MUKARANGO v BYAKATONDA N'UNDI

[Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RC 00008/2019/CA (Gakwaya, P.; Kaliwabo na Tugireyezu, J.) 04 Nzeri 2020]

Amategeko agenga umuryango – Umutungo w'abashyakanye – Igabana ry'umutungo – Iyo abashyingiranywe bagabanye umutungo bari basangiye buri wese aba afite uburenganzira bwo kwiyandika ho umutungo we no kuba yawukoresha icyo ashaka.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko rw'Isumbuye rwa Nyamagabe Mukarango arega Byakatonda avuga ko umugabo we Gatera nta burenganzira yari afite bwo kugurana inzu bari basangiye atabimwemereye hamwe n'abana babyaranye, ko rero amasezerano y'ubugurane yagiranye nawe agomba guteshwa agaciro agasubizwa iyo nzu. Urukiko rwaciye urubanza, rwemeza ko ayo masezerano y'ubugurane nta gaciro afite kuko yayakoze gatera atabiherewe uburenganzira n'umugore we basangiye umutungo. Rwategetse ko buri wese asubirana umutungo we, Byagatonda akishyura Mukarango indishyi.

Byagatonda ntiyishimiye imikirize yajuririye Urukiko Rukuru, Urugereko rwa Nyanza avuga ko inzu yaguranye na Gatera yari imwanditseho wenyine 100%, ko Ubuyobozi bw'ibanze bamusinyiye nta nkomyi, ko Mukarango yitwaza urubanza rwaciwe mu 2013 rwemeza ko ari umugore w'isezerano wa Gatera mu gihe amasezerano y'ubugurane yakozwe mu 2011, ko inzu yaguranye na Gatera yayivuguruye, ndetse akayituramo Mukarango abireba (kuko batuye mu Kagari kamwe), ntabitambamire kugeza Gatera apfuye akabona gushora imanza agamije kubona inyungu atavunikiye.

Haje kugoboka mu rubanza uwitwa Kanzayire mu izina ry'abana be avuga ko ubugurane bwabaye ari we ubana na Gatera nk'umugore n'umugabo, ndetse ko bafitanye abana babiri, ko Gatera yatandukanye na Mukarango kuva mu 2003, Ubuyobozi bukabagabanya imitungo, inzu Mukarango asaba ko isubizwa Byagatonda, akaba ari wo mugabane w'abana yabyaranye na Gatera. Urukiko Rukuru, Urugereko rwa Nyanza, rwemeje ko inzu Byagatonda atunze yayibonye nta buryarya kuko yayiguranye na Gatera wari uyanditsweho wenyine, ko yayivuguruye Mukarango abibona ntabitambamire, ko urubanza rwemeza ko Mukarango ari umugore w'isezerano wa Gatera, rwaraciwe ubugurane bwaramaze gukorwa, ko kandi nyuma yo kugabana umutungo na Mukarango, iyi nzu Gatera yayihaye abana yabyaranye na Kanzayire, bityo kuyibambura bikaba ari ukubavutsa uburenganzira basigiwe n'umubyeyi wabo.

Mukarango yandikiye Urwego rw'Umuvunyi, avuga ko yagiriwe akarengane mu rubanza yaciriwe n'Urukiko Rukuru, Urugereko rwa Nyanza, Perezida w'Urukiko rw'Ikirenga yafashye icyemezo ko urwo rubanza rusubirwamo.

Urega avuga ko Urukiko rwirengagije ko amasezerano y'ubugurane yakozwe ku mutungo w'urugo nta ruhare abigizemo nk'umugore w'isezerano kandi ko Gatera yaguranye inzu basangiye, agamije gutura hirya y'umujyi kugira ngo abone uko ahatungira inshoreke ye, ko Byagatonda yemeye kuhagurana azi neza ko bafitanye imanza zabereye mu bunzi no mu nzego z'ibanze, kandi ko aho hose Gatera yemeraga ko iyo nzu iri mu mutungo basangiye. Avuga kandi ko n'ubwo Byagatonda avuga ko yaguranye inzu na Gatera, nyamara amasezerano ya Banki y'Abaturage agaragaza ko Akimana, umugore wa Byagatonda Vincent, yahawe inguzanyo atijwe ingwate na Gatera, bikaba bitumvikana uburyo uyu yari gutizwa ingwate ku mutungo yita uwe.

Uregwa, avuga ko nta karengane uregwa yagiriwe kuko amasezerano y'ubugurane yayagiranye na Gatera, ari na we wenyine wari wanditsweho uyu mutungo uburanwa, kandi ko yaguranye hari Ubuyobozi bw'inzego z'ibanze na Kanzayire wamusinyiye nk'umuntu wabanaga na Gatera

nk'umugabo n'umugore, bityo ko nta bundi buryo yari kumenya ko hari undi muntu ufite uruhare kuri iyi nzu, uregera iyi nzu, ari umuturanyi we ku buryo atari gutegereza ko amara gusana inzu no kuyituramo ngo abone kuyigaruza, ko kandi atari gutegereza urupfu rwa Gatera ngo abone kumushora mu manza. Naho ku birebana no gutira ingwate yisobanuye avuga ko iyi nzu yayivuguruye yifashishije inguzanyo ya Banki, ko kuba inzu yari ikiri mu mazina ya Gatera byatumye ayitangaho ingwate nk'uyitijwe na Gatera n'ubwo bari baramaze kugurana, ndetse Gatera yaramaze kwimukira mu nzu yaguraniwe na we, ko rero ibyo ntacyo bihindura ku masezerano y'ubugurane kuko uwo bayagiranye atigeze ayahakana.

Kanzayire mu izina ry'abana be, avuga ko yabanye na Gatera nk'umugabo n'umugore kuva mu mwaka wa 2003, kandi ko yasanze Gatera na Mukarango baramaze gutandukana, ndetse n'imitungo barayigabanye, ko inzu baguraniye Byagatonda ari yo yasanzemo Gatera, akayigenera abana babiri babyaranye kuko abo yabyaranye na Mukarango bose ari bakuru, kandi ko bahawe iminani, ko gusesa amasezerano y'ubugurane byatuma abana be bamburwa uburenganzira basigiwe n'umubyeyi wabo; akomeza avuga ko Mukarango yamuburanyije imirima igize ingobyi y'iyi nzu iburanwa ngo akaba yaramutsinze, bityo asaba ko Inkiko zitabigarukaho ngo zirenganye abana ahagarariye kandi bafite uburenganzira mu mutungo wa se.

Incamake y'icyemezo: 1. Iyo abashyingiranywe bagabanye umutungo bari basangiye buri wese aba afite uburenganzira bwo kwiyandika ho umutungo we no kuba yawukoresha icyo ashaka, bityo kuba Gatera yaraguranye umutungo na n'uregwa ntibyakwitwa ikosa kuko umutungo yaguranye utari mu mutungo wabarwaga muwo basangiye n'uregwa kuko hari harabaye igabana mbere y'uko Urukiko rwemeza ko basezeranye kandi iryo gabana Mukaranga yararyemeye buri wese akandikwaho umutngo we.

Ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane nta shingiro gifite.

Amategeko yashyimgiweho:
Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 55
Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 22

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku itariki ya 22/01/2011, Gatera Charles yaguranye na Byagatonda Vincent inzu, Gatera Charles amuha inzu yubatse mu Mudugudu wa Karambi, Akagari ka Ngiryi, Umurenge wa Gasaka, mu Karere ka Nyamagabe, mu kibanza n◦ 3493/NYA/GAS, naho Byagatonda Vincent amuha inzu ye yubatse mu Mudugudu wa Ngiryi, Akagari ka Ngiryi, Umurenge wa Gasaka, mu Karere ka Nyamagabe, anamwongereraho 200.000 Frw.

[2] Ku wa 09/10/2014, Mukarango Phoëbe wari warashyingiranywe na Gatera Charles, yatanze ikirego mu Rukiko Rwisumbuye rwa Nyamagabe, avuga ko umugabo we Gatera Charles nta burenganzira yari afite bwo kugurana inzu bari basangiye atabimwemereye hamwe n'abana babyaranye, ko rero amasezerano y'ubugurane yagiranye na Byagatonda Vincent agomba kuba impfabusa agasubizwa iyo nzu.

[3] Ku wa 27/02/2015, Urukiko Rwisumbuye rwa Nyamagabe rwaciye urubanza RC 0003/15/TGI/NYBE, rwemeza ko amasezerano y'ubugurane Gatera Charles yagiranye na Byagatonda Vincent nta gaciro afite kuko yayakoze atabiherewe uburenganzira n'umugore we Mukarango Phoëbe basangiye umutungo. Rwategetse ko buri wese asubirana umutungo we, Byagatonda Vincent akishyura Mukarango Phoëbe indishyi zihwanye na 200.000 Frw no kumusubiza 50.000 Frw yatanzeho ingwate y'amagarama arega.

[4] Ku wa 23/03/2015, Byagatonda Vincent yajuririye Urukiko Rukuru, Urugereko rwa Nyanza avuga ko inzu yaguranye na Gatera Charles yari imwanditseho wenyine 100%, ko Ubuyobozi bw'ibanze kimwe na Kanzayire Vénantie bamusinyiye nta nkomyi, ko Mukarango Phoëbe yitwaza urubanza rwaciwe mu 2013 rwemeza ko ari umugore w'isezerano wa Gatera Charles mu gihe amasezerano y'ubugurane yakozwe mu 2011, ko inzu yaguranye na Gatera Charles yayivuguruye, ndetse akayituramo Mukarango Phoëbe abireba (kuko batuye mu Kagari kamwe), ntabitambamire kugeza Gatera Charles apfuye akabona gushora imanza agamije kubona inyungu atavunikiye.

[5] Kanzayire Vénantie yagobotse mu rubanza mu izina ry'abana be avuga ko ubugurane bwabaye ari we ubana na Gatera Charles nk'umugore n'umugabo, ndetse ko bafitanye abana babiri (2), ko Gatera Charles yatandukanye na Mukarango Phoëbe kuva mu 2003, Ubuyobozi bukabagabanya imitungo, inzu Mukarango Phoëbe asaba ko isubizwa Byagatonda Vincent, akaba ari wo mugabane w'abana yabyaranye na Gatera Charles.

[6] Mu rubanza RCA 0104/15/HC/NYA rwaciwe ku wa 27/11/2015, Urukiko Rukuru, Urugereko rwa Nyanza, rwemeje ko inzu Byagatonda Vincent atunze yayibonye nta buryarya kuko yayiguranye na Gatera Charles wari uyanditsweho wenyine, ko yayivuguruye Mukarango Phoëbe abibona ntabitambamire, ko urubanza rwemeza ko Mukarango Phoëbe ari umugore w'isezerano wa Gatera Charles, rwaraciwe ubugurane bwaramaze gukorwa, ko kandi nyuma yo kugabana umutungo na Mukarango Phoëbe, iyi nzu Gatera Charles yayihaye abana yabyaranye na Kanzayire Vénantie, bityo kuyibambura bikaba ari ukubavutsa uburenganzira basigiwe n'umubyeyi wabo. Urukiko rwategetse Mukarango Phoëbe kwishyura Byagatonda Vincent 725.000 Frw akubiyemo igihembo cya Avoka, n'indishyi z'ikurikiranarubanza no kumusubiza 75.000 Frw yatanzeho ingwate y'igarama.

[7] Mukarango Phoëbe yatakambiye Urwego rw'Umuvunyi, avuga ko yagiriwe akarengane mu rubanza RCA 0104/15/HC/NYA yaciriwe n'Urukiko Rukuru, Urugereko rwa Nyanza kuko rwirengagije ko amasezerano y'ubugurane yakozwe ku mutungo w'urugo nta ruhare abigizemo nk'umugore w'isezerano.

[8] Urwego rw'Umuvunyi, mu isesengura ryarwo, rwasanze Urukiko Rukuru, Urugereko rwa Nyanza rwarirengagije ko nta masezerano agomba gukorwa ku mutungo w'abashyingiranywe, aba bombi batabigizemo uruhare, rwandikira Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza n° RCA 0104/15/HC/NYA rwasubirishwamo ku mpamvu z'akarengane. Mu ibarwa ye yo ku wa 16/07/2017, Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza RCA 0104/15/HC/NYA rusubirishwamo ku mpamvu z'akarengane kandi rukaburanishwa n'Urukiko rw'Ubujurire.

[9] Mu mwanzuro usubirishamo urubanza, Mukarango Phoëbe avuga ko Urukiko Rukuru, Urugereko rwa Nyanza rwirengagije ko Gatera Charles yakoze uburiganya bwo kwiyandikishaho wenyine umutungo w'umuryango no kuwugurana batabyumvikanyeho, ko Byagatonda Vincent yakoze amasezerano y'ubugurane mu buriganya kuko batuye hamwe, ngo akaba yari azi neza imanza zari hagati yabo. Yasabye ko buri wese yasubirana umutungo we, Byagatonda Vincent yaramuka yifuza kugumana inzu iburanwa ngo akamuha agaciro kayo kangana na 7.000.000 Frw, hiyongereyeho ubukode bwayo yamuvukije bungana na 6.500.000 Frw.

[10] Byagatonda Vincent avuga ko yaguranye inzu na Gatera Charles wari uyanditsweho, ko mu gihe Mukarango Phoëbe yakenera kuyisubirana yamuha agaciro kayo kangana na 21. 014.720 Frw kuko yayisannye abibona.

[11] Kanzayire Vénantie, mu izina ry'abana be, avuga ko inzu Byagatonda yabaguraniye ari yo Gatera Charles yahaye abana babyaranye kuko abandi bose bahawe iminani yabo, ko kuyimwambura byatera akarengane.

[12] Iburanisha ryabaye ku wa 08/07/2020, Mukarango Phoëbe ahagarariwe na Me Munyurangabo Dominique, Byagatonda Vincent yunganiwe na Me Nzabihimana Jean-Claude na Me Makuza Justin, naho Kanzayire Vénantie yunganiwe na Me Nsengimana Emmanuel.

[13] Urukiko rurasuzuma niba harabayeho akarengane mu guha agaciro amasezerano y'ubugurane yabaye hagati ya Gatera Charles na Byagatonda Vincent, Mukarango Phoëbe atayigizemo uruhare, runasuzume ishingiro ry'indishyi zisabwa n'impande zombi.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA.

A. Kumenya niba amasezerano y'ubugurane yabaye hagati ya Gatera Charles na Byagatonda Vincent akwiye guhabwa agaciro

[14] Mukarango Phoëbe, uhagarariwe na Me Munyurangabo Dominique, avuga ko akarengane kaboneka mu rubanza RCA 0104/15/HC/NYA katewe nuko Urukiko Rukuru, Urugereko rwa Nyanza rwirengagije ko ari umugore w'isezerano wa Gatera Charles kuva mu 1978, ko mu kwemeza amasezerano y'ubugurane bw'umutungo w'urugo yakozwe na Gatera Charles wenyine, rwirengagije ingingo za 21, 22, 42, 49, 56, 70 na 93 z'Itegeko n° 22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'Urwunge rw'amategeko mbonezamubano kandi rigenga imicungire y'umutungo w'abashyingiranywe, hamwe n'ingingo za 35, 36, 37 z'Itegeko n° 08/2005 ryo ku wa 14/07/2005 ryagengaga ubutaka mu Rwanda.

[15] [15]. Akomeza avuga ko Gatera Charles yaguranye inzu basangiye, agamije gutura hirya y'umujyi kugira ngo abone uko ahatungira inshoreke ye, ko Byagatonda Vincent yemeye kuhagurana azi neza ko bafitanye imanza zabereye mu bunzi no mu nzego z'ibanze, kandi ko aho hose Gatera Charles yemeraga ko iyo nzu iri mu mutungo asangiye na Mukarango Phoëbe. Yatanze urugero rw'amasezerano yo ku wa 23/11/2005 agaragaza ko we na Gatera Charles bazajya bagabana ubukode buvuye ku nzu basangiye, amasezerano yo ku wa 05/02/2007 yemereraga Gatera Charles uburyo azasana iyo nzu, umwanzuro w'Abunzi b'Akagari ka Ngiryi wo ku wa 27/11/2008 ugaragaza uko Gatera Charles yasahuraga umutungo w'urugo awujyana ku nshoreke ye, umwanzuro w'Abunzi wo ku wa 29/01/2009 ugaragaza imitungo yahahanye na Gatera Charles, hamwe n'inyandiko yo ku wa 08/04/2012 y'Umunyamabanga Nshingwabikorwa w'Akagari ka Ngiryi igaragaza imitungo we na

Gatera Charles bagomba kugabana mu rubanza rw'ubutane n° RC 0059/2013/TB/GAS baburanaga mu Rukiko rw'Ibanze rwa Gasaka.

[16] Avuga kandi ko n'ubwo Byagatonda Vincent avuga ko yaguranye inzu na Gatera Charles, nyamara amasezerano ya Banki y'Abaturage agaragaza ko Akimana Fortunée, umugore wa Byagatonda Vincent, yahawe inguzanyo atijwe ingwate na Gatera Charles, bikaba bitumvikana uburyo uyu yari gutizwa ingwate ku mutungo yita uwe.

[17] Mukarango Phoëbe, uhagarariwe na Me Munyurangabo Dominique, avuga kandi ko Byagatonda Vincent wemeye kugurana azi neza ko umutungo Gatera Charles amuguraniye awusangiye n'umugore we, agomba kwirengera igihombo, ko ubwe yemeye mu Rukiko Rwisumbuye ko agaciro k'inzu iburanwa ari 7.000.000 Frw, bityo ko mu gihe yaramuka ashaka kugumana inzu iburanwa, yamugarurira agaciro kayo kavuzwe, hiyongereyeho 6.500.000 Frw angana n'ubukode bw'igihe cyose amaranye iyi nzu; mu gihe adatanze agaciro kavuzwe, agasubirana inzu ye na 200.000 Frw yahaye Gatera Charles, hanyuma akavana igisenge yashyize ku nzu iburanwa kuko ari cyo yasannye cyonyine.

[18] Mukarango Phoëbe avuga nanone ko Urukiko Rukuru, Urugereko rwa Nyanza rwamurenganyije ruvuga ko hari inyandiko y'Ubuyobozi yabagabanyije umutungo mu mwaka wa 2010, nyamara ngo n'ubwo yari muri iyo nama, ariko ko atigeze ashyira umukono kuri iyo nyandiko.

[19] Me Munyurangabo Dominique, uhagarariye Mukarango Phoëbe, avuga ko Mukarango Phoëbe na Gatera Charles baheruka kubana mu nzu imwe mu mwaka wa 2003, ko ariko Gatera Charles yapfuye urubanza rw'ubutane rutaracibwa. Akomeza avuga ko Mukarango Phoëbe atabashije gutambamira iyandikishwa ry'umutungo ryakozwe na Gatera Charles ku mazina ye kuko yari ahugiye mu rubanza rumwemeza nk'umugore w'isezerano wa Gatera Charles kubera ko uyu yari yaramwihakanye.

[20] Me Munyurangabo Dominique avuga kandi ko uwanditsweho inzu Mukarango Phoëbe asanzwe atuyemo ari Gatera Charles na Mukarango Phoëbe, ariko ko atabihamya kuko atitwaje icyangombwa cy'umutungo, yiyemeza kuzagishyira muri dosiye bitarenze ku wa 17/07/2020; icyemezo yashyizemo kikaba kirebana n'ubutaka bubaruwe kuri n° UPI 2/05/03/02/785 buri mu Mudugudu wa Ngiryi, Akagari ka Ngiryi, Umurenge wa Gasaka mu Karere ka Nyamagabe aho biboneka ko uyu mutungo wabaruwe ku wa 30/01/2012 kuri Gatera Charles wenyine.5'

[21] Byagatonda Vincent, wunganiwe na Me Nzabihimana Jean-Claude na Me Makuza Justin, avuga ko nta karengane Mukarango Phoëbe yagiriwe kuko amasezerano y'ubugurane yayagiranye na Gatera Charles, ari na we wenyine wari wanditsweho uyu mutungo uburanwa, kandi ko yaguranye hari Ubuyobozi bw'inzego z'ibanze na Kanzayire Vénantie wamusinyiye nk'umuntu wabanaga na Gatera Charles nk'umugabo n'umugore, bityo ko nta bundi buryo yari kumenya ko hari undi muntu ufite uruhare kuri iyi nzu. Avuga ko Mukarango Phoëbe, uregera iyi nzu, ari umuturanyi we ku buryo atari gutegereza ko amara gusana inzu no kuyituramo ngo abone kuyigaruza, ko kandi atari gutegereza urupfu rwa Gatera Charles ngo abone kumushora mu manza.

[22] Byagatonda vincent avuga kandi ko inyandiko zose mukarango phoëbe agaragarije urukiko, nta buryo yari kuzimenya kuko zakozwe mbere y'amasezerano y'ubugurane yabaye mu mwaka wa 2011, ko kandi zidasimbura icyangombwa cy'ubutaka cyari cyanditswe kuri gatera charles wenyine, ko izi nyandiko yagombye kuzikoresha atambamira iyandikishwa ry'ubutaka cyangwa akaba yarazigaragaje igihe habagaho amasezerano y'ubugurane. akomeza avuga ko urubanza mukarango

phoëbe yitwaza, ashimangira ko ari umugore w'isezerano, rwaciwe ku wa 30/05/2012, mu gihe amasezerano y'ubugurane yabayeho ku wa 22/01/2011, ko umunsi agirana amasezerano na gatera charles, uyu yabanaga na kanzayire vénantie nk'umugabo n'umugore, ko atari kumenya ko hari undi mugore afite.

[23] Byagatonda Vincent avuga na none ko inzu yayiguranye ku busabe bwa Gatera Charles wari wategetswe kuyivugurura hakurikijwe igishushanyo mbonera cy'Umujyi wa Nyamagabe, bikamunanira, ko we yayivuguruye akayinjiramo ifite agaciro ka 7.000.000 Frw, ari nako gaciro yavugiye mu Rukiko Rwisumbuye, ko yakomeje ivugurura, kuri ubu igenagaciro rikaba rigaragaza ko ifite agaciro ka 21. 014.720 Frw.

[24] Byagatonda Vincent yisobanuye ku birebana no gutira ingwate, avuga ko iyi nzu yayivuguruye yifashishije inguzanyo ya Banki, ko kuba inzu yari ikiri mu mazina ya Gatera Charles byatumye ayitangaho ingwate nk'uyitijwe na Gatera Charles n'ubwo bari baramaze kugurana, ndetse Gatera Charles yaramaze kwimukira mu nzu yaguraniwe na we, ko rero ibyo ntacyo bihindura ku masezerano y'ubugurane kuko uwo bayagiranye atigeze ayahakana.

[25] Kanzayire Vénantie, wunganirwa na Me Nsengimana Emmanuel, mu izina ry'abana be, avuga ko yabanye na Gatera Charles nk'umugabo n'umugore kuva mu mwaka wa 2003, kandi ko yasanze Gatera Charles na Mukarango Phoëbe baramaze gutandukana, ndetse n'imitungo barayigabanye, ko inzu baguraniye Byagatonda Vincent ari yo yasanzemo Gatera Charles, akayigenera abana babiri (2) babyaranye kuko abo yabyaranye na Mukarango Phoëbe bose ari bakuru, kandi ko bahawe iminani, ko gusesa amasezerano y'ubugurane byatuma abana be bamburwa uburenganzira basigiwe n'umubyeyi wabo.

[26] Kanzayire Vénantie akomeza avuga ko Mukarango Phoëbe yamuburanyije imirima igize ingobyi y'iyi nzu iburanwa ngo akaba yaramutsindiye mu Rukiko rw'Ibanze rwa Gasaka mu rubanza RC 00139/2019/TB/GAS rwaciwe n'Urukiko rw'Ibanze rwa Gasaka ku wa 20/12/2019, aho rwemeje ko igabana ry'imitungo ryo mu mwaka wa 2010 ryabaye hagati ya Gatera Charles na Mukarango Phoëbe rigumana agaciro karyo, ari nabwo abana be bahawe iminani, urubanza rukaba rwararangijwe ku wa 7/02/2020, bityo ko Inkiko zitabigarukaho ngo zirenganye abana ahagarariye kandi bafite uburenganzira mu mutungo wa se.

[27] Me Munyurangabo Dominique yisobanuye kuri iki kimenyetso avuga ko urwo rubanza ataruzi kandi ko n'iyo rwaba rwarabayeho rureba abarubayemo ababuranyi, ko nta kibuza abana Kanzayire Vénantie yabyaranye na Gatera Charles kuza mu muryango bagasaba uburenganzira bwabo.

UKO URUKIKO RUBIBONA

[28] Ingingo ya 55 y'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko urubanza rwaciwe ku rwego rwa nyuma rushobora gusubirwamo ku mpamvu z'akarengane kubera imwe mu mpamvu zikurikira:

- Iyo hari ibimenyetso simusiga bigaragaza ruswa, ikimenyane cyangwa icyenewabo, byagize ingaruka ku mikirize y'urubanza bikaba bitarigeze bimenywa n'uwatsinzwe mu gihe cy'iburana;
- Iyo mu icibwa ry'urubanza hirengagijwe amategeko cyangwa ibimenyetso bigaragarira buri wese;

- Iyo urubanza rudashobora kurangizwa hakurikije imikirize yarwo.

[29] Urukiko rurasanga Mukarango Phoëbe yaratanze ikirego avuga ko yarenganyijwe n'urubanza rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza kuko rutubahirije amategeko agenga imicungire y'umutungo w'abashakanye.

[30] Urukiko rurasanga ingingo ya 22 y'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryuzuza Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura ryakoreshwaga ku munsi amasezerano y'ubugurane asabirwa guteshwa agaciro akorwa, yarateganyaga ko ‘‘ Umwe mu bashyingiranywe wagize amasezerano ku mutungo agomba ubwumvikane bwabo bombi, agomba mu gihe cyo kuyakora cyangwa mu gihe cy'amezi atandatu akurikira, gusaba uwo bashyingiranywe ko ayemera. Iryo yemera rimenyeshwa mu nyandiko uwo bagiranye amasezerano; iyo nta gisubizo yatanze nyuma y'ukwezi gukurikira umunsi yabimenyesherejweho, ukwemera kwe gufatwa nk'aho kwatanzwe mu buryo budasubirwaho. Iyo uwagombaga kubyemera atabashije kuboneka cyangwa kugaragaza igitekerezo cye abitewe n'impamvu zikomeye, amasezerano aba ntakuka iyo hashize umwaka umwe ku bintu byimukanwa n'imyaka itanu ku bintu bitimukanwa.

[31] Urukiko rurasanga ibivugwa mu ngingo ivuzwe haruguru byerekana ko umwe mu bashyingiranywe ugize amasezerano ku mutungo ari we ufite inshingano yo kumenyesha uwo bashyingiranywe kugira ngo yemere amasezerano yakozwe, akanagira n'inshingano yo kumenyesha uwo bagiranye amasezerano, igisubizo cy'uwo basangiye umutungo.

[32] Urukiko rurasanga ingingo ya 22 y'Itegeko N° 22/99 ryo ku wa 12/11/1999 ryavuzwe haruguru, yari igamije kurengera umutungo w'abashakanye ushobora kurigiswa n'umwe muri bo, ariko ikanarengera n'urundi ruhande aho uwagize amasezerano ku mutungo asangiye n'uwo bashyingiranywe agomba kumenyesha uwo bagiranye amasezerano ko uwo bashyingiranywe yemeye aya masezerano. Ibivuzwe muri iki gika birerekana ko ikigamijwe ari ukwirinda kurigisa umutungo w'abashyingiranywe ku buryo bw'uburiganya, ariko kandi no kurinda undi muntu kuba yagira amasezerano amutera igihombo mu gihe yaba atazi ko hari undi muntu ufite uburenganzira ku mutungo akoreyeho amasezerano cyangwa ko yemeye aya masezerano.

[33] Urukiko rurasanga, mu miburanire ye, Mukarango Phoëbe yemera ko kuva mu mwaka wa 2003 atasubiye kubana na Gatera Charles kandi ko mu mwaka wa 2010, nyuma y'uko Urukiko rwanze kubakira kuko batashyingiranywe ku buryo bwemewe n'amategeko, aba bombi bagiye imbere y'Ubuyobozi bw'Akagali ka Ngiryi bakagabana imitungo yabo, ndetse n'abana Gatera Charles yabyaranye na Kanzayire Vénantie bagahabwa umugabane wabo[1]. N'ubwo Mukarango Phoëbe avuga ko yanze gushyira umukono ku nyandiko, nyamara na we yemera ko yakiriye umutungo yagabanye aho avuga ko yashakaga icyo areresha abana yabyaranye na Gatera Charles.

[34] Urukiko rurasanga iri gabana ry'umutungo ryakorewe imbere y'Ubuyobozi, ryarahaye buri wese uburenganzira bwo kwiyandika ho umutungo we no kuba yawukoresha icyo ashaka, ari yo mpamvu Gatera Charles yiyanditseho wenyine inzu yaje kuguranira Byagatonda Vincent. Mu gihe

[1] Reba inyandiko iri kuri cote 25, ifite umutwe ugira uti: "Ikibazo cya Gatera Charles na Mukarango Phoëbe ". Iyi nyandiko ifite interuro igira iti"Gatera Charles afitanye ikibazo n'umugore we kijyanye n'imitungo kuko babanye none ubu bakaba batakibana. Bagiye mu Rukiko babagarura mu Kagali kuko basanze batarasezeranye. Muri iyi nyandiko kandi, aba bombi barondoye imitungo bafite, inteko ya rubanda iyobowe n'umuyobozi w'Akagali ka Ngiryi wabagabanije ku buryo bungana imitungo yabo, iha n'imigabane abana 3 Gatera yabyaranye na Mukarango n'abana 2 Gatera yabyaranye na Kanzayire

nta kindi cyemezo cyavuguruzaga inyandiko y'igabana, ibyakozwe na Gatera Charles bikaba nta Tegeko byari byishe, ndetse icyo gihe, aba bombi bakaba batari mu barebwa n'inshingano ivugwa mu ngingo ya 22 y'Itegeko No 22/99 ryavuzwe kuko bafatwaga nk'abantu batashyingiranywe ku buryo bwemewe n'amategeko.

[35] Urukiko rurasanga, amasezerano y'ubugurane yabaye hagati ya Byagatonda Vincent na GATERA Charles ku wa 22/01/2011, nta Tegeko yishe kuko GATERA Charles yaguranye umutungo umwanditseho ku giti cye, kandi akaba yarabikoze mu gihe yabarwaga nk'umuntu utarasezeranye na Mukarango Phoëbe, uyu nawe wari wahawe imitungo yigengaho. Rurasanga kandi nta bundi buryo Byagatonda Vincent yari kumenya ko umutungo aguranye hari undi muntu uwufiteho uburenganzira.

[36] Kuba Mukarango Phoëbe avuga ko Akimana Fortunée, umugore wa Byagatonda Vincent, yahawe inguzanyo na Banki y'Abaturage atijwe ingwate na Gatera Charles, ashaka kumvikanisha ko iyo nzu iburanwa yari ikiri mu maboko ya Gatera Charles, ko bityo nta masezerano y'ubugurane yabayeho hagati ya Gatera charles na Byagatonda Vincent, Urukiko rurasanga bidafite ishingiro kuko ubwumvikane bwo gutiza Akimana Fortunée, umugore wa Byagatonda Vincent ingwate budakuraho amasezerano y'ubugurane Gatera Charles yagiranye na Byagatonda Vincent kuko na Mukarango Phoëbe we ubwe adahakana ko ayo masezerano y'ubugurane bw'umutungo w'urugo yabayeho hagati ya Gatera Charles na Byagatonda Vincent uretse gusa ko anenga ko yakozwe na Gatera Charles wenyine nk'uko bisobanurwa mu gika cya 14 cy'uru rubanza.

[37] Urukiko rurasanga, uburenganzira bwo kuba umugore w'isezerano Mukarango Phoëbe akomora ku rubanza RCA 0218/11/TGI/NYBE rusimbura inyandiko y'ubushyingiranwe rwaciwe ku wa 30/05/2012 budashobora kuvanaho ingaruka zikomoka ku masezerano yo kugabana umutungo yagiranye na Gatera Charles byatumye uyu aguranira Byagatonda Vincent umutungo umwanditseho ku giti cye; ari yo mpamvu amasezerano y'ubugurane yatumye Byagatonda Vincent atanga umutungo we akanavugurura ku buryo buhambaye inzu yaguraniwe na Gatera Charles agomba kugumana agaciro kayo.

B. Kumenya niba ababuranyi bakwiye indishyi n'amafaranga y'urubanza basaba

[38] Mu mwanzuro we no mu miburanire ye, Mukarango Phoëbe uhagarariwe na Me Munyurangabo Dominique, asaba ko Byagatonda Vincent yategekwa kumuha indishyi zingana na 5.400.000 Frw zo kuba yaravukijwe ubukode bw'inzu ye mu gihe cyose ayimaranye kuko ngo yari asanzwe ayikodesha 50.000 Frw ku kwezi, no guhabwa 1.150.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[39] Mu iburanisha ryo ku wa 08/07/2020, Byagatonda Vincent yavuze ko nta ndishyi yatanga kuko ibyo aburana ari umutungo we, kandi ko abaheruka gukodesha inzu ya Gatera Charles bishyuraga 1.000 Frw ku kwezi, akaba atabona aho Mukarango Phoëbe avana igiciro cy'ubukode bwa 50.000 Frw ku kwezi, ko n'ubu yavuguruwe bihagije, ukurikije ibiciro biri mu mujyi wa Nyamagabe idashobora gukodeshwa ayo mafaranga. Ku ruhande rwe avuga ko nta ndonke yifuza kuri Mukarango Phoëbe, ari yo mpamvu ngo asaba gusa 1.000.000 Frw y'igihembo cy'Abavoka babiri (2) bamuburaniye

[40] Kanzayire Vénantie, wunganirwa na Me Nsengimana Emmanuel, asaba Mukarango Phoëbe wongeye kumugarura mu manza kumuha 300.000 Frw y'indishyi z'akababaro n'iz'ikurikiranarubanza.

UKO URUKIKO RUBIBONA

[41] Urukiko rurasanga Mukarango Phoëbe nta ndishyi akwiye guhabwa kuko atsindwa n'urubanza.

[42] Urukiko rurasanga, mu bushishozi bwarwo, Mukarango Phoëbe akwiye guha Byagatonda Vincent amafaranga 500.000 y'igihembo cy'ubwunganizi kuri uru rwego mu mwanya w'amafaranga 1.000.000 yasabye.

[43] Urukiko rurasanga amafaranga y'ikurikiranarubanza Kanzayire Vénantie, uburanira abana be Uwineza Marie na Bizimana Emmanuel yabyaranye na Gatera Charles na we wabaye umuburanyi muri uru rubanza kuva mu Rukiko Rukuru, Urugereko rwa Nyanza, asaba ayakwiye, mu bushishozi bwarwo akaba agenewe 200.000 Frw mu mwanya wa 300.000 Frw asaba.

III. ICYEMEZO CY'URUKIKO

[44] Rwemeje ko nta karengane kaboneka mu rubanza RCA 0104/15/HC/NYA rwaciwe n'Urukiko Rukuru, Urugereko rwa Nyanza ku wa 27/11/2015.

[45] Rutegetse Mukarango Phoëbe guha Byagatonda Vincent amafaranga ibihumbi magana atanu (500.000 Frw) y'igihembo cy'ubwunganizi no guha Kanzayire Vénantie mu izina ry'abana be Uwineza Marie na Bizmana Emannuel amafaranga ibihumbi magana abiri (200.000 Frw) y'ikurikiranarubanza.

[46] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.