URUKIKO RWISUMBUYE RWA NYARUGENGE RURI KU CYICARO CYARWO I NYARUGENGE, RUBURANISHA IMANZA Z'IMBONEZAMUBANO KU RWEGO RWA MBERE, RUCIYE URUBANZA RC 00630/2016/TGI/NYGE MU BURYO BUKURIKIRA NONE KU WA 08/02/2017.

HABURANA

UREGA :

MITIMA Gallican mwene MUSHANGI Joseph na MUKWENGERI Suzana utuye mu mudugudu wa Gasabo, akagari ka Kabeza, umurenge wa Kanombe, akarere ka Kicukiro, umujyi wa Kigali, ubarizwa kuri TEL +250785503173 no kuri e-mail aristide164@gmail.com, uhagarariwe na Me KABERUKA BISENGE Claude.

UREGWA:

KAMANA François ubarizwa mu mudugudu wa Gasabo, akagari ka Kabeza, umurenge wa Kanombe, akarere ka Kicukiro, umujyi wa Kigali, abarizwa kuri TEL +250788309007.

KALISA Henri ubarizwa mu mudugudu wa Gasabo, akagari ka Kabeza, umurenge wa Kanombe, akarere ka Kicukiro, umujyi wa Kigali, abarizwa kuri TEL +971505787287.

IKIBURANWA:

1. Ihererekanya ry'umutungo utimukanwa uherereye mu kibanza gifite UPI 1/03/05/02/141.

2. Guhabwa uburenganzira ku nzu iri muri iki kibanza.

3. Gusubizwa amafaranga y'ubukode angana na 7,800,000 Frw.

URUKIKO

I. IMITERERE Y'URUBANZA

[1] MITIMA Gallican avuga ko Kuwa 06/06/2014 yaguze inzu iri Kabeza mu Murenge wa Kanombe mu kibanza gifite UPI 1/03/05/02/141 na KALISA Henri ahagarariwe na KAMANA François wari wahawe ububasha bwo kugurisha no gukora mutation, ku giciro cya miriyoni mirongo itatu (30,000,000 Frw), yishyura mu byiciro bitatu anyujije amafaranga kuri konti N° 0110033810917301 ya KALISA Henri. MITIMA Gallican asobanura ko amaze kugura yasabye

KAMANA ko atanga uburenganzira ku mutungo no kujya kwa Noteri w'ubutaka guhinduza ibyangombwa by'umutungo bikava mu mazina ya KALISA Henri bikajya ku ye ariko KAMANA arabyanga ahubwo amwambura ibyangombwa by'umwimerere, akomeza gutunga uwo mutungo yagurishije, awubyaza umusaruro, bimutera igihombo cya 7.800.000frw mu gihe cy'amezi 26. Mitima akomeza avuga ko KAMANA avuga ko KALISA yamwambuye ububasha nkuko abigaragaza mu nyandiko yo ku wa 25/07/2015, ariko niba KALISA yarambuye KAMANA ububasha ari byo bituma agobokeshwa mu rubanza. Ariko mu iburanisha, Me KABERUKA BISENGE Claude avuga ko aretse ikirego Mitima Gallican yareze KALISA Henri kuko muri système yari yarafashwe nk'uregwa.

[2] KAMANA François avuga ko kuwa 18/6/2014 KALISA yamuhaye Procuration yo kumugurishiriza inzu ye iri mu kibanza No 141, muri iyo procuration hagaragaramo igiciro inzu yagombaga kugurishwaho, n'uburyo Transfert yagombaga gukorwa, ko MITIMA atishyuye amafaranga yose kugira ngo afashwe guhabwa Mutation nkuko byari biteganijwe, bituma KALISA amwambura mandat yari yamuhaye, nkuko bigaragara mu nyandiko yo kuwa 25/07/2015, ko kuwa 13/07/2015, yafashwe n'Ubugenzacyaha ashinjwa ubuhemu, kuwa 16/03/2015, ashyikirizwa ubushinjacyaha maze ategekwa kumvikana n'abamuregaga ubwo buhemu bwari bushingiye ku masezerano yakoze afite Procuration, maze yandika andi, mu gihe yari yarambuwe ububasha. KAMANA akomeza avuga ko atari kuregwa ibijyanye na mutation kubera ko yambuwe ubusha yari afite agurisha, kandi akaba atari afite ibyangombwa bya original by'uwo mutungo.

