BAGARAGAZA N'ABANDI v. SIRWA SARL

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00001/2019/SC (Ntezilyayo, P.J., Muhumuza, Hitiyaremye, Kalihangabo na Kazungu J.) 12 Nyakanga 2024]

Amategeko agenga imitunganyirize ya sosiyete z'ubucuruzi – Agaciro k'inyandikomvugo y'inama rusange ya sosiyete – Inyandikomvugo y' Inama Rusange idasanzwe ya sosiyete igira agaciro iyo abanyamuryango bayo bayitumiwemo mu buryo bwemewe n'amategeko, nukuvuga ko inyandikomvugo igomba kugaragaramo ubutumire bubasaba kuyitabira bunabamenyesha ibigomba kuyigirwamo, urutonde rw'abayitabiriye ruriho imikono, ndetse n'inyandiko zijyanye n'uko amajwi yagiye abarurwa mu matora yo gufata ibyemezo.

Inyungu z'ubukererwe – Igipimo(rate) kibarirwaho inyungu z'ubukererwe – Agaciro k'imigabane n'urwunguko/dividendes bibarwa hakurikijwe umubare w'imigabane ya buri munyamuryango. Igipimo (rate) kibarirwaho inyungu z'ubukerwe ku nyungu/dividendes zitatanzwe kigendera kuri deposit rate rwahawe na Banki Nkuru y'u Rwanda.

Incamake y'ikibazo: Bagaragaza Thaddée avuga ko wa 23/10/1997, sosiyete abereye umunyamurango SIRWA SARL yateranyije Inama Rusange idasanzwe, abanyamigabane bayo batanatumiwemo, ihindura Amategeko Shingiro yayo, inashyiraho Inama y'Ubutegetsi n'uyihagarariye mu mirimo ya buri munsi, inemeza ko imigabane ivuye ku 1000, igashyirwa kuri 3000, maze ibyo bikaba byaratumye atanga ikirego mu Rukiko rwa mbere rw'Iremezo rwa Kigali, asaba gutesha agaciro inyandiko mvugo yo ku wa 23/10/1997, gusubizwa agaciro k'imigabane no guhabwa inyungu ku migabane (dividendes) zo kuva mu 1993 n'indishyi.

Nyuma yaho, abandi banyamigabane aribo Bihira Juvénal, abazungura ba Iyamuremye Pierre Claver, Mukankusi Berthe na Nkundabatware Vénant nabo batanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge, bose basaba gutesha agaciro inyandiko mvugo y'Inama Rusange idasanzwe yateranye ku wa 23/10/1997 ikongera imari shingiro, kwishyura inyungu ku migabane kuva mu mwaka wa 1993 no gushyiraho umuntu ukora igenzuramutungo rya SIRWA SARL kuva mu mwaka wa 1994 kugeza ubwo baregaga muri 2007.

Izo manza zombi zoherejwe mu Rukiko Rukuru rw'Ubucuruzi nyuma y'ivugururwa ry'Inkiko, rwemeza ko ikirego cya Bihira Juvénal, Bagaragaza Thaddée n'abazungura ba Iyamuremye Pierre Claver nta shingiro gifite kuko habayeho ubusaze ku birego bijyanye n'inyungu ku migabane no gutesha agaciro icyemezo cy'Inama Rusange yo ku wa 23/10/1997 n'icyo gusubizwa agaciro k'imigabane ya Bagaragaza Thaddée.

Bihira Juvénal, Bagaragaza Thaddée n'abazungura ba Iyamuremye Pierre Claver bajuririye Urukiko rw'Ikirenga, Bihira Juvénal yitaba Imana urubanza rutararangira, biba ngombwa ko rukomezwa n'abazungura be, Urukiko rw'Ikirenga rwemeza ko ubujurire bwabo nta shingiro bufite rushingiye ku kuba harabayeho ubusaze ku kirego cyerekeye inyungu ku migabane no ku kirego cyo gutesha agaciro inyandikomvugo y'Inama Rusange y'abanyamigabane ba SIRWA SARL.

Nyuma yaho, abatsinzwe urubanza basabye ko rusubirwamo ku mpamvu z'akarengane, basaba gutesha agaciro inyandikomvugo y'Inama Rusange idasanzwe y'abanyamigabane bayo kuko

yakozwe mu buryo butemewe n'amategeko; Kumenya inyungu za Sosiyete SIRWA SARL zo kuva mu 1993 kugeza ku wa 31/12/2021, kumenya agaciro k'umugabane muri SIRWA SARL, no kumenya agaciro k'imigabane yose y'abareze na *dividendes* bagomba guhabwa.

Mironko François Xavier uhagarariye SIRWA SARL yireguye avuga ko atari ngombwa kongera gusuzuma ikirego gisaba gutesha agaciro inyandikomvugo y'Inama Rusange idasanzwe y'abanyamigabane bayo kuko mu rubanza rwasabiwe gusubirishwamo ku mpamvu z'akarengane, cyarasuzumwe, maze urukiko rusanga abarega batanze ikirego impitagihe, cyarashaje.

Urukiko rwategetse ko hashirwaho umuhanga kugirango hemezwe inyungu za sosiyete SIRWA SARL n'agaciro k'umugabane, kugira ngo rubashe kumenya agaciro k'imigabane yose y'abareze, *dividendes* n'inyungu bagomba guhabwa.

Incamake y'icyemezo: 1. Inyandikomvugo y' Inama Rusange idasanzwe ya sosiyete igira agaciro iyo abanyamuryango bayo bayitumiwemo mu buryo bwemewe n'amategeko, nukuvuga ko inyandikomvugo igomba kugaragaramo ubutumire bubasaba kuyitabira bunabamenyesha ibigomba kuyigirwamo, urutonde rw'abayitabiriye ruriho imikono, ndetse n'inyandiko zijyanye n'uko amajwi yagiye abarurwa mu matora yo gufata ibyemezo.

2. Agaciro k'imigabane n'urwunguko/d*ividendes* bibarwa hakurikijwe umubare w'imigabane ya buri munyamuryango. Igipimo *(rate)* kibarirwaho inyungu z'ubukerwe ku nyungu/*dividendes* zitatanzwe kigendera kuri *deposit rate* rwahawe na Banki Nkuru y'u Rwanda.

3. Mu kumenya agaciro k'imigabane abanyamuryango bagomba gusubizwa, Urukiko rwashingiye kuri raporo y'umuhanga igaragaza ko urwunguko *(dividendes)* ndetse n'inyungu ku rwunguko, umubare w'imigabane ya SIRWA SARL ari 1.000, umutungo bwite wayo ukaba ungana na 2.274.089.108 Frw, agaciro k'umugabane umwe wayo kakangana na 2.274.089Frw.

Ikirego gisaba gusubirishwamo ku mpamvu z'akarengane gifite ishingiro.

Amategeko yashingiweho:
Itegeko N°06/1988 ryo ku wa 12 Gashyantare 1988 ritunganya amasosiyete y'ubucuruzi ryakurikizwaga igihe ikirego cyatangwaga, ingingo ya 32;
Amategeko shingiro ya SIRWA SARL yo ku wa 06/12/1989, ingingo ya 28.

Imanza zifashishijwe:
urubanza RS/INJUST/RC 00007/2018/SC rwa Nditiribambe Samuel na bagenzi be, rwaciwe n'Urukiko rw'Ikirenga, ku wa 13/03/2020.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Bagaragaza Thaddée, Bihira Juvénal na Iyamuremye Pierre Claver bari abanyamigabane ba SIRWA SARL kuva yashingwa.

[2] Bagaragaza Thaddée n’abazungura ba Bihira Juvénal na Iyamuremye Pierre Claver bavuga ko ku wa 03/07/1994, habaye Inama y’Ubutegetsi ya SIRWA SARL yateraniye ku Gisenyi, yitabiriwe na Mironko François Xavier, Singaye André, Nkundabatware Venant na Ruhamanya Vincent, yemeza ko abanyamigabane ba SIRWA SARL bagabana inyungu ku migabane ingana na
30.421.000Frw.

[3] Bakomeza bavuga ko ku wa 23/10/1997, hateranye Inama Rusange idasanzwe, batanatumiwemo, ihindura Amategeko Shingiro ya SIRWA SARL inashyiraho Inama y’Ubutegetsi n’uyihagarariye mu mirimo ya buri munsi, inemeza ko imigabane ivuye ku 1000, igashyirwa kuri 3000. Ibyo byatumye Bagaragaza Thaddée atanga ikirego mu Rukiko rwa Mbere rw’Iremezo rwa Kigali, asaba gutesha agaciro inyandiko mvugo yo ku wa 23/10/1997, gusubizwa agaciro k’imigabane no guhabwa inyungu ku migabane (*dividendes*) zo kuva mu 1993 n’indishyi, ikirego cye cyandikwa kuri N° RC 39.761/2003. Nyuma yaho, Bihira Juvénal, abazungura ba Iyamuremye Pierre Claver, Mukankusi Berthe na Nkundabatware Vénant nabo batanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge, bose basaba gutesha agaciro inyandiko mvugo y’Inama Rusange idasanzwe yateranye ku wa 23/10/1997 ikongera imari shingiro, kwishyura inyungu ku migabane kuva mu mwaka wa 1993 no gushyiraho umuntu ukora igenzuramutungo rya SIRWA SARL kuva mu mwaka wa 1994 kugeza ubwo baregaga muri 2007, ikirego cyabo gihabwa RCOM 0052/07/TGI/NYGE.

[4] Nyuma y’ivugururwa ry’Inkiko, izo manza zombi zoherejwe mu Rukiko Rukuru rw’Ubucuruzi zihabwa RCOM 0224/08/HCC na RCOM 344/08/HCC, zihurizwa hamwe zihabwa RCOM 0224/08/HCC, ariko Mukankusi Berthe n’uhagarariye Nkundabatware Vénant baza kureka ikirego.

[5] Ku wa 26/03/2012, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOM 0224/08/HCC rwemeza ko ikirego cya Bihira Juvénal, Bagaragaza Thaddée n’abazungura ba Iyamuremye Pierre Claver nta shingiro gifite, rubategeka kwishyura SIRWA SARL 1.500.000 Frw y'igihembo cy'Avoka n'ikurikiranarubanza.

[6] Mu gufata icyo cyemezo, Urukiko Rukuru rw’Ubucuruzi rwashingiye ku kuba SIRWA SARL isanzwe ifite *commissaires aux comptes* ku buryo bashobora gukora igenzuramutungo, rwemeza ko habayeho ubusaze ku birego bijyanye n’inyungu ku migabane no gutesha agaciro icyemezo cy’Inama Rusange yo ku wa 23/10/1997, n’icyo gusubizwa agaciro k’imigabane ya Bagaragaza Thaddée.

[7] Bihira Juvénal, Bagaragaza Thaddée n’abazungura ba Iyamuremye Pierre Claver bajuririye Urukiko rw'Ikirenga, Bihira Juvénal yitaba Imana urubanza rutararangira, biba ngombwa ko rukomezwa n’abazungura be, maze mu rubanza RCOMA 0066/12/CS rwaciwe ku wa 16/12/2013, Urukiko rw’Ikirenga rwemeza ko ubujurire bwabo nta shingiro bufite, rubategeka guha SIRWA SARL 800.000Frw y'igihembo cy'Abavoka bayiburaniye.

