NDAYISHIMIYE N'UNDI v GAHUTU N'ABANDI.

[Rwanda URUKIKO RW'UBUJURIRE – RCAA 00021/2020/CA - CMB RCAA 00022/2020/CA (Rugabirwa, P.J.) 30 Ukuboza 2021]

Amategeko agenga imiburanishirize y'imanza mbonezamubano – ububasha bw'urukiko – Iyo urukiko rwemeje ko rufite ububasha, umuburanyi utishimiye icyo cyemezo akijuririra hamwe n'urubanza rw'iremezo – 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 94,

Umuryango – Izungura – Inama y'umuryango – Ibibazo byo kubarura no gukusanya umutungo uzungurwa bibanza gukemurirwa mu nama y'umuryango mbere yo gushyikirizwa Urukiko rubifitiye ububasha. – Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, ingingo ya 163.

Incamake y'ikibazo: Uru rubanza rwatangiye Ndayishimiye arega Gahutu mu Rukiko Rwisumbuye rwa Nyarugenge, asaba gutesha agaciro ibyakozwe n'inama ishinzwe iby'izungura, no kugaruza muri Succession Sekidagari imitungo yose yasize yikubiwe n'umwe mu bazungura be ariwe Gahutu. Mukamuyenzi n'abandi bagobotse ku bushake. Gahutu yatanze inzitizi y'iburabubasha bw'Urukiko Rwisumbuye rwa Nyarugenge avuga ko ahubwo Urukiko rw'Ibanze arirwo rufite ububasha, avuga kandi ko icyo kirego kidakwiye kwakirwa kuko Ndayishimiye atabanje kugishyikiriza inama y'umuryango wabo mbere yo kukiregera Urukiko. Urukiko rwemeje ko izo nzitizi nta shingiro zifite. Mu Rubanza mu mizi Urukiko rwemeje ko inama y'umuryango wa Sekidagari iteshejwe agaciro, rutegeka ko imitungo ye igarurwa mu mitungo y'umuryango wa Sekidagari kuko yavanwe muri iyo mitungo ku buryo bunyuranije n'amategeko. Rwanemeje ko ibyangombwa by'ubutaka n'amasezerano y'ubugure bw'imitungo itandukanye ateshejwe agaciro.

Gahutu na bagenzi be bajuririye urwo rubanza mu Rukiko Rukuru, Gahutu yatanze inzitizi yo kuba Urukiko rwabanje rutaragombaga kwakira ikirego cya Ndayishimiye kubera ko atabanje kugishyikiriza inama y'umuryango kugira ngo igisuzume mbere yo kukiregera Urukiko Rwisumbuye, no kuba Mukanoheri umwe mu bagobotse ku bushake, adafite ububasha bwo kurega Kuko atari umwana wa Sekidagari.URukiko rwemeje ko ikirego cya Ndayishimiye kitagombaga kwakirwa ku rwego rwa mbere, rutegeka ko ikibazo kiri mu kirego cyatanzwe na Ndayishimiye kigomba kubanza gusuzumwa n'inama y'umuryango wasizwe na Sekidagari , rutegeka kandi ko ikibazo cya Mukanoheri kigomba gushyikirizwa inama y'umuryango we, batamwemera kigakemurwa n'inkiko.

Ndayishimiye na Mukanoheri Ange bajuririye urwo rubanza mu Rukiko rw'Ubujurire bavuga ko Urukiko Rukuru rutagombaga kwemeza ko ikirego cya Ndayishimiye gisubira mu nama y'umuryango kubera ko idashobora guterana kuko abenshi mu bari bawugize bishwe muri jenoside yakorewe Abatutsi, bavuga ko ahubwo Urukiko Rukuru rwagombaga kuburanisha urubanza mu mizi kugira ngo imitungo iburanwa isubire mu mutungo w'umuryango. Mukanoheri yongeyeho ko Gahutu adafite ububasha bwo kumwihakana avuga ko atari atari umwana wa Sekidagari. Urukiko rw'Ubujurire rwabanje gusuzuma inzitizi zitandukanye; ku bijyanye Kumenya niba impamvu z'ubujurire za Ndayishimiye na Mukanoheri zitagomba kwakirwa kubera ko zatanzwe nyuma y'ibihe by'ubujurire, Urukiko rwemeje ko iyo nzitizi nta shingiro ifite kuko ubujurire bwatanzwe ku gihe usibye impamvu y'ubujurire ivuga ko Gahutu adafite ububasha bwo kwihakana Mukanoheri ko atari mwene Sekidagari kuko yatanzwe nyuma y'ibihe by'ubujurire; ku bijyanye no kumenya niba Urukiko Rukuru rutaragombaga kwakira inzitizi zatanzwe na Gahutu kubera ko atahise ajuririra icyemezo cyafashwe n'Urukiko Rwisumbuye, cyemeje ko inzitizi yatanze ku rwego rwa mbere nta shingiro zifite, Urukiko rwemeje ko Gahutu atashoboraga guhita ajuririra icyemezo cyemeje ko ikirego cya Ndayishimiye kitagombaga gusubira mu nama y'umuryango, ko ahubwo yagombaga kukijuririra hamwe n'urubanza rw'iremezo nk'uko biteganywa n'amategeko; ku bijyanye no

Kumenya niba Urukiko Rukuru rwarakoze ikosa mu kwemeza ko Urukiko Rwisumbuye rutagombaga kwakira no kuburanisha mu mizi ikirego cyatanzwe na Ndayishimiye, Urukiko rw'ubujurire rwemeje ko nta kosa Urukiko Rukuru rwakoze mu kwemeza ko Urukiko Rwisumbuye rutari rufite ububasha bwo kwakira no gusuzuma ikirego cya Ndayishimiye kuko yagitanze atabanje kukigeza mu nama y'umuryango. Urukiko rwemeje kandi ko inama y'umuryango ishobora guterana kuko bigaragara ko hari iyateranye nyuma ya 1994.

Incamake y'icyemezo: 1. Ibisobanuro ku mpamvu z'Ubujurire bishobora gutangwa nyuma y'igihe cy'ubujurire giteganyijwe n'amategeko. Kuba ibisobanuro ku mpamvu z'ubujurire bitanzwe nyuma y'igihe cy'ubujurire giteganyijwe n'Amategeko ntibyafatwa nkaho impamvu z'ubujurire zitanzwe nyuma, bityo birakirwa bigasuzumwa.

2.Impamvu y'ubujurire itanzwe nyuma y'igihe cy'ubujurire giteganyijwe n'Amategeko ntabwo yakirwa ngo isuzumwe n'Urukiko.

3. Iyo urukiko rwemeje ko rufite ububasha, umuburanyi utishimiye icyo cyemezo akijuririra hamwe n'urubanza rw'iremezo. Bityo ntabwo umuburanyi ategetswe guhita ajuririra icyo cyemezo.

4. Ibibazo byo kubarura no gukusanya umutungo uzungurwa bibanza gukemurirwa mu nama y'umuryango mbere yo gushyikirizwa Urukiko rubifitiye ububasha. Bityo Urukiko ruregewe bene ibyo bibazo bitarabanje gukemurirwa mu muryango rwemeza ko nta bubasha rufite.

Amategeko yashingiweho:

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 83,94,111,148, 150

Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, ingingo ya 163, 165

Itegeko Nº 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura ingingo ya 83

Imanza zifashishijwe:

Urubanza RCOMAA00022/2020/CA rwa MIG Ltd v Barco Trading Ltd n'undi rwaciwe n'Urukiko rw'Ubujurire ku wa 12/02/2021

RCOMAA00071/2017/CS rwa BRD v Mbuto n'undi rwaciwe n'Urukiko rw'Ikirenga ku wa 26/10/2018

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, NdayishimiyeAlbert arega Gahutu Gaspard, asaba gutesha agaciro ibyakozwe n'inama ishinzwe iby'izungura yateranye ku wa 01/09/2017, no kugaruza muri *Succession* Sekidagari Barthazar imitungo yose yasize yikubiwe n'umwe mu bazungura be ariwe Gahutu Gaspard. Mukamuyenzi Liliane, Mukanoheri Ange, Ndayisabye Heredion, Yankurije Josiane, Kayumba Léonard, Kwibuka Jesca, Twagira Robert, Murebwayire Grâce, Mukanyandwi Aline na Nyirahabimana Marie bagobotse ku bushake muri urwo rubanza.

