

NDAHUNGA v. MUKAKALISA N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RCAA 0022/15/CS
(Nyirinkwaya, P.J; Hitiyaremye na Munyangeri) 15 Ukuboza
2017]

Amategeko agenga umuryango – Umutungo w'umuryango – Imicungire y'umutungo w'umuryango – Ni ihame ku bashyingiranywe kugirana ubwumvikane mbere yo kugurisha umutungo utimukanwa bahuriyeho cyangwa kuwutangaho ubundi burenganzira.

Incamake y'ikibazo: Mukakalisa yareze umugabo we Nduwayo na Ndahunga mu Rukiko Rwisumbuye rwa Nyarugenge asaba, asaba gusesa amasezerano y'ubugure bw'inzu bagiranye kuko atigeze ayamenya, urubanza ruburanishwa Nduwayo atitabye ariko yarahamagajwe mu buryo bukurikije amategeko. Urwo rukiko rwemeje ko ikirego cya Mukakalisa nta shingiro gifite.

Mukakalisa yajuririye iki cyemezo mu Rukiko Rukuru, maze urwo Rukiko rwemeza ko rutesheje agaciro ayo masezerano kuko amasezerano Nduwayo yakoze ubwo yagurishaga inzu, umugore we atayasinyeho ndetse atanayamenye nyamara haragombaga ubwumvikane bwabo bombi nk'uko amategeko abiteganyaga.

Ndahunga yajuririye uru rubanza mu Rukiko rw'Ikirenga, avuga ko Urukiko Rukuru rutahaye agaciro inzitizi yatanze yo kutakira ikirego cya Mukakalisa kubera ko yarengeje igihe cyo gutambamira ayo masezerano kuko igihe cy'imyaka itanu umushingamategeko yahaye umwe mu bashyingiranywe cyo

gutambamira ibintu bitimukanwa utabonetse ngo agaragaze igitekerezo cye ; rero niba atarashoboye kuboneka ku mpamvu zikomeye, icyo gihe cyari gihagije ngo atambamire amasezerano yakozwe n’umugabo we, bityo kuba amasezerano yakozwe mu mwaka wa 2002, akarega mu mwaka wa 2012 hashize imyaka icumi (10) yose, ibi bigaragaza ko amasezeno yari yarabaye ndakuka, ko rwirengagije kandi ibimenyetso bicukumbuye yarushyikirije bigaragaza ko, n’ubwo uregwa atashyize umukono ku masezerano y’ubugure bw’inzu, yari ayazi.

Mukakalisa avuga ko ibyerekeye ibihe byo gutanga ikirego byaburanishijweho mu Rukiko Rukuru, ariko bitigeze bifatwa nk’inzitizi, ubu ikaba itazanwa bwa mbere mu Rukiko rw’Ikirenga, bityo ikaba itakwakirwa. Akomeza asobanura ko atigeze amenya ko umugabo we yakozwe amasezerano y’ubugure ku mutungo basangiye kuko yamuhishaga ibintu byose ku buryo bukomeye.

Incamake y’icyemezo: 1. Ni ihame ku bashyingiranywe kugirana ubwumvikane mbere yo kugurisha umutungo utimukanwa bahuriyeho cyangwa kuwutangaho ubundi burenganzira.

2. Igihe ntaregwa umwe mu bashakanye ashobora gutambamira amasezerano y’ubugure ku mutungo wimukanwa ni umwaka umwe (1) naho umutungo utimukanwa n’imyaka itanu (5), bityo kuba uregwa yamaze imyaka igera ku icumi (10) yose atarakurikirana umutungo we avuga ko wagurishijwe n’umugabo we atabizi bituma amasezerano yabaye hagati y’umugabo we n’uwajuriye atagomba guteshwa agaciro kuko yatinze kuyaregera.

**Ubujurire bufite ishingiro
Amasezerano agumanye agaciro kayo.**

Amategeko yashingiweho

Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuzwa igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyiranywe, impano n'izungura, ingingo ya 17,21 na 22.

Nta manza z'ifashishijwe

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Mukakalisa Dancille arega umugabo we Nduwayo Nathan na Ndahunga Jean Marie Vianney, asaba ko amasezerano y'ubugure bw'inzu iri mu kibanza n° 5798 bagiranye ku itariki ya 08/02/2002 aseswa kuko atigeze ayamenya, urubanza ruburanishwa Nduwayo Nathan adahari kuko atitabye Urukiko kandi yarahamagajwe ku buryo bukurikije amategeko.

[2] Ku itariki ya 21/06/2013, Urukiko rwaciye urubanza rwemeza ko ikirego cya Mukakalisa Dancille nta shingiro gifite kuko atabashije kugaragaza icyo yakoze ubwo yabonaga Ndahunga Jean Marie Vianney yubaka mu kibanza yaguze n'umugabo we mu gihe uyu yari yaragiye hanze, mu gihe abashyiranywe bafite ububasha bungana bwo gukurikirana

umutungo wabo no kuwuhagararira, rugenera Ndahunga Jean Marie Vianney indishyi z’akababaro n’igihembo cya Avoka.

[3] Mukakalisa Dancille yajuririye iki cyemezo mu Rukiko Rukuru, maze ku itariki ya 15/05/2015 urwo Rukiko rwemeza ko ubujurire bwe bufite ishingiro, rutesha agaciro amasezerano yakozwe n’umugabo we Nduwayo Nathan wenyine agurisha inzu iri mu kibanza n° 5798 na Ndahunga Jean Marie Vianney kuko umugore we atayasinyeho ndetse atanayamenye nyamara haragombaga ubwumvikane bwabo bombi nk’uko amategeko abiteganyaga.

[4] Ndahunga Jean Marie Vianney yajuririye uru rubanza mu Rukiko rw’Ikirenga, avuga ko Urukiko Rukuru rutahaye agaciro inzitizi yatanze yo kutakira ikirego cya Mukakalisa Dancille kubera ko yarengeje igihe cyo kurega, rwirengagiza ibimenyetso bicukumbuye yatanze bigaragaza ko, n’ubwo Mukakalisa Dancille atashyize umukono ku masezerano y’ubugure bw’inzu, yari ayazi. Avuga kandi ko Urukiko rwemeje ko amasezerano y’ubugure bw’iyo nzu aseswa, ariko ntirwamugenera amafaranga ahwanye n’agaciro k’ibikorwa yashyize kuri iyo nzu no muri icyo kibanza nk’uko raporo y’umuhanga ibigaragaza.

[5] Iburanisha ry’urubanza ryabaye mu ruhamwe ku itariki ya 18/07/2017, Ndahunga Jean Marie Vianney ahagarariwe na Me Ndagijimana Emmanuel, Mukakalisa Dancille ahagarariwe na Me Habimana Pie, Nduwayo Nathan atitabye ariko yarahamagawe ahatazwi. Kuri uwo muni, Me Habimana Pie yabyukije inzitizi y’iburabubasha bw’Urukiko rw’Ikirenga, ku itariki ya 15/09/2017 Urukiko rufata icyemezo ko iyo nzitizi nta shingiro ifite, rutegeka ko iburanisha ry’urubanza mu mizi rizakomeza ku itariki ya 14/11/2017.

[6] Uwo muni ababuranyi bitabye Urukiko, Ndahunga Jean Marie Vianney ahagarariwe na Me Ndagijimana Emmanuel afatanyije na Me Rukundo Emile, Mukakalisa Dancille ahagarariwe na Me Habimana Pie, Nduwayo Nathan adahari ariko yarahamagajwe ahatazwi mu buryo bukurikije amategeko.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO

Kumenya niba Mukakalisa Dancille yararengeje igihe cyo kuregera amasezerano yakozwe n'umugabo we Nduwayo Nathan.

[7] Me Rukundo Emile avuga ko impamvu ya mbere y'ubujurire ya Ndahunga Jean Marie Vianney aburanira, ari uko Urukiko Rukuru rutahaye agaciro inzitizi yari yatanze avuga ko ikirego cya Mukakalisa Dancille kitagombaga kwakirwa kubera ko yarengeje igihe cyo kurega, ikaba idatanze bwa mbere mu Rukiko rw'Ikirenga nk'uko uregwa abivuga kuko bigaragara ko umucamanza yayisuzumye (urupapuro rwa 5, igika cya 18, urubanza RCA 0415/13/HC/KIG).

[8] Me Rukundo Emile akomeza asobanura ko nk'uko biteganywa n'ingingo ya 22 y'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuzwa Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, umushingamategeko yahaye igihe cy'imyaka itanu (5) umwe mu bashyingiranywe wagombaga kwemera amasezerano utabonetse ngo agaragaze igitekerezo cye ; bityo rero niba Mukakalisa Dancille atarashoboye kuboneka ku mpamvu zikomeye, icyo gihe cyari gihagije ngo

atambamire amasezerano yakozwe n'umugabo we. Akomeza avuga ko ibi bihura n'ibiteganyijwe mu ngingo ya 17 y'Itegeko n° 22/99 ryo ku wa 12/11/1999 ryavuzwe haruguru, riteganyako abashakanye bafite ububasha bungana bwo gukurikirana umutungo wabo no kuwuhagararira.

[9] Indi mpamvu y'ubujurire itangwa na Ndahunga Jean Marie Vianney nk'uko Me Rukundo Emile umuburanira abivuga, ni uko ibimenyetso bicukumbuye bigaragaza ko nta kuntu Mukakalisa Dancille ataba yaramenye ko ubugure bwabayeho nk'umuntu wasigaye mu gihugu mu gihe umugabo we atari ahari, ni uko niba yari azi ko inzu ikodeshwa nk'uko abivuga, akabona yarasenye yubatswe bundi bushya kandi yari azi ko ari iye, aba yarabikurikiranye kuko yari afite uburenganzira bungana n'ubw'umugabo we mu guhagararira umutungo no kuwucunga ; kuba rero ntacyo yakoze mu gihe cy'imyaka itanu (5) iteganywa n'amategeko, byerekana ko yari azi ubwo bugure.

[10] Me Rukundo Emile avuga ko ikigaragaza ko Ndahunga Jean Marie Vianney afite uburenganzira ku kibanza yaguze, ni uko yemerewe kucyubakamo ubwo ubuyobozi bwandikiraga nyiri igaraji iri muri icyo kibanza bumwemerera kubaka urukuta no gukoteri, nyuma agahabwa uburenganzira bwo gukora no mu igaraji.

[11] Kuri izi ngingo z'ubujurire, Me Ndagijimana Emmanuel nawe wunganira Ndahunga Jean Marie Vianney yongeraho ko amasezerano umukiriya (client) yagiranye na Nduwayo Nathan ari inyandikomvaho kuko yakorewe imbere ya Noteri, ibyangombwa uwagurishije yatanze bikaba bigaragaza ko umutungo ari uwe ku giti cye, ntiyerekana ko afite umugore cyangwa ko ari ingaragu. Akomeza avuga ko ubwo Ndahunga

Jean Marie Vianney yaguraga iki kibanza cyarimo akazu aragasenya nyuma ahashyira igaraji (garage), kandi muri icyo gihe Mukakalisa Dancille yahanyuraga buri muni aya ku kazi kuko ari ku nzira ijya kuri Bralirwa aho yakoraga, nyamara ntiyigera avuga ko umutungo ari uwe.

[12] Me Ndagijimana Emmanuel akomeza avuga ko Ndahunga Jean Marie Vianney yagiranye amasezerano na Nduwayo Nathan mu mwaka wa 2002, Mukakalisa Dancille arega mu mwaka wa 2012 hashize imyaka icumi (10) yose, ibi bikaba bigaragaza ko amasezeno yari yarabayeho ndakuka; Urukiko Rukuru rero rukaba rwarumvise nabi ingingo ya 22, igika cya 3, y'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryavuzwe haruguru kuko rwavuze ko Nduwayo Nathan atagaragaje impamvu umugore we atabonetse ngo amusinyire.

[13] Ku byerekeye ibimenyetso bicukumbuye bigaragaza ko Mukakalisa Dancille yamenye amasezerano yakozwe n'umugabo we, Me Ndagijimana Emmanuel avuga ko nyuma yo kugurisha, Nduwayo Nathan yagiye i Burayi, uwaguze yubaka igaraji ndetse akajya atanga umusoro w'ubukode (impôt locatif) n'uw'ubutaka (impôt foncier), ibi byose bikaba byerekana ko Mukakalisa Dancille yamenye aya masezerano.

[14] Me Ndagijimana Emmanuel arangiza asaba ko mu gihe Urukiko rwasanga ari ngombwa gusesa amasezerano y'ubugure yabayeho hagati ya Nduwayo Nathan na Ndahunga Jean Marie Vianney, umutungo uburanwa ugasubira mu maboko ya Mukakalisa Dancille, rwamutegeka gusubiza Ndahunga Jean Marie Vianney 177.533.575Frw zihwanyeye n'agaciro k'ibyo yakoze muri uwo mutungo nk'uko kagaragazwa na raporo y'umugenagaciro iri muri dosiye, ibi bikaba ari mu rwego rwo kwirinda ubukungahare budakwiye (enrichissement sans cause),

cyane cyane ko Ndahunga Jean Marie Vianney yaguze uwo mutungo nta buryarya.

[15] Me Habimana Pie uburanira Mukakalisa Dancille, avuga ko ibyerekeye ibihe byo gutanga ikirego byaburanishijweho mu Rukiko Rukuru, ariko bitigeze bifatwa nk'inzitizi, ubu ikaba itazanwa bwa mbere mu Rukiko rw'Ikirenga. Akomeza avuga ko ingingo ya 21 y'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryavuzwe haruguru ishyiraho ihame ry'uko igihe cyose hari umutungo ugiye kugurishwa, umwe mu bashyingiranywe abimenyeshwa, naho iya 22 y'iryo Tegeko igashyiraho irengayobora (exception) yerekeranye n'igihe umwe mu bashyingiranywe atabonetse.

[16] Me Habimana avuga ko Ndahunga Jean Marie Vianney atari gusinya ku masezerano atabanje kubaza umugore w'uwo bayakoranye kandi abona ari umugabo washatse, nk'uko n'ubundi umuntu ugiye kugura akora ipererereza ku mutungo agiye kugura, naho ibivugwa mu ngingo ya 17 y'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryakomeje kuvugwa bikaba bitakorehwa muri uru rubanza kuko iyi ngingo igena uburyo umutungo w'abashakanye ucungwa n'uburyo bawikuraho.

[17] Ku birebana n'ibimenyetso bicukumbuye abo baburana bavuga ko bigaragaza ko Mukakalisa Dancille yamenye amasezerano yakozwe n'umugabo we, Me Habimana Pie avuga ko ibyo bavuga nta shingiro bifite kuko byashobokaga cyane kutamenya ibyakozwe ku kibanza cyagurishijwe bitewe n'uko aho kiri atari ho Mukakalisa Dancille atuye ; naho kuba Ndahunga Jean Marie Vianney ari we wishyura umusoro, asanga ibyo atabyitwaza kuko ibyo atari uburyo buteganyijwe bwo kwegukana umutungo (moyen d'acquisition de la propriété).

[18] Me Habimana Pie arangiza avuga ko mu gihe amasezerano yaba asheshwe ntacyo Mukakalisa Dancille yasubiza Ndahunga Jean Marie Vianney, kuko ibintu byasubira uko byari bimeze mbere y'isinywa ry'ayo masezerano, agasanga ibyo basaba biri hanze y'ikiburanwa.

[19] Mukakalisa Dancille wari witabiriye iburanisha yabajijwe n'Urukiko ku byerekeye uru rubanza, asobanura ko atigeze amenya ko umugabo we yagurishije inzu n'ikibanza yarimo biburanwa, kuko yamuhishaga ibintu byose ku buryo bukomeye, akaba ahubwo yari yaramubwiye ko aha hantu ahakodesha nawe arabyemera. Akomeza avuga ko koko muri icyo gihe yakoreraga hafi aho, ko ariko nta kuntu yari kumenya ko hagurishijwe, ko yabimenye mu gihe cyo kwandikisha ubutaka, ari nabwo yumvise bivugwa ko umugabo we yari yaratangiye gufata amafaranga na mbere y'umwaka wa 2002.

[20] Ku byerekeranye no kuba hari amafaranga y'ubukode Mukakalisa Dancille yaba yarigeze asaba Ndahunga Jean Marie Vianney mu gihe umugabo we Nduwayo Nathan yari yaragiye hanze y'igihugu, avuga ko yagiye ku Murenge wa Kicukiro kubaza ukodesha ikibanza n'inzu biburanwa agasanga koko ari Ndahunga Jean Marie Vianney ndetse anahasorera, abajije umuzamu uko yamubona amubwira ko atazi iwe, ko rero nta n'uburyo yari kumwandikira atazi aho abarizwa.

UKO URUKIKO RUBIBONA.

[21] Ingingo ya 17, igika cya kabiri, y'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuzwa igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyiranywe,

impano n'izungura ryakurikizwaga ubwo Nduwayo Nathan yagiranaga amasezerano y'ubugure na Ndahunga Jean Marie Vianney, iteganya ko « Mu buryo bw'ivangamutungo rusange cyangwa ubw'ivangamutungo w'umuhahano, abashyingiranywe bumvikana ku ucunga umutungo bahuriyeho, bafite kandi ububasha bungana bwo kuwukurikirana no kuwuhagararira ».

[22] Ingingo ya 21 y'Itegeko N° 22/99 ryo ku wa 12/11/1999 rimaze kuvugwa, iteganya ko "Uko imicungire y'umutungo n'uburyo bawucunga byaba bimeze kose, ubwumvikane bw'abashyingiranywe ari ngombwa mu gutanga ikitimukanwa bwite n'umutungo bahuriyeho no kubitangaho ubundi burenganzira".

[23] Ingingo ya 22 y'iryo Tegeko, igira iti "Umwe mu bashyingiranywe wagize amasezerano ku mutungo agomba ubwumvikane bwabo bombi, agomba mu gihe cyo kuyakora cyangwa mu gihe cy'amezi atandatu akurikira, gusaba uwo bashyingiranywe ko ayemera. Iryo yemera rimenyeshwa mu nyandiko uwo bagiranye amasezerano; iyo nta gisubizo yatanze nyuma y'ukwezi gukurikira umunsi yabimenyesherejweho, ukwemera kwe gufatwa nk'aho kwatanzwe mu buryo budasubirwaho. Iyo uwagombaga kubyemera atabashije kuboneka cyangwa kugaragaza igitekerezo cye abitewe n'impamvu zikomeye, amasezerano aba ntakuka iyo hashize umwaka umwe (1) ku bintu byimukanwa n'imyaka itanu (5) ku bintu bitimukanwa".

[24] Isesengura ry'ingingo ya 21 n'iya 22 zimaze kuvugwa, ryumvikanisha ko ari ihame ku bashyingiranywe kugirana ubwumvikane mbere yo gutanga (donation) umutungo utimukanwa bahuriyeho cyangwa kuwutangaho ubundi burenganzira (kuwutangaho ingwate, kuwugurisha...), igihe

amasezerano yakozwe n'umwe muri bo, akaba agomba kuyamenyesha mugenzi we kugira ngo agaragaze ko ayemera, uwo bagiranye amasezerano akabimenyeshwa. Igihe umwe mu bashyingiranywe adashoboye kuboneka ku mpamvu iyo ari yo yose ngo agaragaze ukwemera kwe, umushingamategeko yashyizeho igihe cy'umwaka umwe (1) ku bintu byimukanwa, n'imyaka itanu (5) ku bintu bitimukanwa kugira ngo amasezerano yakozwe umwe mu bashyingiranywe adahari agaragaze ko ayemera cyangwa atayemera, haba nta gikozwe muri icyo gihe, ayo masezerana akaba ndakuka. Iki gihe nicyo umushingamategeko yasanze gikwiye kugira ngo umwe mu bashakanye utarabashije kugaragaza ko yemera amasezerano yakozwe na mugenzi we adahari abe yasaba ko ateshwa agaciro mu gihe asanze atayemera. Ibi bikaba ari ngombwa kandi ku ruhande rw'uwaguze kugira ngo yumve atekanye mu buryo bwo gukoresha umutungo we atikanga ko igihe icyo aricyo cyose hazagira uza kuwutambamira.

[25] Ku byerekeranye n'uru rubanza, inyandiko ziri muri dosiye zigaragaza ko ku itariki ya 08/02/2002, Nduwayo Nathan, umugabo wa Mukakalisa Dancille, yagiranye amasezerano na Ndahunga Jean Marie Vianney amugurisha inzu iri mu kibanza N° 5798 kiri mu Mudugudu w'Amajyambere, Akagari ka Gasharu, Umurenge wa Kicukiro, Akarere ka Kicukiro, mu Mujyi wa Kigali, ku mafaranga miliyoni zirindwi n'ibihumbi magana atanu (7.500.000Frw), hari abatangabuhamya Niyonzima Fidèle, Umugwaneza Miriam, Kobusingye Penina na Uwayezu Dorothy.

[26] Izo nyandiko zigaragaza kandi ko ku itariki ya 07/12/2012 Mukakalisa Dancille yaregeye Urukiko Rwisumbuye rwa Nyarugenge asaba gutesha agaciro

amasezerano y'ubugure bw'ikibanza n° 5798 kirimo igaraje (garage) kiri mu Mudugudu w'Amajyambere, Akagari ka Gasharu, Umurenge wa Kicukiro, Akarere ka Kicukiro, mu Muji wa Kigali, bwabaye hagati ya Nduwayo Nathan na Ndahunga Jean Marie Vianney kubera ko uwagurishije yari umugabo we wemewe n'amategeko, akaba yaragurishije atabizi, arangije yigira i Burayi. Mu mwanzuro we wakozwe na Me Mukamisha Claudine, Mukakalisa Dancille yasobanuye ko yakomeje kwibwira ko inzu ari iyabo kuko atari yaramenyeshewe ubwo bugure kugeza ubwo yajyaga kwandikisha ubutaka agahurirayo n'umugore wa Nduwayo Jean Marie Vianney nawe wari uje kwandikisha aho hantu, ndetse asobanura ko impamvu atakurikiranye uwo mutungo ari uko yibwiraga ko umugabo we ari we yari yarahakodesheje akajya afata amafaranga yaho ngo yite ku bana babo bari barajyanye.

[27] Urukiko Rwisumbuye rwa Nyarugenge rwemeje ko ikirego cya Mukakalisa Dancille nta shingiro gifite kubera ko hari inyubako zazamuwe kuri ubu butaka hamaze gusenywa izarimo ahari arebera ntagire icyo akora ngo akurikirane abubakaga, nyamara yari afite uburenganzira bungana n'ubw'umugabo we bwo gucunga umutungo wabo, naho iby'uko umugabo we yamubwiye ko yahakodesheje by'igihe kirekire akaba atabitangira ikimenyetso¹. Urukiko Rukuru rwo rwasanze amasezerano yabaye hagati ya Ndahunga Jean Marie Vianney na Nduwayo Nathan akwiye guteshwa agaciro kubera ko Mukakalisa Dancille atagaragaje ukwemera kwe nk'uko biteganywa mu ngingo ya 22 y'Itegeko ryerekeye imicungire y'umutungo w'abashakanye yibukijwe haruguru ibigaragaza².

¹ Reba urubanza RC 0014/13/TGI/NYGE igika cya 7, Urupapuro rwa 2

² Reba urubanza RCA 0415/13/HC/KIG, igika cya 13, urupapuro rwa 4.

[28] Urukiko rw'Ikirenga rurasanga koko mu gihe cyo gukora amasezerano, Nduwayo Nathan ataramenyeshije umugore we Mukakalisa Dancille ngo agaragaze ukwemera kwe kuko atanagaragara mu bayashyizeho umukono, nta n'ikindi kimenyetso gihari cyerekana ko nyuma yo kuyakora yabimumenyeshije kugeza ajya i Burayi mu kwezi kwa 03/2003.

[29] Urukiko rw'Ikirenga rurasanga ariko, n'ubwo Mukakalisa Dancille atamenyeshijwe n'umugabo we Nduwayo Nathan amasezerano y'ubugure yagiranye na Ndahunga Jean Marie Vianney ku mutungo bari basangiye ku mpamvu iyo ariyo yose, yari afite igihe kingana n'imyaka itanu (5) kugira ngo akurikirane umutungo we nk'uko biteganyanywa n'ingingo ya 22 y'Itegeko N° 22/99 ryo ku wa 12/11/1999 yavuzwe haruguru, cyane cyane ko yari amaze kubona ko umugabo we avuga ko batumvikanaga agiye i Burayi, akaba yari afite ububasha bwo kuwukurikirana no kuwuhagararira ahabwa n'ingingo ya 17 y'Itegeko rimaze kuvugwa. Kuba rero Mukakalisa Dancille wagombaga kugira icyo avuga ku masezerano y'ubugure yabaye hagati y'umugabo we Nduwayo Nathan na Ndahunga Jean Marie Vianney hagashira imyaka irenga itanu (5) ntacyo akoze, bivuze ko ayo maserano yabaye ndakuka bityo akaba adashobora guseswa ku mpamvu y'uko gusa atayemeye ubwo yakorwaga.

[30] Urukiko rw'Ikirenga rurasanga imyumvire y'Urukiko Rukuru y'uko ingingo ya 17 y'Itegeko ryerekeye imicungire y'umutungo w'abashyiringanywe ryibukijwe haruguru ireba gusa uburenganzira bwo gucunga umutungo abashyiringanywe basangiye (gestion du patrimoine commun) atari yo, kuko iyo ingingo ivuga neza ko bafite uburenganzira bungana bwo

kuwukurikirana no kuwuhagararira, akaba ari yo yahaga Mukakalisa Dancille uburenganzira bwo gukurikirana umutungo asangiye n’umugabo we Ndahunga Nathan ubwo atari ahari, cyane cyane ko yemereye Urukiko ko aho hantu yahanyuraga ajya ku kazi, bikaba bitumvikana ukuntu atabonaga ko hari izindi nyubako ziri kubakwamo kugira ngo agire icyo akora.

[31] Urukiko rw’Ikirenga rurasanga kandi ibyo Urukiko Rukuru rwemeje mu gika cya 17 ko "nta gihe ntarengwa cyateganyijwe n’itegeko cyo kuba umwe mu bashakanye yakurikirana uburenganzira yavukijwe buteganywa mu ngingo ya 22 yavuzwe haruguru" atari byo, kuko nk’uko byagaragajwe haruguru, umushingamategeko yashyizeho igihe cy’umwaka (1) ku bintu byimukanwa n’igihe cy’imyaka itanu (5) ku mutungo utimukanwa ngo amasezerano abe ndakuka ku washyingwiye utarabashije kugaragaza ukwemera kwe ku masezerano yakozwe na mugenzi we mu gihe atabashije kuboneka cyangwa hari impamvu zikomeye zatumye atabasha kugaragaza igitekerezo cye, iki gihe kikaba giteganyijwe ngo uwumva afite uburenganzira abukurikirane.

[32] Urukiko rw’Ikirenga rurasanga rero, niba itegeko rivuga ko uwagombaga kwemera amasezerano y’ubugure yakozwe n’uwo bashakanye atabashije kuboneka cyangwa kugaragaza igitekerezo cye abitewe n’impamvu zikomeye, amasezerano aba ntakuka iyo hashize umwaka umwe (1) ku bintu byimukanwa n’imyaka itanu (5) ku bintu bitimukanwa, bitumvikana ahubwo ukuntu Mukakalisa Dancille we uvuga ko yari ahari, yamara imyaka igera ku icumi (10) yose atarakurikirana umutungo we avuga ko wagurishijwe n’umugabo we atabizi.

[33] Hashingiwe ku bisobanuro no ku mategeko byagaragajwe haruguru, Urukiko rw'Ikirenga rurasanga amasezerano y'ubugure bw'inzu iri mu kibanza n° 5798 gihereye mu Mudugudu w'Amajyambere, Akagari ka Gasharu, Umurenge wa Kicukiro, Akarere ka Kicukiro, mu Mujyi wa Kigali, yabaye hagati ya Nduwayo Nathan na Ndahunga Jean Marie Vianney ku itariki ya 08/02/2002 atagomba guteshwa agaciro kuko Mukakalisa Dancille yatinze kuyaregera, bityo akaba agumanye agaciro kayo.

[34] Urukiko rw'Ikirenga rurasanga atari ngombwa gusuzuma ingingo irebana no kuba Mukakalisa Dancille agomba gusubiza Ndahunga Jean Marie Vianney amafaranga ahwanye n'agaciro k'ibyo yongeye ku mutungo uburanwa kubera ko amasezerano yaregeraga ko aseswa agumanye agaciro kayo.

Kumenya niba ababuranyi bakwiye guhabwa indishyi basaba.

[35] Me Habimana Pie asaba ko kuri uru rwego Mukakalisa Dancille ahabwa miliyoni imwe (1.000.000Frw) y'amafaranga y'u Rwanda ahanye n'igihembo cya Avoka n'ibihumbi magana atatu (300.000Frw) y'ikurikiranarubanza. Asaba kandi ko ahabwa miliyoni makumyabiri (20.000.000Frw) y'indishyi z'akababaro kubera agahinda aterwa n'uko atari mu mutungo we kandi ari umukecuru, akaba abayeho nabi, ndetse agasubizwa ibihumbi icumi (10.000Frw) yatanzeho igarama mu Rukiko Rwisumbuye no mu Rukiko Rukuru.

[36] Me Rukundo Emile avuga ko ntacyo avuga kuri izi ndishyi kuko Ndahunga Jean Marie Vianney asaba ko amasezerano ahabwa agaciro, ahubwo mu mwanzuro yakoze

afatanyije na Me Ndagijimana Emmanuel, basaba ko Mukakalisa Dancille na Nduwayo Nathan bategekwa kwishyura Ndahunga Jean Marie Vianney amafaranga y'ikurikiranarubanza angana na miliyoni ebyiri (2.000.000Frw) n'igihembo cya Avoka kingana na miliyoni eshanu (5.000.000Frw) hamwe n'indishyi z'akababaro zingana na miliyoni icumi (10.000.000Frw).

[37] Ku birebana n'indishyi zisabwa na Ndahunga Jean Marie Vianney, mu nama ntegurarubanza Me Habimana Pie yavuze ko zidakwiye kuko Ndahunga Jean Marie Vianney yakoze amakosa yo kugura na Nduwayo Nathan umugore we adahari, akaba atakuririra ku makosa ye ngo agire ibyo asaba (Nul ne peut invoquer sa propre turpitude).

UKO URUKIKO RUBIBONA

[38] Urukiko rw'Ikirenga rurasanga Mukakalisa Dancille nta ndishyi akwiye guhabwa kuko atsinzwe n'urubanza, ahubwo akaba agomba gufatanya na Nduwayo Nathan kwishyura Ndahunga Jean Marie Vianney amafaranga yakoresheje mu kwishyura Abavoka bamuburanira. Ariko kubera ko ayo yaka ari menshi, bakaba bagomba gufatanya kumuha miliyoni imwe (1.000.000Frw) akubiyemo igihembo cya Avoka n'ay'ikurikiranarubanza. Urukiko rurasanga indishyi z'akababaro Ndahunga Jean Marie Vianney yaka adakwiye kuzihabwa kuko atabashije kuzisobanura.

III. ICYEMEZO CY'URUKIKO

[39] Rwemeje ko ubujurire bwa Ndahunga Jean Marie Vianney bufite ishingiro ;

[40] Rwemeje ko amasezerano y'ubugure bw'inzu iri mu kibanza n° 5798 gihereye mu Mudugudu w'Amajyambere, Akagari ka Gasharu, Umurenge wa Kicukiro, Akarere ka Kicukiro, mu Mujyi wa Kigali, yabaye hagati ya Ndahunga Jean Marie Vianney na Nduwayo Nathan ku itariki ya 08/02/2002 agumanye agaciro kayo ;

[41] Rwemeje ko urubanza n° RCA 0415/13/HC/KIG rwaciwe n'Urukiko Rukuru ku itariki ya 15/05/2015 ruhindutse mu ngingo zarwo zose ;

[42] Rutegetse Mukakalisa Dancille na Nduwayo Nathan guha Ndahunga Jean Marie Vianney miliyoni imwe (1.000.000 Frw) akubiyemo igihembo cya Avoka n'ay'ikurikiranarubanza ;

[43] Rutegetse Mukakalisa Dancille na Nduwayo Nathan gusubiza Ndahunga Jean Marie Vianney amafaranga ibihumbi ijana (100.000 Frw) y'ingwate y'amagarama yatanze muri uru Rukiko.