

AQUILLA & PRISCILLA v. ENGEN N'UNDI

[Rwanda – URUKIKO RW'IKIRENGA - RCOMA 0165/12/CS (Mugenzi P.J,
Hatangimbabazi na Munyangeri, J.) 13 Ukuboza 2013]

Amategeko agenga Abahesha b'Inkiko b'Umwuga – Ububasha bw'umuhesha w'inkiko – Iyo yiyambajwe n'ubutabera cyangwa uwo ari we wese ubifitemo inyungu, yemerewe gukorera inyandiko mvugo ibintu bigaragara – Ntiyakwirukana uwo ari we wese nta cyemezo cy'Urukiko kibimuhera uburenganzira – Umuhesha w'Inkiko n'uwamutumye bacibwa indishyi nk'ingaruka zo kwirukana umuntu mu buryo budakurikije amategeko– Itegeko N° 31/2001 ryo kuwa 12/06/2001 rishyiraho urugaga rw'Abahesha b'Inkiko b'Umwuga , ingingo ya 18.

Amategeko agenga ibimenyetso – Ikimenyetso cy'amasezerano – Inyandiko ya fotokopi ifite inenge ntiyafatwa nk'ikimenyetso cy'amasezerano mu gihe hatagaragazwa umwimerere wayo.

Incamate y'ikibazo: AQUILLA & PRISCILLA yareze ENGEN n'umuhesha w'inkiko w'umwuga Kanyana Bibiane mu Rukiko Rukuru rw'Ubucuruzi kuba ENGEN yarishe amasezerano bagiranye y'ubukode bwa station ya lisansi ikayirukana ikanafatira imitungo yayo igizwe n'amafaranga hamwe n'ibikoresho mu buryo budakurikije amategeko, ibifashijwemo n'Umuhesha w'Inkiko Kanyana.

Urukiko rwemeje ko nta kimenyetso gifatika kandi kidashidikanywaho cy'amasezerano cyashingirwaho mu kwemeza ko ENGEN yishe amasezerano koko, rwemeza ko umuhesha w'inkiko atubahirije inshingano ze afatanyaga na ENGEN gukura ku ngufu AQUILLA & PRISCILLA muri station, rubategeka kumuha indishyi. AQUILLA & PRISCILLA yajuririye Urukiko rw'Ikirenga irusaba kwemeza ko uregwa yishe amasezerano bagiranye no kumutegeka kwishyura indishyi z'akababaro zikomoka ku kuyirukana aho yakoreraga atabihereye ububasha. Ku birebana n'amasezerano ENGEN na Kanyana bavuga ko ibyo umuhesha w'inkiko yakozwe byari byubahirije amategeko, ENGEN ivuga ko ntayo yishe kuko ayo bari bafitanye yari yararangiye.

Incamate y'icyemezo: 1. Umuhesha w'inkiko w'umwuga afite uburenganzira bwo gukora inyandiko mvugo z'imitungo igaragara (constat) iyo yiyambajwe, ariko ntiyakwirukana umuntu ahantu adafite icyemezo cy'urukiko kibimwemerera. Kubw'iyi mpamvu, ibyo yakozwe afatanyije n'uregwa bikaba binyuranyije n'amategeko, bityo bakaba bagomba kubitangira indishyi.

2. Fotokopi y'amasezerano yanditse ntiyafatwa nk'ikimenyetso cy'amasezerano iyo ifite inenge mu myandikire y'ibiyikubiyemo kandi hatari umwimerere wayo.

Ubujurire bufite ishingiro kuri bimwe.

Abaregwa bategetswe guha uwajuriye indishyi zo kumwirukana binyuranyijen'amategeko, igihembo cy'Avoka n'amafaranga y'ikurikiranarubanza.

ENGEN itegetswe kwishyura uwajuriye indishyi z'imitungo n'ibikoresho bye itamusubije.

Ababuranyi bombi bazafatanyaga kwishyura amagarama y'urubanza.