[2] Iburanisha ry'urubanza ritangiye, Gahutu Gaspard yatanze inzitizi y'iburabubasha bw'Urukiko Rwisumbuye rwa Nyarugenge bwo kuburanisha urwo rubanza, ko ahubwo ubwo bubasha bufitwe n'Urukiko rw'Ibanze. Yanatanze inzitizi yo kutakira ikirego cya Ndayishimiye Albert kubera ko atabanje kugishyikiriza inama y'umuryango wabo mbere yo kukiregera urwo

Rukiko. Urukiko rwafashe icyemezo ku wa 23/05/2018, rwemeza ko izo nzitizi nta shingiro zifite, rwemeza ko ikirego cyatanzwe na Ndayishimiye Albert cyakiriwe, rutegeka ko kizaburanishwa mu mizi ku wa 19/06/2018.

[3] Uwo munsi ugeze, urubanza rwaburanishijwe mu mizi, nyuma y'aho, urwo Rukiko rwaciye urubanza RC00857/2017/TGI/NYGE ku wa 18/04/2019, rwemeza ko inama y'umuryango wa Sekidagari Balthazar yabaye ku wa 01/09/2017 iteshejwe agaciro, rutegeka ko imitungo igizwe n'ibibanza birimo amazu, isambu irimo inzu n'ikibanza biri ahantu hatandukanye nk'uko bivugwa mu gika cya 76 cy'urwo rubanza, igarurwa mu mitungo y'umuryango wa Sekidagari Balthazar kuko yavanwe muri iyo mitungo ku buryo bunyuranije n'amategeko.

[4] Urwo Rukiko rwategetse ko ibyangombwa by'ubutaka n'amasezerano y'ubugure bw'imitungo yavuzwe haruguru biteshejwe agaciro, rutegeka Gahutu Gaspard gusubiza mu muryango wa Sekidagari Balthazar 200.000Frw y'ikiguzi cy'ikibanza yagurishije, rutegeka Ndayishimiye Albert guha Mukamuyenzi Liliane ikiguzi cy'ikibanza baguze, akanamuha 1.000.000Frw y'indishyi z'akababaro na 50.000Frw y'ingwate y'igarama, rutegeka Mukanyandwi Aline gusubiza Ndayisabye Heredion amafaranga y'ikiguzicy'ikibanza yamugurishije, akanamuha 1.000.000Frw y'indishyi z'akababaro, 500.000 Frw y'igihembo cy'avoka na 50.000Frw y'ingwate y'igarama, rutegeka Gahutu Gaspard guhaNdayishimiye Albert 500.000Frw y'igihembo cy'avoka na 50.000Frw y'ingwate y'igarama, akanaha Mukanoheri Ange 500.000Frw y'igihembo cy'Avoka na 50.000Frwy'ingwate y'igarama.

[5] Gahutu Gaspard na bagenzi be bajuririye urwo rubanza mu Rukiko Rukuru, barega Ndayishimiye Albert, ubujurire bwabo bwandikwa kuri RCA00213/2019/HC/KIG.

[6] Iburanisha ry'urubanza ritangiye, Gahutu Gaspard yatanze inzitizi yo kutakira ikirego cya Ndayishimiye Albert kubera ko atabanje kugishyikiriza inama y'umuryango kugira ngo igisuzume mbere yo kukiregera Urukiko Rwisumbuye rwa Nyarugenge, no kuba Mukanoheri Ange adafite ububasha bwo kurega asaba kuzungura umutungo wasizwe na Sekidagari Balthazar kandi atari umwana we.

[7] Urwo Rukiko rwaciye urubanza RCA00213/2019/HC/KIG ku wa 29/10/2020, rwemeza ko ikirego cya Ndayishimiye Albert kitagombaga kwakirwa ku rwego rwa mbere, rutegeka ko ikibazo kiri mu kirego cyatanzwe na Ndayishimiye Albert mu rubanza rwajuririwe kigomba kubanza gusuzumwa n'inama y'umuryango wasizwe na Sekidagari Balthazar, rutegeka kandi ko ikibazo cy'uko Mukanoheri Ange ari mwene Sekidagari Balthazar, nacyo kigomba gushyikirizwa inama y'umuryango we, batamwemera kigakemurwa n'inkiko zibifitiye ububasha, rutegeka ko RC00857/2017/TGI/NYGE rwajuririwe ruhindutse mu ngingo zarwo zose, rutegeka Ndayishimiye Albert guha Gahutu Gaspard 600.000Frw y'indishyi z'ibyo yatakaje ku rubanza n'amagarama yishyuye atanga ikirego.

[8] Ndayishimiye Albert na Mukanoheri Ange bajuririye urwo rubanza muri uru Rukikobavuga ko Urukiko Rukuru rutagombaga kwemeza ko ikirego cya Ndayishimiye Albert gisubira mu nama y'umuryango wa Sekidagari Balthazar kubera ko udashobora guterana kuko abenshi mu bari bawugize bishwe muri jenoside yakorewe Abatutsi mu mwaka wa 1994,kandi ko abafite imitungo yasizwe na Sekidagari Balthazar barimo Gahutu Gaspard wanayigurishije batavuguruza ibyemezo bafashe, ko ahubwo Urukiko Rukuru rwagombaga kuburanisha urubanza mu mizi kugira ngo iyo mitungo isubire mu mutungo w'uwo muryango. Mukanoheri Ange yongeyeho ko Gahutu Gaspard adafite ububasha bwo kumwihakanaavuga ko atari umuburanyi muri uru rubanza kubera ko atari umwana wa Sekidagari Balthazar, kandi ari umwana we.

[9] Urubanza rwaburanishijwe mu ruhame ku wa 29/11/2021, Ndayishimiye Albert yunganiwe na Me Twagirumugabe Alexis, Mukanoheri Ange yunganiwe na Me Bayingana Janvier, Gahutu Gaspard yunganiwe na Me Munyaneza Remy, Murebwayire Grâce, Kayumba Léonard, Kwibuka Jesca, na Twagira Robert bahagarariwe na Me Munyandamutsa Jean Pierre, Nyirahabimana Marie ahagarariwe n'umuhungu we Uwiragiye Jean Damascène wunganiwe na Me Kagabo Théoneste, Mukanyandwi Aline na Yankurije Josianne bunganiwe na Me Kamali N. Valens, Ndayisabye Heredion, ahagarariwe na Me Owerisima Mungwe Honorinewanamuburaniye hifashishijwe uburyo bw'ikoranabuhanga bwa *Skype*, naho Mukamuyenzi Liliane ahagarariwe Me Twayigize Jean Claude.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO:

Kumenya niba hari impamvu z'ubujurire za Ndayishimiye Albert na Mukanoheri Ange zitagomba kwakirwa kubera ko zatanzwe nyuma y'ibihe by'ubujurire

[10] Me Munyaneza Remy, wunganira Gahutu Gaspard, avuga ko hari impamvu z'ubujurire za Ndayishimiye Albert zatazwe mu gihe cy'ubujurire zigomba kwakirwa zigasuzumwa mu mizi, ariko ko impamvu z'ubujurire yatanze nyuma y'ibihe by'ubujurire zitagomba kwakirwa ngo zisuzumwe mu mizi.

[11] Avuga ko uru Rukiko rutagomba kwakira impamvu y'ubujurire ya Ndayishimiye Albert yerekeranye n'uko Urukiko Rwisumbuye rwa Nyarugenge rwari rufite ububasha bwo kuburanisha uru rubanza kubera ko yatanzwe nyuma y'igihe by'ubujurire, kandi ko ibyo bihujen'ibyemejwe mu rubanza rw'icyitegererezo RCAA00071/20017/CS rwaciwe n'Urukiko rw'Ikirenga, BRD Ltd yaburanye na Mbuto Aimable na Mukangabire Pacifique, aho rwemeje ko ingingo z'ubujurire BRD Ltd yongeyemo nyuma y'igihe by'ubujurire biteganywa n'amategeko itakwakirwa nk'uko byanemejwe mu rubanza RCOMAA00022/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 12/02/2021, Soyete yitwa MIG Ltd yaburanye na Barco Trading Ltd na Rujugiro.

[12] Ku birebana n'ubujurire bwa Mukanoheri Ange, Me Munyaneza Remy, wunganiraGahutu Gaspard, avuga ko mu iburanisha, Mukanoheri Ange yarondoye impamvu z'ubujurire za Ndayishimiye Albert, ariko ko uru Rukiko rutakwakira impamvu ebyiri z'ubujurire yatanze zigaragarira muri *système* ya *IECMS* zijyanye n'uko Urukiko Rukuru rutagombaga kwemeza ko ikibazo cya Ndayishimiye Albert cyerekeranye no gutesha agaciro ibyemejwe n'inama ishinzwe iby'izungura yo ku wa 01/09/2017 n'icyo kumenya nibaGahutu Gaspard yari afite ububasha bwo kwihakana Mukanoheri Ange kubera ko atariumwana wa Sekidagari Balthazar, bisubira mu nama y'umuryango, kubera ko izo mpamvu ze z'ubujurire zatanzwe nyuma y'igihe cy'ubujurire, kandi ko ibyo bihuje n'ibyemejwe mu rubanza RCAA00071/20017/CS, no mu rubanza RCOMAA00022/2020/CA zavuzwe haruguru.

[13] Me Twagirumugabe Alexis, wunganira Ndayishimiye Albert, avuga ko Urukiko rw'Ubujurire rukwiye kwakira impamvu z'ubujurire za Ndayishimiye Albert kubera ko zatanzwe mu bihe by'ubujurire, kuko umwanzuro we w'ubujurire watanzwe mu gihe cy'iminsi5, ndetse ko yatanze n'umwanzuro w'inyongera amaze kubona kopi y'urubanza kuko yabonetse itinze.

UKO URUKIKO RUBIBONA

[14] Ingingo ya 148, igika cya mbere, 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 "*Igihe ntarengwa cyo kujurira ni ukwezi kumwe (1) gitangira kubarwa kuva ku munsiumuburanyi yamenyeyeho ko urubanza rwasomwe"*. Na none ingingo ya 277 y'iryo Tegeko, iteganya ko "*Ku*

bihe byagenwe mu mezi no mu mwaka, bibarwa kuva ku itariki ibanza kugezaku munsi ubanziriza itariki ya nyuma igikorwa kigomba kurangiriraho".

[15] Naho ingingo ya 150, agace ka 6°, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 rimaze kuvugwa haruguru, igateganya ibigomba kuba bikubiye mu mwanzuro w'ubujurire, birimo "*ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba gukosorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa urukiko*".

[16] Ku birebana n'ubujurire bwa Ndayishimiye Albert, inyandiko ziri muri dosiye zigaragazako urubanza RCA00213/2019/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 29/10/2020, bivuze ko igihe ntarengwa cyo kujurira cyagombaga kuba ku wa 28/11/2020, ariko kubera kohari ku cyumweru, icyo gihe cyabaye ku wa 29/11/2020, ko Ndayishimiye Albert wari wunganiwe na Me Twagirumugabe Alexis, yajuririye urwo rubanza muri uru Rukiko kuwa 02/11/2020. Mu mwanzuro we w'ubujurire, Ndayishimiye Albert avuga ko yajurijwe n'uko Urukiko Rukuru rwemeje ko ikibazo gikubiye mu kirego yatanze ku rwego rwa mbere n'icy'uko Mukanoheri Ange ari mwene Sekidagari Balthazar bisubira mu nama y'umuryango wa Sekidagari Balthazar, yirengagije ko iyo nama itashoboraga guterana kubera ko Gahutu Gaspard wiyise umukuru w'umuryango anikubira imitungo iregerwa, atatumiza inama yo kuyigabana n'abandi bana ba Sekidagari Balthazar, ko ahubwo yiyandikishijeho umugore w'isezerano wa Sekidagari Balthazar kugira ngo bimuheshe uburenganzira bwo kwigira umukuru w'uwo muryango no kwikubira imitungo yasizwe na Sekidagari Balthazar. Muri uwo mwanzuro, Ndayishimiye Albert yibukije na none ko azatanga ibisobanuro birambuye kuri ibyo bibazo amaze kubona kopi y'urwo rubanza, ni ukuvuga ubwo izaba imaze gushyirwa muri *système* ya *IECMS*.

[17] Ndayishimiye Albert wari wunganiwe na Me Twagirumugabe Alexis yatanze na none umwanzuro w'inyongera ku wa 27/11/2020, ni ukuvuga mu bihe by'ubujurire, aho yatanze ibisobanuro birambuye ku birebana n'impamvu ze z'ubujurire zikubiye mu mwanzuroyatanze ku wa 02/11/2020 wavuzwe haruguru, aho yasobanuye ko Urukiko Rukuru rutagombaga kwakira inzitizi yatanzwe na Gahutu Gaspard y'uko Ndayishimiye Albert yagombaga kubanza gushyikiriza inama y'umuryango ikibazo cye, mbere yo kukiregera Urukiko Rwisumbuye rwa Nyarugenge, rwirengagije ko urwo Rukiko rwayisuzumye rusanganta shingiro ifite, kandi ko Gahutu Gaspard atahise ajuririra icyo cyemezo.

[18] Mu mwanzuro we w'inyongera, Ndayishimiye Albert asobanura kandi ko Urukiko Rukuru rutagombaga kwemeza ko ikibazo gikubiye mu kirego cye gisubira mu namay'umuryango kandi atararegeye izungura, ko ahubwo kigamije kugaruza muri *succession* Sekidagari Balthazar imitungo yose yasizwe na Se Sekidagari Balthazar, Gahutu Gaspard, umwe mu bazungura be, wiyise umukuru w'umuryango, anikubira iyo mitungo yoseayita iye kuko yayibarujeho, anayituzamo nyina amaze kuyirukanamo abana ba Sekidagari Balthazar barimo Ndayishimiye Albert kuva jenoside yakorewe Abatutsi mu mwaka wa 1994 irangiye kugeza ubu.

[19] Hashingiwe ku bisobanuro bimaze gutangwa haruguru n'ingingo z'amategeko zavuzwe haruguru, Urukiko rusanga impamvu zose z'ubujurire za Ndayishimiye Albert zikubiye mu mwanzuro we wo ku wa 02/11/2020 n'uwo ku wa 27/11/2020, zikwiye kwakirwa zigasuzumwa mu mizi kuko zatanzwe mu bihe by'ubujurire biteganywa n'ingingo ya 148, igika cya mbere, y'Itegeko ryavuzwe haruguru. Byongeye kandi, Urukiko rusanga ibisobanuro bikubiye mu mwanzuro w'inyongera wa Ndayishimiye Albert wo ku wa 27/11/2020, atariimpamvu z'ubujurire zihariye, ko ahubwo ari ibisobanuro birambuye ku mpamvu ze z'ubujurire zikubiye mu mwanzuro we wo ku wa 02/11/2020 nk'uko abyivugira mu mwanzurow'inyongera**.**

[20] Ku birebana n'ubujurire bwa Mukanoheri Ange, imikiririze y'urubanza RCA00213/2019/HC/KIG, igaragaza ko rwaciwe ku wa 29/10/2020, Mukanoheri Ange

akarujuririra ku wa 04/11/2020, ni ukuvuga mu bihe by'ubujurire, atanga umwanzuro w'ubujurire ukubiyemo impamvu imwe y'ubujurire ijyanye n'uko yasabye Urukiko rw'Ubujurire gusuzuma niba ikirego kigamije gutesha agaciro icyemezo cy'umuryango,cyaragombaga kongera kuregerwa inama y'umuryango.

[21] Inyandiko ziri muri *système* ya *IECMS* zigaragaza kandi ko ku wa 24/02/2021, ni ukuvuga hafi amezi atatu (3), ibihe by'ubujurire birangiye, kuko byarangiye ku wa 29/11/2020, Mukanoheri Ange yongeye gutanga ibisobanuro bishimangira impamvu ye y'ubujurire yatanze mu mwanzuro wo ku wa 04/11/2020 wavuzwe haruguru, ijyanye n'uko Urukiko Rukuru rutagombaga kwemeza ko ikibazo gikubiye mu kirego Ndayishimiye Albert yatanze ku rwego rwa mbere gisubira mu nama y'umuryango kandi itakwikemurira ikibazo yateje, anongeraho ko indi mpamvu y'ubujurire ijyanye n'uko Gahutu Gaspard adafite ububasha bwo kumwihakana avuga ko atari mwene Sekidagari Balthazar, kandi nawe ataratanze *acte de reconnaissance* igaragaza ko ari mwene Sekidagari Balthazar kuko nyina atigeze abana na Sekidagari Balthazar, ko ahubwo uyu yari yarandikishije abana bebose mu ndangamuntu ye.

[22] Hashingiwe ku bisobanuro bimaze gutangwa haruguru n'ingingo z'amategeko zavuzwe haruguru, Urukiko rusanga rukwiye kwakira no gusuzumwa mu mizi, impamvu y'ubujurire ya Mukanoheri Ange ijyanye no kumenya niba ikirego kigamije gutesha agaciro icyemezo cy'umuryango, cyaragombaga kongera gusubira mu nama y'umuryango kubera ko cyatanzwemu bihe by'ubujurire nk'uko byasobanuwe haruguru. Iyi mpamvu y'ubujurire ya Mukanoheri Ange igomba gusuzumirwa hamwe n'impamvu y'ubujurire yaNdayishimiye Albert kuko bayihuje.