[8] Mu gufata icyo cyemezo, Urukiko rw’Ikirenga rwashingiye ku kuba harabayeho ubusaze ku kirego cyerekeye inyungu ku migabane no ku kirego cyo gutesha agaciro inyandikomvugo y’Inama Rusange y’abanyamigabane ba SIRWA SARL.

[9] Ku wa 02/05/2014, Bagaragaza Thaddée, abazungura ba Bihira Juvénal bahagarariwe na Me Nkurunziza Fr. Xavier n'abazungura ba Iyamuremye Pierre Claver bahagarariwe na Me Munderere Léopold, basabye Urwego rw'Umuvunyi ko urubanza RCOMA 0066/12/CS rwasubirwamo ku mpamvu z'akarengane.

[10] Nyuma yo gusesengura ikibazo cyabo, Urwego rw'Umuvunyi rwasabye Perezida w'Urukiko rw'Ikirenga ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane, amaze gusuzuma raporo y'Ubugenzuzi bw'Inkiko, ku wa 13/02/2019, Perezida w'Urukiko rw'Ikirenga, afata icyemezo N° 068/CJ/2019 gitegeka ko urwo rubanza rwongera kuburanishwa ikirego cyandikwa kuri RS/INJUST/RCOM 00001/2019/SC.

[11] Mu iburanisha ryo ku wa 29/06/2020, Urukiko rwafashe icyemezo cyo kwimurira iburanisha ku wa 15/09/2020 kuko Mironko François Xavier yari arwaye, runemeza kandi ko abazungura ba Nkundabatware Vénant bari basabye kugoboka mu rubanza bagomba kurushyikiriza imyanzuro isobanura inyungu bafite mu rubanza, n'urundi ruhande rukayisubiza maze rukabifataho umwanzuro bitabaye ngombwa kongera kubiburanaho. Ku wa 15/09/2020 nabwo urubanza ntirwaburanishijwe kubera ko Mironko François Xavier yagaragaje icyemezo cy'uko afite ikiruhuko cy'uburwayi, iburanisha ryimurirwa ku wa 07/10/2020, Urukiko runavuga ko mu gihe Mironko François Xavier ataboneka, azashaka umuhagararira mu rubanza.

[12] Iburanisha ryasubukuwe ku wa 07/10/2020, hitabye *Succession* Bihira Juvénal, Bagaragaza Thaddée, bahagarariwe na Me Nkurunziza François Xavier, na *Succession* Iyamuremye Pierre Claver ihagarariwe na Me Munderere Léopold na SIRWA SARL ihagarariwe na Mironko François Xavier yunganiwe na Me Nsabimana Jean Baptiste. Abazungura ba Nkundabatware Vénant ntibitabye.

[13] Nyuma yo gusuzuma ibyo abazungura ba Nkundabatware Vénant bashingiraho basaba kugoboka ku bushake muri uru rubanza no gusuzuma inzitizi yo kutakira ubusabe bwabo yatanzwe na SIRWA SARL, Urukiko rwemeje ko abazungura ba Nkundabatware Vénant batemerewe kugoboka ku bushake kuko nta nyungu itaziguye bafite mu rubanza, rutegeka ko iburanisha rikomeza haburanwa inzitizi zatanzwe na SIRWA SARL ivuga ko ikirego kitagomba kwakirwa kuko abarega badafite ububasha bwo kurega no kuba bataratanze imyirondoro yuzuye. Nyuma yo kwiherera, Urukiko rwemeje ko izo nzitizi nta shingiro zifite.

[14] Iburanisha ryakomereje ku kibazo kijyanye n'ubusaze ku birego byerekeye inyungu ku migabane maze mu cyemezo cyarwo cyo ku wa 23/10/2020, Urukiko rwemeza ko ikirego cyatanzwe kirebana n'iyishyurwa ry'inyungu ku migabane cyagombaga kwakirwa kigasuzumwa kuko nta busaze bwabayeho bitewe no kuba nta Nama Rusange ya SIRWA SARL yateranye ngo hemezwe inyungu ku migabane n'igabana ryazo, ko rero ntaho rwahera rubara igihe cy'imyaka itanu kugira ngo rwemeze niba ikirego cyatanzwe cyarashaje.

[15] Nyuma y'icyo cyemezo, iburanisha ryakomeje ku wa 02/11/2020 ababuranyi bose bitabye, haburanwa ku kibazo kijyanye no kumenya niba hashyirwaho umuhanga wo kubara inyungu n'imigabane. Nyuma yo kumva impande zombi, Urukiko rwemeje ko hashyirwaho impuguke izagaragaza inyungu n'agaciro k'umugabane muri SIRWA SARL. Rumaze kubona ko impande zombi zidashobora kumvikana ku mpuguke, rwemeje ko arirwo ruzayishyiraho ikazishyurwa na Bagaragaza Thaddée, Abazungura ba Bihira Juvénal n'Abazungura ba Iyamuremye Pierre Claver.

[16] Nyuma yo gushyiraho umuhanga GPO Partners Rwanda Ltd, agahabwa inshingano zo kugaragaza inyungu ku migabane (*dividendes*) za sosiyeti SIRWA SARL kuva mu mwaka wa 1993 kugeza ubu no kugaragaza agaciro k'umugabane, ariko ntashobore kumvikana n'ababuranyi ku giciro yakwishyurwa, Urukiko rwashyizeho undi muhanga SECAF ku wa 14/12/2021 maze SIRWA LTD itegekwa kumugaragariza inyandiko zose yakenera kugira ngo yuzuze inshingano ze, akazashyikiriza Ubwanditsi bw'Urukiko raporo bitarenze ku wa 14/02/2022.

[17] Ku wa 05/07/2022, umuhanga SACAF Ltd yashyikirije Ubwanditsi raporo maze mu iburanisha ryabaye ku wa 28/07/2022, ababuranyi bose bitabye Urukiko, umuhanga avuga ko atashoboye kugaragaza inyungu za sosiyeti SIRWA SARL kuva 1993 kugeza ku wa 31/12/2021 kuko uhagarariye SIRWA LTD yamwimye ibitabo by'ibaruramari, inyandiko n'amakuru byayo, avuga ko ubutumwa yahawe ari ubwo kujya muri SIRWA SARL aho kuba SIRWA LTD, kuko izo sosiyete zitandukanye, bituma agaragaza mu buryo bugenekereje inyungu cyangwa igihombo guhera mu mwaka wa 2004 kugeza 2021, ashingiye ku makuru yasabye mu Kigo cy'Imisoro n'Amahoro (RRA), kuko mbere y'icyo gihe nta makuru yabonye.

[18] Urukiko rumaze kumva impande zombi rugasanga zitumvikana ku kibazo cyo kumenya niba SIRWA SARL ariyo yahindutse SIRWA LTD kuko Mironko François Xavier avuga ko izo sosiyete zitandukanye, mu gihe abandi bo bavugaga ko ari sosiyete imwe, rwategetse uhagarariye SIRWA LTD kurushyikiriza ibimenyetso bigaragaza uburyo SIRWA SARL yavuyeho n'aho imitungo yayo yagiye, kimwe n'uko SIRWA LTD yavutse n'imitungo yatangiranye, ibyo akabikora bitarenze ku wa 16/08/2022.

[19] Iburanisha ryongeye gusubukurwa ku wa 12/10/2022, hitabye *Succession* Bihira Juvénal, Bagaragaza Thaddée, bahagarariwe na Me Nkurunziza François Xavier, na *Succession* Iyamuremye Pierre Claver ihagarariwe na Me Munderere Léopold na SIRWA LTD ihagarariwe na Mironko François Xavier yunganiwe na Me Hakizimana Gérard. Muri iryo buranisha hasuzumwe ikibazo cyo kumenya niba SIRWA SARL atari yo yahindutse SIRWA LTD, kuko Mironko François Xavier yavugaga ko ari amasosiyete abiri atandakanye, ariko abo baburana bo bakavuga ko ari sosiyete imwe.

[20] Ku wa 18/11/2023, Urukiko rwafashe icyemezo mu rubanza rubanziriza urundi, rwemeza ko SIRWA SARL ari yo yahindutse SIRWA LTD, izo sosiyete zikaba zidatandukanye, rutegeka Umuyobozi Mukuru wa SIRWA LTD korohereza umuhanga washyizweho n'Urukiko mu cyemezo cyo ku wa 14/12/2021 kurangiza inshingano ze.

[21] Ku wa 22/02/2023 iburanisha ryongeye gupfundurwa, Mironko François Xavier n'umwunganira bavuga ko hari inyandiko Umwanditsi Mukuru yashyize muri system ya IECMS ariko bo batashoboye kuyifungura, ko adashobora kumva ibiri busobanurwe, ndetse ko umuhanga atamwemera, Urukiko rukaba rubogamye kuko adafatwa nk'abandi baburanyi. Umuhanga Habimana Vedaste yasobanuye ko yahuye n'imbogamizi zikababuza gukora neza inshingano bahawe n'Urukiko kubera kubura amakuru muri SIRWA LTD, ayo bashoboye kubona akaba ari ayo mu bigo nka RDB, ko hari amabaruwa bagiye bandikira Mironko François Xavier ariko ntabemerere kugera ku mitungo na nyuma y'uko Urukiko rwemeje ko SIRWA SARL ariyo yahindutse SIRWA LTD. Abandi baburanyi bagaragaje ko ibyo Mironko François Xavier asaba ari ugutinza urubanza.

[22] Urukiko rumaze kwiherera, rwafashe icyemezo cyo guhanisha Mironko François Xavier uhagarariye SIRWA Ltd ihazabu mbonezamubano ya 500.000 Frw kubera kubangamira iperereza ryategetswe n'Urukiko, naho Me Hakizimana Gérard ahanishwa ihazabu mbonezamubano ya 200.000 Frw kubera gutinza urubanza, ndetse runahanisha Mironko François Xavier igifungo cy'imyaka ibiri (2), gisubitswe mu gihe cy'umwaka 1 n'amezi 9 ku cyaha cyo gutuka Urukiko gikorewe mu iburanisha. Iburanisha ryarasubitswe ababuranyi bamenyeshwa ko umunsi rizasubukurirwaho bazawumenyeshwa n'Ubwanditsi bw'Urukiko.

[23] Ku wa 19/06/2023 SIRWA LTD yatanze ikirego yihana Abacamanza babiri aribo Ntezilyayo Faustin na Muhumuza Richard, maze mu rubanza RS/RECUS/RCOM 00002/2023/SC rwaciwe ku wa 30/06/2023, Urukiko rwemeza ko ikirego cy'ubwihane cyatanzwe na SIRWA LTD kidakwiye kwakirwa ngo gisuzumwe, kuko cyatanzwe mu buryo bunyuranyije n'amategeko, rutegeka ko abacamanza Ntezilyayo Faustin na Muhumuza Richard baguma mu nteko iburanisha urubanza RS/INJUST/RCOM 00001/2019/SC.

