

## UZAMUSHAKA v TESIRE N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RS/ INJUST/ RC 00001/2020/SC (Cyanzayire, P.J., Hitiyaremye na Nyirinkwaya J.) 30 Nzeri 2021]

*Amategeko agenga imiburanishirize y'imanza zasabiwe gusubirishamo urubanza ku mpamvu z'akarengane – Umuburanyi utarasabye ko urubanza rusubirishwamo ku mpamvu z'akarengane – Umuburanyi utarasabye ko urubanza rusubirishwamo ku mpamvu z'akarengane, akurikije uburyo n'inzira biteganywan'itegeko, ntashobora kuririra ku kirego cyatanzwe n'uwasubirishijemo urubanza ngo na we asabe ko rwasuzuma ibyo yumva yarenganyijwemo.*

*Amategeko agenga imanza z'imbonezamubano – Umuryango – Kuba abo mu muryango w'umugabo bahakana ko nyirakanaka atigeze abana n'umuhungu wabo nk'umugabo n'umugore, bitahabwa agaciro mu gihe hari ubuhamya n'inyandiko bihurijwe hamwe bigaragaza nta gushyidikanya ko babanye.*

*Amategeko agenga imanza z'imbonezamubano – Umuryango – Kubana nk'umugabo n'umugore – Kuba ababanaga nk'umugabo n'umugore batarasezeranye, igihe batagikomeje kubana, umutungo bagabana ari uwo bashakanye, bagahuriza hamwe imbaraga zabo mu mugambi wo kuzamura umutungo wabo.*

*Amategeko agenga imanza z'imbonezamubano – Umuryango – Kubana nk'umugabo n'umugore – Kuba umugore cyangwa umugabo uvuga ko umutungo uyu n'uyu awufiteho uruhare kuko yari awusangiye na nyakwigendera, agomba kugaragaza ibimenyetso by'uko uwo mutungo bari bawufitanye cyangwa bawuhahanye.*

**Incamake y'ikibazo:** Uru rubanza rwatangiyeye Tesire arega Uzamushaka mu Rukiko Rwisumbuye rwa Nyarugenge, asaba guhabwa kimwe cya kabiri cy'umutungo wasizwe na Gatete kuko babanaga nk'umugore n'umugabo nubwo batashyiringiranywe mu buryo bwemewe n'amategeko. Yasobanuye ko mu gihe babanaga bubatse amazu 2 imwe iherereye muri Kicukiro, indi iherereye muri Rwamagana, ariko aho Gatete apfiriye, Uzamushaka ashaka kwigarurira iyo mitungo ya musaza we. Uzamushaka yireguye avuga ko musaza we Gatete yapfuye akiri ingaragu, ko yari yarasabye Tesire aranamukwa, ariko ko yapfuye batarasezerana, kandi ko batigeze babana nk'umugore n'umugabo, ko rero ariwe ufitte uburenganzira bwo kuzungura musaza we. Mukarusanganwa yagobotse muri urwo rubanza asaba ko yishyurwa umwenda Gatete amufitiye naho Kyangira yagobotse muri urwo rubanza asaba ko ahabwa inzu ya Kicukiro yaguze na Uzamukosha kuko ngo n'iherekanya ry'uburenganzira ku mutungo ryamaze gukorwa. Urukiko rwaciye urubanza rwemeje ko inzu ya Kicukiro nta burenganzira Tesire ayifiteho kuko yubatswe mbere y'igihe avuga ko yatangiye kubana na Gatete, ahubwo ikegukanwa na Kyangira kuko yayiguze na Uzamushaka mu buryo bukurikije amategeko. Ku bijyanye n'inzu iri muri Rwamagana, Urukiko rwemeje ko Gatete yayihahanye na Tesire, ikaba igomba kugurishwa, ½ cy'ikiguzi cyayo kigahabwa Tesire. Naho ku bijyanye n'umwenda wa Mukarusanganwa, Urukiko rwemeje ko Uzamushaka agomba kwishyura kubera ko Gatete yawufashe mu mwaka atarabana na Tesire.

Uzamushaka na Tesire bajuririye icyo cyemezo Urukiko Rukuru, narwo rwemeje ko nta gihindutse ku mikirize y'urubanza rwajuririye ariko ku birebana n'amafaranga yishyuzwa na Mukarusanganwa, rwemeje ko Tesire agomba gufatanywa na Uzamushaka kwishyura. Ku birebana no kuba Tesire yagenerwa amafaranga y'ubukode yakiriye na Uzamushaka kuko inzu y'i Rwamagana ayimaranye imyaka irenga irindwi, ariwe wakira ubukode bwayo, Urukiko rwemeje ko ntayo agomba guhabwa kuko Uzamushaka ayitunze nta buryarya.

Tesire na Uzamushaka bajuririye urwo rubanza Urukiko rw'Ikirenga, nyuma y'ivugururwa ry'Urwego rw'Ubucamanza, ubujurire bwabo bwoherezwa mu Rukiko rw'Ubujurire. Urwo rukiko rwemeje ko nta gihindutse ku byari byemejwe n'Urukiko Rukuru, usibye kwemeza ko Tesire na Uzamushaka bagomba kwishyura Mukarusanganwa mbere y'uko bagabana inzu y'i Rwamagana Gatete yasize.

Nyuma y'urwo rubanza, Uzamushaka Consolée yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ikirenga yemeje ko rwandikwa mu bitabo byabugenewe kugira ngo ruzongere ruburanishwe, Tesire yavuze yatanze ikirego kiregera kwiregura ariko Urukiko ntirwacyakira kuko ariwo murongo wafashwe mu zindi manza, hanyuma ku

rubanza mu mizi rwemeza ko ikirego cya Uzamushaka gisaba gusubirishamo ku mpamvu z'akarengane urubanza rwaciwe n'Urukiko rw'Ubujurire gifite ishingiye kuri bimwe.

**Incamake y'Icyemezo:** 1. Umuburanyi utarasabye ko urubanza rusubirishwamo ku mpamvu z'akarengane, akurikije uburyo n'inzira biteganywan'itegeko, ntashobora kuririra ku kirego cyatanzwe n'uwashubirishijemo urubanza ngo na we asabe ko rwasuzuma ibyo yumva yarenganyijwemo.

2. Kuba abo mu muryango w'umugabo bahakana ko nyirakanaka atigeze abana n'umuhungu wabo nk'umugabo n'umugore, bitahabwa agaciro mu gihe hari ubuhamya n'inyandiko bihurijwe hamwe bigaragaza nta gushyidikanya ko babanye.

3. Kuba ababanaga nk'umugabo n'umugore batarasezeranye, igihe batagikomeje kubana, umutungo bagabana ari uwo bashakanye, bagahuriza hamwe imbaraga zabo mu mugambi wo kuzamura umutungo wabo.

4. Kuba umugore cyangwa umugabo uvuga ko umutungo uyu n'uyu awufiteho uruhare kuko yari awusangiye na nyakwigendera, agomba kugaragaza ibimenyetso by'uko uwo mutungo bari bawufitanye cyangwa bawuhahanye.

**Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiye kuri bimwe.**

**Amategeko yashingiweho:**

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

Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, Ingingo ya 39

Itegeko N° 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyiranywe, impano n'izungura, Ingingo ya 88.

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 58

**Imanza zifashishijwe:**

Urubanza RS/INJUST/RC 00024/2018/SC, haburana Ngizweninshuti Albert na Muhima Giovanni; rwaciwe ku wa 21/02/2020

Urubanza RS/INJUST/RC 00007/2018/SC, haburana Nditiribambe Samuel, Gatera Jason na Nyamwasa; rwaciwe ku wa 13/03/2020

Urubanza RS/INJUST/RCOM 00005/2018/SC, haburana Prime Insurance Ltd na Kansiime James; rwaciwe ku wa 12/06/2020

Urubanza RS/INJUST/RSOC 00001/2018/SC, haburana Banki y'Abaturage y'u Rwanda na Ukwibishaka Alexis. rwaciwe ku wa 25/09/2020

Urubanza RS/Inconst/Pén.0003/10/CS haburana Gatera Johnson na Kabarisa Teddy rwaciwe ku wa 07/01/2011

## **Urubanza**

### **I. IMITERERE Y'URUBANZA**

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Tesire Génèreuse arega Uzamushaka Consolée, asaba guhabwa kimwe cya kabiri (½) cy'umutungo wasizwe na Gatete Côme ugizwe n'amazu abiri avuga ko bahahanye babana nk'umugore n'umugabo batarashyiranywe, guhera ku wa 21/01/2007 kugeza umugabo we apfuye ku wa 20/01/2011.

[2] Yasobanuraga ko mu gihe babanaga bubatse inzu ya cadastré, ifite agaciro ka 46.534.606Frw, iherereye mu Karere ka Rwamagana, Umurenge wa Kigabiro, bakora na finissage y'indi nzu babagamo agituyemo kugeza ubu, iherereye mu Karere ka Kicukiro, Umurenge wa Nyarugunga, Akagari ka Rwimbogo, Umudugudu wa Nyandungu, ifite agaciro ka 12.533.002Frw, ko nyuma y'urupfu rwa Gatete Côme, Uzamushaka Consolée yiyandikishije ku byangombwa by'ubutaka by'iyi nzu babagamo, ndetse

atangira kurega mu nzego z'ibanze asaba ko yamuvira mu mitungo, anavuga ko inzu y'i Rwamagana yayihawe nk'inkurarwobo.

[3] Uzamushaka Consolée yireguye avuga ko musaza we Gatete Côme yapfuye akiri ingaragu, ko yari yarasabye Tesire Génèreuse aranamukwa, ariko ko yapfuye batarasezerana, kandi ko batigeze babana nk'umugore n'umugabo, ko rero ariwe ufite uburenganzira bwo kuzungura musaza we ndetse ko izungura ryarangiyeye nyuma y'iminsi mike Gatete Côme apfuye.

[4] Mukarusanganwa Verediane yagobotse mu rubanza asaba kwishyurwa amafaranga yatsindiye Gatete Côme mu rubanza RCA0156/07/HC/KIG rwaciye ku wa 31/03/2010 ku rwego rwa nyuma, akaba yarapfuye atarayamwishyura, mushiki we wamuzunguye ariwe Uzamushaka Consolée akaba yaravuze ko nta muvandimwe we witwa Gatete Côme azi igihe Umuhesha w'inkiko yamushyikirizaga commandement à payer.

[5] Kanyangira Ignace nawe yagobotse mu rubanza, avuga ko inzu iherereye mu Mudugudu wa Nyandungu, Akagari ka Rwimbogo, Umurenge wa Nyarugunga, Akarere ka Kicukiro yayiguzye na Uzamushaka Consolée, ndetse ko bakoze ihererekanyamutungo, icyangombwa cy'ubutaka kikamwandikwaho, asaba ko Tesire Génèreuse wabaga muri icyo nzu yategekwa kuyivamo, kandi akamwishyura 1.000.000Frw y'indishyi zo kumushora mu manza, akamwishyura na 150.000Frw buri kwezi guhera igihe yaherewe integuza.

[6] Ku wa 27/04/2017, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza RC00328/2016/TGI/NYGE. Ku birebana n'inzu iri. Nyandungu/Rwimbogo/Nyarugunga/Kicukiro mu kibanza gifite UPI 1/03/10/03/524, rwemeje ko nta burenganzira Tesire Génèreuse ayifiteho kuko yubatswe mbere y'igihe avuga ko yatangiye kubana na Gatete Côme mu mwaka wa 2007. Iki cyemezo rwagifashe rushingiye ku igenagaciro ryakorewe icyo nzu rigaragaza ko yubatswe mu mwaka wa 1998, naho annexes zayo zikubakwa mu mwaka wa 2004. Rwategetse Tesire Génèreuse kuyivamo, ikagumana Kanyangira Ignace kuko yayiguzye na Uzamushaka Consolée mu buryo bukurikije amategeko.

[7] Ku bijyanye n'inzu iri mu kibanza n° 678/Kigabiro, Rwamagana, Urukiko rwemeje ko Gatete Côme yayihahanye na Tesire Génèreuse, ikaba igomba kugurishwa, ½ cy'ikiguzi cyayo kigahabwa Tesire Génèreuse. Iki cyemezo Urukiko rwagifashe rushingiye ku nyandiko yo ku wa 15/04/2017 yanditswe n'Ubuyobozi bw'Umudugudu wa Nyandungu igaragaza ko Tesire Génèreuse yabanye na Gatete Côme guhera ku wa 21/01/2007 kugeza uyu apfuye, ko ari nawe wamurwaje, ndetse n'impapuro zibitsa muri Banki ya Kigali zerekana amafaranga Tesire Génèreuse yashyize kuri konte n° 0072599-10 ya Gatete Côme, nka versement yo ku wa 24/05/2007 iriho 2.525.000Frw, icyo ku wa 04/06/2007 iriho 3.900.000Frw n'icyo ku wa 07/06/2007 iriho 5.280.000Frw. Rwashingiye kandi ku ngingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2009 rikumira kandi rihana ihohoterwa iryo ariryo ryose rishingiye ku gitsina no ku isesengurwa ry'icyo ngingo ryakozwe n'Urukiko rw'Ikirenga mu manza zinyuranye.

[8] Ku bijyanye n'umwenda wa Mukarusanganwa Verediane, Urukiko rwemeje ko Uzamushaka Consolée agomba kuwishyura kubera ko Gatete Côme yawufashe mu mwaka wa 2006 atarabana na Tesire Génèreuse, Uzamushaka Consolée akaba yemera ko ariwe muzungura wenyine wa Gatete Côme, rumutegeka kwishyura 12.533.002Frw.

