MUHIRWA ET.AL. v. RWIBASIRA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC00016/2018/SC (Kayitesi Z, P.J.,Hitiyaremye na Rukundakuvuga,J) 21 Kamena 2019]

Indishyi – Indishyi z'akababaro – Indishyi z'akababaro zisabwa uregwa ntizatangwa mu gihe ikiburanwa yari yaragiye agihabwa n'inkiko, icyakora abarega bahabwa amafaranga y'ikurikiranarubanza.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu cyahoze ari Urukiko rw'Ibanze rwa Nyarubuye, Ibambasi wari uhagarariye abana be Muhirwa na Mukarutesi n'umwuzukuru we Mugisha arega Rwibasira kuba yarigaruriye urwuri rwabo bana bahawe mu mwaka wa 2004 n'icyahoze ari Akarere ka Nyarubuye ruherereye munsi y'urwuri rwa Rwibasira.Urwo rukiko rukaba rwarasanze urwuri rwaburanwaga bitarashobokaga ko rujya munsi y'urwuri rwa Rwibasira bityo ruca urubanza rwemeza ko urwuri rwaburanwaga ari urwa Rwibasira.

Abarega bajuririye Urukiko Rwisumbuye rwa Ngoma bavugako urukiko rubanza rwafashe icyemezo ku rwuri rutaregewe kuko baregeye urwuri rufite N^{o}106C rungana na Ha10 nyamara urukiko rufata icyemezo ku rwuri rufite N^{o}103 rungana na Ha20 banongeyeho ko ibyerekeranye no kuba urwuri rufite N^{o}106C rutakwegerana nurufite N^{o}103 ko bidakwiye guhabwa agaciro kuko byakozwe n'abakozi b'Akarere babifiye ububasha. Urwo rukiko rwaciye urubanza ruvuga ko kuba Muhirwa na bagenzi be barahawe urwuri rukaswe ku rwuri rwari rwarahawe Rwibasira ari igikorwa cyo gutanga umutungo w'undi kikaba kinyuranyije n'amategeko kikaba kigomba guteshwa agaciro, bityo rwemeza ko ubujurire bwabo nta shingiro rufite.

Muhirwa na bagenzi be basubirishijemo urwo rubanza ingingo nshya bashingiye ku nyandiko yakozwe n'Umunyamabanga Nshingwabikorwa w'umurenge wa Mpanga igaragaza imbibi z'urwuri rwa Rwibasira ariko ikirego cyabo nticyakirwa kuko rwasanze iyo nyandiko itaba ingingo nshya.

Abarega bashyikirije ikibazo cyabo Urwego rw'Umuvunyi basaba ko urubanza RCA0267/13TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma rusubirwamo ku mpamvu z'akarengane,urwo rwego rwakoze iperereza aho urwuri ruburanwa ruherereye rusanga abaturage bafite inzuri zihana imbibi n'uruburanwa bemeza ko munsi y'urwuri rwa Rwibasira hakoreshwaga na Ibambasi Se wa Muhirwa, bityo rwandikira Perezida w'Urukiko Rw'Ikirenga rusaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane maze Perezida w'Urukiko Rw'Ikirenga ashingiye kuri raporo y'Ubugenzuzi bw'inkiko yemeza ko rwoherezwa mu bwanditsi bw'Urukiko rw'Ikirenga kugirango ruzongere ruburanishwe.

Mu Rukiko rw'Ikirenga, urukiko rwasanze ari ngombwa ko hashakwa amakuru ajyanye nuko inzuri zatangwaga, imiterere y'urwuri ruburanwa ndetse n'amakuru arebana n'impapuro Rwibasira yasoreragaho urwuri yari yarahawe mbere.

Mu gihe cy'iburanisha ry'urubanza abarega bagaragaje ko akarengane gashingiye ku bimenyetso byirengagijwe birimo ibyo bahereweho urwuri ruburanwa, ibigaragaza ko barusoreraga, inyandiko igaragaza ko barukodeshaga ndetse n'inyandiko y'ubuyobozi isaba Rwibasira kutavogera urwo rwuri ikanagaragaza nyirarwo n'imbibi zarwo.

Rwibasira we yireguye avuga ko hatanzwe inzuri z'ibisigara ariko ko zahabwaga nimero hakurikijwe inzuri byegeranye, ngo bivuze ko kuba Muhirwa na bagenzi be bavugako urwuri rwabo rufite N°106C bivuze ko rwegeranye n'urwuri rufite N°106 rukaba ntaho ruhuriye nurwe rufite N°103,yongeraho ko abarega banze urwuri bahawe bashaka kumuriganya urwuri rwe.

Incamake y'icyemezo: 1. Kuba Rwibasira yarahawe urwuri Nº103 rwa Ha 20 kugeza na n'ubu akaba akizitunze, ari nazo asorera, ntaho yahera avuga ko Ha 10 zahawe Muhirwa na bagenzi be zakaswe ku rwuri rwe nkuko byemejwe n'Urukiko Rwisumbuye rwa Ngoma, bityo urubanza RCA0267/13/TGI/NGOMA rugomba guhinduka mu ngingo zarwo zose.

2. Kuba urwuri rwa Muhirwa na bagenzi be ruri munsi y'urwuri Nº103, rukaba rwaranahawe Nº106C, Rwibasira ntiyavuga ko bitari gushoboka, mu gihe Ubuyobozi bwatanze urwo rwuri bwemeza ko ariyo nimero bwaruhaye.

3.Indishyi z'akababaro n'izo kudashobora gukodesha urwuri abarega basaba ko zacibwa uregwa ntizatangwa kuko yari yagiye aruhabwa n'inkiko.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro.

Amategeko yashingiweho:
Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 34,ingingo ya 35.
Itegeko Ngenga Nº08/2005 ryo ku wa 14/07/2005 ryagengaga imikoreshereze n'imicungire y'ubutaka mu Rwanda, Ingingo ya 7,11

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ibambasi Célestin ahagarariye abana be Muhirwa Viateur, Mukarutesi Marie n'umwuzukuru we Mugisha Jean Pierre, yareze Rwibasira Célestin mu cyahoze ari Urukiko rw'Ibanze rwa Nyarubuye, kwigarurira urwuri abo bana bahawe n'icyahoze ari Akarere ka Nyarubuye mu 2004 rungana na Ha 10 rwabaruwe kuri N°106C akaruhuza n'urwe nawe yahawe n'ako Karere rufite Ha 20 rwabaruwe kuri N°103.

[2] Mu rubanza RC0008-0009-0010/13/TB/NYARUB rwaciwe ku wa 20/06/2013, Urukiko rushingiye ku bimenyetso byatanzwe na buri ruhande, rusanga urwuri ruburanwa ari urwa Rwibasira Célestin kubera ko urwuri N°106 C rudashobora kwegerana n'urwuri rufite N°103, ko rero rutatanzwe munsi y'urwa Rwibasira Célestin, rwemeza ko ikirego cya Muhirwa Viateur, Mukarutesi Marie na Mugisha Jean Pierre bahagarariwe na Ibambasi Célestin nta shingiro gifite.

[3] Muhirwa Vitateur, Mukarutesi Marie, na Mugisha Jean Pierre bajuririye Urukiko Rwisumbuye rwa Ngoma bavuga ko Urukiko rutasobanukiwe ikiregerwa kuko rwafashe

icyemezo ku rwuri N°103 rufite Ha 20, nyamara bararegeye urwuri rufite N°106 C rungana Ha 10, kandi ko rwanzuye ruvuga ko urwuri rufite N°106 C rutakwegerana n'urufite N° 103, bikaba bitahabwa agaciro kuko byakozwe n'abakozi b'Akarere babifiye ububasha.

[4] Mu rubanza RCA0267/13/TGI/NGOMA rwaciwe ku wa 31/10/2013, Urukiko Rwisumbuye rwa Ngoma rwasanze Muhirwa Viateur na bagenzi be barahawe urwuri 106C rukaswe ku rwuri rwari rwarahawe Rwibasira Célestin, rwemeza ko igikorwa cyo gutanga umutungo w'undi ari igikorwa kinyuranyije n'amategeko kigomba guteshwa agaciro, bityo rwemeza ko ubujurire bwabo nta shingiro bufite.

[5] Muhirwa Viateur na bagenzi be bashingiye ku nyandiko yakozwe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Mpanga yo ku wa 11/02/2014 igaragaza imbibi z'urwuri rwa Rwibasira Célestin basubirishijemo ingingo nshya urubanza RCA0267/13/TGI/NGOMA, mu rubanza RCA0064/14/TGI/NGOMA rwaciwe ku wa 22/05/2014, Urukiko rwemeza ko ikirego cyabo kitakiriwe kubera ko iyo nyandiko itaba ingingo nshya.

[6] Ku wa 08/09/2014, Muhirwa Viateur ahagarariye bagenzi be yashyikirije ikibazo Urwego rw'Umuvunyi, asaba ko urubanza RCA0267/13/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma rusubirwamo ku mpamvu z'akarengane, Urwego rw'Umuvunyi rushingiye ku iperereza rwakoze rusanga abaturage bafite inzuri zihana imbibi n'urwuri ruburanwa bemeza ko munsi y'urwuri rwa Rwibasira Célestin hakoreshwaga na Ibambasi Se wa Muhirwa, runashingiye ku nyandiko zatanzwe n'Ubuyobozi bw'inzego z'ibanze zemeza ko urwuri ruburanwa ari urwa Muhirwa na bagenzi be, rusanga urubanza RCA0267/13/TGI/NGOMA rwaciwe n'Urukiko rwa Ngoma ku wa 31/10/2013 rugaragaramo akarengane.

[7] Tariki ya 17/06/2016, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza RCA0267/13/TGI/NGOMA rusubirwamo ku mpamvu z'akarengane, Perezida w'Urukiko rw'Ikirenga ashingiye kuri Raporo y'Ubugenzuzi bw'Inkiko, mu cyemezo N°026/2018 cyo ku wa 10/04/2018, yemeza ko rwoherezwa mu bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[8] Urubanza rwaburanishijwe mu ruhame ku wa 12/03/2019, Muhirwa Viateur na bagenzi be bahagarariwe na Me Mukamazimpaka Hilarie, Rwibasira Célestin yunganiwe na Me Cyiza Clément na Me Tugirumuremyi Raphaël. Muri iri buranisha Urukiko rwasanze ari ngombwa gusubika iburanisha, kugira ngo hashakwe amakuru y'inyongera agaragaza uburyo inzuri zatangwaga, imiterere y'urwuri 106C ruburanwa, n'arebana n'impapuro Rwibasira Célestin yasoreragaho urwuri N°103 yari yarahawe mbere, iburanisha ryimurirwa tariki ya 21/05/2019. Uwo munsi urubanza rwaraburanishijwe Muhirwa Viateur yunganiwe na Me Mukamazimpaka Hilarie, Rwibasira Célestin yunganiwe na Me Tugirumuremyi Raphaël, rurapfundikirwa, isomwa ryarwo rishyirwa tariki ya 21/06/2019.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

[9] Ibibazo byasuzumwa muri uru rubanza ni ukumenya niba Rwibasira Célestin yarigaruriye urwuri 106C rwahawe Muhirwa Viateur na bagenzi be, no kumenya niba indishyi zisabwa zikwiye gutangwa.

Kumenya niba Rwibasira Célestin yarigaruriye urwuri Nº106C rwahawe Muhirwa Viateur na bagenzi be

[10] Muhirwa Viateur na Me Mukamazimpaka Hilarie umwunganira bavuga ko mu mwaka wa 2003, aborozi bo mu cyahoze ari Akarere ka Nyarubuye bahawe inzuri buri wese ahabwa Ha 20, zihabwa nomero kuva kuri 101 kugeza kuri 106, ahasigaye hatatanzwe haba ibisigara bya Leta. Mu mwaka wa 2004 - 2005 Akarere ka Nyarubuye kongeye gutanga inzuri muri ibyo bisigara zingana na 10 Ha kuri buri tsinda ry'aborozi bishyize hamwe, zitangwa bahereye ku rwuri no 101 rwa Gasekurume na bagenzi be bane (4), munsi yarwo hakatwa urwuri rufite no 102B rwahawe Mugiraneza Paul na bagenzi be batatu, bageze ku rwuri Nº106 bahatanga urwuri Nº106 B rwahawe Nsekanabo Enos na bagenzi be, bageze munsi y'urwuri rwa Rwibasira Célestin rufite no 103 bahatanga urwuri rufite Nº106 C, arirwo rwahawe Muhirwa Viateur na bagenzi be, munsi ya 102, 104 na 105 nta bisigara byari bihari. Me Mukamazimpaka Hilarie avuga ko yagiye aho ikiburanywa kiri asanga ari uko bimeze. Muhirwa Viateur asobanura ko bamaze guhabwa urwo rwuri babanje gushyiramo inka, nyuma bahakodesha abandi borozi, aribwo Rwibasira Célestin yaje arabirukana, arwongera ku rwe bamurega mu nkiko ariko ntizabarenganura.

[11] Mu gusobanura akarengane Muhirwa Viateur na bagenzi be bagiriwe mu rubanza RCA 0267/13/TGI/NGOMA basaba ko rwasubirwamo, Me Mukamazimpaka Hilarie avuga ko akarengane gashingiye ku bimenyetso byirengagijwe n'Urukiko, birimo ibaruwa Muhirwa Viateur na bagenzi be bahereweho urwuri Nº106 C, inyandiko zigaragaza ko barusoreraga, kuba Rwibasira Célestin ubwe yiyemerera ko Ubuyobozi bw'Akagari ka Nyakabungo bwamumenyesheje ko urwuri yahawe barukaseho igice gihabwa Nº106 C nk'uko bigaragazwa n'umwanzuro yatanze mu Rukiko Rwisumbuye rwa Ngoma, kuba Urukiko rwarirengagije inyandiko igaragaza ko urwuri rwa Muhirwa Viateur na bagenzi barukodeshaga, n'inyandiko y'Ubuyobozi bw'inzego z'ibanze yo ku wa 16/03/2010, isaba Rwibasira Célestin kutavogera urwo rwuri, inagaragaza nyir'urwuri n'imbibi zarwo, yakozwe ubwo Muhirwa Viateur yari yareze Rwibasira Célestin kurandura imbago.

[12] Me Mukamazimpaka Hilarie asoza avuga ko Urukiko rwarenze kuri ibyo bimenyetso byose, ruvuga ko Muhirwa Viateur atashoboye kwerekana ko urwuri rwe rutakaswe ku rwa Rwibasira Célestin, runica amategeko cyane cyane ingingo ya 29 y'Itegeko Nshinga ivuga ko umutungo w'umuntu ari ntavogerwa, ndetse n'ingingo ya 4 y'Itegeko rigenga ibimenyetso mu manza n'itangwa ryabyo, iteganya ko Urukiko rwaregewe ruca urubanza rushingiye ku bimenyetso bihuje na kamere y'ikiburanwa.

[13] Rwibasira Célestin avuga ko hatanzwe inzuri z'ibisigara zifite 10 Ha, ariko ko zahabwaga nomero hakurikijwe inzuri byegeranye, bivuze ko niba urwuri Muhirwa Viateur na bagenzi be bavuga ko ari urwabo rufite Nº106 C, ni uko rwegeranye n'urwuri rufite Nº106, rukaba ntaho ruhuriye na Nº103 yahawe, kuko iyo ruza gukatwa ku rwuri rwe, rwari guhabwa nomero igaragaza ko icyo gisigara kivuye kuri Nº103. Avuga ko Muhirwa Viateur na bagenzi be banze gufata urwuri bahawe rwegeranye n'urwa Se Ibambasi bakora akagambane n'uwari "Conseiller" Saiba kubera urwangano yari afitanye nawe rukomoka ku manza bagiranye bashaka kumuriganya urwuri rwe. Akomeza asobanura ko ibisigara byatanzwe ku nzuri zifite nomero 101, 102, na 106, ko ahandi kuri Nº103, 104 na 105 nta bisigara byari bihari, kandi ko urwuri rwe rwamanukaga rukagera ku mazi. Abajijwe icyo yapfaga na "Conseiller" Saiba , avuga ko

yamuhaye inka bumvikana ko nimubyarira azayimusubiza, ntiyabikora, aragenda afata iyo nka n'iyayo amusigira imwe, bahera ubwo baba abanzi.

[14] Ku bijyanye no kuba atunze urwuri rungana na Ha 72 kandi Ubuyobozi bwari bwamuhaye ha 20 gusa, Rwibasira Célestin avuga ko abarega birengagiza uburyo inzuri zatanzwemo, kuko mu gutanga inzuri batapimaga ahantu hari urutare n'amabuye, ariyo mpamvu usanga ku gishushanyo k'ibipimo cyakozwe muri 2009, uwitwa Ibambasi ufite Nº106 yahawe Ha 20 ariko ku bipimpo bikwiye ugasanga afite Ha 123, Rwibasira Célestin ufite Nº103 yahawe Ha 20 ariko ku bipimo nyakuri afite Ha 72, ko iyo aza kuba yarigaruriye Ha 10 za Muhirwa Viateur na bagenzi aba afite Ha 30, bityo ko abarega batakagombye kwibaza ku bipimo by'urwuri rwe birengagije ibipimo by'urwuri rw'umubyeyi wabo Ibambasi nabyo birenga Ha 20 yahawe.

[15] Me Tugirumumyi Raphaël avuga ko inzuri zitangwa bwa mbere batangaga inzuri za Ha 20 kandi zikurikiranye ku murongo kuva kuri Nº101 kugera kuri Nº106, ko mu gutanga ibisigara batangaga munsi ya buri nomero, bityo ko bitumvikana ukuntu Nº106 C yatanzwe munsi ya Nº 103, kandi ko aho batabonaga igisigara bahasimbukaga. Bavuga ko mu rwego rw'amategeko Rwibasira Célestin yahawe mu buryo bukurikije amategeko akaba agomba gutunga urwuri rwe ntawumuvogereye. Asobanura ko uwo bunganira yahawe Ha 20, ariko habariwemo imanga n'ahari amabuye usanga hafite Ha 72. Yongeraho ko ubwo bajyaga aho ikiburanwa kiri nyuma y'uko bisabwe n'Urukiko, yasanze inzuri zose kuva kuri Nº101-106 zirengeje Ha 20, kandi ko basanze aho hantu haratanzwe ibisigara bibiri gusa, 102B kiri hagati ya Nº101 na Nº102, na Nº 106B kiri mu nsi ya Nº106, bakaba barasanze munsi ya Nº103 nta gisigara gihari kuko ruva ku muhanda rukagera ku mugezi.

[16] Me Tugirumuremyi Raphaël asoza avuga ko atabashije kubona aho igisigara Nº106C giherereye, kandi ko n'ibaruwa yanditswe n'Akarere itagaragaza aho kiri, kandi ko n'abaturage babajije barimo uwitwa Ndagijimana Silas wororera mu rwuri rufite Nº101 na Karangwa wororera mu rufite Nº 102 bemeza ko munsi ya Nº103 nta gisigara gihari. Abajijwe niba urwuri Nº106C rutabaho, avuga ko arirwo bashatse kwitiranya na Nº103 amakimbirane ahita avuka, kandi ko n'iyo rutangwa rutari gutangwa munsi ya Nº103 kuko ntaho bihuriye, ko niba urwuri Nº 106C rwaratanzwe hadasobanuwe aho ruherereye, Akarere ari ko karyozwa amakosa kakoze atari Rwibasira Célestin.

UKO URUKIKO RUBIBONA

[17] Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015 ingingo ya 34 iteganya ko buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo asangiye n'abandi utavogerwa kandi ko udahungabanywa. Naho ingingo ya 35 igateganya ko umutungo bwite w'ubutaka n'ubundi burenganzira ku butaka bitangwa na Leta.

[18] Ingingo ya 7 y'Itegeko Ngenga Nº08/2005 ryo ku wa 14/07/2005 ryagengaga imikoreshereze n'imicungire y'ubutaka mu Rwanda, ryakurikizwaga Muhirwa Viateur na bagenzi be batanga ikirego, yateganyaga ko abantu bafite uburenganzira ku butaka ari ababukomoka ku muco, ababurazwe n'ababyeyi babo, ababukebewe n'Ubuyobozi bubifitiye ububasha cyangwa se ababubonye ku bundi buryo bwose bwemewe n'umuco w'Igihugu haba

igura, impano, ingurane n'isaranganya. Naho ingingo ya 11 yaryo igateganya ko ubutaka bw'abantu ku giti cyabo bugizwe n'ubutaka batunze mu buryo buhuje n'umuco, ubwo batunze mu buryo bujyanye n'amategeko yanditse butari mu butaka bwa Leta cyangwa bw'Akarere, Umujyi, n'Umujyi wa Kigali, ubwo bahawe n'Ubuyobozi bubifitiye ububasha, ubwo baguze, impano, ingurane n'isaranganya.

[19] Muri dosiye y'urubanza harimo inyandiko zitandukanye zerekeye urwuri ruburanywa, harimo ibaruwa yo ku wa 22/09/2003 iha Rwibasira Célestin na bagenzi be urwuri rufite Nº103 rungana na Ha 20 na zimwe muri gitansi Rwibasira yasoreyeho urwuri rwe rufite Ha 20, arizo gitansi Nº010753 y'umwaka wa 2011 na Nº219332 y'umwaka wa 2012, izindi gitansi ziri muri dosiye zikaba zitagaragaza ingano y'urwuri yasoreraga.

[20] Mu nyandiko ziri muri dosiye y'urubanza harimo ibaruwa yanditswe mu 2004 na Rucibigango John wayoboraga Akarere ka Nyarubuye iha Muhirwa Viateur, Mukarutesi Marie na Mugisha jean Pierre urwuri Nº106C rufite Ha 10, inabasaba ko nyuma yo kuruhabwa bagomba kuruzitira bakanarukoresha icyo barusabiye bashyiramo amatungo, ariko iyo baruwa ikaba itagaragaza nomero n'itariki yandikiweho, uko guhabwa urwuri bikaba byaragarutsweho mu ibaruwa Akarere ka Kirehe kandikiye Urukiko rw'Ikirenga ku wa 16/05/2019 kemeza ko Muhirwa Viateur na bagenzi be bahawe urwuri Nº106C, kuko iyo baruwa yo mu mwaka wa 2004 yanditswe n'urwego rubifitiye ububasha.

[21] Hagaragaramo kandi inyandiko yo ku wa 06/08/2013 ikubiyemo ubuhamya bwatanzwe na Saiba Emmanuel (*Conseiller*) wahoze ayobora Umurenge wa Kankobwa aho urwuri Nº106C ruburanwa ruherereye yemeza ko ariwe wahaye urwuri Muhirwa Viateur na bagenzi be abiherewe uburenganzira na Burugumesitiri Rucibigango. Harimo n'inyandiko yo ku wa 05/08/2013 yashyizweho umukono na Kabagema Kabatsi Ferdinand, Rugayigarira Nestor, Ndayambaje Léonidas na Kamuhanda Habyarimana Salatiyeri bahawe urwuri Nº102 mu 2003 igihe kimwe na Rwibasira Célestin bemeza ko urwuri Nº106C ruherereye munsi y'urwuri Nº 103 rwahawe Rwibasira Célestin, baruhaye Muhirwa Viateur na bagenzi be, kandi ko ruhana imbibi n'urwabo.

[22] Muri dosiye y'urubanza hagaragaramo na none gitansi z'imyaka itandukanye Muhirwa Viateur yishyura amahoro y'urwuri Nº106C rungana na Ha 10, arizo gitansi Nº09355 (2005), Nº 90942 (2006), Nº119992 (2007), Nº252992 (2008), Nº186599 (2009), Nº292645 (2010), Nº010752 (2011), Nº099368 (1012), Nº0400913 (2013) na gitansi Nº316458 Muhirwa Viateur yandikisha urwuri 106C nk'umutungo bwite we na bagenzi be. Harimo n'inyandiko y'amasezerano yakozwe ku wa 03/02/2006, Muhirwa Viateur na bagenzi be bakodesha urwuri no 106 C uwitwa Ntibenda David ku mafaranga 300.000 ku mwaka.

[23] Izindi nyandiko ziri muri dosiye y'urubanza ni inyandiko yo ku wa 16/03/2010 yakozwe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Mpanga ikemura ikibazo hagati ya Rwibasira Célestin na Muhirwa Viateur na bagenzi be bashinjaga Rwibasira kuvogera urwuri rwabo Nº106C, aho uwo muyobozi ashingiye ku cyemezo cyatanzwe n'Akarere ka Nyarubuye yemeje ko urwuri Nº106C rwagibwagaho impaka, ari urwa Muhirwa Viateur na bagenzi be kandi ko rufite imbibi zizwi zirutandukanya n'urwuri rwa Rwibasira Célestin, anategeka Rwibasira kutavogera Muhirwa na bagenzi be.

[24] Urukiko rurasanga inyandiko zitandukanye zavuzwe haruguru harimo iy'Ubuyobozi bw'Akarere ka Kirehe, n'iy'ubw'icyahoze ari Akarere ka Nyarubuye, zigaragaza ko Muhirwa Viateur, Mukarutesi Marie na Mugisha Jean Pierre bahawe urwuri Nº106C, bigashimangirwa n'abatangabuhamya bafite inzuri aho urwuri Nº106C ruri, barimo Kabagema Kabatsi Ferdinand, Rugayigarira Nestor, Ndayambaje Léonidas na Kamuhanda Habyarimana Salatiyeri, ndetse na Saiba Emmanuel (wari *Conseiller*) wahoze ayobora Umurenge wa Kankobwa aho urwuri Nº106 C ruburanwa ruherereye.

[25] Urukiko rurasanga kuba Muhirwa Viateur, Mukarutesi Marie na Mugisha Jean Pierre bamaze guhabwa urwo rwuri bararukoreyemo, nyuma barukodesha uwitwa Ntibenda David nk'uko bigaragazwa n'amasezerano y'ubukode bagiranye ku wa 03/02/2006, ndetse no mu bihe bitandukanye Muhirwa Viateur akaba yaragiye arusorera nk'uko bigaragazwa na gitansi zitandukanye ziri muri dosiye, bigaragaza ko urwo rwuri rwari urwabo.

[26] Urukiko rurasanga na none kuba Rwibasira Célestin yemera ko muri 2003 yahawe urwuri Nº 103 rwa Ha 20 kugeza na n'ubu akaba akizitunze, ari nazo asorera nkuko bigaragazwa na gitansi ziri muri dosiye, ndetse n'abo baziherewe rimwe bakemeza ko bose Ubuyobozi bwababahaye Ha 20 kuri buri tsinda kandi ko munsi y'urwuri rwa Rwibasira Célestin hari igisigara atashoboye kugaragariza Urukiko igihe yagiherewe n'Ubuyobozi bw'ibanze, ntaho yahera avuga ko Ha 10 zahawe Muhirwa Viateur na bagenzi be zakaswe ku rwuri rwe nkuko byemejwe n'Urukiko Rwisumbuye rwa Ngoma. Rurasanga kandi kuba urwuri rwa Muhirwa Viateur na bagenzi be ruri munsi y'urwuri Nº 103, rwanahawe Nº106C, Rwibasira Célestin n'umwunganira sibo bavuga ko ibyo bitari gushoboka, mu gihe Ubuyobozi bwatanze urwo rwuri bwemeza ko ariyo nimero bwaruhaye.

[27] Urukiko rurasanga rushingiye kuri ibyo bisobanuro no ku bimenyetso byagaragajwe mu bika bibanziriza iki, Muhirwa Viateur, Mukarutesi Marie na Mugisha Jean Pierre barahawe urwuri Nº106C ruri munsi y'urwuri Nº103 rufite Ha 20 rwa Rwibasira Célestin, kandi baruhabwa n'Ubuyobozi bubifitiye ububasha aribwo Akarere ka Nyarubuye, ubu kabaye Akarere ka Kirehe, bakaba barufiteho uburenganzira busesuye hashingiwe ku ngingo ya 34 n'iya 35 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, no ku ngingo ya 7 n'iya 11 z'Itegeko Ngenga N°08/2005 ryo ku wa 14/07/2005 ryagengaga imikoreshereze n'imicungire y'ubutaka mu Rwanda zavuzwe haruguru, ku bw'izo mpamvu urubanza RCA0267/13/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 31/10/2013 rwahaye Rwibasira Célestin urwuri Nº106C, rukaba rurimo akarengane rugomba guhinduka mu ngingo zarwo zose.

Kumenya niba indishyi zisabwa muri uru rubanza zikwiye gutangwa.

[28] Me Mukamazimpaka Hilarie wunganira Muhirwa Viateur avuga ko uwo yunganira yambuwe urwuri yahawe mu buryo bukurikije amategeko, aregera inkiko ntizamurenganura, biba ngombwa ko yitabaza Urwego rw'Umuvunyi, aho hose akaba yaratakazaga umwanya n'amafaranga, akaba abisabira indishyi z'akababaro n'izo gusiragizwa mu manza zingana na 3.000.000 Frw n'indishyi mbonezamusaruro zikomoka ku kuvutswa gukoresha urwuri rwe, zingana na 3.300.000Frw, zibazwe hashingiwe ku 300.000 Frw rwakodeshwaga buri mwaka mu gihe cy'imyaka 11 amaze atarukoresha. Asaba kandi gusubizwa amagarama we na bagenzi be

batanze mu Rukiko rw'Ibanze rwa Nyarubuye angana na 75.000 Frw, ayo batanze mu Rukiko Rwisumbuye rwa Ngoma angana na 150.000 Frw, amafaranga yishyuye Avoka mu Rukiko Rwisumbuye rwa Ngoma angana na 500.000 Frw n'ayo yishyuye mu Rukiko rw'Ikirenga angana na 1.000.000Frw no gusubizwa 100.000 Frw yishyuye nk'indishyi amaze kumutsindwa mu Rukiko Rwisumbuye rwa Ngoma.

[29] Rwibasira Célestin n'umwunganira bavuga ko indishyi zisabwa na Muhirwa Viateur na bagenzi be nta shingiro zifite, kuko ari bo bishoye mu manza nyuma yo kwitwaza inyandiko ibaha urwuri Nº106 C bagashaka ko rukatwa ku rwuri Nº103 rwari rwarahawe Rwibasira kandi ntaho bihuriye, akaba atari kuregwa kubera ko yanze kurekura ibye ku maherere. Bashingiye ku ngingo ya 258 CCLIII, basaba ko Rwibasira ariwe wagenerwa indishyi z'akababaro n'izo gusiragizwa mu manza zingana na 3.000.000 Frw, no gutegeka abaregwa gutanga 3.000.000 Frw nk'indishyi mbonezamusaruro zikomoka ku kudakoresha urwuri rwe mu bwisanzure, na 2.500.000 Frw y'igihembo cy'Avoka.

[30] Urukiko rurasanga ku bijyanye n'indishyi z'akababaro n'izo kudashobora gukodesha urwuri Muhirwa Viateur na bagenzi be basaba ko zacibwa Rwibasira Célestin zitatangwa, kubera ko urwo rwuri yari yagiye aruhabwa n'inkiko.

[31] Urukiko rurasanga ariko Muhirwa na bagenzi be hari ibyo batakaje bakurikirana urwuri rwabo mu nkiko, ariko kubera ko ayo basaba ari menshi, bakaba bagenewe kuri uru rwego amafaranga y'ikurikiranarubanza angana na 300.000Frw n'ay'igihembo cy'Avoka kuko bitabaje Avoka ubunganira angana na 500.000 Frw yose akaba 800.000 Frw.

[32] Urukiko rurasanga indishyi zisabwa na Rwibasira Célestin nta shingiro zifite, kuko ntacyo atsindiye muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[33] Rwemeje ko ikirego cyatanzwe na Muhirwa Viateur na bagenzi be cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA0267/13/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 31/10/2013 gifite ishingiro.

[34] Rwemeje ko urubanza RCA 0267/13/TGI/NGOMA rwaciwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 31/10/2013 rugaragaramo akarengane, rukaba ruhindutse mu ngingo zarwo zose.

[35] Rutegetse Rwibasira Célestin gusubiza Muhirwa Viateur, Mukarutesi Marie na Mugisha urwuri rwabo 106C ruri munsi y'urwuri rwe rwa Ha 20 rufite Nº103 kuko baruhawe n'Ubuyobozi bubifitiye ububasha.

Rutegetse Rwibasira Célestin guha Muhirwa Viateur, Mukarutesi Marie, na Mugisha Jean Pierre 500.000 Frw y'igihembo cya Avoka na 300.000Frw y'ikurikiranarubanza yose hamwe akaba 800.000Frw.