NSENGIYUMVA v NTAGUNGIRA N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00012/2021/SC (Mukamulisa, P.J., Nyirinkwaya, Hitiyaremye, Muhumuza na Karimunda, J.) 22 Ukwakira 2022)

Amategeko agenga imanza mbonezamubano –Amasezerano – Amasezerano y'ubugure – Amasezerano y'ubugure bw'umutungo utimikanwa (Ubutaka) – Ubugure burebana n'umutungo utimukanwa (ubutaka) butakozwe mu buryo bw'inyandiko mpamo nta gaciro buba bufite.

Amategeko agenga imanza mbonezamubano – Amasezerano – Ingaruka zo gutesha amasezerano agaciro ingaruka zo kuba amasezerano adafite agaciro ni uko afatwa nk'atarabayeho (le contrat annulé est censé n'avoir jamais existé), ibintu bikaba bigomba gusubira uko byari bimeze mbere y'uko akorwa, buri wese agasubiza ibyo yahawe – Hashingiwe ku ihame ryo kutikungahaza nta mpamvu iyo amasezerano y'ubugure asheshwe, uwagurishije agomba gusubiza amafaranga yahawe hiyongereyeho inyungu zibarwa ku kigero cy'urwunguko ruteganywa n'amategeko (intérêts au taux légal)

Incamake y'ikibazo: Ntagungira n'umugore we Gitungwa bagurishije isambu Nsengiyumva bakorana amasezerano bise ay'agateganyo kuko hishyuwe igice cy'ikiguzi ariko nyuma amaze kwishyura yose hakorwa andi masezerano amwegurira iyo sambu bumvikana ko icyangombwa cyayo nikiboneka bazamukorera ihererekanyamutungo. Abagurishije baje kuza kwisubiraho bandikira uwaguze bamumenyesha ko amasezerano bagiranye asheshwe bamubwira ko bamusubiza amafaranga yabahaye nabo akabasubiza isambu kuko ngo igice cyanyuma cy'ikiguzi cyahawe Ntagungira gusa umugore we atabizi kandi ko ngo nta mwana wabo n'umwe wasinye kuri ayo masezerano.

Ibi byatumye Nsengiyumva atanga ikirego mu Rukiko rwisumbuye rwa Rubavu asaba ko isambu yaguze yamwandikwaho kuko yayiguze mu buryo bukurikije amategeko. Urukiko rwemeje ko amasezerano y'ubugure afite agaciro rutegeka abagurishije gukorera uwaguze ihererekanyamutungo runamugenera n'indishyi. Abaregwa ntibanyuzwe bituma bajurira mu Rukiko Rukuru urugereko rwa Musanze bavuga ko Urukiko rubanza rwahaye agaciro amasezerano y'ubugure yakozwe abana babo badahari ngo babyemere nkuko byateganywaga n'amategeko yariho igihe bagurishaga. Urukiko rwemeje ko amasezerano yabaye y'ubugure adakurikije amategeko bityo ko asheshwe abagurishije bagasubiza uwaguze ikiguzi cy'isambu yabahaye ndetse bakanamuha indishyi zitandukanye.

Nsegngiyumva yasabye ko urwo rubanza rwasubirushwamo ku mpamvu z'akarengane hanyuma Urukiko rw'Ikirenga ruza kurusubiramo. Mu iburanisha, abaregwa batanze inzitizi ivuga ko uwasubirishijemo urubanza yavuze ko Urukiko rukuru rwirengagije ibimenyetso ko kandi hari n'ibindi bimenyetso bishya yabonye nyuma bityo bagasanga inzira yari gukoreshwa yari gusaba gusubirishamo urubanza ingingo nshya. Nsengiyumva we avuga ko nta bimenyetso bishya yigeze agaragaza ngo Urukiko rwemere gusubiramo urwo rubanza, Urukiko narwo rwemeza ko iyo nzitizi nta shingiro ifte hanyuma iburanisha rirakomeza.

Muri uru rubanza harebwe niba amasezerano y'ubugure bw'isambu yakozwe yaba afite agaciro mu gihe yaba atarakorewe imbere y'umukozi ubifitiye ububasha, mu gihe yaba adafite agaciro ni iki uwaguze yagenerwa. Uwaguze avuga ko yaguze mu buryo bukurikije amategeko kuko atarazi ko abamugurishije bafite abana kandi ko Urukiko rwatesheje agaciro amasezerano rugendeye gusa

ku mvugo z'abagurishije mu gihe itegeko rigenga amasezerano rivuga ko amasezerano akozwe mu buryo bukurikije amategeko ahinduka itegeko ku bayakoranye kandi akubahirizwa nta buriganya. Akomeza avuga ko mu gihe ayo masezerano Urukiko rwakwemeza ko asheshwe, yahabwa indishyi kuko agaciro k' ubutaka bwaguzwe kiyongereye bitewe n'ibikorwa yabukoreyemo birimo ishyamba yateyemo ndetse agasubizwa ikiguzi cyabwo hagendewe ku gaciro iyo sambu igezeho kagaragazwa mu igenagaciro.

Abagurishije bavuga ko babikoze batazi ko abana nabo bakenerwa ngo bashyire umukono ku masezerano ko igihe babimenyeye basabye abana babo ko babyemeza barabyanga akaba ariyo mpamvu ayo masezerano nta gaciro yahabwa. Ku kijyanye n'itegeko ry'amasezerano uwaguze avuga ko ryirengagijwe, bisobanura bavuga ko itegeko ry'ubutaka bashingiraho ari itegeko ngenga ko riri hejuru y'itegeko rigenga amasezerano. Ku bijajyane n'ibikorwa uwaguze avuga ko yakoreye kuri ubwo butaka, bavuga ko ishyamba uwaguze yateye yarisaruye igihe urubanza rwaciwe n'Uurukiko Rukuru rwari rumaze kuba itegeko. Naho ku kijyanye n'ibyo gusaba gusubizwa ikiguzi cy'ubutaka hagendewe ku gaciro kagezweho, bavuga ko Nsengiyumva agomba gusubizwa amafaranga yabuguze kuko nawe batamusabye umusaruro yabuvanyemo.

Incamake y'icyemezo: 1. Ku bijyanye n'ubugure bw'umutungo utimukanwa, kwemeranya kw'abagiranye amasezerano ku kintu no ku kiguzi ubwabyo ntibihagije, ahubwo hari n'ibindi bigomba kubahirizwa nko kuba mu ikorwa ry'amasezerano no kuyashyiraho umukono bigomba gukorerwa imbere y'umukozi ubifitiye ububasha, bitaba ibyo amasezerano y'ubugure akaba nta gaciro afite.

2. Ingaruka zo gutesha amasezerano agaciro ingaruka zo kuba amasezerano adafite agaciro ni uko afatwa nk'atarabayeho (le contrat annulé est censé n'avoir jamais existé), ibintu bikaba bigomba gusubira uko byari bimeze mbere y'uko akorwa, buri wese agasubiza ibyo yahawe.

3. Hashingiwe ku ihame ryo kutikungahaza nta mpamvu iyo amasezerano y'ubugure asheshwe, uwagurishije agomba gusubiza amafaranga yahawe hiyongereyeho inyungu zibarwa ku kigero cy'urwunguko ruteganywa n'amategeko (intérêts au taux légal), kuko agaciro yari afite icyo gihe atariyo agifite ubu, mu gihe ubutaka asubizwe bwo butigeze buta agaciro, bityo agomba kuyasubizabizwa hiyongereyeho inyungu zibariwe ku gipimo cy'inyungu kingana na 8% amabanki aheraho abakiriya bayo babikije amafaranga kugira ngo abungukire.

