MUBERUKA v HOME BASKET SACCO KIMIRONKO N’ABANDI

[Rwanda URUKIKO RW’UBUJURIRE – RCAA 00023/2018/CA– (Mukandamage, P.J., Mukanyundo na Kanyange, J.) 18 Ukwakira 2019]

Amategeko agenga umutungo – Umutungo utimukanwa – Uburyo bwo kubona ubutaka no kubwiyandikishaho – Kwandikwa ku mutungo utimukanwa ntibihagije kwemeza ko uwanditsweho ari nyirawo mu gihe atagaragaza inkomoko yawo.

Incamake y’ikibazo: Habimana n’umugore we Ngendahimana biyandikishijeho umutungo wa Muberuka bari bashinzwe kumucungira kuko yabaga i Burayi ndetse baza no kuwutangaho ingwate muri Home Basket Sacco Kimironko no muri COGEBANQUE kubera umwenda bahawe n’izo banki. Muberuka yabareze mu Rukiko Rwisumbuye rwa Nyarugenge, rwemeza ko uwo mutungo ugomba kubavaho ukandikwa kuri Byukusenge n’umugore we nk’uko yabisabye, nubwo uwo mtungo wari waragurishijwe mu cyamunara mbere y’uko uru rubanza rucibwa, ugurwa na Kamukunde. Nyuma yaho, uyu Muberuka yatanze ikindi kirego arega Home Basket Sacco Kimironko n’Abahesha b’inkiko b’umwuga asaba ko ubwo bugure buteshwa agaciro kuko urubanza rwa mbere rwemeje ko iyo nzu ari iye.

Home Basket Sacco, Kamukunde, Mutezintare na Cogebanque batambamiye urubanza rwahesheje Muberuka inzu iburanwa bavuga ko itagomba guhungabanywa kuko bayifiteho uburenganzira. Nyuma habaye ubwumvikane hagati ya Cogebanque na Muberuka ko inguzanyo yahawe Habimana n’umugore we iguzwe na Byukusenge akazayishyura afashijwe na Muberuka.

Izo manza zose zahurijwe hamwe, Urukiko rwemeza ko ikirego cya Muberuka gifite ishingiro, ko ikibanza kiburanwa n’amazu arimo ari ibye, ko ubugure bwose bwabaye kuri icyo kibanza nta gaciro bufite. Rwemeje kandi ko ibirego bya Home Basket Sacco Kimironko, Kamukunde na Mutezintare Charles nta shingiro bifite, ko urubanza batambamiye rugomba kugumaho.

Home Basket Sacco Kimironko hamwe na Kamukunde Godefroid bajuririye Urukiko Rukuru, mu rubanza RCA 00003-00073/2017/HC/KIG rwaciwe ku wa 15/09/2017, urwo Rukiko rwemeza ko ubujurire bwombi bufite ishingiro kuri bimwe, ko urubanza rwajuririwe ruhindutse kuri byose. Rwemeje ko ikibanza nimero 1/03/09/01/705 kirimo amazu giherereye mu Mudugudu wa Kigarama, Akagari ka Gatare, Umurenge wa Niboyi, Akarere ka Kicukiro mu Mujyi wa Kigali, ari icya Kamukunde, ko ubugure bwose bwabaye kuri icyo kibanza bufite agaciro.

Muberuka yajuririye Urukiko rw’Ikirenga avuga ko Urukiko Rukuru rutagaragaje uburyo yirengagije ko Habimana n’umugore we biyandikishijeho umutungo we, ko kandi rwashingiye ku ngingo ya 20 y’Itegeko rigenga ubutaka ariko rwirengagiza igika cyayo cya kabiri, asaba amafaranga y’ubukode kuva inzu iburanwa igurishijwe n’amafaranga y’igihembo cya Avoka. Kamukunde na Home Basket Sacco Kimironko batanze inzitizi y’iburabubasha bw’Urukiko rwajuririwe ishingiye ku gaciro k’ikiburanwa ariko ntiyahabwa ishingiro. Urubanza rwaburanishijwe mu mizi, nyuma y’uko Urukiko rw’Ikirenga rwemeje ko ubujurire bwa Muberuka buri mu bubasha bwarwo no mu bubasha bw’Urukiko rw’Ubujurire rwoherejwemo uru rubanza ngo ruruburanishe.

Mu iburanisha mu mizi, hasuzumwe ikibazo cyo kumenya niba Urukiko Rukuru rutaragaragaje uburyo Muberuka yamenye ko Habimana n’umugore we biyandikishijeho umutungo we akabyirengagiza kubera ko Muberuka asobanura ko nta kwirengagiza kwabayeho ahubwo habayeho uburiganya bwa Habimana n’umugore we, mu gihe ku ruhande rwa Home Basket Sacco Kimironko n’umuhesha w’inkiko bamenyeshejwe mu nyandiko ko umutungo ari uwe, ko hari n’urubanza rutegerejwe gusomwa, ariko babirengaho cyamunara irakomeza.

Kuri icyo kibazo Kamukunde avuga ko nta kosa Urukiko rwakoze ryatuma urubanza rwajuririwe ruhinduka, kuko mu gihe hari habaye cyamunara kuri uwo mutungo, Muberuka yashoboraga gushingira ku ngingo ya 309 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga icyo gihe agasaba Perezida w'Urukiko rw'Ubucuruzi gukemura impaka cyangwa guhagarika iyo cyamunara, kugira ngo imanza avuga ko zariho ziburanishwa zibanze zirangire, ko kuba atariyambaje uburyo bwateganyijwe n'Itegeko ahubwo akarebera, ari byo byatumye cyamunara iba, kuko niyo umutungo uza kuba ari uwe koko, akarebera ntiyiyambaze inzira amategeko yamuhaye, ari impamvu yari gutuma uwaguze agumana umutungo, naho we agasigara akurikirana uwo yari yawuragije.

Home Basket Sacco Kimironko asobanura ko yahaye inguzanyo Habimana n'umugore we imaze kubona ibyangombwa by'umutungo wabo no kuwusura, itishyuwe irabarega iratsinda, nyuma iteza inzu cyamunara, ko nta nyandiko n'imwe igaragaza ko umutungo ari uwa Muberuka.

Habimana n'umugore we bavuga ko ibivugwa na Kamukunde atari ukuri kuko batigeze batunga umutungo uburanwa nk'uwabo bwite nubwo wari ubanditseho, ko ahubwo bawucungiraga Muberuka baza no kuwiyandikishaho kugira ngo bazashobore gusaba ibyangombwa byo gusana, babone nuko bakomeza kuwubyaza umusaruro kugira ngo aho azazira azabone ko bawucunze neza.

