BATSINDA N'ABANDI v BIZIMANA N'UNDI

[Rwanda URUKIKO RW'UBUJURIRE – RCAA00002/2021/CA (Kamere, P.J.) 03 Werurwe 2023]

Amategeko agenga imanza z'imbonezamubano – Iyimurwa (expropriation) – Iyimurwa mu rwego rwo gushyira mu bikorwa igishushanyo mbonera cy'imikoreshereze y'ubutaka – Umuntu wahawe umutungo n'urwego rwa Leta rubifitiye ububasha, ugizwe n'inzu ndetse n'ubutaka mu rwego rw'iyimurwa (expropriation) nawe agatanga ingurane ikwiye yategetswe, aba yahawe uwo mutungo mu buryo bukurikije Amategeko agenga iyimurwa – ntabwo yahugabanywa ku burenganzira kuri uwo mutungo.

Incamake y'icyibazo: Uru rubanza rwatangiye Batsinda, Mukandoli na Mukabatsinda barega Bizimana mu Rukiko Rwisumbuye rwa Nyarugenge basaba Urukiko gutesha agaciro icyemezo cy'ubukode burambye cyanditswe kuri Bizimana na Mukamana, kikandikwa ku bazungura ba Butera gagizwe n'abarega bavuga ko uregwa yiyandikishijeho umutungo uburanwa mu buriganya. Urukuko mu rubanza RC00499/2017/TGI/NYGE, rwemeje ko ikirego cyatanzwe n'abarega gifite ishingiro, rutegeka ko ubukaba buburanwa kwandikwa ku bazungura ba Butera, bukavanwa kuri Bizimana na Mukamana.

Bizimana ntiyishimiye icyo cyemezo, akijuririra mu Rukiko Rukuru, avuga ko ikirego cy'abazungura ba Butera bahagarariwe na Batsinda ku rwego rwa mbere kitagombaga kwakirwa, kuko ngo batagombaga gusaba gutesha agaciro icyemezo cy'ubukode burambye gifite yahawe, kubera ko ari inyandikomvaho, batabanje kuyiregera mu manza nshinjabyaha ko ari inyandiko mpimbano. Avuga ko ubwo butaka yabuhawe na Leta yimuye abo bazungura, akaba yarabutangiye ingurane ikwiye.

Urukiko Rukuru mu ru banza RCA00417/2018/HC/KIG rwemeje ko ubujurire bwatanzwe na Bizimana bufite ishingiro, ko urubanza rwajuririwe ruhindutse mu ngingo zarwo zose, ko kandi ubutaka buburanwa ari ubwa Bizimana.

Batsinda na bagenzi be bajuririye icyo cyemezo mu Rukiko rw'Ubujurire, barusaba gusuzuma niba Urukiko Rukuru rwaragombaga kwemeza ko ubutaka buburanwa bw'abazungura ba Butera bugumanwa na Bizimana no gusuzuma niba indishyi zitandukanye zaciwe Batsinda na bagenzi be zateshwa agaciro. Bizimana we avuga ko nta makosa Urukiko Rukuru rwakoze mu kwemeza ko agomba kubugumana kuko yabuhawe n'urwego rwa Leta rubifitiye ububasha mu mwaka wa 2004 amaze kubutangaho ingurane ikwiye yari yasabwe.

Urukiko rw'Ubujurire mu rubanza RCAA00002/2021/CA rwemeje ko Batsinda na bagenzi be batsindwa no kutabasha kugaragaza ibimenyetso by'uburiganya bavuga ko Bizimana yakoresheje kugira yandikwe nka nyir'umutungo uburanwa, kuko yawuhawe n'Urwego rwa Leta rwari rubifitiye ububasha kandi amaze kubahiriza ibyo yasabwaga byose hakurikijwe ibyateganywaga n'amategeko agenga iby'iyimurwa(expropriation) yariho muri icyo gihe.

Incamake y'icyemezo: Umuntu wahawe umutungo n'urwego rwa Leta rubifitiye ububasha, ugizwe n'inzu ndetse n'ubutaka mu rwego rw'iyimurwa (expropriation) nawe agatanga ingurane ikwiye yategetswe, aba yahawe uwo mutungo mu buryo bukurikije Amategeko agenga iyimurwa, ntabwo yahugabanywa ku burenganzira kuri uwo mutungo. Bityo ntabwo uwimuwe yakwita uwo mutungo uwe yitwaje ko yanze gufata ingurane kandi atarakoze ibyo Amategeko ateganya kugirango agaragaze ko atanyuzwe n'ingurane yahawe.

Ubujurire nta shingiro bufite.

Amategeko yashingiweho:

Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, zi'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 12, 111

Itegeko-Teka Nº 21/79 ryo kuwa 23 Nyakanga 1979 ryerekeye kwimura abantu kubera imirimo ifitiye Igihugu akamaro ryemejwe n'Itegeko N° 01/82 ryo kuwa 26/01/1982,

Nta manza zifashshijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mu rubanza RC00499/2017/TGI/NYGE, Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata bareze Bizimana Augustin mu Rukiko Rwisumbuye rwa Nyarugenge, basaba gutesha agaciro icyemezo cy'ubukode burambye nº 1/02/13/03/815 cyanditswe kuri Bizimana Augustin na Mukamana Dancille, kikandikwa ku bazungura ba Butera Emile, basaba kandi indishyi zitandukanye. Kuri urwo rwego hagobokeshejwe ku gahato uwitwa Kasine Félicité. Abarega basobanuye ko ari abavandimwe ba nyakwigendera Butera Emile bakaba n'abazungura be bemewe n'amategeko, ko umutungo yasize uburanwa na Bizimana Augustin na Mukamana Dancille bawiyandikishijeho mu buryo bw'uburiganya.

