SONARWA GENERAL INSURANCE COMPANY Ltd (SONARWA) v. NYIRAGANZA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00047/2017/SC (Rugege P.J, Kayitesi na Mutashya, J) 23 Nzeri 2018]

Amategeko agenga ubwishingizi – Amasezerano y'ubwishingizi – Kuba uwahohotewe yandikiye ikigo cy'ubwishingizi agisaba kugena umuganga ugomba kujya mu kanama k'abaganga bemeza ko ajya kwivuza hanze ntikimusubize, ntibyamubuza kujya kwivuza hanze kuko byanze bikunze agomba kuramira ubuzima bwe, niyo mpamvu ikigo cy'ubwishingizi kigomba kwishyura amafaranga yose yakoreshejejwe mu kujya kwivuza – lteka rya Perezida N°31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka z'ibinyabiziga ingingo ya 13.

Amategeko agenga ubwishingizi – Amasezerano y'ubwishingizi – Inyandiko itangirwaho amafaranga (formulaire), itegurwa n'ikigo cy'ubwishingizi igashyirwaho umukono n'umukiriya amaze kwishyurwa nta ruhare yagize mu kuyitegura, ni ikimenyetso cy'uko yishyuwe n'umubare w'amafaranga yakiriye, ariko ntiyafatwa nk'ikimenyetso cyuko bikiranuye no ku bindi ikigo cy'ubwishingizi cyaba kikimugomba.

Incamake y'ikibazo: Imodoka ifite ubwishingizi muri SONARWA yagonze indi modoka ikomerekeramo abantu barindwi barimo Nyiraganza wasigiwe ubumuga bungana na 60%. Nyiraganza yageragije kumvikana na SONARWA ntibyashoboka hanyuma atanga ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba indishyi zitandukanye zirimo indishyi mbonezamusaruro, iz'ububabare, iz'iburaburanga, iz'uburambe ku kazi n'amafaranga yakoreshejwe yivuza. Uru rukiko rwemeje ko SONARWA igomba guha Nyiraganza amafaranga akomoka ku mpanuka yagize, maze rumugenera indishyi z'ibangamira bukungu, iz'ububabare, izikomoka ku itakaza ryuburambe mu kazi, n'amafaranga atandukanye yakoresheje kwa muganga mu gihugu no hanze.

Nyiraganza yajuriye mu Rukiko Rukuru, avuga ko indishyi mbonezamusaruro yahawe zagenwe hashingiwe ku mafaranga 2.500 ku munsi kandi yaragaragaje ko ari umucuruzi winjizaga 10.000Frw ku munsi, ko atahawe indishyi z'ibangamiraburanga kandi yaraziregeye.

SONARWA nayo yajuririye urwo rubanza ivuga ko yagaragaje ko iminsi y'akazi mu kwezi ari 25, nyamara urukiko rukabarira ku minsi 30, kandi ko Urukiko rwatanze amafaranga yo kwivuza hanze n'ay'ingendo kandi Nyiraganza yarijyanyeyo SONARWA itabigizemo uruhare.

Urukiko Rukuru rwaciye urubanza, rutegeka SONARWA kwishyura Nyiraganza amafaranga y'indishyi zikomoka ku mpanuka, ay'ingendo, ay'ikurikiranarubanza hamwe nay'igihembo cya Avoka, ruvuga ko urubanza rwajuririwe ruhindutse ku birebana n'indishyi z'amafaranga yakoresheje yivuza hanze atagomba guhabwa kuko yagiyeyo atabiherewe uburenganzira n'akanama kabishinzwe.

Nyiraganza yandikiye Urwego rw'Umuvunyi, arusaba gusuzuma akarengane yagiriwe mu rubanza rwaciwe n'Urukiko Rukuru kajyanye nuko atagomba gusubizwa amafaranga yakoresheje yivuriza mu Buhindi. Nyuma yo gusuzuma ikibazo cye, Umuvunyi Mukuru yasanze

koko imikirize yurwo rubanza igaragaramo akarengane, nawe yandikira Perezida w’Urukiko rw’Ikirenga, asaba ko uru rubanza rwasubirwamo ku mpamvu z’akarengane.

Nyuma yo gusuzuma raporo y’Ubugenzuzi bukuru bw’Inkiko kuri urwo rubanza, Perezida w’Urukiko rw’lkirenga yemeje ko uru rubanza rugomba kongera kuburanishwa ku mpamvu z’akarengane.

Iburanisha ritangiye, SONARWA yatanze inzitizi yo kudasuzuma ikirego cy’akarengane cyatanzwe na Nyiraganza kuko nta nyungu afite zo gukurikirana urubanza kandi harabayeho kwikiranura hagati ye na SONARWA.

Nyiraganza avuga ko nta kwikiranura kwigeze kubaho, kubera ko amafaranga yakiriye, SONARWA iheraho ivuga ko habayeho kwikiranura, akomoka ku irangizwa ry’urubanza rwaciwe n’Urukiko Rukuru bityo avuga ko iyo nzitizi nta shingiro ifite. Urukiko nyuma y’isuzuma rwanzuye ko iyi nzitizi nta shingiro ifite.

Urubanza rwakomeje Nyiraganza avuga ko muganga we yakoze raporo igaragaza ko agomba kujya kwivuriza mu mahanga kubera ko uburyo yagombaga kuvurwamo mu Rwanda budahari, kandi ko ntako atakoze kugira ngo hajyeho akanama k’abaganga kamwemerera kujya kwivuriza mu mahanga kuko, yandikiye SONARWA ayisaba gushyiraho umuganga wayo afatanyije n’uwe kugira ngo bagene uwa gatatu, SONARWA iramwihorera.

SONARWA yiregura ivuga ko Nyiraganza nta nyungu afite zo kurega, bityo ko nta mpamvu SONARWA yakwirirwa yisobanura ku mafaranga yakoresheje yivuza mu Buhindi, ivuga kandi ko Nyiraganza yumvikanye na SONARWA ko nta kindi azongera kuyikurikiranaho, bityo akwiriye kwemera ingaruka z’amategeko zirebana n’ibyo bumvikanye, iavuga kandi ko amatike, visa n’amafaranga yo gutunga umurwaza mu Buhindi adateganyijwe n’Iteka rya Perezida rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw’umubiri buturutse ku mpanuka zitewe n’ibinyabiziga

Incamake y’icyemezo: 1. Inyandiko itangirwaho amafaranga (formulaire), itegurwa n’ikigo cy’ubwishingizi igashyirwaho umukono n’umukiriya amaze kwishyurwa nta ruhare yagize mu kuyitegura, ni ikimenyetso cy’uko yishyuwe n’umubare w’amafaranga yakiriye, ariko ntiyafatwa nk’ikimenyetso cyuko bikiranuye no ku bindi ikigo cy’ubwishingizi cyaba kikimugomba.

2. Fagitire cyangwa se kuba umuntu yishyura umusoro sicyo kimenyetso kigaragaza ko akora umwuga w’ubucuruzi.

3. Kuba uwahohotewe yandikiye ikigo cy’ubwishingizi agisaba kugena umuganga ugomba kujya mu kanama k’abaganga bemeza ko ajya kwivuza hanze ntikimusubize, ntibyamubuza kujya kwivuza hanze kuko byanze bikunze agomba kuramira ubuzima bwe, niyo mpamvu ikigo cy’ubwishingizi kigomba kwishyura amafaranga yose yakoreshejejwe mu kujya kwivuza. Bityo icyo kigo ntigikwiye kwitwaza guceceka kwacyo ngo kimane ubwishyu. Kuko bitabaye ibyo, igihe cyose ikigo cy’ubwishingizi kidashaka kwishyurira umuntu kwivuza mu mahanga, cyajya kicecekera ntigishyireho umuganga wo gufatanya n’abandi bagize akanama kagomba kwemeza ko umurwayi agomba kuzajya kwivuza hanze.

4. Urubanza rwaciwe ku rwego rwa nyuma nirwo rushobora gusubirwamo ku mpamvu z’akarengane. Bityo, ntabwo umuburanyi yaregera bwa mbere mu rubanza rusubirishwamo ku mpamvu z’akarengane ibyo ataregeye mu manza zabanje.

Inzitizi y'iburabubasha nta shingiro ifite;
Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro kuri bimwe.

Amategeko yashingiweho:
Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/2012 rigena miterere, imikorere n'ububasha by'Urukiko rw'lkirenga, ingingo ya 81.
Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.
Itegeko-teka ryo ku wa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.
lteka rya Perezida N°31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka z'ibinyabiziga, ingingo ya 13.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku mpanuka yabaye ku wa 13/01/2010 ubwo imodoka Camionette Mitsubishi Fuso UAL 879 H ifite ubwishingizi muri SONARWA yagonze imodoka RAB 220 G igakomerekeramo abantu barindwi barimo na Nyiraganza Ramu wakomeretse ku buryo bukabije akagira ubumuga bungana na 60%.

[2] Nyiraganza Ramu yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba indishyi zitandukanye zirimo indishyi mbonezamusaruro, iz'ububabare, iz'iburaburanga, iz'uburambe ku kazi n'amafaranga yakoreshejwe yivuza, zose zingana na 45.468.032Frw.

[3] Uburanira SONARWA yavugaga ko ayo mafaranga y'indishyi SONARWA isabwa ari menshi, ko ku birebana n'indishyi mbonezamusaruro, nta kigaragaza ko Nyiraganza Ramu yari umucuruzi, akaba ahubwo yafatwa nk'umuntu usanzwe, maze kandi ayo mafaranga akabarirwa ku minsi 25, amafaranga yo kwivuza hanze, SONARWA ikaba yumva itagomba kuyishyura kuko yagiye atabyemerewe, naho amafaranga y'ikurikiranarubanza n'igihembo cya Avoka akaba yabarwa mu bushishozi bw'Urukiko.

[4] Mu Rubanza RC0548/13/TGI/Nyge, rwaciwe ku wa 31/10/2013, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko SONARWA igomba guha Nyiraganza Ramu amafaranga akomoka ku mpanuka yagize, maze rumugenera indishyi z'ibangamira bukungu zingana na 3.709.923Frw, iz'ububabare zingana na 900.000Frw, indishyi zikomoka ku itakaza ry'uburambe mu kazi zingana na 450.000Frw, n'amafaranga atandukanye yakoresheje kwa muganga angana na 10.129.924Frw (agizwe na 90.877Frw atarishyuwe, 9.638.047Frw yakoresheje yivuriza mu Buhindi, 401.000Frw yakoresheje mu ngendo ajya kwivuza),100.000Frw y'ikurikiranarubanza hamwe na 300,000Frw y'igihembo cya Avoka yagenwe mu bushishozi bw'urukiko.

[5] Nyiraganza Ramu ahagarariwe na Me Ruzindana yajuririye Urukiko Rukuru, avuga ko indishyi mbonezamusaruro yahawe zagenwe hashingiwe ku mafaranga 2500 ku munsi kandi yaragaragaje ko yakoraga akazi ko gucuruza inkweto kamwinjiriza 10.000Frw ku munsi, ko atahawe indishyi z'ibangamiraburanga kandi yaraziregeye, no kuba yaragenewe amafaranga make y'ikurikiranarubanza n'igihembo cya Avoka.

[6] SONARWA nayo yajuririye urwo rubanza ivuga ko Urukiko rutitaye ku myiregurire yayo, yagaragazaga ko iminsi y'akazi mu kwezi ari 25, nyamara urukiko rukabarira ku minsi 30 hadakuwemo iminsi y'ikiruhuko, aribyo byatumye Nyiraganza Ramu abona indishyi zikabije kuba nyinshi. Yajuriye nanone ivuga ko urukiko rwatanze amafaranga yo kwivuza hanze n'ay'ingendo kandi uwaregaga yarijyanyeyo SONARWA itabigizemo uruhare.

[7] Urukiko Rukuru rwaciye urubanza RCA649/13/HC/KIG-RCA651/13/HC/KIG ku wa 20/6/2014, rwemeza ko ubujurire bwa Nyiraganza Ramu n'ubwa SONARWA bufite ishingiro kuri bimwe, rutegeka SONARWA kwishyura Nyiraganza Ramu amafaranga y'indishyi zikomoka ku mpanuka, ay'ingendo, n'ay'ikurikiranarubanza hamwe n'igihembo cya Avoka angana na 6.851.800Frw harimo n'indishyi z'ibangamiraburanga (zitagenwe n'urukiko rubanza), ruvuga ko urubanza RC0548/13/TGI/NYGE ruhindutse gusa ku birebana n'indishyi atagomba guhabwa z'amafaranga 9.638.047Frw yakoresheje yivuriza hanze atagomba gusubizwa kuko yagiye ku bushake bwe atoherejwe n'akanama kabishinzwe.

[8] Nyiraganza Ramu yandikiye Urwego rw'Umuvunyi ku wa 03/10/2014, arusaba gusuzuma akarengane yagiriwe mu icibwa ry'ubanza rwe RCA649/13/HC/KIG-651/13/HC/KIG, kajyanye nuko atagomba gusubizwa amafaranga yakoresheje yivuriza hanze mu Buhindi. Nyuma yo gusuzuma ikibazo cye, Umuvunyi Mukuru yasanze koko imikirize y'urubanza igaragaramo akarengane ko kuba Nyiraganza atemerewe gusubizwa amafaranga yakoresheje yivuriza hanze, nawe yandikira Nyakubahwa Perezida w'Urukiko rw'Ikirenga, asaba ko uru rubanza rwasubirwamo ku mpamvu z'akarengane yamugaragarije. Nyuma yo gusuzuma raporo y'Ubugenzuzi Bukuru bw'Inkiko kuri urwo rubanza, Perezida w'Urukiko rw'lkirenga yemeje ko uru rubanza rugomba kongera kuburanishwa ku mpamvu z'akarengane.

[9] Urubanza rwaburanishijwe ku wa 27/07/2018, Nyiraganza Ramu ahagarariwe na Me Ruzindana lgnace, naho SONARWA ihagarariwe na Me Munderere Léopold. Iburanisha ritangiye, uburanira SONARWA yatanze inzitizi yo kudasuzuma ikirego cy'akarengane cyatanzwe na Nyiraganza Ramu kuko nta nyungu afite zo gukurikirana urubanza kandi harabayeho kwikiranura hagati ye na SONARWA.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba harabayeho kwikiranura hagati ya SONARWA na Nyiraganza Ramu ku buryo ikirego cye kitagombaga gusubirishwamo ku mpamvu z'akarengane.

[10] Me Munderere Lepold uhagarariye SONARWA avuga ko Nyiraganza Ramu nta nyungu afite zo gukomeza gukurikirana uru rubanza, kuko habayeho kwikiranura hagati ye na SONARWA nk'uko biteganywa n'ingingo ya 591 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, kubera ko Nyiraganza Ramu yishyuwe 274.958Frw yo

kwivuza, no ku wa 24/09/2014 yishyurwa 6.851.800Frw, bityo ko kuba yaremeye kwakira ayo mafaranga nta kindi yagombye gukurikirana kubera ko yasinye ko nta kindi kintu azabaza.

[11] Me Ruzindana Ignace uhagarariye Nyiraganza Ramu avuga ko nta kwikiranura kwigeze kubaho, kubera ko Nyiraganza Ramu mbere y'uko aregera urukiko yabanje kwegera SONARWA agira ngo imuhe indishyi ziteganywa n'Iteka rya Perezida SONARWA irabyanga. Naho amafaranga Nyiraganza yakiriye SONARWA iheraho ivuga ko habayeho kwikiranura, akaba akomoka ku irangizwa ry'urubanza RCA0649/13/HC/KIG, kandi Nyiraganza amaze kuyahabwa, akaba yarashyize umukono kuri « formulaire » itegurwa mu rurimi rw'igifaransa na SONARWA, yemeza ko yakiriye ayo mafaranga.

UKO URUKIKO RUBIBONA

[12] Ingingo ya 81 y'Itegeko Ngenga 03/2012/OL ryo ku wa 13/06/2012 rigena miterere, imikorere n'ububasha by'Urukiko rw'Ikirenga yakoreshwaga igihe ikirego cyatangwaga iteganya ko urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane […] iyo mu icibwa ry'urubanza hirengagijwe amategeko n'ibimenyetso bigaragarira buri wese [...].

[13] Dosiye y'urubanza igaragaza ko hari inyandiko ya SONARWA yiswe *quittance partielle de reglement d'indemnites, dommage corporels N°2/2012* Nyiraganza Ramu yakiriyeho 274.958Frw n'indi yiswe *quittance definitive de reglement d'lndemnites dommages corporels N^{o}793/2014* igaragaza ko Nyiraganza Ramu yahawe 6.851.800Frw.

[14] Urukiko rurasanga ayo mafaranga yose Nyiraganza Ramu yahawe na SONARWA ajyanye na zimwe mu ndishyi yatsindiye, Urukiko Rukuru rwategetse mu rubanza RCA0649, 0651/13/HC/KIG rwaciwe ku wa 20/06/2014, byumvikanisha ko SONARWA itayamuhaye mu rwego rwo kwikiranura, ahubwo ko yayamuhaye kubera ko yabitegetswe n'urukiko, akaba yarayakiriye mu rwego rw'irangizwa ry'urubanza.

[15] Urukiko rurasanga rero, kuba Nyiraganza Ramu yarakiriye izo ndishyi yatsindiye, urubanza rwarabaye itegeko, ariko akabona ko hari aho yarenganyijwe kuko hari izindi ndishyi atemerewe, bitamubuza gutanga ikirego gisaba gusubirishamo urubanza rwe ku mpamvu z'akarengane.

[16] Naho ibyo SONARWA ivuga by'uko Nyiraganza Ramu mu kwakira ayo mafaranga yasinyiye ko nta kindi azongera kubaza, Urukiko rurasanga ibyo bitashingirwaho kubera ko urupapuro Nyiraganza Ramu yahereweho amafaranga ari "formulaire" isanzwe (standard form) itegurwa na SONARWA nta ruhare umukiriya ayigiramo, kenshi ndetse abakiriya bakaba bayisinya batabanje no gusoma ibiyanditsemo. Ku ba "clients" bayujuje bakayishyiraho umukono bamaze kwishyurwa, Urukiko rusanga ari ikimenyetso cy'uko bishyuwe n'umubare w'amafaranga yakiriwe, ariko itafatwa nkikimenyetso cyuko bikiranuye no ku bindi SONARWA yaba ikibagomba. Muri uru rubanza, Nyiraganza Ramu akaba atari yarabonye ibyo yasabye byose aregera inkiko.

[17] Urukiko rusanga rero iyo "formulaire" yasinye ari ikimenyetso cy'amafaranga yishyuwe, ariko bidakuraho uburenganzira bwe bwo gukurikirana ibindi yumvaga agomba kugenerwa,

bityo ikaba itashingirwago ngo ikirego cye gisaba ko urubanza rwasubirwamo ku mpamvu z'akarengane ku bijyanye n'amafaranga yakoresheje ajya kwivuza mu gihugu cy'Ubuhindi cyo kutakirwa.

2. Kumenya niba indishyi Nyiraganza Ramu asaba muri uru rubanza yari akwiriye kuzihabwa

a. Ku bijyanye n'amafaranga Nyiraganza Ramu yakoresheje ajya kwivuza mu gihugu cy'Ubuhindi

[18] Me Ruzindana lgnace uhagarariye Nyiraganza Ramu avuga ko raporo ya muganga we yakozwe ku wa 18/11/2011 yagaragazaga ko Nyiraganza Ramu agomba kujya kwivuriza mu mahanga kubera ko uburyo yagombaga kuvurwamo, bujyanye n'ubushobozi mu Rwanda badafite, kandi ko ntako Nyiraganza Ramu atakoze kugira ngo hajyeho akanama k'abaganga kamwemerera kujya kwivuriza mu mahanga kuko ku wa 29/02/2012, yandikiye SONARWA ayisaba gushyiraho umuganga wayo afatanyije n'uwe kugira ngo bagene uwa gatatu, SONARWA iramwihorera, ariko kuko nta bundi bushobozi Nyiraganza Ramu yari afite, umugabo we Serugira Thomas yitabaza ikigo yakoragamo Kist Savings and Credit Cooperative Society kimuguriza 1.416.000Frw, na Banki ya Kigali imuha inguzanyo ya 5.000.000Frw.

[19] Me Ruzindana lgnace avuga ko kuba Urukiko Rwisumbuye rwarabyumvise, ariko Urukiko Rukuru rukavuga ko kuba SONARWA itaramusubije bidahagije ngo abe yarafashe icyemezo cyo kujya kwivuriza mu mahanga, asanga ari akarengane kuko SONARWA itashingira ku makosa yayo ngo iyireguze.

[20] Me Munderere Leopold akomeza kuvuga ko mu gihe cyose Nyiraganza nta nyungu afite zo kurega, nta mpamvu SONARWA yakwiririrwa yisobanura kuri aya mafaranga yakoresheje yivuza mu Buhindi, avuga ko ajya ya kwemera kumvikana na SONARWA kuneza ko nta kindi azongera kuyikurikiranaho, ntawamushyizeho agahato, ko akwiriye kwemera ingaruka z'amategeko zirebana na "transaction" yakoze, avuga kandi ko amatike, visa n'amafaranga yo gutunga umurwaza mu Buhindi adateganyijwe n'Iteka rya Perezida N°31/01 ryo ku wa 25/8/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga.

UKO URUKIKO RUBIBONA

[21] Dosiye y'urubanza igaragaza ko hari raporo yakozwe na muganga yo ku wa 18/11/2011 yemezaga ko Nyiraganza Ramu agomba kujya kwivuriza mu gihugu cy'Ubuhindi kubera ko uburyo yagombaga kuvurwamo, mu Rwanda budahari.

[22] Ku byerekeye kwivuriza hanze y'u Rwanda, ingingo ya 13 y'Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka z'ibinyabiziga, iteganya ko: […] lyo harimo ukwivuriza ahandi hatari mu Rwanda, uwahohotewe agenda bimaze kwemezwa n'akanama k'ubuvuzi kagizwe n'umuganga w'uwahohotewe, n'umuganga w'umwishingizi hamwe n'impuguke yasabwe n'abo bombi.

[23] Dosiye y'urubanza igaragaza ko ku itariki ya 27/02/2012 Nyiraganza Ramu yandikiye SONARWA ayisaba kugena umuganga wayo kugira ngo ahure n'uwe bemeze uwa gatatu

bafatanye kwemeza ko akwiriye kujya kwivuriza hanze y’u Rwanda, ariko iyo baruwa ikaba itarigeze ihabwa igisubizo.

[24] Dosiye y’urubanza igaragaza kandi ko hari amasezerano y’inguzanyo yo ku wa 09/03/2012 Serugira Thomas (umugabo wa Nyiraganza Ramu) yagiranye na Bank of Kigali Ltd imuha amafaranga 5.000.000Frw yo kuvuza umugore we, hakaba n’andi mafaranga Serugira Thomas yagujije muri Kist Savings and Credit Cooperative Society yo kuvuza umugore we, maze nayo imuguriza 1.416.000Frw ku wa 30/04/2012. Kandi hakaba hari n’inyemezabwishyu Nyiraganza Ramu yagaragarije urukiko zemeza amafaranga yose yakoresheje ajya kwivuza hanze.

[25] Urukiko rurasanga ku byerekeye kuvurwa ubwabyo, SONARWA ifite ishingano zo kwishyura amafaranga Nyiraganza Ramu yatanze yivuriza hanze y’u Rwanda hashingiwe ku biteganywa n’igika cya kabiri cy’ingingo ya 13 y’Iteka rya Perezida rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw’umubiri buturutse ku mpanuka z’ibinyabiziga.

[26] Urukiko rusanga rero kuba ibaruwa Nyiraganza Ramu yandikiye SONARWA itarigeze ihabwa igisubizo ku ruhande rwa SONARWA, bitari kumubuza kujya kwivuza mu gihe yumvaga akomeje kumererwa nabi, kuko byanze bikunze yagombaga kuramira ubuzima bwe, kubera ko Iteka ryavuzwe haruguru ritateganyije uko bizagenda mu gihe ikigo cy’ubwishingizi kizaba kitashubije, cyangwa igihe ntarengwa kigomba kuba hatanzwe igisubizo. Bikaba bigaragara ko SONARWA ariyo yakoze amakosa yo kudasubiza ibaruwa yandikiwe; ngo yemere cyangwa ihakane icyifuzo yari yagejejweho na Nyiraganza Ramu, ari nayo mpamvu idakwiriye kwitwaza uko guceceka kwayo ngo yimane amafaranga yakoreshejwe mu kujya kwivuza, kandi ari inshingano zayo. Bitabaye ibyo, igihe cyose “Societe d’assurance” idashaka kwishyurira umuntu kwivuza mu mahanga, yajya yicecekera ntishyireho umuganga wo gufatanya n’abandi bagize akanama kagomba kwemeza ko umurwayi agomba kuzajya kwivuza hanze.

[27] Urukiko rurasanga SONARWA igomba ndetse kwishyura amafaranga Nyiraganza Ramu yakoresheje ku murwaza wamuherekeje kubera ko atagombaga kugenda wenyine kandi arembye. Bityo akaba agomba gusubizwa amafaranga yose yakoresheje ajya kwivuza mu gihugu cy’ubuhindi angana na 10.129.924Frw nk’uko agaragara mu rubanza RC0548/13/TGl/Nyge rwaciwe n’Urukiko Rwisumbuye rwa Nyarugenge ku wa 31/10/2013, mu gika cyarwo cya 4.

b. Ku bijyanye n’indishyi mbonezamusaruro

[28] Me Ruzindana lgnace avuga ko hari ibimenyetso by’uko Nyiraganza Ramu yakoze impanuka avuye gucuruza, kandi ko yishyuraga umusoro, akaba rero ataragombaga kubarirwa ku mafaranga 2.500 y’insimburamubyizi nk’umuntu udafite akazi kazwi, ahubwo yagombye kubarirwa ku mafaranga 10.000 ku munsi, akaba yaragombaga guhabwa 14.839.694Frw aho kuba 3.709.000Frw, akaba rero asaba ko uwo aburanira yayahabwa.

[29] Me Munderere Léopold avuga ko udupapuro 2 gusa Nyiraganza Ramu agaragaza yasoreyeho tutashingirwaho ngo hemezwe ko ari umucuruzi.

UKO URUKIKO RUBIBONA

[30] Dosiye y'urubanza igaragaza ko mu gutanga ibimenyetso by'uko Nyiraganza Ramu yari umucuruzi yaragaragaje udupapuro tubiri twitwa "inyemezabwishyu y'umusanzu" tw'amezi 2, buri kamwe kanditseho 4.000Frw.

[31] Urukiko rurasanga utu dupapuro tutafatwa nk'ikimenyetso cy'umusoro wishyuwe, kandi tugaragaza ko ari umusanzu, uretse ko n'ubwo twakwitwa utw'umusoro, tutafatwa nk'ikimenyetso cy'uko Nyiraganza Ramu ari umucuruzi, kuko fagitire ataricyo kimenyetso kigaragaza ko umuntu akora umwuga w'ubucuruzi, Nyiraganza Ramu wajuriye akaba agomba gutsindwa n'ibura ry'ibimenyetso by'uko yakoraga umwuga w'ubucuruzi, hashingiwe ku ngingo ya 3 y'Itegeko No15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko urega agomba kugaragaza ibimenyetso by'ibyo aregera, yabibura uwarezwe agatsinda.

c. Ku bijyanye n'amafaranga Nyiraganza Ramu yakoresheje nyuma yo kwivuriza mu Buhindi.

[32] Me Ruzindana lgnace avuga ko kugeza n'ubu Nyiraganza Ramu arwaye, ko hari amafaranga 363.000Frw yishyuye mu bitaro bya Kibogora, akaba asaba ko nayo yayasubizwa.

[33] Me Munderere Leopold uhagarariye SONARWA avuga ko ibijyanye n'amafaranga Nyiraganza Ramu yakoresheje yivuza nyuma y'aho aviriye mu Buhindi, ntaho ahuriye n'akarengane.

UKO URUKIKO RUBIBONA

[34] Urukiko rurasanga ingingo ya 13 y'Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka z'ıbinyabiziga iteganya ko uwakomeretse biturutse ku mpanuka y'ikinyabiziga asubizwa amafaranga yakoreshejwe mu kwivuza, ariko Nyiraganza Ramu akaba adakwiriye kuyaregera muri uru rubanza kuko atigeze ayaregera mu manza RC0548/13/TGI/NYGE na RCA649/13/HC/KIG-RCA 651/13/HC/KIG, mu gihe ingingo ya 81 y'Itegeko N°03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'lkirenga ryakoreshwaga igihe Nyiraganza Ramu yatangaga ikirego mu nkiko, iteganya ko urubanza rwaciwe ku rwego rwa nyuma arirwo rushobora gusubirwamo ku mpamvu z'akarengane.

3. Ku bijyanye n'izindi ndishyi zisabwa n'ababuranyi.

[35] Me Ruzindana lgnace avuga ko SONARWA yategekwa kwishyura 7.000.000Frw zo kwanga kwishyura, bigatuma ajya mu manza kandi urukiko rukayitegeka kwishyura inyungu za 17,25% kuko byatumye Nyiraganza Ramu n'umugabo we Serugira Thomas basaba ideni muri Banki ya Kigali no muri Kist Savings and Credit Cooperative Society, kugira ngo ashobore kwivuza, kandi iryo deni naryo ryarabyaraga iyo nyungu za 17,25%, nuko byabahungabanyije bashakisha uburyo bwose bwo kwivuza, kuko umwishingizi yari yirengagije inshingano ze no gukurikiza amategeko, izo nyungu rero ni SONARWA igomba kuzirengera.

[36] Avuga ko SONARWA yanze kwishyura ku neza uwo aburanira amafaranga yo kwivuza hanze kandi ariyo yishe amategeko kuko itashyizeho akanama k'abaganga bagombaga gufata

icyemezo cyo kumwemerera kujya kwivuriza hanze, ko rero yamuha 1.000.000Frw y'ikurikiranarubanza na 2.000.000Frw y'igihembo cy'avoka.

[37] Me Munderere Leopold avuga ko indishyi Nyiraganza Ramu asaba adakwiye kuzihabwa kuko ariwe wishe amasezerano agarura SONARWA mu nkiko, ko ahubwo ariwe ukwiye kuzitanga, maze ashingiye ku ngingo ya 106 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, asaba ko Nyiraganza yakwishyura SONARWA indishyi zo kuyikurura mu nkiko kubw'amaherere (action temeraire et vexatoire), ndetse na 1.000.000Frw y'igihembo cya Avoka.

UKO URUKIKO RUBIBONA

[38] Ku byerekeye indishyi zo kuba SONARWA yararuhije Nyiraganza Ramu yanga kumwishyura ibyo yari izi neza ko afiteho uburenganzira, kandi yari yaranze ku bushake gukora ibyangombwa ngo ashobore kujya kwivuriza mu mahanga nkuko abaganga bari babigaragaje, Urukiko rurasanga SONARWA yanga gusubiza Nyiraganza Ramu amafaranga yatanze yivuriza mu Buhindi, itarakoze inshingano yayo, yirengagije ko umuganga yari yagaragaje ko uburwayi bwe burenze ubushobozi bw'ibitaro byo mu Rwanda, bituma agana inkiko, ndetse bigera naho aregera akarengane, ikaba igomba kubimuhera indishyi hashingiwe ku biteganywa n'ingingo ya 258 y'Igitabo cya Gatatu cy'Urwunge rw'Amategeko Mbonezamubano, iteganya ko "igikorwa cyose cy'umuntu cyangirije undi, gitegeka nyiri gukora ikosa rigikomokoho kuriha ibyangiritse".Urukiko rurasanga ariko indishyi za 7.000.000Frw asaba ari ikirenga, mu bushishozi bwarwo, rukaba rwamugenera 3.000.000Frw, naho inyungu za 17,25% ku nguzanyo yahawe na Banki ya Kigali, Me Ruzindana Ignace akaba ataragaragaje ibimeyetso by'izo banki yamuciye cyangwa ngo yerekane uko azibara.

[39] Ku birebana na 1.000.000Frw y'ikurikiranarubanza na 2.000.000Frw y'igihembo cya Avoka, Urukiko rusanga Nyiraganza Ramu ayakwiye kuko atsinze urubanza, akaba agomba kugenerwa ibyo yatanze arukurikirana n'igihembo cya Avoka, rukaba rumugeneye mu bushishozi bwarwo 300.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cya Avoka, yose hamwe akaba 1.300.000Frw.

[40] Ku bijyanye n'indishyi zo gukururwa mu manza ku maherere n'igihembo cya Avoka SONARWA isaba, Urukiko rusanga nta nakimwe ikwiye kugenerwa kuko itsinzwe.

III. ICYEMEZO CY'URUKIKO

[41] Rwemeye kwakira no gusuzuma ikirego cy'akarengane cya Nyiraganza Ramu, rugisuzumye rusanga gifite ishingiro kuri bimwe;

[42] Rwemeje kutakira ikirego ku bijyanye n'amafaranga Nyiraganza Ramu yakoresheje nyuma yo kwivuriza mu Buhindi

[43] Rwemeje ko indishyi mbonezamusaruro Nyiraganza Ramu aregera adakwiriye kuzihabwa;

[44] Rutegetse SONARWA General Insurance Company Ltd gusubiza Nyiraganza Ramu amafaranga yakoresheje ajya kwivuza mu gihugu cy'Ubuhindi angana na miliyoni icumi n'ibihumbi ijana na makumyabiri n'icyenda na Magana cyenda na makumyabiri n'ane (10.129.924Frw);

[45] Rutegetse SONARWA General Insurance Company Ltd kwishyura Nyiraganza Ramu indishyi zingana na 3.000.000Frw na 1.300.000Frw y'ikurikiranarubanza n'igihembo cya Avoka, yose hamwe akaba miliyoni enye n'ibihumbi Magana atatu (4.300.000Frw).