[24] Iburanisha ryasubukuwe ku wa 12/12/2023, ariko rihita ryongera gusubikwa kuko Mironko François Xavier kimwe n'umwunganizi we Me Karuranga Floribert bari barwaye, ryimurirwa ku wa 18/01/2024.

Kuri uwo munsi, hitabye *Succession* Bihira Juvénal, Bagaragaza Thaddée, bahagarariwe na Me Nkurunziza François Xavier, na *Succession* Iyamuremye Pierre Claver ihagarariwe na Me Munderere Léopold na SIRWA LTD ihagarariwe na Mironko François Xavier yunganiwe na Me Twahirwa Stephen, muri iryo buranisha habanza gusuzumwa ikibazo cy'abasaba kugoboka ku bushake, aribo Mironko Jean Pierre, Mironko Elvin, Mironko Marie Josee, Mironko Francoise, Mironko Vestine, Mironko Marie Chantal, na Ntamamu Marie Salome bahagarariwe na Me Twizeyimana Innocent. Nyuma yo kumva icyo abasaba kugoboka n'ababuranyi bavuga kuri ubwo busabe, iburanisha ryarapfundikiwe, Urukiko rumenyesha ko icyemezo ku busabe bwo kugoboka kubushake kizafatwa ku wa 26/01/2024.

[25] Ku wa 26/01/2024, Urukiko rwaciye urubanza rubanziriza urundi, rwemeza ko ikirego gisaba kugoboka ku bushake mu rubanza cyatanzwe na Mironko Jean Pierre, Mironko Elvin, Mironko Marie Josee, Mironko Francoise, Mironko Vestine, Mironko Marie Chantal, na Ntamamu Marie Salome kidakwiye kwakirwa kubera ko cyatanzwe mu buryo bunyuranyije n'amategeko, rumenyesha ababuranyi ko iburanisha rizakomeza ku wa 14/02/2024.

[26] Kuri uwo munsi, Urukiko rwabanje kumva ababuranyi ku bijyanye n'inzitizi y'iburabubasha yari yazamuwe na SIRWA LTD ihagarariwe na Mironko François Xavier, ivuga ko rudafite ububasha bwo kuburanisha urubanza mu mizi, maze rufata icyemezo, rwemeza ko iyo nzitizi nta shingiro ifite, iburanisha rikomeza ku zindi ngingo zigize urubanza, maze muri iryo buranisha Urukiko rutegeka ko SIRWA LTD ihagarariwe na Mironko François Xavier igomba gushyikiriza Urukiko ibitabo by'ibaruramari bigaragaza icungamutungo rya SIRWA SARL byo guhera mu mwaka wa 1996 kugeza uwo munsi bitarenze ku wa 23/02/2024, rwemeza ko ruzishakira amakuru ku mutungo ubaruwe kuri UPI : 1/09/03/1064. Urukiko rwemeje kandi ko ruzigerera ahahoze uruganda rwa SIRWA SARL kugira ngo naho hakorerwe igenagaciro, rumenyesha ababuranyi ko itariki y'isubukurwa ry'urubanza bazayimenyeshwa n'Ubwanditsi bw'Urukiko.

[27] Hagati aho ku wa 15/03/2024, Mironko François Xavier uhagarariye SIRWA LTD yashyize muri *IECMS* imyanzuro atanga inzitizi yo kutakira ikirego.

[28] Ku wa 03/04/2024 Urukiko rwasuye ahahoze hakorera uruganda rwa SIRWA SARL mu rwego rwo gukora iperereza nk'uko byari byemejwe mu iburanisha ryo ku wa 14/02/2024.

[29] Iburanisha ryongeye gusubukurwa ku wa 16/05/2024, ariko uwo munsi ryongera gusubikwa kuko Mironko François Xavier yatanze icyemezo cy'ikiruhuko cy'uburwayi yahawe na muganga gihera ku wa 14/05/2024 kugeza ku wa 20/05/2024, Urukiko rumenyesha ababuranyi ko iburanisha ryimuriwe ku wa 21/05/2024, ruvuga ko umuburanyi ubona ko atazabasha kuryitabira azatanga ububasha bwo kuzahagararirwa kugirango urubanza ruzabashe kuburanishwa.

[30] Ku wa 21/05/2024 iburanisha ryarasubukuwe, hitaba *Succession* Bihira Juvénal, Bagaragaza Thaddée, bahagarariwe na Me Nkurunziza François Xavier, na *Succession* Iyamuremye Pierre Claver ihagarariwe na Me Munderere Léopold naho ku ruhande rwa SIRWA LTD hitabye Me Twahirwa Stephen, Me Komezusenge Deogratias na Me Ngezahayo Bernard. Hitabye kandi Habimana Vedaste, umuhanga wifashishijwe muri uru rubanza akaba ahagarariye SECAF.

[31] Abitabye mu mwanya wa SIRWA SARL babajijwe impamvu Mironko François Xavier uyihagarariye atitabye, niba yatanze ububasha bwo guhagararirwa nk'uko byategetswe mu iburanisha riheruka, basubiza ko yatanze ububasha bwo guhagararirwa ku birebana n'inzitizi yatanzwe yerekeranye no kutakira ikirego cy'abarega gusa. Urukiko rwemeje ko rushingiye ku kuba ikiruhuko cy'uburwayi Mironko François Xavier yatanze cyaragombaga kurangira tariki 20/05/2024 akaba nta kindi cyemezo kigisimbura, yagombaga kwitabira iburanisha, rwemeza ko iburanisha rikomeza nk'aho ahari.

[32] Ku nzitizi ivuga ko ikirego kitagombaga kwakirwa mu karengane yatanzwe na Mironko François Xavier ahagarariye SIRWA SARL ku wa 15/03/2024, Urukiko rwemeje ko nta shingiro ifite kubera ko inzitizi izanwa mu rwego rw'akarengane n'ubwo yaba ari ndemyagihugu ari irebana n'urubanza rusubirwamo ku mpamvu z'akarengane, kandi SIRWA LTD ikaba ntacyo inenga urwo rubanza, rwemeza ko iburanisha rikomeza. Uwo munsi iburanisha ryarapfundikiwe, Urukiko rumenyesha ababuranyi ko urubanza ruzasomwa ku wa 28/06/2024, ariko isomwa ryimurirwa ku wa 12/07/2024 kubera imirimo yari igikorwa ku rubanza.

[33] Kuva iburanisha ry'urubanza ripfundikirwa, Mironko François Xavier, uhagarariye SIRWA LTD, yakomeje gushyira muri *IECMS* inyandiko n'ibimenyetso bitandukanye. Ku wa 15/06/2024, yandikiye Urukiko asaba ko iburanisha ripfundurwa kugira ngo sosiyete ahagarariye ihabwe amahirwe yo kuburana ihagarariwe ndetse inunganiwe kuko yaburanishijwe idahagarariwe bitewe n'uko we nk' umuyobozi wayo atari ahari kubera ko yari arwaye, yagiye kwivuriza mu mahanga agaruka ku wa 25/05/2024. Asobanura ko ipfundurwa ry'urubanza asaba ari ngombwa kugirango ibibazo bitasuzumwe abigaragarize Urukiko nabyo rubisuzume cyane cyane ko ari urubanza rwo gusubirishamo ku mpamvu z'akarengane. Ku wa 24/06/2024, yongeye kwandikira Urukiko asaba gupfundura iburanisha avuga ko byamuha umwanya wo kugira icyo avuga ku byavuzwe n'abarega no gushyikiriza Urukiko ibimenyetso bishya. Ku itariki ya 03/07/2024,

nabwo yongeye kwandikira Urukiko yibutsa ubusabe bwe bwo gupfundira ibirunisha, anohereza n'ibindi bimenyetso.

[34] Urukiko, rushingiye ku ngingo ya 75, igika cya mbere kugeza ku cya 3, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu,[1] rusanga ibimenyetso bitandukanye uhagarariye SIRWA LTD yakomeje gushyira muri IECMS nyuma y'ipfundikirwa ry'iburanisha nta kintu gishya kitari cyagaragajwe mbere mu bindi bimenyetso yatanze, cyarufasha mu micire y'uru rubanza. Bityo ipfundurwa ry'iburanisha asaba ntiryakiriwe.

[35] Ibibazo byasuzumwe muri uru rubanza ni ibi bikurikira :

a.Kumenya niba inyandikomvugo y'Inteko Rusange idasanzwe yo ku wa 23/10/1997 yateshwa agaciro;

b.Kumenya inyungu za Sosiyete SIRWA SARL zo kuva mu 1993 kugeza ku wa 31/12/2021, agaciro k'umugabane muri SIRWA SARL, agaciro k'imigabane yose y'abareze na *dividendes* bagomba guhabwa.

c.Kumenya niba hari indishyi z'ikurikiranarubanza n'igihembo cya Avoka zatangwa muri uru rubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

A. Kumenya niba inyandikomvugo y'Inteko Rusange idasanzwe yo ku wa 23/10/1997 yateshwa agaciro

[36] Me Nkurunziza François Xavier uhagarariye Bagaragaza Thaddée n'Abazungura ba Bihira Juvénal, avuga ko impamvu basaba gutesha agaciro inyandikomvugo y'Inama Rusange idasanzwe y'abanyamigabane ba SIRWA SARL yateranye ku wa 23/10/1997 ari uko abanyamigabane ahagarariye batigeze bayitumizwamo, Mironko François Xavier akaba yariyongereye imigabane nyamara iyo baza kuyitumirwamo nabo barashoboraga kongera iyo migabane yabo ariko bakaba barabivukijwe.

[37] Me Nkurunziza François Xavier akomeza avuga ko inama yo ku wa 23/10/1997 yateranye kandi igafata ibyemezo ku buryo bunyuranye n'Amategeko Shingiro ya SIRWA SARL ndetse n'itegeko rigenga amasosiyete y'ubucuruzi, aho iyo nama yongereye imigabane ikava kuri 1.000 maze ikajya kuri 3.000, Mironko François Xavier yihamo imigabane 2.000 ndetse na nyuma yaho imigabane igenda yiyongera hazamo n'abanyamigabane bashya ariko SIRWA SARL ntibe yaratanze ikimenyetso cy'uko iyo migabane yishyuwe nk'uko biteganyijwe n'ingingo ya 8 y'Amategeko Shingiro ya SIRWA SARL. Abiheraho avuga ko ibyo bisobanura impamvu umubare w'imigabane muri iyo sisiyete ari 1.000 aho kuba 8.425 uvugwa n'uhagarariye SIRWA LTD.

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[1] Iyo ngingo ivuga ko *"Muri rusange nta nyandiko, imyanzuro y'urubanza cyangwa inyandiko ikubiyemo ingingo ziburanishwa bishobora kohererezwa urukiko nyuma y'inama ntegurarubanza. Icyakora, igihe cyose urubanza rutaracibwa, iyo habonetse inyandiko cyangwa se ikindi kintu gishya cyafasha mu kugaragaza ukuri kivumbuwe n'umwe mu baburanyi, ashobora kugishyikiriza urukiko, rugasuzuma niba cyakwakirwa. Iyo iburanisha ryari ryarapfundikiwe, umuburanyi asaba ko ripfundurwa. Urukiko ubwarwo ni rwo rusuzuma niba ari ngombwa gupfundura iburanisha, iyo rusanze ruzashingira kuri icyo kintu gishya mu guca urwo rubanza."*

[38] Mironko François Xavier uhagarariye SIRWA SARL na Me Nsabimana Jean Baptiste wamwunganiraga bireguye bavuga ko ku byerekeye gutesha agaciro inyandikomvugo y'Inama Rusange idasanzwe y'abanyamigabane ya SIRWA SARL yateranye ku wa 23/10/1997, haseguriwe ibyasobanuwe n'Urukiko mu rubanza rusubirwamo ko abarega batanze ikirego impitagihe, cyarashaje, ariko kuri *Succession* Iyamuremye Claver hanagaragajwe ko bari barigeze kugitanga, baratsindwa, Urukiko rwemeza ko nta bubasha (*qualité*) bafite bwo kurega SIRWA LTD kuko batari abanyamigabane, urubanza ruba itegeko, bakaba basanga atari ngombwa kongera kugisuzuma. Naho kuri Bihira Juvénal we, hagaragajwe ko yahamagajwe muri iriya nama, asinya no ku nyandikomvugo yayo inatangazwa mu Igazeti ya Leta N° 10 yo ku wa 15/05/1998. Basaba Urukiko gushingira ku rubanza RC28.217/98 rwaciwe ku itariki 11/12/1998, na *Extrait du Procès Verbal de la réunion tenue en date du* 23/10/1997.

UKO URUKIKO RUBIBONA

[39] Ingingo ya 32, igika cya kabiri, y'Itegeko N˚ 06/1988 ryo ku wa 12 Gashyantare 1988 ritunganya amasosiyete y'ubucuruzi ryakurikizwaga igihe ikirego cyatangwaga, ivuga ko *"Kugira ngo Inama Rusange iterane, ibaruwa iyitumiza kandi ikubiyemo ibizigwa igomba kugezwa ku bagize isosiyete hasigaye nibura iminsi munani kugira ngo iterane."*

[40] Ingingo ya 28 y'Amategeko shingiro ya SIRWA SARL yo ku wa 06/12/1989 yavuguruwe hagamijwe guhuza n'ibyateganywaga n'Itegeko N˚ 06/1988 ryo ku wa 12 Gashyantare 1988, ryavuzwe haruguru, ivuga ko Inama Rusange idasanzwe ishobora gutumizwa n'Inama y'Ubutegetsi iyo ibona ari ngombwa, ubutumire bukagezwa ku bagize sosiyete byibuze iminsi umunani mbere y'itariki y'inama. Iyo nama idasanzwe ifite ububasha bwo guhindura Amategeko Shingiro agenga sosiyete, ndetse no kwiga ku kindi kibazo isanga gikomeye kandi cyihutirwa ku buzima bwa sosiyete.

[41] Abahanga, bashingiye ku manza zitandukanye zaciwe mu bindi bihugu, bavuga ko iyo habaye kudatumira mu buryo bukurikije amategeko abagize sosiyete bemerewe gutora cyangwa se n'abatemerewe gutora ariko bafite uburenganzira bwo gutumirwa mu nama za sosiyete, urugero nk' abagenzuzi *(auditors)*, uko guhura ntikwitwa inama. Icyakora, abo bahanga bavuga ko iyo abitabiriye inama itatumiwe mu buryo bwubahirije amategeko bemeye bose kwikuraho uburenganzira bwabo bwerekeye uko bagomba gutumirwa, inama ishobora gufatwa nk'iyateranye mu buryo bwubahirije amategeko.[2]Abahanga bavuga kandi ko inyandikomvugo y'inama igomba gutangaza ko guhamagarwa kw'abanyamigabane mu nama kwakozwe neza, ndetse n'ububasha bwayo bwo gufata icyemezo, urutonde rw'ibyemezo byafashwe, bikagendana no kwerekana

[2] Stephen Mayson, Derek French and Christopher Ryan, *Mayson, French & Ryan on Company Law*, 23rd Ed, (Oxford University Press, 2007), p. 454-455, states that *"There is a long established rule of the law of meetings that failure to give notice of a meeting to a member entitled to notice invalidates the proceedings of the meeting (the rule was applied to companies in Musselwhite v C.H. Musselwhite and Son Ltd [1962] Ch 964). However, a person who does not receive proper notice of a meeting, or of a particular item of business, but who attends the meeting may waive the entitlement to notice. Accordingly, if all members entitled to attend a meeting are gathered together then they may agree to treat their gathering as a meeting of which they have all waived their entitlement to notice (Re Oxted Motor Co. Ltd [1921] 3 KB 32). If anyone of those present does not consent to the gathering being treated as a meeting then it is not. [...] It has been held in Australia that a gathering of members without proper notice cannot be treated as a meeting if a person who was entitled to notice of meetings but was not entitled to vote (such as auditor) did not attend and vaive the entitlement to notice (Re Compaction Systems Pty Ltd [1976] 2 NSWLR 477)."*

amajwi y'abatoye bashyigikira n'abahakana buri cyemezo. Urutonde rw'abitabiriye inama rugaragaraho imikono yabo rukaba rugomba kuba ruri ku mugereka w'inyandikomvugo.[3]

[42] Dosiye y'urubanza igaragaza ko mu nyandikomvugo y'inama yo ku wa 23/10/1997, mu irangashingiro ryayo, yabanje gushyiraho abashinzwe kubarura amajwi y'amatora aribo Sindikubwabo Emmanuel na Uwimana Jean, ndetse n'umunyamabanga ariwe Nyiramfabakuze Dancille, nyuma hasuzumwa niba ibiteganywa n'Amategeko Shingiro yagengaga SIRWA SARL kugira ngo habe Inama Rusange idasanzwe byarubahirijwe hagendewe ku byari ku murongo w'ibyagombaga kwigwa. Muri iyo nyandikomvugo, hagaragamo ko Inama Rusange, ishingiye ku butumire bwo ku wa 15/10/1997 no kuba imigabane irenga ¼ yari ihagarariwe, yasanze Inama yaratumijwe mu buryo bwateganywaga n'ingingo ya 28, umurongo wa 4, y'Amategeko Shingiro ya SIRWA SARL. Iyo nama ikaba yarakurikiraga iyatumiwe ku wa 02/10/1997 itarashoboye gufata imyanzuro kuko ½ cy'imigabane kitari gihari cyangwa ngo kibe gihagarariwe. Urukiko rusanga kandi Inama Rusange idasanzwe yo ku wa 23/10/1997 yarize ku bijyanye no guhindura Amategeko Shingiro ya SIRWA SARL yari yaremejwe n'Inama Rusange idasanzwe yo ku wa 06/12/1989.

[43] Dosiye y'urubanza igaragaza kandi ko muri iyo Nama Rusange idasanzwe yo ku wa 23/10/1997 ariho hahinduriwe imigabane ya SIRWA SARL, ikava ku 1000 igashyirwa ku migabane 3000, aho Mironko François Xavier afite imigabane 2365, Bihira Juvénal akagira 160, Nkundabatware Vénant akagira 150, Iyamuremye Pierre Claver akagira 85, Mukankusi Berthe akagira 80, ACLIR na Bagaragaza Thaddée bakagira 80, buri wese.

[44] Urukiko rurasanga, usibye kuba mu nyandikomvugo yo ku wa 23/10/1997 havugwamo ko abanyamigabane batumiwe muri iyo nama idasanzwe, SIRWA SARL, mu izina ry'Umuyobozi wayo itabasha kugaragaza ubutumire bwo ku wa 15/10/1997 bwaba bwarahawe Bihira Juvénal, Iyamuremye Pierre Claver na Bagaragaza Thaddée basabwa kuyitabira, bunabamenyesha ibyagombaga kuyigirwamo, urutonde rw'abayitabiriye ruriho imikono, ndetse n'inyandiko zijyanye n'uko amajwi yagiye abarurwa mu matora yo gufata ibyemezo, nyamara ivuga ko hari hashyizweho abashinzwe amatora (*scrutateurs*).

[45] Hashingiwe ku bimaze kuvugwa haruguru, Urukiko rusanga Inama Rusange idasanzwe ya SIRWA SARL yo ku wa 23/10/1997 itaratumijwe ku buryo bwemewe n'amategeko, bityo n'inyandikomvugo yayo ikaba nta gaciro ifite.

B. Kumenya inyungu za Sosiyete SIRWA SARL zo kuva mu 1993 kugeza ku wa 31/12/2021, agaciro k'umugabane muri SIRWA SARL, agaciro k'imigabane yose y'abareze na dividendes bagomba guhabwa

[46] Mbere yo gusuzuma iki kibazo, harabanza gusuzumwa ikibazo cyo kumenya niba raporo yakozwe n'Umuhanga isabwe n'Urukiko yashingirwaho hemezwa inyungu za sosiyete SIRWA

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[3] Frank Dornseifer, *Corporate Business Forms in Europe: A Compendium of Public and Private Limited Companies in Europe*, (sellier. european law publ., 2005), p.679, states that *"Shareholders meeting resolutions should be included in minutes drafted by a notary. The minutes should declare the propriety of calling a shareholder meeting and its capability to adopt a resolution, list adopted resolutions, as well as the number of votes cast in favor and against each resolution. An attendance list with signatures of shareholder meeting participants should be attached to the minutes. The management board should also attach proof of called shareholder meeting to the book of minutes."*

SARL n'agaciro k'umugabane muri SIRWA SARL, kugira ngo rubashe kumenya agaciro k'imigabane yose y'abareze, *dividendes* n'inyungu bagomba guhabwa.

1.Kumenya niba raporo ivuguruye yo ku wa 03/05/2024 yakozwe n'Umuhanga yashingirwaho hemezwa inyungu za sosiyete SIRWA SARL n'agaciro k'umugabane muri SIRWA SARL

[47] Mu iburanisha ryo ku wa 02/11/2020, Urukiko rwategetse ko hashyirwaho Umuhanga ugomba kugaragaza inyungu ku migabane (*dividendes*) ya sosiyete SIRWA SARL kuva mu mwaka wa 1993 kugeza ubu no kugaragaza agaciro k'umugabane. Umuhanga washyizweho ntiyashoboye gukora ibyo yari yasabwe, Urukiko rushyiraho undi ari we SECAF Ltd. Uyu muhanga yatanze raporo ya mbere Raporo y'Umuhanga yo ku wa 06/07/2023, yakozwe nyuma yo gusura imitungo ya SIRWA Ltd ku wa 21/06/2023, igaragaza ko umubare w'imigabane yayo ari 1.000, umutungo bwite wayo ukaba ungana na 2.609.949.072 Frw, agaciro k'umugabane umwe wa SIRWA Ltd kakangana na 2.609.949 Frw. Mu gusobanura iyi raporo, umuhanga yagaragaje ko igenagaciro ryakozwe mu buryo bwo kugenekereza kuko nta gusura imitungo byari byabayeho, nta n'Amategeko Shingiro cyangwa inyandikomvugo z'inama yari yabonye mbere zigaragaza umubare w'imigabane.

[48] Byatumye Urukiko rutegeka ko ruzajya gusura imitungo ivugwa, maze ku wa 03/04/2024 Umuhanga ari kumwe na bamwe mu bagize inteko basura imitungo ya SIRWA Ltd iri mu kibanza gifite nimero UPI: 1/03/06/03/213 mu Mudugudu wa Gasave, mu Kagali ka Kicukiro, mu Murenge wa Kicukiro, mu Karere ka Kicukiro.

[49] Ashingiye ku byavuye muri iryo perereza ryakozwe n'Urukiko, n'inyandiko za SIRWA LTD zari zasabwe n'Urukiko mu iburanisha ryo ku wa 14/02/2024 yashyikirijwe ku wa 13/03/2024 ndetse no mu isurwa ry'imitungo ya SIRWA LTD ryakozwe ku wa 21/06/2023, Umuhanga yakoze raporo ivuguruye igaragaza ko umubare w'imigabane yayo ari 1.000, umutungo bwite wayo ukaba ungana na 2.274.089.108 Frw, agaciro k'umugabane umwe wa SIRWA LTD kakangana na 2.274.089 Frw. Ku bijyanye n'imyenda, Umuhanga asobanura ko yashingiye ku yagaragajwe mu nyandiko zamenyekanishijwe muri RRA kuko ikigo gishinzwe imyenda aricyo CRB cyagaragaje ko nta myenda SIRWA LTD ibereyemo amabanki. Avuga ariko ko nta mashini zikora amarangi yabonye igihe yasuraga inyubako y'uruganda ku wa 03/04/2024.

[50] SIRWA LTD, ihagarariwe na Mironko Francois Xavier, ivuga ko iyo raporo ivuguruye irimo inenge zikurikira:

a.Umuhanga washyizweho yivugira ko yagenekereje mu kubara ariko mu kugenekereza ntiyite ku mahame agenga umwuga w'ibaruramari n'igenzuramari, aho agomba gukora mu bwisanzure kandi agatanga amakuru y'ukuri.

b.Umuhanga yashingiye ku magambo adafite ibimenyetso yabwiwe n'uruhande rumwe rw'abarega, aho gukurikiza ibiteganywa n'amategeko y'umwuga kuko yivugira ko mu kugaragaza imiterere y'ikibazo yakoresheje umubare w'imigabane yabwiwe n'abarega kandi yari gushingira k'ugaragara ku nyandiko zemewe n'amategeko yakuye muri RDB.

c.SIRWA LTD yahaye Umuhanga *TIN* na *Password* ngo yinjire muri *system* ya RRA kandi byatumye agera ku makuru yifashishije muri raporo, ibyo batababashije kubona byo kuva 1994 kugeza 2003 bikaba bitabazwa SIRWA LTD kuko byarengeje igihe cyo kubikwa

kandi ko mu myaka ya 1993, 1994, 1995, 1996 sosiyete yari yarabohojwe na Bihira Juvénal afatanyije na bagenzi be, bakaba aribo bagomba kubazwa inyandiko z'icyo gihe.

d.Umuhanga yirengagije kandi ko yahawe uburenganzira bwo gushaka amakuru ku Mwanditsi Mukuru w'amasosiyete ndetse ajyayo, ariko akaba atarakoresheje amakuru yakuyeyo muri raporo ivuguruye.

e.Umuhanga yakoresheje amakuru ari muri RRA bimufasha gukora ishusho y'umutungo ya buri mwaka mu myaka yose yaboneye amakuru, ariko yirengagiza inyandiko y'inyungu cyangwa igihombo, ahubwo avuga ko uhagarariye SIRWA LTD yabyimanye kandi yari yabibonye muri *system* ya RRA, bituma ahunga kugira icyo avuga ku nyungu n'ibihombo sosiete yagize, ari naho abarega bashingiye bakora *actualisation des intérêts* y'inyungu zabonetse mu myaka itatu gusa, birengagije ibihombo bigomba kwimurwa mu yindi myaka ikurikiyeho.

f.Umutungo wa SIRWA LTD ugaragazwa n'Umuhanga ungana na 2.815.156.604Frw, asobanura ariko ko Umuhanga mu kugaragaza umutungo bwite, agaciro k'imitungo itimukanwa yakabaze kabiri bitewe no gushyiraho agaciro k'umutungo kagaragajwe na Rwasibo Jean Bosco akarekeraho n'agaciro k'umutungo kagaragajwe muri *bilan*.

j.Mu kugena agaciro k'ibibanza, umugenagaciro yakoresheje ibipimo bitari byo kuko atagendeye kuri "*weighted average value*" isabwa gukoreshwa n'urugaga rwa IRPV, ahubwo akagendera kuri "*maximum value*".

h.Kuri parcelle n° 1/01/09/03/860 inyubako zirimo zubatswe mu mwaka wa 1976, bivuze ko zimaze imyaka 48, ariko mu kubara ubusaze hakaba harakoreshejwe 28, naho parcelle n° 1/03/06/03/213 inyubako zirimo zubatswe mu 1988, ariko hakaba harakoreshejwe 24.5 na 7 kuri *garage* aho gukoresha 35. Akaba asanga agaciro k'izo nyubako kataragombaga kubarwa kuko ukurikije igishushanyo mbonera cy'Umujyi wa Kigali nta gaciro zigifite, zikaba zidakorerwamo kandi zubatswe n'ibikoresho byashaje utakwimukana ngo byubake indi nyubako yo gukoreramo.

i.Mu kubara imigabane, raporo yavuguruje ibyo muri raporo yabanje aho ivuga ko imigabane ya sosiyete ari 1.000 ashingiye ku makuru yakuye mu Mategeko Shingiro ndetse no mu nyandikomvugo z'inama y'abanyamigabane, mu gihe muri raporo ya mbere yari yagaragaje ko sosiyete ifite imigabane 8.425, iy'abarega ikaba ingana na 325 nayo itagomba kubarirwamo kuko batakiri abanyamigabane.

j.Yakoresheje amakuru amwe yo kuva mu 1994 kugeza 1996 gusa kandi yarahawe inshingano zigera muri 2021.

[51] Me Munderere Léopold, uhagarariye abazungura ba Iyamuremye Pierre Claver avuga ko bemera raporo yakozwe na SECAF LTD hashingiwe ku makuru bahawe, kuko atari bukore ibidashoboka. Yongeraho ko nyamara mu mitungo itimukanwa yagaragajwe n'Umuhanga, hakiburamo ikibanza cyarimo *siège social* ya SIRWA SARL, cyari kibaruwe kuri n° 61 VolR 2 Folio 14, gifite UPI: 1/01/09/03/1064 Mironko François Xavier yiyandikishijeho n'umugore we, kandi cyari mu mitungo yatambamiwe na nyakwigendera Bihira Juvenal mu ibaruwa yari yandikiye Umubitsi w'inyandiko mpamo ku wa 09/11/2009. Bakaba basanga harabayeho uburiganya budakwiriye kwemerwa, ku buryo icyo kibanza nacyo gikwiye kugarurwa mu mitungo ya SIRWA LTD kuko umwenda uvugwa ko cyagurishijwe ngo wishyurwe ntawo Umuhanga yabonye.

[52] Me Nkurunziza François Xavier, uhagarariye Bagaragaza Thaddée n'Abazungura ba Bihira Juvenal avuga ko basanga ntacyo impuguke itakoze kugirango irangize inshingano yahawe n'Urukiko, bakaba bemera raporo yo ku wa 03/05/2024 kubera impamvu zikurikira:

-Impuguke yashingiye ku nyandiko yahawe na SIRWA LTD ku wa 13/03/2024 n'inyandiko yahawe na RRA mu rwego rwo gusuzuma niba hari itandukanyirizo cyangwa bihura neza n'inyungu cyangwa ibihombo bya SIRWA LTD ndetse n'ibigize ifoto y'umutungo wayo mu rwego rwo kugaragaza agaciro k'umugabane;

-Ibyakozwe hashingiwe ku mahame mpuzamahanga ICPAR na IFAC;

-Inama yo ku wa 23/10/1997 yarateranye kandi ifata ibyemezo ku buryo bunyuranye n'Amategeko Shingiro ya SIRWA SARL ndetse n'itegeko rigenga amasosiyete y'ubucuruzi, aho iyo nama yongereye imigabane ikava kuri 1.000 maze ikajya kuri 3.000, Mironko François Xavier yihamo imigabane 2.000 ndetse na nyuma yaho imigabane igenda yiyongera hazamo n'abanyamigabane bashya nyamara SIRWA LTD nta kimenyetso cy'uko iyo migabane yishyuwe nk'uko biteganyijwe n'ingingo ya 8 y'Amategeko Shingiro y SIRWA SARL. Bikaba bisobanura impamvu umubare w'imigabane muri iyo sosiyete ari 1.000 aho kuba 8.425 uvugwa na SIRWA LTD;

-Nubwo hari umutungo utimukanwa uri mu kibanza UPI: 1/01/09/03/1064 cy'aho SIRWA SARL yari ifite icyicaro ubu wanditse kuri Mironko Francois Xavier, byatumye agaciro k'umugabane kaba gato, Urukiko ntirwabura kugendera kuri iyo raporo mu guca urubanza.

[53] Mu iburanisha ryo ku wa 21/05/2024, Umuhanga yasobanuye ibi bikurikira:

-Nta kubogama kwabayeho nk'uko SIRWA LTD ishaka kubyumvikanisha kuko guhera mu mwaka wa 2023 yahuye n'uhagarariye SIRWA LTD inshuro zirenga imwe, kandi icyari kigamijwe kwari ugukusanya amakuru ariko ko bitakunze ari nabyo byatumye habaho kwiyambaza iperereza;

-Yagennye imigabane 1.000 ashingiye ku kuba nta *liquidation* ya SIRWA SARL yabayeho, bikaba byaratumye ashingira ku Mategeko Shingiro ya SIRWA SARL, impamvu atashingiye ku cyemezo cya RDB akaba ari uko kirimo abanyamigabane bashya, asobanura ko iyo ugabanyije imitungo iburanwa n'imigabane 8.425 agaciro k'umugabane kagabanuka, naho yabaririrwa ku 1.000 kakiyongera;

-Ku ngingo ivugwa na SIRWA LTD ko SECAF yashingiye kuri *expertise* yatanzwe n'Umuhanga utarashyizweho n'Urukiko (i.e. RWASIBO Jean Bosco) , avuga ko nta nenge irimo kuko amategeko yemerera Umuhanga kuba yakwiyambaza undi.

UKO URUKIKO RUBIBONA

[54] Ingingo ya 77 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ivuga ko kugira ngo Urukiko ruce urubanza rwaregewe, rushobora gutegeka Umuhanga cyangwa abahanga gusuzuma no gutanga ibitekerezo ku bintu bifitanye isano n'urwo rubanza kandi bijyanye n'umwuga wabo. Naho ingingo ya 98 y'iryo tegeko, ikavuga ko Urukiko rudakurikiza byanze bikunze ibitekerezo by'abahanga mu gihe binyuranye n'imyumvire y'abacamanza. Izi ngingo zirebewe hamwe zumvikanisha ko Urukiko rushobora gukurikiza ibyagaragajwe n'abahanga igihe bitanyuranye n'imyumvire y'abacamanza.