[2] Ku wa 02/11/2018, Urukiko Rwisumbuye rwa Nyarugenge rwakijije urwo rubanza maze rwemeza ko ikirego cyatanzwe na Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata gifite ishingiro, rwemeza ko Bizimana Augustin yibarujeho we n'umugore we ikibanza kibaruye kuri UPI: 1/02/13/03/815 giherereye mu Kagari ka Rukiri I, Umurenge wa Remera, akubiyemo ubutaka bwa Butera Emile uzungurwa na Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata bungana na 4 ares na 75 Ca, bukaba bugomba gukurwamo bugasubizwa abazungura ba Butera Emile, rutegeka ko icyemezo cy'ubukode burambye nº UPI: 1/02/13/03/815 cy'ubutaka buherereye mu Mudugudu w'Agashyitsi, Akagari ka Rukiri I, Umurenge wa Remera, Akarere ka Gasabo cyanditse kuri Bizimana Augustin na Mukamana Dancille, gikosorwa hagakurwamo ubutaka bwa Butera Emile uzungurwa na Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata buhwanye na 4 ares na 75 Ca, akaba ari bo bubarurwaho.

[3] Bizimana Augustin ntiyishimiye icyo cyemezo, akijuririra mu Rukiko Rukuru, ubujurire bwe bwandikwa kuri RCA00417/2018/HC/KIG, avuga ko ikirego cy'abazungura ba Butera Emille bahagarariwe na Batsinda Camille ku rwego rwa mbere kitagombaga kwakirwa, kuko batagombaga gusaba gutesha agaciro icyemezo cy'ubukode burambye gifite UPI: 1/02/13/03/815 yahawe, kubera ko ari inyandikomvaho, batabanje kuyiregera mu manza nshinjabyaha ko ari inyandiko mpimbano, bityo ko urubanza RC00499/2017/TGI/NYGE rwajuririwe rugomba guteshwa agaciro. Yajuriye kandi asaba ko ubutaka buri ku cyangombwa UPI: 1/02/13/03/815 butagomba kuvanwaho 4 ares na 75 Ca z'abazungura ba Butera Emile, ngo kuko yabubonye abuhawe na Leta yimuye abo bazungura, akaba yarabutangiye ingurane ikwiye, asaba kandi ko indishyi zagenewe abazungura ba Butera Emile bahagarariwe na Batsinda Camille zivanwaho, hanyuma izo yasabye kubera igihombo bamuteje zigahabwa agaciro.

[4] Ku wa 09/10/2020, Urukiko Rukuru rwakijije urwo rubanza, rwemeza ko ubujurire bwatanzwe na Bizimana Augustin bufite ishingiro, ko urubanza RC 00499/2017/TGI/NYGE rwajuririwe ruhindutse mu ngingo zarwo zose, ko kandi ubutaka bungana na 4 ares 75 ca bwari ubw'abazungura ba Butera Emile ari bo Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata buri mu

kibanza nº UPI: 1/02/13/03/815 bugumanwa na Bizimana Augustin. Rutegeka Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata guha Bizimana Augustin indishyi zingana na miliyoni esheshatu n'ibihumbi magana atanu na mirongo ine (6.540.000Frw) akubiyemo miliyoni eshanu (5.000.000Frw) y'indishyi z'akababaro, miliyoni imwe n'ibihumbi magana atanu (1.500.000Frw) y'igihembo cy'Avoka, n'amafaranga ibihumbi mirongo ine (40.000Frw) y'igarama yatanze.

[5] Ku wa 08/11/2020, Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata bajuririye icyo cyemezo mu Rukiko rw'Ubujurire, ubujurire bwabo bwandikwa kuri RCAA00002/2021/CA, barusaba gusuzuma niba Urukiko Rukuru rwaragombaga kwemeza ko ubutaka bungana na 4 ares 75 ca bw'abazungura ba Butera Emile buri mu kibaza nº UPI: 1/02/13/03/815 bugumanwa na Bizimana Augustin no gusuzuma niba indishyi zitandukanye zaciwe Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata zateshwa agaciro.

[6] Urubanza ruburanishwa mu ruhame ku wa 13/10/2021, Batsinda Camile yunganiwe na Me Nubumwe Jean Bosco na Me Ngarambe Raphaël bakanahagararira Mukandoli Marcelle, Mukabatsinda Annonciata na Kasine Félicité, naho Bizimana Augustin yunganiwe na Me Taremwa Danitar Daniel na Me Bayingana Janvier, hasuzumwa inzitizi z'iburabubasha bw'Urukiko zatanzwe n'uruhande ruregwa rwa Bizimana Augustin.

[7] Ku wa 29/10/2021, Urukiko rwafashe icyemezo kuri iyo nzitizi, rwemeza ko ikirego cy'ubujurire bwa kabiri cyatanzwe na Batsinda Camille, Mukandoli Marcelle na Mukabatsinda Annonciata kiri mu bubasha bw'Urukiko rw'Ubujurire, rutegeka ko iburanisha ry'uru rubanza rizakomeza ku wa 10/11/2021 guhera saa tatu n'igice za mugitondo (09h30).