Incamake y'icyemezo: Kwandikwa ku mutungo utimukanwa ntibihagije kwemeza ko uwanditsweho ari nyirawo mu gihe atagaragaza inkomoko yawo. Bityo, kuba Habimana Bonaventure n'umugore we aribo banditse ku cyemezo cy'umutungo uburanwa ntibihagije kwitwa ko aribo nyirumutungo ahubwo ni ubwa Muberuka Vincent ugaragaza inkomoko yabwo mbere y'uko abo babwiyandikishaho.

Ubujurire bufite ishingiro kuri bimwe.
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe.
Amagarama aherera ku ruhande rw'Abaregwa.

Amategeko yashingiweho:

Itegeko ngenga Nº 03/2013/OL ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 20.
Itegeko ngenga Nº 03/2012 OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 28.
Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 105.
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 1, 12, 111 n'iya 309.
Itegeko Nº 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 21.
Itegeko N°34/2013 ryo kuwa 24/05/2013 rigenga ubugwate ku mutungo utimukanwa, ingingo ya 4.
Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itagwa ryabyo, ingingo ya 3.
Itegeko Nº 42/1988 ryo kuwa 27/10/1988 rishyiraho interuro y'ibanze n'igitabo cya kabiri cy'urwunge rw'amategeko mbonezamubano (CCLII), ingingo ya 44.

Imanza zifashishijwe:

Harerimana Emmanuel na Sebukayire Tharcisse, RCAA 0018/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2014.
Nshimiyimana Yvon na Sebutinde Edouard RCAA 00035/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 19/07/2019.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Inkomoko y'uru rubanza ni inzu iri mu kibanza UPI 1/03/09/01/705, kiri mu Mudugudu wa Kigarama, Akagari ka Gatare, Umurenge wa Niboye, Akarere ka Kicukiro Muberuka Vincent avuga ko yacungwaga na Habimana Bonaventure n'umugore we Ngendahimana Mutesi Claudine, nyuma bayiyandikishaho, banayitangaho ingwate muri COGEBANQUE kubera umwenda bafashe, HOME BASKET SACCO Kimironko nayo ikavuga ko yayihaweho ingwate kubera umwenda yahaye Ngendahimana Mutesi Claudine akishingirwa na Habimana Bonaventure.

[2] Mu rubanza RC 0622/15/TGI/705 Muberuka Vincent yarezemo Habimana Bonaventure n'umugore we Ngendahimana Mutesi Claudine, Urukiko Rwisumbuye rwa Nyarugenge rwaciye urubanza 22/12/2015, rwemeza ko uwo mutungo ugomba kubavaho ukandikwa kuri Byukusenge Joseph n'umugore we nk'uko Muberuka Vincent yabisabye. Bigaragara ariko ko mbere y'uko urwo rubanza rucibwa, iyo nzu yagurishijwe muri cyamunara ku wa 08/12/2015 bisabwe na HOME BASKET SACCO Kimironko, ibishingiye ku rubanza RCOM 0876/14/TC/Nyge rwaciwe ku wa 17/11/2014 yatsindiyemo Habimana Bonaventure n'umugore we Ngendahimana Mutesi Claudine umwenda n'inyungu bingana na 1.510.000 Frw, hamwe na 500.000 Frw y'igihembo cya Avoka, inzu igurwa na Kamukunde Godefroid.

[3] Nyuma yaho, Muberuka Vincent yatanze ikirego mu rubanza RC 00058/2016/TGI/Nyge, arega HOME BASKET SACCO Kimironko, Kamukunde Godefroid n'abahesha b'inkiko Muvunyi Serge na Muhoza Christian, asaba ko ubwo bugure bwateshwa agaciro kuko urubanza RC 0622/15/TGI/Nyge rwemeje ko inzu ari iye.

[4] HOME BASKET SACCO Kimironko nayo yatanze kirego mu rubanza RC 00310/2016/TGI/Nyge, itambamira urubanza RC 0622/15/TGI/Nyge kuko rwategetse ko inzu iburanwa ari iya Muberuka Vincent kandi yari yaragurishijwe muri cyamunara.

[5] Kamukunde Godefroid nawe yatambamiye urubanza RC 0622/15/TGI/Nyge asaba kugumana inzu yaguze, ikirego cye cyandikwa kuri RC 00416/2016/TGI/Nyge.

[6] COGEBANQUE nayo yatambamiye urubanza RC 0622/15/TGI/Nyge mu kirego cyanditswe kuri RC 00277/2016/TGI/Nyge, isaba ko ingwate yahawe na Habimana Bonaventure n'umugore we idahungabanywa, ariko ku wa 12/08/2016, haba ubwumvikane hagati ya COGEBANQUE na Muberuka Vincent ko inguzanyo yahawe Habimana Bonaventure n'umugore we Ngendahimana Mutesi Claudine iguzwe na Byukusenge Joseph akazayishyura afashijwe na Muberuka Vincent.

[7] Mu rubanza RC 00268/2016/TGI/Nyge, Mutezintare Charles nawe yatambamiye urubanza RC 0622/15/TGI/Nyge, avuga ko hari igice cy'umutungo uburanwa yaguze na Habimana Bonaventure n'umugore we Ngendahimana Mutesi Claudine.

[8] Izo manza zose zahurijwe hamwe, igihe cy'iburanisha COGEBANQUE ivuga ko nta nyungu igifite mu rubanza, ko ntacyo ikibaza Habimana Bonaventure n'umugore we. Urukiko rwaciye urubanza ku wa 18/11/2016, rwemeza ko ikirego cya Muberuka Vincent gifite ishingiro, ko ikibanza kiburanwa n'amazu arimo ari ibye, ko ubugure bwose bwabaye kuri icyo kibanza nta gaciro bufite. Rwemeje kandi ko ibirego bya HOME BASKET SACCO Kimironko, Kamukunde Godefroid na Mutezintare Charles nta shingiro bifite, ko urubanza RC 0622/15/TGI/Nyge batambamiye rugomba kugumaho.

[9] Rwemeje na none ko Habimana Bonaventure n'umugore we Ngendahimana Mutesi Claudine basubiza Kamukunde Charles 2.060.000 Frw yabishyuriye HOME BASKET SACCO Kimironko, naho 46.200.000 Frw asigaye akayasubirana akuwe kuri konti bivugwa ko yashyizweho n'abahesha b'inkiko, Habimana Bonaventure n'umugore we bakanamuha 700.000 Frw y'igihembo cya Avoka, bakanasubiza Mutezintare Charles 4.524.602 Frw yari amaze kubaha ku gice cy'ikibanza bamugurishije, bakanamuha 700.000 Frw y'igihembo cya Avoka.

