URUBANZA RC 00422/2017/TGI/NYGE

URUKIKO RWISUMBUYE RWA NYARUGENGE, RURI KU CYICARO CYARWO, RUHABURANISHIRIZA IMANZA Z`IMBONEZAMUBANO, RUKIJIJE URUBANZA RC 00422/2017/TGI/NYGE KU RWEGO RWA MBERE MU BURYO BUKURIKIRA:

ABABURANA

UREGA:

NEFI Machinery Group Rwanda Ltd mu izina ry`umuyobozi wayo NYAHWIHWIRI Nepos Donatien, ibarizwa mu Mudugudu wa Buhoro, Akagali ka Niboye, Umurenge wa Niboye, Akarere ka Kicukiro, Umujyi wa Kigali. Iburanirwa na Me KAYITARE Paul

ABAREGWA:

1. **KARANGWA Félicien** utuye mu Mudugudu wa Rwimbogo, Akagali ka Rwimbogo, Umurenge wa Nyarugunga, Akarere ka Kicukiro, Umujyi wa Kigali. Aburanirwa na Me NYANKIKO Alphonse
2. **KAYITESI Jeanne** utuye mu Mudugudu wa Rwimbogo, Akagali ka Rwimbogo, Umurenge wa Nyarugunga, Akarere ka Kicukiro, Umujyi wa Kigali. Aburanirwa na Me NYANKIKO Alphonse

IKIBURANWA: gusaba ihererekanyamutungo no kwandikwaho inzu iri muri Parcelle No 0792/KIC/NYA ifite UPI: 1/03/10/03/792 mu Mudugudu wa Rwinyange, Akagari ka Rwimbogo, Umurenge wa Nyarugunga, Akarere ka Kicukiro, Umujyi wa Kigali.

I. IMITERERE Y`URUBANZA

[1] Kuwa 21/10/2016 KARANGWA Felicien n`umugore we KAYITESI Jeanne bakoze amasezerano ku nzu yabo No 0792/KIC/NYA ifite UPI: 1/03/10/03/792 iri mu Mudugudu wa Rwinyange, Akagari ka Rwimbogo, Umurenge wa Nyarugunga, Akarere ka Kicukiro, Umujyi wa Kigali bagigurisha na NEFI MACHINERY GROUP RWANDA LTD ku mafaranga

80.000.000 Frw bakorana n`amasezerano, bemeranywa ko mu gihe cy'amezi 4 uguze azaba yahawe inzu ndetse ko uwagurishije agomba gufasha uguze kugira ngo abashe kubona *mutation* y'iyo nzu. Icyo gihe cyararenze maze, NEFI yaguze irega mu Rukiko isaba guhabwa iyo nzu, ndetse ikanayandikwaho, inasaba indishyi zitandukanye.

[2] Uburanira KARANGWA Félicien na KAYITESI Jeanne witwa Me NYANKIKO Alphonse avuga ko KARANGWA na KAYITESI batanzeho inzu yabo ho ingwate ko batayigurishije, bakaba barayihaga NEFI kuko bari bayirimo umwenda ukomoka ku mafaranga y`imashini zabo bakodesheje ntibishyure kuko nabo batinze kwishyurwa. Asaba ko hakwishyurwa umwenda, ariko inzu ikagumana ba nyirayo.

Muri uru rubanza hakwiye gusuzumwa niba inzu yaratanweho ingwate ariko ntigurishwe. Hakwiye kandi no gusuzumwa uwahabwa umutungo uburanwa mu baburanyi bombi.

II. ISESENGURA RY`IBIBAZO BIGIZE URUBANZA

Kumenya niba inzu iri muri Parcelle No 0792/KIC/NYA ifite UPI: 1/03/10/03/792 yaratanzwe nk`ingwate cyangwa yaragurishijwe.

[3] Me KAYITARE Paul uburanira NEFI, avuga ko tariki ya 21/10/2016 habaye amasezerano y'ubugure bw'inzu iri muri Parcelle No 0792/KIC/NYA ifite UPI: 1/03/10/03/792 KARANGWA Félicien na KAYITESI Jeanne bagurisha iyo nzu yabo na NEFI MACHINERY GROUP RWANDA LTD bemeranywa ko mu gihe cy'amezi 4 uguze azaba yahawe inzu ndetse ko uwagurishije agomba gufasha uguze kugira ngo abashe kubona *mutation* y'iyo nzu.

