KAMURASE N'ABANDI v SUCCESSION HABIMANA N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RCAA 00003/2021/CA-RCAA 00004/2021/CA (Ngagi, P.J.) 15 Nyakanga 2022]

Amategeko agenga imiburanishirize y'imbonezamubano – Kugoboka mu rubanza – Kugira ngo ikirego cyo kugoboka mu rubanza cyakirwe ni ngombwa ko ugoboka agaragaza inyungu yemewe n'amategeko, itaziguye kandi ye bwite imutera kuza mu rubanza ataregeye cyangwa atarezwemo. Procuration ntabwo ari ikimenyetso cy'ubugure cyangwa cy'inyungu mu rubanza.

Amategeko agenga imanza z'imbonezamubano – Amasezerano – Akarengane mu masezerano – Amasezerano adashobora kurangizwa – Amasezerano n'ingaruka zo kwemera kw'impande zombie – Aba agomba kurangizwa cyangwa gushyirwa mu bikorwa mu gihe atabangamira cyangwa atarenganya urundi ruhande – Ariko mu gihe bigaragariye Urukiko ko harimo akarengane, ikigomba gukorwa ntabwo ari ukugena ubundi buryo yarangizwa butandukanye n'ibyo impande zombi zumvikanye mu masezerano, ahubwo ari gutegeka ko atarangizwa ariko hakarebwa n'ingaruka zikomoka ku kutarangizwa kw'ayo masezerano.

Incamake y'ikibazo: uru rubanza rwatangiye Kamurase arega mu Rukiko Rwisumbuye rwa Gasabo Karigirwa uhagarariye succession Habimana ko atubahirije amasezerano y'ubugure bw'umutungo utimukanwa bagiranye ngo anamukorere ihererekanyamutungo (mutation), arusaba gutegeka ihererekanya mutungo, kuri uwo mutungo yaguze, maze ukamwandikwaho. Ntukabumwe yagobotse ku bushake muri urwo rubanza asaba ko amasezerano y'ubugure ateshwa agaciro ngo kuko ari mu bazungura akaba atarahaye nyina Karigirwa uruhushya rwo kugurisha uwo mutungo, bityo ngo nyina yagurishije ibitari ibye.

Succession Habimana ihagarariwe na Karigirwa yaburanye ivuga ko nta bugure bwabayeho nk'uko Kamurase abyumvikanisha, ko ahubwo icyabaye ari uko yamusabye kumuguriza amafaranga yo kwishyura Banki yashakaga kugurisha ingwate yayihaye kubera ibirarane by'ubwishyu bw'inguzanyo, ariko Kamurase akemera kuyamuha ari uko abanje kumusinyira amasezerano y'ubugure bw'umutungo utimukanwa asabira ihererekanya mutungo.

Urukiko Rwisumbuye rwa Gasabo rwemeje mu rubanza RCA00080/2019/TGI/GSBO ko amasezerano y'ubugure bw'umutungo uburanwa yakozwe mu buryo bwubahirije amategeko, bityo ko ikirego cyatanzwe na Kamurase gifite ishingiro, rutegeka ko hakorwa ihinduranyamutungo ku nzu yaguze.

Succession Habimana ihagarariwe na Karigirwa ndetse n'uruhande rwa Ntukabumwe ntibishimiye imikirize y'urubanza bajuririra Urukiko Rukuru. Uwitwa Rutikanga yarugobotsemo avuga ko umutungo uburanwa yawuguze, ariko Urukiko rumubajije ibimenyetso by'ubugure arabibura ndetse na ba nyiri umutungo bavuga ko batamuzi, rwemeza ko ukugoboka kwe kutakiriwe, avanwa mu rubanza. Mu rubanza RCA00305- 00306/2019/HC/KIG rwaciwe n'rukiko Rukuru rwemeje ko ubujurire bwatanzwe na succession Habimana ihagarariwe na Karigirwa bufite ishingiro gusa ku bireba igiciro cy'umutungo yagurishije, ko ubujurire bwatanzwe na Ntukabumwe nta shingiro bufite. Rwategetse ko succession Habimana ihagarariwe na Karigirwa yagiranye na Kamurase ahamaho gusa ari uko Kamurase yemeye gutanga igiciro cyemejwe n'umugenagaciro washyizweho n'Urukiko mu gihe cy'amezi abiri (2) atabyubahiriza agasubizwa amafaranga yatanze hiyongereyego inyungu z'ubukererwe.

Muzima Rutikanga na succession Habimana ihagarariwe na Karigirwa bajuririye urwo rubanza mu Rukiko rw'Ubujurire. Urukiko rw'Ubujurire rwabanje kuburanisha inzitizi yo kureka urubanza yatanzwe na Succession Habimana, hanyuma Urukiko rwemeza ko kureka urubanza mu bujurire kwa

succession Habimana kutemewe. Muzima Rutikanga yajuriye avuga ko Urukiko Rukuru rutari rukwiye kumuvana mu rubanza kuko arufitemo inyungu zishingiye ku kuba yaraguze umutungo uburanwa , ko ikimenyetso aburanisha ari inyandiko ya procuration yahawe na Karigirwa amuha uburenganzira bwo kujya kumukurikiranira ibyangombwa by'uwo mutungo. kandi na Karigirwa yemera ko yamugurishije uwo mutungo. Naho Uhagarariye succession Habimana avuga ko Urukiko Rukuru rwabategetse kugurisha Kamurase umutungo we ku gaciro kagenwe n'umugenagaciro kandi nyamara ngo atifuza kuwugurisha, ko bibaye bityo byaba binyuranije n'ibiteganywa n'Itegeko Nshinga ku bijyanye n'umutungo w'umuntu.

Urukiko rw'Ubujurire rwemeje mu rubanza RCAA00003/2021/CA- RCAA00004/2021/CA, ko amasezerano ateshwa agaciro ibintu bigasubira uko byari bimeze mbere y'amasezerano kuko agaciro k'umutungo uburanwa kari hejuru cyane y'agaciro umutungo waguzwe bityo bikaba bibangamiye cyane uruhande rwa succession Habimana ihagarariwe na Karigirwa. Rwemeje kandi ko ntaherekanyamutunngo rigomba gukorwa ahubwo ko Kamurase akwiye gusubizwa ikiguzi yatanze agura umutungo uvugwa muri uru rubanza hiyongereyeho inyungu zayo zibazwe kuri 18% hitawe ku gihe succession Habimana imaranye ayo mafaranga.

Incamake y'icyemezo:1. Kugira ngo ikirego cyo kugoboka mu rubanza cyakirwe ni ngombwa ko ugoboka agaragaza inyungu yemewe n'amategeko, itaziguye kandi ye bwite imutera kuza mu rubanza ataregeye cyangwa atarezwemo. Procuration ntabwo ari ikimenyetso cy'ubugure cyangwa cy'inyungu mu rubanza.

2. Amasezerano n'ingaruka zo kwemera kw'impande zombie, kandi akaba agomba kurangizwa cyangwa gushyirwa mu bikorwa mu gihe atabangamira cyangwa atarenganya urundi ruhande. Ariko mu gihe bigaragariye Urukiko ko harimo akarengane, ikigomba gukorwa ntabwo ari ukugena ubundi buryo yarangizwa butandukanye n'ibyo impande zombi zumvikanye mu masezerano, ahubwo ari gutegeka ko atarangizwa ariko hakarebwa n'ingaruka zikomoka ku kutarangizwa kw'ayo masezerano.

3. Kuba nta tegeko ririho rigena igikipimo kibarirwaho inyungu, nta cyabuza Urukiko kubara inyungu hifashishijwe ibyemezo byagiye bifatwa n'Inkiko kuri iki kibazo. Bityo inyungu zibazwe ku kigero cya 18% nizo zakurikizwa.

4. Indishyi mbonezamusaruro ntizitangwa iyo uwaguze umutungo, Urukiko rwemeje ko adakwiriye kuwuhabwa kuko amasezerano ushingiyeho agomba guteshwa agaciro.

5.indishyi z'akababaro ntizitangwa iyo uzisbwa bigaragara ko atababaje uzisaba.

6. Amafaranga y'ikurikirana rubanza n'igihembo cy'avoka ntibitangwa iyo ababuranyi bose bagize ibyo batsindira.

Ubujurire bwa Muzima nta shingiro bufite;
Ubujurire bwa succession Habimana bufite ishingiro kuri bimwe;
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe;
Amasezerano y'ubugure ntagomba kurangizwa.

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 114, 147

y'Itegeko No 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 9, 73

Itegeko Nº15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Ingingo ya 3,

Imanza zifashishijwe:

Urubanza RCAA00033/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 14/01/2022, hagati ya Ndayisaba na Rutagengwa hamwe na Rutagengwa Matter Elisabeth.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku masezerano y'ubugure bw'umutungo utimukanwa ugizwe n'inzu zibaruye kuri UPI: 1/02/09/03/404, ziri mu Mudugudu w'Itetero, Akagari ka nyagatovu, Umurenge wa Kimironko, Akarere ka Gasabo,Umujyi wa Kigali, yabaye ku wa 02/05/2017 hagati ya Kamurase Laurent (ugura) na succession HabimanaJoseph ihagarariwe na Karigirwa Félicité (ugurisha), bakaba barawuguze ku gicirocya 17.600.000Frw, ayo masezerano ashyirwaho imikono n'impande zombi ndetse n'abatangabuhamya ba buri ruhande barimo abana batatu ba Karigirwa Félicité, bikorerwa imbere ya Noteri ku wa 03/05/2017. Kamurase Laurent yatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo avuga ko Karigirwa Félicité atubahirije amasezerano bagiranye ku ruhande rwe ngo anamukorere ihererekanyamutungo (mutation), arusaba gutegeka ihererekanyamutungo, umutungo yaguze ukamwandikwaho.

[2] Succession Habimana Joseph ihagarariwe na Karigirwa Félicité yaburanye ivugako nta bugure bwabayeho nk'uko Kamurase Laurent ashaka kubyumvikanisha, ko ahubwo icyabaye ari uko yamusabye kumuguriza amafaranga yo kwishyura Banki yari imumereye nabi ishaka kugurisha ingwate yayihaye kubera ibirarane by'ubwishyu bw'inguzanyo, ko Kamurase Laurent yemeye kuyamuha ari uko abanje kumusinyiraamasezerano y'ubugure bw'umutungo utimukanwa wavuzwe haruguru. Muri urwo rubanza kandi Ntukabumwe Olivier yagobotse ku bushake asaba ko amasezerano y'ubugure ateshwa agaciro ngo kuko ari mu bazungura akaba atarahaye nyinaumubyara Karigirwa Félicité uruhushya rwo kugurisha uwo mutungo, bityo ngo nyina yagurishije ibitari ibye.

[3] Mu rubanza RCA00080/2019/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 06/06/2019, rwasanze amasezerano y'ubugure bw'uwo mutungo yarakozwe mu buryo bwubahirije amategeko, rwemeza ko ikirego cyatanzwe na Kamurase Laurent gifite ishingiro, rutegeka ko hakorwa ihinduranyamutungo ku nzu yaguze, iri mu kibanza kibaruye kuri UPI:1/02/09/03/404, igakurwa kuri Succession Habimana ihagarariwe na Karigirwa Félicité, ikandikwa kuri Kamurase Laurent, runategeka ko amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.

[4] Succession Habimana Joseph ihagarariwe na Karigirwa Félicité na Ntukabumwe Olivier ntibishimiye imikirize y'urubanza buri wese ajuririra Urukiko Rukuru, ubujurire bwa Ntukabumwe Olivier bwandikwa kuri RCA00305/2019/HC/KIG, naho ubwa succession HABIMANA Joseph ihagarariwe naKarigirwa Félicité bwandikwa kuri CMB RCA 00306/2019/HC/KIG, buri wese asaba ko amasezerano y'ubugure bw'umutungo utimukanwa ubaruye kuri UPI: 1/02/09/03/404 ateshwa agaciro hamwe n'indishyi. Izo manza zombi zihurizwa hamwe mu rubanza RCA00305-00306/2019/HC/KIG. Mu iburanisha ryo ku wa 11/02/2020, Muzima Rutikanga Frederick yarugobotsemo avuga ko umutungo uburanwa yawuguze, ariko Urukiko rumubajije ibimenyetso by'ubugure bwe arabibura ndetse na ba nyiri umutungo bavuga ko batamuzi, bituma Urukiko rufata icyemezo koukugoboka kwe kutakiriwe, avanwa mu rubanza.

[5] Ku wa 24/12/2020, Urukiko Rukuru rwaciye urubanza RCA00305- 00306/2019/HC/KIG rwemeza ko ubujurire bwatanzwe na succession Habimana Joseph ihagarariwe na Karigirwa Félicité bufite ishingiro gusa ku bireba igiciro cy'umutungo yagurishije, ko ubujurire bwatanzwe na Ntukabumwe Olivier nta shingiro bufite, ko ukugoboka mu rubanza kwakozwe na Muzima Rutikanga

Frederick nta shingiro gufite, ko kandi amasezerano y'ubugure bw'umutungo utimukanwa ubaruye kuri UPI: 1/02/09/03/404, succession Habimana Joseph ihagarariwe na Karigirwa Félicité yagiranye na Kamurase Laurent ahamaho gusa ari uko Kamurase Laurent yemeye gutanga igiciro cyemejwe n'umugenagaciro washyizweho n'Urukiko gihwanye na 312.810.000Frw, ko Kamurase Laurent ashatse kuwugura yakwishyura succession Habimana Joseph 312.810.000Frw mu gihe cy'amezi abiri (2) abarwa guhera ku munsi urwo rubanza ruzaberaho itegeko atabyubahiriza agasubizwa 28.952.000Frw akubiyemo amafaranga yayishyuye n'inyungu z'ubukererwe. Rutegeka ko nta ndishyi zigomba gutangwa muri urwo rubanza.

[6] Muzima Rutikanga Frederick yajuriye urwo rubanza muri uru Rukiko, ubujurire bwe bwandikwa kuri RCAA00003/2021/CA, succession Habimana Joseph ihagarariwe na Karigirwa Félicité nayo irajurira ubujurire bwayo bwadikwa kuri RCAA 00004/2021/CA. Izo manza zombi zihurizwa hamwe mu rubanza RCAA00003/2021/CA- RCAA00004/2021/CA.