[10] HOME BASKET SACCO Kimironko hamwe na Kamukunde Godefroid bajuririye Urukiko Rukuru, mu rubanza RCA 00003-00073/2017/HC/KIG rwaciwe ku wa 15/09/2017, urwo Rukiko rwemeza ko ubujurire bwombi bufite ishingiro kuri bimwe, ko urubanza rwajuririwe ruhindutse kuri byose. Rwemeje ko ikibanza nimero 1/03/09/01/705 kirimo amazu giherereye mu Mudugudu wa Kigarama, Akagari ka Gatare, Umurenge wa Niboyi, Akarere ka Kicukiro mu Mujyi wa Kigali, ari icya Kamukunde Godefroid, ko ubugure bwose bwabaye kuri icyo kibanza bufite agaciro. Rwanemeje ko HOME BASKET SACCO Kimironko iha COGEBANQUE Ltd 500.000 Frw y'igihembo cya Avoka, naho Ngendahimana Mutesi Claudine na Habimana Bonaventure bagaha Kamukunde Godefroid 1.000.000 Frw na 75.000 Frw y'amagarama, bakanaha HOME BASKET SACCO 1.000.000 Frw na 75.000 Frw y'amagarama.

[11] Muberuka Vincent yajuririye Urukiko rw'Ikirenga avuga ko Urukiko Rukuru rutagaragaje uburyo yirengagije ko Habimana Bonaventure n'umugore we biyandikishijeho umutungo we, ko kandi rwashingiye ku ngingo ya 20 y'Itegeko rigenga ubutaka ariko rwirengagiza igika cyayo cya kabiri, anasaba amafaranga y'ubukode kuva inzu iburanwa igurishijwe, n'amafaranga y'igihembo cya Avoka. Kamukunde Godefroid na HOME BASKET SACCO Kimironko batanze inzitizi y'iburabubasha bw'Urukiko rwajuririwe ishingiye ku gaciro k'ikiburanwa.

[12] Ubwo bujurire bwimuriwe mu Rukiko rw'Ubujurire hashingiwe ku ngingo ya 105 y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, urubanza ruburanishwa mu ruhame ku wa 19/02/2019, Muberuka Vincent aburanirwa na Me Habimana Adolphe hamwe na Me Sebagabo Mbera Patrick, HOME BASKET SACCO Kimironko iburanirwa na Me Rukarishya Philémon, Kamukunde Godefroid ahagarariwe na Me Abijuru Emmanuel, Habimana Bonaventure na Ngendahimana Mutesi Claudine bahagarariwe na Me Nsengiyumva Emmanuel, hasuzumwa inzitizi y'iburabubasha bw'Urukiko rwajuririwe yatanzwe na Kamukunde Godefroid hamwe na HOME BASKET SACCO Kimironko.

[13] Nyuma yo gushyiraho umuhanga wo kugena agaciro k'ikiburanwa no kumva icyo ababuranyi bavuga kuri raporo yatanze, Urukiko rwafatiye icyemezo mu ntebe mu iburanisha ryo ku wa 24/06/2019, rusanga hashingiwe kuri raporo y'umuhanga no ku ngingo ya 28 igika cya kabiri, 7º y'Itegeko ngenga Nº 03/2012 OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga ryakurikizwaga ubujurira butangwa, ubujurire bwa Muberuka Vincent bwari mu bubasha bw'Urukiko rwajuririwe, bukaba buri no mu bubasha bw'Urukiko bwoherejwemo, iburanisha rikomeza hasuzumwa impamvu z'ubujurire mu mizi, rinakomeza ku wa 19/07/2019.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba Urukiko Rukuru rutaragaragaje uburyo Muberuka Vincent yamenye ko Habimana Bonaventure n'umugore we biyandikishijeho umutungo we akabyirengagiza

[14] Uburanira Muberuka Vincent, avuga ko Urukiko rwemeje ko umutungo uburanwa ari uwa Kamukunde Godefroid yaguze mu cyamunara, ko Muberuka yagize uburangare Habimana Bonaventure n'umugore we bakawiyandikishaho, nyamara Muberuka Vincent yarabaga i Burayi,

kandi ubwo cyamunara yabaga hari urubanza rurebana n'uwo mutungo rwari rwaraburanishijwe hategerejwe isomwa ryarwo, ko rero nta kurebera kwabayeho ahubwo habayeho uburiganya bwa Habimana Bonaventure n'umugore we, kandi aho Muberuka Vincent yamenyeye ko umutungo utamwanditseho yahise atanga ikirego. Avuga kandi ko HOME BASKET SACCO Kiironko n'umuhesha w'inkiko bamenyeshejwe mu nyandiko ko umutungo ari uwa Muberuka Vincent, ko hari n'urubanza rutegerejwe gusomwa, ariko babirengaho cyamunara irakomeza.

[15] Akomeza avuga ko Urukiko rutagaragaje ko Muberuka Vincent yaba yarahaye Habimana Bonaventure uburenganzira bwo kwiyandikishaho umutungo we cyangwa bwo kuwutangaho ingwate, usibye ko nta bugwate HOME BASKET SACCO Kimironko yari ifite nk'uko buteganywa n'ingingo ya 4 y'Itegeko rigenga ubugwate ku mutungo utimukanwa, ko kandi igihe cy'iyandikisha ry'ubutaka Muberuka Vincent atigeze amenya niba ababucungaga batarabumwanditseho, ari naho uburiganya bwatangiriye kuko Habimana Bonaventure atabasha kugaragaza icyo yashingiyeho yiyandikishaho umutungo uburanwa, usibye ko adahakana ko ari uwa Muberuka Vincent, ko rero n'ubwo Umucamanza yashingiye ku ngingo ya 20 y'Itegeko ry'ubutaka, atagaragaje ko Muberuka Vincent yahaye Habimana Bonaventure ''*procuration*'' yo kwiyandikishaho umutungo uburanwa, ahubwo yavuze gusa ko Muberuka Vincent atagaragaza impamvu yatumye atiyandikishaho ubutaka.

[16] Uburanira Kamukunde Godefroid, avuga ko nta kosa Urukiko rwakoze ryatuma urubanza rwajuririwe ruhinduka, kuko mu gihe hari habaye cyamunara ku mutungo Muberuka Vincent avuga ko ari uwe, yashoboraga gushingira ku ngingo ya 309 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga icyo gihe agasaba Perezida w'Urukiko rw'Ubucuruzi gukemura impaka cyangwa guhagarika iyo cyamunara, kugira ngo imanza avuga ko zariho ziburanishwa zibanze zirangire, ko kuba atariyambaje uburyo bwateganyijwe n'Itegeko ahubwo akarebera, ari byo byatumye cyamunara iba, kuko niyo umutungo uza kuba ari uwe koko, akarebera ntiyiyambaze inzira amategeko yamuhaye, ari impamvu yari gutuma uwaguze agumana umutungo, naho we agasigara akurikirana uwo yari yawuragije.

