GATERA NTARINDWA v MUKAMUTARA

[Rwanda URUKIKO RW'UBUJURIRE – RCAA 00036/2021/CA (Mukanyundo P.J.) 15 Ukwakira 2021]

Umuryango – Umutungo w'abashakanye – Imicungire y'umutungo w'abashakanye – Uburenganzira ku mutungo w'abashyingiranywe butangira bakimara gushyingirwa imbere y'umwanditsi w'irangamimerere hakurikijwe uburyo bw'icungamutungo bahisemo.

Itegeko rigenga imiburanishirize y'imanza mbonezamubano – ikirego gishya mu bujurire – Ikirego gishya ku rwego rw'Ubujurire ntabwo cyakirwa ngo gisuzumwe iyo bikozwe n'Urukiko biba ari ikosa rikosorwa no gutesha agaciro icyo kirego, – 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 154.

Incamake y'ikibazo: Uru rubanza rwatangiye Gatera Ntarindwa arega Mukamutara mu Rukiko Rwisumbuye rwa Gasabo, asaba ko yavanwa ku cyangombwa cy'umutungo utimukanwa, Avuga ko yashakanye na Mukamutara mu mwaka wa 1988, hanyuma byagera mu mwaka wa 1998, Mukamutara akamuta akajya mu gihugu cya Canada, we agasigara mu Rwanda, umutungo asaba ko akurwaho akaba yarawushatse wenyine.Urubanza rwaburanishijwe Mukamutara adahari ariko yarahamagajwe mu buryo bukurikije amategeko, Urukiko Rwisumbuye rwa Gasabo rwemeza ko ikirego cyatanzwe na Gatera Ntarindwa gifite ishingiro, rutegeka ko Mukamutara akurwa ku cyangombwa cy'umutungo ukandikwa kuri Gatera Ntarindwa wenyine.

Mukamutara yajuririye imikirize y'urubanza mu Rukiko Rukuru, arusaba gusuzuma niba icyemezo Urukiko Rwisumbuye rwa Gasabo rwafashe mu rubanza rujuririrwa kigomba gukurwaho n'ibikubiyemo byose, gusuzuma niba icyifuzo cye cyo kugurisha iyo nzu muri cyamunara kigomba kwemezwa n'Urukiko, anasaba izindi ndishyi.Urukiko Rukuru rwemeje ko ubujurire bwatanzwe na Mukamutara bufite ishingiro, ko ubujurire bwuririye ku bundi bwatanzwe na Gatera Ntarindwa nta shingiro bufite, rwemeza Mukamutara atagomba kwandukurwa ku mutungo uburanwa, ari uwa Gatera Ntarindwa na Mukamutara bityo ko bawugurisha bakagabana ikiguzi.

Gatera Ntarindwa ntiyishimiye imikirize y'urubanza ajuririra mu Rukiko rw'Ubujurire, Asaba Urukiko ko rwatanga umurongo ku kibazo cyo kumenya niba mu gihe umwe mu bashyingiranwe ataye urugo ashobora kugaruka gusaba iyubahirizwa ry'amasezerano y'ivangamutungo yagiranye n'uwasigaye mu rugo, no gusuzuma niba Urukiko Rukuru rutarakoze amakosa yo kwakira no gusuzuma ikirego gishya mu rwego rw'ubujurire kandi bibujijwe, anasaba indishyi. Mukamutara yiregura avuga ko atigeze ata urugo, bityo ko akwiye kugira uruhare ku mutungo uburanwa, kuko igihe Gatera Ntarindwa yari yarasigaye mu Rwanda ashaka uwo mutungo, undi nawe yareraga abana wenyine muri Canada, avuga ko indishyi asaba nt shingiro zifite.

Incamake y'icyemezo: 1. Uburenganzira ku mutungo w'abashyingiranywe butangira bakimara gushyingirwa imbere y'umwanditsi w'irangamimerere hakurikijwe uburyo bw'icungamutungo bahisemo. Bityo, umutungo ubonetse ku bashakanye mu buryo bukurikije amategeko basezeranye ivangamutungo rusange, bafite uburenganzira bungana kuruwo mutungo mu gihe cyose bataratandukana mu buryo bukurikije Amategeko.

2. Ikirego gishya ku rwego rw'Ubujurire ntabwo cyakirwa ngo gisuzumwe iyo bikozwe n'Urukiko biba ari ikosa rikosorwa no gutesha agaciro icyo kirego.

Ubujurire bufite ishingiro kuri bimwe.

Amategeko yashingiweho :

Protocole à la charte Africaine des droits de l'Homme et des peuples relatif aux droits des femmes, adopté à Maputo le 11 juillet 2003, Article 2,7

Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, Ingingo ya 208, 218,242

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 111,154.

Imanza zifashishijwe :

Urubanza RCAA0007/13/CS rwa Mukabarungi Julienne v Gatsinzi Marcel rwaciwe n'Urukiko rw'Ikirenga kuwa 17/04/2014

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Gatera Ntarindwa Georges asaba ko umugore we Mukamutara Benoite yavanwa ku cyangombwa cy'umutungo utimukanwa ubaruye kuri UPI: 1/02/10/01/2172, uherereye mu Mudugudu wa Estate 2020, Akagari ka Gacuriro, Umurenge wa Kinyinya, Akarere ka Gasabo, Umujyi wa Kigali. Avuga ko yashakanye na Mukamutara Benoite mu mwaka wa 1988, hanyuma byagera mu mwaka wa 1998, Mukamutara Benoite akamuta akajya muri Canada, we agasigara mu Rwanda maze agashaka wenyine umutungo umaze gutangirwa umwirondoro.

