MUKANDAYAMBAJE v. MUDEYI N'ABANDI

[Rwanda URUKIKO RUKURU– RCA 00073/2021/HC/RWG (Shoneri M. P.J.) 18 Ugushyingo 2022]

Amategeko agenga imanza mbonezamubano – Amasezerano – Amasezerano y'ubugure – kuba amasezerano y'ubugure abiri agaragaraho abatangabuhamya bamwe icyagurishijwe ari kimwe kandi ugurisha ari umwe, byafatwa nko guhindura amasezerano ya mbere agasanishwa n'aya kabiri ariko kandi hakabamo inenge ko mu masezerano ya kabiri ibyo yemeje bikaba bidakwiye gufatwa nk'ukuri.

Incamake y'ikibazo : Uru rubanza rwatangiye Cyuzuzo umwana wa Rutaneshwa atanga ikirego mu Rukiko Rwisumbuye rwa Nyagatare avuga ko se mbere yuko apfa yaguze isambu na Budeyi ariko ubu ikaba iri mu maboko ya Mukandayambaje wayibonye akoresheje amasezerano y'amahimbano kuko umutungo waguzwe ngo Rutaneshwa, asaba ko uwo mutungo ugarurwa mu mu mitungo izungurwa ya Rutaneshwa. Muri uru rubanza habanje gutangwa inzitizi y'iburabubasha bwa Cyuzuzo ngo kuko atagaragaje abamutumye gutanga icyo kirego, Urukiko rwemeje ko iyo nzitizi ifite ishingiro. Icyo cyemezo cyajuririwe mu Rukiko Rukuru Urugereko rwa Rwamagana, Urukiko rwemeje ko ubujurire bwa cyuzuzo bufite ishingiro, rwemeza ko afite ububasha bwo kuregera kugaruza umutungo asangiye na bagenzi be, Urukiko Rukuru rwohereza urwo rubanza mu Rukiko Rwisumbuye rwa Nyagatare ngo ruruburanishe mu mizi.

Urukiko Rwisumbuye rwa Nyagatare mu iburanisha mu mizi rwagobokesheje Kayitesi washakanye na Rutaneshwa, hanyuma Urukiko ruca urubanza rwemeza ko ikirego cya Cyuzuzo gifite ishingiro, rwategetse ko umutungo uburanwa ugarurwa mu mutungo uzungurwa na Bene Rutaneshwa; ndetse n'ingurane yatanzwe ku bw'inyungu rusange kuri ubwo butaka na yo igahabwa abazungura ba Rutaneshwa.

Mukandayambaje yajuririye icyo cyemezo mu Rukiko Rukuru urugereko rwa Rwamagana, Murindahabi yatanze inzitizi mbere yo kwinjira mu mizi y'urubanza ijyanye n'uko abazungura bavugwa amasezerano baregera bari batarabaho, Urukiko rwasuzumye iyo nzitizi rusanga nta shingiro ifite kuko Cyuzuzo ubwe yatanze ikirego agaragaza inyungu afite mu gusaba ko umutungo wa Se Rutaneshwa ugarurwa mu bazungura be nawe arimo. Hazamuwe nindi nzitizi ijyanye n'uko ifamu iburanwa ari impano Rutaneshwa yahaye Mukandayambaje, bityo nta mpamvu urubanza rwakomeza kubera ko kuva amasezerano akozwe byaba bitagishobotse ko impano yamburwa uwayihawe, Urukiko rwemeje ko iyo nzitizi nta shingiro ifite kuko ikiburwanwa ari amasezerano y'ubugure.

Mukandayamaje mu gusobanura impamvu z'ubujurire, ko Urukiko Rwisumbuye rwirengagije ko amasezerano y'ubugure hagati ya Budeyi na Rutaneshwa ashyizwe mubikorwa, kandi ngo Urukiko rwirengagije ingingo ya 39 agace ka 1,2 y'itegeko rikumira kandi rigahana ihohoterwa rishingiye kugitsina ku bijyanye n'uko Mukandayambaje wabanaga na Rutaneshwa nk'umugore n'umugabo ariwe bari basangiye uwo mutungo waguzwe bari kumwe ko nta ruhare rwa Kayitesi ruriho, banavuze kandi ko bajuriye banenga ko Urukiko rwaciye urubanza ku kitaregewe rwemeza ko umutungo wagurishijwe na Budeyi ugarurwa ukagabana bene Rutaneshwa bose kandi ngo batarabaho (statuer sur l'avenir)

Cyuzuzo avuze ko Mukandayambaje atahakana ko amasezerano y'ubugure hagati ya Rutaneshwa na Budeyi yabayeho, naho ku masezerano ya Mukandayambaje na Budeyi asobanura ko ubutaka bwishyuwe rimwe butishyuwe kabiri, naho ku kijyanye no kuvuga ko Mukandayambaje yari umugore wa Rutaneshwa ngo sibyo uretse gusa ko babyaranye mugihe umugore we Kayitesi yari yagiye kuko Mukandayambaje yari asanzwe aba mu rugo rwabo.

Mu rubanza mu mizi Urukiko rwabanje gusuzuma no kumenya amasezerano afite agaciro hagati yayakozwe na Budeyi na Rutaneshwa ndetse n'ayakozwe hagati ya Budeyi na Mukandayambaje, Urukiko rwemeje ko amasezerano ya mbere ariyo afite agaciro nubwo adafite umwimerere kuko Mukandayambaje yayashyizeho umukono nk'umutangabuhamya, kandi ntiyari kongera ngo ahindukire nawe agurishwe ya sambu na Budeyi kandi azi neza ko itakiri iye. Urukiko rwemeje kandi ko kugaruka kw'abatangabuhamya bamwe muri ubu bugure bwombi bigaragaza uguhindura amasezerano ya mbere ariko agasanishwa n'aya kabiri ariko hakabamo inenge ko mu masezerano ya kabiri n'ubwo yakorewe imbere ya notaire ibyo yemeje bikaba bidakwiye gufatwa nk'ukuri kuko yemeje ibintu bitakorewe imbere ye kuko yazaniwe ibintu byakozwe muri 2013 ngo abishyireho kashe ye muri 2018 bifite inenge kuko atabasha guhamya italiki ayo masezerano yakorewe.

Ku bijyanye nibyo Mukandayambaje asaba, urukiko gushingira ku biteganywa n'iyo ngingo ya 39 agace ka 1,2 Urukiko rwemeje ko byaba ari ukwivuguruza kuko nta kuntu yavuga ko umutungo yawuguze ubwe, ngo anavuge ko waguzwe na Rutaneshwa bikitwa ko bawuhahanye kandi ahakana iby'uko Rutaneshwa yawuguze atabizi nta byabayeho.

Naho Ku bijyanye no kumenya ukwiye gukorerwa mutation no gusubizwa amafaranga y'ingurane y'igice cy'ubutaka buburanwa Urukiko rwemeje ko umutungo waguzwe na Rutaneshwa hamwe n'amafaranga yatanzwe kuri expropriation akaza yanditse kuri Budeyi, igomba kwandikwa kuri Succession Rutaneshwa ndetse n'ayo mafaranga agashyirwa kuri konti ya succession Rutaneshwa.

Incamake y'icyemezo: kuba amasezerano y'ubugure abiri (2) agaragaraho abatangabuhamya bamwe icyagurishijwe ari kimwe kandi ugurisha ari umwe, byafatwa nko guhindura amasezerano ya mbere agasanishwa n'aya kabiri ariko kandi hakabamo inenge ko mu masezerano ya kabiri ibyo yemeje bikaba bidakwiye gufatwa nk'ukuri. Bityo kuba noteri yakwemeza amasezerano ya kabiri nyuma y'igihe kinini akozwe ntabwo yafatwa nkaho yakorewe imbere ya noteri kuko nawe ntaba abasha kugaragaza itariki ayo masezerano yakoreweho.

Ubujurire nta shingiro bufite.

Amategeko yashingiweho:
Itegeko ry'ibimenyetso mu manza n'itangwa ryabyo, Ingingo ya 65, 108
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 12,154

Imanza zifashishijwe:
Urubanza RS/INJUST/RC 00009/2019/SC rwa Nabimana na Mukankubito, rwaciwe n'Urukiko rw'Ikirenga kuwa 3/03/2020
Urubanza RCAA0015/09/CS rwa Nyirabizimana na Musoni Ndamage, rwaciwe n'Urukiko rw'Ikirenga ku wa 29/04/2011

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mukandayambaje Aline wajuriye muri uru rubanza avuga ko rukomoka ku masezerano y'ubugure bw'isambu yagiranye na Budeyi Jean Bosco, mu gihe abaregwa aribo Cyuzuzo, Kayitesi na Budeyi bo bavuga ko ayo masezerano y'ubugure bw'iyo famu yabaye hagati ya Rutaneshwa John na Budeyi Jean Bosco kuwa 21/05/2011 ikagurwa na Rutaneshwa John ku mafaranga 6.000.000frw, bakemeranya ko bazakorana ihererekanya-bubasha nyuma. Mu gihe iyo sambu itarandikwa kuri

Rutaneshwa ngo hakorwe Mutation, abaregwa bavuga ko Rutaneshwa yandikiye Budeyi amusaba ko bahindura uburyo banditsemo amasezerano, maze ahanditswe ko haguze Rutaneshwa hakandikwa ko uguze ari Mukandayambaje, Rutaneshwa yaje gupfa, ariko amasezerano yahinduye aya mbere agaragara ko yanditswe kuwa 24/11/2013 nyuma cyane yurupfu rwa Rutaneshwa.

[2] Umwana wa Rutaneshwa witwa Cyuzuzo nk'umwe mu bazungura be yatanze ikirego avuga ko ayo masezerano ya kabiri aha umutungo Mukandayambaje Aline ari amahimbano kuko umutungo waguzwe na Se Rutaneshwa, ko uwo mutungo ugomba kugarurwa mu izungurwa rya Rutaneshwa, naho Mukandayambaje akavuga ko ariwe wahiguriye ku mafaranga ye miliyoni esheshatu (6.000.000Frw) ayishyuye cash Budeyi Jean Bosco.

[3] Mu rubanza rwaburanishijwe na TGI Nyagatare, hatanzwe inzitizi y'iburabubasha bwa Cyuzuzo bwo kuregera kugaruza umuntungo mu bazungura ba Rutaneshwa kuko atagaragaje abamutumye gutanga icyo kirego, iyo nzitizi ifatirwa icyemezo ko nta bubasha afite bwo gutanga icyo kirego, icyo cyemezo cyajuririwe mu Rukiko Rukuru Urugereko rwa Rwamagana, mu gusuzuma ubujurire bwe kuri icyo cyemezo ku nzitizi rwemeje ko Cyuzuzo afite ububasha bwo kuregera kugaruza umutungo asangiye na bagenzi be, Urukiko Rukuru rwohereza urwo rubanza mu Rukiko Rwisumbuye rwa Nyagatare ngo ruruburanishe mu mizi.

[4] Mu gihe urukiko Rwisumbuye rwasuzumaga urubanza, rwasanze ari ngombwa kugobokesha Kayitesi Janet washakanye na Rutaneshwa John, kugira ngo agire ibyo asobanurira Urukiko, mu iburanisha ryo kuwa 13/10/2021, Kayitesi Janet yaritabye yunganiwe na Me Ndaruhutse Janvier, wari wunganiye Cyuzuzo; nyuma y'icyemezo cyafashwe n'Urukiko Rwisumbuye rwa Nyagatare, rwaciye urubanza maze rwemeza ko ikirego cyatanzwe na Cyuzuzo Jeninah gifite ishingiro, rwategetse ko umutungo Budeyi Jean Bosco yagurishije ugarurwa ugashyirwa mu mutungo uzungurwa na Bene Rutaneshwa John bose; ndetse n'ingurane yatanzwe ku bw'inyungu rusange kuri ubwo butaka na yo igahabwa abazungura ba Rutaneshwa John;

[5] Mukandayambaje Aline yajuririye icyemezo cy'Urukiko Rwisumbuye ahagarariwe na Murindahabi Fidele na Me Mugume Steven, naho Me Gashirabake Aboubakar ahagarariye Budeyi Jean Bosco; naho Cyuzuzo na Kayitesi bahagarariwe na Me Ndaruhutse Janvier, mu iburanisha Murindahabi Fidele na Me Mugume Steven batanze nzitizi mbere yo kwinjira mu mizi y'urubanza ijyanye n'uko abazungura bavugwa batarabaho nk'uko byavuzwe mu Rukiko Rukuru, Urukiko rwasuzumye iyo nzitizi rusanga nta shingiro ifite kubera ko Cyuzuzo ubwe yatanze ikirego agaragaza inyungu afite mu gusaba ko umutungo wa Se Rutaneshwa ugarurwa mu bazungura be nawe arimo. Ku nzitizi ijyanye n'uko Urukiko rwafashe amasezerano y'ubugure bw'ifamu yabaye hagati ya Mukandayambaje na Budeyi ko ari impano yakozwe na Rutaneshwa, ko bityo nta mpamvu urubanza rwakomeza kubera ko kuva amasezerano akozwe byaba bitagishobotse ko impano yamburwa uwayihawe, abahagarariye Mukandayambaje, Murindahabi abajijwe niba icyo bashaka gusobanura mu rubanza ari ukuba uwo baburanira yarahawe impano koko cyangwa icyabaye ari ubugure bakavuga ko ari ubugure, Urukiko rwafashe icyemezo cyarwo ko nta shingiro iyo nzitizi ifite kubera ko Mukandayambaje nawe yivugira ko atahawe, ahubwo yaguze I famu nk'uko bigaragazwa n'amasezerano yagiranye na Budeyi Jean Bosco kandi ko ashaka kuyandikwaho.

[6] Me Gashirabake Aboubakar uhagarariye Budeyi Jean Bosco hamwe n'abahagarariye Mukandayambaje Aline ndetse kandi bongeye gutanga(yatanze) inzitizi ijyanye n'uko Kayitesi Janet wagobokeshejwe mu rubanza, ariwe wagombaga kuba ariwe wareze niba ariwe wagaragaye nk'umuzungura wa Rutaneshwa akaba ariwe ukwiye gutanga ikirego nk'uhagarariye inyungu z'abazungura ba Rutaneshwa, bityo bagasaba ko urubanza rwa TGI Nyagatare rwavanwaho akaba ari Kayitesi Janet ukurikirana urubanza kuko atariwe watanze iki kirego, ko kugobokeshwa kwe gukwiriye gusubiza ibintu uko byari bisanzwe.

[7] Me Ndaruhutse Janvier uhagarariye Cyuzuzo na Kayitesi avuga ko nta tegeko ribuza Kayitesi gukurikirana uyu mutungo mu rubanza yagobokeshejwemo, kuri iyi nzitizi ijyanye no kumenya niba Kayitesi Janet akwiriye gukurikirana cyangwa adakwiye gukurikiranira uburenganzira bwe mu rubanza yagobokeshejwemo n'urukiko ku kirego cyatanzwe na Cyuzuzo umwana we, aho yagitanze mu nyungu z'abazungura ba Se Rutaneshwa John; rwanzuye ko hashingiwe ku biteganywa n'ngingo ya 113 CPCCSA aho ivuga ko "Kugoboka mu rubanza ni ugusaba kuba umuburanyi cyangwa kugirwa we mu rubanza ataregeye cyangwa atarezwemo".

[8] Urukiko rwasobanuye ko iyi ngingo igaragaza neza ko uwagobotse cyangwa uwagobokeshejwe aba yabaye umuburanyi mu rubanza, yarabyishakiye cyangwa yarabigizwe, bivuze ko aba agiye gusobanura inyungu afite mu rubanza cyangwa agira icyo avuga ku nyungu z'uwamugobokesheje, uyu wamugobokesheje akaba agira inyungu z'uko mu gihe urubanza ruciwe uwagobokeshejwe atazageraho atambamira urubanza azaba yaratsinze, kuri iyo nzitizi nayo urukiko rwasanze nta shingiro ifite kuko kuba Kayitesi Janet kuba abaye umuburanyi muri uru rubanza bituma rurangira kuko adashobora kuzarutambamira kandi aricyo igobokesha ry'umuburanyi riba rigamije.

[9] Inzitizi ijyanye n'ububasha bwa Cyuzuzo bwo kuregera Urukiko asaba ko ifamu n'ingurane yahawe Budeyi igaruka mu mutungo uzungurwa wa Rutaneshwa yasuzumwe n'uru Rukiko, rwemezwa ko icyo kirego gifite ishingiro, ko urubanza rugomba kuburanisha mu mizi n'Urukiko Rwisumbuye rwa Nyagatare, iki cyemezo cyetegetse ko uru rubanza ruburanishwa kikaba kitarajuririwe ngo kivanweho nk'uko ibindi byemezo byose bivanwaho hakoreshejwe inzira z'ubujurire zisanzwe n'izidasanzwe, uru Rukiko rusanga rutagomba kugisubiraho kuko rutakivuguruza.

[10] Iburanisha ryarakomeje kuwa 07/10/2022 abahagarariye Mukandayamaje Aline basobanura impamvu z'ubujurire, bavuga ko bajuririye urubanza rwaciwe n'urukiko Rwisumbuye rwa Nyagatare kuko rwirengagije ko amasezerano y'ubugure hagati ya Budeyi na Rutaneshwa yo ku wa 21/5/2011 hatanzwe amafaranga miliyoni eshatu cash, izindi eshatu zasigaye handikwa cheque ariko aya masezerano akaba atarashyizwe mubikorwa, kandi ko urukiko rutari kwemeza ko ayo masezerano yabayeho nta mwimerere wayo uhari, akomeza asobanura impamvu z'ubujurire, ko bashingiye na none ku kuba urukiko rwarashingiye ku ndangamuntu ya cyera yanditsemo ko Kayitesi Janet ari umugore wa Rutaneshwa John rukemeza ko basezeranye byemewe n'amategeko kandi atari ikimenyetso simusiga cyemeza ishyingirwa, kuba urukiko rwarirengagije ingingo ya 39 agace ka 1,2 y'itegeko rikumira kandi rigahana ihohoterwa rishingiye kugitsina ku bijyanye n'uko Mukandayambaje wabanaga na Rutaneshwa nk'umugore n'umugabo ariwe bari basangiye uwo mutungo waguzwe bari kumwe ko ari nta ruhare rwa Kayitesi ruriho, ndetse kandi banajuriye banenga ko urukiko rwaciye urubanza ku kitaregewe rwemeza ko umutungo wagurishijwe na Budeyi ko ugarurwa ukagabana bene Rutaneshwa bose ko n'ingurane igahabwa bene Rutaneshwa, ngo urukiko rukaba rwaremeje abazungura kandi batarabaho (statuer sur l'avenir).

[11] Me Ndaruhutse Janvier uhagarariye Cyuzuzo Jeninah yavuze ko abahagarariye Mukandayambaje batahakana ko amasezerano y'ubugure hagati ya Rutaneshwa John na Budeyi Jean Bosco yabayeho kuko Mukandayambaje ayemera ndetse akaba yaranayashyizeho umukono, naho ku masezerano ya Mukandayambaje na Budeyi asobanura ko ubutaka bwishyuwe rimwe butishyuwe kabiri, akomeza kandi asobanura ko ibyo banenga ko urukiko rwemeje ko Kayitesi yasezeranye hashingiwe ku ndangamuntu ibyo ataribyo byaregewe ko icyo baregera ari uko umutungo ugarurwa muri succession Rutaneshwa ukava ku mazina ya Budeyi Jean Bosco, ku kijyanye no kuvuga ko Mukandayambaje yari umugore wa Rutaneshwa ngo sibyo uretse gusa ko babyaranye mugihe umugore we Kayitesi yari agiye kuko Mukandayambaje yari asanzwe aba mu rugo rwabo.

[12] Me Gashirabake Aboubakar we avuga ko uwo ahagarariye yashowe mu manza n'abagore ba nyakwigendera Rutaneshwa n'abana be kubw'uko amasezerano y'ubugure yakozwe hagati ya Rutaneshwa na Budeyi yaje guhindurwa ku busabe bwa Rutaneshwa kuko yabonaga arembye agashaka ko iyo famu yaguze izatunge Mukandayambaje n'umwana we babyaranye kuko umugore mukuru yari afite indi mitungo.

[13] Ibibazo bigomba gusuzumwa muri uru rubanza akaba ari ukumenya amasezerano afite agaciro hagati y'ayakozwe hagati ya Budeyi Jean Bosco na Rutaneshwa John ndetse n'ayakozwe hagati ya Budeyi Jean Bosco na Mukandayambaje Aline, kumenya ukwiye gukorerwa mutation no gusubizwa amafaranga y'ingurane y'igice cy'ubutaka buburanwa, no kumenya ishingiro ry'indishyi zasabwe muri uru rubanza.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

Kumenya amasezerano afite agaciro hagati y'ayakozwe na Budeyi Jean Bosco na Rutaneshwa John ndetse n'ayakozwe hagati ya Budeyi Jean Bosco na Mukandayambaje Aline,

[14] Abahagarariye Mukandayambaje Aline bavuga ko Budeyi Jean Bosco ubwe yishyiriye umukono ku masezerano y'ubugure hagati ye na Mukandayambaje Aline ndetse ayo masezerano akemezwa na Notaire akaba agaragaza ko Budeyi yishyuwe miliyoni esheshatu cash, akaba ari ntawe ukwiye guhakana ko ubwo bwishyu butabayeho ko ubihakana ko ntabwishyu bwa kabiri bwabayeho yabitangira ibimenyetso, bavuga kandi ko ubugure bwa kabiri bwabayeho bugakuraho amasezerano yitwa aya mbere bo bakemanga ko atanabayeho kuko atashyizwe mu bikorwa kuko bavuga ko hishyuwe cash miliyoni eshatu andi hagatangwa sheki nyamara ntibigaragazwe ko iyo sheki yaretiriwe, bakomeza bavuga ko kuba basobanura ko amasezerano ya mbere yaciwe kuko ntamwimerere uhari akaba ashobora kuba ari amahimbano, ibi urukiko rukaba rwarabyirengagije bagahakana ko ayo masezerano atabayeho, bagasabako uwemeza ko yabayeho agaragaza umwimerere wayo; basobanura kandi basobanura ko Cyuzuzo Jeninah yatanze ikirego arega Budeyi ariko babikora ari ikinamico kuko Budeyi yemeye ko azafasha Cyuzuzo muri uru rubanza mu rwego rwo gusobanura ibintu mu nyungu z'abazungura ba Rutaneshwa ngoabe aribo begukana umutungo uburanwa.

[15] Me Ndaruhutse Janvier uhagarariye abaregwa Cyuzuzo Jeninah na nyina Kayitesi Janet avuga ko kuwa 25/01/2011 Budeyi Jean Bosco yagurishije Rutaneshwa John isambu (ifamu) ku mafaranga miliyoni esheshatu (6 millions) hishyurwa miliyoni eshatu (3,000,000Frw) cash na sheki ya miliyoni eshatu ariko Rutanesha akaba yaraje gupfa kuwa 15/06/2013 iyo sambu itaramwandikwaho, akaba ariyo mpamvu Cyuzuzo nk'umwe mu bazungura ba Rutaneshwa yatanze ikirego asaba ko iyo famu yandikwa kuri Succession Rutaneshwa ikazazungurwa hamwe n'amafaranga yatanzwe kuri expropriation akaza yanditse kuri Budeyi Jean Bosco ko yashyirwa kuri Succession Rutaneshwa. Akomeza asaba urukiko kandi kudaha agaciro amasezerano ya Mukandayambaje ko yakozwe nyuma Rutaneshwa yaramaze gupfa.

[16] Me Gashirabake Aboubakar uhagarariye Budeyi Jean Bosco asobanura ko kuwa 21/5/2011 Budeyi n'umugore we Kibukayire bagurishije isambu yabo bayigurisha Rutaneshwa kuri miliyoni esheshatu (6.000.000Frw) ariko kuko Rutaneshwa yari afite abagore babiri; Kayitesi na Mukandayambaje nyuma nibwo Rutaneshwa yaje kurwara ararembа arareba asanga umugore we mukuru hari imitungo yamugeneye we n'abana be ariko Mukandayambaje n'umwana we bari bamaze kubyarana ntacyo yari yarabahaye akaba aribwo yaje kwegurira Mukandayambaje Aline ya sambu yaguze na Budeyi Jean Bosco maze Rutaneshwa aza gutekerereza Budeyi uko yumva byagenda aribwo yafashe ya masezerano ari kumwe na Budeyi, maze ya masezerano ya 1 barayaca,

hakorwa aya 2 mu nyungu za Mukandayambaje akaba ariyo mpamvu amasezerano yambere nta mwimerere afite kuko waciwe akaba ari muri ubwo buryo Mukandayambaje yabaye nk'uguze.

[17] Akomeza asobanura ko mu masezerano yakozwe bwa kabiri ari nta bwishyu bwabayeho ko ahubwo icyabaye ari uko nyirubwite Rutaneshwa John mu minsi ye yanyuma y'uburwayi, yasabye Budeyi guhindura ya masezerano ariko ntabugure bwabayeho, ahubwo habayeho impano.

UKO URUKIKO RUBIBONA

[18] Ingingo ya 65 y'itegeko ry'ibimenyetso mu manza n'itangwa ryabyo ivuga ko "Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w'abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira".

[19] Ingingo ya 108 y'itegeko ry'ibimenyetso mu manza n'itangwa ryabyo ivuga ko Ibimenyetso bicukumbuwe no gusesengura urubanza ni ibimenyetso bitacukumbuwe n'amategeko, bicukumburwa n'ubwenge n'ubushishozi bw'abacamanza. Abacamanza bagomba kwemera gusa ibyo bimenyetso iyo bikomeye, bisobanuye kandi bihuje.

[20] Ingingo ya 12 y' Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ivuga ko "Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda."

[21] Muri iyi dosiye y'urubanza hagaragaramo amasezerano y'ubugure bw'isambu adafitiwe umwimerere yo kuwa 21/05/2011, hagati ya Budeyi Jean Bosco ayigurisha Rutaneshwa John isambu n° 14079 iherereye mu kagari ka Ndama, Umurenge wa Karangazi, ingana na ha 25 ku mafaranga 6.000.000Frw, mu abatangabuhamya batandukanye bagaragara kuri ayo masezerano hakaba harimo na Mukandayambaje Aline ubwe.

[22] Dosiye y'urubanza kandi igaragaza amasezerano ya kabiri y'ubugure yakorewe kuri ya sambu igaragara ku masezerano y'ubugure bwa mbere Budeyi agurisha Rutaneshwa, ubwo bugure bukaba bwarakozwe hagati ya Budeyi Jean Bosco na Mukandayambaje Aline bukaba bugaragaraho italiki ya 21/11/2013 ndetse Rutaneshwa akaba ayagaragaraho nawe nk'umutangabuhamya n'ubwo bigaragara ko kuri ayo mataliki yari amaze igihe apfuye, ikindi kandi aya masezerano akaba anagaragaraho umukono wa Notaire kuwa 13/08/2018.

[23] Dosiye igaragaramo kandi ibaruwa yo kuwa 25/06/2013 abana ba Nyakwigedera Rutaneshwa John bandikiye umuyobozi w'Akarere ka Nyagatare, basaba guhagarika ihererekanya ry'uburenganzira ku butaka Se yaguze ariko ko bwigaruriwe n'umugore wari kumwe nawe mu minsi ye ya nyuma bagahindura amasezerano y'ubwo bugure hagamijwe ku bumwegurira, iyo baruwa ikaba yarakiriwe mu biro by'Akarere ka Nyagatare kuwa 06/12/2013.

[24] Urukiko rusanga mu miburanire y'ababuranyi bose ni ukuvuga Cyuzuzo ndetse na Budeyi bagaruka ku kuba amasezerano ya kabiri yarakozwe mu minsi ya nyuma ya Rutaneshwa mu rwego rwo kwegurira Mukadayambaje Aline iyi sambu yari yaguze, kandi mu ibaruwa abana ba Rutaneshwa banditse basaba Akarere ka Nyagatare kutemera ihererekanya- mutungo hagati ya Budeyi na Mukandayambaje basobanuraga ko ibintu byo guhindura amasezerano byakozwe umubyeyi wabo atarapfa mu minsi ye ya nyuma, ibi bikumvikanisha ko ibyo Me Ndaruhutse Janvier agarukaho ko amasezerano yakozwe Rutaneshwa yarapfuye ataribyo kuko yaba abana be na Budeyi bavuga ko byakozwe mu minsi ye ya nyuma bityo akaba yarakozwe akiriho, bityo italiki

iyagaragaraho ikaba itafatwa nk'ukuri kuko na nyirubwite Mukandayambaje Aline atagararaza ngo ubu bugure bwakozwe ku italiki runaka, iyi akaba ari inenge igaragara muri ayo masezerano.

[25] Urukiko rusanga kandi muri uru rubanza Mukandayambaje Aline ndetse na Budeyi Jean Bosco ari abantu bazi ukuri kw'ibyabaye ariko ntibahuze uko kuri n'ibyabaye, ariko imvugozabo zikaba zafasha urukiko mu bushishozi n'ubwenge bw'abacamanza bagahuza izo mvugo n'ukuri kwazo, rusanga Mukandayambaje nk'umuntu wabaye umutangabuhamya ku masezerano y'ubugure hagati ya Budeyi na Rutaneshwa, atari kongera ngo ahindukire nawe agurishwe ya sambu na Budeyi kandi azi neza ko itakiri iye, bikaba bitumvikana ukuntu umuntu muzima yakwishora muri icyo gihombo cyo kugura ibintu azi neza ko byagurishijwe abandi bikazamubera imfabusa, kuko n'ubwo abamuhagarariye bahakana amasezerano ya mbere nta wundi muntu n'umwe mu bayagaragaraho uhakana ko atabayeho cyangwa ngo ayakemange uretse ko kuri we byumvikana kuko noneho kuri ubu ahaburana ashaka kuhegukana ukuyahakana kwe kurumvikana ariko ni mu magambo gusa nta kindi kimenyetso abitangira, kuko adasobanura niba umukono we uyagaragaraho ari undi muntu wamusinyiye, bityo ikigaragara akaba ari uko ibyo Budeyi yemeza ko yagurishije umutungo we Rutaneshwa n'ubwo ayo masezerano nta mwimerere wayo ugaragara ariko yabayeho.

[26] Urukiko rusanga kandi ababuranira Mukandayambaje bavuga ko amasezerano ya mbere atashyizwe mu bikorwa, kuko bavuga ko hishyuwe cash miliyoni eshatu gusa andi asigaye hagatangwa sheki itararetiriwe, ariko Me Gashirabake Aboubakar avuga ko amafaranga yishyuwe ndetse sheki yishyurwa na Muhoza Vincent kandi ko yari yabaye umutangabuhamya mumasezerano ya mbere, ubihakana ko itishyuwe akaba nta bimenyetso abitangira.

[27] Urukiko rusanga kandi kuba Mukandayambaje yarabaye umutangabuhamya ku masezerano y'ubugure hagati ya Rutaneshwa na Budeyi, kandi muri ayo masezerano hishyuwe cash miliyoni eshatu, bikaba bitumvikana ukuntu Mukandayambaje ku isambu yaguzwe n'umugabo we yari kongera akayishyura amafaranga miliyoni esheshatu (6,000,000Frw), kandi azi neza ko hari miliyoni eshatu umugabo we yishyuye kandi Budeyi atarayamusubije, ubwo ikibanza ntibyari kwitwa ko kiguzwe miliyoni esheshatu gusa, kuko agaciro kacyo kaba kageze muri miliyoni icyenda (9,000,000Frw), ibi bikaba bigaragaza ko ibyo Mukandayambaje aburanisha urukiko rutabifata nk'ukuri.

[28] Urukiko rusanga kandi amasezerano y'ubugure bwombi agarukaho abatangabuhamya bamwe, hakibazwa ukuntu abantu bihuza kwemera guhamya ko Budeyi agurishije Rutaneshwa isambu imwe, nyuma y'igihe ba batangabuhamya nanone bagahuriza ku kwemera gusinya ngo ya sambu igurishwe na none Mukandayambaje kandi bazi neza ko igurishijwe kabiri, ibi bikaba bitakumvikana, bityo uku kugaruka kw'abantu bamwe muri ubu bugure bwombi bigaragaza uguhindura amasezerano ya mbere ariko agasanishwa n'aya kabiri ariko kandi hakabamo inenge ko mu masezerano ya kabiri n'ubwo yakorewe imbere ya notaire ibyo yemeje bikaba bidakwiye gufatwa nk'ukuri kuko umutangabuhamya Nyamutamba Celestin nta mukono we uyagaragaraho bityo akaba yaremeje ibintu bitakorewe imbere ye kuko yazaniwe ibintu byakozwe muri 2013 ngo abishyireho kashe ye muri 2018 ariko bituzuye cyangwa bifite inenge kuko atabasha nawe guhamya italiki ayo masezerano yakorewe mu gihe na ba nyiranyo ubwabo batayigaragaza, bityo ayo masezerano akaba adakwiye guhabwa agaciro.

[29] Ibyo urukiko rubishingiye ku murongo wafashwe mu rubanza RCAA0015/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 29/04/2011[1], haburana Nyirabizimana Zilipa na Musoni Ndamage Thadée mu gusobanura ingingo ya 13 y'itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo ni uko kuba hari inenge zishingiye ku byo amasezerano agaragaza nk'ukuri kutari ko, ntiyafatwa

---

[1]RCAA 0015/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 29/04/2011, haburana Nyirabizimana Zilipa na Musoni Ndamage Thadée, Icyegeranyo cy'ibyemezo by'iInkiko, Nº 13, Mata 2012, p.61-80 (igika cya 20).

nk'inyandiko mvaho umukozi wa Leta wabigenewe yabereye umuhamya kuko biba binyuranyije n'amategeko ndetse n'ukuri, kuko yemeje amasezerano nk'aho ari ukuri kandi abatangabuhamya bayagaragaraho bose batarasinye kuri ayo masezerano.

[30] Abahagarariye Mukandayambaje Aline bavuga kandi ko Cyuzuzo Jeninah kurega Budeyi ko byari nk'ikinamico kuko yari yabemereye kuzabafasha kugaruza uwo mutungo, ariko urukiko rusanga atariko byafatwa kuko umuburanyi w'ingenzi utagomba kubura muri uru rubanza ni Budeyi kuko ariwe wagurishije rero uwo yari gushaka gukorera mutation wese kandi biri bubangamire inyungu ze niwe yari kurega, kuko iyo Budeyi aba yari agiye gukorera mutation abazungura ba Rutaneshwa na Mukandayambaje nta wundi yari kurega utari Budeyi, rero kuba ariwe Cyuzuzo yareze nta kinamico ririmo nk'uko bashaka kubyumvikanisha kuko niwe zingiro rya byose nta kuntu yabura muri uru rubanza hatitawe ku watanga ikirego uwo ariwe wese.

Kumenya ukwiye gukorerwa mutation no gusubizwa amafaranga y'ingurane y'igice cy'ubutaka buburanwa

[31] Abahagarariye Mukandayambaje Aline bavuga ko kuba Cyuzuzo Jeninah yarandikiye ubuyobozi bw'Akarere ka Nyagatare asaba kutemerera Budeyi gukorera mutation Mukandayambaje ari ikimenyetso cy'uko amasezerano yakozwe hagati yabo ayemera ko yabayeho, kuko avuga ko bumvikanye bagasesa amasezerano yo kuwa 21/05/2011, bagasaba ko umutungo ukwiye kwandikwa kuri Mukandayambaje Aline wawuguze nk'uko amasezerano bakoranye yemejwe n'imbere ya notaire, bavuga kandi ko atari n'ibi Urukiko rwirengagije ingingo ya 39 y'itegeko rikumira kandi rigahana ihohoterwa rishingiye kugitsina igika cya 1,2, kuba Mukandayambaje yarabanaga na Rutaneshwa kandi bafite umutungo basangiye nk'uko na Kayitesi nawe yarafite umutungo yari asangiye na Rutaneshwa aha bakagaragazako Mukandayambaje na Rutaneshwa bari bafitanye umutungo basangiye, bagasaba ko ayo mafaranga ndetse n'isambu biburanwa bitajya kuri Kayitesi kandi nta ruhare yari afite kuri ayo mafaranga.

[32] Me Ndaruhutse Janvier uhagarariye Kayitesi Janet na Cyuzuzo Jeninah avuga ko icyo abo ahagarariye baregeye ari ugusaba urukiko kwemeza ko umutungo (ifamu) Rutaneshwa John yaguze yandikwa kuri Succession Rutaneshwa ikazazungurwa hamwe n'amafaranga yatanzwe kuri expropriation akaza yanditse kuri Budeyi Jean Bosco ko nayo yashyirwa kuri Succession Rutaneshwa.

[33] Me Gashirabake Aboubakar uhagarariye Budeyi Jean Bosco kuri iyi ngingo we avuga ko uwo yunganiye nta we yigeze yanga gukorera mutation ko ahubwo kubera ukutumvikana k'ukwiye kuyikorerwa aribyo byatumye idakorwa ko yaba isambu ndetse n'amafaranga yasohotse ku mazina ye uwo urukiko ruzemeza ko ariwe muzungura yiteguye kubahiriza icyemezo cy'urukiko ko we nta kibazo afite.

UKO URUKIKO RUBIBONA

[34] Urukiko rusanga mu rubanza rujuririrwa igika cya 28, bigaragara ko urukiko rwashingiye ku kuba muri dosiye hagaragaramo indangamuntu ya cyera yerekana ko Rutaneshwa John yasezeranye na Kayitesi Janet, bikaba bisobanuye ko ari umugore we wemewe n'amategeko, muri dosiye kandi hanagaragaramo ifishi y'ibarura Mukandayambaje ashaka kugaragaza ko yasezeranye byemewe n'amategeko ariko uru rukiko kuri iyo ngingo rukaba rusanga ataribyo kuko ikarita ndangamuntu ya cyera atari ikimenyetso cy'uko umuntu yasezeranye byemewe n'amategeko nk'uko byemejwe ku murongo watanzwe mu rubanza RS/INJUST/RC 00009/2019/SC rwaciwe kuwa 3/03/2020 haburana Mukankubito na Nabimana aho rwemeje ko ikimenyetso cyemeza nta mpaka ko abantu bashyingiranywe ari icyemezo cy'ishyingirwa, iyo cyatakaye cyangwa ibitabo by'ishyingirwa bidashoboka kuboneka, muri icyo gihe hashingirwa ku buhamya, Kuba umwe mu babanaga

nk’umugore n’umugabo yanditse mu ikarita ndangamuntu ya kera nk’umugabo cyangwa umugore wa kanaka, si ikimenyetso cyashingirwaho mu kwemeza ko bashyingiranywe mu buryo bukurikije amategeko.

[35] Urukiko rusanga kandi Mukandayambaje asaba urukiko ko rwashingira ku ngingo ya 39 y’itegeko rikumira kandi rigahana ihohoterwa rishingiye kugitsina igika cya 1,2, maze rukemeza ko kuba Mukandayambaje yarabanaga na Rutaneshwa kandi bafite umutungo basangiye nk’uko na Kayitesi nawe yarafite umutungo yari asangiye na Rutaneshwa ko uyu mutungo waguzwe bari kumwe ariwe ukwiye kuwugiraho uruhare kuko wo bawushakanye.

[36] Urukiko rusanga abagore bombi bitwa ko ari ba Nyakwigendera Rutaneshwa yaba Mukandayambaje na Kayitesi bose ntawe ugaragara ko ariwe wasezeranye na Rutaneshwa mu buryo bwemewe n’amategeko, kandi abahagarariye Mukandayambaje ku bw’ibanze ikirego yatanze ni ugusaba ko yandikwaho umutungo we yaguze hakubahirizwa amasezerano y’ubugure yagiranye na Budeyi, kuba rero ahindukira akavuga ko urukiko rwisumbuye rwa Nyagatare rwarirengagije ingingo ya 39 agace ka 1,2 y’itegeko rikumira kandi rigahana ihohoterwa rishingiye ku gitsina ngo rwemeze ko uwo mutungo yawushakanye na Rutaneshwa, ibi akaba atari byo kuko mu miburanire yose y’urubanza rujuririrwa nta mwanzuro wa Mukandayambaje cyangwa iburanisha iryo ari ryo ryose yagaragaje iyo miburanire ngo urukiko ntiruyisuzume kandi umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine ibyo akaba ntabyo yasabwe gusuzuma, uretse ko gusaba urukiko gushingira ku biteganywa n’iyo ngingo ya 39 agace ka 1,2 byaba ari no kwivuguruza kuko ari nta kuntu yavuga ko umutungo yawuguze ubwe, ngo anavuge ko waguzwe na Rutaneshwa bikitwa ko bawuhahanye kandi ahakana iby’uko Rutaneshwa yawuguze atabizi nta byabayeho, uru rukiko rero rugasanga iyi ngingo nayo rudakwiye kuyiha ishingiro cyangwa ngo ruyisuzume kuko ku rwego rw’ubujurire hadashobora gutangirwa ikirego gishya nk’uko biteganywa n’ingingo ya 154 y’itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi.

[37] Urukiko kandi rusanga mu bujurire bwa Mukandayambaje mu bibazo yasabye urukiko gusuzuma harimo issue ivuga ngo “kuba Urukiko rubanza rwaremeje ko Rutaneshwa John yahaye Mukandayambaje Aline impano y’umutungo wo mu kibanza UPI : 5/02/03/06/2025, rukayitesha agaciro impitagihe”, ibi byerekana ko aregera hamwe kuba ariwe wiguriye isambu yishyuye amafaranga ye, ahandi akanenga urukiko ko rwamwambuye impano kandi yararengeje igihe cyo kuregerwa(prescription), bikaba bigaragaza ko ibyo aregera ari ugupima amahirwe kuko hamwe abyita impano, ahandi akavuga ko yiguriye ubwe, akaba ari nta na kimwe cy’ukuri mubyo aregera.

[38] Urukiko rusanga umutungo (ifamu) byaguzwe na Rutaneshwa John hamwe n’amafaranga yatanzwe kuri expropriation akaza yanditse kuri Budeyi Jean Bosco, iyo sambu igomba kwandikwa kuri Succession Rutaneshwa ndetse n’ayo mafaranga agashyirwa kuri konti ya succession Rutaneshwa.

Kumenya ishingiro ry’indishyi zasabwe muri uru rubanza

[39] Murindahabi Fidele na Me Mugume Steven bahagarariye Mukandayambaje Aline mu byo bajuririye harimo n’indishyi bari baregeye mu rukiko Rwisumbuye batahawe zikubiyemo indishyi z’akababaro zingana na 5.000.000Frw, iz’ikurikirana-rubanza zingana na 3.000.000F, n’igihembo cya Avoka cya 4.000.000F ndetse n’igarama ya 40.000Frw bagasaba ko bazihabwa na Cyuzuzo Jeninah watumye baza muri uru rubanza.

[40] Me Gashirabake Aboubakar uhagarariye Budeyi Jean Bosco asaba ko uzatsindwa muri uru rubanza ategekwa guha Budeyi Jean Bosco indishyi z'ibyakoreshejwe kuri uru rwego zirimo igihembo cy'avocat cya 500.000F na 500.000F y'ikurikiranarubanza.

[41] Cyuzuzo Jeninah nawe yatanze ubujurire bwuririye ku bundi asaba igihembo cya Avoka cya 1,500,000Frw, ikurikiranarubanza rya 300,000FRW na 1,000,000Frw y'indishyi zo gushorwa mu manza nta mpamvu, anasaba kandi indishyi zitatanzwe ku rwego rwambere kandi zari ngombwa zituruka ku birego byose bakurikiranye, amafaranga y'ikurikiranarubanza angana na 900,000Frw n'igihembo cya Avocat cya 4,500,000Frw zihwanye na 1,500,000Frw ku birego byose uko ari bitatu Cyuzuzo yishyuriye Avoka (RC00035/2018/TGI/NYGRCA 00010/2019/HC/RWG na RC00019/2020/TGI/NYG), gusubizwa amagarama angana na 60,000Frw igarama rya TGI n'irya HC RWG) n'indishyi z'akababaro kubera gushorwa mu manza zihwanye na 5,000,000Frw.

[42] Abahagarariye Mukandayambaje Aline basobanura ko izi ndishyi zasabwe zose ntazo bakwiriye gusabwa kuko Cyuzuzo Jeninah yareze Budeyi Jean Bosco, Mukandayambaje Aline akaba yaraje muri izi manza mu buryo bwo kugoboka, bisobanuye ko hagati ya Budeyi Jean Bosco na Cyuzuzo Jeninah nta wavuga ko Mukandayambaje Aline yamushoye mu manza, ari nazo mpamvu Cyuzuzo Jeninah adakwiye gusaba ko Mukandayambaje Aline ategekwa kumuha indishyi zaba iz’akababaro, iz’ikurikiranarubanza n’iz’igihembo cy’Avoka.

[43] Urukiko rusanga muri uru rubanza ababuranyi bose haba Cyuzuzo Jeninah wakurikiranaga uburenganzira bwe, ndetse Mukandayambaje wagobotse mu rubanza yabonaga ko arufitemo inyungu hamwe na Budeyi warezwe muri izi manza zaburanwe zose, urukiko rusanga buri mu buranyi yaraje mu rubanza afite inyungu ze ashaka kugaragaza cyangwa ibyo yarezwe agomba kwireguraho, ku buryo utishimiye icyo cyemezo ku kijuririra ari uburenganzira bwe, bikaba bigaragarira urukiko ko nta muntu washoye undi mu rubanza ku maherere ku buryo yabicirirwa indishyi, bityo akaba ari nta ndishyi zitanzwe muri uru rubanza.

III. ICYEMEZO CY’URUKIKO

[44] Rwemeye ko ubujurire bwa Mukandayambaje Aline nta shingiro bufite.

[45] Rwemeje ko urubanza RC00019/2020/TGI/NYG rwaciwe n’Urukiko Rwisumbuye rwa Nyagatare kuwa 22/10/2021 rwajuririwe rudahindutse.

[46] Rutegetse ko umutungo Budeyi Jean Bosco yagurishije Rutaneshwa John ufite UPI: 5/02/03/06/2025 wanditswe kuri Budeyi Jean Bosco n’umugore we Cyibukayire Esperance uherereye mu Akagali ka Ndama, Umurenge wa Karangazi, Akarere ka Nyagatare, Intara y’uburasirazuba wandikwa kuri Succession Rutaneshwa John.

[47] Rutegetse ko ingurane yatanzwe ku bw’inyungu rusange nayo ishyirwa kuri konti ya Succession Rutaneshwa John.

[48] Ruvuze ko nta ndishyi zitangwa muri uru rubanza

[49] Rutegetse ko amagarama Mukandayambaje Aline yatanze ahwanye n’ibyakozwe mu rubanza.