ABAZUNGUZA BA NZISABIRA v. RWANDA FOAM

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA 0033/13/CS (Havugiyaremye, P.J., Rugabirwa na Mukandamage M., J.) 6 Kamena 2014]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Inzitizi yo kutakira ikirego hashingiwe ku iburabubasha n'inyungu byo kurega – Igihe cyo gutanga inzitizi yo kutakira ikirego – Kutagira ububasha n'inyungu byo kurega bishobora kubyutswa n'umuburanyi cyangwa Urukiko rubyibwirije aho urubanza rwaba rugeze hose kuko ari indemyagihugu – Iyo inzitizi yo kutakira ikirego yafashweho icyemezo mu Rukiko rubanza ntibibuza ko byajuririrwa hamwe n'urubanza mu mizi kuko iburanisha riba ritahagarariye ku rwego rwa mbere n'ubwo biba bishobora kujuririrwa byonyine – Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, Ingingo ya 2, 19 2º n'iya 142.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ikimenyetso gitanzwe nyuma y'ipfundikirwa ry'iburanisha ry'urubanza – Urubanza rukosorwa n'urukosora biruzuzanya ntibyatandukanywa ahubwo bifatirwa hamwe – Kubimenyesha umuburanyi mu rwego rwo kubahiriza uburenganzira bwo kwiregura – Mu gihe umuburanyi atanze inyandiko cyangwa se ikindi kintu gishobora gufasha mu kugaragaza ukuri bihabwa agaciro, icyangombwa ni ukukimenyesha mugenzi we no kugira icyo abivugaho mbere yo guca urubanza – Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, Ingingo ya 69.

Amategeko mbonezamubano – Agaciro k'amasezerano atagaragaza icyayakuyeho – Amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye – Iyo uwagurishije yiyemeje gutanga icyagurishijwe akaniyemeza no gukora ibishoboka byose kugira ngo cyandikwe ku uwacyiguze, ntiyavuga ko nta ngaruka ayo masezerano agomba kumugiraho ashingira ko yaba atariwe wagitunze cyangwa wagitanze – Itegeko nº 45/2011 ryo kuwa 25/11/2011 rigena amasezerano, Ingingo ya 64 n'Itegeko ryo kuwa 30/07/1888 rishyiraho Urwunge rw'amategeko y'imbonezamubano, ibyerekeye imirimo nshinganwa cyangwa amasezerano, Ingingo ya 263 na 264.

Amategeko mbonezamubano – Indishyi zishingiye ku gusubizwa ikiguzi cy'icyaguzwe – Kugurisha ibitari ibyawe kandi ubizi neza ni imfabusa – Iyo ariko umuguzi atigeze amenya ko icyo kintu ari icy'undi asubizwa ikiguzi akanabiherwa n'indishyi – Iyo kandi usaba indishyi atagaragaza uburyo yazibazemo zigenwa mu bushishozi bw'Urukiko – Itegeko ryo kuwa 30/07/1888 rishyiraho Urwunge rw'amategeko y'imbonezamubano, ibyerekeye imirimo nshinganwa cyangwa amasezerano, Ingingo ya 276.

Amategeko mbonezamubano – Indishyi z'agaciro k'ibyongewe ku nzu – Ugomba gutanga bene izo ndishyi – Uwaguze ikitari icy'umugurishije, iyo gisubijwe bene cyo, uwari waguze ntasubizwa n'umugurishije agaciro k'ibyo yari yacyongereyeho – Indishyi z'ibyakozwe ku nzu biyongerera agaciro zitangwa n'usubijwe umutungo kugirango atigwizaho umutungo nta mpamvu.

Amategeko mbonezamubano – Gusubizwa amafaranga y'ubukode – Uwaguze ikitari icy'umugurishije kigasubizwa bene cyo ntahabwa amafaranga y'ubukode bwacyo kuko atariwe nyiracyo akaba aba nta n'uburenganzira afite ku bukode bwacyo.

Amategeko mbonezamubano – Igihano gihatira kurangiza urubanza by'agateganyo – Iyo urubanza ruciwe ku rwego rwa nyuma kandi nta n'icyagaragarijwe Urukiko cyatuma uwatsinzwe urubanza atazarurangiza, ntibiba ngombwa ko hategekwa igihano gihatira kurangiza urubanza by'agateganyo.

Incamake y'ikibazo: Uru rubanza rwatangiye ari imbonezamubano mu Rukiko Rwisumbuye rwa Rusizi, abazungura ba NZISABIRA Trojan barega RWANDA FOAM ko yabagurishije inzu itari iyayo iri mu kibanza nº 33 i Kamembe bayisaba indishyi z'amafaranga yatanzwe hagurwa iyo nzu n'amafaranga yakoreshejwe mu kuyagura. RWANDA FOAM nyuma yo gutsindwa uru rubanza yarujuririye mu Rukiko Rukuru, Urugereko rwa Rusizi rwemeza ko ikiburanwa kiri mu bubasha bw'Inkiko z'Ubucuruzi.

Urukiko Rukuru rwaregewe uru rubanza rwemeje ko ikirego cy'Abazungura ba NZISABIRA Trojan nta shingiro gifite kubera ko nta bimenyetso simusiga bagaragaje bishimangira ibyo bavuga byerekeye amasezerano y'ubugure bw'inzu NZISABIRA yakoranye n'abantu babiri batandukanye aribo RWANDA FOAM n'abazungura ba MPUNYU. Urukiko Rukuru rw'Ubucuruzi rwavuze kandi ko mu manza Abazungura ba NZISABIRA bagobotsemo zarimo n'Abazungura ba MPUNYU, batigeze bagobokeshamo RWANDA FOAM, ko bari bazi neza ko ntacyo bayibaza cyane ko n'ikibanza kitari kiyanditseho.

Abazungura ba NZISABIRA bajuririye mu Rukiko rw'Ikirenga bavuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibimenyetso rwashyikirijwe; basaba ko amasezerano yabaye hagati y'umubyeyi wabo na RWANDA FOAM yateshwa agaciro bagasubizwa amafaranga y'ikiguzi cy'inzu hiyongereyeho ay'agaciro bayivuguruje, indishyi z'akababaro zo kuba barahungabanyijwe mu mutungo w'ababyeyi babo, amafaranga y'ubukode bw'iyo nzu kuva bayambuwe, amafaranga yo gukurikirana urubanza, indishyi zo kuba baragurishijwe inzu itari iya RWANDA FOAM batabizi, ko kandi hashyirwaho igihano gihatira RWANDA FOAM kurangiza urubanza by'agateganyo.

