UWAMWEZI v RANGHELLA

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/CIV.0012/16/CS (Kayitesi Z, P.J, Hatangimbabazi na Kanyange, J.) 1 Kamena 2018]

Amategeko agenga umuryango – Umutungo w'abashyingiranwe – Ivangamutungo – Kugabana umutungo – Amasezerano y'ubwumvikane yo kugabana umutungo akozwe hagati y'abashyingiranywe ivangamutungo rusange, nta gaciro aba afite igihe atakozwe hagamijwe guhinduza uburyo bwo gucunga umutungo hagati yabo, kuko ivangamutungo riba rigikomeje igihe cyose batari bahabwa ubutane.

Incamake y'ikibazo: Uru rubanza rwahereye mu Rukiko rw'Ibanze rwa Kacyiru, Ranghella arega umugore we Uwamwezi asaba ubutane ngo kuko yamuhozaga ku nkeke, anasaba ko contrat de partage bagiranye yo kugabana umutungo, Urukiko rwayirekera uko babyumvikanyeho. Urukiko rwaciye urubanza rwemeza ko nta butane bahawe kubera ko nta bimenyetso Ranghella yagaragarije Urukiko by'uko Uwamwezi amuhoza ku nkeke, Urukiko rwemeje kandi ko contrat de partage bagiranye, nta gaciro ifite.

Ranghella ntiyishimiye imikirize y'uwo rubanza maze ajuririra Urukiko Rwisumbuye rwa Gasabo, rwemeza ko ubwo bujurire bufite ishingiro kuri bimwe, rwemeza ko nta butane butanzwe, ko ariko contrat de partage bagiranye igumana agaciro kayo.

Nyuma y'imyaka ibiri Ranghella yongeye gutanga ikirego mu Rukiko rw'Ibanze rwa Kacyiru asaba nanone ubutane, ku mpamvu y'uko we n'umugore we Uwamwezi bamaze imyaka

itatu batabana, Urukiko rwaciye urubanza rwemeza ko batanye burundu, naho kubijyanye n'umutungo hakurikizwa contrat de partage yemejwe n'urukiko Rwisumbuye mu rubanza RCA0180/08/TGI/GSBO kuko rwabaye itegeko.

Uwamwezi ntiyishimiye imikirize y'urubanza ajuririra mu Rukiko rw'Isumbuye rwa Gasabo avuga ko igabana ry'umutungo ritakurikije amategeko kuko ngo Urukiko rutagombaga gushingira kuri contrat de partage kandi barasezeranye ivangamutungo rusange hagombaga gushingirwa ku itegeko. Urukiko rwemeje ko ubujurire bwe nta shingiro bufite ko iby'uko ayo masezerano adakuraho ivangamutungo nta shingiro byahabwa kuko ari amasezerano yabaye hagati y'ababuranyi, akaba atarateshejwe agaciro.

Uwamwezi ntabwo yishimiye imikirize y'urubanza yandikira Umuvunyi Mukuru agaragaza ko urubanza rurimo akarengane asaba ko rwasubirwamo, Urwego rw'Umuvunyi nyuma yo gusuzuma ubusabe bwe rwandikiye Perezida w'Urukiko rw'Ikirenga rumusaba ko urubanza RCA0127/12/TGI/GSBO rwasubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko na we yemeza ko urwo rubanza rwongera rukaburanishwa kugirango hasuzumwe akarengane karubayemo.

Mu iburanisha Uwamwezi yagaragaje ko urubanza asubirishamo rugaragaramo akarengane gashingiye kubijyanye n'igabana ry'umutungo aho Urukiko rwashingiye ku masezerano y'igabana nayo batemera kuko yayasinye atazi ibyo asinyiye, avuga ko ayo masezerano atagombaga gushingirwaho kuko adasimbura uburyo bw'ivangamutungo basezeranyemo kandi batigeze bahindura ko rero bakagombye kugabana umutungo hakurikijwe itegeko ry'uko abatandukanye barasezeranye ivangamutungo rusange bagabana umutungo kuburyo bungana.

Ranghella yiregura avuga ko ibyo Uwamwezi avuga ko urubanza rwamurenganije atari ukuri kuko ntaho Urukiko rwanyuranyije n'itegeko rwemeza ko ibyo kugabana imitungo hagati y'abashakanye byakemuwe mu rubanza rwabaye itegeko, akaba asanga icyo kibazo cy'igabana ry'umutungo kitari gikwiye kugarurwa mu manza, kuko cyasuzumwe mu manza zabanje. Ranghella avuga kandi ko ibyo Uwamwezi avuga by'uko atemera contrat de partagekuko ngo yayishyizeho umukono atazi ibiyikubiyemo, bidakwiye guhabwa agaciro, kuko atagaragaza aho ayo masezerano yamurenganyije cyangwa ngo agaragaze aho anyuranyije n'amategeko.

Incamake y'icyemezo: 1. Amasezerano y'ubwumvikane yo kugabana umutungo akozwe hagati y'abasezeranye ivangamutungo rusange, nta gaciro aba afite igihe atakozwe hagamijwe guhinduza uburyo bwo gucunga umutungo hagati yabo, kuko ivangamutungo riba rigikomeje igihe cyose batari bahabwa ubutane, bityo amasezerano yo kugabana umutungo yakozwe hagati ya Ranghella na Uwamwezi nta shingiro afite, ahubwo igabana ry'umutungo rigomba gushingira kuburyo bw'icungamutungo bahisemo basezerana.

Gusubirishamo urubanza kumpamvu z'akarengane bifite ishingiro;
Imikirize y'urubanza rwasubirishijwemo irahindutse kubijyanye no kugabana umutungo.

Amategeko yashingiweho:
Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga

(ryakoreshwaga icyo gihe), ingingo za 33, 78, 79, 80 na 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 9 n’iya 11

Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe (ryakoreshwaga icyo gihe), ingingo ya 19 n’iya 24;

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Mu rubanza RC0377/08/TB/KCY rwaciwe n’Urukiko rw’Ibanze rwa Kacyiru, Ranghella Giussepe, washakanye na Uwamwezi Joséphine, yareze umugore we asaba ubutane kubera kumuhoza ku nkeke, anasaba ko *contrat de partage* bakoranye ku wa 06/07/2007, Urukiko rwayirekera uko babyumvikanyeho (reba igika cya 7, icya 26, icya 28, n’icya 31 cy’urwo rubanza RC0377/08/TB/KCY).

[2] Mu kwiregura ku bijyanye n’ubutane, Uwamwezi Joséphine yavuze ko ubwo butane atabushaka, naho ku bijyanye na *contrat de partage* avuga ko atayemera kuko Avoka we yayimusinyishije atazi ibiyikubiyemo kubera ko atumva neza igifaransa yanditsemo, byongeye kandi bakaba batarashyizemo

imitungo iri i Burayi, ndetse bakaba baramushyizeho imyenda yose y'urugo, akaba ari kugurisha amazu avugwa muri iyo *contrat de partage* umugabo we yigaramiye (reba igika cya 9, icya 27, icya 29, n'icya 30 cy'urwo rubanza RC0377/08/TB/KCY).

[3] Urukiko rw'Ibanze rwa Kacyiru rwaciye urubanza RC0377/08/TB/KCY ku wa 28/11/2008, rwemeza ko nta butane bahawe kubera ko nta bimenyetso by'uko Uwamwezi Joséphine ahoza ku nkeke Ranghella Giussepe yeretse Urukiko, rwemeza kandi ko "contrat de partage" yo ku wa 06/07/2007, nta gaciro kayo.

[4] Ranghella Giussepe ntiyishimiye imikirize y'urubanza, ajuririra Urukiko Rwisumbuye rwa Gasabo, urubanza rwandikwa kuri RCA0180/08/TGI/GSBO, muri ubwo bujurire, Ranghella Giussepe akomeza gusaba ubutane, naho ku bijyanye na *contrat de partage* avuga ko umucamanza atagombaga kuyisenya mu gihe atatanze divorce, kandi Uwamwezi Joséphine atarigeze abisaba (*ultra petita*). Yavuze kandi ko ibyavuzwe na Uwamwezi Joséphine by'uko atayemera kuko atazi igifaransa atari byo, kuko *correspondances* ze ziri mu gifaransa, kandi bikaba bitari na ngombwa ko abana basinya kuri iyo *contrat de partage*, kuko n'ubundi bazazungura aho umutungo wose wajya (reba igika cya 4 n'icya 5 by'urubanza RCA0180/08/TGI/GSBO).

[5] Mu kwiregura kuri ubwo bujurire bwa Ranghella Giussepe, uhagarariye Uwamwezi Joséphine yavuze ko kuvuga ko umucamanza yashenye *contrat de partage* Uwamwezi Joséphine atarigeze abisaba, itari no mu cyaregewe (*ultra petita*), atari byo, kuko ari Ranghella Giussepe wazanye iyo contrat de partage mu Rukiko, iburanwaho, umucamanza akaba atari kubura kuyivugaho. Yongeyeho ko partage des biens ku bashakanye,

igomba kwemerwa n'Urukiko igihe cya *divorce par consentement mutuel*, kandi Urukiko rukaba atari yo rwatanze, ari yo mpamvu *contrat de partage* nta gaciro ifite (*nul et nul effet*).

[6] Nyuma yo gusuzuma ibisobanuro by'impande zombi, Urukiko Rwisumbuye rwa Gasabo, rwaciye urubanza RCA0180/08/TGI/GSBO tariki ya 07/08/2009, rwemeza ko ubwo bujurire bwa Ranghella Giussepe bufite ishingiro kuri bimwe, rwemeza ko nta butane butanzwe, ko ariko "contrat de partage" bakoranye igumana agaciro kayo[1]. Uru rubanza ntirwigeze rujuririrwa.

