MURENZI v MUTABAZI N'UNDI

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00009/2021/SC (Ntezilyayo, P.J., Cyanzayire na Karimunda, J.) 30 Kamena 2022]

Amategeko agenga imanza mbonezamubano - Ibimenyetso bishingiye kuri raporo z'abahanga - Indahiro n'umukono by'umuhanga wakoze raporo - Kuba nta ndahiro yashyizwe kuri raporo cyangwa nta mukono w'umuhanga uyigaragaraho bitewe no kwibagirwa cyangwa kutamenya ko ari ngombwa, ubwabyo ntibyaba impamvu yo gutesha agaciro raporo y'umuhanga mu gihe ashobora guhamagazwa n'Urukiko izo nenge akazikosora ashyira umukono kuri raporo yatanze cyangwa arahirira imbere y'Urukiko indahiro yateganyijwe n'Itegeko.

Amategeko agenga imanza mbonezamubano - Ibimenyetso bishingiye kuri raporo z'abahanga - Akamaro k'indahiro n'umukono by'umuhanga ku buhamya yatanze muri raporo - Akamaro k'indahiro y'umuhanga ni ukugaragaza ko yakoze inshingano yahawe n'Urukiko ntacyo yirengagije, yazikoze kinyamwuga, nta buhemu nta no kubogamira ku ruhande urwo ariwo rwose. Indahiro cyangwa umukono w'umuhanga ubwabyo sibyo Urukiko ruba rwashyiriyeho umuhanga kuko n'ubundi ntabwo biri mu nshingano ahabwa, ahubwo byombi, iyo bishyizwe kuri raporo, bituma icyizere igomba kugirirwa cyiyongera.

Amategeko agenga imanza mbonezamubano - Ibimenyetso bishingiye kuri raporo z'abahanga - Kwivuguruza k'umuhanga - Umuhanga wahamirije Urukiko ko yafatanyije na bagenzi be gukora raporo ndetse akayishyiraho umukono, ntashobora guhindukira ngo avuge ko atemera ibiyikubiyemo atabanje kugaragaza ko nta bushobozi yari afite bwo kwanga kuyisinya cyangwa kumenya ko agiye kuyisinya.

Amategeko agenga imanza mbonezamubano - Ibimenyetso bishingiye kuri raporo z'abahanga - Agaciro ka raporo y'umuhanga yakozwe hifashishijwe indi raporo y'umuhanga - Kuba umuhanga yarashingiye raporo ye ku byagaragajwe n'indi raporo ababuranyi batari bazi ndetse akanga kubatumira mu nama nyuma yo kubashyikiriza raporo ye, ubwabyo ntibyatuma raporo y'umuhanga iteshwa agaciro kuko nta kibuza ko, nyuma yo kuyibona, ababuranyi bagaragaza ibyo bayinenga.

Amategeko agenga imanza mbonezamubano - Ibimenyetso bishingiye kuri raporo z'abahanga – Akamaro ka raporo y'umuhanga - Ubuhamya bw'abahanga ni ubugamije guha urukiko ibisobanuro bishingiye ku bumenyi kimwe n'umwanzuro urenze ubumenyi busanzwe bw'umucamanza mu kazi ke bitewe n'uko ibiburanwa bishingiye ku buhanga bwihariye.

Amategeko agenga imanza mbonezamubano - Kwirengera amakosa mu myubakire - Kurunda ibintu hejuru y'urukuta rw'umuturanyi kugeza ubwo ruridutse - Iyo umwubatsi yarunze ibintu ku rukuta bikarenga ubushobozi bwarwo agomba kwirengera ayo makosa kuko aba amureba ku giti cye.

Amategeko agenga imiburanishirize y'imanza - Imanza z'akarengane - Gusuzuma ingingo nshya mu iburanisha ry'imanza z'akarengane - Umuburanyi utarajuririye ingingo atanyuzwe nazo hakurikijwe inzira zisanzwe kandi yari abyemerewe n'amategeko, aba yivukije inzira y'ubujurire yari gutuma ibyo yanengaga bikosorerwa mu bujurire, bityo akaba adashobora kwifashisha inzira yo gusubirishamo urubanza ku mpamvu z'akarengane, yirengagije ko hari izindi manza zabaye,

ngo ingingo yanze kujuririra ku bushake asabe ko zisuzumwa mu karengane kuko byaba binyuranyije n'ibiteganywa n'amategeko.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu rukiko rwisumbuye rwa Gasabo aho Mutabazi na Muhawenimana baregaga Murenzi na Uwamahoro bavuga ko kubera imyubakire mibi yabo, urukuta rw'inzu yabo rwasenyutse rukangiza imitungo yabo irimo imodoka n'inzu bagasaba urukiko ko bahabwa indishyi z'ibyangiritse. Abaregwa bo bavuga ko nta ruhare bagize mu isenyuka ry'urukuta rwa Mutabazi ahubwo ko isenyuka ryarwo ryatewe n'ibiza byasanze uyu yarubatse nabi kuko yubatse nta cyangombwa cyo kubaka afite. SORAS AG Ltd (ubu ni SANLAM Assurances Générales Plc) yagobotse mu rubanza isaba ko yakwishyurwa amafaranga yakoresheje isana imodoka yangijwe n'urwo rukuta. Urukiko mu rubanza No RC 00203/2018/TGI/GSBO rwifashishije raporo z'abahanga ndetse n'abatangabuhamya rwasanze urwo rukuta rwasenyutse biturutse ku gutsikamirwa n'uburemere bw'itaka Murenzi yakoresheje nawe yubaka urukata rwe ndetse rukaba rwarasaga n'urwegamiye urukuta rwa Mutabazi nuko rutegeka Murenzi na Uwamahoro kwishyura abarega indishyi zinyuranye.

Murenzi na Uwamahoro bajuririye Urukiko Rukuru bavuga ko urukiko rwabanje rwirengagije ko urukuta rwasenywe no kuba rwarubatswe na Murenzi na Uwamhaoro badafite icyangombwa cyo kubaka bityo rwubakwa nabi hatubahirijwe ibipimo kandi ko raporo y'abahanga idakurikije amategeko kuko abayikoze batumvikanye ku mwanzuro, ko ataribo bayishyikirije urukiko kandi ko batayirahiriye. Mutabazi na Muhawenimana nabo bajuririye Urukiko rukuru bavuga ko hari indishyi batahawe zikomoka ku modoka zakodeshejwe zo gutwara itaka. SANLAM nayo yatanze ubujurire bwuririye ku bundi isaba ko indishyi yagenewe mu rukiko rubanza zashyirwa muri uru rubanza.

Ubwo bujurire bwahurijwe hamwe mu rubanza N° RCA 00499/2019/HC/KIG-CMB RCA 00506/2019/HC/KIG hanyuma Urukiko Rukuru rusanga kuba abahanga batararahiye mbere yo gutanga raporo ari ikosa ry'imyandikire bityo bashobora guhamagazwa bakaza gusobanura ibikubiye muri iyo raporo ndetse bakabanza kurahizwa; kuba abakoze raporo batumvikana ku mwanzuro ko ntacyo bitwaye ko ikingenzi ari uko bayumvikanaho nk'abayikoze bafatanyije ndetse rwemeza ko ubujuri bwatanzwe nta shingiro bufite.

Murenzi yasabye ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane maze ruhabwa Urukiko rw'Ikirenga ngo rwongere ruruburanishe maze rusuzuma ibibazo by'ingenzi bikurikira: Kumenya niba raporo y'abahanga yashingiweho mu icibwa ry'urubanza N° RCA 00499/2019/HC/KIG- CMB RCA 00506/2019/HC/KIG ikwiye guteshwa agaciro no kumenya icyateye isenyuka ry'urukuta rw'urugo rwa Mutabazi na Muhawenimana.

Usubirishamo urubanza yatanze inzitizi y'uburegeke avuga ko hari ikirego Mutabazi yatanze mu Rukiko rw'Ibanze rwa Gasabo kandi kikaba gifitanye isano n'Uru rubanza akaba aribyo byabanza gusuzumwa. Urukiko rwasuzumye iyo nzitizi rusanga ibiburanwa bitandukanye ndetse n'ikiburanwa mu Rukiko rw'Ibanze kitaba mu bubasha bw'Urukiko rw'Ikirenga kandi urubanza rwatangiriye mu Rukiko Rwisumbuye rugakomeza rudashobora kuba mu bubasha bw'Urukiko rw'Ibanze maze rwemeza ko iyo nzitizi nta shingiro ifite urubanza rukomeza kuburanishwa mu mizi.

Usubirishamo urubanza avuga ko raporo y'abahanga yakozwe ku iriduka ry'urukuta ifite inenge kuko yakozwe hatubahirijwe imigenzo ya ngombwa isabwa. Muri iyo migenzo harimo kuba imikono y'abahanga itabanjirijwe n'indahiro no kuba umwe muri abo bahanga avuga ko iyo raporo

irimo amakosa ndetse ko atahawe umwanya wo gushyiramo ibitekerezo bye, kubwo ibyo agasaba ko itahabwa agaciro. Uregwa yiregura avuga ko abo bahanga bakoze iyo raporo Urukiko Rukuru mu gihe cy'iburansiha, rwababahamagaje bakayisobanura babanje kurahirira ibyo bakoze n'ibisobanuro batanze bikaba bikuraho inenge y'ibura ry'indahiro yari muri iyo raporo. Akomeza avuga ko kukijyanye n'umwe muri bo utemeranya na bagenzi be ngo kuko atahawe n'umwanya wo gushyiramo ibitekerezo bye ku mwanzuro wa raporo, ko nta kibigaragaza dore ko nawe yashyize umukono kuri iyo raporo.

Ku kijyanye n'ugomba kuryozwa igihembo cy'abahanga, usubirishamo urubanza avuga ko abahanga bashyizweho n'Urukiko bagomba guhembwa n'impande zombi nyuma utsinzwe agazasubiza uruhare rw'uwatsinze. Akomeza avuga ko Mutabazi we yabikoze wenyine akihererana abahanga bakumvikana igiciro kandi mu madorari y'Amerika atabanje kumumenyesha bityo akaba agomba kwirengera kubishyura wenyine. Uregwa we avuga ko iyi ngingo itari ikwiye gusuzumwa kuri uru rwego kuko itigeze ijuririrwa mu Rukiko Rukuru ariko nanone iramutse isuzumwe Urukiko rwareba uko ibyo bihembo byagenwe kuko abahanga ku mpande zombi aribo babyumvikanyeho banga ko buri ruhande rwagirana amasezerano n'uwarushyizeho. Akomeza avuga ko kuvuga ko igihembo cy'abahanga gihenze kandi kitumvikanweho n'impande zombi atari ukuri bityo agasaba ko Murenzi ariwe wakwishyura icyo gihembo kuko ariwe wakoze amakosa yatumye urukuta rusenyuka.

Mu kumenya icyateye isenyuka ry'urukuta, Murenzi avuga ko rwasenyutse kubera ibiza no kuba Mutabazi yararwubatse nabi kuko yubate mu buryo bunyuranije n'amategeko adafite icyangombwa cyo kubaka, ndetse n'amazi yari mu byobo biyafata byo mu rugo rwe byose akaba aribyo byatumye urwo rukuta ruriduka. Yongeraho kandi ko mu gihe uru Rukiko rwasanga koko hari indishyi zigomba gutangwa, zikwiye kubarwa kinyamwuga hadashingiwe ku marangamutima kandi zikagaragaza agaciro nyakuri k'ibyangiritse. Kuri iki kibazo uregwa avuga ko itaka Murenzi yarunze hejuru y'urugo rwe ari ryo ryateye isenyuka ry'urukuta kubera uburemere bwaryo kandi ko mu kubara indishyi hatagendewe ku marangamutima ahubwo hifashishijwe raporo y'abahanga. Ku bijyanye n'agaciro k'ibyangiritse, akomeza asobanura ko ntacyo Murenzi yanenze raporo y'abahanga ku rwego rwa mbere kuko yari ikoze kinyamwuga, ndetse ko no mu Rukiko Rukuru atabijuririye kuko yemeranyaga n'icyemezo cy'Urukiko Rwisumbuye bityo bikaba bitasuzumwa mu gusubirishamo urubanza ku mpamvu z'akarengane.

Incamake y'icyemezo: 1. Umuhanga urangije inshingano ze atanga raporo iriho indahiro n'umukono we. Icyakora nta kibuza ko uwo muhanga yahamagarwa n'Urukiko kugira ngo asobanure ibyo yakoze, ibisobanuro akaba abitanga na none amaze kurahira bityo kuba raporo iriho imikono idaherekejwe n'indahiro ntabwo biyitesha agaciro kuko iyo nenge yakosowe mu Rukiko Rukuru aho abayikoze barahiye mbere yo kuyisobanurira.

2. Akamaro k'indahiro ni ukugaragaza ko umuhanga yakoze inshingano yahawe n'Urukiko ntacyo yirengagije, azikora kinyamwuga, nta buhemu nta no kubogamira ku ruhande urwo ariwo rwose. Indahiro cyangwa umukono w'umuhanga ubwabyo sibyo Urukiko ruba rwashyiriyeho umuhanga kuko n'ubundi ntabwo biri mu nshingano ahabwa, ahubwo byombi, iyo bishyizwe kuri raporo, bituma icyizere igomba kugirirwa cyiyongera. Umukono n'indahiro by'umuhanga bihamya ko umuhanga azi, yemera kandi yirengera ibikubiye muri raporo yashyikirije Urukiko.

3. Kuba nta ndahiro yashyizwe kuri raporo cyangwa nta mukono w'umuhanga uyigaragaraho bitewe no kwibagirwa cyangwa kutamenya ko ari ngombwa, ubwabyo ntibyaba impamvu yo

gutesha agaciro raporo y'umuhanga mu gihe ashobora guhamagazwa n'Urukiko izo nenge akazikosora ashyira umukono kuri raporo yatanze cyangwa arahirira imbere y'Urukiko indahiro yateganyijwe n'Itegeko.

4. Umuhanga wahamirije Urukiko ko yafatanyije na bagenzi be gukora raporo ndetse akayishyiraho umukono, ntiyahindukira ngo avuge ko atemera ibiyikubiyemo atabanje kugaragaza ko nta bushobozi yari afite bwo kwanga kuyisinya cyangwa kumenya ko agiye kuyisinya bityo ibivugwa n'uwasubirishijemo urubanza ko umwe mu bahanga atemeranya n'ibiri muri raporo bikaba nta shingiro bifite.

5. Kuba umuhanga yarashingiye raporo ye ku byagaragajwe n'indi raporo ababuranyi batari bazi ndetse akanga kubatumira mu nama nyuma yo kubashyikiriza raporo ye, ubwabyo ntibyatuma raporo y'umuhanga iteshwa agaciro kuko nta kibuza ko, nyuma yo kuyibona, ababuranyi bagaragaza ibyo bayinenga akaba ari nako byagenze kuri raporo yashingiweho muri uru rubanza.

6. Iyo umwubatsi yarunze ibintu ku rukuta bikarenga ubushobozi bwarwo (dépassement des charges maximales autorisées sur un mur de soutainement), agomba kwirengera ayo makosa kuko aba amureba ku giti cye bityo Murenzi akaba agomba kurozwa isenyuka ry'urwo rukuta.

7. Umuburanyi utarajuririye ingingo atanyuzwe nazo hakurikijwe inzira zisanzwe kandi yari abyemerewe n'amategeko, aba yivukije inzira y'ubujurire yari gutuma ibyo yanengaga bikosorerwa mu bujurire, bityo akaba adashobora kwifashisha inzira yo gusubirishamo urubanza ku mpamvu z'akarengane, yirengagije ko hari izindi manza zabaye, ngo ingingo yanze kujuririra ku bushake asabe ko zisuzumwa mu karengane kuko byaba binyuranyije n'ibiteganywa n'amategeko.

8. Iby'uko igiciro cy'abahanga cyumvikanweho mu madolari ya Amerika, ntibyaba impamvu yatuma uwafashe umwenda atishyura igihembo cy'abahanga kuko impande zombi zumvikanye ku mirimo igomba gukorwa n'igihembo cyayo, nta cyabuza rero ko amasezerano bumvikanyeho ashyirwa mu bikorwa kuko ayo masezerano aba yabaye itegeko hagati y'abayakoranye.

Urubanza N° RC 00203/18/TGI/GSBO rwasubirishijwemo ruhindutse kuri bimwe;
Amagarama ahwanye yatanzwe ahwanye n'ibyakozwe muri uru rubanza.

Amategeko yashingiweho:

Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 76, 93.

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 55, 63.

Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Ingingo ya 111, 170, 273

Rwanda Building Code yometswe ku Iteka rya Minisitiri N° 04/Cab.M/015 ryo ku wa 18/05/2015 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire, ingingo ya 2.6.5.19.3; 2.6.5.19.4

Amategeko yifashishijwe atagikoreshwa:

Itegeko–Teka Nº 20/75 ryo ku wa 20 Kamena 1975 ryekeye Ubwishingire, ingingo ya 32.

Imanza zifashishijwe:

RPA 0227/08/CS hagati y'Ubushinjacyaha na Sibomana Nathanael, rwaciwe n'Urukiko rw'Ikirenga ku wa 19/02/2010.
RPAA 0321/10/CS Ubushinjacyaha bwaburanaga na Habimana Jean Claude, ruciwe n'Urukiko rw'Ikirenga ku wa 18/03/2016.
RCAA 0082/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 06/11/2015, igika cya 11.
RS/INJUST/RC 00007/2018/SC rwaciwe ku wa 13/03/2020, haburana Nditiribambe Samuel, Gatera Jason na Nyamaswa Faustin.
RS/INJUST/RC 00024/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 21/02/2020, ibika bya 18-22.
RCOM RS/ INJUST/ RC 00004/2019/SC rwaciwe ku wa 28/07/2020, haburana Mukamana, Havugimana, Umuhoza na Candali.
Cass. Civ. 3è, 26 mars 1997, N° 94-21, 808 Bull.Civ, III, N°69.

Inyandiko z'abahanga zifashishijwe:

Serge Guinchard (eds), Droit et pratique de la procédure civile, Paris, Dalloz, 2014, pp. 293, 1062, 1063
Loïc Cadiet na Emmanuel Jeuland, Droit judiciaire privé, 11ème éd., Paris, 2019, p.222.
Tom Bingham, The Business of Judging: Selected Essays and Speeches 1985-1999, Oxford, Oxford University Press, 2000, p.36.
Etienne Vergès, Géraldine Vial et Olivier Leclerc, Droit de la preuve, Paris, PUF, 2015, p.688.

Urubanza

I. IMITERERE Y'URUBANZA.

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Mutabazi Abayo Jean Claude na Muhawenimana Joselyne barega Murenzi Alphonse na Uwamahoro Jacqueline, bavuga ko ku bw'amakosa y'imyubakire mibi, ku wa 25/05/2018, urukuta rw'urugo rwabo rwasenyutse, rwangiza imodoka ebyiri, amazu ya annexes, ibigega by'amazi n'inkingi z'ibyuma byari bibifashe. Basabye ko iryo senyuka n'ibyangijwe biryozwa Murenzi Alphonse na Uwamahoro Jacqueline, bagategekwa kubaha indishyi zitandukanye.

[2] Murenzi Alphonse na Uwamahoro Jacqueline bavuze ko nta ruhare bagize mu isenyuka ry'urukuta rwa Mutabazi Abayo Jean Claude, ko uyu atagaragaza ko ubwo Murenzi Alphonse yubakaga aribwo haje umututu muri urwo rukuta, ahubwo ko isenyuka ry'urukuta ryatewe n'ibiza byasanze Mutabazi Abayo Jean Claude yarubatse nabi kuko yubatse atabiherewe uruhushya, asaba Urukiko kwemeza ko ikirego nta shingiro gifite.

[3] SORAS AG Ltd (yahindutse SANLAM Assurances Générales Plc) yagobotse mu rubanza, isaba ko Murenzi Alphonse na Uwamahoro Jacqueline bategekwa kuyishyura 2.183.000 Frw yakoreshejwe hasanwa imodoka RAD 995 F yangiritse bitewe n'isenyuka ry'urukuta rwabo.

[4] Mu rubanza N° RC 00203/2018/TGI/GSBO rwaciwe ku wa 08/11/2019, Urukiko Rwisumbuye rwa Gasabo rwasanze imvugo z'abatangabuhamya, raporo y'Ubugenzuzi bw'Imyubakire mu Karere ka Gasabo, iy'Umuhanga mu by'ubutaka ndetse n'iy'Itsinda ry'abahanga basuzumye ibyabaye bihuriza ku kwemeza ko urukuta rutari gusenyuka iyo rutagira

ibirutsikamira kuko rwari rukomeye; rusanga kandi Murenzi Alphonse yarubatse urukuta rwe asa n'urwegamije ku rwa Mutabazi Abayo Jean Claude, arangije aharunda itaka, rwanzura ko urukuta rwa Mutabazi Abayo Jean Claude rwasenywe n'uko rwatsikamiwe n'ibikorwa bya Murenzi Alphonse, rumutegeka gufatanya na Uwamahoro Jacqueline kwishyura Mutabazi Abayo Jean Claude na Muhawenimana Joselyne indishyi zingana na 22.159.538 Frw, ndetse n'amadorali ya Amerika angana na 6.173.

[5] Murenzi Alphonse na Uwamahoro Jacqueline bajuririye Urukiko Rukuru, bavuga ko Urukiko rwirengagije ko kuba urukuta rwa Mutabazi Abayo Jean Claude rutarihanganiye amazi byatewe n'uko atubahirije ibipimo kuko yubatse atabiherewe uruhushya. Bavuga ko na raporo y'Abahanga yashingiweho hafatwa icyemezo ku rwego rwa mbere yakozwe mu buryo bunyuranije n'amategeko kuko abayikoze batumvikana ku mwanzuro yagezeho, ko ataribo bayishyikirije Urukiko ndetse ko batayirahiriye. Mutabazi Abayo Jean Claude na Muhawenimana Joselyne nabo bajuririye Urukiko Rukuru bavuga ko hari indishyi batahawe kandi bazikwiriye, ko bagenewe amafaranga make kuyo bakodesheje imodoka nyamara ibimenyetso batanze bihamya ko imodoka RAD 586 M yishyuwe 850.000 Frw naho RAC 847 Y yishyurwa 360.000 Frw.

[6] SANLAM Assurances Générales Plc yatanze ubujurire bwuririye ku bundi, isaba ko 2.183.000 Frw yemejwe ku rwego rwa mbere ashyirwa mu cyemezo cy'Urukiko Rukuru.

[7] Ubujurire bwose bwahurijwe hamwe mu rubanza N° RCA 00499/2019/HC/KIG-CMB RCA 00506/2019/HC/KIG rwaciwe ku wa 19/02/2021, Urukiko rusanga:

i. ibyo gufatanya kubaka urukuta bitararegewe ku rwego rwa mbere, bityo bikaba bidakwiye gusuzumwa mu bujurire;

ii. kuba abahanga batararahiye mbere yo gutanga raporo ari ikosa ry'imyandikire rishobora gukosorwa hahamagazwa abakoze raporo kuza kuyisobanurira Urukiko, mbere yo kuyisobanura bakabanza kurahizwa;

iii. kuba abakoze raporo batumvikana ku mwanzuro wayo atari impamvu yatuma iteshwa agaciro kuko icy'ingenzi ari uko benshi muri bo baba bayumvikanaho;

iv. nta muhanga wemeje ko ibiza aribyo byasenye urukuta, kuko raporo y'Ubuyobozi bw'Umudugudu yo ku wa 22/05/2018 igaragaza ko na mbere y'isenyuka ryarwo icyo kibazo cyari gihari, byumvikanisha ko itaka Murenzi Alphonse yageretse kuri urwo rukuta ariryo ryarusenye;

v. nta makosa Urukiko rubanza rwakoze rutanga 720.000 Frw y'imodoka mu bushishozi bwarwo kuko rutari rutegetswe gushingira ku bimenyetso ababuranyi batanze rutabihuje n'ibiciro biri ku isoko cyane cyane ko Mutabazi Abayo Jean Claude nawe yari afite inshingano zo kugabanya igihombo;

vi. indishyi z'akababaro zingana na 20.000.000 Frw Mutabazi Abayo Jean Claude na Muhawenimana Joselyne basaba batazihabwa kuko batagaragaje uburyo ububabare, agahinda no guhangayika batewe n'ibyabaye babibariye ayo mafaranga;

vii. indishyi zingana na 2.183.000 Frw zagenewe SANLAM Assurances Générales Plc zigomba gushyirwa mu cyemezo cy'Urukiko Rukuru ariko zigakurwa mu ndishyi zagenewe Mutabazi Abayo Jean Claude na Muhawenimana Joselyne;

viii. indishyi zari zagenewe Mutabazi Abayo Jean Claude na Muhawenimana Joselyne zikuweho 3.369.336 Frw y'agaciro k'amazu ya annexes na 2.183.000 Frw yagombaga kugenerwa SANLAM Assurances Générales Plc.

[8] Urukiko rwanzuye ruvuga ko urubanza rwajuririwe ruhindutse kuri bimwe, rutegeka MurenzI Alphonse na Uwamahoro Jacqueline guha Mutabazi Abayo Jean Claude na MuhawenimanA Joselyne 740.000 Frw y'ikurikiranarubanza, igihembo cya Avoka n'igarama, rubategeka kandi gusubiza SANLAM Assurances Générales Plc 2.183.000 Frw yakoresheje imodoka.

[9] Murenzi Alphonse yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza nº RCA 00499/2019/HC/KIG- CMB RCA 00506/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 19/02/2021, rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubwo busabe, yandikiye Perezada w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwasubirwamo, maze mu cyemezo no 243/CJ/2021 cyo ku wa 07/10/2021, Perezida w'Urukiko rw'Ikirenga yemeza ko rwoherezwa mu Bwanditsi bw'Urukiko kugira ngo ruzongere ruburanishwe.

[10] Iburanisha mu ruhame ryabaye ku wa 08/03/2022, Me Habyarimana Christine aburanira Murenzi Alphonse na Uwamahoro Jacqueline, Me Yaramba Ruhara Athanase na Me Niyitegeka Epaphrodite bunganiye Mutabazi Abayo Jean Claude kandi bahagarariye Muhawenimana Joselyne, naho Me Mafaranga Anastase ahagarariye SANLAM Assurances Générales Plc.

[11] Iburanisha rigitangira, Me Habyarimana Christine yavuze ko Murenzi Alphonse arwaye, ko mu busanzwe amwunganira, ariko noneho yamuhaye ububasha bwo kumuhagararira ku bijyanye n'inzitizi y'uburegeke batanze nyuma y'inama ntegurarubanza bitewe n'uko impamvu yayo yabonetse nyuma y'iyo nama. Avuga ko iyo nzitizi ishingiye ku kirego gishya Mutabazi Abayo Jean Claude yatanze mu Rukiko rw'Ibanze rwa Gasabo ku wa 24/02/2022, gihabwa N° RC 00177/2022/TB/GSBO, ko aho Murenzi Alphonse abimenyeye, yasanze icyo kirego gifitanye isano n'uru rubanza, amusaba gutegura inzitizi y'uburegeke, bityo akaba yumva ariyo yaherwaho.

[12] Mu rubanza rubanziriza urundi rwaciwe ku wa 14/04/2022, Urukiko rwasanze ikiburanwa muri uru rubanza ndetse n'ingano yacyo (portée/scope) atari kimwe n'icyaregewe mu rubanza N° RC 00177/2022/TB/GSBO, rusanga kandi urubanza rwaregewe mu Rukiko rw'Ibanze rudashobora kuba mu bubasha bw'Urukiko rw'Ikirenga ndetse n'urubanza rwatangiriye mu Rukiko Rwisumbuye, rugacibwa ku rwego rwa nyuma n'Urukiko Rukuru, nyuma yaho rugasubirishwamo ku mpamvu z'akarengane rudashobora kuba mu bubasha bw'Urukiko rw'Ibanze kuko inkiko zifite ububasha bwo kuruburanisha ari Urukiko rw'Ubujurire cyangwa Urukiko rw'Ikirenga, rwanzura ko nta buregeke buri hagati y'uru rubanza n'ikirego cyanditswe kuri Nº RC 00177/2022/TB/GSBO mu Rukiko rw'Ibanze rwa Gasabo, bityo ko izo manza zitagomba guhuzwa.

[13] Iburanisha ryakomeje ku wa 18/05/2022, Me Habyarimana Christine yunganiye Murenzi Alphonse anahagarariye Uwamahoro Jacqueline, Mutabazi Abayo Jean Claude yunganiwe na Me Yaramba Athanase na Me Niyitegeka Epaphrodite kandi bahagarariye Muhawenimana Joselyne. SANLAM Assurances Générales Plc nayo yari yitabye kandi ihagarariwe nka mbere. Urukiko rwabanje kwibutsa Me Habyarimana Christine ko kuba Uwamahoro Jacqueline ataratanze ikirego

gisubirishamo urubanza ku mpamvu z'akarengane, ashobora kumvwa gusa ariko ntagire ibyo asaba mu rubanza.

[14] Ibibazo byasumwe n'ibyo kumenya niba raporo y'abahanga yashingiweho n'Urukiko Rukuru mu gufata icyemezo yateshwa agaciro, kumenya icyateye isenyuka ry'urukuta rw'urugo rwa Mutabazi Abayo Jean Claude na Muhawenimana Joselyne, kumenya agaciro k'ibyangiritse kubera isenyuka ry'urwo rukuta n'ukwiye kubiryozwa, kumenya ugomba kuryozwa indishyi zishyuwe na Sanlam Assurances Générales Plc, kumenya ingano y'igihembo cy'umuhanga n'ugomba kucyishyura hamwe n'ikibazo cy'indishyi zitandukanye zisabwa mu rubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO.

II.1. Kumenya niba raporo y'abahanga yashingiweho mu icibwa ry'urubanza Nº RCA 00499/2019/HC/KIG- CMB RCA 00506/2019/HC/KIG ikwiye guteshwa agaciro

[15] Murenzi Alphonse avuga ko ingingo ya mbere y'akarengane ishingiye ku kuba raporo y'abahanga yasuzumye iriduka ry'urukuta yashingiweho n'Urukiko Rukuru yarakozwe hatubahirijwe imigenzo ya ngombwa isabwa (conditions de forme), harimo kuba imikono y'abahanga itabanjirijwe n'indahiro iteganywa n'itegeko,[1] no kuba Ir Hirwa Eugène, umwe muri bo, yemeza ko iyo raporo irimo amakosa kandi ko atahawe umwanya wo gushyiramo ibitekerezo bye. Asobanura ko bamwe mu bahanga bavuze ko batari bazi ko bagomba kurahira mbere, nyamara ntawakwitwaza kuba atazi ibyo amategeko ariho ateganya. Naho ku bijyanye na raporo ya Laboratoire yapimye ubutaka, avuga ko nayo nta gaciro ikwiye guhabwa bitewe n'uko itasabwe n'Urukiko ndetse naho ibonekeye, akaba yarihannye umwe mu bahanga bayikoze witwa Nkurunziza Alphonse kubera kubogama, izo nenge zose zikaba zitaragombaga kwirengagizwa n'Urukiko Rukuru rwitwaje ko ari iz'imyandikire kuko ari inenge z'ireme zikwiye gutuma ibyakozwe byose biteshwa agaciro.

[16] Mutabazi Abayo Jean Claude n'abamwunganira kandi bagahagararira Muhawenimana Joselyne, bavuga ko abahanga bakoze raporo yashingiweho n'Urukiko Rukuru bahamagajwe mu iburanisha hashingiwe ku biteganywa n'ingingo ya 99 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, barahirira ibyo bakoze n'ibisobanuro batanze, ibyo bihita bivanaho inenge y'ibura ry'indahiro yari muri raporo batanze. Bavuga ko ibyo kurahiriza mu iburanisha abahanga batashyize umukono kuri raporo bashyikirije Urukiko bihuye n'umurongo watanzwe n'uru Rukiko mu rubanza Ubushinjacyaha bwaburanaga na Sibomana Nathanel, ndetse n'urwo Ubushinjacyaha bwaburanaga na Habimana Jean Claude.[2]

[17] Basobanura ko Ir Hirwa Eugène atari gusanga raporo y'abahanga irimo amakosa cyangwa hatarimo ibitekerezo bye ngo ayisinye, kandi ko yahamirije imbere y'Urukiko ko yayikoranye na

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[1] Ingingo ya 93 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko "... Raporo ishyirwaho umukono n'abahanga bose. Umukono w'abahanga kugira ngo utaba impfabusa ubanzirizwa n'indahiro mu nyandiko iteye itya: « Jyewe, ……… ndahiye ko nakoze umurimo nashinzwe ntacyo nirengagije, nywukora uko ugomba gukorwa nta buhemu. Niba ntawukoze uko bikwiye nzabihanirwe n'amategeko».

[2] Reba urubanza N° RPA 0227/08/CS hagati y'Ubushinjacyaha na Sibomana Nathanael, rwaciwe n'Urukiko rw'Ikirenga ku wa 19/02/2010 n'urubanza Nº RPAA 0321/10/CS Ubushinjacyaha bwaburanaga na Habimana Jean Claude, ruciwe n'Urukiko rw'Ikirenga ku wa 18/03/2016.

bagenzi be, ayisinya nta gahato. Bavuga ko kuba umuhanga adahuza ibitekerezo na bagenzi be bigengwa n'ingingo ya 94 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, icyo gihe utemeranya n'abandi akaba agomba kubitangira impamvu atagaragaje igitekerezo cya buri wese, ko ku bijyanye n'uru rubanza atari uko byagenze, ariko ko niyo bigenda bityo ataribyo byari gutesha agaciro ibyemejwe n'abandi bahanga kuko ibyemezo bifatwa ku bwiganze bw'amajwi. Basanga raporo y'abahanga ari kimwe mu bimenyetso biri muri dosiye, ko uretse yo, Urukiko rwashingiye icyemezo cyarwo no kuri raporo yakozwe n'Umugenzuzi ushinzwe imiturire mu Karere ka Gasabo, Abatangabuhamya batandukanye barimo uwagurishije Murenzi Alphonse ikibanza, abamwubakiye urukuta n'umusingi ndetse n'imvugo z'abaturanyi bigeze gusenyerwa na Murenzi Alphonse.

[18] Bavuga ko bemeranya na MurenzI Alphonse ko raporo ya Laboratoire itasabwe n'Urukiko ariko ko ibyo bitabuza undi muhanga kuba yayifashisha mu gihe ari gukora imirimo ye, ndetse ko kuri iyi ngingo Murenzi Alphonse yivuguruza kuko mu Rukiko Rwisumbuye yasabaga ko iyo raporo ahubwo ariyo ishingirwaho, none akaba avuga ko nta gaciro ikwiye guhabwa. Basanga kuba Murenzi Alphonse yarihannye umuhanga Nkurunziza Alphonse ntacyo byamumarira muri uru rubanza kuko ubwo bwihane bwasuzumwe, Urukiko rusanga nta shingiro bufite, ibyo rero akaba ataribyo byahindukira ngo bifatwe nk'inenge kuri raporo yakozwe n'uwo muhanga. Basobanura ko nta nenge Murenzi Alphonse agaragaza zatuma hakorwa raporo nshya, uretse ko nubwo byakwemezwa bitashoboka kuko ahasenyutse harangije kubakwa, ariyo mpamvu basaba uru Rukiko kwemeza ko ku bijyanye n'iyi ngingo nta karengane kari mu rubanza rwasubirishijwemo.

[19] Me Mafaranga Anastase, uburanira SANLAM AG Plc, avuga ko ku wa 22/05/2018, aribwo itaka ryaturutse kwa Murenzi Alphonse ryasenyaga inkuta, ryangiza imodoka Toyota Prado RAD 995F ya Mutabazi Abayo Jean Claude, yari ifite ubwishingizi muri SANLAM AG Plc (ex-SORAS AG Ltd), ko hishyuwe 2.183.000 Frw kugira ngo iyo modoka ikorwe, akaba asaba uru Rukiko gushimangira icyemezo cy'Urukiko Rukuru cy'uko izo ndishyi zigomba kuryozwa Murenzi Alphonse na Uwamahoro Jacqueline.

UKO URUKIKO RUBIBONA

[20] Ingingo ya 93 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko raporo y'umuhanga ishyirwaho umukono n'abahanga bose babanje kurahirira umurimo bakoze. Naho ingingo ya 99 y'iryo Tegeko iteganya ko mu bujurire, urukiko rushobora guhamagara umuhanga kugira ngo arusobanurire mu magambo raporo yarushyikirije, nabwo akabikora abanje kubirahirira. Izi ngingo zumvikanisha ko umuhanga urangije inshingano ze atanga raporo iriho indahiro n'umukono we. Icyakora nta kibuza ko uwo muhanga yahamagarwa n'Urukiko kugira ngo asobanure ibyo yakoze, ibisobanuro akaba abitanga na none amaze kurahira.

[21] Urukiko rurasanga akamaro k'indahiro imaze kuvugwa ari ukugaragaza ko umuhanga yakoze inshingano yahawe n'Urukiko ntacyo yirengagije, azikora kinyamwuga, nta buhemu nta no kubogamira ku ruhande urwo ariwo rwose. Indahiro cyangwa umukono w'umuhanga ubwabyo sibyo Urukiko ruba rwashyiriyeho umuhanga kuko n'ubundi ntabwo biri mu nshingano ahabwa,

ahubwo byombi, iyo bishyizwe kuri raporo, bituma icyizere igomba kugirirwa cyiyongera.[3] Umukono n'indahiro by'umuhanga bihamya ko umuhanga azi, yemera kandi yirengera ibikubiye muri raporo yashyikirije Urukiko.

[22] Urukiko rurasanga kuba nta ndahiro yashyizwe kuri raporo cyangwa nta mukono w'umuhanga uyigaragaraho bitewe no kwibagirwa cyangwa kutamenya ko ari ngombwa, ubwabyo ntibyaba impamvu yo gutesha agaciro raporo y'umuhanga mu gihe ashobora guhamagazwa n'Urukiko izo nenge akazikosora ashyira umukono kuri raporo yatanze cyangwa arahirira imbere y'Urukiko indahiro yateganyijwe n'Itegeko.

[23] Mu rubanza Ngingo Damien yaburanaga na Akaje Alexis,[4] uru Rukiko rwasanze nta kibuza ko bene izo nenge zo kuba umuhanga atarasinye raporo cyangwa atarayirahiriye zishobora gukemurwa (régulariser) no guhamagaza uwakoze raporo akaza kubishyiraho. Urukiko rurasanga mu gihe raporo yakozwe n'abahanga benshi, buri wese mu bayikoze agomba kuyishyiraho umukono. Icyakora, inkiko n'abahanga bemeranywa ko kuba umwe mu bahanga atarashyize umukono kuri raporo yemejwe na bagenzi be bitafatwa nk'impamvu yatuma iyo raporo iteshwa agaciro, hapfa kuba hari ibimenyetso bihamya ko utarayisinye yafatanyije na bagenzi be kuyikora no kugera ku mwanzuro uyikubiyemo.[5]

[24] Urukiko rurasanga ibi bishimangira ko umuhanga wahamirije Urukiko ko yafatanyije na bagenzi be gukora raporo ndetse akayishyiraho umukono, atahindukira ngo avuge ko atemera ibiyikubiyemo atabanje kugaragaza ko nta bushobozi yari afite bwo kwanga kuyisinya cyangwa kumenya ko agiye kuyisinya. Bityo, ibyo Murenzi Alphonse avuga ko raporo yitwa Panel Expert's Technical Report yakozwe ku wa 02/07/2019 ikwiye guteshwa agaciro kuko Ir Hirwa Eugène atumvikanye n'abandi bahanga ku mwanzuro bagezeho nta shingiro bikwiye guhabwa, kuko nawe ubwe yemeye ko yakoranye na bagenzi be, ndetse ashyira umukono kuri iyo raporo, kuba yarayisinye bikaba byihagije mu guhamya ko yemeraga ibiyikubiyemo.

[25] Urukiko rurasanga dosiye y'urubanza irimo raporo y'abahanga yitwa Panel Expert's Technical Report yakozwe ku wa 02/07/2019 na Ir Hirwa Eugène (washyizweho n'uruhande rwa Murenzi Alphonse), Ir Kassana B. Leonard (washyizweho n'uruhande rwa MutabazI Abayo Jean Claude), na Ir Dr Nkurunziza Alphonse, wari ubayoboye bitegetswe n'Urukiko Rwisumbuye rwa Gasabo mu cyemezo rwafashe ku wa 08/05/2019. Aba bahanga uko ari batatu basinye kuri iyo raporo, icyakora, imikono yabo ntaho ibanzirizwa n'indahiro iteganywa n'ingingo ya 93 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryibukijwe haruguru kandi ntaho bigaragara ko baba bararahiriye imirimo bakoze imbere y'Urukiko Rwisumbuye rwa Gasabo.

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[3] "L'expert doit réaliser ses opérations avec conscience, objectivité et impartialité…Pour obtenir la garantie que les experts respectent cette obligation, la loi s'en remet pour l'essentiel au serment qu'ils prêtent d'accomplir leur mission en honneur et conscience." Reba Etienne Vergès, Géraldine Vial et Olivier Leclerc, Droit de la preuve, Paris, PUF, 2015, p.688.

[4] Reba urubanza N° RCAA 0082/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 06/11/2015, igika cya 11.

[5] "Mais attendu que c'est à bon droit que la cour d'appel a décidé que " la preuve de la collaboration et de la conformité de l'avis des deux experts Z... Rapportée, il n'y avait pas lieu de s'arrêter à une omission materielle qui n'entrainait aucun préjudice pour les parties." Reba Civ 1re, 24 juillet 1973, Bull Civ I, N° 224. "l'omission de la signature d'un des experts n'entraînerait aucun préjudice pour les parties dès lors qu'étaient établies la collaboration des experts et la conformité de leurs avis." Reba Serge Guinchard (Eds), Droit et pratique de la procedure civile, Paris, Dalloz, 2014, p.1062.

[26] Urukiko rurasanga iyo nenge yo kuba abahanga batararahiriye iyo raporo, yarakosowe mu Rukiko Rukuru kuko mu gika cya 22 cy'urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, urwo Rukiko rwibukije ko abahanga bakoze raporo yavuzwe haruguru batumijwe kuyisobanura kandi babanza kurahira. Uru Rukiko rukaba rwemeranya n'isesengura Urukiko Rukuru rwakoze rw'uko inenge yo kutarahira yavanweho n'iyo ndahiro yakorewe mu iburanisha mu rubanza rwari rwajuririwe.

[27] Urukiko rurasanga raporo y'abahanga yitwa Panel Expert's Technical Report yakozwe ku wa 02/07/2019 igaruka ku byagaragajwe na Report of Geotechnical Investigation yo muri Kamena 2019, ibyo ariko bikaba ataribyo byatuma raporo yakozwe n'abahanga bashyizweho n'Urukiko iteshwa agaciro nk'uko Murenzi Alphonse abivuga kuko uretse kuba nta cyabuzaga umuhanga kwiyambaza uburyo ubwo aribwo bwose bwemewe n'amategeko bwamufasha gukora umurimo we cyangwa bwamuha umucyo kurushaho ku bijyanye n'inshingano ze, ntagaragaza icyo anenga imyanzuro yagezweho na Report of Geotechnical Investigation.

[28] Urukiko rurasanga ku kibazo nk'iki, umuhanga Serge Guinchard avuga ko Urukiko Rusesa Imanza rwo mu Bufaransa rwasanze kuba umuhanga yarashingiye raporo ye ku byagaragajwe n'indi raporo ababuranyi batari bazi ndetse akanga kubatumira mu nama nyuma yo kubashyikiriza raporo ye, ubwabyo bitatuma raporo y'umuhanga iteshwa agaciro kuko nta kibuza ko, nyuma yo kuyibona, ababuranyi bagaragaza ibyo bayinenga.[6] Ku bijyanye n'uru rubanza, Murenzi Alphonse akaba atavuga gusa ko atemera Report of Geotechnical Investigation kandi atagaragaza icyo ayinenga, nabyo bikaba bishimangira ko ibyo aburanisha kuri iyi ngingo nta shingiro bifite.

II.2. Kumenya icyateye isenyuka ry'urukuta rw'urugo rwa Mutabazi Abayo Jean Claude na Muhawenimana Joselyne

[29] Murenzi Alphonse na Me Habyarimana Christine, umwunganira bavuga ko Urukiko Rukuru rwemeje ko urukuta rwa Mutabazi Abayo Jean Claude rwasenywe n'itaka ryarutsikamiye, hirengagizwa uruhare rw'umusingi w'amabuye yubatse urwo rukuta, no kuba umusingi wari mugufi kandi wubakijishije amabuye ameze nka Rugarika, ibi bikaba byaremejwe na raporo z'abahanga ziri muri dosiye. Basobanura ko imiyoboro y'amazi yaturukaga kuri annexes za Mutabazi Abayo Jean Claude yayaganishaga mu byobo bicukuye hafi y'uwo musingi, amazi akajya ajenga avuye muri ibyo byobo kugeza ubwo acengeye mu musingi bituma woroha, uzana imitutu ndetse n'inzu zose za Mutabazi Abayo Jean Claude zizamo ubukonje (humidité) kugeza ubwo azisenye, yubaka bushyashya. Bavuga ko ayo mazi byageze aho aba menshi kubera ikibazo cy'ibiza nk'uko bigaragazwa na raporo zitandukanye za Ministeri y'ibiza n'iz'inzego z'ibanze zihamya ko ubwo urukuta rwasenyukaga hari hashize igihe hagwa imvura nyinshi kandi ko yangije ibintu byinshi muri ako gace.

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[6] "…dans une espèce ou l'expert a eu recours aux éléments d'une autre expertise à laquelle les parties étaient étrangères et a refuse de tenir une réunion après communication des rapports de cette expertise, la première chambre a rejeté le moyen tire de la nullité du rapport en raison de la méconnaissance du principe du contradictoire aux motifs que l'expert a communiqué les documents aux parties, les invitants à formurer leurs observations… dès lors que (l'expert) a rendu compte aux parties, qu'il leur a comminiqué les pieces ayant servi à l'élaboration du rapport et que les intéréssés ont eu la possibilité de fournir à l'expert toutes les explications utiles, (ils ne peuvent pas encore demander la nullité du rapport d'expertise). Reba Serge Guinchard (sous la dir.), Droit et pratique de la procédure civile, Paris, Dalloz, 2014, p. 1063.

[30] Basoza bavuga ko amazi yaturutse kwa Murenzi Alphonse atariyo yasenye urukuta kuko amenshi yafatwaga n'ibigega, asagutse akagana mu byobo bicukuye ahitaruye kwa Mutabazi Abayo Jean Claude. Naho ibijyanye n'itaka bivugwa ko ryari ritsikamiye urukuta kugeza ubwo rirusenye kubera kururusha uburemere bavuga ko atari ukuri, ko icyabaye ari ugusiza no gutera ubusitani, bakaba basanga kuba Urukiko Rukuru rutarahaye agaciro imyubakire ya Mutabazi Abayo Jean Claude yatumye urukuta rwe rwubakwa mu buryo butuma rutihanganira ibibazo biturutse hanze no kuba harirengagijwe uruhare rw'ibiza mu isenyuka ryarwo aribyo byateye akarengane.

[31] Mutabazi Abayo Jean Claude n'abamwunganira bakanahagararira Muhawenimana Joselyne bavuga ko dosiye irimo ibimenyetso bitandukanye bigaragaza ko itaka Murenzi Alphonse yarunze hejuru y'urugo rwe ariryo ryabaye nyirabazana w'isenyuka ry'urukuta rwe. Bavuga ko abahanga basanze ibyobo by'amazi ataribyo ntandaro y'isenyuka ry'urwo rukuta nk'uko Murenzi Alphonse abivuga kuko nta mazi yari abiretsemo, bitegereye cyane urukuta rwasenyutse kandi ko aho biri hacuritse ku buryo amazi atatemba azamuka. Bavuga ko iyo ibyo byobo biba aribyo nyirabayazana w'iriduka ry'urukuta byari gusenya n'inzu kuko ariyo ibyegereye cyane kurusha uko byegereye urukuta, ndetse ko urwo rukuta rutari kuba rwarihanganye imyaka umunani yose rwamaze.

[32] Bavuga ko iby'uko amazi yiyongereye bitewe n'ibiza ntaho bigaragara muri raporo y'abahanga ndetse ko imvura yose iguye itakwitwa ikiza kuko ikiza gifite inyito yacyo mu mategeko, kugeza ubu Murenzi Alphonse akaba atagaragaza ko urukuta rwe rwasenywe n'umwuzure waturutse ku mvura nyinshi kandi hakaba nta mpamvu yatuma urukuta rwe rugereranywa n'imihanda cyangwa imisozi yo mu bindi bice by'igihugu byaridutse kuko raporo ya Meteo Rwanda yo ku wa 21 no ku wa 22/05/2018 igaragaza ingano y'imvura yaguye mu gace batuyemo, kandi igahamya ko iyo mvura itakwitwa ikiza. Bavuga ko Murenzi Alphonse yarangije kubaka mu mwaka wa 2017, inkuta ziriduka muri Gicurasi 2018, ko uwamwubakiye witwa Nzabandora Elie ndetse n'amashusho ya google bihamya ko ku wa 22/05/2018, nta kigega na kimwe gifata amazi Murenzi Alphonse yari yagashyize ku nyubako.

[33] Basoza bavuga ko Murenzi Alphonse yemereye imbere y'Urukiko amakosa mu myubakire y'inzu ye, ayo makosa yongera kugaragazwa na raporo y'abahanga bashyizweho n'Urukiko Rwisumbuye rwa Gasabo, raporo yakozwe n'Umugenzuzi ushinzwe imiturire mu Karere ka Gasabo, Abatangabuhamya batandukanye (barimo uwamugurishije ikibanza, uwamwubakiye urukuta rwahirimye, uwacukuye fondation n'abandi), imvugo z'abaturanyi mu gihe cy'iperereza harimo n'iz'abantu babiri basenyewe na Murenzi Alphonse mbere y'ihirima ry'urukuta rwa Mutabazi Abayo Jean Claude hamwe na raporo z'inzego z'ibanze. Basanga ibyo bimenyetso byose byarasesenguwe uko bikwiye ku buryo ahubwo kutabiha agaciro aribyo byatera akarengane.

UKO URUKIKO RUBIBONA:

[34] Ingingo ya 76 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igira iti: "ubuhamya bw'abahanga ni ubugamije guha urukiko ibisobanuro bishingiye ku bumenyi kimwe n'umwanzuro urenze ubumenyi busanzwe bw'umucamanza mu kazi ke bitewe n'uko ibiburanwa bishingiye ku buhanga bwihariye".

[35] Dosiye y'urubanza irimo raporo y'abahanga yitwa Experts' Panel Technical Report igaragaza ko inzu ya Murenzi Alphonse yuzuye mu Kuboza 2017, icyo gihe hakaba harakoreshwaga ingingo ya 2.6.5.19.3 ya Rwanda Building Code yometswe ku Iteka rya Minisitiri N°04/Cab.M/015 ryo ku wa 18/05/2015 rishyiraho amabwiriza ajyanye n'imitunganyirize y'imijyi n'imyubakire iteganya ko inkuta zigamije gutangira ubutaka, amazi cyangwa ibindi byose bishobora kurutsikamira zigomba kubakwa mu buryo bukurikije amategeko, hagakoreshwa reinforced concrete, ibyuma cyangwa ibindi bikoresho byemewe, hagateganywa kandi imiyoboro y'amazi mu butaka itunguka inyuma y'urukuta, n'uburyo ayo mazi azayoborwa kugira ngo atibika mu rukuta.[7] Naho ingingo ya 2.6.5.19.4 y'icyo Gitabo yateganyagа ko nta bintu birenze ibyateganyijwe bigomba gushyirwa inyuma y'urukuta mu ntera ingana nibura n'uburebure bwarwo.[8]

[36] Dosiye y'urubanza igaragaza ko mu kwemeza ko urukuta rwa Mutabazi Abayo Jean Claude rwasenyutse biturutse ku makosa y'imyubakire ya Murenzi Alphonse, Urukiko Rukuru rwashingiye ku bimenyetso bikurikira:

i. Isesengura ryakozwe n'abahanga bakoze raporo yitwa Experts' Panel Technical Report ryemeje ko urukuta rwa Mutabazi Abayo Jean Claude rwari rukomeye bihagije ahubwo rutsikamirwa n'itaka Murenzi Alphonse yarushyizeho bituma rugwa;

ii. Isesengura ryakozwe n'abahanga muri raporo ya Geotechnical Investigations ryemeje ko urukuta rwa Mutabazi Abayo Jean Claude rwari rukomeye ariko ntirwabasha kwihanganira ibyarugeretsweho;

iii. Raporo yakozwe na Sibomana Adolphe, Umugenzuzi w'Imyubakire mu Karere ka Gasabo wemeje ko isenyuka ry'urukuta ryatewe n'imyubakire ya Murenzi Alphonse itubahirije amategeko kuko itaka yamennye azamura ikibanza cye (backfill), ari ryo ryaremereye urukuta rwa Mutabazi Abayo Jean Claude bituma rusenyuka;

iv. Ibyavuye mu iperereza ryakozwe n'Urukiko Rwisumbuye rwa Gasabo, rugasanga Mutabazi Abayo Jean Claude yubatse munsi y'ikibanza cya Murenzi Alphonse kandi ko urukuta rwaridutse rwari rwegamiye umusozi, rugasanga Murenzi Alphonse yararunze itaka mu kibanza cye mu rwego rwo kukiringaniza ndetse n'ibyobo bifata amazi ava kwa Murenzi Alphonse biri mu butumburuke buri inyuma y'urugo rwa Mutabazi Abayo Jean Claude;

v. Abatangabuhamya b'abaturanyi babajijwe n'Urukiko Rwisumbuye rwa Gasabo ubwo rwari mu iperereza bahamije ko itaka Murenzi Alphonse yarunze hejuru y'urugo rwa Mutabazi Abayo Jean Claude ariryo ryasenye urukuta rwe, ko bitari ubwa mbere kuko hari n'abandi baturanyi iryo taka ryasenyeye, Murenzi Alphonse akabubakira.

[7] "Walls built to retain or support the lateral pressure of earth or water or other superimposed loads shall be designed and constructed of approved masonry, reinforced concrete, steel sheet piling or other approved materials within the allowable stresses specified in this Code and the subsoil drainage shall be required behind the retaining wall together with sufficient weep outlets in such wall in order to prevent the accumulation of water."

[8] "No surcharge of fill shall be permitted to be placed behind the retaining wall within a distance equal to the height of the wall."

[37] Urukiko rurasanga raporo y’abahanga yitwa Experts’ Panel Technical Report igaragaza ko amabuye y’urukuta rwa Murenzi Alphonse yaheraga aho amatafari y’urukuta Mutabazi Abayo Jean Claude atangiriye kandi ko ayo mabuye (ya Murenzi Alphonse) yari ateretse ku itaka risanzwe (stable soil), agerekeranye impagarike, amazi y’imvura ayoborwa mu byobo bibiri byacukuwe mu busitani inyuma y’urukuta rwa Mutabazi Abayo Jean Claude, ko rero isenyuka ry’urukuta ryatewe n’impamvu zikurikira:

i. Uburemere bw’itaka Murenzi Alphonse yarunze mu kibanza cye kugira ngo akiringanize;

ii. Umusingi w’urukuta rwa Murenzi Alphonse rutari rwubahirije ibiteganywa n’amategeko nko kuba rwari rushushanyije nabi, rwubatse impagarike kandi bibujijwe n’amategeko ndetse n’imigenzereze y’imyubakire, no kuba rutarimo ibyuma bituma rukomera;

iii. Ubwoko bw’itaka Murenzi Alphonse yakoresheje bwa clay silt buremera cyane iyo buhuye n’amazi;

iv. Kuba Mutabazi Abayo Jean Claude yarubatse urukuta rukomeye adateganyije ko hejuru ye bazaharunda itaka ryo mu bwoko bwa clay silt bigatuma adakoresha inkingi z’ibyuma (reinforced concrete).

[38] Urukiko rurasanga raporo yakozwe n’ubugenzuzi bw’Akarere ka Gasabo ku wa 23/05/2018, bukeye bw’umunsi urukuta rwa Mutabazi Abayo Jean Claude rwasenyutse igira iti: “… bigaragara ko isenyuka ry’urukuta … ryatewe n’imyubakire itubahirije amategeko ya Murenzi, kuko backfill (ubutaka yatinze ashaka kuringaniza ikibanza) yakoze yabaye surcharge kuri retaining wall Abayo yari yarubatse kandi retaining wall Murenzi yari yarubatse ikaba nta weep outlets yigeze ayiha kuko yayubatse ifatanye n’urukuta rw’amatafari rwa Abayo yari yarubatse mbere.”

[39] Urukiko rurasanga Raporo y’Akarere ka Gasabo ntacyo Murenzi Alphonse ayinenga, kandi iyo ihujwe n’iyitwa Experts’ Panel Technical Report zumvikanisha ko mu kubaka urukuta rwe MurenzI Alphonse yakoze amakosa akurikira yatumye urukuta rwa Mutabazi Abayo Jean Claude ruriduka:
i. Kudacukura umusingi ngo arenge ubutaka busanzwe mbere yo gutangira kubaka amabuye;
ii. Kubakira amabuye ku butaka busanzwe ntashyiremo weep outlets zari kuzajya ziyobora amazi mu gihe yinjiye mu butaka;
iii. Kurunda ubutaka burusha uburemere urukuta rwubatswe mbere na Mutabazi Abayo Jean Claude akabutangiriza umusingi w’amabuye utaracukuriwe ubujyakuzimu buhagije ndetse utarahawe imiyoboro y’amazi.

[40] Urukiko rurasanga Urukiko Rusesa Imanza mu Bufaransa rwarasanze iyo umwubatsi yarunze ibintu ku rukuta bikarenga ubushobozi bwarwo (dépassement des charges maximales autorisées sur un mur de soutainement), agomba kwirengera ayo makosa kuko aba amureba ku giti cye.[9]

[9]Cass. Civ. 3è, 26 mars 1997, N° 94-21, 808 Bull.Civ, III, N°69.

[41] Kubera impamvu zose zatanzwe mu bika bibanziriza iki, Urukiko rusanga, mu gihe nta raporo n'imwe ishimangira ibivugwa na Murenzi Alphonse by'uko isenyuka ry'urukuta rwa Mutabazi Abayo Jean Claude ryatewe no kuba hari ibyobo uyu yari yaracukuye hafi y'urukuta rwe bituma rujenga kugeza rusenyutse, ndetse hakaba nta n'itangazo ry'inzego zibishinzwe ryemeza ko mu gace urwo rukuta rwarimo hibasiwe n'ibiza (déclaration de catastrophe naturelle) ku buryo rwaba rwararituwe n'ibiza by'imvura yari imaze igihe igwa, Urukiko Rukuru rwari rufite ukuri ko kwemeza ko urukuta rwa Mutabazi Abayo Jean Claude rwaridutse biturutse ku makosa y'imyubakire ya Murenzi Alphonse.

II.3. Kumenya agaciro k'ibyangiritse kubera isenyuka ry'urukuta rw'urugo rwa Mutabazi Abayo Jean Claude na Muhawenimana Joselyne

[42] Murenzi Alphonse na Me Habyarimana Christine, umwunganira bavuga ko raporo y'abahanga yashingiweho hatangwa indishyi itagaragaza agaciro nyakuri k'ibyangiritse, ko Urukiko rwabaze indishyi rwagennye rugendeye ku marangamutima bituma rutanga iz'umurengera, bikungahaza Mutabazi Abayo Jean Claude nta mpamvu, bakaba basaba ko mu gihe uru Rukiko rwasanga koko hari indishyi zigomba gutangwa, zikwiye kubarwa kinyamwuga kandi zikagaragaza agaciro nyakuri k'ibyangiritse.

[43] Mutabazi Abayo Jean Claude n'abamwunganira kandi bagahagararira Muhawenimana Joselyne bavuga ko Murenzi Alphonse ari we nyirabayazana w'isenyuka ry'inkuta zombi kubera amakosa y'imyubakire, ko abahanga mu by'igenagaciro bashyizweho n'Urukiko bagaragaje ibyangiritse n'agaciro kabyo ku ruhande rwa Mutabazi Abayo Jean Claude, aba aribyo inkiko zombi zabanje zishingiraho. Basobanura ko iby'uko agaciro k'ibyangiritse kashingiwe ku marangamutima aho gushingira kuri raporo y'abahanga atari ukuri cyane cyane ko na annexes Mutabazi Abayo Jean Claude yifuzaga ko zishyurwa na Murenzi Alphonse, Urukiko rwazivanye mu bigomba kwishyurwa. Bavuga ko ku bijyanye n'agaciro k'ibyangiritse, ntacyo Murenzi Alphonse yanenze raporo y'abahanga ku rwego rwa mbere kuko yari ikoze kinyamwuga, ndetse ko no mu Rukiko Rukuru atabijuririye kuko yemeranyaga n'icyemezo cy'Urukiko Rwisumbuye rwa Gasabo, bityo akaba adakwiye kugarura icyo kibazo bwa mbere mu Rukiko rw'Ikirenga.

UKO URUKIKO RUBIBONA

[44] Ku bijyanye n'ikibazo cy'agaciro k'ibyangiritse kubera isenyuka ry'urukuta rw'urugo rwa Mutabazo Abayo Jean Claude na Muhawenimana Joselyne, dosiye y'urubanza igaragaza ko ingingo Me Turatsinze Emmanuel waburaniraga Murenzi Alphonse yajuririye mu Rukiko Rukuru yagiraga iti: "Kuba Urukiko rwaragennye indishyi zishingiye ku isenyuka ry'ibintu byubatswe mu buryo bunyuranyije n'amategeko (report y'Akarere)". Mu gusobanura iyi ngingo, ntaho yinubiraga uburyo agaciro k'ibyangijwe kabazwe, ahubwo yavugaga ko raporo y'Akarere ka Gasabo yemeje ko Mutabazi Abayo Jean Claude yubatse mu buryo bunyuranyije n'amategeko, bityo akaba nta ndishyi yagombaga kugenerwa.

[45] Ikibazo cyo kumenya niba ingingo zafashweho icyemezo ntizijuririrwe zishobora kugarurwa mu gihe cyo gusubirishamo urubanza ku mpamvu z'akarengane, cyasuzumwe n'uru Rukiko mu manza zitandukanye harimo n'urwo Ngizweninshuti Albert yaburanaga na Muhima

Giovani,[10] rusanga iyo ingingo ya 55, igika cya nyuma,[11] n'iya 63[12] z'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko zisomewe hamwe, zumvikanisha ko umuburanyi utarajuririye ingingo atanyuzwe nazo hakurikijwe inzira zisanzwe kandi yari abyemerewe n'amategeko,[13] aba yivukije inzira y'ubujurire yari gutuma ibyo yanengaga bikosorerwa mu bujurire, bityo akaba adashobora kwifashisha inzira yo gusubirishamo urubanza ku mpamvu z'akarengane, yirengagije ko hari izindi manza zabaye, ngo ingingo yanze kujuririra ku bushake asabe ko zisuzumwa mu karengane kuko byaba binyuranyije n'ibiteganywa n'amategeko.

[46] Urukiko rurasanga rero kuba Murenzi Alphonse atarajuririye ingingo ijyanye n'agaciro k'ibyangiritse kubera isenyuka ry'urukuta rw'urugo ngo bisuzumwe n'Urukiko Rukuru, uru Rukiko ntaho rwahera rusuzuma iyo ngingo mu rubanza rusubirishwamo ku mpamvu z'akarengane.

II.4. Kumenya niba Murenzi Alphonse na Uwamahoro Jacqueline bagomba kuryozwa indishyi SANLAM Assurances Générales Plc isaba.

[47] Murenzi Alphonse na Me Habyarimana Christine umwunganira bavuga ko amasezerano yabaye hagati ya Mutabazi Abayo Jean Claude na SANLAM Assurances Générales Plc atabareba, ko batumva impamvu aribo bagomba kuryozwa indishyi ziturutse ku makosa ya Mutabazi Abayo Jean Claude yo guparika imodoka ze ahantu yabonaga ko hajemo imitutu yashoboraga gutuma urukuta ruriduka.

[48] Me Mafaranga Anastase, uburanira SANLAM Assurances Générales Plc avuga ko impamvu Murenzi Alphonse na Uwamahoro Jacqueline aribo bagomba kuryozwa indishyi zishyuwe na SANLAM AG Plc ari uko iyo sosiyete ariyo yari yarafashwemo ubwishingizi bw'impanuka, aba ari nayo yishyura 2.183.000 Frw yakoreshejwe imodoka zangiritse biturutse ku makosa y'imyubakire ya Murenzi Alphonse yatumye urukuta rwe n'urwa Mutabazi Abayo Jean Claude zisenyuka zikangiza imodoka ebyiri.

UKO URUKIKO RUBIBONA

[49] Ingingo ya 32 y'Itegeko–Teka n° 20/75 ryo ku wa 20 Kamena 1975 ryekeye Ubwishingire (Assurances) yakoreshwaga ubwo ikirego cyatangwaga yateganyaga ko: "uwishingiye wishyuye

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[10] Reba urubanza N° RS/INJUST/RC 00024/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 21/02/2020, ibika bya 18-22. Reba kandi urubanza N° RS/INJUST/RC 00007/2018/SC rwaciwe ku wa 13/03/2020, haburana Nditiribambe Samuel, Gatera Jason na Nyamaswa Faustin n'urubanza N° RCOM RS/ INJUST/ RC 00004/2019/SC rwaciwe ku wa 28/07/2020, haburana Mukamana, Havugimana, Umuhoza na Candali.

[11] "…umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanzwe ariko ntabikore mu gihe giteganyijwe n'amategeko ntiyemerewe gusaba ko urubanza yatsinzwe rusubirishwamo ku mpamvu z'akarengane …"

[12] « iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga agena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe »

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

indishyi z'ubwishingire asimbura uwo yishingiye, mu rugero rw'indishyi yatanze, mu byerekeye uburenganzira no gukurikirana abandi bantu batumye yishyura kubera ibikorwa byabo."[14]

[50] Urukiko rurasanga dosiye y'urubanza igaragaza ko mu RukikoRwisumbuye rwa Gasabo ndetse no mu Rukiko Rukuru indishyi zingana na 2.183.000 Frw zagenewe SANLAM Assurances Générales Plc kubera ko raporo y'abahanga yagaragaje ko impanuka yatumye imodoka za Mutabazi Abayo Jean Claude zangirika yaturutse ku makosa y'imyubakire ya Murenzi Alphonse, imbere y'uru Rukiko Murenzi Alphonse akaba atabasha kugaragaza ko haba hari ikindi cyangije izo modoka kitari iriduka ry'urukuta rwe n'urwa Mutabazi Abayo Jean Claude biturutse ku makosa ye y'imyubakire nk'uko byagaragajwe haruguru.

[51] Urukiko rurasanga kandi iby'uko imodoka za Mutabazi Abayo Jean Claude zangijwe n'iriduka ry'urukuta rwa Murenzi Alphonse byatangiwe raporo n'Ubuyobozi bw'Umudugudu wa Nyirabwana ku wa 22/03/2018. Muri raporo yitwa "Raporo y'ibyabaye mu Mudugudu wa Nyirabwana", uwo muyobozi ahamya ko intandaro ry'iyangirika ry'izo modoka ari itaka Murenzi Alphonse yarunze ku rukuta rwa Mutabazi Abayo Jean Claude, noneho ryakwinjiramo amazi y'imvura, rikaremerera urwo rukuta kugeza ubwo rusenyutse. Kuba urukuta rwari rwajemo imitutu sibyo kandi byatuma Mutabazi Abayo Jean Claude aryozwa ingaruka zatewe n'itaka Murenzi Alphonse yarunze ku rukuta rwe. Bari bumvikanye ko Murenzi Alphonse ashyira imiyoboro y'amazi muri iryo taka, ntiyabikora, Mutabazi Abayo Jean Claude akaba rero ataregwa ubuteganye buke kuko atari kumenya igihe imvura izagwira, ingano yayo cyangwa ingano y'uburemere izatera iryo taka ngo bitume adaparika imodoka ze aho yari asanzwe aziparika kubera gutinya ko urukuta rwaziridukira.

[52] Urukiko rurasanga kandi kuba Murenzi Alphonse atari mu masezerano y'ubwishingizi bw'imodoka ataribyo byamuvanaho uburyozwe, kuko mu gihe ariwe nyirabayazana w'impanuka yangije imodoka, akaba atararishye ibyangijwe n'ibikorwa bye bikimara kuba, afite inshingano zo kwishyura SANLAM Assurances Générales Plc yabyishyuye nk'uko byateganywaga n'ingingo ya 32 y'Itegeko-Teka N° 20/75 ryo ku wa 20 Kamena 1975 yibukijwe haruguru.

II.5. Kumenya niba Murenzi Alphonse adakwiye kuryozwa igihembo cy'abahanga

[53] Murenzi Alphonse na Me Habyarimana Christine umwunganira bavuga ko abahanga bashyizweho n'Urukiko bagombaga guhembwa n'impande zombi ariko utsinzwe akazasubiza uruhare rw'uwatsinze. Basobanura ko atari uko byagenze kuko Mutabazi Abayo Jean Claude yaje kwihererana abahanga bose bumvikana igihembo gihanitse kandi mu madolari ya Amerika Murenzi Alphonse atabanje kubimenyeshwa, bityo bakaba basanga Mutabazi Abayo Jean Claude agomba kubyirengera.

[54] Mutabazi Abayo Jean Claude n'abamwunganira kandi bagahagararira Muhawenimana Joselyne bavuga ko iyi ngingo itari ikwiye gusumwa mu rwego rw'akarengane kuko itajuririwe mu Rukiko Rukuru. Basobanura ariko ko iramutse isuzumwe, uru Rukiko rwabona ko ibihembo by'abahanga byashyizweho n'itsinda ryabo kuko bangaga ko buri wese akorana amasezerano n'uwamushyizeho, muri iryo tsinda hakaba harimo na Ir Hirwa Eugène washyizweho na Murenzi Alphonse. Bavuga ko e-mails n'inyandiko ziri muri dosiye bigaragaza uburyo abahanga

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[14] Iri Tegeko-Teka ryavanweho n'Itegeko N° 030/2021 ryo ku wa 30/06/2021 rigenga imitunganyirize y'umurimo w'ubwishingizi ryatangajwe mu Igazeti ya Leta ku wa 02/08/2021.

n'ababuranyi baganiriye ku kiguzi, bumvikana 6.173 USD, buri wese ahabwa 1/3 cyayo kandi ko Ir Hirwa Eugène yemereye Urukiko Rukuru ko yishyuwe. Bavuga kandi ko iby'uko igihembo cy'abahanga gihenze, cyatanzwe mu madolari ya Amerika kandi kitumvikanweho n'ababuranyi bombi atari ukuri, bakaba basaba uru Rukiko kwemeza ko nta kibuza Murenzi Alphonse kwishyura igihembo cy'abahanga kuko urukuta rwaridutse biturutse ku makosa ye y'imyubakire.

UKO URUKIKO RUBIBONA

[55] Ingingo ya 273, igika cya 3, y'Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko "… Utsinze urubanza yishyurwa n'uwatsinzwe amafaranga yatanze ku nzobere…"

[56] Urukiko rurasanga dosiye y'urubanza igaragaza ko mu iburanisha ryabaye mu Rukiko Rwisumbuye ku wa 22/05/2019, MurenzI Alphonse yavuze ko atanga kwishyura abahanga ahubwo ko ashaka kumvikana nabo ku kiguzi, bigeze mu Rukiko Rukuru, mu iburanisha ryabaye ku wa 16/10/2020, avuga ko Mutabazi Abayo Jean Claude yihereranye abahanga bituma bumvikana igiciro cy'umurengera kugira ngo raporo izasohoke irimo ibitekerezo bye gusa, asaba ko hashyirwaho irindi tsinda ry'abahanga, buri muburanyi akihitaramo umuhanga, hanyuma abatoranyijwe bakishakira uwa gatatu, kandi bakumvikana n'ababuranyi ku gihembo cyabo. Urukiko rwasanze iyo ngingo nta shingiro ifite, byumvikanisha ko ibyo Mutabazi Abayo Jean Claude avuga ko icyo kibazo kitashyikirijwe Urukiko Rukuru ngo kigibweho impaka nta shingiro bifite.

[57] Urukiko rurasanga mu gika cya 25 cy'urubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, Urukiko Rukuru rwarasanze Ir Dr Nkurunziza Alphonse wari ukuriye itsinda ry'abahanga yarabanje gusaba ko bahembwa 500 USD ku munsi, ariko nyuma y'imishyikirano bakoranye na Mutabazi Abayo Jean Claude, bemeranya ko bazahembwa 300 USD ku munsi. Ntaho Murenzi Alphonse agaragaza ko ibyo avuga ko yumvikanye na Ir Hirwa Eugene Valery igiciro gito, uyu yavugiraga itsinda ryose ry'abahanga kandi ko babyanzuyeho, cyane cyane ko nyuma yaho Ir Hirwa Eugene Valery yagendeye ku bwumvikane bwagezweho n'uwari ukuriye itsinda ry'abahanga ndetse yemera igihembo uyu yumvikanyeho na Mutabazi Abayo Jean Claude mu izina ry'itsinda ryose.

[58] Urukiko rurasanga kandi iby'uko igiciro cy'abahanga cyumvikanweho mu madolari ya Amerika, nabyo bitaba impamvu yatuma Murenzi Alphonse atubahiriza inshingano ze zo kwishyura igihembo cy'abahanga kuko impande zombi zumvikanye ku mirimo igomba gukorwa n'igihembo cyayo, nta cyabuza rero ko amasezerano bumvikanyeho ashyirwa mu bikorwa kuko ayo masezerano aba yabaye itegeko hagati y'abayakoranye.

[59] Hashingiwe ku bimaze gusobanurwa haruguru no kuba ingingo z'ingenzi Murenzi Alphonse ashingiraho akarengane nta shingiro zifite, Urukiko rurasanga Murenzi Alphonse agomba kwishyura igihembo cy'abahanga nk'uko cyumvikanweho kandi byemejwe n'Urukiko Rwisumbuye rwa Gasabo.

II.6. Kumenya ishingiro ry'indishyi zisabwa muri uru rubanza

[60] Murenzi Alphonse na Me Habyarimana Christine umwunganira bavuga ko kuba Mutabazi Abayo Jean Claude yarubatse atabifitiye uruhushya, ntagene uburyo bukwiye bwo gufata amazi aturuka ku nyubako ze byatumye urukuta rwa Murenzi Alphonse na Uwamahoro Jacquéline ruriduka, bakaba basaba uru Rukiko kumutegeka gufatanya na Muhawenimana Joselyne kubaha 4.000.000 Frw yo kongera kurwubaka, 5.000.000 Frw y'indishyi z'akababaro bateye Murenzi Alphonse n'umuryango we, 1.000.000 Frw y'ikurikiranarubanza ku nzego zose, 3.000.000 Frw y'igihembo cya Avoka mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru, 5.000.000 Frw y'igihembo cya Avoka muri uru Rukiko na 80.000 Frw y'igarama ryatanzwe mu Rukiko Rukuru bajurira.

[61] Mutabazi Abayo Jean Claude n'abamwunganira kandi bagahagararira Muhawenimana Joselyne bavuga ko indishyi zose zisabwa na Murenzi Alphonse ntacyo zishingiyeho kuko ari we nyirabayazana w'isenyuka ry'urukuta nk'uko raporo zose zabigaragaje. Bavuga ko Mutabazi Abayo Jean Claude na Muhawenimana Joselyne aribo bakwiye guhabwa indishyi z'akababaro zingana na 10.000.000 Frw, 1.000.000 Frw y'ikurikiranarubanza na 3.000.000 Frw y'igihembo cya Avoka mu Rukiko rw'Ikirenga.

[62] Me Mafaranga Anastase, uburanira SANLAM Assurances Générales Plc, avuga ko bakomeje gushorwa mu manza nta mpamvu, asaba uru Rukiko gutegeka Murenzi Alphonse na Uwamahoro Jaqueline kuyishyura indishyi z'ikurikiranarubanza n'igihembo cya Avoka zingana na 1.500.000 Frw.

UKO URUKIKO RUBIBONA

[63] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe."

[64] Urukiko rurasanga indishyi zose zisabwa na Murenzi Alphonse ntazo akwiye kuko ntacyo atsindiye muri uru rubanza.

[65] Urukiko rurasanga na none indishyi z'akababaro zisabwa na Mutabazi Abayo Jean Claude muri uru rubanza adakwiye kuzihabwa kuko uretse kuba adasobanura uburyo iriduka ry'urukuta rw'uruzitiro rw'urugo rwe byaba byaratumye agira agahinda, ntiyakwuririra ku kirego cyatanzwe na Murenzi Alphonse mu rwego gusubirishamo urubanza ku mpamvu z'akarengane ngo nawe agire ibyo asaba kandi bigaragara ko ntacyo yanengaga urubanza rwasabiwe gusubirishwamo.

[66] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Mutabazi Abayo Jean Claude na Muhawenimana Joselyne basaba bayakwiriye kuko bakurikiranye uru rubanza ndetse bashyiraho n'aba Avoka bababuranira. Icyakora 1.000.000 Frw y'ikurikiranarubanza na 3.000.000 Frw y'igihembo cya Avoka basaba kuri uru rwego ntibagaragaza ko koko ariyo yagiye kuri uru rubanza, bityo mu bushishozi bw'Urukiko bakaba bagenewe 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka.

[67] Urukiko rurasanga na none SANLAM Assurances Générales Plc nayo nta bimenyetso yatanze bigaragaza ko 1.500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka isaba aricyo yatanze ku rubanza kuri uru rwego, nayo ikaba igenewe 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka, agenwe mu bushishozi bw'Urukiko.

III. ICYEMEZO CY'URUKIKO.

[68] Rwemeje ko ikirego cya Murenzi Alphonse gisubirishamo urubanza N° RCA 00499/2019/HC/KIG- CMB RCA 00506/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 19/02/2021 nta shingiro gifite;

[69] Rwemeje ko nta gihindutse ku mikirize y'urubanza N° RCA 00499/2019/HC/KIG- CMB RCA 00506/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 19/02/2021 hagashyirwa mu bikorwa icyemezo cyarwo giteye gitya:

- "78. Rukijije ko urubanza N° RC 00203/18/TGI/GSBO rwaciwe kuwa 8/11/2019 n'Urukiko Rwisumbuye rwa Gasabo ruhindutse kuri bimwe;
- 79. Rutegetse ko indishyi Mutabazi Abayo Jean Claude na Muhawenimana Alphonsine[15] bari bahawe ku rwego rwa mbere zikuwemo 3.369.336 frw y 'agaciro k'annexe na 2.183.000frw yagombaga kugenerwa SANLAM AG PLC Ltd;
- 80. Rutegetse Murenzi Alphonse na Uwamahoro Jacqueline guha Mutabazi abayo Jean Claude na Muhawenimana Joselyne amafaranga y'igihembo cy'Avoka, ikurikiranarubanza n'igarama yose hamwe angana 740.000frw;
- 81. Rutegetse Murenzi Alphonse na Uwamahoro Jacqueline gusubiza SANLAM AG PLC Ltd 2.183.000frw yakoresheje imodoka ya Mutabazi Abayo Jean Claude na Muhawenimana Joselyne;
- 82. Rwemeje ko amagarama Murenzi Alphonse na Uwamahoro Jacqueline batanze bajurira ahwanye n'ibyakozwe muri uru rubanza;"

[70] Rutegetse Murenzi Alphonse guha Mutabazi Abayo Jean Claude na Muhawenimana Joselyne 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka kuri uru rwego, yose hamwe akaba 800.000 Frw;

[71] Rutegetse Murenzi Alphonse guha SANLAM Assurances Générales Plc 300.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka kuri uru rwego, yose hamwe akaba 800.000 Frw.

[15] Habaye kwibeshya ni Muhawenimana Joselyne.