

NSHIMYUMUREMYI v. LETA Y'URWANDA N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RADA0032/11/CS (Kanyange, P.J., Mukandamage na Rugabirwa, J.) 06 Nzeri 2013]

Amategeko y'ubutegetsi – Ikirego kigamije iseswa rya cyamunara – Agaciro k'ikirego gisaba gusesa cyamunara yabaye hashingiwe ku cyemezo cy'Urukiko mugihe habaye ukwibeshya kuri numero yacyo mu nyandiko y'igurisha – Uko kwibeshya kuri numero y'icyemezo gufatwa nk'ikosa ry'imyandikire rishobora gukosorwa – Ntacyatuma cyamunara iseswa mugihe urega ntacyo anenga icyemezo cy'urukiko cyashingiweho mu kuyikora.

Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Indishyi zinyuranye zikomoka ku kirego gisaba iseswa rya cyamunara – Indishyi z'ikurikiranarubanza n'igihembo cy'Avoka – Indishyi zisabwa n'urega ntiyazihabwa mu gihe cyamunara idasheshwe, ariko abaregwa bahabwa indishyi z'ikurikiranarubanza n'igihembo cy'Avoka.

Incamake y'ikibazo: Tariki ya 07/01/1994 Ndagijimana Jean Pierre yafashe umwenda muri BACAR ubu yahindutse FINA BANK Ltd yishingirwa n'umugore we Murekatete hamwe na Nshimyumuremyi. Ndagijimana yananiwe kwishyura umwenda maze BACAR iregera Urukiko rwa mbere rw'Iremezo rwa Kigali, rutegeka Ndagijimana, Murekatete na Nshimyumuremyi kwishyura umwenda batawishyura ukavanwa mu byabo ku ngufu. Ishingiyeye kuri urwo rubanza, BACAR yasabye Perezida w'Urukiko rwa mbere rw'Iremezo rwa Kigali icyemezo cyo guteza cyamunara inzu eshatu harimo n'ya Nshimyumuremyi yari mu kibanza n° 345 i Nyarugenge maze Urukiko rufata icyemezo n° 501/99 gitegeka ko izo nzu zitezwa cyaunara, iya Nshimyumuremyi igurwa na Rubangura Vedaste.

Nshimyumuremyi yareze Leta y'u Rwanda, Mutabazi Etienne (Noteri wa Leta), FINA BANK, BCR n'abazungura ba Rubangura mu Rukiko Rukuru asaba ko cyamunara y'inzu ye yakozwe kuwa 06/02/2000 yaseswa agasubizwa inzu ye cyangwa agaciro kayo, hiyongereyeho amafaranga y'ubukode, agahabwa n'indishyi. Avuga ko cyamunara yakozwe mu buryo bunyuranyije n'amategeko kuko notaire wa Leta yateje cyamunara ashingiyeye ku cyemezo n° 478/99 kitabayeho, kivugwa mu nyandiko y'igurisha mu cyamunara. Abaregwa bose baburana bemeza ko cyamunara yakozwe mu buryo bwemewe n'amategeko, bityo ko itagomba guseswa, Urukiko rwemeje ko ikirego cya Nshimyumuremyi nta shingiro gifite kuko cyamunara yakozwe hashingiwe ku cyemezo cy'Urukiko rwa mbere rw'Iremezo rwa Kigali n° 501/99. Nshimyumuremyi yajuririye Urukiko rw'Ikirenga avuga ko Urukiko rwemeje nta mpamvu ko inzu ye yatejwe cyamunara hashingiwe ku cyemezo cy'Urukiko n° 501/99 kandi atari byo, ko ahubwo hashingiwe ku cyemezo n° 478/99 kitabayeho, kigaragara mu cyandiko y'igurisha mu cyamunara itaravugurujwe n'uwayikoze.

Incamake y'icyemezo: 1. Mu gihe cyamunara yakozwe hashingiwe ku cyemezo cy'Urukiko n° 501/99 kandi urega akaba ntacyo akinenga, ariko munyandiko y'igurisha hakagaragaramo ko cyamunara yashingiyeye ku cyemezo numero 478/99, bifatwa nk'ikosa ry'imyandikire rishobora gukosorwa n'uwariwe wese ubifitemo inyungu cyane cyane ko ibivugwa muri iyo nyandiko y'igurisha ari ibijyanye n'icyemezo n° 501/99. Bityo nta cyatuma cyamunara yagishingiyeho iseswa, inzu yatejwe cyamunara ikaba igomba kuguma mu maboko y'abazungura b'uwayiguze.

2. Mu gihe cyamunara idasheshwe, indishyi zitandukanye urega asaba abaregwa nta shingiro ziba zifite. Abaregwa bahabwa amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka, naho urega ntayahabwe kuko ubujurire bwe nta shingiro bufite.

Ubujurire nta shingiro bufite.
Uwajuriye ategetswe kwishyura abaregwa indishyi z'ikurikiranarubanza n'igihembo cy'avoka.
Amagarama aherereye ku regwa.

Amategeko yashingiweho:

Itegeko ryo kuwa 30/07/1888 ryerekeye amasezerano cyangwa imirimo nshinganwa, ingingo 276.

Itegeko ryo kuwa 15/07/1964 ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi, ingingo ya 321, 322, 345, 346, 363, 369.

Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 168.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nshimyumuremyi Ephron yatanze ikirego mu Rukiko Rukuru asaba iseswa rya cyamunara yakozwe tariki ya 06/02/2000 na Notaire wa Leta, kunzu ye iri mu kibanza n°345 i Nyarugenge, quartier commercial, mu Mujyiwa Kigali, bisabwe na FINA BANK harangizwaurubanza RC 30039/99, ikagurwana Rubangura Védaste, avuga koyakozwemuburyobudakurikije amategeko.

[2] Mu gutanga icyokirego, ababuranira Nshimyumuremyi bavugaga ko icyemezo n°501/99 cy'Urukiko rwa Mbere rw'Iremezo rwa Kigali gitegeka ko inzu itezwa cyamunara cyafashwe n'abacamanza batatu aho gufatwa na Perezida w'Urukiko, ko muri icyo cyemezo havugwamo iyo nzu kandi itaratanzweho ingwate ya FINA BANK, ko na Notaire yayigurishije azi neza ko atari ingwate yayo, bagasaba ko Leta yamuha indishyi kubera ayo makosa yakozwe n'abakozi bayo.

[3] Ikindi ababuranira Nshimyumuremyi bashingiragaho basaba ko cyamunara iseswa ngo ni uko muri icyo cyemezo n°501/99 havugwamo Nshimyumuremyi Ephron, aho kuba Ndagijimana Jean Pierre wari ubereyemo umwenda FINA BANK. Banavugaga ko iyo Banki yasabye ko inzu igurishwa kandi iziko atari ingwate yayo kandi na nyirayo nta mwenda ayifitiye, ko ndetse itubahirije ingingo z'Itegeko ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi ryariho, zerekereye na cyamunara y'imitungo itimukanwa, bagasaba ko FINA BANK ibimuhera indishyi.

[4] Mu kirego cya Nshimyumuremyi yasabye kandi ko abazungura ba Rubangura Védaste waguze inzu bayimusubiza kuko yayiguze mu cyamunara kidakurikije amategeko, bitashoboka bakamuha agaciro kayo, BCR nayo ikamuha indishyi kuko ariyo yatanze "certificat d'enregistrement" y'inzu kandi yari yarayihaweho ingwate kubera undi mwenda.

[5] Igihe cy'iburanisha, ababuranira Nshimyumuremyi bavuze ko batagishingiye iseswa rya cyamunara ku nenge zavuzwe haruguru bavugaga ko ziri mu cyemezo n°501/99, ko ahubwo bashingiye ku mpamvu y'uko Notaire wa Leta yateje cyamunara iyo nzu ashingiye ku cyemezo n°478/99 kivugwa muri "acte d'adjudication" kitabayeho (imaginaire).

[6] Urukiko Rukuru rwaciye urubanza rwemeza ko ikirego cya Nshimyumuremyi nta shingiro gifite, kuko rwasanze cyamunara isabirwa guseswa yarakozwe hashingiwe ku cyemezo n°501/99 cyafashwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali kandi ntacyo akinenga, cyane cyane ko atigeze asaba ko gihindurwa cyangwa se ko kivanwaho, ko rero hatashingiwe ku cyemezo n° 478/99 kuko nta cyerekana ko cyabayeho.

[7] Ku byerekeranye n'imihango iteganywa n'amategeko ibanziriza cyamunara, Urukiko rwavuze ko idashobora gutandukanywa n'icyemezo n° 501/99 cyavuzwe, ko kugira ngo urukiko rutegeke ko cyamunara ikorwa rwagombaga kubanza gusuzuma niba ibiteganywa n'amategeko byarakozwe, ruvuga ko urega nta kimenyetso yarugaragarije ko ibyo bitakozwe, akaba ataranaregeye urukiko igihe igwatira ry'inzu ryakorwaga nk'uko yabyemererwaga n'ingingo ya 363 y'Itegeko ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi ryakurikizwaga icyo gihe, ngo asabe ko amategeko yubahirizwa.

[8] Urukiko rwasanze kandi azi ko inzu itagomba kugurishwa nk'uko urega abivuga, ruvuga ko Notaire wa Leta atari afite inshingano n'ububasha byo guhindura icyemezo cy'urukiko, ngo agire ibyo akuramo, kabone n'ubwo yari kuba nta kosa yakoze, ko nta n'ikimenyetso rwashyikirijwe cy'akagambane kavugwa ko yagiranye n'abacamanza bafashe icyemezo ndetse na FINA BANK.

[9] Urukiko rwageneye mu bushishozi buri wese mu barezwe amafaranga 300.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[10] Nshimyumuremyi yajuririyeye Urukiko rw'Ikirenga avuga ko urukiko rwemeje nta mpamvu ko inzuye yatejwe cyamunara hashingiwe ku cyemezo cy'urukiko n°501/99 kandi atari byo, ko ahubwo hashingiwe ku cyemezo n°478/99 kitabayeho kigaragara muri "acted adjudication" itaravugurujwe n'uwayikoze, ko rero atashoboraga kujuririra icyemezo kitabayeho, atabonye. Avuga na none ko cyamunara yakozwe igomba guseswa agasubizwa inzu ye cyangwa agaciro kayo, hyongereyeho amafaranga y'ubukode bwayo kuko yakozwe mu buryo budakurikije amategeko ku buriganya bwa FINA BANK, Notaire na BCR, abo baregwa bese bakamuha indishyi.

[11] Abaregwa bavugaga, buri wese, ko nta kosa ryakozwe mu igurishwa ry'inzu ya Nshimyumuremyi mu cyamunara ku buryo yaryozwa indishyi, ko kandi cyamunara yakurikije amategeko, ko rero yagumana agaciro kayo, ko nta n'indishyi akwiye guhabwa, ko ahubwo ariwe ugomba kubaha indishyi zo kuba yarabashoye mu rubanza nta mpamvu n'ibihembo by'aba avoka bababuraniye.

[12] Urubanza rwaburanishijwe mu ruhamwe tariki ya 09/04/2013 no kuwa 02/07/2013, Nshimyumuremyi Ephron aburanirwa na Me Munderere Léopold, Me Buhuru Pierre Célestin na Me Ntampuhwe Juvens, FINA BANK iburanirwa na Me Karangwa Vincent, BCR ihagarariye na Me Batware Jean Claude, Leta y'u Rwanda iburanirwa na Me Sebazungu Alphonse, Intumwa Nkuru ya Leta yungirije, Mutabazi Etienne yunganiwe na Me Baragondoza Jean Damascène na Me Nzaramba Janvier, naho Abazungura ba Rubangura Védaste bahagarariye na Me Rwagatare Janvier.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1.Kumenya niba Urukiko Rukuru rwaribeshye rukemeza ko inzu irimu kibanza n° 345 i Nyarugenge, quartier commercial, mu Mujyi wa Kigali ya Nshimyumuremyi yagurishijwe mu cyamunara hashingiwe ku cyemezo n° 501/99 cy'Urukiko rwa Mbere rw'Iremezo rwa Kigali.

[13] Ababuranira Nshimyumuremyi bavuga ko Urukiko Rukuru rwemeje ko inzu ye iri mu kibanza n°345 i Nyarugenge, quartier commercial, mu Mujyi wa Kigali yatejwe cyamunara na Notaire wa Leta Mutabazi Etienne ashingiye ku cyemezo cy'urukiko n°501/99 kandi ataribyo, kuko mu nyandiko ya cyamunara (acte d'adjudication) Notaire yakoze igaragaza ko hashingiwe ku cyemezo n° 478/99 kitabayeho, bakaba batumva aho urukiko rwakuye amakuru y'uko Notaire yibeshye kandi ataragaragaye mu rubanza ngo avuguruzwe iyo nyandikomvaho yakoze, ko kuba ibyokwibeshya kwe byaravuzwe na bamwe mu baburanyi bitavuze ko habayeho kuregera ko inyandiko ari impimbano, bikaba rero binyuranije n'ingingo ya 13 igika cya mbere y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

[14] Bavuga na none ko bidashoboka ko icyemezo cy'urukiko n°501/99 ari cyo cyahereweho mu igurishwa ry'inzu nk'uko byemejwe n'urukiko, kuko cyavugaga ko cyamunara yagombaga kuba tariki 22/01/2000 saa tanu, ariko ikaba yarabaye kuwa 06/02/2000 saa sita n'igice. Byongeye kandi, ngo itangazo ryo guteza cyamunara rya Notaire ryo kuwa 31/01/2000 ntiryashingiye kuri icyo cyemezo nk'uko urukiko rubivuga, kuko rivugwamo inzu iri mu kibanza n°778 ku kimihurura ya Ndagijimana Jean Pierre, nyamara itagaragara muri icyo cyemezo.