[3] Muri uru rubanza harasuzumwa niba MITIMA Gallican yakwemererwa kureka ikirego yareze KALISA Henri, hanasuzumwe niba KAMANA François yaregwa ihererekanya mutungo yagurishije ahagarariye KALISA Henri, hasuzumwe ibijyanye n'igihombo MITIMA Gallican aregera, hanaszumwe ikibazo cy'indishyi.

II. <u>ISESENGURA RY'IBIBAZO BIRI MU RUBANZA</u>

1. <u>*Ku kibazo cyo kumenya niba MITIMA Gallican yakwemererwa kureka ikirego yareze KALISA Henri*</u>.

[4] URUKIKO rusanga hashingiwe ku ngingo ya 26 y'itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko : «**Kureka ikirego ni ukwiyambura ububasha bwo kuburana. Bijyana no kwiyambura uburenganzira umuntu yari afite bwo gukomeza gukurikirana icyo kirego. Ukwemera k'undi muburanyi si ngombwa. Kureka ikirego ntibishoboka igihe kureka uburenganzira bitemewe nk'ubwerekeye imimerere y'abantu**

cyangwa imanza z'indemyagihugu.», kuba uhagarariye MITIMA mu iburanisha asaba kureka ikirego MITIMA yareze KALISA yabihabwa.

2. ***Ku kibazo cyo kumenya niba KAMANA François yaregwa ibijyanye no gukora mutation kubera ubugure yakoze ahagarariye KALISA***.

[5] Me KABERUKA avuga ko impamvu MITIMA asaba ko KAMANA ari we ukoresha mutation ku mutungo wa KALISA yagurishije amuhagarariye ari uko yahawe procuration yo kugurisha no gukoresha mutation, kandi inshingano yo gutanga icyagurishijwe ireba uwagurishije.

[6] Me HAVUGIMANA Jean de la Croix avuga ko KAMANA François yagurishije na MITIMA Gallican ahagarariye KALISA Henri wari wamuhaye procuration ariko MITIMA ntiyishyuye amafaranga yose, ko MITIMA yaregeye urukiko rw'ibanze asaba MUTATION ariko rwanzura ko ikirego cye nta bimenyetso maze bahindukirira KAMANA wahawe procuration, arafatwa arafungwa noneho yamburwa mandat, akaba atabona icyo KAMANA aregwa. Me HAVUGIMANA akomeza asobanura ko mu kugura hatanzwe amafaranga mu byiciro bibiri, ko KALISA yambuye mandat KAMANA François kuwa 25.05.2015 kandi ko amafaranga yarashyizwe kuri Compte ya KALISA Henri aricyo gihe MITIMA yandikiye KALISA amusaba gusubizwa amafaranga ye, yanzura avuga ko ikirego cye ari sans objets.

[7] Urukiko rusanga ingingo ya 526 al1 y'itegeko ryo ku wa 30 Nyakanga 1888 rishyiraho urwunge rw'amategeko y'imbonezamubano [igitabo cya mbere :] ibyerekeye imirimo nshinganwa cyangwa amasezerano iteganya ko : « **Ubutumwa ni igikorwa gituma umuntu aha undi ububasha bwo kumukorera ikintu kandi uyu akagikora mw'izina ry'uwamutumye. Amasezerano abaho gusa iyo intumwa yemeye ubutumwa yahawe.** » n'aho iya 532 yaro iteganya ko : « **Intumwa itegetswe kurangiza ubutumwa yahawe mu gihe cyose ikibushinzwe kandi iryozwa indishyi zikomoka kukutarangiza ubutumwa yahawe** ».