RWANDA FOAM yo yavuze ko ubujurire bw'Abazungura ba NZISABIRA Trojan butagomba kwakirwa kubera ko batagaragaza abo aribo ku buryo budashidikanywaho, bikaba bisobanuye ko nta bubasha n'inyungu bafite byo kurega. Ku masezerano aburanishwa n'Abazungura ba NZISABIRA, RWANDA FOAM ivuga ko nta kimenyetso na kimwe abajuriye bagaragarije Urukiko cyerekana ko inzu iburanwa yaba ariyo yayibahaye. Naho kubijyanye n'indishyi zasabwe n'abajuriye, RWANDA FOAM ivuga ko nta shingiro zifite kuko nta n'ibimenyetso abazisaba bazitangira.

Incamake y'icyemezo: 1. Inzitizi y'iburabubasha n'inyungu byo kurega ishobora gutangwa aho urubanza rwaba rugeze hose. Zishobora gutangirwa bwa mbere mu rwego rw'ubujurire niyo zaba zarafashweho icyemezo mu rukiko rubanza. Ntibibuza kandi ko zajuririrwa hamwe n'urubanza mu mizi kuko iburanisha riba ritahagarariye kuri urwo rwego. Bityo nta ntacyari kubuza RWANDA FOAM kuzitanga mu Rukiko rwajuririwe.

2. Urubanza rukosora n'urukosorwa biruzuzanya bigafatirwa hamwe. Ntirwafatwa nk'icyimenyetso gitanzwe nyuma y'iburanisha mu gihe rwanahawe impande zombi zikarujyaho

impaka mu rwego rwo kubahiriza uburenganzira bwo kwiregura. Bityo urubanza RC 0098/14/TB/KMB rwaciwe n'Urukiko rw'Ibanze rwa Kamembe kuwa 06/03/2014 rwuzuza urubanza RC 0040/141/TB/KMB rugaragaza ko abajuriye ari abana ba NZISABIRA mu buryo budashidikanywaho, inzitizi ya RWANDA FOAM yo kutakira ikirego cyabo ndetse n'uko urubanza RC 0098/14/TB/KMB rukosora urundi rutashingirwaho ngo kuko rwatanzwe nyuma y'ipfundikirwa ry'iburanisha ry'urubanza, zikaba nta shingiro zifite.

3. Amasezerano hagati y'umuguzi n'ugurisha bw'ikintu bumvikanyeho akaniyemeza gukora ibishoboka byose ngo kimwandikweho aba aba itegeko hagati yabo. Bityo amasezerano yo kuwa 10/03/1992 hagati ya RWANDA FOAM na NZISABIRA Trojan akaba afite agaciro hagati yabo kuko RWANDA FOAM ivuga ko itigeze itunga cyangwa ngo ihe NZISABIRA inzu yamugurishije, itagaragaza icyakuyeho amasezerano bagiranye.

4. Igurisha ry'ikintu cy'undi ni imfabusa, rishobora gutangirwa indishyi iyo umuguzi atigeze amenya ko icyo kintu ari icy'undi. Bityo kuba NZISABIRA yaraguze inzu atari aziko atari iya RWANDA FOAM, Abazungura be bagomba gusubizwa amafaranga 5.500.000 Frw NSIZABIRA yatanze y'ikiguzi cy'inzu n'indishyi za 2.000.000frw zigenwe mu bushishozi bw'Urukiko.

5. Mu gihe umuntu akurikiranye umutungo we utimukanwa k'uwufite, indishyi z'ibyakozwe ku nzu biyongerera agaciro bitangwa n'usubijwe umutungo kugirango atigwizaho umutungo nta mpamvu. Bityo abazungura ba NZISABIRA nta ndishyi z'agaciro k'ibyongerwe ku nzu bahabwa kuko inzu RWANDA FOAM yagurishije atari iyayo ahubwo yasubijwe beneyo, bityo bakaba basaba indishyi z'ibyayikozweho n'uwayisubijwe.

6. Iyo inzu yasubijwe beneyo, uwari wayiguze ntiyasaba uwayimugurishije indishyi z'ubukode kuko nta burenganzira ku bukode aba afite. Bityo Abazungura ba NZISABIRA ntibagomba guhabwa amafaranga y'ubukode bw'inzu kuko atari iyabo.

7. Iyo urubanza ruciwe ku rwego rwa nyuma kandi nta kigaragariza Urukiko rutazarangizwa ntibiba ari ngombwa ko hategekwa igihano gihatira kwishyura. Igihano gihatira RWANDA FOAM kurangiza urubanza by'agateganyo akaba nta shingiro ryacyo.

Ubujurire bufite ishingiro kuri bimwe.
Urubanza rwajuririwe ruhindutse kuri byose
Amagarama aherereye ku uwarezwe.

Amategeko yashingiweho:

Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, Ingingo ya 2, 19 2º', 69 n'iya 142.

Itegeko ryo kuwa 30/07/1888 rishyiraho Urwunge rw'amategeko y'imbonezamubano, ibyerekeye imirimo nshinganwa cyangwa amasezerano, Ingingo ya 264, 276 na 282.

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:

François Terré et Philippe Simler, Le Droit civil, Les biens, Précis Dalloz, 7e éd., Paris, 2006, p. 406.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rusizi ari imbonezamubano, Abazungura ba NZISABIRA Trojan barega RWANDA FOAM bayisaba indishyi nk'uko zigaragara ku kirego cyagaragajwe haruguru, urwo rukiko rwemeza ko RWANDA FOAM igomba kubasubiza amafaranga 5.500.000 yatanzwe hagurwa inzu iri mu kibanza nº 33 i Kamembe. RWANDA FOAM yajuririye Urukiko Rukuru, Urugereko rwa Rusizi rwemeza ko ikiburanwa kiri mu bubasha bw'Inkiko z'Ubucuruzi.

[2] Mu Rukiko Rukuru rw'Ubucuruzi, Abazungura ba NZISABIRA basobanuye ko indishyi basaba zishingiye ku kuba tariki ya 10/03/1992 RWANDA FOAM yaragurishije umubyeyi wabo NZISABIRA Trojan inzu itari iyayo iri mu kibanza nº 33 i Kamembe mu Karere ka Rusizi, ku mafaranga 5.500.000 Frw, ayikoreramo imirimo y'ubucuruzi, ndetse arayagura ayongerera agaciro. Bavuga ko iyo nzu yaje gusubizwa abazungura ba Omar ABDULAZIZ bahagarariwe na ASSIN Omar nyuma yo gutsinda urubanza RCA 0046/05/HC/CYG barezemo Leta y'u Rwanda ihagarariwe na Minisiteri y'Ubutaka, gutuza abantu no kurengera ibidukikije, bakagobokeshamo Abazungura ba MPUNYU n'aba NZISABIRA, basaba gutesha agaciro «certificat d'enregistrement nº VOL RVIII Folio 21» y'icyo kibanza yanditse kuri MPUNYU Zacharie.

