MBERABAGABO N'ABANDI v. FIAT AMELIE N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/COM 0001/13/CS (Kayitesi, P.J., Hatangimbabazi, Mukandamage, Rugabirwa na Gakwaya, J.) 28 Werurwe 2014]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Gusubirishamo urubanza ingingo nshya – Impamvu z'akarengane – Umuburanyi ntiyavuga ko Urukiko rwaciye urubanza rusubirishamo urubanza ku mpamvu z'akarengane gakabije rutari rufite ububasha mu gihe rwafashe icyemezo rushingiye ku ngingo z'amategeko zirebana no gusubirishamo urubanza ingingo nshya kandi n'ababuranyi bakaba arizo bashingiyeho mu myanzuro yabo itanga ikirego – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano , iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 186, igika cya 3 n'icya 6.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Kwiyambaza icyarimwe inzira ebyiri z'ubujurire ku rubanza rumwe – Ntibifatwa nko kwiyambaza inzira ebyiri z'ubujurire mu gihe umuburanyi yaretse urubanza kuri imwe mu nzira yari yatangiye – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Gucungura icyagombaga gutezwa cyamunara – Agaciro k'ubugure bugamije ubwicungure mbere ya cyamunara – Umuntu wese cyangwa urimo umwenda ashobora igihe cyose mu nyungu z'uwafatiriwe n'uberewemo umwenda, ariko mbere ya cyamunara gucungura ibyafatiriwe – Amasezerano y'ubugure agamije ubwicungure bw'ibyafatiriwe aba afite agaciro – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 311.

Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Uburyozwe – Indishyi z'ubukode – Uwavukije undi ubukode yitwaje ko yaguze muri cyamunara, nyamara yarafatanyije n'uwateje cyamunara kutubahiriza amategeko, bafatanya kumwishyura indishyi – Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Incamake y'ikibazo: Banki y'Ubucuruzi y'u Rwanda (BCR) ubu yabaye I&M BANK yahaye inguzanyo Dunia Bakarani, ariko ntiyashobora kuyishyura bituma iregera inkiko iramutsinda. Hatangiye imihango yo kurangiza icyemezo cy'urukiko bikozwe na Noteri Kayitesi Judith, Hagati aho Dunia yagurishije iyo nzu na Fiat Amelie maze yishyura uwo mwenda ndetse banki imenyesha noteri ko uwo mwenda wamaze kwishyurwa. Noteri Kayitesi yabirenzeho akomeza cyamunara, inzu igurwa na Mberabagabo nyuma y'iminsi ibiri yishyuye. Dunia yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi asaba gusesa cyamunara y'inzu ye kuko yakozwe nyuma yo kwishyura umwenda . Muri urwo rubanza hagobotsemo na Fiat Amelie wari waguze inzu na Dunia ku bwumvikane mbere y'uko cyamunara iba.

Urukiko Rukuru rw'Ubucuruzi rwemeje ko cyamunara yabaye hakurikijwe amategeko, ko kandi ikirego cya Fiat Amelie kitakiriwe kuko nta nyungu n'ububasha yari afite byo kurega. Dunia na Fiat bajuririye urwo rubanza mu Rukiko rw'Ikirenga ariko mu gihe rutaraburanishwa bareka urwo rubanza ahubwo bongera kuregera Urukiko Rukuru rw'Ubucuruzi basaba gusubirishamo urubanza ingingo nshya ku mpamvu z'uko Urukiko rwitiranyije uko ibintu byagenze, maze urwo Rukiko rwemeza ko cyamunara yakozwe

iteshejwe agaciro, runategeka ko Kayitesi Judith (Notaire), Mberabagabo Innocent wari ufatanyije sosiyete na Butera wanaguze inzu mu cyamunara bishyura Fiat Amelie 29.575.000Frw y'ubukode bw'inzu yari kubona mu mezi 13 iyo iyo nzu yaguze idatezwa cyamunara, banategekwa kandi kwishyura 500.000Frw by'igihembo cy' Avoka.

Kayitesi, Mberabagabo Innocent na Butera bandikiye umuvunyi Mukuru bamusaba gusubirishamo urubanza ku mpamvu z'akarengane kagaragarira buri wese kuko hari amategeko n'ibimenyetso byirengagijwe maze byemezwa ko rusubirishwamo ku mpamvu z'akarengane.

Mu Rukiko rw'Ikirenga, Kayitesi, Mberabagabo Innocent na Butera basobanura ko akarengane kagaragarira mu kuba Urukiko Rukuru rw'Ubucuruzi atari rwo rwari rufite ububasha bwo gusubirishamo urubanza ku mpanvu z'akarengane, ko ahubwo bwari bufitwe n'Urukiko rw'Ikirenga bityo Urukiko Rukuru rw'Ubucuruzi rukaba rutaragombaga kwakira ikirego cyo gusubirishamo urubanza ingingo nshya cya Dunia na Fiat kandi hari ubujurire bari baratanze mu Rukiko rw'Ikirenga, ko kandi ubugure bw'inzu bwabaye hagati ya Dunia na Fiat bwatumye Dunia abona ubwishyu bwo kwishyura BCR butari guhagarika cyamunara yabaye bitewe n'uko inzu itari ikiri mu maboko yabo. Bavuze kandi ko kuba Fiat Amelie yarahawe amafaranga y'ubukode yemejwe n'Urukiko Rukuru rw'Ubucuruzi ari akarengane kuko nta makosa bakoze.

Dunia na Fiat Amelie bo bavuze ko Urukiko Rukuru rw'Ubucuruzi arirwo rwari rufite ububasha bwo gusubirishamo urubanza ku mpamvu z'akarengane gakabije kuko gashingiye ku kwitiranya uko ibintu byagenze kandi hakaba harashingiwe ku ngingo z'amategeko zijyanye no gusubirishamo urubanza ingingo nshya.

Barongeye bavuga ko batiyambaje inzira ebyiri z'ubujurire icyarimwe kuko batanga ikirego cyo gusubirishamo urubanza ingingo nshya berekanye ko baretse ubujurire bari baratanze mu Rukiko rw'Ikirenga. Bavuze kandi ko ubugure bwabaye hagati yabo bufite agaciro kuko Fiat yarangije urubanza ku neza yishyura BCR ndetse imuha icyemezo cyo kutabamo umwenda inabimenyesha notaire Kayitesi Judith imusaba guhagarika cyamunara. Byongeye kandi bavuga ko kuba Mberabagabo Innocent na Butera baraguze iyo nzu mu cyamunara bazi neza ko ari inzu yagurishijwe basanga ari amakosa akomeye bagomba kuryozwa bakishyura Fiat Amelie amafaranga y'ubukode bamuvukije.

