MUKAGATARE v. SUCCESSION BWANAKEYE (2)

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/CIV 0003/14/CS (Mukanyundo, P.J., Hitiyaremye na Rugabirwa, J.) 03 Gashyantare 2017]

Amategeko agenga ubutaka – Inkomoko y'ubutaka bw'umuntu ku giti cye – Uregera ko ubutaka ari ubwe agomba kugaragaza inkomoko yabwo – Itegeko N°43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 10.

Amategeko agenga ubutaka – Amakimbirane ku butaka – Igihe ubuzime bw'uburenganzira ku butakabudakoreshwa – Umuntu wihaye ubutaka bw'inkungu cyangwa indeka cyangwa ubw'undi muntu akoresheje uburiganya, ntashobora kwitwaza ubuzime – Itegeko N°43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 46 n'iya 47.

Incamake y'ikibazo: Uru rubanza rukomoka ku makimbirane yabaye hagati ya Mukagatare na Bwanakeye ashingiye ku kibanza Mukagatare yubatsemo mu 1995 avuga ko yahawe na Komini Ngoma nyuma yo guhunguka mu 1994.

Mu 2000, Bwanakeye yareze Mukagatare mu nzego z'ubuyobozi avuga koyamwubakiye mu busitani bwe. Ikibazo kidacyemutse Bwanakeye yatanze ikirego mu Rukiko Rwisumbuye asaba ko ubwubatsi bukorerwa mu ikibanza cye buhagarara, urukiko rwemeza ko Mukagatare asenya Bingalo n'amazu yubatse mu kibanza cya Bwanakeye, mu gihe kitarenze iminsi mirongo itatu (30).

Mukagatare yajuririye Urukiko Rukuru maze rwemeza ko urubanza rwajuririwe rudahindutse mu ngingo zarwo zose, yarongeye ajuririra Urukiko rw'Ikirenga maze rwemeza ko ubujurire bwe butari mu bubasha bwarwo rushingiye ku nzitizi y'iburabubasha yari yazamuwe Bwanakeye. Bityo Mukagatare yagannye Urwego rw'Umuvunyi asaba ko urubanza RCA1633/06/HC/NYA rwasubirwamo ku mpamvu z'akarengane, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko rwasubirwamo kuko hari impamvu z'akarengane zishingiye ku byangombwa Mukagatare yerekanye mu Rukiko Rukuru bigaragaza ko ikibanza cyaburanwaga ari icye, nyamara urwo Rukiko ntirubyiteho.

Nyuma yo gutesha agaciro inzitizi yo kutakira ikirego mu Rukiko rw'Ikirenga, iburanisha ryakomeje mu mizi, aho Mukagatare aburana avuga ko afite ibimenyetso byirengajijwe n'Urukiko Rukuru, bigizwe n'inyandiko zitandukanye zerekana ko ikibanza kiburanwa ari icye ariko ko Urukiko Rukuru rwabyirengagije, kandi nyamara Bwanakeye akaba nta kimenyetso na kimwe cyanditse yigeze agaragaza, akaba asanga ibi urukiko rwaragombaga kubiha agaciro rukurikije ubusumbane bw'ibimenyetso, akaba asaba n'indishyi zitandukanye.

Abazungura ba Bwanakeye biregura bavuga ko impamvu urukiko rutitaye ku bimenyetso bya Mukagatare ari uko yatanganga inyandiko zitari umwimerere, kandi ko igihe kivugwa ko iyo sambu yeguriwe kaminuza Bwanakeye yari atuye aho hantu. Bakomeza bavuga ko inyandiko zigaragazwa n'uwajuriye ziterekana ingero z'ubutaka yahawe, mu gihe izindi zerekana ko yatijwe aho ashyira akabarike ariko atahawe ikibanza.

Bakomeza bavuga ko n'iyo ubwo butaka buburanwa bwari kuba ari ubwa Leta hari kuba harabayeho ubuzime kuko *acte de cesssion du Laboratoire Vétérinaire de Butare* yasinywe kuwa 12/02/1964 naho ibaruwa imuha ubwo butaka igasinywa n'Ubuyobozi bwa Komini y'Umujyi ya Ngoma ku wa 10/10/1995, ni ukuvuga nyuma y'imyaka mirongo itatu (30) iteganywa n'amategeko.

Kubirebana n'ubuzime, Mukagatare avuga ko atabwemera kuko ubutaka buburanwa butigeze buba ubwa Bwanakeye, maze nawe asoza asaba indishyi zitandukanye.

Incamake y'icyemezo:1. Ubutaka bw'umuntu ku giti cye n'ubwo yahawe n'ubuyobozi bubifitiye ububasha, ubwo yaguze, yahaweho impano, umurage, izungura, umunani, ingurane cyangwa isaranganya. Bityo rero kuba succession Bwanakeye itarabashije kugaragaza inkomoka y'ubutaka buburanwa bituma Mukagatare abutsindira kuko agaragaza ko yabuhawe n'ubuyobozi bubifitiye ububasha.

2. Umuntu wihaye ubutaka bw'inkungu cyangwa indeka cyangwa ubw'undi muntu akoresheje uburiganya, ntashobora kwitwaza ubuzime, kabone n'iyo yaba abutunze igihe kirenze imyaka y'ubuzime, bityo rero succession Bwanakeye ntikwiye kuvuga ko Leta itashoboraga gutanga ubutaka buburanwa ngo kuko yabwegukanye hamaze kubaho ubuzime.

3. Amafaranga y'ikurikiranarubanza n'igihembo cy'avoko bigenerwa umuburanyi ufite ibyo yatakaje k'urubanza kandi agomba kuba yararutsinze.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro;
Urubanza RCA1633/06/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanzaruhindutse mu ngingo zarwo zose;
Amagarama y'urubanza aherereye kuri Succession Bwanakeye.

Amategeko yashingiweho:
Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa, ingingo ya 3 n'iya 13.
Itegeko N°43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 10, 46 n'iya 47.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nyuma yo kugaruka mu Rwanda mu mwaka wa 1994, Mukagatare Grâce wari warahunze, yagiye gutura mu cyahoze ari Intara ya Butare. Mu mwaka wa 1995 yubatse mu kibanza avuga ko yari ahawe na Komini Ngoma. Mu mwaka wa 2000, Bwanakeye François yatangiye kurega Mukagatare Grâce avuga ko yubatse mu busitani bwe, ikibazo gikurikiranwa mu nzego z'Ubuyobozi.

[2] Mu mwaka wa 2006, Bwanakeye François yareze Mukagatare Grâce mu Rukiko Rwisumbuye rwa Huye asaba guhagarikisha ubwubatsi bwakorerwaga mu murima we. Ku itariki ya 29/09/2006, Urukiko Rwisumbuye rwa Huye rwaciye urubanza RC0069/06/TGI/HYE-RC0002/06/TP/BUT rwemeza ko Mukagatare Grâce asenya Bingalo n'amazu yubatse mu murima wa Bwanakeye François, akabivanamo mu gihe kitarenze iminsi mirongo itatu (30).

[3] Mukagatare Grâce yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Nyanza, ruca urubanza RCA1633/06/HC/NYA ku itariki ya 03/11/2008, rwemeza ko

Mukagatare Grâce atsinzwe, ko urubanza rwajuririwe rwaciwe n'Urukiko Rwisumbuye rwa Huye ku itariki ya 23/06/2006 rudahindutse mu ngingo zarwo zose.

[4] Mukagatare Grâce yajuririye urwo rubanza mu Rukiko rw'Ikirenga, nyuma y'inzitizi y'iburabubasha yari yabyukijwe n'uhagarariye Bwanakeye François, Urukiko rw'Ikirenga rwemeza ko ubujurire bwakozwe ku rubanza RCA1633/06/HC/NYA rwaciwe ku itariki ya 03/11/2006 n'Urukiko Rukuru, Urugereko rwa Nyanza, butari mu bubasha bw'Urukiko rw'Ikirenga.

[5] Mukagatare Grâce abonye icyo cyemezo yagannye Urwego rw'Umuvunyi asaba ko urubanza RCA1633/06/HC/NYA rwasubirwamo ku mpamvu z'akarengane, maze ku itariki ya 27/03/2013, Urwego rw'Umuvunyi rwandikira Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza rumaze kuvugwa rwasubirwamo ku mpamvu z'akarengane rwagejejweho na Mukagatare Grâce.

[6] Urwego rw'Umuvunyi ruvuga ko impamvu z'akarengane zigaragara muri urwo rubanza zishingiye ku byangombwa Mukagatare Grâce yerekanye mu Rukiko Rukuru, Urugereko rwa Nyanza, bigaragaza ko ikibanza cyaburanwaga ari icye, nyamara urwo Rukiko ntirubyiteho. Ibyo akaba ari na byo bikubiye mu mwanzuro watanzwe na Mukagatare Grâce mu Rukiko rw'Ikirenga agaragaza akarengane yagiriwe.

[7] Mu iburanisha ryo ku itariki ya 16/09/2014, Me Ngirabakunzi Evariste waburaniraga Succession Bwanakeye François yatanze inzitizi yo kutakira ikirego cya Mukagatare Grâce kuko kitubahirije ingingo ya 79 n'iya 81 z'Itegeko Ngenga N°03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, maze ku wa 10/10/2014, Urukiko rw'Ikirenga rwemeza ko iyo nzitizi nta shingiro ifite, ko ikirego cya Mukagatare Grâce cyakiriwe kugira ngo kizasuzumwe mu mizi, iburanisha ry'urubanza rishyirwa ku itariki ya 13/01/2015.

[8] Kuva icyo gihe, urubanza rwagiye rusubikwa ku mpamvu zitandukanye, ahanini biterwa n'ibura rya bamwe mu bazungura ba Bwanakeye François, kugeza ubwo iburanisha ryarwo ribaye ku wa 08/03/2016, Mukagatare Grâce yitabye yunganiwe na Me Hakizimana John, muri Succession Bwanakeye François hitabye igice kimwe gihagarariwe na Mukamunana Vénantie yunganiwe na Me Nizeyimana Boniface, Musada Jean Pierre, Ukuyemuye Jeanne, Nabonabana Jeannine, Nibakure Floriane, Tuyisenge Thaddée na Rutaganda Innocent barahamagawe mu bihe bitandukanye ariko ntibitabe Urukiko, naho Barandagiye Alphonse Marie, Uwimana Régine, Tuza M. Alice, Mukangamije Henriette, Mugeni Françoise, Bwanakeye Françoise, Bwanakeye M. Goretti, Bwanakeye M. Thérèse na Mukantagara Josephine barahamagajwe ahatazwi.

[9] Isomwa ry'urubanza ryashyizwe ku wa 15/04/2016 ariko uwo munsi ntirwasomwa, ahubwo Urukiko rw'Ikirenga rufata icyemezo cy'uko mbere yo guca urubanza burundu, ari ngombwa gukora iperereza aho ikiburanwa kiri, ruvuga ko iburanisha rizongera gufungurwa ku itariki ya 21/06/2016. Iryo perereza rikaba ryarabaye ku itariki ya 27/05/2016.

[10] Ku itariki ya 21/06/2016, ababuranyi bongeye kwitaba Urukiko, Me Hakizimana John yunganira Mukagatare Grâce, Me Nizeyimana Boniface yunganiye Mukamunana Vénantie uhagarariye bamwe mu bazungura ba Bwanakeye François babimuhereye ububasha (procuration), maze uwo munsi Urukiko rumenyesha ababuranyi ko ari ngombwa gusaba Umuyobozi w'Ikigo cy'Igihugu gishinzwe umutungo kamere gutanga amakuru ku butaka

buburanwa buri muri hegitari mirongo ine n'eshanu (45) Leta y'u Rwanda yahaye Kaminuza y'u Rwanda mu mwaka wa 1964 nk'uko *Acte de Cession* iri muri dosiye ibigaragaza.

[11] Iburanisha ry'urubanza ryasubukuwe ku itariki ya 29/11/2016, ababuranyi bitabye kandi bunganiwe n'Abavoka babo, maze buri ruhande rugira icyo ruvuga ku iperereza ryakozwe no kuri raporo Umuyobozi w'Ikigo cy'Igihugu gishinzwe umutungo kamere yatanze.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba hari akarengane Mukagatare Grâce yagiriwe mu rubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza, rwemeje ko umurima uburanwa ari uwa Bwanakeye François.

[12] Me Hakizimana John uburanira Mukagatare Grâce, yabwiye Urukiko ko bafite urutonde rw'ibimenyetso bigizwe n'inyandiko Urukiko Rukuru, Urugereko rwa Nyanza, rwirengagije, akaba ari nacyo cyamuteye akarengane. Avuga ko ibyo bimenyetso ari *acte de notoriété* yo ku wa 30/03/2000, *fiche cadastrale* yo ku wa 24/04/2003 yakozwe n'Umujyi wa Butare, *contrat de location* y'ikibanza kiburanwa yakozwe ku wa 28/08/2005 hagati y'Akarere ka Huye na Mukagatare Grâce, *facture au comptant* yo ku wa 28/08/2006 y'amafaranga yishyuwe kugira ngo iki kibanza gishobore kubona *plan cadastral,* raporo ya Komisiyo yo ku wa 22/12/2000 yakozwe n'Ubuyobozi bwa Perefegitura (Préfecture) ya Butare ku kibazo Mukagatare Grâce yari yabugejejeho, ibaruwa ya Burugumesitiri (Bourgmestre) wa Komini y'Umujyi wa Ngoma yo ku wa 10/10/1995 yahaga Mukagatare Grâce uburenganzira bwo kubaka *kiosque*, ibaruwa Umuyobozi w'Akarere ka Huye yandikiye Umuvunyi Mukuru ku itariki ya 03/12/2009 amusobanurira ko ubutaka buburanwa ari ubwa Mukagatare Grâce anamubwira ko nta *fiche cadastrale* ya Bwanakeye François babonye mu bitabo, ndetse na *acte de cession du laboratoire vétérinaire de Butare* yo ku wa 12/02/1964 igaragaza inkomoko y'ubu butaka, aho Leta y'u Rwanda yabuhaga Kaminuza y'u Rwanda, iki kimenyetso kikaba kivuguruza imiburanire ya Bwanakeye François, aho yavugaga ko ubutaka buburanwa ari ubwo akomora kuri gakondo.

[13] Me Hakizimana John akomeza avuga kandi ko kuva mu nkiko zo hasi, Mukagatare Grâce yagiye aburanisha ibi bimenyetso byanditse harimo n'inyandiko mvaho, nyamara Bwanakeye François we akaba nta kimenyetso na kimwe cyanditse yigeze agaragaza, Urukiko rukaba rwaragombaga kubiha agaciro rukurikije ubusumbane bw'ibimenyetso (hiérarchie des preuves).

[14] Ku birebana na raporo yakozwe n'abakozi b'Ikigo cy'Igihugu gishinzwe umutungo kamere, Me Hakizimana John avuga ko bemeranya nayo, kubera ko yerekana inkomoko y'ubutaka buburanwa, ko bwari ubwa Leta ari nayo yabuhaye Mukagatare Grâce, bitandukanye n'ibivugwa n'uruhande rw'abazungura ba Bwanakeye François ko ubwo butaka babukomora kuri gakondo.

[15] Mukamunana Vénantie, umwe mu bazungura ba Bwanakeye François akanahagararira bamwe mu bavandimwe be, avuga ko impamvu Urukiko rutitaye ku bimenyetso bya Mukagatare Grâce ari uko yatangaga inyandiko zitari umwimerere (photocopies). Asobanura ko isambu ya Bwanakeye François iva ku muhanda ikagera mu

kabande, ko kandi nta bibanza byigeze bicibwamo, Mukagatare Grâce akaba yarayigezemo atira aho gushyira *kiosque* gusa, akaba atazi ukuntu yaje kuvamo inzu.

[16] Akomeza asobanura ko mu mwaka wa 1964, igihe bavuga iyo sambu yegurirwaga Kaminuza, Bwanakeye François yari atuye aho hantu kimwe n'abandi baturage, akaba yarahaje aturutse i Kansi mu cyahoze ari Komini Nyaruhengeri, hamwe akaba yarahaguze uretse ko inyandiko yagiye aguriraho zabuze. Asobanura ko abandi baturage batuye aho bavuga ko ari mu isambu ya Kaminuza bafite ibyangombwa by'ubutaka ndetse banahubatse amazu akomeye, iyi *acte de cession du laboratoire* ikaba imenyekanye muri uru rubanza, mbere hose ikaba itarigeze igaragazwa, ndetse na Kaminuza ikaba nta na rimwe yari yarigeze ivuga ko isambu batuyemo ari iyayo. Arangiza asobanura ko aho Mukagatare Grâce yubatse hari mu busitani bwabo, ko yari yahahawe by'igihe gito ngo ahatereke *kiosque* yashoboraga kwimurwa igihe icyo ari cyo cyose.

[17] Me Nizeyimana Boniface asubiza ku bimenyetso bya Mukagatare Grâce, avuga ko *acte de notoriété* yo ku wa 30/03/2000 bayimuhaye bavuga ko afite *Bar Isangano*, ariko ko batemeje ko afite *parcelle*, kuko iyo biba ibyo bari kwandikaho nimero zayo. Ku byerekeye *fiche cadastrale* yo ku wa 24/04/2003 na *contrat de location* yo ku wa 28/08/2006, avuga ko bikwiye guteshwa agaciro kuko bigaragaza ingero, nyamara muri *acte de notoriété* ari naho izo ngero zagombaga kuva zitarimo.

[18] Ku birebana na raporo ya Komisiyo (commission) yo ku itariki ya 22/08/2006, Me Nizeyimana Boniface agaragaza ko muri iyo raporo handitsemo ko aho hantu Mukagatare Grâce ahahawe kugira ngo ashobore gucuruza, adahawe *parcelle*, ibi akaba ari nabyo bigaragara mu ibaruwa ya Burugumesitiri (Bourgmestre) wa Komini Ngoma. Ku birebana n'ibaruwa Umuyobozi w'Akarere ka Huye yandikiye Umuvunyi Mukuru amubwira ko nta *fiche cadastrale* ya Bwanakeye François iboneka mu bitabo, avuga ko ibi atari ikibazo kuko n'abandi baturage batuye aho, izo *fiches* ntazo bari bafite. Ku byerekeye *acte de cession du laboratoire vétérinaire*, avuga ko iki kimenyetso kigaragaza inkomoko y'ubutaka buburanwa, aho Leta y'u Rwanda yabuhaga Kaminuza, ko iyo Mukagatare Grâce aza kubuhabwa hari kugaragazwa n'ingero z'aho yahawe.

[19] Arangiza avuga ko, n'iyo ubwo butaka buburanwa bwari kuba ari ubwa Leta nk'uko bikubiye muri *acte de cesssion du Laboratoire Vétérinaire de Butare* mu gika cya nyuma cy'ingingo ya kabiri yayo, ko bwagombaga gusubizwa *Centre urbain de Butare*, habayeho ubuzime kuko iyo *acte de cession* yasinywe ku itariki ya 12/02/1964, ibaruwa iha ubwo butaka Mukagatare Grâce isinywa n'Ubuyobozi bwa Komini y'Umujyi ya Ngomba ku itariki ya 10/10/1995, ni ukuvuga nyuma y'imyaka mirongo itatu (30) iteganywa n'amategeko. Agasanga rero Leta itarashoboraga gutanga ubutaka bwari bwararangije kwegukanwa na Bwanakeye François (prescription acquisitive).

[20] Ku birebana n'ubuzime uburanira abazungura ba Bwanakeye François aburanisha, Me Hakizimana John avuga ko Mukagatare Grâce atemera buriya buzime (prescription acquisitive) kubera ko ubutaka buburanwa butigeze buba ubwa Bwanakeye François, ko Mukagatare Grâce ajya kuhasaba hari ubusitani (jardin) gusa nta nyubako ihari. Avuga ko, ku birebana n'inkomoko y'ubutaka buburanwa, raporo y'Umuyobozi w'Ikigo cy'Igihugu gishinzwe umutungo kamere ishimangira imiburanire ya Mukagatare Grâce, kuko igaragaza inkomoko ya kure y'ubu butaka, mu gihe abazungura ba Bwanakeye François bavuga ko ari isambu gakondo, nyamara iyi raporo ikabivuguruza.

UKO URUKIKO RUBIBONA

[21] 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. Umucamanza ashobora nyamara gutegeka umuburanyi wese gutanga gihamya y'ibimenyetso afite".

[22] Ingingo ya 13, igika cya mbere, y'Itegeko N°15/2004 rimaze kuvugwa, iteganya ko "Inyandikomvaho ikemura impaka kuri bose mu byerekeye ibiyivugwamo umukozi wa Leta ubigenewe yabereye umuhamya cyangwa yakoze ariko atarengeje ibyo yari ashinzwe gukora. Ibivuzwe muri iyo nyandiko mvaho ntawe ushobora kubihakana, keretse biramutse bikurikiranywe mu rubanza rushinja icyaha cyo kubeshya mu nyandikomvaho cyangwa umuburanyi aregeye ko iyo nyandikomvaho ari impimbano".

[23] Mu nyandiko zigize dosiye y'urubanza Mukagatare Grâce atanga nk'ibimenyetso ko ubutaka buburanwa ari ubwe, hagaragaramo *acte de notoriété* yo ku wa 30/03/2000, *fiche cadastrale* yo ku wa 24/04/2003 yakozwe n'Umujyi wa Butare, *contrat de location* y'ikibanza kiburanwa yakozwe ku wa 28/08/2005 hagati y'Akarere ka Huye na Mukagatare Grâce, *facture au comptant* yo ku wa 28/08/2006 y'amafaranga yishyuwe kugira ngo iki kibanza gishobore kubona *plan cadastral*, raporo ya komisiyo yo ku wa 22/12/2000 yakozwe n'Ubuyobozi bwa Perefegitura (Préfecture) ya Butare ku kibazo Mukagatare Grâce yari yabugejejeho, ibaruwa yo ku wa 10/10/1995 yanditswe na Burugumesitiri (Bourgmestre) wa Komini y'Umujyi wa Ngoma aha Mukagatare Grâce uburenganzira bwo kubaka *kiosque*, ibaruwa yo kuwa 03/12/2009 Umuyobozi w'Akarere ka Huye yandikiye Umuvunyi Mukuru asobanura ko ubutaka buburanwa ari ubwa Mukagatare Grâce anamubwira ko nta *fiche cadastrale* ya Bwanakeye François babonye mu bitabo, ndetse na *acte de cession du Laboratoire vétérinaire de Butare* yo ku wa 12/02/1964 igaragaza inkomoko y'ubu butaka, aho Leta y'u Rwanda yabuhaga Kaminuza y'u Rwanda.

[24] Ibyo Mukamunana Vénantie, uhagarariye bamwe mu bazungura ba Bwanakeye François, avuga ko impamvu Mukagatare Grâce yatsinzwe mu Rukiko Rukuru ari uko inyandiko yatangaga nk'ibimenyetso zitari umwimerere, Urukiko rw'Ikirenga rurasanga muri uru rubanza nta gaciro byagira kuko ibyo yatanze muri uru Rukiko noneho ari umwimerere, kandi ibitari umwimerere hakaba harabonetse n'ibindi bibishyigikira birimo raporo y'Umuyobozi w'Ikigo cy'Igihugu gishinzwe umutungo kamere igaragaza ko ubutaka buburanwa atari gakondo ya Bwanakeye François nk'uko abiburanisha, ahubwo bwari ubwa *Centre Urbain de Butare*[1]. Ibyo avuga ko igice kimwe cy'ubutaka Bwanakeye François yakiguze nabyo nta gaciro bifite kuko atabitangira ibimenyetso nk'uko biteganywa n'ingingo ya 3 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru.

[25] Ku birebana n'ibyo Me Nizeyimana Boniface wunganira Mukamunana Vénantie avuga ko inyandiko Mukagatare Grâce agaragaza ziterekana ingero z'ubutaka yahawe, izindi zikerekana ko yatijwe aho ashyira *Bar Isangano* kuko atahawe *parcelle*, Urukiko rw'Ikirenga rusanga nabyo nta gaciro bifite kuko *Fiche cadastrale* igaragaza ko ubutaka Mukagatare Grâce yahawe bungana na are 5 na ca 40, naho kuba *acte de notoriété* yerekana ko Mukagatare Grâce afite *Bar Isangano* atari *parcelle*, nabyo ntibyatesha agaciro ibimenyetso yatanze kuko iyo *Bar* yubatse ku butaka.

[1] Ingingo ya 35 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko Kopi idateyeho icyemezo cy'uko ihuye n'inyandiko y'umwimerere igira agaciro igihe yunganiwe n'ikindi kimenyetso kitabujijwe n'amategeko iyo inyandiko y'umwimerere idashobora kuboneka.

[26] Urukiko rw'Ikirenga rumaze gusesengura inyandiko zimaze kuvugwa, rurasanga Mukagatare Grâce agaragaza inkomoko y'ubutaka yarezwe na Bwanakeye François kuko yerekana ko yabuhawe n'Ubuyobozi bubifitiye ububasha, nk'uko biteganywa n'ingingo ya 10 y'Itegeko N°43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda[2], mu gihe abazungura ba Bwanakeye François badashobora kwerekana aho bakomora ubutaka baburana, kuko hamwe Mukamunana Vénantie uhagarariye bamwe muri bo avuga ko babukomora ku muco, mu gihe nyamara na none avuga ko Se, Bwanakeye François yageze kuri ubwo butaka aturutse i Kansi ahahoze ari muri Komini Nyaruhegeri, ahandi akavuga ko ari aho yaguze nyamara ntabitangire ibimenyetso nk'uko byagarutsweho haruguru.

[27] Ku kibazo cyo kumenya niba ubutaka bwahawe Mukagatare Grâce butari ubwa Leta, inyandiko zigize dosiye y'urubanza, zigaragaramo acte de cession du *Laboratoire Vétérinaire de Butare par le Gouvernement de la République du Rwanda à l'Université Nationale du Rwanda* yo ku wa 12/02/1964 yerekana ko Leta y'u Rwanda, ihagarariwe na Minisitiri w'Ubuhinzi ndetse na Minisitiri w'Uburezi, yahaye Kaminuza y'u Rwanda umutungo wa *Laboratoire Vétérinaire* urimo n'ubutaka bungana na hegitari mirongo ine n'eshanu (45 ha) nk'uko bigaragara muri iyo nyandiko, aho mu gika cya kabiri cy'ingingo ya kabiri, bagaragaza ko ubuso bungana na hegitari esheshatu (6 ha) *Laboratoire Vétérinaire* yari yarahawe na *Centre Urbain de Butare* (Umujyi wa Butare) yagombaga guhita ibuyisubiza nyuma yo gusinya *acte de cession*.

[28] Raporo y'Umuyobozi w'Ikigo cy'Igihugu gishinzwe umutungo kamere wiyambajwe n'Urukiko kugira ngo arugaragarize niba ubutaka buburanwa ari ubwa Leta, yerekana ko nyuma y'isesengura ry'ikarita yakozwe mu mwaka wa 1957 yerekanaga aho Umujyi wa Astrida wagombaga kwagukira na acte de cession du *Laboratoire Vétérinaire de Butare par le Gouvernement de la République du Rwanda à l'Université Nationale du Rwanda* yo ku wa 12/02/1964, bigaragara ko hari ubutaka *Centre Urbain* yari yaratije *laboratoire vétérinaire* harimo n'uburi kuburanwa hagati ya Bwanakeye François na Mukagatare Grâce, bukaba bungana na hegitari esheshatu (6 ha) nk'uko biri mu ngingo ya kabiri ya *acte de cession*.

[29] Hashingiwe kuri izo nyandiko, Urukiko rw'Ikirenga rurasanga ubutaka buburanwa buherereye mu Murenge wa Tumba, mu Karere ka Huye, ari ubutaka bwa Leta kuko bwari ubwa *Centre urbain de Butare*, ubu ikaba itakiriho, ariko hashingiwe ku Itegeko Ngenga N°29/2005 ryo ku wa 31/12/2005 rigena inzego z'imitegekere y'Igihugu cy'u Rwanda hakaba harahindutse Akarere ka Huye.

[30] Ku birebana n'ibivugwa na Me Nizeyimana Boniface ko Leta itashoboraga gutanga ubutaka buburanwa kuko Bwanakeye François yari yarabwegukanye hamaze kubaho ubuzime, Urukiko rw'Ikirenga rurasanga Bwanakeye François atakwitwaza ubuzime ngo yigarurire ubutaka bwa Leta nk'uko biteganywa n'ingingo ya 47 y'Itegeko N°43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, iteganya ko "Umuntu wihaye ubutaka bw'inkungu cyangwa indeka cyangwa ubw'undi muntu akoresheje uburiganya, ntashobora kwitwaza ubuzime, kabone n'iyo yaba abutunze igihe kirenze imyaka y'ubuzime ivugwa mu ngingo ya 46 y'iri tegeko"[3].

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[2]Ingingo ya 10 y'Itegeko N°43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda iteganya ko ubutaka bw'umuntu ku giti cye bugizwe n'ubutaka atunze ku buryo bw'umuco cyangwa ubw'amategeko yanditse. Ubwo butaka abutunze yarabuhawe n'ubuyobozi bubifitiye ububasha, ubwo yaguze, yahaweho impano, umurage, izungura, umunani, ingurane cyangwa isaranganya.

[3] Igihe cy'ubuzime mu byerekeranye n'ubutaka ni imyaka mirongo itatu (30). Ubuzime bwemezwa n'icyemezo cy'urukiko rubifitiye ububasha.

[31] Hashingiwe ku bimaze kuvugwa haruguru, Urukiko rw'Ikirenga rurasanga ubutaka buburanwa ari ubwa Mukagatare Grâce kuko abifitiye ibimenyetso bigizwe n'ibyangombwa yahawe n'Ubuyobozi bubifitiye ububasha, bityo urubanza RCA1633/06/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 03/11/2008 rukaba ruhindutse mu ngingo zarwo zose.

2. Kumenya niba indishyi ababuranyi basaba bakwiye kuzihabwa.

[32] Me Hakizimana John asaba ko Succession Bwanakeye François iha Mukagatare Grâce indishyi zihwanye n'ibihumbi magana atanu by'amafaranga y'u Rwanda (500.000) kubera kumusiragiza mu manza no mu zindi nzego z'Ubuyobozi, n'ibihumbi magatanu (500.000) y'igihembo cya Avoka, ariko Me Nizeyimana Boniface we akavuga ko nta shingiro zifite kuko atabasha kwerekana akababaro yagize.

[33] Ku rundi ruhande, Me Nizeyimana Boniface asaba ko Succession Bwanakeye François iramutse itsinze uru rubanza, Mukagatare Grâce yayiha indishyi mbonezamusaruro zihwanye na miliyoni ijana z'amafaranga y'u Rwanda (100.000.000) kubera ko ahantu haburanwa Bwanakeye François yateganyaga kuhakorera ubucuruzi ariko ntibyashoboka, izi ndishyi zikaba zarabazwe haherewe ku mubare w'abana makumyabiri (20) yagombaga gutunga. Asaba kandi ko Mukagatare Grâce yatanga indishyi z'akababaro zihwanye na miliyoni makumyabiri (20.000.000) kubera ko izi manza ziri mu byihutishije urupfu rwa Bwanakeye François, na miliyoni umunani (8.000.000) yahawe Abavoka bagiye baburana uru rubanza kuva rwatangira.

UKO URUKIKO RUBIBONA

[34] Urukiko rw'Ikirenga rurasanga, kuba Mukagatare Grâce yarakomeje gukurikirana uru rubanza kugera no kuri uru rwego yunganiwe na Avoka, akwiye kugenerwa amafaranga y'igihembo cya Avoka ahwanye n'ibihumbi magana atanu by'amafaranga y'u Rwanda (500.000) asaba. Urukiko rw'Ikirenga rurasanga kandi indishyi zihwanye n'ibihumbi magana atanu by'amafaranga y'u Rwanda (500.000) kubera kumusiragiza mu manza no mu zindi nzego Mukagatare Grâce asaba nazo agomba kuzihabwa, kubera ko byagaragaye ko uru rubanza yakomeje kurukurikirana.

[35] Ku birebana n'indishyi zisabwa na Succession Bwanakeye François, Urukiko rw'Ikirenga rurasanga ntazo ikwiye guhabwa kuko ntacyo itsindiye muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[36] Rwemeje ko ikirego cyo gusubirishamo urubanza RCA1633/06/HC/NYA ku mpamvu z'akarengane cyatanzwe na Mukagatare Grâce gifite ishingiro;

[37] Rwemeje ko urubanza RCA1633/06/HC/NYA rwaciwe n'Urukiko Rukuru,Urugereko rwa Nyanza, ku wa 03/11/2008 ruhindutse mu ngingo zarwo zose;

[38] Rwemeje ko ubutaka buherereye mu Mudugudu wa Rimba, Akagari ka Gitwa, Umurenge wa Tumba, Akarere ka Huye mu Ntara y'Amajyepfo buburanwa hagati ya Mukagatare Grâce na Succession Bwanakeye François ari ubwa Mukagatare Grâce;

[39] Rutegetse Succession Bwanakeye François guha Mukagatare Grâce ibihumbi magana atanu by'amafaranga y'u Rwanda (500.000) y'indishyi zo gusiragizwa mu manza, n'ibihumbi

magana atanu by'amafaranga y'u Rwanda (500.000) y'igihembo cya Avoka, yose hamwe akaba miliyoni imwe y'amafaranga y'amafaranga y'u Rwanda (1.000.000);
Rutegetse Succession Bwanakeye François kwishyura amagarama y'urubanza angana n'ibihumbi ijana (100.000).