UMUJYI WA KIGALI v. KAGABO

[Rwanda URUKIKO RW'IKIRENGA – RADA0017/11/CS (Nyirinkwaya, P.J., Kayitesi R. na Hatangimbabazi, J.) 04 Gicurasi 2012]

Amategeko agenga imanza z'ubutegetsi – Ibyemezo by'ubuyobozi – Ihame ry'uko icyemezo cy'ubuyobozi kigomba kubahirizwa uko kiri nk'aho gikurikije amategeko, mbere yo kuregerwa kigasuzumwa n'Urukiko (privilège du préalable) – Leta isonewe kubanza kurega kugirango ifate ibyemezo bishyirwa mu bikorwa n'umuturage utabigizemo uruhare.

Amategeko agenga imanza z'ubutegetsi – Ibyemezo by'ubuyobozi – Ihame rya "privilege d'execution d'office" cyangwa "Execution forcee" – Ni imbaraga umuyobozi wo mu rwego rwa Leta akoresha, bigatuma icyemezo afashe wenyine giha uburenganzira cyangwa inshingano ku bandi bantu – Iryo hame rivuze ko ubuyobozi bushobora gukoresha ingufu za Leta kugirango icyemezo bufashe gishyirwe mu bikorwa ariko ubwo burenganzira bw'ubuyobozi bwo kwifashisha ingufu za Leta mu kurengera inyungu rusange iyo bubangamiye inyungu z'umuntu ku giti cye bugomba kwemezwa n'icyemezo cy'Urukiko gishingiye ku mpamvu eshatu, kuba hari itegeko ribiteganya, iyo nta bundi buryo bwo kurengera inyungu rusange n'iyo hari impamvu yihutirwa ituma icyemezo cy'ubuyobozi gishyirwa mu bikorwa cyangwa imwe muri izi – Iyo ubuyobozi bukoresheje ingufu za leta (recours à l'éxécution forcée) kandi nta n'imwe muri izo mpamvu ihari, cyangwa umuntu atanze kubahiriza ibyemezo byabwo, ubuyobozi buba bukoze ikosa bugomba kwirengera.

Incamake y'ikibazo: Imodoka ya Kagabo MERCEDES Benz RAB196D yafashwe na police ku mabwiriza y'Umujyi wa Kigali kuko yangije imikindo ibiri igihe yakoraga impanuka bamusaba ko yakwishyura 2.000.000Frw. Nyuma yo gusaba ko imodoka ye yarekurwa ariko ntabyemerwe yareze Umujyi wa Kigali mu Rukiko Rukuru asaba ko yahabwa indishyi zinyuranye kubera ifatira ry'imodoka ye agasubizwa n'imodoka ye. Urwo Rukiko rwemeje ko Umujyi wa Kigali umuha indishyi zitandukanye kandi rutegeka ko imodoka na carte jaune bisubizwa nyirabyo.

Urwo rukiko rwashingiye ko icyemezo cyafashwe n'Umujyi wa Kigali cyo gufatira imodoka MERCEDES Benz RAB196D, kugeza igihe Kagabo Achille yishyuriye 2.000.000Frw, cyashingiwe ku mabwiriza rusange akubiye mu gitabo cyo mu gushyingo 2004 cyitwa "igitabo cy'ibihano by'amwe mu makosa arangwa mu mujyi wa Kigali", atagira uwayashyizeho umukono, ataje gushyira mu bikorwa itegeko ry'ibidukikije kuko ryasohotse nyuma yayo, kandi ayo mabwiriza akaba anyuranye n'amategeko yagombye kuyaha agaciro, akaba ataranyuze mu nzira agomba kunyuramo kugira ngo agire ireme yubahirizwe. Byongeye icyo cyemezo cyaje kiremereye ukurikije ikosa cyahanaga ryakorwa na buri wese ushobotse kuko gihana kuba umukindo warangijwe n'impanuka kandi ntawe uyikururira.

