NSHIMYUMUREMYI v NGENDAHAYO N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RCAA00009/2019/CA (Karimunda, P.J, Nyirandabaruta na Munyangeri, J.) 6 Werurwe 2020]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Urubanza rwabaye itegeko – Iyo ikiburanwa n'ababuranyi mu rubanza ari bimwe, urubanza rwaciwe hagati y'abo baburanyi rukaba rwarabaye itegeko, ikirego ntigishobora kongera kuburanishwa ku mpamvu zimwe, ku kiburanwa kimwe, hagati y'ababuranyi bamwe baburana ikirego kimwe, byose bigaragaza ko uru Rukiko ntaho rwahera rugaruka ku byasuzumwe mu rubanza rwabaye itegeko – Ingingo ya 14 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Gufungura iburanisha ryapfundikiwe – Gufungura iburanisha ni uburenganzira bwa buri Rukiko, bukoreshwa mu bushishozi bwarwo nta kurengera, bigakorwa hagamije gusa gusobanukirwa byimbitse ikiburanwa, ababuranyi cyangwa ibimenyetso bizasuzumwa cyangwa bizashingirwaho kugirango hagaragazwe ukuri, iyo Urukiko rukoresheje ubwo burengenzira nta gukabya, ntibyafatwa nk'amakosa yajuririrwa kuko gufungura iburanisha bitagamije gutinza urubanza cyangwa kubogamira ku ruhande rumwe ntacyo biba byangirijeho abari mu rubanza – Ingingo ya 14 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

Amategeko agenga amasezerano – Amasezerano y'ubugure – Agaciro k'amasezerano y'ubugure – Kugurisha ikintu kitari icyawe cyangwa kitaraba icyawe biba bivuze ko ubwo bugure ari imfabusa bitewe n'uko ntacyo ugurisha aba afite aribuhe umuguzi; ariko iyo umuguzi azi cyangwa yizeye neza ko ari kugura na nyir'umutungo, nk'igihe bigaragara ko ugurisha ariwe muzungura uhari w'uwo mutungo, umuguzi agumana uburenganzira ku mutungo yaguze.

Incamake y'ikibazo: Urubanza rwahereye mu Rukiko rw'Isumbuye rwa Muhang, Nshimyumuremyi arega Ngendaho ndetse hagobokeshwa Rukatinduru, Nirere, Habimana, Bagirishya, Mukanyangezi, Minani, Nsanzabandi na Nyirindekwe bagobokeshwa mu rubanza, Nshimyumuremyi asaba Urukiko gutegeka ko umutungo ugarurwa mu mutungo w'umuryango kuko abawuguze bari bazi neza ko batawuguze na nyirawo. Urukiko rwaciye urubanza rwemeza ko abaguze umutungo bari bazi ko bari kugura na nyir'umutungo, bityo ko baguze nta buryarya, ko mu gihe Nshimyumuremyi yaba yifuza gusubirana iyo mitungo akwiye kubanza kwishyura abagobokeshejwe agaciro k'ibyo bawongereyeho, rutegeka Ngendahayo gusubiza abavandimwe be ikiguzi cy'umutungo yakiriye ku gaciro umutungo wari ugezeho urubanza rucibwa amaze gukuramo uruhare rwe, rutegeka Nshimyumuremyi guha abagobokeshejwe indishyi zo gisiragizwa mu manza.

Nshimyumuremyi ntiyishimiye imikirize y'urwo rubanza, maze ajuririra Urukiko Rukuru, Urugereko rwa Nyanza, avuga ko Urukiko Rwisumbuye rwa Muhanga rwabogamye mu gufata icyemezo, asaba Urukiko rwajuririwe gutesha agaciro amasezerano y'ubugure, umutungo uburanwa ugasubizwa mu muryango wa Mushumba na Mukakimanuka. Urukiko Rukuru rwaciye urbanza rwemeza ko Urukiko Rwisumbuye rwa Muhanga nta makosa rwakoze mu kwemeza ko abareze, niba bifuza gusubirana umutungo w'umuryango wabo, basubiza abaguze agaciro k'ibikorwa byongewe ku mazu yaguzwe ndetse n'ikiguzi bayatanzeho. Urukiko rwemeje ko imikirize y'urubanza rwajuririwe ihindutse kuri bimwe.

Nshimyumuremyi ntiyishimiye imikirize y'urubanza arujuririra mu Rukiko rw'Ikirenga, , ariko nyuma y'ivugururwa ry'inkiko, urubanza rwoherezwa mu Rukiko rw'Ubujurire.

Mu iburanisha mu Rukiko rw'Ubujurire, Habinama, Bagirishya, Minani na Rukatinduru, bavuga ko ikirego cya Nshimyumuremyi kitagombaga kwakirwa ku rwego rwa mbere kuko cyashaje bitewe n'uko cyagombaga gutangwa mu myaka itanu uhereye mu mwaka wa 1997, ari nabwo yari agejeje imyaka y'ubukure, ko rero we yarengezi igihe kuko yagitanze muri 2011. Asobanura ko iyo mpamvu ari ndemyagihugu, ko yagombaga gutuma ikirego kitakirwa.

Nshimyumuremyi na Me Nkubayingoga, umwunganira, bavuga ko iyi nzitizi yatanzwe ku rwego rwa mbere, Urukiko rwemeza ko nta shingiro ifite, ko rero icyemezo cyafashwe n'Inkiko zibanza gikwiye kugumaho.

Me Nkubayingoga, uburanira Nshimyumuremyi, avuga ko Urukiko Rukuru rwaranzwe n'amarangamutima no kubogama, igihe urubanza rwagombaga gusomwa ntirwasomwa ahubwo rurongera rurapfundurwa, icyo cyemezo gifatwa ntacyo gishingiyeho, rubikora rugamije guha amahirwe ababuranyi batari baritabye mbere, kandi bisabwe n'umwe mu baburanyi wajijishaga ko yabonye ikimenyetso gishya, nyamara icyo yitaga ikimenyetso gishya ntaho cyari gihuriye n'umutungo uburanwa.

Me Umugwaneza, uburanira Ngendahayo, avuga ko igihe cyose urubanza rutarasomwa, Urukiko rufite ububasha bwo kongera gufungura iburanisha iyo rusanze ari ngombwa ko ababuranyi bagira ibindi bisobanuro batanga. Me Mbera, avuga ko uretse ko hari n'ababuranyi basabye ko urubanza rwongera gufungurwa, Urukiko rufite ububasha bwo kubyibwiriza iyo, mu bushishozi bwarwo, rusanze ari ngombwa ko hagira ibindi bisobanuro bitangwa kugirango ukuri kugaragare, bityo ko nawe asanga iyi mpamvu y'ubujurire nta shingiro ryayo. Me Minyati, uburanira Rukiya, Nirere na Nsanzabandi, avuga ko iburanisha ryafunguwe bisabwe na Me Mazimpaka Elie kuko yari amaze kubona ikimenyetso cyerekana ko Nshimyumuremyi hari umutungo yasigaranye kuko yazunguye inzu, akaba asanga nta makosa Urukiko rwakoze rwemeza ko iburanisha ryongera gufungurwa.

Me Nkubayingoga, wunganira Nshimyumuremyi, avuga ko banenga imikirize y'Urukiko Rukuru, kuba rutarabonye ko abaguze na Ngendahayo imitungo iburanwa bari bafite uburyarya bitewe n'uko bari bazi ko bari kugura n'utari nyirawo. Asobanura ko mu rubanza rujuririrwa, Urukiko rwabonye ko Ngendahayo yavugaga mu masezerano y'ubugure ko agurishije umutungo utari uwe, ko agurishije uwa Se, Mushumba, ahandi akavuga ko agurishije umutungo w'umuryango, ayo masezerano akaba yarayakoranye n'abantu bari basanzwe bazi ko afite abandi bavandimwe, ariko ntibabyitaho, bivuze ko ubugure butubahirije amategeko kuko Ngendahayo yagurishije ibitari ibye, ariyo mpamvu asaba ko amasezerano y'ubugure ateshwa agaciro.

