DUFITEMUNGU v MUKARUSINE N'UNDI

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00015/2021/SC (Mukamulisa, P.J., Hitiyaremye, Muhumuza, J.) 22 Werurwe 2024]

Amategeko agenga imanza z'imbonezamubano – Imanza z'ubutaka – Kugaragaza ibimenyetso byemeza ko uwiyandikishijeho ubutaka ari ubwe koko - Icyemezo cy'ubukode burambye cy'ubutaka, si ikimenyetso cyemeza nta shiti ko ugifite ariwe nyir'ubutaka yiyandikishijeho kuko gishobora guteshwa agaciro mu gihe hatagaragajwe inkomoko y'ubwo butaka.

Incamake y'ikibazo: Uru rubanza rukomoka ku butaka bwari ubwa Dusabemungu na we wabuhawe na Komini Kinyamakara nyuma aza guhunga ubwo butaka buza kuburanwa n'umuvandimwe we witwa Mudenge aburana na Komini Kinyamakara yashakaga kubumwambura, arabutsindira hemezwa ko akomeza kuburagirira Dusabemungu. Mukarusine na Kanamugire nabo bavugaga ko ubwo butaka ari ubwabo kuko babukomora kuri se witwa Munyengabe wahunze mu mwaka wa 1959, baje gufata ubwo butaka ariko babwirwa ko nihagira uwo mu muryango wa Dusabemungu utahuka bazamusubiza ubwo butaka. Igihe cyiyandikisha cyarageze babwiyandikishaho, nyuma Dufitemungu umwana wa Dusabemungu aza gutahuka mu mwaka wa 2011 ajya muri ubwo butaka ariko abari babufite baza gutanga ikirego mu Rukiko rw'Ibanze rwa Ngoma bavuga ko ubutaka ari ubwabo kuko aribo bafite icyemezo cyabwo.

Urukiko rw'Ibanze rwa Ngoma rwemeje ko ikirego cya Mukarusine na Kanamugire gifite ishingiro, rutegeka Dufitemungu gusubiza iyo sambu abazungura ba Munyengabe kuko aribo bafite icyemezo cy'ubutaka cya burundu kitigeze giteshwa agaciro. Dufitemungu yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Huye, avuga ko isambu ari iy'umuryango we ukomora kuri Dusabemungu, ko hari n'icyemezo cy'Umuhesha w'Inkiko cyayibahesheje ubwo iyo sambu bayiburanaga n'icyahoze ari Komini Kinyamakara. Urukiko rwemeje ko ubujurire bwa Dufitemungu nta shingiro bufite rugumishaho icyemezo cy'Urukiko rw'Ibanze rwa Ngoma maze yiyambaza inzira z'akarengane. Urubanza rwe rwaje guhabwa Urukiko rw'Ikirenga maze rwongera kuruburanisha hasuzumwa ikibazo cyo kumenya nyir'ubutaka bufite UPI: 2/04/04/02/1310 hagati ya Dusabemungu n'abazungura ba Munyengabe bafite icyemezo cy'ubutaka.

Dufitemungu asobanura ko isambu iburanwa ari iye kuko yagaragaje inkomoko yayo ndetse hakaba harabayeho n'imanza zaburanwe inkiko zikemeza ko iyo sambu ari iye mu gihe abazungura ba Munyengabe be uretse kuvuga ko isambu yari iy'umubyeyi wabo no kuba bagaragaza icyemezo cy'ubutaka, nta kindi kimenyetso bagaragaza kerekana ko ubwo butaka bwari ubwa Munyengabe bityo agasaba ko icyemezo cy'ubutaka bufite UPI: 2/04/04/02/1310 cyateshwa agaciro akabwandikwaho. Mukarusine na Kanamugire ntacyo bavuze kuri iyi ngingo kuko nta myanzuro bakoze iyisubiza kandi baramenyeshejwe iby'urubanza rwabo.

