UBUSHINJACYAHA v. MURINDA N'ABANDI

[Rwanda URUKIKO RUKURU – RPA 0448/13/HC/NYA (Ngabire, P.J.) 25 Mata 2014]

Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Intera itandukanya uvuga ko yabonye icyaha n'aho cyakorewe – Kuvuguruzanya kw'abatangabuhamya – Kuvuguruzanya kw'abatangabuhamya gutera gushidikanya bikarengera ushinjwa – Itegeko nº 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, Ingingo ya 35.

Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Kwemera icyaha – Kugabanyirizwa ibihano – Kuba uwarezwe yaremeye icyaha mu buryo bwuzuye, bituma agabanyirizwa ibihano.

Indishyi zikomoka ku cyaha – Zigenwa mu bushishozi bw'urukiko hakurikijwe ingaruka z'icyaha cyakozwe – Ntawakongera gusaba indishyi mu gihe yazigenewe mu Rukiko rubanza.

Inshamake y'ikibazo: Urukiko Rwisumbuye rwa Huye rwahamije Murinda Deny na Dukuzeyezu Cécile, umugore we ubwinjiracyaha mu bwicanyi bwakorewe Kalisa Vital. Bahanishijwe gufungwa burundu banabategekwa guha Kalisa Vital indishyi zingana na 2.148.725Frw. Murinda ndetse n'umugore we bajuririye Urukiko Rukuru, Murinda asaba kugabanyirizwa no gusubukirwa ibihano anasaba kugabanyirizwa indishyi naho Cecile Dukuzeyezu asaba kurenganurwa akagirwa umwere.

kuri izi ngingo z'ubujurire, Ubushinjacyaha bwavuze ko ukwemera no gusaba imbabazi kwa Murinda kutuzuye ahubwo ari ugukingira ikibaba umugore we kugirango ahanwe wenyine. Bwasoje busa Urukiko kugumishaho imikirize y'urubanza rujuririrwa.

Incamake y'icyemezo: 1. Kuba intera yari hagati y' abatangabuhamya n'aho icyaha cyabereye yari ndende ku buryo batashoboraga kubona niba barafatanyije byongeye kandi bakaba bari gutabara iyo baza kuba hafi y' aho, ndetse imvugo zabo zikaba zivuguruzanya bituma habaho gushidikanya, bikaba birengera ushinjwa. Bityo Dukuzeyezu Cécile agizwe umwere.

2. Ukwemera icyaha k' uregwa kuruzuye bityo ni impamvu ituma agabanyirizwa igihano, akaba ahanishijwe igifungo cy' imyaka makumyabiri n' itanu.

3. Hitawe ku ngaruka z'icyaha cyakozwe, indishyi uwakorewe icyaha asaba ntabwo ari umurengera nk' uko bivugwa n'uregwa. Bityo zikaba zihamyeho. Ikirego cy' uregera indishyi cy'uko izo yagenewe zakongerwa nta shingiro gifite, kuko izo asaba yazigenewe mu Rukiko rubanza

Dukuzeyezu Cecile agizwe umwere.
Murinda Deny ahanishijwe igifungo cy' imyaka 25.
Murinda Deny agomba kwishyura Vital Kalisa 2.148.725Frw.
Murinda Deny asonewe amagarama y'urubanza kuko afunze.

Amategeko yashingiweho:
Itegeko nº 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo za 35 na 165.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Mu rubanza rwavugiwe nimero haruguru, Murinda Deny yaburanye yemera kuba ariwe watemaguye Kalisa Vital ku mugoroba wo kuwa 02/11/2012 bapfuye ubwatsi bw'inka n'imyaka, kandi ko ariwe wenyine wamutemaguye, naho umugore we Dukuzeyezu Cécile aburana ahakana ubwinjiracyaha barezwe hamwe, maze kuwa 16/10/2013 Urukiko Rwisumbuye rwa Huye ruca urubanza rwemeza ko ikirego cy'Ubushinjacyaha n'icya Kalisa Vital gisaba indishyi mu rubanza bifite ishingiro, rwemeza ko Murinda Deny na Dukuzeyezu Cécile bahamwa n'ubwinjiracyaha mu bwicanyi, rwemeza ko Murinda Deny na Dukuzeyezu Cécile bagomba gufatanya guha Kalisa Vital indishyi zingana na 2.148.725 FRW, rukiza ko Murinda Deny na Dukuzeyezu Cécile batsinzwe, rubahanisha igihano cy'igifungo cya burundu, rubategeka gufatanya guha Kalisa Vital indishyi zingana na 2.148.725FRW; Murinda Deny akaba yarajuririye Urukiko Rukuru urwo rubanza kuwa 04/11/2013 asaba kugabanyirizwa no gusubikirwa igihano, anasaba kugabanyirizwa indishyi, na Dukuzeyezu Cécile akaba yarajuriye we asaba kurenganurwa.

II. ISESENGURA RY'IBIBAZO BIRI MURI URU RUBANZA

[2] Haba mu nyandiko no mu mwanzuro bye by'ubujurire ndetse no mu iburanisha ry'uru rubanza ryo kuwa 10/3/2014, Murinda Deny, yunganiwe na Me Ndayisenga Maurice, arasaba kugabanyirizwa no gusubikirwa igihano yahanishijwe ku rwego rwa mbere ngo kuko yaburanye yemera icyaha anagisabira imbabazi ariko ntiyagabanyirizwa igihano, akanasaba kugabanyirizwa indishyi yategetswe kwishyura Kalisa Vital ngo akamwishyura nibura 500.000FRW, naho Dukuzeyezu Cécile arasaba kurenganurwa mu gihe Ubushinjacyaha busaba ko urubanza rwajuriwe rudahinduka ngo kuko ukwemera icyaha no kugisabira imbabazi kwa Murinda Deny gushidikanywaho ngo kuko akingira umugore we ikibaba kugira ngo ahanwe wenyine, Kalisa Vital we agasaba izindi ndishyi ziyongera kuzo yagenewe ku rwego rwa mbere; bityo muri uru rubanza hakaba hagomba gusuzumwa niba koko Murinda Deny n'umugore we Dukuzeyezu Cecile barafatanyije gutemagura Kalisa Vital, muyandi magambo gusuzuma niba ukwemera icyaha no kugisabira imbabazi kwa Murinda Deny kuzuye kuburyo kwamubera impamvu nyoroshyacyaha (1) no gusuzuma ikibazo cy'indishyi zagenwe n'izisabwa muri uru rubanza (2).

Kubyerekeye ikibazo cyo kumenya niba koko Murinda Deny n'umugore we Dukuzeyezu Cécile barafatanyije gutemagura Kalisa Vital, no kumenya niba ukwemera icyaha no kugisabira imbabazi kwa Murinda Deny kuzuye kuburyo kwamubera impamvu nyoroshyacyaha

[3] Ubushinjacyaha ntibwemeranywa na Murinda Deny uvuga ko yatemaguye Kalisa Vital wenyine abanje kumutema ukuguru bituma acika intege agwa hasi maze akomeza kumutemagurira hasi kuko bwo (Ubushinjacyaha) buvuga ko ukwemera icyaha no kugisabira imbabazi kwa Murinda Deny gushindikanywaho ngo kuko Kalisa Vital yatemwe ahantu harenga 18 ukuguru kutarimo, ngo bivuze ko yari afite uwamumufashije ngo nk'uko abatangabuhamya babivuga.

[4] Urukiko rurasanga mu kirego cye yatanze mu Bugenzacyaha kuwa 03/11/2012 yaraye atemaguwe, Kalisa Vital yivugiye ko mu bice by'umubiri yatemaguwe harimo no ku kuguru[1] ibyo bigashimangirwa n'ifoto iri muri dosiye kuri kote ya 34 igaragaza ibisebe bine ku maguru ya Kalisa Vital, bityo ibivugwa n'Ubushinjacyaha by'uko Murinda Deny atatemye Kalisa Vital ku kuguru ngo kuko raporo ya muganga itabivuga nta shingiro bifite, dore ko haba mu kirego cye ndetse no mu kuburana kwe, Kalisa Vital yivugira ko Murinda Deny yamutemye ku ijosi no mu mutwe, ibyo nabyo bigashimangirwa n'amafoto abyemeza ari muri dosiye kuri kote ya 30, 31 n'iya 33, ibyo bikemeza nta shiti ibivugwa na Murinda Deny by'uko yatemye Kalisa Vital akagwa hasi maze akaba ariho akomeza kumutemagurira kuko Urukiko rusanga byumvikana cyane ko umuntu watemwe amaguru yombi, ku ijosi no mu mutwe hakoreshejwe umupanga, yacika intege akagwa hasi kuburyo uwashaka gukomeza kumutemagurira hasi yabyifasha wenyine, cyane cyane ko Kalisa Vital watemaguwe yivugira mu kirego cye ko mu gihe batangiye kurwana na Murinda Deny bituranye hasi.

[5] Urukiko rurasanga abatangabuhamya bashingiweho mu kwemeza ko Murinda Deny yafatanyije n'umugore we Dukuzeyezu Cécile gutemagura Kalisa Vital, aribo Mukakimonyo Esperance na Iyakaremye Mathias, bari hakurya y'aho Kalisa Vital yatemaguriwe nk'uko babyivugiye mu nyandiko-mvugo babarijweho mu Bugenzacyaha[2] nk'uko Kalisa Vital nawe yabyivugiye mu kirego cye cyavuzwe haruguru, nk'uko ndetse n'Umunyamabanga Nshingwabikorwa w'Akagali ka Remera abisobanura mu nyandiko ye yo kuwa 26/9/2013 aho ahamya ko hagati y'aho Kalisa Vital yatemaguriwe n'aho abo batangabuhamya batuye harimo intera ndende kuburyo batari kubona uburyo Kalisa Vital yatemaguwe[3] bityo imvugo za Mukakimonyo Esperance n'iza Iyakaremye Mathias zishinja Dukuzeyezu Cecile ko yafatanyije n'umugabo we Murinda Deny gutemagura Kalisa Vital zikaba zitera ugushidikanya, cyane cyane ko iyo bajya kuba barabonaga Kalisa Vital atemagurwa bari kwambuka bakamutabara, dore ko Iyakaremye Mathias anivugira ko ubwo yari iwe mu rugo yumvise induru ya Kalisa Vital ati: ***"Nimuntabare baranyishe"***, ariko nabo ubwabo bemeza ko batigeze bagera aho yatemaguriwe. Byongeye kandi, Urukiko rurasanga imvugo z'abo batangabuhamya bombi (Mukakimonyo Esperance na Iyakaremye Mathias) zivuguruzanya kuko uwa mbere yemeza ko ari Murinda Deny n'umugore we Dukuzeyezu Cecile batemaguye Kalisa Vital, usibye ko hari naho agira ati "***Gusa nabonaga uwari hejuru akubita ariko icyo akubitisha sinkibone***", byumvikana ko uwatemaguye Kalisa Vital ari umuntu umwe; naho uwa kabiri (Iyakaremye Mathias) we akavuga ko mu gihe yumvise induru ya Kalisa Vital itabaza yahagaze ahirengeye maze abona umuntu ari hejuru y'undi ahondagura, byumvikana ko ari umuntu umwe yabonye watemaguraga Kalisa Vital, ariko Iyakaremye Mathias akongera ati ***"aho birangiriye mbona umugore n'umugabo bafashe inzira baragenda bagana kwa Murinda"***; Urukiko rukaba rusanga uburyo Mukakimonyo Esperance na Iyakaremye Mathias basobanura ko Dukuzeyezu Cecile yafatanyije n'umugabo we Murinda Deny gutemagura Kalisa Vital ari uburyo bwo guhimba, bityo imvugo zabo zikaba zidakwiye kwemerwa hashingiwe ku ngingo ya 65 y'itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

[6] Nanone, Urukiko rurasanga abitwa Makuza Evariste, Uwimana Kaniziyo na Nyiraneza Takirine bemeza ko mu gihe Murinda Deny yatemaguraga Kalisa Vital,

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[1] Reba inyandiko-mvugo Kalisa Vital yatangiyeho ikirego mu Bugenzacyaha kuwa 03/11/2012, ifite kote 3-5 muri dosiye.

[2] Reba inyandiko-mvugo babarijweho mu Bugenzacyaha kuri kote ya 11-12 na 13-14.

[3] Reba inyandiko yo kuwa 26/9/2013 yanditswe n'Umunyamabanga Nshingwabikorwa w'Akagali ka Remera, ifite kote ya 91 muri dosiye; uwo muyobozi akaba yaranditse iyo nyandiko ashingiye ku makuru yahawe n'ubuyobozi bw'umudugudu wa Butare Kalisa Vital yatemaguriwemo, ndetse no ku makuru yahawe n'abaturage.

