MUKANKUBITO v NABIMANA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00009/2019/SC (Ntezilyayo, P.J, Mukamulisa, Nyirinkwaya; Cyanzayire na Hitiyaremye, J.) 03 Werurwe 2020]

Amategeko agenga umuryango – Ishyingirwa mu buryo bukurikije amategeko – Ikimenyetso cy'ishyingirwa – Ikimenyetso cyemeza nta mpaka ko abantu bashyingiranywe ni icyemezo cy'ishyingirwa, iyo cyatakaye cyangwa ibitabo by'ishyingirwa bidashoboka kuboneka, muri icyo gihe hashingirwa ku buhamya – Kuba umwe mu babanaga nk'umugore n'umugabo yanditse mu ikarita ndangamuntu ya kera nk'umugabo cyangwa umugore wa kanaka, si ikimenyetso cyashingirwaho mu kwemeza ko bashyingiranywe mu buryo bukurikije amategeko.

Incamake y'ikibazo: Uru rubanza rwahereye mu Rukiko rw' Ibanze rwa Nyarugenge, Mukankubito asaba urubanza rusimbura inyandiko y'ishyingirwa rye na Nabimana, Urukiko rwafashe icyemezo ko nta bimenyetso bidashidikanywaho yatanze byemeza ko habaye gushyingirwa hagati ye na Nabimana.

Mukankubito yajuriye mu Rukiko Rwisumbuye rwa Nyarugenge agaragaza ko Urukiko rw'Ibanze rwirengagije ibimenyetso yatanze byemeza ko yashyingiranywe mu buryo bwemewe n'amategeko na Nabimana, Urukiko Rwisumbuye rwemeje ko ikirego cye gifite ishingiro ko habaye ishyingirwa hagati ye na Nabimana bityo ko urubanza rwajuririwe ruhindutse kuri byose, rwemeza ko Mukankubito ahabwa urubanza rusimbura inyandiko y'ishyingirwa, Urukiko mu gufata icyo cyemezo rwasobanuye ko nta mpamvu yabuza Mukankubito guhabwa

urubanza rusimbura inyandiko yo gushyingirwa, kuko yagaragarije Urukiko ibimenyetso bihamya ko yasezeranye byemewe n'amategeko na Nabimana, bigizwe n'amafoto yerekana uburyo basezeranye, ibyemezo by'Umurenge wa Kacyiru, icyemezo cya Paruwasi kigaragaza ko basezeranye mu Kiliziya, rusobanura ko abantu batashoboraga gusezerana mu kiliziya batabanje gusezerana muri Komini, ruvuga kandi ko bitashobokaga ko yandikwa mu irangamuntu ya kera nk'umugore we batarasezeranye.

Nabimana yaje kumenya imikirize y'urwo rubanza ararutambamira agaragaza gusa ko babanye na Mukankubito nk'umugore n'umugabo guhera mu mwaka w'1978, cyane ko Mukankubito yari ataruzuza imyaka y'ubukure kuko yari afite 17 gusa, ku buryo batari kubasezeranya imbere y'ubutegetsi, ko rero basezeranye imbere y'Imana mu Kiliziya mu mwaka wa 1983. Urukiko rwaciye urubanza rwemeza ko ikirego cya Nabimana gifite ishingiro, rutegeka ko urubanza rutambamirwa ruhindutse mu ngingo zarwo zose, ko nta bimenyetso bifatika bigaragaza ko habayeho ubushyingiranywe imbere y'ubutegetsi hagati ya Mukankubito na Nabimana. Mukankubito yaje gusubirishamo urwo rubanza ingingo nshya yifashishije icyemezo cyatanzwe n'Ikigo gishinzwe Indangamuntu (NIDA) ariko Urukiko Rwisumbuye rwemeza ko ikirego cye kitakiriwe hagumyeho imikirize y'urubanza rwasubirishijwemo ingingo nshya, rwasobanuye ko inyandiko yatanzwe na NIDA atari ikimenyetso gishya cyagaragaye nyuma y'iburanisha kuko ibiyikubiyemo ari nabyo biri mu nyandiko yindi nubundi yari yatanze.

Mukankubito yandikiye Urwego rw'Umuvunyi asaba ko urubanza rwasubirwamo ku mpamvu z'akarengane. Urwo rwego rumaze gusuzuma ubwo busabe, rwandikira Perezida w'Urukiko rw'Ikirenga rumusaba ko urwo rubanza rwasubirwamo ku

mpamvu z'akarengene. Perezida w'Urukiko rw'Ikirenga amaze kubisuzuma yafashe icyemezo ko urubanza rusubirwamo n’Urukiko rw’Ikirenga.

Mu Rukiko rw’Ikirenga Mukankubito yagaragaje ko Urukiko Rwisumbuye hari amategeko rwirengagije yakoreshwaga icyo gihe kuko ngo ubwo bashyingirwaga mu idini byari byemewe n’Itegeko Nshinga n’andi mategeko ko gushyingirwa mu idini byafatwaga nko kuba barashyingiwe imbere y’amategeko kuko bashyingiwe mu idini muri 1983, yakomeje avuga ko hari n’ibimenyetso byirengagijwe birimo irangamuntu ya Nabimana yanditswemo ko bashyingiranywe mu buryo bwemewe n’amategeko ndetse n’abana babo bakaba banditsemo, bityo ko ibyandikwaga mu irangamuntu byavanwaga mu bitabo by’irangamimerere bikaba ari icyemeza ko bashyingiranywe mu buryo bwemewe n’amategeko.

Nabimana we avuga ko ikirego cy’iremezo cyatanzwe mu Rukiko rw’Ibanze na Mukankubito cyasabaga Urukiko urubanza rusimbura inyandiko y’ishyingirwa ryabaye muri 1978 ariko ubu bakaba bagaragaza ko ibyakwemerwa ari ugushyingirwa kwabereye mu idini muri 1983, bakaba basanga ari uguhindura ikirego kandi bitemewe, ko kandi Itegeko Nshinga bavuze ntaho ryavugaga ko gushyingirwa mu idini byafatwaga nko gushyingirwa imbere y’amategeko kuko Iteka bavugaga ryabyemeraga atariko ryavugaga kandi ko iryo teka ryari ryaranavanyweho. Nahimana avuga kandi ko indangamuntu atari ikimenyetso gishingirwaho mu kwemeza ko umuntu yashyingiranywe n’undi. Asoza avuga ko Urukiko nta tegeko rwirengagije.

Incamake y’icyemezo: 1. Ikimenyetso cyemeza nta mpaka ko abantu bashyingiranywe ni icyemezo cy’ishyingirwa, iyo

cyatakaye cyangwa ibitabo by'ishyingirwa bidashoboka kuboneka, muri icyo gihe hashingirwa ku buhamya, bityo izindi nyandiko zatangiwe mu Bubiligi Mukankubito agaragaza avuga ko yashyingiwe zikaba zitashingirwaho ngo hemezwe ko habaye ishyingirwa ryemewe n'amategeko

2. Kuba umwe mu babanaga nk'umugore n'umugabo yanditse mu ikarita ndangamuntu ya kera nk'umugabo cyangwa umugore wa kanaka, si ikimenyetso cyashingirwaho mu kwemeza ko bashyingiranywe mu buryo bukurikije amategeko, bityo kuba Mukankubito agaragaza ko yari yanditse mu ndangamuntu ya Nabimana atari ikimenyetso rwashingiraho rwemeza ko bashyingiranywe mu buryo bukurikije amategeko.

Gusubirishamo urubanza ku mpamvu z'akarengane nta shingiro bifite;
Imikirize y'urubanza rwasabiwe gusubirishwamo ku mpamvu z'akarengane ntihindutse.

Amategeko yashingiweho:

Itegeko Nshinga ryo ku wa 20/12/1978 rya Repubulika y'u Rwanda (ryakoreshwaga icyo gihe), ingingo ya 25 na 98

Itegeko Nshinga ryo ku wa 24/11/1962, rya Repubulika y'u Rwanda (ryakoreshwaga icyo gihe), ingingo ya 28

Itegeko Nº 15/2004 ryo ku wa 12/05/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 11;

Iteka ryo ku wa 04/05/1895 rishyiraho Urwunge rw'Amategeko Mbonezamubano, Igitabo cya mbere, ingingo ya 18,20 n'iya 117;

Iteka N° 01/81 ryo ku wa 16 Mutarama 1981 ryerekeye ibarura ry'abaturage, ikarita ndangamuntu, ingingo ya 5,6 n'iya 7

Nta manza zifashishijwe.

Inyandiko z'Abahanga zifashishijwe:

Ntampaka Charles, Droit des personnes et de la famille, Manuel de droit rwandais, 1993, pge 108:

Urubanza

I. IMITERERE Y'IKIBAZO

[1] Uru rubanza rukomoka ku kirego Mukankubito Daphrose yatanze mu Rukiko rw'Ibanze rwa Nyarugenge, asaba urubanza rusimbura inyandiko y'ishyingirwa rye na Nabimana Pierre, avuga ko bashyingiranywe mu buryo bukurikije amategeko ku wa 18/08/1978 mu cyahoze ari Komini Nyarugenge, ariko ko yagiye mu Murenge wa Nyarugenge gushaka icyemezo cy'uko yashyingiranywe nawe agasanga nta bitabo by'abashyingiranywe byo muri icyo gihe bihari.

[2] Ku wa 02/04/2015, Urukiko rw'Ibanze rwa Nyarugenge, rwaciye urubanza RC0088/15/TB/NYGE, rwemeza ko nta bimenyetso Mukankubito Daphrose yagaragaje byerekana nta gushidikanya ko yashyingiranywe na Nabimana Pierre ku wa 18/08/1978. Rusobanura ko icyemezo cy'ubushyingiranywe cya Nabimana Pierre na Mukankubito Daphrose cyatanzwe na Komini ya Kacyiru ku wa 12/03/2003 kitaba ikimenyetso cyashingirwaho kuko cyatanzwe kera, urega akaba atagaragaza umwimerere wacyo kandi n'Ubuyobozi bwagitanze nabwo butabifitiye amakuru kuko urega avuga ko yasezeraniye muri Nyarugenge, mu gihe icyemezo (*A qui de droit*) cyatanzwe n'Ubuyobozi bw'Umurenge wa Nyarugenge, kigaragaza ko nta

bitabo by'abashyingiranywe bihari muri uwo Murenge byemeza ko Mukankubito Daphrose na Nabimana Pierre baba barashyingiranywe bikurikije amategeko. Ruvuga kandi ko ifoto igaragaza ko basezeranye mu idini nayo itaba ikemenyetso kuko itagaragaza ko bafotowe nibura bari imbere y'ubutegetsi bw'Igihugu bafashe ku ibendera ry'Igihugu nk'uko amategeko abiteganya, ndetse ko n'ibyangombwa by'ubutaka bitaba ikimenyetso gishingirwaho kuko umugore n'umugabo bashobora gutungana ubutaka batarashyingiranywe mu buryo bukurikije amategeko. Rusanga inyandiko zigaragaza ko bashyingiranywe mu idini zigizwe n'ifoto ndetse n'inyandiko zatanzwe n'Ikigo gishinzwe ubutaka (*Land center*) nta gaciro zahabwa kuko amategeko adafata abasezeraniye mu idini runaka nk'abashyingiranywe mu buryo bukurikije amategeko.

[3] Mukankubito Daphrose ntiyishimiye imikirize y'urwo rubanza arujururira mu Rukiko Rwisumbuye rwa Nyarugenge, avuga ko Urukiko rwirengagije ibimenyetso bitandukanye yarugaragarije, byemeza ko yashyingiranywe na Nabimana Pierre, birimo indangamuntu y'uyu ya kera igaragaza ko ayanditswemo nk'umugore we, icyemezo cyatanzwe na Komini Kacyiru ku wa 12/03/2003 cyemeza ko basezeranye, ikarita itangwa na Paruwasi igaragaza ko Mugkankubito Daphrose yasezeranye na Nabimana Pierre muri Paruwasi Nyamirambo, amafoto basezerana, ndetse n'ibindi byangombwa byerekana ko aho batuye mu Bubiligi bemeza ko basezeranye. Ku wa 30/04/2015, Urwo Rukiko rwaciye urubanza RC0076/15/TGI/NYGE, rwemeza ko ubujurire bwa Mukankubito Daphrose bufite ishingiro, rwemeza ko urubanza rwajuririwe ruhindutse kuri byose, rwemeza ko Mukankubito Daphrose ahabwa urubanza rusimbura inyandiko y'ishyingirwa,

rwemeza ko uru rubanza rusimbura inyandiko y'ishyingirwa rwoherezwa mu Murenge wa Nyarugenge.

[4] Urukiko mu gufata icyo cyemezo rwasobanuye ko nta mpamvu yabuza Mukankubito Daphrose guhabwa urubanza rusimbura inyandiko yo gushyingirwa, kuko yagaragarije Urukiko ibimenyetso bihamya ko yasezeranye byemewe n’amategeko na Nabimana Pierre, bigizwe n’amafoto yerekana uburyo Mukankubito Daphrose na Nabimana Pierre basezeranye, ibyemezo by’Umurenge wa Kacyiru, icyemezo cya Paruwasi ya Nyamirambo kigaragaza ko basezeranye mu Kiliziya, rusobanura ko abantu batashoboraga gusezerana mu kiliziya batanyuze muri Komini, irangamuntu y’umugabo we yatanzwe kera, ruvuga ko bitashobokaga ko yandikwamo nk’umugore wa Nabimana Pierre batarasezeranye.

[5] Nabimana Pierre yatambamiye urwo rubanza, avuga ko atigeze asezerana na Mukankubito Daphrose mu buryo bwemewe n'amategeko, ko babanye nk'umugore n'umugabo gusa guhera mu mwaka w'1978, dore ko Mukankubito Daphrose yari ataruzuza imyaka y'ubukure kuko yari afite 17 gusa, ku buryo batari kubasezeranya imbere y’ubutegetsi, ko rero basezeranye imbere y’Imana mu Kiliziya mu mwaka wa 1983, ariko ko batigeze basezerana mu buryo bwemewe n’amategeko. Ku wa 18/05/2015, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza RCA0106/15/TGI/NYGE, rwemeza ko ikirego cya Nabimana Pierre gifite ishingiro, rutegeka ko urubanza rutambamirwa RCA 0076/15/TGI/NYGE ruhindutse mu ngingo zarwo zose, rutegeka ko nta bimenyetso bifatika bigaragaza ko habayeho ubushyingiranywe imbere y’ubutegetsi hagati ya Mukankubito Daphrose na Nabimana Pierre.

[6] Urukiko rwasobanuye ko ibimenyetso byashingiweho mu rubanza rutambamirwa rwasanze ari ibyo Mukankubito Daphrose ubwe yemeza ko yabonye mu mwaka wa 1983 asezerana mu idini (Kiliziya), ariko ibyo bimenyetso ubwabyo bikaba bitemeza ko yasezeranye mu 1978 mu butegetsi, ahubwo byemeza ko yasezeranye mu idini kandi atagaragaza itegeko ryamwemerereraga ko kuba yarasezeranye mu idini mu mwaka wa 1983, byafatwa nk'amasezerano yo gushyingirwa mu butegetsi, ko rero ibimenyetso Urukiko rwashingiyeho bidahagije ku buryo byashingirwaho hemezwa ko basezeranye byemewe n'amategeko.

[7] Urukiko rwasanze kandi harashingiwe ku ngingo ya 13 y'Itegeko N°15/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Urukiko rukemeza ko icyemezo cy'ishyingirwa cyo ku wa 12/03/2003 ari inyandikomvaho ikemura impaka kuri bose, mu gihe icyo cyemezo kitanditswe cyangwa ngo cyakiranywe imihango yabugenewe n'umukozi wa Leta ufite ububasha bwo gukora mu ifasi, rusobanura ko Mukankubito Daphrose avuga ko basezeraniye mu Murenge wa Nyarugenge, ariko icyemezo cy'ishyingirwa kikaba cyarakorewe mu cyahoze ari Komini Kacyiru, atari n'umwimerere, ko rero uwagikoze ntacyo yashingiyeho yemeza ko Mukankubito Daphrose na Nabimana Pierre bashyingiranywe.

[8] Urukiko rwasanze kandi hari abatangabuhamya bari baturanye nabo bemeza ko batigeze basezerana mu butegetsi ko ibyo bazi ari ugusezerana mu Kiliziya, ko batari gusezerana mu butegetsi ngo babiyoberwe, rusanga kandi na Mukankubito Daphrose nta mutangabuhamya atanga wemeza ibyo avuga cyangwa se ngo agaragaze umutegetsi (*Officier de l'état civil*)

waba waramusezeranyije cyangwa se umutangabuhamya wamusinyiye basezerana.

[9] Mukankubito Daphrose yasubirishijemo urubanza RCA0106/15/TGI/NYGE ingingo nshya, avuga ko hari ikimenyetso gishya kigizwe n'inyandiko yatanzwe na NIDA ku wa 05/10/2015. Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza no RCA0222/15/TGI/NYGE ku wa 15/12/2015, rwemeza ko gusubirishamo urubanza ingingo nshya kwa Mukankubito Daphrose kutakiriwe, rutegeka ko urubanza nº RCA0106/15/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge rugumanye agaciro, rutegeka kandi Mukankubito Daphrose kwishyura Nabimana Pierre indishyi zihwanye n'amafaranga 2.000.000Frw zikubiyemo amafaranga y'ikurikiranarubanza n'igihembo cy'avoka.

[10] Urukiko rwasobanuye ko inyandiko yatanzwe na NIDA ku wa 05/10/2015 atari ikimenyetso gishya cyagaragaye nyuma y'iburanisha kuko ibiyikubiyemo ari nabyo biri mu nyandiko yo ku wa 21/05/2015, kandi zose zikaba zarasabwe na Mukankubito Daphrose, byumvikana ko mu gihe cyo kuburana Mukankubito Daphrose yari azi amakuru akubiye muri izo nyandiko ariko ntiyabiburanisha, akaba ataranagaragaje impamvu ntagobotorwa zatumye atagaragaza icyo kimenyetso, rwemeza rero ko inyandiko yo ku wa 05/10/2015 atari ikimenyetso gishya.

[11] Mukankubito Daphrose yandikiye Urwego rw'Umuvunyi asaba ko urubanza RCA0106/15/TGI/NYGE rwasubirwamo ku mpamvu z'akarengane. Urwo rwego rumaze gusuzuma ubwo busabe, rwandikira Perezida w'Urukiko rw'Ikirenga rumusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengene. Perezida w'Urukiko rw'Ikirenga amaze kubisuzuma yafashe icyemezo ko urubanza RCA0106/15/TGI/NYGE rwoherezwa mu Bwanditsi

bw’Urukiko rukandikwa mu bitabo byabugenewe kugirango ruzongere ruburanishwe, ikirego cyandikwa kuri RS/INJUST/RC00009/2019/SC.

[12] Me Mugeni Anita avuga ko Mukankubito Daphrose yasubirishijemo urubanza RCA0106/15/TGI/NYGE ku mpamvu z'akarengane kuko Urukiko rwirengagije amategeko n'ibimenyetso bigaragaza nta gushidikanya ko yasezeranye na Nabimana Pierre mu buryo bwemewe n’amategeko ku buryo byateje akarengane.

[13] Urubanza rwaburanishijwe mu ruhame ku wa 05/02/2020, Nabimana Pierre yunganiwe na Me Niyomugabo Christophe na Me Ndagijimana Emmanuel naho Mukankubito Daphrose ahagarariwe na Me Mugeni Anita. Mbere yo gusuzuma ibibazo bigize urubanza, Urukiko rwabanje gusuzuma ikibazo kijyanye n’uko hari urubanza RCA0034/03/2017/HC/KIG ruri mu bujurire mu Rukiko Rukuru, aho Mukankubito Daphrose yareze asaba kugabana umutungo na Nabimana Pierre nk’umuntu babanye nk’umugore n’umugabo, hakibazwa niba nta ngaruka urwo rubanza rushobora kugira kuri uru ruburanwa mu Rukiko rw’Ikirenga.

[14] Kuri icyo kibazo, Me Mugeni Anita yatangiye asobanura uko urwo rubanza rugamije kugabana umutungo hagati ya Mukankubito Daphrose na Nabimana Pierre nk’umuntu babanye nk’umugore n’umugabo. Avuga ko gutangiza urwo rubanza byatewe n’uko Mukankubito Daphrose yabonaga nta yindi nzira yari ashigaje amaze kubona ko Nabimana Pierre yatangiye kumwandukuza ku mitungo yabo. Avuga ko uru rubanza rw’akarengane rudashobora kugira ingaruka ku rubanza rwo mu Rukiko Rukuru kuko ngo icyemezo cy’Umuvunyi Mukuru

kimaze gusohoka, basabye ko urwo rubanza ruhagarara rugategereza icyemezo cy'Urukiko rw'Ikirenga.

[15] Ku ruhande rw'abunganira Nabimana Pierre, bo bavuga ko icyo kibazo bari bakigaragaje, bibaza ukuntu Mukankubito Daphrose asaba urukiko kwemeza ko yashyingiranywe ku buryo bwemewe n'amategeko na Nabimana Pierre ku ruhande rumwe, ku rundi ruhande agasaba ko bagabana umutungo nk'umuntu babanye nk'umugore n'umugabo kuko ibyo byemeza ko yemera ko batashyingiranywe ku buryo bwemewe n'amategeko. Bavuga ko ahubwo ibyo byafatwa nka *aveu judiciaire* itsindisha uwemeye, bagasanga ikirego cy'akarengane kitagomba kwakirwa kubera urwo rubanza.

[16] Nyuma yo kumva impande zombi kuri iki kibazo, Urukiko rwariherereye rufata icyemezo ko nyuma yo kubona ko hari urubanza RCA0034/03/2017/HC/KIG ruri mu bujurire mu Rukiko Rukuru haburanwa gusaba kugabana umutungo, mu nyungu z'ubutabera no kugira ngo hatazabaho kuvuguruzanya kw'imanza, urwo rubanza rwaba ruhagaze kugeza igihe Urukiko rw'Ikirenga ruzafatira icyemezo.

[17] Nyuma y'aho na none mbere yo gusuzuma ibibazo bigize urubanza, Urukiko rwabanje gusuzuma inzitizi yatanzwe n'abunganira Nabimana Pierre bavuga ko niba Me Mugeni Anita uhagarariye Mukankubito Daphrose yemeye ko azakomeza kuburanisha ikimenyetso cyitwa inyandiko yatanzwe na Paruwasi Nyamirambo, iyo nyandiko bayiregera kugira ngo hemezwe ko ari impimbano.

[18] Me Mugeni Anita yavuze ko, kubera ko uburyo bwo kuregera ko inyandiko ari impimbano butinda kandi akaba yari yasobanuye ko icyo kimenyetso atari cyo kamara ahubwo

gishimangira ibindi, iyo nyandiko yatanzwe na Paruwasi ya Nyamirambo aretse kuyiburanisha, bituma iburanisha rikomeza.

[19] Mu gusaba ko urubanza RCA0106/15/TGI/NYGE rusubirwamo kubera impamvu z'akarengane, Urukiko rusanga ibibazo bikurikira aribyo bigomba gusuzumwa, nk'uko byanasabwe n'ababuranyi:

i. Gusuzuma niba mu rubanza RCA0106/15/TGI/NYGE harirengagijwe amategeko yakoreshwaga mu gihe Mukankubito Daphrose yashyingiranwaga na Nabimana Pierre.

ii. Gusuzuma niba mu rubanza RCA0106/15/TGI/NYGE harirengagijwe ibimenyetso byatanzwe na Mukankubito Daphrose byemeza gushyingirwa kwe na Nabimana Pierre.

iii. Kumenya niba indishyi ababuranyi basaba bazihabwa.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

(i) Gusuzuma niba mu rubanza RCA 0106/15/TGI/NYGE harirengagijwe amategeko yakoreshwaga mu gihe Mukankubito Daphrose yashyingiranwaga na Nabimana Pierre

[20] Hashingiwe ku myanzuro n'imiburanire ya Me Mugeni Anita uhagarariye Mukankubito Daphrose, ikigomba gusuzumwa kuri iki kibazo ni ukumenya niba gushyingiranwa kwa Mukankubito Daphrose na Nabimana Pierre mu idini kwabaye tariki ya 17/12/1983 kwari kwemewe n'Itegeko Nshinga ryo ku wa 20/12/1978 nk'ugukurikije amategeko.

[21] Me Mugeni Anita avuga ko Mukankubito Daphrose na Nabimana Pierre bemeranya ko babanye kuva mu mwaka wa 1978 bamaze gusezerana imbere y'ubutegetsi kuko umwana wabo wa mbere yavutse muri 1979. Avuga kandi ko nyuma y'aho Nabimana Pierre arigitishirije inyandiko z'ubushyingiranwe bwabo imbere y'ubutegetsi, aribwo Mukankubito Daphrose yashakishije ibindi bimenyetso by'aho basezeraniye mu idini muri 1983, kandi ko na Nabimana Pierre yemera ko basezeraniye mu Kiliziya gusa akavuga ko bitari byemewe n'amategeko.

[22] Asobanura ko mu rubanza rusabirwa gusubirwamo, Umucamanza yirengagije amategeko yakoreshwaga icyo gihe yemezaga ko ugushyingirwa imbere ya Kiliziya Gatulika byari byemewe n'amategeko, avuga ko Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 24/11/1962 ingingo yaryo ya 28, yateganyaga ko Ugushyingirwa hagati y'umugabo umwe n'umugore umwe bikozwe imbere y'amategeko cyangwa imbere y'idini ari byo byemewe n'Itegeko Nshinga", ko iryo Tegeko Nshinga ryaje gusimburwa n'iryo ku wa 20/12/1978, aho mu ngingo yaryo ya 25 ivuga ko Gushyingirwa hagati y'umugabo umwe n'umugore umwe bikozwe mu buryo bukurikije amategeko rusange aribyo byemewe", kandi iyo ngingo ikaba ariyo yakurikizwaga mu gihe Mukankubito Daphrose na Nabimana Pierre basezeranaga mu idini muri 1983.

[23] Akomeza avuga ko amategeko rusange yakurikizwaga mu gushyingirwa hari Iteka ryo ku wa 04/05/1895 rishyiraho Urwunge rw'Amategeko Mbonezamubano, Igitabo cya mbere. Muri iryo teka, mu ngingo yaryo ya 17 hari hateganyijwe ko abamisiyoneri gatulika bari barahawe n'abakoloni ububasha bwo gusezeranya abaturage b'abenegihugu (*indigènes*), kandi iryo sezerano rikemerwa nk'iryakorewe imbere y'Ubutegetsi, ko rero

ugushyingirwa kwa Mukankubito Daphrose na Nabimana Pierre muri Kiliziya Gatulika kwabaye tariki ya 17/12/1983 kwemewe n'amategeko. Avuga ko Urukiko rwagombaga kubishingiraho rukemeza ko bashyingiranywe mu buryo bukurikije amategeko, cyane cyane ko ingingo ya 26 y'iryo Teka kimwe n'iya 476 n'iya 458 z'Itegeko ryo muri 1988 (ryasimbuye iryo muri 1948) ryahinduye Iteka ryo muri 1895, zavugaga ko ibyakozwe bigumana agaciro kabyo, bityo Mukankubito Daphrose akaba ariho ashingira asaba Urukiko rw'Ikirenga kwemeza ko ahabwa urubanza rusimbura inyandiko yo gushyingirwa (*Jugement Supplétif de l'acte de mariage)*.

[24] Asobanura ko ku birebana n'urubanza RC00258/2017/TGI/NYGE Mukankubito Daphrose yaregeye kugabana umutungo na Nabimana Pierre, nk'abantu babanye batarasezeranye, Urukiko rutabifata nk'ikimenyetso cy'uko uwo ahagarariye yemera ko atashyingiranywe na Nabimana Pierre mu buryo bukurikije amategeko, ahubwo yabitewe n'uko yabonye amaze gutsindwa mu manza zabanje, kandi ikibazo yashyikirije Urwego rw'Umuvunyi gitinda gusubizwa, kandi Nabimana Pierre yaratangiye kumwandukuza ku mitungo bafitanye, ahitamo gutanga icyo kirego kubera ko ariyo mahirwe yari asigaranye.

[25] Me Niyomugabo Christophe uhagarariye Nabimana Pierre, avuga ko intandaro y'uru rubanza ari ikirego Mukankubito Daphrose yaregeye urukiko rw'Ibanze rwa Nyarugenge asaba urubanza rusimbura inyandiko y'ishyingirwa yo ku wa 18/8/1978 kuko ariho yasezeranye mu butegetsi mu buryo bukurikije amategeko na Nabimana Pierre, urwo rubanza rukaba rwarahawe RC0088/15/TB/NYGE, ariko ko Mukankubito Daphrose ntaho agaragaza ko mu rubanza

RCA0106/15/TGI/NYGE, Urukiko rwirengagije ibimenyetso bigaragaza ko yashyingiranywe na Nabimana Pierre mu 1978, ahubwo agaragaraza ibimenyetso by'uko bashyingiranywe mu 1983 imbere ya Kiliziya, akaba asanga ari uguhindura ikiregο mu gihe ingingo ya 6 y'Itegeko N° 21/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi itamwemerera kuba yahindura ikirego kuri uru rwego.

[26] Akomeza avuga ko, ku byerekeye ibyo uhagarariye Mukankubito Daphrose avuga ko Itegeko Nshinga ryo muri 1978 ryemeraga ko ugushyingirwa mu idini kwari kwemewe n'amategeko hashingiwe ku ngingo ya 25 y'iryo Tegeko Nshinga n'ingingo ya 17 y'Iteka ryo ku wa 04/05/1895 ryavuzwe haruguru, iyo ngingo ya 17 Me Mugeni Anita ayivuga igice kuko ivuga ko abamisiyoneri gatulika bari barahawe n'abakoloni ububasha bwo gusezeranya abaturage b'abenegihugu kandi iryo sezerano rikemerwa nk'iryakorewe imbere y'ubutegetsi. Akavuga kandi ko iyo ngingo isobanura neza uburyo abamisiyoneri gatulika bashoboraga gusezeranya abaturage, bakabasezeranya mu buryo bw'idini, barangiza bakabasezeranya mu buryo bw'amategeko, babiherewe ububasha na Gouverneur General bikemerwa nk'ibikozwe imbere y'ubutegetsi,[1] kuko atari

---

[1] *Dans chaque ressort, il peut en outre donner délégation aux agents de la colonie ou à des particuliers, aux fins de dresser ces actes dans l'étendue du territoire pendant le délai et aux conditions qu'il fixe. Ils remplissent ces fonctions sous la direction de l'officier du ressort qui veille à ce que les actes soient régulièrement dressés, constate les irrégularités commises et les signale au gouverneur général. La délégation dont il est question à l'alinéa précédent sera accordée sur leur demande aux missionnaires catholiques avec pouvoir pour eux de célébrer civilement le mariage des indigènes dont ils auront célébré l'union religieuse. Les particuliers et les missionnaires catholiques ne pourront recevoir délégation qu'aux fins de dresser les actes relatifs aux indigènes (du Congo ou des colonies limitrophes*)

umumisiyoneri wese wari ufite uburenganzira bwo gusezeranya ngo byemerwe kuko hari conditions ziteganyijwe n'iyo ngingo ya 17 zagombaga kuba zuzuye harimo kuba uwo mu misiyoneri yabisabye akabihabwa kandi akabikora mu buryo no mu bihe byateganyijwe muri urwo ruhushya, kandi agasezeranya abaturage babaga baramaze gusezerana mu kiliziya. Yongeraho ko nyuma yo kubasezeranya, ako kanya yabikoreraga inyandiko y'ishyingirwa (acte de mariage) yashyikirizwaga umwanditsi w'irangamimerere (*officier de l'état civil)* kugira ngo abasezeranye bandikwe mu gitabo cyabigenewe.

[27] Abunganira Nabimana Pierre bavuga kandi ko ibyateganywaga n'ingingo ya 17 y'Iteka ryavuzwe byavanyweho n'Itegeko Nshinga ryo muri 1962 kubera ko mu ngingo yaryo ya 28 iteganya ku buryo bweruye ko "ugushyingirwa hagati y'umugabo umwe n'umugore umwe bikozwe imbere y'amategeko cyangwa y'idini," bivuze ko abakuriye amadini yose yemewe bashoboraga gushyingira mu idini bigahabwa agaciro batiriwe bubahiriza imihango iteganywa n'amategeko yanditse, batiriwe kandi babisabira uburenganzira nk'uko byari biteganyijwe mu ngingo ya 17 y'Iteka ryo ku wa 04/05/1895.

[28] Bongeraho ko Itegeko Nshinga rya 1962 ryahinduwe n'Itegeko Nshinga rya 1978 ari naryo ryakurikizwaga muri 1983 igihe Mukankubito Daphrose yasezeranaga mu kiliziya na Nabimana Pierre, aho ingingo ya 25 yagiraga iti: "gushyingirwa hagati y'umugabo umwe n'umugore umwe bikozwe mu buryo bukurikije amategeko rusange nibyo byemewe", kandi mu ngingo yaryo ya 93 hateganywaga ko amategeko yose yakurikizwaga atanyuranyije naryo mu giheatavanyweho cyangwa ngo ahindurwe azakomeza gukurikizwa. Bakavuga rero ko ingingo zose z'amategeko yo mu Iteka ryo ku wa 04/05/1895

zinyuranyije n'iryo Tegeko Nshinga zavuyeho harimo n'ingingo ya 17 yavuzwe haruguru. Bavuga na none ko kuva taliki ya 28/12/1978 aba Burugumesitiri aribo bashyingiraga mu buryo bwemewe n'amategeko, bakaba barabikoraga mu buryo bukurikije amategeko rusange kuko Itegeko ryagengaga ama Komini aribo bonyine ryahaga uburenganzira bw'abakozi b'irangamimerere (*officier de l'état civil*). Abakuriye amadini ntibashoboraga gushyingira ku buryo bwemewe n'amategeko, babikoraga gusa mu rwego rw'idini.

[29] Bongeraho ko uwo murongo ari nawo wafashwe n'Urukiko rw'Ikirenga mu rubanza RS/INCONST.PEN0003/10/CS rwa Gatera Johnson na Kabarisa Teddy rwaciwe ku wa 07/01/2011, aho urukiko rwemeje ko ubushyingiranwe bw'umugabo umwe n'umugore umwe bikorewe mu butegetsi bwa Leta aribwo bwemewe," urwo rukiko rukaba rwarabyemeje rushingiye ku ngingo ya 26 y'Itegeko Nshinga rya Repubulika y'u Rwanda uko ryavuguruwe kugeza ubu, bakavuga ko mutatis mutandis ari uko ingingo ya 25 y'Itegeko Nshinga rya 1978 igomba kumvikana, kuko izo ngingo zivuga bimwe.

[30] Ikindi abunganira Nabimana Pierre bavuga ni uko ugushyingirwa kwa Mukankubito Daphrose na Nabimana kudashobora gufatwa nk'ukwemewe n'amategeko hashingiwe ku mafishi yatanzwe na Paruwasi Nyamirambo. Bongeye gusobanura ko iyo umumisiyoneri gatulika yahabwaga ububasha bwo gusezeranya, yakoraga nk'umukozi w'irangamimerere (*officier de l'état civil*) agatanga acte de mariage. Bongeyeho ko mu gihe Mukankubito Daphrose atagaragaza inyandiko y'ishyingirwa (*acte de mariage*) yaba yarahawe n'uwo mumisiyoneri akayihabwa hari abatangabuhamya babiri nk'uko

ingingo ya 20 y'Iteka ryo ku wa 04/05/1895 ibivuga,[2] ndetse akagaragaza ko abo batangabuhamya bayisinyeho, nawe akayisinyaho nk'uko ingingo ya 24 y'iryo Teka ibivuga,[3] bakavuga ko ntaho Mukankubito Daphrose yahera avuga ko yashyingiwe mu buryo bukurikije amategeko ashingiye ku ifishi ya paruwasi ya Nyamirambo.

[31] Bashingiye kuri iyo myanzuro yabo yose, abunganira Nabimana Pierre bavuga ko nta mategeko urukiko rwirengagije mu ica ry'urubanza RCA0106/15/TGI/NYGE rwemeje ko gushyingiranwa mu kiliziya mu 1983 hagati ya Mukankubito Daphrose na Nabimana Pierre bitavuze ko bashyingiranywe mu buryo bwemewe n'amategeko yakurikizwaga icyo gihe.

[32] Naho ku birebana n'urubanza Mukankubito Daphrose yaregeye Urukiko asaba kugabana na Nabimana Pierre imitungo nk'abantu babanye batarashyingiranywe, abunganira Nabimana Pierre bavuga ko ibyo byemeza ko Mukankubito Daphrose yemereye Urukiko ko batasezeranye (*aveu judiciaire*), bityo ko atari akwiye kubirengaho ngo atange iki kirego

[33] Kuri ibi byose bimaze kuvugwa n'abunganira Nabimana Pierre, Me Mugeni Anita yavuze ko Iteka ryo ku wa 04/05/1895 ryavuzwe haruguru ritakuweho n'Itegeko Nshinga ryo mu 1962, ahubwo ryakuweho n'Itegeko N°42/1988 rishyiraho Interuro y'Ibanze n'Igitabo cya mbere cy'Urwunge rw'Amategeko mbonezamubano. Yanavuze kandi ko ku byerekeye ishyingirwa

---

[2] *Les actes de l'état civil sont reçus en présence de deux temoins »*

[3] *Les actes sont signés par l'officier de l'état civil, par les comparants et les témoins, ou mention est faite de la cause qui empeche, les comparants et les témoins de signer*

mu kiliziya ryo muri 1983, abapadiri basimbuye abamisiyoneri mu bubasha bwose bari bafite.

[34] Naho ku bijyanye no kuvuga ko bahinduye ikirego imbere y'Urukiko rw'Ikirenga, avuga ko nabyo atari byo kuko kuva urubanza rwatangira basabaga inyandiko isimbura inyandiko y'ishyingirwa kandi ari nacyo bakomeje gusaba, ko umucamanza yasuzuma niba harabayeho gushyingirwa imbere y'amategeko.

UKO URUKIKO RUBIBONA

[35] Ingingo ya 25 y'Itegeko Nshinga ryo ku wa 20/12/1978 ryakurikizwaga mu mwaka wa 1983 ubwo Nabimana Pierre na Mukankubito Daphrose basezeranaga mu kiliziya, yateganyaga ko Gushyingirwa hagati y'umugabo umwe n'umugore umwe bikozwe mu buryo bukurikije itegeko n'uburyo bugenwa naryo aribyo byemewe", naho ingingo yaryo ya 98 igira iti: Iri Tegeko Nshinga rikuyeho Itegeko – Nshinga ryo ku wa 24 Ugushyingo 1962 uko ryahinduwe kugeza ubu".

[36] Isesengura ry'Itegeko Nshinga ryo ku wa 24/11/1962 cyane cyane ingingo ya 28 yavuzwe haruguru ryerekana ko ishyingirwa ryari ryemewe ari iry'umugore n'umugabo umwe, mu gihe iryo shyingirwa ryakorewe imbere y'Ubutegetsi bwa Leta cyangwa barasezeraniye imbere y'idini. Ibi bihujwe n'ikibazo kirimo gusuzumwa, byumvikanisha ko iyo uhagarariye idini ryari ryemewe mu Rwanda yasezeranyaga abantu hakurikijwe amategeko y'idini, iryo shyingirwa ryari ryemewe nk'irikozwe ku buryo bwemewe n'amategeko. Mu Itegeko Nshinga ryo ku wa 20/12/1978, iyo ngingo ya 28 yavuzwe haruguru ntiyagarutsemo, kuko ingingo ya 25 y'Itegeko Nshinga ryo muri 1978 itongeye kuvuga kw'ishyingirwa rikozwe imbere

y'idini, ahubwo ikavuga gusa ko ishyingirwa ry'umugabo umwe n'umugore umwe bikozwe mu buryo bukurikije itegeko n'uburyo bugenwa naryo aribyo byemewe.

[37] Ku bijyanye n'uburyo amategeko yateganyaga ishyingirwa mu mwaka wa 1983 ubwo Mukankubito Daphrose na Nabimana Pierre basezeraniraga mu kiliziya, Me Mugeni Anita avuga ko amategeko yakurikizwaga yari Iteka ryo ku wa 04/05/1895 ryavuzwe haruguru, cyane cyane ingingo yaryo ya 17 nayo yavuzwe haruguru. Mu iburanisha ry'urubanza ku itariki ya 05/02/2020, Me Mugeni Anita yabajijwe guhuza ibivugwa mu ngingo ya 17, ndetse n'ibiteganyijwe n'ingingo ya 16 aho bavuga inzira umumisiyoneri yanyuragamo kugira ngo ishyingirwa yakoze ryemerwe amaze kubihererwa ububasha, n'ishyingirwa mu kiliziya ryabaye muri 1983. Icyibazwaga ahanini ni ukumenya niba ibyo izo ngingo zateganyaga byarashoboraga gukurikizwa muri 1983 kugira ngo iryo shyingirwa mu idini ribe ryemewe n'amategeko, cyane cyane ko, nka *Gouverneur Général* wagombaga guha umumisiyoneri ububasha bwo gushyingira ku buryo bwemewe n'amategeko, wariho mu gihe cya gikoloni, atari akiriho muri 1983. Me Mugeni Anita ntiyanavuze niba hari uwamusimbuye ngo abe yarakoze ibiteganyijwe n'ingingo za 16 na 17 zavuzwe haruguru. Kuri iki kibazo, abunganira Nabimana Pierre bo bavuga ko guhera ku itariki ya 20/12/1978, ishyingirwa mu idini ritari rigifatwa nk'ishyingirwa ryemewe n'amategeko, kuko kuva icyo gihe, aba Burugumesitiri aribo bonyine bari bafite ububasha bwo gushyingira ku buryo bwemewe n'amategeko, babishingiye ku Itegeko rigenga amakomini ryo muri 1963.

[38] Itegeko ryo ku wa 23 Ukuboza 1963 rigenga amakomini, nk'uko ryahinduwe n'Itegeko-teka ryo ku wa 26 Nzeli 1977 rivuga mu ngingo yaryo ya 58 ko Burugumesitiri yari ashinzwe

gufata neza ibitabo by'imimerere n'iby'ibarura ry'abaturage. Muri urwo rwego, yari ashinzwe gukusanya no kwandika amakuru yose areba ibijyanye n'abaturage babaga muri Komini ye. Iyo mirimo ubundi ikorwa n'umukozi w'irangamimerere. Ku bijyanye no gusezeranya by'umwihariko, hari umuhanga mu mategeko uvuga ko muri Butare, yari imwe mu ma Perefegitura yari agize Igihugu, Perefe wayo yatanze amabwiriza ku ba Burugumesitiri b'ama Komini yose yari agize iyo Perefegitura ko aribo bagombaga gukora imirimo yo gushyingira hakurikijwe ibiteganywa n'amategeko mbonezamubano. Hanatanzwe n'ibwiriza rivuga imihango yagomba gukurikizwa. Iyo mikorere yaje gukwira mu Gihugu cyose. Akomeza avuga ko Itegeko N° 42/1988 ryo ku wa 27 Ukwakira 1988 rishyiraho Interuro y'Ibanze n'Igitabo cya mbere cy'Urwunge rw'Amategeko mbonezamubano, mu ngingo yaryo ya 87, ryemeje ba Burugumesitiri muri iyo mirimo yo kuba umukozi w'irangamimerere, naho ingingo ya 456 y'iryo Tegeko ivuga ko ibyakozwe byose n'ubutegetsi bw'amaperefegitura n'ubw'amakomini mbere y'uko rijya mu bikorwa byemewe, n'ubwo nta tegeko ryihariye ryari ryarahaye Burugumesitiri ububasha bwo kuba umukozi w'irangamimerere.[4]

[39] Urukiko rushingiye ku bimaze kuvugwa mu bika bibanziriza iki, rurasanga ibyo Mukankubito Daphrose avuga ko ishyingirwa mu idini na Nabimana Pierre ryabaye muri 1983 muri Paruwasi Nyamirambo, rifatwa nk'iryabaye imbere y'ubutegetsi nta shingiro bifite.

(ii) Gusuzuma niba mu rubanza RCA 0106/15/TGI/NYGE harirengagijwe ibimenyetso byatanzwe

---

[4] NTAMPAKA, Charles, <u>*Droit des personnes et de la famille*</u>, *Manuels de droit rwandais*, 1993, pages 17, 66 et 67.

na Mukankubito Daphrose byemeza ugushyingiranwa kwe na Nabimana Pierre.

a. Indangamuntu ya Nabimana Pierre

[40] Me Mugeni Anita uhagarariye Mukankubito Daphrose avuga ko mu rubanza rusubirishwamo ku mpamvu z'akarengane, Urukiko rwirengagije ibimenyetso birimo indangamuntu ya Nabimana Pierre igaragaza ko bashyingiranywe, kuko yandikwagamo n'umukozi ushinzwe irangamimerere, ko kuba Mukankubito Daphrose yaranditswemo nk'umugore bashakanye ari ikimenyetso kidashidikanywaho cyane cyane ko hanagaragaragaramo abana Nabimana Pierre yabyaranye na Mukankubito Daphrose.

[41] Me Niyomugabo Christophe avuga ko Urwego rw'Umuvunyi mu bimenyetso rwavuze ko byirengagijwe, harimo indangamuntu kuko igaragaza ko Mukankubito Daphrose na Nabimana Pierre bashyingiranywe, ariko ko basanga atari ikimenyetso kigaragaza ko umuntu yashyingiranywe n'undi, ndetse ko n'Umucamanza mu gika cya 18 cy'urubanza rusubirishwamo ku mpamvu z'akarengane yabisobanuye. Avuga kandi ko n'ingingo ya 86 CCLI ivuga ko irangamimerere y'abantu yemezwa, ikanagaragazwa n'inyandiko zitangwa mu buryo buteganywa n'iyi nteruro, ko nta kimenyetso cyemeza ko umuntu yashyingiranywe n'undi uretse *acte de mariage* cyangwa *jugement supplétif d'acte de mariage.*

[42] Mw'iburanisha ryo ku wa 05/02/2020, Nabimana Pierre yahawe ijambo asobanura ko indangamuntu ye yari asanzwe akoresha mbere ya 1994 yayatswe muri jenoside yakorewe abatutsi yo mu 1994, ko rero indangamuntu Mukankubito Daphrose akoresha ari inyandiko yahimbye ashaka kujya mu

mahanga, dore ko atariyo nyandiko yahimbye yonyine, ahubwo ko yanahimbye ko yize amashuri yisumbuye ku Karubanda akahakura diplôme T-568/79 ku wa 25/7/1979, kandi yararangije amashuri abanza gusa, anahimba n'inyandiko y'urugendo (*titre de voyage*) avuga ko ari umunyekongo, agahindura amazina yiyita Caroline. Abamwunganira kandi bavuze ko mu rubanza rusubirishwamo, Urukiko rutirengagije iyo ndangamuntu ahubwo nk'uko bigaragara ku rupapuro rwa 9 mu gika cya 18 cy'urubanza RCA0106/15/TGI/NYGE, rwasobanuye ko itaba ikimenyetso cy'irangamimerere, hashingiwe ku by'amategeko ateganya, kuko ikimenyetso cyemewe n'amategeko ari inyandiko y'ishyingirwa cyangwa urubanza rusimbura iyo nyandiko, dore ko ngo avuga ko basezeraniye Nyarugenge, ariko iyo ndangamuntu ikaba yaratangiwe Kacyiru.

UKO URUKIKO RUBIBONA

[43] Ingingo ya 117 y'Iteka ryo ku wa 04/05/1895 ryavuzwe haruguru yateganyaga ko ikimenyetso cy'ugushyingiranwa gitangwa hakurikijwe ibiteganyijwe mu nteruro irebana n'ibyemezo by'irangamimerere, naho ingingo ya 109 y'iryo Teka ikavuga ibyerekeranye n'umuhango wo gusezeranya, aho bavugaga ko nyuma yo kwemeza ko babaye umugore n'umugabo, umwanditsi w'irangamimerere yahitaga akora icyemezo cy'ishyingirwa. Ibikubiye muri izi ngingo bihuza kandi n'ibivugwa n'umuhanga mu mategeko Ntampaka Charles, aho agaragaza ko muri rusange ikimenyetso cyemeza nta mpaka ko abantu bashyingiranywe ari icyemezo cy'ishyingirwa, keretse mu

gihe cyatakaye cyangwa ibitabo by'ishyingirwa bitashoboye kuboneka, muri icyo gihe hashingirwa ku buhamya.[5]

[44] Hagendewe ku bimaze kuvugwa mu gika kibanziriza iki, Urukiko rurasanga kuba Mukankubito Daphrose yanditse muri kopi y'ikarita ndangamuntu ya Nabimana Pierre nk'umugore we bitafatwa nk'ikimenyetso cyemeza ko bashyingiranywe mu buryo bukurikije amategeko, kuko ishyingirwa ryemezwa gusa n'icyemezo cy'ishyingirwa.

[45] Ku bijyanye n'ibivugwa na Me Mugeni Anita ko kugira ngo umugore yandikwe mu irangamuntu y'umugabo bagombaga kuba barashyingiranywe, Urukiko rurasanga nta shingiro bifite kuko mu Itegeko – Teka N° 01/81 ryo ku wa 16 Mutarama 1981 ryerekeye ibarura ry'abaturage, ikarita ndangamuntu , aho umuntu yandikwa n'aho aba, cyane cyane ko mu ngingo ya 5, iya 6 n'iya 7 hateganywaga ibisabwa kugira ngo umuntu ahabwe ikarita ndanga muntu harimo kuba yujuje imyaka 16, kuba uyisaba afite amafoto magufi abiri, imwe igashyirwa ku ikarita ndangamuntu, indi ku ifishi y'ibarura. Mu bisabwa hakaba ntahateganyijwe ko uyisaba yagombaga kubanza kugaragaza ko yashyingiranywe n'umugabo mu buryo bukurikije amategeko. Ahubwo ku mugereka w'iryo teka akaba ariho hagaragara amakuru agomba kuzuzwa mu ikarita ndangamuntu harimo amazina y'uwo bashyingiranywe n'amazina y'abana. Urukiko rusanga kandi irangamuntu Mukankubito Daphrose agaragaza ari kopi, akaba atarabashije kugaragaza umwimerere wayo yahereyeho akora iyo kopi, cyane ko Nabimana Pierre atayemera, akavuga ko yayibuze mu gihe cya Jenoside.

---

[5] NTAMPAKA, Charles, Droit ***des personnes et de la famille***, *Manuel de droit rwandais, 1993, pge 108: « En général la preuve du mariage est faite à suffisance par un extrait de l'acte de mariage. La prevuve sera faite par témoins en cas de perte ou d'inexistence de registres de mariage ».*

[46] Urukiko rushingiye ku bisobanuro byatanzwe mu bika bibanziriza iki, rurasanga, nk'uko Urukiko Rwisumbuye rwa Nyarugenge rwabyemeje mu rubanza Mukankubito Daphrose asubirishamo ku mpamvu z'akarengane, kuba agaragaza ko yari yanditse mu ndangamuntu ya Nabimana Pierre atari ikimenyetso rwashingiraho rwemeza ko bashyingiranywe mu buryo bukurikije amategeko.

b. Icyemezo cyo kuba warashyingiwe

[47] Me Mugeni Anita avuga kandi ko ikindi kimenyetso cyirengagijwe n'Urukiko ari icyemezo cyo kuba warashyingiwe cyatanzwe muri 1983 kigaragaza ko Mukankubito Daphrose na Nabimana Pierre bashyingiranywe, kikaba cyaratanzwe igihe Nabimana Pierre yasabaga kwandikwa nk'uwashakanye na Mukankubito Daphrose kugira ngo abone ibyangombwa byo mu Bubiligi. Avuga kandi ko nyuma yo guhabwa ubwo bwenegihugu bw'ababiligi, Ubuyobozi bwa Komini zo mu Bubiligi, bwagiye butanga inyandiko zitandukanye zigaragaza ko Nabimana Pierre yashakanye na Mukankubito Daphrose mu buryo bwemewe n'amategeko ariko urukiko rukaba rutarazihaye agaciro.

[48] Me Niyomugabo Christophe avuga ko ku bw'ibanze, icyemezo cyo kuba warashyingiwe cyatanzwe ku wa 12/3/2003 na Komini Kacyiru kitari gikwiriye gusuzumwa kuko Urwego rw'Umuvunyi rutagifashe nk'ikimenyetso cyirengagijwe, ko ariko Urukiko rusanze kigomba gusuzumwa kitafatwa nk'ikimenyetso cyemeza ko Mukankubito Daphrose yasezeranye na Nabimana Pierre kuko atari umwimerere, ndetse kikaba kitubahirije ibiteganywa n'ingingo ya 11 y'Itegeko N° 15/2004 ryo ku wa 12/05/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo. Avuga kandi ko ari nako Umucamanza yabisobanuye mu gika cya 11 cy'urubanza

RCA0106/15/TGI/NYGE, aho yavuze ko iyo nyandiko itagombaga kwitwa inyandiko mvaho hashingiwe ko icya mbere atari umwimerere, icya kabiri ikaba itubahirije ibiteganywa n'ingingo ya 11 yavuzwe haruguru, kuko Mukankubito Daphrose avuga ko yasezeraniye muri Nyarugenge ariko akaba yaratse icyo cyemezo cyo kuba warashyingiwe muri Komini ya Kacyiru; bityo uwayikoze ubwe akaba ntacyo yashingiyeho yemeza ko Mukankubito Daphrose yashyingiranwe na Nabimana Pierre. Bavuga kandi ko icyo cyemezo kitagombye gutangwa nk'ikimenyetso kuko ari icya kera muri 2003 kirengeje imyaka 12 gitanzwe.

[49] Mu iburanisha ryo ku wa 05/02/2020, Nabimana Pierre yavuze ko icyo cyemezo cyo kuba warashyingiwe yakiboneye bwa mbere mu rukiko ari Mukankubito Daphrose ukizanye.

UKO URUKIKO RUBIBONA

[50] Ingingo ya 18 y'Iteka ryo ku wa 04/05/1895 ryavuzwe haruguru yateganyaga ko muri biro y'irangamimerere, ibyemezo by'irangamimerere byandikwa mu bitabo by'irangamimerere naho ingingo ya 20 y'iryo Teka ikavuga ko ibyemezo by'irangamimerere byatangwaga hari abatangabuhamya babiri.

[51] Urukiko rusesenguye ingingo ya 18 imaze kuvugwa mu gika kibanziriza iki, rusanga impamvu yatumye Umushingamategeko ateganya ko ibyemezo by'irangamimerere bigomba kwandikwa mu bitabo (*Registres)* kwari ukugira ngo mu gihe ibyo byemezo bibuze, cyangwa haramutse havutse impaka ku ishyingirwa, abakozi b'irangamimerere bazabone aho bashingira bakora ibindi, no kugira ngo amakuru ari muri ibyo bitabo abe ariyo azafasha mu gukemura izo mpaka.

[52] Dosiye y'uru rubanza igaragaza icyemezo cyo kuba warashyingiwe cyatanzwe na Komini Kacyiru ku wa 12/03/2003 cyemeza ko Nabimana Pierre na Mukankubito Daphrose bashyingiranywe imbere y'Ubutegetsi muri Komini Nyarugenge ku wa 18/8/1978 ndetse banashyingiranwa imbere ya Kiliziya ku wa 17/12/1983.

[53] Urukiko rushingiye ku mvugo za Mukankubito Daphrose, rurasanga yemeza ko yashyingiranywe na Nabimana Pierre ku wa 18/8/1978 muri Komini Nyarugenge, akavuga ko Nabimana Pierre yarigishije icyo cyemezo, ari nayo mpamvu yaregeye Urukiko kugira ngo rumuhe inyandiko isimbura icyemezo cy'ishyingirwa. Rurasanga ariko Mukankubito Daphrose atarigeze arugaragariza byibura abatangabuhamya bazi iby'iryo shyingirwa bagombye kuba barabaherekeje gufata icyo cyemezo nk'uko byateganywaga n'ingingo ya 20 y'Iteka ryavuzwe haruguru, ikindi no mu Murenge wa Nyarugenge (wasimbuye icyahoze ari Komini Nyarugenge) avuga ko bashyingiraniwemo bakaba baremeje ko ibitabo by'irangamimerere by'icyo gihe byabuze, byumvikanisha ko Komini ya Kacyiru yatanze icyemezo cy'ishyingirwa idashingiye ku makuru mpamo.

[54] Urukiko rushingiye ku bisobanuro byatanzwe haruguru, rurasanga Urukiko Rwisumbuye rwa Nyarugenge rutarirengagije icyemezo cyo kuba warashyingiwe cyatanzwe na Komini Kacyiru ku wa 12/03/2003 cyemeza ko Nabimana Pierre na Mukankubito Daphrose bashyingiranywe imbere y'Ubutegetsi muri Komini Nyarugenge ku wa 18/8/1978 kuko cyatanzwe mu buryo budakurikije amategeko.

c. Inyandiko zitandukanye zatanzwe n'Ubuyobozi bwa Komini zo mu Bubiligi

[55] Me Mugeni Anita avuga ko ikindi kimenyetso ari uko mu mwaka wa 1999 Mukankubito Daphrose yagiye mu Bubiligi n'abana bose, ariko kugira ngo bakorerwe ihuzwa ry'umulyango (*regroupement familial*), byasabaga ko Nabimana Pierre agaragaza ko yashyingiranywe na Mukankubito Daphrose, arabikora ku buryo mu Bubiligi bafatwa nk'ababana bashyingiranywe, ko aramutse abihakanye yagaragaza ubundi buryo yaba yarabonyemo ubwenegihugu bw'Ububiligi.

[56] Me Niyomugabo Christophe avuga ko ku bw'ibanze iki kimenyetso kitari gikwiye gusuzumwa kuko Urwego rw'Umuvunyi rutagifashe nk'ikimenyetso cyirengagijwe, ko ariko Urukiko rubibonye ukundi, ibyo kuba Nabimana Pierre yarabonye ubwenegihugu bw'Ububiligi hashingiwe ko bashyingiranywe, atariko byagenze, kandi ko rwakwibaza impamvu, niba Mukankubito Daphrose avuga ko bashyingiranywe mu Bubiligi, atariho yasabye *"acte de mariage*". Anasobanura ko ibizikubiyemo ari ibyavuzwe na Mukankubito Daphrose (*Simples déclarations).*

[57] Mu iburanisha ryo ku wa 05/02/2020, Nabimana Pierre yavuze ko ku bijyanye na regroupement familial, asaba Urukiko kubaza Mukankubito Daphrose kwerekana inyandiko igaragaza aho yaba yaramusabiye iyo *regroupement familial*, asobanura ko yari asanzwe agenda mu bihugu by'iburayi ku buryo batari kumukorera regroupement familial, kandi ko kuba ari ku nyandiko igaragaza abantu bagize urugo (*composition de ménage*) bitaba bivuze ko uba mu Bubiligi, atanga urugero kuri Me Mugeni Anita uba mu Rwanda ariko akaba agaragara kuri iyo composition de ménage ivugwa, ko rero nawe byitwaga ko aba mu Bubiligi kandi atariho aba, ko regroupement familial ntayabayeho.

UKO URUKIKO RUBIBONA

[58] Dosiye igaragaza inyandiko zitandukanye zatanzwe na Komini ya Molenbeek yo mu Bubiligi zanditsemo ko Mukankubito Daphrose yashyingiranywe na Nabimana Pierre, izo nyandiko zikaba ari *Certificat de résidence historique, légalisation, Composition de ménage, avertissement – extrait de rôle Impôt des personnes physiques et taxes additionnelles*.

[59] Urukiko, rushingiye ku ngingo ya 117 y'Iteka ryo ku wa 04/05/1895 ryavuzwe haruguru, nk'uko byasobanuwe mu bika bibanziriza iki rugaragaza impamvu icyemezo cyo kuba warashyingiwe kitashingirwaho hemezwa ko Mukankubito Daphrose na Nabimana Pierre bashyingiwe ku buryo bwemewe n'amategeko, rurasanga kuba mu nyandiko zinyuranye zatangiwe mu Gihugu cy'Ububiligi hagaragaramo ko Mukankubito Daphrose yashakanye na Nabimana Pierre, atari ikimenyetso cyemeza ko bashyingiranywe mu buryo bukurikije amategeko, bityo akaba ari nta kosa Urukiko Rwisumbuye rwa Nyarugenge rwakoze rutazishingiraho.

d. Inyandiko zavuye mu Kigo cy'Igihugu gishinzwe irangamuntu (NIDA) n'izavuye mu Kigo cy'abinjira n'abasohoka.

[60] Me Mugeni Anita avuga ko ikindi kimenyetso cyirengagijwe ari icyavuye muri NIDA kigizwe n'inyandiko yemeza ko bashyingiranywe mu buryo bukurikije amategeko. Avuga kandi ko Urwego rw'Umuvunyi rwakoze iperereza rugera no mu Kigo cy'abinjira n'abasohoka, aho rwasanze mu nyandiko Nabimana Pierre yujuje, ahanditse statut yaruzuzagaho ko yashyingiranywe na Mukankubito Daphrose.

[61] Ku birebana n'inyandiko zatanzwe na NIDA, ababuranira Nabimana Pierre bavuga ko nazo zitaba ikimenyetso gituma urubanza rusubirishwamo ku mpamvu z'akarengane kuko ibizikubiyemo by'uko Nabimana Pierre yashakanye na Mukankubito Daphrose, byakosowe muri data base za NIDA, ubu bikaba bigaragara neza ko Nabimana Pierre ari ingaragu nk'uko attestation de célibat yahawe ku wa 20/4/2016 ibigaragaza ndetse na attestation de célibat nshyashya yo ku wa 31/10/2019. Naho ku bijyanye n'inyandiko zo mu kigo gishinzwe abinjira n'abasohoka, aho Nabimana Pierre yagiye yandika ko yashakanye na Mukankubito Daphrose, bavuga ko ibyo yabyujuje ashingiye ko bashyingiranywe mu Kiliziya, ariko ko atemera ko bashyingiranywe muri Komini.

UKO URUKIKO RUBIBONA

[62] Bigaragara ko Mukankubito Daphrose yandikiye Urwego rw'Igihugu rushinzwe iby'irangamuntu asaba amakuru y'irangamimerere rya Nabimana Pierre maze ku wa 21/5/2015 NIDA imusubiza mu nyandiko ishingiye kuri National ID Data ko Nabimana Pierre yashakanye na Mukankubito Daphrose. Ikindi ni uko ku wa 18/12/2019, Umuyobozi Mukuru w'Ikigo cy'Iguhugu gishinzwe Irangamuntu (NIDA), yasohoye inyandiko igenewe uwo bireba imenyesha ko Mukankubito Daphrose yashakanye na Nabimana Pierre. Na none ku wa 28/12/2019, icyo Kigo cyandikiye Umunyamabanga Nshingwabikorwa w'Umurenge wa Kimihurura ibaruwa isubiza iye yabazaga amakuru kuri Nabimana Pierre, ivuga ko uyu yubatse akaba yarashakanye na Mukankubito Daphrose. Urukiko rusanga izi nyandiko zitafatwa nk'ikimenyetso cyemeza ko bashyingiranywe mu buryo bukurikije amategeko kuko zidasimbura inyandiko yo gushyingirwa nk'uko byateganywaga

mu ngingo ya 117 y'Iteka ryo ku wa 04/05/1895 ryavuzwe haruguru, bityo ibivugwa na Me Mugeni Anita ko Urukiko Rwisumbuye rwirengagije ibyo bimenyetso nta shingiro bifite.

(iii) Ku bijyanye n'indishyi zisabwa muri uru rubanza

- **Gusuzuma indishyi zasabwe na Mukankubito Daphrose na Nabimana Pierre**

[63] Mukankubito Daphrose avuga ko nk'uko byagaragaye ko urubanza rusubirwamo rwabayemo akarengane ku ruhande rwe, asaba Urukiko gutegeka Nabimana Pierre kumwishyura amafaranga yo gukurikirana urubanza ahwanye na 15.000.000Frw (akubiyemo ingendo z'indege n'amacumbi) kuri buri rwego urubanza rwanyuzemo (Urukiko rw'Ibanze, Urukiko Rukuru, Urwego rw'Umuvunyi, Urukiko rw'Ikirenga), ndetse n'igihembo cy'Avoka kingana na 1.500.000Frw kuri buri rubanza, akavuga ko habayemo imanza zigera kuri 9, bityo akaba asaba 13.500.000 Frw.

[64] Nabimana Pierre avuga ko asaba Urukiko gutegeka Mukankubito kumwishyura indishyi zo kumushora mu manza ku maherere zingana na 10.000.000Frw n'indishyi z'ikurikiranarubanza zingana na 2.000.000 Frw, akanamwishyura amafaranga y'igihembo cy'aba Avoka angana na 10.000.000Frw.

UKO URUKIKO RUBIBONA

- **Ku bijyanye n'indishyi zo gushorwa mu manza nta mpamvu**

[65] Urukiko rurasanga indishyi zo gushorwa mu manza nta mpamvu Nabimana Pierre asaba atazihabwa kuko ari

uburenganzira bwa Mukankubito Daphrose bwo kuregera Urukiko ngo rusuzume niba akarengane avuga yagiriwe na Nabimana Pierre gafite ishingiro.

- **Ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka**

[66] Urukiko rurasanga Mukankubito Daphrose nta mafaranga y'ikurikiranarubanza n'igihembo cy'Avoka yabona kuko Urukiko rwasanze nta karengane yagiriwe biturutse ko haba hatarubahirijwe amategeko cyangwa ngo habe harirengagijwe ibimenyetso mu rubanza asubirishamo ku mpamvu z'akarengane.

[67] Urukiko rurasanga Nabimana Pierre akwiye guhabwa amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka kuko byabaye ngombwa ko akurikirana urubanza yarezwemo na Mukankubito Daphrose, akishyura n'Abavoka bamwunganiye muri uru rubanza. Urukiko rurasanga ariko atahabwa 2.000.000 Frw asaba kuko atayagaragarije ibisobanuro kandi akaba ari menshi, rukaba mu bushishozi bwarwo, rumugeneye 300.000Frw y'ikurikiranarubanza. Ku bijyanye n'igihembo cy'Avoka, Urukiko rusanga rutamugenera 10.000.00Frw asaba kuko atayagaragarije ibisobanuro byayo kandi akaba ari menshi, mu bushishozi bwarwo rumugeneye 500.000 Frw.

III. ICYEMEZO CY'URUKIKO

[68] Rwemeje ko ikirego cyo gusubirishamo ku mpamvu z'akarengane, urubanza RC0106/15/TGI/NYGE rwaciwe ku wa 18/05/2015 n'Urukiko Rwisumbuye rwa Nyarugenge, cyatanzwe na Mukankubito Daphrose, nta shingiro gifite;

[69] Rwemeje ko urubanza RC0106/15/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 18/05/2015, rudahindutse;

[70] Rwemeje ko indishyi Mukankubito Daphrose asaba nta shingiro zifite;

[71] Rwemeje ko Nabimana Pierre nta ndishyi zo gushorwa mu manza agenewe;

[72] Rutegetse Mukankubito Daphrose guha Nabimana Pierre amafaranga 300.000Frw y'ikurikiranarubanza n'amafaranga 500.000Frw y'igihembo cy'Avoka, yose hamwe akaba amafaranga 800.000Frw.