UWAMAHORO v HABIMANA N'UNDI

[Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RAD 00002/2020/CA– (Nyirandabaruta, P.J., Mukandamage, Rugabirwa, J.) 31 Werurwe 2021]

Amategeko agenga imiburanishirize y'imanza zisubirwamo ku mpamvu z'akarengane – Inzitizi yatuma urubanza rutaburanishwa mu mizi – Mu kirego gisubirishamo urubanza ku mpamvu z'akarengane, inzitizi yo kutakira ikirego ntigarukira ku nzitizi yo kwibeshya ku bihe byo gutanga ikirego gusa, mu gihe iyo nzitizi ari indemyagihugu ishobora kubyutswa n'umuburanyi cyangwa Urukiko rubyibwirije igihe icyo aricyo cyose.

Amategeko agenga ubutaka – Umutungo utimukanwa – Inkomoko y'umutungo – Ibisabwa kugirango witwe nyirumutungo – Kugira icyemezo cy'umutungo ntibihagije kugirango hemezwe ko umutungo ari uw' umuntu hashingiwe gusa ku kuba icyemezo cy'umutungo kimwanditseho, ahubwo agomba kugaragaza aho yawukomoye.

Incamake y'ikibazo: Nyirambabazi yandikiye Minisitiri w'Imirimo ya Leta n'Ingufu (MINITRAPE) asaba inzira ahahoze ruhurura yari itagikoreshwa kugira ngo abone uko yinjira iwe, kuko aho yari asanzwe anyura mu kibanza cy'umuturanyi we yari amaze kuhafunga, maze Minisiteri imumenyesha ko inzira yasabye ayemerewe, ariko akaba ari we ugomba gutunganya aho hantu yirinda kurengera abaturanyi kandi akubahiriza imbago z'ibiti zihasanzwe.

Nyuma, Rwendeye nawe yandikiye MINITRAP asaba aho hantu hari ruhurura ngo ahomeke ku kibanza cye, arahahabwa, ariko nyuma MINITRAP iza kubona ko habaye amakosa, iramwandikira imumenyesha ko icyemezo cyari cyafashwe cyo kumuha ahantu yari yasabye ngo homekwe ku kibanza cye giteshejwe agaciro, kuko byakozwe ku bwo kwibeshya. Muri iyo baruwa kandi, yavuze ko ibipimo by'ikibanza cye bigomba gukosorwa, kikagumana ibipimo cyahawe nk'uko biri mu nyandikomvugo yerekeye ipimwa n'ishyirwaho ry'imbibi, ariko ibyo ntibyakorwa kugeza ubwo yagurishije ikibanza cye, Habimana n'umugore we, bahaguze bafunga ya nzira, Uwamahoro ntiyongera kubona uko ajya cyangwa ava iwe, nk'uko byari bisanzwe, ndetse n'imodoka yari afite mu rugo rwe ihamamo kuko yabuze aho ayinyuza kugeza ubwo.

Uwamahoro yiyambaje inzego zitandukanye kugira ngo afungurirwe inzira, maze Akarere ka Gasabo kandikira Habimana kamusaba gukosoza «*Titre de propriété n° 1120* (ikibanza cyahoze ari 5056) kugira ngo havanweho agace karimo inzira, kuko atari umutungo we, imanza zitangira ubwo.

Habimana yatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo asaba kuvanaho icyemezo cy'Akarere ka Gasabo cyamusabaga gukosoza *Titre de propriété* yavuzwe, Urukiko rwemeza ko nta makosa yakozwe ku buryo icyemezo cy'Akarere ka Gasabo cyavanwaho. Yakijuririye mu Rukiko Rukuru, ruca urubanza ruvuga ko icyemezo cy'Akarere kimusaba gukosoza *Titre de propriété* cyafashwe n'abatabifitiye ububasha, rukivanaho.

Uwamahoro nawe yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge arega Habimana, asaba gutesha agaciro icyangombwa cy'umutungo n° 1120 cyahoze gifite n o 5056, Urukiko rwemeza ko ikirego cye kitakiriwe, kuko kitari mu bubasha bw'Urugereko ruburanisha imanza mbonezamubano, ahubwo kiri mu bubasha bw'Urugereko rwihariye ruburanisha imanza z'ubutegetsi. Ibi byatumye atanga ikindi kirego muri uru Rukiko arega Habimana n'Ikigo cy'Imicungire n'Imikoreshereze y'Ubutaka mu Rwanda, asaba kuvana inzira yateganyijwe na Leta, nk'inzira rusange umuntu wese yakoresha, muri Titre de propriété ye. Uru Rukiko rwasanze inzitizi yatanzwe n'abaregwa y'uko Urega nta bubasha n'inyungu afite byo kurega nta shingiro

ifite; maze mu mizi y'urubanza, rwemeza ko ikirego cy'Urega nta shingiro gifite ndetse hakaba hari imanza zaciwe mbere zabaye itegeko.

Urega yajuririye mu Rukiko Rukuru, arusaba gusuzuma niba imanza zaciwe mbere zarabaye itegeko, kandi niba zaraburanishije ibijyanye no gukosora *certificat d'enregistrement*, no gusuzuma niba yari ifite nimero Vol. RTXXXIV Folio 93 yasimbuwe na UPI 1/02/13/03/1120 yakosorwa. Uru Rukiko Rukuru rwemeje ko ikirego cye kitakiriwe, kuko cyafashweho icyemezo mu rubanza rwaciwe n'Urukiko Rukuru ku wa 16/01/2015, rusanga ibindi rwasabwe gusuzuma nta mpamvu yo kubisuzuma, kuko ikirego cy'iremezo kitakiriwe.

Urega yandikiye Perezida w'Urukiko rw'Ubujurire, amusaba gusuzuma akarengane kabaye mu rubanza rwaciwe n'Urukiko Rukuru ku wa 27/02/2020, nyuma yo gusuzuma ubusabe bwe, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza rwavuzwe haruguru rwasubirwamo ku mpamvu z'akarengane, maze Perezida w'Urukiko rw'Ikirenga yemeza ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, rwoherezwa mu Rukiko rw'Ubujurire kugira ngo abe ari rwo ruruburanisha.

Urega yagaragaje akarengane ke mu rubanza rusubirwamo avuga ko Urukiko Rukuru rwirengagije gusuzuma niba imanza RC 0129/15/TGI/NYGE na RADA 0025/14/HC/KIG zarabaye itegeko kandi niba zaraburanishije ibijyanye no gukosora *certificat d'enregistrement*, asaba gusuma niba iyo *certificat* yahindurwa ikavanwaho inzira yari yarahawe akayitunganya, gutegeka Uregwa kwirengera igihombo yatejwe n'imodoka ye yafungiranye mu gipangu ubwo yamufungiraga inzira n'indishyi zitandukanye.

Uregwa avuga ko Urega nta bubasha n'inyungu afite byo kuregera inzira rusange muri uru rubanza, ko ibyo aregera byaburanwe mu manza zabaye itegeko, ko kandi ataribo baryozwa igihombo aregera.

Ku kibazo cyo kumenya niba ikirego cyo gusubirishamo urubanza RADA 00071/2019/HC/KIG ku mpamvu z'akarengane cyatanzwe n'Urega, kidakwiye kwakirwa kuko nta bubasha n'inyungu afite byo kurega, Uregwa avuga ko ikirego cy'Urega kidakwiye kwakirwa, kuko yagitanze mu Rukiko Rwisumbuye rwa Nyarugenge ntigisuzumwe, agategereza ko cyasuzumwa muri uru rubanza, yitwaje ibaruwa nyina yandikiwe na MINITRAPE itarigeze ishyirwa mu bikorwa, Leta ikaba igifite ubwo butaka; ko kuba rero bukiri ubwayo nta bubasha n'inyungu afite byo kuburegera, uretse igihe yaba yerekanye ubutumwa yahawe bwo gutanga ikirego mu izina ryayo.

Urega avuga ko iyakirwa ry'ikirego cy'akarengane ryasuzumwe na Perezida w'Urukiko rw'Ubujurire na Perezida w'Urukiko rw'Ikirenga baracyakira, ko iyi nzitizi idakwiye kwakirwa ngo isuzumwe, kuko mu gihe hasuzumwa ibijyanye n'akarengane habanza gusuzumwa ibijyanye n'inyungu n'ububasha bw'uwatanze ikirego, bikaba bitakongera gusuzumwa imbere y'uru Rukiko. Akomeza avuga ko n'ubwo umutungo wanditse k'Uregwa, bitabuza uwo ari we wese uwufiteho inyungu kuwuregera, ko inzira iburanwa ayifiteho inyungu kuko imufasha gutaha iwe, byongeye kandi akaba yari yarayitunganyije kuko mbere hari ruhurura.

Ikigo cy'Igihugu gishinzwe umutungo kamere cyo kivuga ko Urukiko rwaburanisha ikirego rugasuzuma niba Urega yari afite ububasha n'inyungu byo gutanga ikirego kuva na mbere, kuko izi ngingo zagiye ziburanishwa mu manza zabanje. Ikindi ni uko Urega atagaragaza uburenganzira afite ku butaka buburawa, kubera ko kuva urubanza rwatangira icyaregerwaga cyari ugusaba Urukiko kugitegeka kuvana inzira ku cyangombwa gifite *titre de propriété* kandi ibyo bikaba bitari gushoboka mbere y'uko agaragaza uburenganzira afite kuri ubwo butaka bukomoka ku rubanza yatsinze rumuha ibyo asaba, cyangwa ubwumvikane yaba yaragiranye n'Uregwa, nyir'ubutaka.

Ku ngingo ijyanye no kumenya niba Urukiko Rukuru rutarasuzumye impamvu Urega yatanze ajurira y'uko imanza zavuzwe haruguru zitabaye itegeko ku bijyanye no gukosora *certificat*

d'enregistrement kandi zitaburanishije ibijyanye nayo, Urega asobanura ko habaye imanza nyinshi cyane, hakaba kwibeshya ko zabaye itegeko. Avuga kandi ko izo manza zimaze gucibwa, Umuhesha w'Inkiko w'umwuga yaje kurangiza urubanza, abiregeye Urukiko rwemeza ko iryo rangizarubanza ryubahirijwe amategeko, ariko ko we yabonaga ko imanza zarangijwe zitabaye itegeko ku ikosorwa rya *certificat d'enregistrement*.

Akomeza asobanura ko impamvu abona ko izo manza zitabaye itegeko, ari uko mu rubanza RC 0129/15/TGI/NYGE Urukiko rwemeje ko rudafite ububasha, ntihagire ikindi cyemezo gifatwa mu mizi y'urubanza, naho mu rubanza RADA 0025/14/HC/KIG, hakaba harasuzumwe niba Akarere ka Gasabo kari gafite ububasha bwo gufata icyemezo kandi niba icyemezo kafashe cyavanwaho, ntihagira ikindi gisuzumwa mu byari byajuririwe, Urukiko rwemeza ko icyo cyemezo cy'Akarere kivanweho, ko utemera ukuri kuvugwa muri *certificat d'enregistrement* azayiregera akoresheje inzira zemewe n'amategeko.

Uregwa avuga ko Urukiko Rukuru rwasobanuye neza ko iki kibazo kirebana no guhindura *certificat d'enregistrement* cyarangijwe n'imanza zavuzwe haruguru, kuko cyasuzumwe n'inkiko zaziciye kandi ko we n'Urega bazibayemo ababuranyi, ko iyo haba hari uwarenganye aba yarazijuririye, akaba ariho bashingira bavuga ko izo manza zabaye itegeko.

Ikigo cy'Igihugu cy'imicungire n'imikoreshereze y'ubutaka mu Rwanda cyo kivuga ko izo manza zabaye itegeko, kuko ikiregerwa cyaburanwe kandi cyabaye ndakuka. Akomeza avuga ko iyo usomye urubanza RADA 0025/2014/HC, usanga rwaragumishije ibintu uko byari bimeze mbere, aho Uregwa yari afite *titre de propriété* na *fiche cadastrale* akabigumana, rukaba rwaratanze umurongo w'uko cyahindura icyangombwa cyangwa bikaregerwa mu Rukiko, ariko bikaba bitarubahirijwe n'Urega, kuko nta kirego aratanga ngo aho hantu hakurwe ku butaka bw'Uregwa.

Ku kibazo cyo kumenya niba certificat d'enregistrement yari ifite No Vol. RTXXXIV Folio 93 yasimbuwe na UPI: 1/02/13/03/1120 yahindurwa igakurwaho inzira rusange, Urega avuga ko umubyeyi we yandikiye Minisitiri w'Imirimo ya Leta n'Ingufu (MINITRAP), asaba gutunganyirizwa ahahoze ruhurura itagikoreshwa iri imbere y'amarembo ye kugira ngo ashobore kubona uko yinjira iwe, kuko aho yanyuraga ku muturanyi we yahafunze, asubizwa ko inzira yasabye ayihawe, ndetse ko ahawe n'uburenganzira bwo kuyitunganyiriza uko ashaka. Akomeza avuga ko uwagurishije Uregwa nawe yariyasabyeguhabwa iyo nzira arayihabwa ariko nyuma Minisiteri imwandikira imubwira ko iyo nzira ayambuwe kuko habayemo kwibeshya ndetse anasabwa kutanga ibyangombwa by'ubutaka bwe ngo bisubizwe ku gipimo yari asanganywe ntiyabikora kuko yahagurishije bitarakosorwa.

Asobanura ko ibyo avuga bihuye n'ibyavuye mu iperereza, aho bigaragara ko ahaburanwa hari inzira rusange aho kuba ikibanza cy'Uregwa yaje kubakamo umusarane na bingalot, ko ibyavuzwe n'abaregwa ko ruhurura igizwe n'ibice bibiri atari byo.

Uregwa avuga ko avuga ko ibyo Urega avuga ko akeneye inzira atari byo kuko ayifite, iburanwa ikaba iri ku cyangombwa cye cy'ubutaka, ariyo mpamvu nta wundi muntu uyifiteho uburenganzira. Akomeza avuga ko impamvu yafunze iyo nzira ari uko Urega yari afite aho anyura ku muhanda wa ruguru, kuko icyemezo cy'Akarere ka Gasabo cyari cyavuyeho na raporo yakozwe igaragaza ko afite aho agomba kunyura, ko kandi afite ibyemezo yahawe guhera ku Mujyi wa Kigali kugeza ku Murenge wa Remera, ariyo mpamvu asanga ashingiye kuri ibyo byangombwa no ku manza zabaye itegeko, *s* yahawe itagomba guhindurwa.

