RWASIBO v RWASIBO

[Rwanda URUKIKO RW’UBUJURIRE – RCAA 00030/2018/CA (Ngagi, P.J.) 28 Gashyantare 2020]

Amategeko imanza z’imbonezamubano – Amasezerano y’ukwikiranura – Amasezerano yo kwikiranura yabaye hagati yababuranyi agomba kubahirizwa kuko aba afite agaciro kamwe nk’ ak’urubanza rwakemuwe ku buryo budasubirwaho mu rwego rwa nyuma.

Incamake y’ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Rwasibo Bernard asaba kwandikwaho ikibanza cyari icy’ababyeyi be Rwasibo na Iyamuremye bapfuye, abavandimwe be bakaba barakimweguriye.Urukiko rwaciye urubanza rumaze gusuzuma ibyemejwe n’inama y’umuryango, n’inyandiko buri muvandimwe yanditse yitwa rwemeje ko icyo kibanza cyandikwa kuri Rwasibo Bernard.

Rwasibo Jean Bosco, umuvandimwe wa Rwasibo Bernard, yatambamiye urwo rubanza avuga ko ikibanza kitagombaga kumwandikwaho, kuko atigeze atanga 30.000.000 Frw yari yemereye umuryango mbere yo kucyegukana, kandi ko n’inyandiko zashingiweho n’Urukiko mu gufata icyemezo zakozwe mu buryo budakurikije amategeko. Urukiko rwaciiye urubanza rwemeza ko inyandiko zashingiweho hemezwa ko umutungo wandikwa kuri Rwasibo Bernard zari zikurikije, amategeko, ko koko munyandiko y’umuryango hari handitsemo ko azabaha ayo mafaranga vauga ariko bongeye kumvikana ko bayamuhariye kugira ngo azayifashishe aburana imanza z’umuryango, ko ariko Urukiko rutabyivangamo kuko Atari byaregewe.

Rwasibo Jean Bosco ntiyishiye imikirize ajuririra Urukiko Rukuru avuga ko Urukiko rw’Isumbuye rwanze gusubukura iburanisha nk’uko yari yabisabye bitewe n’ibimenyetso yagaragazaga, ko rutasuzumye ko icyo kirego kitagombaga gutangwa mu buryo bw’inyandiko y’ikirego gitanzwe n’umuburanyi umwe, ko rutasuzumanye ubushishozi amasezrano yo gutanga uruhare rwe ndetse no kuba Rwasibo Bernard yariyemeraraga ayo mafaranga yari mu masezerano. Muri ubwo bujurire haje kugobokamo uwitwa Munyakazi Lenuarda avugako ari umugore w’isezerano w’umuvandimwe wababurana, ko rero abana babyaranye nabo bagombaga kugira uruhare mu izungura., bityo ko Rwasibo Bernard atakwandikwa kuri iyo nzu wenyine.

Urukiko rukuru rwaciwe urubanza rwemeza ko Urukiko rw’Isumbuye nta kosa rwakoze mu kwanga gusubukura urubanza kuko Urukiko ari rwo rusuzuma niba bikwiye gusubukura iburanisha cyangwa bidakwiye. Ku bijyamye n’uko ikirego kitagombaga gutangwa mu buryo bw’ikirego gitanzwe n’umuburanye umwe, Urukiko rwasanze ko koko ikirego kitari ikirego cyagombaga gutangwa mu buryo bw’ikirego gitanzwe n’umuburanyi umwe, ko ariko ibyo byakosowe n’uko Rwasibo Jean Bosco yaje gutambamira icyo kirego akagira uruhare rwo kwiregura bityo ko ntampamvu yo gutesha agaciro urubanza rwa mbere. Kubijyanye n’uko Urukiko rw’Isumbuye rutagombaga gutegeka ko ikibanza cyandikwa kuri Rwasibo Bernard igihe byagaragaraga ko hari abandi bavandimwe be batamweguriye umutungonawe akaba atarakemuye ikibazo cy’amafaranga yari yemeye gutanga, rwemeza ko Rwasibo Bernard atagomba kwandikwa ku mutungo uburanwa.

Rwasibo Bernard ntiyishimiye imikirize ajuririra mu Rukiko Rw’Ikirenga, igihe cyivugururwa ry’Inkiko urubanza rwoherezwa mu Rukiko rw’Ubujurire, mu bujurire bwe avuga ko Urukiko Rukuru rutagombaga gusuzuma ibyerekeye amafara yari mu masezerano nk’impamvu zo kutubahiriza amasezerano, kandi ko uwo abangamiye yagombaga gusaba ko aseswa aho kugira ngo Urukiko rwemeza ko ihinduranyamutungo ritakorwa kuko hari abatarawumweguriye. Avuga kandi ko atemeranywa n’isesengura ry’Urukiko Rukuru aho rwemeje ko ikirego yari yatanze

cyahinduye imiterere, kandi ko rutagombaga kwakira no guha ishingiro ukugoboka kwa Munyakazi kuko urubanza rushingiye ku ngaruka zikomoka ku masezerano yabaye hagati y'abagize umuryango atarigeze ateshwa agaciro.

Iburanisha ritangiye, Me Safari uhagarariye Rwasibo Bernard yabwiye Urukiko ko ntanyungu umu client we agifite mu rubanza kuko habaye ubwumvikane umutungo waburanywe barawugurisha baragabana, buri munyamuryango wese abona uruhare rwe. Abandi baburanyi nabo bagaragaza ko koko bumvikanye nta mpamvu y'urubanza.

Incamake y'Icyemezo: 1. Amasezerano yo kwikiranura yabaye hagati yababuranyi agomba kubahirizwa kuko aba afite agaciro kamwe nk' ak'urubanza rwakemuwe ku buryo budasubirwaho mu rwego rwa nyuma., bityo akaba asoza urubanza kandi akaba agomba kubahirizwa, bityo amasezerano y'ubwumvikane yabaye hagati y'ababuranyi akaba asoje urubanza.

Amasezerano y'ubwumvikane asoje urubanza;
Ingwate y'amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.

Amategeko yashyingiweho:
Itegeko ryo ku wa 30 Nyakanga 1888 rishyiraho igitabyo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano, ingingo ya 591

Nta manza zifashishijwe

Nta nyandiko z'abahanga zifashishijwe:

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Rwasibo Bernard asaba kwandikwaho ikibanza nomero 2087 cyari icy'ababyeyi be Rwasibo Jean Baptiste na Iyamuremye Ancilla bapfuye, abavandimwe be bakaba barakimweguriye.

[2] Mu rubanza RC 0317/15/TGI/NYGE rwaciwe n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 01/06/2015, urwo Rukiko rumaze gusuzuma ibyemejwe n'inama y'umuryango yabaye ku wa 01/05/2012, n'inyandiko buri muvandimwe yanditse yitwa "*Contrat de cession des parts d'immeuble en indivision sis à Kicukiro, Parcelle Nº 2087*", rwemeje ko iki kibanza cyandikwa kuri Rwasibo Bernard.

[3] Rwasibo Jean Bosco, umuvandimwe wa Rwasibo Bernard, yatambamiye urwo rubanza avuga ko ikibanza Nº 2087 kitagombaga kwandikwa kuri Rwasibo Bernard, kuko atigeze atanga 30.000.000 Frw yari yemereye umuryango mbere yo kucyegukana, kandi ko n'inyandiko zashingiweho n'Urukiko mu gufata icyemezo zakozwe mu buryo budakurikije amategeko.

[4] Mu rubanza RC 0469/15/TGI/NYGE rwaciwe ku wa 29/10/2015, Urukiko Rwisumbuye rwa Nyarugenge rwasanze inyandiko zashingiweho hemezwa ko Rwasibo Bernard yandikwaho umutungo uburanwa zarakozwe mu buryo bukurikije amategeko,naho iby'uko Rwasibo Bernard

yagombaga guha abavandimwe be 30.000.000 Frw, rusanga koko mu bwumvikane bw'abanyamuryango ari ko byemejwe, ariko nyuma bongera kumvikana ko bayamuhariye kugira ngo azayifashishe aburana imanza z'umuryango, ko ariko ibi rutabyivangamo, kuko atari cyo kibazo cyaregewe; ruvuga ko mu gihe Rwasibo Jean Bosco yakwifuza uruhare rwe yareba ukundi abigenza. Urukiko rwategetse Rwasibo Jean Bosco guha Rwasibo Bernard 100.000 Frw y'indishyi z'akababaro, 500.000 Frw y'igihembo cya Avoka na 100.000 Frw y'ikurikiranarubanza.

[5] Rwasibo Jean Bosco yajuririye Urukiko Rukuru, avuga ko Urukiko Rwisumbuye rwa Nyarugenge rwanze gusubukura iburanisha nk'uko yari yabisabye bitewe n'ibimenyetso yagaragazaga, ko rutasuzumye ko icyo kirego kitagombaga gutangwa mu buryo bw'inyandiko y'ikirego gitanzwe n'umuburanyi umwe, ko rutasuzumanye ubushishozi amasezerano yo gutanga uruhare rwe bagiranye, kandi ko rutahaye agaciro ukwiyemerera kwa Rwasibo Bernard ku bijyanye na 30.000.000 Frw.

[6] Uwitwa Munyakazi Marie Lenualda yagobotse mu rubanza, avuga ko nawe abarirwa mu bazungura ba Rwasibo Jean Baptiste, kubera ko yari yarashakanye mu buryo bukurikije amategeko na Rwasibo Emmanuel, umwe mu bazungura ba Rwasibo Jean Baptiste nawe wapfuye, bityo ko abana babyaranye bagomba guhagararira se mu izungura rya Rwasibo Jean Baptiste. Asaba ko inzu iburanwa itakwandikwa kuri Rwasibo Bernard, kubera ko abazungura bose ba Rwasibo Jean Baptiste batayimuhayeho uburenganzira bwabo.

[7] Mu rubanza RCA 0514/15/HC/KIG rwaciwe ku wa 10/06/2016, Urukiko Rukuru rwasanze nta kosa Urukiko Rwisumbuye rwa Nyarugenge rwakoze mu kudasubukura iburanisha bitewe n'ibimenyeso Rwasibo Jean Bosco yavugaga ko yabonye, kuko Urukiko ari rwo rusuzuma niba bikwiye gusubukura iburanisha cyangwa bidakwiye.

[8] Ku birebana n'uko ikirego kitagombaga gutangwa mu buryo bw'inyandiko y'ikibazo gitanzwe n'umuburanyi umwe (*requête unilatérale*), Urukiko Rukuru rwasanze koko ikirego cyatanzwe na Rwasibo Bernard kitari kiri mu bwoko bw'ibyo birego kuko nta bwihutire bwari buhari, kuko ntacyo icyemezo cy'Urukiko cyagombaga kuramira ndetse kikaba kitarahise kirangizwa nk'uko bigenda kuri bene ibyo birego, ariko ko iyi nenge yavanyweho n'uko urubanza rwatambamiwe, Rwasibo Jean Bosco agahabwa umwanya wo kwiregura, urubanza ruhindura kamere, hakaba nta mpamvu urubanza rwabanje rwateshwa agaciro.

[9] Ku birebana n'uko Urukiko Rwisumbuye rwa Nyarugenge rutagombaga gutegeka ko umutungo wandikwa kuri Rwasibo Bernard, Urukiko Rukuru rwasanze Urukiko Rwisumbuye rwa Nyarugenge rutaragombaga gufata icyo cyemezo mu gihe byagaragaye ko hari abandi bavandimwe batamweguriye uwo mutungo, nawe akaba atarakemuye ikibazo cya 30.000.000 Frw yari yemeye gutanga, ruvuga ko imikirize y'urubanza rwajuririwe ihindutse; Rwasibo Bernard akaba atemerewe kwandikwaho umutungo uri mu kibanza Nº 2087. Urukiko rwategetse Rwasibo Bernard guha Rwasibo Jean Bosco 800.000 Frw y'igihembo cya Avoka, 100.000 Frw y'ikurikiranarubanza na 125.000 Frw yatanzeho ingwate y'igarama, akanaha Munyakazi Marie Lenualda 300.000 Frw y'igihembo cya Avoka, 50.000 Frw y'ikurikiranarubanza na 75.000 Frw yatanzeho igarama.

[10] Rwasibo Bernard yajuririye Urukiko rw'Ikirenga, avuga ko Urukiko Rukuru rutagombaga gusuzuma ibyerekeye 30.000.000 Frw nk'impamvu zo kutubahiriza amasezerano, kandi ko uwo abangamiye yagombaga gusaba ko aseswa aho kugira ngo Urukiko rwemeza ko ihinduranyamutungo ritakorwa kuko hari abatarawumweguriye. Mu bujurire bwe kandi, Rwasibo

Bernard avuga ko atemeranywa n'isesengura ry'Urukiko Rukuru aho rwemeje ko ikirego yari yatanze cyahinduye imiterere, kandi ko rutagombaga kwakira no guha ishingiro ukugoboka kwa Munyakazi Marie Leinualda kuko urubanza rushingiye ku ngaruka zikomoka ku masezerano yabaye hagati y'abagize umuryango atarigeze ateshwa agaciro.

[11] Nyuma y'ivugururwa ry'Urwego ry'Ubucamanza, ubujurire bwa Rwasibo Bernard bwoherejwe mu Rukiko rw'Ubujurire hashingiwe ku ngingo ya 105 y'Itegeko N°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko buhabwa RCAA 00030/2018/CA.

[12] Ku wa 10/07/2019, Turimbari Marie Josée, ahagarariye abana ba Rwasibo Bernard (wapfuye), Rwasibo Jean Bosco, Munyakazi Marie Lenualda, Kayitesi Françoise Chantal na Kayirere Marie Gratia bari bagobotse mu rubanza, bahagarariwe n'Abavoka babo, bagiranye amasezerano y'ubwumvikane agamije kurangiza amakimbirane ari mu bagize umuryango wa Rwasibo Jean Baptiste ashingiye ku rubanza RCAA 0030/2018/CA ruburanishwa muri uru Rukiko.

[13] Iburanisha ry'urubanza ryabaye mu ruhame ku wa 17/02/2020, Me Safari Gahizi, aburanira uruhande rwa Rwasibo Bernard, Me Nyirangirimana Astérie ahagarariye Rwasibo Jean Bosco, Me Rwabigwi Augustin ahagarariye Munyakazi Marie Lenualda, naho Me Nizeyimana Boniface ahagarariye Kayitesi Françoise Chantal na Kayirere Marie Gratia.

[14] Mu ntangiriro y'iburanisha, Me Safari Gahizi yavuze ko buri muburanyi yabonye uruhare rwe, ko umutungo wagurishujwe, abawufiteho uburenganzira bakaba baramaze kuwugabana, bityo ko nta nyungu bagifite mu rubanza, abandi baburanyi nabo bagaragaza ko koko bumvikanye, ko nta mpamvu y'urubanza, ariko Me Nizeyimana Boniface asaba ko yabanza kuvugana n'abo ahagarariye ku birebana n'ubwumvikane ababuranyi bagiranye ku wa 10/07/2019, kuko we yari yahawe ubutumwa (*mandat)* bwo kugira icyo avuga ku rubanza rwabaye mbere y'igabana.

[15] Ku wa 26/02/2020, Me Nizeyimana Boniface, uhagarariye Kayitesi Françoise Chantal na Kayirere Marie Gratia, yandikiye Urukiko abinyujije muri "system ya IECMS" arumenyesha ko abo ahagarariye basaba ko Urukiko rwakurikiza ibyo amategeko ateganya ku bijyanye n'amasezerano y'ubwumvikane ari muri dosiye.

II. IKIBAZO KIRI MU RUBANZA N'ISESENGURA RYACYO

Kumenya agaciro k'amasezerano y'ubwumvikane bwabaye hagati y'abazungura ba Rwasibo Jean Baptiste.

[16] Ingingo ya 591 y'Itegeko ryo ku wa 30 Nyakanga 1888 rishyiraho Igitabyo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano cyakurikizwaga ubwo habaga amasezerano y'ubwumvikane hagati y'abazungura ba Rwasibo Jean Baptiste,iteganya ko: "Amasezerano yo kwikiranura agira hagati y'abayagiranye agaciro kamwe n'ak'urubanza rwakemuwe ku buryo budasubirwaho mu rwego rwa nyuma".

[17] Nk'uko byasobanuwe haruguru, abazungura ba Rwasibo Jean Baptiste bagiranye ikibazo cyo kugabana umwe mu mitungo yasizwe n'umubyeyi wabo ugizwe n'ikibanza Nº 2087 giherereye mu Kagari ka Kicukiro, Umurenge wa Kicukiro, Akarere ka Kicukiro waje guhinduka UPI :1/03/06/03/100, uwitwa Rwasibo Bernard akaba yarasabaga ko uwo mutungo

umwandikwaho avuga ko abavandimwe be bawumweguriye, abandi bakavuga ko nabo bawufiteho uburenganzira.

[18] Mbere y'uko urubanza ruburanishwa muri uru Rukiko, abazungura ba Rwasibo Jean Baptiste biyemeje gukemura mu bwumvikane ikibazo bafitanye gikomoka ku rubanza umuvandimwe wabo Rwasibo Bernard[1] yashoje asaba ko umutungo uburanwa umwandikwaho nk'uko bigaragara mu rubanza RC 0317/15/TGI/NYGE, maze bagirana amasezerano y'ubwumvikane yabaye ku wa 10/07/2019, bahagarariwe n' Abavoka babo.

[19] Muri ayo masezerano, abazungura ba Rwasibo Jean Baptiste bemeranyijwe ko umutungo uburanwa mu rubanza RCAA 0030/2018/CA, ubaruye mu kibanza UPI:1/03/06/03/100, ugomba kubarurwa bakagabana amafaranga avuyemo ku buryo bungana ku bagize umuryango bose, ndetse bakagabana ku buryo bungana indi mitungo isigaye. Bemeranyije kandi ko amafaranga y'ubukode yakiriwe kugeza icyo gihe, yafashije uwacungaga umutungo mu bikorwa byo kuwukurikirana no kuwucunga, bityo akifashishwa mu kwishyura imisoro, gukurikirana imanza kuri uwo mutungo ndetse no kuwusana, hakaba nta mpaka zigomba kubaho kuri ayo mafaranga. Abazungura ba Rwasibo Jean Baptiste bemeje ko bagomba guha umuvandimwe wabo Rwasibo Bernard 10.000.000 Frw yo kumushimira kubera ubwitange yagize.

[20] Abagiranye amasezerano bemeranyijwe ko abagomba kugabana umutungo ukomoka kuri Rwasibo Jean Baptiste ari abana bose yasize bakiriho ari bo Kayitete Munyankindi Spéciose, Kayitesi Françoise Chantal, Kayirere Marie Gratia, Rwasibo Jean Bosco, Beguelin Médiatrice, n'abahagarariye abana ba Rwasibo Jean Baptiste abitabye Imana ari bo: Abana ba Rwasibo Bernard bahagarariwe na Turimbari Marie Josée, na Munyakazi Marie Lenualda, uhagarariye umuryango wa Rwasibo Emmanuel.

[21] Urukiko rurasanga nk'uko biteganywa n'ingingo ya 591 y'Itegeko ryo ku wa 30 Nyakanga 1888 rishyiraho igitabyo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano, amasezerano yo kwikiranura yabaye hagati y'abazungura ba Rwasibo Jean Baptiste nk'uko yasobanuwe haruguru, afite agaciro kamwe nk' ak'urubanza rwakemuwe ku buryo budasubirwaho mu rwego rwa nyuma, bityo akaba ashoje urubanza RCAA 00030/2018/CA, kandi akaba agomba kubahirizwa.

III. ICYEMEZO CY'URUKIKO

[22] Rwemeje ko amasezerano y'ubwumvikane yabaye hagati y'abagize umuryango wa RWASIBO Jean Baptiste bavugwa muri uru rubanza ashoje urubanza RCAA 00030/2018/CA.

[23] Ruvuze ko ingwate y'amagarama yatanzwe ihwanye n'ibyakozwe muri uru rubanza.

[1] Uyu yaje gupfa