Basoje basaba guhabwa amafaranga yo gushorwa mu manza ku maherere n'ay'igihembo cy' Avoka. Naho Kayitesi Judith, Mberabagabo Innocent na Butera bavuga ko ayo mafaranga abayasabye batayakwiye kuko nta makosa bakoze.

Incamake y'icyemezo: 1. Umuburanyi ntiyavuga ko Urukiko rwaciye urubanza rusubirishwamo ku mpamvu z'akarengane gakabije rutari rufite ububasha mu gihe rwafashe icyemezo rushingiye ku ngingo z'amategeko zirebana no gusubirishamo urubanza ingingo nshya kandi n'ababuranyi bakaba arizo bashingiyeho mu myanzuro yabo itanga ikirego;Bityo ijambo "gakabije" yakoreshejwe mu kiburanwa nta ngaruka ifite mu kumenya urukiko rwari rufite ububasha bwo gusuzuma uru rubanza.

2. Ntibifatwa nko kwiyambaza icyarimwe inzira ebyiri z'ubujurire mu gihe uwasubirishijemo urubanza ingingo nshya yaretse ubujurire mbere y'urubanza.

3. Mu gihe cyamunara itaraba umuntu wese cyangwa urimo umwenda ashobora igihe cyose, ariko mbere ya cyamunara, gucungura ibyafashwe mu gihe byakozwe mu nyungu

y'uberewemo umwenda n'uwurimo. Singombwa gusaba Urukiko icyemezo gihagarika cyamunara mbere yo gucungura ibyafashwe.

4. Uwavukije undi amafaranga y'ubukode bw'inzu yaguze mu buryo bwemewe n'amategeko yitwaje ko we yayiguze mu cyamunara nyamara kidakurikije amategeko, bafatanya n'uwayikoresheje kubiryozwa. Icyakora, uwari muri sosiyete imwe n'uwaguze, ntabiryozwa mu gihe yayiguze ku giti cye.

Ikirego cya Butera gifite ishingiro.
Ikirego cy'abandi barega nta shingiro gifite.
Amagarama y'urubanza aherereye ku bareze.

Amategeko yashingiweho:
Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12, 186, igika cya 3 n'icya 6, n'iya 311.
Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Nta manza zifashishijwe.

Ibitekerezo by'Abahanga byifashishijwe:
Albert FETTWEIS, Manuel de procédure civile, deuxième édition, Faculté de droit de Liège, 1987, pp. 479-480.
Michel Franchimont, Ann Jacobs et Adrien Masset, Manuel de procédure pénale, 2e édition, Larcier, Bruxelles, 2006, p. 927.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Banki y'Ubucuruzi y'u Rwanda (BCR) ubu yabaye I&M Bank yahaye Dunia Bakarani inguzanyo ntiyashobora kuyishyura nk'uko byari byasezeranywe, ku buryo hatangiye imihango yo kurangiza urubanza RCOM 0005/09/HCC rwabaye itegeko kuko yatsinze urubanza RCOMA 0013/10/CS. Dunia Bakarani yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi kigamije guhagarikisha cyamura y'inzu ye iri mu kibanza nimero 339 mu Mujyi wa Rubavu, kubera icyamunara cyakozwe na Noteri Kayitesi Judith nyamara ku tariki ya 15/12/2011 yaramenyeshejwe ko Banki y'Ubucuruzi y'u Rwanda yarangije kwishyurwa ku itariki ya 13/12/2011. Fiat Amélie we yagobotse ku bushake muri urwo rubanza kuko yari yaguze inzu na Dunia Bakarini ku bwumvikane mbere ya cyamunara.

[2] Ku itariki ya 18/10/2012, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwaregewe RCOM 0070/12/HCC rwemeza ko cyamunara yakurikije amategeko, ko kandi ikirego cya Fiat Amelie, wagobotse ku bushake, kitagomba kwakirwa kuko atari afite ububasha n'inyungu byo kurega, cyane cyane ko inzu yagurishijwe itari ikiri iye.

[3] Dunia Bakarani na Fiat Amélie bongeye kuregera Urukiko Rukuru rw'Ubucuruzi basubirishamo urubanza RCOM 0070/12/HCC ingingo nshya, bashingiye ku ngingo ya 186,

igika cya 3 n'iya 6 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[4] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOM 0306/12/HCC kuwa 21/01/2013 rwemeza ko ikirego cya Fiat Amélie na Dunia Bakarani gifite ishingiro, rutegeka ko Kayitesi Judith, Mberabagabo Innocent na Butera Jean-Pierre batsinzwe, rutegeka kandi ko cyamunara yo kuwa 15/12/2011 y'inzu iri mu kibanza nimero 339 mu Mujyi wa Rubavu iteshejwe agaciro.

[5] Uru Rukiko kandi rwategetse Kayitesi Judith, Mberabagabo Innocent na Butera Jean-Pierre gufatanya kwishyura Fiat Amélie amafaranga angana na 29.575.000 Frw y'ubukode bw'inzu n'amafaranga angana na 500.000 Frw y'igihembo cy'avoka, yose hamwe angana n'amafaranga 30.575.000 Frw, urubanza rukimara gusomwa bahereye ku mafaranga Noteri Kayitesi Judith yabikije muri Banki Nkuru y'u Rwanda (consignation) kuwa 19/12/2011 amaze guteza cyamunara, rubategeka no gufatanya kwishyura amagarama y'urubanza ahwanye na 9.000 Frw.

[6] Kuwa 6/2/2013, Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza RCOM 0306/12/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rwasubirwamo kubera impamvu z'akaregane gakomoka ku kuba hari amategeko n'ibimenyetso byirengagijwe.

