

CANDARI v. MUKAMANA N’ABANDI

[Rwanda URUKIKO RW’IKIRENGA – RCAA0024/14/CS
(Mukanyundo P.J., Kayitesi R. na Gatete J.) 10 Mata 2015]

Amategeko agenga umuryango – Umuryango – Izungura – Abana batabyawe na nyakwigendera ntabwo bamuzungura kuko ntaho baba bahuriye kereka bigaragara ko yabagize abe ku bw’amategeko. (adoption).

Amategeko agenga umuryango – Umuryango – Imicungire y’umutungo w’abashingiranywe – Iyo abantu basezeranye ivangamutungo rusange, umwe muri bo ntashyire "réserve" (umwihariko) muri ayo masezerano, ku bijyanye n’umutungo yita uw’abana yashakanye, imitungo yose ifatwa ko ari iyabashyingiranywe

Amategeko agenga imanza mbonzambano – Agaciro k’inyandiko – Inenge – Inyandiko nubwo yakorerwa imbere ya noteri ariko igakorwa hirengagijwe ibyo amategeko ateganya, ntabwo iyo nyandiko yahabwa agaciro.

Incamake y’ikibazo: Havugimana yabyaranye na Mwamini abana babiri aribo Mukamana Mamique na Havugimana Celestin. Mwamini yaje gupfa maze Havugimana ashakana na Candali, babyarana Iradukunda Jean Luc. Havugimana nawe yaje gupfa maze abana basizwe na Mwamini barega Candari mu Rukiko Rwisumbuye rwa Gasabo basaba guhabwa uburenganzira ku mutungo wasizwe n’ababyeyi babo. Urwo rukiko rwemeje ko umutungo wasizwe na Havugimana uzungurwa n’abana be bose, ½ cy’umutungo usigaye kigahabwa

Candari Verena nk'umugore bari barashakanye nyuma mu buryo bwemewe n'amategeko.

Candari yajuririye urwo rubanza mu Rukiko Rukuru, uwitwa Umuhuza nawe wemejwe n'Urukiko ko nawe ari umwana wa Havugimana arugobokamo asaba ko nawe yagira uburenganzira bwo kuzungura umubyeyi we. Urukiko Rukuru rushingiye kw'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryerekeye imicungire y'umutungo w'abashingiranywe, impano n'izungura ryakoreshwaga icyo gihe rwemeje ko imitungo ya Havugimana igomba kugabanwamo kabiri, ½ cya kabiri cyayo kigahabwa Candari nk'umugore we w'isezerano naho ½ kigahabwa abana ba Havugimana bose.

Candari yajuriye mu Rukiko rw'Ikirenga avuga ko imwe mu mitungo isabirwa kuzungurwa atayishakanye na Hvugimana kuko bashakanye ayifite indi ayibona nyuma yuko Havugimana yitabye Imana. Avuga kandi ko imwe muri iyo mitungo yamaze kuyigurisha. Bityo ko itajya mu mutungo rusange uzungurwa wa Havugimana.

Akomeza avuga ko nyuma yaje kugirana ubwumvikane n'abana ba Havugimana maze mu nyandiko yakorewe imbere ya Notaire yemera guhabwa 40% by'umutungo wa nyakwigendera, naho abana bemera gutwara 60%, bumvikana ko abana (Candari) yari afite mbere y'uko ashakana na Havugimana nabo bagomba kugira icyo babona, bityo asaba Urukiko guha agaciro ayo masezerano yo kwikiranura. Asobanura ko impamvu umwe mu bana ba nyakwigendera atagaragaye mu bagize inama y'umuryango nu kubera ko yari ataramenya ko ari umwana wa nyakwigendera.

Abaregwa muri uru Rukiko, biregura bavuga ko nta kigaragaza ko hari imitungo Candari yazanye kwa Havugimana kandi niba

hari nuwo yazanye nta cyabuza ko izungurwa n'abazungura bose ba nyakwigendera kuko bari barasezeranye ivangamutungo rusange. Bavuga kandi ko imitungo avuga ko yayigurishije yabikoze imanza zaratangiye akaba yarabikoze mu rwego rwo kuyinyereza, kuba rero yaratinutse kugurisha imitungo ikiburanwa, rikaba ari ikosa agomba guhanirwa, bakaba basaba Urukiko gutegeka ko iri gurisha nta gaciro rikwiye guhabwa ahubwo inzu ikagarurwa mu mutungo uzungurwa kuko yayigurishije agamije kunyereza imitungo izungurwa. Naho ku nyandiko yakorewe imbere ya Notaire, bavuga ko nta gaciro yagombye guhabwa kubera ko yakozwe urubanza rukiri mu rukiko, ndetse ikaba yarakozwe yirengagije umwe mu bana ba nyakwigendera kandi ko hongewemo abandi bana batazwi batigeze banavugwa mu manza zose zabaye.

Incamake y'icyemezo:1. Abana batabyawe na nyakwigendera ntabwo bamuzungura kuko ntaho baba bahuriye kereka bigaragara ko yabagize abe ku bw'amategeko. (adoption)

2. Iyo abantu basezeranye ivangamutungo rusange, umwe muri bo ntashyire "réserve" (umwihariko) muri ayo masezerano, ku bijyanye n'umutungo yita uw'abana yashatse afite, imitungo yose ifatwa ko ari iyabashyiranywe.

3. Inyandiko nubwo yakorerwa imbere ya noteri ariko igakorwa hirengagijwe ibyo amategeko ateganya, ntabwo iyo nyandiko yahabwa agaciro.

**Ubujurire bufite ishingiro kuri bimwe.
Ubujurire bwuririye ku bundi bufite ishingiro.**

Amategeko yishingiweho :

Itegeko n°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso n’itangwa ryabyo mu manza, ingingo ya 3.

Itegeko N° 22/99 ryo ku wa 12/11/1999 ryerekeye imicungire y’umutungo w’abashingiranywe, impano n’izungura, ingingo ya 3,49,50,51,66 niya 70.

Itegeko teka ryo ku wa 30/07/1888, rigenga amasezerano cyangwa imirimo nshinganwa, Igitabo cya III cy’Urwunge rw’amategeko mbonezamubano, ingingo ya 263, 590 (Ryakuweho n’itegeko n’Itegeko n° 020/2019 ryo kuwa 22/08/2019 rikuraho amategeko yose yashyizweho mbere y’itariki y’ubwigenge)

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Mukamana Mamique na musaza we Havugimana Emmanuel, barega Candari Verena, umugore Se, Havugimana Céléstin yashatse nyina wababyaye amaze gupfa nawe nyuma akaza gupfa, mu kirego cyabo bakaba barasabaga ko bahabwa uburenganzira ku mutungo wasizwe n’ababyeyi babo.

[2] Urukiko rwaregewe rwemeje ko umutungo wasizwe na Havugimana Céléstin uzungurwa n’abana be bose, $\frac{1}{2}$ cy’umutungo usigaye kigahabwa Candari Verena nk’umugore bari barashakanye mu buryo bwemewe n’amategeko.

[3] Candari yajuririye urwo rubanza mu Rukiko Rukuru, uwitwa Umuhoza Aïsha wemewe mu rubanza RC0095/12/TB/Kma ko ari mwene Havugimana Célestin arugobokamo asaba ko nawe yagira uburenganzira bwo kuzungura umubyeyi we.

[4] Urukiko rwajuririwe rwemeje kuwa 25/04/2014, ko imitungo igizwe n'igipangu cy'amazu Candari atuyemo, inzu iri ku Gisozi haruguru y'Agakinjoro, inzu iri mu Kiyovu cya Kagugu n'imodoka iri mu rugo rwa Candari Verena, ariyo mitungo igomba kugabanwamo kabiri, ½ cya kabiri cyayo kigahabwa Candari nk'umugore wa Havugimana Célestin w'isezerano naho ½ kigahabwa abana ba Havugimana Célestin bose aribo Mukamana Mamique, Havugimana Emmanuel, hakiyongeraho Umuhoza Aïsha na Shema Iradukunda Jean Luc, bakakigabana ku buryo bungana.

[5] Candari Verena yajuririye n'Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rwirengagije ko ajya gushakana na Havugimana Célestin hari imitungo yari asanganywe, ko rwemeje ko mu mitungo izungurwa hashyirwamo n'iyi yashatse nyuma y'uko uwo basezeranye apfuye, nyamara iyi mitungo itariho mu gihe izungura ryafungurwaga Habimana amaze gupfa no kuba Urukiko rwarirengagije ibiteganywa n'amategeko agenga umutungo w'abashakanye.

[6] Iburanisha ry'urubanza ryashyizwe ku wa 04/11/2014, ariko rugenda rwimurwa hategerejwe umwanzuro ku rubanza Umuhoza Aïsha yaburanaga na Candari Verena, bigeze ku itariki ya 03/03/2015, ruburanishirizwa mu ruhame Candari Verena yitabye, yunganiwe na Me Mbonzimpaye Elias, Havugimana Emmanuel na Mukamana Mamique nabo bahari

bunganiwe na Me Nzabonimana John Peter, naho Umuhuza Aïsha yunganiwe na Me Umutesi Jeanne d’Arc.

II. IBIBAZO BIGIZE URUBANZA N’ISESENGURA RYABYO

Kumenya niba imitungo Candari Verena avuga yabonye nyuma y’urupfu rwa Havugimana Célestin ikwiye kuvamwa mu mitungo igomba kuzungurwa.

[7] Me Mbonyimpaye Elias na Candari Verena yunganira bavuga ko uru rubanza rushingiye ku izungura ry’imitungo y’uwitwa Havugimana Célestin wari warashakanye na Candari Verena mu buryo bwemewe n’amategeko, ko umutungo yashakanye na Havugimana Célestin uhari, ari inzu imwe yubatse ku Gisozi haruguru y’urwibutso, ko indi mitungo igizwe n’inzu iherereye mu Kiyovu cya Kagugu n’indi iherereye ku Gisozi hejuru y’Agakinjiro ndetse n’imodoka abana ba Havugimana bavuga ko yayishakanye na Se atari byo kuko yayiguze umugabo we amaze gupfa, ko rero idakwiye gushyirwa mu mitungo izungurwa kubera ko mu gihe Havugimana yari maze gupfa, amasezerano y’ubushingiranywe na Candari Verena yahise arangira nk’uko biteganywa n’ingingo ya 236 y’Igitabo cya Mbere cy’urwunge rw’amategeko mbonezamubano, bivuga ko n’uburyo bw’imicungire y’umutungo bw’ivangamutungo risesuye bari barahisemo nabwo bwahise burangira nk’uko biteganywa n’ingingo ya 24 y’Itegeko rigenga imicungire y’umutungo w’abashakanye, impano n’izungura.

[8] Akomeza avuga ko mu myanzuro yabo bagiye bagaragaza uburyo Candari yabonye imitungo ye, batanga

n'ibimenyetso byerekana ko ubu yayigurishije ikaba itakiri mu maboko ye : ko imodoka bavuga yayihugujwe na Dusabemengu Aloys (nawe wigeze kuba umugabo we) mu rubanza N° RC0277/12/HC/KIG ikaba itagihari. Avuga ko nyuma Candari yaje kugirana ubwumvikane n'abana ba Havugimana maze mu nyandiko yakorewe imbere ya Notaire kuwa 02/09/2014 Candari yemera guhabwa 40% by'umutungo wa nyakwigendera, naho abana bemera gutwara 60%, ko kandi bumvikanye ko abana Candari yari afite mbere y'uko ashakana na Havugimana nabo bagomba kugira icyo babona, ko rero asaba Urukiko guha agaciro ayo masezerano yo kwikiranura rushingiye ku ngingo ya 155 y'Igitabo cya Mbere cy'urwunge rw'amategeko mbonezamubano Candari asobanura ko impamvu Umuhuza Aïsha atagaragaye mu bagize inama y'umuryango kubera ko Candari yari ataramenya ko ari umwana wa Havugimana Céléstin.

[9] Mu myanzuro ye y'ubujurire, Candari Verena avuga ko inzu y'i Kagugu ntaho ihuriye n'imitungo yashakanye na Havugimana Célestin kubera ko iyo nzu umuzungu witwa Jeff wari inshuti ye wabanje kuyimutiza, amugiriye impuhwe kubera umwana w'uruhinja yari afite, agezaho arayimwegurira amubwira ngo nayijyanire azayireremo uwo mwana yabyaye ku ruhande utari uwa Havugimana.

[10] Asobanura ko mu mitungo abana ba Havugimana bashaka kuzungura, harimo n'iyo Candari Verena yashatse Havugimana yarapfuye, ko hari inzu yubatswe mu kibanza yaguriye abana yabyaranye na Bukuru Ananie atarabana na Havugimana nubwo nyuma baje kucyongera ku cyo Havugimana yari asanganywe, akaba yarabyemeye kubera ko yizeraga ko nta vangura rizaba hagati y'abana be n'abo

yasanganye umugabo we, ko rero uwo mutungo ari uwe kandi ko umwanditseho.

[11] Me Ndacyayisenga mu myanzuro yakoreye Candari Verena, avuga ko Umucamanza wo mu Rukiko Rukuru yirengagije imitungo Candari Verena yazanye ajya gushakana na Havugimana, kandi ko ntacyo yavuze ku bana yatahanyeyo aribo Dufatanye Trésor na Uwimana David ahubwo imitungo yabo yemeza ko ifasha abana ba Havugimana kandi abe ntacyo basigaranye haba kwa Havugimana cyangwa kwa Se Bukuru Ananie, ko rero umucamanza yirengagije ibiteganywa n'Itegeko rigenga umutungo w'abashakanye impano n'izungura, izungura rikaba ryarabaye ari uko Havugimana Célestin amaze kwitaba imana bivuze ko imitungo Candari yashatse nyuma y'urupfu rwe itagomba kugabanywa hagati y'abazungura be.

[12] Asobanura ko impamvu Candari atihutiye guha abazungura ba Havugimana Célestin imitungo yabo byatewe ni uko bari bakiri bato ko kandi icyo gihe yayishakagamo inyungu agura, yongera arayigurisha, avuga ko yafashe ahantu yakuye kwa Bukuru ahafatanya n'ahabo, arangije ahubaka amazu menshi mu mwaka wa 2000, akoresheje amafaranga yishakiye, ko rero abana batavuga ko ntacyo yabamariye kandi yarabishyuriye amashuri uretse ko nyuma baje kumwivumburaho bapfuye amafaranga ya "expropriation" y'inzu yo ku Kimicanga.

[13] Me Nzabonimana John Peter, uburanira Mukamana Mamique na Havugimana Emmanuel yunganira, bavuga ko impamvu z'ubujurire za Candari nta shingiro zifite, kuko nta kigaragaza ko hari imitungo Candari yazanye kwa Havugimana Célestin ayivanye kwa Bukuru Ananie, ko kandi biramutse byarabayeho nabwo nta cyabuza ko izungurwa n'abazungura

bose ba nyakwigendera kuko bari barasezeranye ivangamutungo rusange, cyane ko amategeko ateganya ko uwapfakaye asigarana inshingano zo gucunga umutungo wose ndetse no kurera abana yasigiwe na nyakwigendera ariko ko Candari Verena we atubahirije izo nshingano zo kurera abana kuko Se akimara gupfa, bahise bakwira imishwaro bakaba batarigeze baniga Kaminuza kandi Se yari afite amafaranga. Abana ba Havugimana nabo bemera ko izungura ryafumguwe Se akimara gupfa koko, ko ariko nk'abazungura, basabye Candari Verena kugabana imitungo Havugimana yasize akabyanga, bituma bitabaza Inkiko. Kuba rero atarabikoze kandi ariwe ucunga ibintu, ibyo ntibimuha uburenganzira bwo kwikubira umutungo wa Nyakwigendera kugira ngo awugumane, keretse agaragaje ko nyuma y'urupfu rwa Havugimana izungura ryabayeho.

[14] Bavuga ko Candari Verena atakwitwaza ko inzu y'i Kagugu itajya mu mutungo uzungurwa kubera ko ngo yayigurishije nyamara yarabikoze tariki 28/02/2014, iyo nzu ikiburanwa ndetse n'Urukiko rwarayishyize mu mitungo igomba kuzungurwa, ibi akaba ariko bimeze no ku nzu iri ku Gisozi hejuru y'Agakinjoro, kuba rero yaratinyutse kugurisha imitungo ikiburanwa, rikaba ari ikosa agomba guhanirwa, bakaba basaba Urukiko gutegeka ko iri gurisha nta gaciro rikwiye guhabwa ahubwo inzu ikagarurwa mu mutungo wa Havugimana uzungurwa kuko Candari Verena yayigurishije agamije kunyereza imitungo izungurwa.

[15] Me Nzabonimana akomeza avuga ko ibyo Candari Verena avuga ko amazu yita aye yayubakishije amafaranga yishakiye bitashoboka bitewe nuko nta wundi mwuga akora ku buryo yakwaka umwenda muri Banki kugira ngo abashe kugura inzu ko ahubwo iyi mitungo yayishakanye na Havugimana

Céléstin akajya kwaka ibyangombwa nyuma y'uko apfuye. Naho ku bijyanye n'inzu y'i Kagugu yagurishijwe kandi ikiburanwa, asanga nta kitagaragaza ko yakorewe "Mutation", ko Urukiko rwanareba ibaruwa yo ku wa 20/08/2012 Candari yandikiye ubuyobozi bw'Umurenge wa Gisozi abumenyesha imitungo yasizwe na Havugimana Céléstin

[16] Ku kibazo cy'amasezerano yabereye kwa Notaire, Me Nzabonimana avuga ko nta gaciro ayaha kuko Candari Verena yihereranye abana abumvisha ko ikibanza cyabo Leta igiye kukibatwara, nuko bemera gusinya, ko ariko iyo urebye uburyo byakozwemo ataribwo, kuko inama y'umuryango itari yuzuye kuko Aïsha atari ayirimo kandi yari asanzwe agoboka mu rubanza. Avuga ko indi nenge abona muri iyo nyandiko, ari uko ivugamo abana Candari yabyaranye na Bukuru Ananie kandi batabarwa mu bazungura ba Havugimana Célestin. Avuga nanone ko iyi nyandiko yakozwe abana bazi ko bibaye ku mpamvu za "expropriation" kuko Candari yababwiraga ko ngo nibadasinya Leta izahatwarira ubusa. Basabye Urukiko kuzaha agaciro inyandiko Candari Verena yandikiye Ubuyobozi bw'Umurenge wa Gisozi kuwa 20/08/2012 awumenyesha imutungo ya Havugimana.

[17] Ku bijyanye n'imodoka Candari Verena avuga ko yatsindiwe mu rubanza yaburanye na Dusabemungu Aloys, avuga ko ari ikinamico ryakinywe kubera ko uyu Aloys wayitsindiye ari umugabo we banabyaranye umwana, ko ariko abana bemera ko yakurwa mu mutungo uzungurwa hagasigara amazu gusa.

[18] Me Umutesi Jeanne d'Arc na Umuhaza Aïsha yunganira bavuga ko kuba Havugimana Céléstin yarapfuye ariko ntihabe izungura (liquidation) kuko Candari atigeze yemerera abana

b'umugabo we guhita bamuzungura akimara gupfa, ahubwo agakomeza gukoresha uwo mutungo, ibintu byose bigomba kugabanywa.

[19] Bavuga ko ibyo Candari Verena aburanisha ko hari imitungo yavanye ku mugabo we akayivanga n'iya Havugimana nabyo nta shingiro bifite kuko yagombaga kuyitandukanya, kuba atarabikoze ibyo ntibyahabwa agaciro n'Urukiko rw'Ikirenga.

[20] Naho kuba nta zungura ryabaye, Me Umutesi avuga ko kuba Candari Verena atarigeze agaragariza abana ba Havugimana imitungo ye bagomba kuzungura ahubwo agakomeza kuyikoresha ayikuramo iyindi, yose igomba kugabanywa, ko ibyo yireguza y'uko hari imitungo yishakiye Havugimana amaze gupfa bikaba nta gaciro byahabwa kuva yarasezeranye ivangamutungo risesuye kandi nta zungura ryigeze rikorwa ko kuba Havugimana yarapfuye abana be bakiri bato, Candari Verena niwe wagombaga kubamenyera imitungo maze bakura akabagenera 50% by'umutungo wabo nawe agasigarana 50%.

[21] Me Umutesi akomeza avuga ko mu Rukiko Rukuru, umucamanza yasobanuye icyo ivangamutungo aricyo, avuga ko abashakanye bahisemo ubwo buryo baba basangiye imitungo, yaba iyo bashatse batarabana n'iyi baronse babana. Avuga ko mu gihe cyo gusezerana na Havugimana, Candari Verena atigeze avuga ko afite abandi bana cyangwa ngo avuge ko hari imitungo y'abo bana ashyize iruhande, ko abo bana abavugiye hano mu Rukiko.

[22] Ku nyandiko yakorewe imbere ya Notaire, Candari Verena aburanisha, Me Umutesi avuga ko nta gaciro yagombye

guhabwe kubera ko yakozwe urubanza rukiri mu rukiko, ndetse ikaba yarakozwe yirengagije Aïsha kandi nawe ari umwana wa Havugimana Célestin, ko kandi n'ubwo Urukiko rwakongeramo Aïsha, nabwo nta gaciro yagira kuko hongewemo abandi bana batazwi batigeze banavugwa mu manza zose zabaye, bityo hakaba hakwiye gushingirwa ku ngingo ya 70 y'Itegeko ryerekeye imicungire y'umutungo w'abashakanye, impano n'izungura.

[23] Ku bijyanye n'umutungo wagurishijwe, avuga ko ari amakosa yakozwe na Candari Verena, akaba akwiye kumuhereraho kuko igihe cyose nta gabana ryabayeho, Candari yagombaga gucunga umutungo wose akazawumurikira abana. Umuhaha Aïsha avuga we ko n'imodoka igomba kugaruka kuko yayitsindiye ku makosa ye kubera ko umugabo we yamaze gupfa akazana undi mugabo, kandi ko hari amafaranga yagabanywe ya "expropriation" y'inzu yo ku Kimicanga akaba yarihereranye abandi bana we adahari.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 3 y'itegeko N° 22/99 ryo ku wa 12/11/1999 ryerekeye imicungire y'umutungo w'abashingiranywe, impano n'izungura iteganya ko "Ivangamutungo rusange ni amasezerano abashingiranywe bagirana bumvikana gushyira hamwe umutungo wabo, wose, ibyimukanwa n'ibitimukanwa kimwe n'imyenda yabo yose".

[25] Ingingo ya 49 y'itegeko n° 22/99 ryo kuwa 12/11/1999 ivuga ko kuzungura ari uguhabwa ububasha n'inshingano ku mutungo n'imyenda bya nyakwigendera, igika cya kabiri

kikavuga ko izungura ritangira iyo umuntu amaze gupfa, rikabera ahantu yari atuye cyangwa aho yabaga.

[26] Ingingo ya 50 yo iteganya ko abana amategeko mbomezamubano yemera ko ari aba nyakwigendera bazungura ku buryo bungana nta vangura hagati y'umwana w'umuhungu n'umukobwa.

[27] Ingingo ya 51 ivuga ko igihe cy'igabana ry'umutungo uzungurwa n'abana, inama y'umuryango igena umutungo wo kurera abana bakiri bato n'ugomba guhita ugabanwa abana bose ba nyakwigendera.

[28] Naho ingingo ya 70, agace kayo ka 1° igateganya ko iyo umwe mu bashyingiranywe bafitanye amasezerano y'ivangamutungo rusange apfuye, usigaye asigarana umutungo wose agakomeza inshingano yo kurera abana no gufasha ababyeyi ba nyakwigendera iyo babikeneye, mu gace ka 7, igateganya ko "iyo nta mwana wa nyakwigendera uwapfakaye akirera, akongera gushaka, atwara 1/2 cy'umutungo wose, ikindi 1/2 gihabwa abazungura ba nyakwigendera".

[29] Isesengura ry'izi ngingo zimaze kuvugwa mu bika bibanziriza iki ryumvikanisha ko iyo umwe mu basezeranye ivangamutungo risesuye apfuye usigaye, asigara acunga umutungo wose (acte d'administration) agakomeza inshingano ku bana no ku babyeyi ba nyakwigendera mu gihe ari ngombwa, bikaba byumvikana ko usigaye atazungura umutungo wa mugenzi we, ko ahubwo nyakwigendera azungurwa n'abana be ndetse n'abandi bavandimwe be nk'uko bigaragara mu rutonde ruteganyijwe mu ngingo ya 66 y'Itegeko N° 22/99 ryo ku wa 12/11/1999. Ku birebana n'umutungo wasizwe na nyakwigendera umupfakazi afitemo 50%.

[30] Mu nyandiko zigize urubanza harimo icyemezo cy'ubushyingiranywe hagati ya Havugimana na Candari Verena cyatanzwe n'Ubuyobozi bw'Umurenge wa Kacyiru, icyo cyemezo kikaba kigaragaza ko basezeranye mu buryo bwemewe n'amategeko, bakaba bari barahisemo uburyo bw'ivangamutungo risesuye mu micungire y'umutungo wabo.

[31] Dosiye y'urubanza igaragaza ko Candari Verena na Havugimana Céléstin babyaranye umwana umwe witwa Iradukunda Jean Luc, naho Havugimana Emmanuel na Mukamana Mamique, Havugimana Céléstin akaba yarabyaranye na Mwamini wapfuye mbere ye, hakiyongeraho Umuhiza Aïsha wemejwe n'Urukiko ko yabyawe na Havugimana Céléstin ku wundi mugore. Aba bana bose ababuranyi muri uru rubanza babemeranywaho ko ari aba Havugimana ndetse n'Urukiko Rukuru rukaba aruko rwabibonye mu rubanza N° RCA0557/13/HC/KIG, ko n'imbere y'uru Rukiko nta muburanyi n'umwe wigeze ajurira avuga ko mu bana Urukiko Rukuru rwemeje ko bagomba kugabana umutungo wasizwe na Havugimana hari uwongewemo atabikwiye.

[32] Urukiko rurasanga ku bijyanye n'imitungo igomba kuzungurwa, hari Inzu iri ku Gisozi haruguru y'Urwibutso rwa Jenoside rwa Kigali, inzu iherereye mu Kiyovu cya Kagugu n'indi iherereye ku Gisozi hejuru y'Agakinjiro. Imodoka ivugwa mu rubanza yo bigaragara ko Candari Verena yaje kuyitsindirwa mu rubanza N° RCA0577/12/HC/KIG yaburanaga na Dusabemungu Aloys, rwemeje ko iriya modoka atari iye ahubwo ko ari iya Dusabemungu Aloys¹ ikaba igomba

¹ Muri uru rubanza hemejwe ko Dusabemungu Aloys asubizwa imodoka ye Toyota Harrier ifite Plaque ya Congo n° 9880AA/19 ifitwe na Candari.

kuvanywa mu mitungo izungurwa ndetse n'abazungura ba Havugimana Célestin bakaba babyeranywaho² uretse Umuhoza Aïsha ariko nawe akaba atagaragaza ikindi cyakorwa.

[33] Ku birebana n'imitungo Candari Verena yagurishije kandi yari azi neza ko ayisangiye n'abana ba Havugimana, Urukiko rusanga ubwo bugure bwakozwe mu buryo bunyuranyije n'amategeko nta gaciro bufite hashingiwe ku ngingo ya 263 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano kuko yagurishije ibitari ibye, ibyo kandi akabikora yirengagije ko iyo mitungo yari ikiburanywa ndetse n'Inkiko zabanje zaramaze kuyifataho ibyemezo.

[34] Urukiko rurasanga nk'uko Urukiko Rukuru rwabyemeje, rwemeranya n'ibisobanuro byatanzwe n'urwo rukiko, ko rero rushingiye ku ngingo zimaze kuvugwa mu gika kibanziriza iki, imitungo igizwe n'igipangu cy'amazu ari ku Gisozi haruguru y'Urwibutso rwa Jenocide rwa Kigali iri mu kibanza n° 2710, inzu iri ku Gisozi haruguru y'Agakinjoro iri mu kibanza, inzu iri mu Kiyovu cya Kagugu, igomba kugabanywa n'abazungura ba Havugimana Célestin, ½ kigahabwa Candari Verena nk'umugore basezeranye mu buryo bwemewe n'amategeko, icya ½ gisigaye kigabanywa hagati ya Havugimana Emmanuel, Mukamana Mamique, Umuhoza Aïsha na Iradukunda Jean Luc hashingiwe ku biteganywa n'ingingo ya 70, agace ka 7°, y'Itegeko n° 22/99 ryo ku wa 12/11/1999 ryavuzwe haruguru.

[35] Urukiko rurasanga kandi ibyo Candari Verena aburanisha by'uko hari imitungo yashatse Havugimana Célestin yarapfuye nta shingiro byahabwa, kuko kuba izungura

² Reba inyandiko y'iburanisha ry'uru rubanza yo ku wa 03/03/2015 ku rupapuro rwa 5

ryarafunguwe Havugimana Célestin akimara gupfa nk'uko biteganywa n'ingingo ya 49 y'Itegeko n° 22/99 ryo ku wa 12/11/1999 ryavuzwe haruguru, ariko ntihabe "liquidation" y'umutungo wasizwe na nyakwigendera, kandi Candari Verena yaragombaga gucunga umutungo wose awucungira abazungura ba Havugimana Célestin nk'uko biteganywa n'ingingo ya 70 , agace ka mbere³, y'Itegeko N° 22/99 ryo ku wa 12/11/1999, byumvikana ko ibyo yaguze nyuma niyo byaba bihari uretse ko nta bimenyetso abitangira, bigomba gufatwa ko byakomotse mu nyungu zabyawe n'umutungo yari asangiye na Havugimana Célestin. Kuba asaba ko yabigumana ngo kuko ari umutungo we bwite bikaba byaba ukwikungahaza mu buryo budakurikije amategeko (enrichissement sans cause).

[36] Urukiko rurasanga na none imiburanire ya Candari Verena y'uko abana be Dufatanye Trésor na Uwimana David yabyaranye na Bukuru Ananie bagomba kugabana imitungo yashakanye na Havugimana Célestin nta gaciro byahabwa kubera ko ntaho aba bana bahuriye na Havugimana Célestin bitewe nuko batababyaranye cyangwa ngo habe hari icyemezo byerekana ko yabagize abe ku bw'amategeko (adoption). Byongeye kandi mu masezerano y'icungamutungo Candari Verena yagiranye na Havugimana Célestin basezerana imbere y'amategeko, nta "réserve" (umwihariko) bigeze bashyira ku bijyanye n'umutungo w'abana avuga ko yavanye ku mugabo we Bukuru Ananie, bityo ngo Urukiko rube rwabiheraho rwemeza ko uwo mutungo ariwo ugomba guherera kuri abo bana, ko rero hashingiwe ku biteganywa n'ingingo ya 3 y'Itegeko n°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso n'itangwa ryabyo

³ iyo umwe apfuye, usigaye asigarana umutungo wose akubahiriza inshingano yo kurera abana no gufasha ababyeyi ba nyakwigendera iyo babikeneye.

mu manza⁴, Candari atahabwa ibyo asaba kuko nta bimenyetso abitangira.

[37] N'ubwo inyandiko yo ku wa 02/09/2014 yakorewe imbere ya Notaire, abayishyizeho umukono bakemeranywa uburyo bagabana umutungo wa Havugimana Célestin, Urukiko rurasanga nta gaciro yahabwa kubera ko yakozwe hirengagijwe ibiteganywa n'ingingo ya 50 y'Itegeko y'itegeko n° 22/99 ryo kuwa 12/11/1999, kuko nkuko byasobanuwe mu gika kibanza, abana Dufatanye Trésor na Uwimana David, Candari Verena yabyaranye na Bukuru Ananie, bashyizwe mu mubare w'abagomba kuzungura Havugimana Célestin kandi nta kigaragaza ko ari abe mu buryo buteganywa n'amategeko mbonezamubano. Ikindi ni uko muri iriya nyandiko, Umuhoza Aïsha wagobotse muri uru rubanza yibagiranye nk'umwe mu bana bemewe n'amategeko ba Havugimana Célestin, bityo n'abayikoze bakaba badashobora kuyitwaza nk'uko biteganywa n'ingingo ya 590⁵ y'Igitabo cya gatatu cy'amategeko Mbonezamubano kuko yakozwe ku wa 02/09/2014 kandi Umuhoza Aïsha yaremejwe nk'umwana wa Havugimana Célestin ku wa 28/12/2012.

[38] Urukiko rurasanga ku bijyanye n'amafaranga ya "expropriation" y'umutungo wari ku Kimicanga, Umuhoza Aïsha avuga ko atahaweho uruhare rwe nta shingiro bifite, kubera ko mu Rukiko Rukuru hatanzwe inyandiko yakozwe ku wa 20/12/2013, ikorwa n'ababuranyi bose na Umuhoza Aïsha

⁴ Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

⁵ Amasezerano yo kwikiranura akozwe n'umwe mu basangiye inyungu ntagomba kubahirizwa namba n'abandi basangiye nawe inyungu, kandi nabo ntabwo bashobora kuyitwaza.

ahari, ababuranyi bemeranya ko amafaranga yavuye muri "expropriation" agabanwa hagati ya Candari Verena, Mukamana Mamique na Havugimana Emmanuel, icyo kibazo kikaba cyararangijwe n'ayo masezerano yo kwikiranura impande zose zagiranye, bityo akaba adashobora kugarukwaho muri uru rubanza nk'uko biteganywa n'ingingo ya 591 y'Igitabo cy'amategeko cyavuzwe haruguru.

Ku bijyanye n'ubujurire bwuririye ku bundi

[39] Me Nzabonimana John Peter mu bujurire bwuririye ku bundi, asabira Mukamana Mamique na Havugimana Emmanuel, indishyi z'akababaro zingana na 5.000.000Frw kubera ko ari imfubyi ariko bakaba baravukijwe uburenganzira ku mutungo wabo kandi yarabasigiwe na nyakwigendera maze aho kubarera akabashora mu manza z'amaherere. Basaba kandi 1.000.000Frw y'igihembo cya Avoka na 500.000 Frw y'ikurikiranarubanza.

[40] Me Umutesi Jeanne d'Arc nawe ashingiye ku ngingo ya 167 y'Itegeko n° 18/2004 ryo kuwa 20/06/2004 ryavuzwe haruguru, avuga ko Umuhiza Aïsha atanze ubujurire bwuririye ku bundi asaba Urukiko rw'Ikirenga gutegeka Candari Verena gutanga indishyi z'akababaro n'iz'impozamarira zingana na 5.000.000 Frw kubera kumuvutsa uburenganzira ku mitungo ya Se no kumushora mu manza ku maherere, akamuha na 1.000.000Frw y'igihembo cya Avoka na 500.000Frw y'ikurikiranarubanza.

[41] Me Mbonzimpaye Elias mu mwanzuro we avuga ko Urukiko rukwiye kwemeza ko ubujurire bwa Candari Verena bufite ishingiro maze abarezwe akaba aribo bamuha indishyi z'akababaro zingana na 1.000.000Frw na 500.000Frw y'ikurikiranarubanza harimo n'igihembo cya Avoka.

UKO URUKIKO RUBIBONA

[42] Urukiko rurasanga indishyi z'akababaro abaregwa muri uru rubanza basaba bazihabwa kubera ko Candari Verena yabaruhije bakaba bamaze igihe kirekire bafite ibibazo n'imibereho idakwiye kandi hari imitungo yasizwe n'umubyeyi wabo Havugimana Célestin yashoboraga kubafasha gukemura ibibazo bimwe na bimwe. Mu bushibshozi bwarwo, Urukiko rugeneye Mukamana Mamique Havugimana Emmanuel na Umuhuza Aïsha, buri wese 1.000.000Frw y'indishyi z'akababaro, 500.000Frw y'igihembo cya Avoka n'ikurikiranarubanza kuri Mukamana Mamique na Havugimana Emmanuel na 500.000Frw y'igihembo cya Avoka n'ikurikiranarubanza kuri Umuhuza Aïsha.

III. ICYEMEZO CY'URUKIKO

[43] Rwemeje ko ubujurire bwatanzwe na Candari Verena bufite ishingiro gusa ku birebana n'imodoka ikuwe mu mutungo ugomba kuzungurwa;

[44] Rwemeye kwakira ubujurire bwuririye ku bundi bwatanzwe na Mukamana Mamique, Havugimana Emmanuel na Umuhuza Aïsha kandi rwemeje ko bufite ishingiro;

[45] Rwemeje ko imikirize y'urubanza n° RCA 0557/13/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 25/04/2014 ruhindutse gusa ku bijyanye n'imodoka ifite "plaque" n° 9880AA/19 igomba gukurwa mu mitungo igabanywa hagati y'abazungura ba Havugimana Célestin.

[46] Rwemeje ko abagomba kuzungura umutungo Havugimana Célestin yashakanye na Candari Verena ari: Mukamana Mamique, Havugimana Emmanuel, Umuhoza Aïsha na Iradukunda Jean Luc;

[47] Rutegetse Candari Verena guha Mukamana Mamique, Havugimana Emmanuel na Umuhoza Aïsha buri wese 1.000.000Frw y'indishyi z'akababaro, agaha Mukamana Mamique na Havugimana Emmanuel 500.000Frw y'ikurikiranarubanza n'igihembo cya Avoka, Umuhoza Aïsha nawe akamuha 500.000Frw y'ikurikiranarubanza n'igihembo cya Avoka, yose hamwe akaba 4.000.000Frw.

[48] Rutegetse Candari Verena kwishyura amagarama y'urubanza angana na 100.000Frw.