

RWANDA / JUDGMENT

GAHIZI v. RUHAMYAMBUGA

RCOMA 0069/13/CS

COURT

Supreme Court

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GAHIZI v. RUHAMYAMBUGA

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Text

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GAHIZI v. RUHAMYAMBUGA [Rwanda SUPREME COURT – RCOMA 0069/13/CS (Nyirinkwaya, P.J., Mukandamage and Kanyange, J.) February 6, 2015] Amategeko agenga ibimenyetso – Kugaragaza ibimenyetso – Urega agomba kugaragaza ibimenyetso by’ibyo aregera, iyo abibuze, uwarezwe aratsinda – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo ya 9. Amategeko y’imiburanishirize y’imanza z’ubucuruzi – Ikirego gishya mu bujurire – Ntabwo ababuranyi bemerewe gutanga ikirego gishya mu rwego rw’ubujurire – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo ya 168. Amasezerano cyangwa imirimo nshinganwa – Indishyi – Indishyi z’akababaro kubera gushorwa mu manza – Indishyi z’akababaro ntabwo zitangwa mu gihe uwareze atabikoze agamije kubangamira inyungu z’uwarezwe – Indishyi z’ikurikiranarubanza n’igihembo cy’Avoka – Mu gihe gushorwa mu manza byakozwe ku makosa y’uwareze aba agomba kwishyura uwarezwe Indishyi z’ikurikiranarubanza n’igihembo cy’Avoka – Itegeko ryo kuwa 30/07/1888 rigenga ibyerekeye imirimo nshinganwa cyangwa amasezerano, ingingo ya 258. Incamake y’ikibazo: Gahizi Thaddée afatanyije na Ruhamyambuga Paul bashinze sosiyeti

y'Ubucuruzi yitwa SOKERWA Sarl, bemeranya bombi kuyigiramo imigabane ingana, Ruhamyambuga Paul akayihagararira mu Rwanda. Haje rero kuvuka ikibazo kigendanye n'imirungire yayo maze Gahizi arega Ruhamyambuga mu Rukiko Rukuru rw'Ubucuruzi kuba yaracunze nabi umutungo wayo, akigarurira amakamyo yayo harimo n'inyubako ya CITY PLAZA yigaruriye kubera yuko nta bushobozi bwo kuyubaka yigeze. Gahizi yasabye urukiko gufatira amafaranga y'ubukode bwa CITY PLAZA, rukanasesa SOKERWA. Urukiko rwemeje yuko ikirego cya Gahizi kidafite ishingiro kubera yuko ari uwarezwe, ari uwareze bombi bagize uruhare mu imirungire mibi ya SOKERWA kuko buri wese yisinyiraga ku makonti adakeneye umukono w'undi akanikurira amafaranga muri "caisse" igihe ayakeneye, rwemeza yuko Gahizi ataregera imirungire mibi ya sosiyete nawe yarabigizemo uruhare, naho ku byerekeye amakamyo, Rwemeje yuko atabazwa Ruhamyambuga kubera yuko Gahizi ubwe yiyemereye yuko ariwe uyacunga ubu. naho ku bijyanye n'inyubako ya CITY PLAZA, Rwasaze ari iya Ruhamyambuga kuko ariwe ibyangombwa byanditseho, akaba yarayubatswe ku ideni rya BCDI, ikaba yarishyurwaga n'amafaranga y'ubukode, rwemeje yuko amafaranga y'ubukode atafatirwa kuko CITY PLAZA ari inyubako ya Ruhamyambuga, kubyerekeye iseswa rya SOKERWA rwemeje yuko bikomba gutangirwa ikindi kirego, Urukiko rwanzuye ko ikirego cya Gahizi kidafite ishingiro, rumutegeka kwishyura Ruhamyambuga 1.000.000 y'indishyi kubera kumushora mu manza nta mpamvu. Gahizi yajuririye Urukiko rw'Ikirenga ku mpamvu z'uko; Urukiko Rukuru rw'Ubucuruzi rwirengije ibimenyetso yatanze byerekana yuko CITY PLAZA iri mu mutungo wa SOKERWA kuko yubatswe kumafaranga yayo, bityo ikaba igomba gusubizwa muri uwo mutungo nkuko n'indi mitungo yose imwanditseho ari iya SOKERWA. Gahizi na none yanavuze yuko Urukiko

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ntacyo rwavuze ku migabane ya SOKERWA yari muri COGEAR no kuri stock y'ibicuruzwa SOKERWA yari ifite mu mwaka wa 1999. Ruhamyambuga yasubije ko kuba hari umutungo wa SOKERWA umwanditseho bitamubura kugira uwe bwite, yasobanuye yuko CITY PLAZA yayubatswe SOKERWA yarahombye, CITY PLAZA ikaba yarubatswe n'inguzanyo yahawe na BCDI, kubyerekeye imigabane ya SOKERWA yari muri COGEAR no kuri stock y'ibicuruzwa SOKERWA yari ifite mu mwaka wa 1999, yasobanuye yuko iki kirego ari ikirego gishya kidashobor gusuzumwa mu bujurire. Ruhamyambuga yatanze ubujurire bw'uririye ku bundi asaba indishyi z'akababaro za 10.000.000 Frw kubera gushyurwa mu manza hamwe na 30.000.000 Frw y'igihembo cy'Avoka ku nzego zombi baburanyemo. Gahizi yasubije yuko ibisabwa bidafite ishingiro kuko nayatanze mu rwego rwa mbere batayemera. Incamake y'icyemezo: 1. Urega agomba kugaragaza ibimenyetso by'ibyo aregera. iyo abibuze, uwarezwe aratsinda, ibyo bimenyetso bishobora gutangwa hakoreshejwe inyandiko, ubuhamya, uburyo bwo gucukumbura, ukwiyehera k'umuburanyi cyangwa herekanywe ibindi bintu bifatika. CITY PLAZA ikaba idashobora gurururwa mu mitungo ya SOKERWA mu gihe nta ibimenyetso bifatika byagaragajwe.

2. Gusaba ko imigabane ya SOKERWA yari muri COGEAR n'ibicuruzwa byari muri stock mu mpera z'umwaka wa 1999 byagarurwa mu mutungo wa SOKERWA ntibyasuzuma kuko ari ikirego gishya mu bujurire.

3. Indishyi z'akababaro kubera gushorwa mu manza zitangwa ari uko bigaragajwe ko uwareze yabikoze agamije kubangamira inyungu z'undi, ariko mu gihe bitagaragajwe yuko uwareze atareze agamije kubangamira inyungu z'undi, ntabwo zitangwa.
4. Mu gihe Urukiko rusanze yuko amafaranga y'ikurikirana rubanza nay'igihembo cya avoka yatswe ari ikirenga rukurikije ibyarukozwemo rurayagena mu bushishozi bwarwo. Ubujurire nta shingiro; Ubujurire bw'uririye ku bundi bifite ishingiro kuri bimwe; Amagarama y'urubanza aherereye k'wareze. Amategeko yashingiweho: Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 9 niya 168 ;168; Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya9; Itegeko ryo kuwa 30/07/1888 rigenga ibyerekeye imirimo nshinganwa cyangwa amasezerano, ingingo ya 258 Nta manza zashingiweho. Imikirize

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IMITERERE Y'URUBANZA: [1] Gahizi Thaddée arega Ruhamyambuga Paul ko yikubiye imitungo irimo amamodoka n'inyubako yiswe CITY PLAZA bya sosiyeti y'ubucuruzi SOKERWA Sarl bashinze kuwa 01/08/1995, buri wese afitemo imigabane ingana n'iy'undi usibye ko yari yarahaye Ruhamyambuga Paul uburenganzira bwo kuyihagararira mu Rwanda kuko we yabaga muri Kenya, akarangura akoherereza ibicuruzwa mugenzi we akabigurisha. [2] Urukiko Rukuru rw'Ubucuruzi rwaregwe ku rwego rwa mbere rwaciye urubanza RCOM 0140/12/HCC kuwa 29/11/2012, rwemeza ko ikirego cya Gahizi Thaddée nta shingiro gite, rumutegeka kwishyura Ruhamyambuga Paul 1.000.000 Frw y'indishyi kubera kumushora mu manza nta mpamvu n'igihembo cy'avoka, ndetse runamutegeka kumwishyura amafaranga yahaye umuhanga wasabwe gukora "audit" ya SOKERWA kugira ngo hagaragazwe imicungire n'itungo yayo kuva yashingwa. [3] Impamvu urwo rukiko rwashingiyeho ni izi zikurikira:

- i. Ku bijyanye no kumenya uwari ushinze gucunga SOKERWA n'uko yayicunze, rwasanze buri wese yaragiye acunga sosiyeti uko yishakiye hatubahirijwe ibyari biteganyijwe muri "statut" ku buryo igomba kuyoborwa, buri munyamigabane yisinyira ku makonti adakeneye umukono w'undi kandi yikurira amafaranga muri "caisse" igihe ayakenereye, Gahizi Thaddée akaba rero ataregera Urukiko imicungire mibi ya sosiyete nawe ubwe agomba kubazwa. ii. Ku bijyanye no kumenya niba hari amakamyo asigaye mu mutungo wa SOKERWA Ruhamyambuga Paul yigaruriye, rwasanze hari asigayemo ariko atabazwa Ruhamyambuga Paul kuko Gahizi Thaddée yiyemerera ko ariwe uyacunga ubu. iii. Ku bijyanye n'inyubako CITY PLAZA, rwasanze ari iya Ruhamyambuga Paul kuko ibyangombwa byayo bimwanditseho. Ku byo Gahizi avuga ko hari ibindi byanditse kuri Ruhamyambuga Paul kandi yemera ko ari ibya SOKERWA, rwasanze yarabiyanditseho sosiyeti itarabona ibitabo by'ubucuruzi. Naho ku bijyanye n'ibyo avuga ko nta bushobozi Ruhamyambuga Paul yari afite bwatuma yubaka iyo nzu, rwasanze nta shingiro bifite kuko yayubatswe ku ideni rya BCDI, ikaba yarishyurwaga n'amafaranga y'ubukode. iv. Ku bijyanye no kumenya niba amafaranga y'ubukode bwa CITY PLAZA yafatirwa, rwasanze nta shingiro bifite kuko iyo

nyubako ari iya Ruhamyambuga Paul.

- v. Ku bijyanye no kumenya niba SOKERWA igomba guseswa, rwasanze ibyo bitagomba gusuzumwa muri uru rubanza ahubwo byatangirwa ikirego kihariye. [4] Gahizi Thaddée yajuririye Urukiko rw'Ikirenga kuwa 27/12/2014 avuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibimenyetso yatanze bigaragaza ko inyubako CITY PLAZA iri mu mutungo rusange wa SOKERWA kandi ntacyo rwavuze ku migabane ya SOKERWA yari muri COGEAR no kuri stock y'ibicuruzwa SOKERWA yari ifite mu mpera z'umwaka wa 1999. [5] Urubanza rwaburanishijwe mu ruhamwe kuwa 06/01/2015, Gahizi Thaddée ahagarariwe na Maître Nsengiyumva Abel, naho Ruhamyambuga Paul yunganiwe na Maître Ngarambe Raphaël hamwe na Maître Zitoni Pierre Claver.

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II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO :

- a) Kumenya niba CITY PLAZA igomba gusubizwa mu mutungo rusange wa SOKERWA. [6] Uburanira Gahizi Thaddée avuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibimenyetso byatanze n'uwo ahagarariye bigaragaza ko CITY PLAZA iri mu mutungo rusange wa SOKERWA nubwo itayanditseho, birimo:
- i. Kuba Gahizi Thaddée na Ruhamyambuga Paul barakoreraga mu cyizere ku buryo hari n'indi mitungo ya SOKERWA nk'amamodoka yakoraga imirimo y'ubwikorezi yanditse kuri Ruhamyambuga Paul uyu adahakana ko ari iya SOKERWA, ndetse akaba yarabyemereye urukiko; ii. Kuba SOKERWA yarakoreraga mu nyubako ya CITY PLAZA itishyura ubukode kuko umuhanga washyizweho n'urukiko yagaragaje ko yishyuye ubukode kugeza mu mwaka wa 1997 ubwo inzu yari imaze kugurwa no gutunganywa, bivuze ko yari mu mutungo wayo n'aho ubundi yari kwishyura ubukode nk'abandi bose; iii. Kuba nta handi hantu Ruhamyambuga Paul yari gukura amafaranga yo kubaka iyo nzu kuko atagaragariye urukiko icyo yari kuyakuraho uretse muri SOKERWA. [7] Ku bijyanye n'amafaranga yubatswe CITY PLAZA, asobanura ko ideni rya BCDI Ruhamyambuga Paul yitwaza yarifashe muri 2001 inzu yarubatswe muri 1998 kandi ko inzu ifite agaciro ka miliyari 3 itashoboraga kubakwa na miliyoni 600 umucamanza yavuze ko yubatswe inzu. [8] Yongeraho ko ibyo Ruhamyambuga Paul avuga ko inzu yubatswe muri 2001 ku nguzanyo ya BCDI bidashoboka kuko icyo gihe banki yakoreragamo, inzu ikaba itari kubakwa na 89.809.117 Frw Ruhamyambuga yari yarahawe n'iyi banki mu mpera z'umwaka wa 2000 ngo igere aho ikorerwamo. [9] Avuga kandi ko Ruhamyambuga Paul yiyemereye ko yatse inguzanyo ya 303.809.117 Frw ariko umucamanza mu gace ka 34 k'urubanza rujuririrwa yemeza ko yatse 607.618.234 Frw, ibi akaba yarabikoze mu rwego rwo guhunga ikibazo kijyanye n'aho andi mafaranga yavuye kuko inzu y'amagorofa atandatu itakubakwa kuri 303.809.117 Frw. [10] Avuga na none ko umucamanza yavanye imvugo y'umutangabuhamya muri context yayo yemeza ko umutangabuhamya Kayihura Claver yavuze ko Ruhamyambuga Paul yari afite ahandi akura amafaranga kuko ngo yigeze gukorera muri Mozambique nyamara yaravuze ko ari ibyo yumvanye Ruhamyambuga Paul. [11] Asobanura ko Ruhamyambuga Paul yemeye imbere

y'abantu batandukanye bashakaga kubumvikanisha ko imitungo yose bayifatanyije, bagera ku bwumvikane ko hashyirwaho komisiyo izakora ibaruramutungo neza noneho bakabona kumenya uburyo bazagabana bahereye ku byanditse kuri buri umwe wese kuko babisangiye, ko ariko iyo komisiyo imaze kujyaho igiye gutangira imirimo yayo yisubiyeho ababwira ko atayemera kuko atari urukiko.

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- [12] Ruhamyambuga Paul n'abamwunganira bavuga ko kuba hari umutungo wa SOKERWA umwanditseho bitamubuza kugira uwe bwite, ko niba yaragiye i Burayi akagura amakamyo ya sosiyete atabizira ngo imitungo ye yose ijye kuri iyo sosiyete. [13] Ku bijyanye n'ibyo Gahizi Thaddée avuga ko CITY PLAZA yubatswe ku mafaranga ya SOKERWA, bavuga ko nta shingiro bifite kuko iyo nzu yatangiye kubakwa mu mwaka wa 1999 SOKERWA yaramaze guhomba, hasigaye gusa ibikorwa by'ubwikorezi, Gahizi akaba ntaho agaragaza ko amafaranga yavuye muri ubwo bwikorezi yavamo ayubaka inzu nka CITY PLAZA. [14] Ruhamyambuga Paul asobanura ko yaguze inzu mu kibanza n° 2258/Nyarugenge, ubu cyabaye 2020/Nyarugenge muri cyamunara muri 1997 kuri 50.000.000 Frw yari yagujije muri BCDI yishingiye n'umugore we, ko amaze kwishyura yasabye undi mwenda wo kubaka, BCDI imusaba gukora devis, uwitwa Nzabanita amukorera iya 500.000.000 Frw zirenga, BCDI yemera kumuguriza, ibanza kumuha 89.809.117 Frw kuwa 15/09/2000, irongera imuha 214.000.000 Frw kuwa 06/02/2001, BACAR nayo imuha 40.000.000 Frw, atangaho ingwate inzu ye iri ku Kicukiro, inzu CITY PLAZA yuzura mu mpera z'umwaka wa 2001. [15] Avuga kandi ko Gahizi Thaddée yari i Kigali igihe yaguraga inzu iri iruhande rwaho CITY PLAZA yubatse kuko yari yaraje mu bukwe bw'uwitwa Kayihura Claver, ko iyo baza kuba bayifatanyije bari gusinya bombi ku masezerano, ndetse ko yigeze kugira ibibazo bikomeye kubera ko yari yananiwe kwishyura ideni rya banki, ishaka guteza cyamunara CITY PLAZA, ko iyo baza kuba bayifatanyije aba yaramufashije kwishyura. [16] Avuga na none ko ibyo kuvuga ko nta handi yari gukura amafaranga usibye muri SOKERWA nta shingiro bifite kuko yagaragaje ko yakoreye Congo, Mozambique na Angola, ko yahawe inguzanyo n'amabanki atandukanye, kandi ko n'inzu y'igorofa imwe yaguze muri cyamunara yari isanzwe ikora ifite abayikodesha. [17] Ku bijyanye n'ibyo yaba yaremeye mu nama yo kubumvikanisha ko imitungo yose ibanditseho bayisangiye, avuga ko nta nyandiko y'inama Gahizi Thaddée agaragaza kugirango ibyo avuga bibe byafatwaho ukuri. Uko Urukiko rubibona: [18] Mu gusuzuma niba CITY PLAZA yubatswe mu kibanza n° 2258/Nyarugenge ubu cyabaye 2020/Nyarugenge yarubatswe mu mafaranga ya SOKERWA, nta handi Urukiko rwahera usibye ku bimenyetso byatanze n'ababuranyi. [19] Ku bijyanye n'amategeko yerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 9 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, mu gace kayo ka mbere ivuga ko "urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda", naho ingingo ya 9 y'Itegeko n° 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo igateganya ko "ibimenyetso (.....) bishobora gutangwa hakoreshejwe

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inyandiko, ubuhamya, uburyo bwo gucukumbura, ukwiyemerera k'umuburanyi cyangwa herekanywa ibindi bintu bifatika“1 [20] Ku bijyanye by'umwihariko n'ibimenyetso bishingiye ku buhamya, ingingo ya 64 y'iryo tegeko ryerekeye ibimenyetso mu manza ivuga ko “haseguriwe ibiteganywa n'amategeko yihariye, ubuhamya mu magambo ntibushobora kwemerwa ku masezerano y'amafaranga arenze ibihumbi mirongo itanu (50.000 Frw) cyangwa ku kintu gifite agaciro kayarengeje (....) keretse bwunganiwe n'ibindi bimenyetso“, naho ku bijyanye n'ibimenyetso bicukumbuwe, ingingo ya 108 ikavuga ko byemerwa gusa iyo bikomeye, bisobanuye kandi bihuje (if they are important, precise and consistent/ si elles sont graves, précises et concordantes). [21] Ku bijyanye n'uru rubanza, Gahizi Thaddée ari nawe urega avuga ko we na Ruhamyambuga Paul bakoranaga mu cyizere, ibi kandi bihura n' ibyagaragajwe n'umuhanga washyizweho n'Urukiko Rukuru mu rwego rwo kurufasha kumenya ukuri ku micungire ya SOKERWA ko imitungo yayo itigeze ibarurwa, ndetse ko buri munyamigabane yasinyaga ku makonti adakeneye uruhushya rw'undi, anakura amafaranga muri caisse uko yishakiye. Urukiko rukaba rusanga rero nta bimenyetso bishingiye ku ibaruramari ya SOKERWA rwaheraho rusuzuma niba CITY PLAZA yarubatswe mu mutungo wayo ikaza kuvamo ku buryo Gahizi Thaddée yaregera ko igaruzwa. [22] Ku bijyanye n'ibimenyetso bishingiye ku buhamya, mu Rukiko Rukuru rw'Ubucuruzi Gahizi Thaddée yasabye ko hatumizwa abantu bagerageje kubumvikanisha kugira ngo bagaragaze ko Ruhamyambuga Paul yabemereye ko basangiye imitungo yose aregera harimo na CITY PLAZA, Urukiko rurabyemera, ruhamagaza abatangabuhamya batandukanye, hitaba Kanzayire Bernadette, Rutayisire Déo na Kayihura Claver, bagira ibyo basobanurira urukiko, ariko iyo rusesenguye imvugo zabo nk'uko zigaragara mu nyandiko mvugo y'iburanisha ryo kuwa 21/10/2013 uru Rukiko rusanga bose bahuriza gusa ku kuvuga ko Gahizi na Ruhamyambuga bakoranye kuva kera, ko baje kunanirwa kumvikana ku mitungo basangiye, ndetse ko bagerageje kubunga no kubagira inama ntibabigeraho, ariko ntaho bavuga ko Ruhamyambuga Paul yemeye imbere yabo ko CITY PLAZA bayisangiye cyangwa ko yubatswe ku mafaranga ya SOKERWA, izo mvugo zabo zikaba rero zitafatwa nk'ikimenyetso cyakunganirwa n'ibindi kuko ntacyo zigaragaza ku kiburanwa ubwacyo. [23] Ku bijyanye n'ibimenyetso bicukumbuwe Urukiko rwasabwe na Gahizi Thaddée gusuzuma birimo ko hari n'indi mitungo ya SOKERWA nk'amamodoka yanditswe kuri Ruhamyambuga Paul uyu adahakana ko ari ay'iyi sosiyete, ko SOKERWA itongeye kwishyura ubukode nyuma y'umwaka wa 1997 ubwo inzu yari imaze kugurwa no gutunganywa, ko nta handi hantu Ruhamyambuga Paul yari gukura amafaranga yo kubaka CITY PLAZA uretse muri SOKERWA, Urukiko rusanga hagomba kurebwa niba ari ibimenyetso bikomeye, bisobanuye kandi bihuje nk'uko bisabwa n'itegeko. [24] Urukiko rusanga kuba hari amakamyo ya SOKERWA yanditse kuri Ruhamyambuga Paul bitaherwaho ngo hemezwe ko inzu CITY PLAZA nayo imwanditseho ari iya SOKERWA kuko, 1 A evidence based on a legal issue or on a fact can be proven by the use of written evidence, testimony, presumption, circumstantial evidence, admission of a party or any other material evidence/ La preuve d'un acte juridique ou d'un fait peut être établie par écrit, témoignage, présomption, par aveu ou par la présentation d'un autre élément matériel.

