# CIFTCI v NSHIMIYIMANA N'UNDI

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00003/2020/SC – (Cyanzayire, P.J., Nyirinkwaya na Hitiyaremye, J.) 30 Nzeri 2021]

*Amategeko agenga amasezerano – Ubugure – Umutungo utimukanwa – Ibisabwa ngo amasezerano y'ubugure ku mutungo utimukanwa abe yuzuye – Amasezerano y'ubugure k'umutungo utimukanwa agomba gusinyirwa imbere y'umukozi wabiherewe ububasha uhamya ko akubiyemo amakuru yose ya ngombwa ari ku ifishi yabigenewe – Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/4/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa, ingingo ya 34, igika cya 2, (iteganya ifishi igomba gukoreshwa ku mugereka wa 4 waryo)*

*Amategeko agenga amasezerano – Gutesha agaciro amasezerano y'ubugure – Inyungu zikomoka ku masezerano yateshejwe agaciro – Amasezerano yateshejwe agaciro afatwa nkatarabayeho.*

*Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Gusubirishamo imanza ku impamvu z'akarengane – Indishyi z'akababaro – Indishyi z'akababaro ntizigenwa mu gihe uzisaba atariwe wasabye ko urubanza rusubirishwamo ku impamvu z'akarengane*

**Incmake y'ikibazo**: Nshimiyimana yakoranye na Sebutinde amasezerano y'ubugure bw'inzu ku wa 28/12/2014 amwishyura igice cy'ikiguzi ikindi gice gisigaye bumvikana ko azakimuha bamaze gukora ihererekanya mutungo. Kuwa 31/10/2016 Sebutinde yongeye gukora andi masezerano y'ubugure bw'iyo nzu na Ciftci amwishyura igice ikindi gice bumvikana ko azakimuha bamaze gukora ihererekanya mutungo, bukeye ku wa 01/11/2016 bayajyana kwa Noteri nawe ayashyiraho umukono.

Nshimiyimana yareze Sebutinde mu Rukiko Rwisumbuye rwa Gasabo asaba ko yakorerwa ihererekanyamutungo, Ciftci agoboka muri urwo rubanza avuga ko uwo mutungo yawuguze binyuze mu masezerano bakoreye imbere ya Noteri. Urukiko rwemeje ko ubutaka bwaguzwe na Nshimiyimana maze rutegeka ko abwandikwaho runemeza kandi ko kugoboka mu rubanza kwa Ciftci nta shingiro gufite.

Ciftci ntiyishimiye icyo cyemezo maze ajuririra mu Rukiko Rukuru, ruza gusanga ubujurire bwe bufite ishingiro rutegeka ko iyo nzu yandikwa kuri Ciftci naho Nshimiyimana agasubizwa amafaranga yatanze.

Nshimiyimana yajuririye urwo rubanza mu rukiko rw'ikirenga maze kubera amavugurura yari yakozwe urubanza ruhabwa Urukiko rw'Ubujurire avuga ko Sebutinde yamugurishirije inzu arusaba kwemeza ko igurisha ry'ikintu cy'undi ari imfabusa. Urukiko rw'Ubujurire bwemeje ko ubujurire bwa Nshimiyimana bufite ishingiro rutegeka ko yandikwaho inzu yaguze hashigiwe ko ariwe waguze iyo nzu mbere kandi ko amasezerano Ciftci avuga ko yakoreye imbere ya Noteri ataribyo kuko kwa Noteri bayajyanyeyo bamaze kuyakora no kuyasinya bityo akaba ahuje kamere n'ayo Nshimiyimana yagiranye na Sebutinde.

Ciftci yaje gusaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane n'urukiko rw'ikirenga avuga ko Urukiko rubanza rwemeje ko amasezerano ya Nshimiyimana afite agaciro kandi atarakorewe imbere ya Noteri. Yakomeje avuga ko amasezerano ya Nshimiyimana Urukiko rubanza rwahaye agaciro ari inyandiko bwite bityo rukaba rwarirengangije amasezerano ye yakorewe imbere ya Noteri nkuko biteganywa n'amategeko bityo agasaba Urukiko kwemeza ko

amasezerano ya Nshimiyimana nta agaciro afite kandi rukemeza ko aye ariyo afite agaciro anasaba ko yanakwandikwaho ikibanza kiburanwa. Nshimiyimana we avuga ko Ciftci adashobora kubarurwaho iyo nzu kuko yayiguze n'utari nyirayo dore ko yayiguze yaramaze kugurishwa. Anavuga kandi ko amasezerano avuga ko yakorewe imbere yanoteri ataribyo kuko bayajyanyeyo ku munsi ukurikira uwo bayasinyiye.

**Incamake y'icyemezo:** 1. Amasezerano y'ubugure k'umutungo utimukanwa agomba gusinyirwa imbere y'umukozi wabiherewe ububasha uhamya ko akubiyemo amakuru yose ya ngombwa ari ku ifishi yabigenewe. Bityo rero yaba amasezerano y'ubugure Sebutinde Edouard yakoranye na Ciftci Inanc ndetse nayo Sebutinde Edouard yakoranye na Nshimiyimana Yvon yose akwiye guteshwa agaciro kuko atujuje ibisabwa ku buryo yafatwa nk'inyandikompamo; ibintu bikaba bigomba guubira uko byari bimeze mbere y'uko habaho ayo amasezerano yose y'ubugure.

2. Amafaranga y'igihembo cy'avoka nay'ikurikiranarubanza ntagenwa mu gihe ababuranyi bose nta numwe watsinze urubanza.

3. Amasezerano yateshejwe agaciro afatwa nkatarabayeho bityo akaba nta n'inyungu agomba kubyara; inyungu rero zisabwa ku kuba amasezerano y'ubugure ateshejwe agaciro zikaba ntazikwiye kugenwa.

4. Indishyi z'akababaro ntizigenwa mu gihe uzisaba atariwe wasabye ko urubanza rusubirishwamo ku impamvu z'akarengane.

**Urubanza Nº RCAA 00035/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku itariki ya 19/07/2019 ruhindutse mu ngingo zarwo zose;**

**Amategeko yashingiweho:**

Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 11, 12;

Itegeko N° 13 bis/2014 ryo ku wa 21/05/2014 rigenga umurimo w'Ubunoteri, ingingo ya 2;

Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/4/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa, ingingo ya 34;

**Amategeko yifashijwe atagikoreshwa:**

Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 18.

**Imanza zifashishijwe:**

Manizabayo na Twizerimana, RS/INJUST/RC 00010/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25/09/2020;

Nsanzimana na Nyirajyambere, RS/INJUST/RC 00004/2020/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 09/04/2021;

PRIME Insurance Ltd na Kansiime, RS/INJUST/RCOM 00005/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 12/06/2020.

**Inyandiko z'abahanga zakoreshejwe:**

Code civil annoté, 119ème édition, avec le concours de Xavier Henry, Guy Venandet, Georges Wiederkehr, Pascal Ancel, Auce Tisserand-Martin et Pascale Guiomard, art. 1178, annotation 10, p. 1398.

# Urubanza

## I. IMITERERE Y'URUBANZA

[1] Ku itariki ya 28/12/2014, Nshimiyimana Yvon yakoranye na Sebutinde Edouard amasezerano y'ubugure bw'inzu iherereye ku muhanda KG 567 St/18 mu Mudugudu wa Rwinzovu, Akagari ka Kamatamu, Umurenge wa Kacyiru, Akarere ka Gasabo, Umujyi wa Kigali, ku giciro cya 16.000.000 Frw, yishyura 12.000.000 Frw, 4.000.000 Frw asigaye bumvikana ko azishyurwa ubwo ihererekanyamutungo (mutation) rizaba rirangiye.

[2] Ku itariki ya 31/10/2016, Sebutinde Edouard yongeye gukorana andi masezerano y'ubugure bw'inzu na Ciftci Inanc, bukeye bwaho ku itariki ya 01/11/2016, ayo masezerano bayajyana kwa Noteri na we ayashyiraho umukono. Muri ayo masezerano bumvikanye ko baguze inzu iri mu kibanza gifite Nº UPI 1/02/07/01/826, ku giciro cya 45.000 USD, Ciftci Inanc yishyura 30.000 USD, andi 15.000 USD asigaye bumvikana ko azayatanga bamaze gukora ihererekanyamutungo.

[3] Nshimiyimana Yvon yareze Sebutinde Edouard mu Rukiko Rwisumbuye rwa Gasabo asaba gukorerwa ihererekanyamutungo (mutation) ry'inzu yaguze n'indishyi zitandukanye, urubanza ruhabwa Nº RC 00335/2016/TGI/GSBO.

[4] Ciftci Inanc yagobotse muri urwo rubanza ku bushake avuga ko umutungo uburanwa ari uwe kuko yawuguze na Sebutinde Edouard binyuze mu masezerano bakoreye imbere ya Noteri, ko Nshimiyimana Yvon urega atagaragaza nimero y'ikibanza inzu avuga yaguze iherereyemo, ko ndetse n'amasezerano y'ubugure avuga ko yakoranye na Sebutinde Edouard akwiye guteshwa agaciro kuko atakorewe imbere ya Noteri nk'uko biteganywa n'amategeko.

[5] Ku itariki ya 21/06/2017, Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza rwemeza kandi rutegeka ko:

- ikirego cya Nshimiyimana Yvon gifite ishingiro;
- ikirego cya Ciftci Inanc cyo kugoboka mu rubanza nta shingiro gifite;
- ubutaka buherereye mu Mudugudu wa Rwinzovu, Akagari ka Kamatamu, Umurenge wa Kacyiru, Akarere ka Gasabo, Umujyi wa Kigali, bwari bubaruwe kuri Sebutinde Edouard kuri Nº 0826/GAS/KAC bwandikwa kuri Nshimiyimana Yvon;
- Sebutinde Edouard yishyura Nshimiyimana Yvon 500.000 Frw y'indishyi z'akababaro, 100.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka.

[6] Urukiko rwageze kuri uwo mwanzuro rushingiye ku mpamvu zikurikira:

- Kuba ku itariki ya 28/12/2014, Nshimiyimana Yvon yaraguze na Sebutinde Edouard inzu iri ku muhanda KG 567 St/18, Umudugudu wa Rwinzovu, Akagari ka Kamatamu, Umurenge wa Kacyiru, Akarere ka Gasabo, yishyura 12.000.000 Frw kuri 16.000.000 Frw yumvikanyweho, andi 4.000.000 Frw akaba yari kuzayishyurwa nyuma y'ihererekanyamutungo (mutation), ahabwa imfunguzo z'inzu ndetse ayituramo;
- Kuba ihererekanyamutungo ryaratindijwe ni uko ibyangombwa byarimo ikosa ryatinze gukosorwa, hashira imyaka ibiri (2), Sebutinde Edouard akabyuririraho inzu akayigurisha Ciftci Inanc ku itariki ya 01/11/2016;
- Kuba amasezerano y'ubugure Nshimiyimana Yvon aburanisha atagaragaza nimero y'ikibanza yaguze atari byo byatuma ateshwa agaciro kuko Sebutinde Edouard aterekana ko aho hantu yari ahafite inzu ebyiri ku buryo zakwitiranywa;
- Kuba ibivugwa na Sebutinde Edouard ko yafatiranywe mu bibazo by'ubutane nta shingiro bifite kuko atagaragaza ko byamuteye kubura ububasha bwo gukora amasezerano.

[7] Ciftci Inanc yajuririye urwo rubanza mu Rukiko Rukuru avuga ko Urukiko Rwisumbuye rwa Gasabo rwemeje ko Nshimiyimana Yvon ariwe waguze mu buryo bwemewe n'amategeko kandi nyamara ari we (Ciftci Inanc) waguze mu buryo bukurikije amategeko kuko ubugure bwe aribwo bwabereye imbere ya Noteri, asaba Urukiko kwemeza ko ari we waguze mu buryo bwemewe n'amategeko, rukavuga ko amasezerano ya Nshimiyimana Yvon nta gaciro afite. Nshimiyimana Yvon na we yatanze ubujurire bwuririye ku bundi asaba Urukiko gutegeka Ciftci Inanc kumuha indishyi zitandukanye ku bwo kumushora mu manza nta mpamvu.

[8] Ku itariki ya 19/04/2018, urwo Rukiko rwaciye urubanza Nº RCA 00282/2017/HC/KIG rwemeza kandi rutegeka ko:

- ubujurire bwatanzwe na Ciftci Inanc bufite ishingiro;
- ubujurire bwuririye ku bundi bwa Nshimiyimana Yvon nta shingiro bufite;
- Ciftci Inanc yandikwaho ubutaka bubaruwe kuri Nº 0826/GAS/KAC buherereye mu Mudugudu wa Rwinzovu, Akagari ka Kamatamu, Umurenge wa Kacyiru, Akarere ka Gasabo, Umujyi wa Kigali;
- Sebutinde Edouard asubiza Nshimiyimana Yvon 13.581.000 Frw yari amaze kwishyura;
- Sebutinde Edouard aha Ciftci Inanc 100.000 Frw y'ikurikiranarubanza na 500.000 Frw y'igihembo cya Avoka.

[9] Mu gufata icyo cyemezo, Urukiko rwashingiye ku mpamvu y'uko ubugure bwemewe ari ubukorewe imbere y'umwanditsi w'inyandiko z'ubutaka, rubishingiye cyane cyane ku ngingo ya 14, igika cya mbere, y'Itegeko Nº 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, no ku ngingo ya 34 y'Iteka rya Minisitiri Nº 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa.

[10] Nshimiyimana Yvon yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko Sebutinde Edouard yamugurishirije inzu, asaba Urukiko kwemeza ko igurisha ry'ikintu cy'undi ari imfabusa, nyuma y'ishyirwaho ry'Urukiko rw'Ubujurire, ubujurire bwe bwoherezwa muri urwo Rukiko.

[11] Ku itariki ya 19/07/2019, mu rubanza Nº RCAA 00035/2018/CA, Urukiko rw'Ubujurire rwasuzumye ubujurire bwa Nshimiyimana Yvon, rusanga amasezerano y'ubugure bw'inzu Sebutinde Edouard yagiranye na Ciftci Inanc, yarayakoze azi neza ko agurisha inzu yari yaramaze kugurisha Nshimiyimana Yvon, rwemeza kandi rutegeka ko:

- ubujurire bwa Nshimiyimana Yvon bufite ishingiro;
- imikirize y'urubanza Nº RCA 00282/2017/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 19/04/2018 ihindutse kuri byose;
- amasezerano y'ubugure bw'inzu iherereye mu Mudugudu wa Rwinzovu, Akagari ka Kamatamu, Umurenge wa Kacyiru, Akarere ka Gasabo, Umujyi wa Kigali, ibaruye kuri UPI 1/02/07/01/826 yakozwe ku itariki ya 31/10/2016 hagati ya Sebutinde Edouard na Ciftci Inanc nta gaciro afite;
- Nshimiyimana Yvon yandikwaho ubutaka bubaruwe kuri UPI 1/02/07/01/826 buherereye mu Mudugudu wa Rwinzovu, Akagari ka Kamatamu, Umurenge wa Kacyiru, Akarere ka Gasabo, Umujyi wa Kigali;
- Sebutinde Edouard aha Nshimiyimana Yvon 700.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[12] Mu kugera kuri uwo mwanzuro, Urukiko rwashingiye ku mpamvu zikurikira:

- Kuba amasezerano y'ubugure Sebutinde Edouard yakoranye na Ciftci Inanc yarabaye ku itariki ya 31/10/2016 atarakorewe imbere ya Noteri uwo munsi, bivuze ko yari amasezerano bwite afite agaciro kamwe n'ayo Sebutinde Edouard yari yarakoranye na Nshimiyimana Yvon, kuko amasezerano y'ubugure ya Ciftci Inanc yajyanywe kwa Noteri ku itariki ya 01/11/2016, Noteri yemeza amasezerano bwite yari yaraye akozwe, ibyo akaba aribyo Nshimiyimana Yvon yari yarasabye kuva yagura na Sebutinde Edouard agakomeza kubigenza biguru ntege kugeza ubwo yongeye kugurisha umuntu wa kabiri;
- Kuba Noteri yarashyize umukono ku masezerano ya Ciftci Inanc atari byo byatuma arutishwa aya Nshimiyimana Yvon kandi yombi ahuje kamere;
- Kuba, hashingiwe ku ngingo ya 264 y'Itegeko ryo ku wa 30 Nyakanga 1888 ryerekeye urwunge rw'amategeko y'imbonezamubano, Nshimiyimana Yvon na SebutindE Edouard barumvikanye ku kintu kigurishwa (inzu) no ku giciro cyacyo, bivuze ko ubugure bwari bwuzuye. Kuba Sebutinde Edouard yarahindukiye iyo nzu akongera akayigurisha Ciftci Inanc, yagurishije ikintu cy'undi.