[55] Umuhanga SECAF yashyizweho n'Urukiko ku wa 14/12/2021, ahabwa inshingano zo kugaragaza inyungu ku migabane (*dividendes*) kuva 1993, no kugaragaza agaciro k'umugabane bya sosiyete SIRWA SARL. Muri raporo yo ku wa 06/07/2023, yakozwe nyuma yo gusura imitungo y'iyo sosiyete ku wa 21/06/2023, yagaragaje ko umubare w'imigabane ari 1.000, umutungo bwite wayo ukaba 2.609.949.072 Frw, agaciro k'umugabane umwe kakangana na 2.609.949 Frw. Muri iyo raporo ariko Umuhanga yagaragaje imbogamizi zirimo kwimwa ibitabo by'ibaruramari, inyandiko n'amakuru bya SIRWA SARL, akaba yarashakishije amakuru muri RRA, ndetse akavuga ko kugena agaciro k'umugabane byabaye kugenekereza. Ibyo byatumye mu iburanisha ryo ku wa 14/02/2024, Urukiko rutegeka ko SIRWA LTD irushyikiriza ibitabo by'ibaruramari bigaragaza icungamutungo ryayo bitarenze ku wa 23/02/2024, ndetse rwemeza ko ruzagera ahari imwe mu mitungo ya SIRWA LTD rukahahurira n'Umuhanga.

[56] Muri raporo y'Umuhanga ivuguruye, yo ku wa 03/05/2024, yakozwe nyuma y'ibyavuzwe haruguru, yagaragaje ko umubare w'imigabane ya SIRWA SARL ari 1.000, umutungo bwite wayo ukaba ungana na 2.274.089.108 Frw, agaciro k'umugabane umwe wayo kakangana na 2.274.089 Frw. Umuhanga asobanura ko aka gaciro gatandukanye n'ako yari yaragaragaje muri raporo yatanze ku wa 30/06/2022 na raporo yatanze ku wa 06/07/2023, bitewe no kuba igenagaciro ryari ryakozwe mbere ryari ukugenekereza kuko nta gusura imitungo byari byabayeho, nta n'Amategeko Shingiro cyangwa inyandikomvugo z'inama yari yabonye. Ku bijyanye n'imyenda, asobanura ko yashingiye ku yagaragajwe mu nyandiko zamenyekanishijwe muri RRA kuko ikigo gishinzwe imyenda aricyo CRB cyagaragaje ko nta myenda SIRWA SARL ibereyemo amabanki.

[57] Urukiko rurasanga nta cyarubuza gushingira kuri raporo ivuguruye yo ku wa 03/05/2024, kuko yakozwe hagendewe ku makuru yatanzwe n'urwego rubifitiye ububasha rwa RRA, igenagaciro ryakozwe nyuma yo gusura aho SIRWA Ltd ikorera, ndetse n'inyandiko iyo sosiyete yarushyikirije. Rusanga ibivugwa na SIRWA LTD ko Umuhanga yari gushingira ku makuru yahawe na RDB nta shingiro bifite kuko ari yo yayitangiye, akaba ataravuye mu bugenzuzi yakorewe, ndetse Urukiko rukaba rwasanze n'inama yo ku wa 23/10/1997 SIRWA LTD ivuga ko yashingiweho haba ihinduka ry'imigabane nta gaciro ifite kuko yateranye ku buryo bunyuranyije n'amategeko nk'uko byasobanuwe haruguru. Rusanga kandi ibivugwa n'abarega ko hatabariwemo ikibanza gifite UPI: 1/01/09/03/1064, nta shingiro bifite kuko bitigeze biburanwaho mu rubanza rusubirishwamo, bikaba bitafatwa ko babirenganijweho nk'uko uru Rukiko rwabitanzeho umurongo ko ingingo itaraburanishijweho mu rubanza rusubirwamo ku mpamvu z'akarengane umuburanyi atavuga ko yayirenganyeho.[4]

2.Kumenya agaciro k'imigabane yose y'abareze, dividendes n'inyungu bagomba guhabwa

[58] Umuhanga asobanura ko ibyo yemeje muri raporo yabihereye ku makuru yavanye muri RRA, ariko ko guhera mu 1993 kugeza muri 2004 nta nyandiko yigeze abona. Avuga ko kuva mu mwaka wa 1993 kugeza mu mwaka wa 2004 nta nyungu sosiyete yigeze ibona, ko yagize igihombo. Guhera mu mwaka wa 2004 kuzamura agaragaza ko SIRWA Ltd yabonye inyungu isaga 57.000.000Frw, ko ari naho yahereye abara inyungu kandi ibyo yemeje yabivanye muri RRA nk'uko za *declarations* zakozwe zagiye zibigaragaza.

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[4] Reba urubanza RS/INJUST/RC 00007/2018/SC rwa Nditiribambe Samuel na bagenzi be, rwaciwe ku wa 13/03/2020, kuva ku gika cya 64 kugeza ku cya 66.

[59] Me Munderere Leopold, uhagarariye Abazungura ba Iyamuremye Pierre Claver avuga ko asaba inyungu za 10.592% z'ubukererwe ku nyungu bagombaga kubona buri mwaka muri SIRWA Ltd, kubera ko bavukijwe uburenganzira bwabo ku nyungu, bakaba baragize igihombo cyatewe n'uko iyo sosiyete yagombaga kubaha inyungu ku migabane yabo buri mwaka ariko ntibikorwe, ko ubwo bukererwe bugomba gutangirwa inyungu. Hakaba harabayeho gukoresha *deposit rate* ya BNR aho mu kwezi kwa Gashyantare 2024 yari igeze kuri 10.592%, n'ubwo kandi yagiye ihindagurika hakaba harafashwe iri hejuru ya nyuma yatangajwe na BNR kuko hagiye haba gutakaza agaciro kw'ifaranga.

[60] Me Nkurunziza François Xavier, uhagarariye Bagaragaza Thaddée n'Abazungura ba Bihira Juvenal avuga ko *dividendes* zisabwa n'abazungura ba Bihira Juvénal zibazwe mu buryo bukurikira:

[61] *Dividendes* zatanzwe na SIRWA LTD ku wa 03/07/1994 ku mwaka wa 1993 zingana na 30.421.000 Frw, uruhare rwa Bihira Juvénal ufite imigabane 160, rukaba 4.867.360 Frw, Inyungu z'ubukererwe kuva ku wa 03/07/1994 kugeza ku wa 16/05/2024 ni ukuvuga imyaka 29 n'amezi 10, kuri taux de placement ya 10.25%, zikaba 14.883.981 Frw, igiteranyo kikaba 19.751.341 Frw.

-*Dividendes* zo muri 2011 ni 57.003.157 Frw, uruhare rwa Bihira Juvénal ufite imigabane 160, rukaba 9.120.505 Frw, Inyungu z'ubukererwe kuva 2011 kugeza ku wa 16/05/2024 ni ukuvuga imyaka 12 n'amaezi 5, zikaba 8.504.795 Frw, igiteranyo kikaba 17.625.299 Frw.

-*Dividendes* zo muri 2013 ni 1.431.944 Frw, uruhare rw'abazungura ba Bihira Juvénal ni 229.111 Frw, Inyungu z'ubukererwe kuva ku wa 16/05/2024 ni ukuvuga imyaka 9 n'amezi 5, zikaba 161.809,6 Frw, igiteranyo kikaba 390.920 Frw.

-*Dividendes* zo muri 2021 ni 20.898.919 Frw, uruhare rw'abazungura ba Bihira Juvénal ni 3.343.827 Frw, Inyungu z'ubukererwe kuva 2022 kugeza ku wa 16/05/2024 ni ukuvuga imyaka 2 n'amezi 5, zikaba 606.069 Frw, igiteranyo kikaba 3.949.896 Frw. Igiteranyo cya *dividendes* zishyuzwa n'abazungura ba Bihira Juvénal ni 41.717.456 Frw.

[62] Avuga kandi ko *Dividendes* zisabwa na Bagaragaza Thaddée zibazwe mu buryo bukurikira:

-*Dividendes* zatanzwe na SIRWA LTD ku wa 03/07/1994 ku mwaka wa 1993 zingana na 30.421.000 Frw, Uruhare rwa Bagaragaza Thaddée ni 2.433.680 Frw, Inyungu z'ubukererwe kuri *dividendes* zitatanzwe kuva 1994 kugeza kuwa 16/05/2024 zibazwe kuri taux de placement ya BNR ingana na 10,25% zingana na 7.441.990 Frw, igiteranyo kikaba (2.433.680 Frw + 7.441.990 Frw) = 9.875.671 Frw

-*Dividendes* muri SIRWA LTD kuva 1994 kugeza ubu zabazwe n'umuhanga washyizweho n'Urukiko zingana na 57.003.157 Frw, Uruhare rwa Bagaragaza Thaddée rukaba 4.560.252,5 Frw, Inyungu z'ubukererwe kuva 2011 kugeza ku wa 16/05/2024 ni ukuvuga imyaka 9 n'amezi 4, zikangana na 3.167.893 Frw, igiteranyo kikaba 7.728.146 Frw.

-*Dividendes* zo muri 2013 zingana na 1.431.944 Frw, uruhare rwa Bagaraza Thaddée rukaba 114.555,5 Frw, Inyungu z'ubukererwe kuva 2013 kugeza ku wa 16/05/2024 ni ukuvuga imyaka 9 n'amezi 5, zikaba 80.905 Frw Igiteranyo kikaba 195.461 Frw.

-*Dividendes* zo muri 2021 ni 20.898.919 Frw, uruhare rwa Bagaragaza Thaddée rukaba 1.671.913,5 Frw, inyungu z'ubukererwe kuva 2021 kugeza ku wa 16/05/2024 ni ukuvuga

amezi 26, zikaba 271.686 Frw, igiteranyo kikaba 1.943.599 Frw. Igiteranyo cya *Dividendes* zose Bagaragaza Thaddée yishyuza ni 19.742.877 Frw.

-Agaciro k'umugabane muri 2023 kagenwe n'Umuhanga ni 2.274.089Frw, agaciro k'imigabane yose ya Bagaragaza Thadée ni 2.274.089 Frw x 80 ingana na 181.927.120 Frw. Igiteranyo cyose cy'amafaranga yishyuzwa na Bagaragaza Thadée akaba 19.742.877 Frw + 181.927.120 Frw= 201.669.997 Frw.

[63] SIRWA Ltd, ihagarariwe na Mironko François Xavier, ivuga ko mu kubara imigabane raporo yavuguruje ibyo muri raporo yabanje aho ivuga ko imigabane ya sosiyete ari 1.000 ashingiye ku makuru yakuye mu Mategeko Shingiro ndetse no mu nyandikomvugo z'inama y'abanyamigabane, kandi muri raporo ya mbere yari yagaragaje ko sosiyete ifite imigabane 8.425, iy'abarega ikaba ingana na 325 nayo ikaba itagomba kubarirwamo kuko batakiri abanyamigabane.