[2] Urubanza rwaburanishijwe Mukamutara Benoite adahari ariko yarahamagajwe mu buryo bukurikije amategeko, nuko mu rubanza RC00203/2019/TGI/GSBO rwaciwe ku wa 20/09/2019, Urukiko Rwisumbuye rwa Gasabo rwemeza ko ikirego cyatanzwe naGatera Ntarindwa Georges gifite ishingiro, rutegeka ko Mukamutara Benoite akurwa ku cyangombwa cy'umutungo ufite UPI:1/02/10/01/2172, uherereye mu Mudugudu wa Estate 2020, Akagari ka Gacuriro, Umurenge wa Kinyinya, Akarere ka Gasabo, Umujyi wa Kigali, ukandikwa kuri Gatera Ntarindwa Georges wenyine.

[3] Mukamutara Benoite yajuririye imikirize y'urubanza mu Rukiko Rukuru, ubujurire bwe bwandikwa kuri RCA00442/2019/HC/KIG, arusaba gusuzuma niba icyemezo UrukikoRwisumbuye rwa Gasabo rwafashe mu rubanza RC00203/2019/TGI/GSBO kigomba gukurwaho n'ibikubiyemo byose, gusuzuma niba icyifuzo cye cyo kugurisha iyo nzu muri cyamunara kigomba kwemezwa n'Urukiko, gusuzuma niba indishyi zitandukanye yasabye zigomba gutangwa, anasaba izindi ndishyi kuri urwo rwego zirimo amafaranga y'igihembo cya Avoka, no gusubizwa amagarama y'urubanza.

[4] Urukiko Rukuru rwaciye urubanza ku wa 18/03/2021, rwemeza ko ubujurire bwatanzwe na Mukamutara Benoite bufite ishingiro, ko ubujurire bwuririye ku bundi bwatanzwe na Gatera Ntarindwa Georges nta shingiro bufite, rwemeza ko urubanza RC00203/2019/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 20/09/2019 ruhindutse, rwemeza ko Mukamutara Benoite atagomba kwandukurwa ku mutungo ubaruye kuri UPI: 1/02/10/01/2172, uherereye mu Mudugudu wa Estate 2020, Akagari ka Gacuriro, Umurenge wa Kinyinya, Akarere ka Gasabo, Umujyi wa Kigali. Rutegeka koGatera Ntarindwa Georges na Mukamutara Benoite bagabana uwo mutungo, ukagurishwa buri wese agahabwa 50% byawo, ushaka kuwugumana akabanza guha mugenzi we agaciro kangana na 50% kawo, rutegeka kandi Gatera Ntarindwa Georges guha Mukamutara Benoite 500.000Frw y'igihembo cya Avoka, no kumusubiza 40.000Frw yatanze arega.

[5] Gatera Ntarindwa Georges ntiyishimiye imikirize y'urubanza ajuririra mu Rukiko rw'Ubujurire, ikirego cye cyandikwa kuri RCAA00006/2021/CA. Asaba uru Rukiko korwatanga umurongo ku kibazo cyo kumenya niba mu gihe umwe mu bashyingiranwe ataye urugo ashobora kugaruka gusaba

iyubahirizwa ry'amasezerano y'ivangamutungo yagiranye n'uwasigaye mu rugo, no gusuzuma niba Urukiko Rukuru rutarakoze amakosayo kwakira no gusuzuma ikirego gishya mu rwego rw'ubujurire kandi bibujijwe, anasaba indishyi.

[6] Iburanisha ry'urubanza ryabaye mu ruhame ku wa 04/10/2021, Gatera Ntarindwa Georges yunganiwe na Me Kayitare Serge naho Mukamutara Benoite ahagarariwena Me Umulisa Paola.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

Kumenya niba Urukiko Rukuru rwarakoze ikosa rutegeka ko Mukamutara Benoite atagomba kwandukurwa ku mutungo ubaruye kuriUPI: 1/02/10/01/2172

[7] Gatera Ntarindwa Georges na Me Kayitare Serge umwunganira bavuga ko Mukamutara Benoite yataye urugo nawe akamuta, ko habayeho ubutane amaze imyaka igera kuri 20 batabana, aho yiberaga muri Canada kuva mu mwaka wa 1998, naho we aba mu Rwanda. Ko uko guta urugo gushimangirwa n'uko mu mwaka wa 2005yaje kubyarana n'undi mugabo aho muri Canada, ibyo bikaba bigaragaza ko yateshutseku nshingano ze zo kubana n'umugabo we, kutamuhemukira, gufashanya nawe ndetse no kwita ku burere bw' abana babyaranye. Gatera avuga kandi ko yabanje kujya mu masengesho muri Amerika, hanyuma agashaka kujya muri Canada akamusaba ko yagaruka bakabiganiraho akaza ngo ariko ko kuba yari yamutunguye, byarangiye bemeranije ko agenda akajyana n'abana ariko ko bigeze mu mwaka wa 2002, byabaye ngombwa ko agarura abana batatu, umuto akaba yaramuzanye muri 2005 kubera ko nyina yari yarashatse undi mugabo bakanabyarana.

[8] Gatera Ntarindwa Georges avuga kandi ko umwana mukuru arangije kwiga amashuri yisumbuye, yamwohereje kwiga muri Canada ariko akananiranwa na nyina hanyuma akamukodeshereza abandi bakagenda bamusangayo, akomeza avuga ko Mukamutara Benoite amaze kugenda, mu myaka 20 yagarutse mu Rwanda inshuro enye (4), ku nshuro ya mbere akaba yaracumbitse iwe afite n'uruhinja, ko ariko izindi nshuro yagarutse atigeze acumbika iwe kandi bataratandukana bikaba bigaragaza ko nta mubano w'umugabo n'umugore bari bagifitanye. Urukiko rwamubajije impamvu atigeze atanga ikirego gisaba ubutane niba yarabonaga umugore yarataye urugo kandi atacyubahiriza inshingano zose zikomoka ku masezerano y'ishyingiranwa kugira ngo nibura hafatwe ibyemezo by'agateganyo birengera urugo cyane cyane abana, asubiza ko icyatumye atinda gutanga ikirego cy'ubutane ari amahitamo yakoze kugira ngo arindire ko abana be bakura. Yongeye kubazwa uko yumva irangamimerere (état civil*)* ya Mukamutara Benoite yari iteyemuri icyo gihe cyose yibanaga muri Canada hashingiwe ku byo amategeko ateganya, avuga ko kugeza muri 2018, Mukamutara Benoite yari akiri umugore we wemewen'amategeko.

[9] Me Kayitare Serge umwunganira, avuga ko bitumvikana ukuntu Mukamutara Benoite yari kuba yarananiwe kubahiriza inshingano akomora ku ishyingirwa bagiranye agata urugo, yagaruka nyuma y'imyaka igera kuri makumyabiri (20ans) agasaba uruhareku mutungo yashatse wenyine muri icyo gihe yari yarataye urugo. Ko abashyingiranywemu buryo bw'ivangamutungo basangira umutungo bafatanije gushaka ari uko bari hamwekandi bunze ubumwe. Bityo ko Mukamutara Benoite atagakwiye gusaba ko hubahirizwa uburenganzira bukomoka ku masezerano y'ubushyingiranwe bari baragiranye, mu gihe atujuje inshingano zikomoka kuri ayo masezerano, bityo akaba atagira n'uruhare ku mutungo ufite UPI: 1/02/10/01/2172 kuko atafatanije n'uwari umugabo we kuwushaka bitewe nuko yari yarataye urugo.

[10] Akomeza avuga ko ari yo mpamvu anenga icyemezo cyafashwe n'Urukiko Rukuru mu rubanza RCA00442/2019/HC/KIG yajuririye, kubera ko muri urwo Rukiko habayeho kwitiranya ibivugwa mu rubanza RCAA0007/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 17/04/2014, aho Mukabarungi Julienne yaburanaga na Gatsinzi Marcel bari barashakanye mu buryo bwemewe n'amategeko n'uru rubanza rwe kandi ibibazo birimo atari bimwe, kuko mu manza z'umuryango buri rubanza rugira umwihariko warwo. Asobanura ko muri uru rubanza, Gatera Ntarindwa Georges yasigaye ahahira umuryango wenyine, nuko

nyuma y'imyaka 20, Mukamutara araza ngo bagabane, agasaba ko aha icyarebwa ari ukureba niba koko Mukamutara yaritwaraga nk'ukorera umuryango kuko bagaragaje ko yari afite umutungo w'inzu yaguze muri Canada akawugurisha kandi amafaranga yavuyemo arayagumana Gatera Ntarindwa Georges ntiyayagiraho uruhare, bigaragaza ko atari akitwara nk'usangiye umutungo na Gatera Ntarindwa Georges; bityo akaba asaba Urukiko rw'Ubujurire kuzabikosora rugatanga umurongo maze rukemeza ko umwe mu bashyingiranwe wataye urugo adakwiye kugira uruhare ku mutungo washatswe n'uwasigaye wenyine, ko asanga hari icyuho mu itegeko ry'umuryango rikoreshwa ubu ngubu kuko rivuga gusa ku kibazo kiri hagati y'abashyingiranywe babanaga bakananiranwa, nuko bagatana ariko ntirivuge k'uwataye urugo akagenda ntagire icyo amarira umuryango nyuma akagaruka asaba kugabana n'uwo yasize.

[11] Me Umulisa Paola, uhagarariye Mukamutara Benoite yiregura avuga ko umukiriya we atigeze ata urugo na rimwe, ko ahubwo yumvikanye n'umugabo we Gatera Ntarindwa Georges, bakiyemeza kujyana abana muri Canada kugira ngo bige mu mashuri meza ku buntu, aho ku wa 21/09/1998, yaherekeje umuryango we ku kibuga cy'indege, imfura yabo ikaba yari ifite imyaka 9, umwana wa 2 afite imyaka 8, uwa 3 afite imyaka 6, na bucura wari ufite imyaka 2. Ko rero kuba nta kirego cyo guta urugo Gatera Ntarindwa Georges yigeze atanga kuva icyo gihe kugeza ubu, nta mpamvu yakomeza kuvuga ko yataye urugo, ndetse ko no mu rubanza RC00404/2018/TB/GAS yanabivuze aho yaburanye wenyine ikirego cy'ubutane, hanyuma urukiko ku rupapuro rwa 3, igika cya 9, rukanzura ruvuga ko rusanga Gatera Ntarindwa Georges na Mukamutara Benoite batarigeze buzuza inshingano z'abashakanye, ngo kuko kuva mu mwaka wa 1998, buri wese yagiye kwibana kandi binyuranye n'ingingo ya 207 y'Itegeko rigenga abantu n'umuryango ryo ku wa 28/08/2016". Ko ari na yo mpamvu muri urwo rubanza rw'ubutane hatigeze hatangwa indishyi zari zasabwe kimwe n'igihembo cya Avoka.

[12] Ikindi avuga ni uko Mukamutara Benoite atataye urugo kuko yagiye abyumvikanyehon'umugabo akanajyana abana kugira ngo bige mu mashuri meza yagerayo akiyita impunzi (ibyo bita kwideclara), akavuga ko ari umubyeyi wibana (mère-célibataire)abyumvikanyeho n'umugabo we kugira ngo Leta ya Canada ibafashe kuko we atari yemerewe kujya ku kazi kandi afite abana batoya. Akomeza ashimangira ko atataye urugo kuko yagiye akavuga ko ari impunzi maze bagafashwa na immigration, abana bakaba barabanye na nyina imyaka itanu bakagaruka mu Rwanda bakabana na se indi myaka itanu, ko ibyo urega n'umwunganira bavuga ko Mukamutara Benoite yabyayeundi mwana ntabyo azi kuko nta na attestation de naissance bigeze bagaragaza. Akomeza avuga ko byumvikana rero ko Mukamutara atataye urugo nk'uko Gatera Ntarindwa Georges n'umwunganira babivuga. Naho ibyo bavuga ko nta ruhare akwiye kugira ku mutungo uri muri UPI :1/02/10/01/2172 kuko washatswe na Gatera Ntarindwa Georges wenyine, Mukamutara Benoite yarataye urugo bitahabwa agaciro kuko igihe Gatera Ntarindwa Georges yari yarasigaye mu Rwanda ashakauwo mutungo aregera, undi nawe yareraga abana wenyine muri Canada, bikaba bihuran'ibiteganywa na Protocole de Maputo cyane mu ngingo yayo ya 13(h)[1], bityo aka kazi Mukamutara Benoite yakoraga mu rugo kakaba kagomba guhabwa agaciro.

UKO URUKIKO RUBIBONA

[1] Protocole De Maputo
Article 2: Elimination de la discrimination a l'égard des femmes:
a)Les etats s'engagent a inscrire dans leur constitution et autres instruments législatifs, si cela n'est pas encore fait, le principe de l'égalite entre les hommes et les femmes, et a en assurer l'application effective
Article 7: Separation de corps, divorce et annulation de marriage
(d) en cas de séparation des corps, de divorce ou d'annulation de mariage, l'homme et la femme ont le droit au partage équitable des biens communs acquis durant le marriage.
Article 13: Droits economiques et protection sociale
Les Etats adoptent et mettent en oeuvres des mesures législatives, et autres mesures visant a garantir aux femmes l'égalité des chances en matière d'emploi, d'avancement dans la carriere et d'acces a d'autres activites economiques. A cet effet; ils s'engagent a:
(h) prendre des mesures appropriees pour valoriser le travail domestique des femmes;

[13] Ingingo ya 218, igika cya 1, agace ka 2, y'Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango iteganya ko "guta urugo nibura igihe cy'amezi cumi n'abiri (12) akurikirana " ari imwe mu mpamvu zo gutana burundu, naho ingingo ya 242 y'iryo tegeko yo igateganya ko Ubutane busesa ishyingirwa n'amasezerano agenga imicungire y'umutungo w'abashyingiranywe.

[14] Ingingo ya 7 (d) ya Protocole de Maputo iteganya ko: ''en cas de séparation de corps, de divorce ou d'annulation de mariage, l'homme et la femme ont le droit au partage é, quitable des biens communs acquis durant le marriage", naho iya 13 (h) yo igateganya ko: Les Etats adoptent et mettent en oeuvres des mesures législatives, et autres mesures visant à garantir aux femmes l'égalité des chances en matière d'emploi, d'avancement dans la carrière et d'accès à d'autres activités économiques. A cet effet; ils s'engagent à: (h) prendre des mesures appropriées pour valoriser le travail domestique des femmes;

[15] Urukiko rusanga igika cya 9, cy'urubanza RC00404/2018/TB/GAS, icyashingiweho mu kwemeza ko Gatera Ntarindwa Georges na Mukamutara Benoite batana burundu, ari ukuba: "batarigeze buzuza inshingano z'abashakanye, ngo kuko kuva mu mwaka wa 1998, buri wese yagiye kwibana kandi binyuranye n'ingingo ya 207 y'Itegeko rigenga abantu n'umuryango ryo ku wa 28/08/2016".

[16] Urukiko rurasanga ikibazo gikomeye kigomba gukemurwa muri uru rubanza ari icyo kumenya niba igihe umugore n'umugabo bashyingiwe mu buryo bukurikije amategekobatatabana ariko nta butane butegetswe n'Urukiko bwabaye, umwe muri bombi ashobora kuregera Urukiko asaba ko mugenzi we atagira uburenganzira ku mutungoyashatse undi adahari

[17] Ku birebana n'uru rubanza, imvugo za Gatera Ntarindwa Georges, zigaragaza ko n'ubwo anyuzamo akavuga ko Mukamutara Benoite yataye urugo, ariko na none avuga ko yagiye babyumvikanyeho, ko ari umugambi bagiye kuko umugabo yamwemereye kujyana n'abana mu gihugu cya Canada, ko icyo bari bagamije kwari ugushaka uburyo abana babo baziga muri icyo gihugu gifite system y'uburezi imezeneza bamaze kubona ubwenegihugu, ibyo bakabigeraho babanje kwiyita impunzi.

[18] Urukiko rusanga ibyo Gatera Ntarindwa Georges n'umwunganira bavuga ko Mukamutara Benoite yataye urugo nta gaciro byahabwa mu gihe bigaragara ko yagiye babiziranyeho, kuba yaranze gutanga ikirego cy'ubutane kandi avuga ko yari yarateshutse ku nshingano ze zikomoka ku masezerano y'abashyingiranywe bigaragaza ko yumvaga akiri umugore we, kandi koko niwe wakurikiraniraga hafi uburere bw'abana bane bose babyaranye, ko yabajyanjye bakiri bato kuko umukuru yari afite imyaka icyenda (9) umuto afite imyaka ibiri (2) gusa,

[19] Urukiko rurasanga kuba Urukiko Rukuru rwaranze gukura Mukamutara Benoite kucyangombwa cy'umutungo ufite UPI: 1/02/10/01/2172, nta kosa rwakoze kuko rwashingiye y'uko igihe Gatera Ntarindwa Georges yandikishaga icyangombwacy'uwo mutungo ku wa 27/11/2014, yabwiye abashinzwe urwego rw'ubutaka ko uwomutungo awufatanyije n'umugore we Mukamutara Benoite, dore ko nta kundi yarikubikora kuko nk'uko abyivugira mu miburanire ye, yumvaga akiri umugore we n'ubwoyabaga muri Canada, kuba rero nta butane bwatanzwe n'Urukiko bwari buhari, Urukiko rukaba rwari mu kuri rushingira ku ngingo ya 242 y'Itegeko Nº 32/2016 ryo kuwa 28/08/2016 rigenga abantu n'umuryango ryavuzwe haruguru kuko ubutane aribwo busesa ishyingirwa n'amasezerano agenga imicungire y'umutungo w'abashyingiranywe.

[20] Urukiko rurasanga imvugo za Gatera Ntarindwa Georges n'umwunganira y'uko Mukamutara Benoite nta ruhare yagira ku mutungo ufite UPI: 1/02/10/01/2172 kubera ko atigeze afasha umugabo we kuwushaka nta shingiro byahabwa, kuko nk'umugore wari wemewe n'amategeko, nta nshingano afite yo kwerekana ibimenyetso by'uruhare yashyizeho mu kuwushaka cyane ko byakomeje kuvugwa koicyo gihe umugabo yawushakaga nawe yari mu zindi nshingano zifitiye akamaro urugo rwabo harimo ikomeye yo kurera abana akanabakurikirana mu myigire yabo, bityo ako kazi ko mu rugo Mukamutara Benoite

yakoraga kakaba kagomba guhabwa agaciro nk'uko biteganywa mu ngingo ya 13(h) y'amasezerano ya Maputo u Rwanda rwashyizeho umukono yavuzwe haruguru.

[21] Urukiko rurasanga nk'uko rwabisobanuye haruguru, kuba nta rubanza rw'ubutane Gatera Ntarindwa Georges yerekana ko rwari ruhari mbere y'uko abona umutungo uburanwa, byumvikanisha ko ubushyingiranwe bwabo bwari bugifite agaciro, bityo n'amasezerano agenga imicungire y'umutungo wabo akaba yari agikomeje kuko aseswa ari uko habaye ubutane bwa burundu (reba ingingo ya 242 yavuzwe haruguru).

[22] Urukiko rusanga na none nta kosa Urukiko Rukuru rwakoze rwanga gushingira ku rubanza RCAA0007/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 17/04/2014, haburana Mukabarungi Julienne na Gatsinzi Marcel, kuko impamvu yatumyeMukabarungi Julienne atemererwa ko umutungo w'inzu iri mu kibanza Nº4423 wagarurwa mu mutungo yashakanye na Gatsinzi Marcel ari uko ku wa 28/06/2000, yaregeye Urukiko Rwisumbuye rwa Saint Brieue rwo mu Bufaransa asaba kutabana na Gatsinzi Marcel, ku wa 27/02/2001, urwo Rukiko rufata icyemezo cyangira Gatsinzi Marcel na Mukabarungi Julienne kwiyunga (ordonnance de non conciliation), rwanzura ko rubemereye kutabana by'agateganyo (séparation de corps). Mu gika cya 24 cy'urwo rubanza, itariki ya 28/06/2000, ikirego cyatangiweho ni nayo, yashingiweho bareba igihe kutabana by'agateganyo byatangiriye, kandi mu mategeko y'Ubufaransa, kutabana by'agateganyo ho bituma amasezerano y'ivangamutungo ahagarara, bivuga ko Mukabarungi Julienne atashoboraga kugira uburenganzira yasabaga bw'uko umutungo wabonetse nyuma y'itariki ya ya 28/06/2000, ujya m'uwo bagomba kugabana kuko Gatsinzi Marcel yerekanye ko yawubonye ku wa 07/03/2001[2], ni ukuvuga nyumay'uko Urukiko rwemeje ko buri wese yibana.

[23] Urukiko rw'Ubujurire rusanga ibivugwa mu rubanza RCAA0007/13/CS, bitandukanye cyane n'urubanza rwa Gatera Ntarindwa Georges na Mukamutara Benoite kuko bo ntabwo Urukiko rwigeze rwemeza ko batandukana y'agateganyo kandi n'umutungo ubaruwe kuri UPI 1/02/10/01/2172, wabonetse mu mwaka wa 2004, mu mwaka wa 2014, ubarurwa ku mazina ya Gatera Ntarindwa Georges n'umugore we Mukamutara Benoite kuko bari bagifitanye amasezerano y'ivangamutungo[3], bityo Urukiko Rukuru rukaba rwaragombaga gukosora ikosa ryari ryakozwe n'Urukiko Rwisumbuye rwa Gasabo ruhuza ibiri rubanza RCAA0007/13/CS, n'ibyabaye (les faits) muri uru rubanza kandi ntaho bihuriye bigatuma rwemeza ko Mukamutara Benoite yandukurwa ku cyangombwa cy'umutungo ubaruwe kuri UPI 1/02/10/01/2172 kandi atari byo.

[24] Uru rukiko rurasanga rero kuba Gatera Ntarindwa Georges yaraguze inzu mu mwaka wa 2004, mu mwaka wa 2014 akayiyandikisha we n'umugore we Mukamutara Benoite, bihura n'ibiteganwa n'ingingo ya 208 y'Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango iteganya ko "Uburenganzira ku mutungo w'abashyingiranywe butangira bakimara gushyingirwa imbere y'umwanditsi w'irangamimerere hakurikijwe uburyo bw'icungamutungo bahisemo", byumvikana ko Mukamutara Benoite na Gatera Ntarindwa Georges babanaga nk'umugabo n'umugore imbere y'amategeko igihe umutungo wabonekaga, bakaba bafite uburenganzira bungana ku mutungo ubaruye kuri Nº UPI 1/02/10/01/2172, uherereye mu Mudugudu wa Estate 2020, Akagari ka Gacuriro, Umurenge wa Kinyinya, Akarere ka Gasabo. Ibi kandi birahura n'ibiteganywa mu ngingo ya 7 (d) ya Protocole de Maputo yavuzwe haruguru, bityo iyi ngingo y'ubujurire ya Gatera Ntarindwa Georges ikaba nta shingiro ifite.

[25] Uru Rukiko rusanga umutungo w'inzu Gatera Ntarindwa Georges n'umwunganira bavuga ko Mukamutara Benoite yaguze muri Canada nyuma akawugurisha ariko Gatera ntawugireho uruhare, byo bitasuzumwa muri uru rubanza kuko ataribyo byaregewe guhera ku rwego rwa mbere.

[2]Reba igika cya 22 cy'urubanza Nº RCAA 0007/13/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 17/04/2014
[3]Reba urubanza Nº RC 00404/2018/TB/GAS rwaciwe n'Urukiko rw'Ibanze rwa Gasabo ku wa 27/09/2018.

Gusuzuma niba Urukiko Rukuru rutarakoze amakosa yo kwakira nogusuzuma ikirego gishya mu rwego rw'ubujurire

[26] Me Kayitare Serge wunganira Gatera Ntarindwa Georges avuga ko ashingiye ku ngingo ya 154 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 « Ku rwego rw'ubujurire ntihashobora gutangirwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu rukiko rw'Ubujurire ». Avuga ko ashingiye kubiteganywa n'ingingo imaze kuvugwa, ko Urukiko Rukuru rutubahirije ibiteganywa nayo, kuko nyuma yo gusuzuma niba Mukamutara Benoite yavanwa ku byangombwa by'umutungo ubaruye kuri UPI: 1/02/10/01/2172, kuko ari byo byari byararegewe, ntirwagombaga kurengera ngo rusuzume ikindi kirego gishya cyatanzwe na Mukamutara Benoite cyasabaga kugurisha uwo mutungo bakawugabana.

[27] Asobanura ko kuba icyo kirego cyari gishya kitarigeze gitangwa cyangwa ngo kiburanweho mu rwego rwa mbere, kitarashoboraga gusuzumwa bwa mbere ku rwego rw'ubujurire, kuko ubujurire buba bugamije gusuzuma niba hari amakosa yakozwe mu rwego rwa mbere kugira ngo akosorwe, Urukiko rujuririwe rukaba rutasuzuma ikindi kirego kitagiweho impaka mu rwego rwa mbere, akaba asanga ikirego gisaba kugabanaumutungo cyaragombaga kuburanishirizwa hamwe n'ikirego cy'ubutane kubera ko kimwe ari inkurikizi y'ikindi, kuko ubutane ari bwo busesa amasezerano y'imicungire y'umutungo w'abashyingiranwe nk'uko biteganywa n'ingingo ya 242 igika cya 2 y'Itegeko Nº 32/2016ryo ku wa 28/08/2016 rigenga abantu n'umuryango.

[28] Me Umulisa Paola uhagarariye Mukamutara Benoite avuga ko ari ubujurire yatanzeatari ikirego gishya, kuko yarezwe mu rubanza RC00203/2019/TGI/GSBO, agatumizwa mu buryo bukurikije amategeko nk'uko bigaragara ku rupapuro rwa mbere (1) igika cya kabiri (2) , aho mu miterere y'urubanza urukiko rwavuze ko kutitaba kwe bidakuraho *qualité* yo kuba umuburanyi mu rubanza, ko kandi Gatera Ntarindwa Georges ubwe ari we wamureze, agatanga n'umwirondoro we, ngo uretse ko Mukamutara Benoite yagendaga ahindura adresse, igihe abana babaga bahinduye ibigo by'amashuri. Akomeza avuga ko ingingo ya 142 n'iya 147 z'Itegeko Nº 22/2018 ryoku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi,iz'umurimo n'iz'ubutegetsi zimuha uburenganzira cyangwa amahitamo 2 yo kujurira cyangwa gusubirishamo kubera ko urwo rubanza rwari rwaraciwe adahari, ko rero nta bujurire bushya batanze ko gusaba ko umutungo wagurishwa bakagabana cyari icyifuzobatanze berekana ko bagabana aho kumukura ku byangombwa by'umutungo.

UKO URUKIKO RUBIBONA

[29] Ingingo ya 154 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 « Ku rwego rw'ubujurire ntihashobora gutangirwa ikirego gishya keretse kuregera guhwanya imyenda, cyangwa gutanga ikirego cyo kwiregura ku kirego cy'ibanze cyatanzwe mu rukiko rw'Ubujurire »

[30] Urukiko rusanga urubanza Nº RC 00203/2019/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 20/09/2019, rukajuririrwa mu Rukiko Rukuru rugahabwa No RCA 00442/2019/HC/KIG arinarwo rwajuririwe muri uru rukiko, icyari cyaregewe urukiko ari "Gutegeka ko Mukamutara Benoite avanwa ku byangombwa by'umutungo UPI: 1/02/10/01/2172 uherereye mu Mudugudu wa Estate 2020, Akagari ka Gacuriro, Umurenge wa Kinyinya, Akarere ka Gasabo, Umujyi wa Kigali"

[31] Urukiko rusanga, mu rubanza RCA00442/2019/HC/KIG mu gika cyarwo cya 5, Urukiko Rukuru rwaravuze ko mubyo Mukamutara Benoite yarusabye gusuzuma harimo no "Gusuzuma niba icyifuzo cya Mukamutara Benoite cyo kugurisha iyo nzu muri cyamunara kigomba kwemezwa n'Urukiko Rukuru", naho mu gika 20 cy'urwo rubanza rukaba rwaravuze ko: "rusanze Mukamutara Benoite na Gatera

Ntarindwa Georges bafite uburenganzira bungana ku mutungo UPI 1/02/10/01/2172, uri I Gacuriro, Kinyinya, Gasabo, Kigali. Rusanze rero Mukamutara Benoite atagomba kuvanwa ku cyangombwa cy'umutungo nkuko byasabwe na Gatera Ntarindwa Georges, ahubwo kuba barahawe ubutane bwa burundu, bagomba kugabana uwo mutungo, uwo mutungo ukagurishwa buri wese agahabwa 50% w'umutungo, usibye mu gihe umwe muri bo ashaka kugumana umutungo, agomba kubanza guha mugenzi we agaciro ka 50% k'umutungo"

[32] Urukiko rusanga kandi mu rubanza RC00203/2019/TGI/GSBO rwaciwe ku wa20/09/2019, Gatera Ntarindwa Georges yararegeye Urukiko asaba Urukiko gutegeka ko Mukamutara Benoite avanwa ku byangombwa by'umutungo, nta kirego kirebana n'igabana ry'umutungo ubanje kugurishwa kigeze gisuzumwa ndetse ko no mugika cya mbere cy'urubanza RCA00442/2019/HC/KIG, rwajuririwe muri uru rukiko, Urukiko Rukuru rwavuze ko ikirego kimaze kuvuga ari cyo cyashyikirijwe Urukiko rwa mbere.

[33] Ku kibazo cyo kumenya niba ikibazo cyo kugabana umutungo uburanwa cyari ikirego gishya gitanzwe ku rwego rw'ubujurire, Urukiko rurasanga icyaregewe guhera mu Rukiko Rwisumbuye rwa Gasabo ari "Gutegeka ko Mukamutara Benoite avanwa ku byangombwa by'umutungo UPI: 1/02/10/01/2172 uherereye mu Mudugudu wa Estate 2020, Akagari ka Gacuriro, Umurenge wa Kinyinya, Akarere ka Gasabo, Umujyi wa Kigali", ariko Urukiko Rukuru mu rubanza RCA00442/2019/HC/KIG rukaba rwaremeye kwakira rukanasuzuma ikirego cyatanzwe na Mukamutara Benoite aho yifuzaga ko inzu aburana n'umugabo we yagurishwa maze bakagabana amafaranga avuyemo.

[34] Urukiko rurasanga Urukiko Rukuru rwarakiriye kandi rusuzuma ikirego gishya aho rwemeje mu gika cya 20 cy'imikirize y'urubanza ko kuba Mukamutara Benoite na Gatera Ntarindwa Georges na Mukamutara Benoite barahawe ubutane bwa burundu bagomba kugurisha uwo mutungo bakawugabana umwe agahabwa 50% kandimu rwego rwa mbere bitarigeze biregerwa ngo binagirweho impaka, ibi byakozwen'Urukiko Rukuru bikaba binyuranye n'ibiteganywa n'ingingo ya 154 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryasobanuwe haruguru, bityo bikaba nta gaciro byahabwa.

UBUJURIRE BWURIRIYE KU BUNDI

Gusuzuma niba Mukamutara Benoite akwiye kugenerwa indishyiz'akababaro n'igihembo cya Avoka

[35] Me Umulisa Paola, uhagarariye Mukamutara Benoite avuga ko Mukamutara Benoite na Gatera Ntarindwa George bari barashakanye mu buryo bwemewe n'amategeko, aho bari barahisemo ivangamutungo risesuye, gusaba ubutane akaba yari abifitiye uburenganzira, ariko ko atari kubeshya Urukiko ko batashakanye umutungo, ngo narangiza ajye gusaba Urukiko Rwisumbuye gutegeka ko amazina ye akurwa ku cyangombwa cy'uwo mutungo. Avuga ko ubutane ari bwo bujyana n'isesa ry'amasezerano y'ivangamutungo ku bashakanye nk'uko biteganywa n' ingingo ya 08 y'Itegeko Nº 31 ryo ku wa 01/08/2016 n'ingingo ya 208 n'iya 242 ku byerekeye inkurikizi z'ubutane ku ishyingirwa. Kubera izo mpamvu asaba Urukiko rw'Ubujurire gutegeka Gatera Ntarindwa George guha Mukamutara Benoite indishyi z'akababaron'igihembo cya Avoka bingana na miliyoni enye (4.000.000Frw), akubiyemo indishyi z'akababaro zingana na miliyoni eshatu (3.000.000Frw), na miliyoni imwe (1.000.000Frw) y'igihembo cya Avoka

[36] Me Kayitare Serge, uhagarariye Gatera Ntarindwa Georges yiregura ku ndishyi Mukamutara Benoite asaba avuga ko nta shingiro zifite, kubera ko Gatera Ntarindwa Georges afite uburenganzira bwo kujurira, akaba atasabwa indishyi zishingiye ku gushyira mubikorwa uburenganzira ahabwa n'amategeko, cyane ko kujurirantawe byatera akababaro. Avuga kandi ko niba mu rubanza rw'ubutane hari ibyabayemo byababaje Mukamutara Benoite yari kubisabira indishyi muri urwo rubanza rw'ubutane, aho kuzisaba muri uru rubanza kuko ari imanza ebyiri zitandukanye, ko ahubwo Ntarindwa Georges nawe asaba

Urukiko rw'Ubujurire gutegeka Mukamutara Benoite kumusubiza amafaranga yatakaje akurikirana urubanzan'ay'igihembo cya Avoka angana na miliyoni imwe n'ibihumbi magana atanu (1.500.000Frw).

[37] Me Umulisa Paola Uhagarariye Mukamutara Benoite yiregura ku mafaranga Gatera Ntarindwa Georges asaba avuga ko ibyo asaba nta gaciro byahabwa, kubera ko ari we ukurura Mukamutara Benoite muri uru rubanza. Ko kandi kuba asabaayo mafaranga avuga Mukamutara Benoite yataye urugo nta shingiro byahabwa kubera ko Mukamutara Benoite atataye urugo, kuko nk'uko yakomeje kubisobanura, yagiye muri Canada babyumvikanyeho, ko iyo aza kuruta yari kuba yarabitangiye ikiregocyihariye.

UKO URUKIKO RUBIBONA

[38] 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'ikurikirana rubanza ni ikirego gishamikiye ku kirego cy'iremezokigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo, gishobora kandi kwakirwa kikaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe.

[39] Urukiko rurasanga amafaranga y'indishyi Me Umulisa Paola uhagarariye Mukamutara Benoite asaba atagaragaza aho azishingira mu gihe imanza avuga ko yashowemo yaba urw'ubutane cyangwa se urwasabaga ko Mukamutara Benoite akurwa ku byangombwa by'umutungo, zose ku rwego rwa mbere Mukamutara Benoite atigeze yitaba urukiko kandi yahamagawe mu buryo bukurikije amategeko; bityo akaba ari ntaho urukiko rwashingira ruzimugenera, mu bushishozi bwarwo rukaba rumugeneye amafaranga yasabye kuri uru rwego angana na 700.000Frw akubiyemo igihembo cya Avoka n'ikurikiranarubanza.

[40] Urukiko rugasanga ku bijyanye n'amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Gatera Ntarindwa Georges asabirwa n'umwunganira atayahabwa kuko hari ingingo z'ubujurire ze zitahawe ishingiro.

III. ICYEMEZO CY'URUKIKO

[41] Rwemeje ko ubujurire bwatanzwe na Gatera Ntarindwa Georges bwaje mu buryono mu nzira bikurikije amategeko;

[42] Rwemeje ko bufite ishingiro kuri bimwe ;

[43] Rwemeje ko urubanza RCA00442/2019/HC/Kig rwaciwe n'Urukiko Rukuru ku wa18/03/2021 ruhindutse kuri bimwe ;

[44] Rutegetse ko nta gurishwa ry'umutungo ubaruwe kuri UPI 1/02/10/01/2172, uri Gacuriro,Kinyinya, Gasabo, Kigali rigomba kubaho nk'uko byasobanuwe ;

[45] Rutegetse Gatera Ntarindwa Georges guha Mukamutara Benoite amafarangaibihumbi magana arindwi (700.000Frw), akubiyemo ay'ikurikiranarubanza n'igihembo cya Avoka.

[46] Ruvuze ko ingwate y'amagarama yatanzwe ahwanye n'ibyakozwe kuri uru rubanza.