

TWAGIRAYEZU N'ABANDI v TWAGIRAYEZU N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00007/2020/SC– (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire, Muhumuza na Karimunda, J.) 10 Ukuboza 2021]

Amategeko agenga imanza mbonezamubano – Umutungo utimukanwa – Kuregera kugaruza umutungo wagurishijwe n'utari nyirawo – Amasezerano y'ubugure – Kugira ngo nyir'umutungo aregere kugaruza ibye byagurishijwe n'utari nyirabyo ntibisaba kubanza gusaba iseswa ry'amasezerano y'ubugure.

Amategeko agenga imanza mbonezamubano – Umutungo utimukanwa – Inkomoko y'umutungo utimukanwa – Uregwa kugurisha ibitari ibye ntashobora gutsimbarara gusa ku kuba afite ibyangombwa by'umutungo atabanje kwerekana uburyo umutungo wageze mu maboko ye.

Amategeko agenga amasezerano – Kugurisha ikintu cy'undi – Inkurikizi zo kugurisha ikintu cy'undi – Umuguzi uvukijwe ibyo yaguze asubizwa n'uwamugurishije agaciro kabyo ku munsu abivukijweho, ibyo kandi ntibivanaho ko ashobora gusaba uwamugurishije indishyi zo kuba atarubahirije inshingano ze zo kwishingira ko adahungabanywa mu burenganzira yari afite ku mutungo yaguze cyangwa gusaba ko nyir'umutungo nyakuri, uwusubiranye, yishyura agaciro k'ibyongereweho n'uwari uwutunze.

Amategeko agenga imanza mboneza mubano – Umutungo utimukanwa – Amasezerano y'ubugure – Igurisha ry'umutungo uhuriweho ryakozwe n'umwe mu bawusangiye – Iyo uwagurishije adahakana amasezerano y'ubugure kandi akaba yemera ko yagurishije umutungo azi ko usangiye, igurisha rigira agaciro ku bireba igipande kigize umugabane we gusa.

Incamake y'ikibazo: Twagirayezu Albert yagurishije Niyongira ikibanza abanje kumugaragariza ibyemezo by'umutungo bihamya ko icyo kibanza ari icye. Nyuma y'ubwo bugure, Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine na Twagirayezu Monique bavuze ko icyo kibanza cyari icy'umuryango wa Twagirayezu Aloys na icyimpaye Marie Rose, ko musaza wabo yakigurishije batabizi, baregera Urukiko Rwisumbuye rwa Gasabo barusaba gutesha agaciro amasezerano y'ubugure kugira ngo umutungo ugaruke mu maboko y'abazungura bose.

Urukiko Rwisumbuye rwasanze abarega nta bimenyetso barugaragariza bivuguruza ibya Twagirayezu Albert byerekana ko umutungo uburanwa ari uwe bwite. Twagirayezu Alice na bagenzi be bajuririye Urukiko Rukuru, narwo rwemeza ko ubujurire nta shingiro bufite. Bajuririye kandi Urukiko rw'Ubujurire, bavuga ko inkiko zabanje zitasuzumye ikibazo cy'inkomoko y'umutungo, ko Twagirayezu Albert atagaragaza aho akomora umutungo uburanwa. Urukiko rwemeje ko ubujurire butari mu bubasha bwari kubera ko abarega batsinzwe mu Rukiko Rwisumbuye no mu Rukiko Rukuru ku mpamvu zimwe.

Twagirayezu Alice na bagenzi be basubirishijemo urubanza ku mpamvu z'akarengane mu Rukiko rw'Ikirenga maze Perezida w'Urukiko rw'Ikirenga yemeza ko ruzongera kuburanishwa. Mu iburanisha mu ruhamwe Twagirayezu Albert n'Umumaranyota batanze inzitizi bavugaga ko ikirego cy'Abarega kidakwiye kwakirwa kubera ko batagaragaza impamvu z'akarengane zatuma urubanza rusubirishwamo kandi ko batanemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare. Urukiko rwafatiye icyemezo mu ntebe rwemeza ko iyo nzitizi nta shingiro ifite kubera ko Perezida w'Urukiko rw'Ikirenga amaze kwemeza ko urubanza rwongera kuburanishwa, nta zindi nzitizi zitangwa zatuma urubanza rutaburanishwa mu mizi uretse inzitizi ndemyagihugu. Ku nzitizi ya kabiri, Urukiko rwemeje ko iyo nzitizi igaruka ku mizi y'urubanza, ikaba itasuzumwa hataramenyekana niba Urukiko rw'Ubujurire rwarakoze amakosa rwemeza ko abarega batsinzwe ku mpamvu zimwe mu nkiko zabanje. Umumaranyota yatanze indi nzitizi ndemyagihugu avuga ko abarega badafite ububasha bwo gusaba gusesa amasezerano y'ubugure batagizemo uruhare ariko

Urukiko rwafatiye icyemezo mu ntebe rwemeza ko idakwiye kwakirwa kuko itigeze itangwa nk'impamvu y'akarengane ndetse n'imanza ziza mu karengane ziba zaraciwe burundu.

Iburanisha mu mizi ryarakomeje, habanza gusuzumwa ikibazo kijyanye no kumenya niba Twagirayezu Alice n'Abagenzi be bafite ububasha bwo gusaba ko amasezerano y'ubugure yakozwe hagati ya Twagirayezu Albert na Niyongira ateshwa agaciro. Kuri iki kibazo Abarega bavuga ko ayo masezerano akwiye guteshwa agaciro kuko Twagirayezu Albert nawe ubwe yiyemerera ko yagurishije ibitari ibye. Bavuga kandi ko nubwo abagiranye amasezerano aribo bemerewe gusaba ko aseswa, iryo hame rifite irengayobora ry'uko nta kibuzwa nyir'umutungo kuwukurikirana mu maboko y'uwo awusanganye, asaba iseswa ry'amasezerano uwufite yawuguriyeho.

Umumaranyota na Twagirayezu Albert bavuga ko iseswa ry'amasezerano risabwa n'abayagizemo uruhare, bityo iyi ngingo ikaba itari ikwiye kwakirwa kubera ko nta kimenyetso na kimwe abarega bashingiraho bavuga ko umutungo ari uw'abazungura ba icyimpaye Marie Rose ndetse ko ntacyo bakoze ngo bateshe agaciro inyandiko mpamo zatanzwe n'inzego zibifitiye ububasha zihamya ko ubutaka buburanwa ari ubwe. Ikindi ni uko ayo masezerano atashwa agaciro kuko yakozwe mu buryo bukurikije amategeko kandi impande zombi zayagiranye zikaba ntacyo ziyakemangaho.

Ku kibazo cyo kumenya niba Twagirayezu Albert yaragurishije umutungo asangiye n'abandi bazungura ba Twagirayezu Aloys na icyimpaye batabyumvikanyeho n'ingaruka zabyo, Abarega bavuga ko bagaragariye inkiko zabanje ibimenyetso bigaragaza ko ubutaka buburanwa bwari ubwa Kavamahanga, bugurwa na icyimpaye, umugore wa Twagirayezu Aloys, aba akaba ari ababyeyi babo, bityo bukaba bukwiye kuba ubwabo nk'abazungura babo.

Umumaranyota avuga ko akomora umutungo uburanwa ku bugure bwakozwe n'umugabo we Niyongira kandi ko bwabaye amaze kugaragarizwa ibyangombwa bihamya ko uwo mutungo ari uwa Twagirayezu Albert. Avuga kandi ko amasezerano y'ubugure yo ku wa 01/11/1984 Abarega bashingiraho adakwiye guhabwa agaciro kubera ko handitseho ko uguze ari Kimpaye Marie Rose, nyamara bo bavuga ko nyina yitwa icyimpaye Marie Rose.