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nk'uko byasobanuwe n'Urukiko Rukuru rw'Ubucuruzi, ababuranyi ubwabo bagaragaje ubwo hakorwaga expertise ko bombi bakoreshaga amafaranga yavaga mu bwikorezi bw'ayo makamy, ndetse ko ayavuye mu igurishwa ryayo yakoreshejwe mu kwishyura aba "fournisseurs" ba SOKERWA, ariko ntabwo Gahizi Thaddée yigeze akoresha amafaranga y'ubukode bwa CITY PLAZA nk'uko yakoreshega ay'ubwikorezi, ndetse nta nubwo ayo mafaranga yigeze aca ku makonti ya SOKERWA nk'uko byakorwaga ku bijyanye n'amafaranga y'ubwikorezi. [25] Ku bijyanye n'ibyo Gahizi avuga ko SOKERWA itongeye kwishyura ubukode bw'aho ikorera nyuma y'umwaka wa 1997 ubwo inzu yaguzwe muri cyamunara yari imaze kugurwa no gutunganywa, bikaba byerekana ko CITY PLAZA ari iya SOKERWA kuko itari kwishyura ubukode bw'inzu iri mu mutungo wayo, Urukiko rusanga ntaho rwahera rubyemeza kuko SOKERWA nta baruramari ryizewe yagiraga nk'uko byemejwe n'umuhanga washyizweho n'Urukiko Rukuru rw'Ubucuruzi ku buryo ryaherwaho harebwa ibyo SOKERWA yishyuraga n'ibyo itishyuraga ku bijyanye n'ubukode bw'aho yakoreraga. [26] Ku birebana n'inkomoko y'amafaranga Ruhamyambuga yubatsemo CITY PLAZA, ikigaragarira Urukiko mu nyandiko zatanzweho ibimenyetso ziri muri dosiye n'uko ari Ruhamyambuga Paul ku giti cye waguze muri cyamunara ikibanza cyari mo inzu (Gahizi Thaddée ntahakana ko iyo nzu yari ifite abayikodesha kuva ikigurwa), kandi ko ari we wasabye inguzanyo ya 50.000.000 Frw yo kukigura yishingiye n'umugore we, akanatangaho ingwate y'inzu ye. Ikindi kigaragara n'uko ari we ku giti cye wakoranye amasezerano y'inguzanyo n'amabanki atandukanye agahabwa amafaranga agera kuri 343.809.117 Frw (89.809.117 Frw + 214.000.000 Frw + 40.000.000 Frw) guhera mu mwaka wa 2000 kugeza muri 2001 (Urukiko Rukuru rw'Ubucuruzi rwaribeshye ruvuga ko ari 607.618.234 Frw), akaba ari nawe wishyuraga umwenda. [27] Urukiko rusanga nubwo ayo mafaranga yaba atariyo yonyine yubatswe CITY PLAZA, ibimenyetso bimaze kuvugwa bifite uburemere ku buryo bitavuguruzwa gusa no kuvuga ko nta handi Ruhamyambuga Paul yari gukura amafaranga yo kuyubaka usibye muri SOKERWA mu gihe Gahizi Thaddée urega, ari nawe ugomba gutanga ibimenyetso by'ibyo aregera, adashobora kugaragaza imitungo yari ifite n'uburyo yagiye ikoreshwa, n'umuhanga wasabwe n'Urukiko Rukuru rw'Ubucuruzi gukora "audit" y'iyi mitungo akaba yaragaragaje ko itigeze ibarurwa. [28] Urukiko rusanga rero nta bimenyetso bicukumbuye, bikomeye, bisobanuwe kandi bihuje bigaragaza ko CITY PLAZA yubatswe mu mafaranga ya SOKERWA kuko umutungo wayo nyakuri utazwi ngo habe hagaragazwa ko hari uwakoreshejwe mu kubaka CITY PLAZA. [29] Hashingiye ku bimaze kuvugwa Urukiko rusanga ibyo Gahizi Thaddée asaba ko inyubako CITY PLAZA igarurwa mu mutungo wa SOKERWA nta shingiro bifite kuko nta bimenyetso bishingiye ku nyandiko, ubuhamya, uburyo bwo gucukumbura, ukwiyeemerera k'umuburanyi cyangwa herekanywe ibindi bintu bifatika yashoboye kugaragaza.

- b) Kumenya niba imigabane ya SOKERWA yari muri COGEAR na stock y'ibicuruzwa yari ifite mu mpera z'umwaka wa 1999 bigomba kugarurwa mu mutungo wa SOKERWA.

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- [30] Gahizi Thaddée n'abamwunganira bavuga ko umucamanza ntacyo yavuze ku migabane ya SOKERWA yari muri COGEAR Ruhamyambuga akaza kuyikuramo, no kuri stock y'ibicuruzwa yari ifite agaciro ka 73.275.658 Frw, SOKERWA yari ifite mu mpera z'umwaka wa 1999 aho Ruhamyambuga avuga ko SOKERWA yahagaritse imirimo y'ubucuruzi. [31] Ruhamyambuga yiregura avuga ko imigabane ya SOKERWA yari muri COGEAR yavunjwe mu myenda SOKERWA yari ibereyemo COGEAR, naho ku bijyanye n'ibicuruzwa byari bisigaye muri stock mu mpera za 1999 akavuga ko stock yose yari 21.072.137 Frw kandi ko yangijwe n'imvura nk'uko bigaragara mu nyandiko yasinyweho na Gahizi Thaddée ubwe. [32] Abamwunganira nabo bavuga ko ibyerekeye imigabane ya SOKERWA yari muri COGEAR na Stock y'ibicuruzwa bivugiwe bwa mbere mu bujirire, ko bitemewe kuzana ibirego bishyashya mu rwego rw'ubujirire. [33] Ingingo ya 168 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, mu gika cya mbere ivuga ko ababuranyi badashobora kuregera ikirego gishya ku rwego rw'ubujirire keretse ku biteganyijwe muri iyo ngingo. [34] Ntaho bigaragara mu miburanire y'ababuranyi mu rwego rwa mbere ko imigabane ya SOKERWA yari muri COGEAR n'ibicuruzwa byari muri stock mu mpera ya 1999 byigeze biburanwaho, imitungo yaburanweho na nyuma y'uko "expert" atanze raporo ye akaba ari amakamyi na CITY PLAZA byonyine. [35] Urukiko rusanga hashingiwe ku ngingo ya 168 y'Itegeko ryavuzwe haruguru, ibyo Gahizi asaba ko imigabane ya SOKERWA yari muri COGEAR n'ibicuruzwa byari muri stock mu mpera z'umwaka wa 1999 byagarurwa mu mutungo wa SOKERWA bidashobora gusuzumwa kuko byaba ari ukuzana ikirego gishya mu bujirire.
- c) Ku byerekeye indishyi z'akababaro n'amafaranga y'ikurikirana- rubanza Ruhamyambuga Paul asaba mu bujirire bwuririye ku bundi. [36] Ruhamyambuga n'abamwunganira basaba ko Gahizi yategekwa kumuha indishyi z'akababaro za 10.000.000 Frw kubera gushorwa mu manza na 30.000.000 Frw y'ikurikiranarubanza n'igihembo cy'Avoka ku nzego zombi baburaniyemo, naho Gahizi Thaddée n'abamwunganira bakavuga ko ibyo basaba nta shingiro bifite, ndetse ko n'ayatanzwe mu rwego rwa mbere batayemera. Uko urukiko rubibona: [37] Ku bijyanye n'indishyi z'akababaro Ruhamyambuga Paul asaba, Urukiko rusanga n'izo yagenewe ku rwego rwa mbere ntazo akwiye kuko kuba Gahizi Thaddée yarareze ari uburenganzira ahabwa n'amategeko keretse bigaragajwe ko yabikoze agamije gusa kubangamira inyungu za Ruhamyambuga Paul kandi ibi ntabwo byigeze bigaragazwa. [38] Ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya avoka, Urukiko rusanga ayo asaba ari ikirenga rukurikije ibyakozwe muri uru rubanza, rukaba rumugeneye mu bushishozi bwarwo 1.000.000 Frw ku nzego zombi yaburaniyeho hashingiwe ku ngingo ya

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y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano ivuga ko "igikorwa cyose cy'umuntu cyangirije undi gitegeka nyiri ugukora ikosa rigikomokaho kuriha ibyangiritse. III. ICYEMEZO CY'URUKIKO : [39] Rwemeje ko ubujurire bwa Gahizi Thaddée nta shingiro bufite. [40] Rwemeje ko ubujurire bwa Ruhamyambuga Paul bwuririye ku bundi bufite ishingiro ku bijyanye gusa n'amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka mu rwego rw'ubujurire. [41] Rutegetse Gahizi Thaddée kwishyura Ruhamyambuga Paul 1.000.000 Frw y'ikurikiranarubanza n'igihembo cy' Avoka. [42] Rumutegetse kwishyura amagarama y'urubanza.

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