[3] Urukiko Rukuru rw'Ubucuruzi, rwemeje ko ikirego cy'Abazungura ba NZISABIRA Trojan nta shingiro gifite kubera ko nta bimenyetso simusiga bagaragaje bishimangira ibyo bavuga. Rwasobanuye ko kuwa 10/03/1992 NZISABIRA yabanje gukorana amasezerano yo kugura inzu na RWANDA FOAM ku mafaranga 5.500.000 Frw, nyuma yaho bigaragara ko hari andi masezerano yerekeranye n'iyo nzu yagiranye n'Abazungura ba MPUNYU bahagarariwe na NIYIBIZI Ruben nk'uko bigaragara mu ibaruwa nº 18.04.081/4189 yo kuwa 30/06/1993 Minisitiri w'Imirimo ya Leta n'Ingufu yandikiye Umuyobozi w'imisoro, amusaba uburenganzira bwo gukora "mutation" kubera ko inzu yari yagurishijwe, bakaba rero badatanga ibisobanuro kuri ayo masezerano NZISABIRA yakoranye n'abantu babiri batandukanye.

[4] Urukiko rwavuze kandi ko mu manza Abazungura ba NZISABIRA bagobotsemo zarimo n'Abazungura ba MPUNYU, batigeze bagobokeshamo RWANDA FOAM, bisobanura ko bari bazi neza ko ntacyo bayibaza cyane cyane ko n'ikibanza kitari kiyanditseho, ko no kuba baramaze imyaka 18 yose nta "mutation" basabye ari ikindi kimenyetso ko ntacyo bari bagikurikiranye kuri iyo nzu.

[5] Urukiko rwategetse ko Abazungura ba NZISABIRA bafatanya kwishyura RWANDA FOAM Ltd amafaranga 1.500.000 Frw y'indishyi z'ikurikiranarubanza n'igihembo cya avoka.

[6] Abazungura ba NZISABIRA Trojan bajuririye Urukiko rw'Ikirenga, bavuga ko urukiko rwirengagije ibimenyetso rwashyikirijwe, umucamanza afata icyemezo ashingiye ku

marangamutima yishyira mu mwanya wa RWANDA FOAM Ltd avuga ko kuba abazungura ba NZISABIRA hari imanza baburanye nyamara ntibagobokeshe RWANDA FOAM Ltd, bigaragaza ko bari bazi ko ntacyo bayiryoza. Basaba ko amasezerano yabaye hagati ya NZISABIRA na RWANDA FOAM yateshwa agaciro, ko yabasubiza amafaranga y'ikiguzi cy'inzu hiyongereyeho ay'agaciro ifite ubu, indishyi z'akababaro zo kuba barahungabanyijwe mu mutungo w'ababyeyi babo, amafaranga y'ubukode bw'iyo nzu kuva bayambuwe kugeza ubu, amafaranga yo gukurikirana urubanza, indishyi zo kuba baragurishijwe inzu itari iya RWANDA FOAM batabizi, ko kandi hashyirwaho igihano gihatira RWANDA FOAM kurangiza urubanza (astreinte) n'irangizarubanza ry'agateganyo.

[7] Rwanda FOAM yo ivuga ko ikirego cy'ubujurire cy'Abazungura ba NZISABIRA Trojan kitagomba kwakirwa kubera ko nta bubasha n'inyungu bafite bwo kurega, ko ariko mu gihe icyo kirego cyaba cyakiriwe, urukiko rwakwemeza ko nta shingiro gifite, maze bagacibwa indishyi zo kuyishora mu rubanza nta mpamvu, igihembo cya avoka n'ikurikiranarubanza.

[8] Urubanza rwaburanishijwe mu ruhame tariki ya 21/01/2014, kuwa 25/02/2014 no kuwa 29/04/2014, Abazungura ba NZISABIRA Trojan bahagarariwe na Me NGARAMBE Raphaël hamwe na Me HAKIZIMANA Théogène, naho Rwanda FOAM ihagarariwe na Me MHAYIMANA Isaïe na Me ABIJURU Emmanuel.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. Kumenya niba abajuriye nta bubasha n'inyungu bafite byo kurega.

[9] Ababuranira RWANDA FOAM bavuga ko ubujurire bw'Abazungura ba NZISABIRA Trojan butagomba kwakirwa kubera ko abajuriye batagaragaza abo aribo ku buryo budashidikanywaho, ko nta kigaragaza ko bose uko ari 6 bariho, ko ari abazungura ba NZISABIRA Trojan, kuko bidashoboka ko abo bantu bose bafite imyaka irenga 30 y'amavuko bavuga ko batuye mu nzu imwe ahitwa ku Cyapa. Bavuga kandi ko batagaragaza inyandiko y'Ubuyobozi yemeza ko batuye aho hantu ko kandi ariho babarizwa, ko n'ibyemezo batanze mu rukiko byagaragaye ko birimo amakuru y'ibinyoma, bakaba baniyemerera ko n'urubanza RC 0040/141/TB/KMB kugera kuri RC 0045/141/TB/KMB rwaciwe n'Urukiko rw'Ibanze rwa KAMEMBE rusimbura inyandiko zabo z'amavuko rwashingiweho mu gukora ibyo byemezo narwo rurimo amakosa nk'aho bivugwa ko rwaciwe kuwa 30/01/2013, rukaba rufite nimero zitabaho n'ibindi.

[10] Basanga kandi urubanza RC 0098/14/TB/KMB rurukosora Abazungura ba NZISABIRA bararushyikirije urukiko nyuma yo gupfundikira iburanisha ry'urubanza mu buryo bunyuranije n'ingingo ya 69 CPCCSA kuko rwatanzwe ku itariki ya 13/03/2014 RWANDA FOAM itabanje kurumenyeshwa kuko yarushyikirijwe kuwa 10/04/2014, rukaba rero rutagomba gushingirwaho.