Umujyi wa Kigali wajuriye mu Rukiko rw'Ikirenga uvuga ko hari ihame y'uko ibyemezo by'Ubuyobozi byubahirizwa uko biri (privilège du préalable et d'éxécution forcée) bikaregerwa nyuma bityo Kagabo yagombaga kuba yarabanje kwishyura imikindo yangije hashingiwe ku cyemezo cy'Umujyi wa Kigali, akabona kujya kuregera inkiko. Unavuga ko n'ubwo ayo mahame ataburanishijweho, Urukiko rwari kwibwiriza rukayashingiraho kuko ruzi amategeko, naho ku byerekeye indishyi uvuga ko indishyi zaciwe Kagabo nta kibazo zifite kuko zishingiye ku mabwiriza ya RURA. Ku bijyanye n'indishyi zingana na 25.000Frw ku munsi Urukiko rwageneye Kagabo Umujyi wa Kigali uvuga ko ari nyinshi, kubera ko igihe imodoka ye imaze ifatiriwe kitazwi.

Kagabo we yiregura avuga ko amahame cyangwa icyo bita "*principes doctrinaires",* bidashobora kwifashishwa mu gihe hari amategeko. Bityo ibyo Umujyi wa Kigali wakoze byo kumutegeka kwishyura imikindo yangiritse, aho wakwishyuje umwishingizi we "Phoenix insurance S.A", binyuranyije n'amategeko y'ubwishingizi, kuko uwangirijwe agomba gukurikirana umwishingizi aho gukurikirana uwishingiwe. Naho ku byerekeye indishyi avuga ko we asanga Urukiko rwarazigennye mu bushishozi bwarwo kuko yari yasabye nyishi ariko rumugenera izo. Yatanze n'ubujurire bwuririye ku bundi asaba ko yagenerwa 30.000Frw x 354(jrs) yakodesheje indi modoka kuva aho urubanza rwo mu Rukiko Rukuru rubereye, igihembo cya Avocat n'amafaranga y'ikurikiranarubanza byiyongera ku yo yari yagenewe mu rukiko rubanza, agasoza asaba Urukiko ko rwashyiraho igihano gihatira Umujyi wa Kigali (astreinte) kwishyura vuba.

Ku bijyanye n'ubujurire bwuririye ku bundi Umujyi wa Kigali uvuga ko gukodesha indi modoka ariwe wabyiteye kuko iyo ashyira mu bikorwa icyemezo cy'Umujyi wa Kigali, aba yarahise asubizwa imodoka ye, naho ku bijyanye n'ikurikiranarubanza n'igihembo cya Avocat, avuga ko niba ahagararriwe mu rubanza atagomba kwaka amafaranga y'ikurikiranarubanza, ko ahubwo yasaba igihembo cya avoka. Kubirebana n'igihano kiwuhatira kwishyura, Umujyi wa Kigali uvuga ko ufite amafaranga, ko uramutse utsinzwe ufite ubushobozi bwo kwishyura, akaba ari nta mpamvu yo gushyiraho igihano kiwuhatira kwishyura.

Incamake y'icyemezo: 1. Ibyemezo by'ubuyobozi bigomba kubahirizwa uko biri nk'aho bikurikije amategeko, mbere yo kuregerwa bigasuzumwa n'Urukiko (privilège du préalable) kandi Leta isonewe kubanza kurega kugirango ifate ibyemezo bishyirwa mu bikorwa n'umuturage utabigizemo uruhare.

2. Iryo hame rivuze ko ubuyobozi bushobora gukoresha ingufu za Leta kugirango icyemezo bufashe gishyirwe mu bikorwa ariko ubwo burenganzira bw'ubuyobozi bwo kwifashisha ingufu za Leta mu kurengera inyungu rusange iyo bubangamiye inyungu z'umuntu ku giti cye bugomba kwemezwa n'icyemezo cy'Urukiko gishingiye ku mpamvu eshatu, kuba hari itegeko ribiteganya, iyo nta bundi buryo bwo kurengera inyungu rusange n'iyo hari impamvu yihutirwa ituma icyemezo cy'ubuyobozi gishyirwa mu bikorwa cyangwa imwe muri izi ariko iyo ubuyobozi bukoresheje ingufu za leta (recours à l'éxécution forcée) kandi nta n'imwe muri izo mpamvu ihari, cyangwa umuntu atanze kubahiriza ibyemezo byabwo, ubuyobozi buba bukoze ikosa bugomba kwirengera.