Amategeko yashingiweho:

Itegeko N° 31/2001 ryo kuwa 12/06/2001, rishyira ho urugaga rw' abahesha b'inkiko b'umwuga, ingingo ya 18.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 18/2/2011, *Société AQUILLA AND PRISCILLA* (mu magambo magufi turakoresha *AQUILLA*), ivuga ko yagiranye na *ENGEN RWANDA Ltd* amasezerano y'ubukode bwa *Station Engen* ahitwa ku Giporoso mu buryo bwo gucuruza "produits petroliers" za *ENGEN RWANDA Ltd* mu gihe cy'umwaka umwe, nyuma iza kurega *ENGEN RWANDA Ltd* n'Umuhesha w'inkiko Kanyana Bibiane, mu Rukiko Rukuru rw'Ubucuruzi, kuba kuwa 23/07/2011 yarisubije iyo "station" hatabayeho gusesa amasezerano, ko yabifashijwemo n'Umuhesha w'Inkiko Kanyana Bibiane kandi nta burenganzira bahawe n'Urukiko. Yayireze kandi kuba yarafatiriye umutungo wayo ugizwe n'amafaranga hamwe n'ibikoresho, inasaba ko yahatirwa kuyisubiza amafaranga yishyuwe y'ikirenga, ay'amazi, ay'umuriro, ay'isuku, aya "patente" n'indi misoro y'Akarere.

[2] Urukiko Rukuru rw'Ubucuruzi rwemeje ko nta kimenyetso gifatika kandi kidashidikanywaho cy'amasezerano cyashingirwaho mu gusuzuma niba *ENGEN RWANDA Ltd* yarishe amasezerano yagiranye na *AQUILLA*, rwemeza ko Umuhesha w'Inkiko w'Umwuga Kanyana Bibiane atubahirije inshingano ze, afatanye na *ENGEN RWANDA Ltd* gukura ku ngufu *AQUILLA* muri "station" *ENGEN RWANDA Ltd*, rutegeka Kanyana guha *AQUILLA* indishyi za 500.000 Frw na *ENGEN RWANDA Ltd* igaha *Société AQUILLA AND PRISCILLA* 500.000 Frw.

[3] *Société AQUILLA* yajuririye Urukiko rw'Ikirenga, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko nta mpamvu yo gusuzuma izindi mpamvu zishamikiye ku masezerano ataratangiwe umwimerere, rwirengagije ko ikimenyetso cy'amasezerano y'umwimerere kitabashije kuboneka, kuko cyari kiri mu bintu byasigaranywe na *ENGEN RWANDA*; ko Urukiko rwirengagije ibindi bimenyetso bigaragaza ko *AQUILLA* yari ifitanye amasezerano na *ENGEN RWANDA Ltd*; ko Urukiko mu bushishozi bwarwo rwategetse ko *ENGEN RWANDA Ltd* yishyura *AQUILLA* 500.000 Frw gusa kandi ikosa bayikoreye rikomeye, no kuba Urukiko Rukuru rw'Ubucuruzi rutarategetse *ENGEN RWANDA Ltd* n'Umuhesha w'inkiko kwishyura *AQUILLA* amafaranga y'ikurikiranarubanza n'igihembo cya avoka kandi yarayasabye.

[4] Mu mwanzuro wayo w'ubujurire, *AQUILLA* isaba Urukiko kwemeza ko *ENGEN RWANDA Ltd* yishe amasezerano bagiranye; kuyitegeka kwishyura indishyi z'akababaro zingana na 5.000.000 zikomoka ku kuyirukana aho yakoreraga itabihereye ububasha; kwishyura indishyi z'akababaro za miliyoni mironko itatu (30.000.000 Frw) zishingiye ku iseswa ry'amasezerano ritubahirije amategeko n'amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka angana na miliyoni eshanu (5.000.000 Frw); kuyitegeka gusubiza imitungo ifite agaciro ka 32.636.066 Frw hamwe n'ibikoresho yakomeje gufatira nokwishyura 26.058.200Frw yishyuwe nk'ikirenga hiyongereyeho inyungu ya 18% (intérêt bancaire) mu mezi 18 akaba angana na 115.177.244 Frw; no kuyisubiza 5.920.724 Frw

y'amazi, umuriro n'isuku igihe yari muri "station" ENGEN Remera; ndetse na "patente" na taxe y'Akarere, no kwishyura amafaranga y'ukurikiranarubanza n'igihembo cy'Avoka angana na 5.000.000 Frw. Ibyo byifuzo AQUILLA yagiye ibhindura mu maburanisha anyuranye muri uru Rukiko ivuga ko imibare igenda izamukana n'igihe.

