MUREKATETE v. IKIGO CY'IMISORO N'AMAHÔRO (RRA)

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA0038/2016/CS - RCOMAA0043/16/CS (Mutashya, P.J., Nyirinkwaya na Karimunda, J.) 12 Mutarama 2018]

Amategeko agenga amasosiyete y'ubucuruzi – Uburyozwe bw'abayobozi cyangwa abanyamigabane ba sosiyete – Abanyamigabane n'abayobozi ba sosiyete ntibaryozwa amakosa ya sosiyete keretse hari icyemezo cy'urukiko cyemeje uburyozwe bwabo – Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha, ingingo ya 46 bis – Itegeko N°27/2017 ryo kuwa 31/05/2017 ryerekeye amasosiyete y'ubucuruzi, ingingo ya 23 na 95.

Amategeko agenga amasosiyete y'ubucuruzi – Uburyozwe bw'abayobozi cyangwa abanyamigabane ba sosiyete – Itambamira ry'ihinduzamutungo – Imitungo y'abanyamigabane n'abayobozi ba sosiyete ku giti cyabo ntishobora gutambamirwa urukiko rubifitiye ububasha rutabanje kwemeza uruhare rwabo mu makosa sosiyete iryozwa.

Incamake y'ikibazo: Nyuma yaho Ikigo cy'Imisoro n'Amahôro gitambamiye ihinduzamutungo y'inzu ya Murekatete ku mpamvu yuko hari imisoro DISCOME Ltd yari abereye umuyobozi n'umunyamigabane ikibereyemo, Murekatete yatanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge asaba ko iryo tambamira rivanwaho kuko umutungo w'umunyamigabane utandukanye n'uwa sosiyete, asaba n'indishyi zinyuranye. Ikigo cy'Imisoro n'Amahôro nacyo gitanga ikirego kiregera kwiregura gisaba ko yategekwa kwishyura umusoro waciwe iyo sosiyete.

Urwo Rukiko rwemeje ko iryo tambamira rikuweho kuko Ikigo cy'Imisoro n'Amahôro ntaburenganzira cyari gifite bwo gutambamira ihinduzamutungo ry'inzu ye mu gihe cyose bitemejwe n'Urukiko ko agomba kwishyura uwo musoro waciwe iyo sosiyete; naho kubijyanye n'ikirego kiregera kwiregura rwemeza ko kitakiriwe kuko ari ikirego kihariye.

Ikigo cy'Imisoro n'Amahôro cyajuririye Urukiko Rukuru rw'Ubucuruzi kivuga ko cyatambamiye ihinduzamutungo ry'umutungo utimukanwa wa Murekatete bitewe n'uko mu gihe DISCOME Ltd yakorerwaga igenzura, Murekatete yakoze ibikorwa byo kugurisha imitungo yayo, bituma itishyura umwenda w'imisoro yagombaga, ndetse ko ikirego cyayo kiregera kwiregura cyagombaga kwakirwa kuko kigamije kwiregura kandi kikaba gifitanye isano n'icyatanzwe n'urega.

Urukiko Rukuru rw'Ubucuruzi rwasobanuye ko gutambamira ihinduzamutungo ari igikorwa cy'agateganyo, bityo kikaba gishobora kuza mbere y'uko Urukiko rubifitiye ububasha ruregerwa ngo rwemeze uburyozwe bw'abanyamigabane cyangwa bw'abayobozi ba sosiyete, cyane cyane ko ingingo ya 46 bis y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha ntaho ivuga ko kuregera urukiko bigomba gukorwa mbere y'ikindi gikorwa icyari cyo cyose ku mitungo yabo bwite bityo rero urubanza rwajuririwe rukaba ruhindutse. Kandi rwasanze ko ikirego kiregera kwiregura cyagombaga kwakirwa kuko gifitanye isano n'icyatanzwe na Murekatete, ariko ko rutagisuzuma bwa mbere mu bujurire.

Murekatete yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ko ikigo cy'ubucuruzi gifite ubuzima gatozi gikurikiranwa kikanaryozwa ku giti cyacyo, hadakurikiranwa abayobozi cyangwa abanyamigabane bacyo kuko batandukanye na sosiyete kandi ko ibiteganywa n'ingingo ya 46 bis y'itegeko ryavuzwe haruguru bikorwa gusa igihe Urukiko rubifitiye ububasha rwabyemeje.

Ikigo cy'Igihugu cy'Imisoro n'Amahôro cyiregura kivuga ko nubwo mu bisanzwe umutungo wa sosiyete utandukanye n'umutungo w'abanyamigabane bayo, ntibibuza ko mu gihe bigaragaye ko bagize uruhare mu gutuma sosiyete ituzuza inshingano zayo zijyanye n'imisoro, babiryozwa hashingiye ku ngingo ya 46 bis y'Itegeko ryavuzwe haruguru, kandi ko ntaho iyo ngingo ivuga ko urukiko rugomba kubanza kwemeza uburyozwe bw'abayobozi n'abanyamuryango ba sosiyete mbere y'uko habaho itambamira ry'ihinduzamutungo ku mitungo yabo bwite, ndetse ko itegereje ko urubanza rucibwa yasanga imitungo yavanamo ubwishyu yaranyerejwe cyangwa yarahishwe, gisaba ko ikirego kiregera kwiregura cyatanze guhera mu Rukiko rw'Ubucuruzi cyakwakirwa kigasuzumwa. Ababuranyi bose basoza basaba amafaranga y'ikurikiranarubanza n'igihembo cy'avoka.

Incamake y'icyemezo: 1. Abanyamigabane n'abayobozi ba sosiyete ntibaryozwa amakosa ya sosiyete keretse hari icyemezo cy'Urukiko cyemeje uburyozwe bwabo.

2. Imitungo y'abanyamigabane n'abayobozi ba sosiyete ku giti cyabo ntishobora gutambamirwa Urukiko rubifitiye ububasha rutabanje kwemeza uruhare rwabo mu makosa sosiyete iryozwa bityo rero itambamira ry'ihinduzamutungo ryakozwe ku mutungo utimukanwa wa Murekatete rikaba rigomba kuvanwaho kuko ryakozwe mu buryo bunyuranyije n'amategeko.

3. Ikirego kijyanye n'uburyozwe bw'abayobozi n'abanyamigabane ba sosiyete y'ubucuruzi ni ikirego kihariye nticyafatwa nk'ikirego kiregera kwiregura ku cyatanzwe n'urega kuko nta sano bifitanye. Bityo rero ikirego kiregera kwiregura cyatanzwe Ikigo cy'Imisoro n'Amahôro kigaba kitagomba kwakirwa.

Ubujurire bufite ishingiro.
Ubujurire bwuririye ku bundi nta shingiro bufite
Amagarama y'urubanza aherereye ku Kigo cy'Imisoro n'Amahôro.

Amategeko yashingiweho:
Itegeko N°25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha, ingingo ya 46 bis.
Itegeko N°27/2017 ryo ku wa 31/05/2017 ryerekeye amasosiyete y'ubucuruzi, ingingo ya 23 na 95.
Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 106, 107 niya 283.

Imanza zifashishijwe:
Ikigo cy'Imisoro n'Amahôro v. Munyampundu n'undi, RCOMAA00040/2016/SC rwaciwe n'urukiko rw'ikirenga kuwa 22/12/2017.

I. IMITERERE Y'URUBANZA

[1] Tariki ya 11/02/2015, Ikigo cy'Igihugu cy'Imisoro n'Amahôro cyatambamiye ihinduzamutungo (opposition à mutation) y'inzu ya Murekatete Clémentine Vervelde iri mu kibanza N°UPI1/02/13/02/631, mu nyandiko cyandikiye Umuyobozi Mukuru w'Ikigo gishinzwe Umutungo Kamere mu Rwanda, kikagenera kopi Murekatete Clémentine Vervelde, kivuga ko iryo tambamira rishingiye ku misoro akibereyemo.

[2] Ku wa 12/05/2015, Murekatete Clémentine Vervelde yatanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge, asaba ko itambamira ry'ihinduzamutungo ryakozwe ku nzu ye rivanwaho kuko umutungo w'umunyamigabane utandukanye n'uwa sosiyete, asaba n'indishyi zinyuranye.

[3] Ikigo cy'Igihugu cy'Imisoro n'Amahôro cyireguye kivuga ko itambamira ry'ihinduzamutungo cyakoze ku mutungo utimukanwa wa Murekatete Clémentine Vervelde rishingiye ku ngingo ya 46 bis y'Itegeko N°25/2005 rigena imitunganyirize y'isoresha iteganya ko abayobozi n'abanyamigabane ba sosiyete baryozwa imisoro yayo iyo bafite uruhare mu micungire yayo cyangwa mu mikoreshereze mibi y'umutungo wayo ku buryo idashobora kuzuza inshingano zayo zijyanye n'imisoro, bitewe n'uko Murekatete nk'umuyobozi n'umunyamigabane umwe rukumbi wa sosiyete DISCOME Ltd, yagize uruhare mu gutuma iyo sosiyete itishyura imisoro yaciwe.

[4] Ikigo cy'Igihugu cy'Imisoro n'Amahôro cyatanze ikirego kiregera kwiregura, gisaba ko Murekatete Clémentine Vervelde yategekwa kwishyura umusoro waciwe DISCOME Ltd ungana na 25.490.933, indishyi z'ikurikiranarubanza n'igihembo cya Avoka.

[5] Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza RCOM0783/15/TC/NYGE ku wa 23/11/2015, rwemeza ko itambamira ry'ihinduzamutungo ryakozwe ku nzu ya Murekatete Clémentine Vervelde rikuweho kuko, nubwo ingingo ya 46 bis y'Itegeko N°25/2005 rigena imitunganyirize y'isoresha iteganya uburyozwe bw'abayobozi n'abanyamigabane ba sosiyete iyo hujujwe ibisabwa muri iyo ngingo, inateganya ko ubwo buryozwe bugomba kwemezwa n'urukiko rubifitiye ububasha, ibi bikaba bivuze ko nta burenganzira Ikigo cy'Igihugu cy'Imisoro n'Amahôro cyari gifite cyo gutambamira ihinduzamutungo ry'inzu ya Murekatete Clémentine Vervelde mu gihe cyose urukiko rutaremeza ko agomba kwishyura umusoro waciwe DISCOME Ltd.

[6] Ku birebana n'indishyi Murekatete Clémentine Vervelde yasabye, Urukiko rwemeje ko nta ndishyi yahabwa z'uko inzu ye yafunzwe kuko nta bimenyetso abitangira. Ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, rwasanze zikwiye, rumugenera 500.000 Frw.

[7] Ku birebana n'ikirego kiregera kwiregura cyatanzwe n'Ikigo cy'Igihugu cy'Imisoro n'Amahôro gisaba urukiko gutegeka Murekatete Clémentine Vervelde kwishyura umusoro waciwe DISCOME Ltd, Urukiko rwemeje ko kitakiriwe kuko ari ikirego cyihariye giteganywa n'ingingo ya 46 bis y'Itegeko N°25/2005 rigena imitunganyirize y'isoresha, kikaba kitagomba gufatwa nk'ikirego cyo kwiregura ku cyatanzwe n'urega, giteganywa n'ingingo ya 107 z'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[8] Ikigo cy'Igihugu cy'Imisoro n'Amahôro cyajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi kivuga ko cyihutiye gutambamira ihinduzamutungo ry'umutungo utimukanwa wa Murekatete Clémentine Vervelde hashingiwe ku ngingo ya 46 bis y'Itegeko rigena imitunganyirize y'isoresha ryavuzwe no ku ngingo ya 283, igika cya 1 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi naryo ryavuzwe, bitewe n'uko mu gihe DISCOME Ltd yakorerwaga igenzura, Murekatete Clémentine Vervelde yakoze ibikorwa byo kugurisha imitungo yayo, bituma itishyura umwenda w'imisoro yagombaga, ndetse ko ikirego cyayo kiregera kwiregura cyagombaga kwakirwa hashingiye ku ngingo ya 107 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi kuko kigamije kwiregura kandi kikaba gifitanye isano n'icyatanzwe n'urega.

[9] Urwo rukiko, mu rubanza RCOMA0672/15/HCC rwaciwe ku wa 13/05/2016, rwemeje ko urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge ruhindutse, ruvanaho indishyi Ikigo cy'Igihugu cy'Imisoro n'Amahôro cyategetswe kwishyura mu rwego rwa mbere, runategeka Murekatete Clémentine Vervelde kugiha 300.000Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[10] Mu gufata icyo cyemezo, Urukiko rwasobanuye ko gutambamira ihinduzamutungo ari igikorwa cy'agateganyo, bityo kikaba gishobora kuza mbere y'uko urukiko rubifitiye ububasha ruregerwa ngo

rwemeze uburyozwe bw’abanyamigabane cyangwa bw’abayobozi ba sosiyete, cyane cyane ko ingingo ya 46 bis y’Itegeko rigena imitunganyirize y’isoresha ntaho ivuga ko kuregera urukiko bigomba gukorwa mbere y’ikindi gikorwa icyari cyo cyose ku mitungo yabo bwite.

[11] Rwasobanuye kandi ko gutegereza ko uruhare rw’abayobozi n’abanyamigabane ba sosiyete rugaragazwa n’inkiko mbere yo gufatira cyangwa gukora ikindi gikorwa cy’agateganyo kibabuza kurigisa imitungo yabo bishobora gutuma ahubwo abo bantu bihuta kuyirigisa kugira ngo itazakoreshwa mu kwishyura imyenda ya sosiyete iyo hagaragara ko bagize uruhare mu kutishyura iyo myenda.

[12] Ku birebana n’ikirego kiregera kwiregura cyatanzwe n’Ikigo cy’Igihugu cy’Imisoro n’Amahôro guhera mu rwego rwa mbere, Urukiko rwavuze ko ibyo urukiko rubanza rwashingiyeho rwanga kwakira icyo kirego nta shingiro bifite kubera ko icyo kirego cyari kigamije kwiregura kandi gifitanye isano n’icyatanzwe na Murekatete Clémentine Vervelde, ariko ko rutagisuzuma mu bujurire kubera ko byaba ari ukugisuzuma bwa mbere mu bujurire.

[13] Murekatete Clémentine Vervelde yajuririye uru rubanza mu Rukiko rw’Ikirenga avuga ko Urukiko Rukuru rwirengagije amategeko agenga amasosiyete y’ubucuruzi n’amategeko agenga imisoro, Ikigo cy’Igihugu cy’Imisoro n’Amahôro kibyutsa inzitizi y’iburabubasha bw’Urukiko rw’Ikirega ishingiye ku gaciro k’ikiburanwa, iyo nzitizi imaze kugibwaho impaka no gufatwaho icyemezo mu rubanza rubanziriza urundi rwo ku wa 30/06/2017, Urukiko rukemeza ububasha bwarwo, Ikigo cy’Igihugu cy’Imisoro n’Amahôro cyatanze ubujurire bwuririye ku bundi bugamije gusaba ko Murekatete Clémentine Vervelde yategekwa kwishyura imisoro ya sosiyete DISCOME Ltd nk’uko cyabisabye guhera mu rwego rwa mbere mu kirego kiregera kwiregura.

[14] Urubanza mu mizi rwaburanishijwe ku wa 05/12/2017, Murekatete Clémentine Vervelde ahagarariwe na Me Zawadi Stephen, naho Ikigo cy’Igihugu cy’Imisoro n’Amahôro gihagarariwe na Me Byiringiro Bajeni.

II. IBIBAZO BIGIZE URUBANZA N’ISESENGURA RYABYO

a. Kumenya niba itambamira ry’ihinduzamutungo ryakozwe ku mutungo utimukanwa wa Murekatete Clémentine Vervelde uri mu kibanza gifite nomero UPI 1/02/13/02/631 rigomba kuvanwaho.

[15] Uburanira Murekatete Clémentine Vervelde avuga ko ingingo ya 137 y’Itegeko N°07/2009 ryo ku wa 27/04/2009 rigenga amasosiyete y’ubucuruzi iteganya ko nta na rimwe umuntu ku giti cye ashobora kubazwa inshingano za sosiyete ku mpamvu z'uko afitemo imigabane gusa.

[16] Akomeza avuga ko Ikigo cy'ubucuruzi gifite ubuzima gatozi gikurikiranwa kikanaryozwa ku giti cy’ayo, ko hatakurikiranwa abayobozi cyangwa abanyamigabane bacyo, kuko ari abantu batandukanye na sosiyete, ko iyi ishobora kurega ikanaregwa, igatanga imisoro, ikagira n'abakozi ndetse n'ibindi byose abantu bakora ku giti cyabo.

[17] Avuga kandi ko ibiteganywa n’ingingo ya 46 bis y’Itegeko N°25/2005 rigena imitunganyirize y’isoresha, bikorwa igihe urukiko rubifitiye ububasha rwabyemeje, ko ku birebana na Murekatete Clémentine Vervelde, nta rukiko rwabyemeje mbere y’uko Ikigo cy’Igihugu cy’Imisoro n’Amahôro gitambamira ihinduzamutungo ry’umutungo we utimukanwa, bivuze ko icyo gikorwa kinyuranije n'amategeko agenga imisoro.

[18] Uburanira Ikigo cy'Igihugu cy'Imisoro n'Amahôro avuga ko nubwo mu bisanzwe umutungo wa sosiyete utandukanye n'umutungo w'abanyamigabane bayo, ntibibuza ko mu gihe bigaragaye ko bagize uruhare mu gutuma sosiyete ituzuza inshingano zayo zijyanye n'imisoro, babiryozwa hashingiye ku ngingo ya 46 bis y'Itegeko N˚25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha, kandi ko ntaho iyo ngingo ivuga ko urukiko rugomba kubanza kwemeza uburyozwe bw'abayobozi n'abanyamuryango ba sosiyete mbere y'uko itambamira ihinduzamutungo ry'imitungo yabo bwite, ndetse ko itegereje ko urubanza rucibwa yasanga imitungo yavanamo ubwishyu yaranyerejwe cyangwa yarahishwe.

[19] Akomeza avuga ko Ikigo cy'Igihugu cy'Imisoro n'Amahôro cyatambamiye ihinduzamutungo ry'inzu ya Murekatete Clémentine Vervelde kuko, akimara kubona umushinga w'umusoro wa sosiyete, yahise yihutira kugurisha imodoka zayo ebyiri, bituma nayo yihutira gutambamira ihinduzamutungo ry'umutungo we utimukanwa kugira ngo hato nawo atawuburizamo agambiriye gutuma umusoro utishyurwa.

[20] Avuga kandi ko Ikigo cy'Imisoro n'Amahôro cyatambamiye ihinduzamutungo ry'inzu ya Murekatete Clémentine Vervelde gishingiye ku ngingo ya 283, agace ka 1, y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, yemerera ufitiwe umwenda gusaba itambama hinduranya ry'umutungo w'ufite umwenda.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 46 bis y'Itegeko N°25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha iteganya ko "abayobozi bafite uruhare mu buryo butaziguye mu igenzura no mu micungire y'isosiyete idahamagarira rubanda kuyiguramo imigabane, baryozwa bose hamwe imisoro iyo sosiyete ibazwa, iyo bigaragaye ko, ku bushake cyangwa ku burangare bwabo batumye isosiyete iryozwa iyo misoro. Abanyamigabane nabo baryozwa imisoro y'isosiyete iyo bafite uruhare mu micungire y'isosiyete cyangwa mu mikoreshereze mibi y'umutungo wayo ku buryo bituma idashobora kuzuza inshingano zayo zijyanye n'imisoro. Urukiko rubifitiye ububasha rwemeza uburyozwe bw'abayobozi n'abanyamigabane buvugwa muri iyi ngingo".

[22] Ibivugwa muri iyi ngingo bigaragara ko ari umwihariko (exception) ku ihame rusange rivuga ko sosiyete igira ubuzima gatozi bwite butandukanye n'ubw'abanyamigabane bayo, nk'uko bivugwa mu ngingo ya 23 y'Itegeko N° 27/2017 ryo ku wa 31/05/2017 ryerekeye amasosiyete y'ubucuruzi, ari nayo mpamvu, nk'uko bivugwa na none mu ngingo ya 95 y'iryo tegeko, umuntu ufite umugabane mu isosiyete ifite uburyozwe bugarukira ku migabane, adashobora kubazwa inshingano y'isosiyete ku mpamvu yo kuba afitemo umugabane gusa, uburyozwe bwe bukaba bugarukira gusa ku mafaranga atarishyuwe ku mugabane afite (1), ku bundi buryozwe bwateganyijwe mu buryo butaziguye (expressement) n'inyandiko z'ishingwa rya sosiyete (2), ku byahawe umunyamigabane ariko bikaba bigomba kugaruzwa (3).

[23] Ku bijyanye no gutambamira ihinduzamutungo ry'ibintu bitimukanwa, ingingo ya 283 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya, mu gace kayo ka 1 ko "uberewemo umwenda wese cyangwa umuntu wese ubifitemo inyungu ashobora gusaba Umubitsi w'Inyandikompamo z'ubutaka cyangwa Umunyamabanga Nshingwabikorwa w'Umurenge cyangwa uw'Akarere w'aho ikitimukanwa kiri kubuza umubereyemo umwenda gukora ihinduzamutungo ry'ibintu bye bitimukanwa".

[24] Urukiko rurasanga ingingo ya 46 bis y'Itegeko rigena imitunganyirize y'isoresha ryavuzwe, Ikigo cy'Igihugu cy'Imisoro n'Amahôro kivuga ko cyashingiyeho gitambamira ihinduzamutungo ry'umutungo utimukanwa wa Murekatete Clémentine Vervelde, igiha gusa uburenganzira bwo kuregera Urukiko rubifitiye ububasha kugira ngo rwemeze uburyozwe bw'abayobozi n'abanyamigabane buvugwa muri iyi ngingo, ariko ubwayo itagiha uburenganzira bwo gutambamira ihinduzamutungo ry'umutungo utimukanwa w'abayobozi cyangwa abanyamigabane ba sosiyete bavugwa muri iyo ngingo.

[25] Ku birebana n'ingingo ya 283, agace ka mbere, y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, nayo Ikigo cy'Igihugu cy'Imisoro n'Amahôro kivuga ko cyashingiyeho gitambamira ihinduzamutungo ry'inzu ya Murekatete Clémentine Vervelde, Urukiko rurasanga iyo ngingo itanga inzira yo gukumira by'agateganyo ihinduranya ry'umutungo utimukanwa w'ubereyemo undi umwenda, ariko itakoreshwa hakumirwa ihinduzamutungo y'inzu ya Murekatete Clémentine Vervelde kuko Ikigo cy'Igihugu cy'Imisoro n'Amahôro nta mwenda w'umusoro cyagaragaje yaba akibereyemo, akaba adashobora kuryozwa umusoro waciwe sosiyete DISCOME Ltd mu gihe cyose nta rukiko rubifitiye ububasha ruremeza ko agomba kuryozwa uwo musoro.

[26] Urukiko rurasanga ibimaze kuvugwa ko inzu ya Murekatete Clémentine Vervelde itatambamirwa kugurishwa hashingiye ku musoro waciwe sosiyete DISCOME Ltd bihuye n'ibyemejwe n'uru rukiko mu manza zitandukanye, harimo n'urwo Ikigo cy'Igihugu cy'Imisoro n'Amahôro cyaburanye na Munyampundu Antoine na Mukarugambwa Béatrice, aho rwasobanuye, mu gika cya 26, ko uburyozwe bw'abayobozi cyangwa abanyamigabane ba sosiyete ari umwihariko (exception) wemezwa gusa n'Urukiko[1].

[27] Hashingiye ku mategeko no ku bisobanuro byatanzwe, Urukiko rurasanga itambamira ry'ihinduzamutungo ryakozwe ku mutungo utimukanwa wa Murekatete Clémentine Vervelde uri mu kibanza gifite N° UPI 1/02/13/02/631 rigomba kuvanwaho kuko ryakozwe mu buryo bunyuranyije n'amategeko.

b. Kumenya niba Murekatete Clémentine Vervelde yategekwa kwishyura imisoro ya sosiyete DISCOME Ltd

[28] Uburanira Ikigo cy'Igihugu cy'Imisoro n'Amahôro avuga ko Urukiko Rukuru rw'Ubucuruzi rwagaragaje ko ikirego kiregera kwiregura cyatanze guhera mu rwego ra mbere, gisaba ko Murekatete Clémentine Vervelde aryozwa imisoro ya sosiyete DISCOME Ltd hashingiye ku ngingo ya 46 bis y'Itegeko N°25/2005 rigena imitunganyirize y'isoresha kubera uruhare afite mu gutuma iyo sosiyete itishyura imisoro yaciwe, cyagombaga kwakirwa kigasuzumwa kuko gifitanye isano n'ikirego fatizo cyatanzwe na Murekatete Clémentine Vervelde cyo gukuraho itambamira ry'ihinduzamutungo ryakozwe ku nzu ye, ariko igitangaje, akaba ari uko mu gace ka 36 k'urubanza Urukiko Rukuru rw'Ubucuruzi rwavuze ko rutasuzuma icyo kirego ubwa mbere mu bujurire.

[29] Akomeza avuga ko iyi myumvire y'umucamanza inyuranyije n'ingingo ya 171 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryavuzwe, iteganya ko "Urukiko rwajuririwe iyo ruhinduye icyemezo cyajuririwe, ruburanisha urwo rubanza mu mizi yarwo keretse iyo ruruhinduye ku mpamvu y'uko rwaregewe mu buryo budakurikije amategeko cyangwa ku mpamvu y'iburabubasha", ari nayo mpamvu asaba uru rukiko gusuzuma ikirego

[1] Urubanza RCOMAA00040/2016/SC rwaciwe ku wa 22/12/2017.

Ikigo cy’Igihugu cy’Imisoro n’Amahôro cyatanze guhera ku rwego rwa mbere, rukemeza ko Murekatete Clémentine Vervelde aryozwa umusoro waciwe sosiyete DISCOME Ltd.