[17] Avuga kandi ko nta gisobanuro gifatika Muberuka Vincent atanga kivuguruza icyatanzwe n'Urukiko Rukuru, aho rwasobanuye ko kuba umutungo wari wanditse kuri Habimama Bonaventure n'umugore we, bagasaba amafaranga yo gusana muri HOME BASKET SACCO KIMIRONKO, nta makoza uwatanze amafaranga kimwe n'uwaguze bakoze. Byongeye kandi, kuba Habimana Bonaventure n'umugore we bari basanzwe banditse ku mutungo uburanwa mu buryo bwemewe n'amategeko, bawutunze mu mudendezo, bakavugira mu rukiko ko uwo mutungo ari uwa Muberuka Vincent ariko bakabikora ari uko inzira zo guteza cyamunara zatangiye cyangwa zenda gutangira, bigaragaza ko ari amayeri yo kugira ngo bawugaruze.

[18] Akomeza avuga ko ikindi kigaragaza ko Muberuka Vincent yari azi ko umutungo wanditswe kuri Habimana Bonaventure n'umugore we ko kandi watanzweho ingwate, ari uko ubwo urubanza rwaburanwaga mu Rukiko Rwisumbuye rwa Nyarugenge, Muberuka Vincent, Habimana Bonaventure n'umugore we hamwe na COGEBANQUE, bongeye kwemeza ko uwo mutungo ukomeza kuba ingwate y'amadeni Habimana Bonaventure n'umugore we bafashe, ibi Muberuka akaba atari kubikora iyo baba bafitanye impaka zishingiye ku kuba bariyandikishijeho umutungo we bakanawugwatiriza atabizi, binavuze ko n'ibindi byose byabaga byanyuze mu bwumvikane nk'ubwo.

[19] Uburanira HOME BASKET SACCO Kimironko, avuga ko ibyo Urukiko rwashingiyeho bigaragara mu gika cya 21 cy'urubanza aho rwanenze ibimenyetso Umucamanza wa mbere yari yashingiyeho, ko Muberuka Vincent yagombye kugaragaza ko umutungo watejwe cyamunara uri mu mazina ya Habimana Bonaventure n'umugore we, wigeze kuba mu mazina ye usibye kubivuga mu magambo gusa, kuko ibyo avuga binyuranye n'ingingo ya 44 y'Igitabo cya kabiri cy'urwunge rw'amategeko mbonezamubano (CCLII), ingingo ya mbere y'Itegeko ryerekeye imiburanishirize

y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, n’ingingo ya 3 y’Itegeko ry’ibimenyetso mu manza n’itagwa ryabyo.

[20] Asobanura ko HOME BASKET SACCO Kimironko yahaye inguzanyo Habimana Bonaventure n’umugore we imaze kubona ibyangombwa bw’umutungo wabo no kuwusura, itishyuwe irabarega iratsinda, nyuma iteza inzu cyamunara, ko kugeza ubu nta nyandiko n’imwe igaragaza ko umutungo ari uwa Muberuka Vincent, kuko n’inyandiko zashingiweho n’Urukiko Rwisumbuye rwa Nyarugenge, harimo inyandiko y’uwari Burugumesitiri wa Butaro n’inyandiko y’umuryango, ntaho zihuriye n’umutungo uburanwa, n’Urukiko Rukuru rukaba rutarazihaye agaciro nk’uko rwabisobanuye, Muberuka Vincent kandi akaba atagaragaza uburyo yabomyemo umutungo uburanwa hakurikijwe uburyo buvugwa mu ngingo ya 21 y’Itegeko ry’ubutaka. Asanga hashingiwe ku ngingo ya 12 y’Itegeko ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi ivuga ko urega agomba kugaragaza ibimenyetso by’ibyo aregera, ubujurire bwa Muberuka Vincent butagomba guhabwa ishingiro kuko nta kimenyetso na kimwe mu biteganywa n’amategeko ashobora kugaragariza Urukiko.

[21] Uburanira Habimana Bonaventure n’umugore we, avuga ko ibivugwa na Kamukunde Godefroid atari ukuri, kuko batigeze batunga umutungo uburanwa nk’uwabo bwite nubwo wari ubanditseho, ko ahubwo bawucungiraga Muberuka Vincent, baza no kuwiyandikishaho kugira ngo bazashobore gusaba ibyangombwa byo gusana, babone nuko bakomeza kuwubyaza umusaruro kugira ngo aho Muberuka Vincent azazira azabone ko bawucunze neza.

[22] Avuga kandi ko batahwemye kugaragariza inkiko ko umutungo uburanwa batigeze bawuhaho ingwate HOME BASKET SACCO Kimironko, ahubwo ko COGEBANQUE ariyo yari iwufiteho ingwate kuko yatanze amafaranga yo kuwusana, babimenyesha Muberuka Vincent nubwo atabyemeye bikanamurakaza bigatuma afata icyemezo cyo kubambura ububasha bwo kuwucunga. Asanga ahubwo HOME BASKET SACCO Kimironko, Kamukunde Godefroid n’umuhesha w’inkiko wateje cyamunara, barirengagije ibikurikira:

- Beretswe inyandiko yemeza ko umutungo ari uwa Muberuka Vincent nubwo utari umwanditseho ariko barayirengagiza;
- Muberuka Vincent yabandikiye ibaruwa asaba guhagarika kumugurishiriza umutungo barabyirengagiza;
- Mu cyemezo umuhesha w’inkiko yahawe n’ikigo cy’ubutaka, yagaragarijwe ko inzu iri mu bugwate bwa COGEBANQUE arengaho arayigurisha, bigaragaza ko bashatse guhesha Kamukunde Godefroid uwo mutungo biciye mu buriganya.

[23] Asobanura kandi ko bagaragaje inyandiko yo ku wa 26/05/2000 yahaga Se wa Habimana Bonaventure uburenganzira bwo gukurikirana umutungo wa Muberuka Vincent, banagaragaza ko ku wa 25/07/2008 Habimana Bonaventure yandikiye Muberuka Vincent (*email*) amubwira iby’icyemezo cyari cyafashwe cyo kuvanaho imiyenzi yari yubakishije urugo, anamumenyesha ko ashaka gufata umwenda muri Banki y’abaturage ya Butaro, Muberuka Vincent amubwira ko atagomba gufata umwenda ko ahubwo azamwohereza amafaranga yo kubaka urugo. Akomeza avuga ko icyangombwa cy’inzu iburanwa cyatanzwe muri COGEBANQUE kugira ngo hubakwe ‘’*annexe*’’, ariyo mpamvu Muberuka Vincent yemeye kwishyura uwo mwenda, ko umwenda watanzwe na HOME BASKET SACCO Kimironko utigeze utangwaho ingwate y’inzu iburanwa, ko ahubwo wari umwenda wo gukora ubucuruzi watanzwe nta ngwate itanzwe, ahubwo watanzwe mu rwego rwo guteza imbere abagore. Asobanura kandi ko ubugwate bwemerwa iyo bwanditswe muri RDB, ko rero hakuriijwe ingingo ya 4 y’Itegeko rigenga ubugwate ku mutungo utimukanwa, nta ngwate HOME BASKET SACCO Kimironko yari ifite ku nzu iburanwa.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 12 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 urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda. Naho uvuga ko atagitegetswe gukora icyo yategekwaga gukora cyagaragajwe n'ibimenyetso agomba kugaragaza impamvu zakimukuyeho. Iyo abiburiye ibimenyetso uwo baburana aramutsinda.

[25] Ikibazo kiri muri uru rubanza, ni icyo kumenya niba umutungo wagurishijwe harangiwza urubanza RCOM 0876/14/TC/Nyge HOME BASKET SACCO Kimironko yatsinzemo Habimana Bonaventure n'umugore we, ari uwa Muberuka Vincent cyangwa ari uwa Kamukunde Godefroid wawuguze muri cyamunara.

[26] Imikirize y'urubanza rwajuririwe, igaragaza ko Urukiko rwashingiye ku ngingo ya 20 y'Itegeko ngenga Nº 03/2013/OL ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, rusanga kuba Habimana Bonaventure n'umugore we Ngendahimana Mutesi Claudine bariyandikishijeho umutungo uburanwa bagahabwa icyangombwa cyawo, buri wese bari kukigaragariza yagombaga kwemera ko ari uwabo, ko ari nayo mpamvu nta kosa HOME BASKET SACCO Kimironko yakoze mu gufata ko aribo ba nyiri umutungo. Rwanasobanuye kandi ko niba uburanira Muberuka Vincent avuga ko uyu yavuganaga na Habimana Bonaventure n'umugore we ku birebana no gusana inzu ye, hakwibazwa impamvu atiyandikishijeho ubutaka bwe nkuko Leta yasabye abanyarwanda bose kubikora hashingiwe ku biteganywa n'ingingo yavuzwe haruguru, ko rero Urukiko Rwisumbuyre rwa Nyarugenge rwagombaga kwemeza ko yamenye ko ubutaka avuga ko ari ubwe bwanditse kuri Habimana Bonaveture n'umugore we ntiyagira icyo akora, akaba rero atasaba ko ubugure bwabaye buseswa, kuko iyo yiyandikishaho umutungo avuga ko ari uwe, utari kugurishwa, ahubwo akwiye gukurikirana abawugurishije bakamwishyura ariko uwawuguze n'abafite ibyangombwa ntawamburwe.

[27] Rwasobanuye kandi ko ibimenyetso Urukiko Rwisumbuye rwashingiyeho[1] bitari gutuma Habimana Bonaventure n'umugore we bamburwa uburenganzira ku mutungo ubanditseho, ko na Muberuka Vincent adashobora gusobanura impamvu uwo mutungo avuga ko ari uwe wanditswe ku bandi ntagire icyo akora; ko hakurikijwe uburyo Habimana Bonaventure n'umugore we kimwe na Muberuka Vincent babisobanura, byumvikana ko yamenye ko biyandikishijeho umutungo avuga ko ari uwe, impamvu yicecekeye akaba ari uko yifuzaga ko utangwaho ingwate kugira ngo inzu avuga ko ari iye isanwe, kuko iyo atabyifuza, abantu bo mu muryango we bamuhaga amakuru ajyanye no kwandikisha ubutaka ariko ntiyagira icyo akora, akaba rero atabangamira abandi bantu baguze bazi neza ko Habimana Bonaventure n'umugore we ari bo ba nyiri umutungo.

[28] Rwanasobanuye ko nk'uko Habimana Bonaventure n'umugore we babisobanura, bari bafite inshingano zo gusana inzu ku buryo amafaranga bahawe na HOME BASKET SACCO Kimironko yari ayo gusana inzu yatejwe cyamunara, bikaba bikwiye kumvikana ko nk'abantu bari bashinzwe gucunga inzu bagahabwa amafaranga yo kuyisana, nta kosa HOME BASKET SACCO Kimironko yakoze, kuko yagombaga kugaruza amafaranga yatanze kugira ngo iyo nzu isanwe, kandi uburanira Muberuka Vincent ntiyahakanye iby'ayo mafaranga yo gusana inzu, ko mu gihe ayo mafaranga atari yishyuwe, nta kindi cyagombaga gukorwa uretse kugurisha iyo nzu, ko rero Urukiko Rwisumbuye rwa Nyarugenge rutagombaga kuvuga ko habayeho kugurisha ibintu by'undi, ahubwo rwagombaga kugaragaza ko inzu yagurishijwe kubera ko habuze amafaranga yayitanzweho ngo isanwe kandi Muberuka Vincent yari azi ko igomba gusanwa anazi ko hafashwe ideni kugira ngo isanwe, ko mu

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[1] Inyandiko y'umuryango yemeje ko umutungo ucungwa na Maniragaba Frédéric, Se wa Habimana; Inyandiko ya Burugumesitiri wa Komini Butaro; Inyandiko y'umuyobozi w'Akagari ka Gatare, n'inyandiko ya Kazenga John wari warabohoje inzu iburanwa.

gihe hari andi makosa Habimana Bonaventure n'umugore we bakoze aribo yabaza aho kuyabaza HOME BASKET SACCO Kimironko cyangwa Kamukunde Godefroid, ko rero ubugure bwe budakwiye guseswa.

[29] Isesengura ryakozwe n'Urukiko Rukuru, ryumvikanisha ko rwemeye ko umutungo uburanwa ari uwa Muberuka Vincent ariko akaba yararetse ukandikwa kuri Habimana Bonaventure n'umugore we ku mpamvu rwasobanuye nk'uko zibukijwe haruguru.

[30] Uru Rukiko narwo rurasanga, n'ubwo Habimana Bonaventure n'umugore we aribo banditse ku cyemezo cy'umutungo uburanwa, hari ibimenyetso bigaragaza ko mbere y'uko ubandikwaho wari uwa Muberuka Vincent, bigizwe n'amasezerano y'ubugure bw'ikibanza aho inzu iburanwa iherereye (Komini Kicukiro, Secteur Kicukiro, Cellule Gatare), icyemezo cy'umuryango giha Maniragaba Frédéric[2] uburenganzira bwo gucunga ibintu bya Muberuka Vincent kugeza igihe azazira, inyandiko ya Responsable wa Cellule Gatare yo ku wa 26/05/2000 yandikiye Conseiller wa Secteur Kicukiro, amubwira ko Maniragaba Frédéric afite uburenganzira bwo guhabwa umutungo w'abavandimwe be (Muberuka Vincent na Kanyandekwe Alfred), anavuga ko inzu imwe yabohojwe na John Kazenga indi icyubakwa, inyandiko ya John Kazenga yo ku wa 04/06/2000 ivuga ko ahaye MANIRAGABA Frédéric inzu yari arimo (yabohojwe) iri muri cellule Gatare Zone A1, n'ubutumwa bw'ikoranabuhanga (*emails*) hagati ya Muberuka Vincent na Habimana Bonaventure bugaragaza ko bavuganaga ibigomba gukorwa ku nzu.

