

RWANDA / JUDGMENT

NSENKUMUREMYI v BRALIRWA Plc

RCA 00139/2022/HC/KIG

COURT

High Court

DECIDED

16 February 2024

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RCA 00139/2022/HC/KIG

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NSENKUMUREMYI v BRALIRWA Plc

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Text

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NSENKUMUREMYI v BRALIRWA Plc [Rwanda URUKIKO RUKURU - RCA 00139/2022/HC/KIG (Hitimana, P.J.) 16 Gashyantare 2024] Amategeko agenga imanza z'imbonezamubano – Kuregera indishyi - Indishyi zikomoka ku gifungo - Uwatanze ikirego mu bugenzacyaha siwe ufata icyemezo cyo gufunga kuburyo yacibwa indishyi. Incamake y'ikibazo: Uru rubanza rukomoka ku kirego cyatanze na BRALIRWA Plc aho yasabaga ubugenzacyaha kuba bwakurikirana Nsengumuremyi wakekwagaho ubujura bwabaye muri icyo kigo ikabikora ishingiye ku makuru nayo yahawe n'umwe mu bakozi bayo wavugaga ko amasabune yabuze muri icyo kigo yibwe na Nsengumuremyi. Urubanza rwaje kuburanishwa n'Urukiko Rw'Ibanze rwa Gisenyi ariko bikorwa Nsengumuremyi afunzwe ruza kumugira umwere arafungurwa. Yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko BRALIRWA Plc yamureze mu bugenzacyaha yamuha indishyi zitandukanye kuko yamufungishije. Urukiko rwasanze ikirego cye nta shingiro gifite kuko uwo arega atari we wamufunze na we ajuririra icyo cyemezo mu Rukiko Rukuru. Urukiko Rukuru rwakiriye ubwo bujura maze rusuzuma ikibazo cyo kumenya niba hari ubushake bugenderewe Bralirwa yaba yaragize ibeshya mu kurega Nsengumuremyi ku buryo urega yabiharerwa indishyi. Urega avuga ko BRALIRWA Plc yamuhohoteye imurega imaze gukora

akagambane n'abantu bayiheye amakuru atariyo igamije kumufungisha, akabeshyerwa ko yibye isabune nyamara izo sabune zaribwe n'abandi. Akomeza avuga ko yahise imuhagarika ku kazi aho kumukurikirana ho ikosa nkuko biteganywa n'itegeko rigenga umurimo mu Rwanda ahubwo ihita inatanga ikirego mu bugenzacyaha arafungwa kugeza aho aburaniye akagirwa umwere. Arasaba ko icyo kigo yakoreraga cyamufungishije cyamuha indishyi zitandukanye. BRALIRWA Plc ivuga ko ubujurire bwa Nsengumuremyi butahabwa ishingiro kuberako kuba yarashyikirije ubugenzacyaha ikibazo ishingiyeye ku makuru yari yahawe n'abatangabuhamya nta kosa ririmo kuko ibyo yakoze ari uburenganzira yemerewe n'amategeko, dore ko atari yo yafashe icyemezo cyo kumufunga, bityo ko nta ndishyi ikwiye gutegekwa kwishyura urega Incamake y'icyemezo: Uwatanze ikirego mu bugenzacyaha siwe ufata icyemezo cyo gufunga kuburyo yacibwa indishyi bityo Blarirwa ntigomba kuryozwa indishyi zisabwa kuko atariyo yafashe icyemezo cyo gufunga Nsengumuremyi. Ubujurire bwatanze nta shingiro bufite. Amategeko yashingiweho: Itegeko No 058/2023 ryo ku wa 04/12/2023 rihindura itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 2, 5, 118. Nta manza zifashishijwe

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Inyandiko z'abahanga zifashishijwe: Philippe Le Tournau, Droit de la responsabilité et des contrats, Paris, Dalloz 2004. Urubanza I. IMITERERE Y'URUBANZA [1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, aho Nsengumuremyi John yaregaga BRALIRWA Plc ko tariki ya 26/06/2020 yagejeje inyandiko imurega mu Bugenzacyaha, icyaha cy'ubujura, ko muri icyo nyandiko Bralirwa ikaba yiyemerera ko imurega igendeye ku makuru yahawe n'umwe mu bakozi bayo ko yibye amasabune, ko aya makuru mu by'ukuri BRALIRWA Plc ikaba yari ifite uburyo bwose bwo kugenzura ukuri kwayo mbere yo kumurega mu Bugenzacyaha no kumufungisha, ntiyabikora kuko yari igambiriye kumurenganya inabigeraho, bigeze kuwa 16/07/2020 Ubugenzacyaha bwigiriye ku ruganda kugenzura ibimenyetso byose, bigaragara ko umunsi n'amasaha ubujura yaregwaga atari ku kazi, abatanze ayo makuru nta masabune berekanye yafashwe, biza kurangira uwitwa Nshimiyimana Olivier asobanuye mu ibazwa ryo kuwa 17/07/2020 ko yemerewe amafaranga ngo amushinje, Urukiko rusuzumye ibimenyetso byose rumugira umwere mu rubanza RP 00566/2020/TB/GI, akaba asaba ko iki cyaha yakorewe yagiharerwa indishyi z'akababaro zingana na miliyoni mirongo itanu (50,000,000Frw) kubera kuregwa akanafungwa abeshyerwa, agasaba kandi gusubizwa igihembo cy'umwunganizi kibaze kuri 10% yayo ni ukuvuga miliyoni eshanu (5,000,000Frw), akanasubizwa kandi igihembo cya miliyoni imwe (1,000,000Frw) yahaye umwunganizi mu rubanza Bralirwa yamurezemo akaza kuba umwere (RP 00566/2020/TB/GI), n'ingendo z'amafaranga ibihumbi magana abiri (200,000Frw) yitaba mu bugenzacyaha, kuri Pariki, no mu rukiko yose hamwe akaba 56,200,000Frw; [2] BRALIRWA Plc yiregura ivuga ko kuwa 18/06/2020 muri BRALIRWA Plc habereye ubujura bw'amasabune yayo, BRALIRWA Plc ibimenye yiyambaje urwego rw'ubugenzacyaha kugira ngo bukurikirane abakekwa muri icyo cyaha cyo kwiba, Ubugenzacyaha mu iperereza bwakoze bwasanze abakekwa ari Mugiraneza Jean Claude wari umukozi wa Agespro Security, Nsengumuremyi John na Nshimiyimana Olivier, maze dosiye buyishyikiriza ubushinjacyaha, nabwo burayikurikirana buyishoje buregera urukiko abo bukeka

ko bakoze icyo cyaha, Urukiko rw'Ibanze rwa Gisenyi rumaze gusesengura ikirego cy'ubushinjacyaha n'ibimenyetso by'icyaha cy'ubujura abashinjwa bakekwagaho rwemeje ko ikirego cy'ubushinjacyaha gifite ishingiro kuri bimwe, ko Nshimiyimana Olivier ahamwa n'icyaha cyo kwiba, rumuhanisha igifungo cy'umwaka umwe gisubitswe mu gihe cy'imyaka ibiri, rwemeza ko Nsengumuremyi John na Mugiraneza Jean Claude badahanwa n'icyaha cyo kwiba, ikaba isanga nta mpamvu n'imwe ihari yagombaga gutuma Nsengumuremyi John ayizana mu rubanza; [3] Urukiko rwasuzumye urwo rubanza rwemeza ko ikirego cya Nsengumuremyi John nta shingiro gifite rutegeka ko amagarama yatanze ahwanye n'ibyakozwe muri urwo rubanza, rufata icyemezo rushingiye ko ibimenyetso byose Nsengumuremyi John yatanze bitagaragaza ko umukoresha we yagize uruhare rwo kumufunga no kumufungisha, kuba yarafunzwe bikaba bitaryozwa BRALIRWA kuko yo yatanze ikirego igira ngo harebwe uwagize uruhare mu bujura hamenyekane uwakoze icyaha koko;

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- [4] Nsengumuremyi John ntiyishimiye imikirize y'urubanza ajuririra uru rukiko anenga ko urukiko rwisumbuye rwirengagije ko hari ubushake bugenderewe Bralirwa yagize mu kumurega imubeshyera akanafungwa akaba asaba ko yabiharerwa indishyi n'uwamureze; [5] BRALIRWA Plc yireguraga isaba ko ubujurire bwa Nsengumuremyi John butahabwa ishingiro kuberako kuba yarashyikirije ubugenzacyaha ikibazo ishingiyeye ku makuru yari yahawe na Nshimiyimana Olivier nta kosa ririmo kuko ibyo yakoze ari uburenganzira yemerewe n'amategeko, kandi Bralirwa atari yo yafashe icyemezo cyo kumufunga, bityo ko nta ndishyi ikwiye gutegekwa kwishyura urega; [6] Urukiko rurasuzuma niba urukiko rwariirengagije ko hari ubushake bugenderewe Bralirwa yaba yaragize ibeshya mu kurega Nsengumuremyi John ku buryo urega yabiharerwa indishyi; II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA Gusuzuma niba hari ubushake bwagenderewe Bralirwa yagize bwo kubeshya irega Nsengumuremyi John mu bugenzacyaha. [7] Me Umuhiza Beatrice uburanira Nsengumuremyi John avuga ko icyatumye uwo aburanira ajurira aruko amakuru BRALIRWA Plc yashyize mu nyandiko yo kuwa 26/06/2020 iregera Ubuganzacyaha, ko asanga ari akagambane kagaragazwa n'ibimenyetso bikurikira, byerekana ko iki kirego cyatanze BRALIRWA Plc izi neza ko ibeshyera Nsengumuremyi John ku makimbirane yari ifitanye nayo (uwari ayihagarariye i Rubavu): 1. Kurega ushingiyeye ku makuru yatanze n'abantu bo hanze y'uruganda, ko aya makuru yo hanze ari akagambane kuko iyo kataba ko, yari kugenzurira ukuri kwayo imbere mu ruganda, ko BRALIRWA Plc mu nyandiko yayo yatangiyeho ikirego yo kuwa 26/06/2020 yivugira ko yahawe amakuru na Habumugisha Jean Claude ihembera kuyiha amakuru (whistleblower) n'umuvandimwe we Nshimiyimana Olivier adasobanutse; [8] Me Umuhiza Beatrice uburanira Nsengumuremyi John akomeza avuga ko BRALIRWA Plc ivuga ko uyu mukozi wayo ihembera kuyiha amakuru ariwe Habumugisha Jean Claude yaguze ayo masabune, ubwabyo ntibyumvikana uburyo atahise ayiyereka ngo abe ikimenyetso (igihanga), ko Habumugisha Jean Claude atari gukererwa gutanga aya makuru ku bujura avuga ko bwabaye mu kwezi kwa 05/2020 ngo ayatange mu kwezi kwa 06/2020 kandi aturanye n'uruganda, ko BRALIRWA Plc itigeze igaragaza ko nyuma

yo guhabwa amakuru, yagenzuye ububiko bwayo (dépôt), inakoresha n'igenzura (audit) ibona amakuru afatika iheraho ikeka Nsengumuremyi John kuba ariwe wayibye, ko iri genzura iyo rikorwa hari amahirwe menshi ko Nsengumuremyi John atari kuregerwa Ubugenzacyaha, kutarikora akaba ari ikigaragaza akagambane yakorewe na Bralirwa; [9] Me Umuhiza Beatrice uburanira Nsengumuremyi John akomeza avuga ko kutubahiriza uburenganzira bwa Nsengumuremyi John nk'uwari umukozi wa BRALIRWA Plc ikamuhagarika by'agateganyo ku kazi kuwa 26/06/2020 kugira ngo imukoreho iperereza, aho kugira ngo iryo perereza rikorwe nk'uko biteganyijwe mu ngingo ya 20 y'itegeko N° 66/2018 ryo kuwa 30/08/2018 rigenga umurimo mu Rwanda, ahubwo uwo munsu yahise imuregera Ubugenzacyaha, ishingiyeye kuri ya makuru yahawe n'abantu bo hanze aribo Habumugisha Jean Claude na Mugiraneza Olivier, bigaragaza ko ibimenyetso yabiteguranye nabo, ariko kagambane

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Nsengumuremyi John abona yakorewe, ko ibi bigaragazwa n'ibaruwa yo kuwa 26/06/2020 BRALIRWA Plc yandikiye Nsengumuremyi John imuhagarika by'agateganyo mu gihe igiye gukora iperereza, ko hari kandi ibaruwa yo kuwa 30/07/2020 BRALIRWA Plc yamwandikiye imumenyesha ko iperereza ritagikozwe kuko afunze; [10] Me Umuhiza Beatrice uburanira Nsengumuremyi John akomeza avuga ko urubanza RP 00566/2020/TB/GI rwabaye itegeko, rukaba rwagize umwere Nsengumuremyi John nkuko bigaragara mu bika bya 4, 5, 12 na 16, aho mu gika cya 12 Uhagarariye Ubushinjacyaha avuga ko Nshimiyimana Olivier abeshyera Mugiraneza Jean Claude na Nsengumuremyi John ko nta bimenyetso bafite byo kubashinja, ko Nshimiyimana Olivier avuga ko yabeshyeye Mugiraneza Jean Claude na Nsengumuremyi John, ko mu gika cya 16 cy'urwo rubanza Urukiko ruvuga ko Nshimiyimana Olivier yashatse kuroha Munyaneza Jean Claude (aha ni Mugiraneza Jean Claude) na Nsengumuremyi John mu cyaha ababeshyera ko rero byaba impamvu nkomezacyaha; [11] Me Umuhiza Beatrice uburanira Nsengumuremyi John akomeza avuga ko mu ibazwa ryo kuwa 17/07/2020 (riri muri dosiye), Nshimiyimana Olivier yagaragaje ko yaguriwe na Mupenzi umukozi wa BRALIRWA Plc ngo ashinje Mugiraneza Jean Claude na Nsengumuremyi John, ko iyi mvugo ya Nshimiyimana Olivier ar'iyi yavugiye mu iburanisha Urukiko rwazishingiyeho rubagira abere, ko ibi bimenyetso Urukiko rujuririrwe rukwiye kubihisha ishingiro ko BRALIRWA Plc yazeze Nsengumuremyi John imubeshyera mu Bugenzacyaha kuwa 26/06/2020, ko rero igomba kubitangira indishyi, urubanza RC 00273/2021/TGI/NYGE rugahinduke kuri byose; [12] Me Umuhiza Beatrice uburanira Nsengumuremyi John akomeza avuga ko urubanza rwashyizwemo na Bralirwa rutashingirwaho kuko Mugiraneza Jean Claude atari umukozi wa Bralirwa mugihe Nsengumuremyi John we yari umukozi wa Bralirwa bityo ko Bralirwa itari gutanga ikirego igendeye ku kimenyesto kimwe gusa cy'amakuru ya Nshimiyimana Olivier ataranakoraga muri Bralirwa, ikindi urwo rubanza rwatanzwe ubu ruri mukarengane; [13] Me Munyentwali Charles uburanira BRALIRWA Plc yiregura ku bujurire bwa Nsengumuremyi John avuga ko asaba ko ibyo avuga nta shingiro byahabwa kuko ntacyo anenga urubanza yajuririrwe usibye gusubira mu miburanire ye yo mu Rukiko Rwisumbuye rwa Nyarugenge, kandi ibyo avuga ubu urwo rukiko rwarabisuzumye rusanga ingingo ya 122 y'itegeko

N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha yashingiyeho atanga ikirego yarayivugishije ibyo itavuga, kuko we bigaragara ko yakurikiranywe kuko yakekwagaho icyaha cy'ubujura ndetse runasanga ibimenyetso byose Nsengumuremyi John yatanze bitagaragaza ko umukoresha we yagize uruhare rwo kumufunga no kumufungisha, kuba yarafunzwe bikaba bitaryozwa BRALIRWA Plc kuko hagirango harebwe ibirebana nuko iyo BRALIRWA Plc yibwe, ubugenzacyaha kuba bwaramufunze bugirango bubone uko bukora iperereza bumenye uwaba yari bya BRALIRWA Plc ndetse n'ubushinjacyaha bwashyikirijwe dosiye bukayishyikiriza Urukiko ngo habanze hamenyekane uwakoze icyaha koko, rusanga ibyo byose bitasabirwa indishyi BRALIRWA Plc kuko icyo yakoze ari ugutanga ikirego ntabwo ariyo yafunze Nsengumuremyi John, Urukiko rusanga ntaho rwahera rwemeza ko Nsengumuremyi John yahabwa indishyi na BRALIRWA Plc kuko ibyo avuga nta bimenyetso abigaragariza; [14] Me Munyentwali Charles uburanira BRALIRWA Plc akomeza yiregura avuga ko kuba Nsengumuremyi John atanenga ubusesenguzi urukiko rubanza rwashingiyeho ndetse ntabivuguruzwe ko rudaha ishingiro ubujurire bwe, asaba ko ubwo busesenguzi ko bwagumana

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agaciro kabwo, maze urukiko Rukuru rwa Kigali, rukemeza ko ibivugwa n'uwajuriye nta shingiro bifite, urukiko rukuru rugashingira ku rubanza RCA 00295/2021/HC/KIG rwaciye n'urukiko Rukuru kuwa 19/10/2022 Mugiraneza Jean Claude na Bralirwa aho rwagaragaje ko izi ndishyi zisabwa nta shingiro ziba zifite ashingiyeho ko inkiko zigomba kuba zica imanza kimwe; Uko uru rukiko rubibona [15] Impaka ziri mu rubanza ni ukumenya niba Bralirwa yaba yaragize umugambi wo kurega kandi ibeshyera ibikoze nkana igamije gufungisha Nsengumuremyi John, niba kandi icyo gikorwa cyatuma hagenwa indishyi zikishyurwa uwaba yarafunzwe nyuma nyuma yo kuregwa icyaha cy'ubujura; [16] Ingingo ya 2 y'itegeko n° 058/2023 ryo ku wa 04/12/2023 rihindura itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, cyane igika cyayo cya mbere agace ka f, aho kivuga ko: "(1) Mu kazi k'iperereza, umugenzacyaha afite inshingano zikurikira: (a) gushakisha ibyaha; (b) kwakira ibirego n'inyandiko zijyanye n'ibyaha, (c) gukusanya ibimenyetso bishinje n'ibishinjura; (d) gushakisha abakoze ibyaha, abafatanyacyaha n'ibyatso byabo kugira ngo bakurikiranwe n'ubushinjacyaha; (e) kumenyesha uwakorewe icyaha n'ukekwaho icyaha aho dosiye igeze; (f) kwandika inyandikomvugo yo gufata no gufunga agaha kopi ukekwa icyaha; (g) kurekura ukekwa icyaha cyangwa kumurekura no kumutegeka ibyo yubahiriza; (h) gutangiza ubuho hagati y'ukekwaho icyaha n'uwakorewe icyaha iyo: (i) abona ko ari bwo buryo bukwiye bwo kuriha uwangirijwe, kurangiza inkurikizi z'icyaha no gufasha ukekwa icyaha kwikosora no kwisubiraho; (ii) icyaha cyakozwe kidahanishwa igihano cy'igifungo kirenze imyaka 5"; (iii) Iyo akora iperereza, umugenzacyaha ashobora gufata no gufunga ukekwa icyaha mu buryo buteganywa n'iri tegeko"; [17] Ingingo ya 5 y'itegeko n° 058/2023 ryo ku wa 04/12/2023 rihindura itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko: "(1) Umushinjacyaha wakiriye dosiye afite inshingano zikurikira: (a) guhita aregera urukiko rubifitiye ububasha ukurikiranyweho icyaha, iyo abona ko dosiye yuzuye; (b) gufata icyemezo cyo gukora iperereza ry'inyongera, iyo asanze ibimenyetso biri muri dosiye

yashyikirijwe bidahagije”; [18] Uru rukiko rusanga ingingo zose zimaze kuvugwa zigaragaza ko Ubugenzacyaha bufite ishingano zinyuranye zirimo kwakira ikirego kandi ko arirwo rwego rwemeza ko ukekwa akurikiranwa afunzwe cyangwa adafunzwe, ingingo ya 5 y’itegeko ryavuzwe ikagaragaza inshingano z’ubushinjacyaha ko aribwo bwemeza ko buregera urukiko ndetse uru rwego rukaba rwafata icyemezo cyo gukomeza gufunga cyangwa kurekura ukekwa icyaha, rwabihuza n’ibikubiye muri dosiye Nsengumuremyi John yafatiweho agafungwa, rusanga icyemezo cy’ifungwa kitarafashwe n’umukoresha we ariwe Bralirwa ahubwo cyarafashwe n’ubugenzacyaha ndetse n’ubushinjacyaha bugakomeza kwemeza ko afungwa cyane ko nubwo Nsengumuremyi arega Bralirwa ko ariyo yamufungishije ariko ntabwo ahakana ko icyaha kitabayeho kandi kikabera muri Bralirwa yatanze ikirego cy’ubujura;

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[19] Urukiko rurasanga kuba Bralirwa yarashyikirije ubugenzacyaha ikibazo ishingiyeye ku makuru yari yahawe na Nshimiyimana Olivier nta kosa ririmo kuko ibyo yakoze ari uburenganzira yemerewe n’amategeko bwo gutanga ikirego mu gihe hari icyaha yakorewe, kandi koko kikaba cyarabayeho, nubwo haketswe Nsengumuremyi John kubera amakuru yari yahawe, cyane ko hari ibigaragaza ko yari yibwe koko kandi Nsengumuremyi John atavuguruza, mu gihe bigaragaye ko hari icyaha yakorewe cyane ko cyaje guhama umwe mu bakurikiranywe mu manza nshinjabyaha, ko ibyo Nsengumuremyi John yashingiye ajurira avuga ko n’ubwo BRALIRWA Plc itabanje gukora iperereza ryayo, Urukiko rusanga n’ubwo bwashobora kuba bumwe mu buryo bwari gufasha BRALIRWA Plc gukurikirana ibyo yibwe bitayambura uburenganzira bwo kuregera ubugenzacyaha kugira ngo habeho ikurikiranacyaha ku bujura bwari bwakozwe kuko ari rwo rwego rwonyine rubifitiye ububasha, ariko ko ntaho Bralirwa yigeze isaba ko urwo rwego rwafata icyemezo cyo gufunga uwo yaketse ishingiyeye ku makuru yari yahawe; [20] Ku byerekeye ibivugwa na Nsengumuremyi John ko abamushinje bari baguriwe n’umukozi wa BRALIRWA Plc, ibi urukiko rusanga imvugo yabo ubwayo itafatwa nk’ikimenyetso gishinja BRALIRWA Plc kuba yarakoze nkana igikorwa cyo gufungisha Nsengumuremyi cyane ko atariyo yafashe icyo cyemezo ahubwo ko cyafashwe n’ubugenzacyaha mu gihe bwakoraga iperereza ryabwo akaba nta ruhare Bralirwa yabigizemo dore ko Atari na Bralirwa yatumye Ubushinjacyaha budafata icyemezo cyo kumurekura ngo ntakomeze gufungwa; [21] Ku bivugwa na Me Umuhiza Beatrice wunganira Nsengumuremyi John ko Bralirwa ariyo yanditse itabanje kwikorera iperereza ngo inagaragarizwe amasabune yabuze n’uwamushinje ikaba ariyo yatumye afungwa mu manza nshinjabyaha, ariko uru rukiko rusanga ibi avuga atarirwo ruhare rwatumye Nsengumuremyi John afungwa igihe cyose yarafunzwe n’inzego mu nshingano zazo mu gihe cy’ikurikirana cyaha, kuko niyo aba ari hanze adafunzwe ko bitari kuzitira cyangwa ngo bibuze uwatanze ikirego ariwe Bralirwa kuba yaregera izo nzego mu gihe cyose yari ibonye ko yibwe ko bidasobanuye ko ariyo yafashe icyemezo gifunga Nsengumuremyi John. [22] Mu gushimangira ibimaze kuvugwa rushyingiye ku byanditswe n’umwanditsi Philippe Le Tournau, mu gitabo cye yise “Droit de la responsabilité et des contrats, Paris, Dalloz 2004 », aho avuga ko indishyi zihabwa umuntu wagizwe umwere

zishobora kwishyurwa na leta cyangwa se zikishyurwa n'uregera indishyi iyo ariwe watanze ikirego nshinjabyaha (ibyo amategeko yacu yita citation directe), abivuga muri aya magambo ati «l'indemnité accordée à la personne acquittée peut être à la charge soit de l'Etat soit de la partie civile si l'action publique a été mise en mouvement par cette dernière », uru rukiko ruhuje ibi bivugwa n'umwanditsi ndetse n'ibiteganywa n'itegeko ryerekeye imiburanishirize y'imanza nshinjabyaha, rukabihuza n'urubanza Nsengumuremyi John yagiye aburana, rusanga ingingo ya 3 y'itegeko N° 027/2019 ryo kuwa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, isobanura amwe mu magambo avugwa n'uyu mwanditsi, aho isobanura ko: «1° ikirego cy'ikurikiranacyaha: ikirego gitangwa mu izina rya rubanda, imbere y'inkiko ziburanisha imanza z'inshinjabyaha, kigamije guhana umuntu wakoze icyaha; 2° ikirego cy'indishyi: ikirego gitangwa hagamijwe kwishyura ibyangijwe n'icyaha. icyo kirego kiba kigamije gusa gusaba indishyi. Gitangwa mu buryo buteganyijwe n'iri tegeko», naho ingingo ya 4 yiryo tegeko, ivuga ko “Ikirego cy'ikurikiranacyaha gikurikiranwa n'ubushinjacyaha, (L'action publique est exercée par l'organe de poursuite judiciaire), icyakora, ikirego kivugwa mu gika cya mbere cy'iyi ngingo gishobora gukurikiranwa n'uwangirijwe, atanze ikirego imbere y'inkiko ziburanisha imanza z'inshinjabyaha atisunze ubushinjacyaha”, (par voie de citation directe);

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- [23] Ibi bisobanuye kimwe n'ibyanditswe n'umwanditsi wavuzwe haruguru ko indishyi zitangwa na leta binyuze mu kazi k'ubushinjacyaha nk'umukozi wa leta, ariko zishobora no gutangwa n'uregera indishyi iyo ariwe waregeye urukiko urubanza nshinjabyaha (si l'action publique a été mise en mouvement par cette dernière) mu mategeko yacu ingingo ya 118 y'itegeko ryerekeye imiburanishirize y'imanza nshinjabyaha igaragaza ko uregera indishyi afite uburenganzira bwo kuregera ikirego cy'inshinjabyaha atisunze ubushinjacyaha (Citation directe), muri uru rubanza rusanga uwatanze ikirego mu nkiko (mis en mouvement l'action publique) akaba atari Bralirwa ahubwo ari Ubushinjacyaha, bityo ibivugwa na Nsengumuremyi John ko Bralirwa ariyo yamureze ikanamufungisha ndetse akagezwa mu nkiko akurikiranyweho icyaha Bralirwa yaregeye ubugenzacyaha ariko akagirwa umwere, bikaba bidahuye n'uburyo yafunzwe n'inzego zafashe ibyo byemezo bimufunga, kuko nta kirego cyatanze n'urugera indishyi atisunze ubushinjacyaha ahubwo Bralirwa yisunze ubugenzacyaha isaba ko hamenyekana uwakoze icyaha cyabaye muri icyo kigo hagakorwa iperereza, bityo izo nzego zifite ububasha bwo gufunga cyangwa gufungura Nsengumuremyi John yanyujijwemo zikaba arizo zakomeje kwemeza ko afungwa ko bitabazwa BRALIRWA cyane ko nta bimenyetso by'icyo yakoze cyerekana ko koko BRALIRWA yacuze umugambi w'ikinyoma igamije kumufungisha nkana; Ku byerekeranye ishingiro ry'indishyi, gihembo cy'avoka n'indishyi z'kurikiranarubanza bisabwa na buri muburanyi muri uru rubanza. [24] Me Umuhiza Beatrice uburanira Nsengumuremyi John avuga ko kubera igikorwa cyo kuregwa abeshyerwa Nsengumuremyi John yakorewe bikamuviramo ingaruka zo gufungwa akavutswa uburenganzira buvugwa mu ngingo ya 13 y'itegeko Nshinga nk'uko ryavugururwe muri 2015, asaba ko yabihererwa indishyi z'akababaro zingana na miliyoni mirongo itanu

(50,000,000Frw), kubera ingaruka yagize zikomoka kuri uku kuregwa zo gufungwa, gushyirwa mu kato kubera COVID-19 yari muri kasho, igisebo cyo gufungirwa ubujura yagize mbere yo kugirwa umwere, gutakarizwa icyizere n'abantu bari bamuzi, akishyurwa kandi igihembo cy'umwunganizi kibaze kuri 10% y'indishyi zaregewe akaba ari ukuvuga miliyoni eshanu (5,000,000Frw) akanasubizwa kandi igihembo cya miliyoni imwe (1,000,000Frw) yamuhaye mu rubanza Bralirwa yamurezemo akaza kuba umwere (RP 00566/2020/TB/GIS), n'ingendo z'amafaranga ibihumbi magana abiri (200,000Frw) yitaba mu bugenzacyaha, kuri Pariki, akanasaba gusubizwa igarama ry'amafaranga ibihumbi makumyabiri (20,000Frw) ku rwego rubanza n'ahwanye n'ibihumbi mirongo ine (40,000Frw) yo ku rwego rw'ubujurire; [25] Me Munyentwali Charles uburanira BRALIRWA Plc yiregura ku ndishyi zisabwa ka Nsengumuremyi John avuga ko asanga izo indishyi z'akababaro zidakwiye guhabwa ishingiro kuko atari impamvu y'ubujurire yatanze kuko n'ubundi zari zasabwe ku rwego rubanza, urukiko rusanga nta ndishyi BRALIRWA Plc ikwiye gucibwa kuko atariyo yafunze Nsengumuremyi John, kuba rero hongeye gusabwa izi ndishyi ariko hatagaragazwa icyo zaba zishingiyeho, ndetse ntihagaragazwe ko BRALIRWA Plc ariyo yafunze uzisaba, ko isaba ko nta shingiro zahabwa, kuko n'ibyo urukiko Rwisumbuye rwa Nyarugenge rwashingiyeho rutazitanga biboneka mu gika cya 10-12 ku rupapuro rwa 4-5 rw'urubanza rwajuririwe ntabwo Nsengumuremyi John kugeza ubu abivuguruza, ikindi ko amafaranga y'ikurikiranarubanza, igihembo cy'avoka ndetse no gusubizwa ingwate y'amagarama yatanze bisabwa na Nsengumuremyi John ko nta shingiro byahabwa kuko ariwe wishoye mu manza ku bushake bwe kandi azi neza ko BRALIRWA Plc idafunga, niba hari n'amafaranga na make yatakaje, ko isaba ko ariwe wayirengera ubwe, ahubwo ko yuririye ku bujurire bwe ikanashingira ku ngingo ya 152 y'itegeko no 22/2018 ryo kuwa

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29/04/2018 ryerekeye imiburanishirize y'imanza mbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ko Bralirwa isaba ko Nsengumuremyi John yacibwa amafaranga y'ikurikiranarubanza no gukomeza kuyisiragiza mu manza angana na 300,000Frw n'igihembo cy'avoka kingana na 2,000,000Frw, kubera ko yatumye ikurikirana urubanza igashaka n'abayiburanira; [26] Me Umuhiza Beatrice uburanira Nsengumuremyi John yiregura ku ndishyi Bralirwa isaba avuga ko nta shingiro zahabwa kuko ariyo nyirabayazana w'izi manza, ko ariyo yareze Nsengumuremyi John mu Bugenzacyaha izi neza ko imubeshyera nyuma yo kubigambana, kandi urukiko narwo rwabibonye, n'ubwo ruhindukira rukivuguruza ko bwari uburenganzira bwa Bralirwa bwo kurega, nyamara ubu burenganzira bugomba gukoreshwa mu buryo budatandukira ngo bukoreshwe babeshyera undi kuko ari icyaha gihanwa n'amategeko; Uko uru rukiko rubibona [27]. Urukiko rusanga kuba ubujurire bwa Nsengumuremyi John rwasanze nta shingiro bufite, bityo ko n'indishyi asaba zaba iz'akababaro, izo gushorwa mu manza n'igihembo cya avocat kimwe n'amagarama zikaba ntaho zaba zishingiye, ariko kandi kuba na Nsengumuremyi John yarezwe akaza kugirwa umwere yarekurwa agashaka gukurikirana akarengane yagiriwe nubwo uwo yareze atariwe wafashe icyemezo kimufunga kuko atagaragaje ibimenyetso byemeza ko uwo arega ariwe wafashe icyemezo kimufunga, ko rubona

hari ifungwa rye ryahungabanyijwe ariyo mpamvu yareze akurikirana ako karengane yagiriwe, nubwo atari Bralirwa yafashe icyo cyemezo kuko yashoboraga no gukurikiranwa adafunzwe ariko siko byagenze ahubwo yarafunzwe bikozwe n'inzego zibishinzwe kugeza arekuwe n'urukiko amaze kuburana, ko ako kababaro katagerekwaho kubicirirwa indishyi n'uwatanze iki kirego, bityo n'indishyi Bralirwa isaba ikaba itazihabwa kuko kuyirega Nsengumuremyi John atari agambiriye kuyishora mu manza ko ahubwo yashakaga kumvikanisha uburenganzira bwe nubwo yareze uwo yabonye nawe wamureze mu bugenzacyaha ariko uwarezwe akaba atariwe wafashe icyemezo cyatuma agenerwa indishyi; III. ICYEMEZO CY'URUKIKO RUKURU [27] Rwemeye ko ubujurire bwatanzwe na Nsengumuremyi John arega Bralirwa nta shingiro bufite. [28] Rutegetse ko imikirize y'urubanza RC 00273/2021/TGI/Nyge rwaciwe n'urukiko rwisumbuye rwa Nyarugenge kuwa 31/03/2022 idahindutse mu ngingo zayo zose. [29] Rutegetse ko amagarama yatanzwe ahwanye n'ibyakoze muri uru rubanza

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