Ikigo cy'Igihugu cy'imicungire n'imikoreshereze y'ubutaka mu Rwanda kivuga ko mu iperereza ryakozwe, Urukiko rwabonye ko icyitwa inzira rusange atari byo, kuko inzira rusange igira aho ihera naho irangirira. Asaba Urukiko kubona ko Urega afite umuhanda haruguru kandi nta muhanda uteganywa ugera iwe unyuze kw'Uregwa. Yongeraho ko amabaruwa yanditswe mu mwaka wa 1991 ataherwaho ngo Urega ahabwe inzira aburana, kuko nta gaciro agifite, kuko

yavanweho n'ibindi byemezo bya Leta kandi n'ubundi by'urwo rwego, byagaragaje ko atahabwa aho hantu, ariyo mpamvu buri wese yagumana aho yahawe, kuko buri wese yafashe igice cya ruhururura agishyira ku butaka bwe.

Ikibazo kijyanye no gusuzuma niba Uregwa akwiye gucibwa indishyi zijyanye n'igihombo gikomoka ku gihe imodoka ye imaze ifungiranwe, Urega avuga ko Uregwa agomba kwirengera igihombo kingana na 42.100.000 Frw yatewe no kuba yarafungiranye imodoka ye kuva muri Kamena 2016 kugeza ubu.

Uregwa avuga ko gufunga inzira byakozwe n'Umuhesha w'Inkiko, kandi ko ikirego cyo gufunga inzira Urega yakiburanye n'uwo Muhesha w'Inkiko agatsindwa akaba atakigarura ngo cyongere kuburanishwa, agasanga ntacyo yasabwa kuko Urega yasabwe kuvanamo imodoka ye ubwo harangizwaga urubanza rwaciwe n'Urukiko Rukuru akabyanga. Avuga kandi ko nta kigaragaza ko imodoka yari nzima, ko n'ibyo yubatse yabiherewe ibyangombwa.

RLMUA ivuga ko ku birebana n'indishyi Urega asaba, Urukiko rwabisuzuma.

Incamake y'icyemezo: 1. Mu kirego gisubirishamo urubanza ku mpamvu z'akarengane, inzitizi yo kutakira ikirego ntigarukira ku nzitizi yo kwibeshya ku bihe byo gutanga ikirego gusa, mu gihe iyo nzitizi (yo kutakira ikirego) ari indemyagihugu ishobora kubyutswa n'umuburanyi cyangwa Urukiko rubyibwirije igihe icyo aricyo cyose. Bityo, Uwamahoro Mbabazi Liliane afite ububasha n'inyungu byo kurega, ububasha akaba abukomora k'uburenganzira bwari bwarahawe umubyeyi we, kandi akaba afite inyungu yo kurega kuko ibyo yaregeye aramutse abitsindiye yakongera kubona inzira imugeza iwe nta nkomyi.

2. Kugira icyemezo cy'umutungo ntibihagije kugira ngo hemezwe ko umutungo ari uw' umuntu hashingiwe gusa ku kuba icyemezo cy'umutungo kimwanditseho, ahubwo agomba kugaragaza aho yawukomoye. Bityo, nta cyabuza ko ibyangombwa byahawe Habimana Anselme bishingiye ku manza zabaye itegeko kandi izo manza nta burenganzira zimuhesha ku butaka buburanwa ngo bihindurwa ku buso bw'ubutaka buburanwa, kugira ngo inzira rusange iburanwa igera ku rugo rwa Uwamahoro Mbabazi Liliane ivanweho.

Inzitizi yo kutakira ikirego nta shingiro ifite.
Ikirego cyo gusubirishamo ku mpamvu z'akarengane gifite ishingiro.
Urubanza rwaciwe n'Urukiko Rukuru ruhindutse mu ngingo zarwo zose.
Amagarama aherera ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 62 n'iya 63.
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 3, 12,14, 81, 83, 111, 129, 161 n'iya 176.
Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 11, 12, 37 n'iya 38.
Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.
Itegeko ryo ku wa 20 Nyakanga 1920 ryerekeye imitungo itimukanwa, ingingo ya 34.
Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa, ingingo ya 23.

Imanza zifashishijwe:

Busoro na Busoro n'abandi, RS/INJUST/RCOOO22/2018/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 21 Kamena 2019.

Harerimana na Sebukayire, RCAA 0018/13/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2014.

Rutabayiru na Batamuliza, RCAA 0013/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 03 Kamena 2016.

Inyandiko z'abahanga zifashishijwe:

Jean Vicent et Serge Guinchard, Procédure civile 24é ed. Dalloz, Paris, 1996, P.98.

Serge Guinchard, Droit et pratique de la procédure civile, 8e éd., Dalloz, Paris, 2014, pp.5,8, 1209.

Melina Douchy – Oudot, Procédure civile, 2ed, EJA, Paris, 2006, P. 108.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 22/12/1990, Nyirambabazi Vénantie, yandikiye Minisitiri w'Imirimo ya Leta n'Ingufu (MINITRAPE) asaba inzira ahahoze ruhurura yari itagikoreshwa kugira ngo abone uko yinjira iwe, kuko aho yari asanzwe anyura mu kibanza cy'umuturanyi we yari amaze kuhafunga, maze mu ibaruwa nimero 11.04.04/1974 yo ku wa 20/02/1991, iyo Minisiteri imumenyesha ko inzira yasabye ayemerewe, ariko akaba ari we ugomba gutunganya aho hantu ruhurura yanyuraga, uko bimunogeye, yirinda kurengera abaturanyi kandi akubahiriza imbago z'ibiti zihasanzwe. Nyuma y'uko Nyirambabazi Vénantie yemerewe gutunganya iyo ruhurura, Rwendeye Nzabonimpa Donatille nawe yandikiye MINITRAPE asaba aho hantu hari ruhurura ngo ahomeke ku kibanza cye, ahahabwa ku wa 15/01/1992, ariko nyuma MINITRAP iza kubona ko habaye amakosa, yandikira Rwendeye Nzabonimpa Donatille ibaruwa yo ku wa 15/09/1992, imumenyesha ko icyemezo cyari cyafashwe cyo kumuha ahantu yari yasabye ngo homekwe ku kibanza cye giteshejwe agaciro, kuko byakozwe ku bwo kwibeshya, kuko aho hantu ari inzira rusange izakoreshwa n'ubyifuza wese. Muri iyo baruwa kandi, MINITRAPE yavuze ko ibipimo by'ikibanza cya Rwendeye Nzabonimpa Donatille bigomba gukosorwa, kikagumana ibipimo cyahawe nk'uko biri mu nyandikomvugo yerekeye ipimwa n'ishyirwaho ry'imbibi (*procès-verbal de mesurage et de bornage*) nimero 3200 yo ku wa 01/04/ 1981, ariko ibyo ntibyakorwa kugeza ubwo Rwendeye Nzabonimpa Donatille yagurishije ikibanza cye, Habimana Anselme n'umugore we Irere Jeanne Marie Claire, bahaguze bafunga ya nzira, Uwamahoro Mbabazi Liliane ntiyongera kubona uko ajya cyangwa ava iwe, nk'uko byari bisanzwe, ndetse n'imodoka yari afite mu rugo rwe ihamamo kuko yabuze aho ayinyuza kugeza ubu.

[2] Uwamahoro Mbabazi Liliane yiyambaje inzego zitandukanye kugira ngo afungurirwe inzira, maze ku itariki ya 19/09/2012 Akarere ka Gasabo kandikira Habimana Anselme kamusaba gukosoza «*Titre de propriété* nimero 1120 (ikibanza cyahoze ari 5056) kugira ngo havanweho agace karimo inzira, kuko atari umutungo we, imanza zitangira ubwo.

[3] Habimana Anselme yatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo asaba kuvanaho icyemezo cy'Akarere ka Gasabo kiri mu ibaruwa yo ku wa 19/09/2012, yamusabaga gukosoza *Titre de propriété* yavuzwe, hacibwa urubanza RAD 0057/13/TGI/NYGE ku wa 28/3/2014, Urukiko rwemeza ko nta makosa yakozwe ku buryo icyemezo cy'Akarere ka Gasabo cyavanwaho, Habimana Anselme ajuririye icyo cyemezo mu Rukiko Rukuru, ruca urubanza RADA 0025/14/HC/KIG ku wa 16/01/2015, ruvuga ko icyemezo cy'Akarere ka Gasabo cyo

gusaba Habimana Anselme gukosoza *Titre de propriété* cyafashwe n'abatabifitiye ububasha, rukivanaho.

[4] Uwamahoro Mbabazi Liliane nawe yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge arega Habimana Anselme, asaba gutesha agaciro icyangombwa cy'umutungo nimero 1120 cyahoze gifite nimero 5056, Urwo Rukiko ruca urubanza RC 0129/15/TGI/NYGE ku wa 23/04/2015, rwemeza ko ikirego yarushyikirije kitakiriwe, kuko kitari mu bubasha bw'Urugereko ruburanisha imanza mbonezamubano, ahubwo kiri mu bubasha bw'Urugereko rwihariye ruburanisha imanza z'ubutegetsi.

[5] Uwamahoro Mbabazi Liliane yatanze ikindi kirego mu Rukiko Rwisumbuye rwa Nyarugenge arega Habimana Anselme n'Ikigo cy'Imicungire n'Imikoreshereze y'Ubutaka mu Rwanda, asaba kuvana inzira yateganyijwe na Leta muri *Titre de propriété* Vol. RTXXXIV Folio 93 yo ku wa 18/06/2012 yasimbuwe n'iyo ku wa 18/04/2016, yahawe Habimana Anselme, kuko guhera ku wa 15/09/1992 iyo nzira yateganyijwe na Leta (MINITRAPE) nk'inzira rusange umuntu wese yakoresha.

[6] Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza RC 00131/2017/TGI/NYGE ku wa 18/04/2019, rusanga inzitizi yatanzwe n'abaregwa y'uko urega nta bubasha n'inyungu afite byo kurega nta shingiro ifite; mu mizi y'urubanza, rwemeza ko ikirego rwashyikirijwe na Uwamahoro Mbabazi Liliane nta shingiro gifite, ko rutagomba gutegeka Ikigo Gishinzwe Imicungire n'Imikoreshereze y'ubutaka mu Rwanda (Ikigo cy'Igihugu Gishinzwe Umutungo Kamere) kuvana inzira ku cyangombwa cya Habimana Anselme kandi hari imanza RC 0129/15/TGI/NYGE na RADA 0025/14/HC/KIG zabaye itegeko.

[7] Uwamahoro Mbabazi Liliane yajuririye icyo cyemezo mu Rukiko Rukuru, arusaba gusuzuma niba imanza RC 0129/15/TGI/NYGE na n° RADA 0025/14/HC/KIG zarabaye itegeko, kandi niba zaraburanishije ibijyanye no gukosora *certificat d'enregistrement,* no gusuzuma niba *certificat d'enregistrement* yari ifite nimero Vol. RTXXXIV Folio 93 yo ku 18/06/2012 yasimbuwe na UPI 1/02/13/03/1120 yo ku wa 18/04/2016 yakosorwa.

[8] Mu rubanza RADA 00159/2019/HC/KIG[1] rwaciwe n'Urukiko Rukuru ku wa 27/02/2020, haburana Uwamahoro Mbabazi Liliane, Habimana Anselme n'Ikigo cy'Imicungire n'Imikoreshereze y'Ubutaka mu Rwanda, Urukiko Rukuru rwemeje ko ikirego cya Uwamahoro Mbabazi Liliane kitakiriwe, kuko ikirego yatanze cyafashweho icyemezo mu rubanza RADA 0025/14/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 16/01/2015, rusanga ibindi rwasabwe gusuzuma nta mpamvu yo kubisuzuma, kuko ikirego cy'iremezo kitakiriwe.

[9] Uwamahoro Mbabazi Liliane yandikiye Perezida w'Urukiko rw'Ubujurire, amusaba gusuzuma akarengane kabaye mu rubanza RADA 00071/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 27/02/2020, nyuma yo gusuzuma ubusabe bwe, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza RADA 00071/2019/HC/KIG rwasubirwamo ku mpamvu z'akarengane, maze mu cyemezo nimero 031 /CJ/2020 cyo ku wa 28/9/2020, Perezida w'Urukiko rw'Ikirenga yemeza ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, rwoherezwa mu Rukiko rw'Ubujurire kugira ngo abe ari rwo ruruburanisha, muri uru Rukiko ruhabwa RS/INJUST/RAD 00002/2020/CA.

[1] Urubanza rwavuzwe haruguru rwahawe numero itariyo mu ncarubanza. Muri sisitemu ya IECMS rufite RADA 00071/2019/HC/KIG ari narwo rwasubirishijwemo ku mpamvu z'akarengane, ariko umucamanza mu Rukiko Rukuru yanditse RADA 00159/2019/HC/KIG aho kwandika urubanza RADA 00071/2019/HC/KIG.

[10] Uwamahoro Mbabazi Liliane yagaragaje akarengane ke mu rubanza rusubirwamo avuga ko Urukiko Rukuru rwirengagije gusuzuma niba imanza RC 0129/15/TGI/NYGE na RADA 0025/14/HC/KIG zarabaye itegeko kandi niba zaraburanishije ibijyanye no gukosora *certificat d'enregistrement*, asaba gusuma niba iyo *certificat d'enregistrement* yahindurwa ikavanwaho inzira Nyina Nyirambabazi Vénantie yari yarahawe akayitunganya, gutegeka Habimana Anselme kwirengera igihombo yatejwe n'imodoka ye yafungiranye mu gipangu ubwo yamufungiraga inzira, asaba amafaranga y'ikurikiranarubanza n'ay'igihembo cya ba Avoka bamuburaniye. Abaregwa bavuga ko Uwamahoro Mbabazi Liliane nta bubasha n'inyungu afite byo kuregera inzira rusange (*voie publique*), muri uru rubanza, ko ibyo aregera byaburanwe mu manza zabaye itegeko, ko kandi ataribo baryozwa igihombo aregera.

[11] Urubanza rwahamagawe mu iburanisha mu ruhame ryo ku wa 01/12/2020, Urukiko rusanga ababuranyi bitabye, Uwamahoro Mbabazi Liliane yunganirwa na Me Kayijuka Ngabo na Me Bagabo Faustin, Ikigo cy'Imicungire n'Imikoreshereze y'Ubutaka mu Rwanda (RLMUA) gihagarariwe na Me Mbonigaba Eulade, Habimana Anselme yunganiwe na Me Munderere Léopold, uwo munsi ntirwaburanishwa, kuko hari inyandiko abahagarariye urega bashyize muri dosiye bitinze, abaregwa batireguyeho, iburanisha ryimurirwa ku wa 13/01/2021. Uwo munsi ugeze, iburanisha ryarasubukuwe, rusanga ababuranyi bitabye bamwe bunganiwe abandi bahagarariwe nka mbere, haburanishwa inzitizi yatanzwe na Habimana Anselme y'uko Uwamahoro Mbabazi Liliane nta bubasha n'inyungu afite byo kuregera inzira rusange, hanasuzumwa niba imanza RC 0129/15/TGI/NYGE na RADA 0025/14/HC/KIG zarabaye itegeko, kandi niba zaraburanishije ibijyanye no gukosora *certificat d'enregistrement* iburanwa muri uru rubanza, niba *certificat d'enregistrement* nimero Vol. RTXXXIV Folio 93 yo ku italiki ya 18/06/2012 yasimbuwe na UPI: 1/02/13/03/1120 yo ku wa 18/04/2016 yakosorwa kugira ngo haboneke inzira rusange yahahoze kuva na mbere. Umunsi iburanisha ntiryapfundikiwe, kuko Urukiko rwasanze ari ngombwa kugera aho ikiburanwa giherereye mbere y'uko urubanza rukomeza, gahunda yo kujyayo ishyirwa ku wa 03/02/2021, iburanisha ryimurirwa ku wa 24/02/2021.

[12] Ku wa 24/02/2021, iburanisha ryarasubukuwe, Uwamahoro Mbabazi Liliane yunganiwe na Me Kayijuka Ngabo, naho abaregwa bahagarariwe nka mbere, ababuranyi bahabwa umwanya wo kugira icyo bavuga ku byavuye mu iperereza, hanasuzumwa ingingo zasigaye mbere zitaburanishijwe, iburanisha rirapfundikirwa ababuranyi bamenyeshwa ko bazasomerwa urubanza ku wa 26/03/2021 saa tanu, ariko riza kwimurirwa ku wa 31/03/2021.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba ikirego cyo gusubirishamo urubanza RADA 00071/2019/HC/KIG ku mpamvu z'akarengane cyatanzwe na Uwamahoro Mbabazi Liliane kidakwiye kwakirwa kuko nta bubasha n'inyungu afite byo kurega

[13] Habimana Anselme na Me Munderere Léopold umwunganira, bavuga ko bashingiye ku ngingo ya 3 n'iya 81 z'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, basanga ikirego Uwamahoro Mbabazi Liliane yatanze kidakwiye kwakirwa, kuko yagitanze mu Rukiko Rwisumbuye rwa Nyarugenge ntigisuzumwe, agategereza ko cyasuzumwa muri uru rubanza, yitwaje ibaruwa nyina yandikiwe na MINITRAPE itarigeze ishyirwa mu bikorwa, Leta ikaba igifite ubwo butaka; ko kuba rero bukiri ubwayo Uwamahoro Mbabazi Liliane nta bubasha n'inyungu afite byo kuburegera, uretse igihe yaba yerekanye ubutumwa yahawe (*procuration*) bwo gutanga ikirego mu izina ryayo.

[14] Me Munderere Léopold avuga ko iyo nzitizi Habimana Anselme yatanze igamije gusaba Urukiko kutakira ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane, ayishingira ku kuba mu nama ntegurarubanza barasabye urega kugaragaza ingingo ashingiraho avuga ko habaye akarengane ntiyazigaragaza. Avuga kandi ko ingingo ya 63 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, itabuza Urukiko kongera gusuzuma urubanza mu mizi n'inzitizi barugaragarije, akaba ariho ahera asaba ko inzitizi yatanze zasuzumwa.

[15] Me Bagabo Faustin na Me Kayijuka Ngabo bunganira Uwamahoro Mbabazi Liliane, bavuga ko iyakirwa ry'ikirego cy'akarengane ryasuzumwe na Perezida w'Urukiko rw'Ubujurire na Perezida w'Urukiko rw'Ikirenga baracyakira, ko iyi nzitizi idakwiye kwakirwa ngo isuzumwe, kuko mu gihe hasuzumwa ibijyanye n'akarengane habanza gusuzumwa ibijyanye n'inyungu n'ububasha bw'uwatanze ikirego, bikaba bitakongera gusuzumwa imbere y'uru Rukiko. Bavuga ko Urukiko rw'Ikirenga mu rubanza RS/INJUST/RCOOO22/2018/SC, rwaciwe ku wa 21 Kamena 2019, haburana Busoro vs Busoro n'abandi, rwemeje ko inzitizi yatuma urubanza rutaburanishwa mu mizi mu manza z'akarengane, itakirwa ngo isuzumwe, kuko iba yarasuzumwe n'inzego zibishinzwe, uretse igihe byaba bigaragaye ko uwatanze ikirego yaba yararengeje igihe cyo kugitanga.

[16] Ku bijyanye n'inyungu Uwamahoro Mbabazi Liliane afite mu rubanza, bavuga ko n'ubwo umutungo wanditse kuri Habimana Anselme, bitabuza uwo ari we wese uwufiteho inyungu kuwuregera, ko inzira iburanwa uwo bunganira ayifiteho inyungu kuko imufasha gutaha iwe, byongeye kandi akaba yari yarayitunganyije kuko mbere hari ruhurura.

[17] Bavuga kandi ko kuba ubutaka ari ubwa Leta, Uwamahoro Mbabazi Liliane aburana we aburana inzira yahawe umubyeyi we Nyirambabazi Vénantie, ko kuba aho hantu haramufashaga kugera iwe (*droit de passage*), ubwo burenganzira akaba yarabuvukijwe, kuhaburana bikaba biri mu nyungu ze.

[18] Me Mbonigaba Eulade, uburanira RLMUA, avuga ko Urukiko rwaburanisha ikirego rugasuzuma niba Uwamahoro Mbabazi Liliane yari afite ububasha n'inyungu byo gutanga ikirego kuva na mbere, kuko izi ngingo zagiye ziburanishwa mu manza zabanje. Ku byerekeye urubanza RS/INJUST/RC 00022/2018/SC rwavuzwe rwaciwe n'Urukiko rw'Ikirenga, avuga ko rudahuye n'ikiburanwa muri uru rubanza kuko icyo rwavugaga ari inzitizi ituma urubanza rutaburanishwa itanzwe bwa mbere mu Rukiko rusuzuma urubanza rw'akarengane, ubu hakaba hasuzumwa niba ikirego cya Uwamahoro Mbabazi Liliane cyari gikwiye kwakirwa mbere hose, kandi byaburanwe mu manza RC 0129/15/TGI/NYGE na RADA 0025/14/HC/KIG zabaye itegeko.

[19] Me Mbonigaba Eulade akomeza avuga ko Urukiko rukwiye kwemeza ko Uwamahoro Mbabazi Liliane nta nyungu afite mu rubanza, kuko atagaragaza uburenganzira afite ku butaka buburawa, kubera ko kuva urubanza rwatangira icyaregerwaga cyari ugusaba Urukiko gutegeka Ikigo cy'Igihugu Gishinzwe Umutungo Kamere kuvana inzira ku cyangombwa gifite *titre de propriété* kandi ibyo bikaba bitari gushoboka mbere y'uko agaragaza uburenganzira afite kuri ubwo butaka bukomoka ku rubanza yatsinze rumuha ibyo asaba, cyangwa ubwumvikane yaba yaragiranye na Habimana Anselme, nyir'ubutaka.

[20] Avuga ko ikindi gituma ikirego kitakirwa, ari uko Uwamahoro Mbabazi Liliane ashingira ku ibaruwa MINITRAPE yandikiye Rwendeye Nzabonimpa Donatille imusaba ko ahaburanwa haba ahantu rusange, (*place publique*), ko hashingiwe ku ngingo ya 11 y'itegeko rigenga ubutaka, ibyo asaba binyuranye n'ibiteganijwe mu ngingo ya 37 y'iryo tegeko itegeka umuturanyi guha undi inzira. Ko akurikije ibiteganywa n'ingingo ya 12 agace ka 6, y'itegeko

rigenga ubutaka mu Rwanda, asanga Uwamahoro Mbabazi Liliane aregera ahantu hatari ahe, akaba ariyo mpamvu avuga ko nta nyungu afite mu rubanza.

UKO URUKIKO RUBIBONA

[21] Ingingo ya 63 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko itegenya ko iyo Urukiko rw'Ikirenga cyangwa urundi Rukiko Perezida w'Urukiko rw'Ikirenga agena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe.

[22] Ingingo ya 3 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 cyakirwa mu rukiko iyo urega afite ububasha, inyungu n'ubushobozi byo kurega, naho ingingo ya 83, igika cya 4, y'iryo tegeko iteganya ko impamvu ituma ikirego kitakirwa ari 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.

[23] Ingingo ya 129, igika cya mbere, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru iteganya ko impamvu ituma ikirego kitakirwa igaragazwa mu myanzuro yo kwiregura. Iyo ari indemyagihugu, nko kurenza igihe cyo kujurira, kutagira ububasha, ubushobozi cyangwa inyungu byo kurega, ishobora kubyutswa n'umuburanyi cyangwa urukiko rubyibwirije igihe icyo aricyo cyose.

[24] Ku bijyanye n'inyungu yo kurega, abahanga mu mategeko Jean Vicent et Serge Guinchard, mu gitabo cyabo *Procédure civile* bavuga ko inyungu zigomba kuba ari iz'ako kanya, zavutse kandi zishingiye ku kintu kiriho, zidashingira ku kugenekereza kw'ibizakorwa[2]. Ibyo bihura nanone n'ibyo Serge Guinchard yavuze mu gitabo *Droit et pratique de la procédure civile*, ko inyungu zigomba kuba iz'umuntu ku giti cye, (*personnel*) ziriho (*né*) kandi ari iz'ako kanya (*actuel*), ko kuba inyungu ari iz'umuntu ku giti cye ari kimwe mu biranga ikirego ko cyatanzwe nawe, kuko ntawe utegetswe kurengera inyungu z'undi muntu[3]. Naho ku bijyanye n'ububasha bwo kurega, undi muhanga mu mategeko, Melina Douchy – Oudot, mu gitabo cye *Procédure civile* bavuga ko ububasha bufitwe n'umuntu wese ufite inyungu zo gutanga ikirego, kuko ubwo bubasha bwo kurega akenshi bujyana n'inyungu[4].

[25] Dosiye igaragaza ko Uwamahoro Mbabazi Liliane yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba gutegeka Ikigo cy'Igihugu Gishinzwe Umutungo Kamere (icyo gihe niko cyitwaga), kuvana inzira rusange yateganyijwe na Leta muri *Titre de propriété* Vol. RTXXXIV Folio 93 yo ku itariki ya 18/6/2012 yasimbuwe n'iyo ku wa 18/04/2016, cyandikwa kuri RC 00131/2017/TGI/NYGE, muri urwo rubanza, Urukiko Rwisumbuye rwa Nyarugenge rwemeza ko inzitizi zatanzwe n'abaregwa zigamije kutakira ikirego cye nta shingiro

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[2] L'intérêt doit être né et actuel … le fondement et portée de cette exigence est que le rôle du juge est de trancher des litiges deja nés. C'est la raison pour la quelle on impose au demandeur de faire valoir un interet né et actuel, un intérêt simplement éventuel ne suffirait pas " Jean Vicent et Serge Guinchard, Procédure civile 24é ed. Dalloz, Paris, 1996, P.98.

[3] L'intérêt doit être personnel, né et actuel. L'exigence d'un intêrêt qui soit personnel au demandeur caractérise le contentieux subjectif. Elle traduit l'idée que nul n'est pas admis, en principe à défendre les intérêts d'autrui …. l'intérêt invoqué ne peut être pris en considération que s'il existe au moment où la demande est formée. L'idée est que le rôle du juge est de trancher le litige déjà né…. L'intérêt éventuel, en principe, ne pourrait être pris en considération. " Serge Guinchard, Droit et pratique de la procédure civile, 8e éd., Dalloz, Paris, 2014, pp.5,8.

[4] A la qualité pour agir toute personne qui a intérêt à agir …L'intérêt donne au demandeur la qualité pour agir. L'attribution du droit d'agir est confondue avec celui-ci …. ″ Melina Douchy – Oudot, Procédure civile, 2ed, EJA, Paris, 2006, P. 108.

zifite, ariko rwemeza ko icyo kirego cyatanzwe na Uwamahoro Mbabazi Liliane nta shingiro ifite, ko rutagomba gutegeka icyo Kigo kuvana inzira yategetswe n'Urukiko Rukuru mu rubanza RADA 0025/14/HC/KIG rwaciwe ku wa 16/01/2015 rwabaye itegeko. Urwo rubanza rwajuririwe mu Rukiko Rukuru, ubujurire buhabwa RADA 00071/2019/HC/KIG (kuri kopi y'urubanza handitswe ko rufite no RADA 00159/2019/HC/KIG ku bwo kwibeshya), hasuzumwa ibibazo birimo icyo kumenya niba Uwamahoro Mbabazi Liliane afite ububasha n'inyungu muri uru rubanza, rwemeza ko ibyo aregera byaburanywe mu manza zabaye itegeko, ikirego cye nticyakirwa.

[26] Ku bijyanye no kumenya niba Uwamahoro Mbabazi Liliane afite inyungu n'ububasha byo kurega, mu rubanza RS RS/INJUST/RC00022/2018/SC, Urukiko rw'Ikirenga rwasesenguye ingingo ya 62 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, rusanga yumvikanisha ko mbere yo kugira ngo Perezida w'Urukiko rw'Ikirenga afate icyemezo ko urubanza rusubirwamo ku mpamvu z'akarengane, aba yasuzumye neza raporo yashyikirijwe n'inzego zibishinzwe, yasanga nta nzitizi yatuma urubanza rutaburanishwa mu mizi agategeka ko urubanza rwongera kuburanishwa, ari nayo mpamvu ingingo ya 63 y'iryo Tegeko iteganya ko urukiko rusabwe gusubiramo urubanza ku mpamvu z'akarengane ruruburanisha mu mizi. Rwakomeje rugaragaza ko mu ku biteganya gutyo, umushingamategeko yumvaga ko ibirebana n'inzitizi biba byarangije gusuzumwa, ku buryo kuri uru rwego nta nzitizi iba igomba gutangwa, keretse umuburanyi ashoboye kugaragaza impamvu idasanzwe nko kuba harabayeho kwibeshya ku bihe byo gutanga ikirego[5].

[27] Urukiko rurasanga kuba mu rubanza rwavuzwe haruguru rwaciwe n'Urukiko rw'Ikirenga, rwavuze ko nta nzitizi igomba gutangwa mu manza z'akarengane, uretse igihe umuburanyi agaragaje impamvu idasanzwe, nko kwibeshya ku bihe byo gutanga ikirego, urwo Rukiko rutarigeze rugaragaza inzitizi zikwiye gutangwa izo ari zo, ariyo mpamvu uru Rukiko rutagarukira ku nzitizi yo kwibeshya ku bihe byo gutanga ikirego gusa, cyane cyane ko itegeko riteganya ko inzitizi yo kutakira ikirego iyo ari indemyagihugu ishobora kubyutswa n'umuburanyi cyangwa Urukiko rubyibwirije igihe icyo aricyo cyose[6], bityo imvugo y'abahagarariye urega y'uko mu manza z'akarengane nta nzitizi zindi zisuzumwa ikaba idafite ishingiro.

[28] Urukiko rusanga inzira iburanwa muri uru rubanza nk'uko biri mu kirego cya Uwamahoro Mbabazi Liliane, yari yarahawe Nyirambabazi Vénantie, umubyeyi we akiriho, ayihabwa na MINITRAPE nk'uko byagaragajwe haruguru[7], arayitunganya bigatuma ubwe ndetse n'abamugana bashobora kwinjira no gusohoka iwe n'amaguru cyangwa n'imodoka nta nkomyi, bityo Uwamahoro Mbabazi Liliane afite ububasha bwo gutanga ikirego kuko asimbura umubyeyi we mu burenganzira yari afite kuri iyo nzira. Kuba ubu bidashoboka ko hagira imodoka igera iwe, ndetse n'iyo yari ahafite ikaba yaraheze mu gipangu bitewe nuko iyo nzira yafunzwe na Habimana Anselme, nabyo byerekana inyungu Uwamahoro Mbabazi Liliane afite yo kuregera iyo nzira, kuko kuba Habimana Anselme yarayifunze byamugizeho ingaruka.

[29] Urukiko rurasanga ibyo abaregwa bavuga ko iyo nzira ari rusange, ko atari iya Uwamahoro Mbabazi Liliane ku buryo yagira inyungu n'ububasha bwo kuyiburana aterekanye uburenganzira yahawe na Leta, nta shingiro bifite, kubera ko kuba ikoreshwa n'abandi bantu, bitavanaho ko nawe ayifiteho uburenganzira nk'inzira yamugezaga iwe, kandi yayitunganyije

[5] Urubanza RS/INJUST/RC00022/2018/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 21 Kamena 2019, haburana Busoro vs Busoro n'abandi igika cya 18.
[6] Ingingo ya 129 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru.
[7] Reba ibaruwa yo ku wa 20/02/1991 ya Minisiteri yari ishinzwe imirimo ya Leta n'ingufu yamuhaga uburenganzira ku nzira n'uburyo azayitunganya.

amaze kubisabira Leta uruhushya akabyemererwa, ayitangaho amafaranga ye kugira ngo abone inzira igera iwe, nyamara ubu akaba yarambuwe ubwo burenganzira.

[30] Hashingiwe ku bimaze kugaragazwa haruguru, Urukiko rusanga Uwamahoro Mbabazi Liliane afite ububasha n'inyungu byo kurega, ububasha akaba abukomora k'uburenganzira bwari bwarahawe umubyeyi we, kandi akaba afite inyungu yo kurega kuko ibyo yaregeye aramutse abitsindiye yakongera kubona inzira imugeza iwe nta nkomyi, bityo inzitizi yatanzwe na Habimana Anselme yo kutakira ikirego cye ikaba nta shingiro ifite.

2. Kumenya niba Urukiko Rukuru rutarasuzumye impamvu Uwamahoro Mbabazi Liliane yatanze ajurira y'uko imanza RC 0129/15/TGI/NYGE na RADA0025/14/HC/KIG zitabaye itegeko ku bijyanye no ukosora "*certificate d'enregistrement*" kandi zitaburanishije ibijyanye nayo.

[31] Me Bagabo Faustin, wunganira Uwamahoro Mbabazi Liliane, avuga ko habaye imanza nyinshi cyane, hakaba kwibeshya ko zabaye itegeko. Avuga ko urubanza rwa mbere rukomoka ku kirego cyatanzwe na Habimana Anselme waregeye gutesha agaciro icyemezo cy'Akarere ka Gasabo, hacibwa urubanza RAD 0057/13/TGI/NYGE, Urukiko Rwisumbuye rwa Nyarugenge rwemeza ko icyemezo cy'Akarere ka Gasabo kigumyeho, naho mu rubanza RADA 0025/14/HC, Urukiko Rukuru rwemeza ko icyemezo cyafashwe n'Akarere ka Gasabo giteshejwe agaciro, rushingiye ku mpamvu y'uko Akarere atari Urukiko, ko ibikosorwa bigomba gukorwa n'inzego zibifitiye ububasha.

[32] Avuga kandi ko izo manza zimaze gucibwa, Umuhesha w'Inkiko witwa Kamanzi yaje kurangiza urubanza, uwo yunganira abiregeye Urukiko rwemeza ko iryo rangizarubanza ryubahirijwe amategeko, ariko ko Uwamahoro Mbabazi Liliane we yabonaga ko imanza zarangijwe zitabaye itegeko ku ikosorwa rya *certificat d'enregistrement*, asaba Ikigo cy'Igihugu Gishinzwe Imicungire n'Imikoreshereze y'ubutaka mu Rwanda kuvana ku cyangombwa cya Habimana Anselme inzira yari yarahawe umubyeyi we, kirabyanga, atanga ikirego mu Rukiko Rwisumbuye rwa Nyarugenge gihabwa RC O129/15/TGI/NYGE, Urukiko rwemeza ko Urugereko ruburanisha imanza mbonezamubano nta bubasha rufite rwo kuburanisha ikirego yatanze, nyuma atanga ikindi kirego mu Rugereko ruburanisha imanza z'ubutegetsi, gihabwa RC 00131/2017/TGI/NYGE (y'ibirego mbonezamubano ku bwo kwibeshya), muri urwo rubanza Urukiko rwemeza ko imanza RC O129/15/TGI/NYGE na RADA 0025/2014/HC zabaye itegeko, Uwamahoro Mbabazi Liliane ajuririra mu Rukiko Rukuru, urubanza ruhabwa RADA 00159/2019/HC/KIG, umucamanza ntiyasuzuma icyo yari yasabwe gusuzuma cyo kumenya niba izo manza zimaze kuvugwa zarabaye itegeko ku bijyanye no gukosoza *certificat d'enregistrement*, ahubwo asuzuma ibijyanye n'iyakirwa ry'ikirego.

[33] Akomeza asobanura ko impamvu babona ko imanza RC 0129/15/TGI/NYGE na RADA 0025/14/HC/KIG zitabaye itegeko ku bijyanye no gukosoza *certificat d'enregistrement*, ari uko mu rubanza RC 0129/15/TGI/NYGE Urukiko rwemeje ko rudafite ububasha, ntihagire ikindi cyemezo gifatwa mu mizi y'urubanza, naho mu rubanza RADA 0025/14/HC/KIG, hakaba harasuzumwe niba Akarere ka Gasabo kari gafite ububasha bwo gufata icyemezo kandi niba icyemezo kafashe cyavanwaho, ntihagira ikindi gisuzumwa mu byari byajuririwe, Urukiko rwemeza ko icyo cyemezo cy'Akarere ka Gasabo kivanweho, ko utemera ukuri kuvugwa muri *certificat d'enregistrement* azayiregera akoresheje inzira zemewe n'amategeko; ko urwo rubanza rwabaye itegeko ku byerekeranye n'icyemezo cy'Akarere ka Gasabo, ariko rutabaye itegeko ku kibazo cyo kumenya niba *Certificat d'enregistrement* yakosorwa nk'uko byasabwe na MINITRAPE.

[34] Me Bagabo Faustin akomeza avuga ko mu mwaka wa 2016 RLMUA yandikiye Habimana Anselme ibaruwa imusaba kugarura icyangombwa cye cy'ubutaka kugira ngo gikosorwe hakurwemo inzira rusange kuko ntawe ikwiye kwandikwaho, nk'uko bigaragara mu ibaruwa MINITRAP yandikiye Madamu Rwendeye Nzabonimpa Donatille mu mwaka wa 1992, nyuma Me Munderere Léopold yandikira RLMUA ayigaragariza ko hari imanza zabaye itegeko, ko Habimana Anselme akwiye guhabwa uburenganzira bwo gushyira inzira iburanwa ku butaka bubaruye ku cyangombwa cye, RLMUA ibishingiraho yandikira Uwamahoro Mbabazi Liliane ko ibyo yasabye byo gukosora icyangombwa cyo ku wa 18/04/2016 ku kibanza nimer 1120 cyahoze ari nimero 5056 kiri i Remera-Rukiri I cyanditswe kuri Habimana Anselme n'umugore we Irere Marie Jeanne Claire kugira ngo havanweho inzira rusange bidashoboka, ko ariyo mpamvu Leta igomba kubazwa impamvu itashyize mu bikorwa ibyo yari yiyemeje, kuko kuva MINITRAP yandikiye Rwendeye Nzabonimpa Donatille atigeze agarura ibyangombwa ngo bihindurwe, maze Habimana Anselme akabigenderaho ahabwa ibyangombwa byo kuvugurura, agafungira inzira uwo yunganira.

[35] Me Kayijuka Ngabo, nawe wunganira Uwamahoro Mbabazi Liliane, avuga ko urubanza RC 0129/15/TGI/NYGE rwabaye itegeko ku bijyanye n'uko ikirego kitari mu bubasha bw'Urukiko Rwisumbuye rwa Nyarugenge, Urugereko ruburanisha imanza z'imbonezamubano, naho urubanza RADA 0025/14/HC/KIG rwabaye itegeko ku bijyanye n'icyemezo cy'Akarere Gasabo, ko rero izo manza zitabaye itegeko ku bijyanye n'icyo Uwamahoro Mbabazi Liliane yari yaregeye cyo gukosoza *certificat d'enregistrement*.

[36] Habimana Anselme na Me Munderere Léopold umwunganira, bavuga ko mu gika cya 15 cy'urubanza rusubirishwamo ku mpamvu z'akarengane, Urukiko Rukuru rwasobanuye neza ko iki kibazo kirebana no guhindura *certificat d'enregistrement* cyarangijwe n'imanza RC 0129/15/TGI/NYGE na RADA 0025/14/HC/KIG, kuko cyasuzumwe n'inkiko zaziciye kandi ko we na Uwamahoro Mbabazi Liliane bazibayemo ababuranyi, ko iyo haba hari uwarenganye aba yarazijuririye, akaba ariho bashingira bavuga ko izo manza zabaye itegeko.

[37] Me Mbonigaba Eulade, uhagarariye RLMUA, avuga ko imanza RC 0129/15/TGI/NYGE na RADA 0025/14/HC/KIG zabaye itegeko, kuko ikiregerwa cyaburanwe kandi cyabaye ndakuka (*autorité de la chose jugée*) kuko mu gihe Urukiko rwasesenguraga urubanza RADA 0025/14/HC/KIG rwavuze ko Urukiko ari rwo rufite ububasha bwo gutegeka ko *certificat d'enregistremennt* ikosorwa, ariko ko rutategetse Uwamahoro Mbabazi Liliane kurega cyangwa guhindura imitangire y'ikirego cye, kuko uburyo bwonyine yashoboraga gukoresha ari ubujurire budasanzwe buvugwa kuva mu ngingo ya 161 kugeza ku ngingo ya 176 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Avuga ko n'ubundi ibyo arega RLMUA, yakomeje gushaka kubikora nk'uko bigaragazwa n'amabaruwa ya mbere y'icibwa ry'urubanza RADA 0025/14/HC/KIG, n'ibaruwa yo ku wa 05/07/2016 icyo kigo cyanditse kitaramenya urwo rubanza rwabaye itegeko, hanyuma ruza rutanga umurongo.

[38] Avuga ko iyo usomye urubanza RADA 0025/2014/HC, usanga rwaragumishije ibintu uko byari bimeze mbere, aho Habimana Anselme yari afite *titre de propriété* na *fiche cadastrale* akabigumana, rukaba rwaratanze umurongo w'uko Ikigo cy'Igihugu cy'Imicungire n'Imikoreshereze y'Ubutaka mu Rwanda cyahindura icyangombwa cyangwa bikaregerwa mu Rukiko, ariko bikaba bitarubahirijwe na Uwamahoro Mbabazi Liliane, kuko nta kirego aratanga arega Habimana Anselme ngo aho hantu hakurwe ku butaka bwe.

UKO URUKIKO RUBIBONA

[39] 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. Naho ingigo 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, igateganya 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.

[40] Umuhanga mu mategeko Serge Guinchard, avuga ko kugira ngo urubanza rube itegeko ari uko Urukiko ruba rwaburanishije ikirego rwashyikirijwe mu mizi kandi rukagifataho icyemezo ndakuka… Urwo urubanza ruba rugifite agaciro mu gihe nta kindi cyemezo cyarukuyeho binyuze mu nzira y’ubujurire[8].

[41] Dosiye y’urubanza igaragaza ko Habimana Anselme yareze Akarere ka Gasabo na Uwamahoro Mbabazi Liliane mu Rukiko Rwisumbuye rwa Nyarugenge, asaba ko hakurwaho icyemezo cy’Akarere ka Gasabo kimurenganya, maze mu rubanza RAD 0057/13/TGI/NYGE, rwemeza ko ibyo Akarere ka Gasabo kakoze byo kumutegeka gusubiza icyangombwa kugira ngo kivanweho inzira bifite ishingiro. Habimana Anselme ntiyabyishimiye ajuririra icyo cyemezo mu Rukiko Rukuru, ruca urubanza RADA 0025/14/HC/KIG ku wa 16/1/2015, rwemeza ko Umuyobozi w’Akarere ka Gasabo yafashe icyemezo adafitiye ububasha, ko icyemezo yafashe kivanyweho. Ku kirego cya Uwamahoro Mbabazi Liliane cyo gukosora *certificat d’enregistrement*, rwavuze ko ikigomba gusuzumwa atari ukumenya niba *certificat d’enregistrement* ya Habimana Anselme igomba gukosorwa ngo rusuzume ibimenyetso atanga, kuko icyaregewe ari cyo kigomba gusuzumwa ari ukumenya niba Akarere ka Gasabo kari gafite ububasha bwo gufata icyemezo kafashe.

[42] Muri dosiye bigaragara kandi ko Uwamahoro Mbabazi Liliane yareze Habimana Anselme mu Rukiko Rwisumbuye rwa Nyarugenge, asaba gutesha agaciro icyangombwa cy’umutungo, ikirego cye gihabwa RC 0129/15/TGI/NYGE, ariko Urukiko ntirwagisuzuma, kuko rwasanze Urugereko ruburanisha imanza mbonezamubano rwaregewe rudafite ububasha bwo kukiburanisha, ko ahubwo kiri mu bubasha bw’Urugereko ruburanisha imanza z’ubutegetsi.

[43] Nyuma y’urwo rubanza ruvuzwe haruguru, Uwamahoro Mbabazi Liliane yatanze ikindi kirego mu Rukiko Rwisumbuye rwa Nyarugenge, mu Rugereko ruburanisha imanza z’ubutegetsi, arega RLMUA na Habimana Anselme, asaba Urukiko gutegeka RLMUA (icyo gihe cyitwaga Ikigo Gishinzwe Umutungo Kamere) kuvana inzira yateganyijwe na Leta muri *Titre de propriété Vol. RTXXXIV Folio 93* yo ku itariki ya 18/06/2012 yasimbuwe n'iyo ku wa 18/04/2016, ikirego cye gihabwa RC 00131/2017/TGI/NYGE (n’ubwo ari urubanza rw’ubutegetsi), muri urwo rubanza hakaba harasuzumwe ibijyanye no kumenya niba hari urubanza rwabaye itegeko hagati y’ababuranyi ku buryo ikirego cya Uwamahoro Mbabazi Liliane kitagomba kwakirwa; kumenya niba ikirego cya Uwamahoro Mbabazi Liliane kitagomba kwakirwa kubera ko nta inyungu afite mu rubanza nta n’ubushobozi afite bwo kurega; kumenya niba ikirego cya Uwamahoro Mbabazi Liliane kitagomba kwakirwa bitewe nuko yaregera Urugereko ruburanisha imanza z’imbonezamubano aho kuregera urw’Ubutegetsi, kumenya niba Urukiko rwategeka ikigo cy’Imicungire n’Imikoreshereze y’Ubutaka kuvanaho inzira yateganyijwe na Leta muri *Titre de propriété Vol. RTXXXIV Folio 93* yo ku itariki ya 18/06/2012 no kumenya niba indishyi Uwamahoro Mbabazi Liliane asaba yazihabwa akanasubizwa amafaranga y’ikurikiranarubanza.

[8] ”L’autorité de la chose jugée suppose que l’on soit en présence d’un jugement contentieux, et définitif … le jugement bénéficie de cette autorité tant qu’ il n’a pas été annulé par l’exercice d’une voie de recours”. Serge Guinchard, Droit et pratique de la procédure civile, 8e éd., Dalloz, Paris, 2014, p.1209.

[44] Nyuma yo gusuzuma izo ngingo z'urubanza, urwo Rukiko mu cyemezo rwafashe ku wa 18/04/2019, rwasanze imanza RC 00129/15/TGI/NYGE na RADA 0025/14/HC/KIG zitarigeze ziba itegeko kuri RLMUA, rusanga Uwamahoro Mbabazi Liliane afite ubushobozi n'inyungu zo gutanga ikirego (igika cya 11), kandi ko n'ubwo RLMUA itabaye umuburanyi mu manza zimaze kuvugwa, ntacyo Urega yagaragaje gituma ayirega usibye gusaba ko itegekwa kuvana inzira ku cyemezo yaregeye, rwemeza (igika cya 23) ko ibyo Uwamahoro Mbabazi Liliane arega Habimana Anselme yabiburanye mu manza RC 0129/15/TGI/NYGE na RADA 0025/14/HC/KIG zabaye itegeko hagati ye na Habimana Anselme.

[45] Uwamahoro Mbabazi Liliane yajuririye urwo rubanza mu Rukiko Rukuru, asaba ko hasuzumwa niba imanza RC 0129/15/TGI/NYGE na RADA 0025/14/HC/KIG zarabaye itegeko kandi zaraburabunishije ibijyanye no gukosora *certificat d'enregistrement* iburanwa muri uru rubanza, gusuzuma niba *certificat d'enregistrement* yari ifite no Vol. RTXXXIV Folio 93 yo ku italiki ya 18/06/2012 yasimbuwe na UPI: 1/02/13/03/1120 yo ku wa 18/04/2016, yakosorwa hakavanwaho inzira iburanwa, gusuzuma niba Habimana Anselme yakwirengera igihombo Uwamahoro Mbabazi Liliane yatewe no kuba yarafungiranye imodoka ye. Uhagarariye RLMUA yatanze ubujurire bwuririye ku bundi bugamije gusaba kwishyura ibyagiye ku rubanza, naho Habimana Anselme yongera kuzamura inzitizi y'uko Uwamahoro Mbabazi Liliane nta nyungu n'ububasha afite bwo gutanga ikirego.

[46] Kuri ubwo bujurire, Urukiko Rukuru rwaciye urubanza RADA 00071/2019/HC/KIG, ari narwo rusubirishwamo ku mpamvu z'akarengane (n'ubwo kuri kopi y'urubanza handitse ko ari RADA 00159/2019/HC/KIG), rwemeza ko ubujurire bwatanzwe na Uwamahoro Mbabazi Liliane butakiriwe kuko ikirego yatanze cyafashweho icyemezo mu rubanza RADA 0025/14/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 16/01/2015.

[47] Urukiko rw'Ubujurire rusanga mu rubanza RADA 00071/2019/HC/KIG rumaze kuvugwa haruguru, Urukiko Rukuru rutarigeze rusuzuma mu mizi impamvu y'ubujurire Uwamahoro Mbabazi Liliane ijyanye no kumenya niba imanza RC 0129/15/TGI/NYGE na RADA 0025/14/HC/KIG zarabaye itegeko ku bijyanye no gukosora *certificat d'enregistrement* kandi niba mu rubanza RADA 0025/14/HC/KIG urwo Rukiko rwarakiburanishije, ahubwo rwasesenguye ikibazo cyo kumenya niba Uwamahoro Mbabazi Liliane afite ububasha n'inyungu byo kurega, aho kugifataho umwanzuro, ruhita rwanzura mu gika cya [17], ko ikirego cye kitakiriwe ku mpamvu y'uko cyafashweho icyemezo mu rubanza RADA 0025/14/HC/KIG rwabaye itegeko, nyamara bigaragara ko ikibazo kijyanye n'imanza zabaye itegeko rwari rutarakigeraho, kuko cyasesenguwe mu bika bya [18] – [24].

[48] Urukiko rurasanga kandi mu isesengura ryavuzwe ryakozwe mu bika bya [18] – [24], Urukiko Rukuru rwaragarukiye ku kwemeza gusa ko hari urubanza RADA 0025/14/HC/KIG rwaciwe n'urwo Rukiko n'urubanza RC 0129/15/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge zabaye itegeko, ariko ntirwagaragaza niba zarabaye itegeko ku bijyanye no gukosora *certificat d'enregistrement*, kandi niba izo manza zaraburanishije ibijyanye n'iyo *certificat d'enregistrement*.

[49] Urukiko rusanga rero kuba Urukiko Rukuru rutarafashe umwanzuro ku bijyanye no kumenya niba Uwamahoro Mbabazi Liliane afite ububasha n'inyungu byo gutanga iki kirego, rukaba rutaranasesenguye ibijyanye no kumenya niba imanza RC 0129/15/TGI/NYGE na RADA 0025/14/HC/KIG zarabaye itegeko ku bijyanye no gukosora *certificat d'enregistrement* kandi niba zaraburanishije ibijyanye nayo, nk'uko yari yabijuririye, bigaragaza akarengane Uwamahoro Mbabazi Liliane yagize mu rubanza yasabye ko rusubirwamo ku mpamvu z'akarengane.

[50] Ku bijyanye n'ikibazo cyo kumenya niba izo manza zarabaye itegeko ku bijyanye no gukosora *certifictat d'enregistrement*, Urukiko rw'Ubujurire rusanga mu rubanza RC O129/15/TGI/NYGE, Urukiko Rwisumbuye rwa Nyarugenge, Urugereko ruburanisha imanza z'imbonezamubano, rwariyambuye ububasha ku kirego rwari rwashyikirijwe na Uwamahoro Mbabazi Liliane, cyo gukosora *certificat d'enregistrement* ikavanwaho inzira iburanwa bikaba byumvikana ko rutigeze ruyiburanisha ngo ruyifateho icyemezo. Naho mu rubanza RADA 0025/14/HC/KIG icyaburanwaga kwari ugusaba kuvanaho icyemezo cy'Akarere ka Gasabo Habimana Anselme yavugaga ko kimurenganya, Urukiko Rukuru rwemeza ko icyo icyemezo Akarere ka Gasabo kafashe kivanweho, kuko cyafashwe n'utabifitiye ububasha, ko ikirego cyo gukosora *certificat d'enregistrement* cyatanzwe na Uwamahoro Mbabazi Liliane kitasuzumwa, kuko atari cyo cyaregewe, ko icyaregewe ari ugusuzuma niba Akarere ka Gasabo kari gafite ububasha bwo gufata icyemezo kafashe.

[51] Urukiko rw'Ubujurire rusanga kuba mu rubanza RC 0129/15/TGI/NYGE ikirego kitarakiriwe ku mpamvu y'uko Urukiko rwasanze nta bubasha rufite bwo kukiburanisha, mu rubanza RADA 0025/14/HC/KIG hagasuzumwa gusa ibijyanye n'ivanwaho ry'icyemezo cy'Akarere ka Gasabo, bigaragara ko izo manza zitigeze zisuzuma ikirego kijyanye no gukosora *certificat d'enregistrement*, zikaba zarabaye itegeko ku bibazo byasuzumwe muri zo gusa, kandi nk'uko n'umuhanga mu mategeko Serge Guinchard yabisobanuye mu gitabo cyavuzwe haruguru (ku rupapuro rwa 15, igika cya [41], kugira ngo urubanza rube itegeko urukiko rugomba kuba rwaraburanishije mu mizi ikirego rwashyikirijwe rukagifataho icyemezo ndakuka.

[52] Urukiko rurasanga rero ibyo Habimana Anselme na RLMUA baburanisha ko izo manza zabaye itegeko kandi ko zasuzumye ibijyanye na *certificat d'enregistrement* nta shingiro ifite.

[53] Urukiko rurasanga rero Habimana Anselme atari guhera kuri izo manza ngo asabe Umuhesha w'inkiko kuzirangiza amuhesha ahari inzira iburanwa, cyangwa ngo RLMUA izihereho igira uburenganzira imuha kuri iyo nzira, kuko izo manza nta cyemezo cyazifashwemo kimwegurira aho hantu.

3. Kumenya niba *certificat d'enregistrement* yari ifite nimero Vol. RTXXXIV Folio 93 yo ku italiki ya 18/6/2012 yasimbuwe na UPI: 1/02/13/03/1120, yo ku wa 18/04/2016 yahindurwa igakurwaho inzira rusange.

[54] Uwamahoro Mbabazi Liliane avuga ko ku wa 22/12/1990, umubyeyi we Nyirambabazi Vénantie yandikiye Minisitiri w'Imirimo ya Leta n'Ingufu (MINITRAP), asaba gutunganyirizwa ahahoze ruhurura itagikoreshwa iri imbere y'amarembo ye kugira ngo ashobore kubona uko yinjira iwe, kuko aho yanyuraga ku muturanyi we yahafunze; ko ku wa 20/02/1991, MINITRAP yamusubije imubwira ko inzira yasabye ayihawe, ndetse ko ahawe n'uburenganzira bwo kuyitunganyiriza uko ashaka (*le chemin d'accès que vous avez sollicité vous est accordé, toutefois il vous appartient de l'amenager comme il vous conviendra….)*.

[55] Avuga ko hagati aho ku itariki itazwi Madamu Rwendeye Nzabonimpa Donatille nawe yasabye ko iyo nzira yayihabwa ikongerwa ku kibanza cye arabyemererwa, ariko ku wa 15/01/1992 MINITRAPE yabonye ko habayeho kwibeshya, maze ku wa 15/09/1992, yandikira Rwendeye Nzabonimpa Donatille imumenyesha ko icyemezo kimuha aho hantu giteshejwe agaciro (…*J'ai le regret de vous signifier par la présente que cette mesure est annulée*), ko akibona iyo baruwa areka aho hantu, kuko ari inzira rusange izajya ikoreshwa n'uwo ari we wese (*En conséquences dès réception de la présente, Il vous est demandé de dégager cette bande laquelle sera considérée dorénavant comme une zone publique et ainsi pourra servir à quiconque s'y plaira*); ko kandi uretse no kuba yarambuwe iyo nzira rusange, MNITRAPE yasabye Madamu Rwendeye Nzabonimpa Donatille gusubiza ibyangombwa yahawe bigakosorwa, kuko

yasabye serivisi zibishinzwe guhuza ibyangombwa bye n'ibipimo ikibanza cye cyari gisanganywe (*Le chef de Division Cadastrale et le Chef de Division Domaine qui me lisent en copie sont invités à actualiser les pièces foncières y relatives conformément au procès-verbal de mesurage et de bornage no 3200 du 1 Avril 1981 et à matérialiser cette décision sur terrain*). Avuga ko hashingiwe ku igenzurwa ryakozwe n'Akarere ka Gasabo gakoresheje umuhanga wako (*ingénieur* w'Umurenge wa Remera) n'abandi bakozi, bemeje ko Habimana Anseleme yubatse mu nzira rusange, uyu agomba kubyirengera, agasaba Urukiko kwemeza ko iyi nzira rusange igumaho ikavanwa ku cyemezo cy'umutungo cyahawe Habimana Anselme gifite UPI: 1/02/13/03/1120, kuko yahubatse yirengagije amabaruwa yandikiwe asabwa kukizana ngo gikosorwe akabyanga.

[56] Me Bagabo Fustin, wunganira Uwamahoro Mbabazi Liliane, avuga ko gusuzuma niba inzira yavanwaho babishingira ku bintu bitatu by'ingenzi:

a) Kuva Madame Nyirambabazi Vénantie yasaba inzira akayihabwa, nyuma na MINITRAP ikandikira Rwendeye Nzabonimpa Donatille akandikirwa ibaruwa imusaba gusubiza icyangombwa kuko aho yahawe ngo ahongere ku kibanza cye ari inzira rusange (*voie publique*), nta kindi cyemezo giha Habimana Anselme iyo nzira nyabagendwa, uretse ibyangombwa yerekana birimo *titre de propriété* na *certificat enregestriment* yahawe hashingiwe ku makosa yakozwe na MINITRAP no ku manza avuga ko zabaye itegeko kuri icyo kibazo kandi atari byo.

b) Kuva mu mwaka wa 1992 inzira yabayeho ikoreshwa nk'umuhanda ugera kwa Nyirambabazi Vénantie, kandi abantu bose bahabaye bazi ko inzira yari nyabagendwa, na Habimana Anselme yubaka urugo (*clôture*) rw'amatafari ya Ruriba yasize ya nzira ikomeza gukoreshwa kugera ubwo mu mwaka wa 2016 yayifunze ashingiye kuri za manza avuga ko zabaye itegeko, akaba asanga Habimana Anselme yasenya urupangu yubatse rufungira inzira Uwamahoro Mbabazi Liliane akarusubiza aho rwahoze mbere, kuko n'Ubuyobozi bwa RLMUA bwamwandikiye bumumenyesha ko iyo nzira ikwiye kugumaho.

c) Raporo ya Ingénieur w'Umurenge wa Remera wagaragaje uburyo ubutaka bwatanzwe, mu mwanzuro wayo avuga ko inzira ihagaragara ari rusange, ko igomba kuvanwa kuri certificat d'enegistrement yahawe Habimana Anselme.

[57] Me Bagabo Faustin, avuga ko ibyo abaregwa bavuga ko *titre de propriété* Habimana Anselme afite Rwendeye Nzabonimpa Donatille yayihawe mbere y'uko Nyirambabazi Vénantie ahasaba atari byo, kuko yasabye MINITRAP ahahoze ruhurura ku wa 22/12/1990, agasubizwa ko ahahawe ku wa 20/02/1991, Rwendeye Nzabonimpa Donatille akaba yarahemerewe ku wa 15/01/1992, ahabwa *titre de propriété* ku wa 01/02/1992 ahamburwa mu ibaruwa yo ku wa 15/07/1992. Avuga kandi ko Uwamahoro Mbabazi Liliane adasaba inzira, ahubwo aburana inzira yatanzwe na Leta nyuma igashyirwa ku kibanza cya Rwendeye Nzabonimpa Donatille kandi umubyeyi we ariwe wayitunganyije ku mafaranga ye bwite kugira ngo abone inzira imugeza iwe.

[58] Me Bagabo Faustin avuga ko ashingiye ku mabaruwa yagaragaje, Rwendeye Nzabonimpa Donatille yasabwe gusubiza icyangombwa ngo gikosorwe ntabikore, na Habimana Anselme yabisabwa nawe ntabikore, ayo makosa akaba akwiye gukosorwa, kuko Uwamahoro Mbabazi Liliane yasabye RLUMA kuvana inzira ku cyangombwa cya Habimana Anselme, ikamusubiza yivuguruza, ko itavana inzira ku cyemezo cye kandi hari imanza, nubwo icyo kigo cyari cyagaragarijwe ko izo manza zitabaye itegeko kubyerekeye *certificat d'enregistrement*.

[59] Me Kayijuka Ngabo, nawe wunganira Uwamahoro Mbabazi Liliane, avuga ko Nyirambabazi Vénantie yahawe n'urwego rubifitiye ububasha, ahabwa uburenganzira bwo gutunganya inzira iri rusange (*voie publique*) n'abandi barayikoresha, ko Leta iramutse ihisubije k'ubw'inyungu rusange byakumvikana, ariko ko Uwamahoro Mbabazi Liliane atahamburwa ngo haherezwe ku wundi muntu utagaragaza inyungu rusange. Avuga ko inzira yasubizwaho, kuko ibyo Habimana Anselme avuga ko Uwamahoro Mbabazi Liliane afite aho anyura imbere atari byo, kuko hari umugunguzi, ndetse byatumye imodoka ye ihera mu gipangu indi akayiraza mu baturanyi.

[60] Me Kayijuka Ngabo akomeza avuga ko kudateshwa agaciro kw'icyangombwa (*Inattaquabilité ya titre de propriété*) bivugwa n'abaregwa bitahabwa agaciro, kuko Habimana Anselme yahawe uruhushya rwo kubaka mu mwaka wa 2016 hagendewe ku manza ziswe ko zabaye itegeko, hirengagijwe amabaruwa yandikiwe amusaba kugikosoza ndetse n'ibaruwa yemerera Nyirambabazi Vénantie gutunganya iyo nzira.

[61] Me Kayijuka Ngabo avuga na none ko ibyo Uwamahoro Mbabazi Liliane yasobanuye bihuye n'ibyavuye mu iperereza, aho bigaragara ko ahaburanwa hari inzira rusange aho kuba ikibanza cya Habimana Anselme yaje kubakamo umusarane na *bingalot*, ko ibyavuzwe n'abaregwa ko ruhurura igizwe n'ibice bibiri atari byo, kuko nyina wa Uwamahoro Mbabazi Liliane atafashe icyangombwa cyangwa igice cya ruhurura ngo acyomeke ku byangombwa bye, ahubwo yabisabye akabyemererwa akahatunganya n'undi wese akaba yahakoresha, ko kandi Urukiko rwiboneye ko ku gipangu hari numero ya 55 yo kwa Habimana Anselme na 53 yo kwa Uwamahoro Mbabazi Liliane itaboneka kuko yafunzwe, ikaba iboneka gusa igihe unyuze ku bwiherero Habimana Anselme yubatse mu marembo ya Uwamahoro Mbabazi Liliane, bigaragaza ko yahubatse nyuma, kuko mbere hose iyo nomero yaragaragaraga kuko iri ku rugi rw'amarembo ye Habimana Anselme yafunze.

[62] Habimana Anselme avuga ko ibyo Uwamahoro Mbabazi Liliane avuga ko akeneye inzira atari byo kuko ayifite, iburanwa ikaba iri ku cyangombwa cye cy'ubutaka, ariyo mpamvu nta wundi muntu uyifiteho uburenganzira nk'uko biteganywa n'ingingo ya 23 y'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa, bivuze ko ntawemerewe guhindura *titre de propriété*, ariyo mpamvu ku wa 01/08/2016 yahawe uburenganzira bwo kubaka urupangu.

[63] Akomeza avuga ko impamvu yafunze inzira igera kwa Uwamahoro Mbabazi Liliane ari uko yari afite aho anyura ku muhanda wa ruguru, kuko icyemezo cy'Akarere ka Gasabo cyari cyavuyeho na raporo yakozwe igaragaza ko afite aho agomba kunyura, ko kandi afite ibyemezo yahawe guhera ku Mujyi wa Kigali kugeza ku Murenge wa Remera, ariyo mpamvu asanga ashingiye kuri ibyo byangombwa no ku manza zabaye itegeko, certificat d'enregistrement yahawe itagomba guhindurwa.

[64] Me Munderere Léopold avuga ko Uwamahoro Mbabazi Liliane yitsitsa ku ibaruwa yo mu mwaka wa 1991, ariko akirengagiza ko ingingo ya 34 y'Itegeko ryo ku wa 20 Nyakanga 1920 ryerekeye imitungo itimukanwa iteganya ko *titre de propriété ari inattaquable*, byanatumye na MINITRAP yisubiraho ntikore ibyari bikubiye mu ibaruwa yandikiye Rwendeye Nzabonimpa Donatille, kuko hari ibyangombwa birimo *titre de propriété* uyu yari afite byatanzwe mu mwaka wa 1992, n'ibindi byemezo byagiye bifatwa mu mabaruwa yanditswe nyuma. Avuga ko Uwamahoro Mbabazi Liliane afite undi muhanda wo haruguru anyuramo, undi yifuza ukaba ugomba kunyura mu butaka bwa Habimana Anselme adakodesha, ahubwo afitiye *certificat d'enregistrement*.

[65] Ku bijyanye n'amategeko aha uburenganzira Habimana Anselme, avuga ko ingingo ya 38 y'Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, ivuga ko nyir'ubutaka adashobora kwimana inzira y'amaguru, ko mu gihe Uwamahoro Mbabazi Lialiane ashaka umuhanda ugera iwe asabwa kumvikana na Habimana, ariko akaba atarabikoze. Ku bijyanye na raporo y'Umurenge wa Remera, iri muri dosiye, avuga ko raporo y'Umujyi wa Kigali yo ku wa 26/02/2016, igaragaza ko Uwamahoro Mbabazi Liliane ashaka kwiyenza, kuko afite aho kunyura kandi ko na *Master Plan* igaragaza ko nta muhanda uri aho hantu aburana. Ku byo urega avuga ko atabasha kwinjira iwe, avuga ko Habimana Anselme yerekanye uburyo yakemuye ikibazo cye, kugira ngo agere iwe, aho yakoze akazamuko kari iwe, akaba yibaza impamvu Uwamahoro Mbabazi Liliane nawe atakora iwe ku muhanda wo haruguru ngo ahinjirize imodoka.

[66] Avuga ko kuba Habimana Anselme yarasenye igipangu cye yari yarubatse (kitafungaga inzira iburanwa), atabibona nk'ikibazo, kuko ari uburenganzira yemererwa n'amategeko, ndetse ko atahubatse ashingiye ku manza, ahubwo yabikoze ashingiye kuri *certificat d'enregistrement*, mu gihe Uwamahoro Mbabazi Liliane nta cyo ashingiraho avuga ko atagombaga kuhubaka.

[67] Me Munderere Léopold, avuga ko nk'uko uru Rukiko rwabibonye mu iperereza, iby'uko Uwamahoro Mbabazi Liliane adafite aho kunyura atari byo, kuko Urukiko rwageze iwe runyuze mu nzira afite ku muhanda wo haruguru, ikibazo akaba atari uko yabuze aho anyura, kuko yivugira ko umuntu anyura aho ashaka, akaba ashaka gukora ku mihanda ibiri kandi abandi bose baturanye banyura ku muhanda wo haruguru, ko niba yumva agomba kunyura ku butaka bwa Habimana Anselme, yagombye kwerekana niba kuri *Master plan* uwo muhanda urimo.

[68] Me Mbonigaba Eulade, uhagarariye RLMUA avuga ko ibyo ababuranira Uwamahoro Mbabazi Liliane bavuga ko aho hantu hambuwe uruhande rumwe hagahabwa undi muntu atari byo, kuko Rwendeye Nzabonimpa Donatille yanditse ahasaba n'ubwo yari asanzwe ahafitiye *titre de propriété* guhera ku wa 1/02/1992, ku wa 15/09/92 MINITRAP ikamwandikira imusaba ko aho hantu ari inzira rusange ariko bitashyizwe mu bikorwa, kuko yari ahafitiye *titre de propriété.*

[69] Me Mbonigaba Eulade akomeza avuga ko mu gika cya 3 cy'inyandikomvugo y'iperereza, Uwamahoro yerekanye ko yanyuraga muri icyo kibanza, ari ukwibeshya kuko yavuze ko aho hantu haruguru ku gice cya ruhurura hari hasanzwe hanyura amazi akahongera ku butaka bwe, akaba yibaza niba icyo gice yaracyongereye ku butaka bwe abisabye, kuko ahaburanwa Habimana Anselme we yahahawe. Avuga ko ku iby'uko umuntu yasohokera aho ashaka atari byo, ko ahubwo asohokera aho afitiye uburenganzira, akaba asanga mu gihe ikiregerwa ari inzira, Urukiko rusanze ayifite rwakwanzura ko ikirego cye nta shingiro gifite, rwasanga ntayo afite rukareba niba uburyo akoresha ngo ayibone ariyo, kuko yayibona ari uko yumvikanye na Habimana Anselme akahamugurira.

[70] Avuga kandi ko kuba Urega aregera umuhanda aho kuregera *droit de propriété*, atari kurega RLMUA, kuko idafatanyije na Habimana Anselme ubutaka, ko kandi Urukiko rutafata icyemezo rushingiye ku ibaruwa, kuko rwaba ruvanyeho ibindi byemezo bitaregewe.

[71] Me Mbonigaba Eulade yabajijwe impamvu MINITRAPE yandikiye Nyirambabazi Vénantie imuha uburenganzira bwo gutunganya inzira yasabye anasobanura ko Madame Rwendeye Nzabonimpa Donatille yari ahafitiye *titre de propriété*, nyuma akanasaba ko hongerwa ku butaka bwe, avuga ko nubwo MINITRAPE yandikiye Madame Rwendeye Nzabonimpa Donatille imusaba gusubiza icyangombwa nyuma yasanze yaribeshye, ariyo

mpamvu MINITRAPE itahinduye icyangombwa cye, kandi ko ibyari kuba bibi kurushaho ari uko yari kuvana inzira ku mutungo wa Rwandeye Nzabonimpa Donatille wari ufite *titre de propriété.*

[72] Me Mbonigaba Eulade avuga ko mu iperereza ryakozwe, Urukiko rwabonye ko icyitwa inzira rusange atari byo, kuko inzira rusange igira aho ihera naho irangirira. Asaba Urukiko kubona ko urega afite umuhanda haruguru kandi nta muhanda uteganywa ugera iwe unyuze kwa Habimana Anselme. Yongeraho ko amabaruwa yanditswe mu mwaka wa 1991 ataherwaho ngo Uwamahoro Mbabazi Liliane ahabwe inzira aburana, kuko nta gaciro agifite, kuko yavanweho n'ibindi byemezo bya Leta kandi n'ubundi by'urwo rwego, byagaragaje ko atahabwa aho hantu, ariyo mpamvu buri wese yagumana aho yahawe, kuko buri wese yafashe igice cya ruhurura agishyira ku butaka bwe.

UKO URUKIKO RUBIBONA

[73] Ingingo ya 3 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo yibukijwe haruguru, itegeka buri mu buranyi kugaragaza ukuri kw'ibyo aburana.

[74] Ingingo ya 23 y'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa, iteganya ko icyemezo cy'iyandikisha cyerekana nta mpaka uburenganzira ku mutumgo bwite w 'ubutaka, ku bukode bw'ubutaka cyangwa uburenganzira ku mutungo cyangwa ibiwubangamira byanditse kuri icyo cyemezo. Uburenganzira ku mutungo nk'uko buvugwa mu cyemezo, ntibuhungabanywa kabone n'ubwo icyemezo cyaba cyarakozwe bashingiye ku masezerano yo kurekura umutungo ashobora guseswa cyangwa ashobora guteshwa agaciro, cyangwa icyemezo cy'urukiko cyemeza izungura ku buryo butunguranye…. Cyakora, iyo uburenganzira bwo gutunga umutungo bugifitwe n'uwawuhawe, impamvu yo gusesa cyangwa gutesha agaciro amasezerano yakozwe nawe bituma uwawutanze atangirwa ibirego byo kongera gutanga uwo mutungo akongeraho n'indishyi iyo bibaye ngombwa.

[75] Mu ibaruwa yo ku wa 22/12/1990, Madamu Nyirambabazi Vénantie (umubyeyi wa Uwamahoro Mbabazi Liliane) yandikiye Minisitiri w'imirimo ya Leta n'ingufu (MINITRAPE) amusaba inzira imugeza kuri pariseli ye iri muri Remera I, ahahoze ruhurura yari imbere y'inyubako ye, amusubiza ku wa 20/02/1991, yemera ubusabe bwe bwo kubona inzira ahahoze ruhura, ariko asabwa kuhitunganyiriza uko abyifuza, anasabwa kwirinda kurengerera abaturanyi no kubahiriza uruzitiro rw'ibiti ruhasanzwe.

[76] Muri dosiye na none hari ibaruwa yo ku wa 15/09/1992 MINITRAPE yandikiye Rwendeye Nzaponimpa Donatile, imubwira ko icyemezo yamenyeshejwe mu ibaruwa yo ku wa 15/01/1992 kimwemerera ubusabe bwe bwo komeka (*annexer*) ubutaka bumutandukanya n'abaturanyi ku kibanza cye nimero 5056 kivanweho, ko akibona iyo baruwa asabwe guhita arekura ubwo butaka kuko bufatwa nk'ahantu rusange nyabagendwa (*une zone publique*) hakoreshwa n'ubyifuza wese, inasaba serivisi zibishinzwe za MINITRAPE (*chef de Division cadastre et Chef de Division domaine*) kubishyira mu bikorwa, ibyagombwa by'ubutaka byahawe Rwendeye Nzaponimpa Donatile bigakosorwa, ibipimo by'ubutaka bwe bigasubira nk'uko byahoze mbere hashingiwe ku nyandikomvugo ijyanye n'ikatwa ry'ibibanza (*procès verbal de mésurage et de bornage*) nimero 3200 yo ku wa 01/04/1981.

[77] Raporo yakozwe n'Ubugenzuzi rusange bw'Umujyi wa Kigali ku wa 04/07/2007 bubisabwe n'Ubuyobozi bw'uwo Mujyi bwashakaga gukemura ikibazo cya Uwamahoro Mbabazi Liliane, igaragaza ko bwasanze amakosa yakozwe mu gihe hatangwaga *Titre de propriété* bakaba

barashyizeho Plot itariyo, ifite n'ibipimo (*mésures*) bitandukanye aribyo MINITRAPE yari yemeje ko zitabwaho.

[78] Muri dosiye hari kandi ibaruwa yo mu mwaka wa 2016, Ingen. Sagashya Didier, Umuyobozi wungirije w'Ikigo cy'umutungo kamere, yandikiye Habimana Anselme amusaba kugarura *Titre de propriété* nimero Vol.RTXXXIV Folio 93 yo ku wa 18/06/2012, kugira ngo ahabwe ijyanye n'ikibanza cye nk'uko cyapimwe, ari yo RTXXXIII Folio 140 yo ku wa 18/04/2012. Hari kandi n'ibaruwa yo ku wa 05/07/2016 RLMUA cyandikiye na none Habimana Anselme kimusaba kugarura ibyangombwa yahawe kugira ngo bikosorwe.

[79] Muri dosiye hagaragara kandi ibimenyetso byatanzwe na Habimana Anselme birimo *certificat d'enregistrement* yo ku wa 10/10/2005 yaje gusimbuzwa indi yo ku wa 22/8/2012, hakaba na UPI: 1/02/13/03/1120 yahawe ku wa 18/04/2016. Hari kandi ibaruwa yo ku wa 22/10/2012 yanditswe n'Umuyobozi Wungirije w'Ikigo Gishinzwe Umutugo Kamere mu Rwanda, Ishami ry'Ubutaka no Gutunganya Amakarita yandikiwe Umuyobozi w'Akarere ka Gasabo, imusaba gushyikiriza icyo kigo dosiye za kera z'ibibanza 5056 (prec 589) Remera na 5058 Remera kugira ngo babashe gusuzuma ikibazo bagejejweho na Nyirambabazi Vénantie, ibaruwa yo ku wa 15/12/2014 Umuyobozi w'Umujyi wa Kigali yandikiye Irere Marie Jeanne Claire imwemerera kubaka uruzitiro, iyo ku wa 2/07/2016, Umunyamabanga Nshingwabikorwa w'Umurenge wa Remera yandikiye Habimana Anselme imwemerera kubaka ubwiherero, n'icyemezo cyo mu mwaka wa 2016 kimwemerera kubaka urugo (*clôture*), agatangira ku wa 30/05/2016. Icyo Kigo kandi cyandikiye Uwamahoro Mbabazi Liliane ibaruwa yo ku wa 01/08/2016, imumenyesha ko guhindura *titre de propriété* Vol RTXXXIV Folio 93 yo ku wa 18/6/2012 yahawe Habimana Anselme yasimbuwe n'iyo ku wa 18/04/2016 ku kibanza numero 1120 cyahoze ari 5056, byakorwa gusa mu gihe abo bireba babyiyemereye cyangwa hari icyemezo cy'Urukiko.

[80] Muri dosiye hari na none raporo yo ku wa 26/07/2016 ku bibanza numero 1120 na numero 1985 biri i Remera hafi ya SONATUBE, mu Karere ka Gasabo yakozwe na Nsengiyumva Kagabo Antoine, ushinzwe *Cadastre* (utaragaraje Akarere akoreramo), mu mwanzuro w'iyo raporo, avuga ko ubutaka Habimana Anselme apfa na Uwamahoro Mbabazi Liliane buramutse bugizwe umuhanda ikibanza n^{o} 1120 cyaba kitagifite ubuso bwacyo bungana na 2.082 sqm.

[81] Nk'uko inyandikomvugo y'iperereza ryakozwe n'Urukiko rw'Ubujurire ku wa 10/02/2021 mu Karere ka Gasabo, Umurenge wa Remera, Akagari ka Rukiri I, ibyerekana, kuri iyo tariki Urukiko rwageze aho ikiburanwa kiri, rubona imiterere y'ahaburanwa, ababuranyi berekana ahahoze ruhurura nyuma hakaza gutunganywa na Nyirambabazi Vénantie, umubyeyi wa Uwamahoro Mbabazi Liliane, hakaboneka inzira yagera ku rugi rw'amarembo ye (nimero 53), hagati y'ígipangu nimero 51 n'igipangu nimero 55 cya Habimana Anselme. Aho hantu ubu hakaba hari ibikorwa bya Habimana Anselme, birimo inzu yicarwamo n'abakiriya b'akabari ke (*bungalow*), n'umusarane yubatse ku rugi rw'amarembo ya Uwamahoro Mbabazi Liliane, ufatanye n'igikuta cy'urugo. Abari mu iperereza binjiye kandi no mu rugo kwa Uwamahoro Mbabazi Liliane, baturutse ku muhanda wo haruguru, babona inzira y'abanyamaguru bashobora kwinjira iwe banyuze ku ngazi (*escaliers*) yazamuye ku mukingo kugira ngo ashobore kugera kuri uwo muhanda, rubona n'imodoka ya Uwamahoro Mbabazi Liliane yaheze mu rugo, kubera kubura aho ayinyuza, kuko aho yanyuraga hafunzwe.

[82] Urukiko rusanga ikiburanwa muri uru rubanza ari uburenganzira MINITRAP yahaye Nyirimbabazi Vénantie bwo gutunganya ahahoze ari ruhurura nk'uko abishaka**,** kugira ngo abone inzira y'umuhanda imugeza iwe, akahatunganya neza ku buryo yashoboraga kugera iwe nta

kibazo ndetse n'undi wese ubikeneye akahanyura, ariko nyuma MINITRAP ikaza na none guha aho hantu Rwendeye Nzaponimpa Donatille wari wahasabye ngo ahomeke ku butaka bwe, bidatinze MINITRAP ibona ko yibeshye ihamuha, imumenyesha ko icyemezo kimuha aho hantu kivanyweho, asabwa kuzibukira ubwo butaka kandi icyangombwa cye kigakosorwa ntiyabikora kugeza ubwo yagurishije ubutaka bwe, ibyangombwa bitakosowe abiha Habimana Anselme wabuguze, uyu nawe asabwe kubikosoza arabyanga, ahubwo ashingira kuri ayo makosa asaba ibyangombwa bishya aribyo UPI: 1/02/13/03/1120 yahawe ku wa 18/04/2016, anarega Akarere ka Gasabo kamusabaga gukosoza ibyo byangombwa by'umutungo, bushingiye kuri raporo yakozwe n'abakozi bako.

[83] Urukiko rurasanga rero, ikibazo kiri muri uru rubanza atari icyo gusaba inziri nk'uko Habimana Anselme n'uhagarariye RLMUA babivuga, ahubwo ari uburenganzira ku nzira rusange igera kwa Uwamahoro Mbabazi Liliane yavukijwe, akomora ku mubyeyi we wayihawe na MINITRAPE, bityo ibyo Habimana Anselme n'umwunganizi we ndetse n'uhagarariye RLMUA bavuga ko Uwamahoro Mbabazi Liliane atasabye inzira mu buryo bukurikije amategeko, ko yagombaga gukurikiza ibiteganywa n'ingingo ya 38[9] y'Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, akumvikana na Habimana Anselme akaba yamuha inzira, bikaba nta shingiro bifite kuko ahaburanwa atari ubutaka bwa Habimana Anselme yifuza ko bucishwamo inzira, ahubwo ari uburenganzira bwo gukoresha inzira rusange imugeza iwe nk'uko yahozeho itarafungwa.

[84] Urukiko rurasanga nk'uko bigaragara mu bimenyetso byavuzwe haruguru biri muri dosiye ndetse n'uko rwabibonye igihe rwakoraga iperereza, inzira (agahanda) yageraga ku nyubako ya Uwamahoro Mbabazi Liliane yarakoreshwaga guhera igihe Nyirambabazi Vénantie yayitunganyirije mu mwaka wa 1991 kugeza ubwo Habimana Anselme yahabwaga uruhushya rwo kubaka n'Ubuyobozi bw'Akarere ka Gasabo (Umuyobozi ushinzwe imiturire mu Karere ka Gasabo) muri Gicurasi 2016, agasenya urugo rw'amatafari ya Ruriba (*clôture***)** yari asanzwe yarubatse mbere, akongera kurwubaka arwigije inyuma, ari naho yafungiye Uwamahoro Mbabazi Liliane inzira yamugezaga iwe yanyuragamo n'imodoka.

[85] Urukiko rurasanga ibyo Habimana Anselme na Me Munderere Léopold umwunganira kimwe n'uhagarariye RLMUA bavuga ko ibyangombwa yahawe bitagomba guteshwa agaciro, kuko ubutaka buburanwa bumwanditseho anabufitiye ibyangombwa birimo *certificat d'enregistrement* na *Titre de propriété*, bidakwiye guhabwa ishingiro kubera ko nta cyabuza ko ibyangombwa bikosorwa, mu gihe bigaragaye ko byatanzwe bishingiye ku makossa yatumye abihabwa abona uburenganzira atari akwiye guhabwa, byongeye kandi, nk'uko byasobanuwe haruguru, imanza Habimana Anselme yashingiyeho yimura urugo akubaka umusarane na *bungalow*, nta burenganzira zigeze zimuha ku nzira iburanwa yabyubatsemo, bityo ntiyagombaga gufungira Uwamahoro Mbabazi Liliane amarembo n'umuhanda ugana iwe yahawe n'inzego zibifitiye ububasha nk'inzira rusange.

[86] Urukiko rurasanga kandi imyumvire y'abaregwa muri uru rubanza y'uko uwanditseho umutungo aba ari we nyirawo, itafatwa nk'ukuri igihe cyose, kuko hari impamvu zishobora gutuma uwanditsweho ataba ariwe nyirawo byanze bikunze, nk'igihe bigaragaye ko yawubonye mu buryo butemewe n'amategeko, (akoresheje uburiganya) cyangwa se atarashoboye kugaragaza inkomoko yawo. Iki gitekerezo kikaba ari nacyo kigaragara mu manza zinyuranye zaciwe n'Urukiko rw'Ikirenga ndetse n'uru Rukiko, aho izo nkiko zemeje ko bidahagije kuba umuntu

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[9] Itegeko N° 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 38: « Nyir'ubutaka ntagomba kubangamira uburenganzira bw'abandi. Kubera iyo mpamvu ntashobora: 1° kwima abaturanyi be inzira y'amaguru igera mu kwabo mu gihe nta handi bashobora kunyura. Icyakora, ku zindi nzira, bikorwa ku bwumvikane hagati y'impande zombi … ».

yanditseho umutungo ngo bifatwe ko ari uwe, ahubwo agomba kugaragaza aho yawukomoye[10]. Nubwo Habimana Anselme yerekana ibyangombwa by'umutungo birimo *certificat d'enregistrement* ndetse na *Titre de propriété* yahawe na RLMUA, kuba we kimwe n'icyo kigo bavuga ko ibyangombwa biriho ubutaka buburanwa Habimana Anselme yabihawe hashingiwe ku manza RC 0129/15/TGI/NYGE na RADA 0025/14/HC/KIG zabaye itegeko kandi bikaba byagaragajwe haruguru ko izo manza nta burenganzira zimuhesha ku butaka buburanwa, nta cyabuza ko ibyangombwa yahawe muri ubwo buryo bihindurwa ku buso bw'ubutaka buburanwa, kugira ngo inzira rusange iburanwa igera ku rugo rwa Uwamahoro Mbabazi Liliane ivanweho.

[87] Hashingiwe ku ngingo z'amategeko zavuzwe haruguru no ku bisobanuro bimaze gutangwa, Urukiko rurasanga, *certificat d'enregistrement* yari ifite nimero Vol. RTXXXIV Folio 93 yo ku italiki ya 18/6/2012 yasimbuwe na UPI: 1/02/13/03/1120, yo ku wa 18/04/2016 ya Habimana Anselme na Irere Marie Jeanne Claire igomba kuvanwaho igice cyari gisanzwe ari inzira rusange, ikibanza cyabo kigasubirana ibipimo nk'uko byahoze mbere y'uko Rwendeye Nzabonimpa Donatille ayisaba akayihabwa na MINITRAPE yibeshye mu ibaruwa yo ku wa 15/01/1992; ibyo bigakorwa n'Ikigo Gishinzwe Imicungire n'Imikoreshereze y'Ubutaka mu Rwanda (RLUMUA).

[88] Urukiko rusanga kandi kuba Habimana Anselme yarubatse igipangu agendeye kuri ibyo byangombwa yabonye mu buryo bunyuranyije n'amategeko, ndetse n'Umuhesha w'Inkiko akamuhesha aho hantu kandi bitarigeze biburanwa cyangwa ngo bitegekwe mu manza bise ko zabaye itegeko ku kiburanwa[11], ariwe ugomba kwirengera ingaruka z'ibyo yakoze, agakuraho inyubako yasimbuje izari zihasanzwe (urupangu) akahatunganya kuko yuhubatse azi neza ko hasanzwe hari inzira nyabagendwa, kandi nta cyemezo cy'Urukiko ashingiyeho kimuha uburenganzira kuri aho hantu, bityo akaba agomba kuvanaho ibyo yashyizeho mu gihemcy'ukwezi kumwe (1 *mois*) kibarwa uru rubanza rukimara gusomwa, atabikora muri icyo gihe bigakorwa ku ngufu za Leta.

4. Gusuzuma niba Habimana Anselme akwiye gucibwa indishyi zijyanye n'igihombo gikomoka ku gihe imodoka ya Uwamahoro Mbabazi Liliane imaze ifungiranwe

[89] Uwamahoro Mbabazi Liliane avuga ko Habimana Anselme agomba kwirengera igihombo kingana na 42.100.000 Frw yatewe no kuba yarafungiranye imodoka ye kuva muri Kamena 2016 kugeza ubu.

[90] Me Kayijuka Ngabo avuga ko Uwamahoro Mbabazi Liliane yagize igihombo agitewe na Habimana Anselme, kuko kuva mu mwaka wa 2016 yubatse urugo (*clôture*), amufungira irembo, bituma adashobora gukoresha imodoka ye, imwe ihera mu gipangu, indi ihera hanze, biba ngombwa ko bakodesha indi modoka yo gukoresha, yishyurwa 25.000 Frw buri munsi, bakanishyura aho indi irara, kugeza ubu hakaba hashyize amezi 56, igihombo kikaba gihwanye n'iminsi 17.000 X 25.000 Frw = 42.100.000 Frw.

[91] Avuga ko ku bijyanye n'ibimenyetso by'ayo mafaranga yakoreshejwe, nta nyemezabwishyu batse, ariko ko ikidashidikanywaho ari uko imodoka iri mu gipangu itasohotse icyo gihe cyose kandi yari isanzwe ikora, bigaragara ko hari ibyangiritse (*dommages*), ko kandi imodoka yafunzwe na Habimana Anselme aho kuba Umuhesha w'Inkiko, kuko Habimana

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[10] Urubanza RCAA 0018/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2014, haburana Harerimana na Sebukayire, Icyegeranyo cy'ibyemezo by'Inkiko, V.3,2015, pp.37-56, Reba na none urubanza RCAA 0013/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 03 Kamena 2016 haburana Rutabayiru na Batamuliza, Icyegeranyo cy'ibyemezo by'inkiko V.1,2017, pp.73-87.

[11] Reba imanza RC 0129/15/TGI/NYGE na RADA 0025/14/HC/KIG zavuzwe ko zabaye itegeko.

Anselme ariwe wamusabye gushyira mu bikorwa urubanza, Umuhesha w'Inkiko akaba akurikiranwaho gusa ku makosa aba yakoze ku giti cye.

[92] Habimana Anselme avuga ko gufunga inzira byakoze n'Umuhesha w'Inkiko Kamanzi, kandi ko ikirego cyo gufunga inzira Uwamahoro Mbabazi Liliane yakiburanye n'Umuhesha w'Inkiko Kamanzi agatsindwa akaba atakigarura ngo cyongere kuburanishwa, agasanga ntacyo yasabwa kuko Uwamahoro Mbabazi Liliane yasabwe kuvanamo imodoka ye ubwo harangizwaga urubanza RADA 0025/14/HC/KIG akabyanga. Avuga kandi ko nta kigaragaza ko imodoka yari nzima, ko n'ibyo yubatse yabiherewe ibyangombwa.

[93] Me Munderere Léopold, avuga ko Uwamahoro Mbabazi Liliane atakwishyuza Habimana Anselme 42.100.000 Frw kuko nta mpamvu yayo mu gihe nta kimenyetso ayatangira, kuko aterekanye inyemezabwishyu n'imwe, ibyo ubwabyo bikaba bimutsinda. Avuga ko Habimana Anselme ntaho ahuriye n'ibikorwa byo gufunga inzira kuko Umuhesha w'inkiko wahafunze Uwamahoro Mbabazi Liliane yamureze agatsindwa, kandi ko yasabwe gukuramo imodoka ye akabyanga.

[94] Mbonigaba Eulade, uhagarariye RLMUA, avuga ko ku birebana n'indishyi Uwamahoro Mbabazi Liliane asaba, Urukiko rwabisuzuma.

UKO URUKIKO RUBIBONA

[95] Ingingo ya 12, 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 ko Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda.

[96] Ubwo Urukiko rwageraga aho ikiburanwa kiri, rwasanze hari imodoka ya Uwamahoro Mbabazi Liliane iri mu gipangu kava igihe ahari amarembo n'umuhanda (inzira rusange) yanyuragamo hafunzwe na Habimana Anselme.

[97] Urukiko rusanga ibyo Habimana Anselme na Me Munderere Léopold bavuga ko indishyi z'igihe gishize imodoka iparitse idakoreshwa zabazwa Umuhesha w'Inkiko Kamanzi, kuko ari we wafunze igipangu, nta shingiro ifite, kubera ko ibyo Umuhesha w'Inkiko yakoze yabisabwe na Habimana Anselme arangiza urubanza RADA 0025/14/HC/KIG[12], nyamara urwo rubanza ntacyo rwategetse ku byerekeye uburenganzira ku nzira iburanwa, ikindi Habimana Anselme ni we wubatse ahari inzira iburanwa.

[98] Urukiko rusanga indishyi zingana na 42.100.000 Frw Uwamahoro Mbabazi Lilane asaba kwishyurwa na Habimana Anselme kubera imodoka ye yakingiranwe mu gipangu bigatuma akodesha indi, atayahabwa uko ayifuza, kuko atabashije kuyagaragariza ibimenyetso. Rurasanga ariko ikigaragara ari uko imodoka iparitse mu gipangu guhera mu mwaka wa 2016, kandi idakoreshwa na nyirayo ku mpamvu y'uko yakingirwanwe harangizwa urubanza rwavuzwe haruguru bisabwe na Habimana Anselme, bikaba byumvikana ko Uwamahoro Mbabazi Liliane yavukijwe uburenganzira bwo kuyikoresha uko byari bisanzwe, bityo kubera kuvutswa ubwo burenganzira agomba kwishyurwa na Habimana Anselme indishyi zigenwe mu bushishozi bwarwo zingana na 10.000.000 Frw (miliyoni icumi)

[12] Reba inyandiko mvugo yo kurangiza urubanza RC 0129/15/TGI/NYGE na RADA 0025/HC/KIG yo ku wa 14/06/2016 yakozwe n'Umuhesha w'Inkiko w'umwuga KAMANZI Emmanuel

5. **Gusuzuma niba hari amafaranga y’ikurikiranarubanza n’ay’igihembo cya Avoka akwiye gutangwa muri uru rubanza**

[99] Me Kayijuka Ngabo avuga ko Habimana Anselme agomba kwishyura Uwamahoro Mbabazi Liliane 10.000.000 Frw y’igihembo cya Avoka n’ay’ikurikiranarubanza guhera igihe urubanza rwatangiriye, ko amafaranga uwunganira Habimana Anselme asaba uwo yunganira atayahabwa, kuko ari we watumye Uwamahoro Mbabazi Liliane atanga ikirego, kandi ko n’ayatswe na RLMUA itazihabwa kuko ari yo yahaye Habimana Anselme ibyangombwa by’ubutaka yifashishije amufungira inzira, bigatuma yiyambaza inkiko.

[100] Habimana Anselme kimwe n’umwunganira bavuga ko ayo mafaranga Uwamahoro Mbabazi Liliane asaba ntayo yahabwa, kuko nta bimenyetso ayatangira, kandi ko ari we wishoraga mu manza zose akazitsindwa, ko ahubwo Habimana Anselme ari we ukwiye guhabwa na Uwamahoro Mbabazi Liliane 5.000.000 Frw y'igihembo cya Avoka, 1.000.000 Frw yo gukurikirana urubanza na 3.000.000 Frw y’indishyi z’akababaro zo guhozwa ku nkeke kubera ikibanza cye, mu gihe cy’imyaka 8.

[101] Me Mbonigaba Eulade avuga ko ntacyo yavuga ku ndishyi, kuko Ikigo agaharariye kitazisabwa, ahubwo ko asaba Uwamahoro Mbabazi Liliane ari we ukwiye guha RLMUA 3.000.000 Frw y’ikuririranarubanza no gushora ikigo ahagarariye mu rubanza.

UKO URUKIKO RUBIBONA

[102] 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.

[103] Urukiko rurasanga 10.000.000 Frw y’ikurikiranarubanza n’igihembo cya Avoka Uwamahoro Mbabazi Liliane asaba Habimana Anselme ari menshi akaba agenewe mu bushishozi bw’Urukiko 3.000.000 Frw akubiyemo ay’igihembo cya ba Avoka bamwunganiye n’ay’ikurikiranarubanza, kuko iki kibazo kimaze igihe kandi akaba yaragiye ashaka abamwunganira. Naho amafaranga y’ikurikirana rubanza n’ay’igihembo cya Avoka basaba Uwamahoro Mbabazi Liliane, ntibayahabwa batsindwa n’urubanza.

III. ICYEMEZO CY’URUKIKO

[104] Rwemeje inzitizi yo kutakira ikirego yatanzwe na Habimana Anselme nta shingiro ifite.

[105] Rwemeje ko ikirego cyo gusubirishamo urubanza RADA 00071/2019/HC/KIG rwaciwe n’Urukiko Rukuru ku wa 27/02/2020 ku mpamvu z’akarengane cyatanzwe na Uwamahoro Mbabazi Liliane gifite ishingiro.

[106] Rwemeje ko urubanza RADA 00071/2019 /HC/KIG rwaciwe n’Urukiko Rukuru ku wa 27/02/2020, ruhindutse mu ngingo zarwo zose.

[107] Rutegetse Ikigo Gishinzwe Imicungire n’imikoreshereze y’ubutaka mu Rwanda (RLMUA) kuvana kuri UPI:1/02/13/03/1120 yo ku wa 18/04/2016, inzira iburanwa, ikibanza cya Habimana Anselme na Irere Marie Jeanne Claire kigasubirana ibipimo nk’uko

yahoze mbere y’uko Rwendeye Nzabonimpa Donatille ayisaba akayihabwa na MINITRAPE yibeshye mu ibaruwa yo ku wa 15/01/1992.

[108] Rutegetse Habimana Anselme kuvanaho inyubako yashyize ahari inzira iburanwa, akabikora mu gihe cy’ukwezi uhereye igihe uru rubanza ruciriwe, atabikora ku neza bigakorwa ku ngufu za Leta.

[109] Rutegetse Habimana Anselme kwishyura Uwamahoro Mbabazi Liliane indishyi zingana na 10.000.000 Frw zo kuvutswa uburenganzira bwo gukoresha imodoka ye, na 3.000.000 Frw y’ikurikiranarubanza n’igihembo cya Avoka;

[110] Ruvuze ko amagarama y’urubanza aherera ku Isanduku ya Leta.