# MUKAMUSONI v NKUNDIMANA

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00011/2019/SC (Nyirinkwaya, P.J, Cyanzayire, Hitiyaremye, Rukundakuvuga na Muhumuza, J.) 12 Gashyantare 2021]

*Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Gusubirishamo urubanza ku mpamvu z'akarengane –Urubanza rushobora gusubirishwamo ku mpamvu z'akarengane ni urubanza rwafashe icyemezo kirenganya umuburanyi – Urubanza rutakiriwe bifatwa ko rwarenganyije umuburanyi, iyo muri uko kutakirwa kwarwo ariho akarengane gashingiye.*

*Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Igihe cyo gusubirishamo urubanza ku mpamvu z'akarengane igihe urubanza rwajuririwe ariko ubwo ubujurire ntibwakirwe – Icyo gihe gitangira kubarwa uhereye igihe Urukiko rwajuririrwe rwafatiye icyemezo cy'ukutakira ubujurire, kabone n'ubwo urubanza rusabirwa gusubirwamo rwaba ari urwajuririwe.*

*Amategeko agenga imiburanishirije y'imanza zasabiwe gusubirishwamo ku mpamvu z'akarengane – Icyemezo cya Perezida w'Urukiko rw'Ikirenga – Inteko iburanisha ishobora kuvuguruza icyemezo cyafashwe na Perezida w'Urukiko rw'Ikirenga igihe hari impamvu zikomeye nko kwibeshya ku iyubahirizwa ry'ibihe – Izi mpamvu zikaba zigomba kuba ari impamvu zose zirebana n'imihango ndemyagihugu umucamanza uhawe guca urubanza agomba kureba iteka ko yubahirijwe.*

**Incamake y'ikibazo:** Uwitwa Nzanana na Ukundamariya bitabye Imana muri Genocide yakorewe Abatutsi 1994 hamwe n'abana bose babyaranye. Basize umutungo bari barashakanyhe, maze nyina Mukamusoni asigarana uwo mutungo, ariko hari n'umwana Nzanana yari yarabyaye hanze wasigaye. Muri 1995, Mukamusoni atanga ikirego mu Rukiko rwa mbere rw'Iremezo rwa Kigali asaba ko ariwe uzungura umutungo ngo kuko umuryango we wazimye wose, maze Urukiko rwemeza ko ariwe muzungura.

Muri 2008, Mujawayezu, nyina wa Nkundimana yatanze ikirego mu Rukiko rw'Ibanze rwa Nyarugunga mu izina ry'umwana we asaba ko Urukiko rwemeza ko Nzanana ariwe se wa Nkundimana ndetse akanagira uburenganzira ku mutungo we, Mukamusoni yagobotse muri urwo rubanza. Urukiko rwaciye urubanza rwmeza ko Nkundimana yandikwa kuri se Nzanana akanazungura umutungo we, Mukamusoni ategekwa amafaranga yishyura Mujawayezu.

Mukamusoni ntiyishimiye imikirize ajuririra Urukiko Rwisumbuye rwa Nyarugenge, Urukiko rwemeza ko urubanza ruhindutse gusa kubijyanye n'amategeko yashingiweho. Yongeye subirishamo ingingo nshya, Urukiko rwemeza ko ikirego cye kitakiriwe.

Nkundimana nawe yatanze ikirego muri 2010 mu Rukiko Rwisumbuye rwa Nyarugenge atambamira urubanza rwemeje ko Mukamusoni ariwe muzungura wa Nzanana, ikirego cye nticyakirwa kuko yagitanze impitagihe. Muri 2016 yongeye kandi atanga ikirego muri urwo Rukiko arega Mukamusoni arega kwandikwaho umutungo wa se Nzanana, ugizwe n'ikibanza hamwe n'amazu acyubatsemo. Urukiko rwemeje ko umutungo uburanwa wanditse kuri Mukamusoni, usubizwa Nkundimana ukamwandikwaho.

Mukamusoniu yajuririye Urukiko Rukuru maze rwemeza ko urubanza rwajuririwe rudahindutse mu ngingo zarwo zose. Mukamusoni yongeye ajuririra mu Rukiko rw'Ikirenga, ariko urubanza rw'imurirwa mu Rukiko rw'ubujurire rumaze gushyirwaho, Urukiko rw'Ubujurire rwemeza ko ubujurire bwa Mukamusoni Pétronille butari mu bubasha bw'Urukiko rw'Ikirenga yari yajuririye, bityo bukaba butari no mu bubasha bw'Urukiko rw'Ubujurire rwoherejwemo.

Mukamusoni yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza rwo mu Rukiko Rukuru rusubirwamo ku mpamvu z'akarengane, ariko nyuma y'iminsi mike yandikira kandi Perezida w'Urukiko rw'Ikirenga amusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane kuko ngo nyuma yo gushishoza yasanze Perezida w'Urukiko rw'Ikirenga ariwe ukwiye gushyikirizwa ubwo busabe. Perezida w'Urukiko rw'Ikirenga yasuzumye ubwo busabe maze yemeza ko urubanza rwaciwe n'Urukiko Rukuru rusubirwamo ku mpamvu z'akarengane, rwoherezwa mu bwanditsi bw'Urukiko rw'Ikirenga ngo rwandikwe mubitabo ruzaburanishwe.

Kuri uri urwo rwego, abavandimwe barokotse b'umugore wa Nzanana bagobotse kubashake muri urwo rubanza, basaba kuzungura uruhare rw'umuvandimwe wabo muri uwo mutungo uburanwa. Hanagobotse kandi uwitwa Mwizerwa avuga ko inzu iburanwa yayiguze na Mukamusoni.

Mukamusoni avuga ko impamvu yasubirishijemo urubanza rwo mu Rukiko Rukuru ku mpamvu z'akarengane ari uko urubanza rwaciwe ku ngingo zitagiweho impaka mu iburanisha no kuba Urukiko Rukuru rwarirengagije ko hari imanza zabaye itegeko zigatuma yegukana umutungo ku buryo budasubirwaho.

Nkundimana yatanze inzitizi ishingiye ku cyemezo cya Perezida w'Urukiko rw'Ikirenga, avuga ko cyafashwe hirengagijwe ko urubanza nrwo mu Rukiko Rukuru rwari rwarajuririwe, kuko rwaciwe ku rwego rwa nyuma n'Urukiko akaba ngo ari narwo rwagombaga gushingirwaho hafatwa icyemezo cyo gusubirishamo urubanza ku mpamvu z'akarengane. Asaba rero ko cyakurwaho kuko cyashingiye ku rubanza rutari rwo. Avuga ko niba kandi urubanza rwo mu Rukiko Rukuru arirwo rugomba gusubirwamo ku mpamvu z'akarengane, Urukiko rw'Ikirenga rutaba rufite ububasha bwo kuburanisha uru rubanza kuko icyo gihe rwaba ruri mu bubasha bw'Urukiko rw'Ubujurire.

Mukamusoni avuga ko iyi nzitizi idakwiye guhabwa agaciro kuko itegeko ritateganyije ko hari uburyo ubwo ari bwo bwose icyemezo cya Perezida w'Urukiko rw'Ikirenga cyakurwaho cyangwa ngo giteshwe agaciro, avuga ko impamvu yasubirishijemo ku mpamvu z'akarengane urubanza rwaciwe n'Urukiko Rukuru aho kuba urwaciwe n'Urukiko rw'Ubujurire ari uko ari rwo rwagombaga kurangizwa, kuko Urukiko rw'Ubujurire rutigeze rwakira ikirego.

Abagobotse mu rubanza bavuga ko inzitizi yatanzwe nta shingiro ifite kuko urubanza rusubirwamo ari urwaciwe mu mizi, bakanongeraho ko icyemezo Perezida w'Urukiko rw'Ikirenga yafashe ntawe ugomba kongera kugisuzuma cyane ko n'ubundi ariwe ufata icyemezo cya nyuma ku busabe nk'ubu.

**Incamake y'icyemezo:** 1**.** Urubanza rushobora gusubirishwamo ku mpamvu z'akarengane ni urubanza rwafashe icyemezo kirenganya umuburanyi. Bivuze ko urubanza rutakiriwe bifatwa ko rwarenganyije umuburanyi, iyo muri uko kutakirwa kwarwo ariho akarengane gashingiye bityo ikirego cyo gusubirishamo ku mpamvu z'akarengane cya tanzwe na Mukamusoni kikaba nta shingiro gifite kuko yatanze ikirego aho kitagombaga gutangwa

2. Igihe cyo gusubirishamo urubanza ku mpamvu z'akarengane igihe urubanza rwajuririwe mu Rukiko rw'Ubujurire ariko ntirwakirwe, icyo gihe gitangira kubarwa uhereye igihe Urukiko rw'Ubujurire rwaciriye urubanza, kabone n'ubwo urubanza rusabirwa gusubirwamo rwaba ari urwaciwe n'Urukiko Rukuru, bityo Mukamusoni akaba yaranyuranyije n'amategeko agenga imitangire y'ibirego bisaba gusubirishamo urubanza ku mpamvu z'akarengane bityo ikirego cye kikaba kidashobora kwakirwa ngo gisuzumwe.

3. Inteko iburanisha ishobora kuvuguruza icyemezo cyafashwe na Perezida w'Urukiko rw'Ikirenga igihe hari impamvu zikomeye nko kwibeshya ku iyubahirizwa ry'ibihe, Urukiko rwashyikirijwe urubanza ngo ruruburanishe rutabirengaho ngo ruburanishe mu mizi. Izi mpamvu zikaba zigomba kuba ari impamvu zose zirebana n'imihango ndemyagihugu umucamanza uhawe guca urubanza agomba kureba iteka ko yubahirijwe, bityo urubanza rukaba

rudashobora kwakirwa kuko izo nenge zigaragara mu itangwa ry'iki kirego rudashobora kuzirengaho ngo ruburanishe urubanza mu mizi

**Ikirego cyo Gusubirishamo urubanza ku mpamvu z'akarengane nticyakiriwe.**

**Amategeko yashyimgiweho:**
Itegeko nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 53, 58 n'iya 63
Itegeko n° 22/2018 ryo ku wa 19/4/2018 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'ubucuruzi, iz'imirimo n'iz'ubutegetsi., ingingo ya 2 agace ka 1, 113 112 igika cya 2 n'iya 118

**Imanza zifashishijwe**
RS/REV/INJUST/CIV 0015/14/CS, Ntahonkiriye et al vs Icyitegetse Léa rwaciwe kuwa 31/07/2015
RS/INJUST/RCOM 00005/2020/SC rwaciwe kuwa 27/11/2020 haburana BPR ATLAS MARA PLC VS Nkusi Evariste, igika cya 18;
RS/REV/INJUST/CIV 0023/16/CS rwaciwe kuwa 27/09/2019 haburana Rutabayiru et al vs Mukamabano Charlotte, igika cya 28

**Nta nyandiko z'abahanga zifashishijwe:**

## Urubanza

## I. IMITERERE Y'URUBANZA

[1] Nzanana Cyrille n'umugore we Ukundamariya Béata bitabye Imana muri jenoside yakorewe abatutsi hamwe n'abana babyaranye, Mukamusoni Pétronille nyina wa Nzanana Cyrille aba ariwe usigarana umutungo we ndetse n'umwana Nzanana yari yarabyaye hanze witwa Nkundimana Edison. Mu 1995, Mukamusoni Pétronille yaregeye Urukiko rwa mbere rw'Iremezo rwa Kigali mu nyandiko nsobanura kirego itanzwe n'umuburanyi umwe (requête unilatérale) asaba kuba ariwe uzungura umutungo w'umwana we Nzanana Cyrille kuko umuryango we wazimye wose. Mu rubanza RC 24.348/95/S1 rwaciwe ku wa 09/02/1996, urwo rukiko rwamuhaye uburenganzira bwo kumuzungura.

[2] Ku wa 18/03/2008, Mujawayezu Peruth, nyina wa Nkundimana Edison yatanze ikirego mu Rukiko rw'Ibanze rwa Nyarugunga mu izina ry'umwana we asaba Urukiko kwemeza ko Nzanana Cyrille ari se wa Nkundimana Edison no kugira uburenganzira ku mutungo wa Se. Urubanza rwahawe RC 0054/08/TB/NYRGA, Mukamusoni Pétronille arugobokamo. Ku wa 21/07/2008 rwaraciwe, rwemeza ko Nkundimana Edison yandikwa kuri Se, Nzanana Cyrille, akanazungura umutungo we ; runategeka Mukamusoni Pétronille kwishyura 70.000 Frw Mujawayezu Peruth.

[3] Mukamusoni Pétronille yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Nyarugenge, mu rubanza RCA 0098/08/TGI/NYGE rwaciwe ku wa 17/04/2009, urwo Rukiko rwemeza ko urubanza rwajuririwe ruhindutse gusa mu mategeko yashingiweho, rutegeka Mukamusoni Pétronille guha Mujawayezu Peruth 50.000 Frw y'indishyi z'akababaro. Mukamusoni Pétronille yasubirishijemo urwo rubanza ingingo nshya, maze mu rubanza nº RCA 0090/13/TGI/NYGE rwaciwe ku wa 23/04/2014, Urukiko Rwisumbuye rwa Nyarugenge rwemeza ko ikirego cye kitakiriwe.

[4] Ku wa 19/10/2010, Nkundimana Edison nawe yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge atambamira imikirize y'urubanza RC 24.348/95/S1 rwemeje ko Mukamusoni Pétronille azungura Nzanana Cyrille, mu rubanza RC 0582/10/TGI/NYGE rwaciwe ku wa 09/09/2011, urwo Rukiko rwemeza ko ikirego kitakiriwe kuko cyakererewe. Nkundimana Edison yajuririye icyo cyemezo mu Rukiko Rukuru, ruca urubanza RC0350/11/HC/KIG ku wa 19/07/2013, rwemeza ko imikirize y'urubanza rwajuririwe idahindutse.

[5] Ku wa 11/03/2016 Nkundimana Edison yongeye kurega Mukamusoni Pétronille mu Rukiko Rwisumbuye rwa Nyarugenge, mu rubanza RC 00278/2016/NYGE rwaciwe ku wa 16/09/2016, aregera kwandikwaho umutungo wa se Nzanana Cyrille ugizwe n'ikibanza hamwe n'amazu acyubatsemo bibaruye kuri UPI: 1/03/10/03/830 maze urukiko rwemeza ko umutungo uburanwa wanditse kuri Mukamusoni Petronille usubizwa Nkundimana Edison ukamwandikwaho, runamutegeka guha Nkundimana Edison 100.000 Frw yo gusiragizwa mu manza, 500.000 Frw y'igihembo cya Avoka na 50.000 y'amagarama.

[6] Mukamusoni Pétronille yajuririye Urukiko Rukuru mu rubanza 0391/2016/HC/KIG, maze ruruca ku wa 16/02/2017, rwemeza ko urubanza rwajuririwe rudahindutse mu ngingo zarwo zose uretse 500.000 Frw y'igihembo cy'Avoka Mukamusoni Pétronille agomba guha Nkundimana Edison kuri urwo rwego.

[7] Mukamusoni Pétronille yajuririye Urukiko rw'Ikirenga, Nkundimana Edison atanga inzitizi z'iburabubasha bw'urwo Rukiko zishingiye ku ngingo ya 28 y'Itegeko Ngenga Nº 03/2012/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga ryakurikizwaga ubujurire butangwa, kuko Mukamusoni Pétronille yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu zimwe, no kuba agaciro k'ikiburanwa katageze kuri 50.000.000 Frw kandi nta ndishyi zingana zityo zagenwe mu rubanza rujuririrwa.

[8] Urwo rubanza rwimuriwe mu Rukiko rw'Ubujurire hashingiwe ku biteganywa n'ingingo ya 105 y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, maze mu rubanza RCAA 00002/2018/CA rwaciwe ku wa 18/01/2019, Urukiko rw'Ubujurire rwemeza ko ubujurire bwa Mukamusoni Pétronille butari mu bubasha bw'Urukiko rw'Ikirenga yari yajuririye, bityo bukaba butari no mu bubasha bw'Urukiko rw'Ubujurire rwoherejwemo.

[9] Mukamusoni Pétronille yandikiye Perezida w'Urukiko rw'Ubujurire ku wa 18/02/2019 asaba ko urubanza nº RCA 000391/2016/HC/KIG rusubirwamo ku mpamvu z'akarengane ; ku wa 27/02/2019 yandikira na Perezida w'Urukiko rw'Ikirenga amusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane kuko ngo nyuma yo gushishoza yasanze Perezida w'Urukiko rw'Ikirenga ariwe ukwiye gushyikirizwa ubwo busabe hashingiwe ku ngingo ya 58 y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko.

[10] Perezida w'Urukiko rw'Ikirenga yasuzumye ubwo busabe maze mu cyemezo cye 199/CJ/2019 cyo ku wa 27/11/2019, yemeza ko urubanza RCA 00391/2016/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 16/07/2017 rusubirwamo ku mpamvu z'akarengane, arwohereza mu bwanditsi bw'Urukiko rw'Ikirenga kugira ngo rwandikwe mu bitabo ruzaburanishwe ; ruhabwa RS/INJUST/RC 00011/2019/SC.

[11] Abavandimwe ba Ukundamariya Béata (Umugore wa Nzanana witabye Imana) aribo Nyirarukundo Goreth na Bamurange Françoise bagobotse mu rubanza ku bushake kuri uru rwego basaba kuzungura uruhare rw'umuvandimwe wabo mu mutungo uburanwa. Uwitwa Mwizerwa Vincent nawe yagobotse mu rubanza ku bushake avuga ko inzu iburanwa yayiguze na Mukamusoni Pétronille.

[12] Urubanza rwahamagajwe ku wa 13/01/2021, ababuranyi bose bitabye, Mukamusoni Pétronille ahagarariwe na Me Kananga Protogène hamwe na Me Nzirabatinyi Fidèle,

Nkundimana Edison yunganiwe na Me Kagame Kimonyo Alexis, Nyirarukundo Goreth na Bamurange Françoise bahagarariwe na Me Munyandamutsa Jean Pierre naho Mwizerwa Vincent ahagarariwe na Me Ntagungira Théogène.

[13] Nk'uko yabisobanuye mu myanzuro ye ndetse akanabishimangira mu nama ntegurarubanza no mu iburanisha, abahagarariye Mukamusoni Pétronille bavuga ko banenga urubanza RCA 000391/2016/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 16/07/2017 ku mpamvu z'akarengane kuba rwaraciye urubanza ku ngingo zitagiweho impaka mu iburanisha no kuba Urukiko Rukuru rwarirengagije ko hari imanza (RC 24.348/95/S1 na RC 0350/11/HC/Kigali) zabaye itegeko zigatuma yegukana umutungo ku buryo budasubirwaho.

[14] Nkundimana Edison na Me Kagame Kimonyo Alexis umwunganira batanze inzitizi yo kutakira ikirego kuko batemeranya n'icyemezo cya Perezida w'Urukiko rw'Ikirenga cyemeje ko urubanza RCA 00391/2016/HC/KIG rusubirwamo ku mpamvu z'akarengane. Ntibemera kandi ko abavuga ko bagobotse bafite uburenganzira bwo kugoboka muri uru rubanza.

[15] Urukiko rwemeranyije n'ababuranyi ko rubanza gusuzuma impaka zishingiye ku burenganzira bw'abasabye kugoboka ku bushake mu rubanza, hanyuma rugasuzuma inzitizi yo kutakira ikirego yatanzwe na Nkundimana Edison, rukazasuzuma ingingo zirebana n'imizi y'urubanza ari uko rusanze ikirego kigomba kwakirwa.

## II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.

### A. A. Ibyerekeye ukugoboka mu rubanza ku bushake

#### a. Ibyerekeye ukugoboka ku bushake kwa Nyirarukundo Goreth na Bamurange Françoise

[16] Me Munyandamutsa Jean Pierre uhagarariye Bamurange Françoise na Nyirarukundo Goreth avuga ko bagobotse ku bushake hashingiwe ku ngingo ya 114 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018. Asobanura ko bafite inyungu muri uru rubanza kuko ari abavandimwe b'umugore wa Nzanana Cyrille ariwe Ukundamariya Béata, kandi ko uru rubanza ruramutse ruciwe, batashobora kubona indi nzira barunyuzamo ngo rusubirwemo[1] bityo babone igice cy'umutungo cyagombaga guhabwa umuvandimwe wabo. Avuga ko ibyo basaba babishingira ku kuba mu muryango wa Ukundamariya Béata, Nyirarukundo Goreth na Bamurange Françoise aribo barokotse, bityo bakaba ari bo bafite uburenganzira bwo kuzungura umutungo yari afatanyije n'umugabo we Nzanana Cyrille bapfuye nta rage bakoze, bagahabwaho kimwe cya kabiri cyawo nk'uko biteganywa n'ingingo ya 72 y'Itegeko Nº 27/2016 ryo ku wa 08/07/2016[2] hamwe n'ingingo yaryo ya 73 mu gace ka gatatu, iteganya urutonde n'uburyo rukurikizwa mu izungura.

[17] Nkundimana Edison na Me Kagame Kimonyo Alexis umwunganira ntibemeranya n'amategeko abagobotse bashingiraho, kuko ngo mu 1994 hakoreshwaga itegeko ryo mu 1988, kandi iryo tegeko rikaba ritarateganyaga ko umugore agira umutungo kuko umutungo wabaga ari uw'umugabo gusa, dore ko ngo iyo umugabo yitabaga Imana, kugira ngo umugore abashe kugira uburenganzira bwo gucunga imitungo yasizwe n'umugabo we yagombaga kubanza gusaba "*Ordonnance D'investiture*". Kubera izo mpamvu bakaba basanga ikirego cy'abagobotse nta shingiro gikwiye guhabwa kuko n'uwo bavuga ko bazungura nta bubasha yari afite ku mitungo icyo gihe.

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[1]Igika cya nyuma cy'ingingo ya 53 y'itegeko nº 30/2018 ryo ku wa 02/06/2018 rigenga ububasha bw'inkiko, iteganya ko "Imanza zasubiwemo ku mpamvu z'akarengane zidashobora kongera kujuririrwa."

[2] Iteganya ko "izungura nta rage ari izungura rikorwa hakurikijwe itegeko, iyo nta rage ryabayeho

[18] Nkundimana Edison n'umwunganira bavuga kandi ko izungura riramutse rikozwe ryaba ari impitagihe kuko rigira igihe rikorerwa n'uburyo rikorwamo kandi biteganyijwe n'amategeko ; bityo ko nta mpamvu n'imwe yatuma Bamurange Françoise na Nyirarukundo Goreth baza muri uru rubanza gusaba guhabwa uruhare rwa Ukundamariya nk'abazungura be.

[19] Abahagarariye Mukamusoni Pétronille nabo bavuga ko niba Nyirarukundo Goreth na Bamurange Françoise bashaka kuzungura 50% by'umutungo wa Nzanana n'uwo bashakanye, urukiko rwareba niba bakwiye kubisaba ubu kandi izungura ryaramaze kuba mu 1995.

## b. Ku byerekeye kugoboka ku bushake kwa Mwizerwa Vincent

[20] Me Ntagungira Théogène uhagarariye Mwizerwa Vincent avuga koMwizerwa yagobotse muri uru rubanza ashingiye ku ngingo ya 113 n'iya 114 y'Itegeko N° 22/2018ryerekeyeimiburanishirizey'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[3]. Asobanura ko Mwizerwa Vincent afite inyungu muri uru rubanza kuko yaguze umutungo uburanwa wanditse kuri UPI 1/03/10/03/830 na nyirawo, Mukamusoni Pétronille, ku 20.000.000 Frw muri 2014, akaba agomba kurubamo kugira ngo arengere inyungu ze.

[21] Nkundimana Edison na Me Kagame Kimonyo Alexis umwunganira bavuga ko babona nta mpamvu y'uko Mwizerwa yagoboka muri uru rubanza rw'akarengane kuko uwatsinda wese yakwandikwaho umutungo, maze Mwizerwa akazikurikiranira uwamugurishije. Bavuga kandi ko Nkundimana Edison ariwe utunze umutungo uburanwa ubu, ariko ko ibyangombwa byanditswe kuri Mwizerwa Vincent uvuga ko yawuguze.

[22] Basoza bavuga ko ayo masezerano y'ubugure bw'uwo mutungo na Mukamusoni Petronille acyemangwa kuko Mwizerwa Vincent ubwe nk'umuntu wari DASSO ntaho yari gukura 20.000.000 Frw ; hakaba nta batangabuhamya bo hanze bayasinyeho, ahubwo hakaba hariho abahungu babiri ba Mukamusoni n'uwitwa Emile wari umukozi wabo wo mu rugo gusa ndetse n'igihe habaye imanza kuri uwo mutungo Mukamusoni ntabibwire Mwizerwa Vincent wari waramaze kugura iyo nzu.

[23] Nyuma yo kumva izo mpaka kuri iki kibazo, urukiko rwariherereye rufatira icyemezo mu ntebe ku buryo bukurikira :

1. **Ku bireba ukugoboka ku bushake kwa Bamurange Françoise na Nyirarukundo Goreth.**

Hashingiwe ku byangombwa biri muri dosiye, impande zose ziri mu rubanza zemeranya ko Nyirarukundo Goreth na Bamurange Françoise ari bo bazungura ba Ukundamariya Béata basigaye bonyine mu muryango wabo. Kubera iyo mpamvu, Urukiko rurasanga ari nabo bafite uburenganzira bwo gukurikirana umutungo w'umuvandimwe wabo witabye Imana nk'uko biteganywa n'ingingo ya 72 hamwe y'iya 73, 3o z'Itegeko nº 27/2016 ryo ku wa 08/07/2016.[4]

Rusanze kandi ibivugwa na Nkundimana Edison n'abamwunganira ko nta burenganzira ku mutungo w'urugo umugore yari afite mu mwaka wa 1995 ubwo izungura ryabaga nta shingiro bifite kuko hari imanza nyinshi zaciwe kuri iyi ngingo zisobanura ko ubwo burenganzira nta gihe umugore atabugize mu Rwanda[5].

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[3]Iyo ngingo iteganya ko ukugoboka mu rubanza, ari ugusaba kurubamo umuburanyi cyangwa kugirwa we, utararuregeye cyangwa utararurezwemo. Naho ingingo ya 114 ikavuga ko ugoboka agomba kuba afite inyungu yemewe n'amtegeko, itaziguye kandi ye bwite

[4] Ingingo ya 72 iteganya ko "izungura nta rage ari izungura rikorwa hakurikijwe itegeko, iyo nta rage ryabayeho naho iya 73 ikerekana urutonde rukurikizwa mu kuzungura

[5]Urugero ni urubanza RS/REV/INJUST/CIV 0015/14/CS, Ntahonkiriye et al vs Icyitegetse Léa rwaciwe kuwa 31/07/2015, igika cya 14 aho rwagize ruti: "Urukiko rurasanga ingingo ya 5 (a) y'Amasezerano Mpuzamahanga avanaho ivangura iryo ariryo ryose ku bagore yo ku wa 18/12/1979 u Rwanda rwashyizeho umukono ku wa

Naho ibyerekeye ibyo bavuga ko izungura ryabaye cyera, bakaba badashobora gusaba kuzungura muri uru rubanza, urukiko rurasanga nabyo nta shingiro bifite kuko iryo zungura n'ubu rikirimo impaka.

Kubera izo mpamvu, urukiko rusanga nta kibuza Nyirarukundo Goreth na Bamurange Françoise kugoboka muri uru rubanza hashingiwe ku ngingo za 113 na 114 CPCCSA kuko barufitemo inyungu.

**2. Ku bireba ukugoboka ku bushake kwa Mwizerwa Vincent**

Urukiko rushingiye ku kuba Mwizerwa Vincent avuga ko inzu iburanwa ariwe wayiguze ;

Rushingiye kandi ku kuba na Nkundimana Edison yemera ko inzu iburanwa yanditse kuri Mwizerwa Vincent ;

Rusanze ibyo byumvikanisha ko Mwizerwa Vincent afite inyungu muri uru rubanza bityo akaba afite n'uburenganzira bwo kurugobokamo kugira ngo arengere inyungu ze kuri uwo mutungu nk'uko biteganywa n'ingingo ya 113 na 114 CPCCSA.

**B. Kumenya niba ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane urubanza RCA 00391/2016/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 16/07/2017 cyatanzwe na Mukamusoni Pétronille kigomba kwakirwa**

[24] Nkundimana Edison yunganiwe na Me Kagame Kimonyo Alexis yatanze inzitizi ishingiye ku cyemezo cya Perezida w'Urukiko rw'Ikirenga N° 199/CJ/2019 cyo ku wa 27/11/2019, avuga ko cyafashwe hirengagijwe ko urubanza RCA 00391/2016/HC/KIG rwari rwarajuririwe, kuko rwaciwe ku rwego rwa nyuma n'Urukiko rw'Ubujurire mu rubanza n° RCAA 00002/2018/CA akaba ngo ari narwo rwagombaga gushingirwaho hafatwa icyemezo cyo gusubirishamo urubanza ku mpamvu z'akarengane. Asaba rero ko cyakurwaho kuko cyashingiye ku rubanza rutari rwo. Avuga ko niba kandi urubanza RCA 00391/2016/HC/KIG arirwo rugomba gusubirwamo ku mpamvu z'akarengane, Urukiko rw'Ikirenga rutaba rufite ububasha bwo kuburanisha uru rubanza kuko icyo gihe rwaba ruri mu bubasha bw'Urukiko rw'Ubujurire.

[25] Me Nzirabatinyi Fidèle uhagarariye Mukamusoni Pétronille avuga ko iyi nzitizi idakwiye guhabwa agaciro kuko itegeko ritateganyije ko hari uburyo ubwo ari bwo bwose icyemezo cya Perezida w'Urukiko rw'Ikirenga cyakurwaho cyangwa ngo giteshwe agaciro, ko ahubwo ingingo ya 63 y'Itegeko N° 30/2018 rigena ububasha bw'inkiko yo ishimangira ko iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga agena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe. Avuga ko impamvu Mukamusoni yasubirishijemo ku mpamvu z'akarengane urubanza rwaciwe n'Urukiko Rukuru aho kuba urwaciwe n'Urukiko rw'Ubujurire ari uko ari rwo rwagombaga kurangizwa, kuko Urukiko rw'Ubujurire rutigeze rwakira ikirego.

[26] Ku kibazo cyo kumenya impamvu mu gihe yasubirishagamo urubanza rwaciwe n'Urukiko Rukuru yandikiye Perezida w'Urukiko rw'Ikirenga aho kwandikira Perezida w'Urukiko rw'Ubujurire, avuga ko babanje kwandikira Perezida w'Urukiko rw'Ubujurire ariko

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02/03/1981 iteganya "…ivanaho ry'akarengane, imico n'imigenzo yose ishingiye ku busumbane hagati y'abagabo n'abagore cyangwa kurutanisha ibyo bitsina byombi", naho ingingo ya 3 y'Amasezerano Nyafurika y'Uburenganzira bwa Muntu n'Abaturage yo kuwa 27/06/1981 nayo yemejwe n'u Rwanda kuwa 17/05/1983 iteganya ko abantu bose bareshya imbere y'amategeko kandi barengerwa kimwe n'itegeko, kandi mu kubahiriza izi nshingano u Rwanda rwateganyije mu ngingo ya 16 y'Itegeko Nshinga ryo kuwa 10/06/1991, ryagenderwagaho igihe habaga izungura rya Mporebucye, ko abaturage bose bareshya imbere y'amategeko, bityo ibyo Me Baziruwiha aburanisha ko Mporebucye yazunguwe na Se mu 1997 hanyuma umutungo uragizwa Mukambuguje Bernadette kuko nta mwana yabyaranye na Mporebucye hashingiwe ku muco kuko nta tegeko riringaniza abagabo n'abagore mu izungura ryariho, bikaba nta shingiro bifite"

nyuma bandikira na Perezida w'Urukiko rw'Ikirenga kuko Urukiko rw'Ubujurire narwo rwafashe icyemezo kuri urwo rubanza kandi ngo ingingo ya 58 y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko ikaba itaratomoye neza ngo ivuge niba urubanza rugomba gusubirwamo ari urwafashe icyemezo mu mizi cyangwa niba ari urwafashe icyemezo icyo aricyo cyose. Abajijwe uko bumvaga bizagenda mu gihe bandikiye abayobozi babiri, Me Nzirabatinyi Fidèle yavuze ko bumvaga abo bayobozi bandikiwe bazabyikemurira bakamenya ukwiye kubasubiza, kandi ko ubwo Perezida w'Urukiko rw'Ikirenga yabasubije, ari uko mu bwumvikane bwabo basanze ariwe wagombaga kubasubiza.

[27] Naho ku kibazo cyo kumenya niba batarakererewe kwandikira Perezida w'Urukiko rw'Ikirenga bamusaba ko urubanza rwasubirwamo ku mpamvu z'akarengane, Me Nzirabatinyi Fidèle yavuze ko urubanza rw'Urukiko rw'Ubujurire rwaciwe ku wa 18/01/2019, bandikira Perezida w'Urukiko rw'Ubujurire ku wa 18/02/2019 ariko na nyuma bandikira Perezida w'Urukiko rw'Ikirenga ku wa 27/02/2019; akaba asanga ibaruwa bandikiye Perezida w'Urukiko rw'Ubujurire yarahagaritse ibarwa ry'ibihe (ifite "*effet suspensif*"), bityo igihe iyo baruwa yandikiwe akaba aricyo cyashingirwaho aho gushingira ku gihe bandikiye Perezida w'Urukiko rw'Ikirenga.

[28] Me Munyandamutsa Jean Pierre na Me Ntagungira Théogène bahagarariye abagobotse bunze mu rya Me Nzirabatinyi Fidèle, bavuga ko inzitizi yatanzwe nta shingiro ifite kuko urubanza rusubirwamo ari urwaciwe mu mizi, bakanongeraho ko icyemezo Perezida w'Urukiko rw'Ikirenga yafashe ntawe ugomba kongera kugisuzuma cyane ko n'ubundi ariwe ufata icyemezo cya nyuma ku busabe nk'ubu.

## UKO URUKIKO RUBIBONA

[29] Ingingo ya 58 y'Itegeko rigena ububasha bw'inkiko iteganya ko "Iyo umuburanyi abonye hari akarengane kagaragara mu rubanza rwe, yandikira Perezida w'Urukiko rukuriye urwaciye urubanza ku rwego rwa nyuma, akaba ariwe usuzuma ako karengane. Iyo urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ari urubanza rwaciwe n'Urukiko rw'Ubujurire, ubusabe bushyikirizwa Perezida w'Urukiko rw'Ikirenga. Icyemezo afashe ku isuzuma ry'akarengane kiba ari ndakuka, nta rundi rwego rugisuzuma". Naho ingingo ya 53 mu gika cya mbere ikavuga ko "Ushaka ko urubanza rwe rusubirwamo ku mpamvu z'akarengane, abisaba urwego rubishinzwe mu nyandiko ikubiyemo impamvu ashingiraho mu gihe kitarenze iminsi mirongo itatu (30) uhereye ku munsi yamenyesherejwe imikirize yarwo".

[30] Muri uru rubanza, urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ni urwaciwe n'Urukiko Rukuru n'ubwo nyuma yo gucibwa kwarwo rwajuririwe mu Rukiko rw'Ubujurire. Abasabye ko rusubirwamo ku mpamvu z'akarengane bandikiye abayobozi bombi (Perezida w'Urukiko rw'Ikirenga na Perezida w'Urukiko rw'Ubujurire) bakaba basanga ibyo nta kibazo kirimo cyane ko ari Perezida w'Urukiko rw'Ikirenga wabasubije kandi icyemezo cye kikaba kidashobora kuvuguruzwa. Uruhande ruregwa rwo rusanga harabayemo kwica amategeko arebana n'uburyo ikirego cy'akarengane gitangwa bityo bagasaba Urukiko rw'Ikirenga kutacyakira kuko cyatanzwe mu buryo butubahirije amategeko.

[31] Mu gukemura izi mpaka, urukiko rurasubiza ku ngingo zikurikira : a) Ni uruhe rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane iyo Urukiko Rukuru rwaciye urubanza mu mizi, urwo rubanza rukajuririrwa mu Rukiko rw'Ubujurire ariko ubwo bujurire ntibwakirwe ? b) Ni Perezida w'uruhe Rukiko wandikirwa ? c) Ni ikihe gihe ntarengwa agomba kwandikirwamo ? d) Ese icyemezo Perezida w'Urukiko rw'Ikirenga yafashe mu kwemeza ko urubanza rusubirwamo gishobora kuvuguruzwa n'inteko iburanisha ?

**a. Kumenya urubanza rugomba gusubirwamo iyo urubanza rwaciwe n'Urukiko Rukuru rwajuririwe ntirwakirwe**

[32] Ku kibazo cyo kumenya urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane iyo Urukiko Rukuru rwaciye urubanza mu mizi, urwo rubanza rukajuririrwa mu Rukiko rw'Ubujurire ariko ubwo bujurire ntibwakirwe, urukiko rusanga uru rukiko rwaragisubije mu manza zinyuranye, rukemeza ko urubanza rwaciwe n'Urukiko Rukuru muri ubwo buryo rudashobora gusubirwamo ku mpamvu z'akarengane, igihe bitagaragaye ko hari amakosa Urukiko rw'Ubujurire rwakoze mu kutakira ubwo bujurire[6].

[33] Ibyo bivuze ko umuburanyi wumva yararenganyijwe n'Urukiko rw'Ubujurire mu kutakira ubujurire bwe ashobora kwandikira Perezida w'Urukiko rw'Ikirenga amugaragariza ko urwo rukiko rwanze kwakira ubujurire bwe ku maherere bigatuma hagumaho akarengane yagiriwe n'urubanza rwaciwe n'Urukiko Rukuru, agasaba kurenganurwa. Icyo gihe, iyo ikibazo gishyikirijwe inteko iburanisha ibanza gusuzuma niba koko hari amakosa Urukiko rw'Ubujurire rwakoze mu kutakira ubujurire bwe, rwasanga yarakozwe, rukabona kuburanisha ku byo umuburanyi yagaragaje mu myanzuro ye ko yarenganyijweho mu rubanza rwaciwe n'Urukiko Rukuru[7]. Urukiko rusanga rero ibyo Me Nzirabatinyi Fidèle kimwe n'abunganira abagobotse mu rubanza bavuga bumvikanisha ko hari icyemezo cyafashwe n'Urukiko rw'Ubujurire kandi ngo itegeko rikaba ritarasobanuye neza urubanza rugomba gusubirwamo nta shingiro bifite.

**b. Kumenya Perezida w'urukiko ugomba kwandikirwa**

[34] Urukiko rusanga, hashingiwe ku bisobanuro byatanzwe mu gika kibanziriza iki, iyo urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ari urwaciwe n'Urukiko Rukuru, usaba ko rusubirwamo aba agomba kwandikira Perezida w'Urukiko rw'Ubujurire kuko arirwo Rukiko rwisumbuye ku rwaciye urubanza rwamurenganyije nk'uko biteganywa n'ingingo ya 58 y'Itegeko rigena ububasha bw'inkiko. Ibi bikaba binumvikanisha ko Perezida w'Urukiko rw'Ikirenga yandikirwa mu buryo buteganywa n'iriya ngingo ya 58 yavuzwe, iyo urubanza rwaciwe n'Urukiko rw'Ubujurire arirwo rwamurenganyije kuko nyine Perezida w'Urukiko rw'Ikirenga ariwe Perezida w'Urukiko rwisumbuye ku rwaciye urubanza rurimo akarengane.

[35] Muri uru rubanza Me Nzirabatinyi Fidèle yemera ko urubanza rwarenganyije uwo ahagarariye ari urwaciwe n'Urukiko Rukuru nyamara nk'uko bigaragara mu mabaruwa yanditse asaba kurenganurwa, akaba yarabanje kwandikira Perezida w'Urukiko rw'Ubujurire, hanyuma akandikira Perezida w'Urukiko rw'Ikirenga avuga ko nyuma yo kubigenzura neza yasanze ariwe ugomba kwandikirwa; urukiko rukaba rusanga ibyo byumvikanisha ko ibyo yari yandikiye Perezida w'Urukiko rw'Ubujurire yabisimbuje ibyo yandikiye Perezida w'Urukiko rw'Ikirenga. Hashingiwe rero ku bivugwa mu gika kibanziriza iki, urukiko rusanga Mukamusoni Pétronille n'abamwunganira baranyuranyije n'amategeko agenga imitangire y'ibirego bisaba gusubirishamo urubanza ku mpamvu z'akarengane bityo ikirego cye kikaba kidashobora kwakirwa ngo gisuzumwe.

**c. Igihe ntarengwa cyo kwandikira Perezida w'urukiko umusaba kurenganurwa.**

[36] Ku bijyanye n'uburyo igihe urubanza rusabirwa gusubirwamo kibarwa iyo urukiko rw'ubujurire rwanze kwakira ubujurire, icyo kibazo nacyo uru rukiko rwaragikemuye rwemeza

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[6] Reba urubanza u r u b a n z a N º R S / I N J U S T / R C O M 0 0 0 0 5 / 2 0 2 0 / S C rwaciwe kuwa 27/11/2020 haburana BPR ATLAS MARA PLC VS Nkusi Evariste, igika cya 18; urubanza Nº RS/REV/INJUST/CIV 0023/16/CS rwaciwe kuwa 27/09/2019 haburana Rutabayiru et al vs Mukamabano Charlotte, igika cya 28

[7] Ibyo byasobanuwe neza mu rubanza Nº RS/REV/INJUST/CIV 0023/16/CS rwaciwe kuwa 27/09/2019 haburana Rutabayiru et al vs Mukamabano Charlotte, igika cya 28. Muri urwo rubanza, urukiko rwagize ruti "…bikaba byumvikana ko urubanza rushobora gusubirishwamo ku mpamvu z'akarengane ari urubanza rwafashe icyemezo kirenganya umuburanyi. Mu yandi magambo, urubanza rutakiriwe byafatwa ko rwarenganyije umuburanyi, iyo muri uko kutakirwa kwarwo ariho akarengane gashingiye."

ko icyo gihe gitangira kubarwa uhereye igihe Urukiko rw'Ubujurire rwaciriye urubanza, kabone n'ubwo urubanza rusabirwa gusubirwamo rwaba ari urwaciwe n'Urukiko Rukuru8. Ni ukuvuga ko, nk'uko biteganywa n'ingingo ya 53 y'Itegeko rigena ububasha bw'inkiko, uhereye igihe umuburanyi amenyesherejwe urubanza rw'Urukiko rw'Ubujurire rwafashe icyemezo cyo kutakira ikirego kandi muri uko kutakirwa akaba atariho akarengane gashingiye, aba afite iminsi 30 kugira ngo yandikire Perezida w'Urukiko rw'Ubujurire, bitaba ibyo ikirego cye nticyakirwe. Iyo ukutakira ubujurire mu rubanza rwaciwe n'Urukiko rw'Ubujurire ari byo byateye akarengane, icyo gihe handikirwa Perezida w'Urukiko rw'Ikirenga hubahirijwe igihe kivugwa muri iki gika.

[37] Muri uru rubanza Me Nzirabatinyi Fidèle avuga ko kuba yarandikiye Perezida w'Urukiko rw'Ubujurire mu gihe giteganyijwe, nyuma akongera akandikira Perezida w'Urukiko rw'Ikirenga nyuma y'ukwezi n'iminsi icyenda asanga hagomba gushingirwa ku gihe yandikiye Perezida w'Urukiko rw'Ubujurire kuko kuva yamwandikira, ibyo byahagaritse ibarwa ry'ibihe biteganyijwe mu ngingo ya 53 y'itegeko rigena ububasha bw'inkiko. Urukiko rusanga ariko ibyo nta shingiro bifite kuko nk'uko byasobanuwe mu gika kibanziriza iki, itegeko riteganya mu buryo butaziguye igihe ibyo bihe bigomba gutangira kubarirwamo n'umuyobozi ugomba kwandikirwa bitaba ibyo akaba yakererewe. Byongeye kandi, Urukiko runasanga ibyo Me Nzirabatinyi avuga ko mu kwandikira Perezida w'Urukiko rw'Ikirenga atavuguruje ibyo yari yandikiye Perezida w'Urukiko rw'Ubujurire atari byo, kuko nk'uko byasobanuwe mu gika cya 35, ibaruwa yandikiye Perezida w'Urukiko rw'Ikirenga yavanyeho iyandikiwe Perezida w'Urukiko rw'Ubujurire, bityo ikaba ari nayo igomba gushingirwaho hagenzurwa iyubahirizwa ry'ibihe bivugwa muri iyi ngingo.

[38] Urukiko, rushingiye rero ku kuba urubanza rutakiriye ubujurire bwe rwaraciwe n'Urukiko rw'Ubujurire ku wa 18/01/2019 akandikira Perezida w'Urukiko rw'Ikirenga ku wa 27/02/2019, rusanga ubusabe bwa Mukamusoni Pétronille bwo gusubirishamo urubanza rwaciwe n'Urukiko Rukuru, uretse no kuba bwarashyikirijwe umuyobozi utari uwo itegeko riteganya, bwanatanzwe impitagihe (nyuma y'iminsi 39).

**d. Kumenya niba inteko iburanisha ishobora kuvuguruza icyemezo cyafashwe na Perezida w'Urukiko rw'Ikirenga.**

[39] Me Nzirabatinyi Fidèle kimwe n'abahagarariye abagobotse mu rubanza, bavuga ko ikirego Perezida w'Urukiko rw'Ikirenga ategetse ko cyandikwa kigomba kuburanishwa mu mizi hashingiwe ku biteganywa n'ingingo ya 63 y'Itegeko rigena ububasha bw'inkiko, inteko iburanisha ikaba idashobora kukivuguruza. Urukiko rusanga iki kibazo nacyo cyaracyemuwe mu rubanza RS/INJUST/RC 00022/2018/SC rwa Busoro Gervais waburanaga na Busoro Mugunga Désiré, Twagirayezu Ildephonse na Mukankombe Chartine no mu rubanza rubanziriza urundi mu rubanza RS/INJUST/PEN 00001/2020/SC, rwo ku wa 23/12/2020 rwaburanwagamwo Magara Gahakwa John et al. Vs Ubushinjacyaha.

[40] Mu rubanza rwa Busoro, Urukiko rw'Ikirenga rwasobanuye ko igihe hari impamvu zikomeye nko kwibeshya ku iyubahirizwa ry'ibihe, Urukiko rwashyikirijwe urubanza ngo ruruburanishe rutabirengaho ngo ruburanishe mu mizi. Mu rubanza rwa Magara na bagenzi be, Urukiko rwasobanuye ko izo mpamvu zikomeye, ari impamvu zose zirebana n'imihango ndemyagihugu umucamanza uhawe guca urubanza agomba kureba iteka ko yubahirijwe[9]. Uru Rukiko rukaba rusanga imihango ijyanye n'itangwa n'iyakirwa ry'ikirego ari ndemyagihugu kuko isobanura mu nyungu rusange ubushake bw'umushingamategeko mu kuyobora

[8] Reba urubanza rwa Rutabayiru et al rwavuzwe haruguru
[9] Reba igika cya 39 cy'urwo rubanza.

umuburanyi uko itangwa ry'ikirego rigenda n'inzira bicamo, kandi ababuranyi bakaba badashobora kuyihindura uko bashatse ngo banyure iruhande iyategetswe n'itegeko[10].

[41] Muri uru rubanza nk'uko byasobanuwe mu bika bibanziriza iki, Mukamusoni n'abamwunganira ntibubahirije imihango ijyanye n'itangwa ry'ikirego cy'akarengane. Kubera izo mpamvu uru rubanza rukaba rudashobora kwakirwa kuko izo nenge zigaragara mu itangwa ry'iki kirego rudashobora kuzirengaho ngo ruburanishe urubanza mu mizi.

**C. Ibyerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.**

[42] Me Nzirabatinyi Fidèle na Me Kananga Protogène bavuga ko uwo bahagarariye Mukamusoni Pétronille asaba Urukiko gutegeka Nkundimana Edison kumuha 2.000.000 Frw y'igihembo cya Avoka akubiyemo ayo (ku rwego rwa mbere 500.000 frw, ubujurire 500.000 Frw, no mu Rukiko rw'Ikirenga 1.000.000 Frw, na 500.000 Frw y'ikurikiranarubanza), agatanga n'amafaranga y'amagarama 75.000 Frw mu Rukiko Rukuru na 100.000 Frw mu Rukiko rw'Ikirenga.

[43] Nkundimana Edison na Me Kagame Kimonyo Alexis umwunganira bavuga ko indishyi Mukamusoni Pétronille asaba adakwiye kuzihabwa kuko ariwe wakoze uburiganya akihakana umwuzukuru we agamije gusa indonke mu mitungo yasizwe n'umwana we Nzanana Cyrille. Bavuga ko ahubwo, bashingiye ku biteganywa n'ingingo ya 110 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, Nkundimana Edison atanze ikirego kiregera kwiregura agamije gusaba Urukiko rw'Ikirenga gutegeka Mukamusoni Pétronille kumuha indishyi z'akababaro, amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka angana na 10.000.000 Frw abazwe ku buryo bukurikira: 5.000.000 Frw y'indishyi z'akababaro; 3.000.000 Frw yatakaje muri uku gusiragizwa mu manza ku maherere, ibyo bikaba byaranamuteje igihombo gikabije kuko byatumye agurisha umutungo we kuri 5.000.000 Frw kugira ngo abashe kubona uko akomeza gukurikirana izi manza yashowemo nta mpamvu; 3.000.000 y'Ikurikiranarubanza n'igihembo cy'Avoka, harimo 2.000.000 Frw yo ku rwego rw'Urukiko rw'Ikirenga hiyongereyeho na 1.000.000 Frw ataragenwe n'Urukiko mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane kandi yari yayasabye.

## UKO URUKIKO RUBIBONA

[44] Urukiko rurasanga indishyi Mukamusoni Pétronille asaba ntazo akwiye kuko ikirego cye kitakiriwe. Rusanga kandi indishyi z'akababaro Nkundimana Edison asaba zishingiye ku kirego cyo kwiregura ntayo agomba guhabwa kuko nta kirego kiregera kwiregura kuri uru rwego gishoboka[11]. Rusanze ahubwo amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Nkundimana Edison asaba agomba kuyahabwa[12], ariko kuko atagaragaza uburyo ayabara ngo anabitangire ibimenyetso, Urukiko rukaba rumugeneye mu bushishozi bwarwo amafaranga ibihumbi magana atatu (300.000 Frw) y'ikurikiranarubanza n'ibihumbi magana atanu (500.000 Frw) y'igihembo cya Avoka kuri uri rwego, yose hamwe akaba ari ibihumbi magana inani (800.000 Frw).

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[10] Reba ingingo ya 2,1o y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Iyo ngingo igira iti "amategeko ndemyagihugu (ni) urusobe rw'amahame agenga uburyo bw'imibereho muri sosiyete ashyirwaho hagamijwe inyungu rusange ababuranyi badashobora kumvikanaho ngo bayanyure iruhande

[11] Uyu murongo niwo wafashwe mu manza zinyuranye zaciwe n'uru rukiko. Reba urubanza RS/INJUST/RCOM 00002/2020/SC, rwaciwe kuwa 25/09/2020 haburana Road Solutions Pavement Products vs MAILCO Ltd, igika cya70.

[12] Ingingo ya 111 al2 y'Itegeko No 22/2018 ryo kuwa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ivuga ko ikirego cy'amafaranga y'ikurikiranarubanza gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe.

## III. ICYEMEZO CY'URUKIKO

[45] Rwemeje ko ikirego cya Mukamusoni Petronile cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA 000391/2016/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 16/07/2017, cyatanzwe mu nzira no mu buryo butubahirije amategeko ;

[46] Rwemeje ko ikirego cye kitakiriwe ;

[47] Rutegetse Mukamusoni Pétronille guha Nkundimana Edison amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka ibihumbi magana inani (800.000Frw).