# HABIYAKARE v. GAHONGAYIRE N'UNDI (2)

[Rwanda URUKIKO RW'IKIRENGA – RCAA0009/14/CS (Mugenzi, P.J., Gatete naKarimunda, J.) 21 Nyakanga 2017]

*Amategeko agenga umuryango – Imicungire y'umutungo w'abashyingiranywe – Uko imicungire y'umutungo n'uburyo bawucunga byaba biri kose, ubwumvikane bw'abashyingiranywe ni ngombwa mu gutanga ikitimukanwa bwite n'umutungo bahuriyeho no kubitangaho ubundi burenganzira bwose – Itegeko N°22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 21.*

*Amategeko agenga amasezerano – Igurisha – Iseswa ry'amasezerano – Igurisha ry'ikintu cy'undi ni imfabusa, kandi rishobora gutangirwa indishyi iyo umuguzi atamenye ko icyo kintu ari icy'undi – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 33 n'iya 276.*

*Amategeko agenga amasezerano – Uburyarya – Ugomba gutanga ibimenyetso bw'uko habayeho uburyarya – Kutagira uburyarya bifatwa buri gihe nk'aho biriho kandi uwitwaza uburyarya bw'undi niwe ugomba kubutangira ikimenyetso – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 650.*

*Amategeko agenga amasezerano – Igurisha – Ingaruka zo kuvutswa uburenganzira ku cyagurishijwe – Iyo umuguzi avukijwe uburenganzira bwe ku cyo yaguze, umugurisha agomba gusubiza amafaranga y'ikiguzi cyacyo – Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 306.*

*Amategeko agenga ibimenyetso – Inshingano yo gutanga ibimenyetso – Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana – Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.*

**Incamake y'ikibazo:** Mirimo yagiranye na Habiyakare amasezerano y'ubugure bw'inzu ku gaciro k'amafaranga 80.000.000Frw kugirango yishyure umwenda yari abereyemo Banki. Gahongayire, umugore washyingiranywe na Mirimo mu buryo bwemewe n'amategeko, yaregeye Urukiko Rwisumbuye rwa Nyarugenge arusaba gusesa ayo masezerano kuko atamenyeshejwe ikorwa ryayo kandi inzu yagurishijwe ari umutungo w'umuryango.

Uru Rukiko rwasheshe ayo masezerano kandi rutegeka ko inzu yaguzwe isubira mu mutungo wa Gahongayire na Mirimo kandi igacungwa na Mirimo wanategetswe gusubiza Habiyakare 80.000.000Frw y'ikiguzi cyayo.

Mirimo na Habiyakare bajuririye Urukiko Rukuru bavuga ko Gahongayire yari azi ikorwa ry'ariya masezerano kandi ko inzu yagurishijwe mu nyungu z'umuryango, bityo basaba ko yagumana agaciro, bitaba bityo umuryango wa Mirimo na Gahongayire ugafatanya kwishyura Habiyakare agaciro iyo nzu igezeho mu gihe cy'urubanza kangana na 347.782.150Frw.

Gahongayire avuga ko iriya nzu itagurishijwe mu nyungu z'umuryango kuko Mirimo yayigurishije rwihishwa atabana na Gahongayire, atabimumenyesheje kandi ko n'umwenda wishyurwaga muri BCR kimwe n'ingwate zawo ntacyo aziziho.

Urukiko Rukuru rwemeje ko urubanza rudahindutse kandi rutegeka ko Habiyakare yishyurwa na Mirimo 80.000.000Frw gusa y'ikiguzi cy'inzu cyumvikanyweho mu masezerano ndetse ko Gahongayire ataryozwa amasezerano atagizemo uruhare.

Habiyakare yajuririye Urukiko rw'Ikirenga, arega Mirimo na Gahongayire avuga ko umutungo wagurishijwe mu nyungu z'umuryango mu rwego rwo kwishyura ideni Mirimo yari afitiye BCR ndetse ubwo butaka bwari bumwanditseho wenyine, ikindi kandi akavuga ko Urukiko ruramutse rubibonye ukundi, yagenerwa agaciro k'iyo nzu kagaragazwa n'inyandiko y'umuhanga (expertise).

Hagati aho Habiyakare yanatanze ikirego mu Rukiko rw'Ubucuruzi avuga ko igihe bagura inzu ivugwa mu masezerano, banaguze "Fonds de commerce", icyakora uru Rukiko rwikuraho uru rubanza kugirango ngo ruburanishwe hamwe n'ubujurire bwe mu Rukiko rw'Ikirenga.

Mu gihe urubanza rwari rutaracibwa, Mirimo yitabye Imana, havuka ikibazo cyo kumenya ugomba gukomeza urubanza nyuma y'urupfu rwe. Kuri iki kibazo Urukiko rw'Ikirenga rwemeje ko urubanza hagati ya Mirimo na Gahongayire rwarangiye kubera urupfu, bityo rukaba rugomba gukomezwa na Gahongayire ku byo Mirimo yaburanaga na Habiyakare, ku ruhande rumwe, no ku byo Gahongayire yaburanaga na Habiyakare ku rundi ruhande.

**Incamake y'icyemezo:** 1. Kuba Mirimo yaragurishije umutungo asangiye n'umugore we batabyumvikanyeho, bituma amasezerano yakozwe agomba guseswa, umutungo waguzwe ugasubira mu mutungo w'umuryango wegukanywe na Gahongayire nyuma y'urupfu rwa Mirimo ariko Habiyakare waguze nta buryarya akaba agomba kugenerwa indishyi.

2. Gahongayire usubijwe inzu yari yagurishijwe niwe ugomba gusubiza Habiyakare wari wayiguze nta buryarya ikiguzi cyayo kingana na 80.000.000Frw.

3. Kuba hashize igihe kingana n'iminsi 3265 Habiyakare yaratanze ikiguzi cy'inzu kingana na 80.000.000Frw ariko ntayihabwe cyangwa se ngo asubizwe ayo mafaranga yabashaga kugira ikindi akoresha, byamuteye igihombo akwiye guhererwa indishyi zibazwe ku gipimo cya 8,75% y'inyungu kiri mu rugero rw'izitangwa n'amabanki bityo, Habiyikare agomba guhabwa indishyi zingana na 63.486.111Frw.

4. Habiyakare uvuga ko yishyuye Mirimo 36.000.000Frw n'andi 30.000USD, bagura "Fonds de commerce", nk'uko biboneka mu nyandiko itanga ikirego mu Rukiko rw'Ubucuruzi, nta bimenyetso by'ubwo bugure agaragaza kandi na "bordereaux" ziboneka muri dosiye avuga ko zashingirwaho zikaba zitabonekaho icyo amafaranga yashyiriwe kuri konti ya Mirimo.

**Ubujurire bufite ishingiro.**
**Ubujurire bwuririye ku bundi nta shingiro bufite.**
**Amasezerano y'igurisha arasheshwe.**
**Amagarama y'urubanza ahereye ku warezwe.**

**Amategeko yashingiweho:**

Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 33, iya 276, iya 306 n'iya 650.

Itegeko N°22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 21.

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

**Imanza zifashishijwe:**

Busingye v. Mukarushema, RCAA0029/12/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 08/03/2013, Icyegeranyo cy'ibyemezo by'inkiko, igitabo cya 3, N°18, p.54.

## Urubanza

# I. IMITERERE Y'URUBANZA

[1] Gahongayire Winnifrida, umugore wa Mirimo, yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge, asaba gutesha agaciro amasezerano y'ubugure Habiyakare Robert yagiranye na Mirimo Gaspard, ku wa 26/6/2008, agurisha inzu iri mu kibanza N°4593/Kicukiro, ku giciro cya 80.000.000Frw yanyujijwe kuri konti ya Mirimo muri BCR (I&MBank) hishyurwa umwenda yari ayibereyemo, Gahongayire akavuga ko iyo nzu yagurishijwe atabizi.

[1] Mu rubanza RC0249/12/TGI/NYGE, Urukiko rwemeje ko amasezerano yavuzwe asheshwe, inzu yaguzwe igasubira mu mutungo wa Gahongayire na Mirimo kandi igacungwa na Mirimo, uyu agasubiza Habiyakare 80.000.000Frw y'ikiguzi cy'inzu.

[2] Mirimo na Habiyakare bajuririye Urukiko Rukuru bavuga ko ayo masezerano akwiye kugumaho, kuko Gahongayire yari azi ikorwa ryayo, kandi inzu ikaba yaragurishijwe mu nyungu z'umuryango, ariko ko niba ayo masezerano ateshejwe agaciro, umuryango wa Mirimo na Gahongayire wafatanya kwishyura Habiyakare agaciro k'inzu kagaragajwe n'abahanga ka 347.782.150Frw.

[3] Mu rubanza RCA0566/012 - RCA0581/012/HC, Urukiko Rukuru rwemeje ko urubanza rwa mbere rudahindutse, ko Habiyakare agomba kwishyurwa 80.000.000Frw yumvikanyweho mu masezerano, nk'uko biteganywa mu ngingo ya 263 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano, ariko ko Gahongayire ataryozwa amasezerano atagizemo uruhare.

[4] Urukiko Rukuru rwasobanuye ko nta kigaragaza ko Gahongayire yamenye amasezerano avugwa cyangwa se ko iyo nzu yagurishijwe mu nyungu z'umuryango, ko ahubwo ubugure bwakozwe mu rwego rwo kurigisa umutungo w'umuryango nk'uko biboneka mu manza zaburanywe na Gahongayire, asaba ko iriya nzu ivanwa mu mitungo yatanzweho ingwate ku mwenda atazi, kandi ko Habiyakare akwiye kwishyurwa ikiguzi kigaragara mu masezerano.

[5] Habiyakare yajuririye Urukiko rw'Ikirenga, arega Mirimo na Gahongayire asaba ko hemezwa ko umutungo uburanwa wagurishijwe mu nyungu z'umuryango kuko hishyuwe ideni Mirimo yari afitiye BCR, ryari ryafashwe mu bikorwa by'umuryango, akaba kandi yaraguze azi ko umutungo ari uwa Mirimo wenyine, nk'uko biboneka ku cyangombwa cy'umutungo, ariko ko Urukiko rubibonye ukundi, yagenerwa 347.782.150Frw, agaciro k'inzu kagaragazwa na "expertise", hashingiwe ku ngingo ya 310 CCL.III, agahabwa 2.000.000Frw y'indishyi zo gusiragizwa mu rubanza na 1.000.000Frw y'igihembo cya Avoka, yose hamwe akaba 3.000.000Frw.

[6] Habiyakare yari yatanze kandi ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge, asaba ko amasezerano y'ubugure bw'inzu yo ku wa 26/06/2008 yaseswa, agasubizwa 347.782.150Frw y'agaciro inzu igezeho, amafaranga ya "Fonds de commerce"

30.000.000Frw Habiyakare avuga ko yahaye Mirimo, n'andi 30.000USD, inyungu z'ayo mafaranga yose zibarwa kuri 20% kuva ku wa 30/07/2008 kugeza igihe yose azaba yishyuwe, n'indishyi z'akababaro zingana na 20.000.000Frw. Urukiko rw'Ubucuruzi, rwasanze urwo rubanza RCOM0852/14/TC/NYGE rufitanye isano n'urubanza RCAA0009/14/CS rwaregewe mu Rukiko rw'Ikirenga, rurwohereza mu Rukiko rw'Ikirenga, kugira ngo ziburanishirizwe hamwe.

[7] Ku byerekeye inzitizi y'iburabubasha, yari yatanzwe n'uhagarariye Gahongayire asaba ko ikirego cya Habiyakare kitakwakirwa kuko mu Rukiko Rwisumbuye no mu Rukiko Rukuru yatsinzwe ku mpamvu zimwe, ku wa 19/02/2016, Urukiko rw'Ikirenga rwemeje ko iyo nzitizi nta shingiro ifite, maze urubanza rwongera kuburanishwa ku wa 22/11/2016 no ku wa 14/12/2016, hasuzumwa ikibazo cyo kumenya ugomba gukomeza urubanza, nyuma y'urupfu rwa Mirimo, nk'umwe mu baburanyi.

[8] Ku wa 03/02/2017, Urukiko rw'Ikirenga rwemeje ko urubanza hagati ya Mirimo na Gahongayire rwarangiye kubera urupfu, ko urubanza rugomba gukomezwa na Gahongayire ku byo Mirimo yaburanaga na Habiyakare, ku ruhande rumwe, no ku byo Gahongayire yaburanaga na Habiyakare ku rundi ruhande.

[9] Iburanisha ry'urubanza ryakomeje ku matariki anyuranye, ruburanishwa bwa nyuma ku wa 28/06/2017, Habiyakare Robert ahagarariwe na Me Munyangabe Henri Pierre, Gahongayire Winnifrida yunganiwe na Me Niyomugabo Christophe na Me Rubasha Herbert, Urukiko rubanza kwemeza ko urubanza RCOM0852/14/TC/NYGE n'urubanza RCAA0009/14/CS zihujwe zikaba zigomba kuburanishirizwa hamwe kuko zifitanye isano.

## II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

### A. Kumenya niba amasezerano y'ubugure bw'inzu Habiyakare yagiranye na Mirimo yahabwa agaciro, Habiyakare agahabwa inzu yaguze.

[10] Me Munyangabe Henry Pierre uhagarariye Habiyakare avuga ko inkiko zibanza zagombaga kwemeza ko amasezerano y'ubugure bw'inzu iri mu kibanza 4593/Kicukiro yagurishijwe mu nyungu z'umuryango kubera ko 80.000.000Frw zishyuye umwenda Mirimo yari afite muri BCR, wafashwe mu bikorwa by'umuryango, n'ubwo icyangombwa cy'iyo nzu cyari cyanditse kuri Mirimo wenyine.

[11] Gahongayire na Me Niyomugabo Christophe umwunganira, bavuga ko iriya nzu itagurishijwe mu nyungu z'umuryango kuko Mirimo yayigurishije rwihishwa atabana na Gahongayire, atabimumenyesheje, bikaba binagaragazwa n'imanza Gahongayire yarezemo umugabo, asaba ivanwa mu ngwate ry'umutungo watanzweho ingwate atabizi, kandi ko n'umwenda wishyurwaga muri BCR Gahongayire atawumenye, bityo, n'ingwate ziwutanzweho ntiyazimenya.

[12] Bavuga ko amasezerano y'ubugure akwiye gukomeza guteshwa agaciro nk'uko byemejwe n'inkiko zibanza, inzu ikaguma mu maboko ya Gahongayire, kuko nta n'igikorwa Habiyakare yigeze ayikoraho kuko atigeze anayihabwa, bongeraho ko n'ubwo Gahongayire ariwe wasigaranye inshingano zari iza Mirimo, adakwiye kuryozwa ibyakozwe mu buryo budakurikije amategeko.

[13] Me Rubasha Herbert nawe wunganira Gahongayire, avuga ko amategeko atubahirijwe kuko Mirimo yitwaye nk'umuntu utarashyingiwe mu buryo bwemewe n'amategeko, kuko yagombaga kumenyesha Habiyakare ko afite umugore, ayo masezerano akaba nta gaciro yahabwa hashingiwe ku ngingo ya 51 y'Itegeko N$^{o}$45/2011 ryo ku wa 25/11/2011 rigenga amasezerano hanyuma Gahongayire agakomeza gucunga umutungo hashingiwe ku ngingo ya 6 y'Itegeko N$^{o}$27/2016 ryo ku wa 08/07/2016, rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura.

## UKO URUKIKO RUBIBONA

[14] Ingingo ya 21 y'Itegeko N°22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura ryakoreshwaga igihe Mirimo yagurishaga inzu igira iti: "uko imicungire y'umutungo n'uburyo bawucunga byaba biri kose, ubwumvikane bw'abashyingiranywe ni ngombwa mu gutanga ikitimukanwa bwite n'umutungo bahuriyeho no kubitangaho ubundi burenganzira bwose".

[15] Ku byerekeranye no kumenya niba Gahongayire yaramenyeshejwe amasezerano avugwa, Urukiko rurasanga, nk'uko byemejwe n'inkiko zibanza, ku masezerano yo ku wa 26/6/2008, Mirimo yagiranye na Habiyakare bagura inzu iri mu kibanza N$^{o}$593/Kicukiro, umutungo utimukanwa, hatagaragaraho umukono w'umugore we Gahongayire, nta n'ikindi kimenyetso cyagaragajwe na Habiyakare cyangwa na Mirimo akiriho aburana, cy'uko Gahongayire yamenyeshejwe igurishwa ry'uriya mutungo,akaba atarabyemeye nyuma y'ikorwa ry'amasezerano, kuko yaje gutanga ikirego, bikaba rero bigaragara ko Mirimo yagurishije umutungo utimukanwa w'umuryango atabimenyesheje uwo bashakanye, ibyo bikaba binyuranyije n'ibiteganywa n'ingingo ya 21 y'Itegeko N°22/99 ryavuzwe haruguru, bityo, ayo masezerano akaba agomba guseswa nk'uko biteganywa mu ngingo ya 33 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano, iteganya ko amasezerano ashobora guseswa ku mpamvu zemewe n'amategeko.

[16] Ku byerekeranye no kuba umutungo waragurishijwe mu nyungu z'umuryango, Urukiko rusanga nabyo, nk'uko byasobanuwe mu nkiko zabanje, nta kibigaragaza kuko n'ubwo 80.000.000Frw yishyuwe anyujijwe kuri konti ya Mirimo muri BCR, hishyurwa umwenda yari ayibereyemo, ariko ntihavuguruzwa ibivugwa na Gahongayire ko we atari azi uwo mwenda, ngo amenye n'icyo uzakoreshwa, bigashimangirwa n'imanza Gahongayire yaburanye agaragaza ko atazi ifatwa ry'umwenda anasaba kuvana mu ngwate imitungo yatanzwe atabizi, kandi nta mpamvu igaragara yari gutuma Mirimo agira ibyo akora mu nyungu z'umuryango atabyumvikanyeho n'umugore we.

[17] Ku byerekeranye no kumenya niba Habiyakare yaraguze mu buryarya, Urukiko rusanga hashingiwe ku cyangombwa cy'umutungo (contrat de location N$^{o}$ L4156) cyatanzwe ku wa 15/03/2001 n'icyari Perefegitura y'Umujyi wa Kigali), uwo mutungo wanditswe kuri Mirimo wenyine, hakaba hataragaragazwa ubundi buryo Habiyakare yari kumenya ko umutungo ugurishwa ufite ikibazo, cyane ko ayo masezerano yananyujijwe kwa Noteri[1] kandi muri yo harimo ingingo ivuga ko amafaranga yishyurwaga umwenda wa Mirimo kuri konti ya BCR, akaba rero ariwe wari ufite inshingano zo kumenyesha umugore we iby'iryo gurisha.

[1] Amasezerano y'ubugure yanyujijwe imbere ya Noteri (kote ya 12 muri dosiye y'Urukiko rw'Ubucuruzi).

[18] Urukiko rurasanga, ibivugwa na Gahongayire n'abamwunganira by'uko Habiyakare yaguze mu buryarya, nta bimenyetso babigaragariza kandi bizwi ko uburyarya bugomba kugaragazwa n'ububuranisha[2], nk'uko biteganywa n'ingingo ya 650 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano, igira iti: "kutagira uburyarya bifatwa buri gihe nk'aho biriho kandi uwitwaza uburyarya bw'undi niwe ugomba kubutangira ibimenyetso".

[19] Urukiko rusanga rero, hashingiwe ku bisobanuro byagaragajwe haruguru, kuba Mirimo yaragurishije umutungo asangiye n'umugore we batabyumvikanyeho, bituma amasezerano yakozwe agomba guteshwa agaciro, umutungo waguzwe ugasubira mu mutungo w'urugo wegukanywe na Gahongayire nyuma y'urupfu rwa Mirimo ariko Habiyakare waguze nta buryarya akaba agomba kugenerwa indishyi nk'uko biteganywa mu ngingo ya 276 y'Itegeko ryavuzwe haruguru, iteganya ko igurisha ry'ikintu cy'undi ari imfabusa, ko rishobora gutangirwa indishyi iyo umuguzi atamenye ko icyo kintu ari icy'undi.

**B. Kumenya niba hari ibyo Gahongayire agomba kwishyura Habiyakare.**

**a. Ku bijyanye n'agaciro k'inzu Habiyakare asaba gusubizwa.**

[20] Habiyakare avuga ko mu gihe yaba adahawe inzu yaguze, yasubizwa na Gahongayire 80.000.000Frw yatanzeho ikiguzi cyayo, hongereweho agaciro inzu yiyongereyeho kangana na 267.782.150Frw, kuko yaguze nta buryarya, kandi ayo mafaranga akaba yarinjiye mu mutungo Gahongayire yari asangiye na Mirimo, none ubu akaba ariwe wawegukanye nyuma y'urupfu rwa Mirimo. Avuga ko yasubizwa agaciro inzu ifite uyu munsi, kuko n'ubwo nta bikorwa yayikozeho, igenda izamura agaciro uko ibihe bihita, akaba asaba yose hamwe 347.782.150Frw.

[21] Gahongayire na Me Niyomugabo Christophe bavuga ko Habiyakare na Mirimo bakoze amasezerano hatubahirijwe amategeko, akaba adashobora guhindukira ngo abisabemo inyungu kandi Gahongayire akaba adakwiye kuryozwa ibikorwa byishe amategeko. Bavuga kandi ko nta n'ibindi bikorwa byakozwe na Habiyakare kuri iyo nzu ngo biyizamurire agaciro avuga, kuko atigeze ayihabwa nyuma y'amasezerano y'ubugure.

## UKO URUKIKO RUBIBONA

[22] Urukiko rusanga kubera ko Habiyakare yatanze 80.000.000Frw, agamije kugura inzu nk'uko inyandiko y'amasezerano yo ku wa 26/6/2008 ibigaragaza, nyamara bikaba bidashoboka ko ayihabwa kuko ubugure butubahirije amategeko nk'uko byasobanuwe haruguru, agomba gusubizwa ayo mafaranga na Gahongayire wegukanye umutungo yari asangiye na Mirimo wahawe ayo mafaranga, kuko iseswa ry'amasezerano nk'uko ryemejwe haruguru, risubiza inzu mu maboko ya Gahongayire, kudasubiza ikiguzi cyari cyarayitanzweho bikaba byaba kuvutsa Habiyakare uburenganzira ku bye bikaba n'indonke kuri Gahongayire.

[23] Urukiko rurasanga kuba amasezerano yabaye hagati ya Habiyakare na Mirimo atarubahirije amategeko, bigira ingaruka ry'iseswa ryayo nk'uko byasobanuwe haruguru, ariko Gahongayire usubijwe inzu akaba nawe agomba gusubiza ikiguzi cyayo Habiyakare

[2] Ibisobanuro by'uko uburanisha uburyarya ariwe ubitangira ibimenyetso, byatanzwe mu rubanza RCAA0029/12/CS rwaciwe ku wa 08/03/2013, BUSINGYE Pascaline aburana na Mukarushema Epiphrodosie, Icyegereanyo cy'ibyemezo by'inkiko, igitabo cya 3, N°18 p.54.

wari wayiguze nta buryarya, nk'uko biteganywa mu ngingo ya 306 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano[3].

[24] Ku bijyanye no kuba Habiyakare yakwishyurwa agaciro ka 347.782.150Frw avuga ko inzu igezeho akurikije raporo y'umuhanga wayimukoreye, Urukiko rusanga nta shingiro byahabwa kuko, nk'uko n'umuburanira abivuga, iyo nzu ntiyigeze igera mu maboko ye, nta n'imirimo yayikozeho, kuba hashize igihe kirekire atanze amafaranga y'ikiguzi cyayo, bikaba atari byo byatuma asaba agaciro kaba karayiyongereyeho kandi atarigeze ayitunga ngo abe yagira imirimo ayikoraho.

[25] Urukiko rurasanga ahubwo, kuba Habiyakare yaratanze amafaranga ye 80.000.000Frw kugira ngo ahabwe inzu, ariko hakaba hashize igihe kirekire atarayihawe cyangwa se ngo asubizwe ayo mafaranga yabashaga kugira ikindi akoresha, bigaragaza ko yagize igihombo akwiye guhererwa indishyi, zikaba zabarirwa ku gipimo cya 8,75% cy'inyungu kiri mu rugero rw'izitangwa n'amabanki ku bazibitsamo amafaranga[4], bityo, mu gihe cy'iminsi 3265 kuva ku wa 26/6/2008 igihe amasezerano yakorewe kugeza uyu munsi wa 21/07/2017 urubanza ruciriwe, Habiyikare agomba guhabwa indishyi zibazwe muri ubu buryo: $\frac{80.000.000\text{Frw x } 3265\text{jrs x } 8{,}75}{360 \text{ x } 100} = 63.486.111\text{Frw}$

**b. Ku bijyanye n'amafaranga 36.000.000Frw n'andi 30.000USD Habiyakare avuga ko yishyuye "Fonds de commerce".**

[26] Habiyakare avuga ko yaguze na Mirimo "Fonds de commerce" ijyanye n'inzu yaguze, kuri 36.000.000Frw na 30.000USD n'ubwo nta masezerano yanditse agaragaza, kuko byakozwe mu bwumvikane mu magambo, no mu bwizerane nk'abacuruzi, hakaba hari "bordereaux" zinyuranye zerekana ko hari amafaranga Habiyakare yashyiraga kuri konte ya Mirimo, kandi uyu akiriho akaba yaremeraga ko yayakiriye, ndetse no mu ibaruwa yo ku wa 15/04/2011, Mirimo akaba yaremeraga gukora ihererekanya ry'uburenganzira ku mutungo (mutation), bibuzwa n'uko atari yakabonye icyemezo cy'uko afite umwenda mu Kigo cy'Igihugu cy'imisoro n'amahoro.

[27] Gahongayire na Me Niyomugabo na Me Rubasha, bamwunganira, bavuga ko Habiyakare atagaragaza ko yatanze amafaranga avuga yishyuriwe "Fonds de commerce", ngo abe yanagaragaza icyo yayishyuriye, kuko mu gihe hari hakozwe amasezerano y'ubugure bwanditse bw'inzu, nta cyari kubabuza gushyiramo n'ingingo yerekeranye n'igurwa rya "Fonds de commerce", ndetse na "bordereaux de versement" zavuzwe zikaba zitagaragaza ko impamvu zayo ari iyishyurwa rya "Fonds de commerce".

## UKO URUKIKO RUBIBONA

[28] Urukiko rusanga, hashingiwe ku ngingo ya 3 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana, Habiyakare uvuga ko yishyuye Mirimo 36.000.000Frw n'andi 30.000USD, bagura "Fonds de commerce", nk'uko biboneka mu nyandiko itanga ikirego mu Rukiko rw'Ubucuruzi, yagombye kubigaragariza ibimenyetso, ariko Habiyakare ntagaragaza ibimenyetso by'ubwo bugure, kandi na "bordereaux" ziboneka

[3] Iyo ngingo iteganya ko "iyo umuguzi avukijwe uburenganzira bwe ku cyo yaguze, umugurisha agomba gusubiza amafaranga y'ikiguzi, keretse iyo uweguriwe ikintu yari azi ko ashobora kucyamburwa igihe yaguraga cyangwa yaraguze yemera n'ingaruka zose".
[4] www.imbank.com, consulted on 21st July 2017.

muri dosiye avuga ko zashingirwaho zikaba zitabonekaho icyo amafaranga yashyiriwe kuri konti ya Mirimo.

[29] Urukiko rusanga kandi, mu gihe amasezerano ya mbere yari yakozwe ku buryo bwanditse, nta mpamvu igaragazwa yari gutuma ayo masezerano yandi arebana no kugura "Fonds de commerce" adakorwa mu buryo bumwe n'aya mbere, ayo mafaranga rero akaba atakwishyurwa kuko hatagaragazwa ko yatanzwe n'icyo yatangiwe, bityo, Habiyakare akaba atayagenerwa kuko nta bimenyetso ayagaragariza.

**c. Ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.**

[30] Me Munyangabe avuga ko Habiyakare akwiye kugenerwa indishyi zihwanye na 2.000.000Frw kubera gusiragizwa mu manza, akanagenerwa 1.000.000Frw y'igihembo cya Avoka.

[31] Gahongayire n'abamwunganira bavuga ko nta ndishyi yategekwa kwishyura kuko uzisaba yakoze amakosa, ntiyubahiriza amategeko igihe yaguraga. Mu bujuririre bwuririye ku bundi bwatanzwe mu mwanzuro na Me Niyomugabo Christophe, yari yasabye indishyi zihwanye na 2.000.000Frw n'igihembo cya Avoka, naho mu iburanisha Gahongayire asaba indishyi za 10.000.000Frw kubera gusiragizwa mu manza na 5.000.000Frw y'igihembo cya Avoka.

# URUKIKO RUBIBONA

[32] Urukiko rurasanga, hashingiwe ku ngingo ya 258 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano, iteganya ko nyir'ugukora ikosa ryangirije undi ategetswe kuriha ibyangiritse, Habiyakare wagurishijwe na Mirimo umutungo asangiye n'umugore we Gahongayire atabimumenyesheje, byaramuviriyemo kujya mu manza no kugira ibyo atakaza mu kuzikurikirana no guhemba Avoka mu nzego eshatu z'inkiko yaburaniyemo, akaba rero akwiye kubihererwa indishyi na Gahongayire wegukanye umutungo yari asangiye na Mirimo[5], kuko ariwe ugomba kwirengera ingaruka z'amasezerano yakozwe na nyakwigendera akiriho, ariko kuko Habiyakare nta mibare ifatika yerekana ashingiraho asaba 2.000.000Frw y'ikurikirana rubanza, akaba yagenerwa mu bushishozi bw'Urukiko 1.000.000Frw, akanagenerwa 1.000.000Frw y'igihembo cya Avoka nk'uko yayasabye, kuko ari mu rugero rukwiye.

[33] Mu kwanzura rero, nk'uko byasobanuwe haruguru, usibye 80.0000.000Frw y'ikiguzi cy'inzu Gahongayire agomba gusubiza Habiyakare, agomba no kumwishyura inyungu z'ayo mafaranga zingana na 63.486.111Frw, 1.000.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cya Avoka, yose hamwe akaba miliyoni ijana na mirongo ine n'eshanu, ibihumbi magana ane mirongo inani na bitandatu, n'ijana na cumi na rimwe (145.486.111Frw).

[34] Ku byerekeranye n'ubujurire bwuririye ku bundi bwatanzwe na Gahongayire n'abamwunganira, bugamije kwaka indishyi, Urukiko rusanga ntazo yagenerwa, kuko ibyo azishingiraho nta shingiro byahawe nk'uko byasobanuwe haruguru.

[5]Ingingo ya 8 agace ka 2 y'Itegeko N°31/2016 ryo ku wa 01/08/2016 rigenga imicungire y'umutungo w'abashyingiranywe iteganya ko iyo uburyo bw'ivangamutungo rusange busheshwe kubera urupfu rw'umwe mu bari barashyingiranywe, umutungo wegukanwa n'uwapfakaye kugeza igihe izungura rikorewe, naho ingingo ya 52, igika cya 3, y'Itegeko rivuzwe haruguru, igatenya ko izungura ry'abashyingiranywe ritangira ari uko bombi bapfuye cyangwa umwe yongeye gushyingirwa, usibye igihe itegeko ribiteganya ukundi.

# III. ICYEMEZO CY’URUKIKO

[35] Rwemeje ko ubujurire bwa Habiyakare Robert bufite ishingiro;

[36] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Gahongayire Winnifrida nta shingiro bufite;

[37] Rwemeje ko amasezerano y’ubugure yo ku wa 26/06/2008 bw’inzu iri mu kibanza N$^{o}$4593/Kicukiro hagati ya Mirimo Gaspard na Habiyakare Robert asheshwe;

[38] Rutegetse ko inzu iri mu kibanza N$^{o}$4593/Kicukiro iguma mu mutungo wa Gahongayire Winnifrida;

[39] Rutegetse Gahongayire Winnifrida kwishyura Habiyakare Robert igiteranyo cy’amafaranga miliyoni ijana na mirongo ine n’eshanu, ibihumbi magana ane mirongo inani na bitandatu, n’ijana na cumi na rimwe (145.486.111Frw);

[40] Rumutegetse kwishyura amagarama y’urubanza, ahwanye na 100.000Frw.