[7] Nyuma yo gusuzuma raporo y'Ubugenzuzi Bukuru bw'Inkiko kuri uru rubanza, Perezida w'Urukiko rw'Ikirenga, ashingiye ku ngingo ya 80 y'Itegeko Ngenga n° 03/2012 ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, yemeje kuwa 27/3/2013 ko uru rubanza rwoherezwa mu bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[8] Kayitesi Judith, Mberabagabo Innocent na Butera Jean-Pierre basaba gusubirishamo urubanza RCOM 0306/12/HCC ku mpamvu z'akarengane zikurikira:

a. Kwirengagiza amategeko n'ibimenyetso bigaragarira buri wese, bavuga ko umucamanza yirengagije ingingo ya 78 n'iya 79 z'Itegeko Ngenga nº 03/2012 ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga.

b. Kwakira ikirego no kugisuzuma kandi itegeko ribiteganya ukundi, bavuga ko n'ubwo yari kuba afite ububasha, umucamanza atari kwakira ikirego ngo agisuzume hashingiwe ku ngingo ya 12 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, abarezwe bakaba barabigaragarije umucamanza ariko aranga asuzuma ikibazo.

c. Gushyigikira amanyanga n'amakosa y'abareze; bavuga ko ikirego cy'abareze cyari gishingiye ku manyanga no kwica itegeko kugirango bahagarikishe cyamunara bitwaza amasezerano y'ubugure ku nzu yari yarafatiriwe itakiri mu maboko ya nyirayo bigashimangirwa n'ingingo ya 295 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yakurikizwaga icyo gihe.

[9] Fiat Amélie asaba Urukiko rw'Ikirenga gutegeka abarega kumwishyura 3.500 USD buri kwezi mu gihe cy'amezi 13 y'ubukode bw'inzu yaguze mbere ya cyamunara, hamwe na Dunia Bakarani bagasaba gutegeka abarega kubaha amafaranga 2.000.000 kubera babashoye mu manza ku maherere n'amafaranga 2.000.000 y'igihembo y'avoka. I&M Bank (ex-Banki

y'Ubucuruzi y'u Rwanda) nayo yatanze ikirego cyuririye kucy'abarega isaba Urukiko rw'Ikirenga kubategeka kuyishyura indishyi z'ikurikiranarubanza zingana n'amafaranga 500.000 n'igihembo cya avoka kingana n'amafaranga 500.000.

[10] Iburanisha ryabaye mu ruhame kuwa 4/2/2014, Mberabagabo Innocent, Butera Jean-Pierre na Kayitesi Judith bahagarariwe na Me Nzamwita Toy na Me Twagirayezu Christophe, Fiat Amélie na Dunia Bakarani bahagarariwe na Me Shema Gakuba Charles na Me Buhuru Pierre-Célestin naho I&M BANK (ex-Banki y'Ubucuruzi y'u Rwanda) ihagarariwe na Me Batware Jean-Claude.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

a. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rutari rufite ububasha bwo kuburanisha urubanza RCOM 0306/12/HCC.

[11] Me Nzamwita Toy, uburanira Mberabagabo Innocent, Butera Jean-Pierre na Kayitesi Judith, avuga ko Rukiko rw'Ubucuruzi rutari rufite ububasha bwo kuburanisha urubanza RCOM 0306/12/HCC kuko Fiat Amélie na Dunia Bakarani bari batanze ikirego basaba gusubirishamo ku mpamvu z'akarengane gakabije urubanza RCOM 0070/12/HCC rwari rwaraciwe ku rwego rwa nyuma n'urwo Rukiko, nyamara hakurikijwe ibiteganywa n'ingingo ya 78 n'iya 79 z'Itegeko Ngenga n° 03/2012 ryo kuwa 13/6/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, icyo kirego kitari gushyikirizwa urwo Rukiko kubera ko Urukiko rw'Ikirenga arirwo rwonyine rufite ububasha bwo gusuzuma ibirego bisubirishamo imanza ku mpamvu z'akarengane gakabije, bityo akaba asanga mu gihe Urukiko rw'Ubucuruzi rwihaye ububasha rudafite, iyi ari mpamvu igaragaza akarengane kabaye muri uru rubanza.

[12] Me Nzamwita Toy asobanura ko Fiat Amélie na Dunia Bakarani batanga ikirego mu Rukiko Rukuru rw'Ubucuruzi, batari gushingira ku ingingo ya 186 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kuko ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gitangwa gishingiye ku ingingo ya 78 n'iya 79 z'Itegeko Ngenga n° 03/2012 ryavuzwe haruguru. Me Twagirayezu Christophe, uburanira nawe Mberabagabo Innocent, Butera Jean-Pierre na Kayitesi Judith, asobanura ko mu gika cya munani cy'urubanza RCOM 0306/12/HCC, Urukiko Rukuru rw'Ubucuruzi rwashingiye ku ingingo ya 189 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, rwemeza gusa ko rufite ububasha bwo kwakira ikirego cyo gusubirishamo urubanza ingingo nshya (recours en révision), nyamara urwo Rukiko rwirengagije ko hari Itegeko Ngenga riha Urukiko rw'Ikirenga ububasha bwo gusuzuma ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane.

[13] Me Buhuru Pierre Célestin, uburanira Fiat Amélie na Dunia Bakarani, avuga ko mu rubanza RCOM 0306/12/HCC, abarega basabaga gusubirishamo ingingo nshya urubanza RCOM 0070/12/HCC ku mpamvu z'akaregane, ko kandi Urukiko rwaciye urubanza rusabirwa gusubirishamo ingingo nshya, ari rwo rufite ububasha bwo kuruburanisha hashingiwe kubiteganywa n'ingingo ya 186 n'iya 189 z'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuze haruguru, bityo akaba asanga mu gihe izo ngingo ziha ububasha Urukiko rwaciye mu rwego rwa nyuma urubanza rusubirishamo ingingo nshya, nta makosa Urukiko Rukuru rw'Ubucuruzi rwakoze kuko ari rwo rwaciye mu rwego rwa nyuma urubanza RCOM 0070/12/HCC.

[14] Me Shema Gakuba Charles, uburanira Fiat Amélie na Dunia Bakarani, avuga ko abarega mu Rukiko Rukuru rw'ubucuruzi batanze ikirego cyo gusubirishamo ingingo nshya urubanza RCOM 0070/12/HCC ku mpamvu z'akaregane gakabije katewe n'amakosa akabije yo kwitiranya uko ibintu byagenze, gishingiwe ku ingingo ya 186, igika cya 3 n'icya 6 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, nyamara ingingo ya 78 n'iya 79 z'Itegeko Ngenga n° 03/2012 ryavuzwe haruguru zidateganya ko "kwitiranya uko ibintu byagenze" iri mu mpamvu zituma habaho gusubirishamo ku impamvu z'akarengane urubanza rwaciwe ku rwego rwa nyuma, bityo akaba asanga iyo ngingo nta agaciro ikwiye guhabwa.

