MBESIGYE v MUKANGWIJE N’ABANDI

[Rwanda URUKIKO RW’IKIRENGA - RS/INJUST/RC 00001/2022/SC (Cyanzayire, P.J., Karimunda na Hitiyaremye, J.) 20 Mutarama 2023]

Amategeko agenga umuryango – Isezerano ryo gushyingirwa – Guta agaciro kw’isezerano ryo gushyingirwa bitegekwa n’urubanza – Igihe ishyingirwa riteshejwe agaciro, uwashyingiranywe utarangwaho uburyarya, agira uburenganzira bukomoka ku ishyingirwa, harimo n’uburenganzira bwo kugabana umutungo n’uwo babanaga hakurikijwe amasezerano y’icungamutungo bari baragiranye

Amategeko agenga umuryango – - Ababanaga batarashakanye mu buryo bukurikije amategeko – Umutungo – Kugabana umutungo wababanaga nk’umugabo n’umugore batarashyingiranywe mu buryo byemewe n’amategeko – Iyo ababanaga nk’umugabo n’umugore batarashyingiranywe bahagaritse kubana, kugirango bagabane umutungo ni uko bagomba kuba bawufitanye cyangwa barawushakanye –Igisobanuro cy’amagambo “bawufitanye” cyangwa “barawushakanye” – Si ngombwa ko buri wese agaragaza ingano y’ibyo yakoze kugirango umutungo ubeho cyangwa ngo yerekane ibyo yawushyizeho kugirango wiyongere agaciro – Uwo mutungo ugomba kuba warabonetse mu gihe kidashidikanywaho bombi babanaga – Icya ngombwa ni uko muri iyo mibanire buri wese aba yaragize ibyo akora byagize uruhare mu guteza imbere urugo..

Incamake y’ikibazo: Mukangwije yashakanye na Niyodusenga mu buryo bwemewe n’amategeko ku wa 22/11/2002, basezerana ivangamutungo rusange. Mu mwaka wa 2007, Mukangwije yagize uburwayi bukomeye bituma ajya kurwarira iwabo amarayo igihe kinini. Muri icyo gihe, Niyodusenga yabanye na Mbesigye, basezerana imbere y’amategeko ku wa 23/11/2012 isezerano rya mbere ritaraseswa. Aho Mukangwije akiriye yagarutse mu rugo asanga umugabo yarashakanye n’undi mugore. Ubushinjacyaha bwareze Niyodusenga icyaha cyo gushyingirwa kabiri kiza kumuhama. Nyuma y’urwo rubanza, Mukangwije yatanze ikirego mu Rukiko Rwisumbuye rwa Rubavu asaba ko amazina ya Mbesigye Margueritte yakurwa ku byangombwa by’ubutaka yagaragaje gihuzwa n’ikindi cyari cyatanzwe na Mbesigye asaba kugabana imitungo yashakanye na Niyodusenga. Urukiko rwemeje ko iyo mitungo yandikwaho Niyodusenga na Mukangwije bituma Mbesigye ajurira mu Rukiko Rukuru Urugereko rwa Musanze. Urwo rukiko narwo rwemje ko urubanza rwajuririwe rudahindutse.

Urega yaje kwandikira Perezida w’Urukiko rw’Ubujurire asaba ko urwo rubanza rwasubirishwamo ku mpamvu z’akarengane nawe yandikira Perezida w’Urukiko rw’Ikirenga hanyuma urwo rubanza ruhabwa Urukiko rw’Ikirenga aba arirwo ruruburanisha hasuzumwa ingingo yo kumenya niba Mbesigye yagira uruhare rungana na 50% ku mutungo ubaruye kuri UPI: 3/03/11/04/5600; UPI: 3/03/11/01/60; UPI:3/03/04/06/383; UPI:3/03/04/06/481.

Urega avuga ko Urukiko Rwisumbuye rwa Rubavu ndetse n’Urukiko Rukuru, Urugereko rwa Musanze, zemeje ko nta ruhare afite ku mitungo yavuzwe haruguru, kandi yarayishakanye na Niyodusenga babanaga, mu gihe Mukangwije yari yarigendeye. Akomeza avuga ko ibyavuzwe n’Urukiko Rukuru ko ntaho agaragara mu masezerano y’ubugure nk’ufatanyije imitungo na Niyodusenga, ko ataribyo kuko yatezaga imbere urugo rwe yita ku bana ndetse anashakisha n’amafaranga akayaha umugabo bagafatanya bakagura ibibanza byagiye bigurwa.

Mukangwije avuga ko umutungo uburanwa awusangiye na Niyodusenga kuko basezeranye mu buryo bukurikije amategeko. Niyodusenga avuga ko ibisabwa na Mbesigye ko bagabana umutungo buri wese agahabwa 50%, nta shingiro bifite kuko atigeze asezerana nawe mu buryo bukurikije amategeko ahubwo akaba yarasezeranye na Mukangwije. Avuga kandi ko yatangiye kubana n'urega guhera mu mwaka wa 2007 aho kuba muri 2006.

Incamake y'icyemezo: Mu gihe ababanaga nk'umugabo n'umugore batarashyingiranywe bahagaritse kubana, kugirango bagabane umutungo ni uko bagomba kuba bawufitanye cyangwa barawushakanye bityo Mbesigye akaba agomba guhabwa 50% y'imitungo yashakanye na Niyodusenga guhera mu mwaka wa 2007 ukuyemo agaciro k'ibyo yongeyeho.

Ikirego cyo gusubirishamo ku mpamvu z'akarengane, urubanza Nº RCA 00028/2019/HC/MUS, gifite ishingiro kuri bimwe;
Mbesigye afite uruhare rungana na 50% ku mitungo iburanwa ukuyemo UPI: 3/03/11/04/5600 n' agaciro k'ibyo Niyodusenga yayongeyeho.

Amategeko yashingiweho:

Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, ingingo ya 192, 199, 201.

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

Imanza zifashishijwe:

Urubanza Nº RS/Inconst/Pen.0003/10/CS, Gatera Johnson na Kabarisa Teddy, rwaciwe ku wa 07/01/2011, para15

Urubanza Nº RCAA 0022/13/CS, Ngangare John na Mukankuranga Grace rwaciwe ku wa 25/07/2014, para 24.

Urubanza Nº RCAA 0048/14/CS, Ahishakiye na Namagabira Venantie rwaciwe ku wa 11/03/2016, para 26-27.

Urubanza Nº RCAA 0014/15/CS, Mutoni K. Jackline na Niwenshuti Aloys n'undi, rwaciwe ku wa 01/12/2017, para 33.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mukangwije Espérance yashakanye na Niyodusenga Anaclet mu buryo bwemewe n'amategeko ku wa 22/11/2002, basezerana ivangamutungo rusange. Mu mwaka wa 2007, Mukangwije Espérance yagize uburwayi bukomeye bituma ajya kurwarira iwabo i Rusizi amarayo igihe kinini. Mu gihe Mukangwije Espérance yari yaragiye iwabo, Niyodusenga Anaclet yabanye na Mbesigye Marguerite, basezerana imbere y'amategeko ku wa 23/11/2012 isezerano rya mbere ritaraseswa, babyarana abana babiri.

[2] Mukangwije Espérance amaze gukira yagarutse ku Gisenyi, asanga umugabo we yarasezeranye na Mbesigye Marguerite ari nawe babana. Ubushinjacyaha bwareze Niyodusenga Anaclet icyaha cyo gushyingirwa kabiri kandi isezerano rya mbere rikiriho (bigamie). Mbesigye Marguerite yisunze ikirego cy'Ubushinjacyaha, aregera indishyi muri urwo rubanza. Ku wa 31/05/2017, Urukiko rw'Ibanze rwa Gisenyi rwaciye urubanza Nº RP 00147/2016/TB/GIS, rwemeza ko icyo cyaha gihama Niyodusenga Anaclet, rumuhanisha ihazabu y'amafaranga 300.000, rumutegeka guha Mbesigye Marguerite indishyi z'akababaro zingana na 800.000 Frw. Ubushinjacyaha bwajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Rubavu, urubanza rwandikwa kuri Nº RPA 00292/2017/TGI/RBV, rucibwa ku wa 03/11/2017, Urukiko rwemeza ko urubanza ruhindutse ku ndishyi gusa zigomba guhabwa Mbesigye Marguerite.

[3] Nyuma y'imanza nshinjabyaha, Mukangwije Espérance yatanze ikirego mu Rukiko Rwisumbuye rwa Rubavu asaba ko amazina ya Mbesigye Marguerite akurwa ku byangombwa by'ubutaka bifite UPI: 3/03/11/04/5600; 3/03/11/06/60; 3/03/04/06/383 na 3/03/04/06/481. Iki kirego cyahujwe n'icyo Mbesigye Marguerite yari yatanze asaba kugabana umutungo yashakanye na Niyodusenga Anaclet ugizwe n'amazu. Urubanza rwanditswe kuri Nº RC 00063/2018/TGI/RBV- CMB RC 00068/2018/TGI/RBV, rucibwa ku wa 22/02/2019, Urukiko rwemeza ko imitungo itimukanwa yavuzwe haruguru iherereye mu Karere ka Rubavu yandikwa kuri Niyodusenga Anaclet na Mukangwije Espérance buri wese akagira uruhare rungana na 50%, Mbesigye Marguerite akayandukurwaho. Rwategetse Mbesigye Marguerite guha Niyodusenga Anaclet indishyi zingana na 100.000 Frw, runamutegeka guha Mukangwije Espérance indishyi zingana 825.000 Frw.

[4] Mbesigye Marguerite yajuririye urubanza mu Rukiko Rukuru, Urugereko rwa Musanze, urubanza rwandikwa kuri Nº RCA 00028/2019/HC/MUS, rucibwa ku wa 31/07/2019. Urukiko rwemeje ko urubanza rwajuririwe rudahindutse, rutegeka Mbesigye Marguerite gusubiza Mukangwije Espérance amafaranga 250.000 yakoresheje mu gukurikirana urubanza. Urukiko rwashingiye ku mpamvu zikurikira:

a. Niyodusenga Anaclet yerekanye amasezerano agaragaza ko imitungo iburanwa ariwe wayiguze, Mbesigye Marguerite akaba ayagaragaraho nk'umutangabuhamya[1];

b. Yerekanye kandi ko amafaranga yo kugura iyo mitungo yayakuye mu mirimo yagiye akora ahantu hatandukanye, harimo muri Kaminuza y'u Rwanda, mu Karere ka Rubavu, mu Muryango FPR Inkotanyi;

c. Iyo mitungo yayiguze afitanye amasezerano y'ivangamutungo rusange na Mukangwije Espérance, bivuze ko uyu ariwe uyifiteho uruhare;

d. Ikimenyetso Mbesigye Marguerite afite cyatuma agira uburenganzira kuri iyo mitungo, kigizwe no kuba yaratezaga imbere urugo akita no ku bana, ntigihagije ku muntu wabanye n'umugabo wari usanzwe afite umugore w'isezerano ndetse wanashoboye kwerekana uko yagiye abona uwo mutungo.

[5] Nyuma y'icibwa ry'urubanza, Mbesigye Marguerite yandikiye Perezida w'Urukiko rw'Ubujurire asaba ko urubanza N° RCA 00028/2019/HC/MUS rwaciwe n'Urukiko Rukuru,

[1] Amasezerano y'ubugure bw'inzu yo ku wa 21/07/2006; ayo ku wa 01/03/2010; ayo ku wa 11/10/2011, n'ayo mu mwaka wa 2013.

Urugereko rwa Musanze ku wa 31/07/2019 rwasubirwamo ku mpamvu z'akarengane. Yasobanuye ko yashyingiranywe na Niyodusenga Anaclet nta buryarya, bakaba bagombye kugabana umutungo bashakanye igihe babanaga hakurikijwe amasezerano y'ivangamutungo bagiranye, agahabwa ½ nk'uko ingingo ya 199 y'Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango ibiteganya[2]. Perezida w'Urukiko rw'Ubujurire amaze gusuzuma ubusabe, yakoreye raporo Perezida w'Urukiko rw'Ikirenga, nawe nyuma yo kuyisuzuma afata icyemezo ko urwo rubanza rwongera kuburanishwa n'Urukiko rw'Ikirenga, ruhabwa Nº RS/INJUST/RC 00001/2022/SC.

[6] Iburanisha ry'urubanza ryabereye mu ruhame ku wa 12/09/2022, Mbesigye Marguerite yunganiwe na Me Mukansanga Ziada; Mukangwije Espérance ahagarariwe na Me Bizimungu Vita Guido, naho Niyodusenga Anaclet yunganiwe na Me Mwanangu Alexis. Urukiko rwapfundikiye iburanisha rumenyesha ababuranyi ko urubanza ruzasomwa ku wa 07/10/2022.

[7] Ubwo Urukiko rwari rwiherereye rusesengura ibibazo bigize urubanza, rwasanze mbere yo guca urubanza burundu ari ngombwa ko hashyirwaho umuhanga wo kugaragaza agaciro k'umutungo uburanwa, n'ibyaba byarongeweho nyuma y'icibwa ry'urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane n'agaciro kabyo. Ku wa 24/10/2022, Urukiko rwagennye Dushime Justine nk'umuhanga wo gushyira mu bikorwa icyemezo cyarwo cyo ku wa 07/10/2022, rumuha inshingano zo kugaragaza ibi bikurikira:

a. Ibiranga buri mutungo uburanwa, ni ukuvuga nimero yawo, aho uherereye n'ibindi byose yabona ari ngombwa;

b. Agaciro buri mutungo uburanwa wari ufite urubanza Nº RCA 00028/2019/HC/MUS rusabirwa gusubirwamo ku mpamvu z'akarengane rukimara gucibwa ku wa 31/07/2019, kabazwe ku munsi raporo y'igenagaciro ikoreweho;

c. Ibyaba byarongewe kuri uwo mutungo nyuma y'icibwa ry'urubanza rumaze kuvugwa, n'agaciro kabyo.

[8] Umuhanga yashyikirike Urukiko raporo igaragaza ko:

a. Umutungo ubaruwe kuri UPI: 3/03/11/04/5600, uherereye mu Mudugudu wa Bushenge, Akagari ka Gikombe, Umurenge wa Rubavu, Akarere ka Rubavu, ufite agaciro kangana na 10.432.312 Frw. Agaciro k'imirimo yongeweho kangana na 705.520 Frw.

b. Umutungo ubaruwe kuri UPI: 3/03/04/06/481, uherereye mu Mudugudu wa Munini, Akagari ka Rubavu, Umurenge wa Gisenyi, Akarere ka Rubavu, ufite agaciro kangana na 17.055.205 Frw. Agaciro k'imirimo yongeweho kangana na 18.000 Frw.

c. Umutungo ubaruwe kuri UPI: 3/03/04/06/383, uherereye mu Mudugudu wa Munini, Akagari ka Rubavu, Umurenge wa Gisenyi, Akarere ka Rubavu, ufite agaciro kangana na 49.294.061 Frw. Agaciro k'imirimo yongeweho kangana na 1.922.970 Frw.

d. Umutungo ubaruwe kuri UPI: 3/03/11/01/60, uherereye mu Mudugudu wa Gabiro, Akagari ka Buhaza, Umurenge wa RUBAVU, Akarere ka Rubavu, ufite agaciro kangana na 17.816.908 Frw. Agaciro k'imirimo yongeweho kangana na 85.618 Frw.

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[2]Iyo Urukiko rwemeje ko ishyingirwa nta gaciro rifite, rigira inkurikizi ku bashyingiranywe ku buryo bumwe iyo ryakozwe nta buryarya. Kugabana umutungo w'abashyingiranywe bikorwa hakurikijwe amategeko agenga amasezerano yabo y'icungamutungo.

[9] Urubanza rwongeye gushyirwa kuri gahunda y'iburanisha ku wa 19/12/2022, ababuranyi bose bitabye, Mbesigye Marguerite yunganiwe na Me Munyensanga Gisèle, abandi bunganiwe nka mbere; Dushime Justine wakoze raporo y'igenagaciro ry'imitungo iburanwa nawe ahari, abanza kurahira ko yakoze imirimo yahawe n'Urukiko mu buryo no mu nzira biteganyijwe n'amategeko, hanyuma asobanura raporo yashyikirije Urukiko.

[10] Umugenagaciro yamenyesheje Urukiko ko yageze aho imitungo iburanwa iherereye, yinjira muri buri nzu kugirango arebe imirimo yongeweho mu bwisanzure. Yasobanuye ko agaciro yatanze kadashobora guhura n'akari mu igenagaciro ryatanzwe n'urega mu Rukiko Rwisumbuye rwa Rubavu, kuko ubuso bw'amazu yabonye budahura n'ubwagendeweho n'uwa mbere, kandi n'agaciro k'aho imitungo iri kakaba kariyongereye cyane bitewe n'ibikorwa remezo bimaze kuhagera.

[11] Niyodusenga Anaclet yavuze ko atemeranya n'igenagaciro ryakozwe, kuko agaciro k'umutungo kazamutse mu buryo butumvikana, ugereranyije n'akari kagaragajwe mu igenagaciro ryatanzwe n'urega urubanza rutangira mu Rukiko Rwisumbuye rwa Rubavu. Yavuze kandi ko igenagaciro ryapfobeje agaciro k'ibikorwa yongeyeho. Abandi baburanyi bavuze ko ntacyo bongera ku byagaragajwe n'igenagaciro.

[12] Nyuma yo kumva icyo buri ruhande ruvuga kuri raporo y'umuhanga, Urukiko rwapfundikiye iburanisha, rumenyesha ababuranyi ko urubanza ruzasomwa ku wa 20/01/2023.

[13] Muri uru rubanza, hasuzumwe ibibazo bikurikira:

a. Kumenya niba Mbesigye Marguerite yagira uruhare rungana na 50% ku mutungo ubaruye kuri UPI: 3/03/11/04/5600; UPI: 3/03/11/01/60; UPI:3/03/04/06/383; UPI:3/03/04/06/481;

b. Ibijyanye n'indishyi.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO.

I. Kumenya niba Mbesigye Marguerite yagira uruhare rungana na 50% ku mutungo ubaruye kuri UPI: 3/03/11/04/5600; UPI: 3/03/11/01/60; UPI:3/03/04/06/383; UPI:3/03/04/06/481.

[14] Mbesigye Marguerite n'umwunganira bavuga ko Urukiko Rwisumbuye rwa Rubavu ndetse n'Urukiko Rukuru, Urugereko rwa Musanze, zemeje ko nta ruhare afite ku mitungo yavuzwe haruguru, kandi yarayishakanye na Niyodusenga Anaclet babana, mu gihe Mukangwije Espérance yari yarigendeye. Bavuga kandi ko ibarura ry'imitungo ryabaye Mukangwije Espérance ahari, ntiyashyirishaho amakimbirane, ko ibyo avuga ko yari afite uburwayi bwo mu mutwe ari amayeri yacuranye na Niyodusenga Anaclet kugirango bamuhuguze ibye.

[15] Bakomeza bavuga ko ibyavuzwe n'Urukiko Rukuru, Urugereko rwa Musanze ko ntaho agaragara mu masezerano y'ubugure nk'ufatanyije imitungo na Niyodusenga Anaclet, ko uburenganzira bwe bugarukira ku kuba umutangabuhamya gusa, ari ukwirengagiza ko ari umutungo yashyizeho icyuya cye, uruhare rwe rukaba rugaragarira mu buryo yatezaga imbere urugo, akita ku bana, ibyo byose bikaba bigomba guhabwa agaciro. Bongeraho ko yahaga

umugabo we amafaranga yo kugura umutungo ku bw'icyubahiro cye akayiyandikaho, we agasinya nk'umuhamya, kandi ko igihe uwo mutungo waguriwe mu 2007-2014 nta kazi Niyodusenga Anaclet yagiraga ku buryo yavuga ko yavanye imitungo mu kazi yakoraga. Basobanura kandi ko yumvaga atari ngombwa gusigarana ikimenyetso igihe ahaye umugabo amafaranga, kuko yumvaga ko byose babisangiye.

[16] Bavuga ko kuva mu mwaka wa 2007 kugeza mu wa 2012, Niyodusenga Anaclet yari umunyeshuri, Mbesigye Marguerite akaba ariwe urwana n'urugo wenyine, yabona amafaranga bakagura ikibanza. Bagaragaza ko mu rubanza No RS/INCONST/PEN 0003/10/CS rwaciwe n'uru Rukiko ku wa 07/01/2011, igika cya 12, hemejwe ko ubutaka bwanditse ku mugabo gusa yabugabana n'uwo babanaga nk'umugore n'umugabo bagendeye ku kuba barafatanyije mu bikorwa bitandukanye biteza imbere urugo rwabo.

[17] Bavuga kandi ko ingingo ya 193 n'iya 199 z'Itegeko Nº 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, iteganya ko mu gihe habayeho gutesha agaciro isezerano ry'ishyingirwa ku buryo budasubirwaho, abashyingiranywe bagabana umutungo bari bafitanye hakurikijwe isezerano bari barahisemo, itegeko rikaba rimwemerera guhabwa 50% by'imitungo yabonetse mu gihe isezerano ryari rifite agaciro. Basoza basaba Urukiko kuzatesha agaciro imanza zose zahaye Mukangwije Espérance uburenganzira bwo kwandikwa ku mutungo, rugategeka ko we yongera kwandikwaho 50%.

[18] Bongeraho ko Mbesigye Marguerite yabanye na Niyodusenga Anaclet mu mwaka wa 2006, bikaba bigaragazwa n'amasezerano y'ubugure bw'iyo mitungo asaba ko bagabana. Bavuga kandi ko ibyo Niyodusenga Anaclet yaba yarongeye ku mitungo iburanwa atabisubizwa, kuko amafaranga yo kubyongeraho yayakuraga mu bukode bw'amazu yasigayemo.

[19] Mukangwije Espérance n'umwunganira bavuga ko, nk'uko byasobanuwe mu manza zitandukanye, umutungo uburanwa awusangiye na Niyodusenga Anaclet kuko basezeranye mu buryo bukurikije amategeko. Bavuga ko bashingiye ku ngingo ya 6 y'Itegeko Nº 27/2016 ryo ku wa 08/7/2016 rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura[3], basanga ibyo Mbesigye Marguerite asaba nta shingiro bifite. Basobanura ko ku bijyanye n'umwaka Mukangwije Espérance yaviriye mu rugo, ari mu 2007 aho kuba mu 2006, ko urega agenda yivuguruza ku myaka.

[20] Niyodusenga Anaclet n'umwunganira bavuga ko ibisabwa na Mbesigye Marguerite ko bagabana umutungo ugizwe n'amazu ane yavuzwe, buri wese agahabwa 50%, nta shingiro bifite kuko atigeze asezerana nawe mu buryo bukurikije amategeko, ko uwo basezeranye ari Mukangwije Espérance ku wa 22/11/2002 nk'uko icyemezo cyo gushyingirwa kibigaragaza, akaba ariwe ufite uburenganzira ku mutungo bashakanye nk'uko byemejwe n'Urukiko Rukuru, Urugereko rwa Musanze. Niyodusenga Anaclet asobanura kandi ko yabanye na Mbesigye Marguerite guhera mu mwaka wa 2007 aho kuba mu mwaka wa 2006.

UKO URUKIKO RUBIBONA

[3]Abashyingiranwe bahisemo ivangamutungo rusange bacungira hamwe umutungo wabo, kandi bakagira ububasha bungana bwo kuwukurikirana no kuwuhagararira. Ko umutungo wose wanditse kuri umwe mubashyingiranywe ubarurwa mu mutungo w'abashyingiranywe uburyo bw'ivangamutungo rusange.

[21] Ingingo ya 192 y'Itegeko No 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango iteganya ko guta agaciro k'ishyingirwa gutegekwa n'urubanza……, naho ingingo ya 199 y'iryo Tegeko igateganya ko iyo Urukiko rwemeje ko ishyingirwa nta gaciro rifite, rigira inkurikizi ku bashyingiranywe ku buryo bumwe iyo ryakozwe nta buryarya. Kugabana umutungo w'abashyingiranywe bikorwa hakurikijwe amategeko agenga amasezerano yabo y'icungamutungo. Ingingo ya 201 y'Itegeko rimaze kuvugwa yo iteganya ko ishyingirwa riteshejwe agaciro riha uwashyingiranywe utarangwaho uburyarya kimwe n'abana barikomokaho uburenganzira bwose bukomoka ku ishyingirwa.

[22] Icy'ingenzi cyumvikana mu ngingo zimaze kuvugwa, ni uko ari urubanza rutegeka guta agaciro kw'ishyingirwa, kandi ko igihe ishyingirwa riteshejwe agaciro n'Urukiko, uwashyingiranywe utarangwaho uburyarya, ni ukuvuga utaramenye ko hari impamvu yatuma iryo shyingirwa rita agaciro igihe yarikoraga, agira uburenganzira bukomoka ku ishyingirwa, harimo n'uburenganzira bwo kugabana umutungo n'uwo babanaga hakurikijwe amasezerano y'icungamutungo bari baragiranye.

[23] Ku bijyanye n'uru rubanza, muri dosiye hagaragaramo urubanza N° RP 00147/2016/TB/GI rwaciwe n'Urukiko rw'Ibanze rwa Gisenyi ku wa 31/05/2017, rwemeza ko Niyodusenga Anaclet ahamwa n'icyaha cyo gushyingirwa kabiri kandi amasezerano ya mbere akiriho (bigamie). Iki cyemezo cyashimangiwe n'Urukiko Rwisumbuye rwa Rubavu mu bujurire nk'uko byagaragajwe haruguru. Muri izo manza, inkiko zasanze nta kigaragaza ko Mbesigye Marguerite yasezeranye na Niyodusenga Anaclet azi ko afite irindi sezerano ry'ishyingirwa, rumugenera indishyi.

[24] Ikindi kigaragara muri dosiye ni uko nyuma y'uru rubanza rw'inshinjabyaha, Mukangwije Espérance yareze asaba ko amasezerano yo gushyingirwa yabaye hagati ya Niyodusenga Anaclet na Mbesigye Marguerite yateshwa agaciro, ariko ikirego cye nticyakirwa kuko yari yagobotse mu rubanza narwo rutakiriwe Mbesigye Marguerite yaregagamo Niyodusenga Anaclet asaba ubutane. Muri dosiye Urukiko rufite, nta kigaragaza ko Mukangwije Espérance yongeye gutanga icyo kirego, ahubwo yareze asaba ko Mbesigye Marguerite akurwa ku byangombwa by'ubutaka buburanwa.

[25] Urukiko rurasanga, kuba nta cyemezo cy'Urukiko cyagaragajwe gitesha agaciro amasezerano yo gushyingirwa yabaye hagati ya Niyodusenga Anaclet na Mbesigye Marguerite, hadashobora gushingirwa ku biteganywa n'ingingo ya 199 n'iya 201 z'Itegeko No 32/2016 ryo ku wa 28/08/2016 ryavuzwe haruguru ku bijyanye n'uburenganzira ku mutungo ku babanaga mu buryo budakurikije amategeko, nk'uko urega abisaba.

[26] Icyakora, Urukiko rusanga hari ikibazo gisa n'iki cyasuzumwe mu rubanza No RS/REV/INJUST/CIV0007/15/CS rwaciwe ku wa 04/12/2015, Nyirakamana Marciana n'abo bari kumwe baregagamo Mukasharangabo Eugénie n'abandi. Muri urwo rubanza, uru Rukiko rumaze kwibutsa ibiteganywa n'Itegeko Nshinga rya Repubulika y'u Rwanda n'andi mategeko by'uko isezerano ry'umugabo umwe n'umugore umwe ari ryo ryemewe, rwagaragaje ko Karimunda Gérard ajya gusezerana na Nyirakamana Marciana, yari atarajya mu Rukiko gusaba gutandukana n'umugore we wa mbere, ibyo bikumvikanisha ko ubushyingiranwe bagiranye icyo gihe butari bwemewe n'amategeko, ari yo mpamvu nta gaciro bukwiye kugira.

[27] Muri urwo rubanza kandi, Urukiko rushingiye ku ngingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina[4], rwasanze Nyirakamana Marciana, n'ubwo atari umugore w'isezerano bitewe n'uko yatangiye kubana na Karimunda Gérard ataratandukana ku bw'amategeko n'umugore w'isezerano, afite uburenganzira bwo guhabwa kimwe cya kabiri (½) cy'umutungo yari afitanye cyangwa yahahanye na Karimunda Gérard kuva batangiye kubana nk'umugore n'umugabo.

[28] Uwo murongo ugaragara no mu zindi manza zaciwe n'uru Rukiko ku birebana n'uburenganzira ku mutungo ku bantu babanaga nk'umugore n'umugabo mu buryo budakurikije amategeko. Mu rubanza Gatera Johnson na Kabarisa Teddy baregeraga kuvanaho ingingo ya 39 imaze kuvugwa, kuko inyuranye n'Itegeko Nshinga rya Repubulika y'u Rwanda, Urukiko rwasobanuye ko mu gihe ababanaga nk'umugabo n'umugore batarashyingiranywe bahagaritse kubana, kugirango bagabane umutungo ari uko bagomba kuba bawufitanye cyangwa barawushakanye. Rwongeyeho ko kugira uburenganzira ku mutungo bidashingiye gusa ku kuba barabanye nk'umugabo n'umugore batarashyingiranywe, ahubwo bigomba kuba bigaragara ko bawufitanye cyangwa ko bawushakanye[5].

[29] Mu rubanza Ngangare John na Mukankuranga Grace baburanagamo kugabana imitungo, Urukiko ruhereye ku byavuzwe mu rubanza rwa Gatera Johnson na Kabarisa Teddy, rwasobanuye ko ikigamijwe mu ngingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 ryavuzwe haruguru, ari ukurengera uburenganzira ku mutungo bwa buri wese mu bari basanzwe babana nk'umugabo n'umugore ariko batarashyingiranywe, kubera uruhare yagize mu guteza imbere urugo yabanagamo na mugenzi we, ariyo mpamvu umutungo bahahanye cyangwa bari bafatanyije bagomba kubanza kuwugabana mu gihe umwe yifuza gushyingiranwa n'undi utari we [6].

[30] Na none mu rubanza Ahishakiye Jean yaburanaga na Namagabira Venantie ibijyanye no kugabana imitungo, Urukiko rushingiye ku ngingo ya 39 imaze kuvugwa no ku rubanza rwa Gatera Johnson na Kabarisa Teddy, rwasobanuye ko kuba Ahishakiye Jean na Namagabira Venantie barabanye nk'umugabo n'umugore ariko batarashyingiranywe, bakunguka imitungo, bagomba kuyigabana mu gihe batagishoboye gukomeza kubana, Ahishakiye Jean akaba adakwiye kuyikubira mu gihe bigaragara ko yabonetse ari we na Namagabira Venantie babigizemo uruhare, kuko atashoboye kuvuguruza imvugo ya Namagabira Venantie ko yamufashaga mu bucuruzi bakoraga n'indi mirimo yafashaga guteza imbere urugo[7].

[31] Ibyo guha agaciro imirimo yafashije mu guteza imbere urugo, mu gihe cyo kugabana imitungo yabonetse abantu babana nk'umugore n'umugabo, byagarutsweho no mu rubanza Mutoni K. Jackline yaburanaga na Niwenshuti Aloys na Mukambuguje Alodie, aho Urukiko

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[4]Ababanaga nk'umugore n'umugabo batashyingiranywe mu buryo buteganywa n'amategeko, bashyingirwa hakurikije ihame ry'ubushyingiranywe bw'umugabo umwe n'umugore umwe.
Mu gihe umwe mu barebwa n'ibivugwa mu gika kibanziriza iki, yabanaga n'abagore cyangwa n'abagabo benshi, abanza kugabana ku buryo bungana na buri wese mu bo babanaga, umutungo bari bafitanye cyangwa bahahanye mbere y'uko ashyingirwa.
Igabana ry'umutungo rivugwa mu gika cya 2 cy'iyi ngingo ntirivutsa abana babyaranye uburenganzira bahabwa n'amategeko.
Ibikurikizwa muri iryo gabana bigenwa n'Iteka rya Minisitiri ufite ubutegetsi bw'Igihugu mu nshingano ze.
[5]Urubanza No RS/Inconst/Pen.0003/10/CS, Gatera Johnson na Kabarisa Teddy, rwaciwe ku wa 07/01/2011, para15
[6]Urubanza No RCAA 0022/13/CS rwaciwe ku wa 25/07/2014, para 24.
[7]Urubanza No RCAA 0048/14/CS rwaciwe ku wa 11/03/2016, para 26-27.

rwasobanuye ko amagambo « bawufitanye » cyangwa « barawushakanye » atavuga ko buri wese agomba kugaragaza ingano (quantité) y'ibyo yakoze kugirango umutungo ubeho cyangwa ngo yerekane ibyo yawushyizeho kugirango wiyongere agaciro, ahubwo uwo mutungo ugomba kuba warabonetse muri cya gihe kidashidikanywaho bombi babanaga, kuko icya ngombwa ari uko muri iyo mibanire buri wese aba afite ibyo akora mu guteza imbere urugo[8].

[32] Muri urwo rubanza, Urukiko rwanasobanuye ko ingano y'ibyakozwe n'umugore cyangwa umugabo kugirango umutungo uburanwa uboneke cyangwa utubuke ubwayo atariyo ihesha umugore cyangwa umugabo uburenganzira bwo kugabana umutungo uburanwa n'uwo avuga ko babanaga, ahubwo igomba kuza yiyongera ku bimenyetso by'uko uwo mutungo wabonetse cyangwa wongerewe agaciro bombi babana nk'umugore n'umugabo kabone niyo umwe muri bo atabasha kugaragaza mu buryo burondoye (détaillé/detailed) ibyo yakoze kugirango uboneke cyangwa utubuke[9].

[33] Mu rubanza Twahirwa Ahmed yaburanaga na Kaligirwa Rehema, uru Rukiko rushingiye ku ngingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 ryibukijwe haruguru, rwasanze barungutse inzu iburanwa mu gihe babanaga nk'umugabo n'umugore ariko batarashyingiranywe nk'uko bombi babyemeranywaho, bakaba bagomba kuyigabana mu gihe batagishoboye gukomeza kubana, kuko bigaragara ko yabonetse bombi babigizemo uruhare, mu gihe babanaga buri wese akaba hari ibyo yinjizaga mu rugo kandi byagize uruhare mu kurutunga no kurwungura imitungo, bityo hakaba ntawe ugomba kuyiharira.

[34] Mu manza zimaze kuvugwa zagiye zisobanura ibikubiye mu ngingo ya 39 y'Itegeko N° 59/2008 ryo ku wa 10/09/2008 rikumira kandi rihana ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, hagaragaramo ibintu by'ingenzi bikurikira:

a. Mu gihe ababanaga nk'umugabo n'umugore batarashyingiranywe bahagaritse kubana, kugirango bagabane umutungo ni uko bagomba kuba bawufitanye cyangwa barawushakanye;

b. Amagambo « bawufitanye » cyangwa « barawushakanye » ntavuga ko buri wese agomba kugaragaza ingano (quantité) y'ibyo yakoze kugirango umutungo ubeho cyangwa ngo yerekane ibyo yawushyizeho kugirango wiyongere agaciro, ahubwo uwo mutungo ugomba kuba warabonetse muri cya gihe kidashidikanywaho bombi babanaga;

c. Icya ngombwa ni uko muri iyo mibanire buri wese aba yaragize ibyo akora byagize uruhare mu guteza imbere urugo.

[35] Ku bijyanye n'uru rubanza, ababuranyi bose bemeza ko Niyodusenga Anaclet yabanye na Mbesigye Marguerite kuva aho Mukangwije Espérance aviriye mu rugo akajya iwabo kubera uburwayi, bakaza no gusezerana imbere y'ubuyobozi bw'irangamimerere mu 2012. Bakomeje kubana kugeza igihe Mukangwije Espérance yagarukiye, Niyodusenga Anaclet agahamwa n'icyaha cyo gushyingirwa kabiri kandi isezerano rya mbere rikiriho (bigamie), urubanza kuri icyo cyaha rugacibwa ku wa 31/05/2017.

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[8]Urubanza No RCAA 0014/15/CS rwaciwe ku wa 01/12/2017, para 33.
[9]Ibidem, para 35.

[36] Ababuranyi bemeranywa kandi ko Mukangwije Espérance yavuye mu rugo rwe mu mwaka wa 2007. Ibyo biboneka mu mvugo za Mbesigye Marguerite mu myanzuro yashyikirije Urukiko Rwisumbuye rwa Rubavu no muri kopi y'urubanza rwaciwe n'urwo Rukiko (igika cya 2), ndetse no mu mvugo za Niyodusenga Anaclet na Mukangwije Espérance aho bagiye baburana hose. Bikaba bivuga rero ko Niyodusenga Anaclet yabanye na Mbesigye Marguerite kuva mu mwaka wa 2007, Mukangwije Espérance amaze kuva mu rugo rwe.

[37] Ibivugwa na Mbesigye Marguerite ko yatangiye kubana na Niyodusenga Anaclet mu mwaka wa 2006 ntibyahabwa ishingiro kuko yivugira ko babanye Mukangwije Espérance atagihari. Ibyo bishimangirwa n'ibyo Mbesigye Marguerite yavuze mu myanzuro itanga ikirego cy'ubutane mu Rukiko rw'Ibanze rwa Gisenyi, ko atangira kubana na Niyodusenga Anaclet yamusanganye abana 3 yamufashije kurera, harimo uwavutse mu 2006, bivuga ko Mukangwije Espérance yari agihari muri uwo mwaka.

[38] Urukiko rusanga imitungo Mbesigye Marguerite na Niyodusenga Anaclet bakwiye kugabana ari iyabonetse babana, ni ukuvuga kuva mu mwaka wa 2007 nk'uko byasobanuwe haruguru, kugeza mu mwaka wa 2017 hacibwa urubanza ku cyaha cyo gushyingirwa kabiri kandi isezerano rya mbere rikiriho.

[39] Muri dosiye y'urubanza hagaragaramo amasezerano y'ubugure bw'imitungo akurikira:

a. Amasezerano y'ubugure bw'inzu yo ku wa 21/07/2006;

b. Amasezerano y'ubugure bw'inzu yo ku wa 01/03/2010;

c. Amasezerano y'ubugure bw'ikibanza yo ku wa 11/10/2011;

d. Amasezerano y'ubugure bw'ikibanza yo ku wa 07/01/2013.

Hakurikijwe ibisobanuro byatanzwe na Niyodusenga Anaclet mu Rukiko Rwisumbuye rwa Rubavu, mu iburanisha ry'urubanza No RC 00063/2018/TGI/RBV ryo ku wa 13/02/2019, ibibanza bimaze kuvugwa haruguru byahawe UPI mu buryo bukurikira:

a. Ikibanza cyaguzwe ku wa 21/07/2006 cyanditswe kuri UPI: 3/03/11/04/5600;

b. Icyaguzwe ku wa 01/03/2010 gihabwa UPI: 3/03/11/01/60;

c. Icyaguzwe ku wa 11/10/2011 gihabwa UPI: 3/03/04/06/481;

d. Icyaguzwe ku wa 07/01/2013 gihabwa UPI: 3/03/04/06/383.

[40] Hashingiwe ku masezerano y'ubugure yagaragajwe mu gika kibanza, Urukiko rurasanga umutungo ufite UPI: 3/03/11/04/5600 waguzwe ku wa 21/07/2006 udashobora kujya mu mitungo igabanwa hagati ya Niyodusenga Anaclet na Mbesigye Marguerite, kuko wabonetse mbere ya 2007 bataratangira kubana nk'umugore n'umugabo; ukaba ahubwo ari umutungo Niyodusenga Anaclet asangiye na Mukangwije Espérance. Urukiko rurasanga imitungo Niyodusenga Anaclet na Mbesigye Marguerite bagomba kugabana ari iyabonetse babana, ni ukuvuga nyuma ya 2007 nk'uko byasobanuwe, ariyo:

a. Umutungo waguzwe ku wa 01/03/2010, ufite UPI: 3/03/11/01/60;

b. Uwaguzwe ku wa 11/10/2011, ufite UPI: 3/03/04/06/481;

c. Uwaguzwe ku wa 07/01/2013, ufite UPI: 3/03/04/06/383.

[41] Ku bijyanye n'uruhare rwa buri wese ku mitungo igomba kugabanwa, Urukiko rurasanga Niyodusenga Anaclet na Mbesigye Marguerite, buri wese afite uburenganzira bungana na 50% kuri buri mutungo. Urukiko rurasanga ariko mu kuyigabana, hagomba kubanza kuvanwamo agaciro k'ibyo Niyodusenga Anaclet yayongeyeho, kagaragajwe n'umuhanga washyizweho n'Urukiko.

[42] Muri raporo y'igenagaciro umuhanga yakoze, yagaragaje ko:

a. Ibyongewe ku mutungo wanditse kuri UPI: 3/03/11/01/60, bifite agaciro ka 85.618 Frw;

b. Ibyongewe ku mutungo wanditse kuri UPI: 3/03/04/06/481, bifite agaciro ka 18.000 Frw;

c. Ibyongewe ku mutungo wanditse kuri UPI: 3/03/04/06/383, bifite agaciro ka 1.922.970 Frw.

[43] Ku bivugwa na Niyodusenga Anaclet ko atemera igenagaciro ryakozwe n'umuhanga ngo kuko imitungo iburanwa yayihaye agaciro kari hejuru ugereranyije n'akagaragajwe ikirego gitangira, akanatubya agaciro k'ibyo yongeyeho, Urukiko rurasanga nta shingiro byahabwa kuko ibyo umuhanga yagendeyeho yabisobanuye mu buryo bwumvikana mu iburanisha ryo ku wa 19/12/2022, kandi Niyodusenga Anaclet, uretse kutabyemera gusa, ntagagaraza icyo ashingiraho anyomoza umwanzuro w'umuhanga.

[44] Hashingiwe ku bisobanuro byose byatanzwe, Urukiko rurasanga Mbesigye Marguerite afite uruhare rungana na 50% ku mitungo yagaragajwe hejuru ko ariyo igomba kugabanwa, hakuwemo agaciro k'ibyo Niyodusenga Anaclet yayongeyeho kuva aho urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ruciriwe.

II. Ibijyanye n'indishyi

[45] Mbesigye Marguerite avuga ko Urukiko Rwisumbuye rwamutegetse guha Mukangwije Espérance indishyi z'akababaro zo gushorwa mu manza hamwe n'igihembo cy'Avoka bingana na 825.000 Frw, kandi ari Mukangwije Espérance wamureze, akaba rero nta mpamvu yo kuvuga ko yamushoye mu manza. Avuga ko asanga izo ndishyi yazisaba Niyodusenga Anaclet, kuko ariwe uri kumushora mu manza. Avuga kandi ko n'Urukiko Rukuru rwamurenganyije rugumishaho indishyi yaciwe, rukongeraho n'andi 250.000 Frw y'igihembo cy'Avoka, bityo akaba asaba ko indishyi zose yaciwe zavanwaho.

[46] Asaba ko kuri uru rwego Urukiko rwategeka Niyodusenga Anaclet kumuha indishyi zingana na 1.000.000 Frw zo kumushora mu manza, ndetse na 1.000.000 Frw y'igihembo cy'Avoka n'ikurikiranarubanza, kuko akomeje kumushora mu manza kandi azi ko umutungo uburanwa bawushakanye. Avuga ko indishyi Niyodusenga Anaclet asaba atazihabwa kuko ariwe nyirabayazana w'ibibazo byose, naho ku ndishyi zasabwe na Mukangwije Espérance avuga ko asanga zaryozwa umugabo we, kuko ariwe warenze ku isezerano agakora irindi.

[47] Mukangwije Espérance avuga ko Mbesigye Marguerite nk'inshuti y'umuryango yabonye arwaye agashuka umugabo we ngo babane, bikagera n'aho amushuka bagasezerana imbere y'amategeko kandi azi neza ko isezerano rya mbere rigihari, akiyandikishaho imitungo, none akaba akomeje kumushora mu manza. Avuga ko asanga Mbesigye Marguerite yaciwe

amafaranga make, kuko akomeje gutuma ashaka Abavoka bo kumuburanira no gutakaza amafaranga y'ikurikiranarubanza.

[48] Avuga ko kuva mu mwaka wa 2016 Mbesigye Marguerite yakomeje kumushora mu manza, akaba asaba indishyi zingana na 5.000.000 Frw akubiyemo 4.000.000 Frw y'indishyi z'akababaro n'ikurikiranarubanza, na 1.000.000 Frw y'igihembo cy' Avoka mu Rukiko rw'Ikirenga.

[49] Niyodusenga Anaclet avuga ko asanga Mbesigye Marguerite akwiye guha Mukangwije Espérance indishyi zingana na 825.000 Frw nk'uko yabitegetswe n'Urukiko, kuko ariwe wamushoye mu manza, bigatuma yifashisha umwunganizi ku rwego rwa mbere no ku rwego rwa kabiri.

[50] Asaba Urukiko gutegeka Mbesigye Marguerite kumuha indishyi zingana na 2.000.000 Frw zo kumushora mu manza, 500.000 Frw y'ikurikiranarubanza, na 1.000.000 Frw z'igihembo cy'Avoka wamwunganiye muri uru Rukiko, yose hamwe akaba 3.500.000 Frw yiyongera ku ndishyi Urukiko Rukuru rwari rwamutegetse. Avuga ko indishyi asabwa na Mbesigye Marguerite adakwiye kuzitanga.

UKO URUKIKO RUBIBONA

[51] Urukiko rurasanga indishyi zose zasabwe muri uru rubanza zitagomba gutangwa kuko buri wese afite icyo atsindiye.

III. ICYEMEZO CY'URUKIKO

[52] Rwemeje ko ikirego cyatanzwe na Mbesigye Marguerite cyo gusubirishamo ku mpamvu z'akarengane, urubanza Nº RCA 00028/2019/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze ku wa 31/07/2019, gifite ishingiro kuri bimwe;

[53] Rwemeje ko urwo rubanza ruhindutse kuri bimwe;

[54] Rwemeje ko nta ruhare Mbesigye Marguerite afite ku mutungo ufite UPI: 3/03/11/04/5600;

[55] Rwemeje ko Mbesigye Marguerite afite uruhare rungana na 50% ku yindi mitungo iburanwa, habanje kuvanwamo agaciro k'ibyo Niyodusenga Anaclet yayongeyeho kuva aho urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane ruciriwe, gateye mu buryo bukurikira:

a. 85.618 Frw kuri UPI: 3/03/11/01/60;

b. 18.000 Frw kuri UPI: 3/03/04/06/481;

c. 1.922.970 Frw kuri UPI: 3/03/04/06/383.

[56] Rutegetse Niyodusenga Anaclet na Mukangwije Espérance buri wese gusubiza Mbesigye Marguerite amafaranga 116.667 ahwanye n'uruhare rwabo ku mafaranga yishyuye umuhanga wakoze igenagaciro ryategetswe n'Urukiko.