Incamake y'icyemezo: Icyemezo cy'ubukode burambye cy'ubutaka, si ikimenyetso cyemeza nta shiti ko ugifite ariwe nyir'ubutaka yiyandikishijeho kuko gishobora guteshwa agaciro mu gihe hatagaragajwe inkomoko y'ubwo butaka bityo ubutaka buburanwa bukaba ari ubwa Dufitemungu kuko ariwe ubasha kugaragaza inkomoko yabwo mu gihe ababufite babwibarujeho uretse icyemezo cy'iyandikisha bafite gusa, nta kindi kimenyetso bagaragaza gihamya aho babukomora.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane, gifite ishingiro.

Amategeko yashingiweho:
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12

Amategeko yifashishijwe atagikoreshwa:
Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda, ingingo ya 7;
Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikisha ry'ubutaka rikorwa, ingingo ya 23.

Imanza zifashishijwe:
RCAA 0018/13/CS, Harerimana Gaspard na Sebukayire Tharcisse, rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2014;
RS/INJUST/RC 00004/2018/SC, Nicyabera Espérance na Mukagatare Mariane, rwaciwe n'Urukiko rw'Ikirenga ku wa 21/02/2020.

Urubanza

I. IMITERERE Y'URUBANZA.

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ibanze rwa Ngoma, Mukarusine Judith na Kanamugire Athanase barega Dufitemungu Bernardine kuba ari mu bigabanyije ubutaka bwasizwe na Se Munyengabe ubwo yahungaga mu mwaka wa 1959. Basobanuye ko aho bahungukiye, ku itariki ya 05/01/2000, Ubuyobozi bwa Komini ya Kinyamakara bwafashe icyemezo cyo kubasubiza igice cyari gifitwe na Dufitemungu Bernardine barahakorera kugeza mu mwaka wa 2011 yishubije ubwo butaka.

[2] Dufitemungu Bernardine yireguye avuga ko isambu bamurega ari iya Se Dusabemungu Barthélémy yagabiwe na Komini Kinyamakara, akaba ayifite kubera ko ababyeyi be bahunze ntibagaruke, nawe ahungutse mu mwaka wa 2011 asanga isambu yarahawe abarega, ariko baravuze ko niharamuka hagize uwo mu muryango wa Dusabemungu Barthélémy uhunguka bazayimusubiza.

[3] Ku itariki ya 29/11/2013, Urukiko rw'Ibanze rwa Ngoma rwaciye urubanza N° RC 0099/12/TB/NGOMA, rwemeza ko ikirego cya Mukarusine Judith na Kanamugire Athanase gifite ishingiro, rutegeka Dufitemungu Bernardine gusubiza iyo sambu abazungura ba Munyengabe kuko aribo bafite icyemezo cy'ubutaka cya burundu kitigeze giteshwa agaciro nk'uko biteganywa n'ingingo ya 23 y'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena iyandikishwa ry'ubutaka. Urukiko rwashingiye kandi ku kuba nta kimenyetso Dufitemungu Bernardine yagaragaje cyemeza ko isambu iburanwa ari iya Se Dusabemungu Barthélémy.

[4] Dufitemungu Bernardine yajuririye urwo rubanza mu Rukiko Rwisumbuye rwa Huye, avuga ko isambu ari iy'umuryango we ukomora kuri Dusabemungu Barthélémy, ko hari

n'icyemezo cy'Umuhesha w'Inkiko cyayibahesheje ubwo iyo sambu bayiburanaga n'icyahoze ari Komini Kinyamakara. Naho ku byerekeye icyangombwa cy'ubutaka, yavugaga ko hagombaga kuba haranditswe ko hari amakimbirane aho kugitanga.

[5] Mukarusine Judith na Kanamugire Athanase bireguye bavuga ko isambu iburanwa bayihawe n'uwari Burugumesitiri w'icyahoze ari Komini Kinyamakara, ikaba ari iyabo nk'abazungura ba Munyengabe. Ku birebana n'icyemezo cy'umuhesha w'inkiko, bavuga ko isambu iburanwa ntaho ihuriye n'iyatanzwe n'Umuhesha w'Inkiko harangizwa urubanza, ko icyangombwa cy'ubutaka cya burundu aricyo kigaragaza nyir'isambu uwo ariwe.