[15] Me Batware Jean-Claude, uburanira I&M BANK (ex-Banki y'Ubucuruzi y'u Rwanda) avuga ko urubanza RCOM 0306/12/HCC rwari rwasabye gusubirishamo urubanza RCOM 0070/12/HCC rwashingiye ku karengane gakabije ndetse n'amakosa akabije yo kwitiranya uko ibintu byangenze nk'uko biteganywa n'ingingo ya 186, igika cya 3 n'icya 6 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, ko kandi ibyo bigaragara mu kiburanwa mu rubanza RCOM 0306/12/HCC, bityo akaba asanga nta handi Fiat Amélie na Dunia Bakarani bari kujyana icyo kirego uretse kugishyikiriza Urukiko Rukuru rw'Ubucuruzi rwari rwaciye urubanza RCOM 0070/12/HCC rwabaye Itegeko.

UKO URUKIKO RUBIBONA

[16] Urukiko rw'Ikirenga rurasanga ikiburanwa mu rubanza RCOM 0306/12/HCC ari''gusubirishamo urubanza RCOM 0070/12/HCC ingingo nshya ku mpamvu z'akarengane gakabije katewe n'urubanza ndetse n'amakosa akabije yo kwitiranya uko ibintu byagenze (ingingo ya 186, igika cya 3 n'icya 6 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi).

[17] Usomye agace ka 8 k'urubanza RCOM 0306/12/HCC, biragaragara ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko rufite ububasha bwo kuburanisha urwo rubanza kubera ko ingingo ya 189 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru iteganya ko ikirego cyo gusaba ko urubanza rwaciwe burundu rusubirishwamo ingingo nshya kijyanwa mu Rukiko rwaciye urwo rubanza, kandi ko urubanza RCOM 0070/12/HCC rusubirishwamo ingingo nshya rwaciwe n'urwo Rukiko no kuba igihe batangaga ikirego cyabo, abareze bashingiye ku ingingo ya 186, igika cya 3 n'icya 6 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru.

[18] Ingingo ya 186, igika cya 3 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru iteganya ko "urubanza rushobora gusubirishwamo ingingo nshya iyo kuva aho urubanza ruciriwe habonetse ibimenyetso bya kamarampaka bigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo; icyo kimenyetso cyaba kiri mu nyandiko zatanzwe mu rubanza ariko urukiko ntirukibone cyangwa cyaragaragajwe nyuma", naho igika cya 6 y'iryo ngingo ya 186 iteganya ko "urubanza rushobora gusubirishwamo ingingo nshya iyo mu icibwa ry'urubanza hakozwe amakosa akabije yo kwitiranya uko ibintu byagenze cyangwa hashingiwe ku itegeko ritariho".

[19] Ingingo ya 189, igika cya 1 y'Itegeko n°21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru iteganya ko "Ikirego cy'iremezo cyo gusaba ko urubanza rwaciwe burundu rusubirishwamo ingingo nshya kijyanwa mu rukiko rwaciye urwo rubanza ariko rugizwe n'undi cyangwa abandi bacamanza bataruburanishije".

[20] Ingingo ya 78 y'Itegeko Ngenga n° 03/2012 ryo kuwa 13/6/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko "Urukiko rw'Ikirenga ni rwo ruburanisha ibirego byerekeranye no gusubirishamo ku mpamvu z'akarengane imanza zaciwe ku rwego rwa nyuma byemejwe na Perezida w'Urukiko rw'Ikirenga", naho ingingo ya 79 y'iryo Tegeko Ngenga ryavuzwe haruguru ikavuga ku buryo bwo kuregera Urukiko rw'Ikirenga ibirego byerekeranye no gusubirishamo ku mpamvu z'akarengane urubanza rwaciwe ku rwego rwa nyuma.

[21] Usesenguye ibivugwa muri izo ngingo n'ikiburanwa mu rubanza RCOM 0306/12/HCC, biragaragara bidashidikanywa ko mu Rukiko Rukuru rw'Ubucuruzi, FIAT Amélie na Dunia Bakarani batanze ikirego cyo gusubirishamo urubanza RCOM 0070/12/HCC ingingo nshya gishingiwe ku ingingo ya 186, igika cya 3 n'icya 6 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryavuzwe haruguru, bigaragarira mu gace ka 10 k'imyanzuro ya FIAT Amélie na Dunia Bakarani bashyikirije Urukiko Rukuru rw'Ubucuruzi, ko ikirego cyabo gishingiye ku ingingo ya 186, 187, 188 n'iya 189 z'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryavuzwe haruguru, bityo urwo Rukiko rukaba rwari rufite ububasha bwo kuburanisha kuko ari rwo rwari rwaciye mu rwego rwa nyuma urubanza RCOM 0070/12/HCC.

[22] Ku byerekeye ibivugwa n'abarega by'uko Fiat Amélie na Dunia Bakarani batanga ikirego mu Rukiko Rukuru rw'Ubucuruzi, basabaga gusubirishamo urubanza RCOM 0070/12/HCC ku mpamvu z'akarengane gakabije, ko kubera ibyo bagombaga kujyana icyo kirego mu Rukiko rw'Ikirenga, uru Rukiko rurasanga ataribyo kuko bigaragara mu ngingo ya 186, igika cya 3 y'Itegeko n°21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru ko umuburanyi ufite uburenganzira bwo gusubirishamo urubanza ingingo nshya ashobora kubikora ku mpamvu y'uko kuva aho urubanza ruciriwe, habonetse ibimenyetso bya kamarampaka bigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirishwamo ingingo nshya, bityo ijambo "gakabije" yakoreshejwe mu kiburanwa nta ngaruka ifite mu kumenya urukiko rwari rufite ububasha bwo gusuzuma urubanza RCOM 0306/12/HCC mu gihe bisobanutse neza ko ikirego cyatanzwe muri uru rubanza gishingiye ku ngingo zavuzwe haruguru z'Itegeko n° 21/2012 ryo kuwa 14/6/2012.

[23] Hashingiwe kuri ibyo byose byavuzwe haruguru, Urukiko rw'Ikirenga rurasanga iyo ngingo y'abarega nta shingiro ifite kuko Urukiko Rukuru rw'Ubucuruzi rwari rufite ububasha busesuye bwo kuburanisha ikirego cya Fiat Amélie na Dunia Bakarani cyo gusubirishamo urubanza RCOM 0070/12/HCC ingingo nshya.

b. Kumenya niba Fiat Amélie na Dunia Bakarani bariyambaje icyarimwe inzira ebyiri zo kujurira.

[24] Me Nzamwita Toy avuga ko hashingiwe ku biteganywa n'ingingo ya 12 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano , iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Urukiko Rukuru rw'Ubucuruzi rutari kwakira ikirego cyo gusubirishamo urubanza ingingo nshya, ngo rugisuzume kuko Fiat Amélie na Dunia Bakarani bari batanze kuwa 26/10/2012 ikirego cy'ubujurire mu Rukiko rw'Ikirenga bajurira urubanza RCOM 0070/12/HCC, nyuma bongera batanga kuwa 6/11/2012 mu Rukiko Rukuru rw'Ubucuruzi ikindi kirego gisubirishamo urwo rubanza ingingo nshya, bityo akaba asanga ko mu gihe biyambaje inzira ebyiri, ubujurire no gusubirishamo urubanza ingingo nshya, kandi inzira ya mbere ituma utakaza gukoresha inzira ya kabili, Fiat Amélie na Dunia Bakarani nta burenganzira bari bafite bwo gusubirishamo urubanza RCOM 0070/12/HCC ingingo nshya mu gihe bari baramaze kurujurira mu Rukiko rw'Ikirenga.

[25] Me Buhuru Pierre Célestin avuga ko ibivugwa n'ingingo ya 12 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryavuzwe haruguru, birebana n'inzira zo kujurira zisanzwe, gusubirishamo urubanza n'ubujurire, ko gusubirishamo urubanza ingingo nshya ari inzira yo kujurira idasanzwe, idahuye na ziriya zo kujurira zisanzwe. Asobanura ko kubera ko urubanza RCOM 0070/12/HCC rwari rwaciwe ku iranginzwa ry'urubanza kandi rutashoboraga kujuririrwa, Fiat Amélie na Dunia Bakarani, bashingiye ku ingingo ya 26 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryavuzwe haruguru, bahise bareka ikirego cyabo cy'ubujurire, batanga ikirego cyo gusubirishamo urwo rubanza ingingo nshya mu Rukiko Rukuru rw'Ubucuruzi, ko kandi ingingo ya 26 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryavuzwe haruguru iteganya ko mu gihe umuburanyi areka ikirego, ukwemera k'undi muburanyi atari ngombwa.

[26] Me Batware Jean-Claude avuga ko gusubirishamo urubanza ingingo nshya ari inzira yo kujurira idasanzwe, ndetse ko mu gihe baburanaga mu Rukiko Rukuru rw'Ubucuruzi, Fiat Amélie na Dunia Bakarani bari bagaragaje ko baretse ikirego cyabo cy'ubujurire mu Rukiko rw'Ikirenga, bityo akaba asanga kureka ikirego cyabo byari bihagije kuko bidasaba ko undi muburanyi agira icyo abivugaho.

UKO URUKIKO RUBIBONA

[27] Ku byerekeye inzitizi yari yatanzwe mu Rukiko Rukuru rw'Ubucuruzi na Mberabagabo Innocent, Butera Jean-Pierre na Kayitesi Judith yo kutakira ikirego cya Fiat Amélie na Dunia Bakarani ku mpamvu yuko biyambaje icyarimwe inzira ebyiri zo kujurira, Urukiko rw'Ikirenga rurasanga mu gace ka 6 k'urubanza RCOM 0306/12/HCC, urwo Rukiko rwemeje ko batiyambaje icyarimwe inzira ebyiri zo kujurira kubera ko ikirego cyo gusubirishamo ingingo nshya cyatanzwe batagikurikirana ubujurire bwo mu Rukiko rw'Ikirenga.

[28] Ingingo ya 12 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "nta muburanyi ushobora ku rubanza rumwe, kwiyambaza icyarimwe inzira y'ubujurire n'iyo gusubirishamo urubanza. Inzira ya mbere yahisemo ituma atakaza uburenganzira yari afite bwo kwiyambaza indi nzira".

[29] Hasesenguwe ibiteganywa muri iyo ngingo, Urukiko rw'Ikirenga rurasanga biragaragara ko inzira z'ubujurire zivugwa ari inzira zo kujurira zisanzwe, ni ukuvuga gusubirishamo urubanza n'ubujurire, icyakora, bitabangamiye ibyavuzwe, nta kintu kibuza gukoresha muri uru urubanza amahame y'amategeko agenga imanza zirebana no kwiyambaza icyarimwe inzira z'ubujurire zisanzwe. Rurasanga kandi icyo umushingamategeko abuza ni ***ukwiyambaza icyarimwe inzira ebyiri z'ubujurire***[1], nyamara muri uru rubanza bigaragara ko Fiat Amélie na Dunia Bakarani batanze ubujurire mu Rukiko rw'Ikirenga kuwa 26/10/2012, nyuma baza gutanga ikirego cyo gusubirishamo urubanza

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[1] Ce que la règle "Electa una via non datur recursus ad alteram" prohibe, c'est la poursuite parallèle, simultanée des deux voies de recours contre une même décision'' Albert FETTWEIS, Manuel de procédure civile, deuxième édition, Faculté de droit de Liège, 1987, PP 479-480. Il a été jugé que l'appel du jugement par défaut, interjeté après une opposition, mais en temps utile, doit être reçu si l'opposition est elle-même non recevable'', in Michel Franchimont, Ann Jacobs et Adrien Masset, Manuel de procédure pénale, 2e édition, Larcier, Bruxelles, 2006, P. 927. Lorsqu'une opposition a été formée postérieurement à un appel, si l'appel est irrecevable, il n'y aurait pas d'obstacle à la recevabilité d'une opposition régulière, faite pour la première fois ultérieurement, Michel Franchimont, Ann Jacobs et Adrien Masset, Manuel de procédure pénale, 2e édition, Larcier, Bruxelles, 2006, P. 927.

ingingo nshya mu Rukiko Rukuru rw'Ubucuruzi kuwa 6/11/2012, ndetse baza no kureka ubwo bujurire kuwa 11/12/2012, bityo biragagara ko Fiat Amélie na Dunia Bakarani batiyambaje icyarimwe inzira ebyiri zo kujurira kuko batanze ubujurire busanzwe kuwa 26/10/2012, nyuma y'iminsi 12 n'ukuvuga kuwa 6/11/2012 baza gutanga ikirego kidasanzwe cyo gusubirishamo urubanza ingingo nshya, ndetse baza no kureka ubujurire bari batanze mu Rukiko rw'Ikirenga.

[30] Hashingiwe ku bimaze kuvugwa haruguru, Urukiko rw'Ikirenga rurasanga ibivugwa n'abarega kuri iyo impamvu y'akarengane nta shingiro bikwiye guhabwa kuko nta makosa Urukiko Rukuru rw'ubucuruzi rwakoze.

c. Kumenya niba ubugure hagati ya Fiat Amélie na Dunia Bakarani butahabwa agaciro.

[31] Me Nzamwita Toy avuga ko hakurikijwe ibiteganya n'ingingo ya 295 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakoreshwaga igihe habaga ubugure bw'inzu hagati ya Fiat Amélie na Dunia Bakarani, ubwo bugure butahabwa agaciro kuko Fiat Amélie yafashe amafaranga y'ubugure, akayashyikiriza I&M BANK (ex-Banki y'ubucuruzi y'u Rwanda), aho kuyashyikiriza umucungamari wa Leta. Avuga ko iyo mikorere ya FIAT Amélie, yatumye Noteri akomeza cyamunara ku nyungu za Leta, bityo akaba asanga ko icyemezo I&M BANK (ex-Banki y'ubucuruzi y'u Rwanda) yahaye Dunia Bakarani ubwacyo nta gaciro cyari guhabwa ngo gihagarike cyamunara. Avuga kandi ko Noteri atari afite ishingano yo guhagarika cyamunara ashingiye kuri icyo cyemezo kuko hagombaga irindi Tegeko rya Perezida w'Urukiko Rwisumbuye rwa Rubavu rimutegeka guhagarika cyamunara (parallélisme de forme). Asoza avuga ko ibiteganywa n'ingingo ya 318 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryavuzwe haruguru ryakoreshwaga icyo gihe bidashobora gukurikizwa muri uru rubanza mu gihe ibiteganywa n'ingingo ya 295 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryavuzwe haruguru bitubahirijwe.

[32] Me Shema Gakuba Charles avuga ko kuba Fiat Amélie yaraguze iyo nzu hanyuma akishyura I&M BANK (ex-Banki y'ubucuruzi y'u Rwanda), bigaragara ko habayeho irangiza ry'urubanza ku neza (exécution volontaire) kwa Dunia Bakarani, akaba asanga mu gihe I&M BANK (ex-Banki y'ubucuruzi y'u Rwanda) yahaye Dunia Bakarani ''attestation de non créance'' kandi ikabimenyesha Noteri Kayitesi Judith imusaba guhagarika icyamunara, nta makosa, Urukiko Rukuru rw'Ubucuruzi rwakoze kuko igurisha ry'inzu ryabaye mbere yuko cyamunara ikorwa ndetse igiciro cy'igurisha cyahawe I&M BANK (ex-Banki y'ubucuruzi y'u Rwanda), bityo, akaba abona ko guha Umucungamari wa Leta amafaranga y'igurisha bitari ngombwa kuko ifatira ry'inzu ya Dunia Bakarani ryari ryakozwe mu nyungu za I&M BANK (ex-Banki y'ubucuruzi y'u Rwanda).

[33] Me Batware Jean-Claude avuga ko hashingiwe ku ngingo ya 314 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano , iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, umuntu wese afite uburenganzira bwo gucungura ibyafashwe iyo yishyuye umwenda mu nyungu z'uwafatiriye kandi abimwemereye. Asobanura ko mbere yuko cyamunara iba, I&M BANK (ex-Banki y'ubucuruzi y'u Rwanda) yari yamaze kumvikana na Dunia Bakarani kuko yamwishyuye ku neza kandi ko yabimenyesheje Noteri, bityo akaba asanga ko icyamunara cyabaye kitakurikije amategeko.

UKO URUKIKO RUBIBONA

[34] Ingingo ya 293 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano , iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi (yari ingingo ya 295 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryakoreshwaga igihe habaga ubugure bw'inzu hagati ya Fiat Amélie na Dunia Bakarani) iteganya ko "Gutanga ibintu bitimukanwa cyangwa ubundi buryo bwose bwo kwemera ko hagira undi ubigiraho uruhare bikozwe n'urimo umwenda wahawe icyemezo kimuhatira kwishyura cyangwa yarabujijwe kugira icyo abikoraho ntabwo bigira agaciro, keretse ubihawe yemeye guha umucungamari wa Leta ingwate y'amafaranga angana n'umubare w'umwenda n'amafaranga uwafatiriye agomba guhabwa".

[35] Ingingo ya 313 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryavuzwe haruguru (yari ingingo ya 317 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryavuzwe haruguru) iteganya ko "Urimo umwenda wafatiriwe ibintu ashobora igihe cyose kubicungura, ashyize kuri konti y'urukiko ishyirwamo amafaranga y'ingwate, amafaranga ahagije kwishyura umwenda watumye ibintu bye bifatirwa, habariwemo umubare w'umwenda ubwawo, inyungu n'amagarama kandi nyir'ukubicungura agasobanura neza ko ayo mafaranga ari ayo kwishyura umwenda w'ufatira ibintu, niba aramutse abonye ibimenyetso biwumuhamya".

[36] Ingingo ya 314 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryavuzwe haruguru (yari ingingo ya 318 y'Itegeko n° 18/2004 ryo kuwa 20/6/2004 ryavuzwe haruguru) iteganya ko ''Umuntu wese afite uburenganzira bwo gucungura ibyafashwe iyo yishyuye umwenda wabiteye n'amafaranga y'ibyatanzwe ku ifatira. Apfa kuba yabikoze mu nyungu z'uwafatiriwe kandi abimwemereye, ibye bitaramara gutezwa cyamunara''.

[37] Izo ingingo z'amategeko zigaragaraza ko nubwo habaye ifatira ry'ibintu by'urimo umwenda, umuntu wese cyangwa urimo umwenda ashobora igihe cyose ariko mbere yuko haba icyamunara, gucungura ibyafashwe mu gihe byakozwe mu nyungu y'uberewemo umwenda n'urimo umwenda, bikaba bivuga ko amafaranga atanzwe mu nyungu y'urimo umwenda ari ayo kwishyura umwenda w'ufatira ibintu n'amafaranga y'ifatira (frais de saisie).