[11] Bavuga ko ingingo ya 142 y'Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yerekana neza ko izo mpamvu zirimo kutagira ububasha n'inyungu (défaut de qualité, de capacité et d'intérêt d'agir) zituma ikirego kitakirwa ari indemyagihugu (d'ordre public), ko kandi n'urukiko ubwarwo rugomba kwibwiriza kuzisuzuma, ko ndetse ingingo ya 2 n'iya 19 zaryo ziteganya ibisabwa kugira ngo ikirego cyakirwe.

[12] Ababuranira Abazungura ba NZISABIRA bavuga ko mu rukiko rubanza RWANDA FOAM yari yatanze inzitizi yo kutakira ikirego cyabo ngo kuko batasobanuye aho babarizwa, batanga n'ibirego mu buryo butari bwo kuko buri wese atatanze ikirego ngo cyandikwe ukwacyo kigire dosiye yacyo, ahubwo bikomatanyirizwa hamwe, umucamanza abifataho icyemezo gisobanutse, RWANDA FOAM ntiyakijuririra, ikaba rero idakwiye kongera kukigarukaho. Bavuga ko inzitizi yo kutagira ububasha n'inyungu izamuwe bwa mbere mu bujurire, ikaba idakwiye kwakirwa, ko kandi urubanza rwajuririwe rwabaye urw'ubucuruzi bisabwe na RWANDA FOAM, ko rukiri imbonezamubano itigeze itanga iyo nzitizi.

[13] Ababuranira Abazungura ba NZISABIRA bavuga ko mu gihe izo nzitizi zaba zakiriwe, urukiko rwakwemeza ko nta shingiro zifite kubera ko RWANDA FOAM idahakana ko NZISABIRA Trojan n'umugore we MUSOMAYIRE Marie bitabye Imana, ko abemerewe kubazungura ari ababakomokaho bajuriye, hakaba hari n'urubanza RC 0040/141/TB/KMB kugera kuri RC 0045/141/TB/KMB rwaciwe n'Urukiko rw'Ibanze rwa KAMEMBE rusimbura inyandiko zabo z'amavuko (jugement supplétif) nk'uko biteganywa mu ngingo ya 86 CCLI, rugaragaza ko bose bakuze, buri wese akaba yaratanze igarama arega.

[14] Ku byerekeye amakosa agaragara muri urwo rubanza, Ababuranira Abazungura ba NZISABIRA bavuga ko ari amakosa y'imyandikire adashobora gutuma urubanza ruteshwa agaciro, ko kandi mbere y'uko uru rubanza rucibwa ibyo byakozwe, kuwa 06/03/2014 Urukiko rw'Ibanze rwa Kamembe rwaruciye ruca urundi rubanza RC 0098/14/TB/KMB rurukosora, maze hakosorwa nimero y'urubanza, itariki rwaciriweho, n'itariki y'amavuko ya NZISABIRA Chantal, izo manza rero zikaba zashingirwaho n'urukiko mu kwakira ubujurire bwabo.

Uko Urukiko rubibona

Ku byerekeye iyakirwa ry'inzitizi y'iburabubasha bw'abarega n'iyo kuba nta nyungu bafite

[15] Ingingo ya 142 y'Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi (CPCCSA) iteganya ko "impamvu ituma ikirego kitakirwa ishobora kubyutswa n'umuburanyi cyangwa n'urukiko rubyibwirije. Impamvu zituma ikirego kitakirwa zigaragazwa n'urukiko rubyibwirije iyo ari indemyagihugu, nko kurenza igihe cyo kujurira cyangwa kutagira ububasha, ubushobozi cyangwa inyungu byo kurega". Naho iya 143, igika cya mbere yaryo ikavuga ko "icyemezo gifashwe ku mpamvu zituma ikirego kitakirwa gishobora kujuririrwa cyonyine mu gihe icyo cyemezo gifashwe gituma iburanisha rirangirira aho".

[16] Urukiko rurasanga inzitizi y'iburabubasha bw'abajuriye bwo kurega n'iyo kuba nta nyungu bafite zo kurega ari inzitizi z'indemyagihugu, zikaba zishobora gutangirwa bwa mbere mu rwego rw'ubujurire, ko kandi n'iyo zaba zarafashweho icyemezo mu rukiko rubanza, bitabuza ko zijuririrwa hamwe n'urubanza mu mizi kubera ko iburanisha ritahagarariye kuri urwo rwego, bityo rero hakaba nta kibuza ko RWANDA FOAM itanga bene izo nzitizi mu bujurire muri uru rukiko.

Ishingiro ry'inzitizi zatanzwe

[17] Ku byerekeranye n'ibisabwa kugirango ikirego cyakirwe, ingingo ya 2 igika cya mbere y'Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryavuzwe, iteganya ko ikirego kitemerwa mu rukiko iyo urega adafite ububasha, inyungu n'ubushobozi bwo kurega, naho iya 19, 2º yaryo yerekeye ibikubiye mu kirego, ikavuga ko ikirego kigaragaza amazina, umwuga n'aho ugitanze atuye, ndetse byaba ngombwa, amazina, ububasha bw'abamuhagarariye n'aho batuye.

[18] Urukiko rurasanga urubanza RC 0098/14/TB/KMB rwaciwe n'Urukiko rw'Ibanze rwa Kamembe kuwa 06/03/2014 rwuzuza urubanza RC 0040/141/TB/KMB kugera kuri RC 0045/141/TB/KMB rwaciwe n'urwo rukiko nk'uko biteganywa n'ingingo ya 153 y'Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryavuzwe, bityo zifatiwe hamwe zikaba zigaragaza ko abajuriye ari abana ba NZISABIRA Trojan, ko batuye mu Kagari ka Kamurera, Umurenge wa Kamembe, Akarere ka Rusizi, Intara y'Iburengerazuba, ko bose bafite imyaka y'ubukure ku buryo bakwiburanira, bakaba rero bafite ububasha n'inyungu zo kurega kuko bakurikiranye umutungo wari ufitwe n'umubyeyi wabo nk'abazungura be bemewe n'amategeko.

[19] Kuba ababuranira RWANDA FOAM bavuga ko urubanza RC 0098/14/TB/KMB rukosora urundi rutashingirwaho ngo kuko rwatanzwe nyuma y'ipfundikirwa ry'iburanisha ry'urubanza mu buryo bunyuranije n'ingingo ya 69 y'Itegeko nº 21/2012 ryo kuwa 14/06/2012[1], Urukiko rurasanga nta gaciro byahabwa kuko iyo ngingo, mu buryo bw'irengayobora, yemera ko hashobora gutangwa inyandiko cyangwa se ikindi kintu gishobora gufasha mu kugaragaza ukuri kivumbuwe n'umwe mu baburanyi, icyangombwa akaba ari uko akimenyesha umuburanyi mu rwego rwo kubahiriza uburenganzira bwo kwiregura buri wese mu baburanyi afite. Urukiko rusanga kandi ababuranyi bombi barahawe umwanya wo kugira icyo bavuga kuri ibyo bimenyetso mbere yo guca uru rubanza. Byongeye kandi, nk'uko byasobanuwe haruguru, urwo rubanza hamwe n'urwo rukosora bigize urubanza rumwe ku buryo ntawazitandukanya (art. 153 y'Itegeko nº 21/2012 ryo kuwa 14/06/2012).

b. Kumenya niba amasezerano yabaye hagati ya RWANDA FOAM na NZISABIRA Trojan afite agaciro.

Ababuranira Abazungura ba NZISABIRA bavuga ko urukiko rwirengagije amasezerano y'ubugure yo kuwa 10/03/1992 hagati ya RWANDA FOAM na NZISABIRA Trojan ahubwo ruha agaciro ayo ruvuga ko yabaye hagati ye na MPUNYU Zacharie nyamara rutagaragaza igihe yabereye n'abayashyizeho umukono cyane cyane ko nta n'umwe mu baburanyi wigeze ayagaragaza mu gihe cy'iburanisha ngo agibweho impaka, ngo nibiba ngombwa abe yaregerwa n'abatayemera ko ari amahimbano, ko no mu ibaruwa nº 0009/16.03/RNRA/02W yo kuwa 25/10/2011 yanditswe n'Ikigo cy'Igihugu cy'Umubitsi Mukuru w'Inyandiko Mpamo isubiza ibaruwa yanditswe na Me MPAYIMANA uburanira RWANDA FOAM, icyo kigo cyemeje ko nta masezerano y'ubugure yigeze abaho hagati ya MPUNYU na NZISABIRA, gisobanura neza

[1] Ingingo ya 69 CPCCSA iteganya ko " Nta nyandiko muri rusange, imyanzuro y"urubanza n"inyandiko ikubiyemo ingingo ziburanishwa bishobora kohererezwa urukiko nyuma y"iburanisha.
Icyakora, iyo mbere yo kwiherera mu guca urubanza habonetse inyandiko cyangwa se ikindi kintu gishya kizafasha mu kugaragaza ukuri kivumbuwe n"umwe mu baburanyi, ashobora mu gihe urubanza rutaracibwa kugishyikiriza urukiko, amaze kukimenyesha umuburanyi we.
Urukiko ubwarwo ni rwo rusuzuma niba ari ngombwa gusubukura iburanisha"

amateka y'ikibanza nº 33, kigaragaza ko cyari gisanzwe gifite "certificat d'enregistrement volume R. VIII Folio 21" yanditse kuri MPUNYU Zacharie, yaje guteshwa agaciro n'urubanza RC 2169/R52000 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Cyangugu tariki ya 15/07/2002 rugategeka ko icyo kibanza cyandikwa by'agateganyo ku izina ry'Abazungura ba Omar ABDULAZIZ.

Ababuranira Abazungura ba NZISABIRA bavuga na none ko ikindi kimenyetso kigaragaza ko hari amasezerano y"ubugure bw"ikibanza nº 33 RWANDA FOAM yagiranye na NZISABIRA ikaba idashaka kuyagaragaza mu rwego rwo kwikuraho uruhare mu kukimugurisha kandi atari icyayo, ari ibaruwa nº 73/MAT/171 Umuyobozi Mukuru wayo yandikiye uwitwa NIYONDAMYA Jacques, umuhungu wa MPUNYU Zacharie, akabimenyesha NZISABIRA aho yavuga ko ibijyanye n'ihinduranya (mutation) hagati ya RWANDA FOAM n'Abazungura ba MPUNYU ku ruhande rumwe n'ihinduranya hagati ya RWANDA FOAM ku rundi ruhande byakerejwe na Minisiteri y'Imirimo ya Leta n'Ingufu yasabaga ko habanza kugaragazwa "titre de propriété", Umuyobozi Mukuru wa RWANDA FOAM akaba yaramusabaga ko hakorwa ibishoboka byose kugira ngo afashe mu kubona iyo "titre de propriété" yari muri Banki y'Ubucuruzi y'u Rwanda (BCR), ko namara kuyibona azamumenyesha kugira ngo harangizwe ibijyanye n'izo "mutations" zagombaga gukorwa.

Bakomeza bavuga ko urukiko rubanza rwafashe icyemezo ruvuga ko igishimangira ko amasezerano y'ubugure bw'inzu hagati ya RWANDA FOAM na NZISABIRA yari yarataye agaciro agasimburwa n'ayakozwe hagati y'abazungura ba MPUNYU Zacharie bahagarariwe na NIYIBIZI Ruben, ngo ari uko hari izindi manza zaburanwagamo ibijyanye n'umutungo uri mu kibanza nº 33, nyamara abazungura ba NZISABIRA batigeze batumiramo RWANDA FOAM ngo isobanure uko yabagurishije ibitari ibyayo, ngo kuko bari bazi ko ntacyo bayiryoza, ko rero rwirengagije ko nta tegeko ryabamburaga uburenganzira bwo kuba bakurikirana RWANDA FOAM nyuma y'izo manza mu gihe bari kubona ko uburenganzira bwabo butubahirijwe.

Ababuranira RWANDA FOAM basobanura iby'amasezerano aburanishwa n'Abazungura ba NZISABIRA bavuga ko MPUNYU yacuruzaga matelas za RWANDA FOAM, ahagarika kwishyura, maze NZISABIRA nawe wari umucuruzi abivugana na MPUNYU yishyura RWANDA FOAM, NZISABIRA afata inzu ya MPUNYU, abazungura ba NZISABIRA babonye amasezerano bahita barega RWANDA FOAM.

Basanga rero ubujurire bw'Abazungura ba NZISABIRA bugamije gusaba ko amasezerano y'ubugure ngo yabaye hagati ya RWANDA FOAM na NZISABIRA ahabwa agaciro kandi bidashoboka.

