NGIZWENINSHUTI v MUHIMA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00024/2018/SC (Mukamulisa, P.J, Nyirinkwaya, Cyanzayire, Rukundakuvuga, na Hitiyaremye, J.) 21 Gashyantare 2020]

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Inzitizi –Inzitizi yabyukijwe mu rwego rwa mbere, igafatirwa umwanzuro ntigarukweho nk'impamvu y'ubujurire mu rubanza rwaciwe ku rwego rwa nyuma, ntishobora kongera kugarukwaho mu rwego rwo gusubirishamourubanza ku mpamvu z'akarengane.

Amategeko agenga ibimenyetso – Agaciro k'inyandiko – Inyandikomvaho – Inyandiko ntigirwa inyandikomvaho no kuba yarakozwe n'umukozi wa Leta gusa, ahubwo kugira ngo igire agaciro k'inyandikomvaho, igomba kuba ikubiyemo amakuru y'impamo umukozi wa Leta ubifitiye ububasha yahagazeho ubwe; iyo bitabaye ibyo, iyo nyandiko ifatwa nk'ikimenyetso icyo aricyo cyose gishobora kunyomozwa n'ikindi kimenyetso kikivuguruza

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko rw'Isumbuye rwa Nyarugenge aho Muhima yareze Ngizweninshuti asaba ko inyandikomvugo y'umugenzacyaha yamushyizeho ikosa ryateje impanuka mu muhanda yakosorwa, maze Ngizweninshuti Albert wamugonze akamwishyura amafaranga yakoresheje imodoka. Urukiko rwaciye urubanza ruvuga ko ntaho rwahera ruhindura inyandikomvugo y'umugenzacyaha yemeje ko impanuka yatewe n'amakosa ya Muhima, rwemeje ko ikirego cye kidafite ishingiro kuko ari we nyir'ikosa ryateje impanuka.

Muhima ntiyishimiye imikirize ajuririra Urukiko Rukuru avuga ko ibyo croquis d'accident ivuga ntibihuye n'ukuri, hari ibyo itavuze kandi ari ingirakamaro, ko Urukiko rw'isumbuye rwirengagije ibintu by'ingenzi kandi yari yabigaragaje ko aho umugenzacyaha yavuze ko Muhima ariwe wagonze imodoka ya Ngizweninshuti ataribyo ahubwo iya Ngizweninshuti ariyo yamugonze. Urukiko rwaciye urubanza rwemeza ko Ngizweninshuti ari we nyirabayazana w'impanuka kuko atagize ubushishozi ngo yubahirize amategeko y'umuhanda. Ko imvugo zaba traffic police bari mumuhanda zihabanye n'ibyo igishushanyo cy'uburyo impanuka yakozwe cyerekana, ko ubujurire bwa Muhima bufite ishingiro ko Ngizweninshuti agomba kumaha indishyi.

Ngizweninshuti ntiyishimiye imikirize maze yandikira Urwego rw'Umuvunyi asaba ko urubanza rusubirwamo kumpamvu z'akarengane, byoherezwa mu Rukiko rw'Ikirenga narwo rwemera uko gusubirishamo urubanza ku mpamvu z'akarengane ruraruburanisha.

Ngizweninshuti yatanze impamvu yatumye asubirishamo urubanza ku mpamvu z'akarengane avuga ko ikirego gisaba gukosora inyandikomvugo y'impanuka atariwe cyaregwa kuko atariwe wakoze iyo nyandikomvugo; ikindi ni uko ngo inyandikomvugo y'impanuko yakozwe ari inyandikomvaho idashobora kuvuguruzwa uretse muburyo buteganywa n'amategeko ko umucamanza atagombaga kuyinenga no kuyivuguruza, icyanyuma cyatumye asubirishamo ngo ni uko Urukiko rwirengagije nyirabyazana w'impanuka ariwe Muhima kuko rwirengagije amategeko cyane cyane amabwiriza agenga imihanda n'uburyo bwo kuyigendamo agena a bashinzwe kubahiriza iteka rugatesha agaciro inyandikomvugo yakozwe na OPJ rutabanje kumwumva.

Muhima yavuze ku kibazo cy'uko Ngizweninshuti ataregwa gukosora inyandikomvugo y'impanuka avuga ko mu bibazo bijyanye n'impanuka haregwa abagiranye ikibazo kugira ngo urukiko rugaragaze uwateje impanuka ari nawe ugomba kwishyura, ariko kuko iyi nyandikomvugo y'impanuka irimo amakosa kuko umugenzacyaha wayikoze avuga ko Muhima

ari we wateje impanuka kandi yaratejwe na Ngizweninshuti ayo makosa akaba agomba gukosorwa kandi n'umwanzuro wayo ugateshwa agaciro kuko bitari mu bubasha bw'Umugenzacyaha kwemeza uwateje impanuka, akaba asoza avuga ko umugenzacyaha ntacyo bamurega ku giti cye. Kukibazo cy'uko ngo inyandikomvugo y'impanuka itagomba guteshwa agaciro kuko ngo ari inyandikomvaho, Muhima avuga ko ataribyo kuko Umucamanza afite ububasha bwo gusuzuma ko ibivugwa mu nyandiko yakozwe n'umugenzacyaha bihura n'ukuri ndetse akaba yanayitesha agaciro asanze idakurikije amategeko cyangwa ibivugwamo atari ukuri kuko inyandikomvugo yakozwe n'umugenzacyaha atari inyandikomvaho ahubwo ari inyandikomvugo isanzwe, ku buryo ntawavuga ko ibirimo bidashobora guhinduka, cyangwa ngo yemeze ko ari ukuri kose, ndetse akaba asanga nta cyabuza kuvuguruza ibiyikubiyemo. Asoza avuga ku kibazo cy'uwateje impanuka avuga ko uwateje impanuka ari Ngizweninshuti kuko imodoka Muhima yari atwaye ubwo yavaga ku Kimihurura agana mu mujyi ageze mu masangano y'imihanda (umwe ujya mu mujyi n'undi wahuranya ugana ku Kimihurura) yagonzwe n'iyo Ngizweninshuti yari atwaye kuko yahagurutse itunguranye ikangiza igice cy'iburyo cyose cy'imodoka Muhima Giovanni yari atwaye.

Incamake y'Icyemezo: 1. Inzitizi yabyukijwe mu rwego rwa mbere, igafatirwa umwanzuro ntigarukweho nk'impamvu y'ubujurire mu rubanza rwaciwe ku rwego rwa nyuma, ntishobora kongera kugarukwaho mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane, bityo ikibazo cy'uko Ngizweninshuti yatanze cyo kutaregwa gukosora inyandikomvugo y'impanuka icyo kibazo cyaratanzwe nk'inzitizi mu Rukiko Rwisumbuye cyagera mu bujurire ntibakigaragaza bityo kikaba kitasuzumwa ku rwego rwo gusubirishamo ku mpamvu z'akarengane.

2. Inyandiko ntigirwa inyandikomvaho no kuba yarakozwe n'umukozi wa Leta gusa, ahubwo kugira ngo igire agaciro k'inyandikomvaho, igomba kuba ikubiyemo amakuru y'impamo umukozi wa Leta ubifitiye ububasha yahagazeho ubwe; iyo bitabaye ibyo, iyo nyandiko ifatwa nk'ikimenyetso icyo aricyo cyose gishobora kunyomozwa n'ikindi kimenyetso kikivuguruza, bityo inyandiko mvugo y'impanuka yakozwe igomba gufatwa nk'inyandiko iyo ari yo yose itanga amakuru ashobora kuvuguruzwa mu buryo ubwo ari bwo bwose.

