) yagenerwa kuko ari yo ikomokaho igikorwa cyateye impanuka ikaba igomba kuryozwa impanuka yabaye.

[37] Kuba Musengimana Jean Baptiste yarakomeje gutanga amafaranga mu rwego rw'ubujurire yishyura abavoka, urukiko rurasanga Energy Utility Corporation Ltd (EUCL), igomba kiyamwishyura. Mu bushishozi bw'urukiko Energy Utility Corporation Ltd (EUCL) ikaba igomba kwishyura amafaranga ibihumbi magana atatu (300.000Frw) y'igihembo cy'avoka mu rwego rw'ubujurire yiyongera ku yemejwe ku rwego rwa mbere;

III. ICYEMEZO CY'URUKIKO

Urukiko Rukuru,

[38] Rwemeye kwakira ubujurire bwatanzwe na Musengimana Jean Baptiste rubusuzumye rusanga bufite ishingiro.

[39] Rwemeje ko urubanza RC 01087/2020/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge kuwa 24/06/2022 ruhindutse;

[40] Rutegetse Energy Utility Corporation Ltd (EUCL)kwishyura Musengimana Jean Baptiste indishyi mbonezamusaruro zingana na 13,088,847 Frw indishyi z'akababaro zingana na 2.000.000Frw n'indishyi n'indishyi z'amafaranga yakoresheje mu kwivuza n'ingendo zingana na 516,217 frws yose hamwe akaba amafaranga miliyoni cumi n'eshanu ibihumbi magana atandatu na bitanu na mirongo itandatu n'ane (15,605,064Frw);

[41] Rutegetse Energy Utility Corporation Ltd (EUCL) kwishyura Musengimana Jean Baptiste amafaranga y'igihembo cy'avoka ibihumbi magana atatu (300.000) ku rwego rw'ubujurire yiyongera ku mafaraga ibihumbi magana arindwi (700.000 Frw) yemejwe mu rubanza rujuririrwa;

[42] Rutegetse Energy Utility Corporation Ltd (EUCL) kwishyura Musengimana Jean Baptiste amafaranga ibihumbi mirongo itandatu (60.000Frw) y'ingwaye y'igarama yatanze ari kurega ku rwego rwa mbere no ku rwego rw'ubujurire.