

## NYIRAKAMANA N’ABANDI v. MUKASHARANGABO N’ABANDI

[Rwanda URUKIKO RW’IKIRENGA – RS/REV/INJUST/CIV0007/15/CS (Kayitesi Z., P.J., Hatangimbabazi, Gatete, Hitiyaremye na Ngagi, J.) 04 Ukuboza 2015]

*Amategeko agenga umuryango – Amasezerano yo gushyingirwa – Agaciro k’amasezerano yo gushyingirwa bwakabiri ayambere ataravaho – Amasezerano yo gushyingirwa bwa kabiri ntagira agaciro igihe ishyingirwa rya mbere rikiriho – Itegeko Nshinga rya Repubulika y’u Rwanda ryo ku wa 24/11/1962, ingingo ya 28 – Itegeko N°42/1988 ryo kuwa 27/10/1988 rishyiraho igitabo cya mbere cy’urwunge rw’amategeko mbonezamubano, ingingo 175.*

*Amategeko agenga umuryango – Ubushyingiranwe – Kugabana umutungo – Mu gihe abashyingiranwe bitandukanyije bagabana umutungo wari uriho igihe batandukanaga.*

*Amategeko agenga umuryango – Ababanye batarashakanye mu buryo bukurikije amategeko – Kugabana umutungo – Ababanaga nk’umugore n’umugabo batarasezeranye mu buryo bwemewe n’amategeko bagabana umutungo bahahanye gusa ku buryo bungana – Itegeko N°59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, ingingo ya 39.*

*Amategeko agenga umuryango – Irage – Igihe irage rita agaciro – Irage ntagaciro rigira igihe risumbanisha abana hashingiye ku gitsina ndetse n’igihe nyakwigendera yagaragaje imyitwarire yuko yisubiyeho mbere y’uko yitaba Imana – Itegeko Nshinga rya Repubulika y’u Rwanda ryo ku wa 20/12/1978, ingingo ya 16 n’iya 93(2) – Amasezerano Mpuzamahanga yerekeye guca burundu ivangura iryo ari ryo ryose rikorerwa abagore yashyirihwe umukono i New York ku wa 18 Ukuboza 1979, ingingo ya 5(a).*

*Amategeko agenga umuryango – Impano – Igihe impano idahabwa agaciro – Impano nta gaciro igira igihe yatanzwe abasangiye umutungo batabyumvikanyeho kandi igatangwa hagamijwe gusumbanisha abana.*

**Incamake y’ikibazo:** Karimunda yashakanye na Mukasharangabo, mu mwaka wa 1965 yataye umugabo we ajya kwibanira n’undi mugabo; nyuma y’icyo gihe nibwo Karimunda yabyaranye na Mukandori ariko batabana.

Mu 1970, Karimunda yabanye na Nyirakamana baranasezerana mu buryo bwemewe n’amategeko; ndetse banakorana amasezerano yo gushyira hamwe umutungo mu rwego rwo guteganya ubucuruzi ndetse banafatanyaga ibikorwa byo guteza imbere urugo.

Mu 1979 Karimunda yatanze ikirego mu Rukiko rwa mbere rw’iremezo asaba gutandukana na Mukasharangabo, hanyuma urwo Rukiko rwemeza ubutane kuko uwo mugore yataye urugo.

Ubushinjacyaha bwaje gukurikirana Karimunda na Nyirakamana mu Rukiko rw’iremezo rwa Kigali ku icyaha cy’ubuharike kuko yabanye n’uwo mugore ataratandukana na Mukasharangabo, bunasaba ko amasezerano y’ubushyingiranwe yagiranye na Nyirakamana aseswa, maze rubahamya icyaha cy’ubuharike ariko ntirwasesa ubwo bushyingiranwe, ku impamvu yuko ayo masezerano aramutse asheshwe byaba ari ugusenya urugo rwashinze imizi cyane ko amasezerano y’ubushyingiranwe Karimunda yagiranye na Mukasharangabo atakiriho.

Mu 1991, Mukasharangabo yatanze ikirego cyo gusubirishamo urubanza rw’ubutane kuko rwabaye adahari, maze rwemeza ko ubwo butane butagomba kuvanwaho kuko ariwe

witandukanyije n'umugabo we Karimunda 1965. Mukasharangabo yajuririye imikirize y'urwo rubanza ariko Karimunda yitaba Imana urubanza rutaraburanishwa.

Mukasharangabo yatanze ikirego mu Rukiko rw'ibanze asaba ko habaho iseswa ry'amasezerano y'ubushyingiranwe yabaye hagati ya Karimunda na Nyirakamana maze urukiko rwemeza ko ikirego cye nta shingiro gifite.

Hagati aho Nyirakamana n'umwana we Karangwa batangije urubanza rwo gutambamira ikirego Karimunda yaregeye ko abana be banze kwakira umunani abaha mu rubanza; baruhuriza hamwe n'imanza abagore be ndetse n'abana babo batanze bagamije gusaba ko irage yasize akoze rivanwaho ndetse n'izindizaregwagamo Central Motors and Parts Sarl na Karangwa zose zihurizwa hamwe mu rubanza RC0153/05/TP/KIG, rwaciwe n'Urukiko rw'Umujyi.

Urwo Urukiko rwemeje ko Mukasharangabo ahabwa ½ cy'umutungo afatanyije na Karimunda nk'umugore w'isezerano; ko abana bose ba Karimunda bazungura ½ cy'umutungo wose wa se; ko inzu iri muri "parcelle" N°05/524 iri Karambo-Gikondo, igarurwa mu mutungo wa Karimunda ikajya mu bizungurwa; ko Mukandoli ahabwa isambu iri i Kiziguro yatujwemo; ko kandi Nyirakamana Marciana agumana imigabane afite muri Central Motors and Parts Sarl.

Nyirakamana, Karangwa na Central motors bajuririye Urukiko Rukuru maze ubwo bujuriye babuhuza n'urundi rubanza Mukasharangabo yari yarajuririye muri uru Rukiko, rwemeje ko amasezerano yo gushyingirwa ya Nyirakamana na Karimunda ataseswa; ko kuba bombibaragizwe icyarimwe abagore b'isezerano ba Karimunda ntaho rwahera rwemeza umugore ufite uruhare ku mutungo wasizwe na nyakwigendera. Rukomeza ruvuga ko irage rivugwa ritabayeho ko umutungo wose wa Karimunda uzungurwa n'abana be bose kuburyo bungana, runategeka ko n'inzu iri muri mu kibanza N°15/525 yanditse kuri Central Motors and Parts Sarl igarurwa mu umutungo wa Karimunda ugomba kuzungurwa.

Nyirakamana, Karangwa na Central motors bajuririye Urukiko bajuririye Urukiko rw'Ikirenga maze rusanga ubujuriye bwabo butagomba kwakirwa kuko butari mu bubasha bw'Urukiko rw'Ikirenga.

Abajuriye batanze ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane basaba ko irage ryakozwe na Karimunda ku wa 25/08/1981 ryahabwa agaciro ku bijyanye n'igabanywa ry'umutungo yasize, ko riramutse ridahawe agaciro, amasezerano yo gushyingirwa yabaye hagati ya Karimunda na Nyirakamana yahabwa agaciro, maze Nyirakamana akagenerwa ½ cy'umutungo ahabwa n'itegeko, ko Mukasharangabo nta ruhare yahabwa mu mutungo Karimunda yashakanye na Nyirakamana, kandi ko umutungo uri muri Central Motors and Parts Sarl utagomba gushyirwa mu mutungo wa Karimunda igomba kuzungurwa.

**Incamate y'icyemezo:** 1. Ntawe ushobora gushyingirwa igihe ishyingirwa rya mbere rikiriho, kuba rero Karimunda yarasezeranye na Nyirakamana atarasaba ubutane hagati ye na Mukasharangabo bituma ishyingirwa bagiranye icyo gihe riteshwa agaciro.

2. Mu gihe abashyingiranwe bitandukanyije bagabana umutungo wari uriho igihe batandukanaga, ni kubwibyho rero Mukasharangabo agomba guhabwa ½ cy'umutungo yarasangiye na Karimunda kugeza igihe yataga urugo.

3. Ababanaga nk'umugore n'umugabo batarasezeranye mu buryo bwemewe n'amategeko bagabana imitungo bahahanye, kubwibyho rero Nyirakamana afite ubureganzira bwo guhabwa ½ cy'umutungo yahahanye na Karimunda kuva batangiye kubana nk'umugabo n'umugore.

4. Irage nta gaciro rigira igihe risumbanisha abana hashingiwe ku gitsina ndetse n'igihe nyakwigendera yagaragaje imyitwarire yuko yisubiyeho mbere y'uko yitaba Imana ibyo rero bikaba byumvikanisha ko irage Karimunda yakoze ridashobora gukurikizwa mu kugena izungura rye, ahubwo koizungura rigomba gukorwa nk'aho nta rage ryigeze ribaho (Sucession ab intestat), bityo abana bose ba Karimunda bakaba bafite uburenganzira bwo kumuzungura ku buryo bungana umutungo wose yaba afite, nta mwana uhejwe.
5. Impano nta gaciro igira igihe yatanzwe abasangiye umutungo batabyumvikanyeho kandi igatangwa hagamiywe gusumbanisha abana ni kubwiyo mpamvu rero impano yahawe Central Motors and Parts Sarl nta gaciro yahabwa, ahubwo igomba kuguma mu mutungo uzungurwa Karimunda yari asangiye na Nyirakamana.
6. Ikirego nticyakirwa igihe umuburanyi nta nyungu afite mu rubanza.
7. Indishyi ntizigenwa iyo buri muburanyi afite ibyo yatsindiwe mu rubanza.

**Ikirego gifite ishingiye kuri bimwe.  
Amagarama y'urubanza aherereye ku baburanyi bose.**

**Amategeko yashingiweho:**

- Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 24/11/1962, ingingo ya 28.  
Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 20/12/1978, ingingo ya 16 n'ya 93(2).  
Itegeko Ngenga N°59/2008 ryo kuwa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, ingingo ya 39.  
Amasezerano Mpuzamahanga yerekeye guca burundu ivangura iryo ari ryo ryose rikorerwa abagore yashyirirweho umukono i New York ku wa 18 Ukuboza 1979, ingingo ya 5(a).  
Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 2.  
Itegeko N°22/99 ryo kuwa 12/11/1999 ryuzuzwa Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cyagatanu cyerekeye imicungire y'umutungo w'abashyiriranywe, impano n'izungura, ingingo ya 56 n'ya 58.  
Itegeko N°42/1988 ryo kuwa 27/10/1988 rishyiraho igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano, ingingo 175.

**Nta manza zifashishijwe.**

**Inyandiko z'abahanga:**

Christian Jubaut, Droit Civil, les successions. Les Libéralités, DALLOZ, 2005, pp.444-445, N°751.

## Urubanza

### I. IMITERERE Y'URUBANZA

[1] Karimunda Gérard yabanye n'abagore batatu (3) aribo Mukasharangabo Eugénie, Mukandoli Epiphane na Nyirakamana Marcianna. Mu mwaka wa 1965 Mukasharangabo Eugénie yataye umugabo we, ajya kwibanira n'undi mugabo witwa Muvunyi Aaron, hagati

aho Karimunda Gérard yacuditse n'uwitwa Mukandoli Epiphanie, ariko ntibabana nk'umugore n'umugabo, cyakora babyarana abana batatu (3).

[2] Karimunda Gérard amaze kubona ko umugore we Mukasharangabo Eugénie yamutaye, yashatse undi mugore witwa Nyirakamana Marcianna, basezerana mu buryo bwemewe n'amategeko ku wa 26/11/1970. Baje gukorana amasezerano yo gushyira umutungo hamwe mu rwego rwo guteranya ubucuruzi, Karimunda Gérard azana 51.000Frw naho Nyirakamana Marciana azana 80.000Frw, maze bakora ubucuruzi. Mu mwaka wa 1975 baguze ikibanza kiri muri "parcelle" N°517 mu Mujyi wa Kigali, bubakamo inzu. Babyaranye abana batatu (3), aribo: Karangwa Denis, Karigirwa Edinace na Kantamage Jacqueline. Batandukanyijwe n'urupfu rwa Karimunda Gérard mu mwaka wa 1994.

[3] Hagati aho, mu mwaka wa 1979, Karimunda Gérard yari yaratanze ikirego mu Rukiko rwa Mbere rw'Iremezo ruri ku Kabaya, asaba gutandukana na Mukasharangabo Eugénie, maze mu rubanza N°RC224/79 rwaciye ku wa 21/11/1979 Mukasharangabo Eugénie adahari, Urukiko rumwemerera ubwo butane kubera ko uwo mugore yataye urugo, rutegeka ko amasezerano y'ubushyingiranwe bari bafitanye akuweho.

[4] Ku mpamvu z'uko Nyirakamana Marciana na Karimunda Gérard bari barasezeranye ku wa 26/11/1970 mu gihe uyu yari atarabona ubutane, Ubushinjacyaha bwabakurikiranye mu Rukiko rwa Mbere rw'Iremezo rwa Kigali ku cyaha cy'ubuharike, bunasaba ko amasezerano y'ubushyingiranwe bagiranye yaseswa, Urukiko rubahamya icyo cyaha, ariko ntirwasesa ubwo bushyingiranwe, Ubushinjacyaha bubijuririyeye mu Rukiko rw'Ubujurire rwa Kigali, narwo ruca urubanza RPA2826/KIG ku wa 19/11/1981, rwemeza ko bahamwa n'icyo cyaha, ariko ruvuga ko rutasesa amasezerano y'ubushyingiranwe bagiranye kuko rusanga ntawe byagirira akamaro, ahubwo byaba gusenya urugo rwashinze imizi bikaba byavamo guhungabanya amahoro n'umutekano rusange, cyane cyane ko amasezerano y'ubushyingiranwe ya Karimunda Gérard na Mukasharangabo Eugénie yari atakiriho.

[5] Mukasharangabo Eugénie yasubirishijemo rwa rubanza rw'ubutane rwaciye n'Urukiko rwa Mbere rw'Iremezo rwa Gisenyi, rukorera ku Kabaya adahari, maze urwo Rukiko ruca urubanza RC5195/R11/KY ku wa 21/09/1991, rwemeza ko ubwo butane butagomba kuvanwaho kuko kuwa mu mwaka wa 1969 Mukasharangabo Eugénie yitandukanyije n'umugabo we Karimunda Gérard. Mukasharangabo Eugénie yajuririyeye mu Rukiko rw'Ubujurire rwa Ruhengeri kuri RCA6302/R14/RUH, ariko Karimunda Gérard yitaba Imana urubanza rutaraburanishwa, bityo urwo Rukiko rutegeka ko urubanza rw'ubutane rukuweho n'urupfu rwa Karimunda Gérard.

[6] Nyuma y'aho, Mukasharangabo Eugénie yatanze ikirego mu Rukiko rw'Ibanze rwa Nyarugenge, asaba iseswa ry'amasezerano y'ubushyingiranwe ya Karimunda Gérard na Nyirakamana Marciana. Urwo rukiko rwaciye urubanza RC0379/08/TB/NYG ku wa 31/10/2008, rwemeza ko icyo kirego nta shingiro gifite.

[7] Mukasharangabo Eugénie yarabijuririyeye mu Rukiko Rukuru kuri RC5195, ariko ikirego cye kiza guhuzwa n'izindi manza zari zaratangijwe na Nyirakamana Marciana na Karangwa Denis batambamira urubanza RC5091/R11/KYA, rwaciye ku wa 23/05/1990 n'Urukiko rwa Mbere rw'Iremezo rwa Gisenyi, ruri ku Kabaya, aho Karimunda Gérard akiriho, yari yararegeye ko abana be banga kwakira umunani abaha.

[8] Nyirakamana Marciana na Karangwa Denis bamaze gutambamira urwo rubanza RC5091/R11/KYA, urubanza rwabo rugahuzwa na rwa rubanza ku kirego cya

Mukasharangabo Eugénie cyo gusaba iseswa ry'amasezerano y'ubushyingiranwe hagati ya Nyirakamana Marciana na Karimunda Gérard, izo manza zahujwe n'izindi manza ku birego byatanzwe n'abandi bagore ba Karimunda Gérard n'abana babo bagamije gusaba ko irage ryakozwe na Karimunda Gérard rivanwaho, imitungo yasize ikazungurwa hakurikijwe itegeko no gusaba iminani, zihuzwa kandi n'izindi zaregwagamo Central Motors and Parts Sarl na Karangwa Denis, zihabwa numero imwe y'urubanza RC0153/05/TP/KIG, rwaciwe n'Urukiko rw'Umujyi wa Kigali ku wa 13/06/2005.

[9] Mu byemezo rwafashe, Urukiko rw'Umujyi wa Kigali rwemeje ko Mukasharangabo ahabwa ½ cy'umutungo afatanyije na Karimunda Gérard nk'umugore w'isezerano; ko abana bose ba Karimunda Gérard bazungura ½ cy'umutungo wose wa Karimunda Gérard na Mukasharangabo Eugénie; ko inzu iri muri "parcelle" N°05/524 iri Karambo-Gikondo, igarurwa mu mutungo wa Karimunda Gérard ikajya mu bizungurwa; ko Mukandoli ahabwa isambu iri i Kiziguro yatujwemo; ko kandi Nyirakamana Marciana agumana imigabane afite muri Central Motors and Parts Sarl.

[10] Nyirakamana Marciana, Karangwa Denis na Central Motors and Parts bajuririye urwo rubanza mu Rukiko Rukuru, ruhuzwa n'urundi rubanza rwa Mukasharangabo Eugénie ajuririra urubanza N°RC5195 rwavuzwe haruguru, rwari rwaremeje ko amasezerano y'ubushyingiranwe ya Karimunda Gérard na Nyirakamana adasheshwe, ziba urubanza rumwe N°RCA0221/05/HC/KIG, RCA0221/09/HC/KIG, rucibwa ku wa 02/04/2010, maze Urukiko Rukuru rwemeza ko amasezerano yo gushyingirwa ya Nyirakamana Marciana na Karimunda Gérard ataseswa; ko kuba Mukasharangabo Eugénie na Nyirakamana Marciana baragizwe icyarimwe abagore b'isezerano ba Karimunda Gérard ntaho rwahera rwemeza umugore ufite uruhare ku mutungo wasizwe na Karimunda Gérard.

[11] Ku birebana n'irage, Urukiko Rukuru rwemeje ko iryo rage ritabayeho, maze rutegeka ko umutungo wa Karimunda Gérard uzungurwa n'abana be bose ku buryo bungana, rutegeka kandi ko n'inzu iri muri "parcelle" N°15/525 yanditse kuri Central Motors and Parts Sarl igarurwa mu mitungo ya Karimunda Gérard igomba kuzungurwa.

[12] Nyirakamana Marciana, Karangwa Denis na Central Motors and Parts Sarl bajuririye mu Rukiko rw'Ikirenga, umucamanza w'ibanzirizasuzuma yemeza ko ubujurire bwabo butakiriwe kuko butujuje ibisabwa n'itegeko kugira ngo bube mu bubasha bw'Urukiko rw'Ikirenga. Bajuririye icyo cyemezo, Urukiko ruca urubanza RCAA0038/10/CS ku wa 16/03/2012, rwemeza ko ubujurire bwabo nta shingiro bufite, bityo hagumaho urubanza RCA0221/05/HC/KIG, RCA0221/09/HC/KIG rwaciwe ku wa 02/04/2010.

[13] Nyirakamana Marciana, Karangwa Denis na Central Motors and Parts Sarl batanze ikirego gisaba gusubirishamo urubanza RCA0221/05/HC/KIG, RCA0221/09/HC/KIG kubera impamvu z'akarengane basaba ko irage ryakozwe na Karimunda Gérard ku wa 25/08/1981 ryahabwa agaciro ku bijyanye n'igabanywa ry'umutungo yasize, ko riramutse ridahawe agaciro, amasezerano yo gushyingirwa yabaye hagati ya Karimunda Gérard na Nyirakamana Marciana yahabwa agaciro, maze Nyirakamana Marciana akagenerwa ½ cy'umutungo ahabwa n'itegeko, ko Mukasharangabo nta ruhare yahabwa mu mutungo Karimunda Gérard yashakanye na Nyirakamana Marciana, kandi ko umutungo uri muri Central Motors and Parts Sarl utagomba gushyirwa mu mitungo ya Karimunda Gérard igomba kuzungurwa.

[14] Abaregwa muri uru rubanza, ndetse na bamwe mu bagobokeshejwe batanze inzitizi z'uko icyo kirego kidakwiriye kwakirwa, ariko mu rubanza rubanziriza urundi rwaciwe ku

wa 30/06/2015, Urukiko rw'Ikirenga rwemeza ko inzitizi zatanzwe nta shingiro zifite, rwemeza ko iburanisha ry'urubanza rizakomeza mu mizi.

[15] Urubanza rwaburanishijwe ku wa 07/10/2015, ababuranyi bitabye, Nyirakamana Marciana na Central Motors and Parts Sarl na Karangwa Denis bahagarariwe na Me Kayirangwa Claire afatanyije na Me Gashagaza Philbert, Mukasharangabo Eugénie ahagarariwe na Me Twayigize Jean Claude, abazungura ba Bitwayiki Martin, abazungura ba Ntahobari Nasson, abazungura ba Mukanoheli, abazungura ba Mukandekezi Alphonsine bahagarariwe na Me Nsabimana Jean Baptiste afatanyije na Me Ndereyimana Sylvestre, Mukandori Epiphane, Nyirashema Marie, na Karimunda Hakizimana Alphonse bunganirwa na Me Nsabimana Jean Baptiste, naho GT Bank Ltd yahoze yitwa FINA Bank ihagarariwe na Me Nkurunziza François Xavier.

## **II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO**

**Kumenya hagati ya Nyirakamana Marciana na Mukasharangabo Eugénie, umugore ukwiye kugira uburenganzira ku mutungo uzungurwa wa Karimunda Gérard.**

[16] Ababuranira Nyirakamana Marciana bavuga ko akarengane afite kakemurwa n'uko hakubahirizwa irage Karimunda Gérard yakoze ku wa 25/08/1981 ryamugeneye inzu iri mu kibanza N°05/224 iri i Gikondo, ko ariko mu gihe Urukiko rwasanga iryo rage ritagomba kubahirizwa, Urukiko rw'Ikirenga rwakwemeza ko ari we mugore w'isezerano wa Karimunda Gérard, maze akagenerwa kimwe cya kabiri (½) cy'umutungo wa Karimunda Gérard uzungurwa, naho Mukasharangabo Eugénie ntagire uruhare ahabwa muri uwo mutungo, kuko Karimunda Gérard yawushakanye na Nyirakamana Marciana, igihe Mukasharangabo Eugénie yari yarataye umugabo we.

[17] Basobanura ko Nyirakamana Marciana ariwe mugore w'isezerano kubera ko nyuma y'aho Mukasharangabo Eugénie atereye urugo, Karimunda Gérard yatanze ikirego asaba ubutane, maze mu rubanza RC224/79, Urukiko rwaregewe rukemeza ko Mukasharangabo Eugénie avanwa mu bitabo by'irangamimerere, nyuma Mukasharangabo Eugénie yatanga ikirego gisubirishamo urubanza, hagafatwa icyemezo cy'uko ubutane bukomeza kugumaho, akijuririyeye, Karimunda Gérard aza gupfa urubanza rutaracibwa, bakaba basanga uburenganzira Mukasharangabo Eugénie yasabaga yari atarabuhabwa, ahubwo hakaba haragumyeho urubanza rw'ubutane, bityo bakaba basanga Nyirakamana Marciana ari we wasigaye ari umugore w'isezerano.

[18] Bavuga ko no mu rubanza nshinjabyaha RPA2826/KIG rwo ku wa 19/11/1981 rwahamijwe Nyirakamana Marciana na Karimunda Gérard icyaha baregwaga cy'ubuharike, Urukiko rwavuze ko rutasesa amasezerano yabo kubera ko ntawe byagirira akamaro, ko ahubwo byateza imidugararo bashenye urugo rwarangijwe gushinga imizi, bityo bakaba basanga Inkiko zaremereye Nyirakamana Marciana kuba umugore w'isezerano.

[19] Uburanira Mukasharangabo Eugénie avuga ko Karimunda Gérard yasezeranye na Nyirakamana Marciana agifite undi mugore w'isezerano, ari we Mukasharangabo Eugénie, ko ariko ashyingikiye ibyavuzwe n'Urukiko Rukuru ko ntaho rwahera ngo rwemeze ko umwe muri abo bagore ari uw'isezerano cyangwa atari we, icyo kibazo kikaba atari na cyo kiburanwa ubu, kuko ikigibwaho impaka ari irage Karimunda yakoze, niba ryarakurikije amategeko cyangwa ritarayakurikije.

[20] Ababuranira Mukandori Epiphanie, abana be, n'abana ba Mukasharangabo Eugénie bavuga ko Nyirakamana Marciana adashobora kwitwa umugore w'isezerano, mu gihe bigaragara ko na Mukasharangabo Eugénie ari uw'isezerano, bakaba basanga Itegeko Nshinga ritemereraga Karimunda kugira abagore babiri b'isezerano, n'urubanza rwabyemeje bakaba basanga rwarakoze amakosa (abus de droit)

## UKO URUKIKO RUBIBONA

[21] Ingingo ya 28 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 24/11/1962 ryakurikizwaga igihe Karimunda Gérard yasezeranaga na Nyirakamana Marciana ku wa 25/11/1970 iteganya ko isezerano ry'umugabo umwe n'umugore umwe ari ryo ryemewe.<sup>1</sup>

[22] Ingingo ya 101 y'Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano cyakurikizwaga<sup>2</sup> igihe Karimunda Gérard yasezeranaga na Nyirakamana Marciana ku wa 25/11/1970 ivuga ko "ntawe ushobora gushyingirwa ugushyingirwa kwa mbere kukiriho".

[23] Dosiye y'uru rubanza igaragaza ko Mukasharangabo Eugénie yashakanye na Karimunda Gérard mu mwaka wa 1952 imbere y'umwanditsi w'irangamimerere Rwamuningi mu cyahoze ari Komini Ngororero nk'uko bigaragazwa n'icyemezo cyatanzwe n'umwanditsi w'irangamimerere w'Akarere ka Kageyo ku wa 11/06/2001 (urubanza rw'Urukiko Rukuru, igika cya 44). Muri dosiye y'uru rubanza harimo kandi icyemezo cy'ibiro by'irangamimerere cyakorewe i Runda kuwa 22/03/2002 kigaragaza ko Karimunda Gérard yasezeranye na Nyirakamana Marciana ku wa 25/11/1970.

[24] Nk'uko byasobanuwe haruguru mu ntangiriro z'uru rubanza, mu mwaka wa 1979, ni ho Karimunda Gérard yatanze ikirego asaba ubutane na Mukasharangabo Eugénie, maze mu rubanza RC224/79 rwaciwe ku wa 21/11/1979, Urukiko rwemerera Karimunda Gérard ubutane kubera ko uwo mugore yataye urugo, maze rutegeka ko amasezerano y'ubushyingiranwe bari bafitanye akuweho.

[25] Ikigaragarira Urukiko rw'Ikirenga, ni uko Karimunda Gérard ajya gusezerana na Nyirakamana Marciana ku wa 25/11/1970, yari atarajya mu Rukiko gusaba gutandukana n'umugore we wa mbere Mukasharangabo Eugénie, ibyo bikumvikanisha ko ubushyingiranwe bagiranye icyo gihe butari bwemewe n'amategeko yose yavuzwe haruguru, ari yo mpamvu ubwo bushyingiranwe nta gaciro bukwiye kugira.

[26] Urukiko rurasanga nk'uko na none byasobanuwe, Karimunda yarapfuye urubanza rw'ubutane yaburanaga na Mukasharangabo Eugénie rutaracibwa burundu, bikumvikanisha rero ko nta butane bwigeze bubaho, bityo Mukasharangabo Eugénie akaba ari we wari umugore w'isezerano wa Karimunda Gérard mu rwego rw'amategeko.

[27] Urukiko rurasanga ariko n'ubwo Mukasharangabo Eugénie ari we wari umugore w'isezerano, dosiye y'uru rubanza igaragaza ko yari atakibana n'umugabo we Karimunda kuwa mu mwaka wa 1965, igihe yajyaga kwibanza n'undi mugabo, ndetse na nyuma y'aho bakaba baraburanye urubanza rw'ubutane rutaje kurangira bitewe n'uko Karimunda yaje gupfa mu mwaka wa 1994 nta cyemezo ndakuka kirafatwa kuri ubwo butane, ibyo

<sup>1</sup>Article 28: "Seul le mariage monogamique est reconnu dans les formes et les conditions prévues par la loi [...]".

<sup>2</sup>Iyo ngingo ya 101 yagaruwe mu ngingo ya 175 y'Itegeko N°42/1988 ryo ku wa 27/10/1988 rishyiraho igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano.

bikumvikanisha ko umutungo yari asangiye na Karimunda ari uwo bari bafitanye kugeza muri uwo mwaka wa 1965, akaba ari nawo gusa afiteho uburenganzira bwo kubonaho icya kabiri (1/2) nk'umugabane we.

[28] Urukiko rurasanga ku bireba Nyirakamana Marciana, n'ubwo atigeze aba umugore w'isezerano hakurikijwe ibimaze gusobanurwa haruguru, bigaragara ko yabanye na Karimunda kuva ku wa 25/11/1970 kugeza Karimunda Gérard apfuye mu mwaka wa 1994, muri icyo gihe cyose bakaba barafatanyije ibikorwa by'ubucuruzi bahereye ku masezerano agaragara muri dosiye y'uru rubanza bagiranye ku wa 05/01/1968 (cote 23 Dos.CS), aho Nyirakamana Marciana yazanye amafaranga 70.000 n'imashini idoda ifite agaciro ka 10.000Frw, naho Karimunda akazana 20.000Frw n'icyumba cy'iduka riri i Vunga cyahawe agaciro ka 31.000Frw, yose hamwe Karimunda akaba yarazanye umugabane uhwanyeye na 51.000Frw, byumvikana ko ari ayo yavanye mu mutungo yari afatanyije na Mukasharangabo Eugénie nk'umugore we w'isezerano.

[29] Ku bijyanye n'ababanaga nk'umugore n'umugabo batashyingiranywe mu buryo bwemewe n'amategeko, ingingo ya 39 y'Itegeko N°59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina itegeka umugabo cyangwa umugore wabanaga n'abagore cyangwa n'abagabo benshi, gusezerana n'umugabo cyangwa n'umugore umwe, ikanabategeka ariko muri icyo gihe kubanza kugabana ku buryo bungana umutungo bari bafitanye cyangwa bahahanye mbere y'uko asezerana. Iyo ngingo inavuga ko iryo gabana ry'umutungo ritavutsa abana babyaranye uburenganzira bahabwa n'amategeko.<sup>3</sup>

[30] Hashingiwe ku ngingo ya 39 y'Itegeko N°59/2008 rimaze kuvugwa, Urukiko rurasanga Nyirakamana Marciana, n'ubwo atari umugore w'isezerano bitewe n'uko yatangiye kubana na Karimunda Gérard ataratandukana n'umugore w'isezerano, afite uburenganzira bwo guhabwa kimwe cya kabiri (½) cy'umutungo yari afitanye cyangwa yahahanye na Karimunda Gérard kuva batangiye kubana nk'umugore n'umugabo kuva ku wa 27/11/1970, ikindi kimwe cya kabiri (½) gisigaye, kigasigara ari umutungo wa Karimunda Gérard kigomba kuzungurwa hakurikijwe amategeko.

[31] Hashingiwe na none ku biteganywa n'igika cya nyuma cy'ingingo ya 39 y'Itegeko N°59/2008 ryavuzwe, kivuga ko igabana ry'umutungo ritavutsa abana babyawe uburenganzira bahabwan'amategeko, Urukiko rurasanga abana Karimunda Gérard yabyaranye na Mukasharangabo Eugénie bafite uburenganzira ku mutungo w'ababyeyi babo bombi, by'umwihariko, uburenganzira bahabwa n'amategeko y'izungura yakurikizwaga igihe Karimunda Gérard yitabaga Imana mu mwaka wa 1994, kimwe n'uko abandi bana Karimunda Gérard yabyaranye na Mukasharangabo, Nyirakamana Marciana na Mukandoli, bafite uburenganzira bwo kumuzungura hakurikijwe amategeko y'izungura yakurikizwaga igihe yitabaga Imana mu mwaka wa 1994.

[32] Urukiko rurasanga kugira ngo izungura rikorwe mu buryo buboneye, haba kuri Mukasharangabo, haba kuri Nyirakamana Marciana, ku ruhare rwabo rwavuzwe haruguru, haba ndetse no ku bana bose ba Karimunda Gérard, abazungura bose bagomba kuzagaragaza,

<sup>3</sup> Ingingo ya 39 iteganya ibikurikira:

“Ababanaga nk'umugore n'umugabo batashyingiranywe mu buryo buteganywa n'amategeko, bashyingirwa hakurikije ihame ry'ubushyingiranywe bw'umugabo umwe n'umugore umwe. Mu gihe umwe mu barebwa n'ibivugwa mu gika kibanziriza iki, yabanaga n'abagore cyangwa n'abagabo benshi, abanza kugabana ku buryo bungana na buri wese mu bo babanaga, umutungo bari bafitanye cyangwa bahahanye mbere y'uko ashyingirwa. Igabana ry'umutungo rivugwa mu gika cya 2 cy'iyi ngingo ntirivutsa abana babyaranye uburenganzira bahabwa n'amategeko”.



igihe bizaba ngombwa, imitungo yose Mukasharangabo yari asangiye na Karimunda kugeza igihe yataga urugo rw'abashakanye, kimwe n'imitungo Nyirakamana Marciana yahahanye na Karimunda Gérard kuwa kuwa 25/11/1970 kugeza igihe Karimunda Gérard apfiriye, iyo mitungo yaba ibanditseho cyangwa itabanditseho, yaba imitungo igizwe n'ibintu byimukanwa cyangwa bitimukanwa, yaba igizwe n'amafaranga ari ku makonti cyangwa imigabane mu masosiyete, n'ibindi.

**Kumenya niba irage ryakozwe na Karimunda Gérard kuwa 25/08/1981 ryahabwa agaciro.**

[33] Ababuranira Nyirakamana Marciana, Karangwa Denis na Central Motors and Parts Sarl, bavuga ko bagiriwe akarengane mu icibwa ry'urubanza RCA0221/05/HC/KIG rwaciwe tariki ya 02/04/2010, gashingiye ku kuba irage ryakozwe na Karimunda Gérard tariki ya 25/08/1981, ritarigeze riteshwa agaciro n'Urukiko Rukuru, kandi rwaremeje ko ritigeze ribaho rushingiye ku rubanza rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Kabaya tariki ya 23/05/1990 aho Karimunda Gérard yahatiraga abana be kwakira iminani rukavuga ko iyo iryo rage riza kubaho, Karimunda Gérard atari kurega asaba ko abana bakira iminani yabageneye, bakaba basanga nta sesengura ry'iryo rage Urukiko Rukuru rwigeze rukora ngo hagaragazwe ko rinyuranyije n'amategeko yariho igihe ryakorwaga kuwa 25/08/1981.

[34] Bavuga ko rero iryo rage ryo kuwa 25/08/1981 ryakorewe imbere ya "Notaire" rikwiye gushyirwa mu bikorwa, cyane cyane ko Karimunda Gérard atigeze arihindura nk'uko bivugwa n'ababuranira uruhande ruregwa, bitwaza ko hari ibaruwa Karimunda Gérard yandikiye Minisitiri w'Ingufu n'Imirimo ya Leta, avuga ko inzu yari i Gikondo ayihaye Central Motors and Parts Sarl, kuko iyo arihindura aba yarasubiye kwa "Notaire".

[35] Ababuranira Nyirakamana Marciana bavuga na none ko Urukiko Rukuru rwitiranyije irage n'umunani, kubera ko ingingo ya 42 y'Itegeko N°22/99 ryo kuwa 12/11/1999 rigenga imicungire y'umutungo w'abashakanye, impano n'izungura iteganya ko "itangwa ry'umunani ni igikorwa ababyeyi bakora bakiriho kigamije kugabira umutungo abana babo cyangwa ababakomokaho bagahita bawegukana, bikitwa ko bashoje inshingano yo kubarera no kububakira"; naho ingingo ya 56 y'iryo Tegeko igateganya ko "Irage ni igikorwa umuntu akora agena amerekezo y'umutungo we mu gihe azaba atakiriho, akagaragaza n' ibyifuzo bye bya nyuma[.....]".

[36] Bavuga ko Urukiko Rukuru rwasobanuye amategeko nabi kuko rwashingiye icyemezo cyarwo ku ngingo ya 56 imaze kuvugwa, nyamara irage riburanwa ryarakozwe mbere mu mwaka wa 1981 iryo Tegeko ritarajyaho, hakaba harakurikizwaga icyo gihe umuco nyarwanda, aho hazunguraga gusa abahungu, ari yo mpamvu muri iryo rage nta bakobwa bavugwamo, naho ku mugabo ufite abagore benshi, umuco ukaba ari uko abana bazunguraga ku mitungo yaherejwe kuri ba nyina.

[37] Bavuga rero ko iyo ngingo yasobanuwe mu buryo butari bwo kuko isobanura irage icyo ari cyo, ko kandi iryo Tegeko ryaje ryuzuzwa ibyateganywaga n'umuco nyarwanda, rigashimangira ko irage ryakozwe mu buryo bwemewe n'amategeko rikomeza kugira agaciro kugira ngo hubahirizwe ibyifuzo bya nyakwigendera.

[38] Bavuga na none ko iryo rage ritari guteshwa agaciro kandi ryarakozwe mu buryo bw'inyandikomvaho nk'uko biteganywa n'ingingo ya 13 y'Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, riteganywa ko nyandikomvaho yakozwe n'ubifitiye ububasha, ibiyivugwamo bikomeza gufatwa nk'ukuri,

bityo iryo rage rikaba rigomba guhabwa agaciro karyo, rikagenga ibyifuzo bya nyuma bya Nyakwigendera Karimunda Gérard.

[39] Ababuranira uruhande ruregwa bavuga ko ibyo Nyirakamana Marciana, Karangwa Denis na Central Motors and Parts Sarl ndetse n'Urwego rw'Umuvunyi bavuga, by'uko habaye akarengane mu Rukiko Rukuru kajyanye no kwirengagiza irage nta shingiro bifite, kuko bigaragara ku rupapuro rwa 11, mu gika cya 47 na 48 by'urubanza, ko Urukiko Rukuru rutaryirengagije, ahubwo ko rwarisuzumye rugasanga ritagomba guhabwa agaciro.

[40] Bavuga ko ingingo ya 56 y'Itegeko rimaze kuvugwa haruguru nayo itakurikijwe nabi, cyane ko n'ababuranira Nyirakamana Marciana, Karangwa Denis na Central Motors and Parts Sarl basaba Urukiko rw'Ikirenga kuyikurikiza ku bijyanye n'irage rivugwa n'iyi ingingo. Bongeraho ariko ko iryo rage rifite inenge zatumye umucamanza w'Urukiko Rukuru atariha agaciro, izo nenge zikaba izikurikira:

- a. Kuba mu by'ukuri ritakorewe imbere ya "Notaire" nk'uko bivugwa n'ababuranira Nyirakamana Marciana, Karangwa Denis na Central Motors and Parts Sarl kuko nta zina rya "Notaire" rigaragara kuri iryo rage.
- b. Kuba nta mwimerere w'iryo rage uboneka, fotokopi ikaba nta gaciro yahabwa.
- c. Kuba Karimunda Gérard yararikoze ku wa 25/08/1981, nyuma gato y'urubanza RC500/R11/KYA rwabereye ku Rukiko rwa Mbere rw'Iremezo rwo ku Kabaya rwamubuzaga kongera gutanga imwe mu mitungo ye.
- d. Kuba iryo rage ryaratanzwe mu buryo busumbanisha abana, kubera ko abana ba Mukasharangabo Eugénie bahawe umurima wa 50 m kuri 70 m, abana ba Nyirakamana Marciana bagahabwa igorofa mu Muji wa Kigali.
- e. Kuba yaratanze inzu inshuro ebyiri, ubwa mbere akaba yari yayihaye Nyirakamana Marciana, akongera akayihaye Central Motors and Parts Sarl.

## UKO URUKIKO RUBIBONA

[41] Amategeko y'u Rwanda yakurikizwaga igihe Karimunda Gérard yakoraga irage ryo ku wa 25/08/1981 nta na hamwe yateganyaga ibijyanye n'irage cyangwa izungura. Ingingo ya 1 y'Iriburiro ry'Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano ni yo yateganyaga ko iyo ntamategeko ariho akemura ikibazo, impaka zivutse inkiko zifitiye ububasha zizakemurwa hakurikijwe umuco, cyangwa amahame rusange n'amategeko n'ubutabera.<sup>4</sup>

[42] Ku biyanye n'amahame rusange, ingingo ya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 20/12/1978 ryakurikizwaga igihe Karimunda Gérard yakoraga irage ryo ku wa 25/08/1981<sup>5</sup>, iteganya ko "Abantu bose bangana imbere y'amategeko, kandi ko

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<sup>4</sup> Ordonnance de l'Administrateur Général au Congo relatif aux principes à suivre dans les décisions judiciaires, approuvée par le Décret du 12 novembre 19986, rendu exécutoire au Rwanda par l'O.R.U. N°11/82 du 21/06/1949: "Quand la matière n'est pas prévue par un Décret, un arrêté ou une ordonnance déjà promulguée, les contestations qui sont de la compétence des tribunaux...seront jugées d'après les coutumes locales, les principes généraux du droit et l'équité".

<sup>5</sup> Iryo Tegeko ryasimbuye iryo ku wa 24/11/1962.

Itegeko ribarengera ku buryo bumwe nta vangura iryo ari ryo ryose, nk'irishingiye ku gitsina...»<sup>6</sup>.

[43] Naho ku bijyanye n'umuco, ingingo ya 93, igika cya 2 y'Itegeko Nshinga rimaze kuvugwa iteganya ko "umuco w'Igihugu ukurikizwa gusa iyo utasimbujwe itegeko kandi ntube unyuranyije n'Itegeko Nshinga, amategeko, amabwiriza, n'amahame ndemyagihugu cyangwa umuco w'imbonezabupfura".

[44] Ingingo ya 5(a) y'Amasezerano Mpuzamahanga avanaho ivangura iryo ariryo ryose ku bagore yo ku wa 18/12/1979 u Rwanda rwemeje burundu ku wa 10/11/1980<sup>7</sup> iteganya "...ivanaho ry'akarengane, imico n'imigenzo yose ishingiyeye ku busumbane hagati y'abagabo n'abagore cyangwa kurutanisha ibyo bitsina byombi"<sup>8</sup>.

[45] Nk'uko byari bimaze kuvugwa haruguru, igihe Karimunda Gérard yakoraga irage ryo ku wa 25/08/1981, ntaho amategeko y'u Rwanda yatangaga igisobanuro cy'irage. Ariko Abahanga mu mategeko basobanura ko "irage ari igikorwa umuntu akora akena amerekezo y'umutungo we mugihe azaba atakiriho, akagaragaza n'ibyifuzo bye bya nyuma"<sup>9</sup>, naho ku bijyanye n'irage mpamo, bakavugaga ko "ari rikorewe imbere y'umwanditsi w'inyandiko mpamo n'abatangabuhamya babiri"<sup>10</sup>.

[46] Ibi bisobanuro bihuza n'ibiteganywa n'ingingo ya 56 y'Itegeko N°22/99 ryo ku wa 12/11/1999 ryuzuzaga Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cyagatanu cyerekeye imitungo y'umutungo w'abashyiranywe, impano n'izungura iteganya ko "Irage ni igikorwa umuntu akora akena amerekezo y'umutungo we mu gihe azaba atakiriho, akagaragaza n'ibyifuzo bye bya nyuma. Ibintu nyakwigendera atatanze mu irage bikurikiza amategeko agenga izungura nta rage"<sup>11</sup>. Naho iya 58 igateganya ko "Irage mpamo ni irage rikorewe imbere y'umwanditsi w'inyandiko mpamo cyangwa imbere y'umwanditsi w'irangamimerere w'aho uraga atuye cyangwa aho aba [.....]".

[47] Ku bijyanye n'irage Karimunda Gérard yakozwe ku wa 25/08/1981, dosiye y'urubanza (cote 64 ya dosiye) igaragaza ko ryanditse mu ngingo cumi n'ebiri (12), ingingo ya 1 ikaba ivugaga ko "Isambu iri i Kiziguro, Komini Satinsyi, Prefegitura ya Gisenyi, ifata imisozi ibiri Kanyinya na Karunyambo, igabanyijwe abana be ku buryo Isambu iri i Kanyinya yagenewe iminani y'abo bana"; naho "Isambu iri i Karunyambo guhera ku rubibi rwa Kagabo kugeza ku rubibi rwa Kagenza ku mugezi witwa Kankomati" iharirwa uburage (héritage).

[48] Mu ngingo ya 2, niho Karimunda Gérard aha abana be b'abahungu yabyaranye na Mukasharangabo Eugénie, uburage bugizwe ahanini n'amasambu yabagabanyije, ari bo: Bitwayiki Martin, Habimana Ildephonse, Ntahobari Naasson, na Hakizimana Alphonse mu buryo bukurikira: 1. Bitwayiki Martin: icya kabiri (1/2) cy'ishyamba riri i Karunyambo, hamwe n'umurima uri hagati y'iryo shyamba na Kagabo, amuraga n'amazu abiri (2) ari i Kiziguro; 2. Habimana Ildephonse: igice gisigaye cy'ishyamba azagabana na Bitwayiki;

<sup>6</sup> Article 16 : Tous les citoyens sont égaux devant la loi, sans discrimination aucune, notamment de race, de couleur, d'origine, d'ethnie, de clan, de sexe, d'opinion, de religion, ou de position sociale.

<sup>7</sup> "Date de ratification" ni 10/11/1980 nk'uko biboneka muri Arrêté Présidentiel yo kuwa 10/11/1980.

<sup>8</sup> Reba Iteka rya Perezida N°431/16 ryo ku wa 10/11/1980.

<sup>9</sup> droit-finances-net, in: <http://droit-finances.commentcamarche.net/contents/1012-testament-comment-le-rediger>.

<sup>10</sup> droit-finances-net, in: <http://droit-finances.commentcamarche.net/contents/1012-testament-comment-le-rediger>: « (Le testament authentique est un acte passé devant deux notaires ou devant un notaire et deux témoins) ».

<sup>11</sup> Le testament est l'acte par lequel une personne détermine la destination de son patrimoine après sa mort et fixe ses dispositions de dernière volonté. Les biens dont le de cujus n'a pas disposé par testament sont dévolus conformément aux dispositions sur la succession ab intestat.

hamwe n'umugabane mu isambu wegereye igice cy'ishyamba; 3. Ntahobari Naasson: umugabane wo hagati mu isambu wegereye igice cy'ishyamba; 4. Hakizimana Alphonse: umugabane uhana imbibi na Kagenza kuri Kankomati n'ishyamba riwurimo; naho kuva ku ngingo ya 5 kugeza ku ngingo ya 9, Karimunda Gérard aha Nyirakamana Marciana ndetse n'abana babyaranye uburage bugizwe n'ibikurikira:

- a. Inzu iri i Gikondo, “parcelle” N°05/524 yahawe Nyirakamana Marciana;
- b. Inzu iri i Kigali muri Parcelle N°517, “Quartier commercial”, yahawe umuhungu wa Nyirakamana Marciana witwa Karangwa Denis;
- c. amamodoka, amafaranga Karimunda Gérard afite muri za banki no muri za sosiyete na yo yahawe umuhungu wa Nyirakamana Marciana, Karangwa Denis asabwa no kuzishyura imyenda Karimunda Gérard azaba afite.

[49] Hasesenguwe irage (Testament) Karimunda Gérard yakoze nk'uko ryanditse, hakurikijwe n'imiterere y'inyandiko zigize dosiye y'uru rubanza, Urukiko rurasanga Karimunda Gérard afite abandi bana batavugwa muri iryo rage bakomoka ku bagore batatu yari afite ari bo: Mukasharangabo Eugénie, Nyirakamana Marciana na Mukandori Epiphanie, hakaba nta mwana n'umwe w'umukobwa uvugwa ko hari ikintu yarazwe uretse kuvuga ko naba indushyi, azajya ajya kwagira musaza we, abo bana b'abakobwa batavugwa bakaba ari abakurikira : Kantamage Jacqueline na Karimunda Kaligirwa Edinace ba Nyirakamana Marciana; Mukashema Madeleine na Nyirashema Marie ba Mukandori Epiphanie; Mukandekezi Alphonsine na Mukandori Mariane ba Mukasharangabo Eugénie.

[50] N'ubwo ababuranira Nyirakamana Marciana, Karangwa Denis na Central Motors and Parts Sarl bavugaga ko irage nta makemwa rifite kuko ryakurikije umuco wariho icyo gihe irage rikorwa rivugaga ko hazungura gusa abana b'abahungu, kandi rikaba ryarakorewe kwa “Notaire”, Urukiko rurasanga iryo rage ritarubahirije amahame rusange avugwa mu ngingo ya 1 y'Iriburiro ry'Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano yibukijwe haruguru, rimwe muri ayo mahamwe rikaba ari iryo kudakora ivangura iryo ari ryo ryose, by'umwihariko irishingiye ku gitsina riteganywa n'ingingo ya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 20/12/1978 ryakurikizwaga igihe Karimunda Gérard yakoraga irage ryo ku wa 25/08/1981<sup>12</sup> hamwe n'ingingo ya 5(a) y'Amasezerano Mpuzamahanga avanaho ivangura iryo ariryo ryose ku bagore ryo ku wa 18/12/1979 u Rwanda rwemeje burundu ku wa 10/11/1980.

[51] Urukiko rurasanga rero iryo vangura ari inenge ikomeye kandi y'indemya gihugu (d'ordre public), ituma iryo rage ryo kuwa 25/08/1981 riheza uruhande rumwe rw'abana nta gaciro rigomba guhabwa.

[52] Urukiko rurasanga kandi, kuba irage rya Karimunda ryarahaga abana bamwe imirima yo mu giturage, abandi bagahabwa imitungo itubutse irimo inzu iri i Kigali muri Parcelle N°517 muri *Quartier Commercial*, amamodoka, amafaranga afite muri za banki, amafaranga afite muri za sosiyete byahawe Karangwa Denis wabyawe na Nyirakamana Marciana, bigaragaza na none ko iryo rage ryasumbanyishije abana, kandi na byo byari bibujijwe n'ingingo ya 16 y'Itegeko Nshinga ryavuzwe haruguru, byumvikana ko iryo rage nta gaciro rigomba kugira.

[53] Urukiko rurasanga na none, uretse no kuba irage Karimunda Gérard yakoze ku wa 25/08/1981 nta gaciro ryahabwa kubera impamvu zimaze gusobanurwa, na Karimunda

<sup>12</sup>Iryo Tegeko ryasimbuye iryo ku wa 24/11/1962.

Gérard ubwe yagaragaje mu myitwarire ye ko iryo rage yarivanyeho (révocation), ibyo bikaba bigaragazwa n’uko muri iryo rage yari yagaragaje ubushake bwe (volonté testamentaire) bwo guha Nyirakamana Marciana inzu iri i Gikondo mu kibanza N°05/524, nyamara muri dosiye y’uru rubanza harimo “Contrat de donation” yakozwe ku wa 24/11/1992 aho Karimunda Gérard yahaga noneho icyokibanza Central Motors and Parts Sarl nk’impano; bikongera kugaragazwa no kuba muri iryo rage yari yagaragaje ubushake bwo guha abana be b’ababungu bavugwamo iminani mu isambu iri i Kiziguro, iherereye i Kanyinya, nyamara dosiye y’uru rubanza igaragaza ko icyo cyifuzo Karimunda Gérard yagisubiyeho mu nyandiko yise “Itanga ry’iminani ku bana ba Karimunda Gérard” nk’uko igaragara ku rupapuro rwa kabiri rw’urubanza RC5091/R11/KYA rwaciwe n’Urukiko rwa Mbere rw’Iremezo ruri ku Kabaya ku wa 23/05/1990, aho noneho yerekanye ko “isambu iri i kanyinya ayihaye Mukanoheli Mariana, Habimana Ildephonse, Mukashema Madeleine na Nyirashema”.

[54] Abahanga mu mategeko basobanura ko irage rishobora kuvanwaho ku buryo butaziguye (la révocation peut être expresse), cyangwa mu buryo bwa bucece (la révocation peut être tacite), muri ubu buryo bwa bucece, bakavuga ko ibyari byanditse mbere mu irage bishobora kuvanwaho bucece n’ibindi bikorwa bikozwe nyuma bitajyana n’ibyari byavuzwe mbere (la révocation procède de l’incompatibilité ou du caractère contraire de l’acte nouveau avec l’acte précédent).<sup>13</sup>

[55] Urukiko rurasanga kuba hari ibikorwa bya Karimunda Gérard yakoze bigaragaza ko yisubiyeho, byumvikanisha ko irage yakoze ku wa 25/08/1981 ridashobora gukurikizwa mu kugena izungura rye nk’uko Nyirakamana Marciana n’abana be babyifuzza (Succession testamentaire), ahubwo izungura rye rigomba gukorwa nk’aho nta rage ryigeze ribaho (Succession ab intestat), bityo abana bose ba Karimunda Gérard bakaba bafite uburenganzira bwo kumuzungura ku buryo bungana ku mutungo wose yaba afite, nta mwana uhejwe.

**Kumenya niba inzu iri i Gikondo mu kibanza N°05/524 yaguma mu mutungo rusange wa Karimunda Gérard ugomba kuzungurwa.**

[56] Ababuranira Nyirakamana Marciana, Karangwa Denis na Central Motors and Parts Sarl, bavuga ko bagiriwe akarengane mu icibwa ry’urubanza RCA0221/05/HC/KIG rwaciwe tariki ya 02/04/2010, gashingiye ku kuba Urukiko Rukuru rutaritaye ku kimenyetso cy’umutungo wa Central Motors and Parts Sarl, rugashyira ikibanza cyayo N°05/524 mu mitungo igomba kugabanwa n’umuryango wa Karimunda Gérard kandi uwo mutungo wareguriwe Central Motors and Parts Sarl ifite n’icyangombwa cyawo kuwa mu mwaka wa 1986, ndetse Karimunda akaba nta migabane yari anafite muri icyo sosiyete.

[57] Me Twayigize Jean Claude na Me Nsabimana Jean Baptiste baburanira urundi ruhande bavuga ko icyo ngingo nta shingiro ifite kuko Urukiko rwa Mbere rw’Iremezo rwa Kabaya rwari rwabujije Karimunda Gérard kongera kuvana umutungo we mu muryango awuha Nyirakamana Marciana. Bakomeza bavuga ko ibintu byanditse kuri Central Motors and Parts Sarl byahozze ari umutungo wa Karimunda Gérard, iby’icyo kibanza kivugwa Karimunda Gérard akaba yaragitanze inshuro ebyiri, kuko mu irage yakoze ku wa 25/08/1981, yari yaragihaye Nyirakamana Marciana, noneho nyuma mu mwaka wa 1990 akaba yaragihaye Central Motors and Parts Sarl nk’uko bigaragazwa n’ibaruwa yandikiye Minisitiri w’ingufu n’imirimo ya Leta amusaba ko yacyandika ku izina rya Central Motors and Parts Sarl, aho yanavugaga ko Central Motors and Parts Sarl igifite kuwa ku wa

<sup>13</sup> Christian Jubaut, Droit Civil, les successions. Les Libéralités, DALLOZ, 2005, p.444-445, N°751.

17/11/1986, bakaba basanga ari uburiganya yakomeje gukoresha kugira ngo atoneshe gusa Nyirakamana Marciana n'abana babyaranye yivanaho umutungo.

[58] Karigirwa Edinace avuga ko icyo kibanza kivugwa byari ibibanza bibiri, byahujwe bikabyara ikibanza kimwe, naho Karimunda Hakizimana Alphonse avuga ko ibivuzwe na mushikiwe Karigirwa Edinace ubyarwa na Nyirakamana Marciana atari ukuri, ahubwo ikibanza kikaba cyari kimwe uretse ko cyari kuri numero ebyiri, kuko bari barashatse kugihindura bandika ko ari numero 50108, nyamara kera cyari N°05/524, nk'uko bigaragara mu ibaruwa Karimunda Gérard yandikiye MINITRAPE.

## UKO URUKIKO RUBIBONA

[59] Ku bijyanye no kumenya niba inzu iri i Gikondo mu kibanza N°05/524 yaguma mu mutungo rusange wa Karimunda Gérard ugomba kuzungurwa, ntukomeze kwitwa uwa Central Motors and Parts Sarl, dosiye y'uru rubanza igaragaza ko igihe yatangaga irage ku wa 25/08/1981, Karimunda Gérard yagaragaje ko iyo nzu iri mu mutungo we, aho yayiragaga umugore we Nyirakamana Marciana.

[60] Na none nk'uko byari byavuzwe haruguru muri dosiye y'uru rubanza, harimo ibaruwa N°012/09/90/KG/RE, Karimunda Gérard yandikiye Minisitiri w'Imirimo ya Leta, Ingufu n'amazi, ku wa 12/09/1990 asaba ko icyo kibanza cyandikwa kuri Central Motors and Parts Sarl, hakaba harimo na "Contrat de donation" yakozwe ku wa 24/11/1992 aho Karimunda Gérard yahaga icyo kibanza Central Motors and Parts Sarl.

[61] Ku bijyanye n'abagize iyo sosiyete Central Motors and Parts Sarl, "statuts" zayo zo ku wa 14/03/1991 zigaragaza ko igizwe na Nyirakamana Marciana n'abana be ari bo Karangwa Denis, Karigirwa Edinace, na Kantamage Jacqueline (cote 117-120).

[62] Isesengurwa ry'izi nyandiko zose, zigaragaza ko ikibanza kivugwa n'inzu irimo byahozwe mu mutungo wa Karimunda kuko iyo utaba uwe, ntaba yaragaragaje ko awutanzeho irage yahaye umugore we Nyirakamana Marciana, nyuma akaza kubihindura akawuha Central Motors and Parts Sarl.

[63] N'ubwo ariko nta kibuzza umuntu gutanga impano mu mutungo we bwite, hakurikijwe amahame rusange yerekeye itangwa ry'impano avuga ko impano ari uburyo umuntu akoresha akibereyeho atanga ikintu afite yivanyeho mu buryo budasubirwaho, akagiha undi muntu uriho (entre vifs), uyunta kiguzi amuhaye (gratuit)<sup>14</sup>, ikigaragara ni uko inzu imaze kuvugwa iri i Gikondo mu kibanza N°05/524 mu by'ukuri itari umutungo wa Karimunda wenyine, ahubwo nk'uko byavuzwe haruguru, yari ayisangiye na Nyirakamana Marciana, uyifiteho gusa uruhare rwa kimwe cya kabiri hakurikijwe ingingo ya 39 y'Itegeko N°59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina ryibukijwe haruguru, bikaba bitumvikana rero ukuntu Karimunda Gérard yari gutanga impano kuri uwo mutungo, ayiha undi muntu, ari we Central Motors and Parts Sarl, atabyumvikanyeho na Nyirakamana Marciana bari bawusangiye, hyongereyeho ko yari yaranagaragaje mbere hose ko iyo nzu ayeguriye Nyirakamana Marciana mu irage Urukiko rwasanze ritagomba guhabwa agaciro.

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<sup>14</sup>La donation consiste essentiellement dans l'aliénation gratuite que le disposant fait de tout ou partie de ses biens ou droits au profit d'une autre personne. Lire commentaires de l'article 894, du Code Civil français, DALLOZ, Edition 2009.

[64] Ikindi kigaragarira Urukiko, ni uko iriya mpano yakozwe mu buryo usanga bigamije gusumbanisha abana ba Karimunda Gérard, kuko nk'uko "Statuts" za Central Motors and Parts Sarl zibigaragaza, iyo sosiyete igizwe n'abana ba Nyirakamana Marciana bafatanyije na nyina, Urukiko rukaba rusanga guha iyo nzu iyo sosiyete byambura abandi bana babyawe na Karimunda Gérard batari aba Nyirakamana Marciana, uburenganzira bwo kuzungura Ise ku ruhare uyu yari afite kuri iyo nzu.

[65] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga impano yakorewe ku nzu iri i Gikondo mu kibanza N°05/524, igahabwa Central Motors and Parts Sarl, mu buryo bwashobanuwe haruguru, yaratanzwe mu buryo burenganya, ari yo mpamvu nayo itagomba guhabwa agaciro, ahubwo igomba kuguma mu mutungo uzungurwa Karimunda Gérard yari asangiye na Nyirakamana Marciana.

**Ku byerekeranye n'ibisabwa na GT Bank Ltd yatanze byo kwishyurwa umwenda Karimunda Gérard yasize afashe.**

[66] Me Nkurunziza François Xavier uburanira GT Bank Ltd avuga ko umuryango wa Karimunda Gérard ukwiye gutegekwa kwishyura GT Bank Ltd amafaranga uyifitiye angana na 47.416.566Frw hashingiwe ku rubanza RCOM321/10/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, rukaba rwarategetse ko bakurikirana abazungura ba Karimunda Gérard kuri uwo mwenda Karimunda Gérard yapfuye atishyuye.

[67] Me Twayigize avuga ko ku kibazo cy'izungura uko giteye nta na rimwe higeze hatangazwa umutungo wa Karimunda Gérard kubera ko no mu irage rye yavugaga ko agikora, urupfu rwe rukaba rwaratangajwe mu mwaka wa 2007, uwari gufasha kumenya uwo mutungo akaba ari "Liquidateur" Karambizi Canisius wari washyizweho, Urukiko rw'Ikirenga rukaba rwarategetse ko "liquidation" iba ihagaze, akaba asaba Urukiko kumwifashisha kugira ngo agaragaze imitungo ya Karimunda Gérard kuko ikizwi gusa ari ideni riri muri GT Bank Ltd, inzu bivugwa ko ari iya Central Motors and Parts Sarl ndetse n'igorofa iri mu Mujyi wa Kigali.

## **UKO URUKIKO RUBIBONA**

[68] Ingingo ya 2 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, iteganya ko "Ikirego nticyemerwa mu Rukiko iyo urega adafite [...] inyungu n'ubushobozi bwo kurega [...]", iya 77 y'iryo Tegeko igaha umucamanza uburenganzira bwo "kutakira ikirego cy'umuburanyi, hatinjiwe mu mizi yacyo, kubera ko adafite [...] ububasha n'inyungu zo kurega", naho iya 78 ikemerera umucamanza kubyutsa inzitizi nk'iyi aho urubanza rwaba rugeze hose, aho ivuga ko "umucamanza ushaka kubyutsa inzitizicyangwa impamvu ituma ikirego kitakirwa abyibwirije ashobora kuyibyutsa igihe cyose urubanza rutarasomwa."

[69] Dosiye y'uru rubanza igaragaraza, nk'uko bivugwa n'uburanira GT Bank Ltd, ko hari urubanza RCOM321/10/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, rukaba rwarabayeho ndakuka, aho abazungura ba Karimunda Gérard bategetswe kwishyura GT Bank Ltd amafaranga 47.416.566Frw Karimunda Gérard yapfuye atishyuye.

[70] Urukiko rurasanga urubanza rumaze kuvugwa RCOM0321/10/HCC rugaragaza ko nta nyungu GT Bank Ltd ifite mu rubanza RCA0221/05/HC/KIG rwaciwe tariki ya 02/04/2010 rusabirwa gusubirwamo ku mpamvu z'akarengane, kubera ko ibyo isaba yabyemerewe mu

rubanza RCOM0321/10/HCC, bityo rero hashingwe ku ngingo z'Itegeko N°21/2012 zavuzwe haruguru, ibisabwa na GT Bank Ltd bikaba bitakwakirwa ngo bisuzumwe.

**Ku byerekeranye n'indishyi zisabwa.**

[71] Ababuranira Nyirakamana Marciana bavuga ko uyu yashowe mu manza bitari ngombwa, bakaba basaba ko Urukiko rwazamugenera indishyi z'ikurikiranarubanza zingana na 2.000.000Frw ndetse n'igihembo cy'Avoka kingana na 6.000.000Frw, naho ababuranira urundi ruhande ruregwa mu karengane bakavuga ko indishyi zisabwa nta shingiro zifite kubera ko nta muntu wabashoye mu manza, ko ahubwo ari bo bakwiye guhabwa indishyi zingana na 5.000.000Frw kubera gushorwa mu manza na 2.000.000Frw y'igihembo cya Avoka.

[72] Urukiko rurasanga indishyi zisabwa n'ababuranyi muri uru rubanza batazihabwa, kubera ko buri wese afite ibyo atsindiwe.

### **III. ICYEMEZO CY'URUKIKO**

[73] Rwemeje kwakira ikirego cy'akarengane rwashyikirijwe na Nyirakamana Marciana, abana behamwe na sosiyete barimo ya Central Motors and Parts Sarl, rugisuzumye rusanga gifite ishingiro kuri bimwe;

[74] Rwemeje ko Mukasharangabo Eugénie afite uburenganzira kuri kimwe cya kabiri (1/2) cy'umutungo wa Karimunda Gérard bari basangiye kugeza igihe yataga urugo rwabo mu mwaka wa 1965;

[75] Rwemeje ko Nyirakamana Marciana nawe afite uburenganzira kuri kimwe cya kabiri (1/2) cy'umutungo wa Karimunda Gérard bari basangiye kuva batangiyeye kubana ku wa 26/11/1970 kugeza ubu;

[76] Rwemeje ko irage ryakozwe na Karimunda Gérard ku wa 25/08/1981 nta gaciro rifite, bityo izungura rye rikaba rigomba gukorwa nk'aho nta rage ryabayeho;

[77] Rwemeje ko impano yakorewe ku nzu iri i Gikondo mu kibanza N°05/524 nta gaciro ifite, bityo iyo nzu ikaba igomba kuguma mu mutungo wa Karimunda Gérard uzungurwa yari afatanyije na Nyirakamana Marciana;

[78] Rwemeje ko abana bose ba Karimunda Gérard bafite uburenganzira bungana bwo kuzungura umutungo we, havuyemo uruhare rwa Nyirakamana Marciana n'urwa Mukasharangabo Eugénie rwavuzwe haruguru;

[79] Rutegetse ko Nyirakamana Marciana n'abana be ku ruhande rumwe, na Mukasharangabo Eugénie n'abana be ku rundi ruhande, gufatanya kwishyura amagarama y'urubanza angana na 100.000Frw, buri ruhande rukishyura icya kabiri cyayo kingana 50.000Frw.

[80] Ruvuze ko urubanza RCA0221/05/HC/KIG, RCA0221/09/HC/KIG rwaciwe n'Urukiko Rukuru kuwa 02/04/2010 ruhindutse kuri bimwe.