MUKAMUSONI v. LETA Y'U RWANDA N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RADA0030/12/CS – (Mukamulisa, P.J., Mukandamage na Gatete, J.) 10 Ukwakira 2014]

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Cyamunara – Urubanza rw'ikirego gisaba gukuraho cyamunara yakozwe mu buryo budakurikije amategeko – Urubanza rw'ikirego gisaba gukuraho cyamunara yakozwe mu buryo budakurikije amategeko rwemerewe kujuririrwa kuko atari urubanza rw'impaka zivutse ku irangiza ry'urubanza – Itegeko-teka N°09/80 ryo kuwa 07/07/1980 ryerekeye imitunganyirize n'ububasha by'inkiko, ingingo ya 176.

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Cyamunara – Uberewemo cyangwa urimo umwenda asanze igiciro gitanzwe kidakwiye ashobora gusaba ko cyamunara gishyirwa ku wundi munsi, kuri uwo munsi wemejwe ibyo bintu bitezwa cyamunara byanze bikunze kandi agaciro k'inzu yatejwe cyamunara kagomba kureberwa igihe iyo cyamunara yabereyeho – Itegeko ryo kuwa 15/07/1964 ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi, ingingo ya 336.

Amategeko agenga imiburanishirize y'imanza z'ubutegetsi – Cyamunara – Gutanga ibintu bitimukanwa cyangwa ubundi buryo bwose bwo kwemera ko hagira undi ubigiraho uruhare bigizwe n'urimo umwenda yarahawe itegeko ryo kwishyura cyangwa yarabujijwe kugira icyo abikoraho ntabwo byemerwa, keretse ubihawe yemeye kwishyura umubare w'umwenda n'amagarama uwafatiriye agomba guhabwa – Itegeko ryo kuwa 15/07/1964 ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi, ingingo ya 331.

Incamake y'ikibazo: Mu rwego rwo kurangiza urubanza RPA8787/KIG Mukamusoni yategetswemo kwishyura Ntiserurwa amafaranga 3.690.000Frw n'umusogogero wa Leta, umuhesha w'inkiko yateje inzu ya Mukamusoni cyamunara. Nyuma Mukamusoni yareze umuhesha w'inkiko hamwe n'umukoresha we Leta y'u Rwanda mu Rukiko Rukuru avuga ko iyo cyamunara yakozwe mu buryo budakurikije amategeko. Muri uru rubanza hagobotsemo Kamali waguze inzu na Yansoneye Consolée uvuga ko inzu yatejwe cyamunara ari iye yaguze mbere y'imihango ya cyamunara. Urwo Rukiko rwafashe icyemezo ko ikirego cye nta shingiro gifite, rumutegeka kwishyura Kamali indishyi z'akababaro, igihembo cya Avoka, umusogongero wa Leta n'amagarama y'urubanza.

Mukamusoni yajuriye mu Rukiko rw'Ikirenga avuga ko umuhesha w'inkiko atubahirije imihango yo guteza cyamunara kubera ko atashyikirije Mukamusoni inyandiko zabugenewe, yateje inzu cyamunara ku giciro gito kandi arangiza urubanza ku musogongero wa Leta kandi warishyuwe.

Leta y'u Rwanda yatanze inzitizi yo kutakira ubujurire ku mpamvu y'uko urubanza ruciwe ku bibazo bivutse mu irangiza ry'urubanza rutajuririrwa na Kamali nawe akavuga ko ikibazo kiri muri uru rubanza ari uburyo rwarangijwe rukaba rudakwiye kwakirwa.

Mukamusoni na Yansoneye bo bavuga ko ikirego cya Mukamusoni atari impaka zavutse mu irangiza ry'urubanza ahubwo ari ugukuraho cyamunara yakozwe mu buryo budakurikije amategeko. Urukiko rwameje ko iyo nzitizi ya Leta y'u Rwanda nta shingiro ifite.

Kubirebana nuko hari imihango ya ngombwa itarubahirijwe n'umuhesha w'inkiko hatezwa cyamunara, Leta y'u Rwanda ivuga ko Perezida w'Urukiko atanga itegeko ryo guteza

cyamunara (ordonnance) amaze gusuzuma ko imihango yose ya ngombwa yubahirijwe kandi iryo tegeko rya Perezida ritarigeze riteshwa agaciro kuko Mukamusoni atarijuririye.

Incamake y'icyemezo: 1. Urubanza rw'ikirego gisaba gukuraho cyamunara yakozwe mu buryo budakurikije amategeko rwemerewe kujuririrwa kuko atari urubanza rw'impaka zivutse mu irangiza ry'urubanza.

2. Uberewemo cyangwa urimo umwenda asanze igiciro gitanzwe kidakwiye ashobora gusaba ko cyamunara ishyirwa undi munsi, kuri uwo munsi wemejwe ibyo bintu bitezwa cyamunara byanze bikunze kandi agaciro k'inzu yatejwe cyamunara kagomba kureberwa igihe iyo cyamunara yabereyeho.

3. Gutanga ibintu bitimukanwa cyangwa ubundi buryo bwose bwo kwemera ko hagira undi ubigiraho uruhare bigizwe n'urimo umwenda yarahawe itegeko ryo kwishyura cyangwa yarabujijwe kugira icyo abikoraho ntabwo byemerwa, keretse ubihawe yemeye guha umucungamutungo wa Leta umubare w'umwenda n'amagarama uwafatiriye agomba guhabwa.

4. Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Bityo, kuba Mukamusoni atabashije kugaragaza inyandiko avuga ko zabugenewe atahawe n'umuhesha w'Inkiko bituma iyi ngingo nta shingiro yahabwa.

5. Kamali yagenerwa indishyi z'uko inzu ye atayibayemo, ay'ikurikiranarubanza n'ayigihembo cy'Avoka ariko akagenwa mu bushishozi bw'Urukiko.

Ubujurire bufite ishingiro kuri bimwe;
Ubujurire bwuririye ku bundi bwatanzwe na Yansoneye nta shingiro bufite
Ubujurire bwuririye ku bundi bwatanzwe na Kamali bufite ishingiro kuri bimwe;
Cyamunara igumanye agaciro;
Amagarama aherereye ku wajuriye no ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko Ngenga N°51/2008 ryo kuwa 09/09/2008 ryerekeye imiterere, imikorere n'ububasha by'inkiko, ingingo ya 93.

Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 9.

Itegeko-teka N°09/80 ryo kuwa 07/07/1980 ryerekeye imitunganyirize n'ububasha by'inkiko, ingingo ya 176.

Itegeko ryo kuwa 15/07/1964 ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi, ingingo za 336, 351, 357 na 361.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mukamusoni Béatrice yareze umuhesha w'inkiko Kagaju hamwe n'umukoresha we Leta y'u Rwanda, asaba urukiko gusesa cyamunara yabaye tariki ya 21/6/2002 hakagurishwa inzu ye mu buryo avuga ko butakurikije amategeko, harangizwa urubanza

RPA8787/KIG yategetswemo kwishyura uwitwa Ntiserurwa Christophe amafaranga 3.690.000Frw n'umusogongero wa Leta ungana na 147.600Frw. Muri urwo rubanza hagobotsemo Kamali Emmanuel waguze inzu na Yansoneye Consolée uvuga ko inzu yatejwe cyamunara ari iye yaguze na Mukamusoni.

[2] Urukiko Rukuru rwaciye urubanza Kagaju na Yansoneye badahari, ariko barahamagajwe mu buryo bukurikije amategeko, rwemeza ko cyamunara yakozwe ku nzu ya Mukamusoni Béatrice yabarizwaga mu kibanza Nº 112 ku Kimironko igumana agaciro, kubera ko ibyo yaburanishaga avuga ko amategeko atubahirijwe by'uko cyamunara yakorewe ku mutungo utabaruye (maison non identifiée), ko umuhesha w'inkiko yirengagije gusubika cyamunara kubera igiciro gito kandi yabimusabye, ko umuhesha w'inkiko yashyize mu cyemezo cyishyuza 147.600Frw y'umusogongero wa Leta kandi yarayishyuye, ko kandi atamusubije amafaranga yasaguye nyuma yo kurangiza urubanza, nta shingiro bifite.

[3] Urukiko rwategetse Mukamusoni guha Kamali Emmanuel indishyi z'akababaro zingana na 1.000.000Frw n'igihembo cya avoka kingana na 300.000Frw yose hamwe akaba 1.300.000Frw, no kuyatangira umusogongero wa Leta uhwanye na 52.000Frw, akishyura n'amagarama y'urubanza.

[4] Mukamusoni yajuririye Urukiko rw'Ikirenga, avuga ko umuhesha w'inkiko Kagaju atubahirije imihango yo guteza cyamunara, ko inzu yatejwe cyamunara ku giciro gito ariko umucamanza ntiyabiha agaciro, ko yarangije urubanza ku musogongero wa Leta kandi warishyuwe, ko atamuhaye amafaranga yasigaye amaze kugurisha inzu, ko kandi umucamanza yirengagije ibyo yagaragarijwe ko mu byatejwe cyamunara harimo inzu ya Yansoneye Consolée.

[5] Leta y'u Rwanda nayo yatanze inzitizi yo kutakira ubujurire bwa Mukamusoni, uyihagarariye avuga ko urubanza ruciwe ku bibazo bivutse mu irangiza ry'urubanza rutajuririrwa.

[6] Yansoneye Consolée wagobotse mu rubanza avuga ko inzu yatejwe cyamunara ari iye kuko yayiguze na Mukamusoni Béatrice.

[7] Urubanza rwaburanishijwe mu ruhame tariki ya 09/09/2014, Mukamusoni ahagarariwe na Me Mbonyimpaye Elie, Leta y'u Rwanda iburanirwa na Me Ntaganda Félix, Intumwa ya Leta, Kamali Emmanuel ahagarariwe na Me Bigaraba John, Yansoneye Consolée ahagarariwe na Me Gumisiriza Hilary, naho Kagaju Alphonse atitabye ariko yarahamagawe ahatazwi mu buryo bukurikije amategeko.

II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA

Kumenya niba ubujurire bwa Mukamusoni butagomba kwakirwa.

[8] Me Ntaganda uburanira Leta y'u Rwanda avuga ko ubujurire bwa Mukamusoni budakwiye kwakirwa kubera ko yareze Leta y'u Rwanda n'Umuhesha w'inkiko Kagaju wateje cyamunara inzu ye, asaba ko iyo cyamunara yateshwa agaciro kuko itakurikije amategeko, aregera Urukiko Rukuru rwasimbuye Urukiko rw'Ubujurire rwa Kigali, kuko ari rwo rwaciye ku rwego rwa nyuma urubanza RPA8787/KIG rwarangizwaga, ko rero impaka zishingiye ku irangiza ry'urubanza zikemurwa n'urukiko rwaruciye bwa nyuma, ko kandi bene izo manza zitajuririrwa nk'uko biteganywa n'ingingo ya 208, igika cya 2,

y'Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[9] Me Mbonyimpaye uburanira Mukamusoni avuga ko inzitizi yatanzwe na Leta y'u Rwanda nta shingiro ifite kuko ingingo ya 208, igika cya 1, y'Itegeko Nº21/2012 ryo kuwa 14/06/2012 uburanira Leta ashingiraho asaba ko ubujurire bwa Mukamusoni butakirwa, ivuga impaka zavutse mu irangiza ry'urubanza ryaba ririmo kuba cyangwa ryararangiye, ibyo rero bikaba bitandukanye n'ibyo Mukamusoni yaregeye byo gukuraho cyamunara kuko yabaye mu buryo budakurikije amategeko.

[10] Yongeraho ko mu gutanga iyi nzitizi, Leta y'u Rwanda ishaka guhindura ikirego Mukamusoni yatanze mu Rukiko Rukuru, kandi itabyemerewe mu bujurire nk'uko biteganywa n'ingingo ya 4 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[11] Me Gumisiriza uburanira Yansoneye avuga nawe ko ikirego cyatanzwe mu Rukiko Rukuru na Mukamusoni cyari kigamije gukuraho cyamunara kubera ko itubahirije amategeko, bitandukanye no kuvuga ko hari impaka zavutse hagati y'impande zombi nk'uko uburanira Leta y'u Rwanda abivuga. Asanga harabayeho kutubahiriza amategeko y'ifatira n'igurisha ry'umutungo wagombaga kugurishwa n'utagomba kugurishwa, bityo Yansoneye akaba atagomba kubihomberamo, urukiko rero rukaba rukwiye gushingira ku ngingo ya 268 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ivuga ku bijyanye no kubuza igurisha ry'ibyafatiriwe, aho gushingira kuya 208 yaryo yavuzwe haruguru.

[12] Me Bigaraba John uburanira Kamali avuga ko ikibazo kiri muri uru rubanza ari uburyo urubanza rwarangijwe, ko kuba Mukamusoni atararegeye izindi nkiko akaregera urukiko rwaciye urubanza bwa nyuma bigaragaza ko icyaregewe ari impaka zavutse mu irangizwa ry'urubanza, ko rero bene izo manza zitajuririrwa.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 93 y'Itegeko Ngenga Nº51/2008 ryo kuwa 09/09/2008 ryerekeye imiterere, imikorere n'ububasha by'inkiko, iteganya ko Urukiko Rukuru ruburanisha ibirego bijyanye n'imanza z'ubutegetsi kuva ku rwego rw'Intara n'urw'Umujyi wa Kigali kugeza ku rwego rwa Perezida wa Repubulika byerekeye uburyozwe bushingiye ku zindi mpamvu zitari iza kontaro cyangwa andi masezerano, iyo ibyangijwe byatewe n'igikorwa cyangwa imyitwarire y'ubutegetsi cyangwa se bikaba byarangijwe n'ibikorwa by'imirimo rusange.

[14] Ku byerekeye urukiko Mukamusoni yaregeye, inyandiko zikubiye muri dosiye zigaragaza ko nyuma ya cyamunara y'inzu ye yari mu kibanza Nº112 ku Kimironko mu Mujyi wa Kigali yabaye tariki ya 21/06/2002, Me Pasteur Munyandamutsa Oscar wari umuhagarariye yatanze ikirego mu Rukiko rwa Mbere rw'Iremezo rwa Kigali asaba ko cyamunara yakozwe n'Umuhesha w'Inkiko Kagaju iseswa kubera ko itubahirije amategeko, ashingiye ku ngingo ya 176 igika cya 1 y'Itegeko-teka N°09/80 ryo kuwa 07/07/1980 ryerekeye imitunganyirize n'ububasha by'inkiko ryateganyaga ko impaka zivutse mu irangizwa ry'imanza ziregerwa mu Rukiko rwa Mbere rw'Iremezo rw'aho iryo rangizwa rigomba kubera.

[15] Iryo tegeko-teka ryaje guhinduka urubanza rutaracibwa ubwo habaga ivugurura ry'amategeko n'inzego z'ubucamanza mu mwaka wa 2004, maze urubanza rwimurirwa mu Rukiko Rukuru kubera ko ari rwo rwari rufite ububasha, rwandikwa kuri Nº RAD0447/06/HC/KIG rucibwa kuwa 27/02/2009 ikirego nticyakirwa kuko nta ngwate y'amagarama yari yatanzwe, maze nyuma yo kuyitanga ikirego gihabwa Nº RAD0078/09/HC/KIG muri urwo rukiko kuwa 22/07/2009, urwo rubanza akaba ari rwo rwajuririwe mu Rukiko rw'Ikirenga.

[16] Urukiko rurasanga ibyo uhagarariye Leta y'u Rwanda avuga ko Mukamusoni yaregeye urukiko rwaciye bwa nyuma urubanza RPA8787/KIG rwarangizwaga, ko rero yaregeye impaka zavutse mu irangizwa ry'urwo rubanza, nta shingiro bifite kuko yaregeye Urukiko rwa Mbere rw'Iremezo rwa Kigali nk'uko Itegeko-teka Nº09/80 ryo kuwa 07/07/1980 ryerekeye imitunganyirize n'ububasha by'inkiko ryakurikizwaga igihe yatangaga ikirego ryabiteganyaga, urubanza rwoherezwa mu Rukiko Rukuru, ikirego cyandikwa hashingiwe ku mpamvu z'uko ari rwo rwari rufite ububasha bushingiye ku ngingo ya 93(3º) y'Itegeko Nº51/2008 yavuzwe haruguru.