[30] Avuga kandi ko igituma Ikigo cy’Igihugu cy’Imisoro n’Amahôro gisanga Murekatete Clémentine Vervelde agomba kuryozwa imisoro ibazwa DISCOME Ltd ari uko, mu gihe sosiyete DISCOME Ltd yakorerwaga igenzurwa, yakoze ibikorwa byo kugurisha imitungo yayo, bifatwa nk’ibyatumye itishyura imisoro yaciwe, ingero zifatika akaba ari amasezerano y’ubugure bw’imodoka zayo ebyiri yakozwe hagati ya sosiyete DISCOME Ltd (ugurisha) n’indi sosiyete yitwa DITRAC Solution Ltd (ugura) ku wa 30/04/2013.

[31] Avuga ko ikindi kigaragaza ko Murekatete Clémentine Vervelde yagize uruhare mu gutuma sosiyete DISCOME Ltd idashobora kuzuza inshingano zayo zijyanye n’imisoro, ari uko yagurishije imitungo ya sosiyete DISCOME Ltd yaramaze guhabwa inyandiko ikosora yo ku wa 05/03/2013, aho kugira icyo ayivugaho mu gihe cy’iminsi mirongo itatu (30) nk’uko amategeko abimwemerera mu ngingo ya 27 y‘Itegeko rigena imitunganyirize y’isoresha, ahubwo yihutiye kugurisha imitungo ya sosiyete, ibi akaba ari uburyo yakoze bwo kunyereza imitungo ya sosiyete DISCOME Ltd agamije kuburizamo iyishyurwa ry’umwenda w’imisoro iyi sosiyete ibazwa, kuko iyo aza kuba yaragize ubushake bwo kugira ngo yuzuze inshingano yayo yo kwishyura imisoro, yari kubikora kuko ugereranyije umusoro yasabwaga kwishyura mu nyandiko isoza igenzura yakiriye ku itariki ya 26/06/2013 ungana na 19.895.201Frw, ukareba mu by‘ukuri n’amafaranga yagurishije ziriya modoka ebyiri za DISCOME Ltd ku giciro cya 38.000.000Frw, aya mafaranga yashoboraga kuvamo ubwishyu bw’umwenda w’imisoro DISCOME Ltd igomba Ubuyobozi bw’Imisoro.

[32] Uburanira Murekatete Clémentine Vervelde avuga ko Urukiko Rukuru rwabisobanuye neza ko ikirego cyatanzwe n‘Ikigo cy’Igihugu cy’Imisoro n’Amahôro kitasuzumwa bwa mbere mu bujurire, akaba asanga n’uru rukiko rutagisuzuma bwa mbere mu bujurire bwa kabiri.

UKO URUKIKO RUBIBONA:

[33] Mu bujurire bwayo bwuririye ku bundi, Ikigo cy’Igihugu cy’Imisoro n’Amahôro gisaba ko ikirego kiregera kwiregura cyatanzwe guhera mu Rukiko rw’Ubucuruzi cyakwakirwa kigasuzumwa, Murekatete Clémentine Vervelde akaryozwa imisoro ya sosiyete DISCOME Ltd hashingiye ku ngingo ya 46 bis y’Itegeko N°25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y’isoresha kubera uruhare ngo afite mu gutuma iyo sosiyete itishyura imisoro yaciwe

[34] Ingingo ya 106 y’Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ivuga ko ikirego kiregera kwiregura ari igitangwa n’uregwa agamije gusaba ko urega agira ibyo acibwa, naho ingingo ya 107 y’iryo tegeko, mu gace kayo ka 2, igateganya ko ibirego bigamije kwiregura byakirwa gusa iyo bigamije kwiregura k’uregwa ku kirego cy’iremezo cyangwa bifitanye isano nacyo (1°), bigamije kwaka indishyi ku makosa yakozwe mu rubanza (2°), cyangwa bigamije guhwanya imyenda kugira ngo ababuranyi babe bishyuranye (3°).

[35] Urukiko rurasanga ikirego cyatanzwe n’Ikigo cy’Igihugu cy’Imisoro n’Amahôro gisaba ko uregwa yategekwa kwishyura imisoro ya sosiyete DISCOME Ltd kitagamije kwiregura ku kirego cy’iremezo cyatanzwe na Murekatete Clémentine Vervelde asaba ko itambamira ry’ihinduzamutungo y’inzu ye rivanwaho kubera ko ryakozwe mu buryo butubahirije amategeko, hagaragazwa ko itambama ryakozwe ryubahirije amategeko, ndetse nta n’isano gifitanye nacyo kuko, nk’uko byasobanuwe n’Urukiko rw’Ubucuruzi, ari ikirego cyihariye gishingiye ku mpamvu itandukanye irebana

n'uburyozwe bw'abayobozi n'abanyamigabane ba sosiyete y'ubucuruzi ku birebana n'imisoro yaciwe iyo sosiyete, nk'uko bisobanurwa mu ngingo ya 46 bis y'Itegeko rigena imitunganyirize y'isoresha, kikaba rero kitagomba kwakirwa.

[36] Urukiko rurasanga kandi nta yindi mpamvu ishingiye ku ngingo ya 107, agace ka 2, y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryavuzwe yatuma ikirego kiregera kwiregura cyatanzwe n'Ikigo cy'Igihugu cy'Imisoro n'Amahôro cyakirwa, bityo ubujurire bwayo bwuririye ku bundi bukaba nta shingiro gifite.

c. Ku bijyanye n'amafaranga y'ikurikirana rubanza n'igihembo cya Avoka asabwa n'ababuranyi

[37] Uburanira Murekatete Clémentine Vervelde asaba ko Ikigo cy'Igihugu cy'Imisoro n'Amahôro cyashoye uwo ahagarariye mu nkiko ku maherere, cyakwishyura indishyi za 5.000.000Frw kubera ko yambuwe ibyangombwa by'inzu ye, bigatuma adashobora kubona abayikodesha, kikanishyura amafaranga y' igihembo cya Avoka angana na 1.000.000Frw kuri uru rwego na 1.100.000Frw ku nzego ebyiri zabanje.

[38] Uburanira Ikigo cy'Igihugu cy'Imisoro n'Amahôro avuga ko indishyi Murekatete Clémentine Vervelde asaba nta shingiro zifite kuko ibyangombwa by'inzu bitigeze bifatirwa, itambamira ry'ihinduzanya rikaba ritabuza ko inzu ikodeshwa, ko n'amafaranga y'igihembo cya Avoka asaba adakwiye kuyahabwa kuko ari we washoye Ikigo cy'Igihugu cy'Imisoro n'Amahôro mu rubanza.

[39] Asoza asaba ko Ikigo cy'Igihugu cy'Imisoro n'Amahôro cyagenerwa 2.000.000Frw y' ikurikiranarubanza n'igihembo cya Avoka.

UKO URUKIKO RUBIBONA:

[40] Urukiko rurasanga nta ndishyi zishingiye ku gihombo yagize Murekatete Clémentine Vervelde yagenerwa kuko nta bimenyetso atanga byerekana icyo gihombo, ariko akwiye kugenerwa amafaranga y'ikurikirana rubanza n'igihembo cya Avoka ku nzego eshatu yaburaniyemo kuko Ikigo cy'Igihugu cy'Imisoro n'Amahôro cyamushoye mu manza bitari ngombwa, bikaba byarabaye ngombwa ko asohora amafaranga yo gutegura urubanza, akaniyambaza umunyamategeko umuburanira, bityo mu bushishozi bwarwo, hagendeye ku miterere y'urubanza, igihe rumaze n'inzego eshatu yaburanyiyemo, akaba agenewe 2.600.000Frw yose hamwe.

III. ICYEMEZO CY'URUKIKO:

[41] Rwemeje ko ubujurire bwa Murekatete Clémentine Vervelde bufite ishingiro;

[42] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe n'Ikigo cy'Igihugu cy'Imisoro n'Amahôro nta shingiro bufite;

[43] Rwemeje ko urubanza RCOMA0672/15/HCC rwaciwe ku wa 13/05/2016 n'Urukiko Rukuru rw'Ubucuruzi ruhindutse;

[44] Rwemeje ko itambamira ry'ihinduzamutungo ryakozwe ku mutungo utimukanwa wa Murekatete Clémentine Vervelde, iri mu kibanza gifite N° UPI 1/02/13/02/631 rivanyweho;

[45] Rwemeje ko ikirego cyatanzwe n‘Ikigo cy’Igihugu cy’Imisoro n’Amahôro, gisaba ko Murekatete Clémentine Vervelde yategekwa kwishyura imisoro ya sosiyete DISCOME Ltd kitagomba kwakirwa ngo gisuzumwe;

[46] Rutegetse Ikigo cy’Igihugu cy’Imisoro n’Amahôro kwishyura Murekatete Clémentine Vervelde amafaranga y’ikurikiranarubanza n’igihembo cya Avoka angana na 2.600.000Frw ku nzego eshatu baburanyiyemo;

[47] Rutegetse kandi Ikigo cy’Igihugu cy’Imisoro n’Amahôro kwishyura amagarama y’urubanza ahwanye na 100.000 Frw.