

UBUSHINJACYAHA v MAGARA GAHAKWA N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RP 00001/2020/SC– (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire, Hitiyaremye na Muhumuza, J.) 12 Ugushyingo 2021]

Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Guhamagarwa mu rubanza rusubirwamo ku mpamvu z'akarengane – Ababaye ababuranyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ariko batasabye ko rusubirwamo – Ababaye ababuranyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ariko batasabye ko rusubirwamo baruhamagarwamo, Urukiko rugashobora kugira icyo rubabaza cyafasha mu micire y'urubanza rusubirishwamo cyangwa nabo bakaba bagira amakuru batanga, ariko bakaba badashobora gusaba ko urwo rubanza ruhinduka ku byerekeye ibyemezo bari bafatiwe, keretse rusanze hari ubusobekerane (indivisibilité/indivisibility) bw'ibiburanwa ku buryo rudashobora gufata icyemezo ku busabe bw'abasabye ko urubanza rusubirwamo bitagize ingaruka ku byemezo byafatiwe abatarabisabye kandi ku buryo bubafitiye inyungu.

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Gusubiza ibikomoka ku cyaha – Itandukanyirizo n'indishyi zikomoka ku cyaha – Gusubiza ibikomoka ku cyaha bitegekwa mu manza nshinjabyaha n'Urukiko rubyibwirije n'iyo uwakorewe icyaha yaba ataratanze ikirego mu gihe abaregwa bahamwe n'icyaha kandi bagahabwa ibihano bigizwe n'igifungo cyangwa ihazabu – Naho ikirego cy'indishyi kikaba ari ikirego gitangwa n'uwangirijwe n'icyaha wese kigamije gusa gusaba indishyi.

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Gusubiza ibikomoka ku cyaha – Ubufatanye mu gusubiza ibikomoka ku cyaha – Abahamijwe icyaha kimwe cy'ubugome cyangwa gikomwe bategekwa gufatanya kwishyura ihazabu, gusubiza ibikomoka ku cyaha, kwishyura indishyi kimwe n'andi mafaranga yakoreshejwe mu kugikurikirana – Ntawakwitwaza ko hari abandi bahamijwe icyo cyaha kugirango yishyure igice, uburyozwacyaha bw'abandi bukaba butamukuraho ingaruka z'icyaha yakoze.

Incamake y'ikibazo: Ubushinjacyaha bushinja Bamiika, Mawadza, Karake, Nzaramba, Kamanzi na Magara ibyaha bitandukanye bakoze ubwo bari mu buyobozi bwa SONARWA. Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo aho bahamijwe ibyaha baregwa, bahanishwa igihano cy'igifungo ndetse bacibwa n'ihazabu. Aba bese bajuririye mu Rukiko Rukuru maze rwemeza ko ubwo bujirire nta shingiro bufite, ruhindura urubanza rwajuririwe gusa ku bijyanye n'igihano cy'igifungo cyahanishijwe buri wese mu baregwa. Kamanzi na Magara basubirishijemo urwo rubanza ingingo nshya, Urukiko rwemeza ko ikirego cyabo kitakiriwe. Ibi byatumye bandikira Perezida w'Urukiko rw'Ubujurire, basaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, ariko nyuma yo gusuzuma ubwo busabe, abasubiza ko nta mpamvu iteganywa n'itegeko yatuma rusubirwamo ku mpamvu z'akarengane.

Kamanzi na Magara bandikiye Urwego rw'Umuvunyi bavuga ko mu guca urubanza, Urukiko Rukuru rwirengagije amategeko, bituma barengana. Nyuma yo gusuzuma ubusabe bwabo, uru Rwego rwandikiye Perezida w'Urukiko rw'Ikirenga rumusaba ko urubanza urwo rubanza rwasubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ikirenga yemeje ko rusubirwamo ku mpamvu z'akarengane.

Muri uru rubanza bavuga ko ibikorwa bakurikiranweho babikoze mu buryo bwo gufasha ubutabera kubona amakuru, bityo badakwiye kubukurikiranwaho. Abatarasabye ko urubanza rusubirwamo ku mpamvu z'akarengane barahamagajwe mu rubanza, nabo basaba ko impamvu zabo zo kwiregura zasuzumwa n'Urukiko kuko urubanza rufite ubusobekerane. Ikibazo nyamukuru cyasuzumwe muri uru rubanza cyari ukumenya niba Abasubirishijemo urubanza ku mpamvu z'akarengane barakoze ibikorwa bakurikiranyweho bagamije gufasha inzego zishinzwe kugenza icyaha kubona amakuru, bityo bakaba

batagomba gukurikiranwa mu rubanza. Aha Urukiko rwemeje ko ibikorwa bakoze byari mu rwego rwo gutanga amakuru yari agamije gufasha ubutabera, bityo Kamanzi na Gahakwa bagirwa abere. Nyuma y'uko aba bagizwe abere, Urukiko rwasuzumye ikibazo kijyanye n'umubare w'amafaranga agomba gusubizwa SONARWA n'abasigaye mu rubanza. Buri wese usigaye muri uru rubanza yagiye atanga ibisobanuro bitandukanye kuri iki kibazo, aho ubushinjacyaha busaba ko Abaregwa bagomba gufatanya kwishyura ayo mafaranga yari gishijwe anatangwaho ruswa.

Ku ruhande rw'Abaregwa, buri wese atanga impamvu ze zigaragaza ko atagomba kwishyura ayo mafaranga ariko Urukiko rwo rwasanze bagomba kuyishyura kuko yagiye atangwa mu ikorwa ry'iby byaha bimwe aribyo ruswa n'ibindi byaha bifitanye isano nayo, nubwo SONARWA itigeze iyaregera.

Incamake y'icyemezo: 1. Ababaye ababuranyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ariko batasabye ko rusubirwamo baruhamagarwamo, Urukiko rugashobora kugira icyo rubabaza cyafasha mu micire y'urubanza rusubirishwamo cyangwa nabo bakaba bagira amakuru batanga, ariko bakaba badashobora gusaba ko urwo rubanza ruhinduka ku byerekeye ibyemezo bari bafatiwe, keretse rusanze hari ubusobekerane (indivisibilité/indivisibility) bw'ibiburanwa ku buryo rudashobora gufata icyemezo ku busabe bw'abasabye ko urubanza rusubirwamo bitagize ingaruka ku byemezo byafatiwe abatarabisabye kandi ku buryo bubafitiye inyungu.

2. Gusubiza ibikomoka ku cyaha bitegekwa mu manza nshinjabyaha n'Urukiko rubyibwirije n'iyo uwakorewe icyaha yaba ataratanze ikirego mu gihe abaregwa bahamwe n'icyaha kandi bagahabwa ibihano bigizwe n'igifungo cyangwa ihazabu. Naho ikirego cy'indishyi kikaba ari ikirego gitangwa n'uwangirijwe n'icyaha wese kigamije gusa gusaba indishyi.

3. Abahamijwe icyaha kimwe cy'ubugome cyangwa gikomeye bategekwa gufatanya kwishyura ihazabu, gusubiza ibikomoka ku cyaha, kwishyura indishyi kimwe n'andi mafaranga yakoreshejwe mu kugukurikirana. Ntawakwitwaza ko hari abandi bahamijwe icyo cyaha kugirango yishyure igice, uburyozwacyaha bw'abandi bukaba butamukuraho ingaruka z'icyaha yakoze.

Abahamagajwe mu rubanza rwaciwe n'Urukiko Rukuru bagomba gufatanya gusubiza SONARWA amafaranga banyereje.

Amategeko yashingiweho:

Itegeko Nshinga ryo mu 2003 nk'uko ryavuguruwe mu 2015, ingingo ya 29.

Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 45, 46, 325, 614, 641 n'ya 650.

Amasezerano mpuzamahanga y'Umuryango w'Abibumbye agamije kurwanya ruswa, U Rwanda rwemeje ku wa 4 Ukwakira 2006, ingingo ya 17 n'ya 22.

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 10.

Itegeko N° 30/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 9, 10 n'ya 86

Itegeko N° 35/2012 ryo ku wa 19/09/2012 rirengera abatanga amakuru ku byaha, ingingo ya 17.

Imanza zifashishijwe:

Mukarwego Josepha n'abandi na Ngiriyabandi André, RS/REV/INJUST/CIV0009/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 14 Nzeli 2018.

Inyandiko z'abahanga zifashishijwe:

Victoire Alexis Désiré, Répertoire méthodique et alphabétique de législation, doctrine., Volume 33, Edition Dalloz 2018, pge 329.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mu mwaka w'ingengo y'imari wa 2013/2014, MININFRA yatanze isoko ry'ubwishingizi bw'ibinyabiziga bya Leta, Ubushinjacyaha bukaba bwagaragaje ko SONARWA yashakishije uburyo bwose yahabwa iryo soko kuko hari hashize igihe ritsindirwa na COGEAR. Ubushinjacyaha bwagaragaje ko buri mwaka uko Minisiteri y'Ibikorwa remezo (MININFRA) yishyuraga facture y'ubwo bwishingizi, abakozi ba SONARWA nabo bateguraga sheki yo kubikuza amafaranga ya komisiyo yo kwishyura uwabafashije kubona iryo soko, zanditseho amazina ya Rutagwabira Barnabas cyangwa Mbabazi Gerard bari aba agents ba SONARWA, kandi ntacyo bayifashije mu kubona iryo soko kubera ko ryatanzwe binyuze mu ipiganwa risesuye (*open tender*).

[2] Ubushinjacyaha bwagaragaje ko mbere y'uko sheki ibikuzwa hakorwaga inyandiko isaba ayo mafaranga, yandikirwaga Umuyobozi Mukuru, yamara gushyirwaho umukono n'abo bireba bose, hagakorwa sheki, ikandikwaho amazina ya Mbabazi Gerard cyangwa Rutagwabira Barnabas nk'abahawe ayo mafaranga, nabo bagasinyira ko bayakiriye. Nyuma yo kuyabikuza, buri wese yahabwaga 15.000Frw, asigaye akoherezwa Nzaramba Stevenson kugira ngo nawe ayagabane n'abo bafatanyije gutanga iryo soko, asagutse abakozi ba SONARWA nabo bakayagabana.

[3] Ubushinjacyaha bwareze mu Rukiko Rwisumbuye rwa Gasabo Karake Mutsinzi Charles wari Umuyobozi w'inama y'ubutegetsi y'Ikigo cy'ubwishingizi SONARWA (*Chairman of the Board of Directors*), Mawadza Nhamo wari Umuyobozi Mukuru wa SONARWA (*Managing Director*), Bamiika Rumanyika Herbert (*Technical Director*), Magara Gahakwa John na Kamanzi Charlotte bagiye basimburana ku mwanya wa *Commercial Director* na Nzaramba Stevenson wari *Director of Planning and Policy* muri Minisiteri y'Ibikorwa remezo (MININFRA), bubakurikiranyeho ibyaha bifitanye isano no kunyereza umutungo, gutanga cyangwa kwakira indonke kugira ngo hakorwe ibinyuranyije n'amategeko no kwandika inyandiko zivuga ibintu uko bitari.

[4] Kamanzi Charlotte yarezwe icyaha cyo kwandika abizi inyandiko zivuga ibintu uko bitari n'icyaha cy'ubufatanyacyaha mu cyaha cyo kunyereza umutungo w'Ikigo, Karake Mutsinzi Charles aregwa ubufatanyacyaha mu gutanga impano kugira ngo hakorwe ibinyuranyije n'amategeko n'ubufatanyacyaha mu kunyereza umutungo w'Ikigo. Bamiika Rumanyika Herbert, Mawadza Nhamo na Magara Gahakwa John bo barezwe icyaha cyo kwandika babizi inyandiko ivuga ibintu uko bitari, icyaha cyo gutanga indonke kugira ngo hakorwe ibinyuranyije n'amategeko, n'ubufatanyacyaha mu kunyereza umutungo.

[5] Urukiko Rwisumbuye rwa Gasabo, mu rubanza RP 00538/2016/TGI/GSBO rwo ku wa 30/06/2017, rwemeje ko Bamiika Rumanyika Herbert na Magara Gahakwa John bahamwa n'icyaha cyo kunyereza umutungo, icyaha cyo gutanga ruswa n'icyo kwandika inyandiko zitavuga ukuri, rubahanisha igifungo cy'imyaka 7 n'ihazabu y'amafaranga 5.000.000 kuri buri wese;

- Karake Mutsinzi Charles ahamwa n'icyaha cyo kwakira ruswa n'icyo kunyereza umutungo, rumuhanisha igifungo cy'imyaka 5 n'ihazabu y'amafaranga 5.000.000.
- Mawadza Nhamo ahamwa n'icyaha cyo kunyereza umutungo n'icyo kwemeza inyandiko zitavugisha ukuri, rumuhanisha igifungo cy'imyaka 5 n'ihazabu y'amafaranga 5.000.000.

- Nzaramba Stevenson ahamwa n'icyaha cyo kwakira ruswa, rumuhanisha igifungo cy'imyaka itanu n'ihazabu y'amafaranga 5.000.000.
- Kamanzi Charlotte ahamwa n'icyaha cyo kunyereza umutungo n'icyo kwandika inyandiko zitavugisha ukuri, rumuhanisha igifungo cy'imyaka 4 n'ihazabu y'amafaranga 5.000.000.

[6] Urukiko rwategetse Bamiika Rumanyika Herbert, Mawadza Nhamo, Karake Mutsinzi Charles, Nzaramba Stevenson, Kamanzi Charlotte na Magara Gahakwa John gufatanya kwishyura amafaranga yanyerejwe muri SONARWA angana na 163.843.336 Frw. Rutegeka kandi ko Mbabazi Gerard na Rutagwabira Barnabas bahita barekurwa kuko badahamwa n'ibyaha bashinjwaga.

[7] Bamiika Rumanyika Herbert, Mawadza Nhamo, Karake Mutsinzi Charles, Nzaramba Stevenson, Kamanzi Charlotte na Magara Gahakwa John ntibishimiye imikirize y'urwo rubanza, barujuririra mu Rukiko Rukuru, ubujurire bwabo bwandikwa kuri RPA 00669/2017/HC/KIG, RPA 00680/2017/HC/KIG, RPA 00684/2017/HC/KIG, RPA 00685/2017/HC/KIG, RPA 00686/2017/HC/KIG, RPA 00745/2017/HC/KIG.

[8] Ubujurire bwabo bwashyizwe mu rubanza rumwe, ku wa 27/04/2018, Urukiko Rukuru rwemeza ko ubwo bujurire nta shingiro bufite, ruhindura urubanza rwajuririwe gusa ku bijyanye n'igihano cy'igifungo cyahanishijwe buri wese mu baregwa. Rwahanishije:

- Bamiika Rumanyika Herbert, Nzaramba Stevenson igifungo cy'imyaka 3 n'ihazabu y'amafaranga 5.000.000 kuri buri wese;
- Magara Gahakwa John, Mawadza Nhamo, Kamanzi Charlotte na Karake Mutsinzi Charles igifungo cy'imyaka 3 gisubitse mu gihe cy'umwaka umwe (1) n'ihazabu y'amafaranga 5.000.000 kuri buri wese.

Rwategetse Bamiika Rumanyika Herbert, Mawadza Nhamo, Karake Mutsinzi Charles, Nzaramba Stevenson, Kamanzi Charlotte na Magara Gahakwa John gufatanya kwishyura amafaranga yanyerejwe muri SONARWA angana na 163.843.336Frw.

[9] Kamanzi Charlotte na Magara Gahakwa John basubirishijemo urwo rubanza ingingo nshya, ikirego cyandikwa kuri RPA 00658/2018/HC/KIG, RPA 00661/2018/HC/KIG, Urukiko rwemeza ko ikirego cyabo kitakiriwe.

[10] Kamanzi Charlotte na Magara Gahakwa John ntibishimiye icyo cyemezo cyafashwe n'Urukiko Rukuru, bandikira Perezida w'Urukiko rw'Ubujurire, basaba ko urubanza RPA 00658-00661/2018/HC/KIG na RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG - RPA 00685/2017/HC/KIG - RPA 00686/2017/HC/KIG - RPA 00745/2017/HC/KIG rusubirwamo ku mpamvu z'akarengane, ariko nyuma yo gusuzuma ubwo busabe, abasubiza ko nta mpamvu iteganywa n'itegeko yatuma urwo rubanza rusubirwamo ku mpamvu z'akarengane.

[11] Kamanzi Charlotte na Magara Gahakwa John ntibanyuzwe n'icyo gisubizo, bandikira Urwego rw'Umuvunyi bavuga ko mu guca urubanza RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG - RPA 00685/2017/HC/KIG - RPA 00686/2017/HC/KIG - RPA 00745/2017/HC/KIG, Urukiko Rukuru rwirengagije amategeko, bigatuma barengana.

[12] Urwego rw'Umuvunyi nyuma yo gusuzuma ubusabe bwabo, rwandikiye Perezida w'Urukiko rw'Ikirenga ku wa 25/09/2020 rumusaba ko urubanza RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG - RPA 00685/2017/HC/KIG - RPA 00686/2017/HC/KIG - RPA 00745/2017/HC/KIG rwasubirwamo ku mpamvu z'akarengane.

[13] Ku wa 28/09/2020, Perezida w'Urukiko rw'Ikirenga, ashingiye kuri raporo y'Ubugenzuzi Bukuru bw'Inkiko, yemeje ko urwo rubanza rusubirwamo; rwandikwa kuri RS/INJUST/RP 00001/2020/SC.

[14] Urubanza rwahamagawe ku wa 26/10/2020, ntirwaburanishwa kubera ko Nzaramba Stevenson, yari yanditse agaragaza impamvu adashobora kwitaba, bituma iburanisha ryimurirwa ku wa 03/11/2020, nabwo ntirwaburanishwa kubera ko Bamiika Rumanyika Herbert yari arwaye, Urukiko rwemeza ko Ubwanditsi bw'Urukiko buzamenyesha indi tariki y'iburanisha.

[15] Iburanisha ryashyizwe ku wa 03/12/2020, uwo muni ugeze ruburanishwa mu ruhame, Kamanzi Charlotte yunganiwe na Me Musore Gakunzi Valery na Me Asimwe Frank, Magara Gahakwa John yunganiwe na Me Uwizeyimana Jean Baptiste na Me Bugingo John Bosco, Bamiika Rumanyika Herbert ari muri gereza hakoreshejwe ikoranabuhanga, yunganiwe na Me Gashagaza Philbert na Me Nyirangirimana Astérie, Karake Mutsinzi Charles yunganiwe na Me Rutabingwa Athanase, Mawadza Nhamo ahagarariwe¹ na Me Bandora Alfred, Nzaramba Stevenson ari muri gereza hakoreshejwe ikoranabuhanga, yunganiwe na Me kanyambo Diogène na Me RUTABINGWA Athanase naho Ubushinjacyaha buhagarariwe n'Umushinjacyaha ku rwego rw'Igihugu Uwombonye Hirwa Sudi.

[16] Ku ikubitiro, Ubushinjacyaha bwatanze inzitizi ijyanye no kutakira ubusabe bwa Bamiika Rumanyika Herbert, Karake Mutsinzi Charles, Mawadza Nhamo na Nzaramba Stevenson bw'uko Urukiko rusuzuma akarengane kabo nabo kuko batigeze basaba ko imanza batsinzwe zisubirwamo ku mpamvu z'akarengane.

[17] Nyuma yo gusuzuma ibisobanuro bya buri wese kuri icyo kibazo, ku itariki ya 23/12/2020, Urukiko rwafashe icyemezo ruvuga ko ababaye ababuranyi mu rubanza rusubirwamo ku mpamvu z'akarengane baruhamagarwamo, Urukiko rugashobora kugira icyo rubabaza cyafasha mu micire y'urubanza rusubirwamo cyangwa nabo bakaba bagira amakuru batanga, ariko bakaba badashobora gusaba ko urwo rubanza ruhinduka ku byerekeye ibyemezo bari bafatiwe, keretse rusanze hari ubusobekerane (*indivisibilité/indivisibility*) bw'ibiburanwa ku buryo rudashobora gufata icyemezo ku busabe bw'abasabye ko urubanza rusubirwamo bitagize ingaruka ku byemezo byafatiwe abatarabisabye kandi ku buryo bubafitiye inyungu.

[18] Iburanisha ry'urubanza mu mizi ryashyizwe ku wa 18/01/2021, uwo muni ugeze ruburanishwa mu ruhame, ababuranyi bose n'abunganizi babo bitabye Urukiko. Mbere y'uko iburanisha mu mizi ritangira, Me Gashagaza Philbert na Me Nyirangirimana Astérie basabye Urukiko kwemerera Bamiika Rumanyika Herbert kuba umuburanyi muri uru rubanza kuko harimo ubusobekerane cyane ku birebana n'indishyi zategetswe mu manza zasabiwe gusubirwamo ku mpamvu z'akarengane, zigomba kwishyurwa n'ababuranyi bose bafatanyije (*In solidum*), ko Magara Gahakwa John na Kamanzi Charlotte baramutse bagizwe abere, uwo bunganira kimwe n'abandi bahamagawe muri uru rubanza aribo bategekwa kuzishyura kandi batarahawe uburenganzira bwo kwiregura nk'uko biteganywa n'ingingo ya 29 y'Itegeko Nshinga ryo mu 2003 nk'uko ryavugururwe mu 2015, indi mpamvu ikaba ari uko Magara Gahakwa John na Kamanzi Charlotte aribo bari bafite inshingano z'ibanze zo gucunga ibirebana n'amafaranga bivugwa ko yanyerejwe.

[19] Me Bandora Alfred nawe ashingiye ku mpamvu zisa n'izasobanuwe n'abunganira Bamiika Rumanyika Herbert, yasabye ko Mawadza Nhamo yaba umuburanyi muri uru rubanza kubera ko rurimo ubusobekerane.

¹Mawadza Nhamo yasabye ko ahagararirwa aho kunganirwa, Urukiko rumaze gusuzuma impamvu yatanzerugasanga zifite ishingiro rurabimwemerera.

[20] Urukiko rwafatiye icyemezo mu ntebe kuri ubwo busabe bw'abahamagajwe mu rubanza, rwemeza ko rutagomba kongera gusuzuma ibyasuzumwe mu cyemezo mu rubanza rubanziriza urundi, rusobanura ko ubusobekerane buzasuzumwa mu gihe cyo gufata icyemezo, aho kuba mu gihe cy'iburanisha.

[21] Iburanisha ryarakomeje Kamanzi Charlotte, Magara Gahakwa John n'ababunganira bavuga ko batanze amakuru n'ibimenyetso byafashije inzego z'iperereza kubona amakuru ku byaha byakozwe muri SONARWA, no mu nkiko zose zababuranishije bemeza ko amakuru n'ibimenyetso batanze aribyo byagendeweho n'inzego z'iperereza mu kugenza ibyaha, bikaba bigaragaza ko nta bushake bwo gukora icyaha bari bafite ahubwo bari bagamije gufasha inzego z'ubutabera. Bashingira ku ngingo ya 17 y'Itegeko N° 35/2012 ryo ku wa 19/09/2012 rirengera abatanga amakuru ku byaha n'ingingo ya 650 y'Itegeko Ngenga N° 01/2012 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga icyo gihe basaba Urukiko kubarenganura rukabagira abere.

[22] Nzaramba Stevenson, Bamiika Rumanyika Herbert, Karake Mutsinzi Charles n'ababunganira na Me Bandora Alfred uhagarariye Mawadza Nhamo basabye Urukiko kuzemeza ko hari ubusobekerane mu rubanza rusubirwamo ku mpamvu z'akarengane kuko abaregwa bose bategetswe gufatanya gusubiza 163.843.336 Frw rushingiye kuri internal audit, kandi ntaho igaragaza ko SONARWA yabuze amafaranga ari nayo mpamvu itigeze iregera indishyi. Basobanuye ko ubundi buri wese yagombaga gutegekwa gusubiza amafaranga bavuga yanyereje.

[23] Ikibazo cyasuzumwe muri urwo rubanza kikaba ari ukumenya niba Magara Gahakwa John na Kamanzi Charlotte barakoze ibikorwa bakurikiranyweho bagamije gufasha inzego zishinzwe kugenza icyaha kubona amakuru, bityo bakaba batagomba gukurikiranwa mu rubanza.

[24] Ku wa 19/02/2021 Urukiko rwemeje ko ibikorwa Magara Gahakwa John na Kamanzi Charlotte bakurikiranweho babikoze mu rwego rwo gutanga amakuru yari agamije gufasha ubutabera kumenya ukuri ku byaha byakorerwaga muri SONARWA maze babigirwaho abere kuko batagombaga no kubikurikiranwaho.

[25] Urukiko rwemeje ko iburanisha ry'urubanza rizasubukurwa kugira ngo hasuzumwe ingingo yerekeye amafaranga agomba gusubizwa SONARWA.

[26] Iburanisha ryashyizwe ku wa 13/10/2021, uwo muni ugeze urubanza ruburanishwa mu ruhame, Bamiika Rumanyika Herbert yitabye yunganiwe na Me Gashagaza Philbert, Karake Mutsinzi Charles yunganiwe na Me Rubasha Herbert, Mawadza Nhamo ahagarariwe na Me Bandora Alfred, Nzaramba Stevenson yunganiwe na Me Rutabingwa Athanase na Me Kanyambo Diogène, Ubushinjacyaha buhagarariwe n'Umushinjacyaha ku rwego rw'Igihugu Uwombonye Hirwa Sudi.

[27] Bamiika Rumanyika Herbert, Karake Mutsinzi Charles, Nzaramba Stevenson n'ababunganira hamwe na Me Bandora Alfred uhagarariye Mawadza Nlamo bome bahuriza ku kuba batemera umubare w'amafaranga agomba gusubizwa SONARWA ungana na 163.843.336 Frw. Bagaruka kandi ku gusaba Urukiko ko rwakongera rugafungura iburanisha ku byaha bahamijwe n'Urukiko rubanza bagasobanura ko badashobora kuvuga ku mafaranga agomba gusubizwa hatabanje gusuzuma niba baragombaga guhamwa n'ibyaha bakurikiranyweho. Naho Karake Mutsinzi Charles avugako naho haba gusubizwa hasubizwa amafaranga buri wese yari akurikiranweho n'Ubushinjacyaha, kandi ko amafaranga agomba gusubizwa atagombaga gushingira kuri raporo ya audit interne, ahubwo hagombaga kwifashishwa raporo ya audit externe.

[28] Ubushinjacyaha buvugako mu myanzuro kimwe no mu iburanisha bigaragara ko abahamagawe mu rubanza bashakaga gutangira iburanisha bundi bushya kandi muri uru rubanza, inzira zose z'ubujurire ari izisanzwe n'izidasanzwe zarakoreshejwe. Bushingiye ku rubanza

RS/REV/INJUST/CIV0009/14/CS rwaciwe tariki ya 14 Nzeli 2018, haburana Mukarwego Josepha n'abandi na Ngiriyabandi André rwaciwe n'uru Rukiko ndetse no ku nyandiko z'abahanga, busobanura ko kuba batarigeze basaba ko urubanza rusubirwamo ku mpamvu z'akarengane, ibirebana n'ibyaha bahamijwe, ibihano bahanishijwe kimwe n'amafaranga bategetswe gusubiza bitagomba kongera kuburanishwaho.

[29] Urukiko rusanga ikibazo kigomba gusuzumwa ari ukumenya umubare w'amafaranga agomba gusubizwa SONARWA n'abasigaye mu rubanza nyuma y'uko Magara Gahakwa John na Kamanzi Charlotte bagizwe abere.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

1. Kumenya umubare w'amafaranga agomba gusubizwa SONARWA

Icyo Ubushinjacyaha bubivugaho

[30] Ubushinjacyaha buvuga ko mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, Urukiko Rukuru rwategetse abaregwaga bose gufatanya kwishyura SONARWA amafaranga angana na 163,843,336. Busobanura ko bushingiye ku cyemezo cy'Urukiko mu rubanza rubanziriza urundi RS/INJUST/RP 00001/2020/SC rwaciwe ku wa 19/02/2021, Magara Gahakwa John na Kamanzi Charlotte bagizwe abere ku byaha bari bakurikiranyweho, bukaba busanga Bamiika Rumanyika Herbert, Nzaramba Stevenson, Mawadza Nhamo na Karake Mutsinzi Charles aribo bagomba gufatanya kwishyura SONARWA ingano y'amafaranga yategetswe n'Urukiko Rukuru havuyemo ayagombaga gutangwa n'abaturanyi bagizwe abere, ni ukuvuga 109,228,890 Frw. Bityo buri wese akishyura 27, 307, 222 Frw hakiyongeraho ihazabu ingana n'amafaranga miliyoni eshanu (5.000.000Frw) igomba gutangwa na buri wese.

[31] Ubushinjacyaha busobanura kandi ko amafaranga Urukiko rwategetse Nzaramba Stevenson na bagenzi be gusubiza SONARWA, atari indishyi ahubwo ari amafaranga yarigishijwe anatangwaho ruswa, bityo abahamijwe icyaha bakaba bagomba kuyasubiza nk'uko bwabisobanuye haruguru. Naho ku bivugwa ko SONARWA itayaregeye byatewe n'uko abagombaga kuyaregera nabo bari mu bakurikiranwa.

[32] Buvuga kandi ko ibisabwa n'abahamagawe mu rubanza bijyanye no kongera kujya impaka ku mafaranga agomba gusubizwa, byakwerekeza ku guhindura icyemezo cyafashwe kitajuririwe, nyamara mu gika cya 69 cy'urubanza rubanziriza urundi muri uru rubanza rwavuzwe haruguru, Urukiko rwaremeje ko muri uru rubanza aribo bonyine bagomba kuyasubiza.”

Icyo Nzaramba Stevenson abivugaho

[33] Me Rutabingwa Athanase afatanyije na Me Kanyambo Diogène bunganira Nzaramba Stevenson bavuga ko bashingiye ku byemezo by'Urukiko muri uru rubanza, icyo ku wa 23/12/2020 n'icyo ku wa 19/02/2021, basanga hari ubusobekerane mu biburanwa (ibyaha bashinjwa) kuko kuba indishyi ari ingaruka zikomoka ku cyaha bidashoboka kuzireguraho batavuze ku byaha nyir'izina. Bagaragaza kandi ko kuba Urukiko Rukuru rwategetse Nzaramba Stevenson na bagenzi be gusubiza SONARWA amafaranga angana na 163,843,336 nyamara itarayaregeye, binyuranyije n'ihame rivugwa mu ngingo ya 10 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu.²

[34] Ababuranira Nzaramba Stevenson bavuze kandi ko batemeranya n'ibivugwa n'Ubushinjacyaha ko Nzaramba Stevenson n'abandi basigaye bagomba gusubiza SONARWA 109.228.890 Frw n'ihazabu

² Iyo ngingo iteganya ko: “Umucamanza aca urubanza ku cyasabwe cyose kandi icyo cyonyine.

ya 5.000.000 Frw kuri buri wese kuko n’ubwo abari abayobozi ba SONARWA icyo gihe nabo bakurikiranywe, ariko nyuma hashyizweho abandi, ariko ko batigeze baregera indishyi, kandi ko kugeza ubu nta genzura ryigeze rikorwa ngo rigaragaze ko hari umutungo wa SONARWA wabuze mu buryo bw’ubujura.

[35] Nzaramba Stevenson we avuga ko ingingo ya 46 y’Itegeko ngenga N° 01/2012/OL ryashyiragaho Igitabo cy’Amategeko ahana yashingiweho n’Urukiko rwemeza ko agomba gusubiza amafaranga itamureba kuko atari umukozi wa SONARWA, kandi ko no muri *audit reports* z’imyaka itatu ikurikirana ya SONARWA bigaragara ko nta mafaranga yabuze.

[36] Abamwunganira basozu basaba Urukiko ko ruramutse rubibonye ukundi, Nzaramba Stevenson yategekwe kuzasubiza 17.625.000 Frw kuko ariyo Ubushinjacyaha bwamureze naho ihazabu ya 5.000.000 Frw ntategekwe kuyatanga kubera ko nta gisobanuro afite mu mategeko.

Icyo Mawadza Nhamo abivugaho

[37] Me Bandora Alfred uhagarariye Mawadza Nhamo avuga ko kwiregura ku ndishyi zikomoka ku byaha, kandi ibyo byaha batarabiburanye ndetse batanemerewe kubyireguraho basanga bitandukanye n’ibiteganywa n’Itegeko Nshinga rya Repubulika y’u Rwanda ryo mu 2003 ryavugururwe mu 2015 mu ngingo zaryo za 15³ na 29⁴; cyane ko SONARWA itigeze irega bitewe no kuba *Audit Report* yayo igaragaza ko nta gihombo cyabayeye.

[38] Me Bandora Alfred avuga kandi ko Urukiko rw’Ikirenga ruramutse rubibonye ukundi rwazirikana ko Mawadza Nhamo n’ubwo aregwa hamwe na bagenzi be, ariko we yatangiye akazi muri SONARWA mu mwaka wa 2015 naho ibyo bamurega yasinyeho akaba yarabikoze mu mwaka wa 2016. Kubazwa amafaranga yatanzwe mbere y’uko aza mu Rwanda akaba asanga byaba ari akarengane kandi bari mu rubanza rwo gusuzuma akarengane ku baregwa bose. Asoza asaba Urukiko gukosora iryo kosa, Mawadza Nhamo akishyuzwa uruhare yagize muri ibyo bikorwa hitawe no ku gihe yabikoreye.

Icyo Bamiika Rumanyika Herbert abivugaho

[39] Bamiika Rumanyika Herbert yiregura avuga ko mu makuru Magara Gahakwa John na Kamanzi Charlotte batanze bavugaga ko nta mafaranga SONARWA yabuze, bivuze ko izo mvugo zabo zashingirwaho n’abasigaye ntibategekwe kugira amafaranga basubiza. Avuga kandi ko ibyo bigaragazwa no kuba Sonarwa itarigeze irega kuko ariya mafaranga yemewe nka *expenses (commissions)*, ko kandi iyo haba hari amafaranga bayifitiye nk’ikigo cy’ubucuruzi kiba cyaratanze ikirego kuko ifite umunyamategeko ubishinzwe. Asoza asobanura ko nta mafaranga afitiye SONARWA ku buryo yayiyasubiza, ahubwo ko hari ayo yari imubereyemo kandi ko yayahawe.

[40] Mu kumwunganira, Me Gashagaza Philbert avuga ko nyuma yo kubona ko hari ubusobekerane bw’ikiburanwa, Bamiika Rumanyika Herbert asaba ko akarengane ke kasuzumwa. Avuga kandi ko atakwirerwaga ku mafaranga Ubushinjacyaha busaba ko yasubizwa SONARWA atagaragaje akarengane ke. Akomeza asobanura ko Urukiko rudakwiye gutegeka ko Bamiika Rumanyika Charles afatanywa n’abandi kwishyura ayo mafaranga kuko bigaragara ko ubwo yakorerwaga *décompte final* na SONARWA ku wa 31/05/2016, atigeze agaragarizwa ko hari amafaranga akekweho cyangwa agomba SONARWA, ko ahubwo ariwe wagombwaga angana na 10.500.000Frw kandi akaba yarayishyuye igihe urubanza rwari rutangiye.

³ Iyo ngingo iteganywa ko abantu bose bararushya imbere y’amategeko. Itegeko ribarengera ku buryo bumwe.

⁴ Iyo ngingo iteganywa ko buri muntu wese afite uburenganzira ku butabera buboneye, burimo uburenganzira bwo: 1° kumenyeshwa imiterere n’impamvu z’icyaha akurikiranyweho, kwiregura no kunganirwa; ...

[41] Basoza bavuga ko ibisabwa n'Ubushinjacyaha bijyanye n'indishyi zigomba gusubizwa SONARWA nta shingiro bifite kubera ko zitaregewe cyangwa ngo SONARWA izisabe. Banavuga ko bisanzwe bizwi ko Ubushinjacyaha bukurikirana gusa ibijyanye n'ibihano ntaho buhurira n'indishyi.

Icyo Karake Mutsinzi Charles abivugaho

[42] Me Rubasha Herbert uburanira Karake Mutsinzi Charles yiregura avuga ko mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, Urukiko rwategetse ko SONARWA ihabwa 163,843,336 Frw, nyamara ayo mafaranga atararegewe kuko SONARWA itigeze iba umuburanyi muri urwo rubanza nk'uregera indishyi (*partie civile*) cyangwa ngo ibe yararegeye gusubizwa ibyayo byibwe, ibyambuwe ku buryo bw'uburiganya cyangwa ibyishyuwe bitari ngombwa kuko aricyo cyari kugaragaza ko ifite inyungu mu rubanza. Akavuga ko ibyo binyuranyije n'ibiteganywa n'ingingo ya 10 y'itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu ivuga ko umucamanza aca urubanza ku cyasabwe cyose kandi icyo cyonyine, cyane ko SONARWA itigeze ikora igenzura (*audit*) kugira ngo igaragaze igihombo yatewe n'ibyaha baregwa muri uru rubanza. Anasobanura ko n'iyi indishyi zari kuburanwa zitari guhabwa ishingiro.

[43] Karake Mutsinzi Charles we yiregura avuga ko yafashwe aregwa 12,000 USD, ayo mafaranga akaba akomoka kuri *allowances* ingana na 1,000 USD yabonaga buri kwezi, mu gihe kingana n'amezi 12. Akavuga ko Umucamanza atagombaga gushingira kuri *internal audit* kuko igenzura rikemura impaka ari irikozwe n'abagenzuzi bo hanze (*external audit*). Asobanura ko gusubiza byagombye kumvikana nko gusubiza amafaranga umuntu yafashe, ko Urukiko rusanze hari icyo agomba gusubiza, yasubiza amafaranga yabonye angana na 9,000,000Frw⁵, bitaba ibyo Ubushinjacyaha bukagaragaza aho 27.307.222 Frw zikomoka, kuko icyaha ari gatozi nk'uko biteganywa n'ingingo ya 29 igika cya 5 y'itegeko Nshinga.

UKO URUKIKO RUBIBONA

[44] Urukiko rusanga, haba mu myanzuro yabo cyangwa mu gihe cy'iburanisha, abahamagajwe muri uru rubanza n'ababunganira cyangwa uhagarariye umwe muri bo bagaruka ku byo bari baravuze no mu maburanisha abanza ko basanga ari ngombwa ko Urukiko rwongera kuburanisha ku bihano bahawe n'urukiko rubanza, kuko uru Rukiko rudashobora gusuzuma ibyerekeye amafaranga bita indishyi agomba gusubizwa SONARWA rutabanje gusuzuma ibyerekeye imikorere y'icyaha.

[45] Ikibazo cyo kumenya niba abatarasubirishijemo urubanza ku mpamvu z'akarengane bashobora kuririra ku busabe bw'ababuranyi babisabye, nabo bakagira icyo basaba, cyasubijwe mu cyemezo kibanzirira ikindi cyafashwe ku wa 23/12/2020 aho Urukiko rwemeje ko iyo abahamagajwe mu rukiko bagira icyo banenga ku byemezo bari bafatiwe, bari gusaba ko urubanza rusubirwamo ku mpamvu z'akarengane; ko kuba rero batarabikoze biyambuye ubwo burenganzira. Ibi byanemejwe no mu rubanza uru Rukiko rwaciye ku wa 19/02/2021, aho rwemeje ko abahamagajwe mu rukiko badashobora gusaba ko urubanza rusubirishwamo ku mpamvu z'akarengane ruhinduka ku byerekeye ibyemezo bari bafatiwe keretse urukiko rusanze hari ubusobekerane (*indivisibilité/indivisibility*) bw'ibiburanwa ku buryo rudashobora gufata icyemezo ku busabe bw'abasabye ko urubanza rusubirwamo bitagize ingaruka ku byemezo byafashwe ku batarabisabye kandi ku buryo bubafitiye inyungu.

[46] Ni muri urwo rwego Urukiko, rumaze kubona ko icyemezo cyarwo cy'uko abasabye ko urubanza rusubirwamo ku mpamvu z'akarengane bagizwe abere, kandi bari barategetswe n'urukiko rubanza gufatanya n'abahamagajwe mu rukiko gusubiza SONARWA 163,843,336Frw, gifite ingaruka ku byemezo byari byarafatiwe abatarasabye ko urubanza rusubirwamo ku mpamvu z'akarengane,

⁵ Ahwanye na 12,000 USD ukurikije uko ivunjisha ryari rimeze ikirego gitangwa.

rwasanze ari ngombwa gupfundura iburanisha kugirango habe impaka ku mubare nyakuri w'amafaranga abahamwe n'icyaha bagomba gusubiza SONARWA.

[47] Urukiko rusanga ariko mbere yo gusuzuma umubare w'amafaranga agomba gusubizwa SONARWA na Bamiika Rumanyika Herbert, Nzaramba Stevenson, Mawadza Nhamo na Karake Mutsinzi Charles, ari ngombwa kugaragaza itandukanyirizo riri hagati yo gusubiza ibyarigishijwe, ibyibwe, ibyambuwe ku buryo bw'uburiganya cyangwa ibyishyuwe bitari ngombwa binyujijwe mu masezerano n'indishyi zikomoka ku cyaha, kugirango haveho urujijo ku byo abahamagamajwe mu rukiko n'ababunganira ndetse n'uhagarariye umwe muri bo bita indishyi, bavuga ko zitashoboraga gutangwa n'Urukiko kandi ntawaziregeye.

Kumenya itandukanyirizo riri hagati yo gusubiza ibikomoka ku cyaha n'indishyi zikomoka ku byangijwe n'icyaha

[48] Ingingo ya 45 y'Itegeko – Ngenga N°01/2012 ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ryakoreshwaga icyo gihe yateganyaga ko abantu bose bahaniwe icyaha kimwe bafatanyaga kwishyura ihazabu, ibisubizwa, indishyi z'akababaro n'amagarama y'urubanza. Ariko urukiko rushobora, rukoresheje icyemezo gisobanuye, gusonera bamwe mu bahanwe, ubufatanye bwose cyangwa igice cyabwo. Naho ingingo ya 46 ikavugaga ko mu rubanza rwose rw'inshinjabyaha rugennye igihano cy'igifungo cyangwa cy'ihazabu, umucamanza ateguka gusubiza ibyarigishijwe, ibyibwe, ibyambuwe ku buryo bw'uburiganya cyangwa ibyishyuwe bitari ngombwa binyujijwe mu masezerano.

[49] Ibiteganyijwe muri izo ngingo, biha Urukiko inshingano yo gutegeka abaregwa gusubiza ibyarigishijwe, ibyibwe, ibyatanzwe bitari ngombwa mu gihe rubahamijwe icyaha, rukabahanisha igihano cy'igifungo cyangwa icy'ihazabu kabone n'iyi uwakorewe icyaha yaba atararegeye indishyi zikomoka ku cyaha.

[50] Rushingiye ku bisobanuro byatanzwe mu bika bibanziriza iki, Urukiko rusanga itandukanyirizo riri hagati yo gusubiza ibikomoka ku cyaha n'indishyi zikomoka ku cyaha ari uko gusubiza ibikomoka ku cyaha bitegekwa mu manza nshinjabyaha n'Urukiko rubyibwirije n'iyi uwakorewe icyaha yaba ataratanze ikirego mu gihe abaregwa bahamwe n'icyaha kandi bagahabwa ibihano bigizwe n'igifungo cyangwa ihazabu. Naho ku birebana n'ikirego cy'indishyi, kikaba ari ikirego gitangwa n'uwangirijwe n'icyaha wese kigamijwe gusa gusaba indishyi nk'uko biteganywa n'ingingo ya 9 n'iyi 10 z'Itegeko N° 30/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakurikizwaga ibyaha bikorwa.

[51] Urukiko rukaba rusanga kuba SONARWA itaratanze ikirego kigamijwe gusaba indishyi zikomoka ku byangijwe n'ibyaha Bamiika Rumanyika Herbert, Nzaramba Stevenson, Mawadza Nhamo na Karake Mutsinzi Charles bahamijwe, bakanabihanirwa atari impamvu yari gutuma Urukiko rubanza rutabategeka gusubiza SONARWA amafaranga angana na 163,843,336 yishyuwe atari ngombwa. Bityo, ibyo abahamagajwe mu rubanza bavuga ko kubategeka gusubiza ayo mafaranga binyuranyije n'ihame ry'uko umucamanza aca urubanza ku cyasabwe gusa nta shingiro bifite.

[52] Abahamagajwe mu rubanza n'ababunganira n'uhagarariye umwe muri bo bavuga kandi ko Urukiko rubanza ntacyo rwashingiyeho rubategeka gufatanyaga gusubiza SONARWA 163,843,336 Frw, ko n'iyi haba gusubiza hagombaga kurebwa amafaranga buri wese yari akurikiranyweho n'Ubushinjacyaha.

[53] Urukiko rusanga abahanga mu mategeko nka Victoire Alexis Désiré, avugaga ko abahamijwe icyaha kimwe cy'ubugome cyangwa gikomeye bategekwa gufatanyaga kwishyura ihazabu, gusubiza ibikomoka ku cyaha, kwishyura indishyi kimwe n'andi mafaranga yakoreshejwe mu kugukurikirana. Iyi nshingano ishingiyeye ku kuba buri wese mu bakoze icyaha cy'ubugome cyangwa icyaha gikomeye, cyangwa wakigizemo uruhare, yishyura ibyo cyangije byose; ntashobora kwitwaza ko hari abandi

bahamijwe icyo cyaha kugirango yishyure igice, uburwozwacyaha bw'abandi bukaba butamukuraho ingaruka z'icyaha yakoze. Asobanura kandi ko kugira ngo igihano cyo gufatanya kwishyura ibyangijwe n'icyaha gitangwe hagomba ibi bikurikira:

- Kuba icyakozwe kigize icyaha gihanwa n'amategeko.
- Kuba abahamwe n'icyaha barahamijwe icyaha kimwe⁶.

[54] Ibijyanye no gufatanya gusubiza ibikomoka ku cyaha binasobanurwa na M. Bouriche, aho avuga ko gutegeka gufatanya kwishyura ibyangijwe n'icyaha, bifite umwihariko, bikaba bikomoka ku busobekerane bw' ibigikomokaho cyangwa ku busobekerane bw'icyagitewe.⁷

[55] Urukiko rusanga nk'uko ingingo ya 45 y'Itegeko Ngenga N°01/2012 ryavuzwe haruguru ndetse bikanashimangirwa n'abahanga, kugira ngo Urukiko ruhanishe abahamwe n'icyaha gusubiza ibikomoka ku cyaha, bagomba kuba barahamwe n'icyaha kimwe. Ni muri urwo rwego rugomba gusuzuma niba ibyaha Bamiika Rumanyika Hebert, Nzaramba Stevenson, Karake Mutsinzi Charles na Mawadza Nhamo bahamijwe ari bimwe.

[56] Harebwe urubanza RP 0538/2016/TGI/GSBO, Urukiko rusanga Bamiika Rumanyika Herbert, yarahamijwe icyaha cyo kunyereza umutungo, icyaha cyo gutanga ruswa n'icyo kwandika inyandiko zitavuga ukuri, Mawadza Nhamo ahamwa n'icyaha cyo kunyereza umutungo n'icyo kwemeza inyandiko zitavuga ukuri, Karake Mutsinzi Charles ahamwa n'icyaha cyo kwakira ruswa n'icyo kunyereza umutungo naho Nzaramba Stevenson ahamwa n'icyaha cyo kwakira ruswa.

[57] Urukiko rusanga ku bw'ibanze abahanwe barahamwe n'icyaha cyo kwakira no gutanga ruswa ndetse hashingiwe ku ngingo ya 17⁸ n'ya 22⁹ z'Amasezerano mpuzamahanga y'Umuryango w'Abibumbye agamije kurwanya ruswa¹⁰, n'ibindi byaha bahamijwe birimo kunyereza umutungo no gukoresha inyandiko zitavugisha ukuri bikaba bifatwa nk'ibyaha bifitanye isano na ruswa nk'uko byasobanuwe mu cyemezo cy'Urukiko mu rubanza rwacye ku itariki ya 19/02/2021¹¹. Byumvikanisha rero ko Bamiika Rumanyika Herbert, Nzaramba Stevenson, Karake Mutsinzi Charles na Mawadza Nhamo bahamwe n'ibyaha bimwe. Kuba rero Urukiko rwaremeje ko bagombaga gufatanya kwishyura ibyarigishijwe nta kosa rwakoze kuko bihura n'ibyateganywaga n'ingingo ya 45 y'Itegeko Ngenga N° 01/2012 ryavuzwe haruguru.

⁶Victoire Alexis Désiré, Répertoire méthodique et alphabétique de législation, doctrine., Volume 33, Edition Dalloz 2018, pge 329. Que tous les condamnés pour un même crime ou un même délit seront solidairement tenus des amendes, des restitutions, des dommages-intérêts et des frais. Cette obligation repose sur le fait que chacune des personnes qui commettent un crime ou un délit ou y participe, en doit la réparation pour le tout et ne peut arguer de ce que d'autres ont commis ce délit comme elle pour n'en être tenue que pour partie, la culpabilité des autres ne la déchargeant pas des suites de la sienne. Pour que la peine soit prononcée, il faut que :

- L'acte rentre dans l'ordre des infractions punies par la loi pénale.
- Que les coupables aient commis le même acte.

⁷ Bouriche, M., Les instruments de solidarité en droit international public. Connaissances et savoirs, 2012, P 23; L'obligation in solidum, suis generis, résulte soit de l'indivisibilité du résultat soit de l'indivisibilité de la causalité.

⁸ Article 17 of the United Nations Convention against Corruption: "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or anything of value entrusted to the public official by virtue of his or her position."

⁹ Article 22 of the United Nations Convention against Corruption: each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

¹⁰ U Rwanda rwemeje aya masezerano ku wa 4 Ukwakira 2006.

¹¹ Urubanza RS/INJUST/PEN 00001/2020/SC rwo ku wa 19/02/2021, igika cya 66 na 67.

[58] Urukiko rurasanga ibyo Nzaramba Stevenson avuga ko Urukiko rutagombaga kumutegeka gufatanya na Bamiika Rumanyika Herbert, Karake Mutsinzi Charles na Mawadza Nhamo gusubiza SONARWA amafaranga yanyerejwe kuko atari umukozi wayo, nta shingiro bifite kubera ko nk'uko byasobanuwe haruguru, yahamwe n'icyaha kimwe n'icyabo, kandi iyo ikaba ari impamvu yateganyijwe n'itegeko ituma habaho gufatanya gusubiza ibikomoka ku cyaha.

[59] Ikindi abahamagajwe mu rubanza n'ababunganira n'uhagarariye umwe muri bo banenga urubanza rwaciwe n'Urukiko rubanza ni uko raporo ya *internal audit* itagombaga gushingirwaho hemezwa ko 163,843,336 Frw ariyo agomba gusubizwa SONARWA, ko ahubwo raporo ya external audit ariyo yari gushingirwaho, kandi ko nta yabaye ngo igaragaze ko SONARWA yaba yarabuze ariya mafaranga.

Kumenya niba raporo ya internal audit yaragombaga gushingirwaho n'Urukiko rwemeza amafaranga agomba gusubizwa SONARWA

[60] Urukiko rusanga dosiye y'uru rubanza igaragaza raporo y'igenzura yakozwe na SONARWA yerekana amatariki n'ingano y'amafaranga yishyuwe ku isoko rya MININFRA mu ngengo y'imari y'umwaka wa 2013- 2014, 2014-2015 n'ya 2015-2016 nka komisiyo, yose hamwe akaba angana n'amafaranga 163.843.336 nk'uko bigaragara mu mbonerahamwe iri hasi:

Itariki yishyuriweho	Amafara ng a yishyuwe	Komisiyo yishyuwe	Rate
01/10/2013	158.482.676 Frw	15.848.268 Frw	10%
13/02/2014	241.183.880 Frw	24.118.388 Frw	10%
26/09/2014	327.227.860 Frw	32.722.786 Frw	10%
04/03/2015	65.401.660 Frw	6.540.166 Frw	10%
02/10/2015	253.196.886 Frw	25.319.689 Frw	10%
22/01/2016	337.308.950 Frw	33.730.895 Frw	10%
04/03/2016	164.923.513 Frw	16.492.351 Frw	10%
18/03/2016	164.923.513 Frw	9.070.793 Frw	6%
Total: 2013-2016	1.712.648.938Frw	163.843.336Frw.	

[61] Urukiko rurasanga Ubushinjacyaha bwaratanze raporo ya *internal audit* nk'ikimenyetso kigaragaza ko hari amafaranga yishyuwe na SONARWA bitari ngombwa, ruyiheraho rwemeza ko Bamiika Rumanyika Herbert, Nzaramba Stevenson, Mawadza Nhamo na Karake Mutsinzi Charles ibivugwa na Karake Mutsinzi Charles bafatanya gusubiza SONARWA amafaranga 163.843.336.

[62] Ku byerekeye umwanya w'ubugenzuzi bwite (*internal auditing*) mu kigo, ubu bugenzuzi ni igikorwa gikorwa mu bwigenge, gifite intego kandi ni igikorwa cy'ubujyanama kigamije guteza imbere no kongera ubwiza bw'ibikorwa by'ikigo. Bufasha ikigo kugera ku ntego zacyo hashyirwaho uburyo bunozze bwo gusuzuma no kunoza ibonezantego mu guhamya imicungire y'igenzura n'uburyo

bw'imiyoborere¹². Ishami rishinzwe ubugenzuzi bwite mu kigo rishobora gukora iperereza ku makuru y'uko haba harabayeho uburiganya, inyerezwa ry'umutungo, ubujura, gusesagura umutungo, n'ibindi.¹³

[63] Ku kibazo cyo kumenya niba Urukiko rwaragombaga gushingira kuri raporo ya internal audit rugira ibyo rutegeka abahamwe n'icyaha, Urukiko rusanga nk'uko biteganywa n'ingingo ya 86 y'Itegeko N° 30/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakurikizwaga icyo gihe,¹⁴ iyo raporo ntacyari kubuza Urukiko kuyishingiraho mu gihe bayigiyeho impaka ntibashobore gutanga ibindi bimenyetso biyivuguruzwa.

Kumenya umubare nyakuri w'amafaranga agomba gusubizwa SONARWA

[64] Urukiko rurasanga kugira ngo abahamwe n'icyaha bategekwe gufatanywa gusubiza ibikomoka ku cyaha bishingira ku mpamvu ebyiri: iya mbere ni ukuba barahamijwe icyaha kimwe naho iya kabiri ikaba ari ukudatandukanywa kw' ibikomoka ku cyaha (*indivisible du resultat*) nk'uko byasobanuwe haruguru n'umuhanga M. Bouriche.

[65] Rushingiye kuri iyo mpamvu ya kabiri, Urukiko rurasanga ibikorwa bigize icyaha cyo kwakira no gutanga ruswa n'ibyaha bifitanye isano nayo Bamiika Rumanyika Herbert, Nzaramba Stevenson, Mawadza Nhamo na Karake Mutsinzi Charles bahamijwe n'Urukiko, aribyo byatumye SONARWA itakaza amafaranga 163,843,336. Byumvikana ko ayo mafaranga atareberwa mu ruhare rwa buri wese nk'uko abahamagajwe mu rubanza n'abunganizi babo bashakira kubyumvikanyisha, ahubwo areberwa mu cyaha cyakozwe kikagira ingaruka kuri SONARWA.

[66] Urukiko rurasanga kandi kuba uru Rukiko rwarasanze Magara Gahakwa John na Kamanzi Charlotte bataragombaga gukurikiranwa bakagirwa abere, bidahindura umubare w'amafaranga yarigishijwe. Bityo, ibivugwa n'Ubushinjacyaha ko abasigaye mu rubanza bagomba gufatanywa kwishyura 109.228.891Frw aho kuba 163,843,336 Frw bikaba bidafite ishingiro. Naho ibivugwa na Nzaramba Stevenson ko Urukiko rwanamukuriraho igihano cy' ihazabu bikaba bitagombaga gusuzumwa kuko atabisabye mu buryo buteganywa n'amategeko.

[67] Urukiko rushingiye ku bisobanuro byatanze mu bika bibanziriza iki, rurasanga abasigaye mu rubanza aribo Bamiika Rumanyika Herbert, Nzaramba Stevenson, Mawadza Nhamo na Karake Mutsinzi Charles bagomba gufatanywa gusubiza SONARWA amafaranga 163,843,336.

III. ICYEMEZO CY'URUKIKO

[68] Rwemeje ko abahamagajwe mu rubanza RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG - RPA 00685/2017/HC/KIG - RPA 00686/2017/HC/KIG - RPA 00745/2017/HC/KIG rwaciye n'Urukiko Rukuru ku wa 10/12/2018, aribo Bamiika Rumanyika Herbert, Nzaramba Stevenson, Mawadza Nhamo na Karake Mutsinzi Charles bagomba gufatanywa gusubiza SONARWA amafaranga 163,843,336.

¹² Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes. <https://na.theiia.org/standards-guidance/mandatory-guidance/pages/definition-of-internal-auditing.aspx>

¹³ The Internal Audit Department investigates reported occurrences of fraud, embezzlement, theft, waste, etc. <https://www.marquette.edu/riskunit/internalaudit/role.shtml>

¹⁴ Ibimenyetso bishobora gushingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, abaturanyi bapfa kuba barabigiyeho impaka. Urukiko ruhanya ku buryo butavuguruzwa ko ibimenyetso byose bishinje cyangwabishinjura ari byo kandi bishobora kwemerwa