[23] Urukiko rusanga ariko rutagomba kwakira no gusuzuma mu mizi impamvu y'ubujurire ya Mukanoheri Ange y'uko Gahutu Gaspard adafite ububasha bwo kumwihakana kuberako atari mwene Sekidagari Balthazar kuko yatanzwe nyuma y'ibihe by'ubujurire nk'uko byasobanuwe haruguru. Ibi bihuje kandi n'ibyemejwe mu rubanza rw'icyitegererezo RCOMAA 00022/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 12/02/2021, Sosiyete yitwaMIG Ltd yaburanye na BARCO Trading Ltd na Rujugiro, aho rwemeje ko rutakwakira ingingo z'ubujurire zatanzwe na BARCO TRADING Ltd nyuma yo ku wa 20/03/2020zavuzwe haruguru, kuko zatanzwe nyuma y'ibihe by'ubujurire biteganywa n'amategeko, runasobanura ko ari nawo murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza RCOMAA00071/2017/CS rwaciwe ku wa 26/10/2018, aho rwemeje ko ingingo zongerewe mu kirego cy'ubujurire nyuma y'ibihe byo kujurira biteganywa n'amategeko zitagomba kwakirwa.

Kumenya niba Urukiko Rukuru rutaragombaga kwakira inzitizi zatanzwe na Gahutu Gaspard kubera ko atahise ajuririra icyemezo cyafashwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 23/05/2018, cyemeje ko inzitizi yatanze ku rwego rwa mbere nta shingiro zifite

[24] Ndayishimiye Albert n'umwunganira bavuga ko Urukiko Rukuru rutagombagakwakirwa inzitizi zatanzwe na Gahutu Gaspard kubera ko Urukiko Rwisumbuye rwa Nyarugenge rwazifasheho icyemezo kizitesha agaciro, ariko Gahutu Gaspard n'abandi bavandimwe ntibahita bakijuririra, bivuze ko bemeraga icyo cyemezo.

[25] Ndayishimiye Albert avuga kandi ko yajurijwe n'uko Gahutu Gaspard yatanze inzitizimu Rukiko Rukuru avuga ko Mukanoheri Ange atagombaga kuburanira muri urwo Rukiko kandi yarabaye umuburanyi mu Rukiko Rwisumbuye rwa Nyarugenge.

[26] Me Munyaneza Remy, wunganira Gahutu Gaspard, na Me Munyandamutsa Jean Pierre, uhagarariye Murebwayire Grâce, Kayumba Léonard, Kwibuka Jesca,na Twagira Robert, bavuga ko mu gihe Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko rufite ububasha bwo kuburanisha urubanza mu mizi, Gahutu Gaspard atashoboraga guhita ajuririra icyo cyemezo, ko ahubwo

yagombaga gutegereza kugira ngo azakijuririre hamwe n'urubanza mu mizi nk'uko biteganywa n'ingingo ya 94, 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 "*Iyo urukiko rwemeje ko rufite ububasha, umuburanyi utishimiye icyo cyemezo akijuririra hamwe n'urubanza rw'iremezo*".

[27] Me Munyaneza Remy, wunganira Gahutu Gaspard, avuga kandi ko iyo mpamvu y'ubujurire ya Ndayishimiye Albert nta shingiro ifite kubera ko Urukiko Rukuru rutigezerwambura Mukanoheri Ange ububasha (qualité) bwo kuba umuburanyi muri urwo Rukiko, ko ahubwo rwemeje ko ikibazo cyo kumenya niba ari mwene Sekidagari Balthazar kigomba kubanza gusuzumirwa mu nama y'umuryango we mbere yo kukiregera urukiko.

[28] Me Owerisima Mungwe Honorine, uhagarariye Ndayisabye Heredion avuga ko iyompamvu y'ubujurire ya Ndayishimiye Albert nta shingiro ifite kubera ko ikiburanwa muriuru rubanza, atari urubanza rwaciwe ku rwego rwa mbere, ko ahubwo ari urubanza rwaciwe n'Urukiko Rukuru rwajuririwe muri uru Rukiko.

[29] Me Munyandamutsa Jean Pierre uhagarariye Murebwayire Grâce, Kayumba Léonard, Kwibuka Jesca, na Twagira Robert, avuga ko uru Rukiko rutashingira ku rubanza RCA00064/20/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge kuwa 19/11/2021, rwemeje ko inyandiko y'amavuko ya Mukanoheri Ange idateshejweagaciro, kugira ngo rwemeze ko Mukanoheri Ange yari afite ububasha bwo kurega kuberako urwo rubanza rutaraba itegeko.

UKO URUKIKO RUBIBONA

[30] Ingingo ya 94, 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 "*Iyo urukiko rwemeje ko rufite ububasha, umuburanyi utishimiye icyo cyemezo akijuririra hamwe n'urubanza rw'iremezo".*

[31] Inyandiko ziri muri dosiye zigaragaza ko Gahutu Gaspard yatanze inzitizi mu Rukiko Rwisumbuye rwa Nyarugenge yo kutakira ikirego cya Ndayishimiye Albert kubera ko atabanje kugishyikiriza inama y'umuryango wa Sekidagari Balthazar mbere yo kukiregera urwo Rukiko, yanatanze inzitizi y'iburabubasha bw'urwo Rukiko yo kutaburanisha icyo kirego kubera ko ubutaka n'izungura ryabwo biri mu bubasha bw'Urukiko rw'Ibanze nk'uko biteganywa n'ingingo ya 67 y'Itegeko Ngenga nº 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko. Urwo Rukiko rwafashe icyemezo mu rubanza RC00857/2017/TGI/NYGE ku wa 23/05/2018, rwemeza ko inzitizi zatanzwe na GahutuGaspard nta gaciro zifite, kubera ko Urukiko Rwisumbuye rwa Nyarugenge rufite ububasha bwo kuburanisha urwo rubanza kuko agaciro k'imitungo isabirwa gusubizwa mu mutungo w'umuryango wa Sekidagari Balthazar kangana na 26.179.677Frw kari mu bubasha bwarwo nk'uko biteganywa n'ingingo ya 78 y'iryo Tegeko Ngenga, rwemeza ko ikirego cya Ndayishimiye Albert cyakiriwe, kandi ko kizaburanishwa mu mizi ku wa 19/06/2018.

[32] Hashingiwe ku bisobanuro bimaze gutangwa haruguru n'ingingo z'amategeko zavuzwe haruguru, Urukiko rusanga, kuba Urukiko Rwisumbuye rwa Nyarugenge rwaremeje ko rufite ububasha bwo kuburanisha urubanza mu mizi, bigaragara ko Gahutu Gaspard atashoboragaguhita ajuririra icyemezo cyo ku wa 23/05/2018 cyemeje ko ikirego cya Ndayishimiye Albert kitagombaga gusubira mu nama y'umuryango wa Sekidagari Balthazar, ko ahubwoyagombaga kukijuririra hamwe n'urubanza rw'iremezo nk'uko biteganywa n'ingingo ya 94, igika cya 2, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru.

[33] Urukiko rusanga kandi nta kosa Urukiko Rukuru rwakoze mu kwakira no gusuzuma inzitizi yatanzwe na Gahutu Gaspard y'iburabubasha bwa Mukanoheri Ange bwo kurega asaba kuzungura umutungo wasizwe na Sekidagari Balthazar ngo kuko atari umwana we, kuko ari inzitizi y'indemyagihugu ishobora gutangwa aho urubanza rwaba rugeze hose nk'ukobiteganywa n'ingingo ya 83, igika cya 4, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzweharuguru, iteganya ko impamvu ituma ikirego kitakirwa, ari ingingo yose isaba kutakira ikirego cy'umuburanyi, hatinjiwe mu mizi yacyo, kubera ko adafite uburenganzira bwokurega, nko kuba adafite ububasha n'inyungu zo kurega[1].

[34] Byongeye kandi, Urukiko rusanga, Urukiko Rukuru rutarigeze rwemeza ko MukanoheriAnge adafite ububasha bwo kurega no kuba umuburanyi muri urwo rubanza, ko ahubwo rwemeje ko ikibazo cyo kumenya niba ari mwene Sekidagari Balthazar kigomba gushyikirizwa inama y'umuryango we, itamwemera kikabona gukemurwa n'inkiko zibifitiye ububasha.

Kumenya niba Urukiko Rukuru rwarakoze amakosa mu kwemeza ko Urukiko Rwisumbuye rwa Nyarugenge rutagombaga kwakira no kuburanisha mu mizi ikirego cyatanzwe na Ndayishimiye Albert

[35] Ndayishimiye Albert avuga ko yajurijwe n'uko Urukiko Rukuru rwatesheje agaciro urubanza rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge, kandi ikiburanwa kitari izungura, kuko yari yaregeye gutesha agaciro inama ishinzwe iby'izungura yo ku wa 01/09/2017 kuko yakozwe mu buryo bunyuranyije n'amategeko binatuma n'imitungo ya se igabanywa mu buryo budakurikije amategeko, kandi ko yaregeye kugaruza imitungo yose yikubiwe n'umwe mu bazungura ba Sekidagari Barthazar witwa Gahutu Gaspard kuko yayibarujeho mu buryo bunyuranyije n'amategeko, anatagaguza indi mitungo ya se uko yishakiye, ariko ko umucamanza yahinduye inyito y'ikirego cye, acyita izungura, kandi atariryo.

[36] Avuga kandi ko Urukiko Rukuru rutagombaga gutegeka ko ikirego cye gisubira mu nama y'umuryango wa Sekidagari Barthazar kandi utagihari, utanashobora guterana kukowashize muri jenoside yakorewe Abatutsi mu mwaka wa 1994, ko ikimenyetso kibigaragaza, ari uko inama z'umuryango zabaye mu buryo bunyuranije n'amategeko zari zategetswen'Inzego z'Ibanze.

[37] Asobanura ko inama y'umuryango wabo itaterana kugira ngo isuzume ikibazo cya Ndayishimiye Albert kubera ko bakuru babo biyanditseho imitungo yose basigiwe na se Sekidagari Barthazar, banatagaguza indi, batavuguruza ibyemezo byabo, kandi ko bagezemu bujurire, Gahutu Gaspard asaba ko habaho ubwumvikane, ariko ko itariki bari bahawen'Urukiko yo kumvikana yageze, baramubura, akaba ariyo mpamvu yari yaregeye Urukiko Rwisumbuye rwa Nyarugenge kuko yabonaga ko arirwo rufite ububasha bwo gutesha agaciroibyemejwe mu nama y'umuryango yo ku wa 01/09/2017 kugira ngo uwo mutungo usubizwe muri *Succession* Sekidagari Barthazar, rurabyemeza.

[38] Me Twagirumugabe Alexis, wunganira Ndayishimiye Albert, avuga ko Urukiko Rukuru rutagombaga gushingira ku ngingo ya 84 y'Itegeko Nº 27/2016 ryo ku wa 08/07/2016 rigena imicungire y'umuryango w'abashyingiranwe, impano n'izungura, ngo rutegeke Ndayishimiye Albert kubanza gusubiza ikirego cye mu nama y'umuryango mbere yo kukiregera Urukiko, rwirengagije ko ikiburanwa muri uru rubanza, atari izungura, ko ahubwoari ukugaruza imitungo ya

[1] Ingingo ya 83, igika cya 4, 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 "Impamvu ituma ikirego kitakirwa ni ingingo yose isaba kutakira ikirego cy'umuburanyi, hatinjiwe mu mizi yacyo, kubera ko adafite uburenganzira bwo kurega, nko kuba adafite ububasha n'inyungu zo kurega, ubusaze bw'ikirego, kurenza igihe cyo kurega, urubanza rwabaye itegeko cyangwa kudatanga amagarama, harabayeho amasezerano yo kwikiranura cyangwa iyo hari imihango itarubahirijwe iteganywa n'itegeko".

nyakwigendera Sekidagari Barthazar, mu mutungo we, kuko Gahutu Gaspard yiyise umukuru w'umuryango arayikubira kuko yayibarujeho, kandi ko yasabye gutesha agaciro ibyemejwe n'inama y'umuryango yo ku wa 01/09/2017 kuko byakozwe mu buryo butemewe n'amategeko.

[39] Mukanoheri Ange avuga ko yajuririjwe n'uko Urukiko Rukuru rwemeje ko ikirego cyatanzwe mu Rukiko Rwisumbuye rwa Nyarugenge cyari kigamije gutesha agaciro icyemezo cy'umuryango wa Sekidagari Balthazar cyo ku wa 01/09/2017, cyongera kuregerwa inama y'uwo muryango, rwirengagije ko uwo muryango utaterana ngo unakemure icyo kibazokuko ariwo wagiteje kubera ko Gahutu Gaspard yikubiye imitungo yose y'uwo muryango, ko ahubwo ari Urukiko Rwisumbuye rwa Nyarugenge rwari rufite ububasha bwokukiburanisha no gutegeka ko iyo mitungo yose igarurwa mu mutungo wa Sekidagari Balthazar kugira ngo abazungura be bazayigabane mu buryo bukurikije amategeko nk'uko rwari rwabyemeje.

[40] Me Bayingana Janvier, wunganira Mukanoheri Ange, avuga ko Urukiko Rwisumbuye rwa Nyarugenge n'Urukiko Rukuru zari zifite ububasha bwo kuburanisha uru rubanza kubera ko inama z'umuryango wa Sekidagari Balthazar zabaye nk'uko n'UrukikoRukuru rwabyemeje mu gika cya 8 cy'urubanza rujuririrwa, ariko ko rwibeshye kuko rwafasheibintu uko bitari mu bika bya 6, 7, 8, 9 na 10 by'urubanza rujuririrwa, bituma rufata icyemezokitaricyo, kubera ko mu gika cya 7 cy'urwo rubanza, rwemeje ko ikirego cya Ndayishimiye Albert cyari kigamije gusaba kuzungura, rwirengagije ko ikirego cyose kiganisha k'uwitabye Imana, kitaba kigamije byanze bikunze kuzungura, ko ahubwo rwitiranyije ibintu bitatu (3) bikurikira : izungura, gusubiza umutungo mu mutungo rusange wa Sekidagari Balthazar (indivisibilité) no kuwugabana, bituma rufata icyemezo kitaricyokuko izo nama zabaye hanarondorwa imwe mu mitungo ya Sekidagari Balthazar, ariko nta kibazo cyo kuzungura cyari gihari.

[41] Asobanura ko inama y'umuryango wa Sekidagari Balthazar igomba kubanza kumvikanano kubazungura be no kubizungurwa, ndetse ko zateranye zinagira ibyo zisuzuma, akaba asanga Urukiko Rukuru rwaragombaga gusuzuma icyajuririwe kijyanye no kugaruza imitunguya Sekidagari Balthazar mu muryango we kuko hari imitungo ikiri mu maboko ya Gahutu Gaspard n'iyagurishijwe, rukaburanisha urubanza mu mizi kugira ngo rukosore ibyo zitakoze neza, aho kwemeza ko zitabaye kandi zarabaye, ariko uru Rukiko rubibonyeukundi rutaburanisha uru rubanza mu mizi, ko ahubwo rwarwohereza mu Rukiko Rukurukugira ngo ruruburanishe mu mizi.

[42] Me Kamali N. Valens, wunganira Mukanyandwi Aline na Yankurije Josiane, avuga ko Urukiko Rwisumbuye rwa Nyarugenge rwari rufite ububasha bwo kwakira no kuburanisha mu mizi ikirego cya Ndayishimiye Albert kugira ngo umutungo wa Sekidagari Balthazar, Gahutu Gaspard yibarujeho n'uwo yagurishije, usubire mu mutungo uzazungurwa, nyamara Urukiko Rukuru rwategetse ko icyo kibazo kigomba kubanzagusuzumwa n'inama z'umuryango ngo kuko zitabaye, kandi zarabaye nk'uko byemejwe n'Urukiko Rukuru, mu gika cya 8 cy'urubanza rujuririrwa, ariko n'ubwo izo nama zabaye, zikwiye guteshwa agaciro kubera ko zakozwe mu buryo butemewe n'amategeko, kuko zateranye zinayoborwa mu buryo bunyuranyije n'ingingo ya 164 na 165 z'Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, ziteganya uko inama y'umuryango iterenan'uko iyoborwa, kubera ko abazungura bose ba Sekidagari Balthazar batari bazirimo, kuba Gahutu Gaspard yaritoye anigira umukuru w'umuryango wa Sekidagari Balthazar aniyandikaho imitungo yose y'uwo muryango, ariko abandi bana bose ba Sekidagari Balthazar ntibagira icyo babona, no kuba nta n'inshuti z'umuryango n'abandibantu b'inyangamugayo bari bari muri izo nama, akaba ariyo mpamvu Ndayishimiye Albert yari yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge kugira ngo ruteshe agaciro ibyemezo byose byafashwe n'inama y'umuryango wa Sekidagari Balthazar zateranye zinayoborwa mu buryo bunyuranyije n'amategeko, kugira ngo uwo mutungo usubiremu mutungo wa Sekidagari Balthazar, bityo abazungura be bose bazahabwe ibyo bakwiyemu buryo bwubahirije amategeko.

[43] Mukanyandwi Aline na Yankurije Josiane bavuga ko ikibazo cya Ndayishimiye Albert kitasubira mu nama y'umuryango wa Sekidagari Balthazar kubera ko zabaye, ndetse ko musaza wabo witwa Gahutu Gaspard yari yasabye ko haba ubwumvikane, arikonyuma y'aho, arabwanga.

[44] Ku birebana n'ubujurire bwa Ndayishimiye Albert, Me Munyaneza Remy, wunganira Gahutu Gaspard, avuga ko mu gihe Urukiko rw'Ubujurire rwakiriye ubujurire bwa Ndayishimiye Albert rukwiye kwemeza ko nta shingiro bufite kubera ko Urukiko Rwisumbuye rwa Nyarugenge rutagombaga kwakira ikirego cye kijyanye no gutesha agaciroinama ishinzwe iby'izungura yo ku wa 01/09/2017, no kugaruza imitungo yose yikubiwe n'umwe mu bazungura ba Sekidagari Barthazar, kubera ko ari ikibazo kirebana n'izunguracyagombaga kubanza kunyuzwa mu nama y'umuryango wa Sekidagari Balthazar mbereyo kukiregera urwo Rukiko kuko ariyo ishinzwe kubanza gukemura impaka cyangwa ibibazobiri mu muryango byerekeranye n'izungura mbere y'uko bishyikirizwa urukiko.

[45] Asobanura ko ikibazo kiri muri uru rubanza, aricyo kumenya niba icyaregewe ari izungura cyangwa atariryo, kuko izungura n'igabana, ari ibintu bibiri bitandukanye, kandi ko Umucamanza wo mu Rukiko Rukuru yabisobanuye neza ashingiye ku ngingo ya 84 y'ItegekoNº 27/2016 ryo ku wa 08/07/2016 rigena imicungire y'umuryango w'abashyingiranwe, impano n'izungura, iteganya ibyerekeye izungura, ariko ko atari igabana, kuko intambwe (étape) ya mbere, ari ukubanza gushyira hamwe imitungo, nyuma y'aho, hakaba igabana, kuko igabana ari intambwe imwe mu zigize izungura.

[46] Avuga kandi ko itegeko riteganya ko inama y'umuryango igomba kubanza guterana no gusuzuma ibibazo yashyikirijwe, noneho utishimiye imyanzuro yafashwe n'iyo nama, akabona kubiregera Urukiko kuko ibibazo biregerwa urwo Rukiko, ari ibyasuzumwe n'iyo nama, arikoko atariko byagenze ku birebana n'uru rubanza, kuko imitungo ifitwe na Gahutu Gaspard itigeze iregerwa inama y'umuryango wa Sekidagari Balthazar kugira ngo Ndayishimiye Albert abone kuyiregera mu Rukiko Rwisumbuye rwa Nyarugenge. Yongeyeho ko Ndayishimiye Albert atavuga ko inama y'umuryango wa Sekidagari Balthazar zidashobora guterana bitewe n'uko abavandimwe be bishwe muri jenoside yakoreweAbatutsi mu mwaka wa 1994 kandi abana be bahari, ndetse ko hari n'imyandikomvugo z'inama z'uwo muryango zigaragaza ko izo nama zabaye.

[47] Ku birebana n'ubujurire bwa Mukanoheri Ange, Me Munyaneza Remy, wunganiraGahutu Gaspard, avuga ko mu gihe Urukiko rw'Ubujurire rwakiriye ubujurire bwa Mukanoheri Ange rukwiye kwemeza ko nta shingiro bufite kubera ko impamvu ze z'ubujurire ntaho zihuriye n'ikiregerwa muri uru rubanza, kandi ko Urukiko Rukuru rutigeze rumwambura ububasha (qualité) bwo kuba umuburanyi muri uru rubanza kuko rwemeje ko ikibazo cyo kumenya niba ari mwene Sekidagari Balthazar kizasuzumirwa mu nama y'umuryango, ko ahubwo asanga impamvu ze z'ubujurire zifitanye isano n'ikiburanwa mu rubanza RCA00064/2020/TGI/NYGE aho Gahutu Gaspard yareze asaba guteshaagaciro icyemezo cy'amavuko cya Mukanoheri Ange.

[48] Me Owerisima Mungwe Honorine, uhagarariye Ndayisabye Heredion, avuga ko hashingiwe ku ngingo ya 84 y'Itegeko Nº 27/2016 ryo ku wa 08/07/2016 rigena imicungire y'umuryango w'abashyingiranwe, impano n'izungura, ikibazo cy'izungura cya Ndayishimiye Albert kigomba kubanza gushyikirizwa inama y'umuryango wa Sekidagari Balthazar ikagisuzuma kuko basaba uburenganzira bwabo mu mutungo wasizwe na nyakwigendera Sekidagari Balthazar, cyananirana, akabona kukiregeraUrukiko Rwisumbuye rwa Nyarugenge nk'uko byemejwe n'Urukiko Rukuru, ariko ko mu giheuru Rukiko rubibonye ukundi, rutaburanisha uru rubanza mu mizi, ko ahubwo rukwiyekurwohereza mu Rukiko Rukuru kugira ngo ruruburanishe mu mizi nk'uko biteganywa n'ingingo ya 94, igika cya 3, y'Itegeko nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru.

[49] Me Munyandamutsa Jean Pierre uhagarariye Murebwayire Grâce, Kayumba Léonard, Kwibuka Jesca, na Twagira Robert, avuga ko ubujurire bwa NdayishimiyeAlbert na Mukanoheri Ange nta shingiro bufite kuko ikibazo cya Ndayishimiye Albert cyagombaga kubanza kunyura mu nama y’umuryango mbere yo kukiregera Urukiko Rwisumbuye rwa Nyarugenge nk’uko byemejwe n’Urukiko Rukuru. Avuga kandi ko iyo namaishobora guterana no kwiga ku kibazo cya Ndayishimiye Albert kubera ko abana ba Sekidagari Balthazar ari benshi, ndetse ko Ndayishimiye Albert ubwe yemera ko inama z’umuryango wabo zabaye, ariko nta kimenyetso yatanze kigaragaza ko yabanjekuzishyikiriza ikibazo cye, kikananirana, akabona kukiregera Urukiko Rwisumbuye rwa Nyarugenge.

[50] Nyirahabimana Marie, uhagarariwe n’umuhungu we Uwiragiye Jean Damascène, wunganiwe na Me Kagabo Théoneste, avuga ko ikirego cya Ndayishimiye Albert kigomba kubanza gukemurirwa mu nama y’umuryango wa Sekidagari Balthazar nk’uko byemejwe n’Urukiko Rukuru.

[51] Me Twayigize Jean Claude, uhagarariye Mukamuyenzi Liliane, avuga ko yemeranywa n’icyemezo cyafashwe n’Urukiko Rukuru cy’uko Urukiko Rwisumbuye rwa Nyarugenge rutagombaga kwakira ikibazo cya Ndayishimiye Albert kijyanye n’izungurango runakiburanishe mu mizi, kubera ko atabanje kugishyikiriza inama y’umuryango iteganywa n’ingingo ya 84 y’Itegeko Nº 27/2016 ryo ku wa 08/07/2016 rigena imicungire y’umuryango w’abashyingiranwe, impano n’izungura.

UKO URUKIKO RUBIBONA

[52] Ingingo ya 163, uduce twa 2° na 6°, y’Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n’umuryango, iteganya ko “Inama y’umuryango ishinzwe kumva no gukemura ibibazo byerekeranye n’izungura n’ibindi byose bivutse mu muryango, no kwemera ko umwana ashakirwa umubyeyi utaramubyaye iyo adafite ababyeyi cyangwa ababyeyi badashobora kugaragaza icyo batekereza”.

[53] Na none ingingo ya 165, igika cya 2, y’Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rimaze kuvugwa haruguru, iteganya ko “*Umuntu wese utanyuzwe n’ibyemezo by’Inama y’umuryangoatanga ikirego mu rwego rubifitiye ububasha*”.

[54] Naho ingingo ya 83 y’Itegeko Nº 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y’umutungo w’abashyingiranywe, impano n’izungura, igateganya ko “*Kwegeranya ibizungurwa ni ukubarura umutungo wose ugomba kuzungurwa kugira ngo abazungura b’iwapfuye cyangwa abo yahaye indagano babashe kwegukana*”.

[55] Inyandikomvugo z’inama y’umuryango wa Sekidagari Balthazar ziri muri dosiye, zigaragaza ko inama z’uwo muryango zateranye ku wa 01/01/2008, ku wa 25/08/2015 no ku wa 01/09/2017, zasuzumye ikibazo kijyanye n’itangwa ry’uburage n’iminani, ndetse n’igabana ry’imitungo yasizwe na Sekidagari Balthazar hagati y’abana be, Urukiko

[56] rusanga icyo kibazo gitandukanye n’ikibazo gikubiye mu kirego Ndayishimiye Albert yatanze mu Rukiko Rwisumbuye rwa Nyarugenge, aho yarusabye gutesha agaciro ibyakozwe n’inama ishinzwe iby’izungura yo ku wa 01/09/2017 kugira ngo imitungo yasizwe na Sekidagari Balthazar yagabanyijwe hagati y’abana be muri iyo nama, ndetse n’indi mitungo yose yasizwe na Sekidagari Balthazar yikubiwe n’umwe mu bazungura be ariweGahutu Gaspard, iyahawe abana ba Sekidagari Balthazar mu nama yo ku wa 01/01/2008 n’iyo ku wa 25/08/2015, ndetse n’iyagurishijwe abandi bantu barimo Ndayisabye Heredion igarurwa cyangwa isubizwa muri *Succession* Sekidagari

Balthazar kugira ngo izagabanwe n'abazungura be igihe cy'izungura kigeze, ni ukuvuga ubwo Nyirabakarani Melaniya azaba atakiriho.

[57] Imikirize y'urubanza rwajuririwe muri uru Rukiko, cyane cyane mu bika byarwo bya 7, 10 na 15, igaragaza ko hashingiwe ku ngingo ya 84 y'Itegeko Nº 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura[2], Urukiko Rukuru, rwasanze ikirego cya Ndayishimiye Albert cyavuzwe haruguru kigamije kugaruza no kwegeranya umutungo wasizwe n'umubyeyi wabo witwa Sekidagari Barthazar utakirihokugira ngo azawuzungure afatanyije n'abavandimwe, kiri mu bubasha bw'inama y'umuryangonk'uko bivugwa muri iyo ngingo, bityo kikaba kitaragombaga kwakirwa ngo kiburanishwe mumizi n'Urukiko Rwisumbuye rwa Nyarugenge kitabanje gushyikirizwa inama y'umuryango wabo, rutegeka ko icyo kibazo kigomba kubanza gusuzumwa n'inama y'umuryango wasizwena Sekidagari Balthazar.

[58] Imikirize y'urwo rubanza, mu bika byarwo bya 12 na 15, igaragaza kandi ko Urukiko Rukuru rwasanze rutasuzuma inzitizi yatanzwe na Gahutu Gaspard y'uko Mukanoheri Ange atari mwene Sekidagari Balthazar ashaka kuzungura kuko icyo kibazo kiri mu bubasha bw'inama y'umuryango wa Sekidagari Balthazar hashingiwe ku ngingo ya 84 y'Itegeko Nº 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru, ko mu gihe iyo nama ihakanye ko Mukanoheri Ange atari mu bamuzungura aribwo azakomereza mu Rukiko rubifitiye ububasha nk'uko biteganywa n'iyo ngingo, rutesha agaciro urubanza RC00857/2017/TGI/NYGE rwaciwe mu mizi ku rwego rwa mbere.

[59] Hashingiwe ku bisobanuro bimaze gutangwa haruguru n'ingingo z'amategeko zavuzwe haruguru, Urukiko rusanga nk'uko n'Urukiko Rukuru rwabibonye, kuba ikirego cya Ndayishimiye Albert cyavuzwe haruguru gifitanye isano n'izungura, kubera ko kigamije kwegeranya no kugaruza muri *Succession* Sekidagari Balthazar imitungo yose yasizwe naSekidagari Barthazar witabye Imana kugira ngo abazungura be bazayigabane igihe cy'izungura kigeze, ni ukuvuga igihe Nyirabakarani Mélanie, umugore w'isezerano wa Sekidagari Balthazar, azaba atakiriho, kandi icyo kibazo kikaba kitarigeze gishyikirizwa inama y'umuryango wa Sekidagari Balthazar kugira ngo igisuzume, bigaragara ko nta kosa Urukiko Rukuru rwakoze mu kwemeza ko Urukiko Rwisumbuye rwa Nyarugenge rutagombaga kwakira icyo kibazo no kukiburanisha mu mizi kitabanje gushyikirizwa inama y'umuryango wa Sekidagari Balthazar kugira ngo igikemure, cyananirana, utanyuzwe n'icyemezo cyayo, akabona kugishyikiriza urwego rubifitiye ububasha nk'uko biteganywa n'ingingo ya 165, igika cya 2, y'Itegeko nº 32/2016 ryo ku wa 28/08/2016 ryavuzwe haruguru.

[60] Urukiko rusanga imvugo ya Ndayishimiye Albert y'uko inama y'umuryango wa Sekidagari Balthazar idashobora guterana kugira ngo usuzume ikibazo cye kijyanye no kugaruza muri *Succession* Sekidagari Barthazar imitungo yose yasizwe na Sekidagari Barthazar kubera ko umuryango wa Sekidagari Barthazar utakibaho bitewe n'uko abari bawugize bapfuye igihe cya jenoside yakorewe Abatutsi mu mwaka wa 1994, no kubera ko Gahutu Gaspard atayihamagaza ngo anivuguruze kubera ko yikubiye imitungo yose yasizwe na Sekidagari Barthazar nta shingiro ifite, kubera ko iyo mvugo ivuguruzwa n'ibimenyetso bigizwe n'inyandiko mvugo z'inama y'umuryango wa Sekidagari Barthazar ziri muri dosiye zigaragaza ko inama z'uwo muryango zateranye ku wa 01/01/2008,ku wa 25/08/2015 no ku wa 01/09/2017, ibyo bimenyetso bigaragara kandi ko inama y'umuryango wa Sekidagari Barthazar ishobora kongera guterana no gusuzuma ikibazo cya Ndayishimiye Albert cyavuzwe haruguru, cyananirana, kikabona kuregerwa Urukiko rubifitiye ubasha nk'uko biteganywa n'ingingo ya 165, igika cya 2, y'Itegeko Nº 32/2016 ryoku wa 28/08/2016 ryavuzwe haruguru.

[2] Ingingo ya 84 y'Itegeko nº 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, iteganya ko "Inama y'umuryango ni yo ishinzwe gukemura impaka cyangwa ibibazo mu muryango byerekeranye n'izungura mbere y'uko bishyikirizwa Komite y'Abunzi cyangwa urukiko rubifitiye ububasha".

[61] Urukiko rusanga na none imvugo ya Mukanoheri Ange, Mukanyandwi Aline na Yankurije Josiane z'uko Urukiko Rukuru rutagombaga kwemeza ko ikibazo cya Ndayishimiye Albert cyongera gusubira mu nama y'umuryango wa Sekidagari Balthazar kubera ko izo nama zabaye, nta shingiro zifite, kuko izo nama zitigeze zisuzuma ikibazo cya Ndayishimiye Albert kigamije gusubiza imitungo yose yasizwe na nyakwigendera Sekidagari Balthazar muri *Succession* Sekidagari Balthazar kugira ngo abazungura be bose bazayigabane igihe cy'izungura, ko ahubwo icyasuzumwe n'izo namaari itangwa ry'uburage n'iminani, ndetse n'igabana ry'imitungo yasizwe na Sekidagari Balthazar hagati y'abana be nk'uko byasobanuwe haruguru, bivuze rero ko nta kosa Urukiko Rukuru rwakoze mu kwemeza ko ikibazo cya Ndayishimiye Albert kigomba kubanza gushyikirizwa inama y'umuryango wa Sekidagari Balthazar kugira ngo igisuzume, cyananirana, kikabona kuregerwa Urukiko rubifitiye ubasha nk'uko biteganywa n'ingingo ya165, igika cya 2, y'Itegeko nº 32/2016 ryo ku wa 28/08/2016 ryavuzwe haruguru.

Ku birebana n'indishyi, amafaranga y'ikurikiranarubanza n'igihembo cy'avoka

[62] Ndayishimiye Albert na Me Twagirumugabe Alexis umwunganira bavuga koUrukiko Rukuru rutagombaga kumuca indishyi kuko rutaburanishije urubanza mu mizi, bivuze rero ko rwaciye urubanza mu buryo bunyuranyije n'ingingo ya 94, igika cya 5, 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 iyo urubanza rwohererejwe urukiko rugomba kuruburanisha, nta yandi magarana atangwa.

[63] Ndayishimiye Albert asaba ko Gahutu Gaspard agomba kugarura mu mutungo wa Sekidagari Balthazar amafaranga y'ubukode angana na 86.400.000Frw bw'amazu afite imiryango 10, na 90.000.000Frw y'indishyi z'akababaro kubera ko akomeje kwangara no kutagira aho aba kandi se afite amazu yikubiye akanayabyaza umusaruro kuva jenoside yakorewe Abatutsi irangiye kugeza ubu, na 5.000.000Frw y'igihembo cy'avoka yiyongera kuri 500.000Frw yari yarahawe ku rwego rwa mbere kubera ko akomeje kumusiragiza mu Nkiko kugera ku rwego rwa gatatu.

[64] Mu mwanzuro we w'ubujurire, Mukanoheri Ange wunganiwe na Me Bayingana Janvier asaba ko Gahutu Gaspard yamuha 10.000.000Frw y'indishyi mbonezamusaruro amaze abyaza imitungo ya se wenyine, na 15.000.000Frw y'indishyi z'akababaro kubera ko yikubiye iyo mitungo wenyine bigatuma abaho nabi, 500.000Frw y'ikurikiranarubanza, 3.000.000Frw y'igihembo cy'avoka yo kuva mu Rukiko Rwisumbuye rwa Nyarugenge kugeramuri uru Rukiko.

[65] Mu mwanzuro we w'ubujurire bwuririye ku bundi, Gahutu Gaspard wunganiwe na Me Munyaneza Remy, asaba ko Ndayishimiye Albert na Mukanoheri Ange, bajuriye, bategekwa kumuha 3.000.000Frw y'ikurikiranarubanza n'igihembo cy'avokakubera ko bakomeje kumushora mu nkiko, kandi byarashobokaga ko bakemura ikibazobafitanye mu muryango wabo, ariko ko atabaha indishyi n'amafaranga y'ikurikiranarubanza n'igihembo cy'avoka basaba kubera ko aribo bishoye mu nkiko nta mpamvu, cyane cyane koMukanoheri Ange yagobotse muri uru rubanza kandi nta bubasha afite bwo kurubamo nk'umuburanyi.

[66] Me Munyandamutsa Jean Pierre uhagarariye Murebwayire Grâce, Kayumba Léonard, Kwibuka Jesca na Twagira Robert hamwe na Me Owerisima Mungwe Honorine, uhagarariye Ndayisabye Heredion bavuga ko Urukiko Rukuru rutaciye Ndayishimiye Albert indishyi zirebana n'urubanza mu mizi, ko ahubwo rwamutegetse guha Gahutu Gaspard amafaranga y'ikurikiranarubanza n'igihembo cy'avoka nk'uko biteganywa n'ngingo 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 amafaranga y'ikurikiranarubanza n'igihembo cy'avoka ashobora gutangwa mu rubanza kabone n'iyo ikirego cy'iremezo kitakiriwe.

[67] Me Munyandamutsa Jean Pierre avuga ko ahubwo Murebwayire Grâce, Kayumba Léonard, Kwibuka Jesca na Twagira Robert ahagarariye batanze ubujurire bwuririye ku bundi, basaba ko NDAYISHIMIYE Albert na MUKANOHERI Ange, bajuriye,bategekwa kubaha 1.000.000Frw kuri buri muntu, y'indishyi zo gushorwa mu manza na 5.000.000Frw y'igihembo cy'avoka.

[68] Mu mwanzuro we w'ubujurire bwuririye ku bundi, Mukamuyenzi Liliane uhagarariwe na Me Twayigize Jean Claude, asaba ko Ndayishimiye Albert amuha 3.000.000Frw y'ikurikiranarubanza ku bw'imanza zose amaze kuburana na 5.000.000Frw y'igihembocy'avoka yishyuye Avoka wamuburaniye, kubera ko yakomeje kumushora mu manza ku maherere kandi azi neza ko ariwe wamugurishije umutungo.

[69] Mukanyandwi Aline na Yankurije Josiane bunganiwe na Me Kamali N. Valens, batanze ubujurire bwuririye ku bundi, basaba ko Gahutu Gaspard akwiye guha buri wese 10.000.000Frw y'indishyi z'akababaro, 5.000.000Frw y'indishyi zo gushorwa mu manza ku maherere na 1.000.000Frw y'igihembo cy'avoka.

[70] Nyirahabimana Marie uhagarariwe n'umuhungu we Uwiragiye Jean Damascène wunganiwe na Me Kagabo Théoneste avuga ko akwiye guhabwa indishyi yasabye mu namantegura rubanza byarebwa.

[71] Me Owerisima Mungwe Honorine avuga ko nta mafaranga y'igihembo cy'Avoka Ndayisabye Heredion ahagarariye yasabye.

UKO URUKIKO RUBIBONA

[72] 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 ni 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*".

[73] Hashingiwe ku biteganywa n'ingingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 rimaze kuvugwa haruguru, Urukiko rusanga Ndayishimiye Albert na Mukanoheri Ange batahabwa amafaranga y'ikurikiranarubanza n'igihembo cy' Avoka basaba muri uru rubanza yavuzwe haruguru kuko batsinzwe uru rubanza. Uru Rukiko rusanga rutasuzuma ibirebana n'indishyi z'akababaro, indishyi mbonezamusaruro n'amafaranga akomoka k'ubukode bw'amazu y'umuryango ngo afitwe na Gahutu Gaspard bisabwa na Ndayishimiye Albert na Mukanoheri Ange kuko uru rubanza rutaburanishijwe mu mizi.

[74] Urukiko rusanga kandi nta kosa Urukiko Rukuru rwakoze mu gutegeka Ndayishimiye Albert guha Gahutu Gaspard 600.000Frw y'indishyi z'ibyo yatakaje akurikirana urubanzan'amagarama yatanze kubera ko hashingiwe ku biteganywa n'ingingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, amafaranga y'ikurikiranarubanza atangwa n'uwatsinzwe kabone n'ubwo ikirego cy'iremezo kitakiriwe nk'uko biteganywa n'iyo ngingo.

[75] Urukiko rusanga ahubwo Ndayishimiye Albert na Mukanoheri Ange bagomba gufatanya guha Gahutu Gaspard, Murebwayire Grâce, Kayumba Léonard, Kwibuka Jesca na Twagira Robert buri wese 100.000Frw y'ikurikiranarubanza na 500.000Frw y'igihembo cya Avoka yo kuri uru rwego, ayo mafaranga akaba agenwe n'Urukiko mu bushishozi bwarwo kuko ayo basaba mu bujurire bwuririye ku bundi ari menshi,bityo yose hamwe akaba 3.000.000Frw.

[76] Urukiko rusanga na none Ndayishimiye Albert agomba guha Mukamuyenzi Liliane 100.000Frw y'ikurikiranarubanza na 500.000Frw n'igihembo cya Avoka yo kuri uru rwego,ayo mafaranga akaba agenwe n'Urukiko mu bushishozi bwarwo kuko ayo asaba mu bujurire bwuririye ku bundi ari menshi, bityo yose hamwe akaba 600.000Frw.

[77] Urukiko rusanga Gahutu Gaspard atategekwa guha Mukanyandwi Aline na Yankurije Josiane amafaranga y'ikurikiranarubanza n'igihembo cya Avoka basaba kuberako atsinze urubanza. Uru Rukiko rusanga rutasuzuma ibirebana n'indishyi z'akababaro zisabwa na Mukanyandwi Aline na Yankurije Josiane muri uru rubanza mu gihe rutaruburanishije mu mizi.

[78] Urukiko rusanga Ndayishimiye Albert na Mukanoheri Ange batagomba guha Nyirahabimana Marie amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kuko ntakigaragaza ko yayasabye.

III. ICYEMEZO CY'URUKIKO

[79] Rwemeje ko ubujurire bwa Ndayishimiye Albert na Mukanoheri Ange nta shingirobufite.

[80] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Gahutu Gaspard, Murebwayire Grâce, Kayumba Léonard, Kwibuka Jesca, Twagira Robert na Mukamuyenzi Liliane bufite ishingiro, ko ubujurire bwuririye ku bundi bwatanzwe na Mukanyandwi Aline na Yankurije Josiane nta shingiro bufite.

[81] Ruvuze ko imikirize y'urubanza RCA00213/2019/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 29/10/2020, idahindutse.

[82] Rutegetse Ndayishimiye Albert na Mukanoheri Ange gufatanya guha Gahutu Gaspard, Murebwayire Grâce, Kayumba Léonard, Kwibuka Jesca na Twagira Robert, 100.000Frw y'ikurikiranarubanza na 500.000Frw y'igihembo cya Avoka kuri buri wese yo kuri uru rwego, bityo yose hamwe akaba 3.000.000Frw.

[83] Rutegetse kandi Ndayishimiye Albert guha Mukamuyenzi Liliane 100.000Frw y'ikurikiranarubanza na 500.000Frw n'igihembo cya Avoka yo kuri uru rwego, bityo yose hamwe akaba 600.000Frw.

[84] Rutegetse ko ingwate y'amagarama yatanzwe na Ndayishimiye Albert na Mukanoheri Ange bajurira ihwanye n'ibyakozwe muri uru rubanza.