[13] Ciftci Inanc yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza Nº RCAA 00035/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku itariki ya 19/07/2019 rwasubirwamo ku mpamvu z'akarengane kuko rwirengagije ibimenyetso n'amategeko. Nyuma yo gusuzuma ubwo busabe, ku itariki ya 30/04/2020, Perezida w'Urukiko rw'Ikirenga yafashe icyemezo n° 240/CJ/2020 ko urubanza Nº RCAA 00035/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku itariki

ya 19/07/2019 rusubirwamo ku mpamvu z'akarengane, ruhabwa Nº RS/INJUST/RC 00003/2020/SC.

[14] Nk'uko yabisobanuye mu myanzuro ye ndetse akanabishimangira mu nama ntegurarubanza, Ciftci Inanc avuga ko icyo anenga urubanza Nº RCAA 00035/2018/CA ari uko rwemeje ko inzu Sebutinde Edouard yamugurishije yari yarayigurishije mbere Nshimiyimana Yvon kandi ataribyo kuko amasezerano ya Nshimiyimana Yvon nta gaciro afite bitewe ni uko atakorewe imbere ya Noteri, byongeyeye kandi hakaba nta n'ikigaragaza ko inzu yaguze ari iya Nshimiyimana Yvon kubera ko mu masezerano uyu avuga yagiranye na Sebutinde Edouard nta nimero y'inzu yaguze igaragaramo.

[15] Urubanza rwaburanishirijwe mu ruhame ku itariki ya 13/04/2021, Ciftci Inanc ahagarariwe na Me Rugaza David, Nshimiyimana Yvon ahagarariwe na Me Niyitegeka Eraste, Sebutinde Edouard atitabye ariko bigaragara ko yari yaramenyeshejwe itariki y'iburanisha. Iburanisha rishojwe, ababuranyi bamenyeshejwe ko urubanza ruzasomwa ku itariki ya 30/04/2021, ariko kuri uwo munsi ntirwasomwa kubera ko umwe mu bacamanza bagize inteko yahinduriwe imirimo, bituma iburanisha ryongera gufungurwa ku itariki ya 09/09/2021.

[16] Ikibazo cy'ingenzi cyasuzumwe muri ururubanza ni ukumenya amasezerano y'ubugure bw'inzu afite agaciro hagati y'ayo Sebutinde Edouard yakoranye na Nshimiyimana Yvon n'ayo yakoranye na Ciftci Inanc n'ingaruka zabyo.

# II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

### a. Kumenya amasezerano y'ubugure bw'inzu afite agaciro hagati y'ayo Sebutinde Edouard yakoranye na Nshimiyimana Yvon n'ayo yakoranye na Ciftci Inanc.

[17] Me Rugaza David uburanira Ciftci Inanc avuga ko impamvu basaba ko urubanza Nº RCAA 00035/2018/CA rwasubirwamo ku mpamvu z'akarengane, ari uko mu guca urwo rubanza Urukiko rw'Ubujurire rwirengagije amategeko aho rutabonye ko ari Ciftci Inanc wakoreye amasezerano y'ubugure imbere ya Noteri nk'uko biteganywa n'amategeko, mu gihe amasezerano Nshimiyimana Yvon aburanisha ari inyandiko bwite itemewe, bityo agasaba Urukiko kwemeza ko ayo masezerano nta gaciro afite, rugategeka ko umutungo ubaruwe kuri UPI 1/02/07/01/826 ari nawo uburanwa muri uru rubanza ari uwa Ciftci Inanc, ukamwandikwaho kuko yawuguze mu buryo bukurikije amategeko.

[18] Me Niyitegeka Eraste uburanira Nshimiyimana Yvon, avuga ko Ciftci Inanc adashobora kubarurwaho umutungo uburanwa nk'uko abisaba kubera ko yawuguze n'utari nyirawo, kuko Sebutinde Edouard yawumugurishije yaramaze kuwugurisha Nshimiyimana Yvon, bityo akaba yaramugurishije ikintu cy'undi. Avuga ko amasezerano y'ubugure Ciftci Inanc yagiranye na Sebutinde Edouard atagomba kubangamira Nshimiyimana Yvon kuko atamureba, ko ahubwo akwiye guhabwa umutekano usesuye mu mutungo we yaguze mu buryo bwemewe n'amategeko, kubera ko habayeho kumvikana ku giciro no ku kintu, kandi akaba yarahawe imfunguzo nk'uburyo bwo gushyikirizwa icyaguzwe, bityo amasezerano yagiranye na Sebutinde Edouard mu rwego rw'amategeko akaba yuzuye.

[19] Arangiza avuga ko amasezerano Sebutinde Edouard yagiranye na Ciftci Inanc nayo atakorewe imbere ya Noteri nk'uko uyu abivuga ukurikije igihe yakorewe n'igihe Noteri yayashyiriyeho umukono, kuko yakozwe ku itariki ya 31/10/2016, hanyuma akajyanwa kwa Noteri bukeye bwaho ku itariki ya 01/11/2016. Avuga kandi ko ubusanzwe Noteri w'ubutaka atita ku masezerano, ko ahubwo icyo areba ari ukuzuza inyandiko zabugenewe iyo abona ko umutungo nta kindi kibazo ufite.

[20] Kuri iyi ngingo yo kumenya amasezerano y'ubugure y'ukuri, Me Bizimungu Jean Marie Vianney uburanira Sebutinde Edouard, mu myanzuro ye avuga ko amasezerano y'ubugure yakozwe na Ciftci Inanc ariyo afite agaciro, ibi akabishingira ku ngingo ya 64 y'Itegeko N° 45/11 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye. Asobanura ko ku birebana n'ihererekanya ry'ubutaka, hari amategeko yihariye kugira ngo amasezerano abe akozwe mu buryo bwemewe.

[21] Akomeza avuga ko kuba ingingo ya 18, igika cya mbere, y'Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, iteganya ko kwemeza ko ubutaka bwatanzwe cyangwa bukodeshejwe bigaragazwa n'icyemezo cy'iyandikisha ry'ubutaka gitangwa n'umubitsi w'impapuro mpamo z'ubutaka, ingingo ya 20 y'iryo Tegeko igateganya ko kwandikisha ubutaka ku muntu wese ubutunze ari itegeko, naho ingingo ya 34 y'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/01/04/2008 rigenga uburyo iyandikishwa ry'ubutaka rikorwa, igateganya ko ihererekanya rishingiye ku masezerano yo kwegurira undi ibintu ridashobora gukorwa iyo amasezerano rishingiyeho atakozwe mu buryo bw'inyandiko mpamo ikorewe imbere y'umwanditsi w'inyandiko z'ubutaka, bisobanuye ko amasezerano yakorwa bitanyuze muri iyo nzira nta gaciro yaba afite.

## UKO URUKIKO RUBIBONA

[22] Muri uru rubanza, icyo ababuranyi batumvikanaho kigomba gukemurwa n'Urukiko, ni uko Ciftci Inanc yemeza ko amasezerano y'ubugure yagiranye na Sebutinde Edouard ariyo afite agaciro, impamvu atanga akavuga ko ari uko yayakoreye imbere ya Noteri. Ibi ni nabyo byemezwa n'uruhande rwa Sebutinde Edouard. Uruhande rwa Nshimiyimana Yvon ruvuga ko amasezerano yagiranye Sebutinde Edouard ariyo afite agaciro kubera ko habayeho kumvikana ku giciro no ku kintu, akanahabwa imfunguzo nk'uburyo bwo gushyikirizwa icyaguzwe, kandi akaba ari yo yakozwe mbere.

**b. Ku birebana n'amasezerano Sebutinde Edouard yakoranye na Nshimiyimana Yvon.**

[23] Ingingo ya 18, igika cya mbere, y'Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda ryakurikizwaga ubwo amasezerano avugwa muri uru rubanza yakorwaga, iteganya ko kwemeza ko ubutaka bwatanzwe cyangwa bukodeshejwe bigaragazwa n'icyemezo cy'iyandikisha ry'ubutaka gitangwa n'Umubitsi w'Impampuro mpamo z'ubutaka. Ingingo ya 34, igika cya mbere, y'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/4/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa, iteganya ko ihererekanya rishingiye ku masezerano yo kwegurira undi ibintu ridashobora gukorwa iyo amasezerano rishingiyeho atakozwe ku buryo

bw'inyandiko y'umwimerere[1] (Les mutations en vertu de contrats d'aliénation ne peuvent être opérées que si les contrats sont passés en forme authentique). Iyo ngingo inateganya ifishi igomba gukoreshwa.

[24] Ingingo zimaze kuvugwa, zumvikanisha ko kugira ngo byemezwe ko umutungo utimukanwa watanzwe hagomba kubaho icyemezo cy'iyandikisha ry'ubutaka gitangwa n'umwanditsi w'impapuro mpamo z'ubutaka, kandi kugira ngo uwo mwanditsi atange icyo cyemezo, akaba agomba gushingira gusa ku masezerano yo kwegurira undi uwo mutungo (ubutaka) yakozwe mu buryo bw'inyandiko mpamo. Ibi bikaba byumvikanisha ko amasezerano yakorwa mu bundi buryo butari ubwo nta gaciro yaba afite. Uyu ni na wo murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza N° RS/INJUST/RC 00010/2019/SC rwaciwe ku itariki ya 25/09/2020, hagati ya Manizabayo Kennedy na Twizerimana Théoneste[2].

[25] Ibi kandi byanagarutsweho n'Urukiko rw'Ikirenga mu rubanza rwa Nsanzimana Wilson waburanaga na Nyirajyambere Gacunga Espérance n'abandi, aho, rushingiye ku byemejwe n'abahanga mu mategeko, rwemeje ko ku bijyanye n'ubugure bw'umutungo utimukanwa, kwemeranya kw'abagiranye amasezerano ku kintu no ku kiguzi ubwabyo bidahagije, ko ahubwo hari n'ibindi bigomba kubahirizwa nko kuba mu ikorwa ry'amasezerano no kuyashyiraho umukono bigomba gukorerwa imbere y'umukozi ubifitiye ububasha, bitaba ibyo amasezerano y'ubugure akaba nta gaciro afite[3].

[26] Ku birebana n'uru rubanza, inyandiko zigize dosiye zigaragaza ko ku itariki ya 28/12/2014, Sebutinde Edouard yakoranye amasezerano y'ubugure bw'inzu na Nshimiyimana Yvon, ayo masezerano akorwa mu buryo bw'inyandiko bwite kuko atakorewe imbere y'umukozi uwo ari we wese ubifitiye ububasha. Muri ayo masezerano bavugaga ko baguze inzu iri ku muhanda KG 567 St/18, mu Mudugudu wa Rwinzovu, Akagari ka Kamatamu, Umurenge wa Kacyiru, Akarere ka Gasabo.

[27] Hashingiwe ku mategeko no ku bisobanuro byatanzwe haruguru, Urukiko rurasanga, kuba hagati ya Sebutinde Edouard na Nshimiyimana Yvon harabayeho ubwumvikane ku giciro no ku mutungo ugurishwa (inzu) ndetse uwaguze agahabwa imfunguzo, ibyo bidahagije kugira ngo hemezwe ko ubugure burebana n'umutungo utimukanwa (ubutaka) bwari bwuzuye. Kugira ngo ubwo bugure bube bwuzuye, amasezerano yabwo yagombaga kuba yarakozwe mu buryo bw'inyandiko mpamo, bityo kuba ibyo bitarakozwe, ayo masezerano akaba nta gaciro akwiye guhabwa.

### c. Ku birebana n'amasezerano Sebutinde Edouard yakoranye na Ciftci Inanc

[28] Dosiye y'urubanza igaragaza ko ku itariki ya 31/10/2016, Sebutinde Edouard yakoranye amasezerano y'ubugure bw'inzu bise land sales agreement, bukeye bwaho ku itariki ya 01/11/2016 bayatwara kwa Noteri ari na wo munsi uyu yayashyiriyeho umukono. Hakaba hakwiye gusuzumwa niba yo yafatwa nk'inyandiko mpamo kuko uruhande rwa Nshimiyimana Yvon

[1] Mu Iteka rya Minisitiri bakoresheje « inyandiko y'umwimerere », ariko ni « inyandiko mpamo ».
[2] Urupapuro rwa 9, igika cya 24.
[3] Urubanza N° RS/INJUST/RC 00004/2020/SC, rwaciwe ku itariki ya 09/04/2021, para. 26 na 27.

ruvuga ko nayo atujuje ibisabwa kuko atakorewe imbere ya Noteri bitewe n'uko yayasinye ku munsi ukurikira uwo yakoreweho.

[29] Ku birebana n'igisobanuro cy'inyandiko mpamo, ingingo ya 2, agace ka 3°, y'Itegeko N° 13 bis/2014 ryo ku wa 21/05/2014 rigenga umurimo w'Ubunoteri, ivuga ko inyandiko mpamo ari inyandiko yanditswe cyangwa yakiranywe imihango yabugenewe n'umukozi wa Leta ufite ububasha bwo gukorera mu ifasi y'aho yandikiwe. Iki ni nacyo gisobanuro gitangwa n'ingingo ya 11 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo. Ubushakashatsi bwakozwe n'Inteko ishinga amategeko y'ibihugu by'Uburayi mu nyandiko yiswe "Étude comparative sur les actes authentiques", batanze igisobanuro cy'inyandiko mpamo nk'inyandiko ikorwa n'umukozi wa Leta cyangwa undi muntu wese wabiherewe ububasha na Leta, iyo nyandiko igakorwa mu buryo buteganyijwe, uwayikoze akaba yemeza ko abayishyizeho umukono aribo ko kandi n'ibiyikubiyemo ari byo (un acte authentique est un instrument établi par une autorité publique ou toute autre autorité habilitée à ce faire par l'État membre d'origine, - dressé dans la forme requise, - qui authentifie la signature et le contenu de l'acte authentique)[4].

[30] Ku birebana n'icyo gisobanuro kandi, mu rubanza rwaciwe n'uru Rukiko haburana MUHIMA Giovanni na Ngizweninshuti Albert, Urukiko rwasanze inyandiko mpamo ari inyandiko yujuje ibi bikurikira:

a. Kuba ari inyandiko yakozwe cyangwa yakiranywe imihango yabugenewe n'umukozi wabiherewe ububasha ku rupapuro cyangwa hifashishijwe ubundi buryo bw'ikoranabuhanga;

b. Kuba ari inyandiko yanditse mu gihe arimo kuzuza inshingano ze mu ifasi akoreramo;

c. Kuba ari inyandiko ikubiyemo amakuru yiyandikiye ubwe cyangwa yahagazeho ibyo ahamya biba[5].

[31] Ibisobanuro byatanzwe haruguru, byumvikanisha neza ko, uko byagenda kose, inyandiko mpamo ikorwa n'umukozi wa Leta cyangwa undi wabiherewe ububasha, cyangwa igakorerwa imbere ye hari abo ireba kugira ngo yemeze ibikorwa byose bigendanye nayo, haba ibiyikubiyemo, haba ndetse no kwemeza ko abayishyizeho imikono ari bo. Urukiko rukaba rusanga uyu muhango ari ndemyagihugu ku buryo kutawukora bishobora gutuma inyandiko itagira agaciro k'inyandiko mpamo, ahubwo igafatwa nk'inyandiko bwite. Ibi ni nabyo bivugwa mu ngingo ya 12 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru, iteganya ko inyandiko itakiri imvaho kubera ko umukozi wa Leta yayanditse atabifitiye ububasha cyangwa ubushobozi cyangwa ko yayanditse mu buryo budakurikije amategeko, ifite agaciro k'urupapuro umuntu yiyandikiye iyo iriho umukono w'ababuranyi. Uru Rukiko rukaba rusanga ubwo buryo butaribwo ari nko kuba inyandiko itarakozwe n'umukozi wa Leta cyangwa undi wabiherewe ububasha, cyangwa ngo ibe yarakorewe imbere ye kugira ngo ahamye ibyo yabonye.

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[4] https://www.europarl.europa.eu/RegData/etudes/STUD/2008/408329/IPOL-JURI_ET (2008)408329 FR.pdf (consulté le 22/09/2021).

[5] Urubanza N° RS/INJUST/RC 00024/2018 rwaciwe ku itariki ya 21/02/2020, para. 26.

[32] By'umwihariko ku birebana n'amasezerano y'ubugure bw'umutungo utimukanwa, kuba yakorwa mu bundi buryo hatagaragajwe amakuru ari ku ifishi iri ku mugereka w'Iteka rya Minisitiri ryavuzwe haruguru, nabyo bikaba bigomba gufatwa nk'uburyo budakurikije amategeko, kubera ko muri iyo fishi hateganyijwe amakuru y'ingenzi atagomba kubura muri bene ayo masezerano[6]. Muri ayo makuru harimo kuba muri ayo masezerano hagomba kugaragaramo ko hishyuwe amafaranga y'ihererekanyamutungo, gitansi yayo ikayomekwaho. Harimo kandi amagambo yuzuzwa na Noteri w'ubutaka ahamya ibikubiye mu masezerano, mbere yo kuyashyiraho umukono.

[33] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga amasezerano Ciftci Inanc yakoranye na Sebutinde Edouard ku itariki ya 30/10/2016 atujuje ibisabwa ku buryo yafatwa nk'inyandiko mpamo ku mpamvu zikurikira:

Kuba ku itariki ya 31/10/2016 atarakorewe imbere y'umukozi wabiherewe ububasha, kugira ngo yemeze ko yujuje ibisabwa byose mu ihererekanya ry'ubutaka kandi ko n'amafaranga y'ihererekanya ry'ubutaka na serivisi zijyana nabyo yishyuwe;

Kuba ku itariki ya 01/11/2016 yarajyanywe kwa Noteri akayashyiraho umukono ntibihagije kugira ngo yitwe inyandiko mpamo kuko bigaragara ko akorwa atari ahari ngo abihamye.

Kuba atagaragaramo amakuru yose ari ku ifishi yabigenewe iteganywa mu iteka rya Minisitiri N° 002/2008 ryo ku wa 01/4/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa.

[34] Kubera izo mpamvu, Urukiko rurasanga amasezerano y'ubugure bw'umutungo utimukanwa Sebutinde Edouard yakoranye na Ciftci Inanc agomba gufatwa nk'inyandiko bwite, bityo nayo akaba nta gaciro akwiye guhabwa.

[35] Ku birebana n'ingingo yo kumenya umutungo waguzwe uwo ariwo kubera ko Nshimiyimana Yvon na Ciftci Inanc batawumvikanagaho, Ciftci Inanc akaba yari yasabye Urukiko ko nabyo rwabisuzuma, Urukiko rurasanga bitakiri ngombwa gusuzuma iyo ngingo kubera ko rwasanze bombi nta n'umwe waguze mu buryo bukurikije amategeko.

### c. Ku bijyanye n'indishyi zisabwa muri uru rubanza

[36] Me Rugaza David asaba Urukiko gutegeka Nshimiyimana Yvon guha Ciftci Inanc 6.000.000 Frw y'igihembo cya Avoka kuva izi manza zatangira mu Rukiko Rwisumbuye, ndetse akanishyura indishyi z'ikurikiranarubanza zingana na 2.000.000 Frw kuko yakomeje kumushora mu manza abizi neza ko umutungo aburana atari wo ugaragara mu masezerano afite yaguriyeho, ibi bikaba byaratumye Ciftci Inanc akoresha ayo mafaranga mu gukurikirana imanza ndetse no kuzitegura.

[37] Arangiza asaba ko mu gihe Urukiko rwasanga inzu iburanwa Ciftci Inanc yaguze nta burenganzira ayifiteho, rwategeka Sebutinde Edouard kumusubiza 30.000 USD yamwishyuye hiyongereyeho indishyi zihwanye na 18% yayo ku mwaka mu gihe cy'imyaka itandatu (6).

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[6] Ingingo ya 34, igika cya 2, y'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/4/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa, iteganya ifishi igomba gukoreshwa ku mugereka wa 4 waryo.

[38] Me Niyitegeka Eraste uhagarariye Nshimiyimana Yvon avuga ko Ciftci Inanc ariwe nyirabayazana w'uru rubanza rudafite ishingiro, bityo ko nta ndishyi agomba guhabwa, ko ahubwo asaba Ciftci Inanc indishyi z'akababaro zingana na 5.000.000 Frw ku bwo gushorwa mu manza, kandi nta masezerano afitanye na we, nta cye yamwangirije, nta n'aho bahuriye, usibye kumubuza umudendezo ku mutungo we amushora mu manza, akamuha n'igihembo cya Avoka gihwanye na 1.000.000 Frw.

[39] Arangiza asaba ko mu gihe Urukiko rwasanga inzu iburanwa Nshimiyimana Yvon yaguze nta burenganzira ayifiteho, rwategeka Sebutinde Edouard kumusubiza 13.581.000 Frw yamuhaye n'inyungu zayo zibariye kuri 18% ku mwaka mu gihe cy'imyaka irindwi (7) ayamaranye.

[40] Me Bizimungu na Me Saadi Jashi bahagarariye Sebutinde Edouard mu myanzuro yabo basaba Urukiko gutegeka Nshimiyimana Yvon kwishyura 5.000.000 Frw y'indishyi z'akababaro, 600.000 Frw y'ikurikiranarubanza na 1.500.000 Frw y'igihembo cya Avoka.

## UKO URUKIKO RUBIBONA

[41] Ku birebana n'amafaranga y'igihembo cya Avoka kimwe n'ay'ikurikiranarubanza asabwa muri uru rubanza, Urukiko rusanga ntawe ugomba kuyahabwa kubera ko yaba Nshimiyimana Yvon cyangwa Ciftci Inanc ndetse na Sebutinde Edouard nta n'umwe utsinze urubanza.

[42] Ku birebana n'indishyi z'akababaro zingana na 5.000.000 Frw ku bwo gushorwa mu manza Nshimiyimana Yvon asaba Ciftci Inanc, kuba Nshimiyimana Yvon atari we wasabye ko urubanza rusubirwamo ku mpamvu z'akarengane, Urukiko rurasanga ikirego cy'indishyi z'akababaro yatanze kuri uru rwego kidashobora kwakirwa. Ibi byatanzweho umurongo muri uru Rukiko aho rwemeje ko umuburanyi wese wumva yararenganyijwe mu rubanza yaciriwe ku rwego rwa nyuma ariko ntatange ikirego gisaba ko rusubirwamo ku mpamvu z'akarengane hakurikijwe ibisabwa n'ingingo ya 55 y'Itegeko rigena ububasha bw'inkiko, abanje kunyura mu nzira ziteganywa n'ingingo ya 58 y'iryo Tegeko, ikirego cye kidashobora kwakirwa mu gihe hasuzumwa ikibazo cy'akarengane cyazanywe n'uwo baburana[7].

[43] Ku bireba n'amafaranga Nshimiyimana Yvon na Ciftci Inanc basaba ko Sebutinde Edouard yabasubiza mu gihe Urukiko rusanze nta n'umwe waguze mu buryo bukurikije amategeko, Urukiko rurasanga, kuba hafashwe icyemezo ko amasezerano Sebutinde Edouard yakoranye na Nshimiyimana Yvon na Ciftci Inanc nta gaciro afite, bigomba guhuzwa n'ihame ry'uko icyateshejwe agaciro gifatwa nk'ikitarabayeho (ce qui est nul est réputé n'avoir jamais existé)[8], bityo kikaba nta n'inyungu kigomba kubyara. Ingaruka z'iryo hame akaba ari uko abari baragiranye amasezerano yateshejwe agaciro bagomba gusubira uko bari bameze mbere y'uko bayakora, buri wese agasubirana ibyo yatanze mu rwego rwo kuyubahiriza, ibyo bigakorwa nta ruhande rusabwe gutanga indishyi uretse mu gihe uzisaba yabasha kugaragaza ko uwo azisaba hari

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[7] Reba URUBANZA Nº RS/INJUST/RCOM 00005/2018/SC rwaciwe ku wa 12/06/2020, haburana PRIME Insurance Ltd na Kansiime James.
[8] Quod nullum est nullum effectum producit.

ikosa yakoze kugira ngo amasezerano ateshwe agaciro. Ibi ni nabyo byemezwa n’abahanga mu mategeko basobanuye ingingo ya 1178 y’Itegeko mbonezamubano y’Ubufaransa[9].

[44] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga, Nshimiyimana Yvon, Ciftci Inanc na Sebutinde Edouard bagomba gusubira uko bari bameze mbere y’uko amasezerano yateshejwe agaciro akorwa, Sebutinde Edouard agasubiza amafaranga yakiriye nawe agasubirana inzu ye. Ni ukuva ko Sebutinde Edouard ategetswe gusubiza Nshimiyimana Yvon 12.000.000 Frw kuko ari yo bigaragara mu masezerano ko ari yo yishyuye, naho Ciftci Inanc agasubizwa 30.000 USD agaragara mu masezerano ko ari yo yari amaze kwishyura.

[45] Urukiko rurasanga indishyi zihwanye n’inyungu za 18 % ku mwaka Nshimiyimana Yvon na Ciftci Inanc basaba Sebutinde Edouard mu gihe kingana n’icyo amaranye amafaranga bamuhaye ntazo bagomba guhabwa, kubera ko batagaragaza ikosa yakoze kugira ngo amasezerano bakoze abe yateshejwe agaciro.

## III. ICYEMEZO CY’URUKIKO

[46] Rwemeje ko urubanza N° RCAA 00035/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku itariki ya 19/07/2019 ruhindutse mu ngingo zarwo zose;

[47] Rwemeje ko amasezerano yakozwe hagati ya Sebutinde Edouard na Nshimiyimana Yvon ku itariki ya 28/12/2014 kimwe n’ayo Sebutinde Edouard yakoranye na Ciftci Inanc ku itariki ya 31/10/2016 yombi nta gaciro afite;

[48] Rutegetse Sebutinde Edouard gusubiza Nshimiyimana Yvon 12.000.000 Frw;

[49] Rutegetse Sebutinde Edouard gusubiza Ciftci Inanc 30.000 USD.

[9] Code civil annoté, 119 ème édition, avec le concours de Xavier Henry, Guy Venandet, Georges Wiederkehr, Pascal Ancel, Auce Tisserand-Martin et Pascale Guiomard, art. 1178, annotation 10, p. 1398. « Par l’effet de l’anéantissement rétroactif d’un contrat annulé, la responsabilité d’une des parties à ce contrat ne peut être recherchée que sur le fondement délictuel ou quasi délictuel ».