Gusubirishamo urubanza kumpamvu z'akarengane bifite ishingiro;

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 150 agace ka 6

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 55

Itegeko-Ngenga N° 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 24 igika 2

Itegeko N⁰ 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 119

Iteka rya Perezida Nº 85/01 ryo ku wa 11/09/2002 rishyiraho amabwiriza agenga imihanda n'uburyo bwo kuyigendamo, ingingo 11, 13. 15 na 104

Itegeko-Teka N° 21/77 ryashyiragaho igitabo cy'amategeko ahana, ingingo ya 18

Nta manza zifashishijwe.

Inyandiko z'abahanga:
Thierry Debard et al, Lexique des termes juridiques, 23ème éd., Dalloz, 2015-2016, p.18
Rapport Annuel 2012, La preuve dans la jurisprudence de la Cour de cassation, p.27

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 06/01/2012, ku byuma by'amatara ayobora imodoka (feux de circulation) byo ku Kabindi habaye impanuka, aho imodoka M. Benz RAB 638 W yari itwawe na Muhima Giovanni iva kuri MINADEF yagonganye n'imodoka Toyota Corolla RAB 464 R yari itwawe na Ngizweninshuti Albert, iva i Remera maze mu nyandiko mvugo yakozwe n'Umupolisi Muhire Emmanuel yandika ko imodoka yateje impanuka ari iya Muhima Giovanni. Ibyo byatumye Muhima Giovanni arega Ngizweninshuti Albert mu Rukiko Rwisumbuye rwa Nyarugenge, asaba ko inyandikomvugo y'umugenzacyaha yamushyizeho ikosa ryateje impanuka mu muhanda yakosorwa, maze Ngizweninshuti Albert wamugonze akamwishyura amafaranga yakoresheje imodoka.

[2] Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza RC 0701/13/TGI/NYGE ku wa 25/04/2014, rwabanje gusuzuma inzitizi yo kutakira ikirego yatanzwe na Ngizweninshuti Albert mbere yo gusuzuma ikibazo mu mizi.

[3] Ku byerekeye inzitizi, Ngizweninshuti Albert yavuze ko atari we ukwiye kuregwa gukosora inyandikomvugo y'impanuka yo mu muhanda yakozwe n'Umugenzacyaha Muhire Emmanuel kuko atari we wayikoze naho Me Kazeneza Théophile uhagarariye Muhima Giovanni asubiza ko bareze basaba gukuraho iyo nyandikomvugo, ariko Ngizweninshuti Albert agasabwa gutanga ibyakozwe ku modoka yagonzwe. Kuri iyi ngingo, Urukiko rwemeje ko nta mpamvu Ngizweninshuti Albert ataregwa kuko kuregwa kwe gushingiye ku buryozwe bw'impanuka, kudashingiye ku nyandikomvugo kuko atari we wayikoze.

[4] Naho kubyerekeye urubanza mu mizi, Urukiko rushingiye ku kuba inyandikomvugo yakozwe igaragaza ko umupolisi wari aho impanuka yabereye yemeje ko Muhima Giovanni yatambutse atarabona uburenganzira bwo guhita (*feu vert*) bigatuma haba impanuka, no kuba ntaho rwahera ruhindura inyandikomvugo y'umugenzacyaha yemeje ko impanuka yatewe n'amakosa ya Giovanni, rwemeje ko ikirego cye kidafite ishingiro kuko ari we nyir'ikosa ryateje impanuka.

[5] Muhima Giovanni yajuririye Urukiko Rukuru, avuga ko Umucamanza w'Urukiko Rwisumbuye rwa Nyarugenge yirengagije ibintu by'ingenzi nyamara yari yabigaragaje, birimo ibi bikurikira;

a. Umwe mu bapolisi wari hafi aho wavuze ko imodoka ya Muhima Giovanni yatambutse harimo feu vert ntiyabajijwe

b. Umugenzacyaha yavuze ko imodoka ya Muhima Giovanni ari yo yagonze iya Ngizweninshuti Albert kandi ahubwo iye ari yo yagonze iya Muhima Giovanni mu rubavu;

c. Imodoka yindi (*véhicule C*) yari ihagararanye na Ngizweninshuti Albert, yo igategereza, naho Ngizweninshuti Albert agakomeza, ntiyavuzwe;

d. Muri rusange ngo ibyo *croquis d'accident* ivuga ntibihuye n'ukuri, hari ibyo itavuze kandi ari ingirakamaro (*position des véhicules après l'accident; la distance déjà effectuée par les deux véhicules* ...)

[6] Urukiko Rukuru, mu rubanza RCA 0249/14/HC/KIG rwaciwe ku wa 23/10/2015, rwanenze icyemezo cy'Urukiko Rwisumbuye kuba rwarashingiye icyemezo cyarwo ku buhamya bw'umugenzacyaha wemeje ko nyirabayazana w'impanuka ari Muhima Giovanni ashingiye gusa ku byo yabwiwe n'abapolisi ba *traffic police* bari ku kazi icyo gihe bakavuga ko yatambutse harimo feu vert nyamara bigaragara ko ibyo bihabanye n'ibyo igishushanyo cy'uburyo impanuka yakozwe cyerekana. Urukiko Rukuru, rushingiye ku kuba:

a. Aho imodoka ya Muhima Giovanni yahagurukiye ugereranyije n'aho bagonganiye ari harehare kandi hakaba hafi y'aho iya Ngizweninshuti Albert yahagurukiye ;

b. Imodoka ya Muhima Giovanni yari igiye kurangiza icyanya cy'amasangano mu gihe iya Ngizweninshuti Albert yari ikinjiramo; rwasanze Ngizweninshuti Albert ari we nyirabayazana w'impanuka kuko atagize ubushishozi ngo yubahirize ibiteganywa n'ingingo ya 15 y'Iteka rya Perezida Nº 85/01 ryo ku wa 02/09/2002 rishyiraho amabwiriza rusange agenga imihanda n'uburyo bwo kuyigendamo[1], bityo rwemeza ko:

a. Ubujurire bwa Muhima Giovanni bufite ishingiro;

b. Urubanza rwajuririwe ruhindutse mu ngingo zarwo zose;

c. Rutegeka Ngizweninshuti Albert guha Muhima Giovanni 3.262.603 Frw y'indishyi no kumusubiza 75.000 Frw y'igarama ry'urubanza yatanze.

[7] Ngizweninshuti Albert ntiyishimiye iyo mikirize y'urubanza, yandikira Umuvunyi Mukuru amusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane.

[8] Nyuma yo kubigenzura, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza RCA 0249/14/HC/KIG rwaciwe ku wa 23/10/2015 n'Urukiko Rukuru rwasubirwamo ku mpamvu z'akarengane, maze Perezida w'Urukiko rw'Ikirenga ashingiye kuri raporo y'Ubugenzuzi Bukuru bw'Inkiko yemeza ko urwo rubanza rusubirwamo rwandikwa kuri RS/INJUST/RC 00024/2018/SC.

[9] Ku wa 04/02/2020, urubanza rwahamagawe Ngizweninshuti Albert ahagarariwe na Me Bizumuremyi Isaac afatanyije na Me Ndoba Augustin naho Muhima Giovanni ahagarariwe na Me Kazeneza Théophile, urubanza ruraburanishwa.

[10] Mu ikubitiro, Me Kazeneza Théophile uhagarariye Muhima Giovanni yabanje gutanga inzitizi yo kutakira ikirego mbere yo gusubiza ku mpamvu z'akarengane zatanzwe na Ngizweninshuti Albert, avuga ko urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane

[1] Iyo ngingo ivuga ko Umuyobozi w'ikinyabiziga agomba by'umwihariko kwegera isangano agenda ku buryo ashobora guhagarara kugira ngo ibinyabiziga bitambuka mbere bihite; ntashobora kwinjira mu isangano iyo ikinyabiziga cye gishobora kuhahagarara kandi kikabuza guhita ibinyabiziga bigenda mu muhanda usanganya.

rwarangijwe, bityo akaba asaba Urukiko kwemeza ko nta nyungu Ngizweninshuti Albert akirufitemo kuko icyo yashakaga atakigezeho.

[11] Me Bizumuremyi Isaac uhagarariye Ngizweninshuti Albert yasubije ko kuba urubanza rwararangijwe ari uko itegeko ritabibuza, ariko ko rinemera ko uko kurangizwa kwarwo bitari intambamyi ibuza gusubirishamo urubanza ku mpamvu z'akarengane kandi ko bidakuraho inyungu Ngizweninshuti Albert afite mu gukurikirana uru rubanza.

[12] Urukiko rwahise rukemura izo mpaka, rwemeza ko iyo nzitizi nta shingiro ifite kuko irangiza ry'urubanza ritabuza umuburanyi wumva yararenganye gutanga ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane nk'uko biteganywa n'ingingo ya 64 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko[2], iburanisha rikomereza ku bireba imizi y'urubanza.

[13] Me Bizumuremyi Isaac na Me Ndoba Augustin bahagarariye Ngizweninshuti Albert basobanuye ko akarengane bifuza ko Urukiko rw'Ikirenga rwakosora gashingiye ku ngingo zikurikira:

a. Kuba yararezwe gukosora inyandikomvugo y'impanuka yakozwe n'Umupolisi Muhire Emmanuel, akaba yumva iby'iyo nyandiko atari we wagombye kubibazwa;

b. Kuba Urukiko Rukuru rwarirengagije ko inyandikomvugo y'ubugenzacyaha ari inyandikomvaho iteganywa n'ingingo ya 13 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ikaba idashobora kuvuguruzwa n'imvugo z'abatangabuhamya gusa.

c. Kuba Urukiko Rukuru rwarirengagije amategeko n'ibimenyetso rukemeza ko ari we wateje impanuka kandi hari abatangabuhamya bemeza ko impanuka yatejwe na Muhima Giovanni, bityo akaba asaba gusubizwa amafaranga yamwishyuye n'inyungu zayo.

[14] Ku mpamvu ya mbere Me Kazeneza Théophile avuga ko Muhima Giovanni ahagarariye yasabye ko hakosorwa inyandikomvugo y'impanuka kugira ngo hagaragare uwateje impanuka, kuko ikigamijwe ari uko Ngizweninshuti Albert wateje impanuka yabiryozwa. Ntiyemera kandi ko inyandikomvugo y'umugenzacyaha ari inyandikomvaho (*acte authentique*) kuko we asanga ari inyandiko isanzwe (*acte juridique*) ishobora kuvuguruzwa mu buryo ubwo ari bwo bwose hashingiwe ku kuri ibimenyetso bigaragaza. Asanga kandi nta bimenyetso urukiko rwirengagije kuko rwashingiye ku miterere y'impanuka nk'uko igishushanyo cy'impanuka kibigaragaza.

[15] Urukiko rurasaga ibibazo bikwiye gusuzumwa muri uru rubanza ari ibi bikurikira:

- Ibyerekeye impaka zishingiye ku kirego cyo gukosora inyandikomvugo yakozwe n'Umupolisi Muhire Emmanuel;
- Kumenya niba inyandikomvugo y'impanuka y'umugenzacyaha ari inyandikomvaho ishobora kuvuguruzwa gusa mu buryo buteganywa n'ingingo ya 13 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo;
- Kumenya ukwiye kuryozwa impanuka yo ku wa 06/01/2012;

[2] Iyo ngingo ivuga ngo "Gusaba ko urubanza rwaciwe ku rwego rwa nyuma rusubirwamo ku mpamvu z'akarengane ntibihagarika irangiza ry'urubanza.

- Ibijyanye n’amafaranga Ngizweninshuti Albert yishyuye Muhima Giovanni;
- Ibyerekeye indishyi zisabwa n’impande zombi.

II. ISESENGURA RY’IBIBAZO BIGIZE URUBANZA

Ibyerekeye impaka zishingiye ku kirego cyo gukosora inyandikomvugo yakozwe n’Umupolisi Muhire Emmanuel

[16] Me Bizumuremyi Isaac uhagarariye Ngizwenishuti Albert avuga ko ikirego gisaba gukosora inyandikomvugo y’impanuka yakozwe n’Umupolisi Muhire Emmanuel kidakwiye kuba ari we kiregwa kuko atari we wakoze iyo nyandikomvugo;

[17] Me Kazeneza Théophile uhagarariye Muhima Giovanni avuga ko mu bibazo bijyanye n’impanuka haregwa abagiranye ikibazo kugira ngo urukiko rugaragaze uwateje impanuka ari nawe ugomba kwishyura, ariko kuko iyi nyandikomvugo y’impanuka (PV de constat de l’accident) irimo amakosa kuko umugenzacyaha wayikoze avuga ko Muhima Giovanni ari we wateje impanuka kandi yaratejwe na Ngizweninshuti Albert, ayo makosa akaba agomba gukosorwa kandi n’umwanzuro wayo ugateshwa agaciro kuko bitari mu bubasha bw’Umugenzacyaha kwemeza uwateje impanuka. Me Kazeneza asoza avuga ko umugenzacyaha ntacyo bamurega ku giti cye.

UKO URUKIKO RUBIBONA

[18] Urukiko rwasanze ikibazo cyo kumenya niba ikirego gisaba gukosora inyandikomvugo y’impanuka yakozwe n’Umupolisi Muhire Emmanuel gikwiye kuregwa Ngizweninshuti Albert cyaraburanwe nk’inzitizi mu Rukiko Rwisumbuye, gifatirwa umwanzuro, urwo rukiko rwemeza ko ikirego kiregwa Ngizweninshuti Albert ari ikirego gishingiye ku buryozwe bw’impanuka, ko kidashingiye ku gukosora inyandikomvugo kuko atari we wayikoze. Rusanga kandi icyo kirego kitarajuririwe mu Rukiko Rukuru, kuko nk’uko bigaragara, muri urwo Rukiko impaka zashingiye gusa ku kumenya nyirabayazana w’impanuka no ku buryozwe bwayo. Ikibazo gihari ubu akaba ari ukumenya niba inzitizi yabyukijwe mu rwego rwa mbere, igafatirwa umwanzuro, ntijuririrwe bityo ntiburanwe nk’impamvu y’ubujurire mu rubanza rwaciwe ku rwego rwa nyuma yakongera gusuzumwa mu rubanza rw’akarengane.

[19] Kuri iki kibazo, Urukiko rusanga, igika cya nyuma cy’ingingo ya 55 Y’Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’inkiko, hari icyo kibivugaho. Icyo gika kigira kiti «..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 ku mpamvu z’akarengane … ». Ibi bivuze ko iyo Ngizweninshuti Albert yumva ataranyuzwe n’icyo cyemezo, aba yarakigarutseho mu bujurire bwuririye ku bundi mu Rukiko Rukuru, rugakosora amakosa yaba yarakozwe n’umucamanza w’Urukiko Rwisumbuye[3]. Kuba rero atarabikoze kandi yariabifitiye uburenganzira, bivuze ko yivukije inzira z’ubujurire bityo akaba adashobora kwifashisha inzira yo gusubirishamo urubanza

[3] Ingingo ya 170 y’Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi ryakoreshwaga ubwo uru rubanza rwaburanishwaga yagiraga iti:” Urukiko rwajuririwe ruburanisha gusa ubujurire mu mbibi z’icyajuririwe. Rufata icyemezo ku ngingo zatumye uwatanze ubujurire ajurira cyangwa uwabwuririyeho na we akajurira.”

ku mpamvu z'akarengane ngo icyo kibazo cyongere gisuzumwe kuko byaba binyuranye n'ibiteganywa n'ingingo ya 55 y'itegeko ryavuzwe haruguru.

[20] Urukiko rusanga ariko hari n'uwakwibaza niba ubujurire buvugwa mu gika kibanziriza iki atari ubureba urubanza rwose gusa; ku buryo iyo ngingo ya 55 itashingirwaho igihe ari zimwe mu ngingo zafashweho icyemezo mu rukiko rwa mbere zitarajuririwe. Hari n'uwakwibaza kandi impamvu izo ngingo[4] zitagarukwaho mu rwego rw'akarengane nyamara ingingo ya 63 y'itegeko rimaze kuvugwa iteganya ko « iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga agena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe ». Ikibazo kiri aha, kikaba ari ukumenya neza imbibi z'iryo suzuma rishya iyi ngingo ivuga.

[21] Kuri iki kibazo, Urukiko rw'Ikirenga rusanga gusuzuma urubanza mu mizi bundi bushya bidakwiye kumvikana nko kwirengagiza ko hari izindi manza zabaye mbere y'uko ruregerwa akarengane. Iyo biba ibyo, ntibyari kuba ngombwa ko ababuranyi basabwa gutanga imyanzuro igararagaza akarengane batewe n'urubanza rwabarenganyije nk'uko biteganywa n'ingingo ya 150,6o y' Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Iyi ngingo isaba umuburanyi utishimiye imikirize y'urubanza kugaragaza icyo urubanza anenga rwamurenganyijeho, ni ukuvuga icyo rwakoze nabi cyangwa icyo rutakoze (harimo no gukosora amakosa y'urubanza rwo ku rwego rurubanziriza) hakurikijwe ibyo amategeko ateganya)[5]. Ibyo bisobanuye ko inzitizi umuburanyi atagarutse ho mu rubanza rwaciwe ku rwego rwa nyuma aba yarishimiye icyemezo cyayifashwe ho, bityo akaba adashobora kuyigarura mu rwego rwo gusubirishamo urubanza mu rwego rw'akarengane kuko nyine aba yarivukije uburenganzira bwo kurenganurwa igihe yashoboraga kuyijuririra agasaba ko ikosorwa mu buryo amategeko abiteganya ntabikore.

[22] Urukiko rw'Ikirenga rusanga rero, hashingiwe ku bisobanuro bivuzwe mu bika bibanziriza iki, ingingo za 55 igika cya nyuma isomewe hamwe n'igika cya mbere cy'ingingo ya 63 z'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, inzitizi itaremewe mu rwego rwa mbere, ntisubire kuburanwaho mu rwego rw'ubujurire, idashobora kongera kugarukwaho mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane. Bityo, kuba ibyerekeye ikirego cyo gukosora inyandikomvugo yakozwe n'Umupolisi Muhire Emmanuel bitaraburanyweho mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, nta n'ubwo bishobora kugarukwaho muri uru rwego.

Niba inyandikomvugo y'impanuka y'umugenzacyaha ariinyandikomvaho ishobora kuvuguruzwa gusa mu buryo buteganywan'ingingo ya 13 'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

[23] Me Ndoba Augustin uhagarariye Ngizweninshuti Albert avuga ko umucamanza wo ku rwego rw'ubujurire yasuzumye igishushanyo kigaragaza uko impanuka yabaye akakinenga akagiha ubusobanuro bwe atitaye ku kuba inyandikomvugo y'impanuka ari inyandikomvaho kuko

[4]Aha haravugwa izo ngingo nyine zafasweho icyemezo mu rwego rwa mbere ariko ntizijuririrwe, bityo ntiziburanweho mu rubanza rwaciwe ku rwego rwa nyuma, ari narwo rusabirwa gusubirishwamo ku mpamvu z'akarengane

[5] Iyo ngingo igira iti : Ubujurire (byumvikane mu buryo bwagutse) bukorwa mu buryo bw'umwanzuro utanga ikirego, ugaragaza ibi bikurikira : « …Ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba gukosorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa urukiko

iba yakozwe n'umukozi ubifitiye ububasha, bityo ikaba idashobora kuvuguruzwa uretse mu buryo buteganywa n'ingingo ya 13 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo[6].

[24] Me Kazeneza Théophile uhagarariye Muhima Giovanni avuga ko Umucamanza afite ububasha bwo gusuzuma ko ibivugwa mu nyandiko yakozwe n'umugenzacyaha bihura n'ukuri ndetse akaba yanayitesha agaciro asanze idakurikije amategeko cyangwa ibivugwamo atari ukuri kuko inyandikomvugo yakozwe n'umugenzacyaha atari inyandikomvaho (acte authentique) ahubwo ari inyandikomvugo isanzwe (acte juridique), ku buryo ntawakwihandagaza ngo avuge ko ibirimo bidashobora guhinduka, cyangwa ngo yemeze ko ari ukuri kose, ndetse akaba asanga nta cyabuza kuvuguruza ibiyikubiyemo nk'uko ingingo ya 119 y'Itegeko N° 15/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo[7] ibiteganya.

UKO URUKIKO RUBIBONA

[25] Urukiko rusanga impaka zishingiye ku gaciro nk'ikimenyetso (*force probante*) k'inyandikomvugo y'impanuka ikozwe n'umugenzacyaha kagomba gusobanurwa hashingiwe ku isesengura ry'ingingo z'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo zikurikira: iya 11, iya 13 n'iya 119 zisobanura ibyerekeye inyandiko zikozwe n'umukozi ubifitiye ububasha, agaciro kazo n'ikoreshwa ryazo nk'ibimenyetso mu rwego rw'amategeko. Ingingo ya 11 ivuga ko inyandikomvaho ari "iyanditswe cyangwa yakiranwe imihango yabugenewe n'umukozi wa Leta ufite ububasha bwo gukora mu ifasi y'aho yandikiwe"; ingingo ya 13 y'iryo tegeko ikongeraho ko iyo nyandiko "icyemura impaka kuri bose mu byerekeye ibiyivugwamo umukozi wa Leta yabereye umuhamya cyangwa yakoze ariko atarengeje ibyo yari ashinzwe gukora… », mu gihe ingingo ya 119 yaryo ivuga ko "mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa".

[26] Iyo usomye igisobanuro cy'inyandikomvaho mu nkoranyamagambo y'amagambo y'amuga mu by'amategeko (*Lexique des termes juridiques*) usanga havugwa ko inyandikomvaho ari "inyandiko yakozwe n'umukozi wabiherewe ububasha, ku rupapuro cyangwa hifashishijwe ubundi buryo bw'ikoranabuhanga, ikubiyemo amakuru yizewe adashobora gupfa kuvuguruzwa, keretse umuburanyi aregeye ko iyo nyandiko ari impimbano…[8]". Nk'uko bigaragara, iki gisobanuro gihuza ibivugwa mu ngingo ya 11 n'iya 13. Kuri ibi bisobanuro ariko inkiko zanongeyeho ko inyandiko umukozi wabiherewe ububasha yiyandikiye ubwe yemeza ibyabaye mu gihe yariho yuzuza inshingano ze, cyangwa yahagazeho biba, ari zo zigira ububasha

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[6] Iyi ngingo ivuga ko "inyandikomvaho ikemura impaka kuri bose mu byerekeye ibiyivugwamo umukozi wa Leta yabereye umuhamya cyangwa yakoze ariko atarengeje ibyo yari ashinzwe gukora. Ibivuzwe muri iyo nyandikomvaho ntawe ushobora kubihakana, keretse biramutse bikurikiranwe mu rubanza rushinja icyaha cyo kubeshya mu nyandikomvaho cyangwa umuburanyi aregeye ko iyo nyandiko ari impimbano"

[7] Iyi ngingo ivuga ko "mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa".

[8] *Ecrit établi par un officier public, sur support papier ou electronique dont les affirmations font foi jusqu'à inscription de faux…* ». cfr Thierry Debard et al, Lexique des termes juridiques, 23ème éd., Dalloz, 2015-2016, p.18

bw'ikimenyetso ntavuguruzwa, gishobora gukurwaho gusa no kukiregera mu rukiko[9]. Mu magambo make, Urukiko rukaba rusanga inyandiko mvaho ari inyandiko yujuje ibi bikurikira:

a. Kuba ari inyandiko yakozwe cyangwa yakiranywe imihango yabugenewe n'umukozi wabiherewe ububasha ku rupapuro cyangwa hifashishijwe ubundi buryo bw'ikoranabuhanga;

b. Kuba ari inyandiko yanditse mu gihe arimo kuzuza inshingano ze mu ifasi akoreramo;

c. Kuba ari inyandiko ikubiyemo amakuru yiyandikiye ubwe cyangwa yahagazeho ibyo ahamya biba.

Hashingiwe kuri iki gisobanuro rero, bikaba byumvikanisha ko bidahagije kuba inyandiko iba yakozwe n'umukozi wa Leta ubifitiye ububasha kugira ngo yitwe inyandikomvaho.

[27] Ku byerekeye inyandikomvugo y'umugenzacyaha, umushingamategeko w'u Rwanda ntasobanura mu buryo bwihariye agaciro kayo nk'ikimenyetso mu manza. Mu bindi bihugu nk'Ubufaransa usanga hari amahame abigenga: muri rusange inyandikomvugo z'umugenzacyaha amategeko aziha agaciro k'amakuru asanzwe gusa, zikaba zavuguruzwa hakurikijwe ingingo ya 119 y'Itegeko ry'ibimenyetso[10], ariko zimwe muri zo zigahabwa agaciro k'ikimenyetso karemereye kurushaho[11]. Zimwe muri zo zihabwa agaciro nk'ak'inyandikomvaho: izo ni nk'inyandikomvugo zikozwe n'umukozi wa gasutamo[12]; izindi zihabwa ingufu zirenze amakuru asanzwe, zikaba zishobora kunengwa gusa igihe habonetse ikimenyetso kizivuguruza[13]. Ibyo bivuze ko ushaka kuzinyomoza bitamukundira yifashishije imvugo ze gusa[14]. Nabwo ariko, kugira ngo inyandikomvugo yo muri uru rwego igire izo ngufu zihariye, hari ibyo igomba kubahiriza[15]:

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[9]Selon la jurisprudence, seuls les faits que l'officier public a énoncés dans l'acte comme ayant été accomplis par lui ou comme s'étant passés en sa présence dans l'exercice de ses fonctions sont revêtus de cette force probante, qui ne peut être combattue que par la procédure d'inscription de faux ». Voir Cour de Cassation Française, Rapport Annuel 2012, La preuve dans la jurisprudence de la Cour de cassation, p.27, accessible sur https://www.cour de cassation.fr/publicationss26/rapport annuel 36/rapport2012 4571/

[10] En principe, un procès-verbal rédigé par un membre de la police judiciaire ou par un fonctionnaire chargé de constater une infraction ne vaut qu'à titre de simple renseignement ». Ibid., p.229

[11] « En premier lieu, la loi peut prévoir que le procès-verbal vaudra jusqu'à preuve contraire et la loi réglemente alors les conditions dans lesquelles cette preuve contraire pourra être rapportée, soit, le plus souvent, par l'écrit et le témoignage. En second lieu, la loi peut préciser que le procès-verbal vaudra jusqu'à inscription de faux. Le contenu du procès-verbal ne pourra être contesté que par la mise en œuvre de la procédure d'inscription de faux ». Ibid., p.230

[12] Selon l'article 336, 1°, du code des douanes, lorsqu'ils sont rédigés par deux agents des douanes ou de toute autre administration, les procès-verbaux de douane font foi, jusqu'à inscription de faux, des constatations matérielles qu'ils relatent. Les constatations matérielles sont celles qui sont faites directement par les rédacteurs du procès-verbal ». Ibid., p 231

[13] Le fait d'attribuer une force probante renforcée à certains procès-verbaux induit nécessairement une limitation du contradictoire, la discussion des éléments de preuve étant encadrée par la loi. Le prévenu a le droit de combattre ces procès-verbaux par tous les moyens légaux de preuve, mais leur force probante ne peut être infirmée sur ses seules dénégations ou allégations ». Ibid., p. 230

[14] En premier lieu, cette force probante renforcée ne s'attache qu'aux constatations effectuées par les agents et non aux appréciations personnelles, reconstitutions et déductions auxquelles elles donnent lieu, qui ne valent qu'à titre de renseignements laissés à l'appréciation des juges du fond. En deuxième lieu, seuls les constats effectués personnellement par l'auteur du procès-verbal bénéficient de la valeur probatoire renforcée.

[15] Enfin, la force probante renforcée ne vaut que pour les constatations se rapportant aux infractions que l'auteur du procès-verbal est spécialement habilité à constater, sur l'étendue de la circonscription à laquelle il est affecté ». Ibid., p. 231

a. Kuba ikubiyemo amakuru umugenzacyaha yahagazeho, ni ukuvuga atari umwanzuro ushingiye ku busesenguzi bwayo yikoreye kuko ibyo biha iyo nyandikomvugo agaciro k'amakuru asanzwe;

b. Kuba idashingiye ku nkuru mbarirano kabone n'iyo yaba yayibwiwe n'undi mugenzacyaha;

c. Kuba yakozwe n'umugenzacyaha ufite ububasha bushingiye ku ifasi y'aho icyaha cyakorewe.

Muri uru rwego, inyandikomvugo zikozwe mu rwego rw'ibyaha bito (contraventions) nizo nyandikomvugo zigira ingufu zihariye[16], mu gihe izikozwe ku byaha biremereye (délits) zifatwa nk'amakuru asanzwe uretse igihe itegeko ryabigennye ukundi[17]. Ibyo kandi nk'uko byumvikana bigamije kugabanya impaka z'urudaca ku byaha bito no kutazingitirana (guha uburenganzira buhagije bwo kwiregura) uregwa ibyaha binini.

[28] Urukiko rw'Ikirenga rusanga, mu gihe hatarajyaho amategeko asobanura agaciro k'inyandikomvugo y'umugenzacyaha mu rwego rw'ibimenyetso, uru rugero rw'Ubufaransa rwakwifashishwa mu gukemura impaka zihoraho ku bijyanye n'agaciro k'inyandikomvugo y'umugenzacyaha. Ikibazo gisigaye kikaba ari ukumenya urwego inyandikomvugo y'umugenzacyaha ku byaha bikozwe mu kwirengagiza Iteka rya Perezida rigenga imihanda n'uburyo bwo kuyigendamo[18] yashyirwamo.

[29] Urukiko rw'Ikirenga rusanga igisubizo cy'iki kibazo cyari mu ngingo ya 18 y'Itegeko-Teka N° 21/77 ryashyiragaho igitabo cy'amategeko ahana[19] ryakurikizwaga ubwo impanuka yabaga ndetse no mu gika cya 2 cy'ingingo ya 24 y'Itegeko Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 ryashyiragaho igitabo cy'amategeko ahana ryakoreshwaga igihe inyandikomvugo y'impanuka yo mu muhanda hagati ya Muhima Giovanni na Ngizweninshuti Albert yakoreshwaga nk'ikimenyetso mu manza zabanjirije uru. Iyo ngingo yateganyaga ko icyaha gikomoka ku kutubahiriza amategeko y'umuhanda gishyirwa mu rwego rw'ibyaha byoroheje uretse igihe hari itegeko bwite ribihana[20].

[30] Hashingiwe ku bikubiye mu bika bibanziriza iki, Urukiko rw'Ikirenga rusanga inyandikomvugo y'impanuka y'imodoka ari ikimenyetso kitapfa kunyomozwa uretse igihe habonetse ikimenyetso kikivuguruza kuko ari inyandikomvugo y'umugenzacyaha ku cyaha gito (contravention) mu gihe cyujuje ibyangombwa byavuzwe mu gika cya 27.

[31] Ku bijyanye n'uru rubanza, inyandikomvugo y'umugenzacyaha yakozwe ku mpanuka yabaye hagati y'imodoka ya Muhima Giovanni na Ngizweninshuti Albert si inyandikomvaho ahubwo ni inyandiko ubundi idakwiriye kuba yapfa kunyomozwa uretse igihe habonetse ikimenyetso kiyivuguruza kuko yakorewe ku cyaha gito(contravention), ariko Urukiko rusanga hari ibyo itujuje biyibuza kugera kuri urwo rwego bishingiye cyane cyane ku kuba ibiyikubiyemo

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[16]Les procès-verbaux de constat établis en matière contraventionnelle valent jusqu'à preuve contraire». Ibid., p.230

[17] Les procès-verbaux ne bénéficient de cette force probante renforcée que dans les cas où leurs auteurs «ont reçu d'une disposition spéciale de la loi le pouvoir de constater des délits par des procès-verbaux ou des rapports». Ibid.

[18] Iteka rya Perezida N° 85/01 ryo ku wa 02/09/2002 rishyiraho amabwiriza rusange agenga imihanda n'uburyo bwo kuyigendamo.

[19] Iyo ngingo yagiraga iti « …Les infractions aux lois, arrêtés, règlements d'administration publique et de police, à l'égard desquelles la loi ne détermine pas de peines particulières, sont des contraventions ».

[20] Iyo ngingo yagiraga iti "Gifatwa kandi nk'icyaha cyoroheje, icyaha gikomoka ku kutubahiriza amategeko, amateka n'amabwiriza y'ubutegetsi bwa Leta n'ayerekeye umutekano iyo nta tegeko bwite ribihana ».

ari amakuru umugenzacyaha atahagazeho ubwe, ahubwo bikaba bishingiye ku makuru y'abo yasanze aho impanuka yabereye imaze kuba[21]. Byongeye kandi iyo nyandikomvugo isoza isa n'itanga umwanzuro w'uburyo ibintu byagenze ashingiye ku busesenguzi yikoreye[22]. Kubera izo mpamvu, Urukiko rw'Ikirenga rukaba rusanga iyo nyandikomvugo igomba gufatwa nk'inyandiko iyo ari yo yose itanga amakuru ashobora kuvuguruzwa mu buryo ubwo ari bwo bwose nk'uko biteganywa n'ingingo ya 119 y'Itegeko No15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

Kumenya ukwiye kuryozwa impanuka yo ku wa 06/01/2012

[32] Me Ndoba Augustin na Me Bizumuremyi Isaac bahagarariye Ngizweninshuti Albert bavuga ko Muhima Giovanni ari we nyirabayazana w'impanuka kuko:

a. Abashinzwe umutekano wo mu muhanda bamwiboneye;

b. hari n'abatangabuhamya bemeza ko Muhima Giovanni atubahirije amategeko agenga umuhanda agatambuka kuri feux rouges harimo itara ry'umutuku rimubuza gutambuka, bagahita bagongana.

[33] Bavuga ko Urukiko Rukuru rwirengagije kandi amategeko cyane cyane Iteka rya Perezida Nº 85/01 ryo ku wa 11/09/2002 rishyiraho amabwiriza agenga imihanda n'uburyo bwo kuyigendamo mu ngingo ya mbere agace ka 11 risobanura umukozi ufite ububasha mu kubahiriza iri teka, rugatesha agaciro inyandikomvugo yakozwe na OPJ Muhire Emmanuel rutabanje kumwumva.

[34] Me Kazeneza Théophile uhagarariye Muhima Giovanni avuga ko nyirabayazana w'impanuka ari Ngizweninshuti Albert kuko imodoka Muhima Giovanni yari atwaye ubwo yavaga ku Kimihurura agana mu mujyi ageze mu masangano y'imihanda (umwe ujya mu mujyi n'undi wahuranya ugana ku Kimihurura) yagonzwe n'iyo Ngizweninshuti Albert yari atwaye kuko yahagurutse itunguranye ikangiza igice cy'iburyo cyose cy'imodoka Muhima Giovanni yari atwaye.

[35] Me Kazeneza Théophile avuga ko kandi n'iteka rya perezida bashingiraho rivuga ko mu masangano y'imihanda umuntu agomba kwigengesera, agasoza asaba Urukiko kureba inyandikomvugo y'impanuka na *declarations* z'ababuranyi bombi kuko bigaragara ko idahuye n'ibyabaye.

UKO URUKIKO RUBIBONA

[36] Urukiko rurasanga ingingo ya 104 y'Iteka rya Perezida Nº 85/01 ryo ku wa 02/09/2002 rishyiraho amabwiriza rusange agenga imihanda n'uburyo bwo kuyigendamo isobanura ikinyabiziga gifite uburenganzira bwo gutambuka mbere hashingiwe ku bimenyetso by'amatara bimurika mu buryo bw'amabara atatu bukurikira:

a. itara ritukura: birabujijwe kurenga icyo kimenyetso;

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[21] Reba iyo inyandikomvugo ku rupapuro rwa 4 aho igira iti : « Abapolisi ba traffic bari bahagaze muri ziriya feux lumineux muri irya carrefour nabo bemeza ko Muhima Giovanni yatambutse harimo feux rouges »

[22] Reba iyo inyandikomvugo ku rupapuro rwa 4 aho ivuga ko « …impanuka yatewe na Muhima Giovanni watambutse harimo feux rouges»

b. itara ry'umuhondo: birabujijwe gutambuka umurongo wo guhagarara umwanya muto, cyangwa igihe uwo murongo werekana udahari icyo kimenyetso ubwacyo, keretse igihe ryatse umuyobozi (w'ikinyabiziga) akiri hafi cyane ku buryo yaba atagishobora guhagarara mu buryo butamuteza ibyago; nyamara iyo ikimenyetso kiri mu masangangano umuyobozi (w'ikinyabiziga) arenze umurongo wo guhagarara cyangwa ikimenyetso muri ubwo buryo, ashobora kwambukiranya amasangano gusa ari uko atateza abandi ibyago;

c. itara ry'icyatsi: rivuga uburenganzira bwo kurenga icyo kimenyetso.

[37] Iyo ibinyabiziga bigonganye mu isangano rifite ibimenyetso by'amatara kandi buri wese mu bayobozi b'ibyo binyabiziga atemera uruhare rwe harebwa uwarenze ku mabwiriza rusange agenga abakoresha umuhanda, cyane cyane ingingo ya 15 y'Iteka rya Perezida nº 85/01 ryo ku wa 02/09/2002 rishyiraho amabwiriza rusange agenga imihanda n'uburyo bwo kuyigendamo, ivuga ko umuyobozi w'ikinyabiziga agomba kwegera isangano kandi agenda ku buryo ashobora guhagarara kugira ngo ibinyabiziga bitambuka mbere (bifite *priorité*) bihite, yirinda icyateza impanuka.

[38] Iyo impanuka ibaye itewe no kuba ikinyabiziga kimwe cyatambutse kikinjira mu isangano kitemerewe kuko harimo ikimenyetso cy'itara ritukura akagongana n'uwari ufite ikimenyetso kiri mu ibara ry'icyatsi ari nawe ufite uburenganzira bwo gutambuka, aba afite uruhare byanze bikunze mu mpanuka yabaye. Ku rundi ruhande ariko, iyo ufite uburenganzira bwo gutambuka kuko hari ikimenyetso cy'ibara ry'icyatsi atambutse akagira icyo agonga, nawe aba afite uruhare mu mpanuka rushingiye ku kudashishoza ngo yinjire mu muhanda yitwararitse icyateza impanuka cyose nk'uko biteganywa n'ingingo ya 15 y'Iteka ryavuzwe haruguru. Icyakora, birumvikana ko iyo ari we ugonzwe, impanuka iryozwa umugonze wenyine. Iyo bagonganye ku gice cy'imbere cyangwa iyo bigoye kumenya uwagonze undi, impanuka iryozwa uwatambutse mu gihe hari ikimenyetso cy'itara ritukura kuko ari we uba yirengagije ihame ry'ubushishozi ku buryo bugaragarira buri wese.

[39] Muri uru rubanza, igishushanyo cy'impanuka (croquis d'accident) kigaragaza ko Muhima Giovanni waturukaga mu cyerekezo cyo kuri RRA yambukiranya amasangano y'umuhanda yagonganye n'imodoka ya Ngizweninshuti Albert wari mu muhanda uturuka kuri KBC werekeza ku Kimihurura. Nk'uko kandi kibigaragaza, imodoka zangiritse ku gice cy'imbere. Umupolisi wari aho impanuka yabereye yavuze ko impanuka yaturutse kuri Muhima Giovanni watambutse mu masangano y'umuhanda kandi harimo ibara ritukura. N'ubwo ibyo Muhima Giovanni abihakana, ntibyumvikana ukuntu imodoka ya Ngizweninshuti Albert yari kumusanga mu masangano iyo aza kuba yubahirije ikimenyetso kimwereka itara ritukura kuko ayo matara adashobora kwerekana ibimenyetso bituma imodoka zigerera mu masangano rimwe ku buryo zagongana. Ku rundi ruhande kandi, nta mutangabuhamya n'umwe wigeze avuguruza ko Ngizweninshuti Albert yatambutse harimo itara ry'icyatsi. Ibi bikaba bigaragaza nta gushidikanya ko Muhima Giovanni ari we winjiye mu masangano y'umuhanda harimo itara ritukura. Bityo rero, kuba baragonganye imodoka zombi zikangirika ku gice cy'imbere, kandi Muhima Giovanni ari we warenze ku byo ikimenyetso cy'itara ry'umutuku kimutegeka gukora, ni ukuvuga guhagarara, Urukiko rusanga iyo mpanuka ari we igomba kuryozwa kuko ari we wagize ubushishozi buke ku buryo bugaragarira buri wese nk'uko byasobanuwe mu gika kibanziriza iki.

[40] Naho, ibyo kuba inkiko zibanza zitarahamagaje uwakoze inyandikomvugo ngo agire ibyo asobanura, Urukiko rw'Ikirenga rusanga ibyo bitari ngombwa kuko nk'uko byasobanuwe, iyi

nyandikomvugo y’impanuka idafite agaciro karenze ak’amakuru asanzwe urukiko rushobora gusuzuma rugaha agaciro rukurikije uko rubibona mu bushishozi bwarwo.

Ibijyanye n’amafaranga Ngizweninshuti Albert asaba gusubizwa, hamwe n’inyungu zayo

- **Kumenya niba Ngizweninshuti Albert yasubizwa amafaranga yishyuye Muhima Giovanni angana na 3.837.603 Frw**

[41] Me Bizumuremyi Isaac uhagarariye Ngizweninshuti Albert avuga ko Urukiko Rukuru rwategetse Ngizweninshuti Albert kwishyura Muhima Giovanni miliyoni eshatu n’ibihumbi magana atatu na mirongo itatu na birindwi na magana atandatu n’atatu (3.337.603 Frw) yatanzwe ku modoka yangijwe wongeyeho amafaranga y’igarama ibihumbi mirongo irindwi na bitanu (75.000 Frw) n’ibihumbi magana atanu (500.000 Frw) yishyuye Umuhesha w’Inkiko w’umwuga warangije urubanza, yose hamwe akaba ari miliyoni eshatu n’ibihumbi magana inani na mirongo itatu na birindwi na magana atandatu n’atatu (3.837.603 Frw); bityo akaba agomba kuyasubizwa kuko atari we nyirabayazana w’impanuka.

[42] Me Kazeneza Théophile uhagarariye Muhima Giovanni avuga ko ibyo Urukiko rwategetse ari ingaruka z’urubanza rwarangijwe kugira ngo habeho gukoresha imodoka yangijwe n’impanuka yateje, kandi ko ayo mafaranga atasubizwa Ngizweninshuti kuko atari we ahubwo yishyuwe n’ikigo cy’ubwishingizi n’ubwo abihakana, bityo akaba ntayo agomba gusubizwa.

UKO URUKIKO RUBIBONA

[43] Urukiko rusanga amafaranga miliyoni eshatu n’ibihumbi magana inani na mirongo itatu na birindwi na magana atandatu n’atatu (3.837.603 Frw) Ngizweninshuti Albert yishyuza Muhima Giovanni ashingiye ku irangiza ry’urubanza n’uburyozwe bw’iyi mpanuka kimwe n’igarama yatanze mu Rukiko Rukuru agomba kuyasubizwa kuko atari we nyirabayazana w’impanuka nk’uko byasobanuwe, ariko muri yo hakaba harimo ayishyuwe n’umwishingizi (SAHAM RWANDA ex CORAR AG Ltd) angana na miliyoni ebyiri n’ibihumbi magana abiri na birindwi na magana atandatu n’atatu (2.207.603 Frw) ayo akaba agomba kuvanwa mu yo asubizwa kuko atariwe wayishyuye. Urukiko rusanga rero amafaranga agomba gusubizwa ari miliyoni imwe n’ibihumbi magana atandatu na mirongo itatu (1.630.000 Frw).

- **Ibyerekeye inyungu ku mafaranga Ngizweninshuti Albert asaba gusubizwa**

[44] Me Ndoba Augustin uhagarariye Ngizweninshuti Albert asaba inyungu za 18% ku mwaka mu gihe cy'imyaka 4 ishize atanze 3.837.603 Frw zikaba zingana na 2.763.074 Frw, zishingiye ku gihombo yatejwe no kuba yarayavukijwe ku maherere.

[45] Me Kazeneza Théophile uhagarariye Muhima Giovanni avuga ko amafaranga y’inyungu nta mpamvu yayo, nta n’ishingiro afite, kuko byaba ari uguca ibihano uwatsinze urubanza, kandi nta kosa, icyo yakoze akaba ari ugushyira mu bikorwa icyemezo cy’urukiko.

UKO URUKIKO RUBIBONA

[46] Nk’uko bigaragara mu nyandikomvugo y’irangiza ry’urubanza 0249/14/HC/KIG rwaciwe ku wa 23/10/2015 n’Urukiko Rukuru hagati ya Muhima Giovanni na Ngizweninshuti Albert, Urukiko rurasanga Muhima Giovanni yarishyuwe miliyoni eshatu n’ibihumbi magana inani na mirongo itatu na birindwi na magana atandatu n’atatu (3.837.603 Frw) ; muri yo Ngizweninshuti Albert akaba yaratanze miliyoni imwe n’ibihumbi magana atandatu na mirongo itatu (1.630.000 Frw) naho umwishingizi we SAHAM (ex CORAR) agatanga miliyoni ebyiri n’ibihumbi magana abiri na birindwi na magana atandatu n’atatu(2.207.603 Frw) bikaba byumvikana ko aya yatanzwe na SAHAM atabarirwa mu yo yavukijwe, bityo akaba nta n’inyungu yayabonaho.

[47] Urukiko rusanga ahubwo inyungu agomba kubona ari izishingiye ku yo ubwe yatanze, ni ukuvuga miliyoni imwe n’ibihumbi magana atandatu na mirongo itatu (1.630.000 Frw). Naho ku byerekeye ijanisha rya 18% Ngizweninshuti Albert aheraho azibara, Urukiko rurasanga Muhima Giovanni ntacyo abivugaho, ariko n’Urukiko rukaba rusanga ziri mu gaciro, kuko iyo aba yaragujije ayo mafaranga kugira ngo ayishyure cyangwa se akaba yarayagujije kugira ngo azibe icyuho cy’aho ayo yishyuye aturutse, yari kuyaguza ku kigero cy’inyungu banki zitangiraho amafaranga ku bazigujije, kandi ubu koko hakaba hari banki zitanga inguzanyo ku nyungu ya 18% ku mwaka. Kubera izo mpamvu, Muhima Giovanni akaba agomba guha Ngizweninshuti Albert inyungu za miliyoni imwe n’ibihumbi magana atandatu na mirongo itatu (1.630.000 Frw) zibazwe mu gihe cy’imyaka itatu n’iminsi makumyabiri n’itanu, ni ukuvuga iminsi igihumbi n’ijana na makumyabiri kuva igihe urubanza rwarangirijwe nk’uko bigaragazwa n’inyandikomvugo y’irangiza ry’urubanza yo ku wa 27/01/2017 kugeza uyu munsi, aho kuba imyaka ine nk’uko Ngizweninshuti Albert abiburanisha ; bityo yose hamwe akaba ari (1.630.000 Frw x 18% x 1120 J) : 350 J= ibihumbi magana cyenda na magana abiri na mirongo cyenda n’atanu (900.295 Frw)

Ibijyanye n’indishyi zisabwa muri uru rubanza

[48] Me Ndoba Augustin uhagarariye Ngizweninshuti Albert amusabira ko yasubizwa amafaranga miliyoni (1.000.000 Frw) yishyuye Avoka mu Rukiko Rwisumbuye no mu Rukiko Rukuru ndetse n’andi amafaranga miliyoni (1.000.000 Frw) yamwishyuye muri uru Rukiko, yose hamwe akaba ari 2.000.000 Frw wongeyeho n’amafaranga miliyoni 1.000.000 Frw y'ikurikiranarubanza kuva muri Polisi, hakorwa iperereza kugeza kuri uru rwego.

[49] Me Kazeneza Théophle uhagarariye Muhima Giovanni avuga ko amafaranga y’igarama n’igihembo cya Avoka adakwiye kuryozwa Muhima kuko atari we waciye urubanza kandi zikaba nta shingiro zifite, akaboneraho ahubwo gusaba ko Urukiko rwategeka uwareze kwishyura indishyi z'ikurikiranarubanza zingana n’ibihumbi magana atanu (500.000 Frw) n'igihembo cy’Avoka gihwanye n’amafaranga miliyoni 1.000.000 Frw.

UKO URUKIKO RUBIBONA

[50] Urukiko rurasanga indishyi Muhima Giovanni asaba ntazo akwiye kuko ari we nyirabayazana w’impanuka yo ku wa 06/01/2012 yabaye hagati y’imodoka ye n’iya Ngizweninshuti Albert. Rusanga ahubwo izo Ngizweninshuti Albert asaba agomba kuzihabwa, ariko kuko adasobanura uko azibara, Urukiko rukaba rumugeneye mu bushishozi bwarwo amafaranga y’ikurikiranarubanza ibihumbi magana atatu (300.000 Frw) kuri buri rwego bihwanye n’ibihumbi magana cyenda (900.000 Frw) n’ibihumbi magana atanu (500.000 Frw) y’igihembo

cy'Avoka kuri buri rwego bingana na miliyoni imwe n'ibihumbi magana atanu (1.500.000 Frw), yose hamwe akaba ari miliyoni ebyiri n'ibihumbi magana ane (2.400.000 Frw).

III. ICYEMEZO CY'URUKIKO

[51] Rwemeje ko ikirego cya Ngizweninshuti Albert cyo gusubirishamo ku mpamvu z'akarengane urubanza nº RCA 0249/14/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 23/10/2015, gifite ishingiro;

[52] Rwemeje ko imikirize y'urubanza nº RCA 0249/14/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 23/10/2015, ihindutse kuri byose;

[53] Rutegetse Muhima Giovanni guha Ngizweninshuti Albert:

- miliyoni imwe n'ibihumbi magana atandatu na mirongo itatu **(**1.630.000 Frw**)** yatanze harangizwa urubanza nº RCA 0249/14/HC/KIG rwaciwe n'Urukiko Rukuru;
- inyungu zayo zihwanye n'ibihumbi magana cyenda na magana abiri na mirongo cyenda n'atanu (900.295 Frw)
- miliyoni ebyiri n'ibihumbi magana ane (2.400.000 Frw) y'ikurikiranarubanza n'igihembo cya Avoka mu Rukiko Rwisumbuye, mu Rukiko Rukuru no mu Rukiko rw'Ikirenga;

yose hamwe akaba ari miliyoni enye n'ibihumbi magana cyenda na mirongo itatu na magana abiri na mirongo cyenda n'atanu (4.930.295 Frw).