

MAHINYUZA v MUKESHIMANA N'ABANDI

[Rwanda URUKIKO RUKURU – RCA 00273/2020/HC/KIG (Kabagambe, P.J.) 24 Kamena 2021]

Amategeko agenga imanza z'imbonezamubano – Ubutumwa – Umuntu wakoze ibivugwa mu butumwa (procuration) yahawe mu nyandiko kandi mu buryo amategeko abiteganya nta kosa aba yakozwe kugeza igihe abwamburiwe.

Amategeko agenga imanza z'imbonezamubano – Umuryango – Ubutane – Umutungo w'abashakanya – Kugabana umutungo kw'abashakanye – Kugabana umutungo gukomoka ku rubanza rw'ubutane bishobora gukorwa umwe mu batanye yishyura undi ½ cy'agaciro k'umutungo ugabanwa.

Incamake y'Ikibazo: Uru rubanza rwatangiyeye Mahinyuza arega Mukeshimana mu Rukiko Rwisumbuye rwa Gasabo hagobokeshwa ku gahato abantu batandukanye ariko Umwiza yagobotse kubushake; Mahinyuza asobanura ko yari yarashakanye na Mukantabana nyuma baza gutandukana mu buryo bukurikije amategeko hanyuma kuko aba mu gihugu cy'u Bubiligi aha Mukeshimana uburenganzira bwo kumuhagararira mu rwego rwo kugabana imitungo afitanye na Mukantabana. Avuga ko yahaye Mukeshimana ubwo bubasha kuko bari bamaze gusinyana nawe amasezerano yo gushyingirwa mu gihugu cya Tanzania, kandi yagombaga kumusanga mu Bubiligi ariko birangira atagiyeyo, ahubwo afata umutungo wa Mahinyuza ufite UPI 1/02/12/503 uherereye mu Karere ka Gasabo awucamo ibibanza byinsi arawugurisha n'amafaranga ntiyayamushyikiriza.

Mukeshimana mu kwiregura asobanura ko nyuma y'uko Mahinyuza atanye n'umugore we Mukantabana, bumvikanye uburyo bagabana umutungo wabo. Nyuma y'ubwo butane Mahinyuza yasezeranye na Mukeshimana mu gihugu cya Tanzania nkuko bigaragazwa na "Copy Of An Entry In Marriage Register". Mukeshimana avuga kandi ko kugira ngo agurishye ubutaka Mahinyuza aregera yamuhaye "procuration" inyujijwe muri ambasade y'u Rwanda mu Bubiligi yo kuwa 24/04/2017 imuha ububasha bwo gushaka abakiliya ndetse no kugurisha igipande cyangwa ubutaka bwose ndetse akanabika amafaranga avuyemo.

Umwiza wagobotse mu rubanza kubushake asobanura ko ari ukubera ikibanza kibaruye kuri UPI 1/02/12/02/3735, gikomoka ku kibanza kiburanwa, yaguze na n'uware uhagarariye Mukeshimana, asaba Urukiko kwakira kugoboka ku bushake kwe, kwemeza ko itambama ryashyizwe ku butaka UPI 1/02/12/02/3735 rikuweho no gutegeka ko ubwo butaka bumwandikwaho.

Urukiko Rwisumbuye rwa Gasabo mu rubanza RC00095/2019/TGI/GSBO rwemeje ko ikirego cyatanzwe na Mahinyuza nta shingiro gifite; rwemeza ko ibikorwa byo kugurisha ibibanza bikomoka ku butaka UPI 1/02/12/02/503 byakozwe mbere y'itariki ya 4/12/2017 bigumanye agaciro kabyo; rwemeza ko ubutaka bubaruye kuri UPI 1/02/12/02/3735 ari ubwa Umwiza; rwemeza abagobokeshejwe ku gahato bagumana ubutaka baguze na Mahinyuza wari uhagarariye na Mukeshimana, kandi ubwashyizweho itambama rigakurwaho.

Mahinyuza ntiyishimiye imikirize y'urubanza ajurira mu Rukiko Rukuru asaba ko rwemeza ko Mukeshimana, yarengereye ububasha yahawe na Mahinyuza mu gihe yafashe umutungo Mahinyuza asangiye na Mukantabana akawufata nk'aho wose ari uwa Mahinyuza; gutegeka ko aho yarengereye agurisha umutungo wose nk' aho ari uwa Mahinyuza hagarurwa mu mutungo wa Mukantabana kuko ngo we atigeze atanga uburenganzira bwo kumugurishiriza umutungo; kandi ko ibivugwa muri Procuration yatanze na Mahinyuza bitamureba; gutegeka Mukeshimana Marthe kwishyura indishyi zitandukanye.

Mukeshimana mu kwiregura yatanze ubujurire bwuririye kubundi asaba gusuzuma indishyi ziyongera kuzo Mahinyuza yaciye ku rwego rwa mbere.

Abagokeshejwe ku gahato batanze ubujurire bwuririye kubundi basaba gusuzuma ko ubutaka baguze bwabandikwaho; basaba n'indishyi kubera kubashora mu manza.

Umwiza wagobotse kubushake asaba ko Urubanza rujuririrwa rutahinduka asaba n'indishyi.

Urukiko mu rubanza RCA 00273/2020/HC/KIG, rwemeje ko nta kosa urukiko rubanza rwakoze, kuko ibikorwa byose byakozwe na Mukeshimana mbere y'uko yamburwa ububasha yabikoze mu buryo bukurikije amategeko, kuko Mahinyuza yari yamuhaye ubutumwa mu nyandiko bikaba byaramuhaga ububasha bwo kubikora. Rwemeje kandi ko uwo mutungo utari ukiri uwa Mukantabana na Mahinyuza kuko nyuma y'urubanza rw'ubutane Mahinyuza yahaye Mukantabana agaciro kangana na 1/2 cy'uwo mutungo hanyuma arawegukana wose.

Ku bijyanye no kumenya niba ubutaka bwaguzwe n'uwagobotse n'abagobokeshejwe mu rubanza bwabandikwaho, urukiko rwemeje ko ubujurire bwabo nta shingiro bufite kuko ibyo basaba bari babihawe mu rubanza rujuririrwa ariko rubagera indishyi zikurikirana rubanza n'igihembo cya avoka.

Incamake y'icyemezo: 1. Umuntu wakoze ibivugwa mu butumwa (procuration) yahawe mu nyandiko kandi mu buryo amategeko abiteganyaga nta kosa aba yakozwe kugeza igihe abwamburiwe. Bityo ntabwo uwamuhaye ubutumwa yahindukira ngo avuge ko yarengereye ubutumwa yahawe kandi atabigaragariza ibimenyetso.

2. Kugabana umutungo gukomoka ku rubanza rw'ubutane bishobora gukorwa umwe mu batanye yishyura undi ½ cy'agaciro k'umutungo ugabanwa bikagaragazwa n'inyandiko mvugo y'irangizarubanza ikorwa n'umuhesha w'Inkiko.

3. Iyo umwe mu bashakanye aburana umutungo w'umuryango, aba ahagarariye uwo muryango muri byose, keretse iyo mu bo baburana harimo abawugize. Bityo ntabwo umwe mu bashakanye bamaze gutandukana yatanga ikirego avuga ko ahagarariye undi atagaragaza ko yamutumye ahubwo ubitemo inyungu yitangira ikirego cyangwa agashaka umuhagararira.

4. Uwajuriye asaba ibyo yahawe mu rubanza ajuririra ubujurire bwe nta shingiro buhabwa.

Ubujurire nta shingiro bufite.

Amategeko yashingiweho:

Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, Ingingo ya 85 Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, ingingo ya 526, 539

Nta manza zifashishijwe.

Urubanza

I. IMITERERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gasabo Mahinyuza Aloys arega Mukeshimana Marthe hagobokeshwa ku gahato Uwitonze Joachim, Mbagizente Edouard, Gatanazi Damien, Byensi Bonaventure, Nsengamungu Emmanuel, Kanyamahanga Vianney, Sindikubwabo Vianney, Nshimiyimana Saverien, Mutuyimana Jean Claude naho Umwiza Solange yagobotse kubushake; Mahinyuza Aloys asobanura ko we na Donatille Mukantabana bari barasezeranye kuwa ya 2/9/1978 babyarana abana bane nyuma baza gutandukana mu buryo bukurikije amategeko taliki ya 4/10/2010, byemezwa n'inkiko z'u Rwanda kuwa 2/11/2012. (Urubanza RC0022/12/HC/KIG);

bari barashakanye umutungo urimo uwabaruwe kuri UPI 1/02/12/503 ari nawo uburanwa. Bitewe n'uko Mahinyuza Aloys na Mukantabana Donatille bose baba mu gihugu cy'u Bubiligi, taliki ya 24/04/2017, byabaye ngombwa ko Mahinyuza aha Mukeshimana Marthe uburenganzira bwo kumuhagararira mu rwego rwo kugabana imitungo na Mukantabana agacunga igice cy'aho Mahinyuza azaherera. Ubwo yahisemo Mukeshimana kuko bari bamaze gusinyana amasezerano yo gushyingirwa mu gihugu cya Tanzaniya, Uyu Mukeshimana yizeza Mahinyuza ko azaza mu Bubiligi bakabana nk'umugore n'umugabo ariko birangira Mukeshimana Marthe atagiye.

[2] Mahinyuza Aloys asobanura ko Mukeshimana Marthe atigeze amenyeshya Mahinyuza uburyo igabana ryagenze, ahubwo yahise akora ibishoboka byose kugira ngo agabagabanye ubutaka, abuhishe ku bandi bantu, maze akatishamo ibibanza 17. Amaze kubona ko Mukeshimana yamubeshye kuri byose ndetse ko nta kindi yari agamije uretse kumutwarira umutungo, ndetse n'uw'umugore batandukanye Mukantabana, yakoze inyandiko yo kuwa 27/11/2017 yambura Mukeshimana ububasha yari yaramuhaye. Mukeshimana ayimenyeshwa kuwa 4/12/2017. N'ubwo yari amaze kumenyeshwa ko yambuwe ububasha bwo gucunga uwo mutungo, yakomeje kugurisha ndetse ku buryo amazina y'abari banditseho ibyo bibanza yahindutse ku buryo Mahinyuza ategereje igisubizo ku baruwa yanditse asaba amakuru ku bantu banditse muri ibyo bibanza.

[3] Mahinyuza asobanura ko Mukeshimana Marthe yitwaza ko yasezeranye na Mahinyuza Aloys, bakaba barasezeraniye mu gihugu cya Tanzaniya. Ari Mahinyuza, ari Mukeshimana, nta n'umwe ufite ubwenegihugu bwa Tanzaniya, nta n'umwe ufite icyemezo cy'uko yatuye muli icyo gihugu ; asaba ko kuba Mukeshimana atanga inyandiko yo gushyingirwa yakorewe mu gihugu cya Tanzaniya, nta gaciro yahabwa mu Rwanda mu gihe itanditswe mu bitabo by'indangamimerere. Ibyo bishimangirwa kandi n'uko kugeza kuri iyi tariki Mukeshimana yanditswe mu bitabo by'indangamimerere ko ali ingaragu.

[4] Mahinyuza asobanura ko Mukeshimana yirengagije ko uwo mutungo utimukanwa Mahinyuza awusangiye n'umugore we Mukantabana Donatille batandukanye, kuko batigeze bagabana. Mahinyuza n'abamuhagarariye bakoze ibishoboka byose kugira ngo Mukeshimana arekure uwo mutungo, aliko uyu yaranangiye ahubwo agahitamo gukoresha iterabwoba yoherereza Mahinyuza ubutumwa kuri telefoni amubwira ko nagaruka mu Rwanda hari ibyo azabazwa ; bigaragaza ko yaba yaragiye kumuhimbira ibyaha. Kuba Mukeshimana yaramukoreye ubwo buhemu byamuteye igihombo gikomeye ndetse n'akababaro kenshi, akaba ariyo mpamvu aregera urukiko asaba kurenganurwa, agasubizwa ibye, ndetse akanahabwa indishyi z'akababaro.

[5] Mukeshimana Marthe mu kwiregura asobanura ko nyuma y'uko Mahinyuza aburanye n'umugore we Mukantabana Donatille ku kirego cy'ubutane, baje kumvikana uburyo bazagabana umutungo wabo. Ibyo babikora bahagarariwe n'Abavoka babo. Mahinyuza ahagarariwe na Me Nsabimana Jean Damascene naho Mukantabana ahagarariwe na Kayiranga Desire. Akaba ari muri urwo rwego Mahinyuza yasubije amafaranga Mukantabana maze yegukana ikibanza kibaruye kuri no 503/Gas/NDU. Nyuma y'ubwo butane Mahinyuza yaje gucudika na Mukeshimana Marthe ariko kubera ko atashoboraga gukandagira mu Rwanda ahitamo kujya bahurira mu gihugu cya Uganda ndetse na Tanzania, ibyo bikagaragarizwa na passport ya Mukeshimana Marthe. Byaje kugeraho basezeranira mu gihugu cya Tanzania nkuko bigaragazwa na "Copy Of An Entry In Marriage Register".

[6] Mukeshimana Marthe mu kwiregura asobanura kandi ko kugira ngo agurishe ubwo butaka habayeho "procuration" inyujijwe muri ambasade y'u Rwanda mu Bubiligi yo kuwa 24/04/2017 imuha ububasha bwo gushyamba abakiliya ndetse no kugurisha igipande cyangwa ubutaka bwose ndetse akanabika amafaranga avuyemo. Muri icyo Procuracy Mahinyuza we yiyemerera ko Mukeshimana Marthe ari umugore we mushya aho avuga mu magambo y'igifaransa ati:"Donne la présente Procuration à Madame Marthe Mukeshimana ma nouvelle épouse. ", akemera kandi ko amuhaye

ububasha bwose bwo kugurisha cyaba igice cyangwa ubutaka bwose akabivuga muri aya magambo: "En outre, elle pourra entreprendre toutes démarches de négociation pouvant aboutir à la vente de tout ou partie de cette propriété et en encaisse le produit". Iyi procuration akaba atariyo yonyine kuko hari n'indi yo kuwa 08/04/2016 Mahinyuza yandikiye Mukeshimana amuha uburenganzira bwo gukurikirana amafaranga ya Pension ye mu Rwanda. Hakaba ndetse n'indi yo kuwa 08/06/2016 yanditse aha Mukeshimana ububasha bwo kugurisha ndetse avuga n'uburyo amafaranga azava muri ubwo bugure ko azashyirwa kuri konti, mwishywa we witwa Isidore Ntawugayimana azacunga afatanyije na Mukeshimana Marthe.

[7] Umwiza Solange yagobotse mu rubanza kubushake asobanura ko ari ukubera ikibanza kibaruye kuri UPI 1/02/12/02/3735, akaba yarakiguze na Mugwaneza Emmanuel wari uhagarariwe na mushiki we Mukeshimana Marthe kuko Mukeshimana Marthe ku bw'uburiganya atigeze amumenyesha ko uru rubanza ruhari akaba abimenye ku munota wa nyuma rugeze mu iburanisha mu mizi. Asaba kwakira kugoboka ku bushake kwa Umwiza Solange no kwemeza ko gufite ishingiro; kwemeza ko itambama ryashyizwe ku butaka UPI 1/02/12/02/3735 rikuweho; gutegeka ko ubutaka bubaruwe kuri UPI 1/02/12/02/3735 buherereye mu mudugudu wa Nyakabungo, akagari ka Gasanze, umurenge wa Nduba, akarere ka Gasabo umujyi wa Kigali bwandikwa kuri Umwiza Solange, gutegeka Mukeshimana Marthe guha Umwiza Solange indishyi zose hamwe zingana na 3.520.000frws.

[8] Ku wa 03/08/2020 Urukiko Rwisumbuye rwa Gasabo rwaciye urubanza rwemeza ko ikirego cyatanzwe na Mahinyuza Aloys nta shingiro gifite; rwemeza ko ibikorwa byo kugurisha ibibanza bikomoka ku butaka UPI 1/02/12/02/503 byakozwe mbere y'itariki ya 4/12/2017 bigumanye agaciro kabyo; rwemeza ko ubutaka bubaruye kuri UPI 1/02/12/02/3735 ari ubwa Umwiza Solange; rwemeza ko Uwitonze Joachim, Mbagizente Edouard, Gatanazi Damien, Byensi Bonaventure, Nsengamungu Emmanuel, Kanyamahanga Vianney, Sindikubwabo Vianney, Nshimiyimana Saverien, Mutuyimana Jean Claude bagumana ubutaka baguze na Mahinyuza Aloys wari uhagarariwe na Mukeshimana Marthe, kandi ubwashyizweho itambama rigakurwaho; rutegeka ko itambama ryashyizwe ku mitungo yagurishijwe na Mukeshimana Marthe mu izina rya Mahinyuza Aloys mbere y'itariki ya 4/12/2017 rikurwaho; rutegeka Mahinyuza Aloys guha Umwiza Solange ibihumbi maganacyenda (900.000frw); rutegeka Mahinyuza Aloys guha Mukeshimana Marthe indishyi zingana na miliyoni imwe (1000.000frw).

[9] Mahinyuza Aloys ntiyishimiye imikirize y'urubanza ajurira mu Rukiko Rukuru asaba kwakira ikirego cye, no kwemeza ko Mukeshimana Marthe, yararengereye ububasha yahawe na Mahinyuza mu gihe yafashe umutungo Mahinyuza asangiye na Mukantabana akawufata nk'aho wose ari uwa Mahinyuza; gutegeka ko aho yararengereye agurisha umutungo wose nk'ako ari uwa Mahinyuza hagarurwa mu mutungo wa Mukantabana Donatille kuko we atigeze atanga uburenganzira bwo kumugurishiriza umutungo; kuko ibivugwa muri Procuration yatanze na Mahinyuza bitamureba; gutegeka Mukeshimana Marthe kwishyura indishyi z'ikurikiranarubanza zingana 100,000.000frs n'igihembo cya Avoka kingana na Miliyoni ebyiri z'amafaranga y' uRwanda (2,000,000frs), Gukora ibindi uko amategeko abiteganyaga

[10] Mukeshimana Marthe mu kwiregura yatanze ubujurire bwuririye kubundi asaba gusuzuma indishyi ziyongera kuzo Mahinyuza yaciye ku rwego rwa mbere

[11] Uwitonze Joachim, Mbagizente Edouard, Gatanazi Damien, Byensi Bonaventure, Nsengamungu Emmanuel, Kanyamahanga Vianney, Sindikubwabo Vianney, Nshimiyimana Saverien, Mutuyimana Jean Claude batanze ubujurire bwuririye kubundi basaba gusuzuma ko ubutaka baguze bwabandikwaho ; gusuzuma indishyi kuri buri wese kubera kubashora mu manza.

[12] Umwiza Solange wagobotse kubushake asaba gusuzuma ibyerekeye kugoboka mu rubanza; kumenya niba itambama ryashyizwe ku butaka bwaguzwe na Umwiza Solange rikwiriyeye gukurwaho

no kumenya niba akwiriye kubwandikwaho; gusuzuzuma indishyi, ikurikiranarubanza, igihembo cya avoka n'amagarama y'urubanza.

IBIBAZO BIGOMBA GUSUZUMWA MU RUBANZA

- Guzuma niba Mukeshimana Marthe, yararengereye ububasha yahawe na Mahinyuza, umutungo Mahinyuza asangiye na Mukantabana akawufata nk'aho wose ari uwa Mahinyuza ;
- Gusuzuma niba hari aho Mukeshimana Marthe yararengereye agurisha umutungo wose nk' ako ari uwa Mahinyuza hagarurwa mu mutungo wa Mukantabana Donatile, kuko we atigeze atanga uburenganzira bwo kumugurishiriza umutungo ;
- Gusuzuma niba ubutaka bwaguzwe n'abagobokeshejwe bwabandikwaho ;
- Gusuzuma niba itambama ryashyizwe ku butaka bwaguzwe na Umwiza Solange rikwiriye gukurwaho no gusuzuma niba akwiriye kubwandikwaho ;
- Gusuzuzuma indishyi zisabwa mu rubanza.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

Gusuzuma niba Mukeshimana Marthe yararengereye ububasha yahawe na Mahinyuza mu kugurisha umutungo

[13] Uhagarariye Mahinyuza avuga ko asaba urukiko kwemeza ko Mukeshimana Marthe, yararengereye ububasha yahawe na Mahinyuza mu gihe yafashe umutungo Mahinyuza asangiye na Mukantabana akawufata nk'aho wose ari uwa Mahinyuza. Bakaba baragaragaje ko inyandiko bavuga ko arizo muri Tanzanie batazamera, banagaragaza neza ibimenyetso ko Mukeshimana yagurishije umutungo wa Mahinyuza yikoreye irangizarubanza. Babonye ikimenyetso nyuma ko Marthe yakoze inyandikompimbano. Bandikiye umunyamabanga nshingabikorwa wa Cour supreme niba ayo mafaranga yarashyizwe kuri Compte ya Cour supreme ibaruwa yabashubije iri muri Systeme amubwira ko ntayashyizweho. Ikindi bavuze ko bahamagaye Mukantabana Donathille umugore wa Mahinyuza ngo bikozwe na Huissier Kanani Anani bombi rero bagobokeshwa muri uru rubanza.

[14] Uhagarariye Mukeshimana na bagenzi be avuga ko Mukeshimana Marthe yagurishije umutungo abihereyemo uburenganzira na Mahinyuza Aloys. Ubwo burenganzira bukaba bugaragazwa na Procuration yahawe inasobanura neza inshingano zo kuba yagurisha uwo mutungo. Ikindi nuko uwo mutungo utari ukiri uwa Mukantabana na Mahinyuza kuko nyuma y'urubanza rw'ubutane Mahinyuza yahaye Mukantabana agaciro kangana na 1/2 cy'uwo mutungo hanyuma arawegukana wose. Bikaba rero byumvikana ko ibyo Mukeshimana Marthe yakoze yari abifitiye uburenganzira, kandi n'Urukiko Rwisumbuye rwa Gasabo rukaba rwarabibonye gutyo.

[15] Uhagarariye Mukeshimana na bagenzi be akomeza avuga ko mbere uru rubanza rwatangiye kuburanishwa haburanwa ikibanza gifite UPI 1/02/12503 wari uwa Mahinyuza n'umugore we Mukantabana Donathille baza gutandukanira mu Bubiligi Mahinyuza amuha agaciro kumugabane we. Ikindi umutungo wagurishijwe na Huissier, amafaranga yayashyize muri Compte ya Cour Supreme ari muri BNR. Naho ubundi Mukeshimana nta buriganya yigeze akora kuko yagurishije umutungo ashingiye kuri Procuration bakoreye muri Tanzania kuko Mahinyuza ntiyashoboraga kuza mu Rwanda. Uwagurishije yarafite ububasha kuko yarashingiye kuri Procuration, n'abaguze bose baguze byemewe n'amategeko kuko nabo bashingiye kuri iriya Procuration. Uwaguze yahabwa uburenganzira ku butaka yaguze, kuko inyandiko yo kwambura ububasha ashingiraho ntaho isinyeho ahubwo yayanditse kuko Marthe bari basanzwe baturira muri Tanzania amusabye ngo amusange mu Bubiligi aranga kuko yamaze kubona ko aza gusura abarwanya Urwanda bituma abyanga Mahinyuza ararakara ahitamwo kwandika iyo annulation. Ikindi na MINAFET Procuration yemera

ni ebyiri gusa iyo kuwa 31/5/2017 niyo kwa 24/4/2017, izindi ntazo bemera. Ariko abaguze bahabwa imitungo yabo kuko bayiguze mu buryo bwemewe n'amategeko.

[16] Uhagarariye Umwiza Solange avuga ko Umwiza Solange ahagarariye yaguze de bonne fois kuko yaguze na Marthe wari ufite procuration ya Mahinyuza. Ikindi ntacyo bagaragaza ko banenga imikirize y' Urubanza rwaciwe n'urukiko rubanza. Ikindi iyo nyandikompimbano bavuga nta rukiko rwayemeje ntanaho baregeye ahubwo n'amagambo yivugira gusa. Urukiko ntirwayiha agaciro. Ikindi ibyo avuga ntagaciro byahabwa kuko abo asaba ko bagobokeshwa ntabwo baza kuba ababuranyi mu bujurire batarigeze baba ababuranyi mu rwego rwa mbere cyane ko ntanicyo anenga imikirize y'Urwego rwa mbere uretse gukwedura urubanza kugira ngo abaguze abatabona uko bahabwa imitungo yabo.

UKO URUKIKO RUBIBONA

[17] Urukiko rusanze ingingo ya 526 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano (yakoreshwaga igihe Mahinyuza Aloys yahaye Mukeshimana Marthe ubutumwa), iteganya ko ubutumwa ni igikorwa gituma umuntu aha undi ububasha bwo kumukorera ikintu kandi uyu akagikora mw'izina ry'uwatumye. Kandi ingingo ya 539 y'iryo tegeko iteganya ko uwatumye ategetswe kubahiriza amasezerano intumwa yagiranye n'abandi bantu, ikurikije ububasha yahawe. Ntabazwa ibyo intumwa yakoze birenze ububasha bwayo, keretse nyuma yarabyemeye ku buryo bweruye cyangwa buteruye.

[18] Urukiko rusanze Mahinyuza Aloys yahaye Mukeshimana Marthe ubutumwa kuwa 24/04/2017 mu nyandiko amuha ububasha bwo gukurikirana umutungo, harimo no kuwugurisha (Je soussigné, Aloys Mahinyuza, né à Tumba le 08/08/1954 et dont carte d'identité numéro 592-5039642, résidant Sint Maartens straat, 10 à B-9420 Erpe-Mere en Belgique, Considérant les prescrits du Jugement RC0189/14/TB/RUS rendu par le Tribunal de Première Instance de RUSORORO au Rwanda en date du 23 juin 2015 Etant momentanément empêché d'être présent sur place ; donne la présente Procuracy à Madame Marthe Mukeshimana, ma nouvelle épouse, dont la carte d'identité N° 1 1980 0172177 1 05 résidant à Gasanze» Secteur Nduba, District de Gasabo (Kigali) pour me représenter devant les instances administratives du Rwanda, dans toutes les questions se rapportant à ma propriété enregistrée sous le numero 503, sise à Gasanze, Secteur Nduba, District de Gasabo, en ce notamment la demande; l'enregistrement, la déposition et le retrait de tout document y relatif . En outre, elle pourra entreprendre toutes démarches de négociation pouvant aboutir à la vente de tout ou partie de cette propriété et en encaisser produit);

[19] Urukiko rusanze mu nyandiko yiswe "annulation de la procuration " yo ku wa 27/11/2017, Mahinyuza Aloys yanditse avuga ko yambuye Mukeshimana Marthe ubutumwa yari yamuhaye mu nyandiko yo ku wa 24/04/2017;

[20] Urukiko rusanze Mahinyuza yivugira ko yambuye ububasha Mukeshimana, mu nyandiko yakiriye kuwa 4/12/2017, kandi urukiko rubanza rwahaye agaciro ibikorwa byakozwe na Mukeshimana mbere y'itariki ya 4/12/2017 kuko yabikoze abifitiye ububasha. Akaba rero nta kosa urukiko rwakoze, kuko ibikorwa byose byakozwe na Mukeshimana mbere y'uho yamburwa ububasha yabikoze mu buryo bukurikije amategeko, kuko Mahinyuza Aloys yari yamuhaye ubutumwa mu nyandiko bikaba byaramuhaye ububasha bwo kubikora. Rusanze kandi uwo mutungo utari ukiri uwa Mukantabana na Mahinyuza kuko nyuma y'urubanza rw'ubutane Mahinyuza yahaye Mukantabana agaciro kangana na 1/2 cy'uwo mutungo hanyuma arawegukana wose, nkuko byemezwa na Mukeshimana, kandi bigaragazwa n'inyandiko mvugo y'irangiza ry'urubanza RC0189/14/TB/RUS rwaciwe ku wa 18/06/2015 n'urukiko rw'ibanze rwa Rusororo.

Gusuzuma niba hari aho Mukeshimana Marthe yarengereye agurisha umutungo wose nk' ako ari uwa Mahinyuza

[21] Uhagarariye Mahinyuza avuga ko asaba gutegeka ko aho Mukeshimana Marthe yarengereye agurisha umutungo wose nk' ako ari uwa Mahinyuza hagarurwa mu mutungo wa Mukantabana Donatile kuko we atigeze atanga uburenganzura bwo kumugurishiriza umutungo; kuko ibivugwa muri Procuration yatanzwe na Mahinyuza bireba igice cye kuri uwo mutungo kingana na 50%;

[22] Uhagarariye Mukeshimana na bagenzi be avuga ko umutungo wagurishijwe Mahinyuza yararangije kuwegukana wose kuko yari yarabujije Mukantabana Donatile agaciro kangana n'umugabane we nkuko bigaragazwa n'inyandikomvugo yakozwe n'umuhesha w'Inkiko wakoze iryo gabana ashingiye kurubanza rw'ubutane rufite RC0189/14/TB/RUS rwabaye hagati ya Mukantabana Donatile na Mahinyuza Aloys.

UKO URUKIKO RUBIBONA

[23] Hashingiwe ku ngingo ya 85 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 ko "Umuburanyi afite uburenganzira bwo kwiburanira, guhagararirwa cyangwa kunganirwa na avoka mu nkiko. Umuburanyi ashobora kandi guhagararirwa n'uwo yabihereye ububasha, amaze kugaragaza ko bafitanye isano ya hafi, nibura kugeza ku gisanira cya kane, ... Iyo umwe mu bashakanye aburana umutungo w'umuryango, aba ahagarariye uwo muryango muri byose, keretse iyo mu bo baburana harimo abawugize."

[24] Urukiko rusanze Mahinyuza Aloys nta kigaragaza ko ahagarariye Mukantabana muri uru rubanza, cyane cyane ko bamaze gutana, mu gihe rero Mukantabana abona ko inyungu ze zabangamiwe, ariwe ugomba kubitambamira cyangwa kubiregera, kuko atahaye Mahinyuza ububasha bwo kumuburanira.

[25] Urukiko rusanze kandi, nkuko urukiko rubanza rwabisanze, ku cyangombwa cy'ubutaka UPI 1/02/12/503 GAS/NDU cyo ku wa 16/11/2011 bigaragara ko ubwo butaka bwari bubaruwe kuri Mahinyuza Aloys na Mukantabana Donatile buri wese abufiteho 50%. Nyuma ubwo butaka bwaje kwandikwa kuri Mahinyuza Aloys gusa ku mugabane wa 100% ku cyangombwa cy'ubutaka (ubukode burambye) cyo kuwa 07/10/2016. Ibi bikaba byemeza ko umutungo Mukeshimana Marthe yagurishije wari uwa Mahinyuza Aloys 100%; nkuko bigaragazwa n'inyandikomvugo y'irangizarubanza RC 0189/14/TB/RUS yo kuwa 18/06/2015.

Gusuzuma amafaranga y' indishyi z'ikurikiranarubanza nay'igihembocya Avoka asabwa na Mahinyuza Aloys

[26] Uhagarariye Mahinyuza avuga ko asaba gutegeka Mukeshimana Marthe kwishyura indishyi z'ikurikiranarubanza zingana 1000,00,000frs n'igihembo cya Avoka kingana na Miliyoni ebyiri z'amafaranga y'uRwanda (2,000,000frs).

[27] Uhagarariye Mukeshimana n'abagenzi be avuga ko nta mpamvu n'imwe Mukeshimana yacibwa indishyi kuko ibyo yakoze byose yabikoze abifitiye uburenganzira kandi bigashimangirwa n'ibimenyetso byemewe.

UKO URUKIKO RUBIBONA

[28] Urukiko rusanze kuba ubujurire bwa Mahinyuza Aloys budafite ishingiro, indishyi asaba atagomba kuzihabwa kuko nta shingiro zifite.

Gusuzuma indishyi zisabwa ziyongera kuzo Mahinyuza Aloys yaciwe kurwego rwa mbere

[29] Uhagarariye Mukeshimana avuga ko kubera gushorwa mu manza z'ubusa basaba Urukiko gutegeka Mahinyuza guha indishyi Mukeshimana Marthe 10,000,000frw yiyongera kuyo yari yaraciwe.

UKO URUKIKO RUBIBONA

[30] Urukiko rusanze kuba ari uburenganzira bwa Mahinyuza Aloys bwo kujuririra urubanza mu gihe atishimiye imikirize yarwo, rusanze indishyi zo gushorwa mu manza z'ubusa zisabwa na Mukeshimana nta shingiro zifite.

Gusuzuma niba ubutaka bwaguzwe n'uwagobotse n'abagobokeshejwe mu rubanza bwabandikwaho

[31] Uhagagariye Mukeshimana na bagenzi be abagobokeshejwe avuga ko kubyerekeranye n'abagobotse ku gahato mu rubanza n'uwagobotse kubushake bwe, asaba ko Ubutaka baguze bukomoka kuri UPI:1/02/12/02/503 bubandikwaho kandi n'itambama riburiho rikavanwaho kuko baguze mu buryo bwemewe n'amategeko nkuko bigaragazwa n'amasezerano baguriyeho ndetse n'ibyangombwa byabo bya burundu nkuko Urukiko Rwisumbuye rwa Gasabo rwabitegetse.

[32] Uhagagariye Umwiza avuga ko amasezerano y'ubugure yo kuwa 27/11/2018 agaragaza ko Umwiza Solange yaguze na Mugwaneza Emmanuel wari uhagarariye na mushiki we Mukeshimana Marthe ubutaka bubaruwe kuri UPI 1/02/12/02/3735 nk'uko kopi y'icyangombwa cy'ubutaka na kopi ya procuration yahawe Umwiza Solange zibigaragaza, ubu butaka bukaba buherereye mu mudugudu wa Nyakabungo, akagari ka GAsanze, umurenge wa nduba kandi kuva yagura ubu butaka, Umwiza Solange yabuze uburyo abwiyandikishaho kuko bwanditse kuri Mugwaneza Emmanuel utakiba mu Rwanda, kandi mushiki we witwa Mukeshimana Marthe ari nawe wamuhagarariye ku masezerano y'ubugure bukaba bwarashyizweho itambama n'uwitwa Twizere Gilbert uvuga ko ahagarariye Mahinyuza Aloys,;

[33] Uhagagariye Umwiza avuga ko asaba urukiko gutegeka ko itambama ryashyizwe ku butaka UPI 1/02/12/02/3735 bubaruye kuri Mugwaneza Emmanuel ryakurwaho kugira ngo bubashe kwandikwa kuri nyirabwo Umwiza Solange, ibi urukiko rukabitegeka rushingiye ku masezerano y'ubugure yavuzwe haruguru, kopi y'icyangombwa cy'ubutaka hamwe na kopi ya procuration byose bigaragaza ko ubutaka UPI 1/02/12/02/3735 bwaguzwe na Umwiza Solange; bityo akaba agomba kubwandikwa kuko ariwe nyirabwo cyane ko na Mukeshimana Marthe wahagarariye musaza we Mugwaneza Emmanuel yemera ko ubwo bugure bwabayeho kandi akemera ko ubwo butaka bukwiye kwandikwa kuri Umwiza Solange nka nyirabwo ubukomora ku masezerano y'ubugure nk'uko biteganywa n'ingingo ya 20 y'itegeko N° 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda aho iteganya ko "Kwandikisha ubutaka ku muntu wese ubutunze ni itegeko." Ikindi kandi, Umwiza Solange ni acquereur de bonne foi kuko atigeze amenya ibibazo bishobora kuba biri hagati ya Mahinyuza Aloys na Mukeshimana Marthe, cyane ko igice cy'ubutaka yagurishijwe cyanditswe ku mazina na Mugwaneza Emmanuel, bikaba byumvikana ko atigeze amenya niba ubwo butaka yaguze bukomoka kuri UPI: 1/02/12/02/503 iburanwa na Mahinyuza Aloys uyu munsu, akaba ari muri urwo rwego basaba urukiko gutegeka ko ubutaka UPI 1/02/12/02/3735 bukurwa ku mazina ya Mugwaneza Emmanuel kuko atakiri nyirabwo, maze bukwandikwa kuri Umwiza Solange kuko ariwe nyirabwo kuwa kuwa 27/11/2018 ubwo yabuguraga.

[34] Uhagagariye Umwiza avuga ko Urukiko kandi rukwiriye gutegeka ko itambama ryashyizwe ku butaka UPI 1/02/12/02/3735 rikurwaho hashingiwe ku kuba Twizere Gilbert warishyizeho ntaho ahuriye n'ubwo butaka kuko ari ubwa Umwiza Solange ubukomora ku masezeano y'ubugure yo

kuwa 27/11/2018, nk'uko biteganywa mu ngingo ya 21 y'itegeko ryavuzwe haruguru iteganya ko "Bitabangamiye ibiteganywa n'iri tegeko byerekeranye n'ubuso bw'ubutaka butemerewe kugabanywamo ibice, uburenganzira ku butaka bushobora guhererekanywa biciye mu izungura, impano, umurage, umunani, ikodeshwa, igurishwa, iyatisha, ingurane, inshingano yo gutanga inzira ku butaka bw'undi bukomoka ku miterere y'ahantu, gutangwaho ingwate n'ubundi buryo bwose bw'iherekanya hakurikijwe uburyo bugenwa n'amategeko n'amabwiriza." Hashingiwe kuri iyi ngingo rero kuba Umwiza Solange yaraguze ubutaka bubaruwe kuri UPI 1/02/12/02/3735 kandi akabugura na nyirabwo Mugwaneza Emmanuel nta mpamvu n'imwe yabuza urukiko gutegeka ko itambama ryabushyizweho na Twizere Gilbert rikurwaho maze ubutaka bukandikwa kuri nyirabwo Umwiza Solange.

[35] Uhagariye Umwiza avuga ko Ingingo ya 64 y'itegeko N° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano iteganya ko "amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye"; hashingiwe ku biteganywa muri iyi ngingo, Umwiza Solange akwiriye kwandikwaho ubutaka bwe kuko abukomora ku bugure bwakozwe hagati ye na Mugwaneza Emmanuel kandi uwo baguze nawe akaba adahakana ubwo bugure, bityo icyemezo cy'urukiko rwisumbuye rwa Gasabo gikwiriye kugumana agaciro kacyo kuko urukiko rwagifashe nyuma yo gusuzuma ibimenyetso rwahawe na Umwiza Solange bigizwe n'amasezerano y'ubugure, procuration yatanzwe na nyir'ubutaka ariwe Mugwaneza Emmanuel, hamwe na kopi y'icyangombwa cy'ubutaka. Ikindi kandi' urukiko rwashingiye ku mvugo za Mukeshimana Marthe uhamya ko yahagarariye musaza we Mugwaneza Emmanuel mu bugure yagiranye na Umwiza Solange, bityo no mu rwego rw'ubujurire, urukiko rukaba rukwiriye guha agaciro ibyo bimenyetso maze rugategeka ko ubutaka UPI 1/02/12/02/3735 bwandikwa kuri Umwiza Solange.

[36] Uhagarariye Mukeshimana na bagenzi be avuga ko Umwiza Solange akwiye guhabwa ubutaka bwe kuko yabuguze mu buryo no mu nzira zemewe n'amategeko. Ku byerekeye itambama rikwiye gukurwaho nkuko n'abandi bese baguze ubwo butaka bakwiye kubuvanirwaho.

UKO URUKIKO RUBIBONA

[37] Urukiko rusanze mu rubanza rujuririrwa bigaragara ko urukiko rubanza rwemeje ko ko ubutaka bubaruye kuri UPI 1/02/12/02/3735 ari ubwa Umwiza Solange, ko Uwitonze Joachim, Mbagizente Edouard, Gatanazi Damien, Byensi Bonaventure, Nsengamungu Emmanuel, Kanyamahanga Vianney, Sindikubwabo Vianney, Nshimiyimana Saverien, Mutuyimana Jean Claude bagumana ubutaka baguze na Mahinyuza Aloys wari uhagarariye na Mukeshimana Marthe, kandi ubwashyizweho itambama rigakurwaho; rutegeka ko itambama ryashyizwe ku mitungo yagurishijwe na Mukeshimana Marthe mu izina rya Mahinyuza Aloys mbere y'itariki ya 4/12/2017 rikurwaho. Rusanze rero Umwiza Solange na Uwitonze Joachim n'abagenzi be basaba mu bujurire ibyo bari barahawe n'urukiko rubanza, bityo iyo mpamvu y'ubujurire ikaba idafite ishingiro kuko basaba ibyo bahawe.

A. Gusuzuzuma indishyi z'ikurikiranarubanza n'igihembo cya avoka.

[38] Uhagariye Mukeshimana na bagenzi be avuga ko abagobotse kugahato n'uwagobotse ku bushake bwe basaba indishyi kuri buri wese 300,000frw kubera kubashora mu manza, na 500.000frw y'igihembo cy'avoka.

[39] Uhagariye Umwiza avuga ko Igikorwa cya Mugwaneza Emmanuel uhagarariye na mushiki we Mukeshimana Marthe cyo kudafasha ku gihe Umwiza Solange kubona mutation y'ubutaka bamugurishije, nicyo nyirabayazana wo gushorwa mu manza z'amaherere kuko Umwiza Solange atahwemye gusaba ko yakoroherezwa kubona mutation nk'uko amategeko abiteganywa, ariko bikaburizwamo n'ubushake buke bwa Mugwaneza Emmanuel kugez'ubwo uwitwa Twizere Gilbert

uvuga ko ahagarariye Mahinyuza Aloys ashyira itambama kuri ubwo butaka, bityo ibi byose bikaba byarashyize mu gihombo Umwiza Solange kuko ubutaka bwe atabashije ku bukoresha icyo yabuguriye kuko kugez'ubu butamwanditseho ndetse bukaba buriho itambama, ikindi kandi byamushoye mu manza akaba ariyo mpamvu Umwiza Solange atanze ubujurire bwuririye ku bundi kuko atanyuzwe n'indishyi zingana na 900.000frws yagenewe ku rwego rwa mbere nk'uko biteganywa mu ngingo ya 152 ya CPCCSA aho igira iti "Uregwa mu rukiko rujuririrwa ashobora na we kugira ibyo asaba yiregura. Ubujurire bwuririye ku bundi bukorwa n'uwarezwe mu bujurire bwerekeye ku wajuriye cyangwa ku bandi barezwe mu bujurire."

[40] Uhagagariye Umwiza avuga ko indishyi Umwiza Solange yifuza ziteye ku buryo bukurikira: - Indishyi z'akababaro ko gushorwa mu manza z'amaherere zingana na 2.000.000frws nk'uko yazisabye ku rwego rwa mbere, cyane ko bigaragara ko akomeje gushorwa mu manza ku buryo bw'amaherere. - Gusubizwa igihembo cya avoka yatanze ku rwego rwa mbere kingana na 1.000.000frws, hiyongereyeho 1.000.000frws yishyuye avoka ku rwego rw'ubujurire, ikurikiranarubanza ringana na 500.000frws hamwe n'ingwate y'amagarama yatanze agoboka mu rubanza ku rwego rwa mbere ingana na 20.000frws, byumvikana ko indishyi zose dusaba zingana na 4.520.000frws zikagenwa hashingiwe ku ngingo ya 111 ya CPCCSA aho iteganya ko "Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyura ibyakoreshejwe mu rubanza."

[41] Uhagarariye Mukeshimana na bagenzi be avuga ko izo ndishyi zose zikwiriye gutangwa na Mahinyuza Aloys kuko ariwe washoye mu rubanza abaruburanye bese kandi yarirengagije ko ariwe watanze ububasha bwo kugirango bahagure.

UKO URUKIKO RUBIBONA

[42] Urukiko rusanze kuba ubujurire bwa Mahinyuza Aloys budafite ishingiro, kandi byatumye abaregwa bakurikirana urubanza mu bujuriyenditse banashaka aba avoka, rusanze Mahinyuza Aloys agomba guha Umwiza Solange indishyi z'ikurikirana rubanza n'igihembo cy'avoka zingana na 500.000frw; agomba kandi guha Mukeshimana Marthe na Uwitonze Joachim, Mbagizente Edouard, Gatanazi Damien, Byensi Bonaventure, Nsengamungu Emmanuel, Kanyamahanga Vianney, Sindikubwabo Vianney, Nshimiyimana Saverien na Mutuyimana Jean Claude igihembo cy'avoka kingana na 500.000frw, kandi agaha buri wese amafaranga y'ikurikirana rubanza angana na 100.000frw

III. ICYEMEZO CY'URUKIKO

[43] Rwemeje kwakira ubujurire bwatanzwe na Mahinyuza Aloys, rubusuzumye rusanga budafite ishingiro;

[44] Rwemeje ko ubujurire bwuririye ku bundi bwa Umwiza Solange bufite ishingiro kuri bimwe

[45] Rwemeje ko ubujurire bwuririye ku bundi bwa Mukeshimana Marthe n'abagenzi be bufite ishingiro kuri bimwe.

[46] Rwemeje ko urubanza RC00095/2019/TGI/GSBO rwaciwe kuwa 03/08/2020 n'urukiko rwisumbuye rwa Gasabo rudahindutse ;

[47] Rutegetse Mahinyuza Aloys guha Umwiza Solange indishyi z'ikurikirana rubanza n'igihembo cy'avoka zingana na 500.000frw.

[48] Rutegetse Mahinyuza Aloys guha Mukeshimana Marthe na Uwitonze Joachim, Mbagizente Edouard, Gatanazi Damien, Byensi Bonaventure, Nsengamungu Emmanuel, Kanyamahanga Vianney, Sindikubwabo Vianney, Nshimiyimana Saverien na Mutuyimana Jean Claude igihembo cy'avoka kingana na 500.000frw, kandi agaha buri wese amafaranga y'ikurikirana rubanza angana na 100.000frw.

[49] Rutegetse ko amafaranga 40.000frw y'igarama yatanzwe na Mahinyuza Aloys arega ahwanyeye n'ibyakozwe mu rubanza.