Mu nama ntegururubanza, Twagirayezu Albert yemeye ko yagurishije ubutaka asangiye na bashiki be ndetse yemera gusubiza amafaranga yakiriye, akaba yarabikoze mu rwego rwo gushaka guhuguza Umumaranyota Agnès. Yavuze ko gusubiza amafaranga atari kubiterwa no kuba yaragurishije icy'undi ahubwo ari uko yashakaga kugaruza umutungo we bwite.

Ku kibazo cyo kumenya ingaruka zo kuba umutungo wagurishijwe wari uhuriweho n'abazungura ba Twagirayezu Aloys na icyimpaye Abarega bavuga ko mu gihe Urukiko rusanze Twagirayezu Albert yaragurishije umutungo bari basangiye, Umumaranyota yasubiza umutungo ba nyirawo akikurikiranira uwamugurishije ku gaciro umutungo ugezeho hashingiwe ku igenagaciro ryashyizwe muri dosiye cyane cyane ko uyu nawe yemera kumusubiza amafaranga yakiriye.

Umumaranyota avuga ko ntacyo yabashije kugira icyo akora kuri ubwo butaka nyuma y'urupfu rw'umugabo we ku buryo kugeza ubu ntacyo yubatsheho nta n'icyahindutse ku buso bwabwo ariko ko ibyo bitabujije uwo mutungo kuzamura agaciro, bityo mu gihe uru Rukiko rwasanga, umutungo ugomba gusubizwa mu maboko y'Abarega, Twagirayezu Albert yategekwa kumusubiza agaciro uwo mutungo ugezeho uyu muni.

Incamake y'icyemezo: 1 [1] Kugira ngo nyir'umutungo aregere kugaruza ibye byagurishijwe n'utari nyirabyo ntibisaba kubanza gusaba iseswa ry'amasezerano y'ubugure kuko nta ruhare aba yaragize muri ayo masezerano. Ku birebana n'uru rubanza, bikaba ari uburenganzira bwa Twagirayezu Alice na bagenzi be gusaba ko umutungo bumva ko bafiteho uruhare ufitwe na Umumaranyota Agnès ugaruzwa.

2. Uregwa kugurisha ibitari ibye ntashobora gutsimbarara gusa ku kuba afite ibyangombwa by'umutungo atabanje kwerekana uburyo umutungo wageze mu maboko ye; bityo mu gihe Twagirayezu Albert atabasha kugaragaza uburyo umutungo uburanwa wavuye mu maboko ya nyina

Icyimpaye Marie Rose, wari nyirawo, ugahinduka uwe ku giti cye, bikwiye gufatwa ko uwo mutungo yari awusangiye n'abandi bazungura, agurisha uruhare rwabo kuri uwo mutungo batabimuhereye uburenganzira.

3. Umuguzi uvukijwe ibyo yaguze asubizwa n'uwamugurishije agaciro kabyo ku muni abivukijweho, ibyo kandi ntibivanaho ko ashobora gusaba uwamugurishije indishyi zo kuba atarubahirije inshingano ze zo kwishingira ko adahungabanywa mu burenganzira yari afite ku mutungo yaguze cyangwa gusaba ko nyir'umutungo nyakuri, uwusubiranye, yishyura agaciro k'ibyongereweho n'uwari uwutunze. Bityo, Umumaranyota Agnès agomba gusubizwa na Twagirayezu Albert agaciro umutungo uburanwa ugezeho uyu muni kuko ntacyo yawongereyeho.

4. Iyo uwagurishije adahakana amasezerano y'ubugure kandi akaba yemera ko yagurishije umutungo azi ko usangiwe, igurisha rigira agaciro ku bireba igipande kigize umugabane we gusa., bityo uruhare rwa Twagirayezu Albert ku mutungo uburanwa ruhwaye na kimwe cya gatanu (1/5) cyawo kikaba kigomba guhabwa Umumaranyota Agnès, bine bya gatanu byawo (4/5) bigasubizwa Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine, hanyuma Twagirayezu Albert agasubiza Umumaranyota Agnès agaciro kabyo (4/5).

**Ikirego cy'ubujurire cyatanzwe mu Rukiko rw'Ubururire gifite ishingiro kuri bimwe.
Urubanza rwaciye n'Urukiko Rukuru ruhindutse kuri bimwe.**

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 N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 52, 62, n'ya 63.

Itegeko N° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza

z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111.

Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64 n'ya 113.

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Imanza zifashishijwe:

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

RCAA 00045/2016/SC rwaciye n'Urukiko rw'Ikirenga ku wa 24/05/2019.

RS/ INJUST/ RC 00011/2018/ SC rwaciye n'Urukiko rw'Ikirenga ku wa 09/06/2021

RCAA 0018/13/CS rwaciye n'Urukiko rw'Ikirenga ku wa 24/12/2014.

Mukagatare Grace na Succession Bwanakeye Francois, RS/REV/INJUST/CIV 0003/14/CS, rwaciye n'Urukiko rw'Ikirenga ku wa 03/03/2017.

Itangishaka Leonidas na Nyiramahane Rachel n'undi, RS/REV/INJUST/RC 00038/2017/CS rwaciye n'Urukiko rw'Ikirenga ku wa 22/06/2018.

Gahire Athanase na Mukarushakiro Gloriose na bagenzi be, rwaciye n'Urukiko rw'Ikirenga ku wa 12/11/2021.

RS/INJUST/RC 00008/2019/SC rwaciye n'Urukiko rw'Ikirenga ku wa 12/11/2021.

Ikigo cy'Imisoro n'Amahoro na SECAM Ltd RCOMAA 0051/14/CS rwaciye ku wa 04/12/2015.

Bank of Kigali Ltd na Mulisa Kana Martin, RCOMAA 0038/16/CS-RCOMAA 0033/2016/SC rwaciye n'Urukiko rw'Ikirenga ku wa 21/4/2017.

Ikigo cy'Imisoro n'Amahoro na SODAR Ltd RCOMAA, 0048/16/CS hagati rwaciye n'Urukiko rw'Ikirenga ku wa 19/05/2017.

Road Solution Pavement Products na MAILCO Ltd, RS/INJUST/RCOM 00002/2020/SC rwaciye n'Urukiko rw'Ikirenga ku wa 25/09/2020.

Ikigo cy'Imisoro n'Amahoro na SODAR Ltd, RCOMAA 0048/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2017.

Inyandiko z'abahanga zifashishijwe:

Douglas R. Richmond, unoriginal sin: The Problem of Judicial Plagiarism, (2014) Arizona State Law Journal 177 at 179.

Serge Guinchard (sous la dir.) Droit et pratique de la procédure civile, Dalloz, Paris, 2014, p.1191.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo, Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine na Twagirayezu Monique, barega musaza wabo Twagirayezu Albert kuba yaragurishije ikibanza cy'umuryango kibaruye kuri UPI 1/02/10/03/4370, batabizi, basaba ko amasezerano y'ubugure yo ku wa 22/02/2012, yakoranye na nyakwigendera Niyongira Jean Claude, wari umugabo wa Umumaranyota Agnès aseswa, uyu agasubiza umutungo uburanwa.