Basobanura ko ingingo ya 276 CCLIII ivuga ko nta bugure bugira agaciro bukozwe n'utari nyir'ikintu (la vente de la chose d'autrui est nulle), ko na bene ubwo bugure budakenera kuregerwa kugira ngo buteshwe agaciro (nullité absolue), ko nta kimenyetso na kimwe abajuriye bagaragarije urukiko cyerekana ko inzu iri mu kibanza nº 33 Kamembe yaba yarigeze iba iya RWANDA FOAM, ko ku byerekeye umutungo utimukanwa itegeko risobanura ko ikimenyetso rukumbi cyemewe ari "certificat d"enregistrement", ko nyamara yari ku izina rya MPUNYU.

Bakomeza bavuga ko nta n'ikimenyetso abajuriye bigeze bereka urukiko ko iyo inzu iri muri icyo kibanza bayinjijwemo na RWANDA FOAM (obligation du vendeur de délivrer la chose

vendue), ngo byibuze berekane ko ariyo yabahaye imfunguzo zo kuyinjiramo, bityo ngo babashe kuregera ko bayikuwemo (évincés), bakibaza ukuntu umuguzi yaregera ko yakuwe mu nzu mu gihe ugurisha atigeze ayimuha, akaba ahubwo yagombye kubanza kumuregera ko atamuhaye inzu yaguze.

Ababuranira RWANDA FOAM bavuga ko yo yatanze ikimenyetso kidashidikanywaho cyaturutse muri dosiye y'urubanza Abazungura ba NZISABIRA baburanye na ASSIN Omar na Leta y'u Rwanda, cy'uko hari amasezerano y'ubugure yabaye hagati ya MPUNYU wari nyir'inzu na NZISABIRA kigizwe n'ibaruwa nº 18.04.081/4189 Minisitiri w'Imirimo ya Leta n'Ingufu yandikiye Umuyobozi w'Imisoro kuwa 30/06/1993 amumenyesha ko Succession MPUNYU nk'uwagurishije na NZISABIRA Trojan nk'uwaguze, basabye "mutation immobilière" y'ikibanza nº 33 kiri i Kamembe kandi ko ubugure bwabaye ku giciro cy'amafaranga 5.700.000 Frw, hakaba ntawigeze yerekana ko urwo rupapuro rutabayeho cyangwa se ko ari uruhimbano.

Bavuga ko abajuriye batagaragaza impapuro z'aho bishyuriraga imisoro y'icyo kibanza mu myaka 18 bakimaranye, kugira ngo hamenyekane niba koko barishyuraga imisoro mu izina rya RWANDA FOAM, ko ndetse no muri rapport d'expertise bakoresheje k'uwitwa TUYIZERE Emmanuel kuwa 15/10/2010, bigaragara ko iyo nzu ari iya MPUNYU batayandika kuri RWANDA FOAM.

[29] Ababuranira RWANDA FOAM banzura bavuga ko kuba harabayeho inyandiko yiswe amasezerano y'ubugure hagati ya NZISABIRA na RWANDA FOAM, ubwabyo ntacyo bivuze (absence d'effet juridique) kubera ko: Abajuriye ntibatanze ikirego bashingira ku kuba gusa harakozwe iyo nyandiko, ahubwo ikirego ni ugusaba indishyi zikomoka ku kwamburwa inzu y'ubucuruzi iri mu kibanza nº 33 yagurishijwe umubyeyi wacu kandi atari iye. N'iyo iyo nyandiko yaba yarakozwe, ntacyo byabamarira mu gihe NSIZABIRA yayigizemo uruhare, cyane ko itanateguwe na RWANDA FOAM, kuko itari kuyikora ngo ishyiremo ingingo ya 6 ivuga ko bakoze "élection de domicile" i Cyangugu kandi itahafite icyicaro, ibiro cyangwa se ibikorwa. Bene iyi nyandiko nta gaciro mu rwego rw'amategeko (valeur juridique) yagira kugira ngo ibe yagira ingaruka ziteganywa n'amategeko (effets juridiques). Kuba NZISABIRA yarongeye agakora amasezerano na MPUNYU bivuze ko yari azi ko ayo yakoranye na RWANDA FOAM nta gaciro yari afite.

Uko Urukiko rubibona

Ingingo ya 64 y'itegeko nº 45/2011 ryo kuwa 25/11/2011 rigena amasezerano iteganya ko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya".

Ku byerekeye amasezerano y'ubugure, ingingo ya 263 y'Itegeko ryo kuwa 30/07/1888 rishyiraho Urwunge rw'amategeko y'imbonezamubano, ibyerekeye imirimo nshinganwa cyangwa amasezerano (CC LIII), iteganya ko igurisha ari amasezerano atuma umwe yiyemeza gutanga ikintu naho undi akishyura igiciro cyemeranyijwe. Ashobora gukorwa mu nyandiko-mvaho cyangwa se mu nyandiko bwite, naho ingingo ya 264 yaryo ikavuga ko « igurisha riba ryuzuye hagati y'abagiranye amasezerano kandi umugurisha akegurira burundu umuguzi

icyagurishijwe mu gihe bumvikanye ku kintu no ku giciro cyacyo n'ubwo ikigurishwa kitari cyatangwa n'ikiguzi cyacyo kikaba kitari cyishyurwa ».

Ku birebana n'igurisha ry'ibintu bitimukanwa, ingingo ya 282 y'itegeko rimaze kuvugwa iteganya ko inshingano yo gushyikiriza ibitimukanwa iba yuzuye ku ruhande rw'umugurisha iyo atanze imfunguzo, niba ari inyubako, cyangwa iyo yatanze impapuro zigaragaza nyirikintu.

Mu nyandiko iri muri dosiye yiswe "contrat de vente" yakorewe imbere ya Noteri wa Leta, bigaragara ko tariki ya 10/03/1992, RWANDA FOAM yagurishije NZISABIRA Trojan inzu iri mu kibanza nº 33 i Cyangugu, ku giciro cy'amafaranga 5.500.000 Frw, yiyemeza no gukora ibishoboka byose kugira ngo iyo nzu imwandikweho (ingingo ya 1- 4).

Mu ibaruwa nº 73/MAT/171, umuyobozi wa RWANDA FOAM yandikiye NIYONDAMYA Jean Jacques, yamusabaga kumuha "certificat d'enregistrement" yari ifitwe na BCR kugira ngo hakorwe "mutation" y'icyo kibanza hagati y'Abazungura ba MPUNYU Zacharie na RWANDA FOAM SARL ku ruhande rumwe, no hagati ya RWANDA FOAM na NZISABIRA Trojan ku rundi ruhande, bigaragaza ko RWANDA FOAM yubahirizaga ibikubiye mu masezerano amaze kuvugwa.