[5] Urubanza rwaburanishijwe ku matariki anyuranye, kuwa 25/06/2013, kuwa 24/09/2013 no kuwa 19/11/2013, Société AQUILLA AND PRISCILLA igihe kimwe ihagarariwe na Me Mutungirehe Anastasie, ikindi gihe Me Karega Blaise Pascal agahagararira Société AQUILLA AND PRISCILLA, akamunganira Umuyobozi w'iyi Société Nkwaya Alfred Nkwaya Alfred wari uhibereye, naho Me Buzayire Angèle agahagararira ENGEN RWANDA Ltd akanunganira na Kanyana Bibiane wari uhibereye, ENGEN RWANDA Ltd kandi ikongera guhagarariwa na Me Rutembesa Phocas.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

Kumenya niba ENGEN n'Umuhesha w'inkiko Kanyana barirukanye AQUILLA kuri "station" mu buryo bunyuranije n'amategeko.

[6] Uburanira AQUILLA avuga ko kuri iki kibazo, zimwe mu ndishyi basaba zishingiye ku kuba kuwa 26/07/2011 Umuhesha w'inkiko Kanyana yakoze inyandikomvugo y'uko ibintu byose abifatiriyeye, ikaba yarasabaga indishyi ko yahohotewe n'imikorere y'uwo muhesha w'Urukiko kuko ibyo yakoze, yabikoze nta cyemezo cy'urukiko yarangizaga, ikaba yarifuzaga ko Kanyana yakwishyura indishyi zingana na 5.000.000 Frw kuko yamwirukanye kuri "station" atabyemerewe, Urukiko rubanza rukaba rutaragize icyo rubivugaho, rukaba rwaramutegetse gutanga indishyi za 500.000 Frw mu buryo budasobanutse.

[7] Uburanira ENGEN RWANDA Ltd akanunganira Kanyana, na Kanyana ubwe bavuga ko indishyi za 500.000 ENGEN RWANDA Ltd na Kanyana baciwe nta shingiro zifite kuko ibyo Kanyana yakoze bifite amategeko abigenga, ko nta tegeko yishe, kuko nta muntu yirukanye, ahubwo ko yaje kuri "station", akahasanga abantu banyuranye, n'ibiro bifunguye, agasaba comptable gufungura umutamebwa (coffre fort), ibintu byarimo akabishyira mu maboko ya ENGEN, akabikorera "PV de constat" Nkwaya Julesyanze gusinyira, ibyo bintu kandi ENGEN ikaba yarakomeje kubicungira kuri iyo "station", Nkwaya akaza kubisubizwa n'Umuhesha w'inkiko Kagame waje gukora "PV de remise" yabyo.

[8] Bakomeza bavuga ko ariya mafaranga 500.000Frw yayaciriwe ubusa kuko nta kosa Umuhesha w'inkiko Kanyana yakoze, mu gihe icyabaye ari "*constat de l'abandon de la station*" yakozwe n'umuyobozi w'AQUILLA, akaba rero atarigeze amwirukana nk'uko AQUILLA ibiburanisha, ko kandi muri icyo gihe nta "titre exécutoire" iba ikenewe, ku bw'iyi mpamvu, bakaba basanga n'ariya 500.000 Frw AQUILLA yagenewe akwiye kuvaho.

UKO URUKIKO RUBIBONA

[9] Itegeko ryo kuwa 12/06/2001 rishyiraho urugaga rw'abahesha b'inkiko b'umwuga riteganyaga inshingano zabo mu ngingo ya 18, agace kayo ka nyuma kakavugaga ko abahesha b'inkiko bemerewe gukorera inyandiko mvugo ibintu bigaragara (*constatations purement matérielles*) iyo babisabwe n'ubutabera, cyangwa babisabwe n'uwariwe wese ubifitemo inyungu.

[10] Hasesenguwe ibiteganywa n'ingingo imaze kuvugwa, Urukiko rurasanga Kanyana, nk'umuhesha w'urukiko w'umwuga, abisabwe na ENGEN RWANDA Ltd, yari afite uburenganzira bwo kujya gukora "constat" yasabwe n'icyo kigo nk'uko abivuga.