Ngendahayo avuga ko igihe umutungo wagurishwaga, atari yakamenye ko abavandimwe be bakiriho, abaguze akaba ari we wenyine babonaga, bamufata nkaho ari we muzungura wenyine uhari. Asobanura ko abavandimwe be batahutse basanze umutungo waragurishijwe, akaba yiteguye kubaha uruhare rwabo ku mafaranga yakiriye.

Me Mbera, uburanira Habinama, Bagirishya, Minani na Rukatinduru, avuga ko abo aburanira batigeze bamenya ko Ngendahayo afite abandi bavandimwe bitewe n'uko batagaragaraga, ko Rukatinduru atari asanzwe ari umuturage wa Ruhango ahubwo yahageze yimutse aho yari atuye mu Mayaga, Habimana agura na Bitunguramye, Bagirishya agura na Kasavubu, akaba asanga nta buryarya abo aburanira bari bafite ubwo baguraga umutungo uburanwa.

Me Minyati, uburanira Nsanzabandi, Nirere na Nyirindekwe, avuga ko Nshimiyumuremyi, nyuma y'uko asanze imitungo y'iwabo yaragurishijwe, yashumbushijwe igipangu, acyiyandikishaho ijana ku ijana, ndetse bituma atihutira gutanga ikirego kigamije kugaruza

imitungo ya se, akaba asanga icyo nacyo ari ikimenyetso kigaragaza ko abo aburanira baguze imitungo iburanwa nta buryarya.

Incamake y'Icyemezo: 1. Iyo ikiburanwa n'ababuranyi mu rubanza ari bimwe, urubanza rwaciwe hagati y'abo baburanyi rukaba rwarabaye itegeko, ikirego ntigishobora kongera kuburanishwa ku mpamvu zimwe, ku kiburanwa kimwe, hagati y'ababuranyi bamwe baburana ikirego kimwe, byose bigaragaza ko uru Rukiko ntaho rwahera rugaruka ku byasuzumwe mu rubanza rwabaye itegeko, bityo icyemezo cyafashwe ku nzitizi ya tanzwe mu rubanza rwa mbere yo kuba Nshimiyumuremyi yararenge igihe cyo kuregera umutungo aburana ntiyasubirwamo kuko yaburanishijwe urubanza rukaba itegeko.

2. Gufungura iburanisha ni uburenganzira bwa buri Rukiko, bukoreshwa mu bushishozi bwarwo nta kurengera, bigakorwa hagamije gusa gusobanukirwa byimbitse ikiburanwa, ababuranyi cyangwa ibimenyetso bizasuzumwa cyangwa bizashingirwaho kugirango hagaragazwe ukuri, iyo Urukiko rukoresheje ubwo burengenzira nta gukabya, ntibyafatwa nk'amakosa yajuririrwa kuko gufungura iburanisha bitagamije gutinza urubanza cyangwa kubogamira ku ruhande rumwe ntacyo biba byangirijeho abari mu rubanza, bityo icyemezo cy'uko Urukiko rwangeye gufungura iburanisha mu rubanza rwari rwarafundikiwe ntabwo cyajuririrwa.

3. Kugurisha ikintu kitari icyawe cyangwa kitaraba icyawe biba bivuze ko ubwo bugure ari imfabusa bitewe n'uko ntacyo ugurisha aba afite aribuhe umuguzi; ariko iyo umuguzi azi cyangwa yizeye neza ko ari kugura na nyir'umutungo, nk'igihe bigaragara ko ugurisha ariwe muzungura uhari w'uwo mutungo, umuguzi agumana uburenganzira ku mutungo yaguze

Ubujurire bufite ishingiro kuri bimwee,
Ubujurire bwuririye ku bundi nta shingiro bufite,
Imikirize y'urubanza rwajuririwe ihindutse kuri bimwe,
Amagarama y'urubanza ahwanye n'ibyakozwe mu rubanza.

Amategeko yashyimgiweho:
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 14 na 111
Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:
Serge Guinchard [sous la dir], Droit et pratique de la procédure civile, Paris, Dalloz, 2014, p.542

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Muhanga, Nshimyumuremyi Matusalem avuga ko nyuma ya Jenoside yakorewe Abatutsi yatatanye n'abavandimwe be, umutungo w'ababyeyi babo Mushumba Esiri na Mukakimanuka ugizwe n'amazu atanu usigara ucungwa n'umuvandimwe wabo Ngendahayo Abias. Yavuze ko Ngendahayo Abias yagurishije

uwo mutungo abavandimwe be batabizi, abaguze bose aribo Rukatinduru Oswald, Nirere Afisa, Habimana Augustin, Bagirishya Sefu, Mukanyangezi Hasina, Minani Jean Pierre, Nsanzabandi Fabrice na Nyirindekwe Rukiya bagobokeshwa mu rubanza, Nshimyumuremyi Matusalem asaba Urukiko gutegeka ko umutungo ugarurwa mu mutungo w'umuryango kuko abawuguze bari bazi neza ko batawuguze na nyirawo.

[2] Mu rubanza RC 0060/14/TGI/MHG rwaciwe ku wa 20/02/2015, Urukiko Rwisumbuye rwa Muhanga rwemeje ko abaguze umutungo bari bazi ko bari kugura na nyir'umutungo, bityo ko baguze nta buryarya, ko mu gihe Nshimyumuremyi Matusalem yaba yifuza gusubirana iyo mitungo akwiye kubanza kwishyura abagobokeshejwe agaciro k'ibyo bawongereyeho, rutegeka Ngendahayo Abias gusubiza abavandimwe be ikiguzi cy'umutungo yakiriye ku gaciro umutungo wari ugezeho urubanza rucibwa amaze gukuramo uruhare rwe, rutegeka Nshimyumuremyi Matusalem guha abagobokeshejwe indishyi zo gisiragizwa mu manza.

[3] Nshimyumuremyi Matusalem ntiyanyuzwe n'imikirize y'urwo rubanza, maze ajuririra Urukiko Rukuru, Urugereko rwa Nyanza, avuga ko Urukiko Rwisumbuye rwa Muhanga rwabogamye mu gufata icyemezo, asaba Urukiko rwajuririwe gutesha agaciro amasezerano y'ubugure, umutungo uburanwa ugasubizwa mu muryango wa Mushumba Esiri na Mukakimanuka.

[4] Mu rubanza RCA 0070/15/HC/NYA rwaciwe ku wa 19/11/2015, Urukiko Rukuru, Urugereko rwa Nyanza, rwasanze abaguze bose baraguze nta buryarya kuko nta wundi nyir'umutungo babonaga, bakaba badashobora kuryozwa ingaruka z'amakosa yakozwe na Ngendahayo Abias, rwemeza ko Urukiko Rwisumbuye rwa Muhanga nta makosa rwakoze mu kwemeza ko abareze, niba bifuza gusubirana umutungo w'umuryango wabo, basubiza abaguze agaciro k'ibikorwa byongewe ku mazu yaguzwe ndetse n'ikiguzi bayatanzeho. Urukiko rwemeje ko imikirize y'urubanza rwajuririwe ihindutse kuri bimwe, rutegeka Nshimyumuremyi Matusalem guha Nyirindekwe Rukiya, Nirere Afisa, Rukatindura Oswald, Minani Jean Pierre, Habimana Augustin na Bagirishya Sefu indishyi zo gusiragizwa mu manza n'igihembo cya Avoka zingana na 1.600.000 Frw, rutegeka Ngendahayo Abias na Mukagakwaya Arlette guha Nyirindekwe Rukiya 1.000.000 Frw akubiyemo ay'ikiguzi cy'ikibanza n'indishyi.

[5] Nshimyumuremyi Matusalem ntiyishimiye imikirize y'urubanza arujuririra mu Rukiko rw'Ikirenga, Ubujurire bwe bwandikwa kuri RCAA 007/16/CS, ariko nyuma y'ivugururwa ry'inkiko, urubanza rwoherezwa mu Rukiko rw'Ubujurire hashingiwe ku biteganywa n'ingingo ya 105 y'Itegeko no 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, rwandikwa kuri RCAA 00009/2019/CA.

[6] Urubanza rwahamagawe ku wa 23/05/2019, Urukiko rusanga Rukatinduru Oswald atarahamagawe mu buryo bukurikije amategeko kuko yahamagajwe nk'uba mu Rwanda kandi aba ahantu hatazwi mu mahanga, rutegeka ko ahamagazwa ahatazwi. Iburanisha ryasubukuwe ku wa 30/09/2019, Nshimyuremyi Matusalem ahagarariwe na Me Nkubayingoga Samuel, Ngendahayo Abias ahagarariwe na Me Umugwaneza Claudine, Habinama Augustin, Bagirishya Sefu, Minani Jean Pierre na Rukatinduru Oswald bahagarariwe na Me Mbera Ferdinand wavuze ko byaje kumenyekana ko Rukatinduru Oswald aba muri Zambia, kandi ko yamuhaye ububasha bwo kumuhagararira. Nsanzabandi Fabrice, Nirere Afisa na Nyirindekwe Rukiya bahagarariwe na Me Minyati Rugamba Jacob naho Mukanyangezi Hasina atitabye ariko yarahamagajwe ahatazwi mu buryo bukurikije amatageko.

[7] Iburanisha ryarapfundikiwe, ababuranyi bamenyeshwa ko urubanza ruzasomwa ku wa 25/10/2019. Uwo munsi ugeze, isomwa ryarwo ryimuriwe ku wa 01/11/2019 kuko umwe mu bagize inteko yari mu butumwa bw'akazi hanze y'igihugu.

[8] Nyuma yaho, Urukiko rwariherereye ngo ruce urubanza, rusanga icyemezo cyo gucunga umutungo 58/05.01/ORD0N/95, "actes de notoriétés" zahawe Kazavubu Ayub, ari nawe wagurishije Bagirishya Sefu, iyahawe Nzamwita Omary wahaye inzu ye Nirere Afissa, iyahawe Mukanyangezi Hassina, Minani Jean Pierre, Nsanzabandi Fabrice na Nyirindekwe Rukiya cyangwa abo baguze nabo, bitagaragara muri dosiye y'urubanza. Rwasanze kandi amasezerano y'ubugure Nzamwita Omary, Kazavubu Ayub, Rukatinduru Oswald, Bitunguramye Telesphore, Mukanyangezi Hasina, Minani Jean Pierre na Nsanzabandi Fabrice bakoranye na Ngendahayo Abias atagaragara muri dosiye y'urubanza, rusaba ko ibyo bimenyetso bishyirwa muri dosiye, iburanisha ryimurirwa ku wa 02/12/2019.

[9] Uwo munsi ugeze, iburanisha ryabereye mu ruhame ababuranyi bahagarariwe nka mbere uretse Ngendahayo Abias na Me Umugwaneza Claudine, umuburanira, batitabye ariko Me Umugwaneza Claudine akaba yari yasabye ko urubanza ruburanishwa badahari naho Mukanyangezi Hasina akaba yari yarahamagajwe ahatazwi. Nyuma yo kumva ibyo ababuranyi bavuga ku bimenyetso byasabwe, Urukiko rwasanze ari ngombwa gutumiza abatangabuhamya barimo Minani Javan, umuvandimwe wa Mushumba Esiri, Mukagakwaya Arlette, umukobwa wa Mushumba Esiri, Mushimiyimana Juliette, mushiki wa Nshimyumuremyi Matusalem kwa nyina wabo, Mazimpaka André wari Burugumesitiri wa Komini Tambwe guhera mu mwaka wa 1994 na Gatorano Gadi Jacques, urubanza rwimuriwe ku wa 23/01/2020.

[10] Uwo munsi ugeze iburanisha ryabereye mu ruhame, ababuranyi bose bahagarariwe nka mbere, Ngendahayo Abias nawe yitabye yunganiwe na Me Umuganeza Claudine, humvwa Mazimpaka André na Gatorano Gadi Jacques nk'abatangabuhamy anaho Mukagakwaya Arlettena Mushimiyimana Juliette bumvwa nk'abatanga amakuru.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1.1. Kumenya niba ikirego cya Nshimyumuremyi Matusalem cyaragombaga kwakirwa

[11] Me Mbera Ferdinand, uburanira Habinama Augustin, bagirishya Sefu, Minani Jean Pierre na Rukatinduru Oswald, avuga ko ikirego cya Nshimiyumuremyi Matusalem kitagombaga kwakirwa ku rwego rwa mbere kuko cyashaje bitewe n'uko cyagombaga gutangwa mu myaka itanu uhereye mu mwaka wa 1997, ari nabwo yari agejeje imyaka y'ubukure kuko yavutse mu mwaka wa 1976, ariko ko we yarengeje icyo gihe, atanga ikirego mu mwaka wa 2011, hashyize imyaka 14 afite imyaka y'ubukure. Asobanura ko iyo mpamvu ari ndemyagihugu, ko yagombaga gutuma ikirego kitakirwa nk'uko biteganywa n'ingingo ya 409 y'Itegeko No 42/1988 ryo ku wa 27/10/1998 rishyiraho Interuro y'Ibanze n'Igitabo cya mbere cy'amategeko mbonezamubano ubu yabaye ingingo ya 144 y'Itegeko No 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango n'ingingo ya 129 n'iya 158 z'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ariko ko byirengagijwe n'Inkiko zombi zabanje nyamara, akaba asaba uru Rukiko kwemeza ko inzitizi ifite ishingiro, rugatesha agaciro imanza zose zaciwe.

[12] Nshimyumuremyi Matusalem na Me Nkubayingoga Samuel, umwunganira, bavuga ko iyi nzitizi yatanzwe ku rwego rwa mbere, Urukiko rwemeza ko nta shingiro ifite, Me Mbera Ferdinand abijuririye, Urukiko Rukuru, Urugereko rwa Nyanza rusanga imitungo iburanwa ari

iy'umuryango wa Mushumba Esiri aho kuba iy'umwana we runaka, bityo ko ubuzime bw'ikirego bwari kubarwa iyo buri mwana aba yarazunguye atarageza imyaka y'ubukure, imitungo yabo igacungishwa inama y'ubwishingizi, ariko ko atari uko byagenze kuko Ngendahayo Abias yahawe inshingano zo gucunga umutungo w'umuryango naho Nshimiyumuremyi Matusalem ashiririrwaho Inama y'Ubwishingizi ariko nta mutungo bwite afite, akaba asanga icyemezo cyafashwe n'inkiko zabanje gikwiye kugumaho.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 14 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ivuga ko : Urubanza rwaciwe ku rwego rwa nyuma ntirushobora kongera kuburanishwa bundi bushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y'ababuranyi bamwe baburana ikirego kimwe.

[14] Dosiye y'urubanza igaragaza ko Nshimiyumuremyi Matusalem na Mukagakwaya Arlette baregeye Urukiko Rwisumbuye rwa Muhanga, basaba Ngendahayo Abias kugaruza imitungo y'ababyeyi babo yagurishijwe abagobokeshejwe, hanyuma bakayizungura ku buryo bungana. Mu rubanza RC 0159/11/TGI/MUH rwaciwe ku wa 28/02/2013, Urukiko ruhera ku gusuzuma inzitizi yo kutakira ikirego yatanzwe n'abaregwa bavugaga ko Mukagakwaya Arlette adafite ububasha bwo kurega naho Nshimyumuremyi Matusalem akaba yararengeje igihe cyo kurega, bityo ko kuri we habaye ubuzime bwo gutanga ikirego, Urukiko rubisuzumye rusanga inzitizi zombi zifite ishingiro.

[15] Dosiye y'urubanza igaragaza ko Nshimiyumuremyi Matusalem na Mukagakwaya Arlette bajuririye icyo cyemezo mu Rukiko Rukuru, Urugereko rwa Nyanza, narwo ruca urubanza 0112/13/HC/NYA ku wa 25/04/2014, rwemeza ko ubujurire bufite ishingiro, ko urubanza RC 0159/11/TGI/MUH rwaciwe n'Urukiko Rwisumbuye rwa Muhanga ku wa 28/02/2013 ruvuyeho mu ngingo zarwo zose, urubanza rwoherezwa mu Rukiko Rwisumbuye rwa Muhanga kugirango ruburanishwe mu mizi.

[16] Urukiko rurasanga muri uru Rukiko haburanishwa urubanza RCAA 00009/2019/CA, rukomoka ku rubanza RCAA 007/16/CS rwari rwarajuririwe mu Rukiko rw'Ikirenga, uru rukaba rwari ubujurire bw'urubanza no RCA 00070/15/HC/NYA rwaciwe ku wa 19/11/2015, imyanzuro isubiza ya Me Mbera Ferdinand yo ku wa 19/12/2017 nayo ikaba igaragaza ko urubanza rwajuririwe ari urufite RCA 00070/15/HC/NYA rwaciwe ku wa 19/11/2015, bivuze ko urubanza 0112/13/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 25/04/2014 rutigeze rujurirwa, kuba rutarajuririwe bikaba byaratumye ruba itegeko, bityo uru Rukiko rukaba ntaho rwahera rugaruka ku byaburanwe mu rundi rubanza byagizwe itegeko n'uko abo byarebaga bahisemo kutabijuririra.

[17] Urukiko rurasanga nk'uko biteganywa n'ingingo ya 14 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryibukijwe haruguru, kandi byagarutsweho n'Urukiko rw'Ikirenga mu manza zitandukanye harimo n'urwo Kajeguhakwa Valens yaburanaga na Engen Rwanda Ltd,[1] iyo ikiburanwa n'ababuranyi mu rubanza ari bimwe, urubanza rwaciwe hagati y'abo baburanyi rukaba rwarabaye itegeko, ikirego ntigishobora kongera kuburanishwa ku mpamvu zimwe, ku kiburanwa kimwe, hagati y'ababuranyi bamwe baburana ikirego kimwe, byose bigaragaza ko uru Rukiko ntaho rwahera rugaruka ku byasuzumwe mu rubanza rwabaye itegeko.

[1] Reba urubanza Nº RS/INJUST/RCOM 00004/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25/05/2018

1.2. Kumenya niba mu Rukiko Rukuru, Urugereko rwa Nyanza, urubanza rwarasubukuwe nta mpamvu ifatika.

[18] Me Nkubayingoga Samuel, uburanira Nshimyumuremyi Matusalem, avuga ko Urukiko Rukuru, Urugereko rwa Nyanza, rwaranzwe n'amarangamutima no kubogama, igihe urubanza rwagombaga gusomwa ntirwasomwa ahubwo rurongera rurapfundurwa, icyo cyemezo gifatwa ntacyo gishingiyeho, Urukiko rubikora rugamije guha amahirwe ababuranyi batari baritabye mbere, kandi bisabwe n'umwe mu baburanyi wajijishaga ko yabonye ikimenyetso gishya, nyamara icyo yitaga ikimenyetso gishya ntaho cyari gihuriye n'umutungo uburanwa.

[19] Me Umugwaneza Claudine, uburanira Ngendahayo Abias, avuga ko igihe cyose urubanza rutarasomwa, Urukiko rufite ububasha bwo kongera gufungura iburanisha iyo rusanze ari ngombwa ko ababuranyi bagira ibindi bisobanuro batanga, akaba asaba uru Rukiko kwemeza ko ubujurire kuri iyi ngingo nta shingiro bufite.

[20] Me Mbera Ferdinand, uburanira Rukatinduru Oswald, Habimana Augustin na Bagirishya Sefu, avuga ko uretse ko hari n'ababuranyi basabye ko urubanza rwongera gufungurwa, Urukiko rufite ububasha bwo kubyibwiriza iyo, mu bushishozi bwarwo, rusanze ari ngombwa ko hagira ibindi bisobanuro bitangwa kugirango ukuri kugaragare, bityo ko nawe asanga iyi mpamvu y'ubujurire nta shingiro ryayo.

[21] Me Minyati Rugamba Jacob, uburanira Rukiya Nyirindekwe, Nirere Afissa na Nsanzabandi Fabrice, avuga ko iburanisha ryafunguwe bisabwe na Me Mazimpaka Elie kuko yari amaze kubona ikimenyetso cyerekana ko Nshimyumuremyi Matusalem hari umutungo yasigaranye kuko yazunguye inzu ifite agaciro ka 86.000.000 Frw, akaba asanga nta makosa Urukiko rwakoze rwemeza ko iburanisha ryongera gufungurwa.

UKO URUKIKO RUBIBONA

[22] Ingingo ya 75 igika cya 2, y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko : 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, naho igika cya 4 cy'iyo ngingo kigateganya ko Mbere yo gufata icyemezo kandi rubyibwirije, urukiko rushobora gupfundura iburanisha mu gihe rusanga hari ibyo rukeneye gusobanukirwa kurushaho bitasobanutse mu iburanisha kugira ngo ukuri kugaragare.

[23] Urukiko rurasanga gufungura iburanisha kugirango hagaragazwe ukuri ari uburenganzira bwa buri Rukiko, bukoreshwa mu bushishozi bwarwo nta kurengera, bigakorwa hagamije gusa gusobanukirwa byimbitse ikiburanwa, ababuranyi cyangwa ibimenyetso bizasuzumwa cyangwa bizashingirwaho kugirango hagaragazwe ukuri, iyo Urukiko rukoresheje ubwo burengenzira nta gukabya, ntibyafatwa nk'amakosa yajuririrwa kuko gufungura iburanisha bitagamije gutinza urubanza cyangwa kubogamira ku ruhande rumwe ntacyo biba byangirijeho abari mu rubanza.

[24] Urukiko rurasanga dosiye y'urubanza (cotes 50 na 93) igaragaza ko Me Mazimpaka Elie, waburaniraga Nirere Afisa, Nyirindekwe Rukiya na Nsanzabandi Fabrice yarandikiye Urukiko asaba ko isomwa ry'urubanza ryari riteganyijwe ku wa 30/09/2015 risubikwa, iburanisha rigapfundurwa kuko yabonye ibimenyetso bishya bigaragaza ko Nshimyumuremyi Matusalem

yazunguye, iyi ngingo ikaba yari yagiweho impaka mu iburanisha, avuga kandi ko abo baburana bavugaga ko imanza nº RCA 103/12/HC/KIG na nº RCA 109/12/HC/KIG zaburanishwaga nk'ibimenyetso zitaraba itegeko, nyamara we abona kopi zazo zateweho kashe mpuruza, kubw'izo mpamvu Urukiko rwemeza ko iburanisha ry'urubanza risubukurwa ku wa 20/10/2015, kuba Urukiko rwarapfunduye iburanisha rubisabwe n'umwe mu baburanyi ku mpamvu z'ingingo zagibwaho impaka Urukiko rwari gufataho icyemezo, bikaba bihuye n'ibiteganywa n'ingingo ya 75 igika cya 2, y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, uretse ko nta cyabuzaga n'Urukiko kubyibwiriza nk'uko byasobanuwe haruguru, ariyo mpamvu iyi ngingo y'ubujurire nta shingiro ifite.

1.3. Kumenya niba abaguze umutungo barawuguze mu buryarya

[25] Nshimyumuremyi Matusalem avuga ko Ngendahayo Abias nabo baregwa hamwe bitwaza ko umutungo wagurishijwe bibwira ko atakiriho, nyamara mukuru we yari azi ko ari mu Rwanda kandi ko akorera mu gisirikare. Asobanura ko amaze kumenya ko mukuru we yagurishije amakamyo ya Se n'amafaranga yari muri banki amaze kuyamara, yahise yandikira Burugumesitiri wa Komini Tambwe, ashinganisha imitungo ya Mushumba Esiri yari isigaye, akaba asanga ibyo Ngendahayo Abias nabo baregwa hamwe bitwaza ko yari yarahungiye muri Congo ari ukujijisha Urukiko, asaba ko amasezerano yose y'ubugure Ngendahayo Abias yakoze ku mitungo ya Se ateshwa agaciro, imitungo ikagarurwa mu muryango, abana bose ba Mushumba Esiri bakazungura ababyeyi babo ku buryo bungana.

[26] Me Nkubayingoga Samuel, umwunganira, avuga ko anenga imikirize y'Urukiko Rukuru, Urugereko rwa Nyanza kuba rutarabonye ko abaguze na Ngendahayo Abias imitungo iburanwa bari bafite uburyarya bitewe n'uko bari bazi ko bari kugura n'utari nyirawo. Asobanura ko mu rubanza rujuririrwa, Urukiko rwabonye ko Ngendahayo Abias yavugaga mu masezerano y'ubugure ko agurishije umutungo utari uwe, ko agurishije uwa Se, Mushumba Esiri, ahandi akavuga ko agurishije umutungo w'umuryango, ayo masezerano akaba yarayakoranye n'abantu bari basanzwe bazi ko afite abandi bavandimwe, ariko ntibabyitaho, bivuze ko ubugure butubahirije amategeko kuko Ngendahayo Abias yagurishije ibitari ibye, ariyo mpamvu asaba ko amasezerano y'ubugure ateshwa agaciro.

[27] Me Umugwaneza Claudine, wunganira Ngendahayo Abias, avuga ko igihe umutungo wagurishwaga, Ngendahayo Abias atari yakamenye ko abavandimwe be bakiriho, abaguze akaba ari we wenyine babonaga, bamufata nkaho ari we muzungura wenyine uhari. Asobanura ko abavandimwe ba Ngendahayo Abias batahutse basanze umutungo waragurishijwe, akaba yiteguye kubaha uruhare rwabo ku mafaranga yakiriye.

[28] Me Mbera Ferdinand, uburanira Habinama Augustin, Bagirishya Sefu, Minani Jean Pierre na Rukatinduru Oswald, avuga ko abo aburanira batigeze bamenya ko Ngendahayo Abias afite abandi bavandimwe bitewe n'uko batagaragaraga, ko Rukatinduru Oswald atari asanzwe ari umuturage wa Ruhango ahubwo yahageze yimutse aho yari atuye mu Mayaga, Habimana Augustin agura na Bitunguramye Telesphore, Bagirishya Sefu agura na Kasavubu Ayub, akaba asanga nta buryarya abo aburanira bari bafite ubwo baguraga umutungo uburanwa. Kuri Rukatinduru Oswald, Me Mbera Ferdinand, avuga ko amasezerano y'ubugure yahamijwe n'icyemezo cy'Ubuyobozi cya « *acte de notoriété* », akaba atari kujya kwibaza niba Ngendahayo Abias ari nyir'umutungo kandi inzego z'ubuyobozi zimaze kubihamya. Asobanura ko ikindi kigaragaza ko abo aburanira baguze nta buryarya ari uko, aho Mukagakwaya Arlette atahukiye, yafatanyije na Ngendahayo Abias kugurisha indi mitungo, bituma abaguze bose bumva ko amasezerano yabo y'ubugure yubahirije amategeko.

[29] Avuga kandi ko, nubwo mu masezerano y'ubugure hari ahavugwaga ko umutungo ugurishijwe ari uwa Mushumba Esiri, hari inyandiko igaragaza ko uwo mutungo wishingiwe na Ngendahayo Abias kandi nta na rimwe abagenzuzi b'ubwishingizi bigeze bambura Ngendahayo Abias inshingano yari yahawe nyamara bari babyemerewe, abaguze babona Ngendahayo Abias agurisha nyamara yarahawe n'Urukiko rwa Mbere rw'Iremezo inshingano zo gucunga gusa, bakibwira ko ari uko ari we wenyine warokotse iwabo.

[30] Me Minyati Rugamba Jacob, uburanira Nsanzabandi Fabrice, Nirere Afisa na Nyirindekwe Rukiya, avuga ko Nshimiyumuremyi Matusalem, nyuma y'uko asanze imitungo y'iwabo yaragurishijwe, yashumbushijwe igipangu, acyiyandikishaho ijana ku ijana, ndetse bituma atihutira gutanga ikirego kigamije kugaruza imitungo ya se, akaba asanga icyo nacyo ari ikimenyetso kigaragaza ko abo aburanira baguze imitungo iburanwa nta buryarya.

UKO URUKIKO RUBIBONA

[31] Ingingo ya 3 y'Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko « Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana…»

[32] Umuhanga mu mategeko ajyanye n'amasezerano y'ubugure Philippe Le Tourneau avuga ko nta watanga uburenganzira buruta ubwo afite, bityo ko kugurisha ikintu kitari icyawe cyangwa kitaraba icyawe biba bivuze ko ubwo bugure ari imfabusa bitewe n'uko ntacyo ugurisha aba afite aribuhe umuguzi. Asobanura ariko ko iyo umuguzi yari azi cyangwa yizeye neza ko ari kugura na nyir'umutungo, nk'igihe bigaragara ko ugurisha ariwe muzungura uhari w'uwo mutungo, umuguzi agumana uburenganzira ku mutungo yaguze.[2]

[33] Mu rubanza Harelimana Emmanuel yaburanaga na Sebukayire Tharcisse,[3] Urukiko rw'Ikirenga rwemeje ko iyo uwaguze cyangwa wabonye umutungo nta buryarya ategetswe kuwusubiza kandi hari ibyo yawongereyeho, usubijwe umutungo asubiza ibyashyizwe cyangwa ibyongerewe ku mutungo asubiranye.

i. Ku bireba umutungo waguzwe na Rukatinduru Oswald na Nsanzabandi Fabrice

[34] Dosiye y'urubanza irimo Icyemezo nomero 058/05.04/ORDON/95 cyatanzwe n'Urukiko rwa Mbere rw'Iremezo rwa Gitarama ku wa 27/03/1995, mu gika cya gatatu cy'icyo cyemezo hagira hati « Tumaze kubona ikibazo twagejejweho n'witwa Ngendahayo Abias mu ibaruwa yo ku wa 20/03/1995 asaba Perezida w'Urukiko rwa Mbere rw'Iremezo rwa Gitarama, icyemezo kimuha uburenganzira bwo kuba umwishingizi wa murumuna we Nshimyumuremyi Matusalem, mwene Mushumba Esri na Mukakimanuka, bombi bitabye Imana… » naho mu byemezo biri ku rupapuro rwa kabiri hakagira hati « Inama yemeje ko Ngendahayo Abias aliwe ihisemo kuba umwishingizi wa murumuna we Nshimiyumuremyi Metusalem…akaba aliwe ugomba gukurikirana no gucunga umutungo rusange w'ibintu byimukanwa n'ibitimukanwa umubyeyi wabo Mushumba Esri yabasigiye aho waba uli hose….ko Gashugi Emile aliwe ugizwe umugenzuzi w'umwishingizi muli iyo milimo…. Ko Ngendahayo Abias, ubaye umwishingizi,

[2] La vente opère un droit de tarnsfer de propriété du vendeur à l'acheteur; elle n'est donc valable que si le vendeur est titulaire du droit en cause, car nul ne peut transférer plus de droit qu'il n'en a lui-même …La revendication immobilière peut etre paralysée …par le jeu de l'apparence. L'acquéreur qui a légitimement pu croire que son vendeur était propriétaire ne peut etre evincé…l'hypothèse principale en est celle ou le vendeur était l'héritier apparent. » Reba Philippe Le Torneau, Responsabiltés des vendeurs et fabricants, Paris, Dalloz, 2006, p.28.

[3] Urubanza Nº RCAA 0018/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2014

ahita ageza mu Biro by'Urukiko rwa Mbere rw'Iremezo rwa Gitarama ibarura ry'umutungo rusange w'ibintu byimukanwa n'ibitimukanwa ababyeyi babo babasigiye limaze gusinywa na Gashugi Emile, umugenzuzi w'umwishingizi… »

[35] Dosiye y'urubanza irimo « *acte de notoriété* » Rukatinduru Oswald yaguriyeho inzu ituzuye iri hagati y'amazu ya Musatsi Claver na Karekezi Claver ku wa 30/12/1996, ku mafaranga 1.500.000 Frw, iyo nyandiko ikaba itangira igira iti « Ngendahayo Abias mwene Esri Mushumba akaba ahagarariye umutungo we Mushumba Esri kuko se yitabye Imana… », harimo kandi amasezerano y'ubugure yabaye ku wa 02/12/1999 hagati ya Ngendahayo Abias na Nsanzabandi Fabrice, ayo masezerano agatangira agira ati « Njyewe Ngendahayo Abias kubera ububasha mpabwa n'icyemezo 058/05.04/ORDN/95 cy'Inama y'Ubwishingizi…»

[36] Dosiye y'urubanza irimo ubuhamya bwa Mazimpaka André wari Burugumesitiri wa Komini Tambwe nyuma ya Jenoside yakorewe Abatutsi mu mwaka wa 1994, yavugiye imbere y'uru Rukiko mu iburanisha ryabaye ku wa 23/01/2020, ko Ngendahayo Abias yamusabye uburenganzira bwo kugurisha imwe mu mitungo ya Se kugirango atangire gucuruza, amugira inama yo kujya gusaba ubwo burenganzira mu Rukiko, agarukanye icyemezo cy'Urukiko nabo bamuha uburenganzira bwo kugurisha, n'abaguze bahabwa icyemezo ko baguze. Yasobanuye ko bari bazi ko mu muryango wa Mushumba Esri ari we warokotse wenyine kuko ari we wagaragaraga, ko icyatumye batanga uburenganzira bwo kugurisha kandi Urukiko rwari rwaratanze ubwo gucunga ari uko Ngendahayo Abias yababwiraga ko agiye kuzahura ubucuruzi bwa Se.

[37] Dosiye y'urubanza irimo na none imvugo Mukagakwaya Arlette yavugiye imbere y'uru Rukiko mu iburanisha ryabaye ku wa 23/01/2020, asobanura ko yahungiye muri Zaïre, atahuka mu mwaka wa 1997, asanga Ngendahayo Abias yaragurishije imwe mu mitungo y'iwabo, harimo uwo yagurishije Rukatinduru Oswald n'uwo yagurishije Bitunguramye Telesphore, abajije abanyamuryango, bamubwira ko yari yahawe uburenganzira bwo gucunga gusa, ko nyuma yaho yasinye ku masezerano y'ubugure bw'umutungo wagurishijwe Nyirindekwe Rukiya kuko Ngendahayo Abias yari yamubwiye ko agiye kugombora imodoka, ariko abonye akomeje kugurisha, ajya kubitambamira kwa Burugumesitiri, icyakora ntibyagira icyo bitanga.

[38] Urukiko rurasanga inyandiko y'ubugure bwa Rukatinduru Oswald igaragaza neza ko Ngendahayo Abias nta mutungo bwite yari afite ahubwo ko yari ahagarariye umutungo wa Se, Mushumba Esri, Icyemezo cy'Urukiko Mazimpaka André avuga ko aricyo bashingiyeho batanga « acte de notoriété » (yasinyweho na Mazimpaka André) kigaragaza ko cyatanze gusa uburenganzira bwo gucunga bikaba bitumvikana uburyo Ngendahayo Abias yihaye uburenganzira bwo kugurisha Rukatinduru Oswald umutungo wa se nyamara awusangiye n'abavandimwe be n'Ubuyobozi bwa Komini bukabiha umugisha kandi bubona ko icyemezo cy'Urukiko gitanga gusa uburenganzira bwo gucunga umutungo.

[39] Urukiko rurasanga ibyo Me Mbera Ferdinand avuga ko icyatumye Rukatinduru Oswald wimukiye mu Ruhango avuye mu Mayaga yizera ko aguze na nyir'umutungo ari uko Ngendahayo Abias ari we wenyine wagaragaraga binyomozwa n'icyemezo cyatanzwe n'Urukiko kuko mu gika cya kabiri cy'icyo cyemezo hibutswa ko Ngendahayo Abias ari we wanditse asaba uburenganzira bwo kuba umwishingizi wa Nshimyumuremyi Matusalem, icyo cyemezo akaba aricyo cyashingiweho Rukatinduru Oswald ahabwa « acte de notoriété », bisobanuye ko ubwo ubugure bukorwa, uretse Ngendahayo Abias na Rukatinduru Olswald ubwabo, n'ubuyobozi bwari buzi ko mu muryango wa Mushumba Esri harokotse undi mwana, ariko bose babirengaho, umutungo abo bana basangiye ugurishwa mu buryo bunyunyuranyije n'amategeko

batarawugabana, mu byagurishijwe hagenderamo n'ibya Nshimyumuremyi Matusalem uyu atabizi kandi yari ahari, ariyo mpamvu amasezerano y'ubugure hagati ya Ngendahayo Abias na Rukatinduru Oswald akwiye guteshwa agaciro, Rukatinduru Oswald akirengera ingaruka zo kuba yaraguze umutungo n'utari nyirawo, yakwifuza gusubizwa ibyo yawutanzeho akikurikiranira uwawumugurishije.

[40] Urukiko rurasanga mu rubanza rujuririrwa, Urukiko Rukuru, Urugereko rwa Nyanza, rwarasanze Nsanzabandi Fabrice akigaragara mu baregwa, ruvuga ko rutakwemeza ko yumvikanye n'urega kuko atigeze yitaba inkiko kandi hakaba ntawabimuvugiye; imbere y'uru Rukiko, Nshimyumuremyi Matusalem akaba atarigeze avuga ko hari amasezerano y'ubwumvikane yakoranye na Nsanzabandi Fabrice ku buryo ntacyo akimukurikiranyeho, bityo ibyo Me Mbera Ferdinand avuga ko Nsanzabandi Fabrice yumvikanye na Nshimyumuremyi Matusalem, ku buryo ku bimureba ntacyo uru Rukiko rwari rukwiye kubivugaho bikaba nta shingiro bifite.

[41] Urukiko rurasanga Nsanzabandi Fabrice yaragaragarijwe ko hari icyemezo no 058/05.04/ORDN/95 gitanga uburenganzira bwo gucunga (*gestion*) aho kuba ubwo kugurisha cyangwa gutanga nk'impano (aliénation), abirengaho akorana amasezerano y'ubugure na Ngendahayo Abias, bikaba bigaragara ko atagize ubushishozi buhagije mbere yo kugura kandi yagaragarijwe ibimenyetso by'uko uwo yaguraga nawe atari nyir'umutungo, byumvikanisha ko amasezerano y'ubugure atubahirije ibiteganywa n'amategeko ariyo mpamvu nayo agomba guteshwa agaciro, umutungo yaguze ugasubira mu muryango wa Mushumba Esri, akazikurikiranira Ngendahayo Abias ku kiguzi yamuhaye no kubyo yaba yarongereye ku mutungo yaguze.

ii. Ku bireba umutungo ufitwe na Minani Jean Pierre yaguze na Bagirishya Sefu, ufitwe na Nirere Afisa yahawe na Nzamwita Omary n'ufitwe na Habimana Augustin yaguze na Bitunguramye Telesphore

[42] Dosiye y'urubanza irimo amasezerano y'ubugure hagati ya Bagirishya Sefu na Kasavubu Ayub yakozwe ku wa 10/07/1998 agira ati « Njyewe Kasavubu Ayub ngulishije inzu yanjye na Bagilishya Sefu… Iyo nzu niyubucuruzi iri mu mugi wa Ruhango, parcelle no 6 ku ruhande rw'iburyo igabana na Uwimana Gérard ku ruhande rw'ibumoso igabana na Bigirimfura Epaphrodite, hepfo ku gikali igabana na Uwimana Gérard… », harimo kandi amasezerano y'impano yakorewe imbere ya Burugumesitiri wa Komini Tambwe ku wa 22/09/2000 hagati ya Nzamwita Omary na Nirere Afissa, agira ati « Njyewe Nzamwita Omary mpaye Nirere Afissa inzu yanjye nari naraguze na na Ngendahayo, umuhungu wa Mushumba Esri iherereye hagati ya Migambi Issa na Sezicyeye Muhamud.

[43] Dosiye y'urubanza igaragaza ko Bitunguramye Télesphore yaguze inzu na Ngendahayo Abias ahabwa « *acte de notoriété* » ku wa 12/11/1997, nawe aza kuhagurisha Habimana Augustin. Muri dosiye harimo kandi imvugo ya Gatorano Gad Jacques uvuga ko ari umuvandimwe wa Minani Jean Pierre, avuga ko baguze inzu na Bagirishya Sefu, nawe amaze kubagaragariza amasezerano y'ubugure yerekana ko aho hantu ari ahe, ko Nshimiyumuremyi Matusalem yamubwiye ko inzu baguze yahoze ari iyabo, ko nta ndi makuru yari azi ku muryango wa Mushumba Esri uretse kuba Nshimiyumuremyi Matusalem yaramubwiraga ko akomoka mu Mayaga.

[44] Urukiko rurasanga Nshimiyumuremyi Matusalem na Me Nkubayingoga Samuel, umwunganira bavuga ko Nirere Afissa na Bagirishya Sefu nabo batunze umutungo uburanwa mu

buryarya kuko Bagirishya Sefu yari azi ko aguze umutungo n'utari nyirawo naho Nirere Afissa akaba yari azi ko ahawe umutungo n'utari nyirawo, icyakora ntiberekana uburyo aba bombi bari kumenya ko Kasavubu Ayub na Nzamwita Omary bari baraguze uwo mutungo n'utari nyirawo, mu gihe abaguze uwo mutungo ataribo barezwe muri uru rubanza, kwemeza ko Nirere Afissa na Bagirishya Sefu wagurishije inzu ye Minani Jean Pierre batunze umutungo uburanwa mu buryarya byaba ari ugushingira ku gukeka nyamara uvuga ko uwo arega atunze ikiburanwa mu buryarya ari we ufite inshingano zo kugaragaza ibimenyetso ashingiraho ubwo buryarya, yabibura bigafatwa ko abafite umutungo bawutunze nta buryarya.

[45] Urukiko rurasanga mu gihe Bagirishya Sefu ari we wari waraguze umutungo na Kasavubu Ayub, hanyuma Bagirishya Sefu akawugurisha Minani Jean Pierre, uyu atahungabanywa mu mutungo yaguze mu gihe Nshimiyumuremyi Matusalem atagaragaza ko uwaguze yari azi ko Bagirishya Sefu amugirishije ibitari ibye, kandi nk'uko byasobanuwe haruguru, kubigaragaza bisaba kubanza kwerekana ko Bagirishya Sefu ubwe ubwo yaguraga na Kasavubu Ayub, yari azi ko ari kugura n'utari nyir'umutungo, bityo mu gihe abarega batabashije kubigaragararaza bikaba bikwiye gufatwa ko nta kimenyetso gihari cyerekana ko Minani Jean Pierre yaguze umutungo uburanwa mu buryarya.

[46] Urukiko rurasanga na none nta kigaragaza ko Habimana Augustin agura umutungo na Bitunguramye Augustin yari azi ko uyu ari kumugurisha umutungo yaguze n'utari nyirawo, Nshimyumuremyi Matusalem na Me Nkubayingonga Samuel, umwunganira, ntibabashije kubigaragaza, bityo akaba akwiye gufatwa ko agura, yari azi neza ko ari kugura umutungo na nyirawo, ariyo mpamvu akwiye kuguma mu mutungo we nta nkomyi.

iii. Ku bireba umutungo waguzwe na Mukanyangezi Hasina

[47] Dosiye y'urubanza igaragaza ko Nshimiyumuremyi Matusalem yareze mu Rukiko Rwisumbuye rwa Muhanga asaba ko inzu Mukanyangezi Hasina yaguze na Ngendahayo Abias isubizwa mu mutungo w'umuryango wa Mushumba Esri na Mukimanuka. Mu myanzuro Me Nkubayingoga Samuel, uburanira Nshimyumuremyi Matusalem, yatanze mu Rukiko Rwisumbuye rwa Muhanga atanga ikirego, ntagaragaza umutungo Mukanyangezi Hasina yaba yaraguranye na Ngendahayo Abias uwo ariwo, imbere y'uru Rukiko, mu cyemezo cyafashwe ku wa 01/11/2019, ababuranyi bose basabwe kuzana ibimenyetso bigaragaza amasezerano y'ubugure cyangwa « *acte de notoriété* » y'imitungo iburanwa, ku bireba Mukanyangezi Hasina, nta nyandiko n'imwe yigeze ishyirwa muri dosiye.

[48] Urukiko rurasanga ku bireba Mukanyangezi Hasina nta kigaragaza ko hari umutungo yaguze na Ngendahayo Abias n'uwo ariwo, bityo hashingiwe ku ngingo ya 3 y'Itegeko no 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko « Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana », iyi ngingo y'ubujurire ya Nshimyumuremyi Matusalem ikaba nta shingiro ifite.

iv. Kubireba umutungo ufitwe na Nyirindekwe Rukiya n'ubujurire bwe bwuririye ku bundi

[49] Urukiko rurasanga mu myanzuro Me Nkubayingoga Samuel yatanze mu izina rya Nshimyumuremyi Matusalem avuga ko icyo asaba ari « Gukuraho icyemezo cyafashwe n'Urukiko Rukuru, Urugereko rwa Nyanza, uretse Nyirindekwe Rukiya », bivuze ko nta bujurire yatanze kubireba Nyirindekwe Rukiya bityo ku bireba Nyirindekwe Rukiya, hakaba hagomba kubahirizwa icyemezo cyafashwe mu rubanza nRCA 0070/15/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 19/11/2015.

[50] Urukiko rurasanga ubujurire bwuririye ku bundi bwatanzwe na Nyirindekwe Rukiya budakwiye kwakirwa ngo busuzumwe kuko bwari gushingira ku bujurire bwa Nshimiyumuremyi Matusalem, nyamara ku bireba Nyirindekwe Rukiya, akaba yaravuze ko atajuriye, bivuze ko ubujurire bwuririye ku bundi butakwakirwa mu gihe nta bujurire bw'iremezo buriho. Uyu murongo uhura kandi n'uwemezwa n'abahanga mu mategeko y'imiburanishirize y'imanza z'imbonezamubano bavuga ko umuntu utararezwe mu bujurire nta bubasha aba afite bwo gutanga ubujurire bwuririe ku bundi.[4]

1.4. Kumenya niba indishyi zisabwa zifite ishingiro

[51] Me Nkubayingoga Samuel, uburanira Nshyimyumuremyi Matusalem, asaba uru Rukiko gutegeka Ngendahayo Abias, Rukatinduru Oswald, Nirere Afissa, Habimana Augustin, Bagirishya Sefu, Mukanyangenzi Hasina, Minani Jean Pierre na Nsanzabandi Fabrice, kuri buri wese, gutanga indishyi z'akababaro zingana na 1.000.000 Frw, yose hamwe akaba 8.000.000 Frw, gufatanya kumuha indishyi mbonezamusaruro zingana na 10.000.000 Frw ahwanye n'imyaka ishyize batunze umutungo uburanwa, bawubyaza umusaruro naho abana ba Mushumba Esri na Mukakimanuka bicwa n'inzara, gufatanya kwishyura 4.000.000 Frw y'igihembo cya Avoka na 2.000.000 Frw y'ikurikiranarubanza ku nzego zose.

[52] Me Mbera Ferdinand, uburanira Rukatinduru Oswald, Habimana Augustin na Bagirishya Sefu, avuga ko ibyo Nshimyumuremyi Matusalem asaba nta shingiro bikwiye guhabwa, ahubwo ko ari we ukwiye kwishyura buri wese mubo aburanira 1.000.000 Frw y'igihembo cya Avoka, 600.000 Frw y'ikurikiranarubanza no gutanga 2.000.000 Frw y'indishyi z'akababaro kuri buri wese mubo aburanira kubera kubashora mu manza nta mpamvu.

[53] Me Minyati Rugamba Jacob, uburanira Nyirindekwe Rukiya, Nirere Afissa, Nsanzabandi Fabrice, avuga ko ibyo Nshimyumuremyi Matusalem asaba nta shingiro bifite, ahubwo ko akwiye gutegekwa kwishyura abo aburanira 1.500.000 Frw y'igihembo cya Avoka na 3.000.000 Frw y'indishyi zo gushorwa mu manza.

UKO URUKIKO RUBIBONA

[54] Ingingo ya 111 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko Ikirego cy'amafaranga y'ikurikiranarubanza ari ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe.

[55] Urukiko rurasanga ikirego cya Nshimyumuremyi Matusalem kigamije kugaruza imitungo y'umuryango wa Mushumba Esri na Mukakimanuka umuvandimwe we Ngendahayo Abias yagurishije mu buriganya, uretse kuri Rukatinduru Oswald na Nsanzabandi Fabrice, nta kigaragaza ko abandi bari bazi ko bagura cyangwa bahawe impano n'utari nyir'umutungo, bityo indishyi z'akababaro, igihembo cya Avoka n'amafaranga y'ikurikiranarubanza asaba akaba ayakwiriye, ariko agatangwa gusa na Ngendahayo Abias, Rukatinduru Oswald na Nsanzabandi Fabrice.

---

[4]L'appel incident est réservé à la personne intéressée. Il convient évidemment que la personne ait été intimée dans la qualité qu'elle prend pour son appel incident." Reba Serge Guinchard [sous la dir], Droit et pratique de la procédure civile, Paris, Dalloz, 2014, p.542

[56] Urukiko rurasanga kuba Rukatinduru Oswald na Nsanzabandi Fabrice barihereranye Ngendahayo Abias bakagura nawe umutungo w'umuryango wa Mushumba Esri na Mukakimanuka, abandi bana b'imfubyi bakomoka muri uwo muryango batabizi, byaragize ingaruka kuri abo bana, by'umwihariko kuri Nshimyumuremyi Matusalem wari ukuri muto, akeneye kurerwa, kubaho neza no kurihirwa amashuri, ariko nk'uko Gatorano Gad

[57] Jacques yabivugiye mu iburanisha, imbere y'uru Rukiko ku wa 23/01/2020, bikaba byarabaye ngombwa ko ajya kuba Kadogo mu Gisirikare, akivuyemo ajya gucumbika hamwe n'abandi basore kuko imitungo y'iwabo yari yarayoyotse biturutse ku buriganya bwa mukuru we, bityo indishyi z'akababaro asaba akaba azikwiriye.

[58] Urukiko rurasanga icyakora 1.000.000 Frw asaba buri wese mubo arega, atagaragaza ishingiro ryayo kuko baguze mu bihe no mu buryo butandukanye ndetse bagura imitungo itanganya agaciro, bityo mu bushishozi bw'Urukiko, Ngendahayo Abias, Rukatinduru Oswald na Nsanzabandi Fabrice, buri wese akaba agomba kumuha 500.000 Frw y'indishyi z'akababaro.

[59] Urukiko rurasanga na none igihembo cya Avoka n'amafaranga y'ikurikiranarubanza Nshimiyumuremyi Matusalem asaba abikwiriye, kuba avuga ko asaba 4.000.000 Frw y'igihembo cya Avoka na 2.000.000 Frw y'ikurikiranarubanza ku baburanyi umunani biri mu rugero kuko bivuze ko uwagurishije n'abaguze mu buryarya aribo Ngendahayo Abias, Rukatinduru Oswald na Nsanzabandi Fabrice, buri wese, akwiye kumuha 500.000 Frw y'igihembo cya Avoka na 250.000 Frw y'ikurikiranarubanza kuri buri wese.

[60] Urukiko rurasanga indishyi mbonezamusaruro za 10.000.000 Frw Nshimiyumuremyi Metusalem asaba ntaho uru Rukiko rwahera rwemeza ishingiro ryazo kuko nta bimenyetso yabitangiye.

[61] Urukiko rurasanga kandi Minani Jean Pierre, Bagirishya Sefu, Nirere Afissa na Habimana Augustin baraguze umutungo uburanwa nta buryarya, bityo Nshimyumuremyi Matusalem akaba atari akwiye kuba yarabakuruye mu manza ahubwo yari gukurikirana mukuru we ku kiguzi yahawe ku mitungo bafite, ariyo mpamvu amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza basaba bayakwiriye, bityo akaba akwiye guha buri wese 500.000 Frw y'igihembo cya Avoka na 250.000 Frw y'ikurikiranarubanza kuri uru rwego.

III. ICYEMEZO CY'URUKIKO

[62] Rwemeje ko ubujurire bwa Nshimyumuremyi Matusalem bufite ishingiro kuri bimwe ;

[63] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Nyirindekwe Rukiya butakiriwe ;

[64] Rwemeje ko imikirize y'urubanza RCA 0070/15/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, ku wa 19/11/2019 ihindutse gusa kubireba Rukatinduru Oswald na Nsanzabandi Fabrice ;

[65] Rwemeje ko amasezerano y'ubugure yakozwe hagati ya Ngendahayo Abias na Rukatinduru Oswald n'ayakozwe hagati ya Ngendahayo Abias na Nsanzabandi Fabrice yakozwe mu buryarya akaba ateshejwe agaciro, umutungo ugasubizwa mu mutungo rusange w'umuryango wa Mushumba Esri na Mukakimanuka ;

[66] Rwemeje ko ibyangombwa by’umutungo Ngendahayo Abias yagurishije Rukatinduru Oswald n’uwo yagurishije Nsanzabandi Fabrice byandikwa ku bazungura ba Mushumba Esri na Mukakimanuka ;

[67] Rwemeje ko amasezerano y’ubugure yakozwe hagati ya Minani Jean Pierre na Bagirishya Sefu, amasezerano y’impano yakozwe hagati ya Nirere Afisa na Nzamwita Omary, n’amasezerano y’ubugure yakozwe hagati ya Habimana Augustin na Bitunguramye Telesphore, yakozwe nta buryarya bityo bakaba batagomba guhungabanywa mu mitungo yabo ;

[68] Rutegetse Ngendahayo Abias, Rukatinduru Oswald na Nsanzabandi Fabrice, buri wese, guha Nshimyumuremyi Matusalem

[69] 500.000 Frw y’indishyi z’akababaro, 500.000 Frw y’igihembo cya Avoka na 250.000 Frw y’ikurikiranarubanza kuri uru rwego ;

[70] Rutegetse Nshimyumuremyi Matusalem guha Minani Jean Pierre, Bagirishya Sefu, Nirere Afisa, Habimana Augustin, kuri buri wese, 500.000 Frw y’igihembo cya Avoka na 250.000 Frw y’ikurikiranarubanza kuri uru rwego ;

[71] Ruvuze ko amagarama yatanzwe ahwanye n’ibyakozwe mu rubanza.