MURENZI RUKATA v RWIGAMBA

[Rwanda URUKIKO RW'UBUJURIRE – RCAA 00025/2022/CA (Nyirandabaruta, P.J; Rugabirwa na Kanyange) 27 Ukuboza 2023]

Amategeko Mbonezamubano – Itegeko rigenga abantu n'umuryango – Ubutane – Inkurikizi z'ubutane – Kuba Urukiko rwaraciye urubanza rw'ubutane ntirugene ingano y'amafaranga y'ishuri umwe mu baburanyi agomba kwishyura, ntabwo byaba impamvu yo guhunga inshingano zo kwishyurira abana amafaranga y'ishuri kuwa bitegetswe n'Urukiko.

Amategeko Mbonezamubano – Itegeko rigenga abantu n'umuryango – Ubutane – Inkurikizi z'ubutane – Umwe mubashyingiranywe batandukanye burundu wakoze inshingano z'undi zategetswe n'urubanza rw'ubutane, agomba gusubizwa nuwo yakoreye inshingano ibyo yatanze kugirango izo nshingano zubahirizwe, mu rwego rwo kwirinda kwikungahaza

Incamake y'ikibazo: Uru rubanza rwatangiye Rwigamba arega Murenzi Rukata mu Rukiko Rwisumbuye rwa Nyarugenge avuga ko kuva mu mwaka wa 2014 kugeza 2019 yagiye yishyura nabi amafaranga y'ishuri yategetswe kwishyuira abana babyaranye mu rubanza rw'ubutane RC0033/11/TB/KCY rwaciwe n' Urukiko rw'Ibanze rwa Kacyiru ku wa 04/03/2011, avuga ko iyo myitwarire yatumye Rwigamba akoresha amafaranga ye, asaba urwo Rukiko gutegeka Murenzi Rukata kumwishyura umwenda w'amadolari y'Amerika 77,984.69USD ukomoka ku mafaranga y'ishuri yishyuriye abana babo mu mwanya we.

Murenzi Rukata yireguye avuga ko yagize ikibazo cyo guhagarikwa mu kazi, kandi ko Rwigamba yajyanye abana mu mashuri ahenze batabyumvikanyeho, yirengagije ubushobozi bwe, avuga ko atabiheraho yishyuza amafaranga yita umwenda ukomoka ku mafaranga yishyuye amashuri y'abana.

Urukiko mu rubanza RC01140/2019/TGI/NYGE, rwemeje ko urubanza rw'ubutane rutegeka ko Murenzi Rukata azajya yishyurira abana amafaranga y'ishuri, Rwigamba ashingiraho, atari ikimenyetso kigaragaza umwenda aregera, rwemeza ko ikirego cye nta shingiro gifite.

Rwigamba ntiyanyuzwe nicyo cyemezo, ikijuririra mu Rukiko Rukuru, anenga Urukiko rwabanje kuba rwaremeje ko urubanza rw'ubutane, atari ikimenyetso kigaragaza umwenda uregerwa nyamara urwo rubanza ari rwo shingiro ry'umwenda kuko ari rwo aheraho yishyuza amafaranga yakabaye yarishyuwe na Murenzi Rukata. Avuga kandi ko Urukiko Rwabaje rwarenze ku itegeko rugaca urubanza ku cyo rutaregewe kandi ko ngo rutasobanuye icyatumye rudaha agaciro ibimenyetso rwashyikirijwe. Asaba Urukiko Rukuru gukosora ayo amakosa. Murenzi Rukata yireguye avuga ko ibyo Rwigamba aregera nta shingiro bifite kuko mu rubanza rujuririrwa, Urukiko rwasobanuye aho rwashingiye icyemezo rwafashe.

Urukiko Rukuru mu rubanza RCA00252/2021/HC rwemeje ko ubujurire bwa Rwigamba bufite ishingiro, ko Murenzi Rukata asubiza Rwigamba 77,984.69USD yishyuriye abana amashuri kuko yabitegetswe mu rubanza rw'ubutane ariko ntabikore.

Murenzi Rukata yajuririye Urukiko rw'Ubujurire, avuga ko atagombaga gutegekwa kwishyura Rwigamba amadolari ya Amerika 77,984.69USD, kuko Urukiko Rukuru rwamutegetse kwishyura ayo madolari y'amashuri y'abana rwirengagije ko Rwigamba yabajyanye kwiga mu mashuri ahenze mu Rwanda no mu mahanga (Canada) batabyumvikanyeho kandi azi ko nta bushobozi afite, ko rutagombaga gufata icyemezo rushinge ku rubanza rw'ubutane kuko nta ngano y'amafaranga y'ishuri rwagennye, avuga kandi ko nta masezerano y'umwenda ari hagati ye na Rwigamba .Asaba Urukiko rw'Ubujurire kuvanaho icyemezo cy'urukiko Rukuru.

Rwigamba yiregura avuga ko ubujurire bwa Murenzi nta shingiro bufite ko kuba Murenzi Rukata yarigeze kwishyuzwa umwenda ukomoka ku mafaranga y'ishuri ry'abana be, akemera kwishyura ariko ntakomeze kwishyura, ari ikimenyetso gihagije cyerekana ko uwo mwenda awuzi kandi awemera.

Utrukiko rw'ubujurire mu rubanza RCAA00025/2022/CA, rwemeje ko ubujurire bwa Murenzi Rukata nta shingiro bufite.

Incamake y'icyemezo: 1. Kuba Urukiko rwaraciye urubanza rw'ubutane ntirugene ingano y'amafaranga y'ishuri umwe mu baburanyi agomba kwishyura, ntabwo byaba impamvu yo guhunga inshingano zo kwishyurira abana amafaranga y'ishuri kuwa bitegetswe n'Urukiko. Bityo, urubanza rw'ubutane ni ikimenyetso gitanga inshingano kubatanye burundu ku bijyanye n'inkurikizi z'ubutane, kigomba gushingirwaho mu kugararagaza ibyo buri wese yategetswe n'Urukiko.

2. Umwe mubashyingiranywe batandukanye burundu wakoze inshingano z'undi zategetswe n'urubanza rw'ubutane, agomba gusubizwa nuwo yakoreye inshingano ibyo yatanze kugirango izo nshingano zubahirizwe, mu rwego rwo kwirinda kwikungahaza. Bityo, Umwe mubashyingiranywe batandukanye burundu, wishyuye amafaranga y'ishuri kandi uwo batandukanye ariwe wagombaga kuyishyura, uyu agomba ku gusubiza amafaranga yishyuwe kuko byari mu nshingano ze cyane cyane iyo yamenye ko yishyurwaga ntasabe ko bihagarara cyangwa ngo agaragaze ko ayo mafaranga adashobora kuyabona bitewe n'ubushobozi bwe.

Ubujurire nta shingiro bufite.

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 12, igika cya 2,

Imanza zifashishijwe:

URS/INJUST/RC 00005/2021/SC, Radiant Insurance Company Ltd v Dusabimana rwaciwe n'Urukiko rw'Ikirenga kuwa 21 Mutarama 2022

Case nº: 642 / 2008 Fish Hoek Primary School v G W, judgement delivered by Supreme Court of Appeal on 26 Nov 2009, paragraph 14. Available online at http://www.saflii.org/za/cases/ZASCA/2009/144.html, accessed on 20th Sept 2023.

Case number: 53198/2013, Cloete v Blignaut, judgement delivered by the High court of South Africam Gauteng Division, Pretoria on 14th April 2016, paragraph 23. Available online at http://www.saflii.org/za/cases/ZAGPPHC/2016/231.html, accessed on 19th Sept 2023. Idem, par.24.

Inyandiko z'abahanga zifashishijwe:

PER Journal, 2011, Volume 14 Nº.6. Available online at https://www.ajol.info/index.php/pelj/article/view/73008, accessed on 20th Sept.2023

Urubanza

0. Incamake y'urubanza

Murenzi Rukata Mark na Rwigamba Molly barashyingiranywe, babyarana abana babiri ariko nyuma y'aho baratandukana mu rubanza rw'ubutane RC0033/11/TB/KCY rwaciwe n'Urukiko rw'Ibanze rwa Kacyiru ku wa 04/03/2011, urwo Rukiko rutegeka Murenzi Rukata Mark gutanga amafaranga y'amashuri y'abo bana, ibikoresho by'ishuri no kubavuza.

Rwigamba Molly yareze Murenzi Rukata Mark mu Rukiko Rwisumbuye rwa Nyarugenge mu rubanza RC01140/2019/TGI/NYGE, avuga ko kuva mu mwaka wa 2014 kugeza 2019 yagiye yishyura nabi amafaranga y’ishuri, bituma Rwigamba Molly akoresha amafaranga ye, asaba

urwo Rukiko gutegeka Murenzi Rukata Mark kumwishyura umwenda w’amadolari y’Amerika ibihumbi mirongo irindwi na birindwi, magana acyenda mirongo inani n’ane n’ibice mirongo itandatu n’icyenda (77,984.69USD) ukomoka ku mafaranga y’ishuri yishyuriye abana babo mu mwanya we.

Urukiko Rwisumbuye rwa Nyarugenge mu rubanza RC01140/2019/TGI/NYGE rwaciye ku wa 21/07/2021, rwasanze urubanza rw’ubutane Rwigamba Molly ashingiraho rwemeje ko Murenzi Rukata Mark azajya yishyurira abana amafaranga y’ishuri, ibikoresho by’ishuri no kubavuza, atari ikimenyetso kigaragaza umwenda aregera, rwemeza ko ikirego cye nta shingiro gifite.

Rwigamba Molly yajuririye urwo rubanza, Urukiko Rukuru mu rubanza RCA00252/2021/HC/KIG rwaciye ku wa 28/07/2022 rusanga ubujurire bwe bufite ishingiro , rutegeka Murenzi Rukata Mark kumusubiza amadolari y’Amerika ibihumbi mirongo irindwi na birindwi, magana acyenda mirongo inani n’ane n’ibice mirongo itandatu n’icyenda (77,984.69USD), na miliyoni imwe y’amafaranga y’u Rwanda (1,000,000Frw) akubiyemo ay’ikurikiranarubanza n’igihembo cya Avoka n’ibihumbi mirongo ine (40,000Frw) yatanzeho ingwate y’amagarama; rwemeza ko urubanza RC01140/2019/TGI/NYGE rwaciwe n’Urukiko Rwisumbuye rwa Nyarugenge ku wa 21/07/2021 ruhindutse kuri byose.

Murenzi Rukata Mark yajuririye Urukiko rw’Ubujurire avuga ko atagombaga gutegekwa kwishyura Rwigamba Molly amadolari yavuzwe haruguru, bityo asaba Urukiko rw'Ubujurire kuvanaho icyemezo cy’urukiko Rukuru no gutegeka Rwigamba Molly kumusubiza amafaranga y'igihembo cya Avoka n'ikurikiranarubanza. Rwigamba Molly yireguye avuga ko kuba Murenzi Rukata Marc yarigeze kwishyuzwa umwenda ukomoka ku mafaranga y’ishuri ry’abana be, akemera kwishyura ariko ntakomeze kwishyura, ari ikimenyetso gihagije cyerekana ko uwo mwenda awuzi kandi awemera. Asoza asaba Urukiko rw’Ubujurire kumutegeka kumwishyura amadolari ibihumbi mirongo irindwi na bitatu, magana abiri makumyabiri n’abiri (73.222USD) yishyuye amashuri y’abana, no kumusubiza amafaranga y’abavoka kubera gukomeza kumushora mu manza.

Urukiko rw’Ubujurire rwasuzumye ibijyanye no kumenya niba Murenzi Rukata Mark atari akwiye gutegekwa kwishyura Rwigamba Molly amadolari y’Amerika ibihumbi mirongo irindwi

na birindwi, magana acyenda mirongo inani n’ane n’ibice mirongo itandatu n’icyenda (77,984.69USD); niba indishyi Murenzi Rukata Mark yetegetswe kwishyura Rwigamba Molly mu rubanza rujurirwa zikwiye kuvaho; no kumenya niba Murenzi Rukata Mark na Rwigamba Molly bakwiye amafaranga y’ibigenda ku rubanza asabwa kuri uru rwego.

Mu gusesengura ibijyanye no gusubiza umwe mu bari barashyingiranywe ariko nyuma bakaza gutana, ibyo yatanze ku nshingano zari gukorwa na mugenzi we, Urukiko rw’Ubujurire rwasanze iyo umubyeyi ubana n’umwana (custodian parent) atanze amafaranga arenga uruhare rwe mu yo agomba, afite uburenganzira bwo kuyasubizwa n’undi mubyeyi w’umwana wagombaga kuba warayatanze; rusanga kandi kugira ngo umubyeyi watanze amafaranga arenze uruhare rwe (mu kwita ku bana ba bashyingirwanye bakaza gutandukana) ayasubizwe, hagomba kwitabwa ku ngingo zitandukanye zirimo kumenya niba umubyeyi utarubahirije inshingano ze yari azi neza ko undi mubyeyi mugenzi we yarimo kugira ibyo atanga mu nyungu z’abana, no kumenya niba mu gihe yari abizi yaramubujije gukomeza kumukorera inshingano; bisobanuye ko umubyeyi wamenye ko hari undi muntu urimo gukora ibiri mu nshingano ze, ntamubuze kuzikora, bifatwa nk’umwenda amubereyemo agomba kwishyura udakomoka ku masezerano, ahubwo ukomoka ku nshingano atakoze zigakorwa n’undi.

Kubyerekeranye n’uru rubanza, urukiko rwasanze kuba Murenzi Rukata Mark yari azi neza ko kuba abana be biga ari uko nyina Rwigamba Molly abishyurira amafaranga y’ishuri kandi ibyo ari inshingano ze, akaba atarigeze abuza Rwigamba Molly kumukorera inshingano cyangwa ngo babe hari ukundi babyumvikanyeho, Urukiko Rukuru nta kosa rwakoze mu kumutegeka kumwishyura ibyo yatanze byari

mu nshingano ze, kuko kutayamusubiza byaba ari ukwikungahaza nta mpamvu ku ruhande rw'uwagomba kuba yarishyuye amafaranga y'ishuri (Murenzi Rukata Mark) ariko ntabikore.

Hashingiwe ku bisobanuro byatanzwe, Urukiko rw'Ubujurire rwemeje ko ubujurire bwa Murenzi Rukata Mark nta shingiro bufite, ariko ko urubanza rujuririrwa RCA00252/2021/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 28/07/2022 ruhindutse gusa ku ngano y'amafaranga Murenzi Rukata Mark agomba kwishyura Rwigamba Molly; Rutegeka Murenzi Rukata Mark kwimwishyura amafaranga miliyoni mirongo icyenda n'imwe n'ibihumbi magana ane mirongo icyenda n'umunani, magana abiri na cumi na rimwe

(91.498.211Frw), ahwanye n'ibihumbi mirongo irindwi na bitatu, magana abiri makumyabiri n'abiri by'amadolari y'Amerika (73.222USD) Rwigamba Molly yagaragarije ibimenyetso; runamutegeka kandi gusubiza Rwigamba Molly amafaranga miliyoni imwe n'ibihumbi magana arindwi na mirongo ine (1.740.000Frw) y'ikurikiranarubanza n'igihembo cy'abavoka.

Urubanza.

I. IMITERERE Y'URUBANZA

[1] Murenzi Rukata Mark na Rwigamba Molly barashyingiranywe, babyarana abana babiri aribo Murenzi Portia na Ntare Rukata Mark. Nyuma baje gutandukanwa mu rubanza rw'ubutane RC0033/11/TB/KCY rwaciwe n'Urukiko rw'Ibanze rwa Kacyiru ku wa 04/03/2011, urwo Rukiko rutegeka Rwigamba Molly kumenya ubuzima bw'abana n'ibyo bakenera bya buri munsi, naho Murenzi Rukata Mark rumutegeka kujya atanga amafaranga y'ishuri y'abo bana, ibikoresho by'ishuri n'amafaranga yo kubavuza.

[2] Rwigamba Molly yareze Murenzi Rukata Mark mu Rukiko Rwisumbuye rwa Nyarugenge mu rubanza RC01140/2019/TGI/NYGE, avuga ko kuva mu mwaka wa 2014 kugeza 2019 yagiye yishyura nabi amafaranga y'ishuri, bigatuma Rwigamba Molly akoresha amafaranga ye, asaba urwo Rukiko gutegeka Murenzi Rukata Mark kumwishyura umwenda w'amadolari y'Amerika ibihumbi mirongo irindwi na birindwi, magana acyenda mirongo inani n'ane n'ibice mirongo itandatu n'icyenda (77,984.69USD) ukomoka ku mafaranga y'ishuri yishyuriye abana babo mu mwanya we.

