WHITEFIELD INVESTMENT COMPANY LTD v. THOMAS ET PIRON GRANDS LACS

[Rwanda URUKIKO RW'IKIRENGA– RS/INJUST/RAD 00001/2020/SC (Nyirinkwaya, Cyanzayire, Rukundakuvuga, Hitiyaremye, Muhumuza, P.J.) 16 Ukwakira 2020]

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Ikirego gitanzwe mu buryo bw'inyandiko nsobanurakirego – Gutambamira urubanza – Ubujurire bw'urubanza rutambamira urundi – Urubanza rwatambamiwe rwari rutagishoboye kujuririrwa ku kirego cyatanzwe mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe; bidakuraho uburenganzira bw'umuburanyi utanyuzwe n'umwanzuro wafashwe mu rubanza rwarutambamiye bwo kurujuririra.

Amategeko agenga imitunganyirize n'imikorere y'ubutegetsi bw'ubucamanza – Inshingano z'urwego rw'ubucamanza – Inshingano za Perezida w'Urukiko – Icyemezo cyafashwe na Perezida w'Urukiko rw'Ubucuruzi cyo gutesha agaciro inyandikompuruza, atari icyemezo cy'ubutegetsi kiregerwa hashingiwe ku ngingo ya 178 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ahubwo ko umushingamategeko yashatse ko icyo cyemezo kijya mu rwego rw'ibyemezo by'ubuyobozi Perezida w'Urukiko ashobora gufata mu rwego rw'imitunganyirize n'imigendekere myiza y'akazi kajyanye n'imanza..

Incamake y'ikibazo: Whitefield Investment Company Ltd yareze Thomas et Piron Grands Lacs mu bukemurampaka ko itubahirije amasezerano bagiranye yo kubaka warehouses muri Free Trade Zone, Whitefield Investment Company LTD iratsinda, Ubwanditsi bw'Urukiko rw'Ubucuruzi butera inyandikompuruza ku mwanzuro w'ubukemurampaka no ku cyemezo cye cyiswe *recoverable costs*, urubanza rutangiye kurangizwa Thomas et Piron Grands Lacs yandikira Perezida w'Urukiko rw'Ubucuruzi isaba ko iyo nyandikompuruza yateshwa agaciro.

Nyuma yo kumva impande zombi zirebwa n'iki kibazo, Perezida w'urwo rukiko yafashe icyemezo kiyitesha agaciro, bituma Urega atakambira Perezida w'Urukiko Rukuru rw'Ubucuruzi kugira ngo akureho icyemezo cyafashwe na Perezida w'Urukiko rw'Ubucuruzi, ariko ntiyasubiza kuri uko gutakamba, atanga ikirego cy'ubutegetsi mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe mu Rukiko Rwisumbuye rwa Nyarugenge isaba ko inyandikompuruza isubizwa agaciro kayo.

Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko ikirego cy'Urega kitakiriwe ngo gisuzumwe kuko kitagombaga gutangwa nk'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe. Urega yajuririye, Urukiko Rukuru rwemeza ko ubujurire bw'Urega bufite ishingiro, rutegeka ko asubizwa uburenganzira bwayo, inyandikompuruza yari yateshejwe agaciro na Perezida w'Urukiko rw'Ubucuruzi igasubizwa agaciro kayo.

Uregwa yatambamiye icyo cyemezo igaragaza ko icyemezo cya Perezida w'Urukiko rw'Ubucuruzi gitesha agaciro inyandikompuruza atari icyemezo cy'ubutegetsi nk'ibindi byemezo by'ubutegetsi. Urukiko Rukuru rwemeje ko ikirego cy'Uregwa gifite ishingiro, ko urwo rubanza ruteshejwe agaciro.

Urega yajuririye Urukiko rw'Ubujurire, maze ruca urubanza rwemeza kutakira ubujurire bwayo kuko butari mu bubasha bwarwo. Urega yandikiye Perezida w'Urukiko rw'Ikirenga imusaba ko yategeka ko urubanza rwaciwe n'Urukiko rw'ubujurire rwasubirwamo ku mpamvu z'akarengane karugaragaramo, Perezida w'Urukiko yemeza ko uru rubanza rwongera kuburanishwa.

Urubanza rwaburanishijwe mu ruhame hasuzumwa niba ubujurire bw'Urega bwaragombaga kwakirwa mu Rukiko rw'Ubujurire, aho avuga ko urwo Rukiko rutakiriye ubujurire bwayo rwirengagije ko mw'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko hatambamirwa urubanza rwafashweho icyemezo mu mizi kandi rutagishoboye kujuririrwa ndetse ko imanza zaciwe habaye itambama zishobora kongera kujuririrwa inshuro imwe gusa. Ibi bitandukanye n'umurongo wari warafashwe mbere n'Urukiko rw'Ikirenga aho rwasobanuyemo ko urubanza rutambamira urundi rujuririrwa ari uko urwatambamiwe narwo rwashoboraga kujuririrwa.

Uregwa avuga ko urubanza ruciwe n'Urukiko habaye itambamira rubanza rushobora kujuririrwa inshuro imwe bitewe na kamere yarwo ariko ko atari ihame. Bivuze ko nyuma y'ubujurire mu Rukiko Rukuru nta bundi bujurire bwashobokaga ariko bishobora gusubirwaho bisabwe umucamanza wafashe icyo cyemezo kugira ngo agire ibyo

ahindura cyangwa akura ku byo yari yemeje mbere, ariko bitabangamira uburenganzira bw'abandi ku byo bahawe n'icyo cyemezo.

Ku ngingo ijyanye no kumenya niba icyemezo cyafashwe na Perezida w'Urukiko cyo kuvanaho inyandikompuruza ari icyemezo cy'ubutegetsi kiregerwa hashingiwe ku ngingo ya 178 iteganywa n'itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi rikoreshwa uyu munsi. Urega avuga ko hari ibyemezo Perezida w'urukiko afata nk'umucamanza kibanza kunyura mu nzira zisanzwe ibindi birego binyuramo mu gihe bikenewe guhindurwa n'ibyemezo afata nk'umuyobozi bisubirwamo hakurikijwe inzego z'imitegerekere z'urwego rw'ubucamanza. Akomeza bavuga ko icyemezo cyo gutesha agaciro inyandikompuruza ari icyemezo cy'ubuyobozi, utacyishimiye anyura mu nzira zo gutakambira Perezida w'urukiko rwisumbuye ku rwagifashe. Ibi bikaba bitandukanye n'ibyemejwe n'Urukiko Rukuru aho rwemeje ko icyemezo cyafashwe na Perezida w'Urukiko rw'Ubucuruzi cyo kuvanaho inyandikompuruza atari icyemezo cy'ubutegetsi ngo kubera ko gifatwa hashingiwe ku mpamvu z'ababuranyi cyangwa ku mpamvu z'abo inyandikompuruza ireba.

Uregwa avuga ko icyemezo cyo gutesha agaciro inyandikompuruza ari icyemezo cy'ubutegetsi ariko ko atari icyemezo cy'ubutegetsi nk'ibindi kuko Perezida w'Urukiko agifata mu rwego rw'ubuyobozi ntawe abajije kandi kikaba kitarebana n'ishyirwa mu bikorwa ry'ibyemezo byafashwe n'inkiko. Akomeza avuga ko Umushingamategeko yateganyije ko iki cyemezo gikuraho inyandikompuruza nta nzira yo gutakamba yateganyije, ibi nabyo bikaba byumvikanisha ko atari icyemezo cy'ubutegetsi (*caractère administratif*), ahubwo ari icyemezo cy'ubucamanza (caractère judiciaire), kuba perezida w'urukiko agifata mu biro bikaba bitavanaho iyo kamere.

Incamake y'icyemezo: 1. Urubanza rwatambamiwe rwari rutagishoboye kujuririrwa ku kirego cyatanzwe mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe; bidakuraho uburenganzira bw'umuburanyi utanyuzwe n'umwanzuro wafashwe mu rubanza rwarutambamiye bwo kurujuririra. Bityo, ubujurire bwa Whitefield Investment Company Ltd bwagombaga kwakirwa mu Rukiko rw'Ubujurire.

2. Icyemezo cyafashwe na Perezida w'Urukiko rw'Ubucuruzi cyo gutesha agaciro inyandikompuruza, atari icyemezo cy'ubutegetsi kiregerwa hashingiwe ku ngingo ya 178 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ahubwo ko umushingamategeko yashatse ko icyo cyemezo kijya mu rwego rw'ibyemezo by'ubuyobozi Perezida w'Urukiko ashobora gufata mu rwego rw'imitunganyirize n'imigendekere myiza y'akazi kajyanye n'imanza. Bityo, icyemezo cya Perezida w'Urukiko rw'ubucuruzi gikuraho inyandikompuruza ntabwo ari icyemezo cy'ubutegetsi kiregerwa mu buryo buteganywa n'ingingo ya 178 y'Itegeko ryavuzwe haruguru.

Ubujurire bwagombaga kwakirwa mu Rukiko rw'Ubujurire.
Urubanza rwaciwe n'Urukiko rw'Ubujurire ruvanyweho.
Urubanza rwaciwe n'Urukiko Rukuru ntiruhindutse.

Amategeko yashingiweho:
Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe muri 2015, ingingo ya 151.
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 9, 20, 142, 149, 172, 161, 168, 178,179, 181, 184, 192 n'iya 243.
Itegeko Nº 012/2018 ryo ku wa 04/04/2018 rigena imitunganyirize n'imikorere y'ubutegetsi bw'ubucamanza, ingingo ya 43.

Nta manza zifashishijwe.

Urubanza

IMITERERE Y'URUBANZA

[1] Whitefield Investment Company Ltd yareze Thomas et Piron Grands Lacs mu bukemurampaka ko itubahirije amasezerano bagiranye yo kubaka *warehouses* muri F*ree Trade Zone*, Whitefield Investment Company LTD iratsinda, Ubwanditsi bw'Urukiko rw'Ubucuruzi butera inyandikompuruza ku mwanzuro w'ubukemurampaka no ku cyemezo

cyiswe *recoverable costs*, urubanza rutangiye kurangizwa Thomas et Piron Grands Lacs yandikira Perezida w'Urukiko rw'Ubucuruzi isaba ko iyo nyandikompuruza yateshwa agaciro.

[2] Nyuma yo kumva impande zombi zirebwa n'iki kibazo, perezida w'urwo rukiko yafashe icyemezo kiyitesha agaciro ashingiye ku mpamvu y'uko umukemurampaka Emmanuel Ochola Odhiambo wo muri Kenya yafashe umwanzuro mu buryo bunyuranye n'amategeko ndemyagihugu ya Repubulika y'u Rwanda kuko yakomeje kuburanisha urubanza azi neza ko yihanwe, ndetse ko hashyizweho undi mukemurampaka, ko rero kurekera inyandikompuruza ku mwanzuro yafashe byaba ari ukwirengagiza uburenganzira bwa Thomas et Piron Grands Lacs bwo kuburanishwa n'urukiko rubifitiye ububasha.

[3] Inyandikompuruza imaze guteshwa agaciro, Whitefield Investment Company Ltd, ishingiye ku ngingo ya 243 igika cya 4 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko icyemezo cya Perezida w'urukiko ku bijyanye no gutesha agaciro inyandikompuruza ari icyemezo cy'ubuyobozi , iya 178 y'iryo tegeko iteganya iby'iyakirwa n'itangwa ry'ikirego gisaba gukuraho icyemezo cy'umuyobozi, ndetse n'iya 179 y'iryo tegeko irebana n'ingaruka za bene ibyo birego, yatakambiye Perezida w'Urukiko Rukuru rw'Ubucuruzi kugira ngo akureho icyemezo cyafashwe na Perezida w'Urukiko rw'Ubucuruzi, ariko ntiyasubiza kuri uko gutakamba, Whitefield Investment Company Ltd itanga ikirego cy'ubutegetsi mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe mu Rukiko Rwisumbuye rwa Nyarugenge isaba ko inyandikompuruza isubizwa agaciro kayo.

[4] Urwo rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Urugereko ruburanisha imanza z'ubutegetsi, rukomeza kujuririrwa kugeza mu Rukiko rw'Ubujurire, urubanza rwaciwe n'urwo rukiko akaba ari narwo rwaje mu karengane.

[5] Mu rubanza RAD 00116/2019/TGI/NYGE rwaciwe ku wa 24/06/2019, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko ikirego cya Whitefield Investment Company Ltd kitakiriwe ngo gisuzumwe ngo kuko kitagombaga gutangwa nk'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe. Iki cyemezo cy'urukiko cyashingiye ku mpamvu y'uko nta bwihutirwe Whitefield Investment Company Ltd yigeze igaragaza bwatuma icyemezo cyafashwe cyo gutesha agaciro inyandikompuruza gikurwaho no kuba bigaragara ko ibyo isaba birimo impaka, bikaba byari ngombwa kubanza kumenyesha abarebwa n'ikibazo bose mbere y'uko Urukiko rubifataho icyemezo.

[6] Whitefield Investment Company Ltd yarajuriye. Mu rubanza RADA 00091/2019/HC/KIG rwo ku wa 26/07/2019, Urukiko Rukuru rwemeje ko ubujurire bwa Whitefield Investment Company Ltd bufite ishingiro, rutegeka ko isubizwa uburenganzira bwayo, inyandikompuruza yari yateshejwe agaciro na Perezida w'Urukiko rw'Ubucuruzi igasubizwa agaciro kayo. Mu gufata iki cyemezo Urukiko rwashingiye ku ngingo ya 178 igika cya 3 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryavuzwe ivuga ko umuyobozi ufite ububasha bwisumbuye k'uwafashe icyemezo kinengwa watakambiwe agomba gusubiza ubwo butakambe mu gihe cy'ukwezi kumwe, yaba adasubije muri icyo gihe, ubutakambe bugafatwa nk'aho bufite ishingiro.

[7] Thomas et Piron Grands Lacs yatambamiye icyo cyemezo igaragaza ko icyemezo cya Perezida w'Urukiko rw'Ubucuruzi gitesha agaciro inyandikompuruza atari icyemezo cy'ubutegetsi nk'ibindi byemezo by'ubuyobozi, ndetse ko mu rubanza rutambamirwa hakozwe amakosa yo gusuzuma ikirego mu mizi kandi mu rubanza rwajuririwe urukiko rwari rwemeje ko ikirego kitakiriwe, bivuze ko urubanza rwagombaga gusubizwa mu Rukiko Rwisumbuye akaba arirwo ruca urubanza mu mizi, ko irindi kosa riri mu rubanza itambamira ari uko ingingo ya 178 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryavuzwe yakoreshejwe nabi kuko uburenganzira bwatakambiwe butari ubwa Whitefield Investment Company Ltd kuko atariyo yari yasabye ko inyandikompuruza iteshwa agaciro.

[8] Mu rubanza RADA 00109/2019/HC/KIG rwo ku wa 17/09/2019, Urukiko Rukuru rwemeje ko ikirego cya Thomas & Piron Grands Lacs Ltd gitambamira urubanza RADA 00091/2012/HC/KIG gifite ishingiro, ko urwo rubanza ruteshejwe agaciro.

[9] Mu gufata icyo cyemezo, rwasobanuye ko hashingiwe ku nzira zikoreshwa kugira ngo inyandikompuruza iterwe ku nyandikompesha n'uburyo ikurwaho, bigaragaza ko atari igikorwa bwite cya Perezida w'Urukiko kuko kibanzirizwa no kuba iyo nyandikompuruza yashyizweho n'Umwanditsi w'Urukiko, ubifitemo inyungu akandikira

perezida w'urukiko asaba ko ivanwaho, bikamenyeshwa abo bireba bose, nabo bakagira icyo babivugaho, perezida w'urukiko akabona gufata icyemezo. Bivuze ko icyo cyemezo kiba kitamuturutseho ahubwo ko kiba gishingiye ku mpamvu z'ababuranyi cyangwa abo inyandikompuruza ireba, ariyo mpamvu kiba kitagomba kuregerwa mu buryo buteganywa n'ingingo ya 178 yavuzwe haruguru, nyamara akaba ariyo Whitefield Investment Company Ltd yashingiyeho itanga ikirego cy'ubutegetsi, bikaba byumvikana ko icyo kirego yagitanze mu buryo budakurikije amategeko.

[10] Whitefield Investment Company Ltd yarongeye irajurira. Mu iburanisha ry'urwo rubanza Thomas et Piron Grands Lacs Ltd yatanze inzitizi yo kutakira ubujurire bwa Whitefield Investment Company Ltd hashingiwe ku biteganywa n'ingingo ya 192 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryavuzwe iteganya ko icyemezo cyafashwe ku kibazo nsobanurakirego gitanzwe n'umuburanyi umwe kijuririrwa inshuro imwe gusa, iyo nshuro ikaba yararenze.

[11] Whitefield Investment Company Ltd yireguye ivuga ko ubujurire bwayo bushingiye ku ngingo ya 168 y'iryo tegeko iteganya ko urubanza ruciwe n'urukiko habayeho itambamirarubanza rushobora kujuririrwa hakoreshejwe inzira zimwe nk'izikoreshwa mu kujuririra izindi manza, ko kandi urubanza rutambamira urundi rushobora kujuririrwa rimwe gusa, ikavuga ko itegeko ryayemereraga kujurira indi nshuro imwe.

[12] Mu rubanza RADAA 00006/2019/CA rwo kuwa 06/12/2019, Urukiko rw'Ubujurire rwemeje ko inzitizi yatanzwe na Thomas et Piron Grands Lacs yo kutakira ubujurire bwa Whitefield Investment Company Ltd ifite ishingiro, ko rero ubujurire bwayo butakiriwe. Mu gufata icyo cyemezo rwashingiye ku kuba ikirego cyayo cyaratanzwe mu Rukiko Rwisumbuye gitanzwe mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe, rujuririrwa mu Rukiko Rukuru ariyo kamere rufite, rutambamirwa mu Rukiko Rukuru n'ubundi rugifite iyo kamere, bityo ko bitari gushoboka ko rujuririrwa mu Rukiko rw'Ubujurire kuko bene icyo kirego kijuririrwa rimwe gusa, uyu akaba ari umurongo wafashwe mu manza zaciwe n'urwo rukiko, ndetse n'Urukiko rw'Ikirenga.

[13] Whitefield Investment Company Ltd yandikiye Perezida w'Urukiko rw'Ikirenga imusaba ko yategeka ko urubanza RADAA 00006/2019/CA rwasubirwamo ku mpamvu z'akarengane karugaragaramo, maze ku wa 18/05/2020 mu cyemezo nimero 259/CJ/2020 Perezida w'Urukiko yemeza ko uru rubanza rwongera kuburanishwa ategeka ko ubwanditsi bw'Urukiko rw'Ikirenga kuruha numero kugirango ruburanishwe. Rumaze kwandikwa rwahawe RS/INJUST/RAD 00001/2020/SC.

[14] Urubanza rwaburanishijwe mu ruhame ku wa 15/09/2020, Whitefield Investment Company Ltd ihagarariwe na Me Munyandamutsa Jean Pierre hamwe na Me Butare Emmanuel, Thomas et Piron Grands Lacs ihagarariwe na Me Ngirinshuti Jean Bosco hamwe na Me Nzirabatinyi Fidèle.

[15] Urukiko rwabanje kwemeranya na bo ku ngingo zigize urubanza hashingiwe ku myanzuro impande zose zatanze, ari nabyo bibazo byasuzumwe muri uru rubanza. Izo ngingo ni izi zikurikira:

- Kumenya niba ubujurire bwa Whitefield Investment Company Ltd bwaragombaga kwakirwa mu Rukiko rw'Ubujurire.
- Kumenya niba icyemezo cyafashwe na Perezida w'Urukiko rw'Ubucuruzi cyo kuvanaho inyandikompuruza ari icyemezo cy'ubutegetsi kiregerwa hashingiwe ku ngingo ya 178 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi;
- Kumenya niba Thomas et Piron Grand Lacs yahabwa indishyi isaba.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A) Kumenya niba ubujurire bwa Whitefield Investment Company Ltd bwaragombaga kwakirwa mu Rukiko rw'Ubujurire

[16] Me Munyandamutsa Jean Pierre na Me Butare Emmanuel bahagarariye Whitefield Investment Company Ltd bavuga ko Urukiko rw'Ubujurire rwemeje ko ubujurire bwayo butakiriwe rwirengagije ingingo ya 161 igika cya gatatu

y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko hatambamirwa urubanza rwafashweho icyemezo mu mizi kandi rutagishoboye kujuririrwa n'iya 168 igika cya kabiri y'iryo tegeko iteganya ko imanza zaciwe habaye itambama zishobora kongera kujuririrwa inshuro imwe gusa.

[17] Bavuga kandi ko urubanza RCAA 0050/11/CS, Urukiko rw'Ikirenga rwasobanuyemo ko urubanza rutambamira urundi rujuririrwa ari uko urwatambamiwe narwo rwashoboraga kujuririrwa, rutari rukwiye gushingirwaho nka jurisprudence n'Urukiko rw'Ubujurire kuko rwaciwe hashingiwe ku itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryo muri 2004 kandi ikirego cya Whitefield Investment Company Ltd cyaratanzwe hakurikijwe itegeko ryo muri 2018.

[18] Me Ngilinshuti Jean Bosco na Me Nzirabatinyi Fidèle bahagarariye Thomas et Piron Grand Lacs bavuga ko ingingo ya 168 igika cya 2 y'itegeko ryavuzwe itagomba gusomwa yonyine, ahubwo igomba gusomerwa hamwe n'igika cya mbere cy'iyo ngingo iteganya ko urubanza ruciwe n'Urukiko habaye itambamira rubanza rushobora kujuririrwa hakoreshejwe inzira zimwe nk'izikoreshwa mu kujuririra izindi manza, ibivuzwe muri iki gika bikaba byumvikanisha ko urubanza ruciwe n'Urukiko habaye itambamira rubanza rushobora kujuririrwa inshuro imwe bitewe na kamere yarwo ariko ko atari ihame.

[19] Bakomeza bavuga ko icyemezo gifashwe ku nyandiko nsobanurakirego itanzwe n'umuburanyi umwe kijuririrwa inshuro imwe gusa nk'uko bisobanurwa mu ngingo ya 192 y'itegeko ryavuzwe, bivuze ko nyuma y'ubujurire mu Rukiko Rukuru nta bundi bujurire bwashobokaga.

[20] Bavuga ko n'ubwo bene ibyo birego bitajuririrwa kabiri, ariko bishobora gusubirwaho (*réformation et rétractation*) kuko ingingo ya 194 y'itegeko ryavuzwe iteganya ko uwatanze inyandiko nsobanurakirego cyangwa uwayigobotsemo ashobora, mu gihe hari ibyahindutse, gutanga ikirego gisaba umucamanza wafashe icyo cyemezo kugira ibyo ahindura cyangwa akura ku byo yari yemeje mbere, ariko bitabangamira uburenganzira bw'abandi ku byo bahawe n'icyo cyemezo.

UKO URUKIKO RUBIBONA

[21] Ikirego cya Whitefield Investment Company Ltd gisaba ko inyandikompuruza isubizwa agaciro yateshejwe, yagitanze mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe ishingiye ku ngingo ya 178 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya mu gika cyayo cya nyuma ko iyo nta gisubizo yahawe kandi atasubijwe uburenganzira bwe, (uwatakambiye umuyobozi ufite ububasha bwisumbuye k'uwafashe icyemezo kinengwa) ashobora gusaba urukiko ruburanisha imanza z'ubutegetsi gutegeka ko uburenganzira bwe bwubahirizwa. Icyo kirego gitangwa mu gihe kitarenze ukwezi kumwe (1) mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe.

[22] Uburyo ibi birego bijuririrwa bisobanuwe mu ngingo ya 192 y'iryo tegeko, iteganya ko icyemezo cy'umucamanza ku kirego cyatanzwe mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe kijuririrwa inshuro rimwe gusa. Iyi ngingo niyo Whitefield Investment Company Ltd yashingiyeho ijuririra mu Rukiko Rukuru icyemezo cyari cyafashwe n'Urukiko Rwisumbuye. Yumvikanisha ko nyuma y'uko Urukiko Rwisumbuye rufashe icyemezo, kikajuririrwa mu Rukiko Rukuru, nta bundi bujurire bwashobokaga kuko inzira z'ubujurire zisanzwe zari zarangiriye muri urwo rukiko.

[23] Ikibazo cyibazwaho muri uru rubanza ni icyo kumenya uko bigenda igihe icyemezo cyafashwe ku kirego cyatanzwe mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe cyarangije inzira zisanzwe z'ubujurire ariko kikaza gutambamirwa nk'uko Thomas et Piron Grand Lacs yabikoze, maze Urukiko Rukuru, mu rubanza rutambamira urundi rugahindura icyemezo rwari rwafashe mu rubanza rwatambamiwe. Ese ubujurire bw'urwo rubanza rwaciwe habaye itambamirarubanza bwashoboraga kwakirwa mu gihe urubanza rwatambamiwe rwo rwari rutagishoboye kujuririrwa hashingiwe ku ngingo ya 192 y'itegeko ryavuzwe.

[24] Ku birebana n'inzira yo gutambamira urubanza, ingingo ya 161 y'Itegeko ryavuzwe ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, mu gika cyayo cya gatatu, ivuga ko

hatambamirwa (gusa) urubanza rwafashwemo icyemezo mu mizi kandi rutagishoboye kujuririrwa, naho ingingo ya 168 y'iryo tegeko, mu gika cyayo cya nyuma, igateganya ko urubanza rutambamira urundi rushobora kujuririrwa rimwe gusa. Ibiteganyijwe muri izi ngingo zombi bikaba byumvikanisha ko urubanza rushobora gutambamirwa ari urwarangije inzira z'ubujurire zisanzwe, hanyuma urubanza ruciwe kuri iryo tambama rukaba rushobora kujuririrwa inshuro imwe.

[25] Urukiko rurasanga rero kuba urubanza rwatambamiwe rwari rutagishoboye kujuririrwa hashingiwe ku ngingo ya 192 y'iryo tegeko kuko rwaciwe ku bujurire bw'icyemezo cyafashwe ku kirego cyatanzwe mu buryo bw'inyandiko nsobanurakirego itanzwe n'umuburanyi umwe, hakaba nta bundi bujurire bwashobokaga, bidakuraho uburenganzira bw'umuburanyi utanyuzwe n'umwanzuro wafashwe mu rubanza rwarutambamiye bwo kurujuririra hakurikijwe ibiteganywa n'ingingo ya 161 n'iya 168 igika cya kabiri z'iryo tegeko.

[26] Ibimaze kuvugwa byumvikanisha ko umurongo watanzwe mu rubanza RCAA 0050/11/CS utagombaga gukurikizwa muri uru rubanza rusubirishwamo kuko wari ushingiye ku Itegeko N° 18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iryo tegeko kimwe n'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryarisimbuye zikaba ntaho zateganyaga ko hatambamirwa gusa imanza zitagishoboye kujuririrwa, ndetse ko urubanza rutambamira urundi rushobora kujuririrwa rimwe nk'uko biteganywa mu itegeko ry'ubu.

[27] Izi mpinduka zazanywe n'iri tegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi zumvikanisha ko urukiko rwajuririwe urubanza rwaciwe habaye itambamirarubanza rutabanza gusuzuma niba urubanza rwatambamiwe narwo rwarashoboraga kujuririrwa kugira ngo rubone gufata icyemezo ku iyakirwa ry'ubwo bujurire kuko urubanza rutambamirwa aba nyine ari urubanza rutagishoboye kujuririrwa. Bityo kujurira inshuro rimwe akaba ari uburenganzira bwahawe umuburanyi utaranyuzwe n'umwanzuro wafashwe mu rubanza rwatambamiwe.

[28] Naho ibyo abahagarariye Thomas et Piron Grand Lacs bavuga ko igika cya kabiri cy'ingingo ya 168 y'itegeko ryavuzwe kitagomba gusomwa cyonyine, ahubwo kigomba gusomerwa hamwe n'igika cya mbere cyayo giteganya ko urubanza ruciwe n'Urukiko habaye itambamira rubanza rushobora kujuririrwa hakoreshejwe inzira zimwe nk'izikoreshwa mu kujuririra izindi manza, bagashaka kumvikanisha ko ibivuzwe muri iki gika bisobanuye ko urubanza ruciwe n'Urukiko habaye itambamira rubanza rushobora kujuririrwa inshuro imwe bitewe na kamere yarwo ariko ko atari ihame, uru rukiko rusanga atari byo kuko icyo igika cya mbere cy'ingingo ya 168 gisobanuraari uburyocyangwainziraibyobiregobitangwamo,kikerekana ko bitangwa mu nzira zimwe cyangwa zisa n'izo ibindi birego by'ubujurire bitangwamo.

[29] Urukiko rw'Ikirenga rusanga, nk'uko yabikoze no ku bireba izindi nzira z'ubujurire, Umushingamategeko atarashatse gusobanura mu buryo burambuye uburyo ibirego bitangwa ahubwo agakoresha imvugo yohereza ku zindi ngingo, kuko muri rusange uburyo ibirego ku rwego urwo arirwo rwose bitangwa budatandukanye n'inzira zisanzwe zireba itangwa ry'ikirego ku rwego rwa mbere nk'uko biteganywa mu ngingo ya 20 y'itegeko ryavuzwe ivuga ko urukiko ruregerwa hakoreshejwe imyanzuro iregera urukiko hifashishijwe uburyo bw'ikoranabuhanga bwabigenewe bikozwe n'urega ubwe, umwunganira cyangwa umuhagarariye. Ni muri urwo rwego, yavuze ko gusubirishamo urubanza (opposition) bikorwa mu buryo bumwe n'ubwo gutanga ikirego (reba igika cya kabiri cy'ingingo ya 142 y'iryo tegeko), ko ubujurire busanzwe bukorwa mu buryo bumwe n'ubwo gutanga ikirego (reba ingingo ya 149 y'iryo tegeko), ko ikirego cyo gusubirishamo urubanza ingingo nshya gitangwa mu nzira zimwe nk'izubahirizwa mu gutanga ibindi birego (reba igika cya kabiri cy'ingingo ya172 y'iryo tegeko).

[30] Ni no muri urwo rwego rero, ku bijyanye no kujuririra urubanza rutambamira urundi, Umushingamategeko yahisemo kuvuga gusa mu gika cya mbere cy'ingingo ya 168 yavuzwe ko urubanza ruciwe n'urukiko habaye itambamirarubanza rushobora kujuririrwa hakoreshejwe inzira zimwe nk'izikoreshwa mu kujuririra izindi manza, aho kongera kurondora uburyo ikirego gitangwamo kuko byose bikorwa mu nzira zimwe nk'uko bisobanuye mu ngingo ya 20 yavuzwe haruguru.

[31] Hashingiye rero ku bimaze gusobanurwa, Urukiko rurasanga ubujurire bwa Whitefield Investment Company Ltd bwaragombaga kwakirwa mu Rukiko rw'Ubujurire.

B) Kumenya niba icyemezo cyafashwe na Perezida w'Urukiko rw'Ubucuruzi cyo kuvanaho inyandikompuruza ari icyemezo cy'ubutegetsi kiregerwa hashingiwe ku ngingo ya 178 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi

[32] Me Munyandamutsa Jean Pierre na Me Butare Emmanuel bahagarariye Whitefield Investment Company Ltd bavuga ko hari ibyemezo perezida w'urukiko afata nk'umucamanza (*décision judiciaire*) n'ibyemezo afata nk'umuyobozi (*décision administrative*). Iyo afashe icyemezo nk'umucamanza kinyura mu bwanditsi bw'urukiko, kigahabwa nomero, kikaburanishwa, utishimiye icyemezo gifashwe akaba yakijuririra. Iyo afashe icyemezo nk'umuyobozi w'urukiko, ntikinyura muri izo nzira, ntigihabwa numero y'urubanza, ntigifatwa habaye iburanisha ngo hacibwe urubanza rujuririrwa.

[33] Bakomeza bavuga ko ingingo ya 243 y'Itegeko ryavuzwe iteganya ko icyemezo cya perezida w'urukiko ku bijyanye no gutesha agaciro inyandikompuruza ari icyemezo cy'ubuyobozi, bivuze ko utacyishimiye anyura mu nzira zo gutakambira perezida w'urukiko rwisumbuye ku rwafashe icyo cyemezo nk'uko biteganywa n'ingingo ya 178 y'iryo tegeko kuko icyo cyemezo agifata amaze kureba ibisabwa kugirango haterwe kashimpuruza.

[34] Bavuga kandi ko Urukiko Rukuru rwarenze ku bivugwa muri iyo ngingo maze rwemeza ko icyemezo cyafashwe na Perezida w'Urukiko rw'Ubucuruzi cyo kuvanaho inyandikompuruza atari icyemezo cy'ubutegetsi ngo kubera ko gifatwa hashingiwe ku mpamvu z'ababuranyi cyangwa ku mpamvu z'abo inyandikompuruza ireba kandi ataribyo byakibuza kuba icyemezo cy'ubutegetsi, ntiyanasobanura ubwoko bwacyo cyangwa ingingo y'itegeko yashingiweho, ibi bikaba binyuranyije n'ingingo ya 151 y'Itegeko Nshinga rya Repubulika y' u Rwanda ryo muri 2003 ryavuguruwe muri 2015 iteganya, mu gace kayo ka gatatu, ko urubanza rwose ruciwe rugomba kugaragaza impamvu rushingiraho kandi rukandikwa mu ngingo zarwo zose, rugomba gusomerwa mu ruhame n'impamvu zose rwashingiyeho uko zakabaye n'icyemezo cyafashwe, ndetse n'ingingo ya 9, igika cya mbere, y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryavuzwe, iteganya ko umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego, iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho (.).

[35] Me Ngilinshuti Jean Bosco uhagarariye Thomas et Piron Grand Lacs avuga ko nubwo ingingo ya 243 y'itegeko ryavuzwe iteganya ko icyemezo cyo gutesha agaciro inyandikompuruza ari icyemezo cy'ubutegetsi, ari inyito gusa kubera ko gifatwa na perezida w'urukiko, ariko ko atari icyemezo cy'ubutegetsi nk'ibindi.

[36] Me Nzirabatinyi Fidèle nawe uhagarariye Thomas et Piron Grand Lacs avuga ko icyemezo cya Perezida w'Urukiko rw'Ubucuruzi gikuraho inyandikompuruza kiba kigamije gushyira mu bikorwa ibyemejwe n'inkiko kandi ko iyo usomye ingingo ya 243, igika cya 2, usanga umushingamategeko yarateganyije ukuvuguruzanya kw'abarebwa n'icyemezo (*débat contradictoire*) kuko agifata abanje kumenyesha ikibazo abarebwa nacyo bose, nabo bakagira iminsi 5 yo kugira icyo bakivugaho. Ibi byumvikanisha ko icyo cyemezo gitandukanye n'ibindi byemezo afata mu rwego rw'ubuyobozi (*purement administrative*) ntawe abajije kandi bitarebana n'ishyirwa mu bikorwa ry'ibyemezo byafashwe n'inkiko.

[37] Akomeza avuga ko mu bindi byemezo by'ubutegetsi, nk'icyemezo gica ihazabu ababuranyi batinza urubanza cyangwa icyemezo cy'umwanditsi cyo gusiba urubanza, Umushingamategeko yateganyije ko bitakambirwa Perezida w'Urukiko, ariko ko atari ko biri ku birebana n'icyemezo gikuraho inyandikompuruza kuko nta nzira yo gutakamba yateganyije, ibi nabyo bikaba byumvikanisha ko atari icyemezo cy'ubutegetsi (*caractère administratif*), ahubwo ari icyemezo cy'ubucamanza (*caractère judiciaire*), kuba perezida w'urukiko agifata mu biro bikaba bitavanaho iyo kamere.

[38] Ku birebana no kuba umucamanza ataravuze ubwoko bw'icyemezo cyafashwe na Perezida w'Urukiko rw'Ubucuruzi cyo kuvanaho inyandikompuruza, Me Ngilinshuti Jean Bosco avuga ko atari ashinzwe kuvuga inyito yacyo kuko atari cyo cyari cyaregewe, kandi ko kuba atarasobanuye ubwoko bw'icyo cyemezo ubwabyo atari impamvu y'akarengane, ko ahubwo bashoboraga kujya gusobanuza urubanza umucamanza akababwira ubwoko bwacyo niba babifitemo inyungu.

[39] Naho ku birebana no kuba umucamanza nta ngingo y'amategeko yashingiyeho afata icyemezo, avuga ko atari ko biri kuko yasesenguye ibiteganywa n'ingingo ya 178 n'iya 243 z'itegeko ryavuzwe, kandi ko umucamanza adategetswe igihe cyose gushingira ku itegeko kuko n'iyo ridahari ategetswe guca urubanza hakurikijwe ingingo ya 9 y'iryo tegeko, iteganya, mu gika cyayo cya 2, ko umucamanza adashobora kwanga guca urubanza yitwaje impamvu iyo ariyo yose, kabone n'iyo ntacyo itegeko ryaba riteganya, ridasobanutse mu buryo bwumvikana cyangwa ridahagije.

UKO URUKIKO RUBIBONA

[40] Ibirebana no gutesha agaciro inyandikompuruza yashyizwe ku nyandikompesha, biteganyijwe mu ngingo ya 243 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi igaragaza ko bisabwa perezida w'urukiko rwayishyizeho, ikanagaragaza uburyo ikibazo yashyikirijwe gisuzumwa n'igihe bigomba kuba byakorewemo. Iyo ngingo igira iti:

> Iyo inyandikompesha ishyizweho inyandikompuruza bitari bikwiye, umuburanyi wese ubifitemo inyungu ashobora gusaba mu nyandiko perezida w'urukiko rwashyizeho inyandikompuruza kuyitesha agaciro.
>
> Inyandiko isaba gutesha agaciro inyandikompuruza, igomba kumenyeshwa abarebwa n'ikibazo bose. Abarebwa n'ikibazo bose bafite iminsi itanu (5) yo kuba bagira icyo bavuga ku nyandiko isaba gutesha agaciro inyandikompuruza.
>
> Mu masaha mirongo ine n'umunani (48) nyuma y'igihe kivugwa mu gika cya 2 cy'iyi ngingo, perezida w'urukiko cyangwa uwo yabihereye ububasha, ashingiye ku nyandiko yashyikirijwe, afata icyemezo gisobanuye impamvu gishingiyeho.
>
> Icyemezo cya perezida ku bijyanye no gutesha agaciro inyandikompuruza ni icyemezo cy'ubuyobozi (*décision administrative).*

[41] Iyo ngingo igaragaza ko icyemezo cyo kuvanaho inyandikompuruza ku nyandikompesha kibanzirizwa n'ivuguruzanya ry'abarebwa n'icyemezo (*débat contradictoire*) kuko perezida w'urukiko agifata abanje kubamenyesha ikibazo yashyikirijwe bakagira icyo bakivugaho. Igaragaza kandi ubwihutire Umushingamategeko yahaye isuzumwa ry'icyo ikibazo kuko abarebwa nacyo bafite iminsi 5 yo kuba bagira icyo bakivugaho, perezida nawe akagira amasaha 48 nyuma y'iyo minsi 5 kugira ngo afate icyemezo gisobanuye impamvu gishingiyeho.

[42] Naho ibirebana no kuvanaho ibyemezo by'ubutegetsi, biteganyijwe mu ngingo ya 178 y'iryo tegeko iri mu nteruro ya V yerekeye imiburanishirize yihariye, umutwe wa mbere werekeye imiburanishirize y'imanza z'ubutegetsi, icyiciro cya mbere cyerekeye ikirego gisaba gukuraho ibyemezo by'ubutegetsi. Iyo ngingo, iteganya mu gika cyayo cya mbere ko ikirego gisaba gukuraho icyemezo cy'umuyobozi cyakirwa iyo cyerekeye icyemezo cy'umuyobozi cyaba cyeruye cyangwa kiteruye (icyemezo cy'umuyobozi kivugwa gisobanuwe nka administrative authority mu rurimi rw'icyongereza, nka autorité administrative mu ririmi rw'ugifaransa).

[43] Mu gusuzuma niba icyemezo cya Perezida w'Urukiko rwashyizeho inyandikompuruza cyo kuyitesha agaciro ari icyemezo cy'ubutegetsi kiregerwa hashingiye ku biteganywa n'iyi ngingo ya 178 imaze kuvugwa, habanza gusobanuka niba kiba cyafashwe n'umuyobozi (*administrative authority/ autorité administrative*) uvugwa muri iyo ngingo.

[44] Ubutegetsi bw'ubucamanza bufite inzego z'imitegekere nk'ubundi butegetsi bwa Leta zijyanye n'inshingano urwo rwego rwahawe zo guca imanza. Izo nzego ziteganyijwe mu Itegeko N° 012/2018 ryo ku wa 04/04/2018 rigena imitunganyirize n'imikorere y'ubutegetsi bw'ubucamanza. Havugwamo Inama Nkuru y'Ubucamanza, Biro y'Urwego rw'Ubucamanza, Ubugenzuzi Bukuru bw'inkiko, Ubunyamabanga Bukuru bw'Inkiko, Inkiko zisanzwe n'inkiko zihariye. Izo nzego zigizwe n'abacamanza, abanditsi b'inkiko n'abandi bakozi bagengwa na sitati y'abacamanza n'abakozi b'inkiko ndetse n'abakozi bo mu Bunyamabanga Bukuru bw'inkiko bagengwa na Sitati rusange igenga abakozi ba Leta n'inzego z'imirimo ya Leta.

[45] Kubera imiterere y'ubutegetsi bw'ubucamanza n'inshingano bwahawe, inkiko zose ziyoborwa n'abacamanza. Inshingano za perezida w'urukiko ziteganyijwe mu ngingo ya 43 y'itegeko ryavuzwe rigena imitunganyirize n'imikorere y'Ubutegetsi bw'Ubucamanza1.

[46] Iyo usesenguye ibivugwa muri iyo ngingo, usanga abacamanza bayobora inkiko bashobora gufata ibyemezo by'ubutegetsi (*décisions administratives*) n'ibyemezo by'ubucamanza (*décisions judiciaires*) nk'uko n'ababuranyi ubwabo babyemeranywaho. Ibyemezo by'ubucamanza, nk'undi mucamanza wese, abifata mu rwego rwo gukemura ibibazo aba yashyikirijwe n'abagana inkiko, biri mu bubasha bw'urukiko ayobora cyangwa bwa perezida w'urukiko, naho ibyemezo by'ubutegetsi abifata mu rwego rw'imirimo y'ubuyobozi ashinzwe.

[47] Iyo na none usesenguye ibyemezo by'ubutegetsi abayobozi b'inkiko bashobora gufata bivugwa muri iyo ngingo, usanga birimo ibyemezo by'ubwoko bubiri butandukanye, ibyemezo bijyanye n'imitunganyirize n'imigendekere myiza y'akazi kajyanye n'imanza (*actes relatifs au fonctionnement de la justice*): aha havugwa nko kugena amatariki y'iburanisha ry'imanza, kugena inteko iburanisha n'abacamanza baziburanisha, kwemeza cyangwa guhakana iyandikwa ry'ibirego igihe umuburanyi atemeranya n'umwanditsi ku kutakira iyandikwa ry'ikirego, kwemeza ko habayeho ubwumvikane mu nama ntegurarubanza. Hari kandi n'ibyemezo bijyanye n'imitunganyirize y'akazi, imikorere n'imyitwarire y'abakozi b'urukiko ayobora (*actes relatifs à l'organisation du service public de la justice*): aha havugwa nko kugenzura imikorere ya buri mukozi wese w'urukiko ayobora, kumufatira ibihano, gufata ingamba za ngombwa zigamije kunoza akazi k'urukiko no kugira ngo imanza zicibwe vuba kandi neza, gukurikirana no kugenzura imikorere y'inkiko ziri munsi y'urwo ayobora.).

[48] Urukiko rurasanga n'ubwo abacamanza bayobora inkiko bashobora gufata ibyemezo by'ubutegetsi, haba mu rwego rw'imitunganyirize n'imigendekere myiza y'akazi kajyanye n'imanza (*administration de la justice*), haba mu bijyanye n'imitunganyirize y'akazi, imikorere n'imyitwarire y'abakozi b'urukiko ayobora (*organisation du service public de la justice*), ibyemezo bafata bitaregerwa hashingiye ku ngingo ya 178 y'itegeko ryavuzwe kuko uburyo ibyemezo bafata bisubirwamo cyangwa bivuguruzwa biteganyijwe mu itegeko rigenga imitunganyirize n'imikorere y'ubutegetsi bw'ubucamanza, binyuze mu nzego z'imitegekere z'urwego rw'ubucamanza uko zigenda zirutana, aho buri muyobozi w'urukiko aba ashinzwe gukurikirana no kugenzura imikorere y'inkiko ziri munsi y'urwo ayobora (kuva kuri Perezida w'Urukiko Rwisumbuye kugeza kuri Perezida w'Urukiko rw'Ikirenga uyobora Urwego rw'Ubucamanza, ndetse n'Inama Nkuru y'Ubucamanza nk'urwego rukuriye Ubutegetsi bw'Ubucamanza).

[49] Urukiko rurasanga kandi iyo usomeye hamwe ingingo ya 178 y'itegeko ryavuzwe n'ingingo zikurikira, cyane cyane ingingo ya 181 iha urukiko ububasha bwo gutegeka ubuyobozi gukora icyo rwemeje cyangwa kudakora icyo rubujije kandi rugateganya igihano gihatira kurangiza urubanza, ndetse n'ingingo ya 184 igaragaza ko, bisabwe n'umuburanyi ubifitemo inyungu, umuyobozi wanze kubahiriza ibyategetswe mu rubanza ashobora guhamagarwa mu rukiko rwafashe icyemezo kugira ngo yisobanure ku mpamvu zamubujije, umuyobozi uvugwa muri izo ngingo atari umucamanza uyobora urukiko kuko bitakumvikana ko inkiko ziburanisha imanza z'ubutegetsi zahabwa ububasha bwo kugenzura imiyoborere cyangwa imitegekere y'izindi nzego z'ubucamanza, kuko ariho byaganisha ziramutse zemerewe gusuzuma ibyemezo bifashwe n'ubuyobozi bw'izo nzego zindi, bikaba byateza akajagari mu miyoborere y'Urwego rw'Ubucamanza.

[50] Ku birebana by'umwihariko n'icyemezo cyo gutesha agaciro inyandikompuruza, Urukiko rurasanga, usibye n'ibimaze kuvugwa ku bijyanye n'uko ibyemezo bifashwe n'abacamanza bayobora inkiko atari ibyemezo biregerwa

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1 Iyo ngingo igira iti:
Buri Perezida w'Urukiko ashinzwe ubuyobozi bwarwo. Ashinzwe muri rusange ibijyanye n'ica ry'imanza, ubutegetsi, imitunganyirize n'imigendekere myiza y'akazi n'imyifatire y'abakozi b'urukiko ayobora.
Muri urwo rwego
1° ayobora iburanisha ry'imanza z'inteko arimo;
2° agena amatariki y'iburanisha ry'imanza;
3° agena inteko iburanisha akanasaranganya imanza abacamanza baziburanisha;
4° afata ingamba za ngombwa zigamije kunoza akazi k'urukiko no kugira ngo imanza zicibwe vuba;
5° agenzura imikorere ya buri mukozi wese w'urukiko ayobora, akanamufatira ibihano ku rwego rwe, mu gihe yateshutse ku nshingano ze, akurikije amategeko agenga uwo mukozi mu kazi ke kandi akabimenyesha Perezida w'urukiko rumukuriye n'Ubugenzuzi Bukuru bw'Inkiko;
6° atumiza, akanayobora inama y'abacamanza bose b'urukiko n'abandi bakozi buri kwezi n'igihe cyose bibaye ngombwa igamije kureba imikorere y'urukiko muri rusange, ibyerekeye ubudakemwa bw'imanza n'ubwihute bwazo;
7° akurikirana, akanagenzura imikorere y'inkiko ziri munsi y'urwo ayobora.

hashingiwe ku ngingo ya 178 y'itegeko ryavuzwe, Umushingamategeko yarashatse ko iki cyemezo kijya mu rwego rw'ibyemezo by'ubuyobozi Perezida w'Urukiko ashobora gufata mu rwego rw'imitunganyirize n'imigendekere myiza y'akazi kajyanye n'imanza (*administration de la justice*) nk'uko asanzwe afata n'ibindi birimo nko gusuzuma ubujurire ku ihazabu yo gutinza urubanza, iyandikwa ry'ikirego umwanditsi yanze kwandika, kwemeza ko habaye ubwumvikane Ibyo byose bikaba bigamije kugira ngo ibyemezo bimwe bifite aho bihuriye n'imanza bishobore gufatwa ku buryo bwihuse, kandi bworohereza ababuranyi guharanira uburenganzira bwabo, bitabaye ngombwa ko banyura mu nzira zisanzwe z'ibirego (kwandika ikirego mu bwanditsi bw'urukiko, guhabwa nomero, kugena inteko iburanisha, kuburanisha) n'inzira z'ubujurire zijyanye nabyo kugira ngo ibyemezo byazifashwemo bibashe guhinduka.

[51] Umwihariko w'ibyo byemezo byiswe iby'ubutegetsi ubigerereranyije n'imanza, ni uko igihe cyose umuyobozi agifashe, ntikinyure umuburanyi, aba ashobora kumusaba kugihindura, yaba atagihinduye kandi umuburanyi yumva arengana, akaba yabimenyesha umuyobozi ufite ububasha bwisumbuye k'uwafashe icyemezo kinengwa nk'uko bwasobanuwe haruguru cyangwa ubugenzuzi bukuru bw'inkiko kugira ngo bumufashe kubona igisubizo gikwiye ndetse byaba ngombwa, uwo muyobozi wagaragayeho amakosa akaba yafatirwa ibihano mu rwego rw'imyitwarire (*discipline*).

[52] Hashingiye ku bisobanuro byatanzwe bigaragaza ko icyemezo cya Perezida w'Urukiko rw'Ubucuruzi gikuraho inyandikompuruza atari icyemezo cy'ubutegetsi kiregerwa mu buryo buteganywa n'ingingo ya 178 y'Itegeko ryavuzwe ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Urukiko rurasanga nta karengane kabaye mu rubanza RADA 00109/2019/HC/KIG, bityo rukaba rugomba kugumana agaciro karwo.

C) Kumenya niba Thomas et Piron Grand Lacs yahabwa indishyi isaba

[53] Me Ngilinshuti Jean Bosco asaba ko Thomas et Piron Grand Lacs yahabwa 10.000.000 Frw y'indishyi zo gusiragizwa mu manza z'amaherere, 5.000.000 Frw y'igihembo cya Avoka na 2.000.000 Frw y'ikurikiranarubanza.

[54] Me Munyandamutsa Jean Pierre uhagarariye Whitefield Investment Company Ltd avuga ko indishyi Thomas et Piron Grand Lacs isaba nta gaciro zikwiye guhabwa kuko nta bimenyetso izitangira.

UKO URUKIKO RUBIBONA

[55] Urukiko rurasanga nta ndishyi zo gusiragizwa mu manza Thomas et Piron Grand Lacs yahabwa kuko itayatangira ibisobanuro.

[56] Ku birebana n'amafaranga y'igihembo cya Avoka n'ikurikiranarubanza, Urukiko rurasanga nubwo ikirego cya Whitefield Investment Company Ltd cyagombaga kwakirwa mu Rukiko rw'Ubujurire, ntabwo ibyo iregera byahawe ishingiro, ikaba rero igomba kwishyura Thomas et Piron Grand Lacs amafaranga yatakaje ikurikirana urubanza kuri uru rwego, ikaba igenewe 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza agenwe mu bushishozi bw'urukiko kuko ayo isaba nta bisobanuro iyatangira.

III. ICYEMEZO CY'URUKIKO

[57] Rwemeje ko ubujurire bwa Whitefield Investment Company Ltd bwagombaga kwakirwa mu Rukiko rw'Ubujurire.

[58] Rwemeje ko urubanza RADAA 00006/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 06/12/2019 ruvanyweho.

[59] Rwemeje ko icyemezo cya Perezida w'Urukiko rw'Ubucuruzi gikuraho inyandikompuruza atari icyemezo cy'ubuyobozi kiregerwa mu buryo buteganywa n'ingingo ya 178 y'Itegeko ryavuzwe ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[60] Rwemeje ko nta gihindutse ku rubanza RADA 00109/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 17/09/2019.

[61] Rutegetse Whitefield Investment Company Ltd guha Thomas et Piron Grand Lacs 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw.