BUREGEYA N'ABANDI v NYIRAFUNDI

[Rwanda URUKIKO RW'IKIRENGA - RC 0001/2018/SC – (Mukanyundo, P.J., Hitiyaremye, Munyangeri, J.) 23 Gashyantare 2018]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Ibirego byihutirwa – guhakarika irangizarubanza – Usaba ko irangizarubanza riba rihagaze agomba kugaragaza icyakononekara ku buryo kitazashobora gusubiranywa igihe yaramuka atsinze urubanza rw'iremezo

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Ibirego byihutirwa – Indishyi – Amafaranga y'ikurikiranarubanza n'igihembo cy'avoka ntagenwa mu manza zirebana n'ibirego byihutirwa, ahubwo uyasaba ashobora ashobora kuyaregera igihe aburana ikirego cy'iremezo – Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 320, igika cya 4.

Incamake y'ikibazo: Uru rubanza rukomoka ku irage ryakozwe na Sinamenye araga abana be bane aribo Nikuze, Nyirahirana, Kamanzi na Buregeya. Amaze gupfa habaye imanza zinyuranye aho Nyirafundi yareze Buregeya asaba ko habaho izungura ry'ababyeyi nta vangura hanyuma urwo rubanza ruza no kugera mu Rukiko rw'Ikirenga rwaje gutegeka Buregeya kwishyura Nyirafundi amafaranga y'indishyi y'ubukode atamuhaye kuko yamuheje mu mutungo wa se na nyina ndetse runategeka ko inzu yaburanwaga igurishwa abana bose bakagabana ku buryo bungana ikiguzi kivuyemo.

Buregeya yaje gusaba gusubirishamo urubanza N° RCAA 0036/14/CS avuga ko Urukiko rwitiranyije uko ibintu byagenze ku buryo hari amakosa yakozwe mu isesengura ry'ibiburanwa no kuba hari ibimenyetso Urukiko rutabonye ngo rubishingireho bigatuma arenganywa n'icyemezo cy'Urukiko.

Hagati aho yanatanze ikirego cyihutirwa asaba guhagarika irangizwa ry'urwo rubanza rusubirishwamo ingingo nshya kuko Umuhesha w'inkiko yari yatangingije ibikorwa bimwishyuza kandi ayo mafaranga yagenewe Nyirafundi Vicentie yishyuzwa afitanye isano n'ikirego yatanze cyo gusubirishamo urubanza ingingo nshya kitaraburanishwa mu mizi, ko aramutse yishyuye ayo mafaranga nyuma bikazagaragagara ko yarenganye, uwayishyuwe atabona andi mafaranga yo kumusubiza.

Nyirafundi we asobanura ko ibyo bivugwa nta shingoro bifite kuko atabura ubushobozi bwo gusubiza ayo mafaranga dore ko yanava no ku mugabane we azahabwa ku nzu izagurishwa ikiguzi kikagabanywa abana bose ba Sinamenye.

Incamake y'icyemezo: 1. Usaba ko irangizarubanza riba rihagaze agomba kugaragaza icyakononekara ku buryo kitazashobora gusubiranywa igihe yaramuka atsinze urubanza rw'iremezo; bityo rero kuba Buregeya atashoboye kugaragaza icyakononekara ku buryo kitazashobora gusubiranywa igihe yaramuka atsinze urubanza rw'iremezo, nta mpamvu irangizwa ry'urubanza N° RCAA 0036/14/CS ryari ryatangiye rihagarara ku birebana n'ariya 7.294.0008 Frw yategetswe kwishyura Nyirafundi.

2. Amafaranga y'ikurikiranarubanza n'igihembo cy'avoka ntagenwa mu manza zirebana n'ibirego byihutirwa, ahubwo uyasaba ashobora ashobora kuyaregera igihe aburana ikirego cy'iremezo.

Ikirego kihutirwa gisaba ihagarikwa ry'irangiza ry'urubanza nta shingiro gifite;

Amategeko yashingiweho
Nta mategeko agikoreshwa yashingiweho

Amategeko yifashishijwe atagikoreshwa:
Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 190, 316, 320

Imanza zifashishijwe:
RS /REV /COM 0013/12/CS, RRA na GARIBSONS COMMODITIES rwaciwe n'Uurkiko rw'Ikirenga ku itariki ya 23/11/2012
RCOMA 0010/11/CS, KOBIL PETROLEUM RWANDA na Mirimo, rwaciwe n'Urukiko rw'Ikirenga kuwa 18/11/2011

Inyandiko z'abahanga zifashishijwe:
Serge Guinchard et alii, Procédure civile, 4ème Edition, Dalloz, 2015, P. 160.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nyakwigendera Sinamenye Athanase yakoze irage bwite, ku wa 06/09/1980, atanga amerekezo y'umutungo we mu gihe azaba atakiriho, maze umutungo yatanze mu irage awugabanyamo imirwi ine: kuri Nikuze, kuri Nyirahirana Marie Rose, kuri Kamanzi Nathalie no kuri Buregeya Joseph.

[2] Amaze kwitaba Imana habaye imanza nyinshi zerekeye iryo rage, abazungura be baburana hagati yabo, zikaba zarabimburiwe n'urubanza N° RC 0042/11/TGI/NYBE, Nyirafundi Vicentie arega Buregeya Joseph asaba ko hakorwa izungura ry'ababyeyi ku buryo bungana nta vangura, kugabana umurage wa nyina ku nzu iri mu kibanza N° 1065 i Kana, Akagari ka Kabasengerezi, umurenge wa Muhima, Akarere ka Nyarugenge, indishyi zingana na 668.000 Frw, amazu 3 ari i Mushubi, isambu 1 iri Uwarukakara, isambu 1 iri i Nyakagezi, isambu 1 iri i Nyagatovu, isambu 1 iri ku Rushubi, amasambu 3 ari i Nyakabuye, isambu 1 iri i Rwumba, amafaranga ari muri Banki y'Ubucuruzi y'u Rwanda (BCR), inka 24 n'imodoka 1.

[3] Izo manza zakomeje kuzenguruka mu Nkiko ziherukwa n'urubanza N° RCAA 0036/14/CS, rwaciwe ku wa 22/09/2017 n'Urukiko rw'Ikirenga, rwemeza ibi bikurikira:

- ✓ Rutegetse Buregeya Joseph kwishyura Nyirafundi Vicentie 4.294.008 frw y'ubukode atamuhaye na 3.000.000 frw y'indishyi z'akababaro kuko yamuheje mu

mutungo wa se Sinamenye Athanase na nyina Nyirashyaka, yose hamwe akaba 7.294.008 Frw.

- ✓ Rutegetse ko inzu iri mu kibanza N° 1065 i Kana, Akagari ka Kabasengerezi, Umurenge wa Muhima, Akarere ka Nyarugenge, Umujyi wa Kigali y'abazungura ba Sinamenye Athanase igomba kugurishwa, maze amafaranga avuyemo akagabanywa abana be bose nta vangura hagati y'abakobwa n'abahungu, abapfuye bagasimburwa n'ababazunguye.
- ✓ Rutegetse Buregeya Joseph kwishyura Nyirafundi Vicentie, abana ba Mukandanga Félicité aribo: Kananga Emmanuel, Mbarushimana Joséphine, Mukashyaka Jeannine, Muhawenimana Vestine, Mushimiyimana Francine, Mukakalisa Jeannette, umwana wa Nyirahabimana Daphrose witwa: Dusabimana Callixte, umwana wa Sebahire witwa: Ngaboyamahina Philémon, Nzabamwita Jérôme na Mukabutwa Angéline; 700.000 Frw y'igihembo cya Avoka wababuraniye kuri uru rwego.
- ✓ Rutegetse Buregeya Joseph kwishyura abana ba Kamanzi Nathalie aribo Mukandutiye Justine, Uwamariya Jacqueline, Safari Emmanuel, Sinamenye Athanasie, abana ba mukarurangwa aribo: Mukabutwatwa Angéline, Kampirwa Béatricie, Uwimana Jeanne na Mugenzi Augustin, 700.000 frw y'igihembo cya Avoka wababuraniye kuri uru rwego no gukurikirana urubanza.
- ✓ Rutegetse Buregeya Joseph kwishyura 100.000 Frw y amagarama y'urubanza.

[4] Nyuma y'urwo rubanza, Buregeya Joseph yatanze ikirego gisaba gusubirishamo urubanza N° RCAA 0036/14/CS rwaciwe ku wa 22/09/2017 ingingo nshya, urubanza ruhabwa Nº RCAA 0044/2017/CS, impamvu atanga akaba ari ukuba Urukiko rwaritiranyije uko ibintu byagenze ku buryo hari amakosa yakozwe mu isesengura ry'ibiburanwa no kuba hari ibimenyetso Urukiko rutabonye ngo rubishingireho bigatuma Buregeya arenganywa n'icyemezo cy'Urukiko.

[5] Buregeya Joseph na none yatanze ikirego cyihutirwa gisaba guhagarika by'agateganyo irangiza y'urubanza N° RCAA 0036/14/CS rwasubirishijwemo ingingo nshya. Asobanura ko mu gihe urubanza rutaracibwa mu mizi ngo hasuzumwe imizi n'ishingiro ry'ikirego cye, Umuhesha w'Inkiko w'umwuga yatangije ibikorwa bimwishyuza amafranga y'indishyi yaciwe kandi ayo mafaranga yagenewe Nyirafundi Vicentie amwishyuza afitanye isano n'ikirego yatanze asubirishamo urwo rubanza ingingo nshya ku bw'ibimenyetso byirengagijwe n'Urukiko rw'Ikirenga ndetse n'izindi ngingo zirengagijwe. Bityo, akaba asaba Urukiko rw'Ikirenga gutegeka ko irangiza ry'urubanza ryaba rihagaze nk'uko amategeko abiteganya. Buregeya Joseph avuga kandi ko ishingiro ry'iki kiregeo cyihutirwa ari uko hari impungenge ko aramutse yishyuye indishyi yaciwe muri urwo rubanza, nyuma bikazagaragara ko yarenganye (ko ikirego cye gifite ishingiro), uwazigenewe nta kigaragaza ko yazabona amafaranga yo kumusubiza.

[6] Iburanisha ry'urubanza ryabaye mu ruhame ku wa 20/02/2018, Buregeya Joseph ahagarariwe na Me Munyemana G. Pascal, Nyirafundi Vicentie, ahagarariwe na Me Rwabirinda Sylvestre. Abagobotse mu rubanza ku bushake bahagarariwe mu buryo bukurikira: Mbarushimana Joséphine, Mukabutwatwa Angéline, Kananga Emmanuel, Mukashyaka Jeannine, Muhawenimana Vestine, Mushimiyimana Francine, Mukakalisa Jeannette, Mukamana Joséphine, Ngaboyamahina Philémon, Dusabimana Callixte, Nzabamwita Jérôme na mukabutwatwa angéline

bahagarariwe na me Rwabirinda Sylvestre, Nyirahirana Marie Rose ahagarariwe na Me Makuza Justin, Mukandutiye Justine, sinamenye Athanasie, Uwamariya Jacqueline, Safari Emmanuel, Uwimana Jeanne, Kampirwa Béatrice na Mugenzi Augustin bahagarariwe na Me Mukamusoni Antoinette, naho Habineza Jean, Nsengimana Thomas, Yandereye Vénantie, Nyirandikubwimana Emérence, na Ngayabahiga Pancrace bahagarariwe na me Irafasha Félix

II. IBIBAZO BYASUZUMWE N'ISESENGURA RYABYO

1. Kumenya niba hari impamvu zatuma irangizarubanza ry'urubanza N° RCAA 0036/14/CS rihagarara

[7] Me Munyemana G. Pascal uburanira Buregeya yabanje gusobanura muri make inkomoko y'ikirego batanze, avuga ko umubyeyi w'ababuranyi muri uru rubanza witwa Sinamenye Athanase yakoze irage noneho avuga ko imitungo ye izagabanwa n'abana bane, aho apfiriye bamwe mu bazungura ntibishimira ko hari amafaranga ava mu bukode bw'inzu batabonaho, ubwo hagenda haba imanza nyinshi zijyanye n'ishyirwa mu bikorwa rya ririya rage. Avuga ko mu rubanza Nº RCAA 0036/14/CS rwaciwe ku wa 22/09/2017, Urukiko rw'Ikirenga rwitiranyije ibintu kuko rwavuze ko 12.000.000 Frw ava ku bukode Buregeya yari yemerewe, yagombaga kuyagabana n'abavandimwe be 2, aribo Nyirafundi na Nyirahabimana, rutegeka ko agomba guha Nyirafundi 4.294.008 Frw, kandi mu irage se yasize akoze atarigeze amuvugamo, ko Urukiko rwahereye nanone kuri uko kwibeshya ruvuga ko Nyirafundi yahejwe ku mutungo wa Se maze bituma ajya mu bukene, bityo rumuha n'indishyi z'akababaro zingana na 3.000.000 Frw.

[8] Ku birebana n'impamvu asaba guhagarikisha irangiza rubanza ryari ryatangiye, avuga ko bakurikije icyo ingingo ya 190 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko gusubirishamo urubanza ingingo nshya bitarubuza kurangizwa, ko ariko umuburanyi ashobora gusaba ko irangiza rubanza ryahagarikwa abigaragarije impamvu. Avuga ko impamvu ya mbere ari uko 7.000.000 Frw Buregeya yaciwe aramutse ayishyuye Nyirafundi, nyuma mu isesengura ry'ikirego mu mizi Buregeya akamutsinda, Nyirafundi atabona amafaranga yo kumusubiza bitewe ni uko nta bushobozi afite cyane cyane ko Urukiko rw'Ikirenga rwemeje ko kuba Buregeya yaramuheje ku mutungo w'ababyeyi be byatumye ajya mu bukene bukabije. Abona ko kwishyura amagarama no kwishyura avoka ataribyo bigaragaza ubushobozi w'umuburanyi nk'uko umuburanira abivuga. Imbere y'uru Rukiko, avuga ko ihagarika ry'irangizarubanza asaba rireba gusa amafaranga 7.294.008 Frw, Urukiko rw'Ikirenga rwageneye Nyirafundi rwirengagije ibimenyetso yari yatanze, ko ariko yemera ko ryakomeza ku bindi rwategetse.

[9] Avuga ko imvugo ye ayihuza n'ibyemezo byafashwe n'Urukiko rw'Ikirenga mu manzaRS REV/COM 0013/12/CS 23/11/2012 haburana RRA vs GARIBSONS COMMODITIES n'urubanza Nº RCOMA 0010/11/CS rwaciwe ku wa 18/11/2011, haburana Milimo Gaspard vs KOBILL PETROLEUM RWANDA Ltd, aho rwagaragaje impungenge zo kurangiza urubanza mbere y'uko urubanza mu mizi rurangira mu gihe umuburanyi atagaragaza ibimenyetso by'ubushobozi afite bwo kuzishyura ibintu yaba yahawe mu irangiza ry'urubanza.

[10] Me Rwabirinda Sylvestre avuga ko Nyirafundi ahagarariye atari umukene kuko yagiye yitangira igarama mu manza zose bamaze imyaka 6 baburana, ko yiyishyurira Abavoka bamuburanira, ko ari umuturage utuye ufite urugo ruzwi n'imitungo, ko rero hakurikijwe

ibiteganywa n'ingingo ya 9 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryavuzwe haruguru, urega ariwe ugomba gutanga ibimenyetso bigaragaza ko Nyirafundi nta bushobozi afite bwo kwishyura. Uretse n'ibyo kandi, avuga ko hari umugabane Nyirafundi afite ku nzu izagurishwa barangiza urubanza rwavuzwe haruguru rwaciwe n'Urukiko rw'Ikirenga urega akaba atagaragaza uburyo Nyirafundi atabona ubwishyu mu ruhare azahabwa.

[11] Yongeraho ko aribo bafite impungenge kubera ko batangiye kurangiza urubanza basanga kuri konti za Buregeya nta kintu kiriho, ko ahubwo arimo gutinza urubanza kugira ngo abone igihe cyo kurigisa ibintu bye byose maze abazaza kurangiza urubanza bazabure icyo bafata. Nko ku birebana n'ibyategetswe n'Urukiko ko inzu y'umuryango igomba kugurishwa, avuga ko mbere Buregeya yavugaga ko adashaka Huissier, ko nyuma y'iminsi ine azatanga icyangombwa cy'ubutaka, nyamara nyuma y'amezi 3 yavuze ko yakibuze, bivuga ko arimo guhisha ibintu. Asanga nta kibazo gihari cyatuma urubanza rwamaze kuba itegeko ntakuka rutarangizwa. Naho kuri Jurisprudence Me Munyemana yatanze, avuga ko ibintu bitandukanye kuko nka sosiyete ya GARIBSONS COMMODITIES, yateraga amakenga kubera ko itabonekaga no mu iburanisha, ntawe uzi niba hari imitungo ifite kimwe naho yaba iherereye. Naho mu rubanza rwa KOBIL na Mirimo, urubanza rwaciwe badahari babaha amahirwe yo kumvwa, noneho hagaragara ko hakozwe ifatira kuri compte ya KOBIL, akazi kayo hari guhagarara kuko yasabwaga amafaranga menshi cyane.

[12] Me Makuza Justin, uburanira Nyirahirana Marie Rose, avuga ko kuvuga ko Nyirafundi atazabona amafaranga yo kwishyura atsinzwe byaba ari ugukabya kuko ashobora no kuzakurwa ku mugabane we mu gihe cy'igurisha ry'inzu y'umuryango, ubu irimo gutangwaho ikiguzi cya 200.000.000 Frw. Avuga ko imanza z'ikitegererezo zatanzwe n'uburanira Buregeya, ibintu bidateye kimwe kuko nko kubuza KOBIL PETROLEUM gukoresha amafaranga yayo, bishobora kuyiviramo igihombo kidasubirwaho, kubera ko ibikorwa byayo bijyanye n'ubucuruzi bw'amavuta ndetse ko byagira ingaruka ku bukungu bw'Igihugu akaba atariko bimeze kuri Buregeya kuko n'amafaranga yakwishyura ntabwo ari ava mum mutungo we bwite kuko ari ayo yakuye ku nzu y'umuryango. Ku rubanza rwa GARIBSONS COMMODITIES, naho birumvikana guhagarika irangizarubanza bitewe nuko iyi Sosiyete itaboneka, bikaba bitandukanye n'ibya Nyirafundi Vicentie utuye kandi akaba afite umugabane uzavamo amafaranga nk'uko yabivuze haruguru.

[13] Me Mukamusoni Antoinette, uburanira bamwe mu bagobotse mu rubanza, avuga ko basanga nyirafundi atazabura icyo ariha kuko afite imitungo, bityo bareke gushingira ku gukeka kuko aratuye afite imitungo n'ikimenyimenyi yiyishyuriye avoka ndetse yitangiye n'amagarama, ibyo bivuga ko afite ubushobozi.

[14] Me Irafasha Félix avuga ko impungenge zagaragajwe n'uhagarariye Buregeya nawe azifite kuko yatangiranye n'uru rubanza ku buryo mbere byavugwaga ko Nyirafundi yabaye umukene kubera kumuheza mu mutungo ndetse bavugaga ko yabaye umutindi. Avuga ko gutanga igarama ubwabyo bidasobanura ko uwo muntu yashobora kubona 7.000.000 Frw, ko ahubwo abamuhagarariye bagomba kugaragaza ubushobozi afite bwo kuzishyura mu gihe Buregeya yatsinda ikirego gisaba gusubirishamo urubanza ingingo nshya, niba ntabyo berekanye asanga irangizarubanza ryahagarara.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 316 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ''Iyo hari ikirego cy'iremezo, ariko hagomba kugira icyemezwa by'agateganyo mu buryo bwihuta ku rubanza rwaregewe urukiko rutaraburanishwa, ikirego cyihutirwa gishyikirizwa umucamanza ushinzwe kurangiza impaka zihutirwa w'aho zigomba gukemurirwa hakurikijwe uburyo busanzwe bw'ihamagara''.

[16] Ingingo ya 190 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012, iteganya ko " Gusubirishamo urubanza ingingo nshya ntabwo birubuza kuranginzwa, keretse iyo iryo rangizwa ryahagaritswe bitangiwe impamvu n'urukiko rwaregewe gusubirishamo urubanza ingingo nshya".

[17] Isesengura ry'ingingo imaze kuvugwa, ryumvikanisha ko ibirego byihutirwa bigomba kuba byujuje nibura ibintu bibiri by'ingenzi, ari byo:

- ✓ Gukorwa mu buryo bwihuse cyane kugira ngo bigire icyo biramira ku buryo bitinze haba igihombo kitagira igaruriro;
- ✓ Icyemezo kigomba kuba ari icy'agateganyo.

[18] Ku birebana n'ibibazo birimo ubwihutire, Umushingamategeko w'u Rwanda ntabwo yabirondoye, ariko abahanga mu mategeko bakaba bavuga ko nta kintu gifatika kibaho gishingirwaho hemezwa ko hari ubwihutire ku bintu runaka, ko ahubwo bigenwa mu bushishozi bw'umucamanza bitewe n'imiterere y'urubanza afite (L'urgence est une notion floue qui ne répond pas à des critères précis. Elle s'apprécie in concreto et suppose une évaluation des intérêts en présence. C'est une notion de fait dont l'appréciation relève du pouvoir souverain des juges de fond, ou plutôt en l'espèce des juges du provisoire).[1]

[19] Icyo Buregeya yita ubwihutire akagishingiraho asaba ko irangiza ry'urubanza N° RCAA 0036/14/CS rwageneye umuvandimwe we Nyirafundi 7.294.008 Frw ryahagarikwa by'agateganyo, ni impungenge afite z'uko ko mu gihe urubanza rw'iremezo ruri mu Rukiko rw'Ikirenga rurebana no gusubirishamo urubanza rumaze kuvugwa ingingo nshya rwaramuka ruhinduye ibintu, Nyirafundi atabona ubwishyu kuko ari umukene utabona aho yakura ariya mafaranga, ko rero aho kugira ngo azahure n'igihombo, byaba byiza ko irangizarubanza ryahagarara kugeza urubanza Nº RCAA 0044/2017/CS ruciwe.

[20] Urukiko rw'Ikirenga rurasanga, imiburanire ya Buregeya y'uko aramutse atsinze urubanza rw'iremazo atabona ubwishyu kuri Nyirafundi, atari impamvu yihutirwa yatuma urubanza N° RCAA 0036/14/CS rutarangizwa ku birebana n'ariya mafaranga 7.294.008 Frw rwageneye Nyirafundi, kuko ibyo Buregeya avuga ko mushiki we ari umukene bitafatwa nk'impamvu yatuma agira igihombo kidasubirwaho, kuko atashoboye kubigaragariza Urukiko, cyane cyane ko nawe yiyemerera ko irangizarubanza ryakomeza ku bindi urubanza N° RCAA 0036/14/CS rwemeje, harimo no kugurisha inzu y'umuryango bivugira ko ubu abaguzi barimo gutangaho 200.000.000 Frw, Nyirafundi nawe akaba azabona umugabane ku giciro kizatangwa, ibi nabyo bikaba bikuraho impungenge z'uko nta bushobozi afite.

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[1] Serge Guinchard et alii, Procédure civile, 4ème Edition, Dalloz, 2015, P. 160.

[21] Ku byerekeye imanza zaciwe n'uru Rukiko Buregeya yatanzeho icyitegererezo, Urukiko rurasanga impamvu zashingiweho hemezwa guhagarika irangiza ry'urubanza ntaho zihuriye n'uru rubanza kuko nko mu rubanza RS /REV /COM 0013/12/CS 23/11/2012, RRA yaburanaga na GARIBSONS COMMODITIES, irangizarubanza ryahagaritswe kubera ko Urukiko rwasanze iyi Sosiyete itaboneka ku biro byayo no kuri telefone igendanwa, ko ibiro by'icyicaro gikuru cyayo byafunze kubera ko idafite ibicuruzwa, ikindi gikomeye kikaba ari uko nta mitungo izwi ifite mu Rwanda, Nyirafundi we rero akaba afite aho abarizwa kuko ari umuturage utuye kandi utari umukene nk'uko Buregeya abivuga. Naho mu rubanza Nº RCOMA 0010/11/CS rwaciwe ku wa 18/11/2011, KOBIL PETROLEUM RWANDA yaburanye na Mirimo Gaspard, Urukiko rw'Ikirenga rwemeje ko irangizarubanza riba rihagaze kubera ko rwasanze gufatira amafaranga ku makonti y'iriya Sosiyete nini icuruza amavuta y'imodoka, bishobora kuyiviramo igihombo kidasubirwaho kuko byahagarika ibikorwa byayo mu Gihugu hose, ibi akaba atariko bimeze kuri Buregeya.

[22] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga mu gihe Buregeya atashoboye kugaragaza icyakononekara ku buryo kitazashobora gusubiranywa igihe yaramuka atsinze urubanza rw'iremezo, nta mpamvu irangizwa ry'urubanza N° RCAA 0036/14/CS ryari ryatangiye rihagarara ku birebana n'ariya 7.294.0008 Frw yategetswe kwishyura Nyirafundi.

2. Kumenya niba hari amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka yatangwa muri uru rubanza.

[23] Me Rwabirinda Sylvestre avuga ko abo ahagarariye bishyuye Avoka wo kubaburanira muri uru rubanza kandi ko bakoresheje amatike baza ku rukiko, akaba asaba ko Buregeya yabishyura 5.000.000 Frw, ni ukuvuga 1.000.000 Frw kuri buri muntu. Ku birebana n'ishingiro, avuga ko harebwa ibiteganywa n'ingingo ya 20 y'Amabwiriza ya Perezida w'Urukiko rw'Ikirenga[2] ivuga ko niyo ikirego kitakwakirwa uwarezwe cyangwa uwagobokeshejwe ku gahato bashobora guhabwa indishyi zijyanye n'ibyo bavukijwe mu ikurikirana ry'urwo rubanza, bityo akaba asanga nta mpamvu hatakwishyurwa ibyatanzwe kuri uru rubanza.

[24] Me Mukamusoni Antoinette avuga ko kuba Buregeya yaratumye baza muri uru rubanza byatumye abo ahagarariye batanga amafaranga yo kwishyura Avoka ubaburanira, akaba asaba ko yabishyura bose hamwe 3.500.000 Frw y'igihembo cya Avoka na 700.000 Frw y'ikurikiranarubanza.

[25] Me Makuza Justin avuga ko Buregeya agomba gusubiza Nyirahirana Marie Rose ahagarariye muri uru rubanza, 1.000.000 Frw y'igihembo cya Avoka na 1.000.000 Frw y'ikurikiranarubanza kubera kumushora mu manza.

[26] Me Irafasha Félix we avuga ko ku rwego rw'urubanza ku kirego cyihutirwa yumva nta mafaranga yerekeranye n'ibyatanzwe ku rubanza yasabira abo ahagarariye.

[27] Me Munyemana G. Pascal avuga ko abagobotse muri uru rubanza nta mafaranga bagomba gusaba Buregeya kuko atariwe wababatumije, ko ibyo byagenzurwa harebwe muri system ko

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[2] Iyi ngingo iteganya ko " Iyo ikirego kitakiriwe ku mpamvu iyo ariyo yose, uwarezwe cyangwa uwagobokeshejwe ku gahato bashobora guhabwa indishyi zijyanye n'ibyo batakaje n'ibyo bavukijwe mu ikurikirana ry'urwo rubanza iyo bazisabye.

babwiye ubwanditsi ko nta mpamvu yo gutumiza abagobokeshejwe ariko bakanga bakababahamagara. Avuga ko ikindi bashingiraho bavuga ko batahabwa amafaranga basaba, ari uko ingingo ya 320 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012, igika cya nyuma, iteganya ko indishyi ababuranyi barimo gusaba zigomba kuregerwa mu kirego cy'iremezo.

UKO URUKIKO RUBIBONA

[28] Ku birebana n'ibyatanzwe ku rubanza bisabwa n'uregwa ndetse na bamwe mu bagobotse, ingingo ya 320, igika cya 4, y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko " Indishyi n'ibindi bijyanye n'amafaranga umuburanyi yakoresheje mu rubanza ku kirego cyihutirwa biregerwa hamwe n'ikirego cy'iremezo". Ibi bikaba bitandukanye n'ibiteganywa mu ngingo ya 20, igika cya mbere, y'Amabwiriza ya Perezida w'Urukiko rw'Ikirenga yavuzwe haruguru, uburanira Nyirafundi ashingiraho asaba indishyi z'ibyo yakoresheje mu rubanza, kuko yo ikoreshwa mu manza umuburanyi yatanzemo inzitizi yo kutakira ikirego ku mpamvu iyo ariyo yose mu gihe Urukiko rusanze ifite ishingiro. Aha urubanza ruhita rurangira.

[29] Hashingiwe ku biteganywa n'ingingo y'Itegeko imaze kuvugwa haruguru, Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa n'uregwa ndetse na bamwe mu bagobotse muri uru rubanza rurebana n'ikirego cyihutirwa ntayo bagenerwa, ko nibasanga ari ngombwa bazayaregera igihe bazaba baburana ikirego cy'iremezo.

III. ICYEMEZO CY'URUKIKO

[30] Rwemeje ko ikirego cyihutirwa gisaba guhagarika irangizarubanza cyatanzwe na Buregeya Joseph nta shingiro gifite;

[31] Rwemeje ko irangiza ry'urubanza N° RCAA 0036/14/CS rwaciwe ku wa 22/09/2017 rikomeza;

[32] Rwemeje ko nta mafaranga y'ikurikiranarubanza n'igihembo cya Avoka rugeneye: Nyirafundi Vicentie, Mbarushimana Joséphine, Kananga Emmanuel, Mukashyaka Jeannine, Muhawenimana Vestine, Mushimiyimana Francine, Mukakalisa Jeannette, Nzabamwita Jérôme, Mukabutwatwa Angéline, Nyirahirana Marie Rose, Dusabimana Callixte, Ngaboyamahina Philémon, Mukandutiye Justine, Sinamenye Athanasie, Uwamariya Jacqueline, Safari Emmanuel, Uwimana Jeanne, Kampirwa Béatrice na Mugenzi Augustin.

[33] Ruvuze ko ingwate y'amagarama yatanzwe na Buregeya Joseph ihwanye n'ibyakozwe muri uru rubanza.