

KAPERE v. IYAMUREMYE

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/CIV0005/14/CS (Nyirinkwaya, P.J., Mukandamage na Nyirandabaruta, J.) 5 Gashyantare 2016]

Amategeko agenga ububasha bw'Inkiko – Gusubirishamo urubanza ku mpamvu z'akarengane – Urubanza rwasubirishijwemo ingingo nshya – Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane ni inzira y'ubujurire idasanzwe yihariye igamije gukosora amakosa yakozwe mu rubanza rwaciwe ku rwego rwa nyuma, bityo n'urubanza rwaciwe burundu nyuma yo gusubirishwamo ingingo nshya rurebwa n'iyi nzira idasanzwe – Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 79 n'ya 81 – Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 186 n'ya 193.

Amategeko agenga ubutaka – Amakimbirane ku butaka – Igishushanyo cy'aho ibibanza byatangiwe kibitswe n'inzego zibishinze gishobora kuba ikimenyetso kimara impaka zo kumenya nyir'ikibanza kiburanwa – Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa, ingingo ya 3.

Indishyi – Indishyi z'ikurikiranarubanza – Igihembo cy'Avoka – Umuburanyi watsinzwe urubanza ntiyagenerwa indishyi z'ikurikiranarubanza kuko ahubwo ariwe uzicibwa zigahabwa uwamutsinze – Iteka ryo kuwa 30 Nyakanga 1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Incamate y'ikibazo: Uru rubanza rwatangiriye mu Rukiko rw'ibanze rwa Gisenyi, Iyamuremye arega Kapere ikibanza N°2129 kiri mu Mudugudu wa Nyarubande, Akagari ka Mbugangari, Akarere ka Rubavu, Intara y'Iburengerazuba.

Uru Rukiko rwanzuye ko ikibanza ari icya Kapere nk'uko byanemejwe n'umubitsi w'impapuro mpamo z'ubutaka rushingiye ku bimenyetso bigizwe n'inyandiko yagiye yandikira ubuyobozi bw'Akarere asaba icyo kibanza, rwanemeje kandi ko ibyo Iyamuremye aburanisha ko ibikorwabiri mu kibanza ari ibya Kapere ariko ikibanza atari icye nta shingiro byahabwa. Iyamuremye yajuririye Urukiko Rwisumbuye rwa Rubavu, narwo rwemeza ko imikirize ya mbere idahindutse, kubera ko nta kimenyetso atanga kigaragaza nta shiti ko ikibanza aburana ari icye.

Uru rubanza rumaze kuba itegeko Iyamuremye yarusubirishijemo ingingo nshya, avuga ko yabonye igishushanyo kigaragaza aho ibibanza byatangiwe nk'ikimenyetso gishya, ko kandi mu gihe urubanza rwari rukiburanishwa, Kapere yapakiye amabuye yari muri icyo kibanza akaba agomba kuyishyura. Mu rubanza RCA0495/012/TGI/RBV, urukiko rwashingiye kuri icyo kimenyetso ndetse n'iperereza rwakoze mu biro bishinze ubutaka by'Akarere ka Rubavu, n'aho ikiburanwa kiri, bwumva n'abantu batandukanye, maze rwemeza ko ikibanza ari icya Iyamuremye, ko kigomba no kumwandikwaho kigakurwa kuri Kapere, ko kandi Kapere agomba kumwishyura 650.000Frw y'agaciro k'amabuye yavanye mu kibanza, indishyi z'akababaro zingana na 300.000Frw na 200.000Frw y'igihembo cya Avoka.

Nyuma y'icibwa ry'urwo rubanza, Kapere yandikiye Urwego rw'Umuvunyi asaba ko urubanza RCA0495/012/TGI/RBV rwasubirishwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma impamvu ze, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko urwo rubanza rwasubirishwamo kubera ko hari ibimenyetso byirengagijwe mu icibwa ryarwo. Amaze gusuzuma raporo y'Ubugenzuzi Bukuru bw'Inkiko, Perezida

w'Urukiko rw'Ikirenga yemeje ko dosiye ishyikirizwa Ubwanditsi bw'Urukiko kugirango urubanza ruburanishwe.

Mu gihe cy'iburanisha, Me Idahemuka uburanira Iyamuremye yazamuye inzitizi avuga ko Urukiko rw'Ikirenga rudafite ububasha bwo kuburanisha ikirego cyatanzwe na Kapere cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA0027/012/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu kubera ko urwo rubanza ari urwasubirishagamo urundi ingingo nshya, kandi ibyo bikaba binyuranyije n'ibiteganywa n'ingingo ya 193 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi iz'umurimo n'iz'ubutegetsu itemera inzira iyo ari yo yose y'ubujurire kuri bene izo manza, kuko urubanza rudashobora gusubirishwamo ingingo nshya inshuro ebyiri.

Me Gashagaza wunganira Kapere avuga ko ikirego cye gishingiye ku biteganywa n'ingingo ya 29 y'Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'Ububasha by'Urukiko rw'Ikirenga iruha ububasha bwo gusubiramo ku mpamvu z'akarengane urubanza yasabiye gusubirishamo, kuko yagaragarije Urwego rw'Umuvunyi akarengane karurimo, maze ikirego kirakirwa. Yongeraho ko iryo Tegeko Ngenga ari ryo rigomba gukurikizwa kubera ko risumba Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'ianza z'imbonezamubano, iz'ubucuruzi iz'umurimo n'iz'ubutegetsu.

Me Idahemuka wunganira Iyamuremye avuga ko Kapere nta nyungu afite muri uru rubanza kuko mu myanzuro ye yivugiye ko mu gihe ikirego cyakwakirwa n'Urukiko rw'Ikirenga nta shingiro cyahabwa. Me Gashagaza wunganira Kapere avuga ko afite inyungu mu rubanza, kuko Urwego rw'Umuvunyi rwemeje ko mu rubanza asaba ko rusubirwamo harimo akarengane, ko ahubwo uwo baburana yasomye nabi imyanzuro ye.

Me Gashagaza avuga na none ko Iyamuremye agomba gutegekwa guha umukiliya we 2.000.000Frw y'ikurikiranarubanza n'igihembo cya Avoka, mu gihe Me Idahemuka avuga ko Kapere ariwe ugomba kwishyura umukiliya we 1.000.000Frw y'igihembo cya Avoka yamutangishije.

Nyuma y'izo ingingo z'imiburanire y'impande zombi, Urukiko rwasanze rugomba gusuzuma niba ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane urubanza rwasubirishijwemo ingingo nshya cyakwakirwa, rwasanze kandi rugomba kureba niba igishushanyo cyatangiweho ibibanza Iyamuremye yatanze asubirishamo ingingo nshya urubanza RCA0027/012/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu kuwa 25/04/2012 gishobora kumara impaka mu kumenya nyir'ikibanza N°2129 kiburanwa.

Incamate y'icyemezo: 1. Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane ari inzira y'ubujurire idasanzwe yihariye igamije gukosora amakosa yakozwe mu rubanza rwaciwe ku rwego rwa nyuma, bityo n'urubanza rwaciwe burundu nyuma yo gusubirishwamo ingingo nshya rukaba rurebwa n'iyi nzira idasanzwe.

2. Habayeho kutumva neza ibikubiye mu myanzuro ya Kapere kuko adasaba ko ikirego cye kitakwakirwa, bityo afite inyungu mu rubanza kuko ikibanza aburana avuga ko ari icye.

3. Igishushanyo cy'aho ibibanza byatangiye kiri mu Karere ka Rubavu ni ikimenyetso kimara impaka zo kumenya nyir'ikibanza kiburanwa hagati ya Kapere na Iyamuremye, bityo kuba Urukiko Rwisumbuye rwarakiriye ikirego cya Iyamuremye gusubirishamo ingingo nshya urwo rubanza RCA0027/012/TGI/RBV rukanahindura imikirize yarwo, bikaba bifite ishingiro kandi nta karengane byateje Kapere.

4. Indishyi Kapere asaba Iyamuremye ntagomba kuzigenerwa kuko atsinzwe muri uru rubanza, ahubwo ku ruhande rwe agomba kwishyura Iyamuremye 500.000Frw kuri uru

rwego agenwe mu bushishozi bw'urukiko, kuko yashatse Avoka wo kumuburanira muri uru rubanza.

Ikirego nta shingiro gifite.

Amagarama y'urubanza aherereye k'uwasubirishijemo urubanza ku mpamvu z'akarengane.

Amategeko yashingiweho:

Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 79 n'ya 81.

Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, ingingo ya 186 n'ya 193.

Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa, ingingo ya 3.

Iteka ryo kuwa 30 Nyakanga 1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258.

Imanza zifashishijwe:

Mberabagabo n'abandi v. Dunia n'abandi, RS/REV/INJUST/COM/0001/13/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 03/01/2014.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Iyamuremye Mbanza Jeannot yareze Kapere George mu Rukiko rw'Ibanze rwa Gisenyi, asaba kwemeza ko ikibanza N°2129 kiri mu Mudugudu wa Nyarubande, Akagari ka Mbugangari, Akarere ka Rubavu, Intara y'Iburengerazuba ari icye no gutegeka ko kimwandikwaho.

[2] Urukiko rwaciye urubanza RC0794/011/TB/GIS kuwa 16/12/2011 rwemeza ko ikibanza kiburanwa ari icya Kapere George, kubera ko rwasuzumye ibimenyetso yarushyikirije birimo inyandiko yo kuwa 28/04/2009 y'Ubuyobozi bw'Umudugudu wa Nyarubande bwakemuye ikibazo cye na Iyamuremye ivuga ko ibikorwa biri mu kibanza ari ibye, ikanzura ko n'ikibanza ari icya Kapere, inyandiko yo kuwa 14/05/2009 yanditse asaba ibyangombwa by'ikibanza, inyandiko zo kuwa 21/05/2009 no kuwa 19/05/2009 zigaragaza aho yishyuriye Akarere ngo kamupimire ikibanza, inyandiko yo kuwa 15/02/2010 igaragaza ko ikibanza cyahawe N°2129 cyabaruwe by'agateganyo kuri Kapere n'amasezerano y'ubukode burambye yo kuwa 22/07/2011 Kapere yagiranye na Leta, maze rusanga nta kindi rwakora uretse kwemeza ibyo umubitsi w'impapuro mpamo z'ubutaka yakoze, ko ndetse atari ngombwa kwiyambaza abatangabuhamya nk'uko ababuranyi babyifuzaga kuko hari ikimenyetso cy'inyandiko mvaho.

[3] Urukiko rwasuzumye kandi amasezerano y'ubugurane bw'ikibanza yo kuwa 17/06/2004 yabaye hagati ya Iyamuremye na Kabanda Jean Népo, aho yamuguraniraga ikibanza kiri mu Mudugudu wa Mbugangari nawe akamuha ikiri mu Mujyi wa Kigali, rusanga rutayaha agaciro kuko ibyo bibanza bitagaragarizwa ibishushanyo, n'abo

Iyamuremye avuga ko basinyeho, rukaba rutamenya ubuyobozi bari bahagarariye ubwo ari bwo, kuko bidahagije kuvuga ngo nyumbakumi “zone 5” rutamenya aho iherereye.

[4] Urukiko rwasanze na none ibyo Iyamuremye yavugaga ko Kapere yatangiye gushaka ibyangombwa mu mwaka wa 2009 batangiye kuburana nta shingiro bifite kuko icya ngombwa ari uko yabishatse akabibona mu gihe we nta cyangombwa na kimwe afite, ko kandi n’ibyo aburanisha ko Ubuyobozi bw’Umudugudu bwanditse ko ibikorwa biri mu kibanza ari ibya Kapere ariko ikibanza atari icye nta shingiro byahabwa.

[5] Iyamuremye yajuririye Urukiko Rwisumbuye rwa Rubavu, ruca urubanza RCA0027/012/TGI/RBV tariki ya 25/04/2012, rwemeza ko imikirize ya mbere idahindutse, kubera ko nta kimenyetso atanga kigaragaza nta shiti ko ikibanza aburana ari icye, rumutegeka guha Kapere 100.000Frw yo kumusiragiza mu manza, gutanga umusogongero wa Leta n’amagarama y’urubanza.

[6] Uru rubanza rumaze kuba itegeko Iyamuremye Mbanza Jeannot yarusubirishijemo ingingo nshya, avuga ko yabonye igishushanyo kigaragaza aho ibibanza byatangiye nk’ikimenyetso gishya, ko kandi mu gihe urubanza rwari rukiburanishwa, Kapere yapakiye amabuye yari muri icyo kibanza akaba agomba kuyishyura. Mu rubanza RCA0495/012/TGI/RBV, urukiko rwashingiye kuri icyo kimenyetso, iperereza rwakoze mu biro bishinzwe ubutaka by’Akarere ka Rubavu, n’aho ikiburanwa kiri, bwumva n’abantu batandukanye, maze rwemeza ko ikibanza ari icya iyamuremye, ko kigomba no kumwandikwaho kigakurwa kuri Kapere George, ko kandi Kapere agomba kumwishyura 650.000Frw y’agaciro k’amabuye yavanye mu kibanza, indishyi z’akababaro zingana na 300.000Frw na 200.000Frw y’igihembo cya Avoka.

[7] Mu gufata icyo cyemezo, urukiko rwasanze koko Kapere ariwe ufite ibyangombwa bw’icyo kibanza, ariko ubwo rwakoraga iperereza haba muri Biro by’ubutaka cyangwa ku kiburanwa, rwarabajije Bigirimana Makini ubishinzwe, aba “topographes” Munyabuhoro Jean Louis Robert na Kuramba Placide bavuga ko Kapere yabonye icyo kibanza biturutse mu buyobozi bw’Akagari ka Mbugangari, ubwo hakorwaga ibarura rishya ikibanza kigahabwa N°2129, ariko kikaba kitagaragaza nimeru cyari gisanganywe mbere, mu gihe ku gishushanyo (MAP) bigaragara ko Niyonshuti Jean Paul wagihawe yari yadikanyije na Kayitani Evariste haruguru yabo hari uwitwa Bizimana Mpakaniye, ariko Kapere akaba atakigaragara, icyo kibanza rero kikaba cyari gifite N°4288 nk’uko bigaragara kuri MAP iri mu biro by’ubutaka, kandi kikaba cyari cyarabaruwe kuri Niyonshuti Jean Paul wari wadikanyije na Kayitani Evariste, Kapere rero akaba yarahawe izo nimeru mu ibarura rishya ry’ubutaka ryakozwe n’Akagari bushingiye ku byo yari yabasobanuriye ku giti cye.

[8] Rwasanze umutangabuhanya witwa Mataratara uvuga ko ikibanza cyahawe Kapere, agaragaza ikindi gishushanyo kiriho izina rya Kapere, ariko wareba aho ikibanza yita ko aricyo cyahawe Kapere kiri, ugasanga ntaho gihuriye n’ikibanza cyahawe Niyonshuti Jean Paul bigaragara ko ari we wadikanyije n’abandi basirikare bari baherewe ibibanza umunsi umwe, akibaza icyo gishushanyo cyavuye kandi kitanagaragara mu biro by’ubutaka.

[9] Ku byerekeye ubuhanya bunyuranye bwatanzwe, urukiko rwasanze ubwatanzwe na Mataratara butahabwa agaciro kuko bunyuranya nibyo Kapere ubwe yivugiye ubwo yaburanaga icyo kibanza na Iyamuremye ku wa 28/04/2009 mu nzego z’ibanze, akavuga ko yaje kubaka icyo kibanza cye ahasanga umuturanyi witwa Bahati Augustin, babanza gushwana ku kibazo cy’imbibi, ariko baza kumvikana muri 2002, ko ariko ubwo rwakoraga iperereza rwabajije Bahati aho akomora ikibanza atuyemo, avuga ko yakiguze na Bizimana

Mpakaniye nk'uko bigaragazwa n'amasezerano y'ubugure yo ku wa 28/08/2003, mu kureba aho ikibanza cya Bizimana Mpakaniye, Bahati yaguze, rusanga atadikaniye na Kapere ahubwo yadikanyije na Kayitani Evariste ibumoso bwe uturutse kuri ITIG, hari Niyonshuti Jean Paul, wabihuza n'igishushanyo cyazanywe na Mataratara ugasanga ntaho ikibanza yita icya Kapere gihuriye n'icya Niyonshuti Jean Paul.

[10] Nyuma y'icibwa ry'urwo rubanza, Kapere George yandikiye Urwego rw'Umuvunyi asaba ko urubanza RCA0495/012/TGI/RBV rwasubirishwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma impamvu ze, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko urwo rubanza rwasubirishwamo kubera ko hari ibimenyetso byirengagijwe mu icibwa ryarwo. Amaze gusuzuma raporo y'Ubugenzuzi Bukuru bw'Inkiko, Perezida w'Urukiko rw'Ikirenga yemeje ko dosiye ishyikirizwa Ubwanditsi bw'Urukiko kugirango urubanza ruburanishwe.

[11] Urubanza rwaburanishijwe mu ruhamwe tariki ya 15/09/2015, Kapere George yunganiwe na Me Gashagaza Philbert, naho Iyamuremye Mbanza Jeannot yunganiwe na Me Idahemuka Tharcisse, urubanza rushyirwa mu mwiherero, tariki ya 16/10/2015, urukiko rufata icyemezo cyo gukora iperereza mu Biro by'ubutaka by'Akarere ka Rubavu n'aho ikibanza kiburanwa kiri, iburanisha rishyirwa tariki ya 15/12/2015, uwo munsu iburanisha rikomereza ku byavuye mu iperereza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a) Kumenya niba Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane urubanza rwasubirishijwemo ingingo nshya.

[12] Me Idahemuka uburanira Iyamuremye avuga ko Urukiko rw'Ikirenga rudafite ububasha bwo kuburanisha ikirego cyatanzwe na Kapere cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA0027/012/TGI/RBV rwaciwe tariki ya 25/04/2012 n'Urukiko Rwisumbuye rwa Rubavu kubera ko urwo rubanza ari urwasubirishagamo urundi ingingo nshya, ko ibyo binyuranyije n'ibiteganywa n'ingingo ya 193 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi iz'umurimo n'iz'ubutegetsu itemera inzira iyo ari yo yose y'ubujurire kuri bene izo manza, kuko urubanza rudashobora gusubirishwamo ingingo nshya inshuro ebyiri, ahubwo ruba rwabayeho itegeko.

[13] Me Gashagaza wunganira Kapere avuga ko ikirego cy'e gishingiye ku biteganywa n'ingingo ya 29 y'Itegeko Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'Ububasha by'Urukiko rw'Ikirenga iruha ububasha bwo gusubiramo ku mpamvu z'akarengane urubanza yasabiye gusubirishamo, kuko yagaragarije Urwego rw'Umuvunyi akarengane karurimo, maze ikirego kirakirwa. Yongeraho ko iryo Tegeko Ngenga ari ryo rigomba gukurikizwa kubera ko rifite agaciro kari hejuru y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi iz'umurimo n'iz'ubutegetsu.

UKO URUKIKO RUBIBONA

[14] Mbere yo gukomeza iburanisha mu mizi y'urubanza, Urukiko rwariherereye rusanga ingingo ya 193 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imburanishirize

y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu iteganya ko icyemezo gifashwe mu gusubirishamo urubanza ingingo nshya kitemera inzira z'ubujurire izo arizo zose.

[15] Na none igika cya mbere cy'ingingo ya 79 cy'Itegeko Ngenza N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko Urwego rw'Umuvunyi ari rwo rufite ububasha bwo kuregera Urukiko rw'Ikirenga ibirego byerekeranye no gusubirishamo ku mpamvu z'akarengane urubanza rwaciwe ku rwego rwa nyuma, naho ingingo ya 81 yaryo ikavuga ko urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane nk'uko byavuzwe haruguru, iyo hari ibimenyetso simusiga bigaragaza ruswa, ikimenyane cyangwa icyenewabo, byagize ingaruka ku mikirize y'urubanza bikaba bitarigeze bimenywa n'uwatsinzwe mu gihe cy'iburana; iyo mu icibwa ry'urubanza hirengagijwe amategeko n'ikimenyetso bigaragarira buri wese; iyo urubanza rudashobora kurangizwa ukurikije imikirize yarwo.

[16] Urukiko rwasanze rero ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane giteganywa n'ingingo ya 79 n'ya 81 zavuzwe haruguru, ari inzira y'ubujurire idasanze yihariye igamije gukosora amakosa yakozwe mu rubanza rwaciwe ku rwego rwa nyuma hashingiwe ku biteganywa muri izo ngingo, bityo n'urubanza rwaciwe burundu nyuma yo gusubirishwamo ingingo nshya rukaba rurebwa n'ayo nzira idasanze.

[17] Uwo ni nawo murongo wafashwe kuri iki kibazo n'uru rukiko mu rubanza RS/REV/INJUST/COM/0001/13/CS rwaciwe tariki ya 03/01/2014 haburana Mberabagabo Innocent, Notaire Kayitesi Judith, Butera Jean Pierre na Fiat Amélie na Dunia Bakarani, hagobokeshejwe BCR, ko igihe umuburanyi agaragaza imwe mu mpamvu ziteganywa n'ingingo ya 81 yavuzwe haruguru, urubanza rwasubirishijwemo ingingo nshya hashingiwe ku mpamvu ziteganywa mu ngingo ya 186 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryavuzwe haruguru, rushobora gusubirishwamo ku mpamvu z'akarengane.

b) Kumenya niba Kapere afite inyungu muri uru rubanza.

[18] Me Idahemuka wunganira Iyamuremye avuga ko Kapere nta nyungu afite muri uru rubanza kuko mu myanzuro ye yivugiye ko mu gihe ikirego cyakwakirwa n'Urukiko rw'Ikirenga nta shingiro cyahabwa.

[19] Me Gashagaza wunganira Kapere avuga ko afite inyungu mu rubanza, kuko Urwego rw'Umuvunyi rwemeje ko mu rubanza asaba ko rusubirwamo harimo akarengane, ko ahubwo uwo baburana yasomye nabi imyanzuro ye.

[20] Kuri iyi nzitizi, urukiko rwasanze harabayeho kutumva neza ibikubiye mu myanzuro ya Kapere kuko adasaba ko ikirego cye kitakwakirwa, rusanga rero afite inyungu mu rubanza kuko ikibanza aburana avuga ko ari icye.

Kumenya niba igishushanyo cyatangiyeho ibibanza Iyamuremye yatanze asubirishamo ingingo nshya urubanza RCA0027/012/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu kuwa 25/04/2012 gishobora kumara impaka mu kumenya nyiri ikibanza N°2129 kiburanwa hagati ya Iyamuremye Jeannot na Kapere George.

[21] Me Gashagaza na Kapere yunganira bavuga ko icyo Iyamuremye yitaga ikimenyetso gishya kigizwe n'igishushanyo avuga ko yahawe n'Akarere ka Rubavu cyatumye asubirishamo urubanza RCA0027/012/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa

Rubavu kuwa 25/04/2012 ntaho gihuriye n'ikibanza N°2129 cyaburanwaga, ko kandi kitagaragaza aho gikomoka ndetse n'urwego rwagitanze, umukono na kashe by'uwagitanze.

[22] Bavuga ko harebwe ibiteganywa n'ingingo ya 186, agaka ka 3 y'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, umucamanza atari kwakira ikirego cya Iyamuremye kuko ibyo bimenyetso bidafite aho bihuriye n'ikiburanwa, atari ibya kamarampaka.

[23] Basobanura ko mu cyemezo umucamanza yafashe, yitiranyije inkomoko y'ikibanza N°2129 aho avuga ko gikomoka ku kibanza N°4288 cyari cyaratanzwe n'Akarere ka Rubavu (iyo barebye ku gishushanyo cy'Akarere ka Rubavu), anasobanura ko ngo bigaragara ko Kapere ari we wanditseho ikibanza akaba ari nawe ugifitiye ibyangombwa, ariko ko mu gihe yakoraga iperereza akabaza abakozi bo mu Biro bishinzwe iby'ubutaka, yasanze ko mu gihe cyo kwandikisha ikibanza Kapere yakibonye hagendewe cyangwa biturutse ku makuru bahawe n'ubuyobozi bw'Akagari ka Mbugangari, ko ariko ikibanza kitagaragaza numero cyari gisanzwe gifite mbere mu bishushanyo by'Akarere.

[24] Umucamanza kandi ngo asobanura ko ikibanza numero 2129 gikomoka ku kibanza N°4288 ngo nk'uko byagaragaraga ku gishushanyo kiri mu Biro by'ubutaka by'Akarere ka Rubavu, agakomeza avuga ko iyo N°4288 yari ibaruwe kuri Niyonshuti Jean Paul wari wadikanyije na Kayitani Evariste ngo bityo Kapere akaba yarahawe iriya numero mu biro by'ubutaka bashingiye ku byo yari yasobanuriye Akagari ku giti cye gusa, nyamara, nk'uko n'Urwego rw'Umuvunyi rwabyibonye mu iperereza, ntabwo ikibanza N°2129 gikomoka kuri n° 4288, ahubwo gikomoka kuri N°4300 gihereye Nyakabungo, Mbugangari, kikaba cyari cyarahawe Nsengiyumva Eneas kuwa 28/01/2002 agihereywe "fiche cadastrale" na "contrat de location à usage résidentiel", ariko ananirwa kugikoresha, ubuyobozi burakimwambura bugiha Kapere ahabwa "fiche cadastrale" anatererwa "bornes".

[25] Bakomeza bavuga ko kuba umucamanza yaravuze ko ntaho icyo kibanza kigaragara ku gishushanyo cy'Akarere ka Rubavu, bituruka ku kuba yaritiranyije ibintu bigatuma atamenya n'ikibanza kiburanwa, kuko gihana imbibi n'ikibanza N°2130 na N°1707 nk'uko bigaragara kuri icyo gishushanyo, kikaba kiri mu masangano y'umuhanda kandi cyanditse kuri Kapere.

[26] Ikindi ngo kigaragaza ko ikibanza N°2129 gikomoka kuri N°4300 ni inyemezabwishyu zatanzwe n'Akarere ka Rubavu aho zisobanura ubwoko bw'imisoro ko ari "régularisation PC 4300", ibyo bikagaragaza ko ntaho gihuriye n'ikibanza N°4288 nk'uko Iyamuremye abivuga ari nabyo byayobeje urukiko.

[27] Me Gashagaza na Kapere yunganira bavuga na none ko umucamanza yitiranyije ko ikibanza N°4288 cyahozze ari icya Niyonshuti Jean Paul, n'ubwo ntaho bigaragara ku gishushanyo cy'Akarere ka Rubavu, aricyo cyahindutse N°2129 cyanditse kuri Kapere mu gihe cyo kwandika ubutaka. Basobanura ko Urwego rw'Umuvunyi rwasanze, mu gihe cyo kubarura ubutaka, ikibanza N°4288 cyarahawe N°2127 kikaba cyanditse kuri Mukamana Salima na Uwihoireye Kassim, kandi kitari muri "bloc" imwe na N°2129 cya Kapere.

[28] Bavuga kandi ko urukiko rwirengagije ko Kapere yandikiwe n'Akarere amenyeshwa ko amaze imyaka itanu ntacyo akorera muri icyo kibanza n'ibisubizo yatanze ndetse n'inyandikomvaho y'amasezerano y'ubukode burambye afite byose bigaragaza ko iki kibanza ari icye.

[29] Me Idahemuka na Iyamuremye yunganira bavuga ko igisubizo cy'iki kibazo kiboneka mu gika cya 15 cy'urubanza RCA0495/012/TGI/RBV rusabirwa gusubirishwamo ku mpamvu z'akarengane aho umucamanza agaragaza ko yakoze iperereza mu biro bishinzwe ubutaka ku bishushanyo ababuranyi batanze, akagaragaza abakozi yahasanze babishinzwe bamugaragariza igishushanyo cy'aho kibanza kiri.

[30] Bavuga ko uru rukiko rukwiye kwemeza ko umwanzuro w'Urwego rw'Umuvunyi uteshejwe agaciro hakemezwa ko nta karengane kabayeho kubera ko umukozi warwo wakoze iperereza yihaye ububasha adafite atesha agaciro icyemezo cyatanzwe n'umuntu ubifitiye ububasha.

[31] Bakomeza bavuga ko Kapere avuga ko yahawe iki kibanza kandi cyari cyarahawe Niyonshuti Jean Paul cyatangiriyeho, kiza kugera kuri Iyamuremye, bikaba rero bitari gushoboka ko kibanza kimwe gihabwa abantu babiri, ko kuba umukozi w'Urwego rw'Umuvunyi avuga ko ntaho Iyamuremye na Kabanda banditse mu biro by'ubutaka, ntabwo bivuguruzwa urubanza rusubirishwamo, kuko umucamanza n'ubundi atavuze ko icyo kibanza cyanditse kuri umwe muri aba bombi, ahubwo yavuze ko cyanditse kuri Niyonshuti Jean Paul kandi uyu mukozi w'Umuvunyi ngo ntiyabivugurujwe.

[32] Bavuga nanone ko hari ukwivuguruzwa mu mvugo z'uyu mukozi w'Urwego rw'Umuvunyi aho avuga ko iki kibanza Gapere yagihawe muri 2005 cyambuwe undi, kandi rukagaragazwa ko yari afite ibyangombwa byacyo kuva muri 2002.

[33] Nyuma yo kumva imburanire y'impande zombi, urukiko rwafashe icyemezo cyo gukora iperereza tariki ya 26 Ugushyamba 2015 mu Biro by'ubutaka by'Akarere ka Rubavu no ku kibanza kiburanwa, rwumva n'abantu banyuranye bafite icyo bakizaho.

[34] Ku biro by'Akarere ka Rubavu, intumwa z'urukiko zakiriwe na Bwana Gasuku Oscar ushinze One Stop Center ari ryo shami rihuzwa icyahozwe ari Ibiro by'ubutaka na Service y'imiturire na Bwana Munyabuhoro Jean Louis Robert ushinze gupima ubutaka (topographe), bazigaragariza amateka y'ibibanza N°2129, N°4300 na N°4288 biherereye mu Kagari ka Mbugangari mu Murenge wa Gisenyi hifashishijwe ikarita yakozwe mu mwaka wa 2002 yitwa Plan Parcellaire du Site Mbugangari, ikarita iriho amazina ya ba nyiri ibibanza nayo ibitse ku biro by'Akarere ka Rubavu yakozwe ihereye kuri icyo ya mbere yatangiweho ibibanza n'indi "carte electronique" igaragaza numero nshya zatanzwe n'Akarere ka Rubavu kuri ibyo bibanza.

[35] Ku byerekeye ibishushanyo byazanywe muri dosiye n'ababuranyi bombi bifite cote 92 na cote 93, Gasuku Oscar avuga ko igishushanyo gifite cote 92 kinyuranyije n'icyakozwe n'Akarere ka Rubavu kuko hariho byinshi umuburanyi yiyongereyeho, naho icyo kuri cote 93 cyo gihuje n'icyakozwe n'Akarere, ko ariko hariho numero umuburanyi yiyongereyeho kuko ahanditse ko numero 4288 ari iya Niyonshuti Jean Paul, ku ikarita ibitse mu Karere numero 4288 akaba ari iya Kayitani Evariste naho N°4288 ikaba iya Niyonshuti Jean Paul, hepfo ya Kayitani Evariste hari Bizimana Mpakaniye afite numero 4290 .

[36] Yasobanuye ko igishushanyo gishya cya Land center cyakozwe muri 2011 kigaragaza ko:

- Kibanza cyari gifite numero 4288 cyari icya Kayitani Evariste, ubu cyahindutse 2129 cyanditswe kuri Iyamuremye Mbanza Jannot harangizwa urubanza RCA0495/012/TGI/RBV;

- Ikibanza cyari gifite numero 4289 cya Niyonshuti Jean Paul ku ikarita ya Land Center cyahindutse 2130;
- Ikibanza numero 4300 bigaragara ku ikarita ko cyari kitaratangwa ubwo hakorwaga ikarita ya mbere, nyuma gihabwa Nsengiyumva Eneas, ubu gifite N°2131.
- Ikibanza numero 4290 cyahindutse 1707 ni icya Bizimana Mpakaniye.

[37] Nyuma yo gusesengura ibigaragara ku makarita, iperereza ryakomereje aho ikiburanwa kiri, Bwana Munyabuhoro Jean Louis Robert ushinzwe gupima ubutaka (topographe) yerekana uko ibibanza biteye.

[38] Madamu Mukampunga Marie Claire utuye mu kibanza N°4300 cyahindutse 2131 yasabwe ibyangombwa by'ubutaka atuyemo yerekana amasezerano y'ubukode burambye numero 2131/Rub/Gis yahawe tariki ya 25/02/2014, asobanura ko icyo kibanza cyaguzwe n'uwari umugabo we batandukanye witwa Mbonabucya Jean Bosco akiguzwe na Nsengiyumva Eneas.

[39] Uwitwa Kayitani Evariste watumijwe n'urukiko yasabwe kwerekana ikibanza yahawe, yerekana ikibanza n° 4289 ubu cyabaye N°2130, avuga ko bamaze kumwimurira muri Repubulika Iharanira Demokarasi ya Congo yahise akigurisha uwitwa Gakwe Ndabarinze amuguranira inzu arimuka, ko ariko nawe yumvise ko yakigurishije. Yabajijwe uwo bahanaga imbibi avuga ko bari abasirikare batatu, iruhande rwe hahabwa Niyonshuti Jean Paul nawe wari umusirikare. Yabajijwe na none impamvu ku ikarita yakozwe iri mu Karere biboneka ko yahawe ikibanza numero 4288 ubu cyahindutse 2129, asubiza ko bishoboka ko habayeho kubihindura, ko icyo azi ari uko yahawe iruhande rwa Niyonshuti Jean Paul babanaga mu gisirikare. Ku kibazo cyo kumenya niba igihe yagurishaga nta kibazo yagiranye na Niyonshuti, yasubije ko ntacyo bagiranye, ko Niyonshuti nawe yaje kugurisha Kabanda, uyu akaba yaramubwiye ko nawe yagurishije icyo kibanza na Iyamuremye.

[40] Niyonshuti Jean Paul nawe watumijwe n'urukiko yabwiye urukiko ko mu mwaka wa 2000 batanze ibibanza muri Mbugangari, bahabwa ibibanza ari abasirikare 3 (Niyonshuti, Sakera na Kayitani) bakoreraga ku kibuga cy'indege cya Gisenyi, Komisiyo yatangaga ubutaka imuha ikibanza gifatanye n'icya Kayitani. Yabajijwe impamvu ku ikarita y'Akarere bigaragara ko ikibanza numero 4288 ubu cyahindutse 2129 yita icye cyari icya Kayitani, asubiza ko habayeho kwibeshya. Yakomeje avuga ko bamaze kumuha icyo kibanza yacyatiye Gashema akajya agihinga, nyuma baza kumwimurira i Kigali i Kanombe ahita akigurisha Kabanda kuko nta bushobozi bwo kucyubaka yari afite, aza kumva ko nawe yakigurishije Iyamuremye.

[41] Ku byerekeye Kapere uvuga ko icyo kibanza ari icye, Niyonshuti Jean Paul yavuze ko nawe yari umusirikare ariko ataba i Gisenyi, ubu akaba akorera i Kanombe muri Military, ko nta kibanza yigeze ahabwa muri uwo Mudugudu.

[42] Kabanda Jean Népo nawe watumijwe n'urukiko avuga ko ikibanza gifite N°2129 cyahozwe ari icya Kayitani. Asobanura ko we yari ashinzwe Ubuyobozi (administration) ku kibuga cy'indege, abasirikare Sakera Benjamin, Kayitani na Niyonshuti bakatirwa ibibanza, icyo kibanza kugeza ubu kitubatse gihabwa Niyonshuti Jean Paul, Sakera ahabwa ahagana haruguru, ko we yaguzwe na Niyonshuti Jean Paul, nyuma baza kumwimurira ikibanza agiha Iyamuremye amurangiwe na mukuru we Ngabonziza ukora muri Marine, baragurana nawe amuha ikindi kibanza kiri i Kabuga.

[43] Ku kibazo cyo kumenya impamvu bagurana batasobanuye neza mu nyandiko ngo bashyireho nimeru z'ibibanza biguranywe, Kabanda yasubije ko nta nimeru zari zagatangwa, ko bo bumvikanye gusa ku kibanza baguranye.

[44] Topographe Munyabuhoro Jean Louis Robert yabajijwe impamvu ibiri ku makarita atari byo bigaragara aho ibibanza biri ku byerekeranye n'ababihawe, avuga ko arebye ibyo ababajijwe bavuze, akanareba ibyanditse ku bishushanyo (plan), biragaragara ko kibanza Niyonshuti yahawe cyahinduranyijwe n'icyo Kayitani yahawe, ko bishoboka ko igihe babihabwaga nta nimeru byari bifite, baraza babituramo uko babonye, ko ariko bibaye ngombwa iryo kosa ryakosorwa.

[45] Mataratara Israel watumijwe n'urukiko yavuze ko Umudugudu wa Mbugangari utangwamo ibibanza yari ahari, ko mu mwaka wa 2000 iki kibanza N°2129 yagisanzemo Kayitani, ikindi gihe agisangamo Niyonshuti, nyuma hashize iminsi Kapere aza kumusaba ko yacyubaka, arebye ku ikarita y'abahawe yikoreye mu rwego rwo guca akajagari amubonamo ariko amubwira ko icyo kibanza atari icye ko ari icya Kayitani, aranga akomeza kwemeza ko ari icye. Akomeza avuga ko nyuma yaho yamubwiye ko izo blocs 3 yazitujemo abandi bantu, amwerekaga ikindi kibanza, akimwanditseho aranga, ahubwo atangira kubaka fondation mu kibanza cya Kayitani, aza guhagarikwa n'abo baburana.

[46] Bahati Augustin yavuze ko kibanza nimeru 4290 ubu cyabaye N°1707 atuyemo yakiguzye na Bizimana Mpakaniye mu mwaka wa 2002, ko mu kibanza 2129 kiri hepfo ye yasanze fondation, ko nyiri kibanza atajyaga agaragara, ko nyuma y'aho hajyaga haza umuntu witwaga Kapere akagisura, aza no gushyiramo akazu gato, Iyamuremye araza aragashyiraho, aba ari bwo batangiye kujya mu nkiko kugeza na n'ubu.

[47] Iperereza rirangiye, iburanisha ryakomeje tariki ya 15/12/2015, ababuranyi bagira icyo bavugaga kuri ibyo byarivuyemo.

[48] Kapere avuga ko yumva ibyo iperereza ryageze harimo urujijo kubera ko kibanza cye gikomoka ku kibanza N°4300, kikaba kitubatse, ko kandi agifitiye ibyangombwa, ko haruguru ye hari Bahati ndetse yamurengereye, akaba atumva ukuntu Kayitani yagurishije kibanza cye asize icyo yahawe. Avuga ko koko yari umusirikare ataba i Gisenyi, ko ariko mu itangwa ry'ibibanza bamenyaga abasirikare batahaba, ko yahawe na MINIREISO, Mataratara akaba ari we wamweretse aho yahawe. Asaba urukiko guha agaciro ibyangombwa yahawe kuri icyo kibanza.

[49] Kapere avuga kandi ko Kabanda Jean Népo wari umuyobozi mu gisirikare atazi uko ibibanza byatangwaga, ko we bamaze kumuha kibanza bakimweretse, ajya i Goma amarayo ibyumweru bibiri agarutse bamwerekaga Mataratara amubona ku rutonde rw'abahawe ibibanza, amubaza aho bamuhaye amwerekaga (Kapere) icyo kibanza, nawe amubwira ko hari abandi basirikare bagenzi be bahashyize, amusaba ko babaha ahandi, ahita ashyiramo fondation bwa mbere, nyuma aza kujya mu kazi agarutse asanga barahubatse.

[50] Me Gashagaza avuga ko nk'uko Gasuku Oscar yabigaragaje, ibibanza mbere nta nimeru byagiraga, akaba ariho habereye amakosa yo gutwara kibanza cya Kapere. Avuga ko ababajijwe bose batagaragaza uburyo ibibanza byabushanyijwe ku buryo buri wese yagiye ajya mu kibanza kitari icye, ko Bahati yemeje ko kibanza ari icya Kapere ndetse n'abantu bose babizi, ibyo bigashimangirwa n'ibyo Kapere avuga ko yahawe na Responsable, ko rero hari urujijo ku kibanza Kapere yahawe afitiye ibyangombwa.

[51] Me Idahemuka uburanira Iyamuremye avuga ko agaragaza ko yabonye ikibanza mu mwaka wa 2002, mu mpapuro Kapere yerekana we akagaragaza ko yagihawe mu mwaka wa 2009. Avuga ko itangwa ry'ibanza ryabereye mu ruhame, ko Iyamuremye yaguranye ikibanza yari afite i Kabuga kuko yari agiye gukorera i Gisenyi.

[52] Asobanura ko mu mwaka wa 2002 ubutaka bwari butarandikishwa ku buryo bw'ikoranabuhanga, ko buri muntu yabaga azi abo bahana imbibi, akaba ariho abo basirikare batatu bahereye bavuga ko Kapere atari arimo, ko amakosa yaba arimo ku byerekeye numero y'ibanza yakosorwa.

[53] Ku byerekeye ubuhamya bwa Mataratara, Me Idahemuka avuga ko nawe yemera ko habaye impaka, na Kapere mu rukiko akaba yemera ko batumvikanye, akaba rero asanga abantu bose bazi ko Niyonshuti ari we wahawe ikibanza kiburanwa, amasezerano nayo akagaragaza uko uburenganzira kuri ubwo butaka bwagiye buhererekanwa.

UKO URUKIKO RUBIBONA

[54] Ingingo ya 3 y'Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[55] Ikirego cya Kapere cyo gusubirishamo urubanza RCA0495/012/TGI/RBV kigamije kugarabaza ko Urukiko Rwisumbuye rwa Rubavu rwamurenganyije kuko rwemeye kwakira ikirego gisubirishamo urubanza RCA0027/012/TGI/RBV rushingiye ku gishushanyo cy'aho ibibanza byatangiwe cyiswe kamarampaka Iyamuremye avuga ko yahawe n'Akarere ka Rubavu, kigaragaza ko ikibanza numero 2129 ari cye kandi atari byo, kuko icyo kibanza gikomoka ku kibanza cyahozze gifite numero 4300 cyari cyarahawe Nsengiyumva Eneas akananirwa kucyubaka akacyamburwa nk'uko bigaragazwa n'inyandiko yishyuriyeho, maze Akarere ka Rubavu kakamuha ibyangombwa kamaze kumuterera imbago (bornes).

[56] Iyamuremye we avuga ko ikibanza N°2129 aburana gikomoka ku kibanza N°4288 cyahozze ari icya Niyonshuti Jean Paul, nyuma akigurisha Kabanda, baza kukigurana icyo yari afite i Kabuga kuko yari yimutse ku Gisenyi agiye gukorera i Kigali.

[57] Isesengura ry'amakarita ari muri One Stop Center y'Akarere ka Rubavu, ari ryo shami rihuza icyahozze ari Ibiro by'ubutaka na Service y'imiturire, rihujwe n'ibiboneka aho ikiburanwa kiri, rigaragaza ko ikibanza ubu gifite N°2129 Iyamuremye aburana na Kapere cyahozze gifite numero 4288 cyahawe Kayitani Evariste nawe akavuga ko yakigurishije Gakwe Ndabarinze, naho ikibanza N°4289 cyo cyahozze ari icya Niyonshuti Jean Paul, ubu gifite numero 2130 kigahana imbibi ku ruhande rwo haruguru n'ikibanza N°1707 cya Bahati Augustin.

[58] Urukiko rurasanga kuba harabaye ukubusana kuri numero z'ibibanza n'ababihawe hagati ya Kayitani na Niyonshuti ari amakosa ashobora kuba yarakozwe n'Akarere ka Rubavu igihe cy'itangwa rya numero zabyo, kuko igihe byatangwaga nta numero byari bifite, bikaba bigaragara ko ba nyiri ibibanza batura nta kibazo bagiranye kugeza ubu.

[59] Ku byerekeye ikibanza N°4300, biboneka ko cyahozze ari icya Nsengiyumva Eneas, ubu kikaba gifite numero 2131 kikaba cyubatse inzu za Mukampunga Marie Claire ufite amasezerano y'ubukode burambye numero 2131/Rub/Gis yahawe tariki ya 25/02/2014, akaba

avuga ko icyo kibanza cyaguzwe n'uwari umugabo we batandukanye witwa Mbonabucya Jean Bosco akiguzwe na Nsengiyumva Eneas.

[60] N'ubwo numero z'ibyo bibanza zabayemo amakosa, uko ibintu bimeze ubu nyuma y'itangwa rya numero nshya, bigaragagara ko abatuye mu bibanza N°2130, 2131 na 1707 ntawe ufite ikibazo, ahubwo ikibazo kiri ku kibanza N°2129 kiburanwa hagati ya Kapere na Iyamuremye.

[61] Hashingiwe ku bimaze kuvugwa, urukiko rurasanga aho Kapere avuga ko akomora icyo kibanza N°2129 hatagaragara kuko ibyo avuga ko cyahawe Nsengiyumva Enéas akananirwa kucyubaka, hanyuma Akarere ka Rubavu kakamuterera imbago kakakimuha amaze kwishyura amafaranga ya "régularisation" nta shingiro bifite, kubera ko Nsengiyumva Enéas yagurishije ikibanza N°4300 cyahindutse N°2131 na Mbonabucya umugabo wa Mukampunga Marie Claire utuyemo, hakaba ntawe ukimuburanya. Icyo kibanza kandi Kapere ntiyagihawe mu mwaka wa 2000, ubwo Kabanda na Niyonshuti bahabwaga ibibanza mu Mudugudu wa Nyarubande, Akagari ka Mbugangari, Umurenge wa Gisenyi mu Karere ka Rubavu nk'uko ababajijwe babivuze, kuko iyo ahabwa nk'abandi, ntiyari guhindukira ngo yishyure amafaranga ya régularisation y'ikibanza N°4300 nk'uko abiburanisha.

[62] Urukiko rurasanga ahubwo, hakurikijwe uburyo Kayitani na Niyonshuti bahawe ibibanza bihana imbibi, nyuma bigahabwa numero ariko amazina ya ba nyirabyo akabusana, ikibanza kiburanwa byagaragajwe ko ubu gifite N°2129 kitubatse, ari icya Iyamuremye, nk'uko bigaragazwa n'amasezerano y'ubugurane bwacyo yo kuwa 17/06/2004 yabaye hagati ya Iyamuremye na Kabanda Jean Népo waguze na Niyonshuti Jean Paul, aho Kabanda yaguraniraga Iyamuremye ikibanza kiri mu Mudugudu wa Mbugangari nawe akamuha ikiri mu Muji wa Kigali, ayo masezerano akaba kandi ashimangirwa n'invugo z'abayagiranye, invugo ya Niyonshuti Jean Paul ndetse n'ibishushanyo by'uko ibibanza byatanzwe biri muri One stop center y'Akarere ka Rubavu.

[63] Urukiko rurasanga rero, igishushanyo cy'aho ibibanza byatangiwe kiri mu Karere ka Rubavu Urukiko Rwisumbuye rwa Rubavu rwashingiyeho rusubiramo urubanza RCA0027/012/TGI/RBV ari ikimenyetso kimara impaka zo kumenya nyir'ikibanza kiburanwa hagati ya Kapere George na Iyamuremye Mbanza Jeannot, bityo kuba urwo rukiko rwarakiriye ikirego cya Iyamuremye gisubirishamo ingingo nshya urwo rubanza rukanahindura imikirize yarwo, bikaba bifite ishingiro kandi nta karengane byateje Kapere George.

[64] Nk'uko rero byemejwe mu rubanza RCA0495/012/TGI/RBV rwaciwe tariki ya 24/06/2013 n'Urukiko Rwisumbuye rwa Rubavu, urukiko rusanga ikibanza N°2129 kiri mu Mudugudu wa Nyarubande, Akagari ka Mbugangari, Umurenge wa Gisenyi, Akarere ka Rubavu kigomba gukomeza kwandikwa kuri Iyamuremye Mbanza Jeannot kuko ariwe nyiracyo.

d) Amafaranga y'ikurikiranarubanza asabwa n'ababuranyi.

[65] Me Gashagaza wunganira Kapere avuga ko Iyamuremye agomba gutegekwa kumuha 2.000.000Frw y'ikurikiranarubanza n'igihembo cya Avoka, naho Me Idahemuka akavuga ko Kapere ariwe ugomba kumwishyura 1.000.000Frw y'igihembo cya Avoka yamutangishije.

UKO URUKIKO RUBIBONA

[66] Ku byerekeye itangwa ry'indishyi, ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonzambano (CCLIII) iteganya ko igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse.

[67] Urukiko rurasanga indishyi Kapere asaba Iyamuremye atagomba kuzigenerwa kuko atsinzwe muri uru rubanza, ahubwo ku ruhande rwe agomba kwishyura Iyamuremye 500.000Frw kuri uru rwego agenwe mu bushishozi bw'urukiko, kuko yashatse Avoka wo kumuburanira muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[68] Rwemeje ko ikirego cyatanzwe na Kapere George cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA0495/012/TGI/RBV rwaciwe tariki ya 24/06/2013 n'Urukiko Rwisumbuye rwa Rubavu nta shingiro gifite;

[69] Rwemeje ko ikibanza N°2129 kiri mu Mudugudu wa Nyarubande, Akagari ka Mbugangari, Umurenge wa Gisenyi, Akarere ka Rubavu ari icya Iyamuremye Mbanza Jeannot, kikaba kigomba gukomeza kumwandikwaho nk'uko byemejwe mu rubanza RCA0495/012/TGI/RBV rwaciwe tariki ya 24/06/2013 n'Urukiko Rwisumbuye rwa Rubavu;

[70] Rutegetse Kapere George kwishyura Iyamuremye Mbanza Jeannot 500.000Frw y'igihembo cya Avoka kuri uru rwego;

[71] Ruvuze ko nta gihindutse ku mikirize y'urubanza RCA0495/012/TGI/RBV rwaciwe tariki ya 24/06/2013 n'Urukiko Rwisumbuye rwa Rubavu;

[72] Rutegetse Kapere George kwishyura 100.000Frw y'amagarama y'urubanza.