[38] Ku byerekeye ingingo ya 293 y'Itegeko n° 21/2012 ryo kuwa 14/6/2012 ryavuzwe haruguru, Urukiko rw'Ikirenga rurasanga guha umucungamari wa Leta ingwate y'amafaranga angana n'umubare w'umwenda n'amagarama uwafatiriye agomba guhabwa atari kamarampaka cyangwa umuhango simusiga kuko icyangombwa ari uko uberewemo umwenda yishyurwa umwenda, byongeye kandi iyo ngingo ya 293 y'Itegeko ryavuzwe haruguru ntabwo ari indemyagihugu.

[39] Ku byerekeye ibivugwa n'abarega y'uko ubugure bw'inzu hagati ya Fiat Amélie na Dunia Bakarani nta gaciro byahabwa kuko byari ngombwa ko mbere y'uko iryo gurisha riba, Perezida w'Urukiko Rwisumbuye yagombaga gufata ikindi cyemezo gihagarika cyamunara, Urukiko rw'Ikirenga rurasanga ataribyo kuko nta mategeko abiteganya, ahubwo nkuko byavuzwe haruguru umuntu wese cyangwa urimo umwenda ashobora igihe cyose, ariko mbere ko haba icyamunara, gucungura ibyafashwe mu gihe byakozwe mu nyungu y'uberewemo umwenda n'urimo umwenda, bityo si ngombwa gusaba Perezida w'Urukiko Rwisumbuye icyemezo gihagarika cyamunura mbere yo gucungura ibyafashwe.

[40] Kubera izo mpamvu zose, Urukiko rw'Ikirenga rurasanga ubugure hagati ya Fiat Amélie na Dunia Bakarani bugomba guhabwa agaciro kubera ko bwakoze mu rwego rwo gucungura inzu yafatishijwe na I&M BANK (ex-Banki y'ubucuruzi y'u Rwanda), ikishyurwa kandi ikabimenyesha Noteri Kayitesi Judith mbere y'uko cyamunara iba.

d. Kumenya niba indishyi z'ubukode bw'inzu zaciwe n'Urukiko Rukuru rw'Ubucuruzi zifite ishingiro.

[41] Me Nzamwita Toy avuga ko gutegeka Noteri Kayitesi Judith, Mberabagabo Innocent na Butera Jean-Pierre kwishyura Fiat Amélie na Dunia Bakarani indishyi zingana na mafaranga 30.000.000 ari akarengane kuko nta makosa bakoze, ndetse ko Noteri Kayitesi Judith yagizwe umwere mu Nkiko ebyiri zose. Avuga ko Butera Jean-Pierre nta kosa yari gukora kuko atagurishije inzu, akaba ataranayiguze, ko Mberabagabo Innocent nta makosa yakoze mu gihe yabonye itangazo, akitabira cyamunara, akagenda akagura inzu, bityo akaba asanga nta hantu na hamwe Urukiko Rukuru rw'Ubucuruzi rwashingiye rutanga izo ndishyi.

[42] Me Buhuru Pierre Célestin avuga ko Urukiko Rukuru rw'Ubucuruzi rwemeje ko cyamunura yakozwe na Noteri Kayitesi Judith idakurikije amategeko, ivutsa Fiat Amélie na Dunia Bakarani ubukode bwayo kuko iyo nzu yakodeshwaga USD 3.500 ku kwezi, mbere yuko igurishwa, ko abo baguze cyamunura bakoze amanyanga kandi ko ari Butera Jean-Pierre wakoze ayo masezerano. Asobanura ko mbere ya cyamunara Mberabagabo Innocent, Butera Jean-Pierre na Bisamaza bari bakoze isosiyete yitwa "Prime Lodge", bahita bahindura ''destination'' ya "busness" yakorerwaga mu nzu yagurishijwe, bityo akaba asanga ko mu gihe Urukiko Rukuru rw'Ubucuruzi rwashimangiye icyemezo cyafashwe kuri ibyo bisobanuro, biragaragara ko rwasobanuye neza amakosa bakoze.

[43] Me Gakuba Shema Charles avuga ko kuwa 13/12/2011, I&M Bank (ex-Banki y'ubucuruzi y'u Rwanda) yandikiye Noteri Kayitesi Judith, imusaba guhagarika cyamunara kuko nta mwenda Dunia Bakarani yari ayifitiye, bityo mu gihe Noteri Kayitesi Judith yarenze ibyo byose agateza cyamunara, naho Mberabagabo Innocent na Butera Jean-Pierre bakagura iyo nzu bazi neza ko ari amanyanga, asanga ari amakosa akomeye bagomba kuryozwa.

UKO URUKIKO RUBIBONA

[44] Urukiko rw'Ikirenga rurasanga mu gace ka 14 k'urubanza rwajuririwe, Urukiko Rukuru rw'Ubucuruzi rwaremeje ko: "amakosa yakozwe yavukije Fiat Amélie wari waguze inzu mbere ya cyamunara ubukode bw'inzu ye buhwanye na Us$ 3,500. buri kwezi mu gihe cy'amezi 13 yose hamwe akaba ahwanye na Us$ 45,500, ahwanye na rwf 29.575.000, ayo mafaranga, mu gihe cy'irangiza ry'uru rubanza, akaba agomba gukurwa ku yabikijwe muri BNR igihe cyamunara yari imaze gutezwa (ingingo ya 258 CCLIII)", bityo rukaba rwarategetse Noteri Kayitesi Judith, Mberabagabo Innocent na Butera Jean-Pierre gufatanya kwishyura Fiat amélie rwf 30.575.000 uru rubanza rukimara gusomwa, bahereye ku mafaranga Noteri Kayitesi Judith yabikije muri BNR (consignation) kuwa 19/12/2011 amaze guteza cyamunara.

[45] Ku byerekeye Noteri Kayitesi Judith, Urukiko rw'Ikirenga rurasanga mu gihe I&M Bank (ex-Banki y'ubucuruzi y'u Rwanda) yari yamumenyesheje mbere yuko cyamunara iba, ko Dunia Bakarani yari yarangije kuyishyura, ikamusaba guhagarika cyamunara ariko akabirengaho akagurisha iyo nzu iri muri parseli n° 339 i Rubavu (ex-Gisenyi), ari amakosa agomba kuryozwa indishyi kuko iki gikorwa cyangirije FIAT Amélie kimuvutsa ubukode bw'inzu yari yaguze mbere ya cyamunara, buhwanye na USD 3.500 buri kwezi mu gihe cy'amezi 13 yose hamwe akaba ahwanye na USD 45,500., ahwanye na 29.575.000Frw y'igihe Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza. Urukiko rw'Ikirenga rurasanga kandi kuba Noteri Kayitesi Judith yaragizwe umwere mu manza z'inshinjabyaha, bitabuza ko

aryozwa amakosa (faute délictuelle ou quasi-délictuelle) yakoreye Fiat Amélie, bityo Noteri Kayitesi Judith akaba agomba kuriha ibyangiritse.

[46] Ku byerekeye Mberabagabo Innocent, Urukiko rw'Ikirenga rurasanga mu gihe yari yamenyeshejwe ko inzu yaguze mu cyamunara yari ifite ibibazo kuko hari undi muntu wayiguze mbere ariko akayigumana, agahindura ibyakorerwaga muri iyo nzu, ari amakosa agomba kuryozwa kuko yavukijije FIAT Amélie ubukode bw'inzu yari yaguze mbere ya cyamunara, buhwanye na USD 3.500 buri kwezi mu gihe cy'amezi 13 yose hamwe akaba ahwanye na USD 45,500., ahwanye na 29.575.000Frw y'igihe Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza, bityo Mberabagabo Innocent akaba agomba kuriha ibyangiritse.

[47] Ku byerekeye Butera Jean-Pierre, Urukiko rw'Ikirenga rurasanga nta gikorwa yakoze cyangirije Fiat Amélie kuko ataguze iyo nzu mu cyamunara kandi kuba ari muri bamwe bagize isosiyete yitwa "Prime Lodge", atari impamvu yatuma yishyura amakosa Mberabagabo Innocent yakoze, bityo Butera Jean-Pierre akaba ataryozwa ibyangirijwe na Mberabagabo Innocent.

[48] Kubera izo mpamvu zose, hakurikijwe ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko "igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse". Urukiko rw'Ikirenga rurasanga Noteri Kayitesi Judith na Mberabagabo Innocent bonyine bagomba kwishyura Fiat Amélie 29.575.000Frw y'ubukode bw'inzu yari yaguze mbere ya cyamunara, ahwanye na USD 3.500 buri kwezi mu gihe cy'amezi 13, bityo urubanza RCOM 0306/12/HCC rukaba rugomba guhinduka ku birebana na Butera Jean-Pierre kuko rwamutegetse gufatanya na bandi kwishyura FIAT Amélie ayo mafaranga.

e. Kumenya niba abaregwa bakwiye guhabwa amafaranga y'indishyi basaba.

[49] Me Buhuru Pierre Célestin na Me Gakuba Shema Charles basaba ko Urukiko rw'Ikirenga rutegeka Noteri Kayitesi Judith, Mberabagabo Innocent na Butera Jean-Pierre kuriha FIAT Amélie na Dunia Bakarani 2.000.000Frw kubera kubashora mu manza ku maherere na 2.000.000Frw y'igihembo cy'avoka.

[50] Me Batware Jean-Claude asaba Urukiko rw'Ikirenga gutegeka Noteri Kayitesi Judith, Mberabagabo Innocent na Butera Jean-Pierre kwishyura I&M Bank (ex-Banki y'Ubucuruzi y'u Rwanda) indishyi z'ikurikiranarubanza zingana na 500.000Frw n'igihembo cy'avoka kingana na 500.000Frw.

[51] Me Nzamwita Toy avuga ko abaregwa badakwiye guhabwa ayo mafaranga kuko nta makosa abarega bakoze.

UKO URUKIKO RUBIBONA

[52] Urukiko rw'Ikirenga rurasanga 2.000.000Frw FIAT Amélie na Dunia Bakarani basaba kubera kubashora mu manza ku maherere, badakwiye kuyahabwa kuko bari bafite uburenganzira bwo gutanga iki kirego mu gihe basangaga ko ari akarengane babakoreye.

[53] Ku birebana na 2.000.000Frw y'igihembo cy'avoka Fiat Amélie na Dunia Bakarani basaba, Urukiko rw'Ikirenga rurasanga bagomba kuyahabwa ariko kubera ari ikirenga, rubagenera mu bushishozi bwarwo amafaranga y'igihembo cy'avoka angana na 500.000Frw.

[54] Ku birebana na 500.000Frw y'indishyi z'ikurikiranarubanza n'igihembo cy'avoka zingana na 500.000Frw I&M Bank (ex-Banki y'Ubucuruzi y'u Rwanda) isaba, Urukiko rw'Ikirenga rurasanga ari ikirenga, ruyigenera mu bushishozi bwarwo amafaranga angana 500.000Frw.

[55] Kubera izo mpamvu zose, Urukiko rw'Ikirenga rugomba gutegeka Noteri Kayitesi Judith na Mberabagabo Innocent kwishyura Fiat Amélie na Dunia Bakarani 500.000Frw y'igihembo cy'avoka, no kwishyura I&M Bank (ex-Banki y'Ubucuruzi y'u Rwanda) 500.000Frw y'ikurikirarubanza n'igihembo cy'avoka.

III. ICYEMEZO CY'URUKIKO

[56] Rwemeje ko ikirego cyatanzwe na Noteri Kayitesi Judith na Mberabagabo Innocent nta shingiro gifite.

[57] Rwemejo ko ikirego cya Butera Jean-Pierre gifite ishingiro.

[58] Rutegetse Noteri Kayitesi Judith na Mberabagabo Innocent gufatanya kwishyura Fiat Amélie 29.575.000Frw y'ubukode bw'inzu.

[59] Rutegetse Noteri Kayitesi Judith na Mberabagabo Innocent gufatanya kwishyura Fiat Amélie na Dunia Bakarani amafaranga y'igihembo cy'avoka angana na 500.000Frw yongera kuri 500.000Frw yagenewe n'urukiko Rukuru rw'Ubucuruzi, akaba yose 1.000.000Frw.

[60] Rutegetse Noteri Kayitesi Judith na Mberabagabo Innocent gufatanya kwishyura I&M Bank (ex-banki y'ubucuruzi y'u Rwanda) 500.000Frw y'igihembo cy'avoka n'ikurikiranarubanza.

[61] Rutegetse Noteri Kayitesi Judith na Mberabagabo Innocent kwishyura amagarama y'uru rubanza angana na 14.500Frw.