NDITIRIBAMBE v GATERA N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RS/ INJUST/ RC 00007/2018/ SC (Mukamulisa, P.J, Nyirinkwaya, Cyanzayire, Rukundakuvuga na Hitiyaremye, J.) 13 Werurwe 2020]

Gusubirishamo urubanza ku mpamvu z'akarengane – Imbibi z'ikiburanwa – Ibyemejwe mu rundi rubanza rwaciwe ku rwego rwa nyuma, ntibishobora kuvuguruzwa binyuze mu nzira yo gusubirishamo ku mpamvu z'akarengane urubanza rutari mu ruhererekane rumwe narwo hashingiwe gusa ku kuba zifitanye isano.

Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishamo ku mpamvu z'akarengane – Imbibi z'ikiburanwa – Ibirego bishya bitari mu murongo w'ibyaburanywe urubanza rugishingwa mu rwego rwa mbere cyangwa ingingo zitasuzumwe mu rubanza rusubirishwamo ntibyakirwa mu rubanza rwasabiwe gusuburwamo ku mpamvu y'akarengane.

Amategeko agenga amasezerano – Amasezerano y'ubugure – Inshingano y'umugurisha – Umugurisha yishingira ko umuguzi atazavutswa uburenganzira bwe ku cyo yaguze (garantie contre l'éviction).

Incamake y'ikibazo: Urubanza rwahereye mu Rukiko Rwisumbuye rwa Gasabo, Nditiribambe arega Gatera asaba indishyi zirebana n'inzu ye yari mu kibanza yamugurishije yasenywe barangiza urubanza Gatera yaburanyemo na Nyamaswa wamureze ko yagurishije ikibanza cye Urukiko rwemeza ko icyo kibanza ari icya Nyamaswa nibwo urubanza rwarangijwe inzu Nditirimana yubatsemo zirasenywa. Muri urwo

rubanza Nditiribambe yarezemo Gatera, Urukiko rwafashe icyemezo ko Gatera agomba gusubiza Nditiribambe ikiguzi cy'inzu yashenywe ndetse n'amafaranga y'igihombo cy'ubukode yabonaga. Kubera ko urubanza rwaciwe Gatera adahari yaje gusubirishamo urwo rubanza muri urwo Rukiko maze rufata icyemezo rushingiye ku rubanza Nditiribambe yari yatambamiye rwaburanagamo Gatera na Nyamaswa aho Urukiko rutakiriye ikirego cye, ariko mu myanzuro akaba yaragaragazaga ko ajya kugura icyo kibanza yari azi ibibazo birimo kuko yari azi ko yari yarigeze ku kigurisha Nyamaswa, bityo Urukiko ruvuga ko ibi bigaragaza ko Gatera atamugurishije azi ko ibyo agurisha atari ibye, bityo akaba ataryozwa ibyashenywe harangizwa urubanza yatsinzwe na Nyamaswa.

Nditiribambe ntiyishimiye imikirize ajurira Urukiko Rukuru avuga ko Urukiko Rwisumbuye rwirengagije ko yaguze ikibanza na Gatera nta buryarya, ndetse ko mafaranga yahise ayishyura banki bitewe n'uko inzu yari mu bugwate kubera umwenda Gatera yari ayibereyemo, akaba yarumvaga nta wundi ikibanza cyanditseho kuko Gatera atari kugitangaho ingwate atari icye, Urukiko Rukuru rwafashe icyemezo rwemeza ko ubujurire bwe nta shingiro bufite kubera ko amasezerano ya Gatera yemera gusubiza Nyamaswa amafaranga baguze atasimbura ay'ubugure bakoze mbere.

Nditiribambe yandikiye Urwego rw'Umuvunyi asaba ko urwo rubanza rwasubirishwamo ku mpamvu z'akarengane. Urwego rw'Umuvunyi, rwandikiye Perezida w'Urukiko rw'Ikirenga rumusaba ko urwo rubanza rwasubirwamo kubera impamvu zakarengane. Perezida w'Urukiko rw'Ikirenga yemeje ko urwo urubanza rugomba kongera kuburanishwa. Muri uru rubanza hagobokeshejwemo Nyamaswa,

Mu gusobanura akarengane yagiriwe, uregwa avuga ko inkiko zakoze amakosa kuko zemeje ko habaye amasezerano y'ubugure hagati ye na Nyamaswa kandi uyu atarigeze agaragaza amasezerano y'ubugure yanditse baba baragiranye cyangwa agaragaze igiciro bemeranyijeho n'ingano z'ikibanza baguze, ariyo mpamvu nawe asanga urubanza rwakimweguriye rukwiye gusubirishwamo ku mpamvu z'akarengane kuko ibyakozwe binyuranyije n'amategeko.

Mu kwiregura kuri iyi mpamvu, Gatera avuga ko inkiko zakoze amakosa kuko zemeje ko habaye amasezerano y'ubugure hagati ye na Nyamaswa kandi uyu atarigeze agaragaza amasezerano y'ubugure yanditse baba baragiranye cyangwa agaragaze igiciro bemeranyijeho n'ingano z'ikibanza baguze, ariyo mpamvu nawe asanga urubanza RCA0086/09/HC/KIG rwakimweguriye rukwiye gusubirishwamo ku mpamvu z'akarengane, akaba asanga nta karengane kari mu rubanza RCA0379/12/HC/KIG rwasabiwe kusubirishwamo, kuko urukiko rutari kumutegeka gusubiza ikibanza kandi atagifite, ariko ko Urukiko rusanze imanza zose zasubirwamo, hasuzumwa urubanza RCA0086/09/HC/KIG yaburanye na Nyamaswa rwamweguriye icyo kibanza. Ku bijyanye nindishyi arasanga we atazibazwa ahubwo zabazwa Nyamaswa weguriwe ikibanza mu buriganya inzu zigasenywa.

Iyindi mpamvu, uregwa avuga ko akwiye guhabwa indishyi zishingiye ku nzu ye yasenywe harangizwa urubanza RCA0086/09/HC/KIG, kuko yaguze icyo kibanza nta buryarya.

Kuri iyi mpamvu, Gatera yiregura avuga ko nta ndishyi akwiye gutegekwa kwishyura, ahubwo zakwishyurwa na Nyamaswa waburanye amahugu agahabwa umutungo utari uwe, naho Nyamaswa avuga ko, Nditiribambe atagombye kumurega kubera ko yagiranye amasezerano y'ubugure na Gatera azi neza ko

uwamugurishije yari atararangiza ikibazo cyari hagati yabo kuko cyagombaga kurangira amaze kumwishyura amafaranga bumvikanye mu masezerano yo kwikiranura. Urega asoza asaba amafaranga yatanze ku manza yaburanye.

Naho uregwa avuga ko amafaranga yatanze yose yagiye ayategekwa n'inkiko harangizwa imanza yatsinzwe kandi ko izo ndishyi zose atari ko zose zashyizwe mu nyandiko isaba gusuzuma akarengane, bityo nta ndishyi akwiye gutegekwa kumwishyura.

Incamake y'Icyemezo: 1. Ibyemejwe mu rundi rubanza rwaciwe ku rwego rwa nyuma, ntibishobora kuvuguruzwa binyuze mu nzira yo gusubirishamo ku mpamvu z'akarengane urubanza rutari mu ruhererekane rumwe narwo hashingiwe gusa ku kuba zifitanye isano, bityo icyemezo cyafashwe murubanza Gatera yaburanye na Nyamaswa rwabaye itegeko ntabwo bigomba kuburanwaho cyangwa guhindurwa mu rubanza Nditiribambe yasubirishijemo ku mpamvu z'akarengane.

2. Umugurisha yishingira ko umuguzi atazavutswa uburenganzira bwe ku cyo yaguze (garantie contre l'éviction).

3. Ibirego bishya bitari mu murongo w'ibyaburanywe urubanza rugishingwa mu rwego rwa mbere cyangwa ingingo zitasuzumwe mu rubanza rusubirishwamo ntibyakirwa mu rubanza rwasabiwe gusubirwamo ku mpamvu y'akarengane bityo Nditiribambe ntagomba gusaba mu rubanza ruburanishwa ku mpamvu z'akarengane ko ahabwa ibyo atigeze asaba mbere muri urwo rubanza.

Gusubirishamo urubanza kumpamvu z'akarengane bifite ishingiro.

Imikirize y’urubanza rwasubirishijwemo irahindutse.

Amategeko yashingiweho:

Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo ya 9 n’iya 63

Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n’ububasha bw’Urukiko rw’Ikirenga (ryakoreshwaga icyo gihe), ingingo ya 81

Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi (ryakoreshwaga icyo gihe), ingingo ya 11 n’iya 81

Nta manza zifashishijwe.

Inyandiko z’abahanga:

François Collart Dutilleul et Philippe Delebecque, Contrats civils et commerciaux, Dalloz, 7ème éd.,2004, n°246 p.230

Urubanza

I. IMITERERE Y’URUBANZA

[1] Ku wa 10/10/2004, Nditiribambe Samuel yaguze na Gatera Jason ikibanza ku mafaranga 850.000. Nyuma ariko Nditiribambe Samuel yaje kwamburwa icyo kibanza n’inzu yari yubatsemo bitewe n’imanza zabaye hagati ya Gatera Jason na

Nyamaswa Faustin, Urukiko Rwisumbuye rwa Gasabo mu rubanza RCA 0096/06/TGI/GSBO rwaciwe ku rwego rwa nyuma ku wa 15/06/2006 rukemeza ko ikibanza inzu yubatsemo ari icya Nyamaswa Faustin, Nditiribambe Samuel yatambamira urwo rubanza agatsindwa ku rwego rwa nyuma mu rubanza RCA 0086/09/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 21/10/2009.

[2] Urubanza RCA 0086/09/HC/KIG rwararangijwe, Nditiribambe Samuel ategekwa gusenya inyubako zari mu kibanza cyeguriwe Nyamaswa Faustin, nyuma arega Gatera Jason mu Rukiko Rwisumbuye rwa Gasabo asaba indishyi zirebana n'inzu ye yari mu kibanza yamugurishije yasenywe barangiza urubanza rwavuzwe.

[3] Ku wa 17/12/2010, urwo rukiko rwaciye urubanza RC 0389/10/TGI/GSBO, rwemeza ko ikirego cya Nditiribambe Samuel gifite ishingiro kuko Gatera Jason yamugurishije inzu n'ikibanza atamumenyesheje ko ikibanza cyubatseho iyo nzu yari yarakigurishije Nyamaswa Faustin, rutegeka Gatera Jason kumwishyura amafaranga yasabye angana na 9.450.000 Frw, akubiyemo 8.000.000 Frw y'agaciro k'inzu ye yashenywe na 1.200.000 Frw kubera igihombo cy'ubukode yabonaga na 250.000 y'igihembo cya Avoka.

[4] Gatera Jason yasubirishijemo urwo rubanza rwaciwe adahari, maze Urukiko Rwisumbuye rwa Gasabo, mu rubanza RC 0069/11/TGI/GSBO rwo ku wa 24/05/2012, rwemeza ko ikirego cya Nditiribambe Samuel nta shingiro gifite kubera ko mu rubanza RC 0026/08/TGI/GSBO yatambamiragamo imikirize y'urubanza RCA 0096/06/TGI/GSBO yasobanuye mu myanzuro no mu mvugo ye ko ajya kugura na Gatera Jason yashingiye ku masezerano yo ku wa 03/10/2004, aho Gatera Jason yemeraga

gusubiza Nyamaswa Faustin amafaranga bakiguze, agaragaza ko nta kibazo Gatera Jason agifitanye na Nyamaswa Faustin no ku byangombwa byose yamuhaye, bivuze ko agura yari azi amateka y'icyo kibanza, ibi bikaba bigaragaza ko Gatera Jason atamugurishije azi ko ibyo agurisha atari ibye, bityo akaba ataryozwa ibyashenywe harangizwa urubanza yatsinzwe na Nyamaswa Faustin.

[5] Nditiribambe Samuel yajuriye mu Rukiko Rukuru avuga ko Urukiko Rwisumbuye rwa Gasabo rwirengagije ko yaguze ikibanza na Gatera Jason nta buryarya, Se n'umugore ba Gatera Jason bamusinyiye kimwe n'abagize nyobozi ya Ruhura ya II bose, ndetse ko ayo mafaranga yahise ayishyura banki bitewe n'uko inzu yari mu bugwate kubera umwenda Gatera Jason yari ayibereyemo, akaba yarumvaga nta wundi ikibanza cyanditseho kuko Gatera Jason atari kugitangaho ingwate atari icye, ko yagombye kumwishyura ibyo yavukijwe kubera kwikungahaza agurisha icyo kibanza abantu babiri.

[6] Urwo rukiko rwaciye urubanza RCA 0379/12/HC/KIG ku wa 19/07/2013, rwemeza ko ubujurire bwe nta shingiro bufite ku mpamvu zikurikira:

- Amasezerano yo ku wa 03/10/2004, aho Gatera Jason yemera gusubiza Nyamaswa Faustin amafaranga bakiguze, ntabwo asimbura ayo bari baragiranye mbere Nyamaswa Faustin akigura kandi muri ayo masezerano nta hagaragaramo ko uyu yemeye gusesa amasezerano y'ubugure bw'ikibanza bagiranye mbere;
- Ababajijwe bemeje ko Nditiribambe Samuel yaguze azi neza ko ikibanza kiri mu bibazo kuko cyari cyaraguzwe na Nyamaswa Faustin;

- Nditiribambe Samuel yubatse muri icyo kibanza agendeye ku byangombwa Gatera Jason yamuhaye mbere kandi byarateshejwe agaciro n'Abunzi mu rubanza rwaburanywe hagati ya Nyamaswa Faustin na Gatera Jason.

[7] Nyuma yo gusubirishamo urwo rubanza ingingo nshya (urubanza RCA 0494/13/HC/KIG rwaciwe ku wa 16/05/2015), ikirego cye nticyakirwe, Nditiribambe Samuel yandikiye Urwego rw'Umuvunyi asaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane.

[8] Nyuma yo gusuzuma icyo kibazo, Urwego rw'Umuvunyi rwasanze urubanza RCA 0379/12/HC/KIG, arirwo rukwiriye gusubirwamo ku mpamvu z'akarengane kubera ko arirwo rwaburanishijwe mu mizi bwa nyuma, maze ku wa 03/02/2018, rwandikira Perezida w'Urukiko rw'Ikirenga, rumusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane.

[9] Perezida w'Urukiko rw'Ikirenga, nyuma yo gusuzuma raporo y'Ubugenzuzi Bukuru bw'Inkiko kuri urwo rubanza, yemeje ko rwandikwa mu bitabo byabugenewe kugira ngo ruzongere ruburanishwe.

[10] Urubanza rwahamagawe ku wa 26/02/2019, ntirwaburanishwa kubera ko ababuranyi basabye Urukiko ko Nyamaswa Faustin yagobokeshwa, maze Urukiko rwemera ubwo busabe, rutegeka ko Nyamaswa Faustin agobokeshwa mu rubanza, ndetse ko ababuranyi bagomba guhererekanya nawe imyanzuro, urubanza rwimurirwa ku wa 14/05/2019.

[11] Uwo munsi ugeze, ababuranyi baritabye, Nyamaswa Faustin nawe aritaba ariko aza nta mwunganizi. Haje n'uwitwa

Uwimana Coloneria wasabye kugoboka mu rubanza ku bushake avuga ko arufitemo inyungu zirebana n'uko hari ikibanza Gatera Jason yari yaramuhaye akubakamo inzu nayo yashenywe mu gihe harangizwaga urubanza RCA 0086/09/HC/KIG. Nyuma yo kumva ababuranyi icyo babivugaho, Urukiko rwemeye ubusabe bwe, rusubika iburanisha kugira ngo we na Nyamaswa Faustin bashake ba Avoka babunganira kandi batange imyanzuro.

[12] Nyuma urubanza rwagiye rusubikwa ku mpamvu ziturutse ku baburanyi, ruburanishwa mu ruhame ku wa 07/11/2019, Nditiribambe Samuel ahagarariwe n'umugore we Nyirahabimana Rehema, uyu nawe yunganiwe na Me Nzabamwita Jean Claude, Gatera Jason yunganiwe na Me Katushabe Mary, Nyamaswa Faustin yunganiwe na Me Mulingande Jean Claude, Uwimana Coloneria yunganiwe na Me Murekatete Marigarita.

[13] Nyuma yo kumva imiburanire y'ababuranyi, Urukiko rwasanze hari ibyo rugomba gusobanukirwa kurushaho ku bijyanye n'imiterere y'ikibanza n'amazu yari muri icyo kibanza yasenywe harangizwa urubanza RCA 0086/09/HC/KIG rwaciwe n'Urukiko Rukuru tariki ya 21/10/2009, maze ku wa 13/01/2020 rujya aho ikiburanwa kiri, rwumva abatangabuhamya runakora igishushanyo cy'ahaburanwa cyemeranyijweho n'ababuranyi, ku wa 06/02/2020, ababuranyi bongera guhamagarwa mu rukiko kugira ngo niba hari icyo bongeraho bakivuge, bose baritaba bahagarariwe cyangwa bunganiwe nka mbere, usibye Uwimana Coloneria wivanye mu rubanza.

[14] Mu miburanire ye, Nditiribambe Samuel yasobanuye ko akarengane ke mu rubanza RCA 0379/12/HC/KIG gashingiye ku kuba yarimwe indishyi zishingiye ku nzu ye yashenywe no ku manza 13 yaburanye, asaba ko yarenganurwa maze akazihabwa,

ndetse akanasubizwa ikibanza cye cyeguriwe Nyamaswa Faustin mu buryo bunyuranyije n'amategeko mu rubanza n° RCA 0086/09/HC/KIG.

[15] Gatera Jason yasobanuye ko Nyamaswa Faustin yaburanye amahugu, inkiko zimwegurira umutungo utari uwe, ariyo mpamvu nawe asanga urubanza rwamweguriye icyo kibanza rukwiye gusubirishwamo ku mpamvu z'akarengane kuko ibyakozwe binyuranyije n'amategeko, maze Nditiribambe Samuel agasubizwa ikibanza cye.

[16] Nyamaswa Faustin we yaburanye avuga ko Nditiribambe Samuel atagombye kumurega kubera ko yagiranye amasezerano y'ubugure bw'ikibanza na Gatera Jason azi neza ko kitari kikiri mu maboko ye. Yasabye kandi ko Nditiribambe Samuel yategekwa kumusubirizaho bornes z'ikibanza yarimbuye, akanategekwa gutanga igice cy'ikibanza yasigaranye cya metero 3 kuri 20 ubwo harangizwaga RCA 0086/09/HC/KIG .

[17] Ibibazo byasuzumwe muri uru rubanza ni ibi bikurikira:

- Kumenya niba Nditiribambe Samuel yasubizwa ikibanza Nyamaswa Faustin yeguriwe mu rubanza n° RCA 0086/09/HC/KIG;
- Kumenya niba Nditiribambe Samuel yahabwa indishyi asaba zishingiye ku nzu ye yashenywe;
- Kumenya niba Nditiribambe Samuel yahabwa indishyi asaba zishingiye ku manza yaburanye na Gatera Jason na Nyamaswa Faustin;
- Kumenya niba Nyamaswa Faustin yahabwa ibyo asaba.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO:

A. Kumenya niba Nditiribambe Samuel yasubizwa ikibanza Nyamaswa Faustin yeguriwe mu rubanza RCA 0086/09/HC/KIG

[18] Me Nzabamwita Jean Claude wunganira Nyirahabimana Rehema uhagarariye Nditiribambe Samuel avuga ko amasezerano yo kwikiranura yabaye ku wa 3/10/2004 hagati ya Gatera Jason na Nyamaswa Faustin agaragaza neza ko ikibanza yakiguze mu buryo bukurikije amategeko, ko rero akwiye kugisubizwa.

[19] Gatera Jason avuga ko inkiko zakoze amakosa kuko zemeje ko habaye amasezerano y'ubugure hagati ye na Nyamaswa Faustin kandi uyu atarigeze agaragaza amasezerano y'ubugure yanditse baba baragiranye cyangwa agaragaza igiciro bemeranyijeho n'ingano z'ikibanza baguze, ariyo mpamvu nawe asanga urubanza rwakimweguriye rukwiye gusubirishwamo ku mpamvu z'akarengane kuko ibyakozwe binyuranyije n'amategeko.

[20] Asobanura ko Nyamaswa Faustin yamugurije amafaranga, mu kumwishyura amusigaramo 50,000 Frw, bumvikana ko namara kubona icyangombwa bazagura ikibanza amwongeyeye andi mafaranga, ariko ko batigeze bumvikana ku ngano y'ikibanza kizagurishwa n'ingano y'amafaranga kizagurwa, ko rero nta kuntu Nyamaswa Faustin yavuga ko yaguze.

[21] Akomeza avuga ko nyuma bananiwe kumvikana ku kintu kigomba kugurishwa, ndetse no ku mafaranga y'ikiguzi, ubugure

bunaniranye bagirana amasezerano y'ubwumvikane ku wa 3/10/2004, bemeranya ko azishyura Nyamaswa Faustin amafaranga 50.000 yari amubereyemo, akamuha n'amafaranga 67.272 bitarenze ku wa 30/1/2015 kuko yari yaratindanye amafaranga yamugurije, ko bamaze kubyumvikanaho yagurishije ikibanza Nditiribambe Samuel kugira ngo yishyure amafaranga yose abereyemo Nyamaswa Faustin, ariko agiye kuyamwishyura uyu arayanga, ahubwo ajya kurega.

[22] Avuga ko n'ubwo inkiko zakoze amakosa, Nditiribambe Samuel atagomba kuburana ikibanza cyose baguze cya metero 20 kuri 30 kuko abizi neza ko hari igice cyacyo agifite. Asobanura ko ikibanza Nyamaswa Faustin yatwaye kirimo ibice bibiri, igice atamugurishije gifite metero 15 kuri 10 n'igice cya Nditiribambe Samuel gifite metero 15 kuri 20. Asoza avuga ko kugira ngo habeho ubutabera ari uko Nyamaswa Faustin yasubiza buri wese igice cy'ikibanza yabatwaye.

[23] Me Katushabe Mary umwunganira avuga ko inyandiko y'ubwumvikane yo ku wa 3/10/2004 hagati ya Gatera Jason na Nyamaswa Faustin yerekana ko uyu ataguze ikibanza kiburanwa, akaba asanga nta karengane kari mu rubanza RCA 0379/12/HC/KIG kuko urukiko rutari gutegeka Gatera Jason gusubiza ikibanza kandi atagifite, ariko ko Urukiko rusanze imanza zose zasubirwamo, hasuzumwa urubanza RCA 0086/09/HC/KIG rwacyeguriye Nyamaswa Faustin.

[24] Nyamaswa Faustin avuga ko mu mwaka wa 2003, Gatera Jason yamubwiye ko afite ikibanza kigurishwa, amaze kukimwereka bumvikana ku mafaranga 50.000, aramwishyura, amubwiye ngo bakorane inyandiko Gatera Jason akomeza kumubeshya agenda abisunika, abonye ko ari kumuryarya ahamagara abaturanyi, babaza Gatera Jason niba hari amafaranga

yamusigayemo, avuga ko ari ntayo, bamubajije niba yarayamuhaye amuguriza, avuga ko bateganyaga kugura ikibanza, bamubaza impamvu atamuha inyandiko, avuga ko ashaka gusubiza ayo yahawe n'inyungu zayo gusa, bakorana amasezerano y'ubwumvikane ku wa 03/10/2004, Gatera Jason yemera ko azamusubiza 50.000Frw, yongeyeho 67.272 Frw y'inyungu bitarenze ku wa 30/01/2005.

[25] Akomeza avuga ko Nditiribambe Samuel atagombye kumurega kubera ko yagiranye amasezerano y'ubugure na Gatera Jason ku wa 10/10/2004 azi neza ko kuri iyo tariki Gatera Jason yari atararangiza ikibazo cyari hagati yabo kuko cyagombaga kurangira ku wa 30/01/2005 amwishyuye amafaranga yemeye mu masezerano yo kwikiranura, ubutaka bukaba rero bwari bukiri mu maboko ye igihe yaguraga na Gatera Jason.

[26] Me Muligande Jean Claude umwunganira avuga ko ibivugwa mu nyandiko yo ku wa 03/10/2004, Nyamaswa Faustin yabyemeye nk'amaburakindi kuko yabonye abuze ikibanza bari baguze yemera gusubizwa amafaranga.

UKO URUKIKO RUBIBONA:

[27] Mu rubanza RCA 0379/12/HC/KIG rwasabiwe gusubirishwamo ku mpamvu z'akarengane, Nditiribambe Samuel yaregaga Gatera Jason asaba indishyi zishingiye ku nzu ye yashenywe harangizwa urubanza RCA 0086/09/HC/KIG rwemeje ko ikibanza iyo nzu yubatsemo ari icya Nyamaswa Faustin kubera ko yakiguze na Gatera Jason.

[28] Iyo ariko Nditiribambe Samuel asobanura akarengane abona mu rubanza RCA 0379/12/HC/KIG rusubirishwamo ku

mpamvu z'akarengane n'ibyo asaba ko bikosorwa cyangwa bihindurwa, ndetse n'iyo Gatera Jason yiregura, bigaragara ko bombi bagaruka ku byo batsindiwe mu rubanza RCA 0086/09/HC/KIG kuko basaba ko uru rukiko rwemeza ko nta bugure bw'ikibanza bwabaye hagati ya Gatera Jason na Nyamaswa Faustin, ko ahubwo habaye kuguza amafaranga.

[29] Ikibazo rero kigomba gusobanuka kikaba ari kumenya niba ibyemejwe mu rundi rubanza rwaciwe ku rwego rwa nyuma bishobora kuvuguruzwa binyuze mu nzira yo gusubirishamo ku mpamvu z'akarengane urubanza rutari mu ruhererekane narwo hashingiwe ku kuba zifitanye isano.

[30] Ingingo ya 11 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yateganyaga ko urubanza rwaciwe ku rwego rwa nyuma, n'inzira yo kurusubirishamo ku mpamvu z'akarengane yararangiye, ntirushobora kongera kuburanishwa bundi bushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y'ababuranyi bamwe baburana ikirego kimwe.

[31] Ku birebana no gusubirishamo urubanza ku mpamvu z'akarengane, ingingo ya 81 y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga yateganyaga ko umuburanyi utishimiye imikirize y'urubanza rwaciwe ku rwego rwa nyuma ashobora gusaba ko rusubirishwamo ku mpamvu z'akarengane[1].

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[1]Urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane kubera impamvu zikurikira:

[32] Iryo Tegeko Ngenga ryanateganyaga uburyo n’ibihe isubirwamo ry’imanza ku mpamvu z’akarengane zaciwe ku rwego rwa nyuma bikorwamo, ndetse mu ngingo zaryo z’inzibacyuho n’izisoza ryanateganyaga uko byakorwa ku manza zaciwe ku rwego rwa nyuma mbere y’uko ritangazwa. Ingingo ya 86 y’iryo tegeko yateganyaga ko imanza zivugwamo akarengane zaciwe burundu nyuma y’ishyirwaho ry’Urwego rw’Umuvunyi mu mwaka wa 2003 zaba izarangijwe cyangwa izitararangizwa zizashyikirizwa Urwego rw’Umuvunyi mu gihe kitarenze umwaka umwe (1) kuva iri Tegeko Ngenga ritangajwe mu Igazeti ya Leta ya Repubulika y’u Rwanda. Ibi bivuze ko kuva iryo tegeko ritangajwe, umuburanyi waburanye urubanza rukaba itegeko mbere y’uko iri tegeko risohoka, ariko akumva rwabayemo akarengane, nawe yahawe inzira yo kuba yarusubirishamo.

[33] Urukiko rurasanga rero mu gihe iyo nzira yari ihari ariko ntikoreshwe ngo Nditiribambe Samuel cyangwa Gatera Jason basubirishemo urubanza RCA 0086/09/HC/KIG rweguriye ikibanza Nyamaswa Faustin, ibyaburanyweho hagati yabo muri urwo rubanza rwaciwe ku rwego rwa nyuma byarabaye ndakuka. Ibi bivuze ko icyo kibanza cyeguriwe Nyamaswa Faustin ku buryo budasubirwaho, Nditiribambe Samuel akaba nta burenganzira akigifiteho kuko kudasubirishamo urwo rubanza byatumye rudashobora kongera kuburanishwa bundi bushya

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1° iyo hari ibimenyetso simusiga bigaragaza ruswa, ikimenyane cyangwa icyenewabo, byagize ingaruka ku mikirize y’urubanza bikaba bitarigeze bimenywa n’uwatsinzwe mu gihe cy’iburana;
2° iyo mu icibwa ry’urubanza hirengagijwe amategeko cyangwa ibimenyetso bigaragarira buri wese; 3° iyo urubanza rudashobora kurangizwa hakurikije imikirize yarwo

nk'uko byateganywaga n'ingingo ya 11 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryavuzwe.

B. Kumenya niba Gatera Jason na Nyamaswa Faustin bategekwa guha Nditiribambe Samuel indishyi zishingiye ku nzu ye yasenywe harangizwa urubanza RCA 0086/09/HC/KIG

[34] Me Nzabamwita Jean Claude avuga ko Urukiko Rukuru rwemeje ko Nditiribambe Samuel adakwiye guhabwa indishyi zishingiye ku nzu ye yasenywe harangizwa urubanza RCA 0086/09/HC/KIG ngo kuko yaguze ikibanza inzu yari yubatseho azi ko cyari cyaramaze kugurwa na Nyamaswa Faustin, rwirengagije ko amasezerano yo kwikiranura yabaye ku wa 3/10/2004 hagati ya Gatera Jason na Nyamaswa Faustin agaragaza neza ko ikibanza yakiguze nta buryarya mu buryo bwemewe n'amategeko.

[35] Gatera Jason yiregura avuga ko nta ndishyi akwiye gutegekwa kwishyura, ahubwo zakwishyurwa na Nyamaswa Faustin waburanye amahugu Urukiko rukamwegurira umutungo utari uwe, ko we nta ruhare yagize mu karengane Nditiribambe Samuel yagiriwe kuko ntako atagize ngo yereke inkiko ko ikiburanwa ari icye ariko bombi bagatsindwa.

[36] Me Katushabe Mary umwunganira avuga ko Nditiribambe Samuel atagombye kuba yarareze Gatera Jason kuko nawe yemera ko nta bugure bwabaye hagati ye na Nyamaswa Faustin, akaba nta ruhare yagize kugira ngo atsindwe urubanza RCA 0086/09/HC/KIG cyangwa mu kurangiza urwo rubanza, ibyabaye byose bikaba byarashingiwe ku byemezo by'inkiko, bitarashingiye ku gikorwa cyangwa ku mabwiriza ya Gatera Jason.

[37] Me Muligande Jean Claude wunganira Nyamaswa Faustin avuga ko uyu atigeze aba mu rubanza rusubirishwamo, ko uwaba yararangije imanza nabi ariwe wakwishyura indishyi zisabwa, ko uwo yunganira ntacyo yaryozwa kuko nta ruhare yagize mu gusenya inzu ya Nditiribambe Samuel.

UKO URUKIKO RUBIBONA

[38] Nk'uko byasobanuwe haruguru, ibyemejwe mu rubanza RCA 0086/09/HC/KIG ko ikibanza kiburanwa ari icya Nyamaswa Faustin byabaye itegeko. Ibi bisobanuye ko ataryozwa ibyasenywe mu irangiza ry'urwo rubanza kuko nta ruhare yabigizemo ku giti cye. Ibi kandi bisobanuye ko Gatera Jason yagurishije Nditiribambe Samuel ikibanza kitari kikiri icye kuko kubitwara ukundi byaba ari ukuvuguruza icyemezo cy'urukiko cyabaye itegeko. Mu ngingo zikurikira, hakaba hagiye gusuzumwa niba Gatera Jason yategekwa kubitangira indishyi.

[39] Nta ngingo y'itegeko mu Rwanda isobanura uko bigenda mu gihe umuntu yaguze ikintu n'utari nyiracyo, nyuma akagomba kugisubiza nyiracyo. Icyakora ingingo ya 9 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko iyo nta tegeko rijyanye n'ikiburanwa gihari umucamanza ashobora kwifashisha amahame rusange agenga amategeko (*principes généraux du droit*)[2].

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[2] Iyo ngingo igira iti Umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko,

[40] Muri urwo rwego, Urukiko rurasanga hari ihame rusange ryakwifashishwa mu gukemura iki kibazo. Iryo hame rivuga ko ugurishije (*vendeur*) yishingira ko uwo agurishije ikintu atagira ikimuhungabanya mu butunzi b'icyaguzwe (*garantie contre l'éviction*). Mu yandi magambo, iyo umuguzi avukijwe uburenganzira bwe ku cyo yaguze, ashobora gusaba uwamugurishije gusubizwa amafaranga y'ikiguzi, umusaruro yategetswe gusubiza, amafaranga yatanzwe ku kirego, indishyi (*dommages et intérêts*), ndetse n'amafaranga yatanzwe hakorwa amasezerano. Birumvikana ariko ko uwagurishije atabisabwa iyo umuguzi yari azi ko ashobora kwamburwa icyo yaguze igihe yaguraga. Abahanga mu mategeko basobanura ko inkomoko y'iryo hame ari ubwubahane n'ubunyangamugayo mu masezerano (*obligation de loyauté*)[3].

[41] Ku bireba uru rubanza, Urukiko rurasanga Gatera Jason wagurishije Nditiribambe Samuel ikibanza akaba abisabirwa indishyi, nawe ubwe yemera ko Nditiribambe Samuel yaguze ikibanza cyaburanyweho mu rubanza RCA 0086/09/HC/KIG azi ko akiguze na nyiracyo, ibi ubwabyo bikaba byumvikanisha ko yakiguze nta buryarya, atazi ko yacyamburwa. Kuba rero yaracyambuwe n'uwabaye nyiracyo byemejwe n'inkiko, bikaba bimuhesha uburenganzira bwo gusaba indishyi uwamugurishije hashingiwe ku ihame ryavuzwe rivuga ko ugurisha yishingira ko uwo agurishije atagira ikimuhungabanya mu butunzi bw'icyaguzwe, ikibazo akaba ari icyo kumenya ingano yazo, ari nabyo bigiye gusuzumwa mu gice cy'urubanza gikurikira.

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umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko.

[3]François Collart Dutilleul na Philippe Delebecque, Contrats civils et commerciaux, Dalloz, 7ème éd., 2004, n° 246 p.230

C. Kumenya ingano y'indishyi zishingiye ku nzu za Nditiribambe Samuel zashenywe Gatera Jason yategekwa kwishyura

[42] Me Nzabamwita Jean Claude asaba ko hashingiwe ku karengane Nditiribambe Samuel yagiriwe yakwishyurwa agaciro k'inzu ze zasenywe kangana na 3.867.000 Frw nk'uko kagaragazwa n'igenagaciro yashyize muri IECMS, akishyurwa na 1.200.000 Frw yavanaga mu bukode bw'izo nzu zari zifite ibyumba bitanu, bitatu bikodeshwa buri cyumba 25.000 Frw ku kwezi, bibiri bikodeshwa buri cyumba 15.000 Frw ku kwezi.

[43] Ubwo Urukiko rwageraga aho ikiburanwa kiri, rwabajije ababuranyi uko inyubako zasenywe zari ziteye, bemeranya ko inzu imwe yari ifite imiryango itatu, indi ifite imiryango ibiri n'umusarani, ko zari zubakishije rukarakara, inzu imwe isakaje ibati rimwe, indi isakaje amabati abiri.

[44] Ku birebana n'agaciro k'inzu za Nditiribambe Samuel zasenywe, Gatera Jason yavuze ko agereranyije asanga ubu zaba zifite agaciro ka 3.000.000 Frw ariko ko kuri ako gaciro hagombye kuvanwamo agaciro k'ibyo yaramuye kangana na 500.000 Frw agereranyije.

[45] Me Katushabe Mary umwunganira yavuze ko amafaranga 3.867.000 Nditiribambe Samuel asaba y'agaciro k'inzu zashenywe akubiyemo ibikoresho yaramuye igihe urubanza rwarangizwaga, birimo amabati, inzugi n'idirishya nk'uko bibaruwe mu igenagaciro yatanze, ko atakagombye gusaba agaciro kabyo, ko ahubwo icyagombye kuba gisabwa ari ubutaka na *main d'oeuvre*.

[46] Nyamaswa Faustin yavuze ko agereranyije asanga inzu za Nditiribambe Samuel zashenywe ubu zaba zifite agaciro ka 3.000.000 Frw ariko ko kuri ako gaciro hagomba kuvanwamo 300.00 Frw y'agaciro k'ibikoresho byaramuwe.

[47] Umutangabuhamya Ngarambe Félix, akaba n'Umunyamabanga Nshingwabikorwa w'Akagari ka Ruhuha, ari nawe warangije urubanza RCA 0086/09/HC/KIG yavuze ko agereranyije asanga inzu zaba ubu zifite agaciro ka 4.500.000 Frw ariko ko kuri ako gaciro hagomba kuvanwamo 500.00 Frw y'agaciro k'ibikoresho byaramuwe.

[48] Umutangabuhamya Gasana Athanase, ari nawe wakiraga amahoro yaturukaga kuri izo nzu, yavuze ko inzu zashenywe yari azizi, ko abona zahabwa agaciro ka 5.000.000 Frw.

[49] Ku birebana n'ibikoresho yaba yararamuye igihe inzu zasenywaga, Nditiribambe Samuel yavuze ko iyo umuntu bamusenyeye, ibyashenywe nta mumaro bigira.

[50] Ku birebana n'amafaranga y'ubukode Nditiribambe Samuel asaba, Gatera Jason yavuze ko yagaragaza amasezerano yaba yaragiranye byibuze n'umuntu umwe ngo abe yaherwaho hasuzumwa indishyi asaba.

[51] Yavuze kandi ko asanga ibyumba bitatu byabarirwa buri cyumba ku mafaranga 7.000 Frw ku kwezi, ibindi bibiri bikabarirwa buri cyumba ku mafaranga 4.000F ku kwezi, ariko ko amazu yashenywe ibyo byumba byose bitagikodeshwa kuko nta cyashara cyabonekaga, ko iyo biza kuba bigikodeshwa byose Nditiribambe Samuel atari gusaba amafaranga y'ubukode bw'umwaka umwe gusa kuko urubanza rwarangijwe mu mwaka

wa 2010 arega mu mwaka wa 2013, ahubwo yari gukuba n'iyo myaka yose.

[52] Nyamaswa Faustin yavuze ko amafaranga Nditiribambe Samuel asaba ari umurengera, ko we yumvaga bavuga ko icyumba kimwe cyakodeshwaga 10.000 Frw ku kwezi, kandi yabonaga hari igihe habaga hakora umuryango umwe indi idakora.

UKO URUKIKO RUBIBONA

[53] Ababuranyi baremeranywa ku miterere y'inzu zashenywe, ku ngano yazo no ku byumba byari bizigize, ikibazo akaba ari icyo kumenya agaciro izo nzu zaba zifite ubu n'uko ibyumba byari bizigize byakodeshwaga niba byaranakodeshwaga.

[54] Ku birebana n'agaciro k'inzu zashenywe, mu gihe nta genagaciro ryakozwe inzu zitarasenywa, Urukiko rurasanga mu bushishozi bwarwo, hagendewe ku byo ababuranyi bemeranywaho ku miterere yazo, ibyumba byari bizigize, rukurikije kandi aho zari zubatse muri centre y'ubucuruzi, hakwemezwa ko ako gaciro kangana na 3.500.000 Frw.

[55] Ku birebana n'ibikoresho byaba byararamuwe igihe inzu zasenywaga, Urukiko rurasanga usibye Nditiribambe Samuel ubihakana, ababajijwe bose, haba ababuranyi, haba abatangabuhamya, bose bemeza ko byari bihari, hakaba rero hagomba kugenwa agaciro kabyo kakavanwa mu gaciro k'amazu yasenywe.

[56] Mu gihe nta bindi bimenyetso rushobora kwifashisha mu kugena ako gaciro, harebwe ibiciro byatanzwe n'ababuranyi n'abatangabuhamya kandi hazirikanywe ko ibikoresho bita agaciro iyo byavanwe ku nzu, Urukiko rurasanga, mu bushishozi bwarwo ibikoresho byaramuwe byahabwa agaciro ka 150.000 Frw.

[57] Hakurikijwe ibisobanuro byatanzwe mu bika bibanziriza iki, Urukiko rurasanga Gatera Jason agomba guha Nditiribambe Samuel 3.350.000 Frw y'agaciro k'inzu ze zasenywe (3.500.000 Frw-150.000 Frw).

[58] Ku birebana n'indishyi zishingiye ku mafaranga y'ubukode Nditiribambe Samuel yavanaga ku nzu ze zasenywe, Urukiko rurasanga kuba inzu ze zari zigamije ubucuruzi kandi ziri ahantu hakorerwa ubucuruzi byumvikanisha ko hari igihombo yatejwe no kubura amafaranga yavanaga mu bukode bwazo.

[59] Urukiko rurasanga kandi n'ubwo nta masezerano y'ubukode Nditiribambe Samuel yatanze ngo abe yaherwaho hagaragazwa uko buri cyumba cyakodeshwaga, mu bushishozi bwarwo, hakurikijwe imiterere yabyo, aho biherereye muri centre y'ubucuruzi, hakwemezwa ko buri cyumba cyakodeshwaga 8.000Frw ku kwezi, bityo igihombo yagize mu gihe cy'umwaka umwe kubera kubura amafaranga y'ubukode yavanaga mu nzu ze zasenywe akaba ari 480.000 Frw (8.000 Frw x 5 x amezi 12), ayo mafaranga nayo Gatera Jason akaba agomba kuyamwishyura

[60] Muri rusange rero Urukiko rukaba rusanga Gatera Jason agomba kwishyura Nditiribambe Samuel 3.830.000 Frw (3.350.000 Frw +480.000Frw).

D. Ku birebana n'amafaranga Nditiribambe Samuel asaba ashingiye ku manza yaburanye

[61] Nzabamwita Jean Claude asaba ko hashingiwe ku karengane Nditiribambe Samuel yagiriwe yakwishyurwa 402.000 Frw yahaye Gatera Jason harangizwa urubanza RC 0196/13/TB/RHHA[4], 235.000 Frw yamuhaye harangizwa urubanza RCA 0084/14/TGI/GSBO[5] nk'uko bigaragazwa n'inyandikomvugo y'irangizwa ry'izo manza, na 73.200 Frw yatanze harangizwa urubanza RCA 0086/09/HC/KIG aho yategetswe gukuraho inyubako ku neza bitarenze tariki ya 03/02/2010 kandi ko ibirebana n'ivanwaho ry'iyo nyubako ariwe ugomba kubyishyura, 6.000.000 Frw yishyuye aba Avoka bamuburaniye mu manza 13 yaburanye na Gatera Jason na Nyamaswa Faustin, 1.000.000 Frw yishyuye Avoka umuburanira uru rubanza rusubirishwamo ku mpamvu z'akarengane na 1.000.000 Frw y'ikurikiranarubanza.

[62] Gatera Jason avuga ko amafaranga Nditiribambe Samuel yatanze yose yagiye ayategekwa n'inkiko harangizwa imanza yatsinzwe, ku buryo nta ndishyi akwiye gutegekwa kumwishyura.

[63] Me Katushabe Mary umwunganira avuga ko imanza zose Nditiribambe Samuel avuga ko yaburanye atazisabira indishyi

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[4]Ni urubanza rwo ku wa 31/10/2013, Gatera Jason yareze Nditiribambe Samuel asaba indishyi zishingiye ku manza yamushoyemo, Urukiko rukemeza ko Nditiribambe Samuel agomba kumuha 400.000 Frw y'ikurikiranarubanza.

[5] Ni urubanza rwo ku wa 29/07/2015, rukomoka ku kirego Gatera Jason yareze Nditiribambe Samuel asaba indishyi zishingiye ku rubanza n°RCA 0494/13/HC/KIG rwasubirishagamo ku ngingo nshya urubanza n° RCA 0379/12/HC/KIG, Urukiko rukemeza ko Nditiribambe Samuel agomba kumuha 235.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza.

kuko atari ko zose zashyizwe mu nyandiko isaba gusuzuma akarengane.

UKO URUKIKO RUBIBONA

[64] Muri uru rubanza harasuzumwa niba urubanza RCA 0379/12/HC/KIG Nditiribambe Samuel yasabagamo indishyi zijyanye n'inzu ze zasenywe, igihombo cy'ubukode ‘‘igihembo cya Avoka rurimo akarengane. Iyo ariko harebwe ibyo Nditiribambe Samuel asaba, Urukiko rurasanga hakubiyemo ibyo atigeze asaba mu rubanza rusubirishwamo ku mpamvu z'akarengane. Muri byo, harimo amafaranga yahaye Gatera Jason harangizwa imanza zavuzwe, amafaranga yatanze harangizwa urubanza RCA 0086/09/HC/KIG, ndetse n'amafaranga yishyuye aba Avoka bamuburaniye mu manza yaburanye na Gatera Jason na Nyamaswa Faustin zitari mu ruhererekane rw‘uru rusubirishwamo ku mpamvu z'akarengane.

[65] Ikibazo kigomba gusobanuka ni icyo kumenya niba ibivugwa mu ngingo ya 63 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko ko Urukiko rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya, binemerera umuburanyi kuzana ibirego bishya bitaburanweho mu rubanza rusubirishwamo.

[66] Urukiko rurasanga kuba umuburanyi wumva ko urubanza yaburanye rwabayemo akarengane yarahawe inzira yo kuba yarusubirishamo rukaburanishwa bundi bushya nk'uko byateganywaga mu ngingo ya 81 y‘Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, bitavuga ko yakwitwaza iyo

nzira kugira ngo abe yazana ibirego bishya bitari mu murongo w'ibyaregewe urubanza rugishingwa mu rwego rwa mbere cyangwa ingingo zitasuzumwe mu rubanza rusubirishwamo kuko yaba avuye mu mbibi z'urwo rubanza.

[67] Urukiko rurasanga rero, hashingiwe ku bisobanuro bivuzwe mu gika kibanziriza iki, ibirebana n'amafaranga Nditiribambe Samuel yahaye Gatera Jason:

a. 402.000 Frw harangizwa urubanza nºRC 0196/13/TB/RHHA;

b. 235.000 Frw yamuhaye harangizwa urubanza nº RCA 0084/14/TGI/GSBO;

c. 73.200 Frw yatanze harangizwa urubanza nº RCA 0086/09/HC;

d. Amafaranga yishyuye aba Avoka mu manza zitari mu ruhererekane rw'uru rusubirishwamo ku mpamvu z'akarengane; bitasuzumwa muri uru rubanza kuko bitari mu mbibi zarwo.

[68] Ku birebana n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka angana na 2.000.000 Frw Nditiribambe Samuel asaba ashingiye kuri uru rubanza rusubirishwamo ku mpamvu z'akarengane, Urukiko rurasanga akwiye kuyahabwa kuko hari ibyo yatakaje akurikirana uru rubanza, akaba atsinze urubanza, kandi rukaba rusanga ayo asaba ari mu rugero harebwe inzego eshatu yaburaniyemo.

E . Ku birebana n'ibyo Nyamaswa Faustin asaba

[69] Nyamaswa Faustin asaba ko Nditiribambe Samuel yategekwa gusubizaho imbibi z'ikibanza (*bornes*) yarimbuye atangira kuburana, agategekwa no gutanga igice cy'ikibanza

yasigaranye cya metero 3 kuri 20 kuko atagitanze ubwo harangizwaga urubanza RCA 0086/09/HC.

[70] Arasaba kandi ko yakwishyurwa ibyo yatakaje aburana, birimo: 200.000 frw y'ingendo, 100.000 Frw y'ifunguro, 200.000 Frw y'igihombo, 500.000 Frw yo kumushora mu manza, 1.000.000 Frw y'indishyi z'akababaro na 500.000 Frw y'igihembo cya Avoka, yose hamwe akaba 2.500.000 Frw.

[71] Abo baburana ntacyo bavuze ku bisabwa na Nyamaswa Faustin, haba ku bijyanye n'imbibi z'ikibanza, haba ku bijyanye n'indishyi, nyamara biri mu mwanzuro w'inyongera yashyize muri IECMS.

UKO URUKIKO RUBIBONA

[72] Urukiko rurasanga ibijyanye no gusubirizwaho imbago bitari mu mbibi z'ikiburanwa muri uru rubanza rusubirishamo urubanza RCA 0379/12/HC/KIG ku mpamvu z'akarengane, bikaba rero bitagomba gusuzumwa.

[73] Urukiko rurasanga ariko Nyamaswa Faustin akwiye kugenerwa amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza kuko byabaye ngombwa ko yishyura Avoka wo kumuburanira akagira n'ibyo atakaza akurikirana urubanza yagobokeshejwemo, mu bushishozi bwarwo rukaba rumugeneye 800.000 Frw akubiyemo 500.000 frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, akaba agomba kuyishyurwa na Nditiribambe Samuel na Gatera Jason bafatanyije kuko ari bo basabye ko agobokeshwa muri uru rubanza.

[74] Ku bijyanye na 200.000 Frw y'igihombo, 500.000 Frw yo kumushora mu manza na 1.000.000 Frw y'indishyi z'akababaro, Urukiko rurasanga ntayo yagenerwa kuko atayatangiye ibisobanuro.

III. ICYEMEZO CY'URUKIKO:

[75] Rwemeje ko ikirego cya Nditiribambe Samuel cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA 0379/12/HC/KIG rwaciwe n' Urukiko Rukuru ku wa 19/07/2013 gifite ishingiro kuri bimwe.

[76] Rwemeje ko urubanza RCA 0379/12/HC/KIG rwaciwe n' Urukiko Rukuru ku wa 19/07/2013 ruhindutse kuri byose;

[77] Rutegetse Gatera Jason guha Nditiribambe Samuel 5.830.000 Frw, akubiyemo:

-3.350.000 Frw y'agaciro k'inzu ze zashenywe;

-480.000 Frw yavanaga mu bukode bw'inzu ze zashenywe;

-2.000.000 Frw y'igihembo cy'Avoka n'ikurikiranarubanza.

[78] Rutegetse Gatera Jason na Nditiribambe Samuel guha Nyamaswa Faustin 800.000 Frw, akubiyemo 500.000 Frw y'igihembo cy'Avoka na 300.000 Frw y'ikurikiranarubanza, buri wese akamuha 400.000 Frw.