[8] Urubanza rwagiye rusubikwa ku mpamvu zinyuranye kugeza ubwo rushyizwe ku wa 13/02/2023, ruburanishwa ababuranyi bunganiwe mu buryo basanganywe, Batsinda Camile yunganiwe na Me Nubumwe Jean Bosco na Me Ngarambe Raphaël bakanahagararira Mukandoli Marcelle, Mukabatsinda Annonciata na Kasine Félicité, naho Bizimana Augustin yunganiwe na Me Taremwa Danitar Daniel na Me Bayingana Janvier.

[9] Urubanza rwaburanishijwe ku mpamvu z'ubujurire zagaragajwe mu nama ntegurarubanza, zerekeranye no gusuzuma niba Urukiko Rukuru rwaragombaga kwemeza ko ubutaka bungana na 4 ares 75 CA bw'abazungura ba Butera Emile buri mu kibaza nº UPI 1/02/13/03/815 bugumanwa na Bizimana Augustin, gusuzuma niba indishyi zitandukanye zaciwe Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata zateshwa agaciro, ikibazo cy'indishyi z'akababaro zingana na 10.000.000Frw n'indishyi zo gushorwa mu manza ku maherere zingana na 5.000.000Frw zisabwa n'abajuriye, n'amafaranga y'ibyagiye ku rubanza asabwa n'impande zombi. Isomwa ry'urubanza ryashyizwe ku wa 24/02/2023 ariko nyuma Urukiko ruryimurira ku wa 03/03/2023.

II. IBIBAZO BIGIZE URU RUBANZA N'ISESENGURA RYABYO

Kumenya niba hari ikosa ryakozwe mu kuba Urukiko Rukuru rwaremeje ko ubutaka bungana na 4 ares 75 CA bwahoze ari ubw'abazungura ba Butera Emile buri mu kibaza nº UPI 1/02/13/03/815 bugumanwa na Bizimana Augustin

[10] Me Ngarambe Raphael na Me Nubumwe Jean Bosco bunganira Batsinda Camile, bakanahagararira Mukandoli Marcelle, Mukabatsinda Annonciata na Kasine Felesita bavuga ko banenga ko Urukiko Rukuru rwemeje ko ubutaka bungana na 4 Ares 75 CA bw'abazungura ba Butera Emile buri mu kibaza nº UPI 1/02/13/03/815 bugumanwa na Bizimana Augustin. Basobanura ko nyuma

y’uko abazungura ba Butera Emile aribo Batsinda Camille, Mukandoli Marcelle na Mukabatsinda Annonciata babonye ko Bizimana Augustin yakoze uburiganya mu kwibaruzaho umutungo wa Butera Emile, bagejeje icyo kibazo ku buyobozi bw’inzego zitandukanye zirimo Umujyi wa Kigali, Akarere ka Gasabo n’Urwego rw’Umurenge kugira ngo zibafashe gusubizwa umutungo w’umuvandimwe wabo, maze zimaze gusesengura icyo kibazo zishingiye ku nyandiko zitandukanye zirebana n’ikibanza kibaruye kuri UPI: 1/02/13/03/815, bugasanga koko Bizimana Augustin n’umugore we barakoresheje uburiganya mu kwibaruzaho icyo kibanza, ndetse bunandikira Umuyobozi Mukuru w’Ikigo Gishinzwe Umutungo Kamere bumusaba gutesha agaciro icyo cyangombwa cyabonetse kubw’uburiganya.

[11] Bakomeza basobanura ko nyuma yo guhabwa ayo makuru kuri ubwo buriganya, Umuyobozi Mukuru w’Ikigo Gishinzwe Umutungo kamere yandikiye Batsinda Camille amusaba gukurikirana Bizimana Augustin imbere y’inzego zibifitiye ububasha, kugira ngo icyo cyangombwa giteshwe agaciro, ndetse ko byaje no gushimangirwa na Minisitiri w’Umutungo Kamere.

[12] Bavuga ko kuba Urukiko Rwisumbuye rwa Nyarugenge rwarashingiye ku nyandiko zitandukanye z’Ubuyobozi, ku kuba Bizimana nta nyubako yashyize kuri ubwo butaka, no ku kuba Batsinda Camille nawe yarasabye ko yahubaka, maze rugategeka ko ubutaka bungana na 4 Ares 75 Ca buvanwa mu kibanza Bizimana Augustin yahawe gifite ubuso bungana na 21 Ares 49 Ca, basanga bifite ishingiro. Ko basanga kuba Urukiko Rukuru rwarafashe icyemezo rushingiye kuri expropriation yakozwe ari inenge, ngo kuko n'Umujyi wa Kigali ubwawo mu iburanisha wemeje ko nta expropriation yabaye, akaba ari nayo mpamvu basaba ko icyemezo cyafashwe n'Urukiko Rukuru cyateshwa agaciro.

[13] Bavuga ko bashingira ku ngingo ya 34 y’ Itegeko-Nshinga rya Repubulika y’u Rwanda ryo muri 2003 nk’uko ryavuguruwe muri 2015, ku ngingo ya 17 akagemo ka 2 k’amasezerano- mpuzamahanga y’uburenganzira bwa muntu yo kuwa 10/12/1948, n’ingingo ya 34 y’Itegeko Nº 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda.