[11] Urukiko rurasanga ariko mu nyandiko yise "*reprise de la gestion de la station Engen Remera*", Kanyana yerekana ko AQUILLA ivanywe muri iyo Station kubera kutubahiriza amasezerano yagiranye na ENGEN RWANDA Ltd, iyi sosiyete ikaba ifashe icyemezo cyo gusubirana burundu "station" yayo. Ibi rero bigaragaza neza ko AQUILLA yirukanywe mu by'ukuri muri iyo "station", bikaba byarabaye nta cyemezo cy'urukiko bishingiyeho, kandi mu gika cya gatatu cy'ingingo ya 18 yavuzwe haruguru, hateganywamo ko abahesha b'inkiko b'umwuga bemerewe kwirukana abantu ahantu bitegetswe n'Urukiko (expulsions ordonnées par un tribunal).

[12] Urukiko rurasanga rero mu gihe ibyabaye kuri AQUILLA ari ukwirukanwa, umuhesha w'urukiko w'umwuga atarashoboraga kubikora nta cyemezo cy'urukiko kibimuhesha uburenganzira, ku bw'iyi mpamvu, ibyo yakoze afatanije na ENGEN, bikaba binyuranije n'amategeko, bakaba bagomba kubitangira indishyi.

[13] AQUILLA mu bujirire bwayo, ivuga ko ku rwego rwa mbere yasabaga Kanyana kuyiha 5.000.000 Frw y'indishyi kubera ibyo yakoze atabihereye uruhusa n'Urukiko, ariko Urukiko rubanza rukaba rutaragize icyo ruyavugaho.

[14] Urukiko rurasanga nk'uko byavuzwe haruguru, ENGEN RWANDA Ltd na Kanyana bagomba guha AQUILLA indishyi isaba kubera urugomo yagiriwe yirukanwa kuri Station nta cyemezo cy'Urukiko, ariko ikaba ikwiye kugenerwa izo ndishyi mu bushishozi bw'Urukiko ku rugero rwa 2.000.000 Frw zatangwa na Kanyana na ENGEN RWANDA Ltd bafatanije, kuko 5.000.000 Frw isaba akabije kuba menshi.

Kumenya niba hari amasezerano yaba yarabaye hagati ya AQUILLA na ENGEN atangira kuwa 18/02/2011 akarangira kuwa 18/02/2012, n'indishyi zijyanye no kutayubahiriza.

[15] Uburanira AQUILLA avuga ko impamvu yabateye kujurira ari uko Urukiko rubanza rwavuze ko nta masezerano yari ahari hagati yayo na ENGEN RWANDA Ltd, ahera kuwa 18/02/2011 yagombaga kurangira kuwa 18/02/2012, ngo kubera ko nta mwimerere wayo wagaragajwe, nyamara wari ufitwe na ENGEN RWANDA Ltd kuko yawufashe igihe yazaga kuyirukana kuri Station yayo ifatanije n'Umuhesha w'inkiko Kanyana Bibiane.

[16] Akomeza avuga ko mu gihe uwo mwimerere wari ubuze, rutari kuvuga ko nta masezerano ahari, ahubwo rwashoboraga no gushingira ku bindi bimenyetso bigaragaza amasezerano yari afitanye na ENGEN RWANDA Ltd, muri ibyo hakaba hari:

Inyandiko mvugo y'umuhesha w'inkiko Kanyana aho avuga ko ENGEN RWANDA Ltd yisubije Station yayo bitewe n'uko AQUILLA itubahiriza inshingano ziteganywa n'amasezerano;

Impapuro zigaragaza ko habayeho kwandikirana ku mpande zombi;

Bons de commandes ziriho cachet ya ENGEN;

Factures chèques zishyuriweho produits ENGEN yahaye AQUILLA.

[17] Uburanira AQUILLA avuga ko ayo masezerano rwose yari ahari ku buryo n'Umuhesha w'inkiko Kagame Alexis yabikoreye "PV de constat", avuga ko Kanyana atagaragaje umwimerere w'ayo masezerano mu byo yakoreye "constat".

[18] Uburanira AQUILLA avuga ko ashingiyeye ko habaye amasezerano, AQUILLA yasabaga mu Rukiko Rukuru amafaranga 30.000.000 y'indishyi zishingiyeye ku iseswa ry'amasezerano ritubahirije amategeko ariko urwo Rukiko ntirwagira icyo ruyavugaho, maze rwirengagiza uburemere bw'ikosa ENGEN RWANDA Ltd n'Umuhesha w'inkiko Kanyana bakoreye AQUILLA, rubategeka kwishyura indishyi nkeya, akaba yifuza ko izo ndishyi AQUILLA yazigenerwa, ndetse ikanagenerwa n'indishyi za 47.412.000 Frw y'igihombo yatejwe nyuma y'amezi 12, kibazwe kuri 3.951.000 Frw yagombaga kunguka buri kwezi.

[19] Uburanira ENGEN RWANDA Ltd avuga ko ubujurire bwa AQUILLA nta shingiro bufite kuri icyo ngingo, kuko icyo ENGEN RWANDA Ltd yakoze ari ugusubirana "station" yayo AQUILLA yari yaranze kuvamo, kandi amasezerano bari baragiranye yo kuwa 18/02/2010 yari yararangiye, iby'ayo masezerano yandi AQUILLA ivuga akaba ari amahimbano nk'uko Urukiko rubanza rwabisobanuye rumaze kubona ko ari na "photocopie" bagiye bahinduramo amatariki y'igihe yakorewe, ku buryo batanze n'ikirego kiregera ko ayo masezerano ari amahimbano.

[20] Akomeza avuga ko ubwo indishyi basaba ari izishingiyeye kuri ayo masezerano, nta zikwiye gutangwa mu gihe nyine nta masezerano ahari kuko ntacyo zishingiyeho, n'imibare yavuzwe haruguru ikaba ishingiyeye ku masezerano y'impimbano. Arangiza avuga ko nta kuntu Urukiko rubanza rwari kujya gucukumbura ibindi bimenyetso bishingiyeye ku kintu kitari ukuri.

UKO URUKIKO RUBIBONA

[21] Urukiko rurasanga nk'uko byavuzwe n'Urukiko Rukuru rw'Ubucuruzi, photocopie y'inyandiko y'amasezerano AQUILLA yerekana, ENGEN ikaba itayemera, igaragaza inenge zinyuranye, zirimo:

kuba ku rupapuro rwa nyuma, bigaragara ko itariki ayo masezerano yasinze yarahinduwe, aho hejuru bigaragara ko umukono wanditse "18è fevrier 2011" atari umwe n'uwanditse "18ème fevrier 2011" wanditse hasi;

kuba "fevrier" yo muri photocopie y'inyandiko y'amasezerano AQUILLA yerekana yanditse mu cyapa, bikaba bitandukanye n'umukono wakoreshwe muri "18è fevrier 2011" yanditse hejuru;

kuba bigaragara ko icyo "fevrier" yanditse mu cyapa hari ikindi cyasibwe cyayisimbuye;

kuba bigaragara ko rimwe (1) ya nyuma yo muri "2011", hari ikintu cyasibwe kikayisimbura;

[22] Urukiko rurasanga izo nenge, ziyongereye ku kuba inyandiko AQUILLA yerekana ari "photocopie", zituma rutakwemeza ko hari amasezerano yasinze hagati ya AQUILLA na ENGEN RWANDA Ltd atangira kuwa 18/02/2011 akarangira kuwa 18/02/2012, cyane cyane ko kugeza ubu itarashobora kugaragaza umwimerere (original) wayo.

[23] Urukiko rurasanga iby'uko uwo mwimerere waba warasigaranywe na ENGEN mu bintu yafatiriye nk'uko bivugwa na AQUILLA nta shingiro bifite, kuko haba mu nyandiko mvugo yakozwe n'umuhesha w'inkiko Kanyana, haba mu nyandiko mvugo yakozwe n'umuhesha w'inkiko Kagame, haba mu ibaruwa AQUILLA yandikiye "CID" isaba

ibikoresho byayo, nta na hamwe AQUILLA igaragaza ikibazo cy'umwimerere w'ayo masezerano.

[24] Hashingiwe kuri ibyo bisobanuro, Urukiko rurasanga ntaho rwahera rwemeza ko amasezerano amaze kuvugwa yabayeho, bityo n'indishyi ziyashingiyeho zingana na 30.000.000 Frw AQUILLA isaba cyangwa iz'igihombo yatejwe mu mezi 12 zingana na 47.412.000 Frw zikaba nta shingiro zifite.

[25] Urukiko rurasanga ahubwo nk'uko byasobanuwe na ENGEN mu miburanire yayo mu Rukiko Rukuru rw'Ubucuruzi, n'ubwo kuwa 18/03/2011 yandikiye AQUILLA iyimenyesha ko amasezerano bari bafitanye yari yararangiye, hakaba nta masezerano yanditse byari bishingiyeho, bigaragara ko yakomeje gukorana nayo, kuko ENGEN yakomeje kuyiha "produits" zayo zo gucuruza, itegereje imishyikirano yo kuzavugurura amasezerano bari bafitanye yari yararangiye kuwa 18/02/2011. Kuba ENGEN yaraje rero nyuma kuvana AQUILLA kuri Station yayo mu buryo bunyuranije n'amategeko, ni byo byatumye uru Rukiko ruyibihera indishyi zavuzwe haruguru zijyanye n'urugomo yagiriwe zingana na 2.000.000 Frw zatangwa na Kanyana na ENGEN RWANDA Ltd, bafatanyije, rukaba rusanga izo ndishyi zihagije.

Ku bijyanye n'indishyi za 32.870.517 Frw ahwanye n'imitungo n'ibikoresho bya AQUILLA byakomeje gufatirwa na ENGEN RWANDA Ltd.

[26] Uburanira AQUILLA avuga ko mu kwirukanwa kuri Station yakoreragaho, hari imitungo n'ibikoresho bihwanye na 32.870.517 Frw ENGEN RWANDA Ltd yakomeje gufatira nk'uko bigaragazwa na PV yakozwe n'Umuhesha w'inkiko Kagame Alexis igaragaza ibyabuze n'ibyabonetse, icyo bashaka kugaragaza kikaba ari uko mu Rukiko Rukuru rw' Ubucuruzi, iki kibazo k'ibintu byabuze cyavuzwe, ENGEN ntiyagira icyo ibivugaho, nyamara urubanza rumaze gucibwa yanga kubisubiza.

[27] Akomeza avuga ko muri ibyo bintu ENGEN RWANDA Ltd yakomeje gufatira harimo ibikoresho byaguzwe na AQUILLA nk'uko bivugwa mu ngingo ya 8 y'amasezerano, ko uretse inyubako na "pompes", ibindi byose byari ibya AQUILA.

[28] Uburanira ENGEN RWANDA Ltd avuga ko ubujurire bwa AQUILLA nta shingiro bufite kuri iyo ngingo, kuko icyo ENGEN RWANDA Ltd yakozwe ari ugusubirana "station" yayo AQUILLA yari yaranze kuvamo, ko n'ibikoresho byafatiriwe bimwe byari ibya ENGEN birimo za "Equipements" za "classeurs", ndetse na "Stock" ya "Produits petroliers" AQUILLA ikaba yaragombaga kuyikoraho ari uko yishyuye kuko yari umukozi ufite uko akorana na ENGEN, ko rero ibyo AQUILLA yashubijwe n'umuhesha w'inkiko KAGAME ari byo byari ibyayo, naho ibyo itashubijwe bikaba byari ibya ENGEN.

[29] Ku bijyanye na "Produits petroliers" zimaze kuvugwa, uburanira ENGEN RWANDA Ltd avuga ko mu masezerano bari baragiranye na AQUILLA mu ngingo yayo ya cumi, agace ka kane, hateganijwemo ko AQUILLA iramutse itishyuye, ENGEN yahita yiyishyura; ko rero kubera ko AQUILLA yari irimo ENGEN amafaranga agera 12.550.515 Frw, ikaza gutanga sheki itariho amafaranga (*cheque non certifié*), byatumye biyishyura bahereye kuri "essence" yahasanze ifite agaciro ka 903 000 Frw, bahereye no kuri "bons" bahasanze bakazigurisha, ko ariko ibyo bitashoboye kugabanya umwenda AQUILLA ikibabereyemo.

[30] Kubijyanye n'amafaranga yatwawe mu mutamenwa (coffre fort) agaragazwa na za "*chequiers, nombre de billets, bordereaux, bons de commande*" zivugwa na AQUILLA, uburanira ENGEN RWANDA Ltd avuga ko AQUILLA itigeze igaragaza umubare

w'amafaranga yari muri uwo mutamenwa, akaba asanga hakwiye gukurikizwa ibyo umuhesha w'inkiko Kagame yabonye.

UKO URUKIKO RUBIBONA

[31] Urukiko rurasanga uburanira ENGEN RWANDA Ltd yarabanje kuvuga mu iburanisha ry'uru rubanza ko ibintu yafatiriye byari ibyayo, kuko byari biri kuri Station AQUILLA yakoreragaho nk'umukozi wa ENGEN, nyuma aza guhindura imvugo avuga ko itabakoreraga, ibyo bikumvikanisha rero ko ubwo AQUILLA itakoreraga ENGEN, hari ibintu byayo byafatiriwe na ENGEN yakagombye gusubizwa.

[32] Urukiko rurasanga muri ibyo bintu bya AQUILLA, ENGEN yafatiriye, nk'uko bigaragara mu nyandikomvugo (proces verbal de constat) yakozwe n'umuhesha w'inkiko Kagame, hagaragamo ibintu bitahawe AQUILLA, birimo: Essence ingana na 264 l iri muri cuve ya 1AQUILLA ivuga ko ifite agaciro ka 270.000 Frw; Gasoil ingana na 900 l AQUILLA ivuga ko ifite agaciro ka 922.500 Frw; Kerosene iri muri cuve ya 3 ingana na 34.600 l AQUILLA ivuga ko ifite agaciro ka 24.739.100 Frw; amafaranga 1.885.450 yari muri coffre fort, n'andi 277.650 Frw; amafaranga 159.000 yishyuwe na Millenium kuwa 21/07/2011; bons zakoreshejwe zingana na 970.000 Frw; AQUILLA ikaba ivuga mu mwanzuro wayo yashyirikije Urukiko ko ibintu byose byafatiriwe bifite agaciro ka 32.870.517 Frw.

[33] Urukiko rurasanga mu gihe bigaragara ko hari ibintu bimaze kuvugwa AQUILLA itashubijwe, kandi ENGEN RWANDA Ltd ikaba itagaragaza ko ibyo bintu yafatiriye ari ibyayo, nta mpamvu yo kutabisubiza nyirabyo ari we AQUILLA, bityo rero ubwo ENGEN RWANDA Ltd itigeze ivuguruzwa agaciro k'ibyo bintu kangana na 32.870.517 Frw kavugwa na AQUILLA, uru Rukiko rugomba kwemeza ko ako gaciro ari ko gahwanye n'imitungo n'ibikoresho bya AQUILLA kagomba kwishyurwa na ENGEN.

Ku bijyanye n'amafaranga ENGEN yishyuwe nk'ikirenga (26.058.200 Frw hiyongereyeho inyungu ya banki ya 18% buri kwezi, angana na 115.177.244); ay'amazi, umuriro n'isuku, ipatanti n'imisoro y'Akarere.

[34] Uburanira AQUILLA avuga ko igomba guhabwa na ENGEN RWANDA Ltd 26.058.200 Frw yishyuwe nk'ikirenga kuri "carburant" yahawe, ngo icyo kirenga kikaba cyaragarajwe n'abagenzuzi, hiyongereyeho inyungu ya banki ya 18% buri kwezi, mu mezi 18 akaba angana na 115.177.244 Frw, ikanahabwa amafaranga y'amazi, ay'umuriro, ay'isuku na 233.333 Frw ahwanye n'ipatanti n'imisoro y'Akarere yishyuye.

[35] Uburanira ENGEN RWANDA Ltd avuga ko ibyo AQUILLA ivuga nta shingiro bifite kuko itabitangira ibimenyetso.

[36] Urukiko rurasanga amafaranga yishyuwe nk'ikirenga 26.058.200 Frw AQUILLA isaba ivuga ko yagarajwe n'abagenzuzi, iterekana isano ryaba riri hagati y'icyo kirenga no kuba yarirukanwe kuri Station mu buryo bunyuranije n'amategeko, bityo rukaba ntahorwahera ruyayigenera.

[37] Urukiko rurasanga n'andi mafaranga AQUILLA isaba y'amazi, ay'umuriro, ay'isuku, ipatanti n'imisoro bigaragara ko ajyanye na "charges d'exploitation", bikaba bitumvikana ukuntu ENGEN RWANDA Ltd igomba kuyishyurira izo "charges d'exploitation", by'umwihariko izijyanye n'amasharanyarazi, amazi na "gaz" ku nyubako

ikoreramu, mu gihe ingingo ya 11.2¹. y'amasezerano AQUILLA ishingiraho muri uru rubanza igaragaza ko ari yo igomba kuzishyura, byongeye kandi nk'uko byari bimaze kuvugwa haruguru, ikaba iterekana isano ryaba riri hagati y'ayo mafaranga no kuba yarirukanwe kuri Station mu buryo bunyuranije n'amategako, bityo rukaba ntaho rwahera ruyayigenera.

Ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka asabwa muri uru rubanza

[38] AQUILLA mu bujurire bwayo, ivuga ko ku rwego rwa mbere yasabaga 5.000.000 Frw y'ikurikiranarubanza n'igihembo cy'avoka asabwa Kanyana afatanije na ENGEN, ariko Urukiko rubanza rukaba rutaragize icyo ruyavugaho, ikaba yifuza rero ko yayagenerwa nk'uko yari yayasabye, naho uburanira ENGEN RWANDA Ltd akanunganira Kanyana, ndetse na Kanyana ubwe, bakavuga ko ahubwo indishyi za 500.000 ENGEN RWANDA Ltd na Kanyana baciwe n'Urukiko Rukuru nta shingiro zifite, ko bayaciriwe ubusa kuko nta kosa Umuhesha w'inkiko Kanyana yakoze, bakaba basanga akwiye kuvaho, ahubwo AQUILLA ikaba ariyoikwiye guha ENGEN RWANDA Ltd na Kanyana 5.000.000 Frw buri wese yo kubashora mu manza.

[39] Urukiko rurasanga mu gihe bigaragara nk'uko byavuzwe hejuru, ko AQUILLA yirukanwe kuri Station ya Engen bitewe n'urugomo yakorewe, ikagomba gufata Avoka wo kuyikurikiranira urubanza kugeza muri uru Rukiko, nta mpamvu ENGEN na Kanyana Bibiane bayikoreye urwo rugomo batakwishyura amafaranga y'igihembo cy'avoka, ndetse n'ay'ikurikirana rubanza, ariko ikayagenerwa mu bushishozi bw'Urukiko kuko 5.000.000 Frw isaba akabije kuba menshi, ikaba rero yagenerwa 800.000 Frw y'ikurikiranarubanza n'igihembo cy'avoka ku nzego zombi yaburaniyemo, agomba gutangwa na ENGEN RWANDA Ltd ifatanyije na Kanyana Bibiane.

III. ICYEMEZO CY'URUKIKO

[40] Rwemeje ko ubujurire bwa Société AQUILLA AND PRISCILLA bufite ishingiro kuri bimwe;

[41] Rwemeje ko nta masezerano Société AQUILLA AND PRISCILLA yari ifitanye na ENGEN RWANDA Ltd ahera kuwa 18/02/2011 kugeza kuwa 18/02/2012 kuko nta bimenyetso AQUILLA iyatangira;

[42] Rutegetse Kanyana na ENGEN RWANDA Ltd guha Société AQUILLA AND PRISCILLA 2.000.000 Frw y'indishyi zijyanye n'urugomo yagiriwe yirukanwa kuri Station nta cyemezo cy'Urukiko;

[43] Rutegetse ENGEN RWANDA Ltd guha Société AQUILLA AND PRISCILLA 32.870.517 Frw ahwanye n'imitungo n'ibikoresho ENGEN RWANDA Ltd itashubije Société AQUILLA AND PRISCILLA;

[44] Rutegetse ENGEN na Kanyana gufatanya guha Société AQUILLA AND PRISCILLA 800.000 Frw y'igihembo cy'avoka n'ikurikirana rubanza ku nzego zombi yaburaniyemo;

¹ Iyo ngingo ya ya 11.2 ivuga itya: "Le concessionnaire doit...payer sans délai....toutes les factures de consommation d'électricité, eau et gaz dans ou sur les Locaux".

[45] Rutegetse ENGEN na Kanyana gufatanya gutanga $\frac{1}{2}$ cy'amagarama y'urubanza angana na 31.450 Frw, ni ukuvuga 15.725 Frw, Société AQUILLA AND PRISCILLA nayo igatanga $\frac{1}{2}$ cy'amagarama kingana na 15.725 Frw.