UWANKUBITO N'UNDI v IRANKUNDA

[Rwanda URUKIKO RW'IKIRENGA - RS/INJUST/RC 00008/2023/SC (Mukamulisa, P.J., Kalihangabo, Kazungu, J.) 17 Gicurasi 2024]

Amategeko agenga imanza z'imbonezamubano – Amasezerano – Ubugure - Umutungo utimukanwa - Mu kwemeza ko umutungo utimukanwa watanzwe, bikorwa ari uko hari icyemezo cy'iyandikisha ry'ubutaka gitangwa n'umubitsi w'impapuro mpamo z'ubutaka nacyo gitangwa hashingiwe gusa ku masezerano yo kwegurira undi uwo mutungo akorwa mu buryo bw'inyandiko mpamo.

Incamake y'ikibazo: Uru rubanza rukomoka ku masezerano y'ubugure bw'inzu yakozwe na Nsanzimana na Uwankubito bemeranywa amafaranga 23.000.000 Frw aho Nsanzimana yagombaga kuyishyura mu byiciro bitatu. Bagura, nta ihererekanya mutungo ryabayeho bituma Irankunda wari umugore wa Nsanzimana nyuma bakaza gutandukana atanga ikirego mu Rukiko Rwisumbuye rwa Rusizi asaba ko uwo mutungo wabandikwaho, we na Nsanzimana kuko bari basezeranye icungamutungo ry'ivangamutungo rusange. Abaregwa bo bavugaga ko nta bugure bwemewe bwababayeho kuko uwagombaga kugura atishyuye ikiguzi cyumvikanweho. Urukiko rwategetse ko iyo nzu yandikwa kuri Nsanzimana na Irankunda.

Uwankubito na Mukangarambe, bajuririye icyo cyemezo mu Rukiko Rukuru Urugereko rwa Rusizi bavuga ko nta masezerano yigeze ahaba kuko atakorewe imbere ya Noteri kandi n'ikiguzi gisabwa kikaba kitarishyuwe. Urukiko rwaje kwemeza ko ubujurire bwabo budafite ishingiro. Abarega ku rwego rw'ubujurire bagiye mu nzira z'akarengane hanyuma urubanza ruhabwa Urukuiko rw'Ikirenga rwongera kuruburanisha hasuzumwa ikibazo cyo kumenya niba amasezerano yo ku wa 25/08/2017 Nsanzimana André yagiranye na Uwankubito Alphonse afite agaciro ku buryo yashingirwaho hategekwa ihererekanyamutungo.

Abarega bavuga ko nubwo bakoze amasezerano bemeranya kugura inzu, Nsanzimana atigeze yishyura kandi bari bakeneye amafaranga byihutirwa bityo ko amasezerano yakozwe nta gaciro afite dore ko atanakorewe imbere ya Noteri ngo abe yujuje ibisabwa. Abaregwa bo basobanura ko ayo masezerano afite agaciro kuko ugura n'ugurisha bumvikanye kuri byose kandi ko ku kijyanye no kwishyura, ikiguzi cyagombaga gutangwa mu byiciro bityo ko hagomba kubaho ihererekanya mutungo. Ku ruhande rwa Nsanzimana, asobanura ko nubwo habayeho ayo masezerano ariko atigeze ashyira mu bikorwa ibiyakubiyemo bijyanye no kwishyura bityo akaba adafite uburenganzira kuri uwo mutungo.

Incamake y'icyemezo: Mu kwemeza ko umutungo utimukanwa watanzwe, bikorwa ari uko hari icyemezo cy'iyandikisha ry'ubutaka gitangwa n'umubitsi w'impapuro mpamo z'ubutaka nacyo gitangwa hashingiwe gusa ku masezerano yo kwegurira undi uwo mutungo akorwa mu buryo bw'inyandiko mpamo.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro;
Imikirize y'urubanza RCA 00033/2021/HC/RSZ irahindutse.

Amategeko yashingiweho:
Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/4/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa, ingingo ya 34.

Amategeko yifashishijwe atagikoreshwa:
Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 18.

Imanza zifashijwe:
RS/INJUST/RC 00010/2019/SC, Twizerimana Théoneste na Manizabayo Kennedy, na HAFASHIMANA Elia, rwaciwe n'Urukiko rw'Ikirenga ku wa 25/09/2020;
RS/INJUST/RC 00004/2020/SC, Nsanzimana Wilson na Nyirajyambere Gacunga Espérance n'abandi; rwaciwe n'Urukiko rw'Ikirenga ku wa 09/04/2021;
RS/INJUST/RC 00003/2020/SC, CIFTCI Inanc na Nshimiyimana Yvon na Sebutinde Edouard, rwaciwe n'Urukiko rw'Ikirenga ku wa 30/09/2021;
RS/INJUST/RC 00014/2021/SC, Mukandori Costasie na Kayitesi Elyne, rwaciwe n'Urukiko rw'Ikirenga ku wa 13/05/2022;
RS/INJUST/RC 00012/2021/SC, Ntagungira Jerôme na Gitungwa Ester baburanaga na Nsengiyumva Théoneste, rwaciwe n'Urukiko rw'Ikirenga ku wa 22/07/2022;
RS/INJUST/RC 00024/2018/CS, Ngizweninshuti Albert na Muhima Giovanni, rwaciwe n'Urukiko rw'Ikirenga ku wa 21/02/2020;
RS/INJUST/RC 00007/2018/SC, Nditiribambe Samuel, Gatera Jason na Nyamaswa Faustin, rwaciwe n'Urukiko rw'Ikirenga ku wa 13/03/2020;
RS/ INJUST/RC 00004/2019/SC, Mukamana Mamique n'abandi na Candali Vérène, rwaciwe n'Urukiko rw'Ikirenga ku wa 28/07/2020.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku itariki ya 25/8/2017, Nsanzimana André na Uwankubito Alphonse, wari uhagarariwe n'umugore we Mukangarambe Berthilde, bagiranye amasezerano y'ubugure, maze bemeranya ko « Nsanzimana André aguriye Uwankubito inzu y'ubucuruzi Nº 3469 iri muri centre y'ubucuruzi ya Tyazo, mu Kagari ka Kibogora, Umurenge wa Kanjongo, Akarere ka Nyamasheke, ku giciro cya 23.000.000 Frw, ariko akazayishyura mu buryo bukurikira :

- 8.000.000 Frw, ku wa 30/07/2017;
- 4.480.150 Frw, ku wa 20/09/2017;
- Ikinyuranyo cya 10.519.850 Frw kingana n'agaciro k'ibikorwa byakozwe ku nzu mu isanwa ».

[2] Nta hererekanyamutungo ryumvikanyweho ryabayeho, bituma ku itariki ya 14/03/2021 Irankunda Ester arega Uwankubito Alphonse na Mukangarambe Berthilde mu Rukiko Rwisumbuye rwa Rusizi, asaba ko umutungo baguze ubandikwaho, we na Nsanzimana André wari

umugabo we bari barashyingiranywe barahisemo icungamutungo ry'ivangamutungo rusange[1], ikirego cyandikwa kuri No RC 00033/2020/TIGI/RSZ.

[3] Abaregwa bo bireguye bavuga ko amasezerano yabaye ari ayo kumvikana kugura, ariko ko ubugure butabayeho kuko ikiguzi kitigeze gitangwa ngo n'icyagurishijwe gitangwe, ahubwo ko Nsanzimana André na Irankunda Ester bakorera muri iyo nzu ubucuruzi bayikodesha.

[4] Urukiko Rwisumbuye rwa Rusizi rwaciye urubanza ku wa 06/07/2021, rwemeza ko ikirego cyakiriwe, rutegeka ko inzu iri ku butaka bubaruye kuri UPI: 3/07/06/01/3469 bukurwa ku mazina ya Uwankubito Alphonse na Mukangarambe Berthilde bukandikwa kuri Irankunda Ester na Nsanzimana André; rutegeka Uwankubito Alphonse na Mukangarambe Berthilde kwishyura Irankunda 250.000 Frw y'igihembo cya Avoka n'igarama rya 20.000 Frw.

[5] Urukiko rwasobanuye ko amasezerano yo ku wa 25/8/2017 yujuje ibiteganywa n'amategeko kugirango abe ubugure, kuko impande zombi zujuje inshingano zazo uretse iyo guhererekanya umutungo waguzwe.

[6] Uwankubito Alphonse na Mukangarambe Berthilde bajuririye uru rubanza mu Rukiko Rukuru, Urugereko rwa Rusizi, ikirego cyandikwa kuri N° RCA 00033/2021/HC/RSZ, bavuga ko Urukiko Rwisumbuye rwasesenguye nabi inyandiko yo ku wa 25/8/2017 kubera ko: 1) isesengura ryakorewe iyi nyandiko y'ubugure rinyuranye n'ubushake bwa ba nyirayo; 2) nta mafaranga y'ikiguzi yishyuwe; 3) abanditse ku mutungo bose bagombaga gusinya ku bugure; 4) yagombaga gukorerwa imbere ya Noteri;

[7] Mu mpamvu z'ubujurire bongeyeho iy'uko baciwe amafaranga y'ikurikiranarubanza n'igihembo cya Avoka.

[8] Irankunda Ester yisobanuye ashyigikira imikirize y'urubanza mu Rukiko Rwisumbuye rwa Rusizi, akavuga ko Uwankubito Alphonse na Mukangarambe Berthilde nta gishya berekana mu bujurire cyatuma urwo rubanza ruhinduka.

[9] Nsanzimana André wagobokeshejwe ku ngufu mu Rukiko Rukuru, Urugereko rwa Rusizi, avuga ko nta bugure bwabayeho kubera ko ku wa 25/08/2017 impande zombi zemeranyijwe kugura, zumvikana ku giciro no ku cyagombaga kugurwa, ariko ubugure ntibwaba kuko ba nyir'inzu yari kugurwa baje kwisubiraho, noneho we na Irankunda Ester bahitamo kuyikodesha, maze bumvikana ko amafaranga yakoreshejwe mu gusana inzu azakoreshwa nk'ubukode.

[10] Ku wa 18/11/2022, Urukiko Rukuru, Urugereko rwa Rusizi rwaciye urubanza, rwemeza ko ubujurire bwa Uwankubito Alphonse na Mukangarambe Berthilde nta shingiro bufite, ko nta gihindutse ku mikirize y'urubanza rwa mbere uretse indishyi z'ikurikiranarubanza n'igihembo cya Avoka ziyongereyeho ku rwego rw'ubujurire ; rutegeka ko inzu iburanwa iri mu butaka bubaruye

[1] Baje gutandukana, reba urubanza rw'ubutane RC00030/2020/TB/KAG rwaciwe n'Urukiko rw'Ibanze rwa Kagano, ku itariki ya 07/01/2021; rwemejwe kandi n'urubanza RCA 00005/2021/TGI/RSZ rwaciwe n'Urukiko Rwisumbuye rwa Rusizi ku wa 03/02/2022.

kuri UPI : 3/07/06/01/3469 bukurwa ku mazina ya Uwankubito Alphonse na Mukangarambe Berthilde bukandikwa kuri Irankunda Ester na Nsanzimana André.

[11] Urukiko rwashingiye ku kuba : 1) inyito y'inyandiko ubwayo ari amasezerano y'ubugure kandi ibigize amasezerano y'ubugure biteganywa n'amategeko biruzuye ; 2) impande zombi zemera iyi nyandiko kandi abagurishije bemera ko hari igice cy'igiciro cyishyuwe kingana na 10.519.850 Frw yakoreshejwe mu gusana inzu ivugwa ; 3) ibindi bice by'ikiguzi abaregwa bavuga ko bitishyuwe ariko ikigaragara ni uko batabiregeye bishyuza cyangwa se ngo barege basaba gusesa amasezerano, uretse ko ibyo bitanabuza ubugure kubaho 4) inzu yagumye mu maboko y'abayiguze kandi n'ubukode bivugwa ko aribwo bakoreramo nta masezerano yabwo yagaragajwe.

[12] Ku wa 17/12/2022, Uwankubito Alphonse na Mukangarambe Berthilde bandikiye Perezida w'Urukiko rw'Ubujurire basaba ko urubanza RCA 00033/2021/HC/RSZ rwaciwe n'Urukiko Rukuru Urugereko rwa Rusizi ku wa 18/11/2022 rusubirwamo ku mpamvu z'akarengane.

[13] Amaze gusuzuma ubwo busabe, Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga ku wa 01/11/2023, asaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane.

[14] Mu cyemezo cye N° 164/CJ/2023 cyo ku wa 03/11/2023, Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza Nº RCA 00033/2021/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 18/11/2022 rwongera kuburanishwa, ruhabwa N° RS/INJUST/RC 00008/2023/SC.

[15] Urubanza rwaburanishijwe mu ruhame ku wa 03/04/2024, Mukangarambe Berthilde yunganiwe na Me Uwimana Thadée, uyu anahagarariye Uwankubito Alphonse ; Irankunda Ester ahagarariwe na Me Bigirimana Félicien ; Nsanzimana André ahagarariwe na Me Mihigo Bernard, maze hasuzumwa ibijyanye n'agaciro kahabwa amasezerano yo ku wa 25/08/2017 yabaye hagati ya Nsanzimana André na Uwankubito Alphonse kugirango harebwe niba yashingirwaho haba ihererekanyamutungo, ndetse n'ibijyanye n'indishyi.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1) Kumenya niba amasezerano yo ku wa 25/08/2017 Nsanzimana André yagiranye na Uwankubito Alphonse afite agaciro ku buryo yashingirwaho hategekwa ihererekanyamutungo

[16] Mukangarambe Berthilde na Me Uwimana Thadée umwunganira akanahagararira Uwankubito Alphonse bavuga ko ipfundo ry'uru rubanza ari amasezerano yo ku wa 25/08/2017 yakozwe hagati ya Nsanzimana André na Uwankubito Alphonse yo kugurisha inzu, ariko ko Nsanzimana André atigeze yishyura kuko igihe amasezerano yakorwaga atari afite amafaranga yuzuye yo kwishyura, maze Mukangarambe Berthilde abona ahandi avana amafaranga kuko yashakaga ayo kujya kuvuza Uwankubito Alphonse wari urwaye.

[17] Bakomeza bavuga ko ayo masezerano adakwiye guhabwa agaciro kuko uvuga ko yaguze atabasha kugaragaza inzira cyangwa uburyo yakoresheje yishyura amafaranga yari yumvikanyweho, kuko ubugure buba bwuzuye igihe ugura yishyuye ikiguzi akabona guhabwa

icyo yaguze, kandi ko ibyo bitabaye. Bavuga kandi ko Uwankubito Alphonse atari akwiye gusinyirwa na Mukangarambe Berthilde, ko nubwo ibi bitavuzwe mu manza zibanza, ariko ko aya masezerano ariyo shingiro ry'ikibazo ababuranyi bafitanye, ko hataba hatanzwe ubutabera igihe cyose hatasuzumwe inenge ziri mu masezerano.

[18] Basobanura ko na Nsanzimana André ubwe yiyemerera ko nta bwishyu bwabayeho bujyanye n'amasezerano yagiranye na Mukangarambe Berthilde, ko no ku bijyanye n'ibikoresho by'ubwubatsi bavuga ko byakoreshejwe mu kwishyura igice cy'ikiguzi yagombaga kwishyura, nta gaciro bwikwiye guhabwa kuko ibikoresho hamwe n'ibyasanwe ku nzu ivugwa, byose byagiye bibarwa mu bukode bw'imyaka ibiri yamaze ayikodesha.

[19] Bavuga kandi ko ayo masezerano yagombaga gukorerwa imbere ya Noteri, kuko n'ubwo uregwa avuga ko Itegeko rigena imirimo y'ubunoteri ryaje muri 2023, yirengagiza ko hari urubanza rwaciwe n'Urukiko rw'Ikirenga Nº RS/INJUST/RC 00010/2019/SC, aho hemejwe ko ubugure bw'umutungo utimukanwa bukorerwa imbere ya Noteri.

[20] Me Bigirimana Félicien uhagarariye Irankunda Ester avuga ko amasezerano yo ku wa 25/08/2017 yabaye hagati ya Nsanzimana André na Uwankubito Alphonse n'umugore we Mukangarambe Berthilde akwiye kugumana agaciro kuko impande zombi zayemeranyijeho zikanayasinya, ko nta bundi buryo Nsanzimana André cyangwa Irankunda Ester bakeneye kwerekanamo uko bishyuye, kuko biteganyijwe mu masezerano yavuzwe, ko igice cya mbere kingana na 8.000.000 Frw cyishyuwe ku wa 30/08/2017, igice cya kabiri kingana na 4.480.150 Frw kikishyurwa ku wa 20/09/2017, amafaranga y'igice cya kabiri akaba yarishyuwe mu ntoki kuko yari ayo kwivuza, naho 10.519.850 Frw akaba ahwanye n'ibikoresho byasannye iyo nzu kugirango bashobore kuyikoreramo.

[21] Asobanura ko amasezerano y'ubugure agira agaciro iyo ugura n'ugurisha bumvikanye ku kigurishwa no ku giciro n'iyo icyaguzwe cyaba kitaratangwa. "La loi dispose qu'un contrat de vente est formé dès qu'il y a un accord sur la chose et sur le prix". Akavuga ko igisobanuro cy'amasezerano cyumvikana mu ngingo ya 68, igika cya 2, y'itegeko No 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano[2]. Avuga ko nyuma yo kumvikana bakagura, Nsanzimana André na Irankunda Ester bahise begukana iyo nzu, ndetse bakanayikoreramo ubucuruzi, bityo ko kuba abagurishije bavuga ko batabonye ikiguzi atari byo, kuko iyo biba byo bari kubiregera cyangwa bakaregera gusesa amasezerano.

[22] Akomeza avuga ko kuba abarega mubyo banenga amasezerano harimo no kuba Uwankubito Alphonse yarasinyiwe n'umugore we, nabyo bidafite ishingiro kuko atigeze amurega ko yamusinyiye atamutumye ngo byitwe ko atemera amasezerano, dore ko hagati y'umugore n'umugabo nta yindi nyandiko mpeshabubasha yari ikenewe kugira ngo umugore ahagararire inyungu z'umuryango. Anavuga ko no mu miburanire ye yose mu nzego zibanza, nta na hamwe Uwankubito Alphonse yigeze aburanisha iyi ngingo, bityo ikaba itasuzumwa muri uru rubanza

[2] Ingingo ya 68, igika cya 2: "inyandiko y'amasezerano isesengurwa uko yakabaye. Izindi nyandiko zijyanye n'amasezerano zisesengurirwa hamwe. Iyo amaseerano ateye ku buryo igisabwa gikorwa inshuro nyinshi kuri rumwe cyangwa urundi ruhande mu zigirana amasezerano kandi hari uburyo urundi ruhande rushobora kuyanga, hahabwa uburemere mu isesengurwa ry'amasezerano ibyakozwe impande zombi zemeranyaho...".

rw'akarengane kubera ko Urukiko rutari kumuha ibyo atasabye, akaba rero atavuga ko yarenganyijwe.

[23] Avuga kandi ko kuba amasezerano atarakorewe imbere ya Noteri, atari ikosa rya Irankunda Ester cyangwa Nsanzimana André kuko uyu atishyuye amafaranga yose y'ikiguzi umunsi amasezerano yasinywaga, ahubwo bateganyaga kuzajya imbere ya Noteri ari uko ubwishyu bwose bumaze gutangwa, ariko ko igihe Nsanzimana André yarangirije kwishyura yahise agirana amakimbirane n'umugore we, bituma yimuka aho yari atuye yanga kwiyandikishaho umutungo kugirango batazawugabana. Akomeza avuga ko aba Noteri b'ubutaka bari batarashyirwaho ngo batangire bifashishwe kandi ko n'abandi ba Noteri bashyizweho mu itegeko Nº 017/2023 ryo ku wa 30/08/2023 rihindura Itegeko Nº 13bis/2014 ryo ku wa 21/05/2014 rigenga umurimo w'ubunoteri.

[24] Asoza avuga ko mu gihe urukiko rwabona hari impamvu iyo ari yo yose yatuma amasezerano ateshwa agaciro nubwo bitaregewe, Irankunda Ester yasubizwa amafaranga y'ikiguzi yishyuye, rukanamugenera agaciro k'inzu yaguze, akayivugurura akayongerera agaciro, ubu igenagaciro ryayo rikaba ryarashyizwe kuri 65,370,000 Frw.

[25] Kuri ibi, Me Uwimana Thadée uhagarariye abarega avuga ko Irankunda Ester aramutse yemerewe ibyo asaba byaba ari uburyo bwo kwikungahaza, kuko atigeze agaragaza uburyo umutungo avuga ko yaguze wishyuwemo.

[26] Me Mihigo Bernard uhagarariye Nsanzimana André avuga ko amasezerano yo ku wa 25/08/2017 yakozwe hagati ya Mukangarambe Berthilde na Nsanzimana André, Uwankubito Alphonse adahari. Agasobanura ko amasezerano agira agaciro ari uko impande zose zubahirije inshingano zazo, ariko ko uruhande rwagombaga kwishyura igiciro cy'inzu rutubahirije inshingano zarwo, hakaba nta bwishyu bwabayeho, na Irankunda Ester uvuga ko yishyuye mu ntoki akaba nta bimenyetso yabitangiye. Avuga ko kubera iyo mpamvu Nsanzimana André nta burenganzira afite kuri uwo mutungo, hanashingiwe ku ihame ry'uko ntawe ushobora kugira ibyo ahabwa kandi ariwe nyiri amakosa, ndetse ko haba habayeho "enrichissement sans cause", bityo ayo masezerano akaba agomba guteshwa agaciro.

[27] Yongeraho ko ahamya ko ikiguzi cy'inzu kitigeze kishyurwa yaba icyiciro cya mbere yaba n'icya kabiri, ko ikindi cyiciro kijyanye n'ibyakoreshejwe mu gusana inzu byahwanishijwe n'imyaka 2 yamaze akodesha. Asoza avuga ko inzu Nsanzimana André yayisubije nyirayo ku wa 02/05/2022 ndetse bakanumvikana uburyo bwo gukemura ibibazo bijyanye no kwishyurana amafaranga yakoresheje mu gusana inzu kugirango ayikoreremo ubukode.

[28] Uhagarariye Uwankubito Alphonse na Mukangarambe Berthilde avuga ko ibivugwa na Nsanzimana André byafatwa nk'ukuri kuko ariwe wari ufite inshingano zo kwishyura akaba yiyemerera ko atishyuye.

[29] Uhagarariye Irankunda avuga ko ibyavuzwe n'uhagariye Nsanzimana André bitahabwa agaciro, kuko Nsanzimana André afite inyungu zo kurigisa umutungo w'umuryango kugirango azawiyandikisheho imanza zirangiye, kubera ko Urukiko rwamaze gutegeka ubutane bwa burundu hagati ye na Irankunda Ester. Anavuga ko inyandiko ya Nsanzimana André yo ku wa 02/05/2022

ivuga ko ari gusubiza inzu kuko yabuze ubwishyu, yakozwe imanza zigeze hagati ziburanwa, kandi ko kuba yarayikoze akanayijyana kwa Noteri, bigaragaza ko hari ibyo bateguraga.

Uko Urukiko rubibona

[30] Ingingo ya 18, igika cya mbere, y'Itegeko N° 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda ryakurikizwaga ubwo amasezerano avugwa muri uru rubanza yakorwaga, iteganya ko « kwemeza ko ubutaka bwatanzwe cyangwa bukodeshejwe bigaragazwa n'icyemezo cy'iyandikisha ry'ubutaka gitangwa n'Umubitsi w'Impampuro mpamo z'ubutaka ». Ingingo ya 34, igika cya mbere, y'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/4/2008 rigena uburyo iyandikishwa ry'ubutaka rikorwa, iteganya ko « ihererekanya rishingiye ku masezerano yo kwegurira undi ibintu ridashobora gukorwa iyo amasezerano rishingiyeho atakozwe ku buryo bw'inyandiko y'umwimerere[3] ».

[31] Ingingo zimaze kuvugwa, zumvikanisha ko kugira ngo byemezwe ko umutungo utimukanwa watanzwe, hagomba kubaho icyemezo cy'iyandikisha ry'ubutaka gitangwa n'Umubitsi w'impapuro mpamo z'ubutaka, kandi kugira ngo atange icyo cyemezo, akaba agomba gushingira gusa ku masezerano yo kwegurira undi uwo mutungo yakozwe mu buryo bw'inyandiko mpamo. Ibi bikaba byumvikanisha ko amasezerano yakorwa mu bundi buryo butari ubwo nta gaciro yaba afite.

[32] Ibi ni nabyo byatanzweho umurongo n'uru Rukiko mu rubanza rwa Manizabayo Kennedy na Twizerimana Théoneste, rwagobotsemo Hafashimana Elias[4], aho Urukiko rwasobanuye ko ku bijyanye 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 kugirango agire agaciro hubahirizwa imihango yihariye, maze akura amasezerano y'ubugure bw'ubutaka mu cyiciro cy'amasezerano asanzwe (contrats consensuels) aho abantu biyumvikanira ku kintu no ku giciro nta yindi mihango yihariye ibaye, ayashyira mu cyiciro cy'amasezerano yubahiriza imihango yihariye kugirango agire agaciro (contrats solennels).

[33] Ibi kandi byagarutsweho n'uru Rukiko mu rubanza Nsanzimana Wilson yaburanaga na Nyirajyambere Gacunga Espérance n'abandi[5], 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.

[3] Nubwo mu kinyarwanda banditse ''inyandiko y'umwimerere'', iyo usomye ibyanditse mu gifaransa no mu cyongereza, usanga ari ''inyandiko mpamo''.

[4] Urubanza N° RS/INJUST/RC 00010/2019/SC rwaciwe ku wa 25/09/2020, haburana Twizerimana Théoneste na Manizabayo Kennedy, na Hafashimana Elias warugobokeshejwemo, igika cya
22-27.

[5] Urubanza Nº RS/INJUST/RC 00004/2020/SC rwaciwe ku wa 09/04/2021, haburana Nsanzimana Wilson na Nyirajyambere Gacunga Espérance n'abandi, igika cya 26 – 27.

[34] Ibi ni nabyo byasobanuwe none mu rubanza rwa CIFTCI Inanc yaburanye na Nshimiyimana Yvon na Sebutinde Edouard[6], aho Urukiko rwavuze ko ubugure burebana n'umutungo utimukanwa butakozwe mu buryo bw'inyandiko mpamo nta gaciro buba bufite. Ibi kandi byagarutsweho no mu rubanza rwa Mukandori Costasie na Kayitesi Elyne, aho Urukiko rwasobanuye ko mu gihe nta nyandiko mpamo yo gutanga uburenganzira ku butaka bwaburanwaga yabayeho, inkiko zibanza zitagombaga gutegeka ihererekanya mutungo hagati y'ababuranyi[7].

[35] Ibi nanone byagarutsweho mu rubanza rwa Ntagungira Jerome na Gitungwa Esther baburanaga na Kayitesi Théoneste[8], aho rwasobanuye ko amasezerano yo kwegurira undi uburenganzira ku butaka atakozwe mu buryo bw'inyandiko mpamo aba adafite agaciro, maze rwemeza ko ayo masezerano atashingirwaho hategekwa ihererekanya ry'ubutaka.

[36] Ku birebana n'uru rubanza, Urukiko rusanga mu masezerano yavuzwe haruguru yabaye ku wa 25/08/2017, Nsanzimana André yaremeye kugura inzu ya Uwankubito Alphonse ku giciro cya 23.000.000 Frw yagombaga gutangwa mu bice bitatu, igice cya mbere akishyura 8.000.000 Frw ku wa 30/08/2017, igice cya kabiri akishyura 4.480.150 Frw ku wa 20/09/2017, ikinyuranyo kingana na 10.519.850 agahwana n'agaciro k'ibikorwa byakozwe ku nzu. Ku ruhande rw'ugurisha hasinye Mukangarambe Berthilde mu mwanya wa Uwankubito Alphonse, naho ku ruhande rw'ugura hasinya Nsanzimana André.

[37] Urukiko rusanga aya masezerano yarakozwe mu buryo bw'inyandiko bwite kandi nyamara arebana n'ubugure bw'umutungo utimukanwa ugizwe n'inzu yubatswe mu butaka bubaruye kuri UPI: 3/07/06/01/3469. Kuba ko rero atakorewe imbere ya Noteri ngo yemeze ubwo bugure, rusanga atarakozwe mu buryo bw'inyandiko mpamo, akaba nta gaciro afite; bityo inkiko zibanza zikaba zitaragombaga kuyashingiraho ngo zitegeke ko ubutaka iyo nzu yubatsemo bwandikwa ku mazina ya Irankunda Ester na Nsanzimana André.

[38] Nyuma y'ibisobanuro bimaze gutangwa, Urukiko rusanga atari ngombwa gusuzuma izindi mpamvu abaregwa bashingiyeho bavuga ko amasezerano yateshwa agaciro, nko kuba Uwankubito Alphonse yarasinyiwe n'umugore we ndetse no kuba ikiguzi kitarishyuwe, kuko kuba atarakozwe mu buryo bw'inyandiko mpamo ubwabyo bihagije kugirango abe adafite agaciro.

[39] Urukiko rusanga kandi ibisabwa na Irankunda Ester ko Urukiko ruramutse rutesheje agaciro amasezerano rwamugenera ikiguzi yatanze ndetse n'agaciro kiyongereye ku nzu, atarigeze abisaba mu manza zabanje, akaba adashobora gusaba ko bisuzumwa bwa mbere mu rubanza rw'akarengane. Ibi ni nabyo byafashweho umurongo mu rubanza rwa Ngizweninshuti Albert na Muhima Giovani; urubanza rwa Mukamana Mamique & crts na Candali Vérène n'izindi[9], aho

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[6] Urubanza Nº RS/INJUST/RC 00003/2020/SC rwaciwe ku wa 30/09/2021, CIFTCI Inanc aburana na Nshimiyimana Yvon na Sebutinde Edouard, igika cya 33 -34.

[7] Urubanza Nº RS/INJUST/RC 00014/2021/SC rwaciwe ku wa 13/05/2022, haburana Mukandori Costasie na Kayitesi Elyne, igika cya 35-36.

[8] Urubanza Nº RS/INJUST/RC 00012/2021/SC rwaciwe ku wa 22/07/2022, Ntagungira Jerôme na Gitungwa Ester baburanaga na Kayitesi Théoneste igika cya 35 - 36

[9] Reba Urubanza Nº RS/INJUST/RC 00024/2018/CS rwaciwe ku wa 21/02/2020, haburana Ngizweninshuti Albert na Muhima Giovanni, igika cya 19 - 22 ; Urubanza Nº RS/INJUST/RC 00007/2018/SC rwaciwe ku wa 13/03/2020, haburana Nditiribambe Samuel, Gatera Jason na Nyamaswa Faustin, igika cya 64 - 67; Urubanza Nº RS/ INJUST/RC 00004/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 28/07/2020 haburana Mukamana Mamique n'abandi na

muri izo manza Urukiko rw'Ikirenga rwasobanuye ko ''ibibazo bitaburanyweho mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane bidashobora gusuzumwa mu rwego rwo gusubirishamo urubanza ku mpamvu z'akarengane, kuko umuburanyi atavuga ko yagize akarengane ku kibazo atigeze asaba urukiko gusuzuma''.

2) Gusuzuma ishingiro ry'indishyi zisabwa muri uru rubanza

[40] Me Uwimana Thadée avuga ko kuba Irankunda Ester yarashoye Uwankubito Alphonse n'umugore we Mukangarambe Berthilde mu manza z'amahugu agamije kubariganya umutungo wabo, akwiriye kubaha indishyi zingana na 5.000.000 Frw, akanabaha 1.000.000 Frw y'ikurikiranarubanza na 2.000.0000 Frw y'igihembo cya Avoka. Anavuga ko we nta ndishyi agomba guhabwa kuko ariwe nyirabayazana w'izi manza.

[41] Me Bigirimana Félicien uhagarariye Irankunda Ester avuga ko nta ndishyi z'akababaro urega akwiriye guhabwa kuko ari we wishoye mu manza. Yongeraho ko Irankunda Ester nta kosa yakoze ryo gutanga ikirego, kubera ko byabaye ngombwa ko yiyambaza urukiko rubifitiye ububasha arwana ku nyungu z'umuryango. Avuga ahubwo ko ari we ukwiye kuzihabwa kuko abagurishije bakomeje kumusiragiza mu manza zitari ngombwa kandi bigaragara ko ari bo bakomeje gushaka kwisubiza umutungo wagurishijwe hagendewe ko wazamuye agaciro, bityo ko asaba indishyi z'akababaro zingana na 6.000.000 Frw, n'igihembo cya Avoka cyo kuri uru rwego kingana na 1.000.000 Frw.

[42] Me Mihigo Bernard uhagarariye Nsanzimana André, avuga ko abona abasaba indishyi z'akababaro batazihabwa kuko batagaragaza uburyo zabazwe, ndetse n'uruhare rwe kugira ngo abe yatanga izo ndishyi. Avuga ko nawe asaba indishyi z'akababaro za 2,000,000 Frw zo kuba yarazanywe mu manza mu rwego rw'ubujurire agobokeshejwe, n'ubu akaba aje mu Rukiko rw'Ikirenga, agasaba n'igihembo cya Avoka kingana na 2.000.000 Frw, akazishyurwa n'uwo Urukiko ruzemeza ko atsinzwe.

[43] Uhagarariye abarega avuga ko asanga izo ndishyi nta shingiro zaba zifite kuri bo, kuko na Nsanzimana André ubwe yemera ko ikirego cyabo gifite ishingiro, kandi yemera ko akwiye gusubiza umutungo uburanwa kuko azi neza ko atigeze awishyura.

[44] Me Bigirimana Félicien uhagarariye Irankunda Ester avuga ko uyu nta ndishyi yasabwa kuko nta ruhare yagize kugira ngo Nsanzimana André aze mu rubanza. Yongeraho ko ibyo kuba avuga ko ataguze inzu nabyo bituma atabona indishyi kuko ahishira ubugure bwabayeho ku mugaragaro.

Uko Urukiko rubibona

[45] Urukiko rusanga indishyi z'akababaro Uwankubito Alphonse na Mukangarambe Berthilde baka batagomba kuzihabwa kuko batagaragaza ko Irankunda Esther arega mu Rukiko Rwisumbuye yari agamije kubashora mu manza z'amaherere. Rusanga ariko amafaranga y'ikurikiranarubanza n'igihembo cya Avoka basaba bakwiye kuyahabwa kuko aribo batsinda uru rubanza, ariko kuko ayo baka ari ikirenga, mu bushishozi bw'Urukiko rukaba rubageneye 500.000

Candali Vérène, igika cya 23; Urubanza Nº RS/INJUST/RC 00009/2022/SC haburana SANLAM AG Plc na Uwihanganye Jean, igika cya 35 - 37.

Frw y'igihembo cya Avoka na 300.000 Frw y'ikurikiranarubanza, yose hamwe akaba 800.000 Frw.

[46] Urukiko rusanga ariko indishyi z'akababaro ndetse n'amafaranga y'igihembo cya Avoka Nsanzimana André asaba atagomba kuyahabwa kuko kuvuga ko yashowe mu manza ku rwego rw'ubujurire bidafite ishingiro, mu gihe yagobokeshejwe mu rubanza nk'uwaguze inzu na Uwankubito Alphonse, kandi urubanza mu Rukiko Rukuru, Urugereko rwa Rusizi rukaba rwaraburanishijwe adahari, akaba rero atasaba igihembo cya Avoka kuri uru rwego kuko yaje mu rubanza nk'uwari umuburanyi mu rubanza rusubirwamo ku mpamvu z'akarengane, ibyo bikaba atari amakosa ya Irankunda Ester, dore ko abasabye ko rusubirwamo aribo batsinze urubanza.

III. ICYEMEZO CY'URUKIKO

[47] Rwemeje ko ikirego cya Uwankubito Alphonse na Mukangarambe Berthilde cyo gusubirishamo ku mpamvu z'akarengane urubanza N° RCA 00033/2021/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 18/11/2022, gifite ishingiro;

[48] Rwemeje ko imikirize y'urubanza N° RCA 00033/2021/HC/RSZ rwaciwe n'Urukiko Rukuru, Urugereko rwa Rusizi ku wa 18/11/2022, ihindutse kuri byose;

[49] Rwemeje ko amasezerano y'ubugure bw'inzu yo ku wa 25/08/2017 yabaye hagati ya Uwankubito Alphonse na Nsanzimana André adafite agaciro;

[50] Rutegetse ko ubutaka bubaruwe kuri UPI: 3/07/06/01/3469, buherereye mu Kagari ka Kibogora, Umurenge wa Kanjongo, Akarere ka Nyamasheke, n'inzu irimo bukomeza kwandikwa kuri Uwankubito Alphonse na Mukangarambe Berthilde;

[51] Rutegetse Irankunda Ester kwishyura Uwankubito Alphonse na Mukangarambe Berthilde 800.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.