Urukiko rurasanga ayo masezerano yabaye hagati ya RWANDA FOAM na NZISABIRA afite agaciro hagati y'abayagiranye kuko itagaragaza icyayakuyeho, ikaba rero itavuga ko nta ngaruka agomba kuyigiraho.

Ku byerekeranye n'ibyo RWANDA FOAM iburanisha by'uko itigeze itunga iyo nzu, ikaba atariyo yayihaye NZISABIRA, urukiko rurasanga nta shingiro bifite, mu gihe ivuga ko MPUNYU yayitanze kugirango hishyurwe umwenda wayo, ikagurishwa NZISABIRA wishyuye umwenda RWANDA FOAM mu mwanya wa MPUNYU, akaba ari muri ubwo buryo inzu yamugezeho, habanje gukorwa amasezerano yavuzwe, aho RWANDA FOAM yavugaga ko igurishije NZISABIRA inzu iri mu kibanza nº 33 i Cyangugu, ndetse ikagira uruhare rugaragara mu gutangiza ibyo guhinduza iyo nzu (mutation), byaburijwemo n'uko NZISABIRA yapfuye, nyuma y'aho hakabaho urubanza abazungura ba Omar ABDULAZIZ barezemo gukuraho "certificat d'enregistrement" yari icyanditse kuri MPUNYU Zacharie.

Ku byerekeranye n'uko nyuma y'ayo masezerano habaye andi hagati ya MPUNYU na NZISABIRA urukiko rurasanga ntayo ababuranyi barugaragarije, ku buryo rwakwemeza koko ko yabayeho, uretse ibivugwa mu ibaruwa nº 18.04.081/4189 Minisitiri w'Imirimo ya Leta n'Ingufu yandikiye Umuyobozi w'Imisoro kuwa 30/06/1993 ko yayimugurishije ku giciro cya 5.700.000 Frw, na cyane cyane ko "mutations" zasabwaga na RWANDA FOAM zagombaga gukorwa hagati y'Abazungura ba MPUNYU Zacharie na RWANDA FOAM SARL ku ruhande rumwe, no hagati ya RWANDA FOAM na NZISABIRA Trojan ku rundi ruhande.

c. Ishingiro ry'indishyi zisabwa n'Abazungura ba Nzisabira Trojan

Ababuranira Abazungura ba NZISABIRA bavuga ko amasezerano y'ubugure NZISABIRA yagiranye na RWANDA FOAM afite agaciro kuko nta yandi masezerano yigeze igaragaza, akaba ari itegeko hagati yabo nk'uko biteganywa n'ingingo ya 64 y'itegeko nº 45/2011 ryo kuwa 25/11/2011 rigena amasezerano, akaba yaseswa mu gihe abayagiranye babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko kandi akubahirizwa nta buryarya.

Bavuga ko mu ngingo ya 5 y'ayo masezerano, hateganyijwe ko RWANDA FOAM ihagarariwe n'Umuyobozi Mukuru wayo nk'umugurisha izirengera ingaruka zose NZISABIRA nk'uguze yazahura nazo mugihe azaba ahungabanyijwe ku burenganzira afite ku nzu iri mu kibanza nº 33 kiri i Kamembe, akaba ari muri urwo rwego Abazungura ba NZISABIRA, nk'abafite uburenganzira ku mutungo w'umubyeyi wabo, bayisaba kubahiriza ibyo yiyemeje, kuko ibyari byateganyijwe byabayeho nyuma y'uko ASSINI Omar nk'umuzungura wa Omar ABDULAZIZ na ZURA atsindiye burundu urubanza rwabakuye mu nzu baguze na RWANDA FOAM, ikaba igomba rero kubazubiza amafaranga y'ikiguzi cy'inzu (303, 307 al 1 agace ka 1 n'aka 4, 310 CCLIII) ahwanye na 5.500.000 Frw hiyongereyeho agaciro ifite uyu munsi kagaragajwe n'umuhanga ka 44.333.488 Frw, amafaranga y'ubukode angana na 37.100.000 Frw akomeza kubarwa kugeza urubanza ruciwe (700.000 Frw x amezi 53 inzu zimaze zitari mu maboko yabo) n'indishyi z'amafaranga yatanze ikurikirana urubanza angana na 3.000.000 Frw mu rukiko rubanza na 5.000.000 Frw mu Rukiko rw'Ikirenga.

Bashingiye ku ngingo za 258, 276 CCLIII, ababuranira Abazungura ba NZISABIRA basobanura ko igurisha ry'ikintu cy'undi ari imfabusa kandi rishobora gutangirwa indishyi iyo umuguzi atigeze amenya ko icyo kintu ari icy'undi, ko rero amasezerano hagati ya NZISABIRA na RWANDA FOAM ari impfabusa kuko yamugurishije ibitari ibyayo ibizi neza, bikabangiriza mu migambi y'ubuzima bwabo, bikabatera akababaro umuhangayiko no kubaho nabi kandi umubyeyi wabo yari yarabateganyirije, bikabangiriza n'igenamigambi bari bakoze iyo baza kugumana umutungo wabo, ikaba igomba kubibahera indishyi z'akababaro zingana na 6.000.000 Frw.

Ababuranira Abazungura ba NZISABIRA basanga mu rwego rwo kutabakerereza, no mu nyungu z'ubutabera, mu gihe urubanza rwaba rubaye ndakuka, ko rwategeka igihano gihatira RWANDA FOAM kururangiza cyo gutanga amafaranga 100.000 Frw y'ubukererwe abazwe buri munsi, no gutegaka irangizarubanza ry'agateganyo.

Ababuranira RWANDA FOAM bavuga ko izo ndishyi zose nta shingiro zifite kuko nta n'ibimenyetso abazisaba bazitangira, ko "rapport dexpertise" y'inzu ari iyo bikoreye kandi ikaba igaragaza ko inzu ari iya MPUNYU Zacharie, ikaba itaherwaho mu rubanza ruregwa RWANDA FOAM. Bavuga ko Abazungura ba NZISABIRA nta gisubizo batanze ku byo babasabye kugaragaza by'aho bishyuriraga imisoro, mu gihe buri wese azi neza ko gutanga imisoro ari inshingano, bakaba rero ntaho bashingira baka indishyi. Bavuga kandi ko abaregera izo ndishyi nta nyandiko yerekana aho baba baraherewe uburenganzira bwo kubaka amazu bavuga ko bongeye mu kibanza, ngo bagaragaze ko babyatse mu izina rya RWANDA FOAM.

Uko urukiko rubibona

- Ku byerekeye gusubizwa ikiguzi cy'inzu n'indishyi z'akababaro zingana na 6.000.000 Frw.

[20] Ingingo ya 276 CC LIII iteganya ko igurisha ry'ikintu cy'undi ni imfabusa, rishobora gutangirwa indishyi iyo umuguzi atigeze amenya ko icyo kintu ari icy'undi

[21] Iyi ngingo yumvikanisha ko ubugure bw'ikintu cy'undi ari imfabusa, ko kandi uwakiguze atazi ko atari icy'uwakimugurishije ashobora guhabwa indishyi.

[22] Nk'uko byasobanuwe haruguru, RWANDA FOAM yagurishije NZISABIRA inzu iri mu kibanza nº 33 i Cyangugu, uyu akaba atari azi ko atari iya RWANDA FOAM kuko byaje kugaragara mu rubanza RCA 0046/05/HC/CYG abazungura ba Omar ABDULAZIZ bahagarariwe na ASSIN Omar barezemo Leta y'u Rwanda ihagarariwe na Minisiteri y'Ubutaka, gutuza abantu no kurengera ibidukikije, basaba gutesha agaciro «certificat d'enregistrement nº VOL RVIII Folio 21» y'icyo kibanza yanditse kuri MPUNYU Zacharie, ko inzu ari iyabo, bakayisubizwa, ayo masezerano rero akaba ari imfabusa, bityo Abazungura ba NZISABIRA bakaba bagomba gusubizwa amafaranga 5.500.000 Frw NSIZABIRA yatanze y'ikiguzi cy'inzu, bakabiherwa n'indishyi.

[23] Ku byerekeye ingano y'izo ndishyi, Urukiko rurasanga izo Abazungura ba NZISABIRA basaba batagaragaza uburyo bazibazemo, bityo mu bushishozi bakaba bagenerwa izihwanye na 2.000.000 Frw.

- Indishyi z'agaciro k'inzu n'ibyayongeweho.

[24] Ku byerekeye amafaranga 44.333.488 y'agaciro k'inzu ifite ubu, Abazungura ba NZISABIRA basaba bashingiye kuri raporo batanze yakozwe n'umuhanga, urukiko rurasanga batazigenerwa kubera ko inzu yeguriwe ba nyirayo, ibyo bavuga ko bongereyeho akaba aribo ubu babifite, bikaba rero bitaryozwa RWANDA FOAM.

[25] Ibi ni nako abahanga mu mategeko François Terré na Philippe Simler babibona, basobanura ko mu gihe umuntu akurikiranye umutungo we utimukanwa k'uwufite (action en revendication) bene izo indishyi z'ibyakozwe ku nzu biyongerera agaciro bitangwa n'usubijwe umutungo kugirango atigwizaho umutungo nta mpamvu[2].

- Ku byerekeye amafaranga y'ubukode angana na 37.100.000 Frw akomeza kubarwa kugeza urubanza ruciwe

[2] Le possesseur, spécialement s"il s"est cru propriétaire et si la possession a duré un certain temps, a pu entreprendre sur le bien dont il est évincé des travaux constitutifs d"améliorations. En laisser purement et simplement le bénéfice au revendiquant eût procuré à ce dernier un enrichissement injustifié. La jurisprudence, s"inspirant de la tradition romaine et de dispositions éparses dans le Code civil, a retenue le principe de l"indemnisation du possesseur évincé, en fonction, non plus, cette fois, de sa bonne ou mauvaise foi, mais de la nature des travaux entrepris ou frais exposés, appelés impenses".
Le Droit civil, Les biens, par François Terré, Philippe Simler , p. 406.

[26] Urukiko rurasanga Abazungura ba NZISABIRA batagomba guhabwa amafaranga y‟ubukode bw‟inzu kubera atari iyabo kuko yasubijwe bene yo nk‟uko byasobanuwe haruguru, bakaba rero batashobora kugira uburenganzira ku bukode bwayo kuva bayisubije Abazungura ba Omar ABDULAZIZ kugeza ubu.

- Indishyi z'amafaranga y'ikurikiranarubanza ku nzego zombi angana na 3.000.000 Frw mu rukiko rubanza na 5.000.000 Frw mu Rukiko rw'Ikirenga.

[27] Urukiko rurasanga Abazungura ba NZISABIRA bakwiye guhabwa amafaranga y'ikurikiranarubanza n'igihembo cya avoka kuko mu gukurikirana uru rubanza ku nzego zombi hari ibyo batakaje, ariko ntiberekana uburyo babibazemo, bityo mu bushishozi bw'urukiko bakaba bahabwa 800.000 Frw ku nzego zombi baburaniyeho akubiyemo gukurikirana urubanza n'igihembo cya avoka.

[28] Urukiko rurasanga indishyi zose RWANDA FOAM igomba kwishyura Abazungura ba NZISABIRA Trojan zingana na 5.500.000 Frw y'ikiguzi cy'inzu + 2.000.000 Frw y'indishyi z'akababaro + 800.000 Frw y'ikurikiranarubanza n'igihembo cya avoka, yose hamwe akaba 8.300.000 Frw.

- Igihano gihatira RWANDA FOAM kurangiza urubanza by'agateganyo.

[29] Urukiko rurasanga uru rubanza ruciwe ku rwego rwa nyuma, bikaba atari ngombwa ko hategekwa irangizwa ryarwo ry'agateganyo.

[30] Urukiko na none rurasanga ntacyo rwagaragarijwe cyatuma RWANDA FOAM itazarurangiza ku buryo hateganywa igihano kiyihatira kwishyura.

III. ICYEMEZO CY'URUKIKO

[31] Rwemeje kwakira inzitizi y'iburabubasha bw'abarega n'iyo kutagira inyungu zatanzwe na RWANDA FOAM.

[32] Rwemeje ariko ko nta shingiro zifite.

[33] Rwemeje ko ubujurire bwatanzwe n'Abazungura ba NZISABIRA Trojan bufite ishingiro kuri bimwe.

[34] Rutegetse RWANDA FOAM kwishyura Abazungura ba NZISABIRA Trojan indishyi zingana na 8.300.000 Frw nk'uko zasobanuwe haruguru.

[35] Rutegetse RWANDA FOAM kwishyura amafaranga 24.000 y'amagarama y'urubanza, itayatanga mu gihe cy'iminsi umunani (8), ayo mafaranga agakurwa mu byayo ku ngufu za Leta.

[36] Ruvuze ko urubanza RCOM 0248/12/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 26/11/2012 ruhindutse kuri byose.