[3] Muri urwo rubanza, Rwigamba Molly yasobanuye ko ku wa 18/10/2016 Murenzi Rukata Mark ubwe yiyemereye umwenda w'ibirarane by'ishuri, kuko yari amaze imyaka ibiri (2) atishyurira abana ishuri, yemera kumusubiza amadolari y'Amerika ibihumbi umunani magana abiri (8,200USD), ariko ko uretse amadolari igihumbi (1000USD) gusa yamwishyuye kuri uwo mwenda, atarongera gushyira mu bikorwa icyemezo cy'Urukiko kimutegeka kwishyurira abana ishuri, ko ari yo mpamvu Rwigamba Molly aregera umwenda ukomoka kuri ayo mafaranga yishyuye mu mwanya wa Murenzi Rukata Mark.

[4] Murenzi Rukata Mark yireguye avuga ko yagize ikibazo cyo guhagarikwa mu kazi mu mwaka wa 2017, akaba nta kazi afite, kandi ko Rwigamba Molly yajyanye abana mu mashuri ahenze batabyumvikanyeho, yirengagije ubushobozi bwe, akaba atabiheraho yishyuza amafaranga adafite aho ashingiye yita umwenda ukomoka ku mashuri y'abana, atanga ikirego kiregera kwiregura asaba ko Rwigamba Molly yategekwa kumuha miliyoni imwe (1,000,000Frw) y'amafaranga y'u Rwanda y'igihembo cy'umwavoka.

[5] Urukiko Rwisumbuye rwa Nyarugenge mu rubanza RC01140/2019/TGI/NYGE rwaciye ku wa 21/07/2021, rwasanze urubanza rw'ubutane Rwigamba Molly ashingiraho rwemeje ko Murenzi Rukata Mark azajya yishyurira abana amafaranga y'ishuri, ibikoresho by'ishuri no kubavuza, atari ikimenyetso kigaragaza umwenda aregera, rwemeza ko ikirego cye nta shingiro gifite.

[6] Rwigamba Molly yajuririye urwo rubanza mu Rukiko Rukuru, anenga Urukiko Rwisumbuye rwa Nyarugenge kuba rwaremeje ko urubanza RC0033/11/TB/KCY rw'ubutane rwaciwe ku wa 04/03/2011, atari ikimenyetso kigaragaza umwenda uregerwa kandi urwo rubanza ari rwo shingiro ry'umwenda kuko ari rwo aheraho yishyuza amafaranga yakabaye yarishyuwe na Murenzi Rukata Mark. Ikindi yanenze urwo Rukiko ni uko ibimenyetso by'amafaranga yishyuza Murenzi Rukata Mark yabishyikirijwe kandi na we mu myiregurire ye atigeze ahakana ishingiro ry'itangwa ry'amadolari aregerwa nk'umwenda, ko rero urwo Rukiko rutagombaga kurenga ku myiregurire ya Murenzi Rukata Mark ngo ruvuge ko ibimenyetso by'amafaranga aregerwa bitatanzwe, rutanagaragaje ko ayo mafaranga y'ishuri yaba yaratanzwe na Murenzi Rukata Mark. Anavuga ko Urukiko Rwisumbuye rwa Nyarugenge rwarenze ku itegeko rugaca urubanza ku cyo rutasabwe kandi ko rutasobanuye icyatumye rudaha agaciro ibimenyetso rwashyikirijwe ndetse ko rwakabaye rwarasabye Murenzi Rukata Mark kugaragaza icyamukuyeho inshingano yo kwishyurira abana be amashuri, asaba Urukiko Rukuru gukosora ayo amakosa.

[7] Murenzi Rukata Mark yireguye avuga ko ibyo Rwigamba Molly aregera nta shingiro bifite kuko mu rubanza RC001140/2019/TGI/NYGE rujuririrwa, Urukiko rwasobanuye aho rwashingiye icyemezo rwafashe, ko rwasanze ikirego cya Rwigamba Molly nta shingiro gifite.

[8] Urukiko Rukuru mu rubanza RCA00252/2021/HC/KIG rwaciye ku wa 28/07/2022, rushingiye ku ngingo zinyuranye z'Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, cyane cyane iya 322 iha ababyeyi inshingano yo kwita ku mwana babyaye no kumurera, iya 244 iha nanone ababyeyi batandukanye uburenganzira bwo kugenzura uburyo abana bafashwe n'uko barerwa, kuba inshingano yo kwishyurira abana amashuri urubanza RC0033/11/TB/KCY rw'ubutane rwaciwe ku wa 04/03/2011, rwarayihaye Murenzi Rukata Mark akaba atarayubahirije, kuba Rwigamba Molly yarabishyuriye kugira ngo badahagarika amasomo, rwasanze Murenzi Rukata Mark agomba kumusubiza amadolari y'Amerika ibihumbi mirongo irindwi na birindwi, magana acyenda mirongo inani n'ane n'ibice mirongo itandatu n'icyenda (77,984.69USD), rumutegeka kuyamwishyura no kumusubiza miliyoni imwe y'amafaranga y'u Rwanda (1,000,000Frw) akubiyemo ay'ikurikiranarubanza n'igihembo cya Avoka no kumusubiza amafaranga ibihumbi mirongo ine (40,000Frw) yatanzeho ingwate y'amagarama; bityo rwemeza ko ubujurire bwa RWIGAMBA Molly bufite ishingiro, ruhindura kuri byose urubanza RC01140/2019/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 21/07/2021;

[9] Murenzi Rukata Mark yajuririye Urukiko rw'Ubujurire, ubujurire bwe buhabwa RCAA00025/2022/CA, urubanza ruburanishwa mu ruhame ku wa 13/09/2023, Murenzi Rukata Mark yunganiwe na Me Mbarushimana Aimé, naho Rwigamba Molly yunganiwe na Me Buzayire Angèle na Me Niyondora Nsengiyumva, iburanisha rirapfundikirwa, ababuranyi bamenyeshwa ko bazasomerwa imikirize y'urubanza ku wa 27/09/2023, ariko uwo munsi rufata icyemezo mu rubanza rubanziriza urundi gitegeka kongera gufungura iburanisha kugira ngo buri ruhande rurugaragarize amafaranga y'ishuri buri mwana (Murenzi Portia na Ntare Murenzi Mark) yagombaga kwishyura ku mwaka guhera 2014 kugeza 2019 n'ayo buri wese yishyuye muri icyo gihe. Iburanisha ryapfunduwe ku wa 24/10/2023 ababuranyi bahabwa umwanya wo kugira icyo bavuga ku bimenyetso batanze, iburanisha rirapfundikirwa, bamenyeshwa ko urubanza ruzasomwa ku wa 17/11/2023 ariko ruza gusomwa ku wa 27/12/2023.

[10] Mu myanzuro no miburanire ye Murenzi Rukata Marc avuga ko atagombaga gutegekwa kwishyura Rwigamba Molly amadolari y'Amerika ibihumbi mirongo irindwi na birindwi, magana cyenda mirongo inani n'ane n'ibice mirongo itandatu n'icyenda (77,984.69USD), ko Urukiko Rukuru rwamutegetse kwishyura ayo mafaranga y'amashuri y'abana rwirengagije ko Rwigamba Molly yabajyanye kwiga mu mashuri ahenze mu Rwanda no mu mahanga (Canada) batabyumvikanyeho kandi azi ko nta bushobozi afite, ko rutagombaga gufata icyemezo rushinge ku rubanza rw'ubutane kuko nta ngano y'amafaranga y'ishuri rwagennye, ndetse ko nta masezerano y'umwenda ari hagati ye na

Rwigamba Molly. Akomeza asaba Urukiko rw'Ubujurire kuvanaho icyemezo cy'urukiko Rukuru no gutegeka Rwigamba Molly kumusubiza amafaranga y'igihembo cya Avoka n'ikurikiranarubanza.

[11] Rwigamba Molly yiregura avuga ko kuba Murenzi Rukata Marc yarigeze kwishyuzwa umwenda ukomoka ku mafaranga y'ishuri ry'abana be, akemera kwishyura ariko ntakomeze kwishyura, ari ikimenyetso gihagije cyerekana ko uwo mwenda awuzi kandi awemera, kandi ko yirengagiza ko ari we wisabiye Urukiko mu rubanza rw'ubutane, inshingano yo kwita ku mashuri y'abana no kubavuza kuko yari yagumanye 99% by'umutungo wose bari barashakanye. Asoza avuga ko Urukiko Rukuru rwasobanuye neza ishingiro ry'icyemezo cyarwo, Murenzi Rukata Marc akaba atabasha kubivuguruza. Asaba Urukiko rw'Ubujurire kumutegeka kumwishyura amadolari ibihumbi mirongo irindwi na bitatu, magana abiri makumyabiri n'abiri (73.222USD) yishyuye amashuri y'abana, no kumusubiza amafaranga y'abavoka kubera gukomeza kumushora mu manza.

[12] Hashingiwe ku miburanire y'impande zombi imbere y'uru Rukiko, ku myanzuro yabo ndetse n'inyandikomvugo y'inama ntegurarubanza, uru Rukiko rugomba gusuzuma ingingo izikurikira :

Kumenya niba Murenzi Rukata Mark ataragombaga gutegekwa kwishyura Rwigamba Molly amadolari y'Amerika ibihumbi mirongo irindwi na birindwi, magana acyenda mirongo inani n'ane n'ibice mirongo itandatu n'icyenda (77,984.69USD) yishyuriye abana amashuri ;

Kumenya niba indishyi Murenzi Rukata Mark yetegetswe kwishyura Rwigamba Molly mu rubanza rujuririrwa zikwiye kuvaho ;

Kumenya niba Murenzi Rukata Mark na Rwigamba Molly bakwiye amafaranga basabwa kuri uru rwego y'ibigenda ku rubanza.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1.Kumenya niba Murenzi Rukata Mark ataragombaga gutegekwa kwishyura Rwigamba Molly amadolari y'Amerika ibihumbi mirongo irindwi na birindwi, magana acyenda mirongo inani n'ane n'ibice mirongo itandatu n'icyenda (77,984.69USD) yishyuriye abana amashuri

[13] Murenzi Rukata Mark na Me Mbarushimana Aimé umwunganira, bavuga ko mu gika cya 35 cy'urubanza rwaciwe n'Urukiko Rukuru ari narwo rujuririrwa, urwo Rukiko rwavuze ko Murenzi Rukata Mark avuga ko atishyuriye abana be amafaraga y'ishuri kuko bajyanywe mu mashuri ahenze kandi yarashyigikiye igitekekerezo cy'uko bajya kwiga muri Canada, nk'uko bigaragara muri message "E-mail" yo ku wa 06/04/2017 n'iyo ku wa 12/04/2017, ko kuba nyina w'abo bana yaragiye abishyurira kandi ari inshingano ya se, Murenzi Rukata Mark agomba kumusubiza amafaranga yishyuye. Banenga urwo Rukiko kuba rwarafashe ibintu uko bitari, kuko ibaruwa ya Rwigamba Molly yo kuri "e-mail" n'igisubizo Murenzi Rukata Mark yatanze rwabifashe nk'amasezerano bagiranye kandi atariko biri, kuko nta masezerano bigeze bagirana.

[14] Bavuga ko ibaruwa yo kuwa 06/04/2017 Rwigamba Molly yandikiye Murenzi Rukata Mark agira ati: "The reason for pursuing this even though It Is Expensive is because the Admissions Director indicated to me that their African Students get about 100% Scholarship (…)," n'iyo ku wa 12/04/2017 Murenzi Rukata Mark yamusubije agira ati: "Portia had told me 10.000USD to be paid in September. I support the idea of Canada, like I would support USA or UK Universities depending on tuition and convinience"; zumvikanisha ko Murenzi Rukata Mark atigeze yemera ko abana bajyanwa kwiga mu mahanga kandi no kwemera ko azabishyurira, kuko Rwigamba Molly ubwe yanditse yiyemerera ko amashuri ahenze, ndetse ko abana bazahabwa scholarship 100%. Bavuga ko Murenzi Rukata Mark yamusubije ko ashyigikiye icyo gitekerezo, ariko ko byose bizaterwa n'amafaranga azishyurwa (Tuition) n'ubushobozi buzaba buhari (Convenience), ko rero Urukiko Rukuru rutagombaga guhindura izo mvugo amasezerano yo kwemera umwenda, ngo rutegeke Murenzi Rukata Mark kwishyura

amafaranga y'ishuri, bityo bagasaba Urukiko rw'Ubujurire kuvanaho icyemezo cyafashwe n'urwo Rukiko.

[15] Bakomeza basobanura ko ibyo kujyana umwana (Portia) kwiga muri Canada ari icyemezo cyafashwe n'umubyeyi umwe, ari we Rwigamba Molly wasabye ubufasha Murenzi Rukata Mark mu butumwa bwa "e-mail" yo ku wa 06/04/2017 bwavuzwe haruguru, amubwira ko umwana wabo yashobora kwiga Kaminuza no kubona ubwenegihugu, ari cyo cyatumye ku wa 12/04/2017 Murenzi Rukata Mark amusubiza amwemerera ubufasha bw'amadolari y'Amerika ibihumbi icumi (10,000$) kuko "email" yandikiwe n'uwo mwana yamubwiraga ko amafaranga y'ishuri ari ibihumbi makumyabiri na bitanu (25,000$) by'amadolari y'Amerika, asabwa gutanga ibihumbi icumi (10,000$), asigaye agatangwa na nyina.

[16] Bavuga ko inshingano yahawe zo kwishyurira abana amashuri yazubahirije, ko atigeze ananirwa kwishyurira abana be amashuri, ko n'ubwo nta kazi yari afite yagiye akora uko ashoboye akuzuza inshingano ze nk'uko yazihawe n'Urukiko rw'Ibanze (mu rubanza rw'ubutane) kandi ko yabishyuriye neza muri Green Hills Academy no muri WellSpring Academy ku buryo nta kibazo abo bana bigeze bagira, ko Rwigamba Molly ari we wazanye amananiza abajyana mu mashuri arenze ubushobozi bwe, muri Kigali International Community School (KICS) aho buri mwana yishyuraga amadolari y'Amerika arenga ibihumbi icumi (10,000USD) ku mwaka ndetse no muri Canada batabanje kubyumvikanaho kandi nta n'akazi yari afite, ko Rwigamba Molly yajyanye abana muri ayo mashuri ahenze agamije kumuhima, ko rero Urukiko Rukuru rutagombaga kwemeza ko yananiwe kubahiriza inshingano ze.

[17] Bakomeza banenga ko mu gika cya 27 cy'urubanza rujuririrwa Urukiko Rukuru mu gusesengura icyemezo cyarwo, rwashingiye ku ngingo ya 244 y'Itegeko Nº 32/2016 ryo ku wa 28/08/2016[1], ariko mu gika cya ka 32 rutanga umurongo utari wo kuko rwemeje ko Rwigamba Molly asubizwa amafaranga yagiye atangira abana, rutabanje gusuzuma niba biri mu bushobozi bwa Murenzi Rukata Mark kandi ko ayo Rwigamba Molly yatanze nka nyina w'umwana yishyuriraga, atayishyuza Murenzi Rukata Mark nk'umwenda.

[18] Bavuga kandi ko Urukiko Rukuru rutari gushingira ku ngingo za 322, 244 na 245 z'Itegeko rigenga umuryango, kuko Murenzi Rukata Mark atananiwe inshingano ze zo kwishyurira abana amashuli ngo Rwigamba Molly abe ari we umufasha kuzuzuza, ko bigaragara ko amafaranga yishyuriye abana be (Portia Murenzi na Mark Ntare Rukata) amashuri angana na miliyoni makumyabiri n'imwe n'ibihumbi ijana na mirongo irindwi na bitanu magana atanu (21,175,500Frw), amadolari y'Amerika ibihumbi mirongo itandatu na bibiri, magana atandatu mirongo itanu n'abiri (62,652USD) n'amadolari ya Canada ibihumbi bibiri n'ijana na mirongo itanu (2,150 CAN Dollars).

[19] Murenzi Rukata Mark yasoje akosora, abwira Urukiko ko amadolari yohereje abana muri Cadana ari ayo kwifashisha gusa (pocket money), ko nta "school fees" yigeze yishyura muri Canada.

[20] Rwigamba Molly avuga ko iby'uko yajyanye abana kwiga mu mashuri ahenze batabyumvikanyeho na Murenzi Rukata Mark atari byo, kuko uyu ubwe ari we wajyanye umwana wabo Portia Murenzi kwiga muri Kigali International Community School (KICS), nyuma akamusaba ko na musaza we bamujyana kuri iryo shuri akanemera kuzajya yishyura kimwe cya kabiri (1/2) cy'amafaranga y'ishuri kuko hahenze. Anavuga ko n'ibyo kujyana umwana kwiga muri Canada Murenzi yabyemeye nk'uko "e-mail" bandikiranye n'iyo Murenzi Rukata Mark yandikiranye na Portia zibyerekana, ko yemeye ko uwo mwana ajya gukomereza amashuri yisumbuye muri Canada, akanavuga ko ibyo kujya kwiga muri Canada, USA na UK abishyigikiye, anemera kwishyura Amadolari y'Amerika ibihumbi icumi (10,000USD) ariko atigeze yishyura kugeza ubu.

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[1] iteganya ko: "Hatitawe k'uwashinzwe kurera abana, ababyeyi babo bafite uburenganzira bwo kugenzura uko abana bafashwe n'uko barerwa, bagomba kandi gutanga indezo hakurikijwe ubushobozi babifitiye"

[21] Rwigamba Molly n'abamwunganira bavuga ko Murenzi Rukata Mark ataregwa "indezo" z'abana (pension alimentaire), ko aregwa amafaranga y'ishuri yishyuriwe abana be hashingiwe ku nyemezabwishyu (bordereaux) zashyikirijwe Urukiko nk'uko bigaragara mu gika cya 34 cy' urubanza rujuririrwa, ko Rwigamba Molly asaba gusubizwa amadolari yose yishyuye ku mwana wabo witwa Murenzi Portia kuko se atigeze amwishyurira ishuri, naho ku mwana wabo witwa Ntare Rukata Mark, akaba yishyuza amadolari yasigaye ku madolari ibihumbi umunani magana abiri (8200$) Murenzi Rukata Mark yari yiyemeje kwishyura Rwigamba Molly bitarenze ku wa 30/01/2017, ariko akaba yaramwishyuye amadolari igihumbi (1000$) gusa nk'uko ikimenyetso kiri muri dosiye cya "commitment" / payment schedule" kibigaragaza.

[22] Bakomeza bavuga ko mu rubanza rujuririrwa, Urukiko rwasobanuye neza ko kujya kwiga kw'abana muri Canada, Murenzi Rukata Mark yabishyigikiye nk'uko bigaragara muri "emails" yandikiranye na Rwigamba Molly hagati y'itariki ya 06/04/2017 n'iya 12/04/2017, bityo ko agomba gusubiza Rwigamba Molly amafaranga yabishyuriye, ko rero ubujurire bwe kuri iyi ngingo budakwiye guhabwa ishingiro ;

[23] Kubyo Murenzi Rukata Mark avuga ko amadolari Urukiko Rukuru rwamutegetse kwishyura Rwigamba Molly rwayafashe nk'umwenda yari amubereyemo kandi nta masezerano yawo yabayeho, bavuga ko Urukiko Rukuru rwabisobanuye neza mu gika cya 31 cy'urubanza rujuririrwa, aho rwavuze ko kuba Rwigamba Molly agaragaza ko hari amafaranga yishyuriye abana mu mashuri kubera ko Murenzi Rukata Mark atari yubahirije iyo nshingano, Rwigamba Molly akaba ayafata nk'umwenda amufitiye, ko nubwo ayo mafaranga adashingiye ku masezerano impande zombi zaba zaragiranye, bigaragara ko hari inshingano Murenzi Rukata Mark atubahirije, bigatuma Rwigamba Molly yiyemeza kuzubahiriza mu mwanya we, kugira ngo abana badahagarika amasomo.

[24] Bavuga kandi ko Urukiko Rukuru rwasanze amafaranga Rwigamba Molly yagiye atangira abana ku mashuri, Murenzi Rukata Mark agomba kuyasubiza yose uko ari amadolari y'Amerika ibihumbi mirongo irindwi na zirindwi, magana acyenda mirongo inani na bine n'ibice mirongo itandatu n'icyenda (77,984.69USD) kuko ari inshingano yahawe n'Urukiko kandi ishingiye ku mategeko, ko kuba Rwigamba Molly yarishyuriye abana amashuri nk'ufite inshingano n'uburenganzira bwo kugenzura uko abana bafashwe n'uko barerwa bitakuyeho Murenzi Rukata Mark inshingano yahawe n'Urukiko mu rubanza rw'ubutane, ndetse ko yirengagiza ko ari we wisabiye Urukiko kwita ku mashuri y'abana no kubavuza kuko yari yagumanye 99% by'umutungo wose bari barashakanye. Bavuga ko Urukiko Rukuru rwasobanuye neza ishingiro ry'icyemezo cyarwo, Murenzi Rukata Marc akaba atabasha kubivuguruza, kandi ko icyari kuba cyiza atari uko abana bari guhagarika kwiga kandi nyina ashobora kubona uko abishyurira, ariko ko uwagombaga kubishyurira amashuri agomba gusubiza mugenzi we ibyo yakoze mu mwanya we.

[25] Basoza bavuga ko kuri abo bana bombi Rwigamba Molly yishyuza Murenzi Rukata Marc umwenda ungana n'ibihumbi mirongo irindwi na bitatu, magana abiri makumyabiri n'abiri by'amadolari y'Amerika (73,222$), ugizwe n'ibihumbi makumyabiri na bitatu magana ane mirongo ine n'atanu by'amadolari y'Amerika (23,445$), Rwigamba Molly yishyuriye umwana wabo Ntare Rukata Marc n'ibihumbi mirongo ine n'icyenda magana arindwi mirongo irindwi na birindwi by'amadolari ya Amerika (49,777$) yishyuriye Murenzi Portia, bityo bagasaba Urukiko ko rwakosora ingano y'amadolari yari yararegewe mbere angana n'ibihumbi mirongo irindwi na birindwi, magana cyenda mirongo inani na bine (77,984$) ari nayo yari yaragenewe mu rubanza rujuririrwa kuko hari ibimenyetso batashoboye kubona.

UKO URUKIKO RUBIBONA

[26] Impaka kuri iyi ngingo y'ubujurire zishingiye ku kumenya niba Urukiko Rukuru rwarategetse Murenzi Rukata Mark kwishyura amadolari Rwigamba Molly yishyuye amashuri y'abana babyaranye, rwirengagije ko yabajyanye kwiga mu mashuri ahenze batabyumvikanyeho kandi azi ko nta bushobozi Murenzi Rukata Mark afite, niba kandi urubanza rw'ubutane rutaragombaga gushingirwaho kuko nta ngano y'amafaranga y'ishuri rwagennye, no kuba urwo Rukiko rwarafashe "e-mail" yo ku wa 12/04/2016 nk'amasezerano maze rugategeka Murenzi Rukata Mark kwishyura Rwigamba Molly umwenda kandi bwari ubufasha yemeye.

[27] Ku bijyanye n'uko Urukiko Rukuru rwategetse Murenzi Rukata Mark kwishyura amadolari Rwigamba Molly yishyuriye amashuri abana babyaranye rwirengagije ko Rwigamba Molly yabajyanye kwiga mu mashuri ahenze mu Rwanda no mu mahanga (Canada) batabyumvikanyeho kandi azi ko Murenzi nta bushobozi afite, mu rubanza rujuririrwa (igika cya 34), Urukiko Rukuru rwagaragaje ko Murenzi Rukata Mark atashoboye kuvuguruza ibimenyetso byatanzwe na Rwigamba Molly bigizwe na bordereaux z'amabanki atandukanye yagiye atangiraho amafaranga y'ishuri ry'abana, aho agaragaza ko kuva muri 2014 kugeza muri 2021 ariwe wagiye yishyurira abana amashuri, nyamara iyi nshingano yari iya Murenzi Rukata Mark, rwanzura ko Murenzi Mark atashoboye kubinyomoza ngo agaragaze niba yaba ariwe wishyuye, ko ahubwo avuga ko Rwigamba Molly yajyanye abana mu mashuri ahenze adafitiye ubushobozi, kandi adafite akazi, ariko ntagaragaze ko no muri ubwo bushobozi buke, hari icyo yaba yarakoze kuri iyi nshingano yategetswe n'urukiko yo kwishyura amashuri y'abana, uretse kugaragaza ko yishyuye "pocket money" kandi aya akaba atari amafaranga y'ishuri yari yategetswe n'urukiko.

[28] Urukiko Rukuru rwagaragaje kandi (igika cya 35) ko Murenzi Rukata Mark atavuga ko yananijwe kwishyurira abana amashuri n'uko bajyanywe mu mashuri ahenze kandi bigaragara muri" e-mail" yandikiranye na Rwigamba Molly hagati y'itariki 06/04/2017 na 12/04/2017, ko yashyigikiye igitekerezo cyo kwiga kw'abana muri Canada, ko kuba rero nyina yaragiye abishyurira amashuri kandi ari inshingano ye, Murenzi agomba kumusubiza ayo yishyuye.

[29] Ku kibazo cyo kumenya niba Murenzi Rukata Mark yarabujijwe kwishyurira abana be amashuri no kuba Rwigamba Molly yarabajyanye mu mashuri ahenze mu Rwanda no mu mahanga batabyumvikanyeho, Urukiko rw'Ubujurire rurasanga nta shingiro bifite kuko muri dosiye harimo ibimenyetso bivuguruza imvugo ye, birimo :

> Impamuro za banki (nk'iyo ku wa 16/07/2016, iyo ku wa 08/05/2017 n'iyo ku wa13/01/2016) zigaragaza amafaranga Murenzi Rukata Mark yagiye yishyurira abana be Murenzi Portia na Ntare Murenzi Mark ubwo bigaga kuri Kigali International Community School (KICS);
>
> Inyandiko Murenzi yashyizeho umukono ku wa 18/10/2016 yiswe "Payment schedule to Ms Rwigamba Molly'', aho yemeraga kwishyura (gusubiza) Rwigamba Molly amadolari y'Amerikac ibihumbi umunani Magana abiri (8200USD) yishyuriye abana kuri KICS mu mwanya we) mu mezi ane guhera ku wa 30/10/2016 kugeza ku wa 30/01/2017, amwishyura buri kwezi amadolari ibihumbi bibiri na mirongo itanu (2,050USD) aniyemeza ko azakomeza kwishyurira abana be amashuri nta yindi mpamvu yitwaje (without prejudice).

[30] Usibye inyandiko zimaze kuvugwa, imbere y'uru Rukiko Rwigamba Molly yasobanuye ko Murenzi Rukata Mark ari we ubwe wajyanye Murenzi Portia ku ishuri rya KICS, nyuma Rwigamba Molly asanga byaba byiza ko na muzasa we bamujyana ku ishuri mushiki we yigaho, anasezeranya Murenzi Rukata Mark kujya amwishyurira kimwe cya kabiri (½) cy'amafaranga y'ishuri kuri uwo mwana wa kabiri kugira ngo bitamuremerera kuko ayo bishyuraga yari menshi, ariko ko Murenzi atakomeje kwishyura, ariyo mpamvu yaje gukora inyandiko ku wa 18/10/2016 yavuzwe haruguru[2],

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[2] yiswe "Payment schedule to Ms RWIGAMBA Molly'', yemera kuzamusubiza USD 8200 bitarenze ku wa 30/01/2017.

ariko kugeza ubu akaba yaramwishyuyeho amadolari y'Amerika igihumbi gusa (1.000USD) gusa, ibi kandi Murenzi Rukata Mark akaba atarigeze abivuguruza.

[31] Mu butumwa bwa "e-mails" zavuzwe haruguru, Murenzi Rukata Mark yandikiranye na Rwigamba Molly (hagati y'itariki 06/04/2017 na 12/04/2017), yashyigikiye igitekerezo cyo kohereza abana kwiga muri Canada, USA cyangwa UK ndetse asezeranya ko Amadolari y'Amerika ibihumbi icumi (10,000USD) yasabwaga kwishyurira Murenzi Portia wari ugiye kwiga Canada azayatanga muri Nzeli 2017 n'ubwo atigeze ayatanga kugeza ubu.

[32] Ingingo ya 12, igika cya 2, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kugeza ubu ivuga ko "uvuga ko atagitegetswe gukora icyo yategekwaga gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda."

[33] Hashingiwe kuri iyo ngingo, ibyagaragajwe haruguru byose birebewe hamwe, byerekana ko ibyo Murenzi Rukata Mark avuga ko Rwigamba Molly yohereje abana kwiga mu mashuri ahenze mu Rwanda no mu mahanga batabyumvikanyeho binyuranyije n'ukuri ndetse n'ibimenyetso biri muri dosiye.

[34] Kubyo Murenzi Rukata Mark avuga ko urubanza rw'ubutane rutagombaga gushingirwaho ategekwa gusubiza Rwigamba Molly amadorari yishyuye amashuri y'abana babo kuko nta ngano y'amafaranga urwo rubanza rwagennye no kuba avuga ko Urukiko Rukuru rwasanze inshingano yo kwishyurira abana amashuri yarahawe Murenzi Rukata Mark mu rubanza rw'ubutane kandi urwo rubanza rutaravuze ubwoko bw'amashuri abana bakwishyurirwa cyangwa umubare w'amafaranga yajya atangwa, no kuba avuga ko Rwigamba Molly agaragaza ko hari amafaranga yishyuriye abana mu gihe se atari yubahirije inshingano ze, akayafata nk'umwenda amufitiye kandi udashingiye ku masezerano bagiranye cyangwa ngo ananirwe kwishurira abana amashyuri;

[35] Uru Rukiko rurasanga kuba Urukiko rwaciye urubanza rw'ubutane rutaragennye ingano y'amafaranga y'ishuri Murenzi Rukata Mark azajya yishyurira abana be, atari icyo cyatuma urwo rubanza rudashingirwaho kuko ari rwo rwamuhaye inshingano yo kwishyurira abana yabyaranye na Rwigamba Molly amashuri, akaba ari we wari ufite mbere na mbere inshingano yo gushakira abana babo amashuri bigaho ajyanye n'ubushobozi afite, kandi nk'uko byavuzwe haruguru yarabikoze azishyira mu bikorwa kuko hari amafaranga y'ishuri yishyuye, kandi aho aboneye ko bimugoye, aba yarasubiye mu Rukiko akabivuga urukiko rukabisuzuma. Byongeye kandi, byagaragaye ko nta shuri na rimwe abana bajyanwe kwigaho atabizi atanabyemeye, bityo kuba mu rubanza rujuririrwa, Urukiko Rukuru rwarategetse Murenzi Rukata Mark gusubiza Rwigamba Molly amafaranga yishyuriye abana babo rukaba nta kosa rwakoze.

[36] Ku byo Murenzi Rukata Mark avuga ko Urukiko Rukuru rwafashe "e-mail" yo ku wa 12/04/2016 nk'amasezerano rukamutegeka kwishyura Rwigamba Molly umwenda nta masezerano yawo bigeze bagirana, uru Rukiko rurasanga ntaho mu rubanza rujuririrwa havugwa ko iyo "e-mail" ari amasezerano, ahubwo nk'uko bigaragara mu gika cyarwo cya 35, Urukiko rwavuze ko iyo "e-mail" igaragaza ko Murenzi yashyigikiye igitekerezo cy'uko abana bajya kwiga muri Canada, ko rero kuba Rwigamba Molly yaragiye abishyurira kandi ari inshingano za Murenzi, uyu agomba kumusubiza ayo yishyuye.

[37] E-mail yo ku wa 12 Mata 2017, igaragaza ko Murenzi Rukata Mark yasubizaga Rwigamba Molly amubwira ko Portia yamubwiye ko azishyura amadolari y'Amerika ibihumbi icumi (USD 10,000) muri Nzeri, kandi ko ashyigikiye igitekerezo cyo kwiga muri Canada nk'uko yashyigikira kwiga muri

Leta z'unze Ubumwe z'Amerika cyangwa muri UK hashingiwe ku bushobozi bwe[3]. Rwigamba Molly nawe kuwa 13 Mata 2017, amusubiza kuri "email" ko biri kumugora, ko azamurekera inshingano zo kwishyura ishuri hakurikijwe ubushobozi bwe[4].

[38] Urukiko rw'Ubujurire rurasanga n'ubwo "e-mails" Murenzi Rukata Mark yandikiranye na Rwigamba Molly zitafatwa nk'amasezerano y'umwenda, ni ikimenyetso kigaragaza ko Murenzi yemeye ko Murenzi Portia yoherezwa kwiga muri Canada, anizeza uwo mwana na nyina Rwigamba Molly ko azishyura amadolari y'Amerika ibihumbi icumi (10,000USD) muri Nzeli 2016, bityo akaba ari ikimenyetso cy'uko Murenzi yemeye kwishyura ayo madorari, kandi hashingiwe ku ngingo ya 12 yavuzwe haruguru[5] Murenzi akaba nta kindi atanga kivuguruza icyo kimenyetso.

[39] Mu gusesengura ikibazo kijyanye no gusubiza umwe mu bari barashyingiranywe ariko nyuma bakaza gutana ibyo yatanze ku nshingano zari gukorwa na mugenzi we, twakeneye kumenya uko bigenda mu bindi bihugu, dusanga atari umwihariko w'u Rwanda kuko n'ahandi ari bwo butabera butangwa: mu rubanza Nº 642/2008 rwaciwe n'Urukiko rw'Ikirenga rwa Afurika y'epfo kuwa 26 Ugushyingo 2009, Fish Hoek Primary School iburana na G W, urwo Rukiko rwatanze umurongo ko bitagibwaho impaka ko mu nyungu z'umwana, umubyeyi utabana nawe (non-custodian parent) kandi atagaragaza ubushake bwo kumwishyurira amashuri agomba kubihatirwa, byaba ngombwa agategekwa kwishyura ishuri ry'umwana we. Urwo Rukiko rwemeje kandi ko iyo umubyeyi ubana n'umwana (custodian parent) atanze amafaranga arenga uruhare rwe mu yo agomba, afite uburenganzira bwo kuyasubizwa n'undi mubyeyi w'umwana wagombaga kuba warayatanze[6].

[40] Na none mu rubanza Nº 53198/2013 rwaciwe n'Urukiko Rukuru rwa Afrika y'epfo, Urugereko rwa Pretoria, Sone Cloete aburana na Johann Chris Blignaut batandukanye (divorce) mu mwaka wa 1996, Sone Cloete aregera urukiko arusaba gutegeka uwahoze ari umugabo we (Johann Chris Blignaut) kumwishyura amarandi miliyoni ebyiri, ibihumbi magana atanu mirongo itandatu na kimwe, magana acyenda mirongo itatu n'icyenda (R2,561,939) yatanze yita ku bana babyaranye, harimo ayo yatanze mu buvuzi ndetse no mu burenzi bwabo kuva mu mwaka wa 2009 kugeza 2012, nyuma aza gusaba ko asubizwa kimwe cya kabiri cyayo (1,280,969Frw). Sone Cloete yatsinzwe kubera kubura ibimenyetso by'ayo marandi yasabaga kwishyurwa, ariko urwo Rukiko rusanga mu gihe umugabo n'umugore batanye, umwe akishyura amafaranga arenga uruhare rwe mu kwita ku bana babo, uwatanze ayo mafaranga afite uburenganzira bwo gusaba kuyasubizwa arimo n'ayo yatanze ku mashuri yabo (The child's educational needs)[7].

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[3] "Portia had told me $10,000 to be paid in September. I support the idea of Canada, like I would support USA or UK Universities depending on tuition and convenience."

[4] "…It seems am stretching myself too much and without your support. I can't make it so I will not pursue it further. I will let you take the lead in getting a university for her depending on your capacity to pay tuition fees and your convenience because it is your obligation in the first place."

[5] Ingingo ya 12, igika cya 2, y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ivuga ko "uvuga ko atagitegetswe gukora icyo yategekwaga gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho."

[6] "unquestionably is in the best interests of a child that a non-custodian parent, who is unwilling, yet has the means to pay his child's school fees, should be made to do so, if necessary, by the injunction of an order of a competent court. Were that not to be so, the custodian would solely be saddled with that responsibility. And whilst a custodian parent if she has paid more than her pro rata share towards the child's support may in law be entitled to recover the excess from the non-custodian parent" Case no : 642 / 2008 Fish Hoek Primary School v G W, judgement delivered by Supreme Court of Appeal on 26 Nov 2009, paragraph 14. Available online at http://www.saflii.org/za/cases/ZASCA/2009/144.html, accessed on 20th Sept 2023.

[7] "There is no doubt that under appropriate circumstances a parent who paid more than his/her pro rata share may recover the excess. However in order to determine the contribution various factors should be considered in Modise the following factors that need consideration were set out:(ix) The child's educational needs." Case number : 53198/2013, Cloete v Blignaut, judgement delivered by the High court of South Africam Gauteng Division, Pretoria on 14th April 2016, paragraph 23. Available online at http://www.saflii.org/za/cases/ZAGPPHC/2016/231.html, accessed on 19th Sept 2023.

[41] Urukiko Rukuru rwa Afrika y'epfo kandi rwasanze kugira ngo umubyeyi watanze amafaranga arenze uruhare rwe (mu kwita ku bana ba bashyingirwanye bakaza gutandukana) ayasubizwe, hagomba kwitabwa ku ngingo zitandukanye zirimo kumenya niba umubyeyi utarubahirije inshingano ze yari azi neza ko undi mubyeyi mugenzi we yari yarimo kugira ibyo atanga mu nyungu z'abana (whether the parent who did not contribute was aware that the other party was making expenses for the benefit of their children.) no kumenya niba mu gihe yari abizi yaramubujije gukomeza kumukorera inshingano (If the dominus negotii was aware of the gestor's payment of maintenance, whether he, at any point specifically forbade her from acting for him or in any way indicated his views on the matter)[8]; bisobanuye ko umubyeyi wamenye ko hari undi muntu urimo gukora ibiri mu nshingano ze, ntamubuze kuzikora, bifatwa nk'umwenda amubereyemo agomba kwishyura udakomoka ku masezerano, ahubwo ukomoka ku nshingano atakoze zigakorwa n'undi.

[42] Ku bijyanye n'uru rubanza kuba Murenzi Rukata Mark yari azi neza ko kuba abana be biga ari uko nyina Rwigamba Molly abishyurira amafaranga y'ishuri kandi ibyo ari inshingano ze, akaba atarigeze abuza Rwigamba Molly kumukorera inshingano cyangwa ngo babe hari ukundi babyumvikanyeho, Urukiko rw'Ubujurire rusanga nta kosa Urukiko Rukuru rwakoze mu kumutegeka kumwishyura ibyo yatanze byari mu nshingano ze.

[43] Urukiko rurasanga kandi kuba Murenzi Rukata Mark avuga ko nta bushobozi yari afite igihe Rwigamba Molly yishyuraga amashuri y'abana babo, bitamukuraho izo nshingano kubera ko hari amadolari Rwigamba Molly yabishyuriye amashuri, bityo akaba agomba kuyasubizwa kuko kutayamusubiza byaba ari ukwikungahaza nta mpamvu ku ruhande rwa Murenzi Rukata Mark wagomba kuba yarishyuye amafaranga y'ishuri y'abana babo ariko ntabikore, nk'uko bivugwa n'umuhanga mu mategeko Marita Carnelley (Professor of Law, University of KwaZulu-Natal/Pietermaritzburg Campus) mu nyandiko yise "Liability for the payment of public-school fees" aho avuga ko umubyeyi utarishyuriye abana amafaranga y'ishuri, aba yikungahaje nta mpamvu akagumana amafaranga yagombaga kuba yaratanze[9].

[44] Hashingiwe ku bisobanuro byatanzwe, Urukiko rw'Ubujurire rurasanga ibyo Murenzi Rukata Mark avuga ko Urukiko Rukuru rutagombaga kumutegeka kwishyura Rwigamba Molly amadolari y'Amerika yishyuye amashuri y'abana babo, nta shingiro bifite kuko ibyo Rwigamba Molly yakoze byari mu nshingano za Murenzi Rukata Mark, bityo uyu akaba agomba kumusubiza ibihumbi mirongo irindwi na bitatu, magana abiri makumyabiri n'abiri by'amadolari y'Amerika (73,222$), ariyo ahwanye n'amafaranga y'u Rwanda miriyoni mirongo cyenda n'imwe n'ibihumbi magana ane mirongo icyenda n'umunani, magana abiri na cumi na rimwe (91,498,211Frw) hashingiwe ku ivunjisha ry'uyu munsi[10]; kubw'ibi ingano y'amadolari (77,984$) yari yarategetswe kwishyurwa Rwigamba Molly mu rubanza rujuririrwa, ikaba ihindutse kubera ko ahwanye n'amafaranga amaze kuvugwa haruguru ariyo yagaragarije ibimenyetso muri uru rubanza.

2.Gusuzuma niba amafaranga Murenzi Rukata Mark yategetswe kwishyuraRwigamba Molly y'ikurikiranarubanza, igihembo cya Avoka n'ay'ingwate y'igaramaakwiye kuvaho

[45] Murenzi Rukata Mark n'Avoka umwunganira bavuga ko nyuma yo kugaragaza ko ibyo Urukiko Rukuru rwashingiyeho rwemeza ko Rwigamba Molly atsinze nta shingiro bifite, basaba Urukiko

[8] Idem, par.24.

[9] "The argument is that the enriched party (the non-paying parent) would have had to pay the necessaries (the school fees) out of his or her own pocket and as such the enrichment is equal to the costs of the necessaries (the school fees" M. Carnelley "Liability for the payment of public-school fees" PER Journal, 2011, Volume 14 No.6. Available online at https://www.ajol.info/index.php/pelj/article/view/73008, accessed on 20th Sept.2023.

[10] (73,222$X1,249.6). Reba igipimo cy'ivunjisha kuri https://www.bnr.rw/currency/exchange-rate/?tx_bnrcurrencymanager_master%5Baction%5D=list&tx_bnrcurrencymanager_master%5Bcontroller%5D=Currency&cHash=4fb7571d4be4cafcb4dc2859ca4996ea rwasuwe kuwa 27 Ukuboza 2023.

rw'Ubujurire kuvanaho n'icyemezo gitegeka Murenzi Rukata Mark kumwishyura indishyi zingana na miriyoni imwe (1,000,000Frw) n'ibihumbi mirongo ine (40,000Frw) y'ingwate y'amagarama.

[46] Rwigamba Molly n'abamuburanira avuga ko ibyo Murenzi Rukata Mark asaba gusubizwa nta shingiro bifite, kuko kuba Urukiko rwaramutegetse gusubiza Rwigamba Molly amafaranga y'ikurikiranarubanza n'igihembo cya Avoka bifite ishingiro nk'uko n'Urukiko Rukuru rwabisobanuye mu bika bya 38-41 by'urubanza rujuririrwa, kandi akaba atabasha kubivuguruza.

UKO URUKIKO RUBIBONA

[47] Dosiye igaragaza ko Murenzi Rukata Mark yategetswe kwishyura Rwigamba Molly indishyi zingana na miriyoni imwe (1,000,000Frw) akubiyemo ay'ikurikiranarubanza n'ibihembo by'Abavoka, anategekwa kumusubiza ibihumbi mirongo ine (40,000Frw) y'ingwate y'amagarama[11].

[48] Urukiko rw'Ubujurire rurasanga impamvu Murenzi Rukata Mark avuga ko icyemezo cy'Urukiko Rukuru kimutegeka kwishyura amafaranga amaze kuvugwa cyavanwaho, ari uko ibyo rwashingiyeho rwemeza ko Rwigamba Molly atsinze nta shingiro bifite, nyamara nk'uko byasobanuwe mu ngingo yabanjirije iyi, ibyashingiweho bifite ishingiro, bityo icyo cyemezo kikaba kitagomba gukurwaho, iyi ngingo ye y'ubujurire ikaba nta shingiro ifite.

3.Kumenya niba hari amafaranga y'ikurikiranarubanza n'igihembo cya Avoka yatangwa muri uru rubanza

[49] Murenzi Rukata Mark n'umwunganira, bashingiye ku ngingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, basaba Urukiko rw'Ubujurire gutegeka Rwigamba Molly kumusubiza amafaranga miriyoni eshatu (3,000,000Frw) y'igihembo cy'umwavoka n'ibihumbi magana atatu (300,000Frw) y'ikurikiranarubanza.

[50] Rwigamba Molly asaba Urukiko rw'Ubujurire gutegeka Murenzi Rukata Mark kumwishyura amafaranga miriyoni imwe n'ibihumbi magana atanu (1,500,000Frw) yishyuye abamuburanira kubera gukomeza kumushora mu manza z'amaherere.

[51] Murenzi Rukata Mark yiregura kuri izo ndishyi zisabwa na Rwigamba Molly, avuga ko ntazo akwiye guhabwa kuko ntaho zishingiye kubera ko ari we watangije imanza zidafite aho zishingiye uhereye ku rwego rwa mbere.

UKO URUKIKO RUBIBONA

[52] Ibyerekeranye n'amafaranga umuburanyi yakoresheje ku rubanza, Urukiko rw'Ikirenga mu rubanza .RS/INJUST/RC 00005/2021/SC rwaciwe kuwa 21 Mutarama 2022 Radiant Insurance Company Ltd na Dusabimana, rwemeje ko uyasaba agomba kuyahabwa kubera ko atsinze urubanza kandi bikaba bigaragara ko byabaye ngombwa kurukurikirana no gushaka umwavoka umuburanira; cyakora ko iyo ayo asaba ari menshi kandi atagaragaza uburyo ariyo yagiye kuri uru rubanza atangwa mu bushishozi bw'Urukiko[12].

[11] Urbanza RCA00252/2021/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 28/07/2022, haburana RWIGAMBA Molly na MURENZI RUKATA Marc, igika cya 42 na 44.
[12] Urubanza RS/INJUST/RC 00005/2021/SC rwaciwe kuwa 21 Mutarama 2022 n'Urukiko rw'Ikirenga, haburana Radiant Insurance Company Ltd na Dusabimana, igika cya 43.

[53] Urukiko rw'Ubujurire rushingiye kuri uwo murongo, rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Murenzi Rukata Mark asaba nta shingiro afite kuko ikirego cye nta shingiro gifite, akaba ahubwo agomba gutegekwa kwishyura Rwigamba Molly amafaranga ibihumbi amagana atanu (500,000Frw) y'igihembo cya Avoka n'ibihumbi magana atatu (200,000Frw) y'ikurikiranarubanza agenwe mu bushishozi bw'Urukiko, yiyongera kuri miriyoni imwe n'ibihumbi mirongo ine (1,040,000Frw) yategetswe mu rubanza rujuririrwa, yose hamwe akamwishyura amafaranga miriyoni imwe n'ibihumbi magana arindwi na mirongo ine (1,740,000Frw).

III. ICYEMEZO CY'URUKIKO

[54] Rwemeje ko ubujurire bwa Murenzi Rukata Mark nta shingiro bufite.

[55] Rwemeje ko rubanza RCA00252/2021/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 28/07/2022 ruhindutse gusa ku ngano y'amafaranga Murenzi Rukata Mark agomba kwishyura Rwigamba Molly.

[56] Rutegetse Murenzi Rukata Mark kwishyura Rwigamba Molly amafaranga miliyoni mirongo icyenda n'imwe n'ibihumbi magana ane mirongo icyenda n'umunani, magana abiri na cumi na rimwe (91.498.211Frw), ariyo ahwanye n'ibihumbi mirongo irindwi na bitatu, magana abiri makumyabiri n'abiri by'amadolari y'Amerika (73.222USD).

[57] Rutegetse Murenzi Rukata Mark kwishyura Rwigamba Molly amafaranga miliyoni imwe n'ibihumbi magana arindwi na mirongo ine (1.740.000Frw) akubiyemo miliyoni imwe na mirongo ine (1.040.000Frw) yategetswe mu rubanza rujuririrwa n'ibihumbi magana arindwi (700.000Frw) y'ikurikiranarubanza n'igihembo cy'abavoka kuri uru rwego.

[58] Rutegetse ko amafaranga Murenzi Rukata Mark yatanzeho ingwate y'amagarama ahera mu Isanduka ya Leta kuko ahwanye n'ibyakozwe mu rubanza.