[7] Ranghella Giussepe, nyuma y'uko yimwe ubutane mu rubanza rumaze kuvugwa, yasubiye mu Rukiko rw'ibanze rwa Kacyiru, atanga bundi bushya ikindi kirego muri urwo Rukiko gifite RC0422/10/TN/KCY asaba nanone ubwo butane, ku mpamvu y'uko we n'umugore we Uwamwezi Joséphine bamaze imyaka itatu batabana.

[8] Urukiko rw'ibanze rwa Kacyiru, rwaciye urubanza ku wa 13/02/2012, rwemeza ko Ranghella Giussepe atandukanye

[1] Urukiko Rwisumbuye rwa Gasabo, rwavuze, mu gika cya 33, cy'urubanza RCA0180/08/TGI/GSBO, ko « Ingingo yay'Itegeko N° 22/99 ryo kuwa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashakanye, impano n'izungura iteganya ko ivangamutungo rusange cyangwa w'umuhahano rirangira ari uko habaye ugutana burundu, kutabana by'agateganyo, guhindura uburyo bw'icungamutungo, bityo igihe cyose Uwamwezi Joséphine na Ranghella Giussepe batarajya imbere y'Umwanditsi w'irangamimerere ngo bahinduze ubunyo bwo gucunga umutungo wabo, n'ubwo basinyanye kontaro igaragaza ubunyo bagabanye umutungo wabo, ivangamutungo basezeranye riracyaniho »

burundu na Uwamwezi Joséphine, rwemeza kandi ko ikibazo cy'imitungo cyacyemuwe mu rubanza RCA0180/08/TGI/GSBO kuko rwemeje ko *contrat de partage* yo ku wa 07/06/2007 igumaho kandi urwo rubanza rukaba rwarabaye Itegeko, bityo buri wese akagumana ibyo yabonye icyo gihe n'inyungu zabyo.

[9] Uwamwezi Joséphine yajuririye Urukiko Rwisumbuye rwa Gasabo, maze mu rubanza RCA0127/12/TGI/GSBO rwaciwe ku wa 27/01/2014, urwo Rukiko rwemeza ko ubutane butanzwe, kandi ko ku bijyanye n'umutungo, hakurikizwa *contrat de partage* yo ku wa 07/06/2007 kuko ari amasezerano ababuranyi bakoranye kandi *contrat de partage* ikaba itarigeze iteshwa agaciro, rusobanura ko ibivugwa na Uwamwezi Joséphine by'uko ayo masezerano adakuraho ay'ivangamutungo nta shingiro byahabwa kuko ari amasezerano yabaye hagati y'ababuranyi, akaba atarateshejwe agaciro nk'uko urubanza RC 0180/08/TGI/GSBO rwabisobanuye.

[10] Urukiko Rwisumbuye rwa Gasabo rwasobanuye ko ibyo Uwamwezi Joséphine avuga by'uko igabana ry'umutungo ryashingiye ku masezerano yo ku wa 06/07/2007 adakurikije amategeko nta shingiro byahabwa, kuko ntacyo ashingiraho abivuga, rusanga iby'uko ayo masezerano adakuraho ay'ivangamutungo nta shingiro byahabwa kuko ari amasezerano yabaye hagati y'ababuranyi, akaba atarateshejwe agaciro nk'uko n'abahagarariye uregwa babisobanuye.

[11] Uwamwezi Joséphine ntiyishimiye imikirize y'urubanza, ashyikiriza ikirego cye Urwego rw'Umuvunyi, avuga ko yagiriwe akarengane mu rubanza rumaze kuvugwa RCA0127/12/TGI/GSBO. Yasobanuriye urwo Rwego ko akarengane ke gashingiye ku kuba Urukiko Rwisumbuye rwa Gasabo rwaraciye urubanza rukamutanya n'umugabo we, ariko

rukaba rutarabagabanyije neza umutungo w'abashakanye mu buryo bw'ivangamutungo rusange, ko ibyo binyuranije n'ibiteganywa n'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura.

[12] Urwego rw'Umuvunyi rumaze gusesengura ikirego rwashyikirijwe, rwasanze mu rubanza RCA0127/12/TGI/GSBO ruvuzwe haruguru harimo akarengane, kuko Ranghella Giussepe na Uwamwezi Joséphine basezeranye mu buryo bw'ivangamuntungo rusange, igihe cyo gutanga ubutane, Urukiko rukaba rutarabagabanyije imitungo n'imyenda byabo nk'uko biteganywa n'ingingo ya 24 y'Itegeko Nº 22/99 ryo ku wa 12/11/1999 ryavuzwe haruguru, kandi hatarigeze habaho guhindura uburyo bw'imicungire y'umutungo wabo, ruvuga kandi ko Urukiko rwaciye urubanza rushingiye kuri *contrat de partage* kandi idasimbura amasezerano y'ivangamutungo rusange ababuranyi basezeranye, rusaba Perezida w'Urukiko rw'Ikirenga ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane, na we yemeza ko urwo rubanza rwongera rukaburanishwa kugirango hasuzumwe akarengane karubayemo.

[13] Urubanza rwaburanishijwe mu ruhame, ku wa 26/09/2017, Uwamwezi Joséphine ahagarariwe na Me Ndagijimana Emmanuel, naho Ranghella Giuseppe ahagarariwe na Me Nkurunziza François Xavier, uyu atanga inzitizi yo kutakira ikirego kubera ko hari urubanza RC0180/08/TGI/GSBO rwabaye Itegeko rwagumishijeho amasezerano yo ku wa 06/07/2007 y'igabana ry'umutungo yakozwe hagati ya Uwamwezi Joséphine na Ranghella (*contrat de partage*), avuga ko mu igabana ry'umutungo w'abashakanye nta tegeko

ryirengagijwe, ko rero Uwamwezi Joséphine uregera akarengane nta nyungu afite mu rubanza.

[14] Urukiko rwafashe icyemezo kuri iyo nzitizi rushingiye ku biteganywa n'ingingo ya 78 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, agace ka 4, rutegeka ko iburanisha rikomeza, inzitizi ikazasuzumirwa hamwe n'urubanza mu mizi.

[15] Urukiko rwakomeje iburanisha ry'urubanza, ariko bigeze hagati, rusanga hari ibimenyetso bindi ndetse n'ibisobanuro bikenewe mbere y'uko rusoza iburanisha, rusaba Me Ndagijimana Emmanuel kuzashaka imibare igaragaza ko hari amafaranga yasigaye ku mazu yagurishijwe hishyurwa ideni Uwamwezi Joséphine afitiye Banque Rwandaise de développement (BRD), no kuzerekana *comptes* bwite za Uwamwezi Joséphine n'iza Sosiyete La Comète, kuva igihe urubanza rwatangiraga kugeza ubu, naho Me Nkurinziza François Xavier asabwa kuzagaragaza uburyo ikibanza nomero 99 cyageze kuri Sosiyete ya Ranghella Giussepe yitwa SOGIS n'amafaranga cyagurishijwe; kuzagaragaza ibyangombwa by'inzu ziba mu Bubiligi n'i Roma hamwe na *expertises* yazo no kuzerekana uko *comptes* za Ranghella Giussepe ku giti cye n'iza Sosiyete SOGIS zihagaze mu gihe nibura cy'imyaka ibiri kuva igihe urubanza rwavuzwe rusabirwa gusubirwamo ku mpamvu z'akarengane rwacibwaga. Urukiko rwasabye kandi ababuranyi b'impande zombi gushyira muri dosiye imanza bagiye bavuga no kuzatanga ibindi bimenyetso babona ari ngombwa ko byafasha Urukiko.

[16] Ibi byose byatumye Urukiko rufata icyemezo cyo kwimurira iburanisha ry'urubanza tariki ya 05/12/2017, ryongera

kwimurirwa ku wa 06/02/2018, uwo munsi ugeze ababuranyi bose baritabye, bahagarariwe nka mbere, urubanza ruraburanishwa, rurapfundikirwa, isomwa ryarwo rishyirwa ku wa 16/03/2018.

[17] Nyuma y'uko rwiherereye kugira ngo rufate icyemezo, Urukiko rwasanze hari ibigikenewe gusobanuka ku mitungo yimukanwa n'itimukanwa ababuranyi batunze, rusaba ababuranyi ibikurikira:

1. Ranghella Giuseppe agomba kugeza ku Rukiko, mu nyandiko, amateka y'inzu ya SOGIS Ltd iri i mu kibanza nomero 2603 ku Kamonyi, ivuye mu igurishwa ry'ikibanza nomero 99/Nyarugenge, cyaje guhinduka ikibanza n° 778/Nyarugenge, kandi akageza ku Rukiko inyandiko zose z'icyo kibanza kuva akikibona, n'izerekeye *mutations* zagiye zigikorwaho;

2. Ranghella Giuseppe agomba kugeza ku Rukiko agaciro mu mafaranga k'imigabane afite muri SOGIS Ltd, umutungo wimukanwa n'utimukanwa wa SOGIS Ltd n'agaciro kawo mu mafaranga;

3. Ranghella Giuseppe na Uwamwezi Joséphine bagomba kugeza ku Rukiko, buri wese ku giti cye, agaciro mu mafaranga k'imigabane bafite cyangwa bari bafite muri *La Comète*, umutungo wimukanwa n'utimukanwa wa La Comète n'agaciro kawo mu mafaranga, bakanagaragaza konti zayo mu mabanki n'amafaranga ariho;

4. Uwamwezi Joséphine agomba kugeza ku Rukiko urubanza avuga ko yatsindiwe n'uwitwa Kayitesi Monique amafaranga 120.000.000Frw n'ibisobanuro ku isano urwo rubanza rufitanye n'uru rubanza;

5. Uwamwezi Joséphine agomba kugeza ku Rukiko ingano y'amadeni avuga ko agaragazwa n'imanza yatsindiwe mu Rukiko rw'Ikirenga, n'isano afitanye n'uru rubanza;

6. Ranghella Giuseppe na Uwamwezi Joséphine bagomba kugeza ku Rukiko ingano y'amafaranga bafite mu mabanki yo mu Rwanda n'ayo hanze y'u Rwanda, bakanagaragaza numero za konti bafite n'amabanki izo konti zirimo;

7. Ranghella Giuseppe na Uwamwezi Joséphine bagomba kugeza ku Rukiko, buri wese ku giti cye, ibijyanye na Gestion Concession Carlo Mo (Giti cy'inyoni) ivugwa muri uru rubanza.

