

RWANDA / JUDGMENT

RLR-V.1-2017

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RUTAZANA Angeline : Umwanditsi wa Komite Umugenzuzi w'Inkiko

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BWIZA N. Blanche : Umugenzuzi w'Inkiko

DUSHIMINAMA Claudine : Umushinjacyaha ku rwego Rw'Igihugu

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KIBUKA Jean Luc : Umucamanza mu Rukiko Rukuru rw'Ubucuruzi

Major. MADUDU A. Charles : Umucamanza mu Rukiko Rukuru rwa Gisirikare

MUREREREHE Saouda : Umucamanza mu Rukiko Rukuru

Prof. Dr. NGAGI M. Alphonse : Umucamanza mu Rukiko rw'Ikirenga

RUBANGO K. Epimague : Intumwa ya Leta

RUKUNDAKUVUGA F. Regis : Umugenzuzi Mukuru w'Inkiko

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IRIBURIRO Basomyi bacu, Dutangiye tubifuriza Umwaka w'ishya n'ihirwe wa 2017. Muri uyu mwaka, Urwego rw'ubucamanza ruzakomeza inshingano yo kubagezaho icyegeranyo cy'ibyemezo by'inkiko. Dutangiranye rero n'icyegeranyo No V.1[2017]. Nk'uko tutahwemye kubibakangurira, dukeneye ibitekerezo n'inama byanyu mu rwego rwo kurushaho kunoza iki gikorwa. Muri iyi numero murasangamo imanza cumi na rumwe (11) zikubiyemo imanza ebyiri z'imiburanishirize y'imanza (2), urubanza rumwe rw'ubutegetsi (1), imanza ebyiri z'imbonezamubano (2), imanza eshatu z'ubucuruzi (3) n'imanza eshatu nshinjabyaha (3). Tuboneyeho no kubibutsa ko imanza ziri muri iki cyegeranyo ziboneka no ku rubuga rwa murandasi kuri <http://decisia.lexum.com/rlr/kn/nav.do> rw'Urukiko rw'Ikirenga ruborohereza kubona urubanza mukeneye mu buryo bwihuse. Prof. RUGEGE Sam Perezida w'Urukiko rw'Ikirenga Perezida w'Inama Nkuru y'Ubucamanza

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xix ashobora guhitamo urukiko rw’aho utwara abantu abarizwa, urw’aho afite icyicaro cye cy’ibanze, urw’aho amasezerano yakorewe, cyangwa urw’aho abagenzi bagomba kugezwa – Amategeko y’iburanisha akurikizwa ni ay’aho urukiko rwaregwe – Amasezerano mpuzamahanga ya Varsovie yo kuwa 12/10/1929, ingingo ya 28. UMWARI N’ABANDI v. SN BRUSSELS AIRLINES.....117 Indishyi – Indishyi zijyanye no gushorwa mu manza – Igihembo cy’Avoka – Indishyi z’ikurikiranarubanza – Indishyi zo gushorwa mu manza nta mpamvu ntizigenwa igihe uzisaba atagaragaza ishingiro ryazo – Amafaranga y’ikurikiranarubanza n’igihembo cy’Avoka, agenwa mu bushishozi bw’Urukiko igihe uyasaba atagaragaza uburyo yayabazemo. GAHIGA v. FORTIS BUSINESS HOLDINGS LLC...1 Indishyi zo gushorwa mu manza – Indishyi zijyanye n’igihembo cy’Avoka n’ikurikiranarubanza – Umuburanyi utarishimiye imikirize y’urubanza rwaciwe afite uburenganzira bwo kurujuririra bityo nta ndishyi zijyanye no gushorwa mu manza z’amaherere uzisaba yahabwa – Amafaranga y’ikurikiranarubanza n’igihembo cy’Avoka uyasaba arayakwiye kuko byumvikana ko hari ibyo yagombye gukora kubera ubujurire bwatanzwe n’uwajuriye, ndetse akaba yaragombye gushaka Avoka umuburanira mu bujurire – Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo ya 162. HAGENGIMANA v. UWIHOREYE.....15 AMAGAMBO MPINE

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GAHIGA v. FORTIS BUSINESS HOLDINGS LLC [Rwanda URUKIKO RW'IKIRENGA – RCA0010/11/CS (Kanyange, P.J., Mukandamage na Rugabirwa, J.) 21 Gashyantare 2014] Amategeko agenga ububasha bw'inkiko – Ikirego gisaba ko urubanza rwaciwe n'urukiko rwo mu mahanga rurangirizwa mu Rwanda – Ibisabwa kugirango urubanza rurangirizwe mu Rwanda – Urubanza ntirurangirizwa mu Rwanda igihe mu icibwa ryarwo hatubahirijwe uburenganzira bwo kwiregura k'umuburanyi – Itegeko Nshinga rya Repuburika y'u Rwanda ryo kuwa 04 Kamena 2003 nk'uko ryujijwe kandi ryahinduwe kugeza ubu, ingingo ya 18 – Itegeko Ngenga N°51/2008 ryo ku wa 09/09/2008 rigenga imiterere, imikorere n'ububasha by'inkiko, ingingo ya 91 – Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 10. Indishyi – Indishyi zijyanye no gushorwa mu manza – Igihembo cy'Avoka – Indishyi z'ikurikiranarubanza – Indishyi zo gushorwa mu manza nta mpamvu ntizigenwa igihe uzisaba atagaragaza ishingiro ryazo – Amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka, agenwa mu bushishozi bw'urukiko igihe uyasaba atagaragaza uburyo yayabazemo. Incamake y'ikibazo: Fortis Business Holdings LLC yareze

Gahiga mu Rukiko Rukuru i Kigali isaba ko urubanza 1

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 2 N°09103391 rwaciwe n'Urukiko rw'Ikirenga rwa Leta ya New York rurangirizwa mu Rwanda; maze uru rukiko ruca urubanza Gahiga adahari rwemeza ko ikirego cyatanze mu buryo bukurikije amategeko kandi ko gifite ishingiro, rutegeka ko urwo rubanza rurangirizwa mu Rwanda. Gahiga yasubirishijemo urwo rubanza maze urukiko rwemeza ko ikirego cyekitakiriwe bituma ajuririra Urukiko rw'Ikirenga avuga ko urukiko rwamwangiye gusubirishamo urubanza rwaciwe adahari kandi atarahamagawe kuruburana mu buryo bukurikije amategeko bikamuvutsa uburenganzira bwe bwo kwiregura. Urukiko rwemeje ko Gahiga yavukijwe uburenganzira bwo kwiregura nk'uko biteganywa n'itegeko nshinga ry'u Rwanda akaba agomba guhabwa uburenganzira bwemerewe umuburanyi waciriwe urubanza adahari, akemererwa gusubirishamo urubanza rwaciwe n'Urukiko Rukuru i Kigali. Mu miburanire ye Gahiga avuga ko yategetswe kwishyura 6.596.526,37USD, nyamara urubanza rwaciwe adahamagawe ngo aburane, n'ubwo amasezerano yagiranye na Fortis Business Holdings LLC yemeye ko habaho urubanza adahamajwe. Akaba asanga ibyo binyuranyije n'amategeko ndemyagihugu ndetse n'amahame agenderwaho mu mategeko y'u Rwanda aha umuburanyi uburenganzira kwiregura. Gahiga avuga kandi ko urubanza Fortis Business Holdings LLC isabira kurangirizwa mu Rwanda yari yanarusabiye kurangirizwa mu Busuwisi maze itsindwa mu Rukiko rubanza no mu bujirire. Bityo Gahiga asaba uru rukiko gukurikiza ibyemejwe n'izo nkiko. Gahiga asaba na none ko Fortis Business Holdings LLC yamuha indishyi z'akababaro, amafaranga y'ikurikiranarubanza

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GAHIGA v. FORTIS BUSINESS HOLDINGS LLC 3 n'igihembo cy'Avoka kubwo kumushora mu manza nta mpamvu. Fortis Business Holdings LLC ivuga ko ibisabwa byose kugirango urubanza rurangirizwe mu Rwanda byubahirijwe kubera ko ibyakozwe mu kuruca bitanyuranyije n'amategeko ndemyagihugu y'u Rwanda n'amahame rusange akurikizwa, ko kandi mu masezerano impande zombi zagiranye zemeranyijwe ko atari ngombwa ko Gahiga aba ahari mu rubanza ngo yiregure. Fortis Business Holdings LLC ivuga kandi ko indishyi isabwa nta shingiro ryazo kuko ibyo isaba muri uru rubanza bikomoka ku masezerano bagiranye ubwabo, naho ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka akaba nta bimenyetso abitangira, akaba rero atayahabwa. Incamake y'icyemezo: 1. Kuba urega atarahamagawe mu rubanza N°09103391 ngo yiregure, bifatwa nko kutubahiriza uburenganzira bwe bwo kwiregura kandi ni umuhango ndemyagihugu mu mategeko y'u Rwanda bityo rero uru rubanza ntirwarangirizwa mu Rwanda kuko mu icibwa ryarwo hatubahirijwe uburenganzira bw'umuburanyi.

2. Ibijyanye no gusuzuma niba umwenda wa Fortis Business Holdings LLC waba warishyuwe na Carl Linde ntibikiri ngombwa kuko urubanza N°09103391 rutarangirizwa mu Rwanda.

3. Indishyi zo gushorwa mu manza nta mpamvu ntizigenwa igihe uzisaba atagaragaza ishingiro ryazo.
4. Amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka, agenwa mu bushishozi bw'Urukiko igihe uyasaba atagaragaza uburyo yayabazemo.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 4 Ubujurire bufite ishingiro; Amagarama y'urubanza aherereye ku warezwe. Amategeko yashingiweho: Itegeko Nshinga rya Repuburika y'u Rwanda ryo kuwa 04 Kamena 2003 nk'uko ryujwe kandi ryahinduwe kugeza ubu, ingingo ya 18. Itegeko Ngenga N°51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, ingingo ya 91. Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruza, iz'umurimo n'iz'ubutegets, ingingo ya 10. Nta manza zifashishijwe. Urubanza I. IMITERERE Y' URUBANZA [1] Fortis Business Holdings LLC yareze Gahiga Médard mu Rukiko Rukuru Kigali isaba ko urubanza N°09103391 rwaciwe n'Urukiko rw'Ikirenga rwa Leta ya New York (The Supreme Court of the state of New York, County of New York) rurangirizwa mu Rwanda. [2] Urukiko rwaciye urubanza RC0004/11/HC/KIG, Médard Gahiga adahari, rwemeza ko ikirego cyatanze mu buryo bukurikije amategeko kandi ko gifite ishingiro, rutegeka ko urwo rubanza rurangirizwa mu Rwanda.

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GAHIGA v. FORTIS BUSINESS HOLDINGS LLC 5 [3] Nyuma y'icibwa ry'urubanza Médard Gahiga yarusubirishijemo, urukiko ruca urubanza RC0038/11/HC/KIG, rwemeza ko ikirego cye gisaba gusubirishamo urubanza RC0004/11/HC/KIG kitakiriwe, ko kandi ntagihundutse kuri urwo rubanza, rusobanura ko Fortis Business Holdings LLC yibeshye ikamurega bitari ngombwa, ko kandi hakurikije ikiba kigamijwe muri bene izi manza n'ibisuzumwa n'umucamanza bateganywa n'amategeko, urubanza nk'urwo rutaburanishwa hakoreshejwe uburyo bwo kunyomozanya, ko ndetse Gahiga atabashije kwerekana amategeko amwemerera gusubirishamo urubanza, ajyanye n'ubu bwoko bw'imanza. [4] Gahiga yajuririyeye Urukiko rw'Ikirenga, avuga ko urukiko rwamwangiye gusubirishamo urubanza rwaciwe adahari kandi atarahamagawe kuruburana mu buryo bukurikije amategeko bikamuvutsa uburenganzira bwe bwo kwiregura. [5] Nyuma yo gusuzuma ikibazo cyo kumenya niba icyo kirego cya Gahiga gisaba gusubirishamo urubanza RC0004/11/HC/KIG cyaragombaga kwakirwa n'Urukiko Rukuru, uru rukiko rwasanze Gahiga yarafashwe nk'umuburanyi nyamara rwirengagije ko atari yahamagawe kuburana, ko rero yavukijwe uburenganzira afite bwo kwiregura mu rukiko buteganywa mu ngingo ya 18 y'Itegeko Nshinga ryo kuwa 04/06/2003 nk'uko ryavugururwe kugeza ubu, mu gihe muri bene izo manza ubusanzwe ababuranyi bahamagarwa bakaburana, maze rwemeza ko ahabwa uburenganzira bwemerewe umuburanyi waciye urubanza adahari, akemererwa gusubirishamo urubanza RC0004/11/HC/KIG. [6] Iburanisha ry'urubanza mu mizi ryakomeje mu ruhamye tariki ya 14/01/2014, Fortis Business Holdings LLC iburanirwa

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 6 na Me Mugisha Richard, Gahiga Médard aburanirwa na Me Rwihandagaza Richard. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

- a. Kumenya niba urubanza N°09103391 rwaciwe n'Urukiko rw'Ikirenga rwa Leta ya New York rwujuje ibisabwa kugira ngo rurangirizwe mu Rwanda. [7] Me Mugisha avuga ko Gahiga Médard na Robert Hirsch bishingiye sosiyete yitwa Hirsch & Cie ku mwenda yagurijwe na Fortis Business Holdings LLC ungana na USD 5.250.000, bityo biyemeza gufatwa nk'abayibereyemo umwenda. [8] Mu rwego rwo gushimangira ingwate, Gahiga ngo yongeye kwishingira umwenda wa sosiyete Hirsch & Cie tariki ya 06/10/2008 hakurikijwe ibiteganywa n'ingingo ya 111 y'Itegeko ryo mu gihugu cya "Suisse" ryerekeye imirimo nshinganwa cyangwa amasezerano (Guarantee in accordance with art. 111 Swiss Code of Obligations), anasinya amasezerano y'ubwishingire (Guaranty Agreement) maze yemera ko yishingiye umwenda wavuzwe. [9] Me Mugisha avuga na none ko hakurikijwe ingingo ya 19 y'amasezerano y'ubwishingire (Guaranty Agreement), impande zombi zemeranyije ko igihe cyo kwishyura nikigera umwenda utarishyurwa, Gahiga yemereye Fortis Business Holdings "confession of judgement in favour of the applicant" iteganywa mu ngingo ya 3218 ya "Civil practice law and rules of the state of New York", ku madorari yose yaba atarishyurwa, inyungu n'amagaranga y'ikurikiranarubanza n'igihembo cya

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GAHIGA v. FORTIS BUSINESS HOLDINGS LLC 7 avoka, bivuze ko hagombaga kubaho urubanza bitabaye ngombwa kumuhamagara ngo aze kuburana. [10] Avuga rero ko ari muri urwo rwego tariki ya 11/03/2009, Fortis Business Holdings yaregeye Urukiko rw'Ikirenga rwa Leta ya New York, maze rubinyujije muri "judgement by confession N°09103391" Gahiga ategukwa kuyishyura USD6.596.526,37 yose hamwe, ikaba rero isaba ko urwo rubanza rwarangirizwa mu Rwanda kuko izi neza ko Gahiga ahafite imitungo yakoresheye mu kwishyura uwo mwenda. [11] Ku byerekeye amategeko, Me Mugisha avuga ko ashingiye ku ngingo ya 91 y'Itegeko Ngenga N°51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, ibisabwa byose kugirango urubanza rurangirizwe mu Rwanda byubahirijwe kubera ko ibyakozwe mu kuruca bitanyuranyije n'amategeko ndemyagihugu y'u Rwanda n'amahame rusange akurikizwa, ko urubanza rwaciwe rwujuje ibyangombwa, ko kandi mu masezerano impande zombi zagiranye zemeranyijwe ko atari ngombwa ko Gahiga aba ahari mu rubanza ngo yiregure. [12] Yongeraho ko ku mwenda wose Gahiga yatsindiye, hishyuwe gusa 1.700.000USD, hakaba nta bundi bwishyu bwabayeho. [13] Me Rwihandagaza uburanira Gahiga avuga ko tariki ya 08/09/2008, sosiyete Hirsch & Cie yahawe na Fortis Business Holdings LLC umwenda ungana na 5.250.000USD wishingirwa na Robert Hirsch, Carl Linde na Gahiga, ko mu gihe uwo mwenda utari wishyuye ku gihe, Fortis Business Holdings LLC yishyuye Gahiga Médard na Carl linde.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 8 [14] Akomeza avuga ko urubanza N°09103391 rwaciwe tariki ya 11/03/2009 n'Urukiko rw'Ikirenga rwa Leta ya New York (jugement par acquiescement – judgment by confession), Gahiga agategekwa kwishyura 6.596.526,37USD, rwaciwe adahamagawe ngo aburane, atanamenyeshejwe umunsi w'iburanisha ngo abe ahari cyangwa se ahagarariwe. [15] Me Rwihandagaza asanga rero, n'ubwo mu masezerano yagiranye na Fortis Business Holdings LLC yemeye “jugement par acquiescement - judgment by confession”, urubanza rusabirwa kurangirizwa mu Rwanda runyuranyije n'amategeko ndemyagihugu ndetse n'amahame agenderwaho mu mategeko y'u Rwanda kubera ko Gahiga yaciriwe urubanza atahamagawe ngo amenyeshwe umunsi w'urubanza, akaba atarahawe uburyo bwo kwisobanura no kurengera inyungu ze (violation des droits de la défense), ibyo bikaba binyuranye n'ibiteganywa n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavugururwe kugeza ubu, ndetse n'ibiteganywa n'ingingo ya 10 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ivuga ko nta muburanyi ushobora gucibwa urubanza atumviswe cyangwa atahamagawe. [16] Ku byerekeranye n'umwenda wishyuzwa, Me Rwihandagaza avuga ko Robert Hirsch yaje guhomba ku giti cye tariki ya 14/07/2009 na sosiyete Hirsch & Cie irahomba kuwa 01/12/2011, Fortis Business Holdings LLC itangaza umwenda wayo mu biro bibishinzwe i Lausanne yemererwa kwishyurwa, iza kwishyurwa 1.700.000USD yatanzwe na SAN Foundation yaguze Hôtel Megève yahoze ari iya Robert Hirsch. Avuga kandi ko hari ubundi bwishyu bwaturutse mu igurishwa

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GAHIGA v. FORTIS BUSINESS HOLDINGS LLC 9 ry'umutungo wa Carl Linde i Tel-Aviv muri Israel n'i Londres, ko rero hishyuwe 7.250.000USD yose hamwe, hakaba rero nta mpamvu yo gusaba ko urubanza rwavuzwe rurangirizwa mu Rwanda. [17] Akomeza avuga ko Gahiga yatangajwe no kubona ko tariki ya 01/10/2010 yahawe itegeko rimwishyura CHF6.474.058,80 (commandement de payer N°01022559) hashingiwe ku rubanza rwavuzwe, arayitambamira, maze kuwa 06/10/2011 Fortis Business Holdings LLC iregera urukiko rwa Mbere rwa Canton ya Genève isaba ko urubanza rurangirizwa muri “Suisse”, ariko iratsindwa nk'uko bigaragara mu rubanza rwaciwe kuwa 19/09/2012, ijuriye nabwo iratsindwa nk'uko na none bigaragara mu rubanza rwaciwe kuwa 22/03/2013, none ibyo yatsindiwe ikaba yarabiregeye mu nkiko z'u Rwanda, agasaba uru rukiko gukurikiza ibyemejwe n'izo nkiko (jurisprudence), maze ntirwemere ko urubanza rwavuzwe haruguru rurangirizwa mu Rwanda. UKO URUKIKO RUBIBONA [18] Ku byerekeranye n'ibirego by'irangizwa ry'imanza zaciwe n'inkiko zo mu mahanga, ingingo ya 91 y'Itegeko Ngenga N°51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko iteganya ko bisuzumwa harebwa ibi bikurikira: 1° ko urubanza rwaciriwe mu mahanga rutanyuranije n'amategeko rusange ndemyagihugu n'amahame ashingiweho n'amategeko y'u Rwanda; 2° ko rwaciwe burundu hakurikijwe amategeko y'Igihugu rwaciriwemo;

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 10 3° ko kopi yarwo yujuje ibyangombwa byose byemeza ko ari impamo, hakurikijwe ayo mategeko; 4° ko uburenganzira bwo kwiregura bwubahirijwe. [19] Impaka muri uru rubanza zishingiye ku kuba urubanza N°09103391 rwaciwe tariki ya 11/03/2009 n'Urukiko rw'Ikirenga rwa Leta ya New York rusabirwa kurangirizwa mu Rwanda rwaraciwe mu buryo bunyuranyije n'amategeko rusange ndemyagihugu n'amahame ashingiweho n'amategeko y'u Rwanda, no kuba uburenganzira bwo kwiregura butarubahirijwe kubera ko Gahiga yaciriwe urubanza atahamagawe ngo amenyeshwe umunsi w'urubanza, akaba atarahawe uburyo bwo kwisobanura no kurengera inyungu ze (violation des droits de la defense). [20] Nk'uko bisobanuwe muri "legal dictionary", "confession of judgment" ni amasezerano yanditse, aho uregwa yiyemeza ko agomba kwishyura umwenda yumvikanyeho n'umurega mu gihe atawishyuye neza, habayeho urubanza, ariko bitabaye ngombwa gukurikiza imihango isanzwe ikurikizwa mu iburanishwa ry'imanza ngo amenyeshwe ikirego ahamagazwe kuburana "confession of judgment is a written agreement in which the defendant in a lawsuit admits liability and accepts the amount of agreed-upon damages he/she must pay to plaintiff (person suing him/her), and agrees that the statement may be filed as a court judgment against him/her if he/she does not pay or perform as agreed. This avoids further legal proceedings and may prevent a legal judgment being entered (made) if the terms are fulfilled by defendant".

1 <http://legal-dictionary.thefreedictionary.com/Confession+of+Judgment>

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GAHIGA v. FORTIS BUSINESS HOLDINGS LLC 11 [21] Ku byerekeranye n'uburenganzira bwo kwiregura, ingingo ya 18 igika cya 2 y'Itegeko Nshinga rya Repubilika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavugururwe kugeza ubu, iteganya ko kwiregura no kunganirwa ari uburenganzira budahungabanywa mu bihe byose, ahantu hose, mu nzego zose z'ubutegets, iz'ubucamanza n'izindi zose zifata ibyemezo. [22] Naho ku birebana n'imihango y'iburanisha ry'imanza, ingingo ya 10 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, nayo ishimangira ubu burenganzira bwo kwiregura ivuga ko "nta muburanyi ushobora gucirwa urubanza atumviswe cyangwa atahamagawe". [23] Bigaragara ko mu rubanza N°09103391 rwaciwe n'Urukiko rw'Ikirenga rwa Leta ya New York, Gahiga Médard atarhamagawemo ngo yiregure, rukaba rero rutarubahirije uburenganzira bwe bwo kwiregura buteganyijwe mu ngingo z'amategeko zimaze kuvugwa. Na none kandi imihango ya ngombwa iteganywa kugirango habeho urubanza iteganywa mu nkiko z'u Rwanda ntiyubahirijwe nk'uko bisabwa mu itegeko rigenga imiburanishirize y'imanza ryavuzwe. [24] Hashingiwe ku bimaze kuvugwa, Urukiko rurasanga urwo rubanza rutagomba kwemerwa kurangirizwa mu Rwanda kuko mu icibwa ryarwo rutubahirije uburenganzira bw'umuburanyi uregwa, rukaba kandi runyuranyije n'amahame ndemyagihugu agenga imiburanishirize y'imanza mu nkiko z'u Rwanda. [25] Ibyo kandi bihuye n'ibyemejwe mu rubanza rwaciwe tariki ya 22/03/2013 na "Cour de Justice" ya Canton ya Genève mu gihugu cya Suisse, ku kirego nk'iki Fortis Business

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 12 Holdings LLC yareze Gahiga Médard, aho rwavuze ko urubanza rwaciriwe mu mahanga rutemerwa kurangirizwa muri icyo gihugu iyo rutubahirije amategeko ndemyagihugu yacyo yerekeye imiburanishirize y'imanza, ateganya ko umuburanyi agomba kumenyeshwa ko yarezwe, igihe urubanza ruzabera, agatumizwa kuburana, agatanga n'imyanzuro ye. Rwasanze rero Gahiga yaraciriwe urubanza n'Urukiko rwa Leta ya New York ibyo bitubahirijwe, maze ntirwakira ubujurire bwa Fortis Business Holdings LLC. [26] Urukiko rurasanga rero atari ngombwa gusuzuma niba urubanza N°09103391 rwaciwe n'Urukiko rw'Ikirenga rwa Leta ya New York rutarangirizwa mu Rwanda ku mpamvu z'uko umwenda wa Fortis Business Holdings LLC waba warishyuye na Carl Linde.

- b. Ishingiro ry'indishyi zisabwa na Gahiga Médard [27] Me Rwihandagaza avuga ko Fortis Business Holdings LLC yareze Gahiga nta mpamvu (action téméraire et vexatoire), ikaba igomba kumuha indishyi z'akababaro zingana na 150.000.000Frw, ikanishyura 20.000.000Frw y'ikurikiranarubanza n'igihembo cya avoka. [28] Me Mugisha avuga ko izo ndishyi z'akababaro Gahiga asaba Fortis Business Holdings LLC nta shingiro ryazo kuko ibyo isaba muri uru rubanza bikomoka ku masezerano bagiranye ubwabo, naho ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya avoka akaba nta bimenyetso abitangira, akaba rero atayahabwa.

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GAHIGA v. FORTIS BUSINESS HOLDINGS LLC 13 UKO URUKIKO RUBIBONA [29] Ku byerekeranye n'indishyi z'akababaro za 150.000.000Frw Gahiga asaba, urukiko rurasanga nta kigaragaza ko Fortis Business Holdings LLC yatanze ikirego cyo gusaba kurangiriza urubanza mu Rwanda idafite impamvu kuko yabonaga hari aho gishingiye, bityo akaba atagomba kuzigenerwa. [30] Ku birebana n'amafaranga y'ikurikiranarubanza n'igihembo cya avoka, urukiko rurasanga 20.000.000Frw asabwa na Gahiga atagaragaza uburyo yayabazemo, akaba agomba kugenerwa mu bushishozi 500.000Frw. III. ICYEMEZO CY'URUKIKO [31] Rwemeje ko ikirego cya Fortis Business Holdings LLC nta shingiro gifite. [32] Rutegetse ko urubanza N°09103391 rwaciwe tariki ya 11/03/2009 n'Urukiko rw'Ikirenga rwa Leta ya New York rutemerewe kurangirizwa mu Rwanda. [33] Rutegetse Fortis Business Holdings LLC kwishyura Gahiga Médard 500.000Frw y'ikurikiranarubanza n'igihembo cya avoka. [34] Rutegetse Fortis Business Holdings LLC kwishyura 25.750Frw y'amagarama y'urubanza.

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HAGENGIMANA v. UWIHOREYE [Rwanda URUKIKO RW'IKIRENGA – RCAA0006/13/CS (Hatangimbabazi, P.J., Mukamulisa na Hitiyaremye, J.) 10 Nyakanga 2015] Amategeko agenga ububasha bw'Inkiko – Ikirego gisaba ko Urubanza rwaciwe n'Urukiko rwo mu mahanga rurangirizwa mu Rwanda – Kugira ngo hemezwe ko urubanza rwaciriwe mu mahanga rurangirizwa mu Rwanda harebwa ko rutanyuranyije n'amategeko rusange ndemyagihugu n'amahame ashingiyeho n'amategeko y'u Rwanda, ko rwaciwe burundu hakurikijwe amategeko

y'Igihugu rwaciriwemo, ko kopi yarwo yujuje ibyangombwa byose byemeza ko ari impamo, hakurikijwe ayo mategeko kandi ko uburenganzira bwo kwiregura bwubahirijwe – Itegeko Ngenga N°51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha bw'Inkiko nk'uko ryahinduwe kandi ryujijwe kugeza ubu, ingingo ya 91. Amategeko agenga imiburanishirize y'imanza mbonezamubano – Inshingano yo gutanga ibimenyetso – Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda – Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo, ingingo ya 9. Indishyi – Indishyi zo gushorwa mu manza – Indishyi zijyanye n'igihembo cy'Avoka n'ikurikiranarubanza – Umuburanyi utarishimiye imikirize y'urubanza rwaciwe afite uburenganzira bwo kurujuririra bityo nta ndishyi zijyanye no gushorwa mu manza z'amaherere uzisaba yahabwa – Amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka 15

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 16 uyasaba arayakwiye kuko byumvikana ko hari ibyo yagombye gukora kubera ubujurire bwatanzwe n'uwajuriye, ndetse akaba yaragombye gushaka Avoka umuburanira mu bujurire – Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 162. Incamake y'ikibazo: Uwihoreye yatanze ikirego mu Rukiko Rukuru i Kigali asaba ko rwemeza ko urubanza rw'ubutane rwaciwe n'Urukiko rwo muri Leta Zunze ubumwe za Amerika rurangirizwa mu Rwanda. Mu iburanisha ry'urubanza, Hagengimana yarugobotsemo ku bushake asaba ko ikirego cya Uwihoreye kitahabwa agaciro kubera ko Urukiko rwo muri Amerika rwaciye urubanza mu buryo bunyuranyije n'amategeko yo mu Rwanda kuko atahawe umwanya wo kwiregura, ko urubanza rwaciwe adahari kandi ko urubanza rurebana n'abana rwari urw'agateganyo kandi narwo akaba atararuhamagawemo. Urukiko Rukuru rwaciye urubanza rwemeza ko ikirego cya Uwihoreye gifite ishingiro, rutegeka ko urubanza rwavuzwe rugomba kurangirizwa mu Rwanda, naho ukugoboka ku bushake kwa Hagengimana kukaba nta shingiro gufite, kubera ko Urubanza rusabirwa kurangirizwa mu Rwanda nta mategeko y'u Rwanda rutubahirije, ko rwaciwe burundu nk'uko inyito yarwo ibyerekanwa ku rupapuro rwa mbere ahanditse ko ari Final decree kandi iyo kopi ikaba yujuje ibyangombwa byemeza ko ari impamo nk'uko byemejwe n'Ambassade y'u Rwanda muri Amerika yateye Kashi yayo kuri iyo kopi, ndetse ikirego cyerekeye abana kikaba cyaraburanyweho mu rubanza rwiswe "Juvenile and Domestic relations".

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HAGENGIMANA v. UWIHOREYE 17 Hagengimana yajuririye mu Rukiko rw'Ikirenga, avuga ko umucamanza wo mu Rukiko Rukuru yirengagije ko amategeko yakoreshejwe hatangwa ubutane anyuranye n'amategeko yo mu Rwanda, anafata ibintu uko bitari kandi yirengangiza ko Uwihoreye ariwe wagombaga gutanga ibimenyetso by'uko Hagengimana yahamagawe mu rubanza rujyanye n'iby'abana hamwe n'urw'ubutane rwaciriwe muri Amerika. Uwihoreye yisobanura ku bujurire avuga ko Hagengimana ntacyo anenga urubanza rwaciwe n'Urukiko Rukuru kubera ko nawe ubwe yemera ko Urubanza rwaciriwe muri Amerika rwabaye itegeko, ko

rero rugomba kurangizwa, ndetse ko ikigaragaza ko yemera ko rwabaye itegeko ari uko yahise ashaka undi mugore ashingiye kuri urwo rubanza rw'ubutane. Uwihoreye yatanze ubujurire bwuririye ku bwa Hagengimana, asaba amafaranga yatakaje mu gukurikirana urubanza, igihembo cy'Avoka n'indishyi zo gushorwa mu manza. Hagengimana avuga ko indishyi zijyanye no gushorwa mu manza ku maherere nta shingiro zifite kubera ko nta bimenyetso uziregera abitangira naho ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, agasaba Urukiko kuzabisuzuma. Incamake y'icyemezo: 1. Uwajuriye ntiyasaba ko urubanza rwaciriwe muri Amerika rutarangirizwa mu Rwanda ku mpamvu y'uko ataruhamagawemo ngo ahabwe umwanya wo kwisobanura mu gihe nta bimenyetso abitangira kandi ari we ubiburanisha.

2. Uregwa ntagenewe indishyi zijyanye no gushorwa mu manza z'amaherere, kuko uwajuriye utishimiye imikirize y'urubanza rwaciwe n'Urukiko Rukuru, afite uburenganzira bwo kurujuririra.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 18

3. Amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Uregwa asaba arayakwiye kuko byumvikana ko hari ibyo yagombye gukora kubera ubujurire bwatanzwe n'uwajuriye, ndetse akaba yaragombye gushaka Avoka umuburanira mu bujurire, kubera iyo mpamvu uwajuriye akaba agomba kumuha 500.000Frw kuko ari mu rugero rukwiye. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe. Amagarama y'urubanza aherereye ku wajuriye. Amategeko yashingiweho: Itegeko Ngenga N°51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha bw'Inkiko nk'uko ryahinduwe kandi ryujijwe kugeza ubu, ingingo ya 91. Itegeko N°21/2012 ryo kuwa 14/06/2012, rigena imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 9 n'ya 162. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Uwihoreye Dancille yashyingiranywe na Hagengimana Athanase babyarana abana 3. Kuwa 20/05/2011 Urukiko rwo muri Leta ya Virginia muri Amerika rwitwa Fairfax County Circuit Court rwaciye urubanza ku kirego cyatanzwe na

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HAGENGIMANA v. UWIHOREYE 19 Uwihoreye arega umugabo we Hagengimana asaba ubutane, rwemeza ko gifite ishingiro, kuko bigaragara ko abashakanye bamaze umwaka wose batabana kuko buri umwe aba ukwe, ko rero no kubunga bitagishobotse, rutegeka ko Hagengimana Athanase na Uwihoreye batandukana. [2] Ku bijyanye n'ikibazo cy'imitungo n'uburyo izagabanywa, Urwo rukiko rwemeje ko inkiko zo mu Rwanda z'aho iyo mitungo iri arizo zizagena uko bizagenda. [3] Nyuma y'urwo rubanza Uwihoreye yatanze ikirego mu Rukiko Rukuru i Kigali asaba ko rwemeza ko urubanza rw'ubutane rwaciwe n'Urukiko rwo muri Amerika rurangirizwa mu Rwanda. [4] Mu iburanisha ry'urubanza mu Rukiko Rukuru, Hagengimana Athanase yagobotsemo ku bushake agamije kurengera inyungu ze muri urwo rubanza. Urwo Rukiko rwaciye urubanza rwemeza ko ikirego cya Uwihoreye gifite ishingiro, rutegeka ko urubanza

rwavuzwe rugomba kurangirizwa mu Rwanda, naho ukugoboka ku bushake kwa Hagengimana kukaba nta shingiro gufite. [5] Mu gufata icyemezo, Urukiko rwasobanuye ko ibijyanye no kugoboka ku bushake kwakozwe na Hagengimana ari uburenganzira bwe, ko ariko nta nyungu afite yo kubuza ko urubanza rurangirizwa mu Rwanda kuko Uwihoreye yatanze ikirego cy'ubutane muri Amerika akabuhabwa Hagengimana akamenyeshwa urubanza rwaciwe ariko ntagire icyo akora haba gusubirishamo urubanza cyangwa kurujuririra. [6] Ku bijyanye n'impamvu Hagengimana yatangaga zatuma Urubanza rutarangirizwa mu Rwanda, harimo ko

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 20 Urukiko rwo muri Amerika rwaciye urubanza mu buryo bunyuranyije n'amategeko yo mu Rwanda, Urukiko Rukuru rwasanze nta shingiro bifite, kubera ko atagaragaza amategeko yo muri Amerika umucamanza waho yakurikije anyuranyije n'ayo mu Rwanda ku birebana n'ubutane, ko ahubwo ubutane Urukiko rwatanze no mu Rwanda bwemewe kandi ko butabangamiye amahame ndemyagihugu y'u Rwanda. [7] Rwasobanuye ko ku bijyanye n'umutungo, umucamanza yavuze ko bizakemurwa n'inkiko zo mu Rwanda, naho ku kibazo cy'abana avuga ko cyakemuwe mu rundi rubanza rwaciwe kuwa 03/03/2006 mu Rukiko rwitwa Fairfax County mu cyiswe "Juvenile and Domestic relations". [8] Rwasanze kandi Hagengimana aba mu Busuwisi naho Uwihoreye akaba aba muri Amerika, ku buryo umucamanza wo muri Amerika yasanze Hagengimana yarataye umuryango we mu gihe kiri hejuru y'umwaka, ari nayo mpamvu yatanze ubutane, kandi n'amategeko y'u Rwanda akaba yemera ko hatangwa ubutane iyo umugabo yataye urugo mu gihe kirenga amezi 12 nibura. [9] Urukiko rwasobanuye nanone ko urubanza rwaciriwe muri Amerika rwaciwe burundu nk'uko inyito yarwo ibyerekana ku rupapuro rwa mbere ahanditse ko ari Final decree kandi iyo kopi ikaba yujuje ibyangombwa byemeza ko ari impamo nk'uko byemejwe n'Ambassade y'u Rwanda muri Amerika yateye Kashi yayo kuri iyo kopi. [10] Rwasobanuye ko kandi ibyo Hagengimana avuga ko atahawe umwanya wo kwiregura, ko kandi urubanza rwaciwe adahari, nta bimenyetso abitangira cyangwa ngo yerekane ko yarusubirishijemo cyangwa ngo arujuririre, bivuze ko

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HAGENGIMANA v. UWIHOREYE 21 amategeko yubahirijwe, ko rero rugomba kurangirizwa mu Rwanda kuko ingingo zirugize zitanyuranyije n'amategeko rusange ndemyagihugu y'u Rwanda. [11] Hagengimana Athanase yajuririye mu Rukiko rw'Ikirenga, avuga ko umucamanza wo mu Rukiko Rukuru yirengagije ko amategeko yakoreshejwe hatangwa ubutane anyuranye n'amategeko yo mu Rwanda, anafata ibintu uko bitari kandi yirengangiza ko Uwihoreye ariwe wagombaga gutanga ibimenyetso by'uko Hagengimana yahamagawe mu rubanza rujyanye n'iby'abana hamwe n'urw'ubutane rwaciriwe muri Amerika. [12] Me Sayinzoga Jean Pierre uburanira Uwihoreye Dancille avuga ko impamvu z'ubujurire za Hagengimana nta shingiro zifite, ko kandi na Uwihoreye atanze ubujurire bwuririye ku bwa Hagengimana, akaba asaba amafaranga yatakaje mu gukurikirana uru rubanza. [13] Iburanisha ry'urubanza ryabereye mu ruhamwe kuwa 26/05/2015 Hagengimana aburanirwa na Me Bimenyimana Eric naho Uwihoreye Dancille aburanirwa na Me Sayinzoga Jean Pierre. II. IBIBAZO BIRI MU RUBANZA

N'ISESENGURWA RYABYO Kumenya niba Urukiko Rukuru i Kigali rutaragombaga kwemeza ko urubanza N° 2011-296 rwaciwe na “THE FAIRFAX COUNTY CIRCUIT COURT” yo muri Amerika muri Leta Virginia kuwa 20/05/2011 rurangirizwa mu Rwanda.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 22 [14] Me Bimenyimana Eric uburanira Hagengimana Athanase avuga ko ababuranyi muri uru rubanza bafite ubwenegihugu bw'u Rwanda, kubera iyo mpamvu bakaba bagengwa n'amategeko y'u Rwanda, ko rero icyatumye Hagengimana ajurira, ari uko umucamanza wo mu Rukiko Rukuru yemeje ko urubanza rwaciriwe muri Amerika rurangirizwa mu Rwanda nyamara mu icibwa ryarwo amategeko yakoreshejwe anyuranye n'amategeko y'u Rwanda. Anavuga ko icyo Hagengimana agamije ari ukwerekana ko urubanza rutarangizwa ahubwo rwaguma uko rwaciwe. [15] Asobanura kandi ko Urukiko rwo muri Amerika rwaciye urubanza rw'ubutane rwirengagije ingingo ya 10 y'Interuro y'ibanze n'Igitabo cya mbere y'Igitabo cy'urwunge rw'amategeko mbonezamubano (C.C L.1er) kubera ko rutigeze rukemura ikibazo cy'abana, kuko icyemezo cyafashwe mbere kuri icyo kibazo cyari icy'agateganyo, Hagengimana akaba ataranahamagawe muri urwo rubanza rwasuzumye ikibazo cy'abana ngo agire icyo abivugaho. Anavuga ko urwo Rukiko rwirengangije ingingo ya 9 y'Itegeko N°27/2001 rirengera umwana aho ivuga ko icyemezo cyose kigomba gufatwa hitawe ku nyungu z'umwana. [16] Akomeza avuga ko Hagengimana atigeze ahamagarwa mu rubanza rw'ubutane, ngo abashe kwiregura, ko rero ingingo ya 18(3°) y'Itegeko Nshinga n'ya 10 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi zitubahirijwe, agasanga Urukiko Rukuru rutaragombaga gusaba Hagengimana ibimenyetso by'uko uburenganzira bwe bwo kwiregura bwubahirijwe, ahubwo ko Uwihoreye watanze ikirego muri Amerika ariwe wagombaga kubibazwa kuko ariwe

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HAGENGIMANA v. UWIHOREYE 23 watwaye inyandiko ihamagara uwo arega, ko niba atarayimuhaye ariwe ugomba kubyirengera. [17] Me Bimenyimana avuga ko indi nenge ari uko urubanza rw'ubutane rwaciwe hatabanje gukorwa umuhango wo kunga abashakaga gutana, agasanga ingingo ya 243 y'Interuro y'ibanze n'Igitabo cya mbere y'Igitabo cy'urwunge rw'amategeko mbonezamubano itarubahirijwe. [18] Avuga nanone ko Urukiko Rukuru rwafashe ibintu uko bitari, kuko rwemeje ko ubutane bwatanzwe kubera ko Hagengimana yari amaze umwaka yarataye urugo nyamara bwaratanzwe hashingiwe ku mpamvu y'uko, mbere y'itangwa ry'ikirego gisaba ubutane, Hagengimana yari amaze umwaka atabana n'umugore. Yongeraho ko Urukiko rwo muri Amerika rwanyuranyije n'amategeko y'u Rwanda kuko ateganyaga ko ubutane butangwa iyo umwe mu bashakanye ataye urugo mu gihe cy'imyaka 3. [19] Me Sayinzoga Jean Pierre uburanira Uwihoreye Dancille asubiza ko impamvu ya mbere y'ubujurire bwa Hagengimana nta shingiro ifite kubera ko amategeko avuga ko yashingiweho kandi anyuranyije n'ay'u Rwanda atayagaragaza, ko ahubwo impamvu yatumye ubutane butangwa muri Amerika ijyanye no guta urugo mu gihe kingana n'umwaka, no mu Rwanda yemewe. [20] Naho ku kibazo cy'abana, avuga ko cyakemuwe na FAIRFAX COUNTY COURT mu cyiswe “Juvenile and domestic

relations” kuwa 3/03/2006, ko rero kuvuga ko urwo rubanza rujyanye n’abana rwari urw’agateganyo nta shingiro bifite. Anavuga ko n’ibyo Hagengimana avuga by’uko atigeze ahamagazwa ataribyo kubera ko yahamagawe ntiyitabe,

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ICYEGERANYO CY’IBYEMEZO BY’INKIKO 24 urubanza rumaze no gucibwa ararumenyeshwa nyamara ntiyarushirishamo cyangwa ngo arujuririre, ko rero ibyo atakoreye mu nkiko zo muri Amerika atajya kubikorera mu nkiko zo mu Rwanda. [21] Me Sayinzoga akomeza avuga ko Hagengimana ntacyo anenga urubanza rwaciwe n’Urukiko Rukuru kubera ko nawe ubwe yemera ko Urubanza rwaciwe muri Amerika rwabaye itegeko, ko rero rugomba kurangizwa, ndetse ko ikigaragaza ko yemera ko rwabaye itegeko ari uko yahise ashaka undi mugore ashingiye kuri urwo rubanza rw’ubutane, ibyo avuga ko urwo rubanza rutakurikije amategeko bikaba bidakwiye guhabwa agaciro. [22] Ku bijyanye n’ibivugwa na Hagengimana ko atahamagawe mu rubanza rw’ubutane rwaciwe muri Amerika, Me Sayinzoga asubiza ko nta shingiro bifite kuko ibimenyetso by’uko urubanza rwagenze bihari, ko Urukiko nirubisuzuma ruzabibona. UKO URUKIKO RUBIBONA [23] Ingingo ya 91, igika cya 2 y’Itegeko Ngenga N°51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n’ububasha bw’Inkiko nk’uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ibisuzumwa n’Urukiko Rukuru kugira ngo rwemeze ko urubanza rwaciwe mu mahanga rurangirizwa mu Rwanda rureba ibi bikurikira: 1° ko urubanza rwaciwe mu mahanga rutanyuranyije n’amategeko rusange ndemyagihugu n’amahame ashingiweho n’amategeko y’u Rwanda;

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HAGENGIMANA v. UWIHOREYE 25 2° ko rwaciwe burundu hakurikijwe amategeko y’Igihugu rwaciriwemo; 3° ko kopi yarwo yujuje ibyangombwa byose byemeza ko ari impamo, hakurikijwe ayo mategeko; 4° ko uburenganzira bwo kwiregura bwubahirijwe. [24] Ingingo ya 9, igika cya mbere y’itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruza, iz’umurimo ivuga ko urega agomba kugaragaza ibimenyetso by’ibyo aregera. Iyo abibuze, uwarezwe aratsinda. [25] Urukiko rurasanga ibivugwa na Hagengimana Athanase ko impamvu urubanza rwaciwe muri Amerika rutarangirizwa mu Rwanda ari uko ataruhamagawemo ngo ahabwe umwanya wo kwisobanura nta bimenyetso abitangira kandi ari we ubiburanisha, Urukiko rukaba rutabona aho rwahera rwemeza ko yavukijwe uburenganzira bwo kwiregura bushimangirwa n’ingingo ya 18 y’Itegeko Nshinga. [26] Byongeye kandi, mu gihe Hagengimana adahakana ko yamenyeshejwe urwo rubanza ariko akaba ataragize icyo arunenga, cyane cyane ko mu miburanire ye avuga ahubwo ko icyo yifuza gusa ari uko urubanza rw’ubutane rwaguma uko rwaciwe, Urukiko rusanga imiburanire nk’iyo irimo ukwivuguruza, kuko rugumye uko ruri ntirurangizwe, ubutabera bwaba butuzuye. [27] Hakurikijwe rero ibisobanuro byatanzwe haruguru, Urukiko rusanga ibivugwa na Hagengimana ko atahamagawe mu rubanza ku buryo byaba impamvu ituma urubanza rutarangirizwa mu Rwanda, nta gaciro byahabwa.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 26 [28] Urukiko rusanga nanone izindi nenge Hagengimana atanga zijyanye n'uburyo urubanza rwaciwemo ntaho zihuriye n'ibivugwa mu ngingo ya 91, igika cya 2 y'Itegeko Ngenga N°51/2008 ryo kuwa 09/09/2008 ryavuzwe. Byongeye kandi, muri izo nenge avuga, harimo izijyanye n'urubanza rwaciwe ku kibazo cy'abana nyamara rutandukanye n'urw'ubutane nk'uko Urukiko Rukuru rwabigaragaje; izo nenge zikaba zitakwitabwaho mu gihe igisuzumwa muri uru rubanza ari ukureba niba urubanza rw'ubutane rwaciriwe mu kindi gihugu rwarangirizwa mu Rwanda. [29] Hashingiwe ku bisobanuro byose byatanzwe, Urukiko rurasanga nta cyari kubuza Urukiko Rukuru kwemeza ko urubanza rwaciriwe muri Amerika muri Leta Virginia na "THE FAIRFAX COUNTY CIRCUIT COURT" kuwa 20/05/2011 rurangirizwa mu Rwanda. Ku bijyanye n'ubujurire bwa Uwihoreye Dancille bwuririye ku bwa Hagengimana Athanase. [30] Me Sayinzoga uburanira Uwihoreye Dancille avuga ko uwo yunganira ashingiye ku ngingo ya 167 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, yuririye ku bujurire bwa Hagengimana akaba hari ibyo amusaba kubera ko akomeje kumushora mu manza ku maherere, ko akwiye kumuha indishyi z'akababaro zingana na 5.000.000Frw, akanamuha 500.000Frw y'ikurikiranarubanza n'igihembo cya Avoka. [31] Me Bimenyimana Eric uburanira Hagengimana avuga ko indishyi zijyanye no gushorwa mu manza ku maherere nta shingiro zifite kubera ko nta bimenyetso uziregera abitangira,

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HAGENGIMANA v. UWIHOREYE 27 naho ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, asaba Urukiko kuzabisuzuma. UKO URUKIKO RUBIBONA [32] Urukiko rusanga nta mpamvu Uwihoreye yegenerwa indishyi zijyanye no gushorwa mu manza z'amaherere, kuko niba Hagengimana atarishimiye imikirize y'urubanza rwaciwe n'Urukiko Rukuru, afite uburenganzira bwo kurujuririra hashingiwe ku biteganywa n'ingingo ya 162 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets. [33] Urukiko rusanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Uwihoreye asaba ayakwiye kuko byumvikana ko hari ibyo yagombye gukora kubera ubujurire bwatanzwe na Hagengimana, ndetse akaba yaragombye gushaka Avoka umuburanira mu bujurire, kubera iyo mpamvu Hagengimana akaba agomba kumuha 500.000Frw kuko ari mu rugero rukwiye. III. ICYEMEZO CY'URUKIKO [34] Rwemeje ko ubujurire bwa Hagengimana Athanase nta shingiro bufite; [35] Rwemeje ko ubujurire bwa Uwihoreye Dancille bwuririye ku bundi bufite ishingiro kuri bimwe;

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 28 [36] Rutegetse Hagengimana Athanase kwishyura Uwihoreye Dancille 500.000Frw y'ikurikiranarubanza n'igihembo cya Avoka; [37] Ruvuze ko urubanza rwaciwe n'Urukiko Rukuru i Kigali rudahindutse usibye ku bijyanye n'amafaranga 500.000 y'ikurikiranarubanza n'igihembo cya Avoka Hagengimana ategetswe guha Uwihoreye; [38] Rutegetse Hagengimana gutanga amagarama y'urubanza ahwanye na 100.000Frw.

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IMANZA ZACIWE MU MIZI

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URUBANZA RW'UBUTEGETSI

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LETA Y'U RWANDA (MINECOFIN) v. VUZIMPUNDU [Rwanda URUKIKO RW'IKIRENGA – RADA0037/13/CS (Mukanyundo, P.J., Rugabirwa na Ngagi, J.) 11 Werurwe 2016] Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Itakamba – Mu isuzuma ry'iyakirwa ry'ikirego cy'urubanza rw'ubutegetsi, Urukiko ntirureba impamvu zashingiweho mu itakamba ahubwo rureba niba uwo muhango warakozwe – Itegeko No18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 339. Amategeko agenga imanza z'ubutegetsi – icyemezo cy'ubutegetsi – Umuyobozi ufite ububasha bwo gufata icyemezo ni na we ufite ububasha bwo kukivanaho kandi inzira yakoreshejwe mu kugifata ni nayo igomba kubahirizwa mu kugikuraho – Itegeko No22/2002 ryo ku wa 09/07/2002 rishyiraho Sitati rusange igenga Abakozi ba Leta n'Inzego z'Imirimo ya Leta, ingingo ya 119. Amategeko agenga imanza z'ubutegetsi – Gutanga ububasha – Ububasha bwatanze n'Umuyobozi bwo gufata icyemezo no kugishyiraho umukono bugomba kuba bugaragara mu nyandiko ibyemeza. Amategeko agenga imanza z'ubutegetsi – Kurahira kw'umukozi wa Leta – Umukozi wa Leta ntabwo yakwitwaza imyemerere ye ngo yange kubahiriza amategeko n'amabwiriza ya Leta y'u Rwanda ajyanye n'irahira ry'abakozi ba Leta, kuko Leta y'u Rwanda nta dini ishingiyeho – Itegeko Nshinga rya Repubulika y'u Rwanda nk'uko ryavugururwe mu 2015, ingingo ya 4. 33

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 34 Incamake y'ikibazo: Vuzimpundu yari umukozi wa MINECOFIN ariko iramwirukana kubera ko yanze kurahirira ku idarapo. Byatumye arega Leta y'u Rwanda (MINECOFIN) avuga ko yirukanwe mu buryo budakurikije amategeko kuko atanze kurahira ahubwo yagaragaje ko agomba kurahirira kuri Bibiliya agasanga uko kwirukanwa kunyuranyije n'uburenganzira bwa muntu, imyemerere n'umutimanama bye, ko kandi yirukanwe n'Umuyobozi utabifitiye ububasha. Urwo Rukiko rwanzuye ko icyemezo kimwirukanakinyuranyije n'amategeko, rutegeka Leta y'u Rwanda kumuha imishahara

atahembwe n'indishyi zitandukanye. Leta y'u Rwanda yajuririyemo mu Rukiko rw'Ikirenga ivuga ko urukiko rubanza rwanze gusuzuma inzitizi yo kutakira ikirego ku mpamvu y'uho inenge ijyanye n'ububasha bw'uwashe icyemezo cyo gusezerera Vuzimpundu itigeze ivugwaho mu itakamba. Vuzimpundu yiregura avuga ko mu isuzuma ry'iyakirwa ry'ikirego Urukiko rutareba impamvu zashingiweho mu itakamba ahubwo rureba niba uwo muhango warakozwe. Vuzimpundu yatanze ubujurire bw'uririyemo ku bundi avuga ko uburenganzira ku myemerere ari ndahungabanywa, bikaba biteganywa n'Itegeko Nshinga n'Amasezerano Mpuzamahanga, bityo ko nta cyemezo gishobora gufatirwa umuntu ku buryo bunyuranye n'ayo mahame, akaba asanga umukoresha atari kumwirukana amuziza kwanga kurahira kandi yari asanzwe mu kazi. Ku bw'ibyo agasaba ko Urukiko rwamugenera indishyi z'itandukanye. Leta y'u Rwanda yo ivuga ko Vuzimpundu atirukanywe kubera imyemerere ye, ko ahubwo ari ukubera kutubahiriza amategeko, kandi ko uburenganzira bwa buri muntu bwubahirizwa mu buryo buteganywa n'amategeko, bityo akaba atakwitwaza izindi

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LETA Y'U RWANDA (MINECOFIN) v. VUZIMPUNDU 35 ngingo z'amategeko ngo yange kubahiriza amategeko y'igihugu. Incamake y'icyemezo: 1. Mu isuzuma ry'iyakirwa ry'ikirego cy'urubanza rw'ubutegetsi, Urukiko ntirureba impamvu zashingiweho mu itakamba ahubwo rureba niba uwo muhango warakozwe bityo kuba uwatakambye atagaragaje inenge ijyanye n'ububasha bw'uwashe icyemezo cyo kumuhagarika ku murimo, ntibyatuma ikirego cyo kitakirwa.

2. Umuyobozi ufite ububasha bwo gufata icyemezo ni na we ufite ububasha bwo kukivanaho kandi inzira yakoreshejwe mu kugifata ni nayo igomba kubahirizwa mu kugikuraho. Bityo kuba umukozi yarasezerewe n'Umunyamabanga Uhoraho muri MINECOFIN kandi yashizweho n'Inama y'Abaminisitiri byerekana ko yasezerewe mu buryo budakurikije amategeko.
3. Uregwa ntiyagombaga kwitwaza imyemerere ye ngo yange kubahiriza amategeko n'amabwiriza ya Leta y'u Rwanda ajyanye n'irahira ry'abakozi ba Leta, kuko Leta y'u Rwanda nta dini ishingiyeho, kuba rero atarabikoze, akaba ari ikosa ryatuma Umuyobozi ubifitiye ububasha amusezerera mu kazi. Hakurikijwe ibiteganywa n'amategeko Leta y'u Rwanda ingomba kwishyura uregwa igihembo cy'Avoka kingana na kimwe cya kabiri cy'amafaranga yari yatanze ku rwego rwa mbere. Ubujurire nta shingiro bufite; Ubujurire bwuririyemo ku bundi bufite ishingiro kuri bimwe; Amagarama y'urubanza aherereye ku Isanduku ya Leta.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 36 Amategeko yashingiweho: Itegeko Nshinga rya Repubulika y'u Rwanda nk'uko ryavugururwe mu 2015, ingingo ya 4 n'ya 37. Itegeko No18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 339. Itegeko - teka ryo kuwa 30 Nyakanga 1888, rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258. Itegeko No22/2002 ryo ku wa 09/07/2002 rishyiraho Sitati rusange igenga Abakozi ba Leta n'Inzego z'Imirimo ya Leta, ingingo

ya 29 n'ya 119. Itegeko No34/2008 ryo ku wa 08/08/2008 rigena imiterere, ibisobanuro, imikoreshereze n'iyubahirizwa by'ibendera ry'Igihugu nk'uko ryavugururwe kandi ryujijwe n'Itegeko No06/2013 ryo ku wa 27/02/2013, ingingo ya 13. Imanza zifashishijwe: Nyirasafari v. Komisiyo y'Abakozi ba Leta, RADA0065/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 12/12/2014 Niyonsaba v. Caisse Sociale du Rwanda- CSR (RSSB), RADA0067/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 22/07/2014. Semali v. EWSA Ltd, RADA0006/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 15/05/2015. Inyandiko z'abahanga: J. RIVERO et J.WALINE, Droit administratif, 20ème édition, Dalloz, Paris, 2004.

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LETA Y'U RWANDA (MINECOFIN) v. VUZIMPUNDU 37 Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Vuzimpundu Clarisse arega Leta y'u Rwanda mu izina ry'Intumwa Nkuru ya Leta, avuga ko yari umukozi wa MINECOFIN, iza kumwirukana kubera ko yanze kurahira kandi atarabyanze, ahubwo ko yagaragaje ko agomba kurahirira kuri Bibiliya, ko asanga uko kwirukanwa kutarakurikije amategeko kuko kunyuranyije n'uburenganzira bwa muntu, imyemerere n'umutimanama bye, kandi ko yirukanwe n'Umuyobozi utabifitiye ububasha (Umunyamabanga Uhoraho muri Minisitiri y'Imari n'Igenamigambi "MINECOFIN") kandi yari yarashyizweho n'Inama y'Abaminisitiri. [2] Ku wa 19/04/2013, urwo Rukiko rwaciye urubanza No RAD0125/11/HC/KIG, rwemeza ko icyemezo gisesa amasezerano y'akazi Vuzimpundu Clarisse yafatiwe giteshejwe agaciro, rutegeka Leta y'u Rwanda kumuha 3.222.274Frw y'imishahara atahembwe, 500.000Frw y'indishyi z'akababaro na 300.000 Frw y'igihembo cya Avoka. [3] Mu gufata icyo cyemezo, Urukiko Rukuru rwasanze kuba Vuzimpundu Clarisse yaranze kurahira byari impamvu yatuma yirukanwa kandi bikaba byubahirije amategeko, ariko ruvuga ko yasezerewe n'Umuyobozi utabifitiye ububasha kuko byakozwe n'Umunyamabanga Uhoraho akaba n'Umunyamabanga w'Ikigega cya Leta muri MINECOFIN, mu gihe nyamara imihango yakozwe mu kwemeza ko Vuzimpundu Clarisse ashirirwa mu mwanya wa "Administrative Assistant to the Director General of National Budget" ari nayo yagombaga

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 38 gukorwa kugira ngo asezererwe, bityo ko ibyo bituma ikirego cye kigira ishingiro ku bijyanye no kuba yarirukanywe n'Umuyobozi utabifitiye ububasha. [4] Leta y'u Rwanda, mu izina ry'Intumwa Nkuru yayo, yajuririye iki cyemezo mu Rukiko rw'Ikirenga ivuga ko: Urukiko Rukuru rutasuzumye inzitizi yo kutakira ikirego kandi ifite ishingiro, aho rwagaragarijwe ko inenge ijyanye n'ububasha bw'uwashe icyemezo cyo gusezerera Vuzimpundu Clarisse itigeze ivugwaho mu itakamba, ko kuyigaragaza mu iburanisha ari impamvu yatuma itakirwa ngo isuzumwe n'Urukiko. Ku bw'inyongera (à titre subsidiaire), kuba Minisitiri w'Abakozi ba Leta n'Umurimo yarahaye umukoresha wa Vuzimpundu Clarisse ububasha bwo kumurahiza no kumusezerera mu gihe yanze kurahira nk'uko bigaragazwa n'ibaruwa No029/19.23 yo ku wa 06/01/2011 ya Minisitiri w'Abakozi ba Leta n'Umurimo, ibyo bigaragaza ko atirukanwe n'Umuyobozi utabifitiye ububasha. [5] Vuzimpundu Clarisse yatanze ubujurire bwuririye ku bundi avuga ko Urukiko Rukuru rwirengagije ko uburenganzira bwe ku

myemerere ari ndahungabanywa, nk'uko biteganywa n'Itegeko Nshinga n'Amasezerano Mpuzamahanga, ko rero yirukanwe mu buryo budakurikije amategeko. [6] Urubanza rwaburanishijwe mu ruhamwe ku wa 09/02/2016, Leta y'u Rwanda iburanirwa na Me Rubango Epimaque, Intumwa ya Leta, naho Vuzimpundu Clarisse aburanirwa na Me Nkurunziza François-Xavier.