[31] Hashingiwe ku bimaze kuvugwa, bigaragara ko inkomoko y'ubutaka buriho inzu iburanwa ari ubugure bwa Muberuka Vincent, bivuze ko mu gihe nta kigaragaza ko habaye ihererekanya ryabwo mu buryo buteganywa n'ingingo ya 21 y'Itegeko Nº 43/2013 ryo ku wa 16/06/2013 rigenga ubutaka mu Rwanda, ivuga ko uburenganzira ku butaka bushobora guhererekanywa biciye mu izungura, impano, umurage, umunani, ikodeshwa, igurishwa (…..) n'ubundi buryo bwose bw'ihererekanya hakurikijwe uburyo bugenwa n'amategeko n'amabwiriza, hagomba kwemezwa ko ubwo butaka ari ubwa Muberuka Vincent ubugaragariza inkomoko. Urukiko rurasanga rero, kuba Habimana Bonaventure n'umugore we ari bo banditse ku cyemezo cy'uwo mutungo, ubwabyo bidahagije kugira ngo hemezwe ko ari uwabo mu gihe batagaragaza inkomoko yawo, kuko nk'uko byagiye byemezwa mu zindi manza, ntawushobora gutunga umutungo utimukanwa atagaragaje uburyo yawubonye.[3]

[32] Ku byasobanuwe n'Urukiko Rukuru, ko Muberuka Vincent yarebereye umutungo we ukandikwa kuri Habimana Bonaventure n'umugore we, Urukiko rurasanga, usibye kuvuga ko Itegeko risaba buri munyarwanda kwandikisha ubutaka, nta kindi cyashingiweho mu kwemeza ko Muberuka Vincent yamenye ko umutungo we wibarujeho abari bawucunze, kuko nubwo yaba atarabikoze Itegeko ribiteganya rigisohoka, cyangwa akaba yarashoboraga kubibwirwa n'abo mu muryango we nk'uko Urukiko Rukuru rwabivuze, byafatwa ko yatinze kubikora, ariko ntibyaba ikimenyetso cy'uko yamenye ko ubutaka bwe bwibarujeho abandi bantu agaceceka, ngo bishingirweho hemezwa ko atari ubwe.

[33] Ku bindi byasobanuwe n'Urukiko Rukuru ko Muberuka Vincent yicecekeye kuko yifuzaga ko umutungo we utangwaho ingwate kugira ngo inzu ye isanwe, Urukiko rurasanga kimwe n'ibyasobanuwe haruguru, nta kigaragaza ko yemeye ko umutungo we utangwaho ingwate, cyane cyane ko mu butumwa bw'ikoranabuhanga (emails) yandikiranaga na Habimana Bonaventure, hari

[2] Umuvandimwe wa Muberuka Vincent akaba Se wa Habimana.

[3] Urubanza RCAA 0018/13/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 24/12/2014 hagati ya Harerimana Emmanuel na Sebukayire Tharcisse; Urubanza RCAA 00035/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 19/07/2019 hagati ya Nshimiyimana Yvon na Sebutinde Edouard.

aho uyu yavugaga ko azasaba umwenda ku kazi kugira ngo yubake urugo (*clôture*), ndetse na raporo yakoreye Muberuka Vincent irimo n'ibyo yakoze ku nzu, ntahavugwa umwenda yaba yarafashe.

[34] Urukiko rurasanga rero, kuba hari umwenda Habimana Bonaventure n'umugore we bafashe muri HOME BASKET SACCO Kimironko, no mu masezerano hakandikwa ko ari amafaranga yo gusana inzu, nta kigaragaza ko iyo nguzanyo yasabwe Muberuka Vincent yabitangiye uburengagira, cyane cyane ko ibaruwa isaba inguzanyo ivuga ko isabiwe ubucuruzi ikongera ikavuga gusana inzu, hakaba hanibazwa impamvu ubwishyu butari kuva mu bukode bw'iyo nzu niba koko umwenda wari uwo kuyisana, nyamara handitswe ko ubwishyu buzava mu nzu ikodeshwa, ku mushahara no mu bucuruzi, ku buryo ntawakwemeza ko yari inguzanyo yo gusana inzu koko, kuko n'inguzanyo Habimana Bonaventure n'umugore we bafashe muri COGEBANQUE inzu iburanwa igatangwaho ingwate, yari iy'ubucuruzi.

[35] Byongeye kandi, ingano y'umwenda (2.500.000 Frw), umufuragiro watanzwe (25.000 Frw) kimwe n'itariki umwenda wagombaga kwishyurirwaho (14/08/2012), bivugwa mu masezerano HOME BASKET SACCO Kimironko iburanisha, bitandukanye n'ibivugwa mu rubanza RCOM 0876/14/TC/Nyge rwaciwe ku wa 17/11/2014 n'Urukiko rw'Ubucuruzi rwa Nyarugenge, ari narwo rwarangijwe hatezwa cyamunara umutungo uburanwa, kuko muri urwo rubanza havugwamo ko umwenda watanzwe ari 3.000.000 Frw, hatangwa umufuragiro ungana na 30.000 Frw kandi ko umwenda wagombaga kwishyurwa ku wa 15/07/2013, ibi nabyo bikaba bituma, hejuru y'ibyasobanuwe mu gika kibanziriza iki, ntawakwemeza ko umwenda wafatiwe gusana inzu iburanwa nk'uko HOME BASKET SACCO Kimironko ibisobanura ndetse n'Urukiko Rukuru rukaba ariko rwabisobanuye.

[36] Hashingiwe ku byasobanuwe no ku biteganywa n'ingingo ya 12 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, Urukiko rurasanga kuba nta kimenyetso cy'uko Muberuka Vincent yahaye Habimana Bonaventure n'umugore we uburenganzira bwo kwiyandikishaho umutungo we no kuwutangaho ingwate, nta kundi byafatwa usibye kuba barabikoze mu buryo bw'uburiganya nk'uko Urukiko Rwisumbuye rwa Nyarugenge rwari rwabisobanuye, bityo ingaruka z'ibyo bakoze zikaba zitabazwa Muberuka Vincent ahubwo ubugure bwabaye ku mutungo we ku wa 08/12/2015 inzu ikegukanwa na Kamukunde Godefroid, bukaba nta gaciro bufite.

[37] Urukiko rurasanga kandi mu gihe bimaze kugaragazwa ko umutungo uburanwa ari uwa Muberuka Vincent, nta mpamvu yo gusuzuma impamvu ya kabiri y'ubujurire irebana no kuba Urukiko rwarashingiye ku ngingo ya 20 y'Itegeko rigenga ubutaka rukirengagiza igika cyayo cya kabiri, kuko nayo igamije kugaragaza uburenganzira bwa Muberuka Vincent ku mutungo uburanwa.

