MUHIRWA N'UNDI v MUKAMAZIMPAKA N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00003/2019/SC (Mukamulisa, P.J, Nyirinkwaya, Cyanzayire, Rukundakuvuga, na Hitiyaremye, J.) 06 Werurwe2020]

Amategeko agenga imanza mbonezamubano – Umutungo utimukanwa – Ibyongerewe ku nzu – Ibyongereye inzu agaciro bigomba kwishyurwa igihe ishubijwe nyirayo hatitawe kumenya niba uwari uyitunze yari ayitunze mu buryarya cyangwa nta buryarya.

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Inshingano y'ukugaragaza ibimenyetso – Buri muburanyi agomba kugaragaza ibimenyetso by'ukuri kw'ibyo aburana, yabibura akaba atsinzwe – Itegeko Nº 15/2014 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo *ya 3 – 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 12.*

Incamake y'ikibazo: Urubanza rwahereye mu Rukiko rw'Isumbuye rwa Rubavu harega Muhirwa Delphine na Muhirwa Françoise barega Mukamazimpaka, basaba guhabwa inzu y'umubyeyi wabo Muhirwa yigabijwe na Mukamazimpaka avuga ko yayihawe na Mutabazi naw euvuga ko yayiguze na Muhirwa Françoise ariko bikaba ataribyo kuko igihe avuga yayiguriye Françoise akaba yari umwana atarabashaga gukora amasezerano y'ubugure. Urukiko rwafashe icyemezo rwemeza ko ikibanza kirimo inzu Mukamazimpaka yiyandikishijeho kivanwa ku mazina ye kikandikwaho abarega ndetse akanabishyura amafaranga y'ubukode ahwanye n'imyaka 8 yayibayemo.

Mukamazimpaka ntiyishimiye imikirize ajuririra Urukiko Rukuru avuga ko iyo nzu ayitunze nta buryarya, ndetse ko indishyi yaciwe zateshwa agaciro, Mutabazi nawe yagobotse muri urwo rubanza ku bushake. Utrukiko rwaciye urubanza rwemeza ko ubujurire bwe bufite ishingiro, ko agomba gusubiza Françoise na Adelphine inzu iburanwa, ko amasezerano y'ubukode burambye ku kibanza yanditswe kuri Mukamazimpaka ateshwa agaciro, akandikwa kuri Françoise na Adelphine, rutegeka Françoise na Adelphine gusubiza Mukamazimpaka 21.991.264 Frw y'agaciro k'ibikorwa yakoze avugurura inzu iburanwa no kwishyura igihembo cy'Avoka, bakanishyura amafaranga yakoreshejwe agena agaciro k'inzu iburanwa.

Françoise na Adelphine basubirishijemo urubanza rwo mu Rukiko rukuru ingingo nshya bavuga ko mu rubanza habayemo amakosa akabije yo kwitiranya ibintu uko byagenze, uburiganya, ndetse ngo hari n'ikimenyetso cyari muri dosiye urukiko rutitayeho, Urukiko rwaciye urubanza rwemeza ko ikirego kitakiriwe, rwemeza ko urwo rubanza rurangizwa nta gihindutse na busa.

Françoise na Adelphine nabwo ntibishimiye imikirize bavuga ko urubanza rurimo akarengane basaba ko urubanza rusubirwamo ku mpamvu z'akarengane ari uko Urukiko rwasanze amasezerano y'ubugure ntagaciro afite kuko agaragaraho ko yasinywe na Françoise utari wujuje imyaka y'ubukure bityo ntabububashsa yari afite bwo kuyakora., n'uko ntakuntu umutungo w'abana bakiribato washobora kugurishwa ntanama w'ubwishingire yabaye ngo byemezwe n'Urukiko, ko kuba Urukiko kuba rwarageneye indishyi Muakamazimpaka ntacyo rushingiyeho kuko atagaragaza uburyo inzu iburanwa yageze mu maboko ye.

Mukamazimpaka we avuga ko amasezerano y'ubugure yabayeho kuko Mutabazi wamuhaye yemeye imbere ya Notaire w'ubutaka ko amasezerano yabayeho, ko kandi indishyi za zagenwe zishingiye ku byo yashyizeho ku nzu iburanwa amaze kuyihabwa na Mutabazi nk'uko byemejwe n'umuhanga. Mutabazi nawe yemeza ko ayo masezerano yabayeho ariko ko atakozwe n'umwana kuko yakozwe n'abagize umuryango mu nyungu z'umwana, hanyuma akaza gushimangirwa mu nyandikomvaho yabereye imbere ya notaire.

Incamake y'icyemezo: 1. Ibyongereye inzu agaciro bigomba kwishyurwa igihe ishubijwe nyirayo hatitawe kumenya niba uwari uyitunze yari ayitunze mu buryarya cyangwa nta buryarya, bityo Mukamazimpaka akaba agomba gusubizwa agaciro kibyongerewe ku nzu.

2. Buri muburanyi agomba kugaragaza ibimenyetso by'ukuri kw'ibyo aburana, yabibura akaba atsinzwe, bityo kuba abaregwa batagaragaza amasezerano y'ubugure bw'inzu kandi aricyo kimenyetso cyonyine cyamara impaka, urukiko rusanga ntaho rwahera rwemeza ko yabayeho.

Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro.

Amategeko yashingiweho:
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 12.
Itegeko Nº 15/2014 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Muhirwa Pierre yitabye Imana hanyuma aza gukurikirwa n'umugore we Nyirahabimana, basiga abana babiri ari bo Muhirwa Françoise na Muhirwa Adelphine, babasigira n'inzu iri muri parcelle no 2018. Muhirwa Adelphine na Muhirwa Françoise bavuga ko iyo nzu yaje kwigabizwa na Mukamazimpaka Thacienne, uvuga ko yayihawe na Mutabazi Déo na we wayiguze na Muhirwa Françoise nk'uko bigaragazwa n'amasezerano y'ubugure bwayo.

[2] Muhirwa Françoise na Muhirwa Adelphine bamureze mu Rukiko Rwisumbuye rwa Rubavu, mu rubanza RC0101/16/TGI/RBV, basaba guhabwa inzu y'umubyeyi wabo Muhirwa Pierre kuko ayo masezerano y'ubugure batayazi, kandi ko icyo gihe Muhirwa Françoise atashoboraga gukora amasezerano mu buryo bwemewe n'amategeko kuko yari afite imyaka 14 y'amavuko.

[3] Urukiko Rwisumbuye rwa Rubavu rwaciye urwo rubanza ku wa 24/02/2016, rwemeza ko:

- ikirego cya Muhirwa Françoise na Muhirwa Adelphine gifite ishingiro;
- ikibanza gifite nº 2018 cyahawe no 0392/RUB/GIS kirimo inzu iherereye mu Mudugudu w'Urubyiruko, Akagari ka Nengo, Umurenge wa Gisenyi, Akarere ka Rubavu, kivanwa kuri Mukamazimpaka Thacienne kikandikwa kuri Muhirwa Françoise na Muhirwa Adelphine, kandi akabaha amafaranga y'indishyi z'ubukode bw'imyaka 8 angana na 9.600.000 Frw, akabaha n'amafaranga y'igihembo cy'Avoka.

[4] Urukiko rwageze kuri uwo mwanzuro rushingiye ku mpamvu zikurikira:

- Kuba amasezerano yo ku wa 24/11/1995 Mutabazi Déo atarayagizemo uruhare kuko atayasinyeho kandi ari we wakagombye kuyashyiraho umukono kubera ko ari umuguzi

(*acheteur*) muri yo, naho Muhirwa Françoise wari ufite imyaka cumi n'ine (14ans) nta bubasha n'ubushobozi (qualité et capacité) bwo kugurisha inzu y'umuryango yari afite;

- Kuba barirengagije uburenganzira abana bafite bwo kurerwa n'umutungo w'ababyeyi babo, no kuba muri ayo masezerano nta kigaragaza ko umuryango wa Muhirwa wabanje kuzungura hanyuma ukabona kugurisha;
- Kuba amasezerano y'ubugure hagati ya Mutabazi Déo na Muhirwa Françoise yo ku wa 24/11/1995 atarubahirije amategeko kuko hari urubanza nº RC 190/88 rwaciwe ku wa 10/06/1995 rubuza uwo mutungo kugurishwa umuryango utabizi rwabaye itegeko;
- Kuba nta kigaragaza ko hari amasezerano yabaye hagati ya Mukamazimpaka Thacienne na Mutabazi Déo;

[5] Mukamazimpaka Thacienne yajuririye urwo rubanza mu Rukiko Rukuru Urugereko rwa Musanze avuga ko iyo nzu ayitunze nta buryarya, ndetse ko indishyi yaciwe zateshwa agaciro, urubanza ruhabwa RCA 0025/16/HC/MUS. Mutabazi Déo nawe yagobotse muri urwo rubanza ku bushake.

[6] Ku wa 16/06/2017, Urukiko Rukuru Urugereko rwa Musanze rwaciye urubanza nº RCA 0025/16/HC/MUS rushingiye ku kuba amasezerano y'ubugure yo ku wa 24/11/1995 yarabayeho ariko nta gaciro yahabwa kuko Muhirwa Françoise yayasinye afite imyaka 14 hashingiwe ku cyemezo cy'amavuko cyo ku wa 23/09/2015 cyatanzwe n'ubuyobozi bw'umurenge wa Nyamyumba kigaragaza ko yavutse ku wa 28/12/1981, maze ruca uru rubanza mu buryo bukurikira:

- rwemeje ko ubujurire bwa Mukamazimpaka Thacienne bufite ishingiro;
- rwemeje ko Mukamazimpaka Thacienne asubiza Muhirwa Françoise na Muhirwa Adelphine inzu iburanwa;
- rwemeje ko amasezerano y'ubukode burambye ku kibanza no 0392/RUB/GIS yanditswe kuri Mukamazimpaka Thacienne ateshwa agaciro, Umubitsi w'impapurompamo akayandika kuri Muhirwa Françoise na Muhirwa Adelphine;
- rutegeka Muhirwa Françoise na Muhirwa Adelphine gusubiza Mukamazimpaka Thacienne 21.991.264 Frw y'agaciro k'ibikorwa yakoze avugurura inzu iburanwa;
- rutegeka Muhirwa Adelphine na Muhirwa Françoise kwishyura Mukazimpaka Thacienne 1.000.000 Frw y'igihembo cy'Avoka, bakanishyura Muhire Jean Claude 100.000 Frw yakoresheje agena agaciro k'inzu iburanwa.

[7] Muhirwa Adelphine na Muhirwa Françoise basubirishijemo urubanza nº RCA 0025/16/HC/MUS ingingo nshya, bavuga ko mu rubanza rumaze kuvugwa habayemo amakosa akabije yo kwitiranya ibintu uko byagenze, uburiganya, ndetse ngo hari n'ikimenyetso cyari muri dosiye urukiko rutitayeho.

[8] Ku wa 31/05/2018, Urukiko Rukuru Urugereko rwa Musanze rwaciye urubanza RCA 00082/2017/HC/MUS, rushingiye ku kuba abatanze ikirego cyo gusubirishamo urubanza ingingo nshya nta mpamvu yemewe n'amategeko batanze yatuma urubanza RCA 0025/16/HC/MUS rusubirishwamo ingingo shya; rwemeza ko:

- ikirego cyo gusubirishamo urubanza Nº RCA 0025/16/HC/MUS ingingo nshya cyatanzwe na Muhirwa Adelphine na Muhirwa Françoise kitakiriwe, rwemeza ko urwo rubanza rurangizwa nta gihindutse na busa;

- rutegeka Muhirwa Adelphine na Muhirwa Françoise kwishyura Mukamazimpaka Thacienne na Mutabazi Déo igihembo cy'Avoka kingana na 250.000 frw kuri buri wese.

[9] Ku wa 28/06/2018 Muhirwa Françoise na Muhirwa Adelphine bandikiye Perezida w'Urukiko rw'Ubujurire basaba ko urubanza RCA 00082/2017/HC/MUS rwaciwe n'Urukiko Rukuru Urugereko rwa Musanze ku wa 31/05/2018, rusubirwamo ku mpamvu z'akarengane; nyuma yo kubigenzura, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rwasubirwamo, maze nawe yemeza ko urwo rubanza rusubirwamo; rwandikwa kuri RS/INJUST/RC 00003/2019/SC.

[10] Urwo rubanza rwahamagawe ku wa 07/02/2020, ababuranyi bose baritaba, Me Tom Mitsindo yunganiye Muhirwa Adelphine anahagarariye Muhirwa Françoise, Mukamazimpaka Thacienne yunganiwe na Me Bizimana Vita Guido, naho Mutabazi Déo ahagarariwe na Me Kwizera Bernard; ruraburanishwa.

[11] Ku ikubitiro Urukiko rwashatse kumenya urubanza rusubirishwamo ku mpamvu z'akarengane kuko abarega banditse ko hasubirwamo urubanza RCA 00082/2017/HC/MUS rwaciwe n'Urukiko Rukuru Urugereko rwa Musanze ku wa 31/05/2018 nyamara mu bisobanuro by'akarengane bavuga, bakibanda ku rubanza RCA 0025/16/HC/MUS rwaciwe n'Urukiko Rukuru Urugereko rwa Musanze ku wa 16/06/2017. Nyuma yo kumva impande zombi, cyane cyane ibisobanuro by'abarega bishimangira ko urubanza bifuza ko rwahinduka ari urubanza RCA 0025/16/HC/MUS rwaciwe n'Urukiko Rukuru Urugereko rwa Musanze ku wa 16/06/2017, Urukiko rwemeye ko urwo rubanza arirwo rusubirishwamo ku mpamvu z'akarengane, ababuranyi basobanura ingingo baburanisha.

[12] Muhirwa Adelphine na Me Tom Mitsindo umwunganira akanahagararira Muhirwa Françoise basobanuye ko impamvu z'akarengane kabo zishingiye ku ngingo zikurikira:

a. Urukiko Rukuru Urugereko rwa Musanze, mu rubanza nº RCA 0025/16/HC/MUS rwemeje ko amasezerano yo ku wa 24/11/1995 nta gaciro afite kuko Muhirwa Françoise wari ufite imyaka cumi n'ine y'amavuko yagurishije nta bubasha bwo gukora amasezerano afite nyamara ayo masezerano atarabayeho;

b. umutungo w'abana bakiri bato ntiwashoboraga kugurishwa hatabayeho inama y'ubwishingizi ndetse n'uburenganzira bwo kugurisha bwatanzwe n'Urukiko nk'uko biteganywa n'ingingo ya 353 CCLI;

c. Urukiko Rukuru/Urugereko rwa Musanze rwageneye indishyi Mukamazimpaka Thacienne zingana na 21.991.264 Frw ntacyo rushingiyeho, kuko atagaragaza uburyo inzu iburanwa yageze mu maboko ye.

[13] Me Bizimana Vita Guido wunganira Mukamazimpaka Thacienne we avuga ko urubanza rwaciwe n'Urukiko Rukuru/Urugereko rwa Musanze rudakwiye guhinduka ku mpamvu zikurikira:

a. amasezerano yabayeho, ahubwo nk'uko Urukiko rwabibonye ayo masezerano nta gaciro yahabwa kuko uwahawe uburenganzira bwo kugurisha (Muhirwa Françoise) yari akiri umwana.

b. n'ubwo Mutabazi Déo atasinye ku masezerano y'ubugure yo ku wa 24/11/1995, nyuma bagiye kwa *notaire* w'ubutaka ku wa 27/11/1995, ayasinyaho, ahinduka inyandikomvaho; bityo ko iyo nyandiko itanyomozwa n'inyandiko bwite kuko uwaguze n'uwagurishije bemereye imbere ya *notaire* ko ubwo bugure bwabayeho;

c. indishyi za 21.991.264 Frw zagenewe Mukamazimpaka Thacienne zishingiye ku byo yashyizeho ku nzu iburanwa amaze kuyihabwa na Mutabazi Déo nk'uko byemejwe n'umuhanga.

[14] Me Kwizera Bernard uhagarariye Mutabazi Déo nawe yemeza ko ayo masezerano yabayeho ariko akanongeraho ko atakozwe n'umwana kuko yakozwe n'abagize umuryango mu nyungu z'umwana, hanyuma akaza gushimangirwa mu nyandikomvaho yabereye imbere ya notaire. Asoza asabira Mutabazi Déo gusubizwa amafaranga yaguze iyo nzu ku gaciro k'uyu munsi.

[15] Ababuranyi ku mpande zombi basoza basaba indishyi zitandukanye.

[16] Urukiko rurasanga ibibazo bikwiye gusuzumwa muri uru rubanza ari ibi bikurikira:

a. Kumenya niba amasezerano y'ubugure yo ku wa 24/11/1995 yarabayeho;

b. Kumenya niba Mutabazi Déo akwiye gusubizwa ikiguzi cy'inzu;

c. Kumenya niba Mukamazimpaka Thacienne agomba gusubizwa amafaranga y'ibyo yongeye ku nzu iburanwa;

d. Gusuzuma ibyerekeye indishyi zisabwa n'impande zombi.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba amasezerano y'ubugure bw'inzu yo ku wa 24/11/1995 yarabayeho.

[17] Muhirwa Adelphine kimwe na Me Mitsindo Tom umwunganira akanahagararira Muhirwa Françoise bavuga ko amasezerano y'ubugure bw'inzu ya Muhirwa Pierre yo ku wa 24/11/1995 ntayabayeho ku mpamvu zikurikira:

a. Uvuga ko yaguze (ari we Mutabazi Déo) nta mukono we uyagaragaraho;

b. Umukono uyariho bitirira Muhirwa Françoise si uwe ;

c. Igikumwe kitiriwe Muhirwa Françoise bavuga kuri *acte de notoriété* si icye ;

d. Abatangabuhamya babajijwe (Ngizwenayo Janvier, Nsengiyumva Noël) n'umukuru w'umuryango Nizigiyeyezu Innocent bavuze ko ayo masezerano batayazi, anongeraho ko n'abandi yavuze bo mu muryango wabo (Uwimana Marceline na Agnès) batabajiwe.

e. Abatangabuhamya bavuze ko bazi iby'ayo masezerano nka Twagirayezu Védaste uvugwa ko ariwe wanditse ayo masezerano, ntibamuzi;Bityo bagasaba ko izo nyandiko zakorerwa isuzumanyandiko rya gihanga hifashishijwe Rwanda Forensic Laboratory, kugira ngo ukuri kwazo kugaragare.

[18] Me Bizimungu Vita Guido wunganira Mukamazimpaka Thacienne na Me Kwizera Bernard uhagarariye Mutabazi Déo bo bemeza ko ayo masezerano yabayeho bashingiye kuri ibi bikurikira :

a. ababyeyi ba Muhirwa Françoise bamaze kwitaba Imana, umuryango wahaye Muhirwa Françoise uburenganzira bwo kugurisha inzu yabo, igurwa na Mutabazi Déo nk'uko bigaragara kuri ayo masezerano ;

b. ku wa 27/11/1995 bagiye kwa notaire w'ubutaka, uwaguze n'uwagurishije bemerera imbere ye ko ubwo bugure bwabayeho na Mutabazi Déo arasinya bityo iyo nyandiko y'amasezerano yari yanenzwe ko itariho umukono we, ihinduka inyandikomvaho;

c. Mu bagurishije iyo nzu harimo Ntawumenyibyundi (nyirakuru w'abana), Twizeyeyezu Marie (nyirasenge w'abana) na Nsengiyumva Pierre n'abandi bagize umuryango;

[19] Urukiko rwatumye Mukamazimpaka Thacienne na Mutabazi Déo amasezerano y'ubugure kimwe na *acte de notoriété* by'umwimerere kuko ibiri muri dosiye ari fotokopi, bakabishyikiriza Urukiko mbere y'itariki 14/02/2020, ariko ntabyo batanze.

UKO URUKIKO RUBIBONA

[20] Urukiko rusanga impaka ziri muri uru rubanza zo kumenya niba amasezerano y'ubugure bw'inzu iburanwa yarabayeho koko zitakemurwa n'ubuhamya bw'abatangabuhamya nk'uko Urukiko Rukuru/ Urugereko rwa Musanze rwabigenje kuko buvuguruzanya kandi rukaba ntacyo rwashingiraho kimara impaka ku buryo budasubirwaho rwemera ubuhamya bushyigikira iby'uruhande runaka, cyane cyane ko Muhirwa Françoise ahakana umukono (signature) uri kuri ayo masezerano n'igikumwe kiri kuri *acte de notoriété*. Rusanga ahubwo icyashoboraga kumara impaka ari uko haboneka umwimerere w'izo nyandiko, kugira ngo hasuzumwe umukono n'igikumwe bya Muhirwa Françoise hifashishijwe isuzumanyandiko rya gihanga, none iryo suzumanyandiko rikaba ridashobora gukorwa igihe nta nyandiko y'umwimerere ihari kuko Mukamazimpaka Thacienne na Mutabazi Déo bazitumwe n'Urukiko, ntazo bazanye.

[21] Ingingo ya gatatu y'Itegeko Nº 15/2014 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko "buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana…" naho ingingo ya 12 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ikagira iti "urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Naho uvuga ko atagitegetswe gukora icyo yategekwaga gukora cyagaragajwe n'ibimenyetso, agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso, uwo baburana aramutsinda". Mu magambo make, Urukiko rusanga izi ngingo zombi zisomewe hamwe, zumvikanisha ko buri muburanyi agomba kugaragaza ibimenyetso by'ukuri kw'ibyo aburana, yabibura akaba atsinzwe.

[22] Muri uru rubanza, abunganira Mutabazi Déo na Mukamazimpaka Thacienne nibo bari bafite inshingano yo kugaragaza inyandiko y'umwimerere y'amasezerano y'ubugure bw'inzu bavuga ko baguze, kuko abo baburana bahamya ko ayo masezerano ntayabayeho. Kuba rero batarashoboye kuyashyikiriza urukiko kandi aricyo kimenyetso cyonyine cyamara impaka, rusanga ntaho rwahera rwemeza ko yabayeho, bityo n'izindi mpaka ziyashingiyeho, nko kuba yaba yarasinywe n'umuntu utarageza ku myaka y'ubukure cyangwa kuba yaremejwe mu "nyandikomvaho" (*acte de notoriété*) zikaba zitagifite impamvu yo gusuzumwa muri uru rubanza.

2. Kumenya niba Mutabazi Déo akwiye gusubizwa ikiguzi cy'inzu

[23] Me Kwizera Bernard uhagarariye Mutabazi Déo avuga ko mu gihe amasezerano y'Ubugure yaba ateshejwe agaciro, asaba Urukiko gutegeka abarega kumusubiza amafaranga ibihumbi magana cyenda (900.000 Frw) yaguze iyo nzu kandi bakayamusubiza abariwe ku gaciro afite uyu munsi.

[24] Muhirwa Adelphine na Me MitsindoTom umwunganira akanahagararira Muhirwa Françoise, ntacyo bavuze kuri ubwo busabe.

UKO URUKIKO RUBIBONA

[25] Urukiko rusanga, nk'uko byasobanuwe haruguru, ayo masezerano y'ubugure bw'inzu ntayabayeho, bityo rero amafaranga Mutabazi Déo avuga ko yatanze ayigura, akaba asaba kuyasubizwa ntayo agomba kubona kuko ntacyo ashingiyeho.

3. Kumenya niba Mukamazimpaka Thacienne agomba gusubizwa amafaranga 21.991.264 Frw ajyanye n'ibyo yongeyeye ku nzu iburanwa

[26] Muhirwa Adelphine na Me Mitsindo Tom umwunganira akanahagararira Muhirwa Françoise bavuga ko batemeranya n'ibyo Urukiko Rukuru/Urugereko rwa Musanze rwategetse ko Mukamazimpaka agomba gusubizwa 21.991.264 Frw nk'agaciro k'ibyo yavuguruye ku nzu iburanwa, kubera impamvu zikurikira:

a. Mukamazimpaka ntagaragaza uburyo inzu yageze mu ntoki z'uwayimuhaye (Mutabazi Déo);

b. ntiyigeze agaragaza ibyo yakoze kuri iyo nzu ngo anabitangire ibimenyetso, kuko Urukiko Rukuru Urugereko rwa Musanze rwagendeye gusa ku byakozwe n'umugenagaciro yitangiye, wanagendeye ku marangamutima ye;

[27] Me Bizimungu Vita Guido na Me Kwizera Bernard basubiza kuri izo ngingo mu buryo bukurikira:

a. inzu yageze mu maboko ya Mukamazimpaka ayihawe na Mutabazi Déo wayiguze n'umuryango wa Muhirwa Pierre;

b. icyemezo gishyiraho umugenagaciro cyafashwe n'Urukiko ababuranyi bamaze kumwemeranywaho;

c. nk'uko bigaragara mu rubanza RCA 0025/16/HC/MUS rwo ku wa 16/06/2017 ku rupapuro rwa 12 igika cya 20[1], ku rupapuro rwa 13 igika cya 21, Urukiko rwasobanuye impamvu Mukamazimpaka Thacienne akwiye kugenerwa 21.991.264 Frw[2].

UKO URUKIKO RUBIBONA

[28] Urukiko rusanga inzu iburanwa itunzwe na Mukamazimpaka Thacienne yarayihawe na Mutabazi Déo, uyu nawe akaba yari yarayigabije nk'uko byasobanuwe haruguru; akaba yaratanze inzu itariye, bityo iyo mpano ikaba nta gaciro ifite. Rusanga ariko aho Mukamazimpaka Thacienne ayigiriyemo, yarayivuguruye, ikava ku gaciro ka miliyoni makumyabiri n'eshatu n'ibihumbi magana ane mirongo icyenda na kimwe na magana cyenda (23.491.900 Frw) ikagera ku gaciro ka miliyoni mirongo ine n'eshanu n'ibihumbi magana ane mirongo inani na bitatu n'ijana na mirongo itandatu n'ane (45.483.164 Frw) nk'uko byemezwa na raporo y'umuhanga wakoze igenagaciro kayo.

[29] Naho ku byerekeye ibyo abarega banenga raporo y'umuhanga yemejwe n'Urukiko Rukuru/Urugereko rwa Musanze ngo kuko uwo muhanga yishyiriweho na Mukamazimpaka kandi akagendera ku marangamutima ye, Uru rukiko rusanga nta shingiro bifite kuko nk'uko

[1]Urukiko rwavuze ko: «Mutabazi Deo yagaragaje mu iburanisha ku wa 25/08/2016 ko yaguze inzu iburanwa ituzuye neza. Me Nsabimana wamwunganiraga yagaragaje ko Mukamazimpaka hari ibindi bikorwa yongeye ku nzu yahawe na Mutabazi Deo. Me Bizimungu VITA wunganira Mukamazimpaka nawe yagaragaje ko nyuma y'uko Mukamazimpaka ahawe inzu na Mutabazi yayivuguruye»

[2] Urukiko rwavuze ko: «Muri Expertise, umuhanga yagaragaje ko inzu iburanwa yari ifite agaciro k'amafaranga 23.491.900 FRW mbere y'uko igurwa na Mutabazi ko mu gihe Expertise yakorwaga yari ifite agaciro k'amafaranga 45.483.164 FRW bityo urukiko rukaba rusanga ikinyuranyo hagati y'agaciro inzu yari ifite mbere y'uko igurwa n'ako ifite ubwo hakorwaga expertise aricyo gihwanye n'agaciro k'ibikorwa Mukamazimpaka yakoze avugurura inzu iburanwa, bityo akaba akwiye gusubizwa amafaranga 21.991.264 FRW»

byasobanuwe n'Urukiko Rukuru/Urugereko rwa Musanze, Umuhanga (umugenagaciro) yashyizweho n'urukiko ababuranyi bombi bamwemeranyaho[3], igenagaciro(*expertise*) rikorwa Urukiko Rukuru ruhari, rwirebera imiterere y'inzu iburanwa, aba ari narwo rugaragariza umuhanga ibyo agomba gukora[4].

[30] Ku byerekeye kumenya niba Mukamazimpaka Thacienne agomba gusubizwa amafaranga y'ibyo yashyize kuri iyo nzu yahawe n'uwayigabije, uru Rukiko rusanga impaka nk'izo zarakemuwe mu rubanza RCAA 00031/2016/SC rwaciwe ku wa 25/09/2019 haburana Nishimwe Claudine na Mashami Gisèle vs Mugenga Joseph[5]. Kimwe no muri urwo rubanza ikibazo gihari ni ukumenya niba umuntu utunze umutungo adafiteho uburenganzira, akagira ibyo awushyiraho biwongerera agaciro, yasaba kubisubizwa igihe nyirawo w'ukuri ashatse kuwusubirana. Uru Rukiko rwanzuye ko uwabonye umutungo kabone n'ubwo yaba yarawubonye mu buryarya nta cyabuza ko asubizwa ibyo yawushyizeho biwongerera agaciro kugira ngo hatabaho ukwikungahaza nta mpamvu k'ugomba kuwusubizwa; bityo no muri uru rubanza, Mukamazimpaka Thacienne akaba agomba gusubizwa agaciro k'ibyo yongeye ku nzu iburanwa.

[31] Naho ku birebana n'ingano y'ibyo Mukamazimpaka Thacienne agomba gusubizwa n'abarega, Urukiko rurasanga agomba gusubizwa amafaranga ahwanye n'ibyo yongeye ku nzu byatumye yongera agaciro bihwanye na miliyoni makumyabiri n'imwe n'ibihumbi magana cyenda mirongo icyenda na kimwe na magana abiri na mirongo itandatu n'ane (21.991.264 Frw), ahwanye n'ikinyuranyo cy'agaciro inzu ifite ubu ugereranyije n'ako yari ifite mbere nk'uko byagaragajwe na raporo y'umuhanga yo ku wa 02/03/2017.

4. Gusuzuma ibijyanye n'indishyi zisabwa n'impande zombi

i. Indishyi zisabwa n'abarega

[32] Muhirwa Adelphine na Me Mitsindo Tom umwunganira akanahagararira Muhirwa Françoise bavuga ko kuba Mukamazimpaka Thacienne yaratunze inzu iburanwa imyaka irenga makumyabiri ayibyaza umusaruro mu buryo bunyuranyije n'amategeko bakwiye guhabwa indishyi z'ubukode, kuko iyo nzu Mukamazimpaka atayibamo ahubwo ayikodesha, bakaba basaba indishyi zibariye ku mafaranga ibihumbi ijana (100.000 Frw) buri kwezi, mu gihe cy'imyaka makumyabiri n'ine bambuwe iyo inzu, ni ukuvuga (100.000 Frw x 12 x 24) bihwanye n'amafaranga miliyoni makumyabiri n'umunani n'ibihumbi magana inani (28.800.000 Frw).

[33] Me Bizimungu Vita Guido uburanira Mukamazimpaka Thacienne avuga ko nk'uko byagaragajwe mu rubanza nº RCA 0025/16/HC/MUS, kuba Mutabazi Déo yaraguze inzu iburanwa nta buryarya, nyuma akayiha Mukamazimpaka muri 2008 nk'uko yabivuze, asanga Mukamazimpaka nawe atunze inzu iburanwa nta buryarya, bityo ibyo abarega basaba akaba asanga nta shingiro byahabwa.

[34] Me Kwizera Bernard uhagarariye Mutabazi Déo ntacyo avuga kuri izi ndishyi.

UKO URUKIKO RUBIBONA

[35] Urukiko rusanga Muhirwa Adelphine na Muhirwa Françoise baravukijwe uburenganzira ku nzu y'ababyeyi babo ku maherere kuva ku wa 24/11/1995 kugeza ubu, kandi bigizwemo uruhare

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[3] Reba PV y'iburanisha ryo ku wa 21/02/2017 (c157)

[4] Ibid. (c158)

[5] Igika cya 37 cy'urwo rubanza, kigira kiti "…. Ibyakozwe bifite akamaro (les impenses utiles), ni ukuvuga ibyakozwe bitari ngombwa ariko bikongerera agaciro umutungo, uwabikoze asubizwa agaciro k'ibyo yongeye ku mutungo, karebewe igihe byemejwe ko asubiza uwo mutungo".

na Mukamazimpaka Thacienne abifashijwemo na Mutabazi Déo, bityo bakaba bagomba gufatanya kwishyura igihombo babateye, hashingiwe ku gihe buri wese yamaranye iyo nzu.

[36] Urukiko rusanga Mutabazi Déo yarayigiyemo kuva ku wa 24/11/1995 kugeza mu mwaka wa 2008 nk'uko abyivugira, naho Mukamazimpaka Thacienne akaba yarayibayemo kuva 2008 kugeza ubu, bivuze ko bombi bayimazemo igihe cy'imyaka makumyabiri n'ine n'amezi atatu ariko kuko abarega basaba ko bakwishyurwa indishyi ku gihe cy'imyaka makumyabiri n'ine gusa, Urukiko rurabarira buri wese igihe cy'imyaka cumi n'ibiri (12). Rusanga kandi agaciro k'ubukode bw'amafaranga ibihumbi ijana (100.000 Frw) ku kwezi icyo gihombo kibarirwaho kari mu rugero kandi nta n'uwigeze akanyomoza, bityo akaba ari nacyo gicirofatizo ku kwezi uru Rukiko rugomba gushingiraho mu kugena indishyi Muhirwa Adelphine na Muhirwa Françoise bagomba guhabwa. Hashingiwe kuri ibyo, uru Rukiko rusanga buri wese agomba kwishyura ibihumbi ijana mu gihe cy'imyaka cumi n'ibiri, (100.000 Frw x 12x12) = 14.400.000 Frw (miliyoni cumi n'enye n'ibihumbi magana ane).

[37] Icyakora, kuko hari amafaranga Muhirwa Adelphine na Muhirwa Françoise bagomba gusubiza Mukamazimpaka Thacienne kubera ibyo yongeye ku nzu iburanwa angana na miliyoni makumyabiri n'imwe n'ibihumbi magana cyenda mirongo icyenda na kimwe na magana abiri na mirongo itandatu n'ane (21.991.264 Frw) nk'uko byasobanuwe haruguru, Urukiko rurasanga hagomba kuba ihwanyamyenda, bityo bakishyura 21.991.264 Frw - 14.400.000 = **7.591.264 Frw** (miliyoni zirindwi n'ibihumbi magana atanu mirongo icyenda na kimwe na magana abiri mirongo itandatu n'ane).

ii. Indishyi zisabwa n'abaregwa

[38] Me Bizimungu Vita Guido uhagarariye Mukamazimpaka Thacienne avuga ko abarega basobanuriwe kenshi ko Mukamazimpaka Thacienne nta ruhare yigeze agira mu igurishwa ry'inzu yabo ariko banga kumwumva bakomeza kumushora mu manza, bamusebya mu gihe cy'imyaka 4, ibyo akaba abisabira indishyi za 5.000.000 Frw, kuko icyo gikorwa kimutesha agaciro mu bantu babyumva kandi bari bafite uko bamuzi.

[39] Muhirwa Adelphine na Me Mitsindo Tom umwunganira akanahagararira Muhirwa Françoise bavuga ko indishyi z'akababaro Mukamazimpaka Thacienne asaba ntazo akwiye guhabwa kuko ari we wigabije umutungo wabo, ko ahubwo ariwe ukwiye guha abarega indishyi.

UKO URUKIKO RUBIBONA

[40] Urukiko rusanga indishyi z'akababaro Me Bizimungu Vita Guido uhagarariye Mukamazimpaka Thacienne asaba ntazo akwiye kuko ari we utsindwa muri uru rubanza, naho Muhirwa Adelphine na Muhirwa Françoise batarasobanuye izo basaba, bityo bakaba nabo ntazo bagenewe.

iii. Amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka

[41] Muhirwa Adelphine na Me Mitsindo Tom umwunganira akanahagararira Muhirwa Françoise basaba indishyi zingana na 10.000.000 Frw akubiyemo ikurikiranarubanza n'igihembo cy'Avoka guhera mu Rukiko Rwisumbuye rwa Rubavu kugera mu Rukiko rw'Ubujurire i Kigali.

[42] Me Bizimungu Guido Vita uhagarariye Mukamazimpaka Thacienne avuga ko indishyi abarega basaba nta shingiro zifite kuko aribo bishoye mu manza, kubera iyo mpamvu bagomba no kwirengera ingaruka, ahubwo asaba Urukiko ko rwabaca amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka angana na 5.000.000 Frw ku manza enye bamushoyemo.

[43] Me Kwizera Bernard uhagarariye Mutabazi Déo avuga ko mu gihe urukiko ruzaba rusanze ikirego nta shingiro gifite cyangwa kitagomba kwakirwa, rwategeka abareze gusubiza Mutabazi Déo 500.000 Frw y'igihembo cy'Avoka na 300.000 Frw y'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[44] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka Muhirwa Adelphine na Muhirwa Françoise basaba bayakwiye kuko aribo batsinze muri uru rubanza, ariko kuko badasobanura uko bayabara, Urukiko rukaba rubageneye mu bushishozi bwarwo amafaranga y'igihembo cy'Avoka ibihumbi magana atanu (500.000 Frw) n' ibihumbi magana atatu (300.000 Frw) y'ukurikiranarubanza kuri buri rwego, ni ukuvuga miliyoni imwe n'ibihumbi magana atanu wongeyeho ibihumbi magana cyenda (1.500.000 Frw+900.000 Frw)=2.400.000 Frw (miliyoni ebyiri n'ibumbi magana ane), akishyurwa na Mutabazi Déo afatanyije na Mukamazimpaka Thacienne.

[45] Naho ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka bisabwa na Mukamazimpaka Thacienne hamwe n'asabwa na Mutabazi Déo, Urukiko rusanga ntayo bakwiye kuko aribo batsinzwe.

III. ICYEMEZO CY'URUKIKO

[46] Rwemeje ko ikirego cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA 0025/16/HC/MUS rwaciwe n'Urukiko Rukuru/Urugereko rwa Musanze ku wa 16/06/2017 cyatanzwe na Muhirwa Adelphine na Muhirwa Françoise, gifite ishingiro ;

[47] Rwemeje ko urubanza RCA 0025/16/HC/MUS rwaciwe n'Urukiko Rukuru Urugereko rwa Musanze ku wa 16/06/2017 ruhindutse mu ngingo zarwo zose;

[48] Rwemeje ko inzu iburanwa iri mu kibanza UPI 3/03/04/05/392 yanditswe kuri Mukamazimpaka Thacienne ari iya Muhirwa Adelphine na Muhirwa Françoise, akaba ari na bo igomba kwandikwaho ;

[49] Rwemeje ko icyangombwa cy'umutungo UPI3/03/04/05/392 cyanditswe kuri Mukamazimpaka Thacienne giteshejwe agaciro ;

[50] Rutegetse Mutabazi Déo guha Muhirwa Adelphine na Muhirwa Françoise amafaranga miliyoni cumi n'enye n'ibihumbi magana ane (14.400.000 Frw);

[51] Rutegetse Muhirwa Adelphine na Muhirwa Françoise \gusubiza Mukamazimpaka Thacienne amafaranga miliyoni zirindwi n'ibihumbi magana atanu mirongo icyenda na kimwe na magana abiri mirongo itandatu n'ane (7.591.264 Frw);

[52] Rutegetse Mukamazimpaka Thacienne afatanyije na Mutabazi Déo guha Muhirwa Adelphine na Muhirwa Françoise amafaranga miliyoni ebyiri n'ibumbi magana ane (2.400.000 Frw) y'ikurikiranarubanza n'igihembo cy'Avoka.