BIENVENU JEAN BAPTISTE N'UNDI v MUKANGARUYINKA

[Rwanda URUKIKO RW'IKIRENGA – RS/ INJUST/CIV 0024/16/SC (Kayitesi Z., P.J., Kayitesi R.., Mukanyundo J.) 12 Mutarama 2018]

Amategeko agenga imanza mbonezamubano – Umuryango – Gucunga umutungo w'abana wasizwe n'ababyeyi babo – Iyo Umuntu ahawe ububasha bwo gucunga umutungo w'abana wasizwe n'ababyeyi babo ntiyemerewe kugira ibikorwa awukoraho bigamije gutanga, kugurisha n'ibindi byose bishobora kubangamira umutungo w'umwana, umwishingizi adashobora kubikora atabiherewe uburenganzira n'inama y'ubwishingire.

Amategeko agenga imanza mbonezamubano – Umutungo – Umutungo utimukanwa – Amasezerano y'ubugure – Uwaguze ntashobora kwitwaza ko atari azi ko umugurisha atariwe nyiri umutungo mu gihe yari afite amakuru cyangwa se hari ibindi bigaragaza ugushidikanya ko ari nyiri umuntu, ku buryo umuntu wese ushyira mu gaciro uri mu mwanya we atabura kubanza kubikurikirana mbere yo kuzuza amasezerano y'ubugure.

Incamake y'ikibazo : uru rubanza rwatangiye Bienvenu Jean Baptiste na Mugunga Aventurier barega nyirakuru Nyiramatama mu Rukiko Rwisumbuye rwa Gasabo basaba Urukiko gutesha agaciro amasezerano y'ubugure yagiranye na Habimana n'umugore we Mukangaruyinka bagura inzu ya Mugunga akaba se ubabyara, bavuga ko ayo masezerano yakozwe mu buriganya. Nyiramatama avuga ko yagurishije iyo nzu kugirango abashe kurera abo bana naho Mukangaruyinka, kuko umugabo we yitabye Imana, yireguye avuga ko ikirego cyabo kitakwakirwa kubera ko iyo nzu bayiguze hashize kinini, kandi ko Nyiramatama yayigurishije ashingiye ku burenganzira yari yahawe n'Urukiko. Abana ba Nyiramatama bagobokeshejwe muri urwo rubanza. Urukiko rwemeje ko ayo masezerano y'ubugure bw'inzu yabaye hagati ya Nyiramatama na Habimana, ateshejwe agaciro, rutegeka ko inzu ihabwa abana ba Mugunga, rwemeje kandi ko Urukiko rutigeze ruha Nyiramatama uburenganzira bwo kugurisha

Mukangaruyinka yajuririye mu Rukiko Rukuru, avuga ko Urukiko rwatesheje agaciro ubugure bw'iyo nzu rwirengagije ko ari iye kuko ayifitiye icyangombwa cy'ubukode burambye kandi ko yayiguze na Nyiramatama wari ufite uburenganzira ku mutungo. Urukiko Rukuru rwemeje ko ubujurire bwa Mukangaruyinka bufite ishingiro, rwashingiye ko afite icyemezo cy'ubukode burambye ku mutungo uburanwa, kandi gifite agaciro k'inyandikomvaho, nta cyavuguruza ibikubiyemo.

Bienvenu Jean Baptiste na Mugunga Aventurier bandikiye Urwego rw'Umuvunyi basaba ko urubanza rwaciwe n'Urukiko Rukuru rwasubirwamo ku mpamvu z'akarengane. Urwego rw'Umuvunyi nyuma yo gusuzuma ikibazo cyabo, rwandikiye Perezida w'Urukiko rw'Ikirenga, rusaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ikirenga, nyuma yo gusuzuma raporo yakozwe n'Ubugenzuzi Bukuru bw'Inkiko kuri urwo rubanza, yemeje ko rwandikwa kugira ngo rwongere kuburanishwa.

Bienvenu Jean Baptiste na Mugunga Aventurier bavuze ko bakorewe akarengane muri urwo rubanza kuko kuba Nyiramatama yari ashinzwe kurera abana, bitari kumuhesha uburenganzira bwo kugurisha, igihe cyose nta cyemezo cy'Urukiko kibimwemerera. Mukangaruyinka avuga ko ibyo Bienvenu Jean Baptiste, Mugunga Aventurier n'ubunganira bagaragaza nk'akarengane ataribyo, kuko birengagiza ko hari urubanza rwahaye nyirakuru Nyiramatama uburenganzira bwo kubarera ndetse ahabwa n'iyo nzu ngo ibimufashemo. Abagobokeshwe mu rubanza, bavuga ko Nyiramatama yari ashaje nta bushobozi afite ahitamo kugurisha iyo nzu kugirango amafaranga avuyemo ayatungishe abo bana kandi ngo niko byagenze.

Urukiko rwemeje ko Nyiramatama yagurishije atabyemerewe n'Urukiko kuko uburenganzira yari yahawe bwari ubwo gucungira gusa abana umutungo uburanwa, rwemeje kandi ko yagurishije ntawuhagarariye nyina w'abana kandi byari byaremejwe mu nama y'umuryango ko uruhande rwa se na nyina w'abana

rugomba kuba ruhagarariwe ku cyemezo cyose cyafatirwa umutungo wasizwe na Mugunga, bityo rwemeza ko amasezerano aregerwa ateshejwe agaciro, ko abarega bishyurwa agaciro k'inzu baregeye.

Incamake y'icyemezo : 1. Iyo Umuntu ahawe ububasha bwo gucunga umutungo w'abana wasizwe n'ababyeyi babo ntiyemerewe kugira ibikorwa awukoraho bigamije gutanga, kugurisha n'ibindi byose bishobora kubangamira umutungo w'umwana, umwishingizi adashobora kubikora atabiherewe uburenganzira n'inama y'ubwishingire.

2. Uwaguze ntashobora kwitwaza ko atari azi ko umugurisha atariwe nyiri umutungo mu gihe yari afite amakuru cyangwa se hari ibindi bigaragaza ugushidikanya ko ari nyiri umuntu, ku buryo umuntu wese ushyira mu gaciro uri mu mwanya we atabura kubanza kubikurikirana mbere yo kuzuza amasezerano y'ubugure.

3. Uburenganzira ku butaka bushingira ku kuba nyirabwo yarabubonye ku bw'umuco cyangwa se yarabuhawe cyangwa yarabuguze n'ubifitiye ububasha. Bityo, kuba utunze ubutaka afite amasezerano y'ubukode burambye ku butaka atagaragaza inkomoko yabwo, ayo masezerano ateshwa agaciro nubwo ari inyandiko imvaho.

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

Amategeko yashingiweho :

Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda, Ingingo ya 5

Itegeko Ngenga N° 08/2005 ryo ku wa 16/06/2013, rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda, Ingingo ya 5

Itegeko Nº 42/1988 ryo kuwa 27/10/1988 rishyiraho interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano, Ingingo ya 16, 353, 389

Itegeko Nº 42/1988 ryo kuwa 27/10/1988 rishyiraho Igitabo cya II cy'urwunge rw'amategeko mbonezamubano, Ingingo ya 24.

Itegeko Nº 42/1988 ryo kuwa 27/10/1988 rishyiraho cya III cy'urwunge rw'amategeko mbonezamubano

Imanza zifashishijwe :

Urubanza RCAA0018/13/CS rwa HARERIMANA Emmanuel vs SEBUKAYIRE Tharcisse, rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2014.

Inyandiko z'abahanga zifashshijwe :

Vincent KARIM, "Preuve et présomption de bonne foi", Revue de droit de l'Université de Sherbrooke, 1996, p. 441

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nyuma y'urupfu rwa Mugunga Jean Pierre, nyina Nyiramatama yatanze ikirego mu Rukiko asaba uburenganzira bwo kurera abana uwo muhungu we yasize aribo Bienvenu Jean Baptiste na Umugwaneza, abarerera mu mutungo ise yasize no kubafatira amafaranga ya pansiyo y'ubupfubyi mu Isanduku y'Ubwiteganyirize bw'Abakozi y'u Rwanda, ubwo burenganzira arabuhabwa, ndetse ku wa 29/08/1993, umuryango unamumurikira iyo nzu yasizwe na Mugunga Jean Pierre, iri mu Mudugudu wa Marembo, Akagari ka Nyamugari, Umurenge wa Gatsata, Akarere ka Gasabo, kugira ngo ayicungire abo buzukuru

be. Naho undi mwana wa Mugunga Jean Pierre witwa Mugunga Aventurier, umuryango wemeza ko arerwa na Nyirarume witwa Nyirinkindi.

Bienvenu Jean Baptiste na Mugunga Aventurier bamaze kuzuza imyaka y'ubukure,bamenye ko inzu yari yarahawe Nyiramatama kubacungira yayigurishije Habimana Zabulon n'umugore we Mukangaruyinka Thérèse, maze baregera Urukiko Rwisumbuye rwa Gasabo, basaba gutesha agaciro amasezerano y'ubugure bw'iyo nzu kuko yagurishijwe ku bw'uburiganya *(de mauvaise foi*) cyane cyane ko itagurishijwe mu rwego rwo kubarera kubera ko bafashwe nabi ndetse ntibashyirwe no mu ishuri.

[2] Mukangaruyinka Thérèse, umugore wa Habimana Zabulon witabye Imana, yireguye avuga ko ikirego cyabo kitakwakirwa kubera ko iyo nzu bayiguze hashize imyaka irenga 15, kandi ko Nyiramatama wayibagurishije yashingiye ku burenganzira yari yahawe n'Urukiko. Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza RC0322/10/TGI/GSBO, ku wa 30/12/2011, rwemeza ko ayo masezerano y'ubugure bw'inzu yabaye hagati ya Nyiramatama na Habimana Zabulon ku wa 09/01/1994, ateshejwe agaciro , rutegeka ko inzu ihabwa abana ba Mugunga Jean Pierre, ruvuga ko Urukiko rutigeze ruha Nyiramatama uburenganzira bwo kugurisha, kandi ko ibyo uregwa avuga ko Nyiramatama yagurishije inzu kugira ngo arere abana nta gaciro byahabwa, kubera ko bagombaga gutungwa n'amafaranga y'ubwiteganyirize bw'abakozi kimwe n'indi mirima yabo Nyiramatama yahingaga, cyane cyane ko muri abo bana nta n'umwe yashyize mu ishuri ngo nakura aziteze imbere.

[3] Mukangaruyinka Thérèse yajuririye mu Rukiko Rukuru, avuga ko Urukiko rwatesheje agaciro ubugure bw'iyo nzu rwirengagije ko ari iye kuko ayifitiye icyangombwa cy'ubukode burambye kandi ko yayiguze na Nyiramatama wari ufite uburenganzira ku mutungo. Urwo rukiko rwaciye urubanza RCA0034/12/HC/KIG, ku wa 17/05/2013, rwemeza ko ubujurire bwa Mukangaruyinka Thérèse bufite ishingiro, rwemeza ko inzu iburanwa ari iye, agomba kuyigumana, hashingiwe ko ufite icyemezo cy'ubukode burambye ku mutungo uburanwa, icyo cyemezo kikaba gifite agaciro k'inyandikomvaho, nta cyavuguruza ibikubiyemo kuko ingingo ya 13 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko inyandiko mvaho ikemura impaka kuri bose mu byerekeye ibiyivugwamo, ko ntawe ushobora kubihakana keretse biramutse bikurikiranywe mu rubanza rw'inshinjabyaha ku cyaha cyo kubeshya mu nyandiko mvaho cyangwa umuburanyi aregeye ko ari inyandiko mpimbano, kandi akaba nta rubanza ruriho cyangwa rwabayeho kuri iyo nyandiko.

[4] Bienvenu Jean Baptiste na Mugunga Aventurier bandikiye Urwego rw'Umuvunyi basaba ko urubanza RCA0034/12/HC/KIG baburanye na Mukangaruyinka Thérèse, rwasubirwamo ku mpamvu z'akarengane. Urwego rw'Umuvunyi rumaze gusuzuma ikibazo cyabo, rwasanze mu mikirize y'urwo rubanza harirengagijwe amategeko, rwandikira Perezida w'Urukiko rw'Ikirenga, rusaba ko urubanza RCA0034/12/HC/KIG, rwasubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ikirenga, nyuma yo gusuzuma raporo yakozwe n'Ubugenzuzi Bukuru bw'Inkiko kuri urwo rubanza, yemeje ko rwandikwa mu bitabo byabugenewe kugira ngo ruzongere ruburanishwe.

[5] Bienvenu Jean Baptiste na Mugunga Aventurier batanze umwanzuro bavuga ko kuba Nyiramatama yari ashinzwe kurera abana, bitari kumuhesha uburenganzirabwo kugurisha, igihe cyose nta cyemezo cy'Urukiko kibimwemerera, ko ibyo Urukiko rwagombaga kubishingiraho rutesha agaciro ubwo bugure bwabaye hagati yaNyiramatama na Habimana Zablon.

[6] Urubanza rwaburanishijwe mu ruhame ku wa 12 Ukuboza 2017, Bienvenue Jean Baptiste na Mugunga Aventurier bunganiwe na Me Bizimana Olivier, Mukangaruyinka Thérèse na Nderabakura Aloys bunganiwe na Me Mucyo Paul Emile, naho Munyarukiko Jean Damascène atitabye kandi yaramenyeshejwe mu buryo bukurikije amategeko.

II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURWA RYABYO

A. Kumenya niba hari impamvu zatuma amasezerano y'ubugure bw'inzu Nyiramatama yagiranye na Habimana Zablon yateshwa agaciro.

1.Kuba Nyiramatama yaragurishije iyo nzu atabiherewe uruhushya n'Urukiko

[7] Bienvenu Jean Baptiste na Mugunga Aventurier bavuga ko umubyeyi wabo Mugunga amaze gupfa, nyirakuru, Nyiramatama yahawe n'Urukiko inshingano yo kubarera, asigarana abana babiri uwa gatatu ari we Mugunga Aventurirer bajyakumureresha kwa nyirarume witwa Nyirinkindi. Bavuga ko ikibazo cya mbere babateje ari ukurerera abana ba Mugunga mu miryango itandukanye, ko akarengane kabo gashingiye ku kuba Nyiramatama yari yahawe inshingano yokurera bamwe mu bana, bitamuheshaga uburenganzira bwo kugurisha imitungo yagombaga kubareramo, igihe cyose nta cyemezo cy'Urukiko kibimwemerera, ko ibyo Urukiko Rukuru rwagombaga kubishingiraho rutesha agaciro ubwo bugure bwabaye hagati ya Nyiramatama na Habimana Zabulon. Bongeraho ko hari inyandiko yari yakozwe n'inama y'umuryango, bumvikana ko ikizajya gikorwa cyose Nyiramatama na nyina Nyirabazungu Christine bazajya babanza kucyumvikanaho, ko ariko Nyiramatama n'abahungu be Nderabakura Aloys na Munyankiko bagurishije iyo nzu nta muntu wo mu muryango wa nyina ubizi.

[8] Me Bizimana Olivier ubunganira, avuga ko kuba uwo baburana avuga ko Urukiko rwari rwahaye Nyiramatama uburenganzira bwo kugurisha ataribyo, kuko Urukiko rutigeze rwemeza ko rumuhaye uburenganzira bwo kugurisha iyo nzu, ariyo mpamvu bavuga ko Urukiko Rukuru rutakurikije amategeko, kuko rwari gushingira ku ihame ry'uko igurisha ry'ikintu cy'undi ari imfabusa, rukemeza ko kuba Nyiramatama yaragurishije ibyo afitiye uburenganzira bwo gucunga ariko adafitiye uburenganzira bwo kugurisha, amasezerano y'ubugure yakozwe muri ubwo buryo ateshejwe agaciro. Avuga kandi ko imvugo y'abo baburana y'uko inzu yagurishijwe na Bourgmestre, nta kuri kuyirimo kuko mu nyandiko yakozwe n'uwo muyobozi batanditse ko igurishijweHabimana Zabulon.

[9] Mukangaruyinka Thérèse avuga ko ibyo Bienvenu Jean Baptiste, Mugunga Aventurier n'ubunganira bagaragaza nk'akarengane ataribyo, kuko birengagiza ko hari urubanza rwahaye nyirakuru Nyiramatama uburenganzira bwo kubarera ndetse ahabwa n'iyo nzu kugira ngo imufashe kuzuza inshingano yari ahawe, ko rero iyo nzu yashoboraga kuyikodesha cyangwa kuyigurisha, kugira ngo abone ubushobozi bwo kubarera, kandi ko nta handi yari kuvana ibyo kubareresha bitavuye mu mutungo basigiwe na Se, bityo ko kuba Nyiramatama yarabareze bagakura bivuze ko kugurisha inzu byakozwe mu nyungu zabo.

[10] Nderabakura Aloys na Munyarukiko Jean nka bene Nyiramatama, bavuga ko kuba Nyiramatama yarasigaranye abo bana bakiri bato cyane naho we ashaje afite imyaka 70, nta bushobozi yari afite bwo kubaka iyo nzu yari ituzuye, yahisemo kwifashisha Bourgmestre Nzabonimpa Anselme, kugira ngo ayigurishe, kandi koamafaranga yagurishijwe iyo nzu angana na 208.000Frw yakoreshejwe mu nyungu z'abo bana kuko yabikijwe muri Banki y'abaturage, Nyiramatama akajya akuraho make yo kureresha abana nk'uko bigaragara ku ifishi ya banki, ndetse ko iyo fishi igaragaramo *opérations* zimwe na zimwe zakozwe na mukuru wabo Umugwaneza kuko ariwe wamufashaga gucunga ayo mafaranga.

[11] Me Mucyo Paul Emile, wunganira Mukangaruyinka Thérèse, Nderabakura Aloys na Munyarukiko Jean, avuga ko ikibazo kiri mu cyemezo cy'urukiko rwatanze uburenganzira bwo kurera abana, kigomba gusuzumwa hakorwa ubusobanuro (interprétation) bw'amagambo yakoreshejwe muri urwo rubanza, kuko muri rumaze ya kane havugwa ko yasabye iyo nzu ngo imufashe kurera abo bana, dore ko icyaregerwaga ari "kurera abana", ariyo mpamvu ikigomba kumvikana ari uko nta kuntuUrukiko rwari kuvuga ko iyo nzu ituzuye azayireramo abana, usibye kuba yayigurisha mu nyungu zabo, bityo amasezerano y'ubugure bwayo akaba afite agaciro.

UKO URUKIKO RUBIBONA

[12] Ingingo ya 353 y’Itegeko Nº 42/1988 ryo kuwa 27/10/1988 rishyiraho interuro y’ibanze n’igitabo cya mbere cy’urwunge rw’amategeko mbonezamubano iteganya ko: «gutanga, kugurisha cyangwa kugwatiriza ibintu by'umwana ku buryo bigabanura umutungo we, ntibishobora gukorwa nta ruhusa rw'urukiko ». Naho ingingo ya 389, igateganya ko: ibikorwa bigamije gutanga, kugurisha n’ibindi byose bishobora kubangamira umutungo w’umwana, umwishingizi ntashobora kubikora atabiherewe uburenganzira n’inama y’ubwishingire.

[13] Muri uru rubanza ikibazo nyamukuru kigomba gusubizwa ni icyo kumenya niba Nyiramatama wari ushinzwe gucunga imitungo y’abuzukuru yasigiwe n’umuhungu we Mugunga Jean Pierre, yari afite ububasha bwo kugurisha inzu yabo kandi yari umutungo agomba kubacungira, atabiherewe uruhushya n’Urukiko nk’uko biteganywa n’iyo ngingo ya 353 ivuzwe haruguru. Uregwa n’abagobokeshejwe bavuga ko Nyiramatama yari yarahawe n’Urukiko uburenganzira bwo kurera abo bana mumitungo basigiwe na Se, ko kandi nta buryo yari kuzuza inshingano ze atagurishije iriya nzu bitewe nuko nta yandi mikoro bwite yari afite, dore ko yari n’umukecuru ushaje cyane w’imyaka 70.

[14] Urukiko rusanga mu rubanza RC1024/89, Nyiramatama yaratanze ikirego asaba uburenganzira bwo kurera abana yasigiwe n’umuhungu we Mugunga Jean Pierre aribo Bienvenu Jean Baptiste na Umugwaneza, akabarera mu mutungo ise yasize no kubafatira amafaranga ya pansiyo y’ubupfubyi mu Isanduku y’Ubwiteganyirize bw’Abakozi y’u Rwanda, maze ku wa 30/08/1989, Urukiko rufata icyemezo muri aya magambo: "Rwemeje ko Nyirabamatama akwiye guhabwa uburenganzira bwo kurera abuzukuru be Umugwaneza na Bienvenu kuko umuhungu we yapfuye nyina ubabyara nawe akaba yarishakiye ahandi, ko aho Mugunga apfiriye akaba atarashubije amaso inyuma ngo arebe abo bana". Rurasanga rero ntaho bigaragara ko Urukiko rwemeje ko Nyiramatama yemerewe kuba yagurisha umwe mu mitungo y’abana, dore ko bitari no mu byo yaregeye.

[15] Urukiko rusanga kandi nk’uko bigaragara mu nyandiko yakozwe ku wa 22/10/1990, ubwo uwahoze ari Bourgmestre Nzabonimpa Anselme yagiye mu kibazo cy’umuryango wa Nyiramatama, yatakiwe na Bunagu Nderabakura Aloys amubwira ko afitanye amakimbirane na Nyirabazungu Christine (umugore wa Mugunga Jean Pierre) ku mutungo wasizwe na Mugunga Jean Pierre, mu myanzuro yafashwe n’uwo muyobozi afatanyije n’uwo muryango, nta na hamwe handitse ko iyo nzu igomba kugurishwa.

[16] Urukiko rurasanga kandi Mukangaruyinka Thérèse, Nderabakura Aloys na Munyarukiko Jean nabo bemera ko abo mu muryango wa nyina w’abana batagize uruhare mu masezerano y’ubugure bw’inzu y’abana ba Mugunga Jean Pierre kandi imiryango yombi yaragombaga guhura mu gihe hari ikibazo gikomeye cy’abana kigomba gukemurwa nk’uko bishimangirwa n’ingingo ya 389, igika cya mbere y’Itegeko Nº 42/1988 rishyiraho interuro y’ibanze n’igitabo cya mbere cy’urwunge rw’amategeko mbonezamubano iteganya ko ibikorwa bigamije gutanga, kugurisha n’ibindi byose bishobora kubangamira umutungo w’umwana, umwishingizi adashobora kubikora atabiherewe uburenganzira n’inama y’ubwishingire.

[17] Urukiko rurasanga n’ubwo Nyiramatama ashobora kuba yari afite ibibazo by’amikoro kugira ngo asohoze inshingano yari yahawe yo kurera abana b’umuhungu we Mugunga wapfuye, niyo biza kuba ngombwa ko iriya nzu igurishwa kugira ngo abana babone ibibatunga, yagombaga kubisabira uruhusa mu Rukiko, kuba rero yaragurishije inzu y’abana atabiherewe uruhusa n’Urukiko, binyuranyije n’ingingo ya 353 y’Itegeko Nº 42/1988 ryo ku wa 27/10/1988 yavuzwe haruguru, bityo iri kosa rikaba rigize inenge ikomeye ituma amasezerano y’ubugure bw’inzu iburanwa ateshwa agaciro.

2.Kumenya niba Habimana Zabulon yaraguze inzu y’abana ba Mugunga mu buryo bw’uburyarya

[18] Bienvenu Jean Baptiste na Mugunga Aventurier bavuga ko kuba Urukiko Rukuru rwaremeje ko amasezerano y'ubugure bw'inzu yabo agumana agaciro kayo kandi mu ikorwa ry'ayo masezerano harabayemo uburiganya kuko nta muntu uhagarariye umuryango wo kwa nyina wari uhari, mu gihe mu nyandiko yo guha Nyiramatama inshingano yo kurera abana, imiryango yombi (uwo kwa se n'uwo kwa nyina), yaremeranyije ko nta kintu kizajya gikorwa k'umutungo w'abana, iyo miryango itabanje kubyumvikanaho, na Habimana Zabulon akaba yari abizi kuko ari we wandikaga, kubayarabirenzeho akagura iyo nzu, asinyiwe n'abahagarariye umuryango umwe, ndetse abona n'ugurisha adafite abana bose kuko umwe yari afitwe na Nyirinkindi, basanga ubwo bugure bwarabayemo uburiganya.

[19] Me Bizimana Olivier avuga ko nkuko abo yunganira babisobanura, akarengane kabo bagashingira no ku ngingo ya 389 y'Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano (CC LI) yateganyaga ko habaho inama y'ubwishingire mu gihe cyo gutanga umutungo cyangwa kuwugurisha, nyamara akaba atariko byagenze kuko mu masezerano y'ubugure bw'iyo nzu, abo mu miryango yombi batagaragaramo kimwe n'uwareraga Mugunga Aventurier. Avuga kandi ko kuba Urukiko Rukuru rwaravuze ko icyemezo cy'ubutaka ari inyandiko mvaho kitavuguruzwa, atariko bo babibona kuko mu guha agaciro icyemezo cy'ubutaka hagombaga gusuzumwa inkomoko y'ubwo butaka, yaba ubugure cyangwa gutanga bishingiye ku muco, ariyo mpamvu basaba ko icyo cyemezo kigomba guteshwa agaciro, hashingiwe ku ngingo ya 10 na 20 z'Itegeko N° 43/2013 ryo ku wa 16/06/2013, kubera ko icyo cyemezo gikomoka ku masezerano arimo uburiganya.

[20] Mukangaruyinka Thérèse avuga ko Habimana Zabulon ataguze inzu akoresheje uburiganya kuko yayiguze nk'uwari uyituriye, ibyo kuba yarabaye umwanditsi w'umuryango igihe bamurikiraga Nyiramatama umutungo azareresha abo bana bikaba bitamukuraho uburenganzira bwo kuba yayigura mu gihe iri ku isoko, kandi ko kuba yaragize uruhare muri iyo nyandiko, bitaba ikimenyetso cy'uburiganya, ahubwo bishimangira ko yari azi impamvu iyo nzu igurishirijwe, cyane cyane ko bene wabo w'abarega ari nabo bagobokeshejwe muri uru rubanza, bashyize umukono kuri ayo masezerano, n'ubwo abo ku ruhande rwa nyina batari bahari, bikaba bitumvikana ko nyirakuru w'abana na ba sewabo bajya inama yo gukora ibinyuranyije n'inyungu z'abo bana.

[21] Me Mucyo Paul Emile yunganiye Mukangaruyinka Thérèse, Nderabakura Aloys na Munyarukiko Jean, avuga ko nta buriganya bwabayeho kuko niba Urukiko rwarahaye Nyiramatama uburenganzira bwo kurera abana ndetse ubuyobozi bukavuga ko aho hantu hagurishwa, kuba Habimana nk'umuntu wari uhaturiye, azi ikibazo cyo kwa Mugunga, cyane cyane ikijyanye n'amikoro yo kurera abana, nta buriganya abona yagize agura iriya nzu.

UKO URUKIKO RUBIBONA

Ku birebana n'uburiganya mu masezerano y'ubugure, ingingo ya 16 y'Itegeko Nº 42/1988 ryo kuwa 27/10/1988 rishyiraho interuro y'ibanze n'igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano iteganya ko uburiganya ari impamvu iteshaagaciro amasezerano iyo ubucabiranya bwakoreshejwe ku ruhande rumwe buteye ku buryo bigaragara neza ko iyo budakoreshwa, urundi ruhande rutari kuyemera. Naho ingingo ya 650 ikaba iteganya ko kutagira uburyarya bifatwa buri gihe nk'aho biriho kandi uwitwaza uburyarya bw'undi niwe ugomba kubutangira ikimenyetso. Iyi ngingo ikaba ishaka kuvuga ko uburanisha ko runaka yagize uburiganya atagomba kubivuga gusa ahubwo agomba kubitangira ibimenyetso.

[22] Abahanga mu mategeko bavuga ko imvugo ya nyir'umutungo, ubwayo idahagije kugira ngo uwaguze byitwe ko yabikoze mu buriganya. Ahubwo afatwa nk'uwaguze nta buriganya, iyo mu gihe cyo kugura atigeze amenya ko umugurisha atariwe nyiri umutungo koko, apfa kuba gusa uko kutabimenya kudaturuka ku burangare bwe cyangwa se kudaterwa no kwifata nk'utabizi kandi abizi. Mu yandi magambo, uwaguze ntashobora kwitwaza ko atari abizi mu gihe yari afite amakuru cyangwa se hari ibindi

bigaragaza ugushidikanya ko ari nyiri ikintu, ku buryo umuntu wese ushyira mu gaciro uri mu mwanya we atabura kubanza kubikurikirana mbere yo kuzuza amasezerano y'ubugure[1].

[23] Ku birebana na Habimana Zabulon, Urukiko rurasanga mu igura ry'inzu, imyifatire ye yaragaragayemo uburyarya ku mpamvu zikurikira: kuba ariwe wari umwanditsi w'inyandiko yahaga Nyiramatama inshingano zo kurera abana abacungira n'imitungo Se yabasigiye harimo n'inzu yagurishwaga, kuba yarahindukiye akagura iyo nzu azi neza ko yahawe Nyiramatama kugira ngo ayicungire abuzukuru be, kuba kandi yaraguze imiryango yombi ihagarariye abana itabanje guhura ngo ibyemeze kuko abo ku ruhande rwa nyina w'abana batari bahari kandi byari mu nyandiko yakozwe ahari ari umwanditsi w'iyo nyandiko; kuba kandi yari azi neza ko umugurisha adafite abana bose; kuba ataragize amakenga ngo abanze kumenya niba uwo bagura Urukiko rwarabimuhereye uruhusa nk'uko amategeko abiteganya, imvugo ya Mukangaruyinka Thérèse ko umugabo we yaguze nk'uko n'undi wese yari kugura, ikaba nta gaciro yahabwa kuko ibyo yakoze yabikoranye umutima w'uburyarya agamije kwibonera umutungo.

[24] Urukiko rurasanga kuba mu masezerano y'ubugure bw'inzu y'abana ba Mugunga Jean Pierre, yabaye hagati y'abiyise ko bahagarariye nyakwigendera Mugunga Jean Pierre na Habimana Zabulon n'umugore we Mukangaruyinka Thérèse, nta na hamwe banditse ikibazo gikomeye abo bana bari bafite kigomba gukemurwa n'amafaranga avuye muri ubwo bugure, nabyo bigaragaza uburyarya ku mpande zombi zagiranye amasezerano cyane ko no mu nyandiko zose zigize dosiye, nta n'imwe igaragaza ko imiryango yombi yaba yarateranye yiga ku kibazo kiremereye Nyiramatama mu kurera abo bana ku buryo cyakemurwa n'uko iyo nzu igurishwaaho kubanza kugurisha imirima yabacungiraga.

[25] Hashingiwe ku biteganywa n'ingingo ya 650 yavuzwe haruguru, ibisobanuro bimaze gutangwa bikaba ari ikimenyetso gihagije mu kugaragaza ko Habimana Zabulon yaguze inzu y'abana ba Mugunga ku bw'uburyarya, bityo iyo akaba ari impamvu itesha agaciro amasezerano y'ubugure bw'iyo nzu nk'uko ingingo ya 16 yavuzwe haruguru ibiteganya.

B. Ku bijyanye n'ingaruka k'uwaguze umutungo mu buryarya

[26] Bienvenu Jean Baptiste, Mugunga Aventurier na Me Bizmana ubunganira bavuga ko kuba Urukiko mu gufata icyemezo rwarashingiye ku mpamvu y'uko Mukangaruyinka, umugore wa Habimana Zabulon, afite icyemezo cy'ubutaka cya burundu, rukavuga ko ari inyandiko mvaho itateshwa agaciro, nabyo babibonamo akarengane kuko batemera iryo sesengura Urukiko rwakoze, ahubwo ko rwari kubanza gusuzuma agaciro k'amasezerano y'ubugure bw'iyo nzu, rugendeye ku bisobanuro batanze by'uko habayeho uburiganya kuko Habimana yaguze iyo nzu azi neza ko Nyiramatama atigeze ahabwa n'Urukiko uburenganzira bwo kuyigurisha, bityo rukemeza ko nta gaciro iki cyangombwa gifite kubera ko gishingiye ku masezerano yakozwe mu buriganya.

[27] Bavuga kandi ko imvugo ya Mukangaruyinka y'uko iyo nzu igurwa yari ituzuye ari ikinyoma kuko iyo nzu se yayibagamo akora muri BNR afite n'umukozi, ndetse ko n'amasezerano y'ubugure abigaragaza kuko banditse ko Habimana aguze inzu, annexes zayo n'igipangu. Naho Me Bizimana Olivier abunganira, avuga ko *expertise* yatanzwe na Mukangaruyinka Thérèse itashingirwaho kuko ntayo bahawe ngo bagire icyo bayivugaho, ahubwo ko hashingirwa kuyo bo batanze igaragaza ko iyo nzu ifite agaciro ka 6.388.360Frw[2].

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[1] "*Une simple allégation de mauvaise foi par le véritable propriétaire du bien ne rend pas nécessairement l'acheteur de mauvaise foi. Au contraire, il est de bonne foi s'il ignore, lors de la transaction, que son vendeur n'est pas le véritable propriétaire, à condition que son ignorance ne soit pas la conséquence d'une négligence voulue ou d'une négligence aveugle. En d'autres termes, l'acheteur ne peut pas plaider ignorance lorsqu'il a à sa disposition des informations ou des éléments pouvant soulever des doutes sur le droit de son vendeur, puisqu'une personne raisonnable se trouvant à sa place aurait pu procéder à une vérification avant de compléter la transaction" : Vincent KARIM, "Preuve et présomption de bonne foi", Revue de droit de l'Université de Sherbrooke, 1996, p 441.*

[2] Expertise yo ku wa 26/09/2011, yakozwe na BAGAMBA Edward abisabwe na MUGUNGA Aventurier.

[28] Mukangaruyinka Thérèse nkuko yari yajuriye mu Rukiko Rukuru abivuga, akomezagushimangira ko iriya nzu bayiguze mu buryo bukurikije amategeko kuko bayiguze na Nyaramatama wari ufite uburenganzira ku mutungo w'abana ba Mugunga kandi ayifitiye n'icyangombwa cy'ubukode burambye. Avuga kandi ko iyo nzu baguze itari yuzuye, ahubwo ko yari isakaye, nta sima irimo, nta miryango, nta na *cloture* usibye ko aribwo bari bagitangira gutera imiyenzi, ndetse ko na *annexes* banditse mu masezeranoari akazu ka *toilette* kandi ko kageze aho kakagwa. Akomeza avuga ko nyuma yo kugura iyo nzu bayivuguruye maze mu mwaka wa 2014, bayigurisha 11.000.000Frw, ariyo mpamvu gusaba ko amasezerano y'ubugure bwayo yateshwa agaciro byaba ari ugushaka indonke.

[29] Me Mucyo Paul Emile yunganiye Mukangaruyinka Thérèse , Nderabakura Aloys na Munyarukiko Jean, avuga ko inzu Habimana yayiguze 280.000Frw, nyuma arayivugurura, ubu ikaba igeze ku gaciro ka 15.000.000Frw, ariyo mpamvu basaba urukiko ko ruramutse rubibonye ukundi, rugategeka ko basubirana inzu yabo, rwakwita ku gaciro kongerewe kuri iyo nzu, hagashingirwa ku genagaciro ryakozwe (rapport d'expertise) rigaragaza agaciro ka 11.322.945Frw[3].

UKO URUKIKO RUBIBONA

[30] Ingingo ya 24 y'Igitabo cya II cy'urwunge rw'amategeko mbonezamubano yakurikizwaga igihe impande zombi zagiranaga amasezerano iteganya ibikurikira: "Iyo amazu, ibyubatswe cyangwa ibihingwa byakozwe n'ubitunze nta buryarya akoresheje ibyubakishwa cyangwa ibimera bye, nyirubutaka ntashobora gusaba ko bivanwaho; agomba kwishyura ubitunze igiciro cy'ibyubakishijwe hamwe n'ibimera n'ibyishyuwe ababikoze cyangwa se inyungura-gaciro ubutaka bwahaboneye. Iyo uwakoze ibyo byose yari atunze ubutaka ku buryarya cyangwa ku bundi buryo budahamye, nyirabwo ashobora guhitamo, ari ugusaba kuvanaho ibyubatswe cyangwa ibyatewe, uwabikoresheje akaba ari we ubyishyura hamwe n'indishyi bibaye ngombwa, ari ukwishyura icyo byatanzweho cyangwa inyungura-gaciro nk'uko bivugwa haruguru".

[31] Ku birebana n'uru rubanza, byasobanuwe haruguru ko amasezerano y'ubugure bw'inzu y'abana ba Mugunga Jean Pierre yagurishijwe na Nyiramatama mu buryo budakurikije amategeko kandi na Habimana Zabulon wayiguze bikaba byagaragaye ko yabikoze mu buryo bw'uburyarya, ariyo mpamvu amasezerano bagiranye agomba guteshwa agaciro.

[32] Urukiko rurasanga ariya masezerano y'ubugure bw'iyo nzu ateshejwe agaciro kandi ariyo yashingiweho Habimana Zabulon ahabwa icyemezo cy'ubukode kigomba nacyo gutesha agaciro. Ibi kandi bikaba bihura n'umurongo wafashwe n'Urukiko rw'Ikirenga mu manza zitandukanye, nk'urubanza RCAA0018/13/CS rwa Harerimana Emmanuel aburana na Sebukayire Tharcisse, rwaciwe ku wa 24/12/2014, aho Sebukayire n'umwunganira bemezaga ko ufite amasezerano y'ubukode burambye bw'ubutaka ari nyirabwo kuko icyemeze cy'ubutaka gishingiye kuri ayo masezerano arintayegayezwa; nyamara uru Rukiko rukabivuguruza rwemeza ko icyo cyemezo atari ntayegayezwa, ko Sebukayire yagombaga kugaragaza aho yakomoye ubwo butaka, kugira ngo abwandikweho abashe kubutunga k'ubw'ubukode burambye, ko kuba atahagaragaza binyuranyije n'ingingo ya 5 y'Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda ndetse n'ingingo ya 5 y'Itegeko Ngenga N° 08/2005 ryo ku wa 16/06/2013, rigenga ubutaka mu Rwanda, izi ngingo zombi zikaba zivuga ko uburenganzira ku butaka bushingira ku kuba nyirabwo yarabubonye ku bw'umuco cyangwa se yarabuhawe cyangwa yarabuguze n'ubifitiye ububasha.

[33] Ku byerekeranye n'ingaruka ibyo bikwiye kugira kuri Habimana Zabulon n'umugore we Mukangaruyinka Thérèse baguze mu buryarya inzu iburanwa, Urukiko rurasanga, hashingiwe ku byateganywaga n'igika cya 2 cy'ingingo ya 24 yavuzwe haruguru, Mukangaruyinka Thérèse yagombye

[3] Expertise yo ku wa 14/11/2012, yakozwe na Tuyizere Emmanuel, abisabwe na Mukangarukiyinka Thérèse.

gusubiza Bienvenu Jean Baptiste na Mugunga Aventurier inzu yasizwe na se, ariko kuba abareze muri ru rubanza batarasabye ko byanze bikunze basubizwa inzu yabo, bigaragazwa nuko bashyikirije uru rukiko expertise yerekana ko ifite agaciro ka 6.388.360Frw, Urukiko rurasanga ubwo Mukangaruyinka Thérèse avuga ko yamaze kugurisha inzu iburanwa undi muntu, yasubiza Bienvenu Jean Baptiste na Mugunga Aventurier agaciro k'inzu yabo bitangiye kangana na 6.388.360Frw.

Kumenya ishingiro ry'indishyi zasabwe muri uru rubanza

[34] Bienvenu Jean Baptiste na Mugunga Aventurier basaba Urukiko gutegeka Mukangaruyinka Thérèse kubaha 35.900.000Frw y'indishyi zikomoka ku bukode bw'iyo nzu bavukijwe, kuko iyo nzu ikodeshwa 100.000Frw ku kwezi, kandi ikaba imazeimyaka 22 igurishijwe, ni ukuvuga kuva ku wa 8/1/1994 kugeza ubu. Basaba kandi ko yabaha 5.000.000Frw y'indishyi z'akababaro kuko bavukijwe uburenganzira bwabobwo kwiga kandi yenda bari kwishyurirwa kuri ayo mafaranga yaguze inzu, bagahabwa na 3.000.000Frw y'ikurikiranarubanza na 1.500.000Frw y'igihembo cya Avoka.

[35] Mukangaruyinka Thérèse avuga ko amafaranga y'ubukode bw'inzu abarega basaba badakwiye kuyahabwa kuko nta kimenyetso kigaragaza ko iyo nzu yakodeshwaga 100.000Frw ku kwezi, cyane cyane ko yagurishijwe ituzuye, byongeye kandi, n'amafaranga yayivuyemo akaba yarabareze bagakura. Naho ku birebana n'indishyi z'akababaro basaba, avuga ko nazo ntazo bakwiye kubera ko badashobora kwerekana akababaro batewe no kugurisha iyo nzu kandi nyirakuru yarabikoze amaze kubihererwa uburenganzira n'Urukiko. Avuga ko n'andi mafaranga basaba batayakwiriye kuko batayagaragariza ibimenyetso, byongeye izi akaba ari imanza bashoye birengagije ko nyirakuru yagombaga kubareresha ibiturutse mu mitungo yabo. Asoza asaba 2.000.000Frw y'indishyi zo gukomeza kumushora mu manza, na 2.000.000Frw y'igihembo cya Avoka.

[36] Me Mucyo Paul Emile yunganiye Mukangaruyinka Thérèse, Nderabakura Aloys na Munyarukiko Jean, avuga ko indishyi zisabwa n'abarega zitahabwa ishingiro kuko baterekana ibimenyetso bigaragaza ko iyo nzu yakodeshwaga, n'umubare w'amafaranga y'ubukode, byongeye kandi nk'uko bisanzwe bizwi, inzu yaguzwe 280.000Frw idashobora gukodeshwa 100.000Frw ku kwezi, hatirengagijweko nta kosa ryabaye ryacisha abo yunganira indishyi.

UKO RUKIKO RUBIBONA

[37] Urukiko rurasanga kuba Bienvenu Jean Baptiste na Mugunga Aventurier baravukijwe uburenganzira ku nzu ise yasize, bakwiye guhabwa indishyi hashingiwe ku ngingo ya 258 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano iteganya ko: ''Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

[38] Urukiko rusanga ariko 35.900.000Frw y'indishyi zikomoka ku bukode bw'iyo nzu basaba nta bimenyetso bazitangira bigaragaza ko iyo nzu yakodeshwaga 100.000Frw ku kwezi, kandi bikaba bitumvikana ukuntu inzu yagurishijwe 260.000Frw yakodeshwa 100.000 Frw ku kwezi. Urukiko rurasanga ibyo bavukijwe kuri iyo nzu bihwanye n'agaciro kayo kazamutse kakava kuri 260.000 Frw kugeza kuri 6.388.360Frw. Naho ku birebana n'indishyi zingana na 6.000.000Frw z'uko bavukijwe uburenganzira bwo kwiga, Urukiko rusanga izo ndishyi zitatangwa kubera ko uwo bagombye kuzishyuza ari Nyiramatama wahawe uburenganzira bwo kubacunga mu mutungo Se yasize, kandi akaba atari umuburanyi muri uru rubanza ndetse atakiriho. Ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, Urukiko rusanga 2.000.000Frw basabye arimenshi, bityo mu bushishozi bwarwo rukaba rubageneye 1.000.000Frw.

[39] Urukiko rurasanga ku birebana n'indishyi abandi baburanyi basaba, ntazo bagenerwa mu gihe byemejwe ko imiburanire yabo nta shingiro ifite.

III. ICYEMEZO CY’URUKIKO

[40] Rwemeje ko ikirego cya Bienvenu Jean Baptiste na Mugunga Aventurier gisaba gusubirishamo urubanza RCA0034/12/HC/KIG ku mpamvu z’akarengane, gifite ishingiro ;

[41] Rutegetse Mukangaruyinka Thérèse guha Bienvenu Jean Baptiste na Mugunga Aventurier 6.388.360Frw y’agaciro k’inzu yabo na 1.000.000Frw y’ikurikiranarubanza n’igihembo cya Avoka, yose hamwe akaba 7.388.360Frw.

[42] Rutegetse Mukangaruyinka Thérèse gutanga amagarama y’uru rubanza.