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LETA Y'U RWANDA (MINECOFIN) v. VUZIMPUNDU 39 II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO A. Ubujurire bwa Leta y'u Rwanda 1. Kumenya niba kuba mu itakamba ikibazo cy'ububasha bw'uwashe icyemezo gisezerera umukozi kitaravuzweho, byatuma ikirego kitakirwa. [7] Me Rubango Epimaque, uburanira Leta y'u Rwanda, avuga ko mu rwego rwa mbere hatanzwe inzitizi yo kutakira ikirego, ariko Urukiko ntirwagira icyo ruyivugaho, ko rwagaragarijwe ko, mu itakamba, Vuzimpundu Clarisse yasabaga ivanwaho ry'icyemezo kimubangamiye kubera imyemerere ye, ko atagaragaje inenge ijyanye n'ububasha bw'uwashe icyemezo cyo kumusezerera, bityo kuyigaragaza mu iburanisha bikaba byari impamvu ituma itakirwa. [8] Me Nkurunziza François-Xavier, uburanira Vuzimpundu Clarisse, avuga ko iyo Urukiko rusuzuma iyakirwa ry'ikirego rutareba impamvu zashingiweho mu itakamba, ko ahubwo rureba niba uwo muhango warakozwe, ko uwajuriye atagaragaza itegeko rivuga ibigomba kujya mu itakamba. UKO URUKIKO RUBIBONA [9] Ingingo ya 339 y'Itegeko No18/2004 ryo ku wa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, yakurikizwaga itakamba rikorwa, iteganya ko: "Ikirego gisaba gukuraho icyemezo cy'umutegetsi cyakirwa gusa iyo cyerekeye icyemezo cy'umutegetsi cyeruye cyangwa kiteruye. Mbere yo gutanga ikirego, unenga icyemezo cy'umutegetsi agomba

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 40 kubanza gutakambira umutegetsi wagifashe. Umutegetsi utakambiye, agomba gusubiza ubwo butakambe mu gihe cy'amezi abiri (2) abarwa uhereye umunsi yabuboneyeho. Iyo adashubije, ubutakambe bufatwa ko atabwemeye. Mu gihe uwatakambye atishimiye igisubizo yahawe, afite igihe cy'amezi atandatu (6) cyo kuregera urukiko gitangira kubarwa kuva ku munsi yabuboneyeho igisubizo, yaba nta gisubizo yabonye icyo gihe kigatangira kubarwa nyuma y'amezi abiri (2) avugwa mu gika kibanziriza iki". [10] Dosiye y'urubanza igaragaza ko ku wa 31/05/2011, Umunyamabanga Uhoraho muri MINECOFIN1 yandikiye Vuzimpundu Clarisse ibaruwa No2999/11/10/HR amumenyesha ko ahagaritswe ku mirimo ye kubera kutubahiriza amategeko ya Repubulika y'u Rwanda arebana no kurahira kw'abakozi ba Leta. Ku wa 07/06/2011, Vuzimpundu Clarisse yatakambiye uwo Munyamabanga Uhoraho amusaba guhindurirwa icyemezo yafatiwe cyo guhagarikwa ku mirimo, aho yasobanuraga ko mu myaka 16 amaze akorera MINECOFIN, nta cyemezo icyo ari cyo cyose cyo kumucyaha cyangwa kumugaya yigeze afatirwa, ko kuba yumvira umutimanama we yatojwe na Bibiliya nk'Umuhamywa wa Yahova atari byo byatuma asezererwa ku kazi. [11] Urukiko rurasanga, kuba mu itakamba, Vuzimpundu Clarisse atagaragaje inenge ijyanye n'ububasha bw'uwashe icyemezo cyo kumuhagarika ku murimo, bitatuma ikirego cye kitakirwa kuko icyo itakamba riba

rigamije ari ukugira ngo Umuyobozi wafashe icyemezo yisubireho, hatitawe ku kumenya niba yari afite ububasha cyangwa se atabufite, cyane cyane ko n'ingingo ya 339 yavuzwe haruguru itagaragaza iby'ingenzi

1 Ministry of Finance and Economic Planing.

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LETA Y'U RWANDA (MINECOFIN) v. VUZIMPUNDU 41 cyangwa impamvu zigomba gushingirwaho mu itakamba ku buryo utabyubahirije, ikirego cye kitakwagirwa. [12] Hakurikijwe ibimaze gusobanurwa haruguru, Urukiko rurasanga inzitizi yo kutakira ikirego yatanze na Me Rubango Epimague uburanira Leta y'u Rwanda, nta shingiro ifite.

2. Kumenya niba Umunyamabanga Uhoraho muri MINECOFIN yari afite ububasha bwo gusezerera ku kazi Vuzimpundu Clarisse. [13] Me Rubango Epimague uburanira Leta y'u Rwanda avuga ko mu rubanza rwaciye ku rwego rwa mbere mu gika cya 18, Urukiko rwasobanuye ko, n'ubwo kwanga kurahira kwa Vuzimpundu Clarisse byari impamvu yumvikana ituma ashobora kwirukanwa ku kazi, yirukanwe n'Umuyobozi utabifitiye ububasha, ariko ko atari ko abibona kuko Umunyamabanga Uhoraho muri MINECOFIN yamwirukanye abihereye uruhushya na Minisitiri w' Abakozi ba Leta n' Umurimo mu ibaruwa No029/19.23 yo ku wa 06/01/2011 yanditse avuga ko abanze kurahira ku mpamvu iyo ari yo yose bafatirwa ibihano. [14] Me Nkurunziza François-Xavier, uburanira Vuzimpundu Clarisse, avuga ko Umunyamabanga Uhoraho muri MINECOFIN atigeze ahabwa ububasha bwo kwirukana Vuzimpundu Clarisse kuko ntawe utanga ububasha adafite, ko Vuzimpundu Clarisse yashyizweho n'Inama y'Abaminisitiri, noneho Minisitiri w'Abakozi ba Leta n'Umurimo abishyira mu bikorwa, ko rero byagombaga gusubira mu Nama y'Abaminisitiri, hakubahirizwa ihame rya "Parallélisme des formes". Avuga ko iyo usomye iyo baruwa usanga nta gutanga ububasha birimo, kandi ko n'iyi byaba birimo, uhawe ububasha

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 42 akora akazi mu izina ry'uwamuhaye ububasha, ariko ko atari ko byagenze kuko Umunyamabanga Uhoraho yirukanye Vuzimpundu Clarisse mu izina rye. UKO URUKIKO RUBIBONA [15] Ingingo ya 119 y'Itegeko No22/2002 ryo ku wa 09/07/2002 rishyiraho Sitati rusange igenga Abakozi ba Leta n'Inzego z'Imirimo ya Leta yakurikizwaga igihe Vuzimpundu Clarisse yasezerwaga ku kazi, iteganya ko: "Gusezererwa nta mpaka ni icyemezo umutegetsu ubifitiye ububasha mu birebana n'abakozi ba Leta afata cyo kuvana burundu umukozi wa Leta mu bakozi ba Leta". [16] Abahanga mu mategeko Jean Rivero na Jean Waline, nabo basobanura ko ihame ari uko umuyobozi ufite ububasha bwo gufata icyemezo ari na we ufite ubundi bubasha bwo kukivanaho kandi ko ibyo bivuze ko inzira yakoreshejwe mu gufata icyemezo cya mbere ari na yo igomba kubahirizwa mu gufata ikindi cyemezo kinyuranyije nacyo. Basobanura kandi ko umuyobozi ashobora gutanga ububasha bwo gufata icyemezo no

2 Il existe, en droit administratif, un principe de parallélisme des compétences (ou encore dit de l'acte contraire) qui veut que lorsqu'une autorité a compétence pour faire un acte, elle a également compétence pour faire l'acte contraire (par exemple celui qui nomme a compétence pour révoquer). Le plus souvent (mais il ya des exceptions) cela implique également le parallélisme des formes, c'est-à-dire l'obligation de suivre la même procédure que celle de l'acte initial pour accomplir l'acte contraire (J. RIVERO et J.WALINE, Droit administratif, 20ème édition, Dalloz, Paris, 2004, p. 341, no 404 in fine).

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LETA Y'U RWANDA (MINECOFIN) v. VUZIMPUNDU 43 kugishyiraho umukono, ariko ko gutanga ububasha bigomba kuba bigaragara mu nyandiko ibyemeza³. [17] Muri uru rubanza, dosiye igaragaza ko Vuzimpundu Clarisse yashyizwe mu mwanya wa "Administrative Assistant to the Director General of National Budget" muri MINECOFIN, bikorwa na Minisitiri w'Abakozi ba Leta n'Umurimo nk'uko bigaragazwa n'ibaruwa No282/19.23 yo ku wa 15/09/2009. Na none, mu ibaruwa No029/19.23 yo ku wa 06/01/2011, Minisitiri w'Abakozi ba Leta n'Umurimo yandikiye Abaminisitiri n'Abanyamabanga Bakuru muri Minisitiri abasaba kurahiza abakozi ba Leta batarahiye ku mpamvu zitandukanye no gufatira ibihano abanze kurahira ku mpamvu izo ari zo zose mu buryo bukurikira: a) umukozi wanze kurahira azahabwa mu nyandiko iminsi 15 y'integuza, akanamenyeshwa ko agiye kwirukanwa ku mirimo ye kubera ikosa ryo kudakurikiza amategako n'amabwiriza amugenga, ibyo bigakorwa n'umukoresha we, akagera kopi Komisiyo ishinzwe Abakozi ba Leta na Minisitiri y'Abakozi ba Leta n'Umurimo, b) muri icyo gihe cy'iminsi 15, umukozi wandikiwe agomba kugeza ku mukoresha we, mu nyandiko, ibisobanuro bye kandi avuga n'icyemezo yafashe, c) iyo umukozi asubije yemera kurahira, umukoresha we aramurahiza, akaguma ku kazi ke, d) iyo umukozi asubije ko yanze kurahira ku mpamvu izo ari zo zose, cyangwa ntasubize nyuma y'iminsi 15 uhereye umunsi

3 Il serait matériellement impossible à certaines autorités administratives par exemple le Ministre d'exercer elles-mêmes effectivement l'ensemble de leurs compétences. Pour que le système puisse fonctionner, il est donc indispensable de recourir au système de délégations, qui distingue la délégation de compétence et la délégation de signature. Les délégations sont indispensables mais doivent être limitées à ce qui est nécessaire, ce qui explique leur régime juridique: il n'y a pas de délégation sans texte l'autorisant [...] (J. RIVERO et J.WALINE, op.cit., p.342, no405).

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 44 yaboneye ibaruwa, ahita asezererwa ku mirimo ye bikozwe n'Umuyobozi ubifitiye ububasha. [18] Urukiko rurasanga, hakurikijwe ibiteganywa n'ingingo ya 119 y'Itegeko No22/2002 ryo ku wa 09/07/2002 yavuzwe haruguru ndetse n'ibyasobanuwe n'abahanga mu mategeko nabo bavuzwe haruguru, Umuyobozi wari ufite ububasha bwo gusezerera Vuzimpundu Clarisse ku kazi ari Minisitiri w'Abakozi ba Leta n'Umurimo ashingiye ku myanzuro y'Inama y'Abaminisitiri nkuko byagenze igihe yashyirwaga

mu mirimo (Principe du parallélisme des formes et de compétences). [19] Kuba Me Rubango Epimaque avuga ko Minisitiri w' Abakozi ba Leta n' Umurimo yatanze ububasha bwo gusezerera Vuzimpundu Clarisse, ibyo ntabwo byahabwa agaciro kuko ibaruwa isaba Abaminisitiri n'Abanyamabanga bakuru muri Minisitiri (yavuzwe haruguru gika cya 17 igaragaza ko ububasha bwatanzwe ari ubwo kwandikira umukozi wanze kurahira bamumenyesha ko agiye kwirukanwa ku mirimo ye kubera ikosa ryo kudakurikiza amategeko n'amabwiriza. Naho ku bijyanye no gusezerera uwo mukozi, Minisitiri w'Abakozi ba Leta n'Umurimo yanditse avuga ko umukozi uzasubiza ko yanze kurahira cyangwa akarenza iminsi 15 adasubije, azahita yirukanwa ku mirimo ye bikozwe n'Umuyobozi ubifitiye ububasha. Ibi byumvikanisha ko ububasha bwo gusezerera umukozi butigeze buhabwa abandikiwe ibaruwa yavuzwe haruguru, ahubwo bwahawe Umuyobozi ubifitiye ububasha, kuri Vuzimpundu Clarisse, uwo Muyobozi akaba ari uwavuzwe mu gika kibanziriza iki. [20] Urukiko rurasanga rero kuba Vuzimpundu Clarisse yarasezerewe n'Umuyobozi utabifitiye ububasha ari we Umunyamabanga Uhoraho muri MINECOFIN, byerekana ko

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LETA Y'U RWANDA (MINECOFIN) v. VUZIMPUNDU 45 yasezerewe mu buryo budakurikije amategeko, bityo ubujurire bwa Leta y'u Rwanda bukaba nta shingiro bufite. B. Ubujurire bwuririye ku bundi bwatanzwe na Vuzimpundu Clarisse. 1. Kumenya niba gusaba Vuzimpundu Clarisse, nk'umukozi wa Leta, kurahirira ku ibendera ry'Igihugu, binyuranyije n'Itegeko Nshinga n'Amasezerano Mpuzamahanga. [21] Me Nkurunziza François-Xavier uburanira Vuzimpundu Clarisse avuga ko mu rukiko rubanza yaburanye agaragaza ko uburenganzira ku myemerere ari ndahungabanywa, bikaba biteganywa n'Itegeko Nshinga mu ngingo ya 33 n'ya 45, n'Amasezerano Mpuzamahanga, cyane cyane ingingo ya 18 ya "Pacte International relatif aux Droits Civils et Politiques du 16/12/1966"⁴, n'ingingo ya 14, iya 15 n'ya 19 za "Charte africaine des droits de l'homme et des peuples", ko nta cyemezo gishobora gufatirwa umuntu ku buryo bunyuranye n'ayo mahame, bityo ko ikibazo gihari ari icyo kumenya niba hari icyemezo gishobora gufatirwa umuntu ku buryo bunyuranye n'Itegeko Nshinga n'ayo Masezerano Mpuzamahanga no kumenya niba bene icyo cyemezo kiramutse gifashwe cyaba kibangamiye ihame ry'uko uburenganzira ku myemerere ari ndahungabanywa, ko rero umucamanza atasubije icyo kibazo. Avuga ko ingingo ya 29 ya Sitati y'Abakozi ba Leta ivuga ko mbere yo gutangira akazi ka Leta, umukozi agomba kurahira, ko

4 Mu mwanzuro yavuze ko ari "Déclaration Universelle des Droits Civils et Politiques", ariko ayo masezerano mpuzamahanga yo kuwa 19/12/1966 ntabwo abaho, ahubwo ariho ni "Pacte international relatif aux droits civils et politique cyangwa se "Déclaration universelle des droits de l'homme", usibye ko yo ari iyo ku wa 10/12/ 1948.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 46 rero umukoresha atari kwirukana Vuzimpundu Clarisse ngo nuko yanze kurahira kandi yari asanzwe mu kazi. [22] Me Rubango Epimaque, uburanira Leta y'u Rwanda, avuga ko Vuzimpundu Clarisse atirukanwe kubera imyemerere ye, ko ahubwo yirukanwe kubera kutubahiriza amategeko, ko uburenganzira bwa buri muntu bwubahirizwa mu buryo buteganywa n'amategeko, ko rero Vuzimpundu Clarisse atakwitwaza izindi ngingo z'amategeko ngo yange kubahiriza amategeko y'igihugu. UKO URUKIKO RUBIBONA [23] Ingingo ya 33 y'Itegeko Nshinga rya Repubilika y'u Rwanda ryo ku wa 04/06/2003 (yahindutse iya 37 y'Itegeko Nshinga rya Repubilika y'u Rwanda nk'uko ryavugururwe mu 2015), iteganya ko: "Ubwisanzure mu bitekerezo, mu kubigaragaza, mu mutimanama, mu guhitamo idini, mu gusenga no kubigaragaza mu ruhamwe burengerwa na Leta mu buryo buteganywa n'amategeko. [...]". Naho ingingo ya 45 y'iryo Tegeko Nshinga yateganyaga ko: "[...] Abenegihugu bose bafite uburenganzira bungana bwo kujya mu mirimo ya Leta hashingiwe ku bumenyi n'ubushobozi bwabo". [24] Ingingo ya 29 y'Itegeko No22/2002 ryo ku wa 09/07/2002 rishyiraho Sitati Rusange igenga Abakozi ba Leta n'Inzego z'Imirimo ya Leta, yateganyaga ko: "Mbere yo gutangira imirimo ye, buri mukozi wa Leta arahira indahiro ikurikira: -«Njyewe.....», ku izina ry'Imana ishobora byose, ndahiriye u Rwanda ku mugaragaro ko nzatunganya imirimo nshinzwe, ko ntazahemukira Repubilika y'u Rwanda, ko nzubaha Umukuru w'Igihugu n'Inzego za Leta,

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LETA Y'U RWANDA (MINECOFIN) v. VUZIMPUNDU 47 kandi ko nzaharanira ibyagirira abaturarwanda bose akamaro, nubahiriza Itegeko Shingiro n'andi Mategeko». [25] Ingingo ya 13 y'Itegeko No34/2008 ryo ku wa 08/08/2008 rigena imiterere, ibisobanuro, imikoreshereze n'iyubahirizwa by'ibendera ry'Igihugu nk'uko ryavugururwe kandi ryujijwe n'Itegeko No06/2013 ryo ku wa 27/02/2013, iteganya ko "Umuntu wese urahira imbere y'Ibendera ry'Igihugu arahira arifatishije ikiganza cy'ibumoso azamuye ukuboko kw'iburyo akarambura ikiganza hejuru. Umuntu ufite ubumuga usabwa kurahira adashobora kubahiriza ibiteganywa n'igika cya mbere cy'iyi ngingo, araryambikwa". [26] Muri uru rubanza, dosiye igaragaza ko hari ibaruwa N°029/19.23 yo ku wa 06/01/2011 (yavuzwe haruguru), Minisitiri w'Abakozi ba Leta n'Umurimo yandikiye Abaminisitiri n'Abanyamabanga Bakuru muri Minisitiri abaha amabwiriza yo kurahiza abakozi ba Leta bose batarahiye ku mpamvu zitandukanye, anabamenyeshako abakozi ba Leta batazarahira kubera impamvu izo ari zo zose bazahita basezererwa ku kazi n'Umuyobozi ubifitiye ububasha kubera ikosa ryo kutubahiriza amategeko n'amabwiriza abagenga, nyuma y'integuza y'iminsi 15 yabasabaga kurahira, bakabyanga. Mu kwezi kwa cumi 2010, Umunyamabanga Uhoraho muri Minisitiri y'Imari y'Igenamigambi, ashingiye ku mabwiriza ya Minisitiri w'Abakozi ba Leta n'Umurimo, yandikiye Vuzimpundu Clarisse ibaruwa No6155/10/10/HR amusaba kurahira, ku wa 06/01/2011, Vuzimpundu Clarisse amusubiza ko adashobora kurahirira ku ibendera ry'Igihugu kuko bitemeranywa n'umutimanama we, ahubwo ko ashobora kurahirira kuri Bibiliya.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 48 [27] Urukiko rurasanga Vuzimpundu Clarisse, nk'umukozi wa Leta yaragombaga kurahira indahiro yavuzwe haruguru anafashe ku ibendera ry'Igihugu nk'uko biteganywa n'ingingo ya 13 y'Itegeko N°34/2008 ryo ku wa 08/08/2008 ryavuzwe haruguru. Kuba rero atarabikoze, iryo akaba ari ikosa ryari gutuma Umuyobozi ubifitiye ububasha amusezerera ku kazi, kandi ko atakwitwaza ko yari asanzwe mu kazi kugira ngo avuge ko hari uburenganzira bwe bwo kwanga kurahirira ku ibendera ry'Igihugu bwahungabanyijwe, kuko igikorwa cyo kurahiza abakozi ba Leta batarahiye cyari kigamije gutunganya ibitarakorewe ku gihe (Régularisation), cyane cyane ko bigaragara ko, ubwo yatangiraga akazi ke, indahiro ari yo yagombaga kubanziriza itangira ry'umurimo nk'uko biteganywa n'ingingo ya 29 y'Itegeko No22/2002 ryo ku wa 09/07/2002 ryavuzwe haruguru. [28] Urukiko rurasanga Vuzimpundu Clarisse ataragombaga kwitwaza imyemerere ye ngo yange kubahiriza amategeko n'amabwiriza ya Leta y'u Rwanda ajyanye n'irahira ry'abakozi ba Leta, kuko Leta y'u Rwanda nta dini ishingiyeho nk'uko biteganywa n'ingingo ya 1, igika cya mbere, y'Itegeko Nshinga ryo ku wa 04/06/2003 (yahindutse iya 4 y'Itegeko Nshinga rya Repubulika y'u Rwanda nk'uko ryavugururwe mu 2015). Uyu murongo niwo wafashwe no mu manza zitandukanye zaciwe n'uru Rukiko, nko mu rubanza No RADA0065/12/CS rwaciwe ku wa 12/12/2014 (Nyirasafari Xavéra vs Komisiyo y'Abakozi ba Leta), urubanza No RADA0067/12/CS rwaciwe ku wa 22/07/2014 (Niyonsaba Jean Claude) n'urubanza No RADA0006/13/CS rwaciwe ku wa 15/05/2015 (Semali Alfred vs EWSA Ltd yahindutse Rwanda Energy Group Ltd). No mu kibazo uwitwa Paul Westerman yashyikirije Komite Mpuzamahanga y'Uburenganzira bwa Muntu (Human Rights

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LETA Y'U RWANDA (MINECOFIN) v. VUZIMPUNDU 49 Committee) arega Igihugu cye cy'Ubuholandi, ku bijyanye no kuba yarashyizwe mu gisirikari atabishaka, nyuma ntiyubahiriza amabwiriza yo kwambara impuzangano (uniforme), iyo Komite yasanze uburenganzira ku myemerere butagomba gufatwa nk'uburenganzira bwo kutubahiriza inshingano zigenwa n'itegeko cyangwa butuma hatabaho uburyozwacyaha⁵. Igihe rero Itegeko ridateganya ko hari ubundi buryo bwo kurahira mbere yo gutangira imirimo, usibye gufata ku ibendera ry'Igihugu, uwanze kurahira mu buryo buteganywa n'Itegeko agomba kwirengera ingaruka z'icyemezo cye; Vuzimpundu Clarisse rero akaba agomba kwirengera ingaruka zo kutubahiriza ibiteganwa n'amategeko. [29] Urukiko rurasanga kandi kurahirira ku ibendera ry'Igihugu ntaho binyuranyije n'Itegeko Nshinga, ingingo ya 33 (yahindutse iya 37) n'iyahozze ari iya 45, ingingo ya 186 ya "Pacte International relatif aux Droits Civils et Politiques du

5Dans une affaire où l'intéressé s'étant vu refusé le statut d'objecteur, a été incorporé dans l'armée et condamné pour refus d'obéissance (port de l'uniforme), le Comité a fait observer que le droit à la liberté de conscience en tant que tel ne peut être interprété comme donnant le droit de refuser de s'acquitter de toutes les obligations imposées par la loi ou comme déchargeant une personne de sa responsabilité pénale à l'égard de chaque refus ainsi opposé. (Communication No 682/1996: Paul WESTERMAN c. Pays-Bas, CCPR/C67/D/682/1996, §9.3, Cité par Jean-Bernard MARIE et

Patrice MEYER-BISCH, in La liberté de conscience dans le champ de la religion, p.25 →<https://www.unifr.ch/iiedh/assets/files/.../publicdt04.pdf>). 6 Toute personne a droit à la liberté de pensée, de conscience et de religion; ce droit implique la liberté d'avoir ou d'adopter une religion ou une conviction de son choix, ainsi que la liberté de manifester sa religion ou sa conviction, individuellement ou en commun, tant en public qu'en privé, par le culte et l'accomplissement des rites, les pratiques et l'enseignement [...].

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 50 16/12/1966", n'ingingo ya 147, iya 158 n'ya 199 za "Charte Africaine des Droits de l'homme et des peuples", Me Nkurunziza François-Xavier ashingiraho, kuko izo ngingo zose icyo zihuriyeho ari uko abantu bose bafite uburenganzira ku myemerere yabo n'idini kandi ko bangana imbere y'amategeko haba mu kubona akazi no ku burenganzira ku mutungo, mu gihe nyamara iyo myemerere itagomba kubangamira amategeko igihugu kigenderaho nk'uko byasobanuwe haruguru, cyangwa ngo umuntu abe yakwitwaza imyemerere ye yanga gukora inshingano asabwa n'amategeko. [30] Urukiko rurasanga, hakurikijwe ibimaze gusobanurwa haruguru, gusezererwa ku kazi kwa Vuzimpundu Clarisse ku mpamvu yuko yanze kurahirira ku ibendera, bitanyuranyije n'Itegeko Nshinga n'Amasezerano Mpuzamahanga.

2. Kumenya niba Vuzimpundu Clarisse yahabwa indishyi asaba muri uru rubanza. [31] Me Nkurunziza François-Xavier uburanira Vuzimpundu Clarisse avuga ko Leta y'u Rwanda ikwiriye kumuha amafaranga y'igihembo cya Avoka waburanye uru rubanza kingana na 1.500.000Frw, yiyongera ku indishyi zagenwe. [32] Me Rubango Epimaque uburanira Leta y'u Rwanda avuga ko amafaranga asabwa nta shingiro afite kuko Leta y'u

7 Le droit de propriété est garanti. Il ne peut y être porté atteinte que par nécessité publique ou dans l'intérêt général de la collectivité, ce, conformément aux dispositions des lois appropriées. 8 Toute personne a le droit de travailler dans des conditions équitables et satisfaisantes et de percevoir un salaire égal pour un travail égal. 9 Tous les peuples sont égaux; ils jouissent de la même dignité et ont les mêmes droits. Rien ne peut justifier la domination d'un peuple par un autre.

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LETA Y'U RWANDA (MINECOFIN) v. VUZIMPUNDU 51 Rwanda yemerewe gukoresha inzira z'ubujurire ziteganyijwe n'amategeko, ariko ko mu gihe urukiko rwabibona ukundi, rwazareba neza niba igihembo cya Avoka gihwanye n'amafaranga yifujwe. UKO URUKIKO RUBIBONA [33] Ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano iteganya ko: "Igikorwa cyose cyangirije undi gitegeka nyir'ugukora ikosa kuriha ibyangiritse". Ingingo ya 33 y'Amabwiriza y'Urugaga rw'Abavoka mu Rwanda No01/2014 yo ku wa 18/07/2014 agenga ibihembo mboneza by'Abavoka, iteganya ko: "Mu bujurire, avoka w'urega n'uw'uregwa bafite uburenganzira kuri kimwe cya kabiri cy'igihembo cyumvikanyweho ku rwego rwa mbere". [34] Muri uru rubanza, dosiye igaragaza ko umwanzuro wo kuregera Urukiko Rukuru uri kuri cotes

1-5, Vuzimpundu Clarisse yasabaga ko Leta y'u Rwanda yategekwa kumwishyura 600.000Frw y'igihembo cya Avoka, aya mafaranga akaba ari yo agaragara nk'ayumvikanyweho ku rwego rwa mbere. [35] Urukiko rurasanga, hakurikijwe ibiteganywa n'ingingo ya 33 y'Amabwiriza No01/2014 yavuzwe haruguru, Vuzimpundu Clarisse agomba kwishyurwa na Leta y'u Rwanda igihembo cya Avoka kingana na kimwe cya kabiri ($\frac{1}{2}$) cya 600.000Frw, ni ukuvuga 300.000Frw.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 52 III. ICYEMEZO CY'URUKIKO [36] Rwemeje ko ubujurire bwatanzwe na Leta y'u Rwanda (MINECOFIN) nta shingiro bufite. [37] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Vuzimpundu Clarisse bufite ishingiro kuri bimwe. [38] Rwemeje ko urubanza No RAD0125/11/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 19/04/2013 ruhindutse gusa ku bijyanye n'amafaranga y'igihembo cya Avoka agomba kwiyongera. [39] Rutegetse Leta y'u Rwanda (MINECOFIN) kwishyura Vuzimpundu Clarisse amafaranga ibihumbi magana atatu (300.000Frw) y'igihembo cya Avoka waburanye urubanza kuri uru rwego. [40] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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IMANZA MBONEZAMUBANO

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GAHENDA v. RUTSINDURA [Rwanda URUKIKO RW'IKIRENGA – RCAA0020/14/CS (Rugege, P.J., Mugenzi na Kanyange, J.) 07 Nyakanga 2015] Amategeko agenga ububasha bw'Inkiko – Ububasha bw'Urukiko rw'Ikirenga hashingiwe ku gaciro k'ikiburanwa – Igenwa ry'agaciro k'ikiburanwa – Agaciro k' ikiburanwa gashobora kugenwa no mu Rukiko rw'Ikirenga iyo katigeze kagenwa n'izindi nkiko – Itegeko Ngenga N°03/2012 ryo kuwa 14/06/2012 ryerekeye imitunganyirize, imiterere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28. Amategeko agenga ibimenyetso – Agaciro k'ikizamini cya ADN – Ikizamini cya ADN gifatwa nk'ikimenyetso cya kamarampaka ku byerekeye kumenya isano riri hagati y'abapimwe, igihe cyakozwe n'umuhanga ubifitiye ubumenyi buhagije. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Huye aho uwavugaga ko yitwa Rutsindura Alexis ariko abo baburana bakavuga ko atari ko yitwa ahubwo ko yitwa Bigirimana Cedric yareze asaba kuzungura umutungo wasizwe n'abo yitaga ababyeyi be aribo Rutsindura Alphonse na Dusabe Emma Marie bishwe muri Jenoside yakorewe abatutsi mu 1994 wari warazunguwe na Gahenda Bienvenue n'abavandimwe be. Urwo Rukiko rwemeje ko Rutsindura ari we muzungura wenyine wa Rutsindura Alphonse na Dusabe Emma Marie, rutegeka Gahenda n'abavandimwe be gusubiza uwo umutungo wose. Gahenda yajuririye Urukiko Rukuru, hagati aho Urukiko Rwisumbuye rwa Nyarugenge rwaregewe ku icyaha cyo 55

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 56 kwihesha inyandiko z'irangamimerere mu butegetsu ashingiye ku nkomoko ye n'izina by'ibihimbano rwemeje ko nta shingiro bifite kubera gushidikanya ku bimenyetso harimo n'icya "test ADN", ruvuga ko yakozwe hadakurikijwe amategeko. Urukiko Rukuru rwemeje ko urubanza rwajuririwe rudahindutse mu ngingo zarwo zose. Gahenda ntiyishimiye iyo mikirije y'urubanza maze ajurira mu Rukiko rw'Ikirenga ariko mbere y'uko iburanisha ritangira mu mizi, uregwa yatanze inzitizi yo kutakira ubwo bujurire kuko yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe kandi ko urubanza rwajuririwe rutagenwemo indishyi zingana nibura na 50.000.000Frw. Uwajuriye yireguye avuga ko bitari ngombwa ku nkiko zacye urubanza rujuririrwa ko habaho impaka ku gaciro k'ikiburanwa, ariko ko hari expertise yatanze igaragaza ko agaciro k'umutungo basaba kuzungura karenze 50.000.000Frw. Avuga kandi ko atigeze atsindwa ku mpamvu zimwe, kuko mu Rukiko Rwisumbuye rwa Huye, yatsinzwe bitewe n'abatangabuhamya bavuze ibinyoma, naho mu Rukiko Rukuru atsindwa bitewe n'umucamanza utarashatse gutegereza ibimenyetso bya nyabyo yitwaje ko byatinza urubanza. Urukiko rw'Ikirenga rwasuzumye iyo nzitizi rwemeza ko agaciro gashobora kugenwa no mu Rukiko rw'Ikirenga iyo katigeze kagenwa n'izindi nkiko, bityo ruhereye kuri expertise yatanze n'uwajuriye igaragaza ko imwe mu mitungo izungurwa ifite agaciro karenze 50.000.000Frw rufite ububasha bushingiye ku gaciro k'ikiburanwa bwo kuruburanisha. Ku birebana no kuba Gahenda yaratsinzwe ku mpamvu zimwe, rwemeje ko Urukiko Rwisumbuye rwasuzumye urubanza mu mizi rusanga ugomba kuzungura umutungo wa Rutsindura Alphonse ari Rutsindura Alexis kuko abavugaga ko atari umwana we batashoboye kubigaragaza. Urukiko Rukuru rwo

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GAHENDA v. RUTSINDURA 57 rwafashe umwanzuro ku nzitizi rwashyikirijwe, rusuzuma niba gusubirishamo urubanza ku mpamvu z'akarengane byaba impamvu yo gusubika iburanisha, rusuzuma niba kugobokesha umuntu mu rubanza utararurezwemo ari uburenganzira bw'umuburanyi ubisaba, rusuzuma n'ibirebana no kugena agaciro k'inzu, Urukiko rw'Ikirenga rusanga Urukiko Rukuru rutarakemuye ikibazo cy'ingenzi rwari rwashyikirijwe cyo kumenya ufite uburenganzira bwo kuzungura hagati y'uwajuriye n'uregwa, bityo rwemeza ko hatabayeho gutsindwa ku mpamvu zimwe. Mu ngingo z'ubujurire mu Rukiko rw'Ikirenga, Gahenda avuga ko uwiye Rutsindura Alexis atari mwene Rutsindura Alphonse na Dusabe Emma Marie kuburyo yasaba kubazungura ndetse n'amazina ya Rutsindura Alexis ari ayo yihaye kuko amazina ye yukuri ari Bigirimana Cedric ufite ababyeyi b'abarundi, agasaba ko hakorwa ikizamini cya ADN hagati y'uwiyita Rutsindura Alexis n'abo bita ababyeyi be baba i Burundi. Uregwa yiregura avuga ko hari abatangabuhamya benshi bemeje ko ari mwene Rutsindura Alphonse na Dusabe Emma Marie, kandi uwo baburana atigeze abivuguruzwa, kandi ko ikizamini cya ADN atari ngombwa kuko ibimenyetso mu manza mbonezamubano bifite uko bikurikirana akaba asanga imvugo z'abatangabuhamya zihagije, ko nubwo yaba ikozwe hapimwa amagufwa y'ababyeyi n'umwana wabo. Urukiko rwafashe icyemezo ko hakorwa ikizamini cya ADN hagati y'uwiyita Rutsindura Alexis n'abo Gahenda Bienvenu afata nk'ababyeyi be (Nahishakiye Berchmans) kigakorera mu

Budage. Ibisubizo by'ibizami biza byerekana ko uwiya Rutsindura Alexis ari mwene Nahishakiye Berchmans ku kigero cya 99,9999%.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 58 Incamake y'icyemezo: 1. Agaciro k'ikiburanwa gashobora kugenwa no mu Rukiko rw'Ikirenga iyo katigeze kagenwa n'izindi Nkiko.

2. Urukiko Rwisumbuye rwasuzumye ugomba kuzungura umutungo wa Rutsindura Alphonse naho Urukiko Rukuru rwasuzumye inzitizi gusa rwashyikirijwe, bityo uwajuriye ntiyatsinzwe ku mpamvu zimwe. 3. Ikizamini cya ADN gifatwa nki kimenyetso cya kamarampaka ku byerekeye kumenya niba isano iri hagati yabapimwe ari isano y'umwana na se, igihe cyakozwe n'umuhanga ubifitiye ubumenyi buhagije, bityo ikizamini cyakozwe hagati y'uwiya Rutsindura Alexis na Nahishakiye Berchmans cyemeje ko bafitanye isano y'umwana na se ku kigero cya 99,9999%. Kubera iyo mpamvu rero uwiya Rutsindura Alexis nta burenganzira afite bwo kuzungura umutungo wa Rutsindura Alphonse. Ubujurire bufite ishingiro; Amagarama y'uru rubanza aherereye ku uregwa. Amategeko yashingiweho: Itegeko Ngenga N°03/2012 ryo kuwa 14/06/2012 ryerekeye imitunganyirize, imiterere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28. Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuru, iz'umurimo n'iz'ubutegetsi, ingingo ya 7. Itegeko N°15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3 n'ya 76. Itegeko No22/99 ryo kuwa 12/11/1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano

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GAHENDA v. RUTSINDURA 59 kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyiranywe, impano n'izungura, ingingo ya 50. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Uregwa mu bujurire ku izina rya Rutsindura Alexis, naho abo baburana bakavugaga ko yitwaga Bigirimana Cedric yatanze ikirego mu Rukiko Rwisumbuye rwa Huye asaba kuzungura umutungo wasizwe n'abo yitaga ababyeyi be aribo Rutsindura Alphonse na Dusabe Emma Marie bishwe muri Jenoside yakorewe abatutsi mu 1994. Uwo mutungo wari warazunguwe na Gahenda Bienvenue n'abavandimwe be hakurikijwe urubanza RCA8697/132 rwaciye ku wa 15/06/2004 n'Urukiko rw' Ubujurire rwa Nyabisindu. [2] Kuwa 05/01/2010, Urukiko Rwisumbuye rwa Huye rwaciye urubanza RC00053/08/TGI/Hye rwemeza ko Rutsindura Alexis ari we muzungura wenyine wa Rutsindura Alphonse na Dusabe Emma Marie, ko agomba kuzungura umutungo wose basize aho wagaragara hose, rutegeka Gahenda Bienvenu n'abavandimwe be gusubiza umutungo wose wa Rutsindura Alphonse na Dusabe Emma Marie bari bazunguye mu rubanza RCA8697/132 cyangwa se undi mutungo wa Rutsindura Alphonse na Dusabe Emma Marie baba barihayeho cyangwa uri ahandi.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 60 [3] Gahenda Bienvenu ntiyishimiye imikirize y'urwo rubanza, yarujuririyeye mu Rukiko Rukuru, urugereko rwa Nyanza, urubanza rwandikwa kuri RCA0003/10/HC/NY. Hagati aho, urubanza rw'inshinjabyaha uregwa yari akurikiranyweho icyaha cyo kwihesha inyandiko z'irangamimerere mu butegetsi ashingiye ku nkomo ye n'izina by'ibihimbano rwaraciye, Urukiko Rwisumbuye rwa Nyarugenge rwemeza ko kitamuhama bitewe no gushidikanya ku bimenyetso harimo n'icya "test ADN", Urukiko rwavuze ko yakozwe hadakurikijwe amategeko, iyo "test ADN" ikaba yari yemeje ko Rutsindura Alexis ari mwene Nahishakiye Jean Berchmans. Ku itariki ya 12/03/2014, Urukiko Rukuru, urugereko rwa Nyanza rwaciye urubanza RCA0003/10/HC/NY rwemeza ko urubanza RC0053/08/TGI/Hye rwajuririyeye rudahindutse mu ngingo zarwo zose. [4] Ku itariki ya 03/04/2014, Gahenda Bienvenu yajuririyeye mu Rukiko rw'Ikirenga, urwo rubanza rwaciye n'Urukiko Rukuru. Iburanisha ry'uru rubanza mu Rukiko rw'Ikirenga ryatangiyeye ku itariki ya 13/01/2015 Gahenda Bienvenu wajuririyeye yitabye yunganirwa na Me Protais Mutembe naho uregwa mu bujurire yunganirwa na Me Mwine Geoffrey. [5] Mbere y'uko iburanisha ritangira mu mizi, Me Mwine Geoffrey uburanira uregwa yatanze inzitizi avuga ko ubujurire bwatanzwe na Gahenda butagomba kwakirwa hashingiye ku ngingo ya 28 y'Itegeko Ngenga N°03/2012 ryo kuwa 14/06/2012 ryerekeye imitunganyirize, imiterere n'ububasha by'Urukiko rw'Ikirenga igika cyayo cya nyuma kimwe n'agace

Iki gika kivugako ngo "...icyakora, urubanza umuburanyi yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, ntirushobora kujuririrwa mu Rukiko rw'Ikirenga".

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GAHENDA v. RUTSINDURA 61 ka 72 k'iyi ngingo. Abisobanura avuga ko urwo rubanza rutagenwemo indishyi zingana nibura na 50.000.000Frw, ko nta n'umucamanza wagaragaje ko agaciro k'ikiburanwa kari hejuru ya 50.000.000Frw, ndetse n'uwajuririyeye akaba yaratsinzwe ku mpamvu zimwe haba mu Rukiko Rwisumbuye no mu Rukiko Rukuru.

[6] Me Mutembe Protais yavuze ko iyo nzitizi nta shingiro ifite kuko bitari ngombwa ku nkiko zacye urubanza rujuririrwa ko habaho impaka ku gaciro k'ikiburanwa, ariko ko hari expertise yatanze n'uwo aburanira igaragaza ko agaciro k'umutungo ababuranyi basaba kuzungura karenze 50.000.000Frw. Ku bijyanye no kuba Gahenda yaratsinzwe ku mpamvu zimwe, Me Protais Mutembe yavuze ko izo mpamvu atari zimwe kubera ko mu Rukiko Rwisumbuye rwa Huye, Gahenda yatsinzwe bitewe n'abatangabuhamya bavuze ibinyoma, naho mu Rukiko Rukuru atsindwa bitewe n'umucamanza utarashatse gutegereza ibimenyetso bya nyabyo yitwaje ko byatinze urubanza. [7] Urukiko rwafashe icyemezo kuri iyo nzitizi yatanze na Me Mwine Geoffrey uburanira uregwa, rwemeza ko nta shingiro ifite. Ku kirebana n'agaciro k'ikiburanwa, Urukiko rwavuze ko gashobora kugenwa no mu Rukiko rw'Ikirenga iyo katigeze kagenwa n'izindi nkiko, ko no muri uru rubanza katigeze kagenwa n'inkiko zo hasi kuko bitari ngombwa.

2 Agace ka 7 k'igika cya kabiri kavuga ngo « ...Urukiko rw'Ikirenga rufite kandi ububasha bwo kuburanisha mu rwego rw'ubujurire imanza zaciwe ku rwego rwa kabiri n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi iyo izo manzazagenwemo n'urukiko indishyi zingana nibura na miliyoni mirongo itanu z'amafaranga y'u Rwanda (50.000.000Frw) cyangwa se zifite agaciro kagenwe n'umucamanza igihe habaye impaka, kangana nibura n' amafaranga y'u Rwanda miliyoni mirongo itanu (50.000.000Frw)»;

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 62 Ruhereye kuri expertise yatanzwe n'uwajuriye igaragaza ko imwe mu mitungo izungurwa ifite agaciro karenze 50.000.000Frw, Urukiko rwemeje ko rufite ububasha bushingiye ku gaciro k'ikiburanwa bwo kuburanisha uru rubanza. [8] Ku birebana no kuba Gahenda Bienvenu yaratsinzwe ku mpamvu zimwe, Urukiko rwavuze ko Urukiko Rwisumbuye rwasuzumye urubanza mu mizi rusanga ugomba kuzungura umutungo wa Rutsindura Alphonse ari Rutsindura Alexis kuko abavugaga ko atari umwana we batashoboye kubigaragaza. Urukiko Rukuru rwo rwafashe umwanzuro ku nzitizi rwashyikirijwe, rusuzuma niba gusubirishamo urubanza ku mpamvu z'akarengane byaba impamvu yo gusubika iburanisha, rusuzuma niba kugobokesha umuntu mu rubanza utararurezwemo ari uburenganzira bw'umuburanyi ubisaba, rusuzuma n'ibirebana no kugena agaciro k'inzu, rwemeza ko nta gihindutse ku rubanza rwajuririwe. Uru Rukiko, rwasanze Urukiko Rukuru rutarakemuye ikibazo cy'ingenzi rwari rwashyikirijwe cyo kumenya hagati y'uwajuriye n'uregwa, ufite uburenganzira bwo kuzungura Rutsindura Alphonse nyamara Urukiko Rwisumbuye rwo rwari rwemeje ugomba kuzungura, bityo rwemeza ko hatabayeho gutsindwa ku mpamvu zimwe. [9] Gahenda Bienvenu na Me Mutembe Protais umwunganira baburanye bavuga ko uwiye Rutsindura Alexis atari mwene Rutsindura Alphonse na Dusabe Emma Marie kuburyo yasaba kubazungura, ko ndetse n'amazina ya Rutsindura Alexis ari ayo yihaye kugirango agaragaze ko akomoka kuri ba nyakwigendera, ko amazina ye yukuri ari Bigirimana Cedric ufite ababyeyi b'abarundi. Basaba ko

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GAHENDA v. RUTSINDURA 63 hakorwa ikizamini cya ADN hagati y'uwiyita Rutsindura Alexis n'abo bita ababyeyi be baba i Burundi. [10] Me Mwine Geoffrey avuga ko hari abantu benshi babajijwe bakemeza ko uwo aburanira ari mwene Rutsindura Alphonse na Dusabe Emma Marie, ko Gahenda atigeze abivuguruza, naho ku birebana n'ikizamini cya ADN, inkiko zacye urubanza rujuririrwa zagifasheho umwanzuro, akaba asanga atari ngombwa ko cyakorwa cyane cyane ko n'ababyeyi ba Rutsindura Alexis bapfuye, ko nubwo yaba ikozwe hapimwa amagufwa y'ababyeyi n'umwana wabo. Asoza ashimangira ko ADN atari ngombwa kuko ibimenyetso mu manza mbonezamubano bifite uko bikurikirana akaba asanga imvugo z'abatangabuhamya zihagije. [11] Urukiko rwafashe icyemezo ko icyakemura impaka zo kumenya niba uregwa mu bujurire ku izina rya Rutsindura Alexis atari mwene Rutsindura Alphonse ari ikizamini cy'ADN, igakorwa hagati y'uwiyita Rutsindura Alexis n'abo Gahenda Bienvenu afata nk'ababyeyi be. Ku itariki ya 23/02/2015, Umwanditsi Mukuru w'Urukiko rw'Ikirenga yandikiye Umushinjacyaha Mukuru amusaba gufasha Urukiko, hagakorwa ikizamini cya ADN hagati ya Nahishakiye Berchmans

ukomoka i Burundi n'uwiyita Rutsindura Alexis. Ku itariki ya 24/02/2015 hafashwe ibipimo by'amacandwe byoherezwa mu Budage, ku itariki ya 26/03/2015 nibwo "test ADN" yakozwe na Dr Christa Augustine wo muri "Institute of legal medicine" iri Hamburg muri icyo gihugu. Ku itariki ya 02/04/2015, Umushinjacyaha Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga amwoherereza ibisubizo by'ikizamini cyasabwe. Iburanisha ry'urubanza ryasubukuwe ku itariki ya 09/06/2015 ababuranyi bagira icyo bavuga ku kizamini cy'ADN cyakozwe. Kuri uwo

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 64 munsu, Me Uwimabera Beatha yaje mu rubanza nawe aburanira uregwa mu bujuriye ku izina rya Rutsindura Alexis. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO Kumenya niba uregwa mu bujuriye ari umwana wa Rutsindura Alphonse ku buryo byamuhesha uburenganzira bwo kuzungura umutungo wasizwe na nyakwigendera Rutsindura Alphonse. [12] Me Mwine Geoffrey avuga ko ikizamini cya ADN cyakozwe atagihakana, ndetse n'inzego zagize uruhare mu ikora ryacyo, yaba Police cyangwa Ubushinjacyaha ntacyo azinenga. Ariko ko nubwo ibyo bimeze gutyo, abashakashatsi bemeje ko uwakoze ikizamini cya ADN ashobora kwibeshya ku kigero cya 75%. Yakomeje asaba ko hakorwa indi ADN hagati y'uwo aburanira n'abakomoka kuri se wa Gahenda witwa Seburikoko Narcisse, ibivuyemo bigahuzwa n'ikizamini cyakozwe kuko, asanga ibyo byakemura impaka burundu, kandi nkuko bisanzwe iyo hakozwe "expertise" hakorwa na "contre expertise". [13] Me Uwimabera Beatha avuga ko atewe amakenga no kuba ikizamini cya ADN cyarakozwe ku ngufu, uwo aburanira atabyemera ndetse nuwo bita se wavuye i Burundi akaba yaravuze ko atamuzi. Avuga ko niba Gahenda yaravuze ko uwo aburanira ari umurundi bikemerwa, naho we akaba avuga ko ari umunyarwanda nabyo akaba asaba ko byakwemerwa, impande zombi zikumvikana ku muganga zisanzuyeho, akabaherekeza mu kindi gihugu kitari Ubudage hagakorwa indi "ADN" test kugirango ababuranyi babe bizeye ubutabera.

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GAHENDA v. RUTSINDURA 65 [14] Gahenda Bienvenue avuga ko ibyagaragajwe n'ikizamini cya ADN abyemera kuko bishimangira ibyo yari asanzwe azi, ko n'indi ADN yakozwe mbere yagaragaje ko uwo baburana atari mwene Rutsindura Alphonse, izo ADN zose zikaba zaragaragaje ko uwiyita Rutsindura Alexis ari mwene Nahishakiye Berchmans ku kigero cya 99,9999%. Kubirebana no kuba Nahishakiye Berchmans yaravuze ko atamuzi, Gahenda Bienvenu avuga ko yemereye commission rogatoire ko Bigirimana Cedric ari umwana we kandi ko bari baramubuze. Asoza avuga ko hari urubanza RPAA0054/10/CS rwaciye n'Urukiko rw'Ikirenga rwemeza ko icyo igisubizo cya ADN kije ari 99, 9999% kiba kizewe. [15] Me Mutembe Protas avuga ko ibyavuye mu kizamini cya ADN cyakozwe nta kibazo abifiteho, ko atemera ibindi bizamini byakorwa hagamijwe kwemeza ko uwo baburana ari mwene Rutsindura Alphonse kuko ibizamini byose byakozwe byagaragaje ko ari mwene Nahishakiye Berchmans. Ikindi nuko hari ibindi bimenyetso bishimangira ibyagaragajwe na ADN, birimo amafoto agaragaza ko umwana Rutsindura Alexis yari afite amatwi abangutse, kandi uburana na Gahenda afite amatwi aryanye ku misaya. UKO URUKIKO RUBIBONA [16] Urukiko Rukuru, Urugereko rwa Nyanza rwaciye urubanza rujuririrwa,

ntirwasuzumye ingingo y'ingenzi muri uru rubanza yo kumenya niba uregwa mu bujurire ku izina rya Rutsindura Alexis ariwe muzungura wa Rutsindura Alphonse. Urwo Rukiko rukaba rwaranyuraniye n'ingingo ya 7 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 66 n'iz'ubutegetsu iteganya ko umucamanza aca urubanza ku cyasabwe cyose. Niyo mpamvu, uru Rukiko rugomba gusuzuma ikibazo cyo kumenya niba uregwa mu bujurire ari umwana wa Rutsindura Alphonse ku buryo byamuhesha uburenganzira bwo kumuzungura. [17] Ingingo ya 3 y'Itegeko N°15/2004 ryo ku 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, igira iti "buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana". Na none ingingo ya 76 y'iryo Tegeko, 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". [18] Urukiko rurasanga muri dosiye hari igisubizo cya "test ya ADN" cyatanze n'umuhanga witwa Dr Christa Augustine ukorera mu Kigo cyo mu Budage cyitwa "Institute of Legal Medicine". icyo kizamani cya ADN cyakozwe hagati y'uvuga ko ari Rutsindura Alexis na Nahishakiye Jean Berchmas, kigaragaza ko isano iri hagati yabo, ari iy'umwana na se ku kigero cya 99,9999%. Abakoze icyo kizamini cya ADN bemeje ko bakurikije ibipimo bakoresheje basanze uvuga ko ari Rutsindura Alexis na Nahishakiye Jean Berchmas hari ibyo bahuriyeho ku buryo ntawahakana ko Jean Berchmans Nahishakiye ari se. Babivuze muri aya magambo "Jean Berchmas Nahishakiye and Alexis Rutsindura share at least one allele in every STR-system tested here. Thus Jean Berchmas Nahishakiye cannot be excluded from paternity". [19] Urukiko rurasanga icyo cyemezo cya "test ADN" kigomba guhabwa agaciro kuko cyakozwe n'Umuhanga ubifitiye ubumenyi buhagije ahereye kuri "saliva samples"

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GAHENDA v. RUTSINDURA 67 (ibipimo by'amacandwe) zafashwe kuw'uregwa muri uru rubanza na Nahishakiye Jean Berchmas, kikaba rero kigomba gufatwa nk'ikimenyetso cya kamarampaka ku bijyanye no kumenya niba uwiye Rutsindura Alexis atarabyawe na Rutsindura Alphonse, ko ahubwo yabyawe na Nahishakiye Jean Berchmans. [20] Urukiko rusanga ibyagaragajwe n'ikizamini cya ADN byerekana nta shiti ko uwiye Rutsindura Alexis ari mwene Nahishakiye Jean Berchmans. Ibi bikaba bikuraho ibyo uwiye Rutsindura Alexis avuga ko yabyawe na Rutsindura Alphonse. Ikizamini cya ADN cyakozwe kikaba gifite agaciro kandi kikaba kizewe kurusha ibindi bimenyetso bishingiye ku mvugo z'abatangabuhamya byatanze n'uregwa mu bujurire ku izina rya Rutsindura Alexis (Bigirimana Cedric) ashaka kugaragaza ko ari uwa Rutsindura Alphonse. Test ADN igaragaza ko uwiye Rutsindura Alexis ari uwa Nahishakiye Jean Berchmans si ubwa mbere yari ikozwe, dore ko yigeze gukorwa mu rubanza nshinjabyaha (RPA0138/11/TGI/NYGE) mu Rukiko Rwisumbuye rwa Nyarugenge, urwo Rukiko ntiruyiye agaciro bitewe n'inzira yakoreshejwemo, atari uguhakana ukuri ku byo yagaragaje. Nabwo hari hagaragajwe ko uregwa ari uwa Nahishakiye Jean Berchmans ku kigero cya 99,9999999%. [21] Ku

birebana n'ibyo Me Mwine Geoffrey yavuze ko abashakashatsi bemeje ko uwakoze ikizamini cya ADN ashobora kwibeshya ku kigero cya 75%, Urukiko rushingiye ku nyandiko yarushyikirije, rusanga ibyo atariko byanditse. Ahubwo ukurikije iyo nyandiko, abashakashatsi bagaragaje ko kudasobanukirwa neza ikoranabuhanga rikoresheya mugukora “test AND” bituma abaregwa bahamwa n'icyaha ku kigero cya 75% ugereraniye na 42% aho abafata icyemezo baba

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 68 basobonukiwe iby'iryo koranabuhanga. (..it is from this study she concluded the less people understood the technology the higher were conviction rates. Low understanding of the technology translated to 75% conviction rates versus 42% conviction with better knowledge3).

[22] Urukiko rurasanga imvugo z'abunganira uregwa mu bujurire zijyanye nuko hakorwa ikindi kizamini cya ADN hagati ye n'abakomoka kuri Seburikoko Narcisse nta shingiro zifite kuko, icyo kizamini kindi gisabwa ntacyo cyaba kije gukemura mu gihe hari icyakozwe kikagaragaza ko uwiye Rutsindura Alexis ari uwa Nahishakiye Jean Berchmans kandi bakaba batagaragaza icyo banenga icyo kizamini ku buryo ibyo cyagaragaje byahinyuzwa hakorwa ikindi kizamini. Umuhanga wapimye “ADN” hagati y'uregwa mu bujurire ku izina rya Rutsindura Alexis na Nahishakiye Jean Berchmans, mu mwanzuro we, ntashidikanya ku bijyanye n'uko isano iri hagati yabo ari iy'umwana na se. Ibyo bikaba bihagije kugirango Urukiko rufate umwanzuro bitabaye ngombwa kongera gukoresha ikizamini gisa nk'icyakozwe, keretse iyo ababuranira uregwa bashobora kugaragaza ko umuhanga wakoze icyo kizamini yibeshye. [23] Hagati y'umwaka wa 2007 na 2014, u Rwanda rwohereje ibipimo mu Budage, mu kigo kitwa, “Institute of Legal Medicine, University Hospital of Hamburg” hakorwa “test ADN” zirenga 4004. Muri icyo kigo, niho Dr Christa Augustine wakoze “test ADN” muri uru rubanza akora. Ashinzwe gupima za “test ADN” akaba akuriye kandi “Forensic

3 www.news-medical.net/news/20100329/DNA 4 Reba urubuga rwa internet rw'Ubushinjacyaha Bukuru bw'u Rwanda: www.nppa.gov.rw

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GAHENDA v. RUTSINDURA 69 Genetics Laboratory” muri icyo kigo. Mu bizamini bya “ADN” yakoze byose biturutse mu Rwanda nta kibazo cyari cyagaragara mu bisubizo yagiye atanga ku bizamini yabaga yasabwe gukora. Nkuko tubikesha umuryango “Organization Research Gate”⁵, Dr Christa Augustine amaze kwandika inyandiko (scientific papers) zerekanye na ADN zirenga 46. Ibi byose byerekana ko ari impuguke mu birebana na ADN. Kuba ababuranira uregwa mu bujurire ku izina rya Rutsindura Alexis bavugaga ko banyurwa aruko hakoze indi “test AND” ikagereranywa n'iyakozwe batagaragaje icyo bayinenga, nta gaciro byahabwa. [24] Urukiko rurasanga kandi muri dosiye hari raporo yakozwe n'Umushinjacyaha wo muri Pariki ya Muramvya, mu Gihugu cy'Uburundi, yise “rapport d'une descente effectuée sur la colline Gahweza, Commune de Kiganda, Province de Muramvya en date du 23/11/2010”. Muri iyo raporo,

Umushinjacyaha wa Repubulika i Muramvya avuga ko yeretse Nahishakiye Jean Berchmas ifoto ya Bigirimana Cedric akavuga ko ari umwana we wa kane, Nahishakiye amubaza niba umwana we akiriho. Abivuga muri aya magambo “. [.....] j’ai rencontré sieur Nahishakiye Jean Berchmas. Son épouse était encore aux champs. Je lui ai alors montré la photo de Bigirimana Cédric. Il l’a aussitôt reconnu et a déclaré que c’est son fils et qu’il est son quatrième enfant. Avec beaucoup d’étonnement, il m’a demandé de lui dire si son fils vivait encore.. ». Ibyagaragajwe na «test ADN» bishimangira ibyavuzwe n’Umushinjacyaha wa Repubulika i Muramvya/Burundi, ko ababyeyi b’uwiye Rutsindura Alexis, babonye ifoto ye bakamumenya ndetse bakanemera ko ari umwana wabo wa kane.

5www.researchgate.net

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ICYEGERANYO CY’IBYEMEZO BY’INKIKO 70 [25] Muri raporo ivugwa mu gika kibanziriza iki, Umushinjacyaha wa Repubulika i Muramvya/Burundi anerekana ko uwarezwe mu bujurire muri uru Rukiko yagiye ahindagura amazina. Ikigaragara nuko ababyeyi be batamuzi nka Rutsindura Alexis. Bavuze amazina atandukanye ye nuko yagiye ayahindura ariko iryo ntibigeze barikomozaho. Umushinjacyaha avuga ko nyina w’uwiye Rutsindura Alexis yavuze ko umwana we mbere yuko abatizwa yitwaga Nahishakiye Cedric nyuma aza kwiyita Bigirimana Cedric. Yabivuze muri aya magambo “elle a précisé qu’avant qu’il ne soit baptisé, il s’appelait Nahishakiye Cédric mais qu’il s’est baptisé Bigirimana Cedric [....]”. Uguhindagura amazina k’uwarezwe mu bujurire uko yishakiye, ku buryo naho avuga ko yabaye i Burundi batamuzi nka Rutsindura Alexis, byongera gushimangira ko atari mwene Rutsindura Alphonse. Urukiko ruherereye ku bisobanuro biri muri iki gika ndetse no mu bika bikibanziriza, rurasanga uregwa muri uru rubanza ku izina rya Rutsindura Alexis (Bigirimana Cedric), atari uwa Rutsindura Alphonse. [26] Ingingo ya 50 y’Itegeko No22/99 ryo kuwa 12/11/1999 ryuzuza igitabo cya mbere cy’urwunge rw’amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y’umutungo w’abashyiranywe, impano n’izungura ivuga ko abana amategeko mbonezamubano yemera ko ari aba nyakwigendera bazungura ku buryo bungana. Bivuze ko kugirango umuntu agire uburenganzira bwo kuzungura nk’umwana wa nyakwigendera, ari uko hakurikijwe amategeko mbonezamubano, uzungura agomba kuba ari umwana w’uwo azungura. Uregwa mu bujurire si uwa Rutsindura Alphonse nkuko byasobanuwe, hakurikijwe ingingo ya 50 ivugwa muri iki gika nta burenganzira afite bwo kuzungura umutungo wasizwe

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GAHENDA v. RUTSINDURA 71 na Rutsindura Alphonse, bityo imikirize y’imanza zose zaciwe zimuha uburenganzira bwo kuzungura uwo mutungo ikaba igomba guhinduka. III. ICYEMEZO CY’URUKIKO [27] Rwemeje ko ubujurire bwatanzwe na Gahenda Bievenu bufite ishingiye; [28] Rwemeje ko uregwa mu bujurire ku izina rya Rutsindura Alexis (Bigirimana Cedric) atari umwana wa Rutsindura Alphonse bityo akaba adafite n’uburenganzira bwo kumuzungura; [29] Ruvuze ko imikirize y’urubanza RCA0003/10/HC/NYA rwaciwe kuwa 12/03/2014 n’Urukiko

Rukuru, Urugereko rwa Nyanza rukajuririrwa mu uru Rukiko kimwe n'imikirize y'urubanza RC0053/08/TGI/HYE rwaciwe n'Urukiko Rwisumbuye rwa Huye kuwa 05/01/2010 ihindutse kuri byose; [30] Rutegetse uregwa mu bujurire ku izina rya Rutsindura Alexis (Bigirimana Cedric) gutanga amagarama y'uru rubanza angana na 100.000Frw.

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RUTABAYIRU v. BATAMURIZA [Rwanda URUKIKO RW'IKIRENGA – RCAA0013/13/CS (Mugenzi, P.J., Gakwaya na Munyangeri, J.) 03 Kamena 2016] Amategeko agenga umuryango – Ababana batarashakanye mu buryo bukurikije amategeko – Kugabana imitungo – Uruhare rw'umwe mu babanye nk'umugore n'umugabo ku mutungo bashakanye ntirugaragarira gusa mu gukora akazi kamuha umushahara mu gihe bafatanyaga kurukorera mu buryo bunyuranye. Amategeko agenga ubutaka – Umutungo utimukanwa – Ibisabwa kugirango witwe nyirumutungo – icyemezo cy'umutungo Ntibihagije kugirango hemezwe ko umutungo ari uw'umuntu hashingiwe gusa ku kuba icyemezo cy'umutungo kimwanditseho igihe atagaragaza inkomoko yawo – Itegeko Ngenga No08/2005 ryo kuwa 14/07/2005 rigena imicungire y'ubutaka mu Rwanda, ingingo ya 5. Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Imbibizi z'ubujurire – Ubujurire busuzumwa gusa mu mbizi z'ibyajuririwe – Itegeko No21/2012 ryo kuwa 14/06/2012, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 170. Incamake y'ikibazo: Batamuriza yareze Rutabayiru mu Rukiko Rwisumbuye rwa Nyarugenge, asaba ko bagabana imitungo igizwe n'amazu abiri, urwuri, imodoka 2 n'ibikoresho byo mu nzu, kuko babanye nk'umugabo n'umugore kuwa muri 1991 kugera muri 2003. 73

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 74 Urwo rukiko rwemeje ko Batamuriza atsinze kuko nta bimenyetso agaragaza by'uko yagize uruhare mu kubona iyo mitungo kandi ikaba yanditse kuri Rutabayiru. Rusobanura kandi ko hatashingirwa ku ngingo ya 39 y'Itegeko No59/2008 ryo kuwa 10/09/2008 kuko ababuranyi baretse kubana kuwa muri 2003 kandi iryo Tegeko ritari ryajyaho. Batamuriza yajuririye Urukiko Rukuru, avuga ko Urukiko Rwisumbuye rwagombaga kumufata nk'uwashyinyiwe mu buryo bukurikije amategeko hashingiwe k'umuco w'igihugu bashakanyemo (Uganda), rukaba rutaritaye ku batangabuhamya yatanze ahubwo rwitiranya uru rubanza rwo kugabana imitungo n'urwo yari yatanzemo ikirego cyo gusaba kwemeza ko abana babyawe na Rutabayiru. Urukiko Rukuru rwemeje ko ubwo bujurire bufite ishingiro maze rutegeka ko umutungo uri mu kibanza No6173 na No6174 ubagabanywa ku buryo bungana, ndetse runasobanura ko nta kimenyetso cyashingirwaho mu gufata Rutabayiru na Batamuriza nk'abasezeranye imbere y'amategeko y'u Rwanda kandi bakaba batagabanywa umutungo hashingiwe ku ngingo ya 39 y'Itegeko No59/2008 ryo kuwa 10/09/2008 kuko ritariho igihe bahagarikiye kubana kandi ritaragenye ko rizanagenga ibintu byabaye mbere yaryo ko rero bakwiye kugabana umutungo hashingiwe ku itegeko umucamanza yashyiraho mu mwanya w'umushingamategeko. Rutabayiru yajuririye Urukiko rw'Ikirenga, asaba ko icyemezo cyafashwe n'Urukiko Rukuru cyo kumugabanya umutungo na Batamuriza cyatashwe agaciro kuko

kinyuranyije n'Itegeko Nshinga. Akomeza avuga ko hirengagijwe ubusumbane bw'ibimenyetso kuko Urukiko Rukuru rwahaye agaciro imvugo z'abatangabuhamya, basimbura icyemezo cy'umutungo kimwanditseho kandi gifatwa nk'inyandikomvaho kandi

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RUTABAYIRU v. BATAMURIZA 75 kitarateshejwe agaciro n'Urukiko. Avuga kandi ko urubanza rwaciwe ku kitajuririwe, kuko Batamuriza yavugaga ko yarenganyijwe hashingiwe ku ngingo ya 39 y'Itegeko No59/2008 ryo ku wa 10/09/2008 ryavuzwe haruguru, Umucamanza asuzuma igabanya ry'umutungo ashingiye ku byemezo by'inkiko n'inyandiko z'abahanga. Batamuriza yiregura avuga ko iyo mitungo yafatanyije na Rutabayiru kuyishaka, kandi nawe yinjizaga amafaranga. Incamake y'icyemezo: 1. Uruhare rw'umwe mu babanye nk'umugore n'umugabo ku mutungo bashakanye ntirugaragarira gusa mu gukora akazi kamuha umushahara mu gihe bafatanyaga kurukorera mu buryo bunyuranye.

2. Ntibihagije kugirango hemezwe ko umutungo ari uw'umuntu hashingiwe gusa ku kuba icyemezo cy'umutungo kimwanditseho igihe atagaragaza inkomoko yawo.
4. Ubujurire busuzumwa gusa mu mbibi z'ibyajuririwe, kuko undi mutungo ugizwe n'urwuri utajuririwe ntiwajya mubisuzumwa.
5. Indishyi zigenwa mu bushishozi bw'urukiko igihe uzisaba atagaragaza neza umubare w'izo asaba. Ubujurire nta shingiro bufite; Amagarama y'urubanza aherereye k'uwajuriye. Amategeko yashingiweho: Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavugururwe, ingingo ya 29. Itegeko Ngenga No08/2005 ryo kuwa 14/07/2005 rigena imicungire y'ubutaka mu Rwanda, ingingo ya 5.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 76 Itegeko No59/2008 ryo kuwa 10/09/2008 rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, ingingo ya 39. Itegeko No21/2012 ryo kuwa 14/06/2012, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 170. Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258. Imanza zifashishijwe: Harerimana v. Sebukayire, RCAA0018/13/CS rwaciwe n'Urukiko rw'Ikirenga, kuwa 24/12/2014. Urubanza I. IMITERERE Y'URUBANZA [1] Batamuriza yareze Rutabayiru mu Rukiko Rwisumbuye rwa Nyarugenge, asaba ko bagabana imitungo avuga ko bashakanye babana nk'umugabo n'umugore kuva muri 1991 kugera muri 2003. Iyo mitungo ikaba igizwe n'amazu abiri ari ku Muhima mu Kagali k'Amahoro, mu Mudugudu wa Kabirizi, urwuri, imodoka 2 n'ibikoresho byo mu nzu. [2] Mu rubanza RC0790/09/TGI/NYGE rwo kuwa 04/02/2011, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko Batamuriza atsinze kuko nta bimenyetso agaragaza by'uko yagize uruhare mu kubona iyo mitungo kandi ikaba yanditse kuri Rutabayiru. Rwashingiye kandi ku kuba mu rubanza rwemeza ko Rutabayiru ari we Se w'abana, rwategetse ko Batamuriza arerera abana mu nzu ya Rutabayiru iri ku Muhima,

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RUTABAYIRU v. BATAMURIZA 77 Batamuriza atagaragaje ko hari uruhare ayifiteho, rusobanura kandi ko hatashingirwa ku ngingo ya 39 y'Itegeko No59/2008 ryo ku wa 10/09/2008 kuko ababuranyi baretse kubana kuwa muri 2003 kandi iryo Tegeko ritari ryajyaho. [3] Batamuriza yajuririye Urukiko Rukuru, avuga ko Urukiko Rwisumbuye rwagombaga kumufata nk'uwashyingiwe mu buryo bukurikije amategeko hashingiwe k'umuco w'igihugu bashakanyemo (Uganda), rukaba rutaritaye ku batangabuhamya yatanze ahubwo rwitiranya uru rubanza rwo kugabana imitungo n'urwo yari yatanzemo ikirego cyo gusaba kwemeza ko abana babyawe na Rutabayiru. [4] Urukiko Rukuru rwemeje ko ubujurire bwa Batamuriza bufite ishingiro, rwemeza ko urubanza rwaciwe n'Urukiko Rwisumbuye ruhindutse kuri byose, rutegeka ko agaciro k'umutungo uri mu kibanza No6173 na No6174 ugabanywa ku buryo bungana, buri wese agaherezwaho agaciro ka 57.093.153Frw, ruvuga ariko ko, Batamuriza aherezwaho umutungo usanzwe umuhereyeho, uri mu kibanza No6174, Rutabayiru agaherezwaho umutungo uri mu kibanza No6173 ariko akongerera Batamuriza 24.837.481Frw kugira ngo yiharire uwo mutungo mu rwego rwo kuringaniza agaciro, batashobora kubigabana ku neza, imitungo igatezwa cyamunara bakagabana amafaranga. [5] Urukiko Rukuru rwasobanuye ko nta kimenyetso cyashingirwaho mu gufata Rutabayiru na Batamuriza nk'abasezeranye imbere y'amategeko y'u Rwanda kandi bakaba batagabanywa umutungo hashingiwe ku ngingo ya 39 y'Itegeko

Itegeko rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 78 No59/2008 ryo kuwa 10/09/2008 ryavuzwe haruguru kuko ritariho igihe bahagarikiye kubana kandi ritaragennye ko rizanagenga ibintu byabaye mbere yaryo. [6] Rwasobanuye ariko ko bakwiye kugabana umutungo hashingiwe ku itegeko umucamanza yashyiraho mu mwanya w'Umushingamategeko, kuko n'ubwo nta tegeko ryagenaga uburyo ababana nk'umugabo n'umugore bacunga umutungo wabo n'uburyo bawugabana mu gihe batandukanye, ariko mu mibanire y'abantu haba hari amategeko yanditse cyangwa atanditse ayigenga kandi Rutabayiru akaba adakwiye kwikungahaza nta mpamvu, abikomoye ku bikorwa bya Batamuriza, ngo uyu abivutswemo uburenganzira. [7] Rutabayiru yajuririye Urukiko rw'Ikirenga, avuga ko Urukiko Rukuru rwafashe icyemezo cyo kumuvogerera umutungo ruwumugabanya na Batamuriza, kandi bibujijwe mu ngingo ya 29 y'Itegeko Nshinga3, icyo cyemezo kikaba gikwiye guteshwa agaciro kuko kinyuranyije naryo, nk'uko bivugwa mu ngingo yaryo ya 200, iteganya ko "Itegeko Nshinga ariryo Tegeko ry'Igihugu risumba ayandi. Itegeko ryose, icyemezo cyose, binyuranyije na ryo nta gaciro na gato bigira". [8] Avuga kandi ko hirengagijwe ubusumbane bw'ibimenyetso kuko Urukiko Rukuru rwahaye agaciro imvugo z'abatangabuhamya, basimbura icyemezo cy'umutungo

2 Ingingo ya 2 y'Itegeko No42/88 ryo kuwa 27/10/1988 Interuro y'ibanze n'Igitabo cya mbere cy'amategeko y'urwunge rw'amategeko mbonezamubano iteganya ko "Itegeko rishyirirwaho gutunganya ibizakorwa ritangiye gukurikizwa; ntirishobora kugira inkurikizi ku bikorwa byabaye ritaratangira gukurikizwa keretse iyo biteganyijwe ukundi". 3 Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 nk'uko ryavugururwe kugeza ubu.

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RUTABAYIRU v. BATAMURIZA 79 kimwanditseho kandi gifatwa nk'inyandikomvaho kandi kitarateshejwe agaciro n'Urukiko, akaba ari cyo kigaragaza nyir'umutungu, nk'uko biteganywa n'ingingo ya 2 y'Itegeko No08/2005 ryo ku wa 14/07/2005 rigena imikoreshereje n'imicungire y'ubutaka mu Rwanda, bigashimangirwa n'ingingo ya 26 y'iryo Tegeko. [9] Avuga kandi ko urubanza rwaciye ku kitajuririwe, kuko Batamuriza yavugaga ko yarenganyijwe hashingiwe ku ngingo ya 39 y'Itegeko No59/2008 ryo ku wa 10/09/2008 ryavuzwe haruguru, Umucamanza asuzuma igabanya ry'umutungu ashingiye ku byemezo by'inkiko n'inyandiko z'abahanga. [10] Urubanza rwaburanishijwe mu ruhame kuwa 03/05/2016, Rutabayiru yunganiwe na Me Mutunzi Donat naho Batamuriza yunganiwe na Me Ntwali Justin. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO A. Kumenya niba Batamuriza yaragize uruhare mu kubona imitungo aburana na Rutabayiru. [11] Rutabayiru avuga ko Urukiko rwavogereye umutungu we, rugena ko agabana na Batamuriza amazu abiri kandi ari aye bwite kuko yayubatse nyuma ya 2003, atakibana na Batamuriza, kandi inzu ziri mu kibanza No6173 na No6174 zikaba zimwanditseho ndetse azifitiye ibyangombwa by'umutungu, bikaba aribyo bigaragaza nyiri umutungu. [12] Avuga ko Urukiko Rukuru rwirengagije ubusumbane bw'ibimenyetso kuko rwashingiye ku mvugo

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 80 z'abatangabuhamya batanze amakuru mu iperereza ritigeze risabwa n'umuburanyi, hashingirwa ku zindi manza zaciye zo mu bihugu tudahuje umuco, rwirengangiza ko imitungo iburanwa yanditse kuri Rutabayiru akaba anayifitiye ibyangombwa kandi bitigeze biteshwa agaciro n'Urukiko nk'uko biteganywa n'amategeko agenga iby'ubutaka. [13] Akomeza avuga ko habayeho guca urubanza ku kitajuririwe kuko Batamuriza yajuriye asaba kurenganurwa hashingiwe ku Itegeko No59/2008 ryo ku wa 10/09/2008 rikumira kandi rikarinda ihohoterwa, ariko Umucamanza asuzuma ibyerekeranye no kugabana umutungu yirengagije ibiteganywa n'amategeko, asaba ko icyo cyemezo cyakurwaho. [14] Me Mutunzi, mu kumwunganira, avuga ko habayeho kutubahiriza amategeko kuko Urukiko rwahaye agaciro ubuhamya bw'amagambo kandi hari ibimenyetso byanditse bitagaragajwe ko ari inyandikomvaho. Avuga ko habayeho kuvogera imitungo ya Rutabayiru kuko yayishatse mu 2004, ari wenyine, atakibana na Batamuriza kuwa muri 2003. [15] Avuga kandi ko nta bimenyetso bifatika bigaragaza ko bashakanye imitungo, kuko amafoto Batamuriza aburanisha atafashwe n'umuntu ubifitiye ubuzobere, kandi ko aho umuntu agaragazwa ku ifoto ashobora kuba atari naho yafotorewe, naho kuba abana ba Rutabayiru barize muri APACOPE ku Muhima bikaba atari ikimenyetso cy'uko bafatanyije umutungu. [16] Avuga ariko ko Urukiko rubibonye ukundi, rwazirikana ko imitungo iburanwa yatanze ingwate muri Banki, Rutabayiru ahabwa

umwenda atabashije kwishyura, ubu ikaba iri muri gahunda yo gutezwa cyamunara, harangizwa urubanza RCOMA0054/10/CS, rwaciwe n'Urukiko rw'Ikirenga, ibi

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RUTABAYIRU v. BATAMURIZA 81 bikaba bikwiye kwitabwaho, hakaba hagabanwa amafaranga yasaguka nyuma y'uko banki iteje cyamunara. [17] Batamuriza avuga ko yatangiye kubana na Rutabayiru nk'umugabo n'umugore muri 1991, muri Uganda, barekeraho kubana muri 2003, bashakana iyo mitungo irimo inzu iri mu kibanza No6173, yubatswe muri 1997, batuye i Gikondo, bajya kuyibamo mu 1999 ari naho babyariye umwana witwa Prince ku wa 10/07/2001, abandi bana bakaba barigaga muri APACOPE, ubwo bari batuye ku Muhima. [18] Avuga ko nawe yinjizaga amafaranga kuko yakoreraga CICR (Comité International de la Croix Rouge), ahavanwa n'uburwayi bw'umwana, nyuma acururiza Nyabugogo ahazwi ku izina ryo mu "Mashyirahamwe" mu muryango wa No12, kandi akaba ari nawe wahaga umufundi ibikoresho n'amafaranga kuko Rutabayiru yakoreraga kure. Avuga ko kubera ko bari batuye ku Muhima abana babo bize kuri APACOPE, ko kandi uruhare rwe rwasobanuwe n'umutangabuhamya wubatse inzu ya mbere, ariwe Sakindi wabajijwe mu Rukiko Rukuru n'ubu akaba yakongeraga kubazwa bibaye ngombwa, kimwe na Mukakamanzi Agnès baguze ikibanza, akamwishyura 35.000Frw. [19] Avuga ko kuba ibyangombwa byanditseho amatariki ya nyuma yo kubana kwe na Rutabayiru ari uko ari "régularisation" yakozwe nyuma, naho kuba yaratanze ingwate kuri iyo mitungo bikaba bidakwiye kumuvutsa uburenganzira bwe. Avuga kandi ko hari n'urwuri bari bafite, ruherereye i Bungwe, akaba afite amakuru ko rwaguzwe na Kabera Etienne mu kwezi kwa kabiri 2016, ku mafaranga 14.000.000Frw.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 82 [20] Me Ntwali avuga ko mu rubanza rujuririrwa nta mategeko yirengagijwe, kuko icyari kigamijwe ari ukumenya niba Rutabayiru yarabanye na Batamuriza bakaba barashakanye umutungo uburanwa, bityo, bakaba bakwiye kuwugabana. Asobanura ko gukora iperereza byibwirijwe n' Umucamanza nta tegeko byishe, kuko yari agamije gusubiza icyaregewe cyo kumenya niba Batamuriza yaragize uruhare ku mutungo aburana. [21] Avuga ko umutungo uburanwa utabonetse nyuma yo kutabana nk'umugore n'umugabo, kuko nk'uko biboneka mu rubanza rwo ku wa 29/04/2004, rwemeje ko abana babyawe na Rutabayiru, iyo mitungo yavuzwe, kandi uburyo ibyangombwa byabonetse bikaba bidasobanutse kuko bigaragara ko yahawe icyangombwa cy'ikibanza No6173 kuwa 11/04/2005, naho icyo kwubaka akagihabwa ku wa 01/04/2005. Akomeza avuga ko nta kuvogera umutungo wa Rutabayiru kwabayeho ngo habe haranyuranyijwe n'ingingo ya 29 y'Itegeko Nshinga, kuko niba awufatanyije na Batamuriza, kutawuvogera byareberwa ku mpande zombi. [22] Ku kibazo cy'uko Rutabayiru ari we wanditswe ku byangombwa by'umutungo, bikaba bigomba gufatwa nk'inyandikompamo, Me Ntwali avuga ko n'ubundi Batamuriza atavugaga ko izo nyandiko ari impimbano, ko ahubwo icyo yemeza ari uko uwo mutungo bawushakanye, akaba rero akwiye kuwuhabwaho uburenganzira. UKO URUKIKO RUBIBONA [23] Urukiko rusanga imiburanire ya Rutabayiru y'uko umutungo uburanwa wabonetse muri 2004, batakibana,

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RUTABAYIRU v. BATAMURIZA 83 itafatwaho ukuri kuko nk'uko Urukiko Rukuru rwabigaragaje, abatangabuhama barimo Nyinawabera Euphrate na Uwitonze Innocent babajijwe n'urwo Rukiko, basobanuye neza ko bari abaturanyi ba Rutabayiru na Batamuriza ku Muhima, aho aba babanaga nk'umugabo n'umugore, akaba ari cyo gihe bahubatswe amazu aburanwa, bakaba bavugaga ko ahaburanwa haguzwe kandi hubakwa muri 1997 na 1998, Rutabayiru abana na Batamuriza, hakaba nta mpamvu ubwo buhama butafatwaho ukuri, kandi na Rutabayiru, aburana mu Rukiko Rukuru yavuze ko ikibanza No6174 bakiguze mu 1998 akibana na Batamuriza. [24] Urukiko rurasanga kandi, mu igenagaciro ryasabwe n'Urukiko Rukuru mu cyemezo cyo ku wa 08/08/2012, bigaragara ko inzu y'ingenzi yo mu kibanza No6173 yubatswe mu 1997 naho inzu yo mu kibanza No6174 yubakwa mu 2000, usibye n'ibyo kandi, mu rubanza RC4106/04 rwo ku wa 29/04/2004 rwari rugamije kwemeza ko abana babyawe na Rutabayiru, hakaba haremejwe ko abo bana bazarererwa mu nzu ye ntoya ikodeshwa 50.000Frw, iri ku Muhima, Kigali Ville, bikazakorwa nyuma y'umwaka w'amashuri 2003-2004, ibi bikaba byumvikanisha ko hari inzu nini n'intoza, kandi zubatswe mbere ya 2004. [25] Nk'uko abaturanyi babyemeranywaho, Rutabayiru na Batamuriza babanye nk'umugore n'umugabo kuva muri 1991 kugera muri 2003, aho bagereye mu Rwanda, Rutabayiru yakoreraga mu Ntara, Batamuriza akora muri CICR nk'uko biboneka mu cyemezo cy'umukoresha cyo ku wa 09/10/1997, ahembwa 47.600Frw, nk'uko bigaragara mu cyemezo cy'umushahara cyo ku wa 21/10/2010 cyatanze na CICR, kandi no kuba yaracurujwe, bikaba bitaravugurujwe n'uwo baburana.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 84 [26] Urukiko rusanga kandi n'ubwo Rutabayiru avugaga ko amafoto Batamuriza yagaragaje yerekana abana babo bakinira imbere y'amazu aburanwa atahabwa agaciro, icyo kimenyetso nacyo kitabura kwemerwa kuko, kuba kigizwe n'ifoto ubwabyo atari inenge, mu gihe ukinenga atagaragaza ko cyaba ari igihimbano. Urukiko rurasanga rero icyo kimenyetso nacyo cyunganira ibindi byagaragajwe byerekana ko Rutabayiru atubatswe amazu aburanwa nyuma yo kubana na Batamuriza. [27] Urukiko rurasanga kandi n'iyi Batamuriza aza kuba atarakoze akazi kamuha umushahara, muri kiriya gihe cy'imyaka 12 yabanaga na Rutabayiru nk'umugabo n'umugore bafatanyije kwubaka ko guteza imbere urugo, atari kubura uruhare mu bikorwa byarwo, mu gihe bafatanyaga kurukorera, mu buryo bunyuranye. [28] Ku ngingo y'uko Rutabayiru afite icyangombwa y'imitungo iburanwa kimwanditseho, Urukiko rusanga n'ubwo ariwe ufite icyemezo cy'umutungo, bidahagije kugirango hemezwe ko ari uwe wenyine, ahubwo akaba yari akwiye kugaragaza inkomoko yawo, nk'uko biteganywa mu ngingo ya 54 y'Itegeko Ngenga No08/2005 ryo kuwa 14/07/2005 rigenga imicungire y'ubutaka mu Rwanda, iteganya ko umuntu afite uburenganzira bwo gutunga ubutaka yabonye ku bw'umuco, yahawe, cyangwa se yaguzwe, bityo akerekana ko nta ruhare

4 Iyo ngingo iteganya ko “umuntu wese, ku giti cye cyangwa ishyirahamwe rifite ubuzima gatozi, batunze ubutaka, baba barabubonye ku bw’umuco, cyangwa se barabuhawe n’ubuyobozi bubifitiye ububasha cyangwa se barabuguze, bemerewe kubutunga ku buryo bw’ubukode burambye, hakurikijwe ibiteganywa n’iri Tegeko Ngenga”. 5 Ibisobanuro by’uko kuba umuburanyi afite icyemezo cy’umutungo bidahagije kugira ngo Urukiko rwemeze ko uwo mutungo ai uwe atabanje

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RUTABAYIRU v. BATAMURIZA 85 Batamuriza yagize kuri iyo nkomoko, naho kwandikwaho ibyangobwa gusa bikaba byanaterwa n’amakuru atari ay’ukuri yatanzwe mu iyandikisha. [29] Ku byerekeye ishingiro ry’igabana ry’umutungo hagati ya Rutabayiru na Batamuriza ku bw’amategeko, Urukiko rusanga igabanwa ry’uwo mutungo ritashyingirwa ku ngingo ya 39 y’Itegeko No59/2008 ryo ku wa 10/09/2008 kuko ababuranyi barekeye aho kubana ritarajyaho, ahubwo ryashyingirwa ku ngingo ya 29 y’Itegeko Nshinga rya Repubulika y’u Rwanda ryo ku wa 04/06/2003 nk’uko ryavugururwe kugeza ubu, na Rutabayiru ubwe aburanisha, iteganya ko “buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo afatanyije cyangwa asangiye n’abandi, kandi ko uwo mutungo utavogerwa”, bityo, ubwo Batamuriza yafatanyije na Rutabayiru guhaha umutungo w’amazu aburanwa nk’uko byasobanuwe haruguru, hakaba ntawagira uburenganzira bwo kuwuhazaho undi, kuko ukutavogerwa ku mutungo usangiwe n’abantu babiri bigomba kureberwa ku mpande zabo bombi. [30] Urukiko rurasanga mu gihe Rutabayiru yaba yegukanye umutungo wose kandi wagizwemo uruhare n’uwo bawushakanye, byaba binyuranyije n’ihame rikomeye mu mategeko ryo kutikungahaza nta mpamvu (enrichissement sans cause) nk’uko byasobanuwe mu rubanza rujurirwa. [31] Ku byerekeranye n’undi mutungo ugizwe n’urwuri Batamuriza avuga ko ruherereye mu Karere ka Gicumbi, Urukiko rusanga, Batamuriza yararutsindiye mu Rukiko Rukuru, ntiyabijuririra, ku buryo no mu mwanzuro we wo

kugaragaza inkomoko yawo, byatanzwe mu rubanza RCAA0018/13/CS rwo ku wa 24/12/2014, Harerimana Emmanuel aburana na Sebukayire Tharcisse.

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ICYEGERANYO CY’IBYEMEZO BY’INKIKO 86 kwiregura yasabye ko urubanza rwaciwe n’Urukiko rutahinduka, bityo, Urukiko rukaba rutasuzuma ibijyanye n’urwo rwuri kuko ntawabijuriraye, kandi ingingo ya 170 y’Itegeko No21/2012 ryo ku wa 14/06/2012, ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, iteganya ko ubujurire busuzumwa gusa mu mbizi z’ibyajuririrwe. B. Ku byerekeye indishyi zisabwa na Batamuriza. [32] Me Ntwali asaba ko Batamuriza yagenerwa 500.000Frw y’igihembo cya Avoka na 700.000Frw y’ikurikiranarubanza, naho Me Mutunzi uburanira Rutabayiru akavuga ko nta ndishyi zikwiye kuko nta mpamvu zishingiyeho. [33] Urukiko rurasanga, hashingiwe ku ngingo ya 258 y’Igitabo cya gatatu cy’Urwunge rw’Amategeko mbenezamubano, iteganya ko nyir’igikorwa cyangirije undi, ategukwa kuriha ibyangijwe, kuba Batamuriza yaragombye kuburana na Rutabayiru kugira

ngo ahabwe uburenganzira bwe ku mutungo, byumvikana ko yagize ibyo atanga mu gukurikirana urubanza no guhemba Avoka wamuburaniye, ariko kuko nta bimenyetso yatanze bigaragaza neza umubare w'izo ndishyi asaba, Urukiko rukaba rwamugenera, mu bushishozi bwarwo 300.000Frw y'ikurikiranarubanza, na 500.000Frw y'igihembo cya Avoka. III. ICYEMEZO CY'URUKIKO [34] Rwemeje ko ubujurire bwa Rutabayiru Charles nta shingiro bufite;

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RUTABAYIRU v. BATAMURIZA 87 [35] Rwemeje ko urubanza RCA0076/11/HC rwaciwe n'Urukiko Rukuru kuwa 15/03/2013 ruhindutse gusa ku byerekeye indishyi; [36] Rutegetse Rutabayiru Charles kwishyura Batamuriza Immaculée, igiteranyo cy'indishyi zihwanye n'amafaranga ibihumbi magana inani (800.000Frw); [37] Rutegetse Rutabayiru Charles kwishyura amagarama y'urubaza angana na 100.000Frw.

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IMANZA Z'UBUCURUZI

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IKIGO CY'IMISORO N'AMAHORO (RRA) v. MUHIRE [Rwanda URUKIKO RW'IKIRENGA – RCOMA0035/13/CS (Kayitesi R., P.J., Gakwaya na Gatete, J.) 3 Gicurasi 2016] Amategeko agenga imisoro – Umusoro ku musaruro – Inyungu zikomoka ku bikorwa by'ubucuruzi – Amafaranga usora yahawe nk'inguzanyo ntagomba gusoreshwa kuko atari inyungu zikomoka ku bikorwa by'ubucuruzi cyangwa umusaruro ukomoka ku ishoramari – Itegeko No16/2005 ryo kuwa 18/8/2005 rigena imisoro itaziguye ku musaruro, ingingo ya 10. Indishyi – Igihembo cy'Avoka – Nubwo urega yatsindiye bimwe mu birego ntibyamubuza kugenerwa igihembo cy'Avoka mu gihe yamwiyambaje – Itegeko-Teka ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258. Amategeko agenga imisoro – Ubusaze bw'umusoro – Ubusaze bw'umusoro ku nyongeragaciro ni indemyagihugu ikaba ishobora kubyutswa n'usora igihe cyose bibaye ngombwa – Itegeko N°25/2005 ryo kuwa 4/12/2005 rigena imitunganyirize y'isoresha, ingingo ya 27 – Itegeko N°06/2001 ryo kuwa 20/1/2001 rishyiraho umusoro ku nyongeragaciro, ingingo ya 37. Incamake y'ikibazo: Nyuma y'igenzura ryakorewe Muhire, RRA yamumenyesheje ko agomba kwishyura umusoro ungana na 32.957.990Frw ukubiyemo umusoro ku nyungu no ku nyongeragaciro ku myaka itandukanye atari yarishyuye. Muhire yatakambiye Komiseri Mukuru amusaba kurenganurwa ariko 91

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 92 mu ibaruwa yo kuwa 16 Gicurasi 2012 asubizwa ko itakamba rye nta shingiro rifite. Muhire yaregeye Urukiko Rukuru rw'Ubucuruzi avuga ko umusoro ku nyongeragaciro wo mu mwaka wa 2005, 2006 n'uwa 2007 itagishoboye kwishyurwa kuko RRA itawukurikiranye mbere y'uko habaho ubusaze ndetse ko mu kumwishyura umusoro ku nyungu RRA yabariye amafaranga y'inguzanyo mu nyungu zisoreshwa. Urukiko rwemeje ko

ubusaze bw'umusoro ku nyongeragaciro butasuzumwa kuko uwo musoro utigeze ujuririrwa kwa Komiseri Mukuru. Rwemeje kandi ko amafaranga Muhire yagurijwe atagombaga gukurwa mu byacurujwe usibye gusa umwenda wa 10.177.083Frw mu byacurujwe muri 2007. RRA yajuririye mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rwirengagije ibisobanuro byatanze kuri 10.177.083Frw yemejwe ko agomba gukurwa mu byacurujwe. Yongeyeho ko mu ngingo zose Muhire yaregeye imwe gusa ariyo yatsindiye bityo akaba atari kugenerwa igihembo cya Avoka. Muhire yasubije ko 10.177.083Frw ari ayo yagurijwe n'uwitwa Kwitonda nk'uko bigaragaraga mu ibaruwa yasubije RRA abyemera. Muhire yatanze ubujurire bwuririye ku bundi avuga ko atagombaga kwishyuzwa imisoro ya 2005 na 2006 kuko kuba RRA itaragenzuye ko yakoze neza imenyekanisha mu gihe cy'imyaka 3 yatakaje ubwo burenganzira bituma umusoro uba ndakuka akaba atagomba gucibwa undi muri iyo myaka. Incamake y'icyemezo: 1. Umusaruro usoroshwa ni inyungu zikomoka ku bikorwa by'ubucuruzi n'umusaruro ukomoka ku

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IKIGO CY'IMISORO N'AMAHORO (RRA) v. MUHIRE 93 ishoramari, byumvikanisha ko amafaranga usora yahawe inguzanyo atagomba gusoroshwa. Bityo Muhire akaba ataragombaga gusoroshwa amafaranga yahawe inguzanyo.

2. Nubwo urega yatsindiye bimwe mu birego ntibyamubuza kugenerwa igihembo cy'Avoka mu gihe yamwiyambaje.
3. Ubusaze bw'umusoro ku nyongeragaciro ni indemyagihugu ikaba ishobora kubyutswa n'usora igihe cyose bibaye ngombwa. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi bufite shingiro. Amagarama y'urubanza aherereye kuri RRA. Amategeko yashingiweho: Itegeko No25/2005 ryo kuwa 4/12/2005 rigena imitunganyirize y'isoresha, ingingo ya 27(3). Itegeko No16/2005 ryo kuwa 18/8/2005 rigena imisoro itaziguye ku musaruro, ingingo ya 10. Itegeko No15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3. Itegeko No06/2001 ryo kuwa 20/1/2001 rishyiraho umusoro ku nyongeragaciro, ingingo ya 36. Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258. Nta manza zifashishijwe.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 94 Urubanza I. IMITERERE Y'URUBANZA [1] RRA yakoreye Muhire Jean-Pierre igenzura, imugaragariza ko agomba kwishyura umusoro ungana na 32.957.990Frw, ukubiyemo umusoro ku nyungu (IBPP), n'umusoro ku nyongeragaciro (TVA) ku myaka ya 2005, 2006 na 2007. Kuwa 20/03/2012, Muhire Jean-Pierre yatakambiye Komiseri Mukuru asaba kurenganurwa, kuwa 16/05/2012, Komiseri Mukuru amusubiza ko ubujurire bwe nta shingiro bufite. [2] Muhire Jean-Pierre yaregeye Urukiko Rukuru rw'Ubucuruzi, maze mu rubanza No RCOM0160/12/HCC rwo kuwa 07/01/2013, rwemeza ko ubusaze bw'umusoro wa TVA w'umwaka wa 2005 (ukwezi kwa mbere kugeza mu kwezi kwa cumi na kumwe) butasuzumwa kubera ko uwo musoro utari ndakuka kubera ko Muhire Jean-Pierre atigeze abijuririra kwa Komiseri Mukuru. [3] Rwemeje kandi ko 9.000.000Frw, Muhire Jean-Pierre yavuze ko yagurijwe

n'uwitwa Kayijuka Alphonse, atagombaga gukurwa mu byacurujwe mu mwaka wa 2005; rwemeza ko 7.350.432Frw yavuze ko yishyuwe na MINAGRI, hamwe na 4.863.500Frw yavuze ko yatanze umwuga, adakurwa mu nyungu zisoreshwa mu mwaka wa 2006. Rwemeza ko 10.177.083Frw akurwa mu byacurujwe muri 2007, maze

1 Muhire Jean-Pierre yavugaga ko umusoro wo muri 2005 washaje kuko RRA itawukurikiranye, bamusubiza ko ibyo atabijuririye kwa Komiseri.

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IKIGO CY'IMISORO N'AMAHORO (RRA) v. MUHIRE 95 Muhire Jean-Pierre agenerwa 300.000Frw y'igihembo cya Avoka. [4] Ikigo cy'Imisoro n'Amahôro (RRA) cyajuririye Urukiko rw'Ikirenga kivuga ko Urukiko Rukuru rwirengagije ibisobanuro cyatanze ku 10.177.083Frw yemejwe ko agomba gukurwa mu byacurujwe na Muhire Jean-Pierre mu mwaka wa 2007; ko urwo Rukiko rwirengagije kandi ko mu ngingo zose Muhire Jean-Pierre yaregeye imwe gusa ariyo yatsinze, ko rero atari kugenerwa igihembo cya Avoka. [5] Muhire Jean-Pierre nawe yatanze ubujurire bwuririye ku bw'Ikigo cy'Imisoro n'Amahôro (RRA) avuga ko kidakwiye kumwishyuza imisoro ya 2005 na 2006 kuko kuba kitaragenzuye ko Muhire Jean-Pierre yakoze neza imenyekanisha mu gihe cy'imyaka itatu, yatakaje ubwo burenganzira, bityo umusoro yamenyekanishije ukaba warabaye ndakuka, akaba nta wundi agomba gucibwa muri iyo myaka yombi. [6] Iburanisha mu ruhame ryabaye kuwa 29/3/2016, RRA ihagarariwe na Me Byiringiro Bajeni, naho Muhire Jean-Pierre ahagarariwe na Me Nsengiyumva Abel. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

- a. Ku bujuriye bw'Ikigo cy'Imisoro n'Amahôro (RRA). Kumenya niba 10.177.083Frw atagomba gukurwa mu byacurujwe na Muhire Jean-Pierre mu mwaka wa 2007.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 96 [7] Me Byiringiro Bajeni, uhagarariye Ikigo cy'Imisoro n'Amahôro (RRA), avuga ko Urukiko Rukuru rwirengagije imiburanire ya RRA ku bijyanye n'umusoro wa 10.177.083Frw wo mu mwaka wa 2007 Muhire Jean-Pierre avuga ko yagurijwe n'uwitwa Kwitonda Jean de Dieu. Asobanura ko amasezerano Muhire Jean-Pierre ashingiraho, Kwitonda Jean de Dieu yayahakanye mu ibaruwa yandikiye RRA kuwa 14/9/2010, kandi ibikubiye muri ayo masezerano bikaba bitandukanye cyane n'ibisobanuro Kwitonda Jean de Dieu ubwe yahaye RRA mu ibaruwa ye yo kuwa 8/1/2010 kuko mu masezerano, Muhire Jean-Pierre avuga ko Kwitonda yamuguriye amafaranga, akavuga ko Kwitonda azajya amwungukira 1.000.000Frw kandi ariwe wamuguriye, nyamara mu ibaruwa ye Kwitonda Jean de Dieu avuga ko yahaye Muhire Jean- Pierre mu ntoki, uyu akajya amwishyura amafaranga cyangwa "ciment" kuko yubakaga. Asoza avuga ko umukono wa Kwitonda Jean de Dieu uri kuri ayo masezerano ntaho uhuriye n'ugaragara ku mabarura yavuzwe haruguru kimwe no ku ndangamuntu ye. [8] Me Nsengiyumva Abel, uhagarariye Muhire Jean-Pierre, avuga ko 10.177.083Frw, Muhire Jean-Pierre yayagurijwe n'uwitwa Kwitonda Jean de Dieu, Urukiko rukaba rwarashingiye ku masezerano y'imikoranire yo kuwa 4/1/2007 agaragaza ko yayamuguriye kugira ngo abashe kurangura isima muri CIMERWA. Akomeza avuga ko RRA yandikiye Kwitonda Jean de Dieu

imubaza niba koko yarahaye Muhire Jean-Pierre ayo mafaranga, asubiza abyemeza, bityo akaba asanga iyo ngingo y'ubujurire bwa RRA nta shingiro yahabwa.

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IKIGO CY'IMISORO N'AMAHORO (RRA) v. MUHIRE 97 UKO URUKIKO RUBIBONA [9] Ingingo ya 3, igika cya mbere cy'Itegeko No15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko "Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana". [10] Ingingo ya 10 y'Itegeko No16/2005 ryo kuwa 18/8/2005 rigena imisoro itaziguye ku musaruro iteganya ko "Umusaruro ukomoka ku nyungu no ku ishoramari ugizwe n'ibi bikurikira: 1o umusaruro ukomoka ku kazi, 2o inyungu zikomoka ku bikorwa by'ubucuruzi, 3o umusaruro ukomoka ku ishoramari". [11] Nk'uko bigaragara mu gace ka 25 k'urubanza rwajuririwe, Urukiko Rukuru rwasobanuye ko ibivugwa n'Ikigo cy'Imisoro n'Amahôro by'uko cyabajije Kwitonda Jean de Dieu mu ibaruwa yo ku wa 14/9/2010 niba yaba yaraguriye Muhire Jean-Pierre amafaranga, agahakana ko nta masezerano bagiranye ku wa 4/1/2007, bidafite ishingiro kuko amasezerano yahakanye ari ayo kuwa 4/1/2010. Rwasobanuye kandi ko iby'uko imikono ya Kwitonda Jean de Dieu idasa, bitasuzumwa kuko bitaregewe ko ari inyandiko mpimbano, bityo rwemeza ko 10.177.083Frw agomba gukurwa mu byacurujwe mu mwaka wa 2007 kuko Ikigo cy'Imisoro n'Amahôro cyabajije Kwitonda Jean de Dieu niba yarayaguriye Muhire Jean-Pierre, mu ibaruwa yo kuwa 8/10/2010, agisubiza yemeza ko mu mwaka wa 2007 yayamuguriye kugirango agure sima ayimugurisha ku giciro cya Cimerwa. [12] Nk'uko bigaragara muri dosiye y'urubanza, Muhire Jean-Pierre yagiranye amasezerano y'imikoranire na Kwitonda Jean de Dieu ku wa 4/1/2007 aho bumvikanye ko Kwitonda

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 98 Jean de Dieu yahaye Muhire Jean-Pierre amafaranga miliyoni icumi n'ibihumbi ijana na mirongo irindwi na birindwi (10.177.000Frw) kugirango abashe kugura sima muri Cimerwa yo gucuruza, ko azajya ayigura, akayihira Kwitonda Jean de Dieu akayicuruza ku buryo bwa "détail" ku giciro cyemewe na Cimerwa kandi akayitanga ku izina rya Muhire Jean-Pierre, Kwitonda Jean de Dieu akajya yungukira Muhire Jean-Pierre amafaranga angana na miliyoni imwe (1.000.000Frw) ku mifuka ya sima 100, aya masezerano akazarangira mu gihe cyose Muhire Jean-Pierre azaba amubijije amafaranga ye y'ikiranguzo (+ ou - 10.177.083Frw). [13] Ibaruwa ya Kwitonda Jean de Dieu yo kuwa 14/9/2010 iri muri dosiye y'urubanza, isubiza ibaruwa No045/RRA/RSZ/LE/10 ya "coordinateur" wa RRA mu Karere ka Rusizi no mu Karere ka Nyamasheke igaragaza ko yasobanuye ko atagiranye amasezerano na Muhire Jean-Pierre ku itariki ya 4/1/2010 ahubwo bagiranye amasezerano mu ntangiriro z'umwaka wa 2007, amuguriza amafaranga mu gihe yiteguraga gucuruza sima ya CIMERWA. Mu ibaruwa ye yo kuwa 8/10/2010 igaragara muri dosiye y'urubanza, Kwitonda Jean de Dieu, asubiza ku ibaruwa y'Umuhuzabikorwa wa RRA, ishami rya Rusizi na Nyamasheke yo kuwa 22/9/2010, yemeza ko yahaye Muhire Jean-Pierre inguzanyo ya 1.000.000Frw mu mwaka wa 2006 n'inguzanyo ya 10.177.083Frw mu mwaka wa 2007. [14] Urukiko rw'Ikirenga rurasanga isuzumwa ry'inyandiko zivugwa haruguru, rigaragaza nta gushidikanya ko Kwitonda Jean de Dieu yaguriye

koko Muhire Jean-Pierre 10.177.083Frw ku itariki ya 4/1/2007.

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IKIGO CY'IMISORO N'AMAHORO (RRA) v. MUHIRE 99 [15] Urukiko rw'Ikirenga rurasanga kandi ku birebana n'umucuruzi, umusaruro usoroshwa ari inyungu zikomoka ku bikorwa by'ubucuruzi n'umusaruro ukomoka ku ishoramari, kuba rero ayo mafaranga avugwa ari umwenda cyangwa inguzanyo Kwitonda Jean de Dieu yahaye Muhire Jean-Pierre agomba kvanwa ku nyungu zisoreshwa (charge déductible). [16] Ku birebana n'ibivugwa na RRA by'uko umukono wa Kwitonda Jean de Dieu uri kuri ayo masezerano ntaho uhuriye n'ugaragara ku mabarurwa yavuzwe haruguru kimwe no ku ndangamuntu ye, Urukiko rw'Ikirenga rurasanga mu gihe Kwitonda Jean de Dieu yemeza ko yahaye Muhire Jean-Pierre inguzanyo ya 10.177.083Frw nk'uko bigaragara mu masezerano bagiranye kuwa 4/1/2007, ibivugwa na RRA bitahabwa agaciro. Uretse n'ibyo, nk'uko Urukiko Rukuru rw'Ubucuruzi rwabisobanuye, nta mpamvu yo gusuzuma ibivugwa na RRA kuko itaregeye ko ayo masezerano ari inyandiko mpimbano. [17] Hashingiwe ku ngingo z'amategako zavuzwe haruguru no ku bisobanuro byatanze mu bika bibanziriza iki, Urukiko rw'Ikirenga rurasanga 10.177.083Frw agomba kvanwa ku nyungu zisoreshwa, bityo iyi ngingo y'ubujurire bw'Ikigo cy'Imisoro n'Amahôro (RRA) nta shingiro ifite. Kumenya niba Muhire Jean-Pierre yari akwiye kugenerwa igihembo cya Avoka. [18] Me Byiringiro Bajeni avuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ko mu ngingo zose Muhire Jean- Pierre yaregeye imwe gusa ariyo yatsinze, ingingo RRA yatsindiye akaba ari nyinshi kurusha izo Muhire Jean-Pierre yatsindiye, bityo akaba asanga Muhire Jean-Pierre atari kugenerwa igihembo cya Avoka kuko batsindaguranye.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 100 [19] Me Nsengiyumva Abel yiregura avuga ko kuba hari ikimenyetso cy'uko Muhire Jean-Pierre yaburaniwe na Avoka mu Rukiko Rukuru rw'Ubucuruzi, asanga ayo mafaranga yari akwiye kugenwa. UKO URUKIKO RUBIBONA [20] Ingingo ya 258 y'Igitabo cya III cy'urwunge rw'amategako mbonezamubano iteganya ko "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa kuriha ibyangiritse". [21] Hakurikijwe ibiteganywa n'iyi ngingo ya 258 yavuzwe haruguru, kuriha igihombo (ibyangiritse) bigomba gukorwa mu buryo bwuzuye (intégrale ou complète) ariko kugira ngo bishoboke icyo gihombo kigomba kugaragarizwa ibimenyetso. [22] Nk'uko bigaragara mu gace ka 32 k'urubanza rujuririrwa, Ikigo cy'Imisoro n'Amahôro (RRA) cyavuze mu Rukiko Rukuru rw'Ubucuruzi ko igihembo cya Avoka Muhire Jean-Pierre asaba nta shingiro gifite naho mu gace ka 33 k'urwo rubanza, Urukiko rwasobanuye ko Ikigo cy'Imisoro n'Amahôro (RRA) kigomba kwishyura Muhire Jean-Pierre igihembo cya Avoka kuko mu byo aregera hari ibifite ishingiro kandi arabihemberwa. [23] Urukiko rw'Ikirenga rurasanga nta makosa Urukiko Rukuru rw'Ubucuruzi rwakoze rugenera Muhire Jean-Pierre amafaranga y'igihembo cya Avoka yari yasabye, rushingiye ku ngingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategako mbonezamubano kuko byabaye ngombwa ko ashaka Avoka umuhagararira nk'uko byagaragaye igihe cy'iburanisha kandi

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IKIGO CY'IMISORO N'AMAHORO (RRA) v. MUHIRE 101 yatsindiye bimwe mu birego yari yatanze. Rurasanga kandi kuba Ikigo cy'Imisoro n'Amahôro (RRA) na Muhire Jean- Pierre baratsindaguranye atari impamvu yari gutuma atagenerwa igihembo cya Avoka yari yasabye mu gihe bigaragara ko hari Avoka wamuhagarariye mu rubanza. [24] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rw'Ikirenga rurasanga iyi ngingo y'ubujurire bw'Ikigo cy'Imisoro n'Amahôro (RRA) nta shingiro ifite.

- b. Ku bujurire bwuririye ku bundi bwa Muhire Jean- Pierre. Kumenya niba imisoro ku nyongeragaciro yo mu mwaka wa 2005 Muhire Jean-Pierre yishyuzwa yarashaje. [25] Me Nsengiyumva Abel avuga ko Ingingo ya 27 y'Itegeko No25/2005 ryo kuwa 4/12/2005 rigena imitunganyirize y'isoresha iteganya ko Ubuyobozi bw'Imisoro bwari bufite uburenganzira bwo kugenzura ko Muhire Jean- Pierre yakozwe neza imenyekanisha mu gihe cy'imyaka itatu, ko kuba RRA itararikozwe yatakaje ubwo burenganzira, umusoro yamenyekanishije ukaba warabaye ndakuka, bityo nta wundi agomba gucibwa muri iyo myaka yombi. [26] Ku byerekeranye no kuba Umucamanza yaranze gusuzuma iyo ngingo (mu gace ka 7 k'urubanza) kubera ko itavuzwe mu bujurire bwatanzwe kwa Komiseri Mukuru, Me Nsengiyumva Abel asobanura ko Muhire Jean-Pierre atigeze ahindura ikirego (demande nouvelle), ko ahubwo ari uburyo bushya (moyen nouveau) bwo gusobanura ko RRA idakwiye kwishyura imisoro ku nyongeragaciro yo mu mwaka wa 2005 n'iyi mu mwaka wa 2006.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 102 [27] Me Byiringiro Bajeni yiregura asaba uru Rukiko kudasuzuma iyo ngingo kuko asanga ari ikirego gishya. Asobanura ko Muhire Jean-Pierre atayijuririye kwa Komiseri Mukuru nk'uko biteganywa n'amategeko y'imisoro, bivuze ko yari yemeye icyo cyemezo. [28] Me Byiringiro Bajeni avuga ko Urukiko ruramutse rusanze ari ngombwa ko runabisuzuma, asanga na none nta gaciro rwabiha kuko Muhire Jean-Pierre yashyikirijwe inyandiko imumenyesha ko azakorerwa igenzura ry'imisoro y'iyi myaka ku itariki ya 23/12/2008, kandi ikaba itari yagashaje. Akomeza avuga ko ubwo busaze bwahagaritswe n'inyandiko yashyikirijwe ku wa 16/2/2011 kuko umunsi wa nyuma wari itariki 23/12/2011. UKO URUKIKO RUBIBONA [29] Ingingo ya 27, igika cya 3 cy'Itegeko N°25/2005 ryo kuwa 4/12/2005 rigena imitunganyirize y'isoresha ryakoreshwaga igihe Muhire Jean-Pierre yakorerwaga inyandiko ikosora iteganya ko "Inyandiko ikosora ishobora gutangwa mu gihe cy'imyaka itatu (3) uhereye ku munsi w'iyakira ry'imenyeshamushyiraho. Inyandiko ikosora igomba kuba yakozwe nibura ku munsi wa nyuma w'icyo gihe cy'imyaka itatu (3). Ubusaze buvugwa muri iki gika buhagarikwa n'inyandiko imenyeshya umusoresha igihe azangenzurirwa, inyandikomvugo y'icyaha, inyandiko y'umusoresha yemera umusoro n'ibindi bikorwa byose biteganywa n'amategeko asanzwe". [30] Ingingo ya 36, igika cya mbere cy'Itegeko N°06/2001 ryo kuwa 20/1/2001 rishyiraho umusoro ku nyongeragaciro

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IKIGO CY'IMISORO N'AMAHORO (RRA) v. MUHIRE 103 ryakoreshwaga igihe Muhire Jean-Pierre yakorerwaga inyandiko ikosora iteganya ko "Umusoresha wiyandikishije agomba gukora imenyekanisha ry'umusoro ku nyongeragaciro hakurikijwe impapuro n'uburyo bwabigenewe mu gihe kitarenze iminsi cumi n'itanu (15) nyuma y'igihe cy'umusoro ku nyongeragaciro". [31] Urukiko rw'Ikirenga rurasanga nubwo mu myanzuro ye, Muhire Jean-Pierre asaba Urukiko kwemeza ko imisoro y'imyaka ya 2005 na 2006 yashaje, ariko nk'uko bigaragara mu gace ka kane k'urubanza rwajuririwe, Muhire Jean-Pierre yaburanye mu rwego rwa mbere asaba Urukiko Rukuru rw'Ubucuruzi kwemeza ko umusoro ku nyongeragaciro w'umwaka wa 2005 kuva mu kwezi kwa mbere kugeza mu kwezi kwa cumi na kumwe yamenyekanishije wabaye ndakuka kuko Ikigo cy'Imisoro n'Amahôro cyari gifite uburenganzira bwo kumugenzura mu gihe cy'imyaka itatu kikaba cyarabikoze igihe cyararenze, bityo uru Rukiko rukaba rugomba gusuzuma gusa ubusaze bw'umusoro ku nyongeragaciro w'umwaka wa 2005 buvugwa na Muhire Jean-Pierre. [32] Urukiko rurasanga nk'uko bigaragara mu gace ka karindwi k'urubanza rwajuririwe, Urukiko Rukuru rw'Ubucuruzi rwarasobanuye ko ubusaze bw'umusoro ku nyongeragaciro (TVA) w'umwaka wa 2005 kuva mu kwezi kwa mbere kugeza mu kwezi kwa cumi na kumwe (11) butasuzumwa kubera ko Muhire Jean-Pierre atigeze abijuririra Komiseri Mukuru kuko mu cyemezo cye ntahagaragara ko yajuririye ubusaze bw'umusoro kandi Urukiko ruregerwa iyo umusoresha atishimiye icyemezo cya Komiseri Mukuru, bityo umusoro ku nyongeragaciro (TVA) w'umwaka wa 2005 kuva

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 104 mu kwezi kwa mbere kugeza mu kwezi kwa cumi na kumwe Muhire Jean-Pierre yamenyekanishije ukaba utari ndakuka. [33] Urukiko rw'Ikirenga rurasanga Ikigo cy'Imisoro n'Amahôro (RRA) cyarandikiye Muhire Jean-Pierre ibaruwa kuwa 16/12/2008, akayibona kuwa 23/12/2008, imumenyesha ko azakorerwa kuwa 5/1/2009 ingezura ry'imenyekanisha ry'imisoro yakoze (IR, TPR na TVA) w'imyaka wa 2005, 2006 na 2007. [34] Urukiko rw'Ikirenga rurasanga hashingiwe ku ngingo ya 36, igika cya mbere cy'Itegeko N°06/2001 ryo kuwa 20/1/2001 ryavuzwe haruguru no ku ngingo ya 27, igika cya gatatu cy'Itegeko N°25/2005 ryo kuwa 4/12/2005 ryavuzwe haruguru, imenyekanisha ry'umusoro ku nyongeragaciro w'ukwezi kwa mbere w'umwaka wa 2005 ryaragombaga gukorwa n'Ikigo cy'Imisoro n'Amahôro (RRA) bitarenze itariki ya 15/2/2008 naho iy'ukwezi kwa cumi na kumwe ryagombaga gukorwa bitarenze itariki ya 15/12/2008, bityo kuba Ikigo cy'Imisoro n'Amahôro (RRA) cyaramenyeshije Muhire Jean-Pierre kuwa 23/12/2008 ko azakorerwa igenzura ry'imisoro y'imyaka ya 2005, 2006 na 2007 kuwa 5/1/2009, umusoro ku nyongeragaciro (TVA) w'umwaka wa 2005 kuva mu kwezi kwa mbere kugeza mu kwezi kwa cumi na kumwe Muhire Jean-Pierre yamenyekanishije ukaba warabaye ndakuka. [35] Ku birebana n'ibivugwa n'Ikigo cy'Imisoro n'Amahôro (RRA) by'uko iyi ngingo irebana n'ubusaze bw'umusoro ku nyongeragaciro w'umwaka wa 2005 idasuzumwa n'uru Rukiko kuko ari ikirego gishya kitasuzumwe na Komiseri Mukuru wayo mu rwego rw'ubujurire, Urukiko rw'Ikirenga rurasanga atari ukuri kuko ubusaze buvugwa mu ngingo ya 27, igika cya gatatu cy'Itegeko N°25/2005 ryo kuwa 4/12/2005 ryavuzwe haruguru,

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IKIGO CY'IMISORO N'AMAHORO (RRA) v. MUHIRE 105 ari indemyagihugu ku buryo bushobora kubyutswa n'umusoreshwa igihe cyose, haba imbere ya Komiseri Mukuru, haba no mu Rukiko. Rurasanga kandi ubwo busaze budafatwa nk'ikirego gishya kuko ari ingingo yo kwiregura umusoreshwa afite, kandi nk'uko byavuzwe haruguru, ashobora kuyifashisha igihe cyose ari ngombwa. [36] Hashingiwe ku byasobanuwe mu bika bibanziriza iki, Urukiko rw'Ikirenga rurasanga iyi ngingo y'ubujurire bwa Muhire Jean-Pierre ifite ishingiro, bityo akaba agomba gucibwa gusa umusoro ku nyongeragaciro w'umwaka wa 2005 yamenyekanishije Ikigo cy'Imisoro n'Amahôro (RRA). Kumenya niba Muhire Jean-Pierre akwiye guhabwa indishyi asaba. [37] Muhire Jean-Pierre avuga ko asaba Urukiko gutegeka Ikigo cy'Imisoro n'Amahôro (RRA) kumwishyura 500.000Frw y'igihembo cya Avoka. [38] Ikigo cy'Imisoro n'Amahôro (RRA) kivuga ko ibisabwa na Muhire Jean-Pierre nta shingiro bifite. UKO URUKIKO RUBIBONA [39] Ingingo ya 258 y'Igitabo cya III cy'urwunge rw'amategako mbonezamubano iteganya ko "igikorwa cyose cy'umuntu cyangirije undi gitegeka nyiri ugukora ikosa rigikomokaho kuriha ibyangiritse". [40] Urukiko rw'Ikirenga rurasanga hashingiwe ku ngingo yavuzwe haruguru, Muhire Jean-Pierre akwiye guhabwa

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 106 500.000Frw y'igihembo cya Avoka asaba kuko byabaye ngombwa ko ashaka umuhagararira. III. ICYEMEZO CY'URUKIKO [41] Rwemeje ko ubujurire bw'Ikigo cy'Imisoro n'Amahôro (RRA) nta shingiro bufite; [42] Rwemeje ko 10.177.083Frw agomba kvanwa ku nyungu zisoreshwa Muhire Jean-Pierre; [43] Rwemeje ko ubujurire bwa Muhire Jean-Pierre bwuririye ku bw'Ikigo cy'Imisoro n'Amahôro (RRA) bufite ishingiro; [44] Rwemeje ko Muhire Jean-Pierre agomba gucibwa gusa umusoro ku nyongeragaciro w'umwaka wa 2005 yamenyekanishije Ikigo cy'Imisoro n'Amahôro (RRA); [45] Rutegetse Ikigo cy'Imisoro n'Amahôro (RRA) kwishyura Muhire Jean-Pierre 500.000Frw y'igihembo cya Avoka kuri uru rwego; [46] Rutegetse Ikigo cy'Imisoro n'Amahôro (RRA) kwishyura amagarama y'uru rubanza angana na 100.000Frw.

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ROCK GLOBAL CONSULTING Ltd v. IMPACT DISTRIBUTORS EAST AFRICA Ltd [Rwanda URUKIKO RW'IKIRENGA – RCOMA0041/13/CS (Mukanyundo, P.J., Rugabirwa na Ngagi, J.) 3 Werurwe 2016] Amategako agenga amasezerano – Amasezerano y'ubucuruzi – Ibimenyetso mu manza z'ubucuruzi – Imikoranire mu bucuruzi ntiyita gusa ku bimenyetso byanditse cyangwa imihango runaka kuko imitangire y'ibimenyetso ikurikiza uburyo bwose bwemewe n'amategako. Indishyi – Kwica amasezerano – Ntawagenerwa indishyi mu gihe bigaragara ko ari we wishe amasezerano – Itegeko N°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 137. Incamake y'ikibazo: IMPACT DISTRIBUTORS EAST AFRICA Ltd yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi isaba ko ROCK GLOBAL CONSULTING Ltd yayishyura amadorari 98.673.69 USD n'indishyi ziwukomokaho. Urukiko rwategetse ROCK GLOBAL CONSULTING Ltd kwishyura

ayo madorari hiyongereyeho 1.000.000Frw y'indishyi. ROCK GLOBAL CONSULTING Ltd yajuririye mu Rukiko rw'Ikirenga ivuga ko Urukiko Rukuru rwirengagije ibimenyetso bigaragaza ko ibyo bikoresho itabihawe kandi rukaba rwaragaragaje ukwivuguruza. 107

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 108 IMPACT DISTRIBUTORS EAST AFRICA Ltd ivuga ko urukiko rutirengagije imiburanire ye kuko yanayifasheho umwanzuro. Incamake y'icyemezo: 1. ROCK GLOBAL CONSULTING Ltd ntiyahakana umwenda ibereyemo IMPACT DISTRIBUTORS EAST AFRICA Ltd yitwaje ko nta bon de livraison igaragaza, cyane cyane ko, mu busanzwe abacuruzi bagirirana icyizere bagakomeza gukorana batitaye ku mihango (formalités) runaka yakagombye kubahirizwa, byongeye kandi nta n'ikigaragaza ko impande zombi zazezeranye ko byanze bikunze hagomba kubaho bon de livraison. Bityo ROCK GLOBAL CONSULTING Ltd ikaba igomba kwishyura umwenda wose ibereyemo IMPACT DISTRIBUTORS EAST AFRICA Ltd.

2. Ntawahabwa indishyi mu gihe bigaragara ko ariwe wishe amasezerano. Bityo, IMPACT DISTRIBUTORS EAST AFRICA Ltd igenewe indishyi mu bushishozi bw'urukiko. Ubujurire nta shingiro bufite. Ubujurire bwuririye ku bundi bufite ishingiro. Amagarama y'urubanza aherereye kuwajuriye. Amategeko yashingiweho: Itegeko N°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 137. Nta manza zifashishijwe.

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ROCK GLOBAL CONSULTING Ltd v. IMPACT DISTRIBUTORS EAST AFRICA Ltd 109 Urubanza I. IMITERERE Y'URUBANZA [1] IMPACT DISTRIBUTORS EAST AFRICA Ltd ivuga ko yakoranye ibikorwa by'ubucuruzi na ROCK GLOBAL CONSULTING Ltd, iyigurisha ibikoresho by'ikoranabuhanga bifite agaciro kangana na 98.673,69USD, hanyuma itegereza kwishyurwa ku neza ntibyashoboka, bityo iregera Urukiko Rukuru rw'Ubucuruzi isaba ko ROCK GLOBAL CONSULTING Ltd itegekwa kwishyura umwenda n'indishyi byavuzwe haruguru mu kiburanwa. [2] Mu rubanza No RCOM0163/12/HCC rwaciwe ku wa 08/02/2013, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ROCK GLOBAL CONSULTING Ltd igomba kwishyura IMPACT DISTRIBUTORS EAST AFRICA Ltd umwenda iyibereyemo ungana na 98.673,69USD hiyongereyeho indishyi zingana na 1.000.000Frw. [3] ROCK GLOBAL CONSULTING Ltd ntiyishimiye urwo rubanza, irujuririra mu Rukiko rw'Ikirenga, ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibimenyetso yatanze byagaragaza ko itayihaye ibikoresho kandi ko Urukiko rwagaragaje ukwivuguruza. [4] Urubanza rwaburanishijwe mu ruhamwe kuwa 03/05/2016, ROCK GLOBAL CONSULTING Ltd idahari kandi itunganiwe ariko bigaragara ko yahamagajwe mu buryo bukurikije amategeko, naho IMPACT DISTRIBUTORS EAST AFRICA Ltd iburanirwa na Me Nizeyimana Boniface.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 110 II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO A. Ubujurire bwa ROCK GLOBAL CONSULTING Ltd A.1. Kumenya niba hari ibimenyetso bigaragaza ko ROCK GLOBAL CONSULTING Ltd ibereyemo IMPACT DISTRIBUTORS EAST

AFRICA Ltd umwenda. [5] Mu mwanzuro utanga ubujirire, ROCK GLOBAL CONSULTING Ltd ivuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije imiburanire yayo, aho yasabye ko IMPACT DISTRIBUTORS EAST AFRICA Ltd itanga ibimenyetso bigaragaza koko ko yayihaye ibikoresho bivugwa, ko niba hari bon de commande, hagombye no kubaho "bon de livraison". [6] Ivuga ko, mu gika cya 12 cy'urubanza, Urukiko rwemera ko IMPACT DISTRIBUTORS EAST AFRICA Ltd itashoboye kugaragaza ikimenyetso simusiga cy'uko ibikoresho bivugwa yabiyishyikirije, bityo ikaba igomba kwishyura ikiguzi cyabyo, ariko rukabirengaho rugendeye ku migendekere y'ubucuruzi isanzwe rutasobanuye no kuri "E-mails" zitagaragaza ko ibyo bikoresho byayishyikijwe, bityo ko urwo Rukiko rwagaragaje ukwivuguruza. [7] Me Nizeyimana Boniface, uburanira IMPACT DISTRIBUTORS EAST AFRICA Ltd, avuga ko imiburanire ya ROCK GLOBAL CONSULTING Ltd itirengagijwe kuko ibisobanuro yatanze, Urukiko rwabyakiriye, rukanabifataho umwanzuro ku rupapuro rwa kane, agace ka 15, rw'urubanza rujuririrwa; naho ibijyanye n'ibimenyetso nabyo umucamanza akaba yarabisuzumye mu gace kavuzwe haruguru, ko inyandiko

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ROCK GLOBAL CONSULTING Ltd v. IMPACT DISTRIBUTORS EAST AFRICA Ltd 111 zose zanyuze kuri "E-mail" zagendaga zigaragaza umwenda kandi na ROCK GLOBAL CONSULTING Ltd ikaba yarazisubizaga, bityo akaba ari ntaho yahera ivuga ko nta mwenda iyifitiye. UKO URUKIKO RUBIBONA [8] Ku byerekeranye no kumenya niba Urukiko Rukuru rw'Ubucuruzi rwarirengagije ibimenyetso byatanze na ROCK GLOBAL CONSULTING Ltd, Urukiko rurasanga mu gika cya 11 cy'urubanza rwajuririwe, urwo Rukiko rwarerekanye ko ROCK GLOBAL CONSULTING Ltd ubwayo yiyemereye ko yakoze purchase order N° PO027-IS-05-10 igaragaraho ibikoresho IMPACT DISTRIBUTORS EAST AFRICA Ltd iyishyura, ariko nyuma mu iburanisha mu mizi igashaka guhakana ko itigeze yakira ibyo bikoresho, nyamara, mbere y'aho mu iburanisha ry'ibanze, Me Niyomugabo Christophe, wayiburaniraga, yarabanje guhakana ko atazi IMPACT DISTRIBUTORS AFRICA Ltd, ibyo Urukiko rukaba rwarabifashe nk'aho ROCK GLOBAL CONSULTING Ltd yashatse guteza urujijo, bisa no guhunga uruhare rwayo, igamije kutishyura umwenda ikurikiranweho. [9] Urukiko rurasanga na none, n'ubwo Urukiko Rukuru rw'Ubucuruzi rwarasobanuye ko n'ubwo nta bimenyetso simusiga bihari, byerekana ko IMPACT DISTRIBUTORS EAST AFRICA Ltd yashyikirije ROCK GLOBAL CONSULTING Ltd ibikoresho bivugwa mu rubanza, ariko ko hashingiwe kuri Purchase Order yavuzwe haruguru yakozwe na ROCK GLOBAL CONSULTING Ltd itarigeze iteshwa agaciro n'uwayikoze, kuri za "E-mails" zinyuranye zahererekanywe hagati y'izi sosiyete zombi ndetse no ku buryo abacuruzi

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 112 basanzwe bakorana, aho ukoze Purchase Order mu gihe abona nta gaciro akiyiha, abanza akabimenyesha uwo yayiyaye, ko kuba rero bitarakozwe ibyo bivugwa ko imikoranire y'impande zombi yakomeje kugenda neza, ikibazo kivuka mu kwishyura nk'uko biboneka muri "E-mails" zavuzwe haruguru. [10] Urukiko rurasanga, nk'uko Urukiko Rukuru rw'Ubucuruzi rwabibonye, nta bimenyetso ROCK GLOBAL CONSULTING Ltd

yatanze byerekana ko nta mwenda ibereyemo IMPACT DISTRIBUTORS EAST AFRICA Ltd noneho ngo bibe byarirengangijwe nk'uko ibivuga, usibye kuvuga gusa ko uwo baburana aterekanye "bon de livraison", nkaho aricyo kimenyetso simusiga cyagombaga gutangwa na IMPACT DISTRIBUTORS EAST AFRICA Ltd. [11] Urukiko rurasanga kuba bon de livraison itagaragara, ibyo bitatesha agaciro ibindi bimenyetso byerekana nta shiti ko ROCK GLOBAL CONSULTING Ltd ibereyemo umwenda IMPACT DISTRIBUTORS EAST AFRICA Ltd. Muri ibyo bimenyetso harimo "E-mails" hagati y'abayobozi b'izi sosiyete zombi cyane cyane hagati ya Kabagema Patrick wa ROCK GLOBAL CONSULTING Ltd na Glen Matswetu wa IMPACT DISTRIBUTORS EAST AFRICA Ltd, aho imwe muri izo "E-mails" igaragaza ko nyuma yo kureregwa inshuro nyinshi, Glen MATSWETU yandikiye Kabagema Patrick kuwa 11/10/2010, amumenyesha ko umwenda ROCK GLOBAL CONSULTING Ltd ibereyemo IMPACT DISTRIBUTORS EAST AFRICA Ltd ugeze kuri 87.142,79USD hakubiyemo umwenda-remezo n'inyungu zawo (Please note that the amount due plus interest now stands at 87.142,79USD). Ikigaragara, harebwe ibisubizo ROCK GLOBAL CONSULTING Ltd yagiye itanga, nta na hamwe ihakana umwenda, ahubwo ivuga ko batangiye

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ROCK GLOBAL CONSULTING Ltd v. IMPACT DISTRIBUTORS EAST AFRICA Ltd 113 kugirirwa icyizere gike, ko ariko barimo kugerageza kureba uburyo baza kwishyura n'ubwo badashobora guhamya umunsi nyawo. Na none hashingiwe kuri "e-mails" impande zombi zagiye zikomeza kwandikirana, bigaragara ko kuwa 18/04/2011 uyu mwenda wari ugeze kuri 96.673,69 USD, kandi ntaho bigaragara ko ROCK GLOBAL CONSULTING Ltd iwuhakana. [12] Urukiko rurasanga rero ko, nyuma y'izi nyandiko n'izindi zakurikiyeho, ntaho ROCK GLOBAL CONSULTING Ltd yahera ihakana umwenda ibereyemo IMPACT DISTRIBUTORS EAST AFRICA Ltd yitwaje ko nta bon de livraison igaragaza, cyane cyane ko, ukurikije ko mu busanzwe abacuruzi bagirirana icyizere ku buryo bakomeza gukorana batitaye ku mihango (formalités) runaka yakagombye kubahirizwa, byongeye kandi hakaba ari nta kigaragaza ko impande zombi zasezeranye ko byanze bikunze hagomba kubaho bon de livraison; bityo ROCK GLOBAL CONSULTING Ltd ikaba igomba kwishyura umwenda wose ibereyemo IMPACT DISTRIBUTORS EAST AFRICA Ltd, ungana na 98.673,69USD, nk'uko yawutegetswe n'Urukiko Rukuru rw'Ubucuruzi. A.2. Kumenya niba ROCK GLOBAL CONSULTING Ltd itaragombaga gucibwa indishyi ku rwego rwa mbere. [13] ROCK GLOBAL CONSULTING Ltd ivuga ko indishyi IMPACT DISTRIBUTORS EAST AFRICA Ltd yagenewe zingana na 1.000.000Frw nta shingiro zifite kuko itagaragaza ko yashyikirije ROCK GLOBAL CONSULTING Ltd ibicuruzwa iyishyura.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 114 [14] IMPACT DISTRIBUTORS EAST AFRICA Ltd ivuga ko kuba ROCK GLOBAL CONSULTING Ltd yaratsinzwe, yagombaga gutanga indishyi. UKO URUKIKO RUBIBONA [15] Ingingo ya 137 y'Itegeko N°45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko: "Uruhande rwarenganyijwe rufite uburenganzira bwo kubona indishyi zitanzwe n'urundi ruhande rutubahirije ibisabwa mu masezerano, keretse iyo ikirego kigamije kubona indishyi cyahagaritswe cyangwa cyaravuyeho". [16] Ku byerekeranye n'ubujurire bwa

ROCK GLOBAL CONSULTING Ltd ku ndishyi yaciwe, Urukiko rurasanga nta shingiro bufite kuko niba byaragaragaye ko ari yo itarubahirije amasezerano, bityo uruhande rwarenganyijwe rukaba rwaragombaga kubona indishyi nk'uko biteganywa n'ingingo ya 137 yavuzwe mu gika kibanziriza iki. B. Ubujurire bwuririye ku bundi bwa IMPACT DISTRIBUTORS EAST AFRICA Ltd. Kumenya niba ubujurire bwuririye ku bundi bwa IMPACT DISTRIBUTORS EAST AFRICA Ltd bufite ishingiro. [17] IMPACT DISTRIBUTORS EAST AFRICA Ltd ivuga ko, nk'ubujurire bwuririye ku bundi bushingiye ku ngingo ya 167 y'Itegeko No21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, igomba guhabwa indishyi zingana na 10.000.000Frw kubera ko ROCK GLOBAL CONSULTING

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ROCK GLOBAL CONSULTING Ltd v. IMPACT DISTRIBUTORS EAST AFRICA Ltd 115 Ltd yajuriye igamije kutishyura umwenda mu rwego rwo kutarangiza urubanza. UKO URUKIKO RUBIBONA [18] Urukiko rurasanga indishyi IMPACT DISTRIBUTORS EAST AFRICA Ltd isaba zifite ishingiro kubera ko yarenganyijwe na ROCK GLOBAL CONSULTING Ltd, ariko umubare w'izo isaba ukaba ari ikirenga ndetse ikaba itagaragaza icyo ushingiyeho, bityo mu bushishozi bwarwo rukaba ruyigeneye 800.000Frw yiyongera kuyo yagenewe n'Urukiko Rukuru rw'Ubucuruzi, yose hamwe akaba ari 1.800.000Frw. III. ICYEMEZO CY'URUKIKO [19] Rwemeje ko ubujurire bwa ROCK GLOBAL CONSULTING Ltd nta shingiro bufite. [20] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na IMPACT DISTRIBUTORS EAST AFRICA Ltd bufite ishingiro. [21] Rwemeje ko imikirize y'urubanza N° RCOM 0163/12/HCC rwaciwe ku wa 08/02/2012 n'Urukiko Rukuru rw'Ubucuruzi idahindutse, uretse gusa ku bijyanye n'indishyi zigomba kwiyongera. [22] Rutegetse ROCK GLOBAL CONSULTING Ltd kwishyura IMPACT DISTRIBUTORS EAST AFRICA Ltd indishyi zingana na 800.000Frw ziyongera ku zategetswe n'Urukiko Rukuru rw'Ubucuruzi zingana na 1.000.000Frw, zose hamwe zikaba 1.800.000Frw.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 116 [23] Rutegetse ROCK GLOBAL CONSULTING Ltd gutanga amagarama ya 100.000Frw.

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UMWARI N'ABANDI v. SN BRUSSELS AIRLINES [Rwanda URUKIKO RW'IKIRENGA – RCOMA0007/10/CS (Mugenzi, P.J., Mukamulisa na Rugabirwa, J.) 06 Gicurasi 2011] Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Ubujurire bwuririye ku bundi – Ubujurire bwuririye ku bundi ntibugarukira gusa ku kibazo cyajuririwe, kuko nta kibaza ko bwanarebana n'izindi ngingo z'urubanza, zipfa gusa kuba zaraburanyweho mu rwego rwa mbere – Itegeko No18/24 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo n'izubutegetsi, ingingo ya 167. Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Iyakirwa ry'ikirego – Mu gihe abarega bashatse ubaburanira umwe, ariko buri wese mu barega akitangira igarama biba ari ibirego bitandukanye – Itegeko No18/2004

ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'umurimo n'iz'ubutegets, ingingo ya 20. Amategeko yo gutwara abantu mu ndege – Ububasha bushingiye ku ifasi – Amategeko akurikizwa – Urega ashobora guhitamo urukiko rw'aho utwara abantu abarizwa, urw'aho afite icyicaro cye cy'ibanze, urw'aho amasezerano yakorewe, cyangwa urw'aho abagenzi bagomba kugezwa – Amategeko y'iburanisha akurikizwa ni ay'aho urukiko rwaregwe – Amasezerano mpuzamahanga ya Varsovie yo kuwa 12/10/1929, ingingo ya 28. Indishyi – Inshingano z'umwikorezi – Indishyi z'akababaro – Sosiyete itwara abantu n'ibintu ifite inshingano zo kugeza 117

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 118 abagenzi aho basezeranye (obligation de résultat) itabasha guhunga – Indishyi z'akababaro zigenwa igihe itaragaragaza ko yakoze ibishoboka ngo ishake ubundi buryo bwo kugeza abagenzi aho basezeranye, kabone n'ubwo byari buyihende. Indishyi – Igihembo cy'Avoka – Igihembo cya Avoka kigenwa n'ubushishozi bw'urukiko mu gihe icyasabwe ari umurengera. Incamake y'ikibazo: Umwari na bagenzi be baguze amatike y'indege ya SN BRUSSELS AIRLINES yo kuva Kigali mu Rwanda bakagera mu Bubiligi no kugaruka maze mu kugaruka SN BRUSSELS ibasiga i kampala abandi Nairobi aho kubageza i Kigali. Ibi byatumye bayirega mu Rukiko Rukuru rw'Ubucuruzi basaba indishyi z'uko yabatereranye bakirwanaho bagakoresha amafaranga yabo icyo gihe cyose bari bamaze i Kampala na Nairobi, banahava bakagaruka i kigali kandi batabiteganyije. Urukiko rwemeje ko SN BRUSSELS AIRLINES ibaha indishyi z'akababaro, iz'imbonezamusaruro hamwe n'iz'igihembo cy'Avoka. Abarega bajuririyeye Urukiko rw'Ikirenga basaba guhabwa indishyi zisumbuye kuzo bahawe mu rukiko rubanza bavuga ko rwabageneye indishyi nkeya ugereranyije n'akababaro bagize, basaba urukiko kubagenera buri wese 15.000 Euros n'igihembo cya avoka kingana na 10% y'ayo. SN BRUSSELS AIRLINES nayo yatanze ubujurire bwuririyeye ku bundi isaba urukiko kutakira ubujurire bw'abarega ivuga ko urubanza rwagombaga gucibwa hashingiwe ku mategeko yo mu Bubiligi kuko iyi sosiyete yatwaye abagenzi ari imbirigi, ivuga kandi ko ibirego byabo byatanzwe binyuranyije n'amategeko kuko babihurije hamwe hatabayeho ordonnance ya Perezida w'urukiko rubifitiye ububasha, ikaba isaba kwishyurwa indishyi z'ikurikiranarubanza hamwe n'izo gushorwa mu manza nta

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UMWARI N'ABANDI v. SN BRUSSELS AIRLINES 119 mpamvu. Ikomeza ivuga ko abareze bari abantu barindwi batandukanye, maze barega nk'itsinda ridafite ububasha bwo kurega. Abarega bisobanura bavuga ko n'ubwo ikirego cyatanzwe ari kimwe kuri bose nta tegeko ryishwe mu gihe buri wese yatanze igarama. SN BRUSSELS AIRLINES ivuga ko ikirego cy'abarega gishaje kuko amasezerano yo gutwara abantu yabaye hagati yayo n'abarega agengwa n'amategeko yo mu Bubiligi ateganya ko ikirego gisaza nyuma y'umwaka umwe. Kubw'indishyi zisabwa n'abaregwa, ivuga ko ntazo yatanga bitewe n'impamvu itunguranye yatumye ingendo Kampala/Nairobi kugera i kigali zidashoboka, ikavuga ko yemeye gusa kubasubiza amafaranga batanze bagura ayandi matike y'izo gendo zitashobotse hamwe n'ibyo bakoresheje bagaragaza impapuro zerekana ibyo

bakoresheje. Incamake y'icyemezo: 1. Ubujurire bwuririye ku bundi ntibugarukira gusa ku kibazo cyajuririwe, kuko nta kibuzo ko bwanarebana n'izindi ngingo z'urubanza, zipfa gusa kuba zaraburanyweho mu rwego rwa mbere.

2. Mu gihe abarega bashatse ubaburanira umwe, ariko buri wese mu barega akitangira igarama biba ari ibirego bitandukanye.
3. Urega ashoboraguhitamo urukiko rw'aho utwara abantu abarizwa, urw'aho afite icyicaro cye cy'ibanze, urw'aho amasezerano yakorewe, cyangwa urw'aho abagenzi bagomba kugezwa kandi amategako y'iburanisha akurikizwa ni ay'aho urukiko rwaregawe.
4. Sosiyete itwara abantu n'ibintu ifite inshingano zo kugeza abagenzi aho basezeranye (obligation de résultat) itabasha guhunga mu gihe itaragaragaza ko yakoze ibishoboka ngo

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 120 ishake ubundi buryo bwo kugeza abagenzi aho basezeranye, kabone n'ubwo byari buyihende, bityo rero igomba kubitangira indishyi.

5. Igihembo cya Avoka kigenwa n'ubushishozi bw'urukiko mu gihe icyasabwe ari umurenzaga. Ubujurire bufite ishingiro. Ubujurire bwuririye ku bundi nta shingiro bufite. Amagarama y'urubanza aharereye kuwarezwe. Amategako yashyirahwe: Amasezerano mpuzamahanga ya Varsovie yo kuwa 12/10/1929 u Rwanda n'u Bubiligi byashyirahwe umukono, ingingo ya 28. Itegeko No18/24 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo n'izubutegetsu, ingingo ya 20 n'ya 167. Nta manza zifashishijwe. Inyandiko z'abahanga zifashishijwe: Melina Douchy-Oudot: "Procédure civile", 2ème édition, Paris, 2006, page 366, No638. Urubanza I. IMITERERE Y'URUBANZA [1] Umwari Marie Agnès, Gakwaya Innocent, Gakirendekwe Panthaléon, Nsengiyumva Sylvestre, Senyana

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UMWARI N'ABANDI v. SN BRUSSELS AIRLINES 121 Marie Noel, Somayire Rubona Freddy na Spinette Génèvieve baguze amatike y'indege ya Sosiyete SN BRUSSELS AIRLINES, yo kuwa i Kigali bajya i Bruxelles no kugaruka, maze mu gihe bagombaga kugaruka iyo sosiyete ikuraho ingendo Entebbe / Nairobi - Kigali zari zisanzweho, bituma igarukiriza abo bagenzi i Kampala na Nairobi gusa, ikavuga ko byatewe n'uko Leta y'u Rwanda yari imaze guhagarika mu buryo butunguranye, indege yayo ku kibuga cy'indege i Kanombe maze ntibishoboke gutwara abagenzi kuri izo ngendo. [2] Bareze iyo sosiyete basaba indishyi zo kuba yarabateranye bakirwanaho ku mafaranga yose bakoresheje mu gihe bamaze i Kampala na Nairobi, ndetse no kuhava bagaruka i Kigali. [3] Urukiko Rukuru rw'Ubucuruzi rwemeje ko SN BRUSSELS AIRLINES igomba gutanga indishyi mbonezamusaruro ziteye zitya: Gakwaya 364.262Frw, Nsengiyumva 287.174Frw, Spinette 282.894Frw, Senyana 247.192Frw, Gakirendekwe 261.361Frw, Somayire 261.361Frw, Umwari 261.361Frw; hamwe n'indishyi z'akababaro (dédommagement du préjudice moral) zihwanye na 1.283.939frw (ahwanye na 1.500 Euros) kuri buri mugenzi, ndetse n'igihembo cy'avoka

(honoraires d'avocat) gihwanye na 1.000.000Frw. [4] Abarega bajuririye Urukiko rw'Ikirenga bavuga ko urukiko rubanza rwahaye agaciro gake akababaro bagize, bakaba basaba ko buri wese yagenerwa 15.000 Euros bari basabye, kandi bakagenerwa igihembo cya avoka kingana na 10% y'ayo.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 122 [5] SN BRUSSELS AIRLINES nayo yatanze ubujurire bwuririye ku bundi ivuga ko ibirego bitagombaga kwakirwa kuko byatanzwe mu buryo butubahirije amategeko, kuko abarega basa n'abifatanyije kandi ibirego byabo bikaba byarahujwe hatabaye itegeko (ordonnance) rya Perezida w'Urukiko rubifitiye ububasha, ikavuga kandi ko hirengagijwe ko urubanza rwagombaga gucibwa hashingiwe ku mategeko y'Ububiligi kuko SN BRUSSELS AIRLINES yatwaye abo bagenzi ari imbiligi, ikirego kikaba cyaranatanzwe cyarashaje, hakurikijwe amategeko y'icyo gihugu. Inavuga kandi ko hirengagijwe ko kutabasha kugeza abagenzi i Kigali byatewe n'impamvu zitunguranye zitakwigobotorwa (force majeure). [6] Iyo sosiyete irasaba kwishyurwa 2.000 Euros y'ibyakoreshejwe mu rubanza harimo n'igihembo cya avoka, ikanasaba indishyi za 1000 Euros zo kuba yarashowe mu rubanza nta mpamvu (action téméraire et vexatoire). [7] Urubanza rwaburanishijwe mu ruhamwe kuwa 31/03/2011, abarega bahagarariwe na Me Nzamwita Toy, naho SN BRUSSELS AIRLINES ihagarariwe na Me Kavaruganda Julien hamwe na Me Nizeyimana Boniface. [8] Abarega babanje gusaba ko ubujurire bwuririye ku bwabo butakwakirwa kuko butagarukira gusa ku kibazo cy'indishyi z'akababaro bajuririye, abaregwa bo bakemeza ko ubwo ubujurire bwabo butanyuranyije n'amategeko; Urukiko rwemeza ko ruzabisuzumira hamwe n'ibindi bibazo bigize urubanza.

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UMWARI N'ABANDI v. SN BRUSSELS AIRLINES 123 II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO A. Ku byerekeye iyakirwa ry'ubujurire bwa SN BRUSSELS AIRLINES bwuririye ku bundi. [9] Inzitizi y'abarega igamije gusaba ko ubujurire bw'uregwa bwuririye ku bwabo butakwakirwa kuko batajuririye urubanza rwose ahubwo bajuririye gusa urugero rw'indishyi z'akababaro bagenewe n'Urukiko rubanza, bakavuga rero ko ubujurire bwuririye ku bundi butagombye kurebana n'ikindi kitajyanye n'izo ndishyi. SN BRUSSELS AIRLINES yo isanga nta kibuzo ko ubujurire bwayo bwuririye ku bundi bwarebana n'ibindi bibazo bijyanye n'urubanza rwose. [10] Harebwe ibiteganywa n'ingingo ya 167 y'Itegeko No18/24 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'umurimo n'izubutegetsu nk'uko ryahinduwe kandi ryujijwe kugeza ubu, yemera ko uregwa mu bujurire ashobora nawe kujurira yuririye ku bujurire bw'urega, ntaho ivuga ko ubujurire bwuririye ku bundi bugarukira gusa ku kibazo cyajurije uwajurije bwa mbere, Urukiko rurasanga nta kibuzo ko ubujurire bwuririye ku bundi bwanarebana n'izindi ngingo z'urubanza, zipfa gusa kuba zaraburanyweho mu rwego rwa mbere. [11] Iki gisobanuro kinajyanye kandi n'ibivugwa n'abahanga mu mategeko basobanura ko, ubujurire bwuririye ku bundi bushamikirwa ku bujurire bw'ibanze, bugakorwa n'uregwa mu bujurire, mu gihe asanga ataranyuzwe kuri byose mu mikirize

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 124 y'urubanza rwa mbere¹, bikumvikana rero ko ibyo bishobora kuba bitaramunyuze bitaba gusa ibirebana n'ibyajuriye uwo baburana. B. Ku bijyanye n'uburyo ikirego cyatanzwe mu Rukiko Rukuru rw'Ubucuruzi. [12] Nk'uko yanabiburanishaga mu Rukiko Rukuru rw'Ubucuruzi, SN BRUSSELS AIRLINES ivuga ko abareze bari abantu barindwi batandukanye, bakaba barareze nk'itsinda hatagaragajwe ubwoko bwaryo n'ububasha rifite bwo kurega, kandi ibirego byabo bigahuzwa byandikwa ku inumero imwe bitejwe n'itegeko (ordonnance) rya Perezida w'Urukiko. [13] Uburanira abarega asubiza ko nta tegeko ryishwe, kuko n'ubwo ikirego cyatanzwe ari kimwe kuri bese, buri wese yatanze igarama. [14] Urukiko rurasanga kuba abarega barashatse avoka umwe akajyanira ibirego byabo hamwe, ariko buri wese mu barega yaritangiye igarama nta tegeko byishe, ibyo birego rero bikaba byarubahirije ibiteganywa n'ingingo ya 20 y'Itegeko No18/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'umurimo n'iz'ubutegetsi, iteganya ko iyo abasangiye inyungu mu rubanza ari benshi, barega cyangwa baregwa, buri wese ku bimureba afite uburenganzira n'inshingano z'ababuranyi", kuvuga ko bareze hatagaragaza ububasha bafite ngo kuko bareze ari nk'ishyirahamwe bikaba

1“L'appel incident vient se greffer sur l'appel principal, il est le fait de l'intimé qui ne s'estime pas totalement satisfait de la solution des premiers juges”. Reba igitabo cya Melina Douchy-Oudot: “Procédure civile”, 2ème édition, Paris, 2006, page 366, No638.

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UMWARI N'ABANDI v. SN BRUSSELS AIRLINES 125 nta shingiro bifite kuko batigeze biyita ishyirahamwe cyangwa ngo bagaragare nka ryo, ahubwo buri wese akaba yarigaragaje ku giti cye. [15] Urukiko rurasanga rero nta mpamvu yagaragajwe ku bijyanye n'itangwa ry'ikirego yatuma ibirego byatanzwe bitakirwa, naho kuvuga ko byanabuzwa kwakirwa n'uko byaburanishirijwe hamwe kandi bitahujwe na Perezida w'Urukiko, iyo ikaba itaba impamvu yo kutakira ikirego cyatanzwe mu buryo bukwiye, ahubwo hashoboraga gusabwa ivanwaho ry'urubanza, iyo habasha kugaragazwa ko ukwandika ibirego mu rubanza rumwe bidahujwe na Perezida w'urukiko ari inenge yo mu rwego rutesha agaciro ibyakozwe mu rubanza, akaba atari byo SN BRUSSELS AIRLINES yasabye. C. Ku kibazo cyo kumenya niba amategeko y'u Rwanda yarashoboraga gukoreshwa muri uru rubanza. [16] SN BRUSSELS AIRLINES ivuga ko hashingiwe ku ngingo ya 19 y'amategeko rusange (conditions générales) yayo agenga kontaro yo gutwara abantu n'ibintu, amasezerano yo gutwara abantu yabaye hagati yayo n'abarega agengwa n'amategeko y'u Bubiligi kuko iyo sosiyete ari iyo muri icyo gihugu, ayo mategeko rusange akaba yibutswe ku matike y'indege abagenzi bagura n'ubwo bataba bayazi ubwayo ariko bakaba bashobora kuyashaka bakayabona. [17] SN BRUSSELS AIRLINES inahera aho yemeza ko ikirego cyatanzwe mu Rukiko Rukuru rw'Ubucuruzi cyashajwe, kuko ubusaze bw'ibirego nk'ibyo bubaho nyuma y'umwaka umwe, hakurikijwe amategeko y'u Bubiligi.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 126 [18] Ingingo ya 28 y'Amasezerano mpuzamahanga ya Varsovie yo kuwa 12/10/1929 u Rwanda n'u Bubiligi byashyizeho umukono, akaba asumba amategeko y'ibihugu, iteganya, mu gace kayo ka mbere, ko ku bijyanye n'ahagomba kuregerwa, urega afite guhitamo urukiko rw'aho utwara abantu abarizwa, urw'aho afite icyicaro cye cy'ibanze cy'aho akorera, urw'aho afite icyicaro amasezerano yakorewe, cyangwa urw'aho abagenzi bagomba kugezwa, ikanavuga, mu gace kayo ka kabiri ko amategeko y'iburanisha akurikizwa ari ay'aho urukiko rwaregewe. [19] Bigaragara rero ko kuba abarega barahisemo kugana inkiko z'u Rwanda nk'uko babyemererwa n'Amasezerano Mpuzamahanga yavuzwe haruguru, bitashidikanywaho ko baregeye urukiko rubifitiye ububasha, kandi hakaba hagomba gukurikizwa amategeko y'u Rwanda, bityo, imiburanire y'uko bagombaga gukurikiza amategeko rusange y'iyi sosiyete iniyemerera ko bashobora kuba batarayabonye, ikaba nta shingiro ifite. [20] No ku bijyanye n'ubuzime bw'ikirego uregwa avuga ko bugomba kureberwa ku mategeko y'Ububiligi hakomezwa ko ubwo buzime bubaho mu mwaka umwe, ingingo ya 29 y'amasezerano mpuzamahanga ya Varsovie yavuzwe haruguru, isobanura ko ubuzime bw'ikirego ari imyaka ibiri, ibarwa ryayo rigakurikiza amategeko y'urukiko rwaregewe, bityo, ubujurire bwa SN BRUSSELS AIRLINES busaba ko hakurikizwa amategeko y'u Bubiligi bukaba nta shingiro bufite. D. Ku byerekeye indishyi zisabwa. [21] Abarega bajuririyeye Urukiko rw'Ikirenga bavuga ko Urukiko rubanza rwahaye agaciro gake akababaro bagize,

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UMWARI N'ABANDI v. SN BRUSSELS AIRLINES 127 rubagenera indishyi z'akababaro nke cyane zihwanye na 1.500 Euros, bakaba basaba buri wese 15.000 Euros bari basabye kuko basanga ariyo ndishyi ikwiye. Barasaba kandi guhabwa amafaranga y'igihembo cya avoka angana na 10% y'indishyi basaba. [22] Basobanura ko urwo rugero rw'indishyi basaba rushingiye ku kababaro gakomeye batewe na SN BRUSSELS AIRLINES yategereje umunsi bagombaga kuza i Kigali akaba ariho ibabwira ko itakihabagejeje, ikaba yaranashakiye abandi bagenzi izindi ndege zibageza aho bajyaga ariko bo ikabareka, ibizeza ko nibagera Kampala cyangwa Nairobi izabashakira ubundi buryo, nyamara bahagera ikabihorera ku buryo bahuye n'ibibazo bikomeye byo gushakisha amacumbi n'uburyo bwo kuyariha ndetse n'ibibatunga mu buryo buruhanyije kuko bitari bwiteguwe. Bavuga ko yabasuzuguye ikabafata nk'aho atari abantu. [23] SN BRUSSELS AIRLINES yo ivuga ko nta ndishyi ikwiye gutanga kuko yananiwe kugeza abo bagenzi i Kigali bitewe n'uko indege yayo yagumishijwe na Leta y'u Rwanda i Kigali kandi ariyo yagombaga kuza gutwara abagenzi kuva Nairobi/Kampala, bikaba byarabaye impamvu itunguranye kandi itigobotorwa (force majeure) yatumye ingendo Kampala/Nairobi kugera i Kigali zidashoboka, cyakora ikaba yaremeye kubasubiza gusa amafaranga batanze bagura amatike y'izo ngendo zitashobotse n'ibyo bakoresheje, babanje kubigaragariza impapuro zerekana ibyo bayakoresheje. SN BRUSSELS AIRLINES ihakana kuba yarabavanguye n'abandi bagenzi. [24] Urukiko rurasanga, SN BRUSSELS AIRLINES, nka sosiyete itwara abantu n'ibintu, yari ifite inshingano zo kugeza

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 128 abagenzi aho basezeranye (obligation de résultat) itabasha guhunga izo nshingano ivuga ko habaye impamvu itunguranye kandi itigobotorwa ngo nk'uko amasezerano mpuzamahanga ya Varsovie ateganya ko umwikorezi ataryozwa indishyi iyo agaragaje ko yakoze ibishoboka kugirango akumire ingaruka z'ibyakwangirika, nyamara nk'uko Urukiko rubanza rwabisobanuye, uwo mwikorezi akaba ataragaragaje ko yakoze ibishoboka ngo ashake ubundi buryo bwo kugeza abagenzi aho basezeranye, kabone n'ubwo byari bumuhende. [25] Ku byerekeye urugero rw'indishyi z'akababaro zikwiye, hakurikijwe akababaro abarega bagize kandi bagatewe n'ubushake buke bw'umwikorezi wabashaga gushaka uko abakemurira ikibazo akarangiza inshingano ze, Urukiko rurasanga, buri wese mu barega yakongererwa indishyi z'akababaro zagenwe n'Urukiko rubanza, agahabwa 2.000.000Frw. [26] Ku bijyanye n'amafaranga y'igihembo cya Avoka, Urukiko rurasanga ayo mafaranga akwiye kugenerwa abareze kuko bagombye kwiambaza avoka mu rubanza, ariko kuko ayo basaba angana na 10% y'indishyi bifuzaga ari ikirenga, bakaba bagenerwa, mu bushishozi bw'Urukiko 300.000Frw buri wese kuri uru rwego, yiyongera kuri 1.000.000Frw yagenwe mu Rukiko rubanza. III. ICYEMEZO CY'URUKIKO [27] Rwemeje kwakira ubujurire bwatanzwe na Umwari Marie Agnès, Gakwaya Innocent, Gakirendekwe Panthaléon, Nsengiyumva Sylvestre, Senyana Marie Noel, Somayire Rubona Freddy na Spinette Génèvieve, n'ubwa SN BRUSSELS

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UMWARI N'ABANDI v. SN BRUSSELS AIRLINES 129 AIRLINES bubwuriyeho kuko bwatanzwe mu buryo n'inzira bikurikije amategeko; [28] Rwemeje ko ubujurire bwa Umwari, Gakwaya, Gakirendekwe, Nsengiyumva, Senyana, Somayire Rubona na Spinette bufite ishingiro kuri bimwe, ko ubwa SN BRUSSELS AIRLINES nta shingiro bufite; [29] Rukijije ko Umwari, Gakwaya, Gakirendekwe, Nsengiyumva, Senyana, Somayire Rubona na Spinette batsinze; ko SN BRUSSELS AIRLINES itsinzwe; [30] Rutegetse SN BRUSSELS AIRLINES guha buri wese mu bareze bavuzwe haruguru indishyi z'akababaro zingana na 2.000.000Frw na 1.300.000Frw y'igihembo cya avoka, ni ukuvuga yose hamwe 3.300.000Frw, itayatanga mu gihe cy'ukwezi, ayo mafaranga agakurwa mu byayo ku ngufu za Leta; [31] Ruyitegetse kwishyura 924.000Frw y'umusongongerwa wa Leta ahwanye na 4% y'igiteranyo cyose cy'indishyi iciwe (23.100.000Frw), itayatanga mu gihe cy'ukwezi ayo mafaranga akakurwa mu byayo ku ngufu za Leta; [32] Ruyitegetse kwishyura amagarama y'uru rubanza, ahwanye na 41.700Frw, itayatanga mu gihe cy'iminsi umunani agakurwa mu byayo ku ngufu za Leta; [33] Ruvuze ko imikirize y'urubanza rwajuririwe ihindutse.

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IMANZA NSHINJABYAHA

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UBUSHINJACYAHA v. MANIRIHO N'ABANDI [Rwanda URUKIKO RW'IKIRENGA – RPA0082/11/CS (Mukamurisa, P.J., Munyangeri na Hitiyaremye, J.) 22 Mata 2016] Amategeko Mpanabyaha – Ubwinjiracyaha buhanirwa – Kugira ngo habeho ubwinjiracyaha kandi buhanwe, ni ngombwa ko haba habayeho ibikorwa biboneka kandi bidashidikanywaho mu rwego rwo gutangira gushyira mu bikorwa umugambi wo gukora icyaha, hanyuma ibyo bikorwa bigakomwa mu nkokora n'impamvu zidaturutse kuri ba nyiri ukubikora – Itegeko-Teka N°21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 21. Incamake y'ikibazo: Abaregwa bakurikiranywe ku cyaha cy'ubwinjiracyaha bw'ubuhotozi, aho Ubushinjacyaha bwavugaga ko bacuze umugambi wo guhitana uwitwa Nsabimana Isaac ariko ntibabigeraho, bagafatwa kubera “tract” banditse bamutera ubwoba ko natabaha amafaranga ibihumbi magana atatu (300.000Frw) bamwica. Urukiko Rukuru, Urugereko rwa Musanze, rwaciye urubanza rwemeza ko bahamwa n'ubwinjiracyaha bw'ubuhotozi, maze ruhanisha buri wese igifungo cya burundu. Ntibishimiye imikirize y'urwo rubanza, bajuririra Urukiko rw'Ikirenga, bavuga ko uwo mugambi ntawabayeho, ko ahubwo ibyo bintu byateguwe na Nsabimana Isaac kubera amakimbirane yari afitanye na Niyonsenga Léonard agira ngo amufungishe we na bagenzi be asigarane isoko ryo gucuruza wenyine, ko kandi 133

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 134 umucamanza yashingiye kuri “tract” nyamara avuga ko uwayanditse atazwi. Uhagarariye Ubushinjacyaha avuga ko nta gushidikanya guhari kuko abaregwa bashinjanywa. Avuga kandi ko ubwinjiracyaha bw'icyaha cy'ubugome buhanwa nk'icyaha ubwacyo, ko habayeho umugambi wo guhitana Nsabimana Isaac, abaregwa bakabuzwa kugera ku mugambi bitabaturutseho. Incamake y'icyemezo: Kugira ngo habeho ubwinjiracyaha kandi buhanwe, ni ngombwa ko haba habayeho ibikorwa biboneka kandi bidashidikanywaho mu rwego rwo gutangira gushyira mu bikorwa umugambi wo gukora icyaha, hanyuma ibyo bikorwa bigakomwa mu nkokora n'impamvu zidaturutse kuri ba nyiri ukubikora. Kubirebana n'uru rubanza, nta kigaragaza ko umugambi wo kwica Nsabimana wari wagatangira gushyirwa mu bikorwa ku buryo byakwitwaga ubwinjiracyaha buhanirwa. Ubujurire bufite ishingiro. Imikirize y'urubanza rwajuririwe ihindutse kuri byose. Amagarama aherereye ku isanduku ya Leta. Amategeko yashingiweho: Itegeko-Ngenga N°01/2012/OL ryo kuwa 2/5/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 25. Itegeko-Teka N°21/77 ryo kuwa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, ingingo ya 21. Nta manza zifashishijwe.

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UBUSHINJACYAHA v. MANIRIHO N'ABANDI 135 Inyandiko z'abahanga: Gaston Stefani, Georges Levasseur, Bernard Bouloc, Droit Pénal Général, Douzième édition 1984, Précis Dalloz, p. 223, para. 194 in fine. Harald Renout, Droit Pénal Général, Editions Paradigme, manuel 2005-2006, p.126 in fine. Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko rwa Musanze, Ubushinjacyaha bukurikiranyeho abitwa Maniraho Eric,

Niyonsenga Léonard, Uwamahoro Jean d'Amour na Nzamuye Selemani, icyaha cy'ubwinjiracyaha bw'ubuhotozi buvuga ko bakoze ku itariki ya 05/08/2010, ubwo bacuraga umugambi wo guhitana uwitwa Nsabimana Isaac ariko ntibabigeraho, bagafatwa kubera "tract" banditse bamutera ubwoba ko natabaha amafaranga ibihumbi magana atatu (300.000) bamwica. [2] Ku itariki ya 3/2/2011, Urukiko Rukuru, Urugereko rwa Musanze, rwaciye urubanza rwemeza ko Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour na Nzamuye Selemani bahamwa n'ubwinjiracyaha bw'ubuhotozi, rushingiye ku kuba abaregwa bose baremeye ko bari bazi uwo mugambi ndetse no kuba harabonetse "tract" yaka Nsabimana Isaac amafaranga ibihumbi magana atatu (300.000) ngo atazicwa, maze ruhanisha buri wese igifungo cya burundu.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 136 [3] Uwamahoro Jean d'Amour na bagenzi be ntibishimiye imikirize y'urwo rubanza, bajuririra Urukiko rw'Ikirenga, bavuga ko uwo mugambi ntawabayeho, ko ahubwo ibyo bintu byateguwe na Nsabimana Isaac kubera amakimbirane yari afitanye na Niyonsenga Léonard agira ngo amufungishe we na bagenzi be asigarane isoko ryo gucuruza wenyine, ko kandi umucamanza yashingiye kuri "tract" nyamara avuga ko uwayanditse atazwi. [4] Urubanza rwaburanishijwe mu ruhame ku itariki ya 18/01/2016 Maniriho Eric atitabye nyuma yo guhamagazwa ahatazwi, Niyonsenga Léonard yunganiwe na Me Uwimana Channy, Uwamahoro Jean d'Amour yunganiwe na Me Umulisa Paola, Nzamuye Selemani yunganiwe na Me Kabagambe Joëlle, Ubushinjacyaha buhagarariwe na Mutayoba Alphonse, Umushinjacyaha ku rwego rw'Igihugu, kuri uwo munsu ariko iburanisha ntiryasozwa, ryimurirwa ku itariki ya 7/03/2016. [5] Kuri icyo tariki iburanisha ryarasubukwe, abaregwa bitabye bunganiwe nka mbere, uretse Maniriho Eric nanone wongeye kutitaba nyuma yo guhamagazwa ahatazwi, Ubushinjacyaha buhagarariwe na Niyonkuru Françoise, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO Kureba niba hari icyaha gihama Uwamahoro Jean d'Amour na bagenzi be hashingiye ku byo bakurikiranweho.

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UBUSHINJACYAHA v. MANIRIHO N'ABANDI 137 [6] Uwamahoro Jean d'Amour avuga ko yahamijwe icyaha nyamara ntacyo yakoze. Asobanura ko mu mwaka wa 2010 ku munsu atibuka neza, yagiye muri centre y'ubucuruza ya Busoro, asabye Niyonsenga Léonard kugura ibirayi bye, amubwira ko atari bubigire kuko nta mafaranga afite. Akomeza avuga ko yagiye kubibunza kwa Nsabimana Isaac, amubajije impamvu Niyonsenga Léonard atabiguze, amusubiza ko ari uko yasanze nta mafaranga afite. Avuga ko Nsabimana Isaac yahise amubaza impamvu Twishime Fabien ashaka kumwicisha, undi amusubiza ko ntabyo azi. Avuga ko yamanutse agahura na Maniriho Eric, mu kanya umupolisi aramuhamagara, amwitabye asanga ari kumwe na Twishime Fabien na Niyonsenga Léonard, amubajije amubwira ko yumvise Nsabimana Isaac avuga ko Twishime Fabien yamubwiye ko Niyonsenga Léonard ashaka kumwicisha. [7] Uwamahoro Jean d'Amour abajijwe ku byo yavugiye mu Bugenzacyaha ko yari azi umugambi wo kuzica Nsabimana Isaac, yasubije ko ibyinshi yavuze batabyanditse, ko Nsabimana Isaac yiyemerera ko ari Twishime Fabien wamubwiye ko Niyonsenga Léonard ashaka kumwicisha, ko ndetse hafashwe

amajwi. Ahakana ko tract ivugwa ari we wayanditse. [8] Me Umulisa Paola umwunganira avuga ko Uwamahoro Jean d'Amour yari azi uyu mugambi kandi akaba ari we wagiye kuwumenyesha kuri Polisi. Avuga ariko ko nta bwinjiracyaha bw'ubuhotozi bwabayeho, kuko nta buryo bwari kuzakoreshwa bwerekanywe bugaragaza uko umugambi wari gushyirwa mu bikorwa (exécution). Ku byerekeranye na tract itangwaho ikimenyetso, avuga ko itashingirwaho mu guhamya abaregwa icyaha, mu gihe nta mpuguke (expert) yemeje ko aribo bayanditse kuko bo batayemera.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 138 [9] Mu myanzuro ye yanditse, Me Umulisa Paola avuga ko uretse ibihuha byagiye bikwirakwizwa n'abarega ko hari umugambi wo kuzica Nsabimana Isaac, nta gikorwa na kimwe kiboneka cyakozwe mu rwego rwo gutangira gushyira mu bikorwa uwo mugambi, ngo abaregwa babe barabujijwe kuwugeraho n'impamvu zitabaturutseho nk'uko biteganywa n'ingingo ya 21 y'Itegeko-Teka N°21/77 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga icyo gihe. Akavuga rero amagambo gusa bagiye bakwirakwiza adahagije kugira ngo habe harabayeho icyaha cyangwa se ubwinjiracyaha bwacyo. [10] Nzamuye Selemani avuga ko nta bimenyetso Urukiko Rukuru rwashingiyeho rwemeza ko yari mu mugambi w'ubwicanyi. Ku byerekeranye n'ibyavuzwe na Twishime Fabien ko yamuterefonnye amubwira ko hari umugambi wo kumugirira nabi, asobanura ko yahuye na Maniriho Eric aje iwe mu Gasiza akamubwira ko yumvise abantu bagambanira Twishime Fabien, ko kubera ko uyu yari inshuti ye, yamuhamagaye akamuhuza na Maniriho Eric amubwira ko Niyonsenga Léonard ategura umugambi wo kuzamugirira nabi amuhora ko ari we watumye ahomba. [11] Me Kabagambe Joëlle wunganira Nzamuye Selemani avuga ko icyo yakoze ari ukuburira Twishime Fabien ko yari yumvise ko hari abateguye umugambi wo kuzamugirira nabi, akaba atumva aho ahuriye n'icyaha kuko Twishime Fabien atanga ikirego atamuvuzemo. Akomeza avuga ko Nzamuye Selemani yanze ko hari uwakwica undi ubwo yatangaga amakuru, agasaba ko hatashingirwa ku byavuzwe na Uwamahoro Jean d'Amour ashinja Nzamuye Selemani mu gihe we abihakana.

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UBUSHINJACYAHA v. MANIRIHO N'ABANDI 139 [12] Ku byerekeye tract itangwa nk'ikimenyetso muri uru rubanza, Me Kabagambe Joëlle avuga ko nta muhanga wigeze wemeza ko ari Nzamuye Selemani wayanditse cyangwa se ngo habe hari ikindi kimenyetso kigaragaza ko hari uruhare yagize mu kuyandika. Avuga ko muri rusange nta n'icyaha abona cyabayeho, kuko nta gikorwa na kimwe cyagaragajwe ko cyakozwe mu rwego rw'ubwinjiracyaha bw'ubuhotozi arebye ibigize icyo cyaha nk'uko giteganywa n'ingingo ya 312 y'Igitabo cy'amategeko ahana cyakoreshwaga icyo gihe, ko ndetse n'umugambi wo gukora icyaha ntawabayeho, kuko ababivuga batagaragaza intwari zari gukoreshwa, cyangwa isaha n'ahantu icyaha cyari gukorerwa, agasanga icyabaye ari amagambo gusa. [13] Arangiza asaba Urukiko rw'Ikirenga kugira Nzamuye Selemani umwere ku cyaha aregwa, kuko Urukiko Rukuru rwakimuhamije rugendeye ku magambo y'abandi baregwa hamwe kandi na bo bagaragaza ko nta cyaha cyabayeho kuko kitigeze gitangira na gato, ko kandi

rutagaragaje icyo yapfaga n'abagombaga kwicwa. [14] Niyonsenga Léonard avuga ko anenga Urukiko Rukuru kuba rwaramuhamije icyaha rukamukatira gufungwa burundu kandi nta cyaha yakozwe, ko abamushinje bamubeshyera, ko ahubwo ari abambuzi (escrocs) bazwi. Asobanura ko Twishime Fabien yamuzaniye amabuye y'agaciro ngo ayagure, amaze kumuha amafaranga asanga nta buziranenge afite (atari amabuye y'agaciro ahubwo ari amabuye asanzwe), ajya kumurega kuri Polisi baramufunga. Avuga ko nyuma y'aho uyu Twishime Fabien afunguriwe mu buryo atamenye, yamurwaye inzika akamuhimbira ko ashaka kumwicisha afatanyije na Nsabimana Isaac, ashaka n'abamushinja aribo Nzamuye

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 140 Selemani na Uwamahoro Jean d'Amour, batangira guhimba ibipapuro (tract). [15] Me Uwimana Channy avuga ko Urukiko Rukuru rwahamije Niyonsenga Léonard icyaha nta bimenyetso bifatika rushingiyeho, kuko rwashingiye kuri tract, ku mvugo za bagenzi be baregwa hamwe, no kuba yari asanzwe afitanye ibibazo na Nsabimana Isaac gusa. Avuga ko imbere y'uru Rukiko Uwamahoro Jean d'Amour na Nzamuye Selemani nta n'umwe wigeze amushinja ko yamusabye kugira uwo yica, kandi muri dosiye bivugwa ko ari bo yari yaratumye gusohozwa uwo mugambi, akanavuga ko aho babarijwe hose bagiye barangwa no kuvuguruzanya. Avuga ko Twishime Fabien ari inshuti ya Nsabimana Isaac, akaba nta kuntu Niyonsenga Léonard yari kumukoresha mu kwica mugenzi we kandi abizi neza ko ari inshuti. [16] Avuga kandi ko Maniriho Eric abazwa yavuze ko bari bashatse gukura inyandiko kuri Niyonsenga Léonard gusa, Nzamuye Selemani we abajijwe avuga ko atari azi Niyonsenga Léonard, ko iryo zina yaryumvize ubwo yaganiraga na Twishime Fabien, akavuga ko abo bese bari bateguye umugambi wo kumufungisha, agasanga ibikubiye muri dosiye byose ari amatiku, ko ahubwo hari ikindi kintu kitazwi cyari kigambiriwe. [17] Uhagarariye Ubushinjacyaha avuga ko Niyonsenga Léonard ari we watanze ikiraka nk'uko byemezwa n'abo baregwa hamwe, ko bakoraga ibyo abategetse amaze kubaha amafaranga y'u Rwanda ibihumbi mirongo inani (80.000). Ku byerekeranye no kuba umwunganizi we avuga ko nta ntwaro zari gukoreshwa zagagarajwe bityo ko ibigize icyaha bituzuye, uhagarariye Ubushinjacyaha avuga ko intwaro atari zo zonyine

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UBUSHINJACYAHA v. MANIRIHO N'ABANDI 141 zica, kuko bashoboraga no kwica Nsabimana Isaac bamunize, ibi bikaba byarabujijwe n'uko habonetse tract. Avuga ko nta gushidikanya ku cyaha guhari kuko abaregwa bashinjanywe. [18] Uhagarariye Ubushinjacyaha asabwe guhuza ibyo avuga n'Itegeko, yavuze ko ubwinjiracyaha bw'icyaha cy'ubugome buhanwa nk'icyaha ubwacyo, ko habayeho umugambi wo guhitana Nsabimana Isaac, abaregwa bakavugaga ko batumwe na Niyonsenga Léonard, babuzwa kugera ku mugambi na tract yabonetse, Nsabimana Isaac akaba yararokotse bitabaturutseho. UKO URUKIKO RUBIBONA [19] Inyandiko zikubiye muri dosiye y'urubanza zigaragaza ko imbere y'Ubugenacyaha, Uwamahoro Jean d'Amour yemeye ko umugambi wose wo guhitana Nsabimana Isaac wacuzwe ahari ari kumwe na Maniriho Eric na Nzamuye Selemani, bakaba bari babisabwe na Niyonsenga Léonard ku kiguzi cy'amafaranga y'u

Rwanda ibihumbi magana ane (400.000), bakaba ariko bari bafite n'umuhuza ari we Twishime Fabien. [20] Twishime Fabien yarabajijwe ahakana uruhare rwe, avuga ko ahubwo na we yari kwicwa, ko abari bahawe ikiraka ari bo bamubwiye uwo mugambi, na we abimenyesha Nsabimana Isaac, bemeranya ko bazaha abagombaga kubahitana ibihumbi magana atatu (300.000) kugira ngo badashyira mu bikorwa umugambi wabo. [21] Maniriho Eric na we yemeye ko uyu mugambi yari awurimo, akaba yarawugejejweho na Uwamahoro Jean d'Amour bahuriye ahitwa mu Kadahenda ku wa 5/08/2010

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 142 amusaba ko bafatanyaga, na we abigeza kuri Nzamuye Selemani ngo azabafashe, arabyemera ariko ahita ahamagara Twishime Fabien amusaba ko yabimenyesha Nsabimana Isaac amutera ubwoba ngo abahe amafaranga. [22] Nzamuye Selemani ariko mu ibazwa rye yahakanye ko uwo mugambi yari awurimo, cyakora yemera ko yawumenye akaburira Twishime Fabien na we wagombaga kwicwa. Asobanura ko Niyonsenga Léonard yamuzizaga amafaranga y'u Rwanda ibihumbi magana atatu na mirongo itanu (350.000) yari yaramwambuye. [23] Niyonsenga Léonard yahakanye ko hari umugambi wo kwica yigeze ategura, gusa yemera ko yari afitanye ibibazo na Twishime Fabien kubera amafaranga y'u Rwanda ibihumbi magana abiri na mirongo itanu (250.000) ye yamutwaye amubeshya ko amuhaye amabuye y'agaciro nyuma bikaza kugaragara ko atari yo, naho Nsabimana Isaac bakaba bari bahanganye mu kazi kabo k'ubucuruzi, ariko ko nta mutima yagira wo kubicisha. [24] Nyuma yo gusesengura imvugo z'abaregwa ndetse n'ibindi bimenyetso byatanzwe n'Ubushinjacyaha mu gika cya 20 cy'incarubanza, Urukiko rw'Ikirenga rurasanga Urukiko Rukuru rwarabahamije icyaha cyo kuba baracuze umugambi wo guhotora Nsabimana Isaac, maze rubahana rushingiye ku ngingo ya 21 y'Itegeko-Teka N°21/77 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga icyo gihe, ruvuga ko habayeho ubwinjiracyaha bw'ubuhotozi. [25] Ingingo ya 21 y'Itegeko-Teka N°21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga icyo gihe, iteganya ko "ubwinjiracyaha

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UBUSHINJACYAHA v. MANIRIHO N'ABANDI 143 buhanirwa iyo imigambi yo gukora icyaha yagaragajwe n'ibikorwa biboneka, bidashidikanywa by'intangiriro y'icyaha, bigenewe kugitsotsoba, bigahagarikwa gusa cyangwa bikabuzwa kugera ku cyifuzo, bikazitirwa gusa n'impamvu zidakomoka ku bwende bwa nyiri icyaha". [26] Kugira ngo habeho ubwinjiracyaha kandi buhanwe, ni ngombwa ko haba habayeho ibikorwa biboneka kandi bidashidikanywaho mu rwego rwo gutangira gushyira mu bikorwa umugambi wo gukora icyaha, hanyuma ibyo bikorwa bigakomwa mu nkokora n'impamvu zidaturutse kuri ba nyiri ukubikora. [27] Ibi kandi ni nako abahanga mu mategeko babisobanura, aho bavuga ko, kuba hari ibikorwa byo gukora icyaha byatangiye kandi nyiri ukubikora akaba atigaruye ku bushake bwe, ari byo bituma habaho ubwinjiracyaha (Le commencement d'exécution et l'absence de désistement volontaire constituent les deux éléments certains de la tentative. ...)1. Gutangira gukora icyaha, ubwabyo ni icyaha. Haba habayeho ibikorwa bigize icyaha cyangwa se ibituma icyaha kirushaho kugira

ubukana (Selon la conception objective, le commencement d'exécution révèle par lui-même le délit. Il s'agit donc d'actes qui font partie de l'infraction, soit en tant qu'élément constitutif, soit en tant que circonstance aggravante)². [28] Ku birebana n'uru rubanza, Urukiko rw'Ikirenga rurasanga, hashingiwe ku bikubiye muri dosiye nk'uko

1 Gaston Stefani, Georges Levasseur, Bernard Bouloc, Droit Pénal Général, Douzième édition 1984, Précis Dalloz, p.223, para. 194 in fine. 2 Harald Renout, Droit Pénal Général, Editions Paradigme, manuel 2005- 2006, p.126 in fine.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 144 byibukijwe haruguru, icyabaye, n'ubwo abaregwa batabivugaho rumwe, kwari ugutegura umugambi wo kuzica Nsabimana Isaac, ariko hakaba nta kigaragaza ko uwo mugambi wari wagatangira gushyirwa mu bikorwa ku buryo byakwitwa ubwinjiracyaha buhanirwa nk'uko byasobanuwe. [29] Ku byerekeranye na tract yavuzwe n'Urukiko Rukuru ko ishimangira uruhare rwa Uwamahoro Jean d'Amour na bagenzi be mu bwinjiracyaha bw'ubuhotozi baregwa, Urukiko rw'Ikirenga rurasanga, uretse ko nta n'ikigaragaza ko ari bo bayanditse ku buryo budashidikanywaho kubera ko baburanye bayihakana, kandi n'Ubushinjacyaha bukaba nta kindi kimenyetso bwerekanye cyerekana ko ari bo bayanditse koko, ubwayo si igikorwa kigize intangiriro (commencement d'exécution) yo kwica Nsabimana Isaac. [30] Nyuma y'ibyo bisobanuro byose, Urukiko rw'Ikirenga rurasanga kandi ibyakozwe na Maniriho na bagenzi be ari ugucura umugambi wo gukora icyaha, ibyo rero bikaba bitarahanwaga n'amategeko y'u Rwanda igihe babikoraga, kuko byatangiye guhanwa ubwo hasohokaga Itegeko-Ngenga N°01/2012/OL ryo ku wa 2/5/2012 rishyiraho igitabo cy'amategeko ahana³, bityo rero bakaba batagomba kubihanirwa.

3 Ingingo ya 25 iteganya ko "gucura umugambi wo gukora icyaha ari ubwumvikane hagati y'abantu babiri cyangwa benshi bugamije gukora icyaha bikozwe n'umwe cyangwa benshi muri bo, na ho ingingo ya 26 igateganya ko gucura umugambi wo gukora icyaha cy'ubugome cyangwa icyaha gikomeye bifatwa kimwe nk'ubwinjiracyaha ku cyaha cy'ubugome cyangwa icyaha gikomeye cyari kigambiriwe .

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UBUSHINJACYAHA v. MANIRIHO N'ABANDI 145 III. ICYEMEZO CY'URUKIKO [31] Rwemeje ko ubujurire bwa Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour na Nzamuye Selemani bufite ishingiro; [32] Rwemeje ko Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour na Nzamuye Selemani ari abere ku cyaha cy'ubwinjiracyaha bw'ubuhotozi bari bakurikiranweho; [33] Rwemeje ko imikirize y'urubanza N° RP0113/10/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 3/02/2011 ihindutse muri byose; [34] Rutegetse ko Uwamahoro Jean d'Amour na Nzamuye Selemani baburanaga bafunze bahita barekurwa urubanza rukimara gusomwa; [35] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

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UBUSHINJACYAHA v. MUKASHEMA N'UNDI [Rwanda URUKIKO RW'IKIRENGA – RPA0176/11/CS (Mukamulisa, P.J., Munyangeri na Nyirandabaruta, J.) 16 Ukwakira 2015] Amategeko Mpanabyaha – Kwemera icyaha – Guhindura imvugo k'uregwa – Umucamanza uburanisha urubanza mu mizi niwe wemeza ko ibyo uregwa yemeye mu gihe cy'iperereza ari ukuri kudashidikanywaho n'iyoyakwisubiraho mu rukiko akagira ibyo ahindura cyangwa ahakana ku byo yari yavuze mbere. Amategeko Mpanabyaha – Kugabanyirizwa igihano – Icyaha gikoranywe ubugome bukabije – Gukorana icyaha ubugome bukabije ni impamvu yatuma igihano kitagabanywa. Amategeko agenga imiburanishirize y'imanza Nshinjabyaha – Ibazwa ry'uwakoze icyaha – Ukurikiranyweho icyaha kandi ufite amakuru yagitangaho ashobora kubazwa ntibifatwe nkaho ari umutangabuhamya. Incamake y'ikibazo: Mukashema na Bihimana bakurikiranywe n'Ubushinjacyaha kuba barafatanyije guhotora Sibomana Etienne wari umugabo wa Mukashema Janvière. Mukashema Janvière abazwa mu Bugenzacyaha no mu Bushinjacyaha yemeye ko bamwishe bafatanyije na Bihimana bari basanzwe basambana, ndetse ko bafatanyije gukora icyaha kugira ngo nyuma y'urupfu rw'umugabo we bazibanire nk'umugabo n'umugore. Imbere y'Urukiko, Mukashema yahinduye imvugo, avuga noneho ko yishe umugabo we ari wenyine, nyuma 147

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 148 ahamagara Bihimana ngo amufashe guhisha umurambo. Bihimana we kuva yafatwa yahakanye icyaha. Urukiko Rukuru, ku cyicaro cyarwo i Kigali, rwaciye urubanza rwemeza ko abaregwa bahamwe n'ubufatanyacyaha mu cyaha cy'ubuhotozi, ruhanisha buri wese igifungo cya burundu. Mukashema yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko yahanishijwe igihano kirekire kandi yaraburanye yemera icyaha. Anavuga ko impamvu mu Rukiko yivugurujye agahindura imvugo ku birebana n'imikorere y'icyaha ari uko ari bwo bwa mbere yari aburanye, ariko ko imvugo aha agaciro ari izo yavugiye mu Bugenzacyaha, ko kandi yiteguye gusobanura neza imikorere y'icyaha. Bihimana we, avuga ko icyamuteye kujurira ari uko yahamijwe icyaha atakoze, akaba yifuza kurenganurwa. Uhagarariye Ubushinjacyaha we avuga ko ubujurire bwa Mukashema nta shingiro bufitte kuko impamvu yo kwemera icyaha yayiburanishije mbere, usibye ko yaje guhindura imvugo, bityo kubera uburyo avuga ibintu bitandukanye n'ibyo yemeye mbere, ukwemera icyaha kwe kutahabwa agaciro. Kubirebana na Bihimana, avuga ko ingingo z'ubujurire ze nta shingiro zifite kuko Urukiko Rukuru rwasobanuye impamvu rwashingiyeho rumuhamya icyaha, akaba atabasha kuzivuguruzako nta kintu gishya azana mu bujurire. Incamake y'icyemezo: 1. Umucamanza uburanisha urubanza mu mizi niwe wemeza ko ibyo uregwa yemeye mu gihe cy'iperereza ari ukuri kudashidikanywaho n'iyoyakwisubiraho mu rukiko akagira ibyo ahindura cyangwa ahakana ku byo yari yavuze mbere. Bityo Mukashema ntakwiye kugabanyirizwa ibihano kuko ibyo yavuze nyuma ageze mu nkiko atari ukuri kuko binyuranye ku buryo bugaragara n'ibyo yavuze mbere

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UBUSHINJACYAHA v. MUKASHEMA N'UNDI 149 igihe cy'iperereza, hakaniyongeraho ko mu mwanzuro we w'ubujurire, yasobanuye ko imvugo aha agaciro ari izo yakoreye muri Polisi, ubu akaba atagaragaza ko hari icyo anenga izo mvugo.

2. Gukorana icyaha ubugome bukabijeni impamvu yo kutagabanyirizwa ibihano. Harebwe ubugome Mukashema yakoranye icyaha cyo kwiwicira umugabo, n'uburyo yakoze ibishoboka ngo kitamenyekana, ntakwiye kugabanyirizwa igihano.
3. Ukurikiranyweho icyaha kandi ufite amakuru yagitangaho ashobora kubazwa ntibifatwe nkaho ari umutangabuhamya. Bityo, ibisabwa na Bihimana bijyanye no gutesha agaciro imvugo za Mukashema ubwo yabazwaga mu Bugenzacyaha no mu Bushinjacyaha kuko yabajijwe nk'umutangabuhamya kandi aregwa, nta shingiro bifite, kuko atabajijwe nk'umutangabuhamya ahubwo yabajijwe nk'ukurikiranyweho icyaha kandi ufite amakuru yagitangaho cyane cyane ko yanemeye uruhare rwe. Ubujurire bw'abaregwa nta shingiro bufite. Urubanza rwajuririwe ntiruhindutse. Amagarama aherereye ku isanduku ya Leta. Amategeko yashingiweho: Itegeko N°30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanshirize y'imanza z'inshinjabyaha, ingingo ya 86(2). Itegeko - teka N°21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 82 n'ya 83.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 150 Nta manza zifashishijwe. Inyandiko z'abahanga: Michel Franchimont, Ann Jacobs na Adrien Masset, "Manuel de procédure pénale", Edition du Jeune Barreau de Liège, 1989, p.772. Urubanza I. IMITERERE Y'URUBANZA [1] Ubushinjacyaha bwakurikiranye Mukashema Janvier na Bihimana Jean Baptiste kuba barafatanyije guhotorira Sibomana Etienne wari umugabo wa Mukashema Janvier. Mukashema Janvier abazwa mu Bugenzacyaha no mu Bushinjacyaha yemeye ko yishe umugabo amutemesheje umuhoro mu mutwe inshuro eshatu, ko kandi yafatanyije kumwica na Bihimana Jean Baptiste wajombaguye umushyamba nyakwingendera anamukuramo amaso, barangije kumwica umurambo bawutaba mu musarani wo kwa Mukashema utari ugikoreshwa, ariko nyuma barawimura bawuta mu ishyamba bagamije kugira ngo batazafatwa. Anavuga ko yari asanzwe asambana na Bihimana, ndetse ko bafatanyije gukora icyaha kugira ngo nyuma y'urupfu rw'umugabo we bazibanire nk'umugabo n'umugore. Cyokora Mukashema yageze mu Rukiko ahindura imvugo, avuga noneho ko yishe umugabo we ari wenyine, nyuma ahamagara Bihimana ngo amufashe guhisha umurambo. Bihimana we kuva yafatwa yahakanye icyaha. [2] Iperereza rirangiye Ubushinjacyaha bwareze Mukashema na Bihimana mu Rukiko Rukuru, i Kigali, ruca

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UBUSHINJACYAHA v. MUKASHEMA N'UNDI 151 urubanza rwemeza ko abaregwa bahamwa n'ubufatanyacyaha mu cyaha cy'ubuhotozi, ruhanisha buri wese igifungo cya burundu. [3] Mukashema Janvier yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko yahanishijwe

igihano kirekire kandi yaraburanye yemera icyaha. Anavuga ko impamvu mu Rukiko yivugurujye agahindura imvugo ku birebana n'imikorere y'icyaha ari uko ari bwo bwa mbere yari aburanye, ariko ko imvugo aha agaciro ari izo yavugiye mu Bugenzacyaha, ko kandi yiteguye gusobanura neza imikorere y'icyaha. [4] Bihimana we avuga ko icyamuteye kujurira ari uko yahamijwe icyaha atakoze, akaba yifuza kurenganurwa. [5] Iburanisha ry'urubanza ryabereye mu ruhame kuwa 07/09/2015, Mukashema Janvière yunganiwe na Me Rutagengwa Mukiga, Bihimana yunganiwe na Me Rwimo Clotilde, Ubushinjacyaha buhagarariwe na Mukunzi Faustin, Umushinjacyaha ku rwego rw'Igihugu. II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba ukwemera icyaha kwakozwe na Mukashema kwamubera impamvu yo kugabanyirizwa igihano. [6] Mukashema avuga ko icyatumye ajurira ari ko yaburanye yemera icyaha akanagisabira imbabazi ariko akaba yarahanishijwe igihano kirekire adashobora kurangiza, indi mpamvu ikaba iy'uko hari amagambo yavuze mbere ariko

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 152 ntiyayasobanura neza kubera ko bwari ubwa mbere aburanye, ubu akaba yifuza kugaragaza ukuri kuzuye. [7] Akomeza avuga ko icyaha cyatewe n'uko amaze kubyarana kabiri n'umugabo we yamutaye maze agasanga umugore wa mukuru we, bituma yahukana, nyuma umugabo aza kumucyura ari kumwe na Bihimana wari usanzwe ari inshuti ye (y'umugabo). Yongeraho ko umunsi icyaha kiba yari yajyanye n'umugabo ku isoko agiye kugurisha ingurube, bavuyeyo banyura mu kabari, aza kuhasiga umugabo ajya mu rugo guteka, aho umugabo atahiye aza amubwira nabi amubaza impamvu ibyo yatetse bitarashya, aranamukubita, nawe kubera inzoga yari yanyoye ahita agira umujinya aramutemagura. [8] Akomeza avuga ko bigeze nijoro yagiye guhamagara Bihimana ngo aze amufashe kumushyingura cyangwa kumuta mu ishyamba, undi araza ajombagura nyakwigendera ibyuma anamukuramo amaso, nyuma yaho bashyingura umurambo mu musarani wabo (wo kwa Mukashema), ariko hashize icyumweru uwo murambo bawukura aho wari uri kubera ko hari ku nzira, bajya kuwuta mu ishyamba bawukurura. Anavuga ko bimuye umurambo bagira ngo hatazagira undi muntu umenya ibyabaye kuko ari bo bonyine bari babizi. Asoza asaba kugabanyirizwa ibihano akajya kurera abana be. [9] Me Rutagengwa Mukiga avuga ko icyaha Mukashema yemeye cyo kwiwicira umugabo cyamugwiririye, ko batanga guhanwa, ahubwo ko asaba kugabanyirizwa igihano kubera uko kwemera icyaha hashingiwe ku ngingo ya 35 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha no ku ngingo ya 82 na 83 z'Igitabo cy'amategeko ahana cyakurikizwaga igihe icyaha kiba, ndetse mu kumugenera igihano Urukiko rukazirikana ko amaze imyaka 10 afunze.

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UBUSHINJACYAHA v. MUKASHEMA N'UNDI 153 [10] Uhagarariye Ubushinjacyaha avuga ko ubujurire bwa Mukashema nta shingiro bufite kuko impamvu yo kwemera icyaha yayiburanishije mbere, usibye ko abazwa mbere yemeye ko yishe umugabo we afatanyije na Bihimana, none ubu akaba avuga ko yahurije Bihimana umugabo yamaze gupfa, ariko akavuga ko Bihimana yaje

akamutera ibyuma akanamuvanamo amaso. [11] Asanga kubera uburyo Mukashema avuga ibintu bitandukanye n'ibyo yemeye mbere, ukwemera icyaha kwe kutahabwa agaciro hashingiwe ku ngingo ya 82 y'Igitabo cy'amategako ahana ibyaha cyakurikizwaga, cyangwa iya 35 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha. [12] Yongeraho ko Urukiko Rukuru, mu gika cya 23 cy'urubanza, rwasobanuye impamvu rutahaye agaciro ukwemera icyaha kwa Mukashema kuko rwasobanuye ko ashaka gukuraho icyaha Bihimana. Asanga kuba nyakwigendera Sibomana yarabwiye nabi Mukashema atari byo byari gutuma amwica cyangwa ngo ajombagurwe ibyuma anakurwemo amaso nyuma yo kwicwa. UKO URUKIKO RUBIBONA [13] Ingingo ya 82 y'Itegeko-Teka N°21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategako ahana cyakurikizwaga igihe icyaha Mukashema aregwa cyakorwaga, iteganya ko umucamanza ubwe ari we uha agaciro impamvu zigabanya ubugizi bwa nabi bw'uwoyakoze icyaha, ko kandi kwemeza impamvu zigabanya ububi bw'icyaha bigomba gusobanurwa; naho ingingo ya 83 y'icyo gitabo igateganya

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 154 uburyo ibihano biteganyirijwe icyaha bihinduka cyangwa bikagabanywa. [14] Isesengura ry'ingingo zimaze kuvugwa haruguru, ryumvikanisha neza ko umucamanza mu bushishozi bwe, ari we usuzuma niba hari impamvu zituma uregwa akwiye kugabanyirizwa igihano. [15] Nk'uko byavuzwe haruguru, ubujurire bwa Mukashema bugamije gusa kugabanyirizwa igihano hashingiwe ku mpamvu y'uko avuga ko Urukiko rubanza rutakigabanyije kandi yaremeye icyaha mu nzego zose yanyuzemo. [16] Urukiko rusanga ukwemera icyaha gukoze n'uregwa gushobora kumubera impamvu ituma agabanyirizwa ibihano nk'uko ingingo zavuzwe mu gika cya 13 zibivuga, ari ukwakoze mu buryo budasubirwaho, akagaragaza ukuri kwose ntacyo akinga Urukiko. [17] Ibimaze kuvugwa bihura kandi n'ibisobanuro bitangwa n'abahanga mu by'amategako barimo Michel Franchimont, Ann Jacobs na Adrien Masset, mu gitabo cyabo cyitwa "Manuel de procédure pénale", Edition du Jeune Barreau de Liège, 1989, ku rupapuro rwa 772, ahavugwa ko mu manza nshinjabyaha, umucamanza uburanisha urubanza mu mizi ari we wemeza ko ibyo uregwa yemeye mu gihe cy'iperereza ari ukuri kudashidikanywaho n'iyi uregwa yakwisubiraho mu rukiko akagira ibyo ahindura cyangwa ahakana ku byo yari yavuze mbere (L'appréciation de la sincérité d'un aveu en matière répressive relève du pouvoir souverain du juge du fond...Le juge de fond apprécie souverainement la sincérité d'un aveu fait par le prévenu au cours de l'instruction préparatoire, même quand cet aveu a été ultérieurement rétracté devant le tribunal).

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UBUSHINJACYAHA v. MUKASHEMA N'UNDI 155 [18] Nyamara nk'uko Urukiko Rukuru rwabisobanuye, n'ubwo Mukashema avuga ko yemera icyaha akabishingiraho asaba kugabanyirizwa igihano, ikigaragara ni uko mu bisobanuro yatanze igihe yabazwaga mu Bugenzacyaha kuwa 16/04/2005 no kuwa 19/04/2005, hamwe no mu Bushinjacyaha kuwa 25/04/2005, yavuze uburyo yafatanyije na Bihimana kwica umugabo we, ko we yatemye nyakwigendera mu mutwe akoresheje umuhoro, naho Bihimana akamujombagura ibyuma

(umushyo) mu mbavu anamukuramo amaso ayata mu musarane, ndetse ko nyuma y'icyaha bafatanyije guhisha umurambo kuko babanje kuwutaba muni y'urugo, nyuma banafatanyije kuwuhakura bajya kuwuta mu ishyamba. Muri ibyo bisobanuro kandi, Mukashema yavuze ko we na Bihimana bajyaga basambana, ndetse ko bari bafite umugambi wo kuzabana. [19] Ariko ageze mu Rukiko Rukuru, Mukashema yahinduye imvugo, avuga noneho ko ari we wiyiciye umugabo amutemesheje umuhoro, nyuma ajya gutabaza Bihimana ngo amufashe guhisha umurambo. Ibyo bisobanuro ni nabyo yongeye gusubiramo muri uru Rukiko. [20] Ku bijyanye no kugabanyirizwa ibihano, mu rubanza rwajuririwe, Urukiko Rukuru rwasobanuye ko Mukashema adakwiye kubigabanyirizwa kuko atavugisha ukuri ahubwo akaba agerageza gukingira ikibaba Bihimana, n'uru Rukiko rukaba rusanga ibyo yavuze nyuma ageze mu nkiko atari ukuri kuko binyuranye ku buryo bugaragara n'ibyo yavuze mbere igihe cy'iperereza, hakanyongeraho ko mu mwanzuro we w'ubujurire, Mukashema yasobanuye ko imvugo aha agaciro ari izo yakoreye muri Polisi, ubu akaba atagaragaza ko hari icyo anenga izo mvugo.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 156 [21] By'umwihariko ku bijyanye n'ibyo Mukashema yavugiye muri uru Rukiko, ntibyumvikana uburyo Bihimana yaba yarahurujwe na Mukashema nk'inshuti y'umuryango, kandi akaza nyakwigendera Sibomana yarangiye gupfa, ariko akajombagura ibyuma umurambo ndetse akawukuramo amaso akayajugunya mu musarani. Ikigaragarira Urukiko ahubwo ni uko bombi bafatanyije kwica Sibomana, nyuma bagerageza guhisha umurambo baza no kuwimura bawujyana mu ishyamba bagamije gusibanganya ibimenyetso by'icyaha bakoze, nk'uko kandi n'Urukiko Rukuru rwabisobanuye. [22] Kubera ibimaze gusobanurwa, hanarebwe ubugome icyaha cyo kwiyicira umugabo cyakoranwe, n'uburyo yakoze ibishoboka ngo kitamenyekana, uru Rukiko rusanga Mukashema adakwiye kugabanyirizwa igihano, akaba agomba kuguma ku gihano yahawe n'Urukiko Rukuru.

2. Kumenya niba Bihimana yarahamijwe icyaha arengana akaba akwiye kurenganurwa. [23] Bihimana avuga ko icyatumye ajurira ari uko Urukiko Rukuru rwamuhamije icyaha atigeze akora, ko nta n'ibimenyetso rwashingiyeho bigaragaza ko koko yafatanyije na Mukashema guhotora umugabo we. [24] Me Rwimo Clotilde avuga ko Bihimana yahamijwe icyaha hashingiwe ku mvugo ya Mukashema umushinja ko bafatanyije mu cyaha bahamijwe, nyamara ko Urukiko rutabanje gusuzuma niba ibyo Mukashema amushinja ari ukuri kuko yasobanuye ko imvugo ye yo mu iburanisha ari yo yahabwa agaciro.

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UBUSHINJACYAHA v. MUKASHEMA N'UNDI 157 [25] Akomeza asobanura ko mu Bugenzacyaha Mukashema yavuze ko umugabo we yishwe no gutemaguzwa umuhoro inshuro eshatu ari we (Mukashema umutemye), ageze mu Bushinjacyaha avuga ko yafatanyije na Bihimana, byahuzwa n'ibyo yagiye avuga mu nkiko bikagaragara ko ibyo avuga bidahura n'ibyo yasobanuye mbere igihe cy'iperereza, ko rero yivuguruzwa nk'uko n'Urukiko Rukuru rwabisobanuye; ibyo byose bigatuma haba ugushidikanya kugomba kurengera Bihimana hashingiwe ku ngingo ya 153

y'Itegeko ryerekeye imiburanishirize y'ianza z'inshinjabyaha ryakurikizwaga. [26] Anongeraho ko ubucuti bukabije Mukashema yavuze ko yari afitanye na Bihimana ntabwabayeho kuko Bihimana abuhakana, kandi Mukashema ubuvuga akaba atabitangira ibimenyetso. Anasanga bitumvikana uburyo Mukashema yiyambaje Bihimana nk'inshuti y'umuryango mu ma saa sita z'ijoro, ko rero hashingiwe ku ngingo ya 59 y'itegeko ryerekeye imiburanishirize y'ianza z'inshinjabyaha ryakurikizwaga, ivuga ko ushinjwa atagomba kuba umutangabuhamya, Bihimana akwiye kurenganurwa akagirwa umwere kubera ko Ubushinjacyaha butatanze ibimenyetso byuzuye bimushinja. [27] Uhagarariye Ubushinjacyaha avuga ko ingingo z'ubujurire za Bihimana nta shingiro zifite kuko Urukiko Rukuru rwasobanuye impamvu rwashingiyeho rumuhamya icyaha, akaba atabasha kuzivuguruzwa kuko nta kintu gishya azana mu bujurire. [28] Anavuga ko ibyo uburanira Bihimana asaba ko imvugo za Mukashema zitahabwa agaciro hashingiwe ku ngingo ya 59 y'Itegeko ryerekeye imiburanishirize y'ianza z'inshinjabyaha ryakurikizwaga nabyo nta shingiro bifite, kubera ko iyo ngingo yavugururwe n'iya 57 y'Itegeko rishya ryerekeye

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 158 imiburanishirize y'ianza z'inshinjabyaha ko kandi Mukashema atigeze abazwa nk'umutangabuhamya nk'uko iyo ngingo ibivuga. Anasaba Urukiko ko mu gusuzuma agaciro k'ibimenyetso byatanze, rwashingira ku ngingo ya 86 y'Itegeko rishya ryavuzwe ryerekeye imiburanishirize y'ianza z'inshinjabyaha. [29] Uhagarariye Ubushinjacyaha yongeraho ko n'ubwo Bihimana ahakana kuba yari umusambane wa Mukashema, imvugo ye itandukanye n'ibyo Mukashema yasobanuye mbere, ndetse ko hanarebwa ubuhamya bw'abaturanyi be bemeje ko Bihimana na Mukashema bajyaga basambana, ko rero ibyo bavuze bigomba guhabwa agaciro hashingiwe ku ngingo ya 65 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo, kubera ko bavuze ibyo bazi neza ku bijyanye n'ubucuti bwari hagati ya Bihimana na Mukashema. [30] Asoza asaba Urukiko kuzasuzuma imvugo ya Mukashema mu Bugenzacyaha no mu Bushinjacyaha ikanahuzwa n'ibyemejwe n'abatangabuhamya, kuko byose bigaragaza ko Bihimana yafatanyije na Mukashema gukora icyaha. UKO URUKIKO RUBIBONA [31] Ingingo ya 86, igika cya 2, y'Itegeko N°30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'ianza z'inshinjabyaha¹ ivuga ko: "Urukiko ruhamya ku buryo

1 Iyo ngingo ihura n'iya 45 y'Itegeko N°13/2004 ryo kuwa 17/5/2004 ryerekeye imiburanishirize y'ianza z'inshinjabyaha nk'uko ryujijwe kandi ryahinduwe, ryakurikizwaga igihe icyaha cyakorwaga.

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UBUSHINJACYAHA v. MUKASHEMA N'UNDI 159 butavuguruzwa ko ibimenyetso byose bishinje cyangwa bishinjura ari byo kandi ko bishobora kwemerwa". [32] N'ubwo mu bujurire bwe Bihimana akomeje guhakana icyaha nk'uko yagihakanye mu Rukiko Rukuru, uru Rukiko rushingiye ku bisobanuro byatanze haruguru ku bijyanye na Mukashema, rusanga ubujurire

bwa Bihimana nta shingiro bufite kuko Mukashema yasobanuye mbere ku buryo busobanutse uko bafatanyije kwica umugabo we, ndetse nk'uko byavuzwe haruguru, muri ibyo bisobanuro anagaragaza ko yajyaga asambana na Bihimana, ko kandi bifuzaga kuzabana, nanone akavuga ko icyo yapfaga n'umugabo we Sibomana ari uko yari afite inshoreke yitwa Mukandoli Athanasie, ndetse ko ku rundi ruhande Bihimana nawe atumvikanaga na Sibomana kubera ko uyu yari yarinjiye Mukandoli Athanasie wari warabanje kwinjirwa na Bihimana. [33] Byongeye kandi, mu bisobanuro bye, Mukashema yavuze ko umugambi we na Bihimana wo kwica Sibomana bari bawumaranze nk'amezi agera kuri atanu. [34] Urukiko iyo rusuzumye ibisobanuro Mukashema yagiye atanga nk'uko byagaragajwe, rusanga Mukashema na Bihimana baragambiriye kuva mbere kwica nyakwigendera Sibomana, ndetse bamaze kumwica bafatanyije gukora ibishoboka byose ngo bahishe ibimenyetso by'icyaha; kubera iyo mpamvu rukaba rusanga nta gushidikanya ku ruhare rwa Bihimana mu cyaha yahamijwe n'Urukiko Rukuru. [35] Urukiko rusanga nanone ibisabwa n'uwunganira Bihimana bijyanye no gutesha agaciro imvugo za Mukashema ubwo yabazwaga mu Bugenzacyaha no mu Bushinjacyaha hashingiwe ku ngingo ya 59 y'Itegeko N°13/2004 ryo kuwa

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 160 17/5/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakurikizwaga igihe icyaha cyakorwaga, nta shingiro ifite, kuko Mukashema atabajijwe nk'umutangabuhamya nk'uko iyo ngingo yabiteganyaga, ahubwo yabajijwe nk'ukurikiranweho icyaha kandi ufite amakuru yagitangaho cyane cyane ko yanemeye uruhare rwe. III. ICYEMEZO CY'URUKIKO [36] Rwemeje ko ubujurire bwa Mukashema Janvière na Bihimana Jean Baptiste nta shingiro bufite; [37] Rwemeje ko imikirize y'urubanza RPA0069/10/HC/KIG rwaciwe kuwa 16/6/2011 n'Urukiko Rukuru, i Kigali, idahindutse; [38] Ruvuze ko amagarama y'urubanza aherera ku Isanduku ya Leta.

2 Ivuga itya: “Abantu Ubushinjacyaha bufiteho ibimenyetso byo kuba baragize uruhare mu ikorwa ry'icyaha ntibashobora kwumvwa nk'abatangabuhamya”.

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UBUSHINJACYAHA v. NGURINZIRA [Rwanda URUKIKO RW'IKIRENGA – RPAA0118/11/CS (Mutashya, P.J., Munyangeri na Hitiyaremye, J.) 13 Ugushyirye 2015] Amategeko agenga ibimenyetso – Ubuhamya butanzwe n'ufitanye isano n'uwo abutangira – Imvugo ya nyina w'umwana wahohotewe cyangwa iy'umwana ubwe ishingirwaho mu ica ry'urubanza, kuko ntaho amategeko abuza ko umubyeyi w'umwana wahohotewe yatanga ubuhamya ku byabaye – Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 63. Incamake y'ikibazo: Uregwa yakurikiranywe mu Rukiko rw'icyahoze ari Intara ya Kigali Ngali aregwa icyaha cyo gusambanya umwana w'imyaka 8, cyakozwe ubwo uwo mwana yaratumwe na nyina aho uregwa yabaga, yahagera uyu agahita amuterura akamujyana mu nzu akamwambura imyenda akamusambanya ndetse akamwangiza bikomeye nk'uko na raporo ya muganga yabigaragaje. Uregwa yaburanye ahakana icyaha, ariko Urukiko rushingiye ku bimenyetso cyane

cyane ku mvugo z'abatangabuhamya no kuri raporo ya muganga, rurakimuhamya rumuhanisha igifungo cya burundu. Yajuririye icyo cyemezo mu Rukiko Rukuru rwa Kigali rufata umwanzuro ko icyo kirego kitari mu bubasha bwarwo, rurwohereza mu Rukiko Rukuru, Urugereko rwa Rwamagana kuko ariho icyaha cyakorewe, maze rusanga icyaha aregwa kimuhama rumuhanisha igifungo cy'imyaka 15 hamwe 161

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 162 n'ihazabu y'amafaranga ibihumbi ijana, rumugabanyirije kubera ko ari ubwa mbere akoze icyaha. Yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko Inkiko zibanza zamuhamije icyaha kandi ntacyo yakoze, ko n'icyemezo cya muganga zashingiyeho cyabonetse nyuma y'ibyumweru bibiri akaba atakizera, kandi ko yari asanzwe afitanye amakimbirane na nyina w'umwana. Ubushinjacyaha bwo buvuga ko hari abatangabuhamya bamubonye asohotse mu nzu ari gufunga umukandara w'ipantalo. Incamake y'icyemezo: 1. Ntacyabuza imvugo ya nyina w'umwana wahohotewe cyangwa iy'umwana ubwe kuba yashingirwaho mu ica ry'urubanza, kuko ntaho amategako abuza ko umubyeyi w'umwana wahohotewe yatanga ubuhamya ku byabaye.

2. Ibimenyetso bishingiye ku mvugo z'umwana wakorewe icyaha, ku batangabuhamya babajijwe, ku mvugo z'uregwa ubwe zivuguruzanya no ku cyemezo cya muganga, byose bifatiwe hamwe, birahagije kugirango uregwa ahamwe n'icyaha cyo gusambanya umwana utarageza ku myaka 8 y'amavuko, bityo ubujurire bwe bukaba nta shingiro bufite. Ubujurire nta shingiro. Ntagihindutse ku rubanza rwajuririwe. Amagarama aherereye ku isanduku ya Leta. Amategako yashingiweho: Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 63.

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UBUSHINJACYAHA v. NGURINZIRA 163 Imanza zifashishijwe: Ubushinjacyaha v. Nshimiyimana n'abandi, RPAA0059/08/CS, rwaciye n'Urukiko rw'Ikirenga ku wa 19/11/2010. Urubanza I. IMITERERE Y'URUBANZA [1] Uru rubanza rwatangiriye mu Rukiko rw'icyahoze ari Intara ya Kigali Ngali Ngurinzira Sylvestre aregwa icyaha cyo gusambanya umwana w'imyaka 8 witwa N.M.L. Ubushinjacyaha buvuga ko ku wa 26/12/2001, Nzitabakuze Providence nyina wa N.M.L. yamutumye kuzana isuka kwa Nyirankambabaye ahasanga Ngurinzira Sylvestre, uyu ahita amuterura amujyana mu nzu amwambura imyenda aramusambanya aramwangiza bikomeye nk'uko na raporo ya muganga yabigaragaje. Uregwa yaburanye ahakana icyaha, ariko Urukiko rushingiye ku bimenyetso cyane cyane ku mvugo z'abatangabuhamya no kuri raporo ya muganga, rurakimuhamya rumuhanisha igifungo cya burundu. [2] Ngurinzira Sylvestre yajuririye mu Rukiko Rukuru rwa Kigali rufata umwanzuro ko icyo kirego kitari mu bubasha bwarwo, rurwohereza mu Rukiko Rukuru, Urugereko rwa Rwamagana kuko ariho icyaha cyakorewe. [3] Muri urwo Rukiko, Ngurinzira Sylvestre yakomeje guhakana icyaha, ariko mu rubanza rwaciye ku wa 7/1/2011, rusanga kimuhama rumuhanisha igifungo cy'imyaka 15 hamwe n'ihazabu y'amafaranga ibihumbi ijana, Urukiko

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 164 rukaba rwaramugabanyirije kubera ko ari ubwa mbere akoze icyaha. [4] Ngurinzira Sylvestre yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko Inkiko zibanza zamuhamije icyaha kandi ntacyo yakoze, ko n'icyemezo cya muganga zashingiyeho cyabonetse nyuma y'ibyumweru bibiri akaba atakizera, kandi ko yari asanzwe afitanye amakimbirane na nyina w'umwana. Ubushinjacyaha bwo bukavuga ko hari abatangabuhamya bamubonye asohotse mu nzu ari gufunga umukandara w'ipantalo. [5] Urubanza rwaburanishijwe mu ruhamye ku wa 12/10/2015, Ngurinzira Sylvestre yunganiwe na Me Mukamana Elisabeth, naho Ubushinjacyaha buhagarariwe na Bunyoye Grâce, Umushinjacyaha ku rwego rw'Igihugu. II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO Kumenya niba hari ibimenyetso bidashidikanywaho bihamya Ngurinzira Sylvestre icyaha. [6] Ngurinzira Sylvestre mu gusobanura ubujurire bwe, avuga ko akimara gufatwa umugenzacyaha yasabye ibyemezo bya muganga bigaragaza ko uwo mwana yafashwe ku ngufu, hashira igihe bitaraza aramurekura, biboneka nyuma y'ibyumweru bibiri yararekuwe, arongera arafatwa, avuga ko atumva ukuntu ibyo byemezo byari byabanje kubura, aho byaturutse nyuma. Avuga kandi ko yari afitanye ikibazo na nyina w'umwana yari acumbitseho kuko yamubwiraga kuvoma amazi yo kwenga akabyanga bituma amutega uwo

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UBUSHINJACYAHA v. NGURINZIRA 165 mutego. Asoza avuga ko icyemezo cya muganga kigaragaza ko umwana yaba yararongojwe urutoki, akaba asanga ibyo barabikoze kugira ngo bamuhamye icyo cyaha. [7] Me Mukamana Elisabeth avuga ko yari yagiriye uwo yunganira inama yo kureka ikirego kubera ko umucamanza yamugabanyirije ibihano agahanishwa igifungo cy'imyaka 15, akaba asigaje umwaka umwe gusa, asaba Urukiko kuzahuza icyemezo cya muganga n'imvugo z'abatangabuhamya hanyuma hakagumaho igihano yahawe. [8] Uhagarariye Ubushinjacyaha avuga ko nubwo Ngurinzira Sylvestre avuga ko bamuhimbiye icyaha, yiyibagiza imvugo z'abatangabuhamya bamubonye asohoka mu nzu afunga ipantalo, ko kandi imvugo z'uregwa zivuguruzanya, aho hamwe yavuze ko nyina w'umwana bapfa y'uko yanze ko baryamana, nyuma agahindura akavuga ko icyo bapfa ari uko yanze kumuvomera. Avuga kandi ko n'ubwo uregwa avuga ko yafashwe agafungurwa, ibyo bitavuze ko iyo raporo yahimbwe, ko kuba muganga yaravuze ko umwana yangiritse ku buryo umuntu yashyiramo urutoki, bitavuga ko yangijwe hakoreshejwe urutoki nk'uko Ngurinzira Sylvestre ashaka kubyumvikanisha. UKO URUKIKO RUBIBONA [9] Urukiko rurasanga imiburanire ya Ngurinzira Sylvestre kuva urubanza rwatangira, yararanzwe no guhakana icyaha haba mu nzego z'iperereza haba no mu nkiko. [10] Urukiko rurasanga mu ica ry'urubanza, inkiko zarashingiye ku mvugo z'abatangabuhamya bemeje ko

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 166 Nyirandayisenga Marie Louise yagiye kwa Nyiransekambabaye akahasanga Ngurinzira Sylvestre, hakabamo n'abemeje ko bamubonye asohoka mu nzu afunga ipantalo, zishingira kandi ku cyemezo cya muganga cyagaragaje ko umwana yangiritse bikomeye. [11] Urukiko rurasanga Nzitabakuze Providence ariwe nyina w'umwana yarasobanuye ko yari yatumye uwo mwana kwa Nyiransekambabaye kumuzanira isuka agasangayo Ngurinzira Sylvestre agahita amufata nk'uko n'uwo mwana yabisobanuye. [12] Urukiko rurasanga Ngurinzira Sylvestre atarabashije kuvuguruza imvugo z'umwana wasambanyijwe, n'iza nyina wabwiwe n'umwana we uburyo yamusambanyije, ngo agaragaze icyo yaba apfa na nyina w'umwana, bityo, ubwo buhamya bwa Nzitabakuze Providence ariwe nyina w'umwana bukaba bwahabwa agaciro kabone n'ubwo ari nyina w'uwakorewe icyaha. [13] Urukiko rurasanga, nk'uko byanemejwe mu rubanza RPAA0059/08/CS Ubushinjacyaha bwaregagamo Nshimiyimana Alexis, Twagirumukiza Anastase na Habimana rwaciwe n'uru Rukiko ku wa 19/11/2010, ubuhamya bw'abantu butatashwa agaciro n'uko bafitanye amasano hagati yabo cyangwa se bafite inyungu mu rubanza, kuko agaciro kabwo kadashingiye ku babutanga ahubwo gashingiye ku kuri gukubiye muri ubwo buhamya, kwemezwa gusa n'urukiko nyuma yo gusesengura imvugo z'abatangabuhamya. [14] Urukiko rurasanga kandi hashingiye ku ngingo ya 63 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko "uwo ari we wese ashobora kumvwa nk'umutangabuhamya mu rukiko

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UBUSHINJACYAHA v. NGURINZIRA 167 keretse abantu badafite ubushobozi bwo kuba abatangabuhamya mu nkiko"; ko kandi "abafatwa nk'abadashobora kuba abatangabuhamya mu nkiko ari abantu batabasha kubara inkuru y'uko ibintu byagenze baramutse batanzweho abatangabuhamya, ntacyabuza imvugo ya nyina w'umwana cyangwa iy'umwana kuba yashingirwaho mu ica ry'urubanza, kuko ntaho amategeko abuza ko umubyeyi w'umwana wahohotewe yatanga ubuhamya ku byabaye. [15] Ku bijyanye n'imvugo z'umutangabuhamya Ntamfurayishyari bita Kanyange uvuga ko yabonye Ngurinzira Sylvestre asohoka yambara ipantalo, Urukiko rurasanga yarasobanuye neza uburyo uwo mwana yageze iwe atumwe n'ababyeyi be, na Ngurinzira Sylvestre nawe ari aho, nyuma akaza kumubona asohotse mu nzu yambara ishata akenyera umukandara, yahinduye imyenda yari yambaye, hashize akanya akabona na NY. nawe asohotse muri iyo nzu Ngurinzira Sylvestre acumbitsemo afite isoni cyane. [16] Urukiko rurasanga iyo mvugo ya Ntamfurayishyari bita Kanyange yababwaga agaciro, kuko igaragaza neza ko Ngurinzira Sylvestre yari kumwe n'uwo mwana muri iyo nzu bonyine, Ngurinzira Sylvestre agasohoka agaragaza ibimenyetso by'uko muri uwo mwana yari kumwe na Nyirandayisenga muri iyo nzu, yari yiyambuye kuko yasohotse yambara ishata akenyera n'umukandara. [17] Urukiko rurasanga ibyo Ngurinzira Sylvestre avugaga ko Ntamfurayishyari bita Kanyange yamubeshyeye kubera amafaranga ibihumbi bibiri yari amurimo, nta shingiro byahabwaga kuko icyo kibazo cy'amafaranga kitari gutuma Ntamfurayishyari bita Kanyange ahita ahimbira aho ko yabonye Ngurinzira Sylvestre asohotse mu nzu ameze atyo.

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 168 [18] Urukiko rurasanga imvugo za Ngurinzira Sylvestre ubwe, zigaragaza ko yagiye yivuguruza mu nzego zose yaburaniyemo. Mu Bugenzacyaha yavuze ko uwitwa Ntamfurayishyari bita Kanyange (ariwe wari umucumbikiye) yashatse kumwambura amafaranga yakoreye amuhimbira icyaha, ariko nyuma, akaba yaraje kwivugira ko nta deni yari akimurimo. [19] Kuri Nzitabakuze Providence ariwe nyina w'umwana, Ngurinzira Sylvestre abazwa mu Bugenzacyaha ntiyigeze avuga ko hari icyo bapfa, ariko mu rubanza rwo mu Rukiko rw'Intara ya Kigali Ngali ku rupapuro rwa 7, yavuze ko icyo amuziza ari uko yanze ko baryamana, ubu muri uru rukiko akaba yarivugurujwe avuga ko icyo amuziza ari uko yanze kumuvomera amazi bigatuma amuhimbira icyo cyaha. [20] Urukiko rurasanga ize mvugo za Ngurinzira Sylvestre zigenda zivuguruzanya bya hato na hato, nta kindi zigamije uretse gushaka guhunga icyaha no gutesha agaciro imvugo z'abatangabuhamya bamubonye, zikaba nta gaciro zahabwa, cyane cyane ko, nk'uko bigaragara mu mvugo ye mu Bugenzacyaha, nawe yiyemerera ko uwo mwana yaje amusanga kwa Ntamfurayishyari bita Kanyange aho yari acumbitse bakabonana, ndetse akinjira mu nzu Ngurinzira Sylvestre yabagamo, kuba rero nawe yemera ko uwo munsu no muri ayo masaha umwana yasambanyijwemo babonanye, ni ikindi kimenyetso kiyongera ku bindi kigaragaza ko nta wundi wasambanyije uwo mwana usibye we. [21] Urukiko rurasanga imvugo ya Ngurinzira Sylvestre ko agifatwa yasabye ko umwana bamujyana kwa muganga hakarenga ibyumweru bibiri bataramujyana, ibyo nta shingiro byahabwa kuko igihe cyose ikimenyetso kibonekeye nk'icyo

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UBUSHINJACYAHA v. NGURINZIRA 169 cyo kwa muganga, gishobora gushingirwaho mu gukurikirana ukekwa icyaha bitewe n'uko iperereza riba rigikomeje hagishakishwa ibindi bimenyetso. [22] Ku byerekeye imvugo ya Ngurinzira Sylvestre ko icyemezo cya muganga kigaragaza ko umwana yaba yararangojwe urutoki, akavuga ko ari ababyeyi b'umwana babikoze bashaka kumusiga icyaha, Urukiko rurasanga na byo nta shingiro byahabwa kuko muganga yavuze ko akarangabusugi k'umwana kashwanyaguritse ku buryo umuntu yacishamo urutoki, ntaho yigeze avuga ko yarangojwe urutoki, muganga akaba yarabivuze muri aya magambo: "la vulve est hyperthémiée, l'hymen perforé et déchiquetté, le toucher vaginal permet le passage d'un doigt", muganga akaba yarashoje yemeza ko umwana yasambanyijwe (cas de viol consommé). [23] Hashingiwe ku bimaze kuvugwa, Urukiko rurasanga ibimenyetso bishingiye ku mvugo z'umwana wakorewe icyaha, ku batangabuhamya babajijwe, ku mvugo za Ngurinzira Sylvestre ubwe zivuguruzanya no ku cyemezo cya muganga, byose bifatiwe hamwe, bihagije kugirango Ngurinzira Sylvestre ahamwe n'icyaha aregwa cyo gusambanya umwana utarageza ku myaka 8 y'amavuko, bityo ubujurire bwe bukaba nta shingiro bufite. III. ICYEMEZO CY'URUKIKO. [24] Rwemeje ko ubujurire bwa Ngurinzira Sylvestre nta shingiro bufite;

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ICYEGERANYO CY'IBYEMEZO BY'INKIKO 170 [25] Rwemeje ko urubanza RPA0168/09/HC/RWG rwaciwe ku wa 7/1/2010 rudahindutse mu ngingo zarwo zose, ni ukuvuga ko ibihano Ngurinzira Sylvestre yari yahawe cy'igifungo cy'imyaka 15 n'ihazabu y'amafaranga ibihumbi ijana bihamyeho. [26] Rutegetse ko amagarama y'urubanza ahereye mu isanduku ya Leta kuko uregwa afunze.

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NTIHEMUKA Emmanuel

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PREFACE Dear Readers, First and foremost, we take this opportunity to wish you a happy and prosperous New Year 2017. This year, the Rwandan Judiciary will continue its task of publishing the Rwanda Law Reports and is hereby honoured to present to you the first volume of the Rwanda Law Reports 2017. As we have often stated, your opinions are very important to us. We encourage you to give us your feedback for the improvement of this task. This volume consists of eleven

cases (11), including two procedural cases (2), one administrative case (1), two civil cases (2), three commercial cases (3) and three (3) criminal cases. We also take this opportunity to remind you that cases contained in this volume can be accessed on the website of the judiciary of Rwanda on: <http://decisia.lexum.com/rlr/en/nav.do> Prof. RUGEGE Sam President of the Supreme Court President of the High Council of Judiciary

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SCOPE OF THE REPORTS These reports cover cases decided by the Supreme Court listed under the heading of “Citation” below.

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xviii carrier's resident, headquarters, the place of the branch where the contract was signed, or the place of destination of passengers – The procedure shall be governed by the law of the seized Court – Warsaw Convention relating to International Carriage by Air, Signed at Warsaw on 12 October 1929 that has been ratified by Rwanda and Belgium, article 28. UMWARI ET AL v. SN BRUSSELS AIRLINES....113 Tax law – Income tax – Business profit – No tax may be levied on the loan granted to the taxpayer since it is not the income from business transactions or the income from the investment – Law No16/2005 of 18/8/2005 on direct income tax, article 10. RWANDA REVENUE AUTHORITY v. MUHIRE...87 Tax statute of limitation – The statute of limitation for the value added tax is of public order which may be raised by the taxpayer at any stage of proceeding – Law N°25/2005 of 4/12/2005 on tax procedures, article 27 – Law N°06/2001 of 20/1/2001 on Value Added Tax, article 37. RWANDA REVENUE AUTHORITY v. MUHIRE...87 RWANDA LAW REPORTS

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RWANDA LAW REPORTS 2 decision in the Supreme Court claiming that the court rejected his opposition while the case was heard in his default and moreover he was not lawfully summoned which deprived him the right to defense. The Court declared that Gahiga was deprived of the right to defense as provided for by the Constitution of Rwanda, therefore he must be accorded right that is granted to the party whose the judgment was ruled in default, so that he can file an opposition claim of the judgment rendered by the High Court at Kigali. In his defence, Gahiga claims that he was ordered to pay 6,596,526.37USD, while the case was adjudicated without summoning him or being represented so that he can defend himself, even though the contract he concluded with Fortis Business Holdings LLC he consented to judgment by confession. Therefore he is of the view that those are contrary to the public order and general principles of the Rwandan laws which accords the right to defence. Gahiga adduces that the judgment which Fortis Business Holdings LLC requests its exequatur in Rwanda, the same was also requested for it in Switzerland. Fortis Business Holdings LLC lost the case on both the first and appeal level, thus he prays that the Court applies the precedent of those courts. Gahiga also claims that Fortis Business Holdings LLC pays him moral damages, procedural and counsel fees and damages for being

dragged into vexatious litigations. Fortis Business Holdings LLC claims that all the requirements for the judgment to be executed in Rwanda were fulfilled because its court procedure does not violate the public order and the general principle of the Rwandan laws and that in the

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GAHIGA v. FORTIS BUSINESS HOLDINGS LLC 3 contract concluded between them, they asserted that it is not necessary that for Gahiga to appear and defend himself. Fortis Business Holdings LLC also claims that the damages requested are baseless because his claims originate from the contract they concluded. Regarding the procedural and counsel fees, it argues that they should not be awarded to him because he does not produce the evidence for them. Held: 1. The fact that the appellant was not summoned to defend himself in the case N°09103391, his right to defence was not violated and that right is public order procedure in the Rwandan laws, therefore that judgment cannot be executed in Rwanda because the defendants right were violated.

2. It is not necessary to examine whether the debt owed to Fortis Business Holdings LLC was reimbursed by Carl Linde because the judgment N°09103391 cannot be executed in Rwanda.
3. Damages for vexatious actions are not awarded if their basis were not established.
4. Procedural and counsel fees are awarded in the court discretion in case their computations were not established. Appeal has merit; The court fees to be borne by the respondent. Statutes and statutory instruments referred to: The Constitution of Republic of Rwanda of 04 June 2003 as amended to date, article 18. Organic Law N°51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts, article 91.

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RWANDA LAW REPORTS 4 Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 10. No case referred to.

Judgment

I. BACKGROUND OF THE CASE [1] Fortis Business Holdings LLC sued Gahiga Médard in the High Court of Kigali applying for the exequatur of the judgment N°09103391 rendered by the Supreme Court of the state of New York in Rwanda. [2] The Court delivered judgment RC0004/11/HC/KIG, in the default of Médard Gahiga, and held that the claim was lawfully instituted and has merit; therefore it ordered for its execution in Rwanda. [3] After the delivery of the judgment, Médard Gahiga applied for the opposition and the Court rendered the judgment RC0038/11/HC/KIG, and held that the claim of opposition against the judgment RC0004/11/HC/KIG is not admissible and upheld the previous rulings. It motivated that Fortis Business Holdings LLC erred where it sued him unnecessarily and following the purpose in such claims and the issues to be examined by the judge as provided by the law, such claims are not conducted through contradictory process. Furthermore, Gahiga was not able to indicate the legal provisions he bases on to lodge the opposition of such cases.

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GAHIGA v. FORTIS BUSINESS HOLDINGS LLC 5 [4] Gahiga appealed in the Supreme Court, claiming that the court rejected his opposition claim while he was not lawfully summoned which prevented him to exercise his right to defense. [5] After examining whether the opposition claim of Gahiga for the judgment RC0004/11/HC/KIG should have been admitted by the High Court, this Court found that Gahiga was considered like a party while he was not summoned to plead. Therefore he was deprived of his right to defence in courts of law which is enshrined in article 18 of the Constitution of 04/06/2003 as amended to date, given that in such cases, parties are normally summoned to appear, thus it declared that he should be regain the right which is usually accorded to a party whose case was heard in absentia and be allowed to oppose the judgment RC0004/11/HC/KIG. [6] The hearing of the case on merit resumed on 14/01/2014 in public whereby Fortis Business Holdings LLC was assisted by Counsel Mugisha Richard, while Gahiga Médard was assisted by Counsel Rwihandagaza Richard. II. ANALYSIS OF LEGAL ISSUES

- a. Whether the judgment N°09103391 delivered by the Supreme Court of the State of New York fulfills the requirements of exequatur in Rwanda [7] Counsel Mugisha claims that Gahiga Médard and Robert Hirsch stood jointly and severally surety for Hirsch & Cie Company for the loan it got from Fortis Business Holdings LLC worth 5,250,000USD.

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RWANDA LAW REPORTS 6 [8] In addition, in order to confirm the security, Gahiga stood surety for the loan of Hirsch & Cie on 06/10/2008 in accordance with article 111 Swiss Code of Obligations), whereby he even signed a guaranty agreement. [9] Counsel Mugisha alleges in addition that in accordance to article 19 of the Guaranty Agreement, both party assented that in case of default of payment there will be confession of judgement in favour of the applicant in accordance to article of 3218 of Civil practice law and rules of the state of New York, for all unpaid amount of dollars, interests, procedural and counsel fees, which implies the hearing of the case was conducted without summoning him. [10] He argues therefore that it was in that context that on 11/03/2009, Fortis Business Holdings seized the Supreme Court of New York state whereby through the judgment by confession N°09103391 Gahiga was ordered to pay a total of 6,596,526.37USD, therefore it requests that judgment to be executed in Rwanda because it is aware that Gahiga owns the property which can be realized for payment. [11] As of the law, Counsel Mugisha adduces that following article 91 of the Organic Law N°51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of Courts, all the requirements for the exequatur to be carried in Rwanda were fulfilled because the process of its adjudication is neither contrary to the public order nor to the general principles of law, that the rendered judgment complies with the law and that in the agreement between both parties, they consented that it is not necessary for Gahiga to appear in order to exercise his right to defence.

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GAHIGA v. FORTIS BUSINESS HOLDINGS LLC 7 [12] He further alleges that the entire loan for which Gahiga lost in the case, only 1,700,000USD was paid. [13] Counsel Rwihandagaza representing Gahiga argues that on 08 September 2008, Hirsch & Cie Company was given a loan of 5,250,000USD by Fortis Business Holdings LLC which was secured by Robert Hirsch, Carl Linde and Gahiga guarantee, and when the loan was not paid on time, Fortis Business Holdings LLC sought payment from Gahiga Médard and Carl Linde. [14] He further adduces that the judgment N°09103391 rendered on 11 March 2009 by the Supreme Court of the State of New York (jugement par acquiescement – judgment by confession), in which Gahiga was ordered to pay 6,596,526.37USD, was rendered without being served the summon so that he can appear to present his defence or being informed of the date of the hearing for him to be present or be represented. [15] Therefore, Counsel Rwihandagaza is of the opinion that even though in the agreement Gahiga concluded with Fortis Business Holdings LLC he consented to the judgment by confession, the judgment for which the exequatur in Rwanda is requested is contrary to the public order and even general principles of law which are followed in Rwanda because Gahiga was not summoned and be given an opportunity to defend himself for his interests (violation of the right to defense), which is contrary to the provisions of article 18 of the Constitution of the Republic of Rwanda of 04/06/2003 as amended to date, as well as the provisions of article 10 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, which provides that no judgment can

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RWANDA LAW REPORTS 8 be rendered without the party defending himself of being summoned. [16] Regarding the loan, Counsel Rwihandagaza argues that Robert Hirsch was declared bankrupt on 14 July 2009 and Hirsch & Cie Company was declared bankrupt on 01 December 2011, therefore Fortis Business Holdings LLC declared its credit to the office in charge of Lausanne and it was accepted to be paid. He was paid 1,700,000USD by SAN Foundation which bought Hôtel Megève which belonged to Robert Hirsch. He further argues that there is another payment got from the sale of Carl Linde's property located in Tel-Aviv, Israel and in London, the total amount paid being 7,250,000USD, therefore there is no reason to apply for the exequatur for the mentioned judgment in Rwanda. [17] He further adduces that Gahiga was surprised by the payment order of CHF 6,474,058.80 served to him on 01 October 2010 (commandement de payer N°01022559) pursuant to the mentioned judgment, of which he opposed. On 06 October 2011, Fortis Business Holdings LLC seized the First Instance Canton Court of Genève applying for the exequatur in Switzerland but it lost as demonstrated in the judgment rendered on 19 September 2012, as it appealed and also lost as demonstrated in the judgment rendered on 22 March 2013, and it has sued in Rwandan Courts for the cases it had lost. Therefore he prays that the court applies the precedents of those courts so that it rejects the exequatur of the above mentioned judgment in Rwanda.

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GAHIGA v. FORTIS BUSINESS HOLDINGS LLC 9 THE VIEW OF THE COURT [18] Regarding the exequatur of decisions taken by foreign courts, article 91 of the Organic Law N°51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of Courts provides that in examination of such applications the following shall be considered: 1° whether the foreign judgment does not contradict Public order or basic Legal tenets of Rwandan public laws; 2° whether the case was finally heard and determined in accordance with the laws of the country of origin; 3° whether a copy of the judgment is by all means authentic in accordance with such laws; 4° whether the right of defence was respected. [19] The contention in this judgment concerns the judgment N°09103391 delivered on 11/03/2009 by the Supreme Court of the State of New York of which is applied to be executed in Rwanda was rendered contrary to the general laws of public order and the principles of law followed in Rwanda and also his right to defence was violated because Gahiga was not summoned and be given an opportunity to defend himself for his interests (violation of right to defence). [20] As explained in the legal dictionary¹ “confession of judgment is a written agreement in which the defendant in a lawsuit admits liability and accepts the amount of agreed-upon damages he/she must pay to plaintiff (person suing him/her),

1 <http://legal-dictionary.thefreedictionary.com/Confession+of+Judgment>.

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RWANDA LAW REPORTS 10 and agrees that the statement may be filed as a court judgment against him/her if he/she does not pay or perform as agreed. This avoids further legal proceedings and may prevent a legal judgment being entered (made) if the terms are fulfilled by defendant”. [21] Regarding the right to defence, article 18 paragraph 2 of the Constitution of the Republic of Rwanda of 04/06/2003 as amended to date, provides that the right to be informed of the nature and cause of charges and the right to defence are absolute at all levels and degrees of proceedings before administrative, judicial and all other decision making organs. [22] Regarding the Court procedures, article 10 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure also emphasize the right to defence by providing that no party to the case shall be subject to a Court ruling without being heard or summoned. [23] It is evident that in the case N°09103391 which was adjudicated by the Supreme Court of the State of New York, Gahiga Médard was not summoned to defend himself, thus it did not respect his right to defence, which is provided in the above mentioned legal provisions. Furthermore the required procedures for the case to be heard in the Rwandan courts were not respected as required by the mentioned procedure law. [24] In accordance to the motivations stated above, the Court finds that the contested judgment in this case should not be executed in Rwanda because during its hearing the right of the defendant was violated and also it is contrary to the public order which regulates the court proceedings in the Rwandan Courts.

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GAHIGA v. FORTIS BUSINESS HOLDINGS LLC 11 [25] That also concurs with the rulings of the judgment delivered 22 March 2013 by Court of Justice of Canton of Genève in Switzerland, on the similar claim where Fortis Business Holdings LLC sued Gahiga Médard, it held that a judgment delivered in foreign country cannot be executed in that country if it did not respect the laws of public order relating to court procedures, which provides that the party must be informed that he was sued, served with summon and submit his defence submissions. Thus it found that the Court of the State of New York rendered the judgment against Gahiga without fulfilling those requirements, and it rejected the appeal of Fortis Business Holdings LLC. [26] Therefore the Court finds that it is not necessary to examine whether judgment N°09103391 rendered by the Supreme Court of the State of New York should not be executed in Rwanda on the basis that the loan of Fortis Business Holdings LLC reimbursed by Carl Linde.

- b. The basis of damages claimed by Gahiga Médard [27] Counsel Rwihandagaza claims that Fortis Business Holdings LLC instituted vexatious action against Gahiga (Reckless and vexatious action), thus it should pay him moral damages amounting to 150,000,000Frw, and 20,000,000Frw for procedural and counsel fees. [28] Counsel Mugisha argues that the moral damages which Gahiga claims from Fortis Business Holdings LLC are baseless because it's claims in this case originates from the agreements they concluded, regarding the procedural and counsel fees does not prove it, thus it should not be awarded to him.

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RWANDA LAW REPORTS 12 THE VIEW OF THE COURT [29] Regarding the moral damages amounting to 150,000,000Frw claimed by Gahiga, the court finds that there is no evidence that Fortis Business Holdings LLC instituted vexatious action for exequatur in Rwanda because it thought that it had a ground, thus they should not be awarded to him. [30] Regarding the procedural and counsel fees of 20,000,000Frw, the Court is of the view that Gahiga does not prove how he computed them, therefore he is awarded 5,000,000Frw in the discretion of the Court. III. DECISION OF THE COURT [31] Holds that the claim of Fortis Business Holdings LLC lacks merit. [32] Orders that judgment N°09103391 delivered on 11 March 2009 by the Supreme Court of the State of New York must not be executed in Rwanda. [33] Orders Fortis Business Holdings LLC to pay Gahiga Médard 500,000Frw for the procedural and counsel fees. [34] Orders Fortis Business Holdings LLC to pay 25,750Frw for the court fees.

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HAGENGIMANA v. UWIHOREYE [Rwanda SUPREME COURT – RCAA0006/13/CS (Hatangimbabazi, P.J., Mukamulisa and Hitiyaremye, J.) July 10, 2015] Law determining jurisdiction of courts – Exequatur – In order for the court to approve the execution of decisions taken by foreign courts in Rwanda, it shall consider whether the foreign judgment does not contradict Public order or basic Legal tenets of Rwandan public laws; whether the case was finally heard and determined in accordance with the laws of the country of origin; whether a

copy of the judgment is by all means authentic in accordance with such laws; whether the right of defence was respected – Organic Law N°51/08 of 09/09/2008 determining the organisation, functioning and jurisdiction of the Court as amended to date, article 91. Civil procedure – Burden of proof – Every plaintiff must prove a claim. Failure to obtain proof, the defendant wins the case – Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 9. Damages – Damages for being dragged into lawsuits – Procedural costs and counsel fees – The litigant who was not satisfied with the ruling of the High Court is entitled with the right to appeal against the judgment; therefore damages relating to being dragged into lawsuits can be awarded to the applicant – The litigant deserves to be awarded procedural expenses and counsel fees because he ought to spend money for case follow up and hired an advocate because of appeal claim – 13

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RWANDA LAW REPORTS 14 Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 162. Facts: Uwihoreye filed the claim to the High Court of Kigali requesting the execution of the judgment of divorce rendered by the court in United State of America in Rwanda. In the course of the hearing Hagenimana intervened voluntarily whereby he requested the claim of Uwihoreye to be considered without merit alleging that the judgment rendered by the court in United States contravenes the Rwandan Law because he was not given the opportunity to exercise the right to defense, that the hearing was held in absentia and that the judgment concerning the juvenile case was provisional and rendered in absentia as well. The high court decided the claim to have merit and ordered the aforementioned judgment to be executed in Rwanda, therefore dismissing the voluntary intervention by Hagenimana on the ground that the judgment for which it is requested to be executed in Rwanda did not contradict Rwandan law, that it was final as it is referred to as final decree on its first page and that it fulfils the conditions of an authentic document as it was approved by the Rwandan Embassy in United States of America which affixed its stamp to the copy and finally the case relating to the custody of children was heard in the case titled “Juvenile and Domestic relations”. Hagenimana appealed to the Supreme Court stating that the judge at the High Court disregarded the fact that the provisions of the law referred to for divorce decision are in contradiction with the Rwandan law and misunderstood the facts. He also alleges that this judge disregarded the fact that it was Uwihoreye who had the burden to provide evidence indicating that Hagenimana was served summons to appear in the case

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15 relating to the custody of children and that relating to divorce which was delivered in United States of America. Uwihoreye presents his grounds against the appeal claim stating that there is nothing Hagenimana has criticized the judgment rendered by the High Court because he himself admit that the judgment delivered in United States of America become final; and therefore it should be executed. Uwihoreye states in addition that the evidence to prove this admission that it became final relies on the fact that he subsequently got married to another spouse relying on that

divorce judgment. Uwihoreye raised a cross-appeal beside the appeal claim lodged by Hagenimana whereby he requested the payment of expenses incurred for case follow up and counsel fees. Hagenimana states that the request for damages for being dragged into unnecessary lawsuits is groundless because the claimant does not provide supporting evidence while concerning the compensation for expenses incurred for case follow up and counsel fees, he prays the court to examine the request thereto. Held: 1. The appealant cannot request that the judgment should not be executed in Rwanda under allegations that he was not summoned to appear and to present his grounds while he does not produce evidence to support it.

2. There is no ground to award damages to the respondent for being dragged into unnecessary lawsuits, because as long as the appellant was not satisfied with the decision of the High Court, he had the right to appeal against it.
3. The respondent deserves to be awarded procedural expenses and counsel fees he requested because it is understandable that he ought to spend due to the appeal claim lodged by the appellant and seek the representation of a counsel on appeal HAGENIMANA v.

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RWANDA LAW REPORTS 16 level; therefore the appellant should pay him 500,000Frw of damages since this amount is in range. Appeal without merit. Cross appeal with merit in part. Court fees to the appellant. Statutes and statutory instruments referred to: Organic Law N°51/08 of 09/09/2008 determining the organisation, functioning and jurisdiction of the supreme Court, article 91. Law N°21/2012 of 14/06/2012, relating to the civil, commercial, labour and administrative procedure, articles 9 and 162. No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Uwihoreye Dancille got civilly married to Hagenimana Athanase Athanase with whom they had three children. On 20 May 2011, the court in Virginia State in America known as Fairfax County Circuit Court adjudicated on the case filed by Uwihoreye against Hagenimana for divorce, and this court declared it with merit on the ground that it was a whole year the spouses did not cohabit, therefore it is impossible to concile them. It granted the divorce between Hategekimana Athanase and Uwihoreye.

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17 [2] Regarding their sharing of their assets, the court decided that it will be the Rwandan court which will determine their fate. [3] After this ruling, Uwihoreye filed a case to the High Court of Kigali requesting it to order the judgment on divorce which was rendered by the court in America be executed in Rwanda. [4] In the course of the hearing before the High Court, Hagenimana Athanase intervened in the case in order to protect his interests. The Court declared the claim of Uwihoreye with merit and therefore ordered the judgment to be executed in Rwanda and

declared the intervention claim of Hagenimana without merit. [5] As far as the motivation of this decision is concerned, the court held that it is the right of Hagenimana to intervene in the case, but that he has no interest to obstruct the execution of the judgment in Rwanda because Uwihoreye filed a claim of divorce to an American Court and won it, and Hagenimana was notified the judgment and did neither lodge opposition nor appeal against it. [6] The High Court found without merit the reasons presented by Hagenimana for the inexecution of the judgment in Rwanda, including the fact that the Court in America rendered the judgment in contradiction with the Rwandan law, because he did not indicate the provisions of American law referred to by the judge which are in contradiction with the Rwandan law as far as the judgment on divorce is concerned, therefore the divorce ruling is valid in Rwanda too, as it does not contradict any Rwandan public order principles. HAGENIMANA v. UWIHOREYE

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RWANDA LAW REPORTS 18 [7] It explained that concerning the issue relating to the sharing of assets, the judge declared that they will be examined by Rwandan courts, while concerning the issue of children custody, it was settled in another lawsuit which was rendered on 3 March 2006 in the Court named Fairfax County in the case known as "Juvenile and Domestic relations". [8] It found also that Hagenimana lives in Switzerland while Uwihoreye dwells in America, therefore the American court judge found that Hagenimana abandoned his family for a period exceeding one year, the ground for which this court granted the divorce. Indeed, the Rwandan law allows the divorce if the spouse abandons the family for more than 12 months. [9] The court explained in addition that the judgment rendered in America is final as indicated by its title on the first page of the minute whereby it is mentioned "Final decree" and this fulfills the test of authenticity as approved by the Rwandan embassy in America which affixed the stamp on that minute. [10] It explained again that Hagenimana does not present evidence to support his statements according to which he alleges that he was not given time to defend himself, or indicate that the judgment was by default, or that he lodged an opposition or appeal claim. Therefore, it complied with the law, and should be executed in Rwanda because its ruling does not contradict with general principles of Rwandan public order. [11] Hagenimana Athanase Appealed to the Supreme Court, alleging that the judge of the High Court disregarded that fact that the provisions of the law referred to for granting the divorce are in contradiction with Rwandan Law. He alleges in addition that the judge was misled and disregarded that it

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19 was the burden to prove the summons of Hagenimana to appear in children custody and divorces cases rendered in America lies on Uwihoreye. [12] Counsel Sayinzoga Jean Pierre who represents Uwihoreye Dancille states that the appeal grounds of Hagenimana lack merit and that Uwihoreye raises a cross-appeal claim in order to request the payment of procedural expenses he incurred. [13] The hearing of the case was held in public on 26 May 2015, whereby Hagenimana was represented by counsel Bimenyimana Eric while Uwihoreye Dancille was represented by Sayinzoga Jean Pierre. II. ANALYSIS OF LEGAL ISSUES Whether the High Court in

Kigali should not have ordered the exequatur in Rwanda of the judgment N°2011-296 rendered by “THE FAIRFAX COUNTY CIRCUIT COURT” in Virgia State of America on 20 May 2011. [14] Counsel Bimenyimana Eric who represents Hagenimana Athanase states that the parties to this case are rwandan by nationaly, the reason why they should be subject to rwandan Law, and that the ground for appeal by Hagenimana relies on the fact that the judge of the High Court ordered the judgment rendered by American Court to be executed in Rwanda while the laws referred to for its adjudication are inconsistent with Rwandan laws. He states in addition that the intention of Hagenimana is to indicate that the judgment should not be executed; rather, it should remain unenforced. HAGENGIMANA v. UWIHOREYE

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RWANDA LAW REPORTS 20 [15] He explains again that the Court in America adjudicated on the divorce case in disregard of article 10 of the preliminary title of civil code (C.C.Book 1) because it did not address the issue relating to the custody of children as the decision taken before was of an interim caracter, and Hagenimana was not summoned to appear and present his defence in the court which heard this issue relating to the children custody. He states in addition that the said Court disregarded the provision of article 9 of the Law N°27/2001 relating to the protection of the child which provides that the primary consideration shall be in the best interests of the child. [16] He goes on stating that Hagenimana have never been summoned in the divorce case in order to allow him to exercise his right to defence, therefore, articles 18(3°) of the Constitution and 10 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure were disregarded, and thus, the High Court should not have requested Hagenimana to produce evidence relating to the respect of his right to defence; rather, this should have been the duty of Uwihoreye who filed the case in America because he is the one who picked the summon of the defender and that if she did not notified them to him, she should bear all related consequences. [17] Counsel Bimenyimana states that another irregularity relies on the fact that the judgment on divorce was rendered without attempt to reconcile the spouses, and for him, the provision of article 243 of the preliminary title of civil code book 1 was violated. [18] He states further that the High Court misunderstood the facts, becuae it held that the divorce was granted on the ground that it was a period of of year Hagenimana abandoned his

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21 family whereas it was granted on ground that before even the submission of the divorce action, Hagenimana was not living with her wife for a period of the year. He adds that the decision of Court in America disregarded the rwandan law which provides that the divorce is prounced in case one of the spouse abandon the household for a period of 3 years. [19] Counsel Sayinzoga Jean Pierre for Uwihoreye Dancille replies that the first ground of the appeal of Hagenimana is without merit because he did not indicate the laws reffered to which are inconsistent with the Rwandan law. Rather, the ground of divorce in America which consists of the abandonment of the household for a period of the year is also valid in Rwanda. [20] Concerning the custody of the children, he states that it was decided on by the FAIRFAX COUNTY

COURT in the case referred to as “Juvenile and domestic relations” on 3 March 2006, therefore alleging that that case relating to the children custody was interim lacks merit. He states in addition that even the statements of Hagenimana according to which he was not summoned are untrue because he was summoned but did not appear, and after the judgment was rendered he was notified it but did not lodge an opposition nor an appeal; therefore, he cannot exercise the remedies in Rwandan Court that he did not exercise in American courts. [21] Counsel Sayinzoga goes on stating that Hagenimana does not have any ground of critics against the judgment rendered by the High Court because he himself acknowledge that the judgment rendered in America became final, therefore it should be executed. He adds that the fact to show that Hagenimana believes the judgment became final is that he got HAGENIMANA v. UWIHOREYE

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RWANDA LAW REPORTS 22 married to another wife basing on the judgment on divorce, therefore his statements that it did not follow the law should be considered without merit. [22] Concerning the statements of Hagenimana, that he was not summoned in the divorce case rendered in America, Counsel Sayinzoga replies that he considers them without merit because there is evidence about the course of the hearing that may be found by the court if examined. THE VIEW OF THE COURT [23] Article 91(2) of the Organic Law N°51/08 of 09/09/2008 determining the organization, functioning and jurisdiction of courts as amended to date, provides for the items to be examined by the High Court in order to order the execution of the decision taken by foreign Courts in Rwanda; those items consist of: 1° whether the foreign judgment does not contradict Public order or basic Legal tenets of Rwandan public laws; 2° whether the case was finally heard and determined in accordance with the laws of the country of origin; 3° whether a copy of the judgment is by all means authentic in accordance with such laws; 4° whether the right of defense was respected. [24] Article 9(1) of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative

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23 procedure states that every plaintiff must prove a claim. Failure to obtain proof, the defendant wins the case. [25] The Court finds that Hagenimana Athanase does not provide evidence to support the grounds that the judgment rendered in America should not be enforced in Rwanda because he was not summoned in order to exercise his right to defense while he values them, therefore the court has no basis to confirm the deprivation of his right to defense which is provided for by article 18 of the constitution. [26] Additionally, as far as Hagenimana does not deny the notification of the judgment to him of which he did not criticize, especially that he states in his submissions that what he needs is the statu quo of the ruling, therefore the court finds that such submissions result in contradictions because if it remains unenforceable, the justice would be granted in part. [27] Considering the grounds as aforementioned, the court finds that the default to be summoned alleged by Hagenimana, on ground of which the exequatur should not be granted in Rwanda, is groundless. [28] The court finds further that other defects relating to the way the decision was taken as alleged by Hagenimana, do not relate to the provisions of article

91(2) of the stated Organic Law N°51/08 of 09/09/2008. In addition, among those raised defects, include those relating to the judgment on the children custody while it is different from divorce case as it was indicated by the High Court; therefore those irregularities should not be considered as far as the issue to be examined in this case consists whether the decision on divorce taken in a foreign country could be executed in Rwanda. HAGENGIMANA v. UWIHOREYE

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RWANDA LAW REPORTS 24 [29] Pursuant to all provided explanations, this court finds that nothing would have prevent the High Court to order the execution of the judgment which was rendered in Virginia State in America by “THE FAIRFAX COUNTY CIRCUIT COURT” on 20 May 2011 in Rwanda. Concerning the cross appeal raised by Uwihoreye Dancille, which is accessory to the appeal lodged by Hagenimana Athanase. [30] Counsel Sayinzoga for Uwihoreye Dancille raises a cross appeal claim accessorially to the appeal lodged by Hagenimana in compliance with article 167 of the Law relating to civil commercial, labour and administrative procedure; therefore he requests the payment of 5,000,000Frw in damages, 500,000Frw of procedural expenses and counsel fees from Hagenimana for dragging him in unnecessary lawsuits. [31] Counsel Bimenyimana Eric for Hagenimana states that damages for being dragged into unnecessary lawsuits are groundless because he does not present evidence to support them and concerning the procedural expenses and counsel fees, it is up to the court to examine their merit. VIEW OF THE COURT [32] The court finds that there are no grounds for Uwihoreye to be awarded damages for being dragged into unnecessary lawsuits, because as long as Hagenimana was not satisfied with the ruling of the High Court, it is his right to lodge an appeal against it in compliance with article 162 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure.

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25 [33] The court finds Uwihoreye deserves to be awarded that the procedural and counsel fees he requested because he ought to engage some expenses due to the appeal claim lodged by Hagenimana, and ought to hire the service of an advocate to represent him in the court, therefore he should be paid 500,000Frw by Hagenimana since this amount is in range. III. DECISION OF THE COURT [34] Declares the appeal lodged by hagenimana without merit; [35] Declares the cross-appeal raised by Uwihoreye Dancille has merit in part; [36] Orders hagenimana Athanase to pay 500,000Frw to uwihoreye Dancille for procedural and counsel fees; [37] Upholds the ruling of the High Court, exception made of 500,000Frw of procedural and counsel fees to be paid by Hagenimana to Uwihoreye; [38] Orders Hagengimana to pay 100,000Frw of court fees.

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CASES IN MERITS

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ADMINISTRATIVE CASE

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GOVERNMENT OF RWANDA (MINECOFIN) v. VUZIMPUNDU [Rwanda SUPREME COURT – RADA0037/13/CS (Mukanyundo, P.J., Rugabirwa and Ngagi, J.) March 11, 2016] Administrative procedure – Administrative appeal – In the examination of the admissibility of an administrative claim, the court does not consider the grounds based on during the administrative appeal rather verifies whether that procedure was carried out – Law No18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 339. Administrative procedure – Administrative decision – The competent authority to make an administrative decision is the one to revoke it and the procedure followed in making a decision remains the same for its revocation – Law N°22/2002 of 09/07/2002 on general statutes for Rwanda public service, article 119. Administrative law – Delegation of power – The authority can delegate the power to make a decision and that of signature, but this has to be clear in the authorising text. Administrative law – The taking of the oath by the public servant – A public servant's religious beliefs cannot be a pretext of noncompliance with the laws and regulations of the Republic of Rwanda relating to the taking of the oath by the public servants, because Rwanda is a secular state – Constitution of the Republic of Rwanda of 2003 revised in 2015, article 4. 31

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RWANDA LAW REPORTS 32 Fact: Vuzimpundu was an employee of MINECOFIN but she was dismissed because she refused to take an oath by holding the national flag. Subsequently, she filed a case against the government of Rwanda (MINECOFIN) stating that she was unfairly dismissed because she did not refuse to take the oath rather she expressed that she should take it by holding the Bible. Therefore she finds her dismissal contrary to the human rights, her religious belief and her conscience. In addition to that she states that she was dismissed by an incompetent authority. That Court found the dismissal decision unlawful and ordered the government of Rwanda to pay her salary arrears and various damages. The Government of Rwanda appealed to the Supreme Court arguing that the previous Court refused to examine the objection of the inadmissibility of a claim on the ground that the irregularity relating to the competence of the authority which dismissed Vuzimpundu was not raised in the administrative appeal. In her defence, Vuzimpundu states that in examining the admissibility of the claim the Court does not consider the grounds based on in administrative appeal rather it verifies whether that procedure was carried out. Vuzimpundu raised a cross appeal stating that her freedom of religion as provided for by the Constitution and International Human Right Conventions is inviolable, therefore a decision which is contrary to those principles cannot be made against a

person. She finds that an employer should have not dismissed her on the ground of refusing to take the oath because she was already in service. Thus, she prays the Court to award her various damages.

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GOVERNMENT OF RWANDA (MINECOFIN) v. VUZIMPUNDU 33 Government of Rwanda rebuts that Vuzimpundu was not dismissed because of her belief, rather she omitted to comply with laws, yet, human rights are enjoyed in accordance with the law, and therefore she cannot rely on other provisions and as a pretext for noncompliance with the national law. Held: 1. In the examination of the admissibility of an administrative claim, the court does not consider the grounds based on during the administrative appeal rather it verifies whether that procedure was carried out, thus the fact that the applicant of the administrative appeal did not raise the irregularity relating to the competence of the authority which dismissed her, is not a ground for inadmissibility of her claim.

2. The competent authority to make an administrative decision is the one to revoke it and the procedure followed in making a decision remains the same for its revocation; therefore the fact that an employee was dismissed by the permanent secretary of MINECOFIN while she was appointed by the cabinet meeting, implies that she was unlawful dismissed.
3. The respondent's religious beliefs cannot be a pretext of non-compliance with the laws and regulations of the Republic of Rwanda relating to the taking of the oath by the public servants, because Rwanda is a secular State, therefore, the fact that she did not perform it, constitutes a fault sanctioned by dismissal by the competent authority.
4. In accordance with the provisions of the law, the Government of Rwanda must pay the respondent damages for the counsel fees equivalent to a half of the fees that were awarded on the first instance.

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RWANDA LAW REPORTS 34 Appeal has no merit; Cross appeal has merit in part; With the the court fees to the public treasury. Statutes and statutory instruments referred to: Constitution of the Republic of Rwanda of 2003 revised in 2015, articles 4 and 37. Law No18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 339. Decree Law of 30/07/1888 relating to Contracts or obligations, article 258. Law N°22/2002 of 09/07/2002 on general statutes for Rwanda public service, articles 29 and 119. Law No06/2013 of 27/02/2013 modifying and complementing Law N°34/2008 of 08/08/2008 on characteristics, description, ceremonial and respect of the National Flag, article 13. Cases referred to: Nyirasafari v. Public Service Commission, RADA0065/12/CS rendered by the Supreme Court, on 12/12/2014 Niyonsaba v. Caisse Sociale du Rwanda- CSR (RSSB), RADA0067/12/CS rendered by the Supreme Court on 22/07/2014 Semali v. EWSA Ltd, RADA0006/13/CS rendered by the Supreme Court on 15/05/2015. Author cited: J. RIVERO et J.WALINE, Droit administratif, 20ème édition, Dalloz, Paris, 2004.

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Judgment

I. BACKGROUND OF THE CASE [1] This case begun in the High Court whereby Vuzimpundu Clarisse sued the Government of Rwanda through the General State Attorney claiming that she was dismissed from MINECOFIN where she worked on the ground that she refused to take the oath while she did not refuse, but she indicated that she has to take the oath on the bible. She finds the dismissal unfair because it is against the human rights, freedom of belief. She further states that she was dismissed by the authority without such competence (Permanent Secretary in Ministry of Finance and Economic planning “MINECOFIN”) while she was appointed to that post by the Cabinet meeting. [2] On 19 April 2013, that Court rendered judgment RAD0125/11/HC/KIG, and held that the decision dismissing Vuzimpundu is repealed; it ordered the Government of Rwanda to pay her 3,222,274Frw of salary arrears, 500,000Frw for moral damages and 300,000Frw for counsel fees. [3] In its ruling, the Court found that since Vuzimpundu refused to take the oath was a ground for her dismissal and it was lawful. However, the Court held that it was done by incompetent authority because she was dismissed by the Permanent Secretary and Secretary to the Treasury in MINECOFIN while her appointment to and dismissal from the post of Administrative Assistant to the Director General of National Budget should have followed the principle of parallelism of procedures, therefore, her ground to have been dismissed by incompetent authority has merit. GOVERNMENT OF RWANDA (MINECOFIN) v. VUZIMPUNDU

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RWANDA LAW REPORTS 36 [4] Through the General State Attorney, the Government of Rwanda appealed in the Supreme Court on the following grounds: The High Court did not examine the preliminary objection of inadmissibility while it had merit, whereby it was demonstrated that the irregularity regarding the competence of the authority which dismissed Vuzimpundu Clarisse was not raised during the administrative appeal; therefore raising it in the course of hearing constitutes a ground for its rejection. Alternatively, the fact that the Minister of Public Service and Labour delegated to Vuzimpundu Clarisse’s employer the power to receive her oath and to dismiss her in case she refuses to do so as indicated by the letter No029/19.23 of 06/01/2011 of the Minister of Public Service and Labour; demonstrates that she was not dismissed by incompetent authority. [5] Vuzimpundu Clarisse raised a cross appeal stating that the High Court disregarded that her freedom of religion as provided for by the Constitution and International Human Right Conventions is inviolable, therefore she was unlawfully dismissed. [6] The hearing was conducted in public on 09 February 2016, the Government of Rwanda represented by the State Attorney Rubango Epimague, whereas Vuzimpundu Clarisse was represented by Counsel Nkurunziza François-Xavier.

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37 II. ANALYSIS OF LEGAL ISSUES A. Concerning the appeal of the government of Rwanda

1. Whether the fact that the incompetence of the authority which dismissed the employee was not raised in the course of administrative appeal is a ground of inadmissibility of the claim. [7] The State Attorney Rubango Epimaque argues that at the first instance the Court did not rule on the preliminary objection of inadmissibility which was raised, while it was demonstrated to the Court that during the administrative appeal Vuzimpundu Clarisse requested for annulment of the decision which prejudiced her religious beliefs, that she has never raised the irregularity concerning the competency of the authority which dismissed her, therefore raising it during the hearing was a ground for inadmissibility. [8] Nkurunziza François-Xavier, the Counsel for Vuzimpundu Clarisse states that in examining the admissibility of the claim, the Court does not consider the grounds of administrative appeal, rather it verifies whether the procedure was followed especially that the appellant does not demonstrate the law which provides for the content of administrative appeal. OPINION OF THE COURT [9] Article 339 of Law No18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which was in force at the time administrative appeal was lodged, provides for that the action for annulment shall be accepted only if it relates to an explicit or implicit decision of an GOVERNMENT OF RWANDA (MINECOFIN) v. VUZIMPUNDU

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RWANDA LAW REPORTS 38 administrative authority. Before filing a claim, the aggrieved party who is against the administrative decision shall be required to first lodge an administrative appeal with the immediate superior authority vis-à-vis the one who took the concerned decision. The authority shall be required to respond in a period of two (2) months which runs from the date he/she received the administrative appeal. If he / she does not respond, the request shall be considered as if it is rejected. In case the applicant is not satisfied with the decision, he/she has a period of six (6) months to file a claim which runs from the date when he/she received the response, and if there is no response, such a period shall start running after two (2) months mentioned in previous paragraph of this. [10] The case file indicate that on 31 May 2011 the Permanent Secretary of MINECOFIN¹ wrote a letter No 2999/11/10/HR to Vuzimpundu Clarisse informing her that she was discharged of her duties due to non-compliance with law of Republic of Rwanda relating to taking the oath by the public civil servant. On 07 June 2011, Vuzimpundu Clarisse lodged an administrative appeal before the Permanent Secretary requesting to repeal the decision taken against her of being dismissed, explaining that during 16 years she spent working for MINECOFIN; no disciplinary sanction was ever taken against her, the fact that she follows her conscience which was embedded to her by the Bible as a Jehovah witness should not be a ground for her dismissal. [11] The Court finds the fact that Vuzimpundu Clarisse did not raise the irregularity regarding incompetence of the authority that dismissed her cannot lead to the rejection of her

1 Ministry of Finance and Economic Planning

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39 claim because the purpose of the administrative appeal is for the authority who made the decision to reconsider it, without considering whether the authority was competent or not, especially that article 339 mentioned above does not specify the essential elements or grounds which have to be contained in the administrative appeal, that whoever does not respected it, his or her claim is rejected. [12] Pursuant to the motivations given above, the Court overrules the preliminary objection of inadmissibility of the claim raised by the State Attorney Rubango Epimaque.

2. Whether the Permanent Secretary of MINECOFIN is competent to dismiss Vuzimpundu Clarisse. [13] Rubango Epimaque, the State attorney argues that in paragraph 18 of the judgment rendered on the first instance, the Court motivated that even though the refusal of Vuzimpundu Clarisse to take the oath was a reasonable ground for her dismissal, she was dismissed by an incompetent authority; the State Attorney states that he differs on that rationale of the court because she was dismissed by the Permanent Secretary of MINECOFIN who was delegated that power by the Minister of Public Servant and Labour in the letter No029/19.23 of 06/01/2011 by the Minister, stating that those who refused to take the oath for any reason have to be sanctioned. [14] Nkurunziza François-Xavier, the counsel for Vuzimpundu Clarisse argues that the Permanent Secretary of MINECOFIN was not delegated the power to dismiss Vuzimpundu Clarisse because no one can delegate the power he/she does not possess, Vuzimpundu Clarisse was appointed by the cabinet meeting and the Minister of Public Servant and GOVERNMENT OF RWANDA (MINECOFIN) v. VUZIMPUNDU

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RWANDA LAW REPORTS 40 Labour implement the cabinet appointment, therefore it should have been referred back to the Cabinet meeting in order to comply with the principle of parallelism of procedures. He further argues that the content of the letter indicates that there is no delegation of power and even though it was the contrary, the delegate acts on behalf of the delegator which was not the case because the Permanent Secretary, personally dismissed Vuzimpundu Clarisse. OPINION OF THE COURT [15] Article 119 of the law N°22/2002 of 09/07/2002 on general statutes for Rwanda public service which was in force at the time Vuzimpundu Clarisse was dismissed provides that automatic resignation is a deed by which the Public Service competent authority decides to expel definitely an employee from the Government staff. [16] Law scholars Jean Rivero and Jean Waline also explained that the principle is that the authority with the competency to make a decision should be the one to revoke it. This implies that the procedure followed to make the first decision is the one to be applied to revoke it². They further

2 Il existe, en droit administratif, un principe de parallélisme des compétences (ou encore dit de l'acte contraire) qui veut que lorsqu'une autorité a compétence pour faire un acte, elle a également compétence pour faire l'acte contraire (par exemple celui qui nomme a compétence pour révoquer). Le plus souvent (mais il ya des exceptions) cela implique également le parallélisme des formes, c'est-à- dire l'obligation de suivre la même procédure que celle de l'acte initial pour accomplir l'acte contraire (J. RIVERO et J.WALINE, Droit administratif, 20ème édition, Dalloz, Paris, 2004, p. 341, no 404 in fine).

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41 explained that the authority can delegate the power to make a decision and that of signature, but this has to be clear in the authorising text³. [17] The case file demonstrates that Vuzimpundu Clarisse was appointed on the post of Administrative Assistant to the Director General of National Budget in MINECOFIN, and this was implemented by the Minister of Public Service and Labour as indicated by the letter No282/19.23 of 15/09/2009. Furthermore the letter 029/19.23 of 06/01/2011 issued by the Minister of Public Service and Labour to the ministers and permanent secretaries aimed at requesting them to receive the oaths of the public servants who previously failed to do so for different reasons and to sanction those who refuse to comply with it for whatever reason as follows: a) an employee who refuses to take the oath will be given by her/his employer a written notice of 15 days, and be informed that he/she is going to be dismissed because of not respecting the laws and regulations governing him or her; and serve a copy to the Public Service Commission and the Ministry of Public Service and Labour, b) within that period of 15 days, the concerned employee must submit his/her defence to his/her employer in writing and inform his/her decision, c) if an employee replies accepting to take the oath, his or her employer receives his or her oath and keeps his or her work, d) if an employee replies

3 Il serait matériellement impossible à certaines autorités administratives par exemple le Ministre d'exercer elles-mêmes effectivement l'ensemble de leurs compétences. Pour que le système puisse fonctionner, il est donc indispensable de recourir au système de délégations, qui distingue la délégation de compétence et la délégation de signature. Les délégations sont indispensables mais doivent être limitées à ce qui est nécessaire, ce qui explique leur régime juridique: il n'y a pas de délégation sans texte l'autorisant [...] (J. RIVERO et J.WALINE, op.cit., p. 342, no 405). GOVERNMENT OF RWANDA (MINECOFIN) v. VUZIMPUNDU

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RWANDA LAW REPORTS 42 refusing to take the oath for any reason, he/she must be automatically dismissed from his or her service by the competent authority. [18] Pursuant to the provisions of article 119 of Law No22/2002 of 09/07/2002 mentioned above and the explanations of the law scholars also mentioned above, the Court finds that the competent authority to dismiss Vuzimpundu Clarisse was the Minister of the Public Service and Labour basing on the resolutions of the cabinet meeting as it was done at the time she was appointed on that post. (Principle of parallelism of forms and competences). [19] The arguments of the State Attorney Rubango

Epimaque that the Minister of the Public Service and Labour delegated the power to dismiss Vuzimpundu Clarisse, are not grounded because the letter which was addressed to the Ministers and Permanent Secretaries (mentioned in paragraph 17) indicates that the delegated power was to write to the employee who had refused to take the oath informing him/her that he/she is to be dismissed because of noncompliance with the laws and regulations. Regarding the dismissal of that employee, the Minister of the Public Service and Labour stated that an employee who will reply that she/he has refused to take the oath or exceeds 15 days without replying, he/she will be immediately dismissed by the competent authority. This implies that the power to dismiss an employee was not delegated to the recipients of the letter mentioned above, rather to the competent authority and as far as Vuzimpundu Clarisse was concerned, that authority is the one mentioned in the previous paragraph. [20] Therefore the Court finds that the fact for Vuzimpundu Clarisse to have been dismissed by an incompetent authority,

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43 who is the Permanent Secretary of MINECOFIN, implies that she was unlawfully dismissed, thus the appeal of the Government of Rwanda has no merit. B. Concerning the cross appeal of Vuzimpundu Clarisse.

1. Whether requesting Vuzimpundu Clarisse, as the public servant to take the oath before the national flag is unconstitutional and in violation of international conventions. [21] Nkurunziza François-Xavier, the counsel for Vuzimpundu Clarisse states that in the previous court, he demonstrated in his defense that the religious freedom is inviolable, and it is provided for by the Constitution in its article 33 and 45, and also in the International Conventions, especially article 18 of International Covenant on Civil and Political Rights of 16/12/1966⁴, articles 14, 15 and 19 of the African Charter on Human and Peoples' Rights, that no decision may be taken for a person which is contrary to those principles, therefore the issue is to determine whether such decision against a person can be taken in contradiction of the Constitutional and those International Conventions and to assess whether the principle of inviolability of religious freedom is violated if such decision is made. He states further that the Judge did not rule on that issue. He further argues that article 29 of the General Statute of the Civil Servant stipulates that before taking office, every government employee shall take the oath; consequently the employer should not have dismissed Vuzimpundu Clarisse

4 In the submission he stated that they are “Déclaration Universelle des Droits Civils et Politiques”, but that convention of 19/12/1966 is called “Pacte international relatif aux droits civils et politique” or “Déclaration universelle des droits de l’homme”, which are of 10/12/ 1948.
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RWANDA LAW REPORTS 44 on the ground that she refused to take oath because she was already employed. [22] Rubango Epimague, the State Attorney argues that Vuzimpundu Clarisse was not dismissed because of her religious belief, rather she was dismissed because of uncompliance with the law, he states in addition that human's rights are enjoyed in accordance with the law, therefore Vuzimpundu Clarisse cannot rely on other provisions and not comply with the national law. OPINION OF THE COURT [23] Article 33 of the Constitution of 04 June 2003 (which is article 37 of the Constitution of the Republic of Rwanda revised in 2015), provides: "freedom of thought, conscience, religion, worship and public manifestation thereof is guaranteed by the State in accordance with the law [...], whereas article 45 of that Constitution provides that "[...] All citizens have the right to participate in the government of the country, whether directly or through freely chosen representatives in accordance with the law". [24] Article 29 of the Law N°22/2002 of 09/07/2002 on General Statutes for Rwanda Public Service, provided that: "Before taking office, every Government employee takes the following oath: «I,, in the name of God Almighty, solemnly do swear before the Nation to loyally carry out my duties, to remain faithful to the Republic of Rwanda, to respect the Head of State and Government institutions and to promote the Rwandese people's interests, in abiding by the Fundamental Law and other laws»".

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45 [25] Article 13 of the Law No06/2013 of 27/02/2013 modifying and complementing the Law N°34/2008 of 08/08/2008 on characteristics, description, ceremonial and respect of the National Flag, provides: "any person taking the oath of office before the National Flag holds the National Flag with his/her left hand and raises the right hand. In case a person with disability obliged to take oath of office before the National Flag cannot comply with the provisions of paragraph one of this article, he/she shall be caused to wear it". [26] The case file of this case contains a letter N°029/19.23 of 06 January 2011 (mentioned above) in which the Minister of Public Service and Labour addressed to the Ministers and Permanent Secretaries instructing them to receive the oath of public servants who had not took the oath for various reasons and also informed them that the employee who will not take the oath for any reason shall be dismissed by the competent authority after the notice of 15 days requesting them to take the oath on the ground of non-compliance with the laws and regulations governing them. In October 2010, pursuant to those regulations of the Minister of Public Service and Labour, the Permanent Secretary in the Ministry of Finance and Economic Planning wrote a letter No6155/10/10/HR to Vuzimpundu Clarisse, requesting her to take the oath. On January 06, 2011, Vuzimpundu Clarisse replied that she cannot take the oath by holding the National Flag because it contradicts her conscience, instead she can take it by holding the Bible. [27] The Court finds that Vuzimpundu Clarisse as a civil servant should have taken the above mentioned oath as it is provided for by article 13 of the aforementioned law N°34/2008 of 08/08/2008. The fact that she did not take it constitutes a fault GOVERNMENT OF RWANDA (MINECOFIN) v. VUZIMPUNDU

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RWANDA LAW REPORTS 46 sanctioned with dismissal by the competent authority. Indeed, she cannot pretend to have been already employed and allege that her right to refuse taking the oath by holding the National Flag was jeopardised given that the act of receiving the oath for the civil servants who had not taken it intended to regularize those which were not timely accomplished, especially that she was supposed to take the oath before she could be appointed in the public service as it is provided for by article 29 of the Law No22/2002 of 09/07/2002 mentioned above. [28] The Court finds that Vuzimpundu Clarisse shouldn't have relied on her religious beliefs as a pretext of not complying with the laws and regulations of the Republic of Rwanda relating to taking of the oath of the public servants, because Rwanda is secular state as provided for by article 1, paragraph 1 of the Constitution of the Republic of Rwanda of 04 June 2003 (which became article 4 of the Constitution of the Republic of Rwanda as amended in 2015). This was also the precedent set in various judgments rendered by this Court, such as; Nyirasafari

- v. Public Service Commission, RADA0065/12/CS rendered on 12 December 2014, Niyonsaba v. Caisse Sociale du Rwanda- CSR, RADA0067/12/CS rendered on 22 July 2014 and Semali
- v. EWSA Ltd currently known as Rwanda Energy Group Ltd RADA0006/13/CS rendered on 15 May 2015. Moreover, in the Communication submitted to Human Rights Committee by Paul Westerman against his country Netherlands, whereby he was recruited in military service against his will and subsequently he refused to put on military uniform. That committee observed that the right to freedom of conscience does not as such imply the right to refuse all obligations imposed by law nor does it

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47 provide immunity from criminal liability⁵. Therefore where the law does not provide for alternative of taking the oath before being admitted in the service other than holding the National Flag, whoever refuses to take the oath as prescribed by the law must bear the consequences of his/her decision. Therefore Vuzimpundu Clarisse should bear the consequences of not complying with the law. [29] The Court also finds that taking the oath by holding the National flag does not violate article 33 (currently article 37) and the former article 45 of the Constitution, nor article 186 of International Covenant on Civil and Political Rights of 16/12/1966, article 147, 158 and 199 of the African Charter on

5 Dans une affaire où l'intéressé s'étant vu refusé le statut d'objecteur, a été incorporé dans l'armée et condamné pour refus d'obéissance (port de l'uniforme), le Comité a fait observer que le droit à la liberté de conscience en tant que tel ne peut être interprété comme donnant le droit de refuser de s'acquitter de toutes les obligations imposées par la loi ou comme déchargeant une personne de sa responsabilité pénale à l'égard de chaque refus ainsi opposé. (Communication No 682/1996: Paul WESTERMAN c. Pays-Bas, CCPR/C67/D/682/1996, §9.3, Cité par Jean-Bernard MARIE et Patrice MEYER-BISCH, in La liberté de conscience dans le champ de la religion, p.25 <https://www.unifr.ch/iiedh/assets/files/.../publicdt04.pdf>) 6 Everyone has the right to freedom of

thought, conscience and religion; This right implies the freedom to have or to adopt a religion or belief of one's choice, as well as the freedom to manifest one's religion or belief, individually or in common, both in public and private, through worship and The performance of rites, practices and teaching. 7 The right to property is guaranteed. It may be infringed only by public necessity or in the general interest of the community, in accordance with the provisions of the appropriate laws. 8 Everyone has the right to work under fair and satisfactory conditions and to receive equal pay for equal work. 9 All peoples are equal; They enjoy the same dignity and have the same rights. Nothing can justify the domination of one people by another. GOVERNMENT OF RWANDA (MINECOFIN) v. VUZIMPUNDU

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RWANDA LAW REPORTS 48 Human and Peoples' Rights, which Counsel Nkurunziza François-Xavier relies on , because the common aim of all those provisions is that every person has freedom of belief and religion and also that all people are equal before the law, either in getting employment or ownership of property, while those beliefs should not jeopardize the national laws and none should rely on them to withdraw from legal obligations. [30] Pursuant to the motivations above, the court finds that the dismissal of Vuzimpundu Clarisse on the ground of her refusal to take the oath by holding the National flag doesn't constitute a violation of the Constitution and International Conventions.

2. Whether damages claimed by Vuzimpundu Clarisse should be awarded. [31] Nkurunziza François-Xavier, the counsel for Vuzimpundu Clarisse argues that the Government of Rwanda should pay her 1,500,000Frw for the counsel fees, in addition to the awarded damages. [32] Rubango Epimaque, the State Attorney argues that the claimed damages are groundless because the Government of Rwanda can exercise the procedures of appeal provided by the law, but in case the Court opines it otherwise, it will assess whether the amount she claims for is equivalent to the counsel fees. OPINION OF THE COURT [33] Article 258 of the civil code book III provides that “any act of man which causes damage to another obliges the person

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49 by whose fault it happened to repair it”. And article 33 of the Rwanda Bar Association regulations No01/2014 of 18/07/2014 fixing the scale of fees for advocates provides that: “In case of appeal, the Advocate for the applicant and the advocate for the defendant are entitled to half of the fees agreed in the first instance”. [34] The case file indicates that the submission for instituting a case in the High Court is on pages 1-5, whereby vuzimpundu Clarisse prayed that the Government of Rwanda be ordered to pay her 600,000Frw of the counsel fees, which is the amount agreed upon on the first instance. [35] According to the provision of article 33 of the Regulation No01/2014 mentioned above, the Government of Rwanda must pay Vuzimpundu Clarisse the counsel fees equivalent to a half (½) of 600,000Frw that is to say 300,000Frw. III. DECISION OF THE COURT [36] It holds that the appeal submitted by the Government of Rwanda

(MINECOFIN) lacks merit. [37] It holds that the cross appeal filed by Vuzimpundu Clarisse has merit in part. [38] It holds that the judgment RAD0125/11/HC/KIG rendered by the High Court on 19 April 2013 is reversed only in regards to the counsel fees which must be increased.

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RWANDA LAW REPORTS 50 [39] It orders the Government of Rwanda (MINECOFIN) to pay Vuzimpundu Clarisse three hundred thousand Rwandan francs (300,000Frw) of the Counsel fees at this level. [40] It orders that the court fees are borne by the public treasury.

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CIVIL CASES

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GAHENDA v. RUTSINDURA [Rwanda SUPREME COURT – RCAA0020/14/CS (Rugege, P.J., Mugenzi and Kanyange, J.) July 07, 2015] Law determining the jurisdiction of courts – Jurisdiction of the Supreme Court on the basis of the value of the subject matter – Determination of the value of the subject matter – The value of the subject matter can be determined by the Supreme Court if it was not determined by other courts – Organic Law N°03/2012 of 14/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 28. Evidence law – Probative value of DNA – The results of DNA test carried out by an expert is considered as irrevocable evidence with regard to determination of genetic relationship between those tested. Facts: This case was initially filed to the Intermediate Court of Huye whereby the alleged Rutsindura Alexis, the name which is denied his opponents since they instead argue that his real names are Bigirimana Cedric. In his petition, he requested to inherit the estate of those he claimed to be his parents who are late Rutsindura Alphonse and late Dusabe Emma Marie killed during the Genocide against the Tutsi in 1994. This estate was inherited by Gahenda Bienvenue and his siblings. That Court held that Rutsindura Alexis is the sole heir to the estate of late Rutsindura Alphonse and late Dusabe Emma Marie, therefore, it ordered Gahenda and his sibling to hand over the entire estate. Gahenda appealed to the High Court, and meanwhile the criminal case which was pending before the Intermediate Court 53

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RWANDA LAW REPORTS 54 of Nyarugenge whereby the accused was being prosecuted for obtaining civil status documents through false declaration about his origin and name was disposed and the accused was acquitted on the benefit of doubt on evidence including the DNA test of which the Court declared unlawfully conducted. The High Court also sustained the appealed judgment. Gahenda appealed against the decision of the High Court to the Supreme Court but before the hearing of the case on merit, the respondent raised a preliminary objection of inadmissibility of the appeal on the grounds that the appellant lost the case on similar grounds

on the first and second level and that there is no damages worth 50,000,000Frw at least awarded in the appealed judgment. In his defence, the appellant argued that before previous courts, it was not necessary to debate over the value of the subject matter, but that there is an expertise he submitted which demonstrates that the pecuniary value of the estate requested to be inherited exceeds 50,000,000Frw. In addition, he contests that he did not lose the case on similar grounds because at the Intermediate Court of Huye, he lost due to false declarations of witnesses whereas in the High Court he lost the case due to the decision of the judge who did not wish to wait for tangible elements of evidence pretending that it was likely to delay the case. The Supreme Court examined the objection raised and declared that the value of the subject matter can be determined by the Supreme Court if it was never determined by other courts, thus relying on the expertise submitted by the appellant which indicates that one of estates to be inherited exceeds 50,000,000Frw in value; it has material jurisdiction to hear the case. Regarding the fact that Gahenda Bienvenu lost the case on similar grounds, the Court declared that the Intermediate Court

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GAHENDA v. RUTSINDURA 55 analysed the case on merit and found that the heir to the estate of late Rutsindura Alphonse is Rutsindura Alexis because those who claimed that he is not his child failed to prove it. The High Court ruled on the objection raised whereby it examined whether the application for case review due to injustice is a ground for suspension of hearing, it also examined whether it is a right of the party to request for the intervention of the third party. It analysed in addition the issue concerning the valuation of the house. The Supreme Court found that the High Court did not rule on the crucial issue of determining the heir between the appellant and respondent, therefore it held that he did not lose the case on similar grounds. In the appellant's grounds at Supreme, Gahenda states that the so-called Rutsindura Alexis is not a child of late Rutsindura Alphonse and late Dusabe Emma Marie for him to request to inherit them, and that the names of Rutsindura Alexis are not his genuine names because his actual names are Bigirimana Cedric whose parents are Burundian. He requests for ADN test between the so-called Rutsindura Alexis and those known to be his parents who live in Burundi. In his defence, the respondent argues that there are many witnesses who confirmed that he is indeed a child of Rutsindura Alphonse and Dusabe Emma Marie which the opponent did not contradict. Regarding the DNA test, he finds it unnecessary because the declarations of witnesses constitute sufficient evidence in consideration of the hierarchy of evidences in civil cases and if it should be carried out, the samples should be collected from the remains of his parents and their child. The Court ordered for the DNA test to be carried out in German between the so-called Rutsindura Alexis and the one Gahenda Bienvenu claims to be his parents (Nahishakiye Berchmas). The

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RWANDA LAW REPORTS 56 results of that test indicated that the so-called Rutsindura Alexis is a child of Nahishakiye Berchmas at 99.9999% rate. Held: 1. The value of the subject matter can be determined by the Supreme Court in case it has never been determined by previous courts.

2. The Intermediate Court examined the rightful heir to the estate of Rutsindura Alphonse while the High Court examined the objection raised, therefore the appellant did not lose the case on same grounds.
3. The results of DNA test carried out by an expert is considered as irrevocable evidence with regard to determination of child and father genetic relationship, therefore, the test carried out between the so-called Rutsindura Alexis and Nahishakiye Berchmas indicated that the genetic relationship between them is that of a child and father on the level of 99.9999%. Basing on that ground, the so-called Rutsindura Alexis has no right to inherit the estate of Rutsindura Alphonse. Appeal has merit; Court fees to the respondent. Statutes and statutory instruments referred to: Organic Law N°03/2012 of 14/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 28. Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 7. Law N°15/2004 of 12/6/2004 relating to evidence and its production, articles 3 and 76.

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57 Law No22/99 of 12/11/1999 supplement book one of the civil code and to institute part five regarding matrimonial regimes, liberalities and successions, article 50. No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] The respondent in the names of Rutsindura Alexis, whereas the other party avers that his names are Bigirimana Cedric petitioned the Intermediate Court of Huye requesting to inherit the estate of his late parents Rutsindura Alphonse and Dusabe Emma Marie that were murdered during the Tutsi genocide in 1994. That estate was inherited by Gahenda Bienvenue and his siblings pursuant to the judgment RCA8697/132 rendered by the Court of appeal of Nyabisindu on 15 June 2004. [2] On 05 January 2010, the Intermediate Court of Huye rendered the judgment RC00053/08/TGI/Hye and held that Rutsindura Alexis is the sole heir of Rutsindura Alphonse and Dusabe Emma Marie, that he should inherit the deceased's entire estate wherever it is. Therefore, it ordered Gahenda Bienvenue and his siblings to hand over the entire estate of Rutsindura Alphonse and Dusabe Emma Marie which they inherited following the judgment RCA8697/132 or any other estate belonging to them which they might have taken on their own or which might be located elsewhere. GAHENDA v. RUTSINDURA

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RWANDA LAW REPORTS 58 [3] Gahenda Bienvenu appealed against the judgment to the High Court, chamber of Nyanza and the appeal was recorded on RCA0003/10/HC/NY. Meanwhile, the criminal case, which was pending before the Intermediate Court of Nyarugenge whereby the respondent was prosecuted for obtaining the civil status documents through false declaration of his origin and name, was delivered. The Intermediate court of Nyarugenge acquitted him on the benefit of doubt on evidence including the DNA test of which the Court declared it was unlawfully conducted. The result of that DNA test indicated that Rutsindura Alexis is a child of Nahishakiye Jean Berchmans. In the judgment RCA0003/10/HC/NY rendered by the High Court, Chamber of Nyanza on 12 March 2014 the Court sustained the appealed

judgment.

[4] On 03 April 2014, Gahenda Bienvenu appealed against the judgment rendered by the High Court in the Supreme Court. The hearing in the Supreme Court commenced on 13 January 2015 whereby the appellant Gahenda Bienvenue was represented by Counsel Protais Mutembe whereas the respondent was represented by Counsel Mwine Geoffrey. [5] Before the hearing of the case on merit, Mwine Geoffrey, the Counsel for the respondent raised a preliminary objection of inadmissibility of Gahenda's appeal basing on the last paragraph of article 281 and litera 72 of the Organic Law

1This paragraph stipulates that "However, a case lost by a party to proceedings in the first and second instances basing on similar grounds shall not be appealed for to the Supreme Court".

2Litera 7 of the paragraph 2 stipulates that The Supreme Court shall also have appellate jurisdiction over cases heard and decided in the second instance by the High Court, the Commercial High Courtif such casesInvolve a judgment in respect of which there was an award of damages of

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59 N°03/2012 of 14/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court. He elaborated that there is no damages worth 50,000,000Frw at least awarded in the appealed judgment; none of the judges indicated that the value of the subject matter exceeds 50,000,000Frw and also the appellant lost the case in the Intermediate Court and High Court on similar grounds.

[6] Counsel Mutembe Protais argued that the objection lacks merit because it was not necessary to debate on the value of the subject matter before the Courts which rendered the appealed judgment, but that there is a valuation report which was submitted by his client, demonstrating that the value of the subject matter to be inherited exceeds 50,000,000Frw. Regarding the ground that Gahenda lost the case on similar grounds, Counsel Protais Mutembe contested that those grounds are not similar because at the Intermediate Court of Huye, Gahenda lost the case due to the witnesses who gave false testimonies whereas in the

High Court he lost the case due to judge who did not wish to stay the hearing in order to wait for the reliable evidence with the pretext of that it would delay the case. [7] The Court overruled the preliminary objection raised by Mwine Geoffrey, the Counsel for the respondent. Concerning the value of the subject matter, the Court declared that it can be determined by the Supreme Court as long as it has never been determined by other Courts and in this case it was not

at least fifty million Rwandan francs (50,000,000Frw), or when the value of the case, as determined by the judge in case of a dispute, is at least fifty million Rwandan francs (50,000,000Frw).

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RWANDA LAW REPORTS 60 determined because it was not necessary in the previous Courts. Pursuant to the valuation report submitted by the appellant who indicates that among the estates to be inherited there is one valued above 50,000,000Frw, the Court held that it has material jurisdiction to hear the case. [8] Regarding the fact that Gahenda Bienvenu lost the case on similar grounds, the Court declared that the Intermediate Court found that the heir to the estate of Rutsindura Alphonse is Rutsindura Alexis because those who claimed that he is not his child failed to prove it. The High Court ruled on the objection raised and analysed whether the application for the case review due to injustice is a ground for suspending the hearing. It also analysed whether it is a right of the party to request for the forced intervention of a third party, it analysed the issues concerning the valuation of the house and it sustained the appealed judgment. The Court found that the High Court did not resolve the crucial issue of determining the heir of Rutsindura Alphonse between the appellant and respondent, while the Intermediate Court ruled on the matter, therefore it held that he did not lose the case on similar grounds. [9] Gahenda Bienvenu and his counsel Mutembe Protais argued that the so-called Rutsindura Alexis is not the son of Rutsindura Alphonse and Dusabe Emma Marie for him to request to inherit them, and also that he named himself Rutsindura Alexis to justify that he is a descendant of the decujus, given that his real names are Bigirimana Cedric whose parents are burundians. They request for ADN test between the so-called Rutsindura Alexis and those they argue to be his parents living in Burundi.

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61 [10] Counsel Mwine Geoffrey avers that many persons were interrogated and confirmed that his client is the son of Rutsindura Alphonse and Dusabe Emma Marie and Gahenda did not contradict it, whereas regarding the DNA test, he finds that the Courts which rendered the appealed judgement decided on it, thus it is not necessary to carry it out especially that the parents of Rutsindura Alexis are deceased and in case it is to be carried out, samples should be taken from the remains of his parents and their child. Finally, he emphasises that ADN is not essential because there is hierarchy of evidence in civil matters; therefore declarations of

witnesses are enough. [11] The Court decided that the evidence to settle the disputes of determining whether the respondent in the names of Rutsindura Alexis is not a child of Rutsindura Alphonse should be a DNA test between the so-called Rutsindura Alexis and those Gahenda Bienvenu considers as his parents. On 23 February 2015, the Chief Registrar of the Supreme Court wrote to the Prosecutor General requesting him to assist the Court so that DNA test be carried out between Nahishakiye Berchmas from Burundi and the so-called Rutsindura Alexis. On 24 February 2015, the saliva samples were sent to Germany, the DNA test was carried out by Dr Christa Augustine from the Institute of Legal Medicine located at Hamburg in that Country on 26 March 2015. On 02 April 2015 the Prosecutor General wrote to the Chief Justice delivering to him the result of the requested test. The hearing resumed on 09 June 2015 for the parties to debate on the DNA test result. On that day, Counsel Uwimabera Beatha also came representing the respondent who is in the names of Rutsindura Alexis.

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RWANDA LAW REPORTS 62 II. ANALYSIS OF THE LEGAL ISSUE Determining whether the respondent is a child of late Rutsindura Alphonse for him to be entitled to inherit his estate. [12] Counsel Mwine Geoffrey states that he does criticise neither the DNA test nor the organs which participated in its process be it the police or the prosecution. However, the researchers confirmed that the expert who carried out the DNA test can make a mistake at the rate of 75%. He requested for another DNA test between his client and the descendants of the father of Gahenda called Seburikoko Narcisse, so that the results compared with former DNA test. According to him that will permanently settle the dispute, because normally the expertise requires a cross expertise. [13] Counsel Uwimabera Beatha states that she is worried of the fact that DNA test was forcibly carried out without the consent of his client who denied knowing the one considered as his father from Burundi. She argues that the statement made by Gahenda alleging to be a Burundian were accepted, the same should apply to her client who states that he is a Rwandan. Furthermore, she states that both parties should agree on a doctor to accompany them to carry out the DNA test in another country than Germany, for them to believe that justice has been rendered. [14] Gahenda Bienvenu states that he acknowledges the results of DNA because it confirms what he already knew, and the previous DNA test indicated that his opponent is not a child of Rutsindura Alphonse. Both DNA test demonstrate that the so-called Rutsindura Alexis is a child of Nahishakiye

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63 Berchmans at the rate of 99.9999%. Concerning the fact that Nahishakiye Berchmans stated that he does not know him, Gahenda Bienvenu argues that during the assistance investigation he confessed that Bigirimana Cedric is his child and that they had lost him. He concludes stating that there is a judgment RPAA0054/10/CS rendered by the Supreme Court that holding that the result of DNA test at the rate of 99.9999% is reliable. [15] Counsel Mutembe Protais avers that he

does not challenge the DNA test results, but does not consent to another tests to be carried out with the purpose of proving that his opponent is a child of Rutsindura Alphonse because all the tests carried out proved that he is a child of Nahishakiye Berchmas. In addition, he argues that there is other evidence which confirms the results of DNA test including the pictures which demonstrate that the child Rutsindura Alexis had forward slanting ears, while opponent of Gahenda has backward slanting ears. OPINION OF THE COURT [16] The High Court, chamber of Nyanza which rendered the appealed judgment did not examine the main issue of the case which is determining whether the respondent in the name of Rutsindura Alexis is the heir to Rutsindura Alphonse. Thus that Court contradicted article 7 of Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure which provides that the judge rule only and on all that which is referred to the court. On that ground this Court should examine the issue of determining whether the respondent is a GAHENDA v. RUTSINDURA

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RWANDA LAW REPORTS 64 child of Rutsindura Alphonse for him to be entitled to inherit him. [17] Article 3 of Law N°15/2004 of 12/6/2004 relating to evidence and its production provides that “each party has the burden of proving the facts it alleges”. Whereas article 76 of the same law stipulates that “evidence by experts is that which is intended to give to the court, explanations based on expertise as well as conclusion which is beyond the ordinary knowledge of a judge in his or her duties, depending on the underlying special expertise”. [18] The Court finds that the case file contains the results of DNA test which was submitted by an expert called Dr Christa Augustine from the Institute of Legal Medicine in Germany. The DNA test which was carried out on the so-called Rutsindura Alexis and Nahishakiye Jean Berchmas indicates that the genetic relationship between them is that of a child and father at the rate of 99.9999%. The expert who carried out the DNA test confirmed that basing on the samples tested they found that Jean Berchmas Nahishakiye and Alexis Rutsindura share at least one allele in every STR-system tested here. Thus Jean Berchmas Nahishakiye cannot be excluded from paternity. [19] The Court finds that result of ADN test has weight because it was carried out by an expert on the basis of saliva samples of the respondent in this judgment and Nahishakiye Jean Berchmas, therefore it must be considered as an irrevocable evidence in regard to determine whether the one who pretends to be Rutsindura Alexis is not the son of Rutsindura Alphonse, rather Nahishakiye Jean Berchmas’s.

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65 [20] The Court finds that the DNA test clearly indicates that the so-called Rutsindura Alexis is a child of Nahishakiye Jean Berchmas. This excludes the allegations of the so-called Rutsindura Alexis that he is the child of Rutsindura Alphonse. The DNA test has more weight and is reliable than testimonies produced by the respondent, the so-called Rutsindura Alexis (Bigirimana Cedric) with the purpose of justifying that he is the son of Rutsindura Alphonse. It is not the first time that the DNA test proves that the so-called Rutsindura Alexis is a child of Nahishakiye Jean Berchmas, as it was once carried out in the criminal case (RPA0138/11/TGI/NYGE) before the Intermediate Court of Nyarugenge, although that Court invalidated it because of the procedural

irregularities but not the content. It had also indicated that the accused is a child of Nahishakiye Jean Berchmas at the rate of 99.9999999%. [21] Regarding the arguments of Counsel Mwine Geoffrey that the researchers confirmed that the expert who carried out the DNA test can make a mistake at the rate of 75%, basing on the document he submitted, the Court finds that it is not mentioned like that, rather according to that document, the researchers explained that the less people understood the technology of ADN test the higher were conviction rates. Low understanding of the technology translated to 75% conviction rates versus 42% conviction with better knowledge³. [22] The Court finds that the arguments of the counsels for the respondents regarding the carrying out of another DNA test between him and the descendants of Seburikoko Narcisse lacks merit because it cannot solve anything when the one already carried out indicate that the so-called Rutsindura Alexis is a

3www.news-medical.net/news/20100329/DNA GAHENDA v. RUTSINDURA

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RWANDA LAW REPORTS 66 child of Nahishakiye Jean Berchmas. Furthermore, they do not demonstrate what they contest on that test in order to invalidate its result by carrying out another test. In his conclusion, the expert who carried out the DNA test between the respondent in the names of Rutsindura Alexis and Nahishakiye Jean Berchmas does not hesitate that the genetic relationship between them is that of a child and father. Those are sufficient for the Court to make a ruling without carrying out a similar test, unless the counsels for the respondent were able to challenge the expert who carried out the test. [23] Between the year 2007 and 2014, Rwanda sent DNA samples at the Institute of Legal Medicine, University Hospital of Hamburg in Germany, and more than 400 DNA tests were carried out. Dr. Christa Augustine who carried out the DNA test in this case is employed in that institution. She is in charge of carrying out DNA test and she is the head of Forensic Genetics Laboratory in that institution. There is no problem ever detected in the results of all the DNA tests sent from Rwanda of which she was requested to carry out. From the Organization Research Gate, Dr. Christa Augustine has already written more than 46 scientific papers relating to DNA. All of those demonstrate that she is an expert in matters concerning DNA test. The fact that the Counsels for the respondent in the names of Rutsindura Alexis argue that they would be satisfied after carrying out another DNA test and compared its results with the one carried out, without demonstrating how they challenge it, is groundless. [24] Furthermore, the Court finds that in the case file there is a report made by the Burundian prosecutor of Muramvya, which he called “rapport d’une descente effectuée sur la colline Gahweza Commune de Kiganda, Province de Muramvya en

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67 date du 23/11/2010”. In that report the Prosecutor states that he showed a photo of Bigirimana Cedric to Nahishakiye Jean Berchmas and he responded that he is his fourth born, Nahishakiye even asked him if his child is still alive. Quoting him, he wrote “[.....] j’ai rencontré sieur Nahishakiye Jean Berchmas. Son épouse était encore aux champs. Je lui ai alors montré la photo

de Bigirimana Cédric. Il l'a aussitôt reconnu et a déclaré que c'est son fils et qu'il est son quatrième enfant. Avec beaucoup d'étonnement, il m'a demandé de lui dire si son fils vivait encore". The results of the DNA test, emphasize the statement of the National Prosecutor of Muramvya/Burundi that the parents of the so-called Rutsindura Alexis recognized him when they saw his photo and accepted that he is their fourth born. [25] In the report mentioned in the previous paragraph, the National Prosecutor of Muramvya/Burundi also demonstrates that the respondent in this Court kept on changing names several times. It is clear that his parents do not know him by the names of Rutsindura Alexis. They mentioned his different names as he changed them but they never mentioned that one. The prosecutor further noted that the mother of the so-called Rutsindura Alexis stated that her child before he was baptized, was called Nahishakiye Cedric and later he named himself Bigirimana Cedric. He quoted "elle a précisé qu'avant qu'il ne soit baptisé, il s'appelait Nahishakiye Cédric mais qu'il s'est baptisé Bigirimana Cedric [...]". Changing of the names by the respondent to the extent that he is not known by the names of Rutsindura Alexis in Burundi where he lived; further emphasizes that he is not a child of Rutsindura Alphonse. Basing on the motivations contained in this paragraph and the previous ones, the Court finds that the respondent in the names GAHENDA v. RUTSINDURA

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RWANDA LAW REPORTS 68 of Rutsindura Alexis (Bigirimana Cedric) is not a child of Rutsindura Alphonse. [26] Article 50 of the Law No22/99 of 12/11/1999 supplement book one of the civil code and to institute part five regarding matrimonial regimes, liberalities and successions provides that all legitimate children of the de cujus, in accordance with civil laws, inherit in equal parts. That is to say for a person to be entitled to inheritance, in accordance with the civil procedure, the heir must be a child of the predecessor. The respondent is not a child of Rutsindura Alphonse as already motivated above. In accordance with article 50 cited in this paragraph he is not entitled to inherit the estate of the late Rutsindura Alphonse, therefore the rulings of all the previous cases granting him the right to inherit that estate are hereby overturned. III. DECISION OF THE COURT [27] Holds that the appeal of Gahenda Bienvenu has merit; [28] Holds that the respondent in the names of Rutsindura Alexis (Bigirimana Cedric) is not a child of Rutsindura Alphonse therefore he is entitled to inherit his estate; [29] Declares that the judgment RCA0003/10/HC/NYA rendered by High Court, chamber of Nyanza on 12 March 2014, which was appealed against in this Court and the judgment RC0053/08/TGI/HYE rendered by the Intermediate Court of Huye on 05 January 2010 are overturned;

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69 [30] Orders the respondent in the names of Rutsindura Alexis (Bigirimana Cedric) to deposit the court fees equivalent equal to 100,000Frw.

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RUTABAYIRU v. BATAMURIZA [Rwanda SUPREME COURT – RCAA0013/13/CS (Mugenzi, P.J., Gakwaya and Munyangeri, J.) June 03, 2016] Family law – Cohabitation – Sharing of property – The role of each cohabiting partner in acquiring the property cannot only be determined by having an income earning job as long as they jointly contributed towards the welfare of the household in different ways. Land law – Immovable properties – Requirements for ownership – The emphyteutic lease registered on the names of a person is not enough to prove the ownership in case of failure to prove its origin – Organic Law N°08/2005 of 14/07/2005 determining the use and management of land in Rwanda, article 5. Civil procedure – Appeal – The scope of appeal – The subject matter to be decided by the appeal court is limited to the scope of appeal – Law No21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 170. Facts: Batamuriza sued Rutabayiru to the Intermediate Court of Nyarugenge, requesting to share the property comprised of two houses, farm land, two vehicles and home furniture which she states that they jointly acquired in the course of their cohabitation from 1991 to 2003. That Court held that Batamuriza loses the case because she failed to produce the evidence indicating her contribution in acquiring those properties especially that they were registered on Rutabayiru. It further explained that article 39 of the Law 71

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RWANDA LAW REPORTS 72 No59/2008 of 10/09/2008 should not be relied on because parties ceased to cohabit since 2003 before the enactment of that law. Batamuriza appealed to the High Court alleging that the Intermediate Court should have considered her as legally married basing on the custom of Uganda where they got married. It disregarded witness declarations she presented rather, it confused the judgment for sharing properties with that relating to paternity petition against Rutabayiru. The High Court held that the appeal has merit then ordered that the property on plot No6173 and No6174 should be apportioned equally. Indeed, it motivated that there is no evidence which should be based on in considering Rutabayiru and Batamuriza as legally married in Rwanda, and consequently they should not be apportioned the property on the basis of article 39 of the Law No59/2008 of 10/09/2008 mentioned above because it was not into force when they ceased to cohabit especially that it did not provide for retroactivity, therefore they should share the property in accordance to the rule the judge would have enacted, had they to do so. Rutabayiru appealed to the Supreme Court requesting for the quashing of the High Court decision which ordered the sharing of the property between him and Batamuriza because it contradicts the Constitution. He further adduces that the hierarchy of evidence was disregarded since the Court considered witness declarations in disregard of his emphyteutic lease which is considered as an authentic deed and was not invalidated by the Court. He further alleges that the Court ruled beyond the scope of appeal given that Batamuriza alleged that she was aggrieved basing on article 39 of the aforementioned Law No59/2008 of 10/09/2008 while the judge examined the

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RUTABAYIRU v. BATAMURIZA 73 sharing of the property basing on the judicial precedents and scholar's opinions. Batamuriza rebuts that she jointly acquired those properties with Rutabayiru because she also used to earn income. Held: 1. The role of each cohabiting partner in acquiring the property cannot only be determined by having an income earning job as long as they jointly contributed towards the welfare of the household in different ways.

2. The emphyteutic lease registered on the names of a person is not enough to prove the ownership in case of failure to prove its origin.
3. The subject matter to be decided by the appeal court is limited to the scope of appeal; therefore the other property consisting of the farm land which was not appealed against cannot be examined.
4. Damages are awarded in accordance to Court discretion in case the aggrieved party does not indicate its amount. Appeal has no merit; With court fees to the appellant. Statutes and statutory instruments referred to: Constitution of the Republic of Rwanda of 04/06/2003, as amended to date, article 29. Organic Law N°08/2005 of 14/07/2005 determining the use and management of land in Rwanda, article 5. Organic Law No59/2008 of 10/09/2008 on prevention and punishment of gender- based violence, article 39.

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RWANDA LAW REPORTS 74 Law No21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 170. Decree Law of 30/07/1888 relating to contracts or obligations, article 258. Cases referred to: Harerimana v. Sebukayire, RCAA0018/13/CS rendered on 24/12/2014 by the Supreme Court.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Batamuriza sued Rutabayiru at Intermediate Court of Nyarugenge, requesting to share the property which they acquired together at the time they have been cohabiting from 1991 to 2003. Those properties comprise of two houses located at Muhima, Amahoro cell, Kabirizi village, farm land, two vehicles and home furniture. [2] The judgment RC0790/09/TGI/NYGE rendered on 04 February 2011, the Intermediate Court of Nyarugenge decided that Batamuriza lost the case because she does not prove her contribution to those properties especially that they are registered in the name of Rutabayiru. It based also on the rulings on the paternity petition which held that Rutabayiru is the father of the children, the Court ordered that Batamuriza gets custody of the children in the House of Rutabayiru located at Muhima, while Batamuriza did not demonstrate that she has a share on the house, furthermore the Court motivated that article

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75 39 of the law No59/2008 of 10/09/2008¹ should not be relied on because the parties are ceased to cohabited in 2003 before that law came into force. [3] Batamuriza appealed to the High Court stating that the Intermediate Court should have considered her as married basing on the custom of Uganda where they got married, it disregarded the witnesses she presented rather, mistook the judgment for sharing the properties with that of paternity petition. [4] The High Court held that the appeal lodged by Batamuriza has merit; overturned the judgment rendered by the Intermediate Court; ordered that the property on plot No6173 and No6174 should be equally apportioned, for each to get 57,093,153Frw. Furthermore, the Court declared that Batamuriza keeps the property in her possession located on plot 6174, Rutabayiru keeps the property located on plot No6173 and gives 24,837,481Frw to Batamuriza in order to equalize and otherwise, the properties will be auctioned for them to share proceeds. [5] The High Court motivated that there is no evidence proving that Rutabayiru and Batamuriza were married in accordance with Rwandan laws and that they cannot be apportioned the property on the basis of article 39 of the law No59/2008 of 10/09/2008 mentioned above because it was not

1Law on prevention and punishment of gender- based violence. RUTABAYIRU v. BATAMURIZA

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RWANDA LAW REPORTS 76 into force at the time they ceased to cohabit because it does not provide for retroactivity². [6] However it motivated that they should share the property by basing on equity, because even though there was no law governing the administration and sharing of the property for those who cohabit in course of their separation, but in every relationship exist codified or customary laws which regulate it. Therefore Rutabayiru should not be unjustly enriched on Batamuriza's, so that the later be deprived the rights. [7] Rutabayiru appealed to the Supreme Court stating that the decision rendered by the High Court violated his property in apportioning it with Batamuriza while it is prohibited by article 29 of the Constitution³, thus it must be overturned, as it is provided for by article 200 that “the Constitution is the supreme law of the State. Any law which is contrary to this Constitution is null and void”. [8] Furthermore, he states that the hierarchy of evidences was disregarded because the High Court gave merit the declarations of the witnesses instead of the title deed registered on his name while the latter is an authentic deed and was not invalidated by the Court; which proves the ownership of the property as provided for by article 2 of the Law Organic Law N°08/2005 of 14/07/2005 determining the use and management of land in Rwanda and it was emphasized by article 26 of that law.

2 Article 2 of the law his Law No42/88 of 27/10/1988 governing the Preliminary Title and Civil Code Book One provides only for the future; it does not have retrospective effect unless otherwise provided. 3Constitution of the republic of Rwanda of 04/06/2003, as amended to date.

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77 [9] He keeps on stating that the Court ruled ultra petita because Batamuriza alleged that she was prejudiced basing on article 39 of the law No59/2008 of 10/09/2008 mentioned above, instead the judge examined the sharing of the property basing on the jurisprudence and the doctrines. [10] The hearing was conducted in public on 03 May 2016, Rutabayiru represented by Counsel Mutunzi Donat whereas Batamuriza represented by Counsel Ntwali Justin. II. ANALYSIS OF THE LEGAL ISSUE A. Whether Batamuriza has contributed to the properties for which she contests with Rutabayiru. [11] Rutabayiru states that the Court violated his property, deciding that he apportions with Batamuriza two houses he owns because he built them after 2003 while he had ceased to cohabit with Batamuriza, moreover, the houses located on plots No6173 and No6174 are registered on his name and possesses their title deeds, which demonstrate his ownership. [12] He states that the High Court disregarded the hierarchy of evidence because it based on the statement of the witnesses who provided the information during the investigation which was not requested by the parties, and it was based on jurisprudences from foreign countries whose customs are different from ours in disregard that the properties in litigation are registered on the name of Rutabayiru who also possesses their documents which had never been invalidated by the Court as it is provided by the law governing land management. RUTABAYIRU v. BATAMURIZA

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RWANDA LAW REPORTS 78 [13] Furthermore, he states that the Court ruled ultra petita because Batamuriza alleged that she was prejudiced basing on article 39 of the law No59/2008 of 10/09/2008 prevention and punishment of gender- based violence, instead the judge examined the sharing of the property basing on the jurisprudence and the doctrines, thus he prays that the decision be overturned. [14] Mutunzi the counsel for Rutabayiru states that there was violation of the law because the Court considered oral testimony while there were written evidences which were not produced as an authentic deed. He further states that was violation of Rutabayiru's properties because he acquired them in 2004, when he had already separated with Batamuriza since 2003. [15] In addition, he adduces that there is no reliable evidence to prove that they jointly acquired those properties because the photos on which Batamuriza relies were not shot by an expert, especially that the status of the image may not correspond to the place where it was shot. In addition the fact for the children of Rutabayiru to have studied at APACOPE Muhima does not constitute evidence of co-ownership of property. [16] However, he states that if the Court opines it otherwise, it should consider that the properties in litigation was mortgaged in Bank to secure the payment of the loan Rutabayiru was given but which he defaulted, and consequently that property is under auction process for in the execution of the judgment RCOMA0054/10/CS rendered by the Supreme Court. This should be put under consideration so that the remainder of the auction proceeds should be the ones apportioned among them.

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79 [17] Batamuriza states that she began to cohabit with Rutabayiru in 1991 in Uganda and they jointly acquired those properties which include the house located on plot No6173 which was built in 1997 while they were still residing in Gikondo. In 1999 they moved into that house, from where they bore their child called Prince on 10/07/2001, other children were studying at APACOPE, when they were residing at Muhima and they separated in 2003. [18] She argues that she also used to earn income because she was an employee of CICR (Comité International de la Croix Rouge) where she resigned due to the sickness of her child, later she carried out commercial activities in shop No12 at a place commonly known as “Mashyirahamwe” in Nyabugogo. She adds that she is the one who used to pay the the builder and also for the materials because Rutabayiru worked far from home. She argues that as they resided in Muhima their children studied at APACOPE She adds that her role was also demonstrated by the witness who built the first house, called Sakindi who was interrogated by the High Court and who is available at any time when necessary and also Mukakamanzi Agnès, from whom they brought the plot on the price of 35,000Frw. [19] Furthermore, she states that the documents are dated after her separation with Rutabayiru because the regularization was made afterwards, and the fact that he mortgaged those properties should not deprive her of her rights. She keeps on arguing that they also had a farm land at Bungwe and she was informed that it was sold to Kabera Etienne for 14,000,000Frw in February 2016. [20] Counsel Ntwali states that no legal provisions were disregarded in the appealed judgment, because the issue was to RUTABAYIRU v. BATAMURIZA

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RWANDA LAW REPORTS 80 determine whether Rutabayiru and Batamuriza cohabited and jointly acquired the property in litigation, for them to share it. He explains that to carry out the investigation on the judge initiative is not unlawful, because he has the burden to determine whether Batamuriza contributed to the property in litigation. [21] He states that the property in litigation was not acquired after their separation, because as it is clear in the judgment rendered on 29 April 2004 concerning the paternity of the children against Rutabayiru, those properties were mentioned and the way the title deeds were obtained is unclear since it is obvious that he was issued the title deed of the plot No6173 on 11 April 2005, whereas he received the building permit on 01 April 2005. He further alleges that there was no violation of the property of Rutabayiru reference made of article 29 of Constitution, because as long as he co-owned it with Batamuriza, the infringement should be determined on both sides. [22] On the issue that Rutabayiru is the one registered on the documents of the property which should be considered as the authentic deed, Counsel Ntwali states that even Batamuriza does not allege those documents to be forged, rather what she confirms is that they jointly acquired that property, thus her right should be recognized. OPINION OF THE COURT [23] The Court finds that the pleadings of Rutabayiru that the property in litigation was obtained in 2004 while they were separated, should not be considered because as the High Court

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81 demonstrated, the witnesses including Nyinawabera Euphrate and Uwitonze Innocent who were interrogated by the Court, clearly explained that they were neighbours to Rutabayiru and Batamuriza at Muhima, where they lived as husband and wife, it was during that time they built the houses in litigation, they further state that the place in litigation was bought and built in 1997 and 1998 when Rutabayiru was cohabiting with Batamuriza, therefore that testimony should be considered, especially that before the High Court Rutabayiru stated that they bought the plot No6174 in 1998 when he was still cohabiting with Batamuriza. [24] The Court finds in addition that, in evaluation report requested by the High Court in the decision of 08 August 2012, it is clear that the main house on the plot No6173 was built in 1997 whereas the house on the plot No6174 was built in 2000, and apart from that, in the judgment RC4106/04 of 29 April 2004 regarding the paternity it was decided that those children will be raised in his little house which is rented 50,000Frw located at Muhima, Kigali city, and this would be implemented after the academic year of 2003-2004, this implies that there is a big and small house both built before 2004. [25] As both parties admit, Rutabayiru and Batamuriza cohabited from 1991 to 2003. After their return in Rwanda; Rutabayiru used to work upcountry while Batamuriza worked at CICR as it is indicated in work certificate of 09 October 1997, whereby she earned 47,600Frw of salary as indicated by the payment slip of 21 October 2010 delivered by CICR. In addition, the opponent failed to contradict that she carried out the business. RUTABAYIRU v. BATAMURIZA

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RWANDA LAW REPORTS 82 [26] The Court finds in addition that even if Rutabayiru states that the photos produced by Batamuriza which show the children playing in front of the houses in litigation must not be given merit, nothing is likely to prevent that evidence to be considered because be it constituted by photos does not consist of a defect, as long as the one who challenges it failed to prove it is a forged document. Therefore, the Court notices that such evidence supports others which were demonstrated; indicating that Rutabayiru did not build the houses in litigation after his separation with Batamuriza. [27] The Court finds further that even though Batamuriza did not have income earning job in the course of 12 years she cohabited with Rutabayiru and jointly built and developed their home, it would not imply that she did not contribute, while they were jointly involved in its welfare in different ways. [28] With regards to the fact the assets in litigation are registered on Rutabayiru, the Court finds that even if he possesses the title deed of the property, it is not enough to confirm that it belongs to him, rather he must demonstrate its origin, as provided for by article 54 of Organic Law N°08/2005 of 14/07/2005 determining the use and management of land in Rwanda, providing that a person owns land either through custom, or purchase⁵, thus he must demonstrate that Batamuriza

4That article provides for that “any person or association with legal personality that owns land either through custom, or who acquired it from competent authorities or who purchased it are allowed to own it on long term lease in conformity with provisions of this organic law”. 5The motive for the fact that a part who possesses the title deed does not enough in order the Court held that the property without demonstrating its origin, it was decided in the judgment RCAA0018/13/CS of 24/12/2014, Harerimana Emmanuel v. Sebukayire Tharcisse.

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83 did not contribute on its origin, whereas to be registered on the documents, it may be due to the false information submitted during the registration. [29] Concerning the legal basis of sharing the property between Rutabayiru and Batamuriza, the Court finds that the sharing should not rely on article 39 of the Organic Law No59/2008 of 10/09/2008 because the parties separated before its promulgation, rather, it should be based on article 29 of the Constitution of the Republic of Rwanda of 04/06/2003, as amended to date, which Rutabayiru also bases on in his pleadings, as provides that “every person has a right to private property, whether personal or owned in association with others and also that it is inviolable”. Therefore as Batamuriza and Rutabayiru jointly contributed towards the acquisition of the houses in litigation as motivated above, none should exclude another since it is inviolable and both are entitled to it. [30] The Court finds that in case Rutabayiru holds the whole property while his partner contributed towards its acquisition, it would be contrary to a major principle of law which prohibits unjust enrichment as it was motivated in the appealed judgment. [31] Concerning the farm land, which Batamuriza states that it is located at Gicumbi district, the Court finds that Batamuriza lost the case concerning it in the High Court and she did not appeal against it and in her submission of appeal he requested that judgment to be sustained therefore the Court cannot examine the issues relating to that farm land, because it was not appealed for, especially that article 170 of the Law No21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides that appeal shall be limited to the appealed matter. RUTABAYIRU v. BATAMURIZA

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RWANDA LAW REPORTS 84 B. Concerning damages claimed by Batamuriza. [32] Counsel Ntwali requests that Batamuriza be awarded 500,000Frw of the counsel fees and 700,000Frw of the procedure fees, whereas Mutunzi, the Counsel for Rutabayiru states that the damages should not be awarded because it lacks merit. [33] Pursuant to article 258 of the civil code book III which provides that any act of man, which causes damage to another obliges the person by whose fault it occurred to repair it, the Court finds that Batamuriza had to resort to courts of law in order to have ownership on the property, it is clear that she incurred procedural expenses and counsel fees, but because she doesn't produce correspondent evidence, the Court in its discretion awards her 300,000Frw for the procedural fees and 500,000Frw for the counsel fees. III. DECISION OF THE COURT [34] Holds that the appeal of Rutabayiru Charles lacks merit; [35] Holds that judgment RCA0076/11/HC rendered by the High Court on 15/03/2013 is hereby overturned only in regards to damages; [36] Orders Rutabayiru Charles to pay to Batamuriza Immaculée a total of

800,000Frw in damages; [37] Orders Rutabayiru Charles to deposit 100,000Frw for the Court fees.

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COMMERCIAL CASES

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RWANDA REVENUE AUTHORITY v. MUHIRE [Rwanda SUPREME COURT – RCOMA0035/13/CS (Kayitesi R., P.J., Gakwaya and Gatete, J.) May 3, 2016] Tax law – Income tax – Business profit – No tax may be levied on the loan granted to the taxpayer since it is not the income from business transactions or the income from the investment – Law N°16/2005 of 18/8/2005 on direct income tax, article 10. Damages – Advocate fees – The win on some grounds by the plaintiff is not likely to prevent him from being granted the lawyer's fee as long as he/she hired him – Decree-Law of 30/07/1888 governing the contracts and the contractual obligations, article 258. Tax law – Tax statute of limitation – The statute of limitation for the value added tax is of public order which may be raised by the taxpayer at any stage of proceeding – Law N°25/2005 of 4/12/2005 on tax procedures, article 27 – Law N°06/2001 of 20/1/2001 on Value Added Tax, article 37. Facts: After Rwanda Revenue Authority audited Muhire, RRA notified him that he has to pay tax amounting to 32,957,990Frw encompassing the income tax and value added tax for several fiscal years he did not pay. Muhire appealed against it, to the Commissioner General, in the letter dated 6th May 2012; he was informed that his appeal has no ground. He seized the Commercial High Court arguing that the value added tax for fiscal years of 2005, 2006 and 2007 cannot be 87

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RWANDA LAW REPORTS 88 paid since RRA did not claimed it before the prescription and that in the computation of the value added tax RRA included the loan among the taxable income. The court decided that the statute of limitation concerning the value added tax should not be analysed since no appeal was made to the Commissioner General. It also held that the money that has been lent to Muhire should not be deducted from the sales revenue except the debt of 10,177,083Frw for sales revenue of 2007. Rwanda Revenue Authority appealed to the Supreme Court arguing that the Commercial High Court disregarded the provided arguments on 10,177,083Frw that was decided to be deducted from the sales revenue. It added that among all the grounds relied on by Muhire, he only won on one of them and therefore no lawyer's fee would be granted to him. Muhire responded that 10,177,083Frw consists of the loan he acquired from Kwitonda as proven by the answer he wrote to RRA in whereby he admitted it. Muhire lodged a cross appeal arguing that he should not have been requested to pay the tax for 2005 and 2006 fiscal years since the fact that RRA did not assess the veracity of the declaration he made for the period of three years, that right was time barred, which made the tax final and therefore no other tax should be imposed on him for those fiscal years. Held: 1. The taxable income consists of the income from business profit and investment income which implies that the loan awarded to the taxpayer should not be taxed. Therefore no tax should have been imposed to Muhire for the

money he has been lent.

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2. The win on some grounds by the plaintiff is not likely to prevent him from being granted the lawyer's fee as long as he/she hired him.
3. The statute of limitation for the value added tax is of public order which may be raised by the taxpayer at any stage of proceedings. Appeal has no merit. Cross appeal has merit. Court fees to RRA. Statutes and statutory instruments referred to: Law No25/2005 of 4/12/2005 on tax procedures, article 27(3). Law N°16/2005 of 18/08/2005 on direct taxes on income, article 10. Law N°15/2004 of 12/6/2004 relating to evidence and its production, article 3. Law N°06/2001 of 20/1/2001 on Value Added Tax, article 36. Law of 30/07/1888 governing contracts or obligations, article 258. No case was referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] RRA conducted tax audit for Muhire Jean Pierre. From this audit, it imposed the tax of 32,957,990Frw which includes

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RWANDA LAW REPORTS 90 tax on income; value added tax for 2005, 2006 and 2007 fiscal years. On March 20, 2012, Muhire Jean Pierre made an administrative appeal to the Commissioner General requesting to handle his injustice. On May 16, 2012 the Commissioner General replied that his appeal lacks merit. [2] Muhire Jean Pierre filed the complaint to the Commercial High Court and the latter in the judgment No RCOM0160/12/HCC rendered on January 7, 2013 decided that the prescription of the value added tax for 2005 fiscal year (From January to November) must not be examined because that tax was not final given that Muhire Jean Pierre had never appealed against it to the Commissioner General¹. [3] It decided further that 9,000,000Frw that Muhire Jean Claude claimed to have been a loan from Kayijuka Alphonse must not be deducted from the annual turnover of the year 2005. It further decided that 7,350,432Frw which he said it was the payment made to him by MINAGRI and 4,863,500Frw which he pretends was business expenses must not be deducted from taxable income for the year 2006. The Court held in addition that 10,177,083Frw must be deducted from the annual turnover for the year 2007. Muhire Jean Pierre was awarded 300,000Frw for advocate fees. [4] Rwanda Revenue Authority appealed to the Supreme Court alleging that the Commercial High Court disregarded its arguments on 10,177,083Frw which was confirmed to be deducted from the annual turnover by Muhire Jean Pierre for the

1 Muhire Jean Pierre claimed that the tax for 2005 fiscal year was time barred since RRA did not make any follow up and he got answered that he had not raised such point before the Commissioner General.

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91 year 2007 and that the very Court disregarded also that on all grounds of appeal filed by Muhire Jean-Pierre, he only won the case on one ground and hence he could not be awarded advocate fees. [5] Likewise, Muhire Jean Pierre filed a cross appeal claiming that it must not demand him to pay taxes for the 2005 and 2006 fiscal years because its failure to examine whether Muhire Jean Pierre had successfully declared the tax within the period of three years, it was time barred and hence the tax that he declared became final and no other tax should be imposed for those both fiscal years. [6] The public hearing was conducted on March 29, 2016, whereby RRA was represented by the State Attorney Byiringiro Bajeni while Muhire Jean Pierre was represented by Nsengiyumva Abel, the counsel. II. ANALYSIS OF LEGAL ISSUES

- a. Concerning the appeal of Rwanda Revenue Authority (RRA). Whether 10,177,083Frw must not be deducted from the annual turnover of Muhire Jean Pierre for the year 2007. [7] Byiringiro Bajeni, the state attorney for Rwanda Revenue Authority claimed that the Commercial High Court disregarded the arguments of RRA with regard to the tax of 10,177,083Frw for the 2007 fiscal year which Muhire Jean Pierre alleges to have been the loan he acquired from Kwitonda Jean de Dieu. He explained that the contract on which Muhire RWANDA REVENUE AUTHORITY v. MUHIRE

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RWANDA LAW REPORTS 92 Jean Pierre bases his defence was denied by Kwitonda Jean de Dieu in his correspondence to RRA dated 14 September 2010. He stressed that the terms in that contract are far different from explanations that Kwitonda Jean de Dieu himself gave to RRA in his correspondence dated January 8, 2010 since, from the contract, Muhire Jean Pierre specifies that Kwitonda gave him a loan and that Kwitonda would give him the interests of 1,000,000Frw while he is the lender. He further states that in his letter, Kwitonda Jean de Dieu states that he gave him that money cash so that he could reimburse him either in money or cement since he was doing construction activities. He concluded arguing that the signature of Kwitonda Jean de Dieu as on that contract is different from the one on his correspondences mentioned above as well as on his identity card. [8] Nsengiyumva Abel, counsel for Muhire Jean Pierre states that 10,177,083Frw is the loan he borrowed from Kwitonda Jean de Dieu. He added that the Court had based on partnership agreement dated January 4, 2007 which indicates that he acquired that loan in the context of buying the cement wholesale from CIMERWA. He continued arguing that RRA wrote to Kwitonda Jean de Dieu asking him whether he had really gave the loan to Muhire Jean de Dieu and his reply was positive; hence, according to him the appeal filed by RRA lacks merit. VIEW OF THE COURT [9] Article 3 of Law No15/2004 of 12/6/2004 relating to evidence and its production provides that “each party has the burden of proving the facts it alleges”.

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93 [10] Article 10 of the Law N°16/2005 of 18/08/2005 on direct taxes on income provides that taxable income is composed of the following: employment income, business profits and investment income. [11] As it is identified on paragraph 25 of the appealed judgment, the Commercial High Court explained that the arguments that RRA asked Kwitonda Jean de Dieu in the correspondence dated September 14, 2010 whether he had lent the money to Muhire Jean Pierre but rejected the conclusion of the contract dated January 4, 2007, have no merit because the contract that he denied is the one dated January 4, 2010. The Court further explained that the allegations that the signatures of Kwitonda Jean de Dieu which do not look alike must not be examined in case no criminal action for forgery was filed and therefore decided that 10,177,083Frw should be deducted from the annual turnover for the year 2007 since RRA asked Kwitonda Jean de Dieu in the latter of October 8, 2010, whether he lent such amount to Muhire Jean Pierre and he confirmed that he did in 2007 so that he could buy the cements and sell them to him in return on CIMERWA wholesale price. [12] As it is highlighted in the case file, Muhire entered into partnership agreement with Kwitonda Jean de Dieu whereby the later lent ten millions and one hundred and seven thousand (10,177,000Frw) so that he could buy the cement from CIMERWA for sale. He added that he had to buy it and hand it over to Kwitonda Jean de Dieu who should retail it on the price fixed by CIMERWA and under the name of Muhire Jean Pierre. He explained that they had agreed that the loan should generate interest of a million in favor of Muhire Jean Pierre for every 100 sacks. The agreement was supposed to be terminated at any time RWANDA REVENUE AUTHORITY v. MUHIRE

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RWANDA LAW REPORTS 94 Muhire Jean Pierre could afford to refund him his capital (±10,177,083Frw). [13] The letter of Kwitonda Jean de Dieu in the case file dated September 14, 2010 which was the response to the correspondence No045/RRA/RSZ/LE/10 authored by the Coordinator of RRA in Rusizi and Nyamasheke Districts demonstrates that he had not entered into the contract with Muhire Jean Pierre on January 4, 2010, instead, they entered into contract at the beginning of the year 2010 whereby he was arranging to sale CIMERWA cement. In correspondence of October 8, 2010 made by Kwitonda Jean de Dieu which is included in the case file, in response to the letter of the Coordinator of RRA Branch for Rusizi and Nyamasheke dated September 22, 2010, he confirmed that he lent 1,000,000Frw to Muhire Jean Pierre in the year 2006 and 10,177,083Frw in the year 2007. [14] The Supreme Court finds that the assessment of the documents mentioned above demonstrates with no doubt that Kwitonda Jean de Dieu had indeed lent to Muhire Jean Pierre 10,177,083Frw on January 4, 2007. [15] The Supreme Court finds further that with regard to the trader, the taxable income is the business profit and investment income. Therefore, the fact that the money in question is the debt or the loan that Kwitonda Jean de Dieu accorded to Muhire Jean Pierre must be deducted from the taxable business profit (deductible expenses). [16] With regard to the arguments of RRA that the signature of Kwitonda Jean de Dieu on that contract is different from that which is on the aforementioned letters as well as that on his

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95 identity card, the Supreme Court finds that as long as Kwitonda Jean de Dieu confirms that he lent Muhire Jean Pierre 10,177,083Frw as it is clear in the contract they had concluded on January 4, 2007, then the allegations of RRA cannot be considered. Apart from that, as explained by the High Court, there is no reason to examine the allegations of RRA as long as it did not file a criminal action claiming that the contract in issue is a forgery. [17] Based on the provisions of the law as mentioned in the previous paragraphs, the Supreme Court finds that 10,177,083Frw must be deducted from taxable business profit. Therefore this ground of appeal filed by Rwanda Revenue Authority has no merit. Whether Muhire Jean Pierre must be awarded the advocate fees. [18] Byiringiro Bajeni, the State Attorney states that the Commercial High Court disregarded that Muhire Jean Pierre won on only one ground of appeal while RRA won the case on more grounds than Muhire Jean Pierre did, hence the latter must not be awarded damages since it is a win-win situation. [19] Counsel Nsengiyumva Abel replied that the existence of evidence that Muhire Jean Pierre hired legal counsel before the Commercial High Court justify the award of that fee. VIEW OF THE COURT [20] Article 258 of the Civil Code Book III provides that any act of man, which causes damage to another obliges the person by whose fault it happened to be held liable. RWANDA REVENUE AUTHORITY v. MUHIRE

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RWANDA LAW REPORTS 96 [21] Based on the provisions of this article 258 as aforementioned, to repair the damage must be done restitio integrum but, for this to work, evidence in support must be produced. [22] As it is clear in paragraph 32 of the appealed judgment, RRA argued before the Commercial High Court that the advocate fees that requested by Muhire Jean Pierre has no merit while in paragraph 33 of that very judgment, the Court explained that RRA must pay counsel fees to Muhire Jean Pierre since some of his grounds have merit. [23] The Supreme Court finds that the Commercial High Court did not error in awarding Muhire Jean Pierre the advocate fees that he had requested based on article 258 of the Civil Code Book III because it was necessary to hire a lawyer as it was evident during the hearing and that some of his grounds of appeal had merit. It finds in addition that the fact that the case between RRA and Muhire Jean Pierre is a win-win situation should not have been a ground for not awarding him the advocate fees he requested. [24] Based on the above motivations, the Supreme Court finds that the grounds of appeal of Rwanda Revenue Authority lack merit. B. Concerning cross-appeal filed by Muhire Jean Pierre. Whether the Value Added Taxes for 2005 fiscal year imposed on Muhire Jean Pierre were time barred. [25] Counsel Nsengiyumva Abel states that article 27 of Law No25/2005 of 4/12/2005 on tax procedures provides that tax administration was entitled to verify whether Muhire Jean Pierre

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97 had properly declared the tax in the period of three years. He stressed that the fact that RRA did not do it was stripped off its rights, hence the tax he declared became final and he must not be imposed another one for those years. [26] With regard to the fact that the judge decided not to

examine that ground (on paragraph 7 of the judgment) because it was not mentioned in the appeal addressed to the Commissioner General, counsel Nsengiyumva Abel explained that Muhire Jean Pierre had never modified the claim, instead, it is a new ground supporting that RRA must not impose the value added tax for the fiscals years 2005 and 2006. [27] Byiringiro Bajeni, the State Attorney presented his defence requesting the Court to not examine such ground because since for him, it is a new claim. He explained that Muhire Jean Pierre had never appealed against it to the Commissioner General as provided for by tax laws, which implies he had admitted that decision. [28] Byiringiro Bajeni, the State Attorney states that could the Court find its examination necessary, to his view, no due consideration should be given to them because Muhire Jean Claude was given a notice for tax audit for those fiscal years on December 23, 2008 and those taxes were not yet time barred. He continued arguing that the prescription in issue was interrupted by the notice given to him on February 16, 2011 given that the deadline was December 23, 2011.

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RWANDA LAW REPORTS 98 VIEW OF THE COURT [29] Article 27(3) of Law N°25/2005 of 4/12/2005 on tax procedure which was into force when Muhire Jean Pierre was given rectification note provides that the “rectification note may be issued in a period of three (3) years, starting from the day of the filing of the tax declaration. A rectification note has to be issued at least on the last day of the three year period. The prescription mentioned in this paragraph is interrupted if the taxpayer has been informed to be audited by the Tax Administration, when there has been an affidavit thereof or by other deeds of acknowledgement by the taxpayer concerning the tax liabilities and all other provisions provided in the other laws”. [30] Article 36(1) of Law N°06/2001 of 20/1/2001 on Value Added Tax which was into force at the time Muhire Jean Pierre was issued the rectification note provides that “a registered tax payer shall make tax declaration on value added tax in accordance with prescribed documents and procedure within 15 days after Value Added tax period”. [31] The Supreme Court finds that even if in his submissions, Muhire Jean Pierre requests the Court to confirm the prescription of taxes for 2005 and 2006 fiscal years, but as it is clear on paragraph 4 of the appealed judgment, Muhire Jean Pierre requested the Commercial High Court to confirm that the value added tax for the fiscal year 2005 from January till November that he declared became final because Rwanda Revenue Authority was entitled to conduct tax audit within three years and it did it after the prescribed period. Hence, the

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99 Court should only examine the prescription of value added tax for 2005 fiscal year as alleged by Muhire Jean Pierre. [32] The Court finds that as indicated on paragraph 7 of the appealed judgment, the Commercial High Court explained that the statute of limitation concerning the value added tax for 2005 fiscal year from January to November must not be examined because Muhire Jean Pierre did not appeal against it to the Commissioner General because in his/her

decision it is not evident that he invoked the prescription of tax while the Court is referred to only after the tax payer deems he is aggrieved by the decision of the Commissioner General. Therefore, the value added tax for 2005 fiscal year from January till November that Muhire Jean Pierre had declared is not final. [33] The Supreme Court finds that Rwanda Revenue Authority issued assessment note on December 16, 2008 and he acknowledged reception on December 23, 2008 for tax declaration (IR, TPR and TVA) he made for 2005, 2006 and 2007 fiscal years. [34] The Supreme Court finds that based on article 36(1) of the Law N°06/2001 of 20/1/2001 referred to above and on article 27(3) of the Law 25/2005 of 4/12/2005 referred to above, tax declaration on value added tax of January 2005 had to be done by Rwanda Revenue Authority not later than February 15, 2008 while that of November had to be done not later than December 15, 2008, therefore the fact that Rwanda Revenue Authority had notified Muhire Jean Pierre on December 23 that it was to conduct tax audit for 2005, 2006 and 2007 fiscal years on January 5, 2009 implies that the value added tax for 2005 year from January to November that Muhire Jean Pierre had declared became final. RWANDA REVENUE AUTHORITY v. MUHIRE

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RWANDA LAW REPORTS 100 [35] With regard to the arguments of Rwanda Revenue Authority that this ground about the state of limitation regarding value added tax for 2005 fiscal year should not be examined by this Court since it is the new claim which had not been referred to Commissioner General at appeal, the Supreme Court finds that these arguments lack merit because the statute of limitation referred to in article 27(3) of the aforementioned Law N°25/2005 of 4/12/2005 is of public order in such a way that it may be raised by the tax payer at any stage of the proceedings either before Commissioner General or the Court. It finds further that this cannot be considered as a new claim since it consists of the defence at the disposal of the tax payer which he/she may raise at any stage as mentioned above. [36] Based on the explanations in the previous paragraphs, the Supreme Court finds that this ground of appeal filed by Muhire Jean Pierre has merit. Hence, he must be imposed value added tax only for 2005 fiscal year that he had declared to Rwanda Revenue Authority. Whether Muhire Jean Pierre must be awarded damages he seeks. [37] Muhire Jean Claude states that he requests the Supreme Court to order Rwanda Revenue Authority to pay 500,000Frw for advocate fees. [38] Rwanda Revenue Authority replied that the requests of Muhire Jean Pierre are not founded.

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101 VIEW OF THE COURT [39] Article 258 of the Civil Code Book III provides that any act of man, which causes damage to another obliges the person by whose fault it happened to be held liable. [40] Based on the explanations detailed above, the Supreme Court finds that Muhire Jean Pierre deserves to be awarded 500,000Frw for advocate fees since he hired the services advocate. III. DECISION OF THE COURT [41] Decides that the appeal of Rwanda Revenue Authority has no merit; [42] Decides that 10,177,083Frw must be deducted from the taxable business profit made by Muhire Jean Pierre; [43] Decides that cross appeal filed by Muhire Jean Pierre has merit; [44] Decides that Muhire Jean Pierre must be imposed to pay the value added tax for 2005 fiscal year

that he declared to Rwanda Revenue Authority; [45] Orders Rwanda Revenue Authority to pay Muhire Jean Pierre 500,000Frw for advocate fees at this instance; [46] Orders Rwanda Revenue Authority to pay court fees worth 100,000Frw.

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ROCK GLOBAL CONSULTING Ltd v. IMPACT DISTRIBUTORS EAST AFRICA Ltd [Rwanda SUPREME COURT- RCOMA0041/13/CS (Mukanyundo, P.J., Rugabirwa and Ngagi, J.) March 3, 2016] Contract law – Commercial contract – Evidence in commercial contract – Commercial relationships do not heavily depend on formalities rather evidence shall be based on all the facts and legal considerations. Damages – Breach of contract – No damages should be granted to the party who breached the contract – Law N°45/2011 of 25/11/2011 governing contract, article 137. Facts: IMPACT DISTRIBUTORS EAST AFRICA Ltd filed a claim before the Commercial High Court requesting that ROCK GLOBAL CONSULTING Ltd pay it the debt worth 98,673.69USD and related damages. The Court ordered ROCK GLOBAL CONSULTING Ltd to pay those dollars in addition to 1,000,000Frw for damages. ROCK GLOBAL CONSULTING Ltd appealed to the Supreme Court arguing that the Commercial High Court disregarded evidence proving that there was no delivery of the said equipments and that this court contradicted itself. IMPACT DISTRIBUTORS EAST AFRICA Ltd argues that the Court did not disregard its arguments since it decided on them. 103

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RWANDA LAW REPORTS 104 Held: 1. IMPACT DISTRIBUTORS EAST AFRICA Ltd cannot deny the debt that it owes to IMPACT DISTRIBUTORS EAST AFRICA Ltd basing on the fact that the latter does not produce the delivery note, besides that the commercial dealers trust each other in their transactions with disregard of given formalities, and in addition, nothing proves that both parties agreed that only the delivery note should be produced. Therefore, ROCK GLOBAL CONSULTING Ltd has to pay the total of debt it owes to IMPACT DISTRIBUTORS EAST AFRICA Ltd.

2. No damages should be granted to the party who breached the contract, therefore, the damages are granted to IMPACT DISTRIBUTORS EAST AFRICA Ltd in the discretion of the court. Appeal has no merit. Cross appeal has merit. Court fees to the appellant. Statutes and statutory instruments referred to: Law N°45/2011 of 25/11/2011 governing contracts, article 137. No case was referred to.

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Judgment

I. BRIEF BACKGROUND OF THE CASE [1] IMPACT DISTRIBUTORS EAST AFRICA Ltd states that it entered into commercial relationship with ROCK GLOBAL CONSULTING Ltd whereby the former sold ICT equipment worth of 98,673.6 USD to the latter. The payment was not done and consequently, IMPACT DISTRIBUTORS EAST AFRICA Ltd sued to the Commercial High Court requesting that ROCK GLOBAL CONSULTING Ltd be ordered to pay the debt and damages as highlighted in the subject matter of the case. [2] In the judgment No RCOM0163/12/HCC delivered on February 8, 2013, the Commercial High Court held that ROCK GLOBAL CONSULTING Ltd must pay to IMPACT DISTRIBUTORS EAST AFRICA Ltd 98,673.69USD in addition to the damage amounting to 1,000,000Frw. [3] Unsatisfied of the ruling, ROCK GLOBAL CONSULTING Ltd appealed to the Supreme Court alleging that the Commercial High Court disregarded evidence which demonstrates that there was no delivery of equipment and that there are contradictions in the ruling. [4] The case was heard in open court but in default of ROCK GLOBAL CONSULTING Ltd while it was clear that summons were served in accordance with the Law. Nizeyimana Boniface, the counsel represented IMPACT DISTRIBUTORS EAST AFRICA Ltd.

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RWANDA LAW REPORTS 106 II. ANALYSIS OF LEGAL ISSUE A. Concerning the appeal lodged by ROCK GLOBAL CONSULTING Ltd. A.1. Whether there exists evidence in support of the debt by ROCK GLOBAL CONSULTING Ltd to IMPACT DISTRIBUTORS EAST AFRICA Ltd. [5] In its appeal submissions, ROCK GLOBAL CONSULTING Ltd states that the Commercial High Court disregarded its arguments whereby it requested IMPACT DISTRIBUTORS EAST AFRICA Ltd to submit evidence to demonstrate the veracity of the delivery of those equipment because once there is a purchase order, there must exist also a delivery receipt. [6] It states further that in paragraph 12 of the judgment, the Court contradicted itself whereby it admits that IMPACT DISTRIBUTORS EAST AFRICA Ltd failed to submit conclusive evidence of the delivery of equipment and hence must pay their cost but disregarded this fact and relied on commercial transactions which it did not explain and e-mails which do not demonstrate that there was the delivery of those equipment. [7] Nizeyimana Boniface, counsel for IMPACT DISTRIBUTORS EAST AFRICA Ltd states that the arguments of ROCK GLOBAL CONSULTING Ltd were not disregarded because its explanations were received and considered by the Court as it is indicated on page 4 paragraph 15 of the appealed judgment. With regard to evidence, the judge had duly examined it in the paragraph referred to above whereby he held

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107 that all electronic correspondences regularly demonstrate the stand of the debt and ROCK GLOBAL CONSULTING Ltd responded regularly. Hence, it cannot allege that it owes it no debt. THE VIEW OF THE COURT [8] With regard to whether the Commercial High Court had disregarded evidence submitted by ROCK GLOBAL CONSULTING Ltd, the Court finds that on paragraph 11 of that appealed judgment, that Court demonstrated that ROCK GLOBAL

CONSULTING Ltd admits to have issued a purchase order N° PO 027-IS-05-10 which details the equipments for which IMPACT DISTRIBUTORS EAST AFRICA Ltd demands the payment, but later during the hearing of the case on merit it tried to deny that there was delivery while in the course of preliminary hearing, Niyomugabo Christophe, its counsel, had denied knowing IMPACT DISTRIBUTORS AFRICA Ltd; which the Court considered as ROCK GLOBAL CONSULTING Ltd was intending to confuse in order to escape from the obligation of payment of the debt. [9] The Court finds further that though the Commercial High Court had explained that there is no evidence proving that IMPACT DISTRIBUTORS EAST AFRICA Ltd had delivered the equipments referred to in the case to ROCK GLOBAL CONSULTING Ltd but that based on the purchase order that was referred to above issued by ROCK GLOBAL CONSULTING Ltd which was never invalidated by the issuer, e- mails that were exchanged between those two companies and commercial usages whereby the issuer of purchase order who no longer consider it, must first make a notification to the seller ROCK GLOBAL CONSULTING Ltd v. IMPACT DISTRIBUTORS EAST AFRICA Ltd

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RWANDA LAW REPORTS 108 and the fact that this was not done; demonstrates that the relationships between parties continued to effectively run well and the dispute arose from the payment as it is demonstrated by the e-mails referred to above. [10] The Court finds that as it was held by the Commercial High Court, ROCK GLOBAL CONSULTING Ltd submitted no evidence to justify that it owes no debt to IMPACT DISTRIBUTORS EAST AFRICA Ltd and which has been disregarded apart from only alleging that the other party failed to show the delivery receipt as if it is the sole evidence that had to be produced by IMPACT DISTRIBUTORS EAST AFRICA Ltd. [11] The Court finds that the absence of the delivery receipt cannot invalidate other elements of evidence which prove with no doubt that ROCK GLOBAL CONSULTING Ltd owes a debt to IMPACT DISTRIBUTORS EAST AFRICA Ltd. Among those elements of evidence there are e-mails between the Managing Directors of those Companies especially between Kabagema Patrick on the side of ROCK GLOBAL CONSULTING Ltd and Glen Matswetw on the side of IMPACT DISTRIBUTORS EAST AFRICA Ltd whereby one of them demonstrates that after more than once procrastinations, Glen Matswetw in his correspondence dated October 11, 2010 informed Kabagema Patrick that the debt that ROCK GLOBAL CONSULTING Ltd owes to IMPACT DISTRIBUTORS EAST AFRICA Ltd stands at 87,142,79USD which is comprised of the principal debt and its interests. Taking into consideration the responses of ROCK GLOBAL CONSULTING Ltd, it is clear that the latter did not deny the existence of the debt, instead, it states that even if the trust was lost but that they were seeking

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109 how to clear the payment though they could not fix the exact day. Moreover, based on the e-mails that both parties continued exchanging, it is clear that on April 18, 2011 this debt stood at 96,673.69USD and ROCK GLOBAL CONSULTING Ltd does not challenge it. [12] Therefore, the Court finds that in consideration of these correspondences and others which followed, ROCK GLOBAL CONSULTING Ltd should not deny owing a debt to IMPACT DISTRIBUTORS EAST

AFRICA Ltd on the ground that the latter does not produce the delivery receipt especially that based on the common practice in commercial transactions which privileges facts and legal consideration and the fact that nothing indicates that parties agreed to the production of delivery receipt as a prerequisite. Hence, ROCK GLOBAL CONSULTING Ltd must pay the whole of the debt to IMPACT DISTRIBUTORS EAST AFRICA Ltd which stands at 98,673.69USD as ordered by the Commercial High Court. A.2. Whether ROCK GLOBAL CONSULTING Ltd had not to be ordered to pay damages on the first instance. [13] ROCK GLOBAL CONSULTING Ltd states that the damages amounting to 1,000,000Frw awarded to IMPACT DISTRIBUTORS EAST AFRICA Ltd are not grounded because it does not prove that it delivered the equipments to ROCK GLOBAL CONSULTING Ltd. [14] IMPACT DISTRIBUTORS EAST AFRICA Ltd states that the fact for ROCK GLOBAL CONSULTING Ltd to have lost the case implies that it must pay damages.

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RWANDA LAW REPORTS 110 VIEW OF THE COURT [15] Article 137 of Law N°45/2011 of 25/11/2011 governing contracts provides that “the aggrieved party has right to damages from the party failing to perform his/her contractual obligations, unless the claim for damages has been suspended or withdrawn”. [16] With regard to appeal filed by ROCK GLOBAL CONSULTING Ltd concerning damages it was ordered to pay, the court finds that it has no merit because it was found that it breached the contract. Hence, the aggrieved party must have been awarded damages as provided for by article 137 cited in the previous paragraph. B. Concerning the Cross appeal filed by IMPACT DISTRIBUTORS EAST AFRICA Ltd. B.1. Whether cross appeal filed by IMPACT DISTRIBUTORS EAST AFRICA Ltd has merit. [17] IMPACT DISTRIBUTORS EAST AFRICA Ltd requests to be paid 10,000,000Frw of damages through a cross appeal based on article 167 of Law No21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure because ROCK GLOBAL CONSULTING Ltd lodged an appeal with the purpose to escape the payment of the debt and therefore delay the execution of the judgment. VIEW OF THE COURT [18] The Court finds with merit the damages requested by IMPACT DISTRIBUTORS EAST AFRICA Ltd. However, since

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111 the amount it requests is excessive and does not prove its basis, it is awarded 800,000Frw in addition to the amount awarded by the Commercial High Court, the total being 1,800,000Frw. III. DECISION OF THE COURT [19] Decides that appeal filed by ROCK GLOBAL CONSULTING Ltd has no merit. [20] Decides that cross appeal filed by IMPACT DISTRIBUTORS EAST AFRICA Ltd has merit. [21] Uphold the ruling of the judgment RCOM0163/12/HCC rendered on February 8, 2012 by the Commercial High Court, except with regard to damages which must accrue. [22] Orders ROCK GLOBAL CONSULTING Ltd to pay to IMPACT DISTRIBUTORS EAST AFRICA Ltd 800,000Frw for damages in addition to 1,000,000Frw, awarded by the Commercial High Court, the total being 1,800,000Frw. [23] Orders ROCK GLOBAL CONSULTING Ltd to pay the court fees equivalent to

100,000Frw.

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UMWARI ET AL v. SN BRUSSELS AIRLINES [Rwanda SUPREME COURT – RCOMA0007/10/CS (Mugenzi, P.J., Mukamulisa and Rugabirwa, J.) May 6, 2011] Commercial procedure – Cross Appeal – Cross Appeal is not only limited to the scope of appeal, since nothing prevents it to extend also to other grounds of the case, provided they have been subject to debate at the first instance – Law N°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 167. Civil procedure – The admissibility of the claim – If the plaintiffs have hired one advocate while each one of them paid his/her own court fees, these are independent claims – Law N°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 20. Law Governing Air Transportation – Territorial jurisdiction – Applicable law – The plaintiff may choose the court of the carrier's resident, headquarters, the place of the branch where the contract was signed, or the place of destination of passengers – The procedure shall be governed by the law of the seized Court – Warsaw Convention relating to International Carriage by Air, Signed at Warsaw on 12 October 1929 that has been ratified by Rwanda and Belgium, article 28. Damages – Obligations of the carrier – Moral damages – The transport company has the obligation of taking the passengers to the destination agreed upon (obligation of result) which it cannot refrain from – Damages are granted in case it does not 113

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RWANDA LAW REPORTS 114 prove the effort to get other means to take the passengers to the agreed destination, even if this would be expensive. Advocate fees – Advocate fees is granted in the discretion of the court in case the one claimed is too excessive. Facts: Umwari and others bought the return tickets from SN BRUSSELS AIRLINES from Kigali- Rwanda to Belgium. On their way back to Kigali SN BRUSSELS AIRLINES left them in Kampala and Nairobi instead of taking them to Kigali. This led them to sue it before the Commercial High Court claiming damages for its failure to assist them and incurred expenses for their accommodation in Kampala and Nairobi as well as the travel back to Kigali while they had not planned it. The court decided that SN BRUSSELS AIRLINES pays to them the pecuniary damages and counsel fees. The plaintiffs appealed to the Supreme Court claiming for the additional damages than those granted by the previous court, alleging that it has granted to them inadequate damages considering the prejudice they suffered, therefore they requested the court to allocate to each one 15,000 Euros and the counsel fees amounting to 10% of the latter. SN BRUSSELS AIRLINES also raised a cross appeal whereby it requested the court to reject the plaintiffs' appeal on allegation that the case should have been decided basing on the Belgium law as the company which transported the passengers is registered in Belgium. It alleges in addition that their claims were filed in contravention with the law because they were joined without the President's court order. Therefore it requests to be awarded procedural expenses and damages for being dragged into

vexatious lawsuits. It argues further that the plaintiffs were seven different individuals but who filed their

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UMWARI ET AL v. SN BRUSSELS AIRLINES 115 case in a joint group without the capacity to file the case to the court. In their defense, the plaintiffs argued that even if the claim that has been filed is common to all, there has been no violation of the law as long as each one paid his/her own court fees. SN BRUSSELS AIRLINES argues that the plaintiffs' claim is time barred since the contract of the transport concluded between it and the plaintiffs is governed by the Belgium law which provides that the claim prescribes after one year. With regard to damages claimed by the plaintiffs, it argues that it cannot pay them because the travels from Kampala/Nairobi to Kigali were rendered impossible due to the force majeure, therefore it only admitted to pay back the amount of tickets for the hindered travels together with expenses substantiated by documents. Held: 1. Cross Appeal is not only limited to the scope of appeal, provided they have been subject to debate at the first instance.

2. If the plaintiffs have hired one advocate while each one of them paid his/her own court fees, these are independent claims.
3. The plaintiff may choose the court of the carrier's resident, headquarters, the place of the branch where the contract was signed, or the place of destination of passengers.
4. The transport company has the obligation of taking the passengers to the destination agreed upon (obligation of result) which it cannot refrain from. Therefore damages are granted in case the carrier does not prove the effort to get other means to take the passengers to the agreed destination, even if this would be expensive.

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5. Advocate fees is granted in the discretion of the court in case the one claimed is too excessive. Appeal has merit. The cross appeal lacks merit. Court fees to the respondent. Statutes and Statutory instruments referred to: Warsaw Convention relating to International Carriage by Air, signed at Warsaw on 12 October 1929, article 28. Law N°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, articles 20 and 167. No case was referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Umwari Marie Agnès, Gakwaya Innocent, Gakirendekwe Panthaléon, Nsengiyumva Sylvestre, Senyana Marie Noel, Somayire Rubona Freddy and Spinette Gènevieve bought the airplane return tickets from the company named SN BRUSSELS AIRLINES for Kigali to Brussels. Before their return, that company cancelled the usual travels of Entebbe / Nairobi – Kigali, and consequently it only took those passengers to Kampala

and Nairobi. SN BRUSSELS AIRLINES argued that it was due to the fact that the Republic of Rwanda has

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117 surprisingly stopped its airplane at Kanombe airport which prevented them to take the passengers to that destination. [2] They sued that company claiming damages for its failure to assist them and incurred expenses for their accommodation in Kampala and Nairobi as well as the travel back to Kigali. [3] The Commercial High Court decided that SN BRUSSELS AIRLINES has to pay the pecuniary damages as follow: 364,262Frw for Gakwaya, 287,174Frw for Nsengiyumva, 282,894Frw for Spinette, 247,192Frw for Senyana, 261,361Frw for Gakirendekwe, 261,361Frw for Somayire, 261,361Frw for Umwari and moral damages amounting to 1,283,939Frw (worth 1500 Euros) for each passenger and the lawyer's fees amounting to 1,000,000Frw. [4] The plaintiffs appealed before the Supreme Court arguing that the previous Court did not consider the prejudice they endured, therefore they claimed that the court award each of them 15,000 Euros as they had claimed and the lawyer's fees amounting to 10% of this amount. [5] SN BRUSSELS AIRLINES also lodged a cross appeal arguing that the claims should not have been admitted since they were illegally filed, because the claimants seem to have jointly submitted their claims and the claims were joined without the President's court order from the competent court. It argued in addition that the fact that the case should have been rendered in reference to the Belgium law was disregarded since SN BRUSSELS AIRLINES which transported those passengers is registered in Belgium, and that the action was time barred according to the law of that country. It argued also that it UMWARI ET AL v. SN BRUSSELS AIRLINES

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RWANDA LAW REPORTS 118 disregarded the fact that the failure to take the passengers to Kigali was due to force majeure. [6] That company claims to be paid 2,000Euros for procedural expenses and counsel fees. It claims also 1,000 Euros for being dragged into vexatious lawsuits. [7] The hearing was held in public on 31 March 2011, whereby the plaintiffs were represented by Counsel Nzamwita Toy while Brussels Airlines was represented by Counsel Kavaruganda Julien and Counsel Nizeyimana Boniface. [8] At the beginning of the hearing, the plaintiffs requested the court to reject the cross appeal raised by SN BRUSSELS AIRLINES since it is not within the scope of their appeal concerning moral damages. The respondents argued that their cross appeal does not contravene the law. The court decided to proceed and examine it with merit of the case. II. ANALYSIS OF LEGAL ISSUES A. With regard to admissibility of the cross appeal of SN BRUSSELS AIRLINES. [9] The plaintiffs' objection aims at rejecting the cross appeal raised by the respondent since the scope of their appeal did not concern the entire judgment, rather the amount of moral damages they were awarded by the previous court. They argued therefore that the scope of the cross appeal should not be beyond any other issue than moral damages. SN BRUSSELS AIRLINES alleges that nothing prevents its cross appeal to extend to other issues of the entire judgment.

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119 [10] According to the provisions of article 167 of the Law N°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure as modified and complemented to date, the respondent may also raise a cross appeal, therefore it does not provide for its limitation to grounds of appeal. The court finds that nothing bares the cross appeal to cover other grounds of the judgment, provided they have been subject to debate at the first instance. [11] This motivation concurs with the opinion of the law scholars who explain that the cross appeal is incident to the main appeal, and is raised by the respondent at appeal level, in case of dissatisfaction with the entire judgment¹. Therefore it implies his/her dissatisfaction can be beyond the grounds of appeal. B. With regard to the procedure in which the claim was filed before the Commercial High Court. [12] As argued before the Commercial High Court, SN BRUSSELS AIRLINES states that the plaintiffs were seven different people, who jointly filed the claim without defining neither the nature nor the capacity of that association to file a claim. Furthermore, it added that their claims were joined and recorded to the same number without the president court order. [13] The counsel for the appellants replied that there was no legal provision violated, because even if the claim filed was common for all, each one paid his/her own court fees.

1 “L’appel incident vient se greffer sur l’appel principal, il est le fait de l’intimé qui ne s’estime pas totalement satisfait de la solution des premiers juges”. See Melina Douchy-Oudot: “Procédure civile”, 2ème édition, Paris, 2006, p.366, No638. UMWARI ET AL v. SN BRUSSELS AIRLINES

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RWANDA LAW REPORTS 120 [14] The court realises that the fact that the appellants hired one advocate who filed their claims jointly, while each one of them paid his/her own court fees, does not violate the law. Therefore, these claims comply with the provision of article 20 of the Law N°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which provides that “If there are several co-plaintiffs or co-defendants with same interests, each of them, has the same rights and obligations as to these interests”. Hence, the arguments that the appellants filed their claims without capacity since they did it as an association, lacks merit because they did not consider themselves as an association nor behave as such, rather each one has appeared personally. [15] Therefore, the court realises that there is no proven ground with regard to the filing of the claim likely to result in the inadmissibility of the claims that have been filed, while arguing that their inadmissibility may rely on the fact that they have been joined without the president’s court order; this ought not to be a ground for rejecting the claim filed in accordance with the procedure, rather, there should have been a request for the quashing of the judgment, in case it was proven that joining the claims without the president’s court order constitutes a substantial irregularity; which was not requested by SN BRUSSELS AIRLINES. C. Whether the Rwandan law were applicable to this case. [16] SN BRUSSELS AIRLINES argues that in accordance to article 19 of its general rules governing transport contract of passengers and goods, the contract concluded between SN BRUSSELS AIRLINES and the plaintiff is governed by

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121 Belgium law since that company is registered in that country, and those general rules are mentioned on the air tickets of passengers even if they may not be aware of them, but they are available whenever needed. [17] Based on this, SN BRUSSELS AIRLINES argues that the claim filed to the Commercial High Court was time barred, since basing on the Belgium law, the statute of limitation for such claims is one year. [18] Article 28 of the Warsaw Convention relating to International Carriage by Air, Signed at Warsaw on 12 October 1929, ratified by both Rwanda and Belgium, superior to national laws, states in its first paragraph that with regard to the forum, the plaintiff may choose the court of the carrier's resident, headquarters, the place of the branch where the contract was signed, or the place of destination of passengers. Furthermore, it states that the applicable law is that of the seized court. [19] It is therefore evident that the fact that the plaintiffs opted to seize the Rwandan courts as recognized by the above mentioned international convention, it is indisputable that the seized court was competent, and the Rwandan law should be applicable, therefore, the arguments that the general rules of that company has to be referred to lacks merit, especially that SN BRUSSELS AIRLINES admits also that they might not have accessed them. [20] Even with regard to the statute of limitation, the defendant argues that it is the Belgium law which should be referred to and be decided that it elapses within one year. However, article 29 of the Warsaw convention mentioned above, explains that the prescription of the claim is two years, UMWARI ET AL v. SN BRUSSELS AIRLINES

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RWANDA LAW REPORTS 122 and its computation shall be determined by the law of the seized Court, therefore the appeal of SN BRUSSELS AIRLINES requesting for the application of the Belgium law has no basis. D. With regard to the claimed damages. [21] The plaintiffs appealed to the Supreme Court arguing that the previous court did not take into consideration the prejudice they suffered and awarded them insufficient damages amounting to 1,500 Euros, therefore, they claim 15,000Euros each as they did, since they find it reasonable and they claim the counsel fees amounting to 10% of the requested damages. [22] They explain that the amount of these damages is based on the profound damage they suffered due to the act of SN BRUSSELS AIRLINES which waited until the day they were supposed to travel to Kigali and informed them that it had cancelled the flight. However, it transported other passengers apart from them to their destination with other airplanes, promising them that in case they reach Kampala or Nairobi it would get for them other means. Upon their arrival, it did not respect the promise and this led them to look for accommodations and meals on their own expenses, which was difficulty since it was not planned. They say that it belittled them as if they are not human beings. [23] SN BRUSSELS AIRLINES argues that it should not pay damages since the failure to take those passengers to Kigali was due to the Rwandan government's decision to ground its airplane in Kigali while it was the one which should have flown passengers from Nairobi/ Kampala, and this has been a force majeure which hindered the travel Kampala/Nairobi to Kigali. However it

accepted to pay back only the money they paid for

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123 tickets corresponding to the failed travels together with expenses they incurred substantiated by documents. SN BRUSSELS AIRLINES denies to have treated them differently from other passengers. [24] The court realizes that SN BRUSSELS AIRLINES as a transport company, had the obligation to take passengers to the destination agreed upon (the obligation of result), therefore, it cannot refrain itself from those obligations under allegations that there has been force majeure as provided for by the Warsaw convention that the carrier is not held liable for damages if he/she proves that he/she did much as possible to mitigate eventual damages. However, as it was held by the previous court, the carrier did not prove the effort to get other means to take the passengers to the agreed destination, even if this would be expensive. [25] With regard to the amount of the reasonable moral damage, considering the prejudice suffered by the plaintiffs due to the carelessness of the carrier who would have found the solution to fulfill its obligations; the court realizes that every plaintiff should be awarded more damages in addition to those awarded by the previous court, to amounting to 2,000,000Frw. [26] With regard to the lawyer's fees, the court realizes that those fees have to be awarded to the plaintiffs since they hired a lawyer in this case, but because those they claim amounting to 10% of the damages is too excessive, and in its discretion, the court awards 300,000Frw each at this level in addition to 1,000,000Frw awarded by the previous court.

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RWANDA LAW REPORTS 124 III. DECISION OF THE COURT [27] It decides to admit the appeal lodged by Umwari Marie Agnès, Gakwaya Innocent, Gakirendekwe Panthaléon, Nsengiyumva Sylvestre, Senyana Marie Noel, Somayire Rubona Freddy and Spinette Génèvieve, and the cross appeal of SN BRUSSELS AIRLINES since they have been filed in accordance with legal procedures; [28] It decides that the appeal of Umwari, Gakwaya, Gakirendekwe, Nsengiyumva, Senyana, Somayire Rubona and Spinette has merit on some grounds and that of SN BRUSSELS AIRLINES is without merit; [29] It decides that Umwari, Gakwaya, Gakirendekwe, Nsengiyumva, Senyana, Somayire Rubona and Spinette wins the case while SN BRUSSELS AIRLINES loses; [30] It orders SN BRUSSELS AIRLINES to pay to each one of the plaintiffs mentioned above moral damages amounting to 2,000,000Frw and 1,300,000Frw for counsel fees, all totalling 3,300,000Frw, failure to pay it within the period of one month, this money will be taken from its property through government coercion; [31] It orders it to pay 924,000Frw of prorated fee amounting to 4% of the total damages to be paid (23,100,000Frw), failure to pay within the period of one month, this amount will be taken from its property through government coercion; [32] It orders it to pay court fees amounting to 41,700Frw within the period of eight days, failure of which it will be taken from its property through government coercion;

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125 [33] It overrules the decision of the appealed judgment.

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CRIMINAL CASES

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PROSECUTION v. MANIRIHO ET AL [Rwanda SUPREME COURT – RPA0082/11/CS (Mukamurisa, P.J., Munyangeri and Hitiyaremye, J.) April 22, 2016] Criminal Law – Punishable attempt – For the attempt to be qualified as such and be punished, there should be observable and unequivocal acts toward the commission of the crime which were suspended or failed in their purpose only because of circumstances beyond the offender’s control – Decree - Law N°21/77 of 18/08/1977 instituting the penal code, article 21. Facts: The accused were prosecuted over the attempt to murder, where the Prosecution accuses them for having plotted to kill Nsabimana Isaac but failed to, and then drafted a “tract” frightening him that they would kill him if he fails to give them three hundred thousand Rwandan francs (300,000Frw). The High Court, Musanze chamber, rendered the verdict and found them guilty of attempt to murder, therefore, sentencing them to life imprisonment. Unsatisfied with the ruling, the accused appealed to the Supreme Court, stating that the plot in question was not perpetrated, rather it was prepared by Nsabimana Isaac due to the conflicts between him and Niyonsenga Léonard with aim to get him and his fellows imprisoned so as he may be able to monopolise the market. They added that the judge based on the tract while he [the judge] stated that its author was anonymous. The Prosecution stated that there is no doubt as they accuse each other, and that attempt to felony is equally punished as felony 129

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RWANDA LAW REPORTS 130 itself, that there was plot to kill Nsabimana Isaac, which was interrupted by circumstances beyond their control. Held: For the attempt to be qualified as such and be punished, there should be observable and unequivocal acts toward the commission of the crime which were suspended or failed in their purpose only because of circumstances beyond the offender’s control. With regard to this case, nothing proves that there has been the commencement of execution of the plot to kill Nsabimana for it to be considered as punishable attempt. Appeal granted. Appealed judgment overturned. Court fees to the public treasury. Statutes and statutory instruments referred to: Decree - Law N°21/77 of 18/08/1977 instituting the penal code, article 21. Organic - Law N°01/2012/OL of 2/5/2012 instituting the penal code, article 25. No case law referred to. Authors cited: Gaston Stefani, Georges Levasseur, Bernard Bouloc, Droit Pénal Général, Douzième édition 1984, Précis Dalloz, p. 223, para. 194 in fine. Harald Renout, Droit Pénal Général, Editions Paradigme, manuel 2005-2006, p.126 in fine.

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Judgment

I. BACKGROUND TO THE CASE [1] This case was first tried in the High Court, chamber of Musanze, where the Prosecution accused Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour and Nzamuye Selemani, of the attempt to murder which allegedly took place on 05 August 2010, when they planned to murder Nsabimana Isaac but failed, and were arrested after drafting a tract threatening him to kill him if he fails to give them three hundred Rwandan francs (300,000). [2] On 3 February 2011, the High Court, chamber of Musanze, tried the case and found Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour and Nzamuye Selemani guilty of attempt to murder, on the ground that the defendants admitted to have known the plot and that there was found a tract whereby they requested Nsabimana Isaac to give them three hundred Rwandan francs (300,000) as ransom and then sentenced everyone to life imprisonment. [3] Uwamahoro Jean d'Amour and his co-accused were not satisfied with the court decision, and appealed to the Supreme Court, claiming that the plot in question was not executed, rather it was prepared by Nsabimana Isaac due to the conflicts between him and Niyonsenga Léonard with aim to have him and his fellows imprisoned so as he may be able to monopolize the market. Furthermore, they state that the judge based on the tract while he [the judge] stated that its author was anonymous.

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RWANDA LAW REPORTS 132 [4] The case was tried in public on 18 January 2016 in the absence of Maniriho Eric after serving his summon to unknown address, Niyonsenga Léonard was assisted by Counsel Uwimana Channy, while Uwamahoro Jean d'Amour was assisted by counsel Umulisa Paola, and Nzamuye Selemani by counsel Kabagambe Joëlle, and the Prosecution being represented by Mutayoba Alphonse, the Prosecutor at the National level. However, the hearing was not closed at the same day, therefore, it was postponed to 7 March 2016. [5] On that day, the hearing of the case resumed, whereby the defendants were assisted as before, except Maniriho Eric who did not appear before the court once again after being summoned to unknown address. The Prosecution was represented by Niyonkuru Françoise, Prosecutor at the national level. II. ANALYSIS OF THE LEGAL ISSUE Whether Uwamahoro Jean d'Amour and his co-accused are guilty of the offence they are charged with. [6] Uwamahoro Jean d'Amour stated that he was proved guilty of the offence he did not commit. He explains that in 2010 on the day he does not recall well, he went to trading center of Busoro to request Niyonsenga Léonard to buy his irish potatoes, who told him that he was not going to buy them as he had no money. He added that he went to sell them on go away price to Nsabimana Isaac, who asked him why Niyonsenga Léonard did not buy them and replied him that it was because the latter had no money. He stated that Nsabimana Isaac instantly asked him the reason why Twishime Fabien plots to

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133 kill him, and he replied that he knew nothing about that issue. He added that he went down to the road and met Maniriho Eric, and shortly after he was called by a police officer, and while he picked up the phone, realized that he was together with both Twishime Fabien and Niyonsenga Léonard. He adds that the police officer asked him regarding the same question and he replied that he heard Nsabimana Isaac saying that Twishime Fabien stated that Niyonsenga Léonard wanted to kill him (Nsabimana Isaac). [7] When Uwamahoro Jean d'Amour was asked about what he declared in the Judicial Police that he was aware of the plot to kill Nsabimana Isaac, he replied that a significant part of his statement was not recorded, that Nsabimana Isaac accepted it was Twishime Fabien who revealed to him that Niyonsenga Léonard plotted to kill him, and that there is an audio record regarding the plot. He denied to have drafted the said tract. [8] Counsel Umulisa Paola who assists him reveals that Uwamahoro Jean d'Amour was aware of the same plot and he is the one who revealed it to the Police. She further states that there was no attempt to murder, as there was no strategy likely to be used was indicated to reveal the way the attempt to murder was likely to be executed. Regarding the tract produced as an evidence, she stated that it should not be relied on to prove them guilty, as long as there is no expert report proving it was written by them as they reject it. [9] Considering her written submissions, Counsel Umulisa Paola stated that apart from rumors spread by the complainants that there was a plot to kill Nsabimana Isaac, there is no substantial act towards the commission of the plot, which was interrupted independently to the will of the accused as it is PROSECUTION v. MANIRIHO ET AL

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RWANDA LAW REPORTS 134 provided for by article 21 of the Decree Law N°21/77 instituting the penal code that was into force at that time. She argues that the spread rumors do not constitute reliable evidence for the commission of the attempted murder. [10] Nzamuye Selemani states that the High Court did not rely on tangible evidence to conclude that he was in the same plot. Regarding Twishime Fabien's statements that he telephoned him informing him that there was a plot to kill him, he explained that he met Maniriho Eric coming to his home in Gasiza and revealed to him that he heard some people plotting against Twishime Fabien and basing on the fact that the latter was his friend, he called him and introduced him to Maniriho Eric whereby he informed him that Niyonsenga Léonard plots to kill him because he was the one who caused him to fall bankrupt. [11] Counsel Kabagambe Joëlle assisting Nzamuye Selemani states that his client did nothing other than warning Twishime Fabien that he heard some people plotting to kill him; therefore he has no connection with the crime as Twishime Fabien did not include him when he complained before the Judicial Police. He keeps on stating that Nzamuye Selemani did not condone the killing, thus he revealed out information, and he forthwith requests that Uwamahoro Jean d'Amour's statements charging Nzamuye Selemani would not be considered while the later rejects those statements. [12] Regarding the tract that is produced as evidence in this case, Counsel Kabagambe Joëlle states that there is neither expert that confirmed it was written by Nzamuye Selemani nor supporting proof that he participated in its drafting. She states that in general, there is no crime committed for there is no

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135 substantial act towards the commission of the attempt to murder, considering the elements of the crime as provided for by article 312 of the penal code that was into force at the time of the crime. She further states that, there was not even the plot to commit crime, since the complainants failed to provide evidence proving neither weapons which were likely to be used, time nor place where the crime was plotted to be committed, hence what happened consist only the spread of rumors. [13] She concluded asking the Supreme Court to acquit Nzamuye Selemani, as the High Court found him guilty basing only on the declarations of co-defendants whilst they also assert that no crime was committed, since there were no acts constituting the beginning of the commission of the offence and that it failed to prove the mens rea to kill the victim. [14] Niyonsenga Léonard criticizes the High Court for having proved him guilty and sentenced him to life imprisonment while he was innocent, and those who accused him lied to the court, and that they are famous scammers. He added that Twishime Fabien brought him ores for sale, yet after paying him, he found them fake (ordinary stones instead), and then went to report it to the Police. He said that after the questionable release of Twishime Fabien, he got very nervous with him and conspired that he plots to murder him with the complicity of Nsabimana Isaac, and then looked for some people to accuse him namely Nzamuye Selemani and Uwamahoro Jean d'Amour, who later on started drafting tracts. [15] Counsel Uwimana Channy states that the High Court declared Niyonsenga Léonard guilty without basing on tangible evidence, as it only based on tract, utterances of his co- defendants, and the fact that he was in conflict with Nsabimana

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RWANDA LAW REPORTS 136 Isaac. She states that before the court neither Uwamahoro Jean d'Amour nor Nzamuye Selemani accused him to have suggested him to kill someone, while in the case file it is recorded that they are the ones that he sent to execute the plot. She keeps on arguing that wherever they were interviewed they used to contradict each other. She further argues that Twishime Fabien is a friend to Nsabimana Isaac; therefore, there is no way that Niyonsenga Léonard could have suggested him to kill his friend being aware of their friendship. [16] She also states that in the course of the interrogation of Maniriho Eric, he said that they wanted only to get a written document from Niyonsenga Léonard, while Nzamuye Selemani stated over the interview that he did not know Niyonsenga Léonard, and that he heard that name when he was conversing with Twishime Fabien. He added that all of them had plotted to have him imprisoned, therefore, she found that the statements in the case file were only based on conflict, rather, there was another hidden intention. [17] The Prosecutor contends that Niyonsenga Léonard is the one who hired the service for killing as it is affirmed by his co- defendants, that they were acting on his orders after paying them eighty thousand Rwandan francs (80,000Frw). Regarding the argument presented by his counsel stating that no weapons likely to be used were demonstrated, thus, the elements constituting the crime are incomplete, the Prosecutor argues that not only weapons can be used to kill, because they could have even killed Nsabimana Isaac by suffocating him, and this was prevented by the fact that the tract was found. He states, furthermore, that

there is no doubt about the crime as co- defendants accuse each other.

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137 [18] When the Prosecutor was requested to indicate the corroboration between his statements and the law, he stated that the attempt to felony itself is equally punished as the felony, therefore, the plot to kill Nsabimana Isaac was committed, where the defendants stated that they were hired by Niyonsenga Léonard, and that they were interrupted beyond their control due to the discovery of the tract. THE VIEW OF THE COURT [19] The documents in the case file indicate that before the Judicial Police, Uwamahoro Jean d'Amour admitted that the full plot to kill Nsabimana Isaac was developed in his presence with Maniriho Eric and Nzamuye Selemani, on the request of Niyonsenga Léonard against four hundred thousand Rwandan francs (400,000Frw), and that Twishime Fabien was a mediator. [20] Over his interrogation, Twishime Fabien denied his role, and stated that even himself was to be killed, because those who were hired to kill revealed the plot to him, and he informed Nsabimana Isaac, where they convened that they would give those who were likely to kill them three hundred thousand Rwanda francs (300,000Frw) so as not to execute the plot. [21] Even Maniriho Eric admitted that he was part of this plot he was informed by Uwamahoro Jean d'Amour whom he met at Kadahenda on 5 August 2010 and requested him to get involved. Maniriho also informed Nzamuye Selemani of it, requesting him to help them, and the latter accepted but he have immediately called Twishime Fabien requesting him to threaten Nsabimana Isaac in order to get money from him. PROSECUTION v. MANIRIHO ET AL

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RWANDA LAW REPORTS 138 [22] However, in the course of his interrogation, Nzamuye Selemani denied his role in the plot, rather he admitted that he knew all about it and then informed Twishime Fabien who also should be killed. He explained that Niyonsenga Léonard was about to kill him because of the conflict between them in connexion to the debt equivalent to three hundred and fifty Rwandan francs (350,000Frw) that the latter failed to pay back. [23] Niyonsenga Léonard denied to have hatched a plot to murder, however, he admits to have been in conflict with Twishime Fabien due to the loan amounting to two hundred and fifty thousand Rwandan francs (250,000Frw) he gave to him for the payment of ores which were later discovered to be fake, while Nsabimana Isaac was his trade competitor, but that he cannot be such a ruthless to the extent to get them killed. [24] Following the analysis of the statements of the defendants and other evidence produced by the Prosecution in the paragraph 20 of case trial, the Supreme Court finds that the High Court declared them guilty of attempted murder against Nsabimana Isaac, and then punished them basing on article 21 of the Decree Law N°21/77 instituting the penal code that was into force at the time of the crime, ruling that the attempt to murder was committed. [25] Article 21 of the Decree Law N°21/77 instituting the penal code that was into force at the time of the crime, stipulates that "An attempt is punishable when the plan to commit an offence has been demonstrated by observable and unequivocal acts constituting the beginning of the offence meant to enable the commission and that were suspended or failed in their purpose only because

of circumstances beyond the offender's control".

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139 [26] For the attempt to be qualified as such and be punished there should be observable and unequivocal acts toward the commission of the crime which were suspended or failed in their purpose only because of circumstances beyond the offender's control. [27] Furthermore, this also corresponds to Law scholars' opinion, whereby they state that the beginning of execution and the absence of voluntary withdrawal constitute the two definite elements of the attempt (Le commencement d'exécution et l'absence de désistement volontaire constituent les deux éléments certains de la tentative....)1. The commencement of execution reveals by itself the offense. They are therefore acts which form part of the infringement either as a constitutive element or as an aggravating circumstance (Selon la conception objective, le commencement d'exécution révèle par lui-même le délit. Il s'agit donc d'actes qui font partie de l'infraction, soit en tant qu'élément constitutif, soit en tant que circonstance aggravante)2. [28] Regarding this case, the Supreme Court finds that, basing on the content of the case file as mentioned above, what happened, thought the co-defendants contradict each other, was a plot to kill Nsabimana Isaac, though there is no evidence of the commencement of its execution that to constitute a punishable attempt as it was explained.

1 Gaston Stefani, Georges Levasseur, Bernard Bouloc, Droit Pénal Général, Douzième édition 1984, Précis Dalloz, p. 223, para. 194 in fine. 2 Harald Renout, Droit Pénal Général, Editions Paradigme, Manuel 2005- 2006, p.126 in fine. PROSECUTION v. MANIRIHO ET AL

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RWANDA LAW REPORTS 140 [29] Regarding the tract as noticed by the Court that stresses on the role of Uwamahoro Jean d'Amour and his co-accused in the attempt to murder, the Supreme Court finds, though there is no tangible evidence proving they are the authors as they themselves deny it, and that the Prosecution failed to produce other evidence proving their role in its drafting; does not itself constitute the commencement of to kill Nsabimana Isaac. [30] Consideration made of the explanation above, the Supreme Court finds once again that what Maniriho and his co- accused committed was conspiracy, which was not punishable by the penal code which was into force at the time of the offence because this became punishable by the Organic Law N°01/2012/OL of 2/5/2012 instituting the penal code3, thus they must not be punished for it. III. DECISION OF THE COURT [31] Decides that the appeal lodged by Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour and Nzamuye Selemani is with merit; [32] Decides that Maniriho Eric, Niyonsenga Léonard, Uwamahoro Jean d'Amour and Nzamuye Selemani are not guilty of the attempt to murder;

3 Article 25 provides that “Conspiracy is an agreement between two or more persons to engage in the commission of an offence by one or more of them, while article 26 provides that Conspiracy to commit a felony or a misdemeanour is considered an attempt to commit the felony or the misdemeanour which was the subject of conspiracy”.

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141 [33] Overrules the

ruling

of the

judgment

RP0113/10/HC/MUS rendered by the High Court, Musanze chamber on 3 February 2011; [34] Orders that Uwamahoro Jean d’Amour and Nzamuye Selemani be immediately released; [35] Orders that the court fees are charged to the public treasury.

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PROSECUTION v. MUKASHEMA ET AL [Rwanda SUPREME COURT – RPA0176/11/CS (Mukamulisa, P.J., Munyangeri and Nyirandabaruta, J.) October 16, 2015] Criminal Law – Guilty plea – Confession retraction – The trial court has the discretion to assess the sincerity of a confession made by the accused during the preliminary investigation, even when this confession was later retracted or altered in court. Criminal Law – Penalty reduction – Offence committed with cruelty – The commission of an offence with cruelty is a ground for the refusal to grant the benefit of penalty reduction. Criminal Procedure – Interrogation of the offender – The suspect who has information about the offence can be interrogated without being considered as a witness. Facts: Mukashema and Bihimana were prosecuted for having murdered Mukashema’s husband named Sibomana Etienne. During her interrogation in the Judicial Police and Prosecution, Mukashema Janvière admitted to have killed her husband with complicity of Bihimana with whom they used to fornicate. She added that he was even involved in the killing to enable them to cohabit. However, when Mukashema appeared before the court, she changed her pleading and stated that she killed her husband alone and called Bihimana for help to hide the corpse. As for Bihimana, he pleaded not guilty since the very first day of his arrest. 143

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RWANDA LAW REPORTS 144 The High Court, at Kigali, convicted the accused of complicity in assassination, and sentenced them to life imprisonment. Mukashema appealed against the judgment in the Supreme Court, stating that she was sentenced to the heavy penalty despite her guilty plea. She also stated that she changed pleadings before the court with regard to how the

offence was committed; because it was the first time for her to appear before the court, but confirms what she stated before the Judicial Police and that she is ready to explain how the offence was committed. As for Bihimana, he pleaded not guilty since the very first day of his arrest. The prosecutor contends that the appeal of Mukashema lacks merit because she had raised the same ground of the guilty plea even in the previous courts, although she retracted later. Therefore, as she contradicts herself from what she had stated before, her guilty plea cannot be taken into consideration. With regard to Bihimana, he contends that his grounds of appeal lack merit because the High Court motivated the reason why it found him guilty and he failed to challenge it as he does not produce any new element at appeal level. Held: 1. The trial court has the discretion to assess the sincerity of a confession made by the accused during the preliminary investigation, even when this confession was later retracted or altered in court. Therefore, Mukashema does not deserve the benefit of penalty reduction, as the statements she made before courts are inaccurate, because they differ from those she made during the pre-trial phase especially that in her appeal submission, Mukashema explained that she considers the statements made before the Judicial Police given that she does not prove that she challenges them.

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2. The commission of an offence with cruelty is a ground for the refusal to grant the benefit of penalty reduction, therefore considering the cruelty by which Mukashema committed the offence of killing her husband, and everything done to conceal the offence, the court finds that she does not deserve the benefit of penalty reduction.
3. The suspect who has information about the offence can be interrogated without being considered as a witness. Therefore the allegations of Bihimana requesting the disregard of the statements made by Mukashema before the Judicial Police and prosecution lack merit, because she was not heard as witness rather as the offender who has information about the offence. Appeal lacks merit. Appealed judgment sustained. Court fees charged to the public treasury. Statutes and statutory instruments referred to: Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure, article 86(2o). Decree Law N°21/77 of 18/08/1977 instituting the penal code, articles 82 and 83. No case referred to. Author cited: Michel Franchimont, Ann Jacobs na Adrien Masset, "Manuel de procédure pénale", Edition du Jeune Barreau de Liège, 1989, p.772.

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Judgment

I. THE BRIEF BACKGROUND OF THE CASE [1] The prosecution has alleged against Mukashema Janvière and Bihimana Jean Baptiste for having connived in the murder of Sibomana Etienne, the husband of Mukashema Janvière. During her interrogation in the Judicial Police and Prosecution, Mukashema Janvière admitted to have killed her husband, by hitting him with the machete in the head three times. She also explained that Bihimana Jean Baptiste helped her to kill him by stabbing him and mutilating his eyes. After killing him, they threw away his corpse into Mukashema's abandoned toilet, before moving and throwing it in the forest in order to conceal evidence. She also mentioned that even before she used to have fornicated with Bihimana, and that he was even involved in the killing to enable them to cohabit. However, when Mukashema appeared before the court, she changed her statements and stated that she killed her husband alone and called Bihimana to help her to hide the corpse. As for Bihimana, he pleaded not guilty since the very first day of his arrest. [2] At the end of investigations, the Prosecution filed the case against Mukashema and Bihimana in the High Court, at Kigali, which convicted the accused of complicity in assassination, sentencing them to life imprisonment. [3] Mukashema Janvière appealed against the judgment in the Supreme Court, stating that she was sentenced to the heavy penalty despite her guilty plea. She also stated that she changed pleadings before the court with regard to how the offence was

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147 committed, because it was the first time for her to appear before the court, but confirms the statements made before the Judicial Police and that she is ready to explain how the offence was committed. [4] Bihimana states that the ground for his appeal relies on the fact that he was convicted of the offence he did not commit, therefore he intends the justice to be made. [5] The hearing was conducted in public on 7 September 2015, Mukashema Janvière being assisted by Counsel Rutagengwa Mukiga, Bihimana assisted by Counsel Rwimo Clotilde, while the Prosecution was represented by Mukunzi Faustin, the National Prosecutor. II. ANALYSIS OF LEGAL ISSUES

1. Whether the guilty plea made by Mukashema can be considered as a mitigating circumstance. [6] Mukashema states that her appeal grounds rely on the fact that she pleaded guilty and sought forgiveness but was sentenced to the heavy penalty that she could never serve. She added that another ground is that there are statements that she did not make clear because it was the first time for her to appear before the court that she intends to clarify. [7] She further states the commission of the offence was due to the fact that after having two kids with her husband, the latter abandoned her and cohabitated with his brother's wife, something that made her return to her parents till when her husband with Bihimana who was his friend came to get her back home. She adds that on the day the offence was committed, she PROSECUTION v. MUKASHEMA ET AL

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RWANDA LAW REPORTS 148 went to the market with her husband to sell pigs and on their way back home; they passed to the pub, where she left her husband and went home to get food prepared. She adds that when the husband reached home, he insulted her and beat her, asking her why the food was not yet served, and as she was drunk, she got nervous and hit him with machete. [8] She proceeds that at night, she went to call Bihimana so that he help her to burry or throw the corpse and he came, stabbed the deceased and removed his eyes before they threw the corpse into Mukashema's toilet. She added that a week later, they took the corpse from that place because it was near the public way and drugged it into the forest. She mentioned that they changed the place where the corpse was, so that none else could know what happened as it was the secret between them. She concludes requesting the penalty reduction, for her to look after her kids. [9] Counsel Rutagengwa Mukiga states that the offence of killing her husband that Mukashema admitted, happened accidentally, that they deserve the penalty but reduced due to the guilty plea following the provisions of article 35 of the Law relating to the code of criminal procedure and article 82 and 83 of the Penal Code that was into force when the offence was committed. He added that in determining her penalty, the court would consider that she has already served 10 years in jail. [10] The Prosecutor contends that the appeal lodged by Mukashema lacks merit because he had the same ground of the guilty plea even in the previous court, although when she was interrogated for the first time, she stated that she killed her husband with the help of Bihimana, and now, she is alleging to have called Bihimana for help after her husband had died, but

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149 indicating that when Bihimana arrived, he stabbed and removed the eyes of the deceased. [11] He finds that basing on article 82 of the penal code that was into force at the time the offence was committed, or article 35 of the Law relating to the code of criminal procedure, Mukashema guilty plea cannot be considered since her statements in the court contradicts the one she made before. [12] He proceeds that the High Court, in paragraph 23 of the judgment, explained the reason why Mukashema's guilty plea was not taken into consideration, because it held that she intends to hide the role of Bihimana in the killing. He adds that the insult to Mukashema by late Sibomana could not be a reason to kill him, or stabbing and removing his eyes from his corpse. THE OPINION OF THE COURT [13] Article 82 of the Decree-Law N°21/77 of 18/08/1977 instituting the penal code that was into force at the time the offence charged to Mukashema was committed provides that the judge may consider the appropriateness of mitigating circumstances which preceded, accompanied or followed an offence. The decision to accept mitigating circumstances must be justified. As for article 83 of the same Law provides the way the penalty is reduced. [14] Analysis of the above mentioned articles proves that the judge in his discretion analyses whether there are mitigating circumstances for the accused. PROSECUTION v. MUKASHEMA ET AL

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RWANDA LAW REPORTS 150 [15] As mentioned above, the appeal lodged by Mukashema solely intends the penalty reduction based on the ground that the previous court did not reduce her penalty despite her guilty plea in every instance of the courts. [16] The Court finds that the guilty plea of the accused can serve as a mitigating circumstance as the provisions mentioned in paragraph 13 provides is the one made accurately. [17] What have been mentioned above correspond with the opinions of the Law scholars including Michel Franchimont, Ann Jacobs and Adrien Masset, in their publication “Manuel de procédure pénale”, Edition du Jeune Barreau de Liège, 1989, at page 772, where it is mentioned that in criminal cases, the trial court has the discretion to assess the sincerity of a confession made by the accused during the preliminary investigation, even when this confession was later retracted in court (L’appréciation de la sincérité d’un aveu en matière répressive relève du pouvoir souverain du juge du fond...Le juge de fond apprécie souverainement la sincérité d’un aveu fait par le prévenu au cours de l’instruction préparatoire, même quand cet aveu a été ultérieurement rétracté devant le tribunal). [18] However, as the High Court explained, although Mukashema pretends to plead guilty and then requests the penalty reduction, the obvious is that when she was interviewed before the Judicial Police on 16 April 2005 and 19 April 2005, and in the prosecution on 25 April 2005, she revealed how Bihimana helped her to kill her husband, that she hit the deceased with the machete in the head while Bihimana stabbed him in the rib and mutilated his eyes and threw them into the toilette. She also stated that after that, they hide the corpse together, because they first hid it behind the house and then

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151 removed it and threw it in the forest. Furthermore, in her statements, Mukashema included that she used to fornicate with Bihimana and they intended to live together as husband and wife. [19] However, when she appeared before the High Court, Mukashema retracted and stated that she killed her husband alone, hitting him with the machete and that she went to call Bihimana so that he helps her to hide the corpse. She repeated such statements before this court. [20] With regards to the penalty reduction, in the appealed judgment, the High Court explained that Mukashema does not deserve it as she does not tell the truth rather she is trying to conceal the role of Bihimana in the killing. Therefore, even this court finds inaccurate the statements she made before courts because they differ from those she made during the pre-trial phase especially that in her appeal submission, Mukashema explained that the statements she considers are those made before the Judicial Police while she does not contest them. [21] Regarding the statements Mukashema made before this court in particular, it is not understandable the way Bihimana would have been called by Mukashema for help as a family friend but came after the death of Sibomana, and stabbed his corpse and removed his eyes that he threw into the toilet. Rather, it is obvious for the court that both of them killed Sibomana and hid the corpse that they even threw in the forest, in order to conceal evidence of the offence, as it has been explained by the High Court. [22] Considering the explanations above and the cruelty that followed the offence of killing one’s husband, and everything PROSECUTION v. MUKASHEMA ET AL

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RWANDA LAW REPORTS 152 done to conceal evidence of the offence, the court finds that Mukashema does not deserve the benefit of penalty reduction, therefore, the penalty that was inflicted to her by the High Court must be sustained.

2. Whether Bihimana was innocently convicted and deserve to be acquitted. [23] Bihimana states that his appeal ground relies on the fact that the High Court convicted him of the offence he did not commit, without evidence proving that he really helped Mukashema to murder her husband. [24] Counsel Rwimo Clotilde states that Bihimana was convicted basing on the statements made by Mukashema who accuses him to have been her accomplice, while the court did not analyze whether the accusations of Mukashema have merit because she requested the consideration of the statements she made before the court. [25] The counsel further states that before the Judicial Police, Mukashema declared that her husband succumbed to the blow of machete she hit him three times, and when she was before the Prosecution, she stated that she had Bihimana as accomplice. She argues that when it is confronted with the statements she made before the courts, it is proven that her statements before courts contradict those she made in the pre-trial phase. Therefore, she added, as the High Court explained, she contradicts herself; something that creates doubt which must be favorable to Bihimana pursuant to article 153 of the Law relating to the code of criminal procedure that was into force at the time the offence was committed.

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153 [26] She proceeds that the intimate relationship which Mukashema alleges to have been between her and Bihimana never existed since Bihimana denies it and Mukashema does not produce evidence thereto. She finds in addition that it is not clear the way Mukashema called Bihimana for help as a family friend around midi night therefore, pursuant to article 59 of the Law relating to the code of criminal procedure that was into force at the time the offence was committed, which states that the accused should not be heard as a witness; Bihimana should be acquitted due to lack of evidence from the Prosecution. [27] The prosecutor contends that the grounds of appeal of Bihimana lack merit because the High Court motivated its position of convicting him and he cannot challenge it as there is nothing new in his appeal. [28] He further states that the request made by the counsel for Bihimana that the statements made by Mukashema should be disregarded pursuant to article 59 of the Law relating to the code of criminal procedure that was into force at the time the offence was committed, lacks merit as well, because this provision was modified by article 57 of the current Law relating to the code of criminal procedure, especially that Mukashema was never heard as a witness as provided by the mentioned article. In addition, he requests the Court to rely on article 86 of the current Law relating to the code of criminal procedure when examining the relevance of evidence provided. [29] The prosecutor adds that although Bihimana denies to have been Mukashema's concubine, his statements contradicts with the statements Mukashema made before, while there are also testimonies testifying that Bihimana and Mukashema used to fornicate. Therefore, their

declarations are to be taken into PROSECUTION v. MUKASHEMA ET AL

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RWANDA LAW REPORTS 154 consideration pursuant to article 65 of the Law relating to evidence and its production, because they presented their knowledge of facts with regard to relationship between Bihimana and Mukashema. [30] He concludes by requesting the Court to analyze the statements Mukashema made before the Judicial Police and the Prosecution in confrontation with the testimonies, because they concur to prove that Bihimana was accomplice of Mukashema in the commission of the offence. THE OPINION OF THE COURT [31] Article 86, paragraph 2, of the Law N°30/2013 of 24/5/2013 relating to the code of criminal procedure¹ provides that: “The court shall decide at its sole discretion on the veracity and admissibility of incriminating or exculpatory evidence”. [32] Although in the appeal, Bihimana kept on denying the offence as he did in the High Court, based on explanations as given above concerning Mukashema, the court finds without merit the appeal lodged by Bihimana, because Mukashema has explained at the very first time the way they killed her husband, and as above mentioned, she explained that she used to fornicate with Bihimana, and that they intended to cohabit. She also mentioned that the conflicts with her husband Sibomana was due to the fact that he had an affair with a lady named Mukandoli Athanasie, and that even Bihimana was in a bad

1 Such provision corresponds to article 45 of the Law N°13/2004 of 17/5/2004 relating to the code of criminal procedure as amended to date, that was into force at the time the offence was committed.

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155 relationship with Sibomana because he was in affair with Mukandoli Athanasie who used to be his concubine. [33] Furthermore, in her explanation, Mukashema stated that they were in the plot to kill Sibomana for approximately five months. [34] The analysis of explanations given by Mukashema as mentioned, the court finds that Mukashema and Bihimana plotted to kill Sibomana for long time, and after killing him, they did their best to conceal evidence of the offence. Therefore, the court finds that there is no doubt on the role of Bihimana in the offence he was convicted of by the High Court. [35] Furthermore, The court finds without merit the allegations made by Bihimana’s counsel relating to the disregard of the statements made by Mukashema before the Judicial Police and prosecution, basing on article 59 of the Law N°13/2004 of 17/5/2004 relating to the code of criminal procedure that was into force at the time the offence was committed², because Mukashema was not heard as witness as provided for by that article, rather, as the suspect who has information about the offence especially that she pleaded guilty. III. THE DECISION OF THE COURT [36] Finds the appeal lodged by Mukashema Janvière and Bihimana Jean Baptiste without merit;

2 It provides “Persons against whom the prosecution has evidence to suspect that they were involved in the commission of an offence cannot be heard as witnesses”. PROSECUTION v. MUKASHEMA ET AL

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RWANDA LAW REPORTS 156 [37] Upholds the judgment RPA0069/10/HC/KIG rendered by the High Court at Kigali on 16 June 2011; [38] Decides that the court fees be charged to the public treasury.

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PROSECUTION v. NGURINZIRA [Rwanda SUPREME COURT – RPAA0118/11/CS (Mutashya, P.J., Munyangeri and Hitiyaremye, J.) November 13, 2015] Evidence Law – Testimony given by the relative of the concerned party – Nothing can prevent the testimony given either by the victim’s mother or the victim to be considered, as it is not prohibited by the law – Law N°15/2004 of 12/06/2004 relating to evidence and its production, article 63. Facts: The accused appeared before the former court of Kigali Ngali Province, where he was accused to have committed child defilement against 8 years old child, committed where her mother sent her to bring a hoe from where the accused stayed, and when she arrived there he immediately held her in his hands, took her in the house, removed her clothes and defiled her, leaving serious injuries as indicated by medical report. The accused pleaded not guilty, but the court, relying on evidences, especially testimonies and the medical report, convicted and sentenced him to life imprisonment. He appealed in the High Court at Kigali, which found that it was not competent to hear such case and transferred it to the High Court, chamber of Rwamagana, where the offence was committed. The court convicted and sentenced him to a reduced penalty of fifteen years (15) of imprisonment and the fine worth one hundred thousand Rwandan francs, because he was the first offender. He appealed against the decision in the Supreme Court, stating that the previous courts innocently convicted him, and that the medical report relied on was issued two weeks later therefore he does not acknowledge it. He added that he normally had 157

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RWANDA LAW REPORTS 158 conflicts with the mother of the victim. As for the prosecutor, he contended that there are witnesses who saw him getting out of the house, tightening the trousers’ belt. Held: 1. Nothing can prevent the testimony given either by the victim’s mother or the victim to be considered, as it is not prohibited by the Law.

2. The statements made by the victim, witnesses, contradicting statements made by the accused and the medical report, concur to prove that the accused is guilty of the child defilement committed against an eight (8) years old child, therefore, his appeal lacks merit. Appeal lacks merit. Appealed judgment sustained. Court fees charged to the public treasury. Statutes and statutory instruments referred to: Law N°15/2004 of 12/06/2004 relating to evidence and its production, article 63. Case law referred to: Prosecution v. Nshimiyimana et

al, RPAA0059/08/CS, rendered by the Supreme Court on 19 November 2010.

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Judgment

I. THE BRIEF BACKGROUND OF THE CASE [1] The case started in the former court of Kigali Ngali Province, where Ngurinzira Sylvestre was accused to have committed child defilement against 8 years old child named N.M.L. The prosecution states that on 26 December 2001, Nzitabakuze Providence, N.M.L's mother, sent her to bring a hoe from Nyiransekambabaye's, where he found Ngurinzira Sylvestre. They add that he immediately held her in his hands, took her in the house, removed her clothes and defiled her, leaving serious injuries as reported by the medical practitioner. The accused pleaded not guilty, but the court, relying on evidence, especially testimony and the medical report, convicted and sentenced him to life imprisonment. [2] Ngurinzira Sylvestre appealed in the High Court, at Kigali, which declared that it was not competent to hear such case and transferred it to the High Court, chamber of Rwamagana, where the offence was committed. [3] In that court, Ngurinzira Sylvestre kept pleading not guilty, but in the verdict rendered on 7 January 2011, the court convicted and sentenced him to fifteen years (15) of imprisonment and to the fine of one hundred thousand Rwandan francs. The court reduced his penalty because he was the first offender. [4] Ngurinzira Sylvestre appealed against the decision in the Supreme Court, stating that he was innocently convicted by the

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RWANDA LAW REPORTS 160 previous courts, and that the medical report relied on was issued two weeks later and he does not acknowledge it. He added that he normally had conflicts with the mother of the concerned girl. As for the prosecutor, he contended that there are witnesses who saw him getting out of the house, tightening the trousers' belt. [5] The public hearing was held on 12 October 2015, Ngurinzira Sylvestre being assisted by counsel Mukamana Elisabeth, while the prosecution was represented by Bunyoye Grâce, the National Prosecutor. II. ANALYSIS OF THE LEGAL ISSUE Whether there are relevant evidence convicting Ngurinzira Sylvestre. [6] In explanation of his grounds of appeal, Ngurinzira Sylvestre states that immediately after his arrest, the Judicial Police requested for the medical report proving that the girl was defiled and after waiting long time for it, he released him. He kept on explaining that the medical report was available after two weeks and he was re-arrested. He adds that it is not clear how the medical report was available after such longtime. He proceeds that he had conflict with the victim's mother, whose house he stayed in, because she used to ask him to fetch water to brew banana juice, which he refused and that is why she plotted against him. He concluded that the medical report reveals that the girl was defiled by a finger; therefore, she did it in order to accuse him. [7] Counsel Mukamana Elisabeth states that he had advised his client to withdraw his appeal because the previous judge had reduced his penalty to imprisonment of 15 years, and he still

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161 have to serve only one year in prison. Therefore, she requests the court to consider the medical report and testimonies to maintain the given penalty. [8] The prosecutor contends that although Ngurinzira Sylvestre states that they falsely incriminated him, he disregards the witnesses who saw him getting out of the house tightening his trousers. He adds that even his statements contradict each other where he on one side, he states that the conflict with the victim's mother started when he refused to fornicate with her, and another side, he states that it was because he refused to fetch water for her. He proceeds that even though the accused states that he was once released, it does not emphasize that the medical report was forged, and the medical practitioner reported that the girl was defiled at the extent that one can insert the finger, does not mean that she was defiled by a finger as Ngurinzira Sylvestre emphasizes. THE VIEW OF THE COURT [9] The court finds Ngurinzira Sylvestre pleaded not guilty in the pre-trial as well as the courts. [10] The court finds that the previous courts considered the witnesses affirming that N.M.L. went to Nyirankambabaye where she met Ngurinzira Sylvestre including even those who affirm to have seen him getting out of the house tightening his trousers. There is also a medical report that confirmed that the victim got serious injuries. [11] The court finds that Nzitabakuze Providence, the victim's mother explained that she had sent her daughter to PROSECUTION v. NGURINZIRA

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RWANDA LAW REPORTS 162 Nyirankambabaye to bring a hoe and it was there that she met Ngurinzira Sylvestre who immediately defiled her as also explained by the victim. [12] The court finds that Ngurinzira Sylvestre failed to challenge the statements made by the victim and her mother who was told by her the way she was defiled. He failed also to prove whether there was any kind of conflict with the victim's mother. Therefore, the testimony given by Nzitabakuze Providence, the victim's mother is to be considered, although she is the victim's mother. [13] The court finds furthermore that as it was decided in the judgment RPAA0059/08/CS, prosecution vs Nshimiyimana Alexis, Twagirumukiza Anastase and Habimana rendered by this court on 19 November 2010, the testimonies cannot be disregarded due to relations between concerned people, nor the fact that they have some interests in the case, because the validity of testimony does not depend on the author, rather, its veracity, which is solely decided by the court following its assessment. [14] The court finds in addition that considering article 63 of the Law N°15/2004 of 12/06/2004 relating to evidence and its production which provides that "Any person can be allowed to testify as a witness in court, with the exception of those people who have no capacity to be witness in court"; it proceeds that "People who are regarded as having no capacity to act as witnesses in court are people who are not capable of communicating what they witnessed". Therefore, nothing can prevent the testimony given either the victim's mother or the victim to be considered, as it is not prohibited by the Law.

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163 [15] With regard to the testimony given by the witness named Ntamfurayishyari also known as Kanyange, who affirms to have seen Ngurinzira Sylvestre getting out of the house, tightening his trouser; the court finds that she clearly explained the way the girl arrived at her home, sent by parents and that Ngurinzira Sylvestre was also around. She added that she saw him later getting out of the house, putting on the shirt and tightening his belt and in other clothes. She proceeded that shortly, she saw N.Y. getting out of the same house where Ngurinzira Sylvestre stayed, being very shy. [16] The court finds the statement made by Ntamfurayishyari known as Kanyange must be taken into consideration, because it does prove well that Ngurinzira Sylvestre was with the girl alone in the house and Ngurinzira Sylvestre went out of the house with evidence proving that he was with N.Y. In the house, and he had removed his clothes as he appeared putting on the shirt and tightening the belt. [17] The court finds that the statements made by Ngurinzira Sylvestre, that Ntamfurayishyari known as Kanyange falsely incriminated him because of two thousand that she owed him cannot be taken into consideration, because such conflict could not make Ntamfurayishyari known as Kanyange to falsely affirm that she saw Ngurinzira Sylvestre coming from the house as he did. [18] The court finds that the statements made by Ngurinzira Sylvestre, prove that he contradicted himself in every instance he was heard. In the Judicial Police, he stated that the named Ntamfurayishyari known as Kanyange (the one who provided accommodation to him) did not want to pay the money she owed PROSECUTION v. NGURINZIRA

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RWANDA LAW REPORTS 164 him therefore she accused him, but later, he stated that she owed nothing. [19] With regard to Nzitabakuze Providence, the victim's mother, when Ngurinzira Sylvestre was interrogated in the Judicial Police, he did not mention that there was conflict between them, but in the judgment rendered by Court of Kigali Ngali province on page 7, he stated that the conflict between them rises from the fact that he refused to fornicate with her but before this court, he contradicted himself and stated that the root cause of their conflict is the refusal to fetch water for her. [20] The court finds that the contradicting statements made by Ngurinzira Sylvestre solely aim at escaping from criminal responsibility and invalidate the declarations of the eye witnesses. Therefore, they cannot be taken into consideration especially that in his interrogation in the Judicial Police, he admitted that the victim found him to Ntamfurayishyari's also known as Kanyange, where he used to stay and that she came in his house. Thus, the fact that he himself admits to have met the victim, on the day and time when she was defiled, is another supporting evidence indicating that no one else defiled the child rather than him. [21] The court finds the statements made by Ngurinzira Sylvestre that immediately after his arrest, he requested that the victim be medically examined and two weeks elapsed without doing so baseless, because the evidence such as the medical report can be taken into consideration to prosecute the accused any time it is available, since the investigation is still pending. [22] With regard to the statements made by Ngurinzira Sylvestre that the medical report proves that the victim was

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165 defiled using the finger, therefore it was committed by the victim's parents in order to falsely incriminate him, the court finds that it cannot also be considered, because the medical practitioner reported that the victim's hymen was broken to the extent that the finger can be introduced in. He did never mention that she was defiled using the finger. It reads as follow: "vulva is hyperemic, perforated and hymen broken, the vaginal allows the passage of a finger" (la vulve est hyperthémiée, l'hymen perforé et déchiquetté, le toucher vaginal permet le passage d'un doigt) and he concluded the defilement was committed "cas de viol consommé". [23] Considering the explanations above, the court finds that evidence constituted of the statements made by the victim, witnesses, contradicting statements made by Ngurinzira Sylvestre and the medical report, concur to prove that Ngurinzira Sylvestre is guilty of the child defilement committed against an eight (8) years old child; therefore, his appeal lacks merit. III. THE DECISION OF THE COURT [24] Finds the appeal lodged by Ngurinzira Sylvestre without merit; [25] Sustains the judgment RPA0168/09/HC/RWG rendered on 7 January 2010 is sustained, which implies that the penalty of 15 years inflicted to Ngurinzira Sylvestre and the fine worth one hundred thousand are maintained. [26] Orders that the court fees be charged to the public treasury as the accused was tried while in detention. PROSECUTION v. NGURINZIRA

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