SEMAPONDO v RWASIMPENZI N’ABANDI

[Rwanda URUKIKO RW’IKIRENGA – RS/INJUST/RAD 00002/2020/SC– (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire, Hitiyaremye na Karimunda, J.) 10 Ukuboza 2021]

Amategeko agenga imiburanishirije imanza zasabiwe gusubirishywamo ku mpamvu z’akarengane – Iyo Perezida w’Urukiko rw’Ikirenga asuzumye raporo yashyikirijwe ku rubanza rw’akarengane, akemeza ko rwongera kuburanishwa, Urukiko ruburanisha urubanza mu mizi bundi bushya nta zindi nzitizi zitanzwe zatuma urubanza rutaburanishwa mu mizi uretse inzitizi ndemyagihugu.

Incamake y’ikibazo: Semapondo yatanze ikirego mu Rukiko Rwisumbuye rwa Gasabo arusaba gutegeka Koperative Goboka kumuha icyangombwa gituma yiyandikishaho ikibanza baguze, gukuraho amasezerano y’ubukode burambye afitwe na Rwasimpenzi no kumuha indishyi z’akababaro kuberako icyo kibanza ariwe wakiguze ubwo yishyuraga amafaranga miliyoni ene n’ibihumbi magana cyenda kuri konti yiyo Koperative ariko yajya kukiyandikishaho agasanga cyanditseho undi muntu ariwe Rwasimpenzwe. Urukiko rwemeje ko icyo kibanza ari icye, ko amasezerano y’ubukode buramye ateshejwe agaciro ndetse agabwa n’amafaranga y’indishyi.

Uregwa yajuririye urwo rubanza mu Rukiko Rukuru avuga ko ikirego cy’Urega kitagombaga kwakirwa kuko kirebana n’umutungo waburanywe mu rubanza rwabaye itegeko. Indi mpamvu ni uko urukiko rwirengagije ibimenyetso yarushyikirije ahubwo rukagendera ku magambo y’Urega gusa. Urukiko rwemeje ko iyo nzitizi ifite ishingiro, rwemeza ko urubanza rwaciwe n'Urukiko Rwisumbuye ruvanyweho, rutegeka Urega kumuha indishyi zitandukanye.

Urega yajuririye mu Rukiko rw’Ikirenga ariko ubujurire bwe bwimurirwa mu Rukiko rw’Ubujurire nyuma y’ivugururwa ry’urwego rw’ubucamanza, aho avuga ko Urukiko Rukuru rwibeshye mu kwemeza ko urubanza RC 1207/14/TB/KCY rwabaye itegeko kandi ataribyo. Uru rukiko rwarabisuzumye, rwemeza ko rutabaye itegeko, ruvuga ko urubanza rwaciwe n’Urukiko Rukuru ruhindutse ku birebana n’iyakirwa ry’ikirego cye mu Rukiko Rwisumbuye, rusanga cyaragombaga kwakirwa, bityo ko rutagombaga kuvanwaho.

Ku birebana n’ubujurire ku mizi y’urubanza rw’Uregwa yari yaratanze mu Rukiko Rukuru, Urukiko rw’Ubujurire rwemeje ko bufite ishingiro kuri bimwe, ko ikibanza kiburanwa ari icye, ko amasezerano y'ubukode burambye kuri icyo kibanza yabaye hagati ye na Leta y’u Rwanda agumaho, rutegeka Urega kumuha indishyi no kuziha Koperative Goboka.

Nyuma yo kwemererwa n’Urukiko rw’Ikirenga ko urubanza rwaciwe n’Urukiko rw’Ubujurire rusubirwamo ku mpamvu z’akarengane, Urega avuga ko muri urwo rubanza Urukiko rwirengagije ibimenyetso yarugaragarije byerekana ko ari we waguze ikibanza kiburanwa, ariko Abaregwa hamwen’ Ikigo cy’Igihugu gishinzwe imicungire n’imikoreshereze y’ubutaka bo bakavuga ko nta bimenyetso byirengagijwe, ko ahubwo rwabisuzumye rugasanga nta shingiro bifite.

Mbere y’uko uru rubanza ruburanishwa mu mizi, Abaregwa batanze inzitizi ko nta mpamvu mu ziteganywa n’ingingo ya 55 y’Itegeko rigena ububasha bw’inkiko Urega agaragaza kugirango urwo rubanza rusubirwemo ku mpamvu z’akarengane ariko Urukiko rw’Ikirenga rwafatiye icyemezo mu ntebe, ruvuga ko iyo nzitizi itakiriwe.

Iburanisha ryakomereje ku ngingo irebana no kumenya uwaguze na Koperative Goboka ikibanza kiburanwa hagati y’Urega n’Uregwa, aho Urega avuga ko Urukiko rw’Ubujurire rwamurenganyije rwima agaciro ibimenyetso byanditse, n’ibishingiye ku buhamya bw’abatangabuhamya bari bazi neza uburyo iyo Koperative yatangaga ibibanza mu mwaka wa 2007. Avuga ko abatangabuhamya birengagijwe baguze

ikibanza na mu mwaka wa 2007 harimo n'uwari *ingénieur* wa Koperative Goboka, uyu akaba ariwe wari ushinzwe gukora amakarita (*maps*) y'ibibanza no kwereka abaguzi aho ibibanza byabo biherereye.

Akomeza avuga ko n'ubwo Urukiko ari rwo rwemeza abatangabuhamya rugomba kumva, rutagombaga kwanga kumva abo batangabuhamya bari bazi neza uburyo ibibanza byagurwaga icyo gihe, ibimenyetso by'ubugure byatangwaga n'uburyo nimero z'ibibanza zagiye zihindagurika, iryo akaba ari ikosa rwakoze, ko iyo ibyo bimenyetso biza kwitabwaho, Urukiko rwari kubona ko ikibanza kiburanwa ari we wakiguze mbere mu mwaka wa 2007. Avuga ko ikindi kimenyetso yerekanye kikirengagizwa ari "*bordereau de versement*" ya 4.900.000 Frw yishyuye kuri compte ya Koperative ikaba yarayakiriye igasinyaho ko yakiriye iyo *versement espèces* ku itariki ya 19/11/2007, ko ibyo bigaragaza ko habayeho ubwumvikane ku kigurwa no ku kiguzi, kuko iyo bitaba ibyo, nta mpamvu ubwo bwishyu buba bwarabayeho.

Uregwa avuga ko nta bimenyetso byirengagijwe n'Urukiko rw'Ubujurire mu kwemeza ko atari Urega Goboka yagurishije ikibanza kiburanwa. Asobanura ko ikimenyetso kigizwe na "*bordereau de versement*" Urega yishyuriyeho 4.900.000 Frw kuri compte ya *Association* GOBOKA, Urukiko rwagisuzumye rugasanga ntacyo cyafasha mu kwemeza ko byanze bikunze ayo mafaranga yari ayo kugura icyo kibanza, cyane cyane ko n'amagambo agaragara kuri iyo *bordereau* yanditswe n'umukozi wa Banki, atagaragaza nimero y'ikibanza, ingano yacyo, aho giherereye n'abo gihana imbibi.