[15] Ababuranira Nshimyumuremyi bavuga kandi ko mu itangazo rya Notaire urukiko rwashingiyeho, hari hateganyijwe urutonde ry'uburyo inzu zizatezwa cyamunara: inzu iri mu kibanza n° 778 ku Kimihurura ya Ndagijimana yagombaga kugurishwa 10h30', iri mu kibanza n° 118 ku Kicukiro ya Nshimyumuremyi ikagurishwa 11h30' naho indi nzu ye yo mu kibanza n° 345 i Nyarugenge ikagurishwa 12h30'.Urukiko rero ngo ntirwasobanuye impamvu iyo gahunda itakurikijwe n'uburenganzira FINA BANK na Notaire wa Leta bari bafite bwo guhera ku nzu ya nyuma itari no mu ngwate za Banki.

[16] Me Karangwa Vincent uburanira FINA BANK avuga ko Nshimyumuremyi yirengagiza uruhererekane rw'ibikorwa byagaragajwe na FINA BANK igihe cy'iburanisha mu Rukiko Rukuru, aho yagaragaje ko habanje kubaho urubanza RC 30039/99 FINA BANK yarezemo Ndagijimana Jean Pierre n'abishingizi be Murekatete Gloria na Nshimyumuremyi bagatsindirwa umwenda wa 55.949.630Frw, ntibarujirire maze rukaba itegeko rukarangizwa.

[17] Avuga ko ntanenge igaragara mu cyemezo n°501/99 cyafashwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali 22/10/1999 bisabwe na FINA BANK kugirango harangizwe urubanza yatsindiye, nk'uko n'abari bahagarariye Nshimyumuremyi babivuze mu rukiko rubanza, ubwo bavugaga ko ntacyo banenga icyo cyemezo, ko ahubwo icyo bashingiraho basaba iseswa rya cyamunara ari uko Notaire wa Leta yagurishije inzu ashingiye ku cyemezo n° 478/99 kitabayeho, batigeze bagaragaza. Asanga rero, niba Nshimyumuremyi yemera icyemezo n° 501/99, akaba atarakijuririyeye cyangwa se ngo asabe ko kivaho mu gihe giteganyijwe n'amategeko, ubu atahindukira ngo asabe ibinyuranye n'uko kucyemera, ko kandi kwibeshya kwa Notaire mu myandikire ya nimero y'icyemezo kutaba impamvu yo gutesha agaciro cyamunara yubahirije imihango yose iteganywa n'amategeko, agasanga rero

ababuburanira Nshimyumuremyi bakwiye kugaragaza urundi rubanza icyemezo n°478/99 cyari kigamije kurangiza.

[18] Me Karangwa avuga kandi ko kuba ababuranira Nshimyumuremyi bavuga ko cyamunara itakurikije gahunda yari iteganyijwe mu itangazo rya cyamunara, ari ukwirengagiza ko icyari kigamijwe ari ukubona ubwishyu bwa FINA BANK bwagombaga guturuka mu mutungo w'abatsinzwe urubanza bose, ko mugihe Notaire yari afite inyandiko mpesha (titre exécutoire) igizwe n'urubanza rwagombaga kurangizwa, imihango yose yarakozwe mu buryo bwemewe n'amategeko, nta cyari kumubuza gushakira ubwishyu mu mitungo y'abatsinzwe aho yaba iherereye hose.

[19] Avuga na none ko kuvuga ko hari inyandiko zidahuye, kuko inzu yo mu kibanza n° 778 ku Kimihurura iri mu itangazo rya cyamunara ariko itagaragara mu cyemezo n°501/99 asanga nta ngaruka mu rwego rw'amategeko bifite kuko iyo nzu itagurishijwe, ko kandi icyo cyemezo kivuga amazu agomba kugurishwa kitavuga gahunda y'uko azagurishwa, bikaba kandi bitarashobokaga ko yose agurishwa ku isaha imwe. Asanga rero nta buriganya bwa FINA BANK bwabayeho kuko nta kimenyetso abutangira.

[20] Mutabazi Etienne n'abamwunganira bavuga ko ababuranira Nshimyumuremyi biyemerera ko icyemezo n°478/99 kitigeze kibaho cyangwa se ngo kigaragare. Basobanura ko cyamunara yashingiye ku cyemezo n°501/99 nk'uko bigaragara mu nyandiko zose zerekeranye nayo, ko ariko mu gukora inyandiko ya cyamunara (acte d'adjudication) habayeho gukora ikosa handikwa "icyemezom°478/99", ko ariko iyo babisaba hakiri kare agikora akazi ka Notaire yari kubikosora.

[21] Ku byerekeye igihe cyamunara yagombaga kubera, bavuga ko yari kuba tariki ya 22/01/2000, habura abaguzi, yimurirwa mu minsi cumi n'itanu, hongera gutangwa amatangazo, ikorwa kuwa 06/02/2000.

[22] Bavuga na none ko icyemezo n° 501/99 cyo guteza cyamunara kitari gisobanutse neza, kuko kigaragaza ko amazu yose yagombaga kutezwa cyamunara ku isaha imwe ya saa tanu, ibyo rero bikaba bitari gushoboka, icyangombwa kikaba ari uko amazu akigaragaraho yagombaga kugurishwa mu cyamunara.

[23] Ku byerekeranye n'amakosa avugwa ko yakozwe na Notaire wateje cyamunara ngo kuko yari azi neza ko inzu itagombaga kugurishwa, Mutabazi n'abamwunganira bavuga ko nta burenganzira yari afite bwo guhindura icyemezo cy'urukiko nk'uko mu rubanza rwajuririrwe bisobanuye, icyo Nshimyumuremyi yagombye kuba yarakoze mbere ya byose kwari ukwitabaza inzira yagenwaga n'amategeko igihe icyemezo cyo guteza cyamunara cyafatwaga n'urukiko akagitambamira, akakijuririra cyangwa se agasaba ko gikosorwa ku nenge avuga ko gifite zari zimubangamiye, ko ariko niba avuga ko icyemezo n° 501/99 ntacyo cyari kimutwaye, atagombaga no kukiregera.

[24] Ku byerekeranye no kumenya impamvu inzu ya Nshimyumuremyi ariyo yahereweho mu guteza cyamunara, Mutabazi asobanura ko amategeko yakurikizwaga igihe cyamunara yabaga yateganyaga ko iyo hari ibintu byinshi byo guteza cyamunara uwabifatishije (le saisissant) ariwe uhitamo kimwe yabona mo ubwishyu bw'umwenda wose, ko rero amaze gutanga itangazo, FINA BANK ariyo yahisemo ko inzu ya Nshimyumuremyi igurishwa.

[25] Me Sebazungu uburanira Leta y'u Rwanda nawe avuga ko icyemezo n° 501/99 ari cyo cyashingiweho na Notaire hatezwa cyamunara inzu ya Nshimyumuremyi, ko kuba mu

nyandiko ya cyamunara (acte d'adjudication) havugwamo n° 478/99 ari ikosa ryakorewe mu bwanditsi. Avuga kandi ko kuba inzu yo mu kibanza n°778 Kimihurura itagaragara mu cyemezo n°501/99, ahubwo ikaboneka mu itangazo rya cyamunara nta kibazo kirimo kuko iyo nzu itagurishijwe, ko ku bijyanye n'itariki yo gutezaho cyamunara igaragara mu cyemezo idahura n'iyi cyabereyeho, asobanura ko habayeho kwimurwa kwa cyamunara, naho ku bijyanye n'amasaha inzu zagombaga kugurishirizwaho, avuga ko bafashe ko saa sita n'igice ari bwo cyamunara yagombaga kuba irangiye.

[26] Asanga kandi ibyerekeranye n'imihango yagombaga gukurikizwa mbere y'uko hafatwa icyemezo cya cyamunara bitararebaga Notaire, ahubwo byararebaga FINA BANK, icyo yari ashinzwe ari ukurangiza ibikubiye muri icyo cyemezo, ibyo akaba ari byo yakoze kubera ko urubanza yasabwe kurangiza ari rwo yarangiye. Avuga ko kandi ikibazo cyerekeranye n'imihango ya cyamunara Nshimyumuremyi avuga ko itakurikijwe yagombaga kukibyutsa hakurikijwe ibiteganywa n'ingingo ya 363 y'Itegeko ryo kuwa 15/07/1964 ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi ryakurikizwaga icyo gihe, maze akagishyikiriza urukiko rwatanze icyemezo giteza cyamunara.

[27] Me Rwagatare uburanira Abazungura ba Rubangura avuga ko abona cyamunara yarashingiye ku cyemezo cy'urukiko n° 501/99 kandi ababuranira Nshimyumuremyi bavuga ko ntacyo kimutwaye, akaba asanga nta n'impamvu yari kuregera icyemezo n° 478/99 kigaragara mu nyandiko ya cyamunara (acte d'adjudication) kuko abona ko ari ikosa ry'imyandikire ryakozwemo.

[28] Mutabazi Etienne n'abamwunganira bavuga ko ababuranira Nshimyumuremyi biyemerera ko icyemezo n°478/99 kitigeze kibaho cyangwa se ngo kigaragare. Basobanura ko cyamunara yashingiye ku cyemezo n° 501/99 nk'uko bigaragara mu nyandiko zose zerekeranye nayo, ko ariko mu gukora inyandiko ya cyamunara (acte d'adjudication) habayeho gukora ikosa handikwa "icyemezong'478/99", ko ariko iyo babisaba hakiri kare agikora akazi ka Notaire yari kubikosora.

[29] Ku byerekeye igihe cyamunara yagombaga kubera, bavuga ko yari kuba tariki ya 22/01/2000, habura abaguzi, yimurirwa mu minsi cumi n'itanu, hongera gutangwa amatangazo, ikorwa kuwa 06/02/2000.

[30] Bavuga na none ko icyemezo n°501/99 cyo guteza cyamunara kitari gisobanutse neza, kuko kigaragaza ko amazu yose yagombaga kutezwa cyamunara ku isaha imwe ya saa tanu, ibyo rero bikaba bitari gushoboka, icyangombwa kikaba ari uko amazu akigaragaraho yagombaga kugurishwa mu cyamunara.

[31] Ku byerekeranye n'amakosa avugwa ko yakozwe na Notaire wateje cyamunara ngo kuko yari azi neza ko inzu itagombaga kugurishwa, Mutabazi n'abamwunganira bavuga ko nta burenganzira yari afite bwo guhindura icyemezo cy'urukiko nk'uko mu rubanza rwajuririwe bisobanuye, icyo Nshimyumuremyi yagombye kuba yarakoze mbere ya byose kwari ukwitabaza inzira yagenwaga n'amategeko igihe icyemezo cyo guteza cyamunara cyafatwaga n'urukiko akagitambamira, akakijuririra cyangwa se agasaba ko gikosorwa ku nenge avuga ko gifite zari zimubangamiye, ko ariko niba avuga ko icyemezo n° 501/99 ntacyo cyari kimutwaye, atagombaga no kukiregera.

[32] Ku byerekeranye no kumenya impamvu inzu ya Nshimyumuremyi ariyo yaherewehe mu guteza cyamunara, Mutabazi asobanura ko amategeko yakurikizwaga igihe cyamunara yabaga yateganyaga ko iyo hari ibintu byinshi byo guteza cyamunara uwabifatishije (le

saisissant) ariwe uhitamo kimwe yabonamo ubwishyu bw'umwenda wose, ko rero amaze gutanga itangazo, FINA BANK ariyoyahisemo ko inzu ya Nshimyumuremyi igurishwa.

[33] Me Sezabungu uburanira Leta y'u Rwanda nawe avuga ko icyemezo n°501/99 ari cyo cyashingiweho na Notaire hatezwa cyamunara inzu ya Nshimyumuremyi, ko kuba munyandiko ya cyamunara (acte d'adjudication) havugwamo n° 478/99 ari ikosa ryakorewe mu bwanditsi. Avuga kandi ko kuba inzu yo mu kibanza n°778 Kimihurura itagaragara mu cyemezo n°501/99, ahubwo ikaboneka mu itangazo rya cyamunara nta kibazo kirimo kuko iyo nzu itagurishijwe, ko ku bijyanye n'itariki yo gutezaho cyamunara igaragara mu cyemezo idahura n'iyoyabereyeho, asobanura ko habayeho kwimurwa kwa cyamunara, naho ku bijyanye n'amasaha inzu zagombaga kugurishirizwaho, avuga ko bafashe ko saa sita n'igice ari bwo cyamunara yagombaga kuba irangiye.

[34] Asanga kandi ibyerekeranyen'imihango yagombaga gukurikizwa mbere y'uko hafatwa icyemezo cya cyamunara bitararebaga Notaire, ahubwo byararebaga FINABANK, icyo yari ashinzwe ari ukurangiza ibikubiye muri icyo cyemezo, ibyo akaba ari byo yakoze kubera ko urubanza yasabwe kurangiza ari rwo yarangiye. Avugako kandi ikibazo cyerekeranye n'imihango ya cyamunara Nshimyumuremyi avuga ko itakurikijwe yagombaga kukibutsa hakurikijwe ibiteganywa n'ingingo ya 363 y'Itegeko ryo kuwa 15/07/1964 ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi ryakurikizwaga icyo gihe, maze akagishyikiriza urukiko rwatanze icyemezo giteza cyamunara.

[35] Me Rwagatare uburanira abazungura ba Rubangura avuga ko abona cyamunara yarashingiye ku cyemezo cy'urukiko n° 501/99 kandi ababuranira Nshimyumuremyi bavugaga ko ntacyo kimutwaye, akaba asanga nta n'impamvu yari kuregera icyemezo n° 478/99 kigaragara mu nyandiko ya cyamunara (acte d'adjudication) kuko abona ko ari ikosa ry'imyandikire ryakozwemo.

UKO URUKIKO RUBIBONA

[36] Inyandiko zikubiye muri dosiye zigaragaza ko tariki ya 07/01/1994 Ndagijimana Jean Pierre yafashe umwenda wa 25.000.000 Frw muri BACAR ubu yahindutse FINA BANK Ltd yishingirwa n'umugore we Murekatete Gloria na se Nshimyumuremyi Ephron.

[37] BACAR ibonye umwenda utishyuwe, yareze uwafashe umwenda n'abishingizi be mu Rukiko rwa Mbere rw'Iremezo rwa Kigali, maze mu rubanza RC 30039/99 rwaciye tarikiya 11/06/1999, rutegeka Ndagijimana, Murekatete na Nshimyumuremyi kwishyura BACAR amafaranga angana na 55.949.630 Frw y'umwenda remezo n'inyungu zawo n'iz'ubukererwe, urubanza rukimara gusomwa, batabikora akavanwa mu byabo ku ngufu za Leta Urwo rubanza rwaciwe abaregwa bose badahari.

[38] Mu ibaruwa yayo yo kuwa 06/10/1999, BACAR yasabye Perezida w'Urukiko rwa Mbere rw'Iremezorwa Kigali icyemezo cyo guteza cyamunara amazu ari mu bibanza n°778 ku Kimihurura III ya Ndagijimana Jean Pierre, n°118 iri ku Kicukiro na n° 345 iri muri Nyarugenge za Nshimyumuremyi Ephron kugira ngo harangizwe urubanzarwavuzwe, ivuga ko inohereje dosiyeyose kugira ngo ruyisuzume.

[39] Mu gusubiza kuri icyo baruwa, kuwa 22/10/1999 urukiko rwafashe icyemez n° 501/99 gitegeka ko habaho cyamunara y'amazu n° 118 iri ku Kicukiro na n° 345 iri i Nyarugenge za Nshimyumuremyi Ephron, kimanikwa uwo munsu ku miryanyo y'Urukiko rwa Mbere

rw'Iremezo rwa Kigali, Parquet ya Kigali, Komini Kicukiro, Komini Nyarugenge, Umujyi wa Kigali n'Urukiko rw'Ubujurire rwa Kigali. Nyuma y'itangazo ryo guteza cyamunara ryo kuwa 31/01/2000, cyamunara ntiyakozwe tariki ya 22/01/2000 saa tanu za mu gitondo nk'uko byari biteganyijwe, ahubwo yabaye tariki ya 06/02/2000, nk'uko bigaragazwa n'inyandikomvugo yo guteza cyamunara yakozwe na Notaire, maze inzu yo mu kibanza n° 345 i Nyarugenge igurwa na Rubangura Védaste ku mafaranga 95.100.000.

[40] Urukiko rurasanga rero, nk'uko byemejwe n'Urukiko Rukuru, icyo cyemezo n°501/99 aricyo Notaire wa Leta yashingiyeho ateza cyamunara inzu yo mu kibanza n° 345 ya Nshimyumuremyi ikivugwamo. Nanone inyandiko mvugo yakozwe na Notaire tariki ya 06/02/2000 imbere y'abagabo, umwanditsi, uwaguze n'uhagarariye FINABANK, ikomekwa kuri "acted'adjudication", igaragaza ko iyo nzu ariyo yagurishijwe, bityo kuba muri "acte d'adjudication" hagaragaramo ko mu kugurisha inzu hashingiwe ku cyemezo n° 478/99 cy'Urukiko rwa Mbere rw'Iremezo rwa Kigali, ni ikosa ry'imyandikire, ryashoboraga gukosorwa bisabwe n'ubifitemo inyungu wese, cyane cyane ko ibindi biyivugwamo ari ibijyanye n'icyemezo n°501/99.

[41] Urukiko rurasanga kandi kuba icyemezo n°501/99 ntacyo Nshimyumuremyi akinenga nk'uko abamuburanira babivuga, nta mpamvu yatuma cyamunara yagishingiyeho iseswa.

[42] Ku byerekeye izindi nenge Nshimyumuremyi avuga ko zakozwe na Notaire wateje cyamunara, urukiko rurasanga nazo zigamije kugaragaza ko cyamunara itashingiye ku cyemezo n° 501/99, ahubwo yashingiyeho ku cyemezo kitabayeho, ariko ibyo bikaba nta shingiro bifite kuko harebwe uruherekane rw'ibyakozwe muri iyo cyamunara, bigaragara ko byose byari bishingiye ku cyemez n°501/99 cyafashwe n'urukiko harangizwa urubanza RC 30039/99 rwavuzwe haruguru.

2. Ku byerekeranye n'uko FINA BANK yaba yaragurishije mu buryo bw'uburiganya inzu itari iyayo.

[43] Ababuranira Nshimyumuremyi bavuga ko mu rubanza rwajuririwe bagaragaje ko igurisha ry'ikintu cy'undi nta gaciro rigira hakurikijwe ibiteganywa n'ingingo ya 276 y'Itegeko ryo kuwa 30/07/1888 rishyiraho urwunge rw'amategeko y'imbonezamubano, ibyerekeye imirimo nshinganwa cyangwa amasezerano, ariko urukiko ntirwasobanura niba hari isano iri hagati ya FINA BANK n'inzu iri mu kibanza n°345 i Nyarugenge ya Nshimyumuremyi. Asobanura ko tariki ya 07/01/1994 hasinywa amasezerano y'inguzanyo n'ingwate FINA BANK yemeye gusa inzu zatanzweho ingwate, bivuze rero ko inzu iburanwa yayigurishije nta burenganzira iyifiteho mu buryo bw'uburiganya (mauvaise foi) kuko ariyo yayijishije urukiko isaba cyamunara cyayo izi neza ko atari ingwate yayo. Igitangaje rero ngo ni uko urukiko ntacyo rwabivuzeho, urubanza rukabarugaragaza ko habayeho kwitiranya "la caution réelle" et "la caution personnelle".

[44] Me Karangwa uburanira FINA BANK avuga ko ababuranira Nshimyumuremyi birengagiza ko amasezerano y'inguzanyo yasheshwe, hagacibwa urubanza RC 30039/99 hatsinzwemo abantu batatu mu buryo bungana, aribo Ndagijimana, Nshimyumuremyi na Murekatete, iyo nyandikompesha rero akaba ariyo sano ihari kuko urubanza rwagombaga kurangizwa, FINA BANK yatsinze ikishyurwa n'abatsinzwe, ubwishyu bukava mu mitungo yabo.

UKO URUKIKO RUBIBONA

[45] Urukiko rurasanga inzu iri mu kibanza n°345 i Nyarugenge ya Nshimyumuremyi yagurishijwe iburanwa muri uru rubanza yaratejwe cyamunara hashingiwe ku cyemezo cy'urukiko nk'uko byasobanuwe haruguru, bisabwe na FINA BANK igira ngo harangizwe urubanza RC 30039/99 ibone ubwishyu, kandi icyo cyemezo ntacyo akinenga. Ntabwo rero ari FINABANK yibwirije ngo iguritse iyo nzu, ku buryo yaregwa ko yagurishije ikintu cy'undi muntu, kandi yaragurishijwe bitangiwe uruhushya n'urukiko, bityo rero ibyo abamuburanira bavuga ko inzu yagurishijwe itari ingwate yayo, bagombye kuba barabiregeye urukiko rwafashe icyemezo n°501/99 cyategetse ko itezwa cyamunara nk'uko biteganywa n'ingingo ya 363 y'Itegeko ryo kuwa 15/07/1964 ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi ryakurikizwaga icyo cyemezo gifatwa¹, basaba ko ivanwa mu nzu zigomba kugurishwa. Kuba rero batarabikoze, ntibabisabira muri uru rubanza kuko icyo cyemezo atari cyo cyaregawe.

3. Ku byerekeranye n'imihango y' ifatira ry'inzu Nshimyumuremyi avuga ko itubahirije amategeko

[46] Ababuranira Nshimyumuremyi bavuga ko urukiko rubanza rwasobanuriwe ko ingingo za 321, 322 na 345 na 346 z'Itegeko ryo kuwa 15/07/1964 ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi ryakurikizwaga cyamunara iba zitubahirijwe kuko muri dosiye ya cyamunara nta nyandiko n'imwe ijyanye nacyo igaragaramo, maze mu gusubiza kuri icyo kibazo urukiko ruvuga ko mbere y'uko icyemezo n° 501/99 gifatwa, Urukiko rwa Mbere rw'Iremezo rwabanje gusuzuma ibigize dosiye byose, kandi atari byo kuko Notaire wagurishije inzu yivugira mu nyandiko ya cyamunara ko yayigurishije ashingiye ku cyemezo n°478/99 kitabayeho (imaginaire), ko kandi iyo urukiko ruza gusuzuma dosiye koko rwari kubona ko mu rubanza RC 30039/99 FINA BANK yasabaga ko rurangizwa, inzu n° 345 i Nyarugenge itarimo, kuko itari ingwate yayo.

[47] Bavuga na none ko urukiko rwavuze ko Nshimyumuremyi ariwe wagombaga gutanga ikimenyetso cy'uko nta nyandiko zishyuzwa zabayeho (commandements), mu gihe yari abyukije icyo kibazo, ngo kandi yaramenyeshyewe ko inzu ye yagurishijwe abibwiwe na BCR igihe yabazaga iby'umwenda we. Basanga ibimenyetso bikwiye gusabwa FINA Bank yasabye guteza inzu cyamunara.

[48] Me Karangwa uburanira FINA BANK avuga ko abona imihango yose isabwa n'itegeko yarubahirijwe mu guteza cyamunara inzu ya Nshimyumuremyi.

[49] Me Baragondoza uburanira Mutabazi avuga ko ingingo z'amategeko ababuranira Nshimyumuremyi baburanisha muri uru rubanza bazitabaje impitagihe kuko bagombye kuba barazifashishije mu gihe imihango ya cyamunara yakorwaga nk'uko byateganywaga n'ingingo za 363 na 369 z'Itegeko ryo kuwa 15/07/1964 ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi ryakurikizwaga icyo gihe, maze bakaregera urukiko cyangwa umutegetsu watanze uruhushya rwo gufatira inzu.

[50] Me Sebazungu uburanira Leta avuga ko Urukiko rwa Mbere rw'Iremezo rwa Kigali rwafashe icyemezo cyo guteza cyamunara ari uko rumaze gusuzuma ko dosiye yuzuye, ko

¹ Iyo ngingo igira iti: 'ibiruhanije byose byerekeya amategeko y'igwatira bibaye mu gihe cy'igwatira bikemurwa n'ibwirizwa rya juji iyo bitagombye gukimurwa n'urubanza.'

kandi icyasabiwe guteshwa agaciro atari icyo cyemezo, ko ndetse kuba nyiri umutungo utezwa cyamunara atari ahari ubwabyo bitatesha cyamunara agaciro.

UKO URUKIKO RUBIBONA

[51] Urukiko rurasanga ingingo za 321 na 322 z'Itegeko ryo kuwa 15/07/1964 ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi ryakurikizwaga ababuranira Nshimyumuremyi bashingiraho zirebana n'ifatira ry'ibintu byimukanwa, zikaba zitashingiraho muri urubanza.

[52] Ku byerekeranye n'itegeko ryishyuzwa Nshimyumuremyi cyangwa rishyizwe aho atuye cyangwa yahisemo ko hitwa iwe (commandement à personne) kimwe n'ibyagombaga kuba birikubiyemo, nk'ukobiteganywamungingo za 345 na 346 z'Itegeko ryo kuwa 15/07/1964 rimazekuvugwa, abamuburanirabavuga ko ritagaragara muri dosiye ya cyamunara, ngo FINA BANK ikaba ariyo yagombaga kurigaragaza, urukiko rurasanga bene iyi nyandiko ikorwa n'umuhesha w'inkiko mbere y'uko urukiko rufata icyemezo gitegeka ko habaho cyamunara. Mu gihe rero ababuranira Nshimyumuremyi bavuga ko icyemezo n° 501/99 cyategetse ko inzu igurishwa cyamunara ntacyo akinenga kandi ari cyo cyashingiweho inzu ye igurishwa mu cyamunara, akaba atararegeye urukiko rwagifashe ko kivaho kubera ko hari imihango itarubahirijwe nk'uko ingingo zavuzwe haruguru zabiteganyaga, ntaho muri uru rubanza yahera asaba ko cyamunara yashingiye kuri icyo cyemezo iseswa.

4. Ku kibazo cyo kumenya niba Nshimyumuremyi yasubizwa inzu cyangwa agaciro kayon' amafaranga y'ubukode bwayo.

[53] Ababuranira Nshimyumuremyi bavuga ko agomba gusubizwa inzu yeyagurishijwe mu cyamunara ikava mu maboko y'Abazungura ba Rubangura wayiguze, kubera ko Notaire wa Leta yayigurishije mu buryo budakurikije amategeko, itari ifiteaho ihuriye n'urubanza RC 30039/99 rwarangizwaga kuko itari mu ngwate za FINA BANK, bitashoboka agahabwa 600.000.000 Frw y'agaciro kayo cyangwa se akagenwa n'umuhanga bibaye ngombwa.

[54] Me Rwagatare uburanira abazungura ba Rubangura avuga ko batagomba gusubiza inzu yaguzwe na Rubangura mu cyamunara kumugaragararo mu buryo bukurikije amategeko, ko kandi nta kosa yakoze ryatuma baryozwa indishyi.

[55] Urukiko rurasanga nk'uko byagaragajwe haruguru, cyamunara yabaye y'inzu ya Nshimyumuremyi, ikagurwa na Rubangura nta mpamvu igomba guseswa, bityo iyo nzu ikaba igomba kuguma mu maboko y'abazungura be.

5. Ishingiro ry' indishyi zisabwa na Nshimyumuremyi

Indishyi zisabwa FINA BANK

[56] Ababuranira Nshimyumuremyi basaba ko FINA BANK imusubiza amafaranga y'ubukode bw'inzu ye yateje cyamunara abazwe guhera tariki ya 06/02/2000 umunsi wa cyamunara kugeza umunsi w'isomwa ry'urubanza ahwanye na 234.680.000 Frw avugwa mu myanzuro hyongereyeho ayishyujwe nyuma y'uko ikorwa, kuko ariyo yakoze ibishoboka byose mu buriganya kugirango inzu igurishwe kandi atari ingwate yahawe, aho kugurisha inzu yahawe ingwate, ikaba yarabikoreye kumwambura inzu ye.

[57] Me Karangwa uburanira FINA BANK avuga ko nta ndishyi na nkeya ikwiye gucibwa kuko nta kosa yakoze kuko yarangije urubanza yishyura umwenda wayo, ko itanatanga amafaranga y'ubukode iyo nzu yinjije kugeza ubu kuko itayibyaza umusaruro.

[58] Urukiko rurasanga indishyiz'amafaranga y'ubukode bw'inzu zisabwa FINA BANK itagombakuzitanga kuko yasabye urukiko icyemezo cyo kugurisha mu cyamunara inzu ya Nshimyumuremyi harangizwa urubanza yari yatsindiyemo umwenda wagombaga kwishyurwa ikagihabwa, nk'uko kandi byakomeje kuvugwa, icyo cyemezo akaba atari cyo cyaregewe.

Indishyi zisabwa Abazungura ba Rubangura

[59] Ababuranira Nshimyumuremyi na none bavuga ko Abazungura ba Rubangura Védaste bagomba kumuha indishyi z'akababaro zingana na 25.000.000 Frw kuko Rubangura yaguze inzu yarangiza akishyura umwenda wa sosiyete ya Nshimyumuremyi yitwa SOCOFAG muri BCR, kugirango abone ibyangombwa byayo kandi atari ingwate ya FINA BANK, akaba rero ayitunze mu buryo bw'uburiganya.

[60] Me Rwagatare uburanira Abazungura ba Rubangura avuga ko Rubangura atariwe wishyuye BCR umwenda wa Nshimyumuremyi kugirango abone ibyangombwa by'inzu, ahubwo BCR ariyo yafatishije mu rukiko amafaranga 1.823.961 Frw Nshimyumuremyi yari ayibereyemo igasaba ko avanwa ku mafaranga ya cyamunara nk'uko bigaragazwa n'icyemezo n°292/ND.E./2000 cyo kuwa 28/07/2000 gifatira by'agateganyo cya Perezida w'Urukiko rwa Mbere rw'Iremezo rwa Kigali. Yongeraho ko kandi uwaguze mu cyamunara hari uburyo itegeko riteganywa abona ibyangombwa, akaba rero yarabihawe n'umwanditsi w'inyandiko mpamo z'ubutaka (conservateur des titres fonciers) mu ibaruwa yamwandikiye tariki ya 17/07/2003, akaba rero atarayikuye muri BCR nk'uko ababuranira Nshimyumuremyi babivugaga.

[61] Urukiko rurasanga nta kimenyetso Nshimyumuremyi atanga kivuguruza icyatanzwe n'abazungura ba Rubangura cyavuzwe haruguru kigaragaza ko koko Rubangura ariwe wishyuye umwenda wa sosiyete SOCOFAG ya Nshimyumuremyi yari ifitiye BCR, agamije kubona ibyangombwa by'inzu muburyo bw'uburiganya.

Indishyi zisabwa BCR

[62] Ababuranira Nshimyumuremyi basaba ko kandi BCR itanga 25.000.000Frw y'indishyi kuko yatanze ibyangombwa by'inzu yari ifite itabanje gushishoza kandi ariyo yari ifite ubugwate kuri yonzu.

[63] Me Batware uburanira BCR avuga ko yamenye iby'igurishwa ry'inzu cyamunara yararangiye, ko rero nta kosa yakoze, icyabaye akaba ari uko BCR ariyo yagombaga kwishyurwa mbere kuko ariyo yari ifite ubugwate bwa mbere ku nzu, noneho Rubangura agaragaza ko ariwe watsindiye cyamunara asaba ko yahabwa ibyangombwa byayo. Avugana none ko indishyi Nshimyumuremyi asaba BCR ari ikirego gishya itakwireguraho bwa mbere mu bujirire.

[64] Urukiko rurasanga indishyi BCR isabwa atari ubwambere iziregwa kuko zikubiye mu kirego cyatanzwe mu rukiko rubanza, gusa zikaba zitari zaragenwe kuko ikirego cya Nshimyumuremyi nta shingiro cyagize. Urukiko rurasanga ariko nta mpamvu BCR yagombaga kwimana icyangombwa cy'inzu (certificat d'enregistrement) yatejwe cyamunara mugihe yariyishyurwe umwenda wayo, bitoyikaba itagomba kubitangira indishyi.

Indishyi zisabwa Leta y'u Rwanda na Mutabazi Etienne.

[65] Ababuranira Nshimyumuremyi basaba na none ko Leta y'u Rwanda umukoresha wa Notaire Mutabazi nawe, bombi bafatanyaga gutanga 25.000.000 Frw y'indishyi kubera ko yateshutse ku nshingano ze akagurisha inzu itari ingwate ya FINA BANK ashingiyeye ku cyemezo cyoguteza cyamunara yihimbiye, kitabayeho.

[66] Me Sebazungu uburanira Leta avuga ko nta ndishyi Leta igombagutanga kuko cyamunara yubahirije amategeko kuko icyemezo cyo guteza cyamunara n°501/99 cyatanzwe bisabwemo na FINA BANK, Notaire agiharaho ateza inzu cyamunara, Leta ikaba itabazwa ikosa ryabayemu kwandikanyandikoye cyamunara (acted'adjudication).

[67] Me Baragondoza avuga ko indishyi Mutabazi uburanira asabwaga nta shingiro ryazo kuko cyamunarayakozwe mu buryo bukurikije amategeko.

[68] Urukiko rurasanga Notaire yarakoresheje cyamunara ashingiyeye ku cyemezo cy'urukiko kandi, nk'uko byasobanurwaga n'urukiko rubanza, nta bubasha yari afite bwo kugihindura, icyo yasabwaga gukora cyo kurangiza urubanza Nshimyumuremyi yatsindiwemo na BACAR umwenda yishingiyeye akaba yaragikoze nk'uko icyemezo cy'urukiko cyari cyabitegetse, akaba rero nta ndishyi agomba kumuha, kimwe na Leta yari umukoresha we.

6. Indishyi zisabwaga n'abaregwa

[69] Me Rwagatare uburanira Abazungura ba Rubangura asaba ko amafaranga 300.000 Frw yaciye Nshimyumuremyi y'ikurikirana rubanza n'igihembo cya avoka yakwiyongereye andi 2.000.000, agatanga na 15.000.000 Frw kubera ko yatanze ikirego abuza Rubangura uburenganzira bwo gukoresha inzu yabo uko babishakaga na 15.000.000 yo kumusebya.

[70] Me Karangwa uburanira FINA BANK avuga ko Nshimyumuremyi agomba kuyiha 30.000.000 Frw kuko yayishoye mu manza kumaherere, hakubiyemo n'igihembo cya avoka.

[71] Me Batware uburanira BCR nawe asaba ko Nshimyumuremyi yayihaye 500.000 Frw yo gukururwa mu bujuzi nta mpamvu no gutegura urubanza no kuruburana, yiyongereye kuri 300.000 yaciye mu rukiko rubanza, yose hamwe akaba 8.000.000 Frw.

[72] Me Sebazungu we asanga indishyi za 300.000 Frw Nshimyumuremyi yari yaciye mbere zo guha Leta y'u Rwanda ari zo zikwiye kugumaho.

[73] Me baragondoza avuga ko Nshimyumuremyi akwiye guha Mutabazi Etienne indishyi zingana na 500.000 Frw y'igihembo cya avoka n'ikurikiranarubanza kuko yashoye mumanza nta mpamvu.

[74] Mu gusubiza ku ndishyi zisabwaga n'abaregwa, ababuranira Nshimyumuremyi bavugaga ko ntandishyi agomba kubaha kubera amakosa buri wese yamukoreye, bigatuma inzu ye itezwa cyamunara, agasaba ahubwo ko bakwiye gufatanyaga kumuha amafaranga y'ikurikirana rubanza n'igihembo cya avoka ahwanye na 10% y'indishyi zose zisabwaga.

UKO URUKIKO RUBIBONA

[75] Urukiko rurasanga indishyi za 30.000.000 Frw zisabwaga n'abazungura ba Rubangura ari ubwa mbere bazisabye mu bujuzi bakaba batazibwaga, kuko bibuzwaga n'ingingo ya

168CPCCSA, ivuga ko nta birego bishya bitangirwa mu bujurire. Ku birebana n'amafaranga y'ukurikirana rubanza n'igihembo cya avoka, urukiko rurasanga bagenerwa mu bushishozi 300.000 Frw yiyongera kuri 300.000 bagenewe mu rukiko rubanza kuko ayo basaba ari menshi, yose hamwe akaba 600.000Frw ku nzego zombi.

[76] Kubyerekeye indishyi FINA BANK isaba Nshimyumuremyi za 30.000.000 Frw kuko yayishoye mu manza ku maherere, ndetse n'igihembo cya avoka, urukiko rurasanga nta kirugaragariza ko yareze FINA BANK agamije kuyishora mu manza kumaherere, mu gihe yumvaga adasobanukiwe n'uburyo inzu ye yagurishijwe, bityo akaba nta indishyi agomba kubitangira, ahubwo agomba kuyiha amafaranga yo kuba yarashatse avoka uyiburanira kuko ariyo afite ishingiro, mu bushishozi ikaba igenewe 300.000 Frw yiyongera kuri 300.000 Frw yari yagenewe n'urukiko rubanza, yose hamwe akaba 600.000Frw.

[77] Urukikorurasanga ku birebana n'indishyi BCR isaba Nshimyumuremyi zingana na 500.000 Frw zo gukururwa mu bujurire nta mpamvu, gutegura urubanza no kuruburana, bwari uburenganzira bwe bwo kujurira mu gihe atishimiye imikirize y'urubanza, ariko kandi kubera ko BCR nayo yashatse uyiburanira, yagenerwa mubushishozi 300.000 Frw y'igihembo cya avoka yiyongera kuri 300.000 yagenewe mu rukiko rubanza, yose hamwe akaba 600.000Frw.

[78] Ku birebana n'ibyo Leta y'u Rwanda isaba ko hagumaho indishyi za 300.000 Frw y'ukurikiranarubanza yagenwe mu rukiko rubanza, urukiko rurasanga byakubahirizwa, naho izisabwa na Mutabazi Etienne akaba ntayo agomba guhabwa kuko atashowe mu rubanza na Nshimyumuremyi, ahubwo yagobokeshejwe mu rubanza na Leta y'u Rwanda.

[79] Ku byerekeranye n'amafaranga y'ukurikiranarubanza Nshimyumuremyi asaba abaregwa, Urukiko rurasanga atayahabwa kuko ubujurire bwe nta shingiro bufite.

III. ICYEMEZO CY' URUKIKO

[80] Rwemeje ko ubujurire bwa Nshimyumuremyi Ephron nta shingiro bufite.

[81] Rumutegetse kwishyura FINABANK, BCR n'Abazungura ba Rubangura Védaste 600.000Frw y'ukurikiranarubanza n'igihembo cya avoka buriwese, no kwishyura Leta y'u Rwanda 300.000Frw y'ukurikiranarubanza nk'uko yagenwe n'Urukiko Rukuru, yose hamwe akaba 2.100.000Frw.

[82] Rutegetse Nshimyumuremyi Ephron kwishyura amafaranga 82.900 y'amagarama y'urubanza, atayatanga mu gihecy'iminsi 8, ayo mafaranga agakurwa mu byo ku ngufu za Leta.