Dukuzeyezu Cecile yari yibereye kwa Makuza Evariste[4] ibivugwa na Makuza Evariste, Uwimana Kaniziyo na Nyiraneza Takirine bikaba bihuje n'imyiregurire ya Dukuzeyezu Cécile yuko atari kumwe n'umugabo we mu gihe yatemaguraga Kalisa Vital, ko ahubwo yari kwa Makuza Evariste ngo kuko ariho yavuye mu gihe bumvaga induru ko Murinda Deny yarwanye na Kalisa Vital, ibi nabyo bigatera ugushidikanya ko Dukuzeyezu Cecile atafatanyije n'umugabo we Murinda Deny gutemagura Kalisa Vital, dore ko no mu iburanisha ry'uru rubanza Ubushinjacyaha butashoboye kugaragaza ko Dukuzeyezu Cécile yari aragiranye n'umugabo we kugira ngo babe barafatanyije gutemagura Kalisa Vital, kandi nta kimenyetso nyakuri cyemeza nta shiti ko Dukuzeyezu Cecile yafatanyije n'umugabo we gutemagura Kalisa Vital.

[7] Hashingiwe ku bisobanuro bitanzwe haruguru, Urukiko rurasanga nta kimenyetso nyakuri Ubushinjacyaha bwashoboye kugaragaza cyemeza nta shiti ko Dukuzeyezu Cécile yageze aho Kalisa Vital yatemaguriwe agafatanya n'umugabo we Murinda Deny gukorera Kalisa Vital ubwinjiracyaha mu bwicanyi, bityo uko gushidikanya kukaba kugomba kumurengera agatsinda urubanza nk'uko ingingo ya 165 y'itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ibiteganya. Nanone, Urukiko rurasanga ibisobanuro byatanzwe haruguru bigaragaza ko ukwemera icyaha no kugisabira imbabazi Murinda Deny yakoreye mu Bugenzacyaha, mu Bushinjacyaha, mu Rukiko Rwisumbuye rwa Huye ndetse no mu iburanisha ry'uru rubanza, kudashidikanywaho aho kuba uburyo bwo guhunga ingaruka z'icyaha no gukingira umugore we ikibaba kugira ngo ahanwe wenyine nk'uko Urukiko Rwisumbuye rwa Huye rwabibonye, bityo ukwemera icyaha no kugisabira imbabazi kwe kukaba gukwiye kumubera impamvu nyoroshya-cyaha ituma agomba kugabanyirizwa igihano hashingiwe ku ngingo ya 35 y'itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha no ku ngingo ya 77 n'iya 78 z'itegeko ngenga rishyiraho igitabo cy'amategeko ahana, ariko mu kumugabanyiriza igihano hakitabwa ku bugome n'ubukana yakoresheje atemagura Kalisa Vital, naho ku cyifuzo cye cyo gusubikirwa igihano, Urukiko rurasanga adakwiye gusubikirwa igihano kubera ubugome bukabije yatemanye Kalisa Vital, akaba akwiye kumara igihano cyose ahanishijwe muri Gereza kugira ngo agororwe bihagije, dore ko n'igihano agomba guhanishwa kirenze kure icyemerewe isubikagihano nk'uko ingingo ya 85 y'itegeko ngenga ryavuzwe haruguru ibiteganya.

Ku byerekeye indishyi

[8] Murinda Deny arasaba kugabanyirizwa indishyi zingana na 2.148.725Frw yategetswe gufatanya na Dukuzeyezu Cecile kwishyura Kalisa Vital ngo kuko ari umurengera, akavuga ko yamwishyura nibura 500.000Frw, mu gihe Kalisa Vital asaba ko hejuru y'izo ndishyi yagenewe ku rwego rwa mbere Murinda Deny yategekwa kongeraho 300.000Frw yishyuye umumotari wamugemuriye ubwo yari mu bitaro, 1.000.000Frw y'indishyi z'akababaro, 200.000Frw yo gusiragizwa mu Nkiko na 300.000Frw y'igihembo cya Avoka wamuburaniye mu bujurire.

[9] Urukiko rurasanga indishyi zingana na 2.148.724FRW zagenewe Kalisa Vital ku rwego rwa mbere atari umurengera nk'uko Murinda Deny abivuga bitewe n'uburemere bw'ubwinjiracyaha yakorewe, kuko ahantu 18 Murinda Deny yemera ko yamutemaguye hateye ububabare bwinshi cyane kuburyo nubwo Kalisa Vital atapfuye, aho yatemaguwe hamusigiye ububabare n'ubusembwa bwinshi, nk'uko amafoto ari muri dosiye abigaragaza, kandi akababaro yagize ntikagereranywa n'indishyi yagenewe cyangwa se 500.000FRW Murinda Deny avuga ko yamwishyura, dore ko Kalisa Vital yamaze n'igihe kirekire mu

[4]Reba inyandiko zabo bakoreye imbere y'ubuyobozi bw'Umurenge wa Muganza kuwa 30/10/2013.

bitaro yivuza, bivuze nanone ko yangirijwe byinshi mu gutemagurwa kwe, bityo iyi mpamvu y'ubujurire ya Murinda Deny ikaba nta shingiro ifite.

[10] Urukiko rurasanga indishyi Kalisa Vital yagenewe ku rwego rwa mbere zikubiyemo indishyi z'akababaro, igihembo cya Avoka n'amafaranga yakoresheje yivuza, nk'uko bisobanuye mu gika cya 18 cy'urubanza rwajuriwe, bityo izindi ndishyi z'akababaro n'andi mafaranga asaba mu bujurire zikaba nta shingiro zifite, cyane cyane ko indishyi z'akababaro akwiye zigenwa mu bwitonzi n'ubushishozi by'Urukiko, akaba ataragaragaje ko yasiragiye mu Nkiko, ahubwo ni Avoka wamuburaniye, igihembo cya Avoka mu bujurire akaba atagihabwa kuko byari ngombwa ko aburana kubera ubujurire bwa Dukuzeyezu Cécile bwagaragaye ko bufite ishingiro, byumvikana ko atakwitwaza ko ari Murinda Deny watumye yishyura Avoka wamuburaniye mu bujurire. Naho kubyerekeye amafaranga 300.000Frw Kalisa Vital asaba ngo kubera amasezerano yakoranye n'umumotari wamugemuriraga mu bitaro, Urukiko rurasanga atayahabwa kuko amasezerano ashingiraho yakozwe kuwa 02/10/2012 mbere yuko atemwa, kandi n'ibikubiye muriayo masezerano ntibyemeza ukuri ko byabayeho.

III. ICYEMEZO CY'URUKIKO

[11] Rwemeje ko impamvu z'ubujurire bwa Dukuzeyezu Cécile zifite ishingiro, naho impamvu z'ubujurire bwa Murinda Deny zifite ishingiro kuri bimwe, bityo urubanza nº RP 0256/13/TGI/HYE rwaciwe n'Urukiko Rwisumbuye rwa Huye kuwa 16/10/2013 rukaba ruhindutse kuri Dukuzeyezu Cécile ugomba gutsinda urubanza no ku gihano Murinda Deny agomba guhanishwa, kubera impamvu zasobanuwe haruguru.

[12] Rukijije ko Dukuzeyezu Cécile atsinze.

[13] Rutegetse ko urubanza nº RP 0256/13/TGI/HYE rwaciwe n'Urukiko Rwisumbuye rwa Huye kuwa 16/10/2013 ruhindutse kuri Dukuzeyezu Cécile utsinze urubanza no ku gihano Murinda Deny agomba guhanishwa, kubera impamvu zasobanuwe haruguru.

[14] Ruhanishije Murinda Deny igihano cy'igifungo cy'imyaka makumyabiri n'itanu (25 years).

[15] Rutegetse Murinda Deny kwishyura Kalisa Vital indishyi zingana na 2.148.725Frw nk'uko zemejwe ku rwego rwa mbere, atazimwishyura ku bushake mu gihe giteganyijwe n'amategeko zikavanwa mu mutungo we ku ngufu za Leta.

[16] Rutegetse ko Murinda Deny asonewe kwishyura amagarama y'Urukiko angana na 4.700Frw yagombaga kwishyura kubera ko afunzwe, hashingiwe ku ngingo ya 268 y'itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha.