

## MANIRARORA v RWANDA RUDNIKI LTD

[Rwanda URUKIKO RW'UBUJURIRE –RS/INJUST/RC 00013/2021/CA (Rukundakuvuga, P.J., Kamere na Ngagi) 28 Kamena 2022]

*Amategeko agenga imanza mbonezamubano – Uburyozwe – Impanuka – Umuntu afite inshingano yo kugenzura ibyo ashinzwe kurinda, kandi agomba kuryozwa icyo byangirije hatitawe ko yaba yakozwe cyangwa atakoze ikosa.– Umwishingizi aryozwa mu gikigero cy'ibyo yishingiye mu masezerano.*

*Amategeko agenga imanza mbonezamubano – Kurega – Kurega umwishingizi cyangwa umukoresha – uwangirijwe n'impanuka utahisemo kurega umwishingizi (action directe) ahubwo agahitamo kurega umukoresha ubwe (action personelle), nta kosa aba akoze.*

*Amategeko agenga imanza mbonezamubano – Uburyozwe – Indishyi – Indishyi zikomoka ku mpanuka zitari izo mu muhanda – Mu kubara indishyi zikomoka ku mpanuka zitari izo mu muhanda ntihashingirwa ku Iteka rya Perezida rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, icyakora nta cyabuza Urukiko kwifashisha uburyo (formule) buteganyijwe muri iryo teka.*

*Amategeko agenga imburanishirize y'imanza mbonezamubano – Agaciro k'inyardiko – Inyardiko Urukiko rushingiraho – amabwiriza – Amabwiriza ni inyardiko zo mu rwego rusange zashyizweho umukono n'Umuyobozi ubifitiye ububasha, zigamije gushyira mu bikorwa itegeko cyangwa zigamije gukurikizwa ku bintu bitarebwa n'itegeko kandi zigatangazwa mu Igazeti ya Leta.*

**Incamake y'ikibazo:** Urubanza rwatangiyeye Manirarora arega Rwanda Rudniki Ltd mu Rukiko Rwisumbuye rwa Muhanga, arusaba kuyitegeka kumuha indishyi zikomoka ku mpanuka y'akazi yamuteye ubumuga buhoraho bungana na 40% kuko yari umukoresha we, hashingiwe ku Iteka rya Perezida rikurikizwa mu kubara indishyi zikomoka ku mpanuka z'ibinyabiziga. Urukiko rwaciye urubanza RC00006/2017/TGI/MHG rwaciye n'Urukiko rwemeza ko ikirego yatanze gifite ishingiro, rutegeka Rwanda Rudniki Ltd guha Manirarora indishyi zitandukanye.

Rwanda Rudniki Ltd ntiyishimiye imikirize y'urubanza, iyijuririra mu Rukiko Rukuru, Urugereko rwa Nyanza, ivuga ko Urukiko Rwisumbuye rwa Muhanga rwayitegetse kwishyura Manirarora indishyi kandi atarigeze aba umukozi ufitanye na yo amasezerano y'akazi ugengwa n'Itegeko ry'umurimo mu Rwanda, ivuga kandi ko Urukiko mu kumugenera indishyi rwashingiye ku Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, kandi impanuka yakozwe atari iyo mu muhanda.

Urukiko Rukuru, Urugereko rwa Nyanza, rwaciye urubanza RCA00104/2017/HC/NYZ rwemeza ko ubujurire bwatanzwe na Rwanda Rudniki Ltd mu izina ry'Umuyobozi wayo bufite ishingiro kuri bimwe, ko imikirize y'urubanza RC00006/2017/TGI/MHG rwaciye n'Urukiko Rwisumbuye rwa Muhanga ihindutse kuri bimwe, ko indishyi zigomba kubarwa hakurikijwe Amabwiriza yatanzwe n'Ikigo gishinzwe Mine, Peteroli na Gazi mu Rwanda, rutegeka SAHAM Assurance Rwanda Ltd mu izina ry'Umuyobozi wayo guha Manirarora indishyi zitandukanye.

Manirarora yasubirishijemo urubanza RCA00104/2017/HC/NYZ rwaciye n'Urukiko Rukuru Urugereko rwa Nyanza ingingo nshya avuga ko mu guca urwo rubanza habayeho uburiganya. maze uru Rukiko mu rubanza RS/REV/RC 00004/2018/HC/NYZ rwemeza ko ikirego cyo gusubirishamo urubanza RCA00104/2017/HC/NYZ ingingo nshya cyatanzwe na Manirarora kitakiriwe.

Manirarora yatakambiyeye Urukiko rw'Ubujujire asaba ko urubanza RCA00104/2017/HC/NYZ rwaciye n'Urukiko Rukuru Urugereko rwa Nyanza rusubirishwamo ku mpamvu z'akarengane, nyuma yo gusuzuma ubusabe bwe, Perezida w'Urukiko rw'Ubujujire yandikiye Perezida w'Urukiko rw'Ikirenga, amusaba kwemeza ko urwo rubanza rusubirwamo kuko rushobora kuba rurimo

akarengane. Perezida w'Urukiko rw'Ikirenga, yemeje ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, maze arwohereza mu Rukiko rw'Ubujurire kugira ngo ruzaruburanishe. Rwanda Rudniki Ltd isaba ko Sanlam AG Plc ihamagazwa mu rubanza nk'umwishingizi wayo Urukiko rurabyemera.

Uhagarariye Manirarora avuga ko amasezerano SANLAM AG Plc yagiranye na Rwanda Rudniki Ltd ataboneye kandi areba abayagiranye, akaba ariyo mpamvu bareze Rwanda Rudniki Ltd bakaba basaba Urukiko rw'Ubujurire kwemeza ko Rwanda rudniki Ltd ari yo ikwiye kuryozwa indishyi kuko itafatiye abakozi bayo ubwishingizi bukwiye.

Uhagarariye Rwanda Rudniki Ltd Avuga ko indishyi zicibwa uwakoze ikosa kandi bo nta kosa bakoze kandi ko ingingo ya 260 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yari gukoreshwa mu gihe Rwanda Rudniki Ltd yari kuba nta bwishingizi yafashe, ko rero SANLAM AG Plc ari yo igomba kwishyura indishyi bityo akaba ari nayo igomba kuregwa.

Uhagarariye SANLAM AG Plc avuga ko kuba Manirarora atarigeze arega SANLAM AG Plc asanga atari yo yaryozwa indishyi. Ko mu gihe Urukiko rwabibona ukundi, rugasanga ari yo igomba kwishyura indishyi, yakwishyura izikubiye mu masezerano yari hagati ya SANLAM AG Ltd na Rwanda Rudniki Ltd.

Urukiko rw'Ubujurire rwemeje ko nta kosa Manirarora yakoze asaba ko Rwanda Rudniki Ltd iryozwa indishyi zikomoka ku mpanuka yatewe n'ikirombe cyayo; bityo Rwanda Rudniki Ltd igomba kwishyura indishyi zikomoka ku mpanuka Manirarora yakoreye mu kirombe cyayo.

**Incamake y'icyemezo: 1.** Umuntu afite inshingano yo kuzuzura ibyo ashinzwe kurinda, kandi agomba kuryozwa icyo byangirije hatitawe ko yaba yakoze cyangwa atakoze ikosa.

2. Uwangirijwe n'impanuka utahisemo kurega umwishingizi (action directe) ahubwo agahitamo kurega umukoresha ubwe (action personnelle), nta kosa aba akoze.

3. Amabwiriza ni inyandiko zo mu rwego rusange zashyizweho umukono n'Umuyobozi ubifitiye ububasha, zigamije gushyira mu bikorwa itegeko cyangwa zigamije gukurikizwa ku bintu bitarebwa n'itegeko kandi zigatangazwa mu Igazeti ya Leta.

4. Mu kubara indishyi zikomoka ku mpanuka zitari izo mu muhanda ntihashingirwa ku Iteka rya Perezida rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, icyakora nta cyabuza Urukiko kwifashisha uburyo (formule) buteganyijwe muri iryo teka..

**Ikirego cyo gusubirishamo Urubanza ku mpamvu z'akarengane ku mpamvu z'akarengane gifite ishingiro.**

**Urubanza rusubirishwamo ku mpamvu z'akarengane ruhindutse kuri byose**

**Amategeko yashingiweho:**

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

Itegeko ryo ku wa 30 Nyakanga 1888 rishyiraho Igitabo cya gatatu cy'urwunge rw'Amategeko mbonezamubano, ingingo ya 258, 260

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, Ingingo ya 9,111

Amabwiriza N° 01/2014 agena ibihembo mbonera by'abavoka, ingingo ya 26

**Imanza zifashishijwe.**

Urubanza RCAA 00008/2020/CA rwa Ndizeye Alphonse iburana na Kibungo Medical Center na PRIME Insurance Company Plc, rwaciwe n'Urukiko rw'Ubujurire ku wa 25/06/2021,  
Urubanza RADA0054/12/CS rwa Kabayijuka Gaspard aburana na Leta y'u Rwanda (Minisanté) rwaciwe n'Urukiko rw'Ikirenga ku wa 19/12/2014,  
urubanza RCAA 0049/14/CS, rwa SORAS AG Ltd iburana N'umuhoza Pacifique n'abandi rwaciwe n'Urukiko rw'Ikirenga ku wa 25/11/2016.  
Urubanza RCAA 00073/2018/CA, rwa Nyirabatesi Laurence aburana n'Ibitaro byitiriwe Umwami Fayisali (King Faisal Hospital) rwaciwe n'Urukiko rw'Ubujurire ku wa 19/07/2019 ,

### **Inyandiko z'abahanga zifashishijwe.**

Philippe Le TOURNEAU et autres, Droit de la responsabilité et des contrats : régimes d'indemnisation, 10 ème édition, Paris, Dalloz, 2014, pp.1973-1974  
Francois Terré, Philippe Smeler na Yves Lequette, Droit civil. Les obligations, 11ème édition, Paris, Dalloz, 2013, p.253.  
Serge GUINCHARD, Lexique des termes juridiques 2015-2016, 23 ème édition, 2015, Paris, Dalloz, p. 887  
Gérard CORNU, Vocabulaire Juridique, 2007-, 8 ème édition, Paris, Quadrige/PUF, p. 789.

## **Urubanza**

### **I. IMITERERE Y'URUBANZA**

[1] Manirarora Jean de Dieu yari umukozi wa sosiyete icukura amabuye y'agaciroyitwa rwanda Rudniki Ltd kuva mu mwaka wa 2008 kugeza ku wa 29/10/2015 ubwo yakoraga impanuka, kuri iyo tariki ya 29/10/2015 yagwirirwe n'ikirombe avunika ukuguru bikomeye, ndetse anakomereka mu musaya, iyo mpanuka imusigira ubumuga buhoraho buri ku gipimo cya 40%.

[2] Manirarora Jean de Dieu yabimenyesheje Rwanda Rudniki Ltd nayo imubwira ko yareba umwishingizi w'ikirombe ari we SAHAM Assurance Rwanda Ltd, Manirarora ahageze asanga amasezerano SAHAM Assurance Rwanda Ltd (yahoze ari CORAR Assurance) yagiranye n'ubuyobozi bwa Rwanda Rudniki Ltd ateganya ko umukozi agwirirwe n'ikirombe agapfa ahabwa 1.000.000Frw n'ibyakoreshejwe mu gushingura naho ukomerekeyemo agahabwa amafaranga hakurikijwe ingano y'ubumuga yatewe n'impanuka. Manirarora Jean de Dieu abonye ayo masezerano atabonye yareze Rwanda Rudniki Ltd nk'umukoresha we mu Rukiko Rwisumbuye rwa Muhanga, arusaba kuyitegeka kumuha indishyi zikomoka ku mpanuka y'akazi yamuteye ubumuga buhoraho bungana na 40%, hashingiwe ku Iteka rya Perezida rikurikizwa mu kubara indishyizikomoka ku mpanuka z'ibinyabiziga.

[3] Mu rubanza RC00006/2017/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 26/10/2017, urwo Rukiko rwemeje ko ikirego cyatanzwe na Manirarora Jean de Dieu gifite ishingiye, rutegeka Rwanda Rudniki Ltd guha Manirarora Jean de Dieu 4.099.607Frw y'indishyi z'ibangamirabukungu, 432.000Frw y'indishyi z'akababaro, 432.000Frw y'indishyi z'ibangamiraburanga, 540.000Frw indishyi z'ibangamira ry'uburambe ku kazi, 100.000Frw yakoreshejwe mu kwivuza, 50.000Frw y'ikurikirarubanza, na 500.000 Frw y'igihembo cya Avoka, yose hamwe aba 6.153.607Frw, ikanamwishyura 50.000 Frw y'amagarama y'urubanza.

[4] Rwanda Rudniki Ltd ntiyishimiye imikirize y'urubanza, iyijuririra mu Rukiko Rukuru, Urugereko rwa Nyanza, ivuga ko Urukiko Rwisumbuye rwa Muhanga rwayitegetse kwishyura Manirarora Jean de Dieu indishyi kandi atarigeze aba umukozi ufiteye na yo amasezerano y'akazi ugengwa n'Itegeko ry'umurimo mu Rwanda, ivuga kandi ko Urukiko mu kumugenera indishyi rwashingiye ku Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura

indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, kandi impanuka yakoze atari iyo mu muhanda.

[5] Ku wa 10/07/2018, Urukiko Rukuru, Urugereko rwa Nyanza, rwaciye urubanza RCA00104/2017/HC/NYZ rwemeza ko ubujurire bwatanzwe na Rwanda Rudniki Ltd mu izina ry'Umuyobozi wayo bufite ishingiro kuri bimwe, ko imikirizey'urubanza RC00006/2017/TGI/MHG rwaciye n'Urukiko Rwisumbuye rwa Muhanga ku wa 26/10/2017 ihindutse kuri bimwe, ko indishyi zigomba kubarwa hakurikijwe Amabwiriza yatanzwe n'Ikigo gishinzwe Mine, Peteroli na Gazi mu Rwanda, rutegeka SAHAM Assurance Rwanda Ltd mu izina ry'Umuyobozi wayoguha Manirarora Jean de Dieu indishyi zose hamwe zingana na 2.906.920Frw, ruvuga ko amagarama y'urubanza ahwanye n'ibyakoze mu rubanza.

[6] Ku wa 31/08/2018, Manirarora Jean de Dieu yasubirishijemo urubanza RCA00104/2017/HC/NYZ ingingo nshya, ikirego cyo cyandikwa kuri RS/REV/RC 00004/2018/HC/NYZ, avuga ko mu guca urwo rubanza habayeho uburiganya. Ku wa 25/10/2018, Urukiko Rukuru, Urugereko rwa Nyanza, rwemeje ko ikirego cyo gusubirishamo urubanza RCA00104/2017/HC/NYZ ingingo nshya cyatanzwe na Manirarora Jean de Dieu kitakiriwe.

[7] Manirarora Jean de Dieu yatakambiye Urukiko rw'Ubujurire asaba ko urubanza RCA00104/2017/HC/NYZ rusubirishwamo ku mpamvu z'akarengane, nyuma yo gusuzuma ubusabe bwe, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga, amusaba kwemeza ko urwo rubanza rusubirwamo kuko rushobora kuba rurimo akarengane. Ku wa 11/02/2021, Perezida w'Urukiko rw'Ikirenga, mu cyemezo cyo N° 112/CJ/2021 yemeje ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, maze arwohereza mu Rukiko rw'Ubujurire kugira ngo ruzaruburanishe, icyo kiregocyanikwa kuri RS/INJUST/RC 00013/2021/CA.

[8] Manirarora Jean de Dieu yasubirishijemo urubanza ku mpamvu z'akarengane avuga ko Urukiko Rukuru, Urugereko rwa Nyanza, rwategetse SAHAM Assurance Rwanda Ltd kumwishyura 2.906.920 Frw kandi itarigeze iba umuburanyi muri urwo rubanza, asaba ko Rwanda Rudniki Ltd ari yo igomba kuryozwa indishyiasaba, ko kandi zigomba kubarwa hakoreshejwe Iteka rya Perezida N° 31/01 ryoku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga kubera ko nta tegeko ririhoryerekeye impanuka zabereye mu birombe bicukurwamo amabuye y'agaciro.

[9] Urubanza rwaburanishijwe mu ruhame ku wa 06/04/2022, Manirarora Jean de Dieu ahagarariwe na Me Nzeyimana Alexis, Rwanda Rudniki Ltd ihagarariwena Me Nsengiyaremye Jean Claude, Rwanda Rudniki Ltd isaba ko Sanlam AG Plc ihamagazwa mu rubanza nk'umwishingizi wayo, Urukiko rushingiye ku biteganywa mu ngingo ya 118 y'Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsirwafatiye icyemezo mu ntebe, rwemeza ko Sanlam AG Plc ihamagazwa mu rubanza nk'umwishingizi wa Rwanda Rudniki Ltd. Urubanza rwongeye kuburanishwa ku wa 09/05/2022, Manirarora Jean de Dieu na Rwanda Rudniki Ltd bahagarariwe nka mbere, naho SANLAM AG Plc ihagarariwe na Me Rwimo Clotilde; isomwa ry'urubanza rishyirwa ku wa 30/05/2022, iyo tariki igeze ryimurirwa ku wa 17/06/2022, ariko ntirwasomwa kuri iyo tariki, ryimurirwa ku wa 28/06/2022.

[10] Muri rusange, mu iburanisha impaka hagati y'ababuranyi zibanze ku byerekeranyeko kumenya niba Rwanda Rudniki Ltd igomba gutegekwa kwishyura indishyi zikomaka ku mpanuka Manirarora Jean de Dieu yagiriye mu kirombe, kumenya icyashyirwaho hatangwa indishyi zisabwa, hamwe no kumenya ingano y'indishyizisabwa, uko zibarwa, n'ugomba kuziryoza.

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

## **1.Kumenya niba RWANDA RUDNIKI Ltd igomba gutegekwa kwishyuraindishyi zikomaka ku mpanuka MANIRARORA Jean de Dieu yagiriye mu kirombe.**

[11] Uhagarariye Manirarora Jean de Dieu avuga ko bashingiye ku ngingo ya 260 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (CCL III) yakoreshwaga igihe Manirarora Jean de Dieu yakoraga impanuka asanga RWANDA RUDNIKI Ltd ari yo igomba kuryozwa indishyi Manirarora Jean de Dieu aregera. Asobanura ko uwo ahagarariye amaze gukomerekerwa mu kirombe cya Rwanda Rudniki Ltd yayandikiye hanyuma imusubiza ko ifite ubwishingizi muri SAHAM Assurance Rwanda Ltd (yahoze ari CORAR AG Ltd), ubu yahindutse SANLAM AG Plc, ko asanze amasezerano Rwanda Rudniki Ltd ifitanye na SANLAM AG Plc ateganya ko uzagwirwa n'ikirombe agapfa hazishyurwa 1.000.000 Frw, naho uzakomereka akazagenerwa indishyi hashingiwe ku ngano y'ubumuga yagize; ko yabegereye kugira ngo bumvikane ku ndishyi imusubiza koindishyi yamuha ari 400.000Frw ariko ko kubera ari mu bwumvikane bamuha 100.000 Frw, ko bamaze kubona ko ayo masezerano ataboneye yareze Rwanda Rudniki Ltd kuko yari ifite inshingano yo kurinda icyo kirombe cyayo kugira ngo kitagwirwa umuntu.

[12] Avuga kandi ko kuba amasezerano SANLAM AG Plc yagiranye na Rwanda Rudniki Ltd ataboneye kandi akaba areba abayagiranye, ari yo mpamvu asaba Urukiko rw'Ubujurire kwemeza ko Rwanda Rudniki Ltd ari yo ikwiye kuryozwa indishyi zikwiye kuko itafatiye abakozi bayo ubwishingizi bukwiye.

[13] Uhagarariye Rwanda Rudniki Ltd avuga ko indishyi zicibwa umuntu wakoze ikosa, ko kugira ngo wemererwe gucukura amabuye y'agaciro hari ibyo ugomba kuba wujuje, ko kandi ibyo byose Rwanda Rudniki Ltd yari ibyujuje, ko ntacyoyari gukora kugira ngo Manirarora Jean de Dieu ye kugwirwa n'ikirombe. Avuga kandi ko kuba barashatse ubwishingizi muri Sanlam AG Plc (yahoze ari CORAR AG Ltd) ari ukugira ngo izishyure mu gihe cy'impanuka, ko ubwo bwishingizi yabufashe mu nyungu z'abakora mu kirombe cyayo harimo na Manirarora Jean de Dieu.

[14] Avuga kandi ko ingingo ya 260 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yari gukoresha mu gihe Rwanda RUDNIKI Ltd yari kuba ntabwishingizi yafashe, ko rero SANLAM AG Plc ari yo igomba kwishyura indishyi. Asobanura ko kuba impanuka yarabaye Rwanda Rudniki Ltd ifite ubwishingizimuri Sanlam AG Plc, ari yo yagombaga kuregwa kuko Rwanda Rudniki Ltd ari yo yagiranye na yo amasezerano y'ubwishingizi; ko kandi SAHAM Assurance Rwanda Ltd ari yo yabanje gusabwa indishyi hashingiwe kuri ayo masezerano, ko Rwanda Rudniki Ltd itazi ko yaba yaranze kuzitanga.

[15] Uhagarariye SANLAM AG Plc avuga ko kuba Manirarora Jean de Dieu atarigeze arega SANLAM AG Plc asanga atari yo yaryozwa indishyi. Ko mu gihe Urukiko rwabibona ukundi, rugasanga ari yo igomba kwishyura indishyi, yakwishyura izikubiye mu masezerano yari hagati ya SANLAM AG Ltd na Rwanda Rudniki Ltd.

## **UKO URUKIKO RUBIBONA**

[16] Ingingo ya 63 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ibikurikira: "Iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga agena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe".

[17] Ingingo ya 258 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano yakoreshwaga mu gihe Manirarora Jean de Dieu yakoraga impanuka mu mwaka wa 2015, yatangaga

ibikurikira: “Igikorwa cyose cy’umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse “.

[18] Ingingo ya 260, igika cya mbere, y’Igitabo cya gatatu cy’urwunge rw’amategeko mbonezamubano cyibukijwe haruguru iteganya ibikurikira: “Umuntu ntaryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangijwe n’ibikorwa by’abantu yishingiye cyangwa n’ibintu ashinzwe kurinda”.

[19] Dosiye y’urubanza igaragaza ko Manirarora Jean de Dieu yakoreraga sosiyete yitwa Rwanda Rudniki Ltd icukura amabuye y’agaciro yo mu bwoko bwa *Coltan*, akaba yarakoreraga mu Kirombe cyitwa Bukina gihereye mu Mudugudu wa Jabiro, Akagari ka Musongati, Umurenge wa Nyarusange, Akarereka Muhanga, Intara y’Amajyepfo. Igaragaza kandi ko ku wa 29/10/2015 saa tatu za mu gitondo (9:00), Manirarora Jean de Dieu yagwirwe n’icyo kirombe ari muri ako kazi ko gucukura amabuye y’agaciro, ko kandi yavunitse ukuguru, ndetse anakomereka ku musaya; harimo na raporo ya muganga igaragaza ko iyo mpanuka yamusigiye ubumuga buhoraho buri ku gipimo cya 40%.

[20] Dosiye igaragaramo kandi amasezerano y’ubwishingizi Police: 220/00013216- SG yo ku wa 16/04/2015, yabaye hagati ya Rwanda Rudniki Ltd na CORAR AG Ltd yaje kuba SAHAM Assurance Rwanda Ltd, ubu ikaba ari SANLAM AG Ltd. Ayo masezerano agaragaza ko umukozi uzakomereka mu kirombe cya Rwanda Rudniki Ltd akagira ubumuga buhoraho azahabwa indishyi zihwanye na 1.000.000Frw.

[21] Muri uru rubanza, Manirarora Jean de Dieu yareze Rwanda Rudniki Ltd ayisaba indishyi kubera ko yakomerekeye mu kirombe cyayo bikamusigira ubumuga bwa 40%, ikibazo kikaba ari cyo kumenya niba iyo sosiyete itaryozwa izo ndishyi.

[22] Urukiko rusomeye hamwe ingingo ya 258 n’iya 260 z’Igitabo cya gatatu cy’urwunge rw’amategeko mbonezamubano yakoreshwaga mu gihe Manirarora Jean de Dieu yakoraga impanuka rusanga zigaragaza ko ihame rusange ryo mu mategeko ari uko igikorwa cyose cy’umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse, ko kandi Umuntu ataryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangijwe n’ibikorwa by’abantu yishingiye cyangwa n’ibintu ashinzwe kurinda. Isesengura ry’ingingo ya 260 yibukijwe haruguru, rigaragaza ko iha inshingano yo kuzuzura ibyo ashinzwe kurinda, kandi akaba agomba kubiryoza, mu gihe byaba hari cyo byangirije hatitawe we ko yaba cyangwa ataba yakozwe ikosa. icyari kigamijwe muri iyi ngingo ni ukwirinda ko habaho ibyangirika ntihabeho uburyozwe hitwajwe ko nta kosa ryakozwe.

[23] Ibi bishimangirwa n’abahanga mu mategeko ari bo Philippe Le Tourneau na bagenzi be aho bavuga ko ku bijyanye n’uburyozwe buturutse ku byangijwe n’ibintu, umuntu ashinzwe kurinda (responsabilité du fait des choses) abanyamategeko bibajije hari kare uburyo umuntu ushinze kurinda ibintu yakwikuraho inshingano yo kuryozwa ibyangijwe n’ibyo bintu. Hemezwa ko ushinze kurinda ibintu nta kuntu ataryozwa ibyangijwe n’ibyo bintu kuko adashobora kwitwaza ko nta kosa yigeze akora, cyangwa se ko yitwaye nk’umuntu ushishoza kandi wita ku bintu uko bikwiye. Bakomeza bavuga ko inshingano zo gusana icyangijwe n’ikintu zifitwe n’uwafashe icyemezo cyo kugikoresha kugira ngo kimubyarire inyungu (risque profit).

[24] Abahanga mu mategeko Francois Terré, Philippe Smeler na Yves Lequette ~~bwa~~ bavugako imanza zaciwe zashyizeho mu buryo budahinduka igisobanuro, ko kurinda ikintu bigaragazwa no gukoresha, kuzuzura no kuyobora icyo kintu. Ko muri icyo gihe inshingano iba ishingiyeye ku bubasha. Bavuga

kandi ko kurinda ikintubihuye cyane n'uburenganzira nyabwo bwo kuba nyiracyo, ko kandi ari ibisanzweko nyiri kintu afatwa ko ari we ushinzwe ku kirinda.<sup>1</sup>

[25] Abandi bahanga bavuga ko ihame ari uko ikintu cyose gishobora kuba isoko y'inshingano, cyaba icyimukanwa cyangwa ikitimukanwa, igifatika cyangwa ikidafatika, ikiri mu gikorwa cyagwa ikitari mu gikorwa, igifite inenge cyangwa ikitayifite. Ko n'ibintu bitagaragaza ikibazo icyo ari cyo cyose nabyo bishyirwa muburyozwe buturutse ku byangijwe n'ibintu. Bavuga kandi ko kenshi na kenshi kumenya ushinzwe kurinda ikintu bitagorana, ko ari nyiri icyo kintu cyangwa ugifitemu gihe impanuka yabaga.<sup>2</sup>

[26] Urukiko rurasanga Rwanda Rudniki Ltd yemera ko ari yo nyiri kirombe gicukurwamo amabuye y'agaciro yo mu bwoko bwa Coltan, ko kandi cyagwiriye Manirarora Jean de Dieu wagikoragamo ku wa 29/10/2015, agakomereka, akaba afite ubumuga buhoraho bwa 40%. Kuba rero ari yo nyiri icyo kirombe kandi mu gihe impanuka yabaga akaba ari yo yagikoreshaga ikibyaza umusaruro, bivuzeko ari yo yagicungaga, akaba ari nayo igomba kuryozwa ibyangijwe nacyo.

[27] Urukiko rurasanga, kuba Manirarora Jean de Dieu yarakoreraga Rwanda Rudniki Ltd hanyuma ikirombe cyayo kikamugwira, agakomereka bikamusigira ubumuga buhoraho bwa 40%, nta kimubaza kuyishyura indishyi cyane ko ari yo nyiri icyo kirombe, akaba ari nayo yagikoreshaga, akaba ari nayo yari inshinzwe kugicunga. Kuba rero Manirarora Jean de Dieu yarahisemo kurega Rwanda ~~RUDNI~~Ltd ayisaba indishyi, nta kosa yakoze.

[28] Ku byo uhagarariye Rwanda Rudniki Ltd avuga ko nta kosa Rwanda Rudniki Ltd yakoze, ku buryo yagira icyo iryozwa, ko kandi ntacyo yari gukora kugira ngo Manirarora Jean de Dieu ye kugwirwa n'icyo kirombe, Urukiko rurasanga nta shingiro byahabwa, kuko uburyozwe budashingira gusa ku ikosa, nk'uko bisobanurwa n'abahanga barimo Philippe Le Tourneau n'abandi bavuzwe haruguru, ko bunashingira ku kuba umuntu ashinzwe kurinda ikintu runaka. Rurasanga rero mu gihe icyo kintu ashinzwe kurinda hari ibyo cyangirije, nta buryo ugishinzwe ataryozwa icyangijwe nacyo, kuko adashobora kwitwaza konta kosa yigeze akora, cyangwa se ko yitwaye nk'umuntu ushishoza kandi wita kubintu uko bikwiye.

[29] Urukiko rurasanga ibivugwa n'uhagarariye Rwanda Rudniki Ltd ko kuba yarafashe ubwishingizi muri SANLAM AG Plc (yahoze ari CORAR AG Ltd) ari ukugira ngo izishyure mu gihe cy'impanuka, ko kandi ingingo ya 260 y'Igitabo cya gatatu cy'urwunge rw'amategako mbonezamubano yari gukoreshwa mu gihe Rwanda Rudniki Ltd yari kuba nta bwishingizi yafashe, ko rero SANLAM AG Plc ari yo igomba kuryozwa indishyi, ntacyo byayimarira kuko gufata ubwishingizi bitayikuraho uburyozwe, ahubwo mu gihe Rwanda Rudniki Ltd yaba iciwe indishyi zirenze amafaranga y'ubwishingizi nta cyayibuza gusaba umwishingizi kuyisimbura ku ngano y'ayo yishingiye kwishyura. Mu gihe Manirarora Jean de Dieu atahisemo kurega umwishingizi (*action directe*) ahubwo agahitamo kurega Rwanda Rudniki Ltd ubwayo (*action personnelle*), Urukiko rurasanga nta kosa yakoze, kuko yakoresheje uburenganzira bwe bwo kurega uwo ahisemo.

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<sup>1</sup> « (...) la jurisprudence a fixé, puis retenu de manière constante, en dépit de quelques variantes, une définition en vertu de laquelle la garde est caractérisée par l'usage, le contrôle et la direction de la chose. La responsabilité est, dans cette mesure, attachée à l'autorité. De cette formule qui tend à définir un certain corpus, on doit, en premier lieu, déduire que la garde coïncidera très souvent avec le droit réel de propriété. Leur parenté est d'ailleurs si naturelle que le propriétaire est présumé gardien de la chose.(...)», voir Francois Terré, Philippe Smeler na Yves Lequette, Droit civil. Les obligations, 11ème édition, Paris, Dalloz, 2013, p.253.

<sup>2</sup> « Par principe, toute chose peut être source de responsabilité, qu'elle soit meuble ou immeuble, matérielle ou immatérielle, en mouvement ou inerte, viciée ou non. Dès lors, même les choses ne présentant aucune dangerosité entrent dans le champ d'application de la responsabilité du fait des choses. Le plus souvent, l'identification du gardien ne pose ne pose aucune difficulté, il s'agit à la fois du propriétaire (qui détient l'usus, le fructus et l'abus) et du détenteur de la chose lors de la réalisation du dommage.», <https://jurislog.fr/responsabilite-fait-des-choses-article> , 20/05/2022.

[30] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rurasanga nta kosa Manirarora Jean de Dieu yakoze asaba ko Rwanda Rudniki Ltd iryozwa indishyi zikomoka ku mpanuka yatewe n'ikirombe cyayo; bityo Rwanda RudnikiLtd igomba kwishyura zikomoka ku mpanuka Manirarora Jean de Dieu yakoreye mu kirombe.

## **2. Kumenya icyashingirwaho mu kubara indishyi MANIRARORA Jean deDieu agomba guhabwa**

[31] Uhagarariye Manirarora Jean de Dieu avuga ko nta tegeko ririho ryashingirwaho mu kubara indishyi ku bijyanye n'impanuka yabereye mu kirombe gicukurwamo amabuye y'agaciro, ko ari yo mpamvu basaba ko hashingirwa ku ngingo ya 9, agace ka 1 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ibyerekeye inshingano z'umucamanza mu gihe nta tegeko rijyanye n'ikiburanwa ririho, aho igira iti: Umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko.

[32] Avuga kandi ko basaba ko hashingirwa ku Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga kubera ko zose ari impanuka, no kuba uwakomerekeye mu mpanuka y'ikinyabiziga n'uwakomerekeye mu mpanuka yabereye mu kirombe bese ari abantu, ko indi mpamvu basaba Urukiko gushingira kuri iryo Teka ari uko hari urubanza N° RADA 0054/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/12/2014, haburana Kabayijuka na Leta y'u Rwanda, aho rwatanze umurongo ko mu gihe umuntu yagize ubumuga bidaturutse ku mpanuka yo mu muhanda, mu kugena indishyi hashobora gushingirwa ku Iteka rya Perezida N°31/01 ryo ku wa 25/08/2003 ryavuzwe haruguru.

[33] Akomeza avuga ko iryo Teka ari naryo Urukiko Rwisumbuye rwa Muhanga rwashigiyeho mu rubanza RC00006/2017/TGI/MHG, ko Urukiko Rukuru, Urugereko rwa Nyanza, rwemeje ko ibyakozwe n'Urukiko Rwisumbuye rwa Muhanga atari byo, rushingiye ku bitabo bigaragaza ibipimo ngenderwaho (Standards) bitari amategeko cyangwa amabwiriza, rubyitiranyije n'amabwiriza rubifata nk'amategeko kandi atari byo. Avuga kandi ko uretse kuba ibikubiye muri ibyo bitabo atari amabwiriza kuko atigeze asohoka mu Igazeti ya Leta, ko n'ibikubiyemo usanga bivuguruzanya, bikaba bitashingirwaho.

[34] Uhagarariye Rwanda Rudniki Ltd avuga ko nta rindi tegeko ryari gushingirwahouretse irijyanye n'ubucukuzi bwa Mine na Kariyeri, rigahuzwa n'ibikubiye mu mabwiriza yerekeye ibipimo ngenderwaho by'ubwirinzi mu bucukuzi bwa Mine na Kariyeri mu Rwanda byakozwe n'Ikigo gishinzwe Mine, Peteroli na Gazi mu Rwanda. Ko ibivugwa n'urega ko ayo mabwiriza atasohotse mu Igazeti ya Leta, koUrukiko rwabisuzuma.

[35] Avuga kandi ko mu gihe Urukiko rutashingira ku itegeko ryerekeye mine na kariyeri, asaba Urukiko rw'Ubujurire gushyiraho umurongo ku bijyanye n'impanuka yabereye mu kirombe, ko ibyo uhagarariye Manirarora Jean de Dieu avuga ko hashingirwa ku Iteka rya Perezida basanga atari byo kuko yaba ari "interprétation par analogie", ko kandi urubanza RADA 0054/12/CS rwaciwe n'Urukiko rw'Ikirenga rudakwiye gushingirwaho, kuko rutanga umurongo ku ikosa ry'umuganga mu kazi k'ubuganga gusa, ko ahubwo Urukiko rusanze rugomba gushyiraho umurongo utandukanye n'uwo Urukiko Rukuru, Urugereko rwa Nyanza rwashyizeho, rwajya mu mwanya w'Umushingamategeko, hanyuma rugashyiraho umurongo.



[36] Uhagarariye SANLAM AG Plc avuga ko we asanga Iteka rya Perezida ritashigirwaho kuko atari impanuka yo mu muhanda, ko kandi amabwiriza nayo atashigirwaho kuko atigeze atangazwa mu Igazeti ya Leta, ko rero Urukiko ari rwo rwashyiraho umurongo.

## **UKO URUKIKO RUBIBONA**

[37] Ingingo ya 9 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, iteganya ibikurikira: "Umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko".

[38] Dosiye y'urubanza igaragaza ko mu rubanza RC00006/2017/TGI/MHG rwaciwe n'Urukiko Rwisumbuye rwa Muhanga, urwo Rukiko rwasanze Iteka rya Perezida atari ryo rigomba gukoreshwa kuko Manirarora Jean de Dieu atakomerekejwe n'impanuka itewe n'ikinyabiziga, ahubwo yagwirwe n'ikirombe cya Rwanda Rudniki Ltd, ikaba yaragize uburangare bwo kurinda impanuka umukozi wayo, rwemeza ko mu gutanga indishyi hagomba gushingirwa ku ngingo ya 260 y'Itegeko ryo ku wa 30 Nyakanga 1888 rishyiraho Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano, ariko hakifashishwa uburyo bwo kubara indishyi busa n'ubuteganywa mu Iteka rya Perezida, ko kandi kubara indishyi muri ubwo buryo byatanzweho umurongo n'Urukiko rw'Ikirenga mu rubanza Kabayijuka yarezemo Leta y'u Rwanda rwaciwe ku wa 19/12/2014, maze rumugenera 4.099.607 Frw y'indishyi mbangamirabukungu, 432.000Frw y'indishyi z'akababaro, 432.000Frw y'indishyi mbangamiraburanga na 540.000Frw y'Indishyi z'ibangamira ry'uburambe ku kazi.

[39] Imikirize y'urubanza N° RCA00104/2017/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, ku wa 10/07/2018, igaragaza ko urwo Rukiko rwashingiye ku gitabo gikubiyemo ibipimo ngenderwaho by'ubwirinzi mu bucukuzi bwa Mine na Kariyeri mu Rwanda byakozwe n'Ikigo gishyinzwe Mine, Peteroli na Gazi mu Rwanda cyakorewe i Kigali mu Gushyirahamwe 2017, ku rupapuro rwa 13 mu gace ka (J) ahavugaga ibikurikira: "Gufatira ubwishingizi bw'akazi abakozi bose, bwishingira gutanga ingurane ingana n'ibura na 2.000.000Frw ku bumuga buhoraho na 1.500.000Frw igihe umukozi yapfuye, hamaze kwishyurwa amafaranga yose yakoreshejwe", maze rwemeza ko Manirarora Jean de Dieu agomba guhabwa indishyi zikomoka ku kuba impanuka yaramusigiye ubumuga bungana na 40% zingana 2.000.000Frw, runamugenera n'ayo yakoresheje yivuzza ndetse n'ayo yakoresheje mu rubanza.

[40] Urukiko rurasanga nta tegeko rihari rirebana n'impanuka yabereye mu kirombe gicukurwamo amabuye y'agaciro, kubera iyo mpamvu rushingiye ku ngingo ya 9 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, aho ivugaga ko iyo nta tegeko rijyanye n'ikiburanwa, Umucamanza ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko. Rurasanga rero mu kugenera Manirarora Jean de Dieu indishyi hagomba gushingirwa ku ihame rusange ryerekeye uburyozwe buturutse ku byangijwe n'ibintu umuntu ashinzwe kurinda (responsabilité du fait des choses).

[41] Urukiko rurasanga ibivugwa n'uhagarariye Manirarora Jean de Dieu ko mu gihe nta tegeko ririho rirebana n'impanuka zabereye mu kirombe basaba Urukiko gushingira ku Iteka rya Perezida N° 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga kubera ko zose ari impanuka, no kuba uwakomerekeye mu mpanuka y'ikinyabiziga n'uwakomerekeye mu mpanuka yabereye mu kirombe bose ari abantu, nta shingiro bifite, kuko nk'uko iri Teka ubwaryo ribiteganywa, rirebana gusa n'impanuka zitewe

n'ibinyabiziga. Izo mpanuka zikaba zitandukanye n'impanuka Manirarora Jean de Dieu yagize kuko we yakomerekeye mu kirombe, bityo iri Teka rikaba ritagomba gushingirwaho muri uru rubaza kuko ridahuye n'ikiburanwa. Urukiko rurasanga itegeko cyangwa iteka ryihariye (spécial) rigomba gukoreshwa ku mwihariko waryo, ibidafite itegeko ryihariye bigakemurwa n'amahame cyangwa amategeko rusange.

[42] Ku byo uhagarariye Manirarora Jean de Dieu avuga ko indi mpamvu ituma basaba Urukiko gushingira ku Iteka rya Perezida N° 31/01 ryavuzwe haruguru ari uko hari urubanza RADA0054/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/12/2014 rwatanze umurungo ko mu gihe umuntu yagize ubumuga bidaturutse ku mpanuka yo mu muhanda, mu kugena indishyi hashobora gushingirwa kuri iryo Teka, Urukiko rurasanga nta shingiro byahabwa, kuko muri urwo rubanza, Urukiko rw'Ikirenga rwabariye Kabayijuka Gaspard indishyi mbonezamusaruro rukoresheje uburyo (formule) bugaragara muri iryo Teka ariko ntaho rwigeze rugaragaza ko rwashingiye kuri iryo Teka, kandi nta nubwo rwigeze ruvuga ko mu gihe umuntu yagize ubumuga bidaturutse ku mpanuka yo mu muhanda, mu kumugenera indishyi hashobora kwifashishwa uburyo (formule) bugaragara mu Iteka rya Perezida N°31/01 ryavuzwe haruguru, ngo rube rwarabitanzeho umurungo rutyo. Bigaragara ahubwo ko hashingiwe ku kibazo rwasuzumaga muri urwo rubanza, rwasanze rushobora kwifashisha ibikubiye muri iryo teka, ariko ntirwigeze rubicaho iteka ko ar iryo rigomba kwifashishwa mu kubara indishyi zose igihe ntacyo itegeko ryagennye ; bityo rero, hakaba nta gitegeka uru Rukiko kurushingiraho.

[43] Ku kibazo cyo kumenya niba Urukiko Rukuru, Urugereko rwa Nyanza, rwaragombaga gushingira ku gitabo gikubiyemo ibipimo ngenderwaho by'ubwirinzi mu bucukuzi bwa Mine na Kariyeri mu Rwanda byakozwe n'ikigo gishyinzwe Mine, Peteroli na Gazi mu Rwanda cyakorewe i Kigali mu gushyirwa 2017, kuko ibikubiye muri icyo gitabo rwabyise amabwiza, Urukiko rurasanga ari ngombwa gusuzuma niba byafatwa nk'Amabwiriza.

[44] Umuhanga Serge Guinchard avuga ko amabwiriza ari inyandiko yo mu rwego rusange yashyizweho n'inzego zibifitiye ububasha, ko hari amabwiriza aba agamije gushyira mu bikorwa itegeko (*règlement d'application*) n'amabwiriza yihagije (*règlement autonome*)<sup>3</sup>. Umuhanga Gérard Cornu nawe avuga ko amabwiriza ari inyandiko yo mu rwego rusange yashyizweho n'Umuyobozi ubifitiye ububasha, agamije gukurikizwa ku bintu bitarebwa n'itegeko cyangwa agamije gushyira mu bikorwa itegeko.<sup>4</sup> Muri rusange amabwiriza ni inyandiko zo mu rwego rusange zashyizweho umukono n'Umuyobozi ubifitiye ububasha, zigamije gushyira mu bikorwa itegeko cyangwa zigamije gukurikizwa ku bintu bitarebwa n'itegeko kandi zigatangazwa mu Igaseti ya Leta.

[45] Kuba nta kigaragaza ko iriya nyandiko yashingiweho n'Urukiko Rukuru, Urugereko rwa Nyanza, yujuje ibisabwa, nko kuba hari umuyobozi ubifitiye ububasha wayishyizeho umukono, no kuba yaratangajwe mu Igaseti ya Leta, birumvikana ko Urukiko Rukuru, Urugereko rwa Nyanza, rutagombaga gushingira ku bikubiye muri icyo gitabo rugenera Manirarora Jean de Dieu indishyi yasabaga, kuko nta mbaraga z'itegeko bifite.

### **3. Kumenya indishyi zigomba gutangwa, uko zibarwa, n'ugomba kuziryoza**

[46] Uhagarariye Manirarora Jean de Dieu avuga ko mu kubara indishyi hashingirwa ku mafaranga 15.000Frw Manirarora Jean de Dieu yatahanaga buri munsu. Asobanura ko ubwo Umuyobozi wa Rwanda Rudniki Ltd yabazwaga mu bugenzacyaha, ku kibazo cya 12 yasubije ko abacukura amabuye

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<sup>3</sup> Règlement : Acte de portée générale et impersonnelle édicté par les autorités exécutives compétentes. Il y a règlement d'application et règlement autonome, (Serge GUINCHARD, Lexique des termes juridiques 2015-2016, 23<sup>ème</sup> édition, 2015, Paris, Dalloz, p. 887.)

<sup>4</sup> Règlement : Texte de portée générale émanant de l'autorité exécutive, a pour objet, soit de disposer dans des domaines non réservés au législateur, soit de développer les règles posées par la loi en vue d'en assurer l'application. (Gérard CORNU, Vocabulaire Juridique, 2007-, 8<sup>ème</sup> édition, Paris, Quadrige/PUF, p. 789.)

y'agaciro bahembwa bitewe n'umusaruro, ko kandi badashobora kujya muni ya 12.000Frw/kg, ku kibazo cya 13 abajijwe ibiro umuntu umwe acukura ku muni, asubiza ko ikipe y'abantu 8 ishobora gucukura ibiro 12 ku muni, ko umuntu umwe yatahanaga 15.000Frw ku muni, ko rero ayo mafaranga ariyo agomba gushingirwaho mu kubara indishyi.

[47] Avuga kandi ko ku bijyanye n'indishyi mbangamirabukungu hadakwiye gushingirwa ku mushahara muto ntarengwa wemewe n'itegeko (SMIG) ahubwo hagomba gushingirwa kuri 15.000 Frw ku muni, ko hashingiwe kuri uwo mushahara asanga Manirarora Jean de Dieu yabarirwa indishyi mbangamirabukungu zihwanye na  $(15.000 \text{ Frw} \times 12 \times 30 \times 36 \times 40\%) / 1 + (8\% \times 36) = 20.041.237 \text{ Frw}$ .

[48] Uhagarariye Rwanda Rudniki Ltd avuga ko imiterere y'akazi ko gucukura amabuye y'agaciro ari uko uwacukuye yahemberwaga amabuye y'agaciro yacukuye, ko kandi hari igihe uwacukuye yatahaga ntayo yabonye, ko rero igiciro cya 15.000Frw ku muni kidakwiye gushingirwaho kuko nta kigaragaza ko Manirarora Jean de Dieu yashoboraga kubona 15.000Frw ku muni. Abajijwe kuri SMIG ya 3.000Frw yemejwe n'Urukiko rw'Ikirenga, avuga ko nayo idakwiye gushingirwaho kuko nta kigaragaza ko yashoboraga kubona 3.000Frw ku muni.

[49] Uhagarariye SANLAM AG Plc avuga ko kuba SANLAM AG Plc itarigeze iba umuburanyi mu manza zabanje, n'awareze akaba ntacyo ayisaba, ahubwo akaba asaba Urukiko gutegeka Rwanda Rudniki Ltd kumwishyura indishyi zikomoka ku mpanuka yagiriye mu kazi, asanga izo ndishyi zitaryozwa SANLAM AG Plc. Avuga kandi ko Urukiko ruramutse rubibonye ukundi rukabona ko hari icyo SANLAM AG Plc yategekwa muri uru rubanza, yategekwa kwishyura amafaranga akubiye mu masezerano yagiranye na Rwanda Rudniki Ltd ahwanye na  $1.000.000 \text{ Frw} \times 40\% = 400.000 \text{ Frw}$  hatarimo amafaranga y'ibihembo by'avoka.

## **UKO URUKIKO RUBIBONA**

[50] Ingingo ya 260, igika cya mbere, y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano cyariho mu gihe Manirarora Jean de Dieu yakoraga impanuka mu mwaka wa 2015 iteganya ibikurikira: Umuntu ntaryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangijwe n'ibikorwa by'abantu yishingiye cyangwa n'ibintu ashinzwe kurinda.

[51] Dosiye y'urubanza igaragaramo icyemezo cya muganga cyo ku wa 14/05/2016 kigaragaza ko Manirarora Jean de Dieu afite ubumuga buhoraho buri ku gipimo cya 40%. Igaragaramo kandi icyemezo cy'amavuko na kopi y'irangamuntu bya Manirarora Jean de Dieu bigaragaza ko yavuze ku wa 01/01/1986. Harimo inyandikomvugo yo mubugenzacyaha igaragaza ko Manirarora Jean de Dieu yagwirihweho n'ikirombe cya Rwanda Rudniki Ltd ku wa 29/10/2015, ko kandi muri icyo gihe yari afite imyaka 29. Inagaragaramo amasezerano y'ubwishingizi Police: 220/00013216- SG yo ku wa 16/04/2015, yabaye hagati ya Rwanda Rudniki Ltd na CORAR AG Ltd yahindutse SANLAM AG Ltd agaragaza ko umukozi uzakomerekerwa mu kirombe cya Rwanda Rudniki Ltd akagira ubumuga buhoraho bwa 100% azahabwa indishyi zihwanye na 1.000.000Frw, naho uzakomerekerwa akazagererwa indishyi hashingiwe ku ngano y'ubumuga yagize.

[52] Nk'uko byagaragajwe haruguru inkiko zombi zibanza zasanze nta tegeko ryihariye riteganywa ibipimo byaherwaho mu kubara indishyi ku mpanuka yabereye mu kirombe ari yo mpamvu Urukiko Rwisumbuye rwa Muhanga rwazigennye rushingiye ku ngingo ya 260 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano ariko ruzibara rwifashishe uburyo bwo kubara indishyi busa n'ubuteganywa mu Iteka rya Perezida, naho Urukiko Rukuru, Urugereko rwa Nyanza, rushingira ku gitabo gikubiyemo ibipimo ngenderwaho by'ubwirinzi mu bucukuzi bwa Mine na Kariyeri mu Rwanda byakozwe n'Ikigo gishyinzwe Mine, Peteroli na Gazi mu Rwanda.

[53] Urukiko rurasanga nk'uko byavuzwe haruguru nta tegeko ryihariye ririho rirebana n'uburyo indishyi zikomoka ku mpanuka zabereye mu birombe bicukurwamo amabuye y'agaciro zibarwa, kubera iyo mpamvu kandi rushingiye ku biteganywa n'ingingo ya 9 y'Itegeko N° 22/2018 ryibukijwe haruguru rurasanga Manirarora Jean de Dieu agomba kugenerwa indishyi z'akababaro kubera ububabare yatewe n'impanuka yagize, n'indishyi mbonezamusaruro kubera ko impanuka yagiriye mu kirombe cya Rwanda Rudniki Ltd yamuvukije umusaruro yahoraga abona kuko yamusigiye ubumuga buhoraho buri ku gipimo cya 40%.

[54] Urukiko rurasanga Manirarora Jean de Dieu agomba kugenerwa indishyi z'akababaro mu bushishozi bw'Urukiko nk'uko kugeza ubu byagiye bigenda ku mpanuka zo kwa muganga mu manza zitandukanye zagiye zicibwa n'uru Rukiko, harimo urubanza RCAA00073/2018/CA rwaciwe ku wa 19/07/2019, haburana Nyirabatesi Laurence n'Ibitaro byitiriwe Umwami Fayisali (King Faisal Hospital), mu gika cyarwo cya 37. Uru Rukiko, rumaze kwemeza ko ibyo Bitaro byagize uburangare, rwageneye Nyirabatesi Laurence mu bushishozi bw'urwo indishyi z'akababaro zingana na 28.000.000Frw. Ibyo ni nako byagenze mu rubanza RCAA00008/2020/CA rwaciwe ku wa 25/06/2021, haburana Ndizeye Alphonse na Kibungo Medical Center, aho uru Rukiko rwemeje ko indishyi zagenwe n'Urukiko Rwisumbuye rwa Ngoma, mu bushishozi bw'urwo ari zo zikurikije amategeko, akaba ari zo zigomba kugumaho, naho izagenwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, zatanzwe hashingiwe ku Iteka rya Perezida N° 31/01 ryo ku wa 25/8/2003 zikaba zarashingiye ku Itegeko ritariho kuko iryo Teka ntaho rihuriye n'ikiburanwa, hanyuma rutegeka Kibungo Medical Center guha Ndizeye Alphonse mu izina ry'umwana we Irasubiza Amani indishyi zingana na 35.000.000Frw.<sup>5</sup>

[55] Urukiko rurasanga, kuba Manirarora Jean de Dieu yarakomereye mu kirombecya Rwanda Rudniki Ltd bikamuviramo ubumuga buhoraho buhwaye 40%, nta gushidikanya byaramuteye akababaro, bityo mu bushishozi rwarwo rukaba rumugeye indishyi z'akababaro zihwanye na 500.000Frw.

[56] Ku bijyanye n'indishyi mbonezamusaruro Manirarora Jean de Dieu agomba guhabwa, Urukiko rurasanga nazo zigomba kugenwa mu bushishozi bw'Urukiko ariko mu kuzibara hakitabwa ku ngano y'ubumuga yagize, ku myaka yari asigaje kugira ngo agere ku myaka 65 (imyaka yo kujya mu kiruhuko cy'izabukuru), hakanakoreshwa uburyo (formule) Urukiko rw'Ikirega rwakoresheje mu rubanza N° RADA 0054/12/CS, rubarira Kabayijuka Gaspard indishyi mbonezamusaruro kubera ubumuga yatewe n'urushinge yaterewe ku Kigo Nderabuzima cya Nyarubuye, aho Urukiko rw'Ikirega rwafashe umushahara w'ukwezi ruwukuba n'amezi 12, rukuba n'ingano y'umubuga n'igihe cyo gukora yari asigaje, rubigabanya ku ijana.<sup>6</sup>

[57] Urukiko rurasanga mu kubara indishyi mbonezamusaruro Manirarora Jean de Dieu agomba guhabwa rutashigira ku mafaranga 15.000 Frw uhagarariye Manirarora Jean de Dieu avuga ko ari yo yatahanaga buri muni abishingiye kumvugo z'Umuyobozi wa Rwanda Rudniki Ltd ubwo yabazwaga mu Bugenzacyaha, kuko Umuyobozi wa Rwanda Rudniki Ltd yavuze ko umukozi yahemberwaga amabuye y'agaciro yacukuye, byumvikana ko hari igihe yashoboraga kuyabona n'igihe atashoboraga kuyabona, haba rero hatakwemezwa ko yabonaga 15.000 Frw ku muni cyane ko nawe nta kimenyetso atanga cyerekana ko ari yo yatahanaga buri muni, akaba ariyo mpamvu rusanga hagomba gushingirwa ku mushahara muto ntarengwa wemejwe n'Urukiko rw'Ikirenga mu rubanza RCAA0049/14/CS, haburana SORAS AG Ltd N'umuhoza Pacifique n'abandi<sup>7</sup>. Bityo rushyize mu gaciro rurasanga

<sup>5</sup> Reba igika cya 36 n'icya 46 by'urubanza No RCAA 00008/2020/CA rwaciwe ku wa 25/06/2021, haburana NDIZEYE Alphonse na KIBUNGO Medical Center na PRIME Insurance Company Plc.

<sup>6</sup> Reba igika cya 31 cy'urubanza No RADA 0054/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/12/2014, haburana KABAYIJUKA Gaspard na Leta y'u Rwanda (Minisanté).

<sup>7</sup> Reba igika cya 28 cy'urubanza No RCAA 0049/14/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 25/11/2016, haburana SORAS AG Ltd n'UMUHOZA Pacifique n'abandi

hatakwemezwa ko Manirarora Jean de Dieu yakoraga buri muni, ariko kuba yari afite icyo akora, akaba yarafite umuryago atunze nk'uko bigaragara muri dosiye ko mu gihe yakoraga impanuka yari afite abana babiri, rurasanga yarashoboraga gukora byibuzwe iminsi itatu (3) mu cyumweru, ni ukuvuga iminsi cumi n'ibiri (12) mu kwezi.

[58] Kubera izo mpamvu, Urukiko rugeneye Manirarora Jean de Dieu indishyi mbonezamusaruro zibazwe mu buryo bukurikira: 3.000 Frw (umushahara muto ntarengwa) x 12 (iminsi yashoboraga gukora mu kwezi) x 12 (amezi y'umwaka) x 40 (igipimo cy'ubumuga) x 36 (igihe cyo gukora yari asigaje kugira ngo agire imyaka 65): 100 = 6.220.800 Frw

[59] Ku bijyanye n'amafaranga Manirarora Jean de Dieu yakoresheje yivuzwa, Urukiko rurasanga ayo yagenewe n'Urukiko Rukuru, Urugereko rwa Nyanza ahwanye na 100.000Frw ari mu gaciro, cyane ko ari nayo ari mu masezerano yo ku wa 16/04/2015, Rwanda Rudniki Ltd yagiranye na SANLAM AG Ltd (yahoze ari CORAR AG Ltd)<sup>8</sup>, akaba rero ariyo Manirarora Jean de Dieu agomba kugenerwa muri uru rubanza.

[60] Urukiko rurasanga indishyi zose Manirarora Jean de Dieu agenewe zigomba kwishyurwa na Rwanda Rudniki Ltd ifatanyije n'umwishingizi wayo SANLAM AG Ltd (yahoze ari CORAR AG Ltd) ku kigero yishingiye kingana na 1.000.000Frw ku mukozi wagize ubumuga buhoraho bwa 100%, no ku ngano y'ubumuga ku mukozi wagize ubumuga buhoraho butageze ku 100% nk'uko bikubiye mu masezerano y'ubwishingizi Police: 220/00013216- SG yo ku wa 16/04/2015, impande zombi zagiranye<sup>9</sup>. Rurasanga Manirarora Jean de Dieu yaragize ubumuga buri ku gipimo cya 40%, SANLAM AG Ltd ikaba igomba kwishyura 1.000.000 Frw x40: 100 = 400.000 Frw, ikanishyura 100.000 Frw yo kwivuzwa nk'uko impande zombi zabyumvikanyeho muri ayo masezerano. Ibi ni nako uru Rukiko rwabibonye mu rubanza RCAA 00008/2020/CA rwavuzwe haruguru, aho rwemeje ko Kibungo Medical Center, ihagarariwe na Dr Kanimba Pierre Celestin, igomba kwishyura indishyi yategetswe ifatanyije n'umwishingizi wayo Prime Insurance Company Plc nk'uko babyumvikanyeho mu masezerano y'ubwishingizi N° 413/00021583- SG Police impande zombi zagiranye ku wa 24/06/2016, no ku kigero kitarenze icyo impande zombi zumvikanyeho muri ayo masezerano y'ubwishingizi.<sup>10</sup>

#### **4. Kumenya niba amafaranga y'ibyagiye ku rubanza asabwa muri uru rubanza afite ishingiro**

[61] Uhagarariye Manirarora Jean de Dieu ashingiye ku ngingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, asaba Urukiko rw'Ubujuriregutegeka Rwanda Rudniki Ltd guha Manirarora Jean de Dieu 2.500.000Frw y'igihembo cya Avoka na 500.000Frw y'ikurikiranarubanza mu nzego zose kuko yifashishije abavoka ndetse ko yanakoresheje abahesha b'inkiko mu mirimo itandukanye. Avuga kandi ko basaba gusubizwa amagarama bishyuye muri uru Rukiko ndetse na 75.000Frw y'amagarama bishyuye mu Rukiko Rukuru basubirishamo urubanza ingingo nshya.

[62] Uhagarariye SANLAM AG Plc avuga ko kuba Rwanda Rudniki Ltd izi neza ko SANLAM AG Plc itigeze iba umuburanyi mu manza zabanje ariko igahitamo kuyihamagaza kuri uru rwego, ko isaba urukiko gutegeka Rwanda Rudniki Ltdkuyiha 500.000Frw y'igihembo cya Avoka.

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<sup>8</sup> Reba amasezerano y'ubwishingizi Police: 220/00013216-SG yo ku wa 16/04/2015, yabaye hagati ya RWANDA RUDNIKI Ltd na SANLAM AG Ltd, muri Tableaux, ahaditse: Frais médicaux.

<sup>9</sup> Reba amasezerano yavuzwe haruguru muri Tableaux, ahaditse : Invalidité suite Accident. Urebe n'igika cyanditse aya magambo : En cas d'invalidité permanente partielle (I.P.P), l'indemnité de l'invalidité permanente totale est réductible dans les proportions prévues à l'article 18 des conditions générales.

<sup>10</sup> Reba igika cya 36 cy'urubanza RCAA 00008/2020/CA.

[63] Uhagarariye Rwanda Rudniki Ltd avuga ko Manirarora Jean de Dieu nta ndishyi na nke akwiye guhabwa, kuko ari we wareze nabi. Ko n'amafaranga Sanlam AG Plc isaba nta shingiro afite kuko ari umwishingizi kuri iriya mpanuka.

[64] Avuga kandi ko Rwanda Rudniki Ltd isaba Urukiko rw'Ubujurire gutegeka Manirarora Jean de Dieu kuyiha 2.000.000Frw y'igihembo cya Avoka mu Rukiko rw'Ubujurire na 1.000.000Frw y'igihembo cya Avoka yo mu nzego ebyiri zabanje, ndetse na 2.500.000Frw yo gukurikirana urubanza ku nzego zose.

[65] Uhagarariye Manirarora Jean de Dieu yiregura ku ndishyi Rwanda RudnikiLtd isaba avuga ko ntazo yahabwa, kubera ko kuva imanza zatangira, impamvu yazo ari impanuka yatewe n'ikirombe cyayo kubera ko itashize uburyo bw'ubwirinziku kirombe cyayo.

### **UKO URUKIKO RUBIBONA**

[66] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru iteganya ibikurikira: "Ikirego cy'amafaranga y'ikurikirana rubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo, gishobora kandi kwakirwa kikaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".

[67] Ingingo ya 26, igika cya mbere, y'Amabwiriza N° 01/2014 agena ibihembo mbonera by'abavoka iteganya ibikurikira : "Avoka w'urega wateguye dosiye n'inyandiko ashobora gusaba igihembo fatizo kiri hagati y'amafaranga 500.000 n'amafaranga 5.000.000, cyongerwaho, iyo hari imyenda yagarujwe nawe ubwe cyangwa n'intumwa ye, igihembo cyinyongera cyo kwishyuza, kibarwa hakurikijwe ijanisha riteganywa mu gace ka II k'ingingo ya 23".

[68] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Manirarora Jean de Dieu asaba afite ishingiro, ariko ayo asaba nta kigaragazako ari yo yatanze, bityo mu bushishozi bw'Urukiko rumugeneye 1.000.000Frw y'igihembo cya Avoka ku nzego zose na 500.000Frw y'ikurikiranarubanza n'amagarama, ku nzego zose, yose hamwe akaba 1.500.000Frw, agomba kwishyurwa na Rwanda Rudniki Ltd.

[69] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Rwanda Rudniki Ltd isaba nta shingiro afite kuko imyiregurire yayo nta shingiroifite.

[70] Urukiko rurasanga amafaranga y'igihembo cya Avoka SANLAM AG Plc isaba Rwanda Rudniki Ltd kuko yayizanye muri uru rubanza nta shingiro afite, kuko nk'uko byagaragajwe haruguru SANLAM AG Plc yishingiye Rwanda Rudniki Ltd, bityo kuba yarayiza muri uru rubanza nk'umwishingizi nta kosa yakoze.

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

[71] Rwemeje ko ikirego cyatanzwe na Manirarora Jean de Dieu gisaba gusubirishamo ku mpamvu z'akarengane urubanza RCA00104/2017/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, ku wa 10/07/2018, gifite ishingiro kuri bimwe.

[72] Rwemeje ko imikirize y'urubanza RCA00104/2017/HC/NYZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 10/07/2018, gihindutse mu ngingo zayo zose.

[73] Rutegetse Rwanda Rudniki Ltd guha Manirarora Jean de Dieu 6.220.800Frw y'indishyi mbonezamusaruro, 500.000Frw y'indishyi z'akababaro na 100.000Frw yo kwivuza, yose hamwe akaba 6.820.800Frw, SANLAM AG Plc ikishyuramo 400.000Frw y'indishyi na 100.000Frw yo kwivuza akubiye mu masezerano y'ubwishingizi CORAR AG Ltd yahindutse SANLAM AG Plc yari ifitanye na Rwanda Rudniki Ltd nk'uko byasobanuwe haruguru. Bivuze ko Rwanda Rudniki Ltd izishyura 6.320.800Frw, naho SANLAM AG Plc ikishyura 500.000Frw.

[74] Rutegetse Rwanda Rudniki Ltd guha Manirarora Jean de Dieu 1.000.000Frw y'igihembo cya Avoka na 500.000Frw y'ikurikiranarubanza n'amagarama, ku nzego zose, yose hamwe akaba 1.500.000Frw.

[75] Ruvuze ko amagarama y'urubanza aherera ku Isanduku ya Leta.