[4] Me NYANKIKO Paul uburanira abaregwa bombi, avuga ko NEFI MACHINERY GROUP RWANDA LTD ihagarariwe na Nepos Donatien Nyahwihwiri, ibyo ivuga ari ukubeshya. Avuga ko KARANGWA usanzwe ari rwiyemezamirimo akagira *Company* y`ubwubatsi yahawe isoko ryo kubaka umuhanda wa Save-Gisagara, maze akodesha ibimashini bikora umuhanda bya NEFI, ariko kuko KARANGWA yatinze kwishyurwa bituma nawe atishyura NEFI, maze aha inzu ye ho ingwate NEFI, ariko ko nta bugure bwabayeho. Avuga ko ibyo bigaragazwa na za *factrures* ndetse n`ibimashini byakodeshejwe kuri NEFI.

[5] Me KAYITARE avuga ko ibyo byo kwishyurwa ataribyo byaregewe ko ibyo bizaregerwa ukwabyo, ko bo icyo bagaragaza ari amasezerano y`uburure bw`inzu kandi ko muri ayo masezerano nta ngwate igaragaramo, ko ababuranyi baguze inzu amafaranga agatangwa *cash*.

[6] Ingingo ya 3 y`itegeko N° 15/2004 ryo kuwa 12/6/2004 ryereke ibimenyetso mu manza n`itangwa ryabyo, ivuga ko buri muburanyi agomba kugaragaza ukuri kw`ibyo aburana.

[7] Urukiko rusanga aha ikiburanwa gishingiye ku masezerano yo kuwa 21/10/2016. Ayo masezerano agaragaramo ubugure bw`inzu iri muri Parcelle No 0792/KIC/NYA ifite UPI: 1/03/10/03/792 mu Mudugudu wa Rwinyange, Akagari ka Rwimbogo, Umurenge wa Nyarugunga, Akarere ka Kicukiro, Umujyi wa Kigali. Urukiko kandi rusanga aya masezerano y`ubugre bw`inzu, nta hantu na hamwe agaragaza ko iyo nzu mbere yo kugurishwa itanzweho ingwate ho umwenda KARANGWA na KAYITESI bafitiye NEFI. Urukiko rero rukaba rusanga ibivugwa na KARANGWA na KAYITESI ko inzu yatanzweho ingwate itagurishijwe nta kimenyetso cyabyo babigaragariza.

[8] Urukiko kandi rusanga kuba KARANGWA yari afitiye umwenda NEFI ukomoka ku kuba yarakodesheje ibimashini bya NEFI ariko ntiyishyure, ari

nabyo batumye agwatiriza inzu, nta gihamya cyabyo, kuko bitari kubananira kwandika bombi ko kubera umwende bari kugaragaza, iyo nzu itanzwe nk`ingwate. Iby`izo *factures* Urukiko rukaba rutabihuza n`ubugure bw`iyi nzu mu gihe amasezenrano yemerwa n`ababuranyi bombi nta hantu na hamwe bigeze babivugamo, yewe cyangwa ngo babe baragiranye andi masezerano hagati yabo agaragaza ikibazo nyakuri cyabo uko cyari kimeze mbere yo guhitamo kugurisha gusa. Ibi bivuga ko bagombaga wenda gukorana amasezerano abiri, imwe ikaba *contrat apparent cyangwa amasezerano agaragarira buri wese* indi ari *contrat cashé* cyangwa se *contre lettre*[1], amasezerano y`ibanga hagati ya banyirayo. Bityo rero amasezerano agaragarira buri wese akaba ari ay`ubugure bw`inzu, kandi ababuranyi bose bakaba badahakana ko bayagiranye.

Kumenya niba umutungo uri muri Parcelle No 0792/KIC/NYA ifite UPI: 1/03/10/03/792 wakwandikwa kuri NEFI

[9] Me KAYITARE avuga ko nyuma yuko inzu igurishijwe, KARANGWA na KAYITSE banze kubahiriza amasezerano ngo bayivemo, ndetse inandikwe ku wari yayiguze, ko ibyo byakorwa n`Urukiko hifashishijwe amasezerano yakozwe n`impande zombie.

[1] Il arrive qu'un contrat soit simulé, il n'est pas destiné à recevoir d'exécution dans les termes dans lesquels il se présente; les parties auront exprimé leur volonté réelle dans un acte secret (une contre-lettre). Par conséquent, deux conventions coexistent, l'une ostensible mais mensongère (acte apparent, simulé) et l'autre qui est sincère dans les rapports inter partes (contre-lettre). Byakuwe ku rubuga http://www.cours-de-droit.net/les-conditions-de-la-simulation-de-contrat-et-ses-effets (urubuga rwasuwe kuwa 24/10/2017)

[10] Me NYANKIKO Alphonse we asaba ko NEFI yakwishyurwa umwenda n`abo irega bari bayibereyemo w`amafaranga 72.266.400 Frw ariko inzu ikaguma mu maboko y`abaregwa.

[11] Urukiko rusanga igikomeza gushingirwaho aha ari amasezerano y`impande zombi yo kuwa 21/10/2016, aho KARANGWA na KAYITSE bagurishije inzu NEFI bakemeranywa ko nyuma y`amezi ane uhereye uwo munsi, uwagurishije azava mu nzu akayiha uwaguze. Ibi bikaba bivuze ko rero KARANGWA na KAYITESI bakwiye kuva mu nzu igafatwa na NEFI Machinery Group Rwanda Ltd ndetse ikayandikwaho nkuko babyemeranijweho kandi bigashimangirwa n`ingingo ya 64 y`itegeko N°45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, aho rivuga ko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye.

Ku byerekeye indishyi zisabwa muri uru rubanza

[12] Me KAYITARE Paul uburanira NEFI avuga ko KARANGWA Félicien na KAYITESI bishe amasezerano nkana igihe bagombaga gutangira inzu ntibabikore, ko bakwiye kubitangira indishyi z`amafaranga 20.000.000 Frw zingana n`igihe cyose banze gutangira inzu. Anasaba ko abaregwa bcibwa amafaranga 1.000.000 Frw y`igihembo cya Avoka n`amafaranga 2.000.000 Frw y`ikurikiranarubanza.

[13] Me NYANKIKO Alphonse uburanira abaregwa asaba ko nta ndishyi zatangwa ndetse ko nta n`igihembo cy`Avoka kiremereye nk`igisabwa gikwiye kugenwa kuko umwunganizi atagaragaza ko dosiye ifite uburemere bukaze ku buryo byamusaba gukoresha amafaranga menshi nkayo asaba ku gihembo kimwe no ku ikurikiranarubanza.

[14] Urukiko rusanga nubwo koko NEFI yariganijwe ntihabwe umutungo yaguze, itabasha kugaragaza akababaro yagize gatuma isaba amafaranga y`indishyi na cyane ko ubaze igihe inzu iba yarayifatiye nta gihe kinini gishize ku buryo yaba ifite igihombo gikabije.

[15] Urukiko kandi rusanga igihembo cya Avoka n`amafaranga y`ikurikiranarubanza byo bikwiye gutangwa, kuko bigaragara ko NEFI yashyizeho umwunganizi ndetse ikaba yaranakurikiranye urubanza irega mu Rukiko, mu bushishozi bw`Urukiko NEFI ikaba ikwiye guhabwa amafaranga 200.000 Frw y`ikurikiranarubanza.

III. ICYEMEZO CY`URUKIKO

[16] RWEMEJE kwakira ikirego cya NEFI Machinery Group Rwanda Ltd irega mu izina ry`umuyobozi wayo Nepos Donatien NYAHWIHWIRI, rugisuzumye rusanga gifite ishingiro;

[17] RUKIJIJE ko cya NEFI Machinery Group Rwanda Ltd itsinze, ko KARANGWA Félicien na KAYITESI Jeanne batsinzwe;

[18] RUTEGETSE ko inzu iri muri Parcelle No 0792/KIC/NYA ifite UPI: 1/03/10/03/792 mu Mudugudu wa Rwinyange, Akagari ka Rwimbogo, Umurenge wa Nyarugunga, Akarere ka Kicukiro, Umujyi wa Kigali ihabwa kandi ikandikwa kuri NEFI Machinery Group Rwanda Ltd ihagarariwe na Nepos Donatien NYAHWIHWIRI;

[19] RUTEGETSE KARANGWA Félicien na KAYITESI Jeanne guha NEFI Machinery Group Rwanda Ltd amafaranga 500.000 Frw by`igihembo cya Avoka n`amafaranga 200.000 Frw y`ikurikiranarubanza.

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NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME, NONE KUWA 31/10/2017

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BURAYOBERA UMUZAYIRE Bibiane	**UWAMWEZI Rosine**
UMUCAMANZA	**UMWANDITSI**