Gusubirishamo urubanza Nº RCA 00005/2016/HC/MUS bifite ishingiro kuri bimwe; Ntagungira na Gitumva bagomba guha Nsengiyumva indishyi zitandukanye.

Amategeko yashingiweho

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 9, 111

Igitabo cy'amategeko y'imbonezamubano y'Ubufaransa, ingingo ya 1352-6

Amategeko yifashishijwe atagikoreshwa

Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 ryagengaga imicungire y'ubutaka mu Rwanda ingingo ya 26.

Itegeko N° 43/2013 ryo ku wa 16/06/2013 ryagengaga ubutaka mu Rwanda, ingingo ya 18.

Imanza zifashishijwe:

Nsanzimana na Nyirajyambere n'abandi, RS/INJUST/RC 00004/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 09/04/2021

Ciftci na Nshimiyimana n'undi, RS/INJUST/RC 00003/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 30/09/2021

Mukandori na Kayitesi, RS/INJUST/RC 00014/2021/SC rwaviwe n'Urukiko rw'Ikirenga ku wa 13/05/2022.

Manizabayo na Twizerimana, RS/INJUST/RC 00010/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25/09/2020

Urubanza rwaciwe ku wa 7 Mata 1998 n'Urukiko Rusesa imanza rwo mu Bufaransa (Cour de Cassation, Chambre civile 1, du 7 avril 1998, 96-18.790, Publié au bulletin)

Urubanza

I. IMITERERE Y'URUBANZA:

[1] Ku wa 22/05/2013, Ntagungira Jérôme n'umugore we Gitungwa Esther bakoranye na Nsengiyumva Théoneste amasezerano bise ay'agateganyo yo kumugurisha isambu iri muri peyizana mu Mudugudu wa Kagaga, Akagari ka Kabatezi, Umurenge wa Jenda mu Karere ka Nyabihu, bandikirana ko bahaguze 8.000.000 Frw, ko Nsengiyumva Théoneste abahaye avansi ya 3.000.000 Frw, asigaye akazayabaha ku wa 05/07/2013, ari nabwo bazakora amasezerano ya burundu, akinjira mu isambu. Kuri iyo tariki bakoranye amasezerano bise aya burundu, bandikirana ko guhera uwo munsi isambu ibaye iya Nsengiyumva Théoneste, ko ibyangombwa nibiboneka bazajya kumuhinduriza mu Karere ka Nyabihu.

[2] Ku wa 07/01/2015, Ntagungira Jérôme yandikiye Nsengiyumva Théoneste avuga ko amasezerano bagiranye asheshwe kuko bayakoranye nta muntu wo mu muryango we uhari, ko rero bamusubiza amafaranga yatanze nawe akabasubiza isambu bari baraguze.

[3] Ku wa 26/02/2015, Nsengiyumva Théoneste yatanze ikirego mu Rukiko Rwisumbuye rwa Rubavu asaba ko isambu yaguze yamwandikwaho kuko yayiguze mu buryo bukurikije amategeko. Ntagungira Jérôme n'umugore we bireguye bavuga ko amafaranga Nsengiyumva Théoneste yayatanze, ariko ko aya nyuma Ntagungira Jérôme yayahawe wenyine, umugore we batari kumwe kuko ubwo bugure yabwanze. Bavugaga kandi ko Nsengiyumva Théoneste yakoresheje uburiganya asinyira umugore we[1] kandi amasezerano akorwa uwo mugore atari ahari.

[4] Urukiko Rwisumbuye rwa Rubavu rwaciye urubanza Nº RC 0022/15/TGI/RBV ku wa 16/12/2015, rwemeza ko amasezerano y'ubugure Nsengiyumva Théoneste yagiranye na Ntagungira Jérôme n'umugore we Gitungwa Esther afite agaciro kuva ku wa 22/05/2013, ubwo

[1] Ku wa 28/05/2015, Gitungwa Esther yatanze ikirego mu Bugenzacyaha avuga ko Nsengiyumva Théoneste yamuhimbiye umukono mu masezerano yo ku wa 05/07/2013. Yavugaga ko bitari gushoboka ko ayasinyaho kuko umunsi akorwa yari yagiye i Burundi. Ikirego cyageze mu Bushinjacyaha dosiye irashyingurwa burundu kubera kubura ibimenyetso. Gitungwa Esther atisunze Ubushinjacyaha yatanze ikirego mu Rukiko Rwisumbuye rwa Rubavu arega Nsengiyumva Théoneste icyaha cyo gukora no gukoresha inyandiko mpimbano, urwo rukiko rwemeza ko icyo kirego nta shingiro gifite. Gitungwa Esther ajurira mu Rukiko Rukuru, Urugereko rwa Musanze, narwo rwemeza ko ubujurire bwe nta shingiro bufite.

bemeranywaga ku giciro no ku kigurwa, n'ubu akaba agifite agaciro kuko Nsengiyumva Théoneste yari yararangije inshingano zo kwishyura amafaranga yari asigayemo.

[5] Urukiko rwategetse Ntagungira Jérôme na Gitungwa Esther kujya guhererekanya nawe ubwo butaka bwahoze bwanditse kuri Nº 3233 nk'ipariseri ya peyizana niba baramaze kubwandikwaho kuko bwari bwarabaruwe ku bantu babucungaga kuri za UPI zitandukanye[2]; baba batarabwandikwaho bugahurizwa hamwe bukandikwa kuri Nsengiyumva Théoneste wabuguze. Rwabategetse kandi kwishyura Nsengiyumva Théoneste 200.000 Frw y'indishyi z'akababaro na 500.000 Frw y'igihembo cya Avoka.

[6] Ntagungira Jérôme na Gitungwa Esther bajuririye Urukiko Rukuru, Urugereko rwa Musanze, bavuga ko Urukiko Rwisumbuye rwa Rubavu rwirengagije ko nta mwana wabo n'umwe wasinye ku masezerano, kandi Itegeko no 08/2005 ryo ku wa 14/07/2005 ryagengaga imicungire n'imikoreshereze y'ubutaka mu Rwanda ryariho igihe amasezerano yakorwaga ryarateganyaga ko ubugure bw'ubutaka budashoboka abagize umuryango batabyemeye.

[7] Abana babiri ba Ntagungira Jérôme na Gitungwa Esther, aribo Ntivuguruzwa Martin na Ntihemuka Albert bagobotse ku bushake muri urwo rubanza bavuga ko amasezerano ababyeyi babo bakoranye na Nsengiyumva Théoneste ku wa 22/05/2013 anyuranyije n'ingingo za 35, 36 na 37 z'Itegeko ryagengaga imicungire n'imikoreshereze y'ubutaka mu Rwanda[3] ryariho igihe ayo masezerano yakorwaga kuko batayasinyeho, ndetse ko n'amasezerano yo ku wa 05/07/2013 nayo anyuranyije n'amategeko kuko yakozwe nyina ubabyara adahari.

[8] Urukiko Rukuru, Urugereko rwa Musanze, rwaciye urubanza Nº RCA 0005/16/HC/MUS ku wa 28/11/2017, rwemeza ko amasezerano Ntagungira Jérôme n'umugore we Gitungwa Esther bakoranye na Nsengiyumva Théoneste atakurikije amategeko, bityo akaba agomba guseswa, Ntagungira Jérôme n'umugore we Gitungwa Esther bagasubiza Nsengiyumva Théoneste 8.000.000 Frw baguze iyo sambu, bakamuha 1.000.000 Frw akubiyemo indishyi z'akababaro kuko atakaje aho bamugurishije n'igihembo cya Avoka, nawe akabasubiza isambu bari baguze kuko buri ruhande rwakuye inyungu kucyo rwari rufite, akanabasubiza ½ cy'igarama batanze barega, ni ukuvuga 75.000 Frw.

[9] Rwategetse kandi Nsengiyumva Théoneste gufatanya na Ntagungira Jérôme na Gitungwa Esther kwishyura Ntivuguruzwa Martin na Ntihemuka Albert indishyi za 1.200.000 Frw akubiyemo amafaranga y'ikurikiranarubanza n'igihembo cya Avoka n'amagarama batanze barega, uruhare rwa Nsengiyumva Théoneste rukangana na 600.000 Frw.

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[2] UPI 3357/NYA/JEN; 3360/NYA/JEN; 3356/NYA/JEN; 2963/NYA/JEN.

[3] Ingingo ya 35: gutanga burundu uburenganzira ku butaka, nko kubugurisha, kubutangira ubuntu cyangwa kubugurana, bikozwe n'uhagarariye umuryango bigomba kubanza kwemerwa n'abagize umuryango bose basangiye ubwo burenganzira.
Ingingo ya 36: Bitanyuranyije n'amategeko mbonezamubano agenga umuryango, abagize umuryango bavugwa mu ngingo ya 35 y'iri Tegeko Ngenga ni abashakanye ku buryo bwemewe n'amategeko, abana bagejeje ku myaka y'ubukure, abana bato batarageza kuri iyo myaka babihagarariwemo n'abashinzwe kubarera n'abandi badashoboye bahagarariwe n'abishingizi babo.
ingingo ya 37: Kwemerwa kuvugwa mu ngingo ya 35 y'iri Tegeko Ngenga kugaragazwa n'inyandiko yashyizweho umukono w'abarebwa n'icyo kibazo cyangwa bateyeho igikumwe, bikorewe imbere y'umwanditsi w'irangamimerere cyangwa imbere y'Umukuru w'Ibiro by'Ubutaka akanabyandika mu bitabo bye.

[10] Urukiko Rukuru, Urugereko rwa Musanze, rwafashe icyo cyemezo rushingiye ku mpamvu zikurikira:

- Rwasanze amasezerano yo ku wa 22/05/2013 atarakurikije ibiteganywa n'Itegeko N° 08/2005 ryo ku wa 14/07/2005 ryagengaga imicungire n'imikoreshereze y'ubutaka mu Rwanda, cyane cyane mu ngingo zaryo za 35, 36 na 37 zateganyaga ko gutanga burundu uburenganzira ku butaka, harimo kubugurisha, kubutangira ubuntu cyangwa kubugurana, bikozwe n'uhagarariye umuryango bigomba kubanza kwemerwa n'abagize umuryango bose basangiye ubwo burenganzira kandi bigakorerwa imbere y'Umwanditsi w'irangamimerere cyangwa imbere y'Umukuru w'Ibiro by'Ubutaka akanabyandika mu bitabo bye.
- Rwasanze hagendewe ku biteganywa n'izo ngingo, Ntivuguruzwa Martin na Ntihemuka Albert bagobotse mu rubanza nk'abana b'abagurishije, baragombaga kubanza kwemera ubwo bugure mbere y'uko ayo masezerano akorwa, ko kuba bitarakozwe ayo masezerano afite inenge ijyanye no kutubahiriza amategeko yariho akorwa, ko agomba guseswa kuko atakurikije amategeko.
- Ku birebana n'amasezerano yo ku wa 05/07/2013 yagiyeho hatagikurikizwa Itegeko no 08/2005 ryo ku wa 14/07/2005 ryagengaga imicungire n'imikoreshereze y'ubutaka mu Rwanda, Nsengiyumva Théoneste yavugaga ko ariyo agomba guhabwa agaciro, Urukiko rwasanze nta shingiro bifite kuko abayakoranye batavugamo ko atesheje agaciro ayo ku wa 22/05/2013.
- Rwasanze kandi amasezerano yo ku wa 05/07/2013 afite inenge zikurikira: kuba Gitungwa Esther avuga ko atayasinyeho kuko kuri iyo tariki yari i Burundi, ndetse n'Urukiko Rwisumbuye rukaba rwarabibonye ko yavuye mu Rwanda kuri iyo tariki; kuba nta kigaragaza ko Gitungwa Esther yatanze ukwemera kwe, kandi kugakorerwa imbere ya Noteri, hashingiwe ku ngingo ya 22 y'Itegeko n° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda yateganyaga ko kwemeza ihererekanya ry'ubutaka kw'abagize umuryango bikorwa mu nyandiko nyakuri ishyirwaho umukono cyangwa igikumwe ikorewe imbere ya Noteri ushinzwe iby'ubutaka.
- Rwasanze ari amasezerano yo ku wa 22/05/2013, ari nayo ku wa 05/07/2013 yarakozwe amategeko agenga igurisha ry'ubutaka atubahirijwe, bityo yombi akaba agomba guseswa hashingiwe ku ngingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano. Rwasanze ihinduzamutungo ridashobora gushingira ku masezerano adakurikije amategeko.
- Rwasanze ingaruka z'iryo seswa ry'amasezerano ari uko Ntagungira Jérôme n'umugore we Gitungwa Esther basubiza Nsengiyumva Théoneste 8.000.000 Frw bakiriye, kuko nubwo hashize imyaka 3 atanze ayo mafaranga bakayakoresha ibikorwa bibabyarira inyungu, Nsengiyumva Théoneste nawe hari ibikorwa yakoreye muri iyo sambu byagiye bimuha umusaruro ku buryo nta gihombo yaba agize ayasubijwe.
- Ku birebana n'ibyo Nsengiyumva Théoneste yavugaga ko hari ibikorwa yakoreyemo ku buryo iyo sambu ubu ifite agaciro ka 46.603.973 Frw, Urukiko

rwasanze nta kigaragaza ko hari ibikorwa yakoreye muri iyo sambu bifite ako gaciro ku buryo yayasubizwa.

[11] Nsengiyumva Théoneste yajuririye urwo rubanza, maze mu rubanza Nº RCAA 00044/2018/CA rwaciwe ku wa 20/09/2019, Urukiko rw'Ubujurire rwemeza ko ubwo bujurire butari mu bubasha bwarwo kuko ikiburanwa kitagejeje ku gaciro ka 50.000.000Frw gateganywa n'ingingo ya 28 y'Itegeko Ngenga Nº 03/2012 ryo ku wa 13/06/2012 ryakurikizwaga igihe yajuriraga, rumutegeka guha Ntivuguruzwa Martin na Ntihemuka Albert 900.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka, naho Ntagungira Jérôme n'umugore we Gitungwa Esther akabaha 700.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka na 200.000 Frw bishyuye Umugenagaciro.

[12] Nyuma y'aho Nsengiyumva Théoneste yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza Nº RCA 0005/16/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, rwasubirishwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubwo busabe yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane. Mu cyemezo N° 265/CJ/2021 cyo ku wa 09/11/2021, Perezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rwongera kuburanishwa, arwohereza mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe, ruhabwa Nº RS/INJUST/RC 00012/2021/SC.

[13] Urubanza rwaburanishijwe mu ruhame ku wa 16/05/2022, Nsengiyumva Théoneste ahagarariwe na Me Kayitare Dieudonné, Ntagungira Jérôme na Gitungwa Esther bahagarariwe na Me Mbarushimana Dominique, Ntihemuka Albert yunganiwe na Me Kavuyekure Dieudonné wari unahagarariye Ntivuguruzwa Martin.

[14] Urukiko rwabanje kumva imiburanire y'ababuranyi ku nzitizi yo kutakira ikirego yari yabyukijwe na Ntihemuka Albert hamwe na Me Kavuyekure Dieudonné umwunganira akanahagararira Ntivuguruzwa Martin. Bavuga ko bashingiye ku ngingo ya 55 y'Itegeko no 30/2018 ryo ku wa 02/06/2018 rigenga ububasha bw'Inkiko iteganya mu gika cyayo cya mbere, agace ka 3, ko umuburanyi wari ufite uburenganzira bwo kwiyambaza izindi nzira zo kujurira zisanzwe n'izidasanzwe ariko ntabikore mu gihe giteganyijwe n'amategeko atemerewe gusaba ko urubanza yatsinzwe rusubirishwamo ku mpamvu z'akarengane. Bavuga ko bashingiye kuri iyo ngingo, basanga ikirego cya Nsengiyumva Théoneste kitagomba kwakirwa kuko atigeze asubirishamo urubanza Nº RCA 0005/16/HC/MUS ingingo nshya kandi avuga ko akarengane ke gashingiye ku bimenyetso byirengagijwe, ndetse mu bimenyetso avuga hakaba harimo n'ibyo yabonye nyuma y'icibwa ry'urubanza. Banzura bavuga ko ibyo aburanisha byose byagombaga gukoreshwa mu gusubirishamo urubanza ingingo nshya. Iyi myumvire bayihuriragaho na Me Mbarushimana Dominique uhagarariye Ntagungira Jérôme na Gitungwa Esther.

[15] Ku ruhande rwe, Me Kayitare Dieudonné uhagarariye Nsengiyumva Théoneste yasabaga ko iyo nzitizi itahabwa agaciro kuko Urukiko rw'Ikirenga rwamaze gufata icyemezo ku iyakirwa ry'ikirego, hakaba nta bimenyetso bishya Nsengiyumva Théoneste yashingiyeho atanga ikirego cy'akarengane.

[16] Urukiko rwafatiye mu ntebe icyemezo cyo kutakira iyo nzitizi, rusobanura ko urega atigeze agaragaza ko hari ikimenyetso gishya yashingiyeho atanga ikirego cyo gusubirishamo urubanza

ku mpamvu z'akarengane, byongeye kandi akaba atari ngombwa ko umuburanyi abanza kwiyambaza inzira yo gusubirishamo urubanza ingingo nshya kugira ngo agire uburenganzira bwo gusaba ko urubanza rwe rusubirwamo ku mpamvu z'akarengane iyo abona ko nta mpamvu n'imwe yujuje mu zo itegeko riteganya kugira ngo ikirego cyo gusubirishamo urubanza ingingo nshya cyakirwe.

[17] Nyuma yo gufata icyo cyemezo, iburanisha ryakomeje hasuzumwa ikibazo cyabyukijwe na Me Kayitare Dieudonné uhagarariye Nsengiyumva Théoneste kirebana n'ukugoboka ku bushake kwa Ntihemuka Albert na Ntivuguruzwa Martin mu Rukiko Rukuru, Urugereko rwa Musanze. Yavugaga ko ukugoboka kwabo kutagombaga kwakirwa kuko, kuba Ntihemuka Albert ukora umwuga wa Avoka yarunganiye nyina Gitungwa Esther mu manza z'inshinjabyaha yashoyemo Nsengiyumva Théoneste abeshya ko yamuhimbiye umukono mu masezerano aregerwa, bigaragaza neza ko uru rubanza abagobotse barumenye rugitangira ku rwego rwa mbere muri 2015, bakaba rero baragombaga kurugobokamo kuri urwo rwego, aho gutegereza kurugobokamo rugeze mu bujurire muri 2017.

[18] Me Mbarushimana Dominique uhagarariye Ntagungira Jérôme na Gitungwa Esther, ndetse na Ntihemuka Albert na Me Kavuyekure Dieudonné umwunganira akanahagararira Ntivuguruzwa bavugaga ko Itegeko Nº 21/2012 ryo ku wa 14/06/2012 ryagenaga imiburanishirize y'imanza z'imbonezamubano, iz'umurimo n'iz'ubutegetsi ryakurikizwaga icyo gihe ryateganyaga ko umuntu agoboka ku bushake mu nkiko zose aho urubanza rwaba rugeze hose, kandi ko kuba Ntihemuka Albert yaba yarunganiye Gitungwa Esther mu bugenzacyaha, bitamwamburaga uburenganzira bwo kugoboka mu rubanza Nsengiyumva Théoneste yashoye ashaka kwigarurira ubutaka nawe afiteho uburenganzira.

[19] Iki kibazo nacyo Urukiko rwagifasheho icyemezo mu ntebe, rwemeza ko kitasuzumwa nk'impamvu y'akarengane kuko mu Rukiko Rukuru, Urugereko rwa Musanze, haba mu nama ntegurarubanza, haba no mu iburanisha, ntaho bigaragara ko Nsengiyumva Théoneste yaba yarasabye ko ukugoboka kwa Ntihemuka Albert na Ntivuguruzwa Martin kutakirwa, kuba atarabivuze muri urwo rukiko ngo bifatweho icyemezo, akaba atabizana muri uru rubanza nk'impamvu y'akarengane.

[20] Nyuma yo gufata icyo cyemezo, iburanisha ryakomeje Urukiko rusuzuma ibibazo bikurikira:
1. Kumenya niba Nsengiyumva Théoneste yaraguze ubutaka buburanwa mu buryo bukurikije amategeko ku buryo hategekwa ko abwandikwaho;
2. Mu gihe Urukiko rwakwemeza ko Nsengiyumva Théoneste yaguze mu buryo butubahirije amategeko, kumenya ibyo akwiye gusubizwa;
3. Ibijyanye n'indishyi.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO:

a. Kumenya niba Nsengiyumva Théoneste yaraguze ubutaka buburanwa mu buryo bukurikije amategeko ku buryo hategekwa ko abwandikwaho

[21] Me Kayitare Dieudonné uhagarariye Nsengiyumva Théoneste avuga ko amasezerano uyu yakoranye na Ntagungira Jérôme na Gitungwa Esther nta nenge afite zatuma ateshwa agaciro kuko

bamugurishije umutungo wabo ku bwumvikane bw'impande zombi, abagurisha bishyurwa amafaranga, nawe ahabwa ubutaka, bityo ko akwiye kurenganurwa, agasubizwa ubutaka bwe kuko yabuguze mu nzira no mu buryo bukurikije amategeko.

[22] Avuga kandi ko Urukiko rwasumbanyije ababuranyi kuko rwagendeye ku Itegeko ry'ubutaka Nº 08/2005 ryo ku wa 14/07/2005 ryashingiweho n'abaregwa kugirango ruteshe agaciro amasezerano y'ubugure kandi Nsengiyumva Théoneste atari azi ko Ntagungira Jérôme na Gitungwa Esther bafite abana ngo nabo bamusinyire ku masezerano y'ubugure, dore ko yari aguze n'umugore n'umugabo aribo ba nyir'ubutaka, rwanga gushingira ku Itegeko no 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano riteganya mu ngingo yaryo ya 64 ko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye. Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya.

[23] Urukiko rwamubajije impamvu abakoranye amasezerano batahererekanyije umutungo imbere ya Noteri w'ubutaka, avuga ko igihe bayakoraga ubutaka bwari bubaruwe ku bantu Ntagungira Jérôme na Gitungwa Esther bari barabutije, ariko ko nyuma byakosowe, icyangombwa kibabaruweho gisohoka muri 2014. Yavuze kandi ko ubugure bukurikije amategeko kuko bwakorewe imbere y'abatangabuhamya n'Umuyobozi w'Akagari ka Kabatezi.

[24] Me Mbarushimana Dominique, uhagarariye Ntagungira Jérôme na Gitungwa Esther avuga ko kuba abana ba Ntagungira Jérôme na Gitungwa Esther batarasinye ku masezerano y'ubugure bakoranye na Nsengiyumva Théoneste, nta kindi Urukiko Rukuru, Urugereko rwa Musanze rwari gukora usibye kuyatesha agaciro hashingiwe ku ngingo za 35, 36 na 37 z'Itegeko Ngenga Nº 08/2005 ryo ku wa 14/07/2005 ryagengaga ubutaka mu Rwanda igihe ayo masezerano yakorwaga zateganyaga ko gutanga burundu uburenganzira ku butaka, nko kubugurisha, kubutangira ubuntu cyangwa kubugurana bikozwe n'uhagarariye umuryango bigomba kubanza kwemerwa n'abagize umuryango bose basangiye ubwo burenganzira.

[25] Avuga kandi ko igihe Ntagungira Jérôme na Gitungwa Esther bagurishaga isambu yabo Nsengiyumva Théoneste, batari bazi ko abana babo bagomba kubitangira uburenganzira, ko aho babimenyeye babasabye gusinya ku masezerano barabyanga, bituma Ntagungira Jérôme yandikira Nsengiyumva Théoneste amusobanurira ikibazo cy'amategeko yahuye nacyo cyamugonganishije n'abana be, amusaba ko bakumvikana akamusubiza 8.000.000 Frw yakiriye bagura, nawe akamusubiza isambu, arabyanga ahitamo kuburana kugeza ubu.

[26] Ku bijyanye n'Itegeko ry'amasezerano Nsengiyumva Théoneste ashingiraho avuga ko amasezerano y'ubugure yakoranye na Ntagungira Jérôme na Gitungwa Esther akurikije amategeko, Me Mbarushimana Dominique avuga ko Itegeko ry'ubutaka ari Itegeko Ngenga risumba Itegeko ry'amasezerano kuko iri ari itegeko risanzwe.

[27] Ntihemuka Albert na Me Kavuyekure Dieudonné umwunganira akanahagararira Ntivuguruzwa Martin nabo bavuga ko amasezerano y'ubugure yo ku wa 22/05/2013 yakozwe mu buryo butubahirije ingingo za 22, 35, 36 na 37 z' Itegeko Ngenga Nº 08/2005 ryo ku wa 14/07/2005 rigenga imicungire y'ubutaka mu Rwanda ryariho icyo gihe, bityo akaba yaragombaga guteshwa agaciro kuko ariyo masezerano y'ibanze, naho ayo ku wa 14/07/2013 akaba yaraje gusa kuzuza aya mbere.

UKO URUKIKO RUBIBONA:

[28] Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 ryagengaga imicungire y'ubutaka mu Rwanda igihe ababuranyi bakoranaga amasezerano yiswe ay'agateganyo ku wa 22/05/2013 yateganyaga, mu ngingo yayo ya 26, ko kwemeza ko ubutaka butanzwe cyangwa bukodeshejwe ku buryo burambye bigaragazwa n'icyemezo gihamya iyandikwa ry'ubutaka gitangwa n'umubitsi w'impapuro mpamo z'ubutaka. Ibi ni nabyo biteganyijwe mu ngingo ya 18 y'Itegeko N° 43/2013 ryo ku wa 16/06/2013 ryagengaga ubutaka mu Rwanda igihe amasezerano yiswe aya burundu yakorwaga ku wa 05/07/2013[4].

[29] Ingingo ya 34 y'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/4/2008 naryo ryagenaga uburyo iyandikishwa ry'ubutaka rikorwa igihe amasezerano yakorwaga yateganyaga, mu gika cyayo cya mbere, ko ihererekanya rishingiye ku masezerano yo kwegurira undi ibintu ridashobora gukorwa iyo amasezerano rishingiyeho atakozwe ku buryo bw'inyandiko y'umwimerere[5]. Iyo ngingo inateganya ifishi igomba gukoreshwa.

[30] Iri teka ryari rishingiye ku Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005, ariko ryakomeje gukurikizwa hamaze kujyaho Itegeko N° 43/2013 ryo ku wa 16/06/2013 kuko ryateganyaga, mu ngingo yaryo ya 73, ko mu gihe atarahindurwa, amategeko, amateka n'amabwiriza yashyiraga mu bikorwa Itegeko Ngenga ryo muri 2005 akomeza kubahirizwa mu ngingo zayo zose zitanyuranyije naryo.

[31] Ingingo zavuzwe zumvikanisha ko kugira ngo byemezwe ko ubutaka buhererekanyijwe, hagomba kubaho icyemezo cy'iyandikisha ryabwo gitangwa n'Umwanditsi w'impapuro mpamo z'ubutaka, kandi kugira ngo uwo mwanditsi atange icyo cyemezo agomba gushingira gusa ku masezerano yo kwegurira undi ubutaka yakozwe mu buryo bw'inyandiko mpamo. Ibi bisobanuye ko amasezerano akozwe mu buryo butari ubwo nta gaciro aba afite ku birebana n'ihererekanya ry'ubutaka. Uyu ni nawo murongo watanzwe n'uru rukiko mu rubanza Manizabayo Kennedy yaburanaga na Twizerimana Théoneste[6], aho rwasobanuye ko ku birebana n'ubutaka, nk'umutungo uri mu murage rusange w'imbaga y'abanyarwanda bose, Umushingamategeko yashatse ko umuguzi n'ugurisha batajya biherera bonyine ngo bakore amasezerano y'ubugure, ategeka ko kugira ngo agire agaciro hubahirizwa imihango yihariye.

[32] Muri urwo rubanza, Urukiko rwasobanuye kandi ko Umushingamategeko yakuye amasezerano y'ubugure bw'ubutaka mu cyiciro cy'amasezerano y'ubugure asanzwe, aho abantu biyumvikanira ku kigurishwa no ku giciro nta yindi mihango yihariye ibaye (contrats consensuels), ayashyira mu cyiciro cy'amasezerano yubahiriza imihango yihariye kugira ngo agire agaciro (contrats solennels) igihe cy'iyandikisha ry'umutungo, ari naryo rihesha uwaguze uburenganzira ku mutungo we.

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[4] Ingingo ya 18 y'iryo tegeko iteganya ko kwemeza ko ubutaka bwatanzwe cyangwa bukodeshejwe bigaragazwa n'icyemezo cy'iyandikisha ry'ubutaka gitangwa n'Umubitsi w'Impampuro mpamo z'ubutaka.
[5]Mu kinyarwanda banditse '' inyandiko y'umwimerere'', ariko hakurikijwe ibyanditse mu gifaransa no mu cyongereza bigaragara ko ari '' inyandiko mpamo ''.
[6] Urubanza N° RS/INJUST/RC 00010/2019/SC rwaciwe ku wa 25/09/2020, ibika bya 22-27.

[33] Ibisobanuro byatanzwe muri urwo rubanza byagarutsweho n'uru rukiko mu rubanza Nsanzimana Wilson yaburanaga na Nyirajyambere Gacunga Espérance n'abandi[7], aho rwemeje ko ku bijyanye n'ubugure bw'umutungo utimukanwa, kwemeranya kw'abagiranye amasezerano ku kintu no ku kiguzi ubwabyo bidahagije, ko ahubwo hari n'ibindi bigomba kubahirizwa nko kuba mu ikorwa ry'amasezerano no kuyashyiraho umukono bigomba gukorerwa imbere y'umukozi ubifitiye ububasha, bitaba ibyo amasezerano y'ubugure akaba nta gaciro afite.

[34] Byagarutsweho na none mu rubanza CIFTCI Inanc yaburanye na Nshimiyimana Yvon na Sebutinde Edouard[8], aho Urukiko rwasobanuye ko ubugure burebana n'umutungo utimukanwa (ubutaka) butakozwe mu buryo bw'inyandiko mpamo nta gaciro buba bufite. Mu rubanza Mukandori Costasie yaburanaga na Kayitesi Elyne[9] naho uru rukiko rwasobanuye ko mu gihe nta nyandiko mpamo yo gutanga uburenganzira ku butaka bwaburanwaga yabayeho, inkiko zibanza zitagombaga gutegeka ihererekanya mutungo hagati y'ababuranyi.

[35] Ku birebana n'uru rubanza, inyandiko ababuranyi bakoranye zigaragaza ko baguze ubutaka mu buryo bw'inyandiko bwite. Byongeye kandi, Nsengiyumva Théoneste ubwe yivugira ko amasezerano atashoboraga gukorerwa inyandiko mpamo igihe baguraga kuko icyangombwa cy'ubutaka cyari kitarasohoka ku mazina y'abamugurishije. Ababuranyi ku mpande zombi baremeranya kandi ko nta nyandiko mpamo bakoreye imbere y'Umwanditsi w'impapuro mpamo z'ubutaka nyuma y'aho ibyangombwa by'ubutaka bisohokeye ku mazina y'abagurishije kandi bigaragara ko nta nzitizi ishingiye ku mategeko yari igihari icyo gihe.

[36] Hashingiwe ku mategeko no ku bisobanuro byatanzwe, Urukiko rurasanga amasezerano Nsengiyumva Théoneste yakoranye na Ntagungira Jérôme n'umugore we Gitungwa Esther atashingirwaho hategekwa ko bakorana ihererekanya mutungo.

b. Kumenya ibyo Nsengiyumva Théoneste akwiye gusubizwa

[37] Me Kayitare Dieudonné avuga ko Nsengiyumva Théoneste ahagarariye yaguze ubutaka na ba nyirabwo aranabuhabwa, hasigara gusa umuhango ujyanye n'ihererekanya mutungo, ko kuva yagura ubwo butaka muri 2013 kugeza muri 2015 yari amaze gukoreramo ibikorwa byinshi, bikaba bitumvikana uburyo uwabonye ubutaka nta buryarya (acquéreur de bonne foi) yabwamburwa ntahabwe agaciro bufite ubu n'ak'ibikorwa yashyizemo byabwongereye agaciro, birimo gutera ishyamba, guca amaterasi y'indinganire arwanya isuri no kubaka inzu nk'uko bigaragazwa na raporo yo ku wa 25/09/2015 yakozwe n'abayobozi b'Umudugudu wa Kagaga, ikemezwa n'Umunyamabanga Nshingwabikorwa w'Akagari ka Kabatezi[10].

[38] Avuga kandi ko nyuma y'impaka ndende na expertise zinyuranye zitumvikanwagaho n'ababuranyi, habonetse idashidikanywaho ihuriweho n'impande zose yakozwe na Ir Twahirwa Herbert abitegetswe n'Urukiko rw'Ubujurire igaragaza ko umutungo wose ufite agaciro ka

[7] Urubanza N° RS/INJUST/RC 00004/2020/SC rwaciwe ku itariki ya 09/04/2021, ibika bya 26 na 27.
[8] Urubanza N° RS/INJUST/RC 00003/2020/SC rwaciwe ku wa 30/09/2021, igika cya 35
[9] Urubanza N°RS/INJUST/RC 00014/2021/SC rwaviwe ku wa 13/05/2022, ibika bya 31-34.
[10] Iyo nyandiko ikubiyemo amagambo akurikira: Twebwe Ubuyobozi bw'Umudugudu wa Kagaga twemeza ko uyu Nsengiyumva Théoneste isambu yaguze na Ntagungira Jérôme na Gitungwa Esther ifite nº 3233, yayubatsemo inzu, ateramo n'ishyamba n'ibikorwa byo kurwanya isuri. Natwe Ubuyobozi bw'Akagari twemeza ko uyu Théoneste Nsengiyumva yubatse inzu agatera ishyamba n'ibiti birwanya isuri mu isambu yaguze na Ntagungira Jérôme na Gitungwa Esther.

38.676.028 Frw, bikaba byerekana nta gushidikanya ko umutungo Nsengiyumva Théoneste yaguze yawongereye agaciro cyane.

[39] Avuga nanone ko mu gihe Urukiko Rukuru, Urugereko rwa Musanze rwari rutesheje agaciro amasezerano y'ubugure rwari gushingira nibura ku gaciro Ntagungira Jérôme na Gitungwa Esther bemeraga hashingiwe kuri expertise bitangiye igaragaza ko umutungo ufite agaciro ka 36.160.000 Frw, maze rugategeka ko ayo mafaranga ayahabwa nk'uwaguze nta buryarya, aho kuvuga ko nta kigaragaza ibikorwa Nsengiyumva Théoneste yakoreye muri iyo sambu.

[40] Me Mbarushimana Dominique uhagarariye Ntagungira Jérôme na Gitungwa Esther avuga ko akazu kari mu isambu iburanwa, Umugenagaciro washyizweho n'Urukiko rw'Ubujurire yabariye agaciro ka 520.628 Frw ari aka kera cyane Ntagungira Jérôme yubatse mu mwaka wa 1972 nk'uko bigaragazwa n'urubanza N° RC 10.378/R.25/83 rwaciwe n'Urukiko rwa mbere rw'Iremezo rwa Ruhengeri ku wa 15/12/1983 (urupapuro rwa gatatu, igika cya gatanu), Ntagungira Jérôme aburana na Minisiteri y'Ubuhinzi n'ubworozi (MINAGRI) ubutaka buburanwa ubu, ku buryo Nsengiyumva Théoneste atavuga ko ari igikorwa cye yasubirizwa agaciro.

[41] Ku birebana n'ishyamba Umugenagaciro yabariye agaciro ka 5.660.000 Frw, avuga ko Nsengiyumva Théoneste yarisaruye igihe urubanza rusubirishwamo rwari rumaze kuba itegeko nk'uko byemejwe n'Umunyamabanga Nshingwabikorwa w'Akagari ka Kabatezi witwa Makuza Gaspard mu nyandiko yo ku wa 01/10/2019, akaba rero adakwiye kwishyuza agaciro karyo.

[42] Ku bijyanye n'amaterasi y'indinganire Nsengiyumva Théoneste avuga ko yaciye mu isambu iburanwa, avuga ko usibye ibiti birwanya isuri byatewe na MINAGRI mu mwaka wa 1985 bimwe muri byo bikaba bigihari na n'ubu, nta kindi gikorwa Nsengiyumva Théoneste yakoze.

[43] Ku bijyanye n'ubutaka Umugenagaciro yabariye agaciro ka 32.495.400 Frw, avuga ko Nsengiyumva Théoneste atagomba kubwita ibikorwa yakoze, ko icyo agomba gusubizwa ari 8.000.000 Frw yatanze agura isambu. Asoza avuga ko urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, rwarangijwe, ku buryo Nsengiyumva Théoneste yahawe ibyo yagenewe byose.

[44] Ntihemuka Albert na Me Kavuyekure Dieudonné umwunganira akanahagararira Ntivuguruzwa Martin bavuga ko nta bikorwa bishya nyongeragaciro Nsengiyumva Théoneste yakoreye mu isambu iburanwa byatuma asubizwa agaciro kabyo, dore ko nawe ataryojwe indishyi mbonezamusaruro z'igihe yamaze abyaza umusaruro iyo sambu.

UKO URUKIKO RUBIBONA:

[45] Mu gihe hasuzumwaga ikibazo cya mbere kiri muri uru rubanza, hagaragajwe ko amasezerano Nsengiyumva Théoneste yakoranye na Ntagungira Jérôme na Gitungwa Esther nta gaciro afite kuko yakozwe mu buryo bunyuranyije n'amategeko. Nk'uko byasobanuwe mu rubanza CIFTICI Inanc yaburanye na Nshimiyimana Yvon na Sebutinde Edouard[11], ingaruka zo kuba amasezerano adafite agaciro ni uko afatwa nk'atarabayeho (le contrat annulé est censé n'avoir

[11] Urubanza RS/INJUST/RC 00003/2020/SC rwaciwe ku wa 30/09/2021, igika cya 43.

jamais existé), ibintu bikaba bigomba gusubira uko byari bimeze mbere y'uko akorwa, buri wese agasubiza ibyo yahawe.

[46] Ku birebana n'uru rubanza, isambu iburanwa yamaze igihe iri mu maboko ya Nsengiyumva Théoneste, akoreramo ibikorwa bitandukanye, ikibazo gisuzumwa aha akaba ari icyo kumenya niba agomba gusubizwa agaciro ubutaka bufite ubu (valeur actuelle), ndetse niba hari ibikorwa byabwongereye agaciro yashyizemo akwiye kwishyurwa mu rwego rwo kwirinda ko haba ukwikungahaza nta mpamvu ku ruhande rw'abamugurishije basubiranye umutungo wabo.

[47] Igenagaciro ryakozwe bitegetswe n'Urukiko rw'Ubujurire ryagaragaje ko umutungo uburanwa wari ufite agaciro ka 38.676.028 Frw igihe ryakorwaga, habariwemo ubutaka (32.495.400 Frw), akazu karimo (520.628 Frw) n'ishyamba (5.660.000 Frw). Iri genagaciro nta muburanyi n'umwe warihakanye, akaba ari naryo rikwiye gushingirwaho hasuzumwa niba hari ibikorwa Nsengiyumva Théoneste yakoze mu isambu iburanwa byayongereye agaciro ku buryo yasubizwa agaciro kabyo.

[48] Ku birebana n'agaciro ubutaka bufite ubu, Urukiko rurasanga nta kimenyetso Nsengiyumva Théoneste atanga kigaragaza ibikorwa yakoze byaba byarabwongereye agaciro ku buryo yahabwa ikinyuranyo hagati y'agaciro bwari bufite igihe igenagaciro ryakorwaga (32.495.400 Frw) n'amafaranga yatanze agura ubutaka (8.000.000 Frw).

[49] Ku birebana n'amafaranga Nsengiyumva Théoneste yasubizwa, amategeko yo mu Rwanda ntagaragaza uko bigenda iyo hagomba gusubizwa amafaranga nyuma y'uko amasezerano yari ashingiyeho byemejwe ko nta gaciro afite cyangwa ateshejwe agaciro kandi yari amaze gihe yarashyizwe mu bikorwa, bikaba bigaragara ko agaciro amafaranga yari afite igihe yatangwaga atariko agifite, icyakora ingingo ya 9, igika cya mbere, 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 [..] iyo nta tegeko rijyanye n'ikiburanwa (umucamanza) ashingira ku mategeko asanga yashyiraho mu gihe yaba ashinzwe kuyashyiraho, yifashishije ibyemezo byagiye bifatwa n'inkiko, umuco, amahame rusange agenga amategeko n'inyandiko z'abahanga mu mategeko.

[50] Mu rubanza rwaciwe ku wa 7 Mata 1998, Urukiko Rusesa imanza rwo mu Bufaransa rwemeje ko iyo amasezerano y'ubugure asheshwe, uwagurishije agomba gusubiza amafaranga yahawe hiyongereyeho inyungu[12], usibye ko Umucamanza ashobora no kugena indishyi[13]. Ibyemejwe n'urwo rukiko byahuzwa n'ingingo ya 1352-6 y'Igitabo cy'amategeko y'imbonezamubano y'icyo gihugu iteganya ko gusubiza amafaranga bijyana no gusubiza inyungu ku kigero cy'urwunguko ruteganywa n'amategeko n'amahoro yishyuwe[14].

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[12] Inyungu zivugwa hano ni inyungu zibarwa ku kigero cy'urwunguko ruteganywa n'amategeko (intérêts au taux légal).

[13] Cour de Cassation, Chambre civile 1, du 7 avril 1998, 96-18.790, Publié au bulletin :Mais attendu que la résolution a pour effet d'anéantir rétroactivement le contrat et de remettre les parties dans l'état où elles se trouvaient antérieurement ; que si, en cas de résolution d'un contrat de vente, le vendeur doit restituer le prix, ce prix ne peut s'entendre que de la somme qu'il a reçue, éventuellement augmentée des intérêts, et sauf au juge du fond à accorder en outre des dommages-intérêts.

[14] La restitution d'une somme d'argent inclut les intérêts au taux légal et les taxes acquittées entre les mains de celui qui l'a reçue.

[51] Hashingiwe ku ihame ryo kutikungahaza nta mpamvu, Urukiko rurasanga kugira ngo ibintu bisubire uko byari bimeze mbere nta muntu ubyungukiyemo, Nsengiyumva Théoneste atasubizwa gusa 8.000.000Frw yatanze agura isambu kuko nyuma y'imyaka ine irenga atanze ayo mafaranga, agaciro yari afite icyo gihe atariyo agifite ubu, mu gihe ubutaka asubije bwo butigeze buta agaciro, ahubwo yayasubizwa hiyongereyeho inyungu zibariwe ku gipimo cy'inyungu kingana na 8% amabanki aheraho abakiriya bayo babikije amafaranga kugira ngo abungukire, izo nyungu zikaba zigomba kubarwa ku itariki yayatanzeho ku wa 05/07/2013 kugeza ku itariki ya 28/11/2017 ubwo Urukiko Rukuru, Urugereko rwa Musanze rwategekaga ko ayasubizwa. Izo nyungu rero zikaba zibazwe mu buryo bukurikira:

$$\frac{8.000.000 \text{ Frw} \times 8 \times \text{iminsi } 1583}{360 \times 100} = 2.814.222 \text{ Frw.}$$

[52] Ku birebana n'inzu, Urukiko rurasanga nanone nta kimenyetso Nsengiyumva Théoneste atanga kigaragaza ko ariwe wayubatse cyangwa ko hari igikorwa yaba yarayikozeho cyayongereye agaciro, mu gihe abo baburana, bashingiye ku rubanza N° RC 10.378/R.25/83 Ntagungira Jérôme yaburanye na MINAGRI, bagaragaza ko yubatswe mbere y'uko Nsengiyumva agura isambu, kuko ivugwa muri urwo rubanza rwaciwe muri 1983, bityo ikaba itafatwa nk'igikorwa cya Nsengiyumva Théoneste ku buryo yasubizwa agaciro kayo.

[53] Ku birebana n'ishyamba, Urukiko rurasanga igihe Urukiko Rukuru, Urugereko rwa Musanze rwacaga urubanza rusubirishwamo rwari rwarashyikirijwe na Nsengiyumva Théoneste igenagaciro ryakozwe ku wa 19/03/2016 ryagaragazaga ko icyo gihe isambu iburanwa yarimo ibiti bya Arnus na Eucalyptus, ndetse n'amaterasi y'indinganire, byose hamwe byari bifite agaciro ka 2.377.560 Frw, ku buryo rutari kuvuga ko nta kigaragaza ko hari ibikorwa Nsengiyumva Théoneste yakoreye mu isambu iburanwa rutasuzumye icyo kimenyetso ngo rugihereho rusesengura niba yasubizwa amafaranga avugwamo cyangwa se niba rwategeka igenagaciro rihuriweho n'ababuranyi ku mpande zose, akaba ariryo rishingirwaho hagenwa agaciro k'ibyo bikorwa.

[54] Urukiko rurasanga kandi kuri uru rwego ababuranyi bemeranya ko hari igice cy'isambu iburanwa Nsengiyumva Théoneste yari yarateyemo ishyamba, ariko ntibemeranya k'uwarisaruye. Ntagungira Jérôme na Gitungwa Esther bavuga ko ryasaruwe na Nsengiyumva Théoneste nyuma y'uko urubanza rusubirishwamo rubaye itegeko, bakagaragaza inyandiko ibyemeza yanditswe n'Umunyamabanga Nshingwabikorwa w'Akagari ka Kabatezi ku wa 01/10/2019[15], Nsengiyumva Théoneste we avuga ko ryarimbuwe na Ntagungira Jérôme, akagaragaza inyandiko yo ku wa 15/03/2022 ibyemeza iriho imikono y'abayobozi batandukanye[16].

[55] Urukiko rurasanga ibivugwa mu nyandiko Ntagungira Jérôme na Gitungwa Esther batanzeho ikimenyetso bitashingirwaho hemezwa ko ishyamba ryasaruwe na Nsengiyumva Théoneste kuko Umunyamabaganga Nshingwabikorwa wayanditse avuga ko abyemeza ashingiye ku byo yabwiwe n'abaturage ariko akaba atagaragaza amazina yabo, ahubwo hashingirwa ku

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[15] Iyo nyandiko ikubiyemo amagambo akurikira: […] Nk'uko byemezwa n'anaturage bavuga ko uwitwa Nsengiyumva yagiye muri iryo shyamba araritema ku buryo agaciro karyo katakaye [….] Nanjye Makuba Gaspard none ku wa 01/10/2019 nageze kuri iyo sambu nsanga ishyamba ryaratemwe ku buryo agaciro karyo katakaye […].

[16] Iyo nyandiko ikubiyemo amagambo akurikira: […] nkatwe nk'ubuyobozi bw'isibo n'umudugudu n'abaturage baturiye iyo sambu turemeza ko ibyo bikorwa byose (inzu, ishyamba n'ibiti by'irwanya suri) byakuwemo na Ntagungira Jérôme [..]

bivugwa mu nyandiko yo ku wa 15/03/2022 Nsengiyumva Théoneste yatanzeho ikimenyetso kuko igaragaza amazina n'imikono y'abatanze ubuhamya, muri bo hakaba harimo abaturiye isambu iburanwa, Ushinzwe umutekano mu Mudugudu, ndetse n'Umukuru w'Umudugudu, byumvikana ko bose bafite amakuru yakwizerwa ku watemye ishyamba. Kuba rero icyo kimenyetso kigaragaza ko ishyamba ryatewe na Nsengiyumva Théoneste ryaranduwe na Ntagungira Jérôme, Urukiko rusanga we na Gitungwa Esther bagomba kumusubiza agaciro karyo.

[56] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga Nsengiyumva Théoneste adakwiye gusubizwa agaciro k'inzu iri mu isambu iburanwa n'agaciro ubutaba bufite ubu, akaba ariko agomba gusubizwa 5.660.000 Frw y'agaciro k'ishyamba yari yarateye mu isambu iburanwa na 2.814.222 Frw y'inyungu yiyongera kuri 8.000.000 Frw yatanze agura isambu yategetswe n'Urukiko Rukuru, Urugerereko rwa Musanze.

c. Ibijyanye n'indishyi

[57] Me Kayitare Dieudonné uhagarariye Nsengiyumva Théoneste asaba ko uyu yagenerwa 2.000.000 Frw yo gushorwa mu manza ku maherere kuva mu mwaka wa 2015 kugeza ubu, ndetse na 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[58] Me Mbarushimana Dominique uhagarariye Ntagungira Jérôme na Gitungwa Esther avuga ko igihombo Nsengiyumva Théoneste aterwa n'izi manza agomba kucyirengera kuko ariwe wishoye mu manza, ko ahubwo ariwe wategekwa guha abo aburanira 2.000.000 Frw yo gushorwa mu manza na 1.000.000 Frw y'igihembo cya Avoka kuri uru rwego.

[59] Me Kavuyekure Dieudonné wunganira Ntihemuka Albert akanahagararira Ntivuguruzwa Martin avuga ko mu gihe Urukiko rwasanga nta karengane kagaragara muri uru rubanza, Nsengiyumva Théoneste yategekwa guha abo aburanira 2.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka, 5.000.000 Frw y'indishyi z'akababaro, 500.000Frw y'insimburamubyizi kuri Ntihemuka Albert na 250.000 Frw kuri Ntivuguruzwa Martin.

UKO URUKIKO RUBIBONA:

[60] 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, igira iti: "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'iyo ikirego cy'iremezo cyaba kitakiriwe."

[61] Hashingiwe kuri iyo ngingo, Urukiko rurasanga indishyi Ntagungira Jérôme, Gitungwa Esther, Ntihemuka Albert na Ntivuguruzwa Martin basaba ntazo bakwiye kuko hari ibyo Nsengiyumva Théoneste atsindiye kuri uru rwego, ahubwo akaba ari we wagenerwa amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego ahwanye na 800.000 Frw kuko ari mu rugero harebwe ibyakozwe mu rubanza.

[62] Ku bijyanye n'indishyi zo gushorwa mu manza ku maherere kuva mu mwaka wa 2015 kugeza ubu Nsengiyumva Théoneste asaba, Urukiko rurasanga ntazo akwiye kuko nta kigaragaza

ko abo baburana bamushoye mu manza ku maherere, mu gihe bigaragara ko hari ibitahindutse mu rubanza rusubirwamo ku mpamvu z'akarengane.

III. ICYEMEZO CY'URUKIKO:

[63] Rwemeje ko ikirego cya Nsengiyumva Théoneste gisubirishamo urubanza N° RCA 00005/2016/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 28/11/2017 gifite ishingiro kuri bimwe.

[64] Rutegetse Ntagungira Jérôme na Gitungwa Esther guha Nsengiyumva Théoneste:

- 5.660.000 Frw y'agaciro k'ishyamba yari yarateye mu isambu iburanwa;
- 2.814.222 Frw y'inyungu;

Yose hamwe akaba 8.474.222 Frw, yiyongera kuri 8.000.000 Frw Urukiko Rukuru, Urugereko rwa Musanze rwabategetse gusubiza.

[65] Rutegetse kandi Ntagungira Jérôme na Gitungwa Esther guha Nsengiyumva Théoneste 800.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego.