RUTABAYIRU v. BATAMURIZA

[Rwanda URUKIKO RW'IKIRENGA – RCAA0013/13/CS (Mugenzi, P.J., Gakwaya na Munyangeri, J.) 03 Kamena 2016]

Amategeko agenga umuryango – Ababana batarashakanye mu buryo bukurikije amategeko – kugabana imitungo – Uruhare rw'umwe mu babanye nk'umugore n'umugabo ku mutungo bashakanye ntirugaragarira gusa mu gukora akazi kamuha umushahara mu gihe bafatanyaga kurukorera mu buryo bunyuranye.

Amategeko agenga ubutaka – Umutungo utimukanwa – Ibisabwa kugirango witwe nyirumutungo – Icyemezo cy'umutungo Ntibihagije kugirango hemezwe ko umutungo ari uw' umuntu hashingiwe gusa ku kuba icyemezo cy'umutungo kimwanditseho igihe atagaragaza inkomoko yawo – Itegeko Ngenga N^{o}08/2005 ryo kuwa 14/07/2005 rigena imicungire y'ubutaka mu Rwanda, ingingo ya 5.

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Imbibi z'ubujurire – Ubujurire busuzumwa gusa mu mbibi z'ibyajuririwe – Itegeko N^{o}21/2012 ryo kuwa 14/06/2012, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 170.

Incamake y'ikibazo: Batamuriza yareze Rutabayiru mu Rukiko Rwisumbuye rwa Nyarugenge, asaba ko bagabana imitungo igizwe n'amazu abiri, urwuri, imodoka 2 n'ibikoresho byo mu nzu, kuko babanye nk'umugabo n'umugore kuva muri 1991 kugera muri 2003.

Urwo rukiko rwemeje ko Batamuriza atsinzwe kuko nta bimenyetso agaragaza by'uko yagize uruhare mu kubona iyo mitungo kandi ikaba yanditse kuri Rutabayiru. Rusobanura kandi ko hatashingirwa ku ngingo ya 39 y'Itegeko N^{o}59/2008 ryo ku wa 10/09/2008 kuko ababuranyi baretse kubana kuva muri 2003 kandi iryo Tegeko ritari ryajyaho.

Batamuriza yajuririye Urukiko Rukuru, avuga ko Urukiko Rwisumbuye rwagombaga kumufata nk'uwashyingiwe mu buryo bukurikije amategeko hashingiwe k'umuco w'igihugu bashakaniyemo (Uganda), rukaba rutaritaye ku batangabuhamya yatanze ahubwo rwitiranya uru rubanza rwo kugabana imitungo n'urwo yari yatanzemo ikirego cyo gusaba kwemeza ko abana babyawe na Rutabayiru.

Urukiko Rukuru rwemeje ko ubwo bujurire bufite ishingiro maze rutegeka ko umutungo uri mu kibanza N^{o}6173 na N^{o}6174 ubagabanywa ku buryo bungana, ndetse runasobanura ko nta kimenyetso cyashingirwaho mu gufata Rutabayiru na Batamuriza nk'abasezeranye imbere y'amategeko y'u Rwanda kandi bakaba batagabanywa umutungo hashingiwe ku ngingo ya 39 y'Itegeko N^{o}59/2008 ryo ku wa 10/09/2008 kuko ritariho igihe bahagarikiye kubana kandi ritaragennye ko rizanagenga ibintu byabaye mbere yaryo ko rero bakwiye kugabana umutungo hashingiwe ku itegeko umucamanza yashyiraho mu mwanya w'umushingamategeko.

Rutabayiru yajuririye Urukiko rw'Ikirenga, asaba ko icyemezo cyafashwe n'Urukiko Rukuru cyo kumugabanya umutungo na Batamuriza cyateshwa agaciro kuko kinyuranyije n'Itegeko Nshinga. Akomeza avuga ko hirengagijwe ubusumbane bw'ibimenyetso kuko Urukiko Rukuru rwahaye agaciro imvugo z'abatangabuhamya, basimbura icyemezo cy'umutungo kimwanditseho kandi gifatwa nk'inyandikomvaho kandi kitarateshejwe agaciro n'Urukiko. Avuga kandi ko urubanza rwaciwe ku kitajuririwe, kuko Batamuriza yavugaga ko

yarenganyijwe hashingiwe ku ngingo ya 39 y'Itegeko N°59/2008 ryo ku wa 10/09/2008 ryavuzwe haruguru, Umucamanza asuzuma igabanya ry'umutungo ashingiye ku byemezo by'inkiko n'inyandiko z'abahanga.

Batamuriza yiregura avuga ko iyo mitungo yafatanyije na Rutabayiru kuyishaka, kandi nawe yinjizaga amafaranga.

Incamake y'icyemezo: 1. Uruhare rw'umwe mu babanye nk'umugore n'umugabo ku mutungo bashakanye ntirugaragarira gusa mu gukora akazi kamuha umushahara mu gihe bafatanyaga kurukorera mu buryo bunyuranye.

2. Ntibihagije kugirango hemezwe ko umutungo ari uw' umuntu hashingiwe gusa ku kuba icyemezo cy'umutungo kimwanditseho igihe atagaragaza inkomoko yawo.

3. Ubujurire busuzumwa gusa mu mbibi z'ibyajuririwe, kuko undi mutungo ugizwe n'urwuri utajuririwe ntiwajya mubisuzumwa.

4. Indishyi zigenwa mu bushishozi bw'urukiko igihe uzisaba atagaragaza neza umubare w'izo asaba.

Ubujurire nta shingiro bufite;
Amagarama y'urubanza aherereye k'uwajuriye.

Amategeko yashingiweho:
Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavuguruwe, ingingo ya 29.
Itegeko Ngenga N°08/2005 ryo kuwa 14/07/2005 rigena imicungire y'ubutaka mu Rwanda, ingingo ya 5.
Itegeko N°59/2008 ryo kuwa 10/09/2008 rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, ingingo ya 39.
Itegeko N°21/2012 ryo kuwa 14/06/2012, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 170.
Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Imanza zifashishijwe:
Harerimana v. Sebukayire, RCAA0018/13/CS rwaciwe n'Urukiko rw'Ikirenga, kuwa 24/12/2014.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Batamuriza yareze Rutabayiru mu Rukiko Rwisumbuye rwa Nyarugenge, asaba ko bagabana imitungo avuga ko bashakanye babana nk'umugabo n'umugore kuva muri 1991 kugera muri 2003. Iyo mitungo ikaba igizwe n'amazu abiri ari ku Muhima mu Kagali k'Amahoro, mu Mudugudu wa Kabirizi, urwuri, imodoka 2 n'ibikoresho byo mu nzu.

[2] Mu rubanza RC0790/09/TGI/NYGE rwo kuwa 04/02/2011, Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko Batamuriza atsinzwe kuko nta bimenyetso agaragaza by'uko

yagize uruhare mu kubona iyo mitungo kandi ikaba yanditse kuri Rutabayiru. Rwashingiye kandi ku kuba mu rubanza rwemeza ko Rutabayiru ari we Se w'abana, rwategetse ko Batamuriza arerera abana mu nzu ya Rutabayiru iri ku Muhima, Batamuriza atagaragaje ko hari uruhare ayifiteho, rusobanura kandi ko hatashingirwa ku ngingo ya 39 y'Itegeko N°59/2008 ryo ku wa 10/09/2008[1]kuko ababuranyi baretse kubana kuva muri 2003 kandi iryo Tegeko ritari ryajyaho.

[3] Batamuriza yajuririye Urukiko Rukuru, avuga ko Urukiko Rwisumbuye rwagombaga kumufata nk'uwashyingiwe mu buryo bukurikije amategeko hashingiwe k'umuco w'igihugu bashakaniyemo (Uganda), rukaba rutaritaye ku batangabuhamya yatanze ahubwo rwitiranya uru rubanza rwo kugabana imitungo n'urwo yari yatanzemo ikirego cyo gusaba kwemeza ko abana babyawe na Rutabayiru.

[4] Urukiko Rukuru rwemeje ko ubujurire bwa Batamuriza bufite ishingiro, rwemeza ko urubanza rwaciwe n'Urukiko Rwisumbuye ruhindutse kuri byose, rutegeka ko agaciro k'umutungo uri mu kibanza N°6173 na N°6174 ugabanywa ku buryo bungana, buri wese agaherezwaho agaciro ka 57.093.153Frw, ruvuga ariko ko, Batamuriza aherezwaho umutungo usanzwe umuhereyeho, uri mu kibanza N°6174, Rutabayiru agaherezwaho umutungo uri mu kibanza N°6173 ariko akongerera Batamuriza 24.837.481Frw kugira ngo yiharire uwo mutungo mu rwego rwo kuringaniza agaciro, batashobora kubigabana ku neza, imitungo igatezwa cyamunara bakagabana amafaranga.

[5] Urukiko Rukuru rwasobanuye ko nta kimenyetso cyashingirwaho mu gufata Rutabayiru na Batamuriza nk'abasezeranye imbere y'amategeko y'u Rwanda kandi bakaba batagabanywa umutungo hashingiwe ku ngingo ya 39 y'Itegeko N°59/2008 ryo kuwa 10/09/2008 ryavuzwe haruguru kuko ritariho igihe bahagarikiye kubana kandi ritaragennye ko rizanagenga ibintu byabaye mbere yaryo[2].

[6] Rwasobanuye ariko ko bakwiye kugabana umutungo hashingiwe ku itegeko umucamanza yashyiraho mu mwanya w'Umushingamategeko, kuko n'ubwo nta tegeko ryagenaga uburyo ababana nk'umugabo n'umugore bacunga umutungo wabo n'uburyo bawugabana mu gihe batandukanye, ariko mu mibanire y'abantu haba hari amategeko yanditse cyangwa atanditse ayigenga kandi Rutabayiru akaba adakwiye kwikungahaza nta mpamvu, abikomoye ku bikorwa bya Batamuriza, ngo uyu abivutswemo uburenganzira.

[7] Rutabayiru yajuririye Urukiko rw'Ikirenga, avuga ko Urukiko Rukuru rwafashe icyemezo cyo kumuvogerera umutungo ruwumugabanya na Batamuriza, kandi bibujijwe mu ngingo ya 29 y'Itegeko Nshinga[3], icyo cyemezo kikaba gikwiye guteshwa agaciro kuko kinyuranyije naryo, nk'uko bivugwa mu ngingo yaryo ya 200, iteganya ko "Itegeko Nshinga ariryo Tegeko ry'Igihugu risumba ayandi. Itegeko ryose, icyemezo cyose, binyuranyije na ryo nta gaciro na gato bigira".

[8] Avuga kandi ko hirengagijwe ubusumbane bw'ibimenyetso kuko Urukiko Rukuru rwahaye agaciro imvugo z'abatangabuhamya, basimbura icyemezo cy'umutungo kimwanditseho kandi gifatwa nk'inyandikomvaho kandi kitarateshejwe agaciro n'Urukiko,

[1]Itegeko rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina.

[2] Ingingo ya 2 y'Itegeko N°42/88 ryo kuwa 27/10/1988 Interuro y'ibanze n'Igitabo cya mbere cy'amategeko y'urwunge rw'amategeko mbonezamubano iteganya ko "Itegeko rishyirirwaho gutunganya ibizakorwa ritangiye gukurikizwa; ntirishobora kugira inkurikizi ku bikorwa byabaye ritaratangira gukurikizwa keretse iyo biteganyijwe ukundi".

[3] Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 nk'uko ryavuguruwe kugeza ubu.

akaba ari cyo kigaragaza nyir'umutungo, nk'uko biteganywa n'ingingo ya 2 y'Itegeko N°08/2005 ryo ku wa 14/07/2005 rigena imikoreshereje n'imicungire y'ubutaka mu Rwanda, bigashimangirwa n'ingingo ya 26 y'iryo Tegeko.

[9] Avuga kandi ko urubanza rwaciwe ku kitajuririwe, kuko Batamuriza yavugaga ko yarenganyijwe hashingiwe ku ngingo ya 39 y'Itegeko N°59/2008 ryo ku wa 10/09/2008 ryavuzwe haruguru, Umucamanza asuzuma igabanya ry'umutungo ashingiye ku byemezo by'inkiko n'inyandiko z'abahanga.

[10] Urubanza rwaburanishijwe mu ruhame kuwa 03/05/2016, Rutabayiru yunganiwe na Me Mutunzi Donat naho Batamuriza yunganiwe na Me Ntwali Justin.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

A. Kumenya niba Batamuriza yaragize uruhare mu kubona imitungo aburana na Rutabayiru.

[11] Rutabayiru avuga ko Urukiko rwavogereye umutungo we, rugena ko agabana na Batamuriza amazu abiri kandi ari aye bwite kuko yayubatse nyuma ya 2003, atakibana na Batamuriza, kandi inzu ziri mu kibanza N°6173 na N°6174 zikaba zimwanditseho ndetse azifitiye ibyangombwa by'umutungo, bikaba aribyo bigaragaza nyiri umutungo.

[12] Avuga ko Urukiko Rukuru rwirengagije ubusumbane bw'ibimenyetso kuko rwashingiye ku mvugo z'abatangabuhamya batanze amakuru mu iperereza ritigeze risabwa n'umuburanyi, hashingirwa ku zindi manza zaciwe zo mu bihugu tudahuje umuco, rwirengangiza ko imitungo iburanwa yanditse kuri Rutabayiru akaba anayifitiye ibyangombwa kandi bitigeze biteshwa agaciro n'Urukiko nk'uko biteganywa n'amategeko agenga iby'ubutaka.

[13] Akomeza avuga ko habayeho guca urubanza ku kitajuririwe kuko Batamuriza yajuriye asaba kurenganurwa hashingiwe ku Itegeko N°59/2008 ryo ku wa 10/09/2008 rikumira kandi rikarinda ihohoterwa, ariko Umucamanza asuzuma ibyerekeranye no kugabana umutungo yirengagije ibiteganywa n'amategeko, asaba ko icyo cyemezo cyakurwaho.

[14] Me Mutunzi, mu kumwunganira, avuga ko habayeho kutubahiriza amategeko kuko Urukiko rwahaye agaciro ubuhamya bw'amagambo kandi hari ibimenyetso byanditse bitagaragajwe ko ari inyandikompimbano. Avuga ko habayeho kuvogera imitungo ya Rutabayiru kuko yayishatse mu 2004, ari wenyine, atakibana na Batamuriza kuva muri 2003.

[15] Avuga kandi ko nta bimenyetso bifatika bigaragaza ko bashakanye imitungo, kuko amafoto Batamuriza aburanisha atafashwe n'umuntu ubifitiye ubuzobere, kandi ko aho umuntu agaragazwa ku ifoto ashobora kuba atari naho yafotorewe, naho kuba abana ba Rutabayiru barize muri APACOPE ku Muhima bikaba atari ikimenyetso cy'uko bafatanyije umutungo.

[16] Avuga ariko ko Urukiko rubibonye ukundi, rwazirikana ko imitungo iburanwa yatanzweho ingwate muri Banki, Rutabayiru ahabwa umwenda atabashije kwishyura, ubu ikaba iri muri gahunda yo gutezwa cyamunara, harangizwa urubanza RCOMA0054/10/CS, rwaciwe n'Urukiko rw'Ikirenga, ibi bikaba bikwiye kwitabwaho, hakaba hagabanwa amafaranga yasaguka nyuma y'uko banki iteje cyamunara.

[17] Batamuriza avuga ko yatangiye kubana na Rutabayiru nk'umugabo n'umugore muri 1991, muri Uganda, barekeraho kubana muri 2003, bashakana iyo mitungo irimo inzu iri mu kibanza N°6173, yubatswe muri 1997, batuye i Gikondo, bajya kuyibamo mu 1999 ari naho babyariye umwana witwa Prince ku wa 10/07/2001, abandi bana bakaba barigaga muri APACOPE, ubwo bari batuye ku Muhima.

[18] Avuga ko nawe yinjizaga amafaranga kuko yakoreraga CICR (Comité International de la Croix Rouge), ahavanwa n'uburwayi bw'umwana, nyuma acururiza Nyabugogo ahazwi ku izina ryo mu "Mashyirahamwe" mu muryango wa N°12, kandi akaba ari nawe wahaga umufundi ibikoresho n'amafaranga kuko Rutabayiru yakoreraga kure. Avuga ko kubera ko bari batuye ku Muhima abana babo bize kuri APACOPE, ko kandi uruhare rwe rwasobanuwe n'umutangabuhamya wubatse inzu ya mbere, ariwe Sakindi wabajijwe mu Rukiko Rukuru n'ubu akaba yakongera kubazwa bibaye ngombwa, kimwe na Mukakamanzi Agnès baguze ikibanza, akamwishyura 35.000Frw.

[19] Avuga ko kuba ibyangombwa byanditseho amatariki ya nyuma yo kubana kwe na Rutabayiru ari uko ari "régularisation" yakozwe nyuma, naho kuba yaratanze ingwate kuri iyo mitungo bikaba bidakwiye kumuvutsa uburenganzira bwe. Avuga kandi ko hari n'urwuri bari bafite, ruherereye i Bungwe, akaba afite amakuru ko rwaguzwe na Kabera Etienne mu kwezi kwa kabiri 2016, ku mafaranga 14.000.000Frw.

[20] Me Ntwali avuga ko mu rubanza rujuririrwa nta mategeko yirengagijwe, kuko icyari kigamijwe ari ukumenya niba Rutabayiru yarabanye na Batamuriza bakaba barashakanye umutungo uburanwa, bityo, bakaba bakwiye kuwugabana. Asobanura ko gukora iperereza byibwirijwe n' Umucamanza nta tegeko byishe, kuko yari agamije gusubiza icyaregewe cyo kumenya niba Batamuriza yaragize uruhare ku mutungo aburana.

[21] Avuga ko umutungo uburanwa utabonetse nyuma yo kutabana nk'umugore n'umugabo, kuko nk'uko biboneka mu rubanza rwo ku wa 29/04/2004, rwemeje ko abana babyawe na Rutabayiru, iyo mitungo yavuzwe, kandi uburyo ibyangombwa byabonetse bikaba bidasobanutse kuko bigaragara ko yahawe icyangombwa cy'ikibanza N°6173 kuwa 11/04/2005, naho icyo kwubaka akagihabwa ku wa 01/04/2005. Akomeza avuga ko nta kuvogera umutungo wa Rutabayiru kwabayeho ngo habe haranyuranyijwe n'ingingo ya 29 y'Itegeko Nshinga, kuko niba awufatanyije na Batamuriza, kutawuvogera byareberwa ku mpande zombi.

[22] Ku kibazo cy'uko Rutabayiru ari we wanditswe ku byangombwa by'umutungo, bikaba bigomba gufatwa nk'inyandikompamo, Me Ntwali avuga ko n'ubundi Batamuriza atavuga ko izo nyandiko ari impimbano, ko ahubwo icyo yemeza ari uko uwo mutungo bawushakanye, akaba rero akwiye kuwuhabwaho uburenganzira.

UKO URUKIKO RUBIBONA

[23] Urukiko rusanga imiburanire ya Rutabayiru y'uko umutungo uburanwa wabonetse muri 2004, batakibana, itafatwaho ukuri kuko nk'uko Urukiko Rukuru rwabigaragaje, abatangabuhamya barimo Nyinawabera Euphrate na Uwitonze Innocent babajijwe n'urwo Rukiko, basobanuye neza ko bari abaturanyi ba Rutabayiru na Batamuriza ku Muhima, aho aba babanaga nk'umugabo n'umugore, akaba ari cyo gihe bahubatse amazu aburanwa, bakaba bavuga ko ahaburanwa haguzwe kandi hubakwa muri 1997 na 1998, Rutabayiru abana na Batamuriza, hakaba nta mpamvu ubwo buhamya butafatwaho ukuri, kandi na

Rutabayiru, aburana mu Rukiko Rukuru yavuze ko ikibanza N°6174 bakiguze mu 1998 akibana na Batamuriza.

[24] Urukiko rurasanga kandi, mu igenagaciro ryasabwe n'Urukiko Rukuru mu cyemezo cyo ku wa 08/08/2012, bigaragara ko inzu y'ingenzi yo mu kibanza N°6173 yubatswe mu 1997 naho inzu yo mu kibanza N°6174 yubakwa mu 2000, usibye n'ibyo kandi, mu rubanza RC4106/04 rwo ku wa 29/04/2004 rwari rugamije kwemeza ko abana babyawe na Rutabayiru, hakaba haremejwe ko abo bana bazarererwa mu nzu ye ntoya ikodeshwa 50.000Frw, iri ku Muhima, Kigali Ville, bikazakorwa nyuma y'umwaka w'amashuri 2003-2004, ibi bikaba byumvikanisha ko hari inzu nini n'intoya, kandi zubatswe mbere ya 2004.

[25] Nk'uko ababuranyi babyemeranywaho, Rutabayiru na Batamuriza babanye nk'umugore n'umugabo kuva muri 1991 kugera muri 2003, aho bagereye mu Rwanda, Rutabayiru yakoreraga mu Ntara, Batamuriza akora muri CICR nk'uko biboneka mu cyemezo cy'umukoresha cyo ku wa 09/10/1997, ahembwa 47.600Frw, nk'uko bigaragara mu cyemezo cy'umushahara cyo ku wa 21/10/2010 cyatanzwe na CICR, kandi no kuba yaracuruje, bikaba bitaravugurujwe n'uwo baburana.

[26] Urukiko rusanga kandi n'ubwo Rutabayiru avuga ko amafoto Batamuriza yagaragaje yerekana abana babo bakinira imbere y'amazu aburanwa atahabwa agaciro, icyo kimenyetso nacyo kitabura kwemerwa kuko, kuba kigizwe n'ifoto ubwabyo atari inenge, mu gihe ukinenga atagaragaza ko cyaba ari igihimbano. Urukiko rurasanga rero icyo kimenyetso nacyo cyunganira ibindi byagaragajwe byerekana ko Rutabayiru atubatse amazu aburanwa nyuma yo kubana na Batamuriza.

[27] Urukiko rurasanga kandi n'iyo Batamuriza aza kuba atarakoze akazi kamuha umushahara, muri kiriya gihe cy'imyaka 12 yabanaga na Rutabayiru nk'umugabo n'umugore bafatanyije kwubaka ko guteza imbere urugo, atari kubura uruhare mu bikorwa byarwo, mu gihe bafatanyaga kurukorera, mu buryo bunyuranye.

[28] Ku ngingo y'uko Rutabayiru afite icyangombwa y'imitungo iburanwa kimwanditseho, Urukiko rusanga n'ubwo ariwe ufite icyemezo cy'umutungo, bidahagije kugirango hemezwe ko ari uwe wenyine, ahubwo akaba yari akwiye kugaragaza inkomoko yawo, nk'uko biteganywa mu ngingo ya 5[4] y'Itegeko Ngenga N°08/2005 ryo kuwa 14/07/2005 rigena imicungire y'ubutaka mu Rwanda, iteganya ko umuntu afite uburenganizara bwo gutunga ubutaka yabonye ku bw'umuco, yahawe, cyangwa se yaguze[5], bityo akerekana ko nta ruhare Batamuliza yagize kuri iyo nkomoko, naho kwandikwaho ibyangobwa gusa bikaba byanaterwa n'amakuru atari ay'ukuri yatanzwe mu iyandikisha.

[29] Ku byerekeye ishingiro ry'igabana ry'umutungo hagati ya Rutabayiru na Batamuriza ku bw'amategeko, Urukiko rusanga igabanwa ry'uwo mutungo ritashingirwa ku ngingo ya 39 y'Itegeko N°59/2008 ryo ku wa 10/09/2008 kuko ababuranyi barekeye aho kubana ritarajyaho, ahubwo ryashingirwa ku ngingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 nk'uko ryavuguruwe kugeza ubu, na Rutabayiru ubwe

[4] Iyo ngingo iteganya 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".

[5] Ibisobanuro by'uko kuba umuburanyi afite icyemezo cy'umutungo bidahagije kugira ngo Urukiko rwemeze ko uwo mutungo ai uwe atabanje kugaragaza inkomoko yawo, byatanzwe mu rubanza RCAA0018/13/CS rwo ku wa 24/12/2014, Harerimana Emmanuel aburana na Sebukayire Tharcisse.

aburanisha, iteganya ko "buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo afatanyije cyangwa asangiye n'abandi, kandi ko uwo mutungo utavogerwa", bityo, ubwo Batamuriza yafatanyije na Rutabayiru guhaha umutungo w'amazu aburanwa nk'uko byasobanuwe haruguru, hakaba ntawagira uburenganzira bwo kuwuhezaho undi, kuko ukutavogerwa ku mutungo usangiwe n'abantu babiri bigomba kureberwa ku mpande zabo bombi.

[30] Urukiko rurasanga mu gihe Rutabayiru yaba yegukanye umutungo wose kandi wagizwemo uruhare n'uwo bawushakanye, byaba binyuranyije n'ihame rikomeye mu mategeko ryo kutikungahaza nta mpamvu (*enrichissement sans cause*) nk'uko byasobanuwe mu rubanza rujurirwa.

[31] Ku byerekeranye n'undi mutungo ugizwe n'urwuri Batamuriza avuga ko ruherereye mu Karere ka Gicumbi, Urukiko rusanga, Batamuriza yararutsindiwe mu Rukiko Rukuru, ntiyabijuririra, ku buryo no mu mwanzuro we wo kwiregura yasabye ko urubanza rwaciwe n'Urukiko rutahinduka, bityo, Urukiko rukaba rutasuzuma ibijyanye n'urwo rwuri kuko ntawabijuririye, kandi ingingo ya 170 y'Itegeko N°21/2012 ryo ku wa 14/06/2012, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko ubujurire busuzumwa gusa mu mbibi z'ibyajuririrwe.

B. Ku byerekeye indishyi zisabwa na Batamuriza.

[32] Me Ntwali asaba ko Batamuriza yagenerwa 500.000Frw y'igihembo cya Avoka na 700.000 Frw y'ikurikiranarubanza, naho Me Mutunzi uburanira Rutabayiru akavuga ko nta ndishyi zikwiye kuko nta mpamvu zishingiyeho.

[33] Urukiko rurasanga, hashingiwe ku ngingo ya 258 y'Igitabo cya gatatu cy'Urwunge rw'Amategeko mbonezamubano, iteganya ko nyir'igikorwa cyangirije undi, ategekwa kuriha ibyangijwe, kuba Batamuriza yaragombye kuburana na Rutabayiru kugira ngo ahabwe uburenganzira bwe ku mutungo, byumvikana ko yagize ibyo atanga mu gukurikirana urubanza no guhemba Avoka wamuburaniye, ariko kuko nta bimenyetso yatanze bigaragaza neza umubare w'izo ndishyi asaba, Urukiko rukaba rwamugenera, mu bushishozi bwarwo 300.000Frw y'ikurikiranarubanza, na 500.000Frw y'igihembo cya Avoka.

III. ICYEMEZO CY'URUKIKO

[34] Rwemeje ko ubujurire bwa Rutabayiru Charles nta shingiro bufite;

[35] Rwemeje ko urubanza RCA0076/11/HC rwaciwe n'Urukiko Rukuru kuwa 15/03/2013 ruhindutse gusa ku byerekeye indishyi;

[36] Rutegetse Rutabayiru Charles kwishyura Batamuriza Immaculée, igiteranyo cy'indishyi zihwanye n'amafaranga ibihumbi magana inani (800.000Frw);

[37] Rutegetse Rutabayiru Charles kwishyura amagarama y'urubaza angana na 100.000Frw.