BRALIRWA v. GISA

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA00023/2017/SC (Hatangimbabazi, P.J., Ngagi na Kanyange, J.) 06 Ukwakira 2017]

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ububasha bw'inkiko z'ubucuruzi – Inshingano zidashingiye ku masezerano – Inshingano zidashingiye ku masezerano zifatwa nk'iz 'ubucuruzi iyo zikomoka ku murimo w'ubucuruzi – Imanza zikomoka kuri izo nshingano zikaba ziri mu mu bubasha bw'inkiko z'ubucuruzi.

Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ububasha bw'inkiko – Ububasha bushingiye ku ndishyi zagenwe mu rubanza – Urugero rw'indishyi zagenwe n'umucamanza igihe habaye impaka nirwo rugomba gushingirwaho mu kwemeza niba ubujurire buri mu bubasha bw'Urukiko rw'Ikirenga, aho kuba gusa agaciro k'ikiburanwa katanzwe n'umuburanyi mu kirego cye – Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigenga imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingigo ya 7.

Incamake y'ikibazo: Gisa Frediane yareze BRALIRWA Ltd mu mu Rukiko rw'Ubucuruzi rwa Nyarugenge avuga ko yarakoresheje amafoto ye mu itangazamakuru (TVR na You tube) mu gikorwa cyo kwamamaza igicuruzwa cyayo cya Heineken nta burenganzira ayihaye, ku byibyo akaba asaba Urukiko kumugenera indishyi zinyuranye zingana na 130.000.000Frw.

BRALIRWA Ltd yatanze inzitizi y'iburabubasha bw'inkiko z'ubucuruzi ivuga ko ikirego kitagombaga kwakira, ahubwo ko yagombaga kuregera mu nkiko zisanzwe kuko icyo aregera ni "violation de la vie privée" biyo kikaba ari ikirego cy'imbonezamubano, kiri mu bubasha bw'inko zisazwe.

Kuri iyi nzitizi, Urukiko rwemeje ko ikirego kiri mu bubasha bwarwo kuko uregwa ari sosiyete y'ubucuruzi, kandi ko igikorwa iregwa cyo kuba yarakoreshejemo amashusho n'amafoto by'urega cyo kwamamaza igicuruzwa cyayo gifatwa nk'igikorwa cy'ubucuruzi.

Mu mizi y'urubanza, Urukiko rw'Ubucuruzi rwa nyarugenge rwemeje ko ikirego cy'urega nta shingiro gifite, bityo ko atagomba guhabwa indishyi asaba kuko urukiko rwasanze BRALIRWA Ltd itigeze yamamaza igicuruwa cyayo ikoresheje amashusho n'amajwi ye, ahubwo rumutegeka guha Bralirwa indishyi z'ikurikiranarubanza.

Gisa ntiyishimiye imikirize y'urubanza maze ajurira mu Rukiko Rukuru rw'Ubucuruzi avuga ko Urukiko rubanza rwirengagije uruhare rwa BRALIRWA Ltd mu bikorwa byo kwamamaza igicuruzwa cyayo cya Heineken hifashishijwe amashusho n'amafoto bye, kandi ko uwo baburana yiyemereye ko ayo mashusho n'amafoto yakoreshejwe mu kwamamaza inzoga zayo kandi nta masezerano bagiranye, avuga ko amafoto yayahawe na sosiyete EXP RWANDA, ariko akaba atarashoboye kugaragaza amasezerano yagiranye n'iyo sosiyete, ku bwibyo, Gisa akaba asaba urukiko guhabwa indishyi yari yatse atagenewe.

Muri uru rukiko, BRALIRWA Ltd yongeye gutanga inzitizi ishingiye ku kuba uru rubanza rutari mu bubasha bw'inkiko z'ubucuruzi, ivuga ko mu gihe amashusho cyangwa amafoto

y'umuntu akoreshejwe mu bikorwa byo kwamamaza atabitangiye uburenganzira byaba ari ikibazo cy'imbonezamubano kigomba kujyanwa mu nkiko zisanzwe. Uru rukiko rwemeje ko ubujurire bufite ishingiro kuko rwasanze Bralirwa yarakoresheje amshusho n'amafoto bya Gisa nta burenganzira ibifitiye, bityo ko imikirize y' urubanza ihindutse, ko ubujurire buri mu bubasha bwarwo, rutegeka Bralirwa kumuha indishyi zingana na 8.200.000Frw.

Bralirwa yajuririye mu Rukiko rw'Ikirenga isaba uru rukiko gusuzuma niba koko yaryozwa indishyi kubwo gukoresha amajwi n'amashusho ya Gisa mu kwamamaza igicuruzwa cyayo ivuga ko ntaho yigeze ihurira nayo. Gisa nawe atanga inzitizi avuga ko uru rukiko rudafite ububasha bwo kwakira ubujurire kuko indishyi zagenwe mu rubanza rujuririrwa zitageze kuri 50.000.000Frw. BRALIRWA Ltd ivuga ko uru rukiko rufite ububasha kuko indishyi zaregewe zirenze 50.000.000Frw kuko icyaregewe kw'ikubitiro ari indishyi zingana na 130.000.000Frw kandi ko ububasha bw'uru Rukiko bushingiye ku kuba uru rubanza rwaraciwe n'inkiko z'ubucuruzi kandi zitabifitiye ububasha kandi ko n'indishyi zaregewe zirenze 50.000.000Frw.

Gisa Frediane we, avuga ko ashingiye kw'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'inkiko z'ubucuruzi, asanga inkiko zibanza zaciye urubanza zibifitiye ububasha kuko ibikorwa bivugwa muri urubanza ari iby'ubucuruzi.

Incamake y'icyemezo: 1. Inshingano zidashingiye ku masezerano zifatwa nk'iz'ubucuruzi iyo zikomoka ku murimo w'ubucuruzi, bityo imanza zibishingiyeho zikaba ziri mu mu bubasha bw'inkiko z'ubucuruzi.

2.Urugero rw'indishyi zagenwe n'umucamanza igihe habaye impaka nirwo rugomba gushingirwaho mu kwemeza niba ubujurire buri mu bubasha bw'Urukiko rw'Ikirenga, aho kuba gusa agaciro k'ikiburanwa katanzwe n'umuburanyi mu kirego cye. Bityo inzitizi y'iburabubasha bw'urukiko rw'ikirenga ifite ishingiro.

Inzitizi y'iburabubasha ishingiye ku kuba indishyi zagenwe mu rubanza rujuririrwa zitageze nibura kuri 50.000.000 Frw ifite ishingiro;
bujurire ntibwakiriwe;
Ingwate y'igarama yatanzwe ihwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:

Itegeko Ngenga N°06/2012/OL ryo ku wa 14/09/2012 rigena imiterere, imikorere n'ububasha by'inkiko z'ubucuruzi, ingingo ya 2.

Imanza zifashishijwe:

RCOMAA 00020/2016/SC–RCOMAA 0025/15/CS, Rural Development Solution Company Ltd v Akarere ka Nyabihu rwaciwe n'Urukiko rw'Ikirenga ku wa 21/04/2017

Ibitekerezo by'abahanga:

D. FASQUELLE, M.- A. FASQUELLE, Droit de l'entreprise 2010/2011, "Introduction au droit et au droit commercial", Paris, Lamy, 2010 p. 143.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Gisa Frediane yatanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge, arega Bralirwa Ltd kuba yarakoresheje amashusho ye mu kwamamaza ubucuruzi bw'inzoga yayo yitwa Heineken nta burenganzira ayihaye, no kuba yarakoresheje amafoto ye mw'itangazamakuru rya televiziyo (RTV), "You tube", "Websites" itabiherewe uburenganzira, bityo ayisaba indishyi zinyuranye.

[2] Mu iburanisha ry'ibanze ryo ku wa 05/10/2016, uburanira Bralirwa Ltd yatanze inzitizi yo kutakira ikirego kubera kitari mu bubasha bw'Urukiko rw'Ubucuruzi, aho uyiburanira yavugaga ko icyo kirego gishingiye ku itegeko rigenga umutungo bwite mu by'ubwenge, mu gihe nyamara Gisa atabanje kwerekana ko ibyo aburana bigize koko umutungo bwite mu by'ubwenge, ko kandi nta masezerano y'ubucuruzi afitanye na Bralirwa Ltd. Ku wa 11/10/2016, Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko ikirego cyatanzwe na Gisa Frediane kiri mu bubasha bwarwo, nyuma yo gusanga Bralirwa Ltd ari sosiyete y'ubucuruzi, ko kandi igikorwa iregwa kuba yarakoreshejemo amashusho n'amafoto bya Gisa Frediane ari icyo kwamamaza igicuruzwa cyayo cya Heineken, kikaba gifatwa nk'igikorwa cy'ubucuruzi.

[3] Mu mizi y'urubanza RCOM 00965/2016/TC/NYGE rwaciwe ku wa 28/10/2016, Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko ikirego cya Gisa Frediane nta shingiro gifite, ko Bralirwa Ltd itigeze yamamaza igicuruzwa cyayo cyo mu bwoko bwa Heineken ikoresheje amashusho n'amajwi

bye ku buryo yabimuhera indishyi. Rwamutegetse guha Bralirwa Ltd indishyi z'ikurikiranarubanza n'igihembo cy'Avoka zingana na 600.000Frw.

[4] Gisa Frediane ntiyishimiye imikirize y'urubanza rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge, ajuririra Urukiko Rukuru rw'Ubucuruzi avuga ko Urukiko rubanza rwirengagije uruhare rwa BRALIRWA Ltd mu bikorwa byo kwamamaza Heineken hifashishijwe amashusho n'amafoto bye, akaba anenga ko indishyi yatse atazigenewe.

[5] BRALIRWA Ltd, nayo, yongeye gutanga inzitizi ishingiye ku kuba uru rubanza rutari mu bubasha bw'inkiko z'ubucuruzi, kuko mu gihe amashusho cyangwa amafotoy'umuntu akoreshejwe mu bikorwa byo kwamamaza atabitangiye uburenganzira, byaba ari ikibazo cy'imbonezamubano kigomba kujyanwa mu nkiko zisanzwe.

[6] Mu rubanza RCOMA 00645/2016/CHC/HCC rwaciwe ku wa 09/02/2017, Urukiko Rukuru rw'Ubucuruzi rwasanze uru rubanza ruri mu bubasha bw'inkiko z'ubucuruzi, rwemeza ko ubujurire bwa Gisa Frediane bufite ishingiro. Rwemeje kandi ko BRALIRWA Ltd yakoresheje amashusho n'amafoto bya Gisa Frediane nta burenganzira ibifitiye, ruyitegeka kumuha 8.200.000Frw no kumusubiza amagarama yose yishyuye atanga ikirego ku rwego rwa mbere no ku rwego rw'ubujurire.

[7] BRALIRWA Ltd yajuririye imikirize y'urubanza mu Rukiko rw'Ikirenga, isaba ko rwasuzuma ibibazo bikurikira:

- Gusuzuma niba BRALIRWA Ltd yaryozwa indishyi kubera amashusho n'amafoto bya Gisa Frediane itigeze igira aho ihurira nayo;

- Gusuzuma ingaruka zigomba guhabwa urubanza rwaciwe nta tegeko na rimwe rishingiweho; - Gusuzuma niba Urukiko rwemerewe kugena indishyi mu bushishozi bwarwo mu gihe nyamara uzisaba azishingira ku rwunguko yemeza ko uziregwa yamukomoyeho;

- Gusuzuma niba Urukiko rutarivuguruje mu kugenera Gisa indishyi mu kirego cy'ubucuruzi, nyamara rugahindukira, rukemeza ko izo ndishyi zitanzwe gusa kubera ko amafoto n'amashusho byakoreshejwe nta burenganzira nyirabyo abitangiye.

[8] Urubanza rwaburanishijwe mu ruhame ku wa 12/09/2017, BRALIRWA Ltd ihagarariwe na Me Umurerwa Jeanne Marie Christine afatanyije na Me Mpayimana Isaïe, naho Gisa Frediane ahagarariwe na Me Ruton Ndasheja Sonia, uyu akaba yaratanze inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga kubera ko indishyi zagenwe mu rubanza rujuririrwa zitageze kuri 50.000.000Frw, ababuranira BRALIRWA Ltd nabo bavuga ko ububasha bw'uru Rukiko bushingiye ku kuba uru rubanza rwaraciwe n'inkiko z'ubucuruzi kandi zitabifitiye ububasha kandi ko n'indishyi zaregewe zirenze 50.000.000Frw.

II. IKIBAZO KIGIZE URU RUBANZA N'ISESENGURWA RYACYO

Kumenya niba uru rubanza ruri mu bubasha bw'Urukiko rw'Ikirenga

[9] Mu gusuzuma iki kibazo, Urukiko rurasanga ari ngombwa kubanza gusuzuma niba uru rubanza ruri mu bubasha bwarwo bushingiye ku kuba rwaraciwe n'inkiko zidafite ububasha, nyuma rwongere rusuzume niba rutari mu bubasha

bwarwo kubera ko urubanza rujuririrwa rutagenwemo indishyi zingana nibura na 50.000.000Frw.

a. Ububasha bw'Urukiko rw'Ikirenga bushingiye ku kuba, mu rwego rwa mbere n'urwa kabiri, uru rubanza rwaraciwe n'inkiko zidafite ububasha

[10] Ababuranira BRALIRWA Ltd bavuga ko ububasha bw'Urukiko rw'Ikirenga bushingiye ku ngingo ya 28, igika cya kabiri, agace ka 2°, y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigenga imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, kubera ko Urukiko Rukuru rw'Ubucuruzi rwakiriye ubujurire ku rubanza rutari mu bubasha bw'inkiko z'ubucuruzi, ko Gisa Frediane yatanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge kigamije gusaba indishyi za 130.000.000Frw zituruka ku gukoresha amashusho ye mu kwamamaza ubucuruzi bw'inzoga za BRALIRWA Ltd nta burenganzira ayihaye no gukoresha amafoto ye mu itangazamakuru rya Televiziyo, "You Tube", "websites" n'ibindi, akaba yarashingiye ku itegeko rigamije kurengera umutungo bwite mu by'ubwenge (*loi sur la propriété intellectuelle*), ndetse arondora n'ingingo z'iryo tegeko (*iya 1, 2, 3, 6, 7, 16, 177, 178, 179, 180, 181, 183 na 184*); ko mu myiregurire yayo, BRALIRWA Ltd yagaragaje ko icyo kirego atari ikibazo cy'ubucuruzi, ko rero kidashobora kwakirwa mu nkiko z'ubucuruzi (*exception d'incompétence des juridictions de commerce*) kubera ko:

1. Mu ngingo z'iryo tegeko rigamije kurengera umutungo bwite mu by'ubwenge, nta n'imwe muri zo igaragaramo ko amafoto n'amashusho by'umuntu ku giti cye, ari igihangano gishobora kurengerwa nk'umutungo bwite mu by'ubwenge;

2. Ingingo ya mbere y'iryo tegeko igaragaza urutonde rw'ibihangano bishobora kurengerwa nk'umutungo bwite mu by'ubwenge, kandi amafoto n'amashusho by'umuntu, bikaba bitarimo;

3. Gisa ubwe yiyemerera ko ntaho yigeze ahurira na BRALIRWA Ltd ku buryo bari kugirana ibikorwa by'ubucuruzi;

4. Nta kuntu iki kirego cyaba icy'ubucuruzi ngo kandi kinabeicy 'imbonezamubano, mu gihe Gisa aregera «violation de la vie privée», anashingiye ku ngingo ya 23 y'itegeko Nshinga, ndetse ko n'indishyi Urukiko Rukuru rw'Ubucuruzi rwaciye BRALIRWA Ltd usanga ariho honyine zishingiye, bityo iki kirego kikaba ari icy'imbonezamubano, kiri mu bubasha bw'Urukiko Rwisumbuye rwa Nyarugenge.

[11] Bavuga, na none, ko uretse no kuba inkiko zombi zibanza zitarashingiye ku mpamvu zimwe ku kibazo cy'ububasha bwazo kuri iki kirego cya Gisa, ingingo ya 178 y'Itegeko Ngenga rigena imiterere, imikorere n'ububasha by'Inkiko, ubwayo yihagije kugira ngo Urukiko rw'Ikirenga rwakire ubu bujurire, kuko mu manza z'imbonezamubano, amategeko yerekeye ububasha bwo kuziburanisha ari indemyagihugu.

[12] Me Ruton Ndasheja Sonia, uburanira Gisa Frediane, avuga ko ashingiye ku ngingo ya 2 y'Itegeko Ngenga Nº06/2012/OL ryo ku wa 14/09/2012 rigena imiterere, imikorere n'ububasha by'inkiko z'ubucuruzi, inkiko zibanza zaciye urubanza zibifitiye ububasha kuko ibikorwa bivugwa muri urubanza ari iby'ubucuruzi.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 28, igika cya kabiri, agace ka 2, y'Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigenga imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, iteganya ko: "Urukiko rw'Ikirenga rufite kandi ububasha bwo kuburanisha mu rwego rw'ubujurire imanza zaciwe ku rwego rwa kabiri n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi cyangwa Urukiko Rukuru rwa Gisirikare, iyo izo manza zashingiye kuitegeko ritariho cyangwa ingingo z'amategeko zitakiriho, cyangwa zaciwe n'urukiko rutabifitiye ububasha".

[14] Ingingo ya 2 y'Itegeko Ngenga N° 06/2012/OL ryo ku wa 14/09/2012 rigena imiterere, imikorere n'ububasha by'inkiko z'ubucuruzi, iteganya ko: "[...] ibibazo by'ubucuruzi bivuga imanza z'ubucuruzi, iz'imari, iz'imisoro n'amahoro n'ibindi bibazo bifitanye isano byerekeye: (10) impaka zivutse ku masezerano cyangwa ku bikorwa by'ubucuruzi hagati y'abantu cyangwa ibigo by'ubucuruzi. [...]". Ingingo ya 12, igika cya mbere, y'iryo Tegeko Ngenga, iteganya ko: "Inkiko z'Ubucuruzi ziburanisha mu rwego rwa mbere imanza zose z'ubucuruzi, iz'imari, iz'imisoro n'ibindi bibazo bifitanye isano, nk'uko bisobanurwa mu ngingo ya 2 y'iri tegeko ngenga"

[15] Abahanga mu mategeko, Daniel FASQUELLE na Marie-Alice FASQUELLE basobanura ko kubyerekeye inshingano zidashingiye ku masezerano, izi nshingano aba ari iz'ubucuruzi igihe cyose zakomotse ku gikorwa cy'ubucuruzi[1].

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[1] *Pour ce qui concerne les engagements extra-contractuels, ceux-ci sont commerciaux dès lors qu'ils sont nés à l'occasion de l'activité commerciale* (D. FASQUELLE, M.- A. FASQUELLE, Droit de l'entreprise 2010/2011, "Introduction au droit et au droit commercial ", Paris, Lamy, 2010 p. 143.

[16] Muri uru rubanza, dosiye igaragaza ko ikibazo Gisa Frediane afitanye na sosiyete y'ubucuruzi BRALIRWA Ltd, cyerekeranye n'amashusho n'amafoto ye yakoreshejwe (na BRALIRWA Ltd) mu kwamamaza ikinyobwa cyo mu bwoko bwa Heineken atabiyihereye uburenganzira, akaba asaba indishyi zikomoka kuri icyo gikorwa. Dosiye igaragaza na none ko uburanira BRALIRWA Ltd, mu Rukiko Rukuru rw'Ubucuruzi, yemeye ko koko ayo mashusho n'amafoto yakoreshejwe na BRALIRWA Ltd mu kwamamaza inzoga zayo kandi nta masezerano yagiranye na GISA Frediane, avuga ko BRALIRWA Ltd yayahawe na sosiyete EXP RWANDA, ariko akaba atarashoboye kugaragaza amasezerano yagiranye n'iyo sosiyete.

[17] Urukiko rurasanga kuba BRALIRWA Ltd ari sosiyete y'ubucuruzi, ibyo byerekana ko kwamamaza igicuruzwa cyayo cyo mu bwoko bwa Heineken hakoreshejwe amashusho n'amafoto bya Gisa Frediane, ari igikorwa gifitanye isano n'ubucuruzi, bityo, hakurikijwe ibiteganywa n'ingingo ya 2 n'iya 12 zavuzwe haruguru, impaka zigikomotseho zikaba zigomba gukemurwa n'inkiko z'ubucuruzi, cyane cyane ko, nk'uko n'abahanga mu mategeko bavuzwe haruguru babisobanura, inshingano zidashingiye ku masezerano zifatwa nk'iz'ubucuruzi iyo zikomoka ku murimo w'ubucuruzi, bityo imanza zibishingiyeho zikaba ziri mu mu bubasha bw'inkiko z'ubucuruzi.

[18] Urukiko rurasanga, hakurikijwe ibimaze gusobanurwa haruguru, urubanza rwajuririwe rwaraciwe n'inkiko zibifitiye ububasha, bityo imvugo y'uburanira BRALIRWA Ltd y'uko Urukiko rw'Ikirenga rufite ububasha bushingiye ku kuba inkiko

zibanza zaraciye urubanza rutari mu babasha bwazo, ikaba nta shingiro ifite.

b. Iburabubasha bw'Urukiko rw'Ikirenga rishingiye ku kuba indishyi zagenwe mu rubanza rujuririrwa zitageze nibura kuri 50.000.000 Frw

[19] Me Ruton Ndasheja Sonia, uburanira Gisa Frediane, avuga ko, ashingiye ku ngingo ya 28, igika cya kabiri, agace ka 7, y'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/2012 rigenga imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, uru rubanza rutari mu bubasha bw'Urukiko rw'Ikirenga, kuko BRALIRWA Ltd yajuririye urubanza ku rwego rwa kabiri kandi haratanzwemo indishyi zingana na 8.200.000 Frw, mu gihe amafaranga make yemewe n'itegeko ari 50.000.000Frw nibura.

[20] Ababuranira BRALIRWA Ltd bavuga ko ingingo ya 28, igika cya kane, y'Itegeko Ngenga N° 03/2012/OL yerekana ko ubu bujurire bugomba kwakirwa mu Rukiko rw'Ikirenga, kubera ko indishyi zisabwa, haba mu kirego, haba no mu iburana rya GISA Frediane, ari 130.000.000Frw, bityo zikaba zirenga 50.000.000Frw ziteganyijwe n'itegeko ku bujurire bwa kabiri, ko kandi icyagombwa atari ukureba icyo urukiko rwatanze, ahubwo ko ari ukureba icyaregerwaga mbere.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 28, igika cya kabiri, agace ka 7, y'Itegeko Ngenga N° 03/2012/OL ryo kuwa 13/06/2012 rigenga imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, iteganya ko: "Urukiko rw'Ikirenga rufite kandi ububasha bwo kuburanisha mu rwego rw'ubujurire imanza zaciwe ku rwego rwa kabiri

n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi cyangwa Urukiko Rukuru rwa Gisirikare, iyo izo manza [...] zagenwemo n'urukiko indishyi zingana nibura na miliyoni mirongo itanu z'amafaranga y'u Rwanda (50.000.000 Frw) cyangwa se zifite agaciro kagenwe n'umucamanza igihe habaye impaka, kangana nibura n'amafaranga y'u Rwanda miliyoni mirongo itanu (50.000.000 Frw)".

[22] Dosiye y'uru rubanza igaragaza ko, mu ntangiriro, GISA Frediane yareze BRALIRWA Ltd kuba yarakoresheje amashusho n'amafoto bye mu kwamamaza inzoga yayo yitwa Heineken atayibihereye uburenganzira, abisabira indishyi mbonezamusaruro zingana na 100.000.000Frw, indishyi z'akababaro zingana na 20.000.000Frw, amafaranga y'ikurikiranarubanza angana na 5.000.000Frw[2] n'igihembo cy'Avoka kingana na 10.000.000Frw, yose hamwe akaba 135.000.000Frw. Ku rwego rwa mbere nta ndishyi GISA Frediane yigeze agenerwa kuko yatsinzwe, naho ku rwego rwa kabiri (mu Rukiko Rukuru rw'Ubucuruzi) agenerwa 5.000.000Frw y'indishyi z'uko amashusho n'amafoto bye byashyizwe na BRALIRWA Ltd ku bicuruzwa byayo nta burenganzira abitangiye, 2.000.000Frw y'indishyi z'akababaro ko gushorwa mu manza ku maherere na 1.200.000Frw akubiyemo igihembo cy'Avoka n'indishyi z'ibyatanzwe mu gukurikirana urubanza, yose hamwe aba 8.200.000Frw.

[23] Urukiko rurasanga, n'ubwo, nk'uko bimaze gusobanurwa haruguru, icyaregewe ku kubitiro ari indishyi za 130.000.000Frw zari zirenze 50.000.000Frw, avugwa mu ngingo ya 28 y'Itegeko Ngenga N°03/2012/OL yavuzwe

[2] Mu Rukiko Rukuru rw'Ubucuruzi urega yavuze indishyi zo gukurikirana urubanza zingana na 3.000.000Frw

haruguru, ariko hashingiwe ku biteganywa mu gika cya 2, agace ka 7, cy'iyo ngingo, urugero rw'indishyi zagenwe n'umucamanza igihe habaye impaka nirwo rugomba gushingirwaho mu kwemeza niba ubujurire bwa BRALIRWA Ltd buri mu bubasha bw'Urukiko rw'Ikirenga, aho kuba gusa agaciro k'ikiburanwa katanzwe n'umuburanyi mu kirego cye nk'uko uburanira BRALIRWA Ltd ashaka kubyumvikanisha. Kuba rero muri uru rubanza bigaragara ko indishyi zagenwe n'umucamanza zingana na 8.200.000Frw, zikaba zitageze ku mubare wa 50.000.000 Frw uteganywa n'ingingo ya 28, igika cya 2, agace ka 7º, y'Itegeko Ngenga N°03/2012/OL yavuzwe haruguru, ibyo byerekana nta shiti, ko ubujurire bwa BRALIRWA Ltd butari mu bubasha bw'Urukiko rw'Ikirenga. Uyu murongo ni nawo wafashwe n'uru Rukiko mu rubanza RCOMAA 00020/2016/SC–RCOMAA 0025/15/CS rwaciwe ku wa 21/04/2017 (RURAL DEVELOPMENT SOLUTION COMPANY LTD vs AKARERE KA NYABIHU).

[24] Urukiko rurasanga rero, hashingiwe ku bimaze gusobanurwa haruguru, inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga yatanzwe na Gisa Frediane, ishingiye ku kuba indishyi zagenwe mu rubanza rujuririrwa zitageze nibura kuri 50.000.000Frw, ifite ishingiro.

III. ICYEMEZO CY'URUKIKO

[25] Rwemeje ko inzitizi y'iburabusha bw'Urukiko rw'Ikirenga yatanzwe na Gisa Frediane ifite ishingiro;

[26] Rwemeje ko ubujurire bwa BRALIRWA Ltd butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ikirenga;

[27] Rutegetse ko ingwate y'igarama yatanzwe na BRALIRWA Ltd ihwanye n'ibyakozwe mu rubanza.