KAYITESI v. BATAMULIZA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00002/17/SC (Mutashya, P.J., Karimunda na Ngagi, J.) 14 Nyakanga 2017]

Amategeko agenga ibimenyetso – Ibimenyetso – Isaranganya ry'ubutaka – Ku birebana n'isaranganywa ry'ubutaka, umuntu ntiyakwitwaza gusa ko yahawe ubutaka na Leta cyangwa ko yabwibarujweho ngo bumwitirirwe atabanje kugaragaza ibimenyetso by'aho avuga ko abukomora. Ntiyavugisha amagambo gusa ko ubutaka yabuhawe mu isaranganya atagaragaza ibimenyetso by'uko koko iryo saranganya ryabayeho kandi ko aririyo akomoraho ubutaka yiyitirira. Itegeko N°43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 5, Itegeko-Ngenga N° 08/2005 ryo kuwa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka, ingingo ya 5, Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza, ingingo ya 3, igika cya 1.

Indishyi – Uregwa ntiyahabwa ibyo asaba iyo urukiko rusanze nta shingiro bifite.

Indishyi – Indishyi z'ikurikiranarubanza n'iz'igihembo cy'Avoka – Urega akwiye guhabwa indishyi zo gushorwa mu manza n'igihembo cy'avoka kuko byatumye agana inkiko kandi bagira n'ibyo batakaza.

Incamake y'ikibazo: Mu mwaka wa 1994, Nyiranjara Edith amaze gutahuka yasaranganyijwe ubutaka bungana na hegitari eshatu(3) buherereye mu karere ka Nyagatare, ahabwa n'icyemezo cy'ubwo butaka cyatanzwe n'ubuyozi bw'ibiro by'ubutaka mu karere ka nyagatare, ashirwa kurutonde bw'abahawe ubutaka ariko nyuma aza gupha mu mwaka wa 1997, ubwo butaka busigaranwa umuzungura we umukobwa we witwa Kayitesi Agnes.

Mu mwaka wa 2011, uwitwa Batamuliza Allen nawe yaribaruje kuri iyo sambu ya nyakwigyendera. Kayitesi Agnes umuzungura wa Nyiranjara Edith arabimenya maze amurega mu Rukiko rw'Ibanza rwa Nyagatare avuga ko yibaruje ku butaka yasigiwe na nyina.

Urukiko rw'Ibanze rwa Nyagatare rwemeje ko ubwo butaka ari ubwa Kayitesi Agnes kuko yagaragaje ibimenyetso bidashidikanywaho bigizwe n'icyemezo cy'ubutaka cyemeza ko nyina Nyiranjara Edith ari mu basaranganyijwe ubutaka atahutse, amaze gupfa abushyingurwamo, ni uko rwemeza ko ubwo butaka buherereye mu Kagari ka Rutaraka ari ubwa Kayitesi Agnes kuko ari umutungo yasigiwe n'umubyeyi we.

Batamuliza Allen ntiyanyuzwe n'icyo cyemezo ajuririra mu Rukiko Rwisumbuye rwa Nyagatare avuga ko Urukiko rw'Ibanze rwakoze iperereza rubogamira ku ruhande rw'uwo baburana. Uru Rukiko rumaze kumva imvugo yabatangabuhamya baturanye n'ahaburanwa ihuje n'ababajijwe mu iperereza y'uko isambu ari iya Batamuliza Allen, narwo rurabyemeza, rutegeka Kayitesi kumuha amafaranga y'ikurikiranarubanza.

Mu Nkiko zombi zibanza, abatangabuhamya banyuranye barababajijwe, bemeza ko isambu iburanwa ari iya Batamuliza Allen, bavuga kandi ko Kayitesi Agnes batamuzi. Batamuliza Allen we abajijwe yemera ko Nyiranjara yasaranganyijwe ubutaka ariko aza kubwamburwa kuko atabubyazaga umusaruro, bituma abwibaruzaho.

Muri ibi byose, Batamuliza Allen ntiyabashaga kugaragaza ikimenyetso ashingirwaho cyerekana ukuntu isambu yageze mu maboko ye, nk'icyemezo cy'ubutaka yahawe n'ubuyobozi cyangwa se yerekane aho aherereye ku rutonde rw'abahawe amasambu.

Kayitesi Agnes yandikiye Umuvunyi Mukuru amusaba gusuzuma akarengane kabaye mu rubanza rwaciwe n'Urukiko Rwisumbuye rwa Nyagatare. Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga amusaba ko urubanza RCA 0004/014/TGI/NYG rwaciwe n'Urukiko Rwisumbuye rwa Nyagatare rusubirishwamo ku mpamvu z'akarengane.

Mu kwiregura mu karengane, uwunganiraga Kayitesi Agnes avuga ko Urukiko Rwisumbuye rwa Nyagatare rutagaragaje uwo ibimenyetso byatanzwe birengera avuga kandi ko Batamuliza Allen yasabwe kugaragaza ibimenyetso byerekana ko isambu ariye arabibura, akaba ariyo mpamvu basaba Urukiko rw'Ikirenga kwemeza ko yarenganyijwe.

Uburanira Batamuliza yiregura avuga ko ibimenyetso byose Kayitesi yaburanishije bitagaragaje aho yasaranganyijwe aho ariho, bituma urukiko rubitesha agaciro, avuga kandi ko imvugo zabatangabuhamya batandukanye zahurizwaga hamwe ku kwemeza ko habaye isaranganya rya mbere mu mwaka wa 1994, risubirwamo mu mwaka wa 1996 Nyiranjara Edith adahari kandi yari yarananiwe kuhabyaza umusaruro nuko isambu ihabwa Batamuliza Allen, ayibaruzaho.

Yongera avuga ko uru Rukiko ruramutse rwemeje ko Kayitesi Agnes yarenganiye mu rubanza rusubirishwamo, asaba urukiko kwemeza ko isambu iburanwa atayimuhuguje, rukanategeka ko amusubiza 50.000.000Frw ahwanye n'agaciro k'ibikorwa yashyizemo.

Incamake y'icyemezo: 1. Batamuliza ntiyakwitwaza gusa ko yahawe ubutaka na Leta cyangwa ko yabwibarujweho ngo bumwitirirwe atabanje kugaragaza ibimenyetso by'aho avuga ko abukomora, ibi nabyo bikaba bishimangira ko Batamuliza Allen atavugisha amagambo gusa ko ubutaka yabuhawe mu isaranganya atagaragaza ibimenyetso by'uko koko iryo saranganya ryabayeho kandi ko aririyo akomoraho ubutaka yiyitirira, bityo kuba adashobora kugaragaza ibimenyetso by'ibyo aburana, ubutaka buburanwa ari ubwa Nyiranjara Edith.

2. Ntacyo Kayitesi Agnes akwiye kuryozwa ku bijyanye n'agaciro k'ibikorwa Batamuliza Allen avuga yashize mu isambu kuko atabashije kugaragaza uburyo yageze mu isambu ya Nyiranjara Edith ari we nyina wa Kayitesi Agnes. Bityo ibyo asaba akaba adakwiye kubihabwa kuko nta shingiro bifite.

3. Kuba Batamuliza Allen yarambuye Kayitesi Agnes umutungo yasigiwe na nyina Nyiranjara Edith, bituma amara igihe kirekire awukurikirana mu nzego z'ubuyobozi no mu Nkiko, akwiye guhabwa indishyi z'akababaro.

4. Kuba Kayitesi Agnes yararezwe mu Nkiko, bigatuma agira ibyo atakaza mu gukurikirana uru rubanza ndetse biba ngombwa ko yiyambaza na Avoka uhembwa, bityo akwiye guhabwa indishyi z'igihembo cy'avoka n'iz'ikurikiranarubanza.

Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane cyakiriwe;
Urubanza RCA0004/014/TGI/NYG rwaciwe n'Urukiko Rwisumbuye rwa Nyagatare ruhindutse mu ngingo zarwo zose;
Isambu ya hegitari eshatu (3) iherereye mu Mudugudu wa Ryabega, umurenge wa Nyagatare, Akarere ka Nyagatare, ni iya Nyiranjara Edith.

Kayitesi Agnes ahawe indishyi z'akababaro zingana na 500.000 Frw, indishyi z'ikurikiranarubanza n'igihembo cya Avoka zingana na 800.000 Frw; Amagarama y'urubanza aherereye kuri Batamuliza.

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Imanza zifashishijwe:

Harelimana v Sebukayire, RCAA 0018/13/CS, rwaciwe n'Urukiko rw'Ikirenga kuwa 24/12/2014.

Amategeko yashingiweho:

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

Itegeko N° 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 5.

Itegeko-Ngenga N° 08/2005 ryo kuwa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka, ingingo ya 5.

Itegeko N°15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza, ingingo ya 3, igika cya 1.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Nyagatare, Kayitesi Agnes arega Batamuliza Allen kuba yaribarujeho ubutaka bungana na hegitari eshatu (3) yasigiwe na nyina Nyiranjara Edith nk'umuzungura we.

[2] Mu rubanza RC 0019/015/TB/NYG, rwaciwe ku wa 16/12/2013 n'Urukiko rw'Ibanze rwa Nyagatare, urwo Rukiko rwasanze Kayitesi Agnes agaragaza ibimenyetso bidashidikanywaho bigizwe n'icyemezo cyo ku wa 21/01/2013 cyatanzwe n'Ubuyobozi bw'Ibiro by'Ubutaka mu Karere ka Nyagatare cyemeza ko nyina Nyiranjara Edith ari mu basaranganyijwe ubutaka atahutse, amaze gupfa abushyingurwamo, ni uko rwemeza ko ubwo butaka buherereye mu Kagari ka Rutaraka ari ubwa Kayitesi Agnes kuko ari umutungo yasigiwe n'umubyeyi we.

[3] Batamuliza Allen ntiyanyuzwe n'icyo cyemezo ajuririra mu Rukiko Rwisumbuye rwa Nyagatare avuga ko Urukiko rw'Ibanze rwakoze iperereza rubogamira ku ruhande rw'uwo baburana, ntirwabaza abatangabuhamya bazi neza ko yahawe iyo sambu, ruca urubanza rushingiye ku cyemezo cyo ku wa 10/10/2013 kitatanzwe mu myanzuro itanga ikirego kandi kitavuzwe mu nama ntegurarubanza.

[4] Mu rubanza RCA 0004/014/TGI/NYG rwaciwe ku wa 20/05/2014, Urukiko Rwisumbuye rwa Nyagatare rwasanze Kayitesi Agnes yemera ko Leta yatanze ubutaka inshuro ebyiri kandi atagaragaza ko ku nshuro ya kabiri bwahawe nyina Nyiranjara Edith kandi abatangabuhamya

baturanye n'ahaburanwa bumviswe n'Urukiko bahuza imvugo n'ababajijwe mu iperereza y'uko isambu ari iya Batamuliza Allen, rwemeza ko isambu iburanwa ari iya Batamuliza Allen, rutegeka Kayitesi Agnes guha Batamuliza Allen 300.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[5] Kayitesi Agnes yandikiye Umuvunyi Mukuru amusaba gusuzuma akarengane kabaye mu rubanza rwaciwe n'Urukiko Rwisumbuye rwa Nyagatare. Ku wa 15/06/2015, Umuvunyi Mukuru yandikiye Perezida w'Urukiko rw'Ikirenga amusaba ko urubanza RCA 0004/014/TGI/NYG rwaciwe n'Urukiko Rwisumbuye rwa Nyagatare ku wa 20/05/2014 rusubirishwamo ku mpamvu z'akarengane.

[6] Mu cyemezo N° 001/2017 cyo ku wa 15/01/2017, Perezida w'Urukiko rw'Ikirenga, yasabye Ubwanditsi bw'Urukiko rw'Ikirenga gushyira urubanza N°RCA 0004/014/TGI/NYG rwaciwe n'Urukiko Rwisumbuye rwa Nyagatare ku wa 20/05/2014 kuri gahunda y'iburanisha kugira ngo hasuzumwe niba rwarabayemo akarengane.

[7] Iburanisha mu ruhame ryabaye ku wa 06/06/2017, Kayitesi Agnes yunganiwe na Me Kimanuka John hamwe na Me Karega Blaise Pascal, naho Batamuliza Allen aburanirwa na Me Rutembesa Phocas.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

II.1. Kumenya nyiri isambu iburanwa

[8] Kayitesi Agnes avuga ko Urukiko Rwisumbuye rwa Nyagatare rwabogamye ku buryo bugaragarira buri wese, rwirengagiza amategeko n'ibimenyetso, rwemeza ko isaranganya rya kabiri ryabaye muri 2012 rushingiye ku magambo atagira ikindi kimenyetso kiyashimangira. Asobanura ko ubutaka aburana ari ubwahawe nyina Nyiranjara Edith mu isaranganya rya kabiri, ko mbere yari yarahawe hegitari esheshatu (6), ariko haza kuba isaranganya rya kabiri ahabwa eshatu (3) nk'uko bigararazwa n'urutonde rw'abagore banditse mu gitabo cy'abasaranganyijwe amasambu, kuri urwo rutonde nyina akaba ari kuri nimero ya 52 kandi ko aya makuru ariyo yemejwe n'Ubuyobozi bw'Ibiro by'Ubutaka mu Karere ka Nyagatare ndetse n'abaturage bakaba bemeza ko isaranganya rya kabiri ryakozwe Batamuliza Allen adahari ahubwo ko uyu yabonye Nyiranjara Edith amaze gupfa atanga 1.000 Frw, maze ahabwa agapapuro katumye yibaruzaho iyo sambu muri 2011.

[9] Me Karega Blaise Pascal, umwunganira, avuga ko Batamuliza Allen yari yarasigaranye na Nyiranjara Edith ku isambu, uyu amaze gupfa, Batamuliza Allen ayibaruzaho. Avuga ko Ubuyobozi bwakoze iperereza busanga isambu ari iya Kayitesi Agnès, umuzungura wa Nyiranjara Edith, ku wa 30/06/2012, hakorwa inama rusange y'abaturage mu mudugudu isambu iherereyemo, abaturage bose bemeza ko ari iya Kayitesi Agnes akomora kuri nyina. Asobanura ko nyuma yaho habonetse icyemezo cyatanzwe ku wa 10/10/2013, kigaragaza ko Nyiranjara Edith ari mu bagore basaranganyijwe amasambu muri 1998 ndetse n'umutangabuhamya witwa Gakwaya Antoine akaba ashimangira ko Nyirinjara Edith yasaranganyijwe isambu, ahabwa hegitari eshatu (3), akaba asanga Batamuliza Allen ari we wari ufite inshingano zo kunyomoza ibi bimenyetso agaragaza icyo ashingiraho yiyitirira isambu iburanwa, bityo Kayitesi Agnes

akaba yararenganiye mu gika cya 13 cy'urubanza rusubirishwamo aho Urukiko rwavuze ko atagaragaje ukuri kw'ibyo aburana.

[10] Me Kimanuka John, nawe wunganira Kayitesi Agnès, avuga ko Urukiko Rwisumbuye rwa Nyagatare rutagaragaje uwo ibimenyetso byatanzwe birengera, nyamara Batamuliza Allen yarasabwe kwerekana icyo ashingiraho avuga ko ubutaka buburanwa ari ubwe akakibura, akitsitsa gusa ku cyemezo cy'uko yabuhawe ku wa 25/03/2016 ariko atabasha kwerekana aho abukomora, ariyo mpamvu basaba uru Rukiko gushingira ku ngingo ya 81, igika cya 2, y'Itegeko–Ngenga N°03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga rukemeza ko Kayitesi Agnes yarenganiye mu kuba Urukiko rwarirengagije ibimenyetso bigaragarira buri wese.

[11] Me Rutembesa Phocas, uburanira Batamuliza Allen, avuga ko ibimenyetso byose Kayitesi Agnes aburanisha birimo icyemezo cy'Akarere ka Nyagatare, imyanzuro y'inama rusange y'abaturange, urutonde rw'abaturage basaranganyijwe amasambu byasuzumwe mu gika cya 13 cy'urubanza rusubirishwamo, Urukiko rusanga Nyiranjara Edith yarasaranganyijwe ariko ibyo bimenyetso bitagaragaza aho yasaranganyijwe aho ariho uretse kuba agaragara ku rutonde rw'abagore utamenya icyo rwakorewe bituma rubitesha agaciro. Asobanura ko mu bika bya 22 kugeza 24 by'urubanza rusubirishwamo, Urukiko rwasuzumye imvugo z'abatangabuhamya batandukanye zahurizaga ku kwemeza ko habaye isaranganya mu 1994 risubirwamo mu 1996 Nyiranjara Edith adahari kandi naho yari yarahawe yarananiwe kuhabyaza umusaruro, isambu ihabwa Batamuliza Allen ntiyandikwa mu gitabo kuko yari yahawe agapapuro kagaragazaga ko ari mu basaranganyijwe ari nako yahereyeho ayibaruzaho, ariyo mpamvu asaba uru Rukiko kwemeza ko iyo Urukiko rusuzumye ibimenyetso byatanzwe rukabitesha agaciro uwari wabitanze atabiheraho avuga ko yarenganiye mu rubanza.

UKO URUKIKO RUBIBONA

[12] Ingingo ya 81 y'Itegeko–Ngenga N°03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko: « *Urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane kubera impamvu zikurikira: 1) iyo hari ibimenyetso simusiga bigaragaza ruswa, ikimenyane cyangwa icyenewabo, byagize ingaruka ku mikirize y'urubanza bikaba bitarigeze bimenywa n'uwatsinzwe mu gihe* cy'iburana*; 2) iyo mu icibwa ry'urubanza hirengagijwe amategeko n'ibimenyetso bigaragarira buri wese; 3) iyo urubanza rudashobora kurangizwa ukurikije imikirize yarwo.*»

[13] Ingingo ya 3, igika cya 1, 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. »

[14] Ingingo ya 5 y'Itegeko-Ngenga N° 08/2005 ryo kuwa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda ryakoreshwaga Batamuliza Allen yibaruzaho isambu iburanwa ivuga ko: "*Umuntu wese, ku giti cye cyangwa ishyirahamwe rifite ubuzima gatozi, batunze ubutaka, baba barabubonye ku bw'umuco, cyangwa se barabuhawe n'ubuyobozi bubifitiye ububasha cyangwa se barabuguze, bemerewe kubutunga ku buryo bw'ubukode burambye, hakurikijwe ibiteganywa n'iri Tegeko Ngenga*." Naho ingingo ya 5 y'Itegeko N° 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda rikoreshwa ubu ivuga ko: "*Umuntu*

wese ufite ubutaka, yaba yarabubonye ku bw'umuco, cyangwa se yarabuhawe n'urwego rubifitiye ububasha, cyangwa se yarabuguze, yemerewe kubutunga ku buryo bw'ubukode burambye hakurikijwe ibiteganywa n'iri tegeko."

[15] Muri dosiye harimo inyandiko yitwa "LIST Y'ABABONYE IBIBANZA/CELLULE RYABEGA" kuwa 07/01/1998 yasinyweho n'Umunyamabanga Nshingwabikorwa w'Akagari ka Rutaraka mu Murenge wa Nyagatare, ndetse n'Umwanditsi w'Urukiko rw'Ibanze rwa Nyagatare akaba yaremeje ku wa 21/02/2012 ko urwo rutonde ruhuye n'umwimerere (copie certifiée conforme à l'original), Nyiranjara Edith akaba agaragara kuri nimero ya 52 y'urwo rutonde (cotes 14 na 15). Harimo kandi inyandiko y'ushinzwe imibereho myiza y'abaturage mu Kagari ka Rutaraka yo kuwa 10/10/2013 yemeza ko Nyiranjara Edith yahawe ubutaka bungana na hegitari eshatu (3) mu mwaka wa 1998, ko uretse Karenzi bahana imbibi ahagana ku mutwe, ahuje imbibi n'abitwa Ntaganda Moses (ibumoso), Gatera Faustin (iburyo), Rudimba Thaddée (ku muhanda), aba bose bakaba bagaragara kuri nimero ya 27, 25 na 10 y'urutonde rw'abahawe ibibanza kuwa 07/01/1998 (cotes 14 na 26).

[16] Dosiye irimo kandi inyandiko yitwa "KUWO BIREBA WESE" yanditswe n'Umuyobozi w'Ibiro by'Ubutaka mu Karere ka Nyagatare kuwa 21/01/2013 yemeza ko "*uwitwa Nyiranjara Edith* yasaranganyijwe *ubutaka mu Murenge wa Nyagatare, mu Kagari ka Rutaraka, nk'uko bigaragazwa n'igitabo cy'imiturize, ku mugereka murahasanga urutonde rw'abadamu basaranganyijwe n'uwavuzwe haruguru arimo kuri nimero ya 01*." Muri dosiye harimo na none urutonde rw'abagore basaranganyijwe rwemejwe na Munyaneza Sam, Umunyabanga Nshingwabikorwa w'Akagari ka Rutaraka, aruteraho na kashe y'Umurenge, Nyiranjara Edith akaba ari kuri nimero ya mbere mu bagore 48 basaranganyijwe. Kuwa 24/02/2011, Batamuliza Allen yibarujeho iyo sambu, yandikwa kuri nimero ya 387, ahabwa icyemezo cy'agateganyo gihabwa uwabaruriwe ubutaka ariko ku wa 16/12/2012, Kayitesi Agnes avuguruza ayo makuru avuga ko iyo sambu ari ariye (cotes 6, 12, 13, 24 na 82).

[17] Muri dosiye harimo kandi ibyemezo bibiri byatanzwe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Nyagatare, icyo ku wa 10/10/2013 kikaba cyemeza ko Kayitesi Agnes ari mwene Kabuye Simon na Nyiranjara Edith, naho icyo ku wa 20/03/2013 kikaba cyemeza ko Nyiranjara Edith yapfuye ku wa 26/11/1998 (cotes 22 na 23).

[18] Dosiye irimo kandi imvugo z'abatangabuhamya babajijwe, mu Rukiko Rwisumbuye rwa Nyagatare, uwitwa Gacinya Faustin, wemeza ko yari "Conseiller" kandi ko ari mu batanze amasambu mu 1999, n'uwitwa Rudimba Thaddée nawe uri mu bahawe amasambu bakaba bavuga ko Kayitesi Agnes batamuzi, ko uwahawe isambu ya hegitari eshatu (3) ari Batamuliza Allen kandi ko Nyiranjara Edith nta sambu yahawe kuko yabanaga na musaza we witwa Nyakabwa Simoni (nyirarume wa Kayitesi Agnès) kwa mwishywa we Kamugwera (cote 38-40).

[19] Dosiye igaragaza kandi ko Nzabamwita Karoli, nawe uvuga ko ari mu bapimaga amasambu, yemeje mu iperereza ryakozwe n'Urukiko rw'Ibanze rwa Nyagatare ko mu gihe cya Bihozagara, nyina wa Kayitesi Agnes na Batamuliza Allen bahawe ubutaka, bigeze nyuma y'inzibacyuho, Batamuliza Allen ahabwa ubutaka bwa nyina wa Kayitesi, ageze mu Rukiko Rwisumbuye rwa Nyagatare avuga ko muri 1999 yapimaga ubutaka, abayobozi bemeza ko Batamuliza Allen ahabwa ubutaka, arongera avuga ko ubutaka bwatanzwe muri 1998 kandi ko icyo gihe Nyiranjara Edith yari yarapfuye kuko yapfuye muri 1997. Gakwaya Antoine we

yavuze ko Batamuliza Allen yahawe ubutaka bwa Nyiranjara Edith amaze gupfa kuko Kayitesi Agnes atari ahari ngo abukurikirane (cotes 39 na 40).

[20] Urukiko rurasanga imvugo z'abatangabuhamya babajijwe n'Inkiko zombi zitemeza ko isambu iburanwa ari iya Batamuliza Allen nk'uko Urukiko Rwisumbuye rwa Nyagatare rwari rwabibonye mu bika bya 21 na 22 by'urubanza rusubirishwamo kuko Gacinya Faustin na Rudimba Thaddée bemeza ko Nyiranjara Edith nta sambu yigeze ahabwa mu masaranganya yose yabaye naho Nzabamwita Karoli akemeza ko Batamuliza Allen na Nyiranjara Edith basaranganyirijwe rimwe ndetse na Gakwaya Antoine akaba yemeza ko ubutaka bwahawe Batamuliza Allen kuko Nyiranjara Edith yari amaze gupfa na Kayitesi Agnes ntawe uhari.

[21] Urukiko rurasanga ikindi gitera urujijo mu mvugo z'abatangabuhamya ari uko Gacinya Faustin na Rudimba Thaddée bemeza ko Nyiranjara Edith batamuzi kandi ko atigeze ahabwa isambu, nyamara Batamuliza Allen yiyemerera ko Nyiranjara Edith yasaranganyijwe inshuro ebyiri ariko isambu aza kuyamburwa kuko atayibyazaga umusaruro, byongeye kandi bikaba bitumvikana ukuntu Rudimba Thaddée yaba yaraherewe isambu rimwe na Batamuliza Allen, ku rutonde rw'abahawe amasambu Rudimba Thaddée akibona kuri nimero ya 10, Batamuliza Allen ntagire aho aboneka. Ikindi kitumvikana akaba ari uburyo Nzabamwita Karoli yaba avuga ko ari mu bahaye Nyiranjara Edith ubutaka mu 1998, ngo yongere avuge ko basaranganyije ubutaka muri uwo mwaka Nyiranjara Edith yarapfuye mu 1997, uku kwivuguruza kukaba gutera amakenga k'ukuri kw'ibyo aba batangabuhamya bavuga.

[22] Urukiko rurasanga Batamuliza Allen avuga ko isambu ayikomora ku isaranganya rya kabiri, mu Nkiko zibanza akaba yaravugaga ko iryo saranganya ryabaye mu kwa gatatu 1999, ko yanditswe mu ikayi iri mu Karere ka Nyagatare igaragaza urutonde rw'abasaranganyijwe icyo gihe kandi ko atazi uwari nyiraho mbere ya 1999 (cotes 9, 20 na 31), icyakora abajijwe iyo kayi ntiyabasha kuyigaragariza Inkiko, byumvikanisha ko uretse kuba yaribarujeho ubutaka buburanwa nk'uko bigaragazwa n'icyemezo cyatanzwe na *National Land Centre* ku wa 18/07/2011, nta kimenyetso afite kigaragaza aho abukomora cyane cyane ko n'abatangabuhamya babajijwe bivuguruza.

[23] Urukiko rurasanga urutonde rw'abahawe amasambu mu Mudugudu wa Ryabega rugaragaza ko uwahawe isambu ari Nyiranjara Edith, bikaba bitumvikana ko yaba ari Batamuliza Allen wahawe isambu nk'uko Gacinya Faustin na Rudimba Thaddée babivuga, cyangwa se ngo abe yaraherewe isambu rimwe na Nyiranjara Edith nk'uko Nzabamwita Karoli abivuga, cyangwa se ngo abe yarasaranganyijwe nyuma y'urupfu rwa Nyiranjara Edith nk'uko Gakwaya Antoine abivuga ngo abure ku rutonde rusange rw'abahawe amasambu, abure ku rutonde rw'abagore basaranganyijwe amasambu cyangwa abure icyemezo cy'ubuyobozi kigaragaza uburyo iyo sambu yageze mu maboko ye.

[24] Urukiko rurasanga Batamuliza Allen atagaragaza icyo anenga icyemezo cyatanzwe n'Umuyobozi w'Ibiro by'Ubutaka mu Karere ka Nyagatare ku wa 21/01/2013 kigaragaza ko isambu iburanwa iherereye mu Murenge wa Nyagatare, Akagari ka Rutaraka, ari iya Nyiranjara Edith, aya makuru kandi akaba ashimangira ibyari byemejwe n'Ubuyobozi bw'Akagari ka Rutaraka buhamya ko isambu ya hegitari eshatu (3) iburanwa ari iya Nyiranjara Edith kandi ko ahana imbibi na Ntaganda Moses, Gatera Faustin, Karenzi na Rudimba Thaddée, bityo hakaba

nta gushidikanya guhari ko iyo sambu ari iyo Nyiranjara Edith yakomoye ku isaranganya nk'uko byavuzwe haruguru.

[25] Urukiko rurasanga kandi uyu murongo uhura n'uwo rwemeje mu rubanza Harelimana Emmanuel yaburanaga na Sebukayire Tharcisse aho rwavuze ko Sebukayire Tharcisse atakwitwaza gusa ko yahawe ubutaka na Leta cyangwa ko yabwibarujweho ngo bumwitirirwe atabanje kugaragaza ibimenyetso by'aho avuga ko abukomora1[1], ibi nabyo bikaba bishimangira ko Batamuliza Allen atavugisha amagambo gusa ko ubutaka yabuhawe mu isaranganya atagaragaza ibimenyetso by'uko koko iryo saranganya ryabayeho kandi ko ariryo akomoraho ubutaka yiyitirira, bityo kuba adashobora kugaragaza ibimenyetso by'ibyo aburana, Urukiko rukaba rusanga ubutaka buburanwa ari ubwa Nyiranjara Edith.

II.2. Kumenya niba indishyi zisabwa zifite ishingiro.

[26] Batamuliza Allen avuga ko uru Rukiko ruramutse rwemeje ko Kayitesi Agnes yarenganiye mu rubanza rusubirishwamo, rwakwemeza ko isambu iburanwa atayimuhuguje, rugategeka ko amusubiza 50.000.000Frw ahwanye n'agaciro k'ibikorwa yashyizemo.

[27] Me Karega Blaise Pascal na Me Kimanuka John, baburanira Kayitesi Agnes, bavuga ko uretse kuba Batamuliza Allen atagaragaza ibikorwa bifite agaciro ka 50.000.000Frw asaba, adakwiye kwishyurwa indishyi z'uko hari ibikorwa yashyize mu isambu azi ko atari iye, ahubwo ko ukwiye guhabwa indishyi z'akababaro za 1.000.000Frw ari Kayitesi Agnes wavukijwe uburenganzira ku butaka bwe hakiyongeraho no gusiragizwa mu Nkiko.

[28] Me Rutembesa Phocas, uburanira Batamuliza Allen, avuga ko indishyi Kayitesi Agnes asaba ntazo akwiye kuko ari we wakomeje gukurura imanza zidafite ishingiro, akaba atashingira ku makosa ye ngo ashake kuyabyaza inyungu.

UKO URUKIKO RUBIBONA

[29] Urukiko rurasanga Kayitesi Agnes ntacyo akwiye kuryozwa kuko Batamuliza Allen atabashije kurugaragariza uburyo yageze mu isambu ya Nyiranjara Edith ari we nyina wa Kayitesi Agnes, bityo ibyo asaba akaba adakwiye kubihabwa kuko nta shingiro bifite.

[30] Urukiko rurasanga ku birebana n'indishyi z'akababaro, Batamuliza Allen yarambuye Kayitesi Agnes umutungo yasigiwe na nyina Nyiranjara Edith, bituma amara igihe kirekire awukurikirana mu nzego z'ubuyobozi no mu Nkiko, bityo indishyi z'akababaro asaba akaba azikwiriye, ariko kuko 1.000.000Frw yifuza ari umurengera, akaba agenewe 500.000Frw mu bushishozi bw'Urukiko.

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[1] Reba urubanza RCAA 0018/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2014, igika cya 25.

[31] Urukiko rurasanga ku birebana n’amafaranga y’ikurikiranarubanza n’igihembo cya Avoka, Kayitesi Agnes yararezwe mu Nkiko, bituma agira ibyo atakaza mu gukurikirana uru rubanza ndetse biba ngombwa ko yiyambaza na Avoka uhembwa, icyakora 1.500.000Frw abisabira akaba ari ikirenga cyane cyane ko atagaragarije Urukiko ikimenyetso cyerekana ko ariyo akwiriye, bityo akaba agenewe 800.000 Frw y’ikurikiranarubanza n’igihembo cya Avoka agenwe mu bushishozi bw’Urukiko.

III. ICYEMEZO CY’URUKIKO

[32] **Rwemeye** kwakira ikirego cya Kayitesi Agnes gisaba gusubirishamo urubanza ku mpamvu z’akarengane kuko cyatanzwe mu buryo n’inzira bikurikije amategeko;

[33] **Ruvuze** ko icyo kirego gifite ishingiro;

[34] Ruvuze ko urubanza RCA 0004/014/TGI/NYG rwaciwe n’Urukiko Rwisumbuye rwa Nyagatare ku wa 20/05/2014 ruhindutse mu ngingo zarwo zose;

[35] **Ruvuze** ko isambu ya hegitari eshatu (3) iherereye mu Mudugudu wa Ryabega, Akagari ka Rutaraka, Umurenge wa Nyagatare, Akarere ka Nyagatare, ihana imbibi na Ntaganda Moses ibumoso, Gatera Faustin iburyo, Rudimba Thaddée hepfo ku muhanda na Karenzi ku mutwe ari iya Nyiranjara Edith nk’uko byemejwe mu rubanza RC 0019/013/TB/NYG rwaciwe n’Urukiko rw’Ibanze rwa Nyagatare ku wa 16/12/2013;

[36] **Rutegetse** Batamuliza Allen guha Kayitesi Agnes indishyi z’akababaro zingana na 500.000Frw, indishyi z’ikurikiranarubanza n’igihembo cya Avoka zingana na 800.000Frw;

[37] **Rutegetse** Batamuliza Allen gutanga amagarama y’urubanza angana na 100.000Frw.