Akomeza avuga ko ibyo Urega avuga ko yaguze ikibanza mu mwaka wa 2007 bitahabwa ishingiro, kuko bitumvikana ukuntu yaba yarageze mu mpera za 2015 ataragishakira ibyangombwa, cyane cyane ko kwandikisha ubutaka ku bantu babutunze ari itegeko. Avuga ko ikindi kigaragaza ko ibyo Urega avuga ko yaguze ikibanza kiburanwa nta shingiro bifite, ari uko atigeze agitangira umusoro, byongeye kandi akaba yarabonaga buri mwaka agihingamo ibihingwa bitandukanye, ntamwegere ngo amubaze impamvu amuhingira mu kibanza cyangwa ngo amuregere ubuyobozi bw'inzego z'ibanze; iyo myitwarire ikaba igaragaza neza ko ikibanza atari icye kandi ko nta na rimwe cyigeze kiba icye.

Ku bijyanye n'abatangabuhamya, Uregwa avuga ko Urukiko nta kosa rwakoze mu kudatumiza abo batangabuhamya, kuko rwasanze imvugo zabo zitasimbura ibimenyetso Urega yakagombye kuba yari afite bishyigikira '*'bordereau de versement''* aburanisha, cyane cyane ko n'ubwo avuga ko atashoboraga guhabwa ibyangombwa by'icyo kibanza avuga ko yaguze, ngo kuko Goboka itamuhaye "*attestation d'attribution de parcelled*", ntiyashoboye nibura kugaragariza Urukiko ko yifashishije abo batangabuhamya avuga, kugira ngo agaragarize ubuyobozi ko icyo kibanza kirimo amakimbirane, kugira ngo hatagira undi ucyibaruzaho.

Incamake y'icyemezo: Iyo Perezida w'Urukiko rw'Ikirenga asuzumye raporo yashyikirijwe ku rubanza rw'akarengane, akemeza ko rwongera kuburanishwa, Urukiko ruburanisha urubanza mu mizi bundi bushya nta zindi nzitizi zitanzwe zatuma urubanza rutaburanishwa mu mizi uretse inzitizi ndemyagihugu.

Ikirego gisaba gusubirishamo ku mpamvu z'akarengane, nta shingiro gifite.
Nta karengane gahari.

Amategeko yashingiweho:

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 55, 62 n'iya 63.

Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo 12 n'iya 111.

Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 10.

Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa, ingingo ya 8.

Imanza zifashishijwe:

Busoro Gervais na Busoro Mugunga Desire n'abandi, RS/INJUST/RC 00022/2018/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 28/06/2019.

I. IMITERERE Y'URUBANZA

[1] Ku itariki ya 19/11/2007, Semapondo Charles yishyuye kuri konti ya *Association* Goboka muri Banki y'Abaturage y'u Rwanda amafaranga 4.900.000, handikwa ko impamvu y'ubwo bwishyu ari *achat parcelle Goboka*. Avuga ko ayo mafaranga yari ayo kugura na *Association* Goboka yahindutse Koperative, ikibanza nimero 12438 cyaje guhinduka nnimero 1418 kiri mu Mudugudu wa Nyirabwana, Akagari ka Kibagabaga, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali; nyuma y'ubwo bugure, Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda kimubwira ko icyo kibanza cyanditse kuri Rwasimpenzi Wellars, bituma atanga ikirego mu Rukiko Rwisumbuye rwa Gasabo arusaba gutegeka Koperative Goboka kumuha icyangombwa gituma yiyandikishaho ikibanza baguze, gukuraho amasezerano y'ubukode burambye afitwe na Rwasimpenzi Wellars no kumuha indishyi z'akababaro.

[2] Ku itariki ya 30/06/2017, urwo Rukiko rwaciye urubanza RAD 00073/2016/TGI/GSBO, rwemeza ko ikibanza kiburanwa ari icya Semapondo Charles, ko amasezerano y'ubukode burambye afitwe na Rwasimpenzi Wellars ateshejwe agaciro, rutegeka Ikigo Gishinzwe Imicungire n'Imikoreshereze y'ubutaka mu Rwanda kwandika icyo kibanza kuri Semapondo Charles, rutegeka Koperative Goboka kumwishyura indishyi zihwanye na 3.700.000 Frw.

[3] Mu gufata icyo cyemezo, urwo rukiko rwashingiye ku mpamvu zikurikira:

- Kuba ikimenyetso kigizwe na bordereau de versement iriho 4.900.000 Frw Semapondo Charles atanga kidaherekejwe n'amasezerano y'ubugure cyangwa ngo hagaragare ikibanza nyirizina yaguze, ntibigomba gutatesha agaciro icyo kimenyetso kuko gisobanutse ku byerekeye impamvu zacyo (ubugure bw'ikibanza) n'igiciro cyacyo, hakanagaragara uguze n'ugurishije, ibyo bikaba ntaho bitaniye n'ubugure bwabaye hagati y'impande zimaze kuvugwa, cyane cyane ko Koperative Goboka itigeze isubiza Semapondo Charles amafaranga yishyuye, bityo ngo igaragaze ko amasezerano bakoranye yasheshwe. Ikindi ni uko icyo kibanza yacyeretswe na Ingénieur wakoreraga Koperative Goboka.
- Kuba amasezerano y'ubukode burambye Rwasimpenzi Wellars afite ku kibanza nimero 1418 atahabwa agaciro kubera ko atagaragaza aho yagikomoye, nk'amasezerano y'ubugure, bityo ngo hamenyekane niba na we yarakiguze, cyangwa indi nkomoko nk'uko biteganywa n'ingingo ya 10 y'Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda. Ikindi ni uko, n'ubwo yaba afite amasezerano y'ubugure, yaba yaraguze ikintu cy'undi kuko Semapondo Charles ariwe waguze mbere.

[4] Rwasimpenzi Wellars yajuririye urwo rubanza mu Rukiko Rukuru avuga ko ikirego cya Semapondo Charles mu Rukiko Rwisumbuye rwa Gasabo kitagombaga kwakirwa kuko kirebana n'umutungo waburanywe mu rubanza RC 1207/14/TB/KCY rwabaye itegeko. Indi mpamvu y'ubujurire yari iy'uko urukiko rwirengagije ibimenyetso yarushyikirije ahubwo rukagendera ku magambo y'urega gusa.

[5] Ku itariki ya 09/11/2017, urwo Rukiko rwaciye urubanza RADA 00037/2017/HC/KIG rwemeza ko inzitizi yo kutakira ikirego kubera ko ikiburanwa cyaburanywe mu rundi rubanza rwabaye itegeko ifite ishingiro, rwemeza ko urubanza rwaciwe n'Urukiko Rwisumbuye ruvanyweho, rutegeka Semapondo Charles guha Rwasimpenzi Wellars 200.000 Frw y'ikurikiranarubanza na 1.000.000 Frw y'igihembo cya Avoka.

[6] Semapondo Charles yajuririye icyo cyemezo mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwibeshye mu kwemeza ko urubanza RC 1207/14/TB/KCY rwabaye itegeko kandi ataribyo. Nyuma y'ivugururwa ry'Urwego rw'Ubucamanza, ubujurire bwe bwimuriwe mu Rukiko rw'Ubujurire, urubanza ruhabwa RADAA 00006/2018/CA.

[7] Urukiko rw'Ubujurire rwasuzumye niba urubanza RC 1207/14/TB/KCY rwari rwarabaye itegeko nk'uko byari byaremejwe n'Urukiko Rukuru, maze ku itariki ya 14/06/2019, rwemeza ko atari byo, ruvuga ko urubanza RADA 00037/2017/HC/KIG rwaciwe n'Urukiko Rukuru ruhindutse ku birebana n'iyakirwa ry'ikirego cya Semapondo Charles mu Rukiko Rwisumbuye rwa Gasabo, rusanga ikirego cye cyaragombaga kwakirwa muri urwo Rukiko, bityo ko urubanza RAD 00073/2016/TGI/GSBO rutagombaga kuvanwaho.

[8] Ku birebana n'ubujurire ku mizi y'urubanza Rwasimpenzi Wellars yari yaratanze mu Rukiko Rukuru, ku itariki ya 04/10/2019, Urukiko rw'Ubujurire rwemeje ko bufite ishingiro kuri bimwe, ko ikibanza nimero 1418 giherereye mu Mudugudu wa Nyirabwana, Akagari ka Kibagabaga, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali ari icya Rwasimpenzi Wellars, ko amasezerano y'ubukode burambye kuri icyo kibanza yabaye hagati ye na Leta y'u Rwanda agumaho, rutegeka Semapondo Charles kumuha 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri urwo rwego, no guha Koperative Goboka iri mu iseswa 600.000 Frw y'igihembo cya Avoka kuri urwo rwego.

[9] Mu gufata icyo cyemezo, Urukiko rw'Ubujurire rwashingiye ku mpamvu y'uko *bordereau de versement* yo ku itariki ya 19/11/2007 itashingirwaho nk'ikimenyetso cyerekana ko 4.900.000 Frw ayigaragaraho Semapondo Charles yayishyuye agura ikibanza nimero 1418 kiburanwa, ko kandi ntaho rwahera rwemeza ko ikibanza ingénieur Musheja Innocent yeretse Semapondo Charles aricyo kiburanwa, mu gihe Rwasimpenzi Wellars yerekana ibimenyetso by'uko ubutaka ari ubwe bigizwe na *"facture"* igaragaza ko ari iy'ubugure bw'ikibanza gifite nimero 12438, ikavuga ubuso bwacyo, aho giherereye (Nyirabwana) hamwe n'ikiguzi, mu bayisinyeho hakaba harimo ingénieur Musheja Innocent (nk'uwabigenzuye) na Bayito Innocent (nk'ubyemeza), inyandiko yishyuriyeho ikiguzi kivugwa muri iyo *"facture"*, icyemezo cy'uko ahawe ikibanza (*attestation d'attribution de parcelle*), n'ibindi byangombwa byatanzwe n'Ubuyobozi kugeza ku masezerano y'ubukode burambye.

[10] Mu izina no mu mwanya wa Semapondo Charles, Me Mutembe Protais yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza RADAA 00006/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku itariki ya 04/10/2019 rwasubirwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma ubwo busabe, ku itariki ya 21/08/2020, Perezida w'Urukiko rw'Ikirenga yafashe icyemezo nimero 016/CJ/2020 ko urubanza RADAA 00006/2018/CA rusubirwamo ku mpamvu z'akarengane, ruhabwa RS/INJUST/RAD 00002/2020/SC.

[11] Me Mutembe Protais uburanira Semapondo Charles yavuze ko impamvu basabye ko urubanza rwaciwe n'Urukiko rw'Ubujurire rwasubirwamo ku mpamvu z'akarengane ari uko rwirengagije ibimenyetso yarugaragarije byerekana ko ari we waguze ikibanza gifite nimero 1418, ariko abahagarariye Rwasimpenzi Wellars na Koperative Goboka iri mu iseswa, kimwe n'uhagarariye Ikigo cy'Igihugu gishinzwe imicungire n'imikoreshereze y'ubutaka bo bakavuga ko nta bimenyetso Urukiko rwirengagije, ko ahubwo rwabisuzumye rugasanga nta shingiro bifite.

[12] Urubanza rwaburanishijwe mu ruhame ku itariki ya 14/04/2021, Semapondo Charles yunganiwe na Me Mutembe Protais, Rwasimpenzi Wellars ahagarariwe na Me Rugeyo Jean, Koperative Goboka iri mu iseswa ihagarariwe na Me Barahira Eric, Ikigo cy'Igihugu gishinzwe imicungire n'imikoreshereze y'ubutaka kititabye ariko cyarahamagawe mu buryo bukurikije amategeko.

[13] Me Rugeyo Jean uhagarariye Rwasimpenzi Wellars yatanze inzitizi yo kutakira ikirego cya Semapondo Charles avuga ko nta mpamvu mu ziteganywa n'ingingo ya 55 y'Itegeko rigena ububasha bw'inkiko agaragaza, Me Barahira Eric na we ashyigikira iyo nzitizi, ariko Me Mutembe Protais we avuga ko iyo nzitizi nta shingiro ifite kubera ko mu rubanza hagaragayemo kwirengagiza amategeko nk'uko bivugwa mu ngingo ya 55 y'Itegeko rimaze kuvugwa.

[14] Nyuma yo kumva ibisobanuro birambuye byatanzwe n'ababuranyi kuri iyo nzitizi, rushingiye ku murongo rwatanze mu rubanza RS/INJUST/RC 00022/2018/SC[1] aho rwasesenguye ingingo ya 62, igika cya mbere, n'iya 63 z'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, rugasanga zumvikanisha ko iyo Perezida w'Urukiko rw'Ikirenga asuzumye raporo yashyikirijwe ku rubanza rw'akarengane, akemeza ko rwongera kuburanishwa, ayohereza Umwanditsi Mukuru w'Urukiko rw'Ikirenga kugira ngo urwo rubanza rushyirwe kuri gahunda y'iburanisha, Urukiko ruburanisha urubanza mu mizi bundi bushya nta zindi nzitizi zitanzwe zatuma urubanza rutaburanishwa mu mizi uretse inzitizi ndemyagihugu, rwafatiye icyemezo mu ntebe, ruvuga ko iyo nzitizi itakiriwe.

[15] Iburanisha ryakomereje ku ngingo irebana no kumenya uwaguze na Koperative Goboka ikibanza kiburanwa gifite nimero 1418 hagati ya Semapondo Charles na Rwasimpenzi Wellars. Nyuma yo kumva ibisobanuro n'ibimenyetso byatanzwe n'ababuranyi kuri icyo kibazo, urubanza rwarapfundikiwe, Urukiko rumenyesha ababuranyi ko ruzasomwa ku itariki ya 30/04/2021, ariko kuri uwo munsi ntirwasomwa kubera ko umwe mu bacamanza bari bagize inteko yahinduriwe imirimo.

[16] Urubanza rwapfunduwe ku itariki ya 31/05/2021, ababuranyi bongera kumenyeshwa ko urubanza ruzasomwa ku itariki ya 25/06/2021, ariko mu mwiherero warwo rusanga mbere yo guca urubanza ari ngombwa kugira abatangabuhamya ruhamagaza kugira ngo bazagire ibisobanuro barugezaho ku birebana n'ikiburanwa, iburanisha ryishyirwa ku itariki 08/09/2021. Uwo munsi ugeze, rumaze kumva abatangabuhamya bari bahamagajwe, Urukiko rwifuje ko na Rwasimpenzi Wellars yarwitaba ubwe, iburanisha ryimurirwa ku itariki ya 16/11/2021.

[17] Nyuma y'iyo mihango yose, Urukiko rwasuzumye ikibazo nyamukuru kiri muri uru rubanza aricyo cyo kumenya ufite uburenganzira ku kibanza gifite nimero 1418 hagati ya Semapondo Charles na Rwasimpenzi Wellars.

II. IKIBAZO KIRI MU RUBANZA N'ISUZUMWA RYACYO

1. Kumenya ufite uburenganzira ku kibanza nimero 1418 hagati ya Semapondo Charles na Rwasimpenzi Wellars.

[18] Me Mutembe Protais uhagarariye Semapondo Charles avuga ko Urukiko rw'Ubujurire rwamurenganyije rwima agaciro ibimenyetso byanditse, n'ibishingiye ku buhamya bw'abatangabuhamya bari bazi neza uburyo Koperative Goboka yatangaga ibibanza mu mwaka wa 2007, ibyo bikaba bigaragara mu gika cya 8, mu gika cya 30 kugeza mu cya 33 by'urubanza rusubirishwamo ku mpamvu z'akarengane, bikagaragara kandi no muri kopi y'urubanza RADA 00037/2017/HC/KIG mu gika cya 25. Avuga ko abatangabuhamya birengagijwe ari Munyanshongore Viateur waguze ikibanza na Koperative Goboka mu mwaka wa 2007 na Musheja Innocent wari ingénieur wa Koperative Goboka, uyu akaba ariwe wari ushinzwe gukora amakarita (*maps*) y'ibibanza no kwereka abaguzi aho ibibanza byabo biherereye.

[1] Urubanza RS/INJUST/RC 00022/2018/SC hagati ya Busoro Gervais na Busoro Mugunga Desire n'abandi, rwaciwe n'Urukiko rw'Ikirenga ku wa 28/06/2019, igika cya 18.

[19] Akomeza avuga ko n’ubwo Urukiko ari rwo rwemeza abatangabuhamya rugomba kumva, rutagombaga kwanga kumva abo batangabuhamya bari bazi neza uburyo ibibanza bya Koperative Goboka byagurwaga icyo gihe mu mwaka wa 2007, ibimenyetso by’ubugure byatangwaga n’iyo Koperative, n’uburyo nimero z’ibibanza zagiye zihindagurika, iryo akaba ari ikosa rwakoze, ko iyo ibyo bimenyetso biza kwitabwaho, Urukiko rwari kubona ko ikibanza kiburanwa ari Semapondo Charles wakiguze mbere mu mwaka wa 2007.

[20] Avuga nanone ko ikindi kimenyetso yerekanye kikirengagizwa ari “*bordereau de versement*” ya 4.900.000 Frw Semapondo Charles yishyuye kuri compte ya Koperative Goboka, Goboka ikaba yarayakiriye igasinyaho ko yakiriye iyo versement espèces ku itariki ya 19/11/2007, ko ibyo bigaragaza ko habayeho ubwumvikane ku kigurwa no ku kiguzi, kuko iyo bitaba ibyo, nta mpamvu ubwo bwishyu buba bwarabayeho.

[21] Me Mutembe Protais akomeza avuga kandi ko igitangaje ari uko mu rubanza RADAA 00006/2018/CA, Urukiko rwavuze ko rusanga n’ubwo byakwemerwa ko hari ikibanza cyishyuriwe amafaranga y’ubugure, ntaho rwahera rwemeza ko ari igifite nimero 1418, rukavuga kandi ko « nta kindi iyo nyandiko yafasha mu kumenya ibiranga icyo kibanza, haba nomero yacyo, ingano yacyo n’aho giherereye, ku buryo yashingirwaho hemezwa ko ubwishyu yakoze burebana n’ikibanza kiburanwa; akibaza niba nimero y’ikibanza ari cyo kimenyetso cy’ingenzi mu kwerekana ikibanza kiburanwa, mu gihe nyamara Urukiko rwemeye ko Rwasimpenzi Wellars ari we nyir’ikibanza nimero 1418, kandi ruvuga ko yaguze ikibanza nimero 12438. Avuga ko icy’ingenzi atari ukumenya inimero y’ikibanza, kuko inimero zigenda zihinduka, ko icy’ingenzi kwari ukumenya aho ubutaka buherereye kuko butimuka ngo bujye ahandi, ndetse no kureba ko habayeho ubwumvikane hagati y’ugurisha n’ugura. Avuga ko kuba harabayeho amasezerano y’ubugure hagati ya Semapondo Charles na Koperative Goboka, na Bayito Innocent wari umuyobozi wayo yabyemereye imbere ya Police ubwo yabazwaga kuri icyo kibazo.

[22] Me Rugeyo Jean uhagarariye Rwasimpenzi Wellars avuga ko nta bimenyetso byirengagijwe n’Urukiko rw’Ubujurire mu kwemeza ko atari Semapondo Charles iyari *Association* Goboka yagurishije ikibanza nimero 12438 cyaje guhinduka nimero 1418. Asobanura ko ikimenyetso kigizwe na *“bordereau de versement”* Semapondo Charles yishyuriyeho 4.900.000 Frw kuri *compte* ya *Association* Goboka, Urukiko rwagisuzumye rugasanga ntacyo cyafasha mu kwemeza ko byanze bikunze amafaranga Semapondo Charles yashyize kuri compte yari ayo kugura ikibanza nimero 1418, cyane cyane ko n’amagambo agaragara kuri iyo *bordereau* (*VT pour achat parcelle* Goboka) yanditswe n’umukozi wa Banki, atagaragaza nimero y’ikibanza, ingano yacyo, aho giherereye n‘abo gihana imbibi. Ibi akaba ari nako Urukiko rw’Ibanze rwa Kacyiru rwari rwarabivuze mu gika cya 9 cy’urubanza RC 1207/14/TB/KCY rwaciwe ku itariki ya 15/10/2015.

[23] Avuga nanone ko *Association* Goboka yaje guhinduka Koperative, ubwayo yahakanye ko itigeze igurisha Semapondo Charles ikibanza nimero 1418, ko uwo izi yagiranye nawe amasezerano kuri icyo kibanza ari Rwasimpenzi Wellars nk’uko bikubiye mu gika cya 22 cy’urubanza RADAA 00006/2018/CA. Avuga ko Semapondo Charles yakabaye yaragaragarije Urukiko ibindi bimenyetso byunganira bordereau de versement yatanze yonyine, kubera ko amagambo ayiriho yanditswe n’umukozi wa banki.

[24] Me Rugeyo Jean akomeza avuga ko ibyo Semapondo Charles avuga ko yaguze ikibanza mu mwaka wa 2007 bitahabwa ishingiro, kuko bitumvikana ukuntu yaba yarageze mu mpera za 2015 ataragishakira ibyangombwa, cyane cyane ko kwandikisha ubutaka ku bantu babutunze ari itegeko hashingiwe ku biteganywa n’ingingo ya 8 y’Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikishwa ry’ubutaka rikorwa. Avuga ko ikindi kigaragaza ko ibyo Semapondo Charles avuga ko yaguze ikibanza kiburanwa nta shingiro bifite, ari uko atigeze agitangira umusoro, byongeye kandi akaba yarabonaga buri mwaka Rwasimpenzi Wellars agihingamo ibihingwa bitandukanye, ntamwegere ngo amubaze impamvu amuhingira mu kibanza cyangwa ngo amuregere ubuyobozi bw’inzego z’ibanze;

iyo myitwarire ikaba igaragaza neza ko ikibanza nimero 1418 atari icye kandi ko nta na rimwe cyigeze kiba icye.

[25] Ku bijyanye n'abatangabuhamya Semapondo Charles avuga ko Urukiko rwanze kubaza, Me Rugeyo Jean avuga ko Urukiko nta kosa rwakoze mu kudatumiza Musheja Innocent na Munyanshongore Viateur, kuko rwasanze imvugo zabo zitasimbura ibimenyetso Semapondo Charles yakagombye kuba yari afite bishyigikira *"bordereau de versement"* aburanisha, cyane cyane ko n'ubwo avuga ko atashoboraga guhabwa ibyangombwa by'ikibanza avuga ko yaguze, ngo kuko Goboka itamuhaye *"attestation d'attribution de parcelled"*, ntiyashoboye nibura kugaragariza Urukiko ko yifashishije abo batangabuhamya avuga, kugira ngo agaragarize ubuyobozi ko icyo kibanza kirimo amakimbirane, kugira ngo hatagira undi ucyibaruzaho.

[26] Avuga ko uretse n'ibyo kandi, uburanira Semapondo Charles yibwiriye Urukiko ko bareze uwitwa Bayito Innocent, wayoboraga Koperative Goboka, akaba yaravugiye mu Bushinjacyaha ko batigeze bagurisha Semapondo Charles icyo kibanza nimero 1418 nk'uko bigaragara mu gika cya 31 cy'urubanza RADAA 00006/2018/CA.

[27] Avuga ko na Musheja Innocent uvugwa ko yakagombye kuba yarazanywe mu rubanza asanga ntacyo byari guhindura kuko atari kuvuguruza inyandiko y'inyemezabwishyu (*facture*) yashyizeho umukono ku itariki ya 30/07/2012 Koperative Goboka yakoreye Rwasimpenzi Wellars yemeza ko ari iy'ubugure bw'ikibanza nimero 12438 cyahindutse nimero 1418 mu gihe cy'ibarura. Avuga ko ahubwo Rwasimpenzi Wellars ariwe ufite ibimenyetso byerekana ko ari we waguze ikibanza kiburanwa, ibyo akaba ari *bordereau de versement* yacyishyuriyeho, *attestation d'attribution de parcelle* yahawe na Koperative Goboka, icyemezo cy'umutungo nimero 12438, icyangombwa cy'ubutaka nimero 1418 n'urubanza rwaciwe n'Urukiko rw'Ibanze rwa Kacyiru. Arangiza avuga ko kubera izo mpamvu zose asanga nta karengane kabaye mu rubanza rwaciwe n'Urukiko rw'Ubujurire.

[28] Rwasimpenzi Wellars wari wifujwe n'Urukiko ko yarwitaba ubwe, yavuze ko kugira ngo agure ikibanza kiburanwa ari umuvandimwe we witwa Rurangwa Alexis wakimurangiye muri Goboka, ko ariko kubera ko we yabaga ari mu kazi nta mwanya afite, uwo muvandimwe we ariwe byose wabikoze mu izina rye, akaba ari na we wasobanurira Urukiko inzira zose yanyuzemo kugira ngo kiboneke.

[29] Me Barahira Eric uhagarariye Koperative Goboka iri mu iseswa, avuga ko n'ubwo Semapondo Charles anenga ibyavuzwe n'Urukiko rw'Ubujurire mu rubanza RADAA 000006/2018/CA ku birebana n'ikimenyetso cya *bordereau de versement*, aho Urukiko rwasobanuye ko icyo kimenyetso kidafasha mu kumenya ibiranga ikibanza cyishyurirwaga, haba nimero yacyo, ingano yacyo n'aho giherereye, ko rero ntaho rwari guhera rwemeza ko igifite nimero 1418 aricyo kirebana n'ubwishyu yakoze, iyo usomye ibyo bisobanuro ukabihuza na *bordereau de versement* yonyine Semapondo Charles yatanze nk'ikimenyetso, usanga ibyo Urukiko rwasobanuye ko iyari *Association* Goboka itigeze imugurisha ikibanza nimero 1418 byumvikana.

[30] Me Barahira Eric akomeza avuga ko kuba Semapongo Charles yitwaza ko nimero Rwasimpenzi Wellars yahawe ari nimero 12438 kandi Urukiko rwaremeje ko ikibanza cye ari nimero 1418, asanga ari ugushaka kuzana urujijo kubera ko Goboka yabaruraga ibibanza byayo ikabiha nimero, uguze ikibanza akagihabwa hagendewe kuri izo nimero; ko rero iyo umuntu yajyaga gushaka icyangombwa cya burundu yahabwaga nimero yindi itandukanye n'iya Goboka, kuko Leta ariyo itanga ibyangombwa bya burundu, ifite n'uko yabibaruye ikabigenera nimero hakurikijwe aho ubutaka buherereye.

[31] Ku birebana n'abatangabuhamya Urukiko rwanze guhamagaza, Me barahira Eric avuga ko nta kosa ryakozwe ndetse nta n'akarengane kabayemo kuko Urukiko rutari kumva abatangabuhamya mu gihe hari ibimenyetso by'inyandiko zakozwe n'ababifitiye ububasha, kandi nabo bakaba babyivugira. Avuga

ko Urukiko rwabisobanuye neza mu gika cya 33 n'icya 34, ko uretse n'ibyo Urukiko rufite ububasha bwo kutumva umutangabuhamya mu gihe rubona ntacyo yarwungura mu mikirize y'urubanza.

[32] Me Habiyambere Clément uhagarariye Ikigo cy'Igihugu Gishinzwe Imicungire n'Imikoreshereze y'ubutaka, mu mwanzuro we, avuga ko Semapondo Charles yaguze ikibanza ariko ntiyashobora kucyandikisha, kuko avuga ko Koperative Goboka yamugoye ntiyamuha inyandiko za ngombwa ngo yiyandikisheho ubutaka. Avuga ko Rwasimpenzi Wellars wabuguze akanabwandikisha ariwe nyirabwo, kuko kwandikisha ubutaka ari itegeko, nk'uko biteganywa n'ingingo ya 20 y'Itegeko rigenga ubutaka mu Rwanda. Avuga kandi ko kumva abatangabuhamya bitari ngombwa, mu gihe hari inyandiko zakozwe na Koperative Goboka yari ifite uburyo itanga ibibanza.

[33] Abatangabuhamya Urukiko rwari rwifuje ko bazabazwa ku byo bazi ku kibanza kiburanwa, barutangarije ibi bikurikira:

- Ruzindana Munana Jean wari Perezida w'Inama y'Ubutegetsi ya Goboka mu mwaka wa 2007, yasobanuriye Urukiko ko Leta imaze kubaha umusozi wa Kibagagaba bakawucamo ibibanza, uwashakaga kugura yabanzaga kurambagiza ikibanza yifuza, yagishima akajya kuri Banki y'Abaturage akacyishyura, nyuma akazana inyemezabwishyu muri serivisi y'icungamutungo, bakamuha icyangombwa kimwegurira ikibanza, cyangwa se hagakorwa amasezerano y'ubugure. Avuga ko muri izo nyandiko zombi hagaragaragamo nimero y'ikibanza. Ku bijyanye n'uburyo Semapondo Charles yaba yarahawe ikibanza, yabwiye Urukiko ko amakuru yayamenye ari uko uyu areze Goboka, ko ariko amakuru yari yarahawe ari uko uyu yishyuye ikibanza ntiyazana inyemezabwishyu, hanyuma ibibanza bigashira.
- Bayito Innocent wari umuyobozi w'iyo Koperative, yabwiye Urukiko ko icyemezaga ko umuntu ahawe ikibanza muri Goboka ari icyangombwa kimwegurira ikibanza. Yasobanuye ko mbere yo kwishyura, uwashakaga ikibanza yabanzaga kugisura, yagishima akishyura, agashyikiriza ubuyobozi inyemezabwishyu ariko agakomeza gukurikirana kugira ngo abone icyo cyangombwa. Avuga ko iyo uwishyuye atabikurikiranaga imyaka ibiri cyangwa itatu igashira, icyo gihe nta kibanza yabaga afite. Yakomeje abwira Urukiko ko kuba Semapondo Charles afite inyemezabwishyu iteyeho kashe ya Goboka, ko bashobora kuba barayimutereyeho ariko ntayijyane muri serivisi zishinzwe gutanga ibibanza, kuko uwahitaga ayijyana yatahanaga icyemezo kimwegurira ikibanza, naho utarayijyanaga mu buyobozi bubishinzwe, ikibanza cyabaga kikiri ku isoko.
- Musheja Innocent wari ingénieur wa Goboka, avuga ko mu kugurisha ibibanza byakorwaga mu buryo bubiri, ko hari abazaga bakiyandikisha, rimwe na rimwe bagatanga avansi, ubundi abandi bakaza bakarambagiza ibibanza bakajya kwishyura. Ku birebana na Semapondo Charles, avuga ko yaje amwereka ikibanza gifite nimero 12438, ajya kwishyura azana inyemezabwishyu, ko ibindi byakurikiyeho atabimenya kuko bitari mu nshingano ze. Ku bijyanye no kuba ikibanza cya Semapondo Charles yaba yarahindukiye akacyereka Rwasimpenzi Wellars, avuga ko uyu atamuzi, ko nta kibanza yigeze amwereka. Amaze kwerekwa facture yasinyeho yemeza ko ikibanza gifite nimero 12438 ari icya Rwasimpenzi Wellars, yavuze ko mu mwaka wa 2012 habaye ikibazo cya facturation, abo muri finance bavuga ko inyemezabwishyu zari zisanzweho zidahagije, bakora izindi factures ziriho nimero z'ibibanza ndetse n'ingano yabyo, bategeka abo muri technique kubigenzura, ko bishoboka ko aribwo Rwasimpenzi Wellars yanditsweho ikibanza gifite nimero 12438 kiburanwa, ko we yasinye kuri iyo *facture* yemeza ko ingano y'ikibanza ihuye na nimero yacyo, ko atitaye ku mazina ya nyiracyo.
- Munyanshongore Viateur, umwe mu baguze ikibanza na Goboka muri icyo gihe, yabwiye Urukiko ko uwashakaga ikibanza yagendaga akareba ingénieur akamwereka ikarita, ikibanza

yagishima akajya kwishyura akazana inyemezabwishyu, bakamuha *“attestation d’attribution de parcelle”*. Avuga ko ubutaka bwagurishijwe Semapondo Charles abuzi kuko hagati yabo haciyemo ikibanza kimwe, ko ariko amakuru yamenye ari uko Goboka yongeye ikabugurisha.

- Havumiragira Théophile, wari ushinzwe iseswa rya Koperative Goboka, avuga ko ikibazo cy’uko Semapondo Charles yaguze ikibanza na Goboka, hanyuma Goboka ikongera ikakigurisha Rwasimpenzi Wellars, bakimenye kigeze mu nkiko bakagiharira umunyamategeko wabo ngo agikurikirane, ko ariko bibaye byarakozwe haba harabayemo ikosa.

- Rurangwa Alexis wari witabye Urukiko ku bwe aherekeje Rwasimpenzi Wellars yahawe ijambo kugira ngo agire amakuru atangariza Urukiko ku birebana n’ikibanza kiburanwa, asobanura ko ariwe wagiranye ibiganiro n’abakozi ba Goboka aribo Musheja Innocent, Bayito Innocent n’umucungamari wabo witwa Julie, mu izina rya Rwasimpenzi Wellars wari wamutumye. Avuga ko bamweretse ibibanza bitanu (5) agashimamo bibiri (2) birimo n’ikiburanwa, ari nabyo yishyuye akabazanira inyemezabwishyu, na bo bamuha facture ayisinyaho mu izina rya Rwasimpenzi Wellars kuko atariwe nyir’ikibanza, nyuma bamuha na *“attestation d’attribution de parcelled”* ayishyira Rwasimpenzi Wellars atangira imihango yo kwiyandikishaho ubutaka bwe.

UKO URUKIKO RUBIBONA

[34] Impaka ziri muri uru rubanza ababuranyi bifuje ko Urukiko rwabakemurira, ni ukumenya hagati ya Semapondo Charles na Rwasimpenzi Wellars ufite ibimenyetso bidashidikanywaho byerekana ko ariwe waguze na Goboka ikibanza nimero 12438 cyaje guhinduka nimero 1418, kuko buri wese avuga ko ari icye. Semapondo Charles avuga ko ari we wakiguze mbere mu mwaka wa 2007, mu gihe Rwasimpenzi Wellars avuga ko akigura mu mwaka wa 2012 nta muntu cyari cyanditseho. Koperative Goboka iri mu iseswa uwo yemera yagurishije icyo kibanza ni Rwasimpenzi Wellars n’ubwo idahakana ko na Semapondo Charles yamugurishije ikibanza, ko ariko atari igifite nimero1418.

[35] Ingingo ya 12, igika cya mbere, y’Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, iteganya ko urega agomba kugaragaza ibimenyetso by’ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Ibiteganywa n’iyo ngingo, binahura n’ibivugwa mu ngingo ya 3, igika cya mbere, y’Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, iteganya ko “buri muburanyi agomba kugaragaza ukuri kw’ibyo aburana.

[36] Mu kwemeza ko ikibanza ubu gifite nimero 1418 ari nacyo kiburanwa ari icya Rwasimpenzi Wellars, Urukiko rw’Ubujurire rwasanze ikimenyetso kigizwe na bordereau de versement Semapondo Charles yashingiragaho avuga ko ari we waguze icyo kibanza kitahabwa agaciro kubera ko iyo nyandiko iterekanaga ibiranga ikibanza nka nimero yacyo, ingano yacyo, n’aho giherereye ku buryo yari gushingirwaho hemezwa ko ubwishyu yakoze burebana n’icyo kibanza. Urwo Rukiko rwemeje ko ikibanza ari icya Rwasimpenzi Wellars kuko yarugaragarije facture yerekana ko ari iy’ubugure bw’ikibanza nimero 12438 cyahindutse nimero 1418, ikavuga ubuso bwacyo, aho giherereye (Nyirabwana) hamwe n’ikiguzi, mu basinyeho hakaba harimo Musheja Innocent nk’uwabigenzuye na Bayito Innocent nk’ubyemeza, icyemezo cy’uko ahawe ikibanza n’ibindi byangombwa byatanzwe n’ubuyobozi kugeza ku masezerano y’ubukode burambye.

[37] Ibimenyetso Semapondo Charles agaragaza byemeza ko ikibanza kiburanwa ariwe wakiguze ni ibi bikurikira:

- Bordereau de versement yishyuriyeho muri Banki y'Abaturage ku itariki ya 19/11/2007. Iyo bordereau igaragaraho 4.900.000 Frw, igisobanuro cyayo akaba ari *"versement pour achat parcelled Goboka"*;
- Ubuhamya bwa Bayito Innocent wiyemereye imbere ya *Police* ko yagurishije Semapondo Charles ikibanza;
- Ubuhamya bwa Musheja Innocent wari *ingénieur* wa Goboka na we uvuga ko Semapondo Charles yaguze ikibanza muri Koperative Goboka ko kandi yacyishyuye 4.900.000 Frw, ko impamvu abihamya ari uko ntawe berekaga ikibanza atabanje kwishyura;
- Ubuhamya bwa Munyanshongore Viateur uvuga ko azi ko ikibanza kiburanwa ari icya Semapondo Charles.

[38] Ibimenyetso Rwasimpenzi Wellars atanga avuga ko ikibanza kiburanwa ari icye ni ibi bikurikira:

- *Facture* ya 14.000.000 Frw yakorewe na Koperative Goboka ku itariki ya 30/07/2012, iyo *facture* ikaba yararebanaga n'ubugure bwa parcelle n° 12438 yaje guhinduka 1418;
- *Bordereau de versement* yishyuriyeho ikibanza nimero 12438;
- *Attestation d'attribution de parcelle* yahawe na Koperative Goboka;
- Icyemezo cy'umutungo nimero 12438;
- Icyangombwa cy'ubutaka nimero 1418 cyatanzwe n'Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka ku itariki ya 17/12/2012;
- Urubanza RC 1207/14/TB/KCY rwaciwe n'Urukiko rw'Ibanze rwa Kacyiru ku itariki ya 15/10/2015 rukemeza ko nta masezerano abiri atandukanye yabayeho ku kibanza nimero 1418.

[39] Ku birebana na *bordereau de versement* Semapondo Charles yishyuriyeho muri Banki y'Abaturage ku itariki ya 19/11/2007 atanga nk'ikimenyetso ko yaguze ikibanza kiburanwa, Urukiko rurasanga nta gushidikanya ko hari ikibanza yishyuye muri Goboka, ndetse na Bayito Innocent wayiyoboraga imbere y'uru Rukiko akaba atarabihakanye. Urukiko rurasanga ariko, nk'uko n'Urukiko rw'Ubujurire rwabibonye, nta kimenyetso na kimwe kigaragaza ko ikibanza yishyuraga ari icyari gifite nimero 12438 cyaje guhinduka nimero 1418 ari nacyo kiburanwa muri uru rubanza kubera ko kuri iyo bordereau nta nimero y'ikibanza igaragaraho.

[40] Ku birebana n'ubuhamya bwa Musheja Innocent uvuga ko mbere y'uko Semapondo Charles ajya kwishyura yamweretse ikibanza cyari gifite nimero 12438 ari nacyo ubu kiburanwa, ndetse n'ubuhamya bwa Munyanshongore Viateur uvuga ko ubutaka bwagurishijwe Semapondo Charles abuzi, ko hari amakuru yamenye ko Goboka yongeye ikabugurisha, Urukiko rurasanga ubwo buhamya butahabwa ishingiro kubera ko ku itariki ya 30/07/2012, Musheja Innocent yasinye ku nyemezabwishyu yemeza ko icyo kibanza ari icya Rwasimpenzi Wellars, bikaba bitumvikana ukuntu mu mwaka wa 2007 yari kuba yaracyeretse Semapondo Charles hanyuma ngo ahindukire yemeze ko ari icya Rwasimpenzi Wellars. Ibyo avuga ko icyari kigenderewe kwari ukugenzura ko nimero z'ibibanza zihuye n'ubuso bwabyo, ntibyagenderwaho kuko ataribyo byanditse kuri iyo nyemezabwishyu, kandi iyo umuntu asinye ku nyandiko aba asinyiye ibiyanditsemo byose. Iyo nyemezabwishyu igaragaza Rwasimpenzi Wellars nk'uguze ikibanza gifite nimero 12438 ku gaciro ka 14.000.000 Frw, yasinyweho na Kayisinga Claudien nk'uwayiteguye, Musheja Innocent ayisinya nk'uwabigenzuye, hanyuma isinywa na Bayito Innocent abyemeza.

[41] Hashingiwe ku ngingo ya 12, igika cya mbere, y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, no ku ngingo ya 3, igika cya mbere, y'Itegeko N° 15/2004 ryo ku wa 12/06/2004

naryo ryavuzwe haruguru, ndetse no ku bisobanuro byatanzwe, nk'uko n'Urukiko rw'Ubujurire rwabibonye, uru Rukiko narwo rurasanga ibimenyetso Semapondo Charles atanga bidahagije mu kumvikanisha ko ariwe waguze ikibanza nimero 12438 cyaje guhinduka nimero 1418, mu gihe ibimenyetso bya Rwasimpenzi Wellars baburana byavuzwe haruguru byerekana ibiranga icyo kibanza byose birimo nimero yacyo, aho giherereye n'ubuso bwacyo, byongeye kandi n'uwo bakiguze akaba abyemeza. Kubera izo mpamvu zose rero, Urukiko rukaba rusanga ikirego cyatanzwe na Semapondo Charles asaba gusubirishamo urubanza ku mpamvu z'akarengane nta shingiro gifite.

Ku birebana n'indishyi zasabwe muri uru rubanza

[42] Semapondo Charles asaba Urukiko gutegeka Koperative Goboka na Rwasimpenzi Wellars kumuha indishyi kubera ko bamuvukije amahirwe yo kubaka mu kibanza cye ibiciro bitarazamuka. Asobanura ko uruhare rwa Koperative Goboka ari uko yamwimye "*lettre d'attribution de parcelle*", ikibanza cye ikakigurisha undi muntu bigatuma agana inkiko kuva mu mwaka wa 2013 kugeza uyu munsi. Avuga ko uruhare rwa Rwasimpenzi Wellars ari uko yamenye ko ikibanza yaguze na Koperative Goboka cyari cyaragurishijwe undi muntu, aho gusaba gusubizwa amafaranga ye, agakomeza guhanyanyaza mu manza, bigatuma akomeza gutakaza amafaranga yishyura Abavoka.

[43] Kubera izo mpamvu zose, Semapondo Charles arasaba indishyi zikurikira zigomba gutangwa na Goboka ifatanyije na Rwasimpenzi Wellars:

- 2.500.000 Frw y'igihembo cy'Avoka;
- 1.300.000 Frw yishyuye Rwasimpenzi Wellars hiyongereyeho inyungu zayo zibazwe nk'iza banki (16% ku mwaka);
- 10.000.000 Frw y'ibiciro byo kubaka byazamutse no kudashobora kubyaza umusaruro ikibanza cye mu myaka irenze icumi (10); hamwe n'akababaro yatewe n'akarengane yagiriwe.

[44] Me Rugeyo Jean uhagarariye Rwasimpenzi Wellars avuga ko nta ndishyi Semapondo Charles akwiriye kuko ariwe wishoye mu manza, akaba akwiriye kwirengera ingaruka zazo zose. Avuga ko ahubwo ariwe Urukiko rukwiye gutegeka guha Rwasimpenzi Wellars indishyi kubera kumuhoza mu manza z'urudaca nta mpamvu. Indishyi basaba akaba ari 3,000,000 Frw y'igihembo cy'Avoka hamwe na 500,000 Frw y'ikurikiranarubanza kuri uru rwego.

[45] Me Barahira Eric uhagarariye Koperative Goboka iri mu iseswa, avuga ko ashingiye ku ngingo ya 111 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, asaba Urukiko gutegeka Semapondo Charles kwishyura Koperative Goboka iri mu iseswa 500,000 Frw y'ikurikiranarubanza na 1,000,000 Frw y'igihembo cy'Avoka kubera kuyishora mu manza zidafite aho zishingiye.

[46] Me Habiyambere Clément uhagarariye Ikigo cy'Igihugu Gishinzwe Imikoreshereze n'Imicungire y'Ubutaka mu Rwanda, mu mwanzuro we, avuga ko asanga iki Kigo cyarashowe mu rubanza ku maherere, kuko Semapondo Charles yiyemerera ko ikosa ari irya Koperative Goboka itaramuhaye ibyangombwa ngo yiyandikisheho ubutaka yamugurishije, ko kubera izo mpamvu asabira Ikigo aburanira indishyi zingana na 600.000 Frw, harimo 100.000 Frw yo gukurikirana urubanza na 500.000 Frw yo kurutegura.

UKO URUKIKO RUBIBONA

[47] Ku birebana n'indishyi zisabwa na Semapondo Charles, Urukiko rurasanga ntazo agomba guhabwa kuko ntacyo atsindiye muri uru rubanza.

[48] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'ay'igihembo cy'Avoka Rwasimpenzi Wellars na Koperative Goboka iri mu iseswa basaba bagomba kuyahabwa kuko byabaye ngombwa gukurikirana urubanza no gushyiraho Abavoka bababuranira, ariko kuko ayo basaba ari menshi kandi bakaba badasobanura uko bayabara, mu bushishozi bw'Urukiko bakaba bagenewe buri wese 500.000 Frw y'igihembo cy'Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw buri wese.

[49] Ku birebana n'amafaranga asabwa n'Ikigo gishinzwe Imicungire n'Imikoreshereze y'ubutaka mu Rwanda, Urukiko rurasanga gikwiye kugenerwa 100.000 Frw y'ikurikiranarubanza yonyine kuko ayo gutegura urubanza basaba batashoboye kuyasobanura, cyane cyane ko batigeze bitabira inama nteguraruba nza, n'amaburanisha yabaye bakaba nta na rimwe bitabiriye.

III. ICYEMEZO CY'URUKIKO

[50] Rwemeje ko ikirego cyatanzwe na Semapondo Charles gisaba gusubirishamo ku mpamvu z'akarengane urubanza RADAA 00006/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku itariki ya 04/10/2019, nta shingiro gifite.

[51] Rwemeje ko nta karengane kari muri urwo rubanza.

[52] Rwemeje ko ikibanza nimero UPI 1/02/09/02/1418 kiri mu Mudugudu wa Nyirabwana, Akagari ka Kibagabaga, Umurenge wa Kimironko, Akarere ka Gasabo, Umujyi wa Kigali, ari icya Rwasimpenzi Wellars.

[53] Rwemeje ko amasezerano y'ubukode burambye kuri icyo kibanza yabaye hagati ya Rwasimpenzi Wellars na Leta y'u Rwanda agumaho.

[54] Rutegetse Semapondo Charles guha Rwasimpenzi Wellars amafaranga ibihumbi magana inani (800.000 Frw) akubiyemo ay'igihembo cy'Avoka n'ay'ikurikiranarubanza.

[55] Rutegetse Semapondo Charle guha Koperative Goboka iri mu iseswa ibihumbi magana inani (800.000 Frw) akubiyemo ay'igihembo cy'Avoka n'ay'ikurikiranarubanza.

[56] Rutegetse Semapondo Charles guha Ikigo Gishinzwe Imicungire n'Imikoreshereze y'ubutaka mu Rwanda ibihumbi ijana (100.000 Frw) y'ikurikiranarubanza.