[18] Tariki ya 09/04/2018 Me Nkurunziza François Xavier uhagarariye Ranghella Giussepe yatanze inyandiko zikubiyemo ibisobanuro byasabwe ku mitungo, naho tariki ya 12/04/2018, Me Ndagijimana Emmanuel uhagarariye Uwamwezi Joséphine nawe atanga ibisobanuro kuri iyo mitungo, agira n'icyo avuga ku bisobanuro byatanzwe na Me Nkurunziza François Xavier uhagarariye Ranghella Giussepe.

[19] Iburanisha ryongeye gusubukurwa tariki ya 17/04/2018 nk'uko byari byategetswe mu rubanza rubanziriza urundi rwo ku wa 16/03/2018, uwo munsi Me Ndagijimana Emmanuel na Uwamwezi Josephine ahagarariye bitaba Urukiko, Me Nkurunziza François Xavier uhagarariye Ranghella Giuseppe nawe aritaba, urubanza ruraburanishwa rurapfundikirwa, isomwa ryarwo rishyirwa tariki ya 01/06/2018.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

Kumenya niba inzitizi yatanzwe na Ranghella Giuseppe yo kutakira ikirego cya Uwamwezi Joséphine gisaba gusubirishamo urubanza RCA0127/12/TGI/GSBO ku mpamvu z'akarengane ifite ishingiro.

[20] Uburanira Ranghella Giuseppe, avuga ko ikirego cy'akarengane cyatanzwe na Uwamwezi Joséphine kidakwiye kwakirwa, kubera ko atagaragaza aho Urukiko rwaciye urubanza RCA 0127/12/TGI/GSBO asabira gusubirwamo rwanyuranyije n'Itegeko. Asobanura ko ikibazo cy'igabana ry'umutungo kitagombaga kugarurwa mu manza, kuko cyasuzumwe mu manza RCA0180/08/TGI/GSBO, RC0422/10/TB/KCY, na RCA 0127/12/TGI/GSBO, zikaba zaragumishijeho amasezerano yo ku wa 06/07/2007 yo kugabana umutungo (*contrat de partage*), akaba asanga ibyo Uwamwezi Joséphine adakwiye kubyita akarengane yagiriwe kuko urubanza RCA0180/08/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo, ari rwo rwemeje bwa nyuma iyo *contrat de partage*, rukaba rwarabaye ndakuka, kuko nta rundi rubanza rwigeze rurukuraho.

[21] Uburanira Ranghella Giuseppe avuga ko ibyo Uwamwezi Joséphine avuga by'uko atemera iriya *contrat de partage* ngo kuko yayishyizeho umukono atazi ibiyikubiyemo kubera ko atumva igifaransa bidakwiye guhabwa agaciro, kuko atagaragaza aho ayo masezerano yamurenganyije cyangwa ngo agaragaze aho anyuranyije n'amategeko, byongeye kandi ayo masezerano akaba ateganya mu ngingo yayo ya 5 ko impaka zose zakemurwa binyuze muri *arbitrage*, iyi *arbitrage* ikaba itarigeze ibaho ngo ibe yaratesheje agaciro ayo masezerano.

[22] Uburanira Ranghella Giuseppe avuga ko yemera ko urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo, ko ariko asanga nta mategeko yirengagijwe, kuko, nk'uko amaze

kubivuga haruguru, hari Inkiko zakemuye ku buryo ndakuka ikibazo cy'umutungo Ranguella Giuseppe na Uwamwezi Joséphine baburana, akaba asanga nta karengane kabaye mu rubanza rusabirwa gusubirwamo, mu gihe kuri icyo kibazo cy'igabana, hari icyemezo cyafashwe cyabaye Itegeko.

[23] Uburanira Uwamwezi Joséphine mu kwiregura ku nzitizi, avuga ko urubanza rwaciwe bwa nyuma, rusubirishwamo ku mpamvu z'akarengane ari RCA0127/12/TGI/GSBO, ari na rwo rwahaye Ranguella Giuseppe n'umugore we Uwamwezi Joséphine ubutane bwa burundu, rukavuga ko ikibazo cy'igabana ry'imitungo cyacyemuwe mu rubanza RCA0180/08/TGI/GSBO rwabaye Itegeko nk'uko uburanira Ranghella Giuseppe abivuga, kuko rwemeje ko amasezerano (*contrat de partage*) yo ku wa 07/06/2007 agumaho, ariko ibi bikaba ari byo byatumye Uwamwezi Joséphine arengana, ako karengane kakaba karabonywe n'Urwego rw'Umuvunyi kuko urwo rubanza rutagabanyije ku buryo bungana abashakanye imitungo yabo yimukanwa n'itimukanwa ndetse n'amadeni bafite kandi barashyingiranywe mu buryo bw'ivangamutungo rusange, ibyo bikaba binyuranije n'ingingo ya 24 y'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura hamwe n'ingingo ya 3 y'iryo Tegeko, iteganya ko ivangamutungo rusange ari amasezerano abashyingiranywe bagirana bumvikana gushyira hamwe umutungo wabo wose, ibyimukanwa n'ibitimukanwa kimwe n'imyenda yabo yose, ndetse n'ingingo ya 4 y'iryo Tegeko iteganya ko iyo abashyingiranywe bahinduye uburyo bw'ivangamutungo rusange, hakurikizwa ibiteganywa n'ingingo ya 19 y'Itegeko

rimaze kuvugwa, bakagabana umutungo rusange n'imyenda ku buryo bungana.

[24] Uburanira Uwamwezi Joséphine asoza avuga ko nta mpamvu ikirego cy'akarengane cya Uwamwezi Joséphine kitakwakirwa kigasuzumwa, mu gihe ako karengane kabonywe n'Urwego rw'Umuvunyi, ko rero inzitizi itangwa n'uburanira Ranghella Giuseppe, nta shingiro ifite, mu gihe avuga ko hari urubanza RCA0180/08/TGI/GSBO rwabaye Itegeko, nyamara urwo rubanza rukaba ntacyo rwigeze ruvuga ku butane, ndetse rukaba rwaremeje ko imicungire y'umutungo w'abashakanye ikomeza kuba iy'ivangamutungo rusange.

UKO URUKIKO RUBIBONA

[25] Ingingo ya 33, y'Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, iteganya ibikurikira: […] Urukiko rw'Ikirenga rushobora kandi gusubirishamo ku mpamvu z'akarengane imanza zaciwe burundu n'urwo Rukiko cyangwa n'izindi nkiko, hakurikijwe ibiteganywa n'iri Tegeko Ngenga.

[26] Ingingo ya 78, y'Itegeko Ngenga N° 03/2012/OL rimaze kuvugwa, iteganya ko: Urukiko rw'Ikirenga ni rwo ruburanisha ibirego byerekeranye no gusubirishamo ku mpamvu z'akarengane imanza zaciwe ku rwego rwa nyuma byemejwe na Perezida w'Urukiko rw'Ikirenga.

[27] Ingingo ya 79, y'Itegeko Ngenga N° 03/2012/OL rimaze kuvugwa iteganya ko: Iyo Urwego rw'Umuvunyi rusanze uburyo urubanza rwaciwe birimo akarengane, rwandikira Perezida w'Urukiko rw'Ikirenga rumusaba ko urubanza rwakongera

kuburanishwa. Rumushyikiriza raporo ikubiyemo imiterere y'icyo kibazo n'ibimenyetso bigaragaza ako karengane. Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane ntigikorerwa ibanzirizasuzuma.

[28] Ingingo ya 80 y'Itegeko Ngenga N° 03/2012/OL rimaze kuvugwa ko "iyo Perezida w'Urukiko rw'Ikirenga asuzumye raporo y'Ubugenzuzi Bukuru bw'Inkiko akemeza ko urubanza rwongera kuburanishwa, yohereza dosiye Umwanditsi Mukuru w'Urukiko rw'Ikirenga kugira ngo ayandike mu bitabo byabugenewe, akanagena kandi n'itariki y'iburanisha n'inteko y'abacamanza bazaruburanisha. Agena kandi muri abo bacamanza uzakora raporo.

[29] Ingingo ya 81 y'iryo Tegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 iteganya mu gika cya kabiri cyayo ko: umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanzwe ariko ntabikore mu gihe giteganyijwe n'amategeko ntiyemerewe gusaba ko urubanza yatsinzwe rusubirishwamo hakurikijwe ibiteganywa n'ingingo zivugwa muri iki cyiciro.

[30] Ku bijyanye n'impamvu ituma ikirego kitakirwa, ingingo ya 77, igika cya 4, 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 ko: Impamvu ituma ikirego kitakirwa ni ingingo yose isaba kutakira ikirego cy'umuburanyi, hatinjiwe mu mizi yacyo, kubera ko adafite uburenganzira bwo kurega, nko kuba adafite ububasha n'inyungu zo kurega, ubusaze bw'ikirego, kurenza igihe cyo kurega, urubanza rwabaye Itegeko cyangwa kudatanga amagarama.

[31] Ku bijyanye n'urubanza rwabaye Itegeko, ingingo ya 11 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 rimaze kuvugwa, igaragaza ko urubanza rwaciwe ku rwego rwa nyuma rudashobora kongera kuburanishwa bundi bushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y'ababuranyi bamwe baburana ikirego kimwe, iyo inzira yo kurusubirishamo ku mpamvu z'akarengane yarangiye, aho igira iti: 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.

[32] Nk'uko byavuzwe haruguru, dosiye y'uru rubanza igaragaza ko nyuma y'uko mu rubanza RCA0127/12/TGI/GSBO rwaciwe ku wa 27/01/2014, Urukiko Rwisumbuye rwa Gasabo rwemeje ko Uwamwezi Joséphine atandukanye n'umugabo we Ranguella Giuseppe, kandi ko ku bijyanye n'umutungo, hakurikizwa *contrat de partage* yo ku wa 07/06/2007 kuko ari amasezerano ababuranyi bakoranye kandi *contrat de partage* ikaba itarigeze iteshwa agaciro, nk'uko urubanza RC0180/08/TGI/GSBO rwabisobanuye, Uwamwezi Joséphine yashyikirije ikirego cye Urwego rw'Umuvunyi, avuga ko yagiriwe akarengane mu rubanza rumaze kuvugwa RCA0127/12/TGI/GSBO, kuko rutamugabanyije n'umugabo we imitungo bafitanye ku buryo bungana, Urwego rw'Umuvunyi ruza gusanga mu rubanza RCA0127/12/TGI/GSBO rwaciwe harimo koko akarengane, rusaba Perezida w'Urukiko rw'Ikirenga ko urwo rubanza rwasubirwamo, Perezida w'Urukiko rw'Ikirenga na we yemeza ko urwo rubanza rwongera rukaburanishwa kugirango hasuzumwe akarengane karubayemo.

[33] N’ubwo bigaragara koko, ko urubanza RC0180/08/TGI/GSBO rwaciwe tariki ya 07/08/2009 n’Urukiko Rwisumbuye rwa Gasabo rwaciwe ku rwego rwa nyuma, kuko yaba Uwamwezi Joséphine, yaba Ranguella Giuseppe ntawigeze yiyambaza izindi nzira z’ubujurire zisanzwe cyangwa zidasanzwe, kugirango urwo rubanza ruhinduke nk’uko bivugwa mu ngingo ya 81, igika cya kabiri, y’Itegeko Ngenga N° 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n’ububasha by’Urukiko rw’Ikirenga, Urukiko rurasanga, hakurikijwe ibiteganywa n’ingingo ya 78, iya 79, iya 80, n’iya 81, z’iryo Tegeko Ngenga zibukijwe haruguru, urubanza Urwego rw’Umuvunyi rwasanzemo akarengane, ari RCA0127/12/TGI/GSBO, bityo kuba hari urubanza Nº RC0180/08/TGI/GSBO rwaciwe tariki ya 07/08/2009 n’Urukiko Rwisumbuye rwa Gasabo uburanira Ranguella Giuseppe avuga rwabaye itegeko kuko rutajuririwe, bitaba impamvu yo kutakira ikirego kirebana n’urubanza RCA0127/12/TGI/GSBO, ahubwo bigomba gusuzumwa nk’ingingo yo kwiregura (*moyen de défense*) ya Ranguella Giuseppe ku bijyanye n’akarengane Uwamwezi Joséphine avuga yagiriwe.

[34] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga inzitizi yatanzwe na Ranguella Giuseppe yo kutakira ikirego cya Uwamwezi Joséphine gisaba gusubirishamo urubanza RCA0127/12/TGI/GSBO ku mpamvu z’akarengane nta shingiro ifite.

Kumenya niba Ranguella Giuseppe na Uwamwezi Joséphine bakwiye kugabana umutungo wabo mu buryo bungana, hatitawe kuri "*contrat de partage*".

[35] Uburanira Uwamwezi Joséphine avuga ko akarengane uyu yagiriwe mu rubanza RCA0127/12/TGI/GSBO

rusubirishwamo ku mpamvu z’akarengane ari uko Urukiko rwahaye Ranguella Giuseppe n’umugore we Uwamwezi Joséphine ubutane bwa burundu, ariko rukavuga ko ikibazo cy’igabana ry’imitungo cyacyemuwe mu rubanza Nº RCA 0180/08/TGI/GSBO rwabaye itegeko, rukemeza ko amasezerano (*contrat de partage*) yo ku wa 07/06/2007 agumaho, aho kubagabanya ku buryo bungana imitungo yabo yimukanwa n’itimukanwa ndetse n’amadeni bafite kandi barashyingiranywe mu buryo bw’ivangamutungo rusange, ibyo bikaba binyuranije n’Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura.

[36] Uburanira Uwamwezi Joséphine akomeza avuga ko ibyo umucamanza yavuze mu rubanza RCA0127/12/TGI/GSBO rusubirishwamo ku mpamvu z’akarengane by’uko hari urubanza RCA0180/08/TGI/GSBO rwabaye itegeko ku bijyanye no kugabana imitungo, atari ukuri kuko urwo rubanza atari rwo rwatanze ubutane, byongeye kandi rukaba rwaravuze ko imicungire y’umutungo w’abashakanye ikomeza kuba iy’ivangamutungo rusange[2].

[2]Byavuzwe mu gika cya 33 cy’ urubanza RCA 0180/08/TGI/GSBO, aho kigira giti : « Ingingo ya 24 y’itegeko N° 22/99 ryo kuwa 12/11/1999 [….] rishyiraho igice cya gatanu cyerekeye imicungire y’umutungo w’abashakanye, impano n’izungura iteganya ko ivangamutungo rusange cyangwa w’umuhahano rirangira ari uko habaye ugutana burundu, kutabana by’agateganyo, guhindura uburyo bw’icungamutungo, bityo igihe cyose Uwamwezi na Langhela batarajya imbere umwanditsi w’irangamimerere ngo bahinduze ubunyo bwo gucunga umutungo wabo, n’ubwo basinyanye kontaro igaragaza ubunyo bagabanye umutungo wabo, ivangamutungo basezeranye riracyaniho

[37] Mu kwiregura, uburanira Ranghella Giuseppe, avuga ko urubanza RCA0127/12/TGI/GSBO Uwamwezi Joséphine avuga ko rwamurenganije ntaho rwanyuranyije n'itegeko rwemeza ko ibyo kugabana imitungo hagati y'abashakanye byakemuwe mu rubanza RCA0180/08/TGI/GSBO rwabaye itegeko, akaba asanga icyo kibazo cy'igabana ry'umutungo kitari gikwiye kugarurwa mu manza, kuko cyasuzumwe mu manza zose zabanjirije urubanza RCA0127/12/TGI/GSBO, urwa nyuma, ari rwo RCA0180/08/TGI/GSBO, akaba ari rwo rwagumishijeho amasezerano yo ku wa 06/07/2007 yo kugabana umutungo (*contrat de partage*), akaba asanga rero ibyo Uwamwezi Joséphine aburanisha by'uko yagiriwe akarengane mu rubanza RCA0127/12/TGI/GSBO nta shingiro bifite, mu gihe nta rundi rubanza rwigeze rukuraho urubanza RCA0180/08/TGI/GSBO.

[38] Uburanira Ranghella Giuseppe akomeza avuga ko ibyo Uwamwezi Joséphine avuga by'uko atemera *contrat de partage*, ngo kuko yayishyizeho umukono atazi ibiyikubiyemo kubera ko atumva igifaransa, bidakwiye guhabwa agaciro, kuko atagaragaza aho ayo masezerano yamurenganyije cyangwa ngo agaragaze aho anyuranyije n'amategeko, byongeye kandi ayo masezerano akaba ateganya mu ngingo yayo ya 5 ko impaka zose zakemurwa binyuze muri "arbitrage", iyi "arbitrage" ikaba itarigeze ibaho ngo ibe yaratesheje agaciro ayo masezerano.

[39] Uburanira Ranghella Giuseppe asoza avuga ko yemera ko urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo, ko ariko asanga nta mategeko yirengagijwe, kuko, nk'uko yabivuze haruguru, hari Inkiko zakemuye ku buryo ndakuka ikibazo cy'umutungo Ranguella Giuseppe na Uwamwezi Joséphine baburana.

UKO URUKIKO RUBIBONA

[40] Ingingo ya 19 y'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura iteganya ko: Bisabwe n'abashyingiranywe cyangwa umwe muri bo igihe bakibana, imicungire y'umutungo wabo ishobora guhindurwa. Ubishaka agomba kugaragaza ko ihinduka rifitiye inyungu urugo cyangwa hari ikintu cyahindutse cyane mu mibereho yabo cyangwa y'umwe muri bo. Ikirego gitangwa mu buryo bw'ibirego byihutirwa kigashyikirizwa Urukiko rwa Mbere rw'Iremezo rw'aho abashyingiranywe baba. Iyo iryo saba ritemewe mu cyemezo ntakuka, ikirego gishobora kwongera gutangwa nyuma y'imyaka ibiri gishingiye ku ngingo nshya.

[41] Ingingo ya 24 y'Itegeko N°22/99 ryo ku wa 12/11/1999 rimaze kuvugwa ivuga ko: Ivangamutungo rusange cyangwa w'umuhahano rirangira ari uko habaye ugutana burundu kw'abashyingiranywe, kutabana by'agateganyo, uguhindura uburyo bw'icungamutungo. Iyo ivangamutungo rirangiye abashyingiranywe bagabana ku buryo bungana umutungo n'imyenda bahuriyeho.

[42] Dosiye y'uru rubanza igaragaza ko mbere y'uko Ranguella Giuseppe na Uwamwezi Joséphine bahabwa ubutane bwatanzwe mu rubanza RC0422/10/TN/KCY rwaciwe n'Urukiko rw'Ibanze rwa Kacyiru ku wa 13/02/2012, ubwo butane bukaza kwemezwa n'Urukiko Rwisumbuye rwa Gasabo, mu rubanza RCA0127/12/TGI/GSBO rwaciwe ku wa 27/01/2014, bari baragiranye amasezerano yiswe "contrat de

partage" yo ku wa 07/06/2007 yanditse mu gifaransa, akubiyemo ibikurikira:

Article 1: Les soussignés se conviennent d'une facon de partager les biens en commun de la manière suivante:

a. Les biens suivants reviennent à Mme Uwamwezi Joséphie:

Maison d'habitation parcelle n^{o} 736 Kacyiru;

1. Immeuble ex Eden Garden parcelle n^{o} 533 à Nyarugenge;

2. Parcelle (marché) n^{o} 2270 à Nyarugenge;

3. Société la COMETE S.A.R.L;

4. Gestion Concession Carlo Mo (Giti cy'inyoni) à 90%;

5. Maison de Bruxelles sise 22, Rue de la Sympathie (Anderleckt) à 50%;

b. Les biens suivants reviennent à Monsieur Ranguella Giuseppe:

7. Immeuble sis dans la parcelle n° 99 à Nyarugenge;

8. La Société SOGIS S.A.R.L;

9. Gestion Concession Carlo Mo (Giti cy'inyoni) à 10%;

10. Maison de Bruxelles sise 22, Rue de la Sympathie (Anderleckt) à 50%;

Article 2:

Concernant le crédit de la BRD sur Mme Uwamwezi Joséphine, la partie Ranguella Giuseppe accepte de payer les intérêts encourus jusqu'à concurrence de 30.000.000 Frw par chèque de Fina Bank dont le présent contrat constitue bonne et valable quittance.

Article 3:

Mme Uwamwezi Joséphine reconnait par la présente convention de partage qu'elle reste seule responsable des engagements pris à la BRD en relation avec l'immeuble sis dans la parcelle n° 533, étant donné qu'elle est unique propriétaire.

Article 4:

Les parties s'engagent d'informer la BRD du retrait de la caution solidaire de Monsieur Ranguella giuseppe sur le crédit octroyé à mme uwamwezi Joséphine, étant donné qu'elle était donnée en sa qualité de co-propriétaire des biens donnés en garantie avant la convention.

En cas de refus du retrait de cette caution par la Banque, les parties trouveront une solution d'apurement de ce crédit par la réalisation des biens donnés en garantie.

Article 5:

En cas de litige ……………. ».

[43] Dosiye y'uru rubanza igaragaza kandi ko ayo masezerano yiswe "contrat de partage" yo ku wa 07/06/2007 yemejwe n'imanza zavuzwe haruguru (RC 0422/10/TN/KCY na RC0127/12/TGI/GSBO) ko ari yo agomba gukurikizwa hagati ya

Ranguella Giuseppe na Uwamwezi Joséphine ku bijyanye no kugabana imitungo basangiye ngo kuko ari amasezerano ababuranyi bakoranye kandi *contrat de partage* ikaba itarigeze iteshwa agaciro nk'uko urubanza RC0180/08/TGI/GSBO rwabisobanuye.

[44] Isuzumwa ry'urubanza RC0180/08/TGI/GSBO rumaze kuvugwa, uhagarariye Ranghela yita ko rufite agaciro k'itegeko ku kibazo cya "contrat de partage" yo ku wa 07/06/2007, rigaragaza ko n'ubwo Urukiko Rwisumbuye rwa Gasabo rwemeje, mu gika 37, ko *contrat de partage* yo ku wa 07/06/2007 ihamyeho, ariko mu gika cya 33 cy'urwo rubanza (RCA0180/08/TGI/GSBO), rwasobanuye ko igihe cyose Uwamwezi Joséphine na Ranghela batarajya imbere y'umwanditsi w'irangamimerere ngo bahinduze uburyo bwo gucunga umutungo wabo, n'ubwo basinyanye kontaro igaragaza uburyo bagabanye umutungo wabo, ivangamutungo basezeranye riracyariho, ibyo kandi rubivuga rushingiye ku ngingo ya 24 y'Itegeko N°22/99 ryo ku wa 12/11/1999 [….] rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashakanye, impano n'izungura iteganya ko ivangamutungo rusange cyangwa w'umuhahano rirangira ari uko habaye ugutana burundu, kutabana by'agateganyo, guhindura uburyo bw'icungamutungo, ibi bikumvikanisha ko n'urwo Rukiko rwari rwemeye ko iyo ngingo ari yo igomba gukurikizwa, mu gihe abashakanye mu buryo bw'ivangamutungo batanye burundu, bikumvikanisha rero ko icyemezo rwafashe cy'uko *contrat de partage* yo ku wa 07/06/2007 ihamyeho, kinyuranije n'imyumvire rwari rumaze kugaragaza, kandi ihura n'ingingo ya 24 y'Itegeko N°22/99 ryo ku wa 12/11/1999 rwashingiyeho.

[45] Urukiko rurasanga rero kuba mu rubanza Nº RCA0127/12/TGI/GSBO Uwamwezi Joséphine asubirishamo ku mpamvu z'akarengane, Urukiko Rwisumbuye rwa Gasabo rwaravuze ko ikibazo cya *contrat de partage* yo ku wa 07/06/2007 cyakemuwe ku buryo budasubirwaho mu rubanza RCA0180/08/TGI/GSBO rwabaye Itegeko, nk'uko na Me Nkurunziza François Xavier uburanira Ranghella Giussepe abyuririraho, atari ukuri, kubera ko nk'uko byari bimaze gusobanurwa, Urukiko rwerekanye mu gika 33 cy'urwo rubanza RCA 0180/08/TGI/GSBO, ko ivangamutungo rigikomeje ku bashakanye batari bahabwa ubutane burundu, bikumvikanisha rero ko hakurikijwe ingingo ya 24 y'Itegeko N°22/99 ryo ku wa 12/11/1999 yibukijwe haruguru, iyo ivangamutungo rirangiye kubera ubutane bahawe, icyo gihe ari ho abashyingiranywe bagomba kugabana ku buryo bungana umutungo n'imyenda bahuriyeho, bityo ibyo kugabana byabaye mbere nk'uko bikubiye muri "contrat de partage" yo ku wa 07/06/2007, bikaba nta gaciro bigomba guhabwa kuko binyuranije n'amategeko, cyane cyane ko iyo contrat de partage itakozwe mu rwego rwo guhindura ivangamutungo rusange, Uwamwezi Joséphine na Ranghella Giussepe bari basanganywe, kuko ibyo bikorwa mu buryo buteganywa n'ingingo ya 19 y'Itegeko N° 22/99 ryo ku wa 12/11/1999 yavuzwe haruguru.

[46] Hakurikijwe ingingo z'amategeko n'ibisobanuro bimaze gutangwa, kuba urubanza RCA0127/12/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo rwaranze kugabanya Ranghella Giussepe na Uwamwezi Joséphine ku buryo bungana umutungo n'imyenda bahuriyeho, ahubwo rukemeza ko *contrat de partage* yo ku wa 07/06/2007 ihamyeho, Urukiko rurasanga urwo rubanza rwararenganije ku buryo bugaragarira buri wese Uwamwezi Joséphine wabitangiye ikirego, kuko ikibazo cya

“contrat de partage” kitigeze kiba itegeko (*autorité de la chose jugée*) nk’uko byasobanuwe haruguru.

[47] Urukiko rurasanga rero mu rwego rwo kuvanaho akarengane kari mu rubanza RC0127/12/TGI/GSBO, ibyemejwe muri urwo rubanza ku bijyanye n’igabana ry’imitungo y’abashakanye « ivangamutungo rusange », bigomba guhindurwa, hakemezwa ko abatandukanye barashakanye muri ubwo buryo bagabana ku buryo bungana imitungo yabo yose harimo n’imyenda (*actif et passif*), nk’uko biteganywa n’ingingo ya 24 y’Itegeko N 22/99 ryo ku wa 12/11/1999 yibukijwe haruguru.

c. Ku bijyanye no kumenya imitungo Ranghella Giussepe na Uwamwezi Joséphine bagomba kugabana nyuma yo gutana burundu.

[48] Me Ndagijimana Emmanuel, uhagarariye Uwamwezi Joséphine, mu mwanzuro we wo gutanga ikirego, ndetse no mu ibaruwa ye yo ku wa 29/01/2018 ashyikiriza Urukiko ibimenyetso byasabwe mu iburanisha ryo ku wa 08/02/2018, hamwe n’ibisobanuro yatanze muri iryo buranisha no mu ryabaye ku wa 17/04/2018, avuga ko umutungo rusange n’imyenda Ranghella Giussepe na Uwamwezi Joséphine bari basangiye nk’abashyingiranywe ivangamutungo bagomba kugabana, ugizwe n’umutungo utimukanwa, uwimukanwa n’imyenda.

[49] Ku bijyanye n’umutungo utimukanwa, Me Ndagijimana Emmanuel avuga ko ugizwe n’ibikurikira:

A. Umutungo utimukanwa

1. Inzu iri mu kibanza nomero 533 Nyarugenge (ifite agaciro ka 395.000.000Frw) yagurishijwe mu cyamunara kuri 301.000.000

Frw, hishyurwa umwenda wa BRD, ikagurwa na Nduwumwami Victor;

2. Ikibanza cyubatsemo isoko mu Gakinjiro gifite n° 2270 Nyarugenge, nacyo cyagurishijwe mu cyamunara hishyurwa umwenda wa BRD;

- Me Ndagijimana Emmanuel asobanura mu ibaruwa ye yo ku wa 29/01/2018 yavuzwe haruguru, ko amazu ari muri ibyo bibanza byombi bya Ranghella Giussepe na Uwamwezi Joséphine byagurishijwe ku wa 22/11/2012 kuri 610.622.000Frw kugirango hishyurwe umwenda wa BRD, kandi ko nyuma yo kwishyura, Uwamwezi Joséphine yasubijwe 65.926.589 Frw, yemera kugabana na Ranghella Giussepe, buri wese agatwara icya kabiri cyayo kingana na 33.790.794Frw.

3. Inzu iri mu kibanza n° 99 Nyarugenge, cyaje guhinduka ikibanza n° 778 Nyarugenge, ikaza kugurishwa, amafaranga avuyemo akagurwa indi nzu ku Kamonyi, mu kibanza gifite n° 2603;

- Me Ndagijimana Emmanuel asobanura mu ibaruwa ye yo ku wa 29/01/2018 yavuzwe haruguru, ko iyo nzu ifite agaciro ka 571.262.000Frw hakurikijwe igenagaciro bashyikirije Urukiko, ariko ko iyo nzu yari yanditse kuri Ranghella Giussepe, uyu yaje kuyihindurira muri Sosiyete SOGIS Ltd, nyuma ayigurisha Rugenera Marc mu mwaka wa 2014, amafaranga avuyemo Ranghella Giussepe ayaguramo indi nzu ku Kamonyi, mu kibanza gifite n° 2603, nayo akomeza kuyandika kuri Sosiyete SOGIS Ltd, ihagarariwe na Ranghella Giussepe n'umukobwa we, Ranghella Giussepe akaba afitemo imigabane ya 99, 03%, umukobwa we akagira 0,07%, akaba asanga kandi amasezerano y'ubugure bw'inzu n° 778 Nyarugenge Ranghella Giussepe agaragaza ko yayigurishije Rugenera Marc kuri 120.000.000 frw,

atari ukuri, kuko bidahuye n'agaciro kayo kavuzwe ka 571.262.000Frw hakurikijwe igenagaciro bashyikirije Urukiko .

- Me Ndagijimana Emmanuel asaba ko iyo nzu yanditse kuri Sosiyete SOGIS Ltd mu buryo butemewe, ngo kuko byakozwe hakurikijwe ya "contrat de partage" itemewe n'amategeko, yagurishwa bakagabana amafaranga azayivamo hakurikijwe imigabane ya 99,03%, Ranghella Giussepe afite muri iyo Sosiyete. Yongeraho ariko ko ubugure bwa Rugenera Marc batabwemera, ari yo mpamvu hari urubanza rukiburanwa mu Rukiko.

4. Inzu yari ku Kacyiru yashenywe n'umuhanda mu kibanza n° 736;

- Me Ndagijimana Emmanuel asobanura ko Uwamwezi Joséphine yahawe kuri iyo nzu 161.273.432Frw, akaba yemera kuyagabana na Ranghella Giussepe, buri wese agatwara icya kabiri cyayo kingana na 80.636.716Frw.

5. Amazu agizwe na "dépôts" 3 akomoka kuri *Gestion Concession Carlo Mo* (Giti cy'inyoni) ;

- Me Ndagijimana Emmanuel asobanura ko n'ubwo mu nyandiko yashyikirije Urukiko, yavugaga ko ayo mazu ari aya Uwamwezi Joséphine, asanga adakwiye kujya mu mitungo itimukanwa igomba kugabanwa, kuko ayo mazu ari ay'undi muntu (Carlo Mo), akaba yisegura ku kuba harabaye kwibeshya mu byanditse mu nyandiko imaze kuvugwa.

- Inzu iri Bruxelles mu gihugu cy'Ububiligi kuri Rue de la Sympothesie, n°.22, Anderleckt;

6. Inzu iri i Roma mu gihugu cy'Ubutaliyani Via Casali du Vallera n°18 Roma.

[50] Kuri iki kibazo cy'umutungo utimukanwa, uburanira Ranghella Giussepe avuga mu mwanzuro we wo kwiregura, ko nta mutungo utimukanwa wa Uwamwezi Joséphine na Ranghella Giussepe ukiriho, bitewe n'uko inzu yari ku Kacyiru yashenywe n'umuhanda mu kibanza n° 736, Uwamwezi Joséphine agahabwa amafaranga ya "expropriation", amazu ari mu bibanza n° 533 na n° 2270 agatezwa cyamunara kugirango hishyurwe umwenda wa BRD, Concession Carlo Mo" akaba atari umutungo wa Uwamwezi Joséphine na Ranghella Giussepe, ahubwo bawucunga, inzu iri i mu kibanza n° 2603 ku Kamonyi, (ivuye mu igurishwa ry'ikibanza n° 99 Nyarugenge, cyaje guhinduka ikibanza n° 778 Nyarugenge) ikaba ari iya Sosiyete SOGIS Ltd.

[51] Uburanira Ranghella Giussepe avuga ko inzu iri Bruxelles impande zombi zumvikanye kuyigabana kuri 50%, naho inzu y'i Roma ikaba itagabanywa kubera ko hatarabaho izungura, akaba asanga rero igihe ikibazo cy'izungura kikiri aho, kuyigabana haba harimo imbogamizi.

B. Umutungo wimukanwa

[52] Ku bijyanye n'umutungo wimukanwa, Me Ndagijimana Emmanuel uhagarariye Uwamwezi Joséphine avuga ko ugizwe n'ibikurikira:

1. Amafaranga yari kuri konti za Banki ya Kigali n'i Burayi, ariko Uwamwezi Joséphine akaba adashobora kuyamenya kuko ari kuri konti y'umugabo we, ko Urukiko rwasaba *situation bancaire* yazo, by'umwihariko izo muri I&M Bank.

2. Amafaranga 65.926.589Frw yasigaye ku mazu yagurishijwe bishyura imyenda, nk'uko yavuzwe haruguru, Uwamwezi Joséphine yemera kugabana na Ranghella Giussepe;

3. Amafaranga yavuye ku nzu iri mu kibanza n° 736 cya Kacyiru Uwamwezi Joséphine yahawe angana na 161.273.432Frw, na yo yemera kuyagabana na Ranghella Giussepe, buri wese agatwara icya kabiri cyayo kingana na 80.636.716Frw.

4. Imodoka Sosiyete SOGIS Ltd yari itunze, ikaba itakigaragara.

[53] Mu iburanisha ryo ku wa 17/04/2018, Me Ndagijimana Emmanuel uhagarariye Uwamwezi Joséphine yongeraho ko uyu yamuhaye "extrait bancaire " ya Banki ya Kigaki igaragaza ko ku wa 29/01/2018, Uwamwezi Joséphine yari afite kuri konti 182.000.000Frw akubiyemo ayo yasubijwe n’ayavuye muri *expropriation*. Naho Uwamwezi Joséphine avuga ko nyuma y’uko hari amafaranga yakoresheje avuye kuri konti ye, asigaranye 253.000.000Frw.

[54] Ku bijyanye na Sosiyete *La Comete*, Me Ndagijimana Emmanuel uhagarariye Uwamwezi Joséphine avuga ko iyo Sosiyete yahombye itakibaho, Uwamwezi Joséphine akaba yarakorewe *constat de stock mort*, ko n’inzu yakoreragamo yatejwe cyamunara nk’uko bigaragazwa n’inyandiko mvugo y’iyo cyamunara yashyikirije Urukiko, amafaranga 14.000.000Frw iyo Sosiyete yari ifite kuri konti, Rwanda Revenue Authority ikaba yarayatawaye.

[55] Kuri iki kibazo cy’umutungo wimukanwa, uburanira Ranghella Giussepe avuga mu mwanzuro we wo kwiregura, ko amafaranga yari mu mabanki y’i Kigali ni Burayi, adashobora kuyamenya kuko Ranghella arwariye mu gihugu cy’Ubutaliyani, Uwamwezi Joséphine uyavuga akaba ari we ugomba kuyatangira ibimenyetso kuko we adafite uburyo yagera kuri konti za Ranghella Giussepe.

[56] Uburanira Ranghella Giussepe akomeza avuga ko imigabane ya Ranghella Giussepe muri Sosiyete SOGIS ari yo Ranguella Giuseppe yagabana na Uwamwezi Joséphine, kuko Sosiyete ubwayo idashobora kugabanywa, ibyo bikaba ari kimwe n'imigabane iri muri Sosiyete La Comete, kuko iyo Sosiyete nayo idashobora kugabanywa, Uwamwezi Joséphine akaba agomba gutegekwa n'Urukiko kugaragaza imigabane afite muri Sosiyete La Comete. Mu iburanisha ryabaye ku wa 17 /04/2018, yongeyeho ko niba Urukiko rwemeje ko Uwamwezi Joséphine agabana n'umugabo we Ranghella Giussepe, ibyo umuburanira avuga by'uko Sosiyete *La Comete* nta mutungo igira kuko yahombye atabyemera, kuko iyo biba byarabaye, iba itarashyizwe mu mitungo igaragara muri "contrat de partage", byongeye kandi ikaba itarigeze yandukurwa mu bitabo by'ubucuruzi, ndetse no kugurisha inzu mu cyamunara na byo bikaba bidasobanuye ko Sosiyete La Comete idafite indi mitungo, mu gihe batagaragaza aho "stock" n'ibindi bikoresho byagiye.

[57] Avuga nanone ko atemera ko ibyo Uwamwezi Joséphine avuga by'uko afite gusa 253.000.000 Frw, kuko ayongayo ari agaragara gusa kuri konti yo muri Banki ya Kigali, nyamara ahisha amafaranga ari ku zindi konti afite.

C. Imyenda

[58] Ku bijyanye n'imyenda Ranghella Giussepe na Uwamwezi Joséphine bafite bagomba kugabana, Me Ndagijimana Emmanuel uhagarariye Uwamwezi Joséphine avuga ko igizwe n'ibikurikira:

1. Umwenda wa BRD ungana na 363.757.476 Frw agaragara mu rubanza RCOM0161/09/HCC- RCOM0165/09/HCC;

2. Umwenda ungana na 120.000.000 Frw yatsindiwe mu rubanza n'uwitwa Kayitesi Monique;

3. N'indi myenda igaragazwa n'imanza yatsindiwe mu Rukiko rw'Ikirenga.

[59] Me Ndagijimana Emmanuel uhagarariye Uwamwezi Joséphine asobanura ko ikigaragaza ko umwenda wa 120.000.000Frw ari uw'umuryango, ari uko waguzwe imashini ababuranyi bakibana, ko rero bwari ubucuruzi bari bahuriyeho bombi. Mu iburanisha ryabaye ku wa 17/0402018, yongeraho ko n'ubwo yakomeje gusaba uwo ahagarariye kumuzanira imanza zijyanye n'iyo myenda, kugeza kuri iyi tariki atashoboye kuzimuzanira, ko ariko kopi y'urubanza ahawe ari iy'urwo mu Rukiko Rukuru rugaragaza icyo Uwamwezi Joséphine yaciriwe 120.000.000Frw.

[60] Ku kibazo cyo kumenya icyo Uwamwezi Joséphine ashaka, mu gihe asaba ko hagabanwa imitungo yari ahuriyeho n'umugabo we, nyamara avuga ko atazi agaciro k'imitungo bari bafite, Me Ndagijimana Emmanuel umuhagarariye avuga ko bavuze ko hari imitungo ifitwe n'umugabo adafitiye uburenganzira bwo kumenya, ko ariko Urukiko rubifasheho icyemezo yabona uburyo bwo kumenya agaciro kayo, ibyo bikaba bijyanye by'umwihariko n'inzu iri i Roma hamwe n'ri mu Bubiligi bigoye kumenya agaciro kazo kuko ntawabasha kuzikorera *expertise* urubanza rutaracibwa ngo habeho *exequatur*.

[61] Kuri iki kibazo cy'imyenda, uburanira Ranghella Giussepe avuga mu mwanzuro we wo kwiregura, ko Uwamwezi Joséphine agomba kugaragaza ikimenyetso cy'umwenda wa BRD wasigaye utishyuwe. Yongeraho ko urubanza rwo mu

Rukiko Rukuru rumaze kuvugwa haruguru rutaragaza icyo Uwamwezi Joséphine yaburanaga, akaba asanga nta cyo rwafasha Urukiko.

UKO URUKIKO RUBIBONA

[62] Ingingo ya 24 y’Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura iteganya ko:" Ivangamutungo rusange cyangwa w'umuhahano rirangira ari uko habaye ugutana burundu kw'abashyingiranywe, kutabana by'agateganyo, uguhindura uburyo bw'icungamutungo. Iyo ivangamutungo rirangiye abashyingiranywe bagabana ku buryo bungana umutungo n'imyenda bahuriyeho".

[63] Ingingo ya 9 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 ko: "Urega agomba kugaragaza ibimenyetso by’ibyo aregera. Iyo abibuze, uwarezwe aratsinda […].

[64] Hakurikijwe ibisobanuro by’impande zombi, byagaragajwe haruguru, Urukiko rurasanga Uwamwezi Joséphine na Ranghella Giussepe bagomba kugabana imitungo yose basangiye, hakurikijwe ibiteganywa n’ingingo ya 24 y’Itegeko N° 22/99 ryo ku wa 12/11/1999 yibukijwe haruguru, ariko bakagabana iyo bagaragarije Urukiko ibimenyetso byayo nk’uko biteganywa n’ingingo ya 9 y’Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi nayo yibukijwe haruguru.

[65] Hashingiwe rero ku byasobanuwe haruguru, ikigaragarira Urukiko ni uko ku bijyanye n'imitungo itimukanwa, impande zombi zigaragaza ko nta mutungo utimukanwa ukibaho mu Rwanda kuko inzu yari ku Kacyiru mu kibanza n° 736 yashenywe n'umuhanda, Uwamwezi Joséphine agahabwa amafaranga ya *expropriation*, amazu ari mu bibanza n° 533 na n° 2270 agatezwa cyamunara kugirango hishyurwe umwenda wa BRD, *concession Mo Carlo* akaba koko atari umutungo wa Uwamwezi Joséphine na Ranghella Giussepe nk'uko impande zombi zibyemeranyaho.

[66] Ikindi kigaragarira Urukiko, ni uko inzu iriho, kandi yahoze mu mutungo w'abashakanye nk'uko impande zombi zibyemeranyaho, ari iyubatse mu kibanza N° 2603 ku Kamonyi, ikaba yaravuye mu igurishwa ry'ikibanza n° 99 Nyarugenge Uwamwezi Joséphine na Ranghella Giussepe bari basangiye nk'abashakanye, ndetse nk'uko uburanira Uwamwezi Joséphine yabyibukije haruguru, hakaba hari urubanza rukiburanwa mu Nkiko rujyanye n'ubugure bw'iyo nzu iri mu kibanza n° 99 Nyarugenge, cyaje guhinduka ikibanza n° 778 Nyarugenge.

[67] Urukiko rusanga ubwo hari urubanza rukiburanwa mu Nkiko rujyanye n'ubugure bw'inzu imaze kuvugwa, Ranghella Giussepe na Uwamwezi Joséphine bagomba kuzagabana ku buryo bungana, agaciro mu mafaranga kazava muri urwo rubanza rujyanye n'iyo nzu, Uwamwezi Joséphine aramutse arutsinze.

[68] Ku bijyanye n'inzu iri Bruxelles mu Bubiligi, Urukiko rusanga impande zombi zirugaragariza ko n'ubundi zumvikanye kuyigabana, buri wese akagira 50% by'iyo nzu.

[69] Naho ku bijyanye n'inzu iri Roma mu Butaliyani, Urukiko rurasanga nta kimenyetso Uwamwezi Joséphine

agaragariza Urukiko ko iyo nzu ari iya Ranghella Giussepe, mu gihe uburanira Ranghella Giussepe avuga ko ikiri mu izungura, Uwamwezi Joséphine akaba atagaragaza ko hari umugabane wagenewe Ranghella Giussepe kuri iyo nzu ku buryo washyirwa mu mutungo bagomba kugabana.

[70] Ku bijyanye n'imitungo yimukanwa, Urukiko rusanga impande zombi zirugaragariza ko zemera kugabana 65.926.589Frw yasigaye ku mazu yabo yari mu bibanza n° 533 na n° 2270 yatejwe cyamunara bishyura imyenda ya BRD, zikaba zinemera kugabana amafaranga yavuye muri "expropriation" y'inzu yabo iri mu kibanza n° 736 ku Kacyiru Uwamwezi Joséphine yahawe angana na 161.273.432Frw, yose hamwe akaba 227.200.021Frw, bityo rero nk'uko na Uwamwezi Joséphine wahawe ayo mafaranga yose yemera kuyagabana na Ranghella Giussepe, buri wese akaba agomba gutwara icya kabiri cyayo kingana na 113.600.011Frw.

[71] Ku wundi mutungo wimukanwa ugizwe n'amafaranga Ranghella Giussepe yaba afite mu mabanki yo mu Rwanda, cyangwa i Burayi nk'uko bivugwa na Uwamwezi Joséphine, Urukiko rurasanga uyu atarashoboye kurugaragariza ibimenyetso rwaheraho rubagabanya amafaranga na we ubwe atazi, mu gihe uburanira Ranghella Giussepe avuga ko atashoboye kumenya amafaranga uwo uhagarariye afite. Ibi bikaba ari kimwe no ku modoka Sosiyete SOGIS Ltd yaba yari itunze, Uwamwezi Joséphine avuga ko itakigaragara, bikumvikanisha ko Urukiko ntaho rwahera rubagabanya ikintu kitagaragara.

[72] Ku bijyanye n'imyenda impande zombi zigomba kugabana, Urukiko rurasanga Uwamwezi Joséphine ari we uvuga « umwenda wa BRD ungana na 363.757.476 Frw » agaragara mu rubanza RCOM0161/09/HCC-RCOM0165/09/HCC, hamwe

n'umwenda ungana na 120.000.000 Frw yatsindiwe mu rubanza n'uwitwa Kayitesi Monique, ndetse ngo n'indi myenda igaragazwa n'imanza yatsindiwe mu Rukiko rw'Ikirenga.

[73] Urukiko rurasanga ariko nk'uko byavuzwe haruguru, umwenda wa BRD ungana na 363.757.476Frw » agaragara mu rubanza RCOM0161/09/HCC-RCOM0165/09/HCC, ujyanye n'ibibanza 533 na 2270 byatejwe cyamunara hishyurwa umwenda wa BRD, bikaba kandi byagaragajwe ko BRD yishyuwe, hagasigara ahubwo 65.926.589Frw impande zombi zigomba kugabana nk'uko byavuzwe haruguru, bikaba byumvikana ko ubwo ayo mazu bari bayafatanyije, agatezwa cyamunara, banafatanyije bombi kwishyura BRD umwenda uvugwa.

[74] Ku bijyanye n'umwenda wa 120.000.000 Frw Uwamwezi Joséphine avuga ko yatsindiwe mu rubanza n'uwitwa Kayitesi Monique, Urukiko rurasanga ibyo umuhagarariye avuga, by'uko hari amafaranga Kayitesi Monique yamutsindiye mu rubanza RC0070/07/TGI/NYGE-RC00754/07/TGI/NYGE nta kuri kurimo, kubera ko kopi y'urubanza RCA0040/09/HC/KIG-RC0047/09/HC/KIG rwaciwe n'Urukiko Rukuru, Uwamwezi Joséphine yerekanye mu iburanisha ryo ku wa 17/04/2018, igaragagaza ko abatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge mu rubanza rwavuzwe RC0070/07/TGI/NYGE-RC00754/07/TGI/NYGE, ari Nshimiyimana Callixte na Uwantege Jeannine, bakaba ari bo baregaga Kayitesi Monique basaba ko Urukiko rwategeka ko amasezerano bagiranye na Kayitesi Monique yo kugura imashini zo kumesa yakubahirizwa, muri urwo rubanza hakagobokamo undi muburanyi witwa Nyirandamira Valérie ku bushake bwe, naho Uwamwezi Joséphine agahatirwa kugobokamo, Kayitesi Monique na

Uwamwezi Joséphine bagatsindwa, bakajuririra Urukiko Rukuru.

[75] Kuba Uwamwezi Joséphine atarigeze ashaka gushyikiriza Urukiko kopi y'urwo rubanza RC0070/07/TGI/NYGE-RC00754/07/TGI/NYGE rumaze kuvugwa, kandi yarabisabwe mu iburanisha ryabaye ku wa 26/09/2017, yongera kubisabwa mu rubanza rubanziriza urundi rwasomwe tariki ya 16/03/2018, byose bigamije kumenya isano uwo mwenda ufitanye n'uru rubanza, Urukiko rurasanga ntaho rwahera rufata icyemezo kuri uwo mwenda.

[76] Ku bijyanye n'indi myenda Uwamwezi Joséphine avuga ko igaragazwa n'imanza yatsindiwe mu Rukiko rw'Ikirenga, Urukiko rurasanga nk'uko byari bimaze kuvugwa, atarigeze ashyikiriza Urukiko kopi y'izo manza uburanira Ranghella Giussepe atigeze abona ngo zigibweho impaka, nyamara yari yarabisabwe mu iburanisha ryabaye ku wa 26/09/2017, ndetse no mu rubanza rubanziriza urundi rwasomwe tariki ya 16/03/2018, ngo anerekane umubare w'amafaranga impande zombi zigomba kugabana, n'aho izo manza zihuriye n'uru rubanza, rukaba rero ntaho rwahera rufata icyemezo kuri iyo myenda yindi idasobanutse ku bijyanye n'isano zifitanye n'uru rubanza.

[77] Hashingiwe ku bisobanuro byatanzwe haruguru no ku ngingo z'amategeko yagaragajwe haruguru, Urukiko rurasanga imitungo Ranghella Giussepe na Uwamwezi Joséphine bagomba kugabana ku buryo bungana hakurikijwe ingingo ya 24, y'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura iteye mu buryo bukurikira:

1. Imigabane ya Ranghella Giussepe muri Sosiyete SOGIS Ltd ingana na 99, 03%: Uwamwezi Joséphine na Ranghella Giussepe bagomba kuyigabana, buri wese akagira icya kabiri cyayo kingana na 49.50%;

2. Inzu iri Bruxelles mu Bubiligi, bagomba kuyigabana nk'uko bari babyumvikanye, buri wese akagira 50% by'iyo nzu.

3. Amafaranga 65.926.589 Frw yasigaye ku mazu yabo ari mu bibanza n° 533 na n° 2270 yatejwe cyamunara bishyura imyenda ya BRD, buri wese akaba agomba gutwara icya kabiri cyayo kingana na 33.790.794 Frw

4. Amafaranga yavuye muri "expropriation" y'inzu iri mu kibanza n° 736 cya Kacyiru angana na 161.273.43 Frw, buri wese akaba agomba gutwara icya kabiri cyayo kingana na 80.636.716Frw.

[78] Urukiko rurasanga kandi Ranghella Giussepe na Uwamwezi Joséphine bagomba kuzagabana ku buryo bungana, agaciro kazava mu rubanza rujyanye n'inzu iri mu kibanza n° 99 Nyarugenge, cyaje guhinduka ikibanza n° 778 Nyarugenge, ikaza kugurishwa, amafaranga avuyemo akagurwa indi nzu ku Kamonyi, mu kibanza gifite n° 2603, Uwamwezi Joséphine aramutse arutsinze.

d. Amafaranga y'indishyi, ay'ikurikiranarubanza ay'igihembo cy'Avoka asabwa muri uru rubanza.

[79] Uburanira Uwamwezi Joséphine, avuga mu mwanzuro we, ko Ranghella Giuseppe akwiye gutegekwa kumuha 10.000.000Frw y'indishyi y'akababaro, 1.000.000 Frw y'ikurikiranarubanza na 5.000.000 Frw y'igihembo cy'Avoka

[80] Uburanira Ranghella Giuseppe mu kwiregura, avuga na we mu mwanzuro we, ko uyu ari we ahubwo ukwiye guhabwa na Uwamwezi Joséphine amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka angana na 1.000.000Frw.

UKO URUKIKO RUBIBONA

[81] Urukiko rurasanga amafaranga y'indishyi, ay'ikurikiranarubanza n'igihembo cy'Avoka asabwa n'ababuranyi muri uru rubanza adakwiye gutangwa, ahubwo mu rwego rwo kubahiriza ihame ryibukijwe haruguru ry'uko bagomba kugabana ku buryo bungana, buri wese akwiye guherezwaho ibyo yatakaje akurikiranye uru rubanza.

III. ICYEMEZO CY'URUKIKO

[82] Rwemeje ko inzitizi yatanzwe na Ranghella Giussepe yo kutakira ikirego cya Uwamwezi Joséphine gisaba gusubirishamo urubanza RCA0127/12/TGI/GSBO ku mpamvu z'akarengane nta shingiro ifite;

[83] Rwemeje ko ikirego cya Uwamwezi Joséphine gisaba gusubirishamo urubanza RCA0127/12/TGI/GSBO ku mpamvu z'akarengane gifite ishingiro;

[84] Rwemeje ko Ranghella Giussepe na Uwamwezi Joséphine bagomba kugabana imitungo yabo ku buryo bungana mu buryo bukurikira:

1. Imigabane ya Ranghella Giussepe muri Sosiyete SOGIS Ltd ingana na 99, 03%: Uwamwezi Joséphine na

Ranghella Giussepe bayigabana, buri wese akagira icya kabiri cyayo kingana na 49.50%;

2. Inzu iri Bruxelles mu Bubirigi, bagomba kuyigabana nk'uko bari babyumvikanye, buri wese akagira 50% by'iyo nzu.

3. Amafaranga 65.926.589 Frw yasigaye ku mazu yabo ari mu bibanza n° 533 na n° 2270 yatejwe cyamunara bishyura imyenda ya BRD, buri wese akaba agomba gutwara icya kabiri cyayo kingana na 33.790.794Frw

4. Amafaranga yavuye muri "expropriation" y'inzu iri mu kibanza n° 736 cya Kacyiru angana na 161.273.432Frw, buri wese akaba agomba gutwara icya kabiri cyayo kingana na 80.636.716Frw.

[85] Rwemeje ko Ranghella Giussepe na Uwamwezi Joséphine bagomba kuzagabana ku buryo bungana, agaciro kazava mu rubanza rujyanye n'inzu iri mu kibanza n° 99 Nyarugenge, cyaje guhinduka ikibanza n° 778 Nyarugenge, ikaza kugurishwa, amafaranga avuyemo akagurwa indi nzu ku Kamonyi, mu kibanza gifite n° 2603, Uwamwezi Joséphine aramutse arutsinze;

[86] Rutegetse Ranghella Giussepe na Uwamwezi Joséphine gufatanya kwishyura amagarama y'uru rubanza angana na 100.000 Frw, buri wese agatanga icya kabiri cyayo kingana na 50.000Frw;

[87] Ruvuze ko imikirize y'urubanza RCA0180/08/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 07/08/2009 n'urubanza RCA0127/12/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 27/01/2014

ihindutse ku bijyanye n’igabana ry’imitungo y’abashakanye mu buryo bw’ivangamutungo rusange.