HARERIMANA N'ABANDI v. SEBUKAYIRE

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0018/13/CS (Kayitesi Z., P.J., Mugenzi na Munyangeri N., J.) 24 Ukuboza 2014]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Kugobokesha umuburanyi mu rubanza – Kugobokesha Umuburanyi bwa mbere mu bujurire kandi ashobora kugira ibyo acibwa ntibyemewe – ibitararegewe mu rwego rwa mbere ntibyasuzumwa mu rwego rw'ubujurire – Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 118.

Amategeko agenga ubutaka – Uburyo bwo kubona ubutaka no kubwiyandikishaho – Ubudahungabanywa bw'uburenganzira bwanditse mu cyangombwa cy'ubutaka – Uburenganzira ku butaka bushingira ku kuba nyirabwo yarabubonye ku bw'umuco, cyangwa se yarabuhawe n'urwego rubifitiye ububasha, cyangwa se yarabuguze – Ibyangombwa by'ubutaka bishobora guteshwa agaciro – Uwatunze ubutaka bw'abandi nta buryarya arabusubiza ariko akishyurwa agaciro k'ibyo yabushyizeho – Itegeko Ngenga N° 08/2005 ryo kuwa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda, ingingo ya 5 – Iteka rya Perezida N° 97/01 ryo kuwa 18/06/2014 rigena imikorere n'ububasha by'Umubitsi w'Impapuro Mpamo, ingingo ya 6(1°) n'iya 10(5°) – Itegeko N° 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 5, iya 20 n'iya 73.

Amategeko agenga amasezerano cyangwa imirimo nshinganwa – Indishyi – Gushorwa mu manza – Abarega bakwiye guhabwa indishyi zo gushorwa mu manza n'igihembo cy'avoka kuko byatumye abarega bagana inkiko kandi bagira n'ibyo batakaza – Indishyi z'akababaro abarega basaba ntibakwiye kuzihabwa kuberako uregwa yafashe ikibanza kiburanwa kandi acyubakamo nta buryarya – Indishyi n'igihembo cy'Avoka uregwa asaba ntazihabwa mu gihe ntacyo agaragaza yangirijwe kandi ari we nyirabayazana w'imanza.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, abagize umuryango wa Harerimana Gaspard na Mukangwije Thérèse bahagarariwe na Harerimana Emmanuel barega sebukayire kubohoza no kwibaruzaho ikibanza cy'uwo muryangowari waraguze na Karyango Sévérien muri 1988, nyuma y'uko mu mwaka wa 1994 Harerimana Gaspard n'umugore we bahungiye ntihagire umenya irengero ryabo kandi n'abana basize bakaba bari bakiri bato. Uru Rukiko Rwisumbuye rwasanze icyo kibanza ari icya Harerimana Gaspard, rutegeka Sebukayire kugisubiza abana ba Harerimana Gaspard no kwishyura indishyi zitandukanye.

Sebukayire yajuririye Urukiko Rukuru avuga ko icyo kibanza agifitiye ibyangombwa yahawe na Leta, kandi ko indishyi yaciwe zakagombye gucibwa Leta kuko ariyo yamuhaye ibyangombwa.

Urukiko Rukuru rwemeje ko urubanza rwagombaga gutangirira mu Rukiko rw'Ibanze kuko imanza zerekeranye n'amasambu, amatungo n'izungura kuri ibyo bintu zitangirira mu nkiko z'ibanzemaze rutesha agaciro urubanza rwaciwe n'Urukiko Rwisumbuye kandi rutegeka ko ibintu bisubiye uko byari bimeze urubanza rutarabaho.

Harerimana Emmanuel yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rwaciye urubanza ku kitararegewe ngo kuko nta n'umwe mu baburanyi wari wanenze ububasha bw'Urukiko Rwisumbuye mu iburanisha, kandi ko ikibazo cy'iburabubasha kitari cyajuririwe. Yongeraho ko icyajuririwe ari nacyo cyaregewe mu ikubitiro mu Rukiko Rwisumbuye ari ikibanza atari isambu; agasaba Urukiko rw'Ikirenga gukosora amakosa yakozwe n'Urukiko Rukuru.

Mu iburanisha Sebukayire yatanze inzitizi yo kutakira ubujurire kuko bwatanzwe nyuma y'igihe cy'iminsi 5 iteganywa n'ingingo ya 90 y'Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ku byerekeye ibyemezo by'iburabubasha, n'iyiburabubasha ry'Urukiko rw'Ikirenga ngo kuko ikiburanwa kidafite agaciro kageze kuri 50.000.000 Frw gateganywa n'ingingo ya 28, 7º y'Itegeko Ngenga nº 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga.

Yatanze kandi inzitizi ijyanye n'uko Harerimana Emmanuel adafite ububasha (qualité) bwo guhagararira ababyeyi be kuko nta cyemezo kigaragaza ko bazimiye cyangwa bapfuye afite, ndetse ko n'urubanza Harerimana avuga ko rutanga ubwo bubasha rutahabwa agaciro kandi yibutsa ko yari yaratanze iyi nzitizi mu Rukiko Rukuru ariko ntisuzumwe. Uhagarariye Sebukayire yasabye na none Urukiko ko Leta yagobokeshwa.

Incamake y'icyemezo: 1. Kugobokesha Umuburanyi bwa mbere mu bujurire kandi ashobora kugira ibyo acibwa binyuranije n'ibiteganywa n'ingingo ya 118 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, bityo iburanisha rigomba gukomeza ku baburanyi bari mu rubanza.

2. Kuba Sebukayire yarahawe icyemezo cy'ubutaka atagaragarije abagitanga aho yakomoye ubwo butaka yita ubwe, bigaragaza ko yakibonye mu buryo bw'uburyarya kuko bitanyuze muri imwe muri nzira ziteganywa n'ingingo ya 5 y'Itegeko Ngenga Nº 08/2005 ryo kuwa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda ryakoreshwaga Sebukayire abona icyangombwa cy'ikibanza kiburanwa ndetse n'ingingo ya 5 y'Itegeko Nº 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda zivuga ko : "uburenganzira ku butaka bushingira ku kuba nyirabwo yarabubonye ku bw'umuco, cyangwa se yarabuhawe n'urwego rubifitiye ububasha, cyangwa se yarabuguze"; n'ubwo ubutaka ubwabwo yabufashe ntaburyarya kubera ko yabumaranye imyaka irenga icumi ntawuragaragaza ko ari ubwe.

3. Ingingo ya 23 y'Iteka rya Minisitiri Nº 002/2008 ryo kuwa 01/04/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa iteganya ubudahungabanywa bw'uburenganzira bwanditse ku cyemezo cy'ubutaka ntishobora gukurikizwa kubera ko inyuranye n'interuro ya 10 ndetse n'ingingo ya 20 y'Itegeko Nº 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda ziteganya ko ibyangombwa by'ubutaka bishobora guteshwa agaciro, kandi uyu murongo unashimangirwa n'ingingo ya 6, 1º ndetse n'iya 10, 5º z'Iteka rya Perezida Nº 97/01 ryo kuwa 18/06/2014 rigena imikorere n'ububasha by'Umubitsi w'Impapuro Mpamo kandi n'ingingo ya 73 y'Itegeko Nº 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda ivuga ko amategeko, amateka n'amabwiriza yashyiraga mu bikorwa Itegeko Ngenga Nº 08/2005 ryo kuwa 14/07/2005 ryavuzwe haruguru akomeza kubahirizwa mu ngingo zayo zose zitanyuranije naryo gusa.

4. Ikibanza kiburanywa ni icya Harerimana Gaspard na Mukangwije Thérèse, bityo icyemezo cy'ubukode burambye Nº 0672/GAS/KAC cy'ikibanza kiburanwa cyanditswe kuri Sebukayire Tharcisse na Umutoni Sarah kikaba kigomba guteshwa agaciro, Umubitsi w'Inyandikompamo akandika icyo kibanza kuri Harerimana Gaspard na Mukangwije Thérèse.

5. Sebukayire ntagomba gusenya inyubako ze ziri mu kibanza Nº 0672/GAS/KAC kiburanwa kuko yafashe ubutaka kandi akabwubakaho ntaburyarya, bityo izo zikaba zikwiye kugumanwa na Harerimana Gaspard na Mukangwije Thérèse, ariko abashinzwe kubacungira umutungo bakazitangira indishyi zingana na miliyoni 33.589.068 frw hashingiwe ku gaciro kemejwe n'igenagaciro ryakoreshejwe na Harerimana Emmanuel kuko Sebukayire ntacyo yagaragaje kirivuguruza.

6. Harerimana Emmanuel n'abo bavukana bakwiye guhabwa indishyi zingana na 1.500.000Frw, zikubiyemo indishyi zo gushorwa mu manza n'igihembo cy'avoka kuko kuba Sebukayire yarahamagawe mu nzego z'ibanze ngo zibakemurire ikibazo akanga kwitaba, byatumye Harerimana agana inkiko kandi agira n'ibyo atakaza. Icyakora ntibakwiye guhabwa indishyi z'akababaro kubera ko Sebukayire yafashe ikibanza kiburanwa kandi acyubakamo nta buryarya.

7. Ku byerekeye ishyamba ryatemwe, ibyuzi by'amafi n'inzu y'ububiko yaba yarasenywe, urukiko rurasanga bitarigeze biregerwa ngo hagagaragazwe n'agaciro kabyo bityo bikaba bitasuzumwa muri uru rubanza.

8. Sebukayire ntakwiye guhabwa indishyi asaba kuko ntacyo agaragaza yangirijwe ku buryo yahabwa indishyi z'akababaro, ndetse n'ay'igihembo cya avoka akaba atayahabwa kuko ariwe nyirabayazana w'izi manza.

Ubujurire bufite ishingiro.
Urubanza rwajuririwe ruhindutse kuri byose.
Amagarama y'urubanza aherereye ku regwa.

Amategeko yashingiweho:

Itegeko Nº 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 5, 20 n'iya 73 n'interuro ya 10.

Itegeko n° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 118.

Iteka rya Perezida Nº 97/01 ryo kuwa 18/06/2014 rigena imikorere n'ububasha by'Umubitsi w'Impapuro Mpamo, ingingo ya 6, (1º) n'iya 10, (5º).

Itegeko Ngenga Nº 08/2005 ryo kuwa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda, ingingo ya 5.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Harerimana Emmanuel arega Sebukayire kubohoza ikibanza Se Harerimana Gaspard ngo yaguze na Karyango Sévérien muri 1988, nyuma ya 1994 Sebukayire aza kucyibaruzaho ubwo Harerimana Gaspard n'umugore we bari barahunze ntihagire umenya irengero ryabo ku buryo nanubu nta muntu uzi niba bakiriho cyangwa barapfuye, kandi n'abana basize bakaba bari bakiri bato. Urukiko Rwisumbuye rwasanze icyo kibanza ari icya Harerimana Gaspard, rutegeka Sebukayire kugisubiza abana ba Harerimana Gaspard no kwishyura indishyi zitandukanye.

[2] Sebukayire yajuririye Urukiko Rukuru avuga ko Urukiko rwemeje ko yabohoje ikibanza nyamara agifitiye ibyangombwa yahawe na Leta, kandi ko yaciwe indishyi zidafite ishingiro, zakagombye gucibwa Leta kuko ariyo yamuhaye ibyangombwa.

[3] Urukiko Rukuru rumaze kuvuga ko Harelimana yareze Sebukayire mu Rukiko Rwisumbuye bapfa isambu (Cote 11), rushingiye kandi ku kuba Harerimana na Me Mulinzi umuburanira batarabashije kurutandukanyiriza ikibanza n'isambu biri mu mujyi, rwemeje ko urubanza rwagombaga gutangirira mu Rukiko rw'Ibanze, hashingiwe ku ngingo ya 67, agace ka 2º y'Itegeko-

Ngenga Nº 51/2008 ryo kuwa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko, ivuga ko : "imanza zerekeranye n'amasambu, amatungo n'izungura kuri ibyo bintu zitangirira mu nkiko z'ibanze", rutesha agaciro urubanza rwaciwe n'Urukiko Rwisumbuye kandi rutegeka ko ibintu bisubiye uko byari bimeze urubanza rutarabaho.

[4] Harerimana Emmanuel yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rwatandukiriye rugaca urubanza ku kitararegewe ngo kuko nta n'umwe mu baburanyi wari wanenze ububasha bw'Urukiko Rwisumbuye mu iburanisha, kandi ko ikibazo cy'iburabubasha kitari cyajuririwe. Ubujurire bwe abushingira na none ku kuba umucamanza w'Urukiko Rukuru yarahinduye ikirego yirengagiza ko icyajuririwe ari nacyo cyaregewe mu ikubitiro mu Rukiko Rwisumbuye ari ikibanza atari isambu; agasaba uru Rukiko gukosora amakosa yakozwe n'Urukiko Rukuru.

[5] Iburanisha ryabaye mu ruhame kuwa 07/01/2014, kuwa 11/02/2014 no kuwa 20/05/2014, Sebukayire Tharcisse yunganiwe na Me Butare Emmanuel naho Harerimana Emmanuel yunganiwe na Me Mulinzi Jean de Dieu.

[6] Igihe cyiburanisha Me Butare Emmanuel uhagarariye Sebukayire yatanze inzitizi zitandukanye, iyo kutakira ubujurire kuko bwatanzwe bukererewe, kubera ko buturubahirije igihe cy'iminsi 5 giteganywa n'ingingo ya 90 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ku byerekeye ibyemezo by'iburabubasha, ijyanye n'iburabubasha ry'Urukiko rw'Ikirenga ngo kuko ikiburanwa kidafite agaciro kageze kuri 50.000.000 Frw gateganywa n'ingingo ya 28, 7º y'Itegeko Ngenga Nº 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga. Mu rubanza rubanziriza urundi Nº RCAA 0018/13/CS rwaciwe kuwa 21/03/2014, Urukiko rw'Ikirenga rwafashe icyemezo kuri izo nzitizi rwemeza ko nta shingiro zifite.

[7] Indi nzitizi uhagarariye Sebukayire yatanze ni ijyanye n'uko Harerimana Emmanuel adafite ububasha (qualité) bwo guhagararira ababyeyi be mu gihe nta cyemezo afite kigaragaza ko bazimiye cyangwa bapfuye, ndetse ko n'urubanza Harerimana avuga ko rutanga ubwo bubasha rutahabwa agaciro, yibutsa ko yari yaratanze iyi nzitizi mu Rukiko Rukuru ariko ntisuzumwe.

[8] Mu rubanza rubanziriza urundi Nº RCAA 0018/13/CS rwaciwe kuwa 20/06/2014, Urukiko rushingiye ku rubanza RC 0252/14/TB/KCY rwaciwe n'Urukiko rw'Ibanze rwa Kacyiru kuwa 06/03/2014 rwemereye Harerimana Emmanuel gucunga imitungo yasizwe n'ababyeyi be Harerimana Gaspard na Mukangwije Thérèse bazimiye guhera muri 1994, rwemeje ko impamvu y'iburabubasha yatumaga Harerimana ataba umuburanyi kuva yatangira kugana inkiko zavanweho n'urwo rubanza rw'Urukiko rw'Ibanze rwa Kacyiru, itakiriho, rwemeza ko inzitizi y'iburabubasha nta shingiro ifite, rutegeka ko iburanisha rizakomeza kuwa 15/07/2014.

[9] Uhagarariye Sebukayire yasabye na none Urukiko ko Leta yagobokeshwa, ariko Urukiko rusanga kugobokesha Leta bwa mbere mu bujurire kandi ishobora kugira ibyo icibwa binyuranije n'ibiteganywa n'ingingo ya 118 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, rutegeka ko iburanisha rikomeza ku baburanyi bari mu rubanza.

[10] Mbere yo guca urubanza, Urukiko rwasanze hakwiye gukorwa iperereza mu Kagari ka Kamutwa ikibanza kirimo, no mu Kigo cy'Igihugu gishinzwe Umutungo Kamere, ndetse naho ikiburanywa kiri, kugirango rubone amakuru ahagije ku rubanza, rwemeza ko iperereza rizakorwa ababuranyi badahari hashingiwe ku ngingo ya 100 y'Itegeko Nº 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iryo perereza rikorwa kuwa 01/10/2014, raporo yaryo igezwa ku baburanyi mu iburanisha ryo kuwa 06/10/2014 bagira icyo bayivugaho.

II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURA RYABYO

II.1. Ibyerekeye kumenya nyiri ikibanza kiburanwa.

[11] Me Mulinzi Jean de Dieu uhagarariye Harerimana Emmanuel avuga ko ikibanza Sebukayire yiyitirira, ari icya Harerimana Gaspard Se w'uwo yunganira, ibi akabishingira ku masezerano y'ubugure bwacyo Harerimana Gaspard yakoranye na Karyango muri 1988 (Cote 50), ku buhamya bw'umugore wa Gisagara, muramu wa Karyango, n'ubuhamya bwa Mukakimenyi, umugore wa Karyango buri muri raporo y'Ubuyobozi bw'Akagali ka Kamutwa aho yemeza ko ikibanza cyaguzwe na Harerimana Gaspard. Avuga ko nubwo ayo amasezerano y'ubugure ari kopi yafatwa nka "commencement de preuve par écrit" agahabwa agaciro kuko ariyo yashoboye kuboneka.

[12] Uhagarariye Harerimana avuga kandi ko bakomeje gusaba Sebukayire kwerekana inkomoko y'ubutaka yiyitirira ntayigaragaze, ko n'amasezerano y'ubukode bw'ikibanza yo kuwa 11/06/1996 avuga yamuhesheje ubutaka yari kumara imyaka 3 gusa, byongeye kandi akaba atamwanditseho ahubwo yanditse ku witwa Rwigamba, bikaba bitumvika uko ikibanza cyaje kwandikwa kuri Sebukayire. Yongeraho ko umutungo w'umuntu ari ntayegayezwa nkuko biteganywa n'ingingo ya 29 y'Itegeko Nshinga, ku buryo na Leta itashoboraga kuhatanga hatabayeho "expropriation" kandi nyiraho atagenewe ingurane ikwiye.

[13] Ku byerekeye raporo y'iperereza, avuga ko nayo igaragaza ko ikibanza ari icya Se w'uwo aburanira, bityo ko akwiye kugisubizwa, naho ku nyubako ziriho akavuga ko Sebukayire yazikuraho kuko yihaye ikibanza ndetse akaryozwa n'indishyi z'ibyo yangirije. Asoza asaba ko uwo aburanira yasubizwa ikibanza cya Se, ko n'urubanza rw'Urukiko Rwisumbuye rwa Gasabo rwagumaho.

[14] Me Butare uhagarariye Sebukayire avuga ko icyo kibanza/Parcelle Sebukayire atakibohoje, ko yagihawe na Leta mu buryo bwemewe n'amategeko binyuze mu cyahoze ari MINITRAPE, akaba yarahawe "contrat de location N° L 23134 yo kuwa 11/09/95" yanditswe kuri Rwigamba François agasinyirwa na Se Sebukayire, igihe cyo gufata ibyangomba by'ubutaka kikamwandikwaho, ubu akaba agifitiye ibyangomwa yahawe n'Ikigo cy'Igihugu gishizwe Umutungo Kamere.

[15] Avuga ko raporo y'Akagali ka Kamutwa kuri icyo kibanza ivugwa, yakozwe muri 2011, naho Sebukayire akaba yarahawe ikibanza ku tariki ya 5/06/2012, ko hari hashize umwaka iyo "litige" izwi, niba ntawagaragaje ikibazo igihe Sebukayire yahabwaga icyemezo, ni uko bari bazi ko agifite mu buryo bwemewe n'amategeko, kubera ko yari agisanganywe hashingiwe ku masezerano y'ubukode yanditse ku mwana we Rwigamba yo muri 1996, ari nayo yashingiweho ahabwa icyemezo. Naho ku bivugwa muri raporo y'iperereza ko ahagenewe amakuru ku nkomoko y'ikibanza mu gitabo cyandikwamo ubutaka ntakihanditse ("vide") avuga ko byabazwa abuzuza icyo gitabo, atari ikosa rya Sebukayire.

[16] Uhagarariye Sebukayire avuga kandi ko inyandiko Sebukayire afite ari inyandiko mpamo "acte authentique", yahawe na Leta yari nyiri ubutaka, itagomba kuyegayezwa. Asoza asaba ko raporo y'Akagali ka Kamutwa n'inyandiko y'ubugure ya Harerimana Gaspard bitashingirwaho, kubera ko izo nyandiko zitarusha agaciro inyandiko mpamo.

UKO URUKIKO RUBIBONA

[17] Urukiko rurasanga muri dosiye y'urubanza harimo amasezerano y'ubugure bw'ishyamba yo kuwa 01/08/1988 hagati ya Harerimana Gaspard na Karyango yasinyweho na Kamuhanda Sylvestre, Kajyibwami Mathias na Gisagara Materne nk'abagabo bahamya ayo masezerano (cote 50).

[18] Muri dosiye y'urubanza harimo kandi inyandiko y'Ubuyobozi bw'Umudugudu w'Urwibutso ku kibazo cy'ikibanza kiburanywa, aho Gisagara Materne muramu wa Karyango yemereye imbere y'Ubuyobozi bw'Umudugudu w'Urwibutso ko ariwe wanditse ayo masezerano y'ubugure, ko aho haburanwa Harerimana Gaspard yahaguze muri 1988, ariko ko atamenye uburyo Sebukayire yahubatse. Iyi mvugo kandi isubirwamo na Mukanyirimpuhwe Emeritha uvuga ko Harerimana akimara kuhagura na Karyango yahamutije ngo ajye ahahinga ariko ko nyuma ya 1994 yahasaruye rimwe ubwa kabiri imashini zikamwangiriza imyaka, ariko akaba ataramenye uwazizanaga. Naho Musonera Callixte wari umukozi wa Harerimana Gaspard mbere ya 1994 akavuga ko yahunze hakiri ishyamba rya Harerimana Gaspard, ariko yahunguka muri 1998 agasanga harubatswe ntamenye uwahubatse uwo ariwe, naho uwitwa Ngezahayo Narcisse akerekana abahanaga imbibi na Harerimana Gaspard aribo Pasiteri Ruzima Narcisse na Bizimungu Athanase, ko nawe atazi uburyo Sebukayire yahubatse (cotes 67-69).

[19] Urukiko rurasanga Sebukayire yarahamagawe n'Ubuyobozi bw'Umudugudu w'Urwibutso ndetse n' Ubuyobozi bw'Akagari ka Kamutwa kugira ngo yisobanure ku kibazo k'ikibanza Harelimana yari yaregeye ubwo buyobozi avuga ko ari icya Se, ntiyitaba (cote 70), ariko rukaba rwarasanze mu Biro by'Akagali ka Kamutwa ubwo rwari mu iperereza, Icyemezo cy'ubukode burabye Nº 672/GAS/KAC cyanditse kuri Sebukayire Tharcisse na Umutoni Sarah, Umuhuzabikorwa w'Akagali akemeza ko cyatswe binyuze ku zindi nzego zitari ako Kagali kari kagejejweho ikibazo.

[20] Urukiko rurasanga mu gitabo cyagenewe kwandikwamo iby'ubutaka urukiko rwasanze mu Biro by'Umubitsi w'Impapurompamo igihe cy'iperereza, ahagenewe kwandikwa inkomoko y'ubutaka, nta cyari kihanditse, kandi na Sebukayire atarugaragariza uburyo ikibanza cyavuye kuri Rwigamba kikamwandikwaho we n'Umutoni Sarah, bisobanura ko yahawe icyo cyemezo atagaragarije abagitanga aho yakomoye ubwo butaka yita ubwe yahawe na Leta, bikaba binyuranije n'ingingo ya 5 y'Itegeko Ngenga Nº 08/2005 ryo kuwa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda[1] ryakoreshwaga Sebukayire abona icyangombwa cy'ikibanza kiburanwa ndetse n'ingingo ya 5 y'Itegeko Nº 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda[2] zivuga ko : "uburenganzira ku butaka bushingira ku kuba nyirabwo yarabubonye ku bw'umuco, cyangwa se yarabuhawe n'urwego rubifitiye ububasha, cyangwa se yarabuguze"; ibi bikaba bigaragaza ko Sebukayire wabonye icyemezo cy'iyandika ry'ubutaka bitanyuze muri imwe muri izo nzira yakibonye mu buryo bw'uburyarya nubwo ubutaka ubwabwo yabufashe ntaburyarya kubera ko yabumaranye imyaka irenga icumi ntawuragaragaza ko ari ubwe.

[21] Urukiko rurasanga kandi ibyo Sebukayire n'Umwunganira bavuga ko ufite icyemezo cy'ubukode burambye ku butaka ariwe nyirabwo, ko icyo cyemezo ari ntayegayezwa babishingira ku ngingo ya 44 y'Igitabo cya II cy'Urwunge rw'Amategeko y'Imbonezamubano, bishingiye ku Iteka ryo kuwa 06/02/1920 ndetse no ku ngingo ya 23 y'Iteka rya Minisitiri Nº 002/2008 ryo kuwa 01/04/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa[3], nyamara izo ngingo z'amategeko

[1] Ingingo ya 5 y'Itegeko Nº 08/2005 ryo kuwa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda ivuga ko : "Umuntu wese, ku giti cye cyangwa ishyirahamwe rifite ubuzima gatozi, batunze ubutaka, baba barabubonye ku bw'umuco, cyangwa se barabuhawe n'ubuyobozi bubifitiye ububasha cyangwa se barabuguze, bemerewe kubutunga ku buryo bw'ubukode burambye, hakurikijwe ibiteganywa n'iri Tegeko Ngenga".

[2] Ingingo ya 5 y'Itegeko Nº 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda ivuga ko: "Umuntu wese ufite ubutaka, yaba yarabubonye ku bw'umuco, cyangwa se yarabuhawe n'urwego rubifitiye ububasha, cyangwa se yarabuguze, yemerewe kubutunga ku buryo bw'ubukode burambye hakurikijwe ibiteganywa n''iri tegeko".

[3] "Ingingo ya 23 y'Iteka rya Minisitiri nº002/2008 ryo kuwa 01/04/2008 rigena uburyo iyandikwa ry'ubutaka rikorwa" igira iti: Icyemezo cy'iyandikisha cyerekana nta mpaka uburenganzira ku mutungo bwite w'ubutaka, ku bukode bw'ubutaka cyangwa uburenganzira ku mutungo cyangwa ibiwubangamira byanditse kuri icyo cyemezo. Uburenganzira ku mutungo nk'uko buvugwa mu cyemezo, ntibuhungabanywa kabone n'ubwo icyemezo cyaba cyarakozwe bashingiye

zitakurikizwa kubera ko Umushingamategeko yasubiye ku ngingo zose z'Iteka ryo kuwa 06/02/1920 nkuko bigaragarira mu nteruro ya 10 y'Itegeko Nº 43/2013 ryo kuwa 16/06/2013 ryavuzwe haruguru ndetse n'ingingo ya 20 y'iri tegeko iteganya ko : "Iteka rya Minisitiri ufite ubutaka mu nshingano ze rigena uburyo iteshagaciro ry'iyandikisha ry'ubutaka rikorwa".

[22] Urukiko rurasanga na none ingingo ya 73 y'Itegeko Nº 43/2013 ryo kuwa 16/06/2013 ryavuzwe haruguru ivuga ko amategeko, amateka n'amabwiriza yashyiraga mu bikorwa Itegeko Ngenga Nº 08/2005 ryo kuwa 14/07/2005 ryavuzwe haruguru akomeza kubahirizwa mu ngingo zayo zose zitanyuranije naryo, bisobanuye ko ingingo ya 23 y'Iteka rya Minisitiri Nº 002/2008 ryo kuwa 01/04/2008 ryavuzwe haruguru iteganya ubutayegayezwa idashobora gukurikizwa kubera ko inyuranye n'interuro ya 10 ndetse n'ingingo ya 20 y'Itegeko No 43/2013 ryo kuwa 16/06/2013 ryavuzwe haruguru ziteganya ko ibyangombwa by'ubutaka bishobora guteshwa agaciro, kandi uyu murongo unashimangirwa n'ingingo ya 6, 1º ndetse n'iya 10, 5º z'Iteka rya Perezida Nº 97/01 ryo kuwa 18/06/2014 rigena imikorere n'ububasha by'Umubitsi w'Impapuro Mpamo[4].

[23] Hashingiwe ku bisobanuro n'amategeko byatanzwe haruguru, Urukiko rurasanga, ikibanza kiburanywa ari icya Harerimana Gaspard na Mukangwije Thérèse, bityo icyemezo cy'ubukode burambye Nº 0672/GAS/KAC k'ikibanza kiri mu Mudugudu w'Urwibutso, Akagari ka Kamutwa, Umurenge wa Kacyiru, Akarere ka Gasabo, Umujyi wa Kigali cyanditswe kuri Sebukayire Tharcisse na Umutoni Sarah kikaba kigomba guteshwa agaciro, Umubitsi w'Inyandikompamo akagikura ku mazina ya Sebukayire Tharcisse n'Umutoni Sarah kikandikwa kuri Harerimana Gaspard na Mukangwije Thérèse.

II.2. Ibirebana n'amazu yubatswe ku Kibanza kiburanwa.

[24] Me Mulinzi Jean de Dieu uburanira Harerimana avuga ko batanga ikirego mu Rukiko Rwisumbuye baregeye ikibanza n'inyubako zikirimo zifite agaciro k'amafaranga miliyoni 33.589.068 Frw, nk'uko bigaragazwa na "expertise" babikoreye, ko yakozwe mu rwego rwo kugaragaza agaciro k'ikiburanwa, kandi ko kuba hari inzu ya «étage» Harerimana Gaspard yubatse, byumvikana ko hari na za annexes zayo zari mu kibanza kiburanywa, yongeraho ko mu gihe urukiko rwasanga zarubatswe na Sebukayire rwategeka ko azikuraho kuko yazubatse mu buriganya.

[25] Me Butare wunganira Sebukayire we avuga ko Sebukayire yasanze muri icyo kibanza nta nyubako zihari ahubaka amazu ari nayo ariho ubu, ko atumva ukuntu Uwunganira Harerimana avuga ko ayo mazu ari ay'uwo baburana.

UKO URUKIKO RUBIBONA

[26] Urukiko rurasanga ibyo Uwunganira Harerimana avuga ko kuba hari inzu ya "étage" Harerimana Gaspard yubatse byumvikana ko hari na za annexes zayo mu kibanza kiburanywa, bitahabwa agaciro, kuko Umuyobozi w'Umudugudu w'Urwibutso n'uw'Akagali ka Kamutwa, babwiye urukiko ubwo rwari mu iperereza, ko inyubako ziri ku kibanza ari Sebukayire wazubatse, ibi bikemezwa kandi n'imvugo ya Harerimana Emmanuel ubwe wavuze ko atibuka niba ikibanza cyariho inzu, ndetse niz'uwitwa Musonera Callixte wari umukozi wa Harerimana Gaspard wavuze

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ku masezerano yo kurekura umutungo ashobora guseswa cyangwa ashobora guteshwa agaciro, cyangwa icyemezo cy'urukiko cyemeza izungura ku buryo butunguranye.

[4] Ingingo ya 6(1º) y'Iteka rya Perezida Nº 97/01 ryo kuwa 18/06/2014 rigena imikorere n'Ububasha by'Umubitsi w'Impapuro Mpamo igira iti: "By'umwihariko Inama y'Ababitsi b'Impapuro Mpamo ifite inshingano zikurikira: kwemeza iteshagaciro ry'ibyemezo by'iyandikisha ry'ubutaka" naho ingingo ya 10(5º) ikagira iti: Umubitsi Mukuru w'Impapuro Mpamo z'Ubutaka n'Umubitsi w'Impapurompamo z'ubutaka bafite ububasha bukurikira: … 5º gutesha agaciro icyemezo cy'iyandikisha ry'ubutaka mu buryo buteganywa n'amategeko".

ko muri 1994 yahunze hakiri ishyamba rya Harerimana Gaspard, n'iza Mukanyirimpuhwe Emeritha wavuze ko muri icyo kibanza yahahingaga ariko ko nyuma ya 1994 haje imashini zirahasiza; bityo hashingiwe ku ngingo ya 3 y'Itegeko Nº 15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ivuga ko: "buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana", kandi Harerimana n'umwunganira bakaba aha ntabyo bagaragaje, inzu zubatswe ku kibanza kiburanwa zikaba ari iza Sebukayire.

[27] Urukiko rurasanga kandi Sebukayire Tharcisse yarubatse amazu mu kibanza cya Harerimana Gaspard n'umugore ntawuhakorera kuko bombi bari barahunze n'abana babo barimo Harerimana Emmanuel bakiri bato, kandi kugeza muri 2011, abo bana bari batararegera Ubuyobozi bw'ibanze ko ikibanza ari icyabo, bisobanuye ko Sebukayire yahubatse yibwira ko ari ahe kandi ntihagira n'ubimubuza, ibi bikaba bigaragaza ko yubaka nta buryarya yari afite.

[28] Urukiko rurasanga rero n'ubwo ingingo ya 35, igika cya 3 y'Itegeko Nº 43/2013 ryo kuwa 16/06/2013 ryavuzwe haruguru iteganya ko uwubatse ku butaka bw'abandi mu buryo butemewe yasabwa gukuraho inyubako ze, ndetse no kubiryorezwa indishyi z'impozamarira cyangwa iz'ibyo yangirije[5], ibyo Uwunganira Harerimana asaba ko Sebukayire yakura inyubako ze ku kibanza bitahabwa ishingiro mu gihe Sebukayire yafashe ubutaka kandi akabwubakaho ntaburyarya nk'uko byasobanuwe mu gika cya 20, bityo inyubako ziri ku kibanza Nº 0672/GAS/KAC zikaba zikwiye kugumanwa na Harerimana Gaspard na Mukangwije Thérèse, ariko abashinzwe kubacungira umutungo bakazitangira indishyi zingana na miliyoni 33.589.068frw hashingiwe ku gaciro kemejwe n'igenagaciro ryakoreshejwe na Harerimana Emmanuel kuko Sebukayire ntacyo yagaragaje kirivuguruza.

II.3. Ibirebana n'indishyi n'ibindi bisabwa mu rubanza.

[29] Me Murinzi wunganira Harerimana asaba urukiko ko uwo aburanira yahabwa 3.000.000Frw y'indishyi z'akababaro, 1.000.000Frw yo gukururwa mu manza na 500.000Frw y'igihembo cya avoka kandi ko yaryozwa indishyi z'inzu yabikwagamo ibikoresho byubakishwaga mu kibanza Nº 671 Sebukayire yashenye, ishyamba yatemye, n'ibyuzi by'amafi yasibye.

[30] Me Butare wunganira Sebukayire avuga ko iby'indishyi zisabwa na Harerimana kubera ibyuzi by'amafi byasibwe, ishyamba ryatemwe n'inzu zasenywe nta shingiro bifite kubera ko ari ikirego gishya kitigeze kiburanwaho, ahubwo ko Urukiko rwagenera uwo yunganira 3.000.000Frw y'indishyi z'akababaro kubera gushorwa mu manza nta mpamvu na 1.000.000Frw y'igihembo cya avoka.

UKO URUKIKO RUBIBONA

[31] Ku birebana n'indishyi Me Murinzi asaba ko zahabwa Harerimana Emmanuel n'abo bavukana, Urukiko rurasanga akwiye guhabwa izo asaba zo gushorwa mu manza zingana na 1.000.000frw, kuko kuba Sebukayire yarahamagawe mu nzego z'ibanze ngo zibakemurire ikibazo akanga kwitaba nk'uko byemejwe n'ubuyobozi bw' ibanze, byatumye Harerimana agana inkiko kandi agira n'ibyo atakaza, bityo akaba agomba no guhabwa 500.000Frw y'igihembo cya avoka kuko yaburanye yunganiwe na avoka, indishyi zose hamwe zikaba zingana na 1.500.000Frw.

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[5] Ingingo ya 35, igika cya 3 y'Itegeko Nº 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda igira iti: "Mu gihe inyubako cyangwa se ibihingwa byashyizwe n'undi muntu ku butaka butari ubwe hadakurikijwe ibisabwa n'amategeko cyangwa amasezerano, nyir'ubutaka afite uburenganzira bwo gusaba uwabishyizeho kubikuraho bitabujije no gusaba impozamarira cyangwa indishyi mu gihe hari ibikorwa bye byangijwe".

[32] Urukiko rurasanga cyakora adakwiye guhabwa indishyi z'akababaro asaba kubera ko nk'uko byasobanuwe haruguru, Sebukayire yafashe ikibanza kiburanwa kandi acyubakamo nta buryarya. Naho ku byerekeye ishyamba ryatemwe, ibyuzi by'amafi n'inzu y'ububiko yaba yarasenywe, urukiko rurasanga bitarigeze biregerwa ngo hagagaragazwe n'agaciro kabyo bityo bikaba bitasuzumwa muri uru rubanza.

[33] Ku birebana n'indishyi Sebukayire n'umwunganira basaba, urukiko rurasanga zidakwiriye, kuko ntacyo agaragaza yangirijwe ku buryo yahabwa indishyi z'akababaro, ndetse n'ay'igihembo cya avoka akaba atayahabwa kuko ariwe nyirabayazana w'izi manza.

III. ICYEMEZO CY'URUKIKO

[34] Rwemeje ko ubujurire bwa Harerimana Emmanuel uhagarariye abavandimwe be bufite ishingiro;

[35] Rwemeje ko ikibanza Nº 0672/GAS/KAC giherereye mu Mudugudu w'Urwibutso, Akagali ka Kamutwa, Umurenge wa Kacyiru, Akarere ka Gasabo ari icya Harerimana Gaspard na Mukangwije Thérèse bashakanye;

[36] Rutegetse ko icyemezo cy'ubukode burambye Nº 672/GAS/KAC cyanditse kuri Sebukayire Tharcisse na Umutoni Sarah giteshwa agaciro, Umubitsi w' inyandikompamo akacyandika kuri Harerimana Gaspard na Mukangwije Thérèse;

[37] Rutegetse Harerimana Emmanuel n'abo ahagarariye bacunga umutungo w'ababyeyi babo gusubiza Sebukayire Tharcisse agaciro k'inyubako ziri mu kibanza Nº 672/GAS/KAC kangana na 33.589.068Frw;

[38] Rutegetse Sebukayire Tharcisse guha Harerimana Emmanuel n'abo ahagarariye indishyi zingana n'amafaranga 1.500.000Frw y'ikurikiranarubanza n'igihembo cya avoka;

[39] Ruvuze ko imikirize y'urubanza RCA 0579/12/HC/KIG ihindutse kuri byose;

[40] Rutegetse Sebukayire Tharcisse kwishyura amagarama y'urubanza ahwanye n'amafaranga 100.000Frw.