UWAYO v BAYINGANA

[Rwanda URUKIKO RUKURU - RS/INJUST/RC 00008/2021/HC/KIG (Karangwa, P.J.) 25 Ugushyingo 2022]

Amategeko agenga imanza mbonezamubano – Umutungo utimukanwa – Ubutaka – Kwiyandikishaho ubutaka butari ubwawe – Kuvuga ko ubutaka bwatanzwe bukandikwa mu bitabo byabugenewe bukanatangirwa ibyemezo si impamvu yatuma ubutaka buburanwa budasubizwa ba nyirabwo babutsindiye.

Incamake y'ikibazo: Uwayo n'abavandimwe be ni abana ba Nkurikiyinka na Nyiramugwera. Babaye imfubyi muri jenoside yakorewe abatutsi hanyuma barerwa na nyirakuru wari utuye mu karere ka Kicukiro. Mu gihe cy'isaranganya, isambu y'umuryango wabo yaje guhabwa Mukamudenge ariwe ukomokwaho na Bayingana wayikoreshaga byitwa ko ayisaranganyije. Aho abana bakuriye baje gukurikirana iyo sambu batanga ikirego mu Rukiko rw'Ibanze rwa Nyamata basobanura ko iyo sambu bayikomora kuri se Nkurikiyinka utakiriho. Bayingana yireguye avuga ko mu mwaka 2000, nyina Mukamudenge kimwe n'abandi banyarwanda bari bahungutse, bahawe ubutaka na Leta, babasaranganyije mu rwego rwo kubabonera aho batura, Mukamudenge ahabwa ubwo butaka bwari ubwa Murundi, nkuko bigaragara mu gitabo cy'abasaranganyijwe. Urukiko rw'Ibanze rwa Nyamata rwaciye urubanza rwemeza ko isambu iburanwa yahoze ari iya Nkurikiyinka yahawe Mukamudenge mu rwego rw'isaranganya kandi isaranganya rikaba ryarakurikije amategeko.

Urega ntiyishimiye icyemezo cy'urukiko rw'Ibanze ajuririra mu Rukiko Rwisumuye rwa Gasabo narwo rwemeza ko ubujurire nta shingiro bufite kandi ko imikirize y'Urukiko rw'Ibanze rwa Nyamata igumyeho. Uwayo yandikiye Perezida w'Urukiko Rukuru asaba ko urwo rubanza rwasubirwamo ku mpamvu z'akarengane hanyuma ruza gusubirwa n'uru rukiko. Muri uru banza hasuzumwe ingingo yo kumenya niba niba isaranganya ry'isambu yari iya Nkurikiyinka na Nyiramugwera ryarakozwe ku buryo bukurikije amategeko yakurikizwaga igihe ryakorwaga no kumenya niba ubwo butaka bwasubizwa abazungura ba Nkurikiyinka.

Abarega bavuga ko abazungura ba Mukamudenge bavuga ko isambu yose yari iya Nkurikiyinka bita Murundi ari iyabo, ko bayisaranganyijwe, icyo gikorwa ngo cyarabarenganyije kuko nta mpamvu n'imwe yatuma abakomoka kuri ba nyir'isambu bavutswa uburenganzira ku mutungo wasizwe n'ababyeyi babo, ko uwo mutungo wose wahawe Mukamudenge, kandi uburyo yawuhawemo atari isaranganya, nkuko bivugwa, itangwa ryawo nta mategeko ryakurikije, ahubwo icyakozwe ni uguhabwa nabyo mu buryo budakurikije amategeko bongeraho kandi ko niyo byakwitwa isaranganya, uwasaranganijwe ntiyatwaraga isambu yose kuko yagombaga kugabanwa n'uwari usanzwe afite iyo sambu hamwe n'utahutse kandi aba bayifite bakaba batari impunzi. Kuba rero Byainga na Mukamudenge baribarujeho imitungo itari yabo nta cyabuza ko byateshwa agaciro.

Uregwa yiregura avuga ko ubutaka atuze babuhawe mu isaranganya kandi uwahawe ubutaka muri ubwo buryo ntafatwa nk'uwariganije bityo rero inkiko nazo ntizari zikwiye gusubiramo ibyakozwe n'ubuyobozi bwite bwa Leta mu isaranganya kuko byashingiye ku murongo na politiki by'igihugu bidashobora kuvuguruzwa kuko byakemuraga ikibazo igihugu cyarimo kandi hatabaye umwiryane mu gihugu. Akomeza avuga itegeko risobanura ko uwabuze ubutaka bwe mu gihe cy'isaranganya

yegera ubuyobozi bw'Akarere bukamushakira aho gutura bityo ko abarega nabo bagakwiye kunyura muri iyo nzira.

Incamake y'icyemezo: 1. Isaranganya cyari igikorwa kireba utanga isambu n'uyihabwa, ku itangwa ry'isambu ya Murundi bikaba bitaritaweho, icyiswe isaranganya kuri iyi sambu iburanwa nticyabayeho, kuko ibisabwa kugira ngo isaranganya ribe bibe byuzuye bitabayeho nkuko bigaragajwe haruguru, ahubwo habayeho gutanga isambu.

2. Umutungo w'umuntu ku giti cye cyangwa uwo asangiye na benshi ntuhugabanywa, ushobora gusa kwakwa nyirawo igihe igihugu kiwukeneye, nabwo kandi mu bihe no mu buryo byashyizweho n'Itegeko, kuba Mukamudenge yarahawe umutungu wa Murundi kandi abazunguraba be bari bakiriho, igikorwa cyo gufata umutungo wagombaga kuba uw'abazungura, ugahabwa undi muntu kinyuranyije n'amategeko, kuko batari kubura uburenganzira ku mutungo w'umuryango wabo.

3. Kuvuga ko ubutaka bwatanzwe bukandikwa mu bitabo byabugenewe bukanatangirwa ibyemezo si impamvu yatuma ubutaka buburanwa budasubizwa ba nyirabwo babutsindiye.

Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane gifite ishingiro;

Amategeko yashingiweho:
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 111.

Amategeko yifashishijwe atagikoreshwa:
Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 10 kamena 1991, ingingo ya 23;
Itegeko Nº 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda, ingingo ya 5;
Iteka rya Minisitiri Nº 001/16/01 ryo kuwa 26/04/2010 rigena uburyo isaranganya ry'amasambu rikorwa, ingingo ya 3, 8.

Imanza zifashishijwe:
Urubanza RS/INJUST/RC 00019/2017/SC, Mwanuyera Géorgette na Munyaneza Oswald na'abandi rwaciwe ku wa 17/05/2019.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko rw'Ibanze rwa Nyamata, Uwayo Jacques arega Bayingana Idrissa Emmanuel isambu ibaruye by'agateganyo kuri nº2838 na 2858, iherereye i Gasenga i Nyamata, Bugesera, indishyi mbonezamusaruro za 30.000.000 Frw, iz'akababaro 5.000.000Frw ikurikiranarubanza 500.000Frw, igihembo cya Avoka 500.000Frw.

[2] Uwayo Jacques yasobanuye ko mu mwaka wa 2008, yaregeye isambu muri komite y'abunzi, abunzi bavuga ko nta bubasha bafite bwo kuburanisha urwo rubanza ngo kuko isambu

yari ifite agaciro karengeje amafaranga 3.000.000, ikirego cye yagitanze mu Rukiko rw'Ibanze rwa Nyamata, gihabwa N° RC0050/2016/TB/NMTA, urukiko ruvuga ko yatanze ikirego itegeko ryarahindutse, rumusubiza mu bunzi, runamutegeka guha uwo baburana indishyi z'amafaranga 700.000. Iki cyemezo ntiyakishimiye, ajuririra mu Rukiko Rwisumbuye rwa Gasabo asaba ko kivanwaho, ko baburanye urubanza mu mizi ariko urukiko rugafata icyemezo ku nzitizi y'iburabubasha kandi batarayiburanyeho, anasaba ko havanwaho n'indishyi yaciwe.

[3] Ikirego cyahawe noRCA 00210/2016/TGI/GSBO, muri urwo rubanza urukiko rufata icyemezo kuwa 23/03/2017, rwemeza ko urubanza RC0050/16/TB/NMTA rusubizwa mu rukiko rw'Ibanze rwa Nyamata rukaruburanisha mu mizi, runategeka ko indishyi zari zategetswe mu rubanza RC0050/16/TB/NMTA zivanyweho.

[4] Uwayo Jacques amaze kubona icyo cyemezo, yatanze ikirego mu Rukiko rw'Ibanze rwa Nyamata, cyandikwa kuri no RC 00414/2018/TB/NYMTA. Yasobanuye ko iyo sambu bayikomora kuri se Nkurikiyinka Simon witabye Imana ahotowe mu mwaka wa 1989, naho Nyiramugwera mama wabo yitaba Imana azize Jenoside yakorewe abatutsi muri Mata1994. Abo ba nyakwigendera ngo bamusize we na bashiki be Umuhoza Sylvie na Uwineza Joselyne bakiri abana batoya. Nyuma yo kurokoka Jenoside, bagiye kurererwa kwa nyirakuru ku Kicukiro, ari naho bize baba. Aho amariye gukura, yasubiye iwabo kw'ivuko kujya kureba imitungo basigiwe n'ababyeyi babo, agezeyo asanga isambu yabo ihingwamo na Bayingana Emmanuel Idrissa, ngo nibwo yatangiye gusaba ubuyobozi bw'inzego z'ibanze ko bwamufasha, we na bashiki be bagasubizwa umutungo basigiwe n'ababyeyi babo, ariko birananirana bituma yiyambaza inkiko asaba gusubizwa iyo sambu ndetse no guhabwa indishyi mbonezamusaruro zingana n'amafaranga 30.000.000, n'izindi ndishyi zitandukanye.

[5] Bayingana Idrissa Emmanuel yireguye avuga ko mu mwaka 2000, nyina Mukamudenge kimwe n'abandi banyarwanda bari bahungutse, bahawe ubutaka na Leta, babasaranganyije mu rwego rwo kubabonera aho batura, Mukamudenge ahabwa ubutaka buherereye Gasenga I, Akagari ka Nyamata Ville, Umurenge wa Nyamata, Akarere ka Bugesera, Intara y'Iburasirazuba, ubutaka bukaba bwari ubwa Murundi Simon, nkuko bigaragara mu gitabo cy'abasaranganyijwe, ibi bikorwa nyuma y'igihe kirekire ubuyobozi butanga amatangazo, busaba abantu bafite amasambu mu Karere ka Bugesera kuza guhagarara ku masambu yabo, ababaga batabonetse isambu barayitangagaga bakayiha uwatahutse. Mukamudenge yaje kwitaba Imana asize abana batatu aribo bazungura be, Bayingana Emmanuel Idrissa uregwa, akaba umwe muri bo.

[6] Abavandimwe ba Uwayo Jacques, Umuhoza Sylvie n'Uwineza Joselyne bagobotse ku bushake muri uru rubanza ndetse n'abavandimwe ba Bayingana aribo Mukahavugimana Sada na Uwizeye Claudine.

[7] Urukiko rw'Ibanze rwa Nyamata rwaciye urubanza rwemeza ko isambu iburanwa ibaruye by'agateganyo kuri nº2838 na 2858, iherereye Gasenga i Nyamata, Bugesera yahoze ari iya Nkurikiyinka Simon. Rwemeje ko isambu ya Nkurikiyinka Simon yahawe Mukamudenge Annonciatta mu rwego rw'isaranganya kandi isaranganya rikaba ryarakurikije amategeko. Rwategetse ko ubutaka bubaruye by'agateganyo kuri nº2838 na 2858 buherereye Gasenga i Nyamata, Bugesera bugomba kwandikwa burundu kuri Succession Mukamudenge Annonciata kuko abukomora ku isaranganya; Rwemeje ko indishyi n'andi mafaranga bisabwa n'urega Uwayo Jacques n'abagobotse Mukahavugimana Sada na Uwizeye Claudine batagomba kubihabwa.

Rwategetse ko amagarama yatanzwe na Uwayo Jacques, Mukahavugimana Sada na Uwizeye Claudine aherera ku isanduku ya Leta.

[8] Uwayo Jacques ntiyishimiye icyemezo cy’urukiko rw’Ibanze ajuririra mu Rukiko Rwisumuye rwa Gasabo ikirego gihabwa no RCA 00089/2020/TGI/GSBO.

[9] Urukiko Rwisumbuye rwaciye urubanza rwemeza kwakira ubujurire bwa Uwayo Jacques uhagarariye abavandimwe be ariko rubusuzumye rusanga nta shingiro bufite. Rwemeje ko isaranganya ryabayeho ku isambu iburanwa ryakozwe mu buryo bukurikije amategeko, ko imikirize y’urubanza RC 00414/2018/TB/NYMTA rwaciwe n’Urukiko rw’Ibanze rwa Nyamata kuwa 10/04/2020 igumyeho mu ngingo zarwo zose. Rwategetse Uwayo Jacques uhagarariye abavandimwe be kwishyura indishyi z’akababaro n’imbonezamusaruro zingana n’amafaranga miliyoni imwe hamwe n’ibihumbi magana atanu (500.000frw) y’ikurikirana rubanza n’igihembo cya Avocat (500.000), yose hamwe akaba miliyoni imwe n’ibihumbi magana atanu (1500.000frw). Rwategetse ko amagarama y’uru rubanza yatanzwe n’abarega ahwanye n’ibyakozwe muri uru rubanza.

[10] Uwayo Jacques yaregeye Urukiko Rukuru ngo rusuzume akarengane, kavugwa mu rubanza RCA 00089/2020/TGI/GSBO rwaciwe n’urukiko Rwisumbuye rwa Gasabo kuwa 28/05/2021.

[11] Nyuma yo gusuzuma ubusabe bwa Uwayo Jacques Perezida w’urukiko yasanze urubanza RCA 00089/2020/TGI/GSBO rwaciwe n’Urukiko Rwisumbuye rwa Gasabo kuwa 24/05/2021, rukwiye gusubirwamo ku mpamvu z’akarengane kugira ngo hongere gusuzumwa inenge zirurimo nk’uko zagaragajwe haruguru. Iyi raporo yashyikirijwe Perezida w’urukiko rw’Ikirenga.

[12] Perezida w’urukiko rw’Ikirenga mu cyemezo Nº 232/CJ/2021 cyo gusubirishamo ku mpamvu z’akarengane urubanza rwaciwe ku rwego rwa nyuma, amaze kubona ibaruwa yandikiwe na Perezida w’Urukiko Rukuru, isaba ko urubanza Nº RCA 00089/2020/TGI/GSBO rwaciwe n’Urukiko Rwisumbuye rwa Gasabo, kuwa 28/05/2021, haburana Uwayo Jacques na Bayingana Idrissa Emmanuel, ko rwasubirwamo ku mpamvu z’akarengane; amaze gusuzuma raporo yakozwe kuri uru rubanza; ashingiye ku itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw’Inkiko mu ngingo yaryo ya 53; yemeje ko urubanza Nº RCA 00089/2020/TGI/GSBO, rwaciwe n’Urukiko Rwisumbuye rwa Gasabo, ku wa 28/05/2021 rusubirwamo ku mpamvu z’akarengane; Yemeje kandi ko urwo rubanza rwoherezwa mu Rukiko Rukuru, rukandikwa mu bitabo byabugenewe kugira ngo arirwo ruzaruburanisha.

[13] Muri uru rukiko ikirego cyahawe Nº RS/INJUST/RC 00008/2021/HC/KIG.

[14] Mu iburanisha ry’uru rubanza hatanzwe inzitizi, Me Kayitare Dieudonne, Me Gatera Callixte na Me Jean Paul Manirafasha bahagarariye Bayingana Idrissa bavuga ko bafite inzitizi ijyanye n’ibihe byo gusaba gusubirishamo urubanza RCA 00089/2020/TGI/GSBO ku mpamvu z'Akarengane bavugaga ko bitubahirijwe n’ijyanye no kuba urukiko rudafite ububasha bwo gusuzuma no kwemeza cyangwa gutesha agaciro ibikorwa by'Ubuyobozi byakozwe hashingiwe kuri politiki ya Leta y’isaranganya.

[15] Uwayo Jacques yunganiwe na Me Ndayambaje Yamuremye Simon na Me Kayitare Dieudonné, bavuze ko ibihe byo gusaba gusubirishamo urubanza ku mpamvu z’akarengane

byubahirijwe kuko mu kubara ibihe bibarwa mu minsi cyangwa mu masaha, iminsi y'ikiruhuko yemewe n'impera y'icyumweru itabarwa. Bakomeje bavuga ko bareze uwahawe ubutaka bwabo ku buryo budakurikije amategeko. Icyo basaba cya mbere gisuzumwa ni ukureba niba mu gihe cyo gutanga ubutaka bwa Nkurikiyinka Simon harakurikijwe amategeko agenga isaranganya, ko procedure y'isaranganya ikozwe idakurikije amategeko iba itemewe, kuko gushyigikira abakoze ibikorwa bidakurikije amategeko byaba ari ukuniga ubutabera, ko ntaho abaregwa bagaragaza ko amategeko agenga isaranganya yakurikijwe hatangwa isambu ya Nkurikiyinka Simon.

[16] Urukiko rwemeje ko uru rukiko rufite ububasha bwo kuburanisha uru rubanza, kuko ububasha bwarwo rubushingira ku cyemezo cya Perezida w'urukiko rw'Ikirenga no mu cyemezo N° 232/CJ/2021 wemeje urubanza N° RCA 00089/2020/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo, kuwa 28/05/2021 rusubirwamo ku mpamvu z'akarengane n'uru rukiko.

[17] Iburanisha ryarakomeje Uwayo Jacques n'umwunganira Me Ruhumuriza Innocent unahagarariye abavandimwe be Umuhoza Sylvie na Uwineza Joselyne bavuga ko urukiko rwabarenganyije kuko rwemeje ko habayeho isaranganya, nyamara bo bemeza ko nta saranganya ryabayeho, ko icyabayeho ari ugutanga isambuye yabo yose nta ruhare babigizemo, ihabwa umuntu utagaragaza ko iyo sambu yari iye mbere yo guhunga, kandi inatangwa ku buryo bwa tombola n'utabifitiye ububasha, ngo bakaba basaba ko ikiswe isaranganya giteshwa agaciro kuko kitubahirije amategeko y'isaranganya, bagasubizwa isambu yari iy'ababyeyi babo ndetse bagahabwa n'indishyi basabye.

[18] Manirafasha Jean Paul na Me Gatera Kanisa Evariste bahagarariye Bayingana Idrissa Emmanuel n'abavandimwe be bavuga ko isambu iburanwa Mukamudenge Annonciata yayihawe ku buryo bw'isaranganya nkuko byemezwa n'inzego z'ubuyobozi ndetse bakabigaragariza n'ibimenyetso, kandi ko isaranganya ryakozwe nta mategeko ariho agenga uko ryagombaga gukora, ko amategeko yaje gusoka ashimangira ibyakozwe mu isaranganya bityo ko ritasubirwamo n'inkiko, kuko isaranganya ryarangiye, abo baburanira bakagumana ubutaka bwahawe umubyeyi wabo ku buryo bukurikije amategeko. Naho kuba harakoreshejwe tombola ngo nuko abashakaga ubutaka bari benshi. Indishyi basabwa ngo ntazo batanga ahubwo niba bazihabwa.

Muri uru rubanza urukiko rurasuzuma ibibazo bikurikira:

- Gusuzuma niba kuba UMUHOZA Sylvie na UWINEZA Joselyne bagaragara mu kirego nk'abaregwa byakosorwa, no kumenya niba bafatwa nk'abagobotse kubushake mu gihe batatanze ingwate y'amagarama;
- Gusuzuma niba isaranganya ry'amasambu ryahoze ku isambu yari iya Nkurikiyinka Simon na Nyiramugwera ryarakozwe ku buryo bukurikije amategeko yakurikizwaga igihe ryakorwaga.
- Gusuzuma niba ubutaka bwa Nkurikiyinka Simon bugomba gusubizwa abazungura be;
- Gusuzuma niba Uwayo Jacques n'abavandimwe be ahagarariye bahabwa indishyi mbonezamusaruro, indishyi z'akababaro, ikurikiranarubanza n'igihembo cya Avoka;
- Gusuzuma niba abarega bategekwa kwishyura Bayingana Emmanuel Idrissa n'abo ahagarariye amafaranga 2,000,000 y'igihembo cya Avoka n'ikurikiranarubanza.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

a. Gusuzuma niba kuba UMUHOZA Sylvie na UWINEZA Joselyne bagaragara mu kirego nk'abaregwa byakosorwa, kumenya niba baragobotse kubushake mu gihe batatanze ingwate y'amagarama.

[19] Bayingana Idrissa avuga ko asaba ko hasuzumwa abantu biswe abarega mu kirego aribo Umuhoza Sylvie na Uwineza Joselyne bagaragara mu kirego nk'Abaregwa akaba yibaza icyo baregwa n'ubarega uwo ari we, kuko ahandi bagaragara batanga imyanzuro y'Abagoboka kubushake nyamara yasuzuma agasanga nta ngwate y'amagarama batanze ngo hemerwe igoboka kubushake ryabo, ikindi nuko mu manza zabanje bose bari abarega bahagarariwe na Uwayo Jacques, ngo bakaba basaba ko bisuzumwa bigahabwa umurongo ukwiye hakurikijwe amategeko.

[20] Uwayo Jacques yunganiwe na Me Ruhumuriza Innocent unahagarariye Umuhoza Sylvie na Uwineza Joselyne bavuga ko kuba muri Systeme hari aho Umuhoza Sylvie na Uwineza Joselyne biswe abaregwa ari ukwibeshya kuko ku rwego rwa mbere n'urwa kabiri bari ababuranyi bagobotse ku bushake, kuri uru rwego naho bakomeza kuba abarega, kuko ku rwego rwa mbere n'urwa kabiri nabo barenganye. Ku bireba igarama bavuga ko bagombaga kwishyura, kuri uru rwego rwo, ngo kuburanisha ku mpamvu z'akarengane nta magarama atangwa nkuko biteganyijwe n'itegeko.

UKO URUKIKO RUBIBONA:

[21] Rusanga Umuhoza Sylvie na Uwineza Joselyne baragobotse mu rubanza rukiri mu rukiko Rwisumbuye nkuko bigaragarazwa n'umwanzuro wo kugoboka ku bushake mu rubanza RCA 00089/2020/TGI/GSBO. Na none kandi mu itangwa ry'ikirego gisubirishamo urubanza ku mpamvu z'akarengane, Me Rwigema Vincent abinyujije kuri murandasi ya sobanuza inkiko mu izina ry'abitwa Uwayo Jeacques, Uwineza Joselyne n'Umuhoza Slyvie, ku wa 29/6/2021, yandikiye Perezida w'Urukiko Rukuru asaba ko urubanza no RCA 00089/2020/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 28/05/2021, rusubirwamo ku mpamvu z'akarengane.

[22] Urukiko rusanga nkuko bisobanurwa mu gitabo cy'urukiko rw'Ikirenga ku miburanishirize y'imanza zisabirwa gusubirishwamo ku mpamvu z'akarengane, cyo muri Kanama, 2022, p.25; mu rubanza rusaba ko urubanza rwaciwe burundu rusubirwamo ku mpamvu z'akarengane, urega ni uwabaye umuburanyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane wanditse abisaba, nk'uko biteganywa mu ngingo za 58 - 62 z'Itegeko n° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, maze nyuma yo kubyemererwa agakora imyanzuro isobanura akarengane ke mu gihe yabisabwemo.

[23] Rusanga Umuhoza Sylvie na Uwineza Joselyne nta mpamvu zatuma bongera kwishyura igarama kuko babaye ababuranyi mu rubanza rusabirwa gusubirishwamo ku mpamvu z'akarengane, ndetse nabo bakaba barasabye ko urubanza rusubirwamo ku mpamvu z'akarengane, ubu akaba ari abarega basangiye inyungu na Uwayo Jacques, si abaregwa nkuko byanditswe muri system.

b. Gusuzuma niba isaranganya ry'amasambu ryahoze ku isambu yari iya Nkurikiyinka Simon na Nyiramugwera ryarakozwe ku buryo bukurikije amategeko yakurikizwaga igihe ryakorwaga.

[24] Me Ruhumuriza Innocent nuwo yunganira Uwayo Jacques akaba anahagarariye Umuhoza Sylvie na Uwineza Joselyne bavuze ko abazungura ba Mukamudenge Annonciata bavuga ko isambu yose yari iya Murundi ari iyabo, ko bayisaranganyijwe, icyo gikorwa ngo cyarabarenganyije kuko nta mpamvu n'imwe yatuma abakomoka kuri ba nyir'isambu bavutswa uburenganzira ku mutungo wasizwe n'ababyeyi babo, ko uwo mutungo wose wahawe Mukamudenge Annonciata, kandi uburyo yawuhawemo atari isaranganya, nkuko bivugwa, itangwa ryawo nta mategeko ryakurikije, ahubwo icyakozwe ni "uguhabwa" nabyo mu buryo budakurikije amategeko.

[25] Bavuze ko ingingo ya 3 y'iteka rya Minisitiri n°001/16.01 ryo kuwa 26/04/2010 rigena uburyo isaranganya ryakorwaga ivuga ko isaranganya riteganijwe n'iryo teka rikorwa hagati y'uwavukijwe uburenganzira ku butaka yari atunze mbere yo guhunga kubera impamvu za politiki mu bihe bitandukanye byashize kugeza mu 1994 n'utunze iyo sambu ubu. Naho ingingo ya 6 y'iteka ivuga ko usaba gusaranganya agaragaza abagabo cyangwa ibimenyetso byerekana ko isambu asabira gusaranganya yari ayitunze mbere yo guhunga. Mukamudenge Annonciata ngo nta mpamvu yatuma ahabwa isambu ya Nkurikiyinka Simon kuko nta bagabo cyangwa ibimenyetso byerekana ko iyo sambu yari iye mbere yo guhunga; ikizwi kidashidikanywaho ni uko iyo sambu yari iya Nkurikiyinka Simon n'umugore we Nyiramugwera Immaculée.

[26] Ikindi ngo nuko usaranganya atatwaraga isambu yose, ngo bakaba basaba ko icyiswe isaranganya ku isambu yabo giteshwa agaciro, kuko isaranganya ritakozwe hagati yabo nkabanyir'isambu n'uwahawe isambu yabo, ndetse ntiryanakozwe hagati y'abigabije imitungo y'impunzi zo kuva mu mwaka wa 1959 kugeza mu mwaka wa 1994, umuryango wabo ukaba utararebwaga n'isaranganya kuko utigeze wigabiza imitungo ya Mukamudenge Annonciata ngo ahunguke asange umuryango wabo uyirimo habeho isaranganya nkuko byateganywaga mu ngingo ya 3 y'iteka rya Minisitiri bavuze, ko ibyakozwe ari ukwamburwa umutungo basigiwe n'ababyeyi babo.

[27] Ikindi na none ngo nuko urukiko rwashingiye ku buhamya rukemeza ko isambu ya Nkurikiyinka Simon yasanganyijwe igahabwa Mukamudenge bikozwe n'uwari Konseye, ngo byakozwe n'utabifitiye ububasha kuko ingingo ya 5 y'iteka rya Minisitiri rivuzwe ivuga ko isaranganywa ry'amasambu ryemezwa na Komite y'Ubutaka ku rwego rw'Umurenge ibifashijwemo na Komite y'Ubutaka ku rwego rw'Akagari nyuma yo kumva icyo abaturage batuye ako Kagari babivugaho. Komite y'ubutaka ku rwego rw'Umurenge igatanga raporo ku Muyobozi wa Komisiyo y'Ubutaka mu Karere isambu iherereyemo".

[28] Bavuze ko ibyakozwe binyuranije n'ibiteganywa n'ingingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda, ahateganya ko uburenganzira bw'umuntu k'umutungo ari ntavogerwa, ndetse n'ingingo ya 34 y'Itegeko ry'ubutaka ryakurikizwaga urubanza rusubirishijwemo ku mpamvu z'akarengane rucibwa yateganyaga ko Leta yishingira ko nyir'ubutaka atabwamburwa. Ibyo uregwa yakoze agahabwa ibimenyetso by'uko yabonye isambu mu isaranganya ritabayeho ku masambu yasizwe n'ababyeyi babo ngo ni uburiganya bugamije kuyobya urukiko kugira ngo hafatwe icyemezo kiri mu nyunguze, cyane ko n'ikimenyetso bashingiraho bavuga ko isambu

yasanganyijwe gitera urujijo kuko bavuga ko basaranganyijwe nyamara cyo kikagaragaza gutanga amasambu.

[29] Bavuze ko mu guca urubanza rusubirishwamo ku mpamvu z'akarengane, urukiko rwashingiye ku masezerano y'amahoro ya Arusha avuga ko abatahutse bari bamaze mu buhungiro igihe cy'imyaka igeze kw'icumi (10) iyo basangaga isambu ari nto kandi ituwemo n'umuryango munini bayihaga uwahungutse, anavuga ko uwari nyiri sambu mbere ataragize ubushake bwo kwerekana ko atemera ibikubiye muri „recommandations" y'ayo Masezerano ya Arusha, iyi mvugo y'urukiko rwisumbuye ngo ni ikinyoma kigamje kujijisha, kuko urukiko rwirengagije ko Nkurikiyinka Simon yishwe ahotowe mu mwaka wa 1989 naho umugore we Nyiramugwera yicwa muri Genoside yakorewe abatutsi nkuko byavugiwe mu rukiko kimwe n'ibimenyetso bihamya ko abazungura babo bari bakiri bato barerwa na nyirakuru wari utuye ku Kicukiro mu mujyi wa Kigali. Bityo, abaregera imitungo yabo, ngo si impunzi ngo babe barebwa n'amasezerano y'amahoro ya Arusha, bityo imvugo ziri mu gika cya 10, icya 11 n'icya 12 by'urubanza RCA 00089/2020/TGI/GSBO rwo kuwa 28/05/2021 zigaragaza akarengane kakozwe n'urukiko rutagize ubushishozi buhagije bituma rubogama bikabije.

[30] Me Manirafasha Jean Paul na Me Gatera Kanisa Evariste bahagarariye Bayingana Idrissa Emmanuel n'abavandimwe be bavuga ko abarega basaba ko ikirego cyabo gihabwa ishingiro ngo kuko isaranganya k'ubutaka bavuga ko bwari ubwa ababyeyi babo, Leta ikabwisubiza kuko yari ibukeneye ngo ibutuzemo abari bavuye hanze mu buryo bw'isaranganya kandi hashingiwe ku buryo buri gace kakoragamo isaranganya nta tegeko ryari rihari riteganya uburyo isaranganya rikorwamo, gusa ubuyobozi bukaba bugaragaza ko ubu butaka bwatanzwe mu isaranganya kandi bukabitangira ibyemezo ndetse n'ibitabo byanditswemo abasaranganyijwe bose muri ako gace bikaba bihari hakaniyongeraho ko nyuma y'ibi bikorwa abashingamategeko bateganije uko hakemurwa ibibazo abanyarwanda bamwe bafite bavuga ko bikomoka ku gikorwa cya Leta cy'isaranganya, ariko abarega bakaba baranze guca mu nzira bahawe kandi ziteganywa n'amategeko bo kubwabo n'imyumvire yabo bakavuga ibyakozwe bitakurikije amategeko kandi nta n'ububasha babifitiye; bityo ko inkiko zitasubiramo ibyakozwe n'ubuyobozi bwite bwa Leta mu isaranganya kuko byashingiye ku murongo na politiki by'igihugu bidashobora kuvuguruzwa kuko byakemuraga ikibazo igihugu cyarimo kandi hatabaye umwiryane mu gihugu.

[31] Bavuze ko ibyo byaje guhindurwa itegeko aho bategetse ko uwabuze ubutaka bwe kubera igikorwa cy'isaranganya akaba nta handi afite ho gutura yegera ubuyobozi bw'Akarere kaho iyo sambu yari iri kakamushakira ahandi nyamara barakomeza kunyuranya n'amategeko bazi bagashaka no gukomeza gushora abantu mu manza no kugonganisha inzego z'imitegekere n'ubutabera bidakwiriye, bityo ko ibisabwa nta shingiro byahabwa, ndetse ko bidakwiye no kuba byumvikana mu nkiko kugeza uyu munsi kuko ibyo asaba nta burenganzira abifitiye kuko binyuranije n'amategeko.

[32] Bavuze ko abarega bavuze ko ikimenyetso batanze kitavugisha ukuri, kandi inyandiko itavugisha ukuri ngo iraregerwa, ndetse ibivuzwe mu nyandiko mvaho ntawushobora kubihakana, ko niba abarega bumva ubuyobozi bwaratanze inyandiko zitavugisha ukuri, icyari gukorwa kwari ukuziregera. Naho kuba abarega baravuze ko itegeko Nshinga ritubahirijwe, ngo umuntu ashobora kwakwa umutungo n'igihugu, Mukamudenge nawe ngo uwo mutungo ntiyigeze awubohoza ahubwo yawuhawe na Leta.

[33] Bavuze ko ingingo ya 52 igika cya 2 y'itegeko ry'ubutaka rya 2021, ivuga ko Icyakora umuntu wahawe ubutaka mu isaranganya ryabaye hagamijwe gutuza abantu, ntafatwa nk'uwariganyije, n'uwatakaje uburenganzira ku butaka kubera impamvu za politiki n'imiyoborere mibi byaranze Igihugu kuva muri 1959 kugeza muri 1994, ntafatwa nk'uwariganyijwe. Naho ingingo ya 87 y'itegeko ry'ubutaka rya 2005, yavugaga ko bitabangamiye ingingo ya 20 y'iri Tegeko Ngenga ivuga ku butaka budashobora kugabanywa, isaranganya ry'amasambu ryakozwe kuva mu mwaka w'igihumbi kimwe magana cyenda na mirongo icyenda na kane (1994) ryemewe n'iri Tegeko Ngenga. Abaturage batunze ubwo butaka babufitiye uburenganzira kimwe nk'abandi bose bakomora ubutaka bariho ku bw'umuco. Iyi ngingo ngo yavugaga ko ibijyanye n'isaranganya ry'amasambu rivugwa muri iyi ngingo bidatangirwa indishyi ziteganwa n'iri Tegeko Ngenga.

[34] Bavuze ko igikorwa cy'isaranganya ari gahunda ya Leta, ngo bakaba basanga nta karengane kabayeho, cyane ko n'abarega bemera isaranganya, kandi ubuyobozi bw'umurenge wa Nyamata nk'urwego rufite ububasha bwo kugaragaza uwasaranganijwe, bwatanze igitabo cyo muri uwo Murenge kerekana ko isambu yari iya Murundi, muri 2000 yasarangayijwe nkuko bigaragara kuri no 22, ndetse bikaba byaremejwe n'umunyamabanga Nshingwabikorwa w'umurenge wa Nyamata. Urukiko icyo rwavuze rwemeza ko habayeho akarengane ngo nukugira ngo harebwe ko basaranganijwe mu buryo bukurikije amategeko, ngo bakaba basanga urukiko rukwiye kuzagendera kubyo Perezida wa Repibulika yavuze, aho yavugaga ko niba hari uwarenganijwe ko yakwegera ubuyobozi bukamuha ubundi butaka.

[35] Bavuze ko nubwo abarega banenga ibyakozwe, ko byakozwe mu buryo bwa tombora, ngo byatewe nuko abantu bari benshi ariko nta mategeko yishwe kuko nta mategeko yariho mu gihe cy'isaranganya yateganya uburyo rikorwa. Ingingo ya 3 igika cya 2 y'iteka rya Ministre no 001/16.01. ryo kuwa 26/04/2010 ivuga ko kuva 2012 nta kindi gikorwa cy'isaranganya kigomba gukorwa cyangwa ngo bisubirwemo cyangwa kubijuririra, ko uwabikora wese yaba anyuranije n'iyi ngingo. Ingingo ya 68 y'itegeko rya 2013 rigenga ubutaka, ivuga ko isaranganya ryabaye hagati ya 1994 kugeza 2012 ryemewe n'amategeko, abatunze ubutaka kuva icyo gihe bafatwa nk'ababubonye mu buryo bw'umuco, ikaba yunganirwa n'ingingo ya 11 nayo y'iri tegeko.

[36] Uwayo Jacques n'umwunganira Me Ruhumuriza Innocent akaba anahagarariye abavandimwe be Umuhoza Sylvie na Uwineza Joselyne bavuze ko batemera isaranganya, ko icyabaye ari ugutanga isambu yabo yatanzwe na konseye nta mategeko akurikije, kandi n'abahagarariye abo baburana ngo biyemereye ko nta mategeko yakurikijwe. Ikindi ngo nuko itegeko Nshinga risobanura uburyo umuntu yakwa umutungo, ko ntawatombora isambu yundi, ngo havugwe ko ibyakozwe bikurikije amategeko.

UKO URUKIKO RUBIBONA:

[37] Ingingo ya 5 y'Itegeko nº 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda ryakurikizwaga urubanza rusubirishwamo ku mpamvu karengane rucibwa yateganyaga ko umuntu wese ufite ubutaka, yaba yarabubonye ku bw'umuco, cyangwa se yarabuhawe n'urwego rubifitiye ububasha, cyangwa se yarabuguze, yemerewe kubutunga ku buryo bw'ubukode burambye.

[38] Ingingo ya 87 y'itegeko ry'ubutaka ryo kuri 2005 yateganyaga ko iteka rya Minisitiri ufite ubutaka mu nshingano ze, rigena uburyo isaranganywa ry'amasambu rikorwa.

[39] Ingingo ya 8 y'iteka rya Minisitiri N° 001/16/01 ryo kuwa 26/04/2010 rigena uburyo isaranganya ry'amasambu rikorwa iteganya ko "Abasaranganya bagabanyamo kabiri isambu ku buryo bungana, usanzwe atuye muri iyo sambu agahitamo mbere". Ingingo ya 3 y'iryo Teka iteganya ko isaranganya riteganijwe n'iryo teka rikorwa hagati y'uwavukijwe uburenganzira ku butaka yari atunze mbere yo guhunga kubera impamvu za politiki mu bihe bitandukanye byashize kugeza mu 1994 n'utunze iyo sambu ubu.

[40] Urukiko rusanga dosiye igaragaramo inyandiko yo kuwa 27/04/2016 y'umunyamabanga Nshingwabikorwa w'umurenge wa Nyamata Gashumba Jacques yanditse avuga ko bamenyesha uwo bireba wese ko Mukamudenge yahawe isambu y'uwitwa Simoni Murundi nkuko igitabo cy'isaranganya cyo muri 2000 kibigaragaza kuri N° 22, ubwo butaka bukaba buherereye mu Murenge wa Nyamata, Akagari ka Nyamata Ville, Umudugudu wa Gasenga.

[41] Dosiye igaragaramo inyandiko yo kuwa 15/04/2014, ubuyobozi bw'umudugudu wa Gasenga I, bwanditse bwemeza ko uyu Bayingana Emmanuel Idrissa mwene Mukamudenge Annociata yitabye Imana yarahawe isambu n'ubuyobozi mu isaranganya ry'amasambu kuko yari aturutse hanze atahutse. Mukamudenge Annociata yitabye Imana atarabona icyemezo cya burundu cy'iyo sambu, umwana yasize ni Bayingana Emmanuel Idrissa yakurikirana akagihabwa. Iyo sambu ngo ifite icy'agateganyo no 2838 na no 2858, iyo sambu ngo ifite hepfo no haruguru y'umuhanda, Nyobozi y'umudugudu wa Gasenga yashyize imikono kuri iyi nyandiko.

[42] Dosiye igaragaramo inyandiko yo kuwa 17/09/2000 ifite umutwe ugira uti: "Gutanga amasambu Gasenga", iyo nyandiko igaragaza nimero y'isambu, uwari nyiri isambu n'uyihawe. Kuri N° ya 22 isambu yari Murundi Simon yahawe Mukamudenge.

[43] Mu iperereza ryakozwe n'urukiko rw'ibanze rwa Nyamata mu rubanza RC00414/2018/TB/NYMTA kuwa 30/01/2020, habajijwe uwitwa Mukabera Melanie, avuga ko nyuma y'ibyabaye mu gihugu, habayeho gahunda y'isaranganya, nk'umuntu wari responsible w'Akagari, ngo habayeho gahunda yo kubarura amasambu adafite ba nyirayo, mu murenge wose, ko bamaze kuyabarura Konseye witwa Niyibizi Evariste ngo yatanze itangazo kuri radio, amenyesha ko ufite isambu kuri Maranyundo yazaza akayihagararaho, ko niyo yaba ari Umwana, w'impfubyi ufite umurera, azaze amuhagararire. Ku isambu iburanwa yari iya Murundi Simon yabuze uyihagararaho nuko yaje gutomborwa na Mukamudenge.

[44] Urukiko rusanga kuba isambu iburanwa yari iya Nkurikiyinka Simon bita Murundi, no kuba yarahawe Mukamudenge bitagibwaho impaka, ikigibwaho impaka ni ukumenya niba iyo sambu yahawe Mukamudenge bishingiye ku gikorwa cy'isaranganya nkuko abaregwa babivuga, ndetse n'urukiko mu rubanza rusubirishwamo ku mpamvu z'akarengane akaba ariko rwabisobanuye, uru rukiko rukaba rusuzuma niba icyiswe isaranganya ariryo kandi niba ryakozwe mu buryo bukurikije amategeko, kuko abarega bo bakavuga ko nta saranganya ryabayeho kubera ko icyo gikorwa nta ruhare bakigizemo nka banyir'isambu, hakaba haratanzwe isambu yabo yose ndetse igatangwa n'umuyobozi utabifitiye ububasha, ndetse igahabwa n'umuntu utari nyir'iyo sambu mbere yo guhunga ku mpamvu za politiki zabaye muri iki gihugu.

[45] Rusanga igikorwa cy'isaranganya cyaratangiye nta tegeko ririho risobanura uko cyagombaga gukorwa, ariko Ijambo "gusaranganya" ubwaryo mu rurimi rwacu, ni gikorwa gikorwa n'umuntu umwe cyangwa benshi aha udafite, cyangwa se gusangira icyo umwe mu bantu

afite cyangwa se icyo bafatanyije. Mu rwego rw'isaranganya ryabaye mu gihugu cyacu naho, igikorwa cy'isaranga cyakozwe abantu basangira cyangwa bagabana umutungo w'ubutaka wari ufitwe n'umwe muri bo kugira ngo na mugenzi we udafite aho atura abone aho atura, kuribari bahungutse bavuye mu buhungiro mu mahanga bari basanzwe barasize ubwo butaka.

[46] Mu nyandiko yakozwe n'urwego rw'umuvunyi rugaragaza imiterere y'ibibazo rwasuzumye, rwasobanuye ko isaranganya ry'ubutaka ryarakozwe mu ntara zose kandi muri rusange hubahirizwa ihame ryo kugabanya amasambu abatahutse bari barahunze mu w'i 1959 n'abari basanzwe mu gihugu; Abatuye baguma aho batuye bagahabwa n'igice cy'isambu yegereye aho batuye. (…), hari naho isaranganya ritakorwa, umuntu wari warahunze "agasubizwa isambu ye yose" iyo bigaragaye ko uwayisigayemo, afite indi mitungo ye bwite; hari kandi naho umuntu wari warahunze agatuzwa n'inzego z'ubuyobozi mu karere kamwe ntashobora kongera gusaranganya mu kandi karere.[1]

[47] Rusanga icyo gikorwa cyo gusaranganya cyarasabaga ko hagaragazwa ingano y'isambu, uhawe n'iyutanze, nkuko urukiko rw'Ikirenga rwabisobanuye mu rubanza Nº RS/INJUST/RC 00019/2017/SC rwaciwe kuwa 17/05/2019, haburana Mwanuyera Géorgette waregaga Munyaneza Oswald na bagenzi be aho urukiko rw'Ikirenga rwasobanuye ko rusanga mu gukemura ikibazo cya Mwanuyera Géorgette, Ubuyobozi bw'ibanze bwarakoze isaranganya ridasobanutse kuko ritagaragaza ingano y'isambu y'uhawe n'iyutanze, abagombaga gusaranganya naho abenshi ntibashyize umukono ku cyemezo cy'Ubuyobozi.

[48] Rusanga igitekerezo gikubiye mu isesengura ryakozwe n'Urukiko rw'Ikirenga nuko isambu igomba gusaranganywa ingero zayo zigomba kuba zizwi, cyangwa se ingano yayo, uhawe isambu n'uyitanze nabo bagomba kugaragazwa kandi abo bireba bagashyira umukono ku nyandiko y'isaranganya.

[49] Na none kandi nkuko byagarutsweho mu ngingo ya 3 y'iteka rya Minisitiri ryavuzwe haruguru, isaranganywa ryagombaga gukorwa hagati y'uwavukijwe uburenganzira ku butaka yari atunze mbere yo guhunga kubera impamvu za politiki mu bihe bitandukanye byashize kugeza mu 1994 n'utunze iyo sambu ubu. Ni nawo murongo w'itegeko rishya ry'ubutaka ryo muri 2021, mu ngingo yaryo ya 52 al 2 aho ivuga ko Icyakora umuntu wahawe ubutaka mu isaranganya ryabaye hagamijwe gutuza abantu, ntafatwa nk'uwariganyije, n'uwatakaje uburenganzira ku butaka kubera impamvu za politiki n'imiyoborere mibi byaranze Igihugu kuva muri 1959 kugeza muri 1994, ntafatwa nk'uwariganyijwe.

[50] Urukiko ruhereye ku buhamya bwa Mukabera Melanie bwasobanuwe haruguru, rusanga uburyo isambu ya Murindi Simon yatanzwe bwa Tombora nkuko byemejwe n'umutangabuhamya Mukabera Melanie wabaruye amasambu atari afite banyirayo icyo gihe, rushingiye ku ngingo zivuzwe haruguru zasobanuye uko isaranganya ryagombaga gukorwa, rusanga nta saranganya ryakozwe ku isambu ya Murindi Simon kuko icyahoze ari isambye yose yagombaga gusigaranwa n'abana be nyuma y'uko ababyeyi babo bitabye Imana yahawe umuntu umwe Mukamudende nawe nyuma yo gukoreshwa Tombola; nta muntu n'umwe bayigabanye mubari basanganywe iyo sambu.

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[1] Inyandiko y'urwego rw'umuvunyi mu gukurikirana ibibazo by'abaturage 111, ku bibazo by'abaturage byakiriwe ku wa 20/07/2009 no ku wa 22/07/2009.

[51] Kuvuga ko nta muntu wari uhagaze kuri iyo sambu, nyamara umuryango wa Murundi wari usigayemo abana bato b'impfubyi zarerwaga na nyirakuru, nawe udatuye muri ako gace, iyi sambu kuba yaratanzwe igahabwa Mukamudenge kandi nawe hatagaragazwa ko iyo sambu yari iye mbere yo guhunga, ngo ibe yari yarasigaranywe n'umuryango wa Murundi Simon, kuko aricyo cyari kumuhesha uburenganzira bwo kuyisaranganyamo nk'umuntu waruhungutse, ikiswe isaranganya nticyuzuye kugira ngo havugwe ko habayeho gusaranganya, kuko ntawe bayigabanye kandi ba nyirayo bari bahari.

[52] Kuba isaranganya cyari igikorwa kireba utanga isambu n'uyihabwa, ku itangwa ry'isambu ya Murundi bikaba bitaritaweho, icyiswe isaranganya kuri iyi sambu iburanwa nticyabayeho, kuko ibisabwa kugira ngo isaranganya ribe bibe byuzuye bitabayeho nkuko bigaragajwe haruguru, ahubwo habayeho gutanga isambu nk'uko inyandiko yatanzweho ikimenyetso nayo ubwayo ibigaragaza, amategeko agomba gukemura iki kibazo akaba atajyanye n'isaranganya nkuko byafashwe n'inkiko zaciye urubanza rusubirwamo ku mpamvu z'akarengane, kuko umushingamategeko yateganyije ko uwagombaga gusaba gusaranganywa ari uwavukijwe uburenganzira ku butaka yari atunze mbere yo guhunga kubera impamvu za politiki mu bihe bitandukanye byashize kugeza mu 1994 n'utunze iyo sambu ubu, hakagaragazwa ingano y'isambu isaranganyijwe, inyandiko y'isaranganya nayo igashyirwaho umukono n'abo bireba, ibi rero bikaba bitarubarijwe mu gutanga isambu ya Murundi Simon.

[53] Urukiko rushingiye ku ihame ryari mu itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 10 kamena 1991 ryakoreshwaga icyo gihe cyane cyane mu ngingo yaryo ya 23 yateganyaga ko umutungo w'umuntu ku giti cye cyangwa uwo asangiye na benshi udahugabanywa, ko ushobora gusa kwakwa nyirawo igihe igihugu kiwukeneye, nabwo kandi mu bihe no mu buryo byashyizweho n'Itegeko, kuba Mukamudenge yarahawe umutungu wa Murundi Simon kandi abazunguraba be bari bakiriho, igikorwa cyo gufata umutungo wagombaga kuba uw'abazungura, ugahabwa undi muntu kinyuranyije n'amategeko, kuko batari kubura uburenganzira ku mutungo w'umuryango wabo.

c. Gusuzuma niba ubutaka bwa Nkurikiyinka Simon bugomba gusubizwa abazungura be.

[54] Uwayo Jacques n'umwunganira Me Ruhumuriza Innocent akaba anahagarariye abavandimwe be bavuze ko kubirebana no gusubiza imitungo impfubyi zarokotse Genoside yakorewe Abatutsi mu mwaka wa 1994, inama yahuje inzego nkuru za Leta yabereye muri Sport View Hotel ku itariki ya 14-15 ukwakira 2010 mu myanzuro yafashe harimo ko uturere twasabwe gusubiza abana b'impfubyi ubutaka bwabo, ubufite akaba ariwe ujya mu nkiko aho kugira ngo abana aribo basiragira mu nkiko. Ngo basabye Akarere ka Bugesera kubafasha bagahabwa ubutaka bwasizwe n'ababyeyi babo ariko ntibabusubizwa, inzego z'ibanze zishyigikira uri mu butaka zivuga ko yabubonye mu isaranganya mu gihe bo isaranganya ritabarebaga kuko umuryango wabo utigeze wigabiza amasambu ya Mukamudenge Annonciata igihe yari mu buhunzi.

[55] Bavuze ko bashingiye ku nyandiko zihamya abanditse ku butaka bwahoze ari ubw'ababyeyi babo, basanze ubutaka bufite UPI: 5/07/010/05/2838 bufite Sqm: 6009 bwanditse kuri Bayingana Emmanuel Idrissa nyamara uyu ngo ntiyari gusaranganywa isambu afite imyaka 7, naho ubufite UPI: 5/07/010/05/2858 bufite Sqm: 13338 bwanditse kuri Mukamudenge Annonciata, kandi ntaho bavuga ko Mukamudenge yahawe amasambu abiri. Ko kuba imitungo yabo yanditse ku batari ba nyirayo basaba ko amasezerano y'ubukode burambye bahawe ateshwa

agaciro hashingiwe ku ngingo ya 20 y'Itegeko Nº 43/2013 ryo kuwa 16/06/2013 iteganya ko ibyangombwa by'ubutaka bishobora guteshwa agaciro, kandi uyu murongo unashimangirwa n'ingingo ya 6, 1o ndetse n'iya 10, 5o z'Iteka rya Perezida Nº 97/01 ryo kuwa 18/06/2014 rigena imikorere n'ububasha by'Umubitsi w'Impapuro Mpamo z'ubutaka, ngo basaba uru rukiko kwemeza kandi rugategeka ko ibyemezo by'ubutaka bwasizwe n'ababyeyi babo biteshwa agaciro ubutaka bukandikwa ku bazungura babo aribo: UMUHOZA Sylvie, UWINEZA Joselyne na Uwayo Jacques bikavanwa mu mazina b'abayibarujeho ikabandikwaho, kuko byakozwe hashingiwe ku buriganya, urukiko rukanategeka ko abazungura ba Nkurikiyinka Simon bahabwa ubutaka bwahoze ari ubwe kuko nta saranganya ryabaye kuri ubwo butaka.

[56] Me Manirafasha Jean Paul na Me Gatera Kanisa Evariste bahagarariye Bayingana Idrissa Emmanuel n'abavandimwe be bavuga ko abarega baburana izungura ngo kandi ntibabona impamvu bategereje iki gihe cyose bakirengagiza ko n'ubuyobozi bwaberetse ko ubu butaka bwatanzwe mu gikorwa cy'isaranganya kandi iri saranganya ryemewe n'Amategeko kuko byemejwe n'Inzego z'Ubuyobozi kandi ryabaye mu mwaka w'Ibihumbi bibiri nta tegeko ryagenga uko isaranganya ryagombaga gukorwa ari nayo mpamvu buri gace kabikoze mu buryo bwako, ariko bihagarariwe n'ubuyobozi ndetse bikanashyirwa mu bitabo byabugenewe bukanabitangira ibyemezo mu gihe bisabwe kandi niko byagenze kuri ubu butaka; kandi ntabwo amategeko yagiyeho nyuma yemeje ko bivanwaho ahubwo yemeje ko ibyakozwe byose muri iki gikorwa cy'isaranganya bikurikije amategeko kandi ko abahawe ubutaka muri icyo gihe kandi mu gikorwa cy'isaranganya batunze ubwo butaka nkababutunze mu buryo bw'umuco, kandi amategeko ubu ateganya ko nta gikorwa na kimwe cyo gusesa isaranganya gishobora gukorwa ko ahubwo ababigiraho ikibazobose bagana Akarere kaho ubwo butaka buherereye kakababonera ahandi ho gutura ari nabyo aba bagomba gukora.

UKO URUKIKO RUBIBONA:

[57] Ingingo ya 5 y'Itegeko Nº 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda ryakurikizwaga izi manza zicibwa yavugaga ko Umuntu wese ufite ubutaka, yaba yarabubonye ku bw'umuco, cyangwa se yarabuhawe n'urwego rubifitiye ububasha, cyangwa se yarabuguze, yemerewe kubutunga ku buryo bw'ubukode burambye hakurikijwe ibiteganywa n'iri tegeko. Naho ingingo ya 67 nayo y'iri tegeko yavugaga ko Leta ifite inshingano zo gufasha abantu bavukijwe uburenganzira bwabo ku butaka kubera amateka kububona.

[58] Ingingo ya 10 nayo y'iri tegeko yateganyaga ko Ubutaka bw'umuntu ku giti cye bugizwe n'ubutaka atunze ku buryo bw'umuco cyangwa ubw'amategeko yanditse. Ubwo butaka abutunze yarabuhawe n'ubuyobozi bubifitiye ububasha, ubwo yaguze, yahaweho impano, umurage, izungura, umunani, ingurane cyangwa isaranganya.

[59] Dosiye igaragaramo imyanzuro y'inama yahuje inzego Nkuru za Leta n'inzego z'ibanze (central and Local Goverments) kuva tariki ya 14 kugeza ku 15 ukwakira 2010, muri sport view Hotel, Kigali, zizeze ku bibazo bitandukanye, byumwihariko ku bibazo by'ubutaka bw'abana b'impfubyi butunzwe n'abandi, hafashwe umwanzuro wo gusubiza abana b'imfubyi ubutaka bwabo, ubufite akaba ariwe ujya mu nkiko, aho kugira ngo abana abe aribo basiragira mu nkiko.

[60] Dosiye igaragaramo icyemezo cy'umubutsi w'impapuro mpamo z'ubutaka gihamya uwanditse ku butaka, cyatanzwe kuwa 15/07/2021, aho uwo umubitsi w'impapurompamo

z'ubutaka yemeje ko ashingiye ku makuru yanditse muri rejisitiri y'ubutaka, yemeje ko UIP:5/07/10/05/2838 buherereye mu Kagari ka Bugesera, Umurenge wa Nyamata, Akagari ka Nyamata y'Umujyi bubaruye kuri Bayingana Emmanuel Idrissa (1198780137759096) (100%). Ubu butaka buhagarariwe na Bayingana Emmanuel Idrissa ufite irangamuntu nimero 1 198780137759096, bugenewe gukoreshwa ubuhinzi, bukaba bufite ubuso 6009 sqm.

[61] Dosiye igaragaramo icyemezo cy'umubutsi w'impapuro mpamo z'ubutaka gihamya uwanditse ku butaka, cyatanzwe kuwa 15/07/2021, aho uwo umubitsi w'impapurompamo z'ubutaka yemeje ko ashingiye ku makuru yanditse muri rejisitiri y'ubutaka, yemeje ko ubutaka bufite UIP:5/07/10/05/2858 buherereye mu Kagari ka Bugesera, Umurenge wa Nyamata, Akagari ka Nyamata y'Umujyi bubaruye kuri Mukamudenge (100%). Ubu butaka buhagarariwe na Bayingana Emmanuel Idrissa ufite irangamuntu nimero (1198780137759096), bugenewe gukoreshwa ubuhinzi, bukaba bufite ubuso 13338sqm.

[62] Urukiko rusanga isambu ibaruye by'agateganyo kuri nº2838 na 2858, iherereye Gasenga I, Nyamata, Bugesera, yahoze ari iya Nkurikiyinka Simon bitaga Murundi na Nyiramugwera, yarahawe Mukamudenge Annonciata mu buryo bunyuranyije n'amategeko nkuko byasobanuwe ibijyanye n'isaranganya biburanishwa ntibikurikije ibisabwa kugira ngo havugwe ko bwasaranganyijwe, bityo abakomoka kuri Mukamudenge Annonciata aribo: Bayingana Emmanuel Idrissa, Mukahavugimana Sada na Uwizeye Claudine bagomba gusubiza Uwayo Jacques, Uwineza Joselyne n'Umuhoza Slyvie isambu ibaruye by'agateganyo kuri nº2838 na 2858, iherereye Gasenga I, i Nyamata, Bugesera, ikomoka ku babyeyi babo.

[63] Kuvuga ko ubu butaka bwatanzwe bikandikwa mu bitabo byabugenewe bukanabitangira ibyemezo si mpamvu yatuma ubutaka buburanwa budasubizwa abazungura ba Murundi Simon na Nyiramugwera bari ba nyirabwo, kuko nkuko urukiko rw'ikirenga rwabisobanuye mu rubanza RCAA 0018/13/CS rwaciwe n'urukiko rw'Ikirenga kuwa 24/12/2014 haburana Harerimana Emmanuel vs/ Sebukayire Tharcisse rwasobanuye ko ingingo ya 23 y'Iteka rya Minisitiri nº 002/2008 ryo kuwa 01/04/2008 ryavuzwe haruguru iteganya ubutayegayezwa (bw' icyemezo cy'ubukode burambye ku butaka) idashobora gukurikizwa kubera ko inyuranye n'interuro ya 10 ndetse n'ingingo ya 20 y'Itegeko Nº 43/2013 ryo kuwa 16/06/2013 ryavuzwe haruguru ziteganya ko ibyangombwa by'ubutaka bishobora guteshwa agaciro, kandi uyu murongo unashimangirwa n'ingingo ya 6, 1º ndetse n'iya 10, 5º z'Iteka rya Perezida Nº 97/01 ryo kuwa 18/06/2014 rigena imikorere n'ububasha by'Umubitsi w'Impapuro Mpamo[2].

[64] Hashingiwe ku bisobanuwe haruguru, ibyemezo by'agateganyo bibarura ubutaka kuri Nº2838 na 2858 bwanditswe kuri Mukamudenge na Bayingana Emmanuel Idrissa bigomba guteshwa agaciro ubutaka bukandikwa kubakomoka kuri Nkurikiyinka Simon bitaga Murundi na Nyiramugwera, aribo Uwayo Jacques, Uwineza Joselyne n'Umuhoza Slyvie.

[65] Kuvuga na none ko abarega bagombaga kugana Akarere kaho ubwo butaka buherereye kakababonera ahandi ho gutura, aho gusesa ibyakozwe mu isaranganya, urukiko rushingiye ku

[2] Ingingo ya 6, 1⁰ y'Iteka rya Perezida Nº 97/01 ryo kuwa 18/06/2014 rigena imikorere n'Ububasha by'Umubitsi w'Impapuro Mpamo igira iti: "By'umwihariko Inama y'Ababitsi b'Impapuro Mpamo ifite inshingano zikurikira: kwemeza iteshagaciro ry'ibyemezo by'iyandikisha ry'ubutaka" naho ingingo ya 10, 5º ikagira iti: Umubitsi Mukuru w'Impapuro Mpamo z'Ubutaka n'Umubitsi w'Impapurompamo z'ubutaka bafite ububasha bukurikira: … 5º gutesha agaciro icyemezo cy'iyandikisha ry'ubutaka mu buryo buteganywa n'amategeko"

ngingo ya 67 nayo y'iri tegeko yavugaga ko Leta ifite inshingano zo gufasha abantu bavukijwe uburenganzira bwabo ku butaka kubera amateka kububona, n'ingingo ya 4 y'amasezerano y'Arusha yo ku wa 04/08/1993 urukiko Rwisumbuye rwashingiyeho yateganyaga ko uburenganzira ku mutungo ari uburenganzira bw`ingenzi ku Banyarwanda bose, ku buryo impunzi zigarutse mu gihugu zifite uburenganzira bwo gusubirana imutungo zahoranye. Ariko impande zombi zitanga inama yuko mu rwego rwo kugarura ituze mu mibanire y'Abanyarwanda n'ubwiyunge bwabo muri rusange, impunzi zimaze imyaka irenze icumi mu buhungiro zidakwiye gukurikirana imitungo yazo yagiwemo n'abandi. Mu buryo bw'ingurane, Leta izabaha ubundi butaka kandi ikazabafasha gutura;

[66] Rusanga nkuko bisobanurwa muri izi ngingo umuryango wa Murundi Simon wari usanzwe mu gihugu, ndetse bakaba batari mu bantu bavukijwe uburenganzira bwabo ku butaka bari atunze mbere yo guhunga kubera impamvu za politiki mu bihe bitandukanye byashize kugeza mu 1994, kuko bwari ubwabo na mbere y'umwaka w'1994, hakaba hatagaragazwa ko umutungo uyu muryango wari ufite wari uwa Mukamudenge ku buryo yagarutse mu gihugu asaba kuwusubizwa. Kuba na none Umuryango wa Murundi Simon wari usigayemo abana bato b'impfubyi za Jenoside yakorewe abatutsi mu 1994, Leta yari isagaye ifite inshingano zo kureberera nkuko bigaragazwa n'imyanzuro y'inama yavuzwe, sibo bari gusaba Akarere ngo batuzwe, nkuko abaregwa babiburanisha ndetse akaba ari nako urukiko rwabisobanuye mu rubanza rwaciwe n'urukiko Rwisumbuye, abavukijwe uburenganzira ku butaka mbere yo guhunga kubera impamvu za politiki, ni umuryango wa Mukamudenge, ugomba gusaba gutuzwa, kuko unatagaragaza ko ubutaka bwari ubwa Murundu bwari ubwabo.

d. Gusuzuma niba Uwayo Jacques n'abavandimwe be Ahagarariye bahabwa indishyi mbonezamusaruro, indishyi z'akababaro, ikurikiranarubanza n'igihembo cya Avoka.

[67] Uwayo Jacques n'umwunganira Me Ruhumuriza Innocent akaba anahagarariye abavandimwe be bavuze ko kuva mu mwaka wa 2000, ubutaka bwasizwe n'ababyeyi babo bukoreshwa n'umuryango wa Mukamudenge Annonciata, ukabubyaza umusaruro, akaba asaba ko urukiko rutegeka Bayingana Idrissa Emmanuel kubaha indishyi mbonezamusaruro zingana n'amafaranga 30.000.000, indishyi z'akababaro zingana n'amafaranga 5.000.000 kuko ababyeyi babo basize umutungo wiharirwa n'abo badafite icyo bahuriyeho byabateye akababro ngo kuko nta mutungo w'ubutaka bafite, bakaba iyo batawamburwa batari kujya mu nkiko ibyo bakaba babisabira amafaranga y'ikurikiranarubanza angana n'amafaranga 500.000, n'igihembo cy'Avoka kingana na 1.500.000, yose hamwe akaba amafaranga 37.000.000.

[68] Me Manirafasha Jean Paul na Me Gatera Kanisa Evariste bahagarariye Bayingana Idrissa Emmanuel n'abavandimwe be bavuga ko uretse kutanyurwa no kwanga kumva icyo amategeko ateganya ngo bakoreshe uburenganzira bahabwa nayo, abarega bikoma ubucamanza bwakoze akazi kabwo bushingiye ku mategeko n'Ibimenyetso bya kamarampaka bishimangira ko isaranganya ryabayeho kandi rigakorwa rihagarariwe n'ubuyobozi bubifitiye ububasha ndetse bukanabyemeza. Abarega bakabikora bagamije guha ubusobanuro butari bwo ibyakozwe ndetse n'amategeko ngo barengere inyungu zabo zinyuranije n'Amategeko ndetse na politiki y'igihugu kandi bidakwiye.

UKO URUKIKO RUBIBONA:

[69] 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 kiburanishirizwa rimwe n’ikirego cy’iremezo. Gishobora kandi kwakirwa kikanaburanishwa n’iyo ikirego cy’iremezo cyaba kitakiriwe.

[70] Urukiko rusanga indishyi mbonezamusaruro Uwayo Jacques n’abavandimwe be basaba Bayingana Idrissa Emmanuel n’abavandimwe be nta shingiro zahabwa, kuko batagaragaza ibimenyetso bizisobanura, kuko nabo nubwo bari mu isambu hari uwayibahaye, ariko kandi mu bushishozi bw’urukiko Bayingana Idrissa Emmanuel n’abavandimwe be babaha indishyi zingana n’amafaranga miliyoni ebyiri (2), akubiyemo indishyi z’akababaro, ikurikiranarubanza n’igihembo cya Avoka, kuko ayo basabye ari ikirenga.

e. Gusuzuma niba Abarega bategekwa kwishyura Bayingana Emmanuel Idrissa n’abo ahagarariye amafaranga 2,000,000 y’igihembo cya Avoka n’ikurikiranarubanza.

[71] Me Manirafasha Jean Paul na Me Gatera Kanisa Evariste bahagarariye Bayingana Idrissa Emmanuel n’abavandimwe be bavuga ko nkuko amategeko abiteganya abarega bagomba gutanga aya mafaranga 2,000,000 y’igihembo cya Avoka n’ikurikiranarubanza kuko aribo babakuruye mu manza ndetse babatangisha n’aya mafaranga bitari bikwiriye.

[72] Uwayo Jacques n’umwunganira Me Ruhumuriza Innocent akaba anahagarariye abavandimwe be bavuze ko izi ndishyi z’amafaranga 2,000,000 nta shingiro zikwiye guhabwa kuko abarengwa aribo bashoye Uwineza Joselyne n'abavandimwe mu manza z'amaherere banga kubasubiza gakondo yabo babonye kubw'uburiganya.

UKO URUKIKO RUBIBONA:

[73] Rusanga indishyi Bayingana Idrissa Emmanuel n’abavandimwe be basaba nta shingiro zahabwa kuko ntacyo batsindiye muri uru rubanza.

III. ICYEMEZO CY’URUKIKO

[74] Rwemeje ko ikirego cya Uwayo Jacques, Uwineza Joselyne n’Umuhoza Slyvie kigamije gusubirishamo urubanza RCA 00089/2020/TGI/GSBO rwaciwe n’Urukiko Rwisumbuye rwa Gasabo kuwa 28/05/2021 ku mpamvu z'akarengane gifite ishingiro.

[75] Rwemeje ko isambu ibaruye by'agateganyo kuri Nº2838 na 2858, iherereye Gasenga I, Nyamata, Bugesera, yahoze ari iya Nkurikiyinka Simon bitaga Murundi na Nyiramugwera, yahawe Mukamudenge Annonciata mu buryo bunyuranyije n’amategeko.

[76] Rutegetse ko abakomoka kuri Mukamudenge Annonciata aribo: Bayingana Emmanuel Idrissa, Mukahavugimana Sada na Uwizeye Claudine basubiza Uwayo Jacques, Uwineza Joselyne n’Umuhoza Slyvie isambu ibaruye by'agateganyo kuri nº2838 na 2858, iherereye Gasenga I, Nyamata, Bugesera.

[77] Rutegetse Bayingana Emmanuel Idrissa, Mukahavugimana Sada na Uwizeye Claudine guha Uwayo Jacques, Uwineza Joselyne n'Umuhoza Slyvie indishyi zingana n'amafaranga 2,000,000 zasonabuwe mu isesengura.

[78] Rutegetse ko urubanza RCA 00089/2020/TGI/GSBO rwaciwe n'Urukiko Rwisumbuye rwa Gasabo ku wa 28/05/2021 n'urubanza RC 00414/2018/TB/NYMTA rwaciwe n'Urukiko rw'Ibanze rwa Nyamata kuwa 10/04/2020 zivanyweho.

[79] Rwibukije ko uru rubanza rutasomewe igihe cyari cyateganyijwe kubera ko umucamanza yari afite imanza nyinshi zihutirwa yagombaga gufatamo ibyemezo.