3. Icyemezo cyo gufatira imodoka no gutegeka ko habanza kwishyurwa ihazabu ni icyemezo cy'ubuyobozi bw'Umujyi wa Kigali arikokibangamiye inyungu z'umuntu ku giti cye, kuko a gishingiye ku mabwiriza atubahirije imihango n'inzira zisabwa kugirango agire agaciro, nko kuba atagira uwayasinyeho, ntabe yaratangajwe mu igazeti ya Leta, kandi ashyirwaho nta tegeko ashingiyeho aje gushyira mu bikorwa, bityo amabwiriza y'Umujyi wa Kigali n'ibyemezo biyakubiyemo, harimo n'icyerekeye ibihano ku wangije ibiti binyuranyije n'amategeko bisobanuye ko ifatira ry'imodoka ya Kagabo rishingiye kuri ayo mabwiriza naryo rinyuranyije n'amategeko.

4. Nta nyungu itaziguye (intérêt immediat) cyangwa impamvu yihutirwa yatuma Police igomba gufatira imodoka y'umuntu ikamuvutsa uburenganzira bwo kuyigendamo kandi ifite ibiyiranga, nawe afite aho abarizwa, kuko amande atishyuwe ako kanya, nta kintu byari byangirije.

5. Impamvu y'ubujurire bw'Umujyi wa Kigali y'uko Urukiko Rukuru rwari kwibwiriza rugashingira ku mahame, si ikirego gishya, kuko ayo mahame mu busanzwe azwi kandi ziteganyijwe kandi muri izo mpamvu nta n'imwe ayo mahame yujuje. Bityo Indishyi

mbonezamusaruro zingana na 25.000Frw ku munsi, nk'uko zemejwe n'Urukiko Rukuru, zikaba zikomeza kubarwa kugeza uyu munsi urubanza ruciwe muri uru Rukiko.

6. Indishyi mbonezamusaruro Kagabo yanewe zifite ishingiro kubera ikosa ry'Umujyi wa Kigali ryo gufatira imodoka ye nta tegeko bishingiyeho kandi hari ubundi buryo bwashobokaga ngo imikindo yishyurwe.

7. Nta kimenyetso kigaragaza ko imodoka ya Kagabo yagurishijwe bityo amafaranga y'ubukode bw'indi modoka asaba akaba ntaho Urukiko rwashingira ruyamugenera.

8. Amafaranga y'ikurikirana rubanza n'igihembo cya avoka yagenwe n'urukiko rubanza agumyeho ariko mu bushishozi bw'Urukiko akagenerwa andi mu rwego rw'ubujurire.

9. Mu gihe nta kimenyetso Kagabo atanga kigaragaza ko Umujyi wa Kigali wagurishije iyo modoka Umujyi wa Kigali ntiwacibwa igihano kiwuhatira kwishyura "astreinte" kuko ntacyabuza ko Kagabo asubizwa imodoka ye.

Ubujurire nta shingiro bufite;
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe;
Amagarama y'urubanza ahereye ku Mujyi wa Kigali.

Amategeko yashingiweho:
Itegeko N°18/2004 ryo ku wa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 346.
Itegeko –Teka N°20/75 ryo kuwa 20 Kamena 1975 rigena ubwishingire, ingingo 37.

Ibitekerezo bya bahanga:
J. Rivero et J. Waline, *Droit administratif,* Paris, Dalloz, 20édition, p.334.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Imodoka y'uwitwa Kagabo Achille MERCEDES Benz RAB 196 D ifite ubwishingizi muri "Phoenix of Rwanda Assurance S.A" yakoze impanuka yangiza imikindo ibiri n'icyapa cya "*Hardware unique*", ifatwa ako kanya n'ishami rya Polisi hakurikijwe amabwiriza y'Umujyi wa Kigali. Kagabo yasabye ko iyo modoka yarekurwa ntiyabyemererwa, kuko ayo mabwiriza ateganya ko imodoka zangije igiti zigomba gufatwa.

[2] Kagabo yatanze ikirego mu Rukiko Rukuru, asaba gusubizwa imodoka ye na carte jaune, n'uko Umujyi wa Kigali wamuha indishyi zinyuranye kubera ifatira ry'imodoka ye. Mu rubanza RAD0008/10/HC/KIG rwaciwe kuwa 19/04/2011, Urukiko rwemeza ko iyo modoka irekurwa na carte jaune bigahita bisubizwa nyirabyo, Kagabo Achille, rutegeka Umujyi wa Kigali kumuha 25.000Frw ku munsi kuva imodoka yafatirwa kugeza urubanza rusomwe, ni ukuvuga 6.475.000Frw, no kumuha indishyi z'akababaro n'ayikurikiranarubanza n'igihembo cy'avoka, yose hamwe aba 7.475.000Frw.

[3] Impamvu Urukiko rwashingiyeho, ni uko icyemezo cyafashwe n'Umujyi wa Kigali cyo gufatira imodoka MERCEDES Benz RAB 196 D, kugeza igihe Kagabo Achille yishyuriye 2.000.000Frw, cyashingiwe ku mabwiriza rusange akubiye mu gitabo cyo mu Ugushyingo 2004 cyitwa "igitabo cy'ibihano by'amwe mu makosa arangwa mu mujyi wa

Kigali", atagira uwayashyizeho umukono, ataje gushyira mu bikorwa itegeko ry'ibidukikije kuko ryasohotse nyuma yayo, kandi ayo mabwiriza akaba anyuranye n'amategeko yagombye kuyaha agaciro, akaba ataranyuze mu nzira agomba kunyuramo kugira ngo agire ireme yubahirizwe. Byongeye icyo cyemezo cyaje kiremereye ukurikije ikosa cyahanaga ryakorwa na buri wese ushobotse kuko gihana kuba umukindo warangijwe n'impanuka kandi ntawe uyikururira.

[4] Umujyi wa Kigali wajuririye mu Rukiko rw'Ikirenga uvuga ko Urukiko Rukuru rwirengagije ko Kagabo yagombaga kubahiriza icyemezo cy'ubuyobozi akishyura ibyangijwe, nyuma akabona kuregera inkiko, n'uko yagenewe indishyi zidafite ishingiro. Umucamanza w'ibanzirizasuzuma yafashe icyemezo kuri ubwo bujurire yemeza ko bwakozwe mu buryo n'inzira bikurikije amategeko.

[5] Urubanza rwaburanishijwe mu ruhame kuwa 28/02/2012, Umujyi wa Kigali uhagarariwe n'intumwa ya Leta Me Sebazungu Alphonse, naho Kagabo Achille ahagarariwe na Me Nkundabarashi Moise.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

Kumenya niba Kagabo Achille yaragombaga kubanza kubahiriza icyemezo cy'Umujyi wa Kigali, akishyura imikindo yangijwe, nyuma akabona gutanga ikirego mu Rukiko.

[6] Uburanira Umujyi wa Kigali avuga ko n'ubwo icyemezo cy'Umujyi wa Kigali cyari kuba kidakurikije amategeko, Kagabo yagombaga kubahiriza amahame y'uko ibyemezo by'Ubuyobozi byubahirizwa uko biri (privilège du préalable et d'éxécution forcée), bigashobora kuregerwa nyuma, maze akaba yarishyuye imikindo yangije hashingiwe ku cyemezo cy'Umujyi wa Kigali, akabona kujya kuregera inkiko. Avuga ko n'ubwo ayo mahame ataburanishijweho, Urukiko rwari kwibwiriza rukayashingiraho kuko ruzi amategeko, rukemeza ko Kagabo atubahirije icyemezo cy'Umujyi wa Kigali nk'uko kigaragara mu mabwiriza yawo yo muri 2004, bityo ntirunamugenere indishyi.

[7] Uburanira Kagabo avuga ko iyo ngingo irebana n'uko hari amahame atubahirijwe itakwakirwa kuko *"principes doctrinaires",* zidashobora kwifashishwa mu gihe amategeko ahari. Asobanura ko ibyo Umujyi wa Kigali wakoze byo gutegeka Kagabo kwishyura imikindo yangiritse, aho wakwishyuje umwishingizi we "Phoenix insurance S.A", binyuranyije n'amategeko y'ubwishingizi, kuko uwangirijwe agomba gukurikirana umwishingizi aho gukurikirana uwishingiwe.

[8] Ku byerekeye amahame y'uko ibyemezo by'Ubuyobozi byubahirizwa uko biri, nyuma byaba bidakurikije amategeko bigashobora kuregerwa (Privilège du préalable et privilège d'éxécution d'office), n'ubwo amategeko y'u Rwanda ntacyo ayavugaho, aya mahame arazwi nk'uburyo bwemewe butuma ibyemezo by'ubuyobozi byubahirizwa uko biri, kuko biba bigamije kurengera inyungu rusange.

[9] Abahanga mu mategeko basobanura mu nyandiko zabo ko "privilège du préalable" ari ihame ry'uko icyemezo cy'ubuyobozi kigomba kubahirizwa uko kiri nk'aho gikurikije amategeko, mbere yo kuregerwa kigasuzumwa n'Urukiko (La decision exécutoire bénéficie, avant toute vérification par le juge, d'une présomption de conformité au droit)[1]. André de Laubadère avuga ko icyo iryo hame risobanuye mu magambo make, ni uko Leta isonewe

[1] *Idem*, p.354.

kubanza kurega kugirango ifate ibyemezo bishyirwa mu bikorwa n'umuturage utabigizemo uruhare (L'administration se trouve dispensée, pour réaliser ses droits, de s'adresser prèalablement à un juge; si l'administré conteste les prétentions de l'administration, c'est lui qui devra saisir le juge).

[10] Naho "privilège d'exécution d'office ou "Execution forcée" ni uburyo (contrainte) umuyobozi wo mu rwego rwa Leta akoresha, bigatuma icyemezo afashe wenyine giha uburenganzira cyangwa inshingano ku bandi bantu (acte juridique accompli unilatéralement par une autorité publique administrative et créant pour les tiers des droits ou des obligations)[2]. Iryo hame rivuze ko ubuyobozi bushobora gukoresha ingufu za Leta kugirango icyemezo bufashe gishyirwe mu bikorwa (ce privilège signifie que l'administration peut employer la contrainte contre le particulier réfractaire en recourant à la force publique et sans saisir le juge).

[11] Ubwo burenganzira bw'ubuyobozi bwo kwifashisha ingufu za Leta mu kurengera inyungu rusange, ariko bubangamiye inyungu z'umuntu ku giti cye, bukomoka ku cyemezo cy'Urukiko[3] cyemeje ko bushoboka ku mpamvu eshatu cyangwa imwe murizo zikurikira:

Iyo hari itegeko ribiteganya (une loi qui prévoit expréssement le recours à la force publique pour faire exécuter un acte unilatéral ou éxécution forcée).

Iyo nta bundi buryo bwo kurengera inyungu rusange (absence d'autre voie de droit pour sauvegarder l'intérêt général).

Iyo hari impamvu yihutirwa ituma icyemezo cy'ubuyobozi gishyirwa mu bikorwa (Exécution forcée en cas d'Urgence, affaire Société immobilière Saint-Just, TC, 1902).

[12] Abahanga mu mategeko bavuga na none ko iyo ubuyobozi bukoresheje ingufu za leta (recours à l`éxécution forcée) kandi nta n'imwe muri izo mpamvu ihari, cyangwa umuntu atanze kubahiriza ibyemezo byabwo, ubuyobozi buba bukoze ikosa bugomba kwirengera (Lorsque l'administration procède à une execution forcée en dehors de ces 3 hypothèses ou encore lorsqu'il n'y a pas de résistance, de l'administré, elle commet une faute de nature à engager sa responsabilité[4]).

[13] Ku mpamvu ya 1 y'uko haba hari itegeko riteganya iryo fatira police yaba yarashingiyeho: bigaragara ko icyemezo cyo gufatira imodoka ya Kagabo, no gutegeka ko abanza kwishyura ihazabu ari icyemezo cy'ubuyobozi bw'Umujyi wa Kigali cyashyizwe mu bikorwa na Police, ikibazo akaba ari ukumenya niba hari imwe mu mpamvu zimaze gusobanurwa yatumaga iryo fatira rishoboka, kuko ari icyemezo kibangamiye inyungu z'umuntu ku giti cye.

[14] Urukiko rusanga, nk'uko Urukiko Rukuru rwabisobanuye, ayo mabwiriza anyuranyije n'amategeko, kuko atubahirije imihango n'inzira zisabwa kugirango agire agaciro, nko kuba atagira uwayasinyeho, ntabe yaratangajwe mu igazeti ya Leta, ariko cyane cyane, ashyirwaho nta tegeko ashingiyeho aje gushyira mu bikorwa, rikaba ryarashyizweho nyuma, bivuze ko ari impitagihe. Bityo amabwiriza y'Umujyi wa Kigali n'ibyemezo biyakubiyemo, harimo

[2] J.Rivero et J.Waline, *Droit administratif*, Paris, Dalloz, 20eme édition, p.334.
[3] http://www.luiss.it/erasmuslaw/francia/amm-03.htm; page 1. http://www.lemondepolitique.fr/cours/droit-public/actes-administrat...., 1920.
[4] http://www.lemondepolitique.fr/cours/droit-public/actes-administrat, page 20.

n'icyerekeye ibihano ku wangije ibiti bikaba binyuranyije n'amategeko, bisobanura ko ifatira ry'imodoka ya Kagabo Achille rishingiye kuri ayo mabwiriza rinyuranyije n'amategeko.

[15] Ku mpamvu ya 2 yo kuba nta bundi buryo bwo kurengera imikindo ibiri yangijwe, uretse gufatira imodoka ya Kagabo, kugirango abanze yishyure amande y'ibyo biti, Urukiko rusanga hari ubundi buryo bwo kurengera ibyangijwe (inyungu rusange) kuko Kagabo yagaragaje ko imodoka ye ifite ubwishingizi bwa sosiyete "Phoenix Insurance", Umujyi wa Kigali ukaba warashoboraga guhita ukurikirana umwishingizi we hakurikjwe ibiteganywa n'ingingo ya 37 y'Itegeko –Teka N°20/75 ryo kuwa 20 Kamena 1975 rigena ubwishingire ivuga ko "*Uwangilijwe ahita arega uwishingiye uburyozwe bw'uwateye ubwo bwangize, ariko agomba kandi kugaragaza ikosa ry'uwo ubwangize bukomokaho. Uwishingiye nta wundi ashobora kwishyura amafaranga yose yishingiye cyangwa igice cyayo, uretse uwangilijwe*….". Umujyi wa Kigali kandi washoraga no kumutegeka kuba yishyuye nko mu gihe runaka, utagombye kumuvutsa uburenganzira bwo gukoresha imodoka, ugereranyije n'ingano y'ihazabu yagombaga gutangwa, ndetse washoboraga kumugenera ikindi gihano.

[16] Ku mpamvu ya 3 ishingiye k'ubwihutirwe yari gutuma Police igomba gufatira imodoka y'umuntu ikamuvutsa uburenganzira bwo kuyigendamo kandi ifite ibiyiranga, nawe afite aho abarizwa, urukiko rusanga nta nyungu itaziguye (intérêt immediat) yatumaga Police igomba gufatira imodoka ya Kagabo, ku buryo amande atishyuwe ako kanya, hari icyari kwangirika.

[17] Hashingiwe ku mategeko n'ibisobanuro byatanzwe haruguru, Urukiko rusanga kuba Umujyi wa Kigali warajuriye uvuga ko Urukiko Rukuru rwari kwibwiriza rugashingira ku mahame, atari ikirego gishya, nk'uko uburanira Kagabo Achille abivuga kuko ayo mahame mu busanzwe azwi kandi akurikizwa mu bijyanye n'ibyemezo by'ubutegetsi, ariko akaba agomba gushingira ku mpamvu zisobanutse zatanzwe haruguru. Uru Rukiko rukaba rusanga muri izo mpamvu nta n'imwe ayo mahame yujujuje, kugirango rube rwayashingiraho.

Ishingiro ry'indishyi mbonezamusaruro n'ingano yazo.

[18] Uburanira Umujyi wa Kigali avuga ko kuba haragenywe indishyi hashingiwe ku mabwiriza ya RURA nta kosa ririmo, ko ariko indishyi zingana na 25.000Frw ku munsi Urukiko rwagennye ari nyinshi, kubera ko igihe imodoka ya Kagabo Achille imaze kitazwi, ko ishobora kuba yari ishaje ku buryo itashoboraga gukora buri munsi, cyane ko itari imodoka ikoreshwa mu bucuruzi, ahubwo yari imodoka yatemberagamo, ikaba yagombye kubarirwa 20.000Frw ku munsi, mu minsi 20 mu kwezi kuko itagombaga kuba ikoreshwa mu gihe cy'ikiruhuko (samedi, dimanche, congé éventuel, ko n`indishyi zari kuba 6.800.000Frw.

[19] Uburanira Kagabo avuga ko n`ubwo mu Rukiko rubanza yari yasabye indishyi zingana na 89.000Frw ku munsi, Urukiko rukamugenera 25.000Frw ku munsi, asanga rwarashyize mu gaciro, ko ibyo bishingiye ku bushishozi bw'Urukiko, nta kosa abibonamo.

[20] Ku bijyanye n'ishingiro ry'indishyi zatanzwe, hashingiwe ku byasobanuwe haruguru, Urukiko rurasanga indishyi mbonezamusaruro Kagabo yagenewe zifite ishingiro kubera ikosa ry'Umujyi wa Kigali ryo gufatira imodoka ye nta tegeko bishingiyeho, hari ubundi buryo bwashobokaga ngo imikindo yishyurwe cyangwa se Kagabo agenerwe ikindi gihano, nta n`impamvu y'ubwihutirwe bw`icyemezo nk'icyamufatiwe, Kagabo ntavutswe uburenganzira bwe ku modoka igihe kirekire byitwa ko ariwe wagombaga kwishyura ibyangijwe kandi imodoka ifite ubwishingizi. Naho ku bijyanye n'ingano y'izo ndishyi, uru Rukiko rusanga izagenwe n'Urukiko Rukuru zingana na 25.000Frw ku munsi zikwiye

harebwe uko imodoka zikodeshwa mu mujyi wa Kigali, hatitawe ku cyo imodoka yakoraga cyangwa umubare w'iminsi yakoraga mu cyumweru kuko ari uburenganzira bw'umuntu bwo gukoresha imodoka ye mu minsi yose harimo n'iy'ikiruhuko, hakaba nta kigaragaza ko yari ishaje cyangwa irwaye ku buryo yagombaga kumara iminsi ihagaze, bityo ubujurire bw'Umujyi wa Kigali kuri iyo ngingo bukaba nta shingiro bufite.

Ubujurire bwuririye ku bundi bwatanzwe na Kagabo Achille.

[21] Uburanira Kagabo Achille avuga ko kuva aho urubanza rwo mu Rukiko Rukuru rubereye, imodoka yaje gutezwa cyamunara n'Umujyi wa Kigali, ko abonye ko kuzongera kuyisubizwa bizagorana, Kagabo yahise akodesha indi modoka atangaho 30.000Frw ku munsi. Avuga rero ko ayo masezerano y'ubukode yakozwe kuva kuwa 10/04/2011, bityo ngo akaba asaba 30.000Frw x 354(jrs) = 10.620.000Frw.

[22] Avuga kandi ko mu Rukiko Rukuru Kagabo achille yari yasabye 2.000.000Frw y'igihembo cya Avocat, na 2.000.000Frw y'ikurikiranarubanza, Urukiko Rukuru rukamugenera 1.000.000Frw gusa, ubu akaba asaba 1.000.000Frw y'ikurikirana rubanza mu bujurire, 1.000.000Frw y'igihembo cya Avoka w'urubanza rwa mbere na 1.000.000Frw y'igihembo cya Avoka mu bujurire.

[23] Ku bijyanye n'uko Kagabo yakodesheje imodoka, uburanira Umujyi wa Kigali avuga ko Kagabo ari we wabyiteye kuko iyo ashyira mu bikorwa icyemezo cy'Umujyi wa Kigali, aba yarahise asubizwa imodoka ye; naho ku bijyanye n'ikurikiranarubanza n'igihembo cya avocat, avuga ko niba Kagabo ahagarariwe mu rubanza atagomba kwaka amafaranga y'ikurikiranarubanza, ko ahubwo yasaba igihembo cya avoka.

[24] Uru rukiko rusanga iby'uko imodoka ye yagurishijwe nta kimenyetso abitangira, bityo amafaranga y'ubukode bw'indi modoka asaba akaba ntaho Urukiko rwashingira ruyamugenera.

[25] Urukiko rusanga ariko indishyi mbonezamusaruro zingana na 25.000Frw ku munsi, nk'uko zemejwe n'Urukiko Rukuru, zikomeza kubarwa kugeza uyu munsi urubanza ruciwe muri uru Rukiko. Ni ukuvuga ko guhera igihe urubanza ruciriwe n'Urukiko Rukuru kuwa 19/4/2011 kugeza kuwa 04/05/2012, umunsi rusomwe muri uru Rukiko, harimo iminsi 375 Kagabo Achille agomba kubarirwa indishyi mbonezamusaruro zingana na 25.000Frw x 375 = 9.375.000Frw.

[26] Ku bijyanye n'ikurikirana rubanza n'igihembo cya avoka, Urukiko rurasanga ayo Urukiko Rukuru rwari rwageneye Kagabo Achille akwiye, akaba gusa mu bushishozi bw'Urukiko yagenerwa ay'igihembo cy'avoka n`ikurikiranarubanza mu bujurire angana na 500.000Frw.

[27] Urukiko rusanga amafaranga Kagabo Achille agomba kwishyurwaa ari aya akurikira: 6.475.000Frw y'indishyi mbonezamusaruro, na 1.000.000Frw y'ikurikiranarubanza n'igihembo cya Avoka yari yagenewe n'Urukiko Rukuru, hakiyongeraho nanone 9.375.000Frw nk'uko yagaragajwe haruguru, hakiyongeraho 500.000Frw y'ikurikiranarubanza n'igihembo cy'avoka yagenwe n'uru Rukiko, yose hamwe akaba angana na 17.375.000Frw.

Igihano gihatira Umujyi wa Kigali kwishyura

[28] Uburanira Kagabo Achille avuga ko, kuba imodoka yaragurishijwe, bigaragara ko bizagorana kuyisubiza, bityo akaba asaba urukiko ko rwashyiraho igihano gihatira Umujyi wa Kigali (astreinte) kwishyura vuba.

[29] Uburanira Umujyi wa Kigali, avuga ko iyo modoka itagurishijwe, ngo kuko ihari, akemeza ko Umujyi wa Kigali ufite amafaranga, ko uramutse utsinzwe ufite ubushobozi bwo kwishyura. nta mpamvu yo gushyiraho igihano kiwuhatira kwishyura.

[30] Ingingo ya 346 y'Itegeko N°18/2004 ryo ku wa 20/6/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu ivuga ko "Iyo urukiko rufashe icyemezo mu manza z'ubutegetsi, rushobora gutegeka ubutegetsi gukora icyo rwemeje cyangwa kudakora icyo rubujije kandi rugateganya igihano cyubahirizwa guhera ku itariki rugena mu gihe icyo rwemeje cyaba kidakurikijwe".

[31] Urukiko rusanga mu gihe nta kimenyetso Kagabo atanga kigaragaza ko Umujyi wa Kigali wagurishije imodoka ivugwa muri uru rubanza, ntaho rwahera rutegeka "astreinte", kuko ntacyabuza ko Kagabo asubizwa imodoka ye, bityo igihano kiwuhatira kwishyura gisabirwa Kagabo, kikaba nta shingiro gifite.

III. ICYEMEZO CY'URUKIKO

[32] Rwemeje ko ubujurire bwatanzwe n'umujyi wa Kigali nta shingiro bufite.

[33] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Kagabo Achille bufite ishingiro kuri bimwe.

[34] Rwemeje ko indishyi mbonezamusaruro zingana na 25.000Frw nkuko zemejwe n`Urukiko Rukuru zikomeza kubarwa kugeza umunsi uru rubanza rusomeweho muri uru Rukiko.

[35] Ruvuze ko urubanza N° R.AD.0008/10/HCLKig rwaciwe n'Urukiko Rukuru kuwa 19/04/2011 ruhindutse ku birebana n'indishyi mbonezamusaruro, amafaranga y`ikurikiranarubanza n`igihembo cy`avoka.

[36] Rutegetse Umujyi wa Kigali kwishyura Kagabo Achille indishyi mbonezamusaruro, amafaranga y'ikurikiranarubanza n'igihembo cy'avoka, yose hamwe angana na 17.375.000 nk'uko byasobanuwe.

[37] Rutegetse Umujyi wa Kigali gutanga amagarama y'urubanza angana na 45.600Frw.