[2] Mu rubanza RC 00038/2017/TGI/GSBO rwaciwe ku wa 27/07/2018, Urukiko Rwisumbuye rwa Gasabo rwasanze Twagirayezu Albert yaragurishije umutungo uburanwa afite acte de notoriété imwanditseho, ibyemezo by'umutungo bitangwa n'inzego z'ibanze, fiche cadastrale n'inyemezabwishyu yishyuriyeho umusoro bigaragaza ko ikibanza nimeru 4370 ari icye, rusanga ibimenyetso abarega bashingiraho bavuga ko ahaburanywa ari ah'umuryango, byarabonetse mu mwaka wa 2014 kandi umutungo waragurishijwe mu mwaka wa 2012 ndetse n'ibyo bavuga ko hari abatangabuhama bemeza ko umutungo wari uw'ababyeyi babo bitahabwa ishingiro kuko abo batangabuhama ntabagaragajwe, kandi nubwo bagaragazwa bakaba batanyomoza ibimenyetso bifatwe na Twagirayezu Albert, rwanzura ko nubwo Twagirayezu Albert atagaragaza inkomoko y'umutungo uburanwa, ibimenyetso yashyikirije Urukiko bitavugurujwe kandi byerekana ko wari uwe. Urukiko rwategetse ko amasezerano y'ubugure yo ku wa 22/02/2012 agumana agaciro kayo kuko yakozwe mu buryo bukurikije amategeko.

[3] Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine, na Twagirayezu Monique bajuririye Urukiko Rukuru bavuga ko Twagirayezu Albert yahengereye batakiba mu Rwanda, yiyitirira umutungo w'umuryango, awiyandikishaho, anahita awugurisha, ko iyo Urukiko rwikorera iperereza, rugasuzuma n'ibimenyetso barushyikirije, rwari kubona ko Twagirayezu Albert atagaragaza inkomoko y'umutungo yiyitiriyeye akanawugurisha.

[4] Mu rubanza RCA 00291/2018/HC/KIG rwaciwe ku wa 31/01/2019, Urukiko Rukuru rwasanze igihe Niyongira Jean Claude yaguraga, hari ibimenyetso Twagirayezu Albert yamugaragariye byerekana ko umutungo ari uwe ndetse ko byari no mu bubasha bwe kuba yawugurisha, bityo kuba abazungura ba Twagirayezu Aloys na icyimpaye Marie Rose batagaragaza ibimenyetso byerekana ko umutungo ari uwabo, bishimangira ko umutungo Twagirayezu Albert yaragurishije wari uwe, rwanzura ko imikurikize y'urubanza RC 00038/2017/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 27/07/2018, idahindutse, rutegeka abarega guha Umumaranyota Agnès 250.000 Frw y'igihembo cya Avoka na 100.000 Frw y'ikurikiranarubanza.

[5] Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine na Twagirayezu Monique bajuririye Urukiko rw'Ubujurire bavuga ko Urukiko Rukuru rwasuzumye inkomoko y'umutungo wagurishijwe ndetse n'inyandiko Twagirayezu Albert yiyandikiye avuga ko yaragurishije

umutungo w'umuryango atabihereye uburenganzira, ko inyandiko y'ubugure yabaye ku wa 01/11/1984 hagati ya icyimpaye Marie Rose na Kavamahanga, n'imvugo z'abatangabuhamyza ziyishimangira byirengagijwe nyamara ari byo bigaragaza inkomoko y'umutungo.

[6] Umumaranyota Agnès yatanze inzitizi yo kutakira ubujurire bwa kabiri ashingiye ku mpamvu y'uko haburanwa gusesa amasezerano y'ubugure bw'ikibanza cyaguzwe 10.000.000 Frw, bityo ko agaciro k'ikiburanwa katageze kuri 75.000.000 Frw ateganywa n'ingingo ya 52 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko. Yatanze kandi inzitizi yo kuba impamvu zashingiweho abarega batsindwa mu Rukiko Rwisumbuye rwa Gasabo ari zimwe n'izashingiweho mu Rukiko Rukuru.

[7] Mu rubanza RCAA 00020/2019/CA rwaciwe ku wa 26/06/2020, Urukiko rw'Ubujujire rwasanze nubwo abagenagaciro bemeza ko ikibanza UPI 1/02/10/03/4370 gifite agaciro ka 92.825.000 Frw, ingingo zasuzumwe n'Urukiko Rukuru ndetse n'Urukiko Rwisumbuye rwa Gasabo, zihuriye ku kumenya niba umutungo wagurishijwe ari uwa Twagirayezu Albert ku giti cye cyangwa niba wari uw'umuryango wa Twagirayezu Aloys na icyimpaye Marie Rose, rusanga izo nkiko zombi zarafashe icyemezo zishingiye ku mpamvu zimwe, rwemeza ko ubujurire butari mu bubasha bwarwo, abajuriye bategekwa gufatanywa kwishyura Umumaranyota Agnès 500.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza.

[8] Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine na Twagirayezu Monique bandikiye Perezida w'Urukiko rw'Ikirenga basaba ko urubanza RCAA 00020/2019/CA rwaciwe n'Urukiko rw'Ubujujire ku wa 26/06/2020, rusubirwamo ku mpamvu z'akarengane. Mu cyemezo nimeru 058/CJ/2020 cyo ku wa 19/11/2020, Perezida w'Urukiko rw'Ikirenga, amaze gusuzuma ubwo busabe, yategetse ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[9] Iburanisha mu ruhame ryabaye ku wa 02/06/2021, Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine na Twagirayezu Monique bahagarariwe na Me Nshuti Salim hamwe na Me Kazenzeza Théophile, Twagirayezu Albert ahagarariwe na Me Ngezahayo Bernard, naho Umumaranyota Agnès ahagarariwe na Me Nsengiyumva Viateur.

[10] Urukiko rwabanje gusuzuma inzitizi zatanzwe n'abahagarariye Twagirayezu Albert na Umumaranyota Agnès, bavugaga ko ikirego kidakwiye kwakirwa kubera ko abarega batagaragaza impamvu z'akarengane zatuma urubanza rusubirishwamo kandi ko batanemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare.

[11] Ku bijyanye n'inzitizi y'uko nta mpamvu z'akarengane zagaragajwe zatuma urubanza rusubirwamo, Urukiko rwafatiye icyemezo mu ntebe, rushingiye ku biteganywa n'ingingo ya 62, igika cya mbere,¹ n'ya 63² z'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko no ku isesengura ryazo ryakozwe mu rubanza Busoro Gervais yaburanagamo na Busoro Mugunga Désiré n'abandi, ry'uko iyo Perezida w'Urukiko rw'Ikirenga amaze kwemeza ko urubanza rwongera kuburanishwa, nta zindi nzitizi zitangwa zatuma urubanza rutaburanishwa mu mizi uretse inzitizi ndemyagihugu,³ rwanzura ko iyo nzitizi itakiriwe.

¹Iyo 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 ...

² Iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga akena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo abaturanyi bose bahamagajwe.

³ Urubanza RS/INJUST/RC 00022/2018/SC hagati ya Busoro Gervais na Busoro Mugunga Désiré n'abandi, rwaciwe n'Urukiko rw'Ikirenga ku wa 28/06/2019, igika cya 18.

[12] Naho ku bijyanye n'inzitizi y'uko abarega baba batemerewe gusaba iseswa ry'amasezerano y'ubugure batagizemo uruhare, rusanga nubwo iyi ngingo yatanzwe nk'inzitizi, igaruka ku mizi y'urubanza, ikaba itasuzumwa hataramenyekana niba Urukiko rw'Ubujurire rwarakoze amakosa rwemeza ko abarega batsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru.

[13] Nyuma yo kwemeza ko inzitizi yatanzwe n'ababuranira Twagirayezu Albert na Umumaranyota Agnès itakiriwe, Urukiko rwakomereje ku kibazo cyo kumenya niba ubujurire bwa kabiri bwaragombaga kwakirwa n'Urukiko rw'Ubujurire. Mu rubanza rubanziriza urundi rwaciwe ku wa 25/06/2021, Urukiko rwasanze Twagirayezu Alice na bagenzi be bataratsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye rwa Gasabo no mu Rukiko Rukuru, rwemeza ko ubujurire bwabo bwagombaga kwakirwa n'Urukiko rw'Ubujurire.

[14] Iburanisha mu mizi ryashyizwe ku wa 08/09/2021, uwo muni ugeze, Urukiko rusanga Twagirayezu Albert yarambuye Me Ngezahayo Bernard inshingano zo kumuburanira kandi ntawundi Avoka yashatse, ahanishwa ihazabu yo gutinza urubanza, iburanisha ryimurirwa ku wa 15/11/2021.

[15] Kuri uwo muni iburanisha ryabereye mu ruhamwe, Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine, Twagirayezu Monique ndetse na Umumaranyota Agnès bahagarariwe nka mbere, naho Twagirayezu Albert atitabye kandi nta na Avoka umuburanira yashatse, Urukiko rwemeza ko ku bimureba, urubanza ruburanishwa adahari.

[16] Iburanisha rigitangira, Me Nsengiyumva Viateur, uburanira Umumaranyota Agnès, yavuze ko hari indi nzitizi ndemyagihugu afite. Asobanura ko abarega badafite ububasha bwo gusaba gusesa amasezerano y'ubugure batagizemo uruhare, bityo ko hashingiwe ku biteganywa n'ingingo ya 129 y'Itegeko ryerekeye imiburanishirize y'ianza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, n'ingingo ya 116 y'Itegeko rigenga amasezerano no ku murongo watanzwe n'uru Rukiko mu gika cya 35 cy'urubanza Mukaruhanga Alexia yaburanaga na Nyirahabimana Emertha na Kold Hansen Jesper,⁴ ikirego cya Twagirayezu Albertine na bagenzi be kitagombaga kwakirwa n'inkiko zabanje na n'ubu kikaba kidakwiye kwakirwa.

[17] Me Nshuti Salim na Me Kazenza Théophile baburanira Twagirayezu Albertine na bagenzi be, bavuze ko inzitizi itanzwe na Me Nsengiyumva Viateur ku nshuro ya mbere mu Rukiko rw'Ikirenga idakwiye kwakirwa ngo isuzumwe keretse ariyo akarengane gashingiyeho cyane cyane ko iby'inzitizi byari byarangiye, Urukiko rukemeza ko urubanza rukomeza mu mizi. Basobanura ko iramutse yakiriwe, Urukiko rukwiye gusanga nta shingiro ifite kubera ko nubwo abagiranye amasezerano aribo bemerewe gusaba ko aseswa, iryo hame rifite irengayobora ry'uko nta kibuzo nyir'umutungo kuwukurikirana mu maboko y'uwo awusanganye.

[18] Urukiko rwafatiye icyemezo mu ntebe, rusanga inzitizi yatanzwe na Me Nsengiyumva Viateur idakwiye kwakirwa kuko itigeze itangwa nk'impamvu y'akarengane, bitewe n'uko imanza ziza mu karengane ziba zaraciwe burundu, zifite abaziburanye, ari nabo bagaruka mu rubanza rw'akarengane, inzitizi yo kutakira ikirego ikaba yakirwa gusa iyo ariyo akarengane gashingiyeho, uyu akaba ari nawo murongo rwafashe mu manza zinyuranye harimo n'urubanza Nyirahabimana Umwali Roselyne aburana na Habimana Jean Léo Pasteur na bagenzi be,⁵ rwemeza ko iburanisha rikomeza hasuzumwa ibibazo bigize imizi y'urubanza.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

⁴ Reba urubanza RCAA 00045/2016/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/05/2019.

⁵ Reba icyemezo cyafatiwe mu ntebe mu rubanza n° RS/ INJUST/ RC 00011/2018/ SC ku wa 09/06/2021.

1. Kumenya niba Twagirayezu Alice, Twagirayezu Albertine, Twagirayezu Alphonsine na Twagirayezu Monique bafite ububasha bwo gusaba ko amasezerano y'ubugure yakozwe hagati ya Twagirayezu Albert na Niyongira Jean Claude ateshwa agaciro

[19] Me Nshuti Salim na Me Kazeneza Théophile, baburanira abarega, bavuga ko amasezerano y'ubugure hagati ya Twagirayezu Albert na Niyongira Jean Claude akwiye guteshwa agaciro kuko Twagirayezu Albert nawe ubwe yiyemerera ko yagurishije ibitari ibye. Bavuga ko nubwo abagiranye amasezerano aribo bemerewe gusaba ko aseswa, iryo hame rifite irengayobora ry'uko nta kibuzza nyir'umutungo kuwukurikirana mu maboko y'uwo awusangaye, asaba iseswa ry'amasezerano uwufite yawuguriyeho.

[20] Me Nsengiyumva Viateur, uburanira Umumaranyota Agnès, avuga ko hashingiwe ku biteganywa n'ingingo ya 113 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano no ku murongo watanzwe n'uru Rukiko mu rubanza Mukaruhanga Alexia yaburanaga na Nyirahabimana Emertha na Kold Hansen Jesper w'uko iseswa ry'amasezerano risabwa n'abayagizemo uruhare, iyi ngingo itari ikwiye kwakirwa. Asobanura kandi ko mu gihe nta kimenyetso na kimwe abarega bashingiraho bavuga ko umutungo ari uw'abazungura ba icyimpaye Marie Rose, bakaba ntacyo bakoze kugira ngo bateshe agaciro inyandiko mpamo zatanzwe n'inzego zibifitiye ububasha zihamya ko ubutaka buburanwa ari ubwa Umumaranyota Agnès, asaba uru Rukiko gushimangira ibyemejwe n'inkiko zabanje by'uko amasezerano y'ubugure hagati ya Niyongira Jean Claude na Twagirayezu Albert afite agciro.

[21] Mu nama ntegururubanza, Me Ngezahayo Bernard waburaniraga Twagirayezu Albert yavuze ko asanga nta cyatuma amasezerano y'ubugure Twagirayezu Albert yakoranye na Niyongira Jean Claude aseswa kuko yakozwe mu buryo bukurikije amategeko kandi impande zombi zayagiranye zikaba ntacyo ziyakemangaho.

UKO URUKIKO RUBIBONA

[22] Ku bijyanye n'ibyo Twagirayezu Alice na bagenzi basaba byo gusesa amasezerano y'ubugure yabaye hagati ya Twagirayezu Albert na Niyongira Jean Claude, ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko amasezerano akozwe mu buryo bukurikije amategeko aba itegeko ku bayagiranye, akaba yaseswa ari uko abayagiranye babyumvikanyeho cyangwa ku zindi mpamvu zemewe n'amategeko. Naho ingingo ya 113, igika cya mbere y'iryo Tegeko iteganya ko amasezerano agira inkurikizi hagati y'abayagiranye gusa, akaba atabangamira undi cyangwa ngo amugirire akamaro hejuru y'ibyayateganyijwemo bimufitiye akamaro.

[23] Izi ngingo zasesenguwe n'uru Rukiko mu buryo burambuye mu manza zitandukanye ariko cyane cyane mu rubanza Mukaruhanga Alexia yaburanaga na Nyirahabimana Emertha na Kold Hansen Jesper, rusanga iyo ikibazo gisuzumwa gikomoka ku masezerano y'ubugure bw'umutungo utimukanwa, nyir'umutungo afite uburenganzira bwo kuwukurikira ku wo awusanganye, atabanje gusaba ko amasezerano y'ubugure yabaye hagati y'uwo awusanganye n'uwawugurishije ateshwa agaciro. Rwasobanuye ko icyatuma amasezerano y'ubugure ateshwa agaciro ari igihe byaba bisabwe n'uwaguze ukurikaranywe na nyir'umutungo nyakuri ushaka kugaruza ibye, kuko uwagurishije atatanga bene icyo kirego kandi afite inshingano yo kwishingira uwaguze kugira ngo atunge uwo mutungo nta nkomyi (*garantie contre l'éviction*), na nyir'umutungo nyakuri ntiyasaba iseswa ry'amasezerano y'ubugure atagizemo uruhare.⁶

⁶ Reba urubanza RCAA 00045/2016/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 24/05/2019, kuva ku bika bya 25 kugeza ku cya 34.

[24] Hagendewe ku bisobanuro bimaze kugaragazwa haruguru, Urukiko rurasanga ibyo Me Nshuti Salim avuga ko hari irengayobora ku biteganywa n'ingingo ya 64 n'ya 113, igika cya mbere, y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano ku buryo umuntu utarebwa n'amasezerano yasaba iseswa ryayo nta shingiro bifite.

[25] Urukiko rurasanga rero ibisabwa n'ababuranira Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine by'uko kugira ngo babashe gukurikirana umutungo wabo wagurishijwe na Twagirayezu Albert ari ngombwa ko amasezerano y'ubugure hagati ye na Niyongira Jean Claude abanza guseswa nta gaciro bikwiye guhabwa kuko kugira ngo nyir'umutungo aregere kugaruza ibye byagurishijwe n'utari nyirabyo ntibisaba kubanza gusaba iseswa ry'amasezerano y'ubugure.

2. Kumenya niba Twagirayezu Albert yaragurishije umutungo asangiye n'abandi bazungura ba Twagirayezu Aloys na Icyimpaye Marie Rose batabyumvikanyeho n'ingaruka zabyo

[26] Me Nshuti Salim na Me Kazenze Théophile, baburanira Twagirayezu Alice na bagenzi be, bavuga ko ubutaka buburanwa bwari ubwa Kavamahanga, bugurwa na Icyimpaye Marie Rose, umugore wa Twagirayezu Aloys, aba akaba ari ababyeyi ba Twagirayezu Albert, Twagirayezu Alice, Twagirayezu Monique, Twagirayezu Alphonsine na Twagirayezu Albertine. Basobanura ko amasezerano y'ubugure yo ku wa 01/11/1984, icyemezo cy'umutungo gakondo cya Icyimpaye Marie Rose cyo ku wa 13/08/2014, inyandiko ya Twagirayezu Albert yo ku wa 15/11/2014 ivuga ko yagurishije umutungo asangiye na bashiki be batabyumvikanyeho, n'imvugo z'abatangabuhamya bihamya ko umutungo ukwiye kuba uw'abazungura ba Icyimpaye Marie Rose na Twagirayezu Aloys.

[27] Bavuga ko ibimenyetso bimaze kuvugwa haruguru byagaragarijwe inkiko, aho kubihaga agaciro, zishingira ibyemezo byazo ku kuba umutungo uburanwa wanditse kuri Twagirayezu Albert, nyamara umurongo watanze n'Urukiko rw'Ikirenga mu rubanza Harerimana Emmanuel yaburanaga na Sebukayire Tharcisse ubwo rwasesenguraga ibiteganywa n'ingingo ya 10 y'Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka ari uko uregwa ataburanisha gusa kuba ubutaka bumwanditseho atabanje kugaragaza aho abukomora.

[28] Me Nsengiyumva Viateur, uburanira Umumaranyota Agnès, avuga ko uyu akomora umutungo uburanwa ku bugure bwakozwe n'umugabo we Niyongira Jean Claude kandi ko bwabaye amaze kugaragarizwa ibyangombwa bihamya ko uwo mutungo ari uwa Twagirayezu Albert. Avuga ko amasezerano y'ubugure yo ku wa 01/11/1984 abarega bashingiraho adakwiye guhabwa agaciro kubera ko handitsemo ko uguze ari Kimpaye Marie Rose, nyamara abarega bavuga ko nyina yitwa Icyimpaye Marie Rose, bikaba bitumvikana uburyo Icyimpaye Marie Rose wari ujijutse kuko yari umuforomokazi, yari gusinye amasezerano y'ubugure ku mazina atari aye ndetse agahindagura n'imikono, akaba asanga mbere yo kwemeza ko ayo masezerano ari ukuri, hakwiye gupimwa imikono iyariho (*vérification de signature*).

[29] Avuga kandi ko inyandiko ya Twagirayezu Albert yo ku wa 15/11/2014 idakwiye guhabwa agaciro kuko Avoka we yavugiye mu nama ntegurarubanza ko ayandika, kari agakino yakoranye na bashiki be kugira ngo bahuguze Niyongira Jean Claude umutungo we, ariko ko amaze kumenya ko yapfuye, yivanye muri ako gakino. Asobanura ko ikindi gikwiye gutuma iyo nyandiko idahabwa agaciro ari uko itanyujijwe muri Ambassade y'u Rwanda mu Bufaransa. Asoza avuga ko umutungo uburanwa utari kuba ari uwa Icyimpaye Marie Rose guhera mu mwaka wa 1984, ngo abe yarabuze kuwiyandikishaho muri MINITRAPE, bityo mu gihe cyose abarega batagaragaza ifishi ya MINITRAPE ihamya ko ababuranwa hari aha Icyimpaye Marie Rose, asaba uru Rukiko kwemeza ko nta karengane kabaye mu manza zisubirishwamo kuko Niyongira Jean Claude yaguze na nyir'umutungo.

[30] Mu nama ntegururubanza, Me Ngezahayo Bernard waburaniraga Twagirayezu Albert, yavuze ko kuba mu nyandiko yo ku wa 15/11/2014, Twagirayezu Albert yaremeye ko yagurishije ubutaka asangiye na bashiki be ndetse akemera gusubiza amafaranga yakiriye byari mu rwego rwo gushaka guhuguza Umumaranyota Agnès. Yavuze ko gusubiza amafaranga atari kubiterwa no kuba yaragurishije icy'undi ahubwo ari uko yashakaga kugaruza umutungo we bwite. Avuga ko inyandiko yo ku wa 15/11/2014 Twagirayezu Albert yayikoze ashutswe na bashiki be bashakaga ko amasezerano y'ubugure aseswa bakongera kugurisha mu rwego rwo gucuruza ubwo butaka. Yasobanuye ko mu mwaka wa 2009, mushiki wa Twagirayezu Albert witwa Twagirayezu Marie Louise yagurishije ubwo butaka 5.000.000 Frw, hanyuma bigeze mu mwaka wa 2012, bumvikana ko amasezerano y'ubugure aseswa, uwaguze agasubizwa amafaranga ye kuko bari babonye umuguzi utanga 10.000.000 Frw. Yavuze ko Twagirayezu Albert amaze kumenya ko Niyongira Jean Claude yapfuye, umutima wamukomanze akanga guhemukira umupfakazi n'imfubyi, aribwo yatangiye kugaragaza ukuri.

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[31] Ingingo ya 5 y'Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 rigena imikoreshereze n'imirungire y'ubutaka mu Rwanda ryakoreshwaga ubwo Niyongira Jean Claude yaguraga ubutaka na Twagirayezu Albert yateganyaga ko umuntu wese, ku giti cye cyangwa ishyirahamwe rifite ubuzima gatozi, batunze ubutaka, baba barabubonye ku bw'umuco, cyangwa se barabuhawe n'ubuyobozi bubifitiye ububasha cyangwa se barabuguze, bemerewe kubutunga ku buryo bw'ubukode burambye, hakurikijwe ibiteganywa n'iri Tegeko Ngenga.

[32] Ingingo ya 3, igika cya mbere, y'Itegeko N° 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.

[33] Dosiye y'urubanza igaragaza ko ibimenyetso Umumaranyota Agnès aburanisha ashaka kwerekana ko umugabo we Niyongira Jean Claude yaguze na nyir'umutungo ari ibi bikurikira:

- *Acte de notoriété* yatanzwe n'Akarere ka Gasabo ku wa 18/01/2012 igaragaza ko umutungo ugizwe n'ikibanza gifite 52m x 103 m uri mu Kagali ka Kagugu ari uwa Twagirayezu Albert.
- icyemezo cy'umutungo gakondo cyatanzwe n'Umurenge wa Kinyinya ku wa 20/01/2012 kigaragaza ko umutungo ufite ubuso bungana na 103 m x 52 m ari gakondo ya Twagirayezu Albert.
- *Fiche Cadastrale* yakozwe ku wa 31/01/2012 igaragaza ko ikibanza numero 4370 ari icya Twagirayezu Albert.
- Inyemezabwishyu y'umusoro ku kibanza numero 4370 yo ku wa 16/02/2012 igaragaza ko Twagirayezu Albert yishyuriraga icyo kibanza umusoro.

[34] Urukiko rurasanga Twagirayezu Alice na bagenzi baratsinzwe mu nkiko zabanje biturutse ku kuba icyemezo cy'umutungo gakondo cya icyimpaye Marie Rose cyo ku wa 13/08/2014 ndetse n'inyandiko ya Twagirayezu Albert yo ku wa 15/11/2014 ihamya ko yagurishije umutungo w'umuryango atabyumvikanyeho n'abavandimwe be byarabonetse nyuma y'uko uwo mutungo ugurishijwe, inkiko zikaba zaravuze ko bitari ngombwa kuri Twagirayezu Albert kugaragaza inkomoko y'umutungo afitiye ibyangombwa. Nyamara kandi, umurongo watanzwe n'uru Rukiko mu manza zitandukanye harimo n'urwo Harerimana Emmanuel yaburanaga na Sebukayire Tharcisse,⁷

⁷ Reba urubanza RCAA 0018/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2014, igikacya 21. Uyu murongo ni nawo wagarutsweho mu rubanza RS/REV/INJUST/CIV 0003/14/CS hagati ya Mukagatare

ubwo rwasesenguraga ingingo ya 5 y'Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 ryavuzwe haruguru ni uko umushingamategeko yateganyije uburyo umuntu abona umutungo utimukanwa, uregwa kuba yaragurishije ibitari ibye akaba atatsimbarara ku kuba afite ibyangombwa atabanje kwerekana uburyo umutungo wageze mu maboko ye.

[35] Urukiko rurasanga icyemezo cy'umutungo gakondo cya icyimpaye Marie Rose cyo ku wa 13/08/2014 gishingiye ku masezerano y'ubugure yo ku wa 01/11/1984, icyimpaye Marie Rose yakoranye na Kavamahanga, ibi bimenyetso hamwe n'urwandiko Twagirayezu Albert yanditse ku wa 15/11/2014 kandi Avoka we yemereye mu nama ntegururubanza bihamya ko umutungo uburanwa waguzwe na icyimpaye Marie Rose, bityo ukaba ugisangiwe n'abazungura be. Kuba mu masezerano y'ubugure yo ku wa 01/11/1984 handitsemo Kimpaye aho kuba icyimpaye cyangwa kuba Me Ngezahayo Bernard yaravugiye mu nama ntegururubanza ko urwandiko Twagirayezu Albert yanditse ku wa 15/11/2014 ari agakino, sibyo byatuma ibikubiye muri izo nyandiko bidahabwa agaciro nk'uko Me Nsengiyumva Viateur abivuga kuko nta kibazo kiri hagati y'abakoranye ayo masezerano cyangwa hagati y'abazungura ba icyimpaye Marie Rose ku kuba mu izina rya nyina haranditswe K mu mwanya ICY, ndetse nta n'ikimenyetso kigaragaza ko Twagirayezu Albert yaba yarasubiye ku mvugo ye iri mu nyandiko yo ku wa 15/11/2014.

[36] Urukiko rurasanga nubwo mu masezerano y'ubugure Twagirayezu Albert yagize ati: njyewe Twagirayezu Albert ngurishije ikibanza cyanjye kiri mu Kagali ka Kagugu, gifite nimeru 4370..., akabishingira kuri *fiche cadastrale, parcel number confirmation na acte de notoriété* nkuko bigaragazwa n'ayo masezerano, ntabasha kwerekana uburyo ubwo butaka bwavuye mu maboko ya nyina icyimpaye Marie Rose ngo bube ubwe nko kuba yaramuzunguye, kuba yarabuguze cyangwa se indi nzira yari gutuma buva kuri nyirabwo wari warabuguze ngo bube umutungo we bwite nk'uko byateganywaga n'ingingo ya 5 y'Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 ryibukijwe haruguru ryakoreshwaga igihe cy'ubugure, bikaba byumvikana ko kuba yari afite ibyo byangombwa bitari byihagije mu gihe cyose atabasha kugaragaza inkomoko y'umutungo ibyo byangombwa bihamya.

[37] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga ikibanza kibaruye kuri UPI 1/02/10/03/4370 gihereye mu Karere ka Gasabo, Umurenge wa Kinyinya, Akagali ka Kagugu, Umudugudu wa Rukingu ari icya icyimpaye Marie Rose, kuva aho apfiriye ku wa 21/11/2000 nk'uko byemezwa n'inyandiko y'uwapfuye yo ku wa 02/03/2020, uwo mutungo ukaba waragiye mu maboko y'abazungura be, bivuze ko Twagirayezu Albert awugurisha ku wa 22/02/2012, yagurishije umutungo asangiye n'abandi bazungura batabyumvikanyeho.

3. Kumenya ingaruka (*conséquences*) zo kuba umutungo wagurishijwe wari uhuriweho n'abazungura ba Twagirayezu Aloys na icyimpaye Marie Rose

[38] Me Nshuti Salim na Me Kazenze Théophile baburanira abarega bavuga ko mu gihe Urukiko rusanze Twagirayezu Albert yaragurishije umutungo bari basangiye, Umumaranyota Agnès yasubiza umutungo ba nyirawo akikurikiranira Twagirayezu Albert ku gaciro umutungo ugezeho hashingiwe ku igenagaciro ryashyizwe muri dosiye cyane cyane ko uyu nawe yemera kumusubiza amafaranga yakiriye.

[39] Me Nsengiyumva Viateur avuga ko Umumaranyota Agnès atabashije kugira icyo akora kuri ubwo butaka nyuma y'urupfu rw'umugabo we, ku buryo kugeza ubu ntacyo yubatshe nta

Grace na *Succession* Bwanakeye Francois, rwaciwe n'Urukiko rw'Ikirenga ku wa 03/03/2017 no mu rubanza RS/REV/INJUST/RC 00038/2017/CS hagati ya Itangishaka Leonidas na Nyiramahane Rachel n'undi rwaciwe n'Urukiko rw'Ikirenga ku wa 22/06/2018, igika cya 19. Reba kandi urubanza Gahire Athanase yaburanaga na Mukarushakiro Gloriose na bagenzi be, rwaciwe n'Urukiko rw'Ikirenga ku wa 12/11/2021, igikacya 67.

n'icyahindutse ku buso bwabwo. Asobanura ariko ko ibyo bitabujije uwo mutungo kuzamura agaciro, bityo mu gihe uru Rukiko rwasanga, umutungo ugomba gusubizwa mu maboko y'abazungura ba Twagirayezu Aloys na Icyimpaye Marie Rose, twagirayezu Albert yategekwa gusubiza Umumaranyota Agnès agaciro kangana na 92.825.000 Frw umutungo ugezeho uyu muni.

[40] Mu nama ntegururubanza, Me Ngezahayo Bernard, waburaniraga Twagirayezu Albert, yavuze ko Urukiko rukwiye kugendera ku bimenyetso rwahawe, Umumaranyota Agnès akagumana umutungo we kuko umugabo we yawuguze mu buryo bukurikije amategeko.

UKO URUKIKO RUBIBONA

[41] Ku bijyanye n'inkurikizi zo kuba uwaguze umutungo awusubije nyirawo kandi akaba awusubije ntacyo yawongereyeho, ntacyo amategeko y'u Rwanda ateganya kuri icyo kibazo, icyakora inkiko z'ibindi bihugu zishimangira ko iyo agaciro k'icyagurishijwe kiyongereye igihe uwakiguze agiye kukivutswa, hatitawe kucyo uwacyeguriwe yakoze, umugurisha agomba kumwishyura amafaranga arimo n'agaciro kacyo karenga ku ko cyari gifite igihe cy'igurisha. Ibi byemejwe n'Urukiko Rusesa Imanza mu Bufaransa mu manza zitandukanye aho rwavuze ko abagurishije bagomba gusubiza abaguzi bavukijwe ibyo baguze agaciro kabyo ku muni babivukijweho, kandi ko hagomba gushingirwa ku gaciro uwo mutungo ubwawo ugezeho bitagizwemo uruhare n'uwaguze.⁸

[42] Urukiko rurasanga ibimaze kuvugwa haruguru byumvikanisha ko umuguzi uvukijwe ibyo yaguze asubizwa n'uwamugurishije agaciro kabyo ku muni abivukijweho, ni ukuvuga ku muni icyemezo kiwumuvutsa cyafatiweho; ibyo kandi ntibivanaho ko ashobora gusaba uwamugurishije indishyi zo kuba atarubahirije inshingano ze zo kwishingira ko adahungabanywa mu burenganzira yari afite ku mutungo yaguze cyangwa gusaba ko nyir'umutungo nyakuri, uwusubiranye, yishyura agaciro k'ibyongereyeho n'uwari uwutunze. Ku bireba uru rubanza bikaba bigaragara ko ntacyo Umumaranyota Agnès yongereye kuri uwo mutungo, bityo akaba agomba gusubizwa agaciro ugezeho uyu muni.

[43] Urukiko rurasanga dosiye y'urubanza irimo igenagaciro ryakozwe ku busabe bwa Twagirayezu Alice na bagenzi be, rikorwa na Ir Dushimimana David ku wa 18/04/2019. Agaragaza ko agaciro ka m2 ari 21.000 Frw, bityo ku buso bwose bwa 3.652 m2, ubutaka buburanwa bufite agaciro ka 76.692.000 Frw. Icyakora yibeshye ku buso kuko icyangombwa cy'umutungo kigaragaza ko ari 3.713 m2, bityo agaciro kawo kakaba kari kuba $21.000 \text{ Frw/m}^2 \times 3.713 \text{ m}^2 = 77.973.000 \text{ Frw}$. Dosiye irimo na none igenagaciro ryakozwe na Ir Bazina Jean Yves ku wa 02/06/2020 ku busabe bwa Umumaranyota Agnès. Bigaragara ko agaciro kuri m2 ari 25.000 Frw, bityo ku buso bwa 3.713 m2, ubutaka bwose bukagira agaciro ka 92.825.000 Frw.

[44] Urukiko rurasanga nyuma y'izo raporo z'igenagaciro, ku wa 01/12/2021, Urugaga rw'Abagenagaciro ku Mutungo Utimukanwa mu Rwanda (IRPV) rwaratangaje mu Igazeti ya Leta, Ibiciro Fatizo by'Ubutaka mu Rwanda mu mwaka wa 2021, ku bijyanye n'imitungo iherereye mu

⁸ ... si la chose vendue se trouve avoir augmenté de prix à l'époque de l'éviction, indépendamment même du fait de l'acquéreur, le vendeur est tenu de lui payer ce qu'elle vaut au dessus du prix de la vente..., Reba Cour de Cassation, Chambre civile 3, du 16 janvier 1991. "...les vendeurs sont tenus d'indemniser leurs acquéreurs de la valeur du bien dont ils sont évincés à la date de la décision d'éviction..." Reba Cour de cassation, Chambre civile 3, 07 juillet 2010. "Mais attendu qu'ayant exactement retenu qu'en application de l'article 1633 du code civil, qui vise l'augmentation du prix, indépendamment même du fait de l'acquéreur, M. B... pouvait réclamer à ses vendeurs l'augmentation de la valeur de la parcelle, la cour d'appel, qui a ordonné une expertise afin de déterminer si le prix avait augmenté entre la vente et la décision constatant l'éviction, a, par ce seul motif, légalement justifié sa décision..." Reba Cour de cassation, civile, Chambre civile 3, 27 octobre 2016.

Karere ka Gasabo, Umurenge wa Kinyinya, Akagari ka Kagugu, Umudugudu wa Rukingu aho ikibanza nimeru UPI 1/02/10/03/4370 gihereye, icyo cyegeranyo kikaba kivuga ko igiciro mpuzandengo kuri m² y'ubutaka bwagenewe guturwa nk'uko bimeze ku mutungo uburanwa ari 20.769 Frw, bityo ku birebana n'uru rubanza iki giciro fatizo akaba aricyo cyashingirwaho kubera ko bigaragarira uru Rukiko ko raporo z'abagenagaciro zakozwe bidasabwe n'Urukiko kandi bakaba baratanze agaciro gatandukanye cyane nyamara raporo zarakozwe mu bihe byegeranye cyane.

[45] Urukiko rurasanga rero ubuso bwa 3.713 m², bufite agaciro ka 77.117.297 Frw, aka akaba ariko gakwiye gufatwa nk'agaciro fatizo k'ubutaka buburanwa kuri uyu muni.

[46] Ku bireba agaciro nyako kagomba gusubizwa uwaguze nta buryarya mu gihe hagurishijwe umutungo usangiwe, uru Rukiko rwabisobanuye na none mu rubanza Gahire Athanase yaburanaga na Mukarushako Gloriose na bagenzi be, aho rwavuze ko iyo uwagurishije adahakana amasezerano y'ubugure kandi akaba yemera ko yagurishije umutungo azi ko usangiwe, igurisha rigira agaciro ku bireba igipande kigize umugabane we gusa.⁹ Ibi bivuze ko amasezerano y'ubugure yakozwe na Twagirayezu Albert afite agaciro ku bireba igipande kigize umugabane we gusa ku mutungo uburanwa, ni ukuvuga kimwe cya gatanu cyawo (1/5) gihwanye na 742,6 m² hafite agaciro ka 15.423.459 Frw, uyu akaba ariwo mutungo Umumaranyota Agnès agomba kugumana nyuma yo kuzibukira 4/5 bisigaye ku butaka buburanwa.

[47] Urukiko rurasanga rero mu gihe byagaragaye ko Twagirayezu Albert yagurishije umutungo uburanwa atabyumvikanyeho n'abavandimwe be Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine, aba bavandimwe be bagomba gusubirana uruhare rwabo ku mutungo rungana na 4/5 byawo, nawe agasubiza Umumaranyota Agnès agaciro k'ibyo 4/5 avukijwe gahwanye na 77.117.297 Frw- 15.423.459 Frw = 61.693.838 Frw. Ibi byumvikanisha kandi ko icyangombwa cy'umutungo cyanditswe kuri Niyongira Jean Claude na Umumaranyota Agnès kigomba guteshwa agaciro, 1/5 cy'ubutaka bubaruye kuri UPI 1/02/10/03/4370 kikandikwa kuri Umumaranyota Agnès, naho 4/5 bikandikwa kuri Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine.

4. Kumenya niba indishyi zisabwa zifite ishingiro

[48] Me Nshuti Salim, uburanira Twagirayezu Alice na bagenzi be, avuga ko abarega bakwiye kugenerwa 5.000.000 Frw y'igihembo cy'aba Avoka batatu baburanye uru rubanza na 700.000 Frw y'ikurikiranarubanza kuva uru rubanza rubayeho, bakanasubizwa amafaranga bategetswe n'inkiko zabanje guha Umumaranyota Agnès.

[49] Me Nsengiyumva Viateur avuga ko Umumaranyota Agnès ari we wakomeje gusiragizwa mu nkiko kuva 2014 ku bw'amaherere, akaba abisabira indishyi zingana na 5.000.000 Frw hiyongereyeho

[50] Mu nama ntegururubanza, Me Ngezahayo Bernard waburanigara Twagirayezu Albert, yavuze ko abarega bakwiye kumuha 3.000.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza kubera kumushora mu manza z'amaherere.

[51] Me Nshuti Salim avuga ko Umumaranyota Agnès nta ndishyi akwiye kuko nawe azi ko umutungo waguzwe n'umugabo we mu buriganya bitewe n'uko atagize amakenga yo gushaka amakuru ahagije ku mutungo uburanwa mbere yo kugura ndetse ntaturire imbere ya Noteri w'ubutaka, bityo akaba agomba kwirengera ingaruka z'amakosa ye. Ku bijyanye n'indishyi zisabwa

⁹ Reba urubanza RS/INJUST/RC 00008/2019/SC rwaciye n'Urukiko rw'Ikirenga ku wa 12/11/2021, ibika bya 82-84.

na Twagirayezu Albert, Me Nshuti Salim na Me Kazeneza Theophile, bavugiye mu nama ntegururubanza ko

UKO URUKIKO RUBIBONA

[52] Ingingo ya 111 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyi ikirego cy'iremezo cyaba kitakiriwe.

[53] Urukiko rurasanga amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza Twagirayezu Alice na bagenzi be basaba bagomba kuyahabwa kuko byabaye ngombwa gukurikirana urubanza no gushaka ababunganira. icyakora kubera ko 5.000.000 Frw y'igihembo cya Avoka na 700.000 Frw y'ikurikiranarubanza basaba batagaragaza uburyo ariyo yagiye kuri uru rubanza, mu bushishozi bw'Urukiko bakaba bagenewe 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw, agatangwa na Twagirayezu Albert.

[54] Urukiko rurasanga na none nk'uko byaragajwe haruguru, nyakwigendera Niyongira Jean Claude wari umugabo wa Umumaranyota Agnès yaguze ubutaka buburanwa nta buryarya, kuba Twagirayezu Albert yaramugurishije uwo mutungo azi neza ko awusangiye n'abavandimwe be, byatumye Umumaranyota Agnès, asiragira mu nkiko ashaka kumvikanisha uburenganzira ashaka n'abavoka bamuburanira kandi babihemberwa, bityo amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza asaba akaba agomba kuyahabwa. icyakora ntagaragaza uburyo 5.000.000 Frw y'ikurikiranarubanza cyangwa 1.000.000 Frw y'igihembo cya Avoka ariyo yagiye kuri uru rubanza. Mu bushishozi bw'Urukiko, akaba ahenewe 500.000 Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw, agomba gutangwa na Twagirayezu Albert.

[55] Urukiko rurasanga kandi uburiganya bwakozwe na Twagirayezu Albert aribwo bwatumye bashiki be bagana inkiko kugira ngo barengere uburenganzira bwabo, bityo mu gihe bigaragaye ko ikirego cyabo cyari gifite ishingiro kuva mu ntangiriro, Twagirayezu Albert akaba ariwe ukwiye kubasubiza indishyi batagetswe n'inkiko guha Umumaranyota Agnès zingana na 1.500.000 Frw mu Rukiko Rwisumbuye rwa Gasabo, 350.000 Frw mu Rukiko Rukuru na 500.000 Frw mu Rukiko rw'Ubujurire, yose hamwe akaba 2.350.000 Frw.

III. ICYEMEZO CY'URUKIKO

[56] Rwemeje ko ikirego cy'ubujurire cyari cyaratanzwe na Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine mu Rukiko rw'Ubujurire gifite ishingiro kuri bimwe.

[57] Rwemeje ko RCA 00291/2018/HC/KIG rwaciye n'Urukiko Rukuru, Urugereko rwa Kigali ku wa 31/01/2012 ruhindutse ku birebana n'ingano y'ubutaka Umumaranyota Agnès agomba kugumana ku kibanza nimeru UPI 1/02/10/03/4370.

[58] Rwemeje ko icyangombwa cy'umutungo w'ikibanza UPI 1/02/10/03/4370 gihereye mu Mujyi wa Kigali, Akarere ka Gasabo, Umurenge wa Kinyinya, Akagali ka Kagugu, Umudugudu wa Rukingu giteshejwe agaciro, kimwe cya gatanu (1/5) kikaba kigomba kwandikwa kuri

Umumaranyota Agnès naho bine bya gatanu byacyo bikandikwa kuri Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine;

[59] Rutegetse Twagirayezu Albert guha Umumaranyota Agnès agaciro ka bine bya gatanu (4/5) by'ikibanza nimeru UPI 1/02/10/03/4370 gahwanye na 61.693.833 Frw.

[60] Rutegetse Twagirayezu Albert gushyirahamwe Twagirayezu Alice, Twagirayezu Alphonsine, Twagirayezu Monique na Twagirayezu Albertine, bese hamwe, 2.350.000 Frw y'indishyi baciwe n'inkiko zabanje na 800.000 Frw y'igihembo cya Avoka n'ay'ikurikiranarubanza kuri uru rwego, yose hamwe akaba angana na 3.150.000 Frw.

[61] Rutegetse Twagirayezu Albert guha Umumaranyota Agnès 800.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza kuri uru rwego.

[62] Rutegetse Twagirayezu Albert kwishyura ihazabu mbonezamubano yo gutinza urubanza ingana na 200.000 Frw yaciwe mu iburanisha ryabaye ku wa 14/09/2021.