2. Indishyi Muberuka Vincent asaba

[38] Uburanira Muberuka Vincent, asaba Urukiko gutegeka Kamukunde Godefroid na HOME BASKET SACCO Kimironko gufatanya kumuha 2.000.000 Frw y'igihembo cya Avoka ku rwego rwa mbere harimo n'ikirego cyihutirwa, 1.000.000 Frw mu Rukiko Rukuru na 1.000.000 Frw kuri uru rwego. Avuga kandi ko mu gihe Urukiko rwasanga inzu iburanwa igomba gusubizwa Muberuka Vincent, Kamukunde Godefroid yanamusubiza ubukode bwa 300.000 Frw buri kwezi kuva cyamunara ibaye kugeza urubanza ruciwe.

[39] Uburanira Kamukunde Godefroid, avuga nta kosa na rimwe uwo aburanira yakoze ryatuma acibwa indishyi izo arizo zose, ko kandi Itegeko ryateganyije uburyo cyamunara ihagarikwa, ko haramutse hari n'indishyi zatangwa, zacibwa Habimana Bonaventure n'umugore we.

[40] Uburanira HOME BASKET SACCO Kimironko, avuga ko ntacyo Muberuka Vincent akwiye kuyisaba kuko iri mu manza kubera amayeri ye ashingiye ku kuba yaremeye ko bamutwerera umutungo utarigeze uba uwe.

UKO URUKIKO RUBIBONA

[41] Ingingo ya 111, 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, iteganya ko ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikiye ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza.

[42] Ku birebana n'amafaranga y'igihembo cya Avoka Muberuka Vincent asaba, Urukiko rurasanga n'ubwo byagarajwe ko ubujurire bwe bufite ishingiro, ntacyo akwiye gusaba Kamukunde Godefroid na HOME BASKET SACCO Kimironko, kuko ibyabaye byose byatewe na Habimana Bonaventure yari yaracungishije inzu yarangiza akayiyandikishaho n'umugore we, bakanafata ideni ryatumye iyo nzu igurishwa, ko iyo bataza kwiyandikishaho iyo nzu, HOME BASKET SACCO Kimironko itari kuyigurisha, na Kamukunde Godefroid akaba atari kuyigura.

[43] Urukiko rurasanga kandi Muberuka Vincent atasaba Kamukunde Godefroid kumuha amafaranga y'ubukode bw'inzu, kuko kuba ari muri iyo nzu bitaturutse ku makosa ye ahubwo byatewe na Habimana Bonaventure n'umugore we nk'uko byasobanuwe haruguru, akaba ari nabo yagombye gukurikirana ku bindi yumva ko yatakaje.

3. Ku byerekeye indishyi zisabwa na Kamukunde Godefroid

[44] Mu bujurire bwuririye ku bundi, Kamukunde Godefroid avuga ko atahawe indishyi yari yaregeye, akaba asaba ko yasubizwa amafaranga yose yishyuye angana na 46.200.000 Frw hatavuyemo ayo HOME BASKET SACCO Kimironko yishyuza Habimana Bonaventure n'umugore we. Asaba kandi 5.000.000 Frw y'indishyi z'akababaro, 2.000.000 Frw y'igihembo cya Avoka ku rwego rwa mbere, 1.500.000 Frw mu bujurire na 1.500.000 Frw mu Rukiko rw'Ikirenga, bakamuha kandi indishyi kubera igihombo cy'igihe amafaranga yishyuye amaze atayabyaza umusaruro, abariwe kuri 21% kugeza ayasubijwe, hamwe n'inyongeragaciro ikibanza cyagize, yagenwa n'umuhanga.

[45] Ku birebana n'inyungu za 21%,[4] uburanira Kamukunde Godefroid asobanura ko uyu yishyuye 46.200.000 Frw ariko ko nta bwisanzure yigeze agira ku mutungo ngo umwandikweho, akaba atarabashije kuwubyaza umusaruro, ahubwo Muberuka Vincent yatanze uburenganzira ngo ube ingwate ya COGEBANQUE, naho ku birebana n'inyongeragaciro y'ikibanza, asobanura ko ari ikinyuranyo hagati y'agaciro umutungo waguzwe n'ako umuhanga yagaragaje, avuga kandi ko izo ndishyi zisabwa Habimana Bonaventure n'umugore we hamwe na HOME BASKET SACCO Kimironko.

[46] Uburanira HOME BASKET SACCO Kimironko, avuga ko nta ndishyi ikwiye gucibwa, kuko umutungo utigeze uba uwa Muberuka Vincent, kandi ntawe HOME BASKET SACCO Kimironko yahamagaye kugura, ahubwo hatanzwe amatangazo mu rwego rwo kurangiza urubanza yari yatsinze, cyamunara nayo ikorwa mu buryo bukurikije amategeko.

[47] Uburanira Habimana Bonaventure n'umugore we, avuga ko ibyo Kamukunde Godefroid asaba nta shingiro bifite, kuko ari we wanze guhagarika igikorwa cyo kugura umutungo abona neza ko utigeze uba ingwate ya HOME BASKET SACCO Kimironko, anagaragarizwa ko uri mu bugwate bwa COGEBANQUE hejuru yo kugaragarizwa urubanza rwemeza ko uwo mutungo ugomba gukurwa ku mazina y'abawibarujeho.

[48] Avuga ko yemera ko Kamukunde Godefroid yasubizwa amafaranga yatanze, Habimana Bonaventure n'umugore we bakishyura amafaranga babereyemo HOME BASKET SACCO

[4] Yasabye ko yazibara akazishyikiriza urukiko

Kimironko, ko ariko nta ndishyi yagenerwa, kuko Habimana Bonaventure n'umugore we batigeze bamushora mu manza, kandi ntibahwemye kumusaba ko yasubirana amafaranga ari kuri konti y'Urukiko rw'Ikirenga ariko arabyanga. Asanga kandi Kamukunde Godefroid ashaka indonke kuko atunze inzu kuva yayigura, akaba ayivanamo ubukode bwa 300.000 Frw ku kwezi.

UKO URUKIKO RUBIBONA

[49] Ku byerekeye amafaranga Kamukunde Godefroid yishyuye agura inzu muri cyamunara, Urukiko rurasanga akwiye kuyasubizwa kuko kuba ubugure buteshejwe agaciro, ibintu bigomba gusubira uko byari mbere, bivuze ko mu mafaranga yatanze hatagomba kuvamo 2.060.000 Frw yishyuwe HOME BASKET SACCO Kimironko, ahubwo igomba gusubiza ayo mafaranga Kamukunde Godefroid, ikaziyishyuriza Habimana Bonaventure n'umugore we.

[50] Ku byerekeye inyungu ku mafaranga Kamukunde Godefroid yishyuye, Urukiko rurasanga mu gihe adahakana ko yahawe inzu kuva akiyigura ntanahakane ko ikodeshwa nk'uko uburanira Habimana Bonaventure abivuga, atasaba inyungu zishingiye ku kuba atarabashije kuyibyaza umusaruro, kuko ishingiro ry'izo nyungu ryari kumvikana mu gihe yari kuba yaratanze amafaranga icyo yatangiwe ntagihabwe.