[14] Me Taremwa Daniel Danitar na Me Bayingana Janvier, bunganira Bizimana Augustin, biregura kuri iyi mpamvu y’ubujurire bavuga ko kuwa 20/06/2014, nyuma y’ibaruwa yo ku wa 30/8/2013, mu gihe cy’amezi icyenda (9) n’iminsi makumyabiri n’umwe (21), Umuyobozi w’Akarere ka Gasabo yandikiye Umubitsi w’Impapuro Mpamo z’Ubutaka ibaruwa ifite Nº 1345/07/01.02/2014, aho mu gika cyayo cya gatanu (5) yasabye ko icyangombwa cy’ikibanza UPI: 1/02/13/03/815 giteshwa agaciro ngo “. kubera ko . amakimbirane yari yarashyizwemo na Batsinda Camile nta mpamvu igaragara yatumye avanwamo”, akanakomoza ku rubanza RC0180/10/TB/KMA rwaciwe ku wa 29/09/2010, agamije gushimangira ko urukiko rwemeje ko Batsinda, Mukandoli na Mukabatsinda ari bo bazungura bemewe n’amategeko ba nyakwigendera Butera Emile. Bongeraho ko icyo Umuyobozi w’Akarere atavuze muri iyo baruwa ye, ari uko mu rubanza RC0127/04/TP/KIG rwaciwe kuwa 04/01/2006, hashize imyaka umunani (8), amezi atanu (5) n’iminsi cumi n’irindwi (17), Umuyobozi w’Akarere ka Gasabo yanditse ibaruwa Nº 1345/07/01.02/2014, aho abo bazungura “. Bagenewe kuzungura ½ cy’agaciro kumvikanyweho n’ababuranyi bombi ku nzu yari mu kibanza giherereye i Remera, Kacyiru, Rukiri ya I yabariwe n’amafaranga ya expropriation n’Umujyi wa Kigali”.

[15] Bavuga ko mu gika cya 13 cy’urubanza RCA00417/2018/HC/KIG, Urukiko Rukuru rwasanze kuwa 23/6/2004 Bizimana Augustin yarasabye Umujyi wa Kigali ikibanza cy’ubucuruzi maze akagipimirwa, agahabwa Fiche Cadastrale Nº 10184 igaragaza ko yahawe ubutaka bungana na 21 Ares 49 Ca. Ko kubera ko ubutaka yahawe bwari butuwemo n’abandi bantu, Umujyi wa Kigali wamusabye gutanga ingurane akayitanga, nk’uko bigaragazwa na Quittance nº 22564/VK yo kuwa 8/7/2004, aho yishyuye ingurane ingana na 13.313.218Frw muri Banki y’Ubucuruzi y’u Rwanda (BCR), ndetse ko kuwa 22/11/2004 yishyuye andi 4.666.451Frw ya expropriation kuri Quittance nº 28368/VK, kandi ko icyishyurirwaga yari iyo expropriation.

[16] Bibutsa ko mu gika cya 21 cy'urubanza RCA00417/2018/HC/KIG, Urukiko Rukuru rwagize ruti: ". nk'uko bigaragara muri raporo y'Umuvunyi ndetse n'ibimenyetso bitandukanye, exproriation yarabaye, ikibanza kiratangwa nk'uko binagaragazwa n'inyandiko z'Umujyi wa Kigali watanze iki kibanza", hanyuma mu gika cya 26 cy'urwo rubanza, Urukiko Rukuru rukagira ruti: "ubutaka bwa Seccession Butera Emile, Bizimana ntiyabubonye mu buriganya, ahubwo yabuhawe n'Urwego rubifitiye ububasha. Kandi nk'uko urukiko rwabigaragaje, nta kosa Umujyi wa Kigali wakoze cyangwa amategeko utubahirije byatuma Bizimana yamburwa ubu butaka mu gihe yamaze kubutangira ingurane ikwiye". Bavuga kandi ko ari ukubera iyi mpamvu, kimwe n'izindi nyinshi, Urukiko Rukuru Rukuru rwemeje ko "ubutaka bungana na 4 ares 75 Ca bwari ubw'abazungura ba Butera Emile. buri mu kibaza nº UPI: 1/02/13/03/815 bugumanwa na Bizimana Augustin".

[17] Bavuga kandi ko ibivugwa n'abajuriye by'uko ubutaka buburanwa ari ubw'abazungura ba Butera Emile atari ko biri, kubera ko kuva ikibazo cyatangira kugeza ubu nta na rimwe bigeze bagira uburenganzira ku mutungo w'ubutaka, kuko ubwo Kasine Felecita yari yabareze, icyaburanwaga cyari inzu ya nyakwigendera Butera Emile n'umugore we Mukankurunziza Cansilide, maze urukiko rubifataho icyemezo cy'uko abazungura ba nyakwigendera bazungura agaciro ka Expropriation kandi ko ibyo bishimangirwa n'ibaruwa nº271/6.04/05 yo kuwa 14/09/2005, aho urukiko rwaburanishaga urubanza rwo kuzungura rwasabye Umujyi wa Kigali ko nta gikorwa icyo ari cyo cyose kigomba gukorwa ku nzu iburanwa. Bityo ko uretse gushingira ku ibaruwa Nº 1345/07/01.02/2014, abajuriye nta burenganzira bafite bwo kuburana umutungo w'ubutaka bwa Leta Butera Emile yari yarubatseho inzu.

[18] Abunganira Batsinda Camile bakanahagararira Mukandoli Marcelle, Mukabatsinda Annonciata na Kasine Felesita bavuga ko ibimaze kuvugwa haruguru n'abunganira Bizimana Augustin ari ubwa mbere bivuzwe, ko mu manza zabanje bitavuzweho, ko basaba Urukiko rw'Ubujurire kuzabitesha agaciro kubera ko umutungo uburanwa ukomoka kuri Butera Emile, nk'uko bigargazwa na Fiche cadastrale n'icyemezo cyo kubaka biri muri IECMS byagaragarijwe inkiko zibanza kuva urubanza rugitangira. Ko abajuriye bakomora uburenganzira bwo gukurikirana uwo mutungo ku rubanza RC0180/010/TB/KMA rwaciwe kuwa 29/09/2010.

[19] Ku birebana n'iyi fiche cadastrale imaze kuvugwa haruguru, abunganira Bizimana Augustin basubiza ko itashingirwaho kubera ko itariho umukono w'uwayikoze ndetse na cachet ya Leta. Bongeraho ko ku bijyanye no kuvuga ko ubutaka bungana na 4 ares 75 ca ari ubw'abazungura ba Butera Emile atari byo, ko umutungo w'ubutaka uvugwa utigeze uba uw'abazungura ba Butera Emille na Mukankurunziza Cansilide kubera ko guhera mu mwaka wa 1994 kugeza kuwa 25/06/2003 ikirego cya Kasine Felicité cyandikiweho mu rukiko, uretse no kutaba umutungo w'abazungura, ngo nta n'ubwo wari warigeze uba uwa ba nyakwigendera Butera Emile na Mukankurunziza Cansilde kuko ngo mu gihe bari bakiriho ubutaka bwari umutungo wa Leta[1]. Bityo ko kubera iyo mpamvu nta munsi n'umwe cyangwa isaha n'imwe uwo mutungo w'ubutaka wigeze uba umutungo w'abazungura ba Butera Emille, ndetse ko igihe cyose abazungura ba Butera Emile bagiraga uburenganzira bwo kuzungura bwababaga bungana n'uburenganzira bw'abavandimwe ba Mukankurunziza Cansilde kandi ko aba ubu barangije kuzungura ku gaciro k'umutungo uburanwa nk'uko byategetswe n'urukiko.

UKO URUKIKO RUBIBONA

[1]In Ministry of Lands, Environment, Forests, Water and Mines, National Land Policy, February 2004, p. 26 ahagira hati: "According to custom, land ownership is held by whoever occupies the land first. This rule has always been respected in our society. However, in modern times, land acquisition by occupation has become obsolete since all vacant land belongs to the State. Likewise, the provisions of the decree-law No. 09/76 of 4th March 1976, article 1, stipulate that "… all land not held under the written law and affected or not by customary law or land occupation belongs to the State".

[20] Impaka kuri iyi ngingo zishingiye ku kumenya niba uburyo ubutaka bungana na 4 ares 75 Ca bwahoze ari ubwa nyakwigendera Butera Emile bwashyizwe mu bigize ikibanza nº UPI: 1/02/13/03/815 cya Bizimana Augustin bwarakurikije amategeko, aho abajuriye bavuga ko byakozwe mu buryo bw'uburiganya kandi mu guca urubanza rwajuririwe Urukiko Rukuru rugakora ikosa ryo kwemeza ko byakurikije amategeko, naho uruhande rwa Bizimana Augustin rwo rukavuga ko nta makosa Urukiko Rukuru rwakoze mu kwemeza ko agomba kubugumana kuko ubwo butaka yabuhawe n'urwego rwa Leta rubifitiye ububasha mu mwaka wa 2004[2] amaze kubutangaho ingurane ikwiye yari yasabwe.

[21] Ingingo ya 12, igika cya 1 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, zi'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira : "Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda".

[22] Dosiye y'urubanza igaragaza ko ku wa 23/6/2004 Bizimana Augustin yasabye Umujyi wa Kigali ikibanza cy'ubucuruzi mu rwego rwo gushyira mu bikorwa igishushanyo mbonera cy'imitunganyirize y'Umujyi, aracyemererwa kuko yapimiwe ikibanza kigahabwa fiche cadastrale no 10184 ku butaka bungana na 21 ares 49 Ca.

[23] osiye igaragaza kandi ko ikibanza Bizimana Augustin yahawe ari ubutaka bwari busanzwe buriho ibikorwa by'abandi bantu, kuko Umujyi wa Kigali wamusabye kubanza kubitangira ingurane kandi akaba yarayitanze nk'uko bigaragazwa na quittance nº 22564/VK yo ku wa 8/7/2004 y'ubwishyu bungana na 13.313.218Frw na quittance no 28368/VK yo ku wa 22/11/2004 y'ubwishyu bungana na 4.666.451Frw, zombi zigaragaza ko ayo mafaranga yashyizwe kuri konti y'Umujyi wa Kigali muri Banki y'Ubucuruzi y'u Rwanda (BCR) hishyurirwa ibikorwa bya expropriation (kwimura abantu).

[24] Dosiye igaragaza ko Umujyi wa Kigali wandikiye Batsinda Camille uhagarariye abazunguza ba Butera Emile ibaruwa nº 5152/07.11.10/04 yo ku wa 21/9/2004 yamusabaga kuza kwerekwa agaciro gahwanye n'umutungo we utimukanwa, n'ibaruwa no 5256/0711.10/2004 yo ku wa 29/9/2004 yamusabaga gushaka bureau d'étude yagombaga gufatanya n'Umujyi wa Kigali gusubiramo ibarura mu kibanza nº 10184 cyavuzwe haruguru kuko atari yemeye uko ryagenze. Nk'uko na none bigaragara muri dosiye, ku wa 22/10/2004, Umujyi wa Kigali ushingiye kuri ayo maburuwa ukaba warongeye kumwandikira umumenyesha ko igihe yahawe cyarenze, ko amafaranga ahwanye n'agaciro k'umutungo we utimukanwa uri mu kibanza cyavuzwe haruguru yashyizwe kuri konti y'Umujyi wa Kigali, akaba asabwa kuza kuyafata no guhita ava muri icyo kibanza bitarenze igihe cy'iminsi iminsi cumi n'itanu (15).

[25] Dosiye inagaragaza ko Batsinda Camille atubahirije ibyo yasabwe byo kuva mu kibanza cyari cyamaze kwishyurirwa ingurane y'ibikorwa byari bikirimo, kuko inagaragaza ko ku wa 18/11/2004 Umujyi wa Kigali wafashe icyemezo cyanditse cyo gusenya. Ibi bikaba bitarahise bishyirwa mu bikorwa kuko ku wa 10/01/2005 Umuyobozi w'Umujyi wa Kigali yongeye kwandikira Batsinda Camille amumenyesha ko ibarura ry'umutungo we uri mu kibanza no 10184 ryarangiye, yongera kumuha indi nteguza y'iminsi irindwi yo kuba yasubirishijemo ibarura niba atararyishimiye, ndetse ku wa 29/4/2005 Batsinda Camille yongeye gusabwa n'ubu buyobozi gusubirishamo iri barura bitarenze iminsi ine (4), ariko aho gushyira mu bikorwa ibi yasabwaga n'ubuyobozi akaba ku wa 13/5/2005 yarandikiye Umujyi wa Kigali asaba kurenganurwa. Ku wa 19/7/2005 Umujyi wa Kigali wandikira polisi uyisaba gutanga ubufasha bwo gukura ku ngufu Batsinda Camille mu kibanza no 10184 kuko

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[2]BIZIMANA Augustin avuga ko yabwishyuyeho ingurane ingana na 13.313.218 Frw muri Banki y'Ubucuruzi BCR kuri Quittance nº 22564/VK yo ku wa 08/07/2004, no ku wa 22/11/2004 yishyuye andi 4.666.451 Frw kuri Quittance nº 28368/VK ya expropriation

yanze kukivamo ku neza ari nta n'impamvu atanga kandi Bizimana Augustin agomba gutangira kugikoreramo ibyo yagiherewe.

[26] Dosiye y'urubanza igaragaza ko na nyuma y'icyemezo cyavuzwe haruguru cyo kuvana ku ngufu za Leta ibikorwa by'umuryango Batsinda Camille yari ahagarariye mu kibanza nº 10184 cyahawe Bizimana Augustin, uyu Batsinda Camille yakomeje gusabwa n'inzego za Leta zitandukanye kujya mu Mujyi wa Kigali gufata amafaranga y'ingurane yabariwe ariko yanga kubikora[3] ahubwo ahitamo kugeza ikibazo cye mu zindi nzego nazo zamugiriye inama yo kujya gufata amafaranga y'ingurane yabariwe ariko nabwo ntabyemere akikomereza inzira yo kujya mu nkiko[4].

[27] Urukiko rurasanga mu rwego rw'amategeko Urukiko Rukuru rwaragaragaje ko Bizimana Augustin yasabye ikibanza cy'ubucuruzi Umujyi wa Kigali hagenderwa ku Itegeko-Teka Nº 21/79 ryo kuwa 23 Nyakanga 1979 ryerekeye kwimura abantu kubera imirimo ifitiye Igihugu akamaro ryemejwe n'Itegeko N° 01/82 ryo kuwa 26/01/1982, ikibanza akaba yari yaragihawe ariko Itegeko N° 18/2007 ryo kuwa 19/04/2007 ryerekeye kwimura abantu ku mpamvu z'inyungu rusange rikaba ryaratangajwe atarabasha kugira ibyo akorera muri iki kibanza kuko Batsinda Camille yakomeje gutsimbarara ku kuguma muri iki kibanza no kudafata amafaranga y'ingurane yabariwe.

[28] Hashingiwe ku bimenyetso n'ibisobanuro bimaze kugaragazwa haruguru kandi byanashingiweho n'Urukiko Rukuru mu guca urubanza rwajuririwe[5], uru Rukiko rurasanga Batsinda Camille, Mukandoli Marcelle na Mukabatsinda Annociata bahuje imiburanire, no muri ubu bujurire bakomeza gutsindwa no kutabasha kugaragaza ibimenyetso by'uburiganya bavuga ko Bizimana Augustin uregwa yakoresheje kugira ngo we n'umugore we Mukamana Dancille bandikwe nka ba nyir'umutungo utimukanwa wabaruwe kuri UPI 1/02/13/03/815, nk'uko biteganywa n'ingingo ya 12 y'Itegeko Nº22/2018 yibukijwe haruguru. Kimwe n'Urukiko Rukuru rwaciye urubanza rwajuririwe, uru Rukiko narwo rukaba rusanga Bizimana Augustin yarabaye nyir'uyu mutungo awuhawe n'Urwego rwa Leta rwari rubifitiye ububasha kandi amaze kubahiriza ibyo yasabwaga byose hakurikijwe ibyateganywaga n'amategeko agenga iby'iyimurwa (expropriation) yariho muri icyo gihe, ibyo kuba abazungura ba Butera Emile bahagarariwe na Batsinda Camille baranze gufata amafaranga y'ingurane babariwe bikaba ari ikibazo kigomba kuguma hagati yabo n'Umujyi wa Kigali wabimuye kandi washyikirijwe amafaranga yabazwe nk'ingurane, kandi bikaba bitagomba kubangamira uburenganzira Bizimana Augustin yahawe mu buryo bukurikije amategeko nka nyir'umutungo wemerewe kuwukoresha icyo ashaka wagenewe. Bityo ubujurire bwa Batsinda Camille, Mukandoli Marcelle na Mukabatsinda Annociata bukaba nta shingiro bufite kuri iyi ngingo.

Gusuzuma niba indishyi zitandukanye zaciwe BATSINDA Camile, MUKANDOLI Marcelle na MUKABATSINDA Annonciata zateshwa agaciro

[29] Me Nubumwe Jean Bosco na Me Ngarambe Raphael bunganira Batsinda Camile, bakanahagararira Mukandoli Marcelle, Mukabatsinda Annonciata na Kasine Felesita basaba Urukiko rw'Ubujurire gutesha agaciro indishyi zitandukanye urukiko rwategetse ko Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata bishyura, ngo kuko ari bo bahohotewe batwarwa umutungo w'umuvandimwe wabo ku maherere.

[3] Ku wa 20/8/2005 yandikiwe asabwa kuza gutwara ingurane, ku wa 21/9/2005 arongera arabyibutswa banamubwira ko atagomba kurenza ku wa 24/9/2005, ku wa 22/10/2007 yandikirwa n'Akarere ka Gasabo kamusaba ko yajya mu Mujyi wa Kigali gufata sheki ihwanye n'igice cye kuko KASINE Felicité yari yamaze guhabwa igice cye hashyirwa mu bikorwa ibyategetswe n'urukiko mu rubanza RC 0127/04/TP/KIG ku izungura rya nyakwigendera BUTERA Emile n'umugore we.

[4] Reba muri dosiye raporo y'Urwego rw'Umuvunyi yo ku wa 12/11/2008 aho nyuma yo gusesengura iki kibazo rwari rwashyikirijwe na BATSINDA, urwo Rwego rwamusabye kwegera Umujyi wa Kigali agahabwa igice cye cy'amafaranga ya expropriation, rukanamubwira ko BIZIMANA Augustin afite uburenganzira busesuye bwo gukoresha ikibanza cye hakurikijwe ibyo yemerewe n'inzego z'ubuyobozi zibifiteye uburenganzira.

[5] Reba ibisobanuro birambuye byatanzwe n'Urukiko Rukuru kuri iki kibazo mu duce twa 13-28 tw'urubanza rwajuririwe.

[30] Bizimana Augustin n'abamwunganira basaba Urukiko rw'Ubujurire kuzabisuzumana ubushishozi, rushingiye ku kuba Batsinda Camile na bagenzi be ari bo bamushoye mu rubanza, kandi bazi neza ko baburana uburenganzira batagenewe n'urukiko mu rubanza RC0127/04/TP/KIG.

UKO URUKIKO RUBIBONA

[31] Urukiko rurasanga indishyi zinyuranye abajuriye basaba ko ziteshwa agaciro ari izasobanuwe n'Urukiko rwaciye urubanza rwajuririwe mu gace karwo ka 33 ku rupapuro rwa 11. Indishyi Urukiko rwategetse abajuriye kwishyura Bizimana Augustin zikaba zingana na 5.000.000Frw kubera ko yabujijwe n'abazungura ba Butera Emile gukoresha ikibanza Umujyi wa Kigali wamuhaye mu buryo bukurikije amategeko, banga gufata ingurane bahawe banamusiragiza mu buyobozi, 1.500.000Frw y'indishyi z'igihembo cya Avoka kubera igihe urubanza rumaze, no gusubiza igarama ringana na 40.000Frw.

[32] Urukiko rurasanga impamvu Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata bashingiraho basaba ko izi ndishyi ziteshwa agaciro ari ukuba ngo barahohotewe batwarwa na Bizimana Augustin umutungo w'umuvandimwe wabo ku maherere, iyi mpamvu y'ubujurire bwabo ikaba nta shingiro ifite kuko nk'uko byamaze gusobanurwa haruguru, umutungo uburanwa Bizimana Augustin yawuhawe n'urwego rubifitiye ububasha kandi hakurikijwe amategeko.

Gusuzuma niba abajuriye bahabwa indishyi basaba z'akababaro n'izo gushorwa mu manza ku maherere

[33] Abajuriye basaba Urukiko gutegeka Bizimana Augustin kubishyura indishyi z'akababaro zingana na miliyoni icumi (10.000.000Frw) basabye mu Rukiko Rukuru rukanga kuzibaha kubera ko biyandikishijeho ikibanza cy'abazungura ba Butera Emile mu buriganya. Basaba kandi Urukiko kumutegeka kubishyura indishyi zo kubashora mu manza ku maherere zingana na miliyoni eshanu (5.000.000Frw).

[34] Bizimana Augustin n'abamwunganira bavuga ko indishyi z'akababaro zingana na miliyoni icumi (10.000.000Frw) zisabwa n'abajuriye nta shingiro zifite, ko ahubwo ari Bizimana Augustin ukwiye guhabwa indishyi mbonezamusaruro zingana zityo, kuko yavukijweuburenganzira bwo kubaka inzu ya kijyambere yakabaye yaramwungukiye mu gihe cy'imyaka 16 yose amaze asiragizwa mu nkiko no mu nzego z'ubuyobozi.

[35] Ku bijyanye n'indishyi abajuriye basaba zo gushorwa mu manza ku maherere, bavuga ko Bizimana Augustin yizeye ubushishozi bw'Urukiko bwo kumenya uwashoye undi mu rubanza, ngo kuko asanga atari we washoje urubanza, ko ahubwo ari we ukwiye kugenerwa indishyi zingana na miliyoni cumi n'eshanu (15.000.000Frw) kubera gushorwa mu manza guhera 2009.

UKO URUKIKO RUBIBONA

[36] Urukiko rurasanga impamvu Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata bashingiraho basaba izi ndishyi ukuba ngo baratwawe umutungo wabo mu buryo budakurikije amategeko kandi bagashorwa mu manza ku maherere, iyi mpamvu y'ubujurire bwabo ikaba nta shingiro ifite kuko nk'uko byamaze gusobanurwa haruguru, umutungo uburanwa Bizimana Augustin yawuhawe n'urwego rubifitiye ububasha kandi hakurikijwe amategeko, akaba nta n'imanza yabashoyemo kuko ari bo bamureze ikirego byamaze gusobanurwa haruguru ko nta n'ishingiro gifite.

[37] Ku birebana n’indishyi nk’izi Bizimana Augustin asaba, uru Rukiko rurasanga nazo nta shingiro zifite kuko izo yasabye mu rubanza rwajuririwe yazigenewe mu bushishozi bw’Urukiko, akaba ntacyo yigeze agararagaza muri ubu bujurire ko azinengaho.

Ibijyanye n’amafaranga y’ikurikiranarubanza n’ay’igihembo cya Avoka asabwa n’ababuranyi.

[38] Me Ngarambe Raphaël na Me Nubumwe Jean Bosco bunganira Batsinda Camile, bakanahagararira Mukandoli Marcelle, Mukabatsinda Annonciata na Kasine Félicité basaba Urukiko rw'Ubujurire gutegeka Bizimana Augustin kwishyura abajuriye amafaranga y’ikurikiranarubanza n’igihembo cya Avoka angana na 5.000.000Frw hashingiwe ku mabwiriza agena ibihembo mbonera by’Abavoka.

[39] Bizimana Augustin yiregura avuga ko indishyi abajuriye bamusaba nta shingiro zifite. Asaba Urukiko kuzashishoza maze rwasanga ahubwo ari we ukwiye guhabwa amafaranga y'ikurikiranarubanza n'igihembo cy'Abavoka bamwunganiye guhera mu mwaka wa 2009, rukamugenera amafaranga angana na 18.000.000Frw.

UKO URUKIKO RUBIBONA

[40] Ingingo ya 111 y’Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi iteganya ibi bikurikira : “Ikirego cy’amafaranga y’ikurikiranarubanza ni ikirego gishamikira ku kirego cy’iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy’amafaranga y’ikurikiranarubanza kiburanishirizwa rimwe n’ikirego cy’iremezo. Gishobora kandi kwakirwa kikanaburanishwa n’iyo ikirego cy’iremezo cyaba kitakiriwe”;

[41] Urukiko rurasanga amafaranga y’ikurikiranarubanza n’igihembo cya Avoka abajuriye basaba batayakwiye, kuko batsindwa uru rubanza ku kiburanwa cy’ibanze. Rurasanga ahubwo Bizimana Augustin ari we uyakwiye kuko yiyambaje Abavoka bo kumwunganira kandi urubanza ruburanishwa inshuro nyinshi no mu gihe kirekire kuri uru rwego. Rurasanga ariko 18.000.000Frw asaba ari menshi, bityo mu bushishozi bw’Urukiko, Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata bakaba bagomba gutegekwa gufatanya kwishyura Bizimana Augustin 1.000.000Frw y’igihembo cya Avoka na 500.000Frw y’ikurikiranarubanza kuri uru rwego, yiyongera ku byategetswe mu rubanza rwajuririwe.

III. ICYEMEZO CY’URUKIKO

[42] Rwemeje ko ubujurire bwatanzwe na Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata nta shingiro bufite ;

[43] Rwemeje ko imikirize y’urubanza RCA00417/2018/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 09/10/2020 igumaho mu ngingo zarwo zose ;

[44] Rutegetse Batsinda Camile, Mukandoli Marcelle na Mukabatsinda Annonciata gufatanya kwishyura Bizimana Augustin 1.000.000Frw y’igihembo cya Avoka na 500.000Frw y’ikurikiranarubanza kuri uru rwego ;

[45] Ruvuze ko amagarama y’uru rubanza yatanzwe n’abajuriye ahwanye n’ibyarukozwemo.