[17] Ku kibazo cyo kumenya niba icyaregewe na Mukamusoni ari impaka zavutse mu irangizwa ry'urubanza, Urukiko rurasanga, hakurikijwe imiterere y'urubanza aho abamuburaniraga mu Rukiko Rukuru basobanuraga ko cyamunara yakorewe ku mutungo utabaruye (maison non identifiée), ko umuhesha w'inkiko yirengagije gusubika cyamunara kubera igiciro gito, ko yashyize mu cyemezo cyishyuza 147.600Frw y'umusogongero wa Leta kandi yarayishyuye n'ibindi, icyaregewe ari cyamunara ubwayo banenga ko hari ibyo itubahirije biteganywa n'amategeko, akaba rero atari impaka zavutse mu irangizwa ry'urubanza RPA8787/KIG, kubera ko icyaregewe atari uko urwo rubanza rwarangijwe mu buryo bunyuranye n'ibyemezo byarufashwemo ubwabyo.

[18] Hashingiwe ku bimaze kuvugwa, urukiko rurasanga inzitizi yo kutakira ikirego cya Mukamusoni yatanzwe n'uburanira Leta y'u Rwanda nta shingiro ifite.

b. Kumenya niba cyamunara itarubahirije amategeko

Ku byerekeye imihango ya cyamunara.

[19] Me Mbonyimpaye uburanira Mukamusoni avuga ko umuhesha w'inkiko Kagaju atubahirije imihango yo guteza cyamunara, muri yo hakaba harimo kuba atarashyikirije Mukamusoni inyandiko zabugenewe nk'uko byemejwe mu rubanza RP40276/Kig rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali kuwa 15/07/2003 rwabaye itegeko, Mukamusoni yaregwagamo ko yaba yaramanuye amatangazo ya cyamunara kandi ntayabayeho.

[20] Me Ntaganda Félix uburanira Leta y'u Rwanda avuga ko ibyo uburanira Mukamusoni avuga ko hari imihango ya ngombwa itarubahirijwe n'umuhesha w'inkiko bidakwiye guhabwa agaciro nk'impamvu yatuma cyamunara iseswa kubera ko Perezida w'Urukiko atanga itegeko ryo guteza cyamunara (ordonnance) ari uko amaze gusuzuma ko imihango yose ya ngombwa yubahirijwe.

[21] Avuga ko umuhesha w'inkiko ateza cyamunara yubahiriza itegeko Perezida w'Urukiko yashyizeho (ordonnance), akaba ari icyemezo cy'urukiko kigomba kubahirizwa na buri wese kireba, kikaba kidashobora kuvaho bitanyuze mu nzira n'uburyo biteganywa n'amategeko nk'uko biteganywa mu ngingo ya 140 y'Itegeko Nshinga, akaba rero asanga

iryo tegeko rya Perezida ritarigeze riteshwa agaciro kuko kugeza ubu Mukamusoni atarijuririye, no kuba ryarubahirijwe bikaba bifite agaciro.

[22] Me Ntaganda avuga kandi ko Mukamusoni atagaragaza imihango simusiga yaba itarubahirijwe nyuma y'icyo cyemezo cya Perezida, yatuma cyamunara iteshwa agaciro.

[23] Me Bigaraba John uburanira Kamali avuga ko Mukamusoni adasobanura inyandiko umuhesha w'inkiko atamuhaye, ko ariko asanga imihango yose yarakozwe hakurikijwe amategeko kubera ko:

Tariki ya 21/03/2001, umuhesha w'inkiko Sebagabo Stany yashyikirije Mukamusoni itegeko ryishyuza (exploit de signification et commandement préalable à la saisie-exécution) rimusaba kwishyura, yaramuka atabikoze bigakurwa mu bye;

Umuhesha w'inkiko amaze kubona ko Mukamusoni yatereye agati mu ryinyo, yakoze inyandiko zifatira inzu ye iri mu kibanza Nº 112 iri Nyagatovu/Kimironko/Kacyiru/Umujyi wa Kigali nk'uko bigaragazwa n'inyandikomvugo y'itangaza (Procès-verbal d'affichage) yakozwe kuwa 26/06/2001;

Tariki ya 03/10/2001 Mukamusoni yagurishije iyo nzu Yansoneye ku mafaranga 4.000.000Frw, biza kumenyekana inzu imaze gutezwa cyamunara.

Tariki ya 16/10/2001 Urukiko rwa Mbere rw'Iremezo rwafashe icyemezo cy'uko cyamunara y'inzu izaba tariki ya 26/01/2002 saa yine, uwo munsi ntiyaba, yimurirwa kuwa 21/06/2002 inzu iragurishwa.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 9, igika cya mbere y'Itegeko Nº21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda".

[25] Urukiko rurasanga Mukamusoni atagaragaza inyandiko avuga ko zabugenewe atahawe n'Umuhesha w'Inkiko, ndetse no mu rubanza RP40276/Kig rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kigali kuwa 15/07/2003 ashingiraho (reba urupapuro rwa 5), bikaba bigaragara ko urukiko rwagize ugushidikanya mu kumenya niba koko atarabonye impapuro zifatira inzu ye kubera ko atari we wazakiriye, rumugira umwere ku cyaha yari akurikiranyweho cyo kugurisha inzu itari iye, bityo ubujurire bwe kuri iyi ngingo bukaba nta shingiro bufite, kuko bigaragara ko ibyangombwa byose biteganywa n'amategeko byubahirijwe.

Kuba umuhesha w'inkiko yaranze kwimura cyamunara y'inzu ya Mukamusoni kandi yabisabwe, akayigurisha ku mafaranga make.

[26] Me Mbonyimpaye uburanira Mukamusoni avuga ko yagaragarije Urukiko ko umuhesha w'inkiko Kagaju yateje cyamunara inzu ya Mukamusoni ku giciro gito, bikaba byaragaragajwe ku nyandiko ya cyamunara n'uwari umuhagarariye, no muri "rapport d'expertise", ariko ntirwabiha agaciro kandi ari rwo rwasabye iyo "expertise" mbere yo guca urubanza.

[27] Me Ntaganda uburanira Leta y'u Rwanda avuga ko kuba Mukamusoni avuga ko inzu yagurishijwe ku giciro gito bidakuraho ko yanze kwishyura ku neza, ibye bikaba byaragombaga gutezwa cyamunara kugirango ubwishyu yatsindiwe buboneke, ko kandi kuba avuga ko igiciro ari gito atari impamvu yari gutuma byanze bikunze cyamunara iburizwamo mu gihe atishyuye ku neza.

[28] Avuga ko itegeko ryariho ritategekaga umuhesha w'inkiko kutemeza cyamunara yakoze kubera ko igiciro ari gito, ko ahubwo ryamuhaga ububasha bwo kuba yashyira mu gaciro ubwe, yabyibwiriza cyangwa se yabisabwa, yasanga cyamunara ikwiye gusibikwa kubera igiciro gito akabikora, ko kandi n'iyo yabikora atyo atashoboraga kongera kuyisubika ku mpamvu nk'iyo.

[29] Me Bigaraba John uburanira Kamali avuga ko n'ubwo Mukamusoni avuga ko inzu ye yagurishijwe amafaranga make, yirengagiza ko ku munsi yatejwe cyamunara yari yarabanje gusubikwa, ikaba rero itari kongera gusubikwa, ko rero igisubizo kiri mu ngingo ya 336 y'Itegeko ryo kuwa 15/07/1964 ryagengaga imiburanishirize y'imanza z'amahugu n'iz'ubucuruzi nk'uko ryagiye rivugururwa, aho ivuga ko ku munsi wa kabiri igiciro uko cyaba kiri cyemerwa.

[30] Avuga na none ko n'iyo bijya kuba ari ubwa mbere, iyi ngingo igaragaza ko isubika rya cyamunara atari itegeko, ahubwo ari ubushishozi bw'umuhesha w'inkiko.

UKO URUKIKO RUBIBONA

[31] Ingingo ya 336 y'Itegeko ryo kuwa 15/07/1964 ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi ryakurikizwaga igihe inzu ya Mukamusoni yatezwaga cyamunara, yateganyaga ko "iyo bigaragara ko ibintu byafatiriwe bigurishijwe byahabwa igiciro kigayitse, umukozi wa Leta washinzwe guteza cyamunara, bisabwe n'uwafatiriye cyangwa abyikoreye ku bwe, ashobora kuba aretse guteza cyamunara. Muri icyo gihe juji perezida w'urukiko ashyiraho undi munsi bizagurishwa akurikije igihe giteganywa mu ngingo ya 330 kandi agakora ibya ngombwa byose kugira ngo hatagira umuburanyi urengana. Kuri uwo munsi wemejwe ibyo bintu bitezwa cyamunara byanze bikunze".

[32] Na none ingingo ya 351 y'iryo tegeko ivuga ko uberewemo cyangwa urimo umwenda asanze igiciro gitanzwe kidakwiye ashobora gusaba ko icyamunara gishyirwa ku wundi munsi, ariko udashobora kurenga ukwezi kuva umunsi icyamunara cya mbere cyatangiriye gutezwa. Itegeko rya juji perezida ni ngombwa kugira ngo icyo gihe cyongerwe.

[33] Urukiko rurasanga, nk'uko bigaragara mu ibaruwa yanditswe tariki ya 27/06/2002 na Me Pasteur Munyandamutsa Oscar wari uhagarariye Mukamusoni atanga ikirego, yemera ko cyamunara yari ibaye ubwa kabiri kuko yari yimuwe iva tariki ya 26/01/2002 igashyirwa ku ya 21/06/2002. Kuba Mukamusoni avuga ko inzu ye yagurishijwe ku mafaranga make, Urukiko rusanga nta shingiro bifite kuko yagurishijwe amafaranga 5.250.000Frw mu gihe avuga ko yayigurishije Yansoneye Consolée ku giciro cya 4.000.000Frw.

[34] Urukiko rusanga kandi rutashingira ku gaciro kagaragajwe na " expertise" yakozwe kuwa 02/05/2012 Mukamusoni avuga ko yari yasabwe n'Urukiko rubanza, ngo rwemeze ko inzu yagurishijwe ku giciro gito, kuko agaciro k'inzu yatejwe cyamunara kagomba kureberwa igihe iyo cyamunara isabirwa guseswa yabaga tariki 26/01/2002.

[35] Urukiko rusanga rero ubujurire bwa Mukamusoni kuri iyi ngingo nabwo nta shingiro bufite.

Kuba umuhesha w'inkiko yararangije urubanza ku byatangiye kwishyurwa.

[36] Me Mbonyimpaye uburanira Mukamusoni avuga ko yagaragarije urukiko ko umuhesha w'inkiko Kagaju yarangije urubanza ku byari byatangiye kwishyurwa birimo 147.600Frw y'umusogongero wa Leta nk'uko bigaragazwa n'icyemezo yishyuriyeho, umucamanza avuga ko nta shingiro ryabyo ngo kuko atigeze abyereka umuhesha w'inkiko kandi icyo gihe Mukamusoni yari afunze aregwa kuba yaramanuye amatangazo ya cyamunara atarabayeho nk'uko biri mu rubanza RP40276/KIG.

[37] Me Ntaganda uburanira Leta y'u Rwanda avuga ko kuba Mukamusoni avuga ko cyamunara yakozwe yaratangiye kwishyura ntacyo byungura kuko atigeze agaragariza umuhesha w'inkiko ko yatangiye kwishyura, ko kandi ikibazo atari ugutangira kwishyura, ahubwo ari ukwishyura umwenda wose yari yatsindiwe. Yongeraho ko n'amafaranga avuga ko yishyuye ari ubusabusa, akaba yari ay'umusogongero wa Leta yishyuye ari uko agiye gusohoka muri gereza, akaba yayasubizwa.

[38] Me Bigaraba uburanira Kamali avuga ko ibyo Mukamusoni avuga bitandukanye n'ukuri, kuko ntaho yigeze agaragariza umuhesha w'inkiko ko yishyuye ngo maze abirengeho ateze inzu cyamunara. Avuga ko icyo Mukamusoni yishyuye ari umusogongero wa Leta agira ngo afungurwe kuko yari arangije igihano cye cy'igifungo nk'uko bigaragara kuri "quittance" yo kuwa 19/01/2001 no ku nyandiko imusohora yo kuri uwo munsi, ibyo rero bikaba bitari kubuza ko cyamunara iba.

UKO URUKIKO RUBIBONA

[39] Urukiko rurasanga kuva tariki ya 21/03/2001 ubwo Mukamusoni yamenyeshwaga itegeko ryishyuza n'umuhesha w'inkiko Stany Sebagabo kugeza cyamunara iba kuwa 26/01/2002, atarigeze agaragaza ko yishyuye amafaranga y'umusogongero wa Leta ngo umuhesha w'inkiko akomeze kuwumwishyuza.

[40] Urukiko rusanga ariko Mukamusoni yararushyikirije "quittance N° 0258424" igaragaza ko tariki ya 19/01/2001, mbere y'uko inzu ye itezwa cyamunara, yishyuye umusogongero wa Leta ungana na 147.600Frw harangizwa urubanza RP 8787/KIG rwo kuwa 18/01/2001 yatsindiwe, bityo Leta y'u Rwanda ikaba igomba kuyamusubiza kuko bigaragara ko yayishyujwe kabiri.

Ku byerekeye amafaranga yasigaye nyuma yo guteza cyamunara Mukamusoni avuga ko atahawe.

[41] Me Mbonyimpaye uburanira Mukamusoni avuga na none ko yagaragarije urukiko ko amafaranga yasigaye kuyatejwe cyamunara ntayo Mukamusoni yabonye cyangwa se ngo ashyirwe mu isanduku ya Leta, ibyo bikaba bigaragaza ko ibyo umuhesha w'inkiko Kagaju yakoraga byari binyuranye n'amategeko, urukiko ntirwabiha agaciro.

[42] Me Ntaganda uburanira Leta y'u Rwanda avuga ko kuba Mukamusoni atarabonye amafaranga yasigaye ku cyamunara atari impamvu yatuma cyamunara iteshwa agaciro, ko ahubwo yaregera kuyahabwa mu kirego cyihariye gitandukanye n'icyo gutesha agaciro cyamunara, agaragaza ikinyuranyo hagati y'agaciro ka cyamunara yakozwe n'amafaranga

yishyuriwe yavuye muri cyamunara kubera ko iryo koreshwa ry'amafaranga ari intambwe iterwa nyuma y'uko cyamunara yarangiye. Avuga ko ayo mafaranga Mukamusoni atigeze ayasaba ngo bayamwime, ku buryo n'ubu aje yayahabwa nta rubanza.

[43] Me Bigaraba uburanira Kamali avuga ko kuba Mukamusoni avuga ko atabonye amafaranga yasigaye nyuma ya cyamunara atari impamvu yo kuvanaho cyamunara, ko ahubwo ari ikibazo cyo kwishyuza amafaranga ye.

UKO URUKIKO RUBIBONA

[44] Ingingo ya 357 y'Itegeko ryo kuwa 15/07/1964 ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi ryakurikizwaga igihe inzu ya Mukamusoni yatezwaga cyamunara, iteganya ko "iyo ikiguzi cy'ikintu kitimukanwa kirenze umubare w'umwenda n'umusogongero, amafaranga arengaho kontabure ayasubiza urimo umwenda wafatiriwe ibintu".

[45] Urukiko rurasanga uhagarariye Leta y'u Rwanda yemera ko amafaranga yasigaye ku mafaranga yatejwe cyamunara yayahabwa, bityo ikaba igomba kumusubiza ikinyuranyo hagati y'amafaranga yagombaga kwishyura Ntiserurwa Christophe n'ayavuye mu cyamunara mu buryo bukurikira: 5.250.000Frw – 3.690.000Frw = 1.560.000Frw.

Kumenya niba mu byatejwe cyamunara harimo n'inzu ya Yansoneye Consolée.

[46] Me Gumisiriza Hilary uburanira Yansoneye avuga ko mu rwego rwo kurangiza urubanza RPA0887/Kig, umuhesha w'inkiko Kagaju yateje cyamunara inzu ye nk'uko Mukamusoni abizi kandi abyemeza ko yakomatanyije umutungo wabo bombi akawuteza cyamunara kandi Yansoneye adafite aho ahuriye n'urubanza ruburanwa.

[47] Avuga ko mu Rukiko Rukuru, ibyo Mukamusoni yabisobanuriye urwo rukiko ariko ntirwabyitaho, ikibazo ahari akaba ari uko urubanza rwaburanishijwe adahari.

[48] Avuga ko ibimenyetso afite bigaragaza ko inzu ari iye ari:

Inyandiko ya Mukamusoni yo kuwa 10/12/2001;

Icyemezo cy'umutungo Nº 1650/0454 cyo kuwa 04/12/2001;

Icyemezo cy'ubuguzi cyo kuwa 02/11/2001;

Icyemezo cyo kuwa 04/12/2001 cyatanzwe n'Akarere ka Kacyiru cyerekana ko ari we usorera ikibanza kirimo inzu;

Inyandiko y'ubuyobozi yo kuwa 03/02/2005 imusubiza inzu;

Icyemezo cy'urukiko cyo kuwa 15/07/2003 ko inzu ari iye;

Ibaruwa ya Perezida w'icyahoze ari Urukiko rw'Umujyi wa Kigali yo kuwa 08/10/2004 wemeje ko inzu ari iye;

Icyemezo ko yatanze 6% (2.000.000Frw) yakiriwe na Leta kuwa 11/03/2002;

PV y'ibazwa rya Rucamumpunzi P. Célestin wemeza ko Yansoneye yaguze inzu nta bibazo iragira, hari ubuyobozi, nta mpapuro za cyamunara zihamanitswe;

PV y'ibazwa rya Mukamusoni yemeza ko ari we yamugurishije inzu;

PV y'ibazwa rya Yansoneye mu Bugenzacyaha n'Ubushinjacyaha asobanura ko yaguze inzu mu buryo bukurikije amategeko.

[49] Asoza asaba ko Mukamusoni yamuha indishyi zingana na 2.000.000Frw y'ikurikiranarubanza n'igihembo cya avoka.

[50] Me Ntaganda uburanira Leta y'u Rwanda avuga ko ubugure bwabaye hagati ya Mukamusoni na Yansoneye nta gaciro bukwiye guhabwa kuko bwabaye bitagishoboka kugurisha kubera ko imihango yo guteza cyamunara ku ngufu yari yaratangiye kandi Mukamusoni abizi, ko ndetse n'igurisha ryabanjirijwe n'amatangazo, rinakorerwa ku nzu bireba, ku buryo nta kuntu ibyo byose byaba byarabaye Yansoneye azi neza ko yaguze iyo inzu, maze ngo aterere agati mu ryinyo.

[51] Avuga ko kuba Yansoneye atararegeye ko inzu ye yatejwe cyamunara nta mwenda ategetswe kwishyura ubwabyo ari ibigaragaza ko ubugure bavuga bwabayeho ari ikinamico, atari ukuri. Asanga rero niba ubwo bugure bwarabayeho Mukamusoni akwiye kuzasubiza Yansoneye amafaranga ye kuko yamugurishije mu buriganya, azi neza ko agamije kugurisha umutungo we yabonaga ko uri hafi gutezwa cyamunara.

[52] Me Bigaraba John uburanira Kamali avuga ko mu gihe Mukamusoni yari amaze gushyikirizwa inyandiko zishyuza n'iz'ifatira, atari agifite uburenganzira bwo kugurisha umutungo we uwo ariwo wose mu gihe atararangiza kwishyura umwenda.

[53] Avuga ko ndetse nyuma y'uko hakorwa ifatira rikanamanikwa nk'uko bigaragazwa na "Procès verbal d'affichage" yakozwe n'Umuhesha w'inkiko Sebagabo kuwa 26/06/2001, Mukamusoni yirengagije ingingo ya 361 y'Itegeko ryo kuwa 15/07/1964 ryavuzwe (ihura n'iya 293 CPCCSA y'ubu), ko rero igurisha ryabaye kuwa 03/10/2001 nyuma y'uko iyo mihango yose yarangiye gukorwa ari impfabusa, bityo ubujurire bwa Yansoneye bukaba budafite ishingiro.

[54] Me Mbonyimpaye uburanira Mukamusoni avuga ko yagaragarije urukiko ko mu mutungo umuhesha w'inkiko Kagaju yateje cyamunara harimo inzu ya Yansoneye Consolée, ko yaneretse urukiko ibaruwa Perezida w'icyahoze ari Urukiko rw'Umujyi wa Kigali yandikiye Umuyobozi w'icyahoze ari Akarere ka Kacyiru amusaba guha Yansoneye inzu ye kuko yayiguze mu buryo bukurikije amategeko, ariko urukiko ntirwabiha agaciro, ahubwo rubirengaho ruvuga ko cyamunara ikurikije amategeko.

UKO URUKIKO RUBIBONA

[55] Ingingo ya 361 y'Itegeko ryo kuwa 15/07/1964 ryerekeye imiburanishirize y'imanza z'amahugu n'ubucuruzi ryakurikizwaga igihe inzu ya Mukamusoni yatezwaga cyamunara, iteganya ko "gutanga ibintu bitimukanwa cyangwa ubundi buryo bwose bwo kwemera ko hagira undi ubigiraho uruhare bigizwe n'urimo umwenda yarahawe itegeko ryo kwishyura cyangwa yarabujijwe kugira icyo abikoraho ntabwo byemerwa, keretse ubihawe yemeye guha kontabure wa Leta umubare w'umwenda n'amagarama uwafatiriye agomba guhabwa".

[56] Nk'uko bigaragazwa n'inyandiko ziri muri dosiye, Mukamusoni yahawe itegeko ryo kwishyura tariki ya 21/03/2001 n'umuhesha w'inkiko Stany Sebagabo, kuwa 26/06/2001 uwo muhesha w'inkiko amanika ku Rukiko rwa Mbere rw'Iremezo rwa Kigali, kuri Parike ya Repubulika i Kigali na Perefegitura y'Umujyi wa Kigali itangazo

rifatira inzu iri mu kibanza N° 112 ya Mukankusi iri Nyagatovu, Kimironko, Umujyi wa Kigali, nyuma kuwa 03/10/2001 Mukankusi agurisha Yansoneye Consolée iyo nzu yafatiriwe.

[57] Hashingiwe ku ngingo y'itegeko imaze kuvugwa, Urukiko rurasanga Mukankusi atarashoboraga kugurisha inzu ye kandi yari azi ko yahawe itegeko ryishyuza (commandement), ubwo bugure rero bukaba butemewe, bityo cyamunara yabaye ku nzu ya Mukamusoni ikaba igomba kugumana agaciro kayo.

[58] Ku byerekeye indishyi zingana na 2.000.000Frw y'ikurikiranarubanza n'igihembo cya avoka Yansoneye asaba Mukamusoni, urukiko rurasanga atazigenerwa kuko atagaragaza ishingiro ryazo.

Ubujurire bwuririye ku bundi bwa Kamali Emmanuel.

[59] Me Bigaraba uburanira Kamali avuga ko urukiko rutamugeneye indishyi yasabye ngo kubera ko kuba atarahawe inzu byategetswe n'Urukiko, nyamara hirengagijwe ko icyo cyemezo cyafashwe bisabwe na Mukamusoni.

[60] Asanga rero cyamunara yarabaye kuwa 21/06/2002, ariko avutswa uburenganzira bwe ku nzu yaguze kandi ingingo ya 349 y'Itegeko ryo kuwa 15/07/1964 ryavuzwe ivuga ko uguze muri cyamunara yegukana icyo yaguze.

[61] Ashingiye ku ngingo ya 258 CC LIII, asaba ko yahabwa indishyi zikurikira:

150.000Frw ku kwezi kuva umunsi agura inzu kugeza urubanza ruciwe kuko iyo akodesha aba yarayabonye (privation de droit d'usage);

10.000.000Frw z'uko inzu ye imaze gusaza atarayibayemo ngo ayifate neza (privation du droit de jouissance et indemnités de vétusté).

1.000.000Frw yishyuwe avoka ku rwego rwa kabiri.

[62] Me Mbonyimpaye uburanira Mukamusoni avuga ko indishyi Kamali asaba nta shingiro ryazo.

UKO URUKIKO RUBIBONA

[63] Ku byerekeye indishyi z'amafaranga y'ubukode Kamali asaba Mukamusoni, urukiko rurasanga atayahabwa kuko nta bimenyetso ayatangira.

[64] Naho ku kijyanye n'indishyi za 10.000.000Frw z'uko inzu ye ishaje atarayibayemo, urukiko rurasanga izo ndishyi asaba ari ikirenga, ahubwo hagumaho iza 1.000.000Frw yari yagenewe n'Urukiko Rukuru kuko ziri mu rugero rukwiye.

[65] Ku byerekeye 1.000.000Frw y'ikurikiranarubanza Kamali Emmanuel asaba Mukamusoni, urukiko rurasanga atagaragaza uburyo ayabara, rukaba rusanga yagenerwa mu bushishozi bwarwo 500.000Frw kuri uru rwego yiyongera kuri 300.000 yagenewe n'Urukiko Rukuru, yose hamwe akaba 800.000Frw.

[66] Urukiko rurasanga indishyi zose Mukamusoni agomba guha Kamali zingana na 1.000.000Frw + 800.000Frw = 1.800.000Frw.

III. ICYEMEZO CY'URUKIKO

[67] Rwemeje ko ubujurire bwa Mukamusoni Béatrice bufite ishingiro kuri bimwe;

[68] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Yansoneye Consolée nta shingiro bufite;

[69] Rwemeje ko Ubujurire bwuririye ku bundi bwatanzwe na Kamali Emmanuel bufite ishingiro kuri bimwe;

[70] Rutegetse ko cyamunara yabaye tariki ya 21/06/2002 y'inzu ya Mukamusoni Béatrice iri mu kibanza Nº 112 Nyagatovu, Kimironko, Umujyi wa Kigali igumanye agaciro;

[71] Rutegetse Leta y'u Rwanda kwishyura Mukamusoni Béatrice amafaranga 147.600 yishyujwe kabiri na 1.560.000Frw yasigaye ku giciro cy'inzu ye, yose hamwe akaba 1.707.600Frw;

[72] Rutegetse Mukamusoni Béatrice kwishyura Kamali Emmanuel indishyi zingana na 1.800.000Frw nk'uko yasobanuwe haruguru.

[73] Rutegetse Mukamusoni Béatrice kwishyura ½ cya 100.000Frw y'amagarama y'urubanza, ni ukuvuga 50.000Frw ahereye kuyo yatanze ajurira, andi asigaye agaherera ku isanduku ya Leta.