[7] Urubanza rwahamagajwe ku wa 02/11/2021, kuri uwo munsi ntirwaburanishwa kubera ko Karigirwa Félicité yari mu kiruhuko cy'uburwayi, rwimurirwa ku wa 09/11/2021, nabwo ntirwaburanishwa kubera ko Muzima Rutikanga Frederick yari mu kiruko cy'uburwayi, rwimurirwa ku 30/11/2021, Muzima Rutikanga Frederick yunganiwe na Me Uwizera Zeno, Kamurase Laurent yunganiwe na Me Bayingana Janvier, succession Habimana Joseph ihagarariwe na Karigirwa Félicité, nawe ahagarariwe na Me Gabiro David, Ntukabumwe Olivier yunganiwe na Me Sayinzoga Jean Pierre habanza kuburanishwa ikibazo cyo kureka urubanzacyatanzwe na Succession Habimana Joseph, maze ku wa 28/01/2022, Urukiko rwemeza ko kureka urubanza mu bujurire kwa succession Habimana kutemewe, koubujurire bw'iremezo bwatanzwe na succession Habimana Joseph bugomba gusuzumwa.

[8] Urubanza rwongeye guhamagazwa ku wa 02/03/2022, inteko iburanisha yahindutse,Muzima Rutikanga Frederick yitabye ariko nta Avoka afite**,** Karigirwa Félicité, uhagarariye succession Habimana Joseph atitabye kubera ko yari arwaye, ariko yunganiwe na Me Gabiro David, Ntukabumwe Olivier nawe atitabye, arikoyunganiwe na Me Sayinzoga Jean Pierre ; iburanisha ryimurirwa ku wa 14/03/2022saa tanu (11:00).

[9] Kuri iyo tariki, iburanisha ryabaye mu ruhame, Muzima Rutikanga Frederick yitabye ariko nta Avoka afite, Kamurase Laurent na Ntukabumwe Olivier bunganiwe nkambere, Karigirwa Félicité, uhagarariye succession Habimana Joseph ahagarariwe na Me Gabiro David, Urukiko rwemeza ko urubanza ruburanishwa, kuruhande rwa Muzima Rutikanga Frederick hakazasumwa imyanzuro ye.

[10] Ku wa 18/03/2022, Muzima Rutikanga Frederick yandikiye Perezida w'inteko iburanisha amusaba ko iburanisha ry'urubanza rwasubukurwa ku mpamvu yasobanuye mu ibaruwa ye. Ku wa 24/03/2022, Karigirwa Félicité nawe yandikiyePerezida w'inteko iburanisha amusaba ko urubanza rwapfundurwa rukongera kuburanishwa ku mpamvu yasobanuriye Urukiko.

[11] Mu gihe rwari mu mwiherero, Urukiko rushingiye ku biteganywa n'ingingo ya 75, igikacya 4, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanzaz'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko mbere yo gufata icyemezo kandi rubyibwirije, Urukiko rushobora gupfundura iburanisha mu gihe rusanga hari ibyo rukeneye gusobanukirwa kurushaho bitasobanutse mu iburanisha kugira ngo ukuri kugaragare, rusanga mbere yo gufata icyemezo cya burundu, ari ngombwa ko rugera aho ikiburanwa kiri mu Mudugudu w'Itetero, Akagari ka Nyagatovu, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali, ababuranyi bose, bakazaba bari aho umutungo usabirwa ihererekanyamutungo uherereye ku wa 12/04/2022, saa tanu (11:00).

[12] Iperereza ryakozwe ku wa 05/05/2022, urubanza rusubukurwa ku wa 16/05/2022, Muzima Rutikanga Frederick yunganiwe na Me Karake Canisius, succession Habimana Joseph ihagarariwe na Karigirwa Félicité yunganiwe na Me Gabiro David, abandi bunganiwe nka mbere, rwimurirwa ku wa 30/05/2022 kugira ngo ababuranyi bajye gukemura ikibazo bafitanye mu bwumvikane, kuri uwo munsi urubanza ruburanishwa ababuranyi bunganiwe nka mbere, maze babwira Urukiko ko ubwumvikane butakunze. Isomwa ry'urubanza ryashyizwe ku wa 24/06/2022, ariko mu gihe urubanza rutarasomwa, ku wa 16/06/2022, Muzima Rutikanga Frédérick yandikiye Urukiko arusaba kureka urubanza, maze ku wa 24/06/2022, Urukiko rufata icyemezo ko iburanisha ry'urubanza rigomba gupfundurwa kugira ngo ababuranyi bagire icyo bavuga ku bijyanye no kureka urubanza bisabwa Muzima Rutikanga Frédérick, ko iburanisha rizapfundurwa ku wa 28/06/2022. Uwo munsi urubanza rwaraburanishijwe, Urukiko rufatira icyemezo mu ntebe, rwemeza ko ukureka urubanza kwa Muzima Rutikanga Frederick kutemewe, isomwa ryarwo rishyirwa kuwa 15/07/2022.

II.IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. UBUJURIRE BWA MUZIMA RUTIKANGA FREDERICK

1.Kumenya niba Muzima Rutikanga Frederick yari afite inyungu zo kugobokamu rubanza rujuririrwa

[13] Muzima Rutikanga Frederick n'umwunganira bavuga ko Urukiko Rukuru rutari rukwiye kumuvana mu rubanza kuko arufitemo inyungu zishingiye ku kuba yaraguzeumutungo uburanwa hagati ya Karigirwa Félicité na Kamurase Laurent, ko ikimenyetso aburanisha ari inyandiko ya *procuration* yahawe na Karigirwa Félicité amuha uburenganzira bwo kujya kumukurikiranira ibyangombwa by'uwo mutungo.

[14] Basobanura ko umutungo uburanwa ufite nº UPI: 1/02/09/03/404, Muzima RutikangaFrederick yawuguze na Karigirwa Félicité, ko amasezerano y'ubugure Ntukabumwe Olivier yayamwambuye, ko kandi na Karigirwa Félicité yemera koyamugurishije uwo mutungo, ko yanamuhaye *procuration* ngo akurikirane ibyerekeye icyangombwa cy'uwo mutungo nyuma yo kubona wanditse kuri succession Habimana Joseph kugira ngo bizakosorwe cyandikwe mu mazina ya Karigirwa Félicité, ko kandi succession Habimana Joseph bitirira uwo mutungo ari ikintu kitabaho.

[15] Uhagarariye succession Habimana Joseph avuga ko mu rubanza rujuririrwa, Urukiko Rukuru rwanze kwakira ukugoboka kwa Muzima Rutikanga Frederick kuberakubura ibimenyetso bigaragaza inyungu yari arufitemo zari gutuma yemererwa kurugobokamo. Ashingiye ku ngingo ya 114, igika cya 2, iya 12 z'Itegeko Nº 22/2018ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi n'ingigo ya 3 n'iya 4 z'Itegeko N° 15/2004 ryoku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, avuga ko kuba Muzima Rutikanga Frederick avuga ko yari yaraguze umutungo uburanwa ariko kugeza ubu akaba atagaragaza amasezerano y'ubugure, Urukiko rutashingira ku magambo ye gusa. Avuga ko asanga rero ubujurire bwe butagomba kwakirwa kuko nta nyungu afite muri uru rubanza, ndetse ko n'ibibazo byose yashikirije Urukuko ntashingiro bikwiye guhabwa kuko ntacyo bishingiyeho.

[16] Kamurase Laurent n'umwunganira bavuga ko Muzima Rutikanga Frederick nta nyungu afite muri uru rubanza kuko usibye kuvuga gusa ko yaguze umutungo uburanwa ariko atagaragaza amasezerano y'ubugure ari yo mpamvu kugoboka kwe kutakiriwe mu Rukiko Rukuru, ko nubu atagaragaza inyungu afite, ko rero ubujurire bwe butagomba kwakirwa kubera kubura inyungu mu rubanza.

[17] Ntukabumwe Olivier n'umwunganira bavuga ko Muzima Rutikanga Frederick ntanyungu afite muri uru rubanza kuko nta kimenyetso yagaragaje cyerekana aho ahuriran'umutungo uburanwa.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 114, 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 ibikurikira: "Ushaka kuburana mu rubanza ataregeye cyangwa atarezwemo abikora mu buryo bwo kuregera inkiko kandi agatanga ingwate y'amagarama." Mu gika cya kabiri cy'iyi ngingo iteganya ibikurikira: "Kugira ngo ikirego cye cyakirwe, ugoboka ku bushake agomba kugaragaza inyungu yemewe n'amategeko, itaziguye kandi ye bwite."

[19] Ingingo ya 147, igika cya kabiri, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, iteganya ibikurikira: "Icyakora, kujuririra urubanza rubanziriza urundi bikorwa gusa iyo urubanza rw'iremezo rwaciwe kandi bigakorerwa rimwe. Muri icyo gihe, igihe cyo kujuririra urubanza rubanziriza urundi gitangira kubarwa kuva ku munsiumuburanyi yamenyeye ko urubanza rw'iremezo rwaciwe".

[20] Urukiko rusesenguye ingingo 114 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru rusanga kugira ngo ikirego cyo kugoboka mu rubanza cyakirwe ari ngombwa ko ugoboka agaragaza inyungu yemewe n'amategeko, itaziguye kandi ye bwite imutera kuza mu rubanza ataregeye cyangwa atarezwemo. Mu yandimagambo ugoboka mu rubanza agomba kwakirwa ari uko abanje kugaragaza aho ahurira n'ikiburanwa muri urwo rubanza ashaka kugobokamo.

[21] Dosiye y'urubanza igaragaza ko mu iburanisha ryo ku wa 11/02/2020, Urukiko Rukuru rwafatiye icyemezo mu ntebe cyo kutakira ukugoboka mu rubanza kwa Muzima Rutikanga Frederick kuko atabashije kugaragaza ikimenyetso cyerekana inyungu afite mu rubanza.

[22] Nubwo Muzima Rutikanga Frederick yajuririye uru Rukiko, kandi akaba abyemerewe n'amategeko, mu bujurire bwe akaba avuga ko yari afite inyungu zo kugoboka mu rubanza rujuririrwa, kuko yaguze umutungo uburanwa na Karigirwa Félicité, Urukiko rurasanga nta kimenyetso atanga cyerekana ko yaguze uwo mutungo, bityo nk'uko biteganywa n'ingingo ya 3 y'Itegeko N° 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, ibyo Muzima Rutikanga Frederick avuganta shingiro bifite.

[23] Urukiko rurasanga ibivugwa na Muzima Rutikanga Frederick ko amasezerano y'ubugure bw'umutungo uburanwa, Ntukabumwe Olivier yayamwambuye, ntashingiro byahabwa kuko usibye kubivuga gusa, nta kimenyetso na kimwe agaragaza cyerekana ko ibyo avuga ari ukuri. Ku byo avuga ko ikimenyetso cyerekana ko yaguze umutungo uburanwa ari inyandiko itanga ububasha (procuration) yahawe na Karigirwa Félicité amuha uburenganzira bwo kujya kumukurikiranira ibyangombwa by'uwo mutungo, usibye kuba atarashyikirije Urukiko iyo nyandiko itanga ububasha (procuration) yaba yahawe na Karigirwa Félicité imuha uburenganzira bwo kujya kumukurikiranira ibyangombwa by'umutungo uburanwa, ntabwo ari ikimenyetso cyerekana ko Muzima Rutikanga Frederick yaguze umutungo uburanwa muri uru rubanza ku buryo yayishingiraho avuga ko yari afite inyungu yo kugoboka mu rubanzarujuririrwa. Urukiko rurasanga rero nta kosa Urukiko Rukuru rwakoze ryo kutakira ikirego cya Muzima Rutikanga Frédérick cyo kugoboka mu rubanza.

[24] Urukiko rurasanga kandi, kuba mu iburanisha ryo 11/02/2020, Urukiko Rukuru rwarafashe icyemezo cyo kutakira ukugoboka mu rubanza kwa Muzima Rutikanga Frederick kuko atabashije kugaragaza ikimenyetso cyerekana inyungu afite mu rubanza, hanyuma mu bujurire bwe muri uru

Rukiko nabwo akaba atarabashije kugaragaza inyungu afite muri uru rubanza, ndetse nawe ubwe muri uru Rukiko akabayarasabye kureka urubanza avuga ko nta nyungu arufitemo ariko nta byemererwe kubera ko uruhande rwa Kamurase Laurent rutabyemeye, nabyo ari ikimenyetso yitangiye cyemeza ko nta nyungu afite muri uru rubanza; bityo ubujurire bwe nta shingiro bufite, akaba rero atari ngombwa gusuzuma indi ngingo y'ubujurire bwe kukobigaragaye ko atari yemerewe kugoboka ku bushake mu rubanza rwaburanishwe n'Urukiko Rukuru.

B. UBUJURIRE BWA SUCCESSION HABIMANA Joseph

2.Kumenya niba Karigirwa Félicité uhagarariye succession Habimana Joseph yari guhatirwa kugurisha Kamurase Laurent umutungo ubaruye kuri UPI 1/02/09/03/404 ku gaciro ka 312.810.000 Frw

[25] Uhagarariye succession Habimana Joseph avuga ko Succession Habimana Joseph itagombaga gutegekwa kugurisha uriya mutungo kandi hamazekugaragaramo ko Karigirwa Félicité yafatiranwe kubera intege nke yatewe n'ibibazo yari afite bya Banki ahubwo rwari gutegeka ko Kamurase Laurent asubizwa 17.600.000Frw. Asobanura ko amasezerano yabaye hagati ya Karigirwa Félicité na Kamurase Laurent atari ay'ubugure ahubwo Karigirwa Félicité yari akeneye amafaranga yo kwishyura Banki yari igiye guteza umutungo we cyamunara, Kamurase Laurent yemera kumuguriza ayo mafaranga ari uko abanje kumusinyira amasezerano y'ubugure bw'umutungo utimukanwa wavuzwe haruguru, amuguriza 11.000.000Frw, ariko mu masezerano bandika ko baguze umutungo mu rwego rwo kumuha icyizere ko azamwishyura *(garantie),* bandika kobawuguze 17.600.000Frw kuko babariyemo n'inyungu, ko rero yemeye kwandika kobaguze umutungo kandi atari byo kugira ngo Kamurase Laurent amugurize amafaranga abashe gukemura ikibazo yari afitanye na Banki.

[26] Avuga kandi ko mu gika cya 27 cy'urubanza rujuririrwa Urukiko rwamutegetse kugurisha Kamurase Laurent umutungo we ku gaciro kagenwe n'umugenagaciro kandi nyamara ngo atifuza kuwugurisha, ko ibyo byaba binyuranije n'ibiteganywa n'ingingo ya 34 y'itegeko Nshinga rya Repuburika y'u Rwanda rya 2003 ryavuguruwe mu 2015 aho iteganya ko "Buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo asangiye n'abandi, ko umutungo bwite, uw'umuntu ku giti cye cyangwa uwo asangiye n'abandi ntuvogerwa (…) ko kandi binyuranije n'ingingo ya 9 y'Itegeko rigenga amasezerano aho iteganya ko "Kugira ngo amasezerano akorwe, ukwemera k'uruhande rumwe kugomba guhura n'ukwemera k'urundi ruhande". Ko rero Karigirwa Félicité nta bushake afite bwo kugurisha uwo mutungo ku giciro cya 312.810.000 Frw, ndetse na Kamurase Laurent nawe nta bushake afite bwo guhatirwa kugura umutungo wa succession Habimana Joseh kuri icyo giciro.

[27] Akomeza avuga ko mu iperereza Urukiko rwakoze aho umutungo uburanwa uri rwabonye ko ibyo Kamurase Laurent avuga ko ari inzu y'ibyondo yaguze atari ukuri,kuko inzu zose zihari zubatse mu matafari ahiye, ko nubwo Karigirwa Félicité yasinye ku masezerano ariko atigeze agurisha uwo mutungo ahubwo yafatiranwe kubera intege nke yatewe n'ibibazo yari afitanye na Banki ariyo mpamvu basaba Urukiko ko Kamurase Laurent agomba gusubizwa amafaranga yatanze ahwanye na 17.600.000Frw.

[28] Avuga na none ko ibyo Kamurase Laurent n'umwunganira bavuga ko icyo baregeye ari ihinduranyamutungo atari amasezerano nta shingiro bigomba guhabwa kuko mbere y'uko Urukiko rwemeza ihunduranyamutungo rugomba gusuzuma amasezerano y'ubugure, ko kandi muri ayo masezerano Karigirwa Félicité yafatiranwe kubera intege nke yatewe n'ibibazo yari afite bya Banki ariyo mpamvu atagombaga guhabwa agaciro. Ku bijyanye n'igenagaciro Kamurase Laurent avugako atemera, avuga ko yaburanye mu Rukiko Rukuru avuga ko yaguze inzu y'ibyondoari yo mpamvu rwategetse ko habaho igenagaciro, ko kandi nta genagaciro rivuguruzairyakozwe yigeze atanga, ko

rero adakwiye kuvuga mu bujurire ko atemera igenagaciro ryakozwe bitegetswe n'Urukiko mu gihe atigeze atanga iririvuguruza.

[29] Kamurase Laurent n'umwunganira bavuga ko ubujurire bwa Karigirwa Félicité uhagarariye succession Habimana Joseph nta nshingiro bufite kuko Urukiko atari rwo rwamuhatiye kugurisha umutungo baburana. Kubirebana n'ingano y'amafarangayategetswe n'Urukiko kongera kuyo yaguze umutungo bavuga ko basanga ibyo Karigirwa Félicité avuga ari ukuri, ko Urukiko rutari gutegeka amafaranga atigezeyumvikanwaho mu masezerano, kubera ko atari rwo rwari kugena igiciro hagati y'abagiranye amasezerano, bityo bakaba basanga amasezerano yashizweho umukono n'impande zombi ari yo afite agaciro cyane ko narwo rwemeje ko yakozwemu buryo bukurikije amategeko. Bavuga ko icyo baregereye ari ihererekanyamutungo *(mutation*), ko nyuma y'uko Urukiko rwemeje ko amasezerano yakozwe mu buryo bukurikije amategeko nta kindi rwagombaga gutegeka uretse ihererekanyamutungo (mutation).

[30] Bavuga kandi ko Kamurase Laurent atigeze agira uruhare mu igenagaciro (*expertise*) ryategetswe n'Urukiko, ko rero iryo genagaciro ritagombaga gushingirwaho kuko impande zombi zitaryemeranyijweho, ko ataguze ashingiye ku igenagaciro (*expertise*), ko kandi ingingo ya 98 y'Itegeko ry'ibimenyetso iteganya ko Urukiko rudategetswe kugendera ku nyandiko z'abahanga, ko icyo impande zombi zemeranyijweho gikubiye mu masezerano bagiranye. Bavuga ko icyo Kamurase Laurent yaguze ari ikibanza kuko atari akeneye utuzu twubatsemo, cyane ko igishushanyombonera (*master plan*) cya 2013 cyagaragaza ko umuhanda uzatwara metero 23, ko igiciro yahaguze ari cyo cyari kihakwiye kubera uko hari hateye ukurikije igishushanyombonera (*master plan*) cya 2013 ari nacyo cyakoreshwaga kugeza mu mwaka wa 2019, ko rero atari gutegekwa kwishyura 312.810.000 Frw kandi atari yo yumvikanywe n'impande zombi mu masezerano zagiranye, ko niba Karigirwa Félicité yarafatiranwe yagombaga kuba yarabiregeye ariko ko ntabyo yakoze.

[31] Kamurase Laurent avuga na none ko amaze kubona ko Karigirwa Félicité adashaka kumukorera ihererekanyamutungo, yamusabye kumuha 50.000.000Frw ngo yigumanire umutungo we nabyo arabyanga ari nayo mpamvu yamureze.

[32] Muzima Rutikanga Frederick n'umwunganira bavuga ko ingingo z'ubujurire zose zatanzwe na succession Habimana Joseph nta gaciro zahabwa.

[33] Ntukabumwe Olivier n'umwunganira bavuga ko batigeze baregwa muri uru rubanza ko barujemo hashingiwe ku ngingo ya 153 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Ntukabumwe Olivier avuga ko icyo yavuga kuri iyi ngingo y'ubujurire ari uko uwo mutungo ufite agaciro kangana na 600.000.000Frw, kandi ko aho hantu hakodeshwa 3.000.000Frw, ko rero amasezerano yakozwe ntagaciro agomba guhabwa.

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[34] Ingingo ya 9 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ibikurikira: "Kugira ngo amasezerano akorwe, ukwemera k'uruhande rumwe kugomba guhura n'ukwemera k'urundi ruhande".

[35] Ingingo ya 73 y'Itegeko ryibukijwe haruguru iteganya ibikurikira: "Iyo amasezerano cyangwa ingingo zayo birimo kubangamira uburenganzira bw'uruhande rumwe igiheamasezerano yakorwaga, uruhande rubangamiwe rushobora gusaba urukiko kwanga ko amasezerano arangizwa cyangwa kwemeza ko harangizwa ibisigaye ku masezerano hatarimo ingingo zirimo kubangamira uruhande rumwe".

[36] Imikirize y'urubanza RCA00305-00306/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 24/12/2020, igaragaza ko urwo Rukiko rumaze gusanga amasezerano Karigirwa Félicité na Kamurase Laurent bakoranye yujuje ibiteganywa n'ingingoya 4 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 ryibukijwe haruguru, ariko rwagera ku giciro umutungo wagurishijweho, nyuma ya raporo y'Umugenagaciro yagaragaje ko uwo mutungo ufite agaciro ka 312.810.000Frw, rushingiye ku manza zaciwe mu bihugu by'amahanga no ku nyandiko z'abahanga mu mategeko, rwasanze na none ayo masezerano arimo ubusumbane bukabije, ku buryo kuyashyira mu bikorwa uko ateye, Kamurase Laurent akegukana umutungo uburanwa ku giciro cya 17.600.000Frw kaba ari akarengane ku ruhande rwa Karigirwa Félicité, maze rwemeza ko amasezerano y'ubugure bw'umutungo utimukanwa ubaruye kuri UPI: 1/02/09/03/404,succession Habimana Joseph ihagarariwe na Karigirwa Félicité yagiranye na Kamurase Laurent ahamaho gusa ari uko Kamurase Laurent yemeye gutanga igiciro cyemejwe n'umugenagaciro washyizweho n'Urukiko gihwanye na 312.810.000Frw, ko Kamurase Laurent ashatse kuwugura yakwishyura succession Habimana Joseph 312.810.000Frw mu gihe cy'amezi abiri (2) abarwa guhera ku munsi urwo rubanza ruzaberaho itegeko atabyubahiriza agasubizwa 28.952.000Frw akubiyemoamafaranga yayishyuye n'inyungu z'ubukererwe.

[37] Isesengura ry'imikirize y'uru rubanza ruvuzwe haruguru rigaragaza ko Urukiko Rukuru rwasanze mu by'ukuri amasezerano impande zombi zagiranye adashobora kuragizwauko yakabaye, ku byo Kamurase Laurent yakorerwa ihererekanyamutungo ku giciro cya 17.600.000Frw nk'uko yabisabaga. Ibyo byatumye rutegeka Kamurase Laurent kwishyura 312.810.000Frw mu gihe yaba ashaka gukorerwaihererekanyamutungo kandi akayishyura mu gihe cy'amezi 2, yaba atabikoze, agasubizwa 28.952.000Frw akubiyemo 17.600.000Frw yishyuye n'inyungu z'ubukererwe.

[38] Ikibazo kigomba gusuzumwa akaba ari icyo kumenya niba Urukiko Rukuru rwari gutegeka Kamurase Laurent kugura uriya mutungo ku giciro cya 312.810.000Frw kidateganijwe mu masezerano kandi n'uruhande rwa Karigirwa Félicité narwo ruvuga ko rutagombaga gutegekwa kugurisha uwo mutungo ku gahato.

[39] Isesengura ry'ingingo ya 9 n'iya 73 z'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 ryibukijwe haruguru zihurijwe hamwe rigaragaza ko amasezerano ari ingaruka zo kwemera kw'impande zombi, kandi akaba agomba kurangizwa cyangwa gushyirwa mu bikorwa mu gihe atabangamira cyangwa atarenganya urundi ruhande; bivuze ko mu gihe bigaragaye ko harimo akarengane, ikigomba gukorwa ntabwo ari ukugena ubundi buryo yarangizwa butandukanye n'ibyo impande zombi zumvikanye mu masezerano, ahubwo ari gutegeka ko atarangizwa ariko hakarebwa n'ingaruka zikomoka ku kutarangizwa kw'ayo masezerano.

[40] Urukiko rurasanga rugomba gusuzuma niba koko amasezerano Karigirwa Félicité yagiranye na Kamurase Laurent arimo akarengane cyangwa abangamiye uruhande rwa Karigirwa Félicité ku buryo adashobora kurangizwa, rukanasuzuma ingaruka zabyo mu gihe koko ako karengane kaba kagaragaye.

[41] Nk'uko byagaragajwe haruguru, umutungo wagurishijwe ku giciro cya 17.600.000 Frw ku wa 02/05/2017. Mu iburanisha mu Rukiko Rukuru, igenagaciro ryategetswe n'Urukiko Rukuru ryagaragaje ko uwo mutungo ufite agaciro ka 312.810.000Frw[1]. Muiperereza ryo ku wa 05/05/2022, ryakozwe n'uru Rukiko aho umutungo usabirwa gukorerwa ihererekanyamutungo uherereye, Urukiko rwasanze uwo mutungo ugizwen'amazu atuyemo imiryango (*famille*)[2] myinshi, urimo n'inzu z'ubucuruzi ziri ku ruhande rwo haruguru ku muhanda wa kaburimbo munini wa Kimironko.

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[1] Raporo y'umugenagaciro yategetswe n'Urukiko igaragaza ko ubwo butaka bufite metero kare (1.720) kandi bukora ku mihanda yombi, uwibitaka mu ruhande rwo hepfo n'uwa kaburimbo ku ruhande rwo haruguru.

[2] Ntukabumwe Olivier, umwana wa Karigirwa Félicité, avuga ko hatuye imiryango 30, naho Kamurase Laurent avuga ko raporo y'igenagaciro igaragaza ko hari annexes 7 n'inzu z'ubucuruzi (2).

[42] Urukiko rushingiye ku igenagaciro ryakozwe n'Umuhanga no ku iperereza rwakoze aho umutungo usabirwa ihererekanyamutungo uherereye rurasanga mu by'ukurink'uko Urukiko Rukuru rwabibonye amasezerano y'ubugure bw'umutungo ubaruye kuri UPI: 1/02/09/03/404, yabaye hagati ya Karigirwa Félicité na Kamurase Laurent abangamiye uruhande rwa Karigirwa Félicité ku byerekeranye n'igiciro waguzwe, kuko bitumvikana uburyo umutungo uherereye muri *centre* y'ubucuruzi ya Kimironko, ufite ubuso bwa metero kare (1.720), wubatswemo amazu atuwe n'imiryango myinshi, ndetse ukabamo n'amazu y'ubucuruzi, wagurwa ku giciro cya 17.600.000 Frw; bityo ntabwo ayo masezerano agomba kurangizwa nk'uko ingingo ya 73 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 ryibukijwe haruguru ibiteganya, ntan'iherekanyamutungo rigomba gukorwa kuri uwo mutungo.

[43] Urukiko rurasanga nubwo ingingo ya 73 y'Itegeko rigenga amasezerano ryibukijwe haruguru itavuga yeruye ko amasezerano agaragaramo akarengane ateshwa agaciro ibintu bigasubira uko byahoze mbere y'ayo masezerano, ariko isesengura ryayo ryumvikanisha ko ingaruka zo kutayarangiza ari zimwe n'izo gutesha agaciro amasezerano cyangwa ingingo y'ayo masezerano igaragaramo akarengane. Ibi byanagarutsweho mu ngingo ya 26 y'Itegeko Nº 017/2021 ryo ku wa 03/03/2021 ryerekeye kurengera umuguzi wa serivisi y'imari iteganya ko ingingo iyo ari yo yose y'amasezerano ngenderwaho y'ubugure bw'igicuruzwa cy'imari cyangwa serivisi y'imari ihabwa umuguzi wa serivisi y'imari irimo akarengane, itakaza agaciro uko yakabaye. Urukiko rurasanga nubwo Itegeko y'Itegeko Nº 017/2021 ryo ku wa 03/03/2021 ritakoreshwa muri uru rubanza, ariko igitekerezo nyamukuru Umushingamategeko atanga muri izi ngingo zombi, nuko amasezerano cyangwa ingingo yayo bigaragaramo akarengane cyangwa bibangimiye urundi ruhande nta gaciro bigomba kugira.

[44] Urukiko rurasanga rero ibyo Kamurase Laurent avuga ko igiciro yaguze umutungoyareze asaba ko yakorerwa ihererekanyamutungo (mutation) ryawo, ari cyo giciro gikwiye nta shingiro byahabwa, kuko nk'uko byagaragajwe haruguru, igiciro cyatwanzwe kuri uwo mutungo kibangamiye mu buryo bugaragara uruhande rwa Karigirwa Félicité.

[45] Urukiko rurasanga Kamurase Laurent akwiye gusubizwa ikiguzi yatanze agura umutungo uvugwa muri uru rubanza hiyongereyeho inyungu zayo hitawe ku gihe succession Habimana Joseph imaranye ayo mafaranga, cyane cyane ko nawe yaburanye avuga ko mu gihe atakorewe ihererekanyamutungo yasubizwa ikiguzi yatanze n'inyungu zayo nk'uko zizakubarwa nyuma yo gusubiza ingingo ya kabiri y'ubujurire bwa Karigirwa Félicité.

3. Kumenya niba hari ikosa Urukiko Rukuru rwakoze ryo gutegeka ko 17.600.000 Frw itangirwa inyungu ya 18%

[46] Uhagarariye succession Habimana Joseph avuga ko Kamurase Laurent atari ikigo cy'imari, ko rero Urukiko rutagombaga gutegeka ko ahabwa inyungu zibariwe ku gipimo cya 18% ya 17.600.000 Frw. Asobanura ko mu gika cya 27 cy'urubanza rujuririrwa Urukiko rwamutegetse guha Kamurase Laurent inyungu zibariwe ku gipimo cya 18% ya 17.600.000Frw yari yaramugurije kandi atari ikigo cy'imari, atemerewe no gucuruza amafaranga, kandi mu masezerano bagiranye harimo inyungu zingana na 6.600.000Frw, bakaba basaba Urukiko gutesha agaciro izo nyungu zibariwe ku gipimo cya 18%, hanyuma rugategeka ko Kamurase Laurent yishyurwa amafaranga ye angana na 17.600.000Frw.

[47] Kamurase Laurent n'umwunganira bavuga ko Kamurase Laurent yaguze ubutaka abushaka, ko icyo yasabye kuva urubanza rutangira ari ihererekanyamutungo (*mutation*), akaba atarigeze aguriza uruhande baburana amafaranga ku buryo rwayamusubiza, ko rero basanga kuri iyi ngingo Urukiko Rukururwaratandukiriye. Basobanura ko inkiko zidahindura amasezerano mu mafaranga kandi atari byo abagiranye amasezerano basabye, ko 17.600.000Frw n'inyungu ya 18% bitigeze

bisabwa na Kamurase Laurent, ko basaba ko byakosorwa kuko ataribyo yaregeye. Bavuga kandi ko bibaza icyo Urukiko rwashingiyeho rumenya uwahenzwe n'utahenzwe, ko kandi bisanzwe kuba ubutaka bugenda bwongeraagaciro, ko agaciro ubwo butaka bwari bufite muri 2017 atari ko bufite ubu, ko kandi n'agaciro 17.600.000Frw yari afite icyo gihe atari ko gaciro afite ubu.

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[48] Ingingo ya 9 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 ibikurikira: "Umucamanza aca urubanza ashingiye ku ngingo z'amategeko zirebana n'ikirego yaregewe. Iyo nta tegeko rijyanye n'ikiburanwa ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko".

[49] Urukiko rurasanga nta tegeko ririho rigena igikipimo kibarirwaho inyungu, ariyompamvu mu kubara inyungu hagomba kwifashishwa ibyemezo byagiye bifatwa n'inkiko kuri iki kibazo kijyanye no kubara inyungu.

[50] Kuri iki kibazo kijyanye no kuba Urukiko Rukuru mu rwego rwo kugena ingano y'amafaranga Kamurase Laurent yasubizwa mu gihe yaba adatanze ikiguzi cya 312.000.000Frw yagenwe n'Umugenagaciro, rwabariye inyungu ku gipimo cya 18%.Urukiko rurasanga ntaho rwahera rutesha agaciro inyungu zibariwe ku gipimo cya 18% ngo kuko Kamurase Laurent atari ikigo cy'imari, akaba atemerewe no gucuruza amafaranga, kuko kuba yasubizwa amafaranga yishyuye hiyongereyeho inyungu zibariwe ku gipimo cya 18% atari ugucuruza amafaranga, ahubwo ari uko uwayatanze ahanini aba nawe yayasabye muri banki, kandi akaba ari cyo gipimo mpuzandengo banki z'ubucuruzi zitangiraho inguzanyo. Urukiko rurasanga rero kuba nta tegeko rihari Urukiko Rukuru rwaba rwarirengaje cyangwa rwakoresheje nabi ntampamvu iki gipimo cya 18% kitakubahirizwa.

[51] Urukiko rurasanga inyungu zibariwe ku kigero cya 18% arizo uru Rukiko rwabariyehomu rubanza RCAA00033/2020/CA rwaciwe ku wa 14/01/2022, haburana Ndayisaba Jean Damascène na Rutagengwa Georges hamwe na Rutagengwa Matter Elisabeth[3].

[52] Urukiko rurasanga ibyo Kamurase Laurent avuga ko atigeza asaba kubarirwa inyungu ya 18% ko ahubwo yaregeye gukorerwa ihererekanyamutungo ari byo, arikohakurikijwe ko Urukiko Rukuru rwasanze amasezerano abangamira bikabijeuruhande rwa succession Habimana Joseph, ibyo bikagira ingaruka ko amasezerano atarangizwa nk'uko biteganywa n'ingingo ya 73 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 ryibukijwe haruguru kandi akaba ariko n'uru Rukiko rubibona, nta kindi cyumvikana cyakorwa usibye gusubiza Kamurase Laurent amafaranga yatanze agura umutungo uvugwa muri uru rubanza hitawe ku gihe succession Habimana Joseph imaranye ayo mafaranga.

[53] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga succession Habimana Joseph igomba gusubiza Kamurase Laurent 17.600.000Frw n'inyungu zayo zibariwe ku gipimo cya 18%, zibazwe guhera ku wa 02/05/2017 kugeza uyu munsi urubanza ruciriweho (ku wa 15/07/2022) ni ukuvuga 17.600.000 Frw x 18 x 1900 (iminsi) : 365 x 100 = 16.490.958Frw, yose hamwe akaba 17.600.000Frw + 16.490.958Frw= 34.090.958Frw.

C. UBUJURIRE BWURIRIYE KU BUNDI

[3] Reba igika cya 32 n'icya 34 by'urubanza RCAA00033/2020/CA rwavuzwe haruguru

4. Kumenya niba Urukiko Rukuru rwakoze ikosa gutegeka KAMURASE Laurentkongera ikiguzi hashingiwe ku igenagaciro ryakozwe nyuma yo kugurisha.

[54] Kamurase Laurent n'umwunganira bavuga ko mu masezerano y'ubugure bw'umutungo yabaye hagati ya Kamurase Laurent na succession Habimana Joseph ihagarariwe na Karigirwa Félicité bumvikanye ku giciro cy'umutungo kandi igiciro kirishyurwa nk'uko impande zombi zabyumvikanyeho, ko rero yatunguwe nuko nyuma y'imyaka igera kuri 4 aguze umutungo, Urukiko rushingiye ku igenagaciro ryakozwe n'uregwa, rwategetse Kamurase Laurent kongera ikiguzi cy'umutungo cyangwa amasezerano agaseswa, bityo basaba Urukiko rw'Ubujurire gukosora ayo makosa yakozwe n'Urukiko Rukuru.

[55] Uhagarariye succession Habimana Joseph avuga ko nta kosa Urukiko Rukuru rwakoze kuko icyo Kamurase Laurent yita ikiguzi atari ikiguzi ahubwo yari amafaranga yari yagurije Karigirwa Félicité na cyane ko nta huriro (proportion) riri hagati y'amafaranga yitwa yatanze n'umutungo waguzwe, ari nayo mpamvu Urukiko nta kosa rwakoze ryo gutegeka ko Kamurase Laurent asububizwa amafaranga ye.

UKO URUKIKO RUBIBONA

[56] Urukiko rurasanga iki kibazo cyashubijwe mu bujurire bwa succession Habimana Joseph ku buryo ntaho Kamurase Laurent yahera avuga ko amasezerano agombagushyirwa mu bikorwa, kuko nk'uko byavuzwe haruguru ingingo ya 73 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 ryibukijwe haruguru iteganya ko amasezerano agaragaramo akarengane cyangwa abangamiye urundi ruhande atagomba kurangizwa; bityo ubujurire bwe bwuririye ku bwa succession Habimana Joseph kuriiyi ngingo nta shingiro bufite.

5. Gusuzuma niba Kamurase Laurent yahabwa indishyi mbonezamusaruro zingana na 30.000.000 Frw hamwe n'indishyi z'akababaro zingana na 15.000.000Frw

[57] Kamurase Laurent n'umwunganira bavuga ko Kamurase Laurent yaguze ubutaka na succession Habimana Joseph ihagarariwe na Karigirwa Félicité mu kwezi kwa gatanu 2017, ubu hakaba hashize imyaka itanu ubwo butaka buri mu maboko y'uwabugurishije kandi abyaza umusaruro ubutaka bwe yaguze, ko rero basanga Kamurase Laurent akwiye kugenerwa n'urukiko indishyi mbonezamusaruro zingana na 30.000.000Frw hamwe na 15.000.000Frw y'indishyi z'akababaro.

[58] Uhagarariye succession Habimana Joseph avuga ko indishyi zisabwa na Kamurase Laurent nta shingiro zahabwa kuko amasezerano y'ubugure ashingirahonta gaciro afite kuko Karigirwa Félicité yafatiranwe kubera intege nke yatewe n'ibibazo yari afite nk'uko na Kamurase Laurent nawe ubwe yabyiyemereye imbere y'Urukiko ari nayo mpamvu Urukiko Rukuru rwategetse ko asubizwa amafaranga yariyatanze yiswe ay'ubugure.

UKO URUKIKO RUBIBONA

[59] Ingingo ya 3, igika cya 1, y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, itaganya ibikurikira : "Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana."

[60] Ku bijyanye n'indishyi mbonezamusaruro Kamurase Laurent asaba, usibye ko atagaragaza uko yazibaze, mu gihe bimaze kugaragara ko Kamurase Laurent atigeze yegurirwa mu buryo bukirikije amategeko umutungo uvugwa muri uru rubanza, kuko amasezerano yo ku wa 02/05/2017

adashobora kurangwizwa kubera impamvu zavuzwe haruguru, Urukiko rurasanga ntazo akwiye guhabwa kuko umusaruro waba waravuye muri uwo mutungo, utavuye mu mutungo we.

[61] Ku bijyanye n'indishyi z'akababaro Kamurase Laurent asaba, Urukiko rurasanga nazo ntazo akwiye guhabwa kuko nta kababaro yatejwe na succession Habimana Joseph ahubwo ibibazo byavutse kubera ko amasezerano ashingiraho yari abangamiye uruhande rwa succession Habimana Joseph.

6. Kumenya niba amafaranga y'ikurikiranarubanza, igihembo cya Avoka n'indishyi bisabwa muri uru rubanza bifite ishingiro

[62] Uhagarariye succession Habimana Joseph ashingiye ku ngingo ya 111 y'Itegeko Nº 22/2018 ryavuzwe haruguru ndetse n'ingingo ya 34 y'Amabwiriza ashyirahoibihembo mbonera bya Avoka, asaba Urukiko gutegeka Kamurase Laurent kwishyura igihembo cya Avoka n'ikurikiranarubanza ku nzego zose bingana na 6.000.000Frw, kumusubiza ingwate y'igarama ya 40.000Frw yatanzwe ku rwego rw'Urukiko Rukuru ndetse na 50.000Frw yatanzwe ku rwego rw'Urukiko rw'Ubujurire.

[63] Avuga kandi ko Karigirwa Félicité asaba Urukiko rw'Ubujurire kumugenera indishyi z'akababaro zingana na 5.000.000Frw zo gushorwa mu manza, kuko Urukiko Rukuru ntazo rwamugeneye kandi nyamara bigaragara ko Kamurase Laurent ari we wamushoye mu manza.

[64] Kamurase Laurent n'umwunganira bavuga ko amafaranga succession Habimana Joseph ihagarariwe na Karigirwa Félicité asaba nta shingiro afite kuko nta kosa Kamurase Laurent yakoze ryatuma acibwa amafaranga, ko ahubwo basanga ari we ukomeje gushorwa mu manza nta mpamvu, bityo akabisabira igihembo cya Avokan'amafaranga y'ikurikiranarubanza bingana na 10.000.000Frw, bibazwe kuva urubanza rutangira kugeza ubu.

[65] Bavuga kandi ko ku bijyanye n'indishyi z'akababaro Karigirwa Félicité asaba nta shingiro zifite, kuko uruhande rujurira rutagaragaza ko rwubahirije amasezerano maze ngo we abe yarabirenzeho aregere Urukiko.

UKO URUKIKO RUBIBONA

[66] Urukiko rurasanga nta ruhande rukwiye guhabwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, kuko buri ruhande rufite ibyo rutsindiye n'ibyo rwatsindiwe. Urukiko rurasanga n'indishyi z'akababaro Karigirwa Félicité, uhagarariye succession Habimana Joseph asaba ntaho zishingiye akaba atagomba kuzihabwa,kuko nawe yabigezemo uruhare asinya amasezerano atabanje gushishoza.

III. ICYEMEZO CY'URUKIKO

[67] Rwemeje ko ubujurire bwa Muzima Rutikanga Frederick nta shingiro bufite.

[68] Rwemeje ko ubujurire bwa succession Habimana Joseph ihagarariwe na Karigirwa Félicité bufite ishingiro kuri bimwe.

[69] Rwemeje ko ubujurire bwuririye ku bundi bwa Kamurase Laurent bufite ishingiro kuri bimwe.

[70] Rwemeje ko imikirize y'urubanza RCA00305-00306/2019/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 24/12/2020 ihinduse kuri bimwe.

[71] Rwemeje ko amasezerano y'ubugure bw'umutungo uri mu kibanza UPI: 1/02/09/03/404, yo ku wa 02/05/2017 atagomba kurangizwa.

[72] Rutegetse ko nta hererekanyamutungo (mutation) ku mutungo ubaruye kuri UPI: 1/02/09/03/404, uherereye mu Mudugudu w'Itetero, Akagari ka Kanyagatovu, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali succession Habimana Joseph ihagarariwe na Karigirwa Félicité igomba gukorera Kamurase Laurent.

[73] Rutegetse succession Habimana Joseph ihagarariwe na Karigirwa Félicité gusubiza Kamurase Laurent 34.090.958Frw.

[74] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.