[51] Ku birebana n'indishyi z'akababaro, Urukiko rurasanga hashingiwe ku ihame ry'uko uwangirije undi kubera amakosa ye ashobora kubitangira indishyi, Kamukunde Godefoid akwiye kuzihabwa kuko yaguze umutungo yizeye ko agiye kuwutunga, ariko kubera amakosa ya Habimana Bonaventure n'umugore we bawiyandikishijeho mu buryo bw'uburiganya bigatuma utezwa cyamunara, byumvikana ko kuwuvamo bimuteye akababaro, bityo indishyi yasabye zingana na 5.000.000 Frw akaba akwiye kuzigenerwa, zikishyurwa na Habimana Bonaventure n'umugore we ku mpamvu imaze gusobanurwa.

[52] Ku birebana n'inyongeragaciro y'ikibanza, Urukiko rurasanga Kamukunde Godefroid atagaragaza ibyo yakoze ku mutungo uburanwa ku buryo wongerewe agaciro, kuko n'ubwo agaciro k'ikibanza kaba kariyongeye, bitavuze ko byatewe byanze bikunze n'ibikorwa byashyizweho, kuko bishobora guterwa n'ihindagurika ry'ibiciro by'ubutaka ku isoko, iterambere ry'aho ubutaka buherereye n'ibindi.

[53] Ku birebana n'amafaranga y'igihembo cya Avoka, Urukiko rurasanga nk'uko byasobanuwe haruguru, igikorwa cyo kwiyandikishaho umutungo utari uwabo ukagurishwa kubera umwenda Habimana Bonaventure n'umugore we bafashe, ari cyo ntandaro y'urubanza Kamukunde Godefroid arimo kandi akaba agize ibyo atsindira, bityo Habimana Bonaventure n'umugore we bakaba bagomba kumuha 1.000.000 Frw y'igihembo cya Avoka kuri uru rwego yiyongera kuri 1.000.000 Frw yagenewe n'Urukiko Rukuru, kuko ayo asaba ari menshi kandi nta kigaragaza ko ariyo koko yishyuye, ni ukuvuga ko amafaranga yose Habimana Bonaventure n'umugore we Ngendahimana Mutesi Claudine bagomba guha Kamukunde Godefroid angana na 5.000.000 Frw + 2.000.000 Frw = 7.000.000 Frw.

4. Indishyi zisabwa na Habimana Bonaventure n'umugore we

[54] Uburanira Habimana Bonaventure n'umugore we, avuga ko ibikorwa bya Kamukunde Godefroid na HOME BASKET SACCO Kimironko byabateje igihombo gikomeye, bakaba basaba indishyi zo gushorwa mu manza zingana na 5.000.000 Frw na 3.000.000 Frw y'igihembo cya Avoka kuva ku rwego rwa mbere.

[55] Ababuranira Kamukunde Godefroid na HOME BASKET SACCO Kimironko bavuga ko izo ndishyi nta shingiro zifite.

UKO URUKIKO RUBIBONA

[56] Nk'uko byasobanuye haruguru, ibyabaye byose byatewe n'uburiganya bwa Habimana Bonaventure n'umugore we biyandikishijeho umutungo bazi ko atari uwabo, bafata umwenda watumye uwo mutungo utezwa cyamunara, bakaba rero batashingira kuri ubwo buriganya ngo bagire ibyo basaba Kamukunde Godefroid na HOME BASKET SACCO Kimironko.

5. Indishyi HOME BASKET SACCO Kimironko isaba

[57] Mu kirego kiregera kwiregura, uburanira HOME BASKET SACCO Kimironko asaba Urukiko gutegeka Muberuka Vincent kuyisubiza igihembo cya Avoka mu Rukiko Rwisumbuye rwa Nyarugenge kingana na 1.000.000 Frw harimo n'arebana n'ikirego cyihutirwa, 500.000 Frw mu Rukiko Rukuru na 500.000 Frw mu Rukiko rw'Ubujurire.

[58] Uburanira Muberuka Vincent, avuga ko HOME BASKET SACCO Kimironko itahabwa ayo mafaranga, kuko ariyo yatumye haba imanza ubwo yemeraga kugurisha kandi yamenyeshejwe ko umutungo atari uw'uwatsinzwe mu rubanza rwarangizwaga, kandi n'uwatsinzwe muri urwo rubanza akaba yari afite indi mitungo nk'uko ikigo cy'ubutaka cyari cyabigaragaje.

UKO URUKIKO RUBIBONA

[59] Urukiko rurasanga mu gihe byagaragajwe ko ubujurire bwa Muberuka Vincent bufite ishingiro, nta mafaranga y'igihembo cya Avoka yategekwa kwishyura HOME BASKET SACCO Kimironko, ahubwo hagomba kugumaho 1.000.000 Frw Urukiko Rukuru rwategetse Habimana Bonaventure n'umugore we kuyishyura.

III. ICYEMEZO CY'URUKIKO

[60] Rwemeje ko ubujurire bwa Muberuka Vincent bufite ishingiro kuri bimwe.

[61] Rwemeje ko ubujurire bwuririye ku bundi bwa Kamukunde Godefroid bufite ishingiro kuri bimwe.

[62] Rwemeje ko ikibanza kirimo amazu kibaruye kuri UPI 1/03/09/01/705, giherereye mu Mudugudu wa Kigarama, Akagari ka Gatare, Umurenge wa Niyoye, Akarere ka Kicukiro mu Mujyi wa Kigali, ari ibya Muberuka Vincent.

[63] Rwemeje ko ubugure bwabaye ku wa 08/12/2015 muri cyamunara nta gaciro bufite.

[64] Rutegetse HOME BASKET SACCO Kimironko gusubiza Kamukunde Godefroid 2.060.000 Frw yishyuriye Habimana Bonaventure n'umugore we Ngendahimana Mutesi Claudine.

[65] Rutegetse ko andi mafaranga asigaye kuri 46.200.000 Frw Kamukunde Godefroid yishyuye, akurwa kuri konti y'Urukiko aho yashyizwe n'abahesha b'inkiko Muvunyi Serge na Muhoza Christian, akayasubizwa.

[66] Rutegetse Habimana Bonaventure n'umugore we Ngendahimana Mutesi Claudine guha Kamukunde Godefroid 7.000.000 Frw.

[67] Rutegetse Habimana Bonaventure n'umugore we Ngendahimana Mutesi Claudine guha HOME BASKET SACCO Kimironko 1.000.000 Frw y'igihembo cya Avoka yagenewe n'Urukiko Rukuru.

[68] Rutegetse Habimana Bonaventure n'umugore we Ngendahimana Mutesi Claudine gufatanya kwishyura 100.000 Frw y'amagarama y'urubanza.