[64] Mu myanzuro yashyikirije Urukiko kuwa 20/05/2024, Mironko Francois Xavier avuga ko ikirego cy'inyungu ku migabane abarega basaba nta shingiro gifite kuko inyungu baregera zitigeze zibaho. Asobanura ko abarega bavuga ko mu Nama y'Ubutegetsi yabereye ku Gisenyi kuwa 03/07/1994 hagabanywe inyungu zingana na 30.421.000 Frw hakurikijwe imigabane ya buri muntu, ariko ko ibyo atari ukuri kuko abahawe ayo mafaranga ari abari mu nama, kandi ko yari inguzanyo bahawe bikaba bigaragazwa na *receipts* ziri ku mugereka kubera ko *bilan* ya 1993 yari itaraboneka. Akomeza avuga ko nta nyungu yari gutangwa mu gihe nta Nteko Rusange isanzwe y'abanyamigabane yateranye ngo izemeze nk'uko biteganywa n'ingingo ya 25 y'Amategeko Shingiro ya SIRWA SARL.

[65] Agaragaza ko mu Nteko Rusange isanzwe yateranye ku wa 26/05/1998 aribwo abanyamigabane bemeje *bilan* y'imyaka yabanje ariyo 1993, 1994, 1995, 1996 na 1997, kandi ko byagaragaye ko SIRWA SARL nta nyungu yagize muri iyo myaka.

[66] Ku birebana n'inyungu abarega bavuga zatangiwe Nairobi mu kwezi kwa 12 zingana n'amafaranga 100.000.000, avuga ko zitigeze zibaho kuko nk'uko bigaragara mu nyandikomvugo y'inama yabereye i Nairobi ku wa 27/12/1995 abarega batangaho ikimenyetso, nta hagaragara itangwa ry'inyungu, ahubwo yigaga uko sosiyete ihagaze no gufata ibyemezo biramira sosiyete, kandi ko itari gushobora guteranira i Nairobi kubera ko Amategeko Shingiro yateganyaga ko igomba kubera ku cyicaro cya sosiyete.

[67] Ku birebana n'inyungu z'imyaka 2011 na 2013, avuga ko abaregera inyungu ku migabane bari batakiri abanyamigabane. Ariko ko inyungu (*profit net*) za SIRWA LTD zigaragazwa na raporo yakozwe n'Umuhanga zingana na 57.003.157 Frw ku mwaka wa 2011 na 1.431.944 Frw ku mwaka wa 2013. Izo nyungu zikaba arizo abarega bita *dividendes* (inyungu ku migabane), akaba asanga bitiranya inyungu ya sosiyete (*profit*) ari nazo Umuhanga yari yahawe kugaragaza n'inyungu ku migabane zidafite aho zigaragara muri raporo y'Umuhanga.

[68] Ashingiye ku ngingo ya 32 y'Amategeko Shingiro ya SIRWA SARL, asobanura ko inyungu ya sosiyete (*profit net*) iboneka hafashwe umusaruro wose hakavanwamo ibyatunze umwuga byose (*frais generaux et toutes autres charges*), ubwicungure (*ammortissement*), naho inyungu ku migabane zikaba ziboneka hafashwe *profit net* hakabanza gukurwamo ibihombo byabanje (*pertes cumulées*), ibisigaye hagakurwamo amafaranga ateganywa ku byabangamira ubucuruzi(*provisions pour risques commerciaux*) kimwe n'andi mafaranga Inama y'Ubutegetsi

yasaba ko akurwaho ku bw'inyungu za sosiyete, akazaherwaho ubutaha (*report à nouveau*). Agaragaza ko mu mwaka wa 2011, inyungu za sosiyete zari 57.003.157 Frw mu gihe *report à nouveau* yari igihombo cya 302.598.219 Frw, bivuze ko nta nyungu zagombaga gutangwa, ahubwo izo nyungu zagabanyije igihombo.

[69] Inyungu z'umwaka wa 2021, avuga ko abarega bazisaba bashingiye kuri raporo y'Umuhanga aho yagaragaje ko inyungu zabonetse ari 20.898.919 Frw yakuye muri Rwanda Revenue Authority mu gihe *etats financiers* z'umwaka wa 2021 yashyikirije Urukiko zigaragara muri system E-tax ya RRA zigaragaza inyungu za 236.636 Frw na *report à nouveau* y'igihombo kingana na 349.541.086 Frw, bikaba bigaragara ko Umuhanga atavuguruye uko yari yabaze inyungu za sosiyete yari yashyize muri raporo zibanza nk'uko yabikoze ari kugena agaciro k'umugabane.

UKO URUKIKO RUBIBONA

[70] Muri raporo y'Umuhanga ivuguruye yo ku wa 03/05/2024, Urukiko rwemeje ko rushingiraho mu kumenya agaciro k'imigabane abarega bagomba gusubizwa, urwunguko *(dividendes)* ndetse n'inyungu ku rwunguko, igaragaza ko umubare w'imigabane ya SIRWA SARL ari 1.000, umutungo bwite wayo ukaba ungana na 2.274.089.108 Frw, agaciro k'umugabane umwe wayo kakangana na 2.274.089 Frw.

[71] Inyandiko-mvugo y'Inama Rusange idasanzwe ya SIRWA Ltd yateranye ku wa 15/06/1993, aho mu byigwa hari harimo guhindura ingingo ya 6 y'Amategeko Shingiro SIRWA SARL, hemejwe ko imigabane y'iyo sosiyete ari 1000, aho Bihira Juvénal afitemo 160, Iyamuremye Pierre Claver akagira 85, naho Bagaragaza Thaddée akagira 80.

[72] Urukiko rurasanga agaciro k'imigabane y'abarega n'urwunguko/d*ividendes* bagomba guhabwa bigomba kubarwa hakurikijwe umubare w'imigabane ya buri wese.

[73] Agaciro k'imigabane kabazwe mu buryo bukurikira:

-Bagaragaza Thaddée afite imigabane 80 x 2.274.089 Frw y'agaciro k'umugabane umwe, imigabane ye yose ikagira agaciro ka **181.927.120 Frw.**

-Bihira Juvénal afite imigabane 160 x 2.274.089 Frw y'agaciro k'umugabane umwe, imigabane ye yose ikagira agaciro ka **363.854.240 Frw;**

-Iyamuremye Pierre Claver afite imigabane 85 x 2.274.089 Frw y'agaciro k'umugabane umwe, imigabane ye yose ikagira agaciro ka **193.297.565 Frw.**

-Ku byerekeye inyungu/*dividendes* zisabwa n'abarega, Urukiko rusanga ingingo ya 27 y'Amategeko Shingiro ya SIRWA SARL iteganya ko zimwe mu nshingano z'Inama Rusange isanzwe ari ukugabanya abanyamigabane inyungu iba yabonetse buri mwaka. Urukiko rusanga ku wa 03/07/1994 harabaye Inama y'Ubutegetsi ya SIRWA SARL ikemeza ko abanyamigabane bahabwa amafaranga 30.421.000 y'inyungu mu gihe hategerejwe Inama Rusange, ariko ari abarega ari na SIRWA Ltd n'uyihagarariye, bose bemeranya ko iyo Nama Rusange itabaye. Kubera izo mpamvu rero, Urukiko rusanga amafaranga yatanzwe n'Inama y'Ubutegetsi ku wa 03/07/1994 atafatwa nk'inyungu/*dividendes* abarega bagomba kubonaho uruhare rwabo. Ibi kandi bireba

amafaranga 100.000.000 abarega bavuga ko yatanzwe nk'inyungu/*dividendes* ariko ntibagaragaze niba hari Inama Rusange isanzwe yateranye ikemeza itangwa ryayo.

[74] Kuri iyi ngingo kandi y'inyungu, Urukiko rusanga inyungu za SIRWA SARL zigaragara muri raporo y'Umuhanga zihera mu mwaka wa 2004 zikageza mu mwaka wa 2021. Urukiko rurasanga, usibye umwaka wa 2011, 2013 n'uwa 2021, indi myaka haragiye haba igihombo, bityo abarega bakaba bagomba kubona kuri izo nyungu mu buryo bukurikira:

-Igiteranyo cy'inyungu *(dividendes)* zabonetse mu mwaka wa 2011 ni **57.0003.157 Frw:**

-Bagaragaza Thaddée akaba afitemo inyungu ingana na $\frac{80 \text{ x } 57.003.157}{1000} =$ $\mathbf{4.560.252,56\ Frw}$

-Bihira Juvenal akaba afitemo inyungu ingana na $\frac{160 \text{ x } 57.003.157}{1000} =$ $\mathbf{9.120.505,12\ Frw}$

-Iyamuremye Pierre Claver akaba afitemo inyungu ingana na $\frac{85 \text{ x } 57.003.157}{1000} =$ $\mathbf{4.845.268,34\ Frw}$

-Igiteranyo cy'inyungu *(dividendes)* zabonetse mu mwaka wa 2013 ni **1.431.944 Frw**

-Bagaragaza Thaddée akaba afitemo inyungu ingana na $\frac{80 \text{ x } 1.431.944}{1000} =$ $\mathbf{114.555,52\ Frw}$

-Bihira Juvenal akaba afitemo inyungu ingana na $\frac{160 \text{ x } 1.431.944}{1000} =$ $\mathbf{229.111,04\ Frw}$

-Iyamuremye Pierre Claver akaba afitemo inyungu ingana na $\frac{85 \text{ x } 1.431.944}{1000} =$ $\mathbf{121.715,24\ Frw}$

-Igiteranyo cy'inyungu *(dividendes)* zabonetse mu mwaka wa 2021 ni **20.898.919 Frw:**

-Bagaragaza Thaddée akaba afitemo inyungu ingana na $\frac{80 \text{ x } 20.898.919}{1000} =$ $\mathbf{1.671.913,52\ Frw}$

-Bihira Juvenal akaba afitemo inyungu ingana na $\frac{160 \text{ x } 20.898.919}{1000} =$ $\mathbf{3.343.827,04\ Frw}$

-Iyamuremye Pierre Claver akaba afitemo inyungu ingana na $\frac{85 \text{ x } 20.898.919}{1000} =$ $\mathbf{1.776.408,11\ Frw}$

[75] Hashingiwe ku bisobanuro byose byatanzwe, Urukiko rurasanga amafaranga yose hamwe ya *dividendes* abarega bagomba guhabwa, ari aya akurikira:

a.Bagaragaza Thaddée : $\mathbf{4.560.252,56\ Frw + 114.555,52\ Frw + 1.671.913,52\ Frw}$ = **6.346.721,6 Frw**

b.Bihira Juvenal: $\mathbf{9.120.505,12\ Frw + 229.111,04\ Frw + 3.343.827,04\ Frw}$ = **12.693.443,2 Frw**

c. Iyamuremye Pierre Claver: $\mathbf{4.845.268,34\ Frw + 121.715,24\ Frw}$ + $\mathbf{1.776.408,11\ Frw}$ = $\mathbf{6.743.391,69\ Frw}$

[76] Urukiko rurasanga ku bijyanye no kumenya igipimo *(rate)* rwabariraho inyungu z'ubukerwe ku nyungu/*dividendes* zitatanzwe, mu bushishozi bwarwo rukwiye kugendera kuri *deposit rate* rwahawe na Banki Nkuru y'u Rwanda ibasha kuboneka, iva ku mwaka wa 2002 kugeza mu kwezi kwa Gicurasi 2024, rugakora impuzandengo ya buri mwaka, ruhuje iya buri kwezi, nyuma rugakora impuzandengo y'impuzandengo za buri mwaka, rugakoresha *deposit rate* rubonye ariyo ya **8.26%.**

[77] Ku bijyanye n'igihe cyo gutangira kubara inyungu ku bukererwe bw'urwunguko abarega batahawe, Urukiko rushingiye ku byateganywaga n'ingingo ya 27 n'iya 33 y'Amategeko Shingiro ya SIRWA SARL,[5] rurasanga kuba inyungu zaragombaga kwemezwa mu kwezi kwa gatanu kwa buri mwaka, hanyuma zigatangwa mu gihe kitarenze amezi atandatu, mu bushishozi bwarwo byafatwa ko habayeho ubukererwe bwo gutanga inyungu/ *dividendes* guhera ku itariki ya mbere Mutarama y'umwaka ukurikira uwo urwunguko ruvugwa rwemerejwemo. Bikaba bigomba kubarwa mu buryo bukurikira:

a. Inyungu ku bukererwe bw'inyungu z'umwaka wa 2011 abarega batahawe bagomba guhabwa bubazwe kugeza mu kwezi kwa Kamena

2024, ni izi zikurikira:

-Bagaragaza Thaddée zingana na $\frac{4.560.252,56 \text{ x } 8.26\% \text{ x } 4.572}{360} = \mathbf{4.783.796.14\ Frw}$

-Bihira Juvenal zingana na $\frac{\mathbf{9.120.505,12} \text{ x } 8.26\% \text{ x } 4.572}{360} = \mathbf{9.567.592.28\ Frw}$

-Iyamuremye Pierre Claver zingana na $\frac{\mathbf{4.845.268,34} \text{ x } 8.26\% \text{ x } 4.572}{360} = \mathbf{5.082.783.39\ Frw}$

b.Inyungu ku bukererwe bw'inyungu z'umwaka wa 2013 abarega batahawe bagomba guhabwa bubazwe kugeza mu kwezi kwa Kamena 2024, ni izi zikurikira:

- Bagaragaza Thaddée zingana na $\frac{114.555,52 \text{ x } 8.26\% \text{ x } 3.792}{360} = \mathbf{99.669,41\ Frw}$

[5] …….ivuga ko "*buri mwaka, ku cyicaro gikuru cyayo, ku wa kabiri w'ukwezi kwa Gicurasi aribwo Inama Rusange Isanzwe ya buri mwaka iba, ikaba ariyo yemeza bilan ndetse no kubara inyungu/ urwunguko n'igihombo ndetse ikagena uko bigabanywa*", naho ingingo ya 33 y'iyo sitati ikavuga ko "*dividends/urwunguko rwishyurwa mu buryo no mu gihe cyagenwe n'Inama Rusange yemeje bilan mu gihe kidashobora kurenga amezi atandatu iyo nama iyemeje keretse mu gihe habaye ibyemezo bibihinyuza*."

- Bihira Juvenal zingana na $\frac{\mathbf{229.111,04} \text{ x } 8.26\% \text{ x } 3.792}{360} = \mathbf{199.338.82\ Frw}$

- Iyamuremye Pierre Claver zingana na $\frac{\mathbf{121.715,24} \text{ x } 8.26\% \text{ x } 3.792}{360} =$ $\mathbf{105.898,75\ Frw}$

b.Inyungu ku bukererwe bw'inyungu z'umwaka wa 2021 abarega batahawe bagomba guhabwa bubazwe kugeza mu kwezi kwa Kamena

2024, ni izi zikurikira:

-Bagaragaza Thaddée zingana na $\frac{1.671.913,52 \text{ x } 8.26\% \text{ x } 912}{360} = \mathbf{349.853,47\ Frw}$

-Bihira Juvenal zingana na $\frac{\mathbf{3.343.827,04} \text{ x } 8.26\% \text{ x } 912}{360} = \mathbf{699.706,95\ Frw}$

-Iyamuremye Pierre Claver zingana na $\frac{\mathbf{1.776.408,11} \text{ x } 8.26\% \text{ x } 912}{360} =$ $\mathbf{371.719,31\ Frw}$

[78] Hashingiwe ku bisobanuro byose byatanzwe, Urukiko rurasanga amafaranga yose hamwe y'inyungu z'ubukererwe abarega bagomba guhabwa, ari aya akurikira:

-Bagaragaza Thaddée: **4. 783. 796. 14 Frw** + **99. 669, 41 Frw** + **349. 853. 47 Frw = 5.233.319,02 Frw**

-Bihira Juvenal: **9. 567. 592. 28 Frw** + **199. 338. 82 Frw** + **699. 706. 95 Frw** = 10.466.638,05 Frw

-Iyamuremye Pierre Claver: **5. 082. 783. 39 Frw** + **105. 898, 75 Frw** + **371. 719. 31 Frw = 5.560.401,45 Frw**

[79] Urukiko rurasanga amafaranga yose hamwe abarega bagomba guhabwa, habariwemo imigabane yabo, *dividendes* batahawe, n'inyungu z'ubukererwe kuri *dividendes* ari aya akurikira:

-Bagaragaza Thaddée agomba guhabwa amafaranga **181.927.120 Frw + 6.346.721,6 Frw + 5. 233. 319, 02 Frw = 193.507.160,62 Frw**

-Bihira Juvénal agomba guhabwa amafaranga **363.854.240 Frw**

+ **12. 693. 443, 2 Frw** + **10. 466. 638, 05 Frw** = **387.014.321,25 Frw**

-Iyamuremye Pierre Claver agomba guhabwa amafaranga **193.297.565 Frw + 6. 743. 391, 69 Frw + 5.560.401,45 Frw = 205.601.358,14 Frw.**

3. Kumenya niba hari indishyi z'ikurikiranarubanza n'igihembo cya Avoka zatangwa muri uru rubanza

[80] Abazungura ba Bihira Juvénal barasaba Urukiko gutegeka SIRWA Ltd kwishyura amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka kuva mu 2003 kugeza ubu angana na 5.000.000 Frw hiyongereyeho 4% ya 78.637.575 Frw angana na 3.145.503 Frw yose hamwe akaba

8.145.503 Frw hashingiwe ku ngingo ya 26 y'amabwiriza y'Urugaga rw'Abavoka agena ibihembo by'Abavoka.

[81] Bagaragaza Thaddée asaba Urukiko gutegeka SIRWA Ltd kwishyura amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka kuva mu 2003 kugeza ubu angana na 5.000.000 Frw + 4% ya 222.777.566,8Frw = 13.911.102,67 Frw hashingiwe ku ngingo ya 26 y'amabwiriza y'Urugaga rw'Abavoka agena ibihembo by'Abavoka.

[82] Me Munderere Léopold, uhagarariye Abazungura ba Iyamuremye Pierre Claver agasaba ko yahabwa amafaranga y'igihembo cya Avoka ahwanye na 10% y'ayishyuzwa yose, ni ukuvuga 19.329.760 Frw, hamwe na 2.000.000 Frw y'ikurikiranarubanza kuva mu 2003 kugeza ubu.

[83] Mironko François Xavier uhagarariye SIRWA LTD n' umwunganira bavuga ko indishyi zisabwa zidakwiye gutangwa kuko abazisaba nta bubasha bafite bwo kuzisaba cyane cyane ko batagaragaza uruhare rwa SIRWA LTD muri izi manza. Batanze ikirego cyuririye ku kindi basaba Urukiko gutegeka abarega guha SIRWA LTD amafaranga 20.000.000 yo gushorwa mu manza ku maherere, 5.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

UKO URUKIKO RUBIBONA

[84] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Bagaragaza Thaddée, abazungura ba Bihira Juvénal kimwe n'abazungura ba Iyamuremye Pierre Claver basaba bakwiye kuyahabwa kubera ko batsinze urubanza. Urukiko rurasanga ariko ayo basaba, 13.911.102,67Frw kuri Bagaragaza Thaddée, 8.145.503Frw ku bazungura ba Bihira Juvénal na 10% y'ayishyuzwa yose ahwanye na 19.329.760Frw hiyongereyeho 2.000.000Frw y'ikurikiranarubanza kuva mu 2003 kugeza ubu ku bazungura ba Iyamuremye Pierre Claver, akabije kuba menshi cyane kandi nta bisobanuro bayatangira, bityo akaba agomba kugenwa mu bushishozi bw'urukiko.

[85] Hashingiwe ku bisobanuro bimaze gutangwa, buri wese agenewe 4.000.000Frw akubiyemo ay'igihembo cy'Avoka n'ay'ikurikiranarubanza, mu kugena aya mafaranga Urukiko rukaba rwitaye ku gihe uru rubanza rumaze mu nkiko no ku nshuro rwaburanishijwe kuri uru rwego.

[86] Ku birebana n'indishyi zisabwa na Mironko François Xavier, uhagarariye SIRWA LTD, Urukiko rusanga ntazo agomba guhabwa kuko SIRWA LTD ariyo itsindwa n'urubanza.

III. ICYEMEZO CY'URUKIKO

[87] Rwemeje ko ikirego cyatanzwe na Bagaragaza Thaddée, abazungura ba Bihira Juvénal n'abazungura ba Iyamuremye Pierre Claver basaba gusubirishamo ku mpamvu z'akarengane urubanza RCOMA 0066/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 16/12/2013 gifite ishingiro;

[88] Rutegetse SIRWA LTD guha Bagaragaza Thaddée amafaranga y'inyungu/*dividendes* atahawe, ay'inyungu z'ubukererwe ku mafaranga y'inyungu/*dividendes* n'amafaranga y'imigabane yose hamwe angana n' amafaranga **193.507.160,62Frw**;

[89] Rutegetse SIRWA LTD guha abazungura ba Bihira Juvénal amafaranga y'inyungu/*dividendes* batahawe, ay'inyungu z'ubukererwe ku mafaranga y'inyungu/d*ividendes*, n'amafaranga y'imigabane; yose hamwe angana n'amafaranga **387.014.321,25**;

[90] Rutegetse SIRWA LTD guha abazungura ba Iyamuremye Pierre amafaranga y'inyungu/*dividendes* batahawe, ay'inyungu z'ubukererwe ku mafaranga y'inyungu/*dividendes*, n'amafaranga y'imigabane; yose hamwe angana n'amfaranga **205.601.358,14**;

[91] Rutegetse SIRWA LTD guha Bagaragaza Thaddée, abazungura ba Bihira Juvénal n'abazungura ba Iyamuremye Pierre Claver, buri wese amafaranga **4.000.000** akubiyemo ay**'**igihembo cy'Avoka n'ay'ikurikiranarubanza.