

## BRD v. UWIMBABAZI

[Rwanda URUKIKO RW'IKIRENGA – RCOMA0052/12/CS (Hatangimbabazi, P.J., Mukamulisa na Hitiyaremye, J.) 04 Ukuboza 2015]

*Amategeko agenga amasezerano – Amasezerano y'inguzanyo – Inyungu zisanzwe n'iz'ubukererwe – Uwahawe inguzanyo na banki agomba kwishyura inyungu zisanzwe n'iz'ubukererwe igihe atubahirije amasezerano kuko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye kandi akaba agomba kubahirizwa nta buryarya – Itegeko ryo ku wa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 33 na 480.*

*Amategeko agenga amasezerano – Amasezerano y'inguzanyo – Guhabwa inguzanyo y'inyongera – Banki zifite uburenganzira bwo gutanga inguzanyo cyangwa kutazitanga zitagombye kwisobanura; ahubwo igishingirwaho ahanini ni icyizere banki runaka igirira umukiliya wayo n'ubushobozi iba ibona afite bwo kwishyura inguzanyo asaba – Itegeko ryo ku wa 30/07/1988 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 33.*

*Amategeko agenga amasezerano – Amasezerano y'inguzanyo – Indishyi zikomoka ku kutubahiriza amasezerano y'inguzanyo – Banki ntiyahabwa indishyi zo kutubahiriza amasezerano igihe yahawe indishyi zisanzwe n'iz'ubukererwe.*

*Amategeko agenga imiburanishirize y'imanza z'ubucuruzi – Kwishyura umwishingizi – Kuba yarishingiye umwenda ubwabyo ntibihagije ngo ategewe kuwishyura mu gihe atabaye umuburanyi mu rubanza – Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 10 n'iya 117.*

*Indishyi – Indishyi zishingiye ku gihombo – Ntawuhabwa indishyi zishingiye ku gihombo igihe nta kosa uwo asaba ko zicibwa yamukoreye.*

**Incamake y'Ikibazo:** Uwimbabazi Jean-Paul yagiranye amasezerano y'inguzanyo na BRD. BRD yayimuhaye mu byiciro bitandukanye. Nyuma yaje kongera kwaka indi nguzanyo y'inyongera kugirango yagure umushinga we ariko BRD ntiyayimuha ivuga ko yayashakiraga ibidakubiye mu masezerano.

Ibi byatumye Uwimbabazi Jean-Paul arega BRD mu Rukiko Rukuru rw'Ubucuruzi avuga ko imyifatire yayo yamuteje igihombo n'akababaro. Mu guca urubanza, Urukiko rwamutegetse guha BRD 302.000.000Frw y'umwenda ayibereyemo, indishyi zo kutubahiriza amasezerano zingana na 5.000.000Frw, hamwe na 500.000Frw y'igihembo cy'Avoka n'ikurikiranarubanza, agatanga kandi 4% yayo angana na 220.000Frw y'umusogongerwa wa Leta na 6.900Frw y'amagarama y'urubanza.

Mu gufata iki cyemezo urwo Rukiko rwavuze ko nta kosa BRD yakoze ryayiviramo kuryozwa indishyi, kuko amasezerano y'inguzanyo ashingiraho ikirego cye yarimo impamvu zatuma atubahirizwa (conditions résolutoires). Ku bijyanye n'indishyi zasabwaga na BRD Urukiko rwavuze ko zitagomba gutangwa kuko umushinga zatangiwe utigeze ukora. Rwavuze kandi ko uwari wishingiyeye umwenda atagomba gutegekwa gufatanywa n'uwahawe inguzanyo kuyishyura kuko atigeze ahamagarwa.

BRD yajuririye Urukiko rw'Ikirenga ivuga ko umucamanza yanze kuyigenera inyungu z'umwenda wose Uwimbabazi yafashe inavuga ko Mukabutera nk'umwishingizi agomba gufatanywa na Uwimbabazi kwishyura iyo nguzanyo. Uwimbabazi yasabye Urukiko ko

rwakwimura iburanisha kugira ngo Mukabuterwa wishingiye inguzanyo nawe ahamagazwe. Yanavuze kandi ko hari n'imishyikirano yatangiye kugirana na BRD hashakwa uburyo ikibazo bafitanye cyakemuka. Kuri izi ngoboka, Urukiko rwemeje ko urubanza ruburanishwa umwishingizi adahari.

Uwimbabazi avuga ko inyungu BRD isaba itazihabwa. Ahubwo yemeye gusubiza gusa amafaranga yahawe inguzanyo kuko iyo nguzanyo yari iyo mu rwego rw'ishoramari bitandukanye n'inguzanyo y'ubucuruzi, avuga kandi ko BRD itari gukomeza kubara inyungu mu gihe yari yahaye uwimbabazi (delai de grace).

**Incamake y'icyemezo:** 1. Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye kandi aba agomba kubahirizwa nta buryarya. Kuba rero impande zombi zaragiranye amasezerano zikagira ibyo zumvikana harimo inyungu zisanzwe ndetse n'izubukererwe nyamara Urukiko rukemeza ko Banki itagomba guhabwa izo nyungu rushingiye ku kuba umushinga iyo nguzanyo yatangiye utarigeze ukora nyamara rwari rumaze kwemeza ko nta makosa yashyirwa kuri iyo banki, bigaragaza ukwivuguruza k'Urukiko ku bijyanye n'ibisobanuro kuri izo nyungu. Bityo, icyemezo rwazifasheho kigomba guhinduka.

2. Ntiyaburanisha ko banki ariyo yamushyizeho amananiza yanga kumuha inguzanyo y'inyongera kugira ngo yagure umushinga nk'uko yabyifuzaga kuko yamweretse ko idashyigikiye ihinduka ry'umushinga yaherewe umwenda kandi ihame akaba ari uko banki zifite uburenganzira bwo kuzitanga cyangwa kutazitanga zitagombye no kwisobanura; ahubwo itangwa ry'inguzanyo rishingira ahanini ku cyizere banki igirira umukiriya wayo n'ubushobozi iba ibona afite bwo kwishyura inguzanyo asaba.

3. Ntawe ushobora gufatirwa icyemezo mu rubanza atabayemo umuburanyi. Umwishingizi rero ntiyategekwa gufatanywa kwishyura umwenda n'uwo yishingiye mu gihe atigeze ahamagazwa muri urwo Rukiko kugira ngo agire ibyo ategukwa.

4. Ntawahabwa indishyi z'igihombo mu gihe atagaraje ikosa yakorewe n'uwo asaba ko zicibwa.

5. Banki ntiyahabwa indishyi zo kutubahiriza amasezerano mu gihe yahawe inyungu zisanzwe n'iz'ubukererwe; agomba ahubwo kuyishyura amagrama y'urubanza n'igihombo cy'avoka.

**Ubujurire bufite ishingiro kuri bimwe;  
Ubujurire bwuririye ku bundi nta shingiro bufite;  
Amagarama y'urubanza aherereye kuwareze.**

**Amategeko yashingiweho:**

Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 10 n'ya 117.

Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Itegeko ryo kuwa 30/07/1988 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 33 na 480.

**Nta manza zifashishijwe.**

## Urubanza

### I. IMITERERE Y'URUBANZA

[1] Uwimbabazi Jean-Paul yagiranye amasezerano y'inguzanyo na BRD, ibanza kumuguriza 235.000.000Frw hakurikijwe amasezerano N° 106/2006/Uj/MM/MM yo kuwa 22/09/2006, nyuma imwongera andi 67.000.000Frw hakurikijwe amasezerano N° 068/2008/UJ/NPJ/npj yo kuwa 13/10/2008.

[2] Uwimbabazi avuga ko yongeye gusaba inguzanyo y'inyongera ingana na 225.000.000Frw yo gutangiza imirimo y'umushinga we, BRD irayimwemerera ariko nyuma iza kwifata, yanga kuyimuha kandi yari yarayimwemereye. Byatumye Uwimbabazi aregera Urukiko Rukuru rw'Ubucuruzi avuga ko iyo myifatire ya BRD yamuteje igihombo n'akababaro.

[3] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza, rutegeka Uwimbabazi guha BRD 302.000.000Frw y'umwenda ayibereyemo, indishyi zo kutubahiriza amasezerano zingana na 5.000.000Frw, hamwe na 500.000Frw y'igihembo cy'Avoka n'ikurikiranarubanza, agatanga 4% yayo angana na 220.000Frw y'umusogongerwa wa Leta na 6.900Frw y'amagarama y'urubanza. Rwemeje kandi ko Mukabutera ntacyo agomba gutegekwa muri uru rubanza.

[4] Mu gusobanura icyemezo cyarwo, urwo Rukiko rwavuze ko nta kosa BRD yakoze ryayiviramo kuryozwa indishyi nk'uko uburanira Uwimbabazi ashaka kubyumvikanisha, kuko amasezerano y'inguzanyo ashingiraho ikirego cye yarimo impamvu zatuma atubahirizwa (conditions résolutoires), ibyo bikaba bihuje n'ingingo ya 81 y'Igitabo cya III cy'urwunge rw'amategeko mbonezamubano cyakurikizwaga igihe cy'amasezerano, bikanahuza kandi n'ingingo ya 18 y'Itegeko N°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano.

[5] Rwasanze ibyasabwe na BRD ko Uwimbabazi yategekwa kwishyura inguzanyo zose yari amaze guhabwa mu rwego rw'umushinga w'amata bifite ishingiro kuko iyo banki yagaragaje ko hari ibirarane ku nguzanyo za mbere Uwimbabazi atishyuye, bikaba biboneka ko atubahirije amasezerano yagiranye na BRD.

[6] Rwanasobanuye ko igihe cy'inzibacyuho (délai de grâce) Uwimbabazi asaba atagaragaza icyo agishingiraho kuko umuburanira yavugiye mu Rukiko ko umushinga w'amata udashobora kunguka, akaba kandi atagaragaza ahandi ateganyanya kuvana ubwishyu n'igihe akeneye kugira ngo abe yabonye ubwo bwishyu.

[7] Ku bijyanye n'inyungu ku nguzanyo BRD yasabye zibazwe kugeza ku munsi w'iburanisha ry'urubanza, Urukiko rwasanze nta gaciro byahabwa kuko nayo ubwayo izi neza ko umushinga yatangiye inguzanyo utigeze ukora, ko rero Uwimbabazi Jean Paul agomba gusubiza gusa inguzanyo yahawe zihwanye na 302.000.000Frw (ni ukuvuga 235.000.000Frw + 67.000.000Frw). Rwasanze kandi Mukabutera Béatrice wasinye nk'umwishingizi ntaho rwahera rutegeka ko afatanyana na Uwimbabazi Jean-Paul kwishyura kuko atigeze ahamagazwa mu rubanza.

[8] BRD yajuririye Urukiko rw'Ikirenga ivuga ko umucamanza yanze kuyigenera inyungu z'umwenda wose Uwimbabazi Jean-Paul yafashe zari zigeze kuri 510.657.673Frw kugeza kuwa 24/01/2012 (umunsi w'iburanisha ry'urubanza mu Rukiko Rukuru

rw'Ubucuruzi) mu gihe n'uwafashe umwenda atazihakana, rwanga no kugira icyemezo rufata kuri Mukabutera kandi yarasinye ku masezerano y'umwenda nk'umwishingizi, akaba yaragombaga gutegekwa gufatanya na Uwimbabazi Jean- Paul kwishyura uwo mwenda.

[9] Iburanisha ry'urubanza ryabereye mu ruhamwe kuwa 28/04/2015, kuwa 28/07/2015 no kuwa 3/11/2015, hitabye Me Zitoni Pierre Claver wavuze ko aburanira gusa Uwimbabazi Jean Paul, naho Mukabutera atitabye nta n'impamvu yagaragarije Urukiko yatumye atitaba, BRD iburanirwa na Me Mafaranga Anastase.

[10] Mbere y'uko urubanza ruburanishwa mu mizi, Me Zitoni yasabye Urukiko ko rwakwimura iburanisha kugira ngo Mukabutera azongere ahamagazwe kuko atabonetse kubera imirimo akorera i New York, ko rero rushyizwe mu kwezi kwa Kanama/2015 yaba yabonye umwunganira nawe akaba ahari agafatanya n'uzamwunganira, ko kandi hari n'imishyikirano yatangiye kugirana na BRD hashakwa uburyo ikibazo bafitanye cyakemuka.

[11] Me Mafaranga uburanira BRD avuga ko urubanza rugomba kuburanishwa kuko ibyo Me Zitoni avuga ku bijyanye na Mukabutera nta shingiro bifite mu gihe atamuhagarariye, ko kandi iyi tariki y'urubanza n'izindi zabanje ari we wagiye uzisaba, agasanga kwimura urubanza byaba ari ukurutinzira gusa, ko ndetse na Me Zitoni ubwe yakunze kubura mu nama ntegura rubanza, akaba yitabye kuko yari azi ko iyi tariki ariyo ya nyuma urubanza rwahawe.

[12] Naho ku bijyanye n'imishyikirano yavuzwe na Me Zitoni ko yatangiye hagati ya BRD n'abo baburana, Me Mafaranga avuga ko ibyo nabyo nta gaciro byahabwa, kubera ko ku mafaranga angana na 609.050.135 abo baburana basabwa kwishyura BRD, bo bavuga ko bakwishyura 302.000.000Frw gusa yategetswe n'Urukiko Rukuru rw'Ubucuruzi.

[13] Nyuma yo kumva icyo uburanira BRD n'uburanira Uwimbabazi Jean-Paul bavuga ku mpamvu Mukabutera atitabye, Urukiko rwasanze mu iburanisha ryo kuwa 19/02/2015 rwarategutse ko Me Mitsindo cyangwa na Me Zitoni nibatitaba kuwa 28/04/2015 urubanza ruzaburanishwa, rusanga kandi kuba Me Zitoni yemeza ko avugana na Mukabutera buri muni bigaragaza ko Mukabutera yari azi itariki y'urubanza. Rushingiye ku ngingo ya 59 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu<sup>1</sup>, rwemeje ko urubanza ruburanishwa Mukabutera Béatrice adahari.

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

**- Kumenya niba inguzanyo BRD yahaye Uwimbabazi Jean Paul igomba kubarirwa inyungu.**

[14] Me Mafaranga Anastase uburanira BRD avuga ko amasezerano y'umwenda iyo Banki yatanze asobanura icyo uwo mwenda ugamije, ndetse ko hateganyijwemo inyungu zisanzwe n'inyungu z'ubukererwe. Anavuga ko ku muni wa nyuma w'iburanisha ryo kuwa 24/01/2012, umwenda wari ugeze kuri 510.657.673Frw, kandi abaregwa bakaba batariyeze bawuhakana, ko rero Urukiko Rukuru rw'Ubucuruzi rwagombaga gutegeka Uwimbabazi

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<sup>1</sup> Iyo ngingo ivuga ko: "Iyo mu iburanisha rya mbere uregwa atitabye nta mpamvu, urega ashobora gusaba ko urubanza rwimurirwa ku yindi tariki cyangwa se gusaba ko ruburanishwa uregwa adahari. Muri icyo gihe hasuzumwa imyanzuro y'urega kandi ikirego cy'e kikakirwa, kigahabwa ishingiro iyo gifite ireme kandi cyaratanzwe mu buryo no mu nzira bikurikije amategeko".

gufatanya na Mukabutera kwishyura ayo mafaranga aho kwemeza ko bishyura 302.000.000Frw gusa, rutitaye ku nyungu zisanzwe n'inyungu z'ubukererwe.

[15] Uburanira BRD yongeraho ko Urukiko Rukuru rw'Ubucuruzi rwivugurujye kuko rwasanze BRD nta kosa yakoze, rumaze no kwemeza ko hari ibirarane Uwimbabazi atishyuye, rumutegeka kwishyura BRD indishyi zingana na 5.000.000Frw, nyamara ku bijyanye n'inguzanyo yahawe, rwemeza ko hagomba kwishyurwa gusa umwenda remezo rudasobanuye impamvu inyungu zitakwishyurwa, mu gihe rwahawe ikimenyetso cy'ingano y'amafaranga yose BRD yishyura n'uko yabazwe kugeza igihe urubanza rwaburanishwaga ku rwego rubanza.

[16] Anasaba kandi Urukiko rw'Ikirenga ko mu kugena inyungu z'umwenda wose rwazashingira ku mibare BRD yarushyikirije igaragaza ko ku munsu urubanza rwaburanishijweho bwa mbere muri uru Rukiko, ni ukuvuga kuwa 28/04/2015, umwenda wose n'inyungu zawo byari bimaze kugera kuri 609.050.531Frw.

[17] Ku bijyanye n'uburyo umwenda BRD yishyura wabazwe, by'umwihariko ku byerekeye amafaranga 235.000.000 Uwimbabazi yahawe kuwa 22/09/2006, Me Mafaranga avuga ko uwagurijwe yemerewe kuba aretse kwishyura umwenda remezo kugeza kuwa 30/09/2007, nyuma yandikira BRD ayisaba kongererwa igihe cyo kwishyura, bituma hagati ye n'iyi banki haba andi masezerano ahindura aya mbere. Anavuga ko mu ngingo ya 1 y'ayo masezerano ya kabiri, impande zombi zumvikanye ko Uwimbabazi asonewe kwishyura umwenda remezo kugeza ku itariki ya 31/03/2009, ko ariko inyungu zizabarwa mu gihe uwagurijwe ataratangira kwishyura zikongerwa ku mwenda remezo, ariyo mpamvu nyuma y'aho mu kubara inyungu zisanzwe za 13% n'iz'ubukererwe zihwanye na 4% kuri uwo mwenda, BRD yagiye ihera kuri 264.000.000Frw nk'umwenda remezo.

[18] Yongeraho ko uwo mwenda n'inyungu zawo BRD yawubaze ukangana na 467.446.136Frw, wateranyaho indi nguzanyo ya 67.000.000Frw Uwimbabazi yahawe, nayo ibariweho inyungu zisanzwe n'izubukererwe bumvikanye zimeze nk'izavuzwe haruguru, igiteranyo cy'iyi myenda yose kikaba gihwanye na 609.050.531Frw nk'uko yavuzwe haruguru.

[19] Akomeza avuga ko ibyo Uwimbabazi na Mukabutera bireguza by'uko bari bafatanyije na BRD umushinga wabo nta shingiro bifite kubera ko badashobora kubatangira ibimenyetso by'uko BRD yari ifatanyije nabo umushinga wabo yabahereye umwenda, ndetse ko amasezerano y'inguzanyo asobanutse neza kuko nta na hamwe handitsemo ko BRD ifatanyije nabo umushinga basabiye inguzanyo.

[20] Naho ku bijyanye na "abus de droit" uburanira Uwimbabazi Jean-Paul avuga ko yakozwe na BRD, Me Mafaranga avuga ko nabyo nta shingiro bifite, kubera ko nta kosa iyo banki yigeze ikora nk'uko n'Urukiko rwabyemeje mu rubanza rujuririrwa, icyabaye akaba ari uko BRD yanze ko umushinga uhindurwa kuko yabonaga harimo ibibazo, akaba ariyo mpamvu yahisemo kudakomeza guha Uwimbabazi indi nguzanyo yifuzaga, banki ikaba kandi idategetswe gutanga inguzanyo mu gihe ibona ko umushinga utazunguka.

[21] Me Zitoni Pierre Claver uburanira Uwimbabazi Jean Paul avuga ko Urukiko Rukuru rw'Ubucuruzi nta kosa rwakoze kuko rwagaragaje ko BRD yitwaye nabi ikarengera mu burenganzira bwayo (abus de droit) kubera ko ariyo yari ifite igisubizo cyo kugira ngo umushinga ugende neza, ndetse ikaba yari inafatanyije na Uwimbabazi uwo mushinga.

[22] Akomeza avuga ko Uwimbabazi yasabye BRD kumworohera ariko irabyanga, anayisabye kumusubiza ingwate ngo arebe ko yaguzura ahandi amafaranga yari akeneye, nabyo irabyanga, iyi myitwarire ikaba ariyo yatumye Urukiko Rukuru rw'Ubucuruzi rutegeka ko hishyurwa gusa umwenda utabariweho inyungu kubera ko rwasanze BRD nayo ifite uruhare mu kutagenda neza k'umushinga yateye inkunga.

[23] Ku bijyanye n'inyungu BRD isaba, Me Zitoni avuga ko zidakwiye kubaho kuko amafaranga yatanze atari ayo mu rwego rw'inguzanyo y'ubucuruzi (crédit commercial) ko ahubwo yari ay'inguzanyo yo mu rwego rw'ishoramari (crédit d'investissement), akaba ari yo mpamvu BRD igomba gusubizwa amafaranga yatanze gusa kubera ko ariyo yananiye Uwimbabazi bigatuma adakora ngo yunguke.

[24] Me Zitoni avuga kandi ko bitumvikana ko BRD yari gukomeza kubara inyungu no mu gihe yahaye Uwimbabazi “délai de grâce”, ko kandi uwo yunganira atemera uburyo haba impinduka mu masezerano ariko agategakwa kwishyura inyungu zibyara izindi nyungu.

## **UKO URUKIKO RUBIBONA**

[25] Ingingo ya 33 y'Igitabo cya III cy'urwunge rw'amategeko y'imbonezamubano cyakurikizwaga igihe BRD na Uwimbabazi bagiranaga amasezerano ivuga ko “Amasezerano akozwe ku buryo bukurikije amategeko, aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buryarya”.

[26] Ingingo ya 3 y'Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko “buri muburanyi agomba kugaragaza ibimenyetso by'ibyo aburana”.

[27] Urukiko rurasanga mu nyandiko zigize urubanza harimo amasezerano y'inguzanyo ya 235.000.000Frw n'ay'ingwate ku mutungo utimukanwa yabaye kuwa 22/09/2006 hagati ya Uwimbabazi Jean Paul na BRD afite N° 106/2006/UJ/MM/MM, asobanura ko iyo nguzanyo yari igamijwe gukoreshwa mu mushinga wo gukora uruganda ruto rutunganya amata (mini laiterie) ruri i Runda mu Karere ka Kamonyi. Mu ngingo ya 4 yayo havugwamo ko impande zombi zumvikanye ko ugurijwe asonewe kwishyura umwenda remezo (délai de grâce) kugeza kuwa 30/09/2007, nyuma y'icyo gihe uwagurijwe akajya yishyura buri kwezi mu gihe cy'imyaka 7. Nanone kandi mu ngingo ya 5 y'ayo masezerano, abayagiranye bumvikanye ko umwenda uzabarirwaho inyungu zisanzwe zihwanye na 13% ku mwaka, n'inyungu z'ubukererwe zihwanye 4%.

[28] Nanone ikiboneka muri dosiye ni uko kuwa 3/02/2009, hagati ya BRD na Uwimbabazi habaye andi masezerano N°01/2009 yerekeye ihinduka ry'amasezerano N°106/2006/UJ/MM/MM, agateganya mu ngingo yayo ya 1 ko: “uwagurijwe asonewe kwishyura umwenda remezo ku nguzanyo kugeza ku itariki ya 31/09/2009. Inyungu zibarwa mu gihe uwagurijwe ataratangira kwishyura zizongerwa ku mwenda remezo”.

[29] Mu nyandiko zigize urubanza harimo kandi andi masezerano yasinze kuwa 13/10/2008 y'inguzanyo yo mu rwego rumwe nk'urw'inguzanyo yo kuwa 22/09/2006 yavuzwe haruguru, y'amafaranga 67.000.000. Mu ngingo ya 4 y'ayo masezerano impande zombi zumvikanye ko inguzanyo izishyurwa mu gihe cy'imyaka 7 uhereye kuwa 31/03/2009,

ko kandi inyungu zisanzwe zihwanye na 14% ku mwaka, naho inyungu z'ubukererwe zikaba 4%.

[30] Mu nyandiko zigize urubanza harimo n'ibaruwa yo kuwa 23/04/2009 Uwimbabazi yandikiye BRD ayimenyeshya ko umushinga we ushobora gutangira igihe icyo ari cyo cyose kubera ko imashini zo gukoresha zageze aho umushinga we ukorera, ariko anavuga ko yifuza guhindura umushinga yaherewe inguzanyo na BRD, maze akawagura akora n'ibijyanye no gutunganya imitobe, amata abikwa igihe kirekire (U.H.T) hamwe n'amazi, kugira ngo ahangane n'abandi bari ku isoko. Muri iyi baruwa akaba yarasabye ko yakongererwa andi mafaranga angana na 45.000.000 yo gutangira gukora (fonds de roulement).

[31] Nanone dosiye igaragaza ko nyuma y'iyi tariki, Uwimbabazi yagiye yandikirana na BRD andi mabaruruwa, muri yo hakabamo iyo kuwa 03/12/2010 BRD yandikiye Uwimbabazi imumenyeshya ko impamvu yatanze zituma areka umushinga bari barumvikanye agakora ibindi bitateganyijwe zidafatika, kubera ko zitemejwe n'abahanga, ko nta n'igihanyama ko umushinga mushya afite uzunguka, ko rero ubwo atifuza gukomeza umushinga BRD yamuhereye inguzanyo, itakimuhaye inguzanyo y'inyongera ya 225.000.000Frw yari yaramwemereye (annulation du crédit).

[32] Mu ibaruwa ya Uwimbabazi yo kuwa 3/12/2010 isubiza iya BRD imaze kuvugwa no mu ibaruwa ye yo kuwa 4/11/2010, yakomeje gusobanura impamvu yatumye ahindura umushinga n'icyo ashingiraho yemeza ko umushinga mushya yifuzaga gukora uzunguka. Naho mu ibaruwa yayo yo kuwa 15/12/2010, BRD yongeye kumenyeshya Uwimbabazi ko itanyuzwe n'ibisobanuro yayihaye ku bijyanye n'igituma ashaka gukora amazi n'imitobe mbere yo gushyira mu bikorwa umushinga yaherewe inguzanyo wo gutunganya amata. Muri iyo baruwa BRD yamumenyeshaga ahubwo ko konti ye imaze kugira impayés zingana na 125.500.078Frw.

[33] Hakurikijwe ibisobanuro bimaze gutangwa, ikigaragara ni uko BRD itigeze yemera icyifuzo cya Uwimbabazi cyo gukora ibindi batumvikanye mu mushinga iyo banki yamuhereye inguzanyo, ndetse imugaragariza uko umwenda we uhagaze kugeza icyo gihe, nyuma kuwa 08/02/2011 imuha integuza yo kwishyura.

[34] Urukiko rurasanga mu gufata icyemezo cyo kutagera inyungu BRD ku nguzanyo yahaye Uwimbabazi Jean Paul, Urukiko Rukuru rw'Ubucuruzi rwarasobanuye ko igituma zitagomba gutangwa ari uko BRD nayo izi neza ko umushinga utakoze, kandi rwari rumaze kugaragaza ko nta makosa yashyirwa kuri iyo banki, ibisobanuro byarwo kuri izo nyungu bikaba birimo ukwivuguruzwa, ari yo mpamvu icyemezo cy'urwo Rukiko kigomba guhinduka.

[35] Urukiko rurasanga kandi imvugo y'uburanira Uwimbabazi y'uko BRD ariyo yamushyizeho amananza yanga kumuha inguzanyo y'inyongera kugira ngo yagure umushinga nk'uko yabyifuzaga, bitahabwa agaciro kubera ko yamweretse ko idashyigikiye ihinduka ry'umushinga yaherewe umwenda. Ikindi nanone, nk'uko abahanga mu bijyanye n'imikorere ya za banki babisobanura, ihame ku bijyanye n'itangwa ry'inguzanyo, ni uko banki zifite uburenganzira bwo kuzitanga cyangwa kutazitanga zitagombye no kwisobanura, igishingirwaho ahanini akaba ari icyizere banki runaka igirira umukiliya wayo n'ubushobozi iba ibona afite bwo kwishyura inguzanyo asaba<sup>2</sup>.

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<sup>2</sup>Thierry Bonneau: "Droit bancaire", 2007, 7ème éd., Montchrestien, p.367 : "Si un droit au compte a été légalement consacré, en revanche, il n'y a pas de droit au crédit, les banquiers étant libres de consentir ou de refuser les crédits sollicités par leurs clients: ...hors le cas où il est tenu par un engagement antérieur, le

[36] Urukiko rurasanga nanone ibyo uburanira Uwimbabazi avuga bijyanye n’uko inguzanyo y’ishoramari (crédit d’investissement) itagomba kubarirwa inyungu nk’inguzanyo yo mu rwego rw’ubucuruzi (crédit commercial), cyangwa ko BRD yarengereye mu gukoresha ububasha bwayo, bitahabwa agaciro, kuko usibye n’uko nta bimenyetso abitangira, mu masezerano impande zombi zagiranye zemeranyijwe kuri izo nyungu, ari yo mpamvu agomba kubahirizwa.

[37] Nyuma y’ibisobanuro bimaze gutangwa, Urukiko rurasanga mu gihe Uwimbabazi adahakana ko yagurijwe na BRD amafaranga yavuzwe haruguru, ko kandi yagombaga kubarirwa inyungu zisanzwe n’iz’ubukererwe n’ibindi bikubiye mu masezerano yamaze kuvugwa, bikanahuzwa n’ibivugwa mu ngingo ya 480 y’Igitabo cya III cy’urwunge rw’amategeko mbonezamubano<sup>3</sup> cyakurikizwaga igihe amasezerano yasinywaga, byumvikana ko agomba gutegekwa kwishyura iyo banki inguzanyo yamuhaye zibariweho n’inyungu zisanzwe hamwe n’iz’ubukererwe, umwenda wose Uwimbabazi agomba BRD nk’uko yawubaze, ukaba uhwanyeye na 609.050.531Frw.

**- Kumenya niba ku rwego rubanza Mukabutera yaragombaga gutegekwa gufatanywa na Uwimbabazi Jean Paul kwishyura umwenda wa BRD.**

[38] Me Mafaranga avuga ko Umucamanza yemeje ko ntacyo Mukabutera agomba gutegekwa kwishyura ku mpamvu y’uko ataburanishijwe muri urwo rubanza rwajuririwe, yirengagije amasezerano y’ubwishingire yagiranye na BRD (cautionnement) kuwa 09/10/2006 no kuwa 01/12/2008 kandi ko Mukabutera yiyemerera muri ayo masezerano ko azafatanywa n’uwagurijwe kwishyura BRD, agasanga nta yandi mananiza cyangwa kubanza kujya impaka kuri ubwo bwishyura, ko kandi kutaburanishwa kwa Mukabutera bitaryozwa BRD mu gihe yo yari yagaragaje mu mwanzuro wayo wo kwiregura icyo imusaba.

[39] Me Zitoni uburanira Uwimbabazi avuga ko nta mpamvu abona Mukabutera yari kuzanwa mu rubanza mu gihe ari Uwimbabazi wareze, ko icyo BRD yasabye mu Rukiko Rukuru rw’Ubucuruzi nk’uko urubanza rujurirwa rubigaragaza, ari uko BRD yasabye gusa ko Mukabutera ategukwa kwishyura afatanyije na Uwimbabazi, nyamara itarigeze isaba ko ahamagazwa kugira ngo nawe yiregure kuri icyo kirego, agasanga Urukiko rutari gufata icyemezo ku muntu utarigeze uhamagazwa. Anavuga ko iyo BRD ishaka ko Mukabutera azanywa mu rubanza, yagombaga gukurikiza amategeko y’uburyo utarareze cyangwa ngo aregwe aruzamo.

## **UKO URUKIKO RUBIBONA**

[40] Ingingo ya 10 y’Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi iteganywa ko “Ntawe ushobora gufatirwa icyemezo atumviswe cyangwa ngo ahamagarwe”.

[41] Ingingo ya 117 y’iryo tegeko yo iteganywa ko “Guhatirwa kugoboka mu rubanza bikorwa ku muntu wese utaburana urubanza akaba ategereje ko rucibwa ngo arutambamire kandi hari umuburanyi ushaka kumufatanywa n’uwo baburana ngo abatsindire mu rubanza rumwe”.

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*banquier est toujours libre , sans avoir à justifier sa décision qui est discrétionnaire, de proposer ou de consentir un crédit quelle qu’en soit la forme, de s’abstenir ou de refuser de le faire”.*

<sup>3</sup>Ivuga ko “Ingano y’inyungu ikomoka ku masezerano ishyirwaho ku bwumvikane bw’abayagiranye, kubitangira ibimenyetso bikurikiza amategeko asanzwe”.



[42] Inyandiko zigize urubanza zigaragaza ko Uwimbabazi Jean-Paul ari we watanze ikirego bwa mbere mu Rukiko Rukuru rw'Ubucuruzi arega BRD, n'ubwo mu myanzuro yayo yo kwiregura iyo banki yasoje isaba ko Mukabutera ategukwa kwishyura umwenda yishingiye afatanyije na Uwimbabazi wagurijwe, ntiyigeze isaba ko nawe ahamagazwa muri urwo Rukiko kugira ngo agire ibyo ategukwa, iburanisha ry'urubanza ririnda ripfundikirwa atabaye umuburanyi.

[43] Hashingiwe ku bimaze kuvugwa no ku ngingo ya 117 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryavuzwe, Urukiko rurasanga kuba hari amasezerano Mukabutera yagiranye na BRD yishingira umwenda wafashwe na Uwimbabazi, ubwabyo bidahagije ngo ategukwe kwishyura uwo mwenda n'ibiwukomokaho kuko atigeze aba umuburanyi ku rwego rubanza.

**- Ku bijyanye n'Ubujurire bwa Uwimbabazi Jean-Paul bwuririye ku bwa BRD n'amafaranga asabwa na BRD.**

[44] Me Zitoni Pierre Claver avuga ko BRD ariyo yatumye umushinga wa Uwimbabazi utunguka nk'uko byari biteganyijwe, ikaba kandi yaranze kumuha amafaranga yari yaramwemerereye bikamuteza igihombo, ko rero kubera iyo mpamvu ayisaba indishyi zingana na 50.000.000Frw.

[45] Me Mafaranga Anastase avuga ko indishyi uburanira Uwimbabazi asaba nta shingiro zifite, ko ahubwo nayo nk'uko yabigaragaje mu mwanzuro wayo w'ubujurire, isaba ko Uwimbabazi yayiha amafaranga y'ikurikiranarubanza n'igihembo cya Avoka angana 1.000.000Frw.

### **UKO URUKIKO RUBIBONA**

[46] Urukiko rurasanga indishyi Me Zitoni Pierre Claver uburanira Uwimbabazi Jean-Paul asaba atazihabwa kubera ko nk'uko byagaragajwe muri uru rubanza, nta kosa yagaragaje BRD yakoze ryatuma icibwa indishyi.

[47] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka BRD isaba iyakwiye, ariko kubera ko ayo isaba ari ikirenga, Uwimbabazi Jean- Paul akaba agomba guha iyo banki 500.000Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego.

[48] Urukiko rusanga nanone mu gihe BRD yagenewe inyungu zisanzwe n'iz'ubukererwe zijyanye n'umwenda yatanze, nta mpamvu indishyi yari yagenewe n'Urukiko Rukuru rw'Ubucuruzi z'uko Uwimbabazi atubahirije amasezerano zahamaho, Uwimbabazi akaba agomba kuyiha gusa 500.000Frw y'ikurikiranarubanza n'igihembo cya Avoka yo ku rwego rubanza.

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

[49] Rwemeje ko ubujurire bwa BRD bufite ishingiro kuri bimwe;

[50] Rwemeje ko ubujurire bwuririye ku bundi bwa Uwimbabazi Jean-Paul nta shingiro bufite.

[51] Rwemeje ko imikirize y'urubanza RCOM0119/11/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 02/03/2012 ihindutse ku byerekeye amafaranga Uwimbabazi Jean-Paul agomba kwishyura.

[52] Rutegetse Uwimbabazi Jean-Paul kwishyura BRD amafaranga y'umwenda yamuhaye n'inyungu zayo angana na 609.050.531Frw, hamwe na 1.000.000Frw y'ikurikiranarubanza n'igihembo cya Avoka yo ku nzego zombi urubanza rwaburanishijwemo, yose hamwe akaba 610.050.531Frw.

[53] Rutegetse Uwimbabazi Jean Paul kwishyura amagarama y'urubanza angana na 100.000Frw.