MUTONI v NIWENSHUTI N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0014/15/CS (Mutashya P.J., Nyirinkwaya na Karimunda, J.) 01 Ukuboza 2017]

Amategeko agenga umuryango – Ababana batarashakanye mu buryo bukurikije amategeko – Ikimenyetso – Ikimenyetso kishingirwaho kwemeza ko abantu babanaga nk' umugabo n'umugore - Iyo imibanire bwite hagati y'abantu idisaba ibimenyetso byihariye, uburyo bwose bushoboka bwagaragaza ko umugore n'umugabo babanye bwashingirwaho mu gufata icyemezo - Icyemezo cy'ubuyobozi bw'aho batuye cyangwa inyemezabuguzi y'amasezerano y'ubukode agaragaza ko babaga mu nzu imwe nibimwe mu bimenyetso byashingirwaho mu kwemeza ko abantu babanaga nk' umugabo n'umugore.

Amategeko agenga umuryango – Ababanaga batarashakanye mu buryo bukurikije amategeko – Umutungo – Kugabana umutungo wababanaga nk'umugabo n'umugore batarashyingiranywe mu buryo byemewe n'amategeko – Ntabwo ari ngombwa ko buri wese agomba kugaragaza ingano (quantité) y'ibyo yakoze kugirango umutungo ubeho cyangwa ngo yerekane ibyo yawushyizeho kugirango wiyongere agaciro, ahubwo uwo mutungo ugomba kuba warabonetse muri cya gihe kidashidikanywaho bombi babanaga kuko icya ngombwa ari uko muri iyo mibanire buri wese aba afite ibyakora mu guteza imbere urugo kabone niyo umwe muri bo atabasha kugaragaza mu buryo burondoye (détaille/details) ibyo yakoze kugirango uboneke cyangwa utubuke.

Incamake y'ikibazo: Mutoni K. Jackline yatambamiye urubanza RC0615/12/TGI/NYGE aho Niwenshuti yareze Mukambuguje, asaba ko bagabana umutungo bashakanye buri wese akegukana kimwe cya kabiri (½) cy'amafaranga avuyemo, Mutoni K. Jackline yarutambamiye avuga ko nawe yabaye umugore wa Niwenshuti mu buryo butemewe n'amategeko, babyarana abana babiri, bafatanya kubaka iyo nzu.

Niwenshuti na mukambuguje batanze inzitizi yo kutakira ikirego bavuga ko Mutoni K. Jackline yabyaranye gusa na Niwenshuti kandi bakaba bahujwe n'akazi k'ubucuruzi bakoreraga hamwe ariko ko batigeze babana nk'umugore n'umugabo, urwo Urukiko rwasanze iyo inzitizi nta shingiro ifite kuko agaragaza inyungu afite mu rubanza ishingiye ku kuba Urukiko rwarategetse ko inzu yubakanye na Niwenshuti igurishwa.

Mu mizi y'urubanza, Urukiko rwasanze, uretse kugaragaza gusa ko Niwenshuti Aloys yishyuraga imisoro no kuba hari amasezerano y'ubukode yagiranye na ba nyir'inzu yacuririzagamo, nta kindi kimenyetso cyerekana ko yafatanyije nawe kubaka inzu iburanwa, maze rwemeza ko ikirego cye nta shingiro gifite, bityo ko urubanza yatambamiraga ruhamanye agaciro karwo, ntiyishimiye icyo cyemezo ajuririra mu Rukiko Rukuru, narwo rusanga nta kimenyetso agaragaza cy'uko yagize uruhare mw'iyubakwa ry'inzu iburanwa, uretse gukurikirana imirimo y'iyubakwa ryayo, maze rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririwe

Yongeye kandi ajuririra mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwavuze ko Niwenshuti atabaye umugabo we ahubwo ko yamusuraga kenshi aje kwiruhukira, bituma rutabagabanya inzu bahahanye, nyamara uwari Umuyobozi w'Umudugudu wa Gatsata, babanje guturamo, Umuyobozi w'Umudugudu wa Gikondo, ndetse n'Umuyobozi w'Umudugudu w'Umurava aho bagiye bimukira, bemeza ko yabanaga nawe nk'umugabo we, ari we wishyura ubukode. Asobanura avuga ko yamenyanye Niwenshuti yigira i Kabare muri Uganda, batangira

kubana guhera ku wa 05/08/2005 abyarana abana babiri amuzanira n'icyemezo cy'ingaragu "attestation de célibat", bituma akomeza kumwizera, bajyana iwabo i Nyagatare, amukwa 1.000.000 Frw, nubwo nta mihango ikomeye yabaye kandi ko abasaza bakiriye iyo nkwano babihamya, asoza avuga ko ntacyo Mukambuguje yashyize ku nzu iburanwa kuko kugeza ubu atagaragaza icyo yakoraga cyari gutuma afatanya na Niwenshuti kubaka inzu iburanwa, ariyo mpamvu asaba kurenganurwa, agahabwa uruhare rwe ku nzu iburanwa.

Niwenshuti avuga ko yashakanye na Mukambuguje kandi ko intandaro yukugabana inzu ari uko Mukambuguje yanze kumusinyira kugirango afate amafaranga yitwaje ko yabyaye hanze, biramurakaza asaba ko iyo nzu bayigabana, asobanura ko yamenyanye na Mutoni K. Jackline guhera muri 2003, uyu azi ko afite undi mugore mu Gatsata kandi ko adahakana ko yitabiriye "collation des grades" ye muri Uganda nk'uko n'abandi bayitabiriye, ko muri ubwo bushuti babyaranye abana babiri kandi ko yamukodeshereje inzu agirango areke gukomeza kuba kwa musaza we. Asoza avuga ko kujya mu birori bisoza amashuri, kumutuma gushyira amafaranga kuri konti, kumukodoshereza inzu cyangwa ibivugwa n'abayobozi b'imidugudu ataribyo byashingirwaho hemezwa ko yari umugabo we.

Mukambuguje Alodie avuga ko intandaro y'amakimbirane ari inguzanyo ya kabiri Niwenshuti Aloys yashatse gufata akamwangira kuko yari amaze kumenya ko yabyaye hanze, ararakara, ata urugo, amara amezi atandatu ataragaruka, atanga ikirego ari iyo yagiye asaba ko iyo nzu bayigabana, bamaze kugabana arigarura nawe aramwakira kuko ariwe wari nyir'amakosa kandi ko atumva uburyo Mutoni K. Jackline yamaze imyaka itandatu akodesha kandi yarubatse inzu. Asoza avuga ko uburyo umwe mu babanye batarashingiranywe agira uruhare ku mutungo w'umugabo cyangwa umugore babanaga ari ukugaragaza icyo yakoze kugirango uwo mutungo uboneke, bityo ko kuvuga gusa ko yabaye umugore utemewe n'amategeko wa Niwenshuti cyangwa ko babyaranye ataribyo byatuma agira uruhare ku nzu atubatse.

Incamake y'icyemezo: 1. Iyo imibanire bwite hagati y'abantu idisaba ibimenyetso byihariye, uburyo bwose bushoboka bwagaragaza ko umugore n'umugabo babanye bwashingirwaho mu gufata icyemezo.

2. Icyemezo cy'ubuyobozi bw'aho batuye cyangwa inyemezabuguzi y'amasezerano y'ubukode agaragaza ko babaga mu nzu imwe nibimwe mu bimenyetso byashingirwaho mu kwemeza ko abantu babanaga nk' umugabo n'umugore.

3. Iyo ababanaga nk'umugabo n'umugore batarashyingiranywe mu buryo byemewe n'amategeko bagiye kugabana umutungo ntabwo ari ngombwa ko buri wese agomba kugaragaza ingano (quantité) y'ibyo yakoze kugirango umutungo ubeho cyangwa ngo yerekane ibyo yawushyizeho kugirango wiyongere agaciro, ahubwo uwo mutungo ugomba kuba warabonetse muri cya gihe kidashidikanywaho bombi babanaga kuko icya ngombwa ari uko muri iyo mibanire buri wese aba afite ibyakora mu guteza imbere urugo.

4. Ingano y'ibyakozwe n'umugore cyangwa umugabo kugirango umutungo uburanwa uboneke cyangwa utubuke ubwayo atariyo ihesha umugore cyangwa umugabo uburenganzira bwo kugabana umutungo uburanwa n'uwo avuga ko babanaga, ahubwo igomba kuza yiyongera ku bimenyetso by'uko uwo mutungo wabonetse cyangwa wongerewe agaciro bombi babana nk'umugore n'umugabo kabone niyo umwe muri bo atabasha kugaragaza mu buryo burondoye (détaille/details) ibyo yakoze kugirango uboneke cyangwa utubuke

5. Kuva uwajuriye yari azi neza ko atasezeranye na Niwenshuti yari yiyemeje ko umubano wabo ushobora kurangira igihe icyo aricyo cyose, mu gihe ibyo yateganyaga bibaye akaba atahindukira ngo abifate nk'ikosa rikwiye kuryorezwa indishyi.

Ubujurire bufite ishingiro
Urubanza rwajuririwe ruhindutse mu ngingo zarwo zose;
Inzu iburanwa ari iya Niwenshuti Aloys, Mukambuguje Alodie na Mutoni K. Jackline, buri wese akaba ayifiteho uburenganzira bungana na 1/3;
Amagarama y'urubanza aherereye ku bajuriye

Amategeko yashingiweho:
Itegeko N°59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, ingingo ya 36.
Itegeko No15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Imanza zifashishijwe:
Gatera Johnson na Kabarisa Teddy N°RS/Inconst/Pén.0003/10/CS rwaciwe ku wa 07/01/2011 n'Urukiko rw'Ikirenga.
Nyirakamana n'abandi na. Mukasharangabo n'abandi No RS/REV/INJUST CIV 0007/15/CS rwaciwe ku wa 04/12/2015 n'Urukiko rw'Ikirenga.
Ahishakiye Jean na Namagabira Venantie Reba urubanza no RCAA 0048/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 11/03/2016.
Twahirwa Ahmed na Kaligirwa Rehema No RCAA 0036/15/CS rwaciwe ku wa 17/11/2017 n'Urukiko rw'Ikirenga
Lother Pettkus V. Rosa Becker [1980] rwaciwe n'Urukiko rw'Ikirenga rwa Canada.
Baumgartener v Baumgartner [1987], rwaciwe n'Urukiko Rukuru rwa Australia.

Inyandiko zabahanga:
Francois Terré et Philippe Simler, Droit Civil: Les régimes matrimoniaux, Paris: Dalloz, 2015, p.734.
Memento Pratique, Droit de la Famille 2014-2015, Lavallos : Francis Lefebvre, 2014, p. 307.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, NIWENSHUTI Aloys arega MUKAMBUGUJE Alodie, asaba ko bagabana umutungo bashakanye buri wese akegukana kimwe cya kabiri (½) cy'amafaranga avuyemo.

[2] Mu rubanza RC0615/12/TGI/NYGE rwaciwe ku wa 03/05/2013, Urukiko rwasanze nubwo ababuranyi bombi bemeranya ko babanye mu buryo butemewe n'amategeko, ubu batakibana, ariyo mpamvu umutungo ugizwe n'inzu iri mu kibanza no 753 bagomba kuwugabana mu buryo bungana hashingiwe ku biteganywa n'ingingo ya 39, igika cya 2, y'Itegeko no 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina cyane cyane ko igabana ry'umutungo riteganywa n'iyo ngingo ridashingiye k'uburenganzira buturuka ku masezerano yo gushyingirwa ahubwo ari uburenganzira ku mutungo umwe mu babanaga aba afite, bushingiye ku kuba barawuhahanye cyangwa bawusangiye nk'uko byemejwe n'Urukiko rw'Ikirenga mu rubanza RS/Inconst/Pén.0003/10/CS

hagati ya Gatera Johnson na Kabarisa Teddy[1], rwanzura ko inzu igurishwa, kimwe cya kabiri (½) cy'igiciro kigahabwa Niwenshuti Aloys, ikindi kigahabwa Mukambuguje Alodie, uyu akishyura Niwenshuti Aloys 410.000 Frw y'ikurikiranarubanza n'igihembo cy'avoka.

[3] Mutoni K. Jackline yatambamiye urwo rubanza avuga ko nawe yabaye umugore wa Niwenshuti Aloys mu buryo butemewe n'amategeko, babyarana abana babiri, bafatanya kubaka iyo nzu, nyuma aza kumva ko hari icyemezo cy'urukiko cyemeje ko igabanywa Niwenshuti Aloys na Mukambuguje Alodie, kandi uyu ntacyo yayishyizeho, ariyo mpamvu yumva ari we ukwiye kuyigabana na Niwenshuti Aloys kuko ariwe bafatanyije kuyubaka.

[4] Niwenshuti Aloys na Mukambuguje Alodie babanje gutanga inzitizi yo kutakira ikirego cya Mutoni K. Jackline bavuga ko yabyaranye gusa na Niwenshuti Aloys, bahujwe n'akazi k'ubucuruzi bakoreraga hamwe ariko ko batigeze babana nk'umugore n'umugabo.

[5] Mu rubanza RC0632/13/TGI/NYGE rwaciwe ku wa 31/03/2014, Urukiko rwasanze inzitizi y'uko Mutoni K. Jackline nta bubasha afite bwo gutambamira urubanza rw'uwo yita umugabo we kuko batigeze bashakana mu buryo bwemewe n'amategeko nta shingiro ifite kuko agaragaza inyungu afite mu rubanza ishingiye ku kuba Urukiko rwarategetse ko inzu yubakanye na Niwenshuti Aloys igurishwa.

[6] Mu mizi y'urubanza, Urukiko rwasanze, uretse kugaragaza gusa ko Niwenshuti Aloys yishyuraga imisoro no kuba hari amasezerano y'ubukode yagiranye na ba nyir'inzu yacuririzagamo, nta kindi kimenyetso cyerekana ko yafatanyije nawe kubaka inzu iburanwa, rwemeza ko ikirego cye nta shingiro gifite, bityo ko urubanza yatambamiraga ruhamanye agaciro karwo.

[7] Mutoni K. Jackline ntiyishimiye icyo cyemezo ajuririra mu Rukiko Rukuru avuga ko Urukiko rubanza rwemeje ko inzu ari iya Niwenshuti Aloys na Mukambuguje Alodie kandi ari we bayubakanye.

[8] Mu rubanza RCA0176/14/HC/KIG rwaciwe ku wa 27/02/2015, Urukiko rwasanze Mutoni K. Jackline nta kimenyetso agaragaza cy'uko yagize uruhare mw'iyubakwa ry'inzu iburanwa, uretse gukurikirana imirimo y'iyubakwa ryayo, maze rwemeza ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

[9] Mutoni K. Jackline ntiyanyuzwe n'icyo cyemezo, ajuririra mu Rukiko rw'Ikirenga avuga ko:

a. Yagaragarije Urukiko Rukuru inyandiko z'abatangababuhamya bemeza ko yari umugore wa Niwenshuti Aloys mu gihe cy'imyaka umunani, babyarana abana babiri, ariko izo nyandiko ntizagaragara muri kopi y'urubanza ;

b. Urukiko Rukuru rwagoretse ingingo ya 39, igika cya 2 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, ruyiha ubusobanuro butari bwo ;

c. Urukiko Rukuru rwavuze ko Niwenshuti Aloys yakuraga amafaranga kuri konti agirango ayamugurize, rubyemza ntacyo rubishingiyeho ahubwo rwirengagije ibimenyetso bigaragaza ko yayavanaga kuri konti agiye kuyubakisha ;

[1] Reba urubanza N°RS/Inconst/Pén.0003/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 07/01/2011 hagati ya GATERA Johnson na KABARISA Teddy, igika cya 6.

d. Urukiko Rukuru rwemeje ko Niwenshuti Aloys yasezeranye na Mukambuguje Alodie mu rwego rwo kuvugurura umubano wabo, nyamara barabikoze imanza zaratangiye bagamije kujijisha ubutabera ;

e. Urukiko Rukuru rwabogamiye kuri Niwenshuti Aloys kuko rwemeje ko yibwe « plan original » y'umutungo uburanwa, « carnet des chèques» yuzuzwaga ubwo yabaga agiye kubikuza, kashe yakoreshwaga mu kazi, byose bibistwe na Mutoni K. Jackline, rubyemeza nta kimenyetso rubishingiyeho kuko nta kirego cy'ubujura Niwenshuti Aloys yigeze atanga ;

f. Yategetswe kwishyura 500.000Frw y'ikurikiranarubanza n'igihembo cya Avoka byo gushora abaregwa mu manza nta mpamvu, Urukiko rwiyibagiza ko aribo bazimushoyemo ;

[10] Mutoni K. Jackline asaba kandi uru Rukiko kwemeza ko Niwenshuti Aloys yamutesheje agaciro, ntiyita ku burere bw'abana bafitanye, anamubeshya ko nta wundi mugore afite, akaba abisabira indishyi za 4.000.000Frw na 2.500.000Frw y'igihembo cya avoka ku nzego zose.

[11] Iburanisha mu ruhame ryabaye ku wa 30/05/2017, Mutoni K. Jackline yunganiwe na Me Karangwayire Epiphanie hamwe na Me Mukundamana Eric, Niwenshuti Aloys yunganiwe na Me Kimanuka John naho Mukambuguje Alodie aburanirwa na Me Karega Blaise Pascal, Urukiko rubanza gusuzuma inzitizi zazamuwe na Me Karega Blaise Pascal z'uko ubujurire budakwiye kwakirwa n'uru Rukiko kuko Mutoni K. Jackline yatsinzwe mu Nkiko zombi zibanza ku mpamvu zimwe, ariko ko niyo uru Rukiko rwasanga ataratsinzwe ku mpamvu zimwe, rwakwemeza ko kimwe cya gatatu (1/3) cy'inzu ifite agaciro ka 53.000.000Frw yaregeye gituma ubujurire bwe butakirwa kuko kitageze nibura kuri 50.000.000 Frw, kandi ko niyo uru Rukiko rwakwemeza ko ubujurire buri mu bubasha bwarwo, rutabwakira kuko ari ubujurire bwa gatatu.

[12] Ku wa 30/06/2017, uru Rukiko rwasanze inzitizi zatanzwe nta shingiro zifite, rwemeza ko ubujurire buri mu bubasha bwarwo kandi ko bukwiye kwakirwa, rutegeka ko iburanisha rikomeza ku wa 26/09/2017. Uwo munsi ugeze, Urukiko rwasanze Niwenshuti Aloys yasabye ko iburanisha ryimurirwa undi munsi, atanga impamvu y'uko arwariye muri Uganda, naho Mukambuguje Alodie, Me Kimanuka John na Me Karega Blaise Pascal batitabye kandi nta mpamvu babitangiye.

[13] Urukiko rwasuzumye impamvu zatanzwe na Niwenshuti Aloys, uburana yunganiwe, rusanga nta shingiro zifite ahubwo ari uburyo bwo gutinza urubanza, rumuhanisha ihazabu mbonezamubano ya 100.000Frw, naho Me Kimanuka John, umwunganira, na Me Karega Blaise Pascal, uhagarariye Mukambuguje Alodie, buri wese ahanishwa ihazabu mbonezamubano ya 200.000 Frw, ariko mu nyungu z'ubutabera zishingiye ku kuba bikwiye ko urubanza ruburanishwa ababuranyi bose bahari, Urukiko rutegeka ko abaregwa mu bujurire bahamagarwa bihanangirijwe, iburanishwa ryimurirwa ku wa 24/10/2017.

[14] Uwo munsi iburanisha ryabereye mu ruhame, Mutoni K. Jackline yunganiwe nka mbere, Niwenshuti Aloys yunganiwe na Me Ruberwa Ngarukiye Silas, naho Mukambuguje Alodie yunganiwe na Me Kamushoshi Gandin.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

II. 1. Kumenya niba Mutoni K. Jackline yarabanye na Niwenshuti Aloys nk'umugore n'umugabo ku buryo bagabana inzu iburanwa.

[15] Mutoni K. Jackline avuga ko yajurijwe n'uko Urukiko Rukuru rwavuze ko Niwenshuti Aloys atabaye umugabo we ahubwo ko yamusuraga kenshi aje kwiruhukira, bituma rutabagabanya inzu bahahanye, nyamara Kalisa Théoneste wari Umuyobozi b'Umudugudu wa Gatsata, babanje guturamo, Habimana Ally, Umuyobozi w'Umudugudu wa Gikondo, ndetse na Ndagimana Athanase, Umuyobozi w'Umudugudu w'Umurava, aho bagiye bimukira, bemeza ko yabanaga nawe nk'umugabo we, ari we wishyura ubukode. Asobanura ko yamenyanye na Niwenshuti Aloys yigira i Kabare muri Uganda, batangira kubana guhera ku wa 05/08/2005, ku wa 23/04/2006 babyarana umwana wa mbere, ku wa 20/11/2011 babyara uwa kabiri, muri 2012, Niwenshuti Aloys amuzanira "attestation de célibat", bituma akomeza kumwizera, bajyana iwabo i Nyagatare, amukwa 1.000.000 Frw, ko nubwo nta mihango ikomeye yabaye, abasaza bakiriye iyo nkwano babihamya.

[16] Asoza avuga ko ku wa 20/08/2012 Mukambuguje Alodie yabwiye Ubuyobozi bw'Akagali ka Niboye ko impamvu yimye Niwenshuti Aloys ibyangombwa by'inzu iburanwa ari uko yashatse undi mugore. Ku wa 13/11/2012, Niwenshuti Aloys yandikira abashinzwe ubutaka asaba kurenganurwa avuga ko Mukambuguje Alodie yamuciye inyuma yiyandikishaho inzu ye kandi batarasezeranye, bigeze mu rubanza RC0915/12/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 03/05/2013, Mukambuguje Alodie avuga ko Niwenshuti Aloys yamutaye, amuhoye ko batasezeranye, bisobanuye ko Mukambuguje Alodie ahamya ko Niwenshuti Aloys yari yarashatse undi mugore, ndetse na Niwenshuti Aloys agahamya ko ntacyo Mukambuguje Alodie yashyize ku nzu iburanwa, ibi bikongera bigashimangirwa n'uko kugeza ubu atagaragaza icyo yakoraga cyari gutuma afatanya na Niwenshuti Aloys kubaka inzu iburanwa, ariyo mpamvu asaba kurenganurwa, agahabwa uruhare rwe ku nzu iburanwa.

[17] Me Mukundamana Eric, umwunganira, avuga ko Niwenshuti Aloys yavanye Mutoni K.Jackline mu ishuri, aramutunga, bamarana imyaka umunani (8) babana nk'umugore n'umugabo, basangira ubucuruzi muri "*quartier commercial*" nk'uko byemezwa n'abatangabuhamya, kugeza ubu imyenda ya Niwenshuti Aloys, inyandiko z'ubucuruzi, *chequier* n'igishushanyo mbonera (*plan*) cy'inzu iburanwa bikaba bikibitswe na Mutoni K. Jackline, uyu kandi akaba yarahaye Niwenshuti Aloys sheki ya 500.000 Frw, ibyo bimenyetso byose bigaragaza ko babanaga nk'umugore n'umugabo bikaba byarirengagijwe n'Urukiko rubanza, bituma rudaha Mutoni K. Jackline uruhare rwe ku nzu iburanwa.

[18] Me Karangwayire Epiphanie, nawe wunganira Mutoni K. Jackline, avuga ko Niwenshuti Aloys yihutiye gusezerana na Mukambuguje Alodie kuko yari abonye Mutoni K.Jackline atangiye kuburana uruhare rwe ku nzu bubakanye, Mutoni K. Jackline ahita atambamira ubwo bushingiranwe kugirango imanza zibanze zirangire, bivuze ko mbere yo gusezerana yabanaga n'abagore babiri, ariyo mpamvu Mutoni K. Jackline akwiye kubona uruhare rwe ku nzu iburanwa nk'uko biteganywa n'ingingo ya 39 y'Itegeko N°59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryose rishingiye ku gitsina.

[19] Niwenshuti Aloys avuga ko yashakanye na Mukambuguje Alodie muri 1993, muri 1994 aratahuka, umuvandimwe we witwa Rutamu Diogène amuha ikibanza yubatsemo inzu iburanwa ku nguzanyo ya 8.000.000Frw we na Mukambuguje Alodie bahawe na Banki y'Abaturage, amafaranga amubanye make Mukambuguje Alodie yanga kumusinyira kugirango afate andi yitwaje ko yabyaye hanze, biramurakaza asaba ko iyo nzu bayigabana. Asobanura ko yasezeranye na Mukambuje Alodie yanga ko bakomeza kumwita inshoreke, ariko ko hagati aho yari yaramenyanye na Mutoni K. Jackline guhera muri 2003, uyu azi ko afite undi mugore mu Gatsata. Avuga ko adahakana ko yitabiriye "collation des grades" ye muri Uganda nk'uko n'abandi bayitabiriye, ko muri ubwo bushuti babyaranye abana babiri kandi ko yamukodeshereje

inzu agirango areke gukomeza kuba kwa musaza we. Asoza avuga ko kujya mu birori bisoza amashuri, kumutuma gushyira amafaranga kuri konti, kumukodoshereza inzu cyangwa ibivugwa n'abayobozi b'imidugudu ataribyo byashingirwaho hemezwa ko yari umugabo wa Mutoni K. Jackline, cyane cyane ko kubyemeza bitari mu nshingano z'abayobozi b'inzego z'ibanze, ariyo mpamvu asaba uru Rukiko kwemeza ko ubujurire nta shingiro bufite.

[20] Me Ruberwa Ngarukiye Silas, umwunganira, avuga ko ikigomba gusuzumwa muri uru rubanza atari ukumenya niba Mutoni K. Jackline yarabanye na Niwenshuti Aloys nk'umugore n'umugabo, kuko badahakana ko babyaranye cyangwa se ko bacururizaga mu nzu imwe buri wese afite ibyo acuruza, ahubwo ko ikibazo ari ukumenya niba hari icyo Mutoni K. Jackline yashyize ku nzu iburanwa. Asobanura ko dosiye igaragaza ko ikibanza cyatanzwe na Rutamu Diogène mu 2006, mu batangabuhamya hasinya Mukambuguje Alodie, ku wa 05/08/2007 Mukambuguje Alodie na Niwenshuti Aloys basaba inguzanyo hamwe muri Banki y'Abaturage, mu 2008, bombi biyimukiramo, byose biba Mutoni K. Jackline ahari, ntiyagira icyo akora, muri 2011 bayibaruzaho, na none ntiyabitambamira, akaba asanga Urukiko Rukuru rwarasesenguye ingingo ya 39, igika cya 2, y'Itegeko y'Itegeko N°59/2008 ryo ku wa 10/09/2008 ryavuzwe haruguru uko bikwiye kuko kugeza ubu Mutoni K. Jackline atagaragaza icyo yashyize ku nzu iburanwa ku buryo yayigiraho uruhare.

[21] Mukambuguje Alodie avuga ko intandaro y'amakimbirane ari inguzanyo ya kabiri Niwenshuti Aloys yashatse gufata akamwangira kuko yari amaze kumenya ko yabyaye hanze, umugabo ararakara, ata urugo, amara amezi atandatu ataragaruka, atanga ikirego ari iyo yagiye asaba ko iyo nzu bayigabana, bamaze kugabana arigarura nawe aramwakira kuko ariwe wari nyir'amakosa. Avuga ko atumva uburyo Mutoni K. Jackline yamaze imyaka itandatu akodesha kandi yarubatse inzu, akaba asaba uru Rukiko guhamishaho imikirize y'urubanza rwajuririwe, rukemeza ko ubujurire nta shingiro bufite.

[22] Me Kamashoshi Gandin, umwunganira, avuga ko uburyo umwe mu babanye batarashingiranywe agira uruhare ku mutungo w'umugabo cyangwa umugore babanaga ari ukugaragaza icyo yakoze kugirango uwo mutungo uboneke, ko ibyo aribyo biteganywa n'ingingo ya 39 y'Itegeko n<u>o</u> 59/2008 ryo ku wa 10/09/2008 ryavuzwe haruguru, akaba asanga ibyo Mutoni K. Jackline n'abamwunganira baburanisha ko uyu yabaye umugore utemewe n'amategeko wa Niwenshuti Aloys cyangwa ko babyaranye ataribyo byatuma agira uruhare ku nzu atubatse.

UKO URUKIKO RUBIBONA

[23] Ingingo ya 39 y'Itegeko N^{o}59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina iteganya ko *« ababanaga nk'umugore n'umugabo batashyingiranywe mu buryo buteganywa n'amategeko, bashyingirwa hakurikijwe ihame ry'ubushyingiranwe bw'umugabo umwe n'umugore umwe. Mu gihe umwe mu barebwa n'ibivugwa m u gika kibanziriza iki, yabanaga n'abagore cyangwa abagabo benshi, abanza kugabana ku buryo bungana na buri wese mu bo babanaga, umutungo bari bafitanye cyangwa bahahanye mbere y'uko ashyingirwa ».*

[24] Ingingo ya 3 y'Itegeko N^{o}15/2004 ryo ku wa 12/06/2004 ryerekey ibimenyetso mu manza n'itangwa ryabyo iteganya ko *« Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana ».*

[25] Dosiye y'urubanza irimo icyemezo cy'Umuyobozi w'Umudugudu wa Nyakaliba, Kalisa Théoneste, wemeza ko Niwenshuti Aloys na Mutoni K.Jackline batuye muri uwo mudugudu nk'umugabo n'umugore kuva mu mwaka wa 2006 kugeza mu Ukuboza 2009; Nyamaswa Eugène, Umuyobozi w'Umudugudu wa Kabeza, avuga mu cyemezo cye cyo ku wa 17/09/2013, ko Niwenshuti Aloys n'umugore we Mutoni K. Jackline batuye mu nzu ya GABIRO Grégoire muri uwo mudugudu kuva ku wa 27/12/2010 kugeza ku wa 21/11/2012, hari kandi inyandiko y'abagize Komite y'Umudugudu w'Umurava bemeza ko Niwenshuti Aloys yashakanye na Mutoni K. Jackline kandi ko bafitanye abana babiri aribo Niwenshuti Patience na Niwenshuti Patrick, se akaba yarabataye, asanga undi mugore uri mu Mudugudu wa Mwijito muri Kicukiro. Dosiye irimo na none icyemezo cy'Ubuyobozi bwa Kigali Investment Company (KIC) cyemeza ko MUTONI K. Jackline yakoreye ubucuruzi mu iduka B2 35 ku masezerano y'ubukode yasinyweho na Niwenshuti Aloys, hakongera hakabamo amasezerano y'ubukode bw'inzu hagati ya Gabiro Grégoire na Niwenshuti Aloys yo ku wa 27/12/2010 ku mafaranga 100.000Frw buri kwezi (cotes 26-30 na 115).

[26] Dosiye y'urubanza igaragaza ko ku wa 27/12/2011, Mutoni K. Jackline yashyize kuri konti 403-1085982-11 ya Niwenshuti Aloys iri muri Banki y'Abaturage, ishami rya "quartier commercial" 1.600.000Frw, ku wa 30/12/2011 ashyiraho 2.300.000Frw, ku wa 18/04/2012 ashyiraho 140.000Frw, ku wa 15/06/2012 ashyiraho 150.000Frw, naho ku wa 19/06/2013, asinyira Niwenshuti Aloys sheki ya 500.000Frw (cotes 22-25 na 75).

[27] Dosiye y'urubanza irimo kandi amasezerano y'impano y'ikibanza yakorewe imbere ya Noteri hagati ya Rutamu Diogène na Niwenshuti Aloys yo ku wa 15/01/2006, kuri ayo masezerano hakaba harasinyeho Umukundwa Chantal na Mukambuguje Alodie nk'abatangabuhamya; harimo kandi amasezerano y'iguriza (contrat de prêt 357/2007) ya 8.000.000 Frw hagati y'Abanki y'Abaturage na Niwenshuti Aloys afatanyije na Mukambuguje Alodie, umwenda ukaba waragombaga kwishyurwa bitarenze ku wa 05/07/2011 (cote 103), hakongera hakabamo amasezerano y'ubukode burambye no 0753/KIC/NIB yo ku wa 01/09/2011 agaragaza ko ikibanza N° UPI 1/03/09/02/753 ari icya Niwenshuti Aloys na Mukambuguje Alodie.

[28] Dosiye y'urubanza irimo kandi inyandiko yo ku wa 30/07/2012, Niwenshuti Aloys yandikiye Umunyamabanga Nshingwabikorwa w'Akagali ka Niboye avuga ko kubera ubwumvikane buke yagiranye na Mukambuguje Alodie, kandi uyu akaba ariwe ubitse ibyangombwa by'inzu ye, ayishinganishije kugirango atazayigurisha cyangwa akayitangaho ingwate atabizi, hari kandi inyandiko yo ku wa 13/11/2012, Niwenshuti Aloys yandikiye Perezida wa Komite ishinzwe iby'ubutaka mu Murenge wa Niboye amusaba kumukemurira ikibazo afitanye na Mukambuguje Alodie wibarujeho inzu yubatse mu butaka yahawe n'umuvandimwe we, akaba avuga ko bayifatanyije kandi nta ruhare ayifiteho (cotes 19- 20).

[29] Dosiye y'urubanza irimo kandi inyandiko yitwa "Raporo y'ikemurwa ry''ikibazo hagati ya Niwenshuti n'umufasha we Alodie" yakozwe n'Umunyamabanga Nshingwabikorwa w'Akagari ka Niboye ku wa 20/08/2012, aho Mukambuguje Alodie yavuze ko impamvu yimye Niwenzhuti Aloys ibyangombwa by'inzu ari uko batakibana neza bitewe n'uko yashatse undi mugore; naho raporo yakozwe na Havugimana Cléophas, Umuyobozi ushinzwe ubukungu n'iterambere mu Mudugudu wa Nyamugari, ikemeza ko Niwenshuti Aloys yabanye n'umugore we Mutoni K. Jackline muri uwo mudugudu kuva muri 2006 kugeza muri 2010. Dosiye irimo kandi inyandiko-mvugo y'iburanisha mu Rukiko Rukuru yo ku wa 29/01/2015, Ndagijimana wabaye Umuyobozi w'Umudugudu w'Umurava mu Murenge wa Gisozi akaba yaravuze ko Mutoni K. Jackline "yabanaga n'umugabo we, niwe nyiri urugo, … hagati ya 2011 na 2013…,

uyu mugabo yaje kundegera ikibazo yagiranye n'uwari ubacumbikiye kandi urubanza rwabo narugiyemo, … [ajya no kuhava] narabimenye… mbibwira ushinzwe umutekano ko Mutoni yaje kundeba ….kumbwira ko umugabo yamutaye, inzara ikaba igiye kumwica n'abana kandi yazaga ku muganda agatanga amafaranga y'umutekano kandi mu manza z'abandi baturanyi hari igihe yadufashaga" (cotes 71, 102 na 129).

[30] Urukiko rurasanga ku bijyanye n'ikimenyetso cy'imibanire y'abagabo n'abagore batashakanye mu buryo bwemewe n'amategeko, Francois Terré na Philippe Simler bavuga ko iyo mibanire bwite hagati y'abantu idisaba ibimenyetso byihariye, ahubwo ko uburyo bwose bushoboka kugirango bugaragaze ko umugore n'umugabo babanye bwashingirwaho mu gufata icyemezo,[2] igitabo cya Mémento Pratique Francis Lefebvre, *Droit de la Famille* nacyo kivuga ko mu kugaragaza ko abantu babiri babanye nk'umugabo n'umugore, hashobora gushingirwa ku kimenyetso icyo aricyo cyose harimo icyemezo cy'ubuyobozi bw'aho batuye cyangwa inyemezabuguzi y'amasezerano y'ubukode agaragaza ko babaga mu nzu imwe.[3].

[31] Urukiko rurasanga Niwenshuti Aloys yemera ko yamenyanye na Mutoni K. Jackline guhera muri 2003, icyo gihe Mutoni K. Jackline akaba yari umunyeshuri i Kabare muri Uganda, umunsi yarangije amashuri ye, amuherekeza kwizihiza ibirori byo kurangiza amashuri (collation des grades), hanyuma batangira gucururiza hamwe, inzu bakoreragamo yishyurwa na Niwenshuti Aloys, icyo gihe Mutoni K. Jackline aba kwa musaza we, ariko bigera aho amukodeshereza inzu, banabyarana abana babiri, amasezerano y'ubukode bw'inzu ya Gabiro Grégoire mu Mudugudu wa Kabeza akaba agaragaza ko Niwenshuti Aloys ari we wishyuraga ubukode, Umukuru w'uwo Mudugudu witwa Nyamaswa Eugène, ndetse na Kalisa Théoneste, Umukuru w'Umudugudu wa Nyakaliba aho babanje gutura, bakaba bemeza ko Niwenshuti Aloys na Mutoni K. Jackline bari babanye nk'umugabo n'umugore, bityo hakaba nta gushidikanya ko guhera muri 2005 babanye mu buryo buhoraho (stable) kandi bukomeza (continue) kugeza igihe batandukaniye.

[32] Urukiko rurasanga ikindi kigaragaza ko Niwenshuti Aloys na Mutoni K. Jackline babanye nk'umugore n'umugabo ari uko Mukambuguje Alodie ubwe yivugira ko Niwenshuti Aloys yigeze kumuta, amusiga wenyine n'abana kuko yari amwangiye kumusinyira kugirango afate inguzanyo ya kabiri ubwo yari amaze kumenya ko abana n'undi mugore babyaranye, Niwenshuti Aloys nawe akaba adahakana ko yabaye Mutoni K. Jackline hafi, nubwo avuga ko byari mu nyungu z'abana be, ntiyari gukomeza kumukodeshereza iduka acururizamo, inzu atuyemo, ngo yitabire umuganda w'aho Mutoni K. Jackline yari atuye, yishyure amafaranga y'umutekano, ajye mu bakemura ibibazo by'abaturanyi, abitse Mutoni K. Jackline ibyangombwa bye birimo sheki, igishushanyo cy'inzu yubakaga, uyu ajye ashyira amafaranga kuri konti ye batabana, ahubwo ikigaragarira Urukiko ni uko yahishe Mutoni K. Jackline ko afite undi mugore, abatunga bombi kugeza ubwo Urukiko rumugabanyije inzu iburanwa na Mukambuguje Alodie.

[33] Ku bijyanye no kumenya niba Mutoni K. Jackline hari uburenganzira afite ku nzu yubatswe abana na Niwenshuti Aloys, Urukiko rurasanga ibyo Me Ruberwa Ngarukiye Silas na Me Kamashosi Gandin baburanisha ko umurongo watanzwe n'uru Rukiko mu rubanza ku kirego cyo kuvanaho ingingo y'itegeko inyuranye n'Itegeko-Nshinga cyatanzwe na Gatera Johnson na

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[2]Le concubinage est une situation de fait, dont la prevue est par conséquent libre…" Francois Terré et Philippe Simler, *Droit Civil: Les régimes matrimoniaux*, Paris: Dalloz, 2015, p.734.

[3] " S'agissant d'une situation de fait, la preuve du concubinage peut etre apportée par tous moyens: certificate de concubinage obtenu auprès de la mairie du domicile des concubins, … quittances des loyers ou factures établies aux deux noms, relevés des comptes bancaires indiquant la meme addresse, etc."Memento Pratique, Droit de la Famille 2014-2015, Lavallos: Francis Lefebvre, 2014, p. 307.

Kabarisa Teddy[4] ari uko ababanaga batarashingiranywe, buri wese agomba kugaragaza uruhare rwe kugirango umutungo aaburana ubeho cyangwa wongererwe agaciro nta shingiro byahabwa, kuko muri urwo rubanza Urukiko rwavuze ko "*mu gihe ababanaga nk'umugabo n'umugore batarashyingiranywe bahagaritse kubana, kugirango bagabane umutungo n'uko bagomba kuba bawufitanye cyangwa barawushakanye*", [5] amagambo "bawufitanye" cyangwa "barawushakanye" akaba atavuga ko buri wese agomba kugaragaza ingano (quantité) y'ibyo yakoze kugirango umutungo ubeho cyangwa ngo yerekane ibyo yawushyizeho kugirango wiyongere agaciro, ahubwo uwo mutungo ugomba kuba warabonetse muri cya gihe kidashidikanywaho bombi babanaga kuko icya ngombwa ari uko muri iyo mibanire buri wese aba afite ibyakora mu guteza imbere urugo.

[34] Urukiko rurasanga, nk'uko bigaragara mu bika bya 9 kugeza kuri 13, Urukiko rw'Ikirenga rwashingiye uwo murongo ku rubanza rwa *Hayward v. Giordani* rwo muri New Zealand, urwa *Baumgartner v. Baumgartner*, urwa *Beaudouin Daigeault v. Ricahrd Paul Eugene* n'urwa *Pettkus v. Becker* zo muri Canada ndetse no kuri *Homesteads Acts* yo muri Manitoba (Canada), *Property (Relationships) Act 1976* yo muri New Zealand n'amategeko y'Intara za Australia, aya mategeko n'izi manza muri ibyo bihugu bikaba byemeza ko buri wese mu babanaga nk'umugore n'umugabo batarashingiranywe afite uburenganzira bungana n'ubwa mugenzi we ku mutungo bafitanye cyangwa bashakanye, by'umwihariko mu rubanza rwa *Pettkus v. Becker*, Rosa Becker akaba yarahawe n'Urukiko ½ cy'ubutaka n'imizinga y'inzuki kuko nawe hari ibyo yakoze mu guteza imbere urugo nko gushaka ibirutunga, gukora aho bororeraga inzuki ndetse no kwishyura ubokode bw'inzu yabanagamo na Lothar Pettkus, bityo mu gihe NIWEN#Shuti Aloys adahakana ko mu mibanire ye na Mutoni K. Jackline, uyu yagiye amuha amafaranga kugirango bateze imbere urugo rwabo harimo no kubaka inzu iburanwa ndetse bakaba bari banahuriye ku bucuruzi bakoraga, nabyo bigaragaza ko koko babanaga nk'umugore n'umugabo, bikaba bikwiye ko bagabana umutungo bahahanye.

[35] Urukiko rurasanga kandi ingano y'ibyakozwe n'umugore cyangwa umugabo kugirango umutungo uburanwa uboneke cyangwa utubuke ubwayo atariyo ihesha umugore cyangwa umugabo uburenganzira bwo kugabana umutungo uburanwa n'uwo avuga ko babanaga, ahubwo igomba kuza yiyongera ku bimenyetso by'uko uwo mutungo wabonetse cyangwa wongerewe agaciro bombi babana nk'umugore n'umugabo kabone niyo umwe muri bo atabasha kugaragaza mu buryo burondoye (détaille/details) ibyo yakoze kugirango uboneke cyangwa utubuke. Uyu murongo kandi ukaba uhura n'uwemejwe n'uru Rukiko mu rubanza nyirakamana marciana na bagenzi be baburanaga na Mukasharangabo Eugènie na bagenzi be, aho rwemeje ko, nubwo Nyirakamana Marciana atari umugore w'isezerano, kuba yarabanye na Karimunda Gérard nk'umugore n'umugabo kuva ku wa 27/11/1970 kugeza apfuye mu mwaka wa 1994 bimuhesha uburenganzira bwo kwegukana cy'umutungo bari bafitanye cyangwa bahahanye, [6] naho mu rubanza Ahishakiye Jean yaburanaga na Namagabira Venantie, uru Rukiko rusobanura ko kuba hari ibyo umugore yakoraga mu guteza imbere urugo, ni ukuvuga uruhare urwo arirwo rwose yaba yaragize, bihagije kugirango agabane n'umugabo umutugo bafitanye cyangwa bashakanye,[7]

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[4] Reba urubanza no RS/Inconst/Pén.0003/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 07/01/2011, Gatera Johnson na Kabarisa Teddy baregeye basaba kuvanaho ingingo ya 39 y' Itegeko Nº59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, kuko inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 nk'uko ryavuguruwe kugeza ubu.

[5] Reba igika cya 15 cy'urubanza.

[6] Reba urubanza RS/REV/INJUST CIV0007/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2015, igika cya 30.

[7] Reba urubanza RCAA0048/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 11/03/2016, ibika bya 26 na 27. Reba kandi urubanza RCAA0036/15/CS hagati ya Twahirwa Ahmed na Kaligirwa Rehema rwaciwe n'Urukiko rw'Ikirenga ku wa 17/11/2017, igika cya 21.

nabyo bishimangira ko Mutoni K. Jackline afite uburenganzira ku mutungo yahahanye na Niwenshuti Aloys.

[36] Urukiko rurasanga kandi ubwo Niwenshuti Aloys yabanaga na Mutoni K. Jackline, yarakoranye na Rutamu Diogène amasezerano y'impano y'ikibanza ku wa 15/01/2006, Mukambuguje Alodie ayashyiraho umukono nk'umutangabuhamya, muri 2007, uyu afatanyije na Niwenshuti Aloys basaba umwenda wa 8.000.000 Frw yo kubaka iyo nzu, bombi bakaba bemeza ko bayimukiyemo muri 2008, ndetse bikaba binashimangirwa na Harerimana Gaspard, Umuyobozi w'Umudugudu wa Mwijuto uvuga ko "*Niwenshuti Aloys na Mukambuguje Alodie, inzu batuyemo hano [ni] iyabo, ... kuva yaturwamo uyu mugabo n'umugore n'abana babo batanu nibo tuzi baba muri iyo nzu*." (Cote 2), bisobanuye ko hagati ya 2006 na 2012, Niwenshuti Aloys yari atunze abo bagore bombi, bityo bose bakaba bakwiye kugabana iyo nzu nk'uko biteganywa n'ingingo ya 39, igika cya 2, y'Itegeko № 59/2008 ryo ku wa 10/09/2008 ryavuzwe haruguru.

[37] Hashingiwe kubyasobanuwe haruguru, Urukiko rurasanga Mutoni K. Jackline afite uburenganzira kuri kimwe cya gatatu (1/3) cy'inzu iri mu kibanza № UPI 1/03/09/02/753 kiri mu Mudugudu wa Niboye, Akarere ka Kicukiro, Umujyi wa Kigali, ni ukuvuga 52.924.870 Frw/3 y'agaciro k'inzu yemejwe n'umuhanga washyizweho na Mukambuguje Alodie muri raporo yatanze ku wa 02/07/2012 (cotes 33-37), ariyo angana na 17.641.623 Frw, agomba gutangwa na Niwenshuti Aloys afatanyije na Mukambuje Alodie.

II.2. Kumenya niba indishyi zisabwa muri uru rubanza zifite ishingiro

[38] Mutoni K. Jackline asaba uru Rukiko kwemeza ko Niwenshuti Aloys yamutesheje agaciro, ntiyita ku burere bw'abana bafitanye, anamubeshya ko nta wundi mugore afite, akaba abisabira indishyi za 4.000.000 Frw hakiyongeraho igihembo cya Avoka ku nzego zose kingana na 2.500.000 Frw.

[39] Niwenshuti Aloys na Mukambuguje Alodie n'ababunganira bavuga ko izo ndishyi nta shingiro zifite kuko nta ruhare Mutoni K. Jackline yigeze agira ku nzu iburanwa. Basobanura ko Mutoni K. Jackline yashinganishije inzu ku buryo ibapfira ubusa, Niwenshuti Aloys akaba abisabira indishyi z'akababaro zingana na 3.000.000Frw, na 500.000Frw y'ikurikiranarubanza, naho Mukambuguje Alodie avuga ko yadindirijwe imirimo, akaba abisabira indishyi za 3.000.000Frw, bombi bakaba basaba kandi igihembo cya Avoka kingana na 2.000.000Frw.

[40] Mutoni K. Jackline n'abamwunganira bavuga ko nta ndishyi akwiye kuryozwa kuko Niwenshuti Aloys na Mukambuguje Alodie aribo bishoye mu manza, bakaba batakwitwaza ko iyo nzu yabahombeye kandi bituye muri Uganda, bakazanwa mu Rwanda no kuburana. Basobanura ko, uretse n'ibyo, indishyi yacibwa atabona aho azikura kuko amafaranga make akorera ariyo atunze abana bitewe n'uko Niwenshuti Aloys yanze gutanga indezo y'abana.

UKO URUKIKO RUBIBONA

[41] Urukiko rurasanga kuba Niwenshuti Aloys yariyemeje gutandukana na Mutoni K. Jackline kabone nubwo baba barabanye amubeshya ko nta wundi mugore afite, ubwabyo ntibyatangirwa indishyi kuko Mutoni K. Jackline kuva yari azi ko atasezeranye na Niwenshuti

Aloys yari yiyemeje ko umubano wabo ushobora kurangira igihe icyo aricyo cyose, mu gihe ibyo yateganyaga bibaye akaba atahindukira ngo abifate nk'ikosa rikwiye kuryorezwa indishyi.[8]

[42] Urukiko rurasanga kandi Mutoni K. Jackline atagaragaza uburyo Niwenshuti Aloys yamutesheje agaciro, ndetse n'ibyo avuga ko atita ku burere bw'abana bikaba bitasuzumirwa muri uru rubanza kuko ataribyo byaregewe.

[43] Urukiko rurasanga cyakora Niwenshuti Aloys yarirengagije ko yatunze abagore babiri mu buryo bunyuranije n'amategeko kandi ko, nk'uko biteganywa n'ingingo ya 39 y'Itegeko n<u>o</u> 59/2008 ryo ku wa 10/09/2008 ryavuzwe haruguru, bombi bareshya imbere y'amategeko, bityo indishyi n'igihembo cya Avoka we na Mukambuguje Alodie basaba bikaba nta shingiro, naho amafaranga y'ikurikiranarubanza Niwenshuti Aloys asaba nayo akaba atayakwiriye kuko ari we watangije imanza kandi akaba atsinzwe.

[44] Urukiko rurasanga Mutoni K. Jackline yarashowe mu manza na Niwenshuti Aloys na Mukambuguje Alodie, kuzizamo kugirango arengere uburenganzira bwe bikaba byari bifite ishingiro, bityo igihembo cya Avoka asaba akaba agikwiriye, cyakora kuba atagaragaza ko 2.500.000 Frw asaba ariyo yatanze ku nzego zose yaburaniyemo, akaba aganewe, mu bushishozi bw'Urukiko, 1.500.000 Frw ku nzego zose, agomba gutangwa na Niwenshuti aloys na Mukambuguje Alodie.

III. ICYEMEZO CY'URUKIKO

[45] Rwemeje ko ubujurire bwa Mutoni K. Jackline bufite ishingiro ;

[46] Rwemeje ko urubanza RCA0176/14/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 23/02/2015 ruhindutse mu ngingo zarwo zose ;

[47] Rwemeje ko inzu iri mu Kibanza N^{o} UPI 1/03/09/02/753 mu Mudugudu wa Mwijuto, Akagari ka Niboye, Umurenge wa Niboye, Akarere ka Kicuro, Umujyi wa Kigali ari iya Niwenshuti Aloys, Mukambuguje Alodie na Mutoni K. Jackline, buri wese akaba ayifiteho uburenganzira bungana na 1/3 ;

[48] Rutegetse Niwenshuti Aloys na Mukambuguje Alodie guha Mutoni K. Jackline 17.641.623 Frw ahwanye na 1/3 y'agaciro k'inzu iri mu kibanza N^{O}UPI 1/03/09/02/753 mu Mudugudu wa Mwijuto, Akagari ka Niboye, Umurenge wa Niboye, Akarere ka Kicuro, Umujyi wa Kigali ;

[49] Rutegetse Niwenshuti Aloys na Mukambuguje Alodie gufatanya kwishyura Mutoni K. Jackline 1.500.000Frw y'igihembo cya Avoka ;

[50] Rutegetse Niwenshuti Aloys na Mukambuguje Alodie gufatanya kwishyura amagarama y'urubanza.

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[8] "Le concubinage est essentiellement précaire ; en ne se mariant pas, les concubins ont précisement voulu se réserver la liberté de romper à leur gré cette liasison, chacun d'eux en s'y pretant, a accepté ce risqué, et … celui qui le subit ne peut demander à l'autre d'en réparer les consequences." Reba Francois Terré et Philippe Simler, Droit Civil : Les régimes matrimoniaux, Paris, Dalloz, p.741.