[6] Ku itariki ya 04/04/2014, Urukiko Rwisumbuye rwa Huye rwaciye urubanza N° RCA 0010/014/TGI/HUYE, rwemeza ko ubujurire bwa Dufitemungu Bernardine nta shingiro bufite, bityo ko nta gihindutse ku rubanza rwaciwe ku rwego rwa mbere.

[7] Mu gufata icyo cyemezo, urwo Rukiko rwashingiye ku cyemezo cy'ubutaka N° 1310/HUY/KIG cyemeza ko ubutaka ari ubw'abazungura ba Munyengabe, cyane cyane ko ngo urega muri urwo rubanza atagaragaza urubanza rwabayeho rwemeza ko icyo cyemezo cy'ubutaka cyatanzwe na Mukarusine Judith na Kanamugire Athanase ari igihimbano.

[8] Dufitemungu Bernardine yajuririye icyo cyemezo mu Rukiko Rukuru, Urugereko rwa Nyanza, ku itariki ya 23/12/2014, urwo Rukiko ruca urubanza N° RCAA 0074/14/HC/NYA, rwemeza ko ubujurire butakiriwe kubera ko bwatanzwe mu buryo bunyuranyije n'amategeko.

[9] Ku itariki ya 19/02/2018, Dufitemungu Bernardine yandikiye Urwego rw'Umuvunyi asaba ko urubanza n° RCA 0010/014/TGI/HYE rwaciwe n'Urukiko Rwisumbuye rwa Huye ku itariki ya 04/04/2014, rwasubirwamo ku mpamvu z'akarengane kuko asanga harirengagijwe amategeko n'ibimenyetso. Nyuma yo gusuzuma icyo kibazo, Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rumusaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane, amaze gusuzuma raporo yakozwe n'Ubugenzuzi bw'Inkiko kuri urwo rubanza, yemeza ko rwongera kuburanishwa, ruhabwa N° RS/INJUST/RC 00015/2021/SC.

[10] Urubanza rwaburanishijwe mu ruhame ku itariki ya 18/07/2023, Dufitemungu Bernardine yitabye yunganiwe na Me Kagabo Théoneste, Mukarusine Judith na Kanamugire Athanase batitabye ariko bigaragara ko bamenyeshejwe urubanza mu buryo bukurikije amategeko, Urukiko rufata icyemezo cyo gukomeza iburanisha badahari.

[11] Urukiko rwemeje ko mbere yo kwinjira mu mizi y'urubanza habanza gukorwa ibi bikurikira:

- Kubaza mu Kigo cy'Igihugu gishinzwe Ubutaka amateka y'isambu ifite UPI: 2/04/04/02/1310.
- Igishushanyo (croquis) cyerekana isambu yaburanywe mu rubanza N° RC 7441/25 rwaciwe n'Urukiko rwa Kanto ya Kinyamakara ku itariki ya 30/11/1999 hagati y'icyari Komini Kinyamakara na Mudenge Modeste rukarangizwa.

[12] Uwo munsi kandi Urukiko rwemeje ko ku itariki ya 08/09/2023, ruzajya kwirebera imiterere y'isambu iburanwa iherereye mu Mudugudu wa Mbogo, Akagari ka Kabatwa, Umurenge wa Kigoma, Akarere ka Huye, Intara y'Amajyepfo.

[13] Ku birebana n'amateka y'ubutaka, Ikigo cy'Igihugu gishinzwe ubutaka cyagaragaje ko mu gihe cy'ibarura rusange ry'ubutaka, ubwo butaka bwanditswe kuri Succession Munyengabe uhagaririwe na Mukarusine Judith atanze amakuru ko ari umurage.

[14] Ku itariki ya 08/09/2023, Urukiko rwageze aho ikiburanwa giherereye rubaza abatangabuhamya batandukanye amateka y'isambu iburanwa. Nyuma iburanisha ry'urubanza ryarasubukuwe ku itariki ya 13/02/2024, kuri uwo munsi hitaba Dufitemungu Bernardine yunganiwe na Me Nshimiyimana Moubarakah, abo baburana nanone ntibitaba nubwo bari baramenyeshejwe iby'urubanza mu buryo bukurikije amategeko.

[15] Ikibazo umuburanyi yashyikirije urukiko ari nacyo cyasuzumwe muri uru rubanza, ni icyo kumenya nyir'ubutaka bufite UPI: 2/04/04/02/1310 hagati ya Dusabemungu Barthélémy n'abazungura ba Munyengabe". Ikindi ni ikirebana n'indishyi zisabwa mu rubanza.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

- **Kumenya nyir'ubutaka bufite UPI: 2/04/04/02/1310 hagati ya Dusabemungu Barthélémy n'abazungura ba Munyengabe**

[16] Dufitemungu Bernardine avuga ko igituma yemeza ko isambu iburanwa atari iy'abazungura ba Munyengabe nk'uko bo babivuga kandi byanemejwe n'Urukiko rwaciye urubanza basabye ko rwasubirwamo, abishingira ku bivugwa mu ngingo ya 9 y'Itegeko N° 27/2021 ryo ku wa 10/06/2021 rigenga ubutaka, iteganya ko "ubutaka umuntu yarazwe, yazunguye, yaguze, yahawe nk'impano, yahawe nk'ingurane, ubwo akomora ku isaranganya cyangwa yahawe n'ubuyobozi bubifitiye ububasha mu buryo bwemewe n'amategeko, abutunga hakurikijwe bumwe mu buryo bwo gutunga ubutaka bukurikira: ubukode burambye n'inkondabutaka". Avuga ko ibikubiye muri iyi ngingo ari nabyo bigaragaza inkomoko yemewe n'amategeko ishobora gushingirwaho hemezwa nyir'ubutaka. Akomeza avuga ko ubutaka buburanwa atari ubwa Munyengabe kubera impamvu zikurikira:

i. Kuba Mukarusine Judith na Kanamugire Athanase batabasha kugaragaza inkomoko idashidikanywaho yerekana aho Se Munyengabe ahurira n'ubu butaka, usibye kuvuga gusa ko yari abutunze mbere ya 1959, bakaba ari nta kimenyetso na kimwe berekana, usibye gusa gushingira ku cyangombwa cy'ubutaka babonye mu buryo bw'uburiganya.

ii. Kuba, nyuma y'uko Komini Kinyamakara itsinzwe urubanza inshuro ebyiri, Urukiko rukemeza ko ubutaka ari ubwa Dusabemungu Barthélémy, rugategeka ko buba bucungwa n'umuvandimwe we Mudenge Modeste ndetse urubanza rukanarangizwa, Mukarusine Judith yaremeye ko ubutaka atari ubwa Munyengabe ahubwo agahitamo kubutira avuga ko nta handi afite akorera akanemera ko ba nyirabwo nibahunguka azabubasubiza.

[17] Avuga kandi ko, ashingiye kuri raporo y'isesengura ry'ikibazo cye ryakozwe n'Urwego rw'Umuvunyi ku itariki ya 21/10/2019, Mukarusine Judith ubwe yiyemereye ko yatijwe ubutaka, yemera ko nyirabwo nahunguka azabumusubiza, ibyo kandi bikaba byaremejwe n'abatangabuhamya Mudenge Modeste, Bizirema Vincent na Barihuta Mathias mu nteko y'abaturage yabaye ku itariki 10/09/2019, ubwo urwo rwego rwari rwaje gukurikirana icyo kibazo.

Avuga ko abo batangabuhamya bemeje ko ubutaka ari ubwa Dusabemungu Barthélémy, ko Mukarusine Judith yabutijwe n'inzego z'ibanze avuga ko azabusubiza nyirabwo ahungutse cyangwa hahungutse uwo mu muryango we, ko ubwo butaka Mukarusine Judith yabwibarujeho mu buryo bw'uburiganya.

[18] Dufitemungu Bernardine akomeza avuga ko ikindi kimenyetso kigaragaza ko isambu iburanwa ari iya Se Dusabemungu Barthélémy, ari inyandiko yo ku itariki ya 22/12/2011, Ubuyobozi bw'Akarere ka Huye bwanditse bwemeza ko Dusabemungu Barthélémy agomba gusubizwa ubutaka bwe kuko abari baburimo bari barabutijwe, hakaba n'ibaruwa yo ku itariki ya 16/02/2000, uwari Burugumesitiri w'iyari Komini Kinyamakara yandikiye uwari Perefe w'icyari Perefegitura ya Gikongoro amumenyesha ko isambu yari ifitwe na Mudenge Modeste yeguriwe Mukarusine Judith, ko ariko umuntu ufite uburenganzira bwo kuzayikurikirana ari Dusabemungu Barthélémy cyangwa abamukomokaho.

[19] Avuga ko nyuma y'ibyo byose Urukiko rutari gushingira gusa ku cyangombwa cy'ubutaka Mukarusine Judith yahawe mu buryo bw'uburiganya ngo rwemeze ko isambu iburanwa ari iye hamwe na Kanamugire Athanase, mu gihe bigaragara ko bayikoreyemo bayitijwe, cyane cyane ko mu rubanza N° RCAA 0018/13/CS rwaciwe ku itariki ya 24/12/2014, Urukiko rw'Ikirenga rwemeje ko icyemezo cy'ubukode burambye atari ikimenyetso cyemeza nta shiti ko ugifite ariwe nyir'ubutaka yiyandikishijeho.

[20] Akomeza avuga ko, ashingiye ku byo yavuze haruguru, asaba Urukiko kuzabona ko ubwo butaka nta kintu na kimwe kigaragaza ko ari ubwa Munyengabe, anasaba ko hazashingirwa ku ngingo ya 18, igika cya 2, y'Itegeko N° 27/2021 ryo ku wa 10/06/2021 ryavuzwe haruguru, iteganya ko "icyemezo cy'iyandikishwa ry'ubutaka ari ikimenyetso ntashidikanywaho cy'uburenganzira ku butaka igihe cyose ubufite yabubonye mu buryo bukurikije amategeko", bityo Urukiko ruzabone ko icyangombwa kivugwa n'abaregwa bakibonye mu buryo budakurikije amategeko.

[21] Avuga ko, ashingiye ku bisobanuro byose yagaragaje haruguru, ndetse n'ibyo Urwego rw'Umuvunyi rwatanze mu isesengura rwakoze, asaba Urukiko kwemeza ko isambu iburanwa ari iya Dusabemungu Barthélémy nk'uko biteganywa mu ngingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

[22] Asoza asaba ko, hashingiwe ku cyemezo cyafashwe n'Urukiko rw'Ikirenga mu rubanza N° RCAA 0018/13/CS rwaciwe ku itariki ya 24/12/2014 rwavuzwe haruguru, uwitwa Harerimana Gaspard aburana na Sebukayire Tharcisse, rwazatesha agaciro icyangombwa cy'ubutaka gifite UPI: 2/04/04/02/1310 ku mpamvu y'uko cyatanzwe mu buryo budakurikije amategeko, icyo cyemezo akaba ari nacyo cyashingiweho mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, maze ubutaka bukandikwa kuri bene bwo babugaragariza inkomoko idashidikanywaho.

[23] Mukarusine Judith na Kanamugire Athanase ntacyo bavuze kuri iyi ngingo kuko nta myanzuro bakoze iyisubiza kandi baramenyeshejwe iby'urubanza rwabo.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 7 y'Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 rigena imikoreshereze n'imicungire y'ubutaka mu Rwanda ryakurikizwa ubwo ikirego cyatangwaga ku rwego rwa mbere, iteganya ko iri Tegeko Ngenga rirengera ku buryo bungana uburenganzira ku butaka bukomoka ku muco n'ubukomoka ku mategeko yanditse. Iyo ngingo ikomeza ivuga ko mu buryo bw'iri Tegeko Ngenga, abafite ubutaka bukomoka ku muco ari abantu bose baburazwe n'ababyeyi babo, ababukebewe n'ubuyobozi bubifitiye ububasha cyangwa se ababubonye ku bundi buryo bwose bwemewe n'umuco w'igihugu haba igura, impano, ingurane n'isaranganya.

[25] Iyo ngingo yumvikanisha ko kugira ngo umuntu agire ubutaka, agomba kuba yarabubonye binyuze muri imwe mu nzira zimaze kuvugwa, bikumvikana ko mu gihe habayeho amakimbirane, uvuga ko ari nyir'ubutaka agomba kwerekana ibimenyetso by'aho abukomora.

[26] Ingingo ya 12, igika cya mbere, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko "urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda". Ibiteganywa n'iyo ngingo, binahura n'ibivugwa mu ngingo ya 3, igika cya mbere, y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko "buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana".

[27] Ingingo ya 23, igika cya mbere n'icya kabiri, y'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikisha ry'ubutaka rikorwa ryakurikizwaga hatangwa ikirego, iteganya ko icyemezo cy'iyandikisha cyerekana nta mpaka uburenganzira ku mutungo bwite w' ubutaka, ku bukode bw'ubutaka cyangwa uburenganzira ku mutungo cyangwa ibiwubangamira byanditse kuri icyo cyemezo. Iyo ngingo ikomeza ivuga ko uburenganzira ku mutungo nk'uko buvugwa mu cyemezo budahungabanywa kabone n'ubwo icyemezo cyaba cyarakozwe bashingiye ku masezerano yo kurekura umutungo ashobora guseswa cyangwa ashobora guteshwa agaciro, cyangwa icyemezo cy'urukiko cyemeza izungura ku buryo butunguranye.

[28] Mu kwemeza ko isambu iburanwa ari iy'abazungura ba Munyengabe, Urukiko Rwisumbuye rwa Huye rwaciye urubanza rwasubirishijwemo ku mpamvu z'akarengane, rwashingiye ku cyemezo cy'iyandikisha ry'ubutaka N° 1310/HUY/KIG (UPI: 2/04/04/02/1310) kigaragaza ko isambu yanditse ku bazungura ba Munyengabe, rushingira no ku ngingo ya 23, igika cya mbere n'icya kabiri, y'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 ryavuzwe haruguru.

[29] Ku birebana n'agaciro gahabwa ikimenyetso gishingiye ku cyemezo cy'iyandikisha ry'ubutaka, mu rubanza N° RCAA 0018/13/CS rwaburanwaga hagati ya Harerimana Gaspard na Sebukayire Tharcisse, Urukiko rw'Ikirenga rwemeje ko ingingo ya 23 y'Iteka rya Minisitiri Nº 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikisha ry'ubutaka rikorwa, iteganya ubutayegayezwa bw'icyemezo cy'iyandikisha ry'ubutaka idashobora gukurikizwa kubera ko inyuranye n'amategeko rwasobanuye, bityo ko ibyangombwa by'iyandikisha ry'ubutaka bitari ntayegayezwa, ko bishobora guteshwa agaciro[1]. Uwo murongo wanashimangiwe mu rubanza N° RS/INJUST/RC 00004/2018/SC rwari hagati ya Nicyabera Espérance na Mukagatare Mariane,

[1] Urubanza N° RCAA 0018/13/CS, rwaciwe ku itariki ya 24/12/2014, igika cya 22.

aho urukiko rwemeje ko kuba hari igice cy'isambu Mukagatare Mariane yibarujeho, ubwabyo bitayimuhaho uburenganzira, keretse agaragaje aho akomora ubwo butaka[2].

[30] Hashingiwe ku ngingo ya 7 y'Itegeko Ngenga N°08/2005 ryo ku wa 14/07/2005 ryavuzwe haruguru no ku bisobanuro byatanzwe n'Urukiko rw'Ikirenga mu manza zimaze kuvugwa, Urukiko rurasanga Urukiko Rwisumbuye rwa Huye rutari gushingira ku cyemezo cy'iyandikisha ry'ubutaka cyonyine ngo rwemeze ko uwo ubutaka buburanwa bwanditseho ari we nyirabwo, rutabanje gusuzuma n'ibindi bimenyetso kugira ngo rumenye niba icyo cyemezo Mukarusine Judith yarakibonye mu buryo bukurikije amategeko.

[31] Ku birebana n'ibindi bimenyetso, inyandiko zigize dosiye y'urubanza zigaragaza ko isambu iburanwa n'ubundi yigeze kuburanwa mu rubanza N° R.C.7441/25, ku itariki ya 30/11/1999, Urukiko rwa Kanto ya Kinyamakara rutegeka ko iyo sambu isubizwa Mudenge Modeste kugira ngo akomeze kuyicungira umuvandimwe we Dusabemungu Barthélémy, kugeza igihe hazagira umukomokaho ugaruka akayimuha. Uru rubanza rwabaye itegeko ndetse ku itariki ya 10/08/2001 ruranarangizwa. Muri urwo rubanza, Mudenge Modeste yari yarareze Komini Kinyamakara kuba yarafashe iyo sambu ikayiha Mukarusine Judith wavugaga ko yari iya Se Munyengabe wayisize mu mwaka wa 1959 ahunze.

[32] Dosiye igaragaza kandi ko ku itariki ya 16/02/2000, uwari Burugumesitiri wa Komini Kinyamakara yandikiye uwari Perefe wa Perefegitura ya Gikongoro, amumenyesha icyemezo cyafashwe ku kibazo cya Mukarusine Judith wasabaga isambu ya Se Munyengabe wayisize ahunze ikaza kugabwa na Komini. Yamubwiye ko iyo sambu ari na yo iburanwa ubu, yeguriwe Mukarusine Judith, ko ariko ufite uburenganzira bwo kuyikurikirana ari Dusabemungu Barthélémy cyangwa abamukomokaho. Ibyo yabishingiraga ku cyemezo cyari cyarafashwe n'urukiko kuri iyo sambu.

[33] Dosiye y'urubanza nanone igaragaza ko ku itariki ya 22/12/2011, nyuma yo gusuzuma ikibazo cy'isambu iburanwa yari yaragejejweho na Mukarusine Judith na Dufitemungu Bernardine, Umuyobozi w'Akarere ka Huye yandikiye abo bombi abamenyesha ko iyo sambu igomba kuguma ari iya Dusabemungu Barthélémy, kuko ibimenyetso Dufitemungu Bernardine yamugaragarije harimo n'urubanza rwaburanywemo iyo sambu n'inyandikomvugo yo kurangiza urwo rubanza yakozwe n'umuhesha w'inkiko, byerekana ko ari we wayegukanye.

[34] Ku itariki ya 08/09/2023, ubwo Urukiko rwageraga aho ikiburanwa kiri kugira ngo rumenye neza nyir'isambu iburanwa, rwabajije abatangabuhamya baruha ubuhamya bukurikira:

i. Uwitwa Bizirema Vincent yavuze ko akimenya ubwenge yasanze isambu iburanwa ituwemo na Barutoromayo (Barthélémy), Munyengabe atuye ahandi haruguru. Ibyo kandi byemejwe n'undi mutangabuhamya Nyirahabimana Dativa wongeyeho ko aho Munyengabe yari atuye ubu hatuye uwitwa Muhimpundu.

ii. Umutangabuhamya Hagenimana Jean Bosco na we yavuze ko isambu yari ituwemo na Barutoromayo ubu ihingwa na Mukarusine kubera ko yayiburanye na Bernardine.

iii. Undi mutangabuhamya witwa Mageza Célestin yavuze ko afite nk'imyaka icumi yasanze isambu iburanwa ituwemo na Barutoromayo, Munyengabe atuye mu mpinga

[2] Urubanza N° RS/INJUST/RC 00004/2018/SC, rwaciwe ku itariki ya 21/02/2020, igika cya 24.

haruguru, ko inzu zarimo zashenywe n'impunzi, nyuma abana ba Barutoromayo bahungutse bahabwa iyo sambu.

iv. Mudenge Modeste yatanze amakuru y'ibyo azi kuri iyo sambu, avuga ko bamuhaye isambu ngo ayireberere Barutoromayo, nyuma ayiburana na Komini Kinyamakara yari yarayimwatse arayitsindira, urubanza rurarangizwa arayihabwa, nanone Burugumesitiri nyuma aragaruka ayibirukanamo ayigabira Mukarusine Judith.

v. Uwitwa Barihuta Mathias uvuga ko ari we wandikaga ubutaka mu gihe cy'ibarura ryabwo, yasobanuriye Urukiko ko icyo gihe ubutaka buburanwa bari babanje kububarura kuri Barutoromayo, ariko kubera impaka zari ziburiho hagati ya Dufitemungu Bernardine na Mukarusine Judith babushyira mu makimbirane. Avuga ko atazi uburyo nyuma Mukarusine Judith yaje kubona ibyangombwa byabwo.

[35] Nyuma yo gusesengura ibimenyetso byose byagaragajwe haruguru, hashingiwe ku ngingo ya 7 y'Itegeko Ngenga N° 08/2005 ryo ku wa 14/07/2005 ryavuzwe haruguru, n'iya 12, igika cya mbere, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 na ryo ryavuzwe haruguru, Urukiko rurasanga ubutaka buburanwa muri uru rubanza ari ubwa Dusabemungu Barthélémy, kubera ko Urukiko rutashoboye kubona icyashingiweho Mukarusine Judith abwandikisha ku bazungura ba Munyengabe, uretse kuvuga gusa ko ari umurage, mu gihe nyamara igihe cy'ibarura ry'ubutaka, ubwo butaka bwari bwarashyizwe mu makimbirane.

[36] Hashingiwe kandi ku bisobanuro byatanzwe haruguru, Urukiko rurasanga icyemezo cy'ubukode burambye N° 1310/HUY/KIG (UPI: 2/04/04/02/1310) cy'ubutaka buri mu Mudugudu wa Mbogo, Akagari ka Kabatwa, Umurenge wa Kigoma, Akarere ka Huye, Intara y'Amajyepfo, cyanditswe kuri Succession Munyengabe, ihagarariwe na Mukarusine Judith, kigomba guteshwa agaciro, Umubitsi w'Inyandikompamo akagikura kuri ayo mazina kikandikwa kuri Dusabemungu Barthélémy.

- **Ku bijyanye n'indishyi zisabwa mu rubanza.**

[37] Dufitemungu Bernardine avuga ko, ashingiye ku ngingo 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, asaba abaregwa kumuha indishyi zihwanye na 5.000.000 Frw zibazwe mu buryo bukurikira:

- 4.000.000 Frw y'indishyi zikomoka ku gihombo batejwe no kuba Mukarusine Judith na Kanamugire Athanase barigaruriye ubutaka bwabo bakabubyaza umusaruro mu gihe yagaragaje haruguru kandi babizi neza ko atari ubwabo;
- 1.000.000 Frw y'indishyi z'akababaro.

[38] Mukarusine Judith na Kanamugire Athanase ntacyo bavuze kuri iyi ngingo kuko nta myanzuro bakoze iyisubiza kandi baramenyeshejwe iby'urubanza rwabo.

UKO URUKIKO RUBIBONA

[39] Urukiko rurasanga indishyi zikomoka ku gihombo Dufitemungu Bernardine asaba ntazo agomba guhabwa kubera ko atagaragarije Urukiko ishingiro ryazo ngo anazisobanure. Ku birebana

n’indishyi z’akababaro asaba, Urukiko rurasanga nazo ntazo akwiye guhabwa mu gihe abashoje urubanza bumvaga hari uburenganzira baharanira.

III. ICYEMEZO CY’URUKIKO

[40] Rwemeje ko ikirego cyatanzwe na Dufitemungu Bernardine cyo gusubirishamo ku mpamvu z’akarengane urubanza N° RCA 0010/14/TGI/HYE rwaciwe n’Urukiko Rwisumbuye rwa Huye ku itariki ya 04/04/2014, gifite ishingiro;

[41] Rwemeje ko urwo rubanza ruhindutse mu ngingo zarwo zose;

[42] Rutegetse ko amasezerano y’ubukode burambye afite N° 1310/HUY/KIG (UPI: 2/04/04/02/1310) yahawe Succession Munyegabe ihagarariwe na Mukarusine Judith ateshejwe agaciro;

[43] Rwemeje ko isambu ibaruye kuri N° 1310/HUY/KIG (UPI: 2/04/04/02/1310) iherereye mu Mudugudu wa Mbogo, Akagari ka Kabatwa, Umurenge wa Kigoma, Akarere ka Huye, Intara y’Amajyepfo, ari iya Dusabemungu Barthélémy, ikaba igomba kumwandikwaho.