NYIRANTAHO v KABANO

[Rwanda URUKIKO RW'UBUJURIRE – RCAA 00041/2018/CA (Mukandamage, P.J, Ngagi na Umugwaneza) 30 Nyakanga 2020]

Amategeko agenga amasezerano – Gutesha agaciro amasezerano y'ubugure – Uwaguze niwe ufite ububasha bwo kuregera gutesha agaciro amasezerano y'ubugure bwakozwe ku kintu cy'undi, naho uvuga ko ari nyir'ikintu cyagurishijwe atabizi, akaba adafite ubwo bubasha, icyakora ashobora kurengera inyungu ze aregera kugaruza icye cyagurishijwe atabizi.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Nyirantaho arega Dr Kabano asaba urukiko gutesha agaciro amasezerano y'ubugure yakozwe hagati ya Bahintasi na Kabano, kumutegeka gusohoka muri iyo nzu, no kwishyura 100.000 Frw buri kwezi yo kumuhatira kubahiriza urubanza, akishyura n'ubukode bw'iyo nzu buhwanye na 250.000 Frw ku kwezi, guhera ku wa 30/07/1998 kugeza igihe urubanza ruzarangirira. Urukiko rwaciye urubanza rwemeza ko ayo msezerano y'ubugure bw'inzu atagomba guteshwa agaciro.

Nyirantaho ntiyishimiye imikirize ajuririra Urukiko Rukuru, urwo Rukiko rwemeza ko ikirego ku rubanza rwajuririwe cyatanzwe nabi, kikaba kitaragombaga kwakirwa ngo gisuzumwe, ko urubanza rwajuririwe ruvuyeho.

Urega na none ntiyishimiye imikirize ajuririra Urukiko rw'Ikirenga, mugihe rutaraburanishwa mu mizi haba ivugurura ry'amategeko, urubanza rwoherezwa.

Me Masumbuko na Me Habimana, baburanira Nyirantaho bavuga ko icyo banenga rwajuririwe ari uko, Urukiko Rukuru rwemeje ko ikirego cyatanzwe Nyirantaho ku rwego rwa mbere cyatanzwe nabi, kikaba kitaragombaga kwakirwa, ngo kuko niba yarahisemo kuregera gusesa amasezerano yabaye hagati ya Bahintasi na Kabano yagombaga no kurega Bahintasi, nyamara ibyo atari ko byagombaga kugenda byanze bikunze, bagasaba ko uru Rukiko rwabikosora. Bakomeza bavuga ko Nyirantaho yareze asaba ko amasezerano y'ubugure bw'inzu yabaye hagati ya Bahintasi na Kabano ateshwa agaciro, ariko agamije gusubirana umutungo we ufitwe na Kabano, kuko ari we yari awusanganye, ko rero ibyo kurega Bahintasi nta shingiro bifite

Incamake y'Icyemezo: 1. Ufite ububasha bwo kuregera gutesha agaciro amasezerano y'ubugure bwakozwe ku kintu cy'undi ni uwaguze, naho uvuga ko ari nyiri ikintu cyagurishijwe atabizi, akaba adafite ubwo bubasha, ariko akaba ashobora kurengera inyungu ze aregera kugaruza icye cyagurishijwe atabizi, bityo Nyirantaho ntabubasha afite bwo kurega asaba gusesa amasezeranoy'ubugure bw'inzu yabaye hagati ya Kabano na Bahintasi

ubujurire nta shingiro bufite.
Imikirize y'urubanza rwajuririwe ntihindutse,
Amagarama y'urubanza ahwanye n'ibyakozwe n'Urukiko.

Amategeko yashyimgiweho:

y'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 3, igika cya 1 n'ingingo ya 2 agace ka 7

Itegeko nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 113

Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano (CCLIII), ingingo ya 63

Imanza zifashishijwe

RCAA 00045/2016/SC rwaciwe ku wa 24/05/2019 n'Urukiko rw'Ikirenga, haburana Mukaruhanga Alexia, Kold Hansen Jesper na Nyirahabimana Emertha

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Nyirantaho Marthe arega Dr Kabano Augustin asaba urukiko gutesha agaciro amasezerano y'ubugure bw'inzu iri mu kibanza 622 plan cadastral de Kigali yo ku wa 30/07/1998 yakozwe hagati ya Bahintasi Albert na Kabano Augustin, kumutegeka gusohoka muri iyo nzu, no kwishyura 100.000 Frw buri kwezi yo kumuhatira kubahiriza urubanza, akishyura n'ubukode bw'iyo nzu buhwanye na 250.000 Frw ku kwezi, guhera ku wa 30/07/1998 kugeza igihe urubanza ruzarangirira.

[2] Mu rubanza RC 0541/14/TGI/NYGE rwaciwe ku wa 09/07/2015, Urukiko Rwisumbuye rwa Nyarugenge rwasanze ikirego cya Nyirantaho Marthe nta shingiro gifite, rwemeza ko amasezerano y'ubugure bw'inzu yabaye hagati ya Bahintasi Albert, ahagarariye Nyirantaho Marthe, na Dr Kabano Augustin atagomba guteshwa agaciro, rutegeka Nyirantaho Marthe guha Kabano Augustin 800.000 Frw akubiyemo ay'ikurikiranarubanza n'igihembo cya Avoka.

[3] Nyirantaho Marthe yajuririye Urukiko Rukuru, maze mu rubanza RCA 0379/15/HC/KIG rwaciwe ku wa 21/07/2016, urwo Rukiko rwemeza ko ikirego ku rubanza rwajuririwe cyatanzwe nabi, kikaba kitaragombaga kwakirwa ngo gisuzumwe, ko urubanza rwajuririwe ruvuyeho, rutegeka Nyirantaho Marthe kwishyura Kabano Augustin 850.000 Frw y'igihembo cya Avoka n'ikurikiranarubanza.

[4] Nyirantaho marthe yajuririye na none urukiko rw'ikirenga, urubanza ruburanishirizwa mu ruhame ku wa 20/03/2018, kabano augustin atanga inzitizi y'iburabubasha bw'urwo rukiko ku mpamvu y'uko ubujurire butujuje imwe mu mpamvu zivugwa mu ngingo ya 28 y'itegeko ngenga N° 03/2012 ol ryo ku wa 13/06/2012 rigena imikorere n'ububasha bw'urukiko rw'ikirenga ryubahirizwaga icyo gihe, ko Nyirantaho marthe yajuriye ashingiye ku gace ka 7, igika cya 2, cy'iryo tegeko ngenga kavuga ku gaciro k'ikiburanwa kandi nta ndishyi zigeze zigenwa mu rwego rw'ubujurire, kandi nta genagaciro ry'ikiburanwa ryakozwe kuva urubanza rutangiye.

[5] Mu rubanza rubanziriza urundi rwaciwe ku wa 20/04/2018, Urukiko rw'Ikirenga rwemeje ko iburanisha ry'urubanza rizongera gufungurwa tariki ya 12/06/2018, kugira ngo harebwe uburyo hashyirwaho umugenagaciro w'inzu iburanwa, agaragaze agaciro ifite, ariko hahita haba ivugurura ry'amategeko, urubanza rwoherezwa Urukiko rw'Ubujurire hashingiwe ku biteganywa n'ingingo ya 105 y'Itegeko N◦ 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ikirego gihabwa RCAA 00041/2018/CA.

[6] Urubanza rwaburanishijwe mu ruhame ku wa 22/01/2020, ababuranyi bashyiraho umugenagaciro, iburanisha ryimurirwa ku wa 23/03/2020, ariko uwo munsi ntiryashobora kuba kubera gahunda yo gukumira icyorezo cya Covid-19, iburanisha ryongera kuba ku wa 07/07/2020, Nyirantaho Marthe ahagarariwe na Me Masumbuko Nde Emile, afatanyije na Me Habimana Gasore Fidèle, naho Kabano Augustin ahagarariwe na Me Mukaruzagiriza Chantal afatanyije na Me Kanamugire Eric, babwira Urukiko ko inzitizi y'iburabubasha bari batanze bayikuyeho, kuko umugenagaciro Shumbusho Jean Pierre yagaragaje ko inzu iburanwa ifite

agaciro kangana na 152.718.000 Frw, iburanisha rikomeza mu mizi y'urubanza, ababuranyi bamenyeshwa ko urubanza ruzasomwa ku wa 31/07/2020, ariko isomwa ryarwo ryigizwa imbere ku wa 30/07/2020, kubera ko ku wa 31/07/2020 wari umunsi w'ikiruhuko cya Eid al - Adha.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. Kumenya niba Urukiko Rukuru rwaragombaga kwakira ikirego cyatanzwe na Nyirantaho Marthe gisaba gusesa amasezerano y'ubugure yabaye hagati ya Kabano Augustin na Bahintasi Albert

[7] Me Masumbuko Nde Emile na Me Habimana Gasore Fidèle, baburanira Nyirantaho Marthe bavuga ko icyo banenga urubanza RCA 0379/15/HC/KIG rwajuririwe ari uko, mu gika cyarwo cya 7, Urukiko Rukuru rwemeje ko ikirego cyatanzwe Nyirantaho Marthe ku rwego rwa mbere cyatanzwe nabi, kikaba kitaragombaga kwakirwa hashingiwe ku biteganywa n'ingingo za 33, 63 na 526 z'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano (CCLIII) cyakurikizwaga igihe amasezerano y'ubugure yakorwaga, ngo kuko niba yarahisemo kuregera gusesa amasezerano yabaye hagati ya Bahintasi Albert na Kabano Augustin yagombaga no kurega Bahintasi Albert, nyamara ibyo atari ko byagombaga kugenda byanze bikunze, bagasaba ko uru Rukiko rwabikosora.

[8] Bakomeza bavuga ko Nyirantaho Marthe yareze asaba ko amasezerano y'ubugure bw'inzu yabaye hagati ya Bahintasi Albert na Kabano Augustin ateshwa agaciro, ariko agamije gusubirana umutungo we ufitwe na Kabano Augustin, kuko ari we yari awusanganye, ko rero ibyo kurega Bahintasi Albert nta shingiro bifite, kubera ko ingingo ya 5 y'ayo masezerano yavugaga ko "*Le représentant du vendeur aux termes du présent contrat déclare répondre personnellement tant à l'égard du montant que de tout autre tiers, de toute éventuelle responsabilité découlant de la conclusion du présent contrat"*[1], ndetse n'ingingo ya 280 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano yakurikizwaga icyo gihe yateganyaga ko "Umugurisha afite inshingano z'ingenzi: gutanga ikintu agurishije no kucyishingira", ko rero izo ngingo zombi zagombaga gutuma Kabano Augustin asaba kugobokesha ku gahato bahintasi albert mu rubanza nk'umuntu wamugurishije, akaba yari yarishingiye ubwo bugure n'ubwo Nyirantaho Marthe atemera iheshabubasha ryashingiweho Bahintasi Albert yiyitirira kuba intumwa yo kugurishwa uwo mutungo.

[9] Bavuga kandi ko ingingo ya 63 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano yavuzwe haruguru, ivuga ko amasezerano agira inkurikizi ku bayagiranye, aribo Kabano Augustin na Bahintasi Albert, ariko kandi inateganya ko aba inkurikizi ku bayagiranye mu gihe atagize undi uwo ari we wese yaba abangamiye, ko nyamara ayo masezerano y'ubugure Nyirantaho Marthe yaregeye amubangamiye nka nyiri umutungo, ari na yo mpamvu yatanze ikirego agamije ko ateshwa agaciro, kugira ngo asubirane umutungo we, bityo bigashimangira na none ko Kabano Augustin yagombaga kugobokesha ku gahato Bahintasi Albert, kuko ari we wari ubifitemo inyungu nk'uwamugurishije, none amasezerano bagiranye akaba yararegewe mu rukiko hagamijwe ko ateshwa agaciro akamburwa umutungo yaguze ku bw'ayo masezerano, ko kuba rero ataramugobokesheje, bitabuza Nyirantaho Marthe kubona ubutabera.

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[1] Tugenekereje mu kinyarwanda bikaba bisobanuye ko "uhagarariye umugurisha muri aya masezerano yiyemeje ko azaryozwa ku giti cye haba ku mafaranga y'ikiguzi cyagwa ku w'undi muntu uwo ari wese utari muri aya masezerano, uburyozwe bushobora kuvuguka bukomoka kuri aya masezerano".

[10] Me Masumbuko Nde Emile na Me Habimana Gasore Fidèle basoza basaba uru Rukiko gukosora ayo amakosa yabaye mu rubanza rwajuririwe, maze rukaruburanisha mu mizi rushingiye ku ngingo ya 157 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "Urukiko rwajuririwe rushobora guhindura urubanza rwajuririwe mu ngingo zarwo zose cyangwa zimwe muri zo, kwemeza uko rwari rwaciwe cyangwa kurutesha agaciro. Urukiko rwajuririwe ruca urubanza mu mizi keretse iyo: 1° Urubanza rwajuririwe rwaciwe n'urukiko rutabifitiye ububasha; 2° Urukiko rwariyambuye ububasha kandi rubufite; 3° Urukiko rwararegewe mu buryo bunyuranyije n'amategeko.

[11] Me Mukaruzagiriza Chantal na Me Kanamugire Eric, baburanira Kabano Augustin, bavuga ko nta kosa Urukiko Rukuru rwakoze rwemeza ko ikirego cya Nyirantaho Marthe cyatanzwe nabi mu Rukiko Rwisumbuye rwa Nyarugenge, ko rero kitagombaga kwakirwa ngo gisuzumwe, ko no mu bujurire bwe muri uru Rukiko Nyirantaho Marthe atagaragaza inenge urubanza RCA 0379/HC/KIG rufite ahubwo asa n'ujuririra imanza zombi zabanje.

[12] Bakomeza bavuga ko ikirego cya Nyirantaho Marthe cyasabaga gutesha agaciro amasezerano y'ubugure yabaye hagati ya Kabano Augustin na Bahintasi Albert wari uhagarariye Nyirantaho Marthe, ko rero, hashingiwe ku ngingo ya 113, igika cya 1, y'Itegeko nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano ivuga ko "Amasezerano agira inkurikizi ku bayagiranye gusa, ntabangamira undi wese kandi amugirira akamaro gusa mu biteganyijwe bijyanye no gusezerana ibifitiye undi akamaro", Nyirantaho Marthe atari afite ububasha bwo gusaba gutesha agaciro ayo masezerano atabayemo.

[13] Bavuga na none ko Urukiko rw'Ikirenga rwatanze umurongo mu gukemura bene ibi bibazo, mu rubanza RCAA 00045/2016/SC rwaciwe ku wa 24/05/2019 haburana Mukaruhanga Alexia, Kold Hansen Jesper na Nyirahabimana Emertha, aho rwemeje ko nta muntu ufite ububasha bwo gusaba gutesha agaciro amasezerano atabayemo, ko ashobora kuregera inyungu ze aregera kugaruza icye cyagurishijwe atabizi.

[14] Ku byo ababuranira Nyirantaho Marthe bavuga by'uko Kabano Augustin yagombaga kugobokesha Bahintasi Albert, Me Mukaruzagiriza Chantal na Me Kanamugire Eric bavuga ko ingingo ya 5 y'amasezerano y'ubugure baburanisha itigeze iburanwaho haba ku rwego rwa mbere cyangwa se mu bujurire bwa mbere, ko kandi itigeze igaragazwa nk'impamvu y'ubujurire kuri uru rwego rw'ubujurire bwa kabiri, ko ahubwo iyo ngingo Nyirantaho Marthe yitsitsaho nawe yari kuyifashisha akarega abo bantu bombi yita ko bakoze amasezerano ku mutungo we atabizi, cyane cyane ko muri iyo ngingo Bahintasi Albert yiyemerera kwirengera ingaruka zose zikomoka kuri ubwo bugure.

[15] Basanga n'ibyo Nyirantaho Marthe avuga ko Kabano Augustin yagobokesha ku gahato Bahintasi Albert kuri uru rwego rw'ubujurire bwa kabiri bitashoboka, kuko ingingo ya 116 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru ivuga ko kugobokesha ku gahato bitemewe mu Rukiko rw'Ubujurire cyangwa mu Rukiko rw'Ikirenga, ko kandi Nyirantaho Marthe adakwiye guhindura ikirego avuga ko arega Kabano Augustin wenyine kugira ngo umutungo we ugaruke, kuko ku rwego rwa mbere yaregeye gutesha agaciro amasezerano y'ubugure.

[16] Banzura bavuga ko mu gihe Urukiko rw'Ubujurire rwasanga urubanza rugomba kuburanishwa mu mizi, rwashingira ku biteganywa n'ingingo ya 156 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, rukaburanisha gusa mu mbibi z'icyajuririwe.

UKO URUKIKO RUBIBONA

[17] Ku byerekeye ibisabwa kugira ngo ikirego cyakirwe, ingingo ya 3, igika cya 1, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "Ikirego cyakirwa mu rukiko iyo urega afite ububasha, inyungu n'ubushobozi byo kurega, keretse igihe itegeko ribiteganya ukundi".

[18] Naho ingingo ya 2, agace ka 7º, y'iryo Tegeko isobanura ko ububasha bw'umuburanyi ari "Uburenganzira umuntu ahabwa n'amategeko akabukoresha arengera inyungu iyi n'iyi mu rukiko cyangwa yumvikanisha ibyo asaba cyangwa arwanya ibisabwa n'undi".

[19] Ku byerekeye inkurikizi z'amasezerano ku bandi bantu, ingingo ya 63 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano (CCLIII) cyakurikizwaga ubwo amasezerano y'ubugure yakorwaga, yahindutse ingingo ya 113 y'Itegeko nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ko "Amasezerano agira inkurikizi ku bayagiranye gusa, ntabangamira undi wese kandi amugirira akamaro gusa mu biteganyijwe bijyanye no gusezerana ibifitiye undi akamaro (…)".

[20] Dosiye y'urubanza igaragaza ko mu rubanza RC 0541/14/TGI/NYGE rwaciwe ku wa 09/07/2015 n'Urukiko Rwisumbuye rwa Nyarugenge, Nyirantaho Marthe yareze Kabano Augustin asaba urwo Rukiko gutesha agaciro amasezerano y'ubugure bw'inzu yo ku wa 30/07/1998, kumutegeka kwishyura ubukode bw'inzu guhera ku wa 30/07/1998 kugeza igihe urubanza ruzakirizwaho buhwanye na 250.000 Frw buri kwezi, kumutegeka gusohoka mu nzu no kumutegeka kwishyura 100.000 Frw buri kwezi yo kumuhatira kubahiriza urubanza n'amafaranga y'ibyagiye ku rubanza.

[21] Nyirantaho Marthe yaburanye avuga ko inzu ye yagurishijwe atabizi, kandi ko Kabano Augustin yari asanzwe azi ko iyo nzu ari iye, kandi azi neza ko aba mu gihugu cy'Ububirigi, naho Kabano Augustin aburana avuga ko yaguze inzu yari asanzwe akodesha ashingiye kuri "procuration" yo ku wa 18/06/1998, Nyirantaho Marthe yahaye umuhungu we Bahintasi Albert, ayishakira n'ibyangombwa ikaba imwanditseho, hakaba ntawigeze abitesha agaciro, maze Urukiko Rwisumbuye rwa Nyarugenge rwakira ikirego cye, ariko rusanga amasezerano y'ubugure atagomba guteshwa agaciro.

[22] Mu bujurire, Urukiko Rukuru, rushingiye ku ngingo za 33, 63 na 526 z'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano cyakurikizwaga igihe amasezerano y'ubugure yakorwaga, rwasanze, mu gukurikirana umutungo we, Nyirantaho Marthe uvuga ko atatanze ubutumwa bwo kugurisha umutungo we, yarashoboraga kurega Kabano Augustin wenyine nk'umuntu awusanganye mu maboko ye cyangwa se akarega iseswa ry'amasezerano yamwitiriwe nk'uko yabikoze, ariko mu gihe yahisemo guca muri iyo nzira ya kabiri, byanze bikunze Bahintasi Albert wiyise intumwa ye mu kuyakorana n'uwaguze akaba yaragombaga kuba ku isonga ry'abaregwa, ko rero ikirego yatanze kitagombaga kwakirwa atanareze Bahintasi Albert, ko rero urubanza rwajuririwe rugomba kuvaho kubera kurega nabi.

[23] Urukiko rurasanga, ingingo ya 63 y'Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano cyakurikizwaga igihe amasezerano y'ubugure yakorwaga, ubu yahindutse 113 y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, yarateganyaga ko amasezerano agira inkurikizi ku bayagiranye gusa, ko atabangamira undi wese kandi amugirira akamaro gusa mu biteganyijwe bijyanye no gusezerana ibifitiye undi akamaro, bikaba rero byumvikana ko Nyirantaho Marthe atari afite ububasha bwo kuregera amasezerano yabaye hagati

ya Kabano Augustin na Bahintasi Albert, kuko atari umwe mu bayagiranye (partie au contrat), ko rero niba yumva ko ayo masezerano amubangamiye akaba ashaka kugaruza umutungo avuga ko ari uwe wagurishijwe na Bahintasi Albert atabizi, ashobora gusa kurega Kabano Augustin amukurikiranyeho uwo umutungo yamusanganye (action en revendication).

[24] Urukiko rurasanga, no mu rubanza RCAA 00045/2016/SC rwaciwe ku wa 24/05/2019 n'Urukiko rw'Ikirenga, haburana Mukaruhanga Alexia, Kold Hansen Jesper na Nyirahabimana Emertha, urwo Rukiko rwarasobanuye ko ingingo ya 113, igika cya 1, y'Itegeko Nº 45/2011 ryo ku wa 25/11/2011 ryavuzwe haruguru isubiramo ihame risanzwe rizwi mu mategeko ryerekeye "*effet relatif des contrats/relative effect of contracts"*, ko ariko idasobanura uko bigenda igihe amasezerano abantu bagiranye abangamiye undi utarayagizemo uruhare.

[25] Urwo Rukiko, rushingiye ku nyandiko z'abahanga mu mategeko no ku manza rwaciye kimwe n'izaciwe mu mahanga, rwasanze ufite ububasha bwo kuregera gutesha agaciro amasezerano y'ubugure bwakozwe ku kintu cy'undi ari uwaguze, naho uvuga ko ari nyiri ikintu cyagurishijwe atabizi, akaba adafite ubwo bubasha, ariko akaba ashobora kurengera inyungu ze aregera kugaruza icye cyagurishijwe atabizi, ko rero Kold Hansen Jesper adafite ububasha bwo kuregera gutesha agaciro amasezerano y'ubugure bw'inzu yakozwe hagati ya Mukaruhanga Alexia na Nyirahabimana Emertha ku wa 10/05/2012, hashingiwe ku ihame ry'uko amasezerano agira inkurikizi ku bayagiranye gusa, kandi ko kutagira ububasha ari imwe mu mpamvu zituma ikirego kitakirwa.

[26] Urukiko rurasanga rero, rushingiye ku ngingo ya ingingo ya 2, agace ka 7º, n'iya 3, igika cya 1, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, no ku bimaze gusobanurwa, Nyirantaho Marthe nta bubasha yari afite bwo kurega asaba gusesa amasezerano y'ubugure bw'inzu yabaye hagati ya Kabano Augustin na Bahintasi Albert agamije kugaruza inzu yagurishijwe, bityo ubujurire bwe nta shingiro bufite.

b. Ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka

[27] Mu myanzuro, ababuranira Nyirantaho Marthe bavuga ko Kabano Augustin agomba kumuha 2.500.000 Frw yo gukurikirana urubanza n'igihembo cya Avoka.

[28] Ababuranira Kabano Augustin bavuga ko ayo Nyirantaho Marthe amusaba nta shingiro afite, ko ahubwo akomeje kumukurura mu manza nta mpamvu, akaba ari we ugomba kumuha 2.500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka yiyongera ku yo yagenewe n'Urukiko Rukuru.

Uko Urukiko rubibona

[29] Ingingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".

[30] Urukiko rurasanga 2.500.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka Nyirantaho Marthe asaba Kabano Augustin atayagenerwa, kuko ubujurire bwe nta shingiro bufite.

[31] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka Kabano Augustin asaba Nyirantaho Marthe afite ishingiro, kuko yashatse abanyamategeko bamuburanira kuri uru rwego, ariko 2.500.000 Frw ni menshi, harebwe ko urubanza rugarukiye gusa ku iyakirwa ryarwo, mu bushishozi bw'Urukiko akaba agenewe 700.000 Frw kuri uru rwego yiyongera kuri 800.000 Frw yagenewe n'Urukiko Rwisumbuye rwa Nyarugenge na 850.000 Frw yagenewe n'Urukiko Rukuru, yose hamwe akaba 2.350.000 Frw.

III. ICYEMEZO CY'URUKIKO

[32] Rwemeje ko ubujurire bwa Nyirantaho Marthe nta shingiro bufite ;

[33] Rwemeje ko ubujurire bwuririye ku bundi bwa Kabano Augustin bufite ishingiro ;

[34] Rutegetse ko urubanza RCA 0379/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 21/07/2016 rwajuririwe na Nyirantaho Marthe rudahindutse, uretse ku byerekeye amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ;

[35] Rutegetse Nyirantaho Marthe guha Kabano Augustin 2.350.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka ku nzego zose yaburaniyeho ;

[36] Ruvuze ko amafaranga y'amagarama y'urubanza yatanzwe na Nyirantaho Marthe ajurira ahwanye n'ibyakozwe mu rubanza.