KAKOZA v NYAGATARE

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA 00056/14/CS (Mukanyundo, P.J., Ngagi na Rugabirwa, J.) 23 Kamena 2017]

Amategeko agenga imanza zubucuruzi – Sosiyete y'ubucuruzi – Umunyamigabane wa sosiyete – Umunyamigabane ntagirwa umunyamigabane wa sosiyete nuko yishyuye imigabane ye yose, abigirwa nuko yanditse mu gitabo cy'abanyamigabane – Kwishyura igice cy'imigabane ntibituma umunyamigabane yamburwa uburenganzira afite muri sosiyete ariko iyo atishyuye ababereyemo umwenda ushingiye ku migabane.

Incamake y'ikibazo: Kakoza Nkuriza Charles yashinze sosiyete y'ubucuruzi y'umunyamigabane umwe yitwa Radio 1 Rwanda Ltd, ifite imari shingiro ya 70.000.000Frw. Nyuma yaho, aza kugirana amasezerano na Nyagatare Jean Luc bemeranya uyu abaye umunyamigabane wa Radio 1 Rwanda Ltd, bumvikana ko buri wese agira 50% y'imigabane ingana na 35.000.000Frw.

Nyuma yaho, Kakoza Nkuriza Charles yandikiye Nyagatare Jean Luc, amubwira ko atakiri umunyamigabane wa Radio 1 Rwanda Ltd kuko atarangije kwishyura imigabane ye yose, amusaba gutanga nimero ya konti ye kugira ngo ishyirweho 9.000.000Frw yari amaze gutanga.

Nyagatare yahise atanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge avuga ko icyemezo Kakoza yafashe cyo kumwirukana nk'umunyamigabane kidakurikije amategeko, asaba gukomeza kuba umunyamigabane, asaba kandi ko hakorwa igenzura muri Radio 1 Rwanda maze Kakoza agakurwa k'ubuyobozi bw'iyo radiyo ndetse na buri munyamigabane agategekwa kugaragaza aho yishyuriye imigabane ye, anasaba indishyi zitandukanye.

Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko ikirego cyatanzwe na Nyagatare nta shingiro gifite, ruvuga ko nta burenganzira afite kuri sosiyete kuko atishyuye imigabane ye yose, ko yasezerewe mu buryo bukurikije amategeko, ndetse anategekwa gutanga indishyi z'akababaro.

Nyagatare ntiyishimiye icyo cyemezo, akijuririra mu Rukiko Rukuru rw'Ubucuruzi avuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza rwirengagije amategeko n'imiburanire ye, avuga ko yamwirukanye mu buryo budakurikije amategeko, kandi ko hatanzwe indishyi zidafite aho zishingiye.

Urukiko Rukuru rw'Ubucuruzi rwemeje ko icyemezo cyafashwe na Kakoza cyo kwirukana Nyagatare nk'umunyamigabane kidakurikije amategeko, rwemeza ko gikuweho, rumutegeka guha Nyagatare indishyi.

Kakoza ntiyishimiye icyo cyemezo, ajuririra Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije amasezerano agaragaza ko yagurishije Nyagatare imigabane, ko rwategetse ko Nyagatare akomeza kuba umunyamigabane w'iyo Radiyo, rwirengagije ko atubahirije inshingano zo kwishyura imigabane.

Nyagatare avuga ko Urukiko rutirengagije ko yari atararangiza kwishyura imigabane yose, ko ahubwo rwavuze ko kuba atararangiza kuyishyura, bitamukuraho uburenganzira bwo kuba umunyamigabane wa Radio 1Rwanda Ltd, kuko kuba umunyamigabane bidasaba kuba wamaze kwishyura imigabane yose, ahubwo ko kuba wanditse muri "Company" nk'umunyamigabane aricyo gituma ufatwa gutyo.

Kakoza avuga kandi ko abona yari afite uburenganzira bwo kwirukana Nyagatare nk'umunyamigabane wa Radio 1 Rwanda Ltd kubera ko atubahirije amasezerano bagiranye bashinga sosiyete. Nyagatare yiregura avuga nta munyamigabane ufite uburenganzira bwo kwirukana undi munyamigabane mugenzi we.

Incamake y'icyemezo: 1. Umunyamigabane ntagirwa umunyamigabane wa sosiyete nuko yishyuye imigabane ye yose, abigirwa nuko yanditse mu gitabo cy'abanyamigabane.

2. Kwishyura igice cy'imigabane ntibituma umunyamigabane yamburwa uburenganzira afite muri sosiyete ariko iyo atishyuye ababereyemo umwenda ushingiye ku migabane.

Ubujurire nta shingiro;
Amagarama y'urubanza ahwanye nibyarukozwemo.

Amategeko yashingiweho:
Itegeko Nº 07/2009 ryerekeye amasosiyete y'ubucuruzi ryo ku wa 27/04/2009, ingingo ya 2, ya 31, 134 niya 140.

Ntamanza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kakoza Nkuriza Charles yashinze sosiyete y'ubucuruzi y'umunyamigabane umwe yitwa Radio 1 Rwanda1[1] Ltd, ifite imari shingiro ya 70.000.000 Frw. Nyuma yaho, aza kugirana amasezerano na Nyagatare Jean Luc bemeranya ko Nyagatare Jean Luc abaye umunyamigabane wa Radio 1 Rwanda Ltd, nk'uko bigaragazwa na "Memorandum and Articles of Association" yo ku wa 29/05/2011, bumvikana ko buri wese agira 50% y'imigabane ingana na 35.000.000Frw. Ku wa 02/08/2012, Kakoza Nkuriza Charles yandikiye Nyagatare Jean Luc, amubwira ko atakiri umunyamigabane wa Radio 1 Rwanda Ltd kuko atarangije kwishyura imigabane ye yose, amusaba gutanga nimero ya konti ye kugira ngo ishyirweho 9.000.000Frw yari amaze gutanga.

[2] Nyagatare Jean Luc yahise atanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge avuga ko icyemezo Kakoza Nkuriza Charles yafashe cyo kumwirukana nk'umunyamigabane wa Radio 1 Rwanda Ltd kidakurikije amategeko, asaba gukomeza kuba umunyamigabane, hagakorwa igenzura muri Radio 1 Rwanda Ltd rigamije kumenya uko umutungo ukoreshwa, maze Kakoza Nkuriza Charles agakurwa k'ubuyobozi bw'iyo radiyo ndetse na buri munyamigabane agategekwa kugaragaza aho yishyuriye imigabane ye. Yanasabaga indishyi zitandukanye nk'uko zigaragara mu kiburanwa.

1Mu rubanza handitswe "RWANDA", ariko muri "Memorandum and Articles of Association" handitse "FM".

[3] Mu rubanza RCOM 0779/12/TC/NYGE rwaciwe ku wa 31/01/2013, Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko ikirego cyatanzwe na Nyagatare Jean Luc nta shingiro gifite, ruvuga ko nta burenganzira afite kuri sosiyete kuko atishyuye imigabane ye yose, ko yasezerewe mu buryo bukurikije amategeko, ndetse anategekwa gutanga indishyi z'akababaro zingana na 1.000.000Frw n'igihembo cya Avoka kingana na 300.000 Frw. Urwo Rukiko rwafashe icyo cyemezo rushingiye ku ngingo ya 2, agace ka 32, y'Itegeko No 07/2009 ryo ku wa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi ryakurikizwaga icyo igihe2[2], itanga igisobanuro cy'ufatwa ko ari umunyamigabane3[3], no ku ngingo ya 6 ya "Memorandum and Articles of Association", ivuga ko buri wese agomba gushyira muri sosiyete 50 % y' imigabane ihwanye na 35.000.000 Frw4.

[4] Nyagatare Jean Luc ntiyishimiye icyo cyemezo, akijuririra mu Rukiko Rukuru rw'Ubucuruzi avuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza rwirengagije amategeko n'imiburanire ye, ndetse rurivuguruza, ko ingingo zimwe z'ikirego ntacyo rwazivuzeho, ntihitabwa no ku byo Kakoza Nkuriza Charles yemeye mu iburanisha avuga ko yamwirukanye mu buryo budakurikije amategeko, kandi ko hatanzwe indishyi zidafite aho zishingiye.

[5] Mu rubanza RCOMA 0071/13/HCC rwaciwe ku wa 05/12/2014, Urukiko Rukuru rw'Ubucuruzi rwemeje ko icyemezo cyafashwe na Kakoza Nkuriza Charles cyo kwirukana Nyagatare Jean Luc nk'umunyamigabane wa Radio 1 Rwanda Ltd kidakurikije amategeko, rwemeza ko gikuweho. Rwategetse Kakoza Nkuriza Charles guha Nyagatare Jean Luc indishyi z'ikurikiranarubanza n'igihembo cya Avoka zingana na 1.500.000 Frw, akanishyura 2.000.000 Frw yasigaye ku gihembocy'Umuhanga wakoze igenzura rya Radio 1 Rwanda Ltd ari we "ABC Consultants Ltd", kandi agasubiza Nyagatare Jean Luc 1.000.000 Frw yatanze kuri avansi y'icyo gihembo cy'Umuhanga.

[6] Kakoza Nkuriza Charles ntiyishimiye icyo cyemezo, ajuririra Urukiko rw'Ikirenga avuga ko:

- Urukiko Rukuru rw'Ubucuruzi rwirengagije amasezerano yo ku wa 06/06/2011agaragaza ko yagurishije Nyagatare Jean Luc imigabane ingana na 50% ya Radio 1 Rwanda Ltd ifite agaciro ka 35.000.000 Frw, ko rwategetse ko Nyagatare Jean Luc akomeza kuba umunyamigabane w'iyo Radiyo, rwirengagije ko atubahirije inshingano zo kwishyura imigabane;
- Urukiko Rukuru rw'Ubucuruzi rwirengagije uruhare rwe muri Radio 1 Rwanda Ltd, aho rwavuze ko atagaragaza niba hari igikorwa cyangwa andi mafaranga yari asanzwe kuri konti ya sosiyete mbere y'uko Nyagatare Jean Luc ayinjiramo, kandi yara garagaje "invoices" zigaragaza ibikorwa yakoze.

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2 Iri Tegeko ryahinduwe n'Itegeko N°27/2017 ryo ku w a 31/05/2017 rigenga Amasosiyete y'Ubucuruzi.

3 Ako gace k'iyo ngingo gateganya ko umunyamigabane ari: a) umuntu ufite izina ryanditse mu gitabocy'imigabane nk'ufite muri icyo gihe umugabane umwe cyangwa myinshi mu isosiyete; b) umuntu uvugwa mu nyandiko isaba kwandikwa kw'isosiyete mu gihe cy'ishingwa ryayo kandi agafatwa nk'umunyamigabane kugeza aho izina rye ryandikiwe mu gitabo cy'imigabane; c) umuntu ugomba kwandikwa mu gitabo cy'imigabane biturutse ku mushinga wo kwibumbira hamwe kw'amasosiyete, afatwa nk'umunyamigabane w'isosiyete yibumbiye hamwe n'indi kugeza igihe izina rye rizandikirwa mu gitabo cy'imigabane cy'isosiyete nshya ibumbiyemo izindi.

- Urukiko Rukuru rw'Ubucuruzi, mu rubanza rubanziriza urundi rwasomwe ku wa 30/09/2013, rwemeje ko "invoice" imwe ivugwa ko yatanzwe na FESTIMO ku wa 02/08/2011, ifite agaciro ka 7.800.000 Frw ikuwe mu rubanza kuko ari impimbano, nyamara mu rubanza nshinjabyaha byaragaragaye ko iyo "invoice" atari impimbano;
- Yategetswe gutanga indishyi z'ikurikiranarubanza n'igihembo cya Avoka zingana na 1.500.000 Frw kandi uzisaba ntazo akwiye kuko ari we uzi neza ko bitari ngombwa kurega, kuko iyo yubahiriza ibyo basezeranye nta manza ziba zarabayeho.

[7] banza rwaburanishijwe mu ruhame ku wa 15/03/2016, Kakoza Nkuriza Charles yunganiwe na Me Shema Gakuba Charles, Me Sadi Jashi na Me Mubangizi Frank, naho Nyagatare Jean Luc yunganiwe na Me Kizito Safari, uyu akaba yaratanze inzitizi yo kutakira ubujurire bwa Kakoza Nkuriza Charles kuko butari mu bubasha bw'Urukiko rw'Ikirenga, ariko uru Rukiko ruza gusanga iyo nzitizi nta shingiro ifite kubera ko agaciro k'ikiburanwa karengeje 50.000.000 Frw, urubanza ruburanishwa mu ruhame mu mizi ku wa 21/06/2016, 25/10/2016 no ku wa 11/01/2017, kuri iyi tariki Kakoza na Nyagatare biyemeje kujya mu bwumvikane, ariko baza kunaniranwa bituma bagaruka mu Rukiko ku wa 16/05/2017, Kakoza Nkuriza Charles yunganiwe na Me Shema Gakuba Charles na Me Mubangizi Frank, naho Nyagatare Jean Luc yunganiwe na Me Kizito Safari.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO

1. Kumenya niba kuba Nyagatare atarishyuye imigabane ye yose bimwambura uburenganzira bwo kuba umunyamigabane wa Radio 1 Rwanda Ltd

[8] Kakoza Nkuriza Charles avuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije amasezerano yo ku wa 06/06/2011, agaragaza ko yagurishije Nyagatare JeanLuc imigabane ingana na 50% ya Radio 1 Rwanda Ltd ifite agaciro ka 35.000.000Frw, ko rwategetse ko Nyagatare Jean Luc akomeza kuba umunyamigabane w'iyo Radiyo rwirengagije ko atubahirije inshingano zo kwishyura imigabane ari nacyo Urukiko rw'Ubucuruzi rwari rwashingiyeho ruvuga ko kugira ngo akomeze kuba umunyamigabane wa Radio 1 Rwanda Ltd, ari uko yabanza kwishyura imigabane isigaye ihwanye na 26.000.000Frw.

[9] Nyagatare Jean Luc n'umwunganira bavuga ko Urukiko rutirengagije ko yari atararangiza kwishyura imigabane yose, ko ahubwo rwavuze ko kuba atararangiza kuyishyura, bitamukuraho uburenganzira bwo kuba umunyamigabane wa Radio 1Rwanda Ltd, kuko kuba umunyamigabane bidasaba kuba wamaze kwishyura imigabane yose, ahubwo ko kuba wanditse muri "Company" nk'umunyamigabane aricyo gituma ufatwa gutyo.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 2, agace ka 32 (b), y'Itegeko Nº 07/2009 ryerekeye amasosiyete y'ubucuruzi ryo ku wa 27/04/2009 ryakurikizwaga sosiyete ishingwa, iteganya ko umunyamigabane ari "umuntu uvugwa mu nyandiko isaba kwandikwa kw'isosiyete mu gihe cy'ishingwa ryayo kandi agafatwa nk'umunyamigabane kugeza aho izina rye ryandikiwe mu gitabo cy'imigabane". Na

none, ingingo ya 2, agace ka 32º, y'Itegeko N° 27/2017 ryo ku wa 31/05/2017 rigenga amasosiyete y'ubucuruzi iteganya ko "umunyamigabane ari umuntu ufite izina ryanditse mu gitabo cy'imigabane nk'ufite muri icyo gihe umugabane umwe cyangwa myinshi mu isosiyete".

[11] Abahanga basobanura mu buryo bworoshye umunyamigabane nk'umuntu ushora imari muri sosiyete akagira uruhare muri iyo sosiyete n'uburenganzira bwo kumenya uburyo ikora, ubwo gufata icyemezo ndetse no ku nyungu. Bakomeza bavuga ko ijambo umunyamigabane risobanura umuntu wese ufite imigabane muri sosiyete[4] S.N. Maheshwari na S.K. Maheshwari nabo bavuga ko umunyamigabane ari umuntu ufite izina rye ryanditse mu gitabo cy'abanyamigabane[5].

[12] Muri uru rubanza, dosiye igaragaza ko Kakoza Nkuriza Charles yashinze sosiyete yitwa Radio 1 Rwanda Ltd, ayandikisha mu Kigo cy'Igihugu GishinzweIterambere (RDB) ku wa 09/05/2011 kuri "code" 102319058, iyo sosiyete ikaba yari ifite imigabane 100 ihwanye na 70.000.000 Frw, hanyuma ku wa 29/05/2011 agirana amasezerano na Nyagatare Jean Luc yiswe "Memorandum and Articles ofAssociation", aho bombi bumvikanye ko bashinze Radio 1 FM[6] Ltd (R1FM Ltd),buri wese akaba ayifitemo imigabane 50 ihwanye na 35.000.000Frw, ndetse ku wa 06/06/2011, Kakoza Nkuriza Charles yandikira RDB, ayimenyesha ko yagurishije Nyagatare Jean Luc imigabane ingana na 50% ya Radio 1 Rwanda Ltd, bityo ayisaba ko uwo munyamigabane mushya yakwandikwa ku cyangombwa cya sosiyete.

[13] Dosiye y'urubanza igaragaza, na none, ko ku wa 02/08/2012, Kakoza Nkuriza Charles, nk'Umuyobozi wa Radio 1 Rwanda Ltd yandikiye Nyagatare Jean Luc,amubwira ko atakiri umunyamigabane wa Radio 1 Rwanda Ltd kuko atarangije kwishyura imigabane ye yose nk'uko "Memorandum and Articles of Association"ibiteganya, bityo amusaba gutanga nimero ya konti ye kugira ngo ishyirweho 9.000.000 Frw yari amaze gutanga, ibi bikaba ari byo byatumye Nyagatare Jean Luc aregera Urukiko rw'Ubucuruzi rwa Nyarugenge asaba ko icyo cyemezo cyo kumwirukana cyavanwaho kubera ko cyafashwe mu buryo budakurikije amategeko, gutegeka ko Nyagatare Jean Luc akomeza kuba umunyamigabane wa Radio 1 Rwanda Ltd, anasaba ko Kakoza Nkuriza Charles yavanwa ku buyobozi bw'iyo Radiyo, ndetse nawe akagaragaza aho yishyuriye imigabane ye, kandi hagakorwa igenzura (audit) ryerekana uko umutungo wakoreshejwe.

[14] Isesengura ry'ingingo z'amategeko n'inyandiko z'abahanga byavuzwe haruguru ryerekana ko nta na hamwe hagaragara ko umuntu aba umunyamigabane ari uko amaze kwishyura imigabane ye yose muri sosiyete, ko ahubwo icy'ingenzi ari aba yanditse mu gitabo cy'imigabane cya sosiyete. Urukiko rurasanga ibi bishimangirwa na none n'ingingo ya 31, igika cya mbere, y'Itegeko ryo ku wa 27/04/2009 ryavuzwe haruguru, iteganya ko imari shingiro y'isosiyete ari imigabane abanyamigabane bemeye yaba yarishyuwe cyangwa itarishyuwe, kuko igaragaza ko kwishyura imigane atari cyo kigira umuntu kuba umunyamigabane, ko ahubwo icya ngombwa ari

5 *Un actionnaire est une personne physique ou morale qui, en investissant du capital dans une entreprise, en détient une part, acquiert un droit de regard et parfois de décision, et peut recevoir des dividendes. Ce terme désigne toute personne physique ou morale détenant des actions dans une société, X, « Les termes comptables expliqués de manière simple », in Lexique, https://debitoor.fr/termes-comptables/actionnaire, consulté le 15/06/2017.*

6 *A shareholder is a person who has his/her name entered in the register of members (S.N. Maheshwari and S.K. Maheshwari, "Membership of Company", A Manual of Business Laws, Mumbai, Himalaya Publishing House,2011, 5.101).*

7 *Aha biragaragara ko banditse "FM" kandi bari kwandika "Rwanda*".

ukwemera gufata imigabane runaka muri iyo sosiyete. Kuba rero Nyagatare atarashoboye kwishyura imigabane yose yari yemeye gufata muri Radio 1 Rwanda Ltd, ibyo bitamwambura uburenganzira bwo kuba umunyamigabane.

[15] Urukiko rurasanga, na none, imvugo ya Kakoza ko Urukiko Rukuru rw'Ubucuruzi rwirengangije amasezerano yo ku wa 06/06/2011yabaye hagati y'ababuranyi bombi,nta shingiro byahabwa, kuko uretse no kuba ayo masezerano adateganya igihe ntarengwa abanyamigabane bari kuba barangije kwishyura imigabane bemeye gushora muri sosiyete, ngo Nyagatare abe yarakirengeje, nta n'aho ateganya ko umunyamigabane utazishyurira imigabane ye ku gihe azatakaza uburenganzira bwe nk'umunyamigabane wa sosiyete. Urukiko rurasanga haba mu ngingo z'amategeko cyangwa mu masezerano ntaho biteganyijwe ko mu gihe umunyamigabane atishyuye imigabane yose yemeye, ahita atakaza uburenganzira bwo kuba umunyamigabane, rukaba rero ntaho rwahera rwemeza ko kuba Nyagatare atarishyuye imigabane yose yemeye bimubuza gukomeza ku ba umunyamigabane muri iyi sosiyete, cyane cyane ko ibimenyetso Kakoza yashyikirije uru Rukiko ku wa 16/09/2016 bikubiye mu gitabo yise "imbonerahamwe igaragaza inyemezabuguzi n'ibimenyetso by'ibyakozwe na kakoza nkuriza charles mu gutangiza radio 1", bitagaragaza ko nawe yishyuye imigabane ye yose yari yemeye, ngo abe yapfa kubyuririraho avuga ko ariwe ufite uburenganzira bwo kuguma muri sosiyete, usibye ko, nk'uko byasobanuwe haruguru, n'iyo azakuba yarishyuye imigabane ye yose, bitari kubuza Nyagatare kuguma kuba umunyabigabane muri Radio 1 Rwanda Ltd.

[16] Urukiko rurasanga, na none, impande zombi zaragiye zikora amakosa mu ishingwa ry'iyi sosiyete nk'aho ubwabo, mu ngingo ya 6 ya "Memorandum and Articles of Association" yo ku wa 29/05/2011, Kakoza na Nyagatare basinyiye ko imigabane yose yishyuwe, buri wese ngo akaba yishyuye 35 000 000 Frw, kandi atari ko byagenze, Kakoza rero akaba atakwirengagiza uko ibintu byagenze igihe yagiranaga amasezerano yo gufatanya na Nyagatare nk'abanyamigabane ba Radio 1 Rwanda Ltd, ngo abe yasubira inyuma avuga ko Nyagatare atakiri umunyamigabane.

[17] Hashingiwe ku ngingo z'amategeko, inyandiko z'abahanga byavuzwe haruguru ndetse no ku bisobanuro bimaze gutangwa, Urukiko rurasanga Nyagatare Jean Luc ari umunyamigabane wa Radio 1 Rwanda Ltd, bityo ibyo Kakoza Nkuriza Charles avuga ko Nyagatare atakiri umunyamigabane wa Radio 1 Rwanda Ltd akaba nta shingiro bifite.

2. Kumenya niba icyemezo cyo kwirukana Nyagatare muri Radio 1 Rwanda Ltd cyarafashwe na Kakoza mu buryo bukurikije amategeko

[18] Kakoza Nkuriza Charles avuga ko abona yari afite uburenganzira bwo kwirukana Nyagatare Jean Luc nk'umunyamigabane wa Radio 1 Rwanda Ltd kubera ko atubahirije amasezerano bagiranye bashinga sosiyete.

[19] Me Mubangizi Frank na Me Gakuba Shema, bunganira Kakoza Nkuriza Charles, bavuga ko kuba Kakoza yarafashe icyemezo cyo kwirukana Nyagatare Jean Luc muri Radio 1 Rwanda Ltd nta mategeko yishe kuko ntabundi buryo babona yari gukoresha.

[20] Me Safari Kizito, wunganira Nyagatare Jean Luc, avuga ko hashingiwe ku ngingo ya 134 y'Itegeko nº 07/2009 ryo ku wa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi, nta munyamigabane ufite uburenganzira bwo kwirukana undi munyamigabane. Avuga kandi ko ingingo ya 31 ya "Memorandum and Articles of Association" iteganya uburyo hakemurwa ikibazo

kivutse, akaba abona ibyo Kakoza yakoze ari amakosa, kuko nta burenganzira yari afite bwo kwirukana umunyamigabane mugenzi we.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 134 y'Itegeko ryo ku wa 27/04/2009 ryerekeye amasosiyete y'ubucuruzi[7] ryakurikizwaga ubwo Kakoza yafataga icyemezo cyo kwirukana Nyagatare iteganya ko: "Isosiyete ishobora gufata uyifitemo imigabane nk'aho ari we muntu wenyine ufite ububasha bwo: 1° gukoresha uburenganz ira bwo gutora bushingiye kuri uwo mugabane; 2° kwakira amabaruwa n'izindi ny andiko; 3° kugira uruhare muigabana riturutse ku mugabane; 4° kugira ubundi bur enganzira n'ububasha bituruka ku mugabane".

[22] Ingingo ya 140 y'Itegeko nº 07/2009 ryo ku wa 27/04/2009 rimaze kuvugwa haruguru[8] iteganya ko: "Ububasha abanyamigabane bagenerwa bukoreshwa: 1° mu nama y'abanyamigabane b'isosiyete; 2° hakoreshejwe umwanzuro nsimburanama wafashwe n'abanyamigabane; 3° ku cyemezo cyumvikanw eho na bose; 4° ku masezerano rusange y'abanyamigabane".

[23] Abahanga S.N. Maheshwari na S.K. Maheshwari bavuga ko umunyamigabane afite uburenganzira bwo guhabwa icyemezo cy'imigabane, kwandikwa mu gitabo cy'abanyamigabane, guhererekanya imigabane, kumenyeshwa amakuru arebana na sosiyete no kwitabira inama, gutora no kugenzura ibitabo, guhabwa n'imigabane ikwiye (...), gusezerera ku mirimo abayobozi (directors), (...)[9].

[24] Dosiye y'urubanza igaragaza ko ku wa 02/08/2012, Kakoza Nkuriza Charles, nk'Umuyobozi wa Radio 1 Rwanda Ltd yandikiye Nyagatare Jean Luc, amumenyesha ko atakiri umunyamigabane wa Radio 1 Rwanda Ltd kuko atarangije kwishyura imigabane ye yose nk'uko "Memorandum and Articles of Association" ibiteganya, bityo amusaba gutanga nimero ya konti ye kugira ngo ishyirweho 9.000.000Frw yari amaze gutanga, ibi bikaba ari byo byatumye Nyagatare Jean Luc arega asaba ko icyo cyemezo cyo kumwirukana cyavanwaho kubera ko cyafashwe mu buryo budakurikije amategeko, anasaba ko Kakoza Nkuriza Charles yavanwa ku buyobozi bw'iyo radiyo, ndetse nawe akagaragaza aho yishyuriye imigabane ye, kandi hagakorwa igenzura (audit) ryerekana uko umutungo wakoreshejwe.

[25] Ingingo ya 31 ya "Memorandum and Articles of Association" yo ku wa 29/05/2011 yavuzwe haruguru iteganya ko impaka zose zirebana na sosiyete zibanza gusuzumwa n'inama

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8 Uburenganzira rusange bw'ibanze bujyanye n'imigabane buteganyijwe na none mu ngingo ya 88 y'Itegeko N°27/2017 ryo ku wa 31/05/2017 rigenga am asosiyete y'ubucuruzi.

9 Ibiteganyijwe muri Iyi ingingo bigaragara mu ngingo ya 100 y' Itegeko N°27/2017 ryo ku wa 31/05/2017 rigenga amasosiyete y'ubucuruzi.

10 *Members of a company have a right to obtain certificate of shares, to get the name entered in the Register of Members, to transfer shares, to receive notices and to attend meeting, to vote and inspect registers, to get right shares, to elect directors and appoint auditors, to declare dividends, to receive statutory report, annual accounts, notice for special resolutions, to demand for investigation, to remove directors, to approach court for the prevention of oppression and mismanagement, to apply for winding up and to share in surplus assets, etc (S.N. MAHESHWARI na S.K. MAHESHWARI, op.cit., p. 5.106).*

rusange y'abanyamigabane, zaba zidakemutse zigashyikirizwa umukemurampaka impande zombi zumvikanyeho, byananirana zigashyikirizwa inkiko zo mu Rwanda zibifitiye ububasha[11][10].

[26] Ku byerekeranye no kumenya niba Kakoza Nkuriza Charles,nk'umunyamigabane, yari afite uburenganzira bwo kwirukana Nyagatare Jean Luc nawe w'umunyamigabane ku mpamvu zavuzwe haruguru, hashingiwe ku ngingo ya 140 y'Itegeko nº 07/2009 ryo ku wa 27/04/2009 ryavuzwe haruguru,Urukiko rurasanga, nta na bumwe mu buryo buteganywa n'iyi ngingo y'Itegeko bwaba bwarakoreshejwe na Kakoza mu kwirukana Nyagatare muri Radio 1Rwanda Ltd. Rurasanga, na none, nta hantu na hamwe ingingo ya 134 y'Itegeko rimaze kuvugwa iha umunyamigabane uburenganzira bwo kwirukana umunyamigabane mugenzi we, ko ahubwo ubwo bubasha bufitwe n'Inteko Rusange y'abanyamigabane. Rurasanga ibyo Kakoza avuga ko nta bundi buryo bwari busigaye kuko inteko rusange itashoboraga guterana bitahabwa agaciro kuko ingingo 31 ya "Memorandum and Articles of Association" yo ku wa 29/05/2011 iteganya ko iyo bidashobotse ko ikibazo gikemurwa n'Inteko Rusange y'abanyamigabane, icyo kibazo gishyikirizwa ubukemurampaka, bitashoboka hakiyambazwa inkiko zo mu Rwanda zibifitiye ububasha.

[27] Hashingiwe ku ngingo z'itegeko ryavuzwe haruguru, ku masezerano impande zombi zagiranye no ku bitekerezo by'abahanga, Urukiko rurasanga icyemezo cya Kakoza cyo kwirukana Nyagatare muri Radio 1 Rwanda Ltd cyarafashwe mu buryo butubahirije amategeko, bityo Nyagatare akaba agomba kugumana uburenganzira bwe bwo kuba umunyamigabane muri Radio 1 Rwanda Ltd.

3. Kumenya niba hari indishyi zatangwa muri uru rubanza

[28] Kakoza Nkuriza Charles n'abamwunganira bavuga ko Urukiko Rukuru rw'Ubucuruzi rwategetse Kakoza guha Nyagatare indishyi zo gukurikirana urubanza n'igihembo cya Avoka zingana na 1.500. 000Frw kandi ntazo akwiye kuko nawe azi neza ko bitari ngombwa ko arega kuko iyo aza kubahiriza ibyo basezeranye agura imigabane nta manza ziba zarabayeho. Bakomeza bavuga ko bashingiye ku biteganywa n'ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, Nyagatare Jean Luc akwiye guha Kakoza indishyi zingana na 4.000.000 Frw kubera gukomeza kumushora mu manza bitari ngombwa. Basoza basaba Nyagatare kumuha 1.500.000Frw y'igihembo kuri buri Avoka wamuburaniye, kuri bombi akaba 3.000.000Frw.

[29] Nyagatare Jean Luc n'umwunganira, bavuga ko indishyi zingana na 1.500. 000Frw zo gukurikirana urubanza n'igihembo cya Avoka Kakoza yategetswe gutanga zifite ishingiro kuko Nyagatare ariwe watsinze urubanza kandi ko hari amafaranga yakoresheje akurikirana urubanza anakubiyemo ay'igihembo cya Avoka. Basaba Urukiko gutegeka Kakoza gutanga 4.000.000 Frw y 'igihembo cya Avoka kuri uru rwego yiyongera ku yo Urukiko Rukuru rw'Ubucuruzi rwategetse na 15.000.000 Frw kubera akababaro Nyagatare yatejwe no kwamburwa uburenganzira bwo kuba umunyamigabane muri Radio One Rwanda Ltd.

11 *All disputes involving the company shall first be brought to the attention of the General Meeting. When the General Meeting fails to resolve the dispute, it shall be referred to an arbitrator agreed upon by both parties. When the dispute remains unresolved it shall be taken to the Rwandan competent court of law*.

UKO URUKIKO RUBIBONA

[30] Ku byerekeranye n'amafaranga y'indishyi zo gushorwa mu manza zingana na 4.000.000 Frw, ndetse na 3.000.000 Frw y'ibihembo by'aba Avoka, asabwa na Kakoza, Urukiko rurasanga nta shingiro ryayo kuko Nyagatare Jean Luc yaje muri uru rubanza kubera amakosa ya Kakoza Nkuriza Charles, uyu akaba anatsinzwe n'uru rubanza.

[31] Ku byerekeranye n'indishyi zingana na 1.500.000Frw zo gukurikirana urubanza n'igihembo cy'Avoka Urukiko Rukuru rw'Ubucuruzi rwategetse Kakoza guha Nyagatare, Urukiko rurasanga zifite ishingiro kuko Nyagatare ariwe watsinze urubanza kandi ko hari amafaranga yakoresheje akurikirana urubanza anakubiyemo ayo guhemba Avoka muri urwo rwego, uru Rukiko rukaba rusanga izo ndishyi yagenewe n'Urukiko Rukuru rw'Ubucuruzi ziri mu kigero gikwiye, bityo zikaba zigomba kugumaho.

[32] Ku bijyanye n'amafaranga y'igihembo cya Avoka, Urukiko rurasanga kuba ubujurire bwa Kakoza Nkuriza Charles nta shingiro bufite, bikaba bigaragara ko Nyagatare Jean Luc warezwe yagombye gukomeza kwiyambaza umuburanira kuri uru rwego, byumvikana ko hari amafaranga yatakaje yishyura uwamuburaniye;ariko kubera ko 4.000.000 Frw asaba ari ikirenga kandi akaba nta bimenyetso ayatangira, mu bushishozi barwo, rurasanga akwiye guhabwa 1.000.000 Frw yiyongera kuri 1.500.000 Frw yagenewe n'Urukiko Rukuru rw'Ubucuruzi, bityo ku nzego zombi akaba 2.500.000 Frw.

[33] Ku byerekeranye na 15.000.000 Frw Nyagatare Jean Luc asaba kubera akababaro yatejwe no kwamburwa uburenganzira bugenerwa umunyamigabanemuri Radio 1 Rwanda Ltd, Urukiko rurasanga, nk'uko urubanza rujuririrwa rubigaragaza (mu gika cya 30), izo ndishyi yari yarazisabye, ariko Urukiko Rukuru rw'Ubucuruzi ntirwazimugenera kubera ko atigeze azisobanura ngo anagaragaze aho zishingiye. Kuba rero, no muri ubu bujurire adasobanura ako kababaro yagize, uretse kuvuga gusa ko yagatejwe no kwamburwa uburenganzira bugenerwa umunyamigabane, ibyo byumvikana ko uru Rukiko narwo ntaho rwahera rusuzuma niba izo ndishyi yasabye zifite ishingiro.

III. ICYEMEZO CY'URUKIKO

[34] Rwemeje ko ubujurire bwa Kakoza Nkuriza Charles nta shingiro bufite;

[35] Rwemeje ko imikirize y'urubanza RCOMA 0071/13/HCC rwaciwe n'UrukikoRukuru rw'Ubucuruzi ku wa 05/12/2014 idahindutse, uretse ku mafaranga y'ikurikiranarubanza n'igihembo cya Avoka Nyagatare Jean Luc agenewe kuri uru rwego;

[36] Rutegetse Kakoza Nkuriza Charles guha Nyagatare Jean Luc 1.000.000Frw y'igihembo cya Avoka kuri uru rwego yiyongera kuri 1.500.000 yari yagenewe n'Urukiko Rukuru rw'Ubucuruzi, yose hamwe akaba 2.500.000 Frw.

[37] Rutegetse ko ingwate y'amagarama yatanzwe na Kakoza Nkuriza Charles ihwanye n'ibyakozwe mu rubanza.