RUTABAYIRO N'ABANDI v MUKAKABANO

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/INJUST/CIV 0023/16/CS – (Kayitesi, P. J., Nyirinkwaya, Cyanzayire, Hitiyaremye na Rukundakuvuga, J.) 27 Nzeri 2019]

Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Urubanza rwaciwe ku rwego rwa nyuma –Gusubirishamo urubanza ku mpamvu z'akarengane –Iyo nta kosa Urukiko rwakoze mu kutakira ikirego, urubanza rwajuririrwaga ruba rubaye itegeko akaba ari rwo rufatwa nk'urwaciwe ku rwego rwa nyuma, biruhesha uburenganzira bwo kuba rwasubirwamo ku mpamvu z'akarengane.

Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Gusubirishamo urubanza ku mpamvu z'akarengane – Inzira z'ubujurire zisanzwe n'iz'idasanzwe – Iyo umuburanyi yaba atirengagije inzira z'ubujurire, ariko izo akoze akazikora igihe giteganyijwe n'amategeko cyarenze, ntiyemerewe kwiyambaza inzira yo gusubirishamo urubanza ku mpamvu z'akarengane.

Incamake y'ikibazo: Rutabayiro Kamanzi yatanze ikirego mu Rukiko rwa Mbere rw'Iremezo rwa Gisenyi cyo gusaba uburenganzira bwo gukurikirana no gucunga umutungo wasizwe n'ababyeyi be no kuwurerereramo barumuna be, arabuhabwa ndetse ategekwa kwita kuri nyirakuru Mukakabano akajya amugenera ikimutunga kandi akagumana inzu arimo. Uyu nawe yaregeye uru Rukiko avuga ko ibyo Urega yategetswe atabyubahirije, asaba uburenganzira bwo kwandikwaho inzu iri mu kibanza nimero 3648 yahawe mu rubanza rwabanje. maze Urukiko rwategetse Urega kujya amuha ibimutunga bingana n'amafaranga ibihumbi ijana (100,000 Frw) buri kwezi ndetse rutegeka ko iyo nzu imwandikwaho nkuko byavuzwe muri urwo rubanza rwabanje.

Umuryango wa Rutabayiro wajuririye urwo rubanza uvuga ko bambuwe umutungo (inzu) wabo basigiwe n'ababyeyi babo bitabye Imana ariko Urukiko rwemeje ko uyu muryango utari kujuririra uru rubanza kuko atari wo muburanyi nyakuri waruburanye mu Rukiko rwa Mbere rw'Iremezo.

Umwe mu bana ba Rutabayiro yatambamiye urubanza rwa mbere rwaciwe n'Urukiko rw'Iremezo rwa Gisenyi maze Urukiko rw'Intara rwa Gisenyi, rwemeza ko icyemezo cyo kwandika kuri Nyirakuru wabo inzu n'icyo guhabwa amafaranga ya buri kwezi gikuweho kuko ibyo bintu bikurwa mu mutungo w'umuryango kandi utararezwe mu rubanza.

Nyirakuru yajuririye mu Rukiko Rukuru, Urugereko rwa Musanze, maze uru Rukiko rutegeka ko hubahirizwa imikirize y'urubanza rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Gisenyi kuwa 01/03/2002, Rutabayiro Kamanzi akubahiriza ibyo yategetswe.

Bamwe mu bana ba Rutabayiro batambamiye urwo rubanza rwaciwe n'Urukiko Rukuru barega Mukakabano, bagobokeshamo abandi bavandimwe babo babiri baburanye imanza za banje, maze Urukiko rwemeza ko ikirego cyabo kitakiriwe kuko bose barutambamiye bakererewe. Abazungura bose batanze ikirego gisaba kuzungura umutungo wasizwe n'ababyeyi babo mu Rukiko Rwisumbuye rwa Rubavu maze bahabwa ubwo burengazira ndetse hagaragazwa n'umutungo uzungurwa harimo ya nzu yari yahawe Nyirakuru wabo.

Nyirakuru wabo yatambamiye uru rubanza arega Abazungura bose, Urukiko Rwisumbuye rwemeza ko imikirize y'uru rubanza ikuweho ndetse na ya nzu igarurwa mu maboko ya Nyirakuru. Nabo bajuririye mu Rukiko Rukuru, urugereko rwa Musanze hemezwa ko urubanza rujuririrwa rudahindutse. Abazungura ba Rutabayiro bandikiye Urwego rw'Umuvunyi basaba ko urubanza RCA 0016/13/HC/MUS rwasubirwamo ku mpamvu z'akarengane kuko nta yindi nzira y'ubujurire bari basigaranye, uru rwego rumaze kurukorera isesengura rwemeza ko rukwiye gusubirwamo ku mpamvu

z'akarengane; rwandikira Perezida w'Urukiko rw'Ikirenga rubisaba, amaze kubisuzuma, yafashe icyemezo cy'uko urwo rubanza ari rwo rugomba gusubirwamo ku mpamvu z'akarengane.

Muri uru Rukiko, Abazungura ba Rutabayiro bavuga ko banenga imanza zose zaciwe bakavuga ko zabateje akarengane kagaragara mu rubanza RC 4826/R13/2001 bityo kakaba kagomba gukosoka hashingiwe ku ngingo ya 81 al 2 y'Itegeko Nº 03/2012 /OL ryo kuwa 13/6/2012 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga.

Uregwa yatanze inzitizi asaba Urukiko kwemeza ko iki kirego kitagomba kwakirwa kuko Abarega birengagije inzira z'ubujurire cyangwa bakazikora mu buryo budakurikije amategeko bigatuma ibirego byabo bitakirwa, bityo bakaba ntacyo bakwifashisha basaba ko urubanza rusubirwamo ku mpamvu z'akarengane.

Muri uru rubanza, Urukiko rwabanje gusuzuma ikibazo kijyanye no kumenya niba urubanza RC 4826/R13/2001 rusabirwa gusubirwamo ku mpamvu z'akarengane ari rwo rwaciwe ku rwego rwa nyuma. Aha Uregwa avuga ko uru rubanza atari rwo rwaciwe bwa nyuma kuko hari imanza zarushamikiyeho haba mu nzira y'ubujurire cyangwa yo gutambama, ariko byose bikarangira zitakiriwe kubera ko byabaga byarakozwe mu buryo bunyuranyije n'amategeko. Abaregwa bo bavuga ko urubanza rwaciwe ku rwego rwa nyuma (nº RCA 016/13/HC/MS) atari rwo rurimo akarengane uretse ko rwagashimangiye. Asanga akarengane kagomba gushakirwa mu rubanza karimo, ni ukuvuga Urubanza RC 4826/13/2001.

Ku kibazo kujyanye no kumenya niba hari inzira z'ubujurire zisanzwe n'izidasanzwe zirengagijwe mbere yo gusaba ko urubanza RC 4826/R13/2001 rusubirishwamo ku mpamvu z'akarengane, Uregwa avuga ko muri urwo rubanza, uwitwa Kamanzi Rutabayiro wari waruburanye atarujuririye ndetse n'urubanza RCA 095/10/HC rwemeje ko gutambama kw'abagize *succession* Rutabayiro kutakiriwe kuko babikoze bakerewe; asanga muri rusange baribujije inzira z'ubujurire bityo bakaba ntaho bahera basaba ko urubanza RC 4826/R13/2001 cyangwa izirushamikiyeho zisubirwamo ku mpamvu z'akarengane.

Abarega bavuga ko urubanza RC 4826/R13/2001 rwajuririwe mu rubanza RCA 854/R3/RUH ariko ubujurire ntibwakirwe, banavuga kandi ko banagerageje inzira yo gutambama mu bihe bitandukanye ariko bikarangira inkiko zigumishijeho akarengane kari mu rubanza RC 4826/R13/2001.

Incamake y'icyemezo: 1. Iyo nta kosa Urukiko rwakoze mu kutakira ikirego, urubanza rwajuririrwaga ruba rubaye itegeko bityo, akaba ari rwo rufatwa nk'urwaciwe ku rwego rwa nyuma, biruhesha uburenganzira bwo kuba rwasubirwamo ku mpamvu z'akarengane.

2. Iyo umuburanyi yaba atirengagije inzira z'ubujurire, ariko izo akoze akazikora igihe giteganyijwe n'amategeko cyarenze, ntiyemerewe kwiyambaza inzira yo gusubirishamo urubanza ku mpamvu z'akarengane.

Urubanza ntirwakiriwe.

Amategeko yashingiweho:

Itegeko Ngenga Nº 03/2012 /OL ryo kuwa 13/6/2012 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga, ingingo ya 81.

Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111.

Itegeko ryo kuwa 15 Nyakanga 1964 rishinga imiburanishirize y'imanza z'amahugu n'ubucuruzi, ingingo ya 226.

Nta manza zifashishijwe.

I. IMITERERE Y'URUBANZA

[1] Nyuma y'uko ababyeyi Rutabayiro Ngango Saidi n'umugore we Kayitesi Josephine bitabye Imana, umwana wabo Rutabayiro Kamanzi yatanze ikirego cyo gusaba uburenganzira bwo gukurikirana no gucunga umutungowasizwe n'ababyeyi be no kuwurerreramo barumuna be, mu Rukiko rwa Mbere rw'Iremezo rwa Gisenyi; Kayiganwa Kabeza, nyirasenge (mushiki wase Rutabayiro) agobokeshwa mu rubanza ku gahato kuko ari we wari ufite imitungo myinshi ya Rutabayiro Ngango Saidi.

[2] Kuwa 18/01/2001, mu rubanza RC 3150/R9/2000, Urukiko rwategetse ko:

- umutungo wose wasizwe na Rutabayiro Ngango Saidi ucungwa n'umwana we Rutabayiro Kamanzi, akawucungira barumuna be bakiri bato.
- imodoka Minibus Toyota Hiace RR19.36A na camionette Mitsubishi simple cabine RR 19.39 C zanditswe kuri Kayiganwa zihindurwa zikandikwa kuri Rutabayiro Kamanzi hamwe na compte iri muri BCDI nimero50228-01-31 n'indi iri muri Banque Populaire ya Rubavu ifite nimero 234470600234 B 01, amafaranga aziriho akabikuzwa n'ubiherewe uburenganzira.
- Rutabayiro Kamanzi azita kuri nyirakuru akajya amugenera ikimutunga kandi akagumana inzu arimo, atabikora bigakorwa ku ngufu za Leta.

[3] Kuwa 17/12/2001, Mukakabano Charlotte nawe yaregeye Urukiko rwa Mbere rw'Iremezo rwa Gisenyi arega Rutabayiro Kamanzi:

- Ikirego cyo kuba uyu atarubahirije ibyo Urukiko rwamutegetse ku byerekeye ikimutunga mu rubanza RC 3150/R9/2000, rwaciwe kuwa 18/01/2001.
- asaba uburenganzira bwo kwandikwaho inzu iri mu kibanza nimero 3648 yahawe mu rubanza RC 3150/R9/2000.

Ikirego cye cyanditswe kuri RC 4826/R13/2001, maze kuwa 01/03/2002 Urukiko rwa Mbere rw'Iremezo rwa Gisenyi rutegeka ko:

- Rutabayiro Kamanzi agomba kujya aha nyirakuru Mukakabano Charlotte ikimutunga gihwanye na 10,000 Frs buri kwezi.
- inzu iri muri parcelle nimero 3648 yandikwa kuri Mukakabano nk'uko byavuzwe mu rubanza nº RC 3150/R9/2000.

[4] Umuryango wa Rutabayiro uhagarariwe na Kamanzi wajuririye urubanza RC 4826/R13/2001 uvuga ko utishimiye imikirize y'urubanza rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Gisenyi kuko rwategetse kwamburwaumutungo (inzu) basigiwe n'ababyeyi babo bitabye Imana**.** Kuwa 20/03/2003, mu rubanza RCA 854/R3/RUH, Urukiko rwemeje ko Umuryango wa Rutabayiro utari kujuririra uru rubanza kuko atari wo muburanyi nyakuri waruburanye mu Rukiko rwa Mbere rw'Iremezo.

[5] Kuwa 04/05/2005, Urukiko rw'Intara rwa Gisenyi, mu rubanza RC 0242/04/TP/GIS-RC 8143/R18/03 rwemeje ko icyemezo cyo kwandika kuri Mukakabano inzu iri muri parcelle nimero 3648 n'icyo guhabwa 10,000 frw buri kwezi cyafashwe mu rubanza RC 4826/R13/2001 gikuweho kuko ibyo bintu bikurwa mu mutungo w'umuryango wa Rutabayiro kandi utararezwe mu rubanza.

[6] Mukakabano Charlotte ntiyishimiye imikirize y'urwo rubanza arujuririra mu Rukiko Rukuru Urugereko rwa Musanze kuwa 27/05/2005**,** rwandikwa kuri RCAA 0639/05/HC/RUH**.** Mbere y'uko rusuzuma icyo kirego**,** habaye ivugurura ry'inzego z'ubucamanza hakurikijwe itegeko ngenga rigena imiterere, imikorere n'ububasha by'inkiko rwongera guhabwa numero nshya ari yo RCAA 0433/06/HC/MUS. Kuwa 25/06/2009**,** Urukiko Rukuru Urugereko rwa Musanze rwategetse ko

hubahirizwa imikirize y'urubanza rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Gisenyi kuwa 01/03/2002, Rutabayiro Kamanzi akubahiriza ibyo yategetswe.

[7] Rutabayiro Museveni Joseph, Rutabayiro Ngango Sadi, Rutabayiro Kangabo Claudia na Rutabayiro Ngabo Sultan batambamiye urubanza RCAA 0433/06/HC/MUS barega Mukakabano Charlotte, bagobokesha RutabayiroNgoga Saidi na Rutabayiro Kamanzi, kuwa 21/01/2011, mu rubanza RCA095/10/HC/MUS, Urukiko Rukuru Urugereko rwa Musanze rwemeza ko ikirego cyabo kitakiriwe kuko bose barutambamiye bakererewe.

[8] Rutabayiro Kamanzi n'abavandimwe be bose nyuma baje gutanga ikirego mu Rukiko Rwisumbuye rwa Rubavu cyo kuzungura ababyeyi babo umutungo ugizwe n'inzu iri muri *parcelle* 306 na *annexe* muri nimero 3648,urubanza ruhabwa RC 0025/011/TGI/RBV, maze mu rubanza rwaciwe kuwa 01/12/2011, Urukiko Rwisumbuye rwa Rubavu, rutegeka ko:

- umutungo ugizwe n'inzu iri mu kibanza nimero 306 kiri mu Mudugudu wa Gikarani, Akagari ka Nengo, Umurenge wa Gisenyi n'inzu yubatswe mu kibanza nimro 3648 cyavuyemo ibibanza bibiri ari byo nimero 3648 na 3649 biri mu Mudugudu wa Kaminuza, Akagari ka Bugoyi, Umurenge wa Gisenyi, wasizwe na Rutabayiro Ngango Saidi na Kayitesi Josephine, uzungurwa n'abana babo ari bo Rutabayiro Kamanzi, Rutabayiro Ngoga Saidi, Rutabayiro Ngabo Sultan ahagarariwe na Rutabayiro Museveni Joseph, Rutabayiro Ngango Sadi, Rutabayiro Kangabo Claudia na Rutabayiro Ngabo Sultan.

[9] Mukakabano Charlotte yatambamiye imikirize y'urwo rubanza arega abazungura ba Rutabayiro bose, mu rubanza RC 0106/012/TGI/RBV rwaciwe kuwa 13/12/2012, Urukiko Rwisumbuye rwa Rubavu rwemeza ko:

- imikirize y'urubanza RC 0025/011/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu kuwa 01/12/2011 ivanyweho.
- inzu iri mu kibanza nimero 306 kiri mu Mudugudu Gikarani, Akagari ka Nengo, Umurenge wa Gisenyi muri paricelle nimero 3648 na 3649 yahindutse n° 440 ari iya Mukakabano Charlotte.

Runategeka abazungura ba Rutabayiro gufatanya guha Mukakabano indishyi zo kumusiragiza mu manza n'igihembo cy'avoka zingana n'ibihumbi magana atatu (300,000 frw).

[10] Mukakabano yongeye gutanga ikirego cyo gukosoza urubanza RC 0106/012/TGI/RBV rwaciwe kuwa 13/12/2012 avuga ko hari amakosa yagaragaye ku rupapuro rwa kane igika cya 13 na 16, kuwa 11/01/2013, maze Urukiko Rwisumbuye rwa Rubavu mu rubanza RC 0294/012/TGI/RBV, rwemeza ko:

- ikibanza nimero 306 kiri mu Mudugudu wa Gikarani, Akagari ka Nengo, Umurenge wa Gisenyi ari icy'Umuryango wa Rutabayiro Ngango Saidi ugizwe na Rutabayiro Kamanzi, Rutabayiro Ngoga Saidi, Rutabayiro Museveni Joseph, Rutabayiro Ngango Sadi, Rutabayiro Kangabo Claudia na Rutabayiro Ngabo Sultan kuko ari icyo basigiwe n'ababyeyi babo, kandi ko icyo kibanza ntaho gihuriye n'ikibanza nimero 3648 na 3649 byahindutse ikibanza nimero 440.
- ibibanza nimero 3648 na 3649 byahindutse ikibanza nimero 440 kiri mu Mudugudu wa Kaminuza, Akagari ka Bugoyi, Umurenge wa Gisenyi ari icya Mukakabano Charlotte.
- urubanza RC 0294/012/TGI/RBV rukosoye urubanza RC 0106/012/TGI/RBV.

[11] Abazungura ba Rutabayiro Ngango Saidi na Kayitesi Josephine bajuririye urubanza RC 0106/012/TGI/RBV rwaciwe kuwa 13/12/2012, mu Rukiko Rukuru Urugereko rwa Musanze, muri urwo rubanza RCA 016/13/HC/MUS, kuwa 29/05/2013:

- Urukiko rwemeje ko urubanza RC 0106/012/TGI/RBV rwaciwe kuwa 13/12/2012 rudahindutse.
- rutegeka abajuriye gufatanya guha Mukakabano Charlotte 600,000 Frw y'indishyi z'akababaro zo kumusiragiza mu manza, bagatanga na 300,000 frw y'igihembo cya avoka wamuburaniye mu bujurire, ayo akiyongera kuyo baciwe mu rubanza rwajuririwe.

[12] Abazungura ba Rutabayiro Ngango Saidi na Kayitesi Josephine bandikiye Urwego rw'Umuvunyi basaba ko urubanza RCA 0016/13/HC/MUS rwasubirwamo ku mpamvu z'akarengane kuko nta yindi nzira y'ubujurire bari basigaranye, uru rwego rumaze gukora isesengura rwasanze urubanza RCA 016/13/HC/MUS rwaciwe n'Urukiko Rukuru Urugereko rwa Musanze kuwa 29/05/2013 rukwiye gusubirwamo ku mpamvu z'akarengane, rwandikira Perezida w'Urukiko rw'Ikirenga rubisaba, Perezida w'Urukiko rw'Ikirenga amaze gusoma raporo y'Ubugenzuzi Bukuru bw'inkiko kandi nawe amaze gusuzuma iyi dosiye, yafashe icyemezocy'uko urubanza RC 4826/R13/2001 rwaciwe kuwa 01/03/2002 ari rworugomba gusubirwamo ku mpamvu z'akarengane. Ikirego cyandikwa kuri RS/REV/INJUST/CIV 0023/16/CS.

[13] Kuwa 10/09/2019**,** urubanza rwahamagawe ababuranyi bose bitabye, Abazungura ba Rutabayiro Ngango Saidi na Kayitesi Josephine bahagarariwe na Rutabayiro Ngoga Saidi nawe yunganiwe na Me Munana Norbert**,** naho Mukakabano Charlotte ahagarariwe na Me Nsengiyumva Straton.

[14] Me Munana Norbert uburanira abazungura ba Rutabayiro Ngango Saidi, anenga imanza zose zaciwe akavuga ko zabateje akarengane ku buryo bukurikira:

a. Urubanza RC 3150/R9/2000 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Gisenyi rwavuze ko Mukakabano Charlotte agumana inzu arimo nyamara rwari rwaregewe gusa kwemeza ko Rutabayiro Kamanzi acunga umutungo we mu izina ry'umuryango.

b. Urubanza RC 4826/ R13/2001. Uru rubanza rwashinzwe na Mukakabano Charlotte ashingiye ku makosa y'urubanza rumaze kuvugwa, maze asaba ko inzu imwandikwaho arabihabwa.

c. Uru rubanza rwarajuririwe (mu rubanza RCA 854/ R3/RUH), ikirego nticyakirwa kuko uwareze mu bujurire atariwe wari waburanye mbere; urwo narwo ruratambamirwa (mu rubanza nº RC0242/04/TP/GIS) biciye kuri Rutabayiro Ngoga Saidi, musaza wa Rutabayiro Kamanzi, imikirize y'urubanza RC 4826/ R13/2001 ivanwaho, ya nzu iburanwaisubizwa abazungura ba Rutabayiro, ariko Mukakabano arajurira (mu rubanza RCAA 0433/06/HC/MUS) aratsinda ya nzu iramugarukira. Na none mu rubanza RCA 095/10/HC/MUS abandi bavandimwe ba Rutabayiro Kamanzi, aribo Rutabayiro Museveni, Rutabayiro Ngoga Sadi, Rutabayiro Kangabo na Rutabayiro Ngabo Sultan batambamiye imikirize y'urwo rubanza RCAA 0433/06/HC/MUS maze ikirego cyabo nticyakirwa kuko bagitanze bakererewe.

[15] Ibyo birego byose bimaze gufata ubusa, bene Rutabayiro bose batanze ikirego noneho cyo kuzungura umutungo w'ababyeyi babo mu rubanza RC 0025/011/TGI/RBV, harimo na ya nzu Mukakabano arimo, barabihabwa. Nyamara Mukakabano yongeye gutambamira iyo mikirizemu rubanza RC 0106/012/TGI/RBV, urukiko rurabimwemerera n'inzu arayisubizwa hishingikirijwe za manza yatsinze bikarangira ayeguriwe. Bene Rutabayiro barabijuririye, Urukiko Rukuru Urugereko rwa Musanze rwemeza ko rudahindutse.

[16] Me Munana akaba asanga izo manza zose zarashyigikiye akarengane kagaragara mu rubanza RC 4826/R13/2001 bityo kakaba kagomba gukosoka hashingiwe ku ngingo ya 81 al 2 y'Itegeko Nº 03/2012/OL ryo kuwa 13/6/2012 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga, ryakoreshwaga icyo gihe.

[17] Me Nsengiyumva Straton uhagarariye Mukakabano Charlotte yatanze inzitizi asaba Urukiko rw'Ikirenga kwemeza ko iki kirego kitagomba kwakirwa kuko Rutabayiro Kamanzi n'abavandimwe be birengagije inzira z'ubujurire cyangwa bakazikora mu buryo budakurikije amategeko bigatuma ibirego byabo bitakirwa. Ibyo abisobanura mu buryo bukurikira:

- Urubanza kuri RC 3150/R9/2000 n'iyo rwaba rwabayemo amakosa mu kwemeza ko inzu Mukakabano Charlotte yarimo ayigumana, ntawarujuririye kandi rwashoboraga kujuririrwa cyangwa rugakosorwa; uretse ko atanemera ko hari amakosa urukiko rwakoze mu kubyemeza rutyo.
- Urubanza RC 4826/R13/2001 rwaciwe n'Urukiko rwa Mbere rw'Iremezo rwa Gisenyi rwemeje ko Mukakabano Charlotte yandikwahoinzu iri muri parcelle nimero 3648, rwabaye itegeko kuko Rutabayiro Kamanzi yarujuririye mu izina ry'umuryango (RCA 854/R3/RUH) kandi atari umuryango wari waburanye mu rwego rwa mbere, bigatumarutakirwa.
- Urubanza RC 0242/04/TPI GIS- RC 8143/R18/03 bamwe muri bene Rutabayiro bagerageje gutambamiramo imikirize y'urubanza RC 4826/R13/2001 rwarangiye basubijwe inzu iburanwa, ariko mu rubanza RCAA 0433/06/HC/MUS rwaciwe mu bujurire bwarwo, Mukakabano arabatsinda inzu arayisubirana, bene Rutabayiro bandi bagerageje kurutambamira, ikirego cyabo nticyakirwa, kuko batinze kugitanga; baba bibujije inzira y'ubujurire batyo.

[18] Me Nsengiyumva Straton asoza avuga ko imanza zishamikiye ku rubanza RC 4826/R13/2001 zarangiye abazungura ba Rutabayiro bivukije inzira z'ubujurire ku makosa yabo bityo bakaba ntacyo bakwifashisha basaba ko urubanza rusubirwamo ku mpamvu z'akarengane. Avuga kandi ko mu Rubanza RC 0025/011/TGI/RBV, bene Rutabayiro bose batanze ikirego basaba kuzungura ababyeyi babo barabibaha ndetse harimo na ya nzu iburanwa; bituma Mukakabano arutambamira baruvanaho mu rubanza RC 0106/012/TGI/RBV kuko baribiheshejemo inzu yaburanwe mu manza zabaye itegeko ikegurirwa Mukakabano Charlotte. Uru rubanza bene Rutabayiro bararujuririye mu rubanza RCA 016/13/HC/MUS; birangira hemejwe ko rudahindutse; kandi ntibagaragaza ko hari ikosa rirurimo, ndetse n'ubugenzuzi bw'inkiko bwasanze nta karengane karurimo.

[19] Me Nsengiyumva Straton avuga ko kubera izo mpamvu zose yifuza ko Urukiko rw'Ikirenga rubona ko ikibazo cyabo kitagombaga kwakirwa mu rwego rw'akarengane hashingiwe ku biteganywa n'ingingo ya 81 al.2 y'Itegeko Ngenga Nº 03/2012 /OL ryo kuwa 13/6/2012 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga ryakurikizwaga igihe batangaga ikibazo ku rwego rw'Umuvunyi, ngo kuko iyi ngingo iteganya ko umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanze ariko ntabikore mu gihe giteganyijwe n'amategeko atemerewe gusaba ko urubanza yatsinzwe rusubirishwamo. Avuga kandi ko n'akarengane kadashobora gushingira ku rubanza RC 4826/R13/2001 kuko urwo rubanza atari rwo rwaciwe ku rwego rwa nyuma, ibyo bikaba biteganywa n'ingingo ya 81 al.1 y'itegeko ryavuzwe haruguru.

[20] Me Munana Norbert wunganira abarega avuga ko nta nzira z'ubujurire zirengagijwe kuko bajuriye bakanatambama, ko ikibazo cyabaye ari uko urukiko rwakoze amakosa, inkiko z'ubujurire zikemeza ko Rutabayiro Kamanzi yarezwe ku giti cye kandi aburana imitungo y'umuryango. Rutabayiro Kamanzi yaburanaga nk'uhagarariye umuryango, ariko urukikorukemeza ko imitungo ari iye ari nayo mpamvu hagiye habaho gutambama.

[21] Nyuma yo kumva impaka z'ababuranyi, Urukiko rwafashe icyemezo cyokubanza gusuzuma iyo nzitizi yo kutakira ikirego, rukayifataho umwanzuro.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

[22] Urukiko rw'Ikirenga rusanga ibibazo bikwiye gusuzumwa muri uru rubanzaari ibi bikurikira:

a. Kumenya niba urubanza RC 4826/R13/2001 rusabirwa gusubirwamo ku mpamvu z'akarengane arirwo rwaciwe ku rwego rwa nyuma.

b. Kumenya niba hari inzira z'ubujurire zisanzwe n'izidasanzwe zirengagijwe mbere yo gusaba ko urubanza RC 4826/R13/2001 rusubirishwamo ku mpamvu z'akarengane.

c. Ibyerekeye indishyi, amafaranga y'ikurikiranarubanza n'igihembo cya avoka.

1. Kumenya niba urubanza RC 4826/R13/2001 rusabirwa gusubirwamo ku mpamvu z'akarengane ari rwo rwaciwe ku rwego rwa nyuma

[23] Me Nsengiyumva Straton avuga ko Urubanza RC 4826/13/2001 atari rworwaciwe bwa nyuma kuko hari imanza zarushamikiyeho haba mu nzira y'ubujurire cyangwa yo gutambama, ariko byose bikarangira zitakiriwekubera ko byababaga byarakozwe mu buryo bunyuranyije n'amategeko.

[24] Me Munana avuga ko urubanza rwaciwe ku rwego rwa nyuma (RCA 016/13/HC/MS) atari rwo rurimo akarengane uretse ko rwagashimangiye.Asanga akarengane kagomba gushakirwa mu rubanza karimo, ni ukuvuga Urubanza RC 4826/13/2001.

UKO URUKIKO RUBIBONA

[25] Ingingo ya 81 y'Itegeko Ngenga Nº 03/2012 /OL ryo kuwa 13/6/2012 rigenaimiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga ryakurikizwaga igihe abazungura ba Rutabayiro batangaga ikibazo ku rwego rw'Umuvunyi,mu gika cyayo cya mbere, yavugaga ko urubanza rushobora gusubirishwamo ku mpamvu z'akarengane ari urubanza rwaciwe ku rwegorwa nyuma. Nyamara, nk'uko bigaragara haba mu myanzuro cyangwa mu miburanire y'ababuranyi, impande zombi zemeranya ko nyuma y'icibwa ry'urubanza RC 4826/R13/2001, urwo rubanza rwajuririwe mu rubanza RCA 854/ R3/RUH ntirwakirwe kuko rwajuririwe n'utarabaye umuburanyi mu rubanza rwajuririwe, ndetse hakabaho n'imanza zo kurutambamira, bikaza kurangira urubanza rwa nyuma muri zo, ni ukuvuga urubanza RCAA 0433/06/HC/MUS narwo rutakiriwe kuko ababuranyi barutambamiye bakererewe.

[26] Urukiko rw'ikirenga rusanga ariko n'ubwo nta gushidikanya ko habayeizindi manza nyuma y'icibwa ry'urubanza RC 4826/R13/2001 rusabirwagusubirwamo ku mpamvu z'akarengane, hakenewe umucyo ku cyo itegeko ryise urubanza rwaciwe ku rwego rwa nyuma. Mu yandi magambo, ese urubanza rutafashe icyemezo mu mizi rushobora gufatwa nk'urwaciwe ku rwego rwa nyuma?

[27] Iyo usomye igika cya mbere[1] cy'ingingo ya 81 ukagihuza n'intangiriro y'igika cyayo cya kabiri[2] ubona gusa ko icyo umushingamategeko yashakaga kumvikanisha nk'urubanza rwaciwe ku rwego rwa nyuma, ni ukuvuga urwemerewe gusubirwamo ku mpamvu z'akarengane**,** ari urubanza rutagishoboye kujuririrwa; rwarangije inzira zose z'ubujurire zisanzwe n'izidasanzwe. Ibi ariko ubwabyo ntibisubiza ikibazo cyo kumenya niba urubanza rwaciwe ku rwego rwa nyuma rukajuririrwa, ubujurire ntibwakirwe byaba intambamyi ku gusubirishamo ku mpamvuz'akarengane rwa rubanza rutakiriwe mu bujurire cyangwa mu yindi nzira idasanzwe y'ubujurire.

[28] Urukiko rw'ikirenga rusanga inzira yo gusubirishamo urubanza ku mpamvuz'akarengane igamije gukosora akarengane katewe n'impamvu zivugwa mu ngingo ya 81 zirimo kuba urwo rubanza

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[1] Urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane kubera impamvu zikurikira…

[2] Iki gika gitangira kigira kiti "Icyakora, umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanzwe ariko ntabikore mu gihe giteganyijwe n'amategeko ntiyemerewe ….

rwarirengagije amategeko n'ibimenyetso; rwarabayemo ruswa, ikimenyane cyangwa icyene wabo, cyangwa se rudashobora kurangizwa. Bityo, urubanza rushobora gusubirishwamo ku mpamvu z'akarengane bikaba byumvikana ko ari urubanza rwafashe icyemezo kirenganya umuburanyi. Mu yandi magambo, urubanza rutakiriwe byafatwa ko rwarenganyije umuburanyi, iyo muri ukokutakirwa kwarwo ariho akarengane gashingiye. Ibyo bivuze ko iyo nta kosaurukiko rwakoze mu kutakira ikirego, urubanza rwajuririrwaga ruba rubaye itegeko bityo akaba ari narwo rufatwa nk'urwaciwe ku rwego rwa nyuma, bikanaruhesha uburenganzira bwo kuba rwasubirwamo ku mpamvu z'akarengane.

[29] Kubera izo mpamvu, Urukiko rw'Ikirenga rusanga ikibuza urubanza RC 4826/R13/2001 gufatwa nk'urwaciwe ku rwego rwa nyuma atari uko rwajuririwe mu rubanza RCA 854/R3/RUH ntirwakirwe, ahubwo ikirubuza gufatwa rutyo ari uko habaye urubanza RC 0242/04/TP/GIS, imikirize yarwo ikavanwaho. Kuba rero iyo mikirize yaravuyeho igasimbuzwa indi, n'ubwo byaje kurangira isubiyeho mu manza zo gutambama n'ubujurire kuri zo nk'uko bisobanuye kuva ku gika cya 15 kugeza ku gika cya 19 cy'urubanza RCAA 0433/06/HC/MUS, nibyo bigaragaza ko urubanza RC 4826/R13/2001 atari rwo rwaciwe ku rwego rwa nyuma, kuko imikirize yarwo yari yarasimbujwe iy'urubanza RC 0242/04/TP/GIS nayo yaje gusimbuzwa iy'urubanza RCAA 0433/06/HC/MUS mu itambama ryakozwe na Mukakabano Charlotte[3] .

[30] Uru rubanza RCAA 0433/06/HC/MUS n'ubwo abandi bazungura ba Rutabayiro[4]bageragereje kurutambamira mu rubanza RCA 095/10/HC/MUS, imikirize yarwo yagumyeho kuko barutambamiye bakererewe, bityo Urukiko rw'Ikirenga rukaba rusanga ari rwo rubanza rwaciwe ku rwego rwa nyuma mu manza zishamikiye ku rubanza RC4826/R13/2001.

2. Kumenya niba hari inzira z'ubujurire zisanzwe n'izidasanzwe zirengagijwe mbere yo gusaba ko urubanza RC 4826/R13/2001 rusubirishwamo ku mpamvu z'akarengane

[31] Me Nsengiyumva Straton avuga ko mu rubanza RC 4826/R13/2001, uwitwa Kamanzi Rutabayiro wari waruburanye atarujuririye, bityo kuba atararujuririye yiyambuye uburenganzira bwo kurusubirishamo kumpamvu z'akarengane. Avuga kandi ko n'urubanza RCA 095/10/HC Musanze rwemeje ko gutambama kw'abagize *succession* Rutabayiro kutakiriwe kuko babikoze bakererewe; akaba asanga muri rusange baribujije inzira z'ubujurire bityo bakaba ntaho bahera basaba ko urubanzaRC 4826/R13/2001 cyangwa izirushamikiyeho zisubirwamo ku mpamvu z'akarengane.

[32] Me Munana avuga ko urubanza RC 4826/R13/2001 rwajuririwe mu rubanza RCA 854/R3/RUH ariko ubujurire ntibwakirwe, anavuga kandi ko abazungura ba Rutabayiro banagerageje inzira yo gutambama mu bihe bitandukanye ariko bikarangira inkiko zigumishijeho akarengane kari mu rubanza RC 4826/R13/2001.

UKO URUKIKO RUBIBONA

[33] Ingingo ya 81 y'Itegeko Ngenga Nº 03/2012 /OL ryo kuwa 13/6/2012 rigenaimiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga ryakurikizwaga igihe abazungura ba Rutabayiro batangaga ikibazo ku rwego rw'Umuvunyi, mu gika cyayo cya kabiri, yavugaga ko umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanzwe ariko ntabikore mu gihe giteganyijwe n'amategeko atemerewe gusaba ko urubanza yatsinzwe rusubirishwamo ku mpamvu z'akarengane.

[3] Reba kopi y'urubanza RCAA 0433/06/HC/MUS rwaciwe kuwa 25/06/2009.

[4] Abarutambamiye bavugwa aha ni RUTABAYIRO Museveni Joseph, RUTABAYIRO Ngango Sadi, Rutabayiro Kangabo Claudia na Rutabayiro Ngabo Sultan

[34] Mu bika bikurikira, Urukiko rurasuzuma niba hari inzira z'ubujurire zisanzwe n'izidasanzwe zirengagijwe mbere yo gusaba ko urubanza nº RC 4826/R13/2001 rusubirishwamo ku mpamvu z'akarengane.

a. Ibyerekeye kwirengagiza inzira z'ubujurire zisanzwe

[35] Me Nsengiyumva Straton ahamya ko kuba urubanza RC 4826/R13/2001 rwarajuririwe ntirwakirwe biturutse ku makosa y'ababuranira abazungura ba Rutabayiro kuko hajuriye utarabaye umuburanyi mu rubanza rwajuririwe, ibyo bikwiye gufatwa nko kwirengagiza inzira y'ubujurire busanzwe nk'uko biteganywa mu ngingo ya 81 y'itegeko ryavuzwe; mu gihe Me Munana ahamya ko icyangombwa ari ukuba urubanza rwarajuririwe.

[36] Urukiko rw'Ikirenga rusanga, nk'uko byateganywaga n'ingingo ya 226 y'tegeko ryo kuwa 15 Nyakanga 1964 rishinga imiburanishirize y'imanza z'amahugu n'ubucuruzi ryakurikizwaga igihe urubanza RC 4826/R13/2001 rwajuririrwaga, umuntu wabaye umuburanyi mu rubanzaku rwego rwa mbere niwe washoboraga kurujuririra[5]. Nyamara mu rubanza RC 4826/R13/2001 rwaburanwagamo Mukakabano Charlotte na Rutabayiro Kamanzi ku giti cye, nta n'umwe muri bo warujuririye. Ibyo bisobanuye ko mu rwego rw'amategeko urwo rubanza rutajuririwe, mu giheabashoboraga kubikora nta n'umwe wabikoze. Kuba hari undi muntu[6] utariumwe mu baburanyi mu rubanza rujuririrwa watanze ikirego cy'ubujurire ari nacyo cyanditswe kuri RCA 854/ R3/RUH, Urukiko rw'Ikirenga rusanga ibyo bitavanaho ko inzira y'ubujurire yirengagijwe ku baribarubayemo ababuranyi, mu gihe iyabaye yakozwe mu buryo bunyuranyije n'amategeko. Mu yandi magambo, Uru Rukiko rusanga uburenganzira burengerwa n'itegeko ku muburanyi wagize akarengane mu rubanza nk'ukobiteganywa n'ingingo ya 81 y'itegeko ryavuzwe haruguru, ari uwagerageje inzira z'ubujurire ariko akazikora mu buryo bukurikije amategeko; bityo igikorwa cyo kuba warajuriye ubwacyo, nk'uko Me Munana abiburanisha, akaba atari cyo gihesha umuburanyi uburenganzira bwo gusubirishamo urubanza ku mpamvu z'akarengane.

b. Ibyerekeye kwirengagiza inzira z'ubujurire zidasanzwe

[37] Ingingo ya 81 y'Itegeko Ngenga Nº 03/2012 /OL ryo kuwa 13/6/2012 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga ryakurikizwaga igihe abazungura ba Rutabayiro batangaga ikibazo ku rwego rw'Umuvunyi,mu gika cyayo cya kabiri, yavugaga ko "umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira z'ubujurire zisanzwe n'izidasanzwe ariko ntabikore mu gihe giteganyijwe n'amategeko atemerewe gusaba ko urubanza yatsinzwe rusubirishwamo ku mpamvu z'akarengane. Iyi ngingo yumvikanisha ko n'iyo umuburanyi yaba atirengagije inzira z'ubujurire, ariko izo akoze akazikora igihe giteganyijwe n'amategeko cyarenze, atemerewe kwiyambaza inzira yo gusubirishamo urubanza ku mpamvuz'akarengane.

[38] Muri uru rubanza, nyuma yo kubona ko inzira z'ubujurire zisanzwe zinaniranye, abazungura ba Rutabayiro bagerageje inzira y'ubujurireidasanzwe yo gutambamira imikirize y'urubanza. Rutabayiro Ngoga Saidi (umuvandimwe wa Rutabayiro Kamanzi) niwe watambamiye urubanza RC 4826/R13/2001, biranamuhira, imikirize y'urwo rubanza ikurwaho n'urubanza RC 0242/04/TP/GIS ariko iza gusubizwaho mu bujurire bwakozwe na Mukakabano Charlotte mu rubanza RCAA 0433/06/HC/MUS. Uru rubanza narwo rwaje gutambamirwa n'abandi bazungura ba Rutabayiro mu rubanza RCA 095/10/HC/MUS nk'uko byasobanuwe mu gika cya 8 cy'uru rubanza ariko imikirize yarwo igumaho kuko barutambamiye bakererewe[7].

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[5] Ingingo ya 226 y'iryo tegeko yatangiraga iti: "hajurira umuburanyi, avoka cyangwa uwo yahaye urubanza…

[6] Ni ukuvuga abazungura ba Rutabayiro biyitiranyije na Rutabayiro Kamanzi ubwe wari wabaye umuburanyi mu rwego rwa mbere ku giti cye.

[7] Reba kopi y'urubanza nº RCA 095/10/HC/MUS, igika cyarwo cya 8.

[39] Kuba rero barakererewe bigatuma urubanza rwabo rutakirwa kandi mu miburanire yabo bakaba batagaragaza ko kuri ibyo hari icyo urukiko rwabarenganyijeho, uru rukiko rusanga ibyo Me Munana yitsitsaho ko hakwiye kurebwa nyirabayazana w'akarengane bagize kagaragara mu rubanza RC 4826/R13/2001 nta shingiro byahabwa kuko ibyo bishoboka gusa mu gihe abo yunganira baba batarirengagije kwiyambaza inzira y'ubujurire mu gihe giteganyijwe n'amategeko nk'uko byasobanuwe mu gika kibanziriza iki.

3. ibyerekeye indishyi, amafaranga y'ikurikiranarubanza n'igihembo cy'avoka.

[40] Me Munana Norbert uhagarariye abazungura ba Rutabayiro Ngango Saidi**,** mu myanzuro yashyikirije Urukiko**,** avuga ko urukiko rukwiye guha abo ahagarariye indishyi zingana na 30.000.000 frw hashingiwe ku ngingo ya 258 CCLIII, kuko inzu n'ikibanza biburanwa byaheze mu maboko y'utari nyirabyo hakaba hashize imyaka 18. Avuga ko abo ahagarariye bakwiye no kugenerwa n'Urukiko igihembo cy'avoka kingana na 1.000.000 frw n'amafaranga y'ikurikiranarubanza angana na 3.000.000 frw kuko aya makimbirane amaze igihe kirekire kandi ari ko atwara ibintu.

[41] Me Nsengiyumva Straton avuga ko indishyi zisabwa za 30.000.000 frw nta shingiro zifite kuko ari bo bamaze imyaka 18 basiragiza umukecuru mu nkiko nta mpamvu. Avuga ko abazungura ba Rutabayiro nta gihembo cy'avoka bakwiye kugenerwa kimwe n'amafaranga y'ikurikiranarubanza**,** kuko ikirego cyabo ari nta shingiro gifite kandi akaba ari nabo bishora mu manza. Akomeza avuga ko ahubwo abazungura ba Rutabayiro aribo bagomba kuyacibwa kubwo guhoza ku nkeke nyirakuru, bakamwishyura amafaranga y'ikurikiranarubanza 500.000 frw na 1.000.000 frw y'igihembocy'avoka hashingiwe ku ngingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

UKO URUKIKO RUBIBONA

[42] Ku bijyanye n'indishyi zisabwa, Urukiko rurasanga ntacyo rwazivugaho kuko ikirego kitasuzumwe mu mizi. Naho ku byerekeye amafaranga y'ikurikiranarubanza, Urukiko rurasanga abazungura ba Rutabayiro Ngango Saidi na Kayitesi Josephine bagomba guha Mukakabano Charlotte amafaranga y'ikurikiranarubanza n'igihembo cya avoka kuri uru rwego angana n'ibihumbi magana atanu (500.000 frw) bigenwe mu bushishozi bw'Urukiko kuko ayo basaba batasobanuye uko yabazwe.

III. ICYEMEZO CY'URUKIKO

[43] Rwemeje ko urubanza RS/REV/INJUST/CIV 0023/16/CS rutakiriwe kuko ikirego cyatanzwe mu nzira zinyuranyije n'amategeko**.**

[44] Rutegetse abazungura ba Rutabayiro Ngango Saidi na Kayitesi Josephine guha Mukakabano Charlotte amafaranga y'ikurikiranarubanza n'igihembo cya avoka kuri uru rwego angana n'ibihumbi magana atanu (500.000 frw).