RWASIBO v HARERIMANA

[Rwanda URUKIKO RUKURU URUGEREKO RWA MUSANZE – RCA 00082/2021/HC/MUS (Gasore P.J.) 07 Nyakanga 2022]

Itegeko rigenga amasezerano – Amasezerano yo gucunga umutungo – Iyo umuntu agiranye n'undi amasezerano yo kumucungira umutungo w'unguka agomba kuwumusubiza hiyongereyeho inyungu wabyaye

Itegeko rigenga ububasha bw'Inkiko – Ububasha bw'Inkiko mu gihe ikiburanwa kitagaragaza agaciro – Mu kugena ububasha bw'urukiko mu gihe ikiburanwa kitagaraza agaciro, urega agaragaza agaciro k'icyo aregera, bitashoboka kakagenwa n'umucamanza – 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 9.

Incamake y'Ikibazo: Uru rubanza rwatangiye Rwasibo arega Harerimana mu Rukiko Rwisumbuye rwa Rubavu avuga ko yamwoherereje amafaranga kuko yabaga mumhanga kugirango amugurire inka 6 no kuzikurikirana arabikora ndetse akajya amwoherereza amafoto ariko bigeze aho itumanaho ryose arikuraho ndetse n'inka bura amakuru yazo atanga ikirgo asaba 38.000.000Frw ahwanye n'inka 71 yagombye kuba afite akurikije igihe yaziguriye n'uburyo zororoka.

Urukiko Rwisumbuye rwa Rubavu rwabanje gusuzuma inzitizi yatanzwe na Harerimana wavugaga ko Urukiko Rwisumbuye rudafite ububasha bwo kuburanisha uru rubanza ashingiye ku genagaciro ryakozwe n'umuntu utabifitiye ububasha kuko ngo nta cyangombwa yagaragaje cy'uko ari veterineri wemewe. Urukiko rwasanze kuba ikiregerwa ari amafaranga arengeje miliyoni makubyabiri, byumvikanisha ko Urukiko Rwisumbuye ari rwo rufite ububasha. Ku birebana n'uko veterineri wakoze igenegaciro ry'inka ziburanwa nta bubasha afite, rwasanze nta shingiro bifite kuko ikiburanwa kigenwa n'ibisabwa na buri muburanyi. Urukiko rwemeje mu rubanza RC00143/2020/TGI/RBV ko Harerimana asubiza Rwasibo agaciro k'inka ze 6 yamuguriye n'agaciro k'inka 6 zizikomokaho. rutegeka Harerimana guha Rwasibo 4.200.000Frw ahwanye n'agaciro k'inka yamuguriye n'izo zabyaye.

Harerimana ntiyishimiye icyo cyemezo maze ikijurira mu Rukiko Rukuru, Urugereko rwa Musanze, avuga ko atishimiye kuba Urukiko rwisumbuye rwa Rubavu rwaremeje ko rufite ububasha kandi yari yagaragaje ko nta bubasha rufite. Yavuze kandi ko nta ndishyi yagombaga gucibwa kuko ngo amasezerano yari yaragiranye na Rwasibo yari ayo kumugurira inka no kumushakira umushumba, ngo ntibigeze bagirana amasezerano yo kumuragirira. Rwasibo yatanze ubujurire bwuririye ku bundi kuko ngo indishyi yari yasabe zose ku rwego rwa mbere atazihawe Urukiko Rukuru rwemeje mu rubanza RCA00082/2021/HC/MUS ko icyemezo cyafashwe n'Urukiko Rwisumbuye rwa Rubavu cyerekeye ububasha bw'Urukiko gikwiye kugumana agaciro. Urukiko rwemeje kandi ko amasezerano Harerimana yari yaragiranye na Rwasibo atagarukiraga gusa ku kumugurira inka no kumushakira umushumba ahubwo yanazikuriranaga akazimucungira, ibi rwabyemeje rushingiye ku batangabuhamya batandukanye. Urukiko rwemeje nanone ko indishyi Rwasibo yahawe n'Urukiko Rwisumbuye zikwiriye kuko umugenagaciro atagaragaje neza uburyo izo nka zari kororoka zikagera kuzo Rwasibo yaregeye kuko zashoboraga kubyara ibimasa bityo ntizororoke.

Icamake y'icyemezo:1. Mu kugena ububasha bw'urukiko mu gihe ikiburanwa kitagaraza agaciro, urega agaragaza agaciro k'icyo aregera, bitashoboka kakagenwa n'umucamanza. Bityo, iyo umuburanyi wareze agaragaje agaciro k'icyiburanwa cyane cyane yifashishije umuhanga nta cyabuza kugashingiraho harebwa ububasha bw'Urukiko.

2.Iyo umuntu agiranye n'undi amasezerano yo kumucungira umutungo w'unguka agomba kuwumusubiza hiyongereyeho inyungu wabyaye zigenwa mu bushishozi bw'urukiko. Bityo umuntu wagiranye nundi amasezerano yo kumugurira inka akanazimucungira agomba

kuzimusubiza cyangwa gusubiza agaciro kazo hiyongereyeho izazikomotseho cyangwa agaciro kazo.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi nta shingiro bufite.

Amategeko yashingiweho.
Itegeko N° 30/2018 ryo kuwa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 3,9,27
Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:
Jean CHEVALLIER na Louis BACH mu gitabo cyabo Droit Civil: introduction à l'étude du droit – les personnes physiques – la famille – les biens – les obligations – les sûretés

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Rubavu. Rwasibo Jean Damascène utuye ku mugabane w'Uburayi, uhagarariwe na Me Nsabimana Jean Damascène yatanze ikirego avuga ko mu mwaka wa 2011 yohereje Harerimana Jean Bosco amafaranga yo kumugurira inka 6 no kuzikurikirana, amaze kuzigura yagiye amwoherereza amafoto yazo anamubwira uko zimeze. Ngo bigeze mu mwaka wa 2020, yatangiye kutamuvugisha, ntiyongera no kumumenyesha uko inka ze zimeze n'umubare wazo,bituma amurega asaba ko amuha agaciro k'inka 71 kangana na 38.000.000Frw nk'uko byabazwe n'umugenagaciro wazibaze ahereye ku nka 6 zo mu 2011 kugeza mu 2020 ngo kukozagiye zibyara ndetse n'izo zibyaye zikabyara izindi.

[2] Urukiko Rwisumbuye rwa Rubavu rwabanje gusuzuma inzitizi yatanzwe na Harerimana wavugaga ko Urukiko Rwisumbuye rudafite ububasha bwo kuburanisha uru rubanza ashingiye ku genagaciro ryakozwe n'umuntu utabifitiye ububasha kuko ngo ntacyangombwa yagaragaje cy'uko ari veterineri wemewe. Urukiko rwasanze kuba ikiregerwa ari amafaranga arengeje miliyoni makubyabiri, byumvikanisha ko Urukiko Rwisumbuye ari rwo rufite ububasha bwo kuburanisha uru rubanza mu rwego rwa mbere. Ku birebana n'uko veterineri wakoze igenegaciro ry'inka ziburanwa nta bubasha afite, rwasanze nta shingiro bifitekuko ikiburanwa kigenwa n'ibisabwa na buri muburanyi nk'uko biteganywa mu ngingo ya 6 y'itegeko N° 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ndetse na Harerimanauvuga ko iri genagaciro ataryemera ko ryakoze n'utabifitiye ububasha yagombye kuba agaragaza irindi ririvuguruza.

[3] Mu mizi y'urubanza, Urukiko rwasanze Rwasibo Jean Damascène yaragiranye na Harerimana Jean Bosco amasezerano yo kumugurira inka mu mwaka wa 2011, bigaragazwa n'inyandiko z'ubugure bw'izo nka: iyo kuwa 13/12/20211 aho yamuguriye inyana ku giciro cya 290.000Frw, inyandiko yo kuwa 14/12/2011 amugurira inka 2 ku giciro cya 800.000Frw n'iyo kuwa 27/12/2011 amugurira inka 2 (imwe ifite amezi n'indi y'ishashi) ku giciro cya 700.000Frw, iyo nka yaguze ifite amezi nayo yaje kubyara ziba inka 6. Ku birebana n'uko yamuguriye inka enye, ko izindi nka ebyiri yaziguriye Rwasibo Alexandre, Urukiko rwasanze nta gaciro byahabwa kuko nawe yemera ko izo nka yazigize ize mu rwego rwo kwiteza imbere kandi nta muntu wazimuhaye. Ku birebana n'uko nta masezerano Harerimana Jean Bosco yagiranye na Rwasibo Jean Damascène yo kuragira no gucunga inka 6 yamuguriye, rwasanze nta shingiro bifite kuko amaze kuzigura yagiye amwoherereza amafoto yazo amugaragariza uko zifashwe nk'uko bigaragazwa n'inyandiko yagiye amwoherereza akoresheje e-mail: iyo kuwa 13/12/2011, iyo

kuwa 18/12/2011, iyo kuwa 16/01/2012, iyo kuwa 07/02/2012, iyo kuwa 07/03/2012, iyo kuwa 23/08/2012 amwereka ikiraro cyazo, n'iyo kuwa 22/11/2012. Rwemeje ko Harerimana Jean Bosco asubiza Rwasibo Jean Damascène agaciro k'inka ze 6 yamuguriye n'agaciro k'inka 6 zizikomokaho. Rwategetse Harerimana Jean Bosco guha Rwasibo Jean Damascène miliyoni enye n'ibihumbi magana abiri y'amafaranga y'u Rwanda (4.200.000Frw) ahwanye n'agaciro k'inka yamuguriye n'izo zabyaye. Rwamutegetse kandi gutanga amafaranga ibihumbi magana atanu (500.000Frw) y'indishyi z'akababaro n'ibihumbi magana atanu (500.000Frw) yo gukurikirana urubanza n'igihembo cy'avoka.

[4] Harerimana Jean Bosco ntiyishimiye icyo cyemezo. Yajuririye mu Rukiko Rukuru, Urugereko rwa Musanze. Yajuriye avuga ko atishimiye kuba Urukiko rwisumbuye rwa Rubavu rwaremeje ko rufite ububasha kandi yari yagaragaje ko nta bubasha rufite. Yavuze kandi ko nta ndishyi yagombaga gucibwa kuko ngo amasezerano yari yaragiranye na Rwasibo Jean Damascene yari ayo kumugurira inka no kumushakira umushumba, ngo ntibigeze bagirana amasezerano yo kumuragirira. Rwasibo Jean Damascene yatanze ubujurire bwuririye ku bundi kuko ngo indishyi yari yasabe zose ku rwego rwa mbere atazihawe. Buri ruhande rwasabye indishyi z'ikurikiranarubanza n'igihembo cya avoka kuri uru rwego rw'ubujurire.

[5] Kuri uru rwego rw'ubujurire, Urukiko rwasuzumye ibibazo bikurikira:

Kumenya niba Urukiko Rwisumbuye rwa Rubavu rwari rufite ububasha bwo kuburanisha ururubanza ku rwego rwa mbere

Kumenya niba Harerimana Jean Bosco yarabashije kugaragariza Urukiko ko amasezerano ye yagarukiraga ku kugura inka no gushaka umushumba

Kumenya niba Rwasibo Jean Damascene yaragombaga kugenerwa indishyi zose yariyasabye

Kumenya niba kuri uru rwego hakwiye gutangwa amafaranga y'ikurikiranarubanza n'igihembo cya avoka

II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA

A. Kumenya niba Urukiko Rwisumbuye rwa Rubavu rwari rufite ububasha bwo kuburanisha uru rubanza ku rwego rwa mbere

[6] Harerimana Jean Bosco yasobanuye ko mu isesengura ryakozwe mu rubanza RC00143/2020/TGI/RBV, mu gika 8 n'igika cya 9, urukiko rwavuze ko rufite ububasha bwo kuburanisha ikirego rwaregewe kuko ngo ikiregerwa kirengeje agaciro ka miliyoni makumyabiri nyamara ngo yari yarugaragarije ko umubare w'amafaranga aregwa nta hantu hemewe n'amategeko hashingiweho agenwa ndetse n'urwego rwabikoze (Veterineri) rukaba rutaragaragaje ibyangombwa by'uko ruzwi mu rwego rw'amategeko, ibyo bikaba byari bihagije ngo urukiko rubone ko nta bubasha rwari rufite. Yavuze ko Urukiko Rukuru/Musanze rukwiye kubona ko Urukiko Rwisumbuye rwa Rubavu rutari rufite ububasha bwo kuburanisha urubanza rujuririrwa ku rwego rwa mbere na cyane ko mu gika cya 21, urukiko rwivugiye ko inka ziregerwa nta rwuri zabagamo ruzwi cyangwa ngo zibe zarabonywe ziragiwe, nta miti yo kuzivura yigeze itangwa, nta n'umuganga w'amatungo waba warazitagaho. Ibi byose nibyo bigaragaza iburabusha ku rwego rwa mbere kuko inyandiko zashingiweho nk'ibimenyetso by'ubutumwa zigaragaza ko ikirego cyagombaga kujyanwa mu Nteko y'Abunzi.

[7] Rwasibo Jean Damascene bavuze ko Harerimana Jean Bosco yiregangiza nkana ihame ry'amategeko riteganya ko ikiburanwa kigenwa n'ibisabwa na buri mu buranyi, ibi bikaba binashimangirwa no kuba Rwasibo Jean Damascène yararegeye urukiko arusaba gutegeka Harerimana Jean Bosco kumuha indishyi zingana na 38.800.000Frw zishingiye ku gaciro k'inka 71, bityo rero kuba Harerimana Jean Bosco avuga ko iki kirego kiri mu bubasha bwa Komite y'abunzi, Urukiko ruzabone ko iyi mvugo ye nta shingiro ifite kuko atagaragaza icyo ashingiraho

abivuga atyo. Urukiko rwajuririwe ruzabone ko ibyashingiweho mu gika cya 9 cy'urubanza rwajuririwe Harerimana Jean Bosco atabasha kubivuguruza.

[8] Urukiko rurasanga ku rwego rwa mbere, Urukiko rwaragaragaje ko ingingo ya 3 y'itegeko N° 30/2018 ryo kuwa 02/06/2018 rigena ububasha bw'inkiko ivuga ko ububasha bwo guca urubanza bugaragazwa n'imiterere y'ikiregerwa n'agaciro kacyo, uretse mu manza nshinjabyaha. Agaciro k'ikiburanwa kagizwe n'ikiburanwa cy'iremezo cyiyongereyeho inyungu zimvukanyweho mu masezerano. Naho ingingo ya 27 agace ka 1o k'iri tegeko ikavuga ko inkiko z'ibanze ziburanisha mu rwego rwa mbere imanza zerekeye umutungo wimukanwa urengeje agaciro ka miliyoni eshatu (3.000.000Frw) ariko katarengeje miliyoni makumyabiri (20.000.000Frw).

[9] Urukiko rurasanga ingingo ya 9 y'itegeko no 30/2018 ryo kuwa 02/06/2018 rigena ububasha bw'inkiko iteganya ko Iyo ibishingirwaho mu kugena ububasha bw'urukiko bitagaragaza agaciro k'ikiburanwa, urega agaragaza agaciro k'icyo aregera, bitashoboka kakagenwa n'umucamanza. Ibiteganywa muri iyi ngingo bikaba byarubahirijwe kuko Rwasibo Jean Damascene wareze yagaragaje agaciro k'inka ziburanwa, ako gaciro ni ko Urukiko rwashingiyeho ruvuga ko rufite ububasha. Uwahakanye agaciro ntiyigeze agaragaza agaciro gatandukanye n'akagaragajwe n'uwareze. Nta ho rero Urukiko rwari guhera ruhakana ako gaciro.

[10] Ku bw'ibyo, icyemezo cyafashwe n'Urukiko Rwisumbuye rwa Rubavu cyerekeye ububasha bw'Urukiko muri uru rubanza gikwiye kugumana agaciro.

B. Kumenya niba Harerimana Jean Bosco yarabashije kugaragariza Urukiko ko amasezerano ye yagarukiraga ku kugura inka no gushaka umushumba

[11] Harerimana Jean Bosco yavuze ko mu guca urubanza mu gika cya 22, Urukiko Rwisumbuye rwa Rubavu rwemeje ko Harerimana Jean Bosco agomba kwishyura Rwasibo Jean Damascene indishyi n'agaciro k'inka atamurikiwe n'izazikomotseho zingana na 4.200.000Frw. Ngo izi ndishyi yaciwe zigomba guteshwa agaciro kubera ko Harerimana Jean Bosco yagiranye amasezerano mu mwaka wa 2011 na Rwasibo Jean Damascene yo kumugurira inka no kumushakira umushumba wo kuzimuragirira, ngo nta masezerano Harerimana Jean Bosco yigeze agirana na Rwasibo Jean Damascene yo kuragizwa cyangwa gucungishwa inka, ngo ahubwo iyo yaguraga inka yayishyikirizaga wa mushumba ku buryo na Rwasibo Jean Damascene yari azi ko bikorwa bityo, dore ko ari nawe watanze izina ry'umushumba Harerimana Jean Bosco yagombaga gushaka kuko yari mwene se bitewe n'uko Muhire se wa Harerimana Emmanuel avukana na se wa Rwasibo Jean Damascene. Harerimana Jean Bosco yakomeje avuga ko yujuje inshingano ze nk'uko yabisabwe bikaba bigaragara mu bimenyetso byerekana uko yagiye amugurira inka anamushakira umushumba wo kuzimuragirira ariwe Harerimana Emmanuel, ngo yarabimumenyesha anamwohehereza amasezerano bagiranye yo kuziragira. Nyuma yaho Harerimana Emmanuel (nk'uwari ufite inka mu nshingano zo kuzitaho no kuziragira) yaje kugurisha cyangwa kurigisa za nka za Rwasibo Jean Damascène bituma Rwasibo Jean Damascène amurega baramufunga. Ibyo kuvuga ngo yafunzwe kubera guhinga umurima we kandi nta nka ze acyoroye ni ukubeshya kugira ngo yerekane ko Harerimana Jean Bosco ariwe wabazwa ziriya nka yirengagije ko amasezerano bagiranye yo kuziragira batigeze bayasesa cyangwa ngo abe yarabiregeye.

[12] Harerimana Jean Bosco yakomeje avuga ko Urukiko Rwisumbuye rwa Rubavu rwirengagije uko kuri ahubwo nk'uko bigaragara mu gika cya 17 na 18 cy'ica ry'urubanza, urukiko rwashingiye ku kuba Harerimana Jean Bosco yaroherezaga Rwasibo Jean Damascene amafoto agaragaza uko inka zimeze mu kiraro cyazo rubishingiraho rwemeza ko Harerimana Jean Bosco ariwe wari ufite inshingano zo kuzicunga. Mu by'ukuri kohereza ifoto no kuvuga uko inka zimeze bihabanye no kugirana amasezerano yo gucunga umutungo w'umuntu. Ngo Harerimana Jean Bosco yabikoraga kubera kp yari asobanukiwe iby'ikoranabuhanga, akamwereka uko inka ze zimeze nk'umuntu wazimuguriye kuko Rwasibo Jean Damascene atarabashije kuhigerera ngo azirebere, byongeye akaba ataba no mu Rwanda. Ngo mu gika cya 21, Urukiko rwisumbuye ubwarwo rwisesenguriye ko Rwasibo Jean Damascène nta rwuri yigeze aha Harerimana Jean

Bosco rwo kuziragiramo, nta miti yamwoherereje yo kuzivura, nta n'umuganga w'amatungo waba warazitagaho, ibi bikaba bigaragaza neza nta gushidikanya ko Harerimana Jean Bosco atagakwiye kuryozwa indishyi n'agaciro k'inka za Rwasibo Jean Damascène n'izazikomotseho kuko mu by'ukuri icyo yari afite mu nshingano ze cyari kugurira inka Rwasibo Jean Damascène akanamushakira umushumba wazo wo kuzimuragirira ntakindi.

[13] Rwasibo Jean Damascene yavuze ko iyi mpamvu nta shingiro ifite kubera ko Harerimana Jean Bosco atabasha kuvuguruza ibyo Urukiko Rwisumbuye rwashingiyeho mu bika bya 17-20, ngo Urukiko rwajuririwe rukwiye kubona ko Harerimana Jean Bosco ari we wari ushinzwe gukurikirana no gucunga izo nka kuko ni we washakaga abashumba akanakorana na bo amasezerano, ndetse ni na we wabahembaga. Ibi ngo bigaragazwa n'amasezerano yo kuragira inka yo kuwa 01/01/2012 aho Harerimana Jean Bosco yari ahagarariye Rwasibo Jean Damascène, ndetse muri aya masezerano Harerimana Jean Bosco agaragaza ko azajya akamirwa amata inshuro imwe mu cyumweru akayaha abantu barwaye cyangwa bamerewe nabi. Ikindi kibigaragaza ni inyandiko yo kuwa 13/12/2011 saa 14H21, Harerimana Jean Bosco yandikiye Rwasibo Jean Damascène abinyujije kuri email amuha raporo ndetse anamwoherereza amasezerano y'inka yari amaze kugura hamwe n'amafoto yazo Ibi ngo yagiye abikora no ku yandi matariki atandukanye. Ngo hari kandi amafoto Harerimana Jean Bosco ari hamwe n'inka ziri ku kiraro cyazo yohereje Rwasibo Jean Damascène. Ngo ibi bimenyetso byose Urukiko rwajuririwe rukwiye kubishingiraho rwemeza ko Harerimana Jean Bosco ari we wari ufite inshingano zo gucunga no gukurikirana imibereho ya buri munsi ya ziriya nka. Ibimaze kuvugwa na none birashimangirwa n'imvugo z'abatangabuhamya babajijwe hamwe n'inyandiko z'inzego z'ibanze zerekanye ko Harerimana Jean Bosco ariwe wari uhagarariye Rwasibo Jean Damascène, kandi ko n'inka yari yararagije abashumba yageze aho akazibaka, akazijyana.

UKO URUKIKO URUKIKO RUBIBONA

[14] Ingingo ya 12 y' itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Kuri uru rwego, Harerimana Jean Bosco wajuriye ni we wagombaga kugaragaza ibimenyetso by'uko inshingano ze zagarukiraga gusa ku kugurira Rwasibo Jean Damascene inka no kumushakira umushumba.

[15] Mu bujurire bwe, Harerimana Jean Bosco yaburanye avuga ko we icyo yagombaga gukorera Rwasibo ari ukumugurira inka no kuzishakira umushumba. Ibi yabivuze mu magambo gusa kuko nta nyandiko cyangwa ikindi kimenyetso kibigaragaza, kandi kuko ari we uvuga ko amasezerano ye yagarukiraga gusa ku kugura inka no gushaka umushumba ni we wagombaga kubigaragariza ibimenyetso, cyane cyane ko isesengura ry'Urukiko Rwisumbuye rwa Rubavu ryari ryagaragaje ko kuba Harerimana Jean Bosco yarakomeje gukurikirana uko inka yaguriye Rwasibo Jean Damascène zifashwe aho ziri mu biraro no kujya amuha raporo yazo, bigaragaza ko inshingano ze zitarangiriye mu kuzigura gusa, ko ahubwo no kuzicunga byari mu nshingano ze. Ibi Urukiko Rwisumbuye rukaba rwarabishingiye ku kuba ku matariki atandukanye yaragiye agura inka, nyuma yo kuzimwoherereza akaba yaragiye amwoherereza amafoto agaragaza uko zifashwe. Iyo amasezerano ye aba yaragarukiraga ku kuzigura ngo kuzishakira umushumba ntiyari kujya yohereza ayo mafoto agaragaza uko zifashwe kuko izi ari inshingano z'umuntu ushinzwe kwita ku nka.

[16] Urukiko rurasanga ikindi kigaragaza ko ibyo Harerimana Jean Bosco avuga ku miterere y'amasezerano yagiranye na Rwasibo nta shingiro bifite ni uko ari we ku giti cye wagiranye amasezerano na Harerimana Emmanuel, nk'uko bikubiye mu masezerano yo kuwa 01/01/2012 yuko azajya amuhemba 5.000Frw ku kwezi, ko amata yazo azajya agura ubwatsi bw'inka. Ibi byemejwe na none n'umuyobozi w'umudugudu wa Nyarusozi wavuze ko \ nta nka RWASIBO yigeze aragiza Harerimana Emmanuel. Ibi byanashimangiwe na Bajyinama Pascal wavuze ko inka za Rwasibo zari ziri kwa Harerimana Emmanuel ariko ngo baje gutungurwa n'uko Harerimana Jean Bosco yaje akazihakura, nyuma ngo baje kumva ko ngo yazigejeje iwe akazigurisha. Iyi

myitwarire ikaba ishimangira ko Harerimana Jean Bosco yari afite ububasha busesuye bwo gucunga izo nka, ibyo kuvuga ngo ububasha bwe bwagarukiraga gusa ku kuzigura no kuzishakira umushumba nta gaciro bifite. Amasezerano yo kuwa 01/01/2012 yo kuragira inka 2 Harerimana Jean Bosco yagiranye na Harerimana Emmanuel nta cyo yahindura ku byemejwe n'Urukiko Rwisumbuye rwa Rubavu kuko nta kigaragaza ko Rwasibo Jean Damascene yari ayazi.

[17] Urukiko rurasanga na none, muri dosiye harimo inyandiko zitandukanye zigaragaza ko inka za Rwasibo Jean Bosco zacungwaga na Harerimana Jean Bosco, ko ahubwo Harerimana Emmanuel yari umushumba wa Harerimana Jean Bosco. Ibi byahamijwe na Gasasira Simon wavuze ko na we yaragijwe na Harerimana Jean Bosco inka imwe ayikuye mu zo Harerimana Emmanuel yamuragiriraga, uyu akaba yarashimangiye ko Harerimana Emmanuel yari umushumba wa Harerimana Jean Bosco. Icyakora ngo iyo nka Gasasira Simon yari yararagijwe ntiyayiragiye igihe kinini kuko Harerimana Jean Bosco yahise aza akongera akayitwara. Umutangabuhamya Uwimana Gaudence we yavuze ko Harerimana Jean Bosco yamugurishije ikiraro cyabagamo inka za Rwasibo Jean Damascene. Undi mutangabuhamya witwa Musabyimana Jean Damascene na we yahamije ko Gasasira na Harerimana Emmanuel bari bararagijwe inka na Harerimana Jean Bosco ariko ngo ko igihe cyageze akaza akazisubiza. Ibi byose bikaba bigaragaza ko amasezerano Harerimana Jean Bosco yari yaragiranye na Rwasibo Jea Damascene atagarukiraga gusa ku kumugurira inka no kumushakira umushumba.

[18] Ku bw'ibyo, ubujurire bwa Harerimana Jean Bosco ku ngingo yo kuvuga ntamasezerano yo kuragira inka yari afitanye na Rwasibo Jean Damascene nta shingiro bufite.

C. Kumenya niba RWASIBO Jean Damascene yaragombaga kugenerwa indishyi zose yari yasabye

[19] Rwasibo Jean Damascene yavuze ko yaregeye indishyi z'amafaranga 38.800.000Frw z'agaciro k'inka 71 kuko nyuma yuko abonye ko Harerimana Jean Bosco ashobora kuba yarakoze uburiganya ku nka ze, yiyambaje impuguke ibifitiye ububasha kugirango igene umubare w'izo nka zaba zigezeho kuva muri 2011 kugeza mu mwaka wa 2020 ndetse n'agaciro kazo maze birakorwa nk'uko bigaragazwa n'inyandiko yo kuwa 21/08/2020 aho bagaragaje ko zose hamwe zaba zimaze kuba 71 zifite agaciro kangana n'amafaranga 38.800.000frw. Urukiko Rwisumbuye rwa Rubavu mu gufata icyemezo mu gika cya 22 rwategetse Harerimna Jean Bosco guha Rwasibo Jean Damascene amafaranga angana na 4.200.000Frw y'agaciro k'inka nkuru 6 n'izazo 6, rubikora mu buryo bugenekereje (analogie) rwirengagiza ibikubiye mu nyandiko y'umugenagaciro wagaragaje ko inka zose hamwe zimaze kugera kuri 71 zikaba zifite agaciro k'amafaranga angana na 38.800.000Frw. Yasabye Urukiko rwajuririwe kubikosora rugategeka Harerimana Jean Bosco guha Rwasibo Jean Damascène ayo mafaranga 38.800.000Frw. Yongeyeho ko yari yasabye indishyi z'akababaro, iz'ikurikiranarubanza n'igihembo cy'avoka. Ngo Urukiko rukwiye gutegaka Hererimana Jean Bosco guha Rwasibo Jean Damascene indishyi z'akababaro zingana na 3.000.000Frw kubera ko akomeje kumushora mu manza z'amaherere kandi yirengagiza ibyo azi. Urukiko rukwiye kandi gutegeka Harerimana Jean Bosco gusubiza Rwasibo Jean Damascene amafaranga 2.000.000frw y'igihembo cy'avoka no kumusubiza amafaranga 500.000 y'ikurikirana rubanza. Izi ndishi zose Harerimana Jean Bosco yavuze ko nta zo akwiye gucibwa kuko we ngo abona nta kosa yakoreye Rwasibo Jean Damascene.

UKO URUKIKO RUBIBONA

[20] Urukiko rurasanga ibyo Rwasibo Jean Damascene avuga nta kimenyetso gifatika cyangwa cy'ukuru abitangira, ntiyigeze agaragaza ku buryo bugaragarira buri wese ko inka yari yaraguriwe na Harerimana Jean Bosco zorortse zikagera kuri 71. Yasabye indishyi ashingiye ku igenagaciro ryakozwe na Veterineri ariko uyu wakoze igenagaciro ntiyigeze abona izo nka zose. Ikigaragara ni imbonerahamwe yakoze, ashingiye ku nka zari zihari muri 2011, akora imibare abona izo zagombaga kuba zimaze kubyara muri 2021. Ntiyigeze agaragaza icyo yashingiragaho avuga ko mu mwaka uyu n'uyu, inka iyi n'iyi yabyaye inyana cyangwa ikimasa. Kwicara ukavuga ko inka yabyaye inyana nta kintu gifatika ushingiye nta gaciro byahabwa, na none kwicara ukavuga ko

inka yavutse ku yindi yororotse kandi utazi niba ari inyana cyangwa niba ikimasa na byo ta gaciro byahabwa. Iri genagaciro rikaba ritashingirwaho habarwa indishyi.

[21] Urukiko rurasanga ibyo Urukiko Rwisumbuye rwa Rubavu rwemeje ari bikwiye kugumaho kuko rwashingiye ku mubare w'inka rwagaragarijwe ndetse n'izo zabyaye ku buryo buzwi.

D.Kumenya niba kuri uru rwego hakwiye gutangwa amafaranga y'ikurikiranarubanza n'igihembo cya avoka

[22] Harerimana Jean Bosco yavuze ko mu guca urubanza, Urukiko rwisumbuye rwemeje ko Harerimana Jean Bosco aha Rwasibo Jean Damascène amafaranga 500.000Frw y'indishyi z'akababaro na 500.000Frw yo gukurikirana urubanza n'igihembo cy'avoka na 20.000Frw y'ingwate y'amagarama yatanze amurega. Ngo izi ndishyi yaciwe zigomba guteshwa agaciro kubera ko yujuje inshingano ze zo kugurira Rwasibo Jean Damascène inka akanamushakira umushumba wo kuzimuragirira no kuzimucungira nkuko yari yabisabwe na Rwasibo Jean Damascène, ngo nta kosa yakoze. Ngo ahubwo Rwasibo Jean Damascène yashatse gutesha umutwe Harerimana Jean Bosco amusiragiza, amushora mu manza kandi nta mpamvu. Ibi nho byamuteye umubabaro ukomeye ku mutima n'umuhangayiko, no kujya ku nkeke z'imanza bitari ngombwa. Bityo Rwasibo Jean Damascène akaba agomba kubitangira indishyi z'akababaro zingana na 500.000Frw. Hakiyongeraho 500.000Frw yo gukurikirana urubanza kuko Harerimana Jean Bosco atigeze agira icyo yikorera kubera uru rubanza ahubwo ajya gushaka avoka, wo gusobanurira idosiye no kuyikurikirana mu rukiko. Urukiko kandi rukwiye gutegeka Rwasibo Jean Damscene kwishyura igihembo cya avoka kingana na 1.000.000Frw kubera uru rubanza rwageze mubujurire mu rukiko Rukuru n'ingwate y'igarama ingana na 40,000Frw.

[23] Rwasibo Jean Damascene yavuze ko nta kosa Urukiko Rwisumbuye rwakoze aho rwategetse Harerimana Jean Bosco gutanga indishyi z'akababaro, iz'ikurikiranarubanza n'igihembo cy'Avoka kuko rwashingiye ku kuba yarahemukiye uwamutumye ariwe Rwasibo Jean Damascène. Ngo ihame ry'amategeko rigomba kubahirizwa ni uko igikorwa cyose cyangije undi kimutegeka kuriha ibyangiritse nk'uko byagarutsweho n'abahanga mu mategeko Jean Chevallier na Louis BACH mu gitabo cyabo Droit Civil: introduction à l'étude du droit – les personnes physiques – la famille – les biens – les obligations – les sûretés bagira bati: « Tout fait quelconque de l'homme qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer »pp404; bishatse kuvuga ngo igikorwa cyose cy'umuntu cyangirije undi gitegeka nyir'ugukora ikosa rigikomokaho kuriha ibyangiritse.

[24] Urukiko rurasanga nta ndishyi Harerimana Jean Bosco akwiye guhabwa muri uru rubanza kuko ari we utsindwa n'urubanza, kandi ubusanzwe indishyi zihabwa umuntu wazanwe mu rubanza atagombaga kugaragaramo, bikarangira arutsinze. Mu gihe rero umuburanyi atsinzwe urubanza, nta cyo Urukiko rwaheraho rumugenera indishyi. Ikindi kigaragara kandi ni uko mu Rukiko Rwisumbuye rwa Rubavu yarategetswe gutanga indishyi nta kosa ririmo kkuko hari hamaze kugaragazwa ko nta kuri afite, hagaragazwa uburyo atubahirije amasezerano yagiranye na Rwasibo Jean Damascene. Mu yandi magambo ishingiro ry'indishyi yategetswe gutangwa ryaragaragajwe ku buryo buhagije.

III. ICYEMEZO CY'URUKIKO

[25] Rwemeje ko ikirego cy'ubujurire rwashyikirijwe na Harerimana Jean Bosco nta shingiro gifite.

[26] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Rwasibo Jean Damascene nta shingiro bufite.

[27] Rwemeje ko imikirize y'urubanza RC 00143/2020/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu kuwa 26/11/2021 igumyeho.

[28] Rwemeje ko indishyi zemejwe n'Urukiko Rwisumbuye rwa Rubavu zigumyeho.

[29] Rwemeje ko ingwate y'amagarama y'uru rubanza yatanzwe na Harerimana Jean Bosco iheze mu isanduku ya Leta.