[8] Urukiko rusanga hashingiwe ku ngingo ya 526 na 532al1 z'itegeko ryo ku wa 30 Nyakanga 1888 ryavuzwe haruguru, kuba MITIMA Gallican yarareze KAMANA François asaba ko yategekwa kumukorera mutation y'inzu iri Kabeza mu Murenge wa Kanombe mu kibanza gifite UPI 1/03/05/02/141, yamugurishije ahagarariye nyirayo KALISA Henri kubera ko yari yarahawe ububasha bwo kugurisha no gukora mutation nta shingiro byahabwa kubera ko KAMANA François yambuwe ububasha yari yahawe ku wa 25/07/2015 yashingiyeho agurisha ari nabwo yari gushingiraho akora mutation, akaba

yararezwe ku wa 01/08/2016 atakibufite, bityo nta nshingano zo gukora ibyo aregwa agifite.

2. ***Ku kibazo cyo kumenya niba Kamana François yategekwa guha Mitima amafaranga y'ubukode.***

[9] Me KABERUKA BISENGE Claude avuga ko asaba urukiko ko umusaruro ukomoka kuri iyo mitungo watangiye gusarurwa mbere y'uko batanga ikirego ungana na 9.600.000 frw uhwanye n'ubukode hakurikijwe reçus zatanzwe na KAMANA François.

[10] Me HAVUGIMANA Jean de la Croix avuga ko Dieudonné wari warakodesheje inzu yandikiwe na MITIMA agahita ayivamo ubu ikaba irimo umuzamu utishyurwa, ko rero KAMANA ataryozwa aya mafaranga, ko kandi ubu inzu itagira nyirayo bashatse bayijyamo.

[11] Urukiko rusanga muri procuration yo ku wa 12/06/2014 KALISA yarahaye KAMANA ububasha bwo kugurisha n'ubwo gukorera mutation uzagura nkuko bigaragazwa n'inyandiko itanga ubutumwa yasinywe n'impande zombi, KAMANA akaba yaratangiye kwakira amafaranga y'ubukode ku wa 19/07/2014 harabaye amasezerano y'bukode hagati ya KALISA na KAYIRANGA Dieudonné n'ubwo bitari mu masezerano y'ubutumwa yahawe, kandi amasezerano y'ubugure yarabaye ku wa 06/06/2014, ariko na MITIMA Gallican akaba atarahise yishyura amafaranga y'ikiguzi yose kandi bari bumvikanye ko azishyura mu byiciro, icyiciro cya nyuma kigatangwa ari uko hagaragajwe ibyangobwa byose by'inzu hakagaragara ko nta misoro itarishyuwe nkuko bigaragara mu ngingo ya 3 y'amasezerano y'ubugure.

[12] Urukiko rusanga rero kuba MITIMA Gallican asaba ko yahabwa amafaranga y'ubukode bw'inzu iri mu kibanza gifite UPI 1/03/05/02/141 yaguze na KALISA Henri, abishingira ku masezerano y'ubugure yagiranye na KALISA Henri wari uhagarariwe na KAMANA François, nta shingiro bifite kubera ko ingingo ya 539 y'itegeko ryo ku wa 30 Nyakanga 1888 ryavuzwe haruguru iteganya ko : «**Uwatumye ategetswe kubahiriza amasezerano intumwa yagiranye n'abandi bantu, ikurikije ububasha yahawe. Ntabazwa ibyo intumwa yakoze birenze ububasha bwayo, keretse nyuma yarabyemeye ku buryo bweruye cyangwa buteruye** », kuko ntagaragaza ko kuba KAMANA François yarakiriye amafaranga y'ubukode bwatanzwe hashingiwe ku masezerano y'ubukode yakoranye na KAYIRANGA Dieudonné ahagariye KALISA Henri, kandi KALISA wari uhagarariwe atarigeze ahakana ko ubwo butumwa ntabwo yamuhaye, ngo abimurege, cyangwa ngo agaragaze ko atahawe ayo mafaranga y'ubukode MITIMA asaba guhabwa.

3. ***Ku bijyanye n'indishyi zisabwa***.

[13] Me KABERUKA avuga ko ko ibikorwa bya KAMANA byagize ingaruka kuri MITIMA bityo akaba asaba indishyi zazasuzumwa mu bushishozi bw'urukiko, ko ku bijyanye n'igihembo cy'avoka hakurikizwa ingigno ya 23,24 z'amabwiriza, ko ku bijyanye n'indishyi KAMANA asaba kuko yafunzwe nta shingiro kuko atari MITIMA wamufunze.

[14] Me HAVUGIMANA Jean de la Croix avuga ko amasezerano ashingiraho arega KAMANA yabonetse binyuze ku gahato katikurwa kubera ko yabonetse akorewe imbere ya Notaire, mu nyandiko yo kuwa 20.07.2015 bityo kuba barayashingiyeho bayaregesha akabisabira indishyi kubera ko nta wushobora gufungirwa kutubahiriza amasezerano mbonezamubano.

[15] Urukiko rusanga indishyi MITIMA Gallican asaba nta shingiro zahabwa kubera ko avuga ko ari ukubera ingaruka yagize kubera ibikorwa bya KAMANA François nyamara ibyo KAMANA François yakoze byose yari ahagarariye KALISA Henri kandi atagaragaza ibimenyetso byemeza ko KAMANA yakoze ibyo atatumwe na KALISA ngo abe yabiryoza, ahubwo yarageze mu iburanisha areka ikirego yari yareze KALISA avuga ko yari agamije kumugobokesha nabyo ntabikore, bityo hatashingirwa ku ngingo ya 258, 526 na 539 z'itegeko ryo ku wa 30 Nyakanga 1888 ryavuzwe haruguru ngo KAMANA François acibwe indishyi.

[16] Urukiko rusanga indishyi KAMANA François asaba avuga ko yafunzwe ku bw'ikirego cya MITIMA Gallican, hashingiwe ku nshingano z'imbonezamubano ari nta shingiro zifite kubera ko yafunzwe n'ubushinjacyaha, aregwa icyaha cy'ubuhemu, akaba atari byo baburanye muri uru rubanza kandi umucamanza aca urubanza ku cyeregewe cyo nyine hashingiwe ku ngingo ya 7 y'itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[17] Urukiko rusanga ahubwo hashingiwe ku ngingo ya 258 y'itegeko ryo ku wa 30 Nyakanga 1888 ryavuzwe haruguru, KMANA François yahabwa na MITIMA Gallican indishyi zingana n'ibihumbi magana atanu (500.000frw) kubera gushorwa mu manza n'ibihumbi magana atanu (500.000frw) y'igihembo cy'avoka nkuko yayasabye.

III. ICYEMEZO CY'URUKIKO

[18] RWEMEYE kwakira ikirego cya MITIMA Gallican, rugisuzumye, rusanga nta shingiro gifite.

[19] RUTEGETSE MITIMA Gallican guha KAMANA François miriyoni imwe y'amafaranga y'u Rwanda (1.000.000frw) akubiyemo indishyi kubera gushorwa mu manza n'igihembo cy'avoka.

[20] RUTEGETSE ko amafaranga ibihumbi mirongo itanu (50.000frw) ahwanye n'ibyakozwe mu rubanza, ahwanye n'igarama MITIMA Gallican yatanze arega.

NI UKO RUCIWE KANDI RUSOMEWE MU RUHAME NONE KUWA 08/02/2017.

INTEKO

MUKAGASANA Marciana

UMUCAMANZA

MUSHIMIYIMANA Sylvie

UMWANDITSI