

## NSHILI KIVU TEA FACTORY LTD (NKTF LTD) N'UNDI v KIGALI LAW CHAMBERS (KLC)

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00003/2022/CA (Rukundakuvuga, PJ,  
Kanyange na Ngagi, J.) 17 Kamena 2022]

*Amategeko agenga imanza z'ubucuruzi – Umwuga w'ubw'avoka – Ibihembo by'umwavoka – Ibihembo by'umwavoka n'igihembo cyose gishingiye ku masezerano Avoka agirana n'umugana mu rwego rwo kugira ngo agire icyo amufasha mu rwego rw'umwuga we nk'Avoka. – Amabwiriza agenga ibihembo mbonera by'Abavoka, ingingo ya 40.*

*Amategeko agenga imanza z'ubucuruzi– Ibihembo by'umwavoka – Impaka zijyanye n'ibihembo by'avoka – Ikirego kirebana n'ibihembo by'Avoka – Icyiciro cy'ubwumvikane gikorera mu Rugaga rw'Abavoka – Iyo impande zombi zirebana n'impaka zijyane n'ibihembo by'Avoka zanzaniwe kumvikana, bakagana inkiko, ibyabaye mu cyiciro cy'ubwumvikane mu Rugaga rw'Abavoka biba birangiye, nta zindi ngaruka bishobora kugira ku bireba ikirego cyaregewe urukiko, uretse kugenzura ko uwo muhango wabayeho cyangwa utabayeho gusa – Amabwiriza agenga ibihembo mbonera by'Abavoka, ingingo ya 40.*

*Amategeko agenga imanza z'ubucuruzi – Amasezerano – Kumenya isesa ry'amasezerano mu buryo buteruye – Mu masezerano ashirwa mu bikorwa mu byiciro, iyo igihe cyo kwishyurwa icyiciro kirangiye ntikishyurwe ndetse hakanyongeraho igihe kiringaniye n'ubusanzwe umuntu ashobora kwihanganira ko umubereyemo umwenda yibwiriza, kandi uruhande rwishyura ntirukurikirane ubwishyu, bifatwa ko rwamenye mu buryo buteruye ko urundi ruhande rwiambuye inshingano.*

*Amategeko agenga imanza z'ubucuruzi – Amasezerano – Iseswa ry'amasezerano mu buryo buteruye – Mu masezerano ashirwa mu bikorwa mu byiciro, iyo igihe cyo kwishyurwa icyiciro kirangiye ntikishyurwe ndetse hakanyongeraho igihe kiringaniye n'ubusanzwe umuntu ashobora kwihanganira ko umubereyemo umwenda yibwiriza, kandi uruhande rwishyura ntirukurikirane ubwishyu, bifatwa ko rwamenye mu buryo buteruye ko urundi ruhande rwiambuye inshingano.*

*Amategeko agenga imanza z'ubucuruzi – Sosiyete – Imikorere y'amasosiyete – Indoor management rule – Amasezerano akozwe n'uhagarariye sosiyete agira agaciro mu maso y'uwo bayagiranye hatitawe ku makosa yaba yakoze mu micungire yayo.*

**Incamategeko y'ikibazo:** KIGALI LAW CHAMBERS Ltd (KLC Ltd) yari isanzwe yunganira mu mategeko NSHILI KIVU TEA FACTORY Ltd (NKTF Ltd) iri kumwe na NSHILI KIVU TEA PLANTATION Ltd (NKTP Ltd) ku giciro cya 200.000 Frw buri kwezi zikishyura n'ubukode bw'aho KLC Ltd ikorera. Ku wa 01/02/2018 yagiranye amasezerano mashya na Nicholas WATSON wari Umuyobozi wazo; bumvikana ko azajya yishyurwa noneho 4.000 USD buri kwezi mu gihe cy'imyaka ibiri, uhereye ku wa 01/01/2019. Inama y'Ubutegetsi nshya y'izo sosiyete yarateranye, ifata imyanzuro itandukanye, irimo no guhagarika ya masezerano KLC Ltd yari imaze gusinya, ariko ntiyayimenyesha ko yahagaritswe. Umuyobozi wa KLC Ltd yanditse ibaruwa yise integuza ya nyuma asaba kwishyurwa. Iyo baruwa ntiyasubijwe, bityo KLC Ltd iregera Urukiko rw'Ubucuruzi, maze rwanzura ko icyo kirego kidashobora kwakirwa kuko KLC Ltd itanbanje kwiyambaza Urugaga rw'Abavoka

KLC Ltd yandikiye Umukuru w'Urugaga rw'Abavoka amusaba gukemura icyo kibazo ariko ntirwashobora kugera ku mwanzuro impande zombi zumvikanyeho. Ubwo yongeye kuregera Urukiko rw'Ubucuruzi; uwo Rukiko rwemeza ko ikirego cyatanzwe na KIGALI LAW CHAMBERS Ltd gifite ishingiro, ruyigenera 96.000 USD, 1.000.000 Frw y'igihembo cya Avoka, 100.000 Frw y'ikurikiranarubanza na 20.000 Frw y'igarama. NKTF Ltd na NKTP Ltd ntizishimiye imikirize y'urubanza ziyijuririra mu Rukiko Rukuru rw'Ubucuruzi maze narwo rwemeza ko imikirize y'urubanza rwajuririwe idahindutse. NKTF Ltd na NKTP Ltd, zajuririye Urukiko rw'Ubujurire.

**Incamake y'icyemezo:** 1. Ibihembo by'umwavoka n'igihembo cyose gishingiye ku masezerano Avoka agirana n'umugana mu rwego rwo kugira ngo agire icyo amufasha mu rwego rw'umwuga we nk'Avoka.

2. Iyo impande zombi zirebana n'impaka zijyane n'ibihembo by'Avoka zananiwe kumvikana, bakagana inkiko, ibyabaye mu cyiciro cy'ubwumvikane mu Rugaga rw'Abavoka biba birangiye, nta zindi ngaruka bishobora kugira ku bireba ikirego cyaregewe urukiko, uretse kugenzura ko uwo muhango wabayeho cyangwa utabayeho gusa.

3. Amasezerano akozwe n'uhagarariye sosiyete agira agaciro mu maso y'uwo bayagiranye hatitawe ku makosa yaba yakoze mu micungire yayo.

4. Mu masezerano ashirwa mu bikorwa mu byiciro, iyo igihe cyo kwishyurwa icyiciro kirangiye ntikishyurwe ndetse hakanyongeraho igihe kiringaniye n'ubusanzwe umuntu ashobora kwihanganira ko umubereyemo umwenda yibwiriza, kandi uruhande rwishyura ntirukurikirane ubwishyu, bifatwa ko rwamenye mu buryo buteruye ko urundi ruhande rwiya mbuye inshingano.

**Ubujurire bwa bufite ishingiro kuri bimwe.**

**Ubujurire bwuririye ku bundi nta shingiro bufite.**

**Imikirize y'urubanza rwajuririwe ihindutse gusa ku bijyanye n'amadorari abajuriye bagomba kwishyura uregwa.**

**Abajuriye baomba gufatanya kwishyura uregwa amadorari ibihumbi umunani (8.000 USD).**

**Amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.**

**Amategeko yashingiweho:**

Itegeko n° 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda, rikanagena imitunganyirize n'imikorere byarwo, ingingo ya 27 na 64

Itegeko N°17/2018 ryo ku wa 13/04/2018 rigenga amasosiyete y'ubucuruzi, ingingo ya 142 na 151

Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya ya 88 na 89.

Amabwiriza N° 01/2014 agena ibihembo mbonera by'Abavoka, ingingo ya 2 na 40.

**Inyandiko z'abahanga:**

JT Pretorius; PA Delpont, Michelle Havenga & Maria Vermaas, South African Company Law through Cases, JUTA & CO, Ltd; 6th ed.1999, p 346.

Véronique Wester-Ouisse, "Le préjudice moral des personnes morales: quand "la perversion de la cité commence par la fraude des mots", JCP, G n° 39,24 Septembre 2012.

## External Cases:

Urubanza N° RS/INJUST/RCOM 00004/2020/SC; NEW KIGALI BUSINESS SERVICES Ltd v KASESE DISTILLERS Ltd, rwaciwe n’Urukiko rw’Ikirenge ku wa 19/11/2021.

## Urubanza

### I. IMITERERE Y’URUBANZA

[1] KIGALI LAW CHAMBERS Ltd ni “Law firm” ikora akazi ko kugira abantu inama mu mategeko no kuburanira abagana inkiko, ikuriwe na Me BANDORA Alfred. Mu mwaka wa 2014 yagiranye amasezerano y’igihe kizwi ashobora no kongerwa na NSHILI KIVU TEA FACTORY Ltd (NKTF Ltd) iri kumwe na NSHILI KIVU TEA PLANTATION Ltd (NKTP Ltd) y’ubufasha mu by’amategeko no kuyibera umwanditsi, ku gihembo kingana na 200.000 Frw, no kwishyura inzu KIGALI LAW CHAMBERS Ltd ikoreramo. Ku wa 01/02/2018, habayeho guhinduka kw’amasezerano, KIGALI LAW CHAMBERS Ltd (KLC Ltd) isinyana amasezerano na Perezida w’Inama y’Ubutegetsi wa NKTF Ltd na NKTP Ltd, Nicholas WATSON, ko igihembo ari 4.000 USD ku kwezi. Ku wa 01/12/2018, ku mpamvu zuko Nicholas WATSON atakundaga kuboneka yagiranye andi masezerano na KLC Ltd y’imyaka 2 yagomba gutangira 01 Mutarama 2019 akarangirana n’ukwezi ku Ukuboza 2020.

[2] Ku wa 19/01/2019 habaye inama y’Inama y’Ubutegetsi ya NKTF Ltd, yitabiriwe na MURENZI Jean na BANGANINKA Jacqueline, naho Nicholas WATSON atitabye, umwanditsi ari Me GASHAGAZA Philbert yemeza ko amafaranga yahabwaga Me BANDORA Alfred ahita ahagarikwa kuko nta rwego rwa sosiyete rwamushyizeho, ko na 4.000 USD yahabwaga mu buryo budasobanutse hashakishwa uburyo yagaruzwa. Ku wa 18/06/2019, KLC Ltd ihagarariwe n’umuyobozi wayo Me BANDORA Alfred yandikiye Umuyobozi wa NKTF Ltd na NKTP Ltd, amumenyesha ko amuhaye integuza ya nyuma yo kwishyurwa ibikubiye mu masezerano bagiranye ku wa 01/12/2018. Nyuma yo kudasubizwa KLC Ltd yareze NKTF Ltd na NKTP Ltd mu Rukiko rw’Ubucuruzi ivuga ko zishe amasezerano bagiranye, isaba kwishyurwa 96.000 USD bumvikanye n’indishyi zitandukanye.

[3] Mu rubanza N° RCOM 01870/2019/TC rwaciwe n’Urukiko rw’Ubucuruzi ku wa 27/12/2019, urwo Rukiko rushingiye ku ngingo 40, igika cya 1, y’Amabwiriza N° 01/2014 agena ibihembo mbonera by’Abavoka rwemeje ko ikirego cya KLC Ltd kitakiriwe kuko itabanje gushyikiriza ikibazo Umukuru w’Urugaga rw’Abavoka. Ku wa 09/01/2020, KLC Ltd ihagarariwe na Me BANDORA Alfred yandikiye Umukuru w’Urugaga rw’Abavoka amusaba gukemura ikibazo ifitanye na NKTF Ltd na NKTP Ltd. Ku wa 28/07/2020, nyuma yo gusuzuma ibyo impande zombi zivuga, Umukuru w’Urugaga yandikiwe Me BANDORA Alfred ibaruwa amuha uburenganzira bwo kwiyambaza izindi nzego. Ku wa 05/08/2020, KLC Ltd yareze NKTF Ltd na NKTP Ltd mu Rukiko rw’Ubucuruzi ivuga ko zitashoboye kubahiriza amasezerano, kuko akazi KLC Ltd yakoraga zagahaye abandi hatabayeho gusesa amasezerano bari bafitanye, isaba ko ziyishyura 96.000 USD ahwanye n’imirimo yakoze mu gihe cy’amezi 24 nk’uko bigaragara mu masezerano zagiranye, inasaba kugenerwa indishyi zitandukanye.

[4] Ababuranira NKTF Ltd na NKTP Ltd mu kwiregura ku ngingo zigize urubanza bavuze ko ibyo KLC Ltd isaba nta gaciro byahabwa, kuko amasezerano ishingiraho yakozwe mu buryo

budakurikije amategeko, aho uwahoze ari Perezida w'Inama y'Ubutegetsi Nicholas WATSON yafashe icyemezo cyo kuzamura ibihembo igomba guhabwa, akabivana kuri 200.000 Frw akabigeza kuri 4.000 USD, bitabanje kwemezwa n'abagize Inama y'Ubutegetsi; bityo ko indishyi KLC Ltd isaba idakwiye kuzihabwa.

[5] Mbere yo kwinjira mu mizi y'urubanza ababuranira NKTF Ltd na NKTP Ltd batanze inzitizi yo kutakira icyo kirego, bashingiye ku kuba Urukiko rw'Ubucuruzi rudafite ububasha bwo kukiburanisha kuko kitari mu rwego rw'ubucuruzi, n'indi nzitizi yuko ikibazo kitashyikirijwe Urugaga rw'Abavoka mu bihe biteganywa n'amategeko. Ku wa 08/12/2020, mu rubanza rubanziriza urundi, Urukiko rw'Ubucuruzi rwafashe icyemezo ko inzitizi zazamuwe na NKTF Ltd na NKTP Ltd nta shingiro zifite kubera ko amasezerano yakozwe mu nyungu z'ubucuruzi bwa NKTF Ltd na NKTP Ltd; no kuba amafaranga yishyuzwa azwi akaba nta mpaka ziri mu kuyagena.

[6] Mu iburanisha ryo ku wa 29/12/2020, ababuranira NKTF Ltd na NKTP Ltd basabye Urukiko kuba ruhagaritse iburanisha ku mpamvu z'uko hari ikirego cy'inshinjabyaha barega Me BANDORA Alfred, Nicholas WATSON na KLC Ltd kigikurikiranwa, banasaba ko Nicholas WATSON wahoze ari Perezida w'Inama y'Ubutegetsi ya NKTF Ltd na NKTP Ltd hamwe na Me BANDORA Alfred bagobokeshwa, maze Urukiko rw'Ubucuruzi rwemeza ko iburanisha ry'urubanza rikomeza kuko nta kirego cy'inshinjabyaha cyari mu nkiko, runasanga Nicholas WATSON na Me BANDORA Alfred batagobokeshwa kuko batashoboraga gutambamira imikirize y'urubanza.

[7] Mu rubanza N° RCOM 01250/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 18/02/2021, urwo Rukiko rwemeje ko ikirego cyatanzwe na KIGALI LAW CHAMBERS Ltd gifite ishingiro, ko NKTF Ltd na NKTP Ltd batubahirije amasezerano bagiranye na KLC Ltd, ko NKTF Ltd na NKTP Ltd bagomba kwishyura KLC Ltd 96.000 USD, 1.000.000 Frw y'igihembo cya Avoka, 100.000 Frw y'ikurikiranarubanza na 20.000 Frw y'igarama; rwemeza kandi ko nta rangizarubanza ry'agateganyo rizaba.

[8] NKTF Ltd na NKTP Ltd ntizishimiye imikirize y'urubanza ziyijuririra mu Rukiko Rukuru rw'Ubucuruzi zisaba urwo Rukiko gusuzuma niba icyo kirego cyaragombaga kwakirwa kandi kitarabanje gushyikirizwa Umukuru w'Urugaga rw'Abavoka mu gihe cy'amezi abiri (2), niba Urukiko rw'Ubucuruzi rwari rufite ububasha bwo kuburanisha urwo rubanza, niba Urukiko rw'Ubucuruzi rwafashe icyemezo rwirengagije amategeko shingiro ya sosiyete ziregwa, no gusuzuma niba Nicholas WATSON na BANDORA Alfred baragombaga kugobokeshwa ku rwego rwa mbere. KLC Ltd yireguye ivuga ko ubujurire bwa NKTF Ltd na NKTP Ltd nta shingiro bufite, itanga ubujurire bwuririye ku bundi, isaba Urukiko gusuzuma niba hakwiye gutegekwa irangizarubanza ry'agateganyo kuri 96.000 USD, inasaba indishyi z'akababaro, amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

[9] Ku wa 29/09/2021, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza N° RCOMA 00208/2021/HCC, rwemeza ko ubujurire bwatanzwe na NKTP Ltd na NKTF Ltd nta shingiro bufite, ko ubujurire bwuririye ku bundi bwatanzwe na KLC Ltd nta shingiro bufite, ko imikirize y'urubanza N° RCOM 01250/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 18/02/2021 idahindutse, rutegeka ko amagarama y'urubanza aherera ku Isanduku ya Leta.

[10] NKTF Ltd na NKTP Ltd, zajuririye na none uru Rukiko, zivuga ko icyo KIGALI LAW CHAMBERS Ltd yaregeye ari igihembo cya Avoka, ko rero yagombaga kubanza kugeza icyo kibazo ku Mukuru w'Urugaga rw'Abavoka mu gihe cy'amezi abiri (2) kuva aho impaka zivukiye nk'uko biteganywa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka ko kandi amasezerano yo ku wa 01/2018 atagombaga gushingirwaho kuko atigeze yemezwa n'Inama y'Ubutegetsi kandi ari yo iyobora izo sosiyete; ubujurire bwazo bwandikwa kuri N° RCOMAA 00003/2022/CA.

[11] Urubanza rwaburanishijwe mu ruhamwe ku wa 04/05/2022, NSHILI KIVU TEA PLANTATION Ltd & NSHILI KIVU TEA FACTORY Ltd zihagarariwe na Me NYILIDANDI Assiel afatanyije na Me HABINEZA Gasore Gilbert, naho KIGALI LAW CHAMBERS ihagarariwe na Me BANDORA Alfred.

[12] Muri rusange, mu iburanisha impaka z'impane zombi zibanze ku byerekeranye n'iyakirwa ry'ikirego cya KLC Ltd mu Rukiko rw'Ubucuruzi NKTF Ltd na NKTP Ltd zivuga ko kitagombaga kwakirwa kuko imihango iteganywa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka igomba gukorerwa mu Rugaga rw'Abavoka mbere y'uko ikirego nk'iki kiregerwa urukiko itubahirijwe, hamwe no kuba Urukiko Rukuru rw'Ubucuruzi rwaremeje ko KLC Ltd yishyurwa amafaranga iburana rushingiye ku masezerano yo ku wa 01/12/2018 yakozwe n'umuntu utabifitiye ububasha. KLC Ltd yo yakomeje kwemeza ko ibyo nta shingiro bifite, isaba ko hagumaho imikirize y'urubanza N° RCOMA 00208/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi. Impande zombi kandi zasabye amafaranga y'ikurikiranarubanza n'indishyi zinyuranye.

[13] Urukiko, rushingiye kuri izo mpaka, rusanga hakwiye gusuzumwa ibibazo bikurikira:

- a. Kumenya niba ikibazo kiri hagati ya NSHILI KIVU TEA PLANTATION Ltd & NSHILI KIVU TEA FACTORY Ltd na KIGALI LAW CHAMBERS Ltd kirebwa n'ibiteganywa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka
- b. Kumenya niba hari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze gushingira ku masezerano yo ku wa 01/12/2018.
- c. Ibyerekeye indishyi n'amafaranga y'ikurikiranarubanza.

## **II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO**

### **1. Kumenya niba ikibazo kiri hagati ya NSHILI KIVU TEA PLANTATION Ltd & NSHILI KIVU TEA FACTORY Ltd na KIGALI LAW CHAMBERS Ltd kirebwa n'ibiteganywa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka.**

[14] Abahagarariye NKTF Ltd na NKTP Ltd banenga kuba mu mu gika cya 16 cy'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwaravuze ko urubanza rwose rushingiye ku kuba haravutse ikibazo giturutse ku mikoranire kuko KLC Ltd yavugaga ko imirimo bakoraga yahawe abandi kandi hatarabayeho gusesa amasezerano, ko rero kuba byararegewe mu Rukiko hatitawe ku bihe biteganywa mu ngingo 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka mu Rwanda nta tegeko ryishwe, ibyo rukabikora rwirengagije ko icyari cyaregewe ari ukutubahiriza

amasezerano no kwishyura igihembo kingana na 96.000 USD, bityo ayo madolari akaba agomba gufatwa nk'igihembo cya Avoka.

[15] Basobanura ko KLC Ltd yarengeje ibihe byo kugeza ikibazo ku Mukuru w'Urugaga rw'Abavoka mu Rwanda, kuko ibaruwa ya nyuma KLC Ltd yandikiye NKTP Ltd na NKTF Ltd yayanditse ku wa 18/06/2019, akaba ari yo igombaga guherwaho habarwa ibihe byo kugeza ikibazo ku rugaga rw'Abavoka mu Rwanda. Basobanura-ko KLC Ltd aho kubanza gushyikiriza ikibazo Urugaga rw'Abavoka, yatanze ikirego mu Rukiko rw'Ubucuruzi mu rubanza N° RCOM 01870/2019/TC, ku wa 27/12/2019, Urukiko rwemeza ko icyo kirego kitakiriwe, kuko imihango iteganywa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka mu Rwanda itubahirijwe; hanyuma ku wa 09/01/2020, KLC Ltd ishyikiriza ikibazo Urugaga rw'Abavoka mu Rwanda, ubwumvikane ntibwagerwaho, Umukuru w'Urugaga rw'Abavoka atanga uburenganzira bwo kwiyambaza izindi nzego. Bityo rero, bavuga ko iyo urebye igihe ibaruwa ya nyuma yishyuzwa yatangiwe n'igihe ikibazo cyashyikirijwe Umukuru w'Urugaga rw'Abavoka mu Rwanda, usanga ibihe by'amezi 2 biteganywa n'ingingo ya 40 y'Amabwiriza yavuzwe haruguru bitarubahirijwe.

[16] Uhagarariye KLC Ltd yiregura avuga ko ikibazo kiri hagati ya KLC Ltd na NKTP Ltd hamwe na NKTF Ltd kitarebwa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka kuko ikiregerwa ari ukutubahiriza amasezerano no kuyica, ko kandi nta mpaka zihari ku bijyanye n'igihembo kuko cyumvikanweho n'impande zombi muri ayo masezerano, ko ari nabyo inkiko zombi zemeje. Asobanura ko mu gika cya 14 cy'urubanza N° RCOM 01250/2020/TC, Urukiko rw'Ubucuruzi rwasobanuye neza impamvu inzitizi yatanzwe nta shingiro ifite kuko nta mpaka zabayeho ku bijyanye n'igihembo kingana na 96.000 USD yishyuzwa, kuko icyaregowe ari ukutubahiriza no kwica amasezerano y'akazi KLC Ltd yagiranye na NKTP Ltd na NKTF Ltd, ko kandi byashimangiwe n'Urukiko Rukuru rw'Ubucuruzi mu gika cya 16 cy'urubanza N° RCOMA 00208/2021/HCC, kuko nyuma y'isesengura rwakoze rwemeje ko icyaregowe ari ukutubahiriza amasezerano yagengaga imikoranire y'impande zayagiranye kandi akaba atarasheshwe. Bityo ko ingingo ya 40 y'Amabwiriza ntaho ihuriye n'urubanza kuko igihembo cyishyuzwa kitagibwaho impaka.

[17] Avuga kandi ko kuba KLC Ltd yarashyikirije iki kibazo Umukuru w'Urugaga rw'Abavoka byari mu rwego rwo gukora ibyo Urukiko rwabasabye mu rubanza N° RCOM 01870/2019/TC ariko bo batemeranwaga n'icyo cyemezo kuko bagaragaje ko iki kibazo kitarebwa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka, ko kandi ari nabyo byemejwe n'Urukiko Rukuru rw'Ubucuruzi mu rubanza rujuririrwa. Avuga kandi ko Urukiko rw'Ubujurire rwasuzuma niba amezi abiri (2) ateganywa mu Mabwiriza agenga ibihembo mbonera by'Abavoka ari indemyagihugu (*d'ordre public*) ku buryo kutayubahiriza byatuma ikirego kitakirwa mu Rukiko. Asoza asaba Urukiko rw'Ubujurire kudaha ishingiro iyi mpamvu y'ubujurire nk'uko n'inkiko zabanje zabyemeje.

## **UKO URUKIKO RUBIBONA**

[18] Nk'uko byagaragajwe haruguru, ikibazo abaturanyi bifuzwa ko Urukiko rusuzuma kuri iyi ngingo y'ubujurire n'icyo kumenya niba ikibazo KLC Ltd ifitanye na NKTF hamwe na NKTP Ltd kirebwa n'ibiteganywa n'ingingo ya 40 y'Amabwiriza agenga ibihembo mbonera by'Abavoka. Urukiko ruributsa ko muri iyi ngingo ya 40 havugwamo ibintu bibiri, aribyo: gushyikiriza

Umukuru w'Urugaga rw'Abavoka impaka zijyanye n'ibihembo bya Avoka, no kubikora mu gihe cy'amezi abiri uherye igihe izo mpaka zavukiye.

**A. Ku byerekeye gushyikiriza Umukuru w'Urugaga rw'Abavoka impaka zijyanye no kugena no kwishyura ibihembo by'Avoka**

[19] Ingingo ya 64, igika cya 2, y'Itegeko n° 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda, rikanagena imitunganyirize n'imikorere byarwo iteganya ko: *“Impaka zijyanye n'ubwishyu zimenyeshwa Umukuru w'Urugaga kugira ngo yumvikanishe impande zombi.”*

[20] Ingingo ya 27, agace ka 3, y'Itegeko n° 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka mu Rwanda ivuga ko *“Inama y'Urugaga ifite inshingano zo gushyiraho amabwiriza agamije guteza imbere umwuga w'ubwavoka”.*

[21] Ingingo ya 40, igika cya 1, y'Amabwiriza N° 01/2014 agena ibihembo mbonera by'Abavoka isobanura uko izo mpaka zerekeranye n'ibyo bihembo zikemurwa, muri aya magambo: *“Impaka zose zijyanye no kugena no kwishyura ibihembo by'Avoka zishyikirizwa Umukuru w'Urugaga rw'Abavoka mu mezi abiri uherye igihe izo mpaka zavukiye. Ikirego gitangwa n'uruhande rufite inyungu, yaba umukiriya utemera ibihembo byose cyangwa igice asabwa kwishyura, yaba avoka usaba kwishyurwa ibihembo bye. Inyandiko itanga ikirego igomba guherekezwa n'ibimenyetso.”* Naho ingingo ya 2, agace 1, y'ayo Mabwiriza isobanura icyo igihembo cy'Avoka ari cyo mu buryo bukurikira: *“Ibihembo by'Avoka ni igihembo cyangwa ikiguzi Avoka ahabwa n'umugana kubera imirimo yo mu rwego rusanzwe, iy'ubwenge n'iyogucunga dosiye aba yamukoreye, haba imirimo yo kumugira inama, yo gusuzuma ibimenyetso, yo kujya mu nama, kumushakira ibikenewe (harimo igihe cyo gutegereza n'ingendo), kumugira inama mu nyandiko, ibiganiro kuri telefone, kumutegurira amabaruwa n'izindi nyandiko zijyanye n'imanza, kumwunganira no kumuburanira, kumutangira ikirego, igihe amara mw'iburanisha, kumukurikiranira irangizwa ry'imanza n'ibindi bikorwa, harimo no gucunga dosiye”.* Iyo ngingo, mu gace kayo ka 2, inasobanura uko Amasezerano ahoraho avoka agirana n'umugana agomba kumvikana: *“amasezerano Avoka agirana n'umukiriya, uyu akiyemeza: gushinga Avoka dosiye ze zirebana n'ibibazo by'amategeko, zose cyangwa igice cyazo; kumwishyura, akenshi ku kwezi, igihembo kidahinduka hatitawe ku gaciro ka dosiye amushinze, cyangwa igihembo kidahinduka hyongereyeho umubare w'amafaranga ushobora guhinduka hakurikijwe imirimo yakozwe, icyagezweho, cyangwa ikindi cyose cyashingirwaho cyumvikanyweho n'impande zombi.”*

[22] Izi ngingo zose zisomewe hamwe, zumvikanisha ko ibihembo by'avoka ari ikiguzi Avoka ahabwa n'umugana kubera imirimo itandukanye yamukoreye, ko icyo gihembo gishobora gutangwa rimwe cyangwa kikaba icya buri kwezi bitewe n'amasezerano Avoka afitanye n'Umukiriya, ko kandi impaka zose zijyanye no kugena ibyo bihembo cyangwa kubyishyura zigomba kubanza gushyikirizwa Umukuru w'Urugaga rw'Abavoka. Mu yandi magambo, bikwiye kumvikana ko igihembo cyose gishingiye ku masezerano Avoka agirana n'umugana mu rwego rwo kugira ngo agire icyo amufasha mu rwego rw'umwuga we nk'Avoka, afatwa nk'igihembo kirebwa n'iyi ngingo.

[23] Imikirize y'urubanza rujuririrwa N° RCOMA 00208/2021/HCC igaragaza ko ikibazo kiri muri uru rubanza ari ikibazo giturutse ku mikoranire kuko KLC Ltd ivuga ko imirimo yakoraga

yahawe abandi kandi hatabayeho gusesa amasezerano inabisabira indishyi, ko rero nk'uko Urukiko rw'Ubucuruzi rwabyemeje mu rubanza N° RCOM 01870/2019/TC bitareba ibivugwa mu ngingo ya 40 y'Amabwiriza agena ibihembo by'Abavoka, bityo ko kuba byararegewe Urukiko hatitawe ku bihe biteganywa mu ngingo ya 40 y'amabwiriza agenga ibihembo mbonera by'abavoka, nta mategeko yishwe.

[24] Dosiye y'urubanza igaragaza amasezerano KLC Ltd ihagarariwe na Me BANDORA Alfred yagiranye n'Umuyobozi wa NKTP Ltd na NKTF Ltd Nicholas WATSON yashyizweho umukono ku wa 01/12/2018. Ayo masezerano agaragaza imirimo itandukanye KLC Ltd yagombaga gukora nk'Avoka, arimo kujya itanga inama mu by'amategeko, gutegura amasezerano y'ubucuruzi n'izindi nyandiko za ngombwa, no guhagararira NKTF Ltd na NKTP Ltd mu nkiko, izi nazo ziyemeza kujya zishyura KLC Ld 4000 USD buri kwezi.

[25] Dosiye y'urubanza igaragaramo kandi urubanza N° RCOM 01870/2019/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 27/12/2019, aho KLC Ltd yaregaga NKTF Ltd na NKTP Ltd, ikiburanwa ari: *“Kwica amasezerano y'akazi no gusaba ko yacibwa indishyi z'akababaro za \$ 20,000 USD - Gutegeka uregwa kwishyura amezi 24 twari twemeranyije angana na \$ 96,000 USD - Gutegeka uregwa kwishyura indishyi”*. Muri urwo rubanza, Urukiko rw'Ubucuruzi rushingiye ku ngingo ya 64, igika cya 2, y'Itegeko n° 83/2013 ryo ku wa 11/09/2013 rishyiraho Urugaga rw'Abavoka no ku ngingo 40, igika cya 1, y'Amabwiriza N° 01/2014 agena ibihembo mbonera by'Abavoka rwemeje ko ikirego cya KLC Ltd kitakiriwe kuko itabanje gushyikiriza ikibazo Umukuru w'Urugaga rw'Abavoka.

[26] Dosiye y'urubanza igaragaramo ibaruwa yo ku wa 18/06/2019, KLC Ltd ihagarariwe n'umuyobozi wayo Me BANDORA Alfred yandikiye Umuyobozi wa NKTP Ltd na NKTF Ltd amuha integuza ya nyuma yo kwishyurwa ibikubiye mu masezerano bagiranye yashyizweho umukono ku wa 01/12/2018. Igaragaramo ibaruwa yo ku wa 09/01/2020, KLC Ltd ihagarariwe n'umuyobozi wayo Me BANDORA Alfred yandikiye Umukuru w'Urugaga rw'Abavoka amusaba gukemura ikibazo KLC Ltd ifitanye na NKTF Ltd hamwe na NKTP Ltd cyo kuba izo kampani (companies) zitarubahirije amasezerano bagiranye. Igaragaramo kandi ibaruwa yo ku wa 28/07/2020, Umukuru w'Urugaga rw'Abavoka yandikiye Me BANDORA Alfred amuha uburenganzira bwo kwiyambaza izindi nzego kuko nta bwumvikane bwagezweho.

[27] Urukiko rurasanga ibyo Urukiko Rukuru rw'Ubucuruzi rwemeje ko amasezerano KLC Ltd yagiranye na NKTF Ltd na NKTP Ltd ari amasezerano asanzwe ko nta mpaka ziyarimo, bityo ko atarebwa n'ingingo ya 40, igika cya 1, y'Amabwiriza N° 01/2014 yavuzwe haruguru nta shingiro bifite, ku mpamvu zikurikira:

- a. Nk'uko byasobanuwe mu bika bibanziriza iki, KLC Ltd yagiranye na NKTF Ltd na NKTP Ltd amasezerano kugira ngo izihe serivisi zavuzwe haruguru hanyuma nazo ziyemeza ko zizajya ziyihemba 4.000 USD ku kwezi, ziza kutumvikana ku iyishyurwa ry'icyo gihembo kiyavugwamo, nk'uko rero byasobanuwe by'umwihariko mu gika cya 23 cy'urubanza, igihembo cyose gishingiye ku masezerano Avoka agirana n'umugana mu rwego rwo kugira ngo agire icyo amufasha mu rwego rw'umwuga we nk'Avoka, ayo masezerano aba ashingiye ku gihembo kirebwa n'iyi ngingo.



- b. Nk'uko kandi byagaragajwe haruguru, hari urubanza N° RCOM 01870/2019/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 27/12/2019, aho urwo Rukiko rwemeje ko ikibazo cya KLC Ltd cyagombaga kubanza gushyikirizwaga Umukuru w'Urugaga rw'Abavoka, kandi urwo rubanza ntirwajuririwe. Kuba rero rutarajuririwe kandi KLC Ltd ihagarariwe na Me BANDORA Alfred ikaba yarahisemo kubahiriza ibyemejwe muri urwo rubanza, kuko ku wa 09/01/2020 yashyikirije icyo kibazo Umukuru w'Urugaga rw'Abavoka, ku wa 28/07/2020 ibaha uburenganzira bwo kwiyambaza izindi nzego kuko batabashije kumvikana, bigaragaza ko nawe yemeraga ko uwo muhango ugomba kubanza gukorwa mbere yo kuregera Urukiko, nk'uko biteganywa n'ingingo ya 40, igika cya 1, y'Amabwiriza N° 01/2014 yavuzwe haruguru.

[28] Kubera izo mpamvu zose, uru Rukiko rurasanga nta mpaka zikiriho ku bijyanye no kumenya niba ikibazo cyerekeranye n'ibihembo by'Avoka byari ngombwa ko gishyikirizwa Umukuru w'Urugaga rw'Abavoka mbere yo kuregera Urukiko. Rurasanga ahubwo ikibazo kigomba gusuzumwa ari icyo kumenya niba kuba KLC Ltd yarashyikirije izo mpaka Umukuru w'Urugaga rw'Abavoka nyuma y'amezi abiri (2) byaba impamvu ituma ikirego cyayo kitaragombaga kwakirwa mu Rukiko.

**B. Kumenya niba kuba KLC Ltd yarashyikirije Umukuru w'Urugaga rw'Abavoka impaka zijyanye n'ibihembo bya Avoka nyuma y'amezi abiri byaba impamvu ituma ikirego kitakirwa mu Rukiko**

[29] Ingingo ya 40, igika cya 1, y'Amabwiriza N° 01/2014 yibukijwe haruguru iteganya ibikurikira: “Impaka zose zijyanye no kugena no kwishyura ibihembo by'Avoka zishyikirizwa Umukuru w'Urugaga rw'Abavoka mu mezi abiri (2) uhereye igihe izo mpaka zavukiye. Ikirego gitangwa n'uruhande rufite inyungu, yaba umukiriya utemera ibihembo byose cyangwa igice asabwa kwishyura, yaba avoka usaba kwishyurwa ibihembo bye. Inyandiko itanga ikirego igomba guherekezwa n'ibimenyetso.” Igika cya 2 cy'iyi ngingo kikavuga ko “Umukuru w'Urugaga yakira ibirego akabyoherereza Komisiyo y'Urugaga ishinze ibihembo by'Abavoka na yo igahita itumiza impande zombi kugira ngo izumve; Komisiyo ishyikiriza raporo Umukuru w'Urugaga, na we agafata umwanzuro mu gihe ntarengwa cy'amezi abiri (2) uhereye igihe yashyikirijwe ikirego”. Naho igika cya 8 cyayo kikongeraho ko “iyi Umukuru w'Urugaga amaze gufata umwanzuro akanawushyiraho umukono, awumenyesha impande zombi, zifite igihe cy'ukwezi kumwe (1) cyo kujuririra urukiko rubifitiye ububasha (ubujurire bw'ibanze kimwe n'ubujurire bwuririye ku bundi)”.

[30] Nk'uko bigaragara ingingo ya 40 y'aya Mabwiriza mu duce twavuzwe mu gika kbanzira iki, iteganya ibyiciro bibiri byo gukemuramo impaka zirebana n'ibihembo by'abavoka. Ni ukuvuga mu bwumvikane imbere y'Urugaga rw'Abavoka no mu Rukiko. Ibyo byiciro byombi bitegetswe kuba muri gahunda (*ordre*) ivugwa muri iyi ngingo, ariko buri cyose kigira amategeko yihariye n'imihango n'ibihe byubahiriza, buri cyose ku bikireba. Ni muri urwo rwego kuregera Urugaga bikorwa mu gihe kitarenze amezi abiri (2), mu gihe kuregera urukiko bikorwa mu gihe cy'ukwezi kumwe. Icyiciro cyo kuregera urukiko kiba ari uko icy'ubwumvikane cyananiranye, kurangira kw'icyo cyiciro bikagaragazwa n'uko Umukuru w'Urugaga rw'Abavoka amenyesheje impande zombi umwanzuro wagezweho. Ibyo bivuze ko ibyabaye muri icyo cyiciro biba birangiye bikaba nta zindi ngaruka biba bigishobora kugira ku bireba ikirego cyaregawe urukiko, uretse

kugenzura ko uwo muhango wabayeho cyangwa utabayeho gusa. Ibireba uburyo wakoze ntibiba bireba urukiko uretse igihe ibyo ari byo byaregewe. Ibyo bivuze ko umuburanyi ufite impamvu zituma atemera ko uwo muhango w'ubwumvikane ukorwa kubera kutubahirizwa kw'ibihe, aba agomba kwanga kuwujyamo, bityo ntunakorwe. Naho iyo yemeye ko ukorwa, ntaba acyemerewe kwitwaza uburyo wakoze mu kwiregura (*en tant que défendeur*).

[31] Dosiye y'urubanza igaragaramo ibaruwa yo ku wa 18/06/2019, KLC Ltd ihagarariwe n'umuyobozi wayo Me BANDORA Alfred yandikiye Umuyobozi wa NKTP Ltd na NKTF Ltd amuha integuza ya nyuma yo kwishyurwa ibikubiye mu masezerano bagiranye yashyizweho umukono ku wa 01/12/2018. Iyi baruwa Umuhesha w'inkiko yagaragaje ko yayohereje Nicholas WATSON kuri e-mail ye.

[32] Dosiye igaragaramo ibaruwa yo ku wa 09/01/2020, KLC Ltd ihagarariwe n'umuyobozi wayo Me BANDORA Alfred yandikiye Umukuru w'Urugaga rw'Abavoka amusaba gukemura ikibazo KLC Ltd ifitanye na NKTF Ltd na NKTP Ltd cyo kuba izo sosiyete zitarubahirije amasezerano bagiranye, no kuba zitarayishyuye ibihembo bya Avoka bihwaye na 96.000 USD nk'uko byumvikanyweho mu masezerano.

[33] Dosiye igaragaramo ibaruwa yo ku wa 28/07/2020, Umukuru w'Urugaga yandikiye Me BANDORA Alfred amuha uburenganzira bwo kwiyambaza izindi nzego. Muri iyo baruwa Umukuru w'Urugaga agaragaza ko ashingiye ko impande zombi zandikiwe zisabwa ibisobanuro kuri iki kibazo ndetse zigasubiza, ko ashingiye kandi ko impande zombi zahamagawe mu muhango wo kubumvikanisha (mediation) wo ku wa 26/05/2020 ariko ntizibashe kumvikana, ko abahaye uburenganzira bwo kwiyambaza izindi nzego akaba arizo zibakemurira ikibazo.

[34] Urukiko rurasanga mu gihe impande zombi zemeye ko Urugaga rw'Abavoka ruzihuza ntihagire ubigiraho ikibazo, no ku bijyanye n'iyubahirizwa ry'ibihe kuri urwo rwego NKTF Ltd na NKTP Ltd ntizigaragaze ko zibifiteho ikibazo ahubwo zikareka umuhango ukaba ukarangira, ntizinabiregere ngo zivuge ko uwo muhango wabayeho mu buryo bunyuranyije n'amategeko, ntaho zahera zivuga ko igikorwa cy'ubwunzi ku rwego rw'Urugaga rw'Abavoka kitubahirije igihe giteganywa n'ingingo ya 40 y'Amabwiriza yavuzwe haruguru.

[35] Kubera izo mpamvu zose, Urukiko rurasanga ibivugwa n'abahagarariye NKTF Ltd na NKTP Ltd ko ikirego cya KLC Ltd kitagombaga kwakirwa kuko igihe cy'amezi (2) cyo kugeza ikibazo ku Mukuru w'Urugaga rw'Abavoka kitubahirijwe, nta shingiro bifite kubera impamvu zasobanuwe haruguru; bityo iyi mpamvu y'ubujurire ikaba nta shingiro ifite.

## **2. Kumenya niba hari ikosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu gushingira ku masezerano yo ku wa 01/12/2018**

[36] Abahagarariye NKTP Ltd na NKTF Ltd ntibishimiye ko ku rupapuro rwa 12 mu gika cya 27 cy'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi mu gufata icyemezo rwashimangiye ibyemejwe n'Urukiko rw'Ubucuruzi ko KLC Ltd itari ifite inshingano zo kumenya niba ibikubiye mu masezerano yo ku wa 01/12/2018 abagize Inama y'Ubutegetsi bari babanje kubyemeza, ko ngo icy'ingenzi ari uko ayo masezerano yashyizweho umukono na Perezida w'Inama y'Ubutegetsi w'izo sosiyete zombi. Bavuga ko ibyo binyuranyije n'amategeko, yaba amategeko yagengaga amasosiyete mu Rwanda yari ariho icyo gihe ndetse n'amategeko shingiro y'izo sosiyete kuko zose zari ziyobowe n'Inama y'Ubutegetsi ( ngo binyuranye n'ibiteganywa n'ingingo ya 145 n'iya

147 z'Itegeko rigenga amasosiyete, n'ingingo ya 15 y'Amategeko shingiro ya sosiyete) kandi ikaba ari nayo yabanzaga kwiga ku myanzuro yose ireba izo sosiyete, nyamara hakaba nta nama n'imwe yigeze iterana, yaba iy'abanyamigabane yaba iy'abagize inama y'ubutegetsi ngo ibyigeho ibifateho icyemezo. Bavuga ko Nicholas WATSON nta bubasha yari afite bwo gukorana amasezerano na KLC Ltd bitemejwe n'Inama y'Ubutegetsi y'izo sosiyete zombi kuko kuba uwasinye yari Perezida w'Inama y'Ubutegetsi bitamuhaga uburenganzira bwo gukora ibitemejwe n'Inama y'Ubutegetsi; ko ahubwo ibyo yakoze yabikoze agamije guhombya izo sosiyete.

[37] Bakomeza bavuga ko ibyo uhagarariye KLC Ltd avuga ko bemera amasezerano yo ku wa 01/02/2018 atari byo kuko batayemera, ko n'ayo ku wa 01/12/2018 ari nayo aregerwa muri uru rubanza batayemera, kandi ko Inama y'Ubutegetsi y'izo sosiyete zombi yateranye ku wa 19/01/2019 yashyizeho ubuyobozi bushya, WATSON Nicholas akaba atakiri we Perezida w'Inama y'Ubutegetsi ndetse inama ya nyuma yayoboye akaba ari nayo KLC Ltd aheruka kwitabira, ari iyabaye ku wa 14/03/2017.

[38] Uhagarariye KLC Ltd avuga ko Nicholas WATSON yasinye nka Perezida w'Inama y'Ubutegetsi ya NKTF Ltd na NKTP Ltd, akaba yari afite ububasha bwo gusinya amasezerano, kandi akaba atari gusinywa n'abagize Inama y'Ubutegetsi bose. Avuga kandi ko nta n'ikigaragaza ko Inama y'Ubutegetsi itateranye, ko nta kuntu KLC Ltd yari kumenya niba Inama y'Ubutegetsi y'izo sosiyete zombi yateranye cyangwa niba itateranye kuko ibyo bimenywa na ba nyiri imigabane b'izo sosiyete. Asobanura ko icyaregawe ari ubwishyu bushingiye ku masezerano yagiranye n'ubifitiye ububasha ari we Perezida w'Inama y'Ubutegetsi wa sosiyete zombi wayashyizeho umukono, kandi ko NKTF Ltd na NKTP Ltd zidahakana ayo masezerano, ko iyo ziza kuba zitayemera zari kuyaregera zisaba ko aseswa, aho gutegereza kuregwa ko zanze kwishyura. Avuga kandi ko amasezerano yo ku wa 01/02/2018, agaragaza ko KLC Ltd igomba guhembwa 4 000 USD buri kwezi nayo yasinywe na Nicholas WATSON nka Perezida w'Inama y'Ubutegetsi kuko yashyizweho muri Kamena 2018, ko kandi ayo masezerano yo bayishyuye, akibaza impamvu bemera ayo, hanyuma bagahakana ayo ku wa 01/12/2018 aburanwa muri uru rubanza kandi yose yarasinnye na Nicholas WATSON nka Perezida w'Inama y'Ubutegetsi w'izo sosiyete zombi.

[39] Akomeza avuga ko ayo masezerano yo ku wa 01/12/2018 nta nenge afite kuko uwasinye n'ubwo atari mu Rwanda ariko yabihamije neza muri "AFFIDAVIT" yakoze iriho n'umukono wa Noteri w'iwabo, akayohereza kuri *e-mail* kubera icyorezo cya COVID 19 cyariho, akaba atarabashaga gukora ingendo kubera izabukuru. Avuga kandi ko *Registration certificate* ya BARCO Trading Ltd igaragaza ko Nicholas WATSON n'abana be aribo ba nyiri iyo company yo mu mahanga yaje no kugura imigabane muri NKTP Ltd na NKTF Ltd, ko BARCO Trading Ltd ya Nicholas WATSON ifite imigabane irenga 92% muri izo sosiyete zombi, ko ibyo ubihuje n'ibiteganywa n'Itegeko rigenga amasosiyete ryakoreshwaga muri 2018, uhita ubona ko nyiri BARCO Trading Ltd yari afite uburenganzira busesuye bwo gusinya mu mwanya w'Inama y'Ubutegetsi kuko ari we ufitemo imigabane myinshi. Avuga na none ko Nicholas WATSON ari we ukiri Perezida w'Inama y'Ubutegetsi, ko hari indi nama yitabiriye ku wa 11/06/2018 yashyizweho umukono na Noteri.

[40] Abajijwe niba KLC Ltd yarahembwaga 4.000 USD ari uko ikoze cyangwa niba yarayahembwaga akazi kahaba cyangwa katahaba, asubiza ko ku kwezi KLC Ltd yagombaga guhembwa 4.000 USD nk'uko bikubiye mu ngingo ya 2 y'amasezerano yo ku wa 01/12/2018, ko

kandi hari igihe akazi kabaga ari kenshi ubundi kakaba ari gake, ko akazi KLC Ltd yagombaga gukora kari kavugwa muri ayo masezerano. Ku byerekeye kumenya niba yakoraze koko imirimo ikubiye muri ayo masezerano, yavuze ko bayikoze; abajijwe uwo bahaga raporo kuva ku wa 01/01/2019, asubiza ko uko bakoraga mbere ariko bakomeje gukora, ko bamubwiraga icyo agomba gukora akagikora, ko bajyaga Nshili kureba ko nta bibazo izo sosiyete zifite kuko Umuyobozi Mukuru yari amaze kugenda, kandi ko raporo yayitangaga *online*. Asoza avuga ko asaba Urukiko kudaha ishingiro iyi mpamvu y'ubujurire, no gutegeka NKTF Ltd na NKTP Ltd kwihutira kwishyura KLC Ltd.

## **UKO URUKIKO RUBIBONA**

[41] Urukiko rusanga impaka kuri iyi ngingo zishingiye ku kumenya niba amasezerano KLC Ltd ishingiraho yishyura igihembo yarasinywe n'ubifitiye ububasha kimwe no kumenya niba igomba kwishyurwa amafaranga yose ateganywa n'ayo masezerano.

### **a. Kumenya niba amasezerano KLC Ltd ishingiraho yishyura yarasinywe n'ubifitiye ububasha**

[42] NKTF Ltd na NKTP Ltd zivuga ko Nicholas WATSON wasinye amasezerano nka Perezida w'Inama y'Ubutegetsi yabikoze nta burenganzira abifitiye kuko nta Nama y'Ubutegetsi yateranye ngo ibimwemerere; mu gihe KLC Ltd yo ivuga ko atari ubwa mbere Nicholas WATSON amusinyira amasezerano nk'ayo, kandi akaba yarayishyuye nta kibazo. Mu gukemura izi mpaka, Urukiko ruragenzura uburyo ibyemezo byo gusinya amasezerano nk'aya muri NKTF Ltd na NKTP Ltd byafatwaga.

[43] Ingingo ya 151, igika cya 2, y'Itegeko N°17/2018 ryo ku wa 13/04/2018 rigenga amasosiyete y'ubucuruzi ryakoreshwaga igihe amasezerano yashyirwagaho umukono iteganya ibikurikira: “Abagize Inama y'Ubutegetsi bakorera hamwe bafatanyije mu buyobozi kandi bagomba kuba bangana n'umubare uteganyijwe mu nyandiko z'ishingwa ry'isosiyete kugira ngo inama iterane.”

[44] Ingingo ya 142, igika cya 1, y'Itegeko N°17/2018 ryo ku wa 13/04/2018 ryavuzwe haruguru iteganya ibikurikira: “Imirimo n'ibikorwa by'isosiyete biyoborwa cyangwa bikarebererwa n'Inama y'Ubutegetsi yayo ifite ububasha bwose bukenewe muri ubwo buyobozi, keretse mu gihe inyandiko z'ishingwa ry'isosiyete cyangwa iri tegeko biha ubwo bubasha abanyamigabane cyangwa undi muntu”

[45] Ingingo ya 15 y'amategeko agenga NKTF Ltd na NKTP Ltd havugwamo ko imicungire ya sosiyete ikurikiranwa n'Inama y'Ubutegetsi; ko ibyemezo by'Inama y'Ubutegetsi ya sosiyete bifatwa ku buryo bwemewe iyo hari umubare wa ngombwa w'abaje mu nama n'igihe buri cyemezo cyabonye ubwiganze bw'amajwi keretse haramutse hari izindi ngingo zigenwa n'amategeko zikurikizwa icyo gihe.

[46] Izi ngingo zisomewe hamwe, zigaragaza ko Inama y'Ubutegetsi ari yo ifite ububasha bwo kugirana amasezerano n'abandi bantu. icyakora itegeko ntirigaragaza uko bigenda iyo umuyobozi w'Inama y'Ubutegetsi afashe icyemezo kitemerwa n'abagize Inama y'Ubutegetsi. Ibi ariko byagiye bihabwa igisubizo kimaze gusa n'icyemerwa mu mahame agenga imicungire

y'amasosiyete. Muri rusange, icyemezo cy'umuyobozi w'Inama y'Ubutegetsi gifatwa nk'aho cyafashwe n'abagize Inama y'Ubutegetsi mu buryo bwemewe n'amategeko mu maso y'abagiranye amasezerano n'iyi sosiyete<sup>1</sup>. Mu yandi magambo, sosiyete ntishobora kutishyura abo yagiranye nabo amasezerano yitwaje ko umuyobozi wayo hari ibyo atubahirije. Ahubwo, iyo ikibazo nk'icyo kivutse, ingaruka zabyo ziryoze uwo muyobozi w'Inama y'Ubutegetsi ku giti cye ariko nabwo bigaragaye ko yarengereye ububasha bwe.

[47] Dosiye y'urubanza igaragararamo amasezerano yo ku wa 01/12/2018, NKTF Ltd na NKTP Ltd zihagarariwe na Nicholas WATSON zagiranye na KLC Ltd ihagarariwe n'Umuyoyi Mukuru wayo BANDORA Alfred. Muri ayo masezerano izo sosiyeti zombi zemeranyijwe na KLC Ltd ko ari yo izajya ibafasha mu bijyanye na serivisi zijyanye n'amategeko nk'uko bikubiye mu ngingo ya mbere y'ayo masezerano, ko kandi KLC Ltd izajya ihembwa 4 000 USD ku kwezi nk'uko ingingo ya kabiri y'ayo masezerano ibiteganyaga; akaba kandi yaragombaga gutangira gukurikizwa ku wa 01/01/2019, akamara igihe cy'imyaka ibiri ariko gishobora kongerwa, ni ukuvuga ko yari kurangira ku wa 31/12/2020.<sup>2</sup>

[48] Muri dosiye hagararamo inyandikomvugo y'inama ya NKTF Ltd n'iya NKTP Ltd yo ku wa 14/03/2017 igaragaza ko Nicholas WATSON atorewe kuyobora Inama y'ubutegetsi mu gihe cy'amezi 12.

[49] Dosiye igaragaramo inyandikomvugo y'Inama y'Ubutegetsi ya NKTF Ltd yo ku wa 19/01/2019. Iyo nyandikomvugo igaragaza ko abagize Inama y'Ubutegetsi ari MURENZI Jean, BANGANINKA Jacqueline na Nicholas WATSON (utari witabye). Abitabiriye inama bemeje ko imirimo y'inama iyoborwa na MURENZI Jean, ko Me GASHAGAZA Philbert ayibera Umwanditsi. Muri iyi nama hemejwe ko amafaranga yahabwaga Me BANDORA Alfred ahita ahagarikwa kuko nta rwego rwa sosiyete rwamushyizeho, ko na 4.000 USD yahabwaga mu buryo budasobanutse hashakishwa uburyo yagaruzwa.

[50] Urukiko rurasanga abahagarariye NKTF Ltd na NKTP Ltd zagiranye amasezerano na KLC Ltd badahakana ko Nicholas WATSON yari Perezida w'Inama y'Ubutegetsi w'izo sosiyeti zombi mu gihe ayo masezerano yakorwaga, ahubwo bavugaga ko amasezerano Nicholas WATSON yagiranye na KLC Ltd yagombaga kuba yemejwe n'Inama y'Ubutegetsi, kuko ari yo iyobora sosiyeti, ko rero kuba itarabyemeje, amasezerano yo ku wa 01/12/2018, nta gaciro agomba guhabwa.

[51] Urukiko rurasanga, kuba abahagarariye NKTF Ltd na NKTP Ltd bemera ko ku wa 01/12/2018, ubwo amasezerano yakorwaga Nicholas WATSON yari Perezida w'Inama

---

<sup>1</sup> Ibi bishingira ku ihame bise “**Indoor management rule**”. This rule allows persons dealing with a company, namely through the managing director, to assume that all matters concerning internal management and procedure have been complied with. See JT Pretorius; PA Delport, Michelle Havenga & Maria Vermaas, *South African Company Law through Cases*, JUTA & CO, Ltd; 6<sup>th</sup> ed.1999, p 346.

<sup>2</sup> Art. 1: *The duties of the Law firm shall be to provide the client with legal counsel, draft business agreements and prepare such other legal documents as the situation may necessitate, represent the client in the courts of law in Rwanda and perform such other judicial duties where the client has interests.* Art. 2: *The Law Firm shall be entitled to a consolidated payment of \$ 4000 US (Four Thousand American Dollars) as monthly retainer fees for the services as stipulated in the Article 1 of this contract.* Art. 3: *This agreement commences on 1<sup>st</sup> January 2019 and is valid for a period of two years (24 months) renewable upon agreement writing by the client and the Law Firm.*

y'Ubutegetsi ya NKTF Ltd na NKTP Ltd, zidashobora kuyahakana zitwaje ko yasinnye n'umuyobozi wayo atabyemerewe n'Inama y'Ubutegetsi kuko nk'uko byasobanuwe mu gika cya 47 ibikozwe na Perezida w'Inama y'Ubutegetsi bifatwa nk'ibyakoze na Sosiyete mu maso y'abandi bantu. Byongeye kandi, kuba hari andi masezerano yo ku wa 01/02/2018, Nicholas WATSON ahagarariye NKTF Ltd na NKTP Ltd yagiranye na KLC Ltd y'uko iyi izajya ihembwa 4.000 USD ku kwezi, agashyirwa mu bikorwa ndetse abandi bagize Inama y'Ubutegetsi bakaba batarabimuregeye, Urukiko rurasanga bigaragaza ko bemera ko Nicholas WATSON nka Perezida w'Inama y'Ubutegetsi w'izi sosiyete zombi yari yemerewe gukora amazerano azihagarariye. Bityo, iyi ikaba atari inenge yatuma amasezerano yo ku wa 01/12/2018 adahabwa agaciro.

[52] Ku bivugwa n'abahagarariye NKTF Ltd na NKTP Ltd ko Nicholas WATSON nta bubasha yari afite bwo gukorana amasezerano na KLC Ltd bitemejwe n'Inama y'Ubutegetsi y'izo sosiyete zombi, ko amasezerano yo ku wa 01/02/2018 yakozwe mu buryo butandukanye n'ibiteganywa n'ingingo ya 145 na 147 y'itegeko N°17/2018 ryo ku wa 13/04/2018 rigenga amasosiyeti y'ubucuruzi ngo kuko Nicholas WATSON yakoresheje ububasha yari afite akayasinya Inama y'Ubutegetsi itateranye ngo ibyemeze, Urukiko rurasanga nta shingiro bifite kuko iza ngingo zitabuza Umuyobozi w'Inama y'Ubutegetsi kugira ibyemezo afata mu izina rya Sosiyete; ahubwo nk'uko nabyo byanasobanuwe haruguru, iza ngingo zikaba ntacyo zikemura kuri iza mpaka.

**b. Kumenya niba KLC Ltd igomba kwishyurwa amafaranga yose ateganywa masezerano yo ku wa 01/12/2018**

[53] NKTF Ltd na NKTP Ltd zivuga ko Urukiko Rukuru rw'Ubucuruzi rutagomba gushingira ku masezerano yo ku wa 01/12/2018 ngo ruzitegeke kwishyura KLC Ltd 96.000 USD kuko ayo masezerano itayemera kuko yasinnye n'utabifitiye ububasha, ko ntacyo KLC Ltd yigeze ikora iyashingiyeho, kuko yagombaga gushyirwa mu bikorwa kuva ku wa 01/01/2019 agomba kumara igihe cy'imyaka ibiri, ariko akaba yaraje guhagarikwa n'Inama y'Ubutegetsi yateranye ku wa 19/01/2019.

[54] KLC Ltd ivuga ko nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze rushingira ku masezerano yo ku wa 01/12/2018 maze rugategeka NKTF Ltd na NKTP Ltd kwishyura KLC Ltd 96.000 USD, kuko Nicholas WATSON yayasinye akiri Perezida w'Inama y'Ubutegetsi akaba yari afite ububasha bwo gusinya ayo masezerano. Ku byo kuba ntacyo yakoraga avuga ko nta shingiro byahabwa kuko yakomeje gukora nk'uko byari bisanzwe atanga raporo *online*. Naho ku bijyanye n'iseswa ry'amasezerano avuga ko yasheshwe n'abatabifitiye ububasha ko kandi atabimenyeshwe.

[55] Mu gukemura iza mpaka, Urukiko rurasuzuma niba amasezerano yo ku wa 01/12/2018 atari gukomeza kubahirizwa mu gihe inama yo ku wa 19/01/2019 yemeje ko asheshwe ariko ntibimenyeshwe KLC Ltd.

[56] Ingingo ya 89 y'itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko "iyu ufite inshingano ahakanye inshingano, uko guhakana inshingano biha urundi ruhande uburenganzira bwo gusaba indishyi zishingiye ku nshingano zose zari zisigaye. ...". icyakora, ingingo ya 91, agace 1, yongeraho ko "Inshingano zo kuriha indishyi z'akababaro zishingiye ku guhakana inshingano zivaho iyo bigaragara ko uruhande rwarenganye na rwo rutari gukora igisabwa".

[57] Izi ngingo zombi zisomewe hamwe zumvikanisha ko iyo habaye kutubahiriza ibikubiye mu masezerano, ariko urundi ruhande narwo rukaba rudakora inshingano zarwo, uruhande rutayubahirije rufite inshingano yo kwishyura urwo rundi hashingiwe ku bimaze gukorwa. Ibi bishimangirwa mu ihame dusanga mu ngingo ya 84 ivuga ko *“Uruhande rumwe (rudashobora) gusaba urundi ruhande kurangiza inshingano zarwo rutabanje gukora ibyo rwasabwaga by’ingenzi mu gihe hari inshingano magirirane”*, hamwe n’ibiteganywa mu ngingo ya 82 aho igira iti *“...Iyo igice cy’ibisabwa ari cyo kigomba kwishyurwa gusa icyarimwe, urundi ruhande rushobora kwishyura igice cyagereranwa n’inshingano zarangiye, keretse bigaragaye ukundi, hakurikijwe uko ibintu biteye”*.

[58] Ingingo ya 88 y’Itegeko ryavuzwe ikemura impaka ku byerekeranye no kumenya igihe guhakana inshingano byabereye. Ibivuga muri aya magambo: *“Guhakana inshingano bishobora gukorwa mu buryo bukurikira:*

1. 1° inyandiko ufite inshingano ahaye ugenewe inshingano imumenyesha ko atazakora igisabwa;
2. 2° gukora ku bushake igikorwa kigaragaza ko ufite inshingano atazakora igisabwa”.

Bivuze ko uruhande ruhakana inshingano rushobora kubikora mu buryo bweruye rumenyeshya urundi mu nyandiko cyangwa rukabikora mu buryo buteruye rukora igikorwa kigaragaza ko rutazubahiriza inshingano zarwo, nko kwanga kwishyura kandi igihe cyo kwishyura cyageze. Mu yandi magambo, iyo igihe cyo kwishyurwa kigeze, uruhande rugomba kwishyurwa ntirwishyurwe, ruba rufite inshingano yo kubaza impamvu, bityo rukamenya ko nta cyahindutse ku nshingano zo kwishyura, naho ubundi ku munsu rwagombaga kwishyurwa, iyo rutishyurwe bifatwa ko rwamenye ko urundi ruhande rwiya mbuye inshingano.

[59] Mu magambo make, hashingiwe ku isesengura ry’ingingo zivuzwe mu bika bibanziriza iki, mu masezerano ashirwa mu bikorwa mu byiciro, iyo igihe cyo kwishyurwa icyiciro kirangiye ntikishyurwe kandi uruhande rwishyurwa ntirukurikirane ubwishyu, bifatwa ko rwamenye ko urundi ruhande rwiya mbuye inshingano, bityo rukishyurwa imirimo yakozwe kugeza ubwo.

[60] Nk’uko byagaragajwe, amasezerano KLC Ltd yagiranye na NKTP Ltd na NKTF Ltd ku wa 01/12/2018 yagombaga gutangira gushyirwa mu bikorwa ku wa 01/01/2019. Ayo masezerano agaragaza ko KLC Ltd yagombaga guhembwa buri kwezi 4.000 USD mu gihe cy’imyaka ibiri (2). Bivuze ko ari amasezerano yagombaga kwishyurwa mu byiciro, buri cyiciro kikaba kingana n’ukwezi kumwe, kandi hakishyurwa ibyakozwe muri uko kwezi.

[61] Ku wa 19/01/2019, ubuyobozi bushya bwa NKTP Ltd na NKTF Ltd buhagarariwe na Bwana MURENZI Jean bwakoze inama y’Inama y’Ubutegetsu, ifata ibyemezo bitandukanye birimo no guhagarika amasezerano KLC Ltd yagiranye na NKTP Ltd na NKTF Ltd yavuzwe mu gika kibanziriza iki. Iki cyemezo ariko nticyigeze kimenyeshwa KLC Ltd mu buryo bweruye, ahubwo ukwezi gushize, ntibigeze bamwishyura nk’uko byari biteganyijwe. icyakora na KLC Ltd, nyuma y’ukwezi, ntiyishyuje igihembo cy’ukwezi bari barumvikanye mu masezerano, ahubwo yishyuje ku wa 18/06/2019. Bivuze ko KLC Ltd yamenye ko NKTP Ltd na NKTF Ltd ziyambuye inshingano zo kwishyurwa mu buryo buteruye ku wa 31/01/2019, ubwo ukwezi kwari gushize, ikabona itishyurwe. Ibyo kuba yarabimenye kare mbere y’uko yishyurwa binashimangirwa n’uko

mu ibaruwa ye yo ku wa 18/06/2019 yandikiye Umuyobozi wa NKTP Ltd na NKTF Ltd yamuhaga integuza ya nyuma yo kwishyurwa ibikubiye mu masezerano bagiranye yashyizweho umukono ku wa 01/12/2018; gutanga integuza ya nyuma bigaragaza ko yari yabanje kugerageza ubundi buryo busanzwe.

[62] Ikindi kigaragara cyavuzwe n'uruhande rwa NKTP Ltd na NKTF Ltd kandi na KLC Ltd ikaba nta kimenyetso yatanze kibihinyuza, ni uko nta kigaragaza ko kuva amasezerano yaseswa yakomeje gukora.

[63] Urukiko rushingiye kuri ibi bisobanuro byatanzwe no ku mategeko yasobanuwe cyane cyane mu bika bya 61 na 62, rurasanga nyuma yo guhagarika amasezerano, NKTP Ltd na NKTF Ltd zari ziyambuye inshingano zazo, ariko kuko zitabimenyesheje KLC Ltd mu buryo bweruye, bikaba bigomba gufatwa ko KLC Ltd yabimenye mu buryo buteruye, ubwo ukwezi kwashiraga ntiyishyuzwe. Urukiko rusanga ariko na none mu migenzereze isanzwe cyane cyane ishingiyeye mu mucu nyarwanda, bishoboka ko igihe umuntu yagombaga kwishyura kigera ntiyishyuzwe, ahubwo akiha akanya gato ngo arebe ko ugomba kwishyura yibwiriza. Ibyo ariko na none bikaba bitagomba kurenga ukwezi gukurikiyeho. Ni muri urwo rwego Urukiko rusanga KLC Ltd igomba guhemberwa ukwezi kwa Mutarama 2019 hamwe n'ukwa Gashyantare 2019 hashingiwe ku kuba ari icyo gihe ikwiye kuba yaramenyeyeho ko amasezerano yari ifitanye na NKTP Ltd na NKTF Ltd yasheshwe; ibyo bikaba bihwanye n'amadorari y'Amerika ibihumbi bine ku kwezi mu gihe cy'amezi abiri; yose hamwe akaba ari amadolari y'Amerika ibihumbi umunani: (4.000 USD x 2) = 8.000 USD).

## **B. UBURIRIWE BWURIRIYE KU BUNDI BWA KLC Ltd**

### **3. Kumenya niba KLC Ltd yaragombaga kugenerwa indishyi z'akababaro**

[64] Abahagarariye KLC Ltd basabye Urukiko gutegeka NKTP Ltd na NKTF Ltd guha KLC Ltd indishyi z'akababaro zingana na 20.000 USD, kubera akarengane gakomeye gashingiye ku cyenewabo, kuko yazikoreye neza imyaka myinshi, zikagera kuri byinshi ku bwayo, ariko ko uwo bita MURENZI Jean waje nyuma yiyita Chairman yashatse kuyambura isoko akariha muramu we, akaba ari na ryo pfundo ry'iki kirego.

[65] Abahagarariye NKTP Ltd na NKTF Ltd biregura ku ndishyi z'akababaro KLC Ltd isaba bavuga ko nta shingiro zikwiye guhabwa kuko sosiyete bahagarariye zigaragaza ko amasezerano ashingirwaho anyuranyije n'amategeko shingiro yazo, hamwe n'ingingo ya 54 y'Itegeko N° 13 bis/2014 ryo ku wa 21/05/2014 rigenga umurimo w'Ubunoteri, iteganya uburyo inyandiko zemejwe n'umunoteri wo mu mahanga zigira agaciro mu Rwanda, ariko ko inzira amasezerano yo ku wa 01/12/2008 yagombaga kunyuramo kugira ngo agire agaciro itubahirijwe.

## **UKO URUKIKO RUBIBONA**

[66] Dosiye y'urubanza igaragaza ko KLC Ltd yasabye indishyi z'akababaro zihwanye na 20.000 USD kuva ku rwego rwa mbere mu Rukiko rw'Ubucuruzi ariko urwo Rukiko rusanga nta shingiro zifite kuko n'ubundi amasezerano bagiranye yari afite igihe kizwi yagombaga kumara, ko kandi kuba bavuga ko nta cyizere cyo kongera gukorana nabo bitatangirwa indishyi. Yongeye



kuzisaba mu Rukiko Rukuru rw'Ubucuruzi, urwo Rukiko rusanga KLC Ltd ari sosiyete nk'uko babyivugiyeye, ko rero itari umuntu yagira akababaro, iza ndishyi ikaba ntazo yagenerwa.

[67] Ibyerekeye kuba sosiyete cyangwa ikigo bitahabwa indishyi z'akababa kuko atari umuntu, uwo murongo Urukiko rw'Ikirenga rwarawuhinduye mu rubanza N° RS/INJUST/RCOM 00004/2020/SC rwaciwe ku wa 19/11/2021, NEW KIGALI BUSINESS SERVICES Ltd yaburanye na KASESE DISTILLERS Ltd, rwaciwe n'Urukiko rw'Ikirenga ku wa 19/11/2021, aho mu gika cya 48, rwavuze ibikurikira : “Urukiko rurasanga umurongo Urukiko rw'Ikirenga rwari rwaragendeyeho mu gufata icyemezo mu rubanza Bralirwa Ltd yaburanaga na Kazigaba André na bagenzi be, rwifashishije inyandiko z'abahanga, ari wo inkiko z'ibindi bihugu zasubiyeho, ndetse n'inyandiko nshya z'abahanga mu mategeko mbonezamubano zivuga ko utakijyanye n'igihe. Muri bo hari Véronique Wester Ouisse uvuga ko ntawari ukwiye guhakana ko sosiyete zishobora gusaba indishyi z'akababaro kubera ko nk'uko bimeze ku bantu, icyubahiro cyazo, icyizere zifitiwe n'uburyo zifatwa muri rubanda bishobora kubangamirwa kandi bikagira ingaruka ku mibereho yazo, bityo ko ikibazo kidakwiye kureberwa gusa ku bikorwa by'ubucuruzi. icyakora, asobanura ko sosiyete yifuzaga indishyi z'akababaro igomba kubanza kugaragaza icyo yangirijwe”<sup>3</sup>.

[68] Urukiko rw'Ikirenga rwasobanuye ko iby'uko sosiyete z'ubucuruzi cyangwa ibigo bishobora guhabwa indishyi z'akababaro bimaze kuba ihame ry'amategeko agenga uburyozwe. icyakora iza ndishyi ziba zigamijwe gusa uburyozwe bushingiye ku buryo rubanda rushobora gutakariza icyizere sosiyete cyangwa ikigo (*réputation/reputation*) cyangwa bukaba bushingiye ku kugaruza icyubahiro cya sosiyete cyangwa ikigo kubera ko izina ryacyo ryasebejwe (*honneur/honor*). Ibi byumvikanisha ko ikigo cyangwa sosiyete (k)itasaba indishyi z'akababaro z'uko (c)yatewe agahinda (*angoisse/distress*), (c)yababajwe ku mubiri cyangwa ku mutima (*blesure physique ou mental/ physical or mental hurt*) cyangwa (c)yasuzuguye (*humiliation*) kuko ibi ari umwihariko w'abantu (*personne physique*). Byongeye kandi sosiyete ntiyahabwa indishyi z'akababaro itabanje kugaragaza icyo yangirijwe. Rusobanura kandi ko indishyi z'akababaro zihabwa sosiyete cyangwa ikigo ziba zigamijwe gusa kugaruza agaciro iyo sosiyete cyangwa ikigo byatakaje aho kuba ibyo yahombye (*restauration de l'honneur ou de la réputation/ restoration of the honor or reputation*)<sup>4</sup>.

[69] Hashingiwe ku bimaze gusobanurwa mu bika bibanziriza iki, Urukiko rurasanga 20.000 USD y'indishyi z'akababaro, KLC Ltd isaba nta shingiro zahabwa kuko itigeze itakarizwa icyizere na rubanda (*réputation/reputation*) cyangwa ngo ibe yatakaje icyubahiro kubera ko izina ryayo ryasebejwe (*honneur/honor*), ku buryo yagenerwa indishyi z'akababaro, bityo nta ndishyi z'akababaro igomba guhabwa muri uru rubanza.

---

<sup>3</sup> “Au vrai, nul ne disconvient qu'une société commerciale puisse subir un dommage moral, au sens d'une atteinte à la personnalité sociale qu'elle a pu se forger aux yeux du public : la considération, la réputation voire l'honneur ne sont pas propres aux personnes physiques. Mais une société ne devrait pas pouvoir en tirer réparation que si un préjudice en résulte. Or, pour admettre qu'elle puisse subir un préjudice moral, il faudrait reconnaître que son image, son crédit, sa réputation lui servent à autre chose qu'à développer l'activité commerciale qui borne son objet social et donc sa personnalité juridique.” ; Véronique Wester-Ouisse, “Le préjudice moral des personnes morales : quand la perversion de la cité commence par la fraude des mots”, *JCP*, G n° 39,24 Septembre 2012.

<sup>4</sup> Reba igika cya 50 n'icya 51 by'urubanza N° RS/INJUST/RCOM 00004/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 19/11/2021.

#### **4. Kumenya niba amafaranga y'ibyakoreshejwe mu rubanza asabwa n'impande zombi afite ishingiro**

[70] Abahagarariye NKTP Ltd na NKTF Ltd bashingiye ku ngingo ya 34 y'Amabwiriza n°01/2014 agena ibihembo mbonera by'Abavoka, basaba Urukiko rw'Ubujurire gutegeka KLC Ltd kwishyura NKTF na NKTP 5.000.000 Frw y'igihembo cya Avoka na 1.000.000 Frw y'ikurikiranarubanza zari zasabye kuva ku rwego rwa mbere kugera mu bujurire na 2.000.000 Frw y'igihembo cya Avoka kuri uru rwego. Bavuga kandi ko amafaranga y'ikurikiranarubanza n'igihembo cya Avoka KLC Ltd isaba mu bujurire bwuririye ku bundi nta shingiro akwiye guhabwa.

[71] Uhagarariye KLC Ltd avuga ko ihame ry'amategeko ari uko ntawushingira ku makosa ye ngo ayabyaze inyungu, ko kubera iyo mpamvu nta ndishyi NKTF na NKTP zikwiye guhabwa, kuko ari zo zabaye nyirabayazana w'izi manza, zanga kubahiriza amasezerano yo ku wa 01/12/2018 zagiranye nayo kandi *Chairman* wayasinye ari nawe wasinye ayayabanjirije.

[72] Avuga kandi ko bashingiye ku ngingo ya 152 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, basaba Urukiko rw'Ubujurire gutegeka NKTF Ltd na NKTP Ltd gufatanya gusubiza KLC Ltd 12.000.000 Frw y'ibihembo by'Abavoka, kuko kuva mu Rukiko rw'Ubucuruzi KLC Ltd yaburanirwaga n'abavoka batatu, ibihembo byabo bikaba bigomba kugenwa hitawe ku mubare wabo, ni ukuvuga 4.000.000 Frw kuri buri rwego na 5.000.000 Frw y'ikurikiranarubanza.

### **UKO URUKIKO RUBIBONA**

[73] Ku bijyanye n'amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza asabwa n'impande zombi muri uru rubanza, Urukiko rurasanga nta ruhande na rumwe rugomba kuyahabwa kuko buri ruhande rufite ibyo rwatsindiye n'ibyo rwatsindiwe.

### **III. ICYEMEZO CY'URUKIKO**

[74] Rwemeje ko ubujurire bwa NSHILI KIVU TEA FACTORY Ltd na NSHILI KIVU TEA PLANTATION Ltd bufite ishingiro kuri bimwe.

[75] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na KIGALI LAW CHAMBERS nta shingiro bufite.

[76] Rwemeje ko imikirize y'urubanza No RCOMA 00208/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 29/09/2021, ihindutse gusa ku bijyanye n'amadorari NSHILI KIVU TEA FACTORY Ltd na NSHILI KIVU TEA PLANTATION Ltd zigomba kwishyura KIGALI LAW CHAMBERS.

[77] Rutegetse NSHILI KIVU TEA FACTORY Ltd na NSHILI KIVU TEA PLANTATION gufatanya kwishyura KIGALI LAW CHAMBERS amadorari ibihumbi umunani (8.000 USD).

[78] Ruvuze ko amagarama yatanzwe ahwanywe n'ibyakozwe mu rubanza.