[9] Uzamushaka Consolée na Tesire Génèreuse bajuririye Urukiko Rukuru, ruca urubanza RCA00167/2017/HC/KIG - RCA00173/2017/HC/KIG ku wa 12/01/2018. Urwo rukiko ntacyo rwahinduye ku mikirize y'urubanza rwa mbere no kw'isesengura ryakozwe n'urwo rukiko ku birebana n'uruhare Uzamushaka Consolée na Tesire Génèreuse bafite ku mitungo iburanwa yasizwe na Gatete Côme, ariko ku birebana n'amafaranga yishyuzwa na Mukarusanganwa Verediane, rwemeje ko Tesire Génèreuse agomba gufatanya na Uzamushaka Consolée kuwishyura. Rwasobanuye ko n'ubwo umwenda wafashwe Tesire Génèreuse atarabana na Gatete Côme, urubanza kuri uwo mwenda rwaburanywe babana ku buryo yari azi ibyawo, kandi ko icyo uza kwishyurwa wari kuva mu mitungo yanditsweho ko ari icyo Gatete Côme.

[10] Ku birebana no kuba Tesire Génèreuse yagenerwa amafaranga y'ubukode yakiriwe na Uzamushaka Consolée kuko inzu y'i Rwamagana ayimaranye imyaka irenga irindwi, ari nawe wakira ubukode bwayo, Urukiko rwemeje ko ntayo agomba guhabwa kuko Uzamushaka Consolée yari ayitunze nta buryarya nyuma yo kuyihabwa nk'inkurarwobo.

[11] Tesire Génèreuse na Uzamushaka Consolée bajuririyeye Urukiko rw'Ikirenga, nyuma y'ivugururwa ry'Urwego rw'Ubucamanza, ubujurire bwabo bwoherezwa mu Rukiko rw'Ubujurire.

[12] Urwo rukiko rwaciye urubanza RCAA00033/2018/CA ku wa 25/10/2019. Ntirwagira icyo ruhindura ku byari byemejwe n'Urukiko Rukuru, usibye kwemeza ko Tesire Génèreuse na Uzamushaka Consolée bagomba kwishyura Mukarusanganwa Verediane mbere y'uko bagabana inzu y'i Rwamagana Gatete Côme yasize.

[13] Nyuma y'aho urwo rubanza ruciriwe, Uzamushaka Consolée yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko rusubirwamo ku mpamvu z'akarengane. Nyuma yo gusuzuma ikibazo yagejewe, Perezida w'Urukiko rw'Ikirenga yemeje ko rwandikwa mu bitabo byabugenewe kugira ngo ruzongere ruburanishwe.

[14] Ababuranyi, mu myanzuro yabo no mu nama ntegururubanza basabye Urukiko gufata umwanzuro ku bibazo bikurikira :

- Ibibazo bijyanye n'ikirego cya Uzamushaka Consolée :
  - Kumenya niba Tesire Génèreuse nta ruhare akwiye kugira ku nzu Gatete Côme yasize iherereye i Rwamagana ;
  - Kumenya niba ataragombaga gutegekwa kwishyura Mukarusanganwa Verediane.
- Ibibazo bijyanye n'ikirego kiregera kwiregura cya Tesire Génèreuse :
  - Kumenya niba amasezerano y'ubugure bw'inzu y'i Nyandungu yakozwe hagati ya Uzamushaka Consolée na Kyangira Ignace agomba guteshwa agaciro ;
  - Kumenya niba Uzamushaka Consolée agomba gutegekwa kwishyura amafaranga akomoka ku musaruro w'inzu y'i Rwamagana ;
  - Kumenya niba atagomba gufatanywa na Uzamushaka Consolée kwishyura umwenda wa Mukarusanganwa Verediane.
- Indishyi zisabwa.

[15] Urubanza rwaburanishijwe mu ruhamwe ku wa 01/03/2021, Uzamushaka Consolée ahagarariwe na Me Twizeyimana Innocent, Tesire Génèreuse ahagarariwe na Me Bayisabe Irénée, Kyangira Ignace ahagarariwe na Me Kazenze Théophile, naho Mukarusanganwa Verediane ahagarariwe na Me Rugabage Albert.

[16] Urukiko rwabanje kwibutsa ababuranyi ibibazo basabye ko bisuzumwa. Ku byerekeye ibibazo byabyukijwe na Tesire Génèreuse mu kirego kiregera kwiregura, rwabifatanyeho umwanzuro mu ntebe, rwemeza ko bitagomba kwakirwa ngo bisuzumwe kuko Tesire Génèreuse atigeze atanga ikirego cy'akarengane kigaragaza ko hari icyo urubanza rusabirwa gusubirishwamo rwamurenganyijeho biciye mu nzira ziteganywa n'amategeko. Urukiko rwibukije ababuranyi ko uwo ari nawo murongo rwafashe mu manza zinyuranye<sup>1</sup> aho rwasobanuye ko umuburanyi wumva yararenganyijwe mu rubanza yaciriwe ku rwego rwa nyuma ashobora gutanga ikirego gisaba ko rusubirwamo ku mpamvu z'akarengane iyo yujuje ibisabwa n'ingingo ya 55 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha

<sup>1</sup> Urubanza RS/INJUST/RC00024/2018/SC rwaciye ku wa 21/02/2020, haburana Ngizweninshuti Albert na Muhima Giovanni ;

Urubanza RS/INJUST/RC 00007/2018/SC rwaciye ku wa 13/03/2020, haburana Nditiribambe Samuel, Gatera Jason na Nyamwasa ; urubanza RS/INJUST/RCOM 00005/2018/SC rwaciye ku wa 12/06/2020, haburana Prime Insurance Ltd na Kansiime James;

Urubanza RS/INJUST/RSOC 00001/2018/SC rwaciye ku wa 25/09/2020, haburana Banki y'Abaturage y'u Rwanda na Ukwibishaka Alexis.

bw'inkiko, yubahiriza inzira ziteganywa mu gutanga icyo kirego, zirimo kubanza kwandikira Perezida w'urukiko rwisumbuye ku rwacyiye urwo rubanza nk'uko biteganywa n'iryo tegeko, cyane cyane mu ngingo yaryo ya 58<sup>2</sup> n'izikurikira

[17] Nyuma yo gufatata icyo cyemezo, Urukiko rwakomeje iburanisha ku bibazo byazanywe mu karengane na Tesire Génèreuse no ku ndishyi zasabwe, urubanza rurapfundikirwa, ababuranyi bamenyeshwa ko urubanza ruzasomwa ku wa 26/03/2021, ariko ubwo inteko yari yiherereye irusuzuma yasanze hari ibyo ikeneye gusobanukirwaho kurushaho, itegeka ko iburanisha ryarwo rizongera gupfundurwa, ndetse ko ku muni w'iburanisha Uzamushaka Consolée na Tesire Génèreuse bazaba bahari ubwabo kugira ngo bibaye ngombwa bazagire ibyo basobanura.

[18] Urubanza rwongeye kuburanishwa ku wa 07/09/2021, ababuranyi bose bahagarariwe nka mbere, Uzamushaka Consolée na Tesire Génèreuse bahari nk'uko Urukiko rwari rwabitegetse.

## **I. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO**

### **KUMENYA NIBA TESIRE GÉNÉREUSE NTA RUHARE AKWIYE KUGIRA KU NZU GATETE CÔME YASIZE IHEREREYE MU KARERE KA RWAMAGANA**

[19] Me Twizeyimana Innocent uhagarariye Uzamushaka Consolée avuga ko nta ruhare Tesire Génèreuse akwiye kugira ku nzu Gatete Côme yasize iherereye i Rwamagana kuko batigeze babana nk'umugabo n'umugore, usibye ko habayeho umuhango wo gusaba no gukwa, nyuma y'aho Gatete Côme akarwara, akajya kwivuriza muri Kenya aherekejwe na mushiki we, akarinda apfa batabanye, ari nayo mpamvu mu muhango wo kuva ku rupfu rwe, umuryango utigeze uvuga Tesire Génèreuse mu bagomba kuzungura imitungo yasize.

[20] Avuga kandi ko ibyo Tesire Génèreuse yagiye aburanisha ko amafaranga yashyiraga kuri konti y'ubucuruzi ya Gatete Côme yayavanaga mu bucuruzi bwe bwite kuko yari umucuruzi w'imyaka, acuruzaga ibishyimbo muri za gereza n'ibigo by'amashuri, bidakwiye guhabwa agaciro kuko nta bimenyetso abitangira.

[21] Akomeza avuga ko Tesire Génèreuse yari umukozi wa Gatete Côme kimwe na Uzamushaka Consolée, bityo ko amafaranga yashyiraga kuri konte ye yari ayo yabaga yamucururije, ko nubwo nta masezerano y'akazi Gatete Côme yagiranaga n'abakozi be, akaba atarabishyuriraga umusoro cyangwa amafaranga y'ubwishingizi, ariko ko Urukiko rusabye historique ya konte ye y'ubucuruzi n° 0072599-10 muri Banki ya Kigali rwabona ko hari n'abandi bayishyiragaho amafaranga babaga bamucururije.

[22] Avuga kandi ko Gatete Côme yari atunze inzu iburanwa mbere y'igihe Tesire Génèreuse avuga batangiriye kubana, ibi bikaba bigaragazwa na avis d'octroi de parcelle yo ku wa 11/08/2004, Contrat de location n° 78/RWA/2004 yo ku wa 11/08/2004 ; Autorisation de bâtir N° 50/RWA /2004 yo ku wa 13/09/2004, Fiche cadastrale yo ku wa 20/02/2006 na Procès verbal de mesurage et de bornage nayo yo ku wa 20/02/2006. Yongeraho ko Urukiko rusanze ari ngombwa, rwabaza uwitwa Kabogo wubatse inzu, ndetse n'uwitwa Niwemutoni wari ushinze abafundi.

[23] Me Bayisabe Irenée uhagarariye Tesire Génèreuse avuga ko batanze ibimenyetso binyuranye bigaragaza ko Gatete Côme na Tesire Génèreuse babanye batarasezeranye kuva mu kwezi kwa mbere 2007 kugeza Gatete Côme apfuye muri 2011, babana mu nzu y'i Nyandungu, ibyo bimenyetso bikaba birimo ubuhamya bw'abagiye gusaba Tesire Génèreuse bemeje ko bamusabye abana na Gatete Côme kandi ko na nyuma bakomeje kubana bategereje kuzasezerana, inyandiko z'inzeho z'ibanze, ubuhamya

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<sup>2</sup> Ingingo ya 58 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko iyo umuburanyi abonye hari akarengane kagaragara mu rubanza rwe, yandikira Perezida w'urukiko rukuriye urubanza ku rwego rwa nyuma, akaba ariwe usuzuma ako karengane.

Iyo urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ari urubanza rwacyiye n'Urukiko rw'Ubujurire, ubusabe bushyikirizwa Perezida w'Urukiko rw'Ikirenga. icyemezo afashe ku isuzuma ry'akarengane kiba ari ndakuka, nta rundi rwego rugisuzuma.

bw'abo bari baturanye bemeje ko baje kubasura bapfushije umwana kandi ko ari nawe warwaje Gatete Côme muri Kenya.

[24] Avuga kandi ko na nyuma y'urupfu rwa Gatete Côme, Tesire Généraleuse yakomeje kuba mu nzu y'i Nyandungu, ku buryo bayigurishije ayibamo, kuba yarakomeje kuyibamo nabyo bikaba bigaragaza ko babanye nk'umugabo n'umugore nubwo batari barasezeranye kuko Uzamushaka Consolée atagaragaza ko yaba yarayigezemo ku gahato.

[25] Avuga ko hari n'ikindi kimenyetso babonye vuba, baraye bashyize muri system, cya caution solidaire Tesire Généraleuse yasinyeho ku wa 28/10/2008, yishingira umwenda Gatete Côme yafashe muri Cogebanque mu rwego rw'ubucuruzi bwe, yanditseho ngo "marié à Tesire Généraleuse", kigaragaza ko uyu ubwe akiriho yemeraga ko ari umugore we.

[26] Ku birebana n'uruhare rwa Tesire Généraleuse ku nzu y'i Rwamagana, Me Bayisabe Irenée avuga ko uyu adahakana ko ikibanza cyabonetse mbere y'uko babana ariko ko inzu bayizamuye, banayikorera finissage bari hamwe, ko nabyo babitangiye ibimenyetso binyuranye, birimo bordereaux z'amafaranga yavanaga mu bucuruzi bwe agashyirwa kuri konti ya Gatete Côme kuko niyo yakorwagaho transfert, imvugo z'abatangabuhamya bemeje ko ariwe wajyaga kwishyura abafundi i Rwamagana, ndetse ko babanye ikibanza kitubatse ariko ko imirimo yose yo kubaka na finissage yabayeye babana.

[27] Ku birebana n'inkomoko y'amafaranga Tesire Généraleuse yashyiraga kuri konte ya Gatete Côme, avuga ko ari ayo yavanaga mu bucuruzi bwe kuko yari umucuruzi w'imyaka, acuruzaga ibishyimbo muri za gereza n'ibigo by'amashuri, ko ibyo uhagarariye Uzamushaka Consolée avuga ko yari umukozi wa Gatete Côme bidakwiye guhabwa agaciro kuko atabigaragariza ikimenyetso na kimwe, nk'amasezerano y'akazi, aho yahemberwaga, umusoro (TPR) n'ubwishingiwi (Caisse Sociale) yatangirwaga, ndetse ko atari kuba ari umukozi we ngo mu gihe cyo kuva ku rupfu rwe umukuru w'umuryango amwandikire amusaba kuzaza yitwaje ibyangombwa bye n'iby'amazu ye kuko bene izo nyandiko zitabikwa n'umukozi.

[28] Yabajijwe niba umwenda Tesire Généraleuse yishingiye ufite aho uhurira n'inzu y'i Rwamagana, avuga ko yari ligne de credit ariko ko bayifashe igihe bubakaga inzu y'i Rwamagana.

[29] Asoza avuga ko ubwishingire Tesire Généraleuse yatanze muri banki, bwamugizeho ingaruka kuko imitungo yishakiye nyuma y'urupfu rwa Gatete Côme yagurishijwe muri ino minsi ya vuba kugira ngo hishyurwe umwenda yapfuye atarishyura bitewe n'uko Uzamushaka Consolée yari yaramaze kwiyandikishaho imitungo yose yasize, nta mutungo ukigaragara mu mazina ye, ibi nabyo bikaba bigaragaza akarengane yakorewe n'umuryango yari yarashatsemo.

[30] Ubwo bitabaga Urukiko, Uzamushaka Consolée na Tesire Généraleuse bagize ibyo basobanura ku kibazo cyagibwagaho impaka. Uzamushaka Consolée yatanze ibisobanuro bikurikira :

- Tesire Généraleuse yari umukozi wa Gatete Côme, kuko ari nawe ubwe (Uzamushaka Consolée) wari warakamuhaye akirangiza amashuri yisumbuye kubera ko bari inshuti ;
- Gatete Côme yari afite undi mugore baratandukana, amuhuza na Tesire Généraleuse, baba inshuti ariko ntibabanye nk'umugabo n'umugore ;
- Iby'uko Gatete Côme yaba yarasabye akanakwa Tesire Généraleuse, yarabyumvise ariko ntabizi kuko atari ahari ;
- Niwe warwaje Gatete Côme muri Kenya, usibye ko Tesire Généraleuse yigeze kujyayo ajyanywe no kumusahura amafaranga ;
- Nyuma y'urupfu rwa Gatete Côme, Tesire Généraleuse yari afite ibyangombwa by'ubutaka bye kuko yari yarabimwibye afatanyije na musaza we n'umukozi. Yari afite n'impapuro ze, zirimo izo kwa muganga, kuko nyuma y'uko bavuye muri Kenya bagarutse mu nzu ya Gatete Côme i Nyandungu, Tesire Généraleuse n'abo mu muryango we baramukubita, bamutesha agaciro, bituma agenda impapuro zose azisize aho, Gatete Côme apfa nyuma y'ibyumweru 2, Tesire Généraleuse ariwe uri mu nzu ;

▪ Icyo yasinyiye cyonyine mu nyandiko yo kuva ku rupfu rwa Gatete Côme, ni uko ahawe uburenganzira ku mitungo yasizwe na musaza we, ntabwo yasinyiye ibyanditswemo ko Gatete Côme yabanye na Tesire Génèreuse nk'umugabo n'umugore batarasezeranye.

[31] Tesire Génèreuse nawe ku ruhande rwe yasobanuye ko :

- Yabaye umukozi wa Gatete Côme ashinzwe stock, ko ako kazi yari yaragahawe na Uzamushaka Consolée akimara kurangiza amashuri yisumbuye ;
- Yabanye na Gatete Côme guhera ku wa 21/01/2007, bafatanyije ubucuruzi bw'imyaka Nyabugogo na konte muri Cogebanque no muri I&M Bank ;
- Ariwe warwaje Gatete Côme muri Kenya, Uzamushaka Consolée akaba yarajeyo aje kubasura gusa ;
- Gatete Côme yaguze ikibanza kiburanwa babana, bahita batangira kubaka mu kwezi kwa 10/2007 ;
- Amafaranga yashyiraga kuri konte ya Gatete Côme, yakomokaga ku bucuruzi bakoranaga. Gatete Côme yajyaga kubakisha, nawe agasigara acuruza ;
- Nta mwenda bafashe bubaka, ahubwo Gatete Côme yawufashe nyuma kugira ngo arangize ibitari byararangiyeye.

[32] Yabajijwe uko ahuza ibyo avuga ko batangiye kubaka mu kwezi kwa 10/2007 n'ibikubiye mu igenagaciro ryo ku wa 18/04/2007 yitangiye we ubwe ku rwego rwa mbere, rigaragaza ko kuri iyo tariki ryakoreweho inzu yari yaramaze kubakwa, ifite agaciro ka 46.534.606Frw, asubiza ko ashobora kuba atibuka amatariki neza.

[33] Ku birebana n'inyandiko zatanzwe n'uruhande baburana, zirimo avis d'octroi de parcelle, contrat de location, autorisation de bâtir; fiche cadastrale, procès verbal de mesurage et de bornage, yavuze ko zishobora kuba atari iz'ikibanza kiburanwa kuko Gatete Côme yari afite n'ibindi bibanza, kuba bigaragaraho numero y'ikibanza 678, ari nayo igaragara ku igenagaciro yitangiye ubwe, yavuze ko atamenya uko byagenze ariko ko icyo azi ari uko ikibanza bakiguzye bari kumwe kandi ko inzu bayubatse mu gihe gito bamaze nk'amezi abiri babanye.

[34] Me Rugambage Albert uhagarariye Mukarusanganwa Verediane avuga ko ikibazo cy'uruhare rwa Tesire Génèreuse ku nzu y'i Rwamagana ntacyo yakivugaho kuko kitareba uwo aburanira.

[35] Me Kazenze Théophile uhagarariye Kanyangira Ignace avuga ko izungura ryarangiye, imitungo ihabwa Uzamushaka Consolée, ko Urukiko rwakurikiza amategeko ajyanye n'izungura cyangwa amategeko y'umuryango.

## **UKO URUKIKO RUBIBONA**

[36] Muri uru rubanza, Urukiko rurabanza rufate umwanzuro ku kibazo cyo kumenya niba Tesire Génèreuse yarabanye na Gatete Côme nk'umugabo n'umugore batarashyingiranywe, rwasanga barabanye akaba aribwo rusuzuma niba hari uruhare akwiye kugira ku nzu y'i Rwamagana Gatete Côme yasize.

**Ku byerekeranye no kumenya niba Tesire Génèreuse yarabanye na Gatete Côme nk'umugabo n'umugore.**

[37] Ibijyanye no kumenya niba Tesire Génèreuse yarabanye na Gatete Côme nk'umugabo n'umugore batarashyingiranywe, ni ikibazo cy'ibimenyetso gikemurwa n'amategeko agenga ibimenyetso, by'umwihariko ingingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganywa ko "buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana".

[38] Muri dosiye harimo ibimenyetso bitandukanye, birimo:

- Inyandiko Ubuyobozi bw'Umudugudu wa Nyandungu bwandikiye Umunyamabanga Nshingwabikora w'Umurenge wa Nyarugunga, bugaragaza ko abagize Inteko rusange y'umudugudu bateranye mu nama yo ku wa 26/09/2015 bemeje ko, nyuma yo kwumva Tesire Génèreuse na Uzamushaka Consolée, Gatete Côme yabanye na Tesire Génèreuse nyuma y'uko atandukanye na Munyakazi Edith mu mwaka wa 2006, ko Tesire Génèreuse yasabwe akanakobwa mu kwezi kwa munani 2007, ko banabyaranye umwana ariko bakagira ibyago agapfa, ndetse ko yarwaje umugabo we muri Kenya azezi 3;
- Inyandiko nanone Umukuru w'Umudugudu wa Nyandungu yandikiye Umunyamabanga Nshingwabikorwa w'Umurenge wa Nyarugunga ku wa 15/04/2017, avuga ko Ubuyobozi bw'umudugudu bwemeza ko Tesire Génèreuse yari umugore wa Gatete Côme, babana mu nzu iri muri uwo mudugudu ;
- Invugo z'abatangabuhama babajijwe mu Rukiko rw'Ubujurire, aribo Kabakire, Munana John, Ntagara Anicet, Karekezi, bahuriza ku kuba bazi ko Gatete Côme na Tesire Génèreuse babanye nk'umugabo n'umugore ;
- Inyandiko Rudakemwa Cassien, nyirarume wa Gatete Côme, yandikiye Tesire Génèreuse amusaba kwitabira umuhango wo kurangiza ikiriyo, anamubwira ko agomba kuza azanye ibyangombwa bya Gatete Côme birimo kopi y'irangamuntu ye, uruhushya rwo gutwara imodoka, ibyangombwa by'amazu, iby'ikibanza cya Masoro, iby'imodoka ze ndetse n'impapuro zo kwa muganga ;
- Inyandiko yo ku wa 20/03/2011 ikubiyemo ibyavugiwe n'ibyemejwe mu muhango wo kuva ku rupfu rwa Gatete Côme, yashyizweho umukono n'abavandimwe be, barimo nyirarume, nyinawabo, mushiki we Uzamushaka Consolée. Iyo nyandiko yanditsemo ko mu bagombaga kwitabira uwo muhango ariko batawitabiriye harimo Tesire Génèreuse wabanaga na nyakwigendera mu buryo butemewe n'amategeko, ndetse ko babanye imyaka 3, kuva mu mwaka wa 2008 kugera mu wa 2011.

[39] Urukiko rurasanga ubwo buhama n'izo nyandiko, iyo bihurijwe hamwe, bigaragaza nta gushyidikanya ko Gatete Côme na Tesire Génèreuse babanye nk'umugabo n'umugore, ndetse ko n'abo mu muryango wa Gatete Côme, barimo Uzamushaka Consolée, bari babizi kuko mu gutegura umuhango wo kuva ku rupfu rwa Gatete Côme batari kumutuma ibyangombwa bye niba batarabanaga, bakaba batari kubyemeza ubwo bashyiraga umukono ku nyandiko ikubiyemo ibyavugiwe n'ibyemejwe mu muhango wo kuva ku rupfu rwa Gatete Côme. Ibyo Uzamushaka Consolée avuga ko nta kindi yahamije muri iyo nyandiko usibye kuba ahawe uburenganzira ku mitungo musaza we yasize bikaba nta gaciro byahabwa kuko iyo nyandiko ikubiyemo ibice bitandukanye bigaragaza umuryango, imitungo n'amadeni Gatete Côme yasize, ubuhama bwatanze ku bana yaba yarasize n'imyanzuro yafashwe, ibyo bice byose akaba aribyo byemejwe n'abayishyizeho umukono.

### **Ibyerekeranye n'uruhare rwa Tesire Génèreuse ku nzu Gatete Côme yasize iherereye mu Karere ka Rwamagana**

[40] Ibiyanye no kumenya niba Tesire Génèreuse afite uruhare ku nzu yavuzwe, birasuzumwa harebwa imitungo ababanaga nk'umugabo n'umugore batarasezeranye bagabana igihe imibanire yabo irangiye.

[41] Mu rubanza rwa Gatera Johnson v. Kabarisa Teddy, uru rukiko rushingiye ku isesengura ry'ingingo ya 39 y'Itegeko no 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina<sup>3</sup> rwasobanuye ko igihe imibanire yabo irangiye ababanaga nk'umugabo n'umugore batarasezeranye bagabana umutungo bafitanye cyangwa bahahanye<sup>4</sup>.

[42] Mu gika cya 6 cy'urwo rubanza, Urukiko rwasobanuye ko igabana ry'umutungo rivugwa mu ngingo yavuzwe ridadekanijwe nk'uburenganzira buturuka ku masezerano yo gushyingirana, ahubwo

<sup>3</sup> Ingingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, iteganya ko « ababanaga nk'umugore n'umugabo batashyiringanywe mu buryo buteganywa n'amategeko, bashyiringirwa hakurikijwe ihame ry'ubushyiringiranwe bw'umugabo umwe n'umugore umwe. Mu gihe umwe mu barebwa n'ibivugwa mu gika kibanziriza iki, yabanaga n'abagore cyangwa abagabo benshi, abanza kugabana ku buryo bungana na buri wese mu bo babanaga, umutungo bari bafitanye cyangwa bahahanye mbere y'uko ashyingirwa.....».

<sup>4</sup> urubanza N° RS/Inconst/Pén.0003/10/CS rwaciye ku wa 07/01/2011.

ari uburenganzira ku mutungo umwe mu babanaga aba afite bushingiye ku kuba barawuhahanye cyangwa bawufitanye. Ntabwo Itegeko rivuga ko ababanaga batarashyingiranywe bagabana umutungo ku buryo bungana hatitawe ku ruhare urwo ari rwo rwose buri wese yagize kugirango uwo mutungo ubeho cyangwa wiyongere nk'uko bigenda ku bashyingiranywe bagahitamo amaserano y'ivangamutungo rusange cyangwa w'umuhahano [.]

[43] Ibi rwabigarutseho no mu gika cya 15, aho rwasobanuye ko [...] ingaruka ku mutungo w'ababanaga nk'umugabo n'umugore batarashyingiranywe mu gihe baretse kubana atari zimwe nk'iziboneka mu gihe habaye ubutane hagati y'abashyingiranywe. Iyo abashyingiranywe bahisemo amasezerano y'ivangamutungo risesuye cyangwa w'umuhahano nk'uburyo bwo gucunga umutungo wabo nk'abashyingiranywe, nyuma bagatandukana, bagabana ku buryo bungana umutungo wose. Uburenganzira ku mutungo bushingiye kuri ayo masezerano ku buryo no mu gihe cy'igabana nta kindi kimenyetso gisabwa. Nyamara mu gihe ababanaga nk'umugabo n'umugore batarashyingiranywe bahagaritse kubana, kugirango bagabane umutungo n'uko bagomba kuba bawufitanye cyangwa barawushakanye. Kugira uburenganzira ku mutungo ntibishingiye gusa ku kuba barabanye nk'umugabo n'umugore batarashyingiranywe ahubwo bigomba kuba bigaragara ko bawufitanye cyangwa ko bawushakanye.

[44] icyo urwo rubanza rwumvikanisha ni uko umutungo ababanaga nk'umugabo n'umugore batarasezeranye bagabana ari uwo bashakanye, bagahuriza hamwe imbaraga zabo mu mugambi wo kuzamura umutungo wabo, umwe muri bo akaba atakwikubira umutungo wose mu gihe imibanire yabo irangiye kandi boba baragize uruhare mu kuwugeraho.

[45] Ibyerekeye kumenya niba umutungo uburanwa muri uru rubanza ari uwo Tesire Génèreuse na Gatete Côme bashakanye nacyo ni ikibazo cy'ibimenyetso kigomba gukemurwa hakurikijwe ibiteganywa mu ngingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo yavuzwe haruguru.

[46] Ku rwego rwa mbere, Tesire Génèreuse yatanze igenagaciro ry'inzu iburanwa ryakozwe ku wa 18/04/2007 rigaragaza ko ikibanza inzu yubatsemo gifite numero 678 n'ubuso bwa 5 ares 40 ca.

[47] Urukiko rurasanga ikibanza kivugwa muri iryo genagaciro ari nacyo kivugwa mu nyandiko ya avis d'octroi de parcelle na contrat de location n° 78/Rwa/2004 byo ku wa 11/08/2004, iya autorisation de batir n° 50/RWA/2004 yo ku wa 13/04/2004, iya fiche cadastrale yakorewe mise à jour ku wa 20/02/2006 n'iya Procès verbal de mesurage et de bornage yo ku wa 20/02/2006 kuko numero y'ikibanza n'ubuso bivugwamo ari bimwe, bikaba byumvikanisha ko Gatete Côme yakibonye mbere y'uko abana na Tesire Génèreuse mu kwezi kwa mbere 2007.

[48] Ku birebana n'inzu yubatswe muri icyo kibanza (*maison principale na annexe*), Urukiko rurasanga, nubwo igenagaciro ritagaragaza igihe yubakiwe, bigaragara ko yari yaramaze kubakwa ku wa 16/04/2007 kuko ariho umuhanga warikoze yayisuye akayihaga agaciro ka 46.534.606Frw, ikaba rero idashobora kuba yarubatswe mu kwezi kwa 10/2007 nk'uko Tesire Génèreuse yabanje kubivuga ariko nyuma akaza kuvuga ko amatariki atayibuka neza.

[49] Urukiko rurasanga kandi igenagaciro rigaragaza mu gace kayo ka VI ko inzu yari ikiri nshya igihe umuhanga yayisuraga ku wa 16/04/2007 (*les maisons sont encore à l'état neuf*), ibi bikaba byumvikanisha ko Tesire Génèreuse yayigiraho uruhare gusa mu gihe yagaragaza ko yubatswe babana guhera ku wa 21/01/2007, ikaba yari yuzuye ku wa 16/04/2007, muri icyo gihe bakaba barahuriye imbaraga hamwe kugira ngo bayubake.

[50] Urukiko rurasanga impapuro zibitsa kuri konte n° 0072599-10 ya Gatete Côme muri Banki ya Kigali, zigaragaza ko Tesire Génèreuse yabikije kuri iyo konte 2.525.000 Frw ku wa 24/05/2007, 3.900.000Frw ku wa 04/06/2007 na 5.280.000Frw ku wa 07/06/2007, zitafatwa nk'ibimenyetso by'uko yahahanye iyo nzu na Gatete Côme kuko ayo mafaranga yabikijwe yaramaze kubakwa.

[51] Urukiko rurasanga kandi ibyo Me Bayisabe Irénée avuga ko hari abatangabuhamyahamye bahamijwe mu Rukiko rw'Ubujurire ko Tesire Génèreuse yajyaga guhamba abakozi bubakaga inzu, bitafatwaho

ukuri kuko ntaho bigaragara mu nyandiko mvugo z'iburanisha z'urwo rubanza, akaba atarabashije gushyira ubwo buhama muri system nk'uko yari yabisabwe mu iburanisha.

[52] Ku birebana n'ubwishingire bwa Tesire Génèreuse muri CogeBanque, inyandiko zashyizwe muri system zigaragaza ko yishingiraga umwenda w'ubucuruzi Gatete Côme yafashe ku wa 06/11/2008, ntabwo rero ibyo avuga ko wafashwe mu rwego rwo kugira ibyo barangiza ku nzu byafatwaho ukuri, cyane ko inzu yari yaramaze kuzura mu kwezi kwa kane 2007, akaba atagaragaza ko hari indi mirimo bakoze ku nzu nyuma y'uko ikorewe igenagaciro.

[53] Urukiko rurasanga kandi n'iyi inzu yaba yarubatswe mu mezi atagera kuri 3, kuva batangiye kubana ku wa 21/01/2007 kugeza ku wa 16/04/2007, byaba bivuga ko yahise itangira kubakwa mu bushobozi buri wese azanye, akaba aribwo Tesire Génèreuse yayigiraho uruhare. Nyamara nk'uko bigaragazwa n'imvugo z'abaturanyi, Gatete Côme yari asanzwe ari umucuruzi w'imyaka, afite imitungo irimo n'inzu babanyemo i Nyandungu, naho Tesire Génèreuse akaba yari umukozi we ushinze stock, akazi yakoze akirangiza amashuri yisumbuye, akaba atagaragaza ko hari imitungo bwite yagiraga yari gutuma bahuza imbaraga mu kuyubaka.

[54] Urukiko rurasanga rero nubwo Tesire Génèreuse yabanye koko na Gatete Côme guhera ku wa 21/01/2007 kugeza apfuye 20/01/2011, nta kimenyetso yashoboye gutanga kigaragaza ko bubakanye inzu y'i Rwamagana, akaba rero nta ruhare akwiye kuyigiraho.

### **Kumenya niba uzamushaka console adakwiye gutegekwa kwishyura mukarusanganwa verediane**

[55] Me Twizeyimana Innocent wunganira Uzamushaka Consolée avuga ko Urukiko rutari gushingira ku rubanza RCA0156/07/HC/KIG ngo rutegeke Uzamushaka Consolée kwishyura umwenda waburanywe muri urwo rubanza kuko uwo Mukarusanganwa Verediane yaregaga muri urwo rubanza ari Gatete Côme, mwene Kanyenganji na Nyirabambari, naho musaza wa Uzamushaka Consolée akaba ari mwene Kanyenganji na Nyiratamu, ibi akaba ari nabyo byatumye atangariza Umuhesha w'Inkiko witwa Munyakaragwe Aline waje kurangiza urwo rubanza ko ntaho ahuriye narwo.

[56] Avuga kandi ko urubanza Mukarusanganwa Verediane yaburanye na Gatete Côme rwabaye itegeko rutagombaga kuzanwa mu rubanza Uzamushaka Consolée aburana na Tesire Génèreuse, ahubwo ko rukwiye kurangizwa ukwarwo.

[57] Avuga nanone ko amafaranga 12.053.000 yishyuzwa muri urwo rubanza ntaho ahuriye n'ayategetswe mu rubanza RCAA00033/2018/CA rusubirishwamo, aho Uzamushaka Consolée na Tesire Génèreuse bategetswe kwishyura 12.533.002Frw ahuye n'agaciro k'inzu y'i Nyandungu kagaragajwe muri raporo y'igenagaciro yari yatanze mu rukiko, ibi nabyo bikaba bigaragaza akarengane Uzamushaka Consolée yakorewe gukosorwa.

[58] Me Bayisenge Irenée uhagarariye Tesire Génèreuse avuga ko umwenda Gatete Côme yatsindiwe mu rubanza yaburanye na Mukarusanganwa Vérediane ukwiye kwishyurwa na Uzamushaka Consolée wenyine.

[59] Me Rugabage Albert uhagarariye Mukarusanganwa Verediane avuga ko akarengane kavugwa nta kabayeho, ko Mukarusanganwa Verediane yagobotse muri uru rubanza Tesire Génèreuse yarezemo Uzamushaka Consolée kuko mu gihe cyo kurangiza urubanza RCA0156/07/HC/KIG yasanze Gatete Côme yarapfuye n'imitungo yasize yagombaga kuvamo ubwishyu, mushiki we Uzamushaka Consolée yaramaze kuyiyandikishaho.

[60] Akomeza avuga ko Mukarusanganwa Verediane ariwe ahubwo wagiriwe akarengane kuko Uzamushaka Consolée wazunguye Gatete Côme yagombaga kuvana mu mitungo yazunguye amafaranga yo kwishyura imyenda yasize, aho kumwihakana abwira Umuhesha w'inkiko wagiye kurangiza urubanza ku wa 14/04/2016 ko nta muvandimwe we witwa Gatete Côme agira, ko nta n'umutungo we yazunguye, none Mukarusanganwa Verediane akaba agikururukana mu nkiko kugeza ubu kubera Uzamushaka Consolée.

[61] Asoza avuga ko nta kosa Urukiko rwakoze rutegeka ko Mukarusanganwa Verediane yishyurwa 12.533.002Frw, ko amafaranga arenga kuri 12.053.000Frw agomba kwishyurwa Mukarusanganwa Verediane ari ay'umusogongero wa Leta ungana na 482.120Frw azashyirwa mu Isanduku ya Leta.

[62] Me Kazeneza Théophile wunganira Kanyangira Ignace avuga ko ntacyo bavuga kuri uwo mwenda kuko utareba Kanyangira Ignace.

## **UKO URUKIKO RUBIBONA:**

[63] Ingingo ya 88 y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 rigenga imicungire y'umutungo w'abashyiranywe, impano n'izungura iteganya ko uwemeye kuzungura azungura umutungo n'imyenda by'uwapfuye.

[64] Kuva uru rubanza rwatangira ku rwego rwa mbere, Uzamushaka Consolée yaburanye avuga ko ari we muzungura wenyine wa Gatete Côme. Muri uru rubanza, haburanywe amazu abiri Gatete Côme yasize. Uzamushaka Consolée yatsindiye inzu y'i Nyandungu yari ifite agaciro ka 12.533.002Frw guhera mu rubanza RC00328/2016/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge, kuri uru rwego naho akaba ahawe uburenganzira busesuye ku nzu y'i Rwamagana yari ifite agaciro ka 46.534.606Frw, hatabariwemo agaciro k'ikibanza, ubwo yakorerwaga igenagaciro mu kwezi kwa kane 2007.

[65] Hashingiye ku itegeko ryavuzwe no kuba Uzamushaka Consolée yarazunguye imitungo ya Gatete Côme ivugwa muri uru rubanza, Urukiko rurasanga ari nawe ugomba gutegekwa kwishyura amafaranga yose Mukarusanganwa Verediane yatsindiye Gatete Côme mu rubanza RCA0156/07/HC/KIG angana na 12.053.000Frw, aho kuba 12.533.002Frw.

[66] Urukiko rurasanga kandi Uzamushaka Consolée atagomba kwitwaza agakosa kabaye ku izina ya nyina wa Gatete Côme muri urwo rubanza RCA0156/07/HC/KIG kugira ngo yange gushyira mu bikorwa ibyategetswe muri urwo rubanza, mu gihe ibikubiyemo byose bimugaragariza ko Gatete Côme uvugwa muri urwo rubanza ari musaza we wapfuye kandi yazunguriye imitungo.

### **Ibyerekeye Indishyi**

[67] Me Rugamage Albert uburanira Mukarusanganwa Verediane asaba ko Uzamushaka Consolée acibwa indishyi za 2.000.000Frw z'igihembo cya Avoka, akubiyemo 500.000Frw y'igihembo cya Avoka kuri buri rwego kuva ku rwego rwa mbere mu Rukiko Rwisumbuye kugera mu Rukiko rw'Ikirenga, akamuha na 200.000Frw y'ikurikiranarubanza nayo kuri buri rwego kuko ariwe watumye agoboka ku bushake muri izo manza zose, nyuma y'uko Mukarusanganwa Verediane afashe umuhesha w'Inkiko ngo aje kurangiza urubanza RCA0156/07/HC/KIG, Uzamushaka Consolée akamubwira ko nta muvandimwe agira witwa Gatete Côme.

[68] Me Twizeyimana Innocent uburanira Uzamushaka Consolée avuga ko indishyi zasabwe atabona ishingiro ryazo mu gihe izi manza zitangira atigeze arega Mukarusanganwa Verediane, akaba atariwe wamuzanye mu rubanza. Naho ku birebana n'ibyo avuga ko yahakanye ko nta muvandimwe we witwa Gatete Côme afite, avuga ko hari ibaruwa yasubije Umuhesha w'Inkiko amugaragariza ko imyirondoro bamugaragariza ntaho ihuriye n'iya Gatete Côme, ariyo mpamvu yavuze ko atamuzi.

[69] Me Kazeneza Théophile asaba ko Tesire Génèreuse yategekwa guha Kanyangira Ignace 500.000Frw y'ikurikiranarubanza na 1.000.000Frw y'igihembo cya Avoka kuko yamukuruye mu manza asaba ko amasezerano y'ubugure bw'inzu yaguze yateshwa agaciro kandi ntaho abihera.

[70] Me Bayisabe Irenée uburanira Tesire Génèreuse avuga ko izo ndishyi Kanyangira Ignace asaba atazemera kuko amasezerano y'ubugure bw'inzu atari gukorwa mbere y'uko hishyurwa umwenda Gatete Côme yatsindiye.

## **UKO URUKIKO RUBIBONA**

[71] Urukiko rurasanga amafaranga y'ikurikiranarubanza ahwanye na 200.000Frw n'ay'igihembo cya Avoka ahwanye na 500.000Frw, kuri buri rwego yaburaniyemo, Mukarusanganwa Verediane asaba Uzamushaka Consolée, agomba kuyahabwa kuko byabaye ngombwa ko akurikirana urubanza, agashyiraho Avoka umuhagarariye, akaba ari mu rugero, bityo akaba agenewe 800.000Frw y'ikurikiranarubanza na 2.000.000Frw y'igihembo cya Avoka ku nzego zose yaburaniyemo, yose hamwe akaba ari 2.800.000Frw.

[72] Urukiko rurasanga kandi n'amafaranga y'ikurikiranarubanza n'ay'igihembo cya Avoka Ignace Kanyangira asaba Tesire Généraleuse kuri uru rwego atagomba kuyahabwa kuko ntacyo amutsindiye.

### **III. ICYEMEZO CY'URUKIKO**

[73] Rwemeje ko ikirego cya Uzamushaka Consolée gisaba gusubirishamo ku mpamvu z'akarengane urubanza RCAA00033/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 25/10/2019 gifite ishingiro kuri bimwe;

[74] Rwemeje ko Tesire Généraleuse nta ruhare afite ku nzu Gatete Côme yasize, iherereye mu kibanza N° 678 mu Karere ka Rwamagana, Umurenge wa Kigabiro;

[75] Rutegetse Uzamushaka Consolée kwishyura Mukarusanganwa Verediane amafaranga yose yatsindiye Gatete Côme mu rubanza RCA 0156/07/HC/KIG angana na 12.053.000Frw;

[76] Rutegetse Uzamushaka Consolée guha Mukarusanganwa Verediane 2.